DECISION **2024 NSUARB 164**
M11548, M11549, M11558

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF APPEALS by **AMY AND FRIEDER DUMKE (M11548)** and **DENIS AND DARCI MACPHERSON (M11549)** and **DAVID AND CATHERINE GREENE (M11558)** from a Decision of Council for the Municipality of the County of Kings to approve a development agreement for a comprehensive neighbourhood development for property located near Collins Road and Steeple View Drive, Port Williams, Nova Scotia.

BEFORE:	Julia E. Clark, LL.B., Member
APPELLANTS:	**AMY AND FRIEDER DUMKE** **DENNIS AND DARCI MACPHERSON** **DAVID AND CATHERINE GREENE**
RESPONDENT:	**MUNICIPALITY OF THE COUNTY OF KINGS** Peter M. Rogers, K.C.
APPLICANTS:	**SAG (PW) DEVELOPMENTS** Aaron Ewer
HEARING DATE:	May 8, 2024
FINAL SUBMISSIONS:	August 1, 2024
DECISION DATE:	**September 27, 2024**
DECISION:	**The Board dismisses the appeal.**

TABLE OF CONTENTS

1.0 INTRODUCTION

[1] Members of the Steeple View Drive Community in Port Williams, Nova Scotia appealed the decision of the Municipal Council of the Municipality of the County of Kings to approve a development agreement for a residential development on vacant land at the end of Steeple View Drive and west of Collins Road. The Board's role in these appeals is to determine if Council's decision reasonably carried out the intent of Kings' Municipal Planning Strategy.

[2] Three separate appeals were filed. The Board decided to hear them together since they involve the same development agreement, and the Appellants had common grounds of appeal and interests. Amy Dumke, Denis MacPherson and David Greene worked together throughout the hearing on behalf of the Appellants. Each of them testified at the hearing and they presented joint documentary evidence and collective written arguments.

[3] The Village of Port Williams is in the heart of the Annapolis Valley. It lies to the north of the Cornwallis River, in the Municipality of the County of Kings (Municipality), between the towns of Kentville and Wolfville. Highway 358 runs roughly north-south through the Village Centre. Collins Road runs perpendicular to Starrs Point Road east Highway 358 . The Village is designated as a "Growth Centre" in the Municipal Planning Strategy (MPS). This means that it is designated for development of a higher density than currently exists, which the Appellants acknowledge.

[4] Halyard Developments applied to the Municipality on behalf of landowners SWG (PW) Developments (Applicant) for a development agreement for a vacant parcel of about 19 acres within the Port Williams Growth Centre Boundary, on the west side of Collins Road, north of Steeple View Drive. The first phase of the proposed project would

allow a mix of residential uses, including construction of “The Collins,” a multi-unit residential building intended for a co-housing condominium initiative, and one- and two-unit and grouped dwellings. These units would be reached by extending Steeple View Drive into the new neighbourhood. Phase 2 of the proposal also consists of a mix of other residential units including one-unit and two-unit dwellings and multi-unit dwellings along a planned future road exiting on Collins Road. The proposal was positively recommended by the Port Willams Area Advisory Committee and the Planning Advisory Committee and approved by Council in a vote of nine to one.

[5] The Appellants feel that Council failed to adequately consider their concerns about existing problems with drainage, lack of sidewalks, traffic and the potential for conflicts during the construction phase of the development. They advocated for more certainty that these issues would be addressed.

[6] The Port Williams Secondary Plan (Secondary Plan) is a part of the overall planning strategy for the Municipality of the County of Kings (MPS). After analyzing the applicable provisions of the plans and gathering information on the proposal, municipal planning staff recommended approval of the development agreement. On July 20, 2023, the Municipal Council followed planning staff’s recommendation and approved the application.

[7] The Board will address the following issues raised in this appeal:

- Primarily: whether the proposal is reasonably consistent with the MPS.
- Whether the proposed density was authorized at the location, on the fringe of the Village's Growth Centre.
- Whether the proposal was premature because of issues about traffic, road or pedestrian networks, drainage and stormwater management, groundwater study, and compatibility with respect to the site location and nearby land uses.

[8] Kings' MPS, as many others, includes a general direction for Council to assure itself that a development is not "premature". It lists a series of issues for Council to consider in making that determination. Like my colleagues in past cases, I found that not every potential issue or conflict must be resolved before the development agreement is approved. The planning and development process includes requirements for more formal approvals at later stages, including subdivision approval by a development officer and sign-off from other responsible agencies. There must be, however, a reasonable prospect that the development can satisfy the conditions for those approvals.

[9] An MPS typically sets out the rules, general guidelines and policies for Council to follow when considering new developments in the Municipality. A development agreement is one of the methods that Council can use to approve a proposal that may not otherwise be allowed in a certain zone or site. The process for review and approval of a development agreement is not a simple exercise of working through a checklist against the wording of each policy. The Courts have held that as the primary planning authority, Council has discretion about how to apply or balance competing MPS policies and objectives. It may give more or less weight to different factors to advance certain objectives, provided its ultimate decision reasonably carries out the intent of the MPS. In reviewing the grounds of appeal, the Board must parse through the applicable policies and complete an interpretive exercise to understand the intent of the MPS. The standard for evaluating a development agreement against the MPS is not perfection, however, its approval must align with an interpretation of the relevant policies that their language can reasonably bear.

[10] The Board found that the MPS, read in proper context, allows for the density proposed for this location, although the property is not centrally located in the Village. The evidence does not establish that the proposal is premature because of the various issues raised by the Appellants. Council had a reasonable basis to decide that traffic issues, road and pedestrian networks, drainage and stormwater management were sufficiently addressed in the proposal and that there is a reasonable prospect that the developer can address the municipal infrastructure elements discussed in this decision, to the satisfaction of the appropriate authorities. If it cannot, the project will not proceed. The development agreement contains sufficient assurances that the proposal is compatible with the surrounding areas.

[11] The Appellants had certain expectations of the Village and the Municipality that, to some extent, exceed the authority of this Board to address. They have reasonable concerns about their existing neighbourhood, the effectiveness of their surface stormwater management and drainage, the potential impacts of nearby construction on the safety of their street, and the maintenance of walking paths and public areas. These concerns are best addressed through by-law and permit enforcement, and infrastructure management by the Village, Municipality or Provincial authorities, as applicable.

[12] On the evidence presented in this matter, the Board finds that Council’s decision reasonably carries out the intent of the MPS. The appeal is dismissed.

2.0 ISSUES

[13] In this case, the ultimate issue I must determine is whether the Appellants have shown, on a balance of probabilities, that Council's decision to approve the

proposed development agreement for property at Collins Road and Steeple View Drive did not reasonably carry out the intent of the MPS. This decision reviews MPS policies related to whether the proposed density was authorized at the location, on the fringe of the Village's Growth Centre, and whether the proposal was premature or inappropriate because of issues of traffic, road or pedestrian networks, drainage and stormwater management, groundwater study, and compatibility with respect to the site location and nearby land uses.

3.0 BACKGROUND

3.1 Law and Scope of Review

[14] The *Municipal Government Act* (*MGA*) establishes the process for Council to enter into development agreements. It also establishes the rules and the authority of the Board for appeals of these decisions. Past judicial decisions have established precedents that direct the Board's analysis. The Board's own past decisions on a particular issue also provide information and guidance. While these past decisions are not binding on an individual member, the Board strives for certainty and consistency in its reasoning and interpretation. This is especially true where the facts and context are similar.

[15] Under s. 247(2)(a) of the *MGA,* an "aggrieved person" may appeal the approval of a development agreement. All parties agreed that, as neighbours, all Appellants met the requirements of the appeal provision:

> **Appeals to the Board**
>
> **247** …

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

[16] The grounds of appeal are limited, as are the powers of the Board when considering an appeal:

> **Restrictions on appeals**
>
> **250 (1)** An aggrieved person or an applicant may only appeal
>
> (b) the approval or refusal of a development agreement or the approval of an amendment to a development agreement, on the grounds that the decision of the council does not reasonably carry out the intent of the municipal planning strategy;
>
> **Powers of Board on appeal**
>
> **251 (1)** The Board may
>
> (a) confirm the decision appealed from;
>
> (b) allow the appeal by reversing the decision of the council … to approve or amend a development agreement;
>
> **(2)** The Board shall not allow an appeal unless it determines that the decision of council … does not reasonably carry out the intent of the planning strategy …

[17] The burden of proof is on the Appellants to show, on the balance of probabilities, that Council's approval of a development agreement to permit comprehensive neighbourhood development on the subject property was not consistent with the intent of the MPS.

[18] 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. These are keystones in the Board's review, so they are cited in nearly every planning appeal decision:

> [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. …
>
> …

[19] In *Archibald*, at para. 24, the Nova Scotia Court of Appeal discussed the assistance a concurrently adopted Land Use By-law (LUB) can provide in the interpretation exercise:

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

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

> (7) … By this, I do not suggest that the Board should apply a different standard of review for such matters. The Board's statutory mandate remains to determine whether the Council's decision reasonably carries out the intent of the MPS. But the intent of the MPS may be that the Council, and nobody else, choose between conflicting policies that appear in the MPS. This deference to Council's difficult choices between conflicting policies is not a license for Council to make *ad hoc* decisions unguided by principle. As Justice Cromwell said, the "purpose of the MPS is not to confer authority on Council but to provide policy guidance on how Council's authority should be exercised" (*Lewis v. North West Community Council of HRM*, 2001 NSCA 98, ¶ 19). So, if the MPS' intent is ascertainable, there is no deep shade for Council to illuminate, and the Board is unconstrained in determining whether the Council's decision reasonably bears that intent.

[21] The Board is not permitted to substitute its own decision for that of Council but must review Council's decision to determine if it reasonably carries out the intent of the MPS. In determining that intent, the Board must apply the pertinent principles of statutory interpretation adopted by the Court of Appeal, as well as the provisions of ss. 9(1) and 9(5) of the *Interpretation Act*, R.S.N.S. 1989, c. 235.

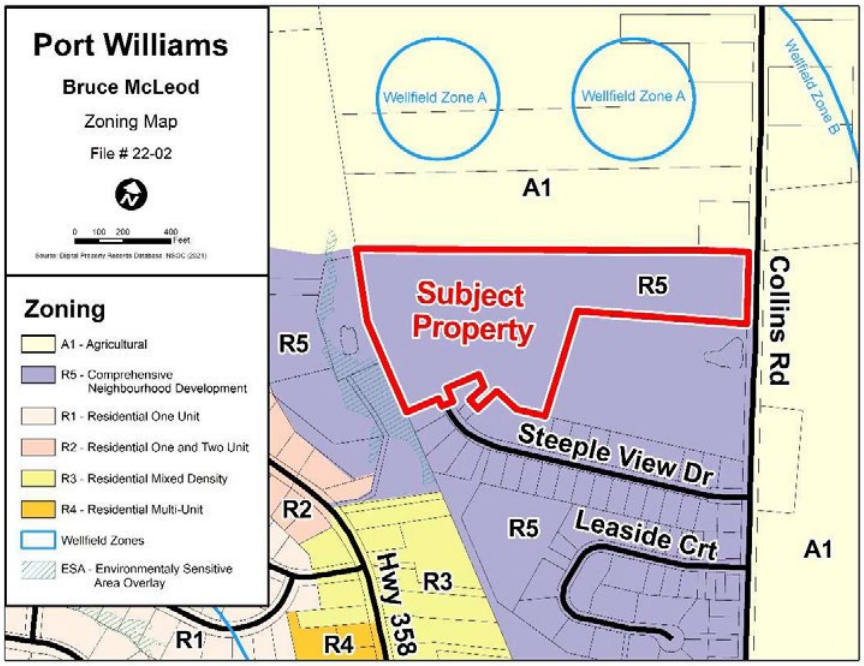
3.2 The Proposal

[22] Aaron Ewer, of Halyard Developments, acting as agent for SWG (PW) Developments, applied for a development agreement on a vacant parcel located on the west side of Collins Road, north of Steeple View Drive, in Port Williams (PID 55037139). The proposal is to permit a comprehensive neighbourhood development consisting of a maximum of 156 residential units in a variety of built forms. The driving force behind the development is the vision of the developers to construct "The Collins", a multi-unit

residential building that is intended to be a co-housing initiative that will allow residents to “age in place”.

[23] The property was planned to proceed in two phases, consisting of construction of the Collins, an expected 32 unit, 4-storey dwelling near the current end of Steeple View Drive, a mix of dwellings consisting of one- and two-unit dwellings, townhomes and grouped dwellings proposed to be owned as bare land condominiums. Two public roads are proposed, including an extension to Steeple View Drive in Phase 1. Phase 2 proposes a public road be developed to connect the end of Steeple View Drive with Collins Road, to the east, supporting additional one- and two-unit dwellings and two other multi-unit dwellings. The number and configuration of units contemplated under the proposal changed at different times in the planning process. The total maximum number of units allowed for the entire development under the agreement is 156.

[24] The site is zoned R5 - Comprehensive Neighbourhood Development. Immediately adjacent to the east and south are other R5 neighbourhoods developed under a 2012 development agreement with Brison Developments. To the east and across Collins Road are properties zoned A1 - Agricultural. There is a section of the property zoned A-1 – Agricultural to the north of the planned development including designated wellfield zones.



[Exhibit D-2, p. 422]

[25] The Port Williams Advisory Committee and Planning Advisory Committee met on October 12, 2023 and November 14, 2023, respectively, and passed motions recommending the approval of the proposed development and a draft development agreement to allow the two-phase development.

[26] Laura Mosher, the Municipality's Manager of Planning and Development Services, prepared a report for those meetings, dated October 12, 2023 (Staff Report). The Staff Report included a summary of the Public Information Meeting (PIM) held March 30, 2023, where members of the public raised concerns similar to those of the Appellants, including the timing of construction and its impact on existing residents on Steeple View Drive, concerns about traffic and density, and their interest in having the Phase 2 road built in advance of the Phase 1 dwellings so that it could be used for construction vehicles. The report included a Policy Review, a draft development agreement and a recommendation to Council to hold a Public Hearing. The report addressed staff's

response to the public concerns raised at the PIM. The conclusion of the staff report noted:

> The proposed development would introduce additional housing resources in alternate formats within an area that has a high demand for housing within the Municipality. The proposed development will assist in the efficient provision of servicing infrastructure within the Village boundaries and provides additional active transportation connectivity within the Growth Centre. As a result, Staff are forwarding a positive recommendation …
>
> [Exhibit D-4, p. 449]

[27] Council held a Public Hearing to discuss the proposal on January 11, 2024, and approved entering into the development agreement at a Special Municipal Council meeting later that evening.

3.3 Public Participation

[28] The Board received two letters of comment opposing the development. One writer did not oppose the development of "The Collins" and the Steeple View Drive extension. Rather, they requested a revision to the agreement to require initial construction of a road with direct access to Collins Road, allowing some traffic to bypass Steeple View Drive. The other writers supported the development of one- and two-unit dwellings but considered that larger multi-unit residential buildings should be directed to "a more central location." They also strongly preferred that a permanent second exit to Collins Road be completed prior to building construction.

[29] The Board also received one request to speak at the hearing. Changes to the hearing schedule prevented Mr. Ryan Dawe's attendance in person, but, with leave of the Board, he submitted written comments. Mr. Dawe supported the Appellants' arguments about the impacts of MPS Policy 4.5.24, arguing that the policy used prescriptive language ("Council shall be satisfied …") directing Council's consideration of traffic impacts and centralizing high-density areas within the Growth Centre. Referencing

policy 5.3.7, he questioned the failure of the proposal and accompanying traffic survey to address the impacts of construction and other traffic and addressed the issues of sidewalks and pedestrian safety on Steeple View Drive.

3.4 The Site Visit

[30] I visited the subject property immediately following the conclusion of the public hearing. The parties did not participate in the site visit, by agreement. I toured the subject property and surrounding area, driving up and parking on Steeple View Drive across from the mailboxes and utility boxes at the end of the street. I stopped to view the properties at numbers 57, 62 and 68 Steeple View, as recommended. I noted the newly installed catch basin and repaving that Mr. Carrigan referenced in his evidence at the Collins Road end of the street. There was no noticeable water in the gutters or in the street at the time of my visit.

[31] I walked from the end of Steeple View Drive onto the vacant land proposed for development and observed the cleared construction area. I note that I encountered a dog walker on the open field, which I understood from testimony and Site Map to be the approximate location planned for The Collins. She pointed me to the start of a forested, cleared path at the western end of the field. The path followed along beside the pond that was addressed in testimony, and behind homes on the south side of Steeple View Drive, to Highway 358. I turned left on Highway 358 and walked along the shoulder to the gravel path across from Ports Landing Avenue. I walked back up the trail returning to the south side of Steeple View Drive. During the visit I saw some narrowing and water erosion of the walking paths, as shown and described in the Appellant's evidence.

[32] After returning to Steeple View Drive, I drove to Collins Road and turned left, observing the speed limit signage and the approximate location of the planned future road. I returned to the parking lot of the soccer fields and walked the length of that area to the gravel pathways leading to Leaside Court and back to Steeple View Drive. I observed the culverts identified in the Municipality's photo evidence [D-8 p. 25-29]. I noted construction in the area. It was lightly raining and there was no other traffic at the park.

[33] The Site Visit helped to ground my understanding of the area and confirmed the oral testimony and photo evidence about the direction and connection of the pathways, roads and sidewalks in the area. I saw the new catch basin, the relevant intersections, the existing cleared lots and the mitigation measures the Municipality described to cut down on silt runoff. The factual testimony on these issues was not generally in dispute, other than whether the safety, connectivity and maintenance of the roads and pedestrian network for the new development met the intent of the MPS.

4.0 WITNESSES AND EVIDENCE

[34] Amy Dumke, Denis MacPherson and David Greene provided oral evidence on the Appellants' behalf. Aaron Ewer testified on behalf of the Applicant.

[35] The Municipality called two witnesses. At the hearing, Brad Carrigan, P. Eng., Director of Engineering and Public Works for Kings, was qualified, without objection, as an expert capable of giving opinion evidence about municipal engineering matters including but not limited to stormwater drainage. Prior to the hearing, Mr. Carrigan filed an expert report dated [Exhibit D-8, p. 12].

[36] The Municipality also called Ms. Mosher, who was qualified, without objection, to give opinion evidence on planning and development matters, including the interpretation and application of municipal planning strategies, land use by-laws and subdivision by-laws. Ms. Mosher filed an expert report [Exhibit D-8]. She also drafted the Staff Report to Council [Exhibit D-2, p. 454], and she was questioned on both reports.

[37] The Board's findings of fact are incorporated into each section of this decision's analysis and findings. The documentary evidence filed before the hearing is clear from the record. As is common in hearings before the Board, the self-represented Appellants provided evidence in the form of statements, and the Board generally accepted their oral evidence at whatever point in the hearing it was offered, other than during cross-examination if their premise was not accepted by the witness.

[38] Under s. 19 of the *Utility and Review Board Act*, the Board operates under relaxed rules of evidence. All witnesses, to some degree, relied on hearsay and offered opinions beyond their qualifications. There were generally no objections to the admissibility of these statements and I was able to weigh the evidentiary value in the normal course.

[39] In post-hearing written submissions, the Appellants included a supplemental document with several images and accompanying explanatory statements that had not previously been provided. The Municipality and Applicant objected to this additional evidence and asked the Board to exclude it. After reviewing written submissions from all parties, on July 11, 2024, the Board circulated a decision letter on these filings, outlining the images that were already in evidence (admitted by consent), and accepting included diagrams for the purpose of a visual representation of the

Appellants' narrative, rather than evidence. New images or commentary purporting to give new evidence would be unlikely to materially affect the decision on these issues and will not be given any weight in this decision.

[40] In their final rebuttal submissions, the Appellants included commentary about their observations post-hearing. The Municipality objected to a passage on page 4 of the rebuttal brief that included observations from as late as August 1, 2024. The Appellants also objected to statements in the Municipality's arguments as unproven evidence that drainage problems were "largely dealt with". I find that these comments provided a summation of counsel's view of the evidence. The Appellants were entitled to rebut that summation in their arguments. However, for the same reasons as set out in the Board's July 11, 2024 letter, I have disregarded any new post-hearing evidence about the state of drainage or construction on Steeple View Drive from any party. I have drawn my own conclusions about the new catch basin and other mitigation measures based on the oral evidence from the hearing, expert reports and other pre-hearing documentary evidence. In any event, given my findings on these issues, any new evidence would be superfluous and would not have impacted my decision.

5.0 ANALYSIS AND FINDINGS

5.1 Interpretation of King's MPS Policies

[41] Section 1.1 of the MPS describes the history of municipal planning in the Municipality. The current MPS was adopted by Council on November 21, 2019, following extensive public consultation. The MPS was approved, with amendments, by the Minister

of Municipal Affairs on March 5, 2020. Section 1.2 of the MPS, under the heading "Interpretation," at p.1. 2-1, states:

> Policies are shown in shaded text and reflect the intent of the Council. Notwithstanding the words "Council shall" preceding policy text throughout the document, policy statements are intended to be permissive.

[42] The intent of this policy direction has been considered in previous Board decisions, related to how much discretion (if any) Council has to determine what factors it will address, and to what degree, for a given application. Previous Board decisions have held that the permissive nature of the words "Council shall" does not mean Council can choose to ignore a relevant policy. It does mean that Council has discretion about *how* the policy in question is applied in a given context [see: *Blanchard (Re)*, 2023 NSUARB 191, at para.90; *Community for Responsible Development for District 1 (Re)*, 2023 NSUARB 37, at paras. 85-86 (*Canning*), *Cornwallis Farms Limited (Re),* 2024 NSUARB 120].

[43] As stated in *Cornwallis Farms Limited*, at paragraph 53*:*

> The exercise of Council's discretion in relation to relevant policies is not absolute. Council's decision must still be guided by the MPS and reasonably carry out its intent. The extent to which Council can decide how to apply a particular policy may depend on its relative importance within the overall guidance provided by the MPS. The particular facts of the case will also be a key factor. In the final analysis, "…a council's discretion must be exercised in a manner that the planning strategy's language can reasonably bear."

5.2 Application of MPS Policy 4.5.24(f) that "Higher Density developments should be located on the fringe of the Growth Centre?

5.2.1 The MPS Context

[44] The property is located within the boundaries of the Port Williams Growth Centre. The Appellants acknowledged that they knew that this brings with it the potential for new development and increased density in the Village.

[45] MPS Policy 2.1.2 identifies Growth Centres as the "…primary growth areas in the Municipality." The MPS establishes parts of Port Williams as a Growth Centre. MPS Policy 2.1.4 indicates an intent to "…establish a detailed and individualized policy direction within the Secondary Plan …" for the Port Williams Growth Centre. Policy 2.3.2 encourages the development of "higher density" developments in Growth Centres that permits "various housing types." The intent of this policy is "…to increase the efficiency and cost-effectiveness of municipal sanitary sewer and water servicing."

[46] The Secondary Plan for Port Williams was incorporated in Part 4 of the MPS. The Secondary Plan indicates it is:

> …tailored to the Growth Centre's distinct qualities and planning needs. It establishes long-term goals and implements planning tools, such as zoning, intended to achieve these goals.

[47] The importance of secondary plans is highlighted by MPS Policy 4.02 indicating that "Council shall…give precedence to Secondary Plan policies in the event of a conflict between the Secondary Plan and the policies of the remainder of this Strategy."

[48] The Secondary Plan, which mostly predates Kings' MPS, says most residents live in "low-density single-family dwellings", and the village has some multi-unit buildings on major roads and in central locations. It discusses an intent to welcome new residents and provide a variety of housing styles for them, along with accommodating the changing housing needs of current residents. Some of the objectives of the Secondary Plan are (as summarized by the Board in *Cornwallis Farms*):

- To direct higher-density developments to central locations;
- To direct lower-density developments to the Growth Centre fringe;
- To encourage infill development on vacant and underused land;
  …
- To provide opportunities for mixed-use developments;

- To enable residents to age within the community by accommodating housing that is suitable for seniors; and
- To provide a buffer between residential developments and agricultural activities.

[49] The Port Williams Secondary Plan has a section about the expansion of the Growth Centre Boundary. Its boundary was first established in 1979. By 2010, the MPS says most of the underdeveloped land within the Growth Centre boundaries had been taken up by residential subdivisions. The Secondary Plan says expansion was controversial because of potential impacts on agricultural lands and wellfields. In 2010, the Growth Centre boundary was adjusted, as provided for under MPS Policy 2.1.13. Lands were added adjacent to the intersection of Collins Road and Starr's Point Road, as well as 78 acres of land between Collins Road and Highway 358, where the existing Steeple View Drive and the development property are located. The Board's recent decision in *Cornwallis Farms* provides some additional history on the Growth Centre (see para. 115-116).

[50] The additions to the Growth Centre were offset by the removal of 120 acres of protected dykeland where development opportunities were limited. If the dykelands are excluded, only a limited amount of land available for development was added by the adjustment to the Growth Centre boundary.

[51] These aspects of the Secondary Plan were already in place when the current MPS came into effect in 2020. In discussing the Residential Designation generally, s. 3.1 of the MPS says the goal is to "identify lands where development of complete residential neighbourhoods is promoted and prioritized over other land uses." An objective was identified to "…discourage urban developments in rural areas by providing a variety of development opportunities within Growth Centres." MPS Policy

3.1.2(d) allowed for the creation of the R5 zone that envisaged comprehensive planning for "…new large-scale development by development agreement."

[52] MPS Policy 3.1.13 specifies how Council must assess development agreements in the R5 zone. The only specific reference to density for the R5 zone is found in MPS Policy 3.1.13(c). This provision requires a minimum density of four units per acre.

[53] As stated in *Cornwallis Farms*:

> While the MPS incorporated the Secondary Plan, it is a forward-looking document that should be interpreted, where possible, to avoid conflicts. It is reasonable to assume that when the Secondary Plan was incorporated in the MPS, the general concepts of Growth Centres as expressed in the MPS, and Comprehensive Neighbourhood Development, discussed in Policy 3.1.2(d), under which the R5 zone was created, were also incorporated in the Secondary Plan. Policy 3.1.2(d) says the R5 zone is for "…integrated and comprehensive planning of new large-scale developments by development agreement." While certain restrictions were maintained in the Secondary Plan, the scope of these restrictions can be informed by other MPS policies.

5.2.2 Is the Project on the "Fringe"?

[54] The facts establish that the proposed project is on the fringe of the Growth Centre. The property is not located directly in the Village Core, or the central part of Port Williams, which runs along Highway 358 after the bridge over the Cornwallis River. It is located on the northeastern edges of the Growth Centre, surrounded by single-family and other residential dwellings, and some designated agricultural land. Ms. Mosher confirmed the property is located on the fringe of the Growth Centre, both in her reports and in her oral testimony before the Board. The Municipality did not challenge the proposition that the development would be located on the fringe of the Growth Centre.

[55] While the terms "fringe" and "centrally located" are not defined in the MPS, the Board finds the wording makes a distinction between a central location and the fringe. As a factual matter, the property is not centrally located in Port Williams. It is located on the fringe of the Growth Centre.

5.2.3 Is the Project a Higher or Lower Density Residential Development?

[56] The specific Growth Centre requirements in the Secondary Plan are found in s. 4.5.24. In *Cornwallis Farms*, the Board addressed whether these requirements take precedence over the Growth Centre provisions in the MPS applicable to the entire Municipality (i.e., MPS Policy 3.1.3). The Secondary Plan was designed to take account of the unique features of Port Williams, which is the purpose of a secondary plan. The Board found that even considering the words "Council shall" as permissive, it would be unreasonable for Council to disregard the clear intent of the MPS and ignore the Secondary Plan.

[57] To address the issue of density it is important to describe what the term means. The Appellants described an apartment building in Port Williams as being fundamentally high-density. The Secondary Plan discusses "low-density" single-family dwellings, but density is not automatically a function of the type of dwelling such as apartment buildings or single-family dwellings. Ms. Mosher, rather, described density as:

> …a relationship by definition, no different than speed. Just because you travelled 1200 kilometers… if you travel a hundred kilometres over the course of a month, that is not high speed, but if you travel a hundred kilometers over the course of half an hour that would be very high speed. [Transcript, p. 290].

She explained that density is a function of the number of dwelling units allowed within a specified area, usually measured in units per acre. Simply put, an apartment building on a large piece of land can result in lower density per acre than a group of single-family homes on smaller lots. The Board recently accepted this explanation in *Cornwallis Farms,* which also involved the interpretation of policy 4.5.24 in relation to another development on the fringe of the Port Williams' Growth Centre.

[58] The Appellants focused on the existing built form in the Port Williams Growth Centre and the areas near the development property. Ms. Mosher also did this to some extent in her staff report. The Appellants also referenced high-density and low-density as a function of building type, describing any apartment building as “high density”. Although the proposed development will have a higher density than much of the existing Growth Centre *built form*, it does not mean that a development agreement can only be approved if this pattern is maintained.

[59] The Appellants also point out that in a staff report filed supporting the development on Belcher Street that was at issue in *Cornwallis Farms* and addressed in evidence in these proceedings, Ms. Mosher referred to the proposal as “higher density” although it met the definition of “low density” based on the Land Use Bylaw requirements. They felt that the multi-unit buildings for Belcher Street were treated as “high or higher” density” but the same consideration was not carried through this proposal. The Municipality responded that the Belcher Street development density was nearly double (17 units/acre approximately) that of the SAG development.

[60] Interpreted in the proper context, there is no true conflict between Policy 4.4.24(f) in the Secondary Plan and the MPS policies establishing Growth Centres. The MPS is a forward-looking document intended to provide policy guidance for future development. The Growth Centre provisions, such as Policy 3.1.2 of the MPS, and the criteria set out in Policy 3.1.11, envisage large scale, comprehensive developments in Growth Centres. I agree that it is reasonable to assume that when the Secondary Plan provisions were incorporated into the MPS, the concept of what was envisaged for Growth Centres was also incorporated. In looking at what constitutes higher and lower density it

is appropriate to consider the concept of large-scale developments, keeping in mind that the density of a large-scale project is dependent on the land available to build that project.

[61] When Council considers a development agreement under the MPS, which includes the Secondary Plan, there may be intersecting or overlapping policies related to density. This does not necessarily create a conflict. The intersection can be resolved by not limiting the “higher density” and “lower density" considerations to existing built form. Rather, Council can consider whether the proposal is “higher density” or “lower density” by looking at what might otherwise be built in other zones, and what is contemplated in the R5 zone.

[62] This property consists of approximately 19 usable acres for development straddling the Growth Center boundary. The development agreement allows for up to 156 units. Given that the primary concern about density arose from Phase One and The Collins proposal, at the hearing Ms. Mosher applied the maximum potential number of units (76) against the Phase One acreage (approximately 9.25 acres) resulted in a calculation of approximately 8.2 units/acre. Other calculations were offered that may have resulted in density of about 9.75 units/acre. In any event, the R1 zone currently allows a single-family dwelling unit, a secondary suite and an accessory building that can be used as a dwelling unit (often referred to as a backyard suite). Ms. Mosher pointed out that the current LUB lot size requirements would allow approximately 30 units per acre. Therefore, the density authorized by the development agreement is considerably lower than what is currently permitted as-of-right in the R1 zone. The Board recognizes that backyard suites were only added as permitted uses for all residential designations in 2024. Even allowing for this, the LUB adopted concurrently with the MPS allowed 20 units per acre in the R1

zone. The R4 Residential multi-unit zone can accommodate 24 units per acre (see: *Cornwallis Farms*, para 128).

[63] In this case, it was assumed that lower density development should confined to single-family and similar dwellings and that apartment-style buildings must be higher-density developments. Given that comparatively higher density can be achieved in the R1 zone under the LUB requirements than proposed ,in this example that assumption does not hold. As my colleagues held in *Cornwallis Farms,* an interpretation that allows for a development with a lower density than what the one- and two-unit zone allows, or allowed under the LUB at the time the MPS was adopted, can properly be called a lower-density development on the fringe. This interpretation allows for large-scale development on appropriately sized properties, while accounting for the need to consider the appropriate level of density outside of the Village core.

[64] At the time the MPS was adopted, the R4 zone had the highest allowable density at approximately 24 dwelling units per acre. It stands to reason that the R5 zone, with its focus on “large-scale developments” could allow for higher densities in an appropriate location. An interpretation of Policy 4.5.24(f) that allows for development at a density on the fringe below the density allowed in the R1 zone at the time the MPS was adopted, and higher density in the core than what was allowed in the R4 zone, reconciles the intersecting policies in a way that the policy language can reasonably bear. Following that line of reasoning, Council’s decision to approve the development agreement with the density proposed is not inconsistent with Policy 4.5.24(f) of the MPS and reasonably carries out its intent.

5.3 Policy 5.3.7(c) of the MPS: Proposed Development is not Premature or Inappropriate

[65] The Appellants made submissions on many aspects of Policy 5.3.7(c) of the MPS. This Policy states that when deciding to approve a development agreement Council must be satisfied that the proposal is not “premature or inappropriate.” Policy 5.3.7 sets out policy considerations but does not set out bright lines or a standard of proof a development must meet to satisfy Council that the application is not premature or inappropriate. These terms are considered “question-begging”, which means they require an exercise of discretion to determine what constitutes “premature” or “inappropriate.” A development agreement is not a subdivision application or a building permit application, where specific design and engineering standards must be met to the satisfaction of a development officer who performs an executory function. A development agreement is more conceptual in nature. While Council can choose the degree of specifics it requires, a development agreement generally sets out the parameters within which construction will be allowed.

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

information that was given to Council. With these general parameters in mind, the Board will address specific issues raised by the Appellants.

5.3.1 Traffic and Road and Pedestrian Network

[67] Throughout the public hearing process before Council and the Board, the Appellants and other interested individuals expressed their concerns about traffic increases based on this proposal. They said traffic flow was already a problem at peak times, particularly with school bus drop offs and pickups, and would worsen with more residents. They also questioned the methodology of the traffic impact study submitted as part of the Applicant's proposal. Ms. Dumke stated the traffic study, completed in August, failed to measure the traffic during the times when children were picked up or dropped off at the bus stops. The Appellants also pointed out that the Applicant's study was completed more than two years ago, perhaps not accounting for new homes in the area.

[68] Policy 5.3.7(c)(iv) states in approving a development agreement, Council shall "be satisfied" that the proposal would not create any excessive traffic hazards or congestion due to road or pedestrian network inadequacy, within, adjacent to, and leading to the proposal."

[69] The Applicant engaged Robert Boychuk, P. Eng., of Fathom Studios to prepare a Traffic Impact Study (TIS) as part of its proposal. An initial TIS was completed, dated November 10, 2022 [Exhibit D-2 p. 60] and the final, dated January 18, 2022 [Exhibit D-2, p.], was reviewed by Logan Watts of the Nova Scotia Department of Public Works who provided no comments on the data and conclusions other than indicating "I have no further concerns in regard to the TIS or the development as the results show these (sic) is negligible impacts to the road network" [Exhibit D-2, p. 149]. The Department

of Public Works has jurisdiction over traffic safety and road network adequacy on provincially owned streets.

[70] The final TIS concluded that the traffic generated by the proposed development can be handled by the existing street network. The Executive Summary notes:

> This report shows that existing traffic volumes on Collins Road, as well as on Steeple View Drive are very low resulting in all proposed roadways and intersections operating at a high level of services with very little delay, minimal capacity utilization, and virtually no queuing. The addition of the proposed 116 residential units, whether distributed over two driveways or all assigned to the Steeple View Driveway have negligible impact on operations with very little change to performance measures once the development is fully constructed. [Exhibit D-2, Final Report, Rev. 1, p. 24]

[71] Ms. Mosher was questioned on the inconsistency between the number of units referred to in the study versus the final maximum unit numbers contemplated under the development agreement. While not a traffic engineer, she pointed out that the study's conclusions indicated such a negligible impact, given the low volumes versus the capacity, that even if all 116 units were assigned to Steeple View Drive, the addition of more units with a second access road are unlikely to create difficulty. The study assigns the intersections an "A" for highest level of service. The results indicated little impact and were accepted by the Department of Public Works, who expressed no concerns.

[72] The Staff Report indicated staff were satisfied there were no concerns under criterion in MPS Policy 5.3.7(c)(iv) with approving a development agreement. The TIS was submitted by the Applicant, which the Department of Public Works reviewed. While not all of planning staff's questions were answered by Public Works Staff, [Exhibit D-2, p. 15-16], Ms. Mosher said that was not surprising for the time. She believed that because the traffic volumes were so low, it would have been a straightforward review. Staff would operate on a "no objections" basis on the other questions.

[73] The Appellants raised concerns with the methodology and findings of the TIS. They pointed out the qualities of the road network within, adjacent to and leading to the development property, which they believe create existing difficulties that may be exacerbated by new residents in the area. Ms. Dumke pointed out that the TIS did not include a study at the intersection of Collins Road and Starrs Point Road, or Highway 358. Ms. Mosher indicated that normally traffic studies that are sent to the Province are "scoped" by Public Works. In advance of the study, they will discuss the scope and the intersections the Province wants included in the review. When pressed, Ms. Mosher speculated that if Public Works had concerns with the scope they would have been in touch, but she suspected that the low volume of traffic would not have been a concern. She said it was rare for a traffic study to be requested for a development of less than 80 units.

[74] The Appellants' most pressing concern was the presence of large construction vehicles on Steeple View Drive, a steep street without sidewalks. In the past, Ms. Dumke experienced a tragic family incident involving a construction truck and has understandable, ongoing fears. I accept that there are safety concerns with having large trucks on a street that may be too narrow for cars to pass in either direction when others are parked on the street. This is a matter that should be brought to the Municipality's attention from an enforcement perspective. While disruptive, construction traffic is temporary, and not part of the future "steady state" impacts of this development. I was not presented with any contrary evidence invalidating or otherwise undermining the findings in the TIS. In this case, the best evidence is the final TIS, which was accepted by planning staff and the Department of Public Works. It supports my finding that Council's decision,

insofar as it was satisfied the proposal was not premature or inappropriate due to the creation of any excessive traffic hazards or congestion due to road or pedestrian network adequacy, reasonably carries out the intent of the MPS.

5.3.1.1 Permanent Secondary Road

[75] A principal concern for the Appellants is the increase in contractor and other traffic on Steeple View Drive during the construction of The Collins, and beyond. Steeple View Drive is somewhat steep and when cars are parked on the road, traffic cannot pass easily in both directions. The Appellants presented video evidence of a circumstance where large trucks backed down the street [Exhibit D-6] and photographs showing the impact of construction vehicles on the road. They speculated this was because there was insufficient room to turn at the current end of the street. Steeple View Drive does not end in a proper cul-de-sac. It is an incomplete road that has a limited turning radius.

[76] The development, as planned, will extend Steeple View Drive from this current end, and connect it with a new “Future Road” with direct access to Collins Road, north of the entrance to Steeple View Drive. The construction of this portion is planned for the second phase of the development. The Applicant and Ms. Mosher explained that the extension of municipal services must come from the existing roads. The electrical infrastructure on Steeple View Drive is underground.

[77] In discussions with the Municipality, and in sworn testimony before the Board, Mr. Ewer said that the owner promised to complete a construction-grade road from Collins Road to alleviate some construction truck traffic on Steeple View Drive and facilitate emergency access to the construction site. In closing submissions, the Applicant said that the installation of a permanent road prior to completion of the Steeple View Drive

extension was illogical because it would create a disjointed community with two incomplete roads, with similar problems for construction truck turnarounds. Building a road to municipal standards requires adjoining to existing services, which connections are the end of Steeple View Drive. Extending underground services through undeveloped land is not economically feasible. Mr. Ewer said that the additional costs would be prohibitive to the whole development.

[78] There was some evidence before Council that A-1 zoning restrictions on the land north of the property along Collins Road may not permit expansion of the planned comprehensive neighbourhood (R5) and therefore make Phase 2 impractical and extend the development timeline. However, Mr. Ewer said that market conditions were now such that he felt that finalizing Phase 2 would be economically feasible even without the adjacent development.

[79] I have no evidence to counter the opinion of Ms. Mosher and Mr. Ewer that Phase 2 will proceed. Once the development agreement is approved, it attaches to the property. It is too remote for Council or me to speculate what may happen if the owner or future owner requests an amendment or abandons plans for Phase 2.

[80] The Appellants' requests about the future road and the second access were on record before Council from as far back as the PIM in March 2023, though perhaps not as well developed as presented to the Board. They are dissatisfied that the owner's gesture to complete a drivable road at the beginning of the construction phase was not formalized as a requirement in the development agreement. Councilors referenced the owner's intentions about the road which they said reassured them that the construction issues would be addressed. Mr. Ewer testified under solemn affirmation to the Applicant's

intentions and gave the Board no reason to doubt his sincerity. The future road is a requirement in the development agreement. It must be constructed to municipal standards and is subject to final subdivision approval. Finalizing the construction driveway will also be subject to approval of the Province to connect with Collins Road.

[81] On a balance of probabilities, I find no policy in the MPS that Council should reasonably have applied to insist on the initial construction of a permanent second access road as a condition for development.

5.3.1.2 Sidewalks and Pedestrian Pathways

[82] The Appellants stated their concerns about the community's access to public transportation and sidewalks. There is no Municipal or Village transit in Port Williams. There were no sidewalks along Steeple View Drive, Collins Road and no proposed sidewalks connecting to the proposed development, which they said contravened Policy 2.3.14 and Policy 2.8.1 of the MPS.

[83] Policy 4.5.32 of the MPS states, in part, that Council shall "encourage, in cooperation with Kings Transit," transit service. Policy 2.3.14 of the MPS states, in part, that Council shall "encourage the development of complete roads, including…active transportation infrastructure including but not limited to sidewalks…bicycle lanes…and frequent pedestrian crossings." MPS Policy 2.8.1 says that Council shall "encourage businesses and residents to reduce energy consumption, while protecting human health and safety" when establishing policies in the MPS and in community infrastructure investment.

[84] The development agreement does not require sidewalks within the project, which would promote a safe active transportation network within the project and beyond.

The Municipality and Applicant said that Policy 4.5-14 of the MPS directs the Growth Centre of Port Williams to “maintain and improve its transportation network by providing a variety of safe transportation options, including measures to encourage walking, transit use, carpooling, and biking.” Under Policy 2.3.21 of the MPS, Council is said to be committed to constructing sidewalks with priority to areas along “roads with greater speed and/or traffic volumes” (Policy 2.3.21(e)), “documented safety concerns or pedestrian/car incidents” (Policy 2.3.21(f)), or service areas with “a higher residential density” (Policy 2.3.21(g)). Sections 4.5 and 2.3 of the MPS “encourage” Council to maintain and improve transit use and safe walking and biking.

[85] Steeple View Drive does not have sidewalks. Sidewalks were not part of the development for that neighbourhood. The Municipality provided documents showing an original development agreement from 2012 for the construction of the existing Steeple View Drive and Leaside Court communities. The record shows that amendments to that agreement were requested in 2013 and approved by Council. The holder of the development agreement, Brison Developments, requested a non-substantive amendment to remove the requirement to have sidewalks on one side of the street. It was considered a non-substantive amendment because the development agreement identified it as such. These are approved by Council, but not subject to a public hearing [Transcript, p. 281].

[86] At page 191 of the Staff Report recommending approval of the amendment, the analysis indicates that:

> Council, at the request of the Village of Port Williams, recently initiated a planning project to remove the Port Williams Secondary Plan strategy policy requirements for sidewalks on only roads in the RCDD’s on August 15, 2013. An advertisement notifying of the changes was published in the local newspaper, thus putting the changes into effect. Council no longer has any policy requiring sidewalks in Port Williams RCDD’s. Removal of the

> sidewalk clause from the development agreement would be consistent with a lack of policy requiring said clause.

[87] The Municipality pointed out that it was the Village's initiative to remove the requirement in the Secondary Plan for sidewalks in Regional Comprehensive Developments (R5 developments). The Village is the entity responsible for sidewalk maintenance in Port Williams. Without a requirement for sidewalks in the Secondary Plan, the Municipality says it was also reasonable not to insist on the construction of sidewalks from the development when there were no sidewalks to attach to from Steeple View and Leaside.

[88] Nevertheless, minutes from a meeting of the Village Commission show that a bid for sidewalk construction along Collins Road was recently accepted after the Village received a grant. There is potential for greater expansion. However, the Appellants indicate that, without sidewalks along the extension of Steeple View Drive to the Development, the pedestrian pathway to the community areas and central Port Williams will not be continuous.

[89] The pedestrian walkways from Steeple View Drive to Highway 358, Leaside Court, and the nearby public recreation areas consist of gravel trails. The Appellants' evidence, in testimony and photographs, shows that the walkways have sustained some damage, narrowing, loss of gravel, erosion and water infiltration. They point out that the trails are not lit, are difficult to navigate with strollers or mobility aids, and are subject to buildups of ice and wash outs in the winter months.

[90] Ms. Mosher explained that pedestrian pathways that are constructed under a development agreement are deeded from the developer to the Municipality. The Municipality accepted the trails that were constructed as part of the 2012 development

agreement. Those lands are leased to the Village, and the Village is responsible for ongoing maintenance of the trails. She testified that Port Williams Park, recreation and trail infrastructure was “significantly above average as compared to [other growth centres]”.

[91] Sidewalks are desirable in an area where pedestrian and non-vehicle mobility is encouraged. The MPS prioritizes active transportation. However, I agree that the MPS cannot be reasonably interpreted to require the installation of sidewalks in new developments in all cases, simply “for sidewalks’ sake”. The provisions about sidewalks appear in the general provisions of the MPS. The evaluation criteria for R5 development agreements in the SPS do not address sidewalks.

[92] Although the pedestrian network through the development into Port Williams is not yet perfectly continuous, in my view the intent of the MPS is carried out since the development agreement assures that the network of trails is continued into the new development to join it with existing neighbouring streets. Better lighting and resurfacing of paths are desirable for any community, but once the trails are turned over to the Municipality by the developer, their maintenance becomes an issue for the Municipality, or in this case, the Village. The Development Agreement calls for inclusion of pathways and open space. I am satisfied with the expert opinion supporting my own review that Council’s satisfaction with these requirements was among the reasonable conclusions they may have come to.

[93] Approval of this development agreement does not prevent the Municipality and Village from seeking additional funding and completing sidewalk projects or providing additional enhancements to the existing trail network. The Board finds that Council’s

decision reasonably carries out the intent of the MPS for considerations about transit access, sidewalks and road and pedestrian networks.

5.3.2 Drainage and Storm Water Infrastructure

[94] The Appellants stated concerns about the effects of stormwater runoff from the proposed development onto adjacent areas, the impact of global warming and severe weather on the drainage system.

[95] The general requirements for development agreements considering whether the development is premature because of “potential for creating flooding or serious drainage problems” (Policy 5.3.7(c)(vii)), and “pollution in the area, including soil erosion and siltation of watercourses.” (Policy 5.3.7(c)(ix))

[96] In addition to photos [Exhibit D-4 – Drainage Photos 1-4], the Appellants presented a video [Exhibit D-5] showing surface rainwater flowing down an under-construction property onto the street during heavy rain. It showed brown silty water flowing quickly down the street gutter and overflowing onto the street itself. Photo 2 showed a buildup of ice in the drain and onto the road from water coming from a partially cleared lot. Mr. MacPherson and Mr. Greene testified that neighbours on the north side of the street down-hill from the development experienced significant water on their property, requiring installation of a French drain. They asked that existing drainage problems be dealt with before further construction takes place.

[97] Mr. Carrigan confirmed the Municipality’s awareness of these issues. Upon hearing the concerns after the Public Information Meeting, Public Works staff investigated and concluded that a new catch basin at the bottom of Steeple View Drive was needed to address ice and water build-up near the school bus pick-up. He acknowledged that the

infrastructure work was incomplete – a curb corner and new asphalt were needed. He also acknowledged he was investigating a new issue with an owner at #12 Steeple View Drive where water was coming up through the lawn. The cause was uncertain, but Mr. Carrigan said most likely it was a water service connection issue and was not related to down-slope drainage as the flow was constant.

[98] The Municipality submitted several photographs of a new catch basin it had installed at the end of Steeple View Drive where it intersects with Collins Road, taken March 7th, 2024. Ms. Mosher indicated that she attended the site on that day because it had been raining up to 22mm that day, so she wanted to identify if the upgrades to the drainage system "had been successful" [Transcript, p. 275; photographs p. 31-24]. Bales of straw were installed by developers to slow water flow and catch silt, in addition to the silt fence.

[99] While I have reviewed all photos and videos showing rainwater overflowing the gutters and silt on the street, it was difficult for me to draw conclusions from these point-in-time images provided by the Appellants and the Municipality. The rain amounts were different each day. Despite discussion of Environment Canada weather data on those days, I did not have the reliable context to make any fact findings about when or what level of storm could cause "serious problems" with the existing system. However, I accept the Appellants' evidence that during certain intense rain events, Steeple View Drive experienced significant water and silt run-off from the bare lots where plant cover had been removed, resulting in overflow of rain and ice onto the street and pooling at the bottom of the hill.

[100] The proposal included design drawings and a stormwater management concept plan completed by Able Engineering, a local full-service engineering firm engaged by Halyard [Exhibit D-2 p. 100-103]. The report included calculated comparisons between the existing subbasin capacity and potential runoff with the planned design values for various storm intensities. The Staff Report explained the preliminary design had been completed to ensure the stormwater runoff pre-development and post-development would be generally equal and within the allowable limits as determined by Nova Scotia Environment and Climate Change. Ms. Mosher explained that this assessment comes from municipal engineers and the consultants' reports.

[101] Mr. Carrigan was the only expert qualified to provide expert opinion evidence to the Board on drainage and stormwater systems, and other municipal engineering issues. While he had not previously reviewed the stormwater concept plan for this development in detail, he was able to answer the Board's questions on what the proposal showed, and how the existing and planned stormwater systems were designed and expected to work together. His testimony was forthright and helpful.

[102] He explained that Steeple View Drive will have two stormwater management systems, the lower, existing system using Steeple View Drive, and the upper system for the new development. The current system uses shallow drainage gutters along the street, which are designed to allow some overflow onto the streets during more significant rain events. The street itself is part of "the system". Without stormwater measures the "existing condition" plan indicates some flow direct toward properties on the north side of at the end of Steeple View Drive and toward the road. The new system has planned features to divert rainwater into stormwater management ponds,

which slow the flow of groundwater, and direct other flows generally more westward so they do not add to flows on Steeple View Drive. The diagrams provided by Mr. Carrigan and by Able Construction showing the flow directions support his explanation.

[103] Regarding staff's findings on policies 5.3.7(c)(vii) and (ix), the Staff Report advised that:

> The applicant will be required to provide a drainage plan at the time of subdivision that incorporates low impact approaches to stormwater management.
>
> […]
>
> Staff are satisfied that the proposal will not generate any pollution. The Property Owner will be required to follow provincial requirements related to erosion and siltation.
>
> [Exhibit D-2 p. 344]

[104] Furthermore, Section 2.10 of the Development Agreement requires that a drainage plan be submitted and professionally vetted prior to beginning construction. The subdivision approvals process occurs after a development agreement is finalized. This stage has more rigid rules and engineering requirements that must be met before permits are granted. Construction given the green light under a development agreement is conditional on all of the agreement's conditions being met, including future permit approvals. As held in *Brison Developments*, without contrary evidence and, I would add, as long as it is reasonable in the circumstances, Council (and the Board) are entitled to assume that the appropriate regulatory authorities will hold the developer to those standards at that stage of the process.

[105] In my role as adjudicator, I cannot direct the Municipality to continue to work with residents of Steeple View Drive to address their existing concerns with overland stormwater and construction runoff, or to complete remediation projects faster or to a

different quality. However, I trust that this public process has sufficiently illuminated residents' concerns.

[106] The Board finds that at this stage of the development process, the reports provided by the Applicants in support of their application, which were prepared by qualified engineers and accepted by the Municipality and Village staff, establish a reasonable prospect that the development would satisfy mandatory controls for stormwater management and soil erosion and siltation in the next stages of the development process. The Applicants will have to satisfy all the requirements before obtaining permits. Council had enough information on which to base their consideration of these policies. Accordingly, the Board finds that Council's decision, that the project is not premature or inappropriate based on any of the general development agreement conditions forming the basis for this appeal, was reasonable.

5.3.3 Ground Water Study

[107] Policy 4.5.24(j) of the Secondary Plan includes direction for developers to prepare a certified groundwater study for proposals located in Wellfield Zone A and B. Mr. Ewer and Ms. Mosher's testimony clarified that the property is located in Wellfield B. The staff report noted this direction in its advice to Council. As indicated earlier, the Staff Report discusses the general criteria to be considered for Comprehensive Neighbourhood Developments in Port Williams, incorporated into the MPS as part of the Secondary Plan, policy 4.5.24. The report draws attention to Policy 4.5.24(j) indicating that a groundwater study was "not requested."

[108] As clarified by Ms. Mosher, the purpose of a groundwater study is to assess how extracting groundwater will impact surrounding wells, as well as the quantity and

quality of the groundwater being extracted. She advised staff did not require the Applicant to submit a formal survey in this case, primarily because the development will utilize municipal water and sewer. The Staff Report to Council indicates that the multi-unit building would not utilize “abnormal amounts” of water and is not expected to utilize large oil tanks which traditionally were a consideration for potential pollution in wellfield zones.

[109] The interplay and history of the MPS and Secondary Plan were reviewed earlier. The importance of secondary plans is highlighted by MPS Policy 4.02 indicating that “Council shall…give precedence to Secondary Plan policies in the event of a conflict between the Secondary Plan and the policies of the remainder of this Strategy.” A strict reading of this policy against the Secondary Plan direction to “prepare a certified groundwater study” might point to a rigid requirement without scope for discretion.

[110] The Secondary Plan policies have not been updated as recently as the MPS and must be reviewed within its overall context. Several provisions of the Secondary Plan provide for groundwater studies as a matter of routine. The MPS requires only that Council consider the possible wellfield effects of developments (MPS Policies 5.3.7(c)(viii)), and allows for staff to request studies, at their discretion, to determine if that criteria for entering a development agreement have been met (Policy 5.3.9). . The Municipality notes that the current general enabling criteria for R5 development agreements in 3.1.13 do not mention groundwater studies at all.

[111] The Court of Appeal directs the Board not to engage in an overly legalistic review and application of the terms of a specific provision. The purpose of such a provision is to manage risks to wellfields. I do not find a true conflict in the intent of Secondary Plan policy 4.4.24(j) and MPS Policy 5.3.7, or its application. Looking at the

provision pragmatically, I cannot find that Council's intended outcome was to insist that a developer undertake a certified groundwater study in absolutely every circumstance, even if wasteful or unnecessary to do so. As per the Board's recent decision in *Cornwallis Farms*, while Council cannot simply ignore a policy, it does have sufficient discretion to decide the extent of its application. In other circumstances, depending on the risk assessment, Council may well insist that a groundwater study be completed, even when a development will rely on municipal services. In this case, staff's recommendation appears reasonable and the explanation of their reasoning was available to Council. I have no contrary evidence and nothing to suggest that Ms. Mosher's explanation was simply "her own opinion". Rather, she based her advice on the recommendation of Municipal Engineers, past practice and review of the MPS as a whole, including other secondary plans.

5.3.4 Compatibility

[112] Policy 5.3.7(c) of the MPS requires that before approving a development agreement Council is to be "satisfied" that the proposal is not "premature" or "inappropriate" because the land use is not compatible with the surrounding land uses (Policy 5.3.7(c)(ii)). All the Appellants, in their respective Notices of Appeal, referred to Policy 5.3.7(c)(xi) but in their testimony and in their submissions stated in general that the proposal was not compatible with the surrounding land uses.

[113] The Appellants said that the proposal would have negative impacts on the nearby residences because of traffic concerns and having an up-to 40-unit multi-story building at the top of the highest point in the area. They also referred to Policy 3.1.10(c) which states that, when approving development agreements for high-density residential

development and new mini-home parks or expanding existing parks, Council “shall be satisfied” that design, scale and location of buildings “is sensitive to the character of and provides an appropriate transition to the surrounding areas.” The Appellants said that the proposal does not have an appropriate transition from the existing, low-density single-family residences to a “high-density” development. The Municipality pointed out that section 3.1.10(c) has been recently amended, though the former language would have been applicable to this proposal at the relevant time. I reviewed the intent and impact of the former provision. As already established, the Board accepts that an apartment building is not necessarily a “high density” development if its units per acre capacity is lower than what is permitted within the zones most restrictive on density such as the R1 zone.

[114] The Staff Report did not refer to Policy 3.1.10 as a policy it considered for this proposal. Considering the number of units and size of the development, I did not conclude that there was an open question of transition between high-density and low-density neighbourhoods. Supported by the findings in *Cornwallis Farms,* I accept the Municipality’s argument that, in this context, that policy was not applicable.

[115] The report concluded that the proposal was compatible under Policy 5.3.7(c)(ii) and Policy 5.3.7(c)(xi) and complemented existing and planned development within an adjacent town or village, consistent with Policy 3.13(m). About Policy 3.13(m), the report wrote:

> The proposal is consistent with the development in the surrounding area. The lands to the south of the subject property, comprising Leaside Court and Steeple View Drive, were also the subject of a comprehensive development agreement. As a result, there is a mix of housing types including the development of or permission to develop a range of housing types including multi-unit dwellings, townhomes, as well as one and two-unit dwellings.

> The proposed development provides appropriate linkages to existing development by extending Steeple View Drive, to connect the proposed development to existing development.
>
> [Exhibit D-2 p. 457]

[116] The Municipality said that the proposed development is a good fit for this location. It would introduce additional housing of different configurations "within an area that has high demand for housing within the Municipality." [Exhibit D-2 p. 461]. The Appellants acknowledged the need for housing options and expansion in Port Williams, though they advocated for situating multi-unit or "higher density" buildings closer to the Village core.

[117] While The Collins will be situated at a high point on Steeple View Drive, there is no evidence the building will interfere with existing streetscapes. The proposed one, two-unit and group dwellings surrounding The Collins would be of similar scale and site density to existing development on Steeple View, Leaside, and Collins Road. I accept that there are not currently any similar large multi-unit buildings in the surrounding area. It may be the first in Port Williams. The Appellants' submissions limit "the character of the neighbourhood" to single-family homes. However, I find that the connecting neighbourhoods include a housing mix including 2 to 6-unit dwellings on Leaside Court and neighbouring streets. Further, the existing 2012 development agreement and planning rules for the Growth Centre allow for the eventual construction of multi-unit dwellings in the surrounding areas. While it would be too remote to compare a planned development to all the "possible" options for future developments when reviewing compatibility, an existing final development agreement with a multi-unit residential component supports the Municipality's position that additional developments of that type in the area are intentional and probable.

[118] The Board has already determined that Council's decision reasonably carries out the intent of the MPS as it relates to concerns about traffic hazards due to road or pedestrian network inadequacy, which are also considerations under the general development agreement criteria. The Board finds that compatibility issues about the size and scale of the development have been appropriately addressed in the development agreement controls.

[119] The Board finds that Council's decision to approve the development agreement is not inconsistent with MPS policies on the issue of complementary and compatible developments. The evidence satisfies me that the development meets the policy requirements in other sub-policies under 3.1.13 and 5.3.7, which also address location, character, and cohesion with existing development. These include encouraging a mix of housing options (3.1.13(b)), setting minimum density requirements (3.1.13(c)), and encouraging efficient uses of vacant parcels and public infrastructure (3.1.13(e); and (f)). Balancing these with the specific direction on compatibility leads me to conclude that Council's decision reasonably carries out the intent of this suite of policies.

5.4 Other

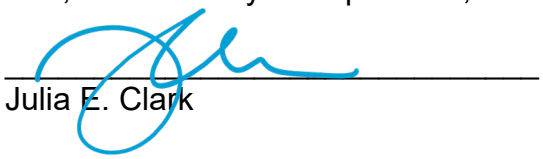
[120] The Board considered all the submissions and the issues raised. Given my approach in determining this appeal, this decision does not include a complete catalogue, or dispose of every point raised by every party. To the extent the decision does not explicitly deal with all aspects of an argument or evidence raised by the parties, it can be assumed the Board did not agree, or the point or argument carried insufficient weight to impact the outcome.

6.0 CONCLUSION

[121] The Appellants raised reasonable concerns about the day-to-day impacts of the planned proposal on their street and neighbourhood. Nevertheless, while the Appellants argue for more community influence and control over development and local services in Port Wiliams, that is beyond the scope of this appeal, where the Board's authority is limited to the boundaries of the legislation. I find the Appellants have not established that Council's decision does not reasonably carry out the intent of the MPS. The appeal is dismissed.

[122] An Order will be issued accordingly.

DATED at Halifax, Nova Scotia, this 27th day of September, 2024.



Julia E. Clark