DECISION **2017 NSUARB 197**
M07800

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **DONAVAN AND JUANITA METHOT, MIKE AND LORI STODDART, JEFF AND WENDY CARTY AND RICK AND HEATHER ROOD** to a Decision of **COUNCIL** for the **MUNICIPALITY OF THE COUNTY OF KINGS** which refused to approve a Developmental Agreement to permit four (4) recreational vehicles with a cottage on two lots at 103 O3 Road, Lake George

BEFORE:	Dawna J. Ring, Q.C., Member
APPELLANTS:	**DONAVAN AND JUANITA METHOT, MIKE AND LORI STODDART, JEFF AND WENDY CARTY, AND RICK AND HEATHER ROOD** Donovan Methot
RESPONDENT:	**MUNICIPALITY OF THE COUNTY OF KINGS** Jonathan G. Cuming, LL.B.
HEARING DATES:	April 19-20, and July 7, 2017
DECISION DATE:	**December 20, 2017**
DECISION:	**Appeal granted. Council is ordered to approve a development agreement to permit four recreational vehicles in addition to an existing cottage, on two adjacent lots at 103 O3 Road, Lake George, Kings County, Nova Scotia.**

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I SUMMARY

[1] The Appellants are four couples: Donavan and Juanita Methot, Mike and Lori Stoddart, Jeff and Wendy Carty, and Rick and Heather Rood (also Owners).

[2] They appealed the December 6, 2016, decision of Council for the Municipality of the County of Kings (County) which refused to approve a Development Agreement (also DA) to permit four recreational vehicles (RVs), in addition to an existing cottage, on two adjacent lots at 103 O3 Road, Lake George, in the County (Lands).

[3] The Appeal is brought pursuant to s. 250(1)(b) of the *Municipal Government Act*, S.N.S. 1998, c. 18 as amended (*MGA*).

[4] The Board's jurisdiction in this Appeal is to determine whether Council's decision reasonably carried out the intent of the County's Municipal Planning Strategy (MPS).

[5] The hearing was held in Kentville on April 19 and 20, 2017. The Owners represented themselves. Donavan Methot was their spokesperson. He also called Laura Mosher, the Supervisor of Planning and Development Services with the County. The County was represented by Jonathan Cuming. Its witness was Gloria Armstrong, property owner on Lake George (also the Lake).

[6] Additional documents and Undertakings were filed on May 5, 2017.

[7] The Board asked the parties to address questions relating to the Board's jurisdiction in this case. The County requested and was granted the opportunity to provide written submissions which were filed on June 8, 2017. The parties agreed the Owners could provide their Submissions orally. Oral submissions from the parties were heard on July 7, 2017, in Halifax.

[8] The facts in this case are unique. Generally, they are not in dispute. The development of the Lands was complete and there are four RVs on the lots in addition to an existing cottage. The DA was to permit its current use. The development does not meet the LUB criteria for development as-of-right or by site plan approval.

[9] Lake George exceeds the goals of the County for chlorophyll levels and exceeds the maximum number of waterfront dwellings within 350 feet of the shoreline which are permitted to be built as-of-right. The MPS permits development around Lake George as-of-right if they are more than 350 feet from the shoreline, and if within 350 feet of the shoreline by site plan approval or Development Agreement.

[10] The main issues in this case are legal questions.

[11] Council was told by staff it had an obligation to uphold the Land-Use Bylaws (LUBs) and Staff should not be told to make applications fit. Staff's Reports mainly addressed the LUBs. They advised Council there were no MPS Policies by which it could approve the DA and would have to amend the MPS in order to do so.

[12] After considering all facts and submissions in this case, the Board finds that, on a balance of probabilities, Council did not consider the DA criteria of its MPS Policies. Consequently, the Board finds Council did not reasonably carry out the intent of the MPS. The Appeal is allowed. The Board orders Council to approve the DA.

II FACTS

1. MPS

[13] Although the Board has read the MPS as a whole, the main Policies for this Appeal are set out below. Other MPS sections referenced in the Decision are found in Appendix "A".

> **3.5.1 Shoreland District – Objectives**
>
> 3.5.1.1 To adequately accommodate demand for seasonal residential and recreational development including campgrounds.
>
> 3.5.1.2 To ensure the availability of shoreland for the use and enjoyment of the general public.
>
> 3.5.1.3 To permit the development of commercial facilities primarily serving the seasonal population.
>
> 3.5.1.4 To allow for permanent development on public and private roads.
>
> 3.5.1.5 To minimize disturbance of environmentally sensitive natural features and habitats on inland lakes and coastal shoreland areas.
>
> 3.5.1.6 To protect the quality of lake water by establishing water quality objectives for individual lakes, and where necessary development criteria which result from lake trophic state carrying capacity studies.
>
> 3.5.1.7 Where lake trophic status is unknown or has reached adopted water quality objectives, to provide for alternative development approval mechanisms with criteria intended to significantly limit impacts on lake trophic status, maintain fish and wildlife habitat and shoreline aesthetics.
>
> 3.5.1.8 Increase awareness among developers, residents and other lake users of lake and shoreline ecology and to actively promote water quality protection measures.
>
> 3.5.1.9 Initiate a volunteer self-help water quality monitoring program for fresh water lakes on the South Mountain.

[14] The chlorophyll level of Lake George was above the Lake Water Quality Objectives for the County (Policy 3.5.4.1, 3.5.11 and Note 3). It had also exceeded the maximum number of residences that were permitted to be built as-of-right within 350 feet of the shoreline (Policy 3.5.4.2 to 3.5.4.4), being 110 residential developments (LUB 14.4.13), referenced as the Lake's "carrying capacity".

[15] Although the MPS Policy 3.5.4.6 does not encourage permanent residential developments on the private roads in the S1 Zone, the above are the predicted chlorophyll

levels based on the assumption that one-third of all dwellings will eventually be occupied as permanent full time residences. At the time of the hearing, there were approximately 138 residential developments and 234 lots, with some of the latter being very large and possibly capable of further subdivision in the future. Permanent residences do not appear to be prevalent and not at the one-third level.

[16] For properties within 350 feet of the shoreline, the MPS permits development by site plan approval or Development Agreement.

[17] The main Policies for the DA relevant to this Appeal are:

> **3.5.8 Medium and Large Scale Development**
>
> 3.5.8.1 Within the S1 and S2 Zones Council may consider a variety of residential, commercial, recreational, institutional, resource development or other medium and large scale permanent or seasonal residential development proposals by development agreement.
>
> 3.5.8.3 In considering development agreement proposals under policy 3.5.8.1 (above) Council shall be satisfied that the proposal:
>
> a. will not create or contribute to erosion issues
>
> b. any silt, nutrients or other contaminates flowing into a lake, tributary stream or wetland shall not exceed acceptable levels or negatively impact the natural ecosystem
>
> c. can meet the waste and septic systems requirements of Nova Scotia Environment
>
> d. will not negatively impact sensitive wildlife habitats shown on the Nova Scotia Department of Natural Resources Significant Habitat map
>
> e. can meet the General Development Agreement Criteria contained in Section 6.3.3 of this Strategy
>
> **6.3.3 Conditions of Approval of Development Agreements**
>
> 6.3.3.1 A Development Agreement shall not require an amendment to the Land Use Bylaw but shall be binding upon the property until the agreement or part thereof is discharged by the Municipality. In considering Development Agreements under the *Municipal Government Act*, in addition to all other criteria as set out in various policies of this Strategy, Council shall be satisfied:

a. the proposal is in keeping with the intent of the Municipal Planning Strategy, including the intent of any Secondary Planning Strategy

b. that the proposal is not premature or inappropriate by reason of:

   i. the financial capability of the Municipality to absorb any costs related to the development of the subject site

   ii. the adequacy of municipal sewer and water services if services are to be provided. Alternatively, the adequacy of the physical site conditions for private on-site sewer and water systems

   iii. the potential for creating, or contributing to, a pollution problem including the contamination of watercourses or the creation of erosion or sedimentation during construction

   iv. the adequacy of storm drainage and the effect of same on adjacent uses

   v. the adequacy of street or road networks in, adjacent to, and leading to, the development

   vi. the adequacy, capacity and proximity of schools, recreation and other community facilities

   vii. adequacy of municipal fire protection services and equipment

   viii. creating extensive intervening parcels of vacant land between the existing developed lands and the proposed site, or a scattered or ribbon development pattern as opposed to compact development

   ix. the suitability of the proposed site in terms of steepness of grades, soil and/or geological conditions, and the relative location of watercourses, marshes, swamps or bogs

   x. traffic generation, access to and egress from the site, and parking

   xi. compatibility with adjacent uses

c. the Development Agreement may specify that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:

   i. the type of use

   ii. the location and positioning of outlets for air, water and noise within the context of the Land Use Bylaw.

   iii. the height, bulk and lot coverage of any proposed buildings or structures

   iv. traffic generation

   v. access to and egress from the site and the distance of these from street intersections

   vi. availability, accessibility of on-site parking

   vii. outdoor storage and/or display

   viii. signs and lighting

   ix. the hours of operation

x. maintenance of the development

xi. buffering, landscaping, screening and access control

xii. the suitability of the proposed site in terms of steepness of grades, soil and/or geological conditions, and the relative location of watercourses, marshes, swamps, or bogs

xiii. the terms of the agreement provide for the discharge of the agreement or parts thereof upon the successful fulfillment of its terms

xiv. appropriate phasing and stage by stage control

d. performance bonding or security shall be included in the agreement if deemed necessary by Council to ensure that components of the development such as, but not limited to, road construction or maintenance, landscaping or the development of amenity areas, are completed in a timely manner

2. Witnesses

[18] The Owners are all lay people. Mr. Methot presented evidence on their behalf along with Lori Stoddart.

[19] Ms. Mosher has worked with the County since October 26, 2015, after she moved to Nova Scotia. She has an Honours Bachelor Degree from the University of Toronto and a Bachelor of Urban and Regional Planning from Ryerson University. She worked for a planning consultant firm in Toronto from May 2010. In this matter, she was involved in the drafting of all Staff Reports to Council and did some of the presentations.

[20] Gloria Armstrong lives at 292 G-2 Road on the upper west side of the Lake.

3. Property

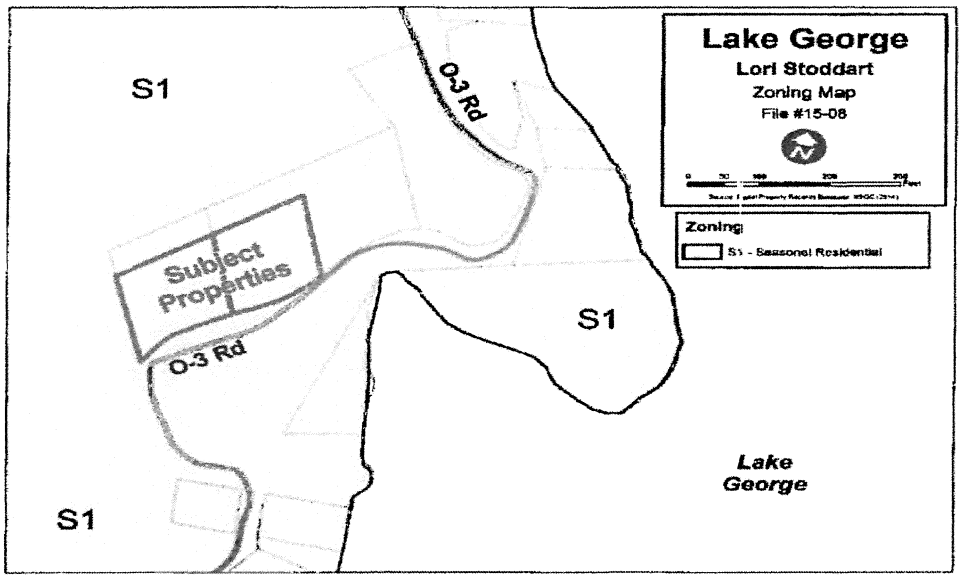
[21] In September, 2013, the Owners purchased two adjacent lots on 103 O3 Road. The properties are PIDs 55146880 and 55337729.

[22] Each property is in the Shoreland District on the Future Land Use Map (Map 15) and is zoned S1 Seasonal Residential.

[23] Each lot has approximately 150 feet of road frontage, is 150 feet in depth, and has an area under 21,000 square feet. If combined, the two lots have an area of approximately 41,900 square feet.

[24] The properties are located on the road opposite the Lake and have no lake frontage. There is a property and cottage on the other side of the road between the Owners' lots and the Lake. The lots are within 350 feet of the Lake shoreline. The eastern lot had an existing small cottage which the Owners repaired. It also had a 1,000 gallon septic holding tank.

Appendix A – Reference Zoning Map



[Exhibit M-3, p. 133]

4. Development

[25] In the spring of 2014, the Owners cleared most of the eastern lot, part of the western lot, and made a second driveway from the latter to the O3 Road. Numerous loads of gravel and fill were brought onto the land to level it.

[26] The Owners placed four RVs in a semi-circle. Two on the eastern lot with the existing cottage and 1,000 gallon septic holding tank. The other two are on the western property, but close to the joint property line. The Owners installed a second 1,000 gallon septic holding tank. Two RVs are connected to each tank. These are pumped out and hauled away annually. The Lands are landscaped and decks built.

[27] With the permission of an owner of the property along the Lake shoreline, the Owners removed some of the vegetation on a small area, including seven trees. It is now a small grass area from which the Owners launch their pontoon boat, kayaks, and canoes. As this is not part of the Owners' Lands, it is irrelevant to the DA and this Appeal.

[28] Mr. Methot testified they mainly use the cottage and, generally, only use the RVs for sleeping.

[29] Mr. Methot testified they did not obtain permits for the above development because they did not know they had too. They were apologetic and just wanted to be able to use their properties as they were doing. They wanted to work through a resolution.

[30] The development does not meet the criteria for development as-of-right or by site plan approval, which will be discussed in more detail below.

5. Complaint

[31] The County received a complaint, dated July 2, 2014, that there were four travel trailers on a lot with a cottage.

[32] On October 2, 2014, the Owners received a letter from the County's Development Officer. She advised their travel trailers did not meet any of the permitted uses for the S1 Zone and specifically did not meet the definitions of "dwelling", "seasonal

dwelling" or "mini-home". If they did meet the definition, they exceeded the maximum number of seasonal or permanent dwellings permitted in the S1 Zone, which is one per lot. The County directed the Owners to remove the RVs by October 31, 2014, to comply with the LUBs. They were welcome to contact Planning Services to see if there were any options available [Exhibit M-6(a), p. 3].

[33] The Owners contacted Ian Watson, MCIP, the Planner for the County at the time. By email dated October 14, 2014, Mr. Watson confirmed his conversation and noted the MPS Policies have a provision for development agreement for medium and large scale developments around the Lake which is a contract enabling parties to do things that are not normally permitted within the S1 Zone. Mr. Watson noted, however, that ultimately the decision to approve or deny a development agreement will be Council's, and there is no guarantee the Owners would receive one. The email included:

> … As we discussed on the phone Council does have policies that allows it to consider a development agreement for medium and large scale developments around lakes. This is a legally binding contract that allows you to do things not normally permitted by the zoning. …
>
> … Ultimately the decision to approve or deny a development agreement is decided on by a vote of municipal Council. You are not guaranteed to receive a development agreement. …
>
> To open up your application please bring in a completed application form along with your cheque and leave them for me. In this case, with multiple property owners, it would also be helpful to have the signatures (on a separate letter will be fine) of all eight of you. …
>
> [Exhibit M-6(a), p. 6]

6. Application

[34] The Owners submitted their Application for a Development Agreement, dated May 13, 2015, to be able to use their RVs with the existing cottage on their lots [Exhibit M-3, p. 3]. It included a letter from the Owners indicating their desired use of the

properties noting they were unaware they were not permitted to put their trailers on the lots. The letter further notes how and when they use the cottage and Lake. They stated there are a large number of people doing the same thing.

[35] A Public Information Meeting (PIM) was held on June 18, 2015. A planner for the County, Mark Fredericks, presented an overview of the planning process and the criteria to be used to evaluate the Application for the DA. The Minutes described their Application as:

> … The proposal is to permit recreational vehicles on two lots at 103 0-3 Road on Lake George (PIDs 55146880 and 55337729).
>
> [Exhibit M-3, p. 10]

[36] The Minutes note 20 members of the public were in attendance and most spoke in favour of the DA. They commented on how the Owners had improved their properties and the area along the shoreline. The Owners keep their properties clean. They are good neighbours. They are not noisy or obnoxious. Some merely stated they had no objections. A few expressed concerns.

[37] Comments included those of Peter Worthylake's brother who said there is already a lot with two and three trailers on the property and queried whether it sets a precedent for this DA:

> - There is already a lot on that street that has <u>had 2-3 trailers on it</u> during the summertime and that have been removed during the wintertime. Does that set some kind of precedence in terms of what is being discussed tonight? [Emphasis added]
>
> [M-3, p. 11]

[38] Orley Lutz, co-owner of one of the lots on O-3 Road on Lake George stated they have been bringing their trailers to their lot for 22 years:

> • Are the culprits in that they have been bringing their trailers to their lot for 22 years. There is no water or sewer. They take their own water and the sewage Is hauled away.
> • They have no problem with having the trailers on the lots. They have been good neighbours. [Emphasis added]
>
> [*ibid*]

[39] Ms. Armstrong spoke as the Vice-President of the Lake George Property Owners Association and noted its role is to ensure the Lake is kept safe for everyone to enjoy. She stated the Owners' Lands were well maintained and landscaped. The Association's main questions related to the septic system:

> • The main concern is the septic system. When the septic system was inspected were the officials aware that five different households would all be using the one septic system or is there a separate holding tank for each recreational vehicle?
>
> [*ibid*]

She also queried whether this created a precedent for others to bring their RVs, who may "not be so respectful of the neighbouring properties" [*ibid*].

[40] After the Meeting, staff received phone calls and emails from other residents expressing "concern over the density, noise and level of activity" from the property. Some expressed concern it would be inequitable to permit four illegal RVs, in addition to the cottage, on this lot when other landowners are only permitted to have a single cottage or home on their property.

[41] On August 5, 2015, Mark Fredericks contacted the Nova Scotia Department of Natural Resources (DNR) and sought a formal comment on the DA's potential impact on the wildlife habitat. His communication noted the subject properties are not identified on the Significant Habitat Map, but recognized the Lake is. Regarding impact, he asked DNR to include the affects of higher density development and the suitability of the property for the proposed development.

[42] On August 10, 2015, the wildlife biologist for the Western Region, Donald Sam, replied as follows:

> Lake George itself is deemed significant wildlife habitat on the basis of its loon population. As such, it is terribly difficult to ascertain when residential densification and associated recreational activities tip the balance to the detriment of loons and other wildlife. Squeezing a few extra RVs on to these cottage lots may not be problematic today. However, if in future the rest of Lake George's currently undeveloped shoreline was to be developed in the same manner and to the same density, then it is safe to say that wildlife will suffer. [Emphasis in original]
>
> Although the RVs are not permanent, the RVs and their users are most likely to be present at the lake during the months when loons are most vulnerable to disturbance. In the case of loons, stress and disturbance from boating-related traffic is known to disrupt breeding, nesting and the rearing of young.
>
> I have no concerns specific to the location of the parcels in question.
>
> I recently received a similar request to review a proposed development on Lake George. If there are planning documents for Lake George and other lakes in Kings County that describe development capacity, I would appreciate being made aware of the reports.
>
> [Exhibit M-8, p. 1]

[43] The Owners were required by the County to address their on-site sewage system and to receive a letter from the Nova Scotia Department of the Environment (NSE). They retained engineers Hiltz & Seamone II Limited. Engineer Robert Rowe attended at their properties and also conducted a four-foot pit test to determine the soil conditions, the results of which were provided to the County.

[44] Mr. Rowe prepared a letter to NSE, dated September 3, 2015, in which he stated the Owners have no well and bring their own drinking water. For the sewer system, the water is pumped from the Lake which is only available seasonally. They have two 1,000 gallon septic holding tanks. Two RVs are connected to one tank while the remaining two RVs and the existing cottage are connected to the second. The septic tanks are pumped out regularly and it is hauled away by a septic tank pumper trunk. The Owners have used this system for three years and have found this is only necessary once per year.

[45] The engineer noted the RVs use very little water; less than a litre per flush and are equipped with low flow showers. As the tanks are just below the ground surface, the engineer recommended they insulate the tanks to prevent freezing. He also recommended an alarm system be installed. The Owners had some questions regarding these and, as of the date of the hearing, they had not been installed.

[46] The engineer advised there were no problems with the holding tanks. If problems were ever to arise in the future, there is sufficient land available on PID 55146880 to install an onsite sewage disposal system without encroaching on property boundaries or separation distances from the neighbours well or property lines.

[47] The letter concluded:

> In conclusion, this system should have no problems handling the loads placed on it by the existing trailers and seasonal dwelling. The effluent is being pumped out as required. and hauled away by a septic tank pumper truck.
>
> [Exhibit M-3, p. 306]

[48] By letter dated September 21, 2015, NSE, through its Regional Office Engineer, Katherine MacLeod, P.Eng., had no objections to the use of the septic system as it was currently operated. Any future changes in load would require re-assessment. The main paragraphs read:

> The information provided by Robert Rowe, P.Eng., MPH, of Hiltz and Seamone II Limited, indicates that the current system is not malfunctioning. The adjacent property has room for a replacement system, after amalgamation, if one should be required.
>
> The system consists of two 1000 gallon holding tanks. As per Mr. Rowe, "They have been using the site for approximately 3 years, and only need to pump out the tanks once per season, using less than 10,000 litres per season."
>
> Nova Scotia Environment has no objections with continuing to use this system as long as there are no further changes to the operation. If additional increases in load are proposed for future operations, an additional assessment will be required from a qualified person to determine the effect this will have on the existing on-site system.
>
> [Exhibit M-6(a), p. 39]

[49] Staff prepared a report for the Planning Advisory Committee (PAC) meeting of November 10, 2015 [Exhibit M-3, Tab 5, p. 126]. Staff described the Proposal as follows:

> Lori S[t]oddart has applied to enter into a development agreement to permit the use of four (4) Recreational Vehicles (RVs) at 103, 03 Road, Lake George. …
>
> [Exhibit M-3, pp. 126-127]

[50] After briefly summarizing how the proposal does not meet the requirements of the LUB, staff informed Council they could enter into a DA, but advised this was limited to the uses noted in the following:

> … Notwithstanding, the MPS does allow Council to consider medium scale residential developments through a development agreement process. In doing so, the intent is to allow for summer camps, resorts and campgrounds with careful site analysis and development agreement conditions aimed as preserving natural vegetation and maintanace of septic systems to help maintain lake water quality. [Emphasis added]
>
> [*ibid*]

[51] The Report set out two options for Council:

1. Refuse the Application; or
2. Direct staff to draft a development agreement.

[52] The Report noted the DA policy, summarized staff concerns, and, as an Appendix, provided their comments of the criteria under Policies 3.5.8.3 and 6.3.3.1. Staff identified their main concerns were the septic systems, and impacts on sensitive wildlife habitats, pursuant to subsections Policy 3.5.8.3(c) and (d).

[53] Regarding waste and septic systems (c), staff commented the following after noting NSE had no objections:

> … However it is Staff's belief that the non-conforming lot area of the subject properties would not allow for the proposed development to be approved if an application prior to the installation of the illegal RVs had been received. …
>
> [Exhibit M-3, p. 131]

The Board notes this is not the MPS criteria.

[54] With respect to wildlife habitats staff stated as follows:

> … Staff believe that the proposed development may contribute to long term negative impacts to significant wildlife habitats shown on the NS DNR Significant Habitat Map. A continued increase in residential density around the lake is linked to a decrease in the quality of the habitat for Loons and other wildlife. DNR's Wildlife Biologist provided the following note: "*the RVs and their users are most likely to be present at the lake during the months when loons are most vulnerable to disturbance. In the case of loons, stress and disturbance from boating-related traffic is known to disrupt breeding, nesting and the rearing of young*."
>
> The DNR staff recognized that it is difficult to ascertain exactly when residential densification and the associated recreational activity will result in significant negative impacts on the habitat of the loon and other wildlife, and it is unlikely that the proposed RVs will cause immediate negative impacts however, this type of development on a large scale could have significant impacts on the habitat of the loon and other wildlife. Therefore, the proposal does not satisfy this criterion. [Emphasis added]
>
> [Exhibit M-3, p. 131]

[55] Staff also opined the proposal was not consistent with the general criteria for development agreements under Policy 6.3.3.1. The following in included in the body of the Report:

> **5.3 General Development Agreement Policies**
>
> Municipal Planning Strategy Section 6.3 contains a number of general criteria for considering all Development Agreements (Appendix C). These criteria consider the impact of the proposal on the road network, services, development pattern, environment, finances, and wellfields, as well as the proposal's consistency with the intent of the Municipal Planning Strategy.
>
> In terms of the general development criteria contained In Municipal Planning Strategy Section 6.3.3.1 the proposed development is not consistent with criterion a. which requires that the proposed development be "in keeping with the intent of the Municipal Planning strategy," as outlined above.
>
> [Exhibit M-3, p. 131]

[56] In the attached detailed criteria of Policy 6.3.3.1 under Appendix "C", the same concerns as above are raised in relation to sewer under sub-policy (b)(ii) and (iii). On the issue of compatibility under sub-Policy (xi), staff were of the opinion the DA was not compatible with the existing pattern of single units and, once again, noted how the proposal did not comply with the LUB.

[57] Staff recommended the PAC refuse the Development Agreement proposal and recommended an unenforced draft future LUB amendment. The Conclusion of the Report read:

> Staff are recommending refusal of the application as the proposed development does not meet the requirements of the underlying zone and is not consistent with the DA and general policies of the MPS. Lake George is above its carrying capacity threshold of Chlorophyll a concentrations, and this lake has passed the number of as-of-right dwelling units outlined in the LUB Section 14.4.13. The proposal is not compatible with adjacent low density uses and poses a level of risk to the lake water based on the current septic configuration, relying on a frequently pumped out holding tank rather than a traditional septic system. There is also concern related to negative impacts on the significant wildlife habitat identified on Lake George. However, if the application is refused, the applicants may find some compromise with the proposed Kings 2050 LUB that may allow a less intense use of their RV's on these properties.
>
> [Exhibit M-3, p. 132]

[58] The Report attached the following Appendices:

> Appendix A- Reference Zoning Map
> Appendix B - Medium and Large Scale Development DA policies
> Appendix C - General Development Agreement Criteria - MPS 6.3.3.1
> Appendix D - Notes from the June 18th Public Information Meeting
>
> [Exhibit M-3, p. 132]

[59] At the PAC Meeting, the Minutes note Ms. Mosher's comments included that if the proposal was done at a large scale, it may impact the Lake and the natural wildlife, Councillors were obliged to uphold the LUBs, and staff should not be told to make applications fit:

> Laura Mosher explained that the major concern with this type of proposal is that there is no policy or regulatory direction to support such an undertaking. The cumulative effects have to be looked at and the possibility of incremental development on this lake and other lakes In the County to this extent. If we are required to permit this type of development on a large scale there will eventually be impacts on the lake both from a water quality and natural wildlife perspective.
>
> ...
>
> - Councillors have an obligation to uphold the County bylaws.
>
> ...
>
> - Staff did a thorough Job in evaluating the proposal. Developers have to follow the rules and regulations and Staff should not be told to make applications fit. [Emphasis added]
>
> [Exhibit M-3, pp. 19-20]

[60] The PAC passed a motion recommending Council refuse the application for the DA:

> **On motion of Councillor Winsor and Mr. Fournier, that the Planning Advisory Committee recommends that Municipal Council refuse the application for a Development Agreement to permit multiple RVs in addition to the existing cottage at 103 03 Road, Lake George. Further, Council also wishes to reiterate that requirement for immediate compliance by the removal of the RV's. Motion Carried.**
>
> [*ibid,* p. 20]

[61] Council, at its meeting on December 1, 2015, defeated the motion to refuse the DA and approved a motion instructing staff to draft a DA pertaining to allowing the existing RVs on the Lands. The Council Minutes [Exhibit M-3, pp. 32-33] read:

> **On motion of Councillor Winsor and Councillor Muttart, that Council refuse the application for a Development Agreement to permit multiple RVs in addition to the existing cottage at 103 03 Road, Lake George. Further, Council also wishes to reiterate that requirement for immediate compliance by the removal of the RV's.**
>
> **Motion Defeated.**
> ...
>
> **On motion of Councillor Lloyd and Councillor Ennis, that Council instruct the CAO to instruct staff to draft a Development Agreement pertaining to allowing existing RVs on 103 03 Road, Lake George.**
>
> **Motion Carried.**

[62] On December 3, 2015, the Owners received a letter from planning services, confirming Council's decision as follows:

> On Tuesday, December 1, 2015 Municipal Council instructed the Chief Administrative Officer (CAO) to instruct staff to draft a Development Agreement pertaining to allowing existing RVs on 103 03 Road, Lake George. You will receive notification once the date has been set for the Planning Advisory Committee (PAC) meeting.
>
> Please contact Mark Fredericks, GIS Planner, at 902-690-6276 or by email at mfredericks@countyofkings.ca if you have any questions.
>
> [Exhibit M-6(a), p. 160]

[63] Staff did not prepare a DA and did not, otherwise, contact the Owners.

[64] Rather, staff eventually prepared a Report for the Committee of the Whole (COTW) dated May 10, 2016. Staff advised they were of the opinion there are no applicable policies in the MPS which would permit a DA allowing RVs on the property and

provided Council with reasons for this analysis. It also noted that to complete such a DA would require an amendment of the MPS. Staff advised, alternatively, the Owners may be interested in the proposed future draft LUB.

[65] After providing a brief background, the Review and Conclusion portions of the Report, focusing on the LUBs, read:

> **2. Review**
>
> **Review**
>
> Staff have reviewed the matter and are of the opinion that no applicable policy exists within the current Municipal Planning Strategy (MPS) which would permit the Municipality of the County of Kings to enter into a Development Agreement pertaining to allowing existing RVs on the subject property.
>
> The MPS identifies a number of options for development agreements in the Municipality, which are generally dependent on a property's location including by Land Use District, specific Growth Centre or a Hamlet area. There are also a limited number of development agreement options that apply to all properties within the Municipality. The options are generally very specific and related to a very narrow context or location. Uses considered by Development Agreement are described throughout the MPS, as necessary. A list of these uses in also included in Part 5 of the Land Use Bylaw (LUB}. For example, [in the LUB] the following developments may be considered by Council by way of a Development Agreement:
>
> *5.1.8 Multiple Unit residential dwellings within Residential Districts in the Coldbrook Growth Centre, as provided for in Policy 2.4.9 of the Municipal Planning Strategy.*
>
> *5.2.4 Development for multi unit residential uses of up to 8 units per acre in Hamlets where central sewer services are available as provided for in Policy 3.6.7.8 of the Municipal Planning Strategy.*
>
> *5.3.1 Development of buildings of historical significance for uses not normally permitted within a district pursuant to Policy 4.4.1 in the Municipal Planning Strategy.*
>
> *5.6 Within the Forestry and Country Residential Districts development within 350 feet of a watercourse which flows into any of the lakes listed in Schedules 1S to 32S in accordance with Policy Section 3.5.7.*
>
> As mentioned previously, all the examples are quite specific either by way of a specific use (multi unit dwellings), specific location (Coldbrook, Hamlets, or within 350 feet of a watercourse) or specific context (reuse of a building of historical Interest).
>
> As indicated above, Staff are of the opinion that the proposed development, as currently configured, cannot be accommodated through the existing policies of the MPS.

If Council believes this type of development is appropriate and should be encouraged then an amendment to the MPS would be required to establish a set of criteria and enabling policy to consider RVs on properties around lakes through a development agreement.

It should be noted that such an amendment would apply to **all properties located within Shoreland Districts around South Mountain lakes** which includes thousands of properties.

The last significant amendment to the LUB applicable to these areas was related to increasing the maximum permitted building footprint of cottages, garages, sheds, etc. for properties in the Seasonal Residential (S1) Zone. At that time, a letter was sent to each property owner in the Seasonal Residential (S1) Zone and future Shoreland (S2) Zone to explain the amendment and its impacts and to provide the residents with the opportunity to provide input.

3. Conclusion

Staff are not able to follow the direction of Council as the proposed development agreement is not consistent with the development agreement criteria and general policies of the MPS.

If Council is considering an amendment to the MPS to accommodate development agreement options for RVs in the Seasonal Residential (S1) Zone and Future Shoreland (S2) Zone then it is recommended that a similar practice regarding the notification of property owners in the S1 and S2 zone be followed in this case.

The notice would include information on the amendment as well as the potential impacts associated with considering by Development Agreement of RV developments on properties around the South Mountain lakes as well as the associated environmental impacts on the freshwater lakes and their related habitats.

It should be noted that the applicants may find some compromise with the proposed LUB, slated for draft release in June 2016, that may provide an option for a limited number of RVs to be located on a lot as-of-right. [Emphasis added]

[Exhibit M-3, pp. 141-143]

[66] The Board notes that when informing Council of the "limited number of development agreement options", Staff did not include the relevant LUB for the S1 Zone of 5.5.1 which reads:

> 5.5 Within the Shoreland Districts the following shall be permitted by Development Agreement:
>
> 5.5.1 Medium or large scale residential, commercial, recreational, institutional, or resource development in the Seasonal Residential (S1) and Future Shoreland (S2) Zones, as provided for in Policy 3.5.8.1 of the Municipal Planning Strategy. [Emphasis added]
>
> [Exhibit M-5, p. 5-5]

[67] The draft proposed future amendment to the LUB would permit one recreational vehicle as one dwelling unit on a vacant lot provided it meets the required

setbacks of the LUB. One visiting RV could be permitted on the property provided it was not there more than 30 days in a calendar year and there is no infrastructure (like a deck) [Exhibit M-3, p. 144]. This potential LUB is irrelevant to this Appeal.

[68] At the COTW meeting on May 17, 2016, Council deferred the motion to reject the DA application until a study of RVs in the S1 and S2 Zones was completed. The Motions read:

> **On motion of Councillor Winsor and Councillor Muttart, that Committee of the Whole recommend that Council reject the application for a Development Agreement to permit multiple RVs in addition to the existing cottage at 103 O3 Road, Lake George.**
>
> **Motion Deferred.**
>
> **On motion of Councillor Lloyd and Councillor Atwater, to defer the motion with respect to Lake George RVs until the study on RVs is completed with respect to the direct engagement of residents in the Seasonal Residential (S1) Zone and Future Shoreland (S2) Zone.**
>
> **Motion Carried.**
>
> [Exhibit M-6(a), p. 240]

[69] Ms. Mosher testified the CAO told staff not to conduct the study and none was conducted. She testified:

> Q. So after Council had decided again in -- but this time to request that staff do a study on other RV's and whatnot out there, what -- why did -- did that happen? Did the study -- did staff or -- do a study, a fact finding ---
>
> A. The study did not occur. Staff were directed by the CAO to not begin the study.
>
> Q. Okay. But I believe the direction was from Council though to -- that that's what they wished to have happen.
>
> A. Council makes directions to the CAO and CAO makes directions to staff.
>
> [Transcript, p. 161].

[70] A new Council was elected as a result of municipal elections held in October, 2016.

[71] Staff prepared a Report to Council for its meeting of December 6, 2016. It summarized its May 10, 2016, report as follows:

> … On May 10th, 2016, staff presented a report to Committee of the Whole indicating that the preparation of a development agreement was contrary to the policies of the Municipal Planning Strategy and therefore, in accordance with the *Municipal Government Act*, could not occur without an amendment to the Municipal Planning Strategy. … [Emphasis added]
>
> [Exhibit M-3, p. 124]

[72] After noting Council's Motion for a study on RVs, the Report provided Council with the following information:

> In the intervening period, staff have met with a number of residents on a number of occasions with regard to development on the South Mountain Lakes and have discussed the matter of RVs and how best to accommodate this alternative form of seasonal accommodation. In that time, Staff have released a Draft Land Use By-law that contains regulations related to RVs. The draft regulations propose that an RV could be permitted as a main use, provided a dwelling is not currently located on the lot. Infrastructure such as a septic system, electrical service or a deck would also be permitted on the lot and the RV would be subject to the setback requirements of the zone. An additional visiting RV would also be permitted to locate on the lot for no more than a total of 30 days per calendar year. A visiting RV would not be permitted to have associated infrastructure. The regulations can be found in Appendix C to this report. Staff have also received comments on the proposed regulations which have generally been positive. …
>
> [Exhibit M-3, p. 124]

[73] Ms. Mosher testified no one informed Council that the study of RVs had not been conducted by staff. Furthermore, the meetings with residents were in private settings after residents had contacted the County requesting councillors/staff attend and speak with them. Ms. Mosher confirmed staff did not initiate any of the meetings (Transcript, p. 177).

[74] Staff, once again, recommended the draft LUB amendment:

> Although the Draft LUB and the proposed regulations related to RVs have not been adopted by Council, the proposed regulations related to RVs continue to represent the recommendation of Staff on this particular issue.
>
> [Exhibit M-3, p. 124]

[75] Staff requested the new Council either confirm Council's previous direction for public consultation of RV use in the seasonal zones or refuse the application for the DA [*ibid*].

[76] Staff's recommendation reiterated their opinion on the inappropriateness of the proposal:

> Staff have not received any information to date that has resulted in a change of professional opinion with regard to the appropriateness of the proposal before Council. Therefore, Staff recommend that Council pass the following motion:
>
> **Be it resolved that Municipal Council refuse the application to enter into a Development Agreement to permit multiple Recreational Vehicles at 103 03 Road, Lake George (File #15-08), as recommended by the Planning Advisory Committee at Its meeting on November 10, 2015.** [Emphasis added]
>
> [*ibid*, p. 125]

[77] The Report attached staff's previous Reports of November 10, 2015, May 10, 2016, and the draft LUB dated June 3, 2016.

[78] At the Council meeting on December 6, 2016, Council passed a Motion to refuse to enter into the DA. The Minutes read:

> **On motion of Councillor Winsor and Deputy Mayor Lutz, that Municipal Council refuse the application to enter into a Development Agreement to permit multiple Recreational Vehicles at 103 03 Road, Lake George (File 15-08), as recommended by the Planning Advisory Committee at its meeting on November 10, 2015.**
>
> **Motion Carried.**
>
> [Exhibit M-3, p. 67]

[79] As Mr. Methot was leaving the Council meeting, Ms. Mosher gave him the letter of Council's refusal, dated December 7, 2016, which stated:

> On Tuesday, December 6, 2016 Municipal Council refused the application to enter into a development agreement to permit recreational vehicles on two lots at 103-03 Road, Lake George, NS. In making its decision, Council considered the Staff Report that was presented to Planning Advisory Committee, the Staff Report presented to Committee of the Whole, and the Staff Report presented to Council.
>
> [Exhibit M-6(a), p. 337]

No reasons were provided.

7. Viewing

[80] The Board viewed the Lands.

8. Hearing

[81] The following is a summary and review of some of the facts provided by the witnesses. Those facts specific to the issues may be addressed in more detail in the Findings section of the Decision.

(1) Laura Mosher

[82] Ms. Mosher was called as the first witness by the Owners. Before turning the witness over to the Owners for questioning, Mr. Cuming had Ms. Mosher confirm she was involved in the drafting of all Staff Reports and that these remain true and accurate, except as modified by the following:

> Q.: Okay. And would you, after reviewing those reports change any of those conclusions?
>
> A.: The only thing that I would have added I wouldn't have changed anything -- the only thing that I would have added to the reports was a clarification that on the basis of the municipal planning strategy and the Land Use By-law that staff would not consider the proposed development of resident development since recreational vehicles do not meet the definition of a residential dwelling under the Land Use By-law. [Emphasis added]
>
> [Transcript, April 19, 2017, p. 29]

[83] Mr. Methot took Ms. Mosher through the above events and the criteria for DA under the MPS. Throughout most of her evidence, Ms. Mosher focused on the specific requirements in the LUB for the criteria to develop as-of-right or by site plan approval.

[84] When Ms. Mosher was asked to explain why MPS Policy 3.5.8.1 did not apply she responded as follows:

> The Witness: Certainly
>
> **--- BY THE WITNESS:**
> A. I'll just read the policy first and the policy says:

> "Within the S-1 and S-2 zones Council may consider a variety of residential, commercial, recreational, institutional resource development or other medium and large scale permanent or seasonal residential development proposals by development agreement."
>
> The reason I don't believe this policy applies is because if I take us through each one of these the proposal is not residential in nature. Our Land Use By-law within the definition section -- and I can take you there if you like --

...

A. I am referring to the Land Use By-law whichever exhibit it happens to be.

The Chair: Okay.

--- BY THE WITNESS:

A. On page 1-7 the definition of a dwelling means:

> "A building or portion thereof occupied or capable of being occupied as a home or residence by one or more persons containing one or more dwelling units but shall not include a hotel, a motel, a motor home, a travel trailer or other recreational vehicle or seasonal dwelling designed for seasonal and non-permanent occupancy only."
>
> The definition clearly tells us that this is not a residential development. [Emphasis added]
>
> [ibid, pp. 47-49]

(2) Donovan Methot

[85] Mr. Methot's testimony reviewed the above events. He expressed the Owners' main concerns that they wished to continue to enjoy their properties; they did not know they were not allowed to develop the Lands as they had done; and they wanted to find a resolution.

[86] He expressed how the process was very personal and hurtful to the Owners. After Mr. Watson left the County planning office, there was no involvement with the Owners to work on the terms of the DA. The new mayor campaigned on the platform that specifically referenced their development; of which he was strongly opposed. There were numerous press statements and accusations about them that were personal and

hurtful and/or which Mr. Methot and Ms. Stoddart stated did not happen. Mr. Methot stated they kept quiet during these personal attacks and did not speak out about them.

[87] The Owners provided an exhibit of the square footage of each of the approximate 139 developed lots on the Lake. Of those, 80% were under the 50,000 square foot requirements for development as-of-right [Exhibit M-10].

[88] Mr. Methot also testified there were other properties where RVs were used on the S1 Zoned lots.

(3) Gloria Armstrong

[89] On rebuttal evidence, the County called Gloria Armstrong. She denied there were RVs permanently parked on her property. She testified she has a permanent home on Lake George. She stated her son brought one RV to their property the day before she testified, to do some repair work on it.

(4) Letters of Comment

[90] The Board received 24 letters of comment. Some had spoken to or written to councillors during the development agreement application process. None of the letters to the Board addressed the MPS Policies applicable to the DA. Those opposed did not appear to understand that development is still permitted on the Lakes through various mechanisms and are not limited to the parameters set in the LUB. This was the case for both the various Lake Property Owners Associations and individuals. They also raised concerns about setting a precedent.

[91] Those in favour of the DA included the owners of the two immediate adjacent properties, Mike and Lana McEachern, and Lester Gould; the former being the

only ones that have a view of the Owners' property on O3 Road. They have no concerns with the DA and support their use of the Lands with the four RVs and existing small cottage.

(5) Undertakings

[92] On May 5th, the County filed its Undertaking which included a list of the building permits that had been issued over the last two years [Exhibit M-13] and a map showing their locations [Exhibit M-14]. The County also included a map that showed the number of lots in the Lake George area and their square footage [Exhibit M-15]. There are currently 234 lots in the Lake George area, most of which have lake frontage. Of those within the S1 Zone, 73.4% are undersized lots below 50,000 square feet. The Board also notes that the upper most section of the Lake consists of only four properties. If these large lots are permitted to be subdivided in the future, there will be more lots capable of being developed.

III ISSUES

[93] The following are the main issues in this Appeal:

1. Did Council's decision reasonably carry out the intent of the MPS?
2. Is the DA consistent with the MPS Policies?
3. Under the *MGA*, does the Board have jurisdiction to hear and decide this appeal when the DA was not in the form of a formal contract?

[94] There are a number of other minor issues that are addressed in the Findings and Remedies sections of the Decision.

IV LAW (General)

[95] The *MGA* gives elected and democratically accountable councils broad authority to govern their municipalities within the jurisdiction granted to them. The purpose of the *MGA* reads as follows:

> **Purpose of Act**
>
> **2** The purpose of this Act is to
>
> (a) give broad authority to councils, including broad authority to pass by-laws, and to respect their right to govern municipalities in whatever ways the councils consider appropriate within the jurisdiction given to them;
>
> (b) enhance the ability of councils to respond to present and future issues in their municipalities; and
>
> (c) recognize that the functions of the municipality are to
>
> (i) provide good government,
>
> (ii) provide services, facilities and other things that, in the opinion of the council, are necessary or desirable for all or part of the municipality, and
>
> (iii) develop and maintain safe and viable communities.

[96] The Board is not a Court. Its authority or jurisdiction is granted by legislation. This means the Board may only consider and/or perform tasks the legislation says it can do. Consequentially, it does not have the ability of a Court to consider all of the issues between the parties.

[97] Under the *Utility and Review Board Act*, S.N.S. 1992, c. 11 as amended (*UARB Act*), the Board has sole jurisdiction to decide the cases and matters conferred upon it (s. 22(1)), by approximately 33 mandates, including the *MGA*. Under the *MGA*, the Board hears appeals.

[98] These statutes are to be read as a whole and given a broad, liberal and purposive interpretation to meet the objects and intent of the legislation, pursuant to s. 9 of the *Interpretation Act* of Nova Scotia, R.S.N.S. 1989, c. 235 (*Interpretation Act*), and

the consistent judicial rules of legislation construction (s. 6(2)), as determined by the Supreme Court of Canada and Nova Scotia Court of Appeal.

[99] The *MGA* gives municipal council the primary responsibility for making planning decisions for its community, (s. 190(b)). The purpose of the Planning section of the *MGA* reads:

> **Purpose of Part**
>
> **190** The purpose of this Part is to
>
> (a) enable the Province to identify and protect its interests in the use and development of land;
>
> (b) enable municipalities to assume the primary authority for planning within their respective jurisdictions, consistent with their urban or rural character, through the adoption of municipal planning strategies and land-use by-laws consistent with interests and regulations of the Province;
>
> (c) establish a consultative process to ensure the right of the public to have access to information and to participate in the formulation of planning strategies and by-laws, including the right to be notified and heard before decisions are made pursuant to this Part; and
>
> (d) provide for the fair, reasonable and efficient administration of this Part.

[100] The municipal planning strategies provide the policy statements to guide council (s. 213). These policies have been developed with public input (s. 190(c)); however, ultimately the content of the MPS is determined by council.

[101] Once the MPS is approved, the *MGA* directs council to reasonably carry out the intent of the MPS polices. Similarly, any actions by the municipality cannot be inconsistent with the MPS, s. 217(1).

[102] In refusing to approve a development agreement, Council is to advise the applicant of its reasons for the refusal:

> **230(6)** Within seven days after a decision refusing to approve a development agreement or an amendment to a development agreement, the clerk shall notify the applicant in writing, giving reasons for the refusal and setting out the right of appeal.

[103] The applicant may appeal to the Board on the following grounds:

> **250 (1)** An aggrieved person or an applicant may only appeal
>
> (b) the approval or refusal of a development agreement or the approval of an amendment to a development agreement, on the grounds that the decision of the council does not reasonably carry out the intent of the municipal planning strategy;

[104] The Board's jurisdiction in an appeal is limited to:

> **251 (2)** The Board shall not allow an appeal unless it determines that the decision of council or the development officer, as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law.

[105] The Board is to review council's decision and then consider the MPS as a whole to see if the decision reasonably carries out the intent of the MPS. If it does, the appeal must be dismissed.

[106] The Board has no jurisdiction to reconsider council's decision or to substitute its own decision for that of council, *Midtown Tavern & Grill Ltd. v. Nova Scotia (Utility and Review Board),* 2006 NSCA 115, para. 55.

[107] If council's decision does not reasonably carry out the intent of the MPS, the Board may allow the appeal and has jurisdiction to order council to approve the development agreement:

> **Powers of Board on appeal**
> **251 (1)** The Board may
>
> …
>
> (c) allow the appeal and order the council to amend the land-use by-law in the manner prescribed by the Board or order the council to approve the development agreement, approve the development agreement with the changes required by the Board or amend the development agreement in the manner prescribed by the Board;

[108] Other restrictions apply to the Board's remedies (s. 252) including not committing council to have to spend any money.

[109] When reviewing the MPS to determine the intent of its policies, the same legal principles used to interpret the *MGA* apply to interpreting the MPS, *Heritage Trust*

of Nova Scotia v. Nova Scotia (Utility and Review Board) (NSCA), (1994), 128 N.S.R (2d) 5, (*Heritage Trust*) paras. 91-93; see also *Interpretation Act*, ss. 6(1), 7(1)(e) and 7(3). The policies are not to be given a strict, narrow, or legalistic interpretation. Words are given their ordinary meaning.

[110] Pursuant to s. 214 of the *MGA,* council is to adopt the LUB at the same time as adopting the MPS. LUBs adopted concurrently with the MPS, may be used to shed light on the interpretation of the MPS, *Mahone Bay Heritage and Cultural Society v. 3012543 Nova Scotia Ltd.,* 2000 NSCA 93, para. 95, but do not restrict council's ability to reasonably carry out the MPS, *Tsimiklis v. Halifax (Regional Municipality)*, 2003 NSCA 30, para. 59 (*Tsimiklis*).

[111] Policies may lend themselves to more than one interpretation. The Nova Scotia Court of Appeal has directed that if council's decision is within an interpretation the language of the policy can reasonably bear, the Board must defer to council, *Heritage Trust*, at para. 99:

> … In my opinion the proper approach of the Board to the interpretation of planning policies is to ascertain if the municipal council interpreted and applied the policies in a manner that the language of the policies can reasonably bear. …

[112] Policies may conflict or overlap. It is for the democratically elected council, not the Board, to decide between them. Deference is to be given to council's decision, provided it reasonably carries out the intent of the MPS.

[113] As set out in the *Tsimiklis* case, the Court of Appeal stated the Board's intervention is triggered when council's decision crosses the boundary of clearly stated policies, and in quoting Hallett, J.A., from the *Mahone Bay* Decision, directs the Board not to ferret out an intent:

> [25] Where, however, it appears that a council has crossed a boundary clearly stated in the strategy, the Board's intervention is triggered. Hallett, J.A. continued at para. 94:

> ...However, when the intent of the strategy is clear and, when applied to the proposed development, it is clear that the proposal is not the type of development contemplated by the strategy, the Board ought to set aside the decision of Council approving the entry into such an agreement. It ought not try and ferret out an intent that flies in the face of the intent expressed in an MPS which is not clouded by conflicting or competing policies. [Emphasis added]

[114] In the Court of Appeal decision *Archibald v. Nova Scotia Utility and Review Board*, 2010 NSCA 27, beginning at para. 24, Fichaud, J.A., summarized the principles governing planning appeals before the Board as:

> (1) The Board usually is the first tribunal to hear sworn testimony with cross-examination respecting the proposal. The Board should undertake a thorough factual analysis to determine the nature of the proposal in the context of the MPS and any applicable land use by-law.
>
> (2) The appellant to the Board bears the onus to prove the facts that establish, on a balance of probabilities, that the Council's decision does not reasonably carry out the intent of the MPS.
>
> (3) The premise, stated in s. 190(b) of the *MGA*, for the formulation and application of planning policies is that the municipality be the primary steward of planning, through municipal planning strategies and land use by-laws.
>
> (4) The Board's role is to decide an appeal from the Council's decision. So the Board should not just launch its own detached planning analysis that disregards the Council's view. Rather, the Board should address the Council's conclusion and reasons and ask whether the Council's decision does or does not reasonably carry out the intent of the MPS. Later (¶ 30) I will elaborate on the treatment of the Council's reasons.
>
> (5) There may be more than one conclusion that reasonably carries out the intent of the MPS. If so, the consistency of the proposed development with the MPS does not automatically establish the converse proposition, that the Council's refusal is inconsistent with the MPS.
>
> (6) The Board should not interpret the MPS formalistically, but pragmatically and purposively, to make the MPS work as a whole. From this vantage, the Board should gather the MPS' intent on the relevant issue, then determine whether the Council's decision reasonably carries out that intent.
>
> (7) When planning perspectives in the MPS intersect, the elected and democratically accountable Council may be expected to make a value judgment. Accordingly, barring an error of fact or principle, the Board should defer to the Council's compromises of conflicting intentions in the MPS and to the Council's choices on question begging terms such as "appropriate" development or "undue" impact. By this, I do not suggest that the Board should apply a different standard of review for such matters. The Board's statutory mandate remains to determine whether the Council's decision reasonably carries out the intent of the MPS. But the intent of the MPS may be that the Council, and nobody else, choose between conflicting policies that appear in the MPS. This deference to Council's difficult choices between conflicting policies is not a license for Council to make *ad hoc* decisions unguided by principle. As Justice Cromwell said, the

> "purpose of the MPS is not to confer authority on Council but to provide policy guidance on how Council's authority should be exercised" (*Lewis v. North West Community Council of HRM*, 2001 NSCA 98, ¶ 19). So, if the MPS' intent is ascertainable, there is no deep shade for Council to illuminate, and the Board is unconstrained in determining whether the Council's decision reasonably bears that intent.
>
> (8) The intent of the MPS is ascertained primarily from the wording of the written strategy. The search for intent also may be assisted by the enabling legislation that defines the municipality's mandate in the formulation of planning strategy. For instance ss. 219(1) and (3) of the *MGA* direct the municipality to adopt a land use by-law "to carry out the intent of the municipal planning strategy" at "the same time" as the municipality adopts the MPS. The reflexivity between the MPS and a concurrently adopted land use by-law means the contemporaneous land use by-law may assist the Board to deduce the intent of the MPS. A land use bylaw enacted after the MPS may offer little to the interpretation of the MPS.
>
> [25] These principles are extracted from the decisions of this court in: *Heritage Trust*, ¶77-79, 94-103, 164; *Lewis v. North West* ¶ 19-21; *Midtown Tavern*, ¶ 46- 58, 81, 85; *Can-Euro Investments*,¶ 26-28, 88-95; *Kynock v. Bennett* (1994), 131 N.S.R. (2d) 334, ¶37-61; *Tsimiklis v. Halifax (Regional Municipality)*, 2003 NSCA 30 ¶ 24-27, 54-59, 63-64; 3012543 *Nova Scotia Limited v. Mahone Bay Heritage and Cultural Society*, 2000 NSCA 93, ¶ 9-10, 61-64, 66, 84, 86, 89, 91- 97; *Bay Haven Beach Villas Inc. v. Halifax (Regional Municipality)*, 2004 NSCA 59, ¶ 26.

[115] The Owners have the burden of proof. To succeed, they must persuade the Board, on a balance of probabilities. This is described in a number of ways. Proof which tips the scales and, therefore, is above 50%. Another description is, "what is more likely than not".

V ARGUMENTS

[116] During the proceeding, it became apparent there were a number of legal issues the Board requested the parties address in their submissions. These were generally discussed at the hearing and outlined in the Board's letter to the parties dated April 26, 2017:

1. Did Council consider and interpret the application of the MPS, in particular, Policy 3.5.8.1 and others relevant to the Development Agreement Application? If yes, please explain.

2. If the Board finds the answer to question #1 is "No", can the Board find Council reasonably carried out the intent of the MPS? If yes, please explain.

3. If the Board finds the answer to question #2 is "No", what remedy or remedies is or are available? If more than one remedy is available, what remedy does the party recommend and why?

4. If the Board finds the answer to question #1 is "No", can the Board consider whether the Development Agreement reasonably carries out the intent of the MPS? If yes, explain how the Board has that jurisdiction, specifically, as an appellant Board.

5. Does the Board have jurisdiction to decide any other issue? If yes, please explain.

6. If the Board agrees it has jurisdiction, what issues remain?

[117] The County requested to provide written submissions. The parties agreed the Owners could give their closing arguments orally.

[118] The Owners reviewed the pertinent facts and the procedure that followed through the various meetings and decisions of Council. Regarding the legal issues, they stated there is a lot they did not understand because they are not lawyers.

[119] The County was also present during the oral submissions and assisted the Board in answering further follow-up questions about their written arguments. The bulk of these are in the Findings section under the various issues.

VI FINDINGS

[120] In this case, the development of the Lands is complete. Driveways have been constructed into each lot. Portions of the Lands have been cleared, filled and leveled. Two 1,000 gallon septic tanks are present. The RVs have been placed on the properties in a semi-circle. Their positioning is known. A site plan, generally, showing their locations in relation to the existing cottage on the lots, was included in the November 2015 Staff Report. There is some dispute regarding the two most westerly RVs. Staff

have these within the eastern lot. While the Owners state that although they are near the lots boundaries, they are on the western lot. The small existing cottage was repaired by the Owners. There is a common grass area and deck.

[121] The Development Agreement is to permit what exists, four RVs on two lots with an existing cottage.

[122] Council refused the DA.

[123] The central question before the Board is, did Council's decision reasonably carry out the intent of the MPS? For the reasons set out below, the Board finds Council did not.

[124] Before addressing the main issues, the Board will briefly review a few minor ones.

1. Concerns and Resolution

[125] The Owners stated they were interested in working with the County to come to a positive resolution that would allow them to use their existing four RVs on the Lands as they have been.

[126] The Board explained, as noted in the Law section above, that its jurisdiction is limited to determining whether Council's decision reasonably carried out the intent of the MPS. The Board cannot address all of the concerns that exist between the parties. For example, the fact that the current Mayor is alleged to have specifically campaigned against the Owners' request for a DA, is not something the Board can address. It is not relevant to this Appeal before the Board.

[127] Furthermore, the Board is limited to granting those orders, specifically outlined in the *MGA* which are addressed in the Remedies section below.

2. Decision Under Appeal

[128] The only decision under appeal in this case is the December 6, 2016, decision of Council to refuse the DA. Although the history of this DA has been reviewed, the earlier Council decisions are not relevant to this Appeal.

3. Draft Future LUB Amendment

[129] Staff raised with Council, and also sought to present evidence to the Board, about its draft future amendment to the LUB which would have allowed limited use of RVs on properties in all S1 and S2 Zones.

[130] The Board advised, at the hearing, that any draft future LUB or draft amendments to the MPS are not relevant to this Appeal. Council and the Board must make their decisions based upon the Policies of the MPS in force at the time Council made its decision, being December 6, 2016.

4. Reasonably Carried out the Intent of the MPS

[131] For the reasons set out below, the Board finds Council's decision did not reasonably carried out the intent the of the MPS.

[132] Pursuant to MPS Policies 3.5.8.3 and 6.3.3, Council must consider the criteria in these policies when deciding whether to approve a DA.

[133] In the last two Staff Reports dated December 6, 2016, and May 10, 2016, Staff advised Council it had to amend the MPS to be able to enter into the DA.

[134] In considering all of the facts in this case, the Board finds that on a balance of probabilities Council accepted Staff's opinion that policies 3.5.8.3 and 6.3.3 did not enable the Owners' DA development, and it did not consider the criteria of those policies.

[135] Having found that Council did not consider the criteria of these Policies, the Board finds Council has not reasonably carried out the intent of the MPS.

[136] The County argued that because all Staff Reports, including November 10, 2015, were before Council, that Council has considered the criteria of these policies in deciding to refuse the DA.

[137] The Board finds it is more likely than not that Council, confronted with the last two most recent Staff Reports which said there were no enabling policies which permitted Council to consider the DA, would override any criteria discussion in the first Staff Report.

[138] To fully understand, the following sections of the Decision will provide a more detailed review of the MPS. These sections are also relevant to the remedy in this Appeal, as any DA ordered by the Board must be consistent with the MPS Policies.

5. Avenues for Development

[139] The Board finds that in reading the MPS as a whole and giving it a broad, liberal and purposive interpretation there are no absolute barriers to further developments on lakes that exceed the County's chlorophyll objective levels and/or their carrying

capacities. Rather, the MPS provides the following three avenues of development on such lots in the S1 Zone:

1. As-of-right;
2. Site plan; and
3. Development Agreement.

[140] The MPS permits a person to build a residential development as-of-right that is more than 350 feet from the shoreline, provided the development meets the criteria of the LUB (Policy 3.5.4.7). The LUB differentiates between properties that have waterfrontage and those that are on back lots (similar to the Owners). Both, however, permit one dwelling per lot, a minimum lot area of 50,000 square feet, 200 feet of road frontage, maximum clearing of 50%, and various side, front and rear yards (LUB 14.4.12).

[141] If the residential development is to be constructed within 350 feet of the lake shoreline, it is permitted by site plan approval or may be granted by a development agreement.

[142] At the hearing, Ms. Mosher expressed the opinion that the MPS requires the DA to have a site plan which she interpreted as requiring site plan approval. As the site plan approval requirements under the LUB cannot be met by the Owners, therefore, they could never receive a development agreement for the proposed development. The County stated the same argument in its written submissions on page 8.

[143] The Board finds this is not correct. Site plan approval and development agreements, under both the MPS and the *MGA,* are two very distinct types of developments.

[144] Under the *MGA,* a municipality may include in its MPS one or both of these avenues of development. The site plan approval provisions are ss. 231-233. Development agreement provisions are outlined in ss. 225-230. Both are subject to other general provisions under the *Act,* such as fees s. 220(4)(l), appeals s. 250, see also ss. 234, 246(1), 263(A), 264, 265, and 266(3).

[145] If the Municipality chooses within its MPS to offer development by site plan approval, the *Act* identifies the issues that are to be set out in the LUB (s. 231(1)). It must be approved by a development officer if the site plan meets the criteria of the LUB and the applicant has undertaken to carry out the terms of the site plan (s. 232(1)). An appeal from the decision of the development officer first goes to Council in the same way as a development officer's refusal of a variance (s. 232(2)). Similarly, the development officer must approve a development permit, if the site plan is approved and the development otherwise complies with the LUB (s. 233). The refusal to grant a development permit may be appealed to the Board on the grounds that the development officer's decision did not comply with the LUB (s. 250(2)).

[146] Development agreements may be considered by Council, if the MPS sets out which developments or areas are subject to development agreement (s. 225(1)). These developments are to be identified in the LUB (s. 225(2)). The *Act* notes potential terms for the DA (s. 227), when it takes effect (s. 228), is discharged (s. 229), and its adoption (s. 230). It is Council, not the development officer, that makes the decision to adopt or refuse a DA based on the policies within the MPS. Subsection 230(1) reads as follows:

> **Adoption or amendment of development agreement**
>
> 2301 (1) A council shall adopt or amend a development agreement by policy. [Emphasis added]

[147] Distinguishing these as two different modes of development is summarized in the County's MPS Policy 6.8.1.1 for site plan approvals which reads:

> 6.8.1.1 The Municipal Government Act permits development by site plan approval in cases where additional controls are warranted on the development of the site but where there are no operational issues that are normally covered by a development agreement. Council may permit site plan approvals in the Land Use Bylaw.
>
> [Exhibit M-4, p. 6.8-1]

[148] The County's MPS provides for developments by site plan approval and by development agreement. Under Policy 3.5.4.7 Council will permit new residential development within 350 feet of the Lake, if a person obtains site plan approval as described in Policy 3.5.7; enabled under Policy 6.8.1.2(b); meets the site plan requirements contained within the LUB. Amongst the various criteria is LUB 14.4.11.2(a) which requires the development to conform with the lot requirements contained in s. 14.4.12 above, including being 50,000 square feet. It is the development officer that decides whether the development receives site plan approval.

[149] As noted in the *MGA,* development agreements are decisions of Council based upon policies within the MPS. Council is permitted to consider development agreements within this S1 Zone pursuant to the County's MPS Policy 3.5.8.1. The various criteria is noted above and will be discussed in more detail in the next section of the Decision.

[150] Under Policy 3.5.8.5, Council may require the preparation of various studies or reports, at the owner's expenses, including under Sub-Policy (c) detailed site plan, maps, and drawings. The detailed site plan is not a requirement for Council to approve a development agreement. Rather, this is a permissive policy and Council may ask for it or not, as it chooses. In this case, Council did not ask for it. As noted above, however,

with the development complete, a general site plan was included with the November Staff Report.

[151] Furthermore, the site plan under Policy 3.5.8.5 does not make a reference to the same criteria as developments by site plan approval, such as meeting the lot requirements of LUB 14.4.12. Rather, it is addressed in the context of maps and drawings and permits a site plan analysis.

[152] As noted in the Law section, an MPS is interpreted using the same principles as the *MGA*, which includes s. 9 of the *Interpretation Act* and the common law principle.

[153] The Board finds that in reading the MPS as a whole, development by development agreement does not have to meet the specifics for development by site plan approval, in particular, the criteria in the LUB.

[154] Under ss. 9(f) of the *Interpretation Act,* the Board may consider the consequences of a particular interpretation. The Board finds that if it were to adopt the argument of Ms. Mosher that every single development agreement required the same adherence to the LUB requirements as for site plan approval, it would, in many cases, prohibit development by development agreement in those situations in which the lot cannot be developed by site plan approval. The Board finds there is nothing in the MPS Policies for DA that restricts Council to only approving development agreements, that also meet all the criteria for development by site plan approval.

[155] The Board finds Council may approve a development agreement on a lot that does not meet the criteria for site plan approval.

6. Development Agreement Criteria

[156] The County argued that in order for the Board to grant the Appeal, it must find that staff are wrong. The Board finds the question is, before ordering any remedy: "Is the DA consistent with the MPS?" The Board finds that from the evidence in this case, the answer is "Yes".

[157] As noted above, Ms. Mosher testified the development agreement was not possible because the RVs were not "Dwellings" as defined in the LUB.

[158] The enabling section in the MPS is Policy 3.5.8.1 which, for ease of reference, is restated:

> 3.5.8.1 Within the S1 and S2 Zones Council may consider a variety of residential, commercial, recreational, institutional, resource development or other medium and large scale permanent or seasonal residential development proposals by development agreement. [Emphasis added]

[159] The Policy refers to residential development. The LUB lists 28 sub-definitions under Dwelling, including a residential unit, which reads:

> 1.57.18 **Residential Unit** means one or more habitable rooms designed, occupied, or intended for use by one or more individuals as an independent and separate housekeeping establishment in which a kitchen, sleeping and sanitary facilities are provided for the exclusive use of such individual or individuals.
>
> [Exhibit M-5, p. 1-9

[160] At the hearing, Ms. Mosher acknowledged that an RV meets the definition of a "residential unit":

> Q. Could I ask you to comment on that definition from a planner's perspective as to how – could you explain how an RV doesn't fit into [the] definition of residential unit?
>
> A. Based on this definition it would meet the definition of a residential unit.
>
> [Transcript, pp. 185-186]

[161] The term was not defined in the MPS and, therefore, takes on its ordinary meaning. As the Board finds the definition of "residential" unit in the LUB is more

restrictive than its ordinary meaning of "an abode", the Board is satisfied the use of the RVs is a residential development and permitted under this Policy of 3.5.8.1 in the MPS. In the end, this was not contested.

[162] Staff advised Council in its November 10, 2015, Report, and again testified to before the Board, that this Policy was limited to "summer camps, resorts and campgrounds". In the Introduction to the enabling Policies for development agreement, these are listed as some of the examples, but are not limited to them. It reads:

> **3.5.8 Medium and Large Scale Development**
>
> Council recognizes that there are methods to accommodate proposals for multi-unit residential, commercial, institutional or resource development uses such as, but not limited to, resorts, marinas, campgrounds, summer camps, fish hatcheries, community centres and similar uses without jeopardizing water quality in the short term. Therefore, Council will provide for an alternative approach to development subject to a site analysis and binding development agreement conditions. [Emphasis added]
>
> [Exhibit M-4, p. 3.5-12]

[163] At the hearing, Ms. Mosher acknowledged the Policy is not restricted to those uses, but is how staff had typically been administering it:

> Q. And when we came to recreational I know that you spoke about campgrounds or other areas like that that would generally be commercial. But can you help me, I don't see anywhere in here that makes that a requirement under this policy that it would only be the commercial recreational developments that Council's allowed to consider?
>
> A. It does not make that specification but that's typically how we have administered.
>
> [Transcript, p. 186]

[164] Ms. Mosher testified that Policy 3.5.8.1 permits permanent or seasonal residential development (*ibid*).

[165] Regarding medium scale, Ms. Mosher testified there is nothing in the MPS that helps to determine what would be medium scale. She acknowledged medium scale is contextual to the area. Medium scale in Toronto or Halifax would be different from a

rural cottage area in Kings County. Ms. Mosher referenced, as an example of context, the growth centers in the County which permit a residential medium density zone. Under LUB 8.6.1, this area permits a maximum of 16 units per acre. Ms. Mosher acknowledged the LUB does not provide a minimum. Within the County, the Board finds there will be a difference between its growth centers and this very rural S1 area.

[166] In this case, the two lots are approximately one acre, if combined. The DA, therefore, is a development of five residential units per one acre. The Board finds that in an S1 Zone, this is consistent with a medium scale residential development under Policy 3.5.8.1 of the MPS.

[167] The criteria Council is to consider for a DA is set out in Policy 3.5.8.3:

> 3.5.8.3 In considering development agreement proposals under policy 3.5.8.1 (above) Council shall be satisfied that the proposal:
>
> a. will not create or contribute to erosion issues
>
> b. any silt, nutrients or other contaminates flowing into a lake, tributary stream or wetland shall not exceed acceptable levels or negatively impact the natural ecosystem
>
> c. can meet the waste and septic systems requirements of Nova Scotia Environment
>
> d. will not negatively impact sensitive wildlife habitats shown on the Nova Scotia Department of Natural Resources Significant Habitat map
>
> e. can meet the General Development Agreement Criteria contained in Section 6.3.3 of this Strategy.
>
> [Exhibit M-4, pp. 3.5-12 -3.5-13]

[168] Staff acknowledged in their November Report that ss. (a) is satisfied [Exhibit M-3, p. 153]. In this section, however, staff also erroneously referred to the waterfront property owned by others and irrelevant to the DA.

[169] Under ss. (b), staff referred to the risk that the septic holding tanks could contaminate the Lake if not pumped regularly [*ibid*]. As this relates to ss. (c) the Board will review it first.

[170] Criteria (c) is "can meet the waste and septic system requirements of [NSE]."

[171] Ms. Mosher acknowledged NSE, not the Municipality, gives approval for the waste and septic systems (Transcript, p. 139). In this case, the waste and septic systems are in place. NSE confirmed it has "no objections with continuing to use the system" provided there are no changes to the operation. It also states the "adjacent property has room for a replacement system … if one should be required". The Board finds the letter from NSE meets criteria (c).

[172] The Board also finds staff, in its Reports, and Ms. Mosher, in her testimony before the Board, focussed on the tanks being installed before having prior approval from NSE. This is not the criteria under the Policy.

[173] In Mr. Rowe's letter he recommends the installation of a solar blanket and alarm system. Ms. Mosher, in her testimony before the Board, referred to these as "deficiencies" in the septic system. She did state, however, that she was not an engineer. The Board notes the NSE letter does not qualify its approval of the septic system nor does it require these two recommendations to be part of the system. There is no indication that these are a requirement of NSE.

[174] Ms. Mosher acknowledged, at the hearing, that the County has entered into other DAs that use septic holding tank systems. The Board finds the recommendations of Mr. Rowe are not deficiencies and, on the evidence before the Board in this case, are not requirements of NSE.

[175] Having said that, the Board is not suggesting these recommendations are not wise to have installed. It is just that they are not deficiencies, but rather

recommendations. Furthermore, they do not affect the system meeting NSE's requirements under Sub-Policy (c).

[176] At the end of the hearing, Ms. Mosher acknowledged the DA can meet the waste and septic requirements of NSE under Sub-Policy (c) (Transcript, p. 179).

[177] The Board finds that, in general, Ms. Mosher did not appear to be very familiar with septic holding tank systems and refers to the on-site sewage disposal systems as the "traditional septic system" (p. 168). There is no evidence before the Board that on-site sewage disposal systems, are the traditional septic system, as opposed to septic holding tank systems, for seasonal or permanent residences in the S1 Zone.

[178] Returning to criteria (b), the Board finds that on a balance of probabilities and for the reasons noted below, that this risk of contamination is so remote as to be irrelevant. The septic holding tank system has been approved by NSE. Two engineers found it to be an adequate working system as configured with current loads. The Owners have successfully used this system for three years and find they only need to have the tanks pumped and the sewage taken away once a year.

[179] Ms. Mosher acknowledged she is not an engineer. There is no evidence before the Board that if there was a spill of the holding tanks that it would reach the Lake. There is no evidence of the various factors, including affects of mitigation practices, to properly assess the risk. The Board also notes this risk is the same for all cottages/residences in the S1 Zone using septic holding tanks.

[180] Considering the above is the only negative comment regarding silt, nutrients, and contaminants, the Board finds that on a balance of probabilities, the DA will

not result in contaminants, silt or nutrients flowing into the Lake exceeding acceptable levels or negatively impacting the natural ecosystem.

[181] With respect to Sub-Policy (d), the Board finds staff had noted in its letter to DNR that the Lands are not included within the Natural Resources Significant Habitat Map. The Lake is. The DNR biologists did not have any specific concerns with respect to the location of the Owners' Lands, squeezing in a few extra RVs may not be problematic today, and that it is difficult to ascertain the tipping point when the recreational activities such as boating could be detrimental to the loons and other wildlife.

[182] There are approximately 138 developments currently on the Lake and at least another 100 lots that may be developed in the future, which include larger properties that may be further divided. With respect to future developments, Mr. Sam opined that if the same density were to apply to these undeveloped shoreline lots, wildlife would suffer.

[183] At the hearing, Ms. Mosher confirmed the DNR Report does not state that this Lake is currently at its tipping point (Transcript, p. 179).

[184] Although that tipping point may come at some point in the future, there is no evidence before the Board that it is there now. The Board finds that on a balance of probabilities Sub-Policy (d) has been satisfied and this DA proposal, at this time, will not negatively impact sensitive wildlife.

[185] Under Sub-Policy (e) Council is to consider whether the DA meets the general development agreement criteria contained in s. 6.3.3 of the most relevant sections of the MPS, which are:

> **6.3.3 Conditions of Approval of Development Agreements**
>
> 6.3.3.1 A Development Agreement shall not require an amendment to the Land Use Bylaw but shall be binding upon the property until the agreement or part thereof is discharged by the Municipality. In considering Development Agreements under the *Municipal*

> *Government Act*, in addition to all other criteria as set out in various policies of this Strategy, Council shall be satisfied:
>
> …
>
> b. that the proposal is not premature or inappropriate by reason of:
>
> …
>
> ii. the adequacy of municipal sewer and water services if services are to be provided. Alternatively, the adequacy of the physical site conditions for private on-site sewer and water systems
>
> iii. the potential for creating, or contributing to, a pollution problem including the contamination of watercourses or the creation of erosion or sedimentation during construction
>
> …
>
> xi. compatibility with adjacent uses

[186] The adequacy of the sewer and water and potential pollutants into the water courses addressed in Sub-Policies (b)(ii) and (iii) are the same as the subsections noted above.

[187] With respect to compatibility, staff informed Council that it was not compatible because of the single unit homes in the area and it does not comply with the LUB. Specifically, they stated in their November Staff Report, Appeal Record, Exhibit M-3 on p. 155 as follows:

xi. compatibility with adjacent uses	The proposed use is not compatible with the existing pattern of single unit homes or cottages around this lake and the others in Kings County, nor is it a permitted use under the LUB. The properties are undersized based on the requirements of the current LUB, and the number of units represents a much higher density than is permitted within the S1 Zone.

[Emphasis added]

[188] Under the MPS Policy, this is not the test. The MPS specifically allows Council in the S1 Zone to allow for medium to large scale residential developments. By their very nature they are going to be more than single unit homes or cottages on an S1 lot.

[189] At the hearing, Ms. Mosher acknowledged compatibility includes that the development is able to co-exist with those around it. Ms. Mosher's answer was as follows:

> If the impacts were such that surrounding properties did not feel it was a problem then yes I would conclude that it could be compatible.
>
> [Transcript, p. 195]

[190] The Board finds that this MPS Policy limits the consideration of compatibility to the "use" and with the "adjacent" properties. It does not address compatibility of height, bulk, scale or other factors. Nor does it extend to the neighbourhood, *Om Khanna (Re)*, 2016 NSUARB 75, para. 137, (CANLII). The Board finds the use of the Lands and the DA is residential, similar to the other residential uses adjacent to it. The evidence before the Board is that the Owners are using their Lands in the same way as others that have cottages or RVs on their properties around the Lake. This is not a commercial or institutional development. The only difference is the increase in density. On one lot there are two residences as opposed to one; and on the other lot there are three residences as opposed to a single cottage.

[191] Some of those who wrote to the Board opposing this Appeal are not adjacent landowners as they are on different lakes. Others would never pass these Lands when travelling to her properties as Lake George has been developed by a series of private roads into different sections of the Lake. For example, the Owners' Lands are on Road O3 while Ms. Armstrong is on Road G2.

[192] The Owners' Lands are also one of the very few lots that is not on the shoreline. They are on the opposite side of the Road behind another property with a cottage. It is situated above a small inlet along the Lake.

[193] There is some variety around the Lake including the summer camp and others, like Mr. Lutz, who bring their RVs to their lot.

[194] In this case, the adjacent property owners have residences on their lots. Both support the DA with the four families using four RVs and the small cottage, [Exhibit M-7, see letters from Mr. Gould and the McEacherns].

[195] In conclusion, the Board finds that staff's opinion would, in effect, eliminate the MPS Policy of permitting Council to consider medium to large scale residential development on S1 lots.

[196] Considering the facts in this case, the Board finds on a balance of probabilities that the proposed DA is compatible with adjacent uses.

[197] Furthermore, having considered the criteria for this DA, the Board finds it is consistent with the MPS Policies.

7. Jurisdiction of the Board

[198] The County argued that as the DA was not put into the form of a contract to be signed by both parties, there is no DA before Council or the Board. Without a DA, the Board has no jurisdiction to consider Council's decision under the *MGA*. The County argued there is a gap in the *MGA*. If there is not a contract in written form (in this case because staff refused to prepare it) then the Board cannot hear this Appeal.

[199] The Board disagrees.

[200] First, the Board finds that the lay Owners requested Council to consider a Development Agreement which would permit them to use their Lands as they exist with four RVs on two lots with an existing cottage. As noted above, the Lands were already developed, portions were cleared, an extra driveway into the second lot was developed, they were leveled, the RVs placed on the properties, a second septic holding tank installed, and the Lands were landscaped and deck constructed.

[201] Council was asked whether they would approve the current and existing use of the Lands. The Board finds that the technicality of putting this DA into a form such that both parties can sign is not determinative of the Board's jurisdiction under the *MGA*.

[202] As noted above, the *MGA* is to be read as a whole giving it a broad, liberal and purposive interpretation to obtain its objects. Under the *Interpretation Act* the relevant provisions of s. 9 read:

> **Interpretation of words and generally**
>
> 9 (1) The law shall be considered as always speaking and, whenever any matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent, and meaning.
>
> …
>
> (5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters
>
> (a) the occasion and necessity for the enactment;
>
> (b) the circumstances existing at the time it was passed;
>
> (c) the mischief to be remedied;
>
> (d) the object to be attained;
>
> (e) the former law, including other enactments upon the same or similar subjects;
>
> (f) the consequences of a particular interpretation; and
>
> (g) the history of legislation on the subject. [Emphasis added]
>
> …

[203] Two of the most relevant subsections for consideration are providing a broad and liberal and purposive interpretation to ensure the objects of the *Act* are attained, and the consequences of a particular interpretation.

[204] The Board finds that in reading the *MGA* as a whole, the intent of the MPS is to enable people, including lay appellants, to appeal from a decision of their Council when they have requested a development agreement. There is nothing in the *Act* that specifically keynotes the form the development agreement must be in for Council to render a decision or for the Board to consider a subsequent appeal.

[205] The Board also finds that the consequences of the County's interpretation would not meet the objects of the *Act*. All a municipal council would have to do, to avoid any appeal from its decision, is refuse to put the development agreement into a formalistic written contract, as was done in this case. The consequence would be to eliminate the right of appeal for some, in particular lay people like the Owners in this case.

8. Value Judgments

[206] The County argued it is Council that is to make the value judgments required by the MPS Policies and to choose between any Policies that overlap or are conflicting.

[207] The Board agrees.

[208] However, from the facts of this case, the Board finds that on a balance of probabilities Council did not do so. Rather, staff made those value judgments, decided the DA was "inappropriate" as against the LUB and informed Council it could not enter into the DA without an amendment to the MPS.

[209] In addition to Staff usurping Council's considerations and value judgments, Staff's opinion is wrong and did not properly consider the MPS Policies.

[210] The Board finds Staff's Reports, and Ms. Mosher's evidence before this Board, made numerous errors, including, but not limited to:

- Advising Council it had an obligation to uphold the LUB;
- Advising Council Staff should not be told to make applications fit;
- Failed to address the MPS DA criteria;
- Staff focused almost entirely on the LUB, and only portions thereof;
- Failed to recognize the MPS (like the *MGA*) offers three avenues of development;
- Failed to recognize DA criteria gives Council choices to approve developments outside of the LUB criteria used by Development Officers to approve developments as-of-right or through site plan approval;
- Failed to inform Council that some LUBs appear to have been amended without corresponding amendments to the MPS and, therefore, cannot be relied upon to interpret the MPS;
- Even within the LUB, Staff did not always address the relevant sections or definitions;
- Staff did not inform Council of the enabling LUB for DA in the S1 Zone under LUB 5.5.1, but quoted other DA sections;
- Staff used the definition of "dwelling" to exclude the enabling MPS for DA which refers to "residential" development; and
- Limited the DA MPS Policy 3.5.8.1 to summer camps, resorts, and campgrounds.

9. Precedent

[211] One of the issues raised as a concern is that this DA will set a precedent. Development agreements do not, in general, create precedents. Rather, each application must be determined based upon the facts and circumstances of each application and as they relate to the criteria within the MPS.

10. Conclusion

[212] The development of the Lands is complete and four RVs are used on the Owners' two lots in addition to an existing cottage. The DA was to permit its current use.

[213] The MPS allows Council to enter into this DA in the S1 Zone on Lake George, which exceeds the County's chlorophyll objective levels and carrying capacity, after Council takes into consideration the criteria outlined in Policies 3.5.8.3 and 6.3.3.1.

[214] Council was advised by Staff, in error, that the MPS did not have any Policies that would permit Council to enter into the DA and an amendment to the MPS was necessary for Council to do so.

[215] On the facts before the Board in this case, the Board finds that, on a balance of probabilities, Council did not consider the criteria of the MPS Policies for development agreements. Consequently, the Board finds Council's decision did not reasonably carry out the intent of the MPS.

[216] The Board, therefore, grants the Appeal.

VII REMEDIES

[217] In an appeal, the Board has the power to order the following:

> **Powers of Board on appeal**
> **251 (1)** The Board may
>
> (a) confirm the decision appealed from;
>
> (b) allow the appeal by reversing the decision of the council to amend the land-use by-law or to approve or amend a development agreement;
>
> (c) allow the appeal and order the council to amend the land-use by-law in the manner prescribed by the Board or order the council to approve the development agreement, approve the development agreement with the changes required by the Board or amend the development agreement in the manner prescribed by the Board;
>
> (d) allow the appeal and order that the development permit be granted;
>
> (e) allow the appeal by directing the development officer to approve the tentative or final plan of subdivision or concept plan.
>
> **(2)** The Board shall not allow an appeal unless it determines that the decision of council or the development officer, as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law.
>
> **Restrictions on powers of Board**
> **252 (1)** The Board shall not order the granting of a development permit, the approval of a plan of subdivision, a land-use by-law amendment, a development agreement or an amendment to a development agreement that
>
> (a) is not reasonably consistent with a statement of provincial interest;
>
> (b) conflicts with an order made by the Minister establishing an interim planning area or regulating or prohibiting development in an interim planning area.
>
> (2) The Board shall not make any decision that commits the council to make any expenditures with respect to a development. [Emphasis added]

[218] Pursuant to s. 251(1)(c) the Board has allowed the Appeal and orders Council to approve the DA which permit the Owners to use four RVs on their two lots in addition to the existing cottage.

[219] This remedy does not commit Council to any expenditures of money under s. 252.

1. Additional Processes

[220] The County argued that if the Board granted the Appeal, then it goes back to the County. At that point the County can then, in effect, begin the process again and require additional reports to those it has already requested, such as a site plan. In its closing arguments it stated as follows:

> Given the information that was already presented to Council it is reasonable to expect that it may, if asked again to consider a Development Agreement related to the Appellants' proposed land use, require an independent study in relation to the potential impacts of the Development on the loon habitat in the area and a detailed site plan (like the one found in the Kingswood Camp development agreement (Exhibit M-9)).
>
> It is the respectful submission of the Municipality that, as it is the primary authority for planning decisions within its jurisdiction (MGA s.s. 190(b)) and as it has not yet determined whether any of the types of studies identified in Policy 3.5.8.5. should be required, Council must be afforded that opportunity before a Development Agreement in relation to the proposed development is entered into.
>
> [Post-hearing Submissions of the County, p. 8]

[221] The Board disagrees.

[222] The *MGA* does not give to the Board the authority to return the DA to Council to redo its proceedings. The County has completed its process. The County had its opportunity to decide what additional information, studies, plans, drawings or documents it wanted to evaluate and it chose only those which it had received, engineering report and biologist. The County does not have the ability to now redo the entire process. Council can do nothing but put into a formal document the one clause Council considered and the one clause the Board has ordered.

2. Additional Clauses

[223] The County argued the Board cannot draft each of the additional clauses for the DA. Without deciding the breadth of the remaining subsection 251(1)(c), the Board finds that this is unnecessary in the unique circumstances of this case. As noted above,

the development has already occurred. At this stage, DA is only permitting the existing use to continue. Furthermore, the *MGA* and MPS policies only refer to the additional clauses that may be in a DA. These are not mandatory.

3. Negotiations

[224] The County then argued if the Appeal is granted it should be able to enter into negotiations with the Owners for, potentially, other clauses. Once again, the Board disagrees. The process is over. Whatever additional clauses the County may have wanted to negotiate into a DA, it had that opportunity during the process and did not do so.

[225] At the end of its closing written submissions, the County stated as follows:

> … In this case, Council chose the protection of the lake water quality and character of the neighbourhood over a multi-unit development. It is respectfully submitted that it was well within its rights to do so and that its decision was reasonably consistent with the intent of the MPS.
>
> [Post-hearing submissions of the County, p. 13]

[226] As noted above, the Board concurs that it is Council's right to make value judgments based upon the policies within its MPS. However, in this case, the Board found Council did not do so.

[227] The Board finds there is insufficient evidence to state Council chose water quality and character of the neighbourhood over multi-unit development. There was no indication of this from the record. Even if there were comments of a few councillors, as found by the Court of Appeal, they do not represent the decision of Council. In this case, the Board finds Council was erroneously informed it had to amend the MPS to consider this Development Agreement.

VIII CONCLUSION

[228] The facts in this case are unique. The development of the Lands is complete and four RVs are used on the Owners' two lots in addition to an existing cottage. The DA was to permit its current use.

[229] The MPS allows Council to enter into this DA in the S1 Zone on Lake George, which exceeds the County's chlorophyll objective levels and carrying capacity, after Council takes into consideration the criteria outlined in Policies 3.5.8.3 and 6.3.3.1.

[230] Council was advised by Staff, in error, that the MPS did not have any Policies that would permit Council to enter into the DA and an amendment to the MPS was necessary for Council to do so.

[231] On the facts before the Board in this case, the Board finds that, on a balance of probabilities, Council did not consider the criteria of the MPS Policies for development agreements. Consequently, the Board finds Council's decision did not reasonably carry out the intent of the MPS.

[232] The Board, therefore, grants the Appeal.

[233] The Board finds the DA is consistent with the MPS Policies.

[234] Pursuant to s. 251(1)(c), the Board further orders Council to approve the DA which permits the Owners to place four RVs on their two lots in addition to the existing cottage.

[235] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 20th day of December, 2017.

Dawna J. Ring

APPENDIX "A" - MPS

MPS sections relevant to this Appeal include:

1.1 RESOURCE AND RURAL DEVELOPMENT DISTRICTS

…

To achieve Council's planning objectives, the rural area has been divided into the following five Rural Districts which have been identified based on natural resource capability and are shown on the County Future Land Use Map (Map 15):

AGRICULTURAL
FORESTRY
COUNTRY RESIDENTIAL
SHORELAND
HAMLET

3.1.1 Rural Planning Objectives

3.1.1.1 To delineate rural land use districts on the basis of soil capability for resource activities.

3.1.1.2 To delineate rural residential and recreational resource areas on the basis of land use suitability.

3.1.1.3 To provide for residential, commercial, industrial and community facility development opportunities which are related to, and supportive of, the primary resource industries.

3.1.1.4 To delineate shoreland residential and resource areas on inland lakes on the basis of trophic state capacity and shoreland biophysical capability analysis.

3.1.2 Rural Districts Policies

3.1.2.1 Council shall establish the following District Designations to apply to lands in rural areas:

…

d. Shoreland Districts (S)

3.5 SHORELAND DISTRICTS

Lakes and coastlines are a natural resource which should be accessible to all residents.

…

The growing demand for seasonal residential development in Kings County is illustrated by the municipal records which show a consistent increase in seasonal residential development since 1963. Between 30 to 40 new lots are being created each year and this is expected to continue, in fact it is expected to increase. As this demand increases, public access to lakes and beach areas may be significantly reduced by the concentration of private development on water frontage. In addition to concerns of public access, the capacity of the inland lakes to sustain development must be addressed.

…

The Kings County Lakeshore Capacity Model, completed in 1995 provided Council with a planning tool designed for predicting development impacts on freshwater lakes.

Up to 1996, Shoreland Districts were established around the larger, more accessible lakes on the South Mountain. Council excluded smaller lakes from designation given their physical limitations for both seasonal residential development and recreational activities such as boating, swimming, and fishing. However, the lakeshore capacity model's ability to predict development impact on lake water is dependent on factors related to land uses and resource activities in the entire watershed. We now know that development around upstream lakes and streams, as well as the natural landscape and human settlement contribute to lake water quality. To maintain water quality in those lakes already recognized for high recreation potential, planning efforts need to consider not only the direct impacts on the immediate lakes undergoing development, but the surrounding watershed too.

Prior to opening up additional undeveloped lands for seasonal residential development however, an assessment of the effects of further development should be undertaken. Matters to consider include the effect on existing development in terms of the social, visual, and natural character, lakeshore biophysical capacity, and effects on lake water quality as well as consideration of the maintenance of future public access to the lakes.

For the most part, in terms of residential use, Shoreland Districts are intended for seasonal residential development. However, Council has conceded to permit year round residential development whether on public or private roads. However, in keeping with the general goal of this Strategy to concentrate development in Growth Centres where services can be provided economically, services to remote areas such as the Shoreland Districts will be limited to basic garbage collection at central locations along public roads.

3.5.2 Shoreland District Policies

3.5.2.1 Council shall establish a "Shoreland District" (S) designation. This designation will apply to areas intended primarily for seasonal residential development.

…

lands around the freshwater lakes of the South Mountain may be designated as Shoreland Districts on the Rural Future Land Use map.

…

3.5.2.3 Council shall establish three zones in the Land Use Bylaw for application exclusively within the Shoreland Districts:

a. Coastal Shoreland (CS) Zone

b. Seasonal Residential (S1) Zone

c. Future Shoreland (S2) Zone

Policies

3.5.4.1 It is Council's intention to set the water quality objective for the eighteen lakes in the watershed beginning at Lake George and ending at Lumsden Pond at a maximum Chlorophyll a concentration of no more than 2.5 µg/L. Where according to the predicted value - water quality in those lakes is at or exceeds 2.5 µg/L, Council intends to limit

development to either lands 350 feet back from the shoreline of the lake or watercourse, or by site plan as provided for in this Strategy. Council may set objectives for lake water quality at less than 2.5 µg/L where necessary to ensure some development opportunities on less developed lakes, which shall be set out in Schedule A of this Strategy. Council may make amendments to water quality objectives from time to time and set objectives for additional lakes by amending this Strategy in accordance with the policies of this section.

3.5.4.2 Created in 1995, the Kings County Lakeshore Capacity Model predicts the expected changes to water quality from new lakeshore development. The model links Chlorophyll a water quality objectives to the maximum number of dwellings around a lake that can be accommodated without negatively affecting water quality. Over time, additional information, refined lake science and new research may arise with which to improve upon the lakeshore capacity model. As a result, Council may, from time to time, review and update the model, water quality objectives, and the associated maximum residential carrying capacity for lakes in Kings County.

3.5.4.3 Council shall establish in the Land Use Bylaw the Seasonal Residential (S1) Zone and the Future Shoreland (S2) Zone. The standards for each zone shall reflect Council's concern for public health, water quality and the maintenance of the natural character of the Shoreland Districts. The standards take the form of a two-tiered zoning system for the County's freshwater lakes as follows:

a. In watersheds where Council has used the Kings County Lakeshore Capacity Model to determine the current trophic state of a lake or chain of lakes, Council shall adopt official water quality objectives for each lake. The water quality objectives will be used to assign each lake a maximum carrying capacity for as-of-right residential development in the Land Use Bylaw. Where Council has adopted official water quality objectives, shoreland areas shall be zoned Seasonal Residential (S1);

3.5.4.4 In order to determine the number of dwellings around each lake which are counted towards a lake's assigned carrying capacity, Council shall include in the count all dwellings within the S1, S2 or O1 Zones around that lake.

3.5.4.5 For the protection of water quality on inland lakes, Council shall establish in the Land Use Bylaw S1 and S2 Zones, a minimum requirement of a 65 feet shoreline setback for primary buildings and structures. Measures to encourage the retention of natural vegetation within such setback areas, particularly the 65 ft. setback, are important to maintain water quality in the lakes. Vegetation within the 65 ft. setback would not be altered, consistent with passage, safety, and provision of views and ventilation to every extent possible. Likewise the soil mantle within the 65 ft. buffer should be disturbed as little as possible.

3.5.4.6 Council shall establish the Seasonal Residential (S1) Zone in the Land Use Bylaw. The S1 Zone will allow for waterfront seasonal dwellings and waterfront single detached dwellings up to the maximum number specified in the Land Use Bylaw, as well as parks and recreation uses as-of-right. Council does not encourage permanent residential development on private roads. Therefore, year round residents of dwellings on private roads can not expect to receive the level of

municipal services, snow clearing and road maintenance, nor access to emergency services such as, fire departments, police and ambulance services available to residents on public roads.

3.5.4.7 Council shall not permit any further as-of-right residential development within 350 feet of a lake or watercourse in the S1 Zone for lakes that have reached their assigned maximum carrying capacity specified in the Land Use Bylaw. Instead, any new residential development within 350 feet of a lake or watercourse must obtain site plan approval as described in Policy 3.5.7 of this Strategy. Residential development on lands that are not within 350 feet of a lake or watercourse may continue to be developed as-of-right according to the Land Use Bylaw requirements for the S1 Zone.

3.5.4.8 Council shall establish the Future Shoreland (S2) Zone in the Land Use Bylaw. In the Future Shoreland Zone, seasonal dwellings, single detached dwellings and passive parks and recreation uses shall be permitted. As stated in policy 3.5.5.1, Council does not encourage private road development for permanent residential use.

3.5.5 Special Character Areas

Council believes that over time there is a risk that the natural attributes of the landscape which attract people to the lakes for recreation and as a residential alternative may be lost in the very process of development. Those natural attributes take the form of a diverse mixture of landscape features and wildlife which are found within these areas. The most ecologically diverse and most sensitive areas to disturbance are often found along the margins of the lakeshores and upland areas immediately around the lakes. But the visual character inherent in the natural shoreline itself has significant aesthetic value to humans as well as to providing the necessities of wildlife and water quality.

…

3.5.5.2 Initially Council shall recognize the special character of lands at the north end of Lake George and Hardwood Lake, the east side of Aylesford Lake in the vicinity of Fancy Cove, and both sides of the channel connecting Aylesford Lake and Loon Lake. These special character areas shall not be rezoned to any other zone with the exception of the O1 Zone.

3.5.7 Site Plan Bylaw Alternatives

Council recognizes the attraction and demand for residential dwellings around Kings County's lakes on the South Mountain plateau. However, Council also wishes to ensure that new lakefront development does not negatively impact lake water quality or the natural environment.

…

In order to balance demand for residential development with environmental concerns, Policy 3.5.3.4, 3.5.4.7, and 3.5.4.9 of this Strategy require certain residential development proposals to receive site plan approvals pursuant to the enabling policies specified in Part 6.8 of this Strategy.

Residential development in the S1 and S2 Zones that require site plan approval must meet the site plan requirements contained in the Land Use Bylaw. The site plan requirements shall be geared towards protecting water quality and by restricting development. Vegetation is encouraged along the shorelines in Kings County; however, in Grand Pré the placement of armour rock appears to be the only truly effective measure that owners are able to use to protect their lands along this stretch of coastline.

3.5.8 Medium and Large Scale Development

Council recognizes that there are methods to accommodate proposals for multi-unit residential, commercial, institutional or resource development uses such as, but not limited to, resorts, marinas, campgrounds, summer camps, fish hatcheries, community centres and similar uses without jeopardizing water quality in the short term. Therefore, Council will provide for an alternative approach to development subject to a site analysis and binding development agreement conditions.

3.5.8.1 Within the S1 and S2 Zones Council may consider a variety of residential, commercial, recreational, institutional, resource development or other medium and large scale permanent or seasonal residential development proposals by development agreement.

3.5.8.3 In considering development agreement proposals under policy 3.5.8.1 (above) Council shall be satisfied that the proposal:

a. will not create or contribute to erosion issues

b. any silt, nutrients or other contaminates flowing into a lake, tributary stream or wetland shall not exceed acceptable levels or negatively impact the natural ecosystem

c. can meet the waste and septic systems requirements of Nova Scotia Environment

d. will not negatively impact sensitive wildlife habitats shown on the Nova Scotia Department of Natural Resources Significant Habitat map

e. can meet the General Development Agreement Criteria contained in Section 6.3.3 of this Strategy

3.5.8.4 The development agreement may contain specific controls and requirements which are geared to preventing water and environmental contamination including:

a. minimum 65 ft setback from lakes and tributary streams and wetlands. The setback shall be greater for land uses considered more intense than residential land uses

b. The preservation of natural vegetation within the required setback from a water body

c. The regular maintenance of septic systems or other facilities which require continued maintenance to ensure proper functioning

d. Regulator monitoring of lake, stream or wetland water quality in the vicinity of the proposed development

3.5.8.5 In considering development agreements under Policy 3.5.8.1 Council may require the preparation of independent environmental reports. The applicant is expected to assume the expense of any required environmental reports. The reports shall demonstrate how the development will protect natural shoreline features and prevent impacts on water quality. Studies may include:

a. independent professional study on the effects of the proposal on the watershed system where it is reasonable to anticipate undue impacts could occur on wetlands, watercourses, fish and wildlife

habitat and any other significant natural and cultural heritage features

b. a biophysical assessment of the site including reports and maps showing relevant natural features and proposed developments including, but not limited to, topology, hydrology, ecology, wildlife habitats, as well as existing and proposed development in the area

c. detailed site plan, maps and drawings

d. the independent application of the Lake Capacity Model to a lake that has not been studied and assigned a water quality objective

3.5.10.1 Council shall coordinate with Nova Scotia Environment to formulate and initiate a Chlorophyll a – Secchi disk self-help program.[1]

3.5.11 The following chart is the Table of Water Quality Objectives for lakes from Lake George to Lumsden Pond.[2]

Lake Name	Chlorophyll a Objectives (Average ice free season) measured in micro grams/Litre
1. Lake George	2.5[3]
…	

6.3 DEVELOPMENT AGREEMENTS

6.3.1 Discharging of Development Agreements

6.3.1.1 Under the 1979 Municipal Planning Strategy the Council has effected considerable specific site planning by way of Development Agreements. Council intends to reduce the number of situations where Development Agreements are used. It follows that a number of Development Agreements now in place will be rendered redundant. Council intends to make an effort to discharge unnecessary Development Agreements.

6.3.1.2 Where Council has agreed, by resolution, to enter a Development Agreement and the applicant has not signed the agreement within six months and no appeal has been lodged, Council may rescind its resolution to enter the agreement. A subsequent agreement would have to be negotiated.

6.3.2 Application of Policies for Development Agreements

6.3.2.1 The following uses shall only be considered subject to the entering into of a Development Agreement according to the provisions of the *Municipal Government Act:*

…

- Medium or large scale residential, commercial, recreational, institutional, or resource development within

---

[3] Lake George 1997 predicted trophic status is 3.0 µg/l chlorophyll a average ice free concentration. It is Council's intention to work with residents to improve water quality and reduce trophic status to 2.5 µg/l

the S1 and S2 Zones in the Shoreland District (Policy 3.5.8.1)

6.3.4 Required Information for Applications for Entering a Development Agreement

6.3.4.1 Council may require that any or all of the following information be submitted to the Municipality by the Developer with respect to any proposed development which is to be the subject of a Development Agreement under the *Municipal Government Act* namely:

a. information as to the physical and environmental characteristics of the proposed site including information regarding topography, contours, elevations, dimensions, natural drainage, soils, existing watercourses, vegetative cover, size and location of the lands

6.8 GENERAL PROVISIONS FOR SITE PLANS

6.8.1 Application of Policies for Site Plans

6.8.1.1 The Municipal Government Act permits development by site plan approval in cases where additional controls are warranted on the development of the site but where there are no operational issues that are normally covered by a development agreement. Council may permit site plan approvals in the Land Use Bylaw.

6.8.1.2 The following uses shall only be considered subject to site plan approval according to the provisions of 6.8.2 of the Municipal Planning Strategy.

…

b. Mini homes, single detached dwellings, or seasonal dwellings within the Seasonal Residential (S1) Zone on lakes where the carrying capacity has been exceeded, as provided for in Policy 3.5.4.7.

6.8.2.2 The Site Plan may deal with the following:

6.8.3 Required Information for Applications for Site Plan Approval

6.8.3.1 Council, through its Development Officer, may require that any or all of the following information be submitted to the Municipality by the Developer with respect to any proposed development which is to be the subject of a Site Plan under the Municipal Government Act namely:

a. information as to the physical and environmental characteristics of the proposed site including information regarding topography, contours, elevations, dimensions, natural drainage, soils, existing watercourses, vegetative cover, size and location of the lands

APPENDIX "B" - Land-Use Bylaw

The LUBs list 28 sub-definitions under "Dwelling"; the relevant ones are:

Definitions:

Dwelling

1.57.1 **Dwelling** means a building, or portion thereof, occupied or capable of being occupied as a home or residence by one or more persons, containing one or more dwelling units, but shall not include a hotel, a motel, a motor home, a travel trailer or other recreational vehicle, or seasonal dwelling designed for seasonal and nonpermanent occupancy only.

1.57.18 **Residential Unit** means one or more habitable rooms designed, occupied, or intended for use by one or more individuals as an independent and separate housekeeping establishment in which a kitchen, sleeping and sanitary facilities are provided for the exclusive use of such individual or individuals.

1.57.19 **Seasonal Dwelling** means a secondary residence not intended for year-round occupancy nor occupied for greater than 182 days or six months per year and which meets the standards for single family residential occupancy as described in the National Building Code of Canada as adopted in the Building Bylaw of the Municipality of the County of Kings.

14.4.13 **Maximum Permitted Waterfront Lots**
The following table lists the lakes in the Lake George to Lumsden Pond Watershed and the maximum permitted number of waterfront dwellings (dwellings which are located within 350 feet of the shoreline) which may be built as-of-right.[1] [Emphasis added]

Lake Name	Chlorophyll a Objectives (average ice free season) measured in micro grams/Litre	Maximum Permitted Number of Waterfront Seasonal Dwellings and Single Detached Dwellings as-of-right
1. Lake George	2.5[2]	110
…		

1 In keeping with Municipal background reports, "existing" water quality values and objectives reflect predicted Chlorophyll a concentrations with an assumption that one third of all waterfront dwellings will eventually be occupied or used on a permanent full time basis.

2 Lake George 1997 predicted trophic status is 3.0 µg/l chlorophyll a average ice free concentration. It is Council's intention to work with residents to improve water quality and reduce trophic status to 2.5 µg/l