

North West Planning Advisory Committee
May 1, 2013

TO: Chair and Members of North West Planning Advisory Committee

Original Signed

SUBMITTED BY:

Brad Anguish, Director of Community & Recreation Services

DATE: March 12, 2013

SUBJECT: **Case 18400: Time Extension to Development Agreement at 1024
Riverside Drive, Lower Sackville**

ORIGIN

Application by Mr. Paul Roma

LEGISLATIVE AUTHORITY

HRM Charter, Part VIII, Planning and Development

RECOMMENDATION

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

1. Approve, by resolution, the proposed Amending Agreement as contained in Attachment A of this report to extend the construction commencement date for the development at 1024 Riverside Drive, Lower Sackville, by an additional one year to January 27, 2014, 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

On January 27, 2005, North West Community Council approved an application by the developer, Mr. Paul Roma, to enter into a development agreement to allow a residential single unit dwelling and accessory building within 100 feet (30 meters) of the Little Sackville River at 1024 Riverside Drive (formerly known as 10 Riverside Drive), Lower Sackville (Map 1). The original development agreement contained a five year time limit for commencement of construction which expired on January 27, 2010. In 2010, North West Community Council approved an amendment to the development agreement to extend the construction commencement date by an additional three years to January 27, 2013. On February 22, 2013, the developer made an application to extend the construction commencement date by one year to January 27, 2014.

Subject Property

The subject property is:

- located at 1024 Riverside Drive (formerly known as 10 Riverside Drive) in Lower Sackville;
- approximately 11,700 square feet (1,087 square metres) in size and abuts the Little Sackville River;
- undeveloped and overgrown with grass and small bushes with trees located at rear of the property;
- located within the Floodplain Designation of the Sackville Municipal Planning Strategy (MPS) (Map 1); and
- zoned R-1 (Residential Single Unit) under the Sackville Land Use By-law (LUB) (Map 2).

Conditions of Existing Agreement

Commencement of construction is defined in the development agreement as the issuance by the Municipality of a building permit for construction of the dwelling, site excavation and the placement of the footing and foundation. An amendment to the commencement date is enabled through Section 4.4 of the development agreement. Section 4.4 states: *“In the event that construction of the project has not commenced by January 27, 2013, the Municipality may, by resolution of Council, upon the written request of the Developer, grant an extension to the date of commencement of construction.”*

To date, construction of the project has not commenced and a building permit has not been issued. The developer has been in discussions with HRM Development Approvals’ staff concerning the applicable permit approval process. As the construction commencement deadline has expired, the applicant requires an extension to the existing development agreement before a permit can be issued.

DISCUSSION

The original development agreement, approved by Council on January 27, 2005, was enabled through Policy FP-3A of the Sackville MPS. This policy enables Council to consider residential development and accessory buildings within 100 feet (30 meters) of the Little Sackville River by development agreement (Attachment B).

The existing development agreement contains a commencement date to encourage the timely development and completion of the project. If the developer has not proceeded or commenced within the allotted time, Council may grant an extension, at the request of the developer, in cases where it is felt that the development is still appropriate. In this instance, the request is for a one year extension to the commencement of construction deadline. The one year extension provides the developer with adequate time to obtain the necessary permits and commence construction of the project.

Should Council grant a one year extension, all development rights under the existing agreement shall remain in effect. If the request for a time extension is denied, a permit cannot be granted. Any future development of the property could only be in accordance with the R-1 (Single Unit Dwelling) Zone requirements of the Sackville LUB or through the consideration of a new development agreement for residential development under Policy FP-3A of the Sackville MPS. Further, Council may choose to discharge the development agreement, by resolution, whereupon the agreement shall have no further force or effect.

Conclusion

It is the opinion of staff that the request to extend the construction commencement date by one year is reasonable. Therefore, staff recommend that Section 4.4 of the development agreement be amended to extend the construction commencement date from January 27, 2013 to January 27, 2014.

FINANCIAL IMPLICATIONS

There are no financial implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Amending Agreement. The administration of the Amending Agreement can be carried out within the proposed 2013/14 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 information on the HRM website. Public information meetings and public hearings are not required for non-substantive amendments to a development agreement. The decision of a non-substantive amendment is made by resolution of Council.

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

ENVIRONMENTAL IMPLICATIONS

The proposal meets all relevant, environmental policies contained in the Sackville MPS.

ALTERNATIVES

North West Planning Advisory Committee may recommend that North West Community Council:

1. Approve the proposed amending agreement, as contained in Attachment A, thereby extending the commencement of construction for an additional one year. This is the staff recommendation. A decision of Council to approve this amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Approve the proposed amending agreement, as contained in Attachment A, with modifications or conditions respecting the commencement of construction. A shorter deadline is not recommended by staff on the basis that the one year extension is reasonable. Some modification or conditions may require additional negotiation with the developer.
3. Refuse to grant the time extension, thus not extending the construction commencement date. This is not recommended for the reasons outlined in this report. 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*.
4. Discharge the development agreement. 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 | Excerpt of Policies from the Sackville MPS |

Available upon request

Staff Report for Case 00676

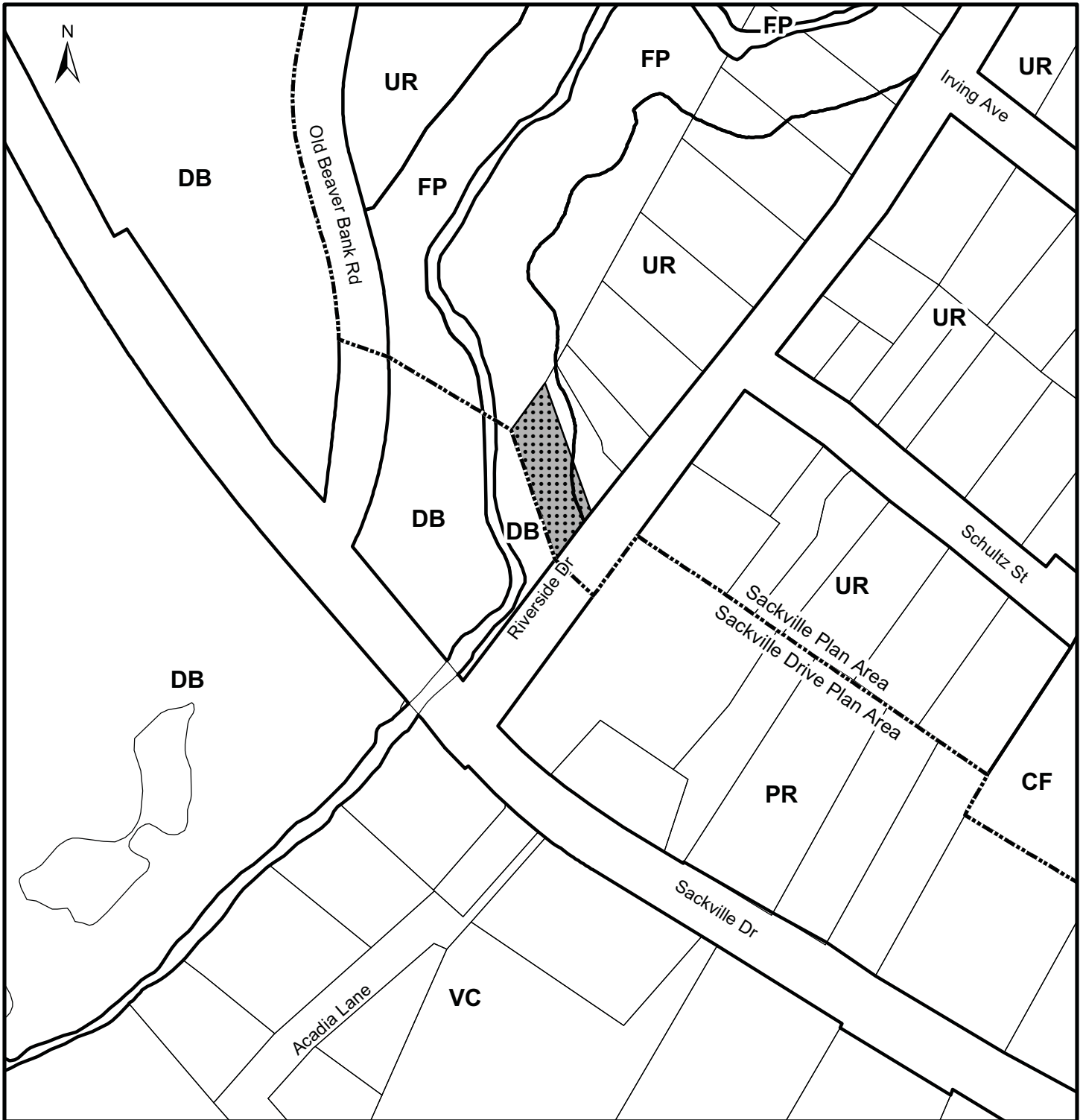
Staff Report for Case 15783 http://www.halifax.ca/commcoun/nwcc/documents/10.1.2_000.pdf

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: Tyson Simms, Planner I, 869-4747

Report Approved by: **Original Signed**

Kelly Denty, Manager of Development Approvals, 490-4800



Map 1 Generalized Future Land Use

1024 Riverside Drive
Lower Sackville



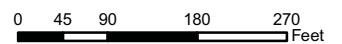
Sackville Plan Area Designation

- UR Urban Residential
- CF Community Facility
- FP Floodplain

Subject Property

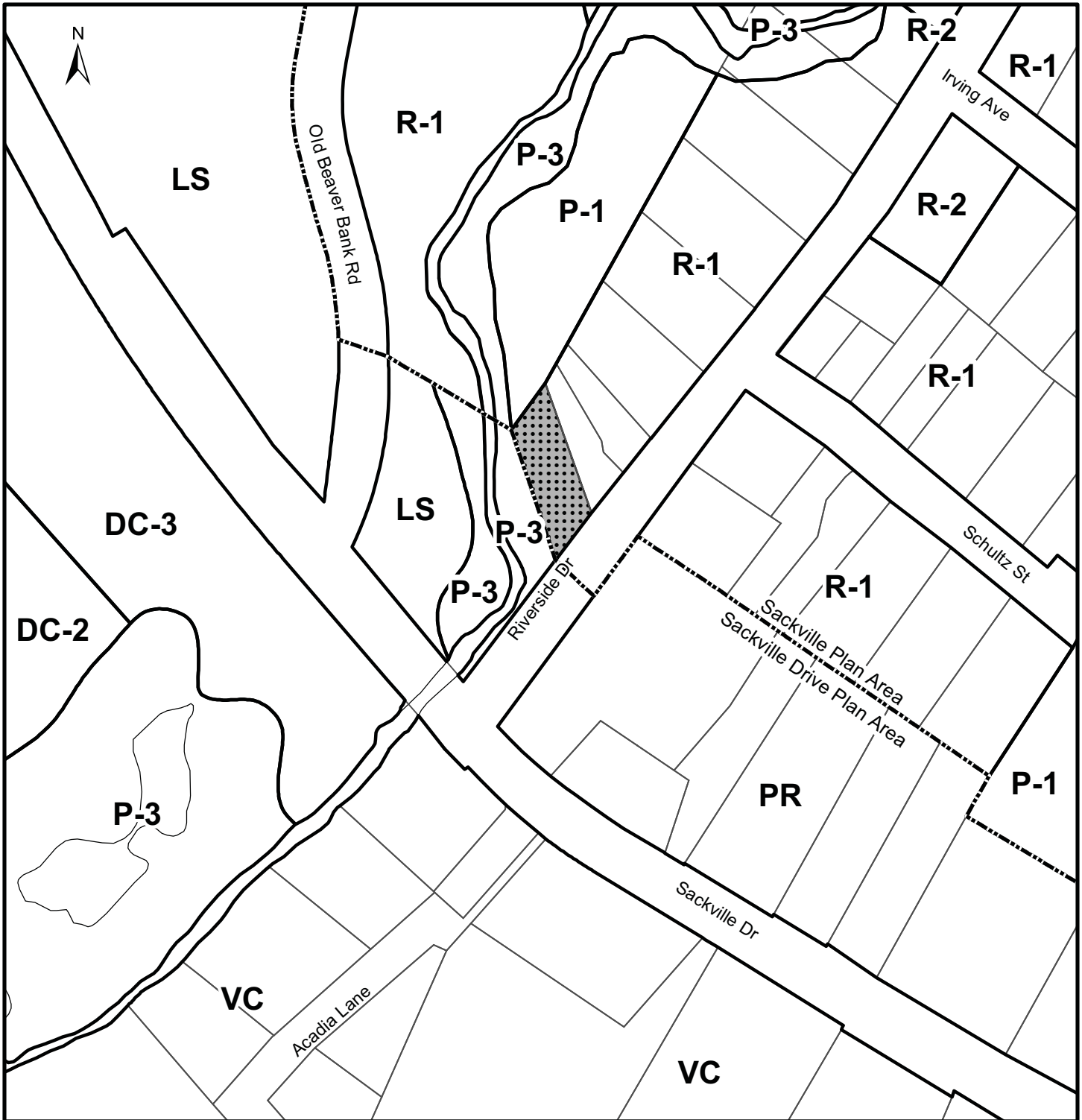
Sackville Drive Plan Area Designation

- DB Downsview/Beaver Bank
- PR Pedestrian Retail
- VC Acadia Village Centre



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for Sackville Plan and Sackville Drive Plan Areas.

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




Map 2 Zoning
 1024 Riverside Drive
 Lower Sackville

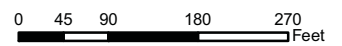
Sackville Plan Area Zone

- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- P-1 Open Space
- P-3 Floodplain

Sackville Drive Plan Area Zone

- DC-2 Downsview Complex-2
- DC-3 Downsview Complex-3
- LS Large Scale Commercial
- PR Pedestrian Retail
- P-3 Floodplain
- VC Acadia Village Centre

 Subject Property



This map is an unofficial reproduction of a portion of the Zoning Map for the Sackville Plan and Sackville Drive Plan Areas.

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

Attachment A
Amending Agreement – Time Extension

THIS SECOND AMENDING AGREEMENT made this day of , 2013

BETWEEN:

<INSERT DEVELOPER NAME>,
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 the Developer, **<INSERT DEVELOPER NAME>**, and the Halifax Regional Municipality previously entered into an agreement to allow for development of a residential single unit dwelling and accessory building at 1024 Riverside Drive (formerly known as 10 Riverside Drive), Lower Sackville, (hereinafter called the Existing Agreement) the said Existing Agreement being recorded at the Registry of Deeds at Halifax as Document 81511264, referenced as Municipal Case Number 00676;

AND WHEREAS the Developer and Halifax Regional Municipality previously entered into a First Amending Agreement to permit a time extension for the commencement of construction date to the provisions of the Existing Agreement, being recorded at the Registry of Deeds at Halifax as Document 95656972 (referenced as Municipal Case Number 15783);

AND WHEREAS the Developer requested to amend the Agreement to permit a time extension for the commencement of construction date by entering into this amending agreement (hereinafter called the Second Amending Agreement)(referenced as Municipal Case Number 18400); and

AND WHEREAS the North West Community Council of Halifax Regional Municipality, at its meeting on the ___th day of _____, 2013, approved this request, referenced as Municipal Case Number 18400);

THEREFORE in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree to the following amendment to the Existing Agreement:

1. Clause 4.4 of the Existing Agreement, which was previously amended by the First Amending Agreement, be further amended to read:

4.4 In the event that construction of the project has not commenced by January 27, 2014, the Municipality may, by resolution of Council, upon the written request of the Developer, grant an extension to the date of commencement of construction. For the purpose of this section, commencement shall mean the issuance by the Municipality of a building permit for construction of the dwelling, site excavation and the placement of the footing and foundation. If commencement of construction has not commenced by the applicable time, this agreement will terminate and all rights shall be at an end.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2013.

SIGNED, SEALED AND DELIVERED
in the presence of:

(Insert Registered Owner Name)

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

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

Attachment B
Excerpt of Policies from the Sackville MPS

FP-3A

Within the Floodplain Designation, except for lands located within the P-3 Zone, it shall be the intention of Council that, notwithstanding any other development provision in this strategy, no development except accessory buildings in conjunction with permitted residential uses shall be permitted within one hundred (100) feet of the Sackville or Little Sackville Rivers. Notwithstanding that no development is permitted, Council may consider development which is consistent with that permitted by the zone on adjacent lands, according to the development agreement provisions of the Planning Act. In considering such agreements, Council shall have regard to the following:

- (a) the scale of the development;
- (b) the environmental protection of the watercourse with respect to proper storm drainage;
- (c) floodproofing provisions as required by the Land Use By-law; and
- (d) the provisions of Policy IM-13.

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 development; and
 - (v) 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.**