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North West Planning Advisory Committee  
December 7, 2011

**TO:** Chair and Members of North West Planning Advisory Committee

**SUBMITTED BY:**

A handwritten signature in cursive script, appearing to read "Phillip Townsend".

Phillip Townsend, Director, Planning and Infrastructure

**DATE:** November 9, 2011

**SUBJECT:** Case 17227 - Time Extension to Development Agreement for Sackville Manor Development, Walker Avenue, Sackville

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**ORIGIN**

Application by Genivar.

**RECOMMENDATION**

It is recommended that North West Planning Advisory Committee recommend that North West Community Council:

1. Give Notice of Motion to consider the proposed development agreement as provided in Attachment A and schedule a public hearing;
2. Approve the proposed development agreement as set out in Attachment A of this report to extend the date for the completion of construction of the development on Walker Avenue, Sackville, for an additional five years; and
3. Require the 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

On July 7, 2005, North West Community Council approved an application by SML Developments Limited to enter into a development agreement to allow mixed residential development at 89, 99, 109, 119 and 129 Walker Avenue, Sackville, as identified on Map 1 (*Case 00653*). The proposal enabled a mix of semi-detached, townhouse and apartment units. The agreement contained a seven year time limit for commencement of construction which expires on September 20, 2012. All amendments to the agreement are considered substantive in nature and require a public hearing prior to a decision by Council.

## DISCUSSION

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

The existing development agreement, approved by Community Council in 2005, was enabled through the use of Policies CC-6A, UR-9 and UR-10 of the Sackville Municipal Planning Strategy (Attachment B). These policies enabled a multiple unit dwelling to be considered on the subject site, through the application of a comprehensive development district and development agreement.

A significant portion of the site has been completed under the existing agreement. The completed portion includes twenty semi-detached dwellings, six townhouses and one multiple unit dwelling with 32 units. The developer has yet to proceed with the final phase of the development; a multiple unit dwelling with 32 units (subject property on Attachment A and B). The developer has requested a five year extension to the date of completion of construction. The applicant has indicated that the recent economic downturn has slowed the projected completion of development and they anticipate an additional five years is needed to ensure completion of the project. If approved, an extension to the development agreement will provide the developer with adequate time to complete the project.

The existing agreement includes the following provision relative to project completion:

- 4.7 In the event the Developer fails to complete the development or portions thereof, or after seven years from the date of registry of this Agreement with the Registry of Deeds (*September 20, 2005*), whichever time period is less, Council may review this Agreement, in whole or in part, and may:
  - (a) retain the Agreement in its present form;
  - (b) negotiate a new Agreement;

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

Provided an extension is granted by Community Council, the developer would retain all development rights under the existing agreement. If the request for a time extension is denied, the developer would have until September 20, 2012, to apply for permits for the final building. Furthermore, Council would then have to decide which of the three options outlined above they would pursue.

Staff has prepared an amending agreement (Attachment A) to amend Section 4.7 of the existing development agreement, to extend the time limit for commencement of construction from seven years to twelve years for the final phase of the development. A decision to extend the time limit requires a public hearing. Staff has no objection to granting the requested time extension and advise that the proposal is consistent with policies in the Sackville Municipal Planning Strategy.

It should be noted that the property is subject to a purchase and sale agreement and the ownership of the property may change. The draft agreement, if approved, will be signed by the property owner of the day. The existing and amending agreement would apply to all future property owners.

### **BUDGET IMPLICATIONS**

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved budget with existing resources.

### **FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

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

### **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was information sharing, achieved

through a sign on the site and information on the HRM website. A public hearing has to be held by Council before they can consider approval of the proposed development agreement.

A Public Information Meeting was waived for this proposal in consultation with the area councillor. A sign was posted on the property and notices posted on the HRM website. 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 (as shown on Map 2) will be notified.

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

### ALTERNATIVES

1. North West Community Council could choose to approve the proposed amending agreement as provided in Attachment A. This is the recommended alternative.
2. North West Community Council could choose to approve the proposed amending development agreement with changes. This would require discussion with the developer and a supplementary staff report or an additional public hearing.
3. North West Community Council could choose to refuse to grant the time extension, thus not extending the completion date. This is not recommended for the reasons outlined in this report.

### ATTACHMENTS

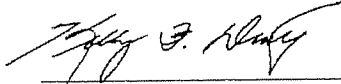
Map 1	Generalized Future Land Use
Map 2	Zoning
Attachment A	Amending Agreement - Time Extension
Attachment B	Relevant Policies from the Sackville MPS

Available upon request

Development Agreement (Case 00653) SML Developments

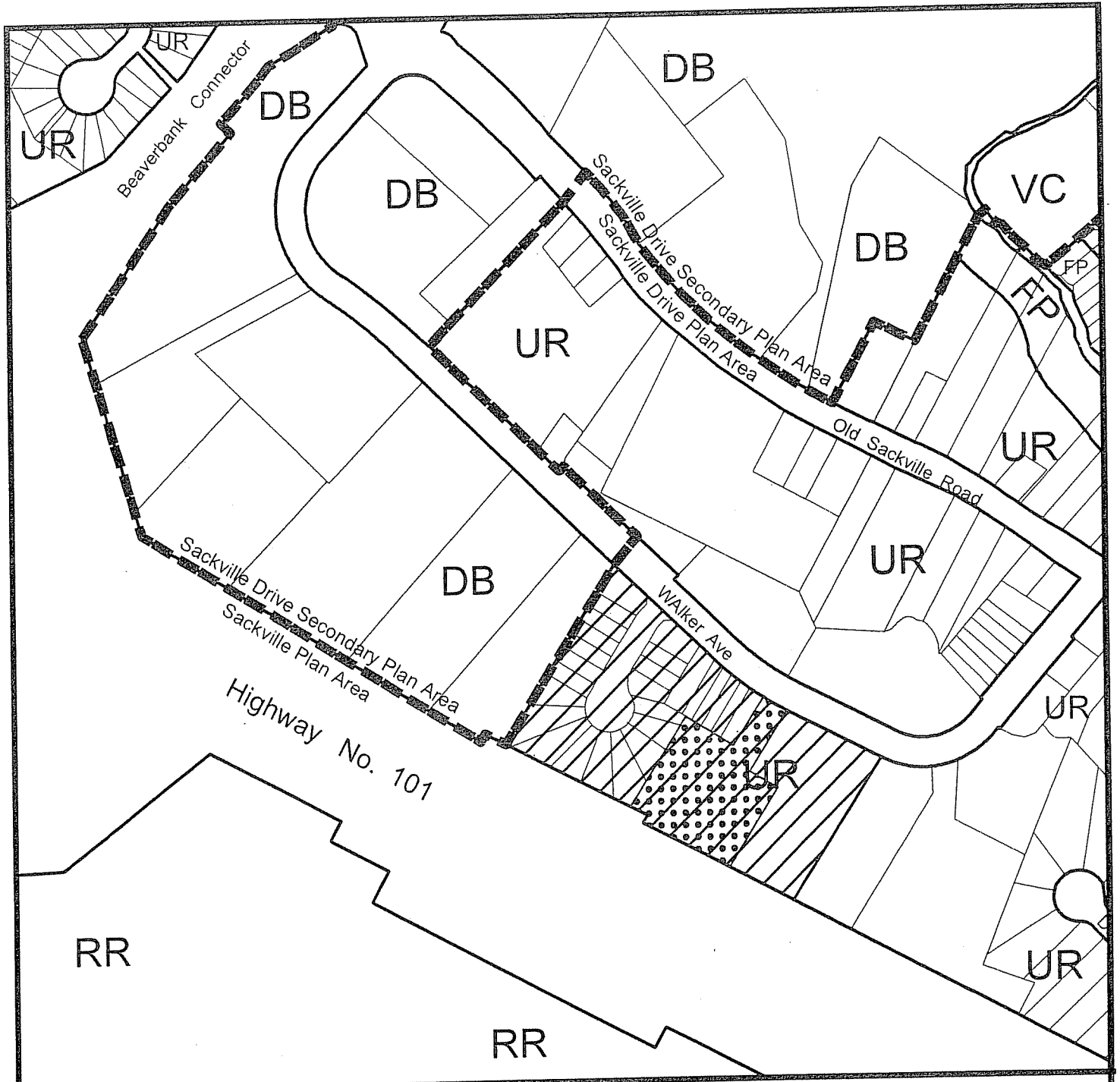
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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



Report Approved by: Kelly Denty, A/Manager of Planning Services, 490-6011

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Map 1  
Generalized Future Land Use



Subject Property



Existing Development Agreement

**HALIFAX**  
REGIONAL MUNICIPALITY  
Planning Services



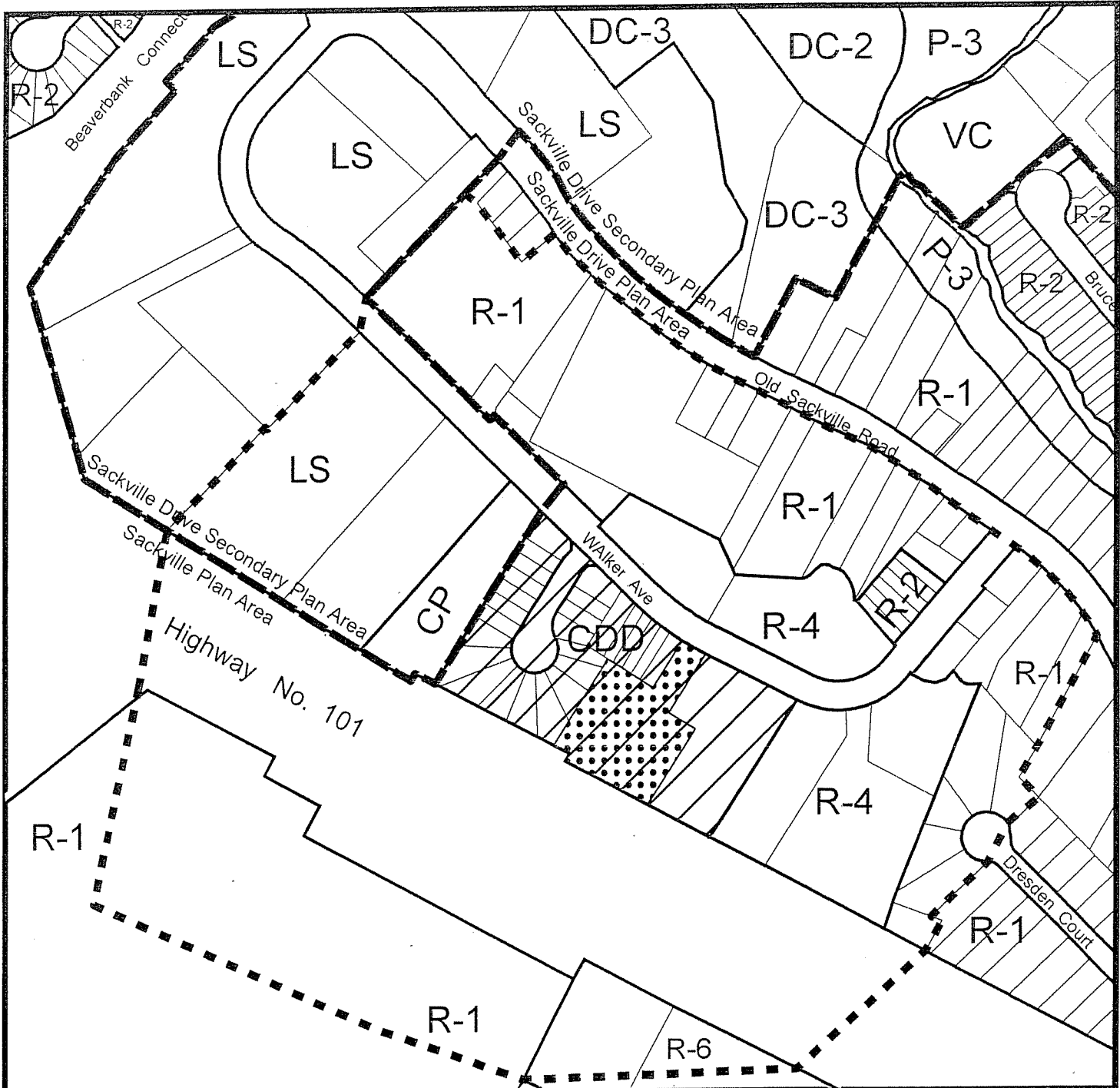
**Sackville Plan Area**

- UR Urban Residential Designation
- RR Rural Residential Designation
- FP Floodplain Designation

**Sackville Drive Secondary Plan Area**

- DB Downsview / Beaver Bank Designation
- VC Acadia Village Centre Designation





**Map 2  
Zoning**



Subject Property



Notification Area



Existing Development Agreement



**Sackville Plan Area**

- R-1 Single Unit Dwelling Zone
- R-2 Two Unit Dwelling Zone
- P-3 Multiple Unit Dwelling Zone
- R-6 Rural Residential Zone
- CDD Comprehensive Development District

**Sackville Drive Secondary Plan Area**

- DC-2 Downsview Complex-2 Zone
- DC-3 Downsview Complex-3 Zone
- CP Community Parkland and Facilities Zone
- LS Large Scale Commercial Zone



**Attachment A**  
**Proposed Amending Development Agreement**

THIS AMENDING AGREEMENT made this        day of        , 20\_\_

BETWEEN:

**INSERT NAME of CORPORATION/BUSINESS**

of Halifax, Province of Nova Scotia  
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

**HALIFAX REGIONAL MUNICIPALITY,**

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

OF THE SECOND PART

WHEREAS SML Development Limited and Halifax Regional Municipality previously entered into an agreement to allow for development of a residential mixed use development at 89, 99, 109, 119 and 129 Walker Avenue, Sackville, the said Agreement being recorded at the Registry of Deeds at Halifax as Document 83038563 (hereinafter called the "Existing Agreement")(referenced as Municipal Case Number 00653);

AND WHEREAS the Developer requested to amend the Existing Agreement to permit a time extension for the completion of construction for 119 Walker Avenue by entering into this amending agreement (hereinafter called the First Amending Agreement)(referenced as Municipal Case Number 17227); and

AND WHEREAS the North West Community Council of Halifax Regional Municipality, at its meeting on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, approved this request;

WITNESSETH THAT in consideration to the granting by the Municipality of this Amending Agreement requested by the Developer, the Developer agrees as follows:

1. The Existing Agreement shall be amended by adding the following clause after clause 4.7:

4.8 Notwithstanding the time frame identified in Section 4.7, the Developer shall be granted a total of twelve years from the registry of the Existing Agreement to complete the construction of the final 32 unit multiple unit dwelling at 119 Walker Avenue before Council may exercise any options identified under Section 4.7 relating to 119 Walker Avenue.



IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written:

Signed, sealed and delivered	)	<b><u>Insert Name of Corporation/Business LTD.</u></b>
in the presence of:	)	
	)	
per: _____	)	per: _____
	)	
Sealed, Delivered and Attested	)	HALIFAX REGIONAL MUNICIPALITY
by the proper signing officers of	)	
Halifax Regional Municipality	)	
duly authorized on that behalf	)	per: _____
in the presence of	)	MAYOR
	)	
per: _____	)	per: _____
	)	MUNICIPAL CLERK

**Attachment B**  
**Relevant Policies from the Sackville MPS**

CC-6A Notwithstanding Policy COR-12, it shall be the intention of Council that multiple unit residential development on the lands of Sackville Manor Limited, LRIS Nos. 40196867, 40560906, 40560914, 40586059 and Atlantic Shopping Centres Limited, LRIS No. 40102402, shall only be considered as part of a comprehensive development district agreement. In considering a development agreement or agreements to permit multiple unit residential development on these properties, Council shall have regard to the following:

- (a) that overall priority is given to commercial and office development;
- (b) the adequacy of community services to support the overall site development plan, particularly the residential component;
- (c) the effective integration of residential and commercial activities in terms of buffering and landscaping and street design;
- (d) the adequacy of open space and amenity areas to serve residents;
- (e) the size and scale of individual apartment buildings as well as site design features related to road access, parking and landscaping; and
- (f) the provisions of Policy IM-13.

**Comprehensive Development Districts**

The Planning Act permits the establishment of comprehensive development districts in the Plan Area and the use of contractual development agreements. The use of these agreements will be advantageous to the community by providing for the comprehensive planning of individual developments. Such a comprehensive approach will permit consideration of a wide range of development conditions including topographic conditions, housing mix including innovative housing forms, the scheduling of development, road layout, public land dedication, sidewalks, the location of school and other community facilities, provisions for storm drainage as well as the general effects of the development on the environment and adjacent land uses. Residential development, through comprehensive development districts, is in keeping with the intent of encouraging well-planned residential neighbourhoods.

UR-9 It shall be the intention of Council to establish a comprehensive development district within the land use by-law which permits any residential use and community facility use, in association with such residential uses. A comprehensive development district shall specifically prohibit any industrial or general commercial development, except local commercial uses which are intended to service households within the district on a daily basis.

When considering an amendment to the schedules of the land use by-law to establish a comprehensive development district, Council shall have regard to the following:

- (a) that the development is within the Urban Residential Designation;
- (b) that the development includes a minimum land area of five acres to be so zoned and will not entail the substantive removal or replacement of existing single or two unit housing stock;

- (c) that, where the development provides for a mix of housing types, it does not detract from the general residential character of the community;
- (d) that adequate and useable lands for community facilities are provided;
- (e) that the development is capable of utilizing existing municipal sewer and water services; and
- (f) that the development is consistent with the general policies of this planning strategy and furthers its intent.

UR-10 With reference to Policy UR-9, and as provided for by the Planning Act, the development of any comprehensive development district shall only be considered by Council through a development agreement or agreements which shall specify the following:

- (a) the types of land uses to be included in the development;
- (b) the general phasing of the development relative to the distribution of specific housing types or other uses;
- (c) the distribution and function of proposed public lands and community facilities;
- (d) any specific land use elements which characterize the development;
- (e) matters relating to the provision of central sewer and water services to the development;
- (f) provisions for the proper handling of stormwater and general drainage within and from the development;
- (g) any other matter relating to the impact of the development upon surrounding uses or upon the general community, as contained in Policy IM-13; and
- (h) furthermore, the elements of (a) through (g) and other matters related to the provision of central services and the proper handling of storm water and general drainage shall additionally be considered by Council according to the development agreement provisions of the Planning Act.

UR-11 It shall be the intention of Council that any agreement made pursuant to Policies UR-9 and UR-10 may be discharged upon completion of the development or upon completion of particular phases of the development. Upon discharging part of all of any agreement, Council shall zone the lands to reflect the intent of the agreement.

## IMPLEMENTATION

IM-13 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, the Sackville Community Council shall have appropriate regard to the following matters:

- (a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;
- (b) that the proposal is not premature or inappropriate by reason of:
  - (i) the financial capability of the Municipality to absorb any costs relating to the development;
  - (ii) the adequacy of sewer and water services;
  - (iii) the adequacy or proximity of school, recreation and other community facilities;
  - (iv) the adequacy of road networks leading or adjacent to, or within the

- (v) development; and  
the potential for damage to or for destruction of designated historic buildings and sites.
- (c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:
  - (i) type of use;
  - (ii) height, bulk and lot coverage of any proposed building;
  - (iii) traffic generation, access to and egress from the site, and parking;
  - (iv) open storage;
  - (v) signs; and
  - (vi) any other relevant matter of planning concern.
- (d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding;
- (e) any other relevant matter of planning concern; and
- (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.