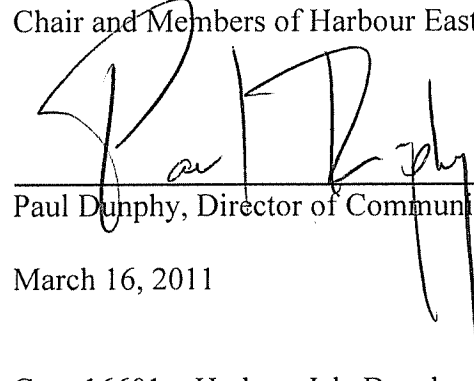


Harbour East Community Council
April 7, 2011

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:


Paul Dunphy, Director of Community Development

DATE: March 16, 2011

SUBJECT: Case 16601 – Harbour Isle Development Agreement, Dartmouth

ORIGIN

An application by Harbour Isle Halifax Ltd., to discharge the existing Harbour Isle development agreement, as amended in 2009, and enter into a new development agreement to permit a 13 storey residential/commercial mixed use building on their lands at 675 Windmill Road, Dartmouth.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give Notice of Motion to consider the proposed development agreement as set out in Attachment A of this report, and schedule a Public Hearing;
2. Approve, by Resolution, the Discharge of the Existing Agreement and Amending Agreement applied to the Lands; and
3. Approve the proposed development agreement for a 13 storey mixed use building, as set out in Attachment A of this staff report; and
4. Require the 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 later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

History

In 2007 HRM and GJR Developments entered into a development agreement to enable a residential development comprised of 255 dwelling units within 3 multi-unit buildings on a waterfront location between Wrights Cove and Windmill Road, as illustrated on Map 1. Subsequently, ownership of the Lands was transferred to Harbour Isle Halifax Inc., which amended the original agreement in 2009, although the project has not been developed. This application seeks to discharge the existing agreement and enter into a new agreement for a single mixed use building as illustrated on the Map 3 and as set out in Attachment A.

Enabling Policy

In 2009 Halifax Regional Council approved the Wrights Cove Secondary Planning Strategy to direct land use and development within the area of the secondary plan, as illustrated on Map 2. The subject property is located within the Harbour Related Commercial Residential (HRCR) designation, which enables Council to consider medium to high density residential developments by development agreement. The proposal may be considered by Harbour East Community Council (HECC), pursuant to Policy WC-4 of the Wrights Cove Secondary Plan and Policies IP-5 and IP-1(c) of the Dartmouth MPS (Attachment B). The intent of the policies is to enable residential developments while ensuring that the interests of existing commercial and residential uses are addressed.

Proposal

Harbour Isle Halifax Inc. has applied to discharge the existing agreement from the Lands, and enter into a new development agreement to permit a mixed use building comprised of a 13 storey 75 unit residential building, 17 townhouses and 4,500 square feet of ground floor commercial space as generally illustrated on Map 3. The proposed agreement also permits the development of 5 additional ground floor townhouse units as an alternative to the proposed commercial space.

As illustrated on the preliminary subdivision/consolidation plan included as Map 4, the Developer's land holdings are sufficient to accommodate a significant amount of development beyond the single building proposed pursuant to this application. Staff recommended that the Developer submit a proposal which considers future development on the entire site at a conceptual level to enable a comprehensive review of the future servicing, infrastructure, land use and amenity needs of the Lands. However, the Developer prefers to proceed with the single mixed use building at this time. As a result, staff are only able to review the proposal on this basis and the Developer has been advised of the risk that potential future development of its adjacent lands may be compromised. This risk is the result of staff not being able to review the current application with any context of the overall layout and distribution of land uses on the remaining property holdings.

DISCUSSION

Staff has reviewed the proposal relative to the applicable policies of the Dartmouth MPS (Attachment B). Policy WC-4 sets out specific criteria for developments in the Wright Cove area, while policies IP-5 and IP-1 (c) include more general criteria that apply to all multi-unit

building proposals in Dartmouth. Staff are of the opinion that the proposal is consistent with all applicable policies of the Dartmouth MPS.

The following matters, including all applicable criteria from Policy WC-4, have been identified for more detailed discussion, while a review of additional criteria from policies IP-5 and IP-1(c) are set out in Attachment B.

Setback to Windmill Road

Policy WC-4 establishes a 300 foot setback from Windmill Road for residential developments within the HRCR designation so as not to compromise the commercial viability of the adjacent Windmill Road commercial corridor. The proposed residential building is not located within the 300 foot Windmill Road setback.

Building Height

The maximum height of proposed residential buildings on sites such as the subject lands, which are not adjacent to a single unit dwelling, is 16 storeys. The proposed building is 13 storeys in height in addition to a mechanical penthouse on the roof of the building.

Noise Mitigation

Policy WC-4 requires that measures be taken in the design of residential buildings in order to mitigate noise. The proposed building is located outside of the 300 foot setback to Windmill Road and the building is to be constructed of concrete and clad with a precast or masonry veneer and include thermopane windows with an STC rating that will minimize the impact of noise within the dwelling units.

Waterfront Trail

Policy WC-4 of the Wright's Cove Secondary Plan requires that proposals include provisions to accommodate a future waterfront trail. The Developer is proposing to construct a combined waterfront trail/public sidewalk system that begins at Windmill Road and connects to a trail along the waterfront boundary of the Lands. The Developer is also proposing to register an easement, in favour of HRM, to allow for public access to the walkway. The width of the easement is 10 feet and the width of the travel surface, which must be designed and built to HRM standards, is a minimum of 6 feet. The travel surface of the waterfront trail may be comprised of different materials such as concrete, pavers, asphalt or other materials deemed satisfactory by HRM.

Sea Level Rise

The lowest habitable floor elevation in the proposed building is located at a minimum height of 8 metres above sea level. The Developer has indicated that this elevation provides reasonable protection in relation to estimated sea level rise since it is more than 2.5 times higher than the 3.1 metre storm surge that was experienced on the property during Hurricane Juan.

Unexploded Military Ordinance

The Developer retained a consultant to conduct a survey of the property with respect to the potential presence of unexploded military ordinance. That study was reviewed by Defence

Construction Canada, who subsequently advised staff that the results of the study satisfy the need to protect the public and construction workers at this site and that no further work is required.

Buffering and Compatibility

Policies IP-5 and IP-1 (c) emphasize the importance of ensuring that multi-unit residential buildings are designed so as to reduce potential impacts on adjacent properties and land uses. The proposed building is located several hundred metres from the nearest low density residential properties and is 3 storeys lower than the maximum height of 16 storeys which may be considered pursuant to Policy WC-4. The entire building is located outside of the 300 foot setback to Windmill Road and its materials and windows will reduce potential noise from nearby commercial and industrial uses. The building also includes ground floor commercial space and low rise townhouses at its base which will create a pleasant and pedestrian friendly presence at ground level.

Infrastructure

All infrastructure and services located on the lands shall be designed and constructed according to applicable HRM and Halifax Water standards unless otherwise approved by HRM Development Engineering or Halifax Water. As previously indicated, staff do not have sufficient information to evaluate the proposal in the context of future development on adjacent undeveloped lands. Neither HRM nor Halifax Water will assume ownership of any of the private infrastructure that will service this development.

Windmill Road is one of the busiest streets in HRM and the Municipality has been exploring a number of options for increasing the level of service on Windmill Road, one of which involves the creation of a new street parallel to the west side of Windmill Road in an area that includes a portion of the subject property. As a result, the proposed development agreement requires that the Developer design and construct the portion of this road that is located on the Lands to an Urban Minor Collector standard, and install traffic signals at the intersection of Ralston Avenue and Windmill Road.

Conclusion

Staff is of the opinion that the proposed development is consistent with the intent of Policy WC-4 regarding residential development within the HRCR designation. The proposed building meets the criteria of Policy WC-4, as discussed above, as well as the general evaluative criteria set out in Policies IP-5 and IP-1(c). Therefore, staff recommends that Council discharge the existing development agreement, as amended in 2009, and enter into the proposed development agreement set out in Attachment A.

BUDGET IMPLICATIONS

There are no budget 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 proposed budget with existing resources.

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 information sharing, achieved through the HRM Website, responses to inquiries, as well as an information/notification sheet that was sent to property owners in the general area of the site which provided direction for submitting comments or concerns to HRM staff regarding the proposal (Attachment D).

Should Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area will be notified as shown on Map 1.

The proposed development agreement will potentially impact local residents and property owners such as the Dartmouth Yacht Club and adjacent businesses.

ALTERNATIVES

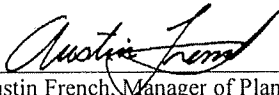
1. Council may choose to approve the proposed development agreement as set out in Attachment A. This is the recommendation of staff for reasons set out in this report.
2. Council may choose to approve the proposed development subject to modifications. This may necessitate further negotiation with the Developer and a second Public Hearing.
3. Council may choose to refuse the proposed development agreement set out in Attachment A, and in doing so, must identify conflict(s) with MPS policy.

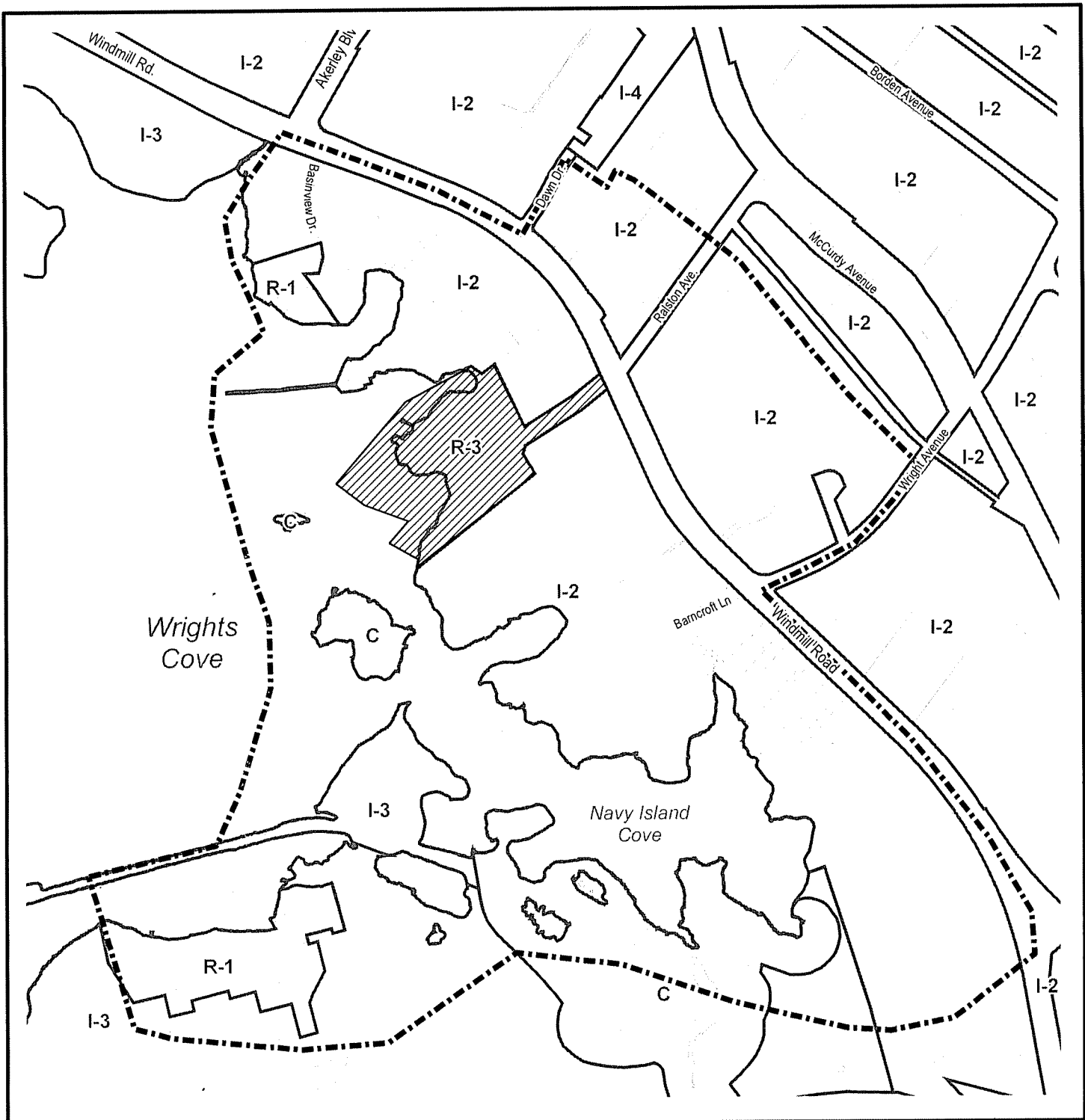
ATTACHMENTS

Map 1	Zoning and Location
Map 2	Generalized Future Land Use
Map 3	Proposed Site Plan
Attachment A	Proposed Development Agreement
Attachment B	Excerpts from the Dartmouth MPS and additional Policy Evaluation
Attachment C	Excerpts from the Dartmouth LUB
Attachment C	Public Submissions

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



Report Prepared by: Joseph Driscoll, Senior Planner, 490-3991

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



Map 1 Zoning & Location

Harbour Isle

-  Subject Property
-  Notification Area

Dartmouth Plan Area

ZONE

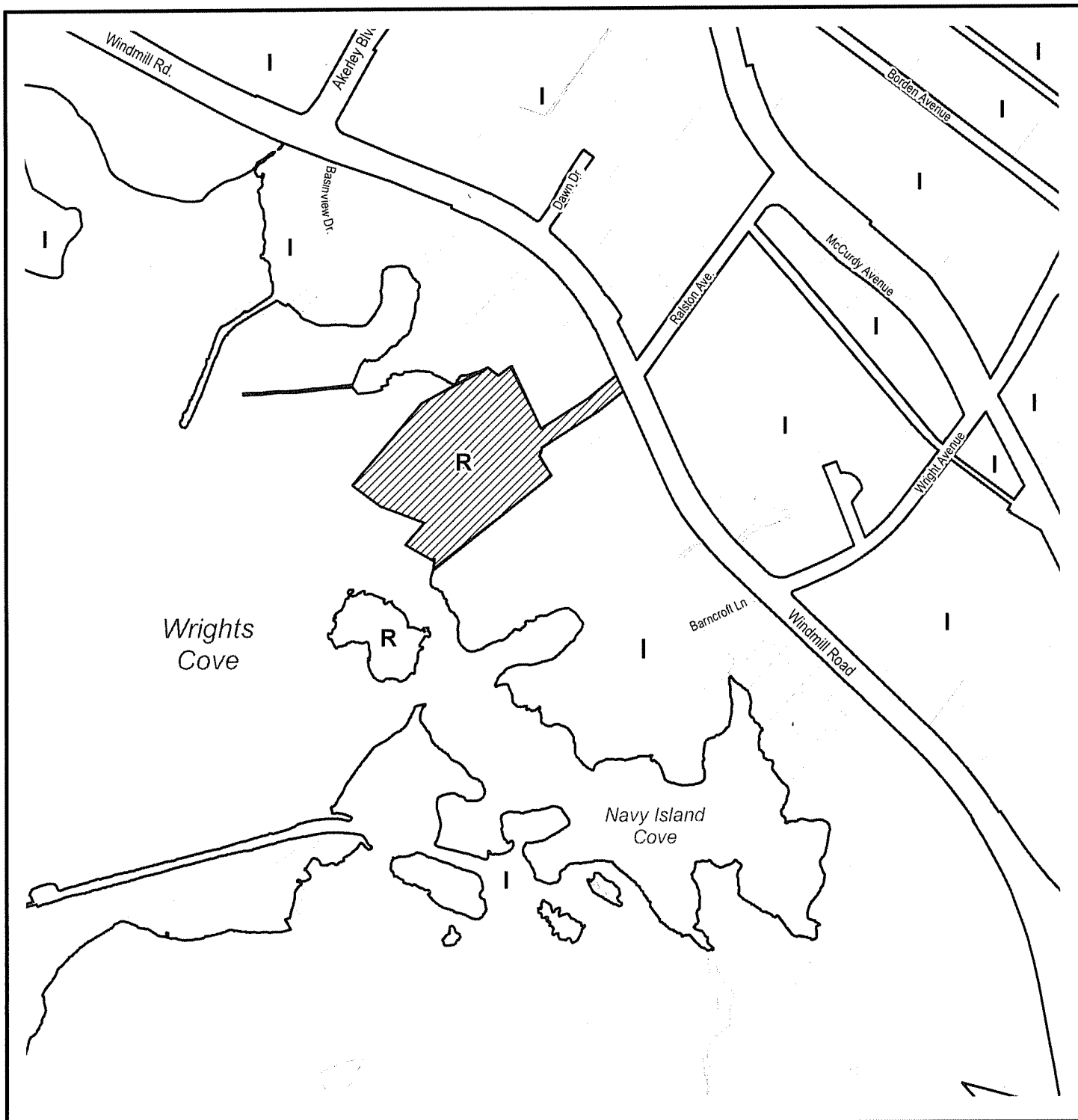
- R-1 Single Family Residential
- R-3 Multiple Family Residential
- C Conservation Zone
- I-2 General Industrial Zone
- I-3 Light Industrial Zone
- I-4 Salvage Zone

HALIFAX
REGIONAL MUNICIPALITY
Community Development
Planning Services

0 150 300 600 900 Feet


This map is an unofficial reproduction of a portion of the Zoning Map for the Dartmouth Land Use By-law area.

HRM does not guarantee the accuracy of any representation on this plan



Map 2 Generalized Future Land Use

Harbour Isle

 Subject Property

Designation

R Residential
I Industrial

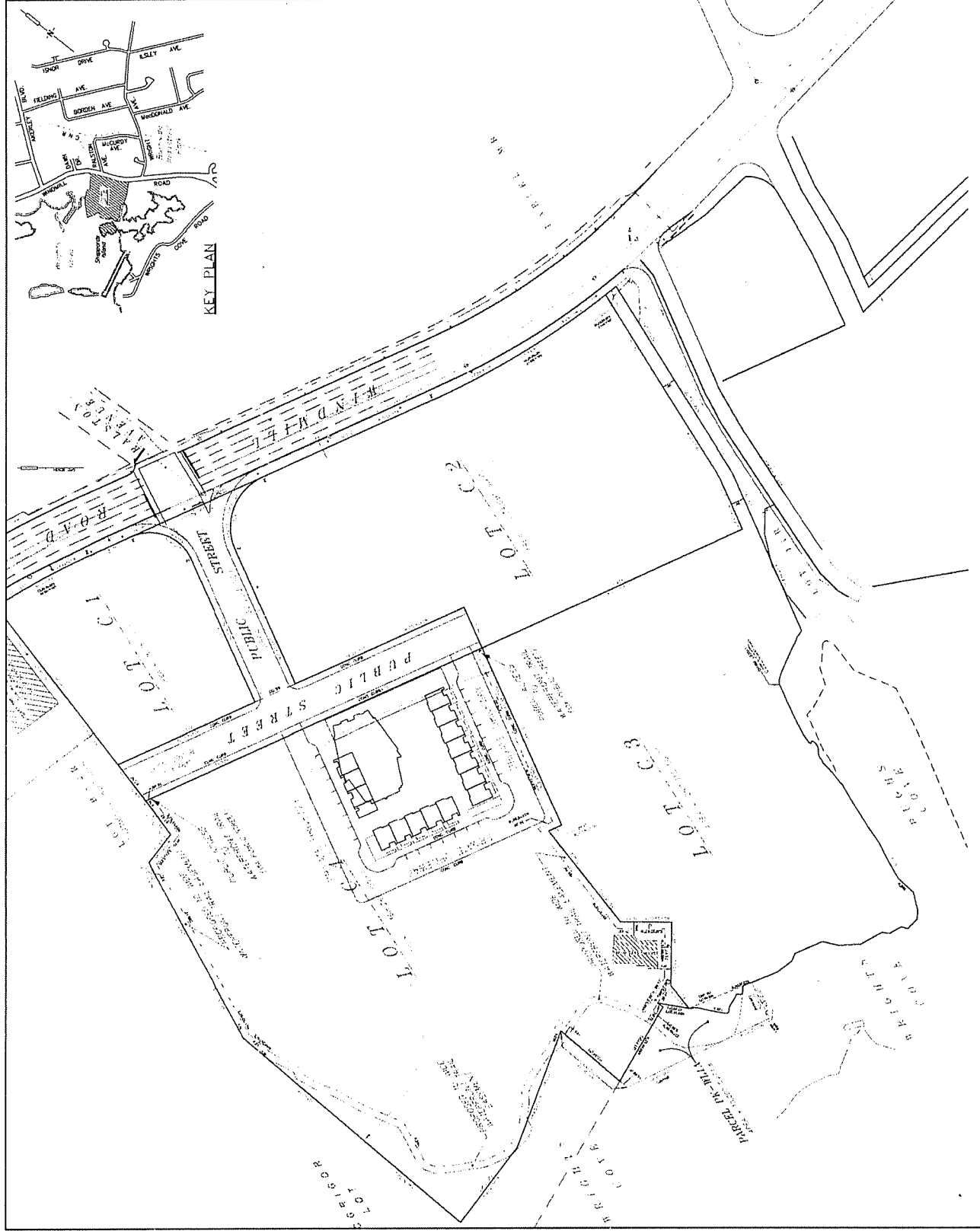
Dartmouth Plan Area

HALIFAX
REGIONAL MUNICIPALITY
Community Development
Planning Services

0 150 300 600 900
Feet

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Dartmouth Land Use By-law area

HRM does not guarantee the accuracy of any representation on this plan



Map 3 Concept Plan

HRM does not guarantee the accuracy of any base information.

Attachment A: Proposed Development Agreement

THIS AGREEMENT made this day of [Insert Month], 2011,

BETWEEN:

(Insert Developer Name)

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 between Wright's Cove and Windmill Road, Dartmouth, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Municipality entered into a Development Agreement with GJR Developments Ltd. to allow for 255 dwelling units within 3 multi-unit residential buildings, which was registered at the Land Registry Office in Halifax as Document Number 88788139 (hereinafter called the "Existing Agreement");

AND WHEREAS GJR Developments Ltd. transferred its interest in the Lands to Sheppards Island Incorporated, which transferred its ownership of the Lands to Harbour Isle Halifax Incorporated on May 14, 2008;

AND WHEREAS the Municipality entered into an amendment to the Existing Agreement with Harbour Isle Halifax Incorporated which was registered at the Land Registry Office in Halifax as Document Number 93015643 (hereinafter called the "Amending Agreement");

AND WHEREAS the Developer has requested that the Existing and Amending Agreements be discharged;

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow a 13 storey residential/commercial mixed use building on the Lands pursuant to the provisions of the Halifax Regional Municipality Charter and pursuant to Policies WC-4, IP-5 and IP-1(c) of the Dartmouth Municipal Planning Strategy;

AND WHEREAS the Harbour East Community Council of the Municipality, at its meeting on [Insert - Date], approved the said Agreement to allow a 13 storey residential/commercial mixed use building on the Lands subject to the registered owner of the Lands described herein entering into this Agreement, referenced as Municipal Case Number 16601, and at the same meeting, approved the discharge of the Existing Development Agreement and the Amending Development Agreement as they applied to PIDs **41209131, 00099572, 41209123, 41200676 and 41224148**, which are filed in the Land Registry Office as Document Numbers 88788139 and 93015643 respectively, said discharge to take effect upon the registration of this Agreement;

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By law and Subdivision By law

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By law for Dartmouth and the Regional Subdivision By law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by law of the Municipality applicable to the Lands (other than the Land Use By law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.

1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on site and off site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

1.4.1 Where the provisions of this Agreement conflict with those of any by law of the Municipality applicable to the Lands (other than the Land Use By law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 Costs, Expenses, Liabilities and Obligations

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law. If not defined in these documents their customary meaning shall apply.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 16601:

Schedule A	Legal Description of the Lands(s)
Schedule B	Concept Plan
Schedule C	Preliminary Landscape Plan
Schedule D	Preliminary Plan of Subdivision/Consolidation
Schedule E	Parking/Floor Plan

Schedule F	Preliminary Servicing Plan
Schedule G	Building Elevation - South
Schedule H	Building Elevation - North
Schedule I	Building Elevation - West
Schedule J	Building Elevation - East

3.2 Requirements Prior to Approval

- 3.2.1 Prior to the issuance of any Municipal Permits, the Developer shall complete the Multi-unit/Industrial/Commercial/Institutional/Commercial (MICI) permit application review process.
- 3.2.2 The Municipality shall not issue any Development or Construction Permit unless Final Design Approval has been granted for all streets and services and the Developer has entered into a Subdivision Agreement for proposed Lot C-4 and the two proposed public streets, as generally illustrated on Schedules B, D and F.
- 3.2.3 The Municipality may issue a Development or Construction Permit prior to Final Subdivision Approval being granted provided that the Developer has posted applicable securities for the construction of streets and services, in accordance with the Final Design Approval and Subdivision Agreement, to the satisfaction of the Development Officer. The Municipality shall not issue an Occupancy Permit unless Final Subdivision Approval has been granted.
- 3.2.4 The Municipality shall not grant Final Subdivision Approval for Lot C-4 unless the proposed subdivision/consolidation includes the provision of a registered easement or right-of-way, for the benefit of the Municipality, for public access over the waterfront trail. The Development Officer, in consultation with the HRM Parkland Planner, shall be satisfied that the registered easement or right-of-way for the waterfront trail provides unobstructed access from Windmill Road and conforms with the requirements of section 3.12 of this Agreement.
- 3.2.5 Prior to the issuance of a Construction Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:
 - (a) A Landscaping Plan in accordance with Section 3.8 of this Agreement; and
 - (b) A Lighting Plan in accordance with Section 3.7 of this Agreement.
- 3.2.6 Prior to the issuance of the first Municipal Occupancy Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:
 - (a) Written confirmation from a Landscape Architect (a full member, in good standing with Canadian Society of Landscape Architects) that the Development

Officer may accept as sufficient record of compliance with the landscaping requirements set out in section 3.8 of this Agreement; and

- (b) Written confirmation from a qualified professional which the Development Officer may accept as sufficient record of compliance with the lighting requirements set out in section 3.7 of this Agreement.

3.2.7 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By law (except to the extent that the provisions of the Land Use By law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.2.8 Notwithstanding subsection 3.2.7, if relevant securities have been posted in accordance with this Agreement to the satisfaction of the Development Officer, an Occupancy Permit may be issued.

3.3 General Description of Land Use

3.3.1 The use(s) of the Lands permitted by this Agreement is a mixed use commercial/residential building, as generally illustrated on the Schedules, comprised of the following:

- (a) A maximum of 75 dwelling units in a multi-unit residential building not to exceed a height of 13 storeys;
 - (b) A maximum of 17 townhouse dwelling units;
 - (c) 4,500 square feet of commercial retail, full service and take-out restaurants, service, personal service, neighbourhood convenience or office uses. As an alternative, the commercial space may be developed and used as a maximum of 5 townhouse units, in addition to the townhouse units referenced in 3.3.1 (b);
 - (d) A publically accessible waterfront trail as generally illustrated on Schedules B, C and D as set out in section 3.12; and
 - (e) A private neighbourhood park as generally illustrated on Schedule C and as set out in subsection 3.13.
- 3.3.2 Within the multi-unit residential building, a maximum of 31 dwelling units may be 1 bedroom units, and all other units shall contain two or more bedrooms.

- 3.3.3 The Development Officer may permit unenclosed structures attached to a main building such as verandas, decks, porches, steps, and mobility disabled ramps to be located within the required minimum front, side and rear yards in conformance with the provisions of the Land Use By-law, as amended from time to time.
- 3.3.4 Unless otherwise stated in this Agreement, development of the Lands shall conform with the provisions of the R-3 Zone, as set out in the Dartmouth Land Use By-law and amended from time to time.
- 3.4 Siting and Architectural Requirements
- 3.4.1 The building shall be located and oriented as generally illustrated on Schedule B, and shall comply with the following:
- (a) Lot coverage shall not exceed 25%;
 - (b) The building shall be setback a minimum distance of 300 feet from Windmill Road and shall front on the new public street parallel to Windmill Road as illustrated on Schedule B;
 - (c) The maximum height of the building shall not exceed 13 habitable storeys and the height elevations indicated on Schedules G through J; and
 - (d) The minimum front yard setback is reduced to 2 feet.
- 3.4.2 The Developer agrees that the design, form, and exterior materials of the building shall, in the opinion of the Development Officer, conform with the Building Elevations included with this Agreement as Schedules G through J.
- 3.4.2 All façades shall be designed and detailed as primary façades. Further, architectural treatment shall be continued around all sides of the building as identified on the Schedules.
- 3.4.3 Any exposed foundation in excess of 1 metre in height shall be architecturally detailed, veneered with stone or brick or treated in an equivalent manner acceptable to the Development Officer.
- 3.4.4 Roof mounted mechanical and/or telecommunication equipment shall be visually integrated into the roof design or screened and shall not be visible from any public street or adjacent residential development. Changes to the rooftop mechanical penthouse, as illustrated on the Schedules, shall be permitted provided that the height and area of the mechanical penthouse is reduced.
- 3.4.5 The building shall be designed such that the mechanical systems (HVAC, exhaust fans, etc.) are not visible from Windmill Road, the Dartmouth Yacht Club or adjacent residential properties. Furthermore, mechanical equipment or exhaust fans shall be

screened as an integral part of the building design. This shall exclude individual residential mechanical systems.

3.4.6 Multiple storefronts shall be visually unified through the use of complementary forms, materials and colours. Covered awnings and similar devices shall be permitted to provide shelter, and encourage pedestrian movement.

3.4.7 Refuse containers located outside the building shall be fully screened from adjacent properties and from streets by means of opaque fencing or masonry walls with suitable landscaping.

3.5 SUBDIVISION OF THE LANDS

3.5.1 Development of the Lands shall occur on proposed Lot C-4, as illustrated on the Schedules. The Municipality shall not issue a Development or Construction Permit for the development unless the following conditions have been satisfied:

- (a) The Developer has received Final Design Approval for the proposed development; and
- (b) The Developer has entered into a Subdivision Agreement with the Municipality as well as a Services Agreement with Halifax Water for the proposed streets and municipal infrastructure.

3.6 PARKING, CIRCULATION AND ACCESS

3.6.1 Outdoor parking areas shall be sited as shown on Schedule E and provided in accordance with the Dartmouth Land Use By-law. All parking required for the multi-unit building and townhouse portions of the development shall be provided underground, or within the internal courtyard which is illustrated on Schedule E.

3.6.2 Above ground parking areas shall be hard surfaced with asphalt, concrete, pavers or an acceptable equivalent and shall be delineated by concrete curb.

3.7 OUTDOOR LIGHTING

3.7.1 Lighting shall be directed to driveways, parking areas, loading areas, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.7.2 Further to subsection 3.7.1, prior to the issuance of a Construction Permit, the Developer shall prepare a Lighting Plan and submit it to the Development Officer for review to determine compliance with Section 3.7 of this Agreement. The Lighting Plan shall contain, but shall not be limited to, the following:

- a) The location, on the building and on the premises, of each lighting device; and
 - b) A description of the type of proposed illuminating devices, fixtures, lamps, supports, and other devices.
- 3.7.3 The Lighting Plan and description shall be sufficient to enable the Development Officer to ensure compliance with the requirements of Section 3.7 of this Agreement. If such plan and description cannot enable this ready determination, by reason of the nature or configuration of the devices, fixtures or lamps proposed, the Developer shall submit evidence of compliance by certified test reports as performed by a recognized testing lab.
- 3.7.4 The information used to satisfy the requirements of this section may be included on the site plan or building elevations provided that the Development Officer is satisfied of compliance with section 3.7 of this Agreement.
- 3.8 LANDSCAPING
- 3.8.1 All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications in the opinion of the Landscape Architect that prepares the plans required pursuant to subsection 3.8.2.
- 3.8.2 Landscaping Plan
Prior to the issuance of a Construction Permit, the Developer agrees to provide a Landscaping Plan which complies with the provisions of this section and generally conforms with the overall intentions of the preliminary landscape features shown on Schedule C. The Landscaping Plan shall be prepared by a Landscape Architect (a full member, in good standing with Canadian Society of Landscape Architects) and comply with all provisions of this section.
- 3.8.3 All portions of the Lands not used for structures, parking areas, driveways, curbing, or walkways shall be landscaped except for areas where natural vegetative cover is maintained. Landscaping shall be deemed to include grass, mulch, decorative stone or water features, planting beds, trees, bushes, shrubs or other plant material or decorative element deemed acceptable by the Development Officer.
- 3.8.4 The Landscaping Plan shall include the location, spacing and species of any vegetation. The Developer shall maintain all landscaping, shrubs, plants, flower beds and trees and shall replace any damaged, dead or removed stock.
- 3.8.5 Construction or Manufacturer's Details
Specifications for all constructed landscaping features such as fencing, retaining walls, pergolas, 3 stream waste disposal facilities, benches, and lighting shall be provided to the Development Officer, and shall describe their design, construction, specifications, hard surface areas, materials and placement so that they will enhance the design of individual buildings and the character of the surrounding area.

- 3.8.6 The Landscape Plan(s) shall provide details of all ground level open spaces, courtyards and rooftop gardens and open spaces as shown on the attached Schedules. The plan(s) shall specify all model numbers, quantities and manufacturers of site furnishings as well as construction details of landscaping features (pergolas, benches, etc.).
- 3.8.7 Retaining walls shall be permitted on private property only, unless approved by the Development Engineer, and any retaining wall shall be constructed of a decorative precast concrete or modular stone retaining wall system or an acceptable equivalent in the opinion of the Municipality.
- 3.8.8 Details of any retaining wall systems that exceeds a height of 3 feet are to be identified, including the height and type of fencing proposed in conjunction with it. A construction detail of any fence and wall combination should be provided and certified by a Professional Engineer.
- 3.8.9 Planting materials shall be carefully selected for their ability to survive in their specific location relative to such factors including, but not limited to, sunlight/shade conditions, or rooftop and sea exposure conditions.
- 3.8.10 Compliance with Landscaping Plan
Prior to issuance of the Occupancy Permit the Developer shall submit to the Development Officer a letter, prepared by a member in good standing of the Canadian Society of Landscape Architects, certifying that all landscaping has been completed according to the terms of this Agreement.
- 3.8.11 Notwithstanding subsection 3.8.10, the Occupancy Permit may be issued provided that the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The cost estimate is to be prepared by a member in good standing of the Canadian Society of Landscape Architects. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by the Development Officer. Should the Developer not complete the landscaping within twelve months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this section of the Agreement. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.

3.9 MAINTENANCE

3.9.1 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting of walkways and driveways.

3.9.2 All disturbed areas shall be reinstated to original condition or better.

3.10 SIGNS

3.10.1 Signage shall conform with the following requirements:

- (a) Projecting or canopy signs may be permitted provided that encroachment permits/licenses are approved if the right-of-way is impacted;
- (b) No flashing lights shall be incorporated in any sign and any lighting shall be arranged so as not to be directed at neighbouring properties;
- (c) Signs depicting the name or corporate logo of the Developer shall be permitted while a sales office is located on the Lands;
- (d) Minor directional ground and fascia signs as may be required for vehicular/pedestrian traffic and "way-finding" purposes are permitted on the Lands;
- (e) A maximum of one permanent ground sign shall be permitted at the entrance to the development to denote the community or development name. The location of such sign shall require the approval of the Development Officer in consultation with the Development Engineer. The maximum height of any such sign inclusive of support structures shall not exceed 10 feet (3.05 m) and the face area of any sign shall not exceed 50 square feet (4.65 sq.m.). All such signs shall be constructed of natural materials such as wood, stone, brick, enhanced concrete or masonry. The only illumination permitted shall be low wattage, shielded exterior fixtures. The ground sign may identify businesses located in the commercial component of the development. This section shall not preclude the construction of decorative entrance gates;
- (f) Commercial signage for the businesses located on the Lands shall comply with the commercial sign provisions of the Dartmouth Land Use By-law; and
- (g) All signs on the Lands shall only be externally illuminated.

3.11 TEMPORARY CONSTRUCTION BUILDING

A building shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction and sale of the development in accordance with this Agreement. The construction/office building shall be removed from the Lands prior to occupancy of the last dwelling unit.

3.12 Waterfront Trail

- 3.12.1 The Developer shall grant a 10 foot wide public easement for a Primary Trail corridor to HRM. The trail easement shall begin at the new public street parallel to Windmill Road, run along the waterfront boundary of the Lands along Wrights Cove and end at the opposite end of the new public street as generally illustrated on Schedules B, C and D.
- 3.12.2 The Developer agrees to construct a 6 foot wide waterfront trail within the Primary Trail corridor required pursuant to section 3.12.1. The 6 foot wide travel surface of the trail shall consist of crusher dust and shall be accompanied by shoulders comprised of bark mulch or another material deemed acceptable by the Municipality. The trail shall meet accessibility standards, in the opinion of the Development Officer and Parkland Planner, and shall conform to a maximum grade of 8%. The exact location and design of the trail shall be approved by the Development Officer, in consultation with the Parkland Planner, prior to the issuance of a Construction Permit, and the trail shall be constructed, as specified, prior to the issuance of an Occupancy Permit.
- 3.12.3 Both ends of the waterfront trail shall be accessed via public sidewalks constructed in conjunction with the new public street parallel to Windmill Road. The sidewalks shall be constructed by the Developer in accordance with HRM specifications and shall provide pedestrian connections from Windmill Road to either end of the waterfront trail.

3.13 Private Neighbourhood Park

- 3.13.1 The Developer shall construct a private neighbourhood park for the benefit of the residents of the proposed development as generally illustrated on Schedule C.
- 3.13.3 The private neighbourhood park shall count toward the amenity space required pursuant to the Land Use By-law.
- 3.13.4 The landscaping and design for the private neighbourhood park shall conform with the requirements of Section 3.8 of this Agreement and shall be included on the Site Grading Plan required pursuant to section 5.1.

3.14 Private Amenity Space

Amenity space for the benefit of the residents of the multi-unit residential building shall be provided in accordance with the requirements of the Dartmouth Land Use By-law.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

All design and construction of primary and secondary service systems shall satisfy the Municipal Design Guidelines unless otherwise provided for in this Agreement and shall receive written design approval from the Development Officer, in consultation with the Development Engineer, prior to undertaking the work.

4.2 Traffic Signals

The Developer agrees to design and construct traffic signals at the intersection of Ralston Avenue, Windmill Road and the new public street that will provide access to the Lands from Windmill Road. The design and construction of the traffic signals shall conform to Municipal Standards and shall be approved by the Development Engineer. The design of the traffic signals shall be included as part of the Final Design Approval. No Occupancy Permit shall be issued on the Lands unless the traffic signals are constructed and operating to the satisfaction of the Development Engineer.

4.3 Public Streets

The Developer agrees to design and construct both Public Streets proposed for the Lands in conformance with the standards for Minor Collector Streets, as set out in the Municipal Design Guidelines, unless otherwise approved by the Development Engineer. The Developer shall design and construct permanent or temporary turn around facilities or cul-de-sac bulbs at each end of the new Public Street that parallels Windmill Road in accordance with the Municipal Design Guidelines unless otherwise approved by the Development Engineer. The Municipality shall not issue Final Design Approval until the design of the turn around facilities or cul-de-sac bulbs has been approved by the Development Engineer.

4.4 Other Approvals

The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including sanitary sewer system, water supply system, stormwater sewer and drainage systems, streets, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of HRM and other approval agencies, except as provided herein. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All construction shall be in accordance with Municipal Specifications and By-laws.

4.3 Municipal Water Distribution, Sanitary Sewer and Storm Sewer Systems

The Municipal water distribution, sanitary sewer and storm sewer systems shall conform with Halifax Water's latest edition of their Design and Construction Specifications unless otherwise deemed acceptable by Halifax Water and the Municipality.

4.4 Off-Site Disturbance

Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

4.5 Outstanding Site Work

The Municipality may accept securities for the completion of outstanding on-site paving and landscaping work on the privately owned portion of the Lands (at the time of issuance of the Occupancy Permit). Such securities shall consist of a security deposit in the amount of 110 percent of the estimated cost to complete the work. The security shall be in favour of the Municipality and may be in the form of a certified cheque or irrevocable automatically renewing letter of credit issued by a chartered bank. The security shall be returned to the Developer by the Development Officer when all outstanding work is satisfactorily completed.

4.6 The Developer shall not commence clearing, excavation or blasting activities required for the installation of primary or secondary services in association with a subdivision prior to receiving final approval of the subdivision design unless otherwise permitted by the Development Officer, in consultation with the Development Engineer.

4.7 Solid Waste Facilities

4.7.1 The building shall include designated space for three stream (refuse, recycling and composting) source separation services. This designated space for source separation services shall be shown on the building plans and approved by the Development Officer and Building Inspector in consultation with Solid Waste Resources.

4.7.2 Refuse containers and waste compactors shall be screened from public view by means of opaque fencing or masonry walls with suitable landscaping.

4.8 Private Infrastructure

All private services and infrastructure located on the Lands, including but not limited to the private circulation driveway(s), laterals for water and sewer, and any private stormwater pipes or collection systems, shall be owned, operated and maintained by the Developer. Furthermore, the Municipality shall not assume ownership of any of the private infrastructure or service systems constructed on the Lands.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Site Grading Plan and Stormwater Management

No Development Permit shall be issued unless a Site Grading Plan, prepared by a qualified Professional Engineer in accordance with the Municipal Design Guidelines, is submitted to the Municipality. The plan(s) shall identify stormwater management measures to minimize any adverse impacts on adjacent lands or stormwater drainage

systems during and after construction. Stormwater shall not be directed to adjacent private property unless private easements are provided in accordance with the most recent edition of the Halifax Water Design and Construction standards.

5.2 Erosion and Sedimentation Control Plan

Prior to the commencement of any onsite works on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated offsite works, the Developer shall have prepared by a Professional Engineer and submitted to the Municipality a detailed Erosion and Sedimentation Control Plan. The plans shall comply with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by Nova Scotia Environment. Notwithstanding other Sections of this Agreement, no work is permitted on the site until the requirements of this clause have been met and implemented.

5.3 Erosion Control

No Occupancy Permit shall be issued unless a Professional Engineer certifies that the entire lot is stabilized in accordance with all applicable standards and regulations of the Province of Nova Scotia and with the terms of this Agreement. Any temporary stabilization of the Lands shall be replaced with final landscaping within six (6) months of the issuance of the Occupancy Permit. The owner of the Lands shall be responsible for ensuring that any temporary stabilization materials are replaced and/or maintained on an as-required basis to ensure that exposed soil is adequately stabilized at all times.

5.4 Stormwater Management System

The Developer agrees to construct, at its own expense, the Stormwater Management System associated with the proposed development. The Developer shall provide certification from a Professional Engineer that the system has been constructed in accordance with the approved design. All private storm water facilities shall be maintained in good order in order to maintain full storage capacity by the owner of the lot on which they are situated.

5.5 Failure to Conform to Plans

If the Developer fails at any time during any site work or construction to fully conform to the requirements set out under Part 5 of this Agreement, the Municipality shall require that all site and construction works cease, except for works which may be approved by the Development Officer, in consultation with the Development Engineer, to ensure compliance with the environmental protection plans.

PART 6: AMENDMENTS

6.1 Non Substantive Amendments

The following items are considered by both parties to be non substantive and may be amended by resolution of Council.

- (a) Changes to the exterior materials of the building;

- (b) Changes to the location and layout of uses and buildings as illustrated on Schedule B;
- (c) An increase in the amount of ground floor commercial space permitted on the Lands or changes to permit additional commercial uses in addition to those specified in this Agreement;
- (d) An increase in the number of 1 bedroom units permitted in the multi-unit building provided that the overall number of dwelling units within the multi-unit building does not exceed 75;
- (e) The granting of an extension to the date of commencement of construction as identified in Section 7.3.1 of this Agreement;
- (f) The length of time for the completion of the development as identified in Section 7.4 of this Agreement;

6.2 Substantive Amendments

Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Halifax Regional Municipality Charter.

PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

7.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

7.2 Subsequent Owners

7.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.

7.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

7.3 Commencement of Development

7.3.1 In the event that development on the Lands has not commenced within 2 years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.

7.3.2 For the purpose of this section, commencement of development shall mean installation of the footings and foundation for the proposed building

7.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

7.4. Completion of Development

Upon the completion of the whole development or complete phases of the development, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By law for Dartmouth, as may be amended from time to time.

7.5 Discharge of Agreement

7.5.1 If the Developer fails to complete the development after 4 years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement; or
- (c) discharge this Agreement.

PART 8: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

8.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

8.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer 30 days written notice of the failure or default, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court

and waives any defense based upon the allegation that damages would be an adequate remedy;

- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the Assessment Act;
- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By law; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the Halifax Regional Municipality Charter or Common Law in order to ensure compliance with 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:

=====

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

(Insert Registered Owner Name)

Per: _____

Per: _____

=====

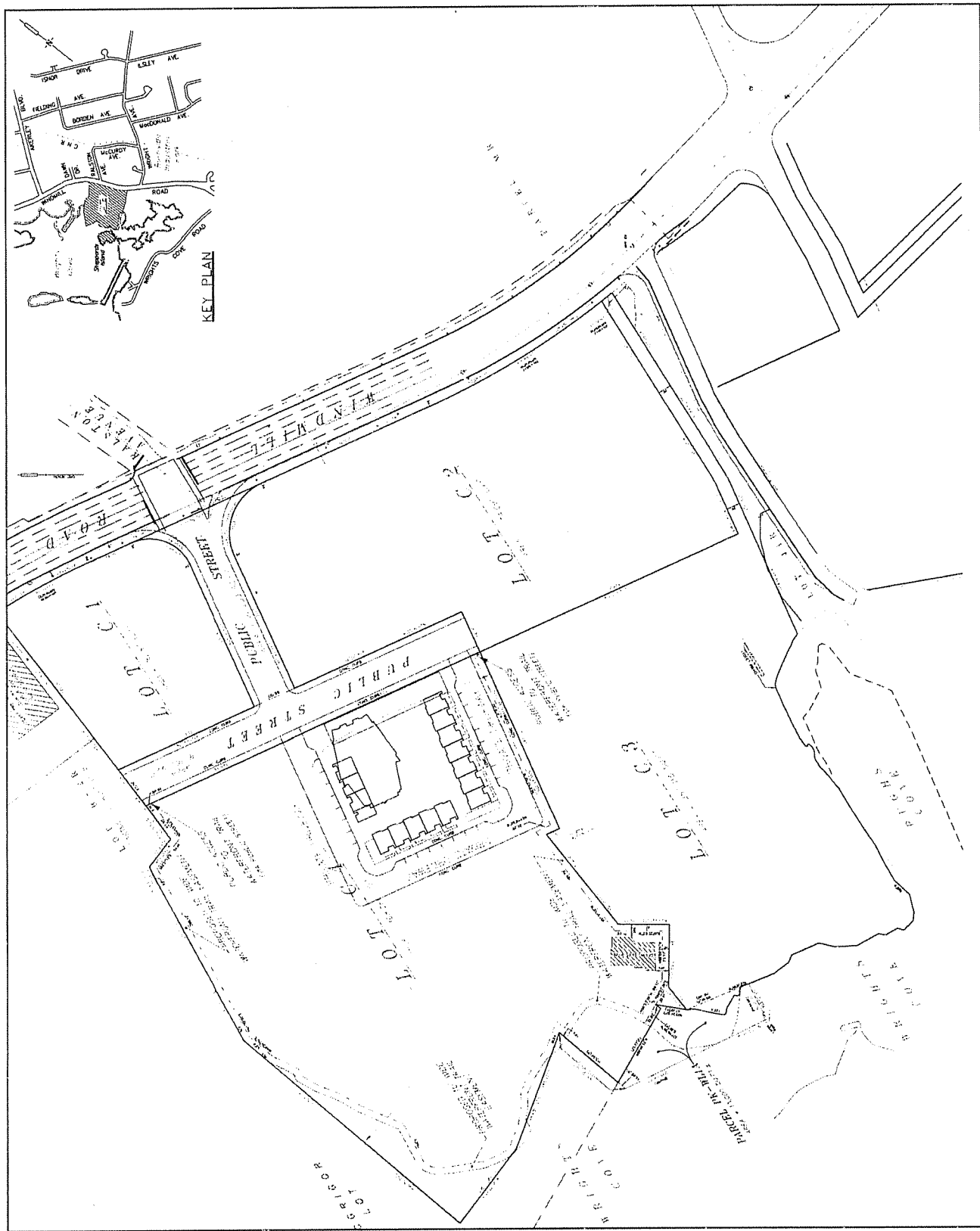
**HALIFAX REGIONAL
MUNICIPALITY**

Per: _____

Mayor

Per: _____

Municipal Clerk



Schedule B Concept Plan

HRM does not guarantee the accuracy of any base information.



Legend

- Play Structure
- Park
- Tree
- Bench
- Green Space
- Trail

Public Access to
Waterfront Trail
(via Public St.)

Wind Mill Road

Public Street

Public Street

Private Driveway

Public Access to
Waterfront Trail
(via Public St.)

Trees

Play Structure

Bench

Trail

Existing Sales
Office

Harbour Isle

Development Agreement

March 2011

EXISTENTIAL PLANNING & DESIGN

Schedule C: Preliminary Landscape Plan

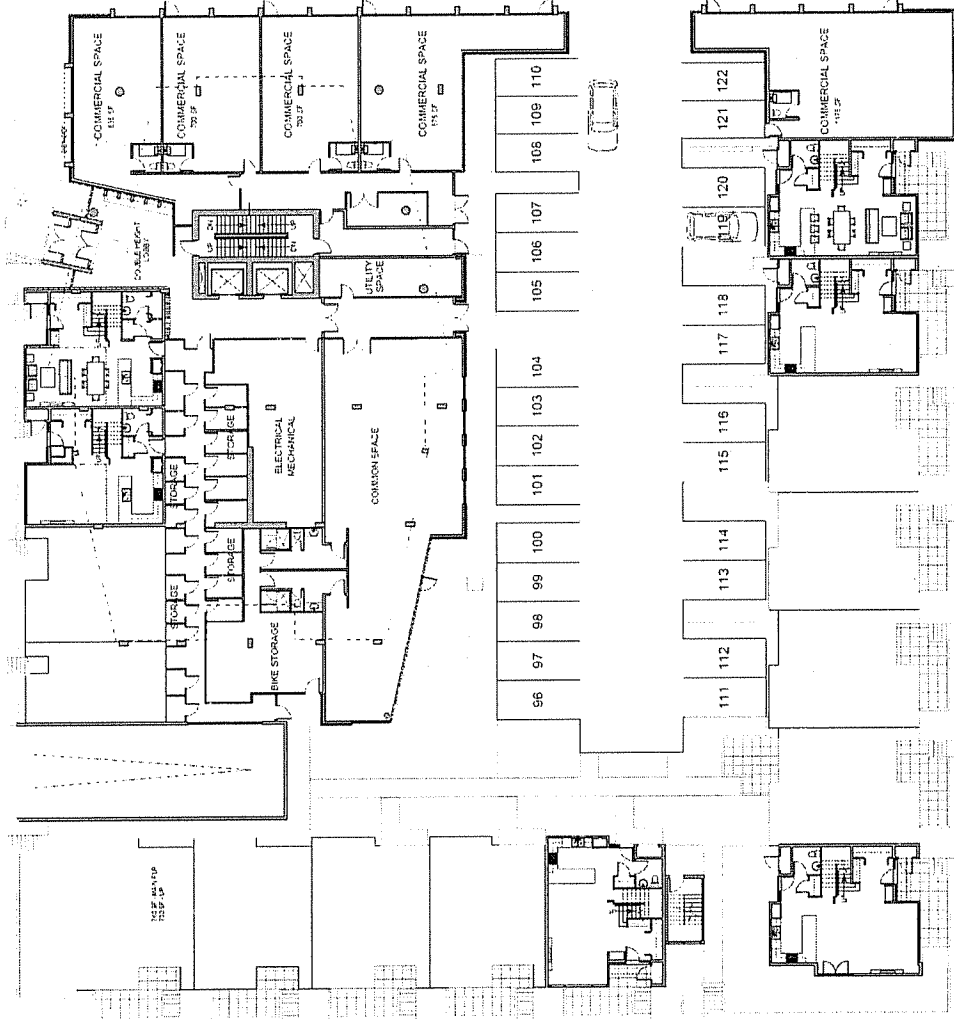
HRM does not guarantee the accuracy of any base information.



LOWER PARKING ENTRANCE

TOWER ENTRANCE

COURTYARD ENTRANCE



1 LEVEL - MAIN F1 29 OCTOBER 2010
Scale: 1/16" = 1'-0"

Schedule E: Courtyard Parking/Main Floor Plan

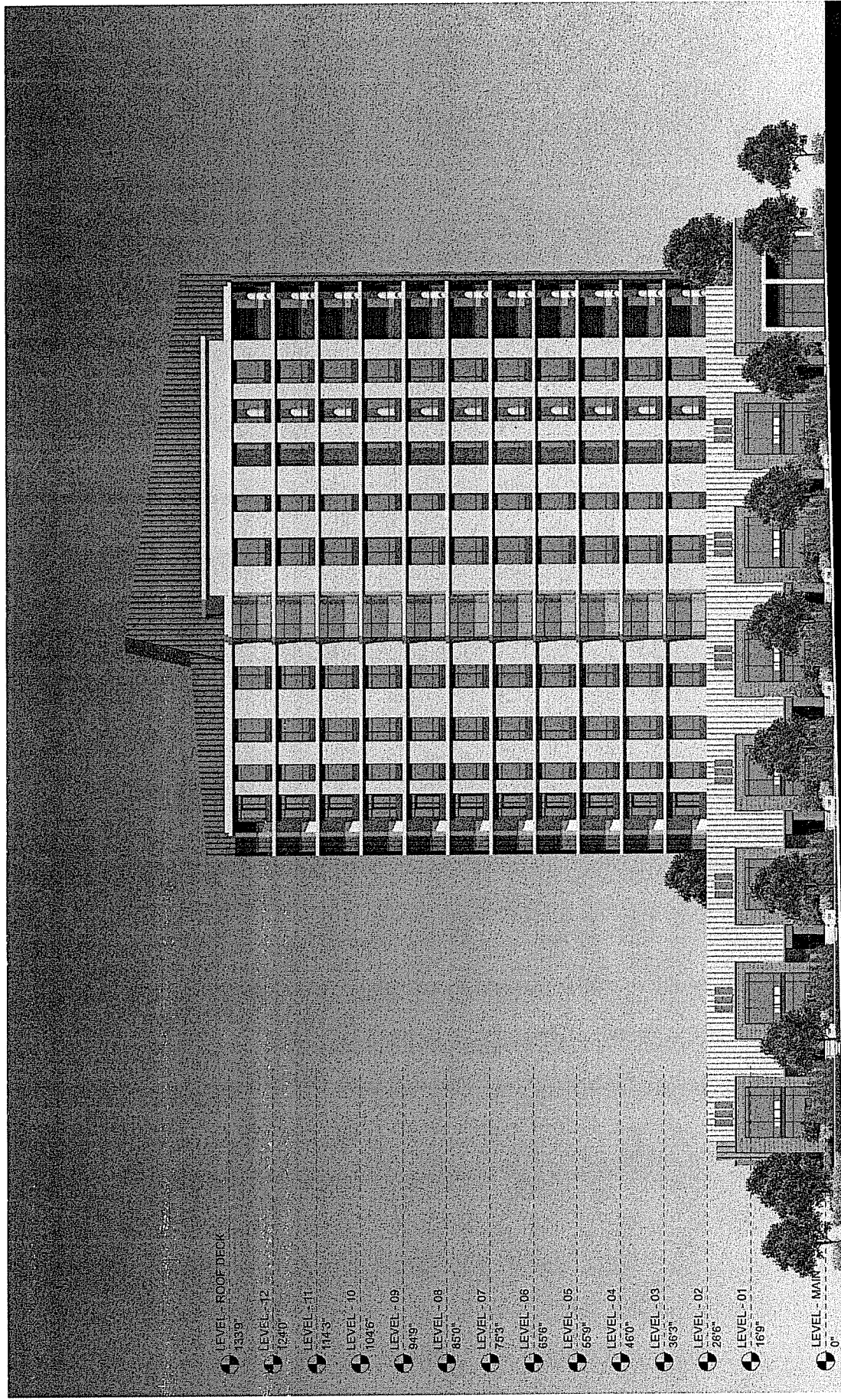
HRM does not guarantee the accuracy of any base information.



March 23, 2011

Case 16601

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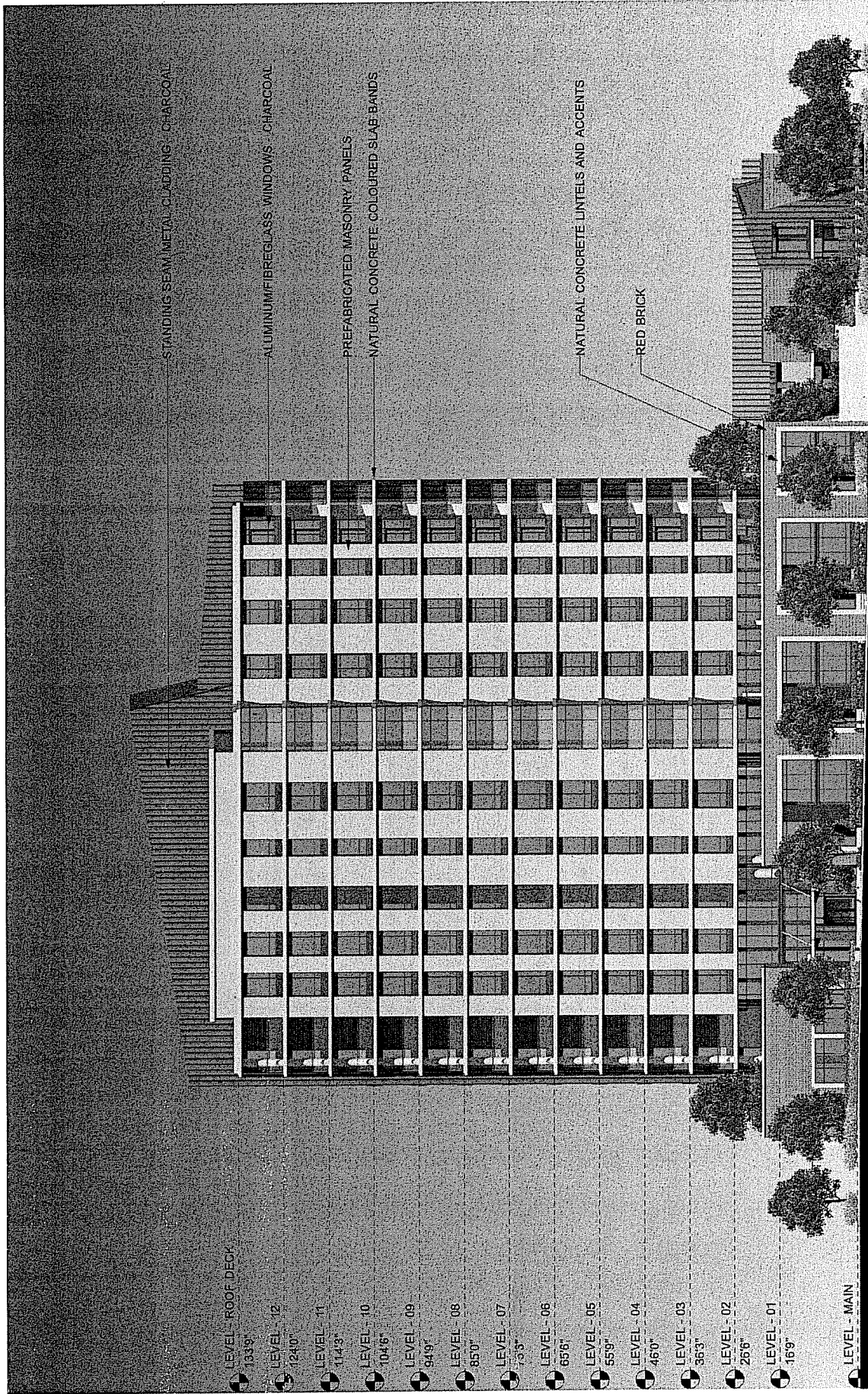


SOUTH ELEVATION

HARBOUR ISLE - PHASE I NOVA SCOTIA 14 AUGUST 2010

Schedule G: Building Elevation - South

HRM does not guarantee the accuracy of any base information.

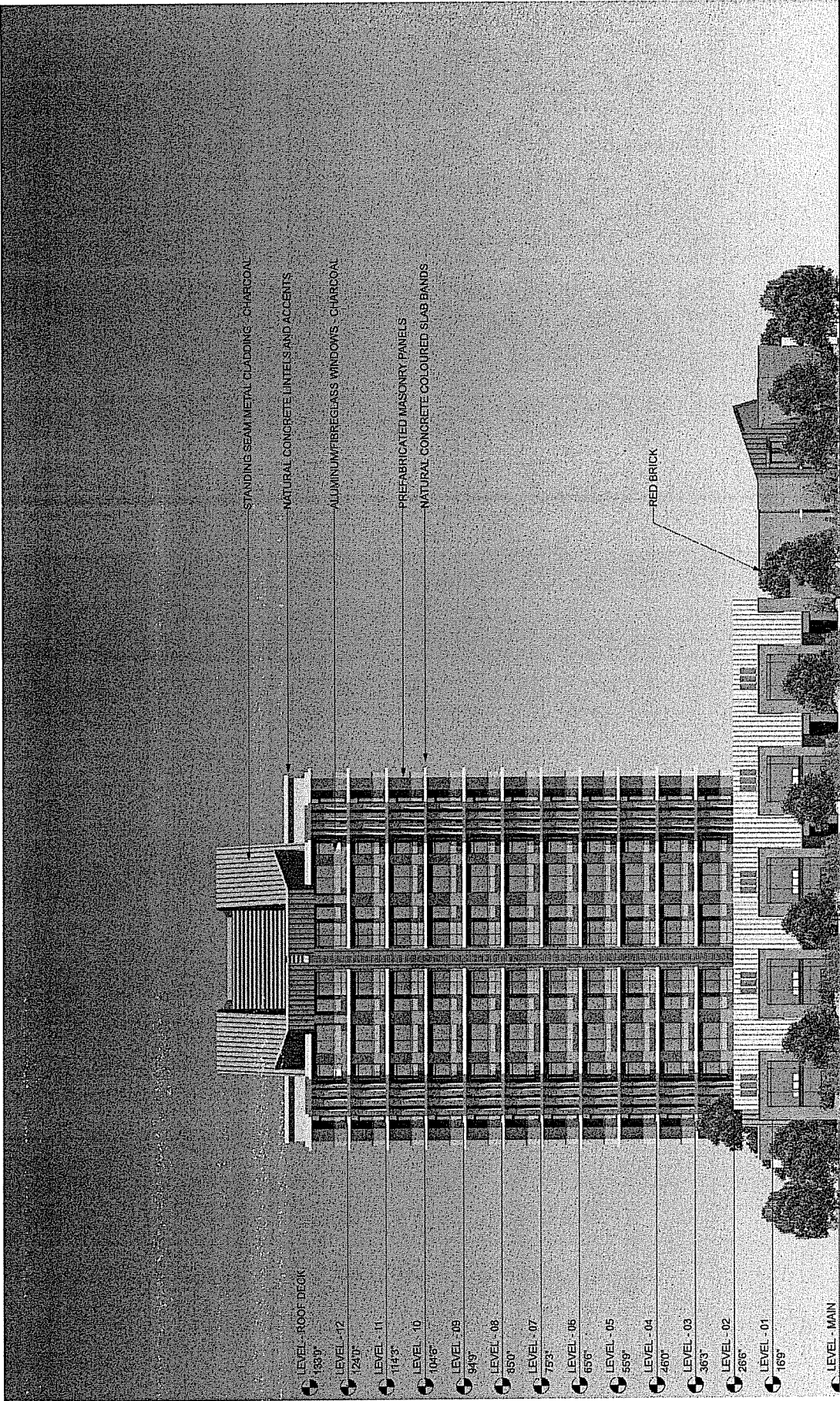


NORTH ELEVATION

HARBOUR ISLE - PHASE I NOVA SCOTIA 14 AUGUST 2010

Schedule H: Building Elevation - North

HRM does not guarantee the accuracy of any base information.

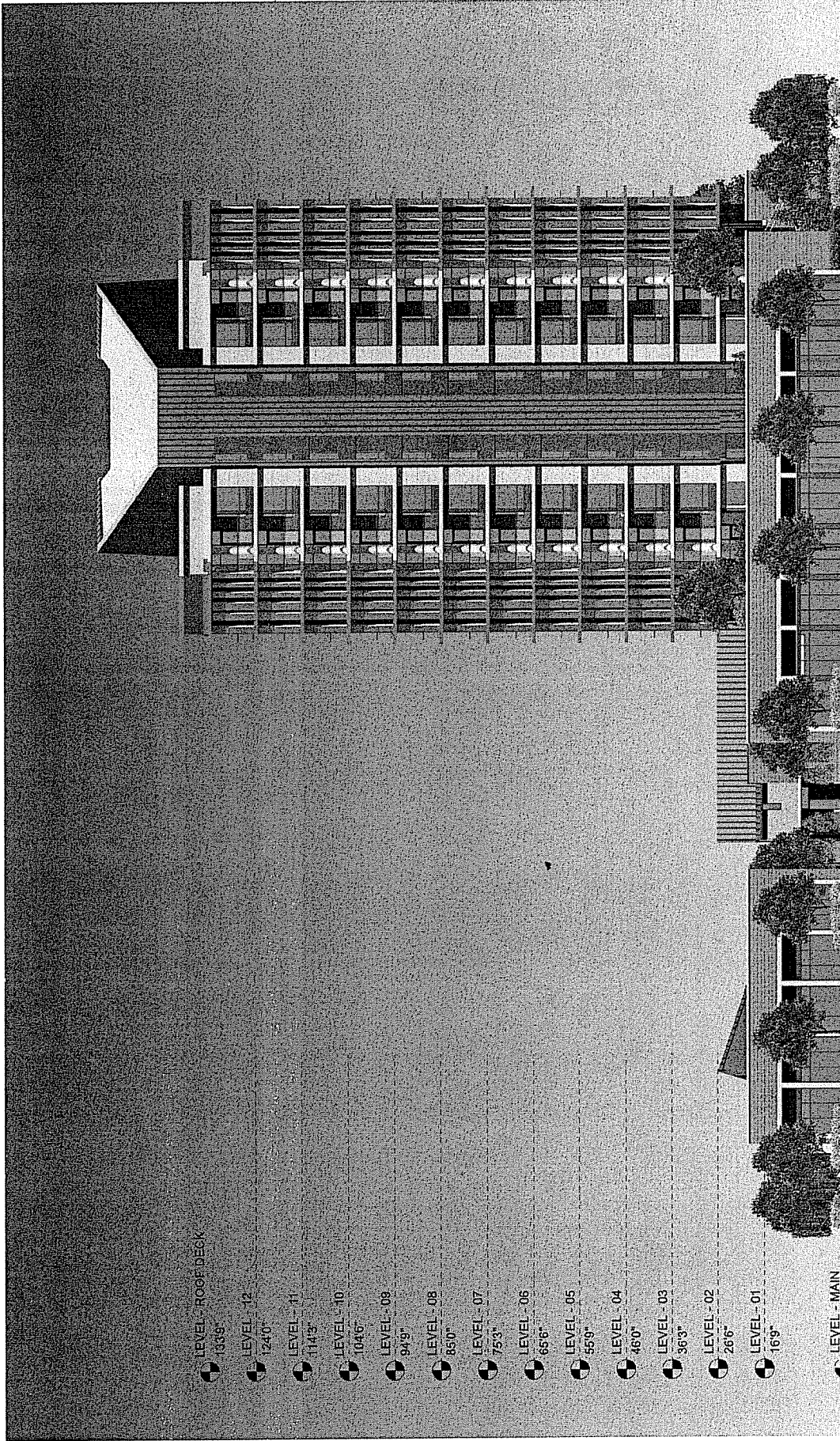


WEST ELEVATION

HARBOUR ISLE - PHASE I NOVA SCOTIA 14 AUGUST 2010

Schedule I: Building Elevation - West

HRM does not guarantee the accuracy of any base information.



EAST ELEVATION

HARBOUR ISLE - PHASE I NOVA SCOTIA 14 AUGUST 2010

Schedule J: Building Elevation - East

HRM does not guarantee the accuracy of any base information.

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this ____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that _____, _____ of the parties thereto, signed, sealed and delivered the same in h presence.

A Commissioner of the Supreme Court
of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this ____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that _____, Mayor and _____, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in h presence.

A Commissioner of the Supreme Court
of Nova Scotia

Attachment B: Excerpts from the Dartmouth MPS and Additional Policy Review

Please note: A review of the proposed development relative to the applicable criteria of Policy WC-4 is included in the Discussion section of this report. A review of the proposed development relative to policies IP-5 and IP-1(c) is included within this attachment.

Commercial Designations:

Lands bordering Windmill Road are suitable for highway-related commercial development to benefit from the visibility to passing traffic, but, more general industrial uses, which can be incompatible with highway commercial uses, will be supported on lands within the Burnside Business Park further to the north of the highway.

Lands between the inner-cove shoreline and highway commercial uses are not suitable for many highway commercial uses but offer opportunities for businesses that can take advantage of the harbour views or utilize the more shallow waters of the cove. Residential developments may also be integrated within this area, provided that controls are established to protect the interests of commercial uses and existing residential uses, as well as the new occupants.

Policy WC-4: Within the Harbour-Related Commercial/Residential designation shown on Schedule WR-1, existing business will be permitted to expand in accordance with the I-2 (General Industrial) Zone provisions of the Land Use By-law. Harbour-related commercial uses, institutional uses, offices, hotels, townhouses, apartment buildings, restaurants and public and private recreation uses may be considered within this designation subject to approval of a development agreement. The following matters shall be considered in any agreement:

- (a) no residential development may be located within 300 feet of the Windmill Road right-of-way except that minor variances to this setback may be considered provided that the development viability of the commercial area is not compromised and effective screening, such as fencing or landscaping, is included to serve as a buffer between the commercial and residential developments;
- (b) no building shall exceed 16 storeys in height;
- (c) notwithstanding (b) above, no building shall exceed six (6) storeys in height where the building is proposed to be located on a property abutting, or adjacent to, a property containing a single-unit dwelling in existence at the time of application for a development agreement;
- (d) measures are taken in the building design of residential, institutional or office uses to mitigate noise;
- (e) where applicable, provision is made for the construction of a publicly accessible waterfront trail across the lands;
- (f) all development on the lands shall incorporate provisions that mitigate potential damages from coastal flooding and storm-surge events;

- (g) that a survey be completed by a qualified person, verifying that there is no evidence of unexploded ordnance on and adjacent the subject site, particularly if water-lot infill is being proposed;
- (h) any development contemplated on Sheppard's Island cover no more than twenty-five percent (25%) of the area of the island, and the trees on the remaining seventy-five percent (75%) area are retained in order to screen development on the island and mainland from harbour-related industrial activities in the outer cove; and
- (i) the criteria of policy IP-1(c) and IP-5 for any apartment building development.

(o) Apartment Building Development

Careful consideration should be given to the construction of apartment buildings throughout the City. Recently, concerns have been expressed about the exterior design, density, concentration, site treatment, massing and traffic issues as they relate to apartment development. These issues could be addressed by the Development Agreement process and would also permit public involvement in the evaluation of the proposed development.

Policy IP-5 It shall be the intention of City Council to require Development Agreements for apartment building development in R-3, R-4, C-2, MF-1 and GC Zones. Council shall require a site plan, building elevations and perspective drawings for the apartment development indicating such things as the size of the building(s), access & egress to the site, landscaping, amenity space, parking and location of site features such as refuse containers and fuel storage tanks for the building.

In considering the approval of such Agreements, Council shall consider the following criteria:

	Policy	Comment
(a)	adequacy of the exterior design, height, bulk and scale of the new apartment development with respect to its compatibility with the existing neighbourhood;	The proposal includes a 13 storey building which is below the maximum height for the subject lands as set out in policy WC-4. The building is not located in close proximity to residential or commercial properties and is to contain ground floor townhouse and commercial uses as well as underground/internal courtyard parking.
(b)	adequacy of controls placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of:	

	Policy	Comment
	(i) the height, size, bulk, density, lot coverage, lot size and lot frontage of any proposed building;	Controls on the height and bulk of the proposed building are described above. The proposal meets the R-3 (Multiple Family Residential - Medium Density) Zone standards for density and lot coverage. The tower portion of the building is much smaller than the townhouse/commercial base at pedestrian level and the location of the building on a new public street with no neighbours render potential impacts unlikely.
	(ii) traffic generation, access to and egress from the site; and	A traffic analysis was submitted by the Developer and was found to meet HRM guidelines. The development agreement requires the Developer to design and construct both traffic signals for the intersection of Windmill Road and Ralston Avenue and a portion of a new collector road intended to relieve pressure from this section of Windmill Road.
	(iii) parking;	Parking is required pursuant to the requirements of the Land Use By-law, and all of the required parking for the residential component of the project must be underground or within the internal courtyard. There are no surface parking lots permitted.
(c)	adequacy or proximity of schools, recreation areas and other community facilities;	Halifax Regional School Board has indicated that there is capacity in the schools assigned to this area. There are currently limited recreation areas in the immediate vicinity of the proposed development, however the proposed agreement requires that amenity space be provided in accordance with the LUB, that the Developer construct a private neighbourhood park, and that the developer construct a publically accessible waterfront trail on the lands.
(d)	adequacy of transportation networks in, adjacent to, and leading to the development;	Staff have reviewed the proposed access/egress to the site as well as a traffic analysis, prepared a Professional Engineer, and submitted by the Developer. The Developer has agreed to construct the required upgrades required to accommodate the proposal and which will also benefit traffic movement on Windmill Road.
(e)	adequacy of useable amenity space and attractive landscaping such that the needs of a variety of household types are addressed and the development is aesthetically pleasing;	The proposed agreement requires that amenity space is provided in accordance with the Land Use By-law. Features will include balconies for the dwelling units and a private neighbourhood park. A professional Landscape Architect must prepare the Landscaping Plan and details.

	Policy	Comment
(f)	that mature trees and other natural site features are preserved where possible;	All undeveloped areas of the site must be landscaped. The landscape plan and the work must be certified by a Professional Landscape Architect.
(g)	adequacy of buffering from abutting land uses;	The site is no located within the 300 foot setback to Windmill Road or in close proximity to any residential areas. Exterior materials and windows types will reduce potential noise impacts within the proposed dwelling units.
(h)	the impacts of altering land levels as it relates to drainage, aesthetics and soil stability and slope treatment; and	The proposed agreement requires the submission of a site grading plan(s), identification of stormwater management measures, and erosion controls. These plans must conform with HRM and Provincial standards as well as minimize impacts on adjacent properties.
(i)	the Land Use By-law amendment criteria as set out in Policy IP- 1(c). <u>As amended by By-law C-692, Dec. 4, 1991).</u>	See below.

IP-1(c)Zoning By-law

The Zoning By-law is the principal mechanism by which land use policies shall be implemented. It shall set out zones, permitted uses and development standards which shall reflect the policies of the Municipal Development Plan as per Section 33 (3) of the Planning Act. **The zoning by-law may use site plan approval as a mechanism to regulate various uses. (RC-Sep 8/09;E-Nov 14/09)**

Notwithstanding the above, it shall be the intention of Council not to pre-zone lands outside the development boundary as shown on the Generalized Land Use Plan: Map 9;

Map 9b, 9c, 9d, 9e, 9g, 9h,9i (By-law 633), 9i (By-law 724), 9j, 9q, 9m, 9o, 9p (Portland St), 9p (Craigwood) and 9r (As amended by By-law C-475, Sept. 20, 1983 and By-law C-493, Dec.9, 1983 and By-law C-511, July 6, 1984).

It shall recognize that certain areas are premature for specific zoning classifications by reason of lack of services, public facilities or other constraints. Council shall use the H-zone (Holding Zone). ***In the H Zone the permitted types of uses shall be limited in accordance with the Reserve classification in Table 4 (As amended by By-law C-475, Sept. 20, 1983).*** In this manner, Council can maintain a comparatively high degree of control, and major development proposals contemplated for such areas shall be processed as zoning amendments.

In considering zoning amendments and contract zoning, Council shall have regard to the following:

	Policy	Comment
(1)	that the proposal is in conformance with the policies and intent of the Municipal Development Plan	The proposal has been considered in accordance with policies WC-4, IP-5, and IP-1c).
(2)	that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal	The proposed building is less than the maximum height of 16 storeys enabled on the property by Policy WC-4. Since the building is not adjacent to residential uses and is otherwise located in a commercial/industrial area, it is not expected that the scale, use or bulk of the building will impact adjacent uses. The building is located outside of the 300 foot setback and exterior materials will reduce potential noise impacts within the proposed units.
(3)	provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries	Access will be limited to a new signalized intersection on Windmill Road. All undeveloped areas of the site must be landscaped and mechanical equipment and refuse/storage areas must be screened from adjacent properties and streets.
(4)	that the proposal is not premature or inappropriate by reason of:	
	(i) the financial capability of the City is to absorb any costs relating to the development	No concerns were identified regarding potential financial implications for HRM.
	(ii) the adequacy of sewer and water services and public utilities	No concerns were identified regarding the capacity of sewer or water.
	(iii) the adequacy and proximity of schools, recreation and other public facilities	Halifax Regional School Board has indicated that there is capacity in the schools assigned to this area. There are currently limited recreation areas in the immediate vicinity of the proposed development, however the proposed agreement requires that amenity space be provided in accordance with the LUB, that the Developer construct a private neighbourhood park, and that the developer construct a publically accessible waterfront trail on the lands.
	(iv) the adequacy of transportation networks in adjacent to or leading to the development	A traffic analysis and the proposed public Streets were reviewed by staff and no concerns were identified. The Developer is responsible for designing and constructing traffic signals at the intersection of Ralston Avenue and Windmill Road.

	Policy	Comment
	(v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas	The proposed agreement includes requirements for site grading, stormwater management and erosion and sedimentation controls in accordance with applicable HRM and Provincial standards.
	(vi) preventing public access to the shorelines or the waterfront	The Developer is proposing to provide public access to the entire waterfrontage of the Lands via construction of a public waterfront trail.
	(vii) the presence of natural, historical features, buildings or sites	Staff are not aware of any such features on the Lands.
	(viii) create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized	The development would utilize sewer, water and transportation infrastructure that is already in place.
	(ix) the detrimental economic or social effect that it may have on other areas of the City.	Staff are not aware of any potential detrimental effects that the development may pose.
(5)	that the proposal is not an obnoxious use	The proposed use is not expected to produce any obnoxious impacts.
(6)	that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:	
	(i) type of use, density, and phasing	The use and density are controlled by the agreement. There is no phasing as the development is comprised of a single building. The Developer is the current owner of adjacent undeveloped lands, future development of which is contingent upon additional development agreement(s) and coordination of land uses, infrastructure, amenity areas and other services.
	(ii) emissions including air, water, noise	The development is not expected to generate emissions that will warrant controls. However, mechanical equipment must be screened from adjacent properties.

	Policy	Comment
	(iii) traffic generation, access to and egress from the site, and parking	Discussed above.
	(iv) open storage and landscaping	The proposed agreement requires that landscaping measures be planned and certified by a Landscape Architect. Open storage is not permitted.
	(v) provisions for pedestrian movement and safety	The agreement requires that the Developer construct sidewalks from Windmill Road to the proposed building.
	(vi) management of open space, parks, walkways	There are currently limited recreation areas in the immediate vicinity of the proposed development, however the proposed agreement requires that amenity space be provided in accordance with the LUB, a portion of which must include a private neighbourhood park.
	(vii) drainage both natural and sub-surface and soil-stability	The proposed agreement includes requirements for site grading, stormwater management and erosion and sedimentation controls in accordance with applicable HRM and Provincial standards
	(viii) performance bonds.	Where applicable, the agreement requires the Developer to provide securities to HRM, that exceed the cost of completing the work. The security is not returned until the work is complete.
(7)	suitability of the proposed site in terms of steepness of slope, soil conditions, rock out-croppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors	No concerns have been identified with regard to these features on the lands. The development will have to comply with all applicable HRM, Provincial and Federal regulations related to watercourses and wetlands.

	Policy	Comment
(8)	that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the "voluntary" public hearing process established by City Council for the purposes of information exchange between the applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council	A Public Information Meeting was held and the proposal cannot be approved unless Council holds a Public Hearing. Both meetings are advertised in the local newspaper and notices are sent directly to local residents.
(9)	that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide:	
	(i) Council with a clear indication of the nature of proposed development, and	Complete.
	(ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community	Complete.
(10)	Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC-Jul 2/02;E-Aug 17/02)	Not applicable.

Attachment C: Excerpts from the Dartmouth LUB

PART 4: R-3 (MULTIPLE FAMILY RESIDENTIAL) ZONE - MEDIUM DENSITY

34(1) The following uses only shall be permitted in an R-3 Zone:

- (a) R-1, R-2 and TH uses as herein set out,
- (b) apartment buildings,
- (c) uses accessory to any of the foregoing uses.
- (d) lodging houses (As amended by By-law C-657, Feb 2/89)

34(2) Buildings used for R-1, R-2 and TH uses in an R-3 Zone shall comply with the requirements of an R-1, R-2 or TH Zone respectfully.

34(3) Buildings used for R-3 uses in an R-3 Zone shall comply with the following requirements:

- (a) Lot coverage, maximum - 25%
- (b) Area of site required per dwelling unit:

Type of dwelling unit	Area of site required per dwelling unit
One bedroom and bedsitting room	1,300 sq. ft.
Two or more bedrooms	1,800 sq. ft.

Provided that where the site area is greater than one acre, the area of the site required per dwelling unit shall be:

Type of dwelling unit	Area of site required per dwelling unit
One bedroom and bedsitting room	1,000 sq. ft.
Two or more bedrooms	1,350 sq. ft.

- (c) On all buildings a minimum side and rear yard clearance of 15 feet shall be maintained and if the building is more than fifty feet high on its highest side the sideyards and rearyards shall have a minimum clearance of not less than one half the height of the adjacent side of the building.
- (d) The yard area located between the street line and the minimum setback line shall be landscaped, and the entire site and all buildings maintained in a neat, tidy manner including the trimming and upkeep of landscaped areas.
- (e) Height Maximum -35 feet on all parcels of land situated within the "Lake Banook Canoe Course Area" as identified on Schedule "W". (RC-Feb 8/05;E-Apr 23/05)

34(4) No uses other than those permitted in R-1 and R-2 shall be permitted unless the lot area is equal to or greater than ten thousand square feet and unless the street frontage is equal to or greater than one hundred feet.

34(5) All developments including three or more dwelling units shall provide, in addition to the site requirements set out in sub-section (3) of this section, amenity areas of not less than one hundred square feet for each bedsitting room or one bedroom dwelling unit; three

hundred square feet for each two bedroom dwelling unit; and 500 square feet for each three or more bedroom dwelling units. An amenity area shall be a space set aside for recreational purposes such as communal play areas, recreational room, roof decks, balconies, swimming pools and tennis courts. An amenity area shall have no dimension less than thirty feet.

- 34(6) Buildings used for lodging house uses shall comply with the requirements of the Lodging House By-law of the City of Dartmouth. (As amended by By-law C-657, Feb 2/89)

NOTE: Effective December 4, 1991, Multiple family residential developments in the City of Dartmouth are permitted only by development agreement.

Attachment D: Public Submissions

Submission (1)

January 6, 2011

To: Mitch Dickey,

HRM Planner

Re: Case 16601, Harbour Isle Development Agreement, Wrights Cove, Windmill Road, Dartmouth, NS

Input to the Proposed Development Agreement for multi-unit project.

Hi Mitch

As President & CEO of 3030558 NS Limited that owns three acres of waterfront land, frontage on Windmill Rd., next to the Dartmouth Yacht and Harbour Isle, I support the following letter from KJ Gandhi about the proposed access road that was sent to you yesterday January 5, 2011.

Harbour Isle's previous Development Agreement shows an access road to the Dartmouth Yacht Club. The access road does not show in Harbour Isle's new Development Agreement.

HRM Planning has required us to provide land for the proposed future access road toward the Dartmouth Yacht Club to Harbour Isle and Windmill Road at the traffic lights.

We ask that the access road continue to show on Harbour Isle's plans and their Development Agreement.

Best Regards

Gary Hill

Gary Hill, ANSCAD, BFA, BEd, MA
President /CEO 3030558 NS Ltd

Submission (2)

Date: January 5, 2011

To: Mitch Dickey

HRM Planner,

RE: Case 16601, Harbour Isle Project, Wrights Cove, Windmill Road, Dartmouth

Comment to the proposed DA for multi-unit project.

Hi Mitch,

As a follow-up of my telephone message today, I am sending this email to register out comments to the above project.

Previously approved project on the above site indicated a future road towards Dartmouth Yacht Club and we were given to understand that this road will continue further through Dartmouth Yacht Club and meet our site at Wrights Cove. We have been required to provide a future road connection on our site drawings for this purpose.

The proposed Site plan for Harbour Isle Project does not show the future road towards Dartmouth Yacht Club. We suggest that this future road should be incorporated in the new DA for Harbour Isle Project.

Regards,

K.J. Gandhi

On behalf of Owners of

PID 00099739, 00099721, 00099705, 00099689