



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

Item No. 11.1.7 (ii)

**Halifax Regional Council
September 20, 2011**

TO: His Worship Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Original Signed
Mr. Alan Parish, Chair, Design Review Committee

DATE: September 12, 2011

SUBJECT: Case 16466: First Annual Review -- Amendments to the Downtown
Halifax MPS and LUB

INFORMATION REPORT

ORIGIN

A motion of Halifax Regional Council at its March 29, 2011 meeting instructed staff to initiate a process to consider amending the Downtown Halifax Secondary Municipal Planning Strategy (SMPS) and the Downtown Halifax Land Use By-law (LUB) to correct identified errors and omission, to clarify certain policies and land use provisions and to introduce additional flexibility.

Meetings of the Design Review Committee held on August 11, 2011 and September 8, 2011.

BACKGROUND

The Design Review Committee considered amendments to the Downtown Halifax MPS and the Downtown Halifax LUB proposed by staff in the July 21, 2011 staff report at meetings held on August 11 and September 8, 2011.

The proposed amendments were intended to correct identified errors and omissions, to clarify certain policies and land use provisions and to introduce additional flexibility.

DISCUSSION

The Design Review Committee reviewed and approved/accepted the proposed amendments as found in the Discussion section of the July 21, 2011 staff report with the exception of number 7, “Requirement for Landscaped Open Space” found on page 6 of the July 21, 2011 staff report.

In this instance the Committee accepted the proposed amendments to the Downtown Halifax Land Use By-law requirement for landscaped open space for Precinct 3 and Precinct 9, but not for Precinct 2. The Committee felt that those proposed amendments created excessive danger to the numerous heritage properties in Precinct 2. The Committee was also aware that a future Heritage District is a possibility in a portion of Precinct 2.

BUDGET IMPLICATIONS

Budget implications of this report are outlined in detail in the attached July 21, 2011 staff report.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

Financial Management Policies/Business Plan compliance is outlined in the attached July 21, 2011 staff report.

COMMUNITY ENGAGEMENT

The Design Review Committee is a Committee consisting of 12 citizen members. Meeting dates, agendas, reports and minutes are posted to the web.

ATTACHMENTS

1. July 21, 2011 staff report

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.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: Sherryll Murphy, Deputy Clerk, 490-4211



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

Design Review Committee
August 11, 2011

TO: Chair and Members of Design Review Committee

Original Signed

SUBMITTED BY: _____
Austin French, Manager of Planning Services

DATE: July 21, 2011

SUBJECT: Case 16466: First Annual Review – Amendments to the Downtown
Halifax Secondary Municipal Planning Strategy and Land Use By-law
(Phase 1 of 2)

ORIGIN

Staff.

RECOMMENDATION

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

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

EXECUTIVE SUMMARY

This report recommends amendments to the Downtown Halifax Secondary Municipal Planning Strategy (SMPS) and the Downtown Halifax Land Use By-law (LUB) to correct identified errors and omissions, clarify certain policies and land use provisions, and introduce additional flexibility. The amendments are being considered in the context of an annual review exercise contemplated under the Downtown Plan.

The proposed amendments to the Downtown Halifax SMPS include:

1. A new policy to prohibit drive-thrus in Downtown Halifax.
2. An amendment recognizing that the undergrounding of overhead utilities is a public benefit that should be considered when assessing site plan approval applications seeking the post bonus height.
3. Amendments to the Spring Garden Precinct policies to provide additional flexibility on the location of public parking, which will replace the parking spaces now contained on the Clyde Street parking lots.
4. A new policy clarifying that additions to non-conforming buildings are permitted.

The proposed amendments to the Downtown Halifax LUB include:

1. Amendment to the definitions for “average grade”, “flat roof”, “multiple unit dwelling” and “projecting sign”.
2. General housekeeping amendments to correct cross-referencing errors in the section dealing with the composition of the Design Review Committee.
3. Amendments to clarify the public consultation component related to substantive site plan approval applications.
4. Amendments to the requirement for the provision of landscaped open space (LOS) in Precincts 2 (Barrington St. South), 3 (Spring Garden Rd.) and 9 (North End Gateway).
5. Amendments to introduce a section on “Temporary Construction Uses Permitted”, which would be in keeping with all other land use by-laws in HRM.
6. Amendments to Map 7 – Streetwall Heights to add maximum streetwall heights where they are missing.

BACKGROUND

Introduction

The Downtown Halifax SMPS and the Downtown Halifax LUB were both approved by Regional Council on June 16, 2009, and came into effect on October 24, 2009. These new planning documents replaced decades old documents which were becoming impediments to growth and densification in Downtown Halifax.

While the shelf life of the new documents is anticipated to be approximately 25 years, it is expected that Council will need to make amendments from time to time to ensure their continued

relevance. Since October, 2009, staff has been closely monitoring the implementation of the Downtown Halifax SMPS and the Downtown Halifax LUB to identify any trends, opportunities, errors, omissions and shortcomings.

Initiation

At the March 29, 2011 meeting of Regional Council, staff was instructed to initiate a process to consider amending the Downtown Halifax SMPS and the Downtown Halifax LUB to correct identified errors and omissions, clarify certain policies and land use provisions, and introduce additional flexibility.

DISCUSSION

Policy Support for Annual Review

The impact of planning policies and land use provisions can only be fully assessed following implementation. With more than a year now elapsed since the coming into force of the new Downtown Halifax SMPS and the Downtown Halifax LUB, staff is ready to embark on a process to propose certain amendments to the documents.

This exercise is in keeping with the policies of the Downtown Halifax SMPS, as follows:

Policy 86 HRM shall adopt an amendment process that provides for regular review and evaluation of the policies contained in this Plan and development regulations.

Policy 87 Further to Policy 86, it shall be the intention of HRM to conduct an annual review to consider proposed amendments that do not require substantive changes to this Plan or the Land Use By-law.

Proposed Amendments to the Downtown Halifax SMPS

1. Drive-Thrus

The Downtown Halifax SMPS and the Downtown Halifax LUB are currently silent on the issue of drive-thrus in Downtown Halifax. While drive-thrus are often seen as a convenient service delivery model within primarily automobile-oriented environments, they are not appropriate in a denser and more compact urban context. In order to (1) reduce potential conflicts between pedestrians and automobiles, (2) maintain the built form character of urban neighbourhoods, and (3) protect the aesthetic quality of urban streetscapes, staff is proposing that drive-thrus be a prohibited built form in Downtown Halifax.

2. Recognizing the Undergrounding of Overhead Utilities as a Public Benefit

The Downtown Halifax SMPS and the Downtown Halifax LUB both assign pre and post-bonus heights to properties in Downtown Halifax. In order to achieve the maximum post-bonus height,

a public benefit must be provided in exchange for any additional height beyond the pre-bonus height. Acceptable public benefit categories are listed in both the Downtown Halifax SMPS and the Downtown Halifax LUB. These include the provision of public art, investment in public transit or active transportation infrastructure, the provision of subsidized residential units, etc. Staff is of the opinion that both the Downtown Halifax SMPS and the Downtown Halifax LUB should be amended to include the undergrounding of overhead utilities as part of the list of public benefit categories that should be considered when assessing site plan approval applications seeking the post-bonus height.

3. Clyde Street Parking Lots

The former Spring Garden Road Commercial Area Plan (Halifax MPS) contained a longstanding requirement that any redevelopment of the HRM-owned Clyde Street parking lots would not result in a net loss of public parking provided on these two sites. This requirement was then carried forward under the Downtown Halifax SMPS and the Downtown Halifax LUB. In order to provide additional flexibility to future redevelopment plans of the Clyde Street parking lots, HRM Infrastructure and Asset Management has requested staff to amend the Downtown Halifax SMPS and the Downtown Halifax LUB to allow for some or all of the 210 parking spaces currently provided on the Clyde Street parking lots to be transferred to the former Halifax Infirmary property.

The Clyde Street lots and the HRM portion of the former Halifax Infirmary site are approved for divestment by Regional Council. The proceeds from the sale of these lots are to be used to provide the majority of the municipal share for the construction of the new Central Library. The two Clyde Street lots are currently under Purchase and Sale Agreement. The accepted proposal for the Clyde Street lots will replace all 210 public parking spaces currently found on those two lots. The ability to “spread” the parking requirements to all three lots gives flexibility to HRM in terms of ensuring additional public parking or realizing a greater return on the HRM portion of the former Halifax Infirmary site.

4. Non-Conforming Buildings

The Downtown Halifax SMPS and the Downtown Halifax LUB diverge from previous municipal planning strategy policies and land use by-law regulations in both approach and intended outcome. It was therefore expected that many existing buildings in Downtown Halifax would not conform to the land use by-law provisions contained under the Downtown Halifax LUB. A recent analysis of the existing building stock has in fact shown that approximately 175 buildings or 46% of the entire stock is currently non-conforming.¹ The analysis was limited to reviewing the streetwall setback, streetwall height, streetwall stepback, maximum building height and maximum building width. It is therefore possible that some of the buildings that have been classified as conforming to the Downtown Halifax LUB would be deemed to be non-conforming under a more detailed analysis.

¹ Of those 175 buildings that are non-conforming, 50 (29%) can be made to be conforming by adding building mass to the existing structure.

At the time of its drafting, staff felt that the Plan contained enough broad policy directions that would support the extension, enlargement, and alteration of buildings that would be made non-conforming under the Downtown Halifax LUB. However, it has since come to our attention that the broad policies of the Plan may not have been clear enough in this regard relative to the specific requirements of the HRM Charter. Staff is therefore proposing amendments to both the Downtown Halifax SMPS and the Downtown Halifax LUB to allow for the extension, enlargement, or alteration of non-conforming buildings in Downtown Halifax.

Proposed Amendments to the Downtown Halifax LUB

1. "Average Grade" Definition

Staff is proposing a change of the "average grade" definition so that it refers to the average finished elevation around the perimeter of the building, and not the lot. This proposed change would bring the "average grade" definition into conformance with those of other HRM land use by-laws.

2. "Flat Roof" Definition

Staff is proposing an amendment to the "flat roof" definition so that it is defined as a roof that is not sloping greater than 1:10, instead of the current 1:12 slope. The amendment is being sought to require the landscaping of more rooftops in Downtown Halifax and to reduce a potential loophole to skirt the existing requirement by providing a very modest roof slope.

3. "Multiple Unit Dwelling" Definition

An amendment is being proposed to the "multiple unit dwelling" definition so that it refers to buildings containing three or more dwelling units, instead of four or more dwelling units. This change is being proposed to bring the definition into conformity with other HRM land use by-laws.

4. "Projecting Sign" Definition

The projecting sign definition is being amended so that it also includes signs that are attached to the underside of a building or canopy, in addition to those that project or extend beyond a wall of a building.

5. Composition of the Design Review Committee

Staff is proposing general housekeeping amendments to correct cross-referencing errors in the section dealing with the composition of the Design Review Committee.

6. Public Consultation Component

Staff is proposing general housekeeping amendments to clarify the public consultation component related to substantive site plan approval applications. Currently, the provision requires that applicants for site plan approval must undertake a public consultation exercise using a "combination" of three methods (open house, public kiosk, and website/online forum). The inclusion of the word "combination" in the provision has been problematic, as it implies for some that there is a choice among the three methods. However, the intent has always been that all three methods would be used for each and every public consultation exercises.

7. Requirement for Landscaped Open Space

The Downtown Halifax LUB currently requires the provision of landscaped open space (LOS) for buildings used primarily for residential purposes in Precinct 2: Barrington Street South; Precinct 3: Spring Garden Road Area; and Precinct 9: North End Gateway. There is no requirement to provide any LOS in the rest of the Downtown Halifax Plan Area.

"Landscaped open space" is defined under the By-law as:

Any outdoor landscaped area or playground for common use by the occupants of a building, but shall not include space for vehicular access, car parking, areas for the manoeuvring of vehicles, or areas covered by any building.

The current requirement is for 11.25 square metres of LOS to be provided for each dwelling unit, 40% of which must be provided at ground level. This requirement closely matches the LOS requirement under the former plan and land use by-law that applied to two of the three precincts. The former Spring Garden Commercial Plan Area, unlike the areas now covered by Precincts 2 and 9, only required LOS for single use residential projects. However, since all residential components along Spring Garden Road were proposed as part of much larger mixed use projects, the provision of LOS never became an issue.

Following the coming into force of the Downtown Halifax LUB, staff began reviewing plans for proposals involving substantial residential components in the three districts requiring the provision of LOS. It soon became apparent that the requirement for LOS in Precinct 3: Spring Garden Road Area would lead to a built form that was incompatible with the already established built form character of the area. For example, Studiowork International proposed a redevelopment of 5688 Spring Garden Road/1485 South Park Street into a mixed use building having at least one floor of retail/commercial and approximately 30 dwelling units. Since the area dedicated to residential uses was to exceed 50% of the gross floor area of the building, LOS became a requirement. Calculations for the project indicated that the project required a total of 337.5 sq. metres (3632.94 sq. feet) of LOS, with 135 sq. metres (1453.17 sq. feet) to be provided at ground level. The entire site itself only has 4319 sq. feet, which means that 33% of the site could not be built on and would need to be landscaped. This is certainly not in keeping with the character of the Spring Garden Road Area.

In Precincts 2 and 3, the requirement that 40% of the LOS must be provided at ground level may also cause some problems for projects proposing the conversion of existing commercial space into residential space. The amount of LOS required at ground level in Precincts 2, 3 and 9 can also result in a disincentive to increasing residential densities in Downtown Halifax.

The current requirement for LOS would not have allowed projects like the Martello or the addition to the City Centre Atlantic to proceed, as it would have been impossible to provide ground level LOS. If the changes are not made, it will certainly affect the proposal for 5688 Spring Garden Road/1485 South Park Street, as well as other projects that are currently in the design stages.

The proposed amendments would reduce the requirement for LOS in Precincts 2, 3 and 9 to 5 sq. metres per unit from 11.25 sq. metres, and allow for a full transfer to rooftops.

8. Temporary Construction Uses

Staff is proposing adding provisions to deal with temporary construction uses. The recommended wording for the temporary construction uses provisions modelled after the wording for similar provisions in other HRM land use by-laws.

9. Maximum Streetwall Heights Map

Following approval of the Downtown Halifax LUB, staff discovered that Map 7 – Streetwall Heights was missing maximum streetwall heights on certain properties, e.g. around Purdy's Lane, on Terminal Road (Westin Hotel), and along Barrington Street (properties to the south of Cornwallis Park, including the Superstore property). Where they were found to be missing, maximum streetwall heights have been added to Map 7. These were determined by matching the maximum streetwall heights assigned to lots located on the opposite side of their respective streets.

Conclusion

Staff has drafted amendments to the Downtown Halifax SMPS and the Downtown Halifax LUB that will correct identified errors and omissions, clarify certain policies and land use provisions, and introduce additional flexibility to the regulatory context of Downtown Halifax. As such, it is recommended that Regional Council adopt the proposed amendments, as contained in Attachments A and B of this report.

BUDGET IMPLICATIONS

The costs to process this planning application can be accommodated within the operating budget for C310 Planning & Applications.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

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 public information meeting held on June 8, 2011. A public hearing has to be held by Regional Council before it can consider the approval of any amendments.

For the public information meeting, notices were posted on the HRM website as well as in a local newspaper. Attachment C contains a copy of the minutes from the meeting.

Should Regional Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, those in attendance at the public information meeting on June 8, 2011 will be notified by mail.

ALTERNATIVES

1. Regional Council may choose to approve the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy and the Downtown Halifax Land Use By-law, as contained in Attachments A and B. This is the recommended course of action.
2. Regional Council may choose to either adopt certain amendments but not others outlined in this report, or alternatively request that additional amendments not identified in this report be made, in which case an additional staff report and public hearing may be required.
3. Regional Council may choose to refuse the proposed amendments to the Downtown Halifax Secondary Municipal Planning Strategy and the Downtown Halifax Land Use By-law, as contained in Attachments A and B. Regional Council is under no obligation to amend its MPS and a decision not to amend the MPS cannot be appealed.

ATTACHMENTS

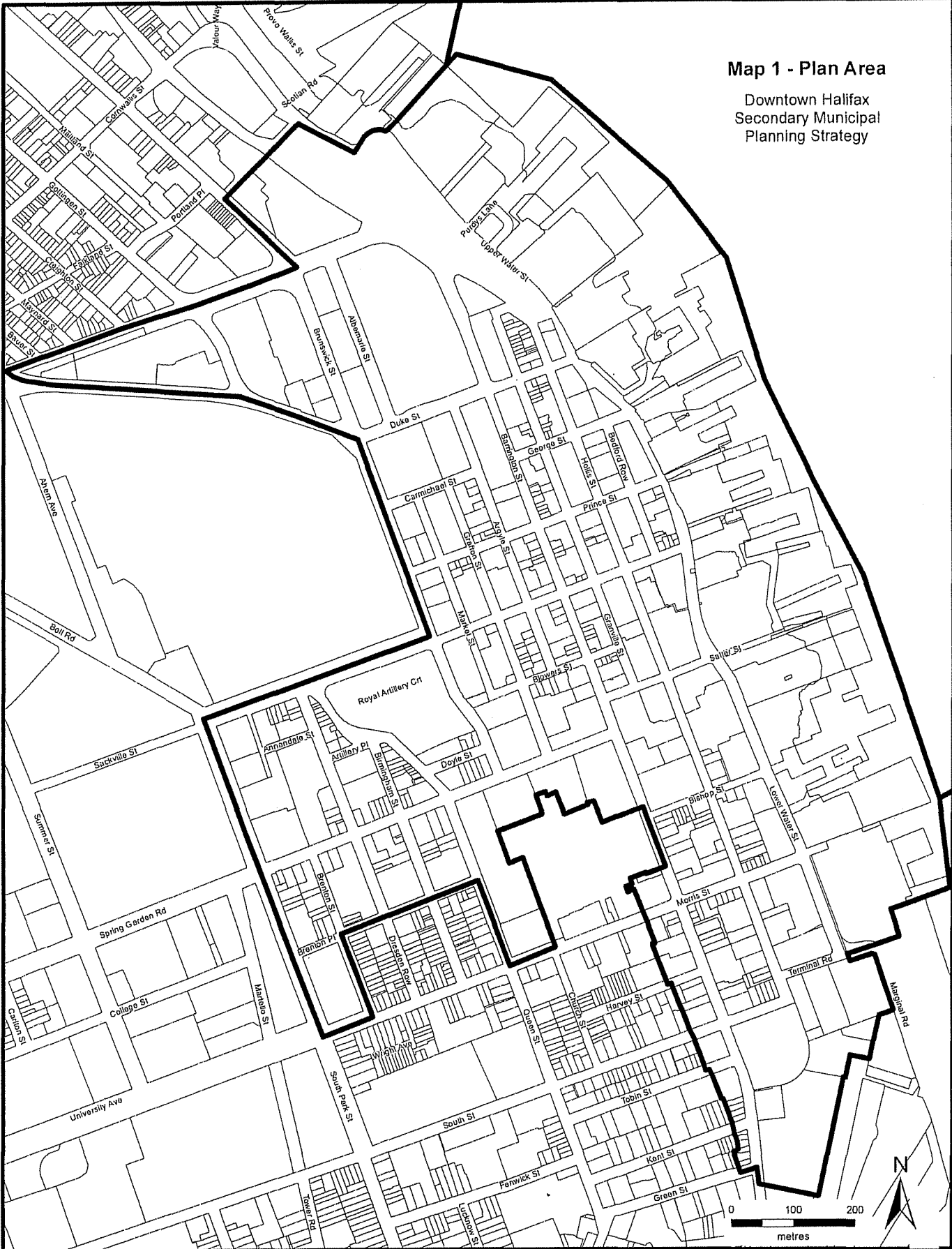
Map 1	Downtown Halifax Plan Area
Attachment A	Proposed Amendments to the Downtown Halifax SMPS
Attachment B	Proposed Amendments to the Downtown Halifax LUB
Attachment C	Minutes from the June 8, 2011 Public Information Meeting

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

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

Map 1 - Plan Area

Downtown Halifax
Secondary Municipal
Planning Strategy



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

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

1. Amend the “TABLE OF CONTENTS” by adding “**3.2.4 Drive-Thrus**” after “3.2.3 Provision of a Mix of Housing Types”.
2. Amend the “TABLE OF CONTENTS” by adding “**8.8 Non-Conforming Buildings**” after “8.7 Functional Plans”.
3. Amend Chapter 3 by adding the following subsection and policy after Policy 8:

3.2.4 Drive-Thrus

Drive-thrus are often seen as a convenient service delivery model within primarily automobile-oriented environments. However, they are not appropriate in a denser and more compact urban context. In order to (1) reduce potential conflicts between pedestrians and automobiles, (2) maintain the built form character of urban neighbourhoods, and (3) protect the aesthetic quality of urban streetscapes, drive-thrus will be prohibited in downtown Halifax.

Policy 8A HRM shall establish provisions within the Land Use By-law to prohibit drive-thrus within downtown Halifax.

4. Amend Policy 18 of Chapter 3 by adding the following clause after clause (i):
 - (j) **the undergrounding of overhead electrical and communication distribution systems.**
5. Amend Chapter 3 by substituting Policy 32 with the following:

Policy 32 It shall be the intention of HRM to ensure through its control of the disposition of the Clyde Street parking lots **and the former Halifax Infirmary property** that their development is beneficial to the commercial well-being of the Spring Garden Road area and the design complements adjacent neighbourhoods. HRM shall initiate a call for proposals for the redevelopment of these lands consistent with the intent of this Plan and the Spring Garden Road/Queen Street Area Joint Public Lands Plan (FOOTNOTE #8). The following criteria shall be considered in the design review of development for those sites:

- (a) the provision for mixed commercial and residential uses with active ground floor uses;

- (b) the redevelopment shall positively contribute to the streetscape in accordance with the provisions of the Design Manual section of the Land Use By-law; and
- (c) public parking in support of Spring Garden Road shall be incorporated within the redevelopment, which at minimum replaces the public parking spaces ~~currently provided on these sites, which existed on the Clyde Street parking lots at the time of the coming into force of this Plan.~~

6. Amend Chapter 8 by adding the following section and policy after Policy 91:

8.8 NON-CONFORMING BUILDINGS

The DHSMPs and the DHLUB diverge from previous MPS policies and land use by-law regulations in both approach and intended outcome. It is therefore expected that many existing buildings in downtown Halifax will not conform to the new land use by-law provisions. In order to support the growth aspirations for downtown Halifax, this Plan will allow for the extension, enlargement, and alteration of non-conforming buildings.

Policy 92 It shall be the intention of HRM to allow for the extension, enlargement, and alteration of non-conforming buildings in downtown Halifax.

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

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

Municipal Clerk

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

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

1. Amend the “TABLE OF CONTENTS” to add “**Non-Conforming Buildings**” following “Interpretation of Zoning Boundaries”.
2. Amend the “TABLE OF CONTENTS” to add “**Temporary Construction Uses Permitted**” following “Waterfront View Corridors: Abutting Uses”.
3. Amend the “TABLE OF CONTENTS” to add “**Drive-Thrus**” following “Prohibited External Cladding Materials”.
4. Amend section 2 by substituting subsection (k) with the following:
 - (k) *Average grade* means the average finished elevation around the perimeter of the lot **building**.
5. Amend section 2 by substituting subsection (af) with the following:
 - (af) *Flat roof* means a roof that is sloping no greater than ~~1:12~~ **1:10**.
6. Amend section 2 by adding the following subsection following subsection (ab):
 - (aba) *Drive-thru* means a built form established to provide or dispense products or services, through an attendant or a window or an automated machine, to persons remaining in vehicles that are in a designated stacking aisle.
7. Amend section 2 by substituting subsection (bb) with the following:
 - (bb) *Multiple Unit Dwelling* means a building containing ~~four~~ **three** or more dwelling units.
8. Amend section 2 by substituting subsection (bh) with the following:
 - (bh) *Projecting sign* means a sign which projects from and is supported by or which extends beyond a wall of a building **or is attached to the underside of the building or canopy**.
9. Amend subsection (2) of section 4 by substituting clause (b) with the following:
 - (b) with the exception noted in clause ~~(d)~~ **(c)**, only those applicants with professional expertise in the fields of architecture, landscape architecture, urban design, city

planning, structural engineering or a similar field shall be eligible as members of the Committee;

10. Amend subsection (2) of section 4 by substituting clause (e) with the following:
 - (e) with the exception of the resident at large ~~member~~ **members**, members of the Committee must hold a professional degree in their respective fields;
11. Amend section 5 by substituting subsection (6) with the following:
 - (6) ~~In addition to the requirements of sub-section (1), unless~~ **Unless** otherwise specified, all development within the Downtown Halifax Secondary Municipal Planning Strategy plan area boundary, as shown on Map 1, shall be subject to site plan approval ~~by the Development Officer.~~
12. Amend section 5 by substituting subsection (7A) with the following:
 - (7A) ~~Prior to an application for site plan approval being submitted~~ **submitting a substantive application for site plan approval**, the applicant shall undertake public consultation concerning the project ~~in a format acceptable to the Development Officer and using a combination of the following three methods~~ **using the following three methods, in a format acceptable to the Development Officer:**
 - (a) open house;
 - (b) public kiosk; and
 - (c) website/online forum.
13. Amend section 6 by adding the following subsection after subsection (4):

Non-Conforming Buildings

- (5) **Where an existing building is deemed to be non-conforming under this By-law, it shall be allowed to be extended, enlarged, altered or reconstructed as long as the work complies with this By-law, or a variance is granted by the Design Review Committee.**
14. Amend section 7 by substituting subsection (6) with the following:
 - (6) Where any ~~residential~~ building is erected, altered, or used primarily for residential purposes in Precinct 2: Barrington Street South; Precinct 3: Spring Garden Road Area; or Precinct 9: North End Gateway, the lot on which such building is located shall contain landscaped open space.

15. Amend section 7 by substituting subsection (8) with the following:
 - (8) A minimum of 5 square metres of landscaped open space shall be provided for each ~~person residing in the building~~ **dwelling unit in a building**.
16. Amend section 7 by deleting subsection (9):

~~(9) For the purposes of calculating the number of persons residing in a building, the population of each dwelling unit shall equal 2.25 persons.~~
17. Amend section 7 by substituting subsection (10) with the following:
 - (10) ~~A maximum of 60%~~ **100%** of the landscaped open space requirement may be transferred to the building rooftop, provided that:
 - (a) ~~the any~~ rooftop landscaped open space is ~~contiguous and not less than a~~ **minimum of** 56 square metres in area; and,
 - (b) the rooftop landscaped open space is fully accessible for the common use of the occupants of the building; **and,**
 - (c) **the rooftop landscaped open space is located on a portion of the roof that is not sloping.**
18. Amend section 7 by substituting subsection (11) with the following:
 - (11) The requirements of subsection (7) ~~and (10)~~ may be varied by site plan approval where the relaxation of the requirement is consistent with the Design Manual.
19. Amend section 7 by adding the following subsections after subsection (23):

Temporary Construction Uses Permitted

- (24) **Nothing in this By-law shall prevent the use of the land or the use or erection of a temporary building or structure which is necessary and accessory to construction in progress, such as a work camp or construction camp, mobile home, sales or rental office, tool or maintenance shed or scaffold, including a shipping container which serves as one of the foregoing, except as a mobile home, sales or rental offices, provided that a development permit has been issued.**
- (25) **A rock crusher may be used at the site of a demolition of a structure or building, or at the site of development permitted pursuant to this By-law, provided a development permit has been issued for such use.**
- (26) **Incidental to a development, a temporary rock crusher may be permitted.**

- (27) A development permit issued for the use of a temporary rock crusher accessory to demolition of a structure or building pursuant to this By-law or a development pursuant to this By-law shall be valid for any period specified not exceeding sixty (60) days. A development permit issued under this subsection may be renewed for a period not to exceed thirty (30) days at a time, if a Development Officer determines that an extension of the period is necessary. No rock crusher shall be located or used within three (3) metres of any property boundary.
- (28) A development permit issued for the use of a temporary rock crusher accessory to the construction of primary or secondary services pursuant to the Regional Subdivision By-law shall be valid for any period which does not exceed the construction time schedule specified in the subdivision agreement. No rock crusher for which a permit has been issued under this subsection shall be located or used within sixty (60) metres of any building used for residential or institutional purposes; with the exception of fire stations, police stations, public works facilities, cemeteries, historic sites and monuments, and recreational trails where no rock crusher shall be located or used within three (3) metres of any property boundary.
- (29) Notwithstanding any other provision of this By-law, a temporary rock crusher accessory to construction in progress shall not be used to process material for export to another site nor to process material imported to the site.
- (30) A temporary rock crusher may be used as accessory to demolition in progress to process demolished material for export to another site subject to disposal in accordance with the requirements of this By-law and the C&D Materials Recycling and Disposal License By-law.

20. Amend section 8 by adding the following subsection after subsection (21):

Drive-Thrus

- (22) Drive-thrus shall be prohibited.

21. Amend section 11 by substituting subsection (4) with the following:

- (4) On the lands commonly known as the Clyde Street Parking Lots, P.I.D. Nos. 00077875 and 00077438, a **minimum stepback of 3 metres above the streetwall shall apply to that portion of a building facing Clyde Street that is a maximum of 28 metres in height.**

- ~~(a) a minimum setback of 3 metres above the streetwall shall apply to that portion of a building facing Clyde Street that is a maximum of 28 metres in height;~~
- ~~(b) new development shall maintain a minimum of 210 or more parking spaces in total on the two lots; and~~
- ~~(c) every application for a development permit shall be accompanied by a statement containing such information as may be deemed necessary by the Development Officer to ensure compliance with the requirements of subsection (b).~~

22. Amend section 11 by adding the following subsection after subsection (4):

(4A) On the lands commonly known as the Clyde Street Parking Lots, P.I.D. Nos. 00077875 and 00077438, as well as the lands commonly known as the former Halifax Infirmary Site, P.I.D. Nos. 40576829:

- (a) new development shall maintain a minimum of 210 parking spaces in total on the three lots combined; and**
- (b) every application for a development permit shall be accompanied by a statement containing such information as may be deemed necessary by the Development Officer to ensure compliance with the requirements of subsection (a).**

23. Amend subsection (7) of section 12 by adding the following clause after clause (i):

(j) the undergrounding of overhead electrical and communication distribution systems.

24. Amend subsection (8) of section 13 by substituting clause (a) with the following:

(a) internally-illuminated fascia signs or **internally-illuminated** awning signs;

25. Amend subsection 4.6.3 of Schedule S-1 (Design Manual) of the Downtown Halifax Land Use By-law by substituting clause (a) with the following:

(a) ~~internally lit box signs~~ **internally-illuminated fascia signs** or ~~internally lit~~ **internally-illuminated** awning signs;

26. Amend subsection 4.6.4 of Schedule S-1 (Design Manual) of the Downtown Halifax Land Use By-law by changing the labeling of subsection 4.5.4.6 (Number of signs) found on page 56 to **4.6.4.6**.

27. Amend Map 7 Streetwall Heights, as illustrated in Appendix "B-1", by adding maximum streetwall heights where they are missing.

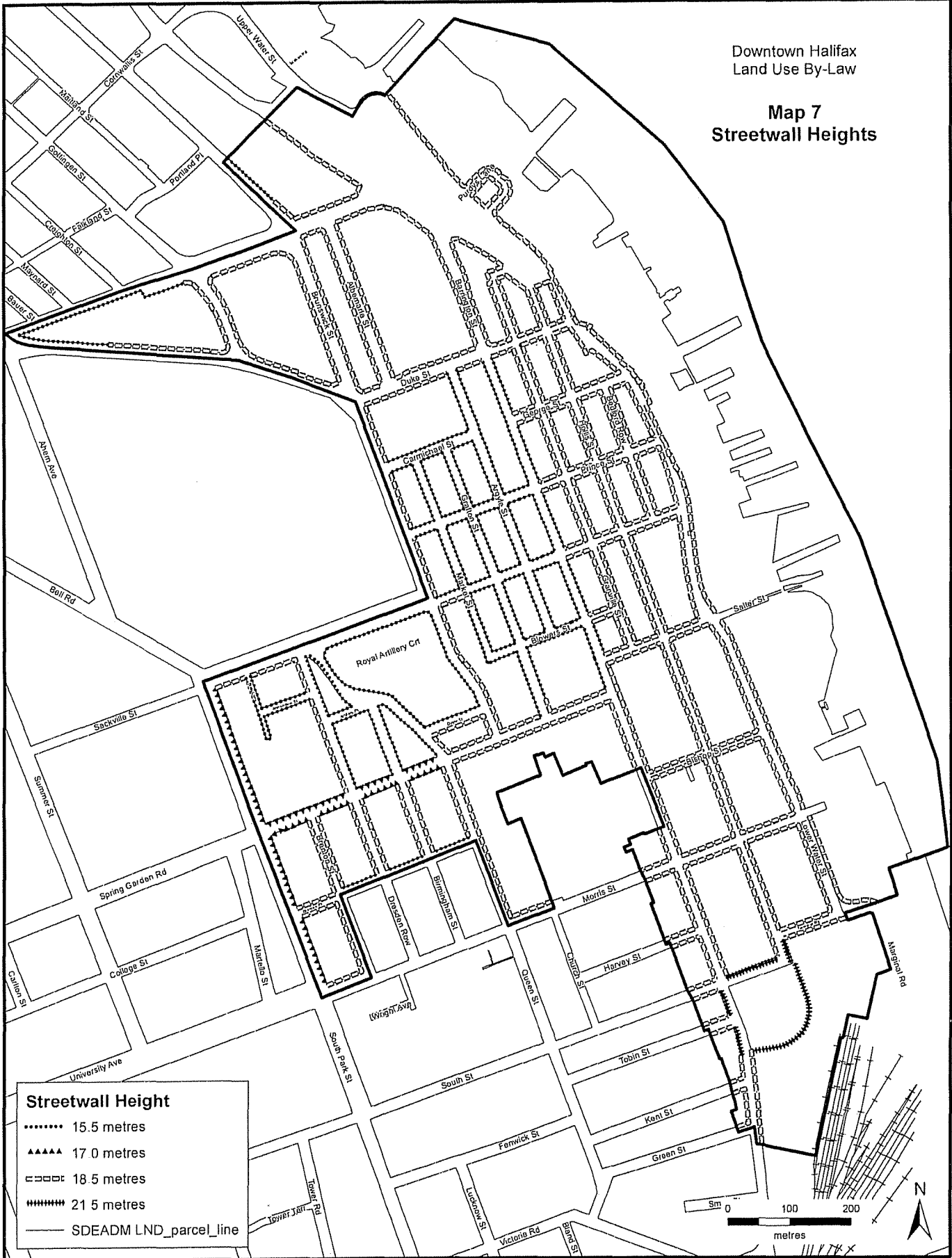
THIS IS TO CERTIFY that the by-law of which this is a true copy was duly passed at a duly called meeting of the Council of Halifax Regional Municipality held on the ____ day of _____, A.D., 20__.

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

Municipal Clerk

Downtown Halifax
Land Use By-Law

Map 7
Streetwall Heights



Effective:

Note: Effective date does not indicate date of data creation

ATTACHMENT C – MINUTES FROM THE JUNE 8, 2011 PUBLIC INFORMATION MEETING

**7:00 p.m.
Wednesday, June 8, 2011
Halifax Hall, Halifax**

IN ATTENDANCE: Luc Ouellet, Senior Planner, HRM Planning Services
Hilary Campbell, Planning Technician, HRM Planning Services
Sharlene Seaman, Planning Controller, HRM Planning Services
Councillor Dawn Sloane
Councillor Jennifer Watts

PUBLIC IN ATTENDANCE: Approximately 15

The meeting commenced at approximately 7:05 p.m.

1. Opening Remarks/Introductions/Purpose of Meeting – Luc Ouellet

Luc Ouellet opened the meeting by introducing himself as a planner for the Western Region with Halifax Regional Municipality (HRM).

He stated that the reason for the meeting is to undertake the first annual review of the Downtown Halifax Secondary Municipal Planning Strategy and the Downtown Halifax Land Use By-law.

He stated that the purpose of the meeting was to first identify that Regional Council has initiated the process because they are planning amendments to the Downtown Plan and the Land Use By-law. Also to identify the scope of the application and receive feedback, issues or concerns. There would be no decisions made at the Public Information Meeting, as this is the first step in the process.

2. Presentation of Proposal Luc Ouellet

Mr. Ouellet showed the plan area and stated that the Plan was approved in June of 2009 and became effective in October of 2009. He noted that since that time there have been some issues within the Plan that will need to be looked at. This would be the objective of the Public Information Meeting.

He stated that the reasons for the review are to correct identified errors and omissions, clarify certain policies and land use provisions, and introduce additional flexibility. With all new plans, they are not perfect from the start and need to be reviewed.

He noted that policy 86 supports a review of the Downtown Plan. It states: HRM shall adopt an amendment process that provides for regular review and evaluation of the policies contained in this Plan and development regulations. Secondly, Policy 87 calls for an annual review to consider proposed amendments to the Plan and Land Use By-law.

Mr. Ouellet advised of the proposed Municipal Planning Strategy amendments:

- An amendment to recognize the undergrounding of overhead utilities as a public benefit. (putting wiring underground);
- A new policy clarifying that the extension, enlargement, alteration or reconstruction of non-conforming buildings is permitted. (issues raised by the public);
- A new policy to prohibit drive-thru establishments. (HRM staff feels that they do not belong downtown);
- Amendments to provide additional flexibility on the location of public parking, which will replace the parking spaces now contained on the Clyde Street parking lots. (asked by Real Estate); and,
- A correction to 5 of the 14 maps contained in the SMPS relative to the Plan Area boundary near Harvey Street, Halifax.

He stated that proposed LUB amendments:

- Amendments to the definitions for average grade, flat roof, multiple unit dwelling and projecting sign;
- General housekeeping amendments to correct referencing errors in the section dealing with the composition of the Design Review Committee;
- Amendments to clarify the public consultation component related to substantive site plan approval applications;
- Amendments to the requirements for provision of landscaped open space in Precincts 2 (Barrington St. South), 3 (Spring Garden Rd.) and 9 (North End Gateway);
- Amendments to introduce a section on “Temporary Construction Uses”; and,
- Amendments to Map 7 – Streetwall Heights to add maximum streetwall heights where they are missing.

3. Overview of planning process – Luc Ouellet

Mr. Ouellet stated that there was an initiation report, which started the process. The present meeting, a Public Information Meeting is to be followed by a detailed staff report, including minutes taken at this meeting. The staff report would be sent to the Design Review Committee, where they will then make a recommendation to Regional Council to hold a Public Hearing. If the amendments are approved or rejected, there is no ability to appeal the decision. If approved, there will also be a Ministerial Review.

Mr. Ouellet gave the ground rules for the meeting and opened the floor for questions and comments.

4. Questions/Comments

Mr. Ron Smith, Halifax, expressed interest in the landscaped open space requirements. He stated that he has at least 4 clients on Spring Garden Road who have had gotten held up or deferred with their projects because there isn't any ability to provide an "at grade" landscaped open space. He stated that they would be happy to turn the developments into residential but it is impossible to do under the present By-laws. He hopes to be able to get a dedicated design landscaped space, above grade, for residents as it would be to their benefit. Plus, in the urban areas of Downtown, such as the area around the Public Gardens, people have much more ability than people inside suburban areas. He is encouraging these amendments to go forward.

Larry Haiven, Halifax, asked if the requirements for the landscaped portion of the residential buildings came in around the 1970's.

Mr. Ouellet stated that it may have gone back even further than that.

Mr. Haiven stated that they did not, at that time of the adoption of the Plan, designate 100 percent of the landscaped open space requirement to be transferred to the building rooftop. Presumably, they must have contemplated that there was some value to landscaped areas, not only to the residents themselves, but to the neighbors. He stated that at that time, 40 percent was supposed to be a grade, not only for the residents but also for the neighbors. In the proposed amendment, the neighbors are not considered. He asked what the reason was for this.

Mr. Ouellet stated that Staff did not look into that as it seemed that it was only supposed to be for the residents of the building, in the sense that if you are doing a commercial building, under the Downtown Halifax Zone, commercial doesn't have the requirements of landscaped open space. It is only when you want to put in residential, covering more than 50 percent of the gross floor area that you would have to provide landscaped open space. Staff looked into this and it seems

that the original requirement was introduced back in the 60's at the same time they brought in angle control. It was a different era for planning.

Mr. Haiven stated that he is a resident of the Schmitville area and he is concerned about the Clyde Street lots. One of the things that make a residential area in the middle of Downtown desirable is that there is some green space in the area. The principles used by HRM by Design in figuring out what could go on the Clyde Street lots was that there would be a smooth and pleasing transition from Schmitville. The residents want to make sure that everything is done that makes the transition as unabrpt as possible. He feels that this applies to other residential areas.

Mr. Ouellet stated that as a part of the Clyde Street parking lots, there were certain policies included within the Design Manual to control how far you should push back the building from the sidewalk and have wider sidewalks with more pedestrians around. If you were to design a building for the Clyde Street parking lot today, it may be more of a U-shaped building with the landscaping in the middle. That is if you were keeping residential in mind.

Phil Pacey, Halifax, introduced himself as the Chair of the Heritage Trust of Nova Scotia. He made reference to the Macara Barnstead building, which he feels is a very important building on Granville (one of the old Georgian Buildings). He provided some history on the building. He noted that the building has serviced the city for at least 186 years. He feels that this and the fabric of the building are very important and needs to be preserved as it is only one of a few that are left. He feels that the building is in jeopardy because there is a proposal to expand the TD Bank building to the east and to demolish all but one façade and 12 feet of one side of the building. He feels that would be very unfortunate as the heritage would be lost. He stated that the only thing protecting the building currently is the Land Use By-law, as there is no provision enabling the expansion of non-conforming uses. He asked if staff would not put that particular provision forward to Council or have greater detailed discussion with the Heritage Trust of Nova Scotia about what the provisions might be. It would be unfortunate to lose Heritage buildings because of that change.

He stated that the TD Bank building and the Barnstead building are not owned by the TD Bank. It is a tenant. It is owned by a company called TDB Holdings, which is German owned. The actual site is about 120 feet square and the tower is about 500 square meters. He feels that there are a variety of provisions under HRM by Design and they are important provisions. He feels that TD has shown a bad example of a building in Halifax. He feels that it is important to keep the provisions because these are step-back provisions. Any high-rise should be stepped back from a street wall by 4.5 meters. Clearly the TD Bank building does not follow that provision as it is not stepped back from Barrington Street. There is a provision that states that buildings should be stepped back by 11 and a half meters from a lot line. The TD has zero step-back. There are many good reasons to have a step-back. One is having sunlight being able to enter the area. If

following HRM by Design, the building is already bigger than what they would allow. If increased in size, HRM is making a bad situation worse. He feels that HRM by Design has placed some good provisions and they should be respected.

Beverly Miller, Halifax, reviewed the staff report, with regard to the time sensitivity aspect and expressed concern that developers can come to HRM stating they do not like certain aspects of HRM by Design, so staff will make changes based on this. She feels it is unacceptable. She noted that HRM by Design cost at least 2 million dollars and took 4 or 5 years of staff's time. She objects to the provision of landscaping open space because it contributes to the experience of the pedestrian. She feels that staff is responding to pressure from developers. This will reassure that the most urgent amendments will not be delayed by a long staff review. If the new policy clarifies the extension, enlargement, alteration or reconstruction of non-conforming buildings is permitted, she asked what the limits would be.

Mr. Ouellet stated the issues came up not long after the plan became operational. On Spring Garden Road, there are upper stories of buildings that cannot be transferred into residential accommodations because the entire bottom floor is occupied by commercial. That is deemed a problem and staff has been looking at this issue for about a year. Developers, in the meantime, have been patiently waiting. There are projects waiting for these amendments. In order to meet the Plan and By-law, there is no way to really provide ground floor landscaped open space. After looking at that site, there were others that came forth. Staff feels that that part of the Plan is not workable and it is preventing development from happening. This indicates a problem with the Plan and that is why they are proceeding with a review.

Mr. Ouellet advised that in regard of non-conforming buildings, there was a cursory review done of the Downtown buildings and it came back stating that 45 to 50 percent of the buildings are non-conforming to the new plan. It is a larger problem with this new plan because it is a major departure of how planning has been done in the past. If you have a building that is non-conforming because of the maximum street wall height or step-back, staff feels that if you want to do an addition towards the back, that doesn't worsen the condition in the front, they should be able to do that. There were concerns raised by a few members of the Community that the policy did not allow for that. He was advised by other staff members, such as Development Services, that Planning should be taking the exact same wording that appeared in most Planning By-laws across the Province. That is the wording that appears in the Municipal Charter and the Municipal Government Act. You should be able to add to a building that is non-conforming; you should be able to, as long as it doesn't worsen the situation. There needs to be some flexibility because if 45 to 50 percent of the buildings are being prevented from being added too, this is preventing development from happening Downtown and that was not the intent of the Plan. It was to facilitate.

Ms. Miller asked if there were any limitations.

Mr. Ouellet stated that in some situations, by adding to a building, you are bringing a building to conformance. For example, with the new Downtown By-law there are specified setbacks and in other situations, such as the Roy Building, which is not conforming to the street wall height, you cannot worsen the situation.

Ms. Miller asked who makes the decision and would there be a staff report attached.

Mr. Ouellet stated that the Design Review Committee makes the decision but Regional Council has the last say. It has to meet the guidelines. There is also a possibility to appeal to Council. All applications have a staff report attached.

Brian Croucher, Bedford, feels that density and height should be removed from the MPS. He feels that if the MPS has to be amended regularly, why put in height and density.

Mr. Ouellet stated that Council will entertain amendments if they present a community benefit. He explained that if there were no restrictions on height and density, Council would have to decide, for each development, what the restrictions should be. He believes that having these restrictions provides predictability. It would also be very hard to appraise land in Halifax without restrictions. There would be multiple issues if it was to be excluded.

Graeme Duffus, Halifax, believes that more guidelines are needed in general and that Heritage properties should have a special policy. He feels that consideration needs to be put towards “original fabric” and those types of things for new developments Downtown.

Ms. Miller asked if the Urban Design Task Force still existed.

Mr. Ouellet stated that it does exist but their role is not to continue advising Council about the existing Downtown Plan. Their role is to continue to work with HRM by Design for the rest of the Peninsula of Halifax and Dartmouth within the Circumferential Highway. They are looking to create the Regional Centre Plan. The Design Review Committee now becomes the advisory committee to Council in terms of changing the Downtown Plan. There is citizen input through the Design Review Committee.

Councillor Sloane advised that the Urban Design Task Force is working on the plans called “The Greenprint”. This deals with the secondary plans for the entire Peninsula, out to the Circumferential Highway. They have been on hiatus because of the lack of funding last year. Mr. Pacey stated that there is a need for more input from the City concerning this matter.

Mr. Ouellet advised that staff is looking for input as per the amendments that are being looked at. If the language needs to change or alternative wording needs to be added or changed, staff is open to that. The annual review is not the right forum to do a major overhaul for Planning. Staff can look into it at another time.

Mr. Pacey stated that the best way to look into changing the current way of doing things is to have a Planning Advisory Committee to review the plans. He feels that this would be the legislative body to develop and review the plans. He would like the input of either the District 12 Planning Advisory Committee or if a new Planning Advisory Committee could be set up. He feels that it is the best way to deal with the issue.

He stated that in the matter of demand and supply, these amendments are to get more projects approved. He feels that this is not the best way to be looking at this. There are many projects approved and not built. That says that there is no difficulty in getting approvals and no shortage of supply on development. These can all be completed without making any amendments to HRM by Design. He feels that the problem is the demand. He asked how we get more people to want to set up an office in the Downtown and plan vacations in the Downtown. He feels that this is the bigger problem. The key to resolving that issue is the controls and making the Downtown attractive. It is also important to protect the Heritage buildings.

He feels that the Heritage properties are the key attraction so they should be protected. He referred to the Old South End and the Barrington South area. This area is supposed to become a Heritage Conservation District. Two years ago this was under discussion and the Heritage Trust was concerned that HRM by Design was going to increase some of the heights in Downtown Halifax, in particular, the South End area. He was concerned that someone would knock down some of the Heritage sites and build something larger. Councillor Sloane put in a motion to lower the heights. Another important factor about the South End is the open space. It is very important to protect the front and back yards. That is a reason to keep the landscaped open space provisions intact.

Mr. Ouellet asked Mr. Pacey if he would have fewer problems of removing the landscaped open space provisions in the Spring Garden area and the Gateway but maybe keeping it for Barrington.

Mr. Pacey stated that open space provisions should be kept in the three areas because that is what was discussed. Barrington South is really important to him and already, HRM by Design has weaker open space provisions than are generally present on the rest of the Peninsula. Only a small fraction of the landscaped open space can be on rooftops. Other areas can use all of the open space on rooftops. He feels that, at ground level, people are more comfortable, than on a roof where they can fall off of. He thinks the Clyde Street parking lots are important because of

the open space there. He thinks the biggest demand for space is probably residential. He believes that one of the biggest selling points for HRM by Design is the pictures with lots of trees. You don't really see the green space on a rooftop, unless you are on another rooftop. He feels that the open space at the Clyde Street parking lots is important.

Ron Smith, Halifax, stated that most of the open space is not generally used as landscaped space, but it is usually used for parking or it is residual space. The other aspect is that much of it is in the shade. There is a lot of potential space on a rooftop. Throughout North America and Germany, rooftop spaces are taken advantage of. He feels passionate about the Heritage of the city and feels that not everyone understands the aspects of what the city is trying to do. Not all clients are big developers and they can't do anything on the second floor, when it comes to open space. He would like to bring more people to the downtown area. They are the real economic driver. He feels that the forefathers of planning would be greatly disappointed and it would be a misdirection to not allow this to happen.

Ms. Miller stated that there is nothing to prevent a developer from providing a roof garden. She feels that this would be a wonderful idea. To allow the developer to put no landscaped open space around the building would affect the pedestrian. Lots of buildings downtown have setbacks, trees and bushes. This makes for a very pleasant walking experience. When talking about the revitalization of the downtown, the pedestrian is as important as the person who may work or live downtown. She feels that a developer should be encouraged to have roof gardens but she doesn't feel that it should be at the expense of the pedestrian and the general citizens. The landscaped open space requirements were put in place for that reason. One of the requirements in Toronto is that a developer has to present a five year contract with a landscaping company to prove that you will keep it up. She feels that this it is a good idea but it should be regulated.

5. Closing comments

Mr. Ouellet asked for any other questions, gave his contact information and thanked everyone for attending the meeting.

6. Adjournment

The meeting adjourned at approximately 8:24 p.m.