

**Harbour East - Marine Drive Community Council
October 17, 2013**

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

SUBMITTED BY: Original signed
Brad Anguish, Director of Community and Recreation Services

DATE: September 26, 2013

SUBJECT: **Case 18262: Development Agreement for a 10,000 sq. ft. Commercial Building (Cole Harbour Shopping Centre commercial area)**

ORIGIN

Application by Sunrose Consulting

LEGISLATIVE AUTHORITY

HRM Charter; Part VIII, Planning & Development

RECOMMENDATION

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

1. Give Notice of Motion to consider the proposed development agreement, as described in Attachment A, to permit a 929 sq. m. (10,000 sq. ft.) commercial building, and to schedule a public hearing;
2. Approve the proposed development agreement, as contained in Attachment A; and
3. Require that the proposed development agreement be signed and delivered 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, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

An application has been submitted for a 929 sq. m. (10,000 sq. ft.) free standing commercial building (Schedule B) by development agreement. The building is proposed to be developed as part of the Cole Harbour Shopping Centre, an existing commercial node.

The site is located on a vacant parcel of land, within the Cole Harbour Shopping Centre commercial area. The existing shopping centre was developed in the mid 1970's with the addition of a Canadian Tire, TD plaza and a Tim Horton's/Wendy's in the 1990's. The development is approximately 150,000 sq. ft. in area and services the local community.

On July 5, 2011, Regional Council adopted amendments to the Cole Harbour/Westphal Municipal Planning Strategy (MPS) and Land Use By-law (LUB) to address site specific issues with the Cole Harbour Shopping Centre. At that time, Policy CC-9a was adopted and required that any additions or new development at the Cole Harbour Shopping Centre could only be considered subject to the development agreement process. A new Shopping Centre Commercial (C-3) Zone was also created and applied to the lands.

DISCUSSION

The Property

The subject property is generally described as:

- located at the northwest corner of the Forest Hills Parkway and Cole Harbour Road intersection;
- designated Community Commercial (CC) and zoned C-3 (Shopping Centre Commercial) within the Cole Harbour/Westphal MPS and LUB;
- approximately 8.28 acres (3.3 hectares) in area within a larger 20.7 acre (8.38 hectare) commercial node; and
- located within a commercial node with an existing total commercial square footage of approximately 150,000 sq. ft.

Policy

Policy CC-9a provides the criteria for Community Council to review when considering a development agreement for new or expanded buildings within the Cole Harbour Shopping Centre. The intent of the policy is to create a more attractive and functional community commercial centre that addresses concerns with traffic access to the site, as well as on-site circulation and parking. Staff has reviewed the proposal in accordance with Policy CC-9a in the Cole Harbour/Westphal MPS (Attachment B). These policies contain criteria for Council to consider when evaluating a proposal of this nature. Attachment B contains staff's evaluation of the application against these applicable policies. Staff is satisfied that this application complies with this policy and have highlighted the following issues for further discussion.

Future expansions

The applicant has stated that there is no intention to have any further build out of the mall site, other than the proposed 929 sq. m. (10,000 sq. ft.) building. Should the landowner wish to

redevelop the site further, it would be a substantive amendment to the development agreement and require a decision by Community Council following a public hearing.

Traffic Management and Parking

In the past, vehicles have had difficulty moving through the site. The development has multiple property owners, which has led to each site being developed in isolation, without coordination. In addition to this, a building was developed in the centre of the parking lot, which further impeded traffic flow. Prior to this request, the applicant improved the traffic flow by removing this building and working with the other land owners to realign the parking lot to provide consistency and improved vehicle flow across the site. The parallel parking spaces along the side of the main driveway aisle have been removed to reduce the opportunity for vehicle conflicts and allow for improved vehicle movement through the site. Attachment C shows the site layout prior to these improvements. The improvements have helped to alleviate the traffic flow problems on the site and are depicted on Schedule B.

The applicant is proposing 49 new parking spaces for this development, however, the land use by-law would require 55 spaces for a building of this size. As there is an abundance of existing parking spaces nearby, staff is satisfied with the quantity of new parking spaces to be provided.

Pedestrian Access

Pedestrian access is provided from Forest Hills Parkway via a sidewalk that connects to a walkway that runs in front of the existing plaza and connects to the proposed building, as shown on Schedule B. A pedestrian walkway also comes into the site from Cole Harbour Road and runs in front of the existing Sobey's building, which connects with the mall site. The Sobey's building is owned by a separate land owner, but does provide a pedestrian connection that connects with the existing plaza and leads to the proposed development. Crosswalks are provided from the parking lot to the building to provide safe crossings for pedestrians.

Landscaping

Due to the size constraints of the existing parking lot, the applicant is not able to incorporate any landscaping into the parking lot layout and still provide sufficient parking. Landscaping is to be provided along the side of the proposed development where there is an existing stormwater pipe and a proposed swale. The proposed landscaping will include dogwoods and willows, which are species often used in support of stormwater management.

Building Design

The development does not have a proposed building design at this stage. The applicant does not have a tenant and would like flexibility in the design depending on the future tenant. To ensure that the building design is acceptable, the agreement provides criteria that must be included once a design is complete. This includes requirements to highlight the entrance with architectural details, limit the size of blank areas on walls facing the street, restrict the types of building materials permitted, and screen the mechanical elements from public view.

Conclusion

It is the opinion of staff that the proposed commercial building developed in accordance with the proposed development agreement (Attachment A) meets the intent of Policies CC-9a and IM-11. The proposed development is consistent with the development that is around it and further reinforces the commercial nature of the area. Therefore, staff recommends approval of the proposed development agreement in Attachment A.

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 on February 13, 2013 (see Attachment E), the HRM website, responses to inquiries, as well as an information/notification sheet that was sent to property owners in the general area of the site regarding the proposal.

The public expressed concerns about littering, pedestrians shortcutting through their properties to access the existing mall site and concerns about stormwater drainage. The applicant is proposing garbage cans in front of the building to address concerns with littering and the building is proposed where much of the current shortcutting occurs, which may reduce the incidences of shortcutting. Finally, the existing storm water system in the area as well as a proposed landscaped swale will help control storm water conditions.

Should Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area will be notified as shown on Map 2.

The proposed development agreement will potentially impact local residents, property owners and adjacent businesses.

ENVIRONMENTAL IMPLICATIONS

The proposal meets all relevant environmental policies contained in the Cole Harbour/Westphal MPS and LUB. Please refer to Attachment B of this report for further information.

ALTERNATIVES

1. Community Council may choose to approve the proposed development agreement, as contained in Attachment A of this report. This is the staff recommendation. 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*.

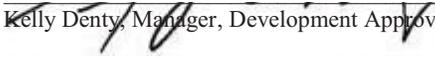
2. Community Council may choose to refuse to approve the development agreement and, in doing so, must provide reasons why the agreement does not reasonably carry out the intent of the MPS. This is not recommended for the reasons discussed above. A decision of Council to reject this development agreement, with or without a public hearing, is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
3. Community Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant and may require an additional public hearing.

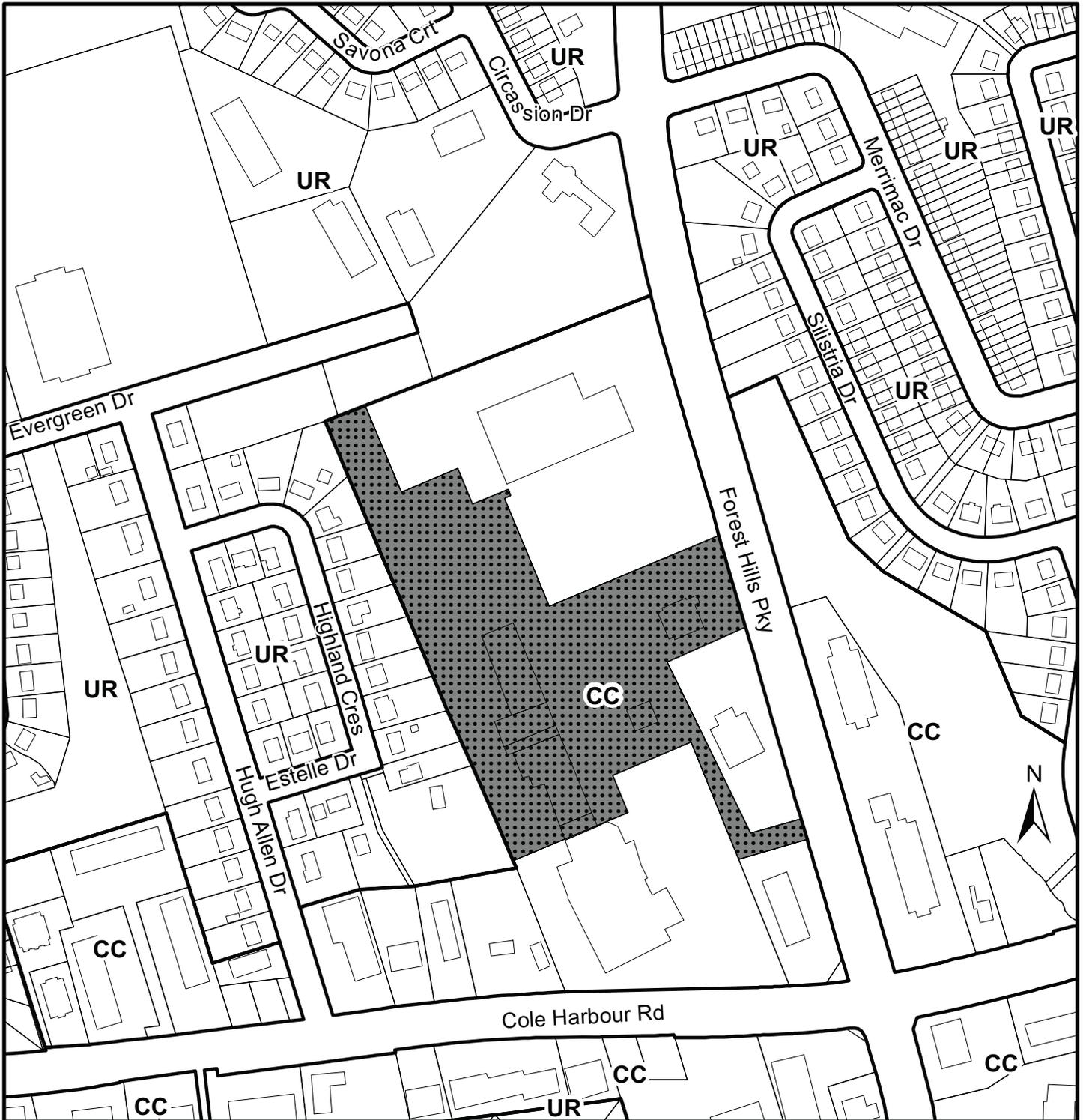
ATTACHMENTS

Map 1:	Generalized Future Land Use Map
Map 2:	Zoning and Notification
Attachment A:	Development Agreement
Attachment B:	Excerpts from the Cole Harbour/Westphal MPS and Policy Evaluation
Attachment C:	Existing Site Conditions
Attachment D:	Excerpts from the Cole Harbour/Westphal LUB
Attachment E:	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: Jennifer Chapman, Planner 1, 490-3999
Original signed

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



Map 1 - Generalized Future Land Use

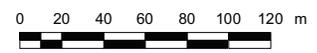
4 Forest Hills Parkway
Cole Harbour



 Area of Proposed Development Agreement

Designation

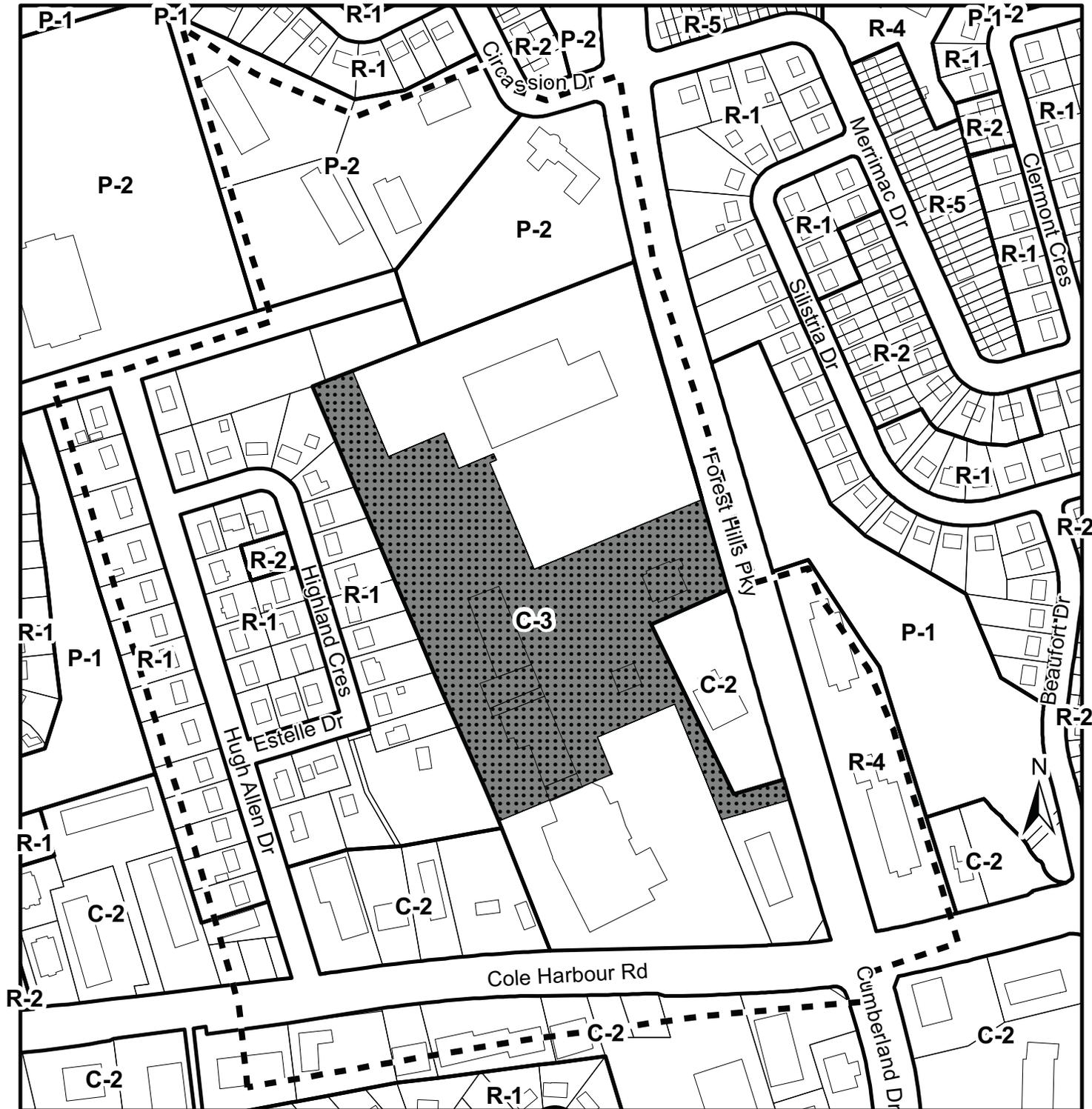
CC Community Commercial
UR Urban Residential



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 Plan Area



Map 2 - Zoning and Notification

4 Forest Hills Parkway
Cole Harbour

 Area of Proposed Development Agreement

 Area of notification

Cole Harbour/Westphal Plan Area

- Zone
- R-1 Single Unit Dwelling
 - R-2 Two Unit Dwelling
 - R-4 Multiple Unit Dwelling
 - R-5 Rowhouse Dwelling
 - C-2 General Business
 - C-3 Shopping Centre
 - P-1 Open Space
 - P-2 Community Facility



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

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

**Attachment A
Development Agreement**

THIS AGREEMENT made this day of **[Insert Month]**, 20__,

BETWEEN:

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

OF THE FIRST PART

- and -

HALIFAX REGIONAL
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 Cole Harbour Shopping Centre, **[Insert PID#]** Cole Harbour/Westphal 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 a new building in an existing commercial shopping centre on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy CC-9A of the Cole Harbour/Westphal Municipal Planning Strategy and Section 3.6(y) of the Cole Harbour/Westphal Land Use By-law;

AND WHEREAS the Harbour East- Marine Drive Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case 18262;

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, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law the 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, lot 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 to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) 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 and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, storm water 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 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.

1.5 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 applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

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, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 18262:

Schedule A Legal Description of the Lands
Schedule B Site Plan

3.2 Requirements Prior to Approval

3.2.1 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.3 General Description of Land Use

3.3.1 The use(s) of the Lands permitted by this Agreement are the following:

- (a) One new commercial building as shown on Schedule B, which will have a maximum gross floor area of 929 sq. m. (10,000 sq. ft.); or
 - (b) Any use permitted within the C-3 Zone, subject to the provisions contained within the Land Use By-law for Cole Harbour/Westphal.
- 3.3.2 The Development Officer may permit unenclosed structures attached to a main building such as verandas, decks, porches, steps, and mobility disabled ramps to be located within the required minimum front, side and rear yards in conformance with the provisions of the Land Use By-law for Cole Harbour/Westphal, as amended from time to time.
- 3.3.3 Notwithstanding section 3.3.1 existing buildings may be reconstructed, repaired or altered provided the building, in the opinion of the Development Officer, is substantially the same as it was prior to reconstruction, repair or alteration.

3.4 Siting and Architectural Requirements

- 3.4.1 All new construction and exterior renovation shall comply with the requirements of section 3.4.

Siting

- 3.4.2 The building's siting, bulk and scale shall be as shown on Schedule B.

Architectural Requirements

Entrances

- 3.4.3 The main entrances to building shall be emphasized by detailing, changes in materials, and other architectural devices such as but not limited to lintels, pediments, pilasters, columns, porticos, overhangs, corner boards, fascia boards or an acceptable equivalent approved by the Development Officer. Service entrances shall be integrated into the design of the building and shall not be a predominate feature.

Blank Walls

- 3.4.4 Large blank or unadorned walls shall not be permitted on any side of the building that faces a street. The scale of large walls shall be tempered by the introduction of artwork, such as murals, textural plantings and trellises, and architectural detail to create shadow lines (implied windows, cornice lines, or offsets in the vertical plane).

Exposed Foundation

- 3.4.5 Any exposed foundation in excess of 61 cm (2feet) in height shall be architecturally detailed, veneered with stone or brick or treated in an equivalent manner acceptable to the Development Officer.

Building Materials

3.4.6 Exterior building materials shall not include vinyl siding but may include any one or more of the following:

- clay masonry;
- non-combustible cladding;
- concrete split face masonry;
- cut stone masonry;
- random stone masonry; or
- acceptable equivalent in the opinion of the Development Officer.

Functional Elements

3.4.7 All vents, down spouts, flashing, electrical conduits, metres, service connections, and other functional elements shall be treated as integral parts of the design. Where appropriate these elements shall be painted to match the colour of the adjacent surface, except where used expressly as an accent.

Awnings

3.4.8 Fixed or retractable awnings are permitted at ground floor levels provided the awnings are designed as an integral part of the building façade.

Roof

3.4.9 All roof mounted mechanical or telecommunication equipment shall be visually integrated into the roof design or screened from public view.

3.5 RETAINING WALLS

3.5.1 Retaining walls shall be constructed of a decorative precast concrete or modular stone retaining wall system or an acceptable equivalent in the opinion of the Development Officer.

3.6 PARKING, CIRCULATION AND ACCESS

3.6.1 The parking area shall be sited as shown on Schedule B. The parking area shall maintain setbacks from the property lines as shown on the plan.

3.6.2 The parking area shall contain a minimum of 272 parking spaces.

3.6.3 The parking area shall be hard surfaced.

3.6.4 The limits of the parking area shall be defined by fencing, landscaping or curb.

3.7 OUTDOOR LIGHTING

3.7.1 Lighting shall be directed to driveways, parking areas, loading area, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.8 MAINTENANCE

3.8.1 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 the building, fencing, walkways, recreational amenities, parking areas and driveways, 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, salting of walkways and driveways.

3.9 SIGNS

3.9.1 The sign requirements shall be in accordance with the Cole Harbour/Westphal Land Use By-law, as amended from time to time.

3.9.2 Ornamental plants shall be planted and maintained around the entire base of any proposed pylon or ground sign as part of the required landscaping.

3.10 SCREENING

3.10.1 Commercial refuse containers located outside the building shall be fully screened from adjacent properties and from streets by means of opaque fencing or masonry walls with suitable landscaping.

3.10.2 Mechanical equipment shall be permitted on the roof provided the equipment is screened and not visible from the street or incorporated in to the architectural treatments and roof structure.

3.10.3 Any mechanical equipment shall be screened from view from the street with a combination of opaque fencing and landscaping or building elements.

3.11 HOURS OF OPERATION

1.11.1 Deliveries to the building, and the collection of refuse and recyclables, shall occur only between the hours of 7:00am and 10:00pm.

3.12 LANDSCAPING

3.12.1 All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.

3.12.2 Landscaping will be required as shown on Schedule B.

PART 4: STREETS AND MUNICIPAL SERVICES

General Provisions

- 4.1 All design and construction of primary and secondary service systems shall satisfy Municipal Service Systems Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work.

Off-Site Disturbance

- 4.2 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, 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.

Underground Services

- 4.3 All secondary or primary (as applicable) electrical, telephone and cable service to all commercial buildings shall be underground installation.

Solid Waste Facilities

- 4.4 The building shall include designated space for three stream (refuse, recycling and composting) source separation services consistent with the Solid Waste Resource Collection and Disposal By-law. This designated space for source separation services shall be shown on the building plans and approved by the Development Officer and Building Inspector in consultation with Solid Waste Resources.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

- 5.1 All private storm water facilities shall be maintained in good order in order to maintain full storage capacity by the owner of the lot on which they are situated.

Erosion and Sedimentation Control and Grading Plans

- 5.2 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.

PART 6: AMENDMENTS

6.1 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of Council:

- (a) changes to the parking layout as detailed in Section 3.6 or which, in the opinion of the Development Officer, do not conform with Schedule B;
- (b) increases to the maximum gross floor area of 929 sq. m. (10,000 sq. ft.) of the building as outlined in section 3.3.1, up to a maximum gross floor area of 1,115 sq. m. (12, 000 sq. ft.) of said building;
- (c) the granting of an extension to the date of commencement of construction as identified in Section 7.3 of this Agreement; and
- (d) 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 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 the installation of the footings and foundation for the proposed building.

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 6.1 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

7.5.1 If the Developer fails to complete the development after 3 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 twenty four hours of receiving such a request.

8.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer 30 days written notice of the failure or default, 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 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 the 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; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy 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: _____

Witness

Per: _____

SIGNED, 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

Witness

Per: _____

MAYOR

Witness

Per: _____

MUNICIPAL CLERK

Attachment B
Excerpts from the Cole Harbour/Westphal MPS and Policy Evaluation

Policy CC-9a It shall be the intention of Council to consider expansions of any building in the C-3 Zone, beyond which is allowed under the C-3 Zone, only through the development agreement process. This includes subdivision of lots to create smaller commercial pads/sites. In considering any such proposal for expansion, Council shall have regard to the following:

Policy Criteria	Staff Comment
(a) That any proposal is considered in the context of the entire mall site, and that the following are addressed:	
(i) future building locations/extensions;	Applicant has stated that other than the proposed new building, no new additions or extensions are being considered. Any changes to other buildings on the site would have to comply with the development agreement or through an amendment to the agreement.
(ii) a comprehensive traffic management plan with appropriate site improvements that optimizes vehicular circulation, provides appropriate throat depth for driveways, clearly separates queuing lanes for drive through restaurants from driving aisles, and provides screened, efficient loading space;	Upgrades have been made to the parking lot that provides better vehicular access through the site. Parallel parking has been removed to reduce potential conflicts and parking has been reoriented around the drive through to reduce conflicts. It is an existing situation, but improvements have been made that allows traffic to flow better through the site.
(iii) a parking utilization & needs assessment to address the number of parking spaces required;	Staff is satisfied with the number of parking spaces provided. The ratio for the entire site is 4.61 which should be adequate for a development of this nature.
(iv) improved pedestrian connections in the form of dedicated sidewalks from street	Pedestrian access is included from the street up to and in front of all the store fronts.

access points to storefronts; and	
(v) several areas suitable for enhanced landscaping, both adjacent to streets and within the site, including trees and flower beds, with consideration for surface runoff to be directed through these to minimize overall peak runoff and provide more adequate watering for the vegetation;	Landscaping is to be provided along the side of the proposed development where there is an existing stormwater pipe and a proposed swale. The proposed trees will be dogwoods and willows, which are often used for their stormwater management qualities.
(b) the ability of the sanitary sewage system to accommodate additional wastewater generation that may be caused by expansions in floor area;	Halifax Water have reviewed the proposal and advised that they do not have any concerns in this regard.
(c) urban design goals including quality architecture, appropriate and attractive signage, active transportation use, and screening of areas such as loading bays, waste storage/collection, and mechanical equipment,	The DA has requirements that limit the types of building materials permitted, requires variation in the built form and prevents large expanses of blank walls on buildings. The DA also refers to the LUB for bicycle parking requirements which would support active transportation. Loading bays and waste receptacles are located behind the building and mechanical equipment is required to be screened so as not to be visible from the street.
(d) the requirements of general implementation policy IM-11.	See below.

(RC-Jul 5/11;E-Oct 8/11)

IM-11 In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, Cole Harbour/Westphal Community Council shall have appropriate regard to the following matters:

Policy Criteria	Staff Comment
<i>(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;</i>	Proposal meets the requirements of Policy CC-9a (see table above).
<i>(b) that the proposal is not premature or inappropriate by reason of:</i>	
<i>(i) the financial capability of the Municipality to absorb any costs relating to the development;</i>	There are no anticipated costs to the Municipality relating to the proposed development.
<i>(ii) the adequacy of sewer and water services;</i>	The property is serviced with municipal water and sewer and Halifax Water is satisfied that the proposed development can be serviced.
<i>(iii) the adequacy or proximity of school, recreation and other community facilities;</i>	The proposed development is a commercial use, therefore, these facilities will not be impacted by this development.
<i>(iv) the adequacy of road networks leading or adjacent to or within the development; and</i>	A Traffic Impact Statement was prepared for the proposed development and its findings were accepted by HRM staff. Specifically, the proposed development can be serviced by the existing access to Cole Harbour Road and Forest Hills Parkway and the road network is adequate to service the proposed development.
<i>(v) the potential for damage to or destruction of designated historic buildings and sites.</i>	Staff is not aware of any such buildings or features on the lands.
<i>(c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:</i>	
<i>(i) type of use;</i>	The development is within an established commercial node that is grade separated to the residential community to the West and has a treed buffer to the residential community to the North.
<i>(ii) height, bulk and lot coverage of any proposed building;</i>	The development agreement provides controls that limit the square footage and the size of the building. The proposed development is consistent with the existing shopping centre complex.

<i>(iii) traffic generation, access to and egress from the site, and parking;</i>	Prior to this application, upgrades were made to the parking lot that provide improved vehicular access through the site. Parallel parking has been removed to reduce potential conflicts and parking has been reoriented around the drive through to reduce conflicts. A TIS was provided and accepted by Staff.
<i>(iv) open storage;</i>	Refuse containers shall be fully screened from adjacent properties and streets by means of opaque fencing or masonry walls with suitable landscaping.
<i>(v) signs; and</i>	Signage as per LUB with landscaping around base of any ground sign and consistent with other commercial uses in the area.
<i>(vi) any other relevant matter of planning concern.</i>	None
<i>(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</i>	The site is suitable for development. The lands do not have any known watercourses or wetlands.
<i>(e) any other relevant matter of planning concern.</i>	None
<i>(f) Within any designation, where a holding zone has been established pursuant to “Infrastructure Charges - Policy IC-6”, Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the “Infrastructure Charges” Policies of this MPS. (RC-Jul 2/02;E-Aug 17/02)</i>	N/A



EXISTING PARKING COUNT
SOBEYS SITE: 157 SPACES
TD SITE: 55 SPACES
FIRST CAPITAL SITE: 167 SPACES
TIM HORTONS/WENDYS: 57 SPACES
TOTAL SPACES: 436 SPACES

PARKING RATIO: (per 1000sqft.)
 SOBEYS SITE: 3.52
 TD SITE: 6.61
 FIRST CAPITAL SITE: 3.66
 TIM HORTONS/WENDYS: 10.71



1000 SHEPPARD AVENUE EAST
 SUITE 100
 SCARBOROUGH, ONTARIO M1S 1T7
 CANADA, TEL: 416 291-1111
 FAX: 416 291-1112
 WWW.GENIVAR.COM



REF PLAN: 1: 25.000



DATE	DESCRIPTION
2012/07/26	ISSUED FOR D.A.
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2012/09/24	ISSUED FOR D.A.
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PROJECT: COLE HARBOUR SHOPPING CENTRE
 COLE HARBOUR, NS

EXISTING SITE CONDITIONS
 PRIOR TO 2012 WORK

DATE: 2022/07/26

SCALE: 1:500

PROJECT NO: 2022-07-001

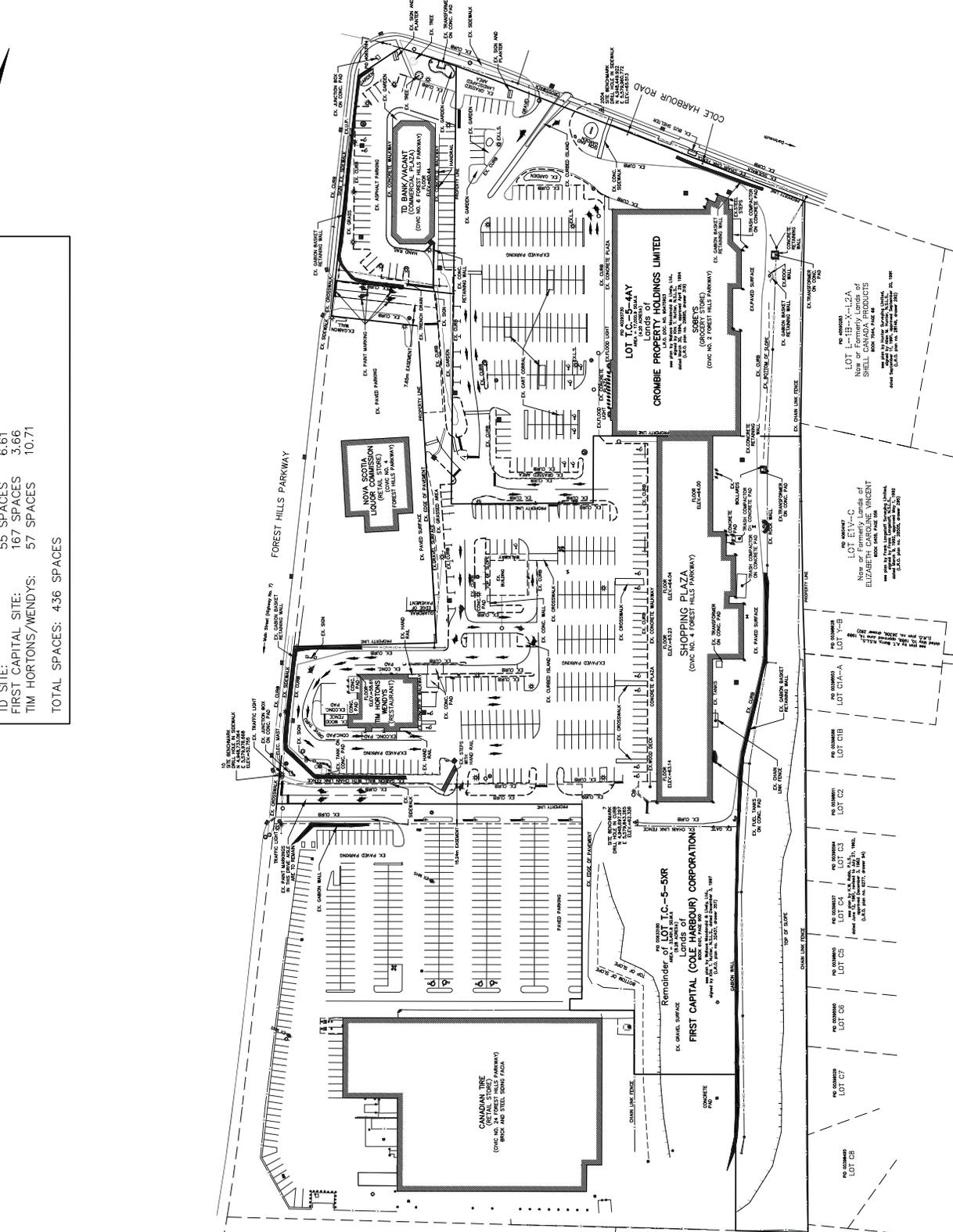
CLIENT: FIRST CAPITAL

DESIGNED BY: GENIVAR INC.

DATE: 2022/07/26

PROJECT NO: 2022-07-001

CLIENT: FIRST CAPITAL



**Attachment D:
Excerpts from the Cole Harbour/Westphal LUB**

PART 17A: C-3 (SHOPPING CENTRE) ZONE

17A.1 C-3 USES PERMITTED (RC-Jul 5/11;E-Oct 8/11)

No development permit shall be issued in any C-3 Zone except for the following:

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;

Veterinary hospitals and accessory indoor kennels.

17A.2 OTHER REQUIREMENTS: ADDITIONAL FLOOR AREA AND LOTS

(RC-Jul 5/11;E-Oct 8/11)

No additions to existing buildings, or the subdivision of parcels to accommodate smaller freestanding uses or buildings, shall be considered except through the development agreement process.

17A.3 OTHER REQUIREMENTS: COMMERCIAL USES

(RC-Jul 5/11; E-Oct 8/11)

Where uses are permitted as Commercial Uses in any C-3 Zone, the following shall apply:

- (a) No outdoor storage shall be permitted and outdoor display shall be restricted to the temporary or seasonal display of plant materials or perishable goods normally associated with

retail uses permitted under the provisions of Section 17A.1 provided that no such display area is located within any parking area required pursuant to Part 4 of this by-law.

- (b) No portion of any lot shall be used for the collection and storage of refuse unless the refuse containers are screened from view from adjacent residential properties or public roads.
- (c) No portion of any parking or loading space shall be located in any required rear yard.
- (d) Access to a lot shall only be from Cole Harbour Road or Forest Hills Parkway.
- (e) Signs on buildings shall comply with the requirements of Part 5 of this bylaw. No new ground signs are permitted, except incidental signs as specified by Section 5.5.

**Attachment E
Minutes from the Public Information Meeting**

**HALIFAX REGIONAL MUNICIPALITY
PUBLIC INFORMATION MEETING
CASE NO. 18262 – Commercial Building Cole Harbour Shopping Centre**

**7:00 p.m.
Wednesday, February 13, 2003
Cole Harbour Place, Harbour Room**

STAFF IN

ATTENDANCE: Jennifer Chapman, Planning Applications
Alden Thurston, Planning Technician
Jennifer Purdy, Planning Controller
Nancy Bellefontaine, Development Controller
Rowena Dill, Development Controller

ALSO IN
ATTENDANCE: Councillor Lorelei Nicoll, District 4
Jennifer Tsang, Sunrose Consulting
Mr. Ryan Barkhouse, Genivar

PUBLIC IN
ATTENDANCE: 7

The meeting commenced at approximately 7:00 p.m.

Opening remarks/Introductions/Purpose of meeting

Ms. Jennifer Chapman introduced herself as the planner guiding this application through the process; she introduced Alden Thurston, Planning Technician, HRM Development Approvals, Jennifer Purdy, Planning Controller, HRM Development Approvals, Nancy Bellefontaine, Development Controller, HRM Development Approvals, Rowena Dill, Development Approvals, HRM Development Approvals and Councillor Lorelei Nicoll, District 4.

The purpose of the meeting is that HRM has received an application by Sunrose Consulting for a development agreement to enable a 9,896 sq.ft. commercial building at Cole Harbour Shopping Centre. The purpose is to identify to the community early in the process that a development application has been received and what policies allow it to be considered.

Process and Overview of Application

Ms. Chapman 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 Harbour East - Marine Drive Community 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 can be appealed to the Nova Scotia Utility and Review Board.

Ms. Chapman explained that the Municipal Planning Strategy is a policy where lands are designated for certain types of activities (residential, commercial, etc.). It also provides policy that guides the decision making process for certain uses that might be ok, provided certain criteria are met. Some of the things staff will consider are community vision, flexible, provides policy framework to review requests for changes, changes require public input and public hearing, and these decisions are appealable. Ms. Chapman reviewed the development agreement, explaining that a development agreement requires policy in the Municipal Planning Strategy, it is more flexible than an as-of-right development; it is a contract between a landowner and the Municipality and places limits and controls on how the site is developed. This agreement is carried with the deed on the property and may be appealed through the URAB following the public process.

Ms. Chapman explained that this particular application is for a development agreement for a 10,000 sq. ft. free standing commercial building located in a vacant parcel adjacent to existing shopping plaza and above Canadian Tire. The subject property is within the Cole Harbour/Westphal plan area and designated Commercial use (C3 Shopping Centre Zone). Ms. Chapman added that this area went through a planning process in 2011 which resulted in a new zone, the C-3 zone and site specific policy for these lands. These lands have long been used as a commercial shopping plaza. At this time, Ms. Chapman showed slides of surrounding commercial sites.

Ms. Chapman explained that following this meeting staff will review certain criteria such as vehicle circulation, pedestrian movement, landscaping and building design.

Presentation of Proposed – Sunrose Consulting

Jennifer Tsang introduced herself as a representative for the owners of First Capital. She explained that they have owned this property for a few years and was originally under a provincial zoning called PUD which recently has been transferred to HRM. She reviewed a slide of the current site conditions and explained that there have been some changes within the last year. She reviewed the current conditions and explained that there has recently been some

changes to the lane way through the parking lot, as the owners have tried to tidy up the parking lot due to the grade changes and the safety complaints.

Questions and Answers

Ms. Shirley Stewart, Cole Harbour, asked who owns the lands where Sobeys is and also the land on the other end.

Ms. Tsang explained that Sobeys owns the property that it is on and the parking lot in front. She added that Sobeys owns Sobeys, TD owns TD, Canadian Tire owns Canadian Tire up to the parking lot, leaving the rest of the area which is owned by First Capital. They have coordinated with Sobeys to improve the parking lot. She added that currently First Capital has approval to extend the Plaza however; they have decided not to do that and have a free standing building, for a Dollarama. She explained that HRM and developers try to beautify the site, however because of the site, grade and parking situation, it is a bit challenging; it was felt that improving the parking and the traffic flow was more important than putting trees in the parking lot. Therefore, in replace of that, First Capital has done a bit more planting in the entrance area and on the corner. At this time, Ms. Tsang reviewed on the slide exactly where the planting will be.

Ms. Stewart explained that she thought that the Dollarama was going into the old Shoppers Drug Mart Building and asked what is going in that space.

Ms. Tsang explained that three years ago, when it was under the regulations of the Province, they wanted to put Shoppers there, but was having a hard time getting approval from the Province.

Mr. Stan Tait, Cole Harbour, expressed concern with the kids in the Tim Horton's parking lot squealing their tires all hours of night and now if the parking will be moved closer to the retaining wall, the noise level will project higher up the hill, which is where he resides. He also asked about delivery hours and expressed concern with the beeper and the noise projected from these large trucks. This is especially disruptive in the summer nights when the residents have their windows open.

Ms. Chapman explained that this falls under the Noise Control By-Law. However, this can also be something that can be addressed in the development agreement.

Ms. Tsang explained that there is not much that can be done about the current situation, but can possibly be addressed within this application and she can try to find out the hours in which delivery times will be.

Ms. Chapman explained that through the development agreement process, sometimes particular language can be put in around the loading times.

Mr. Tait also addressed concern regarding the retaining wall that is currently being used by the Jr. High students and suggested that they increase the height of the retaining wall so that these students will have to find an alternative way to get through.

Ms. Tsang explained that they will look into this concern and try to address it.

At this time, Mr. Tait showed on the slide exactly where the pathway and the portion of the retaining wall that is being climbed over.

Mr. Ryan Barkhouse, Genivar, explained that it is not required however, they could look at the possibility and consider placing a fence on the top of the wall.

Mr. Gary Moulton, St. Angus Church and St. Andrews Church, expressed concerns regarding the additional water runoff and also addressed concern regarding the additional foot traffic this will cause, as there is already so many people walking and jumping the fence at Canadian Tire.

Ms. Chapman explained that she will be doing a site visit.

Ms. Tsang added concern with addressing one area that has heavy pedestrian traffic and it causing more concern at another area.

Mr. Moulton added additional concern regarding the littering.

Councillor Nicoll suggested that it is the responsibility of the property owner to have as many signs up as possible to try to limit this issue.

Ms. Tsang explained that they will look at adding outdoor garbage cans.

Mr. Tait stated that he does not mind development but, he has concern with everything else that comes along with it.

Ms. Stewart explained that a lot of change has happened since she moved to Cole Harbour 40 years ago. She added that Sobeys at that time was Bissett Farm. At that time, when they decided to build, they reached out to the residents and assured that they would leave grass, shrubs and bushes. They have committed to this promise ever since. She explained that her family planted trees in the back of their property to avoid pedestrian traffic, which has worked however, as the mall expands the trees, shrubs did not continue.

Ms. Tsang assured that they will take a close look at what is behind the property and what possibilities there are.

Mr. Tait explained that because of the slope behind the property, they will not be able to plant much.

Ms. Stewart asked how many levels the Dollarama will be.

Ms. Tsang explained that it will just be the single level, the standard Dollarama as other locations. She explained that they have done parking calculations and meet the standards and with the realignment, was able to make the parking lot flow better and increase spaces.

Mr. Tait asked about the Nova Scotia Liquor Commissions.

Ms. Chapman explained that the Nova Scotia Liquor Commission is a separate lot with separate regulations.

Ms. Tsang explained that if the Nova Scotia Liquor Commission planned on doing something with the parking lot, if aware of, they would coordinate with them.

Mr. Barkhouse explained that the Nova Scotia Liquor Commission has plans in the works to redevelop their site however is not aware of the details.

Ms. Chapman explained that the Liquor Stores are all trying to go with a similar look at all of their locations.

Councillor Nicoll agreed that the parking lot is not that great and added that even though there has been attempt to make it better, some public opinion received is that there is still a number of concerns. Some of the suggestions she has received were to remove some of the shrubs to better the parking lot. Another concern was from Canadian Tire, that part of their parking lot is not taken away from them.

Ms. Tsang explained that Dollarama has to provide enough parking on the First Capital Parking but, there is a shared parking and access agreement between all of the owners. She explained that they have spoken with Canadian Tire and are aware of the situation. She added that there won't be much of a difference.

Councillor Nicoll explained that Canadian Tire also has a sessional greenhouse where the Dollarama entrance will be.

Ms. Tsang explained that Canadian Tire will have to place their Greenhouse on their property. She added that HRM's By-Law allows for seasonal outdoor display or storage however, Canadian Tire, as they do on other sites, may have to put it in the parking lot.

Councillor Nicoll stated that she was happy to see the residents come out to the meeting. She addressed concern regarding the new access way and asked why it was designed the way it is, and added that it is almost impossible to turn the car around.

Mr. Barkhouse explained that part of the difficulty when undertaking the development of the parking lot was that it was difficult between First Capital and the Nova Scotia Liquor Commission to make an agreement on exactly how the parking lot was going to change. The Nova Scotia Liquor Commission has an access easement that allows vehicle traffic to access their site therefore; they could not change the access to the liquor store without their permission. He added that hopefully when the NSLC redevelops their site, this access will improve quite significantly.

Some residents would like to see this access relocated.

Ms. Tsang added that if the NSLC redevelops, they are hoping to work together with them to develop an improved access way.

Closing Comments

Ms. Chapman thanked everyone for attending. She encouraged anyone with further questions or comments to contact her.

Adjournment

The meeting adjourned at approximately 7:35p.m.