



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 10.1.1
Harbour East-Marine Drive Community Council
August 7, 2014

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

SUBMITTED BY: Brad Anguish, Direction of Community & Recreation Services

DATE: July 7, 2014

SUBJECT: **Case 18849, Non-Substantive Amendment for 959 Cole Harbour Road, Cole Harbour**

ORIGIN

Application by KWR Approvals Inc.

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 additional commercial uses and changes to the parking lot layout at 959 Cole Harbour Road, Cole Harbour;
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;
3. Approve, by resolution, the Discharging Agreement as contained in Attachment B of this report; and
4. Require the Discharge 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

The site at 959 Cole Harbour Road is zoned C-2 (General Business) and contains an existing commercial building with a driveway to Cole Harbour Road. The C-2 Zone establishes that driveways may only access onto primary streets, these being Cole Harbour Road, Cumberland Drive and Forest Hills Drive. However, Policy TR-11 (Attachment C) of the Municipal Planning Strategy (MPS) for Cole Harbour/Westphal provides the ability for Community Council to consider commercial driveways onto local streets through the development agreement process. Under this policy in, a development agreement was approved in 1995 to enable a commercial driveway access for a bank from the property to Hugh Allen Drive (Maps 1 and 2). This driveway allows traffic from the site to safely access Cole Harbour Road via the signalized intersection at Hugh Allen Drive. Another new development agreement was approved in 1997 to enable a drive through banking kiosk to be placed in the parking lot.

Location, Designation, Zoning and Surrounding Land Use

Subject Properties	959 Cole Harbour Road
Lot Area	24,501 square feet (2234 square metres)
Regional MPS Designation	Urban Settlement
Community MPS Designation	Community Commercial
Zoning	C-2 (General Business)
Surrounding Land Uses	Single unit dwelling to the north, apartment building to the west, and commercial uses to the south and east.
Current Use	Vacant 2900 square foot (269 square metres) commercial building
Servicing Capability	Municipal sewer and water
Physical Characteristics	The site is level and fully developed

Proposed Amendment

The existing development agreements only permit banks or financial institutions on the property. The former bank on the site has now relocated, and the property owner is seeking approval for all land uses permitted by the C-2 zone (Attachment D). In addition, changes to the parking lot layout are proposed.

Amendments to the permitted uses and parking lot layout are listed 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.

DISCUSSION

MPS Policy

The existing development agreement, approved by Community Council in 1995, is enabled through Policy TR-11 of the Cole Harbour/Westphal MPS, which applies to situations where a commercial driveway is proposed to access a local street. The general implementation criteria of Policy IM-11 (Attachment C) are also applicable. The proposal amendments are considered non-substantive amendments to the existing agreement and no concerns have been identified under these policies. However, the following matters have been identified for more detailed discussion.

Proposed Uses and Traffic

The C-2 zone allows a range of commercial, residential, and community uses (Attachment D). None of these uses are considered inappropriate for sites abutting residentially-zoned properties, such as the existing apartment building to the west and single unit dwelling to the north. The only policy concern is relative to traffic volumes generated by these uses and road safety. A Traffic Impact Study, prepared by the applicant's consultant, was reviewed by HRM and was deemed acceptable. The study concludes that the area street network can safely accommodate increased traffic to the site from all requested uses. The amending agreement therefore enables all C-2 permitted uses as requested. The study does note that drive through restaurant uses, which are permitted only by development agreement, could result in vehicles being backed up onto either street. Such uses, however, are not permitted by the C-2 zone and

are therefore not requested by this application.

Parking

There are currently 22 parking spaces on the site. With the removal of the drive through bank machine and a reconfiguration of the parking lot, additional parking can be provided. The new site plan, to be adopted as part of the development agreement amendment, requires 30 spaces to ensure sufficient parking for any of the C-2 zone uses which are to be permitted on site.

Building & Site Design

The current proposal involves the reuse of the existing building, rather than new construction. While the existing development agreement limits the size and location of the building, it can be renovated or replaced. Additional landscaping is appropriate to improve the appearance of the property and provide an improved buffer from the adjoining residential property. The amending agreement therefore allows the parking lot to be reconfigured and requires enhanced landscaping to be provided.

Discharge of 1995 Development Agreement

A drive through bank kiosk was approved for the site in 1997 as a non-substantive amendment to the original 1995 development agreement. However, this amendment led to the adoption of a second development agreement that largely replicates the original 1995 agreement rather than an amending agreement. The existence of two parallel development agreements leads to confusion and difficulties in administration, therefore the original agreement should be discharged. This discharge can be executed separate and apart from the non-substantive amendments to the 1997 agreement which is the subject of this application.

Conclusion

The requested non-substantive amendment to enable all C-2 permitted uses on the site is acceptable, as there is no reason to exclude these uses. There are no traffic concerns related to allowing any of these uses, and the amending development agreement will ensure that landscaping improvements to the site are implemented. Staff recommend approval of the requested non-substantive amendments and are of the opinion the amendments meets the intent of applicable MPS Policies TR-11 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. In addition, in accordance with Section 6.3 of the existing development agreement, property owners within 152m (500 ft) of the site are to be informed by mail at least 10 days in advance of the proposed non-substantive amendments being considered by Community Council (Map 2).

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

ENVIRONMENTAL IMPLICATIONS

No implications have been identified and the proposal meets the applicable environmental policies of the MPS.

ALTERNATIVES

1. Community Council may choose to approve the proposed amending development agreement subject to modifications. This may necessitate further negotiations with the applicant and a supplementary report from staff.
2. Community Council may choose to refuse the proposed amending development agreement, and, in doing so, must provide reasons why the agreement does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed amending development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
3. Community Council may choose to refuse to approve the proposed discharging development 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. A decision of Council to reject this discharging development agreement, is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

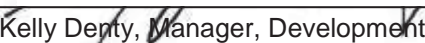
ATTACHMENTS

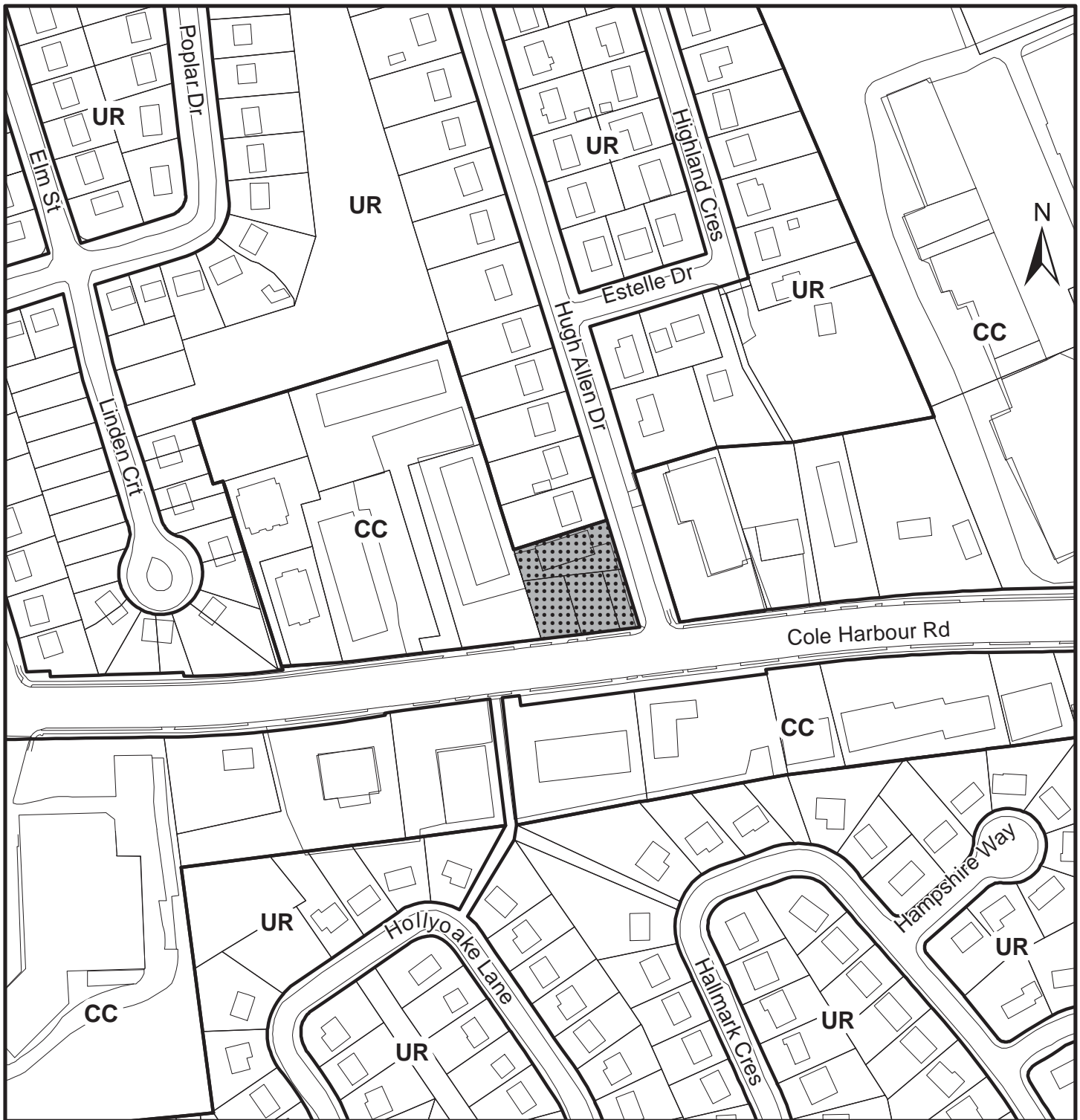
Map 1: Generalized Future Land Use
Map 2: Zoning and Notification

Attachment A: Proposed Amending Development Agreement
Attachment B: Proposed Discharging Development Agreement
Attachment C: Applicable MPS Policies
Attachment D: List of C-2 Zone Permitted Uses

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Mitch Dickey, Planner, 490-5719

Report Approved by: *Original signed*

Kelly Denty, Manager, Development Approvals, 490-4800



Map 1 - Generalized Future Land Use

959 Cole Harbour Road
Cole Harbour

HALIFAX

 Subject Properties

Designation

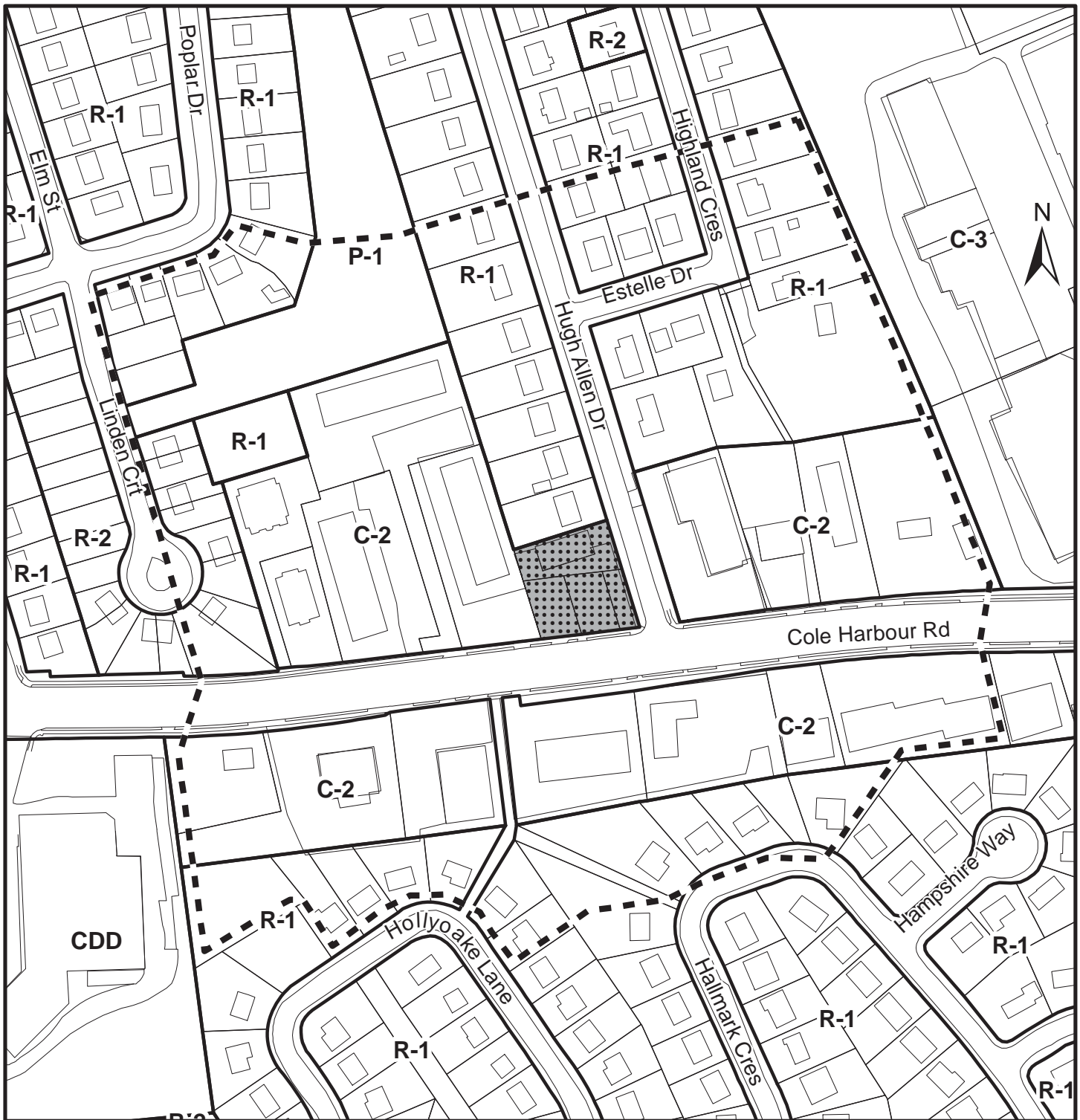
UR Urban Residential
CC Community Commercial

0 20 40 60 80 m


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

HRM does not guarantee the accuracy of any representation on this plan.


Cole Harbour/Westphal
Land Use By-Law Area



Map 2 - Zoning and Notification

959 Cole Harbour Road
Cole Harbour

 Subject Properties

 Area of notification

Cole Harbour/Westphal
Land Use By-Law Area

Zone

R-1	Single Unit Dwelling
R-2	Two Unit Dwelling
C-2	General Business
C-3	Shopping Centre
CDD	Comprehensive Development District

HALIFAX

0 20 40 60 80 m

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

HRM does not guarantee the accuracy of any representation on this plan.

1. The Existing Agreement shall be amended by deleting 'Revised Schedule B' and replacing it with a new Revised Schedule B, attached hereto as Schedule B.

2. The Existing Agreement shall be amended by deleting Section 4.1 of the Existing Agreement and replacing it with the following:

“4.1 The permitted uses of the Property shall be those permitted by the provisions of Part 17: C-2 (General Business) Zone of the Land Use Bylaw.”

3. The Existing Agreement shall be amended by deleting Section 5.3 (a) and replacing it with the following:

“Parking shall be provided as shown on Revised Schedule B.”

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:_____

=====

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

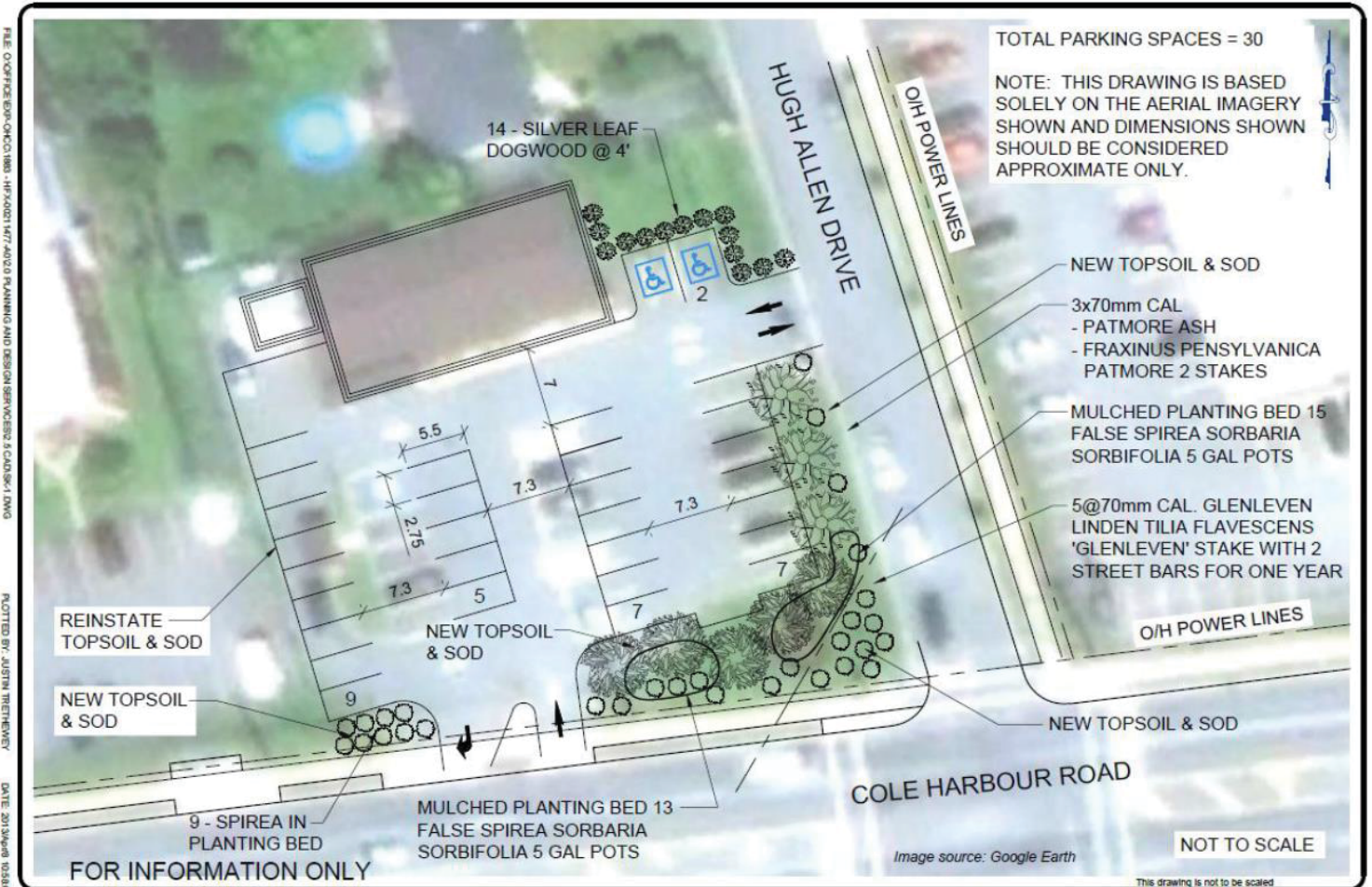
Per:_____

Mayor

Per:_____

Municipal Clerk

Revised Schedule B Site Plan and Landscaping Plan



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Halifax, NS B3L 2C2
CANADA
www.exp.com



BUILDINGS • EARTH & ENVIRONMENT • ENERGY • INDUSTRIAL • INFRASTRUCTURE • SUSTAINABILITY

Project Title
PROPOSED 959 COLE HARBOUR RD. RE-DEVELOPMENT

Dwg. Title
LANDSCAPE/PLANTING PLAN (REV1 - PLANTINGS ADDED)

Drawn By:	Project No.
Dwg. Standards Ckd. By:	HFX-00211477-A0
Designed By:	Dwg. No.
Dwg. Design Ckd. By:	SK-1
	Rev. No.
	1

exp Services Inc. © 2011

WITNESS that this Discharging Agreement, made in triplicate, was properly executed by the respective Parties on this day of , 2014.

SIGNED, SEALED AND DELIVERED in the presence of:

=====

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

(Insert Registered Owner Name)

Per:_____

=====

HALIFAX REGIONAL MUNICIPALITY

Per:_____

Mayor

Per:_____

Municipal Clerk

Attachment C
Applicable MPS Policies

- TR-11 It shall be the intention of Council to require commercial and high density residential uses within the C-2 Zone to access only onto the Cole Harbour Road, Cumberland Drive or Forest Hills Drive. Notwithstanding this, where a lot is to be developed for commercial or higher density residential use and it has been determined through standard engineering practices that access to the Cole Harbour Road, Cumberland Drive or Forest Hills Drive is undesirable, Council shall require any development for such uses with any accesses to any other road to be subject to a development agreement pursuant to the Planning Act. In considering such an agreement Council shall have regard to the provisions of Policy IM-11 and to the most efficient and unobtrusive method of access and egress, for vehicles and pedestrians, and to the optimum design of on-site parking, aisles, signage and other traffic features, and to the orientation of buildings where these may affect traffic flow.
- 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.

Attachment D
List of C-2 Zone Permitted Uses

Commercial Uses

Retail stores;
Food stores;
Service and personal service shops;
Offices;
Commercial schools;
Banks and financial institutions;
Restaurants except drive-in or take-out restaurants;
Theatres and cinemas except drive-in theatres;
Motels, hotels and motor inns;
Funeral establishments;
Taxi and bus depots;
Parking lots;
Veterinary hospitals and indoor kennels;
Existing service stations;
Existing building supply outlets.
Automotive repair uses (minor)

Residential Uses

Existing dwellings;
Multiple unit dwellings containing no more than twelve (12) dwelling units.

Community Uses

Open space uses;
Institutional uses;
Fraternal centres and halls.