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**Item No. 13.1.1**  
**North West Community Council**  
**September 10, 2018**

**TO:** Chair and Members of North West Community Council

Original Signed

**SUBMITTED BY:**

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Kelly Denty, Director, Planning and Development  
Original Signed

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Jacques Dubé, Chief Administrative Officer

**DATE:** July 11, 2018

**SUBJECT:** **Case 19461: Site Specific Amendments to the Municipal Planning Strategy and Land Use By-law for Planning Districts 1 and 3 to permit an asphalt plant at PID# 41457821, north of Highway 103 and west of Little Indian Lake, Head of St, Margarets Bay**

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**ORIGIN**

- Application from Scotian Materials Limited
- April 28, 2015 Initiation of MPS Amendment by Regional Council
- September 20, 2016 Motion of Regional Council  
MOVED by Deputy Mayor Whitman, seconded by Councillor Walker  
THAT Halifax Regional Council direct HRM's Planning and Development staff to conduct an additional public consultation session in relation to Case 19461 – Amendments to the Planning Districts 1 and 3 Municipal Planning Strategy and Land Use By-law to enable an asphalt plant on lands west of Little Indian Lake, Head of St. Margarets Bay for the residents of Westwood Hills, Tantallon and surrounding communities prior to a staff report on the matter being presented to North West Community Council. *MOTION PUT AND PASSED*

**LEGISLATIVE AUTHORITY**

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

**RECOMMENDATION**

It is recommended that North West Community Council recommend that Regional Council:

1. Give First Reading to consider the proposed amendments to the Municipal Planning Strategy (MPS) and Land Use By-law (LUB) for Planning Districts 1 and 3, (St. Margarets Bay) as set out in Attachments A and B of this report, to permit an asphalt plant on a portion of PID# 41457821 north of Highway 103 and west of Little Indian Lake, Head of St, Margarets Bay and schedule a public hearing; and
2. Approve the proposed amendments to the MPS and LUB for District 1 and 3 (St. Margarets Bay), as set out in Attachments A and B of this report.

## **BACKGROUND**

Scotian Materials Limited proposes to develop an asphalt plant on 4.0 hectares (9.8 acres) of a 16.2-hectare (40 acre) parcel (PID# 41457821) which is situated on lands north of Highway 103 and west of Little Indian Lake at the Head of St. Margarets Bay (Map 1). These lands also contain the Island Lake rock quarry. On April 28, 2015, Regional Council Initiated Case 19461, a request for a site-specific amendment to the Planning Districts 1 and 3 Municipal Planning Strategy (MPS) to consider land use policies which would enable an asphalt plant on lands in the Head of St. Margret's Bay area (Maps 1 and 2).

<b>Subject Property (Map 1)</b>	PID# 41457821 Head of St. Margarets Bay.
<b>Location (Map 1)</b>	North of Highway 103 and west of Little Indian Lake
<b>Lot Area</b>	4.0 hectares (9.8 acres) on lands 16.2 hectares (40 acres) in area
<b>Regional MPS Designation</b>	Open Space under the Regional Municipal Planning Strategy (RMPS)
<b>Community MPS Designation (Map 1)</b>	Resource (RSC) under Planning Districts 1 and 3 Municipal Planning Strategy (MPS).
<b>Zoning (Map 2)</b>	Mixed Resource (MR-2) under Planning Districts 1 and 3 Land Use By-law (LUB)
<b>Surrounding Uses</b>	<u>North:</u> N.S. crown forestry and resource lands. <u>South:</u> Privately held forestry and resource lands. Residential uses (2.0 km). Highway 103 (0.8km). <u>East:</u> Residential uses -Westwood Hills (2.5km). NS Power Hydro Electric Plant (1.8 km) <u>West:</u> Privately held forestry and resource lands.
<b>Current Use(s)</b>	Rock quarry

## **Proposal Details**

The applicant is proposing site specific MPS and LUB amendments for Planning Districts 1 and 3 to permit the development of an asphalt plant. The features of the proposed asphalt plant are:

- The plant would work in conjunction with an existing aggregate quarry already on the property.
- All future access points to the asphalt plant and existing quarry would be from Highway 103 at the new Ingramport Interchange. The access route would be coordinated through the Department of Transportation and the Department of Natural Resources.
- The applicant states that the proposed asphalt plant would provide asphalt service to the general metro area, and more specifically to areas west of the metro area including St. Margarets Bay in what they have indicated is a location which is underserved by this business type.

Should Council approve a site specific MPS and LUB amendment, the applicant would require a development permit for asphalt operations on the subject property.

## **History of Asphalt Plant Operations on the Site**

During the summer of 2014, the Province gave authority to enable the operation of an asphalt plant on the subject site for a period of two months. Since provincial authority supersedes municipal zoning regulations

no development permit was required at that time. This authority was given to ensure a local supply of asphalt to facilitate paving the St. Margarets Bay Road from the Superstore at the Crossroads to Hubley in 2014. When this infrastructure project was complete, the asphalt plant operations were no longer authorized by the Province, and municipal land use regulations then came into effect. It was then determined that in the absence of a Provincial exception, asphalt plant operations were not a permitted use in accordance with the LUB regulations that pertained to the subject property.

### **MPS and LUB Context**

The Planning Districts 1 and 3 MPS does not specifically discuss asphalt plants nor does the LUB define the use. The MPS does not enable asphalt plants as a light or service industrial use and therefore the subject site is not eligible for a rezoning to enable an asphalt operation. As such, a site-specific amendment to both the MPS policy and the LUB are required to enable an asphalt plant on the subject lands.

### **Asphalt Plant Operations**

An asphalt plant is equipment that combines aggregates, sand, bitumen and filler material in specific proportions to produce asphalt concrete. The asphalt mixing plant heats aggregate and mixes it with bitumen and other adhesive substances to prepare the hot mix asphalt that is used as a paving material.

Asphalt plant emissions are a key concern for community residents. Although it is largely under provincial jurisdiction, MPS Policy E-16 requires that air pollution emissions be considered when establishing a new industry. Provincial operational requirements dictate that asphalt plants must have air pollution control devices such as bag filter units. These units are used to collect dust which is then reintroduced into the aggregate elevator system. In terms of effluent emissions, it should be noted that the asphalt plant proposed on the subject property will utilize a “dry system” method in which no effluent or water based by-product is directed to the ground.

To address the concerns of residents and at the request of staff, the applicant has supplied studies addressing nuisance impacts (referencing sound, unsightliness and odour) to demonstrate potential mitigation of operational impacts to the neighbouring community. While studies have been provided to assess impacts of this description, matters of environmental health and safety are regulated by the Provincial Department of the Environment (DOE) and not under the purview of Municipal policy. Municipal land use regulation evaluation is limited to nuisance impacts as referenced under the Discussion section of this report.

The proposed use would potentially impact local residents and property owners.

### **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy, the HRM Charter, and the Public Participation Program approved by Council on February 25, 1997. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, signage posted on the subject site, letters mailed to property owners within the notification area, and a Public Information Meeting (PIM) held on June 1, 2015. After the PIM on June 1, 2015, it was identified by staff that approximately 200 persons had been turned away due to the occupancy limit of the meeting room. Comments received at the PIM from approximately 20 speakers were overwhelmingly in opposition to the proposal. Concerns addressed at the June 1<sup>st</sup> 2015 PIM were as follows:

- Negative overall impressions of asphalt plant operations on the property citing concerns regarding the potential for impacts to:
  - Environment
  - Human Health to residents living within proximity to the site
  - Property values of residential houses in the area
  - Recreational use of the subject lands

Attachment C contains a copy of the minutes from the June 1, 2015 meeting.

### **Community Liaison Committee**

In March of 2016, the applicant created a Community Liaison Committee (CLC). The purpose of the committee was to undertake a community based review of the asphalt plant proposal. As per the Community Liaison Committee Organization Charter drafted by the applicant, committee membership was intended to represent stakeholders who may be, or might perceive that they may be, affected by the proposed land use. As with all such committees, HRM's position is that the CLC process and completed report was an independent initiative that would not form part of the HRM's formal planning process, but would instead become a submission to the Planning case file. Accordingly, their work would be treated equally with the hundreds of other application submissions from residents and interest groups. The CLC continued to meet through the summer of 2017 and staff attended a number of these sessions as observers.

The CLC submitted their findings on September 5, 2017 and indicated that they were neither for or against the proposed asphalt plant. They did find that the proponent of the asphalt plant was responsive to the community concerns regarding potential impacts from asphalt operations. Accordingly, the applicant agreed to include additional mitigation measures for potential impacts outside of the municipal regulatory process for land use planning.

### **Second Round of Community Consultation - Community Open Houses**

Given the capacity issues with the original Public Information Meeting and the amount of interest in the project expressed by the community, Regional Council passed a motion on September 20, 2016 directing that staff undertake additional community consultations. Accordingly, on January 25 and 26, 2017 staff conducted 2 community open houses which were attended by a total of approximately 480 persons. Of the 480 attendees, approximately 330 persons responded to a survey regarding the proposal.

Of the survey respondents, 86% indicated that the proposed location was not suitable for asphalt operations, while 95% were concerned that approval of asphalt operations would lead to wider industrial zoning on the lands. A summary of survey responses is shown on Table 1.0 below:

**Table 1.0 Consolidated Summary of Issues Ranked by Percentage of Respondents  
(Sample size – 330 Persons)**

1	Approval of Application would lead to additional Industrial zoning in the area	(95%)
2	Lands unsuitable for an asphalt plant	(86%)
3	Environmental Emissions and Human Health concerns	(82%)
4	Property values will decrease in the area based on the proposed use	(74%)
5	Recreational use of the lands in the area will decrease or be obstructed	(54%)
6	The operation will create sound impacts to residential development	(53%)
7	The operation will create impacts to residential development due to increased truck traffic	(50%)
8	The operation will create visual impacts to residential development	(29%)

Attachment D contains a consolidation of the survey questions in graphic format from the community open houses held on January 25 and 26, 2017.

In addition, it should also be noted that a community group also distributed their own survey, the collection of which was delivered to the Municipal Clerk's office as a separate package.

## **DISCUSSION**

The MPS is a strategic policy document that sets out the goals, objectives and direction for long term growth and development in the Municipality. Amendments to an MPS are significant undertakings and Council is under no obligation to consider such requests.

Staff recommend approval of the amendments proposed to Planning Districts 1 and 3 to permit an asphalt plant on a portion of PID# 40042822 as shown in Attachments A and B of this report. The following paragraphs review the rationale and content of the proposed MPS and LUB amendments.

### **Policy Review**

Site specific Municipal Planning Strategy amendments should be considered only in cases where it can be clearly demonstrated that the property is of such a unique character, or that the circumstances under which policy was originally conceived has changed to such an extent that recognizing this circumstance in policy is appropriate. In reviewing the application staff considered community feedback, agency feedback, and background study provided as part of the application submission as well as other submissions made through the process.

MPS Policy RE-7 establishes the ability to undertake discretionary planning approval for non-resource related light and service industrial uses within the Resource Designation. However, Asphalt Plants are not listed as a permitted use within the Districts 1 and 3 Plan Area nor have they been defined in the LUB. An asphalt plant has been deemed to be beyond the scope of a "light" industrial use and as a result, an MPS amendment is required.

### **Land Use Compatibility**

A key outcome of the comprehensive planning process is to ensure that a land use such as an asphalt plant or any other type of local unwanted land use is situated so impacts such as unsightliness from operations, truck traffic, vibration, sound and odour, do not overly conflict with more sensitive land uses. To this end, impact mitigation is a principal objective with the understanding that impact elimination in many cases is not a realistic outcome.

Furthermore, it is recognized these types of uses are often necessarily located in response to restrictions such as proximity to raw materials and proximity to highways. Accordingly, determining if a proposed location is sufficiently separated from more sensitive uses is key in the determination of land use compatibility.

### **Distance Separation from Residential Use to Proposed Asphalt Plant Operations**

Adequate distance separation from the proposed asphalt plant to the existing residential homes in the Westwood Hills neighbourhood to the east is a key consideration in staff's recommendation.

Separation from the proposed asphalt plant site to the Westwood Hills Community is approximately 2.6kms (Map 3). Residentially developed lands to the south are located closer at 2.3kms but are separated by Highway 103 which creates a substantial visual and acoustic barrier to the subject property.

### **Scope of HRM Evaluation and the Role of the Province**

For matters dealing with provincial roads, the impacts to the environment, and matters of human health HRM Planning staff defers to Provincial authority having jurisdiction over such matters. Matters concerning property values are not contemplated as part of the planning process. Accordingly, staff recommendations of the proposed asphalt plant were not informed by the following factors:

- Impacts to property values
- Environmental Impacts/ Assessments
- Impacts to Human Health (Air Quality)
- Traffic on Provincial Roads

Notwithstanding this jurisdictional division, staff acknowledge the concerns of residents on the important matters as referenced above. However, under the HRM Charter, planning evaluation is based primarily on nuisance impacts such as sound and odour impacts, visual impacts plus vehicular access to the site. Matters under provincial jurisdiction are not the principal issues upon which the recommendations of this report are based. Accordingly, HRM's evaluation contemplated the following impacts:

### *Sound Emissions*

The applicant has undertaken modelling to determine sound impacts from a distance of up to 2 kilometers. Results of the model indicate that the average predicted noise levels within 2 kms the asphalt plant will be less than 20 dBa (about the sound level of the average bedroom at night). Residents of Westwood Hills live a minimum of 2.6 kms from the proposal asphalt plant. Staff considers distance separation adequate to mitigate these concerns (Map 3).

### *Odour Impacts*

Odour can be a product of the mixing process that goes into creating asphalt. Accordingly, the applicant has an Asphalt Plant Operation Approval from the Department of the Environment that requires that the applicant cease operations if they deem the odour generation to be deemed excessive. Additives can be used to neutralize odour if excessive. Research suggests that distance separation is a key factor in addressing odour impacts. When combining mitigating factors of distance and Department of Environment regulation on odour, staff considers the distance separation adequate to address these concerns (Map 3).

### *Access to and from the Asphalt Plant*

It is acknowledged that truck traffic would increase because of asphalt plant operations. In accordance with an agreement between the DNR and the Department of Transportation the applicant is prepared to direct all traffic to and from the proposed asphalt plant to the new interchange at Ingramport which is in the opposite direction from the Westwood Hills neighbourhood. This is done so that no traffic will use the Bowater Access Road known as Hiking Trail Road (Map 4).

### *Visual Impacts*

To address visual impacts, the applicant undertook analysis from the five highest peaks in the Westwood development. These locations were chosen because they represented the best vantage points in Westwood Hills from which to view the asphalt plant. They also assessed contours of the quarry face, quarry floor as well as heights of the asphalt plant and treeline of the quarry face. By using this information, it was determined that only 5 metres of the asphalt plant's silo protrudes above the tree line. At the distances more than 2.5 kilometres away this protrusion is indistinguishable with the horizon. However, at different vantage points a small portion of the asphalt plant may be visible in the Westwood Hills neighbourhood. However, given the distance separation and the relatively small size of the asphalt plant, in most cases the asphalt plant will be obstructed and largely indistinguishable for the households within Westwood Hills. In terms of impacts to residential communities, staff considers distance separation adequate to mitigate concerns of visual impact (Map 3).

### **Additional Concerns Identified through the Community Consultation**

Additional concerns raised by local residents through the community consultation are addressed as follows:

#### *Recreational Use of the Bowater lands will be Impeded if the Asphalt Plant is Approved*

The DNR is owner of the lands that surround the subject site. Municipal regulations acknowledge that resource based activity will continue in the area. To the extent that resource industries can coexist with recreational access to the back lands, both uses could continue. With this said, the Province of Nova Scotia would be in the best position to provide a clearer picture of the long-term plan for this area. The land area proposed for an asphalt plant is 4 hectares in size within a parcel of 16.2 hectares. This is a small portion of the overall Bowater land. It has not been assessed that asphalt plant operations on these lands would impede recreational use of the Bowater lands.

#### *Approval of Asphalt Plant would lead to additional Industrial zoning*

The approval of a site specific MPS amendment does not lend to similar MPS amendments being approved on the subject property. No Regional Plan or Council direction has been provided to designate the balance of these lands Industrial in the future.

Further, the potential increase of industrial and commercial uses is unlikely. The proposed asphalt plant is a product of its location being fixed within an existing quarry on private lands that provide a synergy between the two uses. The quarry is a permitted use in accordance with the Resource designation. Further, while

the subject property is privately owned, all surrounding lands are owned by DNR. The DNR has not expressed any interest in rezoning these lands for industrial or commercial purposes.

#### *Appropriateness of Lands for the Asphalt Plant Operations*

Staff have reviewed the application and advise that distance separation from the proposed use to more sensitive residential development is sufficient to mitigate impacts from the proposed asphalt plant operations. Further, all vehicular traffic will only be permitted in the opposite direction of the residential community.

#### **Proposed MPS and LUB Amendments**

Staff considered the existing MPS policy and LUB context, the extent of the request, and public feedback when drafting the proposed amendments. Attachments A and B contain the proposed MPS and LUB amendments. A summary of the proposed amendments are as follows:

- New Policy and a Schedule in the MPS that enables an asphalt plant on a site-specific basis;
- New regulations and a Schedule in the LUB to establish access provisions and to provide regulations to enable the use of the asphalt plant on a site-specific basis without enabling asphalt plants on other lands within the existing zone.

In addition, the following definition of an Asphalt Plant is proposed as an amendment to the land use by-law:

“An asphalt plant is generally a use of land, building or structure, or parts thereof, which produces and/or recycles asphalt or similar coated road stone and has equipment designed to heat and dry aggregate and to mix mineral aggregate with bitumen and/or tar, and includes the stockpiling and storage of bulk materials used in the process or finished product(s) manufactured on the premises, the storage and maintenance of equipment, and facilities for the administration or management of the business.”

#### **Rationale**

Staff consider the following rationale for the consideration of the proposed amendments:

- The lands are considered a suitable location for a site specific MPS and LUB amendments for an asphalt plant which is otherwise not permitted under the current planning regulations;
- The existing zoning and designation allows for a quarry operation and asphalt plants are typically found in conjunction with this use;
- An asphalt plant has recently been operated on an adjacent crown land parcel with no issues or concerns from regulators or nearby residents;
- The surrounding land is owned by the Crown and zoned so that future expansion of the proposed use is unlikely; and,
- There is adequate distance separation to sensitive residential uses.

#### **North West Planning Advisory Review**

On September 6, 2017, the North West Planning Advisory Committee reviewed the proposal for an asphalt plant on the subject property and recommended against changing the MPS and LUB as they considered that the location was not an appropriate site for an asphalt plant.

#### **Conclusion**

Community concern for this proposal was significant. As with any of its type, a locally unwanted land use is difficult to gain public approval. Despite these types of uses performing a necessary function for the community at large, the perception is that they have an imbalanced impact on the specific community in which they are proposed to locate. Most members of the public agree that the use itself is important but, few if any individuals agree it should be located within their community. Consultation on these types of applications serves an important function in understanding local community knowledge to ensure that local issues can be identified within the context of the application. With this knowledge, staff can then look for

opportunities to mitigate impacts. In this case, several concerns were brought to the attention of staff through the engagement process which may not have otherwise been identified through a standard staff review or traditional public consultation process. As such, this expanded engagement has been very beneficial to the process. Staff has since worked with the applicant and is satisfied that the issues of noise, smell, access, and visual impact have been addressed. Therefore, staff recommends that that Regional Council amend the Municipal Planning Strategy and land Use By-law for Planning Districts 1 and 3 to enable an asphalt plant at PID# 40042822 (Attachment A), north of Highway 103 and west of Little Indian Lake, Head of St, Margarets Bay.

### **FINANCIAL IMPLICATIONS**

There are no financial implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred to satisfy the terms of this Development Agreement. The administration of the development agreement can be carried out within the approved 2018-19 budget with existing resources.

### **RISK CONSIDERATION**

There are no significant risks associated with the recommendations contained within this report. This application involves proposed MPS amendments. Such amendments are at the discretion of Regional Council and are not subject to appeal to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed amendments are contained within the Discussion section of this report.

### **ENVIRONMENTAL IMPLICATIONS**

The primary environmental implications of priority to the municipality include water quality, energy consumption and solid waste management. None of these implications are associated with the recommendations of this report. It should be noted that the Nova Scotia Department of the Environment (NSE) requires that as part of the permit to operate, the asphalt plant is required to undergo demonstrated emissions testing such as Odour Control, Sound Levels, and Air and Particulate Emissions. In addition, the asphalt plant operation also has to have adequate Erosion and Sedimentation Controls and Separation Distance to sensitive land uses.

### **ALTERNATIVES**

The North West Community Council may choose to recommend that Regional Council:

1. Modify the proposed amendments to the MPS and LUB for Planning Districts 1 and 3, as set out in Attachments A and B of this report. If this alternative is chosen, specific direction regarding the requested modifications is required. Substantive amendments may require another public hearing to be held before approval is granted. A decision of Council to approve or refuse the proposed amendments is not appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Refuse the proposed amendments to the MPS and LUB for Planning Districts 1 and 3. A decision of Council to approve or refuse the proposed amendments is not appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.



## **ATTACHMENTS**

Map 1:	Generalized Future Land Use
Map 2:	Zoning and Notification
Map 3:	Separation Distance to Residential Development
Map 4:	Access from Proposed Asphalt Plant Restricted to the Highway #103 Interchange at Ingramport
Attachment A Schedule A	Amendments to the Municipal Planning Strategy for Planning Districts 1 and 3 Lands Permitting an Asphalt Plant
Attachment B Schedule S	Amendments to the Land Use By-law for Planning Districts 1 and 3 Area Permitting an Asphalt Plant Operation
Attachment C	Public Participation Minutes – June 2015
Attachment D	Consolidated Survey Questions from Asphalt Public Meetings - Jan 25 & 26, 2017
Attachment E	Relevant Excerpts from the District 1 and 3 MPS and LUB

Initiation Report <http://legacycontent.halifax.ca/council/agendasc/documents/150428ca1116.pdf>

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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

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Original Signed

Report Approved by: Carl Purvis, Acting Manager of Current Planning, 902.490.4797

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