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Halifax, Nova Scotia  
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**Item No. 15.1.2**  
**Harbour East-Marine Drive Community**  
**February 4, 2016**

**TO:** Chair and Members of Harbour East-Marine Drive Community Council

Original Signed

**SUBMITTED BY:**

\_\_\_\_\_  
Bob Bjerke, Chief Planner & Director, Planning and Development

**DATE:** January 15, 2016

**SUBJECT:** **Case 18849: Discharge Agreement for 959 Cole Harbour Road, Cole Harbour**

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**ORIGIN**

Application by KWR Approvals Inc.

**LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development*

**RECOMMENDATION**

It is recommended that Harbour East- Marine Drive Community Council:

1. Approve, by resolution, the Discharge Agreement as contained in Attachment A of this report; and
2. Require the Discharge Agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later, otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND / DISCUSSION**

On August 7, 2015 Harbour East-Marine Drive Community Council approved two resolutions relating to 959 Cole Harbour Road in Cole Harbour (Maps 1 and 2). These resolutions were for a non-substantive amendment to an existing development agreement which was approved in 1997, and for the discharge of a development agreement that was approved in 1995. Of the two resolutions, the non-substantive amendment agreement was signed and registered at the NS Land Registry. However, the discharge agreement was not signed by the property owner within the required 120 day period as required by Council's motion. Therefore, the approval of Council to discharge the agreement becomes void. To discharge the development agreement from the site the applicant is requesting that Council approve, again, the discharge of the 1995 development agreement.

### **Subject Site**

<b>Location</b>	North-west corner of Hugh Allen Drive and Cole Harbour Road
<b>Community Plan Designation (Map 1)</b>	Community Commercial by the Cole Harbour /Westphal Municipal Planning Strategy (MPS)
<b>Current Zoning (Map 2)</b>	C-2 (General Business) Zone by the Cole Harbour /Westphal Land Use By-law (LUB)
<b>Current Use</b>	A single commercial building

### **Enabling Policy and Land Use Provisions**

Driveways for C-2 Zone uses shall only access onto primary streets such as Cole Harbour Road, Cumberland Drive and Forest Hills Drive. Under Policy TR-11 of the Cole Harbour/Westphal MPS, Community Council can consider commercial driveways onto local streets through the development agreement process. Within the Community Commercial designation, a drive-through banking kiosk shall be only be considered by the development agreement process in accordance with Policy CC-6.

### **Existing Development Agreements**

An overview of the development agreements approved on the subject site as follows:

- In 1995, the former Halifax County Municipality approved a development agreement to permit a commercial access driveway from the site on to Hugh Allen Drive. This driveway allows traffic from the site to safely access Cole Harbour Road via the signalized intersection at Hugh Allen Drive.
- In 1997, the former Harbour East Community Council approved a new development agreement to permit a drive through banking kiosk on the site. This agreement, rather than being an amending agreement, was a standalone document that largely replicated the original 1995 agreement. The existence of two parallel development agreements on the site has led to confusion and administrative difficulties.
- On August 7, 2015 Harbour East-Marine Drive Community Council approved the discharge of the 1995 agreement as well as non-substantive amendments to the 1997 agreement (*Case 18849*) regarding land uses, parking lot, and landscaping.

### **Discharge of 1995 Development Agreement**

The *HRM Charter* provides Council with a mechanism to discharge development agreements, as *Part VIII, Section 244* identifies that Council may discharge an agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property owner. A public hearing is not required. The 1995 development agreement can therefore be discharged by resolution of Community Council. As a discharge was previously approved by Council, a new resolution is required to enable the discharge of the 1995 development agreement.

### **Conclusion**

The discharge of the 1995 development agreement is consistent with the applicable MPS policies and addresses the administrative challenge of having two development agreements registered on the same site. On August 7, 2015 Harbour East-Marine Drive Council concurred with this approach and it is staff's recommendation the discharge agreement again be approved.

### **FINANCIAL IMPLICATIONS**

There are no financial implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved budget with existing resources.

### **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy.

The level of community engagement was information sharing, achieved through the HRM website and responses to inquiries. A public information meeting or a public hearing is not required, nor is it the practice to hold such meetings for the discharge of a development agreement. The decision to discharge a development agreement is made by resolution of Community Council.

The proposed discharge will have no impact on local residents, property owners or other stakeholders as the existing 1997 development agreement will remain in effect.

### **ENVIRONMENTAL IMPLICATIONS**

No implications have been identified and the proposal meets the applicable environmental policies of the MPS.

### **ALTERNATIVES**

1. Harbour East-Marine Drive Community Council may choose not to discharge the 1995 development agreement and, therefore, two development agreements would remain registered on the subject site. As such a situation could cause administrative challenges, this is not recommended.

### **ATTACHMENTS**

Map 1	Generalized Future Land Use Map
Map 2	Zoning Map
Attachment A	Discharge Development Agreement

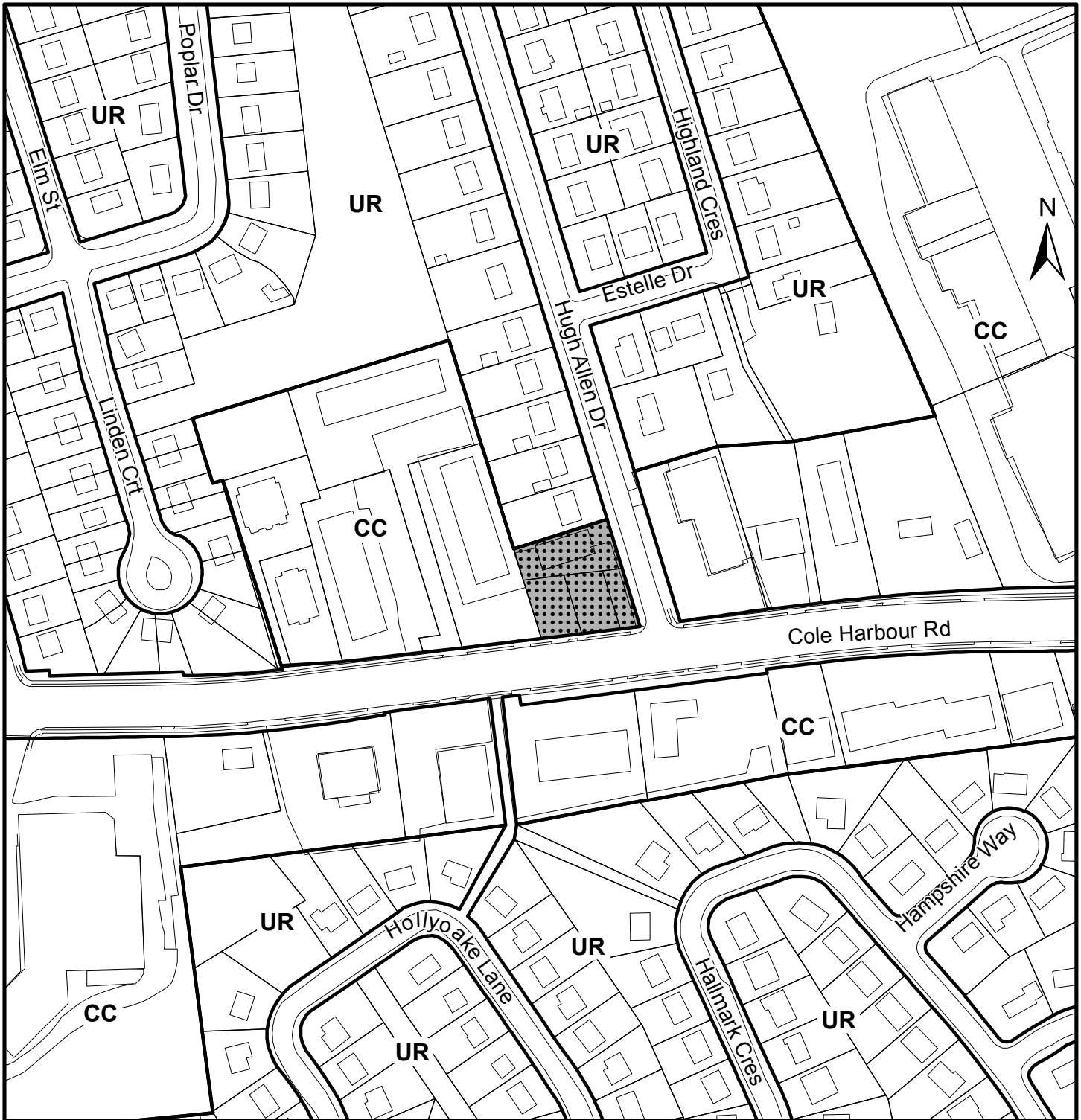
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A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Thea Langille, Major Projects Planner, Planning and Development 902.490.7066


Report Approved by: Original Signed  
Kelly Denty, Manager, Development Approvals 902.490.4800

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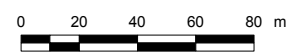
**Map 1 - Generalized Future Land Use**

959 Cole Harbour Road  
Cole Harbour

 Existing Development Agreement  
to be Discharged

**Designation**  
UR Urban Residential  
CC Community Commercial

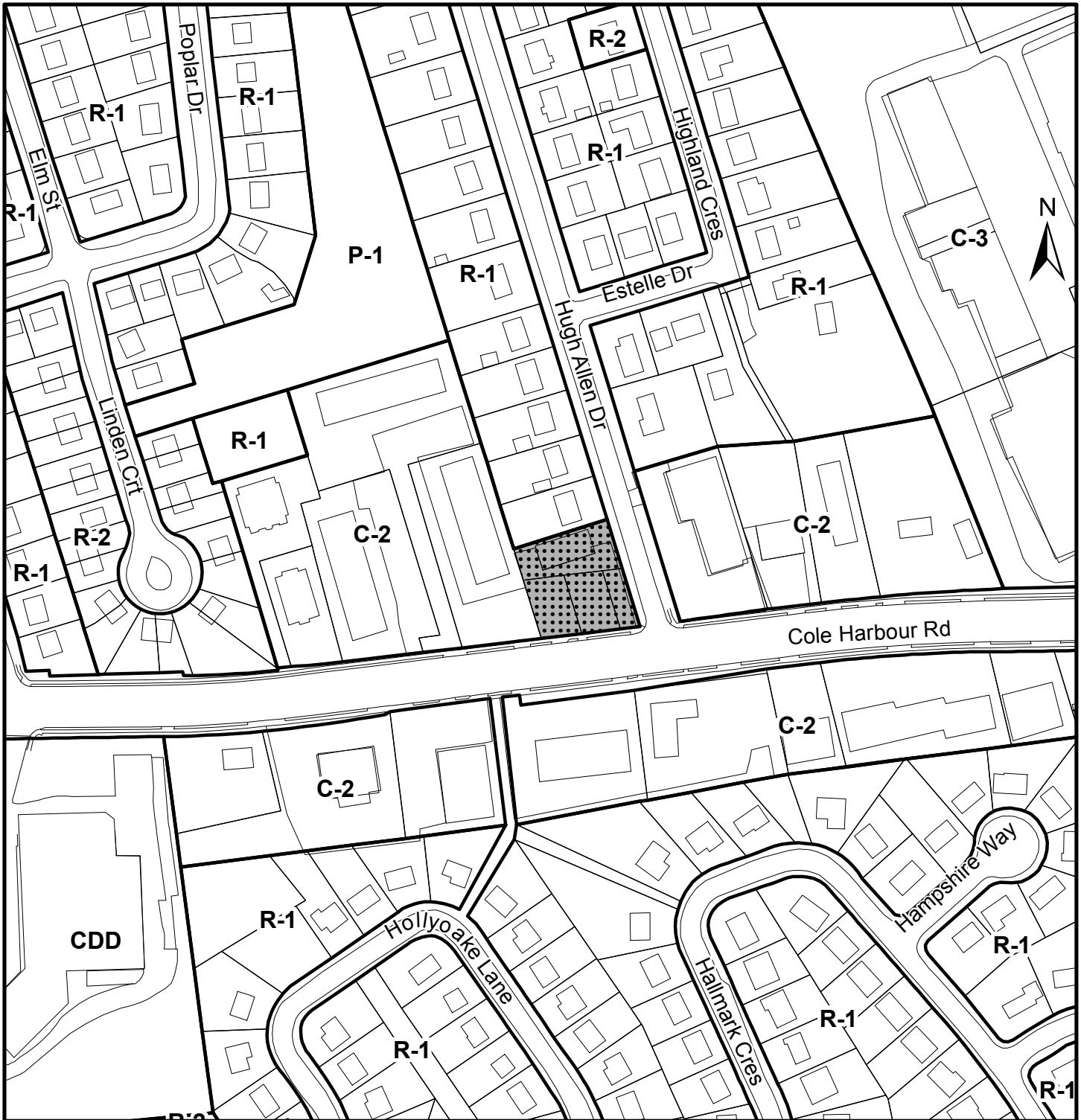
**HALIFAX**



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.


HRM does not guarantee the accuracy of any representation on this plan.

Cole Harbour/Westphal  
Land Use By-Law Area



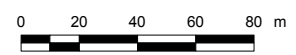
**Map 2 - Zoning**

959 Cole Harbour Road  
Cole Harbour

 Existing Development Agreement  
to be Discharged

- Zone**
- R-1 Single Unit Dwelling
  - R-2 Two Unit Dwelling
  - C-2 General Business
  - C-3 Shopping Centre
  - CDD Comprehensive Development District

**HALIFAX**



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

HRM does not guarantee the accuracy of any representation on this plan.

Cole Harbour/Westphal  
Land Use By-Law Area

## ATTACHMENT A

### Discharging Development Agreement

THIS DISCHARGING AGREEMENT made this        day of        , 2016

BETWEEN:

**[INSERT Name of Corporation/Business]**

a body corporate, in the Province of Nova Scotia  
(hereinafter called the "Developer")

OF THE FIRST PART

and

**HALIFAX REGIONAL MUNICIPALITY**

a municipal body corporate, in the Province of Nova Scotia  
(hereinafter called the "Municipality")

OF THE SECOND PART

**WHEREAS** the Developer is the registered owner of certain lands located at 959 Cole Harbour Road, Cole Harbour and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

**AND WHEREAS** the Cole Harbour/Westphal Community Council of the Municipality of Halifax County approved an application to enter into a Development Agreement to allow for the construction of a driveway to Hugh Allen Drive, which said Development Agreement was registered at the Registry of Deeds in Halifax as Document Number 9139 in Book 5696, at Pages 381 to 390 (hereinafter called the "Existing Agreement");

**AND WHEREAS** the Harbour East Community Council of the Municipality previously amended the Existing Agreement by entering into an Amending Agreement to allow construction of a driveway to Hugh Allen Drive, which said Agreement was registered at the Registry of Deeds in Halifax as Document Number 29994 in Book 6086, at Pages 758-769 (hereinafter called the "Amending Agreement");

**AND WHEREAS** the Harbour East-Marine Drive Community Council of the Municipality previously amended the Amending Agreement to allow for additional commercial uses and changes to the parking lot layout on the Lands, which said Agreement was registered at the Registry of Deeds in Halifax as Document Number 106906929 (hereinafter called the "Second Amending agreement");

**AND WHEREAS** the Harbour East-Marine Drive Community Council of the Municipality previously discharged the Existing Agreement by resolution at a meeting held on August 7, 2015, referenced as Municipal Case Number 18849 however this Discharge Agreement was not signed within the required 120 days and therefore has become null and void;

**AND WHEREAS** the Developer has requested for a second time that the Existing Agreement be discharged from the Lands;

**AND WHEREAS**, pursuant to the procedures and requirements contained in the *Halifax Regional Municipality Charter*, the Harbour East-Marine Drive Community Council of the Municipality approved this request by resolution at a meeting held on **[INSERT - date]**, referenced as Municipal Case Number 18849;

**WITNESS** that it is agreed that the Lands are hereby discharged from the Existing Agreement.

WITNESS that this Discharging Agreement, made in triplicate, was properly executed by the respective Parties on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**SIGNED, SEALED AND DELIVERED** in the presence of:

**(Insert Registered Owner Name)**

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_

**HALIFAX REGIONAL MUNICIPALITY**

**SIGNED, DELIVERED AND ATTESTED** to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_

MAYOR

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_

MUNICIPAL CLERK