

Town of Berwick
Report to Municipal Council
Agenda Item

Subject: Planning Advisory Committee Recommendation for First Reading
Regarding

From: Brighter Community Planning and Consulting

Date: April 14th, 2026

The following recommendations for First Reading to Council are being forwarded from the Planning Advisory Committee for further discussion and action:

THAT Council give initial consideration to the draft Development Agreement for 104 Front Street, PID 55245591, to permit a 40 seat restaurant within the existing mixed-use building together with a rear patio and front entrance, and forward the development agreement to public hearing scheduled for May 12th, 2026.

The purpose of this report is to present for Council's initial consideration the draft Development Agreement for 104 Front Street. The draft agreement relates to a proposal for a 40 seat restaurant within the existing mixed-use building, together with a rear patio and a new front entrance. The building already contains two residential units above a commercial use and sits on a constrained site with limited parking and existing non-conforming front and rear setbacks. The proposed rear patio would extend onto adjacent public land associated with the Harvest Moon Trail.

The draft Development Agreement is separate from the proposed Municipal Planning Strategy and Land Use By-law amendments. Council may consider both matters at the same time; however, the draft Development Agreement depends on Council first adopting the amendments and the Minister approving them. Under Sections 225C and 225D of the *Municipal Government Act*, Council may only grant provisional approval or approval in principle to the Development Agreement until the amendments take effect. Council cannot grant final approval to the Development Agreement until the related amendments receive Ministerial approval.

The draft Development Agreement will regulate site-specific details of the proposal. Staff reviewed the proposal against the Town's Development Agreement criteria and identified the main implementation matters of parking, traffic circulation, site access, lighting, encroachment into public land, and compatibility with surrounding lands. It's important to note that the DA will not apply to the patio, rather the LUB will be amended to allow patios as-of-right in the Open Space (OS1) zone.

The staff report notes that Public Works has no concerns of the servicing capacity. The Traffic Authority has no concerns about the front entrance as it will not extend further than the current entrances on Front Street. There are discussions about making front street one way; however, it is not a precondition to this

agreement, and no decisions have been made. The development agreement has had legal review, and can not apply to the patio extending into the DNR lease.

The Development Agreement also gives Council the tool to regulate impacts that arise from the patio and restaurant use. Staff identified noise, lighting, circulation, parking demand, and compatibility with adjacent uses and the public realm as the main planning issues that require site-specific review.

Comments received during the review process also relate to the draft Development Agreement during the public information meeting. Comments focused on trail access, drainage along the trail, and accessibility at the patio connection. The owner advised that the proposal would provide access from the deck area to the trail but would not include direct stairs from the trail to the building and would instead use a gravel pad connection for motorized vehicles to park.

It's important to note that without the approval of amendments, the DA will not exist.

The Planning Advisory Committee considered the matter on April 7, 2026. After reviewing the staff report, hearing comments from the public, considering the relevant Municipal Planning Strategy policies, PAC passed a positive motion.

At this stage, Council's role is to decide whether to give initial consideration to the draft Development Agreement and allow it to proceed with the associated amendment process. Staff support initial consideration on that basis, with the understanding that the draft Development Agreement remains subject to the Ministers approval of the related Municipal Planning Strategy and Land Use By-law amendments.

Report to PAC – Municipal Planning Strategy and Land Use Bylaw amendments

Prepared by:	Ethan Oderkirk, Junior Planner
Subject:	Municipal Planning Strategy and Land Use By-law Amendments – Unique Sites and Structures
Date:	April 7 th 2026
Purpose:	PAC consideration of planning report and recommendation
Recommendation	Staff recommend that PAC recommend to Council that the proposed Municipal Planning Strategy and Land Use By-law amendments be approved and that the application proceed to a Public Hearing and by Development Agreement
Draft Motion	That the Planning Advisory Committee recommend that Council approve the proposed amendments to the Municipal Planning Strategy and Land Use By-law respecting Unique Sites and Structures, and that the application proceed to a Public Hearing and by Development Agreement.

Part 1: Purpose


The purpose of this report is to present for Planning Advisory Committee (“PAC”) consideration an application to amend the Municipal Planning Strategy (“MPS”) and Land Use By-law (“LUB”) to enable Council to consider development by Development Agreement for lands located at 104 Front Street.

The proposed amendments introduce town wide policies for the development of properties that due to historical development, unusual circumstances, or environmental constraints, may be developed subject to a Development Agreement

The amendments are intended to address unique site conditions.

Part 2: Background

Project Summary

Property Owner	Andy Peters
Civic Address	104 Front Street
PID	55245591
Designation	Commercial
Zone	Commercial General (C1)
Subject Properties (shown in red outline)	
Subject Property Area	0.18 Acres (8000 square ft.)
Existing Land Use	Mixed Use Residential and Commercial
Adjacent Land Use	Recreational and Commercial

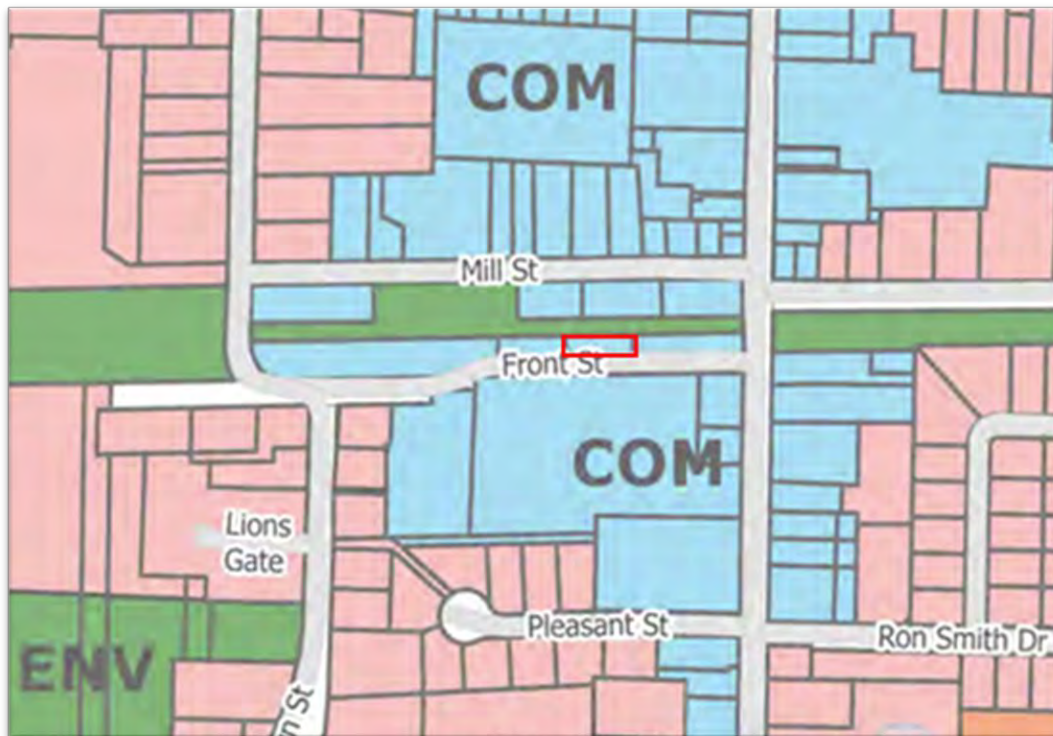
Location and Site Description

The Town received a development permit application for a restaurant in a portion of the building located at 104 Front Street, PID 55245591, within the Commercial

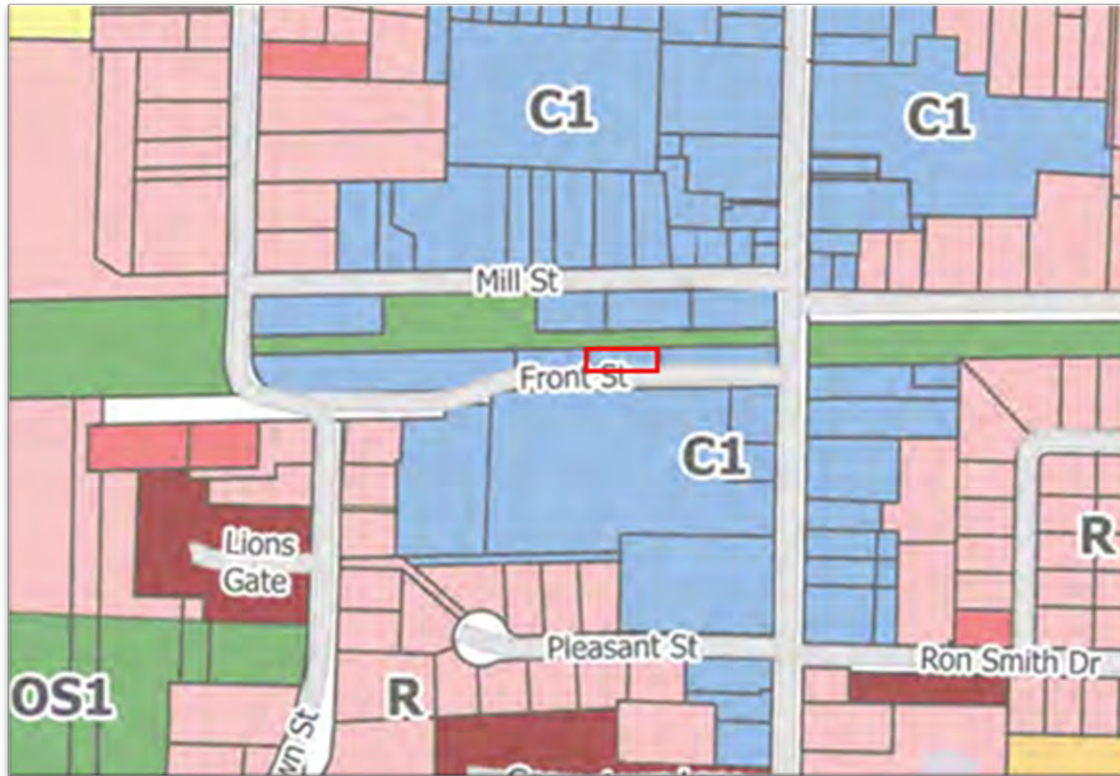
designation and zoned Commercial General (C1). The development officer could not issue the permit due to noncompliance with the land use bylaw.

The Subject Property contains an existing mixed-use building that predates the current zoning framework and does not comply with present setback requirements in the front and rear, making it a non-conforming structure. The building was likely constructed to support the former Dominion Atlantic Railway, and after the rail line was discontinued, has been used for a variety of functions. The building is currently housing two **apartments and a Guy's Frenchy's**. The lot has little room for parking, with the existing uses taking up most of the current parking on the Subject Property.

The Subject Property is located within the Town's traditional commercial area. Surrounding lands include commercial uses and the Harvest Moon Trail. The Annapolis Valley Trail System (Harvest Moon Trail) runs directly adjacent to the rear of the property to the north. To the east and west, barn-like storage structures used in conjunction with the former Dominion Atlantic Railway is located along Front Street, while to the south the Home Hardware warehouse fronts onto Commercial Street with associated parking along Front Street.



Land Use Designation Map - Commercial



Zoning Map – Commercial General (C1)

Background

The applicant applied for a development permit and the development officer could not issue a development permit for the restaurant use. The Town initiated amendments to the MPS and LUB to accommodate situations where due to historical development patterns or to facilitate the reuse of a building that has identified constraints, development may occur by development agreement.

The Subject Property contains an existing commercial use, Guys Frenchy's, and two (2) residential dwelling units located on the second floor. The existing front entrances serving these uses extend into the public right-of-way, along Front Street.

The future restaurant also wishes to build a new entrance on the south side of the building, and a patio on the north side of the building. The proposed patio would extend onto lands owned by the Department of Natural Resources (the Harvest Moon Trail). The applicant has applied for a Crown lease to permit construction of the deck on leased land.

Site Context & Application History

In 2024, the Town issued a Development Permit for the Subject Property to allow two (2) residential dwelling units and a Taproom with an Accessory Brewery. The approval

contemplated a “pickup and leave” and did not include an eat in restaurant use. The residential component required one (1) parking space per dwelling unit. The approved plans did not include a kitchen, fixed seating, outdoor seating, or detailed interior layout drawings.

In 2026, the applicant submitted a new Development Permit application with internal plans that include a commercial kitchen, fixed seating, and a defined dining layout. The application also proposes a rear deck on the rear and a new front entrance facing Front Street. These changes represent a shift in use from a limited taproom model to a sit-down restaurant use.

A restaurant requires a greater number of parking spaces under the Land Use By-law. In addition, the introduction of fixed seating and outdoor seating increases the calculated parking demand.

The proposed rear deck and new front entrance also introduce external structural changes to a building that already does not meet setback requirements within the Commercial General (C1) Zone.

Part 3: Discussion

Municipal Planning Strategy Policy Review

The Municipal Planning Strategy (“MPS”) **establishes the Town’s policy framework for managing growth, development, and land use. The Strategy sets out Council’s intent** for how land within the Town should be used and developed over time and provides the policy direction that guides decisions on amendments, rezonings, and Development Agreements.

The MPS identifies the Commercial **designation as the Town’s traditional commercial** area and supports a range of commercial, institutional, and accessory residential uses.

The proposal connects to the MPS direction for downtown development. Policy 3.7 directs Council to prioritize and encourage development on or near Commercial Street, and Policy 3.8 supports development through reduced parking requirements. These policies recognize the importance of strengthening the downtown core and acknowledge that older commercial areas often do not function like newer development areas.

Policy 4.45 allows Council to consider waiving parking requirements of mixed-use commercial and residential developments in the C1 Zone by Development Agreement. In doing so, Council may assess compatibility with adjacent dwellings, road access, public street frontage, parking, and building design.

Policy 4.46 specifically enables Development Agreement consideration for mixed-use commercial and residential development on Front Street adjacent to the former DAR right-of-way, which matches the location of the Subject Property.

The implementation policies support a Development Agreement approach. Policies 5.16 and 5.17 allow Council to impose conditions on matters such as lighting, noise, structure location, design, landscaping, parking, circulation, hours of operation, and stormwater management. Whereas Policy 5.23 allows Council to require supporting information, including site plans, elevations, grading, landscaping, drainage, traffic, and lighting details.

Policy 5.30 allows Council to consider the expansion of a non-conforming use, or a change from one non-conforming use to another, by Development Agreement where adjacent land uses remain protected and impacts can be mitigated. Policy 5.31 directs Council to establish Land Use By-law regulations for non-conforming structures.

104 Front Street provides an example of a unique site. The Subject Property lies within the Commercial designation. The Commercial designation encourages a broad range of **commercial activities within the Town's established commercial areas**, supporting commercial investment within the downtown.

Many buildings in older commercial districts predate current development regulations and exist as non-conforming structures.

The existing policy framework does not clearly provide authority for Council to consider proposals with unique site features and constraints. This gap presents an opportunity **to introduce a "Unique Sites and Structures" policy framework**, that would enable Council to evaluate development proposals involving atypical site conditions, such as 104 Street.

Land Use By-law Review

The Land Use By-law establishes the regulatory framework that implements the policies of the Municipal Planning Strategy. The LUB regulates land use through zoning and establishes development standards such as setbacks, parking requirements, and permitted uses.

The LUB operates on a lot-based regulatory framework, meaning that buildings and structures associated with a use are required to be located on the same lot as the primary use. This framework provides clarity in the administration and enforcement of zoning.

While this approach functions effectively in most circumstances, it does not account for unique conditions in historic downtown environments. In such areas, development patterns were often established prior to adoption of modern zoning standards, resulting in:

- Compact lot configurations
- Building constructed close to property boundaries
- Limited space on individual parcel to accommodate accessory features such as decks, patios, ramps, or outdoor seating areas

Amendments would not create an as-of-right permission for such structures and instead, would create a mechanism through which Council may evaluate proposals on a case-by-case basis.

Proposed Amendments

The proposed policy amendments would recognize that unique site and structural conditions may limit how existing properties can adapt under the current Land Use By-law. Historic development patterns and environmental constraints can create circumstances where strict application of current regulations prevents the reasonable adaptation or continued use of an existing site.

The proposal for 104 Front Street identifies a gap in the current framework, as the Municipal Planning Strategy and Land Use By-law do not clearly address buildings that **extend onto abutting publicly leased land. The proposed "Unique Sites and Structures"** amendment would address that gap through a narrow policy tool intended for historic or atypical downtown properties where strict lot-based application of the Land Use By-law would prevent reasonable adaptation of an existing building.

The proposed MPS Policy 5.32 focuses on unique structures affected by historical, environmental, or topographical constraints. These unique buildings or properties often predate current parcel configurations, setback requirements, and parking standards. As a result, they may face practical limitations when adapting to modern commercial needs. In these situations, strict application of the Land Use By-law may prevent the reasonable adaptation or continued use of an existing building.

A Unique Structures policy would give Council a clear mechanism to consider adaptive reuse and limited expansion through the Development Agreement process. This approach helps support continued investment in established commercial areas, **strengthen the downtown economy, and retain the built form that defines the Town's** traditional commercial area. Carefully regulated structures, such as decks or patios, may improve the viability of existing businesses without requiring demolition or large-scale redevelopment.

These types of structures can also create land use impacts that require site-specific review. Decks, patios, and similar accessory features may increase noise, lighting, outdoor activity, circulation conflicts, or parking demand. These impacts do not make such structures inappropriate, but they do require careful evaluation to ensure compatibility with surrounding uses and the public realm. The Development Agreement process gives Council the ability to address these matters through site-specific terms, conditions, and mitigation measures.

Staff support a narrowly defined amendment that applies only where the primary building is non-conforming in nature, the proposed structure is accessory and non-permanent, the circumstance arises from historical, environmental, or topographical constraints, and the proposal proceeds through the Development Agreement process. This approach would allow the Town to support adaptive reuse and continued investment in unique buildings while maintaining a clear and enforceable review framework.

The amendments would require demonstration of the uniqueness of the site, allow for the expansion of non permanent uses on to adjacent public land and requirement consistency with the intent of the MPS.

Overall, the proposed amendments depend less on the specific circumstances of 104 Front Street and more on whether the Town wishes to create a limited mechanism to address unique structural conditions that create barriers under the current Land Use By-law. Staff find that this approach can be supported where it remains narrow, enforceable, and focused on existing unique structures.

Part 4: Draft Development Agreement

Attached to this report is draft development agreement for PAC's review. It applies the specific draft policies and considers the policies of 5.23 of the MPS, which are the general criteria for all development agreements.

Policy 5.23 requires Council to be satisfied regarding the adequacy of the road network. The traffic authority is suggesting that Front Street be converted to one way to allow for additional street parking. The Town Traffic Authority has not made this conversion to one way a pre-condition of the restaurant use and therefore, has not identified any concerns regarding traffic that can not be resolved. No other issues of note were identified. There is sufficient water capacity available for the proposed restaurant use outlined in a study done by CBCL in 2023.

The proposal will require an encroachment agreement, as a portion of the front entrance extends into the public right-of-way. This matter would need to be addressed to the satisfaction of the Town prior to issuance of any required approvals or permits.

Staff have also reviewed the specific proposal against the draft policies. Given the historical uses of the site and the limited size of the property, the adjacency to the Harvest Moon trail, this site has unique constraints and will be enabled under Policy 5.32 when amendments are approved. The proposed use supports the economic developments goals of the Plan in Section 2.53 and Policy 3.1.5 regarding development the commercial core.

Under Sections 225C and 225D of the *Municipal Government Act*, Council may consider the proposed Development Agreement at the same time as the associated Municipal Planning Strategy and Land Use By-law amendments, and may grant provisional approval or approval in principle where the Development Agreement has been presented at the public hearing and only minor administrative revisions remain. In this case, final approval of the Development Agreement would not occur unless and until the related MPS and LUB amendments are adopted and take effect, with final approval occurring when the Minister has approved the amendments.

Part 5: Recommendation

Staff recommend that the Planning Advisory Committee recommend to Council the proposed amendments to the Municipal Planning Strategy and Land Use By-law to introduce provisions for Unique Sites and Structures be approved and that the application proceed to a Public Hearing and by Development Agreement in accordance with the requirements of the *Municipal Government Act*.

Part 6: Draft Motion

That the Planning Advisory Committee recommend that Council approve the proposed amendments to the Municipal Planning Strategy and Land Use By-law respecting Unique Sites and Structures, and that the application proceed to a Public Hearing.

Part 7: Appendix

Appendix A: Policy Review

Appendix B: Site Plan

Appendix C: Amendments

Appendix D: Draft Development Agreement

Appendix A – Relevant MPS Policies

Policies	Comments & Concerns
<p>MPS Policy 4.45</p> <p>It shall be the intention of Council to encourage, promote and consider mixed use commercial/residential development with reduced parking requirements on those properties zoned Commercial General (C1) by Development Agreement. In addition to criteria contained in Policy 5-24, Council shall consider the following:</p>	<p><i>See comments below</i></p>
<p>a) That the proposed structure is generally compatible with existing dwellings on adjacent properties;</p>	<p>The example property at 104 Front Street already exists within the established downtown commercial area and contains two (2) residential units above the commercial use. The proposed amendments would allow Council to consider accessory structures through Development Agreement, where compatibility with surrounding uses can be evaluated.</p>
<p>b) That the proposed development can be integrated into and accommodated within the adjacent road network;</p>	<p>Front Street and Commercial Street provide established access routes within the Town’s central business district. Through the Development Agreement process, Council can evaluate potential impacts on traffic circulation and access. Front Street is proposed to be a one-way street to better accommodate the parking requirements and not as a precondition to the approval.</p>
<p>c) The ground floor commercial shall front on a public street.</p>	<p>The proposed restaurant use on the Subject Property is on ground floor, fronting onto Front Street.</p>
<p>d) Parking shall not front on Commercial Street. Underground parking is encouraged.</p>	<p>The subject property does not contain sufficient space for on-site parking due to its compact lot configuration. Parking will not be located on Commercial street, as it can be accommodated by on street parking along Front Street.</p>
<p>e) Council may consider waiving</p>	<p>There is determined to be adequate</p>

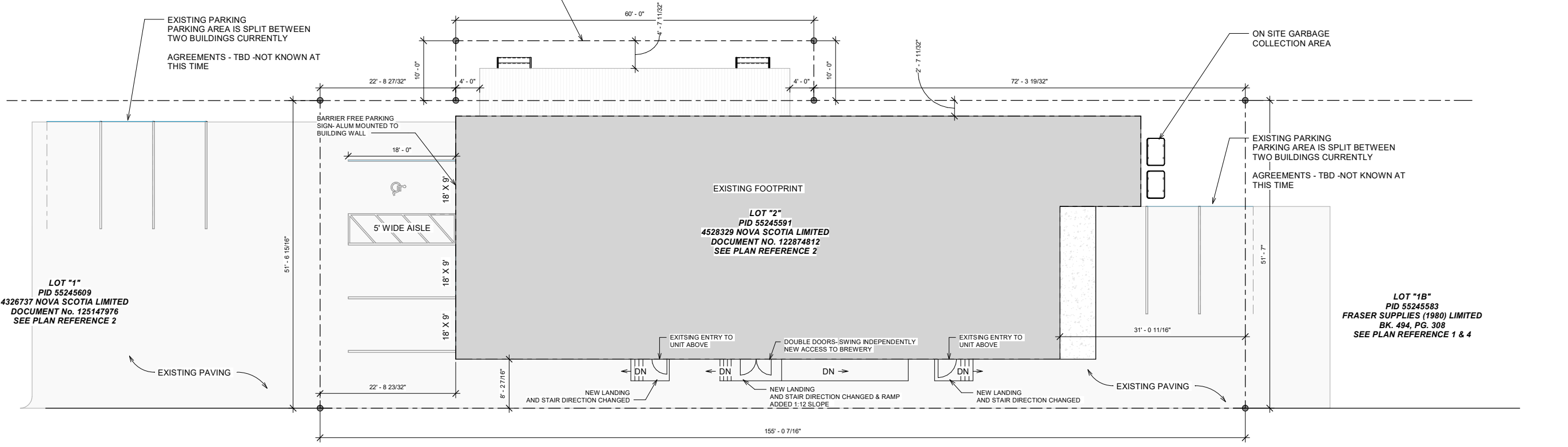
commercial parking requirements if it determined there is adequate street parking or off site parking is provided.	on street parking
f) Commercial buildings shall help create a positive and pedestrian scale street wall	The existing structure contributes to the established street wall along Front Street.
g) A Level 1 Groundwater Assessment prepared by a qualified hydrogeologist identifying potential risk and mitigation options for the protection of quality and quantity of groundwater resources.	Public works has reviewed the proposal and has indicated there are no concerns with off site parking located on the public street.
h) That the design of the proposed structure is complementary to the existing building form: a. Building Mass; b. Materials	There is no parking structure proposed.
i) The policies contained in Policy 5-24	<i>See MPS Policy 5.24</i>
MPS Policy 5.23 It shall be the policy of Council to not amend the Land Use By-law or approve a development agreement unless Council is satisfied the proposal:	<i>See comments below</i>
a) Is consistent with the intent of this Municipal Planning Strategy;	The proposal is consistent with the Municipal Planning Strategy
b) Does not conflict with any Town or Provincial programs, by-laws, or regulations in effect in the Town;	The proposal does not conflict with any programs, by-laws or regulations in the town.
c) Is not premature or inappropriate due to:	
a. The ability of the Town to absorb public costs related to the proposal;	There are no known impacts.
b. Impacts on existing drinking water supplies, both private and public;	Public works has reviewed the application and indicated there are no known impacts.
c. The adequacy of sewer and groundwater to support the proposed density of development;	Public works has reviewed the application and indicated there are no known impacts.

d. The creation of excessive traffic hazards or congestion on road, cycling, and pedestrian networks within, adjacent to, or leading to the proposal;	Front Street will be re routed to become a one-way street to reduce congestion and excessive traffic hazards.
e. The adequacy of fire protection services and equipment;	N/A
f. The adequacy and proximity of schools and other community facilities;	N/A
g. The adequacy of road networks adjacent to, or leading to the proposed development;	The proposal on Front Street is located near Commercial Street.
h. The creation of a new, or worsening of a known, pollution problem in the area, including, but not limited to, soil erosion and siltation of watercourses;	Lighting pollution controls will be in place to reduce light pollution onto adjacent properties.
i. The potential to create flooding or serious drainage issues, including within the proposal site and in nearby areas;	Public works has reviewed the application and indicated there are no known impacts.
j. The potential for damage to or destruction of historical buildings and sites;	N/A
k. Impacts on known habitat for species at risk;	N/A
l. Risks presented by geohazards; and	N/A
m. The suitability of the site in terms of grades, soil and geological conditions, the location of watercourses and wetlands, and proximity to utility rights-of-way.	The front entrance will require an encroachment agreement onto the public right of way.

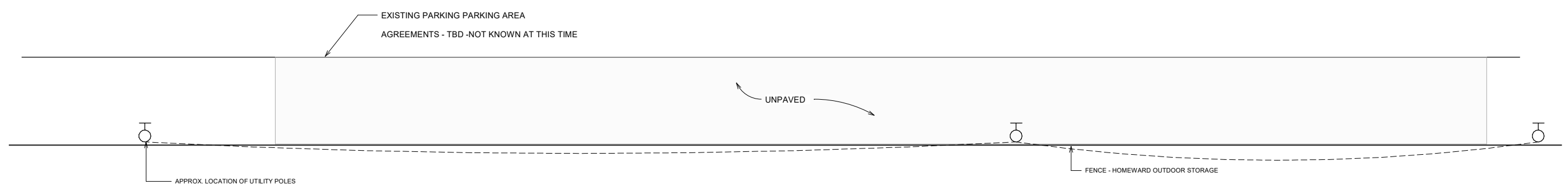


PID 55170856
CROWN LAND
PGP1 11-25-00221
DOCUMENT No. 90424442
SUBJECT TO BENEFITS AND BURDENS,
SEE PARCEL REGISTER

PARCEL XXXX
AREA = 55.7 SQ.M
LEASE OVER CROWN LAND



FRONT STREET - MUNICIPAL STREET



1 Site Plan
1/8" = 1'-0"

NOTES:

NO.	DESCRIPTION:	DATE:

LOGO:



STAMP:
CONCEPTS

PROJECT: SMOKEHOUSE BREWERY RENOVATION PROJECT				DWG. C1
TITLE: SITE - PARKING PLAN				ISSUE:
SCALE: 1/8" = 1'-0"	DATE: 14.01.2026	DRAWN: B.M.S.& K.M.	CHECKED: -	JOB NO. 250118

This Development Agreement made this _____ day of _____, A.D., 2026

Between:

4528329 NS Limited in Berwick Nova Scotia, and hereinafter called the "Owner"

OF THE FIRST PART

-and-

Town of Berwick, a duly incorporated municipal body incorporated under the laws of the Province of Nova Scotia, hereinafter called the "Town"

OF THE SECOND PART

WHEREAS the Developer is the Lessee of certain lands known as 104 Front Street in the Town of Berwick (PID 55245591) and more particularly described in the attached Schedule "A" and hereinafter called the "Property"; and

AND WHEREAS the Developer has submitted a detailed development proposal for a restaurant/pub in in the Property.

AND WHEREAS Policy 5.32 of the Town of Berwick Municipal Planning Strategy require a development agreement for unique site and structures, when amendments are made.

AND WHEREAS Policy 4.45 of the Town of Berwick Municipal Planning Strategy requires Council to consider mixed-use developments in the Commercial General (C1) zone have reduced parking requirements by Development Agreement.

AND WHEREAS the proposed development of the Property has been considered at a Public Hearing held on Insert Date and approved by a majority vote of the Town Council on Insert Date pursuant to requirements of the Municipal Government Act;

NOW THEREFORE in consideration of the various covenants and benefits hereinafter set out in this Agreement, the parties hereto agree as follows:

Part 1: General Requirements and Administration

1.1 Applicability of Agreement

1.1.1 The Developer agrees that the Property shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Other By-laws, Statutes and Regulations

1.2.1 Nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Town applicable to the Property (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Property.

1.2.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to the sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Town and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.3 Conflict

1.3.1 Where the provisions of this Agreement conflict with those of any by-law of the Town applicable to the Property (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

1.3.2 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.

1.4 Costs, Expenses, Liabilities and Obligations

1.4.1 The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Property.

1.5 Provisions Severable

1.5.1 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.

1.6 Property

1.6.1 The Developer hereby represents and warrants to the Town that the Owners is the Owner of the Property and that all owners of the Property have entered into this Agreement.

Part 2: Definitions

2.1.1 All words used herein shall be defined as in the Land Use Bylaw and Subdivision Bylaw unless otherwise specifically defined herein. If not defined herein or in these Bylaws, the customary meaning shall apply.

2.2 When interpreting this agreement, the following words are defined as follows:

a) DNR means the provincial Department of Natural Resources

b) Encroachment Agreement means an agreement that permits a portion of a private structure or use to extend onto public land, subject to specified terms and conditions, and without transferring ownership of the affected land.

c) Fixed Seating means seating that is provided for the purposes of serving dine in customers in the Restaurant, regardless of whether the furniture is physically attached to the floor.

d) Land Use Bylaw means the Town of Berwick Land Use By-law adopted by Council on November 15, 2018, as amended from time to time.

e) Municipal Planning Strategy means the Town of Berwick Municipal Planning Strategy adopted by Town Council on November 15, 2018, as amended from time to time.

f) Patio means a platform without a roof, and with or without a foundation to hold it erect and attached to or abutting one or more walls of a building or constructed separate from a building, with or without direct access to the ground.

Part 3: Use of Property, Subdivision and Development Provisions

3.1 Schedules

3.1.1 The Developer shall develop the Property in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement:

a) Schedule A: Legal Description of the Property(s)

b) Schedule B: Site Plan

c) Schedule C – Lease Agreement with the Department of Natural Resources

3.2 Requirements Prior to approval

3.2.1 Prior to the issuance of a Development Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:

- a) *Submission of a site plan that generally complies with the Site Plan in Schedule B and this Agreement.*
- b) *Executed Encroachment Agreement if the front entrance, as shown on Appendix B, encroaches into Front Street.*
- c) *A lease agreement with DNR.*

3.3 General Description of Land Use

3.3.1 The following uses are permitted on the Property:

- A Restaurant use on the ground floor of the building with a maximum of 40 fixed seats.
- A Patio that may extend onto abutting land subject to a valid lease or license agreement with the landowner.
- Existing commercial uses and two (2) apartment units

3.3.2 Setbacks

- a) The rear setback shall not apply to the accessible ramp.
- b) The front entrance shall not extend further than **3 feet into the front setback.**

3.3.3 Parking

- a) No on-site parking shall be required for the Restaurant.

3.3.4 Lighting

Any new lighting shall be shaded and directed downward.

3.3.5 Unique Site and Structure

- a) *The Developer shall provide a valid signed lease or legal agreement with the Department of Natural Resources authorizing the use of the lands for a patio*
- b) *The Developer shall comply with the Lease Terms outlined in Schedule C.*
- c) *A patio shall be permitted on the Leased Land.*

3.3.6 Maintenance

a) *The Developer shall be responsible to maintain the Property in compliance with all Town By-laws and applicable Provincial regulations and to ensure that the Property is maintained in a safe and clean condition.*

Part 4: Streets and Municipal Services

4.1 Off-Site Disturbance

4.1.1 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Town's Engineer or Director of Public Works.

Part 5: Amendments

5.1 Non-Substantive Amendments

5.1.1 The following items are considered by both parties to be not substantive and may be amended through decision of the development officer.

a) *Changes to the Timing and Completion provisions in section 6.3 and 6.4 of this Agreement.*

5.2 Substantive Amendments

5.2.1 Amendments to any matters not identified under Section 5.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

Part 6: Registration, Effect of Conveyances and Discharge

6.1 Registration

6.1.1 A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office for the County of Annapolis, Nova Scotia and the Developer shall incur all costs in recording such documents.

6.2 Subsequent Owners

6.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Property which are the subject of this Agreement until this Agreement is discharged by Council.

6.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

6.3 Commencement of Development

6.3.1 In the event that development on the Property has not commenced within 2 years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Property shall conform with the provisions of the Land Use By-law.

6.3.2 For the purpose of this section, commencement of development shall mean issuance of a Development Permit.

6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1, if the Town receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

6.4 Completion of Development

6.4.1 Upon the completion of the whole development, Council may review this Agreement, in whole or in part, and may:

- a) retain the Agreement in its present form;*
- b) negotiate a new Agreement; or*
- c) discharge this Agreement.*

6.4.2 For the purpose of this section, completion of development shall mean issuance of a Development Permit.

6.5 Discharge of Agreement

6.5.1 If the Developer fails to complete the development after three (3) years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:

- a) retain the Agreement in its present form;*
- b) negotiate a new Agreement; or*
- c) discharge this Agreement.*

Part 7: Enforcement and Rights and Remedies on Default

7.1 Enforcement

7.1.1 The Developer agrees that any officer appointed by the Town to enforce this Agreement shall be granted access onto the Property during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Town to inspect the interior of any building located on

the Property, the Developer agrees to allow for such an inspection during any reasonable hour within seventy two hours of receiving such a request.

7.2 Failure to Comply

7.2.1 If the Developer fails to observe or perform any condition of this Agreement after the Town has given the Developer 30 days written notice of the failure or default, then in each such case:

- a) *The Town shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defence based upon the allegation that damages would be an adequate remedy;*
- b) *The Town may enter onto the Property and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Property or from the performance of the covenants or remedial action, shall be a first lien on the Property and be shown on any tax certificate issued under the Assessment Act;*
- c) *The Town may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; or*
- d) *In addition to the above remedies, the Town reserves the right to pursue any other remedy under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.*

Part 8: Expenses

8.1.1 In addition to the costs to be paid pursuant to section 6.1.1, any expenses incurred by the Town in exercising its rights under Section 7 shall be paid by the Developer to the Town. Such expenses may include, but are not limited to, costs incurred in returning property owned by the Town, or the Property to their original condition before the beginning of work on the development, costs incurred for entry on the Properties and performance of the Developer's obligations, and all solicitors' fees and disbursements incurred in terminating or discharging this Development Agreement. Such expenses shall be payable by the Developer to the Town as a debt and may be recovered from the Developer by direct suit. They shall form a charge upon the Properties. The Developer shall pay interest on any sum so expended by the Town at the same monthly rate charged by the Town for tax arrears on the outstanding balance from time to time. Such interest shall be treated as an expense.

8.1.2 The Developer shall be liable for any damage caused to public or private property by Developer or any contractor or other individual doing work related to the development. The Developer shall indemnify the Town and save it harmless from any claim, cause of action, or liability in any way relating to the development. The Developer shall obtain

and maintain in force throughout the course of construction on the development, liability insurance coverage to ensure the responsibilities which the Developer is assuming in this section.

Part 9: Notice

Any notice to be given under this Development Agreement shall be made in writing and either served personally or forwarded by courier or by registered mail, postage prepaid,

if to the Town to:

Town of Berwick
236 Commercial Street
Berwick, NS
B0P 1E0
Attention: Chief Administrative Officer

And if the Owner to:

4528329 Nova Scotia Limited
170 Cottage Street
Berwick, NS
B0P 1E0
Attention: Andrew Peters

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

IN WITNESS WHEREOF, this Agreement was properly executed by the respective parties on the day and year first above written

SIGNED, SEALED AND DELIVERED

In the presence of:

Developer

Witness

Andrew Peters, Director

Witness

Mike Peters, Director

Town of Berwick

Witness

Mayor

Witness

CAO/Clerk

Schedule “A”, - Property Description

Place Name: Berwick, Kings County, Nova Scotia

Municipality/County: Kings County

Designation of Parcel on Plan: Lot 2

Title of Plan: PLAN Showing Lands of Berwick Kitchen Centre, Front Street, Berwick, Kings County, N.S.

Registration County: Kings

Registration Number of Plan: P4928

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

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act

Registration District: KINGS COUNTY

Registration Year: 1982

Plan or Document Number: P4928

Schedule “B”, - Site Plan

Schedule “C” – Lease Agreement