



Municipality of the County of Kings Report to the Planning Advisory Committee

Planning Application for a development agreement to permit the development of a campground at 5734 Highway 358 (PID 55014534) in Scots Bay.

File 21-25

March 12, 2024

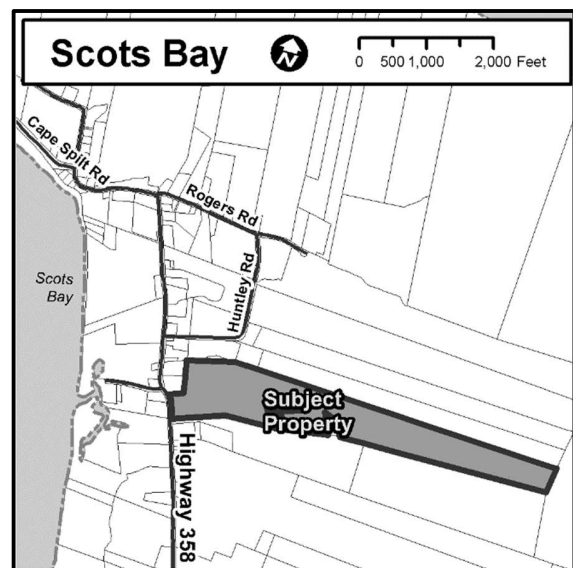
Prepared by: Planning and Development Services

Applicant	Julie Skaling
Land Owner	Breiel Holdings LTD
Proposal	Development Agreement for the development of a campground
Location	5734 Highway 358 (PID 55014534), Scots Bay
Lot Area	35.37 ha/ 98.15 Acres
Designation	Agricultural (A)
Zone	Rural Mixed Use (A2) Zone
Surrounding Uses	Residential uses, Agricultural uses,
Neighbour Notification	Notification letters were sent to 23 property owners within 500 feet of the subject property.

1. PROPOSAL

Julie Skaling, of Breiel Holdings LTD, has applied for a development agreement ('DA) to permit the development of a campground consisting of 100 camp sites with a mix of tenting sites, sites for use with a Recreational Vehicle and cabins at 5734 Highway 358 (PID 55014534) in Scots Bay.

The proposed campground would be developed in 3 phases.



2. OPTIONS

In response to the application, the Planning Advisory Committee may:

- A. Recommend that Council approve the development agreement as drafted;
- B. Provide alternative direction, such as requesting further information on a specific topic, or recommending changes to the draft development agreement;
- C. Recommend that Council refuse the development agreement as drafted.

3. STAFF RECOMMENDATION

Staff recommend that the Planning Advisory Committee forward a positive recommendation by passing the following motion.

The Planning Advisory Committee recommends that Municipal Council give Initial consideration to and hold a Public Hearing regarding entering into a development agreement to permit the development of a campground at 5734 Highway 358 (PID 55014534) which is substantively the same (save for minor differences in form) as the draft set out in the report dated March 12, 2024.

4. BACKGROUND

The subject site was inherited by the applicant in 2021 after the death of a family member to keep the land in the family. At the time of the purchase the land contained multiple dwellings, various accessory buildings, fields and vegetation.

The applicant intends to develop the land with a campground to provide accommodations for visitors to the Scots Bay area and to provide employment opportunities for those with limited abilities. The initial application was for a Land Use By-Law (LUB) Map Amendment which proposed to rezone the land from the Rural Mixed Use (A2) Zone to the Commercial Recreation (P1) Zone to allow for the development of a campground with a mix of 90-100 serviced and un-serviced sites for tents and Recreational Vehicles ('RV'). The RV sites were proposed to be spread over two of the stages with 50 of the RV sites located behind (to the east of) the neighbouring residential properties 5750 and 5770 Highway 358. The proposal also included the development of various accessory buildings on the land to provide amenities for the guests.

Following a Public Information Meeting concerns and feedback were received from the public regarding a range of issues, including but not limited to the scale of the proposal, increase in traffic, impact on neighbouring agricultural uses (avian influenza, campers solid waste ending up in crops), safety and security of neighbouring residents, increase in trespassing, distance from emergency services, noise and waste.

As a result, Staff and the applicant came to an agreement in May 2022 that the proposal would be considered through a development agreement on the land. As it enables Staff to fine tune how the use is operated on the property and provide the public with a certain degree of certainty regarding what can be expected from the proposal through the use of increased restrictions and phasing.

The application has been amended to consider the development of a campground consisting of up to 100 camp sites to be developed over four phases as outlined below.

Phase 1: 15 un-serviced tent/small camper sites. Phase 1 will be located to the south of Pengree lane and fronting onto Highway 358;

Phase 2: 40 un-serviced field and wooded sites including cabins. Phase 2 will be located to the north of Pengree Lane, between 102 and 164 Pengree Lane (approximately);

Phase 3: 10-15 back country camp sites. Phase 3 will be located to the east of 164 Pengree Lane;

Phase 4: 30 un-serviced field sites intended for Recreational Vehicles. Phase 4 will be located to the north of Pengree Lane and to the west of the existing dwelling on the land.

In addition to the camp sites to be developed in phases, additional amenities and services are proposed to be developed. These are proposed to be developed alongside the phases but with no specific associated timeline. Such amenities include, but are not limited to, pit privies, shower stations, wood house, amenity building, well, water taps, and charging station. A commercial use has also been included within the area for Phase 1, near Highway 358.

5. SITE INFORMATION

The subject property is located within a rural area on the Blomidon Peninsula and has an area of 98.15 acres. The subject property has a road frontage of approximately 369 feet on Highway 358. Pengree Lane extends eastward, from Highway 358, into the site approximately 2,656 feet. The property slopes upwards to the east. The eastern half of the site is mostly forested. The western half of the site is sparsely populated by trees with a number of cleared areas for dwellings and agricultural uses. The subject property contains three existing dwellings, two of which are located on separate properties and are not subject to this application. The third dwelling, 41 Pengree Lane, is located on the subject property and will be subject to the development agreement.

The neighbouring properties contain a variety of uses. The land to the north of the subject property is in partial agricultural production with the balance of the lands being wooded. An application for the development of a poultry barn has been received for the land to the north off Huntley Road. At the time of this report, a footing permit was been issued for the development of the poultry barns on March 7, 2023 however no construction progress was apparent during a site visit in July 2023.

The land to the east is completely forested and is part of Blomidon Provincial Park. The land to the south of the property contains a place of worship, cemetery, dwelling, agricultural uses and forested areas. The land to the west contains a number of dwellings and agricultural uses, including a poultry farm. The poultry farm is located across Highway 358 to the west of the site (5741 Highway 358). The poultry barn of the farm is located approximately 180 feet from the western boundary of the subject property and a minimum

of 350 feet from the closest proposed camp site. Another poultry farm, with 3 chicken barns is located to the northwest of the subject site. With regard to the poultry barn with an active permit to the north, the permit drawings submitted by the owner indicate that the poultry barn would be set back 50 feet from the front lot line, have a depth of 50 feet and would be located a minimum of 100 feet from the southern property line. The property where the poultry barn is proposed has a variable depth between 230 feet and 320 feet. In the portion of the property where the poultry barn is proposed, the depth of the property is approximately 260 feet, resulting in a rear setback of approximately 160 feet. There is an intervening parcel between the subject property and the property with the proposed poultry barn resulting in a distance of approximately 300 feet from the closest camp site to the poultry barn.

The property is currently located in the Rural Mixed Use (A2) Zone (See Appendix A), and within the Agricultural Designation. In accordance with policy 8.4.2.1 (Permitted Uses), the LUB does not permit the land to be used for the purpose of a campground as of right. As the application is no longer considering a rezoning of the land, the proposed development can only be considered by development agreement.

The parcels of land making up 5734 Highway 358 have been consolidated to create one property under the same ownership, excluding the two remaining dwelling under separate ownership which are located wholly within the site and are accessed by Pengree Lane.

6. PUBLIC CONSULTATION

Under the Planning Policies of the Municipality of the County of Kings (PLAN-09-001), a Public Information Meeting (PIM) was required because the application concerned a Land Use By-Law Map Amendment. An online recording of the PIM was made available in February 2022 and the video presentation has been made available on the Municipal website since that time.

A total of 23 property owners within 500 feet of the subject property were notified of the planning application and the associated presentation via letter mail in February 2022. An advertisement was also placed in the February 8, 2022, edition of the Valley Journal-Harvester providing notice of the planning application and direction to the video presentation on the municipal website.

Many of the neighbouring residents along Highway 358 and the surrounding area signed letters for and against the proposal.

The general types of concerns were over the increase in traffic on a rural road (with blind turns and existing traffic congestion at the intersections in Scots Bay) which is not monitored for people speeding, the increase in large vehicles traveling at speed down the rural road, the potential increase in noise and activity in a quiet neighbourhood as a result of the proposed development. Concerns regarding the safety and security of existing residents were raised as a result of the proposed number of camp sites and the need for security as emergency services are 30 minutes away. Concerns were also raised regarding pollution and septic contamination which will be generated by the proposal along with the availability of water and whether there will be an impact on existing supply if new wells are servicing the site. Further

to concerns related to pollution, concerns were raised for the salt marshes in Scots Bay as well as light and noise pollution emanating from the proposed development.

The neighbouring farming operations also expressed their concerns that campground guests would be subject to environmental nuisances including traffic, odours, flies and noise emanating from normal poultry farm operations.

Neighbouring residents raised concerns regarding the health and safety of their livestock on the premise that tourists are prone to trespassing onto farmland and this compromises their biosecurity and leads to the spread of disease such as avian influenza.

The Burial Grounds Care Society also noted their concern regarding the impact of the proposal on the preservation of the Pengree cemetery, which is located on the subject site. Two head stones remain, with research indicating additional burials occurred. The site is currently fenced off.

On February 9, 2023, a Community Meeting was held at the Scots Bay Community Hall regarding the processes and procedures of planning applications in the Municipality of the County of Kings. The meeting was community organised, and members of Council were unable to attend. A list of questions was sent to Council after the meeting regarding the changes to the application and the process of moving forward given the change in application type (from Land Use By-Law Map Amendment to Development Agreement). Answers to the submitted questions were posted to the Municipal website.

7. POLICY REVIEW

7.1 Land Use By-law

For Council to be able to consider a DA, the Municipal Government Act (MGA) requires that this ability be outlined within the LUB. Section 8.4.5 of the LUB states that:

LUB 8.4.5 Uses Considered by Development Agreement

Pursuant to the Municipal Planning Strategy, the uses noted below may be considered by Development Agreement with the Rural Mixed Use (A2) Zone:

- a. **Proposals for visitor-oriented development** not permitted as-of-right in accordance with policy 2.5.13 of the Municipal Planning Strategy.*

7.2 MPS Enabling Policy

Policy 2.5.13 of the MPS enables Council to consider entering into a DA to permit development of visitor-oriented developments not permitted as-of-right in the Rural Mixed Use (A2) Zone. The policy states:

Council shall:

MPS 2.5.13 *consider only by development agreement within the Agriculture, Resource, and Shoreland Designations, with the exception of in the Agricultural (A1) Zone, proposals for visitor-*

oriented developments not permitted as-of-right. In evaluating development agreements, Council shall be satisfied that:

- a. The proposal is oriented to visitors or the travelling public, such as, but not limited to, lodging, restaurants, events venues, or other types of special attractions;*

The proposed campground will provide accommodations and amenities to members of the travelling public at 5734 Highway 358.

- b. The subject property has a lot area that can appropriately accommodate the proposed use, any accessory uses and structures, parking areas and required infrastructure;*

The subject property is 98.15 acres in area, on which 100 camp sites are proposed. The area to be developed with camp sites supporting RVs or other permanent infrastructure (ie. Not including back country tent sites) is limited to approximately 45 acres of the 98.15 acre property which incorporates ample open space for other activities. Conversely, the zone applied to existing campgrounds in the Municipality requires a minimum lot area of 100,000 square feet and there are no restrictions within the zone requirements related to the number of camp sites permitted. It is Staff's opinion that the property has an adequate area to accommodate the use as well as accessory uses and buildings and other infrastructure.

- c. The site facilities are adequately buffered and/or separated from surrounding residential dwellings (other than a residential dwelling occupied by the operator) to mitigate negative impacts associated with noise, light, and other visual impacts;*

To maintain adequate separation distances, the development will be required to be setback a minimum of 75 feet from all properties. The 75 foot setback is required to allow vegetation to grow naturally, which is intended to act as a buffer to help reduce potential noise, impact from lighting and other impacts resulting from the proposed use.

- d. If the proposal is for a lot located on a lake within the Shoreland Designation, Council shall be satisfied that: ...*

The location is not on a lake or within the Shoreland Designation and is not applicable.

- e. If the use is a listed permitted use, the condition(s) that prevent the proposal from being permitted as-of-right in the designation is addressed by development agreement including, but not limited to, enhanced buffering and the positioning and design of buildings and structures; and*

The proposed use is not permitted within the Rural Mixed Use (A2) Zone unless Council considers the proposal through a DA for visitor oriented development or through a rezoning to the Commercial Recreation (P1) Zone. Additional restrictions outlined in section 8 of this report and the draft development agreement attached as Appendix C address the reason the use is not permitted as of right.

- f. The proposal meets the general development agreement criteria set out in section 5.3 Development Agreements & Amending the Land Use By-Law.*

The MPS in section 5.3.7 contains the criteria to be used when considering all DA proposals. These criteria consider the impact of the proposal on the road network, services, development pattern, environment, finances, and wellfields, as well as the proposal's consistency with the intent of the MPS. It is Staff's opinion that the proposal meets the general criteria. There are no costs to the Municipality because of the proposed development and the development raises no concerns regarding emergency services, traffic hazards/congestion or pollution. These criteria are reviewed in detail in Appendix B

7.3 Supporting Policies and Objectives of the MPS

The MPS sets out the vision, goals, objectives and general criteria which are to be met in order for the needs of the Municipality to be met and to ensure the decisions made today benefit the Municipality and residents/business owners in the future. Proposals are considered against any number of policies based on their location and complexity. Often the policy in place which applies to a specific site and the goals to be achieved conflict and as a result parameters need to be put in place to achieve the goals while also mitigating any impact that may occur between land uses and proposals.

Section 2.5, the Economic Development section of the MPS describes the growing importance of tourism to the economic development of the region and the intention to encourage visitor-oriented businesses in the Municipality. Some of the policies within the section that support this development are as follows:

Council shall:

2.5.11 *permit a variety of opportunities for visitor-oriented businesses in locations and at a scale consistent with the intent of the zones enabled within the Agricultural, Resource, and Shoreland Designations as well as the Historic Hamlet of Grand Pré (A5) Zone;*

2.5.12 *encourage and promote opportunities for visitor-oriented businesses in the Municipality;*

The intention of the Rural Mixed Use (A2) Zone states "*lands located in this zone are intended for a mix of agricultural, residential and resource uses to enable the agricultural industry expansion as well as to accommodate rural housing demand.*". Although the Rural Mixed Use (A2) Zone prioritizes agricultural, residential and resource uses, the MPS also recognizes that agriculture is key to the Valley's tourism industry, providing a distinct identity for the Municipality, so it offers some flexibility for tourism-oriented businesses in terms of location and expansion. As a result, the Rural Mixed Use (A2) Zone permits some visitor-oriented uses as-of-right in the zone as accessory uses, such as tourist commercial uses. Additionally, properties in the Rural Mixed Use (A2) Zone are eligible to be rezoned to the Commercial Recreation (P1) Zone in addition to the development agreement option used for this application.

Within section 2.5 of the MPS, Council encourages opportunities for visitor-oriented businesses in policy 2.5.12 which states:

Council shall:

2.5.12 encourage and promote opportunities for visitor oriented businesses in the Municipality.

Within section 2.5, the MPS also outlines the Municipality's Economic development goals, objectives and policies. Within this section, the goal of Economic Development states, *"To sustain the Municipality's diverse economic base, encourage entrepreneurship and innovation"*. Further to this goal, policies 2.5.2, 2.5.4 and 2.5.12 state:

Council shall:

2.5.2 encourage the development of new businesses ranging in breadth and scale;

2.5.4 promote the Municipality as a superior location for new businesses;

2.5.12 encourage and promote opportunities for visitor-oriented businesses in the Municipality;

The proposal is an opportunity for the Municipality to encourage entrepreneurship and innovation and the proposal will be consistent with the intent of the above policies through the employment of people with limited abilities.

Also, in Section 2.5, Economic Development objectives, the theme on rural and natural areas states *"To facilitate and promote outdoor recreation and eco-tourism opportunities that take advantage of our natural and scenic assets"*. Although this development might not be completely based on the objectives of eco-tourism the main intention of the development is to provide nature-based tourism where the tourist will get to observe and appreciate the natural and scenic assets of Scots Bay.

8. SUMMARY OF THE DRAFT DEVELOPMENT AGREEMENT

The draft DA has been attached as Appendix C to this report. The main content of the proposed DA includes:

- Permits the development of a campground, local commercial use and accessory building and uses;
- Limits the total number of camp sites although provides flexibility on whether the camp site is occupied by a Recreational Vehicle, a tent or a cabin;
- Requires vegetative buffers to be able to grow along side and rear property boundaries;
- Requires signage along the vegetative buffers restricting access;
- Regulates the provision of parking;
- Prohibits the development of a swimming pool or other open water features; and
- Controls the rate of the development through phasing.

9. CONCLUSION

The proposal and the terms of the draft DA are in keeping with the intent of the Council's Municipal Planning Strategy. The proposal is enabled by the policies regarding tourism within the Municipal Planning Strategy. As a result, a positive recommendation is being made to the Planning Advisory Committee.

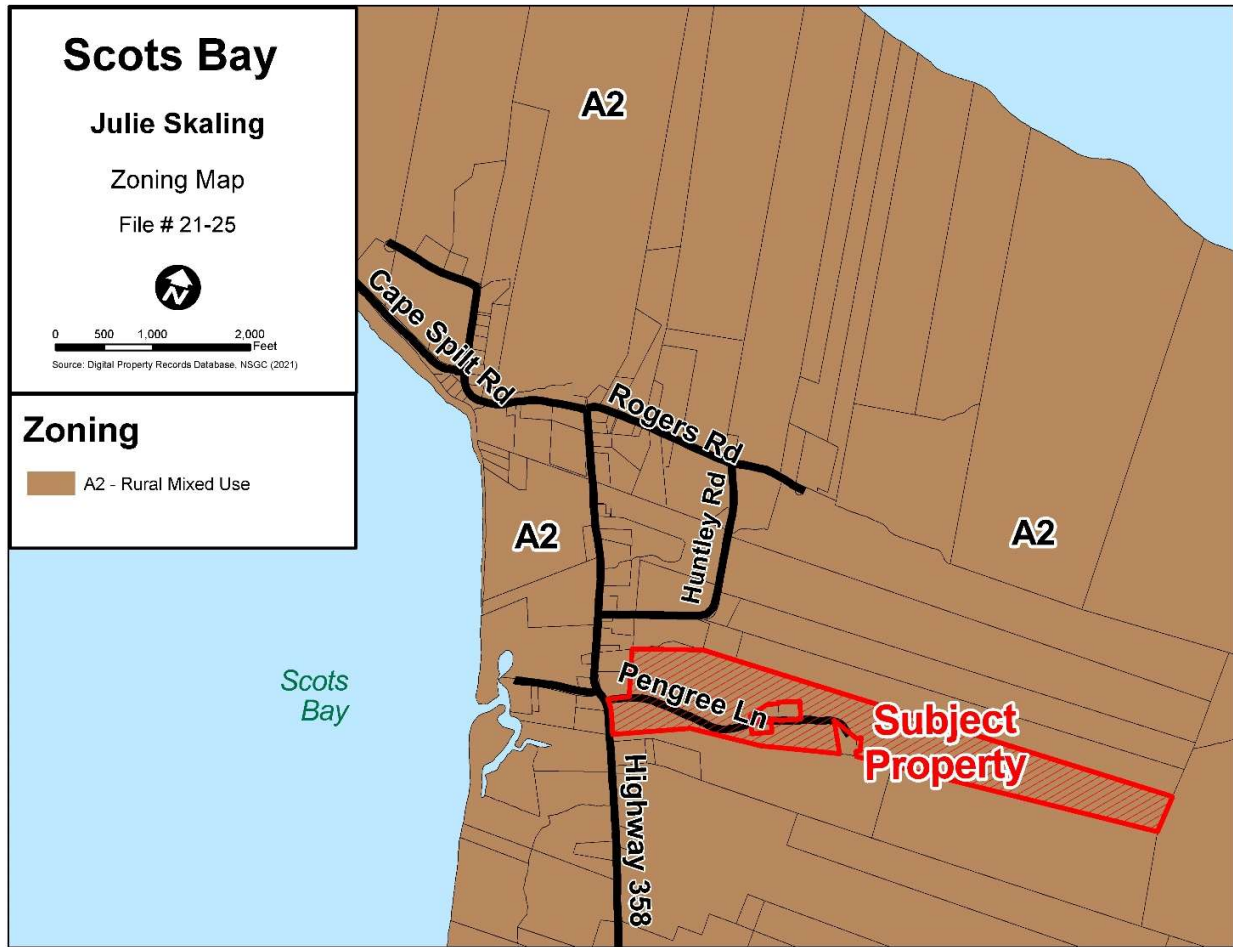
10. APPENDIXES

Appendix A – Zoning Map

Appendix B – General Criteria to Consider for all Development Agreements and Land Use By-Law Amendments

Appendix C – Draft Development Agreement

Appendix A – Zoning Map



Appendix B - General Criteria to Consider for all Development Agreements and Land Use By-Law Amendments

Council expects to receive applications to amend the Land Use By-law or enter into a development agreement for development that is not permitted as-of-right in the Land Use By-law. Council has established criteria to ensure the proposal is appropriate and consistent with the intent of this Strategy. Council shall be satisfied that a proposal to amend the Land Use By-law or to enter into a development agreement:

Criteria	Comments
<i>a. is consistent with the intent of this Municipal Planning Strategy, including the Vision Statements, relevant goals, objectives and policies, and any applicable goals, objectives and policies contained within a Secondary Plan;</i>	The proposed development agreement is consistent with the intent of the Municipal Planning Strategy to support tourism and the applicable goals, objectives and policies contained within the Municipal Planning Strategy.
<i>b. is not in conflict with any Municipal or Provincial programs, By-laws, or regulations in effect in the Municipality;</i>	The proposed development agreement is not in conflict with any Municipal or Provincial programs, By-laws, or regulations.
<i>c. that the proposal is not premature or inappropriate due to:</i>	
<i>i. the Municipal or village costs related to the proposal;</i>	The proposal does not involve any development costs to the Municipality.
<i>ii. land use compatibility with surrounding land uses;</i>	Staff do not expect any compatibility issues. The Development Agreement requires a setback of 75 feet between any development and the lot line.
<i>iii. the adequacy and proximity of school, recreation and other community facilities;</i>	Not applicable as no residential development is proposed.
<i>iv. the creation of any excessive traffic hazards or congestion due to road or pedestrian network adequacy within, adjacent to, and leading to the proposal;</i>	<p>The Department of Public Works were consulted and did not raise any concerns regarding the road and proposed increase in traffic volumes. An access permit was issued in February 2022 and was renewed in January 2023. Comments from March 2024 confirm that the access permit is expected to be renewed.</p> <p>A Traffic Impact Assessment was commissioned by a third party and forwarded by the third party to the Department of Public Works. The Department of Public Works indicated that they did not agree with the study and confirmed that they have no objections to the use from a traffic perspective.</p>

v. <i>the adequacy of fire protection services and equipment;</i>	The deputy Fire Chief confirmed that fire protection services are available to the subject property.
vi. <i>the adequacy of sewer and water services;</i>	<p>On-site sewer and water services will be required as no central services are available in this location. The development agreement requires these to be approved by the authority having jurisdiction being the provincial Department of Environment and Climate Change.</p> <p>Staff consulted directly with the Department related to water quantity in the area and no concerns were raised. The publicly-accessible well log database for other wells in the area did not have any information that would cause concern related to the water supply in the general area.</p>
vii. <i>the potential for creating flooding or serious drainage problems either within the area of development or nearby areas;</i>	Not expected.
viii. <i>negative impacts on identified wellfields or other groundwater supplies for the area;</i>	The subject property is not within any wellfield protection areas.
ix. <i>pollution, in the area, including but not limited to, soil erosion and siltation of watercourses; or</i>	The property owner will be required to follow provincial soil erosion controls during construction enforced by NSECC.
x. <i>negative impacts on lake water quality or nearby wetlands;</i>	No applicable.
xi. <i>negative impacts on neighbouring farm operations;</i>	Not expected to interfere with neighbouring farm operations. The development agreement requires measures to be put in place to mitigate potential impacts including increased setbacks. Staff consulted with the Department of Agriculture related to concerns raised by the public with regard to the spread of avian flu. The department did not indicate that they had any specific concerns related to the proliferation of avian flu due to the introduction of a campground. Materials reviewed by Staff related to the spread of avian flu have informed the restrictions in the DA including the prohibition of any open water amenities such as swimming pools or ponds.

<i>xii. the suitability of the site regarding grades, soils and geological conditions, location of watercourses, marshes, bogs and swamps, and proximity to utility rights-of-way.</i>	The subject property is generally suitable in terms of grades, soils, geological conditions, and proximity to natural features and rights-of-way.
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Appendix C - Draft Development Agreement

THIS DEVELOPMENT AGREEMENT BETWEEN:

BREIEL HOLDINGS LTD, of CANNING, Nova Scotia, hereinafter called the "Property Owner",

of the First Part

and

MUNICIPALITY OF THE COUNTY OF KINGS, a body corporate pursuant to the Municipal Government Act, S.N.S., 1998, Chapter 18, as amended, having its chief place of business at Coldbrook, Kings County, Nova Scotia, hereinafter called the "Municipality",

of the Second Part

WHEREAS the Property Owner is the owner of certain lands and premises (hereinafter called the "Property") which lands are more particularly described in Schedule A attached hereto and which are known as Property Identification (PID) Number 55014534; and

WHEREAS the Property Owner wishes to use the Property for campground uses; and

WHEREAS the Property is situated within an area designated Agricultural on the Future Land Use Map of the Municipal Planning Strategy, and zoned Rural Mixed Use (A2) Zone on the Zoning Map of the Land Use By-law;

WHEREAS policy 2.5.13 of the Municipal Planning Strategy and section 8.4.5 of the Land Use By-law provide that the proposed use may be developed only if authorized by development agreement; and

WHEREAS the Property Owner has requested that the Municipality of the County of Kings enter into this development agreement pursuant to Section 225 of the Municipal Government Act so that the Property Owner may develop and use the Property in the manner specified; and

WHEREAS the Municipality by resolution of Municipal Council approved this Development Agreement;

Now this Agreement witnesses that in consideration of covenants and agreements contained herein, the parties agree as follows:

PART 1 AGREEMENT CONTEXT

1.1 Schedules

The following attached schedules shall form part of this Agreement:

Schedule A Property Description

Schedule B Site Plan

1.2 Municipal Planning Strategy and Land Use By-law

- (a) *Municipal Planning Strategy* means By-law 105 of the Municipality, approved on March 5, 2020, as amended, or successor by-laws.
- (b) *Land Use By-law* means By-law 106 of the Municipality, approved on March 5, 2020, as amended, or successor by-laws.
- (c) *Subdivision By-law* means By-law 60 of the Municipality, approved September 5, 1995, as amended, or successor by-laws.

1.3 Definitions

Unless otherwise defined in this Agreement, all words used herein shall have the same meaning as defined in the Land Use By-law unless the context clearly indicates otherwise. Words not defined in the Land Use By-law but defined herein are:

- (a) *Development Officer* means the Development Officer appointed by the Council of the Municipality.
- (b) *Camp site* means the area used by a member of the travelling public for accommodations either with the use of a recreational vehicle or other temporary structure such as a tent or within a permanent tourist cabin.
- (c) *Back country camp site* means an area used by a member of the travelling public for accommodations within a temporary structure such as a tent.
- (d) *Tourist cabin* means a structure intended for overnight accommodation for the travelling public and may include but is not limited to a recreational cabin as defined in the Land Use By-law, geodesic domes, tear drop style units, tunnel tents. Washroom and cooking facilities may be provided. Tourist cabins are not considered residential units.
- (e) *Amenity Building* means an accessory building that is accessory to the campground use and may include amenities for use by individuals staying at the campground including, but not limited to, kitchen and washroom facilities, laundry facilities, common areas for recreation, reading, meeting, or dining.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Permitted Uses and Requirements

That the Parties agree that a campground shall be developed on the Property consisting of no more than 100 camp sites in the following phases:

- (a) Phase 1 in the location indicated on Schedule B – Site Plan consisting of a maximum of 15 camp sites;
- (b) Phase 2 in the location indicated on Schedule B - Site Plan consisting of a maximum of 40 camp sites;
- (c) Phase 3 in the location indicated on Schedule B - Site Plan consisting of a maximum of 30 camp sites;
- (d) Any number of back country camp sites within the area identified as 'Back Country Camping' on Schedule B – Site Plan;
- (e) A building containing a commercial use within the area identified on Schedule B as Phase 1. The following commercial uses shall be permitted to be located within the building having a maximum gross floor area of 2,500 square feet:
 - i. Retail Store
 - ii. Restaurant
 - iii. Personal Service Shop
 - iv. Uses accessory to the campground
- (f) Amenity building having a maximum building footprint of 2,500 square feet and a maximum height of 25 feet and subject to the setback requirements outlined in section 2.2 Development Standards of this Agreement; and
- (g) Accessory uses and structures subject to the requirements for accessory buildings in the Rural Mixed Use (A2) Zone or the Development Standards outlined in section 2.2 of this Agreement, whichever are more stringent; and
- (h) A dwelling containing up to two residential units at the location identified as 41 Pengree Lane. This dwelling shall be considered the caretaker's residence on the Property.

Except as otherwise provided in this Agreement, the provisions of the Land Use By-law apply to any development undertaken pursuant to this Agreement.

2.2 Development Standards

All activity and development on the subject property shall be subject to the following Development Standards:

- (a) All activity, buildings, structures, and camp sites shall be subject to a 75 foot setback from all lot lines. For clarity, this is intended to be an area of no activity. No camp sites, camp fire areas, walking trails or other activities are permitted in this area;

- (b) All activity, buildings, structures and camp sites shall be located no closer than 250 feet from any existing dwelling that is not accessed by Pengree Lane;
- (c) No activity, buildings, structures, or camp sites shall be permitted within the area identified on Schedule B – Site plan as Pengree Cemetery. This area shall be fenced;
- (d) Notwithstanding 2.1(g), an accessory swimming pool or other accessory uses or structures that include an open water source shall not be permitted;
- (e) Tourist cabins are permitted to have a maximum building footprint of 500 square feet and a maximum height of 20 feet;
- (f) Signage indicating that no access is permitted shall be posted along the 75 foot setback within the areas identified as Phase 1, Phase 2, and Phase 3 at intervals no greater than 100 feet; and
- (g) One parking space shall be required on site for each camp site.

2.3 Site Plan

- (a) All uses enabled by this Agreement on the Property shall be developed in general conformance with Schedule B, Site Plan.

2.4 Appearance of Property

The Property Owner shall at all times maintain all structures and services on the Property in good repair and a useable state and maintain the Property in a neat and presentable condition.

2.5 Subdivision

Subdivision intended to reduce the size of the property shall not be permitted.

2.6 Erosion and Sedimentation Control

During any site preparation, construction activities or demolition activities of a structure or parking area, all exposed soil shall be stabilized immediately and all silt and sediment shall be contained within the site as outlined in the Department of Environment *Erosion and Sedimentation Control Handbook for Construction*, or any successor documents, so as to effectively control erosion of the soil.

2.7 Vegetation

The area identified on Schedule B – Site plan as vegetative buffer is intended to be an area of no activity related to the permitted uses on the Property. Vegetation shall be permitted to grow naturally with little to no human intervention. Nothing in this section shall prevent the removal of damaged or diseased vegetation.

2.8 Lighting

The Property Owner shall ensure that any lights used for illumination of the Property or signs shall be arranged so as to divert light downwards and away from streets and neighbouring properties.

2.9 Servicing

The Property Owner shall be responsible for providing adequate water services and wastewater disposal services to the standards of the authority having jurisdiction and at the Property Owner's expense.

2.10 Refuse Storage

Refuse associated with uses enabled by this Agreement shall be contained in an enclosed building, having a maximum height of 20 feet, until it is collected or transported to the area designated for collection.

2.11 Signage

Signage shall be permitted in accordance with the requirements for signs for all uses in the Commercial Recreation (P1) Zone.

2.12 On-Site Caretaker

An on-site caretaker shall reside in the existing dwelling on the Property and addressed as 41 Pengree Lane. Nothing in this agreement shall prevent the replacement of this dwelling on the subject property, subject to the requirements of the underlying zoning.

PART 3 CHANGES AND DISCHARGES

3.1 The following matters are not substantive and may be changed by Council without a public hearing:

- (a) the addition of commercial uses not listed in section 2.1(e) is not a substantive matter provided the proposed use is permitted in the Rural Commercial (C4) Zone; and
- (b) any changes to the Phasing outlined in this Agreement.

3.2 The following matters are substantive matters

- (a) the uses permitted on the property as listed in Section 2.1 of this Agreement;
- (b) development that would result in any change to Schedule B, Site Plan for uses specifically enabled by this Agreement.

3.3 Upon conveyance of land by the Property Owner to either:

- (a) the road authority for the purpose of creating or expanding a public street over the Property; or
- (b) the Municipality for the purpose of creating or expanding open space within the Property;

registration of the deed reflecting the conveyance shall be conclusive evidence that that this Agreement shall be discharged as it relates to the public street or open space, as the case may be, as of the date of registration with the Land Registry Office but this Agreement shall remain in full force and effect for all remaining portions of the Property.

3.4 Notwithstanding the foregoing, discharge of this Agreement is not a substantive matter and this Agreement may be discharged by Council at the request of the Property Owner without a public hearing.

3.5 Notice of Intent to discharge this Agreement may be given by the Municipality to the Property Owner following a resolution of Council to give such Notice:

- (a) as provided for in Section 3.4 of this Agreement; or
- (c) at any time upon the written request of the Property Owner, provided the use of the Property is in accordance with the Land Use By-law or a new Agreement has been entered into.

3.6 Council may discharge this Agreement thirty (30) days after a Notice of Intent to Discharge has been given. Notwithstanding any other provision of this Agreement, the discharge of this Agreement is not a substantive matter and this Agreement may be discharged by Council without a Public Hearing.

PART 4 IMPLEMENTATION

4.1 Commencement of Operation and Phasing

- (a) No construction or use may be commenced on the Property until the Municipality has issued any Development Permits, Building Permits and/or Occupancy Permits that may be required.
- (b) The development of Phase 2 shall not be commenced until an approved on site sewage disposal system for the purposes of commercial dumping is installed.
- (c) The development of Phase 3 shall not be commenced until January 1, 2029 however, work related to this phase that does not require a permit may be permitted to occur at any time;
- (c) The following uses may be developed at any time following the issuance of a development permit for any number of camp sites associated with Phase 1

- i. The area identified on Schedule B – Site Plan as Back Country Camping;
- ii. Amenity Building and other accessory uses, buildings and activities identified in section 2.1 of this Agreement; and,
- iii. Commercial use permitted in section 2.1(e) of this Agreement.

4.2 Drawings to be Provided

When an engineered design is required for any portion of a development, record drawings shall be provided to the Development Officer within ten days of completion of the work which requires the engineered design.

4.3 Completion and Expiry Date

- (a) The Property Owner shall sign this Agreement within 60 days from the date the appeal period lapses or all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Nova Scotia Utility and Review Board or the unexecuted Agreement shall be null and void;

PART 5 COMPLIANCE

5.1 Compliance With Other By-laws and Regulations

- (a) Nothing in this Agreement shall exempt the Property Owner from complying with Federal, Provincial and Municipal laws, by-laws and regulations in force or from obtaining any Federal, Provincial, or Municipal license, permission, permit, authority or approval required thereunder.
- (b) Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property (other than the Land Use By-law to the extent varied by this Agreement) or any statute or regulation, the higher or more stringent requirements shall prevail.

5.2 Municipal Responsibility

The Municipality does not make any representations to the Property Owner about the suitability of the Property for the development proposed by this Agreement. The Property owner assumes all risks and must ensure that any proposed development complies with this Agreement and all other laws pertaining to the development.

5.3 Warranties by Property Owner

The Property Owner warrants as follows:

- (a) The Property Owner has good title in fee simple to the Lands or good beneficial title subject to a normal financing encumbrance, or is the sole holder of a Registered Interest in the Lands. No other entity has an interest in the Lands which would require their signature on this Development Agreement to validly bind the Lands or the Property Owner has obtained the approval of every other entity

which has an interest in the Lands whose authorization is required for the Property Owner to sign the Development Agreement to validly bind the Lands.

- (b) The Property Owner has taken all steps necessary to, and it has full authority to, enter this Development Agreement.

5.4 Onus For Compliance On Property Owner

Any failure of the Municipality to insist upon a strict performance of any requirements or conditions contained in this Agreement shall not be deemed a waiver of any rights or remedies that the Municipality may have and shall not be deemed a waiver of any subsequent breach or default in the conditions or requirements contained in this Agreement.

5.5 Breach of Terms or Conditions

Upon breach of any term or condition of this Agreement, the Municipality may notify the Property Owner in writing. In the event that the Property Owner has not cured any such breach or entered into arrangements with the Municipality related to such breach to the Municipality's satisfaction, acting reasonably, within six (6) months of such notice then the Municipality may rely upon the remedies contained in Section 264 of the *Municipal Government Act* and may enter the land and perform any of the terms contained in the Development Agreement, or take such remedial action as is considered necessary to correct a breach of the Agreement, including the removal or destruction of anything that contravenes the terms of the Agreement and including decommissioning the site. It is agreed that all reasonable expenses, whether arising out of the entry on the land or from the performance of the terms, are a first lien on the land that is the subject of the Development Agreement.

5.8 Development Agreement Bound to Land

This Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, and shall run with the land which is the subject of this Agreement until such time as it is discharged by the Municipality in accordance with Section 229 of the *Municipal Government Act*.

5.9 Assignment of Agreement

The Property Owner may, at any time and from time to time, transfer or assign this Agreement and its rights hereunder and may delegate its obligations hereunder to an assign, successor, heir, or purchaser of the land bound by this Agreement.

5.10 Costs

The Property Owner is responsible for all costs associated with recording this Agreement in the Registry of Deeds or Land Registration Office, as applicable, and all costs of advertising for and recording of any amendments.

5.11 Full Agreement

This Agreement constitutes the entire agreement and contract entered into by the Municipality and the Property Owner. No other agreement or representation, oral or written, shall be binding.

5.12 Severability of Provisions

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

5.13 Interpretation

- (a) Where the context requires, the singular shall include the plural, and the use of words in one gender shall include all genders as circumstances warrant;
- (b) Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.
- (c) References to particular sections of statutes and bylaws shall be deemed to be references to any successor legislation and bylaws even if the content has been amended, unless the context otherwise requires.

THIS AGREEMENT shall enure to the benefit of and be binding upon the parties hereto, their respective agents, successors and assigns.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto and is effective as of the day and year first above written.

SIGNED, SEALED AND ATTESTED to be the proper designing officers of the Municipality of the County of Kings, duly authorized in that behalf, in the presence of:

MUNICIPALITY OF THE COUNTY OF KINGS

Witness

Peter Muttart, Mayor

Date

Witness

Janny Postema, Municipal Clerk

Date

SIGNED, SEALED AND DELIVERED
In the presence of:

BREIEL HOLDINGS LTD

Witness

Julie Skaling

Witness

Date

SCHEDULE A – Property Description
Accessed via Property Online, December 14, 2023

ALL THAT CERTAIN lot, piece or parcel of land situate, lying and being at Scots Bay in the County of Kings in the Province of Nova Scotia, more particularly bounded and described as follows:

BEGINNING at a point on the east bound of the Scots Bay Road (now known as Highway 358) where the same is intersected by the northerly bound of lands of Cyrus O. Steele, being formerly lands of William Jess;

THENCE in an easterly direction along the north bound of the Steele lands to the base line;

THENCE in a northerly direction thirty-six (36) rods along the base line to the southern bound of lands of Cyrus O. Steele, being formerly lands of George L. Jess;

THENCE in a westerly direction along the south bound of the Steele lands a distance of two hundred (200) rods to a stake, being the centre of the rear division;

THENCE in a northwesterly direction to a brook near a piece of land formerly owned by George L. Jess, called a flatiron piece;

THENCE in a southwesterly direction by the brook to the northeast corner of lands of C. Huntley, being formerly lands of Edward Comstock;

THENCE in a southerly direction along the eastern boundary of the Huntley lands to the northeast corner of lands of Elmer L. Tupper;

THENCE continuing in a prolongation of the said line a distance of seventeen (17) rods four (4) feet to an iron stake;

THENCE in a westerly direction a distance of twelve (12) rods to an iron stake;

THENCE in a southerly direction to the east bound of the Scots Bay Road (now known as Highway 358);

THENCE continuing along in a southeasterly direction along the east bound of the Scots Bay Road (Highway No. 358) to the place of BEGINNING.

BEING AND INTENDED TO BE a portion of those lands as conveyed by Ruby E. Tupper to Elmer L. Tupper by Deed dated November 9, 1942 and recorded on August 5, 1944 in the Kings County Registry of Deeds in Book 166 at Page 340.

AND FURTHER BEING AND INTENDED TO BE those same lands conveyed by Elmer L. Tupper and his wife Gertrude Alice Tupper to their son Weldon R. Tupper and his wife L. Althea Tupper, as Joint Tenants, by Warranty Deed dated August 30, 1971 and recorded on August 31, 1971 in the Kings County Registry of Deeds in Book 307 at Page 52 as Document No. 7598.

SAVING AND EXCEPTING THEREOUT AND THEREFROM the following six (6) parcels of land:

EXCEPTION NO. 1 (PID 55000574)

Those lands conveyed by Elmer L. Tupper and his wife Gertrude Tupper to Theodore Dykens by

Warranty Deed dated July 4, 1964 and recorded on July 29, 1964 in the Kings County Registry of Deeds in Book 229 at Page 82 as Document No. 53886. This 1964 conveyance was not referenced as an exception in the 1971 Deed from Elmer and Gertrude Tupper to Weldon and Althea Tupper recorded in Book 307 at Page 52.

EXCEPTION NO. 2 (PID 55014542)

Those lands conveyed by Weldon R. Tupper and L. Althea Tupper to Hubert J. Tupper by Warranty Deed dated May 15, 1974 and recorded on August 15, 1974 in the Kings County Registry of Deeds in Book 365 at Page 651 as Document No. 6753.

EXCEPTION NO. 3 (PID 55014559)

Those lands conveyed by Weldon R. Tupper and Althea L. Tupper to Cyrus S. MacLatchy and Ann M. MacLatchy by Warranty Deed dated July 30, 1977 and recorded on March 1, 1978 in the Kings County Registry of Deeds in Book 435 at Page 490 as Document No. 1834.

EXCEPTION NO. 4 (PID 55000558)

Those lands conveyed by Weldon Tupper and Althea Tupper to Patrick William Delaney and Sharon Lucille Delaney by Warranty Deed dated May 31, 1977 and recorded on April 21, 1978 in the Kings County Registry of Deeds in Book 438 at Page 143 as Document No. 3513.

EXCEPTION NO. 5 (PID 55014567)

Those lands conveyed by Weldon Tupper and Althea Tupper to Theodore Dykens by Warranty Deed dated January 23, 1979 and recorded on January 29, 1979 in the Kings County Registry of Deeds in Book 458 at Page 842 as Document No. 934.

EXCEPTION NO. 6 (PID 55000566)

Those lands conveyed by Weldon R. Tupper and Althea Tupper to M. Gail Longley by Warranty Deed dated February 12, 1982 and recorded on March 5, 1982 in the Kings County Registry of Deeds in Book 536 at Page 653 as Document No. 1710.

ALL OF THE ABOVE (the original 100 acre block of land minus all 6 exceptions) is now believed to contain between 85 and 90 acres, more or less.

AND ALSO

ALL that certain lot, piece or parcel of land situate, lying and being at Scots Bay, in the County of Kings and Province of Nova Scotia and more particularly described as follows:

BEGINNING at a Witness Set Survey Marker 2.0 feet from road right-of-way on a private unpaved road ten (10) feet wide (Ref. - Deed in Book 229, Page 82) approximately 0.4 +/- from the Scotts Bay Road on the land of Weldon R. Tupper;

THENCE Easterly 305 Feet; more or less, on a line parallel and approximately 5 feet from the center of the said private road to a Set Survey Marker by 4 feet high angle iron 2 feet from the edge of the road right-of-way (witness);

THENCE N05 degrees 15 minutes 00 seconds E a distance of 200 feet to a Set Survey Marker and iron stake Found by 4 feet high angle iron;

THENCE N87 degrees 27 minutes 10 seconds W a distance of 105.67 feet to a Set Survey Marker;

THENCE S55 degrees 40 minutes 00 seconds W a distance of 244.41 feet to a Set Survey Marker;

THENCE S07 degrees 05 minutes 30 seconds W a distance of 69.26 feet to a Witness Set Survey Marker at the place of BEGINNING.

BEING AND INTENDED TO BE that same lot of land shown on a Plan Survey as "Parcel "W.R.T.-1"" as prepared by Valley Surveys Limited (Frank Longstaff - N.S.L.S NO. 279), Plan No. 81-1385 under date of 14 December 1981.

AND ALSO

ALL that certain lot, piece of parcel of land situate on the east side of the main highway at Scotts Bay, in the County of Kings and Province of Nova Scotia, bounded and described as follows:

BEGINNING at an iron stake set on the north side of a Right-of Way four tenths mile from the east road limit of the main highway at Scotts Bay, aforesaid, on land of Weldon Tupper;

THENCE in an easterly direction along the north side of said Right-of-Way Two Hundred and Five (205) feet to an iron stake;

THENCE in a northerly direction a distance of One Hundred and Fifty (150) feet to an iron stake;

THENCE westerly a distance of Two Hundred and Five (205) feet to an iron stake;

THENCE southerly a distance of Two Hundred and Five (205) feet to the place of beginning.

BENEFITS

FIRST BENEFIT

Together with an easement/right-of-way benefit described in Book 435 Page 490 as follows:

"Together With the right to obtain water on land of Weldon Tupper within Five Hundred feet of the above boundary line".

SECOND BENEFIT (Servient PID 55014567)

TOGETHER WITH the benefit of the reservation of a right of way crossing lands conveyed by Weldon and Althea Tupper to Theodore Dykens in the Warranty Deed dated January 23, 1979 and recorded on January 29, 1979 in the Kings County Registry of Deeds in Book 458 at Page 842 as Document No. 934, said right of way crossing the land therein conveyed in a northeast-southwest direction beginning at the northeast corner of the said conveyed lands.

BURDEN NO. 1 (Dominant PID 55000574)

SUBJECT TO a right of way granted in the Warranty Deed from Elmer L. Tupper and Gertrude Tupper to Theodore Dykens dated July 4, 1964 and recorded on July 29, 1964 in the Kings County Registry of Deeds at Book 229 at Page 82 under Document No. 53886, and therein stated to be a perpetual right of way

from the said conveyed lands for Theodore Dykens, his servants, agents, heirs and assigns, both for themselves, their animals and vehicles and at all times, along the farm road running east and west on the lands of Elmer L. Tupper to the main road and being approximately 10 feet in width throughout, and being and intended to be for the benefit of the lands on which the said Theodore Dykens has built a cottage.

BURDEN NO. 2 (Dominant PID 55014542)

SUBJECT TO a right of way granted in the Warranty Deed from Weldon R. Tupper and L. Althea Tupper to Hubert J. Tupper dated May 15, 1974 and recorded on August 15, 1974 in the Kings County Registry of Deeds in Book 365 at Page 651 as Document No. 6753, and therein stated to be a right of way in common with Weldon Tupper, his heirs and assigns over the existing roadway leading from Scots Bay Road over the Weldon Tupper property to the lands herein conveyed. The intended use of this right of way is to allow access and egress to the dwelling to be constructed thereon by Hubert J. Tupper; and this grant of right of way shall terminate if the right of way is used otherwise than for its present contemplated use.

BURDEN NO. 3 (Dominant PID 55014559)

SUBJECT TO water rights granted to Cyrus S. MacLatchy and Ann M. MacLatchy by Weldon R. Tupper and Althea L. Tupper by Warranty Deed dated July 30, 1977 and recorded on March 1, 1978 in the Kings County Registry of Deeds in Book 435 at page 490 under Document No. 1834, and therein stated to be the right to obtain water on land of Weldon Tupper within five hundred (500) feet of the boundary lines of the lot so conveyed to MacLatchy by Tupper.

BURDEN NO. 4 (Dominant PID 55000558)

SUBJECT TO water rights granted to Patrick William Delaney and Sharon Lucille Delaney by Weldon Tupper and Althea Tupper by Warranty Deed dated May 31, 1977 and recorded on April 21, 1978 in the Kings County Registry of Deeds in Book 438 at Page 143 as Document No. 3513, and therein referenced as water rights within five hundred (500) feet from the boundary of the lands therein conveyed to Delaney by Tupper.

BURDEN NO. 5 (Dominant PID 55014567)

SUBJECT TO water rights granted to Theodore Dykens by Weldon Tupper and Althea Tupper in a Warranty Deed dated January 23, 1979 and recorded on January 29, 1979 in the Kings County Registry of Deeds in Book 458 at Page 842 as Document No. 934, and therein referenced as the right to obtain water from lands of Weldon Tupper, his heirs and assigns, by means of piping across said property at any place necessary.

BURDEN NO. 6 (Dominant PID 55000558)

SUBJECT TO a right of way granted by Weldon Tupper and Althea Tupper to Patrick W. Delaney and Sharon L. Delaney dated September 28, 1988 and recorded on September 29, 1988 in the Kings County Registry of Deeds in Book 753 at Page 379 as Document No. 14874, and therein conveying to the Grantees a perpetual right of way across lands of the Grantors situate at Scots Bay in the County of Kings and Province of Nova Scotia, their servants, agents, heirs and assigns, both for themselves, their animals and their vehicles and at all times, along the farm road running east and west on the lands of Weldon and Althea Tupper to the main road, and being approximately ten (10) feet in width throughout.

BURDEN NO. 7 (Dominant PID 55014526)

SUBJECT TO a Water Rights Agreement and Easement between Robert Walter Tupper and Belinda Darlene Tupper, spouses, of the One Part and Weldon R. Tupper and L. Althea Tupper, spouses, of the Other Part, dated January 29, 1993 and recorded on that same date in the Kings County Registry of

Deeds in Book 930 at Page 642 as Document No. 619. All rights and obligations of Robert Walter Tupper and Belinda Darlene Tupper are referenced in detail in this Easement Agreement which runs with and forms a burden on the lands of Weldon and Althea Tupper therein described, to the benefit of the adjoining lands of Robert and Belinda Tupper as therein described.

*** Municipal Government Act, Part IX Compliance ***

Exemption:

The parcel is exempted from subdivision approval under the Municipal Government Act because the parcel was created by a subdivision

Reason for exemption:

Clause 268(2)(a) where all lots to be created, including the remainder lot exceed ten hectares in area.

DRAFT

Schedule B - Site Plan

Application 21-25
PID 55014534

