



## WEST HANTS REGIONAL MUNICIPALITY REPORT

Information <input type="checkbox"/>	Recommendation X	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:** \_\_\_\_\_  
Alex Dunphy, Planner

**Date:** May 11, 2023

**Subject:** Development Agreement: PID 45411808, Cole Drive, Windsor; File # 23-05

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### LEGISLATIVE AUTHORITY

Municipal Government Act Section 230

### RECOMMENDATION

Staff recommends that the 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 allow a four storey, mixed-use apartment building on PID 45411808 on Cole Drive in Windsor which is substantively the same as the draft set out in Attachment B of the report File #23-05 to the Planning and Heritage Advisory Committee dated May 11, 2023.

...that PAC/HAC recommends that Council require that the development agreement with Shawn Foote & Mark Hartlin which permits a four storey, mixed-use apartment building on PID 45411808 on Cole Drive in Windsor 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 X	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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An updated application was received from Darren Shupe of Brighter Community Planning & Consulting on behalf of the property owner Mainland South Investments on March 21, 2023. The application is to consider permitting a 4-storey mixed-use apartment building by development agreement.

**DISCUSSION**

The subject lot is approximately 2 acres (8093.71 sq. m.) in size. It is designated Residential and included within the Three Mile Plains Growth Centre on the Generalized Future Land Use Map (GFLUM) of the West Hants Municipal Planning Strategy (WHMPS) (Figure 1). The subject lot is zoned Multiple Unit Residential (R-3) on Schedule A of the West Hants Land Use By-law (WHLUB) (Figure 2).

***Surrounding Context***

Properties to the south and west of the subject lot are designated Residential and are zoned Multiple Unit Residential (R-3) and Agriculture (AG). Properties to the north and east are designated Joint Industrial Park and zoned Light Industrial Type Three (LI-3). Lands to the south and west are currently being developed for residential uses. There is an office building which is currently under construction and directly abutting the subject lot. Further along Cole Drive in the Joint Industrial Park designation is a hotel and a vacant lot. Highway 101 also directly abuts the subject lot on the northeast lot line. The Residentially designated land located on the south side of Cole Drive are currently being developed for residential uses.

***Municipal Planning Strategy Document Review***

Policy 5.3.8 is one of the two enabling policies to be considered for this application. This policy provides Council with the ability to consider new multiple unit residential development greater than three storeys in height in the Three Mile Plains Growth Centre by development agreement. In addition to the criteria outlined in this policy, Policy 5.3.8 requires the criteria from Policy 5.3.7 to be considered by Council in relation to the proposed development. The full list of criteria is included with this report in Attachment A. In summary, the proposal meets the criteria since:

- the proposed development has side yards that are at least one half the height of the main building;
- Cole Drive has been identified as a Collector Street on the Future Streets Map within the West Hants Subdivision By-law;

- the amount of recreational space provided in the proposal exceeds the amount of recreational space required by the West Hants Land Use By-law; and
- the Development Officer, Municipal Project Engineer, Fire Chief, Manager of Building and Fire Inspection Services, and the Municipal Traffic Authority have no concerns.

Policy 5.6.4 is the second enabling policy to be considered for this application. This policy provides Council with the ability to consider new local commercial uses in Growth Centres outside the Commercial designation by development agreement. This policy also includes criteria which must be considered in relation to the proposed development. The full list of criteria is included with this report in Attachment A. In summary, the proposal meets the criteria since:

- the proposed development is of a similar size to surrounding buildings;
- the draft development agreement outlines the hours of operation for the commercial uses of the development as between 7:00 a.m. and 9:00 p.m. daily, inclusive; and
- the Development Officer and the Municipal Traffic Authority have no concerns.

Policy 16.3.1 establishes the general criteria that must be considered for all development agreements applications. The full list of criteria is included with this report in Attachment A. In summary, the proposal meets the criteria as:

- the proposal is not considered premature or inappropriate for the area;
- no municipal costs related to the proposal are anticipated; and
- the Fire Chief, Development Officer, Manager of Building and Fire Inspection Services, Municipal Project Engineer, and Municipal Traffic Authority have no concerns which have not been addressed in this report.

## **MUNICIPAL CLIMATE CHANGE ACTION PLAN**

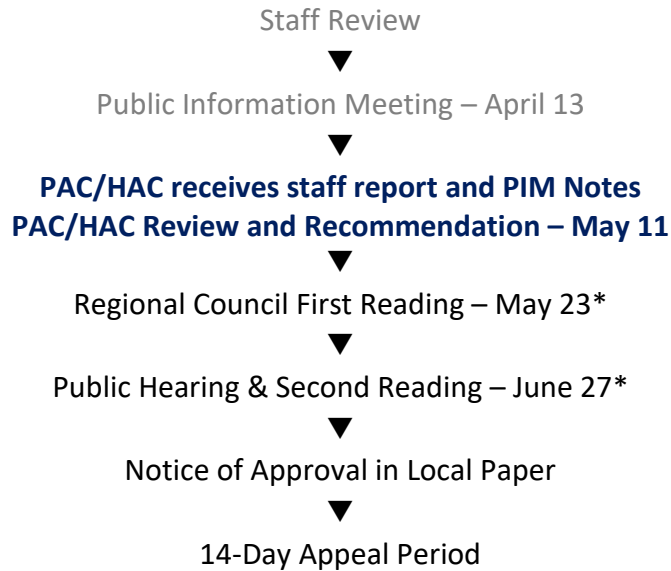
The Municipal Climate Change Action Plan (MCCAP) Inland Flooding and Coastal Flooding maps do not show any risks of either inland or coastal flooding on the subject lot, however the bottom of Cole Drive may experience flooding.

The Municipal Services Specifications Manual will require the developer to provide information to the Municipal Department of Public Works to ensure pre- and post-development flows are met. Property owners are responsible for ensuring that their lot is suitable for the proposed uses.

## **NEXT STEPS**

Discussion from PAC/HAC will be incorporated into the report and presentation to Council.

**Process**



\*anticipated dates; final dates set by Council

## **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 application, the PAC/HAC may recommend that Council:

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

## **ATTACHMENTS**

Figure 1	West Hants GFLUM Extract
Figure 2	West Hants Zoning Map Extract
Attachment A	Policy Summary for Development Agreement
Attachment B	Draft Development Agreement
Attachment C	Public Information Meeting Notes

Report Prepared by: \_\_\_\_\_  
Alex Dunphy, Planner

Report Approved by: \_\_\_\_\_  
Sara Poirier, Director of Planning and Development

Figure 1 – West Hants GFLUM Extract

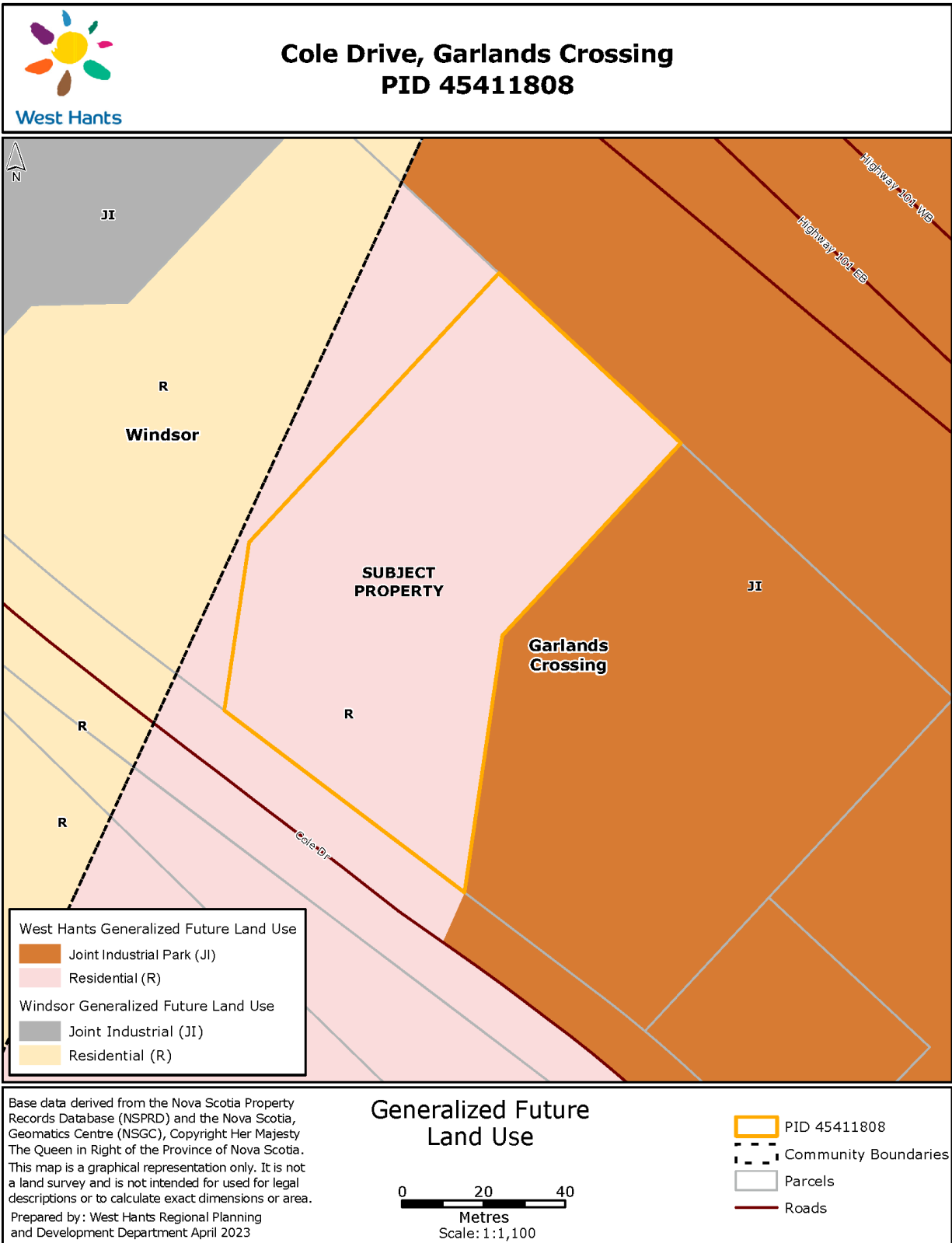
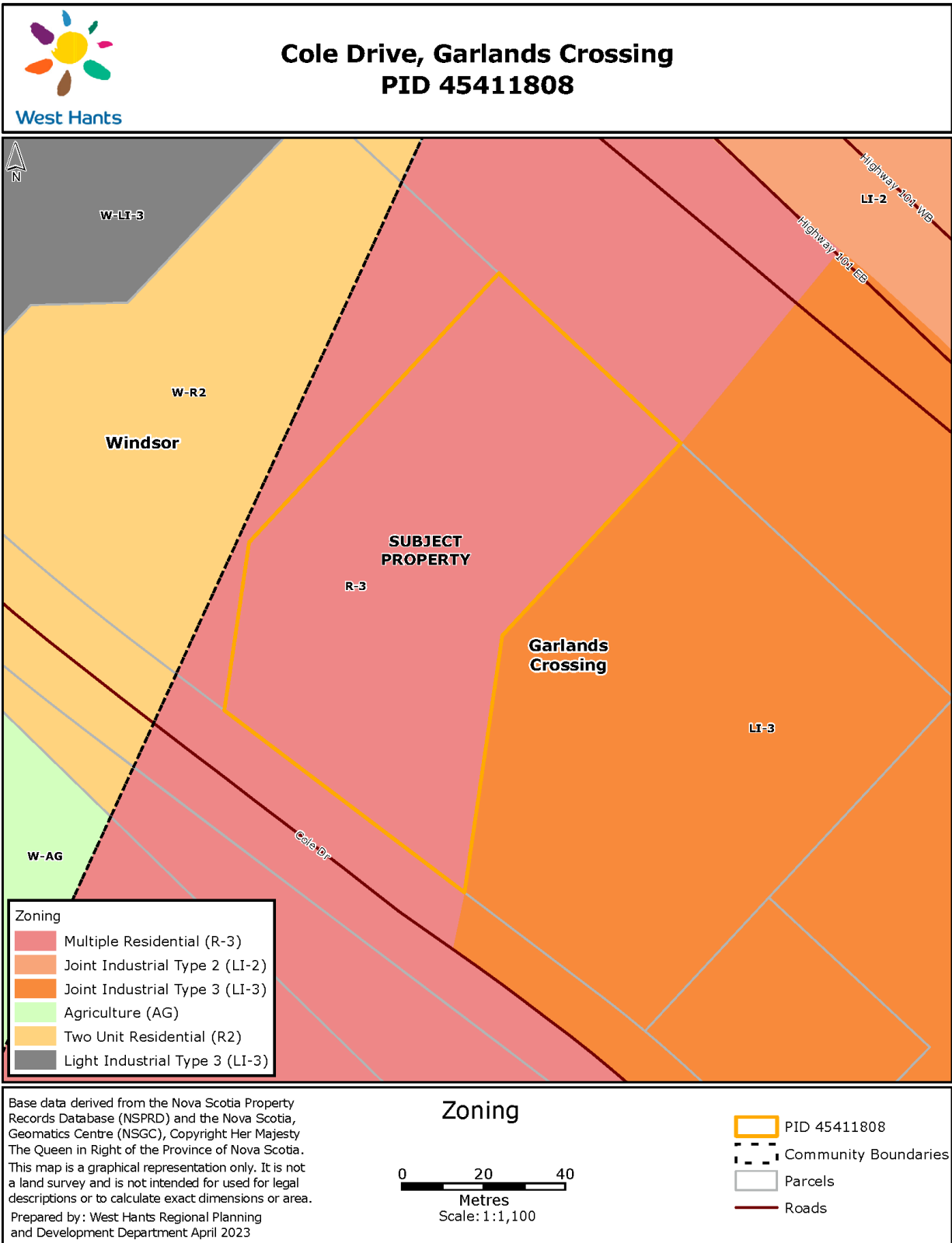


Figure 2 – West Hants Zoning Map Extract



**Attachment A – Policy Summary for Development Agreement**

<p><b>Policy 5.3.7</b>  <i>It shall be the policy of Council to consider rezoning land within the Three Mile Plains Growth Centre to R-3 subject to the following:</i></p>	
<p><i>(a) the development has frontage on an arterial or collector street designated on the Transportation Map (Map 2) if it consists of 12 or more units;</i></p>	<p>Cole Drive is shown as a local road on the Transportation Map of the West Hants Municipal Planning Strategy. Even though Cole Drive is within an area designated Joint Industrial Park and was constructed with a sidewalk on one side of the street, it is most likely classified as a local road due to it being a dead-end street with no current connections elsewhere. The Future Streets Map attached to the West Hants Subdivision By-law identifies Cole Drive as a collector street. Due to this classification and the Traffic Authority having no concerns, this criterion is considered met.</p>
<p><i>(b) the lot is serviced, or is capable of being serviced, with municipal water and sewer; (Amendment WHMPS 14-01 Effective January 22, 2015)</i></p>	<p>The Municipal Public Works Department stated that they have no concerns regarding the adequacy of municipal services for the proposed development.</p>
<p><i>(c) the development is compatible with the character of the area with respect to building scale and design, traffic generation, population density and similar matters;</i></p>	<p>The proposal is of a similar scale and design to the surrounding existing uses. There are no concerns regarding traffic generation or density.</p>
<p><i>(d) existing and proposed streets are adequate to support the development and existing streets will not require major infrastructure improvements as a result of the development; a traffic impact study may be required in accordance with Section 14.6 of this Strategy;</i></p>	<p>Cole Drive is a public street owned by the Municipality. The Municipal Traffic Authority stated that they have no concerns and that the existing street is adequate to support the development.</p>
<p><i>(e) adequate open space or recreational space is provided;</i></p>	<p>The amount of recreational space provided in the proposal exceeds the amount of recreational space required by the West Hants Land Use By-law.</p>

	The Development Officer commented that they have no concern regarding the adequacy of on-site recreational space.
<i>(f) adequate on-site parking is provided;</i>	The Development Officer commented that the parking provided is considered adequate.
<i>(g) any other matter which may be addressed in a Land Use By law; and</i>	All relevant matters have been addressed in this report.
<i>(h) Policy 16.3.1.</i>	See below.
<p><b>Policy 5.3.8</b>  <i>It shall be the policy of Council to consider multiple unit residential development greater than three storeys in height in the Three Mile Plains Growth Centre by development agreement subject to the following:</i></p>	
<i>(a) the side yards are at least one half the height of the building;</i>	The proposed building is 4 storeys and has side yards of at least 20 ft.
<i>(b) adequate landscaping, screening and buffering is provided to minimize the impact of building height on adjacent properties;</i>	The proposed development agreement outlines the buffering requirements for all parking and service areas of the development.
<i>(c) the specific requirements for multiple unit development set out in Policy 5.3.7;</i>	See above.
<i>(d) any other matter which may be addressed in a development agreement; and</i>	All relevant matters have been addressed in this report.
<i>(e) Policy 16.3.1.</i>	See below.

<p><b>Policy 5.6.4</b>  <i>It shall be the policy of Council to consider new local commercial uses in Growth Centres outside the Commercial designation by development agreement subject to the following provisions:</i></p>	
<i>(a) the adjacent residential area will not be adversely affected with respect to:</i>	
<i>(i) traffic generation and traffic safety;</i>	The Traffic Authority stated that they have no concerns regarding traffic generation or safety.
<i>(ii) signage;</i>	Any signage will need to meet the

	requirements of the West Hants Land Use By-law.
<i>(iii) hours of operation;</i>	The draft development agreement outlines the hours of operation for the commercial uses of the development as between 7:00 a.m. and 9:00 p.m. daily, inclusive.
<i>(iv) size of building(s); and</i>	The proposal is of a similar size to the surrounding existing uses. There are no concerns regarding the proposal's building size.
<i>(v) pedestrian circulation and safety;</i>	The Traffic Authority stated that they have no concerns regarding pedestrian circulation or safety. There is a sidewalk on Cole Drive which leads to the subject lot and will connect to the proposed development through an abutting development which is also owned by the property owners of the subject lot.
<i>(b) adequate on-site parking is provided;</i>	The Development Officer has no concerns regarding the adequacy of the proposed on-site parking provided by the development.
<i>(c) adequate buffering or screening, setbacks and yards are provided;</i>	The Development Officer has no concerns regarding the buffering and required setbacks for the proposed development.
<i>(d) maintenance of the proposed use will be satisfactory;</i>	The draft development agreement outlines the requirements for maintenance.
<i>(e) any other matter which may be addressed by a development agreement; and</i>	All relevant matters have been addressed in this report.
<i>(f) Policy 16.3.1.</i>	See below.

**Policy 16.3.1**

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

*(a) whether the proposal is considered premature or inappropriate in terms of:*

<p><i>(i) the adequacy of sewer and water services;</i></p>	<p>The Public Works Department confirmed that the existing municipal services are adequate for the proposed development.</p>
<p><i>(ii) the adequacy of school facilities;</i></p>	<p>The Annapolis Valley Regional Centre for Education has stated that they will accommodate all students.</p>
<p><i>(iii) the adequacy of fire protection and other emergency services;</i></p>	<p>The Manager of Building and Fire Inspection Services has no issues with fire protection but did mention that the proposal has a steep driveway access for the fire department. The local Fire Chief has stated that there is adequate fire protection for the proposed use and had no concerns regarding the driveway access.</p>
<p><i>(iv) the adequacy of road networks adjacent to, or leading to the development; and</i></p>	<p>The Traffic Authority has no concerns regarding the road networks adjacent or leading to the development.</p>
<p><i>(v) the financial capacity of the Municipality to absorb any costs relating to the development.</i></p>	<p>There are no anticipated costs to the Municipality regarding this development.</p>
<p><i>(b) whether the development is serviced, or capable of being serviced, by a potable water supply and either central sewer or an approved on-site sewage disposal system;</i></p>	<p>The subject lot has access to adequate municipal services.</p>
<p><i>(c) the suitability with any aspect relative to the movement of auto, rail and pedestrian traffic;</i></p>	<p>The Traffic Authority has no concerns regarding movement suitability on the subject lot.</p>
<p><i>(d) the adequacy of the dimensions and shape of the lot for the intended use;</i></p>	<p>The Development Officer commented that the subject lot is suitable for this proposal.</p>

<p><i>(e) the pattern of development which the proposal might create;</i></p>	<p>The proposal is in line with the pattern of development surrounding Cole Drive. There have been more applications to consider residential uses in this area lately. The Development Officer has no concerns regarding the pattern of development.</p>
<p><i>(f) the suitability of the area in terms of steepness of grade, soil and geological conditions, location of water courses, wetlands, and susceptibility of flooding;</i></p>	<p>The site appears to be at a higher elevation in comparison to buildings closer to Wentworth Road. There are no watercourses or wetlands located on the property. No concerns were recorded during the site visit.</p>
<p><i>(g) 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>All Municipal, Provincial, and Federal regulations will have to be met.</p>
<p><i>(h) any other matter required by relevant policies of this Strategy.</i></p>	<p>All relevant matters have been addressed in this report.</p>

**Attachment B – Draft Development Agreement**



## DEVELOPMENT AGREEMENT

**THIS AGREEMENT** made this                    day of                    , 2023.

### **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 -

**MAINLAND SOUTH INVESTMENTS INC.** a body corporate, with a head office at 56 Jebel Lane, Herring Cove, in the County of Halifax, Province of Nova Scotia,

(Hereinafter referred to as the “Co-owner”)

OF THE SECOND PART

**3171692 NOVA SCOTIA LIMITED** a body corporate, with a head office at Suite 411, 5 Ramsgate Lane, Halifax, in the County of Halifax, Province of Nova Scotia,

(Hereinafter referred to as the “Co-owner”)

OF THE THIRD PART

**WHEREAS** the Co-owners are the registered owners of parcel of land located on Cole Drive, PID 45411808, hereinafter referred to as the “Property”, which lands are more particularly described in Schedule A attached hereto; and

**WHEREAS** PID 45411808 is designated Residential and is within the Three Mile Plains Growth Centre on the Generalized Future Land Use Map of the Municipal Planning Strategy and zoned Multiple Unit Residential (R-3) on the Zoning Map of the Land Use By-law; and

**WHEREAS** the Co-owners have requested that the Municipality enter into a development agreement to permit up to 42 apartment units and up to 13,400 sq. ft. of commercial space within a four (4) storey apartment building on the Property (the “Development”); and

**WHEREAS** Policy 5.3.8 of the Municipal Planning Strategy and Section 6.1 (a) of the Land Use By-law enable Council to consider entering into a development agreement to allow multiple unit residential development greater than three storeys in the Three Mile Plains Growth Centre, and Policy 5.6.4 of the Municipal Planning Strategy and Section 6.1 (h) of the Land Use By-law enable Council to consider entering into a development agreement to allow new local commercial uses in Growth Centres outside of the Commercial designation; and

**WHEREAS** the Council of the Municipality, at a meeting held on **Month Day**, 2023, 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 Definitions**

In this Agreement, all words or phrases used shall carry their customary meaning unless otherwise set out in the Land Use Bylaw, except those defined as follows:

- (a) “Active Construction” means that the Owner has active development and building permits for the construction of the apartment building and the associated parking podium, and that construction activity including but not limited to equipment, machinery, and employees, are on-site working towards the necessary building inspections leading to an occupancy permit.

- (b) “Commencement” means the date the Owner begins Active Construction on the apartment building within this Agreement as permitted by an issued development and building permit; and
- (c) “Commercial Floor Area” means the total useable floor area within a building used for commercial purposes but excludes washrooms, utility and mechanical rooms, storage rooms and common hallways between stores.

## **1.2 Schedules**

The following attached schedules shall form part of this Agreement:

Schedule A - Legal Description

Schedule B – Site Plan

## **1.3 Municipal Planning Strategy, Land Use By-law and Subdivision By-law**

- (a) Municipal Planning Strategy means the Municipal Planning Strategy of West Hants, approved on May 13, 2008, as amended, or successor by-laws;
- (b) Land Use By-law means the Land Use By-law of West Hants, approved on May 13, 2008, as amended, or successor by-laws;
- (c) Subdivision By-law means the Subdivision By-law of West Hants, approved on May 13, 2008, 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) a four (4) storey apartment building containing up to 42 apartment units and up to 13,400 sq. ft. (1,244.9 sq. m.) of Commercial Floor Area on the ground floor for commercial uses which shall be limited to the following:
    - Arts, crafts, gifts and antique shops
    - Clubs
    - Convenience stores
    - Florists
    - Day care centres, licensed or non-licensed
    - Offices
    - Personal service shops
    - Restaurants, excluding drive-through restaurants

- (iii) underbuilding, underground and surface parking for the uses within the building.

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.

**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 in writing minor changes to the location of the building or other aspects of the Site Plan provided the side yards are not decreased.
- (c) The apartment building shown on the Site Plan in Schedule B shall be limited to a maximum of 42 dwelling units and up to 13,400 sq. ft. (1,244.9 sq. m.) of Commercial Floor Area on the ground floor. The building may include underground and underbuilding parking and shall conform to the following requirements:

Minimum Front Yard	25 ft. (7.62 m.)
Minimum Rear Yard	35 ft. (10.67 m.)
Minimum Side Yard	15 ft. (4.57 m.) or one-half the height of the building whichever is greater
Maximum Storey of Main Building	4 storeys
Maximum Building Height	40 ft. (12.19 m.)
Maximum Height of Accessory Building	15 ft. (4.57 m.)

- (d) Accessory buildings are permitted in accordance with Section 5.1 of the Land Use By-law, *Accessory Buildings and Structures*.
- (e) A minimum of 10,020 sq. ft. (930.89 sq. m.) of usable recreation space as outlined in Section 2.6, *Recreational Space*, shall be required.
- (f) The Co-owners shall keep all undeveloped areas of the Property landscaped which may include grass, shrubs, trees or other appropriate vegetative cover.

**2.3 Access and Egress**

- (a) The Co-owners shall develop, construct, and maintain the driveways in the Development in general conformance with the driveways shown on Schedule B.
- (b) The driveways shown on Schedule B shall be constructed a minimum of 100 ft. (30.48 m.) from a street intersection. The driveways shall be paved with a

minimum paved surface width of 20 ft. (6.09 m.). The vehicular entrance and exit shall be clearly demarcated.

## **2.4 Parking**

- (a) All parking spaces for vehicles using the Property shall be located on the lot and shall be generally located as shown on Schedule B.
- (b) A minimum of one (1) parking space shall be provided per dwelling unit and a minimum of one (1) parking space shall be provided for every 500 sq. ft. (46.45 sq. m.) of Commercial Floor Area dedicated to commercial uses on the Properties.
- (c) Parking may be provided either underbuilding, underground or outside at grade.
- (d) Outside parking aisles and spaces shall be constructed so as to create a stable surface for vehicle traffic and be clearly demarcated and lined by the Co-owners. They may be constructed using permeable construction materials to assist with stormwater retention.
- (e) Each parking space shall be a minimum of 9 ft. by 20 ft. (2.7 m. by 6.1 m.) exclusive of driveways and manoeuvring aisles. Parking aisles shall be a minimum of 20 ft. (6.1 m) wide.
- (f) The number of parking spaces may be varied in writing by the Development Officer in accordance with Section 2.13, *Variance*, of this Agreement.

## **2.5 Fire Safety**

- (a) No development permit shall be issued until the location and connection design of any 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 access routes shall be kept clear of overhead obstructions and wires and be maintained by the Co-owners to allow unimpeded access to the Properties by emergency services vehicles, unless otherwise agreed to in writing by the Fire Chief.

## **2.6 Recreational Space**

A minimum of 10,020 sq. ft. (930.89 sq. m.) of usable recreational space shall be provided on the Property and may include:

- (a) individual balconies; and
- (b) common use landscaped areas.

## **2.7 Buffering**

Outdoor parking, driveways, and parking aisles shall be screened from adjacent properties, except for the lot line abutting Cole Drive and the lot line abutting PID 45366432, through the use of:

- (a) a mix of local species of coniferous trees. At planting, each tree shall have a diameter of at least two (2) in. measured at four-and-one half (4.5) ft. above the surrounding grade and a minimum height of 5 ft.; or
- (b) a hedge of a variety of coniferous shrubs each of which will reach over six (6) ft. in height at maturity; or
- (c) a wall or an opaque fence which is a minimum of five (5) ft. in height and of sufficient height to provide a visual buffer to the abutting property; or

any combination of the above, all arranged to form a dense or opaque screen, and maintained for as long as the buffer is required.

## **2.8 Servicing**

### **(a) Waste Collection**

- (i) No Municipal garbage collection will be provided to the Development. The Co-owners shall have sole responsibility for collecting, storing and disposing of garbage and other recycling or waste items from the Development.
- (ii) The Co-owners shall keep any outdoor storage of garbage in an enclosed structure or in some way adequately screened so as not to be visible from or cause a nuisance to nearby properties and abutting roads and it shall not be located closer than 10 ft. (3.05 m.) to an abutting property.

### **(b) Water and Sewer Services**

- (i) The building shall be serviced with water and sewer services provided by West Hants Regional Municipality authorized by the Municipal Engineer. 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.
- (ii) The Co-owners shall be responsible for constructing, installing and maintaining the water and sewer services on the Property.

### **(c) Snow Plowing**

The Co-owners shall have sole responsibility for snow plowing within the Development.

## **2.9 Maintenance**

- (a) The Co-owners 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.
- (b) The Co-owners shall maintain the driveways to a level adequate to allow for access by emergency services vehicles.

## **2.10 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 ensure there is no light spilling, glare or light cast over neighbouring properties or the street.

## **2.11 Hours of Operation**

The hours of operation for the commercial uses within this Development shall be limited to between 7:00 a.m. and 9:00 p.m. daily, inclusive.

## **2.12 Variance**

In accordance with Section 5.48 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 as required in Section 2.2 (c) of this Agreement; and
- (ii) number of parking spaces required.

## **PART 3 CHANGES AND DISCHARGE**

**3.1** The Co-owners shall not vary or change the number of units within the apartment building on 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 this Agreement.

**3.3** The following matters are substantive matters:

- (a) the number of units permitted within the apartment building on the Property as listed in Section 2.1, *Use*;
- (b) the minimum side yard requirements and maximum building height of the building as listed in Section 2.2, *Development Location and Design*;
- (c) the fire safety requirements as listed in Section 2.5, *Fire Safety*;
- (d) the hours of operation for the commercial uses as listed in Section 2.11, *Hours of Operation*.

**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 Co-owners 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 Co-owners, 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 Co-owners, provided the use of the Properties 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 Co-owners 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. The date of commencement will be determined as the date the Co-owners begins Active Construction on the building within this Agreement as permitted by an issued development and building permit.
- (b) Active Construction 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 Co-owners. Upon the written request of the Co-owners, 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 Co-owners are bona fide delayed from commencing the Development for reasons which are beyond the Co-owners' control, the determination of which shall be at the sole discretion of the Development Officer, then performance by the Co-owners is excused for the period of the delay and the time period for the Co-owners 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 Co-owners 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 Co-owners 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 Co-owners about the suitability of the Property for the Development proposed by this Agreement. The Co-owners assume 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 Co-owners in writing. In the event that the Co-owners have 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 Co-owners 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 Co-owners 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 Co-owners personally or by ordinary mail which shall be deemed to have been received within three (3) business days of mailing, addressed to Shawn Foote at 56 Jebel Lane, Herring Cove, NS, B3V 1T2, and Mark Hartlin at Suite 411, 5 Ramsgate Lane, Halifax, NS, B3P2S6, or at any other address provided in writing or email by the Co-owners.
- (b) The Co-owners 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 in writing or email by the Municipality to the Co-owners.

#### **5.10 Full Agreement**

This Agreement constitutes the entire agreement and contract entered into by the Municipality and the Co-owners. 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

\_\_\_\_\_  
Witness

) **WEST HANTS REGIONAL**

) **MUNICIPALITY**

)

)

Per: \_\_\_\_\_

) Abraham Zebian, Mayor

)

) Per: \_\_\_\_\_

) Deanna Snair, Municipal Clerk

)

) **MAINLAND SOUTH INVESTMENTS INC.**

)

Per: \_\_\_\_\_

) Shawn Foote, President

)

) **3171692 NOVA SCOTIA LIMITED**

)

Per: \_\_\_\_\_

) Mark Hartlin, President

**PROVINCE OF NOVA SCOTIA  
COUNTY OF HANTS**

**ON THIS**            day of            , A.D. 2023, 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            presence.

---

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA  
COUNTY OF HANTS**

**ON THIS**            day of            , A.D. 2023, 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, **Shawn Foote**, one of the parties thereto, signed, sealed and delivered the same in            presence.

---

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA  
COUNTY OF HANTS**

**ON THIS**            day of            , A.D. 2023, 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, **Mark Hartlin**, one of the parties thereto, signed, sealed and delivered the same in            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).

I certify that on this \_\_\_\_\_, 2023  
the Municipal Clerk, Deanna Snair came before me, made oath,  
and swore the foregoing affidavit at  
\_\_\_\_\_, Nova Scotia.

\_\_\_\_\_  
A BARRISTER/COMMISSIONER OF THE  
SUPREME COURT OF NOVA SCOTIA

\_\_\_\_\_  
Deanna Snair, Clerk

Canada  
Province of Nova Scotia

**AFFIDAVIT & PROOF OF EXECUTION (CORPORATE)**

I, Shawn Foote, Nova Scotia, make oath and say that:

1. I Shawn Foote of **MAINLAND SOUTH INVESTMENTS 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 \_\_\_\_\_, 2023  
the Deponents came before me, made oath,  
and swore the foregoing affidavit at  
\_\_\_\_\_, Nova Scotia.

\_\_\_\_\_  
A BARRISTER/COMMISSIONER OF THE  
SUPREME COURT OF NOVA SCOTIA

\_\_\_\_\_  
Shawn Foote, President

Canada  
Province of Nova Scotia

**AFFIDAVIT & PROOF OF EXECUTION (CORPORATE)**

I, Mark Hartlin, Nova Scotia, make oath and say that:

6. I Mark Hartlin of **3171692 NOVA SCOTIA LIMITED** the “Corporation”. Except as otherwise stated I have personal knowledge of the matters to which I have sworn in this Affidavit.
7. 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.
8. I verify that I have the authority to execute the foregoing instrument on behalf of the corporation and thereby bind the Corporation.
9. The Corporation is a resident of Canada under the Income Tax Act (Canada).
10. 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 \_\_\_\_\_, 2023  
the Deponents came before me, made oath,  
and swore the foregoing affidavit at  
\_\_\_\_\_, Nova Scotia.

\_\_\_\_\_  
A BARRISTER/COMMISSIONER OF THE  
SUPREME COURT OF NOVA SCOTIA

\_\_\_\_\_  
Mark Hartlin, President

**Schedule A  
Legal Description**

**PID 45411808**

Registration County: HANTS COUNTY

Street/Place Name: COLE DRIVE /GARLANDS CROSSING

Title of Plan: PLAN OF S/D TO CREATE LOT 2 S/D OF OF LOT 2R LAND REGISTRED TO 3102673  
NOVA SCOTIA LTD COLE DR & HWY NO 101 WINDSOR & GARLANDS CROSSING

Designation of Parcel on Plan: LOT 2

Registration Number of Plan: 122141428

Registration Date of Plan: 2023-03-08 11:29:32

\*\*\* Municipal Government Act, Part IX Compliance \*\*\*

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act

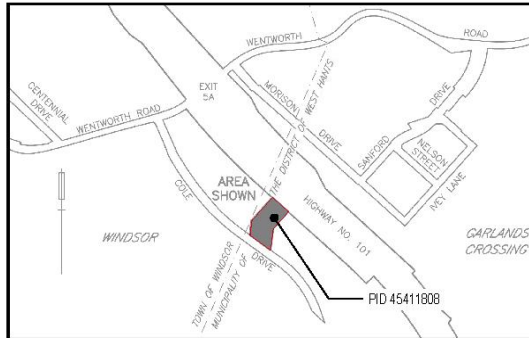
Registration District: HANTS COUNTY

Registration Year: 2023

Plan or Document Number: 122141428

**Schedule B**  
**Site Plan**

**b**righter  
community  
PLANNING & CONSULTING



**KEYPLAN**  
NTS



**INSIGHT**  
..... DESIGN CO .....

101

PID 45411808

COLE DRIVE DEVELOPMENT LOT 2  
4 STOREY BUILDING  
-MAIN LEVEL COMMERCIAL / BUILDING SERVICES  
-LEVELS 2-4 RESIDENTIAL APARTMENTS 14 UNITS / LEVEL (42 UNITS)  
-UNDERGROUND PARKING 37 SPACES

LOT SIZE	87 120 SQFT
BUILDING FOOTPRINT	13 400 SQFT (15%)
HARD SURFACE CALC.	26 654 SQFT (31%)
GREEN SPACE	47 066 SQFT (54%)

PARKING	81 SPACES
	- 37 UNDERGROUND SPACES
	- 44 SURFACE SPACES
	- 2 CHARGE STATION SPACES
	- 4 BARRIER FREE SPACES
	- 15 RESIDENTIAL
	- 23 COMMERCIAL

**ARCHITECTURAL SITE PLAN**

1/64" = 1'-0"

APRIL 2023

**Attachment C – Public Information Meeting Notes**

**April 13 - April 28, 2023**

**Development Agreement: PID 45411808, Cole Drive ; File # 23-05**

<b>Meeting date and time</b>	A Public Information Meeting was held on April 13, 2023 beginning at 6:55 p.m. The meeting was broadcast live on the Municipal Facebook page.
<b>File Number</b>	23-05
<b>Attending</b>	<p>In attendance:</p> <p>One (1) Councillor:</p> <ul style="list-style-type: none"> <li>• Councillor Murley</li> </ul> <p>Three (3) members of staff:</p> <ul style="list-style-type: none"> <li>• Director Poirier</li> <li>• Planner Dunphy</li> <li>• Planning Assistant Lake</li> </ul> <p>Applicant:</p> <ul style="list-style-type: none"> <li>• Darren Shupe, Brighter Community Planning (Applicant’s Planner)</li> <li>• Shawn Foote (Applicant)</li> </ul> <p>PAC/HAC Members:</p> <ul style="list-style-type: none"> <li>• Jennifer Nicholls (Chair)</li> <li>• Jane Davis</li> <li>• Stefan Palios</li> <li>• Greg Pace</li> <li>• Tasha Rogers</li> <li>• Lisa Bland</li> </ul> <p>26 members of the public were present for this meeting.</p>
<p><b>Applicant</b> Darren Shupe on behalf of Shawn Foote</p> <p><b>Property</b> Cole Drive (PID 45411808)</p>	<p>Planner Dunphy outlined the application to allow a proposed mixed-use 4 storey apartment building by development agreement.</p> <p>Darren Shupe provided a presentation on behalf of the applicant.</p>
<b>Comments</b>	<p>Comments from the public could be submitted to Alex Dunphy by mail, e-mail and telephone between April 13 – April 28, 2022.</p> <p>No comments were received from the public.</p> <p>1 member of the public spoke during the Public Information Meeting. The following are the comments from the public. Staff and applicant responses are included in purple text.</p> <ul style="list-style-type: none"> <li>• Shirley Pineo asked how residential development was happening.</li> </ul>

	<p>Shawn Foote responded that a rezoning process was initiated previously.</p> <p>Shirley then asked if Council had looked into policing, municipal servicing, and doctor capacity for more development.</p> <ul style="list-style-type: none"><li>• Laura Mosher asked what the criteria for the policies being considered are.</li></ul> <p>Alex Dunphy responded that the criteria are generally not discussed at Public Information Meetings in depth and that they are addressed in the recommendation report to PAC/HAC.</p>
<b>Adjournment</b>	The presentation portion of the PIM ended at approximately 7:18 p.m.