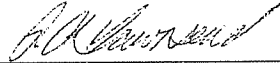


Chebucto Community Council
January 9, 2012

TO: Chair and Members of Chebucto Community Council

SUBMITTED BY:



Phil Townsend, Director, Planning and Infrastructure

DATE: December 5, 2011

SUBJECT: Case 17391 Time Extension to Development Agreement for
Wentworth Estates – Neighbourhood B, Larry Uteck Boulevard,
Halifax

ORIGIN

An application by 32050734 Nova Scotia Limited and Emscote Limited to enable a time extension to the Wentworth Estates Neighbourhood B Development Agreement on Larry Uteck Boulevard, Halifax. The existing development agreement enables the construction of a public street and up to five multiple unit dwellings with a total of 480 units.

RECOMMENDATION

It is recommended that the Chebucto Community Council:

1. Approve the proposed amending agreement as set out in Attachment A of this report to extend the date for the commencement of construction of the development on Larry Uteck Boulevard, Halifax for an additional two years; 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 later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

On September 18, 2006, the Chebucto Community Council approved an application by Emscote Limited to enter into a development agreement (Case 00624) to allow a high density residential development on Larry Uteck Boulevard, Halifax as shown on Map 1. The proposal enabled the extension of Larry Uteck Boulevard and a maximum of five multiple unit dwellings with a total of approximately 480 units. The agreement contained a four year time limit for commencement of construction which expires on December 13, 2011. Commencement of construction is identified within the agreement as completion of the footings for a building. All amendments to the agreement relating to commencement and completion dates are considered non-substantive under clause 3.1 (e) of the agreement and do not require a public hearing prior to a decision by Council.

DISCUSSION

Development agreements contain an expiry date so that projects which have been approved but not commenced can be brought to a conclusion. If the applicant has not proceeded within the allotted time, Council may grant an extension, at the request of the owner, in cases where it is felt that the development is still appropriate.

The existing development agreement, approved by Community Council in 2006, is enabled through policies within the Wentworth Secondary Planning Strategy of the Halifax Municipal Planning Strategy. These policies enable multiple unit dwellings to be considered on the subject site through the development agreement process.

No multiple unit dwellings have been constructed on the subject properties to date; however, the extension of Larry Uteck Boulevard and the subdivision of the lands have been completed. The lands are currently owned by the original developer, Emscote Limited, and by a new owner, 32050734 Nova Scotia Limited, which owns several of the lots. The owners have yet to proceed with the construction of the buildings on their properties.

32050734 Nova Scotia Limited has been working towards construction and applied for permits in June of 2011 for one of the buildings located on the east side of Larry Uteck Boulevard. To date 32050734 Nova Scotia Limited has completed significant work in preparation for permits on their lands but due to unforeseen circumstances, they have not been able to receive permits and commence the first building. As of the drafting of the report, it appears that the applicants will miss the deadline for commencement as identified in the agreement (December 13, 2011).

The owners have requested a 2 year extension to the date of commencement of construction. If approved, an extension to the commencement deadline will provide the applicant with adequate time to complete the project. The existing agreement permits a fifteen year time frame for the completion of the entire development (December 13, 2022).

Section 4.3 of the development agreement outlines two choices for Council:

- (a) grant an extension to the date of extension; or
- (b) discharge the Agreement whereupon the agreement shall have no further force or effect.

Provided an extension is granted by Community Council, the owner would retain all development rights under the existing agreement. If the request for a time extension is denied, the owner will have missed the December 13, 2011 deadline to apply for permits for the buildings. Therefore, permits could not be issued and the development could not proceed.

Staff does not recommend a discharge of the agreement as the Developers have proceeded with installation of public roads, sidewalks and other services in good faith. Further, the lands have been subdivided and sold to new owners. For all intents and purposes, the development has commenced, but just not as specifically laid out in the development agreement. Further other obligations under the agreement (waterline and trail) have not been completed and a discharge would not allow these obligations to be completed in a timely manner. If discharged, the Developers would then have to apply for a new development agreement process, taking significant time and money to achieve matters already agreed to.

A review of the relevant policies in the Wentworth Secondary Planning Strategy (Attachment B) has determined that policies do not specifically address issues such as the commencement dates nor do the policies deal with specific requirements for the timing of the subject development.

Staff has prepared an amending agreement (Attachment A) to amend Section 4.3 of the existing development agreement to extend the time limit for commencement of construction from 4 years to 6 years for the development. A decision to extend the time limit is identified as non-substantive and does not require a Public Hearing. Staff has no objection to granting the requested time extension and advise the proposal is consistent with policies in the Wentworth Secondary Planning Strategy and the Halifax Municipal Planning Strategy.

BUDGET IMPLICATIONS

There are no budget 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.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was information sharing, achieved through a sign on the site and information on the HRM website. A public hearing is not required and the proposal is non-substantive in nature and can be considered by a motion of Council.

A Public Information Meeting is not required for non-substantive amendments. A sign was posted on the property and notices were posted on the HRM website.

The proposed development agreement will potentially impact (but not limit to) the following stakeholders: local residents and property owners.

ALTERNATIVES

1. Chebucto Community Council could choose to approve the proposed amending agreement thereby extending the completion of construction for an additional two years. This is the recommended option for the reasons outlined above.
2. Chebucto Community Council could choose to approve the proposed amending development agreement with different conditions respecting the completion of construction. A shorter deadline is not recommended by staff on the basis that the two year extension is reasonable.
3. Chebucto Community Council could choose to refuse to grant the time extension, thus not extending the completion date and thus discharging the agreement. This is not recommended as the circumstances under which the original development agreement was approved have changed and warrant a time extension.

ATTACHMENTS

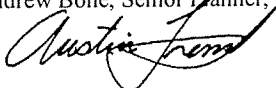
Map 1	Generalized Future Land Use
Map 2	Zoning
Attachment A	Amending Agreement - Time Extension
Attachment B	Policies from the Wentworth MPS
Attachment C	Relevant Sections of existing Development Agreement

Available upon request

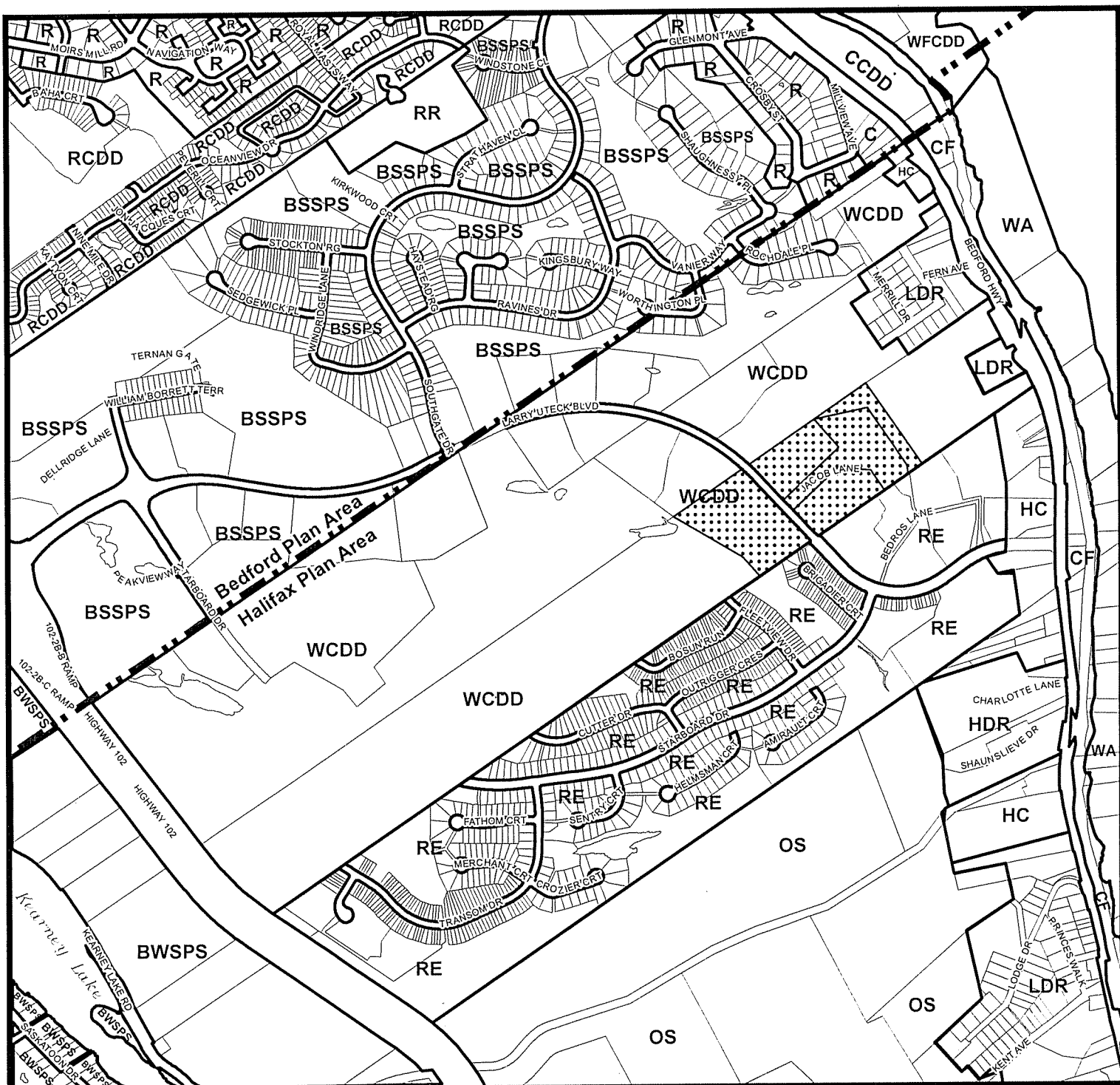
Development Agreement (Case 00624) Emscote Lands

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

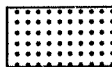
Report Prepared by : Andrew Bone, Senior Planner, 869-4226



Report Approved by: Austin French, Manager of Planning Services, 490-6717



Map 1
Generalized Future Land Use



Subject Properties

HALIFAX
REGIONAL MUNICIPALITY
Community Development
Planning Services

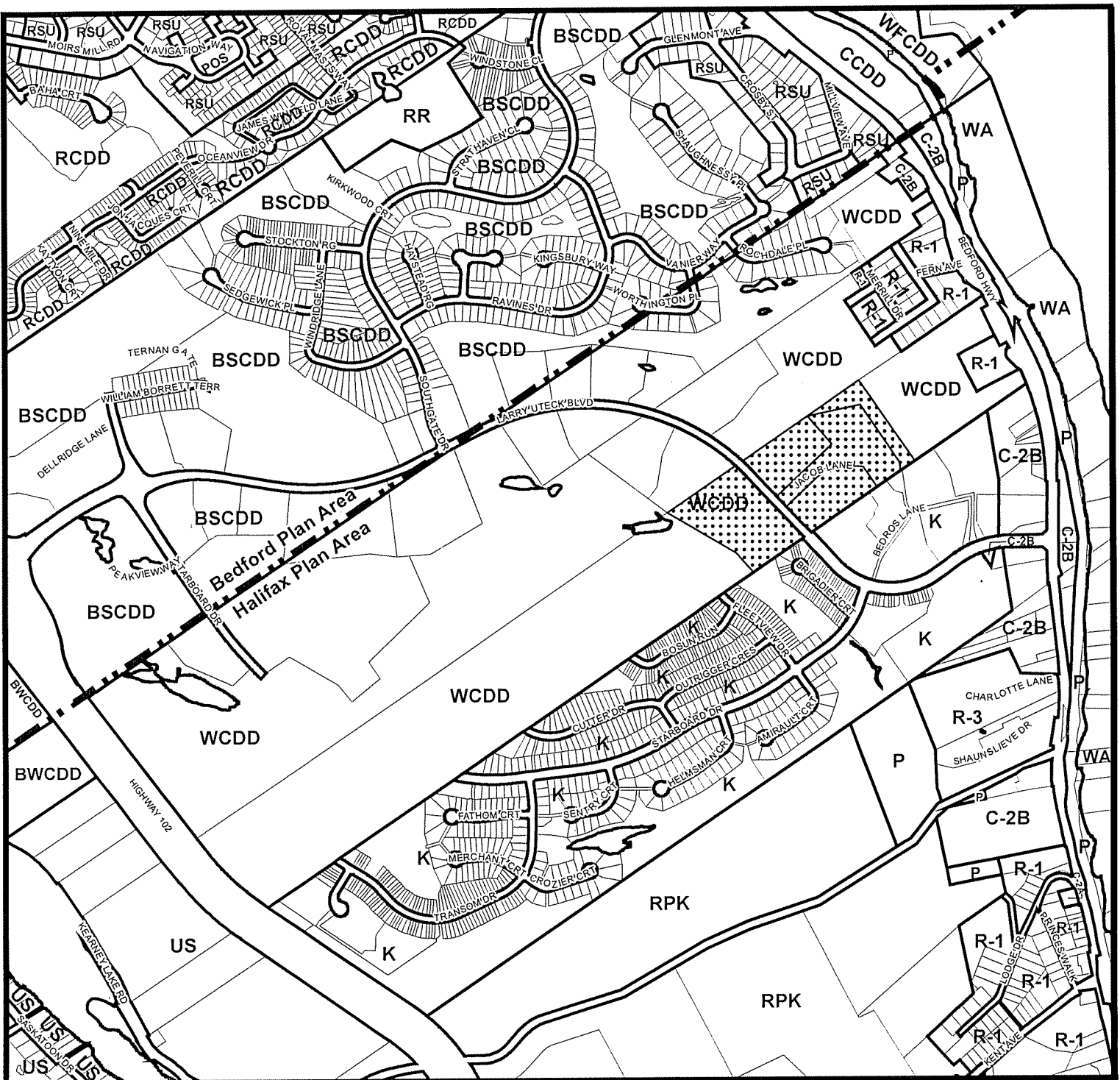
Bedford Plan Area Designations

R	Residential Designation
C	Commercial Designation
RR	Residential Reserve Designation
CCDD	Commercial Comprehensive Development District
RCDD	Residential Comprehensive Development District
BSSPS	Bedford South Secondary Planning Strategy
BWSPS	Bedford West Secondary Planning Strategy
WFCDD	Waterfront Comprehensive Development district

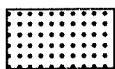
Halifax Plan Area Designations

RE	Residential Environments Designation
CF	Community Facilities Designation
HC	Highway Commercial Designation
OS	Major Community Open Space Designation
WA	Water Access Designation
LDR	Low Density Residential Designation
HDR	High Density Residential Designation
WCDD	Wentworth Comprehensive Development District
BWSPS	Bedford West Secondary Planning Strategy





Map 2 Zoning



Subject Properties

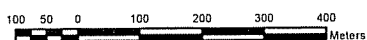
Bedford Plan Area Zones

RSU	Single Dwelling Unit Zone
RR	Residential Reserve Zone
POS	Park Open Space Zone
RCDD	Residential Comprehensive Development District
CCDD	Commercial Comprehensive Development District
BSCDD	Bedford South Comprehensive Development District
WFCDD	Waterfront Comprehensive Development District
BWCDD	Bedford West Comprehensive Development District

Halifax Plan Area Zones

R-1	Single Family Dwelling Zone
R-3	Low Rise Apartment Zone
P	Park Institutional Zone
C-2B	Highway Commercial Zone
WA	Water Access Zone
K	Schedule K Zone
US	Urban Settlement Zone
RPK	Regional Park Zone
WCDD	Wentworth Comprehensive Development District
BWCDD	Bedford West Comprehensive Development District

HALIFAX
REGIONAL MUNICIPALITY
Community Development
Planning Services



Attachment A
Proposed Amending Development Agreement

THIS AMENDING AGREEMENT made this day of , 2012
BETWEEN:

EMSCOTE LIMITED

a body corporate, in the Province of Nova Scotia

- and -

3250734 NOVA SCOTIA LIMITED

a body corporate, in the Province of Nova Scotia
(both hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,

a municipal body corporate,
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer, Emscote Limited, is the registered owner of certain lands on the west side of Larry Uteck Boulevard, in Halifax and which said lands are identified as Block 4-5, as described in Schedule A-1 of this First Amending Agreement and certain lands on the east side of Larry Uteck Boulevard, in Halifax and which said lands are identified as Parcel P-X as described in Schedule A-2 of this First Amending Agreement.

AND WHEREAS the Developer, 3250734 Nova Scotia Limited , is the registered owner of certain lands on the east side of Larry Uteck Boulevard, in Halifax and which said lands are identified as Lot 1, Lot 2 and Lot 3, as described in Schedule A-3, A-4 and A-5 of this First Amending Agreement.

AND WHEREAS the Chebucto Community Council approved an application by Emscote Limited to enter into a development agreement to allow for development of a residential development on Neighbourhood B of the Wentworth Secondary Planning Strategy on the Lands (as described in the Existing Agreement) at Larry Uteck Boulevard, Halifax, which the said Agreement being recorded at the Land Registry Office at Dartmouth as Document 89547534 (hereinafter called the Existing Agreement)(referenced as Municipal Case Number 00624);

AND WHEREAS the Developer has requested an amendment to the provisions of the Existing Agreement to permit a time extension for the commencement of development for the Lands (hereinafter called the First Amending Agreement); and

AND WHEREAS the Chebucto Community Council of Halifax Regional Municipality, at its meeting on the ____th day of _____, 2012, approved this request, referenced as Municipal Case Number 17391)

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 amending Clause 4.3 by replacing the text “four”, located in the first sentence , with the text “six”.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2012.

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

per: _____ per: _____

=====

SIGNED, SEALED AND DELIVERED **3250734 Nova Scotia Limited**
in the presence of:

per: _____ per: _____

=====

SEALED, DELIVERED AND ATTESTED **HALIFAX REGIONAL MUNICIPALITY**
to by the proper signing officers of
Halifax Regional Municipality
duly authorized on that behalf, in the presence of: per: _____
MAYOR

per: _____

per: _____
MUNICIPAL CLERK

Attachment B
Policies from the Wentworth Secondary Planning Strategy

**SECTION XIV: THE WENTWORTH
SECONDARY PLANNING STRATEGY**

Background

After amalgamation of the region's four municipal units in 1996, master planning exercises were initiated as a means of responding to the challenges facing the Municipality in accommodating new growth. In a report prepared for Regional Council in 1998, four potential growth areas were identified as potential infill opportunities which could strengthen links between established communities¹.

One of the potential growth areas encompassed approximately 625 acres of undeveloped lands bounded by Crestview on the Basin Subdivision to the north, Royale Hemlocks Estates Subdivision to the south, the Bicentennial Highway to the west, and the Bedford Highway to the east, excluding Millview and Fernleigh Subdivisions. Development within the southern portion of this area is governed by the Halifax Municipal Planning Strategy and the northern portions governed by the Bedford Municipal Planning Strategy.

The master planning exercise sought to comprehensively plan for a new community over these lands while integrating with the established community planning documents. The study objectives adopted by Council were to prepare conceptual community plans which:

- anticipate future community needs having regard for trends in demographics, housing affordability, building technologies, economics and social issues with specific consideration given to how the community proposed could fulfill a role in responding to needs within a regional context;
- integrate design with established neighbouring communities in terms of the natural and man made environment;
- reduce travel time and energy requirements, encourage the use of public transit, pedestrian and cycling facilities and enhance public safety through innovative integration of land use components with the transportation and open space systems;
- preserve sensitive environmental areas and unique cultural features and respond to the opportunities and constraints imposed by the environment;

¹ 1 Report to Mayor Fitzgerald and Members of Halifax Regional Council Re: Master Planning Studies. Dated November 23, 1999.

- maintain adequate service levels for municipal infrastructure (sanitary sewer, storm drainage, potable water and road systems) both within the area of new development and off-site while minimizing costs to all parties;
- allow for design flexibility in recognition of future changes to external circumstances/market conditions;
- minimize future demands on the Municipality's fiscal resources (capital and operating budgets) and provide fair and predictable cost-sharing of community infrastructure costs between the Municipality and individual property owners in terms of division and timing
- provide policy guidance for more detailed negotiations with property owners/developers with specific consideration given to phasing of development with associated community infrastructure and the responsibilities of each party (property owners/developers and the Municipality²:

This secondary planning strategy has been prepared in accordance with the master plan study objectives and the terms of reference established by Council. Wentworth was adopted as the community name under this planning strategy in recognition of the in recognition of the contributions made by Sir John Wentworth's to the development of this area. Bedford South has been adopted as the name under the Bedford planning strategy strong in recognition of the links these lands have to the residents of Bedford.

The Community Concept Plan

The Community Concept Plan, presented as Schedule I, illustrates the main land use and transportation elements proposed for this community. The design principles incorporated into the plan are highlighted as follows:

- Lands needed for daily living activities - housing, shops, workplaces, schools, parks, and civic facilities - are integrated within the community.
- A central corridor is established around a community collector street which provides for uses beneficial to the surrounding residential neighbourhoods including a community park, institutional and community facilities and community commercial developments.
- A future trail system connects with Hemlock Ravine Park and a regional trail system including the trail serving Clayton Park and the Mainland Common, as well as a future connection to the waterfront project being developed around the shoreline of Mill Cove.

² 2 Report to Mayor Fitzgerald and Members of Halifax Regional Council Re: Public Participation Programs for Governor's Lake North and Hemlock Ravine North (Prince's Lodge) Master Plan Study Areas. Dated November 23, 1999.

- Watercourses, the Old Coach Road, and certain sites which provide panoramic views of the Bedford Basin are preserved as open spaces.
- Residential neighbourhoods have well defined edges in which the open space boundaries prevent external traffic from traveling on local streets while accommodating pedestrians and cyclists throughout the community.
- The residential neighbourhoods encompass lands of varying topography allowing for differing identities and a range of housing opportunities within each.
- The community collector streets facilitate efficient public transit routes which can provide a high level of service to the residential neighbourhoods and activity centres within the community and which conveniently connect with the regional transit system.
- Lands adjacent to the Bicentennial Highway provide opportunities for employment centres and businesses that produce goods and services. Businesses benefit from the accessibility to the regional transportation system and the close proximity to the residential neighbourhoods within this community and surrounding areas.

The Community Concept Plan provides guidance for the overall development of this community. More detailed objectives and policies for each element are presented in the following sections.

Policy MCP-1:

The Community Concept Plan, presented as Schedule I, shall form the framework for land use allocation within the master plan area and all policies and actions taken by the Municipality shall conform with the intent of this plan. A comprehensive development district zone shall be applied to all lands within the master plan area and any development of the land shall be subject to approval of a development agreement.

Residential Neighbourhoods Designation

Planning residential development on a neighbourhood basis is a central theme to this secondary plan. Each of the six residential neighbourhoods shown on the Community Concept Plan is bounded by the community park/open space areas and the community collector road and pathway system.

The varying site topography allows for neighbourhoods of differing characteristics. On lands with steeper slopes, efforts are made to concentrate development in order to preserve the surrounding open space and unique site features.

Objectives:

- to plan neighbourhood development on a comprehensive basis
- to integrate housing opportunities for a variety of income levels, lifestyles and age groups

- to foster individual neighbourhood identities with attractive streetscapes and distinctive architectural and landscaping themes
- to preserve natural drainage systems and areas of unique or sensitive terrain and vegetation
- to provide attractive, safe and convenient routes for pedestrians and cyclists that connect with the community trail system, local commercial and community facilities and public transit stops.
- to provide neighbourhood parks at convenient locations that are safe, visible and secure
- to encourage innovative design within clearly defined performance criterion
- to provide an effective integration with established neighbourhoods.

Policy RN-3:

Each residential neighbourhood shall conform with the following provisions:

Neighbourhood B:

This neighbourhood is intended primarily for apartment building and townhouse developments, although lower density housing units and other developments supported in the Residential Neighbourhood Designation may also be considered. Buildings will not exceed twelve stories above ground level, except that no building shall exceed five stories in height if located within 200 feet of an existing residential lot within Fernleigh Park Subdivision.

Municipal Services

The Municipal Government Act allows a municipality to impose infrastructure charges to recover all or part of the capital costs incurred for the subdivision and development of land. The charges, imposed at the time of subdivision approval, effectively allow for the cost of infrastructure needed to service new development areas to be transferred from taxpayers at large to the benefitting property owners. This legislative tool is instrumental in achieving the financial objectives established for this secondary planning strategy.

In accordance with the objectives and policies regarding infrastructure charges under Part (X) of the Municipal Planning Strategy, a study was undertaken to identify infrastructure needed to service the master plan area, allocate costs between benefitting property owners and the Municipality, and develop a phasing and financial plan¹. The Halifax Regional Water Commission had also prepared a master plan for a water distribution system to service this area and surrounding communities². A traffic impact study was also prepared to assess traffic implications of this community on the surrounding road network³.

The recommendations of these studies have formed the primary basis for the objectives and policies adopted under this section. Consideration has also been given to the need to safeguard the water supplies of the abutting Fernleigh and Millview subdivision and to allowing for innovating service design standards which further the objectives of comprehensively planned communities.

Objectives:

- to ensure that the municipal servicing systems are designed to satisfy the ultimate demands anticipated from this community and that services are phased with development to provide satisfactory service levels at all times;
- to employ service standards that are economical and innovative, and that achieve municipal objectives and policies, including public safety, healthy lifestyles and environmental protection;
- to protect the existing water supplies for residents of Fernleigh and Millview Subdivisions and to allow for the eventual connection of these subdivisions to the municipal water distribution and sanitary sewer systems
- to safeguard the capacity of the Mill Cove sewage treatment plant;
- to recover an infrastructure charge where the subdivision or development presents a requirement for new infrastructure
- to ensure that the costs of new infrastructure are properly allocated to subdividers and other stakeholders deriving benefit from the infrastructure, including existing residential neighbourhoods;
- to limit the Municipality's financial exposure having regard to other budgetary commitments and constraints;
- to provide greater certainty to subdividers and other stakeholders with respect to the costs of development in the Municipality.

¹ SGE Group. Business Case & Analysis: Wentworth Estates/Bedford South Master Plan Area. Prepared for Halifax Regional Municipality. November 30, 2001.

² CBCL Consulting Engineers Ltd. Birch Cove North/Bedford West Water Infrastructure Master Plan. Prepared for Halifax Regional Water Commission. April 1999.

³ Atlantic Road & Traffic Management. Final Report: Traffic Impact Study - Prince's Lodge/Bedford South Master Plan. Prepared for Wallace Macdonald & Lively Ltd. June 2000.

- to ensure that recovery of infrastructure charges is compatible with good land use planning in the Municipality.

Policy MS-1:

For sewage flow calculations, the population of the master plan area shall not exceed a gross density of twenty (20) persons per acre. To provide for an equitable distribution of development among property owners, three sub areas are established as illustrated in Schedule "III". Within each area, a maximum twenty persons per acre shall be permitted.

Policy MS-2:

Populations shall be calculated based on an assumed occupancy of 3.35 persons per single unit, two-unit or townhouse dwelling and 2.25 persons per unit in each multiple unit dwelling. Commercial densities shall be calculated to a maximum of 50 persons per acre for general commercial uses and to a maximum of 30 persons per acre for community commercial, community facility and institutional uses. Final determination of the commercial densities shall be established by development agreement in accordance with intended land uses. In the event that the design population proposed for a residential neighbourhood or commercial designation is less than the maximum permitted, the Municipality may allow the difference to be allocated to another residential neighbourhood or commercial designation within the applicable sub area, provided that all other policy criteria can be satisfied.

Policy MS-5:

No municipal approvals shall be granted within the watersheds of Fernleigh Park or Millview Subdivisions unless the Municipality is satisfied that the potable water supplies serving these subdivisions are protected and that a physical and financial means is established to allow for connection to the water distribution system that is owned and maintained by the Halifax Regional Water Commission. The Municipality shall require the developer to furnish whatever studies are needed and guarantees provided to assure that these conditions are satisfied.

Policy MS-6:

A maximum of 1,330 residential units may be permitted within the master plan area prior to the construction of the proposed interchange. The allocation to each sub area shown on Schedule III shall be as follows:

<i>Sub Area "A":</i>	<i>615 units</i>
<i>Sub Area "B" :</i>	<i>235 units</i>
<i>Sub Area "C" :</i>	<i>480 units</i>

Attachment C
Relevant Section of Existing Development Agreement

PART 3: AMENDMENTS

- 3.1 The provisions of this Agreement relating to the following matters are identified as and shall be deemed to be not substantive and may be amended, upon application by the Developer, by resolution of Community Council:
- (a) The siting of the buildings and building height;
 - (b) Building materials;
 - (c) Number of dwelling units that can be constructed before the interchange has been constructed and connected to Larry Uteck Boulevard. All applicable Development Agreements shall be amended if Community Council determines that there has been compliance with the subsections of Policy MS-7.
 - (d) Landscape specifications; and
 - (e) Commencement and completion dates.
- 3.2 Amendments to any matters not identified under Section 3.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

PART 4: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

- 4.2 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the land which is the subject of this Agreement until this Agreement is discharged by the Council.
- 4.2.1 Upon the transfer of title to any lot, the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.
- 4.3 In the event that the construction of the project has not commenced within four years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction. For the purposes of this section, “commencement of construction” shall mean completion of the footings for a building and completion of the building in a reasonable time frame.
- 4.4 If the Developer fails to complete the development, or after fifteen years from the date of registration of this Agreement at the Registry of Deeds, whichever time period is less, Council may review this Agreement, in whole or in part, and may:
- (a) retain the Agreement in its present form;

- (b) negotiate a new Agreement;
- (c) discharge this Agreement on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law, as may be amended.