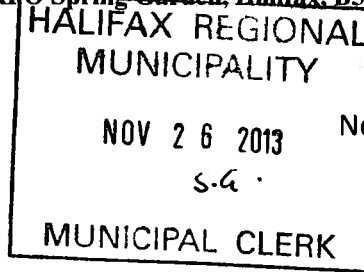




**Heritage Trust of Nova Scotia**  
1588 Barrington Street  
PO Box 36111, RPO Spring Garden, Halifax, B3J 3S9



November 26, 2013

Mr. Stephen Terauds, Chair and  
Members of the Heritage Advisory Committee  
Halifax Regional Municipality

Re Case 17863: Development Agreement, 99 Ochterloney Street

Dear Committee Members:

At the Harbour East-Marine Drive Community Council meeting of November 14, the **HRM solicitor agreed with the Heritage Trust that Policy CH-1 is relevant** to the deliberations about 99 Ochterloney Street and should be considered. We feel that it is important to notify members of the HAC that the position presented in the staff reports of August 16 and September 17 is **not** now the position of HRM.

As you recall, on August 16, 2013, an HRM staff report for the HAC described a proposed development agreement in connection with the heritage property at 99 Ochterloney Street. The report was not written by a heritage planner. The staff report said that it would be a simple matter for staff to subdivide the property, and the report assumed that this would remove the heritage status from the back part of the lot, without any involvement by Regional Council. The report instructed the HAC to consider **only Policy CH-2** of the Regional Plan, which policy deals with developments **abutting** registered heritage properties. The report failed to mention Policy **CH-1**, which sets out policy for development agreements **in connection with** a heritage property.

On August 27, 2013, the Heritage Trust **wrote** the HAC pointing out the omission of Policy CH-1, and asking for a new staff report.

The minutes of the HAC meeting on August 28, 2013, record that HRM **staff continued** to maintain orally that Policy CH-2 was the relevant policy.

On November 5, the Trust learned that a **new staff report** had been issued on September 17, **still claiming** it was not necessary to deal with Policy CH-1. Again, this report was not written by a heritage planner. This report had not been placed on the public agenda of the October 3 meeting of the Harbour East-Marine Drive Community Council; it was dealt with as an added item. Though the subject of the report was the August 27 letter from Heritage Trust, the Trust was not informed of the existence of this report.

<http://www.halifax.ca/Commcoun/east/documents/711iCase17863DAOchterloneyandVictoria.pdf>. The report stated that "Following the subdivision, the proposed development becomes

adjacent to the heritage property and does not include a heritage property”, assuming that subdivision would remove the heritage status of the rear of the property.

When the second report became public, the Trust immediately contacted members of HRM heritage and legal staff. We **hired lawyers**, Ron Pink and Kelsey McLaren. Mr. Pink signed a letter in the morning of November 14 and Ms. McLaren spoke at the Community Council meeting in the evening. The letter is attached.

At the Community Council meeting, **the HRM solicitor, Roxanne MacLaurin, agreed with the Trust’s lawyers that Policy CH-1 is relevant and should be considered.**

It is important to notify members of the HAC that the position presented in the staff reports of August 16 and September 17 and orally at the meeting of August 28 is **not** now the position of HRM. According to the Heritage Property Act, the substantial alteration of a registered heritage property requires a recommendation from the HAC and the approval of Regional Council. Deregistration of part of a heritage property requires a recommendation from the HAC, public notice, a public hearing, and the approval of Regional Council. Neither HRM staff nor Community Council has this power. Subdivision of a heritage property does not mean either part of the property becomes deregistered. **Policy CH-1 is relevant to any development agreement in connection with a heritage property.**

Please bear this in mind in your future deliberations. Two principles remain intact: (1) only Regional Council, on the advice of HAC, can decide the heritage status of part of a lot and (2) only Regional Council, on the advice of HAC, can allow a substantial alteration to a heritage property.

Yours sincerely,

Phil Pacey

HRM Committee

422 8814

November 14, 2013

***Via Email: Darren.Fisher@halifax.ca***

Councillor Darren Fisher  
Chair, Harbour East-Marine Drive Community Council  
PO Box 1749  
1841 Argyle Street  
Halifax, NS, B3J 3A5

Dear Councillor Fisher and Members of Community Council:

***Re: Registered Heritage Property, 99 Ochterloney Street, Dartmouth***

We represent Heritage Trust of Nova Scotia and write regarding the proposed development agreement for Case 17863 – corner of Ochterloney Street and Victoria Road, Dartmouth.

On August 28, 2013, the Heritage Advisory Committee voted against a recommendation to Harbour East-Marine Drive Community Council to approve the proposed development agreement. The site of the proposed development consists of four parcels of land, located at the corner of Ochterloney Street and Victoria Road. The parcel at 99 Ochterloney Street is a registered municipal heritage property. The proposal intends that the “registered heritage property would be subdivided and reduced in lot area, however, the heritage building would remain.”

The Staff Report and the Heritage Advisory Committee reviewed the proposal following Policy CH-2 of the Regional Municipal Planning Strategy (“Regional MPS”), which establishes evaluation criteria for Council’s consideration where a proposed development abuts a heritage property.

Our client, the Heritage Trust of Nova Scotia, sent a letter to the Heritage Advisory Committee on August 27, 2013, outlining its concerns with respect to the procedures followed by HRM Staff in reviewing the proposed development agreement under Policy CH-2. Specifically, the letter states that “the staff report treated the proposed development as if it were abutting a registered heritage property, and considered the clauses of Regional MPS Policy CH-2.” The letter states that Policy CH-1 is an applicable policy as the proposal is clearly a “development agreement application in connection with any municipally registered heritage property,” in the language of the policy. Our client suggests that a supplementary staff report should assess the proposal with respect to CH-1 of the Regional MPS.

In response to the concerns of our client, HRM Staff prepared an Information Report dated

September 17, 2013. HRM staff maintained that CH-2 is the only applicable policy under the Regional MPS as the development is proposed adjacent to a heritage property:

It is the opinion of staff, the applicable policy for the proposed development is CH-2 given the proposed development will be adjacent to the heritage property and does not include any additions or alterations to a heritage building or registered heritage property. The proposed development scenario includes the subdivision of 99 Ochterloney Street (a registered heritage property) by way of a non-substantial alteration to the heritage property, resulting in a parcel being subdivided from the rear of the property, and added to the three vacant adjacent parcels that comprise the development site. Following the subdivision, the proposed development becomes adjacent to the heritage property and does not include a heritage property or heritage building therefore CH-2 applies as the applicable policy. The subdivision of 99 Ochterloney Street can occur with or without the proposed development scenario and does not require the approval of the Heritage Advisory Committee or Regional Council. However, if CH-1 was considered by staff as the applicable policy to evaluate the proposed development, the staff recommendation would remain the same as described in the Staff Report dated August 16, 2013.

It is our understanding that the registered heritage property has not yet been subdivided, or deregistered, at this time. In the above Information Report, HRM staff has pre-determined the matter without relying upon the facts before them. The staff should review the proposed development agreement for the corner of Ochterloney Street and Victoria Road under CH-1 of the Regional MPS as the proposed development agreement includes land (i.e. 99 Ochterloney Street) that consists of a registered municipal heritage property.

A “municipal heritage property” is defined in section 3(g) of the *Heritage Property Act* as “a building, public-building interior, streetscape, cultural landscape or area registered in a municipal registry of heritage property.” Section 3 (c) goes on to define “building” as including “the land and structures appurtenant thereto.” Accordingly, both the building and the land at 99 Ochterloney Street form the “municipal heritage property” at this time as no subdivision nor deregistration has taken place. The approval process for the subdivision of registered municipal heritage property involves a substantial alteration. As well, deregistration requires the review of the Heritage Advisory Committee. It is not a foregone conclusion that the land of the municipal heritage property will be subdivided and deregistered.

Pursuant to HRM By-law H-200, the Heritage Advisory Committee must review an application for deregistration and make a recommendation to Regional Council. This process requires the proposal to be reviewed by staff with a recommendation from the Heritage Advisory Committee:

4. The Committee shall, within the time limits prescribed by Council or the Act, advise the Council respecting
  - (l) the deregistration of heritage properties;

Before Council can consider the deregistration request from the property owner, a public hearing shall be held not less than 30 days after notice of the hearing is served on the registered owner of the municipal heritage property and published in a newspaper circulating in the area following section 16(2) of the *Heritage Property Act*:

16 (1) On the application of an owner of a municipal heritage property or on its own motion, the council may deregister a municipal heritage property where

(a) the property has been destroyed or damaged by any cause; or

(b) the continued registration of the property appears to the council to be inappropriate as a result of the loss of the property's heritage value, as identified in the property's heritage file or notice of recommendation, unless the loss of the heritage value was caused by neglect, abandonment or other action or inaction of the owner ,

after holding a public hearing to consider the proposed deregistration.

(2) Such a public hearing shall be held not less than thirty days after a notice of the hearing is served on the registered owner of the municipal heritage property and published in a newspaper circulating in the area.

(3) Where a municipal heritage property is deregistered, the council shall cause notice of the deregistration to be sent to the registered owner of the property and a copy thereof to be deposited in the registry of deeds for the registration district in which the property is situate.

If Council fails to review the proposed development agreement following CH-1 of the Regional MPS, then we will advise our client to consider legal action. A duty of procedural fairness is owed and Council must follow the procedures for a development agreement in connection with any municipally registered heritage property, as provided in the Regional MPS.

Even if the land were subdivided, and the rear part of the property were deregistered, the proposed development agreement would still be "in connection with any municipally registered heritage property," in the language of Policy CH-1, as clauses 3.3.1(c), 3.3.2(b), 3.8, 5.1(f) and other clauses refer to the front of the registered heritage property.

We request that Council defer its decision regarding the proposed development agreement for the corner of Ochterloney Street and Victoria Road, Dartmouth, to allow HRM Staff to review the proposal according to CH-1 of the Regional MPS. As the parcel at 99 Ochterloney Street is a municipally registered heritage property, CH-1 is an applicable policy as the proposed development agreement includes land within this parcel.

To be clear, consideration must be given to the following points of CH-1 in the Regional MPS:

- (a) that any municipally registered heritage property covered by the agreement is not altered to diminish its heritage value;
- (b) that the development maintains the integrity of any municipally registered heritage property, streetscape or heritage conservation district of which it is part;
- (c) that significant architectural or landscaping features are not removed or significantly altered;
- (d) that the development observes, promotes and complements the street-level human-scaled building elements established by adjacent structures and streetscapes;
- (e) that the proposal meets the heritage considerations of the appropriate Secondary Planning Strategy as well as any applicable urban design guidelines;
- (f) that redevelopment of a municipally registered heritage property, or any additions thereto shall respect and be subordinate to any municipally registered heritage property on the site by:
  - (i) conserving the heritage value and character-defining elements such that any new work is physically and visually compatible with, subordinate to and distinguishable from the heritage property;
  - (ii) maintaining the essential form and integrity of the heritage property such that they would not be impaired if the new work was to be removed in the future;
  - (iii) placing a new addition on a non-character-defining portion of the structure and limiting its size and scale in relationship to the heritage property; and
  - (iv) where a rooftop addition is proposed, setting it back from the wall plane such that it is as inconspicuous as possible when viewed from the public realm; and
- (g) any other matter relating to the impact of the development upon surrounding uses or upon the general community, as contained in Policy IM-15.

I have copied this letter to the Clerk's Office for distribution to members of Council.

Yours very truly,

Original Signed by

Ronald A. Pink, Q.C.

[rpink@pinklarkin.com](mailto:rpink@pinklarkin.com)

c. Client  
Clerk's Office  
Karen Brown