

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **BEAR LAKE WIND LTD.** from a decision of West Hants Regional Municipal Council to refuse an application for a development agreement allowing for a large-scale wind farm at Upper Vaughan, West Hants Regional Municipality, Nova Scotia (PIDs 45399540, 45399573, 45381217, 45381209, 45399532, 45060068, and 45060076)

BEFORE: Julia E. Clark, LL.B. Vice Chair
M. Kathleen McManus, K.C., Ph.D., Member
Darlene Willcott, LL.B., Member

APPELLANT: **BEAR LAKE WIND LTD.**
Ian Dunbar, Counsel
Natasha Puka, Counsel

RESPONDENT: **WEST HANTS REGIONAL MUNICIPALITY**
Jonathan G. Cuming, Counsel

INTERVENOR: **LINDA MOXSAM SKINNER**

HEARING DATE: January 28, 2026

FINAL SUBMISSIONS: March 30, 2026

DECISION DATE: **May 26, 2026**

DECISION: **The appeal is allowed. The Board orders Council to approve the Development Agreement.**

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1.0 INTRODUCTION

[1] On September 25, 2025, the West Hants Regional Municipal Council (Council) rejected a development agreement application by Bear Lake Wind Ltd. (Bear Lake or Appellant) to construct a large-scale wind farm in West Hants, Nova Scotia at PIDs 45399540, 45399573, 45381217, 45381209, 45399532, 45060068, and 45060076 (Development Agreement).

[2] Council refused the application for two reasons: First, relying on Policy 16.3.1(a)(iii) of the West Hants Municipal Planning Strategy (MPS), the proposed approach to fire protection was “not adequate” as the fire prevention methods within the turbines relied solely on passive fire suppression systems. Second, Council’s consideration of Policy 16.3.1(e), indicating concern about the potential pattern of development the proposal might create, “including, without limitation, the industrialization of the forest and discouraging residential development in the area.”

[3] On October 3, 2025, Bear Lake appealed Council’s decision to the Nova Scotia Regulatory and Appeals Board (Board). Following a preliminary hearing on October 17, 2025, the Board issued a Hearing Order setting out filing and hearing dates. A public notice was published on October 23, 2025, and the Board received two requests to intervene. In its decision, 2025 NSRAB 133, the Board allowed the intervention request of Linda Moxsam Skinner, a resident of Chalet Hamlet, a community neighbouring the proposed development. The Board refused a joint request to intervene from Christopher Cann, Sharleen Smith and Mike Toney, who did not meet the test for standing. Those parties provided a written letter of comment in the matter.

[4] Bear Lake argues that Council’s refusal of the application was not grounded in reasons objectively supported by evidence and not supported by a reasonable

interpretation of the intent of the MPS. The Appellant asks the Board to grant the appeal and order that the Development Agreement be approved.

[5] After reviewing the evidence and the applicable MPS policies, the Board finds that Council's refusal of the Development Agreement did not reasonably carry out the intent of the MPS. The Board therefore allows the appeal and orders that the Development Agreement be approved.

2.0 BACKGROUND

2.1 Proposal and Development Agreement Application Process

[6] The Appellant appealed Council's decision to the Board under s. 247(2)(a) of the *Municipal Government Act (MGA)*, within the required appeal period. The Appellant's Notice of Appeal raised the following grounds of appeal:

- (a) The Application properly carries out the intent of the MPS to consider the development of permanent and long-term installations of wind farms outside the Growth Centre, Village and Hamlet designations by development agreement having reasonable regard to the factors enumerated in Policies 4.24.4 and 16.3.1;
- (b) Council's reasons provided for the refusal are unreasonable as the draft development agreement is appropriate in relation to: (i) adequacy of fire protection and (ii) creating a pattern of development for the subject lands consistent with the MPS and the designation and zoning of the lands; and
- (c) Such other grounds as may appear upon a review of the record.

[Exhibit B-1, p. 4]

[7] Bear Lake is a joint venture between Everwind Fuels and majority owner Wind Strength, a company owned by the Mi'kmaq community of Membertou. Bear Lake's purpose is to develop renewable energy and green hydrogen projects in the province.

[8] On December 13, 2023, the Minister of Environment and Climate Change approved Bear Lake's Environmental Assessment (EA) Registration document for a proposed large-scale onshore wind energy project, with terms and conditions [Exhibit B-2, pp. 9-18]. The proposed project would be on provincially and privately owned land in Vaughan and Upper Vaughan. An updated project description was approved on April 28, 2025.

[9] Bear Lake applied to the West Hants Regional Municipality for a development agreement, which was reviewed by the Municipality's planning staff and Planning and Heritage Advisory Committee (PAC/HAC). This initial application received a positive recommendation to submit to Council, with amendments, and was presented to Council for First Reading in November 2024. However, Council postponed First Reading and requested a cumulative visual study.

[10] On April 28, 2025, Bear Lake resubmitted its application for a development agreement. The resubmission included the amendments requested by PAC/HAC and incorporated the results of the cumulative visual study. It also included a revised project reducing the number of wind turbines to be located within the Municipality. Under the revised proposal, 7 out of 11 wind turbines in the project would be located within West Hants. These turbines comprise the "wind farm" or "project" for which the development agreement was sought. Three more turbines will be located in Halifax Regional Municipality, and one within the Municipality of the District of Chester.

[11] The turbines are Goldwind GWH182-8.0 turbine models with a nominal capacity of 8.0 megawatts. The turbines have a hub height of 120 m, blade length of 91

m, and a 182 m rotor diameter for a total height (from ground to blade tip) of 211 m [Exhibit B-2, p. 6].

[12] The planning Staff Report dated September 23, 2025, submitted to Council by Kari Fougere, Acting Director of Planning and Development, summarizes the application review process [Exhibit B-2, pp. 237-241]. The relevant timeline and process were generally confirmed by the testimony of Brendan Chard, Vice President of Power with Everwind Ltd., at the hearing. A public information meeting was held on May 21, 2025, where planning staff collected public comments [Exhibit B-2, p. 50]. On July 10, 2025, planning staff presented a report to PAC/HAC, who agreed with staff's recommendation in favour of the Development Agreement. PAC/HAC passed a motion recommending that Council consider additional factors when deciding on the file, including:

... PAC/HAC recommends that Council also give consideration to the gated emergency access, questions on fire suppression, the vibrancy fund including a community park, and assurances related to well water that potentially could be impacted due to blasting.

[Exhibit B-2, p. 464]

[13] At the July 22, 2025 meeting, Council gave First Reading to the application subject to the added requirement that the Development Agreement include gating the egress road. On September 23, 2025, Council held the Public Hearing and Second Reading. The Staff Report to Council dated September 23, 2025 gave its final recommendation including the requirement for a gated egress road:

Based on previous Council direction, Staff recommends that Council forward a positive recommendation by passing the following motion:

... that Council give Second Reading to consider entering into a development agreement to allow a Wind Farm on PIDs 45399540, 45399573, 45381217, 45381209, 45399532, 45060068, and 45060076 which is substantively the same as the draft set out in Attachment A as this Council report File #25-18B dated September 23, 2025 and further amended to require that the egress road be gated.

... that Council require that the development agreement with Bear Lake Wind Ltd., Wagner Forest NS Ltd., and Atlantic Star Forestry Ltd., for PIDs 45399540, 45399573, 45381217, 45381209, 45399532, 45060068, and 45060076 be signed within 120 days from the date of final approval by Council or the date that any appeals have been disposed of; otherwise this approval will be void and obligations arising hereunder shall be at an end.

[Exhibit B-2, p. 237]

[14] The updated Staff Report included the alternatives that Council may “approve the Development Agreement as drafted or as specifically revised by direction of Council; refuse the Development Agreement as drafted, citing the criteria that Council considers not to be met; or provide an alternative direction such as requiring further information on a specific topic.” [Exhibit B-2, p. 240]

[15] After the September 23, 2025 Public Hearing concluded, Council voted five in favour and five against approving the Development Agreement for the Bear Lake wind farm. The motion was defeated. Council provided Bear Lake with its reasons for the refusal by letter on September 25, 2025 [Exhibit B-2, p. 395]. Bear Lake appealed to the Board on October 3, 2025 [Exhibit B-1].

2.2 The Board’s Jurisdiction and Scope of Review

[16] The burden of proof is on the Appellant to show, on the balance of probabilities, that Council’s decision to refuse the Development Agreement does not reasonably carry out the intent of the MPS.

[17] Under s. 247(2) of the *MGA*, the applicant or 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

- (a) an aggrieved person;
- (b) the applicant;

[18] Under s. 250(1)(b) of the *MGA*, an applicant may only appeal Council's refusal of a development agreement on the grounds that "the decision of council does not reasonably carry out the intent of the municipal planning strategy":

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;

[19] The powers of the Board are similarly limited in these appeals. In this case, the Board may confirm the decision appealed from, allow the appeal and order Council to approve the Development Agreement, or allow the appeal and approve the Development Agreement with the changes required by the Board. The Board can only allow the appeal where Council's decision did not reasonably carry out the intent of the MPS.

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.

[20] In municipal planning appeals, the Board follows statutory requirements and the guiding principles identified by the Nova Scotia Court of Appeal. The Court of Appeal summarized these principles in *Archibald v Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, and more recently relied on and confirmed in *Cornwallis Farms Limited v Nova Scotia (Attorney General)*, 2025 NSCA 9, at paras. 49-52:

[49] For the guiding principles under s. 251(2), the seminal authority is *Heritage Trust of Nova Scotia v. Nova Scotia (Utility and Review Board)*, [1994] N.S.J. No. 50, 1994 NSCA 11, Justice Hallett discussed the former Planning Act, R.S.N.S. 1989, c. 346:

[99] ... 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. [Emphasis added]

[50] Though the *MGA* has replaced the *Planning Act*, Justice Hallett's exposition survives with some elaboration by later authorities...

[51] In *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, para. 24, this Court summarized the principles that derive from these authorities:

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

(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 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. ...

(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, para 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. [Emphasis added]

(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 *Municipal Government Act* 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 by-law enacted after the MPS may offer little to the interpretation of the MPS.

[5] In *Heritage v. AMK Barrett*, paras. 24-26, this Court reiterated *Archibald's summary*.

[21] As noted in the quote above, Council must make choices about how to weigh conflicting policies in the MPS, and how to interpret terms whose meanings are not clearly ascertainable. In those cases, the Board must defer to Council barring an error of fact or principle.

[22] In *Armco Capital Inc. (Re)*, 2021 NSUARB 147, as recently quoted in *Marchand (Re)*, 2025 NSRAB 34, at paras. 61-62, the Board reviewed the guiding principles for a review when Council has not followed the recommendations of its planning staff:

[41] The Board recognizes that municipal councils are not bound by the recommendations of planning staff when considering planning applications and has repeatedly confirmed this in past decisions. The Board also recognizes the fact that a development is consistent with a municipal planning strategy does not automatically mean that a municipal council's refusal to approve the development is inconsistent with the strategy. As discussed above, the principles derived from Court of Appeal decisions confirm that there may be more than one conclusion that reasonably carries out the intent of a municipality's planning strategy.

[42] However, a municipal council should not arbitrarily dismiss the recommendations of its planning staff. When a municipal council disagrees with its professional planners, there should be good planning reasons to do so and these reasons must be rooted in the municipality's planning strategy (see *Re Bona Investments Limited*, 2009 NSUARB 58 at para. 75; *Re Griff Construction Limited*, 2011 NSUARB 51 at para. 146; *Re Rodgers*, 2013 NSUARB 131 at para. 109; *Re Abruzzi Properties Incorporated*, 2017 NSUARB 111 at para. 116; and *Re MacNeil*, 2021 NSUARB 78 at para. 59).

[*Armco (Re)*, paras. 41-42]

[23] In *MacNeil (Re)*, 2021 NSUARB 78, the Board emphasized that when Council does not accept the recommendation of their planning staff, there must be good planning reasons to do so that are rooted in the MPS:

[59] The Planner recommended approval of the Land Use By-Law amendment. There is nothing which requires Council to accept the recommendation of planning staff, but as

noted in other decisions of the Board (for example, *Re Bona Investments Limited*, 2009 NSUARB 58, and *Re Griff Construction Limited*, 2011 NSUARB 51), there must be good planning reasons to do so. The Board considers that such reasons must be rooted in the MPS. In this matter, the only expert evidence presented to the Board at the hearing was from the Appellants. CBRM did not call any witnesses, including any expert witnesses, challenging the evidence of its own planner, who was called as a witness by the Appellants in support of their position.

[60] The Board finds that there do not appear to be any good reasons for Council to have rejected the staff recommendation. CBRM did not identify any policy direction in the MPS for denying the proposed LUB amendment. The fact-finding mission discussed in *Archibald* did not uncover facts or opinion evidence, much less supporting reasons provided in the denial letter, or the rationales expressed during the deliberations which could be tied to the relevant MPS policy, as a basis for the denial.

[24] Both *Armco* and *MacNeil* were decided in the context of staff recommending approval of a land use by-law amendment, where Council rejected the amendment.

[25] The Board cannot simply substitute its own decision for that of Council. It must review Council's decision holistically to determine if it reasonably carries out the intent of the MPS. In reviewing the intent of the municipal planning documents, the Board applies the "modern principle" of statutory interpretation as succinctly summarized in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*):

[117] A court interpreting a statutory provision does so by applying the "modern principle" of statutory interpretation, that is, that the words of a statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously within the scheme of the Act, the object of the Act, and the intention of parliament": [...] Parliament and the provincial legislatures have also provided guidance by way of statutory rules that explicitly govern the interpretation of statutes and regulations.

[26] The Supreme Court of Canada went on to elaborate on the interpretative exercise in an administrative context:

[119] Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. As discussed above, formal reasons for a decision will not always be necessary and may, where required, take different forms. And even where the interpretive exercise conducted by the administrative decision maker is set out in written reasons, it may look quite different from that of a court. The specialized expertise and experience of administrative decision makers may sometimes lead them to rely, in interpreting a provision, on considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise.

[120] But whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory

interpretation apply equally when an administrative decision maker interprets a provision. Where, for example, the words used are “precise and unequivocal”, their ordinary meaning will usually play a more significant role in the interpretive exercise: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements.

[27] More recently, in *Halifax (Regional Municipality) v Hazelview Investments Inc.*, 2026 NSCA 27, at para. 17, the Nova Scotia Court of Appeal emphasized that the Board’s interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. The authorities direct the Board not to analyze a single policy in isolation but to consider the whole scheme of the legislation and policies that impact the decision.

[28] The Board also relies on the *Interpretation Act*, RSNS 1989, c 235, including ss. 9(1) and 9(5).

2.3 Council’s Reasons for the Refusal

[29] Section 230(6) of the *MGA* requires Council to provide written reasons to an applicant for the refusal of an application for a development agreement within seven days:

Adoption or amendment of development agreement

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.

[30] Council confirmed its refusal of the Development Agreement in a letter to the Appellant dated September 25, 2025, providing the following reasons:

- 1) Council determined that the proposed approach to fire protection was not adequate, as the fire prevention methods within the turbines relied solely on passive fire suppression systems. Council found the development to be contrary to Policy 16.3(a)(iii); and
- 2) Council’s consideration of Policy 16.3.1(e) with respect to the potential pattern of development the proposal might create in the area including, without limitation, the industrialization of the forest and discouraging residential development in the area.

[31] In *Archibald*, the Court of Appeal indicated that focussing on Council's written reasons, at least in the first instance, provides a framework for the Board's review in its appellate role. Therefore, this decision focuses principally on the reasons in the refusal letter and the interpretation of the MPS policies relied on in those reasons.

3.0 ISSUE

[32] The issue the Board must decide is whether Council's decision refusing the Development Agreement reasonably carries out the intent of the MPS. This decision reviews Council's reasons for the decision and the relevant MPS policies, including the adequacy of emergency measures, specifically fire suppression, and the pattern of development in the area. The burden of proof is on the Appellant to show, on the balance of probabilities, that Council's decision did not reasonably carry out the intent of the MPS.

4.0 WITNESSES AND EVIDENCE

[33] The Board can consider new evidence introduced by the parties during the appeal that was not before Council when it made its decision on the Development Agreement application. The factual context is important for the Board to carry out its review, as noted by the Nova Scotia Court of Appeal in *Midtown Tavern & Grill Ltd. v Nova Scotia (Utility and Review Board)*, 2006 NSCA 115:

[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.

[34] Under s. 27 of the *Energy and Regulatory Boards Act*, SNS 2024, c 2, the Board operates under relaxed rules of evidence (as did the former Nova Scotia Utility and Review Board under the *Utility and Review Board Act*, SNS 1992, c 11). All witnesses, to some degree, relied on hearsay. There were generally no objections to the admissibility of these statements, and the Board weighed the evidentiary value in the normal course.

4.1 Witnesses

[35] The Appellant called three witnesses: Brendan Chard, Chrystal Fuller and Nick Petrakis.

[36] Brendan Chard is the Vice President of Power with Everwind Ltd. He has a number of designations: Chartered Financial Analyst, Chartered Business Valuator, Chartered Alternative Investment Analyst, and Energy Risk Professional, among others. He testified that he is responsible for the power supply arrangements for the green hydrogen facility and supports the development work for the renewable energy assets.

[37] Chrystal Fuller, LLP, MCIP, a Licensed Professional Planner in Nova Scotia, is the owner and Principal Planner of Brighter Community Planning and Consulting. She was qualified, without objection, as an expert witness to give opinion evidence on land use planning matters, including the interpretation and application of municipal planning strategies and land use by-laws, and the consistency of council decisions with municipal planning strategies.

[38] Nick Petrakis is a Professional Engineer with Energy Safety Response Group. With consent from the Municipality, he was qualified as an expert witness to give opinion evidence on fire protection and the design and implementation of fire protection systems, including the adequacy of fire protection systems and fire protection design for wind turbines and farms.

[39] The Municipality called no witnesses.

[40] Linda Skinner testified on her own behalf, offering her perspective as a property owner in the neighbouring Chalet Hamlet, a residential community in West Hants of about 75 full-time residents and additional seasonal properties, about 1.5 km from the proposed substation at the wind farm site. Ms. Skinner stated that the Development Agreement would guarantee a second egress road allowing another vehicular exit from Chalet Hamlet in an emergency. There is only one road for entry and exit for the 204 lots in the community. She confirmed in her evidence that she is “in favour of the benefits that will come” with the proposed wind farm, with the most important benefit in her view being one of health and safety for her community. She acknowledged that there is a wide spectrum of views about the development. She filed a copy of her supporting presentation that was admitted at the hearing by consent [Exhibit B-6].

4.2 Supplementary Information

4.2.1 Letters of Comment

[41] Christopher Cann, Sharleen Smith and Mike Toney, representing themselves as “4 Consulting Chiefs and Mayors” provided documentation about wind farm developments. This documentation included: a video presentation to the Town of Wolfville Committee of the Whole from April 2024; documentation on surety bonding for third-party liability; transcript of “Wind Turbine Blues” by recording artist Chet Brown; and “2016 original project” proposal for Municipality of the County of Kings’ MPS Policy on Large Scale Wind Turbines.

[42] The Board received letters of comment from Steve Hart, Lower Vaughan; Seamus Marriott, Upper Vaughan; and Mark Kehoe, Upper Vaughan, who supported

Council's decision and highlighted that any wind farm development is discretionary. The writers' concerns primarily related to:

- a. character of the community and surrounding wind farm developments;
- b. the public engagement process; and
- c. dangers of recent wildfires.

[43] Doug Brake, a property owner from Vaughan, supported the development as a source of clean energy and the "collateral benefit of upgrades to access roads (in particular Armstrong Lake West Road)". Brenda Kenty and Dave Paddock, residents of Chalet Hamlet, supported the wind farm development because of the access road and the economic benefits of the project, respectively.

4.2.2 Public Speakers

[44] Nancy Durnford resides east of the proposed development, on the same road as Chalet Hamlet, but farther back into the forest. She noted that the development site is surrounded by growing residential developments. Her concerns are related to the height of the turbines, the potential loss of wetlands and animal habitat, and potential release of uranium or other pollutants to the lake because of construction blasting. The Board noted that Ms. Durnford has participated at each stage of the public engagement process. She has a different perspective than the Chalet Hamlet residents who support the community benefits negotiated with Bear Lake. Her principal message to Council and the Board was "This is just not the place for this development."

[45] Jason Hart said the crux of the matter is the question: does West Hants have the lawful ability to deny the project based on the pattern of development and lack of fire suppression? He said there was "no clearer example of a pattern" than approving three wind farms in their general area. He reminded the Board that West Hants was

intended to be “cottage country.” Mr. Hart pointed out that the public asked for active fire suppression and the PAC/HAC asked that the Development Agreement include it. He said while it was Bear Lake’s right to refuse to include that feature in their turbines, it was also Council’s right to reject the Agreement without it.

4.2.3 Site Visit

[46] The Board panel conducted a site visit on May 1, 2026. The parties did not participate in the site visit, by agreement. After the public session, counsel for Bear Lake informed the Board that Chalet Hamlet was accessible, but the logging roads to the site were not passable by car in the winter months. The Board panel returned to the Municipality later in the spring to view the area and travel the perimeter of the site, to the extent possible.

[47] The Board panel drove on Highway 101 to Windsor, then followed Nova Scotia Trunk 14 (Chester Road) south. The Board observed wind turbines from the Benjamins Mill development, and on Martock Ridge, as described at the hearing. The panel drove the Armstrong Lake East Road to the intersection of Forest Heights Road, then followed Forest Heights Road to Chalet Drive. After driving the length of Chalet Drive, the panel then drove as far as the last visible driveway and developed lot on Armstrong Lake West Road, where the road narrowed. The panel returned to Armstrong Lake East Road by following Armstrong Lake West Road. After turning south onto Trunk 14, the Board observed that boundary, returning to Halifax via Chester and Highway 103. The panel observed the areas described in the testimony and documentary evidence.

5.0 ANALYSIS AND FINDINGS

[48] Municipal planning staff recommended that Council approve entering the Development Agreement with Bear Lake, property owner Atlantic Star Forestry Ltd. and sublessor Wagner Forests NS Ltd. As the Municipality argued, planning staff's conclusion that a development is consistent with a municipal planning strategy is not the final word, because Municipal councils are not bound by staff recommendations.

[49] The *MGA* delegates Council as the primary planning authority. Further, there may be more than one outcome that reasonably carries out the intent of the MPS. Checking off or fulfilling the relevant MPS policy criteria does not mean a development agreement is inevitably consistent with its overall intent. However, as noted in *Armco Capital (Re)*, 2021 NSUARB 147, Council's disagreement must be grounded in good planning reasons that are rooted in the MPS:

[42] However, a municipal council should not arbitrarily dismiss the recommendations of its planning staff. When a municipal council disagrees with its professional planners, there should be good planning reasons to do so and these reasons must be rooted in the municipality's planning strategy (see *Re Bona Investments Limited*, 2009 NSUARB 58 at para. 75, *Re Griff Construction Limited*, 2011 NSUARB 51 at para. 146; *Re Rodgers*, 2013 NSUARB 131 at para. 109; *Re Abruzzi Properties Incorporated*, 2017 NSUARB 111 at para. 116; and *Re MacNeil*, 2021 NSUARB at para. 59).

[50] In this case, Council's letter sets out its reasons for refusing the Development Agreement and is the principle focus of the Board's analysis in these sections. The Board is not confined to those reasons because the MPS must be considered holistically. However, as discussed earlier, the Court of Appeal's judgment in *Archibald* emphasizes the importance of Council's written reasons in providing a framework for the Board's exercise of its appellate authority. The Board undertook its role to consider the evidence, engage in the "fact finding mission" discussed in *Archibald*, and apply the guiding principles in the current context.

5.1 Relevant MPS Policies

[51] The MPS provides the framework to guide growth and development in West Hants. Policy 1.2 explains that it sets out Council's intentions for future development and provides criteria for Council and planning staff to consider in evaluating development proposals. The MPS "may be amended to accommodate changing conditions and must be reviewed from time to time to ensure the policies meet the changing needs of the Municipality." [Exhibit B-3, p. 9] The MPS and the Municipality of the District of West Hants Land Use By-law were approved concurrently on May 13, 2008, effective June 26, 2008. The history of MPS amendments is set out at pp. 2-3 of the document. One of the most recent amendments dealt with wind turbines. This amendment, effective January 24, 2025, amended Policy 4.24.4 and removed Policy 4.24.3, which had dealt with visual impacts of wind turbines.

[52] The MPS creates two resource designations, Agriculture and Resource. This project is proposed in the Resource designation, which comprises land outside of Growth Centres, Villages and Hamlets that is not designated Agriculture. It is essentially a "default" designation. Section 3.6 sets out Council's vision for the Resource designation, specifically setting out the intent of the MPS to "minimize potential conflicts and to treat resource activities as paramount in these areas." [Exhibit B-3, p. 16] The section says that the designation encompasses land "used for forestry and mining, as well as some areas of combined resource use and municipal water supply areas." Limited non-resource development "will also be permitted."

[53] Policy 9.0 applies to the Resource designation, and its sub-policies enable the zones within that designation. The policies state:

- Policy 9.0.1** *It shall be the policy of Council to establish a Resource designation which applies to land outside the Growth Centres, Village and Hamlets which is not designated Agriculture.*
- Policy 9.0.2** *It shall be the policy of Council to limit the development of resource land for non resource use to protect the forestry, mineral, water supply, wildlife habitat and recreational resources of West Hants.*
- Policy 9.0.3** *It shall be the policy of Council to consider existing and new resource uses as the primary focus of the resource zones. Residents must recognize the priority of resource uses in these zones.*

[Exhibit B-3, p. 81]

[54] Policy 9.1 establishes the General Resource zone, stating that the “zone is intended to apply to rural areas which are not subject to intense development pressures.” And “the [General Resource] Zone is a general, rural resource zone where resource activities are considered paramount, but where a range of residential and small-scale commercial and industrial uses that provide a service to residents of the surrounding countryside will be permitted.”

[55] Policy 4.24 distinguishes between small wind turbines (for residential or small business use), and large or utility-scale wind turbines with a production capacity greater than 100kW. This policy permits Council’s consideration of large or utility scale wind farms in the Municipality, outside of Growth Centres, Villages and Hamlets. It is an enabling policy which, as the Municipality points out in its submissions, does not mandate that Council must approve such developments:

4.24 Wind Turbines

Wind energy systems are a clean, renewable source of electric power...

Utility-scale wind turbines have a rated production capacity greater than 100kW. Much larger than those used for residential energy generation, utility-scale turbines may have towers ranging from 165 to 430 ft (50-130 meters) in height, for a total turbine height of up to 709 ft (216 meters). These large wind turbines may be used in wind farms, where a number of turbines feed electricity directly into the utility grid, or as stand-alone

installations. Permanent installations, including the establishment of wind farms, will only be considered by development agreement.

...

Policy 4.24.4 *It shall be the policy of Council to consider the development of permanent or long-term installations of large wind turbines or wind farms outside the Growth Centre, Village and Hamlet designations by development agreement, having regard to the following:*

- (a) *any required provincial and/or federal government environmental assessment processes have been completed;*
- (b) *adequate separation distances are maintained from adjacent land uses to minimize impacts of noise and shadow and to ensure public safety, but installations shall not be required to have separation distances from a dwelling that exceed the greater of:*
 - (i) *four times the wind turbine height; and*
 - (ii) *the distance required to ensure*
 - a. *that sound levels from the wind turbine do not exceed 40 dBA at the exterior of a residential dwelling, and*
 - b. *a residential dwelling receives less than 30 minutes per day or 30 hours per year of shadow flicker;*
- (c) *safe roadway access can be provided;*
- (d) *any other matter which may be addressed in a development agreement; and*
- (e) *Policy 16.3.1.*

[Exhibit B-3, p. 29]

[56] Policy 4.24.4 incorporates Policy 16.3.1 by reference. This policy requires Council to evaluate certain criteria when considering whether to approve or reject a development agreement application. Council's refusal relies on the following two criteria set out in this policy:

Policy 16.3.1 *In considering development agreements and amendments to the West Hants Land Use By law, in addition to the criteria set out in various policies of this Strategy, Council shall consider:*

- (a) *whether the proposal is considered premature or inappropriate in terms of:*
 - ...
 - (iii) *the adequacy of fire protection and other emergency services;*
 - ...
- (e) *the pattern of development which the proposal might create;*

[Exhibit B-3, p. 113]

[57] The remaining criteria under Policy 4.24.4 were not contested. The available evidence, including the planning Staff Reports, Ms. Fuller's Expert Report and her testimony, satisfies the Board that these uncontested criteria under Policies 4.24.4 and 16.3.1 were met by the application. In particular:

- The project received the required Environmental Assessment approval (with conditions) on December 13, 2023, and confirmation the project changes from the initial application did not require an additional Environmental Assessment (with conditions).
- The conditions of the Environmental Assessment approval require the applicant to meet the operational noise level and shadow flicker limits, and the terms of the Development Agreement require the project to meet the MPS requirements for minimum separation distances. The turbine model has a total height of 211 m. The minimum separation distances required (at four times the total height) would be 844 m from a dwelling. The site plan maintains minimum separation distances ranging from 1043-4137 m between all proposed and alternative turbine sites and existing dwellings.
- The Nova Scotia Department of Public Works (DPW) indicated it had no concerns about the location of the wind turbines and had determined the southern and northern access locations were acceptable. It identified issues with the adequacy of the Provincial road network for transportation of the turbine components and access to the site. These issues are subject to permitting and approvals from DPW.
- The Staff Report addressed all of the criteria set out in Policy 16.3.1 with notes on the opinion of staff and/or the responsible authority. These satisfy the Board that they either raise no concerns or that the criteria are met in principle, subject to further approvals by another responsible authority prior to development. Ms. Fuller's report confirms her agreement with those findings and provides her conclusion that the proposal is consistent with Policy 16.3.1 including the direction on pattern of development.

5.2 Issue One: Active vs. Passive Fire Suppression System

[58] Council's first reason for refusing Bear Lake's application for a development agreement was because, contrary to MPS Policy 16.3(a)(iii), the "proposed approach to fire safety was not adequate" in that "the fire prevention methods within the turbines relied solely on passive fire suppression systems." [Exhibit B-2, p. 396]

[59] Under Policy 16.3(a)(iii) of the MPS, in considering development agreements, Council must consider “whether the proposal is considered premature or inappropriate in terms” of the “adequacy of fire protection and other emergency services.” Bear Lake asserts that the fire protection services are adequate.

[60] As part of its application, the Appellant included the Province’s Environmental Assessment (EA) Approval dated December 13, 2023, with the terms and conditions for this approval. The EA’s terms and conditions include a requirement that the Appellant provide a contingency plan, including fire mitigation measures, to meet the Nova Scotia Department of Environment and Climate Change Contingency Planning Guidelines (Contingency Plan) [Exhibit B-2, p. 18].

[61] In August 2024, in response to a request from planning staff, the Appellant provided additional information about the fire protection systems that would be used at the project’s site. This additional information included details about the passive fire prevention system to be used, including the lightning protection, temperature sensors with alarms if overheating is detected, the 24/7 monitoring of the alarms, mitigation measures to prevent and contain the spread of fires, road infrastructure that improves emergency service access, compliance with international safety and fire protection standards that are continuously monitored using sensors, and remote monitoring systems to detect early signs of malfunction [Exhibit B-2, p. 278].

[62] Section 2.7 of the draft Development Agreement states, in part, requirements for the project’s fire protection. The Appellant must comply with all applicable federal and provincial, statutes or regulations (s. 2.7(b)). The Appellant must consult with the Chief of the Fire Department having jurisdiction on the design and

construction of the facility to ensure adequate access for fire vehicles (s. 2.7(c)). The Appellant must provide the equipment, training or onsite infrastructure which the Fire Chief reasonably determines is necessary for an adequate emergency response (s. 2.7(d)). The Appellant must share the Emergency Response Plan with the Fire Chief and the Municipal Emergency Management Coordinator (s. 2.7(d)). Finally, the Appellant must consult with the Fire Chief on the installation and operation of a passive fire detection and suppression system in the nacelle of each turbine (s. 2.7(e)).

[63] Section 2.7 of the draft Development Agreement states:

2.7 Hazardous Materials and Fire Protection

- (a) Any hazardous materials on site shall be stored, handled, and labeled in accordance with the Environmental Assessment Approval Regulations and the Workplace Hazardous Materials Information System (WHMIS) Regulations.
- (b) Nothing in this Agreement shall exempt or be taken to exempt the Developer or any other person from complying with the requirements of any other applicable statute or regulation of the Federal and Provincial governments, and the Developer agrees to observe and comply with all such laws and regulations in connection with the Development and use of the Property.
- (c) The Developer shall consult with the Chief of the Fire Department having jurisdiction on the design and construction of the Facility to ensure adequate access for fire vehicles.
- (d) The Developer shall provide necessary equipment, training or onsite infrastructure required for adequate emergency response, as reasonably determined by the Chief of the Fire Department having jurisdiction. The emergency response plan required by the Provincial EA shall be shared with the Chief of the Fire Department having jurisdiction and the Municipal Emergency Management Coordinator.
- (e) The Developer shall consult with the Chief of the Fire Department having jurisdiction on the installation and operation of a passive fire detection and suppression system in the nacelle of each turbine.

[Exhibit B-2, p. 249]

[64] As part of planning staff's review of the Appellant's application, the appeal record shows that on May 7, 2025, Kari Fougere, Acting Director of Planning and Development, contacted Jamie Harvey, Fire Chief of the District 4, Windsor Fire

Department, and District 5, Southwest Hants Fire Department, about the revised application to determine if he had any concerns about the project's turbine locations, emergency access or passive fire suppression system.

[65] On May 21, 2025, the Fire Chief stated that he had reviewed the new draft Development Agreement. He said that there is an adequate water supply in the area and that, unless there is risk to life, the Fire Department's response to a turbine fire would be to observe and protect possible exposures. He stated that he had no concerns about the access and evacuation routes and noted that they were improved from the prior submission. Finally, the Fire Chief stated that while a non-passive fire suppression system would be "ideal", the passive fire prevention system meets industry standard and there is no requirement in Nova Scotia for a non-passive system. He said that the response to a fire in the turbine would not change if there was a non-passive fire suppression system:

...

3. Do you believe there should be fire suppression systems required in the nacelle of each turbine to help protect the surrounding area from a potential forest fire, if a turbine were to ignite? (Changed from previous DA)

- **A fire suppression system would be ideal however, the passive fire prevention system does meet industry standard. Several online publishing's note that suppression systems are only a recommendation. Windsystemmag.com has an article published Turbines and fire risk (*michele-admin -July 15, 2021*) which states "...while NFPA 850, the code for fire safety in power generation, does provide a standard for wind-turbine fire safety, fire detection and suppression systems are only recommended and not required."** The same article also notes that Ontario has mandated fire suppression installation in new energy products and requires existing sites to be retrofitted. The CSA Guide to Canadian wind turbine codes and standards (csagroup.org) does not reference a fire suppression system at all. I have not found anything showing Nova Scotia requires a fire suppression system in wind turbines but that doesn't mean there won't be anything in the coming future. As this development spans into two other counties, if Halifax and Lunenburg counties require a fire suppression system in each nacelle it would only make sense to install it in all of the nacelles in the project. Having a fire suppression system would not change how we approach a fire in a turbine. [Emphasis in original]

[Exhibit B-2, p. 389]

[66] The planning Staff Report, dated July 10, 2025, prepared for the PAC/HAC, recommended that the committee recommend that Council give First Reading and hold a public hearing to consider entering into the Development Agreement with the Appellant. The planning Staff Report advised that it found that the application satisfied the criterion for the adequacy of fire protection and other emergency services. Relying on s. 2.7 of the draft Development Agreement and the Fire Chief's comments, the report provided the following analysis about the adequacy of the fire protection and other emergency services:

Policy 16.3.1 In considering development agreements and amendments to the West Hants Land Use By-law, in addition to the criteria set out in various policies of this Strategy, Council shall consider:

CRITERIA	COMMENT
(a) whether the proposal is considered premature or inappropriate in terms of:	
...	
(iii) the adequacy of fire protection and other emergency services;	<p>The Manager of Building and Fire Inspection Services noted that they had no comments in relation to this application as the Building Officials do not issue any building permits for wind turbines. Building permits would only be required for any building associated with the operation of the wind facility. In response to an inquiry the local Fire Chief commented that:</p> <p><i>“There is adequate water supply in the vicinity of the proposed area. Any response to a turbine on fire would be strictly to observe and protect possible exposures. Either the fire will burn itself out or the structure will become compromised and collapse. In the event of a collapse then we would be able to enter the area and extinguish any remaining fire. The department will not enter the collapse zone of a turbine with an active fire, unless there are lives at risk. The new DA has a different layout than the previous DA. This current proposed layout allows for easier access and evacuation routes if needed. In my opinion this is an improvement from the previous submission and I have no issues or concerns. A fire suppression system would be ideal however, the passive fire prevention system does meet</i></p>

	<p><i>industry standard. Several online publishing's note that suppression systems are only a recommendation. Windsystemmag.com has an article published Turbines and fire risk (michele-admin -July 15, 2021) which states "...while NFPA 850, the code for fire safety in power generation, does provide a standard for wind-turbine fire safety, fire detection and suppression systems are only recommended and not required." The same article also notes that Ontario has mandated fire suppression installation in new energy products and requires existing sites to be retrofitted. The CSA Guide to Canadian wind turbine codes and standards (csagroup.org) does not reference a fire suppression system at all. I have not found anything showing Nova Scotia requires a fire suppression system in wind turbines but that doesn't mean there won't be anything in the coming future. As this development spans into two other counties, if Halifax and Lunenburg counties require a fire suppression system in each nacelle it would only make sense to install it in all of the nacelles in the project. Having a fire suppression system would not change how we approach a fire in a turbine."</i></p> <p>Section 2.7 of the draft development agreement requires the applicant to consult with the local Fire Chief on the design and construction of the Facility to ensure adequate access for fire vehicles, consult with the Fire Chief on the installation and operation of a passive fire detection and suppression system in the nacelle of each turbine, and provide a copy of an emergency response plan to the local Fire Chief and the Municipal Emergency Management Coordinator.</p>
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[Exhibit B-2, pp. 292-294]

[67] The PAC/HAC recommended in favour of the Development Agreement, but also passed a motion for Council to take additional factors into account, including fire suppression, when making its decision:

... as it relates to the Bear Lake Development Agreement file, PAC/HAC recommends that Council also give consideration to the gated emergency access, questions on fire suppression, the vibrancy fund including a community park, and assurances related to well water that potentially could be impacted due to blasting.

[Exhibit B-2, p. 239]

[68] The planning Staff Report to Council dated July 22, 2025, attached the July 10, 2025 Staff Report, and discussed concerns about the fire suppression system that were raised at the public information meeting. Staff noted that, while the Fire Chief continued to express that a non-passive fire suppression system would be ideal, it is not an industry standard or a requirement to be included in the turbines:

As for the questions around fire suppression systems. Concerns were raised through the PIM and through discussions regarding previous files relating to this proposed development. The local Fire Chief has continued to express while a non-passive system would be ideal, it would not change how they would approach a fire in a turbine and that is it not industry standard nor a requirement to include them within the turbines. Further, Section 2.7 of the draft development agreement requires the applicant to consult with the local Fire Chief on the design and construction of the facility to ensure adequate access for fire vehicles, consult with the Fire Chief on the installation and operation of a fire detection and suppression system in the nacelle of each turbine, and provide a copy of an emergency response plan to the local Fire Chief and the Municipal Emergency Management Coordinator.

[Exhibit B-2, pp. 141-142]

[69] Mr. Petrakis, as noted above, was qualified as an expert witness to give an opinion on fire protection and the design and implementation of fire protection systems, including the adequacy of fire protection systems and fire protection design for wind turbines and wind farms. In his Expert Report, he completed a Fire Protection Basis of Design for the proposed project to evaluate the adequacy of the proposed fire protection systems and mitigations to be employed in the wind turbines. He testified that, in his opinion, the passive fire protections in the turbines, together with the conditions the Development Agreement requires the Appellant to implement, were adequate. He stated, based on his literature review, that the installation of active suppression systems in commercial wind turbines was rare. He explained that active extinguishment systems installed in the turbine nacelle have a limited reservoir and utilize a one-shot release of aerosol agents. He testified that if the one-shot fails and the temperature remains above "autoignition", then the active extinguishment system would provide no discernable

benefit from a passive system. He also stated he considered the system proposed for the project to be “active” in nature, because it incorporates 24/7 monitoring and automatic shut-down capabilities [Transcript, Petrakis, p. 215 and p. 201].

[70] Mr. Petrakis testified that the Fire Chief’s approach to a turbine fire was consistent with standard operating procedures. He stated that if his company was developing an emergency response plan it would recommend the same approach as that of the Fire Chief.

[71] Ms. Fuller, as noted above, is a Licensed Professional Planner in Nova Scotia and was qualified as an expert witness to give opinion evidence on land use planning matters including the interpretation and application of municipal planning strategies and land use by-laws and the consistency and inconsistency of council decisions with municipal planning strategies. She testified that, in her opinion, Council did not have a sound planning basis to refuse the Appellant’s application because the fire protection was inadequate. In her report, Ms. Fuller stated her opinion that the fire and wildfire risk in a forested environment must be managed and that this risk has been reduced and managed by the Environmental Approval’s conditions, the Fire Chief’s input and the requirements in the draft Development Agreement:

In my opinion, the EA and comments from the Fire Chief provide an analysis of the fire risk and required mitigations to address the risk which satisfy the MPS’s intent. The Development Agreement includes specific language in section 2.7 to require additional actions beyond the EA conditions. I therefore conclude that Council’s reliance on fire protection concerns does provide a sound planning basis for refusal under policy 16.3.1.

[Exhibit B-5, Tab 4, p. 17]

[72] The Appellant submits that Council’s refusal to approve the proposed project on the basis that the fire protection system was inadequate and arbitrary as there was no evidence before Council to support this determination. The Appellant says that

planning staff recommended approval of the proposed project. Further, the Fire Chief stated that he had no concerns that the passive fire suppression system, and the mitigations provided in the EA and the draft Development Agreement would provide adequate fire protection. The Appellant says that the Municipality did not call any evidence about fire protection and the only evidence before the Board demonstrates that the fire protections proposed for the project are adequate and satisfy Policy 16.3.1(a)(iii).

[73] The Municipality submits that the MPS requires Council to consider the adequacy of fire protection and emergency services when evaluating a development agreement application. It says that this is an evaluative judgment call and that Council is entitled to determine that a project relying solely on passive fire suppression systems, which “contemplates a response strategy of largely observing and protecting exposures until a turbine fire burns itself out,” does not constitute adequate fire protection for the purpose of Policy 16.3.1(a)(iii). The Municipality says that the Petrakis Report addresses technical aspects of fire risk mitigation and industry practices. The Municipality says that whether a passive system meets a minimum industry standard was not the question before Council. It states that Council had to determine if, having regard to the planning criteria in the MPS, the level of risk associated with the project was appropriate in the context of the surrounding forested landscape and nearby development. The Municipality asserts that this determination was a planning judgment. Further, the Municipality says the evidence of Mr. Petrakis demonstrates that there can be more than one conclusion drawn from the evidence and as such the Board must defer to Council’s chosen outcome.

[74] Ms. Skinner did not make any submissions on this issue.

[75] The Municipality did not obtain a report or call an expert to contradict the Fire Chief's determination that fire protection services for the proposed project were adequate. The Fire Chief stated that the fire protection services were adequate, in part, because the passive fire suppression in the nacelle of the turbines is the industry standard, because of the mitigation factors in the EA's terms and the conditions in the draft Development Agreement. The Fire Chief stated that there was no requirement in Nova Scotia that there must be a non-passive fire suppression system. The Fire Chief stated that whether the fire suppression system was passive or non-passive, the approach to a fire in the turbine would be the same. That is, unless there was a risk to life, fire services would observe the fire and protect against possible excursions. Mr. Petrakis stated his opinion that he agreed with the Fire Chief's assessment and approach to fire protection. Mr. Petrakis also stated his opinion that a non-passive fire suppression system provided little added benefit to a passive system. The Board accepts the opinions of the Fire Chief and Mr. Petrakis on the issue of the adequacy of fire suppression measures. As detailed above, their analysis was thorough and well-reasoned.

[76] The Board owes deference to Council's value judgments involving "... conflicting intentions in the MPS and to the Council's choices on question begging terms such as "appropriate" development or "undue" impact." These value judgments must still be supported by the evidence accepted by the Board. Council's reasoning is not supported by the evidence. The MPS requires Council to consider whether the fire protection measures are adequate, and the evidence is clear that the measures required by the Development Agreement are adequate. It was open to Council to draft planning documents that imposed design standards for wind turbines, but it cannot refuse a

development based on a standard unsupported by the evidence or a reasonable interpretation of the intent of the MPS. The Board finds Council's decision, as it relates to concerns about adequacy of fire protection, does not reasonably carry out the intent of the MPS in this respect.

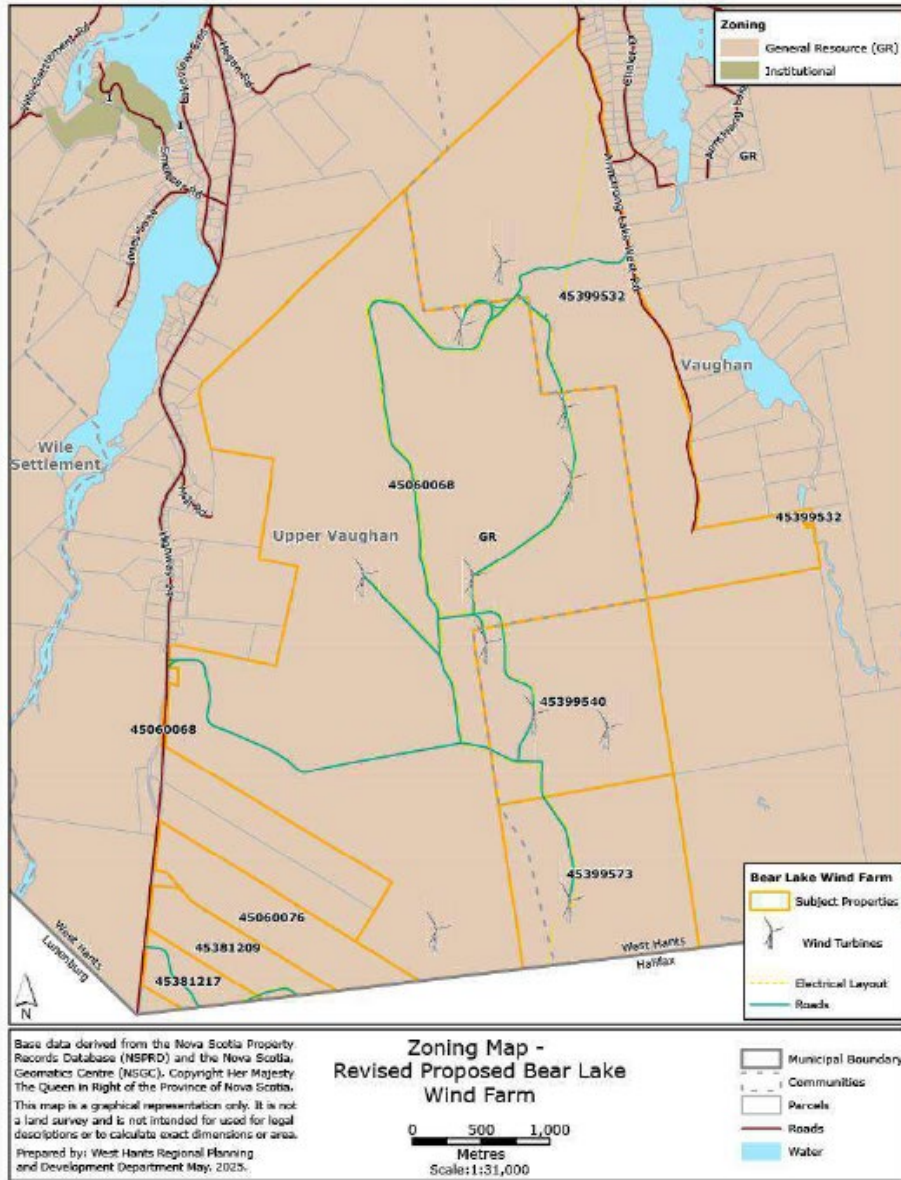
5.3 Issue Two: Pattern of Development and Industrialization of the Forest

[77] Policy 16.3.1(a)(e) directs Council to consider "the pattern of development which the proposal might create." Council pointed to this policy and its reasoning about the potential pattern of development included but was "not limited to" the "industrialization of the forest" and "discouraging residential development."

[78] The location of the proposed wind farm is within the Resource designation, in the General Resource zone, outside of the Growth Centre, Village or Hamlet designations. The combined development lands straddle the borders of West Hants with the Municipality of the District of Chester and the Halifax Regional Municipality. The project's western border aligns in part with Trunk 14. To the east it borders the southern end of Armstrong Lake West Road. The wind turbines, as indicated on the site map, are located in the interior of the site. They would be accessed by improving existing and new roads, at the southern end, from Trunk 14 and from Armstrong Lake West Road at the northern end.

[Remainder of page intentionally left blank]

Figure 3
Zoning Map Extract



[Exhibit B-2, p. 286]

[79] The Staff Report indicated the following notes about the pattern of development the proposal might create:

This is the third wind farm being proposed in the vicinity of the southern portion of [the Municipality]. The South Canoe Wind Farm has been operational in Lunenburg County since 2013, and the Benjamins Mill Wind Farm was recently approved through the development agreement process in 2023. The pattern of development for the Resource designation consists of private road residential developments, residential development along Highway 14, small scale commercial uses, resource uses (i.e., forestry activities) as

well as the existing wind farms. The proposed development is consistent with the intent of the Resource designation.

[Exhibit B-2, pp. 295-296]

[80] Ms. Fuller's Expert Report explains how she determined the pattern of development for the area and articulating a definition of what the phrase means in the planning context:

8.5.1 Understanding Pattern of Development in the Planning Context

In Canadian planning practice, pattern of development refers to the spatial and functional arrangement of land uses, buildings and infrastructure that defines how a community occupies and organises its landscape. It reflects the scale, form, density and interrelationship of uses over time, including how earlier development has shaped the landscape and how planning policy intends it to evolve. Evaluating a change in the pattern of development involves assessing whether new development maintains, extends or fundamentally alters this established pattern and the relationships that support it.

[Exhibit B-5, pp. 38-39]

At the hearing, she clarified that her review reflects not only land uses but also built form and scale of buildings or infrastructure:

A. Right. So, use, built form, all of those sorts of things, the ... So, it's - it's sort of implicit in it. If there's a built form on there, that would be part of the consideration. It's about how it all works together. So, the use, any buildings that may contain the use, articulate the use, are part of the thinking.

And it ... And I think the key phrase in there is on the p. 10 of my opinion, and the end of the first paragraph where it says, "Evaluating pattern means examining fit, consistency with the intended future use, and whether proposal will introduce a level of change that disrupts or reshapes the area." Certainly, a building - certainly a building would be a part of that consideration.

[Transcript, Fuller, p. 116]

[81] Referring to a map prepared by Strum Engineering identifying existing land use while preparing the Environmental Assessment for the project, Ms. Fuller determined that:

... The existing pattern is characterized by large blocks of forest, lakes and wetlands, and clusters of cottages and rural dwellings around Armstrong Lake and along local access roads. The turbines are situated in the interior forest lands, away from the lakeshore and residential clusters, and are separated from non-participating dwellings by substantial distance. The development does not introduce a new serviced village, subdivision or industrial park into the forest, it overlays energy infrastructure within the existing resource landscape.

...

[The Strum] mapping confirms that the Bear Lake site is located in a regional corridor where renewable energy production and forestry already co-exist. It provides clear visual evidence that energy infrastructure is already part of the development pattern in this part of West Hants and neighbouring municipalities.

[Exhibit B-5, Tab 5, pp. 10-11]

The methodology and findings of Strum Engineering were not subject to cross-examination at this hearing, but the fundamental information on existing land uses were not controversial and were generally confirmed by lay witness testimony and the Staff Report.

[82] The Board also notes in Mr. Chard's testimony that Bear Lake has received the development permit for three turbines to be located in Halifax Regional Municipality and approval for the Development Agreement for one in the Municipality of the District of Chester.

[83] The MPS intends the Resource designation to be used for forestry, agriculture (in the Agriculture designation) and other resource-based uses. Ms. Fuller categorizes the project as a resource-type, wind energy use that the MPS enables on resource lands. Her summary of opinion indicates that:

- The existing and intended pattern of development in the project area and surrounding region is resource-dominated, with residential and cottage development concentrated around lakes and existing roads...

...

- The regional land-use mapping confirms that energy production is already part of the development pattern in the area. Wind and hydroelectric facilities operate within about ten kilometres of the site, coexisting with forestry and rural settlement. The Bear Lake project follows an existing pattern rather than creating a new one.

[Exhibit B-5, Tab 5, p. 4]

[84] Addressing Council's observation that the development may create a pattern of development, including what it characterized as "industrialization of the forest", Ms. Fuller noted that the MPS does not treat wind turbines as industrial uses [Exhibit B-

5, Tab 5, p. 12]. Policy 9.1.6 requires rezoning to the Resource Industrial zone to accommodate any industrial uses in the General Resource zone. However, utility-scale wind energy projects are regulated through a separate policy and development agreement process within the Resource designation under Policy 4.24. Ms. Fuller opined that if Council had intended utility-scale wind farms to be treated as industrial uses, it could have regulated them that way in the planning documents. Instead, the MPS's intent is to treat wind farms more liberally, authorizing them by development agreement everywhere in the Municipality, except the Growth Centres, Village and Hamlet designations. Section 9.0 of the MPS indicates Council's intention that "rural areas of West Hants outside the Growth Centres, Village and Hamlets, which are not designated Agriculture, will be designated Resource ..." and "the primary focus of the resource zones will be resource uses." The MPS directs wind turbines to those zones without the requirements needed for industrial uses.

[85] Council's decision expressed its concern that the development would create a pattern that discourages residential development. Some residents of Chalet Hamlet, including Ms. Skinner, support the wind farm for the collateral benefits its approval would provide to their community. Other participating residents objected to additional wind turbines in their area because of the potential visual or noise impacts, environmental and ecological concerns. These considerations are important to the residents. However, the MPS establishes standards to address height, noise, shadow flicker and environmental impacts. The evidence in this case demonstrates that Bear Lake's Development Agreement meets the criteria and standards set by Council (or mandated by the Province, as the case may be) on those issues. Neither Council, nor the Board, can use ad hoc

reasons to override the framework established to guide these decisions in the MPS. The Board finds no support in the MPS for a claim that residential development in the General Resource zone should be encouraged.

[86] Policy 9.02 sets out a clear policy of Council to “limit the development of resource land for non-resource use.” Policy 9.03 states it is Council’s policy to “consider existing and new resource uses as the primary focus of the resource zones. Residents must recognize the priority of resource uses in those areas.” While less instructive than the enabling policies, the goals for the Resource designations identified in Policy 3.6, include a statement that “the intent of the strategy is to minimize potential conflicts and to treat resource activity as paramount in those areas.” [Exhibit B-3 p. 81]

[87] Several public presentations to Council and to the Board addressed local residents’ concerns about possible impacts from wind farms on their rural residential properties and future development in the area. The Board agrees the MPS intends the General Resource zone to include some residential and limited commercial or industrial uses that service residents. Furthermore, new private roads are permitted in the General Resource zone, with developments limited to seasonal and single-unit dwellings, home-based businesses and resource uses. Nevertheless, the priority in the zone is for new and existing resource uses. Despite these permissions, the priority for the designation is for new and existing resource uses and, as set out in Policy 9.02, to limit development of non-resource uses of resource land. The MPS encourages protection of resource land for forestry, mineral exploration, water supply, wildlife habitat and recreational uses. That protection would be to the detriment of expanded residential development.

[88] In *Lutz (Re)*, 2003 NSCA 23, Justice Saunders, for the Nova Scotia Court of Appeal found that the Board's decision had focussed too much on the negative impacts of a quarry development on surrounding residential uses, when the goals of the MPS were to prioritize other uses in the area:

[34] While residential use is recognized as being permitted within an F-1 Zone, the clear intent of the MPS is to give such residential use in a Forestry District, less priority or protection. See for example Policy 3.3.5 Forestry Districts-Subdivisions.

[35] Accordingly, while nuisance and compatibility with adjacent residential properties are relevant factors, all of the circumstances must be considered in light of the entire MPS and in particular, its general goals and stated objectives to encourage and promote opportunities for expanded industrial development. This is equally so in the designated Forestry Districts "where forest activities are to be given priority over other land uses." In my respectful view, the Board erred and exceeded its jurisdiction by virtually ignoring the policies I have just mentioned, thereby failing to give expression to the intent of this MPS, and by considering the views of the respondents to be determinative, to the exclusion of all else.

[89] The wind farm will be located within the interior forest, separated from the current, limited footprint of residential and cottage developments on private roads along the margins of Armstrong Lake, and others along Trunk 14. All of the wind turbines will be situated beyond the minimum required setbacks to residential dwellings. The Board accepts Ms. Fuller's expert opinion that the project does not alter the pattern of rural settlement or discourage residential development. In any event, the Board finds the MPS, itself, discourages prioritizing residential development.

[90] There is also no evidence that wind turbines would impact other ongoing resource uses, which are prioritized in the Resource designation. The expert opinion of Ms. Fuller and the conclusions provided to Council in the Staff Report are clear in their advice that the project is consistent with the development pattern intended by the MPS and as currently exists in the surrounding area.

[91] The Municipality argues that Ms. Fuller's opinion and planning staff's recommendation do not establish that Council's decision failed to reasonably carry out

the intent of the MPS, just that they would exercise their own discretion differently. The Municipality's submissions point out that there is no rigid definition of "pattern of development" in the planning documents; therefore, Council is entitled to deference in both its interpretation of the concept and in the considerations it prioritizes. The Municipality's submissions state at para. 33:

[33] Indeed, the evidence confirms that Council's concern about the potential pattern of development was directed at the broader land-use consequences of introducing large-scale industrial energy infrastructure into a predominantly forested landscape. The turbines would introduce permanent structures of significant scale, require expanded access roads, and alter the visual and functional character of the area. These are precisely the types of considerations captured by Policy 16.3.1(3) which directs Council to evaluate the pattern of development that a proposal might create. The MPS entrusts Council, not expert witnesses, with the responsibility of weighing such considerations in light of local conditions and community planning objectives.

[Respondents' Post Hearing Submissions]

[92] Even taking this statement about Council's concerns at face value, based on the public commentary about the project, the Board does not find objective support in the evidence or in a generous interpretation of "local conditions and community planning objectives" for Council's conclusion on this issue. The MPS sets out the community planning objectives. In this case, those objectives do not reflect an intention to limit utility-scale energy infrastructure in forested areas other than by the objective application of the Policy 4.24.4 criteria. Nevertheless, the Board considered carefully whether Council's decision to reject the application based on Policy 16.3.1(e) was "one among several" reasonable outcomes. Council is entitled to the Board's deference in those cases, but there are limits. As set out by Justice Fichaud in *Archibald*, citing *Lewis v North West Community Council of Halifax Regional Municipality*, 2001 NSCA 98 (quoted earlier in this decision):

[7] ... 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...”

[93] The Appellant referred the Board to a past decision of its predecessor, the Nova Scotia Utility and Review Board, in *Khanna (Re)* 2016 NSUARB 75, where the Municipality had made similar arguments about weighing expert evidence against Council’s discretion. As in that case, the Board finds that Council is not entitled to “absolute deference” on its subjective interpretation of the pattern of development associated with a particular project, notwithstanding the expression of its intentions in the MPS. The evidence and opinions of Ms. Fuller are uncontradicted and are supported by the appeal record.

[94] Borrowing the phrasing from the Board’s recent decision in *Liberty Lane (Re)* 2025 NSRAB 106, the Municipality’s submissions on this issue “do not reasonably connect the decision to anything that could be considered “good planning reasons” with objective support in the evidence.” Council’s finding on this point is not based on an interpretation that the policies of MPS can “reasonably bear”, in the words of Hallett, J.A, in *Heritage Trust*. The Board finds that approving the Bear Lake Wind Project as proposed would not create an unintended pattern of development. Its approval objectively aligns with the existing pattern and is reasonably consistent with the intent of the MPS.

6.0 CONCLUSION

[95] The Appellant has met its burden of showing, on the balance of probabilities, that Council’s refusal to enter into the Development Agreement for the Bear Lake Wind Project did not reasonably carry out the intent of the MPS. Council’s decision was based on considerations not established in the evidence, or an interpretation of MPS

policies that, reviewed as a whole, the MPS cannot reasonably bear. The Board finds that Council's decision to refuse this Development Agreement application for a utility-scale wind energy project in the General Resource zone is not reasonably consistent with the intent of the MPS.


[96] The appeal is granted, and Council is ordered to approve the Development Agreement in accordance with the recommendation in the planning Staff Report dated September 23, 2025 to allow a wind farm on PIDS 4533540, 45399573, 45381217, 45381209, 45399532, 45060068 and 45060076 that is substantially the same as the draft set out as Attachment A to the Staff Report, including the requirement that the egress road be gated.

[97] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 26th day of May 2026.



Julia E. Clark



M. Kathleen McManus



Darlene Willcott