

Heritage Advisory Committee – May 7, 2014
Design Review Committee - May 8, 2014

TO: Chair and Members of the Design Review Committee
Chair and Members of the Heritage Advisory Committee

SUBMITTED BY: Original Signed by
Brad Anguish, Director of Community & Recreation Services

DATE: April 23, 2014

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

ORIGIN

- Application by W.M. Fares Group, on behalf of 3258146 Nova Scotia Limited
- Initiation of the MPS and LUB amendment process by Regional Council on March 18, 2014

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

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

1. Give First Reading and schedule a public hearing to consider adopting the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy, contained in Attachment A, in order to enable an extension to the commencement and completion requirements for a 16 storey building at 1593 Barrington Street, Halifax.
2. Move Notice of Motion to consider the proposed amending development agreement as contained in Attachment B to permit an extension to the commencement and completion

RECOMMENDATIONS CONTINUED ON NEXT PAGE

requirements for a 16 storey building at 1593 Barrington Street, Halifax and schedule a public hearing. The public hearing for the development agreement shall be held concurrently with that indicated in Recommendation 1.

3. Adopt the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy, contained in Attachment A.

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

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

BACKGROUND

This application is to amend the Downtown Halifax Secondary Municipal Planning Strategy (DHSMPS) and an existing development agreement in order to extend the requirements for the commencement and completion of a 16 storey building at 1593 Barrington Street.¹

Location, Site, and Surrounding Area

1593 Barrington Street is located on the south-east corner of Barrington and Sackville Streets, extending to Granville Street (Map 1). It is comprised of a three storey building that is the current location of the Discovery Centre, an interactive science centre. The immediate surrounding area is comprised of a mixture of land uses and low to mid-sized buildings.

Designation and Zoning

1593 Barrington Street is within:

- the Downtown Halifax Secondary Plan Area;
- the Barrington Street Heritage Conservation District Precinct;
- the DH-1 Zone, which allows for a wide range of land uses; and
- an area that allows a maximum building height of 22 metres along Barrington Street and 28 metres Granville Street.

¹ Previous references to 1593 Barrington Street have also included 1595 Barrington Street, which is a civic number for the property that has only recently has been retired.

The property is also within the Barrington Street Heritage Conservation District, which has regulations over the external appearance of buildings and demolition controls.

Enabling Policy and Zoning Context

Prior to 2009, the Halifax Municipal Planning Strategy (HMPS) and Halifax Peninsula Land Use By-law (HPLUB) were the context under which development in the downtown was considered. In the 'Central Business District', building proposals of greater than 40 feet height were considered by development agreements pursuant to a variety of different policy conditions in the HMPS. The Barrington Street Heritage Conservation District did not exist.

In 2009, Regional Council began deliberations on the adoption of the current Downtown Halifax planning and heritage documents². While this was occurring, it was noted that up to four development agreement applications might not to be able to be considered in advance of the adoption process for the new planning and heritage documents. Furthermore, these projects were not going to be permitted by the new policies and regulations. In recognition of the investment that had been made in submitting these applications, Regional Council allowed the applications to be considered under the planning policies that were in place at the time; the policies of the HMPS. However, it is specified in the DHSMPS that the applications would need to commence within three years and be complete within six years from the date of the execution of the development agreements (Attachment A).

All four development agreement applications were approved and of these, two projects have been completed. The remaining two are 1593 Barrington Street and the redevelopment of the Roy Building. For 1593 Barrington Street, the HMPS policy resulted in a requirement in its development agreement that construction must commence by July 20, 2014 and be complete by July 20, 2017. For the Roy Building, this resulted in a requirement in its development agreement in which construction must commence by October 20, 2014 and be complete by October 20, 2017.

Both developers are working on gaining development permit and construction approvals. The existing Roy Building is currently being demolished. With regard to 1593 Barrington Street, a letter from the applicant outlines some major milestones that it has in its schedule for this project (Attachment C). To date it is meeting this schedule; the applicant has submitted information including building plans and a wind study, and applied for a development permit, which is being reviewed by HRM staff.

Proposal

The Discovery Centre is the major tenant in the existing building at 1593 Barrington. Discovery Centre plans to relocate to the Emera Building at 1223 Lower Water Street, Halifax, but it wishes to remain in its current location for a further two years. The Developer is amenable to this, but only if extensions to the requirements for the commencement and completion of construction for its

² The planning documents include the Downtown Halifax Secondary Municipal Planning Strategy (DHSMPS) and the Downtown Halifax Land Use By-law (DHLUB). The heritage documents include the Barrington Street Heritage Conservation District Plan and the Barrington Street Heritage Conservation District By-law.

new building are granted. On behalf of the Developer, W.M. Fares Group has made an application to extend the commencement and completion dates by two years.

Approval Process

The approval process for extending the timing requirements has two parts to be considered by Regional Council, with reviews and recommendations from the Heritage Advisory Committee and the Design Review Committee:

1. Amendments to the DHSMPS to specifically enable the development agreement for 1593 Barrington Street to commence within five years and be complete within eight years, rather than the current respective three and six year requirements; and
2. Amendments to the development agreement for 1593 Barrington Street to reflect the policy time extensions.

A single public hearing can be held for both the DHSMPS amendment and the amending development agreement. However, Regional Council can only make a decision on the development agreement following the DHSMPS amendments coming into effect, which involves the consent of the province.

DISCUSSION

Policy Context for 1593 Barrington Street

The policy context for the time limits that Regional Council specified in the DHSMPS is based on its interest in having development comply with the current planning documents (Attachment A). In particular, it states:

“It is not, however, appropriate that development that is not in conformance with this Plan be afforded longstanding rights relative to time frames for project approval and completion. Developments that are not constructed and completed within a reasonable time period after Plan adoption should be required to comply with the requirements of the Land Use By-law.”

As noted in the Background section, some of the issues around assigning longstanding development rights are particularly important on the basis of the Barrington Street Heritage Conservation District and the controls that have been established to ensure that new development is sensitive to the character of this area.

Discovery Centre

Regional Council has recognized the Discovery Centre as an important educational institution within HRM. Correspondence to HRM from its President and CAO outlines the Discovery Centre’s interest in allowing the time extension (Attachment D). With regard to the implications of needing to relocate immediately, it states:

“The Discovery Centre investigated other options over the past year and the cost of renovating and building new exhibits for a temporary 2-year location are simply too high. The cost of moving twice in two years and the interruption of service to over 80,000 visitors from HRM annually would also be a major risk to the centre’s current operations. The proposed extension would provide the necessary transition time for the Centre to finalize construction drawings and complete construction for both the facility and major exhibits.”

Options

Regional Council can either facilitate the retention of the Discovery Centre at its current location by amending the DHSMPs and the development agreement for 1593 Barrington Street or it can retain the current timing requirements. While retaining the current requirements might be seen as being supportive of the heritage conservation district, it appears that with this option the Developer will proceed immediately with the construction of the 16 storey building and the Discovery Centre will need to vacate its premises earlier than what it deems to be desirable.

Policy Context for Amendments

DHSMPS

The DHSMPs contemplates circumstances where the planning documents might be reviewed and amended. It outlines that modest technical amendments are to be addressed through annual reviews and more substantive matters are to be considered during five-year reviews. Outside of this, it also states:

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

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

While the policy preamble refers to development projects that exceed height and mass, the policy itself is broad and provides latitude in considering unforeseen circumstances. Regional Council’s intent in enacting time restrictions for the development agreements that were under consideration at the time in which the DHSMPs was being adopted was to ensure that such projects did not have longstanding development rights. However, the present implications of this on the Discovery Centre may not have been foreseen. If Regional Council wishes to facilitate the retention of the Discovery Centre at its current location for the reasons outlined in the letter from its President and CAO, it should amend the DHSMPs and the development agreement for 1593 Barrington Street.

Regional Plan and former HMPS

The Regional Plan and HMPS have general policies for considering development agreements. None of these are relevant to the matter at hand, that being simple amendments to the timing requirements for the development at 1593 Barrington Street.

Amendments

The proposed amendments to the DHSMPS outline the rationale and policies for the change in the time requirements. Further to this, the proposed amending development agreement contains the new timing stipulations.

Conclusion

Staff recommend approval of the proposed amendments to the DHSMPS and the development agreement for 1593 Barrington Street in order to facilitate the retention of the Discovery Centre at its current location.

FINANCIAL IMPLICATIONS

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

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through a newspaper advertisement, notification to surrounding area property owners (see Map 1), and the posting of information on HRM's website. Normally, a public information meeting is held for planning applications. Given the timing sensitivities in having this matter considered by Regional Council, the limited scope of the application, and the ability for the public to make submissions at a public hearing, rather than a public information meeting, the public was invited to make written submissions. Those that have been received to date are found in Attachment E.

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

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

ENVIRONMENTAL IMPLICATIONS

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

ALTERNATIVES

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

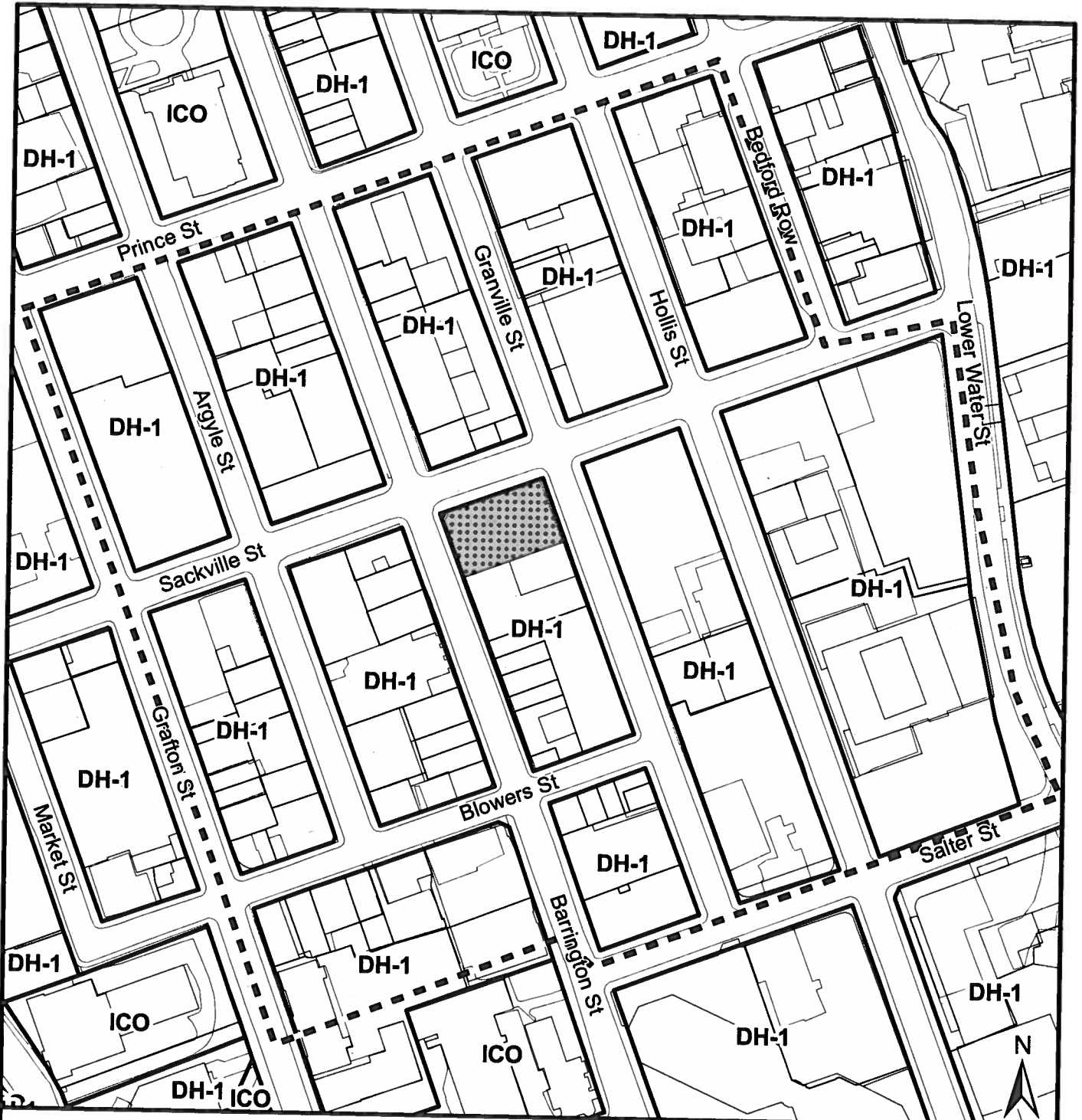
ATTACHMENTS

Map 1	Zoning and Notification
Attachment A	Proposed Amendments to the DHSMPs
Attachment B	Proposed Amending Development Agreement
Attachment C	Letter from Applicant
Attachment D	Submission from Discovery Centre
Attachment E	Public Submissions to Date

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.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: Richard Harvey, LPP, MCIP, Major Projects Planner, 490-6495


Report Approved by: Original Signed by
For: Kelly Denty, Manager, Development Approvals, 490-4800




Map 1 - Zoning and Notification

1593 Barrington Street
Halifax



 Area of existing development agreement



 Area of notification

Zone

- DH-1 Downtown Halifax 1
- ICO Institutional, Cultural and Open Space

Downtown Halifax Plan Area

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

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

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

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

“8.6A TRANSITION TO THIS PLAN

During the course of preparation of this Plan, development continued to occur in the Plan area according to the previous MPS policies and land use by-law requirements. At the time of Plan adoption, development agreement applications in various stages of review and approval remained in progress. In consideration of the fact that these projects were designed within the parameters of the previous policies of the Halifax Municipal Planning Strategy, the substantial investment made in the preparation of such applications and that they were submitted in advance of this Plan being given first reading by Council, it is reasonable that provision be made to allow Council to consider them after the effective date of this Plan under the previous policies. Similarly, non-substantive amendments to approved development agreements should also be able to be considered under the previous policies. It is not, however, appropriate that development that is not in conformance with this Plan be afforded longstanding rights relative to time frames for project approval and completion. Developments that are not constructed and completed within a reasonable time period after Plan adoption should be required to comply with the requirements of the Land Use By-law.

- Policy 90A Applications for development agreements on file on or before March 31, 2009 shall be considered under the policies in effect at the time the complete application was received. Where any such application is withdrawn, significantly altered, or rejected by Council, any new development proposal shall be subject to all applicable requirements of the Land Use By-law.
- Policy 90B Applications pursuant to Policy 90A that have not proceeded to a public hearing by March 31, 2010 shall be subject to all applicable requirements of the Land Use By-law.
- Policy 90BA Notwithstanding Policy 90B, applications pursuant to Policy 90A within the Barrington Street Heritage Conservation District Revitalization Plan that have not proceeded to a public hearing within 90 days of the effective date of this policy shall be subject to all applicable requirements of the Land Use By-law. (RC-Aug 17/10;E-Feb 12/11)
- Policy 90C Applications approved pursuant to Policy 90A shall include project commencement dates not exceeding three years from the date of execution of the development agreement and project completion dates not exceeding six years from the date of execution of the agreement.

Policy 90D Applications for non-substantive amendments to approved development agreements shall be considered under the policies in effect at the time the agreement was approved.

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

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

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

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

Municipal Clerk

**ATTACHMENT B
PROPOSED AMENDING DEVELOPMENT AGREEMENT**

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

BETWEEN:

[INSERT Name of Corporation/Business LTD.]
a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

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

OF THE SECOND PART

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

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

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

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

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

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

1. In Section 8.3:

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

2. In Section 8.4:

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

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

SIGNED, SEALED AND DELIVERED in the presence of:

Witness

Witness

[INSERT REGISTERED OWNER NAME]

Per: _____

Per: _____

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

HALIFAX REGIONAL MUNICIPALITY

Per: _____
Mayor

Per: _____
Municipal Clerk

Attachment C - Letter from Applicant



480 Parkland Drive
Suite 205, Halifax
Nova Scotia, Canada
B3S 1P9

tel. 902.457.6676
fax. 902.457.4686

www.wmfares.com

April 3, 2014

Richard Harvey
Major Projects Planner
Halifax Regional Municipality
7071 Bayers Road
Halifax, NS
B3L 2C2

Re: Amendment to the Downtown Halifax Secondary Municipal Planning Strategy and an amendment to the existing development agreement - Case 01232
Discovery Centre - 1595 Barrington St

Dear Mr. Harvey,

Further to our discussion, the following is our timetable for proceeding with the various required elements in relation to the redevelopment of the Discovery Centre site:

- April 8, 2014: Complete preliminary drawings including, site plan, floor plans and building elevations
- April 9, 2014: Complete Landscape plan
- April 10, 2014: Complete Wind Tunnel Study
- April 11, 2014: Submit Development Permit application
- June 2, 2014: Submit Building Permit application

Regards,

Original signed

Cesar Saleh, P.Eng.
VP Planning and Design
W. M. Fares Group

Attachment D - Submission from Discovery Centre

Harvey, Richard

From: Dov Bercovici
Sent: April-02-14 2:54 PM
To: Harvey, Richard
Cc: Rick Emberley
Subject: Case 19171 Discovery Centre (1593 Barrington St. Extension)

Dear Mr. Harvey,

Thank you for the opportunity to submit comments regarding the extension of a development permit for 1593 Barrington street.

I write on behalf of the Board of Directors of the Discovery Centre who are in full support of extending the timelines in the development agreement.

Now that a significant portion of the funding for construction is in place, the Discovery Centre can begin its final construction drawings and the construction phase. Realistic estimates indicate that two years will be required to complete a new turnkey \$20m science centre on the Halifax waterfront.

The Discovery Centre investigated other options over the past year and the cost of renovating and building new exhibits for a temporary 2-year location are simply too high. The cost of moving twice in two years and the interruption of service to over 80,000 visitors from HRM annually would also be a major risk to the centre's current operations.

The proposed extension would provide the necessary transition time for the Centre to finalize construction drawings and complete construction for both the facility and major exhibits.

In just two years our city and province will have one of the most unique science centres you can find anywhere – one that will benefit Haligonians and Nova Scotians for generations to come.

Thank-you for your consideration of our comments and for facilitating this process.

Yours very truly,

Dov Bercovici
President and CEO
The Discovery Centre
1593 Barrington Street



Harvey, Richard

From: Ian Wilson [redacted]
Sent: April-02-14 4:29 PM
To: Harvey, Richard
Subject: Discovery Centre

Richard Harvey
Major Projects Planner
HRM Planning Applications
Western Region

Dear Mr. Harvey,

Thanks for the opportunity to give feedback on the proposed amendment and extension.

It is essential that the extension be approved to allow Discovery Centre enough time to construct it's new facility.

As Chair of the Capital Campaign for the New Discovery Centre, I can assure you there are hundreds of community members, philanthropists, and stakeholders that would agree.

I applaud Mayor Savage, HRM Council and Staff for approving capital and operating funding for the new Discovery Centre. Building a new modern purpose driven facility that will enhance and complement our educational, cultural, and economic environment will be a major spark to our region's renewal and growth.

The Discovery Centre's board and staff investigated a number of options for temporary space in recent months and the best alternative by far was to operate for two more years at our current 1593 Barrington Street premises.

By amending the development agreement and approving a two-year extension, HRM council will enable the smoothest most cost-efficient transition possible from Barrington street to the new location on Lower Water street.

I personally look forward to opening the new centre with council and staff in just two years and working with you to inspire innovation, creativity and a renewed focus on STEAM (science, technology, engineering, arts, and math) in our great city and province.

Sincerely,

Ian Wilson
Chair, reDiscovery Campaign
President, Wilsons

Attachment E - Public Submissions to Date



Purdy's Wharf Tower One, 900 – 1959 Upper Water Street, P.O. Box 997
Halifax NS B3J 2X2 Canada tel: 902.420.3200 fax: 902.420.1417 stewartmckelvey.com

File Reference: SM004071-00018

April 2, 2014

Delivered by E-mail - harveyri@halifax.ca

Richard Harvey
Major Projects Planner
HRM Planning Applications, Western Region
PO Box 1749
Halifax NS B3J 3A5

Dear Mr. Harvey:

Re: Application by 3258146 Nova Scotia Limited to Amend the DHSMPs and Development Agreement for 1595 Barrington Street (Case 19171)

I act on behalf of the owner of the Roy Building, 778939 Ontario Limited. Please consider this letter with respect to the above-noted amendment application.

OVERVIEW

By way of overview, we object to the proposed amendments for the following reasons:

1. The abbreviated process for a significant amendment is unfair and contrary to policy and practice; and
2. The DHMPS policies do not authorize Council to grant the amendment sought.

The DHMPS contemplates amendments annually (for non-substantive technical amendments – which this isn't), a 5-year review – the ongoing "RP+5" and project amendments. Project amendments may be considered on two bases:

- i. Unforeseen circumstances; and
- ii. Where there are significant economic, social or cultural benefits a change to the built form beyond the bonus zoning is allowed.

The unforeseen circumstances criterion doesn't arise here. At the time of approval by Council, NSPower and the Discovery Centre had already announced their partnership. The Discovery Centre was planning to have moved to Lower Water Street by mid-October 2013.

The economic, social or cultural benefits enables amendments beyond that which is enabled with bonus zoning i.e. amendments to the height and built form, not the timing for completion.

These are addressed in more detail below.

Richard Harvey
April 2, 2014
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ABBREVIATED PROCESS IS UNFAIR

The Development Agreement and DHMPS

In the usual course, an amendment to a Development Agreement to extend the time for completion may be a straightforward process, in this case, it is not a simple amendment.

It is a substantive amendment to the Development Agreement for this property and is inconsistent with the explicit language of the ***Downtown Halifax Secondary Municipal Planning Strategy (DHSMPS)***.

I know that you are aware of the policy context which enabled both the Roy Building and the (former) Zellers Building which now houses the Discovery Centre to proceed. As both applications were in various stages of review and had been designed within the parameters of the previous policies, it was determined that these projects should be allowed to be considered under the old policies. At the time, there were five developments approved. The Zellers Building and the Roy Building are the last two to be completed (apart from the Convention Centre which has its own unique considerations and site-specific Policy and Statement of Provincial Interest). The ***DHSMPS*** included a transition provision which required developments to comply with their approved Development Agreement within certain time periods or else be held to the standards in the new Downtown Halifax LUB i.e. HRM by Design. The preamble to the Policy stated:

It is not, however, appropriate that development that is not in conformance with this Plan be afforded long-standing rights relative to timeframes for project approval and completion. Developments that are not constructed and completed within a reasonable time period after Plan adoption should be required to comply with the requirements of the Land Use By-law. [emphasis added]

The question therefore is what are "long-standing rights" and what is a "reasonable time period"? The DHSMPS Policy dictated the timing for completion:

Policy 90C

Applications approved pursuant to Policy 90A shall include project commencement dates not exceeding three years from the date of execution of the Development Agreement and project completion dates not exceeding six years from the date of execution of the agreement.

The Development Agreement for 1595 Barrington Street was executed July 20, 2011 and the Development Agreement reflects the Policy intent:

8.3 Commencement and Development

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

8.3.2 For the purposes of clause 8.3.1, commencement of development shall mean the issuance of construction permits and the commencement of work for the parking levels shown on the Schedules.

The Development Agreement lapses by operation of law on July 20, 2014 ... *the Agreement SHALL have no further force or effect ...* Thereafter, the development of the lands is required to conform with the provisions of the current Land Use By-law.

The Applicant seeks to avoid the provisions of HRM By Design by further extending the time for commencement and completion. It has been brought forward on an expedited basis because it is unlikely that the amendment would be completed before the Development Agreement lapses.

Part 6 of the Development Agreement deals with amendments. It states that amendments which are not specifically identified as non-substantive are deemed substantive and may only be amended in accordance with the approval requirements of the **HRM Charter**. The time for start and completion is a substantive amendment. A Development Agreement may only be amended consistent with a Municipal Planning Strategy. The amendment sought is explicitly inconsistent with the **DHSMPS** and accordingly, amendments to the **DHSMPS** are also necessary.

As you would be aware, and as HRM planners have testified, amendments to the **MPS** are not regarded by planning staff as routine undertakings; instead, such amendments are usually only considered by staff when there have been significant changes in circumstances since the adoption of an MPS.

Normal Steps to Amend an MPS and DA

The **normal** steps involved with an amendment application respecting a Development Agreement and an MPS are:

1. a completed application is submitted to HRM staff along with a deposit of \$2,600;
2. staff conducts a preliminary review of the proposal;
3. staff prepares an initiation report for Regional Council which includes a recommendation on whether to consider the amendments;
4. decision by Regional Council to initiate the **MPS** and Development Agreement amendment process;
5. the public engagement process is met through a Public Information Meeting and posting of information on the HRM website;
6. a staff report that outlines the required amendments to the **MPS** (and the Development Agreement), along with recommendations about these matters is submitted to the appropriate committees and Regional Council;
7. in this case, given that the site is in a heritage conservation district, the Heritage Advisory Committee and the Design Review Committee would be required to review the application and make a recommendation to Regional Council;

Richard Harvey
April 2, 2014
Page 4

8. the Regional Council would review the report from HRM staff and committees and if it wished to further consider the amendments, it would have first reading and then hold a public hearing;
9. following the public hearing, Regional Council could choose to adopt the amendments to the **MPS**. Amendments to the Development Agreement could not be approved until the **MPS** amendments are approved by the Provincial Minister;
10. the proposed amendment will be forwarded to the Province for Ministerial Approval to determine whether they are in conflict with any statement of Provincial interest;
11. if or when the **MPS** amendments are approved by the Province, Regional Council could subsequently approve the amendments to the Development Agreement.

According to the Planning Applications Approval Process (Attachment A, as posted on the HRM website), the estimated time to final decision is 10 months.

In this case, steps one through five were not followed. In lieu of a Public Information Meeting (PIM), Council has directed that public comments could be submitted to you. Members of the public do not have the benefit of an Initiation Report which would have provided the background, rationale and supporting documents to justify the amendment. Comments are submitted in an evidentiary vacuum. All that is known is that the Applicant has represented that the amendment is sought for the benefit of its tenant, the Discovery Centre. No justification has been communicated as to why the application was delayed until such time as an abridgement in the usual process was required.

No justification or explanation is public as to the state of readiness of the Developer, or of the Discovery Centre, for that matter. Is 3 years necessary? Would a year suffice? No cost-benefit analysis has been presented to show why the project could not proceed with the Discovery Centre taking up temporary residence or why the Discovery Centre did not proceed with its plans at the NS Power site at Lower Water sooner. These are all questions that are unanswered and which are highly relevant before the public should be called upon to comment.

The expedited process undermines the public process which is contemplated for such a significant application. Even if, ultimately, the application may be approved, it should be done in step-wise fashion consistent with a process known and generally adhered to. It does a disservice to other developers and members of the public when such applications are fast-tracked. The rationale given is that there is insufficient time to process the application in the normal course. This should be laid at the feet of the developer, not the public. The approval and execution of the Agreement was in 2011. There is no reason why this application could not have been brought forward sooner.

MPS AMENDMENTS

Amendments are specifically contemplated by the **DHSMPS** (Section 8.6.1). It authorizes an annual review limited to non-substantive technical changes (of which this would not qualify) and a five year review to address amendments which propose substantive changes. The RP+5 Regional Plan Five Year Review has seen an extensive public consultation process, multi-phased engagement, multiple drafts, the involvement of committees and has been presented to Council. This amendment was not brought forward in the RP+5.

Richard Harvey
April 2, 2014
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Instead, and as noted above, this abbreviated amendment application undermines the open, transparent and inclusive public process which was contemplated and has been ongoing with RP+5.

The **DHSMPS** provides that apart from the annual review and five year review, amendments may be considered with respect to specific development projects. The preamble and Policies state:

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

Policy 89

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

Policy 89 must be read in the context of the preamble which speaks to maximum height and building mass. Policy 89 is not to be read as enabling amendments at large. It specifically provides for amendments "beyond the bonus zoning provisions of this Plan". Bonus zoning refers to the built form of the building not the time frame for completion of a Development Agreement. The **DHSMPS** states this regarding bonus zoning:

3.4.2 Bonus Zoning

Subject to the provisions of the Land Use By-law, view planes and citadel ramparts regulations, a bonus in height is offered as an incentive for specific public benefits in excess of the minimum development requirements set out in this Plan. The maximum achievable building height as shown on Map 5 can only be achieved through the bonus zoning provisions of this Plan. The pre-bonus heights as defined on Map 4 will in all cases be approximately 30% lower than those shown on Map 5. To encourage redevelopment and to provide further incentive for the conservation and reuse of heritage resources, the bonus zoning provisions shall not be applied within the Barrington Street heritage conservation district (precinct 5), the two potential heritage conservation districts (precincts 2 and 7), or to low rise building forms.

Policy 18

HRM may consider a variety of public benefits when assessing site plan approval applications seeking a height bonus in exchange for the provision of public benefit, in accordance with the bonus zoning provisions of the Halifax Regional Municipality Charter. HRM shall establish provisions in the Land Use By-law to guide negotiations of appropriate public benefits including:

- (a) *the preservation or enhancement of a heritage building;*
- (b) *the provision of publicly accessible amenity space;*
- (c) *the provision of residential units at a subsidized cost to contribute to housing affordability in the DHSMPS plan area in accordance with the definition of housing affordability in the Land Use By-law;*
- (d) *the provision of three and four bedroom dwelling units with direct access to outdoor amenity space;*
- (e) *the provision of rental commercial space made available at a subsidized cost for arts and cultural uses or child care centres;*
- (f) *the provision of public art;*
- (g) *the provision of public parking facilities;*
- (h) *investment in public transit or active transportation infrastructure; and*
- (i) *the provision of exemplary sustainable building practices.*
- (j) *the undergrounding of overhead electrical and communication distribution systems. (RC-Dec 13/11;E-Mar 10/12)*

In other words, if one of the public benefits enumerated in Policy 18(a) – (j) is provided, the Project height can increase from the Map 4 limit to the Map 5 limit. If there is a significant benefit beyond those listed, Policy 89 allows an amendment beyond the height limits in Map 5.

Policy 89 also allows amendments to development projects for “unforeseen circumstances” (albeit also in the context of the built form). It is worth reviewing what was known at the time of approval of the Development Agreement. The Discovery Centre was a tenant in 1595 Barrington Street at the time of the initial application in 2009, and shortly thereafter on October 15, 2010, Discovery Centre and Nova Scotia Power announced their partnership and plan to move the Science Centre to NS Power's Lower Water Street complex. A copy of the press release of October 15, 2010, is attached as Schedule B. It notes that Emera was donating monies towards the capital costs for the move and Discovery Centre hoped to take up residence “in approximately three years” i.e. by October 15, 2013.

Therefore, in this case, it was known and contemplated that the Discovery Centre would be moving at the time of Council approval in April 2011. With full knowledge that the Discovery Centre would be moving, the time limits were embedded in policies and the Development Agreement.

We respect that the work that the Discovery Centre has done and recognize the value to the community. However, the Development Agreement for the Roy Building was approved at the same time as the Development Agreement for 1595 Barrington Street. The tenants of the Roy Building, while perhaps not as high profile as the Discovery Centre, included government agencies, many not-for-profit entities, artists, small business, entrepreneurs and professional tenants. In order to comply with the conditions as they relate to timing, tenants at the Roy Building have vacated and the Roy is diligently working to comply with its own Agreement.

CONCLUSION

In addition to the concerns respecting the unfairness of the process and the lack of jurisdiction to grant the amendment sought, as a matter of equity and fairness and to ensure the

Attachment E - Public Submissions to Date

Richard Harvey
April 2, 2014
Page 7

redevelopment of these adjacent buildings have a harmonious end point as contemplated by the DHSMPs policies, we respectfully submit that the amendment application should be denied.

We may have further submissions to make after reviewing the Staff Report to Committees and Council.

Yours truly,

Signed by,

Nancy Rubin

Nancy G. Rubin

NGR/lmc

c. 778939 Ontario Limited
Encl.

Planning Applications Approval Process



Municipal Planning Strategy Amendment and Land Use By-law Amendment

- Complete application received
- Preliminary review of proposal
- Initiation report (includes recommendation on whether to consider amendments)
- **Decision by Regional Council to initiate MPS / LUB amendment process**
- Public information meeting
- Detailed review of proposal
- Staff report (includes recommendation on MPS and LUB amendments)
- Recommendation from Community Council
- First reading at Regional Council
- Public hearing at Regional Council for both MPS and LUB amendments
- **Decision by Regional Council on MPS / LUB amendments – no appeal process**
- Ministerial approval – Service Nova Scotia and Municipal Affairs
- Notice of approval of MPS and LUB amendments published
- Subdivision or building permit applications when changes are in effect

*Estimated time to final decision:
10 months*

*Estimated time is based on a typical case;
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Harvey, Richard

From: Phil Pacey [redacted]
Sent: April-02-14 11:22 PM
To: Harvey, Richard
Subject: Case 19171, Zellers Building

Dear Richard:

I am sending some thoughts on Case 19171, the Zellers Building.

1. It appears that 3258146 NS Ltd. is applying for an MPS amendment under Policy 89. The stated purpose of this policy is to deal with "Development projects with **highly significant benefits** for the downtown and HRM at large ..." Here the applicants appear to be claiming that their development project would have a **negative effect** for downtown, by forcing the Discovery Centre to move. It is not the stated purpose of Policy 89 to delay negative effects, as the owners are requesting. The applicant is attempting to misuse Policy 89.
 2. The application runs counter to two strong policy threads in the MPS: The first is the intent to protect heritage buildings and heritage conservation districts. Instead, the application would weaken the protections of the Barrington Street Heritage Conservation District by extending the time allowed for construction of a building that would greatly exceed the height limits in the District. The second policy thread is the intent to have clear, predictable, enforceable rules that will be respected. Contrary to this intent, the application would extend the period of uncertainty, and would encourage others to seek exemptions to the rules.
 3. The application would probably not benefit the Discovery Centre or HRM. I have looked at sections 242 and 235 of the Charter and do not see anything that would allow HRM to regulate who the tenant would be. If the application were approved, there is nothing to prevent the applicant from evicting the Discovery Centre in any event. If the development does not go ahead, the Discovery Centre could stay longer.
 4. It is highly questionable whether the applicant is capable of starting the development by July 20. The time limit has already been extended by 14 months in Policy 90BA. Exemptions and extensions would not be requested for a sound development. This company is listed in the Registry of Joint Stocks as "revoked for non-payment", on Dec. 12, 2013. This does not inspire confidence. Section 3.14.1 of the development agreement requires that wind tunnel testing be done before a development permit is issued. This has not been done. HRM does not have a complete application for a development permit, let alone a building permit. Practical questions, like the potential snow load on the Green Lantern Building, and the windows on the property line, remain. The design is complex, with curved surfaces, which would be expensive to construct. The floor plate of the tower, at 8100 square feet, is small, and may be impractical. The Turner Drake report of March, 2009, showed that 82% of demand in downtown Halifax is for floor plates of more than 10,000 square feet.
 5. It appears likely that this proposal, like the Twisted Sisters, will not be constructed. Extending the time limit just extends the uncertainty for the Barrington Street Heritage District.
- If this application is turned down, the applicant can realize that this development will not happen. Then the applicant can decide to allow the Discovery Centre to remain as long as required.

Sincerely,