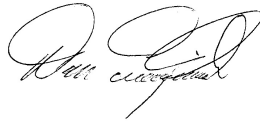


**Halifax Regional Council**  
**March 24, 2009**  
**Committee of the Whole**  
March 31, 2009

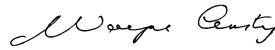
**TO:** Mayor Kelly and Members of Halifax Regional Council



**SUBMITTED BY:**

---

Dan English, Chief Administrative Officer



---

Wayne Anstey, Deputy Chief Administrative Officer - Operations

**DATE:** March 17, 2009

**SUBJECT:** **HRM by Design - Active Development Agreement Applications and Trade & Convention Centre Project**

---

**ORIGIN**

Staff

**RECOMMENDATION**

It is recommended that Council instruct staff:

1. To prepare the appropriate revisions to the HRM by Design documents to enable Council to consider development agreement applications, submitted prior to Council's first notice of its intention to adopt the Downtown Halifax Secondary Municipal Planning Strategy, under the existing policies of the Halifax Municipal Planning Strategy.
2. To take no further action relative to the World Trade and Convention Centre proposal on the former Halifax Herald and Midtown Tavern lands.

## **EXECUTIVE SUMMARY**

The planning documents associated with HRM by Design are expected to be presented to Council next month for first reading. The documents establish a new vision and regulatory regime for growth and development in the downtown over the next 25 years.

There are several development agreement applications that have been prepared and submitted based upon existing Municipal Planning Strategy policies and regulations. There is insufficient time to finish reviewing these applications and submit them to Council for a decision before the HRM by Design amendments are submitted to Council and advertised for a public hearing. Once the public hearing advertisement is published, Council's decisions have to be consistent with the proposed amendments. The existing applications are inconsistent with the proposed HRM by Design policies and bylaws. Each application varies from the proposed HRMbyDesign regulations to a greater or lesser degree. Two of the applications conform closely with the proposed HRM by Design height regulations while two are much taller than what HRM by Design would allow. The existing applications, therefore, cannot be considered unless Council decides to adopt a policy to "grandfather" them. If, on the other hand, HRM by Design is not ultimately adopted, the existing MPS policies will, of course, remain in place. Each development agreement application would then be brought to Council in due course.

The purpose of this report is to outline for Council the issues relative to these development agreement applications; the options Council has; and for staff to seek direction from Council with regard to these options. Whether or not all, some or none of these applications should be grandfathered is in large part a value-based decision for Council to make. The value and weight Council gives issues such as fairness to applicants versus the integrity of the public participation process and vision for the downtown are factors for Council's consideration. There is no right or wrong decision. This report attempts to provide factual information relative to the projects, existing/proposed policy and options in an effort to assist Council in reaching a reasonable decision. The report does not provide a detailed analysis of each project since that is premature.

The approach recommended in this report provides Council with flexibility in reaching a final decision on these projects. The recommended approach incorporates "grandfathering" policies into the HRM by Design policy documents in order to solicit input at the public hearing. After the public hearing Council could decide whether or not to adopt the "grandfathering" policy for all, some or none of the applications. This decision would not be appealable since it is an amendment to the Municipal Planning Strategy. However, if Council does ultimately adopt the recommended option, a public hearing would be required for each grandfathered application and these decisions would be appealable.

The Province is considering a public/private partnership for a new World Trade and Convention Centre in downtown Halifax. No development agreement application has been made for this project and there is no certainty regarding the project. Partnership negotiations have not been completed and a design has not been finalized. Based on the conceptual information that has been made available, the project will not meet the proposed by HRM by Design regulations. Council may wish to accommodate this project by directing changes to the HRM by Design

documents before they are adopted. This could not be considered a “grandfathering” accommodation since no application has been made.

Council should be mindful of the possibility that the partnership negotiations may not be completed for any number of reasons. The project should therefore not receive carte blanche approval allowing it to be constructed as proposed without the convention centre. If the partnership agreement for the creation of a new World Trade and Convention Centre is not approved for the site, the owner has indicated his intent to develop a retail, hotel and office complex on the lands. The project, without the convention centre component, should receive the same treatment and consideration that any other project or property will under HRM by Design. In either development scenario, more certainty could be achieved by use of the provision made in the proposed Downtown Halifax MPS which provides guidance to Council when considering proposals that do not comply with the Plan but which offer a significant public benefit through the plan amendment process.

## **BACKGROUND**

### **Value-based Approach**

There are four active development agreement applications in downtown Halifax that have been submitted pursuant to the current Halifax Municipal Planning Strategy policies and procedures. These applications are outlined in more detail in the Discussion section of this report. Most significantly however, they do not meet HRM by Design’s proposed building regulations to varying degrees. Therefore, they will not be able to be approved under the HRM by Design policies and bylaws. In addition, there is insufficient time to complete negotiations and hold public hearings on each of them prior to advertising the HRM by Design public hearing. (Council is bound to consider development agreement applications based on the policies in effect or advertised at the time their decision is made). Two of the applications conform closely with HRM by Design’s proposed height regulations while two are much taller than HRM by Design would allow.

Staff has been aware this situation could potentially arise. Therefore, a number of developers in the downtown, including the proponents of these four projects, received written notification (Attachment "A") advising them of this risk.

Council must make a substantially value-based decision on whether to grandfather all, some or none of the applications now being negotiated under existing Municipal Planning Strategy policies. The fundamental questions as to whether or not to grandfather the applications relate to fairness and integrity:

- Is it fair that developers who have been negotiating in good faith with staff on their specific projects be allowed to continue to their conclusion?
- Are any of the projects so inconsistent with the proposed vision for the downtown that they undermine the integrity of that vision?

It should be noted that:

- If the recommended approach is adopted for consideration at the public hearing, Council is not ultimately obliged to adopt the grandfathering policies for all or any of the applications; and
- If Council does adopt the recommended grandfathering policy for any of the proposals, there will be a subsequent public hearing to consider each grandfathered application. This approach does not preclude Council from ultimately turning down any or all of these grandfathered applications.

In coming to this position, staff are also mindful of the need to maintain focus at the upcoming public hearing on the HRM by Design vision, policies and bylaws and not turn the HRM by Design public hearing into a public hearing on four different projects. If each project is to have its own public hearing later on, there is no need to overly encumber the HRM by Design public hearing with the details of the pros and cons of each of the four applications. At the public hearing, comments relative to these projects should focus on whether or not the applications should be grandfathered, and if so, which approach is the most reasonable. Such public input may inform Council on community values relative to this issue.

At present, the HRM by Design documents do not include any grandfathering policies. If Council directs staff to incorporate grandfathering policies, the proposed Plan and Bylaw documents will be amended prior to Council's first reading of those documents.

### **What is “Grandfathering”?**

Grandfathering in this instance is unique and separate from grandfathering that typically occurs through as-of-right processes:

- In as-of-right situations, completed permit and subdivision applications made prior to Council's first notice of it's intention to adopt new or amended planning strategies and by-laws are entitled to be reviewed for approval based on the requirements in effect on the day their applications were filed with the Municipality. Staff cannot withhold approval if the application meets all relevant regulations in effect at the time of the application.
- Grandfathering development agreement applications simply determines the rules by which these applications will be considered by Council, not the final decision. In addition, the applicant is not entitled to be grandfathered. It is a discretionary policy decision by Council as to whether or not they will be entertained and what standards will be applied to them.

In 2006, Council addressed the status of pending development agreement and rezoning applications under the Regional Plan through a policy which grandfathered these applications and made them subject to the policies in effect when the applications were submitted.

The recommendations made by the Urban Design Task Force, the committee responsible for advising Council on the development and implementation of the HRM by Design project, do not include an approach to grandfathering. Such a recommendation was beyond their mandate which

is to advise Council on a high level vision for downtown development and growth, not to review the merits of individual projects.

## DISCUSSION

### 1. Recommended Approach - Grandfather Current Development Agreement Applications

Staff's review of the current development agreement applications to-date indicates that they are consistent within the range provided by the applicable policies of the existing Halifax Municipal Planning Strategy. These policies are subject to interpretation and it is reasonable to expect that Council could arrive at a different conclusion from staff on each and every proposal. When compared to the proposed HRM by Design regulations, however, the projects do not meet the proposed requirements to varying degrees:

App. Date	Project	Description of Issue
May 20/08	<b>Case 01162</b> - Application by Dixel Developments Limited for a 10 storey mixed-use building on the south-east corner of Hollis and Morris Streets	approximately <b>105 feet</b> in height, but located in a proposed 72 foot height precinct
June 25/08	<b>Case 01172</b> - Application by Davison Seamone Rickard Adams Architects Incorporated on behalf of 778938 Ontario Limited / Starfish Properties for 16 storey redevelopment of the Roy Building, Barrington, Sackville and Granville Streets	approximately <b>225 feet</b> in height, but is partially located in the proposed Barrington Heritage Conservation District where the maximum height is proposed to be 72 feet; outside the District the proposed maximum height along Granville St. is 91 feet
Dec 22/08	<b>Case 01227</b> - Application by Dixel Developments Limited for a 5 storey addition to City Centre Atlantic, between Birmingham St. and Dresden Row	conforms to the proposed height precinct of 92 feet, but does not meet <b>streetwall stepback</b> and rooftop landscaping requirements
Dec 30/08	<b>Case 01231</b> - Application by 1595 Investments Limited, for a 20 storey mixed-use development at 1595 Barrington Street (Discovery Centre)	approximately <b>220 feet</b> in height, but like the Roy Building, is partially located in the proposed Barrington Heritage Conservation District where the maximum height is proposed to be 72 feet; outside the District the proposed maximum height along Granville St. and Sackville St. is 91 feet

It is important to note that the summarized information about these projects is not a full description or analysis. Most notably, it does not include an analysis of the projects for compliance relative to existing MPS policies. While the incongruency with the proposed height limits are the most obvious, there are other requirements of the HRM by Design documents that the applications may not meet such as streetwall setbacks, streetwall height, building setbacks, building width, dwelling unit mix and rooftop landscaping. Under HRM by Design, it's possible that many of these elements could be considered as variances by the Design Review Committee

should they meet the applicable criteria of the Design Review Manual. Additionally, a full analysis of the projects against the HRM by Design documents is impeded as the projects evolve and change through the review and negotiation process. It should also be noted that all of the projects have taken some cues from HRM by Design by incorporating its basic building form elements; a streetwall and upper storey stepbacks.

While Council has discretion as to how it wishes to address the current development agreement applications, it is recommended that they be grandfathered thereby allowing them to be considered under the existing Municipal Planning Strategy policies. A review of the pros and cons of this approach is as follows:

Pros	Cons
<ul style="list-style-type: none"> <li>• this approach is consistent with the approach taken during the Regional Plan and is an expression of good faith in the discretionary development approval process</li> <li>• the applications have been submitted in advance of the HRM by Design documents being presented to Council</li> <li>• the applications are complete with considerable investment made in their preparation, including detailed plans, professional studies and other supporting documents</li> <li>• these projects were designed within the parameters of the existing development agreement policies of the Halifax Municipal Planning Strategy, based upon these being the existing context for project approvals</li> <li>• this approach removes the projects from being viewed under the HRM by Design lens and provides for their individual consideration and decision</li> </ul>	<ul style="list-style-type: none"> <li>• this approach could result in the construction of new buildings in the downtown that are contrary to the new vision that may be adopted under HRM by Design</li> <li>• the decision-making process could be confusing to the public who would expect that these projects should be judged by the new HRM by Design regulations</li> <li>• Council's decision to grandfather the applications could be perceived as fettering their discretion when decisions are made concerning each application</li> <li>• there has been a substantial investment of time and effort by the public participating in the development of HRM by Design's policies and regulations and citizens may consider grandfathering these applications as undermining their efforts</li> <li>• subsequent public hearings on each application will perpetuate uncertainty and ongoing public debate/appeals about downtown development</li> </ul>

**Timeframes**

Should Council decide to grandfather any of these applications, staff recommend that the required project commencement and completion dates be shortened from that which is typically required in downtown development agreements. This will ensure that if they are approved, the projects will not hold longstanding development rights that are contrary to the HRM by Design regulations. Additionally, requests for renewals and amendments could not be entertained as the enabling policies for the development agreement would no longer be in place. Specific policy would be included in the Downtown Halifax MPS relative to the various timeframes.

**Active Applications Versus Future Project Applications**

Apart from the four active development agreement applications on file, there are a number of other downtown projects that are at various stages of design or public discussion. None of these projects, however, have resulted in a development agreement application to the Municipality. These projects include the Waterfront Development Corporation's Queen's Landing Development between Prince and George Streets, a rooftop addition to the NSCAD complex between Granville Mall and Hollis Street and a re-development of the YMCA and CBC Radio buildings on South Park and Sackville Streets. These projects vary in the degree of their advancement through the design process and it is unknown at this time whether they will be able to meet the proposed new requirements. No accommodation is being recommended for these projects.

**2. Alternative # 2 - No Grandfathering of Current Development Agreement Applications**

The HRM by Design project has been underway for approximately two years. Over this time, a significant amount of work has been undertaken to devise new policies and regulations to guide downtown development and public investment. If accepted by Council, the HRM by Design documents could be the context by which the current applications are considered.

The applications are in various stages of the application review process. These applications could be judged and distinguished based upon factors such as their date of application or their congruence with the proposed HRM by Design policies and regulations. It may even be suggested that these applications be viewed as speculative, however, there is no evidence that they are given that no one could predict when or if the HRM by Design documents would be considered by Council.

This alternative is not recommended prior to the public hearing, however it may be reasonable after Council has had a chance to hear from the public on the issue of grandfathering relative to HRM by Design's vision for the downtown. A review of the pros and cons of this approach is as follows:

Pros	Cons
<ul style="list-style-type: none"> <li>• this approach will result in buildings that are congruent with the new downtown vision adopted under HRM by Design</li> <li>• none of the applications had preceded the start of the HRM by Design process; Draft 1 of the documents was made available to the public in April 2008</li> <li>• the perception of Council fettering its discretion is removed; by not grandfathering current applications Council's intentions and commitment to a new vision and policies is clear</li> </ul>	<ul style="list-style-type: none"> <li>• this approach would be inconsistent with the Municipality's approach during the Regional Plan and demonstrate a lack of good faith in the discretionary development approval process</li> <li>• the up front investment by the developers to make complete applications including detailed plans, professional studies and other supporting documents would be lost</li> </ul>

**Development Moratorium**

Staff have been asked as to whether a development moratorium could have prevented the need for a decision on grandfathering. A moratorium was not invoked as it would have halted development in the downtown for an uncertain length of time and in doing so contravene the Regional Plan policies that support economic growth in the Capital District. Additionally, moratoriums have a practical application to as-of-right development proposals where property owners are entitled to approvals. In downtown Halifax, most development approval occurs through the discretionary process where Council is responsible for approving or refusing development requests. During the HRM by Design process, Council has approved a number of downtown projects and this can be taken as indicating that Council did not wish to introduce a moratorium.

**3. Alternative # 3 - Amend HRM by Design Documents to Allow the Building Heights Proposed Under the Current Development Agreement Applications**

Specific provision could be included in the Downtown Halifax Plan about these projects where their proposed heights are accommodated site specifically. All other aspects of the proposal would have to meet the requirements of HRM by Design and be subject to the new approval regime. The Plan and land use by-law would specify that where these applications do not proceed through the site plan approval process within one year of Council's first notice of it's intention to adopt the Plan, then the maximum heights prescribed by HRM by Design apply.

This alternative is not recommended. A review of the pros and cons of this approach is as follows:

Pros	Cons
<ul style="list-style-type: none"> <li>• there is less concern for bad faith given that accommodation is made to consider perhaps the most critical element of the proposal (height)</li> <li>• although not what was specifically proposed, the resulting building may be somewhat close to what the developer is requesting</li> <li>• the resulting building would be more consistent with the building forms proposed by HRM by Design</li> <li>• the relaxed heights would be for a temporary period and would revert to the proposed HRM by Design heights if the projects do not proceed within a reasonable period of time</li> </ul>	<ul style="list-style-type: none"> <li>• all of the current applications have been designed to align with the existing MPS policies and requirements; grandfathering certain elements and not the project in its entirety, would create too many unknowns for the developer in that some components of the building may not be able to be accommodated under the new requirements</li> <li>• grandfathering any component of the project presumes that Council endorses the project when in fact no decision has been made by Council nor could one be reasonably predicted</li> <li>• the public hearing for HRM by Design could be made confusing to participants and Council by detracting from it's intent to adopt a new vision for downtown Halifax and focussing on the individual development proposals</li> </ul>



### Halifax Herald/Midtown Tavern Properties (Argyle and Grafton Streets)

This portion of the report discusses two, distinct development scenarios for these lands. The first is a proposal which includes the new World Trade and Convention Centre and the second is development of the lands without the WTCC component.

#### World Trade and Convention Centre

The development of these properties warrants particular attention given Council's endorsement of the proposal to date for the new World Trade and Convention Centre. Based on the conceptual information that has been made available, the project would not meet the requirements proposed by HRM by Design relative to building height, width and upper storey setbacks.

Council may wish to expressly accommodate this project by directing changes to the HRM by Design documents before they are adopted. Specific policy could be included in the Downtown Halifax Plan concerning this site and the concept drawings attached as an appendix to the land use by-law. The policy could state that the inclusion of the convention centre component constitutes the public benefit element contemplated by the plan while the land use by-law provisions would simply require the building to be developed consistent with the conceptual plans.

This alternative is not recommended. A review of the pros and cons of this approach is as follows:

Pros	Cons
<ul style="list-style-type: none"><li>no further regulatory approval required by Council</li></ul>	<ul style="list-style-type: none"><li>provincial support and approval of the project is not finalized; the approach is reasonable only if the new WTCC is developed on this site</li><li>specific policy and regulations applicable to the site would have to be drafted to allow a substantial amount of flexibility since the actual final design has yet to be determined</li><li>high potential for unintended result due to the end proposal differing from the Council-endorsed concept but for which approval could not be withheld because it fits within the regulations</li><li>changes to the building could occur only via amendment to the MPS &amp; LUB</li></ul>

More certainty could be achieved by use of the provision made in the proposed Downtown Halifax MPS which provides guidance to Council when considering proposals that do not comply with the Plan but which offer a significant public benefit through the plan amendment process. The wording of the draft policy and its preamble is as follows:

"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. Currently the Province of Nova Scotia and HRM are calling for proposals for construction of a new downtown convention centre. Projects of this scale and status merit special consideration by the community and Council.

Policy 89 Notwithstanding the forgoing policies, where a proposed amendment addresses unforeseen circumstances, or is deemed by Council to confer significant economic, social, or cultural benefits to HRM beyond the bonus zoning provisions of this Plan, such as a new downtown convention centre or other significant cultural infrastructure, such amendments may be considered by Council at any time regardless of the schedule for reviews."

Staff advise that this approach provides Council with the least amount of uncertainty and affords a suitable level of discretion and control to modify the Plan as it sees fit. In addition, a Plan amendment would not be appealable to the Utility and Review Board. The specifics of the development would be known and Council could enter into a definitive contract with the developer that delineates the project requirements and public benefit contribution.

#### Private Retail, Hotel and Office Complex

If the partnership agreement for the creation of a new World Trade and Convention Centre is not approved for this site, the owner has indicated his intent to develop a retail, hotel and office complex on the lands. At the time of writing this report, an application for a development agreement for this proposal has not been submitted. Should an application be received which could be considered under the existing downtown Halifax MPS policies prior to Council's first reading of the HRM by Design documents, it is recommended that the application be considered by the same approach determined relative to the other four applications. If an application is not received by that point in time, it is suggested that such a proposal might also be considered in the future as amendment to the Plan pursuant to Policy 89 above.

#### BUDGET IMPLICATIONS

None.

#### FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

**ALTERNATIVES**

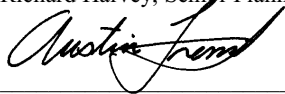
1. Council may choose to instruct staff:
  - (a) To prepare the appropriate revisions to the HRM by Design documents to enable Council to consider development agreement applications, submitted prior to Council's first notice of its intention to adopt the Downtown Halifax Secondary Municipal Planning Strategy, under the existing policies of the Halifax Municipal Planning Strategy; and
  - (b) To take no further action relative to the World Trade and Convention Centre proposal on the former Halifax Herald and Midtown Tavern lands. These are the recommended alternatives.
2. Council may choose not to grandfather current development agreement applications if they are not before Council in advance of Council's first notice of its intention to adopt the Downtown Halifax Secondary Municipal Planning Strategy.
3. Council may choose to instruct staff to revise the HRM by Design documents to grandfather the heights proposed by the current development agreement applications, under the existing Municipal Planning Strategy but require all other components of the proposals to meet the new policies and regulations.
4. Council may choose to instruct staff to revise the HRM by Design documents to include specific provision to accommodate the new World Trade and Convention Centre on the former Halifax Herald and Midtown Tavern lands.


**ATTACHMENTS**

Map 1                                      HRM by Design Study Area and Development Sites  
Attachment "A"                         Letter to Downtown Halifax Developers

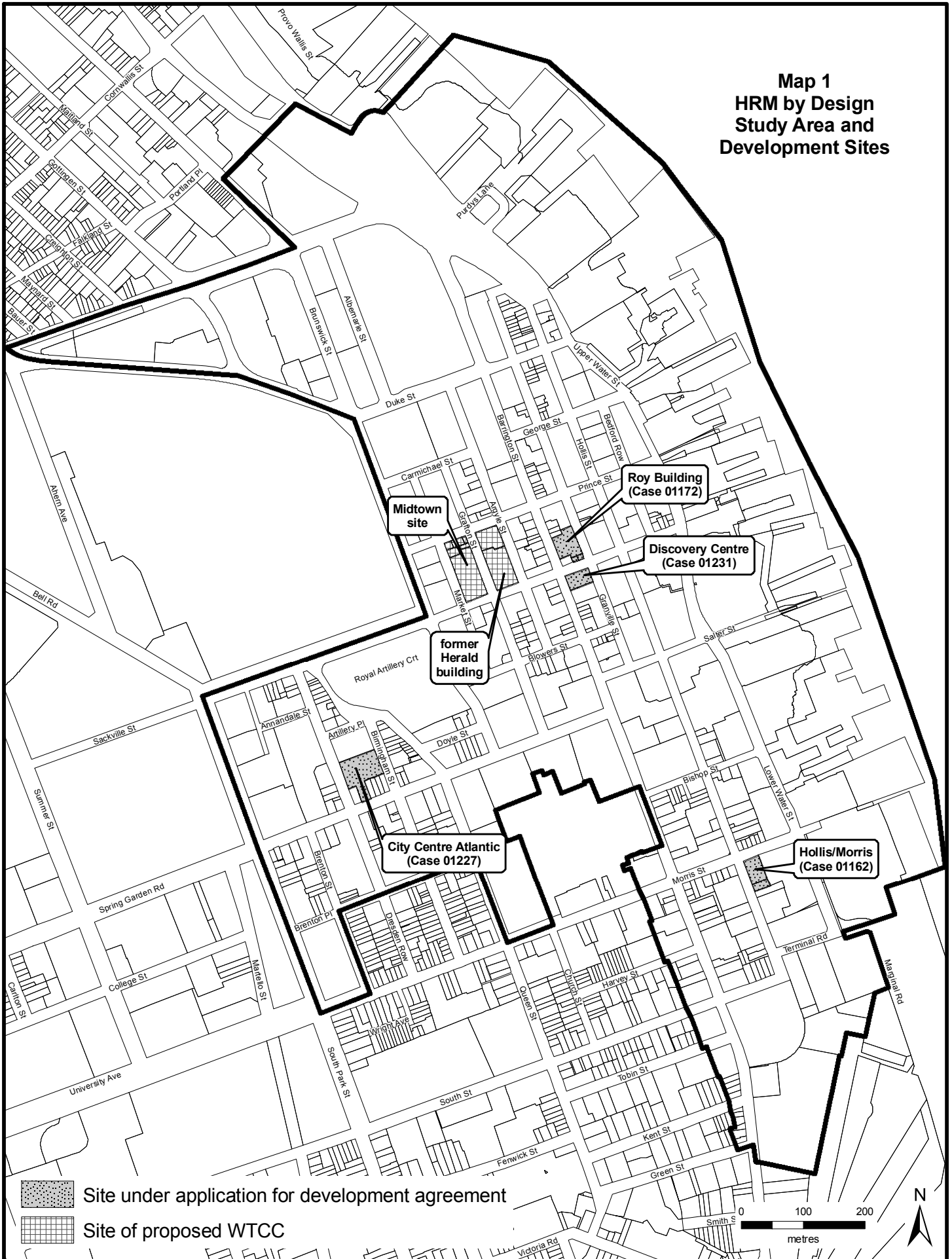
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by:                      Kelly Denty, Planning Supervisor, 490-6011  
   Richard Harvey, Senior Planner, 490-5637

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

Report Approved by:                       
   Paul Dunphy, Director of Community Development, 490-4933

**Map 1  
HRM by Design  
Study Area and  
Development Sites**



**Attachment "A"**  
**Text of Letter to Downtown Halifax Developers**

I am writing to clarify HRM's approach on handling development agreement applications made during a Municipal Planning Strategy (MPS) review such as the ongoing HRM by Design process in downtown Halifax.

Generally speaking, a development agreement application must be considered by Council based on the policies in effect when an approval decision is made pursuant to s. 230 of the *Municipal Government Act*.

In 2006, Council addressed the status of pending development agreements under the Regional Municipal Planning Strategy through Policy IM-21 which states:

“Applications for a development agreement or rezoning on file prior to Council's first notice of its intention to adopt this Plan 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 application shall be subject to all applicable policies of this Plan.”

With regard to other pending HRM policy initiatives, such as HRM by Design, it is contemplated that staff will be proposing appropriate exemption provisions for consideration of Council.

Council may, at the time of adopting new MPS amendments, exempt all or some pending applications and make special policy provisions for these developments. Without such a provision, an application would be evaluated against any new policies adopted by Council.

If you have questions on this topic, please feel to contact myself or any of the following staff members:

Kelly Denty, Supervisor of Planning Applications, Western Region  
Kurt Pyle, Supervisor of Planning Applications, Eastern Region  
Thea Langille, Supervisor of Planning Applications, Central Region

Yours truly,

Austin French  
Manager of Planning Services

c.c. Paul Dunphy, Director of Community Development  
Mary Ellen Donovan, Director of Legal Services  
Karen Brown, Senior Solicitor