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ITEM 7.1

Design Review Committee
February 14, 2013

TO: Chair and Members of Design Review Committee
Original Signed

SUBMITTED BY: _____
Jane Fraser, Director of Planning & Infrastructure

DATE: December 19, 2012

SUBJECT: Case 16773: Second Annual Review – Downtown Halifax Secondary
MPS & LUB

ORIGIN

- March 4, 2011, staff report recommending initiation of a municipal planning strategy amendment process for Downtown Halifax.
- March 29, 2011, initiation by Regional Council of a process to consider amending the Downtown Halifax Secondary Municipal Planning Strategy and the Downtown Halifax Land Use By-Law.

LEGISLATIVE AUTHORITY

- The *Halifax Regional Municipality Charter*, Part VIII, Planning and Development
- Policies 86 and 87 of the Downtown Halifax Secondary Municipal Planning Strategy

RECOMMENDATION

It is recommended that the Design Review Committee recommend that Halifax Regional Council:

1. Give First Reading to consider the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy and the Downtown Halifax Land Use By-Law, as contained in Attachments A, B and C of this report, and schedule a public hearing; and
2. Approve the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy and the Downtown Halifax Land Use By-Law, as contained in Attachments A, B and C of this report.

EXECUTIVE SUMMARY

This report recommends amendments to the Downtown Halifax Secondary Municipal Planning Strategy (DHSMPs), the Halifax Municipal Planning Strategy (MPS), and the Downtown Halifax Land Use By-Law (DHLUB). The amendments are being considered in the context of an annual review exercise contemplated under the Downtown Halifax Plan.

The proposed amendments to both the DHSMPs and the Halifax MPS are limited to map changes to remove a single parking lot located on Harvey Street from the Downtown Halifax Plan Area and to reintroduce it under the South End Area Plan of the Halifax MPS. The changes are required to bring the DHSMPs into conformance with the HRM Charter.

Amendments are also being proposed to the DHLUB to correct identified errors and omissions, clarify certain land use provisions, and introduce additional flexibility. The proposed amendments to the DHLUB include both housekeeping amendments and amendments that are considered minor in nature.

The proposed housekeeping amendments to the DHLUB include:

- Amendments to clarify the definitions for “accessory surface parking lot”, “cultural use”, and “retail use”;
- Amendments to clarify the dwelling unit mix requirement; and
- Amendments to clarify tower separation distances.

The proposed minor amendments to the DHLUB include:

- New definitions for “adult theatre” and “movie theatre”, and an amendment to the definition for “adult entertainment” to close a potential loophole that could permit the establishment of pornographic theatres within Downtown Halifax;
- Amendments to allow movie theatres and commercial recreation uses to occupy the ground floor of buildings immediately abutting the streetline of Pedestrian-Oriented Commercial Streets and along waterfront view corridors;
- Amendments to exempt change of use, change of tenancy, interior renovations, and commemorative structures, plaques and monuments from site plan approval;
- Amendments to change the elevation reference system for residential uses along the Halifax Waterfront from Ordinary High Water Mark to a Canadian Geodetic Vertical Datum standard;
- Amendments to allow mezzanine spaces within the minimum ground floor height for those portions of ground floors being occupied by residential uses;
- Amendments to introduce the ability to vary the required 4.5-metre minimum ground floor height of buildings; and
- Amendments to clarify the Wind Assessment Performance Standards (Schedule S-2).

BACKGROUND

The DHSMPs and the DHLUB were approved by Regional Council on June 16, 2009, and came into effect on October 24, 2009 (see Map 1). These new planning documents replaced decades old documents which had become impediments to growth and densification in Downtown Halifax. To ensure these documents stay relevant, Council is expected to make amendments, from time to time. Since October 2009, staff has closely monitored the implementation of the DHSMPs and the DHLUB to identify any trends, opportunities, errors, omissions and shortcomings within these documents. A previous package of amendments for Downtown Halifax was approved by Regional Council on December 13, 2011.

Initiation:

At the March 29, 2011, meeting of Regional Council, staff was instructed to initiate a process to consider amending the DHSMPs and the DHLUB to:

- (1) Correct identified errors and omissions;
- (2) Clarify certain policies and land use provisions; and
- (3) Introduce additional flexibility.

Following initiation by Regional Council of a process to amend both documents, staff identified a number of amendments to the Halifax MPS that would be required in order to close a gap created by the proposed amendments to the DHSMPs. As both sets of MPS amendments are directly linked, it was determined that the initiation of the DHSMPs amendments was sufficient in itself to also initiate related amendments to the Halifax MPS. Therefore, Council did not need to explicitly initiate the Halifax MPS amendments, in order to have them considered through the municipal planning strategy amendment process.

Policy Support for Annual Review:

An annual review is in keeping with the policies of the DHSMPs, as follows:

- Policy 86 HRM shall adopt an amendment process that provides for regular review and evaluation of the policies contained in this Plan and development regulations.*
- Policy 87 Further to Policy 86, it shall be the intention of HRM to conduct an annual review to consider proposed amendments that do not require substantive changes to this Plan or the Land Use By-Law.*

DISCUSSION

DHSMPs and Halifax MPS Amendments:

The amendments to the DHSMPs and the Halifax MPS are required to address mapping errors made during the adoption of the DHSMPs which occurred near the intersection of Barrington Street and Harvey Street (see Attachment A). More specifically, the Harvey Street parking lot, which is located behind the Thompson Building (1256 Barrington Street), was mistakenly included in 5 of the 14 maps attached to the DHSMPs (see Map 2). These mapping errors are in contravention of the *HRM Charter*, which specifies the area of the Municipality that can be

included under the DHSMPs. Therefore, in order for the Downtown Halifax Plan to be in conformance with the *HRM Charter*, Council must adopt the proposed amendments as put forward under Attachment A.

The amendments package also includes related housekeeping amendments to 3 maps of the Halifax MPS (see Attachment B). The Halifax MPS amendments are necessary to reintroduce the Harvey Street parking lot into the South End Area Plan (Part II, Section V), where it resided prior to being mistakenly included under the DHSMPs. The proposed Halifax MPS amendments would also restore the site's former generalized future land use designation (Medium Density Residential) and height precinct (35 feet). Both sets of amendments (DHSMPs and Halifax MPS) will not require any associated land use by-law amendments, as the site continues to be regulated under the Halifax Peninsula Land Use By-Law.

DHLUB Amendments:

A number of amendments are being proposed to the DHLUB (Attachment C). It is important to note that none of the amendments are considered by staff to be of a substantive nature and can thus be considered as part of the annual review envisioned under Policy 87 of the DHSMPs.

The proposed amendments are almost evenly split between housekeeping amendments and minor amendments as follows:

Housekeeping Amendments

Definition - Accessory Surface Parking Lot

The "accessory surface parking lot" definition is proposed to be amended to clarify that an accessory surface parking lot is limited only to external surface parking lots (outside of a building).

Definition - Cultural Use

The definition of "cultural use" is proposed to be expanded to also include the presentation of motion pictures.

Definition - Retail Use

The definition of "retail use" is to be amended, so that it has a consistent approach and structure with the other "use" definitions contained under the By-Law.

Dwelling Unit Mix

Amendments are being proposed to clarify that one third of the units in a multi-unit dwelling must contain two or more bedrooms. The current by-law provision is ambiguous and can lead to two different interpretations, i.e. either one third or one fourth of the units must contain two or more bedrooms, depending on how it is read.

Tower Separation Distances

Amendments are being proposed to clarify that the requirements for tower separation distances, which address sun penetration and sky exposure, only apply to towers on the same property. Tower setbacks from interior property lines will continue to ensure proper separation distances between towers on separate properties.

Minor Amendments

Adult Entertainment Uses

Adult entertainment uses are currently not permitted in Downtown Halifax. However, staff has identified a potential loophole for pornographic theatres. Therefore, in order to prevent the establishment of pornographic theatres within Downtown Halifax, an amendment is being proposed to the definition for “adult entertainment”, as well as the creation of new definitions for “adult theatre” and “movie theatre”.

Ground Floor Uses

Along Pedestrian-Oriented Commercial Streets and along waterfront view corridors, the By-Law only permits active uses at-grade. Active uses include cultural uses, retail outlets, restaurants, cafes, licensed alcohol establishments, personal service uses, and banking services. However, the Municipality has received a couple of requests over the past year to expand the allowable at-grade uses to also include fitness centres and dance studios. In its review, staff has determined that these uses, defined as commercial recreation uses under the By-Law, would be appropriate at-grade uses along Pedestrian-Oriented Commercial Streets and along waterfront view corridors. In addition, staff is also recommending that the list of permitted ground floor uses be expanded to also include movie theatres.

Site Plan Approval Exemptions

Amendments are being proposed to clarify that the following types of developments are exempt from the site plan approval process:

- change of use or tenancy;
- interior renovations; and
- commemorative structures, plaques and monuments on public lands.

The DHLUB is silent on these types of developments, but it was never staff’s intention that they would fall under the umbrella of the site plan approval process. It is important to note, however, that the exempted uses would still be required to go through the municipal permitting process.

Residential Uses – Storm Surge Protection

To protect residential uses along the Halifax Waterfront from potential storm surge events, the By-Law currently requires that these uses be elevated 2.5 metres above the ordinary high water mark (OHWM). Recently, the Waterfront Development Corporation Limited (WDCL) made a request that the elevation reference system be changed from OHWM to a Canadian Geodetic Vertical Datum (CGVD) standard, which is seen as being more precise. The WDCL has also requested that the CGVD 28 value be established at 3.8 metres. The 3.8 metres CGVD 28 value is nominally higher than the 2.5 metres above OHWM, and it better reflects potential impacts of

future sea level rise and storm surge events on the Halifax Harbour. Staff is in agreement with the amendments requested by the WDCL.

Mezzanine Spaces

Amendments are being proposed to allow mezzanine spaces within the minimum 4.5-metre ground floor height for those portions of ground floors being occupied by residential uses. A mezzanine space is a partial story between two main stories of a building. The original intent of the 4.5-metre ground floor height requirement was to ensure that all new ground floor spaces in Downtown Halifax were designed in a manner to appropriately accommodate retail uses, either immediately or in the future, when they became viable. The allowance of mezzanine spaces would not contravene this intent as they could be easily removed to accommodate a conversion to retail at a later date.

Ground Floor Height Variance

Amendments are being proposed to introduce the ability to vary the required 4.5-metre minimum height for the ground floor of buildings. The following types of developments will be eligible for such a variance:

- an addition to an existing building, where the existing building has a ground floor height lower than 4.5 metres;
- an infill building, where the abutting buildings have ground floor heights lower than 4.5 metres and the infill building would be inconsistent with the established character of the street;
- a new building or an addition to an existing building which is constrained by sloping conditions; and
- a new building to be situated outside of the Central Blocks and off a Pedestrian-Oriented Commercial Street, if it is to be fully occupied on the ground floor by residential uses.

Wind Assessment Performance Standards

The Wind Assessment Performance Standards (Schedule S-2) currently require that wind impact assessments be prepared for new buildings or additions to existing buildings that are to exceed 20 metres in height. However, there is a lack of clarity in the type of assessment required. For example, Section (1) of Schedule S-2 states that all developments that exceed 20 metres in height are subject to a quantitative assessment, while under Section (4) it says that a qualitative assessment may be prepared for developments that are minor in scope. Staff is proposing minor amendments to Schedule S-2 so that it does not imply that all developments above 20 metres in height are automatically subject to a quantitative assessment, which typically involves wind tunnel testing or computational fluid dynamics.

Withdrawal of Other Amendments:

Two other sets of amendments were considered as part of this annual review and presented at the public open house meeting on December 3, 2012, but have since been withdrawn by staff. These were:

1. Amendments to change the allowable tower widths for buildings along the Halifax Waterfront (Schedule W), from a maximum width of 21.5 metres parallel to Lower Water Street and a maximum depth of 38.5 metres to a maximum width and a maximum depth of 27.5 metres and 38 metres, respectively; and

2. An amendment to allow building heights to increase on the Halifax Waterfront (Schedule W) by a rate of 1.25 metres for every additional 1 metre setback from the minimum required setback from the ordinary high water mark. The current height transitioning ratio along the Halifax Waterfront (Schedule W) is 1:1.

The first set of proposed amendments was in response to early discussions that HRM staff had with representatives of the Waterfront Development Corporation Limited (WDCL), in regards to their development proposal for the Cunard Site (located between Bishop's Landing and the new Nova Scotia Powers headquarters). The WDCL has identified issues with strictly meeting the tower width requirement parallel to Lower Water Street. In response, staff prepared draft amendments that were in keeping with the tower widths and depths allowed in the Central Blocks of Downtown Halifax.

The second set of proposed amendments was drafted based on a request from The Armour Group Limited in regards to their proposed Queen's Landing project on the Halifax Waterfront.¹

In both circumstances, the Cunard Site proposal and the Queen's Landing project, staff has identified an existing ability under the DHLUB to vary the requirements for tower widths and the height transitioning ratio, which should provide sufficient flexibility to the respective proponents. Any future variance request, for these two properties, will be considered by the Design Review Committee as part of a substantial site plan approval application. Finally, it is important to note that if the requested amendments had gone forward, it would have created new starting points to consider variances for tower widths and height transitioning.

Appeal Process:

The proposed amendments to the DHSMPs and the Halifax MPS are not subject to appeal at the Nova Scotia Utility and Review Board (NSUARB). However, all of the proposed amendments to the DHLUB are subject to appeal at the NSUARB, as none of them are associated with a municipal planning strategy amendment.

FINANCIAL IMPLICATIONS

The costs to process this application can be accommodated within the approved 2012/13 operating budget for C320 Planning.

¹ A letter from staff was sent to the Chairman of The Armour Group Limited, on August 18, 2011, committing to drafting the amendment.

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 a public open house meeting held on December 3, 2012. Notices of this meeting were posted on the HRM website and published in a local newspaper. Stakeholder groups, including the Waterfront Development Corporation Limited, the Downtown Halifax Business Commission, the Spring Garden Area Business Association, the Heritage Trust of Nova Scotia (HRM Chapter), and members of both the design and development communities, were informed of the meeting and directed to the HRM website to review the proposed amendments. Attachment D contains public comments submitted in regards to the proposed amendments.

A public hearing has to be held by Regional Council before it can consider the approval of any amendments. Should Regional Council proceed with a public hearing on this application, in addition to published newspaper advertisements, a notice will be posted on the HRM website and those individuals that attended the public open house meeting will be advised of the public hearing by mail.

The proposal will potentially impact property owners and residents within Downtown Halifax.

ENVIRONMENTAL IMPLICATIONS

Staff has not identified any environmental implications with this application.

ALTERNATIVES

The Design Review Committee could recommend that Halifax Regional Council:

1. Approve the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy, the Halifax Municipal Planning Strategy and the Downtown Halifax Land Use By-Law, as contained in Attachments A, B, and C of this report. This is the recommended course of action.
2. Adopt certain amendments but not others outlined in this report, or alternatively request that additional amendments not identified in this report be made, in which case an additional staff report and public hearing may be required.
3. Refuse the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy, the Halifax Municipal Planning Strategy and the Downtown Halifax Land Use By-Law, as contained in Attachments A, B, and C of this report. This is not recommended for the reasons stated above.

ATTACHMENTS

Map 1	Plan Area
Map 2	Harvey Street Parking Lot
Attachment A	Proposed Amendments to the DHSMPs
Attachment B	Proposed Amendments to the Halifax MPS
Attachment C	Proposed Amendments to the DHLUB
Attachment D	Public Comments

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

Report Prepared by: Luc Ouellet, LPP, Senior Planner, 490-3689

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

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

Map 1 - Plan Area

Downtown Halifax
Secondary Municipal
Planning Strategy

This area is shown erroneously as being included within the Downtown Halifax Plan Area on several maps in the Downtown Halifax Secondary Municipal Planning Strategy.

0 100 200
metres



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

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

1. Amend Map 6 Heritage Resources, as illustrated in Appendix "A-1" attached hereto, by removing a portion of the parcel identified by LRIS PID # 00092932 (commonly known as the "Harvey Street parking lot" behind the Thompson Building – 1256 Barrington Street).
2. Amend Map 7 Heritage Districts, as illustrated in Appendix "A-2" attached hereto, by removing a portion of the parcel identified by LRIS PID # 00092932 (commonly known as the "Harvey Street parking lot" behind the Thompson Building – 1256 Barrington Street).
3. Amend Map 8 Vacant Sites, as illustrated in Appendix "A-3" attached hereto, by removing a portion of the parcel identified by LRIS PID # 00092932 (commonly known as the "Harvey Street parking lot" behind the Thompson Building – 1256 Barrington Street).
4. Amend Map 9 Streetscape Typologies, as illustrated in Appendix "A-4" attached hereto, by removing a portion of the parcel identified by LRIS PID # 00092932 (commonly known as the "Harvey Street parking lot" behind the Thompson Building – 1256 Barrington Street).
5. Amend Map 11 Views, as illustrated in Appendix "A-5" attached hereto, by removing a portion of the parcel identified by LRIS PID # 00092932 (commonly known as the "Harvey Street parking lot" behind the Thompson Building – 1256 Barrington Street).

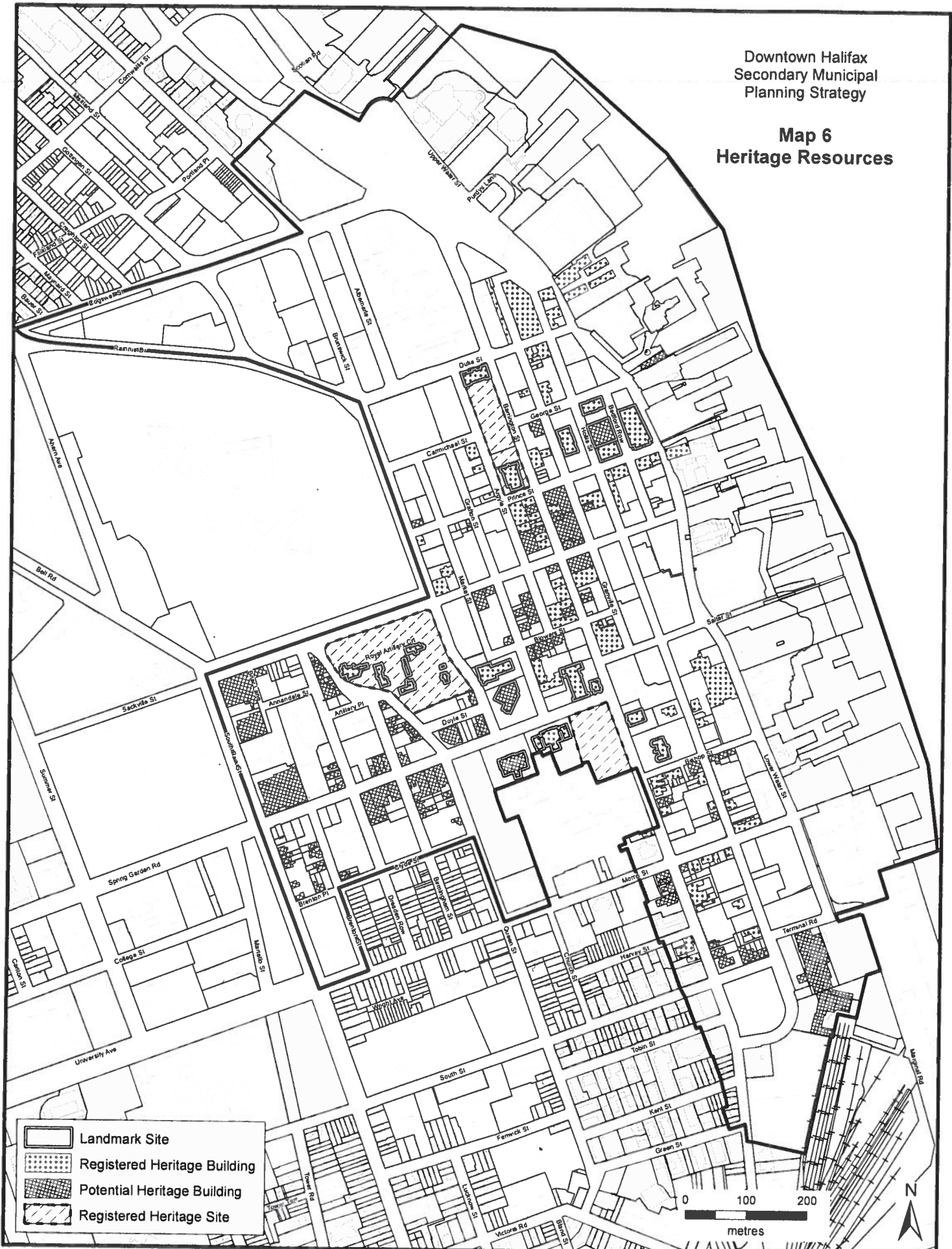
THIS IS TO CERTIFY that the by-law of which this is a true copy was duly passed at a duly called meeting of the Council of Halifax Regional Municipality held on the ____ day of _____, A.D., 20____.

GIVEN under the hand of the Municipal Clerk and under the Corporate Seal of the said Municipality this ____ day of _____, A.D., 20 ____.

Municipal Clerk

**Downtown Halifax
Secondary Municipal
Planning Strategy**

Map 6 Heritage Resources

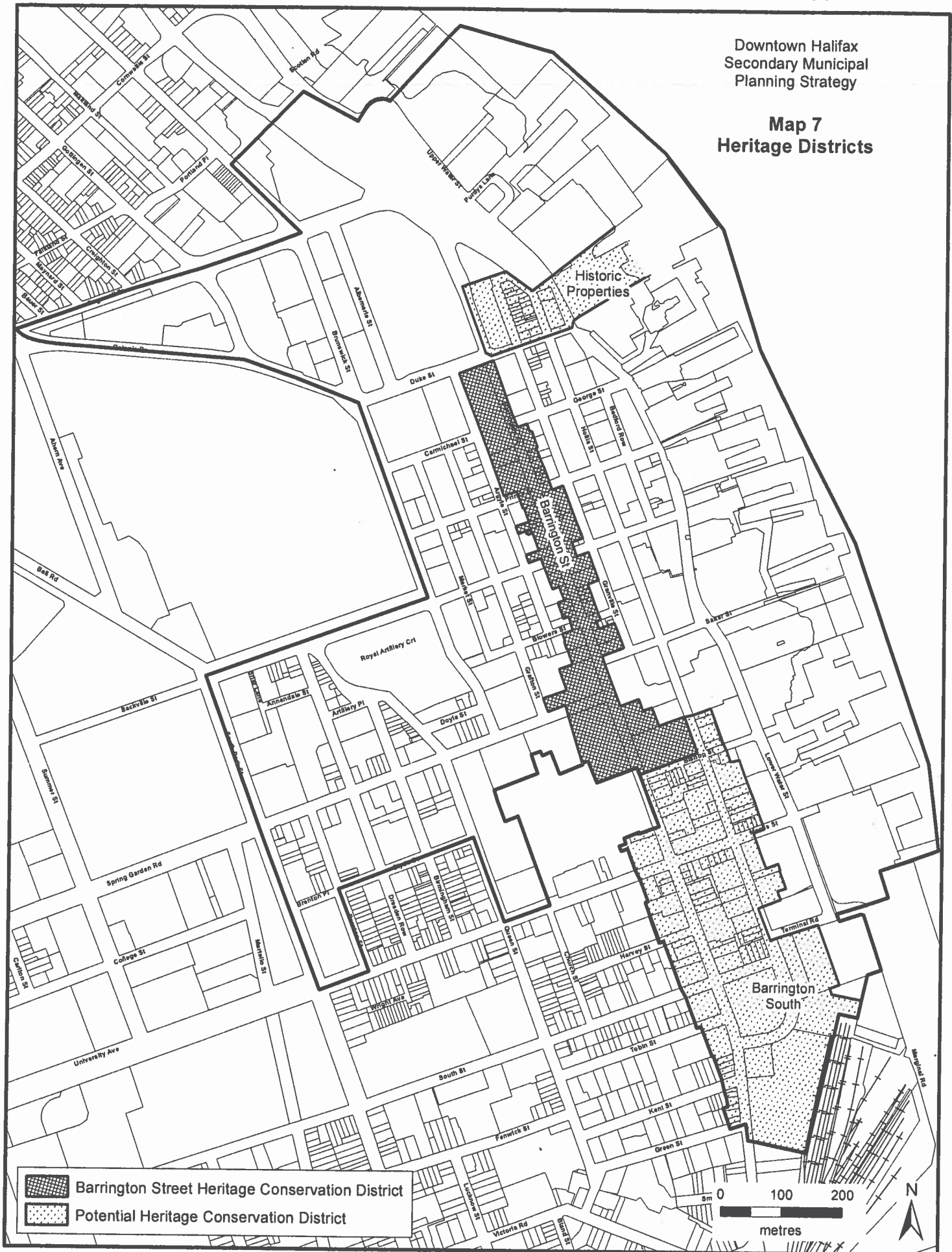


Effective:

Note Effective date does not indicate date of data creation.

Downtown Halifax
Secondary Municipal
Planning Strategy

Map 7
Heritage Districts

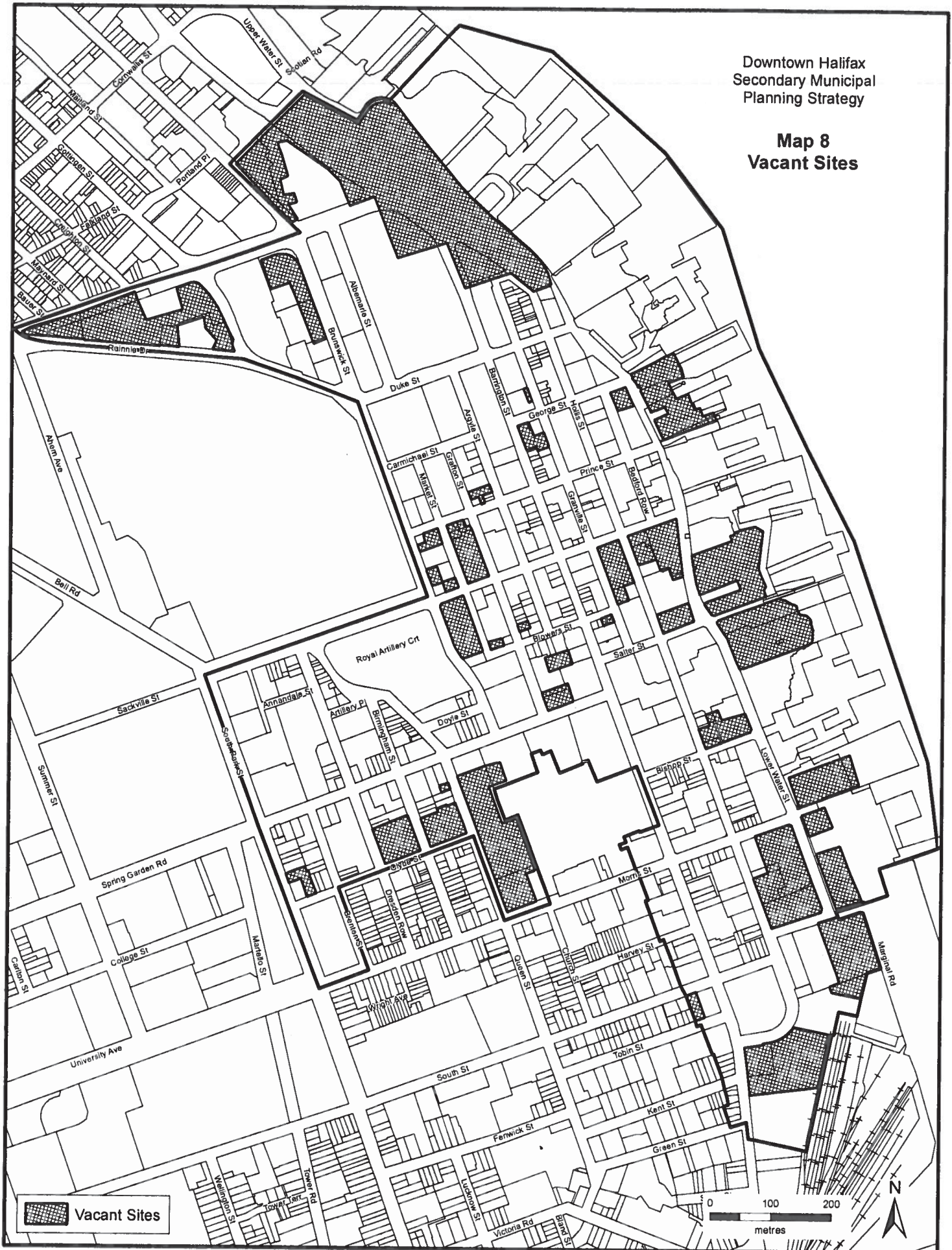


Effective:

Note: Effective date does not indicate date of data creation

Downtown Halifax
Secondary Municipal
Planning Strategy

**Map 8
Vacant Sites**

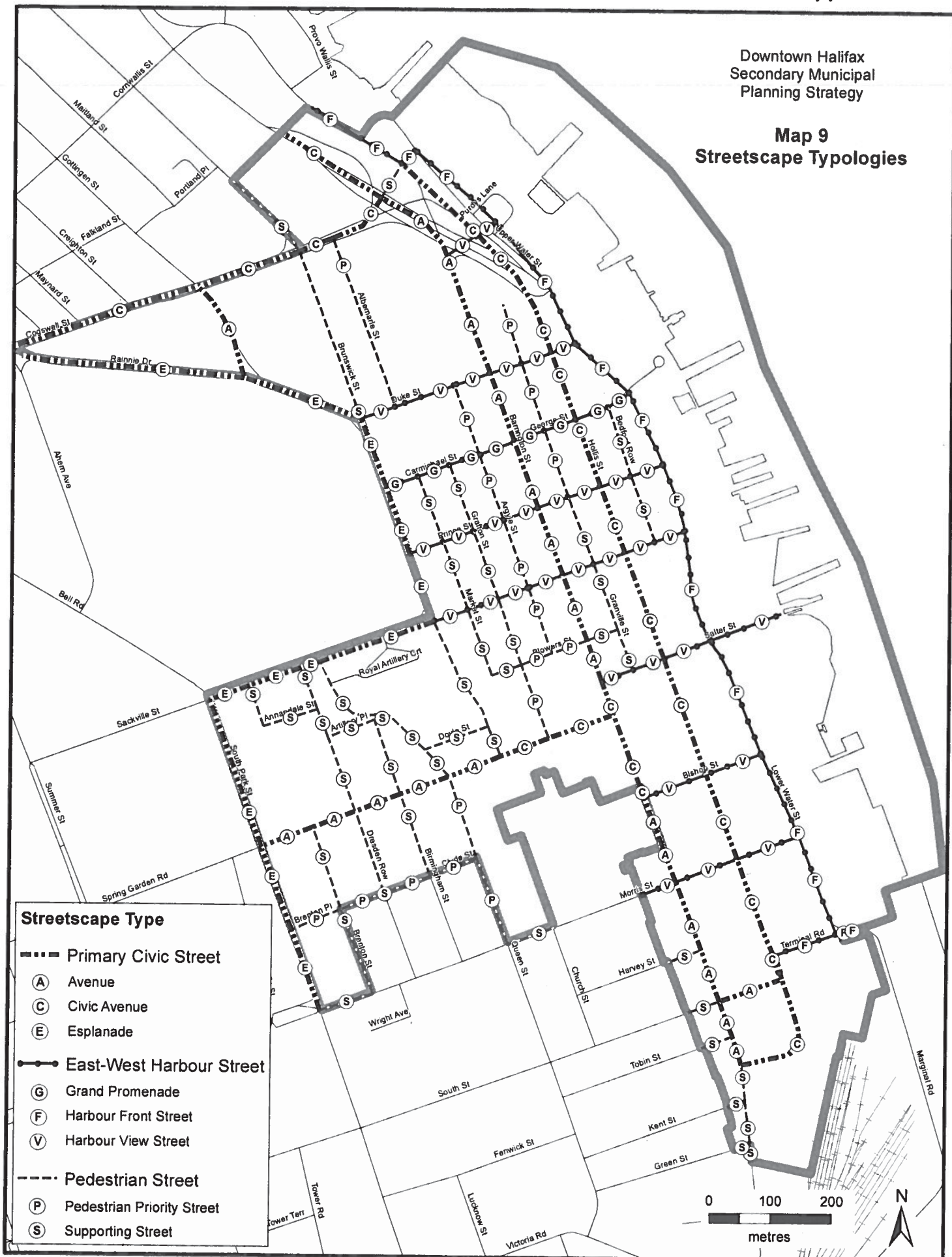


Effective:

Note: Effective date does not indicate date of data creation

Downtown Halifax
Secondary Municipal
Planning Strategy

Map 9
Streetscape Typologies



Effective:

Note: Effective date does not indicate date of data creation



ATTACHMENT B
PROPOSED AMENDMENTS TO THE HALIFAX
MUNICIPAL PLANNING STRATEGY

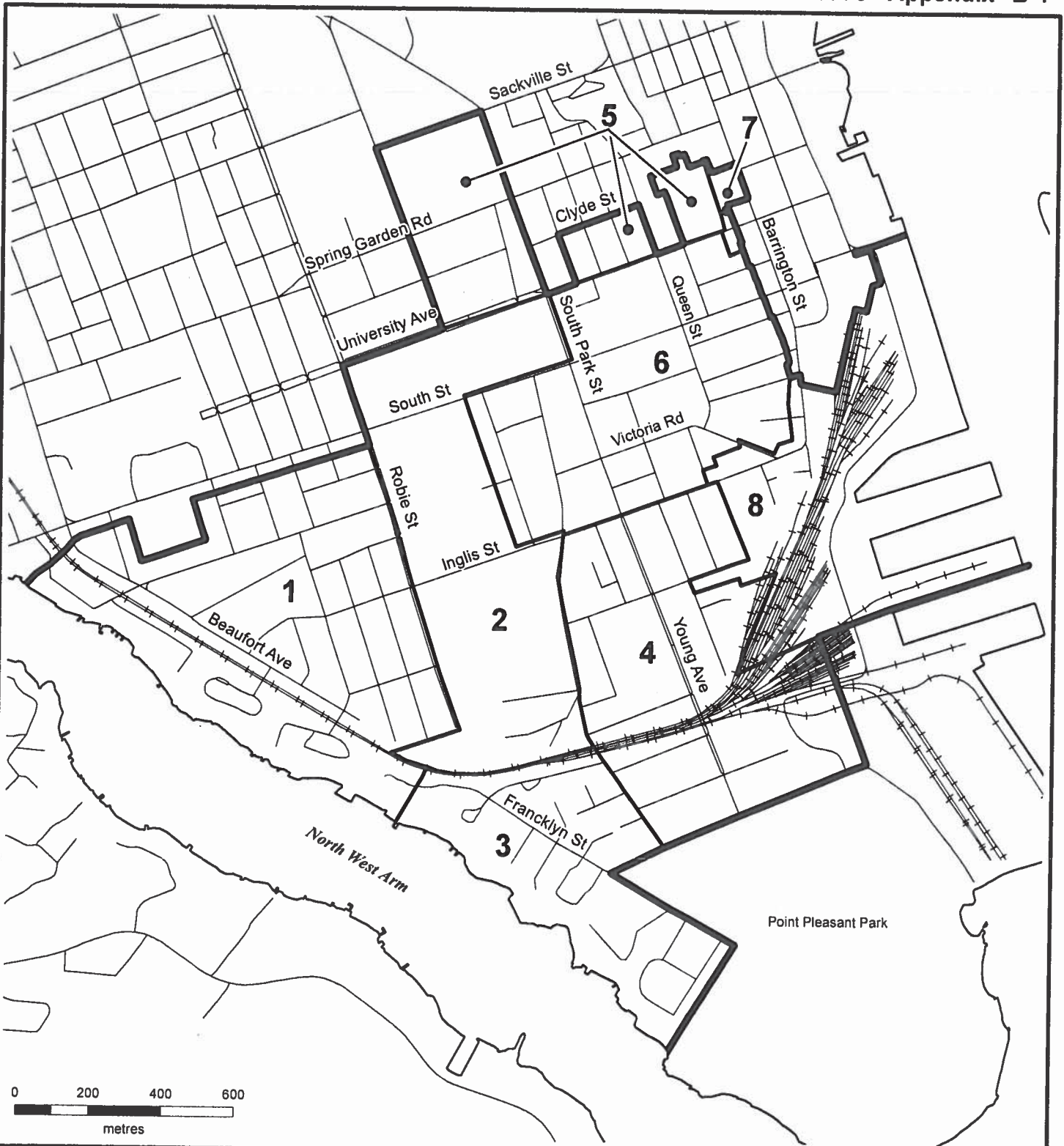
BE IT ENACTED by the Council of the Halifax Regional Municipality that the Halifax Municipal Planning Strategy is hereby further amended as follows:

1. Amend Map 1 Planning Districts – South End Area Plan of Section V, as illustrated in Appendix “B-1” attached hereto, by including a portion of the parcel identified by LRIS PID # 00092932 (commonly known as the “Harvey Street parking lot” behind the Thompson Building – 1256 Barrington Street).
2. Amend Map 2-6 Height Precincts District 6 of Section V, as illustrated in Appendix “B-2” attached hereto, by including a portion of the parcel identified by LRIS PID # 00092932 (commonly known as the “Harvey Street parking lot” behind the Thompson Building – 1256 Barrington Street) and by applying a height precinct of 35 feet to this portion of the parcel.
3. Amend Map 9 South End Area Plan Generalized Future Land Use of Section V, as illustrated in Appendix “B-3” attached hereto, by including a portion of the parcel identified by LRIS PID # 00092932 (commonly known as the “Harvey Street parking lot” behind the Thompson Building – 1256 Barrington Street) and by applying a Medium Density Residential designation to this portion of the parcel.

THIS IS TO CERTIFY that the by-law of which this is a true copy was duly passed at a duly called meeting of the Council of Halifax Regional Municipality held on the ____ day of _____, A.D., 20 ____.

GIVEN under the hand of the Municipal Clerk and under the Corporate Seal of the said Municipality this ____ day of _____, A.D., 20 ____.

Municipal Clerk



South End Area Plan

Map 1

Planning Districts

HALIFAX
REGIONAL MUNICIPALITY



Amended:

Halifax Municipal Planning Strategy

HEC



Height Precincts
District 6

00

Maximum permitted height in feet



Height precinct boundary



Area where maximum permitted height is measured between the highest point of the roof and the mean grade of the finished ground adjoining the building



Area where maximum permitted height is measured between the highest point of the building, exclusive of any non habitable roof and the mean grade of the finished ground adjoining the building between the building and the fronting street



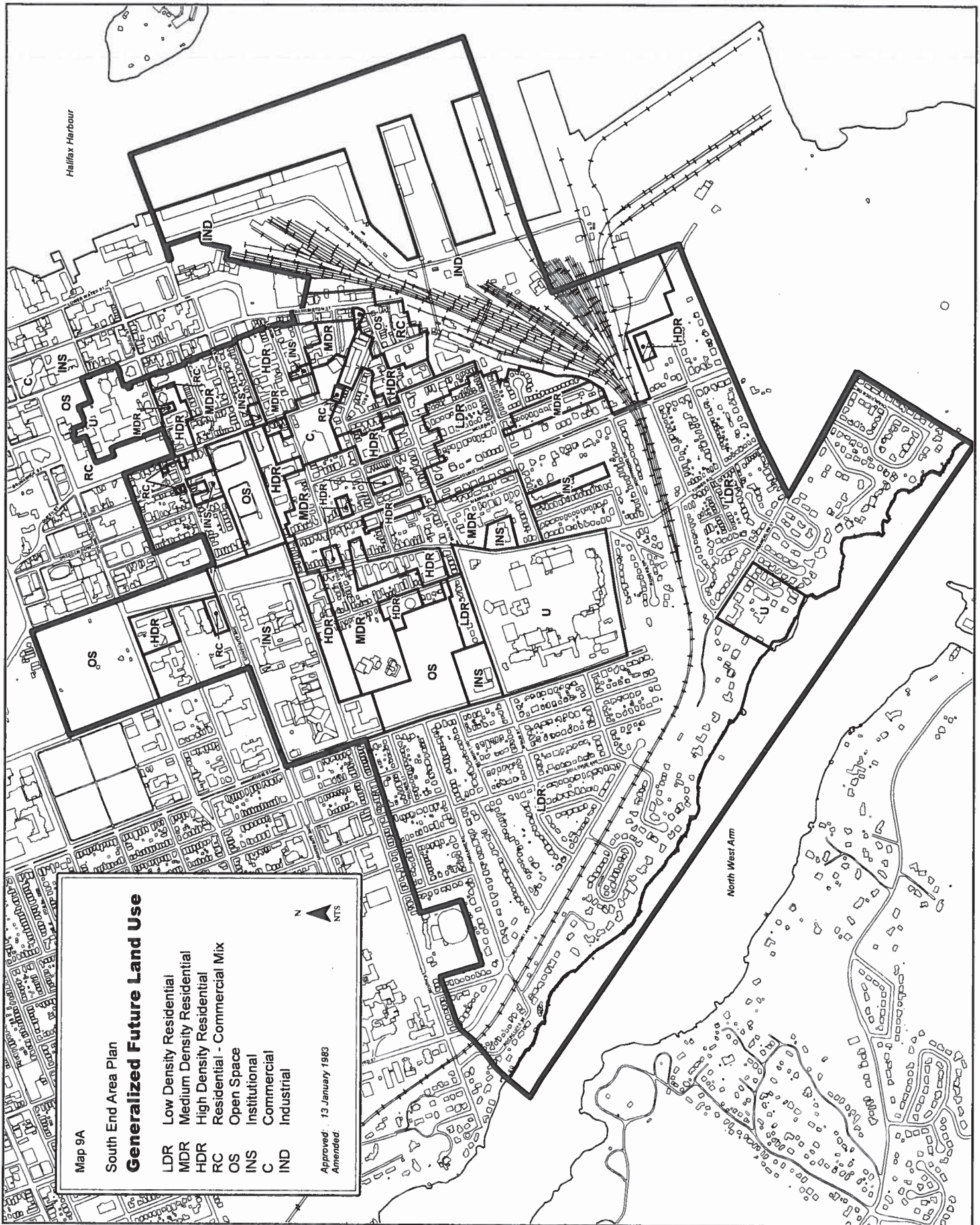
Area where maximum permitted height is measured between the commencement of the top storey of a building and the mean grade of the finished ground adjoining the building between the building and the fronting street

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

Effective:

MAP 2-6

file. T /work/planning/hilary/Halifax/SouthEnd/hp2-6.pdf (HEC)



ATTACHMENT C
PROPOSED AMENDMENTS TO THE DOWNTOWN
HALIFAX LAND USE BY-LAW

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Downtown Halifax Land Use By-law is hereby further amended as follows:

1. Clause (c) of section 2, as shown below in bold, is amended by adding the words “, which is not contained within a building and which is” following the words “on-site, surface parking” and before the word “provided”:
 - (c) *Accessory Surface Parking Lot* means on-site, surface parking, **which is not contained within a building and which is** provided in support of the main use of the land.
2. Clause (d) of section 2, as shown below in strike-out and bold, is amended by:
 - (a) striking out the word “or” after the word “bookstore,” and before the words “an adult”; and
 - (b) adding the words “, or an adult theatre”, after the word “cabaret” and before the period:
 - (d) *Adult Entertainment* means a massage parlour, a sex-aid shop, an adult bookstore, ~~or an adult cabaret,~~ **or an adult theatre.**
3. Section 2 is amended by adding the following clause after clause (f) and before clause (g):
 - (fa) ***Adult Theatre* means a use where the main activity is the showing of motion pictures depicting explicit sexual activity, graphic nudity, or graphic violence and which are either unrated or have been classified as A (Adult) by the Nova Scotia Film Classification Section of the Alcohol and Gaming Division of Service Nova Scotia and Municipal Relations.**
4. Clause (aa) of section 2, as shown below in bold, is amended by adding the words “, motion pictures,” after the word “art” and before the words “artistic performances”:
 - (aa) *Cultural use* means the presentation of art, **motion pictures**, artistic performances, musical performances, lectures, or other exhibits.
5. Section 2 is amended by adding the following clause after clause (az) and before clause (ba):

(aza) ***Mezzanine Space* means a mezzanine as defined under the National Building Code of Canada 2010, or any successor Building Code that is adopted by the Building Code Act, R.S.N.S. 1989, c. 46 or the Nova Scotia Building Code Regulations, N.S. Reg. 322/2009, as amended.**

6. Section 2 is amended by adding the following clause after clause (ba) and before clause (bca):

(baa) ***Movie Theatre* means a use where motion pictures are viewed by the public, but excludes an adult theatre.**

7. Clause (bq) of section 2, as shown below in bold and strike-out, is amended by:

- (a) adding the words “the use of” after the word “means” and before the words “a building”;
- (b) adding the words “or a portion of a building for the sale or rental of” after the word “building” and before the words “in which”;
- (c) striking out the words “in which” after the newly inserted words “rental of” and before the word “articles”; and,
- (d) striking out the words “are sold or rented” after the word “commerce” and before the word “directly”:

(bq) ***Retail use* means the use of a building or a portion of a building for the sale or rental of in which** articles of merchandise or commerce ~~are sold or rented~~ directly to the public.

8. Subsection (10) of section 5, as shown below in strike-out and bold, is amended by:

- (a) striking out the number “(4)” after the word “subsection” and before the words “, the following”;
- (b) adding the number “(6)” after the word “subsection” and before the words “, the following”;
- (c) striking out the word “and” after the word “openings;” and before the end of clause (c);
- (d) adding the word “replacement” after the word “installation” and before the word “or” in clause (d);
- (e) adding a comma after the word “installation” and before the newly added word “replacement” in clause (d);
- (f) striking out the period at the end of clause (d);
- (g) adding the following clauses after clause (d); and
- (h) adding a semi-colon at the end of clause (d):
 - (e) change of use or tenancy;
 - (f) interior renovations;
 - (g) commemorative structures on public lands;
 - (h) commemorative plaques on public lands; and

- (i) commemorative monuments on public lands.
 - (10) Notwithstanding subsection (4) **(6)**, the following developments shall be exempt from site plan approval:
 - (a) a change in the size of windows and doors that do not face streetlines;
 - (b) building repairs;
 - (c) window and door replacement in existing openings; **and**
 - (d) installation, **replacement** or repair of minor building features;;
 - (e) **change of use or tenancy;**
 - (f) **interior renovations;**
 - (g) **commemorative structures on public lands;**
 - (h) **commemorative plaques on public lands; and**
 - (i) **commemorative monuments on public lands.**
9. Clause (a) of subsection (2) of section 7, as shown below in strike-out and bold, is amended by:
- (a) striking out the word “and” after the comma and after the words “Eating establishments”;
 - (b) adding the words “Movie theatres;” as a new item to the list after the words “Eating establishments;” and before the words “Retail uses;”; and
 - (c) adding the words “Commercial recreation uses;” as a new item to the list after the newly inserted words “Movie theatres;” and before the words “Retail uses;”.
- (2) Notwithstanding subsection (1), only those uses listed below shall be permitted on the ground floor of a building in the DH-1 Zone immediately abutting the streetline of Pedestrian-Oriented Commercial Streets, as identified on Map 3:
- (a) The following commercial uses:
 - Banks and related uses;
 - Licensed alcohol establishments;
 - Personal service uses;
 - Eating establishments; **and**
 - Movie theatres;**
 - Commercial recreation uses; and**
 - Retail uses;
 - (b) Cultural uses; and
 - (c) Uses accessory to the foregoing.
10. Section 7, as shown below in strike-out and bold, is amended by:
- (a) repealing subsection (4); and
 - (b) adding subsection (4a) to section 7 after subsection (3) and before subsection (5) as follows;

- (4) ~~Buildings erected, altered or used as a multiple unit dwelling shall be required to include at least one dwelling unit containing not less than two bedrooms for every three dwelling units and one dwelling unit containing not less than two bedrooms for every three, or part of three, dwelling units in a building containing more than three dwelling units. Repealed.~~

- (4a) **One third of the total number of dwelling units, rounded up to the nearest full number, in a building erected, altered or used as a multiple unit dwelling shall be required to include two or more bedrooms.**

11. Subsection (12) of section 7, as shown below in bold and strike-out, is amended by:

- (a) adding the word “residential” after the word “No” and before the word “portion”;
- (b) adding the words “erected, constructed or reconstructed at an elevation” after the words “Schedule W, shall be” and before the words “less than”;
- (c) striking out the words “a 2.5 metre elevation” after the words “less than” and before the words “above the”;
- (d) adding the words “3.8 metres of the Canadian Geodetic Vertical Datum (CGVD) 28 standard” after the words “less than” and before the words “above the”; and
- (e) striking out the words “above the ordinary high water mark” after the newly inserted word “standard” and before the period:

- (12) No **residential** portion of a building on a lot within Schedule W, shall be **erected, constructed or reconstructed at an elevation less than a 2.5 metre elevation- 3.8 metres of the Canadian Geodetic Vertical Datum (CGVD) 28 standard** ~~above the ordinary high water mark.~~

12. Subsection (22) of section 7, as shown below in strike-out and bold, is amended by:

- (a) striking out the word “and” after the words “Retail uses;” and before the words “Uses accessory”;
- (b) adding the words “Movie theatres;” as a new item to the list after “Retail uses;” and before “Uses accessory to the foregoing”; and
- (c) adding the words “Commercial recreation uses; and” as a new item to the list after the newly inserted item “Movie theatres;” and before “Uses accessory to the following”:

- (22) Notwithstanding subsections (1) and (16), only those uses listed below shall be permitted on the ground floor of a building abutting a waterfront view corridor, as identified in subsection (18):
- Cultural uses;
 - Banks and related uses;
 - Licensed alcohol establishments;
 - Personal service uses;
 - Eating establishments;

Retail uses; and
Movie theatres;
Commercial recreation uses; and
Uses accessory to the foregoing.

13. Subsection (12) of section 8, as shown below in bold, is amended by:
- (a) adding an “s” to the word “subsection” after the words “requirements of” and before the number “(10)”; and
 - (b) adding the words “and 11(D)” after the words “subsections (10)” and before the words “of section 7”:
- (12) All buildings erected or altered, with a flat roof shall provide a fully landscaped area on those portions of the flat roof not required for architectural features or mechanical equipment. These landscaped areas need not be fully accessible except where they are provided pursuant to the requirements of subsections (10) **and 11(D)** of section 7.
14. Section 8 is amended by adding the following subsections after subsection (13) and before subsection 14:
- (13A) Notwithstanding subsection (13), in areas where residential uses are allowed on the ground floor, mezzanine spaces are permitted within the minimum floor-to-floor height for those portions of the ground floor being occupied by residential uses.**
- (13B) The requirement of subsection (13) may be varied by site plan approval where the relaxation is consistent with the criteria of the Design Manual.**
15. Subsection (8) of section 10, as shown below in strike-out and bold, is amended by:
- (a) striking out the words “or the same building” after the words “other buildings” and before the words “on the same lot”;
 - (b) adding the words “on the same lot or the high-rise portion of the same building” after the words “other buildings” and before the words “on the same lot”; and
 - (c) striking out the words “, where one of the high-rise buildings is used for commercial purposes” after the words “same lot” and before the period:
- (8) Any portion of a high-rise building above a height of 33.5 metres shall be separated a minimum of 17 metres between the high-rise portion of other buildings ~~or the same building~~ **on the same lot or the high-rise portion of the same building** on the same lot, ~~where one of the high-rise buildings is used for commercial purposes.~~
16. Subsection (9) of section 10, as shown below in bold and strike-out, is amended by:

- (a) striking out the word “Any” at the beginning of the subsection and before the word “portion”;
- (b) adding the words “Notwithstanding subsection (8), any” at the beginning of the subsection and before the word “portion”;
- (c) adding the word “separated” after the words “shall be” and before the words “a minimum”;
- (d) striking out the words “or the same building on the same lot, where both of the high-rise buildings” after the words “other building” and before the words “are used”; and
- (e) adding the words “on the same lot or the high-rise portion of the same building on the same lot, where both of the high-rise portions” after the words “other buildings” and before the words “are used”:

- (9) **Notwithstanding subsection (8), any** ~~Any~~ portion of a high-rise building above a height of 33.5 metres shall be **separated** a minimum of 23 metres between the high-rise portion of other buildings ~~or the same building on the same lot, where both of the high-rise buildings on the same lot or the~~ **high-rise portion of the same building on the same lot, where both of the high-rise portions** are used for residential purposes.

17. Section 3.6 of Schedule S-1 (Design Manual) is amended by adding the following subsection after subsection 3.6.14 and before section 4.1:

3.6.15 Land Uses at Grade Variance

The minimum floor-to-floor height for the ground floor of a building having access at the streetline or Transportation Reserve may be varied by Site Plan Approval where:

- a. **the proposed floor-to-floor height of the ground floor is consistent with the objectives and guidelines of the Design Manual; and,**
- b. **the proposed floor-to-floor height of the ground floor does not result in a sunken ground floor condition;**

And at least one of the following:

- c. **in the case of a proposed addition to an existing building, the proposed floor-to-floor height of the ground floor of the addition matches or is greater than the floor-to-floor height of the ground floor of the existing building; or,**
- d. **in the case of a proposed infill building, the floor-to-floor heights of the ground floors of abutting buildings along a common street frontage are such that the required floor-to-floor height for the ground floor of the infill building would be inconsistent with the established character of the street; or,**
- e. **in the case of a new building or an addition to an existing building being proposed along a sloping street(s), the site of the proposed new building or the proposed addition to an existing building is constrained by sloping**

- conditions to such a degree that it becomes unfeasible to properly step up or step down the floor plate of the building to meet the slope and would thus result in a ground floor floor-to-floor height at its highest point that would be impractical; or,
- f. in the case of a new building to be situated on a site located outside of the Central Blocks and off a Pedestrian-Oriented Commercial Street, the floor-to-floor height of the ground floor may be reduced to 3.5 metres if it is to be fully occupied by residential uses.
18. Section (1) of Schedule S-2: Wind Assessment Performance Standards, as shown below in bold, is amended by adding the words “either a qualitative or” after the words “be subject to” and before the words “a quantitative wind impact assessment”:
- (1) A new building that is proposed to be greater than 20 metres in height or an addition to a building that will result in the building being greater than 20 metres in height shall be subject to **either a qualitative or** a quantitative wind impact assessment.
19. Clause (b) of section (2) of Schedule S-2: Wind Assessment Performance Standards, as shown below in strike-out and bold, is amended by:
- (a) striking out the words “and such areas within the influence of such development on the following places” after the word “development” and before the colon; and
- (b) adding the word “on the following areas” after the word “development” and before the colon:
- (b) The impact of the development ~~and such areas within the influence of such development on the following places~~ **on the following areas:**
- (i) the public realm, including parks, plazas, and other open spaces, sidewalks and other pedestrian traveled ways, building entrances; and
- (ii) private amenity spaces such as rooftop gardens.
20. Section 3 of Schedule S-2: Wind Assessment Performance Standards, as shown below in strike-out and bold, is amended by:
- (a) renumbering section (3) as section (4A) by striking out the number “3” after the bracket “(“ and before the bracket “)” and start of section;
- (b) adding “4A” after the bracket “(“ and before the bracket “)” and start of the section; and
- (c) placing the new section (4A) after section (4) and before section (5):

- (3) ~~A qualitative assessment shall include an analysis and description of expected wind impacts without the use of quantitative scale model simulation analysis~~ **Repealed.**
- (4) For development that is minor in scope, such as a small addition in building height or a development where wind impact is not expected to be detrimental or may be improved upon in the opinion of the qualified professional, a qualitative wind assessment may be prepared.
- (4A) **A qualitative assessment shall include an analysis and description of expected wind impacts without the use of quantitative scale model simulation analysis.**
21. Section 4 of Schedule S-2: Wind Assessment Performance Standards, as shown below in strike-out and bold, is amended by:
- (a) striking out the words “a qualitative wind assessment may be prepared” after the word “professional,” and before the period; and
- (b) adding the words “the wind impact assessment may be limited to a qualitative assessment”, after the word “professional,” and before the period:
- (4) For development that is minor in scope, such as a small addition in building height or a development where wind impact is not expected to be detrimental or may be improved upon in the opinion of the qualified professional, ~~a qualitative wind assessment may be prepared~~ **the wind impact assessment may be limited to a qualitative assessment.**
22. Section (7) of Schedule S-2: Wind Assessment Performance Standards, as shown below in strike-out and bold, is amended by:
- (a) striking out the word “places” after the words “upon the” and before the word “identified”; and
- (b) adding the word “areas” after the words “upon the” and before the word “identified”:
- (7) Where the impact of the development upon the ~~places~~ **areas** identified in S-2(2)(b) can be mitigated, with consideration of the criteria of the Design Manual regarding overall building design, the development shall be approved by the Development Officer or Design Review Committee.

THIS IS TO CERTIFY that the by-law of which this is a true copy was duly passed at a duly called meeting of the Council of Halifax Regional Municipality held on the ____ day of _____, A.D., 20 ____.

GIVEN under the hand of the Municipal Clerk and under the Corporate
Seal of the said Municipality this ____ day of
_____, A.D., 20 ____.

Municipal Clerk



Heritage Trust of Nova Scotia
1588 Barrington Street
PO Box 36111, RPO Spring Garden, Halifax, B3J 3S9

December 10, 2012

Mr. Luc Ouellet
Senior Planner
Halifax Regional Municipality

Dear Luc:

Re Case 16773, Proposed Amendments to the Downtown Halifax Strategy and By-law

The first Guiding Principle of the Downtown Halifax Secondary Planning Strategy (DHSPS) is "a compact, intensified and walkable downtown". This concept of a vibrant, walkable, pedestrian environment was one of the key selling features of the Strategy.

The Strategy recognizes that wind effects can have adverse impacts on the pedestrian experience. Big move 9, sections 3.3.2 and 3.4.5 and Policy 21 all promise to **"minimize wind impacts"**.

The Land Use By-law carries out these promises by requiring a **"quantitative wind assessment"** for developments over 20 m tall in Schedule S-2, section (1). An exception is allowed in section (4), that a qualitative wind assessment may be allowed "for development that is minor in scope, such as a small addition in building height or a development where wind impact is not expected to be detrimental or may be improved upon in the opinion of the qualified professional".

So, in the present by-law, a qualitative assessment may be allowed as an exception, but the normal or default requirement is for a quantitative assessment.

The proposed change is to insert the words "either a qualitative or" before the word "quantitative" in section (1). Since a qualitative test is likely to be less expensive and less stringent than a quantitative test, most developers would be likely to opt for the qualitative test. The qualitative test could become the new normal or default choice. On December 3 you said that a quantitative assessment would still be required for large buildings. What part of the wording would require that? How, under the proposed wording, would HRM be able to require a quantitative test?

The words "quantitative" and "qualitative" are opposites. A quantitative wind tunnel test identifies areas around a proposed development where wind speeds would be unsafe or uncomfortable for pedestrians. Qualitative assessments have been written by the architects designing a project, who have an interest in having the projects approved.

The artful prose of a qualitative assessment should not become a substitute for proper scientific testing. **Switching from a situation where a quantitative test is normal to one**

where a qualitative test is normal, would be a major change of direction. It would be a substantial weakening of the protections for pedestrians in the by-law.

This is a life safety issue, and the present quantitative protections should be retained.

A wind tunnel test is not expensive, at only about 0.1% of the cost of a building of this size. As you mentioned on December 3, some developments under HRMbyDesign have already passed wind tunnel tests.

This would be a "substantive change", in the words of Policy 87, and should not be considered as part of an annual review. According to Section 8.6.1 of the Strategy, "The annual review generally is limited to those amendments resulting in non-substantive technical changes. ... With the annual review, the amendment process also has sufficient flexibility to accommodate technical adjustments or minor amendments which do not affect the overall intent of this Plan." The proposed change would not be a matter of clarification nor a technical adjustment.

This amendment was not mentioned in the staff report of March 4, 2011.

Having a requirement that a wind tunnel test is normally required is an important protection for pedestrians. Dropping that requirement would be a significant reduction in the protections of HRMbyDesign, and should not be done in an annual review.

When the time comes for a five-year review, HRM should consider strengthening wind protection by putting quantitative standards in place. Predictions of safety concerns in a wind tunnel test should lead to an automatic denial of a permit. The areas considered in the test should include adjacent heritage buildings. Computational fluid dynamics could be considered as an alternative to a wind tunnel test. The term "qualified professional" should be defined. It is not sufficient for architects to promise to mitigate wind effects. Unsafe wind effects should be eliminated. Toronto's rules could be considered: <http://www.toronto.ca/developing-toronto/pdf/wind.pdf>.

This change would not be merely technical in nature. Instead, it would step away from a key commitment of HRMbyDesign. **The change would run counter to the concept of a vibrant, walkable downtown. The proposed amendment would weaken the protections for pedestrians from adverse wind effects, and should not be recommended for approval.**

Please do not recommend this amendment.

Sincerely,

Phil Pacey
HRM Committee

A blacked-out redacted signature.