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Item No. 10.1.3

Harbour East- Marine Drive Community Council
November 13, 2014

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

Original signed

SUBMITTED BY:

Bob Bjerke, Director of Planning and Development

DATE: October 30, 2014

SUBJECT: **Case 19482, Non-substantive amendment to Portland Hills CDD
Development Agreement (Commercial Site) Portland Hills Drive Dartmouth**

ORIGIN

Application by Stewart McKelvey on behalf of Finbars Irish Pubs

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, Part VIII, Planning & Development

RECOMMENDATION

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

1. Approve, by resolution, the non-substantial amendment to the Portland Hills Comprehensive Development District development agreement, as provided in Attachment A of this report, to allow eating establishments with accessory lounge areas at the Portland Hills Centre at 635, 639 and 651 Portland Hills Drive; and
2. Require the amending agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

In 2012, Harbour East Community Council (HECC) amended the Comprehensive Development District (CDD) development agreement for the lands 635, 639 and 651 Portland Hills Drive (Maps 1 and 2). The amendment was to allow restaurants at this location to have an accessory lounge area where customers could order alcohol with or without purchasing food. The amendment established accessory lounges to a maximum of 20% of the gross floor area of the restaurant and a maximum of 20 seats. The amendment was applied to their lands at 635, 639 and 651 Portland Hills Drive (Maps 1 and 2).

Finbars Irish Pub, a 108 seat restaurant, is a tenant at 635 Portland Hills Drive. Finbars wishes to increase the amount of dedicated floor area for their accessory lounge. Finbars cites the earlier approval of 20% of gross floor area and 20 seats as limiting their business operations. Therefore, Finbars wish to increase the amount of dedicated floor area for accessory lounges from 20% to 48% and remove the maximum number of seats restriction. In accordance with Section 3.1 (b) of the development agreement, these two proposed changes can be considered through the non-substantive amendment process. A non-substantive amendment may be approved through a resolution of Council without a Public Hearing.

Location, Designation, Zoning and Surrounding Land Use:

Subject Property	635, 639 and 651 Portland Hills Drive, Dartmouth
Location	North of Portland Hills Drive near Portland Street adjacent to the Portland Hills Transit Terminal (Map 1)
Lot Area	3.7 acres (1.5 ha)
Regional Designation	Urban Settlement under the Regional Plan
Community Designation	Residential under the Dartmouth Municipal Planning Strategy (MPS) (Map 1)
Zoning	Comprehensive Development District (CDD) under the Dartmouth Land Use By-law (LUB) (Map 2)
Surrounding Uses	Portland Hills Transit Terminal to the east, a multiple unit building at 621 Portland Hills Drive to the south, Portland Hills Driver to the east and pet store and veterinary clinic to the north
Current Uses(s)	635 and 639 Portland Hills Drive - Two 10,000 square foot commercial buildings containing restaurant and office uses. 651 Portland Hills Drive is currently vacant

DISCUSSION

Enabling Policy

The subject site is designated Comprehensive Development District (CDD) under the Dartmouth MPS. Policy H-3B (Attachment B) regulates land uses in any CDD area with the intent to allow commercial uses intended to service local community needs by development agreement. Staff have concluded that the proposal is consistent with the policies that were considered through the initial development agreement in 2000 and the subsequent amendment in 2012. Attachment B provides an evaluation of the proposed amendments to the existing development agreement in relation to these policies. The scope of this evaluation is limited to the policy requirements that pertain to the expansion of the lounge area.

The Proposal

The Applicant has indicated the maximum 20% dedication of gross floor area and the maximum of 20 seats places a limitation on their practical operations. They have indicated the accessory lounge area does not provide sufficient room to accommodate patrons awaiting tables for meal service in a different part of the restaurant. As a result, Finbars indicates that they are turning patrons away.

Staff Review

The commercial building(s) on the subject lands contain a collection of individually leased spaces providing service commercial and offices uses (Attachment C). Finbars is a small, eat-in licensed

restaurant occupying approximately 2700 square feet of floor area. This size of the restaurant is in keeping with the intent to provide commercial services to the local community (Policy H-3B (j) Attachment B).

Should Council choose to approve the proposed amendments, the increase in floor area dedicated to their accessory lounge is unlikely to alter their current operations from that of a restaurant destination to more of a drinking establishment. This is due to the controls placed on accessory lounges established in 2012 that would remain in place. These include:

- maintaining the hours of operation of the lounge area to match the hours of the restaurant, and no later than 11 pm Sunday-Thursday and 11:45 pm Friday and Saturday;
- continued restriction of video lottery terminals, dance floors, and amplified live entertainment; and
- continued restriction of the playing of music on any outdoor seating area.

Staff advise that expanding the lounge component to 48% of gross floor area and removing the maximum seat requirement would enable restaurant operations to function similarly to other restaurants which offer the purchase of alcohol without the necessity of ordering food. Therefore, the expansion of the accessory lounge's floor space to meet the demand to service local community patrons would further the intent of Policy H-3B (j) (Attachment B).

In consideration of the above, staff further advise that the non-substantive amendment for gross floor area of accessory lounges should also be applied to all of the lands that were the subject of the 2012 amendment in which the accessory licensed lounge use was established. These amendments would apply to the lands on Portland Hills Drive as shown on Maps 1 and 2.

Conclusion

For the reasons identified above, staff recommends that the CDD agreement should be amended through a non-substantial amendment in accordance with Section 3.1 (b) of the DA to revise the Accessory Lounge definition in Schedule G (attachment C) as follows:

- 1) Increase the gross floor area for the licensed lounge from 20% to 48% and,
- 2) Remove the maximum number of seats restriction (Attachment A)

The proposed amendments are consistent with MPS policy and the CDD agreement and will reinforce the site as a commercial neighbourhood node as originally intended under the CDD Agreement.

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 proposed development agreement. The administration of the proposed development agreement can be carried out within the proposed 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 information sharing achieved through a sign on the site and information on the HRM website. A public information meeting is not required for a non-substantive amendment to a development agreement, nor is a public hearing. The decision of a non-substantive amendment is made by resolution of Council.

ENVIRONMENTAL IMPLICATIONS

The proposal meets all relevant environment policies contained in the Dartmouth Municipal Planning Strategy and Land Use By-law. Please refer to Attachment B of this report for further information.

ALTERNATIVES

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

ATTACHMENTS

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

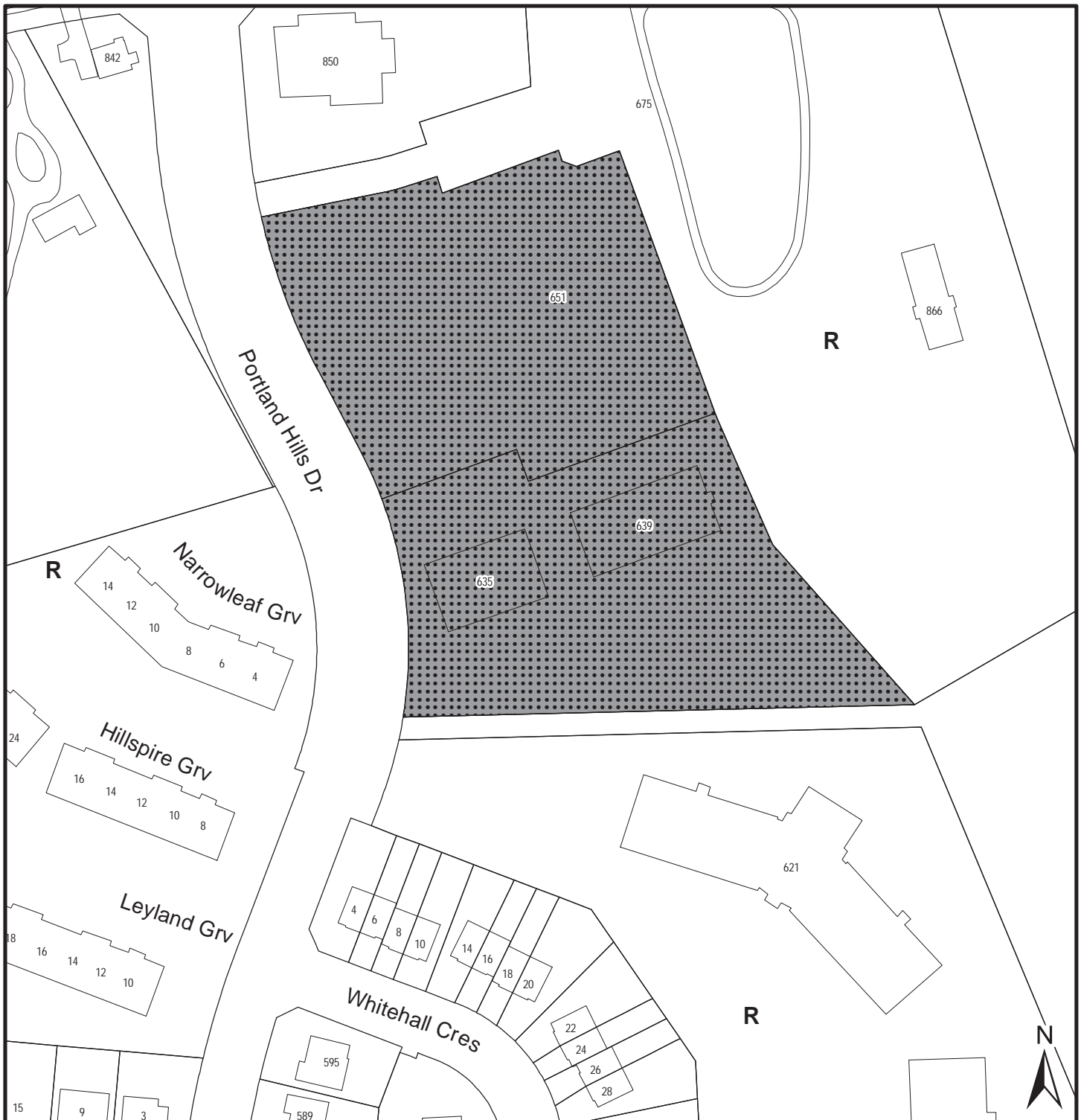
Attachment A: Fourth Amending Agreement
Attachment B: Excerpts of Dartmouth Municipal Planning Strategy
Attachment C: Existing Agreement Schedule G - List of Permitted Uses

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

Report Prepared by: Shayne Vipond, Senior Planner, 902-490-4335

Original signed

Report Approved by: Kelly Denty, Manager of Development Approvals, 902-490-4800



Map 1 - Generalized Future Land Use

635, 639, and 651 Portland Hills Drive,
Dartmouth

HALIFAX



Nonsubstantive Amendment
to the Area of the Existing
Development Agreement

Dartmouth
Plan Area

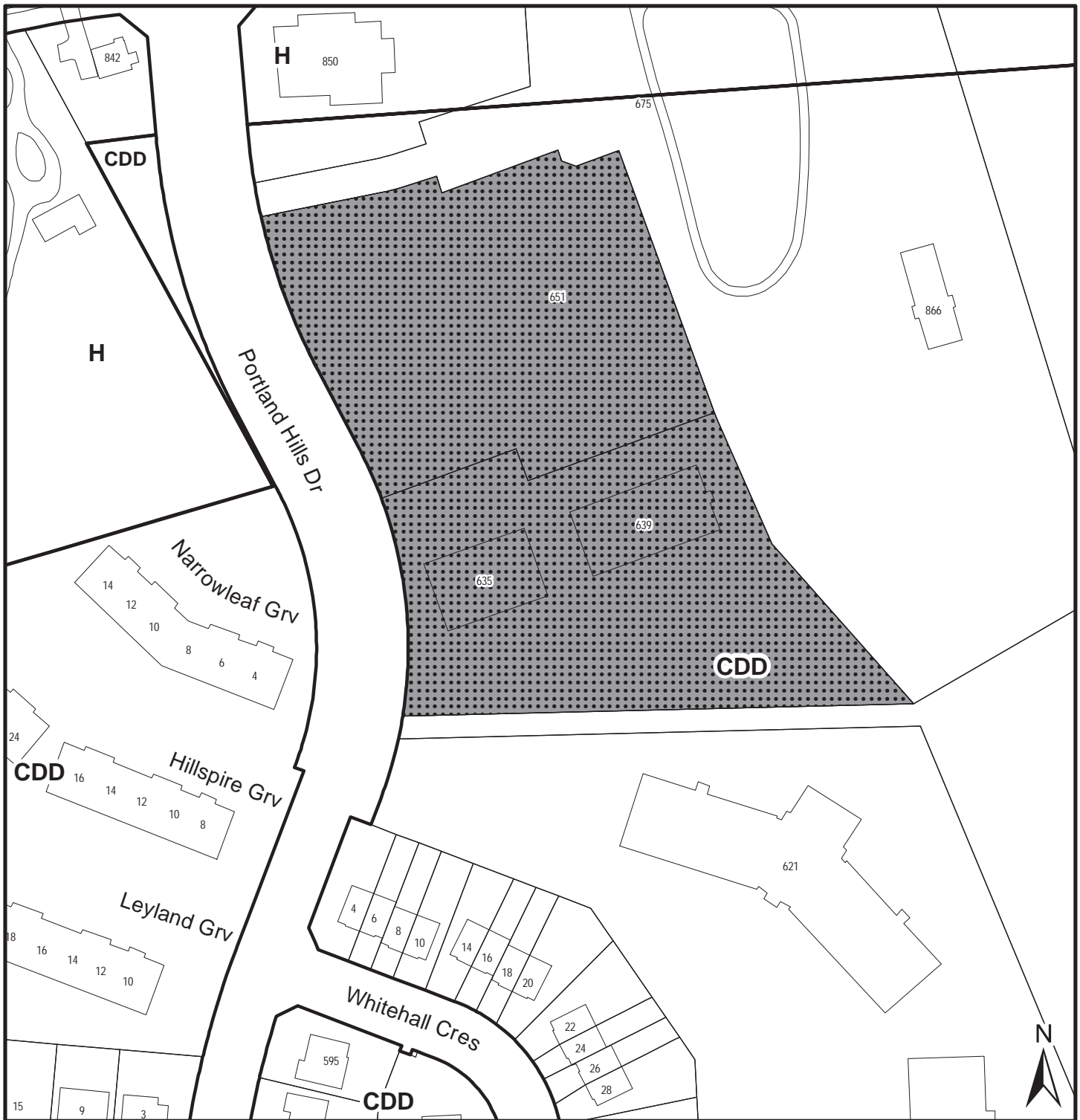
Designation

R Residential



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

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



Map 2 - Zoning

635, 639, and 651 Portland Hills Drive,
Dartmouth

HALIFAX



Nonsubstantive Amendment
to the Area of the Existing
Development Agreement

Zone

H Holding
CDD Comprehensive Development District

Dartmouth
Plan Area



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

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

AND WHEREAS the Developer wishes to further amend the Existing Agreement to expand allow for Accessory Lounge areas with Eating Establishments within the commercial area on the Lands pursuant to the provisions of the Halifax Regional Municipality Charter and the Municipal Planning Strategy for Dartmouth, (hereinafter called the "Fourth Amending Agreement");

AND WHEREAS the Harbour East- Marine Drive Community Council for the Municipality approved this request at a meeting held on _____, referenced as Municipal Case Number 19482;

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

1. Except where specifically varied by this Fourth Amending Agreement, all other terms, conditions and provisions of the Existing Agreement, First Amending Agreement, Second Amending Agreement and Third Amending Agreement shall remain in effect.
2. Amend Schedule "G" of the Third Amending Agreement by deleting reference to "20%" and replacing it with "48%" in the fourth line.
3. Amend Schedule "G" of the Third Amending by deleting the words "(to a maximum of 20 seats)" immediately following the words "total floor area" in the fifth line.

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

Attachment B
Excerpts of Dartmouth Municipal Planning Strategy

Policy H-3B In addition to the provisions of Policy H-3A, Council shall consider the following prior to approving any agreement within a CDD:

Policy	Comments
(a) the adequacy of the mix of residential uses to provide a range of housing options in terms of lot characteristics, building and dwelling type and design;	N/A
(b) the general guide that the maximum number of apartment units shall not exceed 40% of the total actual number of units within the CDD. Such figure may be increased to a maximum of 50% provided clear advantages are gained within the CDD by means of increased parkland or open space, increased areas of undisturbed terrain and vegetation, decreased amount of impermeable surfaces and/or improved environmental protection or an improved transportation system. (RC- Mar 22/05;E-Apr 23/05)	N/A
(c) the location and concentration or dispersal of multi-unit residential buildings with respect to impacts on street networks, abutting uses and the physical environment;	N/A
(d) the general guide of a maximum residential density of 8 units per gross acre, excluding acreage devoted to commercial use;	N/A
(e) the compatibility of various land uses, within and adjacent to the development, and measures proposed to integrate and buffer uses. Compatibility refers to the type of land use, dwelling (housing) type and size and height of the development. Buffering refers to measures that mitigate impacts on adjacent uses, such as adequate separation distances, retention of existing vegetation and the installation of suitable screening features such as new vegetation, berms and or fencing;	Considered through original DA approval (2000)
(f) the adequacy of measures to minimize disruption of existing terrain, vegetation, watercourses and other physical features and to mitigate against the potential effects of disruption;	See above
(g) the hours of operation of non-residential uses, including business uses located in dwellings;	Considered through amendment to DA (2012)
h) the safety and efficiency of all transportation systems, including the effects of driveways to and traffic from abutting uses to streets and walkways including the adequacy of pedestrian facilities (sidewalks/walkways);	See H-3B e)
(i) the general guide that street frontage for	N/A

Policy	Comments
single detached development not be less than forty (40) feet and that the total number of single detached lots having street frontage less than the minimum requirement as prescribed by the land use by-law and/or the subdivision by-law (RC-Jan 29/02;E-Mar 2/02) not exceed twenty-five percent of the total number of single detached units within the CDD;	
(j) that the size and type of commercial uses be designed to serve the shopping needs of residents within the local area, rather than the community or the region. Commercial uses to be considered are to be compatible with and sympathetic to the character of the surrounding residential community in terms of location, use, scale, design and traffic impacts. Uses to be considered may include, but not limited to, offices, financial institutions, convenience shops, drug stores, personal service outlets (dry cleaning depot, laundry mats, hair salons, tailors and so on), small food stores, gas bars, and restaurants (excluding drive-throughs). Uses not to be considered include, but are not limited to department stores, home improvement centres, drinking establishments, adult entertainment uses and large grocery stores;	See H-3B e)
(k) Notwithstanding criteria “j”, larger commercial development containing a wider range of uses may be considered for lands adjacent Highway 111 at the proposed Woodside interchange;	N/A
(l) within the Morris-Russell Lake area, all new development shall adhere to the Morris Lake Watershed Management policies as contained in Policies ML-1 to ML-23 as applicable;	N/A
(m) the impact the proposed development may have on the quality of life of existing neighbourhoods, and notwithstanding criteria (b),(d),(i),and (j), Council may reduce the maximum allowable under each criteria in order to protect the quality of life of residents within existing neighbourhoods;	There is no anticipated impact to the quality of life of existing neighbourhoods as all proposed changes are intended to occur within the existing building.
(n) any and all other matters applicable to the subdivision and servicing of the lands, the provision of parkland and the effects of the development on community services as set out in policy IP- 1(c) and, for specific uses which are otherwise subject to development agreements, the specific considerations required by the text and policies of this Plan.	N/A

ATTACHMENT C

Existing Agreement Schedule G - List of Permitted Uses

Schedule "G"

PORTLAND HILLS COMMERCIAL USES

The following are intended to serve as a guide in determining the type of commercial uses to be permitted, as described in policy H-3B of the MPS. The list is not intended to be all-inclusive, and represents typical uses. The development Officer may permit additional uses provided such uses, in the opinion of the Development Officer, maintain or further the intent of the development agreement in this regard:

- Convenience Store
- Food Store (less than 20,000 sq. ft. in gross floor area)
- Hair Salon
- Restaurant, including fast food restaurants and licensed restaurants but excluding drive-throughs
- Eating establishments with an accessory lounge area on lands located at the Portland Hills Centre site as highlighted on Schedule B of the Third Amending Agreement. [This use is defined as an establishment whose primary business is the service of food, where the accessory lounge area does not exceed 20% of the total floor area (to a maximum of 20 seats) and which has no video lottery terminals, no music to be played outside on patio areas, no amplified live entertainment, and no dance floor. The hours of operation for an accessory lounge area shall be the same as for the restaurant, but shall close no later than 11 pm Sunday to Thursday and 11:45 pm Friday and Saturday.]
- Financial Institutions
- Drug Stores
- Dry Cleaners
- Veterinary Clinics
- Health/Fitness Clubs
- Laundromats
- Bakeries
- Delicatessens
- Photography Studios
- Travel Agencies
- Florists
- Video Stores
- Tailors/Shoe Repair
- Health Food Stores
- Books/Magazines
- Telephone/Computer Sales and Service
- Gas Bars
- Medical/Dental Clinics or Offices
- Insurance, Real Estate, Financial
- Lawyers Offices
- Other Professional Offices

Specific uses not permitted include:

- Department Stores
- Home Improvements Centres

- Drinking Establishments
- Adult Entertainment Uses