

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **BRISON DEVELOPMENTS LTD.** from a decision of the Town of Kentville Council refusing to approve a Rezoning Amendment for property identified as PID: 55247761 and located in Kentville, Nova Scotia

BEFORE: Richard J. Melanson, LL.B., Panel Chair
Jennifer L. Nicholson, CPA, CA, Member
M. Kathleen McManus, K.C., Ph.D., Member

APPELLANT: **Brison Developments Limited**
Kevin Latimer, K.C.
Sarah Dobson, Counsel

RESPONDENT: **Town of Kentville**
Peter M. Rogers, K.C.

INTERVENORS: **Meghan Sabeau and Michael Carter**
Jonathan G. Cuming, Counsel

HEARING DATE(S): November 22, 23, 24, and December 19, 2023

FINAL SUBMISSIONS: March 15, 2024

DECISION DATE: **May 13, 2024**

DECISION: The appeal is allowed. The Board directs Council to approve the appellant's application.

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1.0 INTRODUCTION

[1] This decision relates to an application by Brison Developments Limited (Brison) to rezone a 43.2-acre parcel of land located in Kentville, Nova Scotia (Property). The Town of Kentville is in the heart of the Annapolis Valley. It is the largest town in the region with a population of just under 7,000 people. The Town is the administrative and professional centre of the region. The Property is located between the MacDougall Heights subdivision and a planned Donald Hiltz Connector Road. The appellant proposed the rezoning to allow for construction of a planned development of 427 single family, duplex, and multi-residential units.

[2] The Property is currently zoned Large Lot Residential (R5). Rezoning to a mix of Single Unit Dwelling (R1), Two Unit Dwelling (R2), and High Density Residential (R4) is required to build the desired units under to the Municipal Planning Strategy (MPS).

[3] The Property is located southeast of Acadia Drive and north of the proposed Donald Hiltz Connector Road. This road is expected to connect the Kentville Business Park to Prospect Avenue and eventually, Chester Avenue. The Property is currently vacant and largely forested. It includes a portion of the Mitchell Brook watercourse on the west side. The Property is adjacent to a newer neighbourhood of large single-family homes, parkland, and vacant land designated for residential development. The entire area is on a hill and some streets have experienced flooding in the past.

[4] After considerable communication with Kentville planning staff, and public meetings, a staff report was presented to Kentville Town Council recommending approval of the application. At a Special Meeting of Council on July 10, 2023, Council denied the application as it did not find the application consistent with the intent of the MPS. No specific reasons were given for the refusal at that time.

[5] On October 10, 2023, in an in-camera Council meeting, the Town passed a motion adopting the following reasons for Council's refusal decision:

1. Contrary to Chapter 15, "Implementation" of the MPS, the Application provided insufficient detail to allow Council to make a detailed evaluation of the developer's proposal.
2. Contrary to the intent of the MPS, reflected in Policy MS-20 and Policy IM-8(p), to require the developer to pay for municipal service infrastructure necessitated because of the development, the proposal contains no mechanism to have developer to pay certain items.
3. Such a large, proposed development is premature before the construction of the Donald Hiltz Connector, and there are not sufficient mechanisms through a rezoning process to control the development's timing and other attributes of concern to Council.

[6] Brison appealed Council's decision pursuant to s. 247(1)(b) of the *Municipal Government Act* to the Nova Scotia Utility and Review Board on several grounds. These include that:

- a. The site is designated "Residential" in the Generalized Future Land Use Map by policy and can be considered for the intended rezoning subject to meeting the applicable Implementation Policies;
- b. The site meets the applicable policy criteria for rezoning in the MPS;
- c. The reasons offered are vague, ambiguous and not grounded in the MPS policies which govern the rezoning application;
- d. Any development that occurs on the site will be required to meet all applicable zoning requirements through detailed design plans at the subdivision application and development permit stage;
- e. The Decision was contrary to the recommendations and advice of the Town's planning advisors;
- f. Such further grounds as may appear on a review of the Record.

[7] After due public notice, Meghan Sabeau and Michael Carter, who live on MacDonald Park Road next to the planned development, intervened in this matter. The Board held a hearing on November 22, 23, 24, and December 19, 2023.

[8] The Board finds that Council's decision to refuse to amend the Land Use By-law Map to allow rezoning of Brison's property from Large Lot Residential (R5) to Single Family Dwelling (R1), One-and-Two-Unit Dwelling (R2), and High Density Residential (R4) does not reasonably carry out the intent of the MPS. The appeal is allowed.

2.0 BACKGROUND

[9] In its October 2023 reasons, which explained its decision of July 10, 2023, to deny Brison's rezoning application, Council made the general statement that the application provided "insufficient detail" which permitted it to make a "detailed evaluation" of the proposal. Council identified some areas of concerns such as the (1) storm water management plan; (2) traffic, including pedestrian and cycling; (3) layout of parks, trails, walkways, and open space on the site; and (4) compatibility with the existing neighbourhood.

[10] As each of Council's concerns is considered below, the key question that emerges is what constitutes "sufficient detail" for considering this rezoning application. Brison asserts that it satisfied the requirement to provide sufficient information. Brison further asserts that Council sought a level of detail for several issues which should be addressed in the next phase when an application for subdivision is filed. In contrast, the Town, and the Intervenors, state that, under the MPS, Council decides if the details

provided in a rezoning application are sufficient and this decision must be shown deference. The Town asserts that the jurisprudence establishes Council is the statutory decision-maker and must be shown deference particularly when the MPS requires subjective judgment about the meaning of terms like "appropriate," "adequate," "compatible," "complementary," or "reasonable." The Town asserts that it was within Council's authority to determine that the lack of detailed information, as described in its October reasons, impaired its ability to assess the adequacy of the application for being reasonably consistent with the MPS.

[11] Both the Town and the Intervenors assert that Policy IM-9 in the MPS requires Council to broadly consider the proposal for rezoning, including other potential development scenarios. Policy IM-9 says:

Policy IM-9 *It shall be the intention of Council*, therefore, to take into account the other potential development scenarios that may be permitted as a result of a proposed zone change when evaluating a rezoning application.

[12] Before reviewing the areas where Council considered the application lacked enough detail, it is necessary to discuss the role of the planning consultant hired by the Town to review the Brison rezoning application.

2.1 Role of the Town's Planning Consultant

[13] Sometime around April 2023, the Town retained Caroline Robertson, C+D Community Design, a licensed professional planner, as an outside consultant, to review the Brison application. In the Appeal Record filed in this matter, there are letters from Ms. Robertson to the Town about Brison's application, dated April 7, 2023, and April 20, 2023. In her initial letter, beginning with the subject line of the letter, Ms. Robertson referred to the "subdivision application." She then continued to discuss the documents related to a

concurrent subdivision and rezoning applications and that the Town seek additional information, as follows:

As you know, [redaction] asked me to review the documents related to a concurrent subdivision and rezoning application [sic] in the Town of Kentville and provide my opinion on how these relate to their Planning Documents. I checked all the records provided, put together some questions and thoughts and then met with you to discuss further. Based on our conversation, the following approach is best for the Town of Kentville.

Immediate Response:

Consider requesting the following from the Developer grounded in the Town's existing policies for subdivision and rezoning applications:

- Request further information be included within the Stormwater Management Plan to address concerns raised by residents.
- Request that traffic calming and the efficient, safe movement of pedestrians and cyclists be incorporated into the traffic study.
- Request that parks and other community assets be safe and central.

Intermediate Response:

My recommendation would be that Council approve the rezoning and subdivision applications. The Municipal Planning Strategy supports diverse residential developments, and the R5 zoning indicates the intent to permit residential development in this area. [Emphasis added]

[Exhibit B-3, p. 78]

[14] With her letter of April 7, 2023, Ms. Robertson also sent a report with her preliminary analysis of the application.

[15] On April 20, 2023, Ms. Robertson provided her assessment of the application. As in her prior letter, she identified storm water management, traffic calming, including safe movement of pedestrians and cyclists and allocation of spaces for parks and open spaces as subjects the Town should seek more information about. The further information she recommended Council seek is similar to what she recommended on April 7, 2023:

For the application to be complete, the applicant must consider the Town's vision for residential development outlined within the Municipal Planning Strategy. For this reason, it is reasonable for Council to request further information:

- The Stormwater Management Plan includes grey and green infrastructure elements to address concerns raised by residents at the recent public discussion held at the Council Advisory Committee.
 - In addition, extra consideration should be given to the Mitchell Brook Watercourse System. How the construction process and overall development are approached will impact the flow and quality of the watercourse, affecting the neighbouring properties.
- The transportation infrastructure plan considers traffic calming and the efficient, safe movement of pedestrians and cyclists. To prevent the "sidewalk to nowhere" or infrastructure choices that are not the most appropriate for this community, Council may wish to consider working with the developer to extend infrastructure outside the demands of the new development.
- The parks and other community assets required under Policy P-10 for this development should be included in the rezoning and indicated as allocated for Parks and Open Space. These allocated spaces must be in safe and central lots approved by the Town's Recreation Department.

[Exhibit B-3, pp. 273-274]

[16] While Ms. Robertson's letter of April 20, 2023, had the subject line "Rezoning Application," her letter continued with her opinion that this application should have had a concurrent subdivision application filed as well:

I should note that generally, large lots are only split-zoned into multiple zones with a concurrent subdivision application. The approach of processing the rezoning first has made the application difficult for the community and staff to process. However, due to time constraints, I would continue to process this application with the subdivision after the rezoning to avoid extending the administration unnecessarily.

[Exhibit B-3, p. 274]

[17] On May 1, 2023, Kirsten Duncan, Acting Development Officer for the Town, advised Chrystal Fuller, a licensed planning professional working for Brison, that the Town had retained a professional planner to review the application. Ms. Duncan stated that this planner determined additional information was required to satisfy Policy RS-23 of the MPS. On May 2, 2023, Ms. Fuller provided the additional information requested, but also gave her opinion that Policy RS-23 was a general provision and there were

specifics policies, such as IM-7 and IM-8 that provided specific requirements for a rezoning application:

We understand that these requests for additional information arose based on a reconsideration of MPS Policy RS-23, which states:

Policy RS-23 It shall be the intention of Council to ensure that new residential areas:
a) *Provide for the efficient use of land;*
b) *Provide for the efficient and economic extension of existing water, storm sewer and sanitary sewer systems and other utilities;*
c) *Provides for the efficient and safe movement of pedestrians and cyclists; and*
d) *Provides for parks and other community uses in safe and central locations.*

In my opinion, Policy RS-23 establishes broad general policies with which the more specific policies criteria should align. The more specific policies contained in policy IM-8 are the evaluative[sic] criteria that are the most relevant for Council's consideration.

...

The MPS does indicate a preference for detailed plans as part of the rezoning process, and Policy IM-7 states what is required.

[Exhibit B-3, pp. 151-152]

[18] Ms. Fuller concluded her letter by stating her belief that, with the additional information provided, the application was complete and could go forward to Council for first reading. The appeal record and evidence given at the hearing establish that even after this letter of May 2, 2023, Brison provided more information when requested, such as about the storm water management plan.

[19] The May 2023 staff report prepared for the Council Advisory Committee (CAC) by Ms. Duncan, provided additional information from staff, all of Ms. Robertson's communications and analysis, and additional information from Brison. Ms. Duncan addressed Ms. Robertson's analysis. She advised the additional information Ms. Robertson recommended Brison be made to provide could be obtained at the subdivision phase:

The Town engaged C + D Community Design to provide an opinion on the content of the rezoning application from the standpoint of a Licensed Professional Planner, the analysis

can be found at the end of this report in Appendix B. Staff appreciate the effort put into the review from C + D Community Design. There were some pieces of information that were recommended to be submitted during the planners [sic] review, however staff are confident that we are able to work with the applicant and developer throughout the Subdivision process to satisfy these items. [Emphasis added]

[Exhibit B-3, p. 157]

[20] On May 8, 2023, the CAC recommended that Council give first reading to the rezoning application and hold a public hearing prior to the second reading. The minutes of that meeting summarize the discussion as:

Discussion

- Concerns about who will be responsible for ensure green space and stormwater management. These issues are usually resolved at the subdivision planning phase of development. Stormwater issues are mandated by the provincial government.

[Exhibit B-3, p. 181]

[21] Ms. Robertson's evidence in the appeal record is problematic. On April 7, 2023, Ms. Robertson's first review of the Brison application identified it as a subdivision application. She then proceeded on the basis that there are concurrent Brison applications under consideration, one being a rezoning application and the other being a subdivision application. She provided an opinion and identified additional information required but did not say if the information was needed for the rezoning application as opposed to a subdivision application. Her subsequent correspondence of April 20, 2023, acknowledged this was solely a rezoning application, but identified additional information needs which look strikingly like those identified when she believed there were concurrent rezoning and subdivision applications. Ms. Robertson then stated in her letter of April 20, 2023, that more details, such as parkland dedication, were required. She then opined that a project of this size should have concurrent rezoning and subdivision applications.

[22] Ms. Robertson's communications and analysis of April 7, 2023, and April 20, 2023, were before the CAC and Council as part of their considerations of this application.

[23] It appears that Ms. Robertson may have unintentionally misdirected Council about the amount of detail required for the rezoning application, but to what degree is difficult to assess. As well, when the Town obtained additional information from Brison, arising from her questions, there is no evidence on the appeal record that she reviewed and assessed it. Ms. Robertson did not testify at the hearing where she could have perhaps given an explanation about her approach. She would also have been subject to cross-examination. Finally, based on the appeal record, while Ms. Robertson's role ended in April 2023, the influence of her opinion is present throughout the matter as demonstrated in the Town's submissions to the Board which uses her opinion, in part, to justify Council's decision. This suggests Council may also have relied on Ms. Robertson's problematic opinion. This may have impacted Council's decision as to what constituted sufficient details when considering a rezoning application (as opposed to the detail needed to meet the requirements for a subdivision application).

2.2 Letters of Comment

[24] The Board received 12 letters of comment from people opposed to amending the zoning by-law and one letter in favour of the rezoning. Those against the rezoning had the following concerns:

- Increased flooding and stormwater issues;
- Traffic volumes and congestion resulting in potential for accidents;
- Density and scale issues;

- Parks, trails, green spaces, and environmental issues;
- Pedestrian safety and sidewalks;
- Municipal infrastructure, and
- Concerns with Brison as a quality developer.

[25] One real estate agent and developer was in favour of the development based on the demonstrated need for additional affordable housing in Kentville.

2.3 Evening/Public Session Speakers

[26] An evening session was held on November 22, 2023. In response to the Notice of Hearing, five people registered to speak at the session and four people came to speak. Three of the speakers resided in Kentville, were familiar with the location of the proposed rezoning and spoke against the proposed development. Two of those speakers' concerns mirrored issues expressed in the letters of comment. The third speaker owns property containing old growth forest that is at risk of expropriation to build the Donald Hiltz Connector as it sits within the proposed development path. He stated that he is unwilling to sell this 1.6-acre property at any price.

[27] The real estate agent and developer who submitted a letter of comment also spoke in favour of the development based on the demonstrated need for additional affordable housing in Kentville.

2.4 Site Visit

[28] The Board members conducted a site visit on January 26, 2023. We met at the Kentville Fire Hall and turned right onto Main Street. We then turned left onto Acadia Drive and travelled up the hill through the MacDougall Heights subdivision, noting the lack of sidewalks. This street ended in a dead end where the subject property sits. The area is forested and not accessible by vehicles at this time. We then drove down

Mount Vincent Drive to Alicia Boulevard and MacDonald Park Drive which we noted is next to the proposed development. Most of the homes in the area are new, large, single-family homes. We then drove to Grant Street where we observed smaller, older homes and to Condon Avenue which is on a steep hill. These were all streets that were discussed during the hearing.

[29] We then drove back to Main Street to the beginning of the Donald Hiltz Connector and observed that very little of the connector road has been built at this time.

2.5 Scope of Board's Review

[30] The burden of proof is on the appellant to show, on the balance of probabilities, that Council's decision to refuse its application for the rezoning from Large Lot Residential (R5) to Single Unit Dwelling (R1), One and Two Unit Residential (R2), and High Density Residential (R4), was not consistent with the intent of the MPS.

[31] Under s. 247 (1)(b) of the *Municipal Government Act*:

Appeals to the Board

247 (1) The approval or refusal by a council to amend a land-use bylaw may be appealed to the Board by

...

(b) the applicant;

[32] 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

(a) an amendment or refusal to amend a land-use by-law, on the grounds that the decision of the council does not reasonably carry out the intent of the municipal planning strategy;

[33] 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 on 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 on 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 so as 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. ...

(8) The intent of the MPS is ascertained primarily from the wording of the written strategy.

[34] While *Barrett* and *Archibald* involved development agreements, the same general principles apply to rezoning appeals.

[35] Clearly, the Board is not permitted to substitute its own decision for that of the Town Council 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 principles of statutory interpretation which have been adopted by the Court of Appeal, as well as the provisions of s. 9(1) and s. 9(5) of the *Interpretation Act*, R.S.N.S. 1989, c. 235.

3.0 ISSUE

[36] Does the decision of Kentville Town Council to refuse to amend the Land Use Bylaw (LUB) to re-zone Brison's property as requested from R5 to R1, R2, and R4 reasonably carry out the intent of the MPS?

3.1 Storm Water Management

[37] In its October 2023 reasons, Council stated it denied Brison's application, in part, because it was contrary to MPS Chapter 15 "Implementation," in that it provided:

1. ...insufficient detail to allow Council to make a detailed evaluation of the developer's proposal, including in respect of the following issues of special concern to Council:

(a) the storm water management plan for the proposed development;

[Exhibit B-17, p. 2]

[38] The Town staff report dated March 2023, which was prepared for the CAC, identified Policy RS-23 of the MPS as a relevant policy for the rezoning applications:

Policy RS-23 *It shall be the intention of Council* to ensure that new residential areas:

b) Provide for the efficient and economic extension of existing water, storm sewer and sanitary sewer systems and other utilities;

[Exhibit B-3, p.41]

[39] The March 2023 Town staff report also identified that Policy IM-7, which requires rezoning applications to include a detailed proposal and a graphic representation of the proposal which indicate, among other items:

c) the means by which the site is to be serviced by sanitary and storm sewers, water, electrical service and other utilities;

[Exhibit B-3, pp.72-73]

[40] The March 2023 Town staff report also identified that Policy IM-8 set out the criteria to be considered on a rezoning application and, in particular, IM-8(d) for storm water management. Town staff concluded that Brison's storm water management plan, prepared by Glenn Woodford, P. Eng., in February 2023 submitted the necessary analysis for the rezoning application:

(d) the adequacy of sewer services, water services, waste management services and storm water management services;

Staff Comment

Kentville Water Commission has adequate supply for the proposed development. Applicant has committed to designing a net zero stormwater management system. A downstream sanitary capacity analysis was completed and determined that the existing infrastructure on Acadia Drive has capacity to accommodate 210 multi-unit dwellings and detached homes before upgrades to the system are required.

[Exhibit B-3, p. 48]

[41] The CAC met in March 2023 and sought additional information about the Brison application, including whether there could be a plan for when residents have concerns about water or storm water.

[42] In a letter dated April 7, 2023, with the subject line "Subdivision Application," Ms. Robertson attached her opinion on Brison's storm water management plan of February 2023 and wrote that the Subdivision Bylaw permits the Town to seek a concept plan for storm water management:

Although the Town of Kentville Subdivision By-Law appears to be copied directly from the Municipal Government Act, it does give staff much control when considering applications.

The by-law allows the Development Officer to request concept plans, ... for ... wastewater facilities, stormwater systems, water systems and other services. ... Lastly, the final subdivision application should include installing water systems, wastewater facilities, stormwater systems and other services in the land area being subdivided to the standards prescribed by the Municipality.

[Exhibit B-3, p. 81]

[43] A staff report to CAC dated April 2023, prepared by Ms. Duncan, attached Ms. Robertson's April 7, 2023 analysis of the application which recommended that this was an "opportunity to request more of the stormwater management plan." The staff report addressed the storm water management plan and highlighted that there were provincial regulations that the storm water management plan would have to satisfy:

Stormwater Management

Questions relating to stormwater management were also brought up during the March CAC meeting. For further clarity, NS Environment (NSE) requires all new developments to limit the impact on the downstream infrastructure with a net zero increase in the amount of stormwater run-off. This can be accomplished using several methods such as above/below ground parking lot stormwater storage, site specific storage ponds, flow control roof drains, etc.

...

As always, if residents are unclear who to contact regarding stormwater issues, they are encouraged to reach out to the Town to get clarification.

[Exhibit B-3, p. 73]

[44] The CAC, in its April 11, 2023, meeting, did not request additional information about the storm water management plan.

[45] In a letter dated April 20, 2023, Ms. Robertson stated it was reasonable for Council to seek more information about the storm water management plan, to address concerns raised by residents at the recent public discussion held at the CAC.

[46] In a letter dated May 1, 2023, the Town wrote to Ms. Fuller and asked for more information, including greater detail about the anticipated storm water management plan. Ms. Fuller responded on May 2, 2023, stating her opinion that such a detailed plan, including the issues of erosion, was required at the subdivision stage and not at the

rezoning stage. She noted such a plan must comply with the regulations of Nova Scotia Environment and Climate Change:

Stormwater Management:

The Town's Request:

Greater detail of your anticipated Stormwater Management Plan is requested utilizing both engineered and "green infrastructure" elements, where possible. Additionally, whereas the Mitchell Brook watercourse is present on the property, it would be beneficial for your application to address and acknowledge the responsibility to protect this watercourse and detail your anticipated plans to adhere to the Subdivision Bylaw, Appendix B – Municipal Services Standards and Specifications, Part 12 – Erosion Control Measures.

Applicant's Response:

We note that the MPS does not have any specific stormwater management policies. Section 11.2.4 provides a general discussion of stormwater but no policies to guide Council's consideration of stormwater. Policy IM-8 establishes the evaluation criteria for rezoning and does require Council to "have regard for" the adequacy of stormwater management. Section 15.9.2 again provides text about requiring conceptual plans but no policies that require detailed submissions and defers to the policy in IM-8. In my opinion, Council has no requirement to consider detailed stormwater plans at this time. Recognizing that a development plan/site plan submitted for subdivision approval will change in response to more detailed engineering studies and market condition, the provision of detailed stormwater plans at this stage is unnecessary.

It is my opinion that the letter from DesignPoint on February 22, 2023 confirming that the applicant, "will incorporate on site storage to balance the pre-and post development flows" is sufficient to evaluate the rezoning request under IM-8. However, to further understand your stormwater comments, I have undertaken a review of the Municipal Planning Strategy and Subdivision By-law to seek guidance regarding "green infrastructure" and what exactly that will entail. I was unable to find any specific reference. If the Municipal Specifications has requirements or suggestions that can be considered during detailed design, please provide these to the applicant for their engineering team to consider.

...

The Town is also requesting erosion and sedimentation information at this stage. Erosion and sedimentation plans will be provided to the Town at the time of tentative subdivision when the specific lot configuration and road alignment will be reviewed by the Town for approval. It is only at this point that specific information about how stormwater will be managed in relation to Mitchell Brook will be reviewed by the Town's Engineer. The applicant fully intends to comply with the regulations Nova Scotia Environment and Climate Control and the Town have at the time the application is made for tentative approval. [Emphasis added]

[Exhibit B-3, pp. 152-153]

[47] In a report to CAC dated May 2023, Ms. Duncan provided supplemental information, including the latest letters received from Ms. Robertson and Ms. Fuller. She

indicated that although Ms. Robertson recommended some additional pieces of information during the planner's review, staff was "confident" they would be "able to work with the applicant and developer throughout the Subdivision process to satisfy these items." [Exhibit B-3, Appeal Record, p. 157]. The May 2023 staff report also included a memo from David Bell, P.Eng., Town Engineer, dated May 4, 2023, which stated, in part, that detailed plans for storm water management were required at the subdivision stage:

Detailed engineering plans for all aspects of water, sewer, storm and street & sidewalk design will be required at the Tentative Subdivision application stage should the rezoning application be successful.

[Exhibit B-3, p. 158]

[48] On May 8, 2023, the CAC recommended that Council give first reading to the rezoning application and acknowledged that the storm water management was addressed at the subdivision stage and was regulated by the province. The minutes of that meeting summarize the discussion as follows:

Discussion

- Concerns about who will be responsible for ensure green space and stormwater management. These issues are usually resolved at the subdivision planning phase of development. Stormwater issues are mandated by the provincial government.

[Exhibit B-3, p. 181]

[49] On May 26, 2023, Mr. Woodford sent the Town a storm water conceptual plan for the site. In his cover letter, he discussed the requirements of the provincial regulations. His attached report also discussed the Mitchell Brook Watercourse and identified the requirement of protection from excessive flows and damage from the development. He concluded by saying that DesignPoint had the skill and experience to confirm that the storm water management plan would satisfy the Nova Scotia Department of Environment and Climate Change regulations for storm water design.

[50] On May 30, 2023, Council approved first reading of the Brison application and directed that it proceed to a public hearing on June 21, 2023.

[51] By email dated May 31, 2023, Ms. Fuller wrote to Ms. Duncan further to their phone call on May 29, 2023, when Ms. Duncan indicated she and David Bell had some questions about the supplementary storm water plan submitted on May 26, 2023. Ms. Duncan advised that the report would not be circulated to Council until additional questions and clarifications were answered. Ms. Fuller directed her to contact Mr. Woodford, the Applicant's engineer, who would be able to answer any questions about the plan.

[52] On June 9, 2023, David Bell prepared a Supplementary Staff Engineering Report about the Brison rezoning application. He stated that storm water management in the Town was regulated by provincial regulations and the Subdivision Bylaw. He confirmed that Town staff was satisfied that Brison had provided sufficient information for the evaluation of its rezoning application:

Stormwater management in the Town of Kentville is regulated pursuant to the rules adopted by NS Environment and Climate Change (NSECC) and the Town's Subdivision Bylaw. NSECC regulations require balancing of pre- and post-development flows. Those rules apply where storm drainage works are being constructed to manage the stormwater, but do not apply to the flow of stormwater from one residential lot over another lower-lying lot because of construction on the higher lot, for example. The developer must provide a detailed storm drainage system design at the subdivision stage of the development, and staff is satisfied that sufficient information has been provided to evaluate the current Application for the purposes of rezoning. The Subdivision Bylaw requires lots to be graded so that water flows toward the street or the rear lot line to help alleviate flow towards houses on adjacent lots. The Bylaw is enforced at the time of construction. [Emphasis added]

[Exhibit B-3, p. 306]

[53] The matter returned to Council on June 26, 2023, when Council postponed second reading because it required clarification from staff on several issues: recreation infrastructure; overland water plan; traffic calming measures; recreation issues including green space, active transportation and sidewalks, based on the new bylaw.

[54] In a Town staff report to Council dated July 2023, Ms. Duncan wrote a detailed explanation about the storm water infrastructure plan and erosion controls. Referring to Mr. Bell's memo, she stated that what Brison filed satisfied the requirements at the rezoning stage. She stated that detailed plans were required at the Subdivision phase and there were control measures in the Subdivision Bylaw and the provincial regulations which the plan must satisfy. The Board has summarized her advice as follows:

- Part 13 of the Subdivision Bylaw requires subdivision lot grading and puts the responsibility on the developer to predict the direction of the water flow and associated volumes and ensure that minimum grading standards are employed;
- The Subdivision Bylaw has further sections that relate to storm sewer specifications and erosion control measures, including providing zero increase in peak runoff or alternatively providing increased downstream capacity in a manner acceptable to the Town;
- Part 12 of the Subdivision Bylaw sets requirements for erosion control measures for the development of land draining directly into a body of water;
- Development of land draining directly into a body of water may be subject to more extensive erosion and sediment control measures as a result of the Town zoning bylaw, or other bylaws, or as a result of provincial legislation or regulations, specifically under the control of the Department of Environment;
- NS Environment (NSE) also requires all new developments to limit the impact on the downstream infrastructure with a net zero increase in the amount of stormwater run-off. This can be accomplished using several methods such as above/below ground parking lot stormwater storage, site specific storage ponds, flow control roof drains, etc.

[55] On July 10, 2023, Council denied second reading of the rezoning application. The minutes stated that Council referred to "confidence in staff to use best practices and tools for managing water, stormwater, recreation, active transportation plan and environmental issues." The minutes continued to show Council had concerns about

“long term planning for this area of town, and updates to the Municipal Planning Strategy and the use of development agreements.” [Exhibit B-3, Appeal Record, p.369 at p. 370]

[56] There was nothing in the record and evidence at the hearing to show that Brison was asked to provide additional information after its detailed storm water management plan was provided on May 26, 2023.

[57] Brison submits that a detailed design for stormwater management is not required at the rezoning stage. Council had all the information required by the MPS, as confirmed by Town staff, for approving the rezoning application. Further, Council appears to have failed to appreciate the subdivision approval process ensures that the storm water management plan balances pre-development and post-development flows, as required under provincial regulations. Additionally, one of the conditions for subdivision approval is that the province issue a permit to construct. Such a permit is only issued once the province is satisfied that the plan complies with all provincial regulations and requirements.

[58] The Town argues that there were deficiencies in the information provided about the storm water management plan. These included details on how it would connect the lower end of the various grassy swales to the existing storm water system, adequacy of the existing downstream infrastructure, addressing the impact of the sandy and erodible soil in Kentville, and no detailed storm water schematics, supported by calculations or computer modelling, that an outside engineering consultant could then have reviewed and reported on.

[59] The Intervenors led evidence which included videos and photos of MacDougall Heights and Condon Avenue. Meghan Sabeau testified about the effect of

recent major rainfall events in MacDougall Heights with reference to the videos and photos. The Intervenors did not file an expert's report.

[60] The Intervenors submit it is within Council's authority to emphasize storm water and erosion issues when considering whether to approve a rezoning application. Further, Mr. Woodford, who designed the storm water management plan for Brison's application, failed to provide erosion or sedimentation plans as requested by the Town in May 2023. Finally, the Intervenors submit that Council cannot "simply pass the buck" and rely on the Subdivision Bylaw and provincial regulations to ensure that the storm water and soil erosion concerns are addressed.

[61] It is important to recognize that neither Council nor the Town staff are environmental regulators. In exercising their planning responsibilities, Council and Town staff can assume those tasked with environmental regulation will properly regulate those aspects of a development that are within their authority:

Before considering the environmental issues raised in this appeal, it should be noted when Council considers the approval of a development agreement, it is entitled to assume provincial and federal environmental regulators will properly ascertain any environmental issues within their mandates associated with the proposed development. Although the Municipality has primary responsibility for planning matters in its territory and its Municipal Planning Strategy may direct Council to take environmental matters into consideration, it is not an environmental regulator. The Court of Appeal noted primary responsibility for environmental matters rests with environmental regulators in *Bennett v. Kynock*, (1994) 1994 NSCA 114 (CanLII), 131 N.S.R. (2d) 334:

The legislation of this Province puts the primary responsibility for matters affecting the environment with the Minister of the Environment, not with municipalities, municipal councils, nor with the Nova Scotia Utility and Review Board. That is not to say municipalities shall not have regard for the environment in their planning policies, only that the primary responsibility for the environment is with the Minister of the Environment. [*Bennett*, para. 34]

[*Re Cameron*, 2021 NSUAR 8, para. 139]

[62] Mr. Bell indicated that he considered the provided storm water management plan had sufficient information to evaluate the rezoning application. From a review of their reports to Council and CAC, it is clear that staff reached this conclusion because

any subdivision and use of the site would have to adhere to requirements in the Subdivision Bylaw and provincial regulations for storm water management, including control measures for erosion.

[63] Mr. Woodford, who prepared Brison's storm water management plan, was qualified at the hearing as an expert witness and was cross-examined on his report filed for this appeal. In his report, he explained the control mechanisms in the Subdivision Bylaw and the provincial regulations. For instance, as part of the subdivision application, Brison would have to apply for a permit to construct from Nova Scotia Environment and Climate Change to extend the sewer and storm system. The storm water management for the project must meet all the:

...requirements of the regulations including the balancing of pre and post development flows. The Town Engineer would also review this information at the tentative submission stage. We would not be permitted to build the storm drainage system without the permit from NSECC and if we did not have a permit, the Town could refuse our application as per Section 5.5 of the Subdivision Bylaw.

Additionally, he noted in his report that erosion control is part of the application criteria for subdivision approval:

It is also important to note that the Application Criteria in the NSECC Storm Drainage Works Approval Policy says:

1. "Potential impacts" may include, but are not limited to, baseflow reduction and impacts on groundwater, wetlands and downstream water uses, or may result from downstream or off-site flooding, erosion of the bed and banks of a storm drainage ditch or a watercourse, sedimentation and destruction of fish habitat. [Emphasis added]

[Exhibit B-13, p. 3]

[64] Mitchell R. Dickey, MCIP LPP, was called by the respondent. He was qualified as an expert to give opinion evidence on land use planning matters including the interpretation and application of municipal planning strategies and land use bylaws and the consistency or inconsistency of Council decisions with municipal planning strategies.

In his report, Mr. Dickey stated he reviewed the MPS, the Land Use Bylaws, the Subdivision Bylaw, and supporting technical studies for this rezoning application. He concluded that they gave Council “robust oversight” of developments:

The entire MPS is founded on sustainable development, provision of adequate infrastructure, community character, protection of existing neighbourhoods, environmental protection, and protecting the Town financially. All of these themes tie directly to MPS policies that are intended to provide Council with a robust oversight of development in the Town. [Emphasis added]

[Exhibit B-8, p. 17]

[65] On the issue of the storm water plan submitted, Mr. Dickey wrote about the Town’s flood risk from experience, the intensifying storms due to climate change, and the presence of Mitchell Brook and some steep slopes on the site. He noted that Council must also think beyond the development’s boundaries to possible upstream and downstream impacts. He described the storm water plan as being at a “very high conceptual level” but finds that more detail was required at the subdivision phase and not at the rezoning stage. He concluded, however, Brison should have provided more detail in order “to provide Council with some comfort.” He wrote:

(a) the storm water management plan for the proposed development;

2.3 The Town is all too aware of flood risk from experience, and intensifying storm events due to climate change are increasing the severity of rainfall and flash flooding. Given the very large size of the site, the presence of Mitchell Brook, and some steep slopes as noted below in an excerpt from Environmental Constraints Overlay Map, Map #3, Council is correct in placing a high level of attention to this matter. Council must also think beyond the boundaries of the development site, not just downstream but also upstream.

...

2.4 The submitted stormwater plan is at a very high conceptual level, and only envisions the 320 units in the short term. This leaves very large vegetated areas on the concept, but the allowable density of 815 units would result in a much higher proportion of the site being covered with buildings and parking areas, which intensifies runoff. The letter submitted with the stormwater plan, to my understanding, properly cites current stormwater design principles, and notes that at the detailed design stage that more detailed plans will be developed based on those principles and guiding bylaws and documents. However Council was not given a sufficient level of comfort that design goals could be met. A development agreement process would have required the submission of much more detailed stormwater management plans, which may have given Council the comfort it needed. That detail could

not be required through the rezoning, but the Appellant could have chosen to provide some greater amount of detail in order to provide Council with some comfort.

...

2.7 The proposed development is likely the single largest development proposal to ever take place in the Town. The deforestation and development of 43 acres on a sloped site, with known areas of steep slopes and with knowledge of a recent series of heavy rain and flood events rightfully raises concerns based in MPS policy. Based on the level of information provided, Council determined that they could not be satisfied that the proposal is consistent with the MPS. On that basis, it is my opinion that Council's decision to refuse the rezoning based on stormwater management is justified. [Emphasis added]

[Exhibit B-8, pp. 18-19]

[66] Christopher Markides, Senior Urban Planner, Zzap Consulting Inc., was called by the appellant. He was qualified as an expert in planning matters for purposes of providing expert evidence on the issues in this matter. In his report, Mr. Markides stated that Mr. Dickey's report did not adequately consider the various development controls at each of the stages of the planning and development process. He described the controls over storm water management at the subdivision stage as follows:

Subdivision Approval:

Stormwater and Wastewater Management: The report overlooks the detailed requirements of the Subdivision Bylaw, which mandates comprehensive stormwater and wastewater management plans. It fails to acknowledge that these detailed plans are essential components of the subdivision approval process. The Subdivision Bylaw, particularly Section 7.1 & Appendix B (Parts 4 & 13), mandates the design and construction of all primary and secondary services, including stormwater management systems, according to detailed specifications. These specifications ensure that the infrastructure meets the required standards for public use and environmental safety. Additionally, developers must provide the Town with Warranty Deeds for streets, walkways, easements, and parkland. Under Subdivision Bylaw Sections 5.10.17 & 7.1, plans must clearly indicate if the subdivision is serviced by central sewer and water systems, showing connectivity to the municipal network. The Nova Scotia Environment Act (Part 5) also stipulates that activities like stormwater and wastewater system connections or expansions require approval from the Nova Scotia Department of Environment and Climate Change prior to commencement.

The report also does not recognize the necessity of lot grading plans and the role of the Nova Scotia Environment Act in ensuring environmental compliance at the subdivision stage. These aspects are crucial for managing the environmental impact of the development yet are not typically addressed during rezoning.

[Exhibit B-11, pp. 2-3]

[67] The Board concurs with Mr. Markides that it is a significant shortcoming of Mr. Dickey's report that he failed to discuss mandatory controls over storm water management, including erosion, most notably in the provincial legislation. No subdivision application can be granted until the province issues a permit to build which is only issued once the province is satisfied the statutory and regulation requirements for storm water management have been satisfied.

[68] Mandatory controls cannot be ignored (see: *Re Armco Capital Inc.*, 2021 NSUARB 147, at paras. 71-72). Under the Subdivision Bylaw, an applicant for subdivision must prepare and submit a storm water management plan to the Town for approval. Under the plan, pre-development and post-development stormwater discharge values must balance. Additionally, the applicant must follow applicable environmental legislation.

[69] Council's concern about the impact of storm water management ignores the mandatory controls in the Subdivision Bylaw, other municipal legislation, and provincial environmental legislation. Nothing in the information provided to the Board in the appeal suggests these requirements are likely to be inadequate. As such, the Board finds that Council's decision, as it relates to concerns about insufficient detail in the storm water management does not reasonably carry out the intent of the MPS.

3.2 Traffic, Including Pedestrian and Cycling

[70] In its October 2023 reasons, Council stated it denied Brison's application, in part, because it was contrary to MPS Chapter 15 "Implementation," in that it provided "insufficient detail to allow Council to make a detailed evaluation" about:

(b) traffic, including vehicular, cycling and pedestrian traffic, that will be affected by the development both within and beyond the development site itself, particularly through existing developed areas of MacDougall Heights;

[71] The MPS refers to traffic, including pedestrians and cyclists, in several instances such as Policy RS-23 which states, in part:

Policy RS-23

It shall be the intention of Council to ensure that new residential areas

...

c) Provides for the efficient and safe movement of pedestrians and cyclists,

...

[72] Ms. Fuller testified that she considered Policy RS-23 to be "foundational," but stated more precise guidance is found in Policy IM-8(h). This Policy states:

(h) the adequacy of the road network in, adjacent to, or leading to the development;

[73] Policy T-8 and T-9 also concern traffic. They state, in part, that a Traffic Impact Study (TIS) may be required as part of a rezoning application. Further, Policy T-9 requires that the TIS must be prepared by a qualified engineer registered with the Association of Professional Engineers of Nova Scotia (professional engineer):

Policy T-8 *It shall be the intention of Council* that a Traffic Impact Study (TIS) may be required as part of a rezoning application or prior to tentative subdivision approval where the nature, or location of the development warrants such a study. A TIS will generally be required if the development is expected to generate 100 or more two-way trips at the site entrance(s) during peak hours. A TIS may be required for other factors or fewer than 100 two way-trips at the site entrance(s) during peak hours if warranted.

Policy T-9 *It shall be the intention of Council* that the traffic impact study shall be prepared by a qualified engineer registered with the Association of Professional Engineers of Nova Scotia. [Emphasis added]

[74] Brison submitted a traffic study prepared by Allan Golding, P. Eng., GAALCO Traffic Engineering (GAALCO Traffic Study), as part of its application. In September 2022, prior to preparing the traffic study, Mr. Golding met with Mr. Bell, P.Eng., Town Engineer, Beverly Gentleman, then Director of Planning for the Town, Ms. Fuller, Brighter Community Planning & Consulting and Mitch Brison to establish the guidelines for a traffic study for the proposed development. This type of meeting is often referred to

as a scoping meeting, because it sets the parameters for the traffic report. Mr. Golding's final traffic report dated October 28, 2022, was submitted to the Town. The GAALCO Traffic Study traffic report made findings and recommendations:

Based on this study it is evident that Brison Developments Ltd.'s planned development of the R-1 and R-2 units and two apartment buildings will not require any further infrastructure improvements other than the eventual construction of a left turn lane as the project develops.

Construction of the remaining three apartment buildings should be delayed until after the Donald E Hiltz Connector is constructed.

The 'new' section of Acadia Drive being built to facilitate this development, and ultimately to provide a connection for the entire area to the Donald E. Hiltz Connector should be provided with sidewalks.

[Exhibit B-16, Executive Summary]

[75] On December 15, 2022, Ms. Duncan advised Ms. Fuller that the Town found the GAALCO Traffic Study "very thorough" and supported its recommendations.

[76] As discussed earlier, the Town retained Ms. Robertson, a qualified planner, to review and provide analysis of the application, including the GAALCO Traffic Study. In her report, under the section called Evaluation Criteria provided on April 7, 2023, she recommended that Council request more information about traffic calming, the needs of cyclists and separation of pedestrians from traffic:

Traffic Impact Studies

A significant part of evaluating a development proposal is understanding its potential impact on the existing transportation network. Council feels it is essential to assess this impact early, particularly if development could create or contribute to a need for costly infrastructure improvements such as traffic lights, turning lanes, intersection realignment or other significant changes. To ensure Council has accurate information upon which to base its decision, a traffic impact study will be required as part of the rezoning application; or before tentative subdivision approval where the nature or location of the development warrants such a study.

...

Policy T-8 & T-9

A Traffic Impact Study may be required to be prepared by a qualified engineer.

Traffic impact studies should consider all types of transport requirements in the area. There is mention of a high volume of pedestrians using the grass on the side of the road to access their destinations. ...

[Exhibit B-3, p. 89]

[77] As discussed above, Ms. Roberston's advice on April 7, 2023, was based on her erroneous belief that Brison had submitted concurrent rezoning and subdivision applications. By her April 20, 2023, letter, she stated her knowledge was now that this was solely a rezoning application, yet her advice on the GAALCO Traffic Study remained the same.

[78] On May 1, 2023, Ms. Duncan advised Ms. Fuller that the Town had retained a professional planner to review the application and that this planner recommended that, to satisfy Policy RS-23 of the MPS, additional information was needed about the transportation infrastructure. On May 2, 2023, Ms. Fuller sent additional information, while observing, as discussed under storm water management, that Policy RS-23 was a general provision, and it was Policy IM-8 which sets out the evaluative criteria for a rezoning application. Regarding the traffic issues raised by Ms. Robertson, Ms. Fuller wrote:

Transportation Infrastructure

Town Request:

After a preliminary review with the Town's Engineer, it has been agreed that the optimal location for the addition of a sidewalk to the existing Acadia Drive would be on the westside of the road. A 1.5-metre wide bike lane on both the north bound and south-bound lanes of the existing road will be painted to provide efficient and safe movement of cyclists. The developer should submit a plan showing the intention to continue these pieces of transportation infrastructure in your application.

Applicant Response:

The applicant is open to the approach suggested above and understand that they are responsible for the costs of sidewalks and bike lanes within the new development area. Since the site plans submitted as part of a rezoning request have no regulatory enforceability, the bike lane and sidewalk location will be included as part of any tentative

subdivision application if the above request continues to be the Town's position. We understand that the Donald Hiltz Collector is still in the planning stages and acknowledge that the Town's position on sidewalks and bike lanes may change as the future collector road is constructed and opened for public usage. Depending on the timing of this development, we further understand that the Municipal Specifications in place at the time of subdivision will be the final determinant of the Town's requirement for sidewalks and bike lanes. [Emphasis added]

[Exhibit B-3, pp. 153-54]

[79] In the May 2023 Town staff report prepared for the CAC, Ms. Duncan provided all of Ms. Robertson letters and analysis of Brison's application and Ms. Fuller's May 2, 2023, letter. It also attached a memo from Mr. Bell dated May 4, 2023, that the Engineering and Public Works Department had received sufficient information from Brison and that more detailed information about street and sidewalk design would be required at the "Tentative Subdivision application stage should the rezoning application be successful." Ms. Duncan stated that, despite Ms. Robertson's recommendation for some additional information about traffic, including pedestrians and cyclists, staff were confident these items would be satisfied during the subdivision process.

[80] On May 8, 2023, the CAC recommended that Council give first reading to the rezoning application. The minutes of the CAC stated the committee identified some concerns, but nothing about traffic, including pedestrians and cyclists.

[81] On May 30, 2023, Council approved first reading of Brison's application and directed that it proceed to a public hearing prior to second reading. There is nothing in the minutes indicating that the Council sought additional information about the application.

[82] On June 9, 2023, Mr. Bell provided a supplementary staff engineering report. He identified which costs arising from traffic issues would be incurred by Brison and what would be incurred by the Town. He also acknowledged that C+D Community Design recommended safe movement of pedestrians and cyclists be addressed as part

of the traffic study, but said staff suggested this be considered at the subdivision phase. He concluded that it was the Council's decision to determine whether the application is consistent with the intent of the MPS.

[83] On June 26, 2023, Council deferred second reading of the application as it required more information, including about traffic calming measures. In response, Ms. Duncan prepared a report in July 2023 to Council. She advised that the current subdivision bylaw and land use bylaw did not address traffic calming, but it is discussed in the Active Transportation Plan where tools such as dedicated bicycle lanes, sidewalks, and curb extensions address this issue.

[84] On July 10, 2023, Council denied second reading of Brison's application.

[85] On July 13, 2023, the Town advised Ms. Fuller and Mr. Brison that the rezoning application was denied as "Council did not find the application consistent with the intent of the Municipal Planning Strategy." [Exhibit B-3, Appeal Record, p. 372].

[86] At the Board's hearing, Mr. Bell was qualified as an expert in civil engineering, including cost estimation for infrastructure such as sidewalks and turning lanes. Mr. Bell testified that the traffic report prepared by GAALCO in October 2022 satisfied the policy requirements for a rezoning. He also testified that the additional information suggested by Ms. Robertson should be provided at the subdivision stage. Mr. Bell's filed expert report only addressed the division of costs between the Town and Brison arising from traffic issues.

[87] Mr. Dickey testified that he was not a qualified engineer. In his filed expert report, Mr. Dickey wrote that the GAALCO Traffic Study followed the normal framework,

but he found the Study deficient as it did not provide more information to the Town staff and Council, such as the impact of “hidden density” and other considerations. He stated:

2.11 The TIS is in my experience very indicative of such a document and follows the normal framework with some adjustment to recognize the need for Town input into its Terms of Reference. It considers post development traffic volumes and where that traffic will generally head, both pre and post construction of Donald Hiltz Connector. Its findings were accepted by town staff and Council was so advised. However, there are several areas of note where it is possible that the TIS did not provide all of the information that staff and Council need to properly consider the development proposal.

[Exhibit B-8, p. 21]

[88] In its written submissions, Brison asserts that it has met the TIS requirement for a rezoning application and Mr. Bell agreed. Brison submits that additional questions relating to the traffic study, such as safe movement of pedestrians and cyclists, sought by Ms. Robertson, must be satisfied at the subdivision approval phase. Further, Mr. Bell agreed in his report of June 9, 2023, that these traffic issues were addressed. Brison asserts that Mr. Dickey’s criticism of the GAALCO Traffic Study is based on the parameters used in the study. Brison says that Mr. Dickey’s opinion should be given little weight as he is not a qualified engineer as required by the MPS for preparing a TIS. Further, Mr. Dickey has no expertise in modelling and the TIS’s parameters were developed by a meeting with the Town, which included Mr. Bell who is a qualified engineer, and Mr. Golding, also a qualified engineer.

[89] In contrast, the Town says that the MPS, such as Policy IM-8, gives Council the scope to seek information that may appear to go beyond what is expected at the subdivision application phase.

[90] The Intervenors made no submissions about the traffic report.

[91] The Board agrees that Policy IM-8 does provide items for consideration which could be regarded as broader than the traditional boundaries of a rezoning

application. The Board finds there must be some parameters around the Council's requirements for additional information based on the reasonableness of the information sought. The inquiry turns on what additional information was missing from the application and is it reasonably consistent with the MPS for approving a rezoning application. Perhaps another way to frame this is to ask what more information could Brison have provided about traffic, including pedestrians and cyclists at this stage, to support its application for rezoning?

[92] Like a storm water management plan, it must be acknowledged that both the MPS and the *Municipal Government Act* identify these as issues which require the involvement of experts and to have put in place control measures. For a traffic impact study, the MPS is clear that it could only be prepared by a qualified engineer registered as a professional engineer in the province. The *Municipal Government Act* also requires the expertise of the engineer at the subdivision stage. Section 280(1) of the *Act* provides that a subdivision application cannot be approved without the confirmation by the Town Engineer, in this case, determining that the development would not cause unsafe traffic conditions:

280(1) No plan of subdivision may be approved by a development officer where

...

(c) the Minister of Public Works, or a person designated by that Minister, or the engineer advises that the probable volume of traffic from the development will create unsafe conditions for which no remedial arrangements have been made.

[93] The Town did not file an expert's report from a qualified engineer that identified inadequacies in the GAALCO Traffic Study at the rezoning stage. The Town relied upon Mr. Dickey, a licensed planner, who raised questions about the parameters of the GAALCO Traffic Study and asserted that more questions should have been

addressed by the Traffic Study. As Mr. Dickey testified, he is not a qualified engineer, as required by the MPS to conduct such a study. In its submissions, the Town also relied on the inadequacies in the GAALCO Traffic Study as identified by Ms. Robertson. Her credentials in the record indicate that Ms. Robertson is a licensed professional planner and is not a qualified engineer. Also, as discussed above, the Board finds Ms. Robertson's analysis of the application, including the traffic issues, to be problematic. Ms. Robertson was not called as a witness and was not, therefore, subject to cross-examination. The Board gives little weight to the evidence of Mr. Dickey or Ms. Robertson regarding their assessment of the adequacy of the GAALCO Traffic Study.

[94] In contrast, the Board gives more weight to the evidence of Mr. Bell, the Town Engineer, who is a qualified engineer. The GAALCO Traffic Study met the requirement of the MPS of being prepared by a qualified engineer, Mr. Golding. The parameters used in the GAALCO Traffic Study were established in consultation with the Town in a meeting in September 2022 which included Mr. Golding and Mr. Bell. Mr. Bell accepted the October 2022 traffic report as meeting the MPS requirements for a rezoning application in October 2022 and he never wavered from that position in his advice to Council or in his testimony at the hearing. He was aware of the inadequacies of the traffic report identified by Ms. Robertson and dismissed them on the basis that these issues would be addressed at the time of an application for subdivision.

[95] Finally, no evidence was presented to the Board that additional information requests about traffic, including pedestrian and cyclists, were sought from Brison any time after May 2, 2023, when Ms. Fuller responded to questions raised by Ms. Robertson. Ms.

Fuller and Brison provided additional information after May 2023, for instance about storm water management when requested.

[96] Council's reasoning is not supported by the MPS and the evidence. The Board finds Council's decision is not reasonably consistent with the MPS in this respect.

3.3 Parkland

[97] In its October 2023 reasons, Council stated it denied Brison's application, in part, because it was contrary to Chapter 15 of the MPS, "Implementation," in that it provided "insufficient detail to allow Council to make a detailed evaluation" about:

(c) the layout of parks, trails, walkways, and open space within the development site; and

[98] The MPS refers to parks in several instances beginning with Policy RS-23 in Chapter 5 "Residential" which states.

Policy RS-23 *It shall be the intention of Council to ensure that new residential areas:*

d) Provides for parks and other community uses in safe and central locations.

[99] As already discussed, Ms. Fuller testified that she considered Policy RS-23 to be "foundational," but stated more precise guidance is found in Chapter 15 of the MPS, and in particular, Policies IM-7 and IM-8. These policies require the submission of a detailed proposal for a rezoning application and the information to be included. Policy IM-7 does not require the inclusion of the layout of parks, trails, walkways, and open space in the detailed proposal for rezoning. Similarly, Policy IM-8 sets out criteria for Council when considering a rezoning application, but does not require a specific layout of parks, trails, walkways, and open spaces. The only reference to parks is found in Policy IM-8(g) and this concerns existing, not future, recreational facilities. It states:

(g) the adequacy and proximity of recreation and community facilities;

...

[100] Chapter 10 Parks and Open Spaces of the MPS also addresses parks. Policy P-10 discusses this requirement being a consideration at the subdivision stage. It states, in part, that on a subdivision application the subdivider must convey to the Town 5% of the subdivided land for parks, playgrounds or similar public use, or cash-lieu of land of equivalent value, in accordance with the Subdivision Bylaw. Policy P-10 states:

Policy P-10 *It shall be the intention of Council* to require the subdivider, except where two or fewer lots are being created, where lots are being consolidated, or where the subdivision changes lot boundaries without creating additional lots, to convey to the Town for park, playground or similar public use one of the following in accordance to the Towns Subdivision By-law:

- a) Require the transfer to the Town land for public open space, which fulfills the “usable land” definition on the Towns Subdivision By-law, and which equals 5% of the area subdivided in the final plan of subdivision, excluding streets, roads and residual land owned by the subdivider;
- b) Require the subdivider to contribute cash-in-lieu of parkland of equivalent values; or
- c) Require the subdivider to contribute a combination of land which meets the “usable land” of the Town’s Subdivision By-law and cash-in-lieu of land of equivalent value.

[101] Chapter 10 of the MPS also refers to the preservation of the Kentville Trail System and states at 10.2.8 that the Town “is fortunate to own a continuous linear trail stretching from its most eastern boundary to the most western...[which] offers walkers, bikers and cross-country skiers an enjoyable outing, with opportunities to observe nature in a preserved habitat.” The related Policy P-12 states:

It shall be the intention of Council to preserve this linear trail in order to create a continuous recreational link throughout the length of the Town.

[102] The Town staff report dated March 2023, which was prepared for the CAC, addressed the requirement that on subdivision, in accordance with the Subdivision Bylaw, the subdivider is required to convey 5% of “usable land” to the Town or cash equivalent. The report advised that IM-8 and IM-9 provided the criteria for evaluating a rezoning application. In their analysis, they identified IM-8(g) criterion of “the adequacy and

proximity of recreation and community facilities." The Town staff advised this requirement was met as there were "considerable recreational amenities." Further, they stated that in the subdivision phase an additional 5% parkland dedication would be required:

Kentville has considerable recreational amenities. In addition, 5% parkland dedication will be required for all lots subdivided and multi-unit buildings with four or more units in the R4 zone require on-site amenity space.

[Exhibit B-3, p.48]

[103] The Town staff report of March 2023 identified Policy RS-23 as a relevant policy but stated future parkland dedication on the site would be addressed at the subdivision stage:

Parkland dedication will be negotiated at the subdivision stage and staff are committed to ensuring there is adequate greenspace in a safe and central location.

[Exhibit B-3, p.41]

[104] The CAC met in March 2023 and sought additional information about the Brisson application, but did not request information about the parkland, walkways, or trails.

[105] In a letter dated April 7, 2023, with the re line "Subdivision Application," Ms. Robertson attached her opinion on the application and wrote:

Although the Town of Kentville Subdivision By-Law appears to be copied directly from the Municipal Government Act, it does give staff much control when considering applications. The by-law allows the Development Officer to request concept plans ...[for] pathways, layout, ...should be outlined. Also included are requirements for transferring useable land or equal value for parks, playgrounds and similar public purposes, identification of transportation reserves and requirements for lots to be designed not to impede a transportation reserve.

[Exhibit B-3, p. 81]

[106] Ms. Robertson continued that under Policy RS-23 a residential area design must "provide for parks and other community uses in safe and central locations" and "Based on the subdivision application, this requirement was still outstanding." [Exhibit B-3, Appeal Record, p. 89]

[107] A staff report to CAC dated April 2023, prepared by Ms. Duncan, attached Ms. Robertson's April 7, 2023, opinion of the application. The staff report addressed the rezoning and development processes and concluded that developing a subdivision had two distinct processes. The staff report noted that the development process commences when a tentative subdivision plan is submitted and that this event triggered a process with many moving parts, that can take multiple years and involve various departments. The staff report noted that it was under the development process that the parkland issue is considered. Town staff would work with the developer on this issue, including placement of parkland which would be in the final plan of subdivision. The developer must adhere to this final plan. Town staff wrote:

Development Process

The process of development from conceptual plan to a developed subdivision has many moving parts, can take multiple years, involves various departments and can be complex. Staff have created the following general timeline of events to provide some clarity on the overall process and when specific technical elements are required to be submitted for review.

Tentative subdivision plan submitted:

- review of the proposal in a more detailed form,
- 5% parkland requirement is negotiated,
- approved road layout,
- exact pipe dimension and elevations agreed upon,
- detailed stormwater management plans approved,
- lot areas, dimensions are reviewed for compliance with the LUB zone requirements, etc.

Which, when successful, ends with an **approved tentative subdivision plan** which is valid for a length of two years. Then, the placement of infrastructure and **construction of the road** begins:

- developer works with a site inspector to ensure the project is adhering to the plan approved by the Town, and
- ensure at this time that any as-built record information is captured to convey to the Town for asset management purposes

Once construction of the road is complete, the Town and Developer enter into a **Subdivision Agreement process**. As a result of this process, the Town will receive:

- any as-built record drawings for the new roads,
- the deeds for the roads and parkland, and
- a final plan of subdivision for the roads, parkland and individual lots to be created

The Developer will then request for individual lots to be subdivided with a **Final Plan of Subdivision**. Once lots are approved and registered with the Land Registry Office **Development Permits** can be applied for to begin the construction of individual dwellings.

[Exhibit B-3, pp. 71-72]

[108] In a letter dated April 20, 2023, Ms. Robertson advised the Town, in part, that she believed that based on Policy RS-23 of the MPS, the application was incomplete. Regarding parks and open space, Ms. Robertson stated that the Brison application is required to address Policy P-10. She concluded her letter with the view that this application should also have a concurrent subdivision application. Ms. Robertson stated, in part, about parkland dedication:

Based on Policy RS-23 of the Town's Municipal Planning Strategy, I believe the application received is incomplete.

...

For the application to be complete, the applicant must consider the Town's vision for residential development outlined within the Municipal Planning Strategy. For this reason, it is reasonable for Council to request further information:

...

The parks and other community assets required under Policy P-10 for this development should be included in the rezoning and indicated as allocated for Parks and Open Space. These allocated spaces must be in safe and central lots approved by the Town's Recreation Department.

[Exhibit B-3, pp. 159-160]

[109] In a letter dated May 1, 2023, the Town wrote to Ms. Fuller and asked for more information, including about the parkland dedication. Ms. Fuller responded on May 2, 2023, stating Policy P-10 establishes that the method of determining the parkland contribution, be it as land or cash-in-lieu or a combination of both, is set when an

application under the Subdivision Bylaw is made. Ms. Fuller confirmed Brison's commitment to work cooperatively with the Town on this issue:

Parkland

Town Request:

The Director of Parks and Recreation has expressed interest in an area of land between the existing Acadia Drive and this new proposed phase, on both sides of the road and abutting existing parkland (PID 55540959) to satisfy the "safe and central lots" aspect of Policy RS-23 in the MPS. Using the concept plan to obtain tentative figures for parkland purposes, I've calculated the developable area, exclusive of streets, to be 39.138 acres. A further 5% calculation of that would bring us to 1.957 acres or 85,246.92 sq ft of parkland. We recognize this is a significant area of land and would like to discuss the opportunity to consider a combination of land and a sum of money to satisfy the 5% parkland dedication requirement.

Applicant Response:

The applicant is open to this approach and has invested heavily in parkland development in many other developments outside of Kentville. The applicant understands that park space, trails, and AT links are part of what makes development attractive and is important to supporting a vibrant community where people want to live.

Detailed discussions regarding parkland are not typically part of rezoning applications and at this point, there are no locations for parks specified on the site plan. I draw your attention to the specific evaluative criteria for rezonings. The policy referred to in Policy RS-23 is a general enabling policy that guides development. Since this is a rezoning request not a development agreement, there is no requirement at this stage to determine the exact parkland contribution approach.

Policy P-10 clearly establishes the Subdivision By-law as the method through which parkland is conveyed, either through cash in lieu, land, or a combination of both. [Emphasis added]

[Exhibit B-3, p. 154]

[110] In the Town staff report to CAC dated May 2023, Ms. Duncan provided supplemental information on the Brison application including Ms. Robertson's letter dated April 20, 2023, and Ms. Fuller's letter dated May 2, 2023. Ms. Duncan stated that Ms. Robertson recommended some pieces of information during the planner's review, but staff was "confident" they would be "able to work with the applicant and developer throughout the Subdivision process to satisfy these items." [Exhibit B-3, Appeal Record, p. 157]

[111] On May 8, 2023, the CAC recommended that Council give first reading to the rezoning application. The minutes of that meeting summarize the discussion as:

Discussion

- Concerns about who will be responsible for ensure green space and stormwater management. These issues are usually resolved at the subdivision planning phase of development. Stormwater issues are mandated by the provincial government. [Emphasis added]

[Exhibit B-3, p. 177, at p. 181]

[112] On May 30, 2023, Council approved first reading of the Brison application and directed that it proceed to a public hearing on June 21, 2023. It returned to Council on June 26, 2023, when Council postponed second reading as it required clarification from staff on several issues including recreation infrastructure and recreation issues including green space.

[113] In the Town staff report to Council dated July 2023, Ms. Duncan wrote that Kentville had “considerable recreational amenities” within the Town limits and:

In addition to the existing facilities, 5% parkland dedication will be required for all lots created and multi-unit buildings with four or more units in the R4 zone require on-site amenity space for their tenants.

Referring to the Town’s Subdivision Bylaw, she wrote that at the time of subdivision that the 5% parkland dedication is addressed and satisfied as land conveyance, or cash equivalent. She said:

At this moment in time and for this subject property, it is preferred that the Town obtain land. This area of land will be negotiated at the tentative subdivision stage when the developer brings forth their plans for initial consultation. Our practice is that once the location of the greenspace is identified, agreed upon and turned over to the Town for ownership, staff will work with the surrounding community in consultation to determine what the demand is for the neighbourhood, whether it is additional trails, playgrounds, or sports fields. [Emphasis added]

[Exhibit B-3, pp. 346-347]

[114] Finally, the Board observes nothing in the record or evidence at the hearing demonstrates that Brison was requested to provide additional information after it provided information in Ms. Fuller's letter dated May 2, 2023.

[115] On July 10, 2023, Council denied second reading of the rezoning application.

[116] Brison submits that the evidence shows staff identified and applied the applicable policy criteria about parks and recreation and were satisfied that Brison's rezoning application satisfied the criteria. Brison states the evidence shows that the Town staff concluded that IM-8(g) was satisfied as the staff determined that significant and adequate recreational facilities existed. Brison states that Council did not, in its reasons of October 2023, state there was not inadequate and proximate recreational facilities. Finally, relying on the evidence of Ms. Fuller and Mr. Markides, Brison submits the appropriate time for addressing parkland dedication is during the subdivision approval process.

[117] The Town submits that Policy RS-23 is an important provision in the MPS and speaks directly to parks, trails, walkways, and open spaces. In this regard, the Town relies upon the opinion provided by Ms. Robertson and by Mr. Dickey in his expert report.

[118] In his expert report, Mr. Dickey stated his opinion that the application fell short of the specific objectives of Policy RS-23 and of IM-8 as there was no information at Council about existing parks, open spaces or trails in the area and existing parkland deficiencies. Additionally, there was no discussion about the uses of new parkland, whether it is active or passive. Finally, he says there was a "possible deficiency" in the Town's Subdivision Bylaw that could "theoretically" reduce the area of land to be provided

as parkland dedication. For these reasons, he stated Council had a basis for finding that the MPS goals were not met and in his opinion this decision was consistent with the policies of the MPS.

[119] In cross-examination by the appellant, Mr. Dickey testified that Policy IM-8 of the MPS did not require a layout of parks, trails, walkways and open spaces.

[120] In his expert report, Mr. Markides stated that the MPS, notably Policy P-10, distinguishes between the rezoning phase and the subdivision phase and clearly states that it is at the subdivision stage that the placement of parks and open spaces are addressed. He found that Mr. Dickey's assessment that Council needs to evaluate the location of parks and open spaces on the site during the rezoning process is "a misinterpretation" of the MPS. [Exhibit B-11, p. 3]

[121] The Intervenors made no submissions on this issue.

[122] In looking at the MPS as a whole, a rezoning application, and the development process, which includes an application for subdivision, are separate processes with different criteria. Policy IM-7, IM-8, and IM-9, found in Chapter 15 of the MPS set out the requirements and criteria that the Council must follow in considering a rezoning application.

[123] As noted in Section 15.9.2.2, while "a rezoning application must be accompanied by a clear development proposal, there is no legal agreement which requires a landowner to conform to the proposal as presented." But as stated in Policy IM-9, that Council may take into account other potential development scenarios when evaluating a rezoning application:

Policy IM-9 *It shall be the intention of Council,* therefore, to take into account the other potential development scenarios that may be permitted as a result of a proposed zone change when evaluating a rezoning application.

[124] Chapter 10 Parks and Open Space of the MPS and, in particular, Policy P-10, requires that when there is an application for subdivision, in accordance with the Subdivision Bylaw, the plan of subdivision must convey 5% of its usable land to the Town for park, playground or similar park use, or an equivalent cash-in-lieu.

[125] IM-7 does not require identification of dedicated parkland in the proposal submitted in the rezoning application. IM-8(g) is the only requirement about green space, but it concerns existing parks and recreational facilities and their proximity to the site where rezoning is sought. The evidence in the record establishes that staff were satisfied with this aspect, although Ms. Robertson stated she had concerns in her analysis. There was no evidence presented to substantiate the claim proximity to existing facilities was not adequate. On this point, the Board accepts the views of Town staff and finds that they had a basis for determining that IM-8(g) had been satisfied.

[126] The Town relies on Policy RS-23(d) as requiring Council to ensure that new residential areas provide for "parks and other community uses in safe and central locations." For the reasons discussed above, the Board finds Ms. Robertson's opinion and analysis of this rezoning application was problematic. It introduced considerations for a subdivision process into this rezoning matter. She did seem to concede that parkland dedication is dealt with in a subdivision application. Mr. Dickey identified what he saw as shortcomings in the Subdivision Bylaw which could "theoretically" mean that there may not be sufficient dedicated Parkland.

[127] As discussed above, the Board finds Policy RS-23 to be a general, foundational principle, but does not accept the argument that this policy can be used to disregard that the MPS contemplates, when read as a whole, rezoning and subdivision

as two separate processes. The MPS sets out two separate criteria for Council's consideration. Policy IM-8 sets the criteria for consideration of a rezoning application and Policy P-10 provides the criteria that the Council must consider for parkland and open spaces in a subdivision application.

[128] The Board finds no conflict or a subjective choice in the MPS which Council had to resolve about the layout of future parks, trailways, walkways and open spaces on the site. In a rezoning application, Policy IM-8(d) requires Council be satisfied about the existing recreational and community facilities proximate to the site. The Town staff's opinion that this requirement was met is supported by the evidence. Future parkland and open spaces, and their layout, is a requirement for subdivision approval as provided in Policy P-10. IM-7 does not require a layout of future parks and open spaces as part of the proposal to be submitted with the rezoning application. The reasoning of Council is not supported by the MPS and the evidence. The Board finds Council's decision is not reasonably consistent with the MPS in this respect.

3.4 Compatibility

[129] The October 23, 2023, Council minutes said that pursuant to Chapter 15, Implementation, insufficient detail was provided and the potential impacts relative to compatibility with the existing neighbourhood could not be properly assessed without adequate detail in the proposal.

[130] The MPS addresses the question of compatibility of a proposal with adjacent land uses and properties in several ways. Policy IM-7 requires that a detailed development proposal accompany a rezoning application, including a professionally

prepared site plan and graphic representations of the development. The specifics of what must be included in the site plan and graphic representations are listed in this policy.

[131] Policy IM-8(a) directs Council “to have regard to” the compatibility of the proposed land use with adjacent land uses. Policy IM-8(b) provides the same direction to Council about the “compatibility of the development with adjacent properties in terms of height, scale, lot coverage, density, and bulk.” Policy IM-8(c) provides a mechanism to resolve potential compatibility issues “...through appropriate site design, landscaping, buffering and fencing.” As the proposed rezoning maintains a residential land use, the Board will focus on the type and size of the development.

[132] The information provided to Council included maps showing the current and proposed zoning for the Property and adjacent properties. It also included concept plans prepared by DesignPoint Engineering & Surveying. These concept plans showed the proposed types of units, including the apartment buildings, parking lots, vegetation buffering, sloping, and storm water management features such as swales. Ms. Fuller provided written descriptions of the proposed development and a slide presentation at a public meeting on June 23, 2023. These slides included renderings and graphic representations of the types of apartment buildings and parking lots the Brison development envisages.

[133] While the CAC had asked questions about density and transition at its March 12, 2023 meeting, Town staff was diligent in its assessment of compatibility under the MPS criteria. March 22, 2023, April 2023, and June 23, 2023, staff reports pointed to the R1 single unit lots that would be located next to existing and similar abutting housing. Staff was satisfied that there was a gradual transition from R1 single family units to R2

units, with the R4 multi-unit apartment buildings being buffered from the existing built form. Staff was further satisfied that additional protection was available through the LUB, and Site Plan Approval was required where R4 units abutted R1 and R2 units.

[134] Council was also aware that some neighbours were concerned about the size of the development, and particularly the proposed multi-unit apartment buildings. That said, on the compatibility issue related to potential conflicting land uses and the scale of the project, Ms. Robinson said the following, in her April 7, 2023, report:

The Town requires new structures in the R3 & R4 residential zones that abut an R1 or R2 zone to proceed through Site Plan approval. This requirement means that the Developer must go through Site Plan approval for the high-density elements of their development proposal.

The existing Site Plan Criteria for Development in Residential Zones does provide staff control. Still, it only looks at one property instead of considering the development as a whole. The policy is vague enough in the requirements that the Development Officer should be able to control elements of the apartment building portion of the development in a way that will satisfy neighbours and Council.

[Exhibit B-3, p. 265 (PDF p.268)]

[135] While Ms. Robertson was under the impression this was a rezoning and subdivision application at this stage, she did not suggest requesting further information related to the criteria in Policies IM-7 and IM-8(a), (b) and (c). In reports to Town staff, Ms. Fuller also said the appellant had provided sufficient information and that the application reasonably carried out the intent of these policies.

[136] The foregoing is consistent with Town staff's view. They were satisfied the appellant had provided enough information to determine the policy directions in IM-7 and IM-8(a), (b) and (c) had been satisfied. The July 10, 2023, Council minutes do not indicate what further details, if any, Council might have wanted in relation to these policies. Council's October 10, 2023, reasons do not shed light on what further details, if any, might assist in addressing the compatibility issues discussed in these policies.

[137] The Board received expert reports on the issue from Mr. Markides and Mr. Dickey. Mr. Markides outlined what the appellant had provided to Council under Policy IM-7 before offering his expert opinion that "...the applicant has met the submission requirements outlined in Policy IM-7." Mr. Markides then indicated Town staff concurred with this opinion when Mr. Bell's May 2023 report said staff "...are confident that the necessary information has been provided to satisfy Policy IM-8..." The Board infers from this that Mr. Markides was of the view that, if the required information under Policy IM-7 was provided, there was sufficient information to decide the compatibility issues raised in Policy IM-8.

[138] Mr. Dickey's report on the compatibility issue focused on the fact that, after a rezoning, a developer cannot be held to the concept plans that formed part of the rezoning application. He indicated that the R1 and R2 Zones build out "...would likely be very similar given the existing street layout." Mr. Dickey's primary concern was with the R4 portion of the proposed development. He said that theoretically, if services were available, there was sufficient acreage in the proposed R4 Zone to accommodate 815 units. This is more than double the 320 units shown in the concept plans. He further indicated that there were no LUB height restrictions in any zone, although there was a yard requirement of 50% of the building height. He said this concern could have been alleviated if the appellant had sought less acreage in the proposed R4 Zone.

[139] Mr. Dickey said that with minimal requirements in the site plan approval process, the development officer might have to approve buildings in the R4 Zone that are substantially taller than the ones in the concept plan. In his view, this could lead to "a building or series of buildings that are not compatible or harmonious with the existing

neighbourhood.” It was the “uncertainty over the final built form” combined with “the lack of stronger LUB restrictions around building height and building design” that led to his opinion that Council’s decision “...was consistent with the stated goals of the MPS to adequately address compatibility issues.”

[140] Mr. Markides responded to Mr. Dickey’s concerns in a November 17, 2023, report. He said s. 4.2.20 of the MPS and Policy GD-30 clearly state, “that issues related to site specifics and land use conflicts should be addressed during the Site Plan Approval process, not during rezoning.” Section 4.2.20 of the MPS discusses the Site Plan Approval process as an alternative to development agreements. It can only be applied to one site at a time. Policy GD-30 sets out the various matters a development officer must incorporate in the site approval.

[141] Brison submits that the compatibility issues raised by Policy IM-8 that are being discussed in this section are addressed by the specific requirements in Policy IM-7. Brison submits that Town staff, as well as Mr. Markides and Ms. Fuller, witnesses with planning expertise, all agree that the appellant provided sufficient information to not only allow Council to make a determination, but that the information supplied satisfied the intent of the policies. They all expressed the view that detailed specifics would be addressed at the subdivision stage.

[142] Based on Ms. Fuller’s testimony, Brison says that the 815-unit R4 scenario suggested by Mr. Dickey is unrealistic and does not consider the real limitations imposed by the subdivision, site approval and permitting processes. The appellant further submits that Council cannot rely on alleged deficiencies in the controls to mitigate compatibility imposed by these processes to deny an application. Brison, therefore, submits that

Council's determination was not based on any planning principles expressed in the MPS, and was not supported by the evidence. As such, this aspect of the decision was not reasonably consistent with the MPS.

[143] The respondent submits that some of the underlying assumptions expressed in the MPS are dated, despite the fact the MPS is only five years old. These include statements in the MPS that growth will be gradual as seen in the prior 10 years, that most of the growth will be single-family dwellings, and that development in the R5 Zone is unlikely to take place in the near term.

[144] The Town suggested that the MPS and LUB take a light regulatory approach to development in the R5 lands. The Town submitted regulating large apartment buildings through a more stringent development agreement process may not have been contemplated by the MPS drafters. It is in this context, the Town submits that the MPS wording and policies about detailed proposals should be analysed and interpreted.

[145] The Town says the more detailed the proposal, the better it can be evaluated. The Town further submits the expense of detailed proposals would increase the probability that developers will not materially deviate from the rezoning application proposal. Where a developer, such as the appellant, has large land holdings in the Town, this is said to be a desired result that will benefit the reputation of the developer and the planning process. It helps avoid situations where a completely different development is built than proposed as part of the rezoning process.

[146] While suggesting numerous alternatives open to the appellant, the Town's submissions on compatibility issues about height, bulk, massing, and scale are summarized in the following passage:

70. The extreme lack of detailed plans on important issues which would have heightened the commitment of the developer to a discernible and acceptable plan left Council in the dark on what the ultimate project will look and feel like and how it will impact the existing MacDougall Heights Subdivision. It is small consolation that some issues may be subject to post-rezoning staff approvals on the unknown detail. Mr. Dickey testified about the significance of lack of height restrictions, control over # of buildings or units, and lot coverage requirements in the LUB. As he noted:

With no height or lot coverage controls, the Development Officer may be compelled to approve a building or series of buildings that are not compatible or harmonious with the existing neighbourhood.

71. Furthermore, that statement is made on the assumption that site-planning applies to the multi-unit buildings, which as described previously in this brief, is far from certain – indeed it is unlikely.

[Respondent's Post-Hearing Brief, March 1, 2024, p.28]

[147] The Intervenors focussed on flooding and storm water. There are many parts of the submission that are of general application related to the deference due to Council, the orderly development of lands, the perceived need for comprehensive planning and the lack of detail related to R5 lands.

[148] The starting point for the analysis on this issue is that Council made no decision about whether the appellant's proposal did or did not reasonably carry out the intent of the MPS policies IM-7 and IM-8(a), (b) and (c). Council decided it did not have sufficient information to make this decision. The Appeal Record, and Council's reasons, do not say what additional information was required about scale and density at the time it made its decision. Mr. Dickey's evidence suggested a potential path to support the proposition that a decision to deny the application reasonably carries out the intent of IMP-Policy IM-8(c). He does not suggest what additional information could have helped Council decide this issue.

[149] *Archibald* discusses the importance of Council's reasons in framing the Board's appellate task. The Board has commented on several occasions that Council usually does not sit as a panel to formulate its reasons and they must be read in this light. This case is somewhat different because Council did convene a special meeting for the very purpose of providing better reasons than the generic ones initially provided to the appellant. The Board has no jurisdiction to order Council to provide better reasons. In this case, the appellant's counsel made a request to the Town's counsel, and Council obliged, trying to focus the issues at play in this appeal. Therefore, the lack of any indication of what was missing in the application on this point in the reasons themselves is somewhat surprising. Council has some discretion that is implicit in MPS provisions, such as ss. 15.9.2 and 15.9.2.1, about a detailed rezoning proposal with conceptual plans and graphics. *Archibald* generally directs the Board to provide due deference to the exercise of such discretion. However, the discretion is not absolute. To avoid *ad hoc* decision-making unguided by principle, the exercise of discretion must be grounded in the language of the MPS.

[150] In this case, policy IM-7 establishes what an appellant must submit as part of a rezoning application to meet the general concepts discussed in s.15.9.2 of the MPS. Policy IM-8 (a), (b) and (c) sets out the criteria against which compatibility related to the submitted information is evaluated. The Board appreciates that ss. 15.9.2, 15.9.2.1 and 15.9.2.2 of the MPS highlight the importance of detailed concept plans and graphics in Council's decision-making process. However, it cannot be said, on an objective basis, that the concept plans and data do not provide sufficient information for Council to have decided the compatibility issues related to adjacent land uses and adjacent properties

discussed in IM-8 (a), (b) and (c). The expert opinions of Ms. Fuller and Mr. Markides, and Town staff, that all the required information was provided, is consistent with the Board's own review of the plans and graphics.

[151] The Board rejects the proposition put forward by counsel for the Town that requiring expensive and detailed plans is a way of providing some assurance that the project will likely proceed as described. There is no indication that was in the Town's contemplation. Also, s. 15.9.2.2 recognizes the limited ability of Council "...to require a developer to undertake any design elements included in a rezoning application." Finally, the proposition is based in part on the position that higher density development is occurring more rapidly than envisaged by the drafters of the MPS, thus making the alleged "regulatory light" approach in the subdivision and LUB process less than ideal to establish controls for this type of development.

[152] It is true that s. 5.2.2.5, in the Residential Chapter of the MPS, indicates that at the time the MPS was adopted in 2019, it was anticipated that "much" of the land in the R5 Zone would not be developed "for quite some time." There were no "immediate plans for development." This leaves open the possibility that some of the land would be developed in the nearer term, consistent with this application. It must also be kept in mind that the proposed development will likely be built in phases over many years.

[153] As well, s. 5.1 of the same chapter in the MPS, while acknowledging that single-family dwellings would likely form the bulk of the housing supply in the Town, also discusses the "...significant shift away from this demand for traditional single-family homes," highlighting "semi-detached dwellings, townhouses and apartments."

[154] The Board finds that, reading the MPS in its entire context, the approach taken by the Town, in its LUB and subdivision bylaws, was not based on an erroneous assumption about what controls might be required to address multi-unit buildings or larger scale developments. They were specifically contemplated in creating the R5 Zone, and elsewhere in the MPS. The MPS is a forward-looking document.

[155] In any event, an applicant is still entitled to a decision based on the existing MPS. The Board does not accept the premise that it should be guided in its interpretation of the MPS on the basis that there is some defect in the Town's planning documents. This premise is also not supported to any significant degree given the controls that currently exist in the planning process.

[156] The Board is, therefore, satisfied that based on the evidence before it, there was no basis for the Town to deny the application because the appellant's application contained insufficient detail for it to decide if the compatibility issues raised by Policies IM-7 and IM-8(a), (b) and (c) were satisfactorily addressed. The Board concludes the appellant substantively complied with this requirement. The reason provided by Council on this point does not reasonably carry out the intent of the MPS.

[157] The Board is not confined to the reasons provided by Council when considering an appeal. The Board must still consider whether the outcome of Council's decision, in this case a rejection, does or does not reasonably carry out the intent of the MPS. Ordinarily, the Board must defer to Council's choices where there are potentially conflicting policy directions in the MPS, or Council's exercise of discretion when faced with question-begging terms. In this case, Council did not make any determination on the substantive issue of whether the application reasonably carried out the intent of Policies

IM-7 and IM-8(a), (b) and (c). There is, therefore, no indication about what policy choices and discretion Council exercised, if any, about these policies.

[158] In these circumstances, as set out in *Archibald*, the Board will gather the intent of the MPS on this issue and make its decision on the evidence before it. For context, s. 5.5.2.5 of the MPS clearly promotes development in the R5 Zone in an orderly manner. This provision also shows an intent to avoid costly extensions to municipal infrastructure. Objective 2 in s. 5.1 of the MPS sets out a goal of providing "...a variety of housing types to accommodate the various needs and desires of Town residents." Objective 6 of this provision shows an intent to capture a larger share of regional housing, another growth objective. These objectives, in the Residential chapter of the MPS, reflect a similar intent as s. 3.2.2 of the Key Elements section of the MPS. Section 4.2.3 of the MPS promotes "...appropriate compact developments...." The Board notes that s. 5.2.2.4 indicates that the High Density Residential (R4) Zone will encourage a "...range of housing choices, maximize infrastructure and land and support public transportation."

[159] The foregoing shows a clear intent in the MPS to encourage significant growth in a compact and orderly manner providing a mix of housing options. This necessarily involves a mix of residential housing, including higher density options than previously experienced. The MPS also seeks to safeguard the "character and development form of established residential neighbourhoods." This is expressed in Objective 3 of s. 5.1 of the MPS. Therefore, the compatibility provisions in Policies IM-7 and IM-8 (a)(b) and (c) should be interpreted through the lens of a stated intent to grow while taking precautions to avoid or resolve compatibility issues.

[160] To begin with, the Board accepts the tenure of Ms. Fuller's opinion, expressed under cross-examination, that to be compatible with adjacent land uses or properties, a development does not need to be the same as the existing built form. The Board has previously accepted that the concept of compatibility relates to whether the development can be integrated with nearby properties so that the two can co-exist. The Board acknowledges that some public presentations and letters of comment were adamant that this development is too large for the area and the community.

[161] That was not the opinion of the Town staff, or the planning experts who testified before the Board. The Board places greater weight on the expert opinion evidence. The Board notes that municipal planning strategies use words such as abutting, adjacent, or neighbourhood, when describing the reach of compatibility provisions. This MPS uses the word "adjacent." This has a wider connotation than abutting properties but arguably could involve a smaller geographic area than a neighbourhood. In any event, the concept is at least large enough to encompass the properties on Mount Vincent Drive, Dalhousie Avenue, and Alicia Boulevard, along with the upper ends of Acadia Drive, Duncan Avenue and MacDonald Park Road.

[162] The proposal envisages a gradual transition from R1 single-family units, which are the predominant built form for adjacent properties, to semi-detached R2 units buffering the multi-unit apartment buildings. Therefore, if subdivision is approved, as shown in the concept plans, most of the existing properties would be adjacent to R1 and R2 built forms.

[163] In her written presentations to staff and Council, Ms. Fuller gave an opinion that this form of buffering, along with the restrictions inherent in subdivision approval,

including LUB requirements, and Site Plan approval, for the apartment buildings, addressed compatibility issues. Ms. Robertson appeared satisfied that a development officer could exercise sufficient control over the apartment building to satisfy neighbours' compatibility concerns.

[164] Mr. Dickey did not give an opinion that the proposal as set out in the concept plan and graphics was incompatible with the adjacent properties. He indicated that the proposed R1 and R2 development were an appropriate extension to Acadia Drive. He seemed to suggest they would provide a buffer for the existing adjacent dwellings. He did not say that the proposed apartment buildings would be incompatible with the adjacent properties. Mr Dickey's primary concern appears to be that the appellant could deviate from the concept plans if rezoning was approved. In that context, he said there were insufficient development officer controls related to height and lot coverage in the subsequent approval processes. He felt the resulting development might raise compatibility issues.

[165] The Board accepts the expert evidence before it that the concept plans and graphics before Council in support of the rezoning application sufficiently addressed compatibility issues raised by Policy IM-7 and IM-8 (a)(b) and (c). This conclusion considers that it is more likely than not that Site Plan Approval, pursuant to Policy GD-30, will be required for the apartment buildings. The requirements are set out in that policy and control such things as the location of the apartment buildings on the lot, driveways, and parking, buffering with walls, fences, vegetation, and landscaping. In fact, the specifics of Policy GD-30 appear to address all the compatibility issues Policy IM-8(c) seeks to resolve.

[166] The Board now turns to Mr. Dickey's primary reason for supporting the proposition that Council's decision reasonably carried out the intent of the MPS about the scale of the project. He says that because the appellant cannot be forced to construct the development as envisaged in the concept plans, there is the theoretical capacity, based on available acreage, to construct as many as 815 units in the proposed R4 Zone. As there are no height restrictions or lot coverage restrictions in the LUB, this could result in much taller high-rises than the concept plan details. This part of Mr. Dickey's opinion, therefore, raises an argument that Council could have decided against the project on this basis, and not the lack of detail, and such a decision would reasonably carry out the intent of the MPS. The Board notes this mathematical calculation had been before Council as part of a staff report. Council did not allude to this factor in its decision, nor how more detailed plans would address it.

[167] In assessing this submission, the Board is aware that there can be more than one decision that is supported by the intent of the MPS. Ultimately, the Board cannot accept this opinion or this argument. The Board agrees with Ms. Fuller's testimony that the 815-unit scenario is not realistic:

Well the calculation... the math is correct if you only consider the minimum lot area. So that 816 is based on that particular calculation. It doesn't consider a variety of other things, which is actually referenced somewhere else in this page, that there's going to be on-site amenity space requirements. There are parking requirements. There are buffering requirements. There are practical considerations around construction and areas of steep slope. There are landscape setbacks and requirements within the site planning process that would provide other factors that need to be considered.

[Transcript, p. 145]

[168] While it is true that it was within Council's purview to consider potential development scenarios allowed by the proposed zone beyond what was presented in the concept plans, the alternate scenarios must be plausible. This one is not. The Board,

therefore, finds that Mr. Dickey's opinion that Council's decision reasonably carries out the intent of the MPS because of the potential for major increases in density is not supported by the evidence. Therefore, there is no basis of support for Council's decision grounded in the MPS.

3.5 Municipal Service Infrastructure

[169] Council's October 23, 2023, minutes say that:

Contrary to the intent of the MPS, reflected in Policy MS-20 and Policy IM-8(p), to require the developer to pay for municipal service infrastructure necessitated because of the development, the proposal contains no mechanism to have developer to pay certain items.

[170] Policy MS-20 indicates Council's general intention to "...require that the developer/landowner pay the costs of municipal services." Policy IM-8(p) directs Council to have regard to "...the financial ability of the Town to absorb any costs relating to..." rezoning. Council's reasons indicate that the lack of a mechanism in the proposal to have the developer pay for certain infrastructure items provides a rationale for denying this application. The Board agrees with Brison's submission that with respect to Policy IM-8(p), a rejection is not warranted just because there are potential infrastructure costs that follow a rezoning application. There must be an impact on the Town's ability to absorb the costs. As well, the costs discussed in Policy IM-8(p) must be related to the rezoning application Council is considering. There are also no MPS provisions requiring that a mechanism be in place to ensure infrastructure costs are paid by the developer prior to approval of a rezoning application. Given Policy MS-20, Council certainly can create such a mechanism.

[171] The Board further agrees with the general proposition put forward by Brison, supported by both Mr. Woodford and Mr. Dickey, that there is nothing in the MPS or the subdivision process that requires the Town to spend any money on infrastructure required

for the proposed development. As expressed by counsel for the appellant "...the mechanism to require payment is inherent in the fact that the Applicant will not receive the necessary approval and permits if infrastructure is not installed as required."

3.5.1 New Sidewalks

[172] The Board will address the infrastructure costs raised in this matter. The GAALCO Report recommended a sidewalk for the new part of Acadia Drive in the development proposal. Road infrastructure associated with the proposed development, including any required sidewalk along this new portion, is built at the developer's costs, and then transferred to the Town, as part of the subdivision process. There was no evidence or analysis before Council, and none presented to the Board, indicating that there were any concerns with costs associated with this aspect of the proposed development.

[173] The concern relates to sidewalk construction on the existing Acadia Drive between Park Street and the proposed development. There is no sidewalk in place along this existing portion of Acadia Drive. Mr. Bell testified that the specifications in place when Acadia Drive was built required sidewalks, but this requirement had not been enforced at the time. Mr. Bell indicated in his June 9, 2023, staff report that building this sidewalk is something Council can consider in the future. Ms. Fuller, Mr. Markides, Mr. Bell, and Mr. Dickey all agreed that it was ultimately in Council's discretion whether a sidewalk was installed on this portion of Acadia Drive.

[174] The Board finds that the requirement for a sidewalk along the existing portion of Acadia Drive pre-existed this application. Policy IM-8(p) does not apply. Council now has the discretion whether and when to proceed. As well, as stated by Ms.

Fuller, the specifications in place at the time the development proceeds will determine the extent, if any, to which a developer would be responsible for any sidewalk costs.

[175] The Board therefore finds there is no basis grounded in the MPS for denying the application based on sidewalk cost concerns raised in this appeal. Accordingly, Council's decision on this point does not reasonably carry out the intent of the MPS.

3.5.2 A Left-turning Lane

[176] The GAALCO Study discussed the eventual need for a left-turning lane at the corner of Park Street and Acadia Drive. That said, this study found that, based on 2022 traffic volumes, a left-turning lane was currently needed at this intersection. Mr. Bell also said that a left-hand lane was needed now, and he recommended to Council it be built in the coming years.

[177] Mr. Markides said that the current plans would have the Donald Hiltz Connector Road built before the build out of the apartment building. In any event, s. 280(1)(c) of the *MGA* provides:

s 280 (1) No plan of subdivision may be approved by a development officer where (a) the plan shows a street to be owned by the municipality, unless the engineer has approved the design and construction standards of the street, and any intersection with a street, owned by the municipality;

[178] The Town has the authority to reject an application at the subdivision application stage if the design drawings show a surge in traffic volume that could lead to unsafe traffic conditions.

[179] The Board agrees with the submissions of the appellant on this point. The need for a left-hand turning lane at the intersection of Park Street and Acadia Drive pre-dates this application. Costs associated with this lane are not directly related to the proposed development under IM-8(p). In any event, even if proceeding with the proposed

development would create a situation where construction of the left-turning lane could no longer be avoided, there is no obligation on the part of Council to spend any funds on this lane. If the proposed development creates a safety hazard in the absence of a left-turning lane, subdivision will not be granted, and the proposal cannot proceed.

[180] The Board finds that Council's reasons to deny the application based on concerns about the costs of the left-hand turning lane are not grounded in the MPS. The need for this lane currently exists. In any event, there is no requirement that the Town spend any money on the left-hand turning lane. If Council chooses not to, and the traffic flow from the proposed development creates potential safety hazards, a subdivision application can be denied.

3.5.3 Upsizing the Sanitary Sewer

[181] Another potential infrastructure cost discussed in the evidence is the potential upsizing of the Town's sanitary sewer. Based on Mr. Woodford's report, the existing sanitary sewer can accommodate 144 detached homes and 210 multi-unit dwellings. Mr. Bell pointed out that this means the existing sanitary sewer could accommodate all the proposed detached dwellings and 3 of the 4 proposed apartment buildings.

[182] Mr. Woodford indicated each phase of the proposed development would need a permit to construct from Nova Scotia Environment and Climate Change (NECC). If the sanitary sewer does not have sufficient capacity, a permit will not be issued. There is no evidence NECC does not have the required expertise to make this assessment. It is that department's statutory responsibility to oversee this aspect of proposed construction.

[183] If a permit to construct cannot be obtained, the required subdivision application will be denied. The developer then must decide whether to pay for the required upsizing of the infrastructure or abandoning additional development. There is therefore no cost imposed on the Town for upgrading the sanitary sewer. There is also a clear mechanism for recovering such costs under the subdivision bylaw. Council's decision is not supported by the evidence. The decision, therefore, does not reasonably carry out the intent of the MPS.

3.6 Proposed Development is Premature Before the Construction of the Donald Hiltz Connector

[184] In its October 2023 reasons, Council stated it denied Brison's application, in part, because the application was not consistent with the MPS as:

3. Such a large proposed development is premature before the construction of the Donald Hiltz Connector, and there are not sufficient mechanisms through a rezoning process to control the development's timing and other attributes of concern to Council.

[Exhibit B-17, p. 3]

[185] The proposed Donald Hiltz Connector would be an arterial road along the south boundary of the subject property which is expected to connect the Kentville Business Park to Prospect Avenue and eventually, Chester Avenue. The Town submits the proposed development is premature and then identifies several categories of issues which it says cannot be resolved until the Donald Hiltz Connector is constructed:

- Traffic issues, including flow, for existing roads as the vehicle-centric apartment building can only use these roads until the Donald Hiltz Connector is opened;
- Stormwater management issues as there is uncertainty about whether current infrastructure can support the proposed development and the impact this project could have soil erosion;

- Safe movement of pedestrians and cyclist and the need to construct sidewalks or take other measures such as traffic calming; and,
- Location and/or form of parkland, play areas and active transportation paths within the site.

[186] The Town admits that Brison had the right to bring its application to request rezoning but finds fault with Brison seeking to do the rezoning of all the subject lands all at the same time. The Town's stated preference is that the rezoning take place in several stages, so that it would have more details about the issues around traffic, storm water management and dedicated parkland and other public areas. The Town wrote at paragraph 5 of its post-hearing written submissions:

The Applicant chose to proceed all at once on a rezoning of a large 43 acre parcel for a project focused on monolithically on residential build-out. The project, if build out and occupied according to the submitted site-plan, would be the most consequential planning approval in the Town's history, likely increasing the Town's population by about 1000 residents or 16%. ...It was within its rights to bring the application forward as it did, although it is important to recognize that there were alternative choices which it could have made it if sought a more integrative, less adversarial approach to development, with less risk of legitimate rejection of the application by Council.

[187] The appellant argued that this application is for a rezoning of vacant land which is the first step in a multistep process and pertains only to the use of the land. Mr. Markides stated that there is a "robust and structured" approach to applicable development which safeguards the municipality. Any development will ultimately be subject to these processes. The appellant acknowledges development will be limited by the timing of the construction of the Donald Hiltz Connector but states that it doesn't make the application premature.

[188] The appellant further submits that the MPS intentions captured in the Generalized Future Land Use Map (GFLUM) and policy statements, existing and funded future municipal infrastructure, and the acute need for additional housing stock and

choices mean that the application for rezoning is timely and carries out the intent of the MPS and the provincial statement of interest (housing) for the community.

[189] The Board concurs with the appellant that this is an application for rezoning and, as found above, the rezoning stage is just the beginning of a multi-stepped process, including securing approval for subdivision. As admitted by the Town, Brison had the right to submit its application for the rezoning of the entire subject property. The Town may prefer that Brison sought to rezone the subject property in more than one step, because it does not trust its mechanisms to control the development project at the rezoning stage before the Donald Hiltz Connector is built, but the Board does not accept this as a basis for finding that the application is premature.

[190] The Board also does not accept that the application is premature because of the impact of the proposed development on traffic issues, storm water management, soil erosion, pedestrian and cyclist safety and dedicated parkland and other public areas that cannot fully be assessed until the Donald Hiltz Connector is built. All these issues have been discussed above and the Board found the appellant did provide the information needed to consider the approval of a rezoning application. There are mandatory controls in these future steps of this process and Brison will have to satisfy the requirements before obtaining approvals and permits. As stated in the testimony of the witnesses, the development of the subject property will take many years, if not decades, and adaptation to the situation such as whether or not the Donald Hiltz Connector is built, will be a factor in future stages.

[191] The Board finds that the Council's concern that the application is premature does not reasonably carry out the intent of the MPS.

4.0 CONCLUSION

[192] The Board has addressed the issues raised by the Municipality throughout this decision and finds that the rezoning is not premature. This is the first step of a structured process which will likely take many years to complete. The rezoning is a necessary first step to meet the objectives of the MPS to increase the number and types of available housing in the Town.

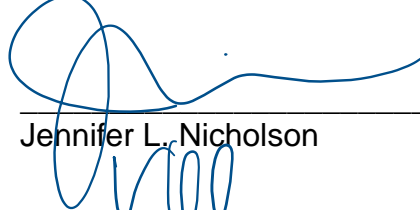
[193] The Board finds that the appellant provided all the information required under the MPS for Council to decide the application. For the reasons set out above, the Board finds that Council's decision to reject the application is not reasonably consistent with the MPS. The Board directs Council to approve the application.

[194] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 13th day of May, 2024.



Richard J. Melanson



Jennifer L. Nicholson



M. Kathleen McManus