DECISION **2025 NSUARB 12**
M11724

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **LINDSAY STEELE** from the decision of the Council of the Municipality of the County of Kings approving a development agreement by Breiel Holdings Ltd., to permit the development of a campground on the property situated at 5734 Highway 358, Scots Bay, Nova Scotia (PID# 55014534)

BEFORE:	Jennifer L. Nicholson, CPA, CA, Panel Chair Julia E. Clark, LL.B., Member M. Kathleen McManus, K.C., Ph.D., Member
APPELLANT:	**LINDSAY STEELE** Charles A. Thompson, Counsel
RESPONDENT:	**MUNICIPALITY OF THE COUNTY OF KINGS** Peter M. Rogers, K.C.
APPLICANT:	**BREIEL HOLDINGS LIMITED** Julie Skaling
HEARING DATES:	September 24 and 25, 2024
FINAL SUBMISSIONS:	November 20, 2024
DECISION DATE:	**January 17, 2025**
DECISION:	**Appeal is allowed.**

TABLE OF CONTENTS

1.0 OVERVIEW

[1] Lindsay Steele is appealing a decision made by the Council of the Municipality of the County of Kings (Council or Kings) approving a development agreement with Breiel Holdings Ltd. to permit a private campground on property at 5734 Highway 358 (PID 55014534) in Scots Bay, Nova Scotia, a community with a population of 200 people. The campground, when fully developed, will have a capacity of 100 campsites.

[2] Julie Skaling and her husband own the subject property and Breiel Holdings Ltd. The subject property is surrounded on three sides by the property owned by Ms. Steele and is located in the Rural Mixed Use (A2) Zone. On her property, Ms. Steele operates a poultry farm which processes about 60,000 chickens a year. This production will increase to 90,000 chickens a year once the current construction of a second barn is completed. Ms. Steele also operates an elite horse breeding facility on her property.

[3] In 2021, Ms. Skaling filed an application seeking rezoning of the subject property from A2 to the Commercial Recreation (P1) Zone to allow for the development of a social enterprise campground. Following public concern and opposition to the proposed rezoning, and in agreement with Municipal staff, Ms. Skaling, on behalf of Breiel Holdings Ltd., withdrew the rezoning application in 2022. In its place, she applied for a development agreement to permit the campground. Development agreements are a planning tool which allow the Municipality to impose conditions or restrictions specific to a proposed development that may not be available with a rezoning. While the Land Use By-Law (LUB) provides for rezoning of a site to the P1 Zone for a campground under s.11 – Commercial Recreation (P1), it does not explicitly authorize development agreements for campgrounds and other high-impact recreation uses with “predictable impacts.” Staff

considered Ms. Skaling's development agreement application under the enabling policies for a "visitor-oriented development" under s. 8.4.5 of the LUB.

[4] Council approved the Development Agreement on May 7, 2024, with a vote of five to four, with one abstention. Ms. Steele appealed that decision to the Board on May 23, 2024. She says that the decision of Council to approve the proposed Development Agreement does not reasonably carry out the intent of the Municipal Planning Strategy (MPS) and asks the Board, under its authority in s. 251(1) of the *Municipal Government Act* (*MGA*) to reverse the decision of Council approving the Development Agreement.

[5] Whether it is an application for rezoning lands to the P1 Zone or an application for a development agreement for a visitor-oriented development, the applicable MPS policies state Council shall be satisfied the proposal meets that the general criteria set out in Policy 5.3 of the MPS. Ms. Steele asserts that the MPS and the LUB recognize that campgrounds are high-impact recreation uses that carry unacceptable negative impacts on neighbours. She says that visitor-oriented development is not the same as a campground and that this proposed Development Agreement does not have the necessary restrictions and control measures to address recognized negative impacts that a campground will have on her property.

[6] A campground is considered separately and differently from a visitor-oriented development in the MPS. The concept of visitor-oriented development is defined broadly enough in the MPS and it could encompass campgrounds, as well as a range of other developments like lodging visitor centers, wineries, and other activities. It says that the proposed Development Agreement, with the additional restrictions and control

measures, reasonably carries out the intent of the MPS, including those for high-impact uses arising from campgrounds.

[7] From the evidence and submissions before it, the Board finds that the questions which emerge for its consideration are: 1) should the sections of the LUB and the MPS related to high-impact uses, including campgrounds, be part of the consideration when assessing the criteria for a proposal of a campground as a visitor-oriented development; and, 2) did Council's approval of the proposed Development Agreement reasonably carry out the intent of the MPS.

[8] The Board finds high-impact uses, as stated in the LUB and the MPS must be considered when assessing the criteria to approve the proposed Development Agreement. The Board also finds that Council's decision to approve the proposed development agreement with Breiel Holdings did not reasonably carry out the intent of the MPS. The appeal is allowed.

2.0 BACKGROUND

[9] Ms. Steele appealed Council's decision under s. 247(1)(a) of the *Municipal Government Act*, S.N.S. 1998, c. 18, (*MGA*) within the required appeal period. She stated that the decision does not reasonably carry out the intent of the Municipal Planning Strategy on the following grounds:

1. The site is designated Agricultural and zoned Rural Mixed Use (A2). The Decision is contrary to the intention of Section 3.4 of the MPS and the policies in that section applicable to the Development, including policies 3.4.1, 3.4.2, 3.4.8, 3.4.9, and 3.4.20.

2. The Decision is contrary to MPS Policy 5.3.7, in that the Decision is not consistent with the intent of the MPS, including the Vision Statement, relevant goals, objectives and policies, and the Decision is inappropriate due to the factors listed in Policy 5.3.7 (c), including land use compatibility with surrounding land uses, the creation of excessive traffic hazards or congestion due to road or pedestrian

network adequacy, negative impacts on groundwater supplies in the area, and negative impacts on neighbouring farm operations.

3. The Decision was based on inadequate and incorrect information. Council ignored or misinterpreted information provided by many individuals, including a traffic impact assessment from qualified traffic and transportation engineers, agricultural experts, and a veterinarian. As such, the Decision was unsupported by the factual and expert evidence that was before Council.

4. Such further grounds that may appear on a review of the Record.

[Exhibit S-1, p. 3]

[10] Scots Bay is a community of about 200 people located on the way to Cape Split, a popular hiking trail in the Annapolis Valley. Scots Bay is relatively isolated with one road, Highway 358, leading into and out of the community. It is located about a 30-minute drive from the town of Kentville, Nova Scotia. There is a community centre and fire station in the community, near the proposed development site, as well as a seasonal restaurant across the road. Scots Bay Provincial Park is a beach area accessed from the Wharf Road, which is about 40m from the entrance to the site on the way to Cape Split.

[11] Ms. Skaling's family has owned and used the subject property for many generations. She purchased the property in 2021 after her father's death, with the vision to keep the land in her family for as long as possible. Her vision was to create jobs and teach skills to adults with various abilities, provide tourist accommodation in Scots Bay and preserve the community as much as possible.

[12] Ms. Skaling's presentation described four phases of planned construction for the campground to be built over several years for a total of 90 to a maximum of 100 campsites. The Development Agreement describes three phases. The Board understands that, once any required permits are obtained, Phase 1 would consist of 15 unserviced tent/small camper sites as well as the development of a utility area containing a wood house, dumping station, well house and site planning for a playground and

comfort centre. Ms. Skaling plans for 10 to 15 backcountry sites at the eastern end of the property farthest from the Highway. Any sites identified as Back Country Camping, along with amenity buildings and the commercial use may be commenced with Phase 1. Phase 2 would consist of 30 to 35 serviced field and wooded sites, after an approved on-site sewage disposal system is installed. Phase 3 would consist of 30 to 35 unserviced field sites to the north of Phase 1, behind existing residential structures on Highway 358.

2.1 The Board's Jurisdiction and Scope of Review

[13] The burden of proof is on the Appellant to show, on the balance of probabilities, that Council's approval of a development agreement to permit a campground at 5734 Highway 358, Scots Bay, Kings County was not consistent with the intent of the MPS.

[14] Under s. 247(2)(a) of the *MGA*:

> **Appeals to the Board**
>
> **247** …
>
> **(2)** The approval, or refusal to approve, and the amendment, or refusal to amend, a development agreement may be appealed to the Board by
>
> (a) an aggrieved person;
>
> […]

[15] The powers of the Board are similarly limited on such an appeal:

> **Restrictions on appeals**
>
> **250 (1)** An aggrieved person or an applicant may only appeal
>
> […]
>
> (b) the approval or refusal of a development agreement or the approval of an amendment to a development agreement, on the grounds that the decision of the council does not reasonably carry out the intent of the municipal planning strategy;
>
> **Powers of Board on appeal**
>
> **251 (1)** The Board may

> (a) confirm the decision appealed from;
>
> (b) allow the appeal by reversing the decision of the council … to approve or amend a development agreement;
>
> […]
>
> **(2)** The Board shall not allow an appeal unless it determines that the decision of council … does not reasonably carry out the intent of the planning strategy …

[16] A municipal planning strategy typically sets out the policies for Council to follow when establishing land use designations and zoning, and when considering a rezoning application or request for a development agreement, as in this case. As noted by this Board in *Dumke, (Re)*, 2024 NSUARB 164 at para. 9, in the context of the review and approval of a development agreement, the process "is not a simple exercise of working through a checklist against the wording of each policy." The same section of the *MGA* authorizes rezoning and development agreement appeals, and both require the Board to review whether the decision of Council reasonably carries out the intent of the municipal planning strategy.

[17] As the primary planning authority under the *MGA*, Council must be afforded discretion about how to apply or balance competing MPS policies and objectives. The Board recognizes the Court's direction that Council may give more, or less, weight to different factors to advance certain objectives, provided its ultimate decision reasonably carries out the intent of the MPS. In reviewing the grounds of appeal, the Board must review the applicable policies holistically to understand the intent of the MPS. The standard for evaluating an application for a development agreement against the MPS is not perfection or a completed "checklist," however, the approval must align with an interpretation of the relevant policies that their language can reasonably bear.

[18] The Board must not interfere with the decision of a council unless the Board determines that the decision does not reasonably carry out the intent of the MPS. In appeals under the MGA, the burden of proof is on the Appellant to show that they are an "aggrieved person" and that the Board should allow their appeal. There is no dispute that, as the immediate neighbour to the proposed development, Ms. Steele meets the criteria as an aggrieved person to bring her appeal. To be successful, the Appellant must establish, on the balance of probabilities, that Council's decision does not reasonably carry out the intent of the MPS.

[19] In municipal planning appeals, the Board follows statutory requirements and guiding principles identified in various Nova Scotia Court of Appeal decisions. The Court summarized the principles in *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27 and, more recently, *Heritage Trust of Nova Scotia v. AMK Barrett Investments Inc.*, 2021 NSCA 42:

> [23] I will start by summarizing the roles of Council, in assessing a prospective development agreement, and the Board on a planning appeal.
>
> [24] In *Heritage Trust of Nova Scotia v. Nova Scotia (Utility and Review Board)*, [1994] N.S.J. No. 50, 1994 NSCA 11 ["*Heritage Trust*, 1994"], Justice Hallett set out the governing principles:
>
> > [99] … A plan is the framework within which municipal councils make decisions. The Board is reviewing a particular decision; it does not interpret the relevant policies or by-laws in a vacuum. In my opinion the proper approach of the Board to the interpretation of planning policies is to ascertain if the municipal council interpreted and applied the policies in a manner that the language of the policies can reasonably bear. …There may be more than one meaning that a policy is reasonably capable of bearing. This is such a case. In my opinion the *Planning Act* dictates that a pragmatic approach, rather than a strict literal approach to interpretation, is the correct approach. The Board should not be confined to looking at the words of the Policy in isolation but should consider the scheme of the relevant legislation and policies that impact the decision. …This approach to interpretation is consistent with the intent of the *Planning Act* to make municipalities primarily responsible for planning; that purpose could be frustrated if the municipalities are not accorded the necessary latitude in planning decisions. …

> [100] … Ascertaining the intent of a municipal planning strategy is inherently a very difficult task. Presumably, that is why the Legislature limited the scope of the Board's review… . The various policies set out in the Plan must be interpreted as part of the whole Plan. The Board, in its interpretation of various policies, must be guided, of course, by the words used in the policies. The words ought to be given a liberal and purposive interpretation rather than a restrictive literal interpretation because the policies are intended to provide a framework in which development decisions are made. …
> …
>
> [163] … Planning decisions often involve compromises and choices between competing policies. Such decisions are best left to elected representatives who have the responsibility to weigh the competing interests and factors that impact such decisions. … Neither the Board nor this Court should embark on their review duties in a narrow legalistic manner as that would be contrary to the intent of the planning legislation. Policies are to be interpreted reasonably to give effect to their intent; there is not necessarily one correct interpretation. This is implicit in the scheme of the *Planning Act* and in particular in the limitation on the Board's power to interfere with a decision of a municipal council to enter into development agreements.

[25] These principles, enunciated under the former *Planning Act*, continue with the planning scheme under the *HRM Charter. Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, para. 24, summarized a series of planning rulings by this Court since *Heritage Trust*, 1994:

> [24] … I will summarize my view of the applicable principles:
>
> (1) … The Board should undertake a thorough factual analysis to determine the nature of the proposal in the context of the MPS and any applicable land use by-law.
> (2) The appellant to the Board bears the onus to prove facts that establish, on a balance of probabilities, that the Council's decision does not reasonably carry out the intent of the MPS.
>
> (3) The premise, stated in s. 190(b) of the *MGA*, [*Municipal Government Act*] for the formulation and application of planning policies is that the municipality be the primary steward of planning, through municipal planning strategies and land use by-laws.
>
> (4) The Board's role is to decide an appeal from the Council's decision. So the Board should not just launch its own detached planning analysis that disregards the Council's view. Rather, the Board should address the Council's conclusion and reasons and ask whether the Council's decision does or does not reasonably carry out the intent of the MPS. …
>
> (5) There may be more than one conclusion that reasonably carries out the intent of the MPS. If so, the consistency of the proposed development with the MPS does not automatically establish the converse proposition, that the Council's refusal is inconsistent with the MPS.

> (6) The Board should not interpret the MPS formalistically, but pragmatically and purposively, to make the MPS work as a whole. From this vantage, the Board should gather the MPS' intent on the relevant issue, then determine whether the Council's decision reasonably carries out that intent.
>
> (7) When planning perspectives in the MPS intersect, the elected and democratically accountable Council may be expected to make a value judgment. Accordingly, barring an error of fact or principle, the Board should defer to the Council's compromises of conflicting intentions in the MPS and to the Council's choices on question begging terms such as "appropriate" development or "undue" impact. …
> …

[20] In *Archibald*, at para. 24, the Nova Scotia Court of Appeal discussed the assistance a concurrently adopted land use by-law can provide in the interpretation exercise:

> (8) The intent of the MPS is ascertained primarily from the wording of the written strategy. The search for intent also may be assisted by the enabling legislation that defines the municipality's mandate in the formulation of planning strategy. For instance, ss. 219(1) and (3) of the *Municipal Government Act* direct the municipality to adopt a land use by-law "to carry out the intent of the municipal planning strategy" at "the same time" as the municipality adopts the MPS. The reflexivity between the MPS and a concurrently adopted land use by-law means the contemporaneous land use by-law may assist the Board to deduce the intent of the MPS. A land use by-law enacted after the MPS may offer little to the interpretation of the MPS.

[21] Also, at para. 24, *Archibald* expanded on the issue of conflicting policies:

> By this, I do not suggest that the Board should apply a different standard of review for such matters. The Board's statutory mandate remains to determine whether the Council's decision reasonably carries out the intent of the MPS. But the intent of the MPS may be that the Council, and nobody else, choose between conflicting policies that appear in the MPS. This deference to Council's difficult choices between conflicting policies is not a license for Council to make *ad hoc* decisions unguided by principle. As Justice Cromwell said, the "purpose of the MPS is not to confer authority on Council but to provide policy guidance on how Council's authority should be exercised" (*Lewis v. North West Community Council of HRM*, 2001 NSCA 98, ¶ 19). So, if the MPS' intent is ascertainable, there is no deep shade for Council to illuminate, and the Board is unconstrained in determining whether the Council's decision reasonably bears that intent.

[22] The Board cannot substitute its own decision for Council's but must review the decision to determine if it reasonably carries out the intent of the MPS. In determining the intent of the MPS, the Board applies the applicable principles of statutory

interpretation which have been adopted by the Court of Appeal, as well as the provisions of ss. 9(1) and 9(5) of the *Interpretation Act*, R.S.N.S. 1989, c. 235.

2.2 Council's Reasons in the Context of an Approval

[23] In this case, Council approved the development agreement application. The Municipality provided the Appeal Record including the information before Council. Following the direction of the Court of Appeal and the Board's usual practice, the Board accepted additional evidence. Unlike when there is a refusal, the *MGA* does not require written reasons when a development agreement is approved, and Council did not provide reasons in this case. There must be a public notice of the approval which also indicates the right to appeal. *Archibald* involved the denial of an application, which required written reasons. The Nova Scotia Court of Appeal indicated that focussing, at least in the first instance, on these written reasons, provides a framework designed to ensure the Board respects its appellate role.

[24] In cases like this one, where there is an approval and no written reasons, the framework is less apparent. In this context, the Board has often said that Council speaks with one voice. Even where there are written reasons, the highlighting of councillors' comments, while sometimes providing context, is usually not helpful in deciding the issue before the Board. Councillors can have many varied reasons for voting in a particular manner. Ultimately, Council's collective decision to approve or deny an application must be considered in the context of the MPS as a whole (see, *Boates, (Re)*, 2023 NSUARB 124).

[25] Council received a Staff Report with a recommendation for approval. This is ultimately what Council approved in this case. That said, this Staff Report was not

generated in the abstract, but with significant input from various sources. As discussed in *Heritage Trust of Nova Scotia* v. *AMK Barrett Investments Inc.*, 2021 NSCA 42, the Board's assessment of whether Council's decision reasonably carries out the intent of the MPS is not confined to what happens before Council when its decision is made. The materials before Council, and planning staff's recommendation, can provide an initial framework.

[26] In the end, the Board's task where there are no written reasons is succinctly summarized in *AMK Barrett*, at para. 29:

> [29] The Board's job is to hear evidence, find the facts and determine whether the outcome – i.e., the Council's approval of the development agreement – was reasonably consistent with the municipal planning strategy as a whole. It is not to micro-manage a de novo planning assessment.

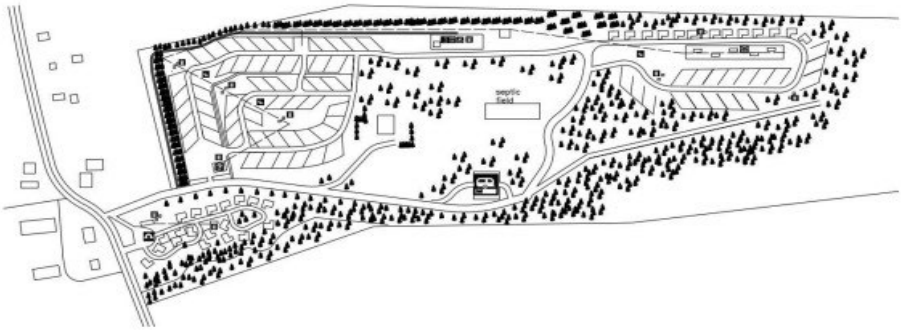
Where there are no written reasons, the Board must ultimately address the outcome. The analysis is based on the Appeal Record and the additional evidence and materials put before the Board.

2.3 The Proposal and Municipal Planning Approval Process

[27] Though the Board's role is not to analyze Council's review process, it is informative to establish the background and timelines relevant to this appeal. On October 4, 2021, Ms. Skaling, on behalf of Breiel Holdings, applied to the Municipality to rezone her property at 5734 Highway 358/41 Pengree Lane, Scots Bay, Nova Scotia (PID # 55014534) from Rural Mixed Use (A2) to Commercial Recreation (P1) to develop a private, potentially non-profit campground.

> I propose to assist people with various abilities, to create and maintain a community campground by forming a non-profit society and partnering with other organizations. This will fulfill several needs; aiding tourism while supporting and preserving Scott's [sic] Bay as my community and creating jobs and skills for people with various disabilities.
>
> [Exhibit S-3, p. 4]

[28] The proposed development, to be named “Down by the Bay Campground,” included 90 to 100 sites to be developed in four phases over several years. The site would also include buildings to service the campground including a woodshed, restrooms with showers, a park office and convenience store. Ms. Skaling envisioned using the existing resources of Scots Bay including the church and community hall adjacent to the subject property to provide additional activities for campers.



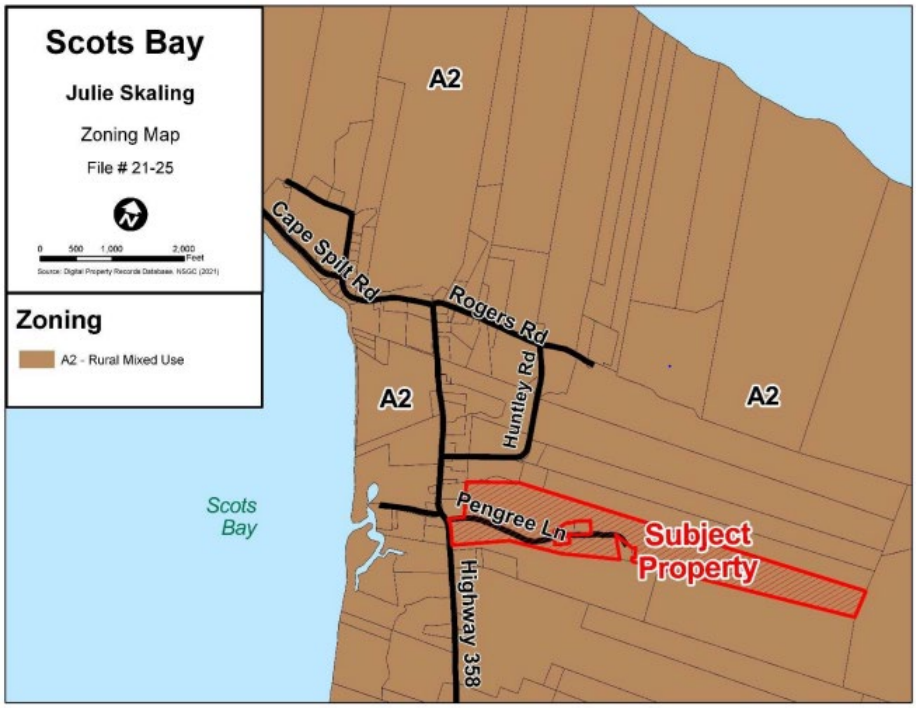
[Exhibit S-3, p. 15]

[29] A virtual public information meeting was held in February 2022. At this meeting, staff heard concerns about traffic, pedestrian safety, impacts on neighbouring farming operations, pollution resulting from septic systems, pollution on the salt marsh, the loss of agricultural land, negative impacts on property values, an increase in noise and light, and an increased number of people on the beach.

[30] The MPS states that lands in the A2 Zone are intended for a mix of agricultural, residential and resource uses to enable agricultural industry expansion as

well as to accommodate rural housing demand. This Zone also recognizes that agriculture is key to the Annapolis Valley's tourism industry, so it offers some flexibility for tourism-oriented businesses in terms of location and expansion. As a result, the A2 Zone permits some visitor-oriented uses as of right such as tourist commercial uses. A campground is not a permitted as-of-right use in the A2 Zone, although the MPS Policy 3.0.32 permits locating a P1 Zone for Commercial Recreation Use (which includes campground use) within the Agricultural Designation where the policy criteria are met.

Appendix A – Zoning Map



[Exhibit S-3, p.109]

[31] After a significant delay, at the suggestion of planning staff, the application proposal was changed from an application to rezone the lot from A2 to P1 to a proposal for a development agreement to authorize the campground under the policies enabling visitor-oriented development that is not otherwise permitted as-of-right. Ms. Mosher

testified that the change allowed staff to provide the public with additional certainty about what can be expected from the proposal, using increased restrictions and phasing:

> **Q.** It was also suggested, during the testimony we heard yesterday, that essentially there was no real difference between a rezoning and the development agreement, insofar as the actual project was concerned. Do you recall that?
>
> **A.** I do. And in process and under the MGA, that is true. They both have the same standing. We can't draft development agreements that contain things that could not otherwise be contained within a land use bylaw. But the ability to impose additional restrictions is available in a development agreement. So in the P1 zone, we require a 40-foot setback, and within that 40-foot setback it's intended to be vegetated, but there's no requirement for signage restricting access, there's no ability to enable phasing. Um, so this, in order to address and take into account concerns from the community, we opted to adjust the application from a rezoning to a development agreement, to control the areas that are developed. That's the other thing with the rezoning is, had we rezoned the entire parcel, there would have been no restriction aside from setbacks, as to how many sites, where they might be located. So in this way, we limited the number of sites, we limited where they would be located on the site, we imposed an additional setback, and we imposed some phasing.
>
> [Transcript dated 25 September 2024 pp. 19-20]

[32] Other details of Ms. Skaling's proposal were modified after community residents raised concerns. Ms. Skaling said she would follow the "Provincial Parks Guidelines" for rules and regulations. She introduced rules about water and septic, traffic generated by the campground, quiet hours, litter, maintenance, smoke from campfires, and trespassing by patrons of the campground onto neighbouring properties.

[33] Changes included in the Development Agreement that would not have been available in a rezoning included increasing the required setbacks for any buildings, campsites or other activity or features from neighbouring residences not accessed by Pengree lane, as well as a "no activity" vegetative buffer, "no access" signage, and directions on how the phased approach for the campground's construction would be implemented, including a five-year delay on commencement of the Phase 3 development. Ms. Mosher indicated the delay was to allow time for vegetation growth between the open field designated for Phase 3 and its neighbours.

[34] This proposal was considered by the Planning Advisory Committee (PAC) on March 12, 2024. Laura Mosher, the Municipality's Manager of Planning and Development Services, prepared a report for that meeting (Staff Report). The Staff Report included a Policy Review, a draft Development Agreement and a recommendation for a Public Hearing. The Staff Report to Council recommended:

> That Municipal Council give initial consideration to and hold a Public Hearing regarding entering into a development agreement to permit the development of a campground at 5734 Highway 358 (PID 55014534), Scots Bay, which is substantively the same (save for minor differences in form) as the draft set out in the report dated March 12, 2024.
>
> [Exhibit S-4, p. 207]

[35] Council approved the PAC recommendation on April 2, 2024, and held a Public Hearing on May 2, 2024. On May 7, 2024, Council approved entering into the Development Agreement.

3.0 WITNESSES AND EVIDENCE

[36] It is well established that the Board can consider new evidence introduced by the parties during the appeal that was not presented to Council in its analysis of the matter. The importance of factual context for the Board's review was noted in the decision of the Court of Appeal in *Midtown Tavern & Grill Ltd.* v. *Nova Scotia (Utility and Review Board)*, 2006 NSCA 115, where MacDonald, CJNS, stated:

> [50] …the fundamental question therefore becomes: Can it be said that Council's decision does not reasonably carry out the intent of the MPS"?
>
> [51] To answer this question, the Board must embark upon a thorough fact-finding mission to determine the exact nature of the proposal in the context of the applicable MPS and corresponding by-laws.

[37] Under s. 19 of the *Utility and Review Board Act*, S.N.S. 1992, c. 11, the Board operates under relaxed rules of evidence. All witnesses, to some degree, relied on hearsay and offered opinions beyond their qualifications. There were generally no

objections to the admissibility of these statements, and the Board was able to weigh the evidentiary value in the normal course. The Board found the evidence of the witnesses to be helpful and credible, unless stated otherwise.

3.1 Appellant's Evidence

[38] Lindsay Steele testified on her own behalf and provided evidence about the location and character of Scots Bay and the land uses in the area and neighbouring the site. Ms. Steele is a fifth-generation farmer and is the owner of Hustle Farms and Steele Family Warmbloods (horses). She lives at 5698 Highway 358 next to the south border of the subject property, directly behind her farm and equine facility at 5682 Highway 358. She owns several farm properties in the area, at least two of which abut and, together, share approximately 3.5 km of property line with the subject property.

[39] Ms. Steele indicated she has a friendly relationship and shared business interests with Ms. Skaling. She voiced her support for alternative agritourism or tourist accommodation on the neighbouring property. Ms. Steele's principal concern is that the location, size, and impact of a private campground is not "suited to the surrounding farm community and rural life." She fears that close contact between campground users and her livestock creates a serious safety risk. She provided first-hand and anecdotal local examples of situations when visitors, dogs, and other human activity got in the way of agriculture practices and livestock resulting in negative, sometimes tragic, consequences. As a former employee at the Blomidon Provincial Park and Campground, Ms. Steele testified to her experience with campers and the human activities associated with a large provincial campground, including staff difficulties in enforcing rules.

[40] Michael Lightfoot, farmer and owner-proprietor of Lightfoot & Wolfville Vineyards and surrounding farmlands, also testified for the Appellant. Mr. Lightfoot owns vineyards and a winery, raises cattle and sheep, and also owns three poultry barns within about 500 to 600 feet of the winery. Mr. Lightfoot testified about the difficulties he has experienced maintaining adequate separation between visitors to his agribusinesses and his livestock and other farming operations. He noted the impact of flies and smells on guests and neighbours from the poultry barns, which led to a recent decision to move his poultry operation to a more “secluded” area. He fears negative financial consequences to his poultry operations and his tourism-focused business if closeness is maintained.

[41] Dara Marie Pelkey-Field, M.Sc., P.Ag. is a senior instructor at Dalhousie University’s Department of Animal Science and Aquaculture, responsible for managing the on-campus equine facility. She provided a brief letter and C.V. that was accepted as an expert report [Exhibit S-9]. The letter had also been provided to Council [Exhibit S-3, Vol. III, p. 207-209]. She was qualified without objection as a professional agrologist capable of giving opinion evidence on equine behavior, biology and welfare including the impact of environmental factors and external stimuli on horses’ behaviour, health, and welfare and on the safety of horses and humans. Her report and testimony gave her opinion on the potential ill-effects of loud or continuous noises on the general and reproductive health of mares and foals. Horses are flight animals that can panic and bolt when startled, creating a risk to themselves and humans. She acknowledged that horses can be flown in airplanes or be stabled near campfires. However, she supported Ms. Steele’s explanation of the unique temperament of her “high performance,” warm-blood stock versus a draft-horse that is bred and raised to have a calmer temperament.

[42] On cross-examination, Ms. Pelkey-Field acknowledged that the studies she referred to did not recreate the circumstances of a campground and there were limited references provided beyond the precis of reports. The studies did not consider buffering measures or separation distances. She clarified her opinion was based not only on the studies referred to but also on her professional and personal experience. She had first-hand knowledge of the death of horses after fireworks were released in their vicinity, and another local experience where a horse was chased by dogs and broke its leg, requiring its owners to euthanize it.

[43] Mr. R. Gary Morton, B.Sc. Agr., CPF, a former professional agrologist, submitted a report and resume [Exhibit S-10] and was also qualified, without objection, in accordance with the submitted qualification statement. In preparation for public meetings before Council, Mr. Morton prepared the presentation submitted as his report for Ms. Steele, who distributed it to Council. His previous experience in agricultural assessments for land use was primarily working with Kings' former planning documents, which were amended in 2019-2020.

[44] Mr. Morton gave his opinion that soil classification for the subject property, based on the 1966 Nova Scotia Soil Survey of Kings County, was Class 3, 4, 7 and ZG (gully). He did not do an in-depth classification of soil quality on the subject property. It was noted on cross-examination that, although agricultural soil classifications may be considered according to the Provincial Statements of Interest in approving land use documents, Kings abandoned its use of soil classes in its land-use policies for agricultural lands. Mr. Morton also testified to agricultural practices in Scots Bay, and the deliberate

approach by farmers to locate poultry operations away from the population and other producers, because of biosecurity risks.

[45] The Appellant submitted a traffic impact assessment and access review authored by Michael MacDonald, P.Eng. of Harbourside Transportation Consultants, along with his C.V. and qualification statement [Exhibit S-11]. Prior to the hearing, the Municipality objected to the Board hearing evidence related to the Traffic Impact Assessment and report of Mr. MacDonald addressing traffic/access issues (letters dated July 18 and July 26, 2024). The Appellant responded by letter from Mr. Thompson dated July 25, 2024.

[46] The Board determined that the issue was best addressed at the hearing. No further objections were taken to Mr. MacDonald's report or expert qualifications and the Municipality and Applicant indicated they did not require Mr. MacDonald's attendance for cross-examination. The Board accepted his report and qualifications for the purpose of providing opinion evidence "on transportation planning and traffic engineering, including the conducting and interpreting of traffic impact studies, traffic congestion and safety issues, and the adequacy of road and street networks, access routes and access to and from development sites" [Exhibit S-11, Tab 4]. Mr. MacDonald's evidence was not directly challenged. The parties' general arguments about the Board's use of Mr. MacDonald's conclusions and the Board's findings on the issue are addressed later in this decision.

3.2 Municipality's Evidence

[47] Kings called Laura Mosher as its only witness. Ms. Mosher, a licensed planning professional, is employed by Kings as the Manager, Planning and Development.

She was involved with the processing of the Applicant's initial rezoning application and then the subsequent application for a development agreement. She drafted the Staff Report. Prior to the hearing, Ms. Mosher filed an undated memorandum providing additional information related to the appeal [Exhibit S-13, p. 4]. Ms. Mosher was qualified, without objection, as an expert capable of giving opinion evidence on planning and development matters, including on the interpretation and application of municipal planning strategies, land use by-laws and subdivision by-laws.

3.3 Applicant's Evidence

[48] Julie Skaling is the Applicant in this matter. She was self-represented in the appeal and provided direct evidence through questioning by Counsel for the Municipality and her own prepared remarks. The subject property has been in her family for many generations. She purchased it from her parents to keep it in the family. She formulated the idea to develop the campground to provide employment and meaningful opportunities for her daughter and other people with disabilities in the community.

[49] Ms. Skaling initially applied to the Municipality to rezone the subject property in 2021 to build this campground in four stages. As discussed earlier in this decision, the application was changed to proceed by a development agreement. Ms. Skaling said she wants to work with her neighbours to ensure their concerns are being addressed. She plans to implement rules and restrictions to manage noise, fireworks, trespassing, impact on water and other issues that have been raised.

3.4 Supplementary Information

3.4.1 Letters of Comment

[50] The Board received 19 letters of comment. Two letters were in support of the campground development. Both letters referenced the potential employment opportunities and revenue generation it could bring to the community. Seventeen letters opposed the proposed campground.

3.4.2 Public Speakers

[51] Three speakers registered for the evening session. Aran Langmead, who lives at 5770 Highway 358, adjacent to the subject property, spoke first against the proposed development. He said he came to Scots Bay seeking peace and never would have bought and renovated his home in that location if he knew a campground might be built there. He is concerned about the impact on his privacy and property value if the development goes ahead.

[52] His home backs onto the proposed Phase 3 of the campground which is at a higher elevation than his property. He stated that the proposed 75-foot setback is insufficient to block campers from seeing directly into an upper-floor bedroom and does not provide any buffer against noise, smoke and trespassers. He expects it would take 15 to 20 years of tree and brush growth to provide any meaningful buffer.

[53] Mr. Langmead said the portion of the subject property behind his house is high-quality farmland currently used to cultivate corn and should remain farmland. This use is in keeping with the objective of the A2 Zone, which is to promote agriculture. He stated that the Municipality did not adequately consult to understand the impact on neighbouring properties.

[54] Mr. B. Chris Cann spoke, indicating his role as a representative for Nikki Lloyd, a Mi'kmaq water protector in Unama'ki and Mi'kma'ki. He pointed out that the Mi'kmaq own four parcels of land in Scots Bay. He read a letter from Nikki Lloyd to the Mayor and Council, stating that her rights and those of the Annapolis Valley First Nation would be threatened with the development of the proposed campground. He offered that Municipal planners did not consult with the Mi'kmaq on the proposal, saying the Municipality "ignored, disregarded and indeed challenged rights of Mi'kmaq peoples by not acknowledging their concerns."

[55] The final speaker, Anne Doyle Huntley, lives in Scots Bay. She has been a registered farmer for 14 years and works as an agribusiness consultant and as a senior researcher at Acadia University. Ms. Huntley objected to the proposed development and spoke about four issues. First, she stated her belief that the Municipality used a procedural loophole to avoid Nova Scotia Department of Agriculture consultation. Because the application was changed from a rezoning to a development agreement there was no longer a requirement to consult with the Department.

[56] Secondly, she said the Municipality is supporting a reduction in farmland by allowing this change in use. Thirdly, she said that new land developments harm existing agricultural businesses and increase the burden on farmers. Finally, she stated that the Municipality did not ask for reports from professionals from Ms. Skaling about the impact on traffic, agriculture, drainage, stormwater management, hydrology, the environment or a site grading plan and therefore did not have adequate information to approve the development.

[57] While these public statements do not carry the weight of sworn testimony subject to cross-examination, Ms. Mosher addressed the key elements of the speakers' commentary in her testimony the following day. Mr. Langmead and Ms. Huntley gave their own perspectives on potential conflicts with the land uses. Questions about the adequacy of Municipal consultations go beyond the Board's jurisdiction in planning matters.

3.4.3 Site Visit

[58] The Board members, accompanied by Ms. Steele, Ms. Skaling and Ms. Javorek (representing the Municipality of Kings) completed a site visit at the conclusion of the oral hearing on September 25th. We travelled separately, by car, along Highway 358 to Scots Bay and met at the Community Centre. Highway 358 is narrow and winding and continues past Scots Bay towards Cape Split, a popular hiking destination.

[59] We stopped in the Community Centre parking lot and observed the fire station next door. The large barbeque pit, referred to at the hearing, was located directly behind the Community Centre and about six feet from Ms. Steele's property line, separated by some brush and trees. A large chicken barn is under construction on Ms. Steele's property about 100 feet from the property line directly behind the Community Centre.

[60] We then proceeded to Ms. Skaling's property and viewed the Phase 1 area of the proposed campground. It is in a protected gully area that contains low brush and is somewhat surrounded by trees. We walked up the road to view the proposed Phase 3 area which was covered in corn that was almost ready to be harvested. This area slopes away from the road at a higher elevation and overlooks Aran Langmead's property, with sightlines to the ocean. Mr. Langmead spoke at the evening session and expressed

concern about the proximity of the campground to his property. Ms. Skaling and Ms. Steele identified a marked, approximately 75-foot setback between his property and the cornfield. This is the width of the required setback for Phase 3 of the campground that Ms. Steele argued was insufficient. The Board noted the proximity of Mr. Langmead's property line to the cornfield on Ms. Skaling's property and, as pointed out in the Municipality's written submissions, saw and heard people working with a chainsaw on Mr. Langmead's property through the existing vegetation. We could also see Ms. Steele's property and her partially constructed barn through the trees and could see flags marking the property line located in the denser trees between the two properties.

[61] We drove up along Pengree Lane and viewed a house on Ms. Skaling's property that is currently rented. The tenants are a family with young children and dogs who, Ms. Steele explained at the hearing, often make their way through the trees to her property. We continued up the hill and viewed three houses on Ms. Skaling's property. One is currently inhabited by an unrelated party, one is used as a recreational property by Ms. Skaling and her husband, and the other is currently uninhabited and dilapidated. Just past the uninhabited house we walked through the woods where the parties identified where the proposed back country lots would begin facing north towards Blomidon. We observed Ms. Steele's property line through the trees.

[62] We then walked through a large field to view the proposed Phase 2 area. This open area is proposed to contain a common area for guests to congregate. We viewed the other side of Ms. Steele's "U" shaped property from here. That part of Ms. Steele's property was covered in corn at the time of our visit. There was no visual or other barrier between the proposed Phase 2 and Ms. Steele's property.

[63] We then proceeded to Ms. Steele's property. Near the entrance we saw a large horse barn with several mares looking out the windows at us. Opposite the horse barn were two large, fenced horse paddocks where Ms. Steele had testified the mares and fouls graze. The fences for these paddocks are very close to the property line, where Ms. Steele's property slopes down an embankment, and are directly across from the proposed Phase 1 of the campground. There is a stand of trees approximately 100 feet thick between the properties. The Board was directed to the area where Ms. Steele testified that Ms. Skaling's tenant's children and dog recently had a "near miss" with a backhoe that was excavating near the property line after making their way through the trees. Ms. Steele allowed the participants to briefly view the stabled horses in the barn. That concluded the Board's site visit.

4.0 SUMMARY OF SUBMISSIONS

[64] In written submissions, the Appellant reiterated that Council's approval of the Development Agreement did not reasonably carry out the intent of the MPS. Ms. Steele asserts that the intent of the MPS does not support locating the proposed campground on the subject property.

[65] Given the emphasis in the MPS on protecting and prioritizing agricultural uses in the Agricultural Designation and the A2 Zone, in particular, she says the decision to approve the proposed campground is not consistent with the intent of the MPS to prioritize agriculture where there are conflicting interests. Further, under Section 2.7 of the MPS (Recreation), campgrounds are included among "high-impact recreation uses" that "carry unacceptable negative impacts on neighbours, such as excessive noise or

require permanent structures or land alterations.” Ms. Steele pointed out the evidence at the hearing regarding the problems of campgrounds, which she says is consistent with the special consideration of campgrounds in the MPS and LUB.

[66] The Appellant also states that the draft Development Agreement does not require adequate buffering and separation to mitigate the expected negative impacts of noise, light and other visual impacts on her neighbouring property or other nearby residences, as required in MPS Policy 2.5.13 (c). Ms. Steele also submits that there was no rational basis for concluding that the campground application is not premature or inappropriate in light of the criteria in Policy 5.3.7 that Council is directed to consider.

[67] The Municipality argues that Council’s decision is reasonably consistent with the MPS. It asserts that Council’s decision followed a comprehensive process where the Appellant’s and others’ concerns were heard. The Municipality said whether or not Council was directed to a particular policy, Council must be given the deference to balance the conflicting objectives of the MPS. Kings says the decision of Council was among the reasonable decisions it was entitled to come to, and the Appellant’s arguments do not prove that Council’s approval of the Development Agreement was inconsistent with a reasonable interpretation of the MPS.

[68] The Appellant, in her rebuttal submissions, says that the need for deference to Council is not a licence for Council to make arbitrary or ad hoc decisions. Her position is that there are no conflicting policies or objectives that reasonably justify Council’s approval of the campground development.

5.0 BOARD'S ANALYSIS AND FINDINGS

[69] Ms. Skaling seeks approval for a campground on the subject property. The parties do not dispute that. As discussed above, Ms. Skaling initially sought approval for a campground through an application for rezoning to P1, the zone that allows campgrounds, golf courses, and other high-impact recreation uses "with predictable impacts," as-of-right. After the expressions of public opposition and concerns about rezoning the subject property, Ms. Skaling agreed with the Municipality's staff that she should withdraw the rezoning application and file an application for a development agreement.

5.1 Policies Enabling Development Agreements in the A2 Zone

[70] As discussed, the site of the proposed campground is located in the Agricultural Designation on the Future Land Use Map (Schedule 2) of the MPS and is zoned Rural Mixed Use (A2). The Agricultural Designation is established under the policies in Section 3.4 of the MPS, which highlights the importance of agriculture to the Municipality and the focus on preserving limited land for agricultural development. The Introduction of the MPS, Section 1.2, discussing the five applicable Statements of Provincial Interest for municipal planning strategies, identifies that:

> The origin of the Municipality's first Municipal Planning Strategy was a citizen movement to protect agricultural land. This commitment continues within this MPS and is strengthened through restrictions on non-farm residential uses in the Agricultural Designation. Section 3.4 offers specific policy direction related to the protection of agricultural land.
>
> [Exhibit S-5, p. 1.2-4]

[71] Section 3.4 sets out that the goal of the Agricultural designation is "To identify lands where agricultural and related land uses are encouraged, promoted and

prioritized over other land uses." The objectives have varying degrees of relevance to this appeal and include:

> To limit and manage non-farm development that could otherwise be located in Growth Centres;
>
> To protect agricultural lands for future generations and facilitate the growth of the agricultural industry; and
>
> To reduce undue fragmentation of farmland that limits future agricultural expansion;
>
> To maintain the rural character of the landscape; and
>
> To protect sensitive natural features.
>
> To provide a flexible regulatory environment that accommodates innovation, agribusiness, value-added agriculture and agritainment.
>
> To maintain the agricultural landscapes that form part of the region's cultural identity.
>
> [Exhibit S-5, p. 3.4-3]

[72] Policy 3.4.2 (b) of the MPS states:

> Rural Mixed Use (A2): lands located in this zone are intended for a mix of agricultural, residential and resource uses to enable the agricultural industry expansion as well as to accommodate rural housing demand. In the event of a conflict between an agricultural use and a non-agricultural use, the agricultural use shall take priority;
>
> [Exhibit S-5, p. 3.4-4]

[73] This section establishes the intent of the A2 zone. It does not dictate how every conflict between agriculture and a new proposed land use should be determined. However, it is instructive on Council's intent for the A2 Zone and how agriculture and land uses should be prioritized. The description for the A2 Zone in the LUB is nearly identical to this wording. The Board agrees with the Appellant that this Policy text establishes that the intended uses for lands located in the A2 Zone is agriculture, resource use and related industry, and some residential. The text of the Policy states that in the event of a conflict between an agriculture and non-agricultural use, the agricultural use shall take priority. The direction on conflicts uses compulsory language – "the agricultural use shall take

priority.” The goals and objectives provide meaning and context for the interpretation of the policy. They focus on protection of agricultural lands and farmlands, and facilitating industry growth.

[74] Ms. Mosher stated in her Staff Report that this statement is intended to convey the purpose of the *Farm Practices Act*, S.N.S. 2000, c. 3, which protects farmers following normal farm practices from civil actions in negligence and nuisance. She says is not intended to be used to block or prohibit a proposal for a use not permitted as-of-right or otherwise enabled to be considered elsewhere in the MPS. The Municipality also indicated it was a recognition that “staff will not be pursing complaints against farmers about farm smells impairing the use and enjoyment of neighbouring … properties.”

[75] Ms. Steele argued in her submissions that this reasoning has no basis in the MPS. Policy 3.4.2(b) says that the agricultural use is to take priority in the event of a conflict between a non-agricultural use and an agricultural use. The *Farm Practices Act* is not mentioned in the MPS or LUB and operates independently regardless of whether an MPS recognizes it.

[76] To the extent this point needs clarifying, the MPS is intended to create the framework for Council’s balancing exercise. Including language prioritizing one use over another in a zone in policy text gives direction to Council for its planning purposes, not for bylaw enforcement or information on how separate legislation operates. On the other hand, as pointed out in *Wolfville Ridge (Re)* 2023 NSUARB 134, it operates, as do all policies, within the context of the whole MPS and cannot operate as a simple veto over other uses.

[77] Campgrounds and other recreation uses are not permitted as-of-right in the A2 Zone, as listed in paragraph 8.4.2.1 of the LUB. The Commercial Recreation (P1) Zone is permitted within the Agricultural Designation, in accordance with policy 3.0.32 and the policies applicable to the initial creation of the zone and rezoning. However, “tourist commercial use,” defined as a “tourist inn, lodge or cabins that primarily provide sleeping accommodations to the vacationing public” is a tourism-related permitted use in the A2 Zone, subject to special conditions under s. 14.3 of the LUB. A campground does not fall within those types of accommodations.

[78] As discussed further in the following section, the MPS identifies campgrounds as “high-intensity recreation uses” within the explanatory commentary to Policies 2.7.11 through 2.7.16, which establish the P1 Zone and its permitted uses. These include campgrounds, golf courses, gun ranges or similar uses that have “predictable land use impacts.” Policy 3.0.32 includes the P1 Zone among several zones that are permitted within all designations under the MPS, as long as other relevant MPS and LUB criteria are met. Rezoning her lot to P1 was among the available pathways for Ms. Skaling to pursue her proposal if it could meet that criteria.

[79] However, Ms. Mosher testified that, considering the concerns raised in the Scots Bay community about a P1 rezoning, she felt a more viable approach was to negotiate terms of a development agreement that could include additional controls and possibly mitigate some of the community concerns. Ms. Skaling agreed to transition to a development agreement process.

[80] Under s. 225 of the *MGA*, development agreements must be enabled by the MPS Policy and the LUB. Section 8.4.5 of the LUB allows Council to consider

development agreements for identified uses that are not allowed as-of-right under the LUB in the A2 Zone, including “visitor-oriented development” and “high-impact recreation uses that are not permitted as-of-right in [P1] Zone.” The reference to high-impact recreation uses not permitted as-of-right in the P1 Zone does not permit a development agreement option for the campground, because they are permitted as-of-right in the P1 Zone, and could be pursued through rezoning:

> **8.4.5 Uses Considered by Development Agreement**
>
> Pursuant to the Municipal Planning Strategy, the uses noted below may be considered by Development Agreement within the Rural Mixed Use (A2) Zone:
>
> (a) Proposals for visitor-oriented development not permitted as-of-right in accordance with policy 2.5.13 of the Municipal Planning Strategy.
>
> (b) Proposals for high-impact recreation uses that are not permitted as-of-right in the Commercial Recreation (P1) Zone in accordance with policy 2.7.14 of the Municipal Planning Strategy.
>
> (c) Proposals for recreation uses that cannot meet the zone requirements of the Commercial Recreation (P1) Zone in accordance with policy 2.7.15 of the Municipal Planning Strategy.
>
> […]
>
> [Exhibit S-6, p. 8.4-3]

[81] Developments agreements for high-impact recreation uses not permitted as-of-right in the P1 Zone are authorized in 8.4.5(b) for uses that are not permitted as of right in accordance with policy 2.7.14 of the MPS, or in 8.4.5(c) for those proposals that would otherwise be permitted within the zone but cannot meet the standards or are for a use not otherwise permitted. The LUB does not explicitly permit a development agreement option for the campground (a high-impact recreation use that is permitted as-of-right in the P1 Zone) on its current lot, because they are permitted as-of-right in the P1 Zone, and could be pursued through rezoning.

[82] MPS Policies 2.5.11 and 2.5.12 generally encourage opportunities for visitor-oriented businesses. The preamble to these policies indicates that Council will balance flexibility for tourist-oriented businesses with limits on the type, location and scale of these uses to minimize conflict and protect rural landscape. MPS Policy 2.5.11 indicates that such development should be "…in locations and at a scale consistent with the intent of the zones enabled within the Agriculture, Resource and Shoreland Designations...."

[83] Staff assessed the Applicant's proposal as a visitor-oriented development. Policy 2.5.13 of the MPS provides the following criteria when considering proposals for visitor-oriented development:

> *Development Agreements*
>
> 2.5.13 consider only by development agreement within the Agriculture, Resource, and Shoreland Designations, with the exception of in the Agricultural (A1) Zone, proposals for visitor-oriented developments not permitted as-of-right. In evaluating development agreements, Council shall be satisfied that:
>
> (a) the proposal is oriented to visitors or the travelling public, such as, but not limited to, lodging, restaurants, events venues, or other type of special attractions;
>
> (b) the subject property has a lot area that can appropriately accommodate the proposed use, any accessory uses and structures, parking areas and required infrastructure;
>
> (c) the site facilities are adequately buffered and/or separated from surrounding residential dwellings (other than a residential dwelling occupied by the operator) to mitigate negative impacts associated with noise, light, and other visual impacts;
>
> […]
>
> (f) the proposal meets the general development criteria set out in s. 5.3 Development Agreements and Amending the Land Use By-law. [Emphasis Added]
>
> [Exhibit S-5, p.2.5 – 7]

[84] In reviewing s. 2.5.13 the Board notes that generally, defined land uses in planning documents exclude overlapping definitions of those uses allowing it to be categorized differently. While “campground” and “tourist commercial use” are defined, “visitor-oriented development” is not. The Board considers that the MPS intended this term to encompass a suite of possible commercial and recreational developments, providing some of the flexibility it calls for.

[85] Ms. Mosher stated that 2.5.13(a) is broad enough to include a campground. It is a non-exhaustive list including the terminology “such as but not limited to….” Campgrounds can reasonably be said to have some affiliation with special attractions or with lodging, as they are a place to stay or shelter. Particularly considering the absence of contrary opinion evidence, the Board finds that Ms. Mosher’s interpretation of s. 2.5.13(a) as applying to this proposal is one that the language of the policy can reasonably bear. However, for the reasons that follow, the Board finds that her reliance on this Policy to the exclusion of sections of the MPS that explicitly address campgrounds omitted important context for the policy analysis.

5.1.1 Visitor-oriented vs. High-impact recreation use

[86] Section 11.2 of the LUB states a campground is one of the permitted uses in the Commercial Recreation Zone (P1). Section 11.3.1 states the purpose of the zone:

> **11.3.1 Zone Purpose**
>
> The purpose of the Commercial Recreation (P1) Zone is to allow the development and expansion of commercial recreational facilities including but not limited to golf courses, campgrounds, gun ranges or similar uses, in accordance with policy 2.7.11 of the Municipal Planning Strategy.
>
> [Exhibit S-6, p. 11.3-1]

[87] The LUB defines a “campground” as:

> …a building, structure, land, or part thereof used for a range of overnight camping experiences from tenting to recreational cabins to serviced recreational vehicle sites and includes accessory facilities that support camping, including, but not limited to, administration offices, laundry facilities, recreation halls and canteens, but does not include the use of mobile homes or recreational vehicles on a permanent year-round basis.
>
> [Exhibit S-6, p. 17-7]

[88] Policy 2.7.11 of the MPS provides that the Commercial Recreation (P1) Zone is intended for commercial recreation facilities and uses, such as campgrounds and identifies these as “high-impact recreation uses with predictable land use impacts”:

> Council shall:
>
> 2.7.11 establish the Commercial Recreation (P1) Zone, intended for areas within any designation that contain, or are intended to contain commercial recreation facilities and uses, indoor recreation uses and high-impact recreation uses with predictable land use impacts including but not limited to, golf courses, campgrounds, gun ranges or similar uses; [Emphasis added]
>
> [Exhibit S-5, pp. 2.7-6 to 2.7-6]

[89] Policy 2.7.12 states that Council shall permit in the P1 Zone golf courses and campgrounds, uses with a “similar level of impact” and, under Policy 2.7.13, setbacks and buffer controls should be established to “reduce land use conflicts with surrounding uses.”

[90] Under Policy 2.7.14, development agreements can only be considered on limited grounds, namely when the high-impact recreation uses would not be permitted as-of-right in the P1 Zone:

> Council shall…
>
> 2.7.14 consider only by development agreement any high-impact recreation uses not permitted as-of-right within the Commercial Recreation (P1) Zone due to their unknown impacts and need for site-specific controls. In evaluating such development agreements, Council shall be satisfied that:
>
> (a) the proposal does not include lands located in the Residential Designation or within the Agricultural (A1) Zone;

> (b) meets the minimum lot area and minimum lot frontage requirements for the Commercial Recreation (P1) Zone;
>
> (c) if the proposal is for lands located on a lake within the Shoreland Designation, Council shall be satisfied of compliance with clause 2.5.13 (d) of this Strategy;
>
> [Exhibit S-5, p. 2.7-7]

[91] As a campground is a high-impact recreation use permitted as-of-right in the P1 Zone, the MPS does not permit a development agreement to establish a campground under Policy 2.7.14.

[92] The Board reads an expectation in the MPS that high-intensity recreation uses with "predictable negative impacts," such as campgrounds, be limited to the Commercial Recreation (P1) Zone or can proceed under development agreement if they don't otherwise meet the requirements of the Zone, for are other uses not permitted as of right in the P1 Zone. This is how both the MPS and the LUB address those defined uses. However, no argument was presented to the Board that the MPS does not permit a campground to be established by a development agreement. Ms. Mosher explained how the more general concept of visitor-oriented development can be interpreted as inclusive of campgrounds.

[93] The Board accepts that Ms. Mosher, who was qualified as an expert in interpreting the MPS and the LUB, reasonably supported her approach that under the MPS a campground can be established under a proposal for a development agreement for a visitor-oriented development.

[94] Ms. Steele submits that the LUB and MPS, read together, identify campgrounds as "high impact recreation uses" which will have negative impacts on surrounding properties. She says that even when Council considered this proposed campground under a development agreement for a visitor-oriented development, Council

was required to consider and evaluate if the proposed development agreement has considered the MPS's acknowledgement that a campground will have negative impacts on her property because of its "high impact recreations uses."

[95] The Board finds that the Policies in the MPS do apply the phrases "high-impact recreation uses" with "predictable impact" on surrounding lands to campgrounds. While these phrases are not defined in the Policies or in the LUB, meaning must be given to them in order to assess whether they are considerations when evaluating this proposed development agreement for a campground. Guidance as to the meaning of these phrases may be found in the preamble text to MPS Policies 2.7.11 to 2.7.16 for the which states:

> **High Impact Recreation Use**
> High-impact recreation uses carry unacceptable negative impacts on neighbours such as excessive noise or require permanent structures or land alterations. Golf courses, campgrounds and similar uses are high-impact recreation uses that have predictable impacts and are located throughout the Municipality.
>
> The Commercial Recreation (P1) Zone provides some opportunity for high-impact uses, though businesses may wish to locate in other appropriate areas. It is difficult to predict impacts and demand associated with certain high-impact recreational uses such as motor cross, theme parks and race tracks, which makes siting challenging, and therefore dependent on the proposal specifics. Council will impose more restrictions on intensive and unpredictable high-impact recreation uses by considering them only by development agreement. (Emphasis added)
>
> [Exhibit S-5, p. 2.7-6]

[96] In *Dumke, (Re)*, 2024 NSUARB 164, the Board considered the phase "Council shall" as used in the Policies of the Kings' MPS:

> 5.1 Interpretation of King's MPS Policies
>
> 41 Section 1.1 of the MPS describes the history of municipal planning in the Municipality. The current MPS was adopted by Council on November 21, 2019, following extensive public consultation. The MPS was approved, with amendments, by the Minister of Municipal Affairs on March 5, 2020. Section 1.2 of the MPS, under the heading "Interpretation," at p.1. 2-1, states:
>
> Policies are shown in shaded text and reflect the intent of the Council. Notwithstanding the words "Council shall" preceding policy text throughout the document, policy statements are intended to be permissive.
>
> 42 The intent of this policy direction has been considered in previous Board decisions, related to how much discretion (if any) Council has to determine what factors it will address,

> and to what degree, for a given application. Previous Board decisions have held that the permissive nature of the words “Council shall” does not mean Council can choose to ignore a relevant policy. It does mean that Council has discretion about how the policy in question is applied in a given context [see: Blanchard (Re), 2023 NSUARB 191, at para.90; Community for Responsible Development for District 1 (Re), 2023 NSUARB 37, at paras. 85-86 (Canning), Cornwallis Farms Limited (Re),2024 NSUARB 120].
>
> 43 As stated in Cornwallis Farms Limited, at paragraph 53:
>
> The exercise of Council’s discretion in relation to relevant policies is not absolute. Council’s decision must still be guided by the MPS and reasonably carry out its intent. The extent to which Council can decide how to apply a particular policy may depend on its relative importance within the overall guidance provided by the MPS. The particular facts of the case will also be a key factor. In the final analysis, “...a council’s discretion must be exercised in a manner that the planning strategy’s language can reasonably bear.” (Emphasis added)

[97] With these principles in mind, the Board finds that the MPS gives specific direction on how to consider the nature of a campground by classifying it as a high-impact use with predictable impacts. It therefore must be considered as such. When reading the LUB and the MPS Policies together, the Board finds that the phrase “high-impact recreation uses” with “predictable impact” on surrounding properties arising from a campground means activities and uses which “carry” or can be expected to cause unacceptable negative impacts on neighbours such as excessive noise or due to the required permanent structures or land alterations. The term “unacceptable” comes from the explanatory statement for the policy, which is the most direct source for meaning. “Unacceptable” is strong language and would, in its ordinary definition, mean something objectionable or unwelcome. Further, high impact suggests that the activities will involve a higher intensity or greater effect. For example, campgrounds attract a larger number and concentration of people in close proximity, having a greater effect than that of the average human activity in, for example, a rural area. These predictable impacts require corresponding mitigating measures to protect surrounding areas and achieve the balance

the MPS seeks between new opportunities and limits on the location and scale of those uses to minimize unwelcome conflicts.

[98] Given that the MPS has identified negative impacts that will occur with campgrounds, the Board finds that, just as these considerations must be part of the evaluation to approve a rezoning to P1 to permit a campground development, it is also appropriate to have this as part of the evaluation of a proposed development agreement for a campground, even if the development is labelled as a visitor-oriented development. The proposed development agreement must have sufficient controls to mitigate the identified negative impacts. Context, however, will guide what constitutes sufficient controls depending on surrounding land uses.

[99] As stated in Clause 2.1 of the Development Agreement, the Applicant's proposal is for the development of a campground, consisting of no more than 100 sites as well as supporting facilities such as washrooms, showers and an administration building. When cross-examined by the Appellant's counsel, Ms. Mosher did not dispute that the proposal was for a campground. She also testified that in the MPS campgrounds are considered high-impact recreation uses and are in a different category than other tourist attractions like wineries. She said that she did not bring the MPS interpretative text and policies about campgrounds to the attention of Council or the Planning Advisory Committee because she did not rely on them in her report:

CROSS-EXAMINATION

MR. THOMPSON: Thank you. Good morning.

A. Good morning.

Q. Um, the proposed development, um, when fully developed, will have approximately 100 campsites; correct?

A. In phases one, two and three, yes.

Q. Yeah, um, and the developer, according to the business plan she submitted, um, is seeking to attract, um, uh, families and children to the campground along with, uh, along with some others; correct?

A. Uh, that's my understanding, yes.

…

Q. Okay. Um, campgrounds are considered high impact recreation use under the municipal planning strategy; correct?

A. That's correct.

Q. Okay. Um, and I'll take you to the municipal planning strategy and the Board, just take a look at that. Uh, municipal planning strategy is Exhibit 5. And I think on the digital version, it's page 100. It's page 2-76 in the hard copy, I believe. So then there's the heading High Impact Recreation Uses. “High impact recreation uses carry unacceptable negative impacts on neighbours such as excessive noise, or require permanent structures or land alterations.” And then it lists golf courses, campgrounds and similar uses are high impact recreation uses that have predictable impacts and are located throughout the municipality.

So campgrounds are considered in a different category under the MPS than some other tourist attractions, like a winery, for example.

A. Yes, that's correct.

Q. And that's because they have a higher impact on the surrounding area?

A. Potentially.

Q. Did you bring this fact to the attention of Council in your report, or any of your presentations to Council or to Planning Advisory Committee?

A. No, because this is interpretive text for the following policies, which were not used.

Q. Okay. Um, and there's a special zone created for high impact recreational uses, I believe, the commercial recreation P1 zone?

A. Yes, that's correct.

Q. Okay. The only zone in which campgrounds are permitted as of right is in the P1 zone?

A. Yes, that's correct.

[Transcript September 25, 2024, pp. 28; 33-34]

[100] In response to questions from the Board, Ms. Mosher testified that approximately 12 to 20 properties in the Municipality are designated P1 Zone. She said that the P1 Zone was assigned in 2020 only to pre-existing campgrounds, non-profit camps and golf courses. No areas in the Municipality have been identified as potential P1

zones. Ms. Mosher testified that she considered the permitted uses in the P1 Zone and the MPS policies under High-Impact Recreation Uses. She testified that she believed that the Development Agreement had restrictions to address the high impact of this recreation use, except for the high impact of noise:

> **Q.** Um, keeping in mind this sort of as we see that language from the high impact recreation uses, and I...and I...as I think I heard your agreement, that that's more than just sort of day to-day human activity. It's going to be intensified, because there'll be a lot more people in the one spot. Uh, are there ones that stand out to you, from what you've just gone through, that really address dealing with the high impact of this concentrated human activity?
>
> **A.** Sure.
>
> **Q.** For the...you know, for...in terms of the surrounding lands and their uses?
>
> **A.** I would definitely say the setbacks, the signage, the separation distance from existing dwellings. Um, I think that's...and the phasing, really, the phasing I think enables the use to establish slowly, and so the community can sort of get used to how that sort of operates and gain a comfort level with how the Applicant is going to operate their business.
>
> **Q.** And what about the inevitable concentration of noise when you have so many more people? Is there something here that you think addresses that high impact of noise?
>
> **A.** Not necessarily. I mean, it's tricky in agricultural areas, because agricultural uses can be quite noisy too. We receive complaints from folks who live near, uh, vineyards, for example, with noise cannons to deter birds. Or we get, I don't know how many complaints we've had about roosters, honestly. Um, so noise is...noise is kind of a part of life in agricultural areas.
>
> Granted, this would be a different kind of noise, but unfortunately noise is very difficult to control through increased restrictions. So the buffering, um, so the expectation that that will be vegetated will provide some barrier to noise, and then the increased separation distance.
>
> [Transcript, September 25, 2024, pp. 144 – 145]

[101] At the hearing, Ms. Mosher confirmed that Council relies heavily on staff advice in planning applications and that the information staff brings to Council's attention generally holds a lot of weight with Council. The Board agrees generally with the Appellant that, the omission in the report of not distinguishing campgrounds from other tourist uses, i.e., as a high-impact recreation use with predictable negative impacts on nearby properties, may have led Council to a decision not consistent with the MPS.

[102] Past cases have directed the Board to look past flaws or gaps in a presentation of the applicable policies to Council or in their interpretation. These flaws or gaps do not mean that a reasonable outcome was impossible. Finding that the concept of visitor-oriented development is broad enough to apply to a campground is one reasonable interpretation. Under that reasoning a campground can be both a high-impact recreation use and a visitor-oriented development. The Board must review the Development Agreement with an understanding of the policies not only relating to development agreements for visitor-oriented developments but with consideration of the particular treatment of high-impact recreation in the MPS. The outcome of the agreement is intended to regulate the impacts of that use. The reasonable comparators are other campgrounds and other high-impact recreation uses, "not tourist lodging, restaurants or community centres," as were used in the Municipality's arguments and staff's rationale.

5.1.2 Adequate Buffering and/or Separation to Mitigate Impacts

[103] The Appellant asserts that the draft Development Agreement does not impose sufficient buffering and separation to mitigate the expected negative impacts of noise, light and other visual impacts on neighbouring residential property, as required in MPS Policy 2.5.13(c):

> (c) the site facilities are adequately buffered and/or separated from surrounding residential dwellings (other than a residential dwelling occupied by the operator) to mitigate negative impacts associated with noise, light, and other visual impacts;

[104] The Appellant also relied on the proximity of Mr. Langmead's and his next-door neighbour's property regarding the elevation of Phases 2 and 3 of the campground in relation to their homes. The land use in Scots Bay is at the rural-residential scale. It is currently an area of working farms, livestock husbandry and food production and rural residential properties according to Mr. Morton and the Scots Bay residents.

[105] Ms. Mosher stated that the P1 Zone requires a 40-foot buffer. She chose an increased buffer of 75 feet where activity or building on the property was not permitted. She provided only the reasoning than it was more than the LUB required:

> Q. Was the existing brush area used as a reference when you when you came up with the 75-foot buffer?
>
> A. No, not a...
>
> Q. Or was something else used as a reference?
>
> A. Not a reference there, to be honest. There's no magic in the 75. Um, it was just, it's an increased...it's almost double what is permitted in the...or what is required under the P1 zone.
>
> [Transcript, September 25, 2024, p.152]

Ms. Mosher's conclusions did not reflect the evidence before the Board on the site-specific context, taking into account the proximity of all phases to residential properties besides those occupied by the operator. After Mr. Langmead raised specific concerns, the Development Agreement was drafted with a control for the delayed construction of Phase 3 that may allow densification of vegetation. Phase 1 construction of sites and operation of commercial uses, washrooms and accessories will proceed without such phasing or additional protections from noise and visual impacts, as will the open field sites in Phase 2. The buffering and setback requirements were based only on an increase from the LUB setback requirements for the P1 Zone rather than any qualitative measure of how the visual, noise, and smoke would be mitigated for the residential and agricultural uses. The LUB requirements were designed and applied for P1 where existing campgrounds and golf courses were already located. They do not reflect the conditions and characteristics of these existing neighbouring properties.

5.2 Policy 5.3 - General Criteria for Development Agreements

[106] Policy 2.5.13(f) of the enabling policy for a development agreement for a tourist-oriented development, in addition to the other requirements discussed earlier, directs that Council be satisfied that general criteria for development in Policy 5.3 – Development Agreements and Amending the Land Use By-Law, be satisfied. That Policy also must be considered in a rezoning application, including a rezoning to P1. The relevant subpolicies in this case are Policies 5.3.6, 5.3.7 and 5.3.8. Policy 5.3.7 sets out the general criteria that Council must consider satisfied in a proposal for a development agreement or rezoning. Policy 5.3.8 requires the development agreement to "establish controls that may be needed to adequately address any concerns raised by the criteria set out in Policy 5.3.7…." This is the direction to Council on what standard it should seek in reducing conflicts and concerns arising in its analysis under s. 5.3.7.

[107] Consideration of the criteria under Policy 5.3.7 will vary upon the context. According to the interpretive guidance in the MPS as recently discussed by the Board in *Cornwallis Farms Limited (Re)*, 2024 NSUARB 120, the inclusion of "Council shall" above the shaded policy text means that Council cannot ignore the policies but has residual discretion, guided by the MPS and the specific wording of the policy text, to determine how particular policies should be applied. The extent to which Council can decide how to apply a particular policy may depend on its relative importance within the overall guidance provided by the MPS. A purposive analysis and the particular facts of a case are also a key factor. As previously quoted from *Cornwallis Farms Limited* at paragraph 53, "in the final analysis '…a council's discretion must be exercised in a manner that the planning strategy's language can reasonably bear.'"

5.2.1 Policy 5.3.7(a) – Consistent with the Intent of the MPS

[108] The Appellant identified a number of sub-policies she said that Council failed to reasonably consider, including 5.3.7(a) which requires that Council shall be satisfied that a proposal:

> (a) is consistent with the intent of the Municipal Planning Strategy, including the Vision Statements, relevant goals, objectives and policies, and any applicable goals, objectives and policies contained a Secondary Plan;

[109] Policy 5.3.7(a) of the MPS forms the crux of this matter. It essentially repeats a modified standard of that set out in s. 250(1)(b) of the *MGA*, which authorizes the Board to allow an appeal where a decision of Council does not reasonably carry out the intent of the Municipal Planning Strategy. The Policy asks for consistency with the MPS and incorporates explicit reference to the Vision Statements, relevant goals, objectives and policies of the MPS.

[110] The Municipality submitted that “the appropriate use of vision statements, goals and objectives does not involve negating express provisions of the MPS which enable specific developments…They do not – and – cannot cover all the qualifications to generalized statements which are embedded in the more detailed text of the enabling policies.” The Board generally agrees with this statement as it aligns with the principles of statutory interpretation and past approaches of the Board that specific provisions generally take precedence over general provisions.

[111] Nevertheless, Policy 5.3.7(a) is a specific policy that the enabling provisions for visitor-oriented developments by development agreement directs Council to consider. The policy integrates a specific direction to seek consistency with the MPS, including the general vision statements, goals and objectives. In its assessment under s. 5.3.7, therefore, these statements cannot simply be disregarded because they are not official

policy text. They guide analysis where there are competing priorities in a given decision. They are used to frame the principles that Council adopted to ensure Council's future planning decisions reflect its overall vision for the future rather than the pressures or competing political interests that may accompany a singular development proposal.

[112] As recognized in the Staff Report, the MPS and LUB Zone purpose statement do not include visitor-oriented, or tourist uses. However, the Board recognizes the interplay between agriculture and tourism is contemplated and generally encouraged by the policies of the MPS. This is evident in MPS Policy 2.5.12 which stipulates that Council shall "encourage and promote opportunities for visitor-oriented business." It seeks a balance in rural areas "between the resource based land uses and their value as a tourism asset." [Exhibit S-4, p. 2.5-4 – 2.5-5]

[113] As often quoted from the Court of Appeal in *Heritage Trust*, there is no "single intent" of the MPS. The Board is guided by the principles in *Heritage Trust* that it must avoid a narrow, legalistic approach to the meaning of policies and use a pragmatic approach that looks to the MPS holistically.

[114] The general statements of objectives, goals and intentions for the Agricultural Designation include reference to "agritainment developments," where they do not interfere with the "agricultural character that is essential to its appeal." Nevertheless, policies under part 3.4 regulate the "agritainment" tourism uses to accessory uses to a farm business. These policies that specifically address farm-associated opportunities for lodging or other businesses do not apply in this case because the campground would be adjacent to, but not accessory to a farm. The suite of policies enabling visitor-oriented

businesses in agricultural zones also focus on questions of scale, location, buffering and measures to mitigate negative impacts of light, noise and other visual impacts.

[115] While high-impact recreation uses are enabled for development within the A2 Zone, the clear intent in the MPS Policy for the Zone is to prioritize agricultural uses in the event of conflicts and to prioritize agriculture, residential and resources uses. In *Lutz, Re* (2003) NSCA 26, the Court found that the Board did not give sufficient deference to Council in light of the entire MPS, by finding that the development agreement did not give sufficient protections to adjacent residential properties. In the Forestry District, where that planned development was to be situated, the MPS prioritized forest activities over other land uses:

> [34] While residential use is recognized as being permitted within an F-1 Zone, the clear intent of the MPS is to give such residential use in a Forestry District, less priority or protection. See for example Policy 3.3.5 Forestry Districts-Subdivisions.
>
> [35] Accordingly, while nuisance and compatibility with adjacent residential properties are relevant factors, all of the circumstances must be considered in light of the entire MPS and in particular, its general goals and stated objectives to encourage and promote opportunities for expanded industrial development. This is equally so in the designated Forestry Districts "where forest activities are to be given priority over other land uses." In my respectful view, the Board erred and exceeded its jurisdiction by virtually ignoring the policies I have just mentioned, thereby failing to give expression to the intent of this MPS, and by considering the views of the respondents to be determinative, to the exclusion of all else.

[116] In these circumstances, the Board finds that priority for agricultural protection and enhancement is a running thread through the MPS and especially in the policy statement applicable to A2. The analysis of the general criteria for the Development Agreement under Policies 5.3.7 and 5.3.8 must be viewed through that lens, even while weighing other relevant objectives such as tourism and recreation.

5.2.2 Policy 5.3.7(c): Proposed Development is not Premature or Inappropriate

[117] Policy 5.3.7(c) requires that Council be satisfied that the proposal:

> (c) is not premature or inappropriate due to:
>
> […]
>
> (ii) land use compatibility with surrounding land uses;
>
> […]
>
> (iv) the creation of any excessive traffic hazards or congestion due to road or pedestrian network adequacy within, adjacent to, and leading to the proposal;
>
> […]
>
> (xi) negative impact on neighbouring farm operations;

[118] The Board also discussed this Policy in *Cornwallis Farms Limited (Re)*, stating:

> [133] The Board believes that the main purpose of provisions such as Policy 5.3.7(c) is to establish, to Council's satisfaction, that there is a reasonable prospect that the proposed development can be built in accordance with the parameters set out in the proposed development agreement. Otherwise, the process can lead to wasted time and expense on the part of both the Municipality and the developer. Council must, therefore, have a rational basis for concluding that the application is not premature or inappropriate, to avoid *ad hoc* decision-making not guided by the very policies it must consider. In an appeal before the Board, additional evidence can be provided to either support or refute the information that was before Council.

[119] With these general parameters in mind, the Board will address specific issues raised by the Appellant.

5.2.3 Compatibility with Surrounding Land Uses

[120] Policy 5.3.7(c)(ii) indicates Council shall consider whether the proposal is "premature or inappropriate" due to the compatibility of the proposed land use with surrounding land uses. The Board agreed with the submissions of the Appellant that finds the proposed campground cannot reasonably be said to be compatible with the nature and scope of the surrounding land uses in Scots Bay, in particular Ms. Steele's properties.

[121] The Municipality argues that the Development Agreement includes protections to address the anticipated “compatibility issues” between the campground and the surrounding farm, as well as the adjacent residential properties. Ms. Mosher indicated that the Development Agreement includes prohibitions on open-water accessories like pools or ponds. This was included after Staff’s online research suggesting sea birds may be drawn to such features. Ms. Mosher pointed to the required 75-foot “no activity” vegetated buffer and the requirements for staged development of camping lots to allow for additional growth of vegetation. She also noted that Ms. Steele’s pastures are not at the same elevation as Phase 1 of the campground. Though she considered that an increased buffer and vegetation growth might dampen the effect, Ms. Mosher testified that these controls would “not necessarily” mitigate the expected noise or campfire smoke from a campground. She maintained that these were normal impacts that Hustle Farms and the residential neighbours might experience anyway.

[122] The MPS acknowledges campgrounds of having such predictable, negative impacts related to “excessive noise, permanent structures, and land alterations.” Excessive noise is the first concern noted. This proposal, when complete, will encompass up to 100 sites, and upwards of 400 people, accompanying vehicles and generators, a commercial store, and accessory structures. As the Staff Report points out, the site is significantly larger than the minimum lot size required for a campground, but may of the sites will be located in more condensed service areas rather than backcountry. While Ms. Skaling’s intention is to impose campground rules, these are not incorporated in the Development Agreement.

[123] The Municipality asked the Board to disregard evidence about the problems arising where livestock is situated next to concentrated human activity related to the agritainment initiatives pursued by Mr. Lightfoot, and other examples drawn from the experience of Ms. Steele, Ms. Pelkey-Field and Mr. Morton. Ms. Mosher pointed out areas within agricultural areas where “existing” tourist-centred uses like wineries and accommodations in the agricultural areas were situated in proximity to chicken barns or other livestock operations. She indicated she was “not aware” of any conflicts. However, without additional context about the nature of the operations and land uses, the Board did not find the comparisons compelling when contrasted with the direct evidence on past and existing conflicts arising from campgrounds, and arising from interactions between tourists and livestock from the Appellant’s witnesses. The Board found it more likely than not that these conflicts would arise and would not be mitigated due to incompatibility of land uses if the development proceeds according to the terms of the agreement.

[124] The Appellant’s witnesses gave credible evidence about the impacts of noise, disruption and concentrated gatherings of the public on warmblood horses, broiler chickens and other livestock, and the expected conflicts between an active farming operation in close proximity to a tourist-centred use where large numbers of people are present. This is not a case, as at Lightfoot & Wolfville, where an owner-operator is expanding their operations to encourage tourist integration with their farm as “agritainment.” The nature of Ms. Steele’s operations necessitates distance from crowds and discourages outside visitors, particularly in light of the bio-safety risk for the broiler operations and stress risk for both horses and chickens.

[125] Furthermore, Phase 1 of the development is planned without any additional allowances for vegetation growth or fencing and would have the closest impact on Ms. Steele's horse pastures and stables. The site maps, evidence about the property boundaries and differences in site elevation support Ms. Steele's evidence that the separation and buffer, even with eventual additional vegetation, are unlikely to meaningfully mitigate the negative impacts of the land uses on one another. The Board is aware of the deference that must be afforded to Council when weighing the balance of interests and terms like "adequate" that are not quantitatively defined. But, after considering all of the evidence, could not conclude that it was among the reasonable outcomes for Council to be satisfied that the controls were adequate, according to any ordinary definition of that term.

[126] In seeking meaning in a provision and affording deference to Council's judgment on the weight to be afforded a particular policy, the Board looks to the purpose of the policy and the broader context of the MPS. Council contemplated approving high-impact recreation uses within the Agricultural Designation, including the A2 Zone, if the policy criteria are met. This could be achieved by rezoning an A2 parcel to P1, or, as was done in this case, categorizing the campground as a visitor-oriented development and proceeding via development agreement, which is also permitted in the designation. The MPS directs that Council shall be satisfied that the criteria in Policy 5.3 be met in either case. Considering the evidence about the noise, campfire smoke, the expected numbers of campground users when the site is at capacity, the hours of ongoing activity, incidents of accidental and deliberate trespass that accompany a campground, along with the probable effects on Ms. Steele's horses and broiler chicken operations, the Board finds

that a conclusion that the intent of Policy 5.3.7(c) is met is not within the available reasonable outcomes.

5.2.4 Excessive Traffic Hazards or Congestion due to Road or Pedestrian Network Adequacy

[127] The subject property is located on the east side of Highway 358. It has two access points on Highway 358: Pengree Lane and an existing driveway to Civic #5734. Scots Bay Provincial Park is located on the west side of Highway 358, across from the property, and accessed by Wharf Road, located about 40m north of Pengree Lane [Exhibit S-11, p. 4]. The Nova Scotia Department of Public Works is the authority responsible for Highway 358, the provincial highway that would intersect the planned access driveway to the subject property. There is no dispute that the Province owns and maintains Highway 358, which runs generally north to south from Cape Split to Greenwich. The road provides vehicle access in and out of Scots Bay.

[128] Public Works was first consulted on the proposal in 2022 via a series of questions from Kings' planning staff. Staff may have provided a copy of an initial general site plan [Testimony of Laura Mosher, September 25, 2024, p. 50], although the Appeal Record did not include an attachment to the letter. After a series of follow-up messages from planners, Public Works sent its first response in October, stating:

> 1. Are the road networks in, adjacent to and leading to the site adequate for the requested development? **– Yes, the current road networks are adequate for this development.**
>
> 2. Do you require a traffic study? **- No, not at this time.**
>
> 3. Do you anticipate any issues related to access and egress and/or internal traffic circulation? **– No, I don't anticipate any issues at this time.**
>
> 4. Do you anticipate any issues related to storm drainage resulting from the proposal? – **No, I don't anticipate any issues at this time.**
>
> 5. Do you have any other concerns or comments? **- No, not at this time.**

> 6. Do you have any other concerns or comments with regard to the specific development application at hand? **– No, not at this time**
>
> [Exhibit S-4, p. 2903]

[129] Later in the process, the Appellant commissioned a traffic impact assessment report from Harbourside Transportation Consultants. This report, dated January 15, 2024, was provided to the Municipality in 2024 and later filed as Mr. MacDonald's expert report in this matter along with a supplemental letter dated May 21, 2024 [Exhibit S-11].

[130] Policy 5.3.7(c)(iv) indicates that Council shall consider whether the development is "premature or inappropriate" due to "the creation of any excessive traffic hazards or congestion due to road or pedestrian network adequacy within, adjacent to, and leading to the proposal."

[131] The Staff Report [Exhibit S-3, p. 110] made the following comments:

> The Department of Public Works were consulted and did not raise any concerns regarding the road and proposed increase in traffic volumes. An access permit was issued in February 2022 and renewed in January 2023. Comments from March 2024 confirm that the access permit is expected to be renewed.
>
> A Traffic Impact Assessment was commissioned by a third party and forwarded by the Third Party to the Department of Public Works. The Department indicated that they did not agree with the study and confirmed that they have no objections from a traffic perspective.

[132] The Municipality suggests the Board may accept the brief comments of Public Works on the question of the adequacy of the road network, and to make no further inquiry. The Appellant says the Staff Report was inadequate, because it overstated Public Work's position on the Harbourside report, because the reply said Public Works "did not endorse" the study, and that none of Harbourside's specific safety concerns were mentioned.

[133] Public Works is responsible for permitting access to provincial roads, and approved and renewed an access permit for a commercial driveway from the property to

Highway 358. Public Works is guided by its governing legislation and regulations, and its own policies. Under the *Bennett v. Kynock*, 1994 NSCA 114, principles enunciated by the Court of Appeal concerning environmental impact assessments, the Board is not to go "behind the curtain" to review non-planning matters subject to the jurisdiction of another lawful authority.

[134] The Municipality argued that staff, and Council, were entitled to accept the conclusions of the Provincial regulatory authority and defer to its findings. The Municipality cannot impose different standards or policies on a Provincial Department, although it could decide to require more stringent standards on a developer prior to approving a development agreement, as long as they reasonably carry out the intent of the MPS. The Municipality is entitled to rely on the province's exercise of its authority over provincial public highways, and at least on its answers to the questions about access and adequacy of the provincial road to handle the development. Public Works answered the Municipality's queries on those issues.

[135] Nevertheless, staff and Council must assure themselves that an assessment, if it is to be relied on, addresses the particular proposal and the necessary elements of the policies Council must consider. As succinctly stated in the Municipality's written arguments:

> This clause (and others within the General Policies) apply to a wide variety of development situations, including some within busy urban or suburban environments, and others in a less busy rural environment; some involving municipal roads, and others on provincial roads. <u>It should be applied to the extent appropriate to the circumstances, and not blindly applied in a uniform manner to all rezoning or development agreement applications.</u> [Emphasis added]

[136] While Public Works is the authority responsible for provincial highways, the "road networks" and "pedestrian networks" associated with a development proposal may be more complex. In drafting Policy 5.3.7(c)(vi), Council made no distinction between

traffic hazards or congestion on a provincial road versus other roads. A blanket acceptance by Council of every “no concerns” response from Public Works may not always satisfy the intent of this MPS Policy, if the criteria that must be considered in the Policy are not addressed, or if evidence demonstrates other “excessive hazards” or congestion beyond the scope of Public Works’ review or authority.

[137] A traffic report, whether commissioned by a developer or third party, and whether endorsed by the responsible authority or not, may be relevant and carry weight in the Board’s deliberations in a given case. It is not appropriate for the Board to fetter its discretion and dismiss every traffic impact assessment out of hand as irrelevant if it involves analysis of a provincial road.

[138] The Harbourside report addresses other pedestrian safety concerns related to what it says are inadequate intersection sight distance and stopping sight distances from the north of the intersections of Pengree Lane as well as the existing driveway access to the site. The Board also notes that the report indicated that the existing intersection of the Highway with Wharf Road did not meet the sight distance standards for most of the measured speeds and directions, either. The study made recommendations to improve the safety of these access points and intersections, and recommended consideration of sidewalks and a crosswalk to accommodate increased pedestrian volumes. Harbourside’s report notes that increased volumes would be perceived as a “nuisance” for adjacent residents, but the volume would not result in deterioration of highway operations given its capacity as a rural collector road. It concluded there was “potential for increased collision rates” at the intersections and noted that an emergency road closure would block the sole entry/exit route for the community.

[139] For the reasons stated earlier, the Board does not accept that it would be reasonable to invoke a catch-all policy relying on a bald “no concerns” response from Public Works, unless staff’s questions and the Department’s responses allow for Council’s reasonable consideration of the policy criteria. However, in this case, staff’s policy of relying on Public Works’ findings on the adequacy of the road network in the recommendation to Council did not, in itself, result in Council having insufficient information to carry out the intent of the Policy. The Department responded to the questions asked. In the event Public Works’ reply did not cover other hazards or concerns not specifically addressed in staff’s questions or the broader policy criteria, Harbourside’s report was available for Council to consider against Public Work’s initial reply. Furthermore, that report was provided to the authority responsible for safety on the road, who did provide a responsive, if cursory, answer, maintaining its initial position and indicating its non-endorsement of the study.

[140] Council chose to use language in drafting Policy 5.3.7(c)(iv) that allows scope for a case-by-case interpretation and application of several “question-begging terms” including: “excessive,” “hazards” or “adequate/adequacy.” The Policy does not require Council to ensure the elimination of every risk or concern. The Board recognizes the requisite deference to Council in the determination of what is meant by “excessive” hazards, and whether identified issues would render the proposal so inappropriate that it should be rejected at an early stage. With the evidence available to Council, and the Board, it is within the available reasonable outcomes to find that the intent of Policy 5.3.7(c)(iv), in these circumstances, in the context of the overall intent of the MPS, was carried out.

5.2.5 Impact on Neighbouring Farm Operations

[141] Policy 5.3.7(c), in addition to seeking consideration of land-use compatibility generally, tells Council to specifically consider negative impacts on neighbouring farms (Policy 5.3.7(c)(xi). The evidence in this matter demonstrated, to the satisfaction of the Board, that the approval of this proposal under the terms of the existing Development Agreement would likely result in negative impacts on neighbouring farm operations and would not adequately be mitigated by the controls in the Development Agreement.

[142] The development site is surrounded by Ms. Steele's farmland. As pointed out in the Appellant's submissions, in addition to her farming operations there are several other farms in the area, identified in an aerial photo in Gary Morton's report [Exhibit S-10, p. 13]. The Board heard measured, credible direct evidence from Ms. Steele and Mr. Lightfoot about the foreseeable negative impacts when farms and livestock operations are in close proximity to public gatherings. The farmers' evidence was supported by the opinions of Ms. Pelkey-Field and Mr. Morton. Anecdotal and layperson statements from public speakers and in the letters of comment, though they did not carry substantive evidentiary weight, raised the same concerns about the scale of the proposal and the ability for a campground to coexist with the predominant land uses in Scots Bay.

[143] Mr. Lightfoot testified about his attempts to integrate an active visitor-oriented business with his agriculture operations. He said that tourists sought access to animal enclosures despite fences and signage. Ms. Steele and Mr. Lightfoot testified about local incidents where livestock were killed after domestic dogs had attacked or chased the animals. Ms. Steele noted that neighbouring children, who live near the planned campground site, have crossed the brook, vegetative buffer, and embankment at the boundary of her property when heavy machinery was operating in that area, posing

a risk to themselves and the farm operations. Ms. Steele and Ms. Pelkey-Field testified about the sensitive nature of her warm-blood horses and Ms. Pelkey-Field testified about the potential impacts on their foaling and conception if the horses are exposed to noise, stranger interactions, or increased stress. The Municipality discounted this evidence, making comparisons to war horses and domestic or farm horses that have existed next to human activity "for millennia." However, the Appellant's witnesses distinguished those circumstances, and the Board was satisfied that their direct evidence carried more weight than mere generalizations.

[144] Both farmers testified to the tendency of poultry to "pile" or smother each other in a barn when stressed. Mr. Morton addressed the risks of avian flu and infectious laryngotracheitis, concluding that "…developing a high-density campground that attracts more of the general public to an active poultry production zone will create an unnecessary bio-security risk and inevitable agriculture and non-agriculture conflict" [Exhibit S-10 p. 15]. He noted the preference for locating poultry operations away from other human activity, in particular, because of these impacts.

[145] Ms. Mosher indicated that she was not aware of conflicts between existing poultry/livestock operations and other tourist-centered facilities located in their vicinity. The Staff Report indicated that staff did not expect the development to "interfere with neighbouring farm operations." Ms. Mosher admitted in her testimony that she did not speak directly to Ms. Steele or other neighbours before preparing her report. She felt that they would be biased. The report notes that the Department of Agriculture did not raise any specific concerns about avian flu and the Development Agreement requires no ponds, pools or open water amenities be permitted in an attempt to reduce risks from

waterfowl that may contribute to avian flu. In fact, the Department of Agriculture declined to respond. Ms. Mosher said that the information about avian flu came from public sources.

[146] The evidence about negative impacts on neighbouring farms (noise, smoke, animal encounters, trespassers) was generally consistent, although the Municipality said that potential impacts were more remote and more manageable than described by the Appellant. Ms. Mosher acknowledged at the hearing that expected impacts from campgrounds included noise, campfires, fireworks, dogs, and trespassers. However, she indicated that these “normal human activities” would be expected all over Scots Bay. These were intended to be mitigated with the protections in the Development Agreement including signage, vegetative buffering, and a further 30 ft of setback added to the standard 40-foot setback required for similar uses zoned as P1. The Development Agreement also requires the campground to have an on-site property manager. Ms. Skaling testified about her intentions not to allow fireworks, as well as other proposed on-site rules intended to manage the risks to or from campground users.

[147] The Board accepts that this MPS acknowledges and generally encourages the integration and protection of existing agricultural areas with emerging development and other land uses. Across the Municipality, poultry barns and other livestock operations, including Mr. Lightfoot’s property, exist in the vicinity of residential and commercial areas, and tourist-centered land uses. The current location of tourist-centred uses does not necessarily mean that there are no conflicts, as Ms. Mosher conceded.

[148] Under Policy 5.3.7, the MPS seeks to limit future conflicts between new land uses approved under development agreements and their existing neighbours, who did

not choose to move beside or deliberately co-exist with the new proposed use. Given the expected intensity of use of this site, and the characteristics of a campground – where people are active outdoors during nighttime as well as daylight hours, with outdoor campfires, children and dogs located in a confined area, we find it more likely than not that Ms. Steele's neighbouring farm will experience the negative impacts described by the Appellant's witnesses in a manner that is not consistent with the intent of the policies and would not be mitigated by the controls in the Development Agreement.

[149] The Board recognizes that Council is not required to eliminate every risk or concern if the overall intent of the MPS is achieved. However, the policy asks for Council's satisfaction that the proposal is not premature or inappropriate considering "negative impacts on existing farms."

[150] Staff's justification that noise, smoke, fireworks, trespass, large gatherings and traffic are normal human activities, to be expected when any other use exists in proximity to a farm, does not hold up in light of the intensity of those activities on a campground and the recognition of their impacts in the MPS.

6.0 CONCLUSION

[151] In its appellate role, the Board is asked to determine if Council's decision reasonably carries out the intent of the MPS. As noted earlier, the *MGA* does not require Council to provide reasons when it approved this development agreement. The Board must, therefore, determine if the outcome of Council's decision, that is, the approval of this development agreement for a campground with its terms and conditions, reasonably carries out the intent of the MPS.

[152] In this review, the Board based its analysis on the Appeal Record, additional evidence and materials before the Board, relevant jurisprudence from the Court of Appeal, and guiding cases from past Board decisions under these provisions of the *MGA*.

[153] After completing its review, the Board agrees with Ms. Steele that the MPS, notably Section 2.7 and its Policies, recognize that campgrounds are high impact recreation uses which will have predictable, negative impacts on neighbouring uses. The Board also agrees that while this proposed development agreement is described as a visitor-oriented development, this development agreement is for a campground. Accordingly, the Board finds that the MPS provisions about campgrounds, and their predictable negative impacts, should have been key provisions that Council had in its contemplation when exercising its discretion to approve the development agreement. Council may have heard concerns from neighbours about their expectations for those negative impacts and compatibility issues but they were not given any or merit whatsoever in the Staff Report, or it was indicated that mitigation measures were included to compensate. When the chosen mitigation measures were investigated, the Board found on balancing the evidence that the measures would not be sufficient to meet a reasonable definition of adequacy.

[154] When the Board looks at the written information provided to Council, one of, if not the most, the significant documents is the Staff Report. Where a decision of Counsel is made without the benefit of reasons, the Board is directed to such reports for careful review. The Staff Report identifies the key policies of the MPS for consideration of the development agreement for the campground and its analysis of the criteria for

approving it. Staff did recommend Council's approval. In testimony, Ms. Mosher said that a visitor-oriented development was different from a campground. She agreed that the Staff Report did not refer to the MPS provisions which recognized campgrounds as high impact recreation uses with predictable negative impacts on neighbouring properties. One such negative impact being excessive noise. Ms. Mosher stated her belief that the terms and conditions of the development agreement could mitigate other negative impacts that the campground might have on neighbouring properties.

[155] The Board agrees with the Municipality that, if Board was satisfied that the terms and conditions of the development agreement, in its outcome, reasonably mitigate against the negative impacts of campgrounds on neighbouring properties as identified in the MPS, then the Board could find that Council's decision to approve the development reasonably carries out the intent of the MPS.

[156] As set out in its analysis, the Board does not find that the terms and conditions of the development agreement do reasonably mitigate the negative impacts of this proposed campground on neighbouring properties, particularly with respect to Ms. Steele's neighbouring farm property and livestock operations.

[157] The Municipality argues that the Court of Appeal directs, in several decisions, that, when the Board carries out its appellate role and reviews Council's decision, it must give great deference to Council. The Municipality further submits that while the Staff Report did not refer to provisions of the MPS about campgrounds, the Board cannot assume that Council did not consider them when making its decision to approve the development agreement. The Municipality states that concerns about the campground and its potential negative impacts on neighbouring properties were raised

by Ms. Steele and others in correspondence and at the public hearing. The Municipality says that the Board must presume that Council is aware of all relevant provisions of the MPS, even without it being addressed in the Staff Report and would have used this knowledge when weighing the various provisions of the MPS in order to make its decision. Finally, the Municipality says that the MPS states that the word “shall” where it precedes policy text is to be interpreted as permissive, not a mandatory direction to Council.

[158] The Board agrees that it must defer to Council’s discretion in balancing competing policies and interests when reviewing this decision to approve this development agreement. The Board finds it difficult to accept, however, the proposition that its appellate role means that it must always assume that, even if the record suggests otherwise, that Council appropriately weighed the consideration of all relevant provisions of the MPS and made a reasoned choice to which the Board must defer.

[159] The Board finds that, in the absence of reasons, its review must be guided by the outcome of Council’s decision to determine if the decision reasonably carries out the intent of the MPS. The Board’s role is also to ensure that the policies that underlie a decision are interpreted reasonably. In reviewing the terms and conditions of the development agreement, the Board cannot conclude that Council had in contemplation the negative impact of campgrounds on neighbouring properties, as recognized by the MPS.

[160] The Board is charged with determining whether Council’s ultimate decision, the outcome of its interpretive and balancing exercise, was reasonable. The Board finds that the scope of authority the *MGA* allows the Board to make that determination that is not so restrictive as the Municipality argues. The Board finds that in

this case, Council did not exercise its discretion in a manner that a purposeful, holistic analysis of the MPS could reasonably bear, taking account of the evidence of the predicable negative impacts and expected conflicts in the context of the neighbouring agricultural land uses. The evidence satisfies the Board that the controls included in the development agreement do not adequately address the expected impacts, and the intent of the MPS is not reasonably carried out.

[161] The Appellant has met the burden of showing, on the balance of probabilities, that Council's decision approving the development agreement did not reasonably carry out the intent of the MPS.

[162] Accordingly, the appeal is allowed and the decision of Council to approve the Development Agreement is reversed.

[163] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 17th day of January, 2025.

Jennifer L. Nicholson

Julia E. Clark

M. Kathleen McManus