



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA16005
Order LA17-02**

IN THE MATTER of an appeal by APM
Construction Services Inc. of a decision of the
Community of Brackley, dated April 29, 2016.

BEFORE THE COMMISSION
on Friday, the 26th day of May, 2017.

J. Scott MacKenzie, Q.C., Chair
M. Douglas Clow, Vice-Chair
John Broderick, Commissioner

Order

Compared and Certified a True Copy

A handwritten signature in blue ink, appearing to read "Philip J. Rafuse".

Philip J. Rafuse
Appeals Administrator
Corporate Services and Appeals Division

IN THE MATTER of an appeal by APM
Construction Services Inc. of a decision of the
Community of Brackley, dated April 29, 2016.

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IN THE MATTER of an appeal by APM
Construction Services Inc. of a decision of the
Community of Brackley, dated April 29, 2016.

Appearances & Witnesses

1. For the Appellant APM Construction Services Inc.

**Tim Banks, Chief Executive Officer
Ian Harper, Vice-President Engineering Services**

2. For the Respondent Community of Brackley

**Derek French, Development Officer
Maureen Cudmore, Chief Administrative Officer
Leonard McCormack, Chair of Council**

IN THE MATTER of an appeal by APM
Construction Services Inc. of a decision of the
Community of Brackley, dated April 29, 2016.

Reasons for Order

1. Introduction

(1) The Appellant APM Construction Services Inc. ("APM") has filed an appeal with the Island Regulatory and Appeals Commission (the "Commission") under section 28 of the Planning Act, R.S.P.E.I. 1988, Cap. P-8, (the *Planning Act*). This appeal concerns an April 29, 2016 decision letter issued by Derek French, Development Officer, of the Respondent Community of Brackley ("Brackley") to deny an application for rezoning of Provincial Parcel number 995514, located at Union Road in Brackley, Prince Edward Island (the "Subject Property"), from Agricultural A1 Zone to Industrial M1 Zone. Brackley's April 29, 2016 decision letter is reproduced below.



Brackley Community Council

14 Union Road
Brackley, PE C1E 3J6

APM Construction Services
APM Place, 3 Lower Malpeque Rd
Charlottetown, PE, Canada C1E 1R4
c/o Ian Harper, VP Engineering Services
(902) 569-8400

April 29, 2016

Re: Application to rezone Pid No. 995514, Union Road, Brackley, Application No. 14-4

Council has reviewed the subject application to rezone pid no. 995514 (24 acres +/-) from Agricultural A1 to Industrial M1. Council has determined that such an amendment would be contrary to the policies within the Community of Brackley's Official Plan and the Charlottetown Region Special Planning Areas (SPA) Regulations.

SPA, Section 63.(3) states:

The specific objectives for development within the Charlottetown Region Special Planning Area are

- (a) to minimize the extent to which unserviced Residential, commercial and industrial Development may occur;**
- (b) to sustain the rural community by limiting future urban or suburban residential development and non-resource commercial and industrial development in order to minimize the loss of primary industry lands to non-resource land uses; and**
- (c) to minimize the potential for conflicts between resource uses and urban residential, commercial and industrial uses.**

SPA, Section 63. states:

(4) An existing parcel of land may, on approval, be subdivided into not more than one lot for each of the following purposes:

(d) Non-resource-commercial or resource-industrial use, where the lot is intended for other than agricultural, forestry or fisheries purposes, where the lot has an area no greater than one acres;



Brackley Community Council

14 Union Road
Brackley, PE C1E 3J6

Official Plan, section 5.4 states:

The Charlottetown Region Special Planning Area Regulations place severe limitations on any large scale non-resource based industrial development. ... Any expansion or further industrial development should only proceed if central services are available and if the proposed development is compatible with any adjacent residential or agricultural land uses.

OBJECTIVES:

- **To strictly limit any further development of unserved non-resource based industrial developments in the Community.**

POLICIES:

New non-resource based industrial uses shall be prohibited unless they are fully serviced and are compatible with adjacent land uses.

Based on the above objectives and policies of the Official Plan and the Charlottetown Region Special Planning Areas (SPA) Regulations, Council has denied the subject application.

Development Bylaw, Appeal, Section 18.1 states:

1. **Any person who is dissatisfied with a decision of Council in the administration of the Official Plan or the Zoning and Subdivision Bylaws may appeal Council's decision to the Island Regulatory and Appeals Commission.**
2. **The appellant will register a notice of Appeal to the Commission, stating the grounds for the appeal and the relief sought. Appeals must be made within twenty-one (21) days of Council's decision.**
3. **The appellant will, within seven (7) days of filing an appeal with the Commission, serve a copy of the notice of Appeal on the Council.**



Brackley Community Council

14 Union Road
Brackley, PE C1E 3J6

If you have any questions or comments, please do not hesitate to contact me.

Regards
Derek French
Development Officer
Community of Brackley
902-394-2945
dfrench@pei.sympatico.ca

- (2) APM's Notice of Appeal was dated and received by the Commission on May 13, 2016. The Notice of Appeal was filed within the time limits for appeals set out in section 28 of the **Planning Act**.
- (3) The Commission requested a copy of the decision maker's file record from Brackley on May 18, 2016. Following several reminders from Commission staff, the file record was received from Brackley on June 28, 2016. A copy of the file record was provided to APM on June 29, 2016. The Commission panel met to review the file record and determined that the record was incomplete. On June 30, 2016, Commission staff requested that Brackley file a copy of the minutes for all Council and Planning Board meetings. On July 7, 2016 Commission staff repeated the request for filing of Brackley's minutes. On July 12, 2016, Brackley filed minutes for the November 19, 2014 and April 27, 2016 meetings of Brackley's Council as well as additional correspondence from Brackley's file.
- (4) On August 10, 2016, the Commission advised the parties that the Commission would hear the matter at a public hearing on October 4, 2016.
- (5) On September 29, 2016, the Commission expressed renewed concern to Brackley that the file record was incomplete.
- (6) The Commission heard the appeal on October 4, 2016.

2. Testimony & Discussion

APM's Position

- (7) APM presented two witnesses, Tim Banks and Ian Harper.

(8) Tim Banks is the Chief Executive Officer of APM. Mr. Banks testified that MacLean Construction is one of the companies owned by APM. The MacLean construction building in Brackley was built in 2008. A six-unit multi-residential property was also built near the MacLean Construction building in order to buffer the MacLean Construction building from its residential neighbours to the northwest. Mr. Banks testified that the Subject Property had ceased to be used for agricultural production some time prior to its purchase by APM in 2007.

(9) Mr. Banks referred the Commission to Brackley's November 19, 2014 minutes contained in Exhibit R2, noting that the Chair of Planning Board had indicated that no one on Council has a problem with APM's request. Mr. Banks testified that Brackley was willing to rezone for other parties, including the Provincial government development, even to the point of rezoning productive agricultural land, yet relies on the Special Planning Area ("SPA") regulations to deny APM's request for rezoning. Mr. Banks noted that there are no residential lots bordering the Subject Property and the Subject Property is immediately adjacent to Brackley's existing business core.

(10) Mr. Banks testified that there is no sewer system in Brackley to hook up to. He stated that page 9 of Brackley's Official Plan deems a lot to be serviced if municipal water is available. Mr. Banks testified that the subject property will be able to be serviced with municipal water from the City of Charlottetown, and he referred to a November 10, 2014 City of Charlottetown resolution approving APM's request for water service (Exhibit A4) as support for his position.

(11) Mr. Banks acknowledged that the SPA regulations do apply but he submits that the SPA regulations do not prevent Brackley from rezoning the subject property to M1. Mr. Banks stated that he was "completely disappointed and really annoyed" with Brackley and observed that Brackley did not obtain professional legal advice prior to making its April 29, 2016 decision.

(12) Ian Harper is APM's Vice-President of Engineering Services. Mr. Harper told the Commission that APM has owned the Subject Property since 2007. At the time of purchase, the Subject Property was not in active agricultural use. In 2012, APM started the process to request a rezoning of the Subject Property to initially C1, said request which was later amended to M1 in order to be consistent with the neighbouring MacLean construction property.

(13) Mr. Harper testified that when he met with Brackley's Council on April 27, 2016 the tone of the meeting was relatively positive. As described in Mr. Harper's February 17, 2016 email to Derek French (part of Exhibit A3) the proposed use of the Subject Property would be as a "storage warehouse with the potential for offices in the front of the building. In the future, there could be light manufacturing, such as a cabinet shop." Mr. Harper stated that this use would be a natural fit with that portion of Brackley. An on-site sewage system would be installed, as Brackley does not offer a sewer system to hook up to, and the on-site sewage system would comply with all engineering and environmental requirements. Mr. Harper emphasized that APM would build within the Bylaw, within the zoning requirements and within all Provincial and Federal requirements.

(14) Mr. Harper referred to Brackley's written decision of April 29, 2016, and stated that Brackley relied on section 63(3) and 63(4)(d) of the SPA and section 5.4 of the Bylaw to deny APM's application for a rezoning of the Subject Property. Mr. Harper testified that he was concerned that APM was never given the opportunity of a public meeting to explain APM's proposal and as such, "we got cut off".

Brackley's Position

(15) Derek French is Brackley's Development Officer. He testified that he was not privy to the preparation of the current Bylaw and Official Plan. He stated that he was, however, involved in considering APM's application for a rezoning of the Subject Property.

(16) Mr. French testified that the Provincial government property mentioned at the hearing has both water and sewer service provided by the City of Charlottetown. He testified that APM's proposed development of the Subject Property would not be fully serviced. Mr. French explained that his understanding of the SPA is that it requires both water and sewer to be serviced, i.e. a central water system and a central sewer system. Mr. French acknowledged that Brackley does not provide sewer service and there is no sewer service available for the Subject Property.

(17) Mr. French testified that Brackley had contacted the Province and the Minister's staff had indicated that the application of the SPA was up to Brackley's discretion but suggested that Brackley obtain legal advice. Mr. French testified that Brackley has limited financial resources and thus Brackley did not pursue obtaining legal advice. Mr. French testified that his advice to Brackley was to deny APM's application for a rezoning of the Subject Property for the reasons outlined in his April 29, 2016 letter.

(18) Mr. French referred to Exhibit A3 and testified that he had requested more detail about APM's plans for the Subject Property from Mr. Harper. Mr. French stated that Brackley needs to know what a proposed rezoning is for, noting that by contrast the Province had provided a detailed concept plan with respect to its development.

3. Findings

(19) After a careful review of the evidence, the submissions of the parties and the applicable law, it is the decision of the Commission to allow the appeal.

(20) It is well known and accepted that appeals under the **Planning Act** take the form of a *hearing de novo* before the Commission. (*In the matter of Section 14(1) of the Island Regulatory and Appeals Commission Act (Stated Case)*, [1997] 2 P.E.I.R. 40 (PEISCAD). The Commission has the power to substitute its decision for that of a municipality. However, the Commission does not lightly interfere with such municipal decisions.

(21) The Commission finds that the two-part test that it has used in the past also serves as a guideline in determining this appeal.

- Whether the municipal authority, in this case the Community of Brackley, followed the proper process and procedure as required in its Bylaw, in the **Planning Act** and in the law in general, including the principles of natural justice and fairness, in making a decision on an application for rezoning; and
- Whether the Community of Brackley's decision with respect to the application for rezoning has merit based on sound planning principles within the field of land use and urban planning and as enumerated in the Official Plan.

(22) Brackley's April 29, 2016 decision relies in part on portions of section 63, otherwise known as the SPA provisions, of the Planning Act Subdivision and Development Regulations, and both parties to the appeal referred to them in the course of this appeal.

(23) Brackley also relies upon section 5.4 of its Official Plan to support its decision, which was expressed in Brackley's April 29, 2016 decision letter written by Mr. French.

(24) The Commission considers an Official Plan in its whole and complete sense, as Brackley's Official Plan contains considerable background material, as well as Official Plan objectives and policies. In order to understand and interpret specific policies, the background information must be considered and the objectives are of particular importance as they provide a specific frame of reference for the policies. Accordingly, the Commission has considered several sections of Brackley's Official Plan which are set out below:

(25) Section 1.7 of Brackley's Official Plan addresses the SPA regulations:

1.7 SPECIAL PLANNING AREA

In 1993 as part of the Provincially initiated Municipal Reform process in the Greater Charlottetown and Summerside Areas, the Provincial Government imposed Special Planning Area (SPA) Regulations which enforced a partial development freeze in the rural areas directly adjacent to the 2 major urban regions. The Community of Brackley fell within the Charlottetown Region Special Planning Area.

While some limited development was allowed, communities with Official Plans were forced to adopt severe development restrictions which to a large extent removed most of the community's autonomy and control. Some communities, such as Winsloe South, responded by abandoning their Official Plan. Others, like Brackley, continued to operate for the next 20 years under a confusing arrangement with duplicated regulations and severely curtailed authority. The result was very slow rates of development and a great deal of confusion and frustration. At the same time uncontrolled and unserviced residential development continued at an increased rate just beyond the SPA.

Prior to initiating the current Official Plan Review all 13 communities affected by the SPA regulations in the Charlottetown, Stratford and Cornwall Areas joined together, hired a consultant and submitted a report to the Provincial Government on the future of the SPA.

The report resulted in an agreement with the Provincial Government whereby Official Plans in the SPA could effectively be removed from most of the regulatory restrictions provided that the Plans and Bylaws effectively restrict large scale urban style developments from spilling over into these rural communities.

This Official Plan review has been prepared in conformance with the standards imposed by the Provincial Government and upon its approval the Community of Brackley is no longer bound by the specific provisions of subsections (2) to (9) of the SPA regulations. Section 63.(10) of the SPA Regulations specifically requires, however, that Official Plans made pursuant to this Section must be "consistent with

the objectives set out in subsection (3)” as follows:

(3) The specific objectives for development within the Charlottetown Region Special Planning Area are

(a) to minimize the extent to which unserved Residential, commercial and industrial Development may occur;

(b) to sustain the rural community by limiting future urban or suburban residential development and non-resource commercial and industrial development in order to minimize the loss of primary industry lands to non-resource land uses; and

(c) to minimize the potential for conflicts between resource uses and urban residential, commercial and industrial uses.

It must be noted, however, that the Community of Brackley is somewhat unique among the rural communities included in the Special Planning Areas. Parts of the Community are already served by central water supply from the City of Charlottetown and are therefore deemed under the Regulations to be “served”. The established land use patterns within the Community, particularly in the southern portion, are already quite “urban” in nature, with significant commercial and industrial development. This area can no longer be truly characterized as “rural” in terms of its land use and farming and other resource activities are becoming less dominant and less viable. This will require Council to interpret the above noted SPA objectives in a sensitive and appropriate fashion given the established development patterns and character.

Emphasis added.

(26) Section 1.7 of Brackley’s Official Plan makes it clear that Brackley is no longer bound by sections 2 to 9 of the SPA regulations provided that Brackley’s Official Plan is consistent with the SPA subsection 3 objectives. These objectives would minimize unserved commercial and industrial development, and limit commercial and industrial development in order to minimize the loss of primary industry lands and minimize land use conflicts.

(27) APM’s witnesses have testified that the Subject Property is serviced in that water service is available from the City of Charlottetown. APM’s witnesses also testified that the Subject Property had gone out of agricultural production at some point prior to APM’s purchase in 2007.

(28) Brackley’s April 29, 2016 decision letter appears to go well beyond the objectives of the SPA regulations and refers to section 5.4 of the Official Plan, citing the following:

OBJECTIVES:

- *To strictly limit any further development of unserved non-resource based industrial developments in the Community.*

POLICIES:

New non-resource based industrial uses shall be prohibited unless they are fully serviced and are compatible with adjacent land uses.

Emphasis added.

(29) While the above objective cited by Brackley uses the phrase “strictly limit” and the corresponding SPA objective uses the phrase “minimize the extent”, both Brackley’s objective and the equivalent SPA objective are harmoniously worded to discourage unserved development. By contrast, the above policy cited by Brackley could be read as going well beyond both the SPA objective and Brackley’s Official Plan objective, as it refers to “fully serviced”, implying a requirement for both centralized water and centralized sewer service, rather than using the term serviced as the precise opposite of “unserved”. A reading of Brackley’s April 29, 2016 decision makes it quite clear that Brackley’s Development Officer interpreted “fully serviced” as requiring both centralized water service and centralized sewer service. This is not possible as there is no centralized sewer service available.

(30) The Commission finds that section 1.7 and parts of section 5.4 of the Official Plan are inconsistent. Section 1.7 accurately reflects the objectives of the SPA regulations by seeking to minimize the extent of unserved industrial development while the policy, but not the objective, relied upon by Brackley from section 5.4 seeks to prohibit industrial development unless it is fully serviced.

(31) Read as a whole, the Official Plan does reflect concern with respect to on-site waste water treatment in the southern area of Brackley, (section 2.8.1 Sanitary Sewer). This point is further echoed in section 2.6 The Local Economy, with the addition of what appears to be a qualified restriction, rather than a prohibition, of use:

2.6 THE LOCAL ECONOMY

...

What sets Brackley apart from the other rural communities surrounding the capital, however, is the large cluster of urban type commercial and industrial facilities located near the former railroad junction with the Brackley Point Road and running south to the border with Charlottetown. This gives Brackley a strong commercial tax and employment base and a much more complex mix of land uses. It is difficult to determine how many local residents are employed in these businesses but if residential development controls were not currently in place (via the SPA Regulations), it is safe to predict that the strong local employment base would likely create a relatively strong local housing market.

Unfortunately, the 2006 and previous Official Plans and Development Bylaws do not properly designate these commercial and industrial facilities. They are almost all designated as “non-conforming uses” and most are included in the Agricultural (A1) Zone.

During our Official Plan deliberations invitations were extended to all commercial and industrial land owners and almost all agreed to meet to

talk about their current zoning and how the zoning might be changed to better protect their current investments and to accommodate their short and long term plans for their businesses. While existing land use conflicts with the neighbouring properties were quite limited, the issue of servicing is a major challenge to the future growth of these sectors. While many of these businesses are currently connected to the Charlottetown central water system, on-site waste water treatment is now and will continue to be a challenge, particularly given the somewhat difficult local soils conditions. Any future commercial or industrial growth will likely have to be limited to “dry” facilities, such as warehousing, unless some form of central waste water collection and treatment can be identified. If this servicing issue can be resolved, there would appear to be considerable demand for commercial growth.

Emphasis added.

(32) Section 2.6 above indicates that land use conflicts “were quite limited” in the southern portion of Brackley nearing the City of Charlottetown. Section 2.6 also contemplates a type of future industrial development that would not require central sewage services.

(33) Taken together, the SPA objectives, section 1.7 and section 2.6 of the Brackley Official Plan suggest that it would be feasible for Brackley to rezone the Subject Property from the A1 to M1 zone.

(34) A municipal zoning and development bylaw is prepared to implement the objectives and policies of that municipality’s official plan. Section 11.2 of Brackley’s Bylaw outlines the permitted uses within the M1 zone. The following M1 zone permitted uses match the uses proposed by APM:

11.2 PERMITTED USES

No Building or part thereof and no land shall be Used for purposes other than:

- (1) (a) *Manufacturing and Assembly*
- (b) *Warehousing*
- ...
- (f) *Business and Professional Offices*
- ...
- (i) *Contractors Yard*

(35) Section 11.4 of Brackley’s Bylaw addresses servicing requirements in the M1 zone:

11.4 SERVICING

Where central sewer and/or water services are available, all development shall be connected to these services. Where the development will be serviced by an on-site waste water treatment system, Council may require that these systems be designed and certified by a professional engineer licensed to practice in the Province of Prince Edward Island. Council may also place a condition on a Development Permit requiring that the Use of the land be limited to one which will not generate volumes of waste water which cannot be adequately handled by the on-site waste water treatment system. In general, restaurants, food processing, laundries and other activities involving the significant use of water or significant waste water loadings shall not be permitted on lots with on-site servicing.

Emphasis added.

(36) Section 11.4 of the Bylaw contemplates the use of an on-site waste water treatment system in the M1 zone, and gives Brackley's Council the discretion to require an engineered system and also require the use of the land to be limited to a use which would be within the capacity of the system. Section 11.4 outlines examples of types of use which would not be permitted as such uses involve significant use of water or waste water. None of these non-permitted uses resemble the uses proposed by APM. Section 11.4 carries out the intent of sections 1.7 and 2.6 of the Official Plan. However, section 11.4 of the Bylaw clashes with the policy relied upon by Brackley from section 5.4 of the Official Plan and does not carry out its expressly prohibitive intent, nor its demand for "fully serviced" uses. It is difficult to reconcile Brackley's interpretation of policy from section 5.4 with the objective set out in section 5.4, the rest of the Official Plan and the Bylaw.

(37) The Commission finds that there is a serious disconnect between the SPA objectives and Brackley's section 5.4 objective, and Brackley's interpretation of section 5.4 policy. The Commission notes the mandatory wording of section 9 of the Interpretation Act, R.S.P.E.I. 1988, Cap. I-8 (the **Interpretation Act**):

9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. 1981, c.18, s.9.

(38) The Commission finds that the policy wording relied upon by Brackley in section 5.4 of the Official Plan must be read so as to be in harmony with the SPA objectives and Brackley's own objectives set out in section 5.4 of the Official Plan, and indeed with the Official Plan as a whole. Thus, "fully serviced" shall be read to be in harmony with the Official Plan objects and the SPA objects, and therefore a land use utilizing municipal or central water service for all its water needs meets the requirement for the M1 zone as the objects only address the limitation of "unserved" development. Furthermore, sewer service is not presently available anywhere within Brackley, and thus water service only is as "fully serviced" as is presently possible within Brackley.

(39) When the Official Plan is read in totality, and the policies are read to flow harmoniously from the background considerations and objects set out in the Official Plan, the Commission finds that the proposed zoning amendment is not contrary to any policy within the Official Plan, pursuant to section 16.5 of the Bylaw.

(40) Section 16 of the Bylaw sets out the process to amend the Bylaw which includes zoning amendments. Section 16.5 sets out a review process:

16.5 COUNCIL'S REVIEW

(1) Council shall determine whether or not to pursue such an amendment, and before making any decision shall examine the Official Plan to ensure that the proposed amendment will not be contrary to any policy within the Official Plan.

(2) No amendment shall be made in these Bylaws which would be contrary to any policy of the Official Plan without a review and amendment of the Official Plan in accordance with the requirements of Section 18 (2) of the Planning Act (1988).

(41) Subsection 15(2) of the **Planning Act** reads as follows:

15. (2) The bylaws or regulations made under clause (1)(d) shall conform with the official plan and in the event of any conflict or inconsistency, the official plan prevails. 1988,c.4,s.15; 1991,c.1,s.1; 1991,c.18,s.22; 1994,c.46,s.4 {eff.} Sept. 1/94; 1995,c.29,s.6 {eff.} Oct. 14/95.

(42) Subsection 18(2) of the **Planning Act** reads as follows:

18.(2) Where a bylaw amendment requires an amendment to the Official plan pursuant to subsection 15(2), the council may consider the official plan amendment concurrently with the bylaw and shall

(a) indicate in general terms, in the notice published under clause (1)(b), the nature of the proposed plan amendment; and

(b) give the planning board an opportunity to comment on the plan amendment prior to adoption of the amendment. 1988,c.4,s.18.

(43) The Commission has concerns that Brackley did not provide the entire file record in this matter, given that file disclosure was spread out over a considerable time period in response to repeated requests for disclosure as described in the Introduction section of these reasons.

(44) The Commission finds no record of Brackley offering or suggesting to APM that a concurrent amendment of both the Bylaw and the Official Plan would be needed, given that APM's request would not only require an amendment to the zoning map, a component of the Bylaw, but also require a concurrent amendment to Brackley's General Land Use Plan, a component of the Official Plan.

(45) The Commission finds that Brackley erred by breaching a duty of fairness to APM by (i) interpreting one policy in its Official Plan without considering that policy in the context of other relevant portions of the Official Plan and the Bylaw, including the applicable objective contained within the Official Plan, (ii) taking an overly cautious and restrictive interpretation to the SPA objectives, and (iii) failing to advise APM of the need for a concurrent amendment to the Official Plan. As a result, Brackley denied APM's request without providing APM the opportunity to present to the public its zoning amendment request and present its proposed project for development of the Subject Property.

(46) From the perspective of sound planning principles, for Brackley to have denied APM's application without a public meeting would have required compelling reasons. The Commission finds that as there is support for new low water uses in the M1 zone within the Official Plan and the Bylaw, no such compelling reasons exist.

(47) In the Notice of Appeal, APM requests the following relief:

An order setting aside the decision of the Community, and directing the community to rezone PID no. 995514 to Industrial M1 as requested.

(48) Based on the evidence before the Commission, the Commission finds that Brackley should rezone PID No. 995514 to Industrial M1 as requested. However, sections 16.4 and 16.6 of the Bylaw require notice to affected property owners, advertisements for a public meeting and the holding of a public meeting before an amendment may be made to the Bylaw and Official Plan. The prescribed process was not followed and, therefore, the Commission is unable, at this stage, to direct Brackley to rezone the Subject Property.

(49) The Commission sets aside Brackley's April 29, 2016 decision to deny APM's zoning application. The Commission directs Brackley, in full consultation with APM, to immediately proceed with the process for the requested Bylaw amendment, together with the concurrent amendment to the Official Plan General Land Use Plan, in accordance with its Bylaw, and to hold the required public meeting as soon as possible.

4. Disposition

(50) An Order setting aside Brackley's April 29, 2016 decision and directing Brackley to immediately proceed with the process for the requested Bylaw amendment follows.

IN THE MATTER of an appeal by APM
Construction Services Inc. of a decision of the
Community of Brackley, dated April 29, 2016.

Order

WHEREAS the Appellant APM Construction Services Inc. appealed a decision of the Respondent Community of Brackley, dated April 29, 2016;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on October 4, 2016 after due public notice;

AND WHEREAS the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Planning Act*

IT IS ORDERED THAT

1. The appeal is allowed.
2. The April 29, 2016 decision of the Respondent Community of Brackley, concerning the rezoning application filed by the Appellant APM Construction Services Inc., is hereby set aside.
3. The Commission directs the Respondent Community of Brackley, in full consultation with the Appellant APM Construction Services Inc., to immediately proceed with the process for the requested Bylaw amendment, together with the concurrent amendment to the Official Plan General Land Use Plan, in accordance with its Bylaw, and to hold the required public meeting as soon as possible.

DATED at Charlottetown, Prince Edward Island, this 26th day of May, 2017.

BY THE COMMISSION:

(Sgd.) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(Sgd.) M. Douglas Clow

M. Douglas Clow, Vice-Chair

(Sgd.) John Broderick

John Broderick, Commissioner

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written **Request for Review**, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the *Act* provide as follows:

13.(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.

NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141AA(2009/11)