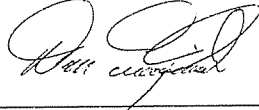


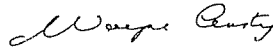
Heritage Advisory Committee  
June 23, 2010

**TO:** Chair and Members of Heritage Advisory Committee

**SUBMITTED BY:**



Dan English, Chief Administrative Officer



Wayne Anstey, Deputy Chief Administrative Officer - Operations

**DATE:** June 8, 2010

**SUBJECT:** **Case 15815: Amendments to the Downtown Halifax SMPS and the Barrington Street Heritage Conservation District Plan and By-law**

### ORIGIN

Application by HRM staff to amend the Barrington Street Heritage Conservation District Revitalization Plan, By-law H-500 [Heritage Conservation District (Barrington Street) By-law] and the Downtown Halifax Secondary Municipal Planning Strategy (MPS) to exempt the two development agreement applications grandfathered under Policy 90A of the MPS which fall within the Barrington Street Heritage Conservation District from the application of the Heritage Conservation District (Barrington Street) By-law.

### RECOMMENDATION

It is recommended that Regional Council:

1. Give First Reading to the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy as provided in Attachment A of this report, and schedule a public hearing.
2. Approve the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy as provided in Attachment A of this report.

It is recommended that the Heritage Advisory Committee:

1. Recommend that Regional Council give First Reading to the proposed amendments to the Barrington Street Heritage Conservation District Revitalization Plan and By-law H-500 [Heritage Conservation District (Barrington Street) By-law], as provided in Attachments B and C of this report, and schedule a public hearing.
2. Recommend that Regional Council approve the proposed amendments to the Barrington Street Heritage Conservation District Revitalization Plan and By-law H-500 [Heritage Conservation District (Barrington Street) By-law], as described in Attachments B and C of this report.

## BACKGROUND

### **Initiation**

At the January 12, 2010 meeting of Regional Council, staff was instructed to initiate a process to amend the Barrington Street Heritage Conservation District (HCD) Revitalization Plan and By-law H-500 [Heritage Conservation District (Barrington Street) By-law] to allow the consideration of development agreements applications within this plan area which were received before March 31, 2009, pursuant to the regulations in effect on March 31, 2009. In addition, staff was asked to amend Policy 90B of the Downtown Halifax Secondary Municipal Planning Strategy to extend the public hearing deadline for these development agreement applications appropriately beyond March 31, 2010.

### **Issue**

On June 16, 2009, Regional Council approved the Downtown Halifax Secondary Municipal Planning Strategy (MPS) and the Barrington Street Heritage Conservation District Revitalization Plan and By-law. The MPS includes policies to enable the “grandfathering” of four development applications under the previous policies of the Halifax MPS (Attachment D). These applications were submitted prior to the HRM by Design public hearing being advertised. Council chose to grandfather these active development applications out of a sense of fairness, so that they could be evaluated based upon the planning regime in effect when the applications were made, notwithstanding that they are not consistent with HRM by Design.

Each project is therefore subject to a public hearing to determine whether or not it is reasonably consistent with the previous Halifax MPS policies. Council also set a March 31, 2010 deadline for holding public hearings on these applications. This was in recognition that they are inconsistent with HRM by Design and would be grandfathered for a limited period of time out of a sense of procedural fairness. They would not, however, be granted this privilege in perpetuity. Grandfathering was discussed in detail in a staff report to the Committee of the Whole dated March 17, 2009.

Two of the four grandfathered development applications (the Roy Building and the Discovery Centre) are located within the Barrington Street Heritage Conservation District Revitalization District. As staff noted in its January 6, 2010 initiation report to Regional Council, similar “grandfathering” provisions are required in the Barrington Street Heritage Conservation District Revitalization Plan and By-law also, in order to grandfather these two projects. It was not sufficient to create grandfathering policy only in the Downtown Halifax Secondary MPS.

## DISCUSSION

### **Barrington Street Heritage Conservation District**

The oversight for the two grandfathered applications within the Barrington Street Heritage Conservation District must be resolved prior to the two projects advancing forward for Council's consideration under the old Halifax MPS policies.

- If this drafting error is not corrected, Council will be obliged to refuse both applications since there are no policies in the new Barrington Street Heritage Conservation District Revitalization Plan to allow Council to consider approving them.
- This situation is inconsistent with Council's intention when grandfathering policies were adopted for the Downtown Halifax Secondary MPS.

The other two grandfathered development applications are outside the Barrington Street Heritage Conservation District, and are unaffected by the error in drafting the Barrington Street HCD Plan and By-law.

### **Status of Grandfathered Applications**

Of the four grandfathered applications:

- The Hollis and Morris and City Centre Atlantic projects have both been approved by Council, with construction having commenced on the Hollis and Morris project;
- The Roy Building (within the Barrington Street Heritage District) staff report has been tabled with the Council's advisory committees; and
- The Discovery Centre (within the Barrington Street Heritage District) proposal is on hold pending the outcome of the amendments proposed in this report.

### **Demolition**

The Roy Building has a valid demolition permit which will expire on September 4, 2010. The building is not a registered heritage property and the permit was issued prior to the effective date of the Heritage Conservation District (Barrington Street) By-law. The By-law requires Council approval and the issuance of a Certificate of Appropriateness for the demolition or removal of both registered and non-registered buildings. The proposed amendments to the Conservation District Plan and By-law in Attachments B and C provide that demolition necessary to carry out an approved development agreement within the District is exempt from the requirements of the

By-law. Should Council not approve the proposed amendments, a renewal of the Demolition Permit for the Roy Building would require the approval of Council as well as the issuance of a Certificate of Appropriateness.

### **Public Hearing Deadline**

Policy 90B of the Downtown Halifax Secondary MPS requires that the grandfathered projects proceed to a public hearing by March 31, 2010 otherwise they will be subject to all applicable requirements of the Downtown Halifax Land Use By-law. The amendment process for the Barrington Street Heritage Conservation District could not have been completed before this deadline. Since this is not the fault of the applicants, it is reasonable to extend the public hearing deadline appropriately for those projects within the Conservation District. The proposed amendments to the MPS to do so are included in Attachment A.

### **Issues Raised by Public**

#### Requirement for Studies in Support of Amendments

The provincial *Heritage Property Act* and *Heritage Conservation District Regulations* both require a study to be undertaken when a Heritage Conservation District is either being adopted or amended. Generally, the study would provide the rationale for heritage conservation measures in the district, identify the relationship of a conservation plan and by-law with the MPS and LUB and include an analysis of the social and economic implications of the establishment of the district.

Due to the nature of the amendments being proposed, staff contacted the NS Department of Tourism, Culture and Heritage to determine whether there is a need for such a study. Extensive background material related to Council's consideration of their original decision to grandfather the proposals was provided and provincial staff did not request additional studies or information. It is important to note that the proposed amendments to the Barrington Street HCD Plan and By-law apply only for the Roy Building and Discovery Centre projects. Should those proposals not proceed, the existing requirements contained in the Plan and By-law remain intact for the two sites.

#### Role of District 12 PAC

Concerns were raised by members of the public that the District 12 Planning Advisory Committee (PAC) was not given the opportunity to review this application. Staff determined prior to initiation that the amendments were not required to go through the District 12 PAC, as the Committee had not been part of the original consultation for the Barrington Street Heritage Conservation District Plan and By-law. Regional Council confirmed this position at its January 12, 2010 meeting by defeating a motion to have the amendments referred to the PAC. However,

the PAC will continue to have a role in reviewing and providing advice to Council on the two development agreement applications within the Heritage Conservation District.

### **BUDGET IMPLICATIONS**

The costs to process this planning application can be accommodated within the approved operating budget for C310 Planning & Applications.

### **FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

### **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through a Public Information Meeting held on February 18, 2010. A public hearing has to be held by Council before they can consider approval of any amendments.

For the Public Information Meeting, notices were posted on the HRM website and in the newspaper. Attachment E contains a copy of the minutes from the meeting. Should Regional Council decide to hold a public hearing, notices will be published in local newspapers.

### **ALTERNATIVES**

The following alternatives are identified in conjunction with this report for consideration by Regional Council:

1. Regional Council may choose to approve the requested amendments to the Downtown Halifax Secondary Municipal Planning Strategy, the Barrington Street Heritage Conservation District Revitalization Plan and By-law H-500 [Heritage Conservation District (Barrington Street) By-law], as contained in Attachments A, B and C of this report. This is the recommended course of action.
2. Regional Council may choose to refuse the requested amendments to the Downtown Halifax Secondary Municipal Planning Strategy, the Barrington Street Heritage Conservation District Revitalization Plan and By-law H-500 [Heritage Conservation District (Barrington Street) By-law], as contained in Attachments A, B and C of this report. Regional Council is under no obligation to consider a request to amend its MPS or

Heritage Conservation District Plan and By-law and a decision not to amend these documents cannot be appealed.

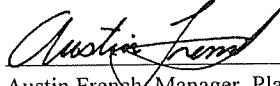
3. Regional Council may choose to either adopt certain amendments but not others outlined in this report, or alternatively request that additional amendments not identified in this report be made, in which case an additional staff report and public hearing may be required.

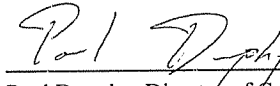
**ATTACHMENTS**

Map 1	Location of Sites under Application for Development Agreement
Attachment A	Proposed Amendments to the Downtown Halifax Secondary MPS
Attachment B	Proposed Amendments to the Barrington Street HCD Revitalization Plan
Attachment C	Proposed Amendments to By-law H-500
Attachment D	Excerpts from the Downtown Halifax Secondary MPS
Attachment E	Minutes from the February 18, 2010 Public Information Meeting

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

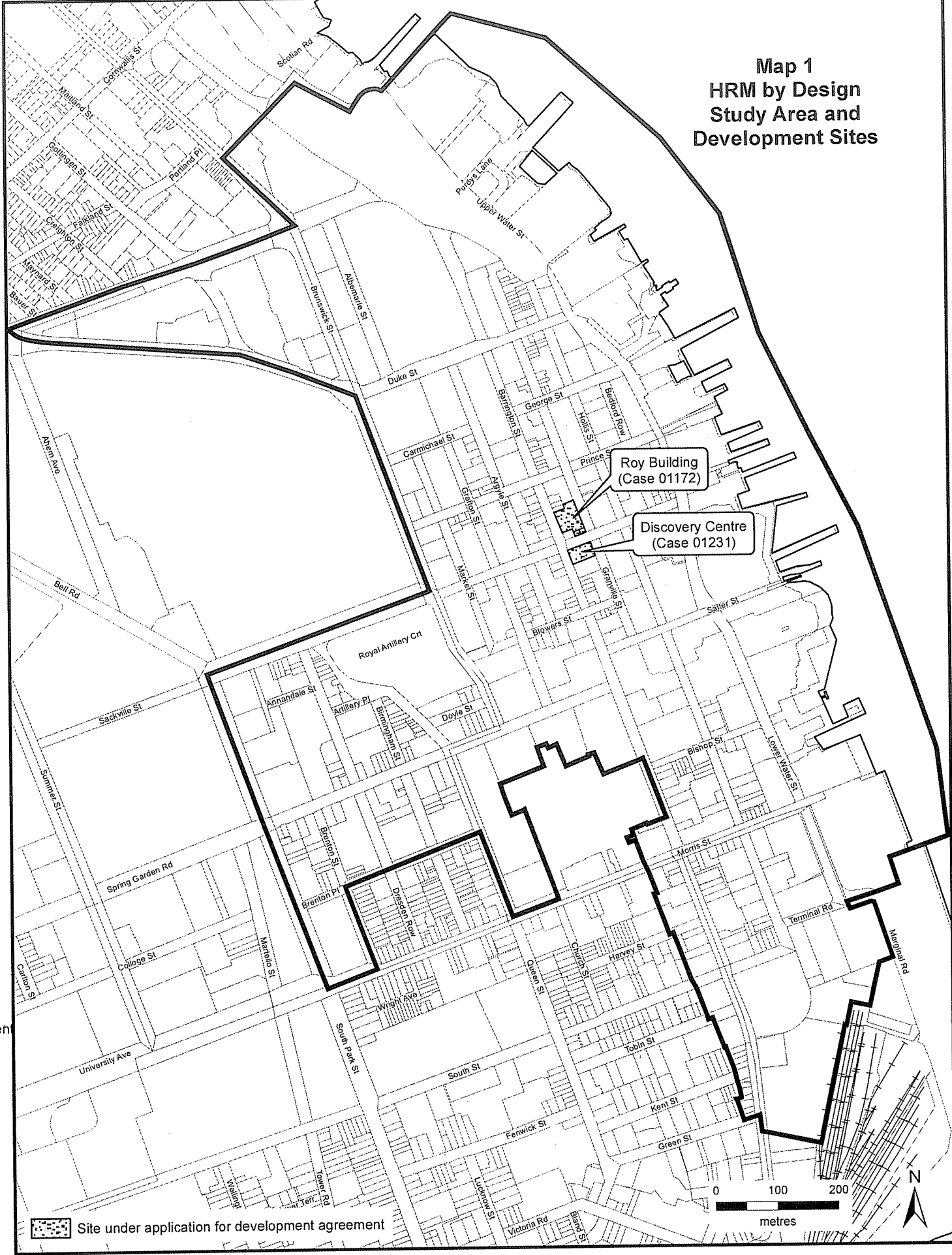
Report Prepared by: Luc Ouellet, Planner, 490-4911


Report Approved by:   
Austin French, Manager, Planning Services, 490-6717

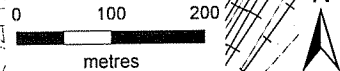
Report Approved by:   
Paul Dunphy, Director of Community Development



# Map 1 HRM by Design Study Area and Development Sites



 Site under application for development agreement



Note: Effective date does not indicate date of data creation



**ATTACHMENT A - PROPOSED AMENDMENTS TO THE DOWNTOWN HALIFAX  
SECONDARY MUNICIPAL PLANNING STRATEGY**

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Downtown Halifax Secondary Municipal Planning Strategy is hereby amended as follows:

1. By adding the following policy after Policy 90B:

Policy 90BA Notwithstanding Policy 90B, applications pursuant to Policy 90A within the Barrington Street Heritage Conservation District Revitalization Plan that have not proceeded to a public hearing within 90 days of the effective date of this policy shall be subject to all applicable requirements of the Land Use By-law.

THIS IS TO CERTIFY that the by-law of which this is a true copy was duly passed at a duly called meeting of the Council of Halifax Regional Municipality held on the \_\_\_\_ day of \_\_\_\_\_, 2010.

GIVEN under the hand of the Municipal Clerk and under the Corporate Seal of the said Municipality this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Municipal Clerk

**ATTACHMENT B - PROPOSED AMENDMENTS TO THE BARRINGTON STREET  
HERITAGE CONSERVATION DISTRICT REVITALIZATION PLAN**

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Barrington Street Heritage Conservation District Revitalization Plan is hereby amended as follows:

1. By adding the following policy after Policy 3:

Policy 3A Certificate of Appropriateness Exemptions

Notwithstanding Policy 3, a Certificate of Appropriateness shall not be required for development or demolition necessary to implement an approved development agreement.

2. By adding the following section after Policy 24:

**8.3 TRANSITION TO THIS PLAN**

During the course of preparation of this Plan, development continued to occur in the Plan area according to previous municipal planning strategy policies and land use by-law requirements. At the time of Plan adoption, development agreement applications in various stages of review and approval remained in progress. In consideration of the fact that these projects were designed within the parameters of the previous policies of the Halifax Municipal Planning Strategy, the substantial investment made in the preparation of such applications and that they were submitted in advance of this Plan being given first reading by Council, it is reasonable that they be exempt from the requirements of By-law H-500 [Heritage Conservation District (Barrington Street) By-law] and that provision be made to allow Council to consider them after the effective date of this Plan under the previous policies of the Halifax Municipal Planning Strategy. Similarly, non-substantive amendments to approved development agreements should also be exempt from the requirements of By-law H-500 [Heritage Conservation District (Barrington Street) By-law].

It is not, however, appropriate that development that is not in conformance with this Plan be afforded longstanding rights relative to time frames for project approval and completion. Developments that are not constructed and completed within a reasonable time period after Plan adoption should be required to comply with the requirements of By-law H-500 [Heritage Conservation District (Barrington Street) By-law].

Policy 25 Applications for development agreements on file on or before March 31, 2009 and which are within the Barrington Street Heritage Conservation District area shall be considered under the Halifax Municipal Planning

Strategy policies in effect at the time the complete application was received and shall be exempt from the requirements of By-law H-500 [Heritage Conservation District (Barrington Street) By-law]. Where any such application is withdrawn, significantly altered, or rejected by Council, any new development proposal shall be subject to all applicable requirements of By-law H-500 [Heritage Conservation District (Barrington Street) By-law].

Policy 26 Applications pursuant to Policy 25 that have not proceeded to a public hearing within 90 days of the effective date of this policy shall be subject to all applicable requirements of By-law H-500 [Heritage Conservation District (Barrington Street) By-law].

Policy 27 Applications for non-substantive amendments to approved development agreements shall be exempt from all applicable requirements of By-law H-500 [Heritage Conservation District (Barrington Street) By-law].

THIS IS TO CERTIFY that the by-law of which this is a true copy was duly passed at a duly called meeting of the Council of Halifax Regional Municipality held on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

GIVEN under the hand of the Municipal Clerk and under the Corporate Seal of the said Municipality this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Municipal Clerk

**ATTACHMENT C - PROPOSED AMENDMENTS TO BY-LAW H-500 [HERITAGE  
CONSERVATION DISTRICT (BARRINGTON STREET) BY-LAW]**

BE IT ENACTED by the Council of the Halifax Regional Municipality that By-law H-500 [Heritage Conservation District (Barrington Street) By-law] is hereby amended as follows:

1. By adding the following clause after clause 4(2)(c):
  - (d) development or demolition necessary to implement an approved development agreement.
2. By adding the following text immediately following the word “building” in subsection 5(10):

“except in accordance with clause (d) of subsection 4(2), “

THIS IS TO CERTIFY that the by-law of which this is a true copy was duly passed at a duly called meeting of the Council of Halifax Regional Municipality held on the \_\_\_\_ day of \_\_\_\_\_, 2010.

GIVEN under the hand of the Municipal Clerk and under the Corporate Seal of the said Municipality this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Municipal Clerk

## ATTACHMENT D - EXCERPTS FROM THE DOWNTOWN HALIFAX SECONDARY MPS

### 8.6A TRANSITION TO THIS PLAN

During the course of preparation of this Plan, development continued to occur in the Plan area according to the previous MPS policies and land use by-law requirements. At the time of Plan adoption, development agreement applications in various stages of review and approval remained in progress. In consideration of the fact that these projects were designed within the parameters of the previous policies of the Halifax Municipal Planning Strategy, the substantial investment made in the preparation of such applications and that they were submitted in advance of this Plan being given first reading by Council, it is reasonable that provision be made to allow Council to consider them after the effective date of this Plan under the previous policies. Similarly, non-substantive amendments to approved development agreements should also be able to be considered under the previous policies.

It is not, however, appropriate that development that is not in conformance with this Plan be afforded longstanding rights relative to time frames for project approval and completion. Developments that are not constructed and completed within a reasonable time period after Plan adoption should be required to comply with the requirements of the Land Use By-law.

Policy 90A Applications for development agreements on file on or before March 31, 2009 shall be considered under the policies in effect at the time the complete application was received. Where any such application is withdrawn, significantly altered, or rejected by Council, any new development proposal shall be subject to all applicable requirements of the Land Use By-law.

Policy 90B Applications pursuant to Policy 90A that have not proceeded to a public hearing by March 31, 2010 shall be subject to all applicable requirements of the Land Use By-law.

Policy 90C Applications approved pursuant to Policy 90A shall include project commencement dates not exceeding three years from the date of execution of the development agreement and project completion dates not exceeding six years from the date of execution of the agreement.

Policy 90D Applications for non-substantive amendments to approved development agreements shall be considered under the policies in effect at the time the agreement was approved.

**ATTACHMENT E - MINUTES FROM THE FEBRUARY 18, 2010 PUBLIC  
INFORMATION MEETING**

**Public Information Meeting  
Case 15815  
February 18, 2010**

In attendance: Councillor Sloane  
Kelly Denty, Supervisor, Planning Applications  
Luc Ouellet, Planner  
Shanan Pictou, Planning Technician  
Gail Harnish, Planning Services

**Opening remarks, introductions, purpose of meeting**

**Mr. Luc Ouellet** called the public information meeting (PIM) to order at approximately 7:00 p.m. in Halifax Hall. The purpose of the meeting is to discuss an application by HRM to amend the Barrington Street Heritage Conservation District Revitalization Plan, the Heritage Conservation District (Barrington Street) By-law, and the Downtown Halifax Secondary Municipal Planning Strategy (MPS) to exempt the development agreement applications that were grandfathered under Policy 90A of the MPS and within the Barrington Street Conservation District from the application of the Heritage Conservation District (Barrington Street) By-law. There are two development agreement applications - the Roy Building and the Discovery Centre.

**Overview of planning process**

Mr. Ouellet advised the Conservation District came into place with the new Downtown Halifax MPS, and has been in effect since October of 2009. Just before the public hearing for these documents, there were already ongoing development agreement applications in the Downtown Halifax area. As a process of fairness to the developers who had put in applications and had plans, they were grandfathered by Council to continue under the old policies under which they were made. At the time there was a bit of an oversight. Council put in a policy in the Downtown Halifax MPS to exempt the development agreement applications from the new regulations, but did not include provisions to exempt them from the Barrington Street Conservation District Plan and By-law.

An initiation report was tabled with Regional Council who initiated the process to consider a plan amendment. When the policy was put in place, it said all development agreement applications had to be to a public hearing by March 31, 2010. There needs to be time to fix the

glitch in the Conservation District so staff is going to be proceeding with a recommendation to extend that timeline by ninety days after the MPS amendment comes into effect.

Mr. Ouellet reviewed the MPS amendment process:

- Regional Council initiated the process to consider the amendments.
- We are now holding the public information meeting.
- Staff will do a detailed review of the application.
- Staff will prepare a report with recommendations which will be tabled with the Heritage Advisory Committee (HAC).
- HAC will forward its recommendation to Regional Council.
- Regional Council will decide whether or not to schedule a public hearing.
- If Council decides not to proceed further, the application stops and there is no appeal process or, if they decide to proceed, the public hearing is held.
- Council will make its decision.
- If Council approves the proposed amendments, they are forwarded to the Province for Ministerial review.
- A notice of approval is placed in the newspaper, at which time the amendments take effect.

Mr. Ouellet noted draft policy changes to the Downtown Halifax MPS are attached to the handout.

### **Questions and comments from members of the public**

**Ms. Beverly Miller** questioned what the City's legal situation is if an application was in before HRMbyDesign was advertised.

Mr. Ouellet responded the development agreement applications did come in before HRMbyDesign. Council made a decision to grandfather them; they could have decided not to grandfather them.

Ms. Miller questioned why it was necessary for Council to grandfather an application if it was already filed before the changes were made.

Mr. Ouellet responded that in order for Council to consider a development agreement application, there needs to be policies in the MPS to allow it to be entertained. The old policies did contain development agreement provisions to allow these two applications to be made. By the time these two applications would have reached Council, the HRMbyDesign documents were approved, so Council could not have entertained a public hearing to consider them. It was a

decision of Council. They could have turned them down and not grandfathered them but Council decided to give them more time.

Ms. Miller questioned if the process started under one set of rules, then why did it not proceed under those same rules?

**Ms. Kelly Denty** stated Council has to make its decision based on the policies in effect at the time of their decision. If we did not include policies to allow an application to be considered under the old policies, then they would have to be considered under the new policies where it would not be enabled.

Ms. Miller commented if they started something that was legal at the time, it seems unusual that it becomes illegal because the rules were changed.

Mr. Ouellet said it is a bit different for permits as they are grandfathered by the time they make application under the ad.

Ms. Miller said when they did the Regional Plan, they put a freeze on more development to prevent developers from throwing in a bunch of stuff before the Regional Plan was approved. It seems that this would be the same type of thing.

Ms. Denty responded the Regional Plan process was a bit different. When we first talked about the Regional Plan there was a fear that people would come in with applications that would negate the whole purpose of the Regional Plan. We got the Province to establish a moratorium but they would only do it for ninety days. Within that ninety day period, we had to have MPS amendments approved that would freeze development.

**Ms. Heather Ternoway** noted the moratorium was necessary for the Regional Plan to be successful and implement its vision for the whole Municipality. She questioned if that process was considered for HRMbyDesign?

**Councillor Sloane** confirmed it was raised several times but it was denied.

**Mr. Phil Pacey** referenced the summary in the second page of the handout which says an amendment to the new Barrington Street provisions is required. He wanted to clarify that an amendment to the new Barrington Street provisions is not required. It is perfectly within Council's right to decide not to amend the Barrington Street Heritage Conservation District Plan, in which case the provisions of the Plan would apply to these two developments.

Mr. Ouellet concurred. What is meant by the wording is that that is what is required for Council to consider the two applications.



Mr. Pacey asked for confirmation that the two development applications do not comply with the Barrington Street Heritage Conservation District Plan. Mr. Ouellet concurred.

Mr. Pacey asked for confirmation that the Barrington Street Heritage Conservation District Plan is in effect today. Mr. Ouellet concurred.

Mr. Pacey noted the Plan has been in effect since October 24, 2009. It is the law of the land and asked for confirmation that these two new applications do not comply with the present laws. Mr. Ouellet concurred.

Mr. Pacey noted the handout indicates the amendment is necessary. Similarly, the amendment is not necessary to carry out the intent of Policy 90A. Policy 90A does not say anything about the Barrington Street Heritage Conservation District Plan.

Mr. Ouellet clarified what was meant by that was that Council, at the time of approving the Downtown Halifax MPS, wanted to grandfather the development agreement applications and put in Policy 90A. If the tools are not in place to enable the project, meaning they would meet the MPS but not the Barrington Street Heritage Conservation District, the amendment by Council to the MPS therefore becomes null and void. You cannot consider a development application because you have not done the amendments to the other document. The intent was clear from Council to grandfather them. The amendments were not carried over into the Barrington Street Heritage Conservation District Plan. If Council does want to consider them and fulfill Policy 90A, then they would also have to amend the Barrington Street Heritage Conservation District Plan.

Mr. Pacey stated he did not think the direction of Council was clear. If you look at the minutes, there is discussion. There was an earlier report which is attached to the document on the back page but when Council considered that, they rejected grandfathering and then staff came forward with a plan that had Policy 90A. Policy 90A says nothing about the Barrington Street Heritage Conservation District Plan. He did not believe the other report on the back table mentions this Plan. If we want to know what Council intended, we should look at what they passed. They passed a document with Policy 90A but with the Barrington Street Heritage Conservation District Plan and By-law intact. That went to a public hearing. Eighty people spoke. Both of the people making the applications were well aware of the proceedings, and they both put in letters which did not object to this. He did not believe it is fair to say that Policy 90A intends there to be any amendment.

Mr. Pacey referenced the flow chart in the handout and indicated he thought the process is too short. The District 12 Planning Advisory Committee should be included as part of the discussion because it is an amendment to the Downtown Halifax MPS, which affects District 12.

Mr. Pacey stated something more significant is the fact that the *Heritage Property Act* requires there to be a study done any time a Heritage Conservation District is either adopted or amended. There are several stages that study has to go through. What are the plans of staff in terms of trying to get a study prepared for this amendment? Are you aware of the provisions in the *Heritage Property Act*?

Mr. Ouellet responded he was aware they need a study to adopt one but would have to check to see if one is required to make any changes.

Mr. Pacey stated there were two substantial studies done before the Barrington Street Heritage Conservation District Plan was adopted. That is a very substantial requirement and thought it was very important to do a study of that sort.

Mr. Pacey indicated he was also concerned that staff said they are going to proceed and have attached to the handout what is roughly going to Council. He thought that was an unfortunate phrase. We are now at the PIM. He hoped staff would listen to what the public had to say instead of asking for questions and comments but you have already made up your minds. He thought there were very good reasons for not proceeding in the direction that you have indicated.

Mr. Pacey confirmed he was referring to the Provincial *Heritage Property Act*.

**Ms. Rebecca Jamieson** said she would like information and know a bit about what is being proposed. She was not a member of any of the participating bodies in this debate. All she knew was that it would affect the provisions of the Barrington Street Heritage Conservation District Plan. Despite her reservations about the HRMbyDesign process and associated matters, they were assured there will be no exceptions. It will be a clear process. Everything is cut and dried. There will be no special cases or bargaining, and now we seem to be in a situation where special amendments are being made for a particular case. She had grave concerns about that and would echo Mr. Pacey's point that Council had the opportunity to grandfather this at an earlier stage before the adoption of the documents. She would have to agree Council's intention was not clear. To what degree does this affect the provisions of the Heritage Conservation District?

Mr. Ouellet indicated he would not go into too much detail about the development agreement applications as the information is available online on the Planning section of the HRM web page. The Conservation District mandates a maximum height of 72'. Two of the applications are in the vicinity of fifteen - seventeen storeys. He was not aware of any other provisions they did not comply with other than the height.

Mr. Ouellet noted Council did adopt Policy 90A so there was an intention to grandfather them. There was an oversight that those amendments were not also included in the Barrington Street Heritage Conservation District Plan and By-law. We did discover that oversight so we are

proceeding to make the amendments to carry out the intent. Council will decide if they think it does not meet with their intent.

Ms. Miller indicated we have seen a proposed development agreement for the Roy Building property but not for the other property. What is the relationship between this process and what we already know about the Roy Building process? Is there a connection between the two or are they two separate processes?

Mr. Ouellet responded they are two separate processes. The only thing Council grandfathered was the development agreement applications, meaning they will have their day before Council. They will still have to hold separate public hearings.

Ms. Miller noted this is not like the Brewery where the MPS amendment and the development agreement were coupled together. If this plan amendment goes through, will there be a separate process? Mr. Ouellet responded yes.

Ms. Miller questioned on what basis has the Planning Department approved this? What will this do for Barrington Street or will this clean up a nasty mess that you made?

Mr. Ouellet responded it will fix a problem. The intent of Council was to grandfather the four applications. It was an oversight where it was not carried over into the Barrington Street Heritage Conservation District and we are fixing that loophole.

Ms. Miller questioned if as planners they are advocating this as being positive or negative for Barrington Street.

Mr. Ouellet responded we are not commenting. If Council decides to grandfather them in the Conservation District, we will make a recommendation on the two projects based on their own merits and on the MPS policies at the time.

Ms. Miller noted there was already a report for the Roy Building and questioned if that would be thrown out the window.

Mr. Ouellet confirmed there is a report for the Roy Building project which is public record.

Ms. Miller questioned what position the City would be in if they did not approve this.

Ms. Denty noted the Downtown Halifax By-law does apply and it establishes a height. These projects would not conform with the height. Council would not be able to approve the development agreement applications because they are not consistent with the by-law unless the by-law is amended.

Ms. Miller noted the by-law would have to be amended to allow the higher heights.

Ms. Denty clarified it is to allow those two particular development agreements to be considered by Council.

Ms. Miller noted one of the developers has gone quite far with their plans before this legal glitch was discovered, and asked if they would be able to sue HRM.

Ms. Denty responded she could not comment on that as it is a legal question.

Ms. Miller questioned if it was not important though?

Ms. Denty noted in any aspect we are open to challenge.

Ms. Miller questioned if this is appealable.

Ms. Denty responded it is an MPS amendment so it is not appealable.

**Mr. Alan Ruffman** stated let the public record show that the planner involved indicated he just began to work on this a few days ago.

Mr. Ouellet clarified he was referring to the MPS amendments.

Mr. Ruffman stated let the public record show that the information report they have been provided with is not completed, in that it only has draft policies that the planner has just begun to work on. This particular member of the public thinks this PIM is premature if we do not know what we are suggesting and responding to. He also heard the planner say that this change is being done at the request of Council. What we have not heard from the planner is what the professional planner thinks about this process. We are dealing with a Plan which has been in place for 4.5 months. It went through a 6.5 year process, which was a such a long and frustrating process. It went to staff and it disappeared for almost three years. Finally it re-emerged as part of HRMbyDesign. Now we are told you have to change it again. He hoped the Minister would agree this is an inappropriate process. Let it work for awhile. There are two renovations going on now on Barrington Street under the current rules. You're hanging this on something that Council wants. What do you as a professional planner think about it? The Conservation Plan is being gutted by this process.

**Ms. Ternoway** said she understood what staff is telling us today about this unfortunate administrative oversight which is requiring this process to be opened up again. Rather than seeing it as an unfortunate oversight, we should see it as an opportunity to uphold and strengthen and test out the potential of the Barrington Street Heritage Conservation District that so many

people have worked on for so many years. This is probably the only place in our City where there is a viable chance for a heritage conservation district to exist. It was envisioned in Policy CH-1 and CH-2 of the Regional Plan before it was ever put into place.

By grandfathering these two particular proposals, and by allowing this amendment to go through, we are completely undermining the District's future of Barrington Street. The two properties are right in the centre and in the heart of the Conservation District, and even allowing Council to consider something that would be against the Conservation District seems unprofessional and without a sense of commitment and vision to what the citizens of this City have been working on for so long. When Council approved the HRMbyDesign documents, there was an intention to grandfather these four properties by including Policy 90A, B and C. There was a huge amount of debate on whether the Barrington Street properties should be part of that package, so she did not think Council was united on considering all four properties equally. As much as it is an administrative oversight, it is a huge opportunity to let the Barrington Street Heritage Conservation District have a chance.

The efforts to revitalize Barrington Street have been in place for many years, long before these applications were formally made. There was an intention and a vision and an idea about what Barrington Street means to the downtown and to this region, which supercedes and pre-dates any application being considered today. She urged Council and staff to take a longer term view and uphold the vision of HRMbyDesign and the Barrington Street Heritage Conservation District and not consider amending the Conservation District. This is a real opportunity to fix something that she thought Council made a mistake on.

**Mr. Pacey** stated he had the greatest respect for both of the developers who are involved in these two projects and has supported a number of their projects before the City in the past, but he could not support this one.

Mr. Pacey asked for confirmation that the developers did not request this amendment by way of an official letter and that it was staff initiated. Mr. Ouellet confirmed it was staff initiated.

Mr. Pacey stated in terms of intent, he was not a lawyer but he did seek legal advice on this point. He was told if you want to know the intent of Council what you do is read their enactment and their enactment grandfathers the application for the MPS but does not grandfather the proposals for the Barrington Street Heritage Conservation District Plan. From that point of view, the intent of Council was not to grandfather these two proposals with respect to the Barrington Street District Heritage Conservation District Plan.

Mr. Pacey indicated he was the Chair of the Heritage Trust and they take some pride in their contribution to the Barrington Street Heritage Conservation District Plan. They were represented on the Steering Committee with Mr. Medjuck which produced this plan and they are

disappointed that a staff report is recommending that it be weakened a mere four months after it was adopted. He had three themes for his comments:

- (1) Thorough examination and studies have already concluded that the new Barrington Street Plan and By-law is the best path to successfully revitalize our Barrington Street.
- (2) An extensive process is necessary before any change is considered. Studies really are needed. This has to be looked at just as thoroughly as the original plan was.
- (3) As well as not complying with the new Plan and By-law, the two development proposals do not comply with the pre-approved existing policies and should be rejected now in any case. Starting a process to amend the Plan and By-law would be a waste of time and money.

In terms of why the current plan is the right plan, heritage conservation districts are good for business. Property values increase more rapidly in designated heritage districts than in surrounding areas that are not designated. For example, in Saint John, properties in the Conservation Districts increased in assessment by 30%, more than properties outside the district. Pedestrians are attracted to a historic atmosphere. Designation allows for special marketing initiatives. In the Plan it says "I have never visited a downtown with a successful record of economic revitalization where historic preservation wasn't a key element of that strategy" says Donovan Rypkema. That is why 8000 American municipalities have designated Heritage Conservation Districts. The real estate consultant, Turner Drake and Partners, said recently "a key driver of demand for all types of space in downtown Halifax is its unique character which in turn is defined in large part by the heritage buildings and their relationship with the harbour. The environment thus created is Downtown Halifax's major competitive advantage which once destroyed will never be reincarnated". This is an economic plus.

The most successful heritage conservation districts are those where the rules are strongly enforced. This is one of the conclusions of the survey of owners of properties in heritage conservation districts in Ontario last year. Owners are willing to accept limits on their property rights if they can see their neighbours are complying with the same rules. "Good fences makes good neighbours" and "What's good for the goose is good for the gander." Providing special exemptions breeds discontent.

Visitors want an authentic heritage experience when they visit a heritage conservation district. Pedestrians will feel cheated if they walk through a heritage district only to find it contains high rise towers. Quebec City, Saint John, and Victoria have successful heritage districts.

One of the purposes of the Plan was to provide additional protection from demolition. By establishing the district, it is Council's intention to strengthen the protection of municipal heritage properties and provide new protection to non-registered properties. In general, the

purpose of district-wide architectural regulatory demolition controls is to provide a secure environment for heritage based investment and ensure that all development will support the objectives of the Revitalization Plan.

Policy 6 of the new Plan says HRM shall make every effort to seek the retention, preservation, rehabilitation and restoration of buildings, streetscapes, features, spaces and areas with heritage values. Those policies should not be exempted for these two sites. The present Roy Building proposal calls for the complete demolition of the Roy Building, which would be a huge loss for heritage architecture. It would also be a huge burden for the landfill. The Plan should not be amended to exempt any building from these protections against demolition.

According to UNESCO, “particular care should be devoted to regulations for and control over new buildings so as to ensure that their architecture adapts harmoniously to the spatial organization and the setting of roofs for historic buildings”. This is one of the things which directed the preparation of this Plan. An analysis of the urban context should precede any new construction. That is what we should do with the new study. That is what was done before this Plan was adopted. Not only so as to define the general character of a group of buildings, but also to analyze its dominant features, the harmony of heights, colours, materials and forms, constancy in the way the facades and roofs are built, the relationships between the volume of buildings and the spatial volume, as well as their average proportions and their positions. Our scoring system for heritage properties recognizes that the heritage value of an individual building, streetscape, or area can be diminished if a taller building or an incompatible building is constructed nearby. The district is now sufficiently compatible that it qualifies as a heritage conservation area.

One of the defining characteristics of the Heritage Conservation District which was identified in the studies was its low scale quoted in the Plan as being between two and six storeys. These four blocks are one of the longest heritage commercial heritage streets in Canada. High rise buildings, the banks and the Aliant building, at either end of the blocks, were deliberately and carefully excluded from the district. It makes no sense to allow two high rise structures in the middle of the district, eliminating one of the defining characteristics of the district. Set in the middle of the conservation district, the towers would overwhelm the other buildings in the district and would defeat the purpose of the Heritage Conservation District Plan.

Pedestrians avoid walking near high buildings. They are well aware of the negative wind and shadow effects mentioned in yesterday’s paper. A vibrant pedestrian area requires low scale interesting buildings. A quote from one of the drafts says “In the late 1960s and early 1970s, the development of a major mall and office towers rather than giving the street two commercial anchors in fact accelerates the loss of retail and office uses as stores and professionals migrate to the new buildings”. An extensive process is required before any change. Those studies which need to be done have to include an analysis of the social and economic implications. It seems unlikely that HRM staff can do that on its own which is why it was sent to external consultants

before. The need for the district was discussed in two background studies and similar work should be done again.

As well as not complying with the new Plan and By-law, the two development proposals do not comply with the pre-existing ones. Even if these amendments are made to weaken the Plan, Council should still be rejecting these two development proposals because at the end Council would have to consider if it met the MPS policies in effect on March 31, 2009. In November, the Heritage Advisory Committee considered the development under those policies and resolved to advise Council to refuse the application to demolish the Roy Building based on Policy 7.2.1, particularly to height. It would be unfortunate to take the time of staff, Council, and the public to weaken the Conservation Plan and By-law for a proposal that would not comply with the old or new policies. In the meantime, several conservation projects are proposed and proceeding, which indicates the plan for revitalization has begun. Just a week or so ago, Council approved some grants for some of these projects. It would not be fair to these other property owners to allow exemptions for owners of these two sites. Please give the approved Barrington Street Heritage Conservation District Plan a chance to work.

**Ms. Janet Morris** stated she agreed with the points made. Barrington Street, in the process of generating this Plan, defined itself as a community and it defined what they wanted in their area. What has happened is that there has been an attempt to get some developments in under the wire. She thought this was a very poor precedent. The objective of HRMbyDesign was to have other community plans and it seems to permit this amendment is a poor precedent for encouraging other communities to get together if they know there can be ways to encourage developers to get their plans in now which can destroy the community's ideas, especially if they include a heritage district.

**Ms. Kate MacKay** commented they developed this Conservation District which is really exciting and something she was proud to hear about. It kept her living on Barrington Street even though her apartment was a little drafty. She thought they are setting a precedent. We have an opportunity to show what we care about. We care about our heritage, our community, the policies that we have drafted, and the things that we are proud of, or we can show that these two developments outweigh that. This is the first time we are dealing with the Conservation District and we need to use this decision to set the tone of how we deal with things in the future.

**Mr. Ruffman** indicated one of the things the Municipality requested of the previous Provincial government was an extension for the protection of Municipally registered heritage buildings from one to two years. The Minister at the time, Mr. Dooks, wrote him several letters indicating the legislation would be in place by September 1, 2009. We know the legislation nor the government is in place. We also know that the new government has not brought that legislation in. How does the loss of that extension against the demolition of registered heritage properties affect these two



properties? Because these buildings are not registered, they can apply for a demolition permit any time they want to.

Mr. Ouellet noted owners of registered heritage properties can apply for a demolition permit which goes to Regional Council. If the request is denied by Council, they have to wait for a year before they can proceed with demolition.

Mr. Ruffman stated staff should think about that as well as gutting the District. The reason they did not get that was because of the Waterside building at the bottom of Duke Street and the Premier intervened. The Minister remained silent. All of this, including the extension, needs time to shake itself out.

**Ms. Jamieson** said she distilled from this evening that: (1) if Council debated but did not approve the grandfathering of these buildings within the Heritage Conservation District, then it did not sound like an oversight. It sounds like Council's intent was not clear; and (2) a special amendment for this area would set a bad precedent. She lived in a neighbourhood bordering the downtown area and would like to be involved with developing a plan for their neighbourhood but shared the concern that special amendments of this type being grandfathered is an unfortunate message being sent to other communities intending such planning, and it is clearly a major problem for this particular area. The specific buildings are clearly out of keeping with the scale and style of the existing heritage district and will certainly be detrimental to the long-term success and stability of the district. If it did not comply with the old and present by-law, then why is it being considered? Give the Heritage Conservation District Plan a chance to work.

Mr. Ouellet pointed out staff did not say the development agreement applications do not meet the old regulations; they do not meet the current rules. They will have to proceed under the merits of the old rules. The report for the Roy Building has been prepared and is public and we are recommending approval. The report has not been finalized yet for the Discovery Centre.

**Ms. Ternoway** suggested if they are proceeding, even though she did not think they should, staff should highlight a future oversight. Policy 90B in the current Downtown Halifax MPS sets a March 31<sup>st</sup> deadline for the grandfathered development agreement applications to go to public hearing. If it is replaced with a new Policy 90B, they should only be considering the two development agreement applications for the Barrington Street heritage properties. It says nothing about City Centre Atlantic. She asked if that application would still have to go to public hearing by March 31<sup>st</sup>.

Mr. Ouellet responded we do not expect these amendments will be approved and in effect by March 31<sup>st</sup>.

Ms. Ternoway asked for confirmation Policy 90B would stay valid and would apply to the City Centre Atlantic property. Mr. Ouellet concurred.

Ms. Ternoway asked about the timeline.

Mr. Ouellet responded it depends upon how long it would take to produce a report. The report would have to be tabled with HAC and then go to Regional Council.

**Councillor Sloane** commented at least four months.

**Ms. Miller** said she wished to reinforce a point made by Mr. Ruffman. In all of this material she did not see a professional planning discussion. What is the best Plan? What about the heights of these buildings? What about the effect it will have on these streets? These are things you as planners should be addressing. We hire you to look at what is good planning, not what we need to accommodate. She would like to see a very clear statement. If you are recommending that these amendments go ahead, then you should have a very clear reason why it is good planning and good for Barrington Street, the Heritage Conservation District, and for the people who will walk down Barrington Street off the cruise ships. We are not getting that from the Planning department. You address this in number 4, where it says Council may decide not to undertake the public participation process. This may be a reasonable course of action based upon the extent of public consultation which has taken place to date on HRMbyDesign and on the concept of the Barrington Heritage Conservation District. You say there is a risk that the amendments would face a legal challenge, thereby further allowing the opportunity to hold public hearings on these two projects. You are saying without any kind of planning background or discussion why this is good, or what kind of principles are affected and enhanced. You are saying you do not want to delay this. She would like to see a well reasoned report from Planning saying this is the best thing we can do for Barrington Street and Downtown Halifax and this corresponds with the best planning principles we know of at the time.

### **Adjournment**

The meeting adjourned at approximately 8:05 p.m.