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Item No. 10.1.4
Harbour East-Marine Drive Community Council
June 10, 2015

TO: Chair and Members of Harbour East-Marine Drive Community Council

Original signed

SUBMITTED BY:

Bob Bjerke, Chief Planner and Director, Planning & Development

DATE: May 25, 2015

SUBJECT: **Case 19600: Non-substantive amendment to the development agreement for lands located on Ochterloney St., Irishtown Rd. and Queen St., Dartmouth**

ORIGIN

Application by 3233503 Nova Scotia Limited & 3200892 Nova Scotia Limited

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, Part VIII, Planning & Development

RECOMMENDATION

It is recommended that Harbour East-Marine Drive Community Council:

1. Approve, by resolution, the proposed Amending Agreement as contained in Attachment A of this report to enable an extension of the date of commencement of development of the existing development agreement at PID's 00230953, 40580730, 00232975, & 41165614, Irishtown Road, Dartmouth; and
2. Require the Amending Agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is late, otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

In 2013, the Municipality entered into a development agreement (Case 17849¹) with 3200892 Nova Scotia Limited for lands with frontage on Ochterloney Street, Irishtown Road, and Queen Street in Downtown Dartmouth. The development agreement allows for three buildings of 6, 14 and 15 floors with a total of 273 residential units, ground floor commercial space and underground parking. The proposal is enabled under site specific Policy B-7a of the Secondary Planning Strategy (SPS) for Downtown Dartmouth, which provides for up to 300 residential units plus commercial space, in three buildings ranging in height from 70 feet to 18 storeys plus penthouse.

The existing development agreement contains a 2-year time limit from the July 8, 2013 date of registration for the commencement of development of the first building. Development is defined in the existing agreement as the installation of the footings and foundation. The second building is to commence within four years from the registration date, while the third building is to commence within six years. At present the footings and foundation are not installed, and the time limit will expire on July 8, 2015. If development has not commenced by that date, Council may:

- Discharge the agreement, whereupon the agreement shall have no force or effect; or
- Upon written request of the developer, grant an extension to the date of commencement of development.

The developer has requested that the date of commencement of construction of the first building be extended by four years in response to changes in local market conditions and higher than desired vacancy rates. Additionally, the developer has advised that his ability to finance the project is impeded by the short duration of the time allotted to commence construction as well as what should be an appropriate timeframe for a project of this scale to be completed given the current market. The extended timeframe as requested would result in construction not being required to commence on the site until 2019, rather than 2015 as required under the existing agreement. The requested amendments would result in the entire three building project being finished within 10 years of the date of registration of the existing development agreement, rather than 8 years as currently required.

Amendments regarding construction time frames are identified as non-substantive matters in Section 6.1.1 (g) of the existing development agreement and may be approved through a resolution of Council, without a public hearing.

Location, Designation, Zoning and Surrounding Land Use

Subject Properties	PID's 00230953, 40580730, 00232975, & 41165614 Irishtown Rd
Total Lot Area	6452 square metres (69,454 square feet)
Regional MPS Designation	Urban Settlement
Community SPS Designation	Downtown Business (DB)
Zoning	Downtown Business (DB)
Surrounding Land Uses	Greenvale Lofts building to the east located on corner lot of Ochterloney St and Irishtown Rd, A multi-unit residential building known as Lock 4 to the north receiving access from Ochterloney St, HRM owned parkland known as the Canal Greenway to the east, and a multi-unit townhouse style development on Irishtown Road.
Current Use	Vacant, except for PID 41165614, which has a small vacant single storey commercial building (previously a laundromat)
Servicing Capability	Municipal sewer and water
Physical Characteristics	The parcel fronting on Ochterloney Street slopes down from the sidewalk and is lightly vegetated. The remaining parcels are relatively flat, and are predominantly graded or paved for use as

¹ see staff report at: www.halifax.ca/boardscom/hac/documents/Report17849.pdf

parking lots except where the one small building exists.

DISCUSSION

One of the reasons that development agreements contain commencement and completion dates is so that projects which have been approved, but not constructed, can be considered by Council if circumstances change. This may include changes to a site or its surroundings or approved amendments to MPS policies that enable such development. This is not the case in this situation and as the policies which provide for this development site continue to exist, staff supports an extension to the required construction commencement date of the first building but not for the duration that has been requested. In this instance however, significant MPS amendments resulting from the on-going Downtown Dartmouth Plan update process are anticipated in the near future that may result in changes to or the removal of the site specific policies that apply to this development.

Policy B-7a establishes that phasing is to be considered but does not address timeframes. The existing development agreement provides for three flexible phases of development, with all buildings to be started within six years of the document's registration date of July 8, 2013, and completed within 8 years. Given the current plan update process that is underway, it is felt that a one year time extension is sufficient and that a one year extension to the required completion date is also appropriate. Attachment A contains the necessary amendments to the development to implement these changes.

Should Community Council grant the extension, all development rights and requirements under the existing agreement will remain in effect. These matters include the total number of units, parkland dedication, siting and architectural standards, landscaping, amenity space, and parking. If the request for a time extension is denied, a development permit cannot be issued after July 8, 2015 as the Land Use Bylaw does not permit any as-of-right development on the site. Therefore if the existing development agreement expires, a new agreement would need to be negotiated pursuant to Policy B-7a. Alternatively, if new MPS policies come into effect for the site as part of the Plan Update process, development on the site would have to be undertaken in compliance with the new policies and land use standards.

Conclusion

Staff advise that the request to extend the initial commencement of development date by 4 years is excessive, given that the Downtown Dartmouth MPS is presently undergoing a review and that a new policy regime is scheduled to be presented to Council for consideration in the coming months. Accordingly, staff recommend that the construction commencement date for the first building be extended for an additional year after. Should construction not commence within that timeframe, Council will have the ability to consider future extensions with regard to any policy changes that may be approved as a result of the current MPS review exercise. Approval of the time extension and related changes to the completion dates are therefore recommended as non-substantive amendments. Attachment A contains the proposed amendments which would implement the changes to the existing development agreement.

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 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 strategy was information sharing, achieved through a sign on the property and information on the HRM website. Public information meetings and public hearings are not

required for non-substantive amendments to a development agreement. The decision to grant a non-substantive amendment is made by resolution of Community Council.

The proposed amending development agreement will potentially impact, but is not limited to, the following stakeholders: local residents and property owners.

ENVIRONMENTAL IMPLICATIONS

No environmental implications have been identified.

ALTERNATIVES

1. Council may choose to refuse to approve the amending agreement and, in doing so, must provide reasons why the agreement does not reasonably carry out the intent of the MPS. A decision of Council to reject this amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM* Charter.
2. Council may choose to approve the proposed amending agreement subject to modifications. This may necessitate further negotiations with the applicant and a supplementary staff report. A decision of Council to approve this amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM* Charter.

ATTACHMENTS

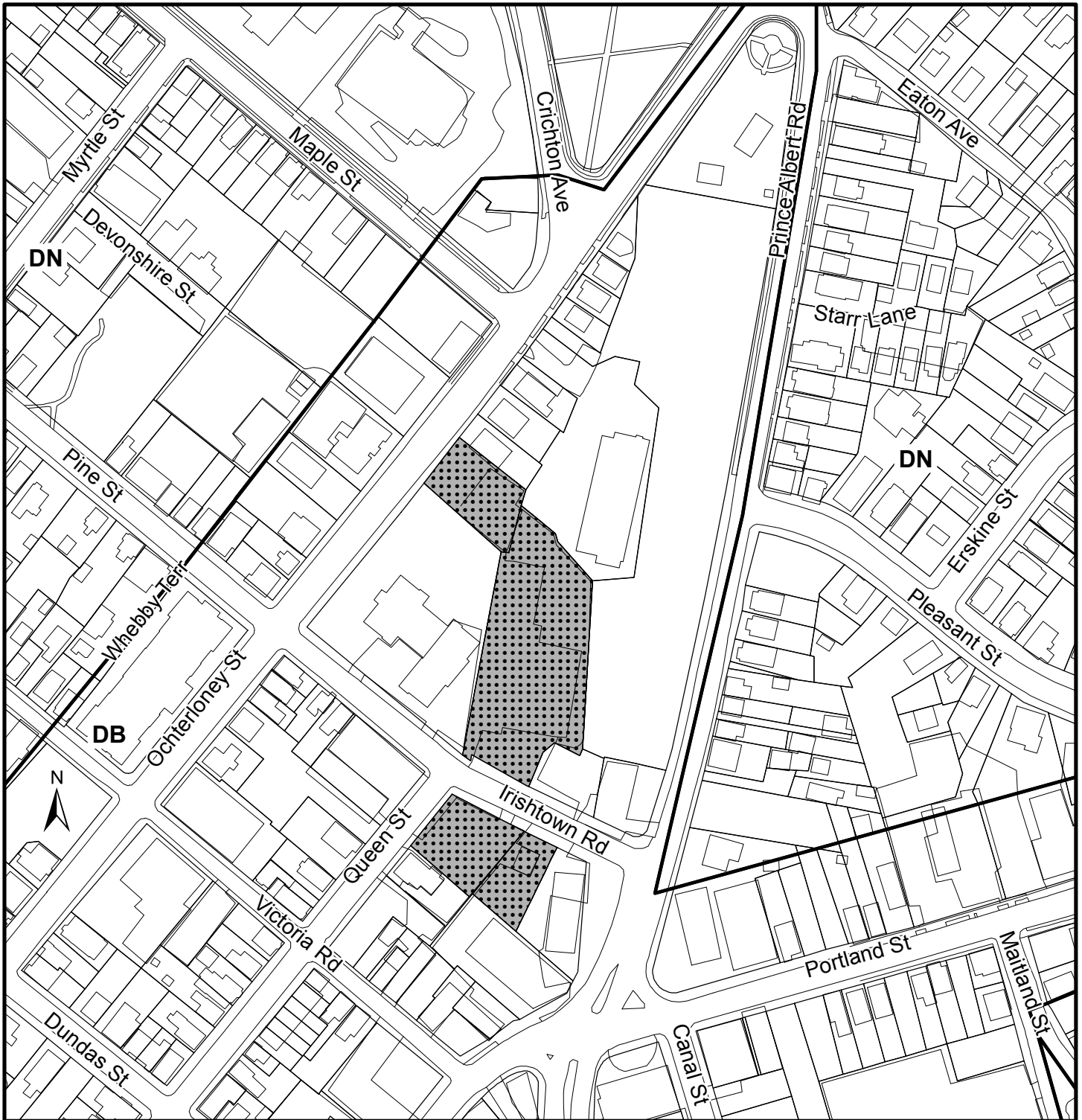
Map 1	Generalized Future Land Use
Map 2	Zoning
Attachment A	Proposed Amending Agreement
Attachment B	Policy B-7a of Downtown Dartmouth Secondary Planning Strategy

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Mitch Dickey, Planner, Development Approvals, 902.490.5719

Report Approved by: *Original signed*


Kelly Denty, Manager of Development Approvals, 902.490.4800



Map 1 - Generalized Future Land Use

PID 00230953, 41165614, 40580730, & 00232975
 Irishtown Rd, Dartmouth

HALIFAX

 Non-Substantive Amendment
 to an Existing Development
 Agreement

Designation

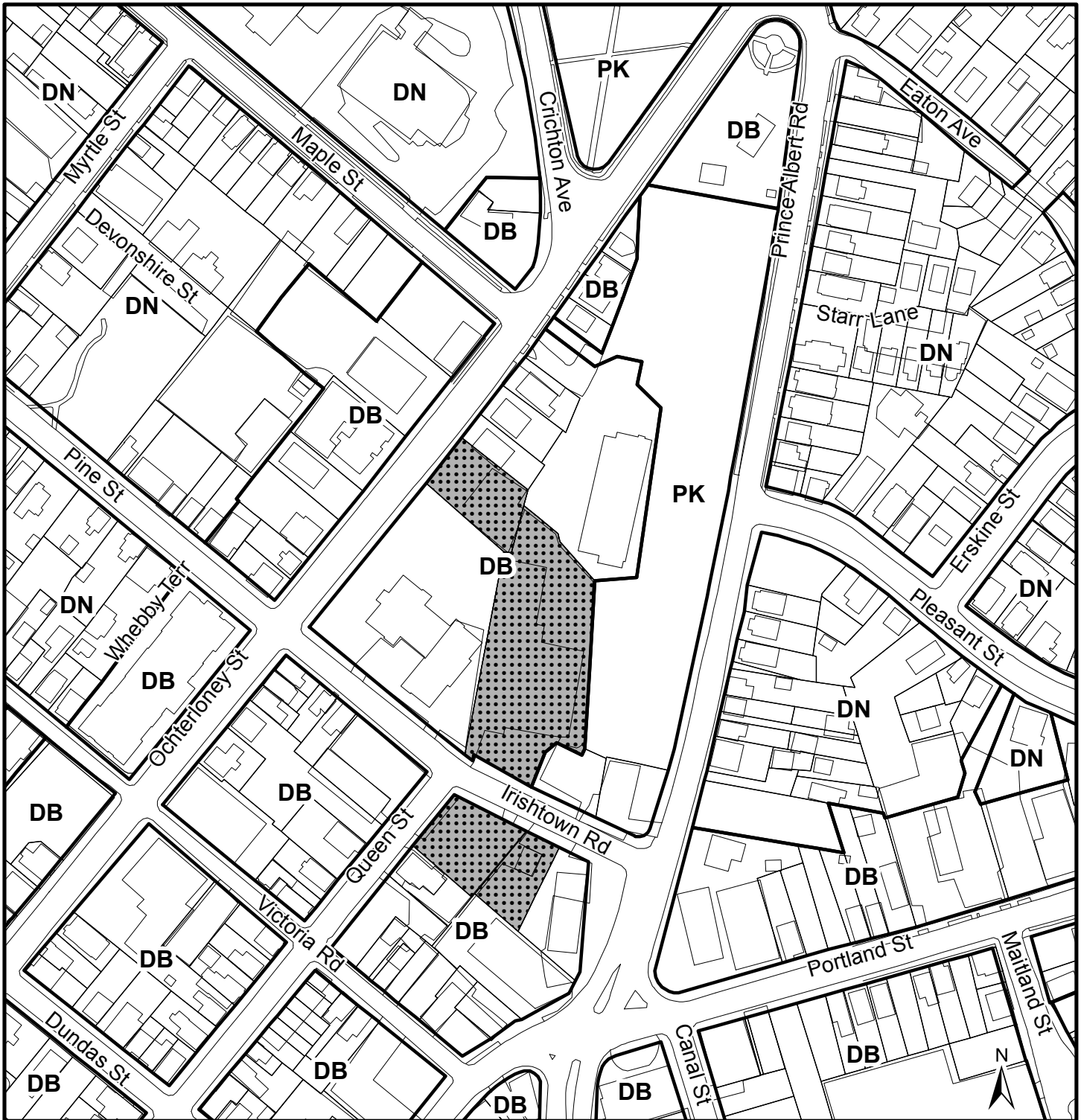
DN Downtown Business District
 DB Downtown Neighbourhood

Downtown Dartmouth
 Plan Area



This map is an unofficial reproduction of
 a portion of the Generalized Future Land
 Use Map for the plan area indicated.


The accuracy of any representation on
 this plan is not guaranteed.



Map 2 - Zoning

PID 00230953, 41165614, 40580730, & 00232975
 Irishtown Road, Dartmouth

HALIFAX

 Non-Substantive Amendment to an Existing Development Agreement

Zone

DN Downtown Business District
 DB Downtown Neighbourhood
 PK Park and Open Space



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

Downtown Dartmouth Plan Area

Attachment A
Proposed Amending Agreement

THIS AMENDING AGREEMENT made this day of , 2015

BETWEEN:

[INSERT Name of Corporation/Business]
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 located on Irishtown Road, Ochterloney Street and Queen Street, Dartmouth and which said lands are more particularly described in Schedule A hereto (hereinafter called "the Lands");

AND WHEREAS the Harbour East Community Council of the Halifax Regional Municipality approved an application to enter into a Development Agreement to allow for three buildings consisting of a total of 273 residential units, ground floor commercial space and underground parking on the Lands pursuant to the provisions of the Halifax Regional Municipality Charter and pursuant to Policy B-7a of the Secondary Planning Strategy for Downtown Dartmouth (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer wishes to amend the Existing Agreement to allow for an extension to the date of commencement of development pursuant to the provisions of the Halifax Regional Municipality Charter (herein after called the "Amending Agreement");

AND WHEREAS the Harbour East-Marine Drive Community Council for the Halifax Regional Municipality approved this request at a meeting held on [REDACTED], referenced as Municipal Case Number 19600;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree to the following amendments to the Existing Agreement:

1. The Existing Agreement shall be amended by deleting the number "2" in Section 7.3.1 and replacing it with the new number "3".
2. The Existing Agreement shall be amended by deleting the text of Section 7.3.2 and replacing it with the following:

“For the purposes of this section, commencement of development shall mean installation of the footings and foundations, for any or all of the buildings identified on Schedule B, within 3 years of the date of registration of this Agreement.”

- 3. The Existing Agreement shall be amended by deleting the number “8” in Section 7.5.1 and replacing it with the number “9”.

IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Owners Names)

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

Attachment B
Policy B-7a of Downtown Dartmouth Secondary Planning Strategy

Policy B-7a

Notwithstanding Policy D-1, Residential Opportunity Site E, as shown on Map 4, is appropriate for mid and high rise residential and mixed use development not exceeding 300 units within three buildings. In addition to the need for a high quality of design and construction, any proposal must foster attractive pedestrian oriented streetscapes, and ensure active, complementary interaction with the adjacent HRM parkland and Shubenacadie Canal corridor. Development on each of the separate parcels shall only be considered together and under a single development agreement to ensure comprehensive and complementary development. The development agreement process shall be utilized for any development on the lands. Council shall therefore consider:

- a) that building heights:
 - (i) up to 70 feet in height plus roof on the Ochterloney Street frontage may be permitted;
 - (ii) up to 14 stories on the south side of Irishtown Road may be permitted; and
 - (iii) up to 18 stories plus penthouse on the north side of Irishtown Rd may be permitted.

- b) that high quality building materials are used and the building design:
 - (i) makes use of podiums to provide 100% indoor/underground parking for residents and businesses. The parking portion of such podiums shall be screened from any adjacent private or public property through the provision of active, useable floor area and careful design at the edges of the structures;
 - (ii) incorporate interesting details and materials at the pedestrian level, with a high proportion of windows in any ground floor commercial space;
 - (iii) include a variety of housing unit types including multiple bedroom units and townhouse-form units at ground level that can accommodate residents in a variety of life stages, household sizes, incomes and tenure needs; and
 - (iv) include provision for pedestrian-oriented commercial uses, preferably café or restaurant uses with outdoor patios, where the site abuts HRM parkland.

- c) appropriate massing and building form for low, mid and high rise components of the buildings including:
 - (i) the need for transitions in scale, or separation distances equal to building height, from directly abutting areas which are designated as Downtown Neighbourhood;

- (ii) defining appropriate standards for bulk and above grade setbacks at the low, mid and high rise levels, and separation distances between buildings to ensure adequate street-level conditions with respect to minimizing wind and maximizing sun penetration and sky exposure;
 - (iii) ensuring an appropriate streetwall height of the low rise portion of each building to street width at a target ratio of 2:3; and
 - (iv) potential wind and shadow impacts on public space and appropriate means to minimize such impacts.
- d) that the project provide:
 - (i) extensive, high quality soft and hard landscaping which enhances the pedestrian environment and complements the Canal Greenway;
 - (ii) substantial useable active and passive amenity space both inside and out to cater to a range of ages and lifestyles, particularly in support of families; including the provision of useable green space on rooftops; and
 - (iii) payment of 10% parkland dedication fees for any further subdivision or consolidation of the parcels;.
- e) that the project address the site's historical context as part of the former Shubenacadie Canal and Starr Manufacturing sites by:
 - (i) ensuring a detailed archaeological assessment is carried out, and that measures are in place to allow proper site investigation prior to and during construction;
 - (ii) allowing restoration of a naturalized open stream bed to replace the piped waterway, formerly the mill stream, that flows underneath a portion of the site; and
 - (iii) including provision for preservation, restoration, and display of canal features, and interpretation of canal history.
- f) the establishment of phasing times for completion; and
- g) Regional MPS Policy CH-2 (regarding development adjacent to heritage properties) and Policy IM-15 (general implementation criteria). (RC–Dec 7/10;E–Feb 5/11)