

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **SOLTERRE INC.** from a decision of Lunenburg Town Council to refuse a rezoning application for property located at 9 and 13 Brook Street, Lunenburg, Nova Scotia (PID 60703899 and 60703881)

BEFORE: Jennifer L. Nicholson, CPA, CA, Panel Chair
Darlene Willcott, LL.B., Member
Marc L. Dunning, P.Eng., LL.B., Member

APPELLANT: **SOLTERRE INC.**
Kevin Latimer, K.C.
Sarah Dobson, Counsel

RESPONDENT: **TOWN OF LUNENBURG**
Peter M. Rogers, K.C.
Raylene Langor, Counsel

INTERVENOR: **HEATHER SMITH LANGILLE**

HEARING DATES: March 23, 24 and 27, 2026

FINAL SUBMISSIONS: May 15, 2026

DECISION DATE: **July 13, 2026**

DECISION: **The appeal is allowed. The Board directs Council to approve the Appellant's application.**

TABLE OF CONTENTS

1.0	INTRODUCTION	3
2.0	BACKGROUND	4
3.0	SCOPE OF BOARD'S REVIEW	8
4.0	ISSUE.....	15
5.0	WITNESSES AND EVIDENCE.....	16
5.1	Witnesses	16
5.2	Intervenor.....	18
5.3	Supplementary Information.....	19
5.3.1	Letters of Comment.....	19
5.3.2	Public Speakers	19
6.0	SITE VISIT.....	21
7.0	WHAT CAN BE BUILT AS-OF-RIGHT?	21
8.0	PROPOSED CHANGES TO USE ZONE	23
8.1	Policies	23
8.1.1	Application of Policies	28
9.0	PROPOSED CHANGES TO FORM ZONE	29
9.1	Policies	29
9.2	Application of Policies.....	30
9.2.1	“Wholesale” and “Minor” Changes	30
9.2.1.1	Findings	33
9.2.2	Policy 6-13(a).....	35
9.2.2.1	Findings	36
9.2.3	Policy 6-13(b) - Clear Need for Amendment	37
9.2.3.1	Findings	39
9.2.4	Policy 6-13(c) - Compatibility	40
9.2.4.1	Findings	42
9.2.5	Policy 6-13(d) - Consideration of Policy 6-19	44
10.0	POLICY 6-19	44
10.1	Policy 6-19(c)(i) - Ability of the Town to Absorb Public Costs Related to the Proposal.....	44
10.1.1	Findings	46
10.2	Policy 6-19(c)(iv) - Traffic hazards, congestion and pedestrian networks	48
10.2.1	Findings	50
10.3	Policy 6-19(c)(vii) - Impacts on UNESCO World Heritage Site	51
10.3.1	Findings	54
10.4	Policies 6-19(c)(ix) and (x) - Flooding, Climate Change and Drainage Issues	55
10.4.1	Findings	60
11.0	PARKING	60
12.0	CONCLUSION.....	61

1.0 INTRODUCTION

[1] On November 25, 2025, the Town of Lunenburg Council (Council) rejected a rezoning application by Solterre Inc. (Solterre or Appellant) to change the use zone of a lot at 9 Brook Street (PID 60703899) and the use and form zones of an adjacent lot at 13 Brook Street (PID 60703881) to allow for a multi-unit housing development in the Town of Lunenburg (Town or Lunenburg), Nova Scotia.

[2] Planning staff reviewed Solterre's application, found that it met the requirements of the Town's Municipal Planning Strategy (MPS) and recommended approval. Council denied the application providing no reasons except that it "did not satisfy the applicable evaluation criteria under the Municipal Planning Strategy."

[3] On December 5, 2025, Solterre appealed Council's decision to the Nova Scotia Regulatory and Appeals Board (Board). The Board received and accepted one request to intervene from Heather Smith Langille.

[4] Solterre argues that its application meets the criteria for approval, and that Council's refusal of the application did not carry out the intent of several key policies of the MPS. The Appellant asks the Board to grant the appeal and order that Solterre's rezoning application be approved.

[5] For the reasons outlined below, the Board finds the evidence demonstrates, on a balance of probabilities, that Council's refusal to rezone the properties does not reasonably carry out the intent of the MPS. The Board allows the appeal and orders that the zone changes be approved.

2.0 BACKGROUND

[6] Lunenburg is a historic oceanfront town on Nova Scotia's South Shore with a population of approximately 2,500. Lunenburg was known for its marine industries including fishing and shipbuilding. Decline in these traditional industries has been offset by new industries such as aerospace and video game development. These have provided new employment opportunities and population growth. In addition, tourism has become a major contributor to Lunenburg's economy. The architectural and planning history on which Lunenburg was built has contributed to the Town's success as a tourist destination. A UNESCO World Heritage Site, Old Town Lunenburg draws thousands of visitors each year. This is integral to the economic success of the Town. Tourism has increased demand for Town services like parking and has created large amounts of congestion in the summer months. The increased use of short-term rentals has threatened the already limited housing supply.

[7] This decision relates to Solterre's application to change the use zone of two parcels of land and change the form zone of one of those parcels to enable development of a multi-unit residential building in Lunenburg, Nova Scotia. Lunenburg regulates use and form separately for planning purposes.

[8] Lunenburg's MPS was enacted concurrently with the LUB. Both came into effect on September 22, 2021. Prior to the MPS, the Town prepared a Comprehensive Community Plan (CCP) dated September 18, 2020. The CCP establishes a set of strategic directions and possible mechanisms to achieve them, which are implemented through the MPS, the Town's Land Use By-law (LUB) and its Subdivision Bylaw [Exhibit S-4, PDF pp. 13 and 272].

[9] The Town's approach to planning is somewhat unique. Land use bylaws typically create a single set of zones with each zone having specific requirements for subdivision, land use and building form. The Town does not follow this approach. Instead of having a single set of zones, it has three sets of zones: subdivision (lot zone), land use (use zone) and building form (form zone). By doing so, it regulates subdivision, land use and building form separately rather than together. As explained in the MPS:

Traditionally in Nova Scotia, standards for subdivision, land use, and building form have been tightly tied together through a single set of "zones" that contain standards for each of these aspects of planning. However, the history of Lunenburg has shown that these factors can independently define the character of the community.

...

Addressing the Key Issues in Lunenburg must be based on the community's strengths. This Municipal Planning Strategy and its associated Land Use By-law recognize the community's historic adaptability and help support Lunenburg's continued evolution by adopting a somewhat unique approach to planning in which lots, uses, and form are regulated separately from each other. [Emphasis added]

[Exhibit S-4, PDF p. 275]

[10] Lot zones govern the subdivision of land and the creation of new streets. Use zones govern the uses that are permitted on land within the Town, and form zones govern the forms of buildings [Exhibit S-4, PDF, pp. 337, 340 and 358]. Only the use zones and form zones are relevant in this matter.

[11] The subject parcels are located at 9 and 13 Brook Street, Lunenburg. Both lots currently are in the Commercial Mixed Use (CM) zone (CM use zone). Solterre applied to have both lots rezoned to General Commercial Use (CG) zone (CG use zone). This change is required to allow ground floor residential use. The current form zone for 13 Brook Street is Old Town/New Town 1 (ONT1) (ONT 1 form zone). Solterre applied to have the form zone changed to Marine form zone (MA form zone). This would remove

certain setback requirements. The lot at 9 Brook Street is already in the MA form zone and does not require a form change.

[12] After considerable communication between Solterre and Town planning staff, public meetings, presentations to Council and design changes, a Staff Report was presented to Council recommending approval of the application. At a Council meeting on November 25, 2025, Council unanimously denied the application contrary to the recommendations in the Staff Report. No reasons were provided at the time.

[13] On December 15, 2025, after the Appellant requested a formal letter, the Town provided a refusal letter. The letter stated:

Subject: Notice of Council's Refusal – Rezoning Request for PIDs 60703881 and 60703899

Dear Ms. Corson,

This letter is to advise that at its meeting held on November 25, 2025, the Council of the Town of Lunenburg considered your application to amend the Land Use By-law to rezone the properties identified as PIDs 60703881 and 60703899.

Following discussion, Council passed the following motion:

“Moved and seconded that Council deny the rezoning request for PIDs 60703881 and 60703899, as the request fails to meet the requirements of the Municipal Planning Strategy (MPS) policy intent.”

Accordingly, your application to amend the Land Use By-law has been refused.

Council's decision reflects its determination that the proposed amendments did not satisfy the applicable evaluation criteria under the Municipal Planning Strategy.

[Exhibit S-3, PDF p. 374]

[14] Solterre appealed Council's decision to the Board, setting out several grounds in its Notice of Appeal:

Policy 4-1 Intent of the General Commercial (CG) Zone

Failure: Council incorrectly asserted that land zoned “General Commercial” must contain a commercial use. Policy 4-1 explicitly states the opposite: the CG Zone is intended to permit a wide mix of commercial, institutional, and residential uses—including **multi-unit residential buildings with no limit on the number of dwelling units**.

Policy 4-2 Consistency with the Future Land Use Map

Failure: The subject property lies within the Downtown Commercial designation of the Future Land Use Map, which specifically enables the General Commercial (CG) Zone.

Policy 4-4 Requirements for Approving a Rezoning

Failure: Policy 4-4 states that Council shall consider a rezoning when the proposed zone is consistent with the Future Land Use Map and the proposal meets Policy 6-19.

Policy 5-1 Intent of the Marine Form Zone

Failure: Council incorrectly interpreted the Marine Form Zone as requiring marine-related uses and as limiting non-marine development. Policy 5-1 states only that the Marine Form Zone is intended to maintain the character of a working waterfront—not that permitted uses must be marine-based, nor that non-marine projects are prohibited.

Policy 6-10 When Rezoning May Be Considered

Failure: The proposed CG Zone is specifically enabled within the Downtown Commercial designation under Policy 6-10(a) Future Land Use Map. Staff confirmed this condition was satisfied. Council failed to apply this and instead refused a rezoning the MPS explicitly allows.

Policy 6-11 Criteria for Placing a Use Zone

Failure: Policy 6-11 requires Council to evaluate whether a proposal (a) fits the description of the intended Use Zone and (b) meets the general criteria of Policy 6-19. Staff confirmed both conditions were met. Council did not identify any inconsistency with these criteria.

Policy 6-13 Criteria for Amending the Form Zoning Map

Failure: Staff concluded the Form Zone amendment met all required criteria under Policy 6-13, including compatibility with surrounding permitted form. Council failed to identify how any portion of Policy 6-13 was not met and provided no evidence contradicting staff's policy findings.

Policy 6-19 General Criteria for LUB Amendments

Failure: Staff explicitly stated that the proposal met all criteria of Policy 6-19. Council did not provide any substantive or policy-based evidence showing the proposal was premature, inappropriate, or non-compliant. Denial fails to carry out the intent of Policy 6-19. [Emphasis in original]

[Exhibit S-2, PDF pp. 1-4]

[15] Solterre stated that despite a comprehensive Staff Report, which assessed its proposal against all relevant MPS policies and determined that the rezoning fully met the requirements for approval, Council denied the application based on concerns that are not supported by the MPS, LUB or evidence provided.

[16] Although Council's only stated reason for the refusal was that the "proposed amendments did not satisfy the applicable evaluation criteria under the Municipal Planning Strategy" correspondence with the Appellant and witness questioning at the oral hearing highlighted several areas of concern. These included parking, flooding and climate change, traffic, sidewalk infrastructure, issues with the "working waterfront" and UNESCO World Heritage Site zones, and the relevance of available infrastructure funding.

3.0 SCOPE OF BOARD'S REVIEW

[17] The burden of proof is on the Appellant to show, on the balance of probabilities, that Council's decision to refuse its application for the rezoning of both the Form and Use zones of PIDs 60703881 and 60703899 was not consistent with the intent of the MPS.

[18] Under s. 247 (1)(b) of the *Municipal Government Act*, SNS 1998, c 18 (*MGA*), an applicant can appeal council's refusal to amend a land-use bylaw:

Appeals to the Board

247 (1) The approval or refusal by a council to amend a land-use bylaw may be appealed to the Board by

...

(b) the applicant;

[19] This provision applies to Solterre's appeal because its application to rezone the lots requires amendments to the LUB.

[20] An applicant can only appeal a refusal to amend a land-use by-law on grounds that the decision 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

(a) an amendment or refusal to amend a land-use by-law, on the grounds that the decision of the council does not reasonably carry out the intent of the municipal planning strategy;

[21] The powers of the Board are similarly limited on such an appeal. Under s. 251(2) of the MGA, the Board can only allow an appeal if it finds that council's decision does not reasonably carry out the intent of the municipal planning strategy.

[22] 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:

[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.

[23] As noted above, the Board has no jurisdiction to allow the Appellant's appeal if Council "interpreted and applied the [MPS] policies in a manner that the language of the policies can reasonably bear."

[24] Additionally, the Board must address Council's conclusion and reasons in this appeal. Written reasons are required from Council, under s. 210(5) of the *MGA* when it refuses to amend the LUB:

210 (5) Within seven days after a decision to refuse to amend a land-use by-law referred to in subsection (1), the clerk shall notify the applicant in writing, giving reasons for the refusal and setting out the right of appeal.

[25] On this point, Justice Fichaud, writing for the Court of Appeal in *Archibald* (para. 30), notes the requirement for a municipality to state its reasons indicates an intention "...that the municipality's stated reasons be pivotal to the appeal." However, the Court went on to state that the Board is not confined to those reasons in deciding an appeal. Instead, the Court says the "ultimate question" for the Board is whether the decision by Council "...reasonably carried out the intent of the MPS..." This is the test stated in s. 250(1) of the *MGA* and is the one which the Board must apply.

[26] In this matter, Council's written reasons for its refusal stated only that the Appellant's application did not "satisfy the applicable evaluation criteria under the

Municipal Planning Strategy.” Council did not set out which evaluation criteria it was referring to.

[27] The Court of Appeal in *Archibald* emphasized that Council’s written reasons for refusing the application establish the framework for the Board’s review in the exercise of its appellate jurisdiction. However, where Council approves an application for a development agreement or land-use bylaw amendment, it is not required to give reasons and often does not. In the end, whether or not there are written reasons, the Board’s task is succinctly summarized in *Barrett*, 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.

[28] While *Barrett* and *Archibald* involved development agreements, the same general principles apply to rezoning appeals. That is, the Board must not interfere with the decision of council unless the Board determines that the decision does not reasonably carry out the intent of the MPS.

[29] The materials before Council, and planning staff’s recommendation, can provide the initial framework. The Board also has some limited guidance on Council’s single comment on the reasons for its refusal, *i.e.*, that the proposal “did not satisfy the evaluation criteria.” Ultimately, even without more specific reasons to focus the Board’s review, it is the outcome which the Board must ultimately address based on the Appeal Record and the additional evidence and materials put before the Board.

[30] Counsel for the Appellant also suggested that Council’s deliberations may assist in providing context for Council’s reasoning. They referred to the minutes, and the recordings of the comments made at First Reading, including comments made by the

Deputy Mayor. The Appellant states: “The minutes capture discussions. The video reflects concerns. Neither disclose or crystalize “reasons” that can be attributed to (or that were adopted by) Council in this case.”

[31] The Board reviewed the minutes, watched the video, and listened to comments made by councillors on November 25, 2025. The Appellant suggests in its submissions that the minutes and recordings of the comments made at First Reading (including the video and the handwritten notes from the Deputy Mayor included in the Appeal Record at page 222) are the only evidence of Council’s thinking.

[32] The Appellant in its post-hearing submissions noted that the video taken at First Reading reveals some of Council’s concerns. For example, there were comments by some Councillors that the Downtown Commercial zone was intended for commercial use, not residential. There were comments that Solterre’s proposal for a multi-unit building does not align with the use zone. There were also comments that the form zone doesn’t speak to the uses being proposed by Solterre. Councillors said that the MA form zone is intended for a working waterfront as well as fishing, shipbuilding and tourism.

[33] While the Board agrees that this evidence may provide some context, the Board’s role remains focussed on determining whether Council’s decision reasonably carries out the intent of the MPS. This was recently discussed in *Cresco Holdings Limited (Re)*, 2021 NSUARB 34:

[58] In *Hatchet Lake*, a planning expert included references to several comments made by Council members in her report to illustrate the rationale behind Council’s decision. She used these comments to support her contention that members of Council were influenced by irrelevant factors. The Board made the following comments, at para. [57], in relation to the use which could be made of this type of evidence:

[57] The Board has accepted in other decisions that it need not confine itself to the stated reasons of Council. (See for example, *Re FH Construction Limited*, 2017 NSUARB 153) The Board finds that, having viewed and heard the video recording, which is linked in the Appeal

Record, Ms. Tsang accurately reported comments made by members of Council at the September 24, 2020 meeting. However, the Board's role is to determine whether Council's decision reasonably complies with the intent of the MPS. The decision-making process of Council is not a matter for the Board. Any issues regarding the process are for the courts. Individual councillors may make comments during public hearings, but ultimately Council speaks with one voice, i.e., its vote. The Board affords no weight to the comments which were recorded on the video and reported in the minutes. In any event, in this appeal, public support or opposition to a proposed development is not a provision in the MPS policies.

[59] The Board continues to be of the view that, as a general proposition, the comments of individual members of a council are of limited assistance in the task of applying the statutory test to the written reasons provided by a municipal council. Council meetings are not courtrooms, and while councils perform a type of adjudicative role when determining applications, they are not courts. As *Archibald* stresses, the written reasons are important in framing the issues before the Board so that it respects its appellate role. That said, council members do not sit as a panel to formulate written reasons. They may disagree with one another and may have different reasons for approving or rejecting a particular application. Therefore, as discussed in *Hatchet Lake*, the Board considers that a council speaks with one voice and generally does not parse the comments of individual members of council.

[60] Despite the foregoing, some of the comments made during these deliberations, in the particular circumstances of this case, provide some insight into the concerns expressed in HRM's decision letter. They provide context for the ultimate reasons provided in the written decision under appeal. The overall impression left with the Board is that those opposed to the amendments were generally opposed to the type of development already authorized, by the MPS and the development agreement, in Sub Area 9. This was then reflected in the written reasons, which were primarily expressed as broad concerns which shed no light on how the proposed narrow amendments would provide cause for the concerns raised.

[34] In this matter, the Town's planning staff recommended that Council approve the Appellant's application. The Board's predecessor, the Nova Scotia Utility and Review Board commented in *Armco (Re)* 2021 NSUARB 147, about guiding principles for its review when council has not followed the recommendations of its planning staff. Generally, council must have "good planning reasons" for going against staff's recommendation that "must be rooted in the municipality's planning strategy":

[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).

[35] The Board in *Liberty Lane Power and Logistics Inc. (Re)*, 2025 NSRAB 106,

also dealt with a matter where Council did not follow staff's recommendations and stated:

[63] The Board recognizes that municipal councils are not bound by the recommendations of planning staff when considering applications. Additionally, the fact that a planner has determined that a development is consistent with a municipal planning strategy does not mean that a refusal to approve the development must be "inconsistent." Sometimes, either outcome could be within the scope of the reasonable outcomes available under a planning framework.

[64] There are many policies within the MPS. Depending on how a council weighs the relative importance of one policy goal over another, it could be reasonable for it to approve the same application it may have refused in another circumstance where another policy goal was prioritized. Archibald recognizes that planning decisions often involve compromises between competing policies, and Council must weigh those factors to decide whether to allow a certain development that is not enabled as of right in the planning documents. If that discretion is exercised in a manner reasonably consistent with the overall intent of the MPS, Courts have said that the Board should defer to the authority of the elected officials in weighing their own policies.

[65] Despite this direction for deference, a municipal council must not arbitrarily overlook the recommendations of its planning staff and other responsible authorities. It is required to make evidence-based decisions that are grounded in the municipal planning documents, which are developed in a transparent process with public input and provincial oversight.

[36] In determining the intent of the MPS, the Board also 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.

4.0 ISSUE

[37] There is one issue in this appeal. Does Council's decision to refuse Solterre's application to amend the LUB to change the use and form zones reasonably carry out the intent of the MPS?

5.0 WITNESSES AND EVIDENCE

[38] The Board can consider new evidence introduced by the parties during the appeal that was not before Council when it made its decision on Solterre's rezoning 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.

[39] 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). To the extent any witnesses relied on hearsay or testified on matters beyond their expertise or personal knowledge, the Board weighed the evidentiary value in the normal course.

5.1 Witnesses

[40] The Appellant called three witnesses: Jennifer Corson, Neil Fougere, and Christopher Markides.

[41] Jennifer Corson, M.Arch., NSAA, is a registered architect with the Nova Scotia Association of Architects and is the co-founder and managing partner of Solterre, the Appellant in this matter. She is also a co-founder of Solterre Design Inc. She testified that with Solterre, she has purchased, rehabilitated, renovated and created green businesses and housing projects. She has also taken existing buildings that needed care and rehabilitation and restored them into a more current and energy efficient state. She

was directly involved in the application to the Town to rezone 9 and 13 Brook Street, which are owned by Solterre.

[42] Neil Fougere is a professional engineer and principal with DesignPoint Engineering & Surveying Ltd. He was qualified, without objection, as an expert witness to give opinion evidence on municipal engineering and servicing.

[43] Christopher Markides, MCIP, LPP, RPP is a senior urban planner with ZZap Consulting Inc. He 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 bylaws and requirements for planning applications. There were no objections to his qualifications.

[44] The Respondent called three witnesses: Matthew Delorme, Tyson Joyce and Chrystal Fuller.

[45] Matthew Delorme, P.Eng., is a professional engineer with EC Atlantic Ltd. He was qualified, without objection, to give opinion evidence on civil engineering matters including coastal engineering and hydrodynamics, coastal flood hazards, extreme sea-level assessment, urban stormwater management analysis, infrastructure risk management and climate change adaptation for land development and coastal infrastructure.

[46] Chrystal Fuller, MCIP, LPP, 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 the interpretation and application of the Town's planning documents and whether the decision of Council refusing the LUB amendments reasonably carries out the intent of the MPS.

[47] Tyson Joyce, P.Eng., is a professional engineer. He is the Town Engineer, Director of Public Works and the traffic authority for the Town. He testified that he has been employed with the Town since 2022 and gave evidence with respect to the responsibility of developers as it relates to infrastructure, including sidewalks on Brook Street. He also testified about his observations of flooding in the Town.

5.2 Intervenor

[48] Heather Smith Langille testified on her own behalf, offering her perspective as a property owner in the Town. She testified that she, along with her parents, reside at 27 Green Street, which is approximately 500 feet from the proposed development. Ms. Langille stated that overturning Council's decision would adversely affect her property and reasonable enjoyment of her home. She stated she did not believe the units in the proposed building would be affordable or low cost. Based on the cost value reported by Solterre, Ms. Langille believes the average rent per month would be at least \$2,900. She also stated that given the lack of parking, these units would likely be used as seasonal vacation homes and short-term rentals. Further, it is her view that allowing Solterre's appeal would likely "open a Pandora's box of similar applications", which would alter the character of the Town. Ms. Langille expressed concerns about the lack of parking and the height of the proposed development. She felt that the residents who live in the building would have to park their vehicles in the surrounding neighbourhood and in front of recreational facilities, which would alter the character of the neighbourhood in a negative way. She also expressed how important the working waterfront is to the Town and that Council took that into consideration when they made their decision to deny the request to change the form zone to MA. In closing, she referred to the fact that the Town has a UNESCO World Heritage Site designation, and that the Town is a "national treasure."

5.3 Supplementary Information

5.3.1 Letters of Comment

[49] The Board received letters of comment from residents in Lunenburg who both supported and opposed Solterre's proposed development.

[50] Joel Westin, C. Colin Whitcomb, and Mitch Dicky supported Solterre's application and stated that Lunenburg needs housing and the tax revenue, and the location on Brook Street is an ideal location for a six-floor building.

[51] Adam and Cindy Dial, Kerry Riley, Vicky Mossman, Philip Conrad, Corrina Peveling, Wendy MacKenzie, Gary and Jean Jackson, and Ryan McCarthy opposed the development. The writers' concerns primarily related to:

- a. parking and traffic congestion;
- b. Lunenburg being a UNESCO World Heritage Site;
- c. the importance of maintaining a working waterfront; and
- d. impact on personal enjoyment of properties.

5.3.2 Public Speakers

[52] There were two public speakers, Wendy Rofihe and Irma Da Sie.

[53] Wendy Rofihe resides in Lunenburg. She has a master's degree in heritage conservation. She spoke in support of the proposed development. She addressed the proposal and zoning change request in a heritage context. She stated that Council denied the zoning change to maintain the working waterfront essential to the UNESCO World Heritage Site designation. However, it is her view that the location of the proposed development would not pose a threat to the designation because it is not being built within the heritage conservation district. She also stated that there seems to be a misunderstanding about the parcel of land in question in that it never had a marine-

oriented building on it. She also commented on Lunenburg's need for housing. In her view, it doesn't make sense to mandate a ground floor commercial rental space that is not in demand when housing, conversely, is in demand.

[54] Irma Da Sie is a registered architect and has been a resident of Lunenburg for 21 years. She stated that she supports housing on the proposed site, provided it is well designed, appropriately scaled and compatible with the surrounding neighbourhood. She noted that the Appellant's rezoning request involves many complicated issues: competing land use designations, future land use mapping, flood zone conditions, setback allowances, parking and traffic impacts, the need for housing and the Town's broader responsibility as a steward of a UNESCO World Heritage Site. She supports Council's decision to reject the Appellant's request for rezoning. She stated that when interpreting the MPS, every word matters. She said fishing, shipbuilding and interpretative tourism are the operations the MA form zone exists to protect, and residential development at any scale or height is not among them. She went on to state that the 63-foot height allowance in the MA form zone is meant to accommodate structures associated with marine activity. She said the fact that development is restricted to 34 feet elsewhere in the Town is not accidental. It reflects the deliberate planning objective to maintain Lunenburg's traditional scale, form and skyline. She further stated that the site of the proposed development appears to involve a planning conflict, namely a discrepancy between residential use being permitted and the MA zone applied to it. She referred to Section 3.4.2 of the LUB which states where provisions conflict, the higher or more stringent provision prevails. Therefore, if the two parcels were consolidated, the stricter provision would apply, namely the 34-foot height limit of the ONT1 form zone. Ms.

Da Sie referred to the fact that Lunenburg is a UNESCO World Heritage Site, and that planning decisions should not erode the identity that designation exists to protect. She also commented on parking and stated that “Council acted within its discretion to ensure that this development meets its own parking needs, rather than put additional pressure on the surrounding neighbourhood, which has little capacity to absorb it.”

6.0 SITE VISIT

[55] The Board members conducted a site visit at the end of the oral hearing on March 27, 2026. We observed an empty lot that was being used for parking. This lot is next door to a large, renovated building that contains several commercial businesses. The lot is across the street from a park that is bordered by residential properties on the other three sides.

7.0 WHAT CAN BE BUILT AS-OF-RIGHT?

[56] In order to put Solterre’s proposal in perspective, it is useful to consider its proposed development compared to what can be built as-of-right. An as-of-right development is one that is allowed under the LUB and does not require Council approval or a public process.

[57] Solterre’s proposal is for a consolidated three and six storey, approximately 50-unit residential building. The three-storey portion would be located on 13 Brook Street which faces Falkland Street. The six-storey part would begin toward the end of that lot and extend through the abutting lot at 9 Brook Street. The building would have a total

area (including all storeys) of approximately 40,000 ft² and a total footprint of approximately 10,000 ft².

[58] As-of-right, Solterre can build one building on each lot. A three-storey building, covering up to 40% of the property, can be built on 13 Brook Street. A six-storey building covering the entire property can be built on the abutting lot. The Staff Report provides the following explanation of what can be built as-of-right:

What the Current Zoning Already Allows: For clarity, under the existing zoning, a development of the same height and overall scale as the proposed building could already be constructed as-of-right on PID 60703899, meaning it would not require Council approval or any public process.

On the adjoining parcel fronting Falkland Street (PID 60703881), the current zoning would also permit a building of similar height (up to 34 ft), though with larger required setbacks: at least 2.4 m (8 ft) on the sides and 6 m (20 ft) at the rear). This would result in a somewhat smaller building footprint compared to the proposal.

The current use zone also restricts residential units on the ground floor within 15 m (50 ft) of the front lot line, though accessory uses such as lobbies or amenity spaces are allowed in that area.

In summary, a building of comparable height and massing could already be built under the existing zoning without Council's approval or public input, but it would have less ground-floor residential space and a different footprint on the Falkland Street lot. [Emphasis added.]

[Exhibit S-3, PDF p. 174]

[59] Solterre's proposal is for approximately 50 residential units, all accessible by elevator and with no requirement for commercial space. Ms. Corson testified that Solterre does not want to build an as-of-right building because doing so would result in fewer residential units, some units would not be accessible by elevator, and ground-floor commercial space would be required. She stated that these constraints would make the project financially unviable and prevent it from qualifying for funding through the Canada Mortgage and Housing Corporation [Exhibit S-3, PDF p. 383].

[60] The purpose of applying to change the use zone for both properties from the CM zone to the CG zone is to allow residential units on the ground floor. The reason

for applying to change the form zone on 13 Brook Street from ONT1 to MA is to remove the setback requirements. The proposed building would not take up the entirety of either lot. There would be an L-shaped area along the southeast and southwest boundaries for parking and access.

8.0 PROPOSED CHANGES TO USE ZONE

[61] The Board will consider Solterre's proposed use zone changes by describing and then applying the applicable policies.

8.1 Policies

[62] Section 4.2.4 of the MPS states that amendments to the use zone map are typically done at the request of a property owner who has a specific plan:

4.2.4 Amendments to the Use Zoning Map

From time-to-time it may be appropriate to amend the Use Zoning Map of the Land Use By-law to modify the uses permitted on a property. This is typically done at the request of a property owner who has a specific plan in mind for their land. Such an amendment is a public process and includes a Public Hearing.

[Exhibit S-4, PDF p. 286]

[63] Similarly, s. 6.3.3 of the MPS refers to amendments to use zones to accommodate a particular development proposal:

6.3.3 Amending the Text and Use Zoning Map of the Land Use By-law

Council recognizes it cannot foresee all possible types of development that might be acceptable in the Town in general, or on a specific piece of land. As such, there will be times when the Land Use Bylaw needs to be amended to accommodate a new development trend or specific development proposal.

Council also recognizes that it is possible to inadvertently make mapping errors in preparing the maps that accompanying this Plan and the Land Use By-law. Such errors may be in conflict with the policies in this Plan. Where such errors are discovered, Council may consider correcting them.

[Exhibit S-4, PDF p. 305]

[64] As a pre-condition to Council determining whether to allow a use zone amendment, the requirements of Policy 6-10 must be met:

Policy 6-10: Council shall consider amendments to the Use Zoning Map of the Land Use By-law when the proposed map amendment is not specifically prohibited within this Plan and at least one of the following three conditions is true:

- (a) the proposed Use Zone is enabled by this Plan for use within the same Future Land Use Map designation;
- (b) a non-conforming use appears to have been created by an inadvertent administrative oversight in the Municipal Planning Strategy and Land Use By-law preparation process, resulting in a property being zoned inconsistent with stated policies in this Plan; or
- (c) notwithstanding the Use Zones permitted within a Future Land Use designation, the land to be rezoned is under 1,000 square metres in area and is abutting a Future Land Use Map designation that permits the proposed Use Zone. For clarity, land that abuts a right-of-way, such as a street, is considered to be abutting the designation on the other side of the right-of-way.

[Exhibit S-4, PDF p. 306]

[65] The Town does not dispute that this policy is satisfied, however, as Ms. Fuller states in her expert report:

... Meeting Policy 6-10 does not determine the outcome. It confirms the amendment is eligible for consideration, after which the decision turns on the separate satisfaction test in Policy 6-11, including whether the proposal meets the general evaluation criteria in Policy 6-19.

[Exhibit S-7, Tab 14, PDF p. 81]

[66] Policy 6-11 requires that Council be satisfied that the proposal is consistent with the description of the use zone in Policy 4-1 as well as any policies directing where it is appropriate to place the proposed use zone, and that the criteria in Policy 6-19 are met:

Policy 6-11: Council shall not amend the Use Zoning Map of the Land Use By-law unless Council is satisfied that:

- (a) the proposal is consistent with the description of the Use Zone in Policy 4-1 and any specific policies, if any, directing where it is appropriate to place the proposed Use Zone; and
- (b) the proposed Use Zone and the uses it permits meet the general criteria for amending the Land Use By-law, set out in Policy 6-19.

[Exhibit S-4, PDF p. 306]

[67] Policy 4-1 requires that use zones generally conform to certain schemes (only those relevant to this appeal are included below):

Policy 4-1: Council shall, through the Land Use By-law, establish Use Zones, shown on the Use Zoning Map of the Land Use By-law, to establish the uses permitted in different areas of Lunenburg. The Use Zones shall generally conform to the following scheme:

...

- (d) The Commercial Mixed Use (CM) Zone is intended to enable a wide range of commercial and institutional uses, as well as larger residential uses located on the upper floors of buildings or to the rear of the lot. Auto-oriented commercial uses, with the exception of body shops, shall be permitted.
- (e) The General Commercial Use (CG) Zone is intended to accommodate the traditional mixing of uses found in Old Town Lunenburg, including a wide range of commercial uses, institutional uses, and residential uses; however, auto-oriented commercial uses, such as gas stations and auto repair, shall not be permitted.

...

- (h) The Marine Industrial (MM) Zone is intended to protect and support the “working waterfront” by permitting a range of industrial uses, government and emergency services uses, craft food and beverage production, and waterfront recreational uses, while limiting other uses.

[Exhibit S-4, PDF pp. 283-284]

[68] Policy 6-19 sets out additional criteria including that Council be satisfied that the proposal is consistent with the intent of the MPS, does not conflict with any applicable programs, bylaws or regulations, and is not premature or inappropriate based on various factors:

Policy 6-19: Council shall not amend the Land Use By-law or enter into a development agreement unless Council is satisfied the proposal:

- (a) is consistent with the intent of this Municipal Planning Strategy;
- (b) does not knowingly conflict with any Town or Provincial programs, by-laws, or regulations in effect in the municipality;
- (c) is not premature or inappropriate due to:
 - i. the ability of the Town to absorb public costs related to the proposal;
 - ii. impacts on existing drinking water supplies, both private and public;

- iii. the adequacy of central water and sewage services or, where such services are not available, the suitability of the site to accommodate on-site water and sewage services;
- iv. the creation of excessive traffic hazards or congestion on road, cycling, and pedestrian networks within, adjacent to, or leading to the proposal;
- v. the adequacy of fire protection services and equipment;
- vi. the adequacy and proximity of schools and other community facilities;
- vii. impacts on UNESCO World Heritage Site statements of outstanding value;
- viii. the creation of a new, or worsening of a known, pollution problem in the area, including, but not limited to, soil erosion and siltation of watercourses;
- ix. site-specific climate change risks;
- x. the potential to create flooding or serious drainage issues, including within the proposal site and in nearby areas;
- xi. impacts on known habitat for species at risk;
- xii. impacts on the navigability and environment of Lunenburg Harbour;
- xiii. the suitability of the site in terms of grades, soil and geological conditions, the location of watercourses and wetlands, and proximity to rights-of-way; and
- xiv. land use conflicts that could place limits on existing operational procedures at existing businesses.

[Exhibit S-4, PDF p. 311]

[69] Policy 4-4 is also relevant. It states that Council shall not approve a use zone amendment unless the proposed use zone is consistent with Policy 4-2 and the Future Land Use Map, and Council is satisfied that the criteria of Policy 6-19 are met:

Policy 4-4: Council shall consider proposals to amend the Use Zoning Map of the Land Use Bylaw. Council shall not approve such an amendment unless:

- (a) the proposed Use Zone is consistent with Policy 4-2 and Schedule 'A', the Future Land Use Map of this Plan; and
- (b) Council is satisfied the proposal meets the general criteria for Land Use By-law map amendments, outlined in Policy 6-19.

[Exhibit S-4, PDF p. 286]

[70] Policy 4-2 designates the various use zones, including the CM and CG zones that are relevant to this appeal:

Policy 4-2: Council shall establish, on the Future Land Use Map, a series of Land Use Designations to guide the evolution of Use Zone placement over time. The Designations and the Use Zones permitted for consideration in each Designation are as follows:

...

(b) The Main Street Land Use Designation permits:

- i. Commercial Mixed Use (CM) Zone
- ii. Institutional Use (INS) Zone Parks and
- iii. Recreation Use (PR) Zone

(c) Downtown Commercial Land Use Designation permits:

- i. General Commercial Use (CG) Zone
- ii. Institutional Use (INS) Zone
- iii. Parks and Recreation Use (PR) Zone

[Exhibit S-4, PDF p. 285]

[71] All parties agree that Solterre's proposal is consistent with the description of the CG use zone. The proposed development is residential and Policy 4-1(e) states that the CG use zone "is intended to accommodate ... a wide range of ... residential uses." [Exhibit S-4, PDF p. 283]

[72] Based on these policies, the Board finds that Council must approach an application to amend a use zone as follows.

[73] First, in order to determine whether Council can even consider the application, the requirements of Policy 6-10 must be met, that is:

1. The proposed amendment cannot be prohibited by the MPS; and
2. At least one of the following conditions is true:
 - a) the proposed use zone is enabled by the MPS for use within the same Future Land Use Map designation;

- b) a non-conforming use appears to have been created by an inadvertent administrative oversight in the MPS and LUB preparation process, resulting in a property being zoned inconsistent with the MPS policies; or
- c) notwithstanding the use zones permitted within a Future Land Use designation, the land to be rezoned is under 1,000 square metres in area and is abutting a Future Land Use Map designation that permits the proposed use zone.

[74] Provided the above pre-conditions are met, Council can proceed to determine whether to allow the application. In doing so, it must answer all of the following questions:

1. Is the proposed use zone consistent with Policy 4-2 and the Future Land Use Map (Policy 4-4)?
2. Is the proposal consistent with the description of the use zone in Policy 4-1 and any specific policies directing where it is appropriate to place the proposed use zone (Policy 6-11(a))?
3. Does the proposed use zone and the uses it permits meet the general criteria for amending the LUB set out in Policy 6-19 as set out earlier in this decision (Policies 4-4(b) and 6-11(b))?

8.1.1 Application of Policies

[75] Town planning staff, as well as Ms. Fuller and Mr. Markides, are of the view that the necessary preconditions set out in Policy 6-10 for Council to consider a use zone amendment have been satisfied. As required by Policy 6-10, the proposed CG use zone is not prohibited by the MPS, the Future Land Use Map designates the lands “Downtown Commercial”, and Policy 4-2(c) indicates that this designation permits the CG use zone. [Exhibit S-3, PDF p. 181 and 264; Exhibit S-6, PDF p. 32; Exhibit S-7, PDF p. 81]

[76] The next step is to consider Policy 6-11. Town planning staff, Mr. Markides and Ms. Fuller are of the view that Policy 6-11(a), which requires that the proposal be consistent with the description of the use zones in Policy 4-1 and any specific policies directing where it is appropriate to place the proposed use zone, is met. The proposed

use is a multi-unit residential building, and Policy 4-1 specifically states that the CG use zone is intended to accommodate residential uses. [Exhibit S-3, PDF, p. 181-183 and 264-265; Exhibit S-6, PDF, p. 6-8; Exhibit S-7, PDF, p. 81-82]

[77] The final step involves considering Policy 6-19, which the Board will do for both the use and form zone changes as set out elsewhere in this decision.

9.0 PROPOSED CHANGES TO FORM ZONE

[78] The Board will consider Solterre's proposed form zone change by describing and then applying the applicable policies.

9.1 Policies

[79] Section 6.3.5 of the MPS contemplates two types of form zone amendments – wholesale changes, which the MPS says, “should only be considered through a review of the Comprehensive Community Plan”, and minor changes, for example, where a change in use dictates the need for a different but compatible form:

6.3.5 Amending the Form Zone Map of the Land Use By-law

The initial placement of the Form Zones on the Form Zoning Map was conducted with much thought and as a reflection of the desired community structure identified in the Comprehensive Community Plan. Any wholesale changes to this structure should only be considered through a review of the Comprehensive Community Plan and, by extension, the Municipal Planning Strategy. However, it may be reasonable at times to consider minor adjustments to the Form Zoning Map as the community evolves or if a significant change in use dictates the need for a different—but compatible—form for buildings and the site.

[Exhibit S-4, PDF p. 307]

[80] Council can only change a form zone if it is satisfied that the application meets the requirements of Policy 6-13:

Policy 6-13: Council may consider amendments to the Form Zoning Map of the Land Use By-law. Council shall not adopt such amendments unless Council is satisfied:

- (a) the proposal is consistent with the description of the Form Zones in Policy 5-1;

- (b) there is a clear need for the amendment to accommodate a proposed use for the land that is both acceptable for the location and that could not be accommodated within the confines of the existing Form Zone;
- (c) the proposed Form Zone enables a form for the site that is compatible with (though not necessarily identical to) the surrounding form; and
- (d) the proposal meets the general evaluation criteria for amending the Land Use By-law, set out in Policy 6-19.

[Exhibit S-4, PDF p. 307]

[81] Policy 5-1(c) and (g) explain the intent of the current form zone (ONT1) and the proposed form zone (MA) for 13 Brook Street as follows:

Policy 5-1: Council shall, through the Land Use By-law, establish Form Zones, shown on the Form Zoning Map, to establish standards for building form, building placement, site design, and signage. The Form Zones shall generally conform to the following scheme:

- ...
(c) The Old Town/New Town 1 Form Zone is intended to maintain the residential development pattern of the parts of Lunenburg that were subdivided from the Common in 1862 & 1878 and enable new subdivisions to emulate said development pattern.
- ...
(g) The Marine Form Zone is intended to maintain the distinct character of a working waterfront with its fishing, shipbuilding, and interpretive tourism operations.

[Exhibit S-4, PDF p. 296]

9.2 Application of Policies

9.2.1 “Wholesale” and “Minor” Changes

[82] As highlighted above, s. 6.3.5 of the MPS states that the placement of form zones reflects the desired community structure set out in the CCP and that any “wholesale” changes should only be considered through a review of the CCP and MPS, although it may be reasonable to consider “minor” adjustments to form zones as the community evolves or if a significant change in use dictates the need for a different, but compatible, form. The Board notes that s. 6.3.5 is preamble to Policy 6-13 which helps provide context and inform that policy, although it is not a policy itself.

[83] Ms. Fuller testified that s. 6.3.5 requires a “review” of the CCP as a whole to understand the history of the form zone that is proposed to be changed. [Transcript, March 27, 2026, pp. 150-153]

[84] Solterre applied to change the form zone of 13 Brook Street from ONT1 to MA. MPS Policy 5-1 states the ONT1 form zone is intended to maintain the residential development pattern of the parts of the Town that were subdivided from the Common in 1862 and 1878.

[85] The CCP states that “... in 1878, a third division of New Town lots was added between Brook Street and Green Street” [Exhibit S-4, PDF p. 32]. Ms. Fuller relies on this in providing her opinion that “This narrative supports that Brook Street is part of the historic pattern that ONT1 is intended to maintain.” [Exhibit S-7, Tab 14, PDF p. 83]

[86] Mr. Markides disagrees with Ms. Fuller’s opinion. He carried out a comprehensive review of the CCP and the foundational documents underpinning the CCP and says that the 1878 subdivision intended for the ONT1 form zone to apply to land west of Falkland Street and not to the subject property which lies east of Falkland Street [Exhibit S-8, Tab 1, PDF pp. 6-9]. He says that because there is no future form zone map, s. 6.3.5 of the MPS implies that the “Community Structure Tomorrow” map in the CCP be used for this purpose. That map shows the subject property in the “Main Street Mixed Use” area which he says “translates directly” to the Main Street Form Zone (MST), which is the form zone intended by the CCP for the property:

- 4.6. It is critical to highlight that there is no explicit future land use map designated specifically for Form Zones within the MPS. Because traditional future land use maps are absent for this specific regulatory layer, the MPS, through the preamble in section 6.3.5, implies that the Community Structure Tomorrow map (Figure 2.2 of the CCP) should act as the guiding future land use map for Form Zones. In the regulatory framework of the Land Use By-law, this “Main Street Mixed Use” designation translates directly to the “Main Street Form Zone.” This contradicts Ms.

Fuller's assertion that the ONT1 Form Zone is the intended Form Zone for these parcels.

[Exhibit S-8, Tab 1, PDF pp. 8-9]

[87] Ms. Fuller testified that she did not perform a detailed review of the CCP and its related documents and deferred to Mr. Markides opinions on these issues [Transcript, April 27, 2026, pp. 123, 128 and 199].

[88] Because the property was never intended to be in the ONT1 form zone, Mr. Markides says that the form zone change from ONT1 to MA is not a "wholesale" change:

4.2. However, I disagree with Ms. Fuller's assertion that the requested Form Zone change represents a "wholesale change." Transitioning these parcels out of the Old Town/New Town 1 (ONT1) Form Zone is not a wholesale dismantling of the Town's heritage fabric. As discussed below, the foundational documents underpinning the CCP reveal that these properties were never intended to be included in that specific historical preservation boundary in the first place. The requested rezoning is a minor mapping correction to align the site with its actual historical and structural context, and its future intent under the CCP. Furthermore, even if I were to agree with Ms. Fuller's assessment that this request constitutes a wholesale change, her subsequent assessment of that change within Ms. Fuller's report remains factually and methodologically incorrect.

[Exhibit S-8, PDF, p. 9-10]

[89] Mr. Markides goes on to say that although Solterre is applying to change the form zone from ONT1 to MA rather than MST as the CCP intended, the proposed change carries out the intent of the MPS because it recognizes the MPS as a flexible tool to implement the physical vision of the CCP, the built form controls of the MST and MA form zones are similar, and the surrounding area is already heavily influenced by the MA zone:

4.10. The CCP contemplates the Main Street Form Zone, while the applicant applied for the Marine Form Zone. However, the difference in built form controls between the two is minimal. Furthermore, from a planning perspective, it is prudent to match the adjacent Marine Form Zone that is already applied to the rear lot, which is also subject to the Use Zone rezoning. Given that the other property subject to the Use Zone Change already possesses the Marine Form Zone, applying the Marine Form Zone to the entirety of the site makes sense from a practical design, and compatibility perspective.

4.11. The refusal of the Marine Form Zone simply because the Main Street Form Zone is the more technically appropriate designation under the CCP, fails to reasonably carry out the intent of the MPS. The MPS is designed as a flexible tool to implement

the physical vision of the CCP. As demonstrated, the built form regulations of the Marine Form Zone are functionally equivalent to the Main Street Form Zone. Refusing an application that achieves a nearly identical physical outcome intended by the CCP prioritizes administrative labels over functional reality. Such a rigid interpretation violates the foundational principles of the MPS, especially given that the surrounding context is already heavily defined by the Marine Form Zone. Furthermore, this stance directly contradicts the Town's own professional planning advice at the time of First Reading, as Town Staff reviewed the application and explicitly supported the requested Marine Form Zone change as being functionally appropriate.

- 4.12. It cannot be in line with the intention of the MPS to refuse a physical form that is so similar to the form intended by the CCP. Such a refusal elevates a minor administrative distinction over functional reality, frustrating the overall development goals of the MPS.

[Exhibit S-8, Tab 1, PDF pp. 11-12]

[90] Mr. Markides compared the built form controls for the MST and MA form zones, including lot coverage, maximum height, maximum building footprint and setbacks, and described the differences as “minimal” [Exhibit S-8, PDF, p. 12-14].

[91] In its closing submissions, the Town took the position that the MPS “denounces” wholesale changes.

9.2.1.1 Findings

[92] The Board finds that 13 Brook Street is not part of the historical pattern that the ONT1 form zone is intended to maintain and that the CCP intended the form zone of the property to be MST. This was demonstrated through the comprehensive review undertaken by Mr. Markides of the documents underpinning the CCP and Ms. Fuller deferred to his findings on this issue.

[93] The Board finds that changing the form zone to MA rather than MST reasonably carries out the intent of the MPS for the reasons set out by Mr. Markides and referred to above, in particular because the rear property is already zoned MA and the built form requirements of the MA and MST form zones are functionally equivalent. The Board finds that Ms. Fuller’s opinion is based on the misunderstanding that the ONT1

form zone was the intended form zone for the property when, as Mr. Markides' review of the CCP proves, the intended form zone for the property was MST. The Board finds that the MA form zone is a different but compatible form to the MST form zone as directed by s. 6.3.5. The Board also finds that the differences between the form of the proposed development and the requirements of the MST form zone are minimal. The proposed development: will be approximately one metre shorter in height than the MST zone allows; is set back from the east and south property boundaries in a similar manner to the setbacks required in the MST zone; and its building footprint is less than half of what the MST zone allows.

[94] The Board finds that it is not necessary to determine whether the proposed form zone change is a "wholesale" or "minor" change. Even if it is a "wholesale" change, the direction from s. 6.3.5 to review the CCP has been carried out and establishes that the change to the MA form zone reasonably carries out the intent of the MPS and, as addressed elsewhere in this decision, the form zone change has been evaluated considering the relevant policies of the MPS.

[95] The Board finds that interpreting the MPS as "denouncing" wholesale changes as the Town submits is not an interpretation the MPS can reasonably bear. The Town provided no evidence or specific MPS policies to support its position. The Board finds the clear language of the MPS means what it says – a wholesale change requires a "review" of the MPS. The Town's expert, Ms. Fuller, agreed with this interpretation and the Board finds that there is nothing in the language of s. 6.3.5 or elsewhere in the MPS to support the Town's position.

9.2.2 Policy 6-13(a)

[96] Policy 6-13(a) requires that Council be satisfied that “the proposal is consistent with the description of the Form Zones in Policy 5-1.”

[97] Ms. Fuller says this requirement is not met because the MA form zone is based on maintaining the character of a “working waterfront” but the proposed building is residential and not organized around marine operations:

6.8.4 In my opinion, if the proposed development is the justification for the form based change, then the proposed development is not within the description of the Marine Form Zone. While the Marine Form Zone description is centred on maintaining the distinct character of a working waterfront, the form and program proposed is primarily residential in function and massing, with marine and marine-supportive activity being mostly ancillary rather than defining. The proposed form does not read as a building or site organised around marine operations or direct marine access, nor does it clearly protect or reinforce the operational character-defining elements associated with fishing and shipbuilding, such as functional yard space, loading and servicing areas, and the tolerance for working waterfront operating conditions.

[Exhibit S-7, Tab 14, PDF p. 85]

[98] Mr. Markides disagrees and says, among other things, that Ms. Fuller improperly imports considerations of “use” into a form zone analysis when the MPS requires that “use” and “form” be regulated separately:

4.14. First, regarding Policy 6-13(a) and consistency with the Form Zone descriptions, Ms. Fuller’s assessment in Sections 6.8.1 through 6.8.4 relies on a flawed approach that evaluates built form using heritage and land use criteria. In Sections 6.8.2 and 6.8.3, Ms. Fuller attempts to assess “typical form” by relying on Canada’s Standards and Guidelines and the Town’s Heritage Conservation District (HCD) Plan, arguing that a Marine Form building must be defined by its “operational function” and have “direct marine access.” This approach is deeply flawed for two reasons. First, Ms. Fuller explicitly acknowledges in Section 6.8.3 that the subject lands are physically located outside the Heritage Conservation District, making the application of HCD guidelines inappropriate. Second, Ms. Fuller’s reliance on marine related uses as “character-defining elements” to assess a Form Zone change is a clear conflation of the Town’s distinct Use and Form regulatory pillars. These parcels of land do not currently allow for Marine Industrial Uses, nor are they permitted in the requested Use Zone (CG). By concluding in Section 6.8.4 that the proposal fails because it is “primarily residential in function” and lacks “marine operations,” Ms. Fuller evaluates a Form Zone application strictly against Use Zone criteria. The Marine Form Zone dictates physical parameters like massing, height, and setbacks; it does not mandate marine industrial functioning. Furthermore, Ms. Fuller’s assumption about the property’s intended physical structure within the community is incorrect. As illustrated in the Community Structure Tomorrow map, the CCP explicitly designates the subject properties as “Main Street Mixed Use”, deliberately locating them outside of the intended working waterfront area and the restrictions placed on the working waterfront area in Section 2.6 of

the CCP. Applying a compatible physical massing to an adjacent transitional site does not violate the high-level descriptions of the Form Zones.

[Exhibit S-8, Tab 1, PDF p. 16]

[99] The Staff Report reinforces the important distinction between “use” and “form” when considering an application to change a form zone. It states that “... the Marine Form zone governs the forms and appearance of buildings – such as setbacks, height, and massing – rather than prescribing land uses”, and “... the form zone system was established to achieve architectural coherence and compatible design outcomes rather than to restrict land use types.” [Exhibit S-3, p. 175]

9.2.2.1 Findings

[100] The Board finds that the MPS clearly intends that “use” and “form” be regulated separately [Exhibit S-4, PDF p. 275].

[101] Policy 5-1 explicitly refers to establishing standards for “building form, building placement, site design and signage.” Although the description of the MA form zone in Policy 5-1 refers to the intention to “maintain the distinct character of a working waterfront with its fishing, shipping, and interpretative tourism operations”, the Board finds that is in the context of form not use. The Board finds that considering use in a Policy 6-13(a) analysis about a form zone change does not reasonably carry out the intent of the MPS.

[102] The Board also finds that the proposed development is consistent with the description of the MA form zone in Policy 5-1(g). The form of the proposed building – three to six storey height, its massing and layout on the lots, aligns with the form associated with the working waterfront and fishing, shipping and tourism operations. This interpretation reasonably carries out the intent of the MPS.

9.2.3 Policy 6-13(b) - Clear Need for Amendment

[103] Policy 6.13(b) directs Council to determine whether “there is a clear need for the amendment to accommodate a proposed use for the land that is both acceptable for the location and could not be accommodated within the confines of the existing Form Zone”. Both experts addressed this in their reports.

[104] Ms. Fuller in her report stated:

Council also needs to evaluate, “if there is a clear need for the amendments to accommodate a proposed use for the land that is acceptable for the location and could not be accommodated within the confines of the existing Form Zone.” For this the question, it is not whether additional height or density is desirable. The test is whether there is a clear need. One way of assessing need is based on the data provided by the developer and the generally accepted fact there is additional housing needed in Nova Scotia. There seems little doubt of the need for more housing. However, the site can be developed without the form-based change, which would likely provide less housing units.

[Exhibit S-7, PDF p. 85]

[105] At the hearing, Ms. Fuller was cross examined about Policy 6.13(b):

Q. And so, your evidence, it ... And - and again, we're talking about Policy 6-13(b), and - and we're skipping ahead a bit. We will loop back to A, as well. But your evidence is that your reading of sub (b) allows Council to consider the need for the - the suggested form zone. So, that would be Marine Industrial form zone, as opposed to the accommodation of the proposed use and whether the proposal can be accommodated within the confines of the existing form zone?

A. Well, I think there's a - there's some interpretation that can be brought to that. They - they could interpret it narrowly, like you're talking about. But I do feel that there's an opportunity to be more expansive in their analysis if they so wish to be. And perhaps, just to add to that, no ... And - and - these policies have to work together. They're not meant to be a checklist, but ... And that's why we talk about intent in the Municipal Planning Strategy, as opposed to the regulatory, you know, six-metre setback, 30-metre height, or whatever it is. Those are easy to check off. The challenge is the balance that Council wants to bring. So, we can talk about B, but it's hard to separate these from each other, because they ... it's about the general intent and the reasonableness of that intent interpretation, if that makes sense to the Board. (page 88)

[106] It is Ms. Fuller's opinion that there is no clear need for the MA form zone change and that the more relevant question is whether the MA form zone is needed to accommodate a use that is acceptable in this location. She also opines that the form zone has to be meaningfully connected to marine operations in a way that cannot be

accommodated under the ONT1 form zone. She stated that evidence would be needed to show that a marine-form regime is necessary for an acceptable use on this site, as opposed to it being used to access a larger envelope. Based on this, she states that Council could reasonably interpret that this criterion is not met.

[107] Mr. Markides disagreed with Ms. Fuller. He stated in his report that she failed to properly apply the test:

... In these sections, she suggests the application fails because a residential development could theoretically be accommodated within the existing ONT1 Form Zone. This interprets the policy too restrictively. The policy asks if the proposed use can be accommodated, not a hypothetical alternative. As detailed in the application, the ONT1 regulations (specifically the 40 percent maximum lot coverage and 6 metre maximum front yard setback requirement) render the applicant's proposed development physically impossible on the front portion of the site. Therefore, there is a clear need for the amendment because the proposed use is acceptable for the location but practically cannot be accommodated within the confines of the existing ONT1 Form Zone. Furthermore, a clear practical need exists to standardize the built form across the newly consolidated lot, as the rear portion is already zoned Marine Form. The Marine Form Zone serves as an ideal transitional built form that bridges the "Main Street Mixed Use" community structure with the aesthetic of the adjacent working waterfront area without forcing the property to adopt restrictive marine uses.

[Exhibit S-8, PDF pp. 13-14]

[108] The Town submits that Ms. Fuller correctly explained that the "need" referred to in Policy 6-13(b) relates to the need for the requested form rather than the developer's economic needs. In its written closing submission, it states:

The need contemplated by the MPS for this Form Zone amendment, when considered in context of the MPS as a whole, is in reality a need for additional height and no setbacks to fulfill the waterfront character purposes of that zone – not apartment building densification to satisfy the developer's proposed financing and its views of the economics or profitability of its project.

[109] The Appellant submits that based on Ms. Fuller's interpretation, any form zone rezoning could be refused because it is not "strictly required" despite the fact that what could be built on a property is impractical, unreasonable, and not economically feasible.

9.2.3.1 Findings

[110] Mr. Markides interprets the “proposed use” in Policy 6.13(b) as the specific proposal for residential development put forward by Solterre in this case. He states that the policy does not ask whether the “proposed use zone” can be accommodated but rather whether the “proposed use” can be accommodated. Ms. Fuller opines that Council could reasonably interpret that the criterion in Policy 6.13(b) was not met because Solterre can develop their property within the existing ONT1 form zone, so no form-based change is required.

[111] As discussed in *Archibald*, the Board is mindful when looking at MPS language that there can be more than one interpretation that the wording can reasonably bear. However, the Board does not accept the Town’s interpretation on this point, i.e. that because Solterre can develop their property within the existing ONT1 form zone, rezoning is not required. Not only is it not apparent this is how Council interpreted Policy 6-13(b), but it is not an interpretation that the words themselves can reasonably bear.

[112] The Board finds there is a clear need for the amendment to accommodate a proposed use, namely the multi-unit residential building, for the land and not a proposed use zone. If it was the intention of the MPS for there to be a clear need for the proposed use zone, the Board finds that s. 6.13(b) would have explicitly used those words. Instead, it used “proposed use.” In this case, the Board finds that an interpretation of the policy that focuses on “proposed use” and not “proposed use zone” is one that the policy can reasonably bear. The proposed use is both acceptable for the location and due to the requested setbacks, it cannot be accommodated within the confines of the existing form zone. As was determined by the findings in this decision, the MPS regulates use zones and form zones separately, and the Board finds rezoning is needed to allow Solterre’s

proposal to be accommodated. Without the change, Solterre could not develop its property as set out in its application.

9.2.4 Policy 6-13(c) - Compatibility

[113] MPS Policy 6-13(c) requires council to be satisfied that the proposed form zone “enables a form for the site that is compatible with (though not necessarily identical to) the surrounding form.”

[114] Ms. Fuller says that the form zone amendment raises a material compatibility issue because it expands the development envelope and introduces working waterfront yard permission into an area where the ONT1 form zone signals a different intended form outcome:

6.8.9. This is not a minor calibration. The Marine zone enables substantially greater height and lot coverage and allows outdoor storage and display. Taken together, these permissions can change how the site reads and functions at the street and at the lot edge. In a Brook Street context, that is a potential shift in the experienced pattern of development, not just a technical change on a map.

6.8.10. Compatibility here is not only visual. It also includes day-to-day operational interface. Marine permissions increase the likelihood of yard-style servicing and activity patterns that can create friction with nearby residential or mixed-use expectations, and they can also affect reverse-sensitivity dynamics at the working waterfront edge. In my opinion, it is reasonable to determine that the proposed change does not meet the compatibility requirement outlined in 6-13(c).

6.8.11. For these reasons, my conclusion that Council can reasonably conclude that the Form Zone amendment request is not compatible with surrounding form.

[Exhibit S-7, Tab 14, PDF p. 87]

[115] Mr. Markides says that Ms. Fuller’s analysis improperly incorporates considerations of “use” contrary to the MPS which requires “use” and “form” be regulated separately. He says that considering the proposed development and the surrounding form zones, Solterre’s proposal is compatible because the majority of the surrounding area is already zoned MA zone:

4.16. Third, regarding the "compatibility" test established in Policy 6-13(c), Ms. Fuller concludes in Sections 6.8.7 and 9.3 of her report that applying the Marine Form

Zone to a non-marine development fails this criterion. However, Policy 6-13(c) specifically dictates that the proposed Form Zone must enable "a form for the site that is compatible with (though not necessarily identical to) the surrounding form." Compatibility in this context refers strictly to the physical relationship between the requested Form Zone and the physical Form Zones applied to the surrounding area. The majority of the surrounding area, including the rear portion of the subject site itself, is already zoned Marine Form. Evaluating compatibility under Policy 6-13(c) requires analysing how the physical massing of the requested Form Zone fits with neighbouring Form Zones, rather than scrutinizing whether the interior uses match. Town staff recognized and agreed with this approach to separating Use from Form as indicated in the Staff Report prepared on November 25, 2025 (Appeal Record page 175-176). Because the proposal matches the adjacent Marine Form Zones, it demonstrably satisfies the compatibility requirement of Policy 6-13(c).

- 4.17. [...] By insisting that the development must involve marine activities to be compatible, Ms. Fuller is improperly evaluating a Form request using Use-based criteria, completely ignoring the Town's trifurcated regulatory structure outlined in Section 2.4 of this report. Ms. Fuller's interpretation of Policy 6-13(a), (b), and (c) is flawed because it conflates Use and Form.

[Exhibit S-8, Tab 1, PDF p. 14]

[116] In its closing submissions, the Town does not refer to Ms. Fuller's opinion on this issue and advances a new argument. It says that Policy 6-13(c) primarily requires consideration of the existing surrounding forms, not (as Mr. Markides opines) the existing surrounding form zones. It says that approach could reasonably lead to the conclusion that the proposed form zone is not compatible with the existing surrounding forms because it will "stick out like a sore thumb from its surroundings" based on its height and "large scale."

[117] The proposed development is three storeys on the part of the property closest to Falkland Street and six storeys on the remainder of the property. It is rectangular in shape and covers roughly half the property. A building of comparable height and massing can currently be built on the property as-of-right. The main difference between what can be built as-of-right and what is proposed is that the as-of-right development on the property adjacent to Falkland Street would have larger setbacks

resulting in a somewhat smaller building footprint. A development of the same height and scale as proposed for the rear lot can already be built as-of-right.

[118] The property is currently surrounded by structures of various sizes. To the east there is a shed and the Lunenburg Shipyard with buildings of varying sizes, up to three storeys. Across Falkland Street to the west, there is a tennis court and two-storey residential buildings. To the south, there is a single storey commercial/industrial building that has a larger ground footprint than the proposed development. To the north, there is a two-storey commercial building owned by Solterre as well as other one to two storey buildings across Brook Street [Exhibit S-3, PDF pp. 10, 116, 118, 124, 126-127, 151 and 231].

9.2.4.1 Findings

[119] The Board repeats its earlier findings in this decision that the MPS intends for “use” and “form” to be regulated independently of one another.

[120] Further, Policy 6-13(c) specifically requires a comparison between the “proposed form zone” and the “surrounding form.” The Board finds that Ms. Fuller’s opinion on compatibility is based on incorporating considerations of “use” into a policy that specifically requires consideration of “form.” Based on the clear language of the MPS, the Board finds Ms. Fuller’s interpretation is not one that the MPS can reasonably bear.

[121] On the issue of whether “surrounding form” means the surrounding form zones or the existing surrounding forms, the Board finds that considering only the latter or making that the dominant consideration in the policy analysis, is not an interpretation that the MPS can reasonably bear.

[122] By its very nature, a municipal planning strategy is a forward-looking document whose purpose is to “guide development” for “the future use, management and

development of lands within the municipality” (*MGA*, ss. 213-214). The MPS states that it helps, “... support Lunenburg’s continued evolution ...” and specifically refers to the “need for different forms of housing” [Exhibit S-4, PDF pp. 273 and 275]. Limiting the comparison to existing surrounding forms or allowing that to dominate the analysis over surrounding form zones is contrary to these goals. Rather than encouraging development it risks stagnating or limiting development based on existing, surrounding forms.

[123] The Town’s suggested approach could also lead to absurd results. For example, it could justify council rejecting an application to rezone a property to align with the form zones of surrounding properties just because those properties are not yet developed and have no current, as-built form.

[124] In addition, the Town’s approach would prevent Solterre from building something of comparable height and massing to what can already be built as-of-right. The Board finds that is not the intent of the MPS.

[125] For these reasons, the Board finds that “surrounding form” in Policy 6-13(c) is primarily intended to refer to the surrounding form zones. Although existing built forms may be considered, the dominant consideration must be the surrounding form zones.

[126] Taking this approach, the Board also finds that rejecting the application on the basis that Council is not satisfied that the proposed form zone is compatible with the existing, surrounding form does not reasonably carry out the intent of the MPS. The majority of the surrounding area, including the rear portion of the subject site, is already zoned MA. The three-storey part of the development proposed for the property adjacent to Falkland Street is similar in height to Solterre’s two-storey commercial building across Brook Street and the two-storey residential development on the other side of Falkland

Street that will also provide a transition to the larger six-storey part of the development in the rear of the property. For these reasons, the Board finds that rejecting the application because the proposed form zone is not compatible with the surrounding form does not reasonably carry out the intent of the MPS.

9.2.5 Policy 6-13(d) - Consideration of Policy 6-19

[127] Policy 6-13(d) requires consideration of Policy 6-19 and is discussed below.

10.0 POLICY 6-19

[128] Policy 6-19 contains the general evaluation criteria which must be met for both a use and form zone change. Council must be satisfied that the proposal is not premature or inappropriate due to many factors. Many of these factors are not relevant to the proposed rezoning, and the parties agree some criteria have been satisfied. The Board will address the sections of this policy that have been raised as issues.

10.1 Policy 6-19(c)(i) - Ability of the Town to Absorb Public Costs Related to the Proposal

[129] The Town says that the Solterre's traffic expert asserts that the Town will have to make upgrades to sidewalks and crosswalks to ensure the safety of vulnerable users of the site; that this work is not in the Town's capital budget; and that the development plan shows a sidewalk partially on Town property, which is a concern for ownership, maintenance and repairs. The Town appears to suggest that these issues could justify refusing the application under Policy 6-19(c)(i) which requires council to be satisfied that the proposal is not premature or inappropriate due to "the ability of the Town to absorb public costs related to the proposal."

[130] As part of its application, Solterre provided a Transportation Impact Statement from GRIFFIN transportation group inc. dated February 27, 2025 (Traffic Study). The Traffic Study refers to “new and improved sidewalks” and installing “proper raised curb and gutters ... and bulb-outs” in the area of the proposed development:

... To improve connectivity for active transportation users a continuous sidewalk connection should be provided along the north side of the building to link the building entrances to a new and improved system of sidewalks and/or multi-use pathway(s) (MUP) along the Falkland Street corridor. To improve vulnerable road user safety – and reduce liability for the Town – proper raised curb and gutters with defined corner radii and bulb-outs should be installed at the study area intersection. This work should be part of a broader effort by the Town to implement a safe, secure, well-connected, and clearly marked active transportation route from the school/community centre area to the downtown/waterfront area.

[Exhibit S-3, PDF p. 30]

[131] Town staff advised Solterre that any upgrades to Town infrastructure were the developer’s responsibility with the potential opportunity to cost-share with the Town under its *Streets and Services Extension Policy*. To be eligible for funding under that policy, a developer must have a formal agreement in place with the Town, and, at a minimum, a development permit must be in place before entering into an agreement with the Town. Solterre advised Town staff that improvements on Town lands would be subject to future discussions which it assumed was not part of its rezoning application. There was no further correspondence from the Town to Solterre on this issue [Exhibit S-3, PDF pp. 49-50, 52; Exhibit S-12, PDF, p. 3].

[132] Mr. Joyce in his email to staff states:

- Assertions within the documents relating to it being the Town’s responsibility to upgrade existing street infrastructure immediately surrounding the Development does not conform with the provisions included in the Town’s Subdivision Specifications and are the Developer’s responsibility.
- It appears that the sidewalks shown along the Brook Street facing section of the building are on both private and public property, which is a concern for ownership, maintenance (such as snow removal) and repairs.

[Exhibit S-3, PDF p. 58]

[133] Mr. Joyce testified that there is nothing in the Town's capital budget for the next five years for street infrastructure or sidewalk work in the area of the proposed development, although he acknowledged that the budget was prepared after Council rejected Solterre's application.

[134] The Staff Report specifically states that the proposal does not obligate municipal expenditures and that any future costs can be addressed through subsequent permitting:

... the proposed zoning does not obligate municipal expenditures. Any future servicing or infrastructure impacts would be identified and addressed through subsequent permit reviews.

[Exhibit S-3, PDF p. 177]

[135] Approving the rezoning application does not approve the proposed development. Further permits will be required, including a development permit. In order for a development permit to be issued, a proposed development must meet the requirements of the LUB. Among other things, this requires a scaled plan of the proposed development showing the location and dimensions of all work to be carried out and any rights-of-way and easements. In addition, there are specific requirements for pedestrian access [Exhibit S-4, PDF pp. 332-333 and 383].

10.1.1 Findings

[136] The references in the Traffic Study to "new and improved sidewalks" and installing "proper raised curb and gutters ... and bulb-outs" are in the context of upgrades to "improve connectivity" and "improve vulnerable road user safety" [Emphasis added]. There is nothing in the Traffic Study or in Solterre's application indicating these are mandatory requirements or pre-conditions of the rezoning application or the proposed development, or that the Town must carry out this work and incur the cost. The Board

finds that any suggestions to the contrary are speculative and not supported by the evidence.

[137] Policy 6-19(c)(i) requires Council to be satisfied that the proposal is not premature or inappropriate “due to the ability of the Town to absorb public costs related to the proposal.” This language indicates that the policy is not engaged simply because a proposal may require the Town to spend money. It applies only if there is an impact on the Town’s ability to “absorb” those costs. There is nothing to suggest that the rezoning application will require the Town to spend money. This is supported by the Staff Report. For that reason, the Board finds that refusing the application on this basis would not reasonably carry out the intent of the MPS. Whether the proposed development will require the Town to spend public money is not clear at this stage. Although the Traffic Study provides comments about certain infrastructure upgrades, there is nothing to suggest that the proposed development is conditional on that work being carried out. For that reason, the Board finds that refusing the application on this basis would not reasonably carry out the intent of the MPS.

[138] On the issue of the sidewalks appearing to be on both private and public property, the Board finds that this type of issue is intended to be addressed at the development permit stage. An application for a development permit requires the submission of a scaled plan showing the location and dimensions of all work to be carried out and all rights-of-way and easements. The Town will be able to determine if there is any infrastructure proposed to be on Town property and whether or not to allow it, for example through an easement or right-of-way, cost sharing arrangement addressing responsibility for ownership, maintenance and repair, etc. Approving a rezoning

application does not approve the location of sidewalks. That is part of the development permit process.

[139] There are several decisions from the Board and its predecessor, the Nova Scotia Utility and Review Board, finding that rejecting a planning application because of concerns that are intended to be addressed at a later stage in the development process does not reasonably carry out the intent of a municipal planning strategy; see *Harvie (Re)*, 2025 NSRAB 68, at para. 83; *Brison Developments Ltd. (Re)*, 2024 NSUARB 81, at paras. 68-69; and *Armco Capital Inc. (Re)*, 2021 NSUARB 147, at paras. 72-72. The Board finds that the same principle applies here.

[140] For these reasons, the Board finds that denying the application on the basis of Policy 6-19(c)(i) does not reasonably carry out the intent of the MPS.

10.2 Policy 6-19(c)(iv) - Traffic hazards, congestion and pedestrian networks

[141] Policy 6-19(c)(iv) requires that council be satisfied that the proposal is not premature or inappropriate due to the creation of excessive traffic hazards or congestion on roads, cycling, and pedestrian networks within, adjacent to, or leading to the proposal.

[142] The potential for increased traffic and insufficient parking was addressed at length throughout this appeal, in the oral hearing and submissions.

[143] The Traffic Study first provides an overview of the road layout surrounding the subject properties:

2.1 - Roadway Layout Overview

The subject lands have direct frontage along two of the Town's public streets. To the west the property is bounded by Falkland Street. This two-lane, two-way street is generally aligned in a north-south direction and provides a key road connection to/from the Town's downtown and waterfront areas.

Brook Street forms the north property boundary. It is generally aligned in an east-west direction and also has a two-lane, two-way cross-section. This street terminates

immediately east of Falkland Street and is only about 90m long. There is no formal cul-de-sac at the terminus and there is no concrete curb-and-gutter to delineate the vehicle lanes.

Brook Street intersects with Falkland Street as a four-leg, two-way stop-controlled intersection. Stop-control is on the Brook-Victoria Street legs, while Falkland Street is free-flow. Again, there is no raised concrete curb-and-gutter to delineate the corner radii and no protection for pedestrians and active users. This represents a significant road safety risk for vulnerable road users traversing this intersection.

[Exhibit S-3, PDF pp. 22-23]

[144] This report highlighted a 2024 traffic study that was commissioned by the Town. This study determined that two-way peak travel demand is about 600 vehicles per hour at the Falkland/Dufferin/Lincoln Street intersection, well below the capacity of this intersection.

[145] The Traffic Study found that the increase in vehicle traffic related to the proposed development was not significant and no infrastructure or traffic control upgrades are expected to be required.

- *New Vehicle Trips:* GRIFFIN has examined the future site-generated person trips moving to/from the proposed development via walking, biking, and vehicle modes. Trip rates contained in ITE's *11th Edition Trip Generation Manual* were used to estimate the weekday morning and afternoon site-generated trips. In summary, the proposed new residential development is expected to generate up to **27 new vehicle trips/hour** (3 inbound and 24 outbound) during the weekday morning peak period, and **19 new vehicle trips/hour** (17 inbound and 2 outbound) during the weekday afternoon peak period.

If we examine all person trips, the ITE empirical data suggests that approximately 65-75% of all new site-generated person-trips will travel by vehicle and the remaining 25-35% will move via the walk and bike modes. The relatively low number of vehicle trips generated by the proposed development is expected to only have a minor and acceptable traffic operational impact on the study area streets and adjacent intersections. Thus, no infrastructure or traffic control upgrades are expected to be required within the planning horizon of this study. [Emphasis in original]

[Exhibit S-3, PDF p. 30]

[146] The Town did not submit a traffic report or provide expert evidence that refuted the Appellant's traffic study. Ms. Fuller did not express any concerns about traffic in relation to this policy. She was cross examined by Ms. Dobson in the hearing and stated that she accepted the Town Staff Report that stated the proposal would not create excessive traffic or congestion issues.

Q. (Dobson) And in your review, I guess, of the Appeal Record and the evidence on this appeal, did you review anything that suggested or concluded that there was a risk of excessive traffic hazard arising from this proposal?

A. (Fuller) I ... If ... Again, doing *de novo*, taking my sort of municipal planner hat on, I would depend on the traffic authority, traffic studies, to make those determinations, and I think staff captured and summarized those issues. So, I don't think I have anything I can offer particularly on it besides, you know, it was identified by staff, and those came from reports or from the traffic authority. And I have no reason to doubt it.

Q. Understood. And - and to be clear, staff concludes here, in the last sentence, "Staff do not feel the proposal would create excessive traffic hazards or conges - congestion."

A. Yeah. And if that - that's the determination of the traffic authority, I would not be ... you know, I'm prepared to accept that. I think the traffic study, you know, again, they - they identify, you know, that there could be, but they're not worried enough about it to suggest that - that it shouldn't proceed. But it has been raised, and that ... and it's ... Again, I keep coming back to it's a fair thing to look at.

[Transcript March 27, 2026, pp. 170-171]

[147] Town staff determined that the proposal is not premature or inappropriate due to the creation of excessive traffic hazards. The Staff Report noted that there may be a need to mitigate potential parking or traffic concerns, but at this stage of the process and based on the documentation provided by Solterre, including the traffic study, staff do not believe there are issues at this point.

10.2.1 Findings

[148] In its written closing submission, under the heading "Traffic Hazards", the Town wrote several pages suggesting Ms. Corson had decided not to include a sidewalk in her most recent development plans based on it not being shown on select PowerPoint slides in her presentation to Council. Ms. Corson testified that this was not the case and that some slides were included to show specific aspects of the development only and the sidewalk was not a focus of those slides. The Board finds Ms. Corson's evidence to be credible and is not convinced that a sidewalk will not be included in the final plans.

[149] The Town also submitted that there are pre-existing traffic issues in the area. A building of the same size and scale can be built as-of-right on the properties

requiring commercial use on the bottom floor. The Appellant argues that its proposal will actually reduce traffic with residential use instead of commercial businesses on the bottom floor. The Board finds that the Town has provided no evidence for its argument.

[150] Based on the evidence provided, the Board finds that Solterre's proposal is not premature or inappropriate due to the creation of excessive traffic hazards.

10.3 Policy 6-19(c)(vii) - Impacts on UNESCO World Heritage Site

[151] Old Town Lunenburg has been designated a UNESCO heritage district. The CCP addresses the importance of this designation [Exhibit S-8, PDF p. 37]. It notes that Lunenburg is world-renowned for its original colonial architecture, the colourful streetscapes and its working waterfront, and that Lunenburg is one of only two urban communities in North America designated as a UNESCO World Heritage site. Section 3.2 of the Old Town Lunenburg Heritage Conservation District Plan, 2024, entitled "Boundaries", states:

Policy 6: It is Council's policy that the Old Town Lunenburg Heritage Conservation District Plan and By-law apply to all lands within the boundary identified on Map 1 Old Town Lunenburg Heritage Conservation District Boundary in Appendix B.

If Old Town Lunenburg Heritage Conservation District's heritage value is to be conserved, the character defining elements necessary to maintain its integrity must fall within the district's boundaries. The boundaries in this Plan and By-law include all the features and processes that convey the district's significance. It corresponds to Charles Morris' plan, with the addition of a transition or buffer area rearranged, in part, to capture the archaeological remains of the original fortifications. The boundary of the Heritage Conservation District has also been amended to better reflect the UNESCO boundary and size of the UNESCO buffer zone.

[Exhibit S-7, PDF pp. 154]

[152] Concerns were raised by the Intervenor and residents that the proposed project may erode or threaten Lunenburg's UNESCO World Heritage Site designation, and therefore they support Council's decision to reject Solterre's re-zoning application.

[153] Whether or not the proposed project would have an impact on the UNESCO World Heritage Site designation was considered by the Town.

[154] The criteria outlined in Policy 6-19(c)(vii) is whether the proposal is premature or inappropriate due to “impacts on UNESCO World Heritage Site statements of outstanding value” (SOUV).

[155] In the Old Town Lunenburg Heritage Conservation District Plan, “outstanding universal value” (OUV) is defined as “cultural significance, as recognized by UNESCO’s World Heritage Committee, which is so exceptional as to transcend national boundaries and to be of common importance to present and future generations of all humanity.”

[156] The Staff Report states:

Staff have done a screening exercise to map any expected impacts to the WHS and its Statement of OUV, and staff are satisfied that the development would be expected to have minimal and no direct negative impacts to the WHS, with consideration given to the WHS buffer zone and wider setting.

[Exhibit S-8, PDF p. 474]

[157] The Preliminary UNESCO WHS Heritage Impact Screening dated November 25, 2025, was prepared by Marc Kiely, the Town’s Director of Community Development [Exhibit S-3, p. 214]. Mr. Kiely stated that the purpose of the screening was to determine whether there is a “reasonable expectation of negative consequences to the Old Town Lunenburg WHS Outstanding Universal Value (OUV)” from Solterre’s proposed project. The intent of the screening was to determine if a heritage impact assessment was required.

[158] Mr. Kiely noted that that the location of the proposed project is outside the boundaries of the World Heritage Site and is not located within the buffer zone. He further stated that staff determined that the proposed project was unlikely to negatively impact

the OUV of the Old Town Lunenburg World Heritage Site because the scope of the project, including its siting and use, would have little interaction with the World Heritage Site. Staff also concluded that indirect impacts due to any increased use or wear and tear from increased visitation would be minimal.

[159] The attributes of the Old Town Lunenburg World Heritage Site OUV were considered as part of the screening process. A brief synthesis of the OUV is as follows:

Old Town Lunenburg is the best surviving example of a planned British colonial settlement in North America. Established in 1753, it has retained its original layout and overall appearance, based on a rectangular grid pattern drawn up in the home country. The inhabitants have safeguarded the town's identity throughout the centuries by preserving the wooden architecture of the houses and public buildings, some of which date from the 18th century and constitute an excellent example of a sustained vernacular architectural tradition. Its economic basis has traditionally been the offshore Atlantic fishery, the future of which is highly questionable at the present time.

[Exhibit S-3, PDF p. 219]

[160] Based on this summary, as Mr. Kiely pointed out, the criteria for key descriptors include:

- ...it has retained its original layout and overall appearance
- ...based on a rectangular grid pattern
- ...wooden architecture of the houses and public buildings...sustained vernacular architectural tradition
- ...economic basis has traditionally been the offshore Atlantic fishery

[Exhibit S-3, PDF p. 219]

[161] Mr. Kiely in his report stated that all attributes were specific to the Old Town Lunenburg World Heritage Site location itself. Because the proposed development would be located outside the World Heritage Site, there would be no impact to those attributes. He also stated that the subject properties are on vacant lands, they are not a part of the working waterfront within the Town's planning framework and would not be considered to have negative impact to the offshore Atlantic fishery.

[162] With respect to “Integrity” he concludes:

The project is highly unlikely to compromise the integrity of Old Town Lunenburg with the construction of a new residential building on Brook Street for the following reasons:

- the site’s physical separation from the WHS;
- the scale of the development would conceivably result in more people residing within the Town; however, not on a scale that would negatively impact the heritage value.

[Exhibit S-3, PDF p. 216]

[163] Based on the above, Town staff did not recommend pursuing a Heritage Impact Assessment.

[164] Mr. Markides, in his report, evaluated the criteria set out in Policy 6-19 [Exhibit S-6, PDF pp. 14-15]. With respect to 6-19(c)(vii), namely the impacts on UNESCO World Heritage Site statements of outstanding value, he, too, concluded that the proposed development is located outside the UNESCO World Heritage Site and buffer area.

10.3.1 Findings

[165] There was no dispute among the parties that Lunenburg has cultural heritage significance, and that it is a UNESCO World Heritage Site. As noted above, the Town conducted a screening exercise and determined the proposed project would not negatively impact the designation. The Board heard no evidence at the hearing to contradict the findings of Town staff.

[166] While the Board acknowledges the concerns raised by the Intervenor and other residents, it heard no evidence to support their argument that this proposed project will erode or threaten Lunenburg’s UNESCO World Heritage Site designation. The Board accepts the evidence submitted by the Town that because the proposed project is located

outside the boundaries of the World Heritage Site, is unlikely to compromise the heritage value of Old Town Lunenburg.

[167] Therefore, the Board finds that rejecting the proposal on the basis that it would have a negative impact on the OUV of the Old Town Lunenburg World Heritage Site does not reasonably carry out the intent of the MPS.

10.4 Policies 6-19(c)(ix) and (x) - Flooding, Climate Change and Drainage Issues

[168] Policies 6-19(ix) and (x) require that Council be satisfied that that the proposal is not premature or inappropriate due to “site-specific climate change risks” and “the potential to create flooding or serious drainage issues, including within the proposal site and in nearby areas”.

[169] The witnesses at the hearing agreed that a portion of the subject properties fall within the Flood Risk Area of the Flood Risk Area Map in the LUB. This map shows areas of Lunenburg with an elevation lower than 3.2 metres relative to the Canadian Geodetic Vertical Datum of 2013 (CGVD2013), which are areas that modelling show are at risk from coastal flooding due to sea level rise and storm surge to the year 2100.

[170] MPS Policy 5.3 requires the following:

Policy 5-3: Developers of new development within areas identified on the Flood Risk Area Map shall be required to acknowledge the risks of coastal flooding to development and to reduce the potential impacts of coastal flooding on the development by:

- (a) Locating habitable areas above the 3.2 metre (GCVD2013) elevation;
- (b) Providing safe containment for potential water pollutants (oils, etc) in the case of a flood; and
- (c) Locating vulnerable infrastructure (such as electrical and mechanical systems) above the 3.2 metres (CGVD 2013) elevation.

[Exhibit S-4, PDF p. 298]

[171] The LUB has specific provisions dealing with the mandatory requirements of Policy 5-3. In particular, s. 7.2.10. states:

Flood Risk Development Standards

7.2.10. New development within the Flood Risk Areas as shown on Schedule “E”, the Flood Risk Area Map, are required to sign a “Flood Risk Area Development Plan Undertaking Form” of risks and responsibility for damages in the event of a flood and confirming that:

- (a) The finished floor elevation of habitable areas is no lower than 3.2 metres CVGD2013.
- (b) Storage areas for hazardous materials and potential water pollutants, such as fuel oil, are located at an elevation no lower than 3.2 metres CGVD2013 or are designed by a Professional Engineer for safety and containment in the event of a flooding event.
- (c) Consideration has given to the placement of floor-vulnerable mechanical and electrical equipment.

[Exhibit S-4, PDF p. 361]

[172] Section 4.7.4 provides additional information that is required at a development permit application stage. This is not relevant to the rezoning stage at issue in this appeal.

[173] Although not required at the rezoning stage, Council requested additional information from Solterre. In response, Solterre provided a Theoretical Servicing Review from DesignPoint dated February 27, 2025. The review included a portion on stormwater flows. DesignPoint produced a preliminary hydrologic/hydraulic stormwater model to determine approximate storage volumes required to balance pre-and post-development stormwater flows. On this basis, DesignPoint concluded that “preliminary storm calculations have indicated that storage will likely not be required to balance pre-and post-development runoff flows.”

[174] In his expert report, Mr. Fougere, DesignPoint’s principal, stated the following:

Detailed stormwater design, including confirmation of storm sewer capacity, grading design, and overland flow routing, is typically completed at the detailed design stage following rezoning approval.

... The detailed engineering analysis required to fully evaluate drainage conditions, overland flow routing, and flood mitigation measures are normally completed during the detailed design stage of development.

[Exhibit S-8, PDF p. 22]

[175] Mr. Fougere also confirmed that the final site plans for the development would comply with the CGVD2013 requirements:

The Town's Land Use By-law also includes provisions related to flood protection, including Clause 7.2.10, which applies to development within the Flood Risk Areas identified on Schedule E of the By-law. This clause requires that the finished floor elevation of habitable areas be no lower than 3.2 metres CGVD2013. In practice, this requirement is applied through the development permit and building permit review process, when detailed site plans and building elevations are submitted to the Town. At that stage, the finished floor elevation of the building must be demonstrated to meet or exceed the 3.2 m CGVD2013 flood protection elevation. Establishing finished floor elevations above this level is the primary mechanism used by the Town to ensure that new development remains resilient to projected coastal flood conditions. Because final building elevations and site grading are only established during detailed design, compliance with this requirement is normally confirmed during the development permit stage rather than during the rezoning process.

The architectural drawings forming part of the appeal record (pages 258–259) illustrate that the proposed building has been conceptually designed with finished floor elevations established above surrounding site grades. The site section drawings illustrate the relationship between the proposed building floor elevations, existing ground elevations, and coastal reference levels, including natural high tide. As illustrated in the site sections, the main floor elevation of the building has been intentionally established above the adjacent grade and incorporates grading and drainage measures along the property boundary. While the final building elevations will ultimately be confirmed through the detailed design and development permit review process using the municipal geodetic datum, the drawings included in the appeal record demonstrate that the building concept has been developed with consideration of the Town's flood protection elevation requirements.

[Exhibit S-8, PDF p. 23]

[176] The Town argued that, although pipe sizing and location of storm water infrastructure are issues for later in the development process, issues of coastal flooding and overland stormwater flows are appropriate matters of concern for Council.

[177] In its written closing submissions, the Town refers to Solterre's most recent concept design. It said that in order to attempt to gain Council's approval of the project, Solterre had removed parts of the building structure in its rear corners such that the

vehicles in the parking area, under a part of the building supported by posts, are directly exposed to ocean waves or overland run-off waters during flooding events. The Town said this risks creating a “fleet of floating vehicles, bobbing around like pool toys, to ram into those building posts during flood events.”

[178] Mr. Delorme, a professional engineer with EC Atlantic Ltd testified on behalf of the Town. He was engaged to provide an expert technical screening risk assessment about the coastal flooding hazard and stormwater risk at the subject properties. Mr. Delorme testified that overland flooding cannot be ruled out in a development with the footprint of that proposed by Solterre.

[179] He stated in his expert report:

- 28.1 In my professional opinion, the zero-setback Marine Form requirement, combined with an at grade building face and the site's position at the low point of a continuous urban overland path, creates a configuration that is materially more vulnerable to overland flood damage than a setback development with threshold protection. The application materials do not demonstrate that this configuration has been or can reasonably be designed to manage that vulnerability.

[Exhibit S-7, PDF p. 13]

[180] In cross examination, Ms. Dobson confirmed with Mr. Delorme that he was engaged to provide a screening risk assessment only.

Q. (Dobson) And as part of you - your review, you agree you were not asked to express an opinion on whether Solterre's application met the requirements of the Town of Lunenburg's MPS?

A. (Delorme) That's correct.

Q. And you were not asked to opine sort of whether the application met any specific requirements of the LUB?

A. That's correct.

Q. So, it's fair to say you don't express an opinion on whether, for example, the applicant supplied sufficient information on flooding to meet Policy 6-19(x) of the MPS?

A. I - I do not and excluded that in my report.

Q. And you don't express an opinion as to sort of what engineering information is required at a rezoning application?

A. I do not.

Q. And Council did not have your report when they were making their decision in November 2025?

A. That's correct. And you did not visit the site in forming the opinions you express in your report?

A. That's correct.

[Transcript March 27, 2026, p. 19-20]

[181] Ms. Fuller deferred to Mr. Delorme's expert opinion in her report and states that evaluating flood risk and serious drainage issues is outside her area of expertise:

(x) "the potential to create flooding or serious drainage issues..." MPS (PDF p.52)	Evaluation criterion	This is outside my area of expertise. Delorme opinion indicates potential increase in flooding and drainage risk associated with increase lot coverage and density.
---	----------------------	---

[Exhibit S-7, PDF p. 89]

[182] Based on her assessment of Mr. Delorme's report, she states in her conclusion that Council's refusal falls within a range of outcomes that can reasonably be supported by the MPS when the MPS is read as a whole:

- 8.10. In my view, this supports Council's determination that the rezoning application was not reasonably [sic] consistent with the Municipal Planning Strategy. While detailed floodproofing and stormwater controls can be required and enforced at the development permit stage, Council was not obliged to treat those matters as resolved at the amendment stage where the application did not demonstrate how the proposal would address the Policy 6-19 flooding and drainage criteria on this specific site, particularly given that this site is in a known area of flood risk.

[Exhibit S-7, PDF p. 91]

[183] Under cross-examination by Ms. Dobson, Ms. Fuller said that the only criteria listed in Section 6-19 that she is concerned about is climate change risk but did not provide any evidence to support her concern. She said that at this stage the MPS requires that Council be satisfied that the proposal is not premature or inappropriate and that Council has the right to ask for more information if it has concerns. Ms. Fuller

concedes that Council did not ask for additional information or state flooding or climate change risk as a reason for its refusal of Solterre's application.

[184] In the Staff Report, Mr. Joyce said the proposed rezoning will not cause or increase any known site-specific climate change risks and will not cause any known flooding or drainage issues. Mr. Joyce acknowledges that the site is located inside of the Flood Risk Area shown on the Flood Risk Area Map, Schedule E of the LUB. He also states that all development will be required to comply with the LUB provisions regarding the Flood Risk area, particularly the requirement to place possible pollutants and sensitive infrastructure above 3.2 m CGVD2013.

10.4.1 Findings

[185] Although the Town's witnesses all expressed theoretical concerns about flooding risk, none of them provided evidence, expert or otherwise to support these concerns for this specific project. The Appellant's expert witness testified that the final development plan, which is not required at this rezoning stage will meet all flood protection elevation provisions in the LUB. Therefore, the Board finds that rejecting the proposal at the rezoning stage due to potential site-specific climate change risks and the potential to create flooding or serious drainage issues, does not reasonably carry out the intent of the MPS.

11.0 PARKING

[186] Solterre says there is no reasonable basis upon which Council can refuse the application based on parking concerns because there is no MPS requirement for parking. The Town acknowledges that parking is not a MPS policy consideration but that

it is a significant issue because of its consequences for traffic (as a result of pedestrian safety concerns) and flooding.

[187] The MPS confirms that Council decided not to establish minimum parking requirements for automobiles:

For this variety of reasons, Council has elected to not establish minimum automobile parking requirements in the Land Use By-law.

[Exhibit S-4, PDF p. 294]

[188] The LUB does not establish minimum parking requirements for automobiles. This reflects the intent of the MPS. The Board finds that automobile parking is not an MPS policy criterion for Solterre's application. None of the applicable policies refer to automobile parking. The Board finds that refusing the application because of automobile parking concerns does not reasonably carry out the intent of the MPS.

[189] The Board notes that although there are no MPS policies for automobile parking, there is a policy addressing minimum requirements for bicycle parking (Policy 4-26). No party suggested that the proposal could be rejected for this reason and the proposal provides for this type of parking [Exhibit S-3, PDF pp. 111 and 125]. The Board finds that rejecting the proposal based on concerns about bicycle parking does not reasonably carry out the intent of the MPS.

[190] The Board has considered the Town's position that parking may have some bearing on traffic and flooding and addresses those issues elsewhere in this decision.

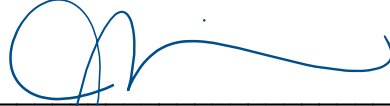
12.0 CONCLUSION

[191] The Board has addressed the issues raised by the Town throughout this decision and finds that the rezoning application meets the requirements of the MPS. This is the first step of a structured process which will likely take some time to complete.

[192] For the reasons set out in this decision, the Board finds that Council's decision to reject the application does not reasonably carry out the intent of the MPS. The Board directs Council to approve the application.

[193] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 13th day of July 2026.



Jennifer L. Nicholson



Marc L. Dunning



Darlene Willcott