

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF APPEALS by **TREVOR CLONEY** and **LISA FRYE** from a decision of the North West Community Council to approve a development agreement for a 374-unit development on land at Windgate Drive, Beaver Bank, Nova Scotia, identified as PIDs 41043597, 40010514, 41398694, 41401159

BEFORE: Stephen T. McGrath, LL.B., Chair

APPELLANTS: **TREVOR CLONEY**

LISA FRYE

APPLICANT: **MARQUE INVESTMENTS**
Robert G. Grant, Q.C.

RESPONDENT: **HALIFAX REGIONAL MUNICIPALITY**
E. Roxanne MacLaurin, Counsel
Kelsey Nearing, Counsel

INTERVENORS: **SHELDON BENOIT**

WILLIAM BURDEN

SUE ROBB

RYAN THOMAS

JANICE THOMAS

HEARING DATES: April 11 – 13, 2022

FINAL SUBMISSIONS: April 13, 2022

DECISION DATE: **June 7, 2022**

DECISION: **The appeals are dismissed.**

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1.0 INTRODUCTION

[1] On January 17, 2022, the North West Community Council (Community Council) approved a development agreement to allow Marque Investments Ltd. (Marque) to create an open space design development residential subdivision on land along the north side of Windgate Drive in Beaver Bank, Nova Scotia. The location of the proposed new subdivision is between two existing residential subdivisions. The proposal would extend streets in the existing subdivisions to connect the new subdivision to those neighbourhoods.

[2] Trevor Cloney and Lisa Frye filed separate appeals with the Board from the Community Council's decision to approve the development agreement. Mr. Cloney and Ms. Frye both live on Elise Victoria Drive, in the Capilano Country Estates subdivision, which is one of the existing residential subdivisions next to the proposed development.

[3] Following the publishing and delivery of the Notice of Public Hearing for these appeals, other neighbourhood residents, Sheldon Benoit, William Burden, Sue Robb, Ryan Thomas and Janice Thomas, applied for and were granted leave to intervene. As the Appellants and intervenors share a common interest in these appeals, they are, for convenience, referred to collectively as the "Appellants" in this decision.

[4] The plan for the road network for the proposed new subdivision would result in an extension of Elise Victoria Drive, a municipally owned street that currently ends in a cul-de-sac at the boundary of the proposed development site. The Appellants note that the road network for the proposed development would allow drivers travelling between Fall River and the Beaver Bank Road to bypass Windgate Drive, the main through-road in the area, and instead travel through the residential subdivisions on the north side of Windgate Drive.

[5] The Appellants believe known problems with the Windgate Drive approach to the Beaver Bank Road will motivate drivers to shortcut through these subdivisions. They are particularly concerned about increased traffic and speeding in these residential neighbourhoods.

[6] The Appellants say they do not oppose the proposed subdivision. However, they do not believe the subdivisions should be connected through an extension of Elise Victoria Drive. They submit there are other streets and road reserves the developer could use for this purpose and say that, of all the possible choices, a connection at Elise Victoria Drive would have the most negative traffic impacts.

[7] The Appellants submit that, under the Halifax Regional Municipal Planning Strategy, the Community Council had to place controls on the proposed development to reduce conflict with adjacent or nearby land uses from traffic generation, access to and egress from the site, and parking. They say that by allowing the developer to connect the subdivisions in a way that results in more negative traffic impacts than other available options, the Community Council's decision did not reasonably carry out the intent of HRM's Municipal Planning Strategy.

[8] The Board finds it is likely that some motorists will avail themselves of the new road network created by the proposed development, but based on the evidence presented, this is not likely to be significant. The Board also finds there are controls on the development to limit traffic impacts. Mechanisms are also available through the approved development agreement and HRM's Subdivision By-law to require that, if necessary, the developer undertake further measures to control traffic, both within the proposed development site and in neighbouring areas. These may include traffic calming, signage, the creation of turning lanes and other measures.

[9] More fundamentally, the Board concludes that the policies in the Municipal Planning Strategy at issue in these appeals do not direct the Community Council to make a specific decision or impose specific controls to mitigate the impacts of a proposed development. The policies set out factors that the Community Council must consider in making its decision but leave the assessment and balancing of these factors to the Community Council's judgment. In such cases, the Board must defer to the choices made by the elected officials who are the primary authority for planning in the municipality.

[10] The appeals are dismissed.

2.0 ISSUE

[11] In this case, the Board must decide whether the Community Council's decision to approve Marque's development agreement application does not reasonably carry out the intent of HRM's Municipal Planning Strategy.

3.0 BACKGROUND

3.1 Board Jurisdiction

[12] Municipalities in Nova Scotia, through the adoption of municipal planning strategies and land-use by-laws, are the primary authorities for planning within their boundaries. In certain circumstances, municipal planning decisions may be appealed to the Board. However, planning decisions made by municipal councils are entitled to a degree of deference from the Board. The Board may only allow an appeal from a municipal council decision if the Board finds the decision does not reasonably carry out the intent of the municipality's planning strategy.

[13] In this case, the Appellants are appealing a Community Council decision to approve a development agreement. Under s. 31(2) of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39 (*HRM Charter*), and Administrative Order Number 48, the

Community Council Administrative Order, s. 3A(1)(a), the Community Council may approve a development agreement applicable to its community. In doing so, the Community Council stands in the place of HRM Council, and Part VIII of the *HRM Charter*, which deals with planning and development, applies to its decisions.

[14] The right to appeal a Community Council decision is set out in s. 265(1)(b) of the *HRM Charter*:

265 (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;

...

[15] Section 267 of the *HRM Charter* prescribes the Board's remedial powers and restrictions on the exercise of these powers:

267 (1) The Board may

(a) confirm the decision appealed from;

(b) allow the appeal by reversing the decision of the Council to amend the land-use by-law or to approve or amend a development agreement;

(c) allow the appeal and order the Council to amend the land-use by-law in the manner prescribed by the Board or order the Council to approve the development agreement, approve the development agreement with the changes required by the Board or amend the development agreement in the manner prescribed by the Board;

...

(2) The Board may not allow an appeal unless it determines that the decision of the Council or the development officer, as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law.

[16] 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*, 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. ...

[17] In considering the intent of a municipal planning strategy, the Board applies the principles of statutory interpretation 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.

3.2 Planning Application

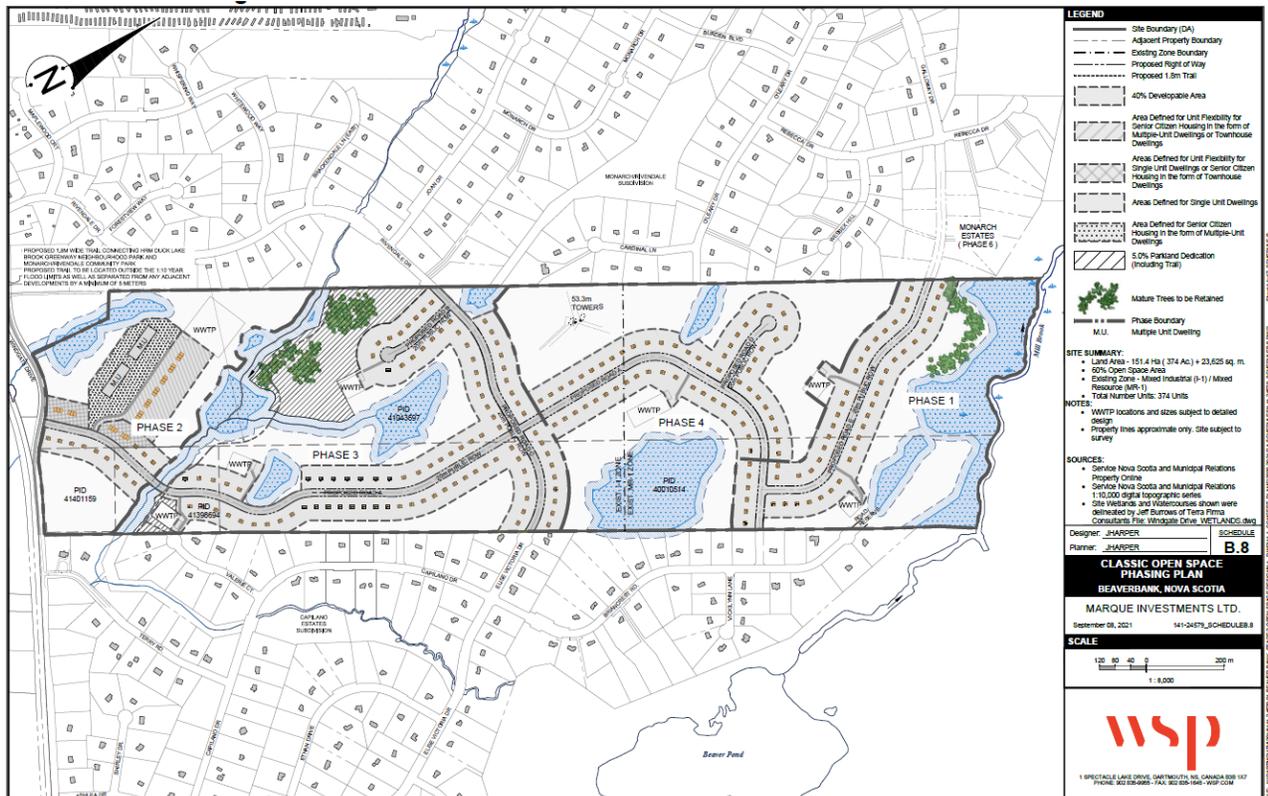
3.2.1 The Proposed Development

[18] This appeal is from the Community Council's approval of a development agreement with Marque for a 374-unit classic open space design development subdivision on approximately 381 acres of land along Windgate Drive in Beaver Bank, Nova Scotia. This land is currently undeveloped and consists of several parcels (PIDS 41043597, 40010514, 41398694 and 41401159) sitting between the existing Monarch-Rivendale and Capilano Country Estates subdivisions. Marque named the proposed development Windgate Village in the materials it filed with HRM, and the Board uses that name to refer to the proposed development in this decision.

[19] Windgate Village's key features include:

- 374 residential units consisting of:
 - a minimum of 201 single unit dwellings
 - a maximum of 173 senior citizen housing units including a maximum of:
 - 3 multiple unit dwellings
 - 45 townhouse dwelling units
- 60% of the subject site is retained as common open space
- 5% parkland dedication (including an expansion of the Monarch-Rivendale Park)
- a trail connecting Monarch-Rivendale Park to Duck Lake Brook Greenway Park at the end of Valerie Court
- new public roads connecting to Windgate Drive, Rivendale Drive, Elise Victoria Drive, Galloway Drive and Briancrest Road.

[20] The phasing plan attached to the development agreement approved by the Community Council shows the design for Windgate Village and is reproduced below:



[21] There are two stages in HRM's consideration of open space design development proposals. Stage 1 involves site analysis and a preliminary site design process to identify the open space areas to be preserved and potential areas for development. Stage 2 is the conceptual design stage. At this stage, the locations of proposed roads, private shared driveways, building sites and other physical design features of the development are determined.

[22] Marque started its stage 1 application in late 2013 and the application was considered complete in March 2014. HRM staff reviewed the stage 1 application, provided the applicant with comments, highlighted relevant planning policies and outlined the information the applicant would need to proceed with a stage 2 application.

[23] Marque submitted a stage 2 application in March 2015. At that time, the proposed development included 265 residential units consisting of a mix of single detached, semi-detached, townhouse and multi-unit dwellings. Marque also proposed commercial uses on about 25 acres of land near Windgate Drive. The proposal included public community facilities consisting of parks, a community amphitheater, a soccer field, and a walking trail.

[24] As is the nature of development agreements, the process between the developer and HRM staff was iterative. HRM staff reviewed information about the proposed development from Marque and provided comments to the developer. As time went on, Marque proposed various changes to the design of the development based on its needs, new information or feedback from HRM staff. As changes were made, HRM staff would review and comment on the new design and these comments would often feed into the next changes in the proposal.

3.2.2 Planning Context

3.2.2.1 Designations and Zoning

[25] When Marque's stage 1 application for Windgate Village was completed, development in HRM was subject to the municipality's 2006 Regional Municipal Planning Strategy (2006 Plan). On June 25, 2014, HRM Council passed a new Regional Municipal Planning Strategy (2014 Plan).

[26] Policy G-18 in the 2014 Plan contemplated that the policies under previous plans would apply to development agreement applications received before HRM's first notice of its intention to adopt the new regional plan:

G-18 Where any completed development agreement application was received by HRM prior to Council's first notification to adopt this Regional Plan, the application shall be considered in accordance with the Regional Plan policies in effect at the time the application was received.

[Exhibit C-3, p. 309]¹

[27] HRM decided that Marque's application was subject to Policy G-18, so it was considered under the policies in the 2006 Plan.

[28] The Windgate Village site is in the Rural Commuter Designation under the 2006 Plan. Policy S-6 in the 2006 Plan described the Rural Commuter Designation as follows:

S-6 HRM shall establish the Rural Commuter Designation, shown on the Generalized Future Land Use Map (Map 2), as the area within commuting distance of the Regional Centre that has been heavily influenced by low-density residential development. The primary intent of this designation shall be to protect the character of rural communities and conserve open space and natural resources by focussing growth within a series of centres, as shown on Settlement and Transportation Map (Map 1), and carefully controlling the amount and form of development between centres. The three types of centres within the designation are the Rural Commuter, Rural Commuter District and Rural Commuter Local centres.

[Exhibit C-3, p. 53]

[29] Under Policy IM-1 in the 2006 Plan, the Beaver Bank, Hammonds Plains and Upper Sackville Municipal Planning Strategy (Beaver Bank Plan) adopted by HRM in 1999 became a Secondary Planning Strategy under the 2006 Plan. In this decision, the Board refers to the 2006 Plan and the Beaver Bank Plan as HRM's Municipal Planning Strategy.

[30] Approximately 140 acres of land in the northern end of Windgate Village is in the Rural Resource Designation under the Beaver Bank Plan. The Rural Resource Designation is described in Policy P-48, and Policy P-49 identifies Council's intention to establish an MR-1 (Mixed Resource) Zone for this designation:

P-48 It shall be the intention of Council to establish the Rural Resource Designation as shown on the Generalized Future Land Use Maps (Map 1A, 1B, 1C, 1D, 1E). Within the designation, it shall be the intention of Council to recognize the area as a priority

¹ In many instances there are differences between the page number printed or showing on a page and the page number in the electronic .pdf file. When referring to page numbers in exhibits throughout this decision, the Board used the page numbers for the electronic .pdf file.

for resource development. The designation shall encourage and support resource development, resource based economic growth and recreation uses while supporting measures to protect the natural environment.

- P-49 Within the Rural Resource Designation, it shall be the intention of Council to establish a MR-1 (Mixed Resource) Zone which permits continued resource use, resource industries, recreation uses, and communication transmission stations, and reflects the intent of the designation in ensuring low density development by permitting development of single unit dwellings, mobile dwellings and business activities in association with residential uses on lots which have a minimum area of eighty thousand (80,000) square feet. Further, it shall be the intention of Council that separation distances from industrial development in a MR-1 (Mixed Resource) Zone to abutting R-1 (Single Unit Dwelling) or R-6 (Rural Residential) Zones be established, that a visual and physical buffer be provided within the required separation distance, and that access through R-1 (Single Unit Dwelling) Zone be restricted except where no other access can be granted by the Department of Transportation or Halifax Regional Municipality.

[Exhibit C-3, pp. 432-433]

[31] Lands in the southern part of the Windgate Village (approximately 240 acres) are in the Mixed Use A Designation under the Beaver Bank Plan. The Mixed Use A Designation is described in Policy P-7, and Policy P-8 identifies Council's intention to establish an MU-1 (Mixed Use 1) Zone within this designation; however, Policy P-28 also provides for an I-1 (Mixed Industrial) Zone:

- P-7 It shall be the intention of Council to establish the Mixed Use A and B Designations as shown on the Generalized Future Land Use Maps (Map 1A, 1B, 1C, 1D, 1E). Within these designations, it shall be the intention of Council to support the continuation of the existing semi-rural mixed use environment, characterized by low density residential development, community facilities and a mixture of light industrial, resource and small scale commercial uses, often located on residential lots. It shall further be the intention of Council to reflect certain community differences regarding future development within its policies for each designation.

- P-8 Within the Mixed Use A and B Designations, it shall be the intention of Council to establish a Mixed Use 1 Zone which permits single and two unit dwellings, open space uses, existing mobile dwellings, boarding and rooming houses and bed and breakfast establishments, the limited use of residential properties for business purposes, small scale commercial and resource related activities and most institutional uses. Controls on open storage and parking will be established to address compatibility concerns with surrounding development. Forestry uses and larger scale agricultural operations, with the exception of intensive agriculture operations, shall be permitted subject to separation distance requirements designed to promote compatibility with surrounding land uses.

...

- P-28 Notwithstanding the provisions of Policy P-8, it shall be the intention of Council to establish a I-1 (Mixed Industrial) Zone in the land use by-law which permits light industrial and service industries, resource uses, limited scale general commercial uses, and residential uses in association with industrial and resource related uses.

The zone shall establish controls on site design details such as outdoor storage and display, parking and loading areas. Any obnoxious operation which produces wastes which cannot be treated by an on-site sewage disposal system, or involves hazardous materials, shall not be permitted within the zone. This zone shall be applied to existing industrial uses. In considering amendments to the schedules of the land use by-law to permit new industrial uses in the Mixed Use A and B Designations, Council shall have regard to the following:

- (a) the potential for adversely affecting adjacent residential and community facility development by virtue of either the nature or scale of the proposed industrial operation;
- (b) that the use is not obnoxious and does not create a nuisance for adjacent residential or community facility development by virtue of noise, dust or smell;
- (c) the impact of the industrial use on traffic circulation and in particular sighting distances and entrance and exit to the site;
- (d) that the use can be serviced with an on-site sewage disposal system and does not involve the use of dangerous chemicals;
- (e) that the industrial operation shall not require access through a R-1 (Single Unit Dwelling) or R-2 (Two Unit Dwelling) Zone;
- (f) that no rezoning from a R-1 (Single Unit Dwelling) Zone or a R-6 (Rural Residential) Zone to a I-1 (Mixed Industrial) Zone shall be considered; and
- (g) the provisions of Policy P-137.

[Exhibit C-3, pp. 366-367; 381-382]

[32] Until recently, the zoning for the Windgate Village site was split between the MR-1 (Mixed Resource) Zone (in the area under the Rural Resource Designation) and the I-1 (Mixed Industrial) Zone (in the area under the Mixed Use A Designation). The Land-use By-law for Beaver Bank, Hammonds Plains and Upper Sackville (Beaver Bank Land-use By-law) allows the following uses in these zones:

PERMITTED USES	
Part 19: I-1 (Mixed Industrial) Zone	Part 21: MR-1 (Mixed Resource) Zone
<p style="text-align: center;"><u>Industrial Uses</u></p> <ul style="list-style-type: none"> • Any manufacturing, processing, assembly or warehousing operation which is not obnoxious and which is conducted and wholly contained within a building • Service industries • General contracting storage yards and services • Transport facilities and maintenance yards • Heavy machinery sales and service • Building materials outlets • Greenhouses • Existing asphalt plants • Trucking, landscaping, excavating and paving services • Communication transmission stations • Commercial and office uses accessory to permitted industrial uses • Cannabis production facilities <p style="text-align: center;"><u>Resource Uses</u></p> <ul style="list-style-type: none"> • Agriculture uses • Forestry uses • Composting operations (see section 4.29) <p style="text-align: center;"><u>General Commercial Uses</u></p> <ul style="list-style-type: none"> • Any commercial use permitted under Section 16.1 <p style="text-align: center;"><u>Residential Uses</u></p> <ul style="list-style-type: none"> • Single unit dwellings and mobile dwellings in association with permitted industrial and resource uses 	<ul style="list-style-type: none"> • Agriculture uses • Intensive agriculture uses • Kennels • Forestry uses • Fishing uses • Communications transmission stations • Single unit dwellings • Mobile dwellings • Business uses in conjunction with permitted dwellings • Open space uses • Hunting and fishing lodges • Recreation uses • Composting operations (see section 4.29) • Cannabis production

[Exhibit C-3, p. 597 and 901]

[33] The zoning of the Windgate Village site did not allow the senior citizen housing Marque proposed, but as mentioned above, the permitted zoning in the Mixed Use A Designation also allows for the MU-1 (Mixed Use 1) Zone. Permitted uses within this zone include senior citizens housing. As such, Marque’s planning application included a request to rezone approximately 48 acres of land near Windgate Drive from I-1 to MU-1.

3.2.2.2 Open Space Design Development

[34] The 2006 Plan recognized a tension between large scale residential development and maintaining the character of rural communities. Large scale residential development was discouraged in the Rural Commuter Designation but could be considered through a development agreement if it was an open space design. These developments conserve a connected system of open space and protect conservation areas such as riparian buffers, wetlands, vernal pools, natural corridors, slopes exceeding 30%, rock outcropping, archeological sites, floodplains, and natural resources. Building sites are generally in areas best suited for development with the rest of the site kept as common open space for active and passive recreation purposes as well as for the location of infrastructure needed to service the development. In the proposed development, 60% of the site must be common open space.

[35] The primary policies in the 2006 Plan for open space design developments are S-15 and S-16:

S-15 HRM shall permit the development of Open Space Design residential communities, as outlined in this Plan, within the Rural Commuter and Rural Resource designations and within the Harbour designation outside of the Urban Service Area, but not within the portions of the Beaver Bank and Hammonds Plains communities as identified in the Subdivision By-law under Policy S-25 and within the Rural Area Designation under the Eastern Passage/Cow Bay Plan Area. HRM will consider permitting the maximum density of such developments to one unit per hectare of gross site area. In considering approval of such development agreements, HRM shall consider the following:

- (a) where the development is to be serviced by groundwater and as determined through a hydrogeological assessment conducted by a qualified professional, that there is an adequate supply of ground water to service the development and that the proposed development will not adversely affect groundwater supply in adjacent developments;
- (b) that there is sufficient traffic capacity to service the development;
- (c) the types of land uses to be included in the development which may include a mix of residential, associated public or privately-owned community facilities, home-based offices, day cares, small-scale bed and breakfasts, forestry and agricultural uses;

- (d) whether soil conditions and other relevant criteria to support on-site sewage disposal systems can be met;
- (e) the lot frontages and yards required to minimize the extent of road development, to cluster building sites on the parcel and provide for appropriate fire safety separations;
- (f) that the building sites for the residential units, including all structures, driveways and private lawns, do not exceed approximately 20% of the lot area;
- (g) approximately 80% of the lot is retained as a non-disturbance area (no alteration of grades, except for the placement of a well or on-site sewage disposal system in the non-disturbance area shall be permitted and provision shall be made for the selective cutting of vegetation to maintain the health of the forest);
- (h) that the development is designed to retain the non-disturbance areas and to maintain connectivity with any open space on adjacent parcels;
- (i) connectivity of open space is given priority over road connections if the development can be sited on the parcel without jeopardizing safety standards;
- (j) trails and natural networks, as generally shown on Map 3 or a future Open Space Functional Plan, are delineated on site and preserved;
- (k) parks and natural corridors, as generally shown on Map 4 or a future Open Space Functional Plan, are delineated on site and preserved;
- (l) that the proposed roads and building sites do not significantly impact upon any primary conservation area, including riparian buffers, wetlands, 1 in 100 year floodplains, rock outcroppings, slopes in excess of 30%, agricultural soils and archaeological sites;
- (m) the proposed road and building sites do not encroach upon or are designed to retain features such as any significant habitat, scenic vistas, historic buildings, pastoral landscapes, military installations, mature forest, stone walls, and other design features that capture elements of rural character;
- (n) that the roads are designed to appropriate standards as per Policy T-2;
- (o) views of the open space elements are maximized throughout the development;
- (p) opportunities to orient development to maximize the capture of solar energy;
- (q) the proposed residential dwellings are a minimum of 800 metres away from any permanent extractive facility;
- (r) the proposed development will not significantly impact any natural resource use and that there is sufficient buffering between any existing resource use and the proposed development to mitigate future community concerns; and
- (s) consideration be given to any other matter relating to the impact of the development upon surrounding uses or upon the general community, as contained in Policy IM-15.

S-16 Further to Policy S-15, within the Rural Commuter, Rural Resource and Agricultural Designations, HRM shall permit an increase in density for Open Space Design Developments up to 1 unit per 4000 square metres, or greater in centres as may be provided for in secondary planning strategies, where approximately 60% or more of the site is retained in single ownership of an individual, land trust, condominium corporation or the Municipality. Notwithstanding Policy E-5, the parkland dedication shall be relaxed to a minimum of 5% for this type of development. In considering approval of such development agreements, HRM shall consider the following:

- (a) the criteria specified in Policy S-15, with the exception of items (f) and (g); and
- (b) that the common open space cannot be used for any other purpose than for passive recreation, forestry, agriculture or conservation-related use except for a portion of which may be used as a village common for active recreation or the location of community facilities designed to service the development.

[Exhibit C-3, pp. 61-62]

3.2.3 North West Planning Advisory Committee

[36] The North West Planning Advisory Committee considered Marque's planning application on January 6, 2016, November 1, 2017, and July 15, 2020. At each instance, the Planning Advisory Committee recommended approval of the application subject to further consideration of several matters, including some that related to traffic issues.

[37] After the first meeting, the committee asked that further consideration be given to having only public roads within Windgate Village. The committee also asked for consideration of the installation of traffic lights at the intersection of Beaver Bank Road and Windgate Drive with a contribution from the developer. The committee also requested further consideration of the installation of lights at this intersection, with a contribution from the developer, after its second meeting about the development.

[38] The third and final time the Planning Advisory Committee considered Marque's application, Deputy Mayor Blackburn tabled a petition signed by 99 area residents asking for an adjustment to remove the proposed connection to Elise Victoria Drive. Residents expressed concern that a connection to Elise Victoria Drive would "become a main artery for vehicles travelling from Beaver Bank Road and Fall River instead of the

quiet and peaceful dead-end street it currently is.” The Planning Advisory Committee recommended approval of the application with consideration given to several factors, including receiving an updated traffic study for the intersection at Beaver Bank Road and Windgate Drive, that traffic calming measures be put in place in areas of connectivity to surrounding subdivisions, and that there be no connection to Elise Victoria Drive.

3.2.4 Public Engagement

[39] In a report to the Community Council that planning staff prepared for Marque’s application (Staff Report), staff concluded that the community engagement process for the application was consistent with the intent of the HRM Community Engagement Strategy. Staff said the level of community engagement was consultation, achieved by supplying information and seeking comments through the HRM website, signage posted on the subject site, letters mailed to property owners within the notification area and two public information meetings held on Wednesday, November 18, 2015, and Monday, August 28, 2017. A mailout was also sent to area residents for feedback in May 2020.

[40] The public information meeting on November 18, 2015, was at the Beaver Bank Kinsac Community Centre and approximately 62 people attended. Traffic related concerns raised by some of those in attendance were primarily about the Beaver Bank Road and Windgate Drive intersection.

[41] The public information meeting on August 28, 2017, was also at the Beaver Bank Kinsac Community Centre. Approximately 40 people attended. As with the meeting in 2015, attendees again expressed concern about the intersection of Beaver Bank Road and Windgate Drive. They also raised concerns about increased traffic from this and other proposed developments in the area. Residents were also worried about the possibility of

drivers taking shortcuts through the neighbourhood, speeding and a lack of sidewalks in the area.

3.2.5 Staff Assessment of Traffic Related Issues

[42] The Staff Report recommended that the Community Council approve Marque's development agreement application. The Staff Report included a matrix with staff's analysis of the policies in HRM's Municipal Planning Strategy they considered to be most relevant in considering Marque's application. A copy of the analysis matrix from the Staff Report is attached as Schedule "A" to this decision.

[43] HRM planning staff explicitly noted, "[t]he proposal will potentially impact local residents and property owners" (Exhibit C-2, p. 475). Overall, HRM planning staff viewed the proposed development, with its mix of residential uses, as more in keeping with the surrounding residential subdivisions than the types of land uses allowed under the current I-1 and MR-1 zoning. As listed previously, these zones allow a wide range of commercial, industrial, and resource uses.

[44] HRM planning staff concluded that the road networks near the proposed development were adequate. They noted that traffic assessments completed for the application concluded that the proposed development would not significantly affect the performance of Windgate Drive and nearby intersections. Planning staff also noted that HRM Engineering and Traffic staff reviewed these assessments and the proposed road network for the new development and found them acceptable.

[45] Planning staff advised that the proposed development includes connections with neighbouring subdivisions and highlighted the fact that residents expressed concern about the proposed road network. However, staff said that the proposed street connections followed HRM's Municipal Design Guidelines and were acceptable. Staff also mentioned

that the proposed connections allowed for a looping of water pipes to make the water system more resilient and limit the number of impacted customers if there was a break. Planning staff noted that the design of new streets in the proposed development must follow the most recent engineering standards, which include requirements to mitigate any concerns about traffic volumes, travel speeds, and safety.

[46] The Staff Report discussed the intersection at Windgate Drive and Beaver Bank Road and described the public's concerns. Staff advised the Community Council that HRM Traffic Services reviewed this intersection both in 2007 and 2019 and considered whether traffic signals or other infrastructure upgrades were needed based on traffic volumes and movements, travel lanes, speeds, sightlines and visibility, and past collision data. Staff also referenced a study prepared for HRM in 2016 by Griffin Transportation Group Inc., which found that the volumes at the intersection did not warrant traffic signals. Griffin also concluded that the intersection was operating near expected safety performance based on Highway Safety Manual guidelines, although it identified some safety concerns.

[47] HRM planning staff also noted there is a rail line running diagonally through the intersection. Although this rail line has been inactive for about 15 years, staff said the current owner said it had plans for the rail line. Planning staff said the presence of the railway crossing infrastructure limits HRM's ability to install traffic lights or a modern roundabout to improve sightlines and queues approaching the intersection.

3.2.6 Community Council Decision

[48] As noted above, Marque's application required an amendment to the Beaver Bank Land-use By-law to allow for senior citizen housing in the southern end of Windgate Village near Windgate Drive. The requested rezoning was a prerequisite for the development agreement application.

[49] In these circumstances, the Community Council held a public hearing for both the rezoning request and the development agreement application on December 13, 2021. Following the public hearing, the Community Council approved the requested Land-use By-law amendment to rezone part of the site to the MU-1 Zone. The Community Council deferred its consideration of the development agreement application pending public notice of its decision to amend the Land-use By-law and the appeal period for that decision. When there was no appeal from the Community Council's decision to amend the Land-use By-law, the Community Council went ahead with its consideration of the development agreement application on January 17, 2022, and approved it at that time.

3.3 Appeal to the Board

[50] Mr. Cloney filed a Notice of Appeal with the Board on January 24, 2022 (M10429). Ms. Frye filed a Notice of Appeal with the Board on February 3, 2022 (M10444). The Notices of Appeal raise the same issue and, during a preliminary hearing telephone conference on February 14, 2022, it was decided that both appeals would be heard together. A timeline for the proceeding was also discussed and a Notice of Public Hearing and Hearing Order were issued on February 16, 2022.

[51] Following the timeline set out in the Hearing Order, Mr. Burden, Mr. Benoit, Mr. Thomas, Ms. Thomas and Ms. Robb asked to be added as intervenors in the proceeding. These requests were approved; however, the Board considered that the appellants and intervenors had the same interests in the proceeding. The Board asked them to consider naming a spokesperson for the purposes of making submissions to the Board and cross-examining witnesses put forward by Marque and HRM at the hearing. The Board was advised that Mr. Cloney would be their spokesperson.

[52] In advance of the hearing, the Appellants sought subpoenas for two HRM councillors on the Community Council. HRM and Marque opposed the issuance of subpoenas for these individuals.

[53] The Board held a preliminary hearing, by way of telephone conference, on April 1, 2022. At that time, the Board heard submissions on the subpoena issue from Mr. Cloney, on behalf of the Appellants, and from legal counsel for Marque and HRM.

[54] In a letter dated April 5, 2022, the Board denied the Appellants' request for the issuance of the subpoenas. For the reasons set out in that letter, the Board concluded that the evidence intended to be obtained from the proposed witnesses related to the processes used by the Community Council in reaching its decision and whether the information before the Community Council was incomplete, inaccurate or misleading. The Board found that the evidence intended to be solicited from the proposed witnesses was not relevant to the issue before the Board in these appeals: namely, whether the decision made by the Community Council does not reasonably carry out the intent of the Municipal Planning Strategy.

[55] At the appeal hearing, the Board heard testimony from both formal appellants, Mr. Cloney and Ms. Frye, and a few of the intervenors (Mr. Burden, Ms. Robb and Mr. Benoit). HRM called three witnesses at the hearing. Marque called two witnesses.

[56] HRM called Stephanie Salloum, who is employed as a Planner 3 by HRM and was the planner assigned to Marque's application. Ms. Salloum testified about the processing of Marque's application and HRM did not ask to qualify her as an expert witness in this proceeding.

[57] HRM also called Thea Langille, who is HRM's Principal Planner on its Rural Policy and Applications Team. Ms. Langille holds a Bachelor's Degree in Design and

Environmental Planning and a Diploma in Planning Technology. She is a full member of the Canadian Institute of Planners, the Atlantic Institute of Planners, and the Licensed Professional Planning Association of Nova Scotia.

[58] Ms. Langille's qualifications were not opposed by the Appellants, and she was qualified by the Board as an expert in land use planning, capable of giving expert evidence on land use planning matters, including the interpretation and application of HRM's Municipal Planning Strategy and the extent to which the January 17, 2022, decision of the North West Community Council was reasonably consistent with the intent of HRM's Municipal Planning Strategy. In advance of her testimony, Ms. Langille filed a report providing the Board with her opinions relating to these appeals.

[59] HRM also called Ashley Blissett. Ms. Blissett holds a Bachelor of Science degree in Civil Engineering and is a professional engineer in the province of Nova Scotia. She is currently a Program Manager for Development Engineering within HRM's Planning and Development Section.

[60] The Appellants did not oppose Ms. Blissett's qualifications, and she was qualified as an expert engineer capable of giving opinion evidence on subdivision design and traffic impacts related to development proposals, including the interpretation and application of traffic impact studies and statements, and the adequacy of the street network, access routes and access to and from development sites. Ms. Blissett filed a report providing the Board with her opinions relating to these appeals.

[61] Marque called Gregory O'Brien. Mr. O'Brien holds a Diploma in Engineering and a Bachelor of Engineering, Civil. He is a professional engineer in Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and is a member of the Canadian Institute of Transportation Engineers and the Transportation Association of Canada. He is

the Practice Manager Atlantic for WSP Canada Inc. (WSP) in the field of traffic engineering and transportation planning.

[62] Mr. O'Brien's qualifications were not opposed by the Appellants, and he was qualified by the Board as a traffic and transportation engineering specialist, capable of giving expert opinion evidence on conceptual and detailed traffic design, site access review and design, route location, traffic impact, traffic calming, safe transportation networks, compliance with Municipal Design Guidelines 2021 (HRM) and controls placed on developments to reduce conflict with nearby land uses by nearby traffic generation. Mr. O'Brien filed a report providing the Board with his opinions relating to these appeals.

[63] Marque also called Jessica Harper. Ms. Harper holds a Bachelor of Community Design (City Planning) and is a member of the Canadian Institute of Planners and the Licensed Professional Planners Association of Nova Scotia. She is a Project Manager – Planning with WSP.

[64] Ms. Harper's qualifications were not opposed by the Appellants and she was qualified by the Board as an expert witness in land use planning, capable of giving expert opinion evidence on land use planning matters, including the intent of the 2014 Plan, the 2006 Plan, the Beaver Bank Plan, the Beaver Bank Land-use By-law, and the extent to which Council's decision about the proposed development reasonably carries out the intent of the policies within the Municipal Planning Strategy. Ms. Harper filed a report providing the Board with her opinions relating to these appeals.

3.4 Site Visit

[65] At the conclusion of the hearing, the Board discussed the possibility of taking a view of the areas considered in the evidence before the Board. The parties agreed the Board should take a view and do so unaccompanied by the parties or counsel.

[66] The Board travelled to the area on April 27, 2022. The Board approached the area of the proposed subdivision by travelling north on the Beaver Bank Road. The Board arrived at the intersection of Beaver Bank Road and Windgate Drive at approximately 12:30 pm and turned right onto Windgate Drive.

[67] The Board continued along Windgate Drive, driving past the proposed development site. The Board continued along Windgate Drive to the intersection with Windsor Junction Road. The Board turned left towards Fall River.

[68] The Board continued driving along Windsor Junction Road until it reached its intersection with Taylor Drive. The Board turned left and entered Capilano Country Estates. The Board travelled along Taylor Drive, observing the residential character of the neighbourhood and the width and condition of the road and the gravel shoulders. The Board encountered a few speed tables (wide speed bumps) while travelling on Taylor Drive, including one next to Taylor Drive Park.

[69] At the end of Taylor Drive, the Board turned right onto Peter Thomas Drive and continued a short distance until it ended at Elise Victoria Drive. The Board turned left and travelled to the eastern end of Elise Victoria Drive where the Board saw the road ended with no cul-de-sac or turning circle.

[70] The Board turned around and headed west along Elise Victoria Drive. The Board encountered a few speed tables travelling from the eastern end of Elise Victoria Drive to where it intersected with Capilano Drive and Briancrest Road.

[71] The Board turned right onto Briancrest Road. The Board travelled to the end of Briancrest Road and saw the turning circle / cul-de-sac where it ended. The Board doubled back along Briancrest Road, turning right on Elise Victoria Drive.

[72] The Board observed the wide turning circle / cul-de-sac at this end of Elise Victoria Drive. The Board navigated the turning circle and headed back easterly on Elise Victoria Drive observing the straight road and slight downhill grade as it approached the intersection with Capilano Drive and Briancrest Road.

[73] The Board turned right onto Capilano Drive and travelled past the area of the road reserve. The Board continued on Capilano Drive until it came to Valerie Court. The Board turned right onto Valerie Court and saw the turning circle / cul-de-sac at the end of Valerie Court.

[74] The Board doubled back on Valerie Court, turning right onto Capilano Drive. The Board traversed a speed table on Capilano Drive after the intersection and was momentarily stopped because of what appeared to be a construction project for Halifax Water.

[75] The Board encountered other speed tables just before and just after turning right onto Ashlea Drive. The Board travelled to the end of Ashlea Drive and turned right on Windgate Drive, exiting Capilano Country Estates.

[76] The Board travelled along Windgate Drive to the intersection with Beaver Bank Road. The Board navigated the left-hand turn described in the written and oral evidence in the appeal and then left the area, heading south on Beaver Bank Road at approximately 1:03 pm.

4.0 ANALYSIS AND FINDINGS

4.1 Appellants' Position

[77] The Appellants do not oppose the proposed development; however, they do not believe Windgate Village should be connected to the Capilano Country Estates subdivision through Elise Victoria Drive. In their view, connecting the subdivisions in this

way does not carry out the intent of HRM's Municipal Planning Strategy. They say other connection points are available that would create fewer negative traffic impacts. Mr. Cloney said this quite directly at the hearing:

So in the end, my position is the development should proceed. It is needed. It should not, however, connect to Elise Victoria Drive, as that would be a direct contradiction with the intent of the 2006 Municipal Planning Strategy as it is represented by Policy IM-15.

[Transcript, p. 48]

[78] Mr. Cloney reiterated this position at the end of his closing submissions to the Board:

Finally, I will end with the fact that I am not against this development. However, I am against the connection at Elise Victoria Drive, and I truly believe that if any other connection was chosen, we would not be here today.

[Transcript, p. 642]

[79] The Appellants are concerned that the proposed new road network for Windgate Village, which connects the Monarch-Rivendale and Capilano Country Estates subdivisions, will create a new pathway through these subdivisions between Fall River and Beaver Bank Road. They said there is already an issue with people shortcutting through the Capilano Country Estates subdivision, at excessive speeds, between Fall River and Windgate Drive. They cite the recent installation of speed tables as a recognition by HRM of the speeding problem in the neighbourhood.

[80] In their view, notorious traffic problems on the Beaver Bank Road, especially at the intersection of Beaver Bank Road and Windgate Drive, will make the existing shortcutting problem worse. They submit the creation of a new possibility for travelling between Fall River and Beaver Bank Road will be attractive to drivers looking to avoid the troublesome intersection (or at least the Windgate Drive approach to the intersection). They suggest the new pathway would cause traffic to divert from Windgate Drive, which is classified as a major collector, onto the streets within the residential subdivisions.

[81] The Appellants further submit that, of all the available options for connecting Windgate Village to Capilano Country Estates, a connection through Elise Victoria Drive creates the most negative impacts. In particular, the Appellants note that Elise Victoria Drive runs through the middle of the subdivision and has the longest straight stretch in Capilano Country Estates. The also said Elise Victoria Drive is the only street drivers can use to travel through Capilano Country Estates uninterrupted by any stop signs. As a result, a connection to Windgate Village through Elise Victoria Drive would not discourage drivers travelling at higher speeds through the subdivision. Furthermore, they noted that the eastern end of Elise Victoria Drive, which currently is a dead end, has the potential of being extended through to Windsor Junction Road. They feel that such an extension, if it were to occur, would compound their concerns about a connection through Elise Victoria Drive. Finally, they said of all the options for connecting through to Windgate Village from Capilano Country Estates, the western end of Elise Victoria Drive was the only one marketed to residents as being a cul-de-sac when the developer of that subdivision sold those properties.

[82] The Appellants framed the appeals in this case around the Community Council's consideration of traffic related issues under Policy IM-15(b)(iii) of the 2006 Plan. As a result, the comments and analysis in this decision focus on traffic issues. The decision does not reference everything that occurred during the review and assessment of Marque's application by HRM planning staff, but it is important for background and context to note that the planning application was complex. Approximately seven years elapsed between Marque's stage 1 application and the Community Council's approval of its development agreement. The Appeal Record filed by HRM exceeds 700 pages and shows a multi-disciplinary review involving different departments within HRM and external agencies.

4.2 Traffic Related Policies in the Municipal Planning Strategy

[83] Several traffic related policies in the 2006 Plan were referenced in this appeal. These include S-15(b), S-15(n), IM-15(a)(iv) and IM-15(b)(iii). Policy P-137 in the Beaver Bank Plan was also referenced but is quite similar to Policy IM-15. The most relevant parts of Policies S-15 and IM-15 are reproduced below (the HRM planning staff policy analysis matrix in Schedule "A" includes the complete policies and Policy P-137):

S-15 HRM shall permit the development of Open Space Design residential communities, as outlined in this Plan, within the Rural Commuter and Rural Resource designations and within the Harbour designation outside of the Urban Service Area, but not within the portions of the Beaver Bank and Hammonds Plains communities as identified in the Subdivision By-law under Policy S-25 and within the Rural Area Designation under the Eastern Passage/Cow Bay Plan Area. HRM will consider permitting the maximum density of such developments to one unit per hectare of gross site area. In considering approval of such development agreements, HRM shall consider the following:

...

(b) that there is sufficient traffic capacity to service the development;

...

(n) that the roads are designed to appropriate standards as per Policy T-2;

[Exhibit C-3, pp. 61-62]

IM-15 In considering development agreements or amendments to land use by-laws, in addition to all other criteria as set out in various policies of this Plan, HRM shall consider the following:

(a) that the proposal is not premature or inappropriate by reason of:

...

(iv) the adequacy of road networks leading to or within the development;

...

(b) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:

...

(iii) traffic generation, access to and egress from the site, and parking; [Emphasis added.]

[Exhibit C-3, pp. 147-148]

[84] The Notices of Appeal specifically referenced Policy IM-15(b)(iii) as the policy not reasonably carried out by the Community Council's decision to approve the development agreement. In its analysis in this decision, the Board also considers the other traffic related policies noted above. The Board did this for a few reasons.

[85] First, guidance from the Court of Appeal, referenced by both HRM and Marque in this proceeding, directs the Board not to confine itself to looking at the words of a policy in isolation but to consider the scheme of the Municipal Planning Strategy and policies that impact on the decision. Second, the Board considered that these are related policies that are not entirely discrete. Specific traffic issues or concerns may be relevant to an analysis under more than one policy. Third, since Policy IM-15(b)(iii) focusses on controls to reduce conflict from "traffic generation, access to and egress from the site, and parking," which could involve a broad range of traffic related impacts, it is helpful to consider the traffic impacts canvassed in the other policies. This informs the analysis because these are potential impacts the Municipal Planning Strategy would be concerned about controlling under Policy IM-15(b)(iii).

4.3 "Shall Consider"

[86] Policy S-15 sets out several items that HRM "shall consider" when deciding whether it should approve a development agreement for an open space design residential community. Policy IM-15 deals with development agreements or amendments to land use by-laws more generally, but likewise sets out a list of things that Council "shall consider" when doing so.

[87] At the appeal hearing, Mr. Cloney commented on the use of these words:

"Shall consider", two words that should never be used together. You can tell a lawyer must have developed these policies.

Definition of "shall", expressing an instruction or command. The definition of "consider", to take something into account when making an assessment or judgment.

So for instance, if I tell somebody to -- they shall go to the store, it's easy. It can be measured, did they go or did they not go. But if I say you should consider going to the store, I cannot, in fact, measure it. I only have their consideration about whether or not they thought about going to the store.

So the words "shall" and "consider" are not helpful, so I will fall back onto the intent of IM-15. The intent of the policy is clear, to reduce conflict with nearby land uses by reason of traffic generation.

[Transcript, pp. 10-11]

[88] Mr. Cloney then suggested that to assess whether the Community Council met its obligation to reduce conflict, one must assess the alternatives that were available to the developer when designing the project:

As Einstein said, everything is relative. I must review the alternatives that both the developer and HRM should have considered and compare them to what was chosen to determine whether conflict has been reduced or increased.

If, relatively speaking, the option chosen increases conflict due to traffic generation, then I would surmise that a decision in this development agreement does not reasonably carry out the intent of the MPS as it relates to IM-15 of the 2006 Municipal Planning Strategy.

[Transcript, pp. 16-17]

[89] In his closing submissions on behalf of Marque, Mr. Grant submitted that Mr. Cloney's criticism of the use of the phrase "shall consider" highlighted a lack of comprehension of the responsibility of the Community Council in reviewing a project against the requirements of the Municipal Planning Strategy and a misunderstanding about the function of the Board in reviewing such decisions. He said Mr. Cloney's lack of comfort with the phrase "shall consider" showed a lack of appreciation of the degree of deference owed to Community Council decisions and the primacy of the Community Council in making value judgments when faced with conflicting choices under the Municipal Planning Strategy.

[90] In his submission, Mr. Grant said the language of the policies required the Community Council to make a subjective assessment:

And I would note that that policy begins with the phrase, "Council shall consider," and then following thereafter, there are dozens or so issues for Council to consider.

Those issues which Council are required to consider don't require a positive checkmark against each issue. Council -- it's up to Council to consider them, to weigh them, to form their own view as to the weight and importance of those various factors.

These factors have littered through them words such as "appropriateness" and "suitability," which as the Board well knows, is a signal to an area which is subjective, and which is for Council's determination.

[Transcript p. 668]

[91] In support of these submissions, Mr. Grant referred to the Board's decision in *Re Monaco Investments Partnership*, 2012 NSUARB 155. That case involved a developer's appeal from an HRM Council decision to refuse to approve a rezoning application. Although the issues were different, the policies considered in that case used similar language to the ones at issue in this appeal. One of the policies considered in that case, Policy IP-5(b), was explicitly compared to Policy IM-15(b) (at issue in this appeal) and the Board noted similarities between the two policies.

[92] The Board discussed the subjective nature of the policies and said:

[530] In the Board's view, Council's task in relation to DMPS Policy IP-5 can, in fact, be seen as having multiple layers of subjective judgments.

[531] Council is to "consider" the "adequacy" (a subjective term according to all of the evidence before the Board) of such aspects of a proposal as "bulk," "height," "scale," "compatibility," etc., (which are themselves likewise subjective).

[532] Further, Council is simply required to "consider" these items. In the view of the Board, the Court of Appeal's decisions make it clear that (while "consideration" of such aspects as bulk, height, etc., by Council is mandatory), the weight which Council chooses to give the particular criterion or criteria being considered is -- as long as Council's decision remains reasonably consistent with the MPS -- a matter for Council to determine.

[533] To complicate matters further, the planning considerations found in DMPS Policy IP-5 must not be evaluated in isolation, but again, following the repeated direction on this point given by the Court of Appeal -- in the context of the MPS as a whole. Thus, the concepts enumerated above must also be evaluated in the context of such planning considerations in the MPS as -- to take but one of a number of examples -- population densification (a theme of particular importance to Mr. Heseltine and Ms. Young).

[2012 NSUARB 155, pp. 117-118]

[93] In a similar vein, Ms. MacLaurin's closing submissions on behalf of HRM highlighted the words "adequacy" and "sufficiency" in the policies. She submitted that it was for Council to consider the adequacy of the road network and sufficiency of traffic

capacity given the facts of the case. She noted that the policies do not tell Council how to make these determinations. Council must exercise its judgment in these matters.

[94] In the Board's view, Policy IM-15(b)(iii) does not specifically direct the Community Council to reduce conflict with nearby land uses by reason of traffic generation. Nor does it direct the Community Council to assess every conceivable option for the development to go ahead and then limit the Community Council to approving only the option that, objectively, results in the least amount of conflict. If that were the case, then any development with any impact on traffic could never go ahead because the alternative of not developing, thereby reducing the impact to nothing, would always exist.

[95] The submissions from counsel for Marque and HRM are consistent with the guiding principles outlined by the Court of Appeal and followed by the Board. The traffic related policies bearing upon the Community Council's decision in this matter use discretionary language that requires the Community Council to consider several factors. Ultimately, the Community Council must exercise its judgment to decide whether its consideration of these factors, overall, warrants the approval or rejection of a proposed development. As was the case with the policies considered in *Heritage Trust*, the policies considered in these appeals:

...do not illuminate a linear path to a distinct outcome. They leave the Council, Municipality and developer with work to do. They contemplate Council will consider the overlapping planning perspectives, weigh a range of solutions, make value judgments, perhaps remit the negotiation to the Municipality for amendment and, if feasible, find an appropriate balance for a development agreement but, if not feasible after a reasonable application of the policies' criteria, refuse the development agreement. (para. 27)

4.4 Policy S-15(b) – Traffic Capacity

[96] Policy S-15(b) requires the Community Council to "consider" that there is "sufficient" traffic capacity to service the development. The Appeal Record shows that this

was an issue considered during the assessment of Marque's planning application and addressed in a variety of reports the developer filed with HRM as part of its application.

[97] Marque's stage 1 application included a traffic impact statement prepared by JRL Consulting in November 2013. This report provided a high-level overview of the proposed development, including estimates of site generated traffic and an initial review of existing traffic counts in the general area of the proposed development. For this report, JRL assumed that Windgate Village would include up to 350 single family homes and 50,000 square feet of light industrial development along Windgate Drive.

[98] JRL concluded that Windgate Village would generate a significant amount of new traffic in the Beaver Bank-Windsor Junction area and recommended a detailed traffic impact study to properly assess the potential traffic impacts of the proposed development. HRM staff told Marque that the traffic impact assessment was acceptable for the stage 1 application, but it would need to provide a full traffic impact study with its stage 2 submission.

[99] Marque's stage 2 submission in March 2015 included a traffic impact study recently completed by WSP. The traffic study considered nearby roads and intersections and assessed the impact of traffic from the proposed development. Overall, WSP concluded it did not expect site generated trips to have a significant impact on traffic performance in the study area.

[100] The study also considered whether signal lights were warranted at nearby Windgate Drive intersections with Windsor Junction Road and Beaver Bank Road. WSP concluded that traffic signals were not expected to be needed at either intersection because of the proposed development. However, WSP identified excessive delays and queue lengths at the Windgate Drive approach to Beaver Bank Road in the afternoon peak hour

(both with and without the proposed development). WSP recommended consideration of the installation of signal lights at the intersection to improve the unacceptably high delays seen at peak times.

[101] As time passed, and as Marque made changes to the proposed road network for Windgate Village and its connections to adjacent subdivisions, WSP prepared addenda to its 2015 traffic impact study. There were three in total dated, June 2017, July 2019 and June 2020. In each case WSP concluded that it did not expect the road network design changes to significantly affect the performance of nearby intersections from what was shown in its earlier study. Following a review of the third addendum in 2020, HRM planning staff told Marque the addendum was acceptable to HRM Development Engineering and Traffic Management.

[102] In their evidence, and through questions on cross-examination, the Appellants raised a concern about the age of the data supporting the WSP 2015 study and addenda. The 2015 study used data from machine counts in October 2013 and manual counts in March 2015. The reported vehicle counts were projected to future periods to account for growth over time.

[103] When asked about this issue by Mr. Cloney on cross-examination, Ms. Blissett said she believed the escalation factors used in the traffic study and addenda were in line with the current growth rate in the area. Mr. Cloney also asked Ms. Blissett about a statement in s. 4.2.1 of HRM's Municipal Design Guidelines about the use of up-to-date data:

Q. Okay. So in section 4.2.1, can you read that bottom paragraph that is there?

A. Thank you for scrolling up. Thanks:

The most recent traffic counts available should generally be used. It may also be possible to use counts or forecast data from other recent TIS reports conducted for development proposals in the same area. Usually, traffic counts

more than two years old should be updated. Where the available traffic count data is not representative of current conditions,...

Do you mind scrolling up, please?

Q. That's good, Ms. Blissett. I really just wanted that much. Thank you. My question is; in this case were the traffic counts more than two years old, with the Traffic Impact Study?

A. I'm sorry; you broke out there. I didn't hear the end of the question.

Q. So it says usually traffic counts more than two years old should be updated. My question is; in this case, the Windgate Village development and the applicable Traffic Impact Study, are they older than two years, the traffic count?

A. Well, we were -- a number of traffic -- well, a traffic statement specifically for -- a traffic study, sorry, specifically for this, a number of addendums were looked at over a number of years. The traffic in the area had not grown so much, so we were looking at, basically, similar data that was there. So, you know, the information we were looking at was felt acceptable at the time.

Q. So the Traffic Impact Study was, in fact, dated March 2015. The first addendum was June 2017, the second one was July 2019, and the third addendum was June 2020. My question is; where do the traffic counts come from, the March 2015, or are they updated in each successive addendum?

A. The traffic counts in the original TIS 2015, I believe were prepared by the traffic consultant for the Applicant. We did not require them to update the traffic counts for any further addendums.

Q. Perfect. And that means that you've -- you went against the recommendation within this - within the policy, within P-14, Exhibit F, section 4 ---

A. No.

Q. Is that true?

A. No, not necessarily because they did provide a growth rate in there. So the Guidelines do allow us to use traffic counts, and then as well as added growth rate.

Q. Okay. So what is the intent of, "Usually, traffic counts more than two years old should be updated"? What does that mean, in your expert opinion?

A. When we're looking at applications, depending on the location of them, depending on where their areas are, where the proposal is, sometimes we do require that the traffic counts are updated because there could have been a change in growth; there could have been a change in connection; there could have been a change that we need to have a study.

Q. Okay, thank you.

[Transcript, pp. 412-415]

[104] Ms. Blissett also noted during re-direct examination that traffic data since the onset of the COVID-19 pandemic would not be helpful.

[105] In the report she filed with the Board, Ms. Blissett also specifically considered the capacity of the streets within the Monarch-Rivendale and Capilano Country Estates subdivisions. She noted that local streets were designed to carry an average daily traffic volume of 3,000 vehicles. She further noted that Rivendale Drive, Galloway Drive and Elise Victoria Drive were all classified as “minor collector roads,” which can carry 12,000 vehicles per day. Ms. Blissett’s report went on to note that “the Monarch/Rivendale and Capilano subdivisions have traffic volumes well below the local street classification limit and experience less than 1,100 and 600 vehicles per day respectively.” At the hearing, Ms. Blissett said HRM obtained these counts in 2019.

[106] Ms. Blissett went on in her report to note:

The proposed subdivision is expecting to generate approximately 238 residential vehicle trips in the AM peak hour (58 trips inbound and 180 trips outbound) and 310 residential vehicle trips in the PM peak hour (195 trips inbound and 115 trips outbound). These trips are expected to use the various access points throughout the common road network between the Monarch/Rivendale, Capilano and proposed subdivisions to access Beaver Bank Road, Windgate Drive and Windsor Junction Road. The traffic generated by the proposed subdivision is not expected to exclusively use the road network through the Capilano subdivision. However, any trips generated from the proposed subdivision that may chose to use access connections at Elise Victoria Drive or Briancrest Drive, can be accommodated within the current capacity of the road network without the need to upgrade intersections. The various TIS and addendums provided in Tab 1 of the Appeal Record found that the proposed development would not have a significant impact on intersections in the study area.

[Exhibit C-6, p. 7]

[107] The evidence before the Board about the intersection of Beaver Bank Road and Windgate Drive did raise some concerns about its capacity, particularly for left-hand turns from Windgate Drive onto Beaver Bank Road. As discussed previously, the 2015 WSP traffic impact study concluded that the intersection was below the warrant threshold for signal lights but recommended these be considered to address some concerns with the functioning of the intersection.

[108] While it does not appear to have been directly related to the HRM staff review of Marque’s application, HRM engaged Griffin Transportation Group Inc. to review the

operation and safety of the intersection of Beaver Bank Road and Windgate Drive in 2016. The review considered the safety of the intersection, intersection approach speeds, intersection traffic operations and traffic signal warrants. Griffin's final report is dated November 2016.

[109] The safety assessment was based on five years of collision data. Griffin analyzed the data and calculated a five-year collision rate of 0.55 collisions per million vehicles entering the intersection and an annual collision rate of 4.2 collisions per year, which was near the expected frequency. Overall, Griffin concluded that the intersection appeared to have operated with an expected level of safety performance over the study period. However, Griffin observed that 81% of the collisions involved vehicles turning left from Windgate Drive.

[110] To assess intersection approach speeds, Griffin collected data using a hand-held radar unit at each of the three approaches. The 85th percentile operating speed for traffic on Beaver Bank Road was observed at 14 or 15 km/h higher than the posted 50 km/h limit. For the Windgate Drive approach, it was about 5 km/h lower than the posted 70 km/h limit. Griffin concluded that the higher speeds on Beaver Bank Road increased the risk associated with this intersection.

[111] Griffin considered historical data about traffic operations as well as data it collected during the study and data collected by HRM while the study was in progress. Comparing the data sets, Griffin observed that the morning peak data was similar, but the afternoon peak data was notably higher in the data it collected. To be conservative, Griffin used its own data in its analysis. The only issue with operations noted by Griffin was that the capacity of the intersection was exceeded for the left-hand turn from Windgate Drive during the afternoon peak, resulting in delays and queueing.

[112] There was a notable difference in Griffin's analysis and the earlier WSP study. The analysis in the Griffin safety review suggested the then current state of operation of the intersection was closer to the 100-point warrant threshold than in the 2015 WSP study. In response to questions from the Board at the hearing, Mr. O'Brien acknowledged this difference but did not feel it was significant for this intersection as both assessments projected an upcoming need for traffic signals. He said the Griffin study suggested the intersection was possibly approaching the threshold sooner than previously thought. Mr. O'Brien also agreed that the proposed development will add warrant points to the analysis but said this would not all be on day one. Traffic would increase over time as development continued.

[113] On cross-examination, Ms. Langille accepted there were some traffic concerns about Beaver Bank Road and its intersection with Windgate Drive. She noted that HRM was watching these issues:

Q. Would you agree that Beaver Bank Road has a traffic problem?

A. What I can say is that Beaver Bank Road has been identified as a street that does have some challenges, that's why the Beaver Bank Road itself has been placed within this growth control. And I do know that other departments of HRM are continuing to look at that, and it is something that is considered with all of our applications in and around the area. There are portions of the Beaver Bank Road that are able to proceed with development, and then there are other areas outside of it that have special conditions applied.

Q. And would you also -- is it your understanding that there's a traffic issue with respect to the Beaver Bank and Windgate Drive intersection?

A. I do know there's a very long history with respect to the Beaver Bank-Windsor Junction crossroad. I do know that separate of this particular planning application, there are motions of Council to continue to study and review that particular intersection and look at potential solutions. My understanding is that there's a court matter associated with that at the moment. And any time we do have planning applications, we do ask that this intersection is -- consideration is given to it, and that is something that is reviewed by our development engineers when they're looking at development proposals in and around this area. Yes, I am aware that there's some traffic concerns. Also aware that there's motions of Council that are asking staff to continue to explore solutions.

[Transcript, pp. 336-337]

[114] Although Ms. Langille referenced the Beaver Bank-Windsor Junction crossroad in her last response, from the question and the context of her response, it is clear to the Board that she was talking about the Beaver Bank Road and Windgate Drive intersection.

[115] Ms. Blissett's testimony in response to questions from Mr. Cloney was similar:

So we have an existing subdivision -- or, sorry; an existing intersection at Beaver Bank and Windgate Drive. Concerns have come up from the public and as well as from Council about how that intersection operates. HRM has studied the intersection and it's -- you know, currently traffic signals are not warranted.

We understand that that intersection, you know, could -- you know, when it gets upgraded, there's probably some realignment that needs to take place. There certainly are some challenges with property in that area, private property as well as the CN track that are limiting you know, work to take place. But HRM is monitoring that intersection, and we're monitoring that intersection as new developments are being proposed, and we're also monitoring that intersection, and, you know, looking forward to the Aerotech connector, which, you know, those traffic studies have indicated that some of -- will alleviate some of the pressure on the Beaver Bank and Windgate and Windsor Junction Fall River Roads.

So that intersection, HRM is monitoring, and based on the information that we have from other developments, it's not on one developer to upgrade. And sometimes in these complex areas, HRM chooses to take the monitoring and the, you know, future upgrades of those intersections on themselves. And that's what I understand is taking place here, that HRM continues to monitor this intersection. We have some proposed suggestions, short-term and long-term. We also have -- for upgrades. And we also, you know, have some existing challenges with ownership and other, you know, utilities or interests in the area as well.

So it's -- there's a lot going on in this area and HRM is monitoring it. And I just want to go back to the comment I had made, that HRM is looking to do an overall transportation study in the whole entire area, you know, that takes a look at all the traffic in the area, not just related to the Windgate or -- the Windgate subdivision or the intersection at Beaver Bank and Windgate Road.

[Transcript, pp. 498-499]

[116] As a final comment on the various traffic reports included in the Appeal Record in this proceeding, the Board notes that the JRL Consulting traffic impact statement and the WSP traffic impact study and addenda also addressed a concern about the adequacy of stopping sight distances for the proposed entrance to Windgate Village from Windgate Drive. It appears this issue was addressed to the satisfaction of HRM staff, and it was not an issue the Appellants focused on.

4.4.1 Findings

[117] Except for the operation of the intersection of Beaver Bank Road and Windgate Drive, the Board finds that the nearby roads and intersection, including the streets within the Monarch-Rivendale and Capilano Country Estates subdivisions, have the capacity to serve the proposed development. None of the traffic assessments relating to the proposed development that were provided to HRM during its consideration of Marque's application identified concerns with the capacity of the nearby road networks and intersections to accommodate the traffic expected from the proposed development (except for the Beaver Bank Road and Windgate Drive intersection).

[118] The Appellants have not persuaded the Board that it should disregard the conclusions in the reports because of the age of the data used in the analysis in those reports. Ms. Blissett's evidence supported the conclusions in the reports and it was her opinion that the traffic assessments reasonably accounted for growth.

[119] The concerns about the intersection of Beaver Bank Road and Windgate Drive were focused particularly on delays and queueing when making a left-hand turn from Windgate Drive onto Beaver Bank Road, to head south towards Sackville, during the afternoon peak. This was a factor for the Community Council to consider and the Staff Report explicitly referenced concerns about this intersection. Furthermore, the evidence from Ms. Langille and Ms. Blissett noted that HRM was actively monitoring this intersection and considering ways to address the identified concerns. The Board concludes it was open for the Community Council to consider the concerns and still exercise its judgment to approve the development agreement.

4.5 Policy S-15(n) and Policy IM-15(a)(iv) – Road Design/Road Networks

[120] Policy S-15(n) requires the Community Council to “consider” that the roads are designed to “appropriate” standards as per Policy T-2. Policy T-2 of the 2006 Plan requires HRM to develop rural local road standards:

T-2 Further to Policy S-30, HRM shall develop a specific rural local road standard for public streets, that will complement the character of rural communities while ensuring that safety and servicing standards are met. (Exhibit C-3, p. 79)

[121] Policy S-30 requires HRM to “consider” establishing a public rural road standard for open space design developments and directs HRM to prohibit the creation of new private roads:

S-30 HRM shall, through the Subdivision By-law, prohibit the creation of new private roads within the Municipality. To reduce the impact of road development on rural areas and to provide for the creation of more effective Open Space Design developments, HRM will consider establishing a public rural road standard as outlined in Policy T-2.

[122] Policy IM-15(a)(iv) requires HRM to “consider” that the proposal is not premature or “inappropriate” by reason of ... the “adequacy” of road networks leading to or within the development.

[123] Marque’s first proposals for the road network within Windgate Village did not include a connection between the northern and southern ends of the proposed development. In March 2015, the proposed access to the northern part of the development was through neighbouring subdivisions via connections at O’Leary Drive and Briancrest Road. Marque proposed that the southern part of the development be accessed through a new connection to Windgate Drive and via Rivendale Drive and Capilano Drive.

[124] Upon review of the proposed road network, HRM staff told Marque that another developer was currently constructing an extension to Galloway Drive and suggested that the proposed street design and connections be revisited. HRM staff noted there were a number of HRM owned streets surrounding the proposed subdivision that

could be extended or joined with streets in Windgate Village, but connections to existing public streets would have to be designed and constructed as public streets:

Rivendale Drive, O'Leary Drive, Briancrest Road, Elise-Victoria Drive and Valerie Court are HRM owned and maintained streets that surround the proposed subdivision. These streets have the possibility to be extended and/or joined. Any proposed streets/extensions must meet HRM Design Guidelines 2013 edition and adhere to the Street By-law S-300.

[Exhibit C-2, pp. 283-284]

[125] Marque submitted a redesigned road network in June 2017. The new design still had no internal connection between the north and south ends of Windgate Village, but changed the proposed access points with the neighbouring subdivisions. Connections to the northern part of Windgate Village were, at that point, contemplated via O'Leary Drive, Galloway Drive and Briancrest Road. The southern part of the development had proposed access from the new connection to Windgate Drive and via Rivendale Drive and Elise Victoria Drive.

[126] In July 2019, the road network was changed again and the proposed connection to O'Leary Drive in the northern end of Windgate Village was removed. After reviewing the changes, HRM staff made a number of comments and recommendations to Marque about the road network:

- HRM staff noted that while Policy S-15 contemplates road networks would be minimized in an open space design development, new public roads were recommended to improve connectivity between the two existing developments and to allow for more efficient connections to existing water service infrastructure.
- HRM advised Marque that the proposed development agreement would require that it build all public streets according to the most recent HRM specifications as set out in the Municipal Design Guidelines.

- HRM said a redesign of public roads in Windgate Village was required to ensure that the public right-of-way extending from Galloway Drive in the northern part of the development did not connect to Briancrest Road through a private road. HRM staff noted that public rights-of-way must be continuously connected.
- HRM staff recommended that the roads be redesigned to connect the northern and southern ends of the development to provide better traffic circulation and for the convenience of residents.

[127] Marque submitted revised plans to HRM in or about March 2020. These plans included a redesign of the road network based on the HRM staff comments in 2019. In particular, the north and south ends of Windgate Village were proposed to be internally connected and all roads were proposed to be public roads. Comments from HRM staff in May 2020 note that HRM Development Engineering supported the revised road network. In July 2020 staff informed Marque that:

The proposed street network has been reviewed and is generally accepted by Development Engineering and Traffic Management. Detailed design of streets will be discussed during the Final Subdivision review process. Streets should be intentionally designed to encourage appropriate speeds and driver behaviour for a residential area. Minor changes to the horizontal alignment or alternative cross-sections may be discussed on the straight section of proposed Street A which intersects with proposed Street C, to encourage slower travel speed.

[Exhibit C-2, p. 457]

[128] Although details about the proposed development continued to be refined, there were no material changes to the design of the road network between March 2020 and the Community Council's approval of the proposed development agreement on January 17, 2022. In the report she filed with the Board for these appeals, Ms. Blissett confirmed that HRM Development Engineering supported the final road layout of the proposed subdivision.

[129] Mr. Cloney asked Ms. Salloum whether the extension of Elise Victoria Drive into the new subdivision was required by HRM or the developer. She responded that HRM did not specifically request this connection:

So what I remember from our back-and-forth discussions, there -- there was no -- HRM did not specifically request connection onto Elise Victoria. HRM receives proposals and reviews those proposals against the applicable requirements of policies and regulations, and the proposal that was in front of us for review met the requirements of the policy.

[Transcript, p. 195]

[130] In her report Ms. Blissett said HRM Development Engineering's focus during its review of Marque's application was on ensuring that the conceptual road layout, site servicing and traffic generation met engineering standards and requirements. To guide their review, they use HRM's Municipal Design Guidelines, its Guide for the Preparation of Transportation Impact Studies, and the Regional Subdivision By-law.

[131] Ms. Blissett's report noted the Municipal Design Guidelines provide the minimum design and construction standards for new municipal services within HRM and details for the following aspects of roadway design: road layout, access, right-of-way classification, intersection design and separation, driveway location, geometric design, cross section elements, signs, street lighting design, construction and acceptance. Ms. Blissett said that Marque's application was considered under the 2013 Municipal Design Guidelines but, since then, the guidelines were updated in 2021. The proposed development agreement requires the developer to follow the most current edition of the Municipal Design Guidelines.

[132] Ms. Blissett's report noted that the road connections in the proposed subdivision were consistent with the following requirements in the Municipal Design Guidelines (2013):

Section 4.2.3.1 Streets must be laid out wherever possible in prolongation of existing streets, either in the same subdivision or in adjacent subdivisions.

Section 4.2.3.3 In general, the use of continuous streets is encouraged, and the number of cul-de-sacs shall be limited where the land can be effectively serviced by the continued extension of the road system.

[Exhibit C-6, p. 7]

[133] To help the public understand the proposed development during the review of Marque's planning application, HRM planning staff prepared a "Frequently Asked Questions" document. Question 12 considered connections between subdivisions:

12. Are infrastructure connections to Monarch Rivendale and Capilano Estates required by HRM and Halifax Water?

The HRM Municipal Design Guidelines identify requirements which are to be considered when new subdivisions are proposed. The subdivision design should consider mitigating new traffic problems from happening while also providing for convenient access, mobility and community connectivity. The general principles for designing streets include:

- (i) accommodating through traffic;
- (ii) linking local streets to higher classification streets to provide good access to other parts of the community;
- (iii) prolonging existing streets in the same subdivision or adjacent subdivisions;
- (iv) using road reserves that were left for future connections (road reserved were provided in both the Monarch Rivendale and Capilano Estates subdivisions); and,
- (v) limiting cul-de-sacs where the lands can be effectively serviced, and the road system can be continuously extended.
- (vi) Looping of watermains (connecting water pipes instead of having the pipes run to a dead end) is always a preferred servicing strategy as it provides resiliency and limits the number of impacted customers in the event of a break.

[Exhibit C-2, pp. 531-532]

[134] In his report filed with the Board for these appeals, Mr. O'Brien noted:

As indicated above and shown in Figure 5, the proposed development includes multiple access points. There is a primary site access to Windgate Drive, and secondary access locations to existing adjacent neighbourhoods. Having multiple access locations adds to the resiliency of the street network and provides a connection between existing Rivendale / Monarch Estates and Capilano Estates Subdivisions. Having connections is good practice and improves traffic circulation for residents of these neighbourhoods, while creating opportunity for improvement to servicing the area with winter maintenance, solid waste collection, school bus routing and emergency services.

Municipal Design Guidelines 2021 (HRM) includes Section 2.2.1 that provides guidance and requirements for the layout of a road network.

- Section 2.2.1 (a) indicates that:
 - (a) Street networks must be continuous and create a connected grid network wherever possible. Grid networks provide:
 - (i) more than one access for emergency vehicles and more than one egress route in the event of an emergency,
 - (ii) ease of municipal services accessing individual lots, and,
 - (iii) improved accessibility of the neighbourhood by all modes of transportation, such as improved access to bus stops, and shorter routes for active transportation.

The latest development plan meets these guidelines as it provides continuous streets and creates a connected network.

- Section 2.2.1 (b) indicates that:
 - (b) Streets must be laid out in prolongation of existing streets, either in the same subdivision area or in adjacent subdivision areas.

The latest development plan provides connection through prolongation of multiple existing streets including Rivendale Drive, Galloway Drive, and Elise Victoria Drive as required by the Municipal Design Guidelines.

- Section 2.2.1 (e) indicates that:
 - (e) Culs-de-sac pose challenges for winter operations and limit access for transit, emergency vehicles and active transportation networks, and are discouraged. Culs-de-sac may be considered when their use avoids:
 - (i) development on steep slopes,
 - (ii) fragmentation of environmental corridors,
 - (iii) natural features,
 - (iv) when a temporary street layout is required ahead of a future urban expansion,
 - (v) when developing infill sites that are unable to create a through connection.

The latest development plan reduces the number of culs-de-sac in the area. By prolongation of adjacent streets, three existing culs-de-sac are removed, and the development plan includes two new culs-de-sac. With the current development plan there is one less cul-de-sac in the area which meets the intent and desire of the Municipal Design Guidelines.

[Exhibit C-7, p. 25]

[135] The Appellants contend that the benefits of connecting the subdivisions were available without an extension of Elise Victoria Drive. They point out that alternative connection points between Capilano Country Estates and Windgate Village exist at the end of Valerie Court, at the end of Briancrest Road and through road reserves connecting to Capilano Drive and Briancrest Road (the latter of which is already used as a connection point in the plan approved by the Community Council). They contend a connection through

Elise Victoria Drive would have the worst traffic related impacts compared to the other options.

[136] On direct examination, Ms. Salloum was asked if HRM staff had considered removing the connection at Elise Victoria Drive. She said it was discussed because of the concerns raised by residents, but the connection proposed by the developer met the policies and guidelines, so staff went ahead with a positive recommendation. During cross-examination, Ms. Salloum was asked why the proposed connection was at Elise Victoria Drive rather than through the road reserve off Capilano Drive. Her response reiterated what she said earlier on direct. Ms. Langille's testimony also discussed the connection at Elise Victoria Drive and noted it met the requirements in the Municipal Design Guidelines.

[137] In response to questions from the Board at the hearing, Ms. Langille said it was her understanding that a rural road standard, as referenced in Policy T-2, was created through HRM's Municipal Design Guidelines. Ms. Blissett advised the Board that the sections of the Municipal Design Guidelines that she referred to in her report (ss. 4.2.3.1 and 4.2.3.3) would be included in the rural road standards contemplated in Policy T-2. In HRM's closing submissions, Ms. MacLaurin also noted that the policy evaluation matrix in the staff report for the Community Council (reproduced in this decision as Schedule "A") noted in the analysis for Policy S-15(n):

The proposed development would require that all public streets are built according to the most recent HRM specifications as set out in the Municipal Design Guidelines. Staff have reviewed the proposed road connections and advise that they generally follow the Municipal Design Guidelines.

[Exhibit C-2, p. 508]

[138] In his closing submissions, Mr. Cloney expressed doubt that the Municipal Design Guidelines included a specific local road standard for public streets as required by

Policy T-2 or that it complemented the character of rural communities. However, he highlighted the following provisions:

4.1.1 General

This Design Guideline provides standards for urban and rural areas and applies to new construction as well as to major reconstruction. The design of the roadway system has to respond to different constraints and possibilities depending on the situation. There are basic design concepts that apply in all situations but the expression of the objectives will necessarily vary depending on the situation.

...

In the 'rural' areas, increased sensitivity to users other than motor vehicles is required of designers by the Municipality and by residents to meet goals of environmental quality.

When considering developments in areas now undeveloped (in either 'urban' or 'rural' contexts) the emphasis is on creation of plans that will keep traffic problems from developing while at the same time providing for convenient access and mobility. A well-conceived street system can segregate through traffic from local traffic and assure that collector and higher classed roads as well as local-serving streets are designed and constructed to standards that reinforce their intended use. Attention should be given to layouts that are suitable for bus operations (with appropriate lane widths, pavement strengths, turning radii and so forth) and to the provision of facilities that permit and encourage non-motorized travel - bikeways/walkways and sidewalks.

...

4.1.3 General Principles for Design of Streets

...

- Local streets should be linked to higher classification streets in a way that provides good access to other parts of the community and region, and minimizes the chances of the local streets' use by through traffic. [Emphasis added to identify the passages highlighted by Mr. Cloney]

[Exhibit C-12, pp. 114-15]

[139] The Board understands that the Appellants' dominant concern in these appeals is about through traffic. They expect that drivers will begin using the new road networks created by the proposed subdivision to travel between Fall River and the Beaver Bank Road through the Capilano Country Estates, Windgate Village and Monarch-Rivendale subdivisions. While no connections through to Beaver Bank Road currently exist (outside of using Windgate Drive), the Appellants said the neighbourhood was already experiencing problems with people shortcutting through Capilano Country Estates.

[140] The Appellants suggest the new pathway between Fall River and Beaver Bank Road would divert traffic from Windgate Drive through the subdivisions as drivers would look to avoid the troublesome intersection at Windgate Drive and Beaver Bank Road. In response to a question from the Board, Ms. Langille acknowledged that this was a relevant concern that the Community Council could have considered under the relevant policies relating to the approval of the development agreement for Windgate Village.

[141] On cross-examination, Ms. Blissett agreed that it is possible that some traffic from Fall River Road will go through Capilano Country Estates and either use the proposed Victoria Elise Drive or Briancrest Road extensions through Windgate Village. She accepted that some people who were not comfortable with the intersection at Beaver Bank Road and Windgate Drive would probably find another route. However, she said a route through the subdivisions would be very meandering so she would not refer to it as shortcutting.

[142] Similarly, in response to a question from the Board, Mr. O'Brien agreed it was likely that some drivers would use the new pathway through the subdivision. Mr. O'Brien also agreed that the WSP traffic assessments for the proposed development did not include an explicit assessment of this potential. He said WSP would have given it some consideration in the preparation of the traffic impact study, but traffic volumes in the area did not suggest it would be a significant concern.

[143] The report Mr. O'Brien filed for these appeals explicitly considered the potential for drivers to cut through the residential subdivisions:

While the intersection of Beaver Bank Road at Windgate Drive is recognized to have delays for traffic turning from Windgate Drive due to high traffic volumes on Beaver Bank Road, this difficulty is not anticipated to result in a significant shift in travel patterns through new street connections made available with the site development. While traffic volume on Beaver Bank Road is high, volume on Windgate Drive is low to moderate. Traffic from Capilano Estates is unlikely to travel through the development to Majestic Drive to reach destinations south of Windgate Drive such as Sackville Drive since travel distance and travel times are higher and drivers would still encounter difficulty turning left to Beaver Bank Road at Majestic Drive. The connection through the development will become quite attractive for traffic from Capilano Estates destined for Beaver Bank-Monarch Drive Elementary School.

The majority of the traffic on Windgate Drive is travelling to and from the south on Beaver Bank Road. As discussed, this traffic is not expected to shift travel patterns as a result of new street connections available through the development. There is potential that some of the traffic on Windgate Drive travelling to and from the north may shift travel routes through the area. The desire to shift routes to avoid the Beaver Bank Road at Windgate Drive intersection is lower since there is less difficulty experienced for right turning traffic from Windgate Drive versus left turning. The volume of traffic to and from the north is also lower resulting in fewer potential vehicles that could shift travel routes. In the AM peak there is only 5 vehicles, and 55 vehicles during the PM peak hour turning right from Windgate Drive as shown in Figure 6.

[Exhibit C-7, p. 27]

[144] In response to questions from the Board about this part of his evidence, Mr. O'Brien said he considered the volume of traffic currently using the origin-to-destination pathways that might consider travelling though Capilano Country Estates to be low to moderate. He said increasing or even doubling those volumes for growth would not significantly change his views.

[145] In response to questions from Mr. Cloney, Mr. O'Brien did not feel it was likely that traffic currently making the problematic left-hand turn from Windgate Drive to Beaver Bank Road would consider travelling through the proposed new pathways through the residential subdivisions to turn left on Beaver Bank Road further north of the Windgate Drive intersection. Mr. O'Brien said there would be a longer route involved and the driver would still have a similar experience turning left on Beaver Bank Road. The following exchange, involving cross-examination (on matters arising from Board questions) and re-direct examination of Mr. O'Brien, outlines his thoughts on this issue:

Q. Perfect. I just -- I don't want to keep saying the same thing, but I don't know how to say it. My understanding, and if we put up the map, is this new connection at Elise Victoria Drive will allow Fall River to be connected all the way to Beaver Bank Road for the first time as a new connection to Beaver Bank Road north of Windgate Drive, which will funnel traffic from Fall River to Beaver Bank north of Windgate Drive, enabling drivers to not have to utilize this, I'll say, terrible intersection. And that's what they will do until it's fixed. Do you concur?

A. No.

Q. Thank you, Mr. O'Brien.

THE CHAIR: Mr. Grant, any follow-up from Board questions or re-direct?

(SHORT PAUSE)

RE-EXAMINATION BY MR. GRANT

Q. Mr. O'Brien, may I ask you to provide your reasons for which you don't concur with the proposition Mr. Cloney posed to you in his last question?

A. I believe the question was referring to will people travel north through the development on -- to get to a intersection further north on Beaver Bank Road to avoid turning left at this intersection, and it's unlikely that drivers, with the price of fuel and everything, are going to travel multiple kilometres out of their way rather than really (indiscernible) at an intersection where you have to turn left. A little bit north, the speeds are higher on Beaver Bank Road, so that does create a little more challenge sometimes for turning left onto Beaver Bank Road. So that -- I guess the same challenge for turning left onto Beaver Bank Road as well as the additional travel distance creates an unlikely situation that people will not use this intersection to travel to the south.

[Transcript, pp. 598-599]

4.5.1 Findings

[146] HRM Engineering Development supported the final road design for Windgate Village as did Ms. Blissett's evidence in this proceeding. The Board finds that the evidence in this proceeding supports a conclusion that the design of the roads for the proposed subdivision follows appropriate standards.

[147] The interconnections between the new and existing subdivisions are consistent with the Municipal Design Guidelines and provide a number of benefits to residents living in these subdivisions such as improved and easier servicing of the area for winter maintenance, solid waste collection, school bus routing and emergency services. The Appellants did not dispute that there were benefits from having the subdivisions interconnected, but in their view, the interconnection with Elise Victoria Drive would result in traffic travelling through the intersections at higher speeds than it would through other connection points. They submitted the same benefits from the interconnection of the subdivisions could be achieved through another route that would better mitigate the impacts of through traffic. The Board considers this issue later in this decision in relation to Policy IM-15(b)(iii).

[148] The Board finds that the proposed interconnection of Windgate Village with the existing subdivisions will likely create new through traffic. However, the Board accepts the expert evidence of Ms. Blissett and Mr. O'Brien that this is not likely to be significant. As such, the Board concludes that the new pathway is unlikely to become the dominant path for through traffic in the area.

[149] As Ms. Blissett observed, the path through the subdivisions would be meandering. It is now also impeded by the installation of speed tables in Capilano Country Estates and consideration is being given to the installation of more speed tables in that subdivision and in the Monarch-Rivendale subdivision.

[150] The Board also accepts Mr. O'Brien's opinion that traffic on pathways most likely to benefit from cutting through these subdivisions is low to moderate and that the higher volumes of traffic headed to destinations south of the Windgate Drive and Beaver Bank Road will be less inclined to cut through these subdivisions as a result of the new pathways that would be created by the proposed subdivision.

4.6 Policy IM-15(b)(iii) – Controls to Reduce Land-use Conflict from Traffic Generation, Access and Parking

[151] Policy IM-15(b)(iii) requires HRM to "consider" that controls are placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of traffic generation, access to and egress from the site, and parking. In her closing submission on behalf of HRM, Ms. MacLaurin emphasized that the policy does not dictate that the Community Council implement specific controls:

It's very important to note that Policy IM-15(b)(iii) does not dictate what controls are to be placed on the development. This is for Council to decide. In this case, the North West Community Council gets to decide not only what controls should be in place, they get to determine whether those controls are adequate in the circumstances.

[Transcript, p. 658]

[152] At the end of his cross-examination of each HRM witness, Mr. Cloney asked them to identify, from their perspective, any controls on the proposed development to reduce conflict with adjacent land uses by reason of traffic generation. Their responses were similar and identified several aspects of the proposed development and development agreement they viewed as limiting the traffic related impacts. These included:

- (1) The proposed development agreement establishes a maximum number of dwelling units that may be developed. It also limits the uses that can occur. As such, the traffic to be expected from the proposed development is constrained by those uses and limits.
- (2) The proposed development agreement also requires that the intended senior citizen multi-unit buildings and townhouses be near Windgate Drive. This provides residents and visitors of those dwellings with easy access to enter and leave the subdivision rather than to have to travel through the rest of the subdivision. These dwellings account for approximately two-thirds of the density in the proposed development.
- (3) The road network for the proposed development is designed to direct traffic to the new intersection with Windgate Drive. Having multiple secondary connections throughout the development also helps to spread traffic out rather than funnelling all through one location.
- (4) The development must be completed in phases. Ms. Salloum testified that phasing helps to avoid building too much density off one access point as the subdivision is built and tries to mitigate impacts in the surrounding neighbourhoods during construction.

(5) The development agreement includes the following provisions to control traffic speeds in Windgate Village:

4.1.1 All design and construction of primary and secondary service systems shall satisfy the Regional Subdivision Bylaw and the most current edition of the Municipal Design Guidelines and Halifax Water Design and Construction Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineering prior to undertaking the work.

4.1.2 Further to 4.1.1, design elements may be required at the discretion of the Development Engineer through the subdivision approval process to mitigate speeds within the development.

[153] Although s. 4.1.2 of the development agreement relates specifically to speed mitigation within the proposed development, other mechanisms were identified in the evidence before the Board that could apply in the neighbouring subdivisions. The Staff Report noted Administrative Order 2015-004-OP and Ms. Salloum and Ms. Langille discussed this in their testimony. Through this, residents can ask that traffic calming measures be implemented on existing public streets.

[154] In her testimony, Ms. Blissett discussed s.17 of HRM's Subdivision By-law, which allows HRM to require infrastructure improvements to the surrounding road network at the subdivision approval stage of a development. This could include upgrading, paving, traffic control, traffic calming, left turn lanes and traffic signals. She confirmed s. 17 could be used, for example, to consider whether the intersection of Capilano Drive and Elise Victoria Drive could be made a four-way stop. This was one of the potential traffic calming measures that WSP noted in a presentation to the Community Council on December 13, 2021, on behalf of the developer (Exhibit C-2, p. 584).

[155] Ms. Blissett also noted that HRM has started a broader program to assess various subdivisions throughout HRM for the installation of traffic calming measures. She said that it was her understanding that there had been one request for traffic calming on a couple of streets in the Capilano County Estates subdivision, but because the HRM

program had more funds this year, HRM decided to install speed tables throughout Capilano Country Estates. She said:

Between 2020 and 2021 HRM has installed speed tables as a traffic calming measure within the Monarch/Rivendale and Capilano subdivisions on Monarch Drive, Ashlea Drive, Elise Victoria Drive, Terry Drive, Taylor Drive, Ethan Drive and Capilano Drive. Two additional speed tables are proposed on Capilano Drive for 2022/23. Further data collection continues for various streets with the Monarch/Rivendale subdivision to assess the need for speed tables in the future.

[Exhibit C-6, p. 8]

[156] Mr. Cloney suggested to witnesses that the speed tables were installed to address an existing issue with speeding. The responses he received did not support the suggestion that these measures were purely reactionary. Regardless, the traffic calming measures now exist and will help to control traffic in the neighbourhood.

[157] As far as impact relating to parking, there was little evidence in this proceeding about parking, so the Board concludes it is not a significant concern. In his report, Mr. O'Brien said:

...It is also understood that each land parcel in the development will include parking. The residential land uses are unlikely to spill over parking demand to adjacent or nearby lands.

[Exhibit C-7, p. 28]

4.6.1 Findings

[158] The Board finds that there are features of the proposed development that, by their design or by their nature, will help to control its traffic related impacts. These were listed by each of HRM's witnesses in response to questions from Mr. Cloney. Ms. Blissett discussed traffic calming options in detail in her testimony before the Board.

[159] The evidence and submissions in these appeals make it clear that the Appellants believe the Community Council should have imposed one particular control: the elimination of Elise Victoria Drive as a choice for connecting the proposed development to the Capilano Country Estates subdivision. In the Board's view, the Community Council's election not to do so was within the allowed scope of its discretion and judgment.

[160] Regarding the Appellants' position that the connection through Elise Victoria Drive has more negative traffic impacts than others, Ms. Blissett noted that the developer may have to implement traffic calming measures at the subdivision approval stage, both within Windgate Village and in adjacent areas. The need for these measures will be assessed at that time and, if needed, could reduce or eliminate any differences in traffic related impacts among the options available for connecting the subdivisions.

[161] Even if it were the case that the connection through Elise Victoria Drive would have more of an impact than other alternatives, Policy IM-15(b)(iii) does not direct the Community Council to assess every possible alternative way for the development to proceed and does not limit it to approving only the one that, objectively, results in the least amount of conflict. Policy IM-15 lists factors that the Community Council must consider, but it is not a checklist of items upon which the Community Council must be fully satisfied on every count. The Community Council may be satisfied on some and less satisfied, or even dissatisfied on other factors, but, after balancing the factors, may still exercise its judgment to approve a development agreement.

[162] Finally, the evidence and submissions of the parties did not identify anything in the Municipal Planning Strategy that would require the Community Council to demand a different connection point because it is at a specifically designated road reserve rather than an extension of a publicly owned street, was specifically marketed to residents by an unrelated party as being on a cul-de-sac, or is not the preferred choice of residents who signed a survey.

5.0 CONCLUSION

[163] Overall, the Board concludes that the Appellants have not met the burden of demonstrating, on a balance of probabilities, that the Community Council decision does not

reasonably carry out the intent of the Municipal Planning Strategy. In considering the application before it, the Community Council had to balance several factors and interests and exercise its judgment about the proposed development. It may have been open for the Community Council to reach a different conclusion, but the Board finds that the Community Council based its decision on relevant considerations supported by the evidence before the Board. As such, the Board finds it must defer to the Community Council's choices in this matter.

[164] Policy IM-15(b)(iii) required the Community Council to place specific controls on the proposed development to reduce conflict with adjacent or nearby land from traffic generation, access to and egress from the site, and parking. This is one of several factors that the Community Council had to consider under Policy IM-15.

[165] The Board finds there are controls on the development to limit traffic impacts and mechanisms are available through the approved development agreement and HRM's Subdivision By-law to require the developer to take further measures if necessary. These may include such things as traffic calming, signage, the creation of turning lanes and by other measures.

[166] The control measure most desired by the Appellants, the elimination of the connection of Windgate Village and Capilano Country Estates by way of an extension of Elise Victoria Drive, was not one the Community Council decided to adopt. Nor was it required to do so for its decision to reasonably carry out the intent of the Municipal Planning Strategy.

[167] Policy IM-15(b) does not direct the Community Council to make a specific decision or impose specific controls to mitigate the impacts of a proposed development. Policy IM-15 set out factors that the Community Council had to consider when it made its

decision but left the assessment and balancing of these factors to the Community Council's judgment. In such cases, the Board must defer to the choices made by the elected officials who are the primary authority for planning in the municipality.

[168] The appeals are dismissed.

[169] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 7th day of June, 2022.



Stephen T. McGrath

SCHEDULE “A” - REVIEW OF RELEVANT PLANNING POLICIES

2014 Regional Municipal Planning Strategy

Policy	Staff Comments
<i>G-18 Where any completed development agreement application was received by HRM prior to Council’s first notification to adopt this Regional Plan, the application shall be considered in accordance with the Regional Plan policies in effect at the time the application was received.</i>	A complete application for an Open Space Development on the subject property was received on March 24, 2014, prior to Council’s first notification to adopt the 2014 Regional Plan. Therefore, this application is being reviewed in accordance with the Open Space policies of the 2006 Regional Plan.

2006 Regional Municipal Planning Strategy

Policy	Staff Comments
<i>S-15 HRM shall permit the development of Open Space Design residential communities, as outlined in this Plan, within the Rural Commuter and Rural Resource designations and within the Harbour designation outside of the Urban Service Area, but not within the portions of the Beaver Bank and Hammonds Plains communities as identified in the Subdivision By-law under Policy S-25 and within the Rural Area Designation under the Eastern Passage/Cow Bay Plan Area. HRM will consider permitting the maximum density of such developments to one unit per hectare of gross site area. In considering approval of such development agreements, HRM shall consider the following:</i>	
<i>(a) where the development is to be serviced by groundwater and as determined through a hydrogeological assessment conducted by a qualified professional, that there is an adequate supply of ground water to service the development and that the proposed development will not adversely affect groundwater supply in adjacent developments;</i>	On May 24, 2016, Regional Council approved amendments to the Regional Subdivision Bylaw for an extension of the Water Service Area to include the lands off Windgate Drive between Capilano Estates and Monarch-Rivendale Subdivisions, which includes the subject properties. Therefore, the proposed Open Space development is eligible for municipal water service and a hydrogeological assessment is not required.
<i>(b) that there is sufficient traffic capacity to service the development;</i>	A Traffic Impact Study (TIS) and amendments to the study were submitted in support of the development. The TIS as amended was deemed acceptable to Development Engineering and Traffic Services.
<i>(c) the types of land uses to be included in the development which may include a mix of residential, associated public or privately-owned community facilities, home-based offices, day cares, small-scale bed and breakfasts, forestry and agricultural uses;</i>	A mix of residential uses, single unit dwellings and seniors citizen housing in the form of townhouses and four-storey multiple unit buildings, associated facilities, and home-based offices are proposed. Rezoning a portion of the subject site to the MU-1 (Mixed Use 1) Zone of the Beaver Bank, Hammonds Plains and Upper Sackville Land

	<p>Use By-law is proposed to enable seniors citizen housing pursuant to Policies P-8 and P-131 of the Beaver Bank Hammonds Plains and Upper Sackville Municipal Planning Strategy.</p>
<p><i>(d) whether soil conditions and other relevant criteria to support on-site sewage disposal systems can be met;</i></p>	<p>Shared wastewater treatment plants (WWTP) are currently proposed for each condominium. Alternative systems may be considered as on-site sewage disposal systems are administered by Nova Scotia Environment and Climate Change. Approval of on-site services is required under the proposed development agreement prior to the issuance of a development permit.</p>
<p><i>(e) the lot frontages and yards required to minimize the extent of road development, to cluster building sites on the parcel and provide for appropriate fire safety separations;</i></p>	<p>The subject properties are located between two established residential neighbourhoods: Monarch-Rivendale to the west and Capilano Estates to the east. While the policy aims to minimize road development, new public roads are recommended to improve connectivity between the two existing developments and to allow for looping and more efficient connections to existing water service infrastructure. Single unit dwellings are generally shown along proposed public roads. This form is compatible with the adjacent existing subdivisions. Seniors housing units in the form of townhouses and multiple unit dwellings are clustered along shared private driveways and along a proposed public cul-de-sac. Staff advise the proposed locations for the seniors units allow for appropriate separation and buffering from existing development. In addition, the location of townhouse units provides a transition from the low density single unit dwellings to the higher density multiple unit dwellings.</p>
<p><i>(f) that the building sites for the residential units, including all structures, driveways and private lawns, do not exceed approximately 20% of the lot area;</i></p>	<p>N/A as per Policy S-16 (a).</p>
<p><i>(g) approximately 80% of the lot is retained as a non-disturbance area (no alteration of grades, except for the placement of a well or on-site sewage disposal system in the non-disturbance area shall be permitted and provision shall be made for the selective cutting of vegetation to maintain the health of the forest);</i></p>	<p>N/A as per Policy S-16 (a).</p>

<p><i>(h) that the development is designed to retain the non-disturbance areas and to maintain connectivity with any open space on adjacent parcels;</i></p>	<p>The proposed development retains 60% of the gross area as open space. Primary conservation areas including riparian buffers and wetlands are protected as open space. An expansion to the existing Monarch-Rivendale Park asset is proposed with a trail and new park to connect to Valerie Court and the Duck Lake Brook Greenway in the Capilano Estates subdivision.</p>
<p><i>(i) connectivity of open space is given priority over road connections if the development can be sited on the parcel without jeopardizing safety standards;</i></p>	<p>It is staff's opinion that connectivity of open space is given priority over road connections. While proposed Road A runs across Duck Lake Brook, the proposed concept shows primary conservation areas protected as open space and proposed parks that allow for connections to existing park assets and protection of mature trees.</p>
<p><i>(j) trails and natural networks, as generally shown on Map 3 or a future Open Space Functional Plan, are delineated on site and preserved;</i></p>	<p>Trails and natural networks shown on Map 3 of the Regional Plan and Map 5 of the Green Network Plan are protected as open space on the proposed concept.</p>
<p><i>(k) parks and natural corridors, as generally shown on Map 4 or a future Open Space Functional Plan, are delineated on site and preserved;</i></p>	<p>There are no natural corridors shown on Map 4 which run through the subject site. Furthermore, there are no essential or important corridors, identified on Map 5 of the Green Network Plan, that run through the subject properties.</p>
<p><i>(l) that the proposed roads and building sites do not significantly impact upon any primary conservation area, including riparian buffers, wetlands, 1 in 100 year floodplains, rock outcroppings, slopes in excess of 30%, agricultural soils and archaeological sites;</i></p>	<p>Primary conservation features are generally protected as non-disturbance areas throughout the development. There is only one location where proposed public Road A crosses Duck Lake Brook. Staff advise that the proposed developed areas are strategically located to minimise the impact on the primary conservation areas. An archaeological impact assessment was submitted as part of the original application. Most of the activity observed through the archaeological assessment was considered to be of low significance. There were two locations on the site where the archaeological significance was unknown and further testing was recommended. The proposed developable areas attempt to avoid reconnaissance findings within the subject lands. However, the proposed development agreement requires that the Developer contact the Coordinator of Special Places of the Nova Scotia Department of Communities, Culture and Heritage prior to any disturbance</p>

	of the Lands and comply with the requirements set forth by the Province in this regard.
<i>(m) the proposed road and building sites do not encroach upon or are designed to retain features such as any significant habitat, scenic vistas, historic buildings, pastoral landscapes, military installations, mature forest, stone walls, and other design features that capture elements of rural character;</i>	Since 60% of the site is retained as open space and primary conservation features are maintained as non-disturbed open space, it is staff's opinion that the proposed road network and building sites are designed to protect features that capture the rural character of the site. Furthermore, given the proposed development is located between two established neighbourhoods, staff advise that the site layout and design is compatible with the lot fabric and rural character of adjacent development.
<i>(n) that the roads are designed to appropriate standards as per Policy T-2;</i>	The proposed development would require that all public streets are built according to the most recent HRM specifications as set out in the Municipal Design Guidelines. Staff have reviewed the proposed road connections and advise that they generally follow the Municipal Design Guidelines.
<i>(o) views of the open space elements are maximized throughout the development;</i>	It is staff opinion that the proposed concept maximises views of open space elements. For example, this is achieved through establishing a trail along primary conservation features connecting to existing park assets in adjacent neighbourhoods.
<i>(p) opportunities to orient development to maximize the capture of solar energy;</i>	Proposed buildings are generally located based on the proposed road network to improve road and service connectivity and to protect primary conservation features. Individual buildings orientation will not be specified in the development agreement to allow for flexibility and opportunity to maximise the capture of solar energy.
<i>(q) the proposed residential dwellings are a minimum of 800 metres away from any permanent extractive facility;</i>	There are no extractive facilities within 800 metres of the subject site.
<i>(r) the proposed development will not significantly impact any natural resource use and that there is sufficient buffering between any existing resource use and the proposed development to mitigate future community concerns; and</i>	The subject properties were formerly used for forestry; however, no resource use has operated on the site for several years.
<i>(s) consideration be given to any other matter relating to the impact of the development upon surrounding uses or upon the general community, as contained in Policy IM-15.</i>	No other concerns have been identified at this time.

<p><i>S-16 Further to Policy S-15, within the Rural Commuter, Rural Resource and Agricultural Designations, HRM shall permit an increase in density for Open Space Design Developments up to 1 unit per 4000 square metres, or greater in centres as may be provided for in secondary planning strategies, where approximately 60% or more of the site is retained in single ownership of an individual, land trust, condominium corporation or the Municipality. Notwithstanding Policy E-5, the parkland dedication shall be relaxed to a minimum of 5% for this type of development. In considering approval of such development agreements, HRM shall consider the following:</i></p>	
<p><i>(a) the criteria specified in Policy S-15, with the exception of items (f) and (g); and</i></p>	<p>See Policy S-15 above.</p>
<p><i>(b) that the common open space cannot be used for any other purpose than for passive recreation, forestry, agriculture or conservation-related use except for a portion of which may be used as a village common for active recreation or the location of community facilities designed to service the development.</i></p>	<p>Areas delineated on the concept plan as common open space are proposed for active and passive recreation uses for residents of the development, public parkland for the general community, as well as conservation uses. In addition, since the wastewater treatment plants are community facilities to service the development, they may be considered within the 60% open space.</p>
<p><i>IM-15 In considering development agreements or amendments to land use by-laws, in addition to all other criteria as set out in various policies of this Plan, HRM shall consider the following:</i></p>	
<p><i>(a) that the proposal is not premature or inappropriate by reason of:</i> <i>(i) the financial capability of HRM to absorb any costs relating to the development;</i> <i>(ii) the adequacy of municipal wastewater facilities, stormwater systems or water distribution systems;</i> <i>(iii) the proximity of the proposed development to schools, recreation or other community facilities and the capability of these services to absorb any additional demands;</i> <i>(iv) the adequacy of road networks leading to or within the development;</i> <i>(v) the potential for damage to or for destruction of designated historic buildings and sites;</i></p>	<p>(i) The developer would be responsible for the construction of all public roads and infrastructure proposed to service the development. (ii) Halifax Water has reviewed the proposal and advised there is capacity to service the development with central water. The proposed public street connections to abutting neighbourhoods would allow for looping of pipes which is supported to improve the overall distribution system. (iii) Halifax Regional Centre for Education has advised that every person between the ages of 5-21 has the right to attend public school and they will work to ensure all students are provided access to an education. (iv) The proposed road network is supported by Development Engineering. Impacts on the existing road network were also evaluated including the intersection of Windgate Drive and Beaver Bank Road. Traffic signals at this intersection are not warrants for reasons identified in the staff report. (v) There are no designated historic buildings or sites in the area.</p>
<p><i>(b) that controls are placed on the proposed development so as to reduce</i></p>	<p>The proposed development agreement would specify the types of residential uses, maximum number of units permitted, and the</p>

<p><i>conflict with any adjacent or nearby land uses by reason of:</i> <i>(i) type of use;</i> <i>(ii) height, bulk and lot coverage of any proposed building;</i> <i>(iii) traffic generation, access to and egress from the site, and parking;</i> <i>(iv) open storage;</i> <i>(v) signs; and</i></p>	<p>locations where different types of uses are permitted. In addition, controls will be placed on the seniors housing units by reason of height and size to reduce conflict with adjacent land uses and to ensure these units are designed appropriately for occupancy by senior citizens. The proposed development agreement also specifies where access to and egress from the site is proposed.</p>
<p><i>(c) that the proposed development is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding.</i></p>	<p>Through the Stage I Open Design process, suitable areas for development were identified. Primary conservation areas identified in Stage I are retained as non-disturbed open space.</p>

Beaver Bank, Hammonds Plains and Upper Sackville Municipal Planning Strategy

Policy	Staff Comments
<p><i>P-8 Within the Mixed Use A and B Designations, it shall be the intention of Council to establish a Mixed Use 1 Zone which permits single and two unit dwellings, open space uses, existing mobile dwellings, boarding and rooming houses and bed and breakfast establishments, the limited use of residential properties for business purposes, small scale commercial and resource related activities and most institutional uses. Controls on open storage and parking will be established to address compatibility concerns with surrounding development. Forestry uses and larger scale agricultural operations, with the exception of intensive agriculture operations, shall be permitted subject to separation distance requirements designed to promote compatibility with surrounding land uses.</i></p>	<p>To enable senior citizen housing in the mix of residential uses for the Open Space Design development, staff recommend that a portion of the subject site be considered for rezoning to the MU-1 Zone. The permitted location of senior citizen housing is specified in the proposed development agreement to ensure there is appropriate separation from adjacent low density residential uses.</p>
<p><i>P-137 In considering development agreements and amendments to the land use by law, in addition to all other criteria as set out in various policies of this Plan, Council shall have appropriate regard to the following matters:</i></p>	
<p><i>(a) that the proposal is in conformity with the intent of this Plan and with the requirements of all other municipal by-laws and regulations;</i></p>	<p>Staff advise that the proposed rezoning and development agreement are reasonably consistent with the intent of this plan and all other relevant policies and regulations.</p>
<p><i>(b) that the proposal is not premature or inappropriate by reason of:</i></p>	<p>See Policy IM-15 (a) under the 2006 Regional Municipal Planning Strategy above.</p>

<p><i>(i) the financial capability of the Municipality to absorb any costs relating to the development;</i></p> <p><i>(ii) the adequacy of central or on-site sewerage and water services;</i></p> <p><i>(iii) the adequacy or proximity of school, recreation or other community facilities;</i></p> <p><i>(iv) the adequacy of road networks leading or adjacent to or within the development; and</i></p> <p><i>(v) the potential for damage to or for destruction of designated historic buildings and sites.</i></p>	
<p><i>(c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of: (i) type of use; (ii) height, bulk and lot coverage of any proposed building; (iii) traffic generation, access to and egress from the site, and parking; (iv) open storage; (v) signs; and (vi) any other relevant matter of planning concern.</i></p>	<p>See Policy IM-15 (b) of the 2006 Regional Municipal Planning Strategy above.</p>
<p><i>(d) that the proposed site is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding.</i></p>	<p>See Policy IM-15 (c) of the 2006 Regional Municipal Planning Strategy above.</p>
<p><i>(e) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy P-81", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC-Jul 2/02; E-Aug 17/02)</i></p>	<p>N/A</p>