DECISION **2026 NSRAB 52**
M12537

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **REBECCA TIMMONS AND ANDREA PATCHETT** from the Decision of Pictou Town Council to approve a development agreement allowing a maximum 12-unit residential development at 85 Union Street, Town of Pictou, Nova Scotia (PID 00977421)

BEFORE:	M. Kathleen McManus, K.C., Ph.D., Panel Chair Jennifer L. Nicholson, CPA, CA, Member Darlene Willcott, LL.B., Member
APPELLANTS:	**REBECCA TIMMONS** **ANDREA PATCHETT**
RESPONDENT:	**TOWN OF PICTOU** B. Craig Clarke, Counsel
HEARING DATE:	January 22, 2026
FINAL SUBMISSIONS:	February 19, 2026
DECISION DATE:	**April 9, 2026**
DECISION:	**The Appeal is dismissed.**

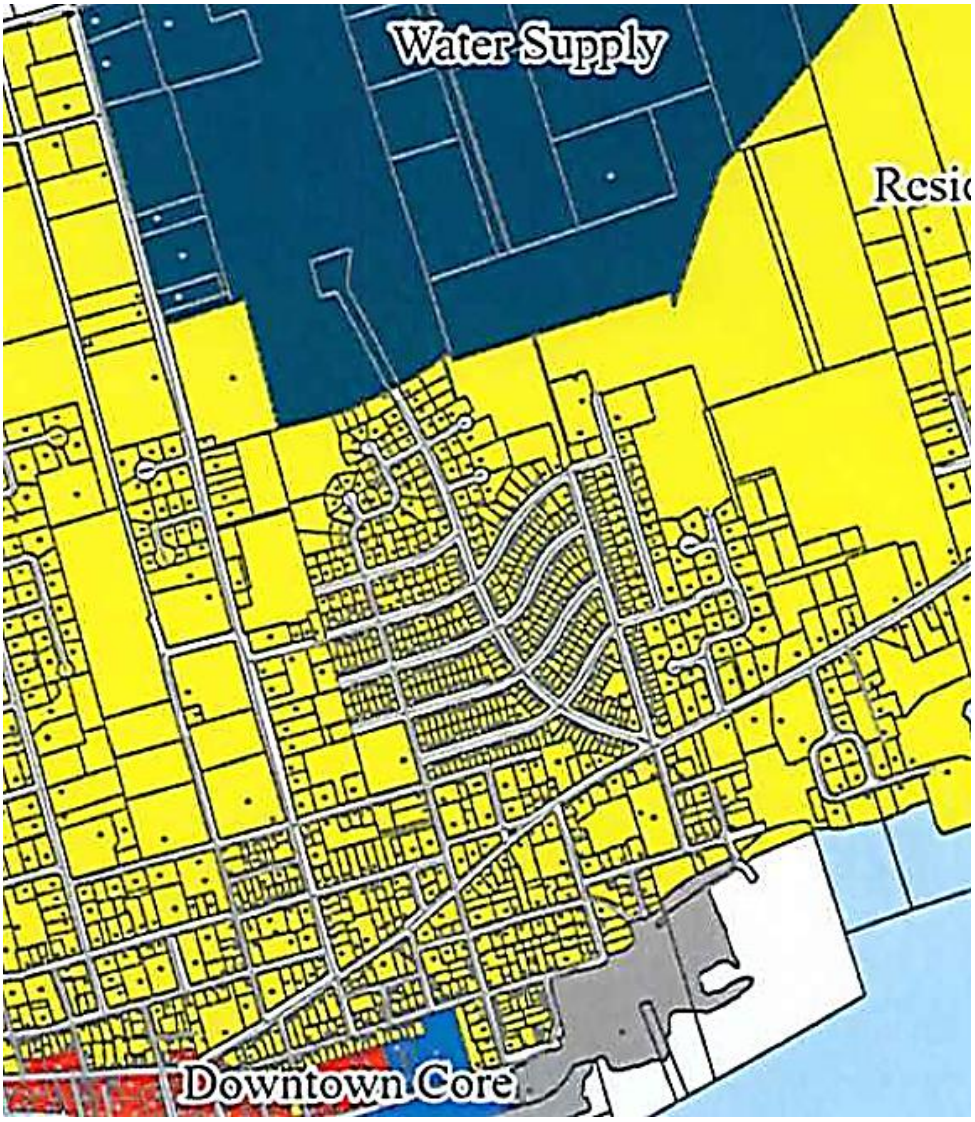
TABLE OF CONTENTS

1.0 OVERVIEW

[1] Rebecca Timmons and Andrea Patchett (Appellants) appealed to the Nova Scotia Regulatory and Appeals Board (Board) from the decision of Pictou Town Council to approve entering into a development agreement with Brookside Developments Inc. (Applicant/Brookside Developments) for the development of a maximum 12 unit residential development at 85 Union Street (PID 00977421), Town of Pictou (Property or Subject Property).

[2] The Town of Pictou owns the Property, which is vacant, undeveloped land, approximately 19,000 square feet in size. The Property is an irregularly shaped lot and located in an established residential area referred to as Victory Heights or the Heights (Heights). This residential neighbourhood was largely developed over 80 years ago as housing for workers at the Pictou Shipyard during the Second World War. The Heights has a high density of one and one-and-a half storey single residential dwellings which are situated close together. The Heights is the densest neighbourhood in the Town with the dwellings having five to seven feet setbacks from the street in some instances and 10 to 20 feet setbacks from the street in other instances. Setbacks are typically five feet to seven feet between adjacent dwellings.

[3] On the Town's Generalized Future Land Use Map, the Property is designated as Residential. The Property abuts single, residential dwellings on all sides and slopes down towards Union Street. The Subject Property, with its distinctive irregular shape, is shown in the following zoning map as located in the Heights. The Heights are shown on the map just below the Water Supply area:



[Exhibit T-3, p. 190]

[4] A closer image of the Property was featured in the Town's Public Notice of Hearing, as the irregularly shaped lot with no number assigned:

[Exhibit T-4, p. 4-2]

[5] The Property is zoned R6 which means, based on its lot size, an eight-unit residential building could be built there as-of-right if it meets the Residential Multiple Unit (R3) Zone requirements which include a 20-foot setback, 10 parking spaces and a maximum height of 35 feet. The Town owns the Property, and it filed an application to enter into a development agreement with Brookside Developments for the vacant property. Brookside Developments proposed a residential multiple unit structure containing 12 units, which will not exceed 35 feet in height, and 15 parking spots. Brookside Developments did not file a detailed site plan for the proposed development, as it was not required by the Town. Brookside Developments filed a concept site plan showing the placement of the multiple unit building, the parking spaces and setback from

abutting properties on two sides. The proposed setbacks were 19 feet, 8 inches, and 6 feet, 8 inches.

[6] After communications among the Town's planning staff and other relevant Town officials, including the Traffic Authority, and attendance at public meetings, Roland Burek, Acting Town Planner/Development Officer, presented a report to Council with a recommendation to consider approval to enter into a development agreement with Brookside Developments. At its meeting on October 20, 2025, after the public hearing, Council approved entering into the Development Agreement without providing reasons. The Appellants appealed Council's decision to the Board under s. 247(1)(a) of the *Municipal Government Act*, SNS 1998, c 18 (*MGA*) on the grounds that Council's decision does not reasonably carry out the intent of the Pictou County Intermunicipal Planning Strategy, also known as the Municipal Planning Strategy (MPS).

[7] The MPS sets out the policies for Council to follow when considering an application for approval of a development agreement. As noted by this Board in *Dumke, (Re)*, 2024 NSUARB 164, at para. 9, in the context of the review and approval of a development agreement, the process "is not a simple exercise of working through a checklist against the wording of each policy". Development agreement appeals under the *MGA* require the Board to review whether the decision of Council "carries out the intent of the municipal planning strategy" (*MGA*, s. 251(2)).

[8] The Courts have held that, as the primary planning authority, Council has discretion about how to apply or balance competing MPS policies and objectives. Council may give more, or less, weight to different factors to advance certain objectives, provided its ultimate decision reasonably carries out the intent of the MPS. In reviewing the grounds

of appeal, the Board must review the applicable policies to understand the intent of the MPS. The standard for evaluating an application for approval of a development agreement against the MPS is not perfection. However, Council's approval must align with an interpretation of the relevant policies that their language can reasonably bear.

[9] The Board finds that Council's decision to approve the Development Agreement to allow the Applicant to build the proposed development reasonably carries out the intent of the MPS in this case. The appeal is dismissed.

2.0 BACKGROUND

[10] The Appellants appealed Council's decision under s. 247(2)(a) of the *MGA* to the Board within the required appeal period. The Appellants stated in their Notice of Appeal that Council's decision does not reasonably carry out the intent of the MPS on several grounds, including that the approval of the Development Agreement was premature or inappropriate because: the land use was not compatible with the surrounding land; a formal traffic study was not conducted; the Property was too small for the proposed development; insufficient setback; and insufficient green space.

[11] The Board held a preliminary hearing on November 17, 2025, to establish hearing and filing dates for the appeal. Brookside Developments, who had status as a party in this appeal, did not attend the preliminary hearing. In subsequent correspondence, Brookside Developments advised the Board that it would not be participating in this appeal.

2.1 The Board's Jurisdiction and Scope of Review

[12] The burden of proof is on the Appellants to show, on the balance of probabilities, that Council's decision to approve the Development Agreement to permit the proposed development on 85 Union Street was not consistent with the intent of the MPS.

[13] Under s. 247 (2)(a) of the *MGA*, an aggrieved person may appeal Council's refusal to approve a development agreement:

> **Appeals to the Board**
>
> **247 (2)** The approval, or refusal to approve, and the amendment, or refusal to amend, a development agreement may be appealed to the Board by
>
> …
>
> (b) an aggrieved person;

[14] Under s. 250(1)(b) of the *MGA*, an aggrieved person may only appeal Council's approval of a development agreement on the following basis:

> **Restrictions on appeals**
>
> **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;

[15] The powers of the Board are similarly limited on such an appeal under s. 251 of the *MGA*:

> **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. [Emphasis added]

[16] The Town did not object to the Appellants' status as aggrieved persons.

[17] In municipal planning appeals, the Board follows statutory requirements and guiding principles identified in various Nova Scotia Court of Appeal decisions. The Court summarized the principles in *Archibald v Nova Scotia (Utility and Review Board)*, 2010 NSCA 27 and, more recently, in *Heritage Trust of Nova Scotia v AMK Barrett Investments Inc.*, 2021 NSCA 42 (*Heritage Trust*):

> [23] I will start by summarizing the roles of Council, in assessing a prospective development agreement, and the Board on a planning appeal.
>
> [24] In *Heritage Trust of Nova Scotia v. Nova Scotia (Utility and Review Board)*, [1994] N.S.J. No. 50, 1994 NSCA 11 ["*Heritage Trust*, 1994"], Justice Hallett set out the governing principles:
>
> > [99] …A plan is the framework within which municipal councils make decisions. The Board is reviewing a particular decision; it does not interpret the relevant policies or by-laws in a vacuum. 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. …There may be more than one meaning that a policy is reasonably capable of bearing. This is such a case. In my opinion the *Planning Act* dictates that a pragmatic approach, rather than a strict literal approach to interpretation, is the correct approach. The Board should not be confined to looking at the words of the Policy in isolation but should consider the scheme of the relevant legislation and policies that impact on the decision. …This approach to interpretation is consistent with the intent of the *Planning Act* to make municipalities primarily responsible for planning; that purpose could be frustrated if the municipalities are not accorded the necessary latitude in planning decisions. …
> >
> > [100] …Ascertaining the intent of a municipal planning strategy is inherently a very difficult task. Presumably that is why the Legislature limited the scope of the Board's review…. The various policies set out in the Plan must be interpreted as part of the whole Plan. The Board, in its interpretation of various policies, must be guided, of course, by the words used in the policies. The words ought to be given a liberal and purposive

> interpretation rather than a restrictive literal interpretation because the policies are intended to provide a framework in which development decisions are made. …
>
> [163] …Planning decisions often involve compromises and choices between competing policies. Such decisions are best left to elected representatives who have the responsibility to weigh the competing interests and factors that impact on such decisions. … Neither the Board nor this Court should embark on their review duties in a narrow legalistic manner as that would be contrary to the intent of the planning legislation. Policies are to be interpreted reasonably so as to give effect to their intent; there is not necessarily one correct interpretation. This is implicit in the scheme of the *Planning Act* and in particular in the limitation on the Board's power to interfere with a decision of a municipal council to enter into development agreements.

[25] These principles, enunciated under the former *Planning Act*, continue with the planning scheme under the *HRM Charter. Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, para. 24, summarized a series of planning rulings by this Court since *Heritage Trust*, 1994:

[24] I will summarize my view of the applicable principles:

> (1) 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 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*, [*Municipal Government Act*] 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.
>
> (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. …
>
> (8) The intent of the MPS is ascertained primarily from the wording of the written strategy. [Emphasis added]

[18] As noted in *Archibald* at para. 24(7), Council will have to make choices about "question begging terms" in the MPS such as "appropriate" development or "undue" impact, and the Board must defer to Council barring an error of fact or principle.

[19] Clearly, the Board cannot substitute its own decision for that of Council but must review the decision holistically to determine if it reasonably carries out the intent of the MPS. In determining the intent of the MPS, the Board applies the principles of statutory interpretation which have been adopted by the Court of Appeal, as well as the provisions of s. 9(1) and s. 9(5) of the *Interpretation Act*, RSNS 1989, c 235.

2.2 Council's Reasons in the Context of an Approval

[20] In this case, Council approved the Development Agreement. The Town provided the Appeal Record including the information before Council and the recommendation of the Town's acting planner to approve the application. Following the Board's usual practice, the Board accepted additional evidence from the parties. Unlike a refusal, the *MGA* does not require Council to provide written reasons when a development agreement is approved, and in this case, Council did not provide any. The only requirement is that public notice of the approval be given, including notice of the right to appeal. In *Archibald* the application was denied; therefore, written reasons were required. The Nova Scotia Court of Appeal indicated that focusing, at least in the first instance, on these written reasons provides a framework designed to ensure that the Board respects its appellate role.

[21] In cases like this one, where an approval is granted with no written reasons, the framework for the Board's review is less apparent. In this context, the Board has often said that Council speaks with one voice. Even where there are written reasons, the highlighting of individual councillors' comments, while sometimes providing a context, is usually not helpful in deciding the issue before the Board. Councillors can have many varied reasons for voting in a particular manner. Ultimately, Council's collective decision to approve or deny an application must be considered in the context of the MPS as a whole (see *Boates, (Re)*, 2023 NSUARB 124).

[22] Council received a report from the Town's acting planner with a recommendation to approve of the Development Agreement. This is ultimately what Council approved. That said, this planner's report was not generated in the abstract, but with input from various sources. As discussed in *Heritage Trust*, the Board's assessment of whether Council's decision reasonably carries out the intent of the MPS is not confined to what happens before Council when its decision is made. The materials before Council, and the recommendation of the Town's acting planner to approve the application, can provide an initial framework.

[23] In the end, the Board's task where there are no written reasons is succinctly summarized in *Heritage Trust*, at para. 29:

> [29] The Board's job is to hear evidence, find the facts and determine whether the outcome – *i.e.*, the Council's approval of the development agreement – was reasonably consistent with the municipal planning strategy as a whole. It is not to micro-manage a *de novo* planning assessment…

[24] Where there are no written reasons, the Board must ultimately address the outcome and the intent of the MPS as a whole. The analysis is based on the Appeal Record, the additional evidence and materials put before the Board.

2.3 The Proposal and the Town's Planning Approval Process

[25] Though the Board's role is not to analyse Council's review process, it is informative to establish the background and timelines relevant to this appeal.

[26] The application proposed the development of a three-storey, 12-unit residential building. Attached to the application was a concept site plan which showed 15 parking spaces on the Property and that the setbacks from two of several abutting properties were 6 feet, 8 inches, and 19 feet, 8 inches. There is no reference to the proposed height of the building on the concept site plan or in the Development Agreement. The Property is designated Residential Development (RD) under the Generalized Future Land Use Map (GFLUM) and zoned R6 on the Land Use By-law (LUB) Zoning Map. Policy RD-9 of the MPS applies and allows multiple unit residential dwellings within the Residential Designation by development agreement.

[27] As part of the Town's consideration of the application, Mr. Burek communicated with officials about whether the proposed development was appropriate, including the adequacy of water and sewer servicing to the Property and traffic concerns. Iain MacIsaac, P.Eng., the Town's Engineer and Superintendent of Public Works, advised that he had no concerns about the capacity of the Town's water and sewer service to support this proposed development and that the Development Agreement stated these services would be connected at the developer's expense. Mr. MacIsaac raised no concerns about traffic generation from the proposed development and did not comment on whether a traffic study was required. The Royal Canadian Mounted Police (RCMP) is the Town's Traffic Authority. Sergeant Curtis MacKinnon of the RCMP advised that because the proposed development included internal parking spaces, he did not foresee

any impact on the existing street network. Sergeant MacKinnon did not recommend a traffic study be required.

[28] Mr. Burek provided a report dated September 24, 2025 (Planner's Report), to the Town's Planning Advisory Committee. The Planner's Report summarised the application and the proposed plan, identified the relevant policies in the MPS for consideration and assessed the compliance of the application for a development agreement with the MPS. The Planner's Report recommended to the Planning Advisory Committee that the application be considered for approval:

> ***III. Summary and Conclusion***
>
> It is recommended that the attached development agreement application be considered for approval, and a Public Hearing Notice be placed in the Pictou Advocate, as outlined under Part VIII of the *Municipal Government Act*.
>
> [Exhibit T-4, p. 7-4]

[29] On October 6, 2025, the Town of Pictou Planning Advisory Committee determined the Development Agreement should require the installation of a 6-foot-high privacy fence when the setback is less than 20 feet from the abutting property. Subject to this requirement, the Committee recommended approval of the application for the Development Agreement and that Council proceed with holding a public hearing.

[30] The public hearing took place on October 20, 2025. Due to the postal strike at that time, the Town staff hand-delivered notices of the public hearing to all civic addresses within a 100-foot radius of 85 Union Street. One of the Appellants, Andrea Patchett, received personal notice of the public hearing. Individuals attended the public hearing, and Council received their oral submissions, including those made by both Appellants. On October 20, 2025, immediately after the public hearing, Council voted to approve entering into the Development Agreement by a motion which stated as follows:

> Development Agreement for 12 Units on 85 Union Street
>
> Council for the Town of Pictou approval of First Reading of the Development Agreement of a three-story, twelve-unit apartment building at 85 Union Street Pictou Nova Scotia with three conditions as part of the Development Agreement that concern local residents:
>
> 1. Consideration of privacy fencing
> 2. Location of garbage
> 3. Drainage issues
>
> Motion Moved, Seconded and Carried at regular Town Council Meeting of October 20th, 2025
>
> [Exhibit T-4, Tab 3 Council's Motion]

[31] Notice of the approval was made public on October 29, 2025.

3.0 ISSUE

[32] In this case, the Board must determine if the Pictou Town Council's decision to approve entering into the Development Agreement does not reasonably carry out the intent of the MPS.

[33] This decision reviews the relevant MPS policies for potential impacts that the proposed Development Agreement would have, including issues about: the compatibility of the multiple unit building with the existing neighbourhood; failure to conduct a traffic study; whether the Property is too small for the proposed development; sufficiency of setback and green spaces; and inadequate public participation.

4.0 WITNESSES AND EVIDENCE

[34] It is well established that the Board can consider new evidence introduced by the parties during the appeal that was not presented to Council in its analysis of the matter. The importance of factual context for the Board's review was noted by the Court

of Appeal in *Midtown Tavern & Grill Ltd. v Nova Scotia (Utility and Review Board)*, 2006 NSCA 115, where MacDonald, CJNS, stated:

> [50] …the fundamental question therefore becomes: Can it be said that Council's decision does "not reasonably carry out the intent of the MPS"?
>
> [51] To answer this question, the Board must embark upon a thorough fact-finding mission to determine the exact nature of the proposal in the context of the applicable MPS and corresponding by-laws. As in this case, this may include the reception of evidence as to the intent of the MPS.

[35] Under s. 27 of the *Energy and Regulatory Boards Act,* SNS 2024, c 2, Sch A, the Board operates under relaxed rules of evidence. All witnesses, to some degree, relied on hearsay and offered opinions beyond their qualifications. There were generally no objections to the admissibility of these statements, and the Board was able to weigh the evidentiary value in the normal course. The Board found the evidence of the witnesses to be helpful and credible, unless stated otherwise.

4.1 Witnesses

[36] The Appellants both testified. Ms. Timmons lives on Poplar Street and Ms. Patchett lives on Union Street, opposite the proposed development. As noted above, Town staff hand-delivered the Notice of Public Hearing to Ms. Patchett because she lives within a 100-foot radius of the Property.

[37] The Town called two witnesses, Mr. Burek, and Mr. MacIsaac. At the hearing, Mr. Burek, a registered planning professional, was qualified, without objection, as an expert capable of giving opinion evidence about land use planning matters, including the interpretation and application of the MPS and the LUB. Mr. Burek relied on his Planner's Report as his expert report. Mr. MacIsaac testified only as a lay witness.

4.2 Supplementary Information

4.2.1 Letters of Comment

[38] The Board received 11 letters of comment, all letters opposed the proposed development and expressed the following concerns:

- Density too high for area;
- Not compatible with the surrounding single-dwellings;
- Too large for lot size;
- Travel volume and pedestrian safety;
- Insufficient green space; and
- Insufficient public consultation.

4.2.2 Public Speakers

[39] Two speakers, Glendon Surette and Saya Poirier, registered for the evening public session. Mr. Surette spoke about his concerns arising from the lack of public consultation, that the proposed development was too large for the lot, that it was not similar to the surrounding single-dwellings, the lack of green space and safety concerns because of the increase in traffic. Mr. Poirier supported the concerns identified by Mr. Surette. In addition, he raised concerns about the failure to conduct a traffic study and the adequacy of the infrastructure.

4.2.3 The Site Visit

[40] The Board conducted a site visit immediately after the conclusion of the hearing on January 21, 2026. The parties chose not to participate in the site visit. The Board members drove to the site from the hearing venue on Front Street to Denoon Street, turning left on Union Street. The Property was a short drive up the street on the left. The Board viewed the vacant, snow-covered lot and observed its boundaries and

sightlines. The panel viewed Ms. Patchett's property across the street from the Subject Property. On leaving the Property, the panel then continued to the top of Union Street where it intersects with Oak Street, turned right, travelled down Pine Street and turned right on Denoon Street. The panel turned right on Welsford Street and drove through the various side streets of Chestnut and Elm Streets. Panel members were able to observe the neighbouring homes and layout of these streets, as described in the oral testimony and depicted in the documents.

5.0 SUMMARY OF SUBMISSIONS

[41] The Appellants say they have demonstrated, on a balance of probabilities, that Council's decision to approve the Development Agreement fails to reasonably carry out the intent of the MPS. They state that the proposed development fails to meet the planning policies' requirements of minimum lot size, minimum setbacks, green space/recreation space and compatibility with the neighbourhood's scale and character, ensuring adequate infrastructure and safeguards for the environment and upholding democratic participation.

[42] The Town submits that the Appellants have not provided evidence which would establish, on a balance of probabilities, that Council's decision to approve the Development Agreement fails to reasonably carry out the intent of the MPS. The Town says that the proposed development would aid in meeting the policy objectives of providing a variety of housing options, accommodating different needs, income levels, lifestyles and address the shortage of housing in the Town. It says that it was open to Council to weigh and prioritize these objectives and that the Board must show a

considerable amount of deference in relation to these decisions. The Town submits that Council's decision reasonably carried out the intent of the MPS.

[43] The Board's findings of fact are incorporated into each section of this decision's Analysis and Findings.

6.0 ANALYSIS AND FINDINGS

6.1 The LUB and Relevant MPS Policies

[44] The Town's MPS is the principal policy document for guiding Council's decision-making in planning decisions. The Town's LUB assists in the implementation of the MPS. As discussed above, the subject properties are designated Residential under the GFLUM and zoned R6. A residential multiple unit structure may be built as-of-right in the R6 Zone if it meets certain requirements; otherwise, the MPS and LUB require that the development of multiple unit residential structures within the Residential Designation can only be considered by a development agreement.

6.1.1 The LUB

[45] In 2024, new planning documents were sent to the Provincial Director of Planning. Mr. Burek, in his testimony, stated that these planning documents were intended to build housing at a faster rate to try to address the housing crisis faced by the Town. This was done to allow for tiny homes and denser development as-of-right. These planning documents were approved by the Province in September 2025. The area in and around the Heights was rezoned to R6 – Residential Tiny Homes. Section 40.1 of the LUB sets out the permitted uses in the R6 Zone. New residential multiple units are permitted as-of-right in the R6 Zone if they meet the Residential Multiple Unit (R3) Zone

requirement (section 40.1.1.a.vii). If the proposed development does not meet the R3 Zone requirements, then it must be considered by an application for development agreement (section 40.1.2). The R6 Zone provides:

> **40. Residential Tiny Homes (R6) Zone**
>
> 40.1. Permitted Uses
>
> 40.1.1. As-of-Right
>
> a. Residential Uses
>
> …
>
> vii. Residential Multiple Units (R3) Zone Uses subject to Residential Multiple Unit (R3) Zone requirements
>
> …
>
> *40.1.2.* Development Agreement
>
> a. multiple unit residential Dwellings subject to Policy RD-9, unless listed as a permitted, as of right use, or when there are five (5) or more units proposed;
>
> …
>
> [Exhibit T-3, pp. 77-78]

[46] Section 37.1 of the LUB sets out the permitted residential uses in the R3 Zone. New residential multiple units are permitted as-of-right in the R3 Zone if they meet the zone requirements (section 37.1.2) which include a minimum lot size (section 37.2.1, Table 12), minimum setbacks of 20 feet (section 37.2.1, Table 12), a maximum height of 35 feet (section 37.2.1, Table 12), recreation space (section 37.3.1, Table 13), and parking areas on the property (section 37.3.4). If the proposed development does not meet the R3 Zone requirements, then it must be considered by an application for a development agreement (section 37.1.2).

[47] The R3 Zone provides:

37. Residential Multiple Unit (R3) Zone

37.1. Permitted Uses

37.1.1. As-of-Right

a. Residential Uses

…

ii. existing and new Multiple Unit Dwellings

…

37.1.2. Development Agreement

a. multiple unit residential Dwellings subject to Policy RD-9, only in cases where an application for a dwelling of more than four (4) units does not meet the R3 Zone requirements. A new multiple unit dwelling that meets these requirements may be built or expanded as of right;

…

37.1.3. Site Plan Approval

a. New or expansions to existing multiple unit residential Developments or Seniors Residential Complexes, provided the total number of Dwelling Units does not exceed four, and is subject to Residential Multiple Unit (R3) Zone Lot, Yard, Height, and Open Space Requirements, subject to Policy IM-23, only in cases where an application for a dwelling of three (3) and four (4) units does not meet the R3 Zone requirements;[Emphasis in original]

37.2. Standard Requirements

37.2.1. Lot, Yard, and Height

Table 12 – Residential Multiple Unit (R3) Zone Requirements

Minimum Lot Area	Multiple Unit Dwellings	836 m² (9,000 ft²) plus 139 m² (1,500 ft²) for each unit in addition to 3
	Townhouses	280 m² (3,000 ft²)/unit
Minimum Lot Frontage	Multiple Unit Dwellings	27.4 m (90 ft)
	Townhouses	7.6 m (25 ft)/unit
Minimum Front Yard		6.1 m (20 ft)
Minimum Rear Yard		6.1 m (20 ft)
Minimum Side Yard	Multiple Unit Dwellings	6.1 m (20 ft)
	Townhouses (common wall)	nil
	Townhouses (outside wall)	3 m (10 ft)
Minimum Side Yard	Flankage	4.6 m (15 ft)
Maximum Height	Multiple Unit Dwellings	10.7 m (35 ft)
	Townhouses	10.7 m (35 ft)

…

37.3. Additional Requirements

37.3.1. Recreation Space

Table 13 – Residential Multiple Unit (R3) Recreation Space Requirements

One Bedroom or Bachelor Unit	18.6 m^2 (200 ft^2)/unit
Two Bedroom Unit	53.4 m^2 (575 ft^2)/unit
Three Bedrooms or More	88.3 m^2 (950 ft^2)/unit

37.3.2. Buffering

Parking and/or Loading Spaces, including driveways and access, shall be prohibited in the required Yards except where a Fence, Berm, or Landscaping forms an opaque visual buffer a minimum of 1.8 metres (6 feet) in height and 1.8 metres (6 feet) in depth.

37.3.3. Abutting Yard

Notwithstanding Table 14, where an Existing Multiple Residential Dwelling abuts a single detached, semi-detached or Duplex Dwelling:

a. The Abutting Yard shall have a 6.1 metre (20 foot) minimum;

b. Parking Space or Outdoor Storage shall be prohibited within the Abutting Yard;

c. Driveways and access to Paring and Outdoor Storage shall be permitted in the Abutting Yard; and

d. There shall be no expansion of existing Structures, storage, or parking Uses encroaching on an Abutting Yard.

37.3.4. Parking for Existing Multiple Residential Dwellings

a. Parking Areas for existing Multiple Residential Dwellings shall only be permitted in the required Rear and Side Yards of the Lot and shall be otherwise compliant with this By-Law.

b. Parking Areas shall be provided in accordance with the requirements and standards as outlined in section 22 of this By-Law.

[Exhibit T-3, pp. 69-71]

6.1.2 Relevant MPS Policies

[48] The parties focused their evidence and arguments on Policy RD-9, New Multiple-Unit Dwellings, and Policy IM-12, Criteria for Amendments, Development Agreements and Site Plan Approval. The preamble to Policy RD-9 (Section 5.4.4)

discusses the increased demand for multiple unit developments while recognizing that some area residents may perceive these multiple unit dwellings as having a negative impact on established neighbourhoods arising from concerns about traffic, density, scale and design. It notes that multiple unit dwellings can be accommodated in any neighbourhood if consideration is given to addressing any negative impact. Section 5.4.4 of the MPS states:

> **5.4.4 Multiple Unit Development**
>
> Council recognizes the importance of providing a range of housing types in order to accommodate specific market demands. Rising home ownership costs, smaller family sizes, the need and desire for greater mobility and the aging population has increased the demand for multiple unit development. This includes both apartment buildings of various sizes and townhouses. There appears to be an increased demand on multiple unit buildings, particularly for seniors housing, and to meet the affordability challenges in the current housing crisis.
>
> Council also recognizes that multiple unit development is an efficient use of land and municipal services because it provides a greater density of development (i.e. units/acre) and can be less costly to service. Such housing is also important as Council seeks to ensure that there is an adequate supply of affordable, special needs, and rental accommodation in the community. However, some area residents may perceive that multiple unit dwellings can also have a negative impact on established neighbourhoods in terms of traffic, aesthetics, scale, design, and density. The councils will work with area residents to try and alter some of the negative perceptions that exist in the community, while striking a balance between housing needs and neighbourhood perception.
>
> Multiple unit housing can be accommodated in virtually any residential neighbourhood provided that consideration is given to address any negative impacts. This can be achieved by creating a Residential Multiple Unit (R3) Zone which shall apply to some existing multiple unit dwellings.
>
> The Residential Multiple Unit (R3) Zoning shall be applied to certain areas in the RD, balancing land use and servicing efficiency with traffic, aesthetic, and residential impact.
>
> [Exhibit T-3, pp. 27-29]

[49] Policy RD-9 provides factors, without limitation, that Council must consider for an application for new multiple unit dwellings by a development agreement:

> **Policy RD-9: New Multiple-Unit Dwellings and Affordable Housing by Development Agreement and Site Plan Approval, and Inclusionary Zoning**

New Multiple Unit Dwellings, expansions to existing Multiple Unit Dwellings, new senior's residential complexes, conversions of single and two unit dwellings to multiple-unit dwellings, the provision of affordable housing, and conversions of single and two-unit dwellings to Senior's Residential Complexes may be permitted by Development Agreement or SPA in areas designated Residential, Downtown Core, Highway Commercial, unless already listed as permitted uses and/or as of right use. Development Agreement applications shall consider, without limitation, factors as follows:

a) Lot requirements of the relevant zones as applicable as a guideline to negotiate DA terms;
b) architectural design compatibility with adjacent uses, including scale and exterior finish;
c) Outdoor Storage area and year-round artificial or natural screening;
d) landscape preservation by minimizing tree and soil removal;
e) municipal water and sewer servicing;
f) open Space, amenity space, and like considerations; and
g) proposals satisfy the review criteria of IM-12.

Notwithstanding the above, the provision of affordable housing by the towns could be achieved through separate agreements that augment the existing development policies of this planning strategy. While a general accepted rule of thumb is that "affordable" housing is usually the availability to pay for housing using no more than thirty (30) percent of household income, each town may apply its own benchmarks or standards. Such projects may be undertaken by DA or SPA, where permissible, through separate agreements negotiated between towns and developers, and may include public sector housing providers, condominium corporations, or other forms of tenure. The adoption of inclusionary zoning that would address affordable housing may also be implemented. [Emphasis added]

[Exhibit T-3, pp. 28-29]

[50] Policy IM-12, which is referred to in Policy RD-9, is found in Section 5.11 of the MPS. Section 5.11 sets the Implementation Policies for the overall development of the Town, including Policy IM-12 which provides:

5.11.5 Evaluation Criteria for LUB Amendments, DAs and SPAs

Policy IM-12: Criteria for Amendments, Development Agreements and Site Plan Approval

It is Council's intention that evaluation criteria for LUB or policy amendments, Development Agreement proposals and Site Plan Approvals, are set out in MGA Part VIII and other Provincial legislation, and shall also include consideration of factors as follows, without limitation:

a) proposal consistency with MPS policies and LUB requirements and all Town By-laws and regulations;
b) capacity to absorb development, operating or capital costs;
c) water and sewer service capacity or private on-site sewer and water systems approval;
d) street networks;
e) proximity to schools, recreation and other community facilities;
f) compatibility with adjacent uses;

g) environmental constraints of proposed site, including steepness of grades, soil and/or geological conditions, relative location of Watercourses, marshes, swamps, or bogs; lands comprising twenty-five (25) percent of the Lot area with a slope gradient of twenty (20) percent or greater shall be considered steep;
h) provision for buffers, or any other controls, to reduce development impact where incompatibilities with adjacent uses are anticipated;
i) impact on access to waterways;
j) development effect on natural features or historical buildings and sites;
k) Obnoxious emissions;
l) requirement for paved parking and/or driveway area where site conditions necessitate;
m) Development Agreements may also address, without limitation:
    i. type of use, density and phasing;
    ii. traffic generation, access to and egress from the site, and parking;
    iii. Outdoor Storage and landscaping;
    iv. pedestrian movement and safety;
    v. development of Open Space, parks, and walkways;
    vi. drainage, both natural and subsurface;
    vii. Signs;
    viii. hours of operation; and
    ix. architectural design compatibility with adjacent uses.
n) Uses listed as permitted, as-of-right uses, within the applicable zone, shall not be required to undertake this process)

[Exhibit T-3, pp. 46]

[51] The Board finds that the intent of the MPS is to encourage a wide variety of residential uses within the Residential Designation, including multiple unit residential dwellings when the relevant policy criteria are satisfied. The intent of the MPS is also to consider the impacts and compatibility of residential development on adjacent uses. The proposed development can only proceed by way of a development agreement because it does not meet the as-of-right R3 Zone requirements. The MPS sets out the policies, including specific criteria Council must consider when determining whether to approve a development agreement. The Board will now consider the Appellants' grounds of appeal alleging that Council's decision to approve the Development Agreement does not reasonably carry out the intent of the MPS.

6.2 Compatibility with Adjacent Uses

[52] The Appellants submit that a proper interpretation of the MPS, in conjunction with the LUB, shows that neither allows a project with the scale and bulk of the proposed development. In essence, it appears to the Board that, in the first instance, the Appellants argue that not only is the proposed development incompatible with the surrounding neighbourhood, but it is not authorized at this location by the Town's planning documents.

[53] The Appellants say that the proposed development is not appropriate because of compatibility factors associated with the impact on neighbouring properties and the change in the existing character of the neighbourhood. The Appellants' main points are summarized by the Board as follows:

- The area surrounding the Heights can be characterized as a quiet neighbourhood consisting predominantly of single-family homes, most of which are single-story dwellings or one-and-a-half storey dwellings.
- The proposed development is too large in bulk and scale, including height and density, describing it as a "stark and abrupt contrast" in the neighbourhood.
- The reduced setbacks and insufficient buffering of the proposed development would lead to a loss of privacy for the neighbouring residents.
- The proposed development would lead to a loss of privacy, views, sunlight and increased noise and traffic.
- The modern design of the proposed building would not be aesthetically compatible with the surrounding properties.

[54] The Appellants say that the MPS encourages infill development and multi-unit development, but only where it is compatible with the established neighbourhood and the LUB requirements are maintained. They note that the R6 Zone requirements include a setback of a minimum of 20 feet (section 37.2.1 of the LUB). The Appellants assert the

development agreement mechanism is intended to implement the MPS, not bypass its standards. The Appellants submit that Council's approval of the Development Agreement does not conform with the LUB and does not reasonably carry out the intent of the MPS.

[55] The Town submits that Council's decision to approve the application for the Development Agreement does reasonably carry out the intent of the MPS. The Town argues that the MPS encourages housing developments to serve different needs, income levels and lifestyles for the Town's population. The Town states that the MPS encourages infill development which achieves greater density through multiple units (Section 5.4.4 of the MPS). The Town says that Council had the Planner's Report before it, which considered all applicable MPS Policies and provisions of the LUB. The Town submits that the Planner's Report considered the size, bulk, lot coverage and setbacks and concluded that the proposed development was compatible with the adjacent land uses. The Town says that the Appellants did not raise the architectural style of the proposed development as a concern and that there was no testimony before the Board on this issue.

[56] When interpreting how the various residential policies of the MPS work together, the Board recognizes that the Residential Multiple Unit Development objectives (Section 5.4.4) are a preamble and not a Policy. These objectives discuss a balance between the goals of protecting, maintaining and respecting existing residential neighbourhoods with the goal of "… providing a wide range of housing types…" and promoting "… an adequate supply of affordable, special needs, and rental accommodation in the community". Therefore, preserving the *status quo* is not the only overarching objective of the Residential Multiple Unit MPS policies. This is confirmed by the MPS' creation of a Residential Generalized Future Land Use Designation on the

GFLUM (Policy IM-4). The GFLUM attached to the MPS has Residential, Downtown Core, Highway Commercial, Industrial, Waterfront and Water Supply Designations, and makes no distinction between existing development and vacant lands within the Residential Designation.

[57] The proposed development is on vacant lands designated as Residential on the GFLUM. Policy RD-9 of the MPS allows a developer to apply for a development agreement for any project involving a residential multiple unit building in the GFLUM Residential Designation to be considered by a development agreement, when such a project cannot be built as-of-right in the relevant zone.

[58] This MPS scheme is consistent with allowing a form of as-of-right development which meets the requirements in the LUB for the relevant zone. However, for potentially higher density developments proposed in the R3 and R6 Zones, the development agreement process allows Council to consider site-specific circumstances, as well as impose additional or different requirements than set out for the existing zones in the LUB. This additional flexibility can be used when considering the impacts buildings may have on existing neighbourhoods and balancing the objectives of protecting existing neighbourhoods while promoting a wide variety of building types in the Residential Designation.

[59] As discussed in *Archibald*, while the intent of the MPS is determined primarily by its language, the reflexivity between the MPS and a concurrently passed LUB can offer some assistance in the interpretive exercise.

[60] Policy RD-9a) states that the development agreement application shall consider “lot requirements of the relevant zones as applicable as a guideline to negotiate

DA terms". [Emphasis added]. The Board does not accept the Appellants' submission that the foregoing MPS scheme means Council cannot consider a proposed multiple unit project by development agreement that does not meet the zone requirements such as lot size, setback and green space/recreation space. The Policy demonstrates an intent that the lot requirements will likely vary from those in the relevant zone as these requirements will be determined in each negotiation for a development agreement. Council "shall consider" lot requirements of the relevant zones as guidelines in this negotiation between the developer and the Town. The purpose of a development agreement is to allow a development which does not meet the requirements of the LUB and cannot be built as-of-right, but otherwise it is reasonably consistent with the MPS as a whole.

[61] Policy RD-9 sets out the applicable factors for considering an application for a development agreement, which includes that the proposal satisfies the review criteria of IM-12 of the MPS. Under Policy IM-12, Council shall consider whether the proposed development agreement is consistent with the MPS and LUB requirements (Policy IM-12 a)), is "compatible with adjacent uses" (Policy IM-12 e)) and that there is a provision for buffers, or any other controls, to reduce development impact where incompatibilities with adjacent uses are anticipated (Policy IM-12 g)).The Board notes that Policy IM-12 does not require the LUB be applied, merely it be considered.

[62] The Board notes that there is a focus on "adjacent uses". "Adjacent" is not a defined term in the MPS, but in planning matters it ordinarily refers to nearby properties. Further, the term is wide enough in this context to encompass the properties in the neighbourhood that surround the proposed development.

[63] As noted above, the R6 Zone permits as-of-right residential multiple unit dwellings. The number of units which can be built as-of-right depends on the lot size and satisfying several other requirements including a setback of 20 feet from abutting properties, green space/recreation space size, which is determined by the units proposed and the height limit of 35 feet.

[64] The Planner's Report found that the proposed Development Agreement satisfied the compatibility sections of Policy RD-9 and Policy IM-12 (the bolded comments being the planner's observations):

> **Policy RD-9: New Multiple-Unit Dwellings by Development Agreement**
>
> New Multiple Unit Dwellings, expansions to existing Multiple Unit Dwellings, new senior's residential complexes, conversions of single and two unit dwellings to multiple-unit dwellings, the provision of affordable housing, and conversions of single and two-unit dwellings to Senior's Residential Complexes may be permitted by Development Agreement or SPA in areas designated Residential, Downtown Core, Highway Commercial, unless already listed as permitted uses and/or as of right use. Development Agreement applications shall consider, without limitation, factors as follows:
>
> a) Lot requirements of the relevant zones as applicable as a guideline to negotiate DA terms; **the proposal for twelve (12) units would normally require 22,500 square feet of land area, while this lot has 19,000 square feet, so it is above the minimum requirements.**
>
> b) architectural design compatibility with adjacent uses, including scale and exterior finish; **the proposed architectural design fits in well with the surrounding area, although the three-storey height may cause objections from residents backing on to the property**
>
> …
>
> [Exhibit T-4, p. 7-2]
>
> **Policy IM-12: Criteria for Amendments, Development Agreements and Site Plan Approval**
>
> Evaluation criteria for LUB or policy amendments, Development Agreement proposals and Site Plan Approvals, are set out in MGA Part VIII and other Provincial legislation, and shall also include consideration of factors as follows, without limitation:
>
> a) proposal consistency with MPS policies and LUB requirements and all Town Bylaws and regulations; **the proposal is consistent. As the lands are designated Residential Development (RD) under the Generalized Future Land Use Map (GFLUM), Policy RD-9 of the Inter-Municipal Planning Strategy applies, which allows multi-unit dwellings by development agreement.**

…

e) compatibility with adjacent uses; **as a residential use, I do not foresee any compatibility issues, although this proposal is at a denser level than the surrounding area**

…

g) provision for buffers, or any other controls, to reduce development impact where incompatibilities with adjacent uses are anticipated; **to be addressed in the agreement though privacy fencing buffer requirements**

[Exhibit T-4, p. 7-3]

[65] Mr. Burek testified that an as-of-right 12-unit building in the R6 Zone would require a lot size of 22,500 square feet, but in this matter the Subject Property's lot size is only 19,000 square feet. He stated that the proposed development would be "tight" and that some neighbours would find it "a little too close" (Transcript, January 20, 2026, p. 189). He testified that when the Planning Advisory Committee reviewed the application, it added the requirement into the Development Agreement that a 6-foot-high privacy fence be built where the building or parking area setback to the abutting properties is less than 20 feet. He stated that the privacy fence requirement is found in Article 3 of the Development Agreement. Mr. Burek stated that as the Property grades down to Union Street and will be built at street level, he anticipates that the effect of the six-foot privacy fence will be more like eight to nine feet. He testified that this privacy fence is a stricter requirement because, with an as-of-right build, a privacy fence is not required. He stated that there are other stricter requirements in the Development Agreement, in comparison to an as-of-right build, including a site grading plan to ensure there will be no drainage issue for dwellings on a lower level and requiring that lights be adjusted to divert lighting away from adjacent residential structures.

[66] In her testimony, Ms. Patchett stated that the distance between her house and her neighbours' houses is roughly five feet on one side and seven feet on the other

side. Mr. MacIsaac, the Superintendent of Public Works and Town Engineer, testified that he found Ms. Patchett's evidence of the distance from the neighbouring homes was consistent with his knowledge and observations. He stated that in the Heights there are some areas where the street boundary to the front door of a dwelling is one foot and in other areas the street boundary is between 10 and 20 feet to the front door. Mr. MacIsaac also testified that some of the Town's water mains were within three to five feet of the front doorsteps.

[67] Mr. MacIsaac testified that an occupancy permit would be issued when the proposed development met the requirements of the Development Agreement, the remaining LUB requirements, which were not suspended by the Development Agreement, and the requirements of the Building Code.

[68] The Board will start its analysis by highlighting the key legal principles at play, when addressing the compatibility issue in this case including those from the *Archibald* decision and prior Board decisions:

- MPS policies must be interpreted reasonably to give effect to their intent and there is not necessarily one correct interpretation.
- Absent an error of fact or principle, the Board should defer to the elected Council's value-laden choices and compromises in the face of conflicting or intersecting policy intentions including question begging terms.
- There may be more than one conclusion that reasonably carries out the intent of the MPS, when that occurs, a decision of Council that reasonably complies with the MPS is entitled to deference by the Board.
- Deference to Council is not a licence for Council to make *ad hoc* decisions unguided by principle. For example, if the resolution of conflicting policies is made clear in the MPS, Council is not owed deference. Council's choices must still be based on planning considerations contained in the MPS.

- The bulk, size, scale, character and transitioning features of the project are important to a determination about compatibility.

[69] The Board acknowledges the Appellants' honest and deeply held view that surrounding land uses are low-density residential homes and that this proposed development is simply too large for their neighbourhood. Also, the Board recognizes their concern that this proposed development would negatively change the character of their quiet neighbourhood.

[70] The Board finds that the MPS intends to allow a diversity of housing types, as reflected in the various Residential Zone Designations, including the R6 Zone which allows a higher density with multiple unit buildings. The Property and the surrounding properties, including the Appellants' properties, are all designated Residential which includes a diversity of housing types. Though the area has been designated for a diversity of residential housing, there has been limited development of different types. The Residential designation allows for residential multiple unit dwellings alongside single dwellings, sometimes as-of-right and other times under a development agreement.

[71] The Board finds that the existing pattern of development in the area is primarily low-density single-family dwellings. The dwellings have short lot frontage, and the separation between the dwellings is typically between five and seven feet. This is consistent with the oral evidence, and with the description of the area in the Planner's Report. This was confirmed by the Board's site visit. However, this does not mean that only single-unit or two-unit dwellings can be constructed on the Property to be reasonably consistent with the intent of the MPS. The Board has held in past decisions that compatibility does not mean that a new development must be the same height and bulk

as an existing development pattern (see, *Peck (Re)*, 2025 NSRAB 12). Compatibility relates to whether the new development can co-exist within the neighbourhood.

[72] Based on lot size, the Board finds that the proposed development, consisting of 12 units, exceeds the as-of-right development potential of the Property under the R6 Zone by four units and five parking spaces. The Property is 19,000 square feet when a proposal for 12 units would normally require 22,500 square feet. The proposed development's height will not exceed 35 feet, the same height as the R6 Zone. The proposal has setbacks of less than 20 feet from the abutting properties. The site concept indicates that in one instance the setback is 19 feet and 8 inches, and in another the setback is 6 feet and 8 inches. The Development Agreement was amended, as recommended by the Planning Advisory Committee, to require the construction of six-foot privacy fences where the Property's setback or parking area is less than 20 feet from the abutting property. The Property's slope will result in the privacy fence effectively creating more than six feet in privacy for the abutting properties. The Development Agreement also requires that lights used for illumination of the Property shall be arranged to divert the light away from any street or adjacent residential structures.

[73] The Appellants and Mr. Burek all agreed that the proposed development would bring change to the neighbourhood. In the Board's opinion, this does not mean that Council's approval of the Development Agreement does not reasonably carry out the intent of the MPS. As discussed earlier, there are competing objectives within the MPS expressed in the same residential policies. One purpose relates to protecting existing neighbourhoods from undue impacts of higher density development, while another encourages a wide variety of housing options in the appropriate circumstances. The MPS

clearly contemplates the possibility of higher density development in any residential zone, such as the one present in this appeal. The Board is satisfied that the two residential objectives are not mutually exclusive in the circumstances of this case.

[74] There was some discussion about the aesthetics of the development. There are no specific guideposts in the MPS about building aesthetics. Without any specific policy direction in the MPS, and the somewhat varied appearance of the neighbourhood properties, the Board does not find that the lack of specifics about the building aesthetics in the Development Agreement means it does not reasonably carry out the intent of the MPS.

[75] Traffic issues are discussed elsewhere in this decision and are not considered an issue to cause the proposed development to be inappropriate at this location. Construction noise is to be reasonably expected when projects of this kind are being built. In any event, temporary construction issues are not sufficient to render this project incompatible with the MPS.

[76] Whether a development is compatible with the surrounding land uses is not a rigidly defined concept in the MPS. It requires a good measure of judgment and the balancing of interests expressed in the MPS. *Archibald* directs the Board to afford some deference to elected officials with this type of decision. The Board notes that most of the issues raised by the Appellants before the Board were raised before Council. Council had an opportunity to consider them. Council could have weighed the various factors, and which aspects of the MPS' policies should be given priority, in a different manner, and with a different outcome, that might also have been reasonably consistent with the MPS. That said, this MPS is not very prescriptive in nature. Having considered the issue, the

Board finds that Council's balancing of competing policies in the MPS, and the approval of the Development Agreement, is reasonably supported by those principles expressed in the MPS, insofar as compatibility and impact on adjacent uses in the neighbourhood are concerned. The Board finds that Council's decision reasonably carries out the intent of the MPS in this respect.

6.3 Adequacy of Green Space/Recreation Space

[77] The Appellants submit that the R6 Zone requires a recreation space of a minimum of 6,900 square feet (section 37.3.1 of the LUB) for this proposed development. They state that based on the information provided the proposed development will only have 5,032 square feet of green space, resulting in a deficiency of approximately 1,867 square feet.

[78] The Appellants refer to this requirement as a green space and the Board will refer to this as the "greenspace/recreation space" requirement.

[79] Neither Policy RD-9 or Policy IM-12 of the MPS refers to "greenspace or recreation space" as a factor for Council's consideration of an application for a development agreement. Policy RD-9f) refers to the consideration of "open Space, amenity space, and like considerations". IM-12m) v.) states that the development agreement "may also address, without limitation…development of Open Space, parks, and walkways".

[80] The Planner's Report states that Policy RD-9f) about "open Space…and like considerations" has been addressed in the Development Agreement. The report also states that Policy IM-12m) v.) about the "development of Open Space" does not apply to this application for a development agreement [Exhibit T-4, p. 7-2 and p. 7-4].

[81] Mr. Burek testified that the proposed development does not meet the LUB requirement for green space/recreation space. He stated that this requirement was suspended by the Development Agreement and said that the only green space/recreation space would be that indicated on the concept site plan.

[82] As discussed above, Policy RD-9a) states that development agreement applications shall consider “lot requirements of the relevant zones as applicable as a guideline to negotiate DA terms”. A development agreement allows for a proposal to be built with specific requirements and restrictions when the proposal cannot be built as-of-right. The very nature of a development agreement under the MPS is that it is not required to strictly comply with the zoning requirements where the proposed development will occur, provided it reasonably complies with the MPS.

[83] Policy RD-9f) requires Council, before entering into a development agreement, to consider “open space…and like considerations”. The Planner’s Report addressed this factor by noting that it had been addressed in the Development Agreement. Article 7 of the Development Agreement does require that the existing mature trees and grassed areas on the property shall be maintained where possible.

[84] The burden rests on the Appellants to demonstrate that Council’s actions did not carry out the intent of the MPS. They did not provide sufficient evidence to meet this burden. Therefore, the Board is unable to conclude that the Town’s actions failed to reasonably carry out the intent of the MPS. Rather the Board finds no basis to determine that Council’s decision about the adequacy of the green space/recreation space did not reasonably carry out the intent of the MPS.

6.4 Traffic Generation and Adequacy of Road Networks

[85] The Appellants question whether the existing road networks can handle the increased traffic from the proposed development. The Appellants submit that no traffic study was conducted despite the increased density and vehicle activity that the development will generate. They also assert that Union Street already experiences congestion, particularly during the school bus and public transit pick-up and drop-off times.

[86] Under Policy IM-12, before entering into a development agreement, Council shall consider “street networks” (Policy IM-12c)) and the development agreement “may also address, without limitation…traffic generation” (Policy IM-12l) ii)). The Planner’s Report stated that no impact on road networks under Policy IM-12c) was anticipated but did not yet have comments from the Traffic Authority. The report also noted that it was awaiting the Traffic Authority’s comments and recommendations about traffic generation, but that the Development Agreement would address any recommendations made by the Traffic Authority.

[87] At the hearing, Mr. Burek testified that the proposed development satisfied the requirement of Section 22.3 of the LUB to provide 1.25 parking spaces per unit. He noted that as there were 12 units, 15 parking spaces were required under the LUB, and this proposed development will have 15 parking spaces as provided in Article 6(2) of the Development Agreement. Mr. Burek testified that, before the proposed development was considered by Council, the Traffic Authority (the RCMP) advised that it did not see any issues with the proposed development, because of the internal parking spaces. Mr. Burek also stated that Mr. MacIsaac, the Town’s Superintendent of Public Works, did not express any concern about the impact that the proposed development would have on

street networks. Mr. Burek concluded that there was no need to conduct a traffic study because neither the Traffic Authority nor the Town's Superintendent raised any traffic concerns for the proposed development, and because the development would meet the parking requirements of the LUB.

[88] The MPS does not require a traffic impact study. The Appellants did not tie any specific evidence in current or potential traffic trends to Policy IM-12 or any other policies within the MPS. In this case, Mr. Burek relied upon the experience of the responsible Traffic Authority and the Town's Superintendent. Council had a rational basis before it to conclude that the proposed development was appropriate when considering the traffic generation by the proposed development and the adequacy of the street network. The burden rests on the Appellants to demonstrate that Council's actions did not carry out the intent of the MPS. They did not provide sufficient evidence to meet this burden. The Board accepts the Town's evidence and concludes that the Development Agreement does reasonably carry out the intent of the MPS with regards to traffic.

6.5 Adequacy of Public Participation in Process

[89] In their Notice of Appeal, the Appellants stated that "There was a public meeting to discuss and although multiple people expressed […] concerns Pictou Town Council voted in favour within minutes of ending the public meeting". In their final submissions, the Appellants say that the residents most directly impacted by the proposed development were not adequately informed or meaningfully engaged during the planning process. They say that there was insufficient time, no opportunity to review the information, understand its impact or give informed feedback. They also say that, despite their repeated requests to the Town's Development Officer, no information about the

proposed development's design and other details were ever provided. Finally, they say that the public hearing lasted no more than 30 minutes and involved minimal dialogue about the proposed development.

[90] The Town argues that it complied with the notice requirements and exceeded the minimum standard of advertising in the local newspaper. The Town says that the postal strike caused it to be concerned that many subscribers would not receive their newspapers. Accordingly, the Town took the additional step of having Town staff hand deliver the notice to all residents within 100 feet of the proposed development. The Town submits that it also complied with all requirements for the public hearing, including that all attendees were given the opportunity to be heard. The Town notes that Council heard the concerns of both Appellants at the public hearing.

[91] The Board has dealt with procedural issues such as public engagement in numerous matters (see: *Municipal Board Halifax (County) v Maskine*, 1992 CanLII 2469 (NSCA); *Peck (Re)*, 2025 NSRAB 121; *Cornwallis Farms Limited (Re)*, 2024 NSUARB 120; *Community For Responsible Development For District 1* (*Re*), 2023 NSUARB 37 (*Canning*); and *Tawil* (*Re*), 2022 NSUARB 95). The Board's consistent position has been that, except possibly where such procedures are embedded in the MPS, it has no jurisdiction to overturn municipal council decisions based on alleged procedural errors. The Board's sole authority in the matter before it is whether the Town's decision reasonably complied with the intent of the MPS. In cases where the procedures are embedded in the MPS, the Board left open the potential to consider whether a council's failure to adequately address them reasonably carries out the intent of the MPS.

However, this is not such a case, as the guidelines being discussed were not included within the MPS. Therefore, such procedural issues are outside the Board's jurisdiction.

[92] The ultimate issue before the Board is whether Council's decision does or does not reasonably carry out the intent of the MPS and not the adequacy of the process to arrive at its decision. If Council made factual errors or errors in planning principles that might result from the process followed, the Appellants can raise them before the Board. The Board notes that this is a hearing *de novo* where wider public notice was provided as it relates to the MPS. The Appellants, who live in the neighbourhood, and the Town were able to gather evidence and advance submissions like those made to Council, with more detail, testify, call other witnesses and be subject to cross-examination. Therefore, in this proceeding, the Board had a full record to determine whether Council's decision does or does not reasonably carry out the intent of the MPS.

6.6 Other

[93] The Board received submissions addressing many aspects of the MPS. The Board considered all submissions and the issues raised. Given the approach the Board has taken in determining the appeal, it has not made a complete catalogue or disposed of every point raised by every party. To the extent the Board does not explicitly deal with all aspects of an argument, or point raised by the parties, it can be assumed the Board did not agree, or the point or argument carried insufficient weight to impact the decision.

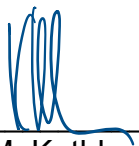
7.0 CONCLUSION

[94] The Appellants have not met the burden of showing, on a balance of probabilities, that Council's decision to approve the Development Agreement was based upon an interpretation of the policies of the MPS as a whole that the MPS cannot reasonably bear. For the reasons set out above, the Board finds that Council's decision to approve the application for the Development Agreement is reasonably consistent with the MPS.

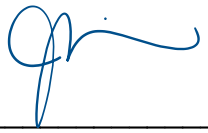
[95] Accordingly, the appeal is dismissed.

[96] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 9th day of April 2026.



M. Kathleen McManus



Jennifer L. Nicholson

Darlene Willcott