

To: **Antigonish Planning Advisory Committee
Antigonish County Council**

From: **Planning Staff (EDPC)**

Date: **March 16, 2015**

Reference: **Development Agreement Application by Nova Construction Company Limited to allow for the construction of a Large Scale Commercial Complex including a 50-60 suite hotel and various retail, restaurant and service station units off of a new cul-de-sac to be located at the intersection of Highway 104 and Trunk 7 in Antigonish County.**

Recommendation:

That Municipal Council **approve** the proposed Development Agreement attached to this staff report between Nova Construction Company Limited and the Municipality of the County of Antigonish with respect to the construction of a large scale, highway oriented commercial development (See Map p. 2) at the intersection of Highway 104 and Trunk 7 off a proposed cul-de-sac on a number of properties and portions of properties totaling 3.07 hectares of area (of a larger total property of 6.67 hectares) located in the Commercial Designation and subject to the development meeting the evaluation criteria as outlined in the agreement.

Information:

In August 2014 Planning Staff received an application from SunRose Land Use Consultants on behalf of Nova Construction Limited to enter a development agreement for a proposed large scale commercial development which included a Big Box Retail development. The proposed development involves the potential construction of a 50 - 60 suite hotel, two unspecified Commercial Retail Units (6,200 and 3,000 square feet of floor area) a drive through and a coffee shop/convenience store gas bar. The development would be located between Keating Court and the 104 Highway at the Highway 7 roundabout off a new cul-de-sac constructed by the developer. The property is designated Commercial in both the old and new Planning Strategies and zoned Residential Single Unit (R-1) and Local Commercial in both documents. Also both documents allow development of a large scale commercial development by Development Agreement.

	Description
Designations:	Commercial (New Plan) Commercial (Old Plan)
Old Zoning:	Residential Single Unit (R-1) Local Commercial (LC-1)
New Zoning:	Residential (R-1) Local Commercial (C-1)
Context Map:	Site Map, Page 7
Area:	3.07 hectares (7.6 acres)
Site Visit:	January 26, 2015



Section 246(3) of the *Municipal Government Act* states that, “A development permit that is inconsistent with a proposed land-use by-law or a proposed amendment to a land-use by-law may not be issued for one hundred and fifty days from the publication of the first notice advertising the council’s intention to adopt or amend the by-law.” Given that the new Fringe Plan was advertised November 26, 2014 the 150 days expire on April 25, 2015. Therefore when writing this development agreement staff used both the old policies and the new policies to ensure the agreement met the requirements of both documents and that in the event the new document was adopted prior to the April 25, 2015 date we could still issue development permits. For the most part however there were only minor differences between the two documents. Policy 9(a)1 from the old plan is exactly the same as Policy L-3.13 of the new plan. The differences between the two documents relates to the list of permitted uses in the Large Scale Commercial (C-3) Zone in the new plan as compared to the uses permitted in the Gateway Commercial (GC-1) Zone from the old plan. The new Large Scale Commercial zone has a more restrictive list of permitted uses.

Policy 9(a)1 from the old plan and Policy L-3.13 of the new *Municipal Planning Strategy* both make provision for considering large-scale commercial developments in one or more buildings within the Commercial Designation by development agreement.

A site visit was completed January 26, 2015 at which time photographs were taken of the proposed site. The proposed development would be located on a proposed cul-de-sac located off of the roundabout. The property is mostly graded with a gravel service road entering the site from the Highway 7 roundabout and is currently undeveloped. Along the south edge of the

larger property (not subject to the development agreement) there is a growth of trees buffering the backyards of properties on Keating Court.

Development agreements provide an approach to development control which is more flexible than traditional zoning mechanisms. The nature of the agreement allows advisory and planning committees to safeguard and retain the general aesthetic of the neighbourhood as well as enforce due regard for natural environment issues such as land grading, drainage and plant life.

When preparing such a document, staff will refer to the evaluation criteria written into the Municipal Planning Strategy (MPS) and include the relevant items in the agreement.

As part of the application process for development agreements, correspondence was sent to the applicant and to the various provincial and municipal departments as is required under the Antigonish MPS.



Analysis:

Under Policy 28(a) of the *Antigonish Fringe Land Use By-Law* the proposed large scale commercial development may be considered by development agreement. Specifically the By-law states: *“The following developments shall be permitted by development agreement only, in accordance with the Municipal Government Act, 1998, c.18, s.1 and the Municipal Planning Strategy:... b) large-scale commercial developments subject to Policy 9(a)1.”* The New Fringe plan has a similar statement; Policy I-1.11 which states: *“The following uses shall be considered subject only to the entering into of a development agreement... large-scale commercial developments subject to Policy L-3.10;”*

There are therefore two sections of the MPS that specifically apply to such a development agreement. The first is Policy 9(a)1 (Policy L-3.10), which is specific to large scale commercial development. It lists ten issues that Council shall have regard to in considering the development agreement. The second specific section of the MPS is Policy 28(b) (or Policy I-1.13, which lists evaluation criteria to be considered for *any* development agreement (not just large scale commercial).

The proposed development agreement must be consistent with 9(a)1 (Policy L-3.13) of the

Municipal Planning Strategy, which lists specific considerations relating to large scale commercial developments. The following is a synopsis of the criteria, evaluation, agreements and conditions (See Appendix A):

The first criteria in Policy 9(a)1 (Policy L-3.13) relates to compatibility with adjacent land uses. For the purposes of this agreement staff considered the residences located along Keating Court as the adjacent land uses. Compatibility relates to the height, bulk, lot coverage, site location and appearance of any building(s). Related to this is a later requirement (subsection “j”) that requires that buildings cannot be higher than one storey taller in



height than the highest building immediately abutting the development. Along Keating Court the highest buildings range between one and a half to two storeys. Therefore the agreement could consider building to be three storeys in height along the abutting property line but rather limits all buildings to two storeys with the exception of the possible hotel. The hotel has a maximum height of five storeys but this building is removed to the furthest section of the property from Keating Court. Five storeys is based on stepping up a storey from the potential three storey limit abutting the Keating Court back property lines, to four storeys along the internal cul-de-sac, to five storeys where the hotel is proposed. Also with respect to bulk, lot coverage and appearance of the buildings the agreement has landscaping and architectural provisions to minimize the impact on the abutting properties from a visual perspective.

Subsection “b”, “c” and “d” of Policy 9(a)1 all deal with landscaping and buffering requires Council to consider building design and the provision of barriers, berms, fences, and/or landscaping to minimize effects on adjacent land uses. The agreement therefore requires buffering of mechanical equipment and refuse containers. Also the developer will be required to provide a landscaping plan prior to the issuance of a Development Permit prepared by a Landscape Architect or a Qualified Person to the Development Officer for review to determine compliance with this Agreement. This landscaping plan shall include, but not be limited to, landscaping introduced to all areas disturbed during construction; natural vegetation, landscaping or screening to be employed around parking areas, ensuring that measures are taken to allow for safe and convenient pedestrian access to public entrances of buildings; and

where practical, a pedestrian circulation system with walkways extending from the entrances of buildings to a public sidewalk in front of the building to any public trail system abutting the property.

The proposal also complies with Subsections “e” and “f” of Policy 9(a)1 of the MPS that deals with active transportation. These provisions are addressed through the section on Bicycle Facilities and required pedestrian connections addressed in the “General Commercial Design Guidelines” appended to the development agreement.

Subsection “g” of Policy 9(a)1 relates to parking. The development agreement specifies that parking will meet the requirements of the Antigonish Land Use By-law but also allows for reduction of these requirements so long as the parking does not dominate the relationships between the proposed buildings, adjacent land uses, and adjacent public streets; and, incorporates adequate landscaping in the form of landscaped islands and end aisle treatments; and, includes storm-water dampening design components, such a porous asphalt pavement and/or bio-swales, wherever possible.

Subsection “h” relates to lighting which generally has to be located such that it eliminates glare and light spillage onto abutting properties which is addressed in Section 3.5 of the agreement. Subsection “i” references loading docks which are not shown on the concept plan for this agreement.

The proposed development agreement must also be consistent with Policy 28(b) of the *Municipal Planning Strategy*, which stipulates the Evaluation Criteria and Terms for any development agreement. The following is a synopsis of the criteria, evaluation, agreements and conditions (See Appendix B):

The Municipality of the County of Antigonish advises that the proposal is not premature or inappropriate by reason of the adequacy of sewer and water services and that the Municipality is financially capable of absorbing the costs relating to the proposed development. Also Section 2.5 of the Agreement states: *“The Developer shall be responsible for all cost, 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.”*

Neither the Antigonish County Recreation Department nor the Strait Regional School Board were asked to comment on this proposal as it is a commercial development.

Nova Scotia Transportation and Infrastructure Renewal provide a “Formal Letter of Comfort” January 30, 2014 advising that the proposal appears appropriate and that the provincial road network adjacent to the development is adequate for the proposed development allowing for a direct access off the roundabout on Trunk 7 as the only option for full development of the site and that the developer would be responsible for a re-design and re-construction of the

roundabout.

Nova Scotia Environment no longer comments on applications like this but the development agreement requires that an erosion and sedimentation plan be prepared for the proposed development. 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 with offsite works, the Development shall have prepared by a Professional Engineer and submitted to the Municipality a detailed Erosion and Sedimentation Control Plan. The plan 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.

An evaluation of the proposal by Nova Construction Development Ltd. shows that the proposed development meets the requirements of Policy 9(a)1 (Policy L-3.13) and 28(b),(c) and (d) in the *Municipal Planning Strategy* and the requirements of all other Municipal by-laws and regulations. The MPS permits large scale commercial developments by development agreement and therefore the proposal is permitted under the *Municipal Planning Strategy* and the *Land Use By-law*.

Conclusion:

In the opinion of planning staff the proposed development at the intersection of Highway 104 and Trunk 7 off a proposed cul-de-sac meets the intent of the *Municipal Planning Strategy* according to the requirements of Policy 9(a)1 (Policy L-3.13) and 28(b),(c) and (d), and Policy 4-A and the applicable *Land Use By-law*. The Municipality is advised to enter into a development agreement attached to this staff report between Nova Construction Company Limited and the Municipality of the County of Antigonish with respect to the construction of a large scale, highway oriented commercial development at the intersection of Highway 104 and Trunk 7 off a proposed cul-de-sac on a number of properties and portions of properties totaling 3.07 hectares of area (of a larger total property of 6.67 hectares) located in the Commercial Designation.

Appendix A: Summary of Evaluation Criteria (Policy 9(a)1 and Policy L-3.13)

<p>Policy 9(a)1</p> <p>It shall be the intention of Council to consider approval of large-scale commercial developments within the Commercial Designation according to the development agreement provisions of the <i>Municipal Government Act</i> and the provisions of Policy 28. In considering such an agreement, Council shall have regard to the following:</p>	
a) the height, bulk, lot coverage, site location and appearance of any building(s) and whether they are compatible with adjacent land uses;	Complies (see staff report)
b) the provision of barriers, berms, fences, and/or landscaping that shall be used to be screen and minimize the impact of the development on adjacent residential or institutional land uses.	Complies Sections 3.7 and 3.8
c) the proposed development shall retain existing vegetation where possible and appropriate;	Complies Section 3.7.3
d) where a proposed development abuts a public roadway, including Highway 104, a combination of building design, hard and soft landscaping shall be used to maintain a degree of visual interest and attractiveness for passing motorists and, where applicable, pedestrians.	Complies Section 3.7.2
e) the proposed development shall be designed to provide active transportation facilities internally...	Complies Section 3.7.2(c) & 3.9
f) shall be designed to be pedestrian-friendly by means of locating buildings in close proximity to one another, providing defined building entrances, and providing well-lit sidewalks and paths between buildings and throughout the site;	Complies Schedule "C"
g) shall include parking areas that are of sufficient size to satisfy the needs of the particular development and do not dominate... incorporate adequate landscaping in the form of landscaped islands and end aisle treatments; and, include storm-water dampening design components...	Complies Section 3.6
h) includes on-site lighting that uses "cut-off" and "non-visible reflective" type lighting to eliminate glare and light spillage onto neighbouring properties and roadways, ensuring that the source of light (the element) is not be visible from adjacent residential properties and, uses metal halide, incandescent or fluorescent lighting (white light).	Complies Section 3.5
i) designed such that any loading facilities and/or outdoor storage of equipment or material not for sale shall not be visible from any public road or adjacent lot and otherwise shall be fully screened, fenced, or designed to minimize any adverse impact on surrounding properties	N/A
j) shall not involve a building that is more than one storey taller in height than the highest building immediately abutting the land subject to development, at the discretion of the Development Officer	Complies – See staff report
k) the proposed development shall be consistent with the evaluation criteria for development agreements, Policy 28(b).	See Appendix B

Appendix B: Summary of Evaluation Criteria: Policy 28(b)(c) and (d) (Old Plan) and Policies I-1.12 and I-1.13 (New Plan)

Policy 28(b) and Policy I-1.12	
In considering development agreements, in addition to all other criteria set out in various policies of this planning strategy, Council shall have regard for the following matters:	
(a) The proposal is in conformance with the intents of this Strategy and with the requirements of all other Municipal by-laws and regulations;	Complies (see staff report)
(b) 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;	Complies (see staff report)
ii) the adequacy of sewer and water services to support the proposed development;	Complies (see staff report)
iii) the adequacy and proximity of school, recreation and other community facilities;	Not Applicable
iv) the adequacy of road networks adjacent to, or leading to the development;	Complies (see staff report)
v) the potential for the contamination of watercourses or the creation of erosion or sedimentation; and	Complies with conditions (see report)
c) The potential for damage to or destruction of historical buildings and sites.	Complies
d) An erosion and sedimentation control plan prepared by a qualified individual or company;	Complies Section 3.2.1(c) and 4.2.1
e) A storm water management plan prepared by a qualified individual or company.	Complies Section 4.3

Appendix B: Summary of Evaluation Criteria: Policy 28(b)(c) and (d) (Old Plan) and Policies I-1.12 and I-1.13 (New Plan) (Continued)

<p>Policy 28(c) and Policy I-1.13 It shall be the policy of Council, when considering an application for a development agreement... that the agreement shall include but not be limited to the following:</p>	<p>Development Agreement Reference</p>
(a) the specified use and size of the structure... and the maximum floor area of additional or accessory uses;	Section 3.3
(b) the location of any structures within the development;	Section 3.3
(c) the percentage of land area that may be built upon and the size of yards, courts or other open spaces;	Subsection 3.4.1
(d) the external appearance of, in particular the compatibility with adjacent structures;	Schedule "C"
(e) access to streets and parking;	Sections 3.6 and 4.4
(f) the landscaping or buffering of development which may include fencing, trees, shrubs, walkways and outdoor lighting;	Sections 3.7 and 3.8
(g) signs;	Section 3.10
(h) open storage and screening;	Section 3.8
(i) hours of operation (Policy I-1.13 only)	Section 3.13
(j) ongoing maintenance of the development (Policy I-1.13 only)	Section 3.11
(k) minimum lot sizes;	Subsection 3.4.1
(l) minimum area of land to be required for any class of use or size of structure;	Section 3.4
(m) regulating or prohibiting the use of land or the erection or use of structures except for such purposes as may be set out;	Subsections 3.3.2 and 3.3.31
(n) the maximum density of the population within the development;	Section 3.3
(o) any other similar matter that may be addressed in a Land Use Bylaw which Council feels is necessary to ensure the general compatibility of the use and structures with adjacent areas.	Remainder of Agreement

Appendix B: Summary of Evaluation Criteria: Policy 28(b)(c) and (d) (Old Plan) and Policies I-1.12 and I-1.13 (New Plan) (Continued)

<p>Policy 28(d) Notwithstanding Policy 28(e), it shall be the policy of Council, when considering an application for a development agreement... that the agreement may include the following:</p>	
(a) security or performance bonding;	Subsections 3.7.5 and 3.7.6
(b) grading or alteration in elevation or contour of the land and provision for the disposal of storm and surface water	Sections 4.2 and 4.3
(c) provide for the time when and conditions under which the development agreement may be discharged with or without the concurrence of the property owner;	Sections 6.3 and 6.4
(d) provide that upon the completion of the development agreement or phases of the development, the development agreement, or portions of it, may be discharged by Council	Section 6.4
(e) provide that if the development agreement does not commence or is not completed within the time specified in the development agreement, the development agreement or portions of it may be discharged by Council without the concurrence of the property owner	Section 6.3

THIS DEVELOPMENT AGREEMENT made this _____ day of _____, AD 2015,

BETWEEN:

NOVA CONSTRUCTION CO LTD of 3098 Old Highway 104, Antigonish, Province of Nova Scotia (hereinafter called the "Developer").

OF THE FIRST PART

-and-

MUNICIPALITY OF THE COUNTY OF ANTIGONISH, a body corporate, in the County of Antigonish, Province of Nova Scotia (hereinafter call the "Municipality").

OF THE SECOND PART

WHEREAS the Developer has good title to lands known as PID _____, _____, _____, _____, _____, and _____, located off Highway 7, Antigonish County in the Municipality of the County of Antigonish, Nova Scotia, and which said lands (hereinafter called the "Property") are more particularly described in Schedule "A" of this Agreement;

AND WHEREAS pursuant to Part 4-A, subsection 1(c) of the *Antigonish Fringe Land Use By-law*, the Developer has requested permission to develop a large-scale commercial development on the Property;

WITNESS that in consideration of the sum of One Dollar (\$1.00) now paid by the Developer to the Municipality (the receipt of which is hereby acknowledged) the request to change the use of the Property is agreed upon by the Developer and the Municipality subject to the following:

PART 1: DEFINITIONS

1.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the *Antigonish Fringe Land Use By-law*, as amended from time to time. If a term is not defined in this document, its customary meaning shall apply.

1.2 Definitions Specific to this Agreement

Notwithstanding Section 1.1, the following words used in this Agreement shall be defined as follows:

Large-scale Commercial Development means a commercial development having a total gross leasable area of 50,000 square feet or more, located in one or more buildings designed, developed, operated or controlled by a single owner with on-site parking to jointly serve all buildings.

Phase of Development shall refer to the completion of an individual element of the development (either a building or the road) and include, where applicable, the landscaping and parking requirements associated with the specific element.

PART 2: GENERAL REQUIREMENTS

2.1 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.

2.2 Applicability of the Land Use By-law

Except as otherwise stipulated by this Agreement, the development of the Property shall comply with the *Antigonish County Fringe Land Use By-law*;

2.3 Applicability of Other By-laws, Statutes, and Regulations

2.3.1 Subject to the provisions of this Agreement, the Developer shall be bound by all By-laws and regulations of the Municipality as well as by any applicable statutes and regulations of the Province of Nova Scotia;

2.3.2 Further to Subsection 2.3.1, the Developer shall receive any necessary approvals from the Fire Marshall’s Office and shall meet all the “Barrier-Free” or “Handicap Access” provisions of the National Building Code.

2.4 Conflict

2.4.1 Where the provisions of this Agreement conflict with those of any other by-law of the Municipality applicable (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.

2.4.2 Where the written text of this Agreement conflict with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

2.5 Cost, Expenses, Liabilities, and Obligations

The Developer shall be responsible for all cost, 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.

2.6 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 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms to this agreement and the following Schedules attached to this Agreement.

Schedule A	Legal Description of the Land(s)
Schedule B	Concept Plan
Schedule C	General Commercial Design Guidelines
Schedule D	General Commercial Land Uses

3.2 Requirements Prior to Approval

3.2.1 No municipal development or construction permit shall be granted unless:

- a) The Developer has submitted a Lot Grading Plan that has been prepared in accordance with the requirements of Section 4.2 of this Agreement, and the plan has been approved by the Antigonish County Municipal Engineer;
- b) The Developer has submitted a Site Servicing Plan that has been prepared by a Professional

Engineer, and the plan has been approved by the Antigonish County Municipal Engineer. This plan shall include statements reflecting the following:

- (i) the Developer shall install any necessary new sewer lines from the existing Municipal sanitary lines to the new buildings separate from any existing sewer lines. These new sewer lines shall meet the standards found in the *Municipal Services Systems General Specifications Pursuant to the Subdivision By-law*, and;
 - (ii) the Developer shall install any necessary new water lines from the existing Municipal water lines to the new buildings separate from any existing water lines. These new water lines shall meet the standards found in the *Municipal Services Systems General Specifications Pursuant to the Subdivision By-law*.
- c) The Developer has submitted an Erosion and Sedimentation Control Plan that has been prepared in accordance with the requirements of Section 4.2 of this Agreement, and signed off by their Engineer as complying with the Department of Environment's guidelines.
- d) The Developer has submitted a Landscape Plan that has been prepared in accordance with the requirements of Section 3.7 of this Agreement, and has been approved by the Development Officer.

3.2.2 Prior to the completion of a final Municipal Occupancy inspection for any building, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:

- a) Verification that all landscaping for the subject phase of development is substantially completed or a security provided in accordance with the requirements of Clause 3.7.5.
- b) Verification that all paving, curbing and line painting for the subject Phase of Development is substantially completed, or a security provided in accordance with the requirements of Clause 3.7.6

3.2.3 Prior to the acceptance of any streets and municipal services within an Phase of Development, the Developer shall provide the Development Officer with certification from a Professional Engineer that the Developer has complied with the required Erosion and Sedimentation Control Plan as required by Section 4.2 of this Agreement and that there is permanent and/or temporary stabilization of all disturbed areas.

3.2.4 Notwithstanding any other provisions 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 Municipal 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 as listed in Schedule D.

3.3.2 Building locations shall be governed by Section 3.4 of this Agreement.

3.3.3 Building Configurations may be varied from those shown on Schedule B with the exception of the proposed hotel which must be located on the North edge of the property.

3.3.4 Height of buildings is to be governed by Section 3.4 of this Agreement.

3.4 Detailed Provisions for Land Use

Land Use Requirements

- 3.4.1 No municipal development permit shall be granted for any general commercial development except in accordance with the following provisions:
- a) Minimum lot frontage: 20.0 m.
 - b) Minimum lot area: 2,800.0 m²
 - c) Minimum front yard: 2.5 m.
 - d) Minimum side yard: 2.5 m.
 - e) Minimum rear yard: 2.5 m.
 - f) Maximum Building Height for Hotels: Five (5) Storeys (plus roof structures)
 - g) Maximum Building Height for all other uses: Two (2) Storeys (plus roof structures)
 - h) The development conforms with the General Commercial Guidelines and Requirements and General Commercial Uses under Schedules C and D

General Provisions

- 3.4.2 Any development of the lands shall conform to the provisions and requirements of Part 6 of the *Antigonish Fringe Land Use By-law*, except where the provisions of this development agreement specifically vary those requirements.

3.5 Commercial Site Lighting

- 3.5.1 Lighting shall be directed to driveways, parking areas, loading areas, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots, and buildings and shall use metal halide, incandescent or fluorescent lighting (white light) or similar lights. Low-pressure sodium lights are not permitted.
- 3.5.2 The Developer shall include lighting details on the detailed plans submitted for Development Permits when submitted to the Development Officer for review to determine compliance with this Agreement.

3.6 Parking, Circulation, Loading, and Access

- 3.6.1 Parking areas shall maintain a minimum 6 foot (2 metre) setback from external property lines and the curb-face of roadways interior to the site.
- 3.6.2 All parking areas shall provide at least the minimum number of parking spaces required by the *Antigonish Fringe Land Use By-law* based on use. Barrier-free parking spaces shall be provided as per the provisions of the National Building Code.
- 3.6.3 Notwithstanding Subsection 3.6.2 parking requirements may be reduced as long as they are of sufficient size to satisfy the needs of the particular development and are designed such that they:
- a) do not dominate the relationships between the proposed buildings, adjacent land uses, and adjacent public streets; and,
 - b) incorporate adequate landscaping in the form of landscaped islands and end aisle treatments; and,

- c) include storm-water dampening design components, such a porous asphalt pavement and/or bio-swales, wherever possible.
- 3.6.4 All parking areas shall be hard-surfaced with asphalt, concrete, or an equivalent material. Individual spaces shall be clearly demarcated.
- 3.6.5 All parking areas shall be defined by curbs, or for the purpose of on-site storm water collection, a similar barrier to clearly define the edge of the parking area for motorists.
- 3.6.6 Commercial developments are required to meet the requirements of Schedule C.

3.7 Landscaping

- 3.7.1 All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specification and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.
- 3.7.2 Prior to the issuance of a Development Permit, the Developer shall submit a landscaping plan, prepared by a Landscape Architect or a Qualified Person to the Development Officer for review to determine compliance with this Agreement. This landscaping plan shall include, but not be limited to, the following:
 - a) Landscaping to be introduced to all areas disturbed during construction;
 - b) Natural vegetation, landscaping or screening to be employed around parking areas, ensuring that measures are taken to allow for safe and convenient pedestrian access to public entrances of buildings;
 - c) Where practical, a pedestrian circulation system with walkways extending from the entrances of buildings to a public sidewalk in front of the building to any public trail system abutting the property; and,
 - d) Buildings and requirements of Schedule C for General Commercial land uses.
- 3.7.3 All disturbed areas shall be re-instated to original condition or better with landscaping.
- 3.7.4 Prior to the issuance of the first Occupancy Permit for each Phase of Development, the Developer shall submit to the Development Officer a letter prepared by a Landscape Architect or a Qualified Person certifying that all landscaping has been completed according to the terms of the Agreement.
- 3.7.5 Notwithstanding Section 3.7.4, the Occupancy Permit may be issued provided that the weather and time of year does not allow the completion of the outstanding landscape works and that the Developer supplies a security deposit in the amount of 110 percent (110%) of the estimated cost to complete the landscaping. The cost estimate is to be prepared by a member in good standing of the Canadian Society of Landscape Architects or Qualified Person. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically-renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the landscape plan, as approved by the Development Officer. Should the Developer not complete the landscaping within twelve (12) months of the issuance of the Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this section of the Agreement. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.

- 3.7.6 Securities for the completion of outstanding on-site curbing, painting and line painting (at the time of the issuance of the first Occupancy Permit) may be permitted. Such securities shall consist of a security deposit in the amount of 110 percent (110%) of the estimated cost to complete the work. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically-renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer by the Development Officer when all outstanding work is satisfactorily completed.

3.8 Buffering

- 3.8.1 Refuse containers located outside the building shall be buffered from adjacent properties and from streets by means of opaque fencing, masonry walls, landscaping or building elements or a combination of these.
- 3.8.2 Mechanical equipment shall be permitted on the roof provided the equipment is screened or incorporated into the architectural treatments of the roof structure. Mechanical equipment shall not be obviously visible from any street.
- 3.8.3 Any ground or wall-mounted mechanical equipment shall be buffered from view from any street or residential properties by means of opaque fencing, masonry walls, landscaping or building elements or a combination of these.

3.9 Bicycle Facilities

- 3.9.1 One multi-cycle bicycle rack shall be provided for each building pad in the development. Racks must allow bicycles to be secured by their frame, and not just by their tires.
- 3.9.2 Bicycle parking shall be located no more than 15 metres from an entrance. Where there are shelters such as building awnings or overhangs or special purpose-designed shelters that protect bicycles from the elements, bicycle parking may be located up to 30 metres from an entrance
- 3.9.3 All bicycle parking spaces shall be located on hard surfaces in areas that are visible and well illuminated
- 3.9.4 Appropriate clearance must be provided around the rack, between the rack and any pedestrian pathways, and between the rack and any other obstructions, walls, or hazards.

3.10 Signs

- 3.10.1 Signage shall be provided in accordance with the sign provisions of the Antigonish Fringe Land Use By-law, as amended from time to time. Notwithstanding these provisions, multi-tenant ground signs and fascia wall signs shall be permitted as follows:
- 3.10.2 Fascia Wall Signs
- a) No single fascia wall sign shall have an area that exceeds ten percent (10%) of the area of the wall on which it is attached
 - b) The total area of all fascia wall signs on a wall shall not exceed fifteen percent (15%) of the area of the wall to which it is attached.
- 3.10.3 Multi-Tenant Ground Signs
- a) Notwithstanding the sign requirements of the *Antigonish Fringe Land Use By-law* a maximum of **two** pylon signs shall be permitted on the property generally as shown on the Concept Plan, Schedule "B" taking into consideration Department of Transportation's five (5) metre setback requirement from a Highway right-of-way.

- b) The Highway pylon sign located at the North West end of the property shall not exceed 20.0 metres in height and shall not exceed 40.0 square metres in size per face and shall be located a minimum of 150 metres from any residence.
- c) The Entrance pylon sign located at the North East entrance to the property shall not exceed 12.5 metres in height and shall not exceed 24.0 square metres in size per face and shall be located a minimum of 120 metres from any residence.

3.11 Maintenance

- 3.11.1 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, snow and ice control, and the salting of walkways and driveways.

3.12 Temporary Construction Building

A building(s) shall be permitted on the Lands for the purpose of housing equipment, materials and office-associated matters relating to the construction and sale of development in accordance with this Agreement. The construction building(s) shall be removed from the Lands prior to the issuance of the last Occupancy Permit on the subject lands.

3.13 Hours of Operation

With the exception of buildings located more than 100 metres from a residence; hours of operation shall be restricted to 8:00 a.m. to 10:00 p.m. with exceptions permitted for Special Occasions.

PART 4: STREETS, MUNICIPAL SERVICES, AND ENVIRONMENTAL PROTECTION

4.1 Off-Site Disturbance

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.

4.2 Erosion and Sedimentation Control and Grading Plans

- 4.2.1 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 with offsite works, the Development shall have prepared by a Professional Engineer and submitted to the Municipality a detailed Erosion and Sedimentation Control Plan. The plan 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.

4.3 Storm Water Management

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

- 4.3.2 Where private storm systems cross multiple properties, the Developer shall provide easements in favour of the affected properties to permit the flow of storm water.

4.4 Interior Road Network

The cul-de-sac shown on the Concept Plan (Schedule "B") and identified as "PROPOSED PUBLIC STREET" shall be consider a Private Road for the purposes of this development agreement and, notwithstanding the provisions of the *Antigonish County Fringe Land Use By-law* requiring frontage on a Public road, for the purposes of Subdivision unless the developer determines otherwise, in which case the Public Street shall be subject to the provisions of the *Antigonish County Subdivision By-law* and shall meet the standards found in the *Municipal Services Systems General Specifications Pursuant to the Subdivision By-law*.

PART 5: AMENDMENTS

5.1 Non-Substantive Amendments

- 5.1.1 The following items are considered by both parties to be non-substantive and may be amended by resolution of Council:
- a) The granting of an extension to the date of commencement or completion of construction as identified in Section 6.3 of this Agreement; and,
 - b) Amendments to the development standards in Section 3.4.1 of this Agreement.

5.2 Substantive Amendments

Amendments to any matters not identified under Section 5.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Municipal Government Act*.

PART 6: REGISTRATION, EFFECT OF CONVEYANCES, AND DISCHARGE

6.1 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 Antigonish, Nova Scotia and the Developer shall incur all costs in recording such documents.

6.2 Subsequent Owners

- 6.2.1 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 that are the subject of this Agreement until this Agreement is discharged by Council.
- 6.2.2 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).

6.3 Commencement of Development

- 6.3.1 This agreement or portions of it may be discharged at the discretion of the Municipality with or without the concurrence of the property owner if construction has not commenced within two years and/or construction has not been completed within five years of the signing of the agreement.
- 6.3.2 For the purpose of this section, Council may consider granting an extension of the

commencement or completion of development time period through a resolution under Section 5.1, 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.

6.4 Completion of Development

6.4.1 This agreement may be discharged at the discretion of the Municipality upon the completion of the project and the satisfactory fulfillment of the terms of the agreement.

PART 7: ENFORCEMENT, AND RIGHTS AND REMEDIES ON DEFAULT

7.1 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.

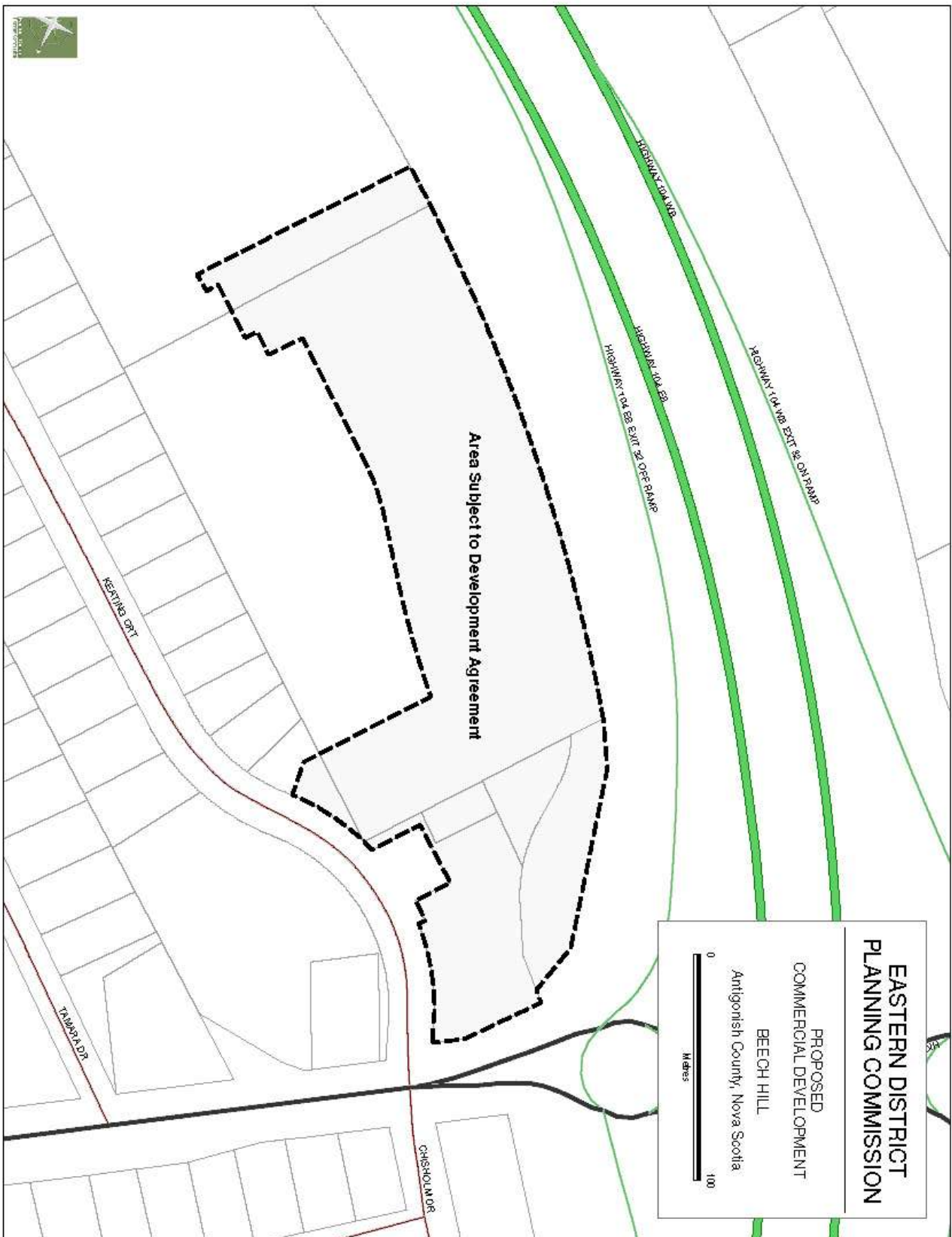
7.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (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 injunction 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 break 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; or,
- 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.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this ____ day of _____, 2015.

Schedule "A" – Lot Description



Schedule “C” – General Commercial Design Guidelines

Required Pedestrian Connections

An on-site system of pedestrian walkways (as generally shown on the concept plan) shall be designed to provide direct access and connections to and between the following:

- a) The primary entrance or entrances and each individual commercial building;
- b) Any sidewalks or walkways on adjacent properties that extend to the boundaries shared with commercial development; and,
- c) Any public sidewalk system along the perimeter streets adjacent to the commercial development.

Minimum Walkway Width

All sidewalks shall be a minimum 1.2 metres in width with 1.5 metres encouraged.

Walkways Along Buildings

Continuous pedestrian walkways shall be encouraged along the full length of a building along any façade featuring a customer entrance and along any façade abutting customer parking areas. Such walkways shall be at least 1.2 metres wide with 1.5 metres encouraged, to accommodate the bumper overhang of parked vehicles. Where there are breaks in continuous walkways or walkways would be impractical landscaping shall be provided.

Architectural Guidelines

1. Hotel Building:

The hotel building is encouraged to have architectural detailing around windows and doors. The building is also encouraged to include a roof line with a pitch and not a flat roof. The use of more than one colour and exterior cladding material is encouraged so that the building has visual interest.

2. Commercial Retail:

Commercial retail buildings are encouraged to avoid large unbroken expanses of wall area. Wall treatments such as different colours, varied exterior cladding, signage, windows, landscaping, and other detailing may be used to break up large expanses of wall area. Where possible, the use of signs or parapets is encouraged to break up any long flat roof lines. Larger buildings that contain more than one business premise could be divided into smaller masses by breaking up the building footprint, offsetting walls, shifting rooflines etc.

3. Gas Bar/Convenience Stores

It is recognized that most gas bars/convenience stores are small in scale and utilize standard franchise designs. It is encouraged that these franchises use their more architecturally attractive designs for this site.

4. Restaurants:

All restaurants, whether sit down, take out, or drive through, shall be encouraged to utilize attractive designs. Detailing may include pitched roofs, parapets, window and door detailing, landscaping, and varied exterior cladding. It is encouraged that franchise restaurants use their more architecturally attractive designs for this site.

Schedule “D” – General Commercial Land Uses

No Development Permit shall be issued for the Lands subject to this Agreement except for one or more of the following uses:

- Automobile sales or rentals
- Automobile service centres (including gas bars)
- Autobody shops
- Display courts including prefabrication homes and mobile homes
- Cinemas
- Convenience stores
- Commercial Recreational Facilities
- Hotels, motels or tourist inns
- Laundromats
- Machinery and commercial equipment leasing or rental businesses
- Multiple Unit Residences (Above Commercial Units)
- Restaurants and licensed establishments
- Offices including medical clinics
- Retail stores
- Veterinary services
- Visitor information centres