

NOVA SCOTIA COURT OF APPEAL

Citation: *Cornwallis Farms Limited v. Nova Scotia (Attorney General)*,
2025 NSCA 9

Date: 20250206

Docket: CA 535609

Registry: Halifax

Between:

Cornwallis Farms Limited

Appellant

v.

The Attorney General of Nova Scotia, Nova Scotia Utility and Review Board,
Municipality of the County of Kings, Bradford Hopgood and Constance Hopgood,
Lindsay MacDonald, Cindy MacDonald and Michael Forsyth

Respondents

Judge:	The Honourable Justice Joel E. Fichaud
Appeal Heard:	January 27, 2025, in Halifax, Nova Scotia
Facts:	Bradford and Constance Hopgood sought approval from the Municipality of Kings for a development agreement to build a multi-unit residential project in Port Williams, an area near Cornwallis Farms Limited's livestock operation. Cornwallis Farms opposed the development, arguing it violated the buffer zone between agricultural and residential land uses as outlined in the Municipal Planning Strategy (MPS) (paras 1-3).
Procedural History:	Nova Scotia Utility and Review Board, July 9, 2024: Dismissed Cornwallis Farms Limited's appeal against the Municipality's approval of the development agreement, finding that the development did not interfere with the intent of the MPS (paras 38-39).

Parties Submissions:	<p>Appellant (Cornwallis Farms Limited): Argued that the proposed development did not reasonably carry out the intent of the MPS, particularly concerning the buffer zone between residential buildings and land used for intensive livestock operations. They also raised concerns about existing traffic hazards (paras 42-43).</p> <p>Respondent (Municipality of the County of Kings): Contended that the development complied with the MPS and that the Board's decision was correct. They argued that the traffic impact study showed no excessive hazards (paras 96-98).</p>
Legal Issues:	<p>Did the Board err in law by interpreting Policy 4.5.24(c) of the MPS in a way that the language cannot reasonably bear?</p> <p>Did the Board err in law by failing to consider evidence of dangerous traffic conditions when assessing the proposal's appropriateness? (paras 42-44).</p>
Disposition:	The appeal was dismissed without costs.
Reasons:	<p>Per Fichaud J.A. (Bourgeois and Beaton JJ.A. concurring):</p> <p>The Court found that the Board did not err in its interpretation of the MPS. The Board reasonably concluded that Cornwallis Farms' use of the pasture was not "intensive" and thus did not trigger the 600-foot buffer requirement under Policy 4.5.24(c) (paras 54-63). The Board's interpretation was consistent with the MPS and LUB, which focus on buildings or facilities for livestock operations rather than simple pasturing (paras 64-66). The Court also found that the Board properly considered the traffic impact study, which was accepted by the Department of Public Works, and concluded that the development would not create excessive traffic hazards (paras 93-103).</p>

<p><i>This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 107 paragraphs.</i></p>
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Lindsay MacDonald, Cindy MacDonald and Michael Forsyth
Respondents

Judges: Bourgeois, Fichaud and Beaton, JJ.A.

Appeal Heard: January 27, 2025, in Halifax, Nova Scotia

Held: Appeal dismissed without costs per reasons for judgment of
Fichaud J.A., Bourgeois and Beaton JJ.A. concurring

Counsel: Jonathan G. Cuming for the Appellant
Peter M. Rogers, K.C., and Raylene Langor for the
Respondent Municipality of the County of Kings
Robert G. Grant, K.C., and Alida J. Doelle for the
Respondents Bradford and Constance Hopgood
The Respondents Lindsay MacDonald, Cindy MacDonald and
Michael Forsyth not participating
The Respondents Attorney General of Nova Scotia and Nova
Scotia Utility and Review Board not participating

Reasons for judgment:

[1] Bradford and Constance Hopgood asked the Council of the Municipality of Kings (“Municipality”) to approve a development agreement for a multi-unit residential project in Port Williams. Port Williams is in the largely agricultural Annapolis Valley. Cornwallis Farms Limited (“Cornwallis”) uses its nearby premises for a livestock operation. Mr. and Ms. Hopgood say their proposed development would promote the Municipality’s growth objective under its Municipal Planning Strategy (“MPS”). Cornwallis says the proposed development oversteps the buffer between agricultural and residential land uses.

[2] The Municipality’s planning staff concluded the proposed development complied with the MPS. The Staff Report recommended approval. The Municipality’s Planning Advisory Committee endorsed the Staff Report’s conclusion. The Council approved the development agreement.

[3] Cornwallis appealed to the Nova Scotia Utility and Review Board (“Board”). The *Municipal Government Act*, SNS 1998, c. 18, (“*MGA*”) s. 251(2) says the Board may allow an appeal only if the Board determines the Council’s decision “does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law ...”. Cornwallis submitted the proposed development did not reasonably carry out the MPS’ intent. The Board’s majority was unpersuaded and dismissed Cornwallis’ appeal.

[4] Cornwallis appeals to this Court. The *Utility and Review Board Act*, SNS 1992, c. 11, (“*URB Act*”) s. 30(1) permits an appeal on a question of law or jurisdiction.

[5] The issue is whether the Board erred in law by concluding the proposed development carries out the intent of the MPS.

The Proposed Development

[6] The Village of Port Williams is between Kentville and Wolfville in the Annapolis Valley. Belcher Street connects Port Williams with Kentville to the west.

[7] On February 3, 2022, Mr. and Ms. Hopgood applied for a development agreement for the “Port Ridge Development” (“Development”). Their application

was to the Municipality's Council. The Development, to be situated at 1207 Belcher Street, would occupy four lots on 12 acres ("Hopgood Property").

[8] Currently, except for the family home, the Hopgood Property is vacant land with a raised sand berm and a stand of trees adjacent to Belcher Street.

[9] The Development would add three five-story buildings with 67 units, a two-unit dwelling over a former sand pit, new commercial space fronting Belcher Street, community gardens, a playground and a community terrace. It would upgrade the existing trail system and install a sidewalk to connect with the public sidewalk. The new residences would occupy the previously vacant land behind the berm that runs parallel to Belcher Street and would be separated by trees from Belcher Street.

[10] The Port Williams Future Land Use Map, which is part of the MPS, designates the Hopgood Property as "R - (Residential)". Under the MPS, the Hopgood Property occupies a portion of the Growth Centre of Port Williams. Under the Municipality's Land Use By-Law ("LUB"), it is zoned mainly as Comprehensive Neighbourhood Development (R5) and partly as Residential Mixed Density (R3).

[11] The submission to the Municipal Council by Mr. and Ms. Hopgood's architect concluded with:

[The Development's] higher density use is located on vacant and underused land. The housing scale will enable seniors to age within the community and benefit from the development's small scale commercial component. Its location between the protective berms and the top of the wooded slope leading down to the agricultural dykelands along the Cornwallis River and adjacent farmland across Belcher Street meet all requirements for separation distances. We feel that Port Ridge more than meets the goals and aspirations contained within the MPS. It will add important housing stock to the village of Port Williams and the surrounding areas while creating unique living options for its residents. Port Ridge will become an important addition to the existing fabric, allowing needed growth in a well located and sensitive manner.

Cornwallis' Livestock Operation

[12] Cornwallis Farms Limited ("Cornwallis") has a large-scale commercial livestock operation across Belcher Street from the Hopgood Property. Brian

Newcombe, Cornwallis' vice-president, testified Cornwallis' livestock include poultry (laying hens and broiler chickens) and cattle. The cattle comprise 30 to 40 heifers, being milking cows, dry cows whose lactation is spent and calves. It has ten dairy barns, eight chicken barns, manure storage facilities, an orchard and a tract of farmland.

[13] Most of Cornwallis' land is designated Agricultural under the Port Williams General Future Land Use Map and zoned Agricultural (A1) under the LUB.

[14] Cornwallis' property includes a corralled pasture at the corner of Belcher Street and Sutton Road ("Pasture"). Cornwallis' use of the Pasture is a key issue in this matter.

Cornwallis' Use of the Pasture

[15] Mr. Newcombe and Ms. Hopgood testified about Cornwallis' use of the Pasture.

[16] Mr. Newcombe said the Pasture is one of several paddocks, Cornwallis moves the cattle from one fenced paddock to another and, after each paddock is grazed "for a day or two", it is shut to let the grass regrow. The cattle return to the Pasture when its turn comes in the rotation. He testified:

A. ... If I have 20 acres, I could pasture it two ways. I could throw 20 cows out there and let them eat where they want, and when it's all gone, it's gone. Or if you want to have intensive pasture, you take that 20 acres, you divide it into paddocks and you have fences. So you put your 20 cows onto a smaller paddock, so they eat that all up. But you don't want to eat down too far because if you eat down to the roots, it takes longer for the grass to regrow.

Q. Yes.

A. So you put them in there for a day or two, depending on the size of the paddock and how many animals you have. And then you move them to the next paddock, and the next paddock. So instead of having food for 20 cows for maybe a month, you could have food for cows for three months by moving around on the paddock. ...

[17] Ms. Hopgood lives across the street from the Pasture and observes it often. On direct examination she said:

Q. Ms. Hopgood, Mr. Newcombe was describing the corral that he has at the corner of Sutton Street and Belcher on the west side of the street towards Kentville.

A. Yes.

Q. Correct? Are you familiar with that corral?

A. Very familiar.

Q. Okay. How would you describe it?

A. Right now, it's full of snow and water.

Q. Right. And how frequently is it full of water from your observation?

A. From the fall through to the spring.

Q. Okay. And how frequently do you see cows being held in the corral?

A. Not very often.

Q. Okay. Are there any particular time when you have observed the cows in that location?

A. Yes.

Q. Okay. What times would you have observed cows in that location?

A. It would be early spring, summer and fall.

On cross-examination, she continued:

Q. So you testified that from – just I think you said from fall through to spring, the corral is covered in water and snow?

A. Correct.

Q. Okay. But then you testified that you see the livestock in the corral area in early spring?

A. Periodically, m'hm.

Q. Okay. Now what I'm having difficulty with understanding is this period. Are you saying that the corral area is covered in water from late fall to early spring?

A. It's a – it floods because there's a really bad drainage area right there, so they have a really bad problem keeping the cows there when they put them there. They have to wait till it's really dry and then they come with a small truck and feed them hay and – but there's only like five – five cows that are ever there at one time, if that.

Q. Well, we've – okay. We'll come back to that. But what I'm trying to figure out is your timeline. I'm going by your evidence on that.

A. Yeah. Sure.

Q. I want to get a clarification from your evidence because your evidence was that this area – essentially, what you're asserting is that this area could not be used for pasturing cattle or for feeding cattle because it was under water and you gave a time period. And your time period was from fall until spring. Correct?

A. When the days are right when they can put them there.

Q. Sure. And what you said was you saw them there in early spring; correct?

A. Well, what's early spring would be like June for us.

Q. Well, I'm asking you because you're the person that

A. Yeah, I would say June.

Q. So my question to you was essentially, are you simply saying it's the – because if it's late fall to early spring, we're really only talking about wintertime when that corral area is not being used.

A. No, it's not being used during the summer months as well because of heavy rains or poor drainage.

Q. So when it's flooded in summer months, it's not being used.

A. That's right.

[18] The Board’s majority made the following findings about Cornwallis’ use of the Pasture:

[70] The Board finds it is unlikely the corral was used during periods when the cattle were not grazing in the pasture or when it was flooded. The Board finds it is likely that when Mr. Newcombe testified the cattle used the corral every day, he meant every day it was in regular use. The Board therefore accepts Ms. Hopgood’s evidence about the seasonal use of the corral. The Board is satisfied that the number of cattle could well have varied. While Ms. Hopgood may have only seen a few cattle in the corral, based on Mr. Newcombe’s testimony, the Board accepts there were probably often more cattle in the corral than what Ms. Hopgood observed.

The Municipal Planning Strategy

[19] The MPS includes the Port Williams Secondary Plan (“Secondary Plan”). The Secondary Plan focuses on development within the “Growth Centre of Port Williams”. The Development would be in the Growth Centre.

[20] The Introduction (section 1.2) to the MPS includes the following interpretive directives that pertain throughout the MPS, including the Secondary Plan:

Planning Context

The Municipal Planning Strategy communicates the Municipality’s long-term Vision and implements the policy tools to achieve its long-term goals. While divided into parts and sections for ease of reference, it is intended to be read as a comprehensive whole. The Municipal Planning Strategy is the policy framework used by Municipal Council to guide development, land use, and other matters of interest within the parameters of Parts 8 and 9 of the *Municipal Government Act*. ... The Land Use By-Law (LUB) and the Subdivision By-Law are companion documents and are the regulatory tools to “carry out the intent of the Municipal Planning Strategy” as set out in Section 219 of the *Municipal Government Act*. ...

Interpretation

... Notwithstanding the words “Council shall” preceding policy text throughout the document, policy statements are intended to be permissive, not mandatory. Non-shaded text, photos and sidebars are intended to provide context and assist in comprehension.

[underlining added]

[21] The policies in the MPS direct the Council to encourage residential development in Growth Centres and on lands zoned as Comprehensive Neighbourhood Development (R5) or Residential:

Policy

Council shall:

...

2.3.2 encourage the development of higher density communities in Growth Centres that permit various housing types to increase the efficiency and cost-effectiveness of municipal sanitary sewer and water servicing;

Policy

Council shall:

...

3.1.11 zone as Comprehensive Neighbourhood Development (R5) lands that are intended to enable the development of large-scale and comprehensively-planned neighbourhoods. This zone may be applied to areas that:

(a) are a minimum of five (5) acres in size;

Policy

Council shall:

...

4.5.21 designate as Residential areas where the maintenance and development of residential neighbourhoods and a variety of infill development opportunities are encouraged;

...

4.5.23 zone as Comprehensive Neighbourhood Development (R5) large parcels of undeveloped land which are intended to enable innovative neighbourhood and building designs by development agreement while providing an opportunity for the community to be consulted;

[22] To “mitigate land use conflict” between agriculture and growth, the MPS prescribes subjective standards, using adjectives “flexible”, “adequate” and “appropriate ... based on scale and potential impact”:

Policy

Council shall:

...

3.4.5 require flexible lot and building standards for agricultural uses, while also providing appropriate separation from adjacent properties and sensitive environmental features.

Livestock Operations

The raising of livestock, such as poultry, cattle and mink, is an integral part of the agricultural economy. The Municipality has one of the highest densities of commercial livestock facilities in Eastern Canada. Although livestock buildings need not locate on optimal soils, the feed the animals consume and the manure they produce are interconnected with other agricultural systems. Livestock operations, therefore, must be permitted to locate and expand in many locations. Appropriate controls, based on the scale and potential impact on neighbours, are established to mitigate land use conflict and environmental concerns. Livestock operations are distinguished as intensive or commercial-scale livestock operations, and household livestock which are small-scale, hobby or niche-market livestock operations.

Policy

Council shall:

3.4.6 permit within the Agricultural (A1), the Rural Mixed Use (A2), and the Rural Industrial (M3) Zone, livestock operations; and

3.4.7 establish for all livestock operations within all Agricultural Zones flexible controls to provide a variety of opportunities. These controls shall require:

- (a) adequate separation between the livestock operation and Growth Centres, and watercourses consistent with the intent of the zone; and
- (b) a manure disposal plan for new or expanded operations, subject to Provincial Regulations and Guidelines.

[underlining added]

[23] Cornwallis' principal submission to the Board and this Court turns on Policy s. 4.5.24(c) of the Secondary Plan. The Policy and its associated provisions state:

Residential

Initially focussed on the waterfront, the Growth Centre of Port Williams has grown to include a number of residential neighbourhoods. The majority of residents live in low-density single-unit dwellings, but there are also a significant number of multi-unit buildings found along major roads and in central locations. The steady residential growth experienced in recent years is expected to continue as new residents are attracted to the community's character and urban services and its proximity to the Wolfville-Coldbrook urban corridor and Highway 101. The Growth Centre should continue to welcome new residents, as well as accommodate the changing lifestyles of existing residents by providing opportunities for a variety of new residential developments.

...

Goal

- To accommodate residential growth that meets the needs of residents from all stages and ages of life.

Objectives

- To direct higher-density developments to central locations;
- To direct lower-density developments to the Growth Centre fringe;
- To encourage infill development on vacant and underused land;
- To provide opportunities for home-based businesses;
- To provide opportunities for mixed-use developments;
- To enable residents to age within the community by accommodating housing that is suitable for seniors; and
- To provide a buffer between residential developments and agricultural activities.

Policy

Council shall:

...

Development Agreements

4.5.24 consider only by development agreement in the Comprehensive Neighbourhood Development (R5) Zone, residential development which is sympathetic to neighbouring farms and will not interfere with normal agricultural activities. In considering such development agreements Council shall be satisfied that:

...

- (c) a separation distance of a minimum of 100 feet (30.5 metres) shall be maintained between any residential building and land actively used for crop land and 600 feet (183 metres) shall be maintained between any residential building and land used for intensive livestock operations;

[underlining added]

[24] Policy 4.5.24(c) prescribes a minimum of 600 feet between a residential building and “land used for intensive livestock operations”. The Pasture is within 600 feet of proposed residences in the Development. At the Board and in this Court, the submissions addressed whether the Pasture is “land used for intensive livestock operations”. I will address this point under the First Issue.

The Land Use By-law

[25] The MPS, section 1.2, says the Land Use By-law (“LUB”) is a “companion” to the MPS and a “regulatory tool” to “carry out the intent of the Municipal Planning Strategy” as set out in Section 219 of the *MGA*.

[26] The Municipal Council adopted the MPS and LUB concurrently on November 21, 2019.

[27] The Hopgood Property is primarily within the Comprehensive Neighbourhood Development Zone (R5). The LUB states the purpose of that zone:

4.7 COMPREHNSIVE NEIGHBOURHOOD DEVELOPMENT (R5) ZONE

4.7.1 Zone Purpose

The purpose of the Comprehensive Neighbourhood Development (R5) Zone is to enable the development of large-scale and comprehensively planned neighbourhoods by development agreement, as per policy 3.1.2(d) of the Municipal Planning Strategy.

[28] Cornwallis' premises are primarily within the Agricultural Zone. The LUB includes the following provisions respecting the Agricultural Zone:

8.3 AGRICULTURAL (A1) ZONE

8.3.1 Zone Purpose

The purpose of the Agricultural (A1) Zone is to protect agricultural land for a viable and sustainable agricultural and food industry, in accordance with policy 3.4.2(a) of the Municipal Planning Strategy. This zone will provide maximum flexibility for agricultural and complementary uses and limit non-farm development, including housing. In the event of a conflict between an agricultural use and a non-agricultural use, the agricultural use shall take priority.

...

8.3.2.1 Permitted Uses

The following uses shall be permitted in the Agricultural (A1) Zone subject to all the applicable requirements of this By-law, including Section 14 – General Regulations. ...

[Livestock Operation Special conditions - Section 14.3]

14.3.6 Agricultural, Forestry and Fishing Uses not Requiring a Permit

If permitted in the zone in which the lot is located, agricultural, forestry and fishing uses may occur without a development permit, but any building associated with the use shall require a development permit.

...

14.3.21 Livestock Operations

Where permitted, livestock operations shall meet the requirements noted below:

- (a) New buildings or additions housing livestock, including manure storage facilities, shall have a separation distance of at least 100 feet from any watercourse and a separation of at least 500 feet from all Growth Centre boundaries.
- (b) Livestock operations not meeting the separation distance specified in (a) above shall be conforming provided they were in existence prior to the date of adoption of this By-Law. Such operations shall be permitted to expand or rebuild and shall be subject to the requirements below.
 - (i) Expansions may include additions and new building construction.
 - (ii) Where the Growth Centre separation distance is not being met, in no case shall the livestock operation expansion encroach more than 20 per cent of the existing distance between the nearest wall of the livestock operation and the affected Growth Centre.

...

[29] The definitions in the LUB, cited in the submissions, include:

Agricultural Use means the use of land, buildings, or structures for the cultivation of crops such as, but not limited to, corn, hay, fruit and vegetables and shall include a greenhouse. This definition includes bee keeping and animal pasturing but excludes buildings for the raising of animals, which is covered by the definitions of livestock operation and household livestock.

...

Household Livestock means livestock accessory to a residential use contained within the limits of the property by means of fencing, enclosures, or buildings without expectation of being a primary source of income. Combinations of different types of livestock, are permitted provided the total maximum number of five (5) animal units is not exceeded.

...

Livestock Operations means a livestock operation in which a number of animals exceeding five (5) animal units are confined to a barn, feedlot or other facility for feeding, breeding, milking or holding for riding, eventual sale or egg production but does not include Household Livestock.

The Council's Approval

[30] After Mr. and Ms. Hopgood applied for the Council's approval, Cornwallis wrote a letter, dated March 28, 2022, to the Municipality's Planner. The letter included:

While we appreciate that this development will not be built on Agricultural land we do feel it will negatively impact agriculture in this area. Increasing the population in an intensive agricultural area will definitely add pressure to the area and stress.

[31] The Municipality's planning staff wrote a Report, dated May 9, 2023 ("Staff Report"), to the Municipal Planning Advisory Committee. Laura Mosher, who testified as an expert planner before the Board, was the author. The Staff Report recommended approval of the Development:

8. CONCLUSION

The proposed development would introduce additional housing resources in a built form that is not common within the Growth Centre of Port Williams on properties in proximity to zoning that permits multi-unit dwellings. The development has been designed to minimize impacts on neighbouring properties and nearby agricultural operations. As a result, Staff are forwarding a positive recommendation to Area Advisory Committee.

[32] The Staff Report discussed the individual strategies in the Municipality's MPS and concluded the Development was consistent with the MPS and the Secondary Plan.

[33] The Staff Report summarized the intent of the MPS and the Secondary Plan:

MPS Objectives

In evaluating applications for development, Municipal Staff review the MPS holistically on the basis of its overarching vision and objectives. The general approach to the MPS balances the interests of protecting agricultural land and the development of healthy and complete communities. Generally speaking, rural areas are intended to be maintained for resource production and extraction while more urban areas, identified as Growth Centres, are intended to accommodate the majority of other types of growth. This is intended to occur in ways that contribute to vibrant communities that incorporate a high level of active transportation and efficiency in providing infrastructure servicing that is efficient and cost-effective to maintain. This approach is outlined in the statements of the MPS, outlined below.

Within the Vision Statement related to Settlement, Council has identified the following priorities:

- *Concentrate new commercial and residential development, including mixed uses, in the Growth Centres with clearly defined boundaries;*
- *Encourage efficient service and infrastructure delivery; and*
- *Enable and encourage a diversity of housing throughout the region.*

The proposed development includes primarily residential uses as well as a community commercial use within a Growth Centre. The proposed development does not include any new public infrastructure while increasing the total number of residents thereby increasing the efficiency of infrastructure. The proposed development also increases the diversity of housing within the Growth Centre of Port Williams since larger scale multi-unit dwellings are not common within Port Williams.

...

General Criteria

Municipal Planning Strategy section 5.3.7 contains the criteria to be used when considering all development agreement 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 Municipal Planning Strategy.

It is Staff's opinion that the proposal meets the general criteria. Staff have reviewed in that it will not result in any direct costs to the Municipality, is compatible with the surrounding development pattern, is compatible with adjacent uses, and raises no concerns regarding emergency services. Staff did investigate concerns relating to traffic generation. The applicant had a Traffic Impact Study prepared to the satisfaction of the Provincial Department of Public Works. Detailed responses to each criteria [sic] can be found in Appendix B.

...

Port Williams Secondary Plan

The Port Williams Secondary Plan forms section 4.5 of the MPS and provides specific policy direction within the boundaries of the Growth Centre of Port Williams. This section will discuss relevant policies contained within the Secondary Plan and how the proposal is consistent with these policies.

...

With regard to residential development, the Secondary Plan states a goal, "*To accommodate residential growth that meets the needs of residents from all stages and ages of life.*" The Secondary Plan also states an objective of directing higher density developments to central locations and to direct lower density developments to the Growth Centre fringe. While this proposal is higher density

and it is located on the fringe, Staff are of the opinion that, based on the visual screening provided by site characteristics including existing vegetation and site topography, there will be little visual, impact of the higher density uses on neighbouring properties.

It should also [be] noted that the central area of Port Williams is almost entirely developed with few vacant properties. The main transportation corridors in the central area exhibit traditional rural development patterns consisting of lower density uses clustered around the main intersection of Belcher Street and Highway 358. The balance of development within Port Williams has occurred relatively recently with major subdivision development occurring in the late 1980s, and over the course of the 2000s thus far. As a result, there is little land remaining within the core of the Growth Centre that is not currently zoned for industrial or commercial uses. The development of higher density residential uses within the core of the Growth Centre of Port Williams would require significant land assembly to be able to accommodate larger proposals. Redevelopment of these areas will likely occur in the fullness of time as buildings reach the end of their natural lifespan, but, until that time, there continues to be a great need for new housing throughout the region, and indeed, the province as a whole. The policies of the MPS directs [*sic*] growth to Growth Centres which are intended to accommodate a variety of housing. The area surrounding the subject properties is zoned for moderate density within all manner of residential built form. Staff do not see any reason to limit development of the subject properties to lower density uses in light of the balance of considerations in the Growth Centre. Given the predominance of lower density built forms within the Growth Centre of Port Williams and in consideration of the other goals pertaining to the provision of a variety of housing types and the goal of the Secondary Plan pertaining to providing housing for people of all ages and stages of life, increasing the number of multi-unit dwellings will enable more people to age within the community.

[34] On May 9, 2023, the Municipality's Planning Advisory Committee adopted the Staff Report's conclusion and forwarded its recommendation to the Municipal Council without further reasons.

[35] The Council approved the proposed development agreement at a first reading on June 6, 2023. Further to s. 230(2) of the *MGA*, the Council held a public hearing on July 4, 2023. On July 20, 2023, the Council approved Mr. and Ms. Hopgood's application for the development agreement. The Council did not issue reasons. The *MGA*, s. 230(6) requires reasons for denial of a development agreement, but not for its approval.

Cornwallis' Appeal to the Board

[36] On August 11, 2023, Cornwallis filed a Notice of Planning Appeal to the Board.

[37] On December 6, 2023, the Board, sitting as a three-member panel, heard the matter *de novo*. The witnesses included Mr. Newcombe, Cindy MacDonald, Constance Hopgood, Benjamin Smyth, Harrison McGrath and Laura Mosher. Messrs. Smyth and McGrath, called by Mr. and Ms. Hopgood, and Ms. Mosher, called by the Municipality, were qualified as experts. The Board received letters from interested parties, heard public speakers and visited the site.

[38] The Board's Decision of July 9, 2024 (2024 NSUARB 120) dismissed the appeal. The Board's majority found that the Pasture was not "land used for intensive livestock operations" under Policy 4.5.24(c). On this point, the majority's reasons included:

5.3 Analysis and Findings on this issue

[87] ... Interpreting Policy 4.5.24(c) of the Secondary Plan requires a determination of what is included in the term "land used for intensive livestock operations". The phrase is not a defined term in the MPS and must not be looked at in isolation. The Board must consider the scheme expressed in the MPS. ...

[89] ... It is reasonable to assume that when the Secondary Plan was incorporated in the MPS, the general concepts of Growth Centres as expressed in the MPS, and Comprehensive Neighbourhood Development, discussed in Policy 3.1.2(d), under which the R5 zone was created, were also incorporated in the Secondary Plan. Policy 3.1.2(d) says the R5 zone is for "... integrated and comprehensive planning of new large-scale developments by development agreement." ...

[91] One objective in s. 4.5 of the Secondary Plan discusses "a buffer between residential development and agricultural activities". This objective does not discuss what or how agricultural activities will be protected. This objective is also tempered by the overall goal of accommodating residential growth. While s. 3.4 of the MPS makes a distinction between "intensive or commercial-scale livestock operations" and "household livestock", those items are not defined in the MPS either. Also, while the use of the word "and" in the phrase could indicate the preamble only contemplates two types of livestock operations, the word "or" is a conjunction which is often used to link two alternatives. This implies "commercial-scale livestock operations" and "intensive livestock operations" could be two different things. ...

[94] ... The term “Livestock Operations” is defined in the LUB. Parts of the LUB definition, which speaks of animals “confined to a barn, feedlot or other facility for feeding, breeding, milking or holding for riding, eventual sale or egg production” have their own interpretation challenges.

[95] Subject to a discussion about the scope of the meaning of “land used” in Policy 4.5.24(c), the Cornwallis barns themselves are not within 600 feet of the proposed residential buildings. This was admitted by Mr. Cuming and is shown by the evidence.

[96] The term “feedlot” is also not defined in the LUB. The Board accepts that a feedlot is not necessarily contained in a building. That said, Mr. Rogers points out the Merriam-Webster.com dictionary defines the term as a “plot of land on which livestock are fattened for market”. ... Cornwallis Farms is not a beef cattle operation where cows are fattened for market for eventual sale. The cattle component of the operation is a dairy farm. The Board finds there is no feedlot associated with the Cornwallis Farm lands.

...

[100] While there are undoubtedly other potential interpretations, it would be an interpretation of the word “facility” it could reasonably bear, in the context of the MPS as a whole, to limit it to enclosed structures which can provide some degree of confinement and protection, in a well-defined space, that would encompass something more than fencing. This would be consistent with the focus on building in the controls established in s. 14.3.21 of the LUB. It would be consistent with the use of the words “livestock buildings” in s. 3.4 of the MPS. The Board notes manure storage facilities are regulated elsewhere in the LUB. The interpretation would also be consistent with the definition of the term “Agricultural Use” in the LUB, which makes a distinction between pasturing and buildings for raising animals, the latter of which are excluded from the definition because that aspect “...is covered in the definitions of livestock operations”.

[101] Cornwallis Farms operates a “livestock operation” as that term is defined in the LUB, on part of its lands. It is further reasonable to conclude that the structures housing the chickens and the cattle would be part of the Cornwallis Farms business where “intensive livestock operations” take place. ...

...

[104] The Board finds that limiting the scope of “lands used” to that part of a livestock operation that sees the most intensive use, such as a barn or an enclosed structure, or a crowded beef cattle feedlot, or structures associated with storing manure, is an interpretation that the wording can reasonably bear.

[105] While LUB provisions can assist with the interpretation of words, one must still consider that Council deliberately chose not to define the term “intensive livestock operation” in the MPS. The intent was probably to leave Council with the ability to exercise an element of discretion and judgement when considering the facts on the ground. This could include considering the number of animals involved so that lands associated with a commercial livestock operation with only six cows or chickens would not necessarily become an intensive livestock operation. Where Council deliberately chose not to define the term “intensive” it is a question-begging term. The issue then becomes how many cows or how many chickens, and over what area is there intensive use of the lands, for the livestock operations.

[106] ... In this case, the Board concludes that it was open to Council not to include in a pasture where cattle graze in segmented portions, or a corral used at a certain time of day, even if over a relatively lengthy season, in the boundary of lands used for intensive livestock operations. Such a way of interpreting the distance limitations in Policy 4.5.24(c) recognizes the flexibility and discretion that should be afforded to Council when reconciling the need to provide a buffer between residential development and intensive livestock operations and the expressed MPS policy direction of integrated and large-scale residential development in the R5 zone.

[107] Also, to interpret the provision otherwise would have significant impacts on the planning scheme envisaged by the MPS. If the meaning of the phrase “land used for intensive livestock operations” were given the meaning suggested by Mr. Cuming, it would mean that the Cornwallis Farms property at the corner of Sutton Street and Belcher Street would be included in the definition. This would therefore mean that Council-approved Growth Centre boundaries that included a significant portion of what was designated the R5 zone that could not be used for residential development, let alone large-scale development. In fact, if the Cornwallis Farms lands at the corner of Sutton Street and Belcher Street are included in the definition of “intensive livestock operations”, then there would not have been an adequate separation between the Cornwallis Farms livestock operation and the portion of the Growth Centre boundary designated for the R5 zone, at the time of its creation, as required by MPS Policy 3.4.7. This is because a significant portion of the R5 zone for the Property, which can only be developed under the development agreement criteria, would be within 600 feet of this part of Cornwallis Farms.

...

[109] While it is true that the buffer described in Policy 4.5.24(c) is more limited than if the appellants’ interpretation were accepted, it is a reasonable compromise with the intersecting Growth Centre policy directions found within the Secondary Plan itself, along with those MPS provisions applicable to the Municipality as a whole.

[39] The majority concluded:

[195] The majority of the Board finds the appellants have failed to establish that Council's decision does not reasonably carry out the intent of the MPS. ...

[40] The dissenting member would have allowed Cornwallis' appeal. He agreed with the majority on all issues but one. He said that the Pasture was "land used for intensive livestock operations", two buildings in the proposed Development were within 600 feet of it contrary to Policy 4.5.24(c), and therefore the Council's approval did not "reasonably carry out the intent" of the MPS.

Cornwallis' Appeal to the Court of Appeal

[41] On July 24, 2024, Cornwallis filed a Notice of Appeal (Tribunal) to the Court of Appeal. Lindsay and Cindy MacDonald and Michael Forsyth, though named as respondents, have neither filed a notice of appeal to this Court nor participated in Cornwallis' appeal.

Issues

[42] Cornwallis' factum (paras. 13-15) states three issues:

Issue 1: Did the Board err at law in applying an interpretation to the wording of Policy 4.5.24(c) of the Municipal Planning Strategy that the language of the Policy cannot reasonably bear?

Issue 2: Did the Board err at law in failing to consider evidence of the dangerous traffic conditions which currently exist in the area proposed for development and the Municipality's acknowledgement of the same, when assessing Council's determination that the proposal was not premature or inappropriate?

Issue 3: Did the Board err at law and exceed its jurisdiction by engaging in its own detached planning analysis?

[43] At the hearing in this Court, Cornwallis' counsel withdrew Issue 3 as a jurisdictional ground. He said Cornwallis maintains the submission that the Board erred in law and that point should be considered under Issue 1.

[44] Under s. 251(2) of the *MGA*, the appeal turns on whether the Board erred in law by finding the Council’s decision reasonably carried out the intent of the MPS. My analysis will address that matter, discuss Cornwallis’ Issues 1 and 2 directly and its third point under Issue 1.

This Court’s Standard for Reviewing a Decision of the Board

[45] The *URB Act*, s. 30(1) permits an “appeal” from an order of the Board to this Court “upon any question as to its jurisdiction or upon any question of law”. Section 26 says a “finding or determination of the Board upon a question of fact within its jurisdiction is binding and conclusive”.

[46] A statutory “appeal” is governed by the appellate standard, *i.e.* correctness for an issue of law: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para 37.

[47] In *Heritage Trust of Nova Scotia v. AMK Barrett Investments Inc.*, 2021 NSCA 42, this Court summarized its approach to the Board’s ruling in a planning matter:

[31] This Court determines whether the Board erred in law. The Court does not review the Board’s findings of fact or weighing of evidence. If the Board misapplied its standard of review and if Council’s approval of the development agreement did not reasonably apply the municipal planning strategy as a whole, then the Board erred in law.

The Board’s Standard for Reviewing a Decision of Council

[48] The *MGA* prescribes the Board’s standard to the Council’s decision:

Powers of Board on appeal

251(1) The Board may

...

(b) allow the appeal by reversing the decision of the council to amend the land-use by-law or to approve or amend a development agreement;

...

(2) The Board shall not allow an appeal unless it determines that the decision of council or the development officer, as the case may be, does not reasonably

carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law.

[49] For the guiding principles under s. 251(2), the seminal authority is *Heritage Trust of Nova Scotia v. Nova Scotia (Utility and Review Board)*, [1994] N.S.J. No. 50, 1994 NSCA 11. Justice Hallett discussed the former *Planning Act*, R.S.N.S. 1989, c. 346:

[99] ... There may be more than one meaning that a policy is reasonably capable of bearing. This is such a case. In my opinion the *Planning Act* dictates that a pragmatic approach, rather than a strict literal approach to interpretation, is the correct approach. The Board should not be confined to looking at the words of the Policy in isolation but should consider the scheme of the relevant legislation and policies that impact on the decision. ... This approach to interpretation is consistent with the intent of the *Planning Act* to make municipalities primarily responsible for planning; that purpose could be frustrated if the municipalities are not accorded the necessary latitude in planning decisions. ...

[100] ... Ascertaining the intent of a municipal planning strategy is inherently a very difficult task. Presumably that is why the Legislature limited the scope of the Board's review... . The various policies set out in the Plan must be interpreted as part of the whole Plan. The Board, in its interpretation of the various policies, must be guided, of course, by the words used in the policies. The words ought to be given a liberal and purposive interpretation rather than a restrictive literal interpretation because the policies are intended to provide a framework in which development decisions are to be made. ...

...

[163] ... Planning decisions often involve compromises and choices between competing policies. Such decisions are best left to elected representatives who have the responsibility to weigh the competing interests and factors that impact on such decisions. ... Neither the Board nor this Court should embark on their review duties in a narrow legalistic manner as that would be contrary to the intent of the planning legislation. Policies are to be interpreted reasonably so as to give effect to their intent; there is not necessarily one correct interpretation. This is implicit in the scheme of the *Planning Act* and in particular in the limitation on the Board's power to interfere with a decision of a municipal council to enter into development agreements. ...

[50] Though the *MGA* has replaced the *Planning Act*, Justice Hallett's exposition survives with some elaboration by later authorities, including: *Kynock v. Bennett* (1994), 131 N.S.R. (2d) 334, paras. 37-61, per Hallett J.A.; *3012543 Nova Scotia Ltd. v. Mahone Bay Heritage and Cultural Society*, 2000 NSCA 93, paras. 9-10,

61-64, 66, 84, 86-89, 91-97, per Hallett J.A.; *Lewis v. Halifax (Regional Municipality North West Community Council*, 2001 NSCA 98, paras. 19-21, per Cromwell J.A. as he then was; *Tsimiklis v. Nova Scotia (Utility and Review Board)*, 2003 NSCA 30, paras. 24-27, 54-59, 63-64, per Chipman J.A.; *Bay Haven Beach Villas Inc. v. Halifax (Regional Municipality)*, 2004 NSCA 59, para. 26, per Roscoe J.A.; *Midtown Tavern & Grill Ltd. v. Nova Scotia (Utility and Review Board)*, 2006 NSCA 115, paras. 46-48, 58, 81, 85, per MacDonald C.J.N.S.; *Can-Euro Investments Ltd. v. Nova Scotia (Utility and Review Board)*, 2008 NSCA 123, paras. 26-28, 88-95, per Oland J.A.

[51] In *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, this Court summarized the principles that derive from these authorities:

[24] ... I will summarize my view of the applicable principles:

- (1) The Board usually is the first tribunal to hear sworn testimony with cross-examination respecting the proposal. The Board should undertake a thorough factual analysis to determine the nature of the proposal in the context of the MPS and any applicable land use by-law.
- (2) The appellant to the Board bears the onus to prove the facts that establish, on a balance of probabilities, that the Council's decision does not reasonably carry out the intent of the MPS.
- (3) The premise, stated in s. 190(b) of the *MGA*, for the formulation and application of planning policies is that the municipality be the primary steward of planning, through municipal planning strategies and land use by-laws.
- (4) The Board's role is to decide an appeal from the Council's decision. So the Board should not just launch its own detached planning analysis that disregards the Council's view. Rather, the Board should address the Council's conclusion and reasons and ask whether the Council's decision does or does not reasonably carry out the intent of the MPS. Later (para. 30) I will elaborate on the treatment of the Council's reasons.
- (5) There may be more than one conclusion that reasonably carries out the intent of the MPS. If so, the consistency of the proposed development with the MPS does not automatically establish the converse proposition, that the Council's refusal is inconsistent with the MPS.

(6) The Board should not interpret the MPS formalistically, but pragmatically and purposively, to make the MPS work as a whole. From this vantage, the Board should gather the MPS' intent on the relevant issue, then determine whether the Council's decision reasonably carries out that intent.

(7) When planning perspectives in the MPS intersect, the elected and democratically accountable Council may be expected to make a value judgment. Accordingly, barring an error of fact or principle, the Board should defer to the Council's compromise of conflicting intentions in the MPS and to the Council's choices on question begging terms such as "appropriate" development and "undue" impact. By this, I do not suggest that the Board should apply a different standard of review for such matters. The Board's statutory mandate remains to determine whether the Council's decision reasonably carries out the intent of the MPS. But the intent of the MPS may be that the Council, and nobody else, choose between conflicting policies that appear in the MPS. This deference to Council's difficult choices between conflicting policies is not a license for Council to make *ad hoc* decisions unguided by principle. As Justice Cromwell said, the "purpose of the MPS is not to confer authority on Council but to provide policy guidance on how Council's authority should be exercised" (*Lewis v. North West Community Council of HRM*, 2001 NSCA 98, para. 19). So, if the MPS' intent is ascertainable, there is no deep shade for Council to illuminate, and the Board is unconstrained in determining whether the Council's decision reasonably bears that intent.

(8) The intent of the MPS is ascertained primarily from the wording of the written strategy. The search for intent also may be assisted by the enabling legislation that defines the municipality's mandate in the formulation of planning strategy. For instance, ss. 219(1) and (3) of the *MGA* direct the municipality to adopt a land use by-law "to carry out the intent of the municipal planning strategy" at "the same time" as the municipality adopts the MPS. The reflexivity between the MPS and a concurrently adopted land use by-law means the contemporaneous land use by-law may assist the Board to deduce the intent of the MPS. A land use by-law enacted after the MPS may offer little to the interpretation of the MPS.

[52] In *Heritage v. AMK Barrett*, paras. 24-26, this Court reiterated *Archibald's* summary.

[53] With those principles in mind, I will turn to the grounds of appeal.

First Issue: Policy 4.5.24(c)

[54] The MPS Policy 4.5.24(c) says “Council shall ... be satisfied that ... a separation distance of ... 600 feet (183 metres) shall be maintained between any residential building and land used for intensive livestock operations”. Cornwallis’ property includes the Pasture which is within 600 feet of proposed residences in the Development. To the Board, Cornwallis submitted the Pasture was an “intensive livestock operation” and, by offending Policy 4.5.24(c), the Council’s approval did not carry out the intent of the MPS.

[55] The Board’s majority disagreed. The Board’s reasons are quoted above (paras. 38-9). Briefly, the majority concluded:

- Cornwallis operates a “livestock operation”.
- The undefined adjective “intensive” in Policy 4.5.24(c), in the context of the entire MPS, allowed the Council a discretion to assess Cornwallis’ degree of usage.
- Based on the testimony of Mr. Newcombe and Ms. Hopgood (above, paras. 15-18), Cornwallis’ intermittent usage of the Pasture was less than “intensive”.
- Hence, the Council did not offend Policy 4.5.24(c), and the approval of the development agreement carried out the intent of the MPS.

[56] I will discuss the intent of the MPS, then Cornwallis’ submissions that challenge the conclusion of the Board’s majority.

[57] **Intent of the MPS:** Policies 4.5.24 and 3.4.6 of the MPS address the reciprocal impact of the agricultural and residential uses.

[58] First – the Development’s effect on Cornwallis. The opening words of Policy 4.5.24 say the Council shall consider a development agreement for a “residential development which ... will not interfere with normal agricultural activities”. If this Development would interfere with Cornwallis’ normal agricultural activities, Council is to decline the development agreement.

[59] There is no finding by the Board that the Development would interfere with Cornwallis’ livestock or agricultural activities or its use of the Pasture. At the hearing in this Court, Cornwallis’ counsel confirmed that, subject to Cornwallis’

traffic concerns, there is no evidence or allegation of such interference. I will address the traffic concerns under Issue 2.

[60] Second – the effect of Cornwallis’ use of the Pasture on the Development. The preamble to Policy 3.4.6 (“Livestock Operations”) addresses the matter:

Appropriate controls, based on the scale and potential impact on neighbours, are established to mitigate land use conflict and environmental concerns.

[61] The MPS intends that there be an assessment of the “scale” of Cornwallis’ usage of the Pasture and its “impact” on Cornwallis’ neighbours. The assessment will enable the formulation of “appropriate controls” that mitigate “land use conflict” between the livestock and residential uses. The scale and impact on neighbours will vary with the intensity of the Pasture’s use by Cornwallis. This segues to Policy 4.5.24(c) which applies the 600-foot margin only to an “intensive” livestock operation. “Intensive” connotes a threshold of “scale” and “impact” beyond which “appropriate” controls are unfeasible.

[62] The Board’s majority assessed the intensity of Cornwallis’ use of the Pasture (above, para. 38). In summary:

- On the one hand, a barn or outdoor feedlot, if there is one, would be used daily to feed and tend to its bovine clientele. Manure would need regular disposal. That would be intensive. A “feedlot” is used to fatten beef cattle with provisions of grain or silage, in preparation for sale. Cornwallis has dairy cattle, not beef cattle, and no feedlot.
- On the other hand, this Pasture is grazed seasonally and only when not water-sodden due to its drainage issues. When available, it is made accessible to cattle for “a day or two” according to Mr. Newcombe, then closed until the grass regrows. When in use, cattle graze leisurely as they choose. The scale is intermittent and the impact on Cornwallis’ neighbours is negligible. The Hopgoods were neighbours who had no complaint about the impact. The Pasture’s modest use was less than “intensive”, meaning the 600-foot margin was not in play.

[63] The majority’s conclusion reasonably applied the intent of the MPS and reflects no error of law. The findings of fact are not appealable.

[64] **The Land Use By-law:** Sections 219(1) and (3) of the *MGA* direct the Municipality to adopt a land use by-law to “carry out the intent of the municipal planning strategy”. The MPS and LUB were adopted on the same day. Section 1.2 of the MPS says the LUB is its “companion” and a “regulatory tool” to “carry out the intent of the Municipal Planning Strategy”. In these circumstances, the LUB may assist the divination of the MPS’ intent: *Archibald*, para. 24 (#8).

[65] The following provisions of the LUB are helpful:

- The LUB defines “livestock operations” as activities in which animals “are confined to a barn, feedlot or other facility for feeding, breeding, milking of holding for riding, eventual sale or egg production”.
- Section 14.3.21(a) of the LUB says “new buildings or additions housing livestock ... shall have a separation distance of at least 500 feet from all Growth Centre boundaries”.
- Section 14.3.21(b)(ii) deals with livestock operations in existence before the LUB was adopted. It says “[w]here the Growth Centre separation is not being met” the livestock operation shall not encroach more than 20% of the “existing distance between the nearest wall of the livestock operation and the affected Growth Centre”.
- The LUB defines “Agricultural Use” as including “animal pasturing” but excluding “buildings for the raising of animals, which is covered by the definitions of livestock operation and household livestock”.
- The LUB does not restrict simple outdoor pasturing. Its restrictions concern buildings. Section 14.3.6 of the LUB says “agricultural ... uses may occur without a development permit” but “any building associated with the use shall require a development permit”.

[66] I interpret these provisions as confirming the interpretation of the MPS adopted by the Board’s majority and which I have endorsed above. Briefly:

- The LUB places restrictions for livestock operations that involve the regular and focused activity which occurs in a facility, i.e. a building or an outdoor feedlot. The preamble to MPS, s. 3.4.6 considers that activity to be “intensive”.
- As Cornwallis has no feedlot, we are left with buildings. The separation for new buildings housing livestock is 500 feet, while non-

conforming livestock operations have a maximum separation between the “wall of the livestock operation” and the Growth Centre. Here, the Development does not encroach upon the prescribed separation to a building or facility used for livestock operations, and the Pasture has no “wall”.

- “Animal pasturing” is Agricultural use. The LUB does not restrict outdoor pasturing, such as Cornwallis’ use of the Pasture. That is because its scale and impact on neighbours is too negligible to trigger the concern noted in the preamble to MPS Policy 3.4.6.

[67] Cornwallis makes three submissions respecting the Board’s ruling on Policy 4.5.24(c).

[68] **First: Is “intensive” superfluous?** Cornwallis cites the concluding words in the preamble to MPS policy 3.4.6. which, for convenience, I re-quote:

Livestock Operations

... Livestock operations, therefore, must be permitted to locate and expand in many locations. Appropriate controls, based on the scale and potential impact on neighbours, are established to mitigate land use conflict and environmental concerns. Livestock operations are distinguished as intensive or commercial-scale livestock operations, and household livestock which are small-scale, hobby or niche market livestock operations. [underlining added]

[69] Cornwallis’ factum (para. 33) submits that, in the underlined phrase:

... the word “or” is used to denote that, for the purposes of the planning policies, the phrase “commercial scale livestock operations” is synonymous with “intensive livestock operations”.

[70] Cornwallis is a commercial livestock operator. Nominally, every square foot of Cornwallis land is “commercial”. According to the submission, as “commercial” and “intensive” are synonymous, every square foot must be an “intensive livestock operation” and any evidence of Cornwallis’ actual usage of the Pasture is irrelevant.

[71] Cornwallis’ submission reiterates the approach of the dissenting member of the Board (Board Decision, paras. 217-220).

[72] Cornwallis’s factum says any other interpretation is unreasonable:

32. The Appellant respectfully submits that the Board's assertion that the phrases "commercial-scale livestock operations" and "intensive livestock operations" could be two different things is not an interpretation that the preamble language can reasonably bear.

[73] I respectfully disagree for the following reasons:

- "Commercial" describes the business. "Intensive" describes the usage. They are not synonyms.
- Cornwallis' submission treats "intensive" as superfluous. The word could be deleted with no effect. That proposition offends a basic rule of construction: words are intended to mean something.
- The concluding sentence of the preamble to Policy 3.4.6, upon which Cornwallis relies, distinguishes "intensive or commercial-scale livestock operations", on the one hand, from "small-scale, hobby or niche market operations" on the other. That distinction is not the same as equating "commercial" and "intensive". Neither does it equate "small-scale", "hobby" and "niche market".
- As I have discussed, the preamble to Policy 3.4.6 provides that the "scale" of the use and its "potential impact on neighbours" would generate an "appropriate" control to "mitigate land use conflict". That approach requires an examination of Cornwallis' actual use of the Pasture to assess intensity. By excluding any consideration of Cornwallis' actual use, Cornwallis' submission controverts the Policy's intent.

[74] Cornwallis' proposition is not a reasonable interpretation of the MPS.

[75] **Second: Did the Board "ferret out" a fictional intent?** Cornwallis relies on Justice Hallett's proscription in *Mahone Bay Heritage and Cultural Society*, para. 94, and repeated in *Tsimiklis*, para. 25:

94. ... However, when the intent of the strategy is clear and, when applied to the proposed development, it is clear that the proposal is not the type of development contemplated by the strategy, the Board ought to set aside the decision of Council approving the entry into such an agreement. **It ought not try and ferret out an intent that flies in the face of the intent expressed in an**

MPS which is not clouded by conflicting or competing policies. [bolding added]

[76] Cornwallis submits the Board's majority ferreted out a fictitious intent to harmonize a non-existent competition between the MPS' policies.

[77] That is not how I see it.

[78] The MPS promotes both agricultural use and growth. Particularly near the boundary, those uses may compete. That is why the MPS establishes a buffer. Several provisions in the MPS and LUB acknowledge this potential conflict or competition. They are quoted above (paras. 21-23, 27-29).

[79] The Development is in the Growth Centre next to Cornwallis' agricultural premises. This proceeding pits the parties' competing uses near the buffer where the Pasture is situated.

[80] A municipal planning strategy is a grouping of sometimes disparate objectives and policies. It is not an interlocking jigsaw puzzle. The elected Council reconciles the components. This Court has discussed the point before: *Heritage Trust* (1994), para. 100, per Hallett J.A.; *Lewis*, paras. 19-21, per Cromwell J.A. (as he then was); *Midtown Tavern*, at para 47, per MacDonald C.J.; *Tsimiklis*, paras. 24, 63-64, per Chipman J.A.; *Mahone Bay Heritage and Cultural Society*, paras 9 and 94, per Hallett J.A.; *Can-Euro Investments*, para. 28, per Oland J.A.; *Archibald*, para. 24, #7; *Heritage v. AMK Barrett*, para. 25.

[81] The MPS adopts this approach. The "Planning Context" and "Interpretation" provisions of section 1.2 say the MPS should "be read as comprehensive whole" and direct that the words "Council shall", which prefix Policy 4.5.24(c), be taken as "permissive, not mandatory". The "permissive" license assists the Council to establish an equilibrium between competing policies.

[82] The Board's majority commented on these provisions:

[51] ... The Board is satisfied its prior decisions capture the essence of what s. 1.2 of the MPS means. The permissive nature of the words "Council shall" does not mean it can ignore relevant policies. It leaves Council with a residual discretion about how particular policies should be applied.

[52] ... Consistent with the Board's interpretation, Council must consider relevant policies even where the words "Council shall" are permissive. It is the extent of Council's discretion once it has considered such policies which is usually at issue.

[53] The exercise of Council's discretion in relation to relevant policies is not absolute. Council's decision must still be guided by the MPS and reasonably carry out its intent. The extent to which Council can decide how to apply a particular policy may depend on its relative importance within the overall guidance provided by the MPS. The particular facts of the case will also be a key factor.

[83] The Council may not amend the MPS *ad hoc*. There is a process to amend a municipal planning strategy, and an application for a development agreement is not it. On an application to approve a development agreement, the key is whether the MPS gives the Council some subjective scope on the topic in question.

[84] The preamble to MPS Policy 3.4.6 says "appropriate controls, based on scale and potential impact on neighbours, are established to mitigate land use conflict". An assessment of "intensity" carries out the intent of the MPS to mitigate land use conflict between Cornwallis' agricultural or livestock use and the practical requirements of the Growth Centre, where the Development is situated.

[85] "Appropriate", "scale", "impact" and "intensive" are undefined in the MPS and LUB. Their flexible meanings are not objectively self-evident. The Council, or the Board on appeal, reasonably may exercise its "permissive" discretion to flesh out these terms and infer from the evidence whether Cornwallis' use of the Pasture was "intensive" under Policy 4.5.24(c).

[86] In adopting this approach, the Board's majority did not ferret out a makeshift intent. It applied a reasonable interpretation of the MPS.

[87] **Third: Did the Board conduct a "detached planning analysis"?** Cornwallis submits the Board erred in law "by engaging in its own detached planning analysis".

[88] In *Archibald*, para. 24(#4), this Court used that phrase:

(4) The Board's role is to decide an appeal from the Council's decision. So the Board should not just launch its own detached planning analysis that disregards the Council's view. Rather, the Board should address the Council's

conclusion and reasons and ask whether the Council's decision does or does not reasonably carry out the intent of the MPS. ...

[89] In *Archibald*, the Board heard an appeal from a refusal by the Town Council to approve a development agreement. The *MGA*, s. 230(6) requires the provision of reasons for a refusal to approve a development agreement. Here, we have Council's approval of a development agreement. The *MGA* does not require reasons for an approval.

[90] Section 251(2) and the directives in this Court's rulings mandated the Board to conduct a *de novo* hearing, find the facts and determine whether the Council's approval of the development agreement reasonably carried out the intent of the MPS. The Board had no statement of the Council's reasons, just a free-standing approval to measure against the MPS. The Board turned to the MPS and Secondary Plan, the LUB, the evidence, expert reports, and submissions of counsel, all of which are appropriate resources to assist the Board's endeavour.

[91] The Board's Decision cited its source for each step of its reasoning. The Board made findings of fact sourced in evidence, and applied the principles from this Court's authorities (cited in the Board Decision, paras. 15-18). The Board's majority assessed whether the Council's approval reasonably carried out the MPS' intent.

[92] The Board's majority did not conjure a planning frolic. It did its job under s. 251(2).

Second Issue: Traffic Conditions

[93] Cornwallis' factum says the nearby elementary school "creates chaos for vehicles endeavouring to weave their way through that section of the road" and the Development would worsen the "hazardous traffic issue currently plaguing the general location of the lands proposed for development". Cornwallis submits "until the hazardous traffic issue is addressed, the proposal is premature and should not have been approved". (factum, paras. 46-47).

[94] The Board's Decision addressed the traffic issue.

[95] The Board noted the applicable policy in the MPS:

[135] Policy 5.3.7(c)(iv) states in approving a development agreement, Council shall “be satisfied” that the proposal would not create any excessive traffic hazards or congestion due to road or pedestrian network inadequacy, within, adjacent to, and leading to the proposal.

[96] Mr. and Ms. Hopgood tendered a Traffic Impact Study (“TIS”) prepared by Harrison McGrath, a transportation engineer. The Board qualified Mr. McGrath as an expert in the impact of development on traffic. Mr. McGrath submitted an interim TIS to the Nova Scotia Department of Public Works, the local traffic authority, and received the Department’s comment. Then he wrote his final TIS for submission to the Board.

[97] Mr. McGrath’s final TIS concluded that “the road network can accommodate future traffic” by adding an eastbound left turn lane on Belcher Street (to be the responsibility of Mr. and Ms. Hopgood). The TIS also said if a northbound left turn lane onto Highway 358 was warranted, it would be the responsibility of the Department of Public Works because of annual traffic growth unrelated to the proposed Development. The TIS concluded with:

The traffic impact study for the proposed Port Ridge development was completed to the Nova Scotia Department of Public Works requirements and approved.

[98] The roads pertinent to traffic flow are owned by the Province. The Board (para. 137) noted Mr. McGrath’s final TIS “was accepted by the Department of Public Works and no concerns were expressed”.

[99] Mr. McGrath’s TIS commented on traffic near the school:

We understand that traffic overflows from the school parking lot to Belcher Street when there are certain events at the Port Williams Elementary School. This could be expected during events like parent/teacher meetings, school plays, etc. and can be observed at most schools during similar events, as the parking lots (like streets) are designed for a typical day, not special events. While, this could be inconvenient, over-designing streets and parking lots for infrequent occasions is not practical.

[100] Laura Mosher is the Municipality’s Manager of Planning and Development. The Board qualified Ms. Mosher as an expert in planning. She drafted the Staff Report, discussed above. That Report noted that staff had received a letter expressing “concerns related to traffic generation in an area where there is also a

school zone that results in traffic back ups in combination with the movement of farm vehicles.” The Report commented:

... While these concerns are understandable, much of these conditions pre-date the application for development of this property and additional traffic would be generated as a result of any development on the subject property. The applicant has prepared a Traffic Impact Study that has been reviewed by the provincial Department of Public Works which has approved the study and has indicated it has no concerns related to traffic generation.

[101] Cornwallis offered neither a traffic study nor expert evidence on the topic.

[102] After noting the above points, the Board, unanimously on this issue, found:

[140] ... The Board finds, based on the final TIS, that was accepted by the Department of Public Works, that Council’s decision about traffic hazards due to road or pedestrian network reasonably carries out the intent of the MPS.

[103] Cornwallis envisages the Development “plaguing” the neighbourhood with traffic “chaos”. The submission displays some embellishment and cites support that is more anecdotal than empirical. On the other hand, the Board’s conclusion emanates from testimony, including the expert opinion of a traffic engineer whose view was accepted by the provincial highway authority, and the opinion of a planning expert. The Board’s factual findings are “binding and conclusive” under s. 26 of the *URB Act*. Insofar as the Board’s conclusion involves interpretation of the MPS, the Board’s view is reasonable.

[104] There is no basis to conclude either that the Board erred in law or that the Council’s approval failed to carry out the intent of the MPS.

Conclusion

[105] I would dismiss the appeal.

[106] Mr. and Ms. Hopgood and the Municipality request costs.

[107] Normally there is no costs award in a planning appeal from the Board. These parties had opposing interpretations of the MPS and LUB. A dissenting member of the Board agreed with Cornwallis’s view. There is systemic value in having that

difference addressed with an authoritative ruling. The parties should bear their own costs.

Fichaud J.A.

Concurred:

Bourgeois J.A.

Beaton J.A.