

**Harbour East-Marine Drive Community Council
February 13, 2014**

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

Original signed

SUBMITTED BY:

Brad Anguish, Director of Community and Recreation Services

DATE: January 29, 2014

SUBJECT: Case 17061: Classic Open Space Design Development Agreement,
Bissett Road, Cole Harbour

ORIGIN

Application by HMJ Consulting Limited

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter; Part VIII, Planning and Development

RECOMMENDATION

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

1. Give Notice of Motion to consider approval of the proposed Development Agreement for a classic open space design development at Bissett Road, Cole Harbour, as contained in Attachment A of this report, and schedule a public hearing.
2. Approve the proposed Development Agreement for a classic open space design development at Bissett Road, Cole Harbour, as contained in Attachment A of this report; and
3. Require the development agreement be signed within 120 days, or any extension thereof granted by Council on request of the applicant, 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

HMJ Consulting Limited has submitted an application for a classic open space design development on lands off Bissett Road (Map 1) in Cole Harbour. The lands are currently undeveloped with immature tree cover, a wetland and small stream. The applicant wishes to develop a 4 unit residential community containing single unit dwellings. As part of the open space design 60 percent of the lands must be retained as common open space under single ownership while only 40 percent of the lands may be residentially developed. To enable the proposed open space design development, Harbour East-Marine Drive Community Council must approve a proposed development agreement (Attachment A).

Location, Designation, Zoning and Surrounding Land Use

The lands are:

- located on Bissett Road, Cole Harbour (Map 1);
- approximately 1.7 hectares (4.2 acres) in area with 185.91 metres street frontage;
- designated Rural Commuter under the Regional Municipal Planning Strategy (RMPS);
- designated Urban Residential under Cole Harbour/Westphal Municipal Planning Strategy (MPS) (Map 1);
- zoned R-1 (Single Unit Dwelling) under the Cole Harbour/Westphal Land Use By-law (LUB) (Map 2) which allows for a broad range of residential, commercial, resource based, industrial and institutional uses; and
- surrounded immediately behind and to the south by Province of Nova Scotia park lands zoned (RPK).

MPS Policy

Under the RMPS, the subject lands are designated Rural Commuter which envisions a mix of low to medium density residential, commercial, institutional and recreational uses. Policy S-16 (Attachment B) of the RMPS sets out the criteria by which Council must consider Classic Open Space Design Development proposals. One of the policy criteria is the overall density of 1 dwelling unit per 4,000 square metres based on gross area. The policies focus on the importance of retaining important ecological and cultural features, while demonstrating there is sufficient groundwater and minimal overall disturbance to the site.

Original Proposal

The original proposal by the applicant was for a classic open space design comprised of 5 dwellings on the lands. The method of sewage disposal was proposed to be a common on-site system to serve all units. This is achievable by forming a condominium corporation on the lands to meet management and operational requirements of Nova Scotia Environment and the units would be served by individual wells. The gross area of the intended site is 1.7 hectares (17,000 square metres), however, in accordance with the RMPS policy the overall density is set at 1 dwelling unit per 4,000 square metres based on gross area. Therefore, this land area falls 3,000 square metres short of the area required for 5 dwellings units.

Revised Proposal

The applicant's revised proposal is for a classic open space design through the development agreement process (Attachment A – Schedule C). Features of the development proposal include:

- 4 single unit dwellings;
- private driveways by which residential dwellings access the public street;
- ownership of the development is proposed to be through condominium corporation;
- individual wells and septic systems will be shared between dwellings;
- retention of 60% of the land for common open space to be used for the shared septic system, conservation and passive recreation uses.

As-of-Right Subdivision

Given the considerable frontage along Bissett Road, the subject lands have an approved Concept Plan for the creation of 4 lots by an application under the Regional Subdivision By-law. However, the applicant wishes to be considered under the Open Space Design policies to enable the benefits of developing the lands as one lot under a condominium corporation.

DISCUSSION

Staff has conducted a review of the proposed development relative to the applicable policy criteria and has concluded that the proposed development is consistent with the intent of the RMPS. Attachment B contains staff's analysis of the applicable policies. Staff has identified below some aspects of the development that warrant further discussion.

Hydrogeological Assessment

An important policy criterion requires a hydrogeological study to assess the adequacy of groundwater available to service the proposed development. The required Level I and Level II hydrogeological assessments have been completed for the development. The Level II findings recommended that each dwelling be served by its own individual well rather than a communal based system. This is because the expected yields in the geological formations to be tapped are not large and it is advisable to disperse the withdrawal over several wells spaced adequately from each other. The anticipated yields from individual wells are sufficient for ordinary household use.

Traffic Issues

The proposed open space development features individual private driveways that will access Bissett Road directly. It is the opinion of staff that utilizing the existing street supports policy criteria to minimize the length of public streets. The traffic study indicated that traffic considerations are not adverse. The agreement identifies that all required permits and approvals are to be obtained before construction commences.

Total Site Area and Number of Dwelling Units

The overall area of the subject property is 1.7 hectares or 17,000 square metres. As 4,000 square metres are required per unit through RMPS policies, only 4 dwelling units can be supported by the lands. The subject area falls 3,000 square metres short of the land area required to support 5 dwellings units.

Common Ownership/Shared Services

The proposed development will not involve any subdivision as the ownership of this development will be through “bareland” Condominium Corporation. A condominium is more traditionally applied to a multiple unit building, however, under the proposed development individuals will own their individual units and will be responsible for their upkeep as well as be responsible for the installation, operation and maintenance of their respective individual water wells. Unit owners are also responsible for the effluent sewer connecting their building to the inlet of their respective unit’s septic tank. The condo corporation will be responsible for operation/maintenance of the central sewage collection, pump chamber and disposal bed systems, common open space, and operation/management of the stormwater infrastructure.

Common Open Space and Parkland

The proposed development contains common open space to serve the condominium residents but this common open space is not for general public use. In this instance, HRM is not entitled to parkland dedication as the proposal does not include the subdivision of land. However, the common open space area is proposed to remain as land held as a “common element” by the condominium corporation. There are two developed trails, Salt Marsh Trail and Cole Harbour Heritage Park trail, in the area that are accessible to residents but not connected to or through the site.

On-Site Sewage Treatment

The applicant is proposing on-site sewage treatment that includes a common disposal bed and related buried infrastructure that receives treated effluent from each individual home’s septic tank. Buried pipes will collect and carry sewerage by gravity flow from the dwellings to a buried pump chamber located adjacent the disposal bed. Because of the slope of the property, the disposal bed will not be visible from Bissett Road.

Nova Scotia Environment is the regulatory agency for on-site systems. Approval requirements for wastewater treatment systems address management of such systems that provide a higher level of performance and, ultimately, improved environmental safety for on-site septic systems. Application for on-site septic systems approval includes a pre-design evaluation, pre-design report and, if the application is deemed acceptable to proceed, detailed design documentation to NSE is required. The condominium corporation will assume operation and management of the proposed de-centralized on-site wastewater treatment facilities.

Conclusion

In the opinion of staff the proposed ‘classic’ open space design development and the corresponding development agreement limits the disturbance to the overall property and is consistent with Policies S-15 and S-16 of the Regional MPS. As such, staff recommend the development agreement contained in Attachment A of this report be approved by Harbour East-Marine Drive Community Council.

FINANCIAL 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.

COMMUNITY ENGAGEMENT

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

The level of community engagement was consultation, achieved through a Public Information Meeting (PIM) held on September 12, 2011 (see Attachment C for minutes). Notices of the PIM were posted on the HRM website, in the newspaper and mailed to property owners within the notification area as shown on Map 2.

A public hearing must be held by Council before they may consider the approval of a proposed development agreement. Should Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail.

The proposed development agreement will potentially impact local residents and property owners on Bissett Road.

ENVIRONMENTAL IMPLICATIONS

This proposal meets all relevant environmental policies contained in the RMPS. Please refer to the Discussion section of this report and Attachment A and B for further information.

ALTERNATIVES


1. Council may choose to approve the proposed development agreement contained in Attachment A of this report. This is the recommended course of action for reasons outlined in this report. A decision of Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Council may refer the case back to staff with specific changes to modify the proposed development agreement. Such modifications may require further negotiations with the Developer and may require a supplementary staff report or an additional public hearing. This alternative is not recommended for reasons outlined in this report. A decision of Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
3. Council may refuse the proposed development agreement, and in doing so, must provide reasons based on a conflict with policy of the MPS for the Cole/Harbour Westphal Planning Area or the Regional MPS.

ATTACHMENTS

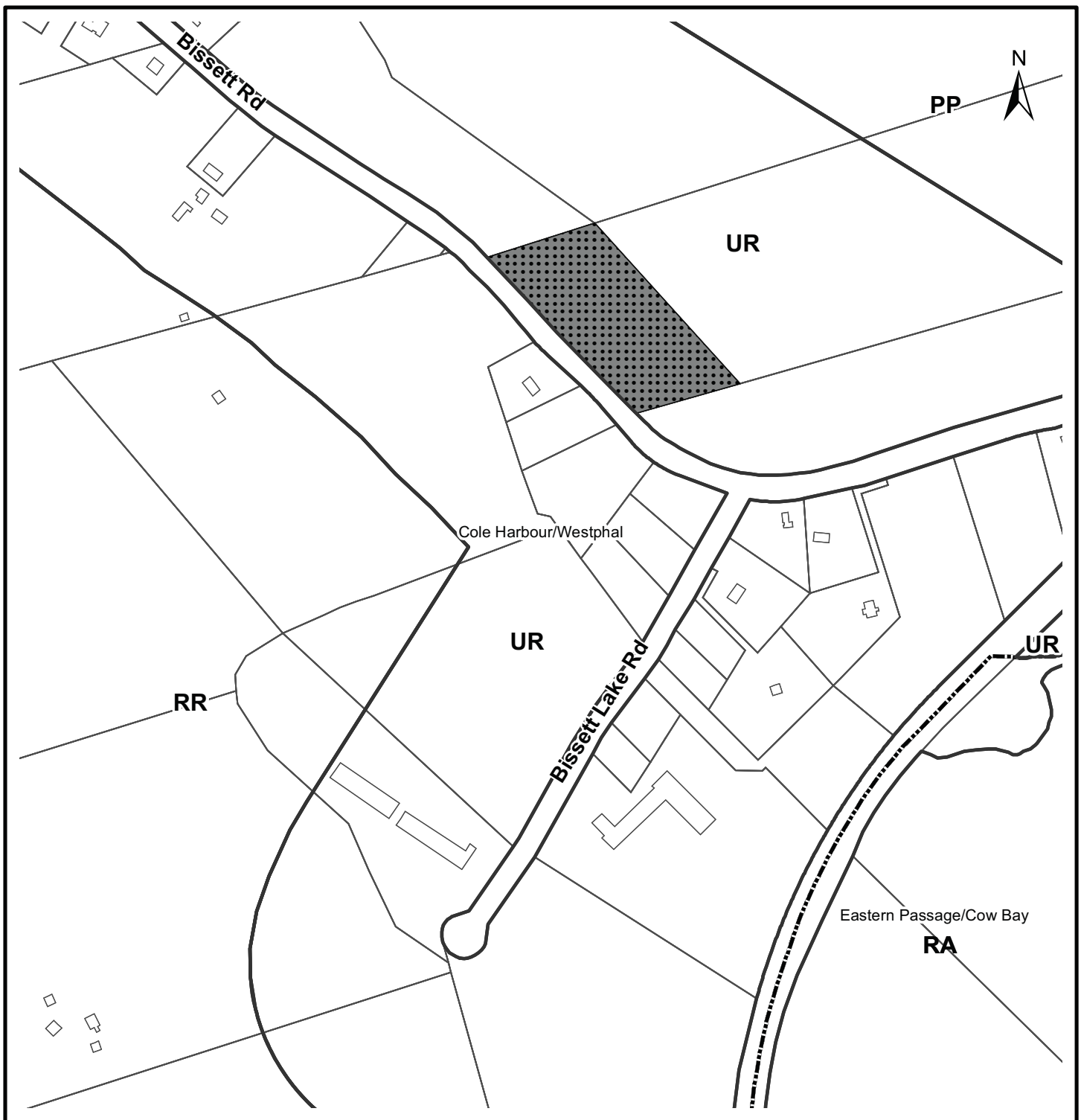
Map 1	Generalized Future Land
Map 2	Zoning and Notification
Attachment A	Proposed Development Agreement (4 units)
Attachment B	Relevant Policy from the Regional MPS
Attachment C	Minutes from the Public Information Meeting

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: Darrell Joudrey, Planner 1, 490-4181

Original signed 



Report Approved by:  Kelly Denty, Manager of Development Approvals, 490-4800 



Map 1 - Generalized Future Land Use

Pid 00473272

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

-  Subject Property
-  Plan Area Boundary

Cole Harbour/Westphal Plan Area
Eastern Passage/Cow Bay Plan Area

Cole Harbour/
Westphal

Eastern Passage/
Cow Bay

Designation

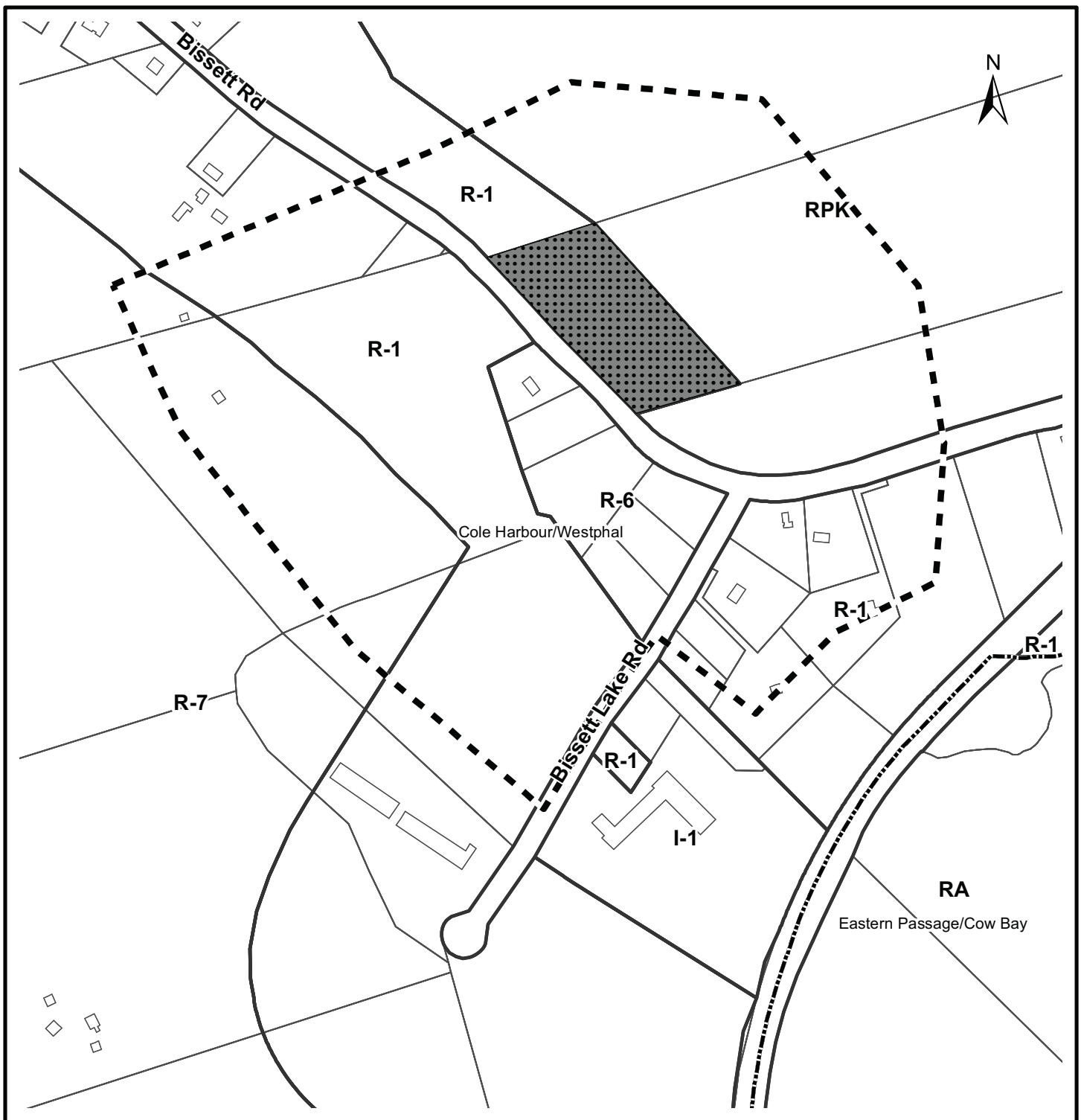
RR Rural Residential
UR Urban Residential
PP Provincial Park

RA Rural Area

0 25 50 100 150 Meters




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

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



Map 2 - Zoning and Notification

Pid 00473272

-  Subject Property
-  Notification Area
-  Plan Area Boundary

Cole Harbour/Westphal Plan Area
Eastern Passage/Cow Bay Plan Area

Cole Harbour/
Westphal

Eastern Passage/
Cow Bay

Zoning

R-1 Single Unit Dwelling
R-6 Rural Residential
R-7 Rural Estate
I-1 Light Industry
RPK Regional Park

RA Rural Area

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

0 25 50 100 150
Meters

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.

Attachment A: Proposed Development Agreement

THIS AGREEMENT made this day of , 2014,

BETWEEN:

[insert NAME OF DEVELOPER**]**

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 Bissett Road in Cole Harbour and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for an open space design development on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy S-16 of the Regional Municipal Planning Strategy;

AND WHEREAS the Harbour East –Marine Drive Community Council for the Municipality approved this request at a meeting held on [****insert date of approval****], referenced as Municipal Case Number 17061;

THEREFORE in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By-law and Subdivision By-law

Except as otherwise provided for herein, the development, subdivision and use of the Lands shall comply with the requirements of the Land Use By-law for Cole Harbour/Westphal and the Regional Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

- 1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, property owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law and the Regional Subdivision By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial or Federal Government and the Developer or property owner agrees to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.
- 1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

- 1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law and the Regional Subdivision By-law to the extent varied by this Agreement) or any Provincial or Federal statute or regulation, the higher or more stringent requirements shall prevail.
- 1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.
- 1.4.3 Where metric values conflict with imperial values within the written text of this Agreement, the metric values shall prevail.

1.5 Costs, Expenses, Liabilities and Obligations

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the Land Use By-law for Cole Harbour/Westphal and the Regional Subdivision By-law.

2.2 Definitions Specific to this Agreement

The following words used in this Agreement shall be defined as follows:

- (a) “Certified Arborist” means a professional, full member in good standing with the International Society of Arboriculture;
- (b) “Classic Open Space Design Development” means a residential development enabled under Policy S-16 of the Regional Municipal Planning Strategy that has a maximum development density of 1 dwelling unit per 4000 m² and where at least 60% of the Lands is retained as common open space;
- (c) “Common Open Space” means the portion of the Lands not designated as developable area, that shall be retained for common use and may include the on-site septic system;
- (d) “Developable Area” means the portion of the Lands where all development and site disturbance shall be located, including but not limited to the home site driveways, home sites, buildings, lawns, grading alterations, wells and on-site septic systems;
- (e) “Footprint” means the area of a building, including land over which the building projects, but excluding any area below the eaves of a roof, and excluding any portion not covered by a roof, such as unsheltered steps, verandas or decks;
- (f) “Home Site” means a specific area designated for an individual single unit dwelling;
- (g) “Landscape Architect” means a professional, full member in good standing with the Canadian Society of Landscape Architects.

PART 3: USE OF LANDS, SUBDIVISION, AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner which, in the opinion of the Development Officer, is in conformance with the following Schedules attached to this Agreement and filed in

the Halifax Regional Municipality as Municipal Case Number 17061:

Schedule A	Legal Description of the Lands
Schedule B	Concept Plan
Schedule C	Lot Layout

3.2 Requirements Prior to Permit Approvals

3.2.1 Prior to the issuance of a Development Permit for each individual home site proposed for the Lands, the Developer or the future property owner, as the case may be, shall provide to the Development Officer a site plan, prepared and endorsed by a qualified professional, indicating the size and location of the developable envelope. Such plans shall be consistent with the Schedules and the Overall Grading Plan and shall indicate/illustrate the following:

- (a) building footprint;
- (b) proposed location of the common open space delineation pursuant to this agreement;
- (c) all other structures that have received approval for construction;
- (d) the proposed location of the structure, including all setbacks from adjacent property lines, all surrounding structures and common open space;
- (e) proposed location and size of the well and septic system;
- (f) proposed location and size of the lawn area;
- (g) proposed location and size of all paved areas; and
- (h) any grade alteration.

3.2.2 Common open space areas shall be delineated with snow fence, or another appropriate method as approved by the Development Officer, prior to any site preparation (e.g. tree cutting, excavation activity, etc). The Developer or the future property owner, as the case may be, shall provide written confirmation to the satisfaction of the Development Officer that the common open space area has been appropriately marked. Such demarcations shall be maintained by the Developer or future property owner for the duration of the construction and may be removed only upon the issuance of an Occupancy Permit for the dwelling.

3.3 General Description of Land Use

The uses of the Lands permitted by this Agreement are:

- (a) A classic open space design development as enabled by this Agreement and as illustrated on Schedules;
- (b) Use of the Lands in the development shall be limited to the following:
 - (i) Single unit dwellings;
 - (ii) In conjunction with permitted single unit dwellings, home based offices and day care facilities, subject to the requirements of the R-1 (Single Unit Dwelling) Zone as set out in the Land Use By-law for Cole Harbour/Westphal;

- (iii) Accessory buildings and structures in accordance with this Agreement.

3.4 Subdivision of the Lands

- 3.4.1 No subdivision or consolidation shall be permitted on the Lands.
- 3.4.2 Provided the requirements of this Agreement have been fulfilled, the Municipality shall consent to the registration of a condominium on the Lands under the *Condominium Act*, if requested by the Developer.

3.5 Detailed Provisions for Land Use

- 3.5.1 Except where varied by this Agreement, all land uses shall comply with the requirements of the R-1 (Single Unit Dwelling) Zone as set out in the Land Use By-law for Cole Harbour/Westphal.
- 3.5.2 Density shall be limited to a maximum of 1 dwelling unit per 4,000 square metres and shall not exceed a total of 4 dwelling units. Prior to any municipal approvals, the Developer shall confirm the total area of the Lands and the maximum number of dwelling units.
- 3.5.3 Notwithstanding Subsection 3.5.1, the minimum front yard setback for single unit dwellings shall be 6.1 metres (20 feet).

3.6 Common Open Space Areas

- 3.6.1 A minimum of 60% of the Lands is identified as common open space areas as shown on Schedule B and no tree cutting or grade alteration shall be permitted within any common open space area except where approved in writing by the Development Officer under one of the following circumstances:
 - (a) To install a septic system or well. In these cases, the location, size and extent of the disturbance shall be identified on a plan prepared and endorsed by a qualified professional which shall identify measures to minimize disturbance within the open space area to the satisfaction of the Development Officer; or
 - (b) To remove fallen timber and dead debris where a fire or safety risk is present, or to remove a tree that is dead, dying or in decline and which represents a danger to private property, public infrastructure or other natural trees and vegetation. Prior to granting approval for such removal, the Development Officer has the discretion to require that the Developer or future property owner, as the case may be, engage a Certified Arborist, Forester or Landscape Architect to certify in writing that the timber or debris poses a fire or safety risk, that the tree poses a danger to people or property, or that it is in severe decline.

- 3.6.2 If trees are removed or tree habitat is damaged beyond repair, with the sole exception of those removed in accordance with Section 3.6.1(a) only, the Developer or future property owner, as the case may be, shall replace each tree with a new tree of minimum 40 mm caliper for every one removed or damaged, as directed by the Development Officer. This section shall apply to trees removed without permission, as well as trees removed with the Development Officer's permission as outlined in this Agreement.

3.7 Maintenance

- 3.7.1 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of all buildings, fencing, walkways, recreational amenities, private driveways and parking areas, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control.
- 3.7.2 The Developer shall be responsible for all aspects of maintenance of the home site driveways, and these private driveways shall not be taken over by the Municipality.

3.8 Single Unit Dwellings and Accessory Buildings and Structures

- 3.8.1 Notwithstanding Section 4.5 of the Land Use By-law for Cole Harbour/Westphal, more than one dwelling is permitted on the Lands in accordance with this Agreement.
- 3.8.2 Notwithstanding Section 4.20 of the Land Use By-law for Cole Harbour/Westphal, uncovered patios, stairways, sun decks, walkways or steps, window bays, solar collectors, exterior staircases, balconies, porches, verandahs and sun decks shall not encroach into a required setback pursuant to Subsection 3.11.3 of this Agreement.

Single Unit Dwellings

- 3.8.3 Single Unit Dwellings shall be located within the developable area as illustrated on the attached Schedules, subject to the requirements of the R-1 Zone of the Cole Harbour/Westphal Land Use By-law, as amended from time to time, and the following requirements:
- (a) No portion of a dwelling shall be located less than 3.05 meters (10 feet) from the boundary of the Lands or the common open space; and
 - (b) No portion of a dwelling shall be located less than 6.1 meters (20 feet) from any other dwelling on the Lands.

Accessory Buildings and Structures

- 3.8.4 Within the developable area, each single unit dwelling is permitted one accessory building or structure, subject to the requirements of the R-1 zone of the Cole Harbour/Westphal Land Use by-law and the following requirements:
- (a) The footprint shall not exceed 55.74 square meters (600 square feet);

- (b) No portion of the building or structure shall be located less than 3.05 meters (10 feet) from the boundary of the Lands or the common open space;
- (c) No portion of the building or structure shall be located less than 2.44 meters (8 feet) from the dwelling with which the accessory building or structure is associated;
- (d) No portion of the building or structure shall be located less than twenty (20) feet from any other dwelling on the Lands; and
- (e) The maximum height of the building or structure shall not exceed 6.1 meters (20 feet).

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

All design and construction of primary and secondary service systems shall satisfy the latest edition of the HRM Municipal Design Guidelines, unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work.

4.2 Off-Site Disturbance

Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to streets, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

4.3 On-site Servicing Systems

The Lands shall be serviced through individual on-site sewage disposal systems and private wells. A design for all private systems shall be prepared by a qualified professional and submitted to Nova Scotia Environment and any other relevant agency. The Development Officer shall not issue Final Subdivision approval or Construction Permits for any individual lot until all applicable approvals required by Nova Scotia Environment have been submitted.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Stormwater Management Plans and Erosion and Sedimentation Control Plans

Prior to the commencement of any site work on the Lands, including grade alteration or tree removal other than that required for preliminary survey purposes, or associated off-site works, the Developer shall:

- (a) Submit to the Development Officer a detailed site disturbance plan, prepared, stamped and certified by a Professional Engineer indicating the sequence and phasing of construction and the areas to be disturbed or undisturbed;

- (b) Prior to the commencement of any onsite works on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated offsite works, the Developer shall have prepared by a Professional Engineer and submitted to the Municipality a detailed Erosion and Sedimentation Control Plan. The plans shall comply with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by Nova Scotia Environment. Notwithstanding other Sections of this Agreement, no work is permitted on the site until the requirements of this clause have been met and implemented.
- (c) Submit to the Development Officer a detailed Overall Grading Plan prepared, stamped and certified by a Professional Engineer, which shall include an appropriate stormwater management system. The Overall Grading Plan shall be for the Lands and shall identify all structural and vegetative stormwater management measures, which may include infiltration, retention, and detention controls, wetlands, vegetative swales, filter strips, and buffers that will minimize adverse impacts on receiving watercourses during and after construction.

5.2 Failure to Conform to Plans

If the Developer fails at any time during any site work or construction to fully conform to the approved plans as required under this Agreement, the Municipality shall require that all site and construction works cease, except for works which may be approved by the Development Engineer to ensure compliance with the environmental protection measures.

PART 6: AMENDMENTS

6.1 Non-Substantive Amendments

The following items are considered by both parties to be non-substantive and may be amended by resolution of the Council:

- (a) The granting of an extension to the date of commencement of development as identified in Section 7.3 of this Agreement; and
- (b) The granting of an extension to the length of time for the completion of the development as identified in Section 7.4 of this Agreement.

6.2 Substantive Amendments

Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

7.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

7.2 Subsequent Owners

7.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.

7.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

7.3 Commencement of Development

7.3.1 In the event that development on the Lands has not commenced within 3 (three) years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.

7.3.2 For the purpose of this section, commencement of development shall mean issuance of a Development Permit.

7.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.2, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

7.4. Completion of Development

Upon the completion of the whole development or complete phases of the development, 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; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Cole Harbour/Westphal, as may be amended from time to time.

7.5 Discharge of Agreement

If the Developer fails to complete the development after 8 (eight) years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office 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; or
- (c) discharge this Agreement.

PART 8: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

8.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within one day of receiving such a request.

8.2 Failure to Comply

If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer fourteen days written notice of the failure or default, except, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;
- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Development Agreement, whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants or remedial action, shall be a first lien on Lands and be shown on any tax certificate issued under the Assessment Act;
- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; and
- (d) In addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Halifax Regional Municipality Charter or Common Law in order to ensure compliance with this Agreement.

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 Registered Owner Name)

Witness

Per: _____

HALIFAX REGIONAL MUNICIPALITY

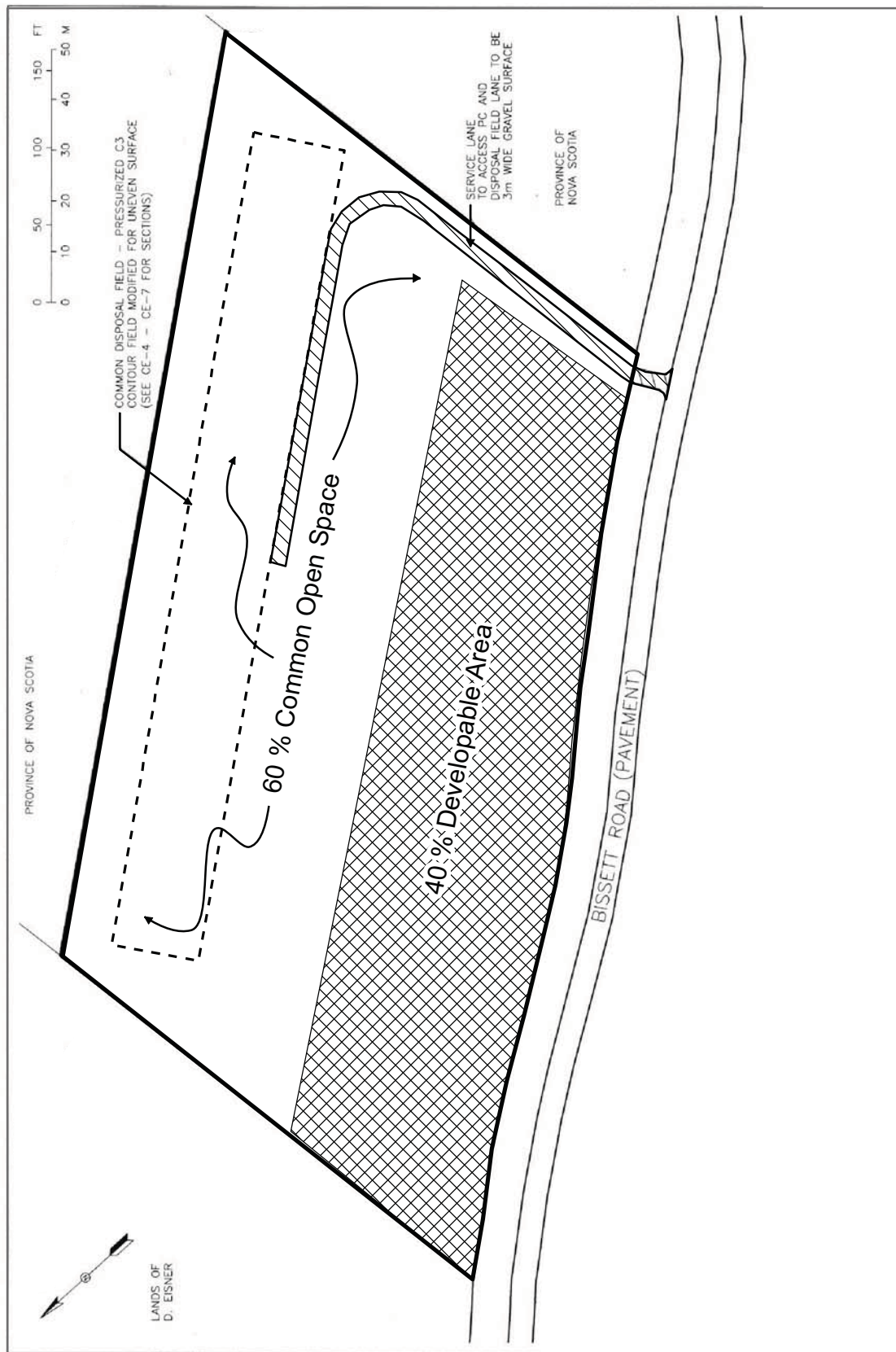
SIGNED, DELIVERED AND ATTESTED
to by the proper signing officers of Halifax
Regional Municipality, duly authorized in that
behalf, in the presence of:

Witness

Per: _____
MAYOR

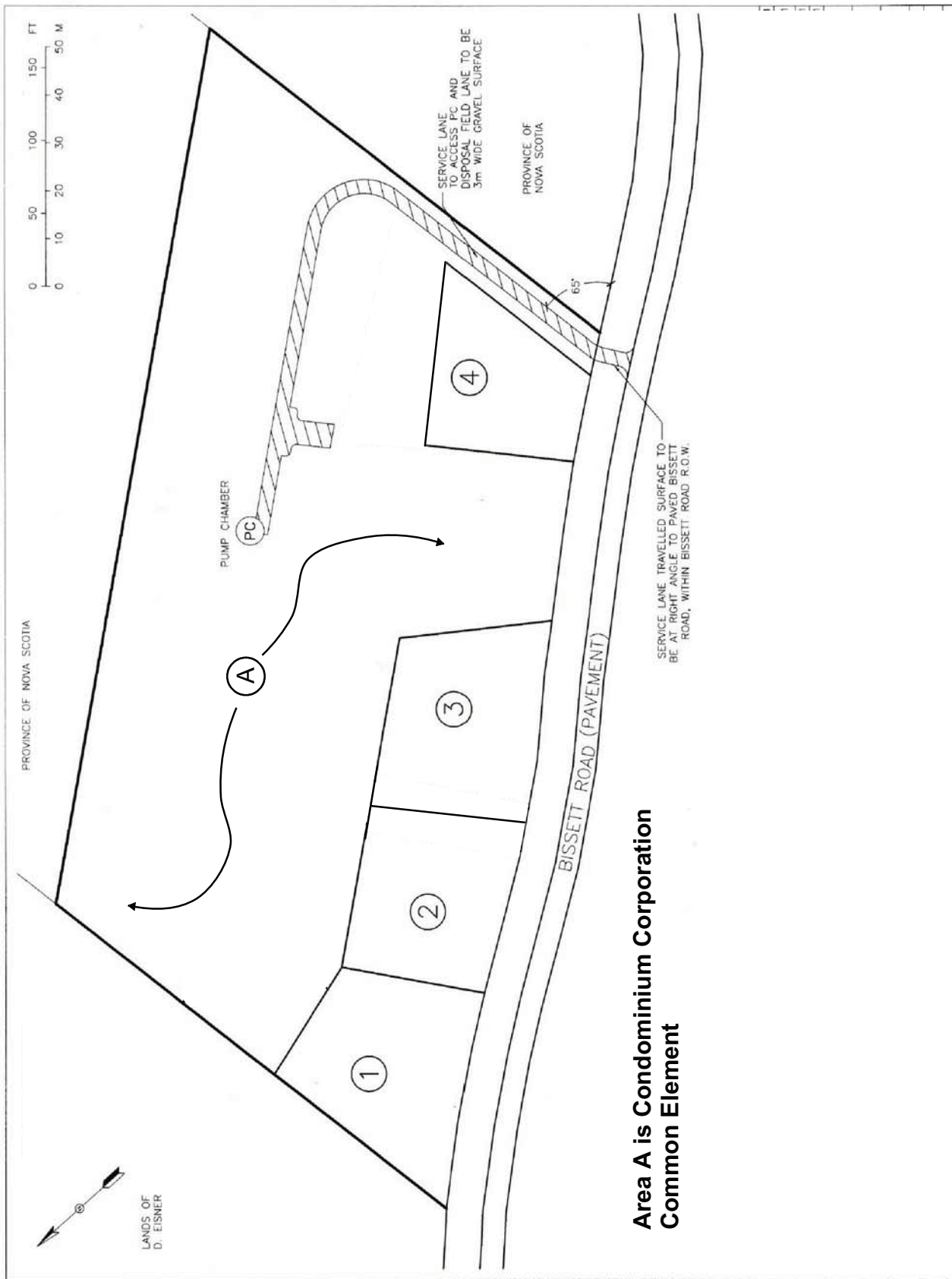
Witness

Per: _____
MUNICIPAL CLERK



Schedule B: Site Plan Four Units

HRM does not guarantee the accuracy of any base information.



Area A is Condominium Corporation Common Element

Schedule C : Lot Layout

HRM does not guarantee the accuracy of any base information.

Attachment B: Excerpt from the Regional Municipal Planning Strategy

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;	The Level I and the Level II groundwater assessment has been prepared for the lands. The test wells revealed acceptable long term yields to service the development. Staff believe the submitted groundwater assessment shows an adequate supply of groundwater is present to service the proposed residential development.
(b) that there is sufficient traffic capacity to service the development;	HRM Development Engineering has accepted the Traffic Impact Study prepared for 5 unit residential development. Therefore, 4 units will have no adverse traffic impacts.
(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;	The proposed DA allows for single unit dwellings with home based business as per the R-1 zone of the Cole Harbour/ Westphal LUB.
(d) whether soil conditions and other relevant criteria to support on-site sewage disposal systems can be met;	The applicant is proposing on-site sewage treatment that includes a common disposal bed and related buried infrastructure that receives treated effluent from each individual home's septic tank. Buried pipes will collect and carry sewerage by gravity flow from the dwellings to a buried pump chamber located adjacent the disposal bed.
(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;	The cluster type of residential development minimizes extent of public street development through use of existing street for access.
(f) that the building sites for the residential units, including all structures,	Not applicable under Policy S-16 criteria that excludes Policy S-15(f) for classic open space

driveways and private lawns, do not exceed approximately 20% of the lot area;	designs.
(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);	Not applicable under Policy S-16 criteria that excludes Policy S-15(g) for classic open space design.
(h) that the development is designed to retain the non-disturbance areas and to maintain connectivity with any open space on adjacent parcels;	The development is designed such that the 60% of the lands required to be retained as common. There are two developed trails, Salt Marsh Trail and Cole Harbour Heritage Park trail in the area that are accessible to residents but not connected to or through the site.
(i) connectivity of open space is given priority over road connections if the development can be sited on the parcel without jeopardizing safety standards;	n/a
(j) trails and natural networks, as generally shown on Map 3 or a future Open Space Functional Plan, are delineated on site and preserved;	Map 3 of the Regional MPS identifies a proposed trail in the vicinity of the proposed development but none occur on the site. There is no connection to the site however and not likely in the future.
(k) parks and natural corridors, as generally shown on Map 4 or a future Open Space Functional Plan, are delineated on site and preserved;	The site abuts undeveloped parkland park land.
(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;	Staff believe that proposed dwellings are located to minimize impact upon primary conservation areas.
(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/a
(n) that the roads are designed to appropriate standards as per Policy T-2;	No roads proposed.

(o) views of the open space elements are maximized throughout the development;	Views of the open space design were taken into account when designing the development.
(p) opportunities to orient development to maximize the capture of solar energy;	The developer has designed the development without such a design response.
(q) the proposed residential dwellings are a minimum of 800 metres away from any permanent extractive facility;	There is no local extraction resource in the area.
(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	Staff believe the proposed development will not impact any natural resource use. The abutting regional parkland functions as a protective buffer.
(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.	n/a

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	The Policy S-15 criteria is responded to in the above table.
(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.	Staff believe the common open space requirement that 60% or more of the site be retained in single ownership of an individual, land trust or condo corporation or HRM has been fulfilled. The on-site sewage disposal is located within the common open space.

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:	
(i) the financial capability of HRM to absorb any costs relating to the	Staff believe HRM may absorb any costs relating to the development which is not

development;	premature at this time.
(ii) the adequacy of municipal wastewater facilities, stormwater systems or water distribution systems;	Staff believe the stormwater management plan required under the proposed development agreement will adequately address runoff and conveyance from the public street as it must meet municipal standards.
(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;	Staff believe the impact on local schools from this proposed development would be insignificant.
(iv) the adequacy of road networks leading to or within the development;	Staff believe adequate traffic capacity is available for the proposed development.
(v) the potential for damage to or for destruction of designated historic buildings and sites;	Not applicable.
(b) 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;	Staff believe the proposed development of 4 residential dwelling units is compatible with adjacent residential development to the southwest and to the east. The 60% retained common open space, that is tree covered or relatively non-altered reduces potential conflict within nearby land-uses.
(ii) height, bulk and lot coverage of any proposed building;	The proposed development agreement permits single unit dwellings as per the R-1 zone of the Cole Harbour/Westphal LUB.
(iii) traffic generation, access to and egress from the site, and parking;	Staff believe, based on the submitted Traffic Impact Study prepared for the proposed development found traffic considerations to be not adverse and that access to and from the lands to the public roads meet capacity requirements.
(iv) open storage;	The proposed development agreement does not permit open storage.
(v) signs; and	n/a
(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.	Staff believe the residential cluster pattern illustrates the avoidance of such features that are not conducive to residential development.

Attachment C: Minutes from Public Information Meeting

HALIFAX REGIONAL MUNICIPALITY

PUBLIC INFORMATION MEETING

CASE NO. 17061 – Open Space Design Application for Bissett Road

7:00 p.m.
Monday, September 12, 2011
Cole Harbour Place
51 Forest Hills Parkway

STAFF IN

ATTENDANCE: Darrell Joudrey, Planning Applications
Holly Kent, Planning Technician
Jennifer Little, Planning Controller

ALSO IN Councillor Lorelei Nicoll, District 4
ATTENDANCE: Jen Jensen, Applicant
Kim Conrad, Applicant

PUBLIC IN
ATTENDANCE: 15

The meeting commenced at approximately 7:04 p.m.

Opening remarks/Introductions/Purpose of meeting

Mr. Darrell Joudrey introduced himself as the planner guiding this application through the process; he introduced Holly Kent, Planning Technician, HRM Planning Applications, Jennifer Purdy Little, Planning Controller, HRM Planning Applications, and Councillor Lorelei Nicoll, District 4.

The purpose of the meeting is that HRM has received an application by HMJ Consulting Limited for lands of Kimberly Conrad, to enter into a Stage 2 open space design development agreement on Bissett Road, Cole Harbour.

Process and Overview of Application

Mr. Joudrey reviewed the application process, noting that the public information meeting is an initial step, whereby HRM reviews and identifies the scope of the application and seeks input from the neighborhood. The application will then be brought forward to Regional Council which will hold a public hearing at a later date, prior to making a decision on the proposed development. Following Council's decision, there is an appeal period, during which the decision may be appealed to the Nova Scotia Utility and Review Board.

Mr. Joudrey explained that HMJ Consulting has applied to enter into a development agreement to permit an open space design residential development, for lands of Kim Conrad, on Bissett

Road, Cole Harbour. The Application is for 5 single unit dwellings with common well and sewage disposal. Reviewing a slide of the subject property, he explained that under the Cole Harbour/Westphal Municipal Planning Strategy, the Urban Residential designation is intended to recognize and support the single unit dwelling residential environment in both serviced and un-serviced areas. This includes the associated activities that are appropriate and typical to each area. In the more urban serviced areas where lot sizes are smaller, non-residential uses that may be accommodated within a dwelling are limited to uses such as day care and office. Larger lots in the un-serviced area may accommodate small businesses as long as conflicts with adjacent lots are minimized. Mr. Joudrey reviewed Section 3.5 of the Regional Municipal Planning Strategy explaining that a subdivision of land may proceed as an open space design development within the Agricultural, Rural Resource and non-growth management areas of the Rural Commuter designation, though the process of a development agreement. There are two stages of an open space design development agreement. The first stage is intended to determine open space areas to be preserved and potential areas for development. The second stage involves the delineation of roads, lots, parks and other physical design features of the development. Within this stage, the plan requires approval of the applicable community council in the form of a development agreement.

Mr. Joudrey explained that this application is for a classic “cluster” open space design development. This type of design preserves culturally and environmentally sensitive areas by clustering smaller lots on a maximum of 40% of the site and preserving 60% of the overall development as common open space. The maximum density of this form of development is 1 unit per 4000 square meters.

Presentation of Proposed – HMJ Consulting Limited

Mr. Jen Jensen, Consultant, gave a brief description of his past experience in this business. He reviewed a slide of the subject property and the surrounding location viewing the park area and the residential areas. He explained that there are no wetlands, watercourses or archaeological features on the property or within several hundred meters of the property that would fall into a sensitive category. He reviewed HRM staff’s map showing the wetland and a small stream. Reviewing the slide, he pointed out that the land is mostly flat with a slight slope towards the back of the property. He explained that this is an open space design that requires 60% of the land must be left as undeveloped land. This application is for a Bare Land condominium, dividing up the land that would look similar to lots will be units and common space. He explained that there is a condominium corporation that has been established that is owned by the owners of the units. In the open space design developments, usually the water supply/sewage collection and treatment are owned and managed by the condominium corporation. He explained that the property is close to 5 acres with 610 feet along the street frontage. The proposal is for single unit dwellings which are currently allowed in this zone. The feature of the open space design preserves more of a rural land ambience. He added that the common open space is reserved for the use of the unit owners only and will allow for service and infrastructure (water and sewer works). Mr. Jensen reviewed diagrams showing the design and added that there are no requirements for any additional public streets or public water/sewer services; this makes good efficient, economic use of the current streets. He pointed out on the side an area which may be confused as being an easement and explained that it is part of lot 5. He added that in a typical cluster development, the water/sewer system is owned by the condominium corporation. He

explained that the sewage from each home can be removed by gravity through conventional sewers to a common disposal field that will be placed at the bottom of the property. Each houses' sewage will first go through a septic tank which will all flow together into a pumping chamber. He added that this has been approved by the Environment Department. Mr. Jensen explained that the Geologist has recommended that each house have its own well, and be scattered at least 100 feet apart. This will secure sufficient water supply to each of the five houses without any interference.

Mr. Kim Conrad, Applicant explained that this application was initiated in 1980. At that time they were told by the Department of Natural Resources that they could sell them their property or pay taxes on it and not be allowed to do anything with it. He explained that he had saved the front part of the property which he took to Bob Gough (former Development Officer), County of Halifax, who created a design of six lots of 340ft deep. They faced some difficulties with that development plan and decided to not proceed with the application until now.

Questions and Answers

Mr. Conrad asked Mr. Joudrey how long of a process will there be until the application goes to Council.

Mr. Joudrey explained that the application process typically takes between 8-12 months. He anticipates that this application will only take 3-4 months before it goes for a public hearing.

A gentleman asked if this application will open up the opportunity for other similar developments.

Mr. Joudrey explained that anyone wishing to develop a subdivision could apply for this type of application.

Ms. Jill Thomas, Cole Harbour, asked about the gap to view at the back of the open space and why it is needed.

Mr. Jensen explained that HRM is trying to achieve a more rural appearance to the country side. This is to maximize the view of the open space and to minimize the appearance of the fifth house.

Ms. Thomas explained that currently driving down Bissett Road it has the appearance of houses with open space in behind them and doesn't understand why the fifth house isn't in-line with the rest.

Mr. Jensen explained that when the gap in left between units three and four, it gives a better view of the back natural area.

A gentleman asked about the minimum property frontage required to build.

Mr. Jensen explained that these 'flag lots' are allowed and permits the development of plans that could not otherwise be developed. This also maximizes the use of existing highways.

Closing Comments

Mr. Joudrey thanked everyone for attending. He encouraged anyone with further questions or comments to contact him.

Adjournment

The meeting adjourned at approximately 8:00 p.m.