

P.O. Box 1749 Halifax, Nova Scotia B3J 3A5 Canada

Item No. 13.1.3 Halifax and West Community Council June 28, 2016

SUBMITTED BY:	Original Signed
	Bob Bjerke, Chief Planner and Director, Planning and Development
DATE:	June 7, 2016
SUBJECT:	Case 18322: Development Agreement – 6124 Coburg Road and 1460, 1462, 1470 and 1474 Seymour Street, Halifax

Chair and Members of the Halifax and West Community Council

SUPPLEMENTRY REPORT

<u>ORIGIN</u>

TO:

- Application by Geoff Keddy Architects and Associates and WSP Canada Inc.
- On April 5, 2016 Regional Council approved amendments to the Halifax Planning Strategy and the Halifax Peninsula Land Use By-law to permit the development of a mixed residential and commercial building at 6124 Coburg Road and 1460, 1462, 1470 and 1474 Seymour Street, Halifax.
- May 21, 2016 coming into effect of MPS and LUB amendments.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development

RECOMMENDATION

It is recommended that Halifax and West Community Council:

- 1. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A, to permit the development of a mixed residential and commercial building at 6124 Coburg Road and 1460, 1462, 1470 and 1474 Seymour Street, Halifax; and
- 2. Require that the proposed development 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 / DISCUSSION

On April 5, 2016 Regional Council and Halifax and West Community Council held a joint public hearing to consider proposed amendments to the Halifax Municipal Planning Strategy and the Halifax Peninsula Land Use By-law, as well as a proposed development agreement, to permit the development of a mixed residential and commercial building at 6124 Coburg Road and 1460, 1462, 1470 and 1474 Seymour Street, Halifax. Following the public hearing, Regional Council approved the amendments to the Planning Strategy and the Land Use By-law as contained in Attachments A and B of the staff report dated February 8, 2016. For more information, please see the staff report at the following link: http://www.halifax.ca/Commcoun/west/documents/160217hwcc1312.pdf

As noted in the February 8, 2016 staff report, Halifax and West Community Council could not make a decision on the proposed development agreement until the MPS and LUB amendments became effective. As the MPS and LUB amendments became effective on May 21, 2016, Community Council is now able to consider the proposed development agreement as contained in Attachment A of this report.

FINANCIAL IMPLICATIONS

There are no financial implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this development agreement. The administration of the development agreement can be carried out within the approved 2016-17 budget with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendation contained within this report. This application may be considered under MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed development agreement are contained within the February 8, 2016 report.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, signage posted on the subject site, letters mailed to property owners within the notification area, a public information meeting held on February 19, 2014, and a public hearing held on April 5, 2016.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

1. Halifax and West Community Council may choose to approve the proposed development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or another public hearing. A decision of Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

2. Halifax and West Community Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons why the proposed agreement does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

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ATTACHMENTS

Attachment A Proposed Development Agreement

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:	Richard Harvey, Principal Planner, 902.490.6495
Report Approved by:	Original Signed Kelly Denty, Manager, Current Planning, 902.490.4800

Attachment A: Proposed Development Agreement

THIS AGREEMENT made this day of [Insert Month], 20__,

BETWEEN:

[[INSERT Name of Corporation/Business LTD.]]

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

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 6124 Coburg Road and 1460, 1462, 1470 & 1474 Seymour Street, Halifax and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for a mixed use residential and commercial building on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and Policy 1.15 of Section VI of the Municipal Planning Strategy for Halifax and 95(4) of the Land Use By-law for Halifax Peninsula;

AND WHEREAS the Halifax and West Community Council for the Municipality approved this request at a meeting held on [Insert - Date], referenced as Municipal Case Number 18322;

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 Halifax Peninsula 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 Bylaw and Regional Subdivision By-law, if not defined in these documents their customary meaning shall apply.

2.2 Definitions Specific to this Agreement

2.2.1 The following words used in this Agreement shall be defined as follows:

(a) *Drug* Store means an establishment engaged in the retail sale of prescription drugs, non-prescription medicines, cosmetics, and related supplies.

(b) *Grocery* Store means a retail establishment primarily selling pre-packaged and perishable food as well as other convenience and household goods.

(c) *Height* means the vertical distance of the highest point of the roof, excluding any mechanical rooftop equipment, above the mean grade of the finished ground adjoining the building along the principle street.

(d) *Commercial Parking Lot* means parking spaces that are rented on a monthly or yearly basis to the general public for the storage of motor vehicles.

PART 3: USE OF LANDS 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 18322:

Schedule A	Legal Description of the Lands
Schedule B	Properties to be consolidated
Schedule C	Site Plan
Schedule D	Seymour Street (East) Elevation
Schedule E	Coburg Road (North) Elevation
Schedule F	South Elevation
Schedule G	West Elevation

3.2 Requirements Prior to Approval

- 3.2.1 Prior to the issuance of a Development Permit, the Developer shall:
 - (a) Obtain subdivision approval from the Municipality in accordance with Section 3.7 of this Agreement;
 - (b) Provide to the Development Officer, a Site Servicing Plan prepared by a Professional Engineer and acceptable to the Development Engineer of the Municipality in accordance with Section 4 of this Agreement; and
 - (c) Provide to the Development Officer, a sewage generation analysis acceptable to Halifax Water.

- 3.2.2 Upon the issuance of the Occupancy Permit, the Developer shall provide to the Development Officer:
 - (a) Confirmation that all disturbed areas within the HRM right-of-way have been reinstated to original or better condition pursuant to Section 3.12 of this Agreement.

3.3 General Description of Land Use

- 3.3.1 The uses of the Lands permitted by this Agreement is a multiple unit residential building with commercial uses.
- 3.3.2 The total number of residential units shall not exceed 35 units and a minimum of one third of the residential units shall have a floor area of 74.3 square metres (800 square feet) or larger.
- 3.3.3 The following are permitted commercial uses:
 - (a) Grocery Store;
 - (b) Drug Store;
 - (c) Commercial Parking Lot; and
 - (d) personal service uses.
- 3.3.4 Commercial uses shall be located at the ground level, with the exception of the commercial parking lot, which shall be located underground.

3.4 Height and Architectural Requirements

- 3.4.1 The building's exterior design and Height shall be developed as illustrated on the Schedules. The Development Officer may permit minor variation to the shape, size and the placement of elements of the building provided the following conditions are met:
 - (a) the size of the building is not increased;
 - (b) the separation distance between the building and adjacent residential buildings is not decreased;
 - (c) the setbacks and step backs are not decreased;
 - (d) the overall Height is not increased and the ground floor Height is not decreased; and
 - (e) the total number of balconies is not increased nor is size of balconies increased.
- 3.4.2 The ground level shall be a minimum Height of 4 metres (13 feet), measured from floor to ceiling.
- 3.4.3 Exterior building materials shall be as shown on the Schedules. Variations to the exterior building materials may include any one or more of the following:
 - (a) clay masonry;
 - (b) random stone masonry;
 - (c) brick;
 - (d) wood; or
 - (e) composite panels located around the window openings.
- 3.4.4 Each commercial occupancy shall have its own separate entrance from Coburg Road or Seymour Street.
- 3.4.5 All balconies located on the west elevation shall be recessed.
- 3.4.6 The total combined floor area of balconies located on the 6th level (penthouse level) shall be no larger than 23.2 square metres (250 square feet).

- 3.4.7 All vents, down spouts, flashing, electrical conduits, metres, service connections, and other functional elements associated with new development or alterations to the existing building shall be treated as integral parts of the design. Where appropriate these elements shall be painted to complement the colour of the adjacent surface, except where used expressly as an accent.
- 3.4.8 Large blank or unadorned walls shall not be permitted. The scale of large walls associated with new development or alterations to the existing building shall be tempered by the introduction of artwork.
- 3.4.9 The mechanical systems associated with the building (HVAC, exhaust fans, etc.) shall be designed such that they are not visible from Coburg Road, Seymour Street or abutting residential properties and no mechanical equipment or exhaust fans shall be located between the building and the adjacent residential properties unless the mechanical systems (HVAC, exhaust fans, etc.) are screened as an integral part of the building design and noise reduction measures are implemented. This shall exclude individual residential mechanical systems.

3.5 Parking

- 3.5.1 A minimum of 15 parking spaces shall be provided for the residential units. Additional parking may be made available for monthly and yearly commercial parking.
- 3.5.2 Parking space sizes shall comply with the requirements of the applicable Land Use By-law, as amended from time to time.
- 3.5.3 The Developer shall provide bicycle parking spaces in compliance with the requirements of the applicable Land Use By-law, as amended from time to time.
- 3.5.4 Access to the underground parking and solid waste collection shall be located along Seymour Street as shown on the Schedules. The design shall be incorporated into the overall design of the building through the use of similar colour and similar building materials as the adjacent portions of the building.

3.6 Signage

- 3.6.1 Signage on the Lands shall be permitted for each commercial occupancy in accordance with the requirements of the underlying zone of the Land Use By-law, as amended from time to time.
- 3.6.2 Notwithstanding Section 3.6.1 signage for the monthly and yearly commercial parking shall be limited to one fascia sign no larger than 2 square metres (21.5 square feet) and shall not be illuminated.

3.7 Subdivision of the Lands

A subdivision application to consolidate the properties shown on Schedule B shall be submitted to the Development Officer in accordance with the Regional Subdivision By-law. No Development Permit shall be issued until the subdivision plan is approved.

3.8 Outdoor Lighting

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

3.9 Outdoor Storage

No outdoor storage shall be permitted on the Lands.

3.10 Solid Waste Facilities

- 3.10.1 The multiple unit building shall include designated space for five stream (garbage, recycling, paper, cardboard and organics) 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.
- 3.10.2 All refuse and recycling materials shall be contained within the building.

3.11 Deliveries and Solid Waste Collection

- 3.11.1 The private collection of refuse and recyclables on the Lands shall occur between the hours of 8:00 a.m. and 7:00 p.m.
- 3.11.2 Commercial delivery vehicles on the Lands shall only be permitted between the hours of 8:00 a.m. and 7:00 p.m.
- 3.11.3 The hours specified under this section shall apply seven (7) days a week.

3.12 Maintenance

- 3.12.1 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.
- 3.12.2 All disturbed areas shall be reinstated to original condition or better.
- 3.12.3 Prior to the issuance of an Occupancy Permit, all disturbed areas located in the HRM right-of-way shall be reinstated to original condition or better as determined by the Development Engineer.

3.13 Construction/Sales Structure

A temporary structure 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 structure shall be removed from the Lands upon the issuance of the Occupancy Permit.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

- 4.1.1 All construction shall conform to the most current edition of the HRM Municipal Design Guidelines and Halifax Water's Design and Construction Specifications and shall receive written approval from the Development Engineer prior to undertaking any work.
- 4.1.2 Any disturbance to existing off-site infrastructure resulting from the development, including 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 Engineer. Furthermore, the Developer shall be responsible for all costs and work associated with the relocation of on-site/ off-site underground

services, overhead wires and traffic signals to accommodate the needs of the development.

4.1.3 Prior to the issuance of a development permit, the Developer shall submit to the Development Officer a sewage generation analysis that is acceptable to Halifax Water.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Stormwater Management Plans and Erosion and Sedimentation Control Plans

Prior to the commencement of any site work on the Lands for construction of streets and services, including grade alteration or tree removal other than that required for preliminary survey purposes, or associated off-site works, the Developer shall:

- (a) Submit to the Development Officer a detailed Site Disturbance Plan, prepared, stamped and certified by a Professional Engineer indicating the sequence and phasing of construction and the areas to be disturbed or undisturbed;
- (b) Submit to the Development Officer a detailed Erosion and Sedimentation Control Plan prepared, stamped and certified by a Professional Engineer in accordance 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 Lands until the requirements of this clause have been met and implemented. The Erosion and Sedimentation Control Plan shall indicate the sequence of construction, all proposed detailed erosion and sedimentation control measures and interim stormwater management measures to be put in place prior to and during construction; and
- (c) Submit to the Development Officer a detailed Site Grading Plan prepared, stamped and certified by a Professional Engineer, which shall include an appropriate stormwater management system. The Site Grading Plan shall identify structural and vegetative stormwater management measures, which may include infiltration, retention, and detention controls, wetlands, vegetative swales, filter strips, and buffers that will minimize adverse impacts on receiving watercourses during and after construction.

5.3 Failure to Conform to Plans

If the Developer fails at any time during any site work or construction to fully conform to the approved plans as required under this Agreement, the Municipality shall require that all site and construction works cease, except for works which may be approved by the Development Engineer to ensure compliance with the environmental protection measures.

PART 6: AMENDMENTS

6.1 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of Council.

- (a) Changes to the Signage requirements as outlined in Section 3.6 of this Agreement;
- (b) The granting of an extension to the date of commencement of construction as identified in Section 7.3 of this Agreement; and
- (c) The length of time for the completion of the development as identified in Section 7.5 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 3 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 the consolidation of the properties.
- 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 of this Agreement, 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 Halifax Peninsula 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 5 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 14 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 defence 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.

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 Registered Owner Name)

Per:____

HALIFAX REGIONAL MUNICIPALITY

Witness

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

Witness

Per:___

MAYOR

Witness

Per:__

MUNICIPAL CLERK











