



P.O. Box 1749  
Halifax, Nova Scotia  
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**Item No. 10.1.2**  
**Harbour East-Marine Drive Community Council**  
**November 13, 2014**

**TO:** Chair and Members of Harbour East-Marine Drive Community Council

**SUBMITTED BY:** *Original signed*  
\_\_\_\_\_  
Bob Bjerke, Director of Planning and Development

**DATE:** October 22, 2014

**SUBJECT:** **Case 19485: Non-Substantive Amendment to the Evergreen Drive  
Development Agreement, Cole Harbour**

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**ORIGIN**

Application by B.A.E. Development Ltd.

**LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter, Part VIII, Planning & Development*

**RECOMMENDATION**

It is recommended that Harbour East-Marine Drive Community Council:

1. Approve, by resolution, the proposed Amending Agreement as contained in Attachment A of this report to enable an extension of the date of commencement of development of the existing development agreement at Evergreen Drive, Cole Harbour; and
2. Require the Amending Agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is late, otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND**

In 2008, the Municipality entered into a development agreement (Case 01145) with B.A.E. Development Ltd. to enable a residential development consisting of 16 townhouse units off Evergreen Drive in Cole Harbour (Map 1 and Map 2). The proposal enabled the development of 16 townhouses which do not provide direct access from each unit to a public street within the Urban Residential Designation of the Cole Harbour/Westphal Municipal Planning Strategy (MPS) by development agreement (Policy UR-8).

The existing development agreement contains a five year time limit from the March 20, 2009 date of registration for the commencement of development. Development is defined in the existing agreement as the completion of the footings of the proposed building. At present, the footings are not completed and the five year time limit expired March 20, 2014. Given that development has not commenced Council may, by resolution of Council:

- Discharge the agreement, whereupon the agreement shall have no force or effect; or
- Upon written request of the developer, grant an extension to the date of commencement of development.

The developer has requested that the date of commencement of development be extended by two years from the date of registration. This would then provide a total of seven years from the date of registration of the agreement for the project to begin. The project was not commenced within the agreed upon five year timeframe because the developer was arranging financing and having engineered plans prepared.

Amendments extending the date of commencement of development are identified as non-substantive matters in Section 6.2 of the development agreement and may be approved through a resolution of Council, without a public hearing.

### ***Location, Designation, Zoning and Surrounding Land Use***

<b>Subject Properties</b>	Evergreen Drive east of Hugh Allen Drive
<b>Lot Area</b>	60,705 square feet (5,639.5 square metres)
<b>Regional MPS Designation</b>	Urban Settlement
<b>Community MPS Designation</b>	Urban Residential (UR)
<b>Zoning</b>	Single Unit Dwelling (R-1)
<b>Surrounding Land Uses</b>	Residential dwellings on Hugh Allen Drive and Highland Crescent; a Canadian Tire store and the Cole Harbour Shopping Centre on Forest Hills Drive to the east; St. Andrew's Church on Circassion Drive and a residential care facility on Circassion Drive; and Sir Robert Borden Junior High School to the north
<b>Current Use</b>	Vacant
<b>Servicing Capability</b>	Municipal sewer and water
<b>Physical Characteristics</b>	The site is an unconstructed leveled section of Evergreen Drive

## **DISCUSSION**

### ***MPS Policy***

The existing development agreement, approved by Community Council in 2008, is enabled through Policy UR-8 (Attachment B) of the Cole Harbour/Westphal MPS. Policy UR-8 enables the consideration of townhouse developments do not provide direct access from each unit to a public street through the development agreement process.

### ***Extension to Construction Commencement Date***

The existing development agreement contains a commencement date to encourage the timely development and completion of the project. If the developer has not commenced the project within the allotted time, Community Council may grant an extension, at the request of the owner, in cases where it is determined that the development is still appropriate. The provision of compact townhouses, intended to be marketed to first time buyers, on a cul-de-sac (limiting future development and traffic thoroughfare) was based on market analysis and remains a relevant and appropriate approach to developing these lands. In this instance, the request is for a two (2) year extension to the commencement of the construction deadline (March 20<sup>th</sup>, 2016). The extension provides the developer with adequate time to obtain the necessary permits and commence construction of the project.

Should Community Council grant the two (2) year extension, all development rights under the existing agreement will remain in effect. If the request for a time extension is denied, a development permit cannot be issued. Any future development of the property could only be in accordance with the applied Single Unit Dwelling (R-1) Zone or through the consideration of a new development agreement. All other requirements of the development agreement must still be satisfied, including but not limited to: the total number of dwellings; siting and architectural; parking; landscaping amenity space; parking; and driveway access requirements.

### ***Conclusion***

The proposed non-substantive amendment to extend the commencement of development date by two (2) years is reasonably consistent with the MPS policies. Attachment A contains the proposed amendment to the existing development. Staff recommend approval of the requested extension as the development proposal is still appropriate for the area and meets the intent of applicable MPS Policies UR-8 and IM-11.

### **FINANCIAL IMPLICATIONS**

There are no financial implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved budget with existing resources.

### **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy.

The level of community engagement strategy was information sharing, achieved through a sign on the property and information on the HRM website. Public information meetings and public hearings are not required for non-substantive amendments to a development agreement. The decision to grant a non-substantive amendment is made by resolution of Community Council.

The proposed amending development agreement will potentially impact, but is not limited to, the following stakeholders: local residents and property owners.

### **ENVIRONMENTAL IMPLICATIONS**

No environmental implications have been identified.

### **ALTERNATIVES**

1. Council may choose to refuse to approve the amending agreement and, in doing so, must provide reasons why the agreement does not reasonably carry out the intent of the MPS. This is not recommended for the reasons discussed above. A decision of Council to reject this amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

2. Council may choose to approve the proposed amending agreement subject to modifications. This may necessitate further negotiations with the applicant and a supplementary staff report.

**ATTACHMENTS**

Map 1	Generalized Future Land Use
Map 2	Zoning
Attachment A	Proposed Amending Agreement
Attachment B	Applicable MPS Policies

2008 Staff Report: <http://www.halifax.ca/commcoun/hecc/documents/Case01145.pdf>

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A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Darrell Joudrey, Planner I, Development Approvals, 902.490.4181

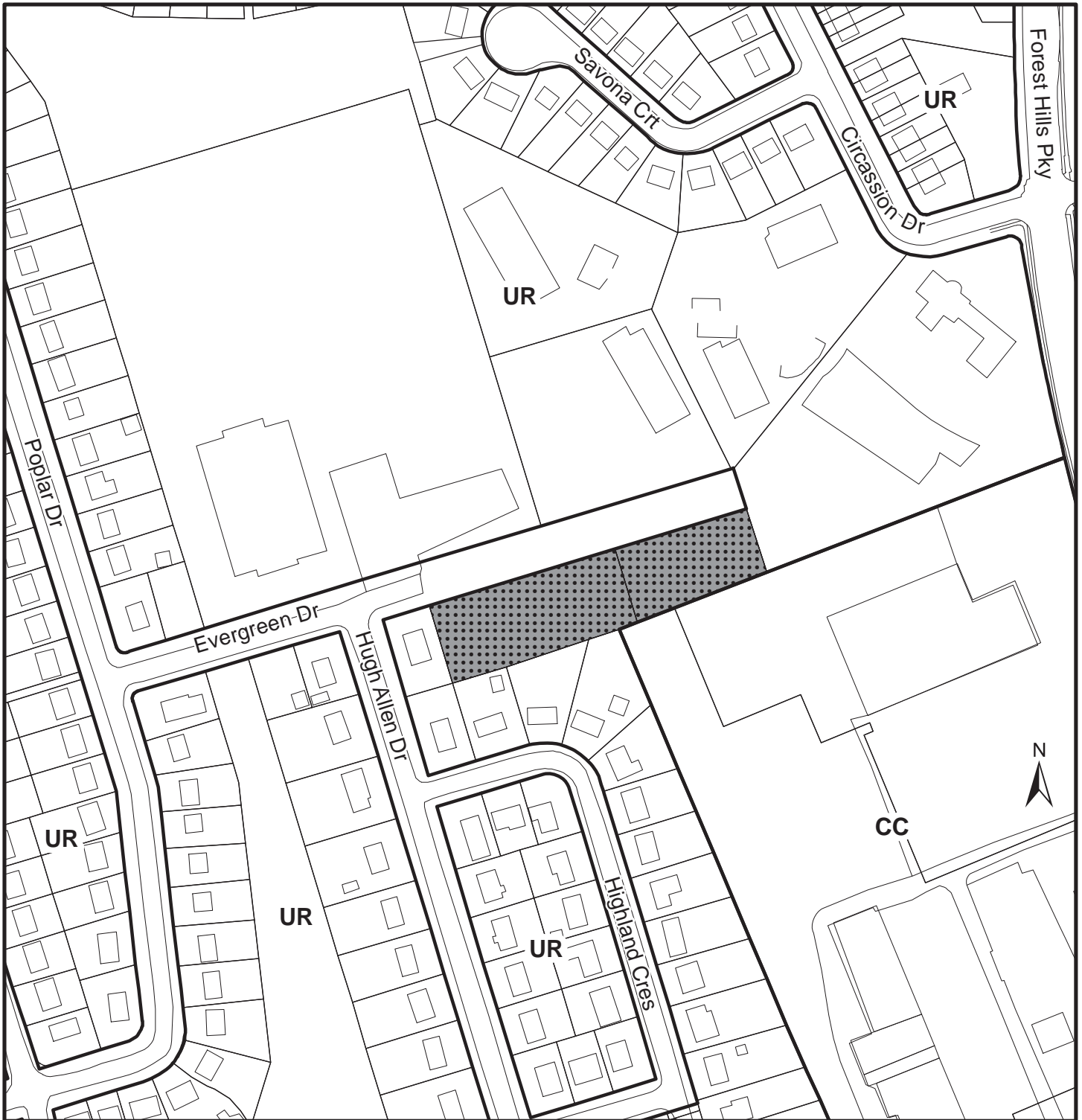
*Original signed*

Report Approved by: 

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Kelly Denty, Manager of Development Approvals, 902.490.4800

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**Map 1 - Generalized Future Land Use**

PID 00398552  
and 40414633



 Area of Existing Development Agreement

**Designation**

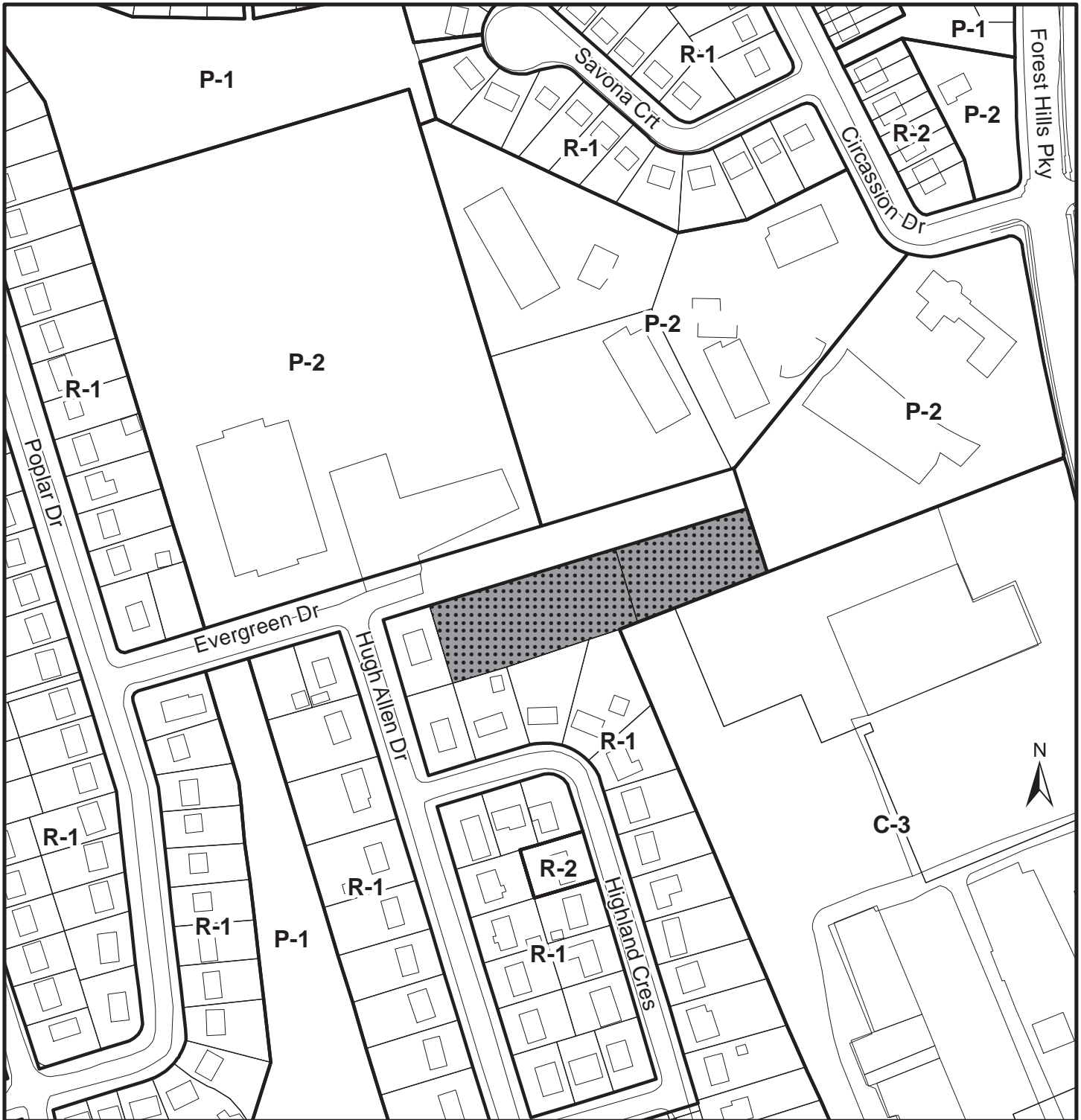
UR Urban Residential  
CC Community Commercial



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

Cole Harbour/Westphal Plan Area



**Map 2 - Zoning**

PID 00398552  
and 40414633



 Area of Existing Development Agreement

**Zone**

- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- C-3 Shopping Centre
- P-1 Open Space
- P-2 Community Facility



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

Cole Harbour/Westphal  
Plan Area

**Attachment A  
Amending Development Agreement**

THIS AMENDING AGREEMENT made this      day of                      , 2014

BETWEEN:

**[INSERT Name of Corporation/Business]**  
a body corporate, in the Province of Nova Scotia  
(hereinafter called the "Developer")

OF THE FIRST PART

and

**HALIFAX REGIONAL MUNICIPALITY**  
a municipal body corporate, in the Province of Nova Scotia  
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at Evergreen Drive, Cole Harbour and which said lands are more particularly described in Schedule A hereto (hereinafter called "the Lands");

AND WHEREAS the Harbour East Community Council of the Halifax Regional Municipality approved an application to enter into a Development Agreement to allow for a two-phase townhouse development comprising 16 dwelling units on the Lands pursuant to the provisions of the Halifax Regional Municipality Charter and pursuant to Policies UR-8 and IM-11 of the Cole Harbour/Westphal Municipal Strategy (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer wishes to amend the Existing Agreement to allow for an extension to the date of commencement of development pursuant to the provisions of the Halifax Regional Municipality Charter (herein after called the "Amending Agreement");

AND WHEREAS the Harbour East-Marine Drive Community Council for the Halifax Regional Municipality approved this request at a meeting held on \_\_\_\_\_, referenced as Municipal Case Number 19485;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree to the following amendments to the Existing Agreement:

1. The Existing Agreement shall be amended by deleting the word and number "five (5)" in Section 8.3.1 and replacing it with the new word and number "seven (7)".

**IN WITNESS WHEREAS** the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

**SIGNED, SEALED AND DELIVERED** in the presence of:

**(Insert Owners Names)**

\_\_\_\_\_

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

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**SEALED, DELIVERED AND ATTESTED** to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

=====

**HALIFAX REGIONAL MUNICIPALITY**

\_\_\_\_\_

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

Mayor

\_\_\_\_\_

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

Municipal Clerk



**Attachment B**  
**Applicable MPS Policies**

- UR-8 Notwithstanding Policies UR-2 and UR-7, it shall be the intention of Council to consider townhouse developments within the Urban Residential Designation which do not provide direct access from each unit to a public street, according the development agreement provisions of the Planning Act. In considering such an agreement, Council shall have regard to the following:
- (a) that each unit in the townhouse development be located on a separate lot with direct access to an internal private driveway serving all units and having access to a public street;
  - (b) that the development includes a minimum area of twenty thousand (20,000) square feet;
  - (c) that municipal central services are available and capable of supporting the development;
  - (d) the adequacy of separation distances from low density residential development;
  - (e) that site design features including landscaping, parking areas and driveways are of an adequate size and design to meet the needs of residents of the development and to address potential impacts on adjacent development;
  - (f) that the height, bulk, lot coverage and appearance of any building is compatible with adjacent uses;
  - (g) general maintenance of the development;
  - (h) preference for a site in close proximity to community facilities such as schools, recreation areas and transit routes;
  - (i) the effect of the development on the overall housing mixture within the community; and
  - (j) the provisions of Policy IM-11.
- IM-11 In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, Cole Harbour/Westphal Community Council shall have appropriate regard to the following matters:
- (a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;
  - (b) that the proposal is not premature or inappropriate by reason of:
    - (i) the financial capability of the Municipality to absorb any costs relating to the development;
    - (ii) the adequacy of sewer and water services;
    - (iii) the adequacy or proximity of school, recreation and other community facilities;
    - (iv) the adequacy of road networks leading or adjacent to or within the development; and
    - (v) the potential for damage to or destruction of designated historic buildings and sites.
  - (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.
  - (d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding; and
  - (e) any other relevant matter of planning concern.