

Item No. 9.1

Halifax Regional Council

May 20, 2014

June 10, 2014

TO: Mayor Savage and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: May 9, 2014

SUBJECT: **Case 19171 – Amendments to the Downtown Halifax MPS and an Existing Development Agreement to Permit an Extension to the Commencement and Completion Requirements for a 16 Storey Building at 1593 Barrington Street, Halifax**

ORIGIN

- Application by W.M. Fares Group, on behalf of 3258146 Nova Scotia Limited
- On March 18, 2014, Regional Council initiated the MPS and LUB amendment process for the application
- April 23, 2014 Staff Report to the Heritage Advisory Committee (May 7, 2014) and the Design Review Committee (May 8, 2014) regarding proposed amendments and amending development agreement for the subject case

LEGISLATIVE AUTHORITY

- *HRM Charter*, Part VIII, Planning and Development

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Give First Reading and schedule a public hearing to consider adopting the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy, contained in Attachment A1 of this report, in order to enable an extension to the commencement and completion requirements for a 16 storey building at 1593 Barrington Street, Halifax.

RECOMMENDATIONS CONTINUED ON NEXT PAGE

2. Move Notice of Motion to consider the proposed amending development agreement as contained in Attachment B1 of this report, to permit an extension to the commencement and completion requirements for a 16 storey building at 1593 Barrington Street, Halifax and schedule a public hearing. The public hearing for the development agreement shall be held concurrently with that indicated in Recommendation 1.
3. Adopt the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy, contained in Attachment A1 of this report.

Contingent upon the amendments to the Downtown Halifax Municipal Planning Strategy being approved by Regional Council and becoming effective pursuant to the requirements of the *Halifax Regional Municipality Charter*, it is further recommended that Halifax Regional Council:

1. Approve the proposed amending development agreement as contained in Attachment B1 of this report.
2. Require that the amending development agreement be signed by the property owner within 120 days, or any extension thereof granted by Regional Council on request of the property owner, from the date of final approval by Regional Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Proposal

The Discovery Centre is the major tenant in the existing building at 1593 Barrington. Discovery Centre plans to relocate to the Emera Building at 1223 Lower Water Street, Halifax, but it wishes to remain in its current location for a further two years. The Developer is amenable to this, but only if extensions to the requirements for the commencement and completion of construction for its new building are granted. On behalf of the Developer, W.M. Fares Group has made an application to extend the commencement and completion dates by two years. In considering this case, staff recommended to extend the commencement and completion dates by two years in its April 23, 2014 report to the Heritage Advisory Committee (May 7, 2014) and the Design Review Committee (May 8, 2014).

Staff have noted two matters in the April 23, 2014 staff report that warrant correction and clarification:

1. In the proposed amendments there is a cross-referencing error; the reference to policy '90D' should in fact be '90C' (policies 90C and 90D are provided in Attachment A1); and
2. The April 23, 2014 staff report indicates that Case 19171 might be viewed as an 'unforeseen circumstance' pursuant to policy 89. It is important to note that Regional Council is considering the time extension for completion of the Development Agreement

on its own merits by inserting a new policy in the Downtown Halifax Secondary Municipal Planning Strategy (DHSMPs). Further to this, it is proposed that the amendments to allow the time extension be exempt from section 8.6.1 of the DHSMPs (the section containing policy 89).

DISCUSSION

Cross-reference Correction

As noted in the Background section, the proposed amendments in the original April 23, 2014 staff report should have referred to policy 90C, which is the policy that outlines the commencement and completion requirements for development agreements that were being considered during the adoption of the DHSMPs. The correction appears in Attachment A1 of this report.

Exemption from Section 8.6.1

Section 8.6.1 of the DHSMPs outlines certain circumstances that Regional Council has established for considering amendments to the DHSMPs. The Section refers to annual reviews for modest technical amendments and five year reviews for more substantial matters. It also states that Council can consider other situations at any time as follows:

“Development projects with highly significant benefits for the downtown and HRM at large that exceed the maximum height or building mass may be proposed from time to time.

Policy 89 Notwithstanding the foregoing policies, where a proposed amendment addresses unforeseen circumstances, or is deemed by Council to confer significant economic, or social, or cultural benefits to HRM beyond the bonus zoning provisions of this Plan, such amendments shall be considered by Council at any time regardless of the schedule for reviews.”

The April 23, 2014 staff noted that there is latitude in addressing what might be an “unforeseen circumstance.” However, it might also be interpreted that the policy is only to relate to projects that “exceed the maximum height or building mass.”

Beyond the provisions of Section 8.6.1, Regional Council has the authority to amend its municipal planning strategies at any time. Therefore, to ensure that there is clarity concerning this matter, should Regional Council wish to extend the commencement and completion timelines for the development agreement for 1593 Barrington Street, it is recommended that the proposed new policy provide an exemption to Section 8.6.1.

The new amendments containing the revisions noted above are contained in Attachment A1 of this report.

Committee Reviews

The Heritage Advisory Committee (HAC) reviewed the April 23, 2014 staff report at their meeting on May 7, 2014. The corrections to the report and the proposed revised amendments were presented verbally by staff. HAC does not consider the subject application to be a heritage matter and HAC has consequently made an alternative motion to Regional Council through a separate report to be provided to Council at the same meeting as this report.

The Design Review Committee (DRC) also considered this matter at their meeting on May 8, 2014. The corrections to the report and the proposed revised amendments were presented verbally by staff. The DRC recommends that Regional Council adopt the revised amendments that are presented in this report. The DRC recommendation will also proceed to Regional Council through a separate report to be provided to Council at the same meeting as this report.

FINANCIAL IMPLICATIONS

There are no financial implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved 2014/15 budget with existing resources.

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 newspaper advertisement, notification to surrounding area property owners (see Map 1 of the April 23, 2014 staff report), and the posting of information on HRM's website. Normally, a public information meeting is held for planning applications. Given the timing sensitivities in having this matter considered by Regional Council, the limited scope of the application, and the ability for the public to make submissions at a public hearing, rather than a public information meeting, the public was invited to make written submissions. Those that have been received to date are found in Attachment E of the April 23, 2014 staff report.

Prior to the considering the approval of any amendments to the planning documents, Regional Council must hold a public hearing. Should it decide to proceed to a hearing, in addition to published newspaper advertisements, individual property owners within the notification area, shown on Map 1 of the April 23, 2014 staff report), will be advised of the hearing by regular mail. The HRM website will also be updated.

The proposed amendments will potentially impact local residents and property/business owners, to the extent that construction at 1593 Barrington Street may occur at a later date than that which might have been originally envisioned.

ENVIRONMENTAL IMPLICATIONS

The proposal meets all applicable environmental policies as contained in the DHSMPs.

ALTERNATIVES

1. Regional Council may choose to refuse the proposed amendments to the DHSMPS, thereby retaining the current timing requirements. This is not recommended. A decision of Council to not approve potential amendments is not appealable to the Nova Scotia Utility and Review Board as per Section 262 of the *HRM Charter*.
2. Regional Council may choose different timing requirements than those that are contained in this report. This may necessitate a supplementary report and a new public hearing.

ATTACHMENTS

Attachment A1	Revised Proposed Amendments to the DHSMPS
Attachment B1	Proposed Amending Development Agreement (unchanged from April 23, 2014 Staff Report Package)

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: Richard Harvey, Major Projects Planner, 490-6495

Report Approved by: _____
Kelly Denty, Manager, Development Approvals, 490-4800

Report Approved by: _____
Brad Anguish, Director of Community & Recreation Services, 490-4933

ATTACHMENT A1
REVISED PROPOSED AMENDMENTS TO THE DOWNTOWN HALIFAX
SECONDARY MUNICIPAL PLANNING STRATEGY

BE IT ENACTED by the Regional Council of Halifax Regional Municipality that the Downtown Halifax Secondary Municipal Planning Strategy be amended inserting the following text as shown in **bold** as follows:

“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 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. (RC-Aug 17/10;E-Feb 12/11)

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.

One of the applications referred to in Policy 90A, at 1593 Barrington Street, initially had a development agreement requirement that it was to commence within three years and be complete within six years from the date of the development agreement's execution (July 20, 2011). In recognition of a desire to allow the Discovery Centre, a tenant within the existing building, to be retained at its current location for a further two years, it is desirable to allow for a greater amount of time for this project.

Policy 90E Notwithstanding Policy 90C and Section 8.6.1, the development agreement for 1593 Barrington Street that was approved pursuant to Policy 90A, may be amended include a project commencement date that does not exceed five years from the date of execution of the original development agreement and a project completion date that does not exceed eight years from the date of execution of the original development agreement.”

I HEREBY CERTIFY that the amendments to the Downtown Halifax Secondary Municipal Planning Strategy, as set out above, were duly passed by a majority vote of the Halifax Regional Municipality Council at a meeting held on the day of _____, 2014.

GIVEN under the hand of the Clerk and the Corporate Seal of the Halifax Regional Municipality this day of _____, 2014.

Municipal Clerk

ATTACHMENT B1
PROPOSED AMENDING DEVELOPMENT AGREEMENT

THIS AMENDING AGREEMENT made this ____ day of _____, 20____,

BETWEEN:

[INSERT Name of Corporation/Business LTD.]

a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

a municipal body corporate, in the Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands within Halifax which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Regional Council of the Municipality approved an application to enter into a development agreement to allow for a building of greater than 40 feet in height on the Lands (municipal case number 01231), which said Development Agreement was registered at the Halifax County Land Registration Office on July 22, 2011 as Document Number 98772172 (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer has requested the Existing Agreement be amended to extend the commencement and completion time requirements;

AND WHEREAS the Regional Council for the Municipality approved this request at a meeting held on [**INSERT-Date**], referenced as Municipal Case Number 19171;

THEREFORE in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

The Existing Agreement is amended by deleting the text shown in ~~strikeout~~ and adding the text shown in **bold**, as follows:

1. In Section 8.3:

8.3.1 In the event that development on the Lands has not commenced within ~~3~~ **5** years from the date of execution of this Agreement, the Agreement shall have no further force of effect and henceforth the development of the Land shall conform to the provisions or the Land Use By-law.

2. In Section 8.4:

8.4.1 The development shall be substantially complete within ~~6~~ **8** years of the execution of this Agreement.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED in the presence of:

Witness

Witness

[INSERT REGISTERED OWNER NAME]

Per:_____

Per:_____

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SEALED, DELIVERED AND ATTESTED
to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

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HALIFAX REGIONAL MUNICIPALITY

Per:_____

Mayor

Per:_____

Municipal Clerk