



P.O. Box 1749
Halifax, Nova Scotia
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Item No. 4.1

**Heritage Advisory Committee
September 12, 2017
Audit and Finance Committee
Regional Council
September 19, 2017**

TO: Chair and Members of Audit & Finance Standing Committee and
Chair and Members of Heritage Advisory Committee

Original signed

SUBMITTED BY:

Kelly Denty, Acting Director, Planning & Development

Original signed

Amanda Whitewood, Director/CFO, Finance & Asset Management

DATE: August 17, 2017

SUBJECT: **Request for financial assistance and to enter into a Heritage Agreement
with St. Paul's Church, 1749 Argyle Street, Halifax**

ORIGIN

Request by the Parish of St. Paul's Church, authorized by Dr. Peter Secord, Senior Warden and the Reverend Dr. Paul Friesen, Rector made May of 2016.

LEGISLATIVE AUTHORITY

The *Heritage Property Act*, R.S.N.S. 1989, c.199

Section 20

(1) The Minister may enter into an agreement with the owner of a provincial heritage property, and the council may enter into an agreement with the owner of a municipal heritage property or property located in a heritage conservation district, whereby the owner grants to the Minister or the council a right or incurs an obligation respecting the use, preservation or protection of the heritage property or property located in a heritage conservation district.

(2) An agreement entered into pursuant to subsection (1) shall be deposited in the registry of deeds for the registration district within which the heritage property or property located in a heritage conservation district is situated.

(3) Where an agreement is deposited in the registry of deeds, the right or obligation given by

the owner becomes an encumbrance upon and runs with the property, and the Minister, in respect of provincial heritage property, and the municipality, in respect of municipal heritage property or property located in a heritage conservation district, may enforce the right or obligation against the property and against the owner or any subsequent owners of the property.

(4) A right or obligation created by an agreement made pursuant to subsection (1) may be waived or discharged by the Governor in Council in respect of provincial heritage property and by the municipality in respect of municipal heritage property or property located in a heritage conservation district.

Section 22

(1) The Minister, subject to the approval of the Governor in Council, may provide financial assistance in respect of provincial heritage property and the Council may provide financial assistance in respect of municipal heritage property or property located in a heritage conservation district to any person to assist in the restoration or renovation of such property upon such terms and conditions as the Minister or the Council, as the case may be, deems fit.

RECOMMENDATION

Audit and Finance Standing Committee

It is recommended that the **Audit and Finance Standing Committee** recommend that Regional Council approve the following, conditional upon i) the execution of the Heritage Agreement as found at Attachment A with the Parish of St. Paul's and its registration at the Land Registry Office, and ii) the execution of a Contribution Agreement with the Government of Canada:

1. the provision of in-kind financial assistance of a value up to but not exceeding \$500,000, with a net municipal project cost up to but not exceeding \$250,000, to the Parish of St. Paul's for the restoration of a portion of the perimeter ironstone wall and cast iron fencing surrounding St. Paul's Church in accordance with the Heritage Agreement as found at Attachment A, with funding as outlined in the Financial Implications section of this report;
2. an unbudgeted withdrawal of \$250,000 from the General Contingency Reserve (Q421) to the project budget to fund the net municipal cost of the financial assistance; and
3. the expansion of the scope of work, in the 2017-18 fiscal year, as found in the Heritage Agreement as found at Attachment A to allow for the restoration of additional portions of the ironstone wall and cast iron fencing, providing that the net municipal project cost does not exceed \$250,000, and to authorize any necessary amendments to the Heritage Agreement to reflect the expanded scope of work.

Heritage Advisory Committee

It is recommended that the **Heritage Advisory Committee** recommend that Regional Council:

1. Approve the provision of in-kind financial assistance of a value up to but not exceeding \$500,000, with a net municipal project cost up to but not exceeding \$250,000, to the Parish of St. Paul's for the restoration of a portion of the perimeter ironstone wall and cast iron fencing surrounding St. Paul's Church in accordance with the Heritage Agreement as found at Attachment A, with funding as outlined in the Financial implications section of this report, conditional on:
 - a. the execution of the Heritage Agreement with the Parish of St. Paul's, and its registration at the Land Registry Office; and
 - b. the execution of a Contribution Agreement with the Government of Canada;

2. Approve the proposed Heritage Agreement as found at Attachment A with the owner of the municipal heritage property located at 1749 Argyle Street, to restore a portion of the perimeter ironstone wall and cast iron fencing in accordance with the terms contained therein; and
3. Authorize the Mayor and Municipal Clerk to execute the Heritage Agreement as found as Attachment A within 120 days, or any extension thereof granted by Council on the request of the applicant, from the date of this approval by Halifax Regional Council and any other bodies as necessary whichever approval is later, including any applicable appeal periods; otherwise this approval will be void and obligations arising hereunder shall be at an end.

Regional Council

It is recommended that **Regional Council** direct the CAO to direct staff to negotiate, and authorize the CAO to execute, a Contribution Agreement with the Government of Canada for the restoration of a portion of the perimeter ironstone wall and cast iron fencing surrounding St. Paul's Church, for a contribution by HRM not to exceed \$250,000, subject to Regional Council's approval of the provision of financial assistance and the Heritage Agreement as set out in this report.

BACKGROUND

Halifax Regional Municipality is committed to providing cost effective, high quality services to its residents. Inherent in this goal is the effective conservation of its historical assets, and the City Hall and the Grand Parade are its most prominent historic assets. In recognition of the historic value, Halifax City Hall was designated a National Historic Site in 1987 by the Historic Sites and Monuments Board of Canada.

HRM is in the middle of a multi-phase, multi-year project to return the exterior of City Hall and the Grand Parade to their former elegance. The Grand Parade Conservation Report, Grand Parade Survey and the Grand Parade – Cultural Asset Study have guided staff in a recapitalization plan that is of high quality, cost effective and is focused on accessibility, program flexibility and service excellence with minimal design impact to the existing elements and layout.

A request has been made by the Parish of St. Paul's Church (Attachment B) to enter into a heritage agreement to facilitate the restoration of the ironstone walls and cast iron fencing which surrounds the Church. St. Paul's Church, located at 1749 Argyle Street, is a municipal and provincial heritage property, and is recognized by the federal government as a National Historic Site (Map 1). Situated at the southern end of the Grand Parade the church property has impressive ironstone walls with cast iron fencing which date back to 1843. The walls are situated on the property boundary, directly abutting the sidewalks on Barrington, Prince, and Argyle Streets.

There are several sections of the walls which have failed or are significantly deteriorated, and the entirety of the walls requires immediate intervention/restoration (Attachment C). The Parish of St. Paul's has done an admirable job maintaining the Church building, but has been unable to secure the funds necessary to undertake the significant project of restoring the wall. Therefore, they are requesting financial assistance from HRM to restore the walls.

Heritage Value

St. Paul's Church is one of the oldest buildings in Halifax, and is the oldest existing Protestant (Anglican) church in Canada. Founded by proclamation of King George II in 1749, the building was erected in the summer of 1750 based on architectural plans of James Gibb's Marybone Chapel (now known as St. Peter's) in London, England. The resemblance of the two churches is remarkable despite additions to St. Paul's including a vestibule and steeple in 1812, two side wings in 1868, and the chancel in 1872.

The Grand Parade was laid out in 1749 as part of the original town plan, making it the oldest open civic space in Halifax. In 1796 the Duke of Kent ordered improvements to the Grand Parade to better allow for

marching of his troops. Due to the natural slope of the ground the first fundamental and lasting intervention on the site was changing the grades of the land. The grade changes necessitated the creation of the stacked ironstone walls which were then topped with a wood rail fence. The Church petitioned the Duke to include the Church property in these improvements to the Parade. In 1843 a 'stone and iron' wall was erected around St. Paul's church yard, and slight modifications were made in 1868. These are the same ironstone walls and wrought iron fencing which still stand around St. Paul's today. The sections of the wall surrounding St. Paul's are the oldest sections around the Parade, as the granite walls around City Hall were erected in 1888-90 with the completion of City Hall. The heritage integrity of the Grand Parade includes the curb to curb area bounded by Argyle, Barrington, Prince and Duke Streets.

The Grand Parade has evolved from being primarily a military parade ground to a public gathering place and park where concerts and civic ceremonies are held. The Grand Parade is 'bookended' by two National Historic Sites - City Hall at the northern end, and St. Paul's Church at the southern end. The Parade has undergone significant changes, however its purpose and significance to Halifax has remained consistent for over 265 years.

DISCUSSION

The *Heritage Property Act* provides the ability for a municipal Council to enter into an agreement with heritage property owners "*whereby the owner grants to the Council a right or incurs an obligation respecting the use, preservation of the heritage property*". The *Act* also clearly states that Council may "*provide financial assistance in respect of municipal heritage property ... to any person to assist in the restoration or renovation of such property upon such terms and conditions ... as the Council may deem fit*".

HRM has entered into heritage agreements in the past to assist property owners retain/restore heritage properties. In some instances, heritage agreements were used to permit subdivision and appropriate redevelopment of heritage properties. Examples of this are 6941 Tupper Grove, executed in 1992, and 1260 Blenheim Terrace, executed in 1996.

In 1997 Council entered into a heritage agreement with the owners of the NFB building on Barrington Street after much of the building was destroyed in a fire. Under the terms of this agreement, HRM provided financial assistance by undertaking the work of stabilizing the front façade of the building. The owners agreed to incorporate the façade into a future redevelopment of the site, and not to demolish or alter the exterior appearance of the building without approval from the municipality. The proposed agreement for St. Paul's Church is similar, in that HRM will be acting as the project manager for the restoration work.

When a Council enters into a heritage agreement the owner of the heritage property grants Council a right or incurs an obligation respecting the use, preservation or protection of the heritage property. Additional protection of the property is achieved through clauses in the agreement whereby the owners expressly waive rights to demolish or alter the exterior appearance of the property without approval by the municipality. Each agreement is filed on title for the property at the Registry of Deeds and the obligations incurred by the owner become an encumbrance upon and runs with the property and is enforceable against subsequent owners. The agreement remains in force until clauses are waived or the entire agreement is discharged by the municipality.

The proposed heritage agreement with St. Paul's Church is found at Attachment A. The agreement sets out the scope of the restoration project, and provides that HRM is responsible for the delivery of the restoration project. Council is committing to providing financial assistance for the project of a value up to, but not exceeding \$500,000, with a net municipal project cost of no more than \$250,000; the balance will come from the Federal Government's National Cost-Sharing Program for Heritage Places. Any additional costs would require Council approval. St. Paul's Church and HRM agree to cooperate on funding

applications to third parties and agree that any additional funds obtained for the restoration project will be used to expand the scope of the project. St. Paul's Church grants a construction easement to HRM to permit HRM to perform the restoration project. Under the terms of the agreement, St. Paul's Church also agrees that it will expand public access to the gardens, maintain and insure the wall, and agrees not to demolish or alter the exterior appearance of the property without express consent of the Municipality, and further expressly waives any rights it may have under section 18 of the *Heritage Property Act* (Section 18 (4) of the *Heritage Property Act* allows a property owner to carry out an alteration or demolition without municipal approval three years after the date of application to the municipality). St. Paul's Church also grants the Municipality a right of first refusal on the property in the event that it is sold.

Wall Condition

In 2012 HRM hired consultants to prepare a Conservation Plan for the Grand Parade with the notion of reunifying the entire space, including City Hall and St. Paul's Church. The conservation plan analyzed all of the components of the Parade, including St. Paul's and City Hall, and made conservation recommendations. The conservation plan speaks to reunifying all elements of the Parade, and identified St. Paul's stone walls as character defining elements of the Parade noting that the walls provide structural integrity for the Parade boundaries.

The report states that the "walls around St. Paul's Church require immediate intervention. Most of the damage appears to be due to age and weather, with little maintenance, as opposed to vandalism or impacts. Regardless of the source of the damage there are several sections of the wall that are in complete failure. The walls surround St. Paul's Church are a coursed random rubble ironstone wall capped with cast iron containing a brick infill. The corners of the wall are marked by tall, narrow sandstone pilasters. The ironstone wall cap is topped with an ornate cast iron rail/grill. Overall, there are sections along Argyle Street are in very poor condition with some sections of wall being braced up with metal rods, and large pieces of cast iron cap missing and gaps are appearing in the rail as it deteriorates. Therefore, it is recommended that immediate action is taken."

The stone walls continue to deteriorate and there continues to be significant risks related to the failure of the Argyle Street section of the stone wall which supports and retains the HRM sidewalk. Failure of the wall or the failure of an agreement to restore the wall would require HRM to support the sidewalk on Argyle Street with an elaborate and expensive concrete retaining wall in the right of way parallel to the existing stone wall.

Project Costs

The total cost of the project is estimated to be \$500,000. This includes wall and fence restoration, drainage improvements, architectural design services, project management services, archeologist services, site protection, and a contingency for unknowns. It also includes the upgrade of the HRM sidewalk to current HRM standards in the area adjacent to the wall restoration. It is estimated that 50 feet of wall and fence will be restored, however, the actual length of wall will be maximized to suit the available budget.

Restoration Project

HRM intends to repair and restore a portion (50 feet) of the ironstone wall and cast iron fencing located along the Argyle Street side starting at the corner of Argyle Street and Prince Street running north (actual length will depend on budget).

All the restoration work will be conducted in accordance with the *Standards and Guidelines for the Conservation of Historic Places in Canada* and the *Special Places Protection Act*. Excavation around the wall will be completed under the supervision of an archaeologist, and Heritage Research Permits will be applied for if needed. HRM will engage additional consultants to undertake the restoration of the ironstone wall and iron fencing including, architects, engineers, and conservation specialist. All information and reports will be provided to designated representative of St. Paul's Church.

The conservation work will require documentation and removal of the iron fencing, and the installation of temporary fencing to protect the church and public. Much of the ironstone wall must be dismantled, after similar documentation and numbering. Specifications will be created for new retaining anchors and a drainage system. The ironstone walls will be reconstructed using the same stones in their original location, and a suitable method of securing the iron cap and fencing will be determined. The brick top course, located under the metal cap, will likely require new bricks given the degree of deterioration.

Funding Availability

HRM applied, on behalf of the Church, for funding under the 2017-18 Parks Canada National Cost-Sharing Program for Heritage Places. This program enables properties designated as National Historic Sites to apply for conservation projects to conserve threatened components of a historic place to ensure its physical integrity. This application was successful. The funding will allow for a \$500,000 project split between HRM and Parks Canada. This funding is subject to the execution of a cost-sharing contribution agreement with the federal government, which at the time this report was written had not yet been received by HRM. The program reimburses up to 50% of eligible costs that are identified and approved in the cost-sharing contribution agreement, and the work must be undertaken between April 1, 2017 and March 31, 2018.

The Church will also continue to seek out additional funding from other agencies and levels of government. Any additional funds will be used to expand the scope of the work, but no additional costs will be incurred by HRM without Council's approval.

Conclusions

Given the local, provincial and national significance of the St. Paul's Church and its walls, and the contribution of the walls to the overall integrity of the Grand Parade, is it reasonable for HRM to consider this restoration project falls within its mandate.

The deteriorated condition of the walls requires immediate attention, and the Church is unable to bear the significant costs of the work. Furthermore, there are significant risks related to the failure of the Argyle Street section of the stone wall which supports/retains HRM's sidewalk, and to the public travelling on these sections of the sidewalk.

2017 marks Canada's 150th anniversary of Confederation. Given the significance of St. Paul's Church, both to Haligonians and Canadians alike, supporting the restoration of the historic walls surrounding the Church will provide a meaningful and long lasting legacy.

The heritage agreement provides permanent protection against demolition and inappropriate alterations to the entire Church property. The owner also grants to HRM a right of first refusal in the event that the property is sold in the future. The agreement also states that HRM shall not be responsible for any future maintenance work, and the Church shall be the sole responsible for future work to the walls.

FINANCIAL IMPLICATIONS

The HRM costs associated with developing the Heritage Agreement can be accommodated within the approved 2017-18 operating budget for C002 Urban Design. The HRM costs related to project management can be accommodated within the 2017-18 operating budget for W953 Facility Development.

The planned restoration project cost of \$500,000 will be funded from the two following sources:

General Contingency Reserve (Q421)	\$250,000
National Cost-Sharing Program for Heritage Places	<u>\$250,000</u>
Total Funding for Wall & Fence Restoration	\$500,000

Although funds are currently available in the General Contingency Reserve, this project was not a budgeted use of reserve funds. If the reserve were to be replenished by \$250,000 from the general tax

rates, the rate impact would be approximately 0.05 cent for one year. There are no on-going (future fiscal year) cost implications of this project to the Municipality.

Budget Summary, General Contingency Reserve, Q421

Balance in Reserve June 30, 2017	\$2,288,330
Projected revenue to March 31, 2018	\$ 16,390
Commitments to March 31, 2018	<u>\$(334,195)</u>
Projected net available balance, March 31, 2018	\$1,970,525
Withdrawal, per recommendation	<u>\$(250,000)</u>
Revised Projected Balance, March 31, 2018	\$1,720,525

Risk Reserve – General Contingency Reserve, Q421 is to receive the annual operating surplus of the Municipality as prescribed by the Provincial Financial Accounting and Reporting Manual, and can be used to fund operating costs, offset deficits, or fund new operating and/or capital expenditures. This is an unbudgeted withdrawal from the reserve but does not negatively affect the anticipated planned usage of the reserve for the next 5 years.

RISK CONSIDERATION

1. Risk (low) that work is not complete by March 31, 2018 and only partial funding is received. Work completed after March 31st, 2018 will not be eligible for federal cost-sharing, however, HRM staff have planned that the work be completed well before then and, if necessary, can carry out work in winter weather conditions. If further funding be required from HRM, a report to Audit & Finance Standing Committee and Council would be required to approve budget increases, and / or approve funding sources such as further withdrawals from reserves.
2. Risk (low) that the agreements are not signed and the project is cancelled. HRM has been working closely with Parks Canada and the Parish of St. Paul's on the two agreements.

COMMUNITY ENGAGEMENT

The Heritage Property Act provides an appeal of Council's decision to the Nova Scotia Utility and Review Board when entering into, or waiving/discharging a right or condition in, a heritage agreement. This level of community engagement is consistent with the intent of the HRM Community Engagement Strategy.

ALTERNATIVES

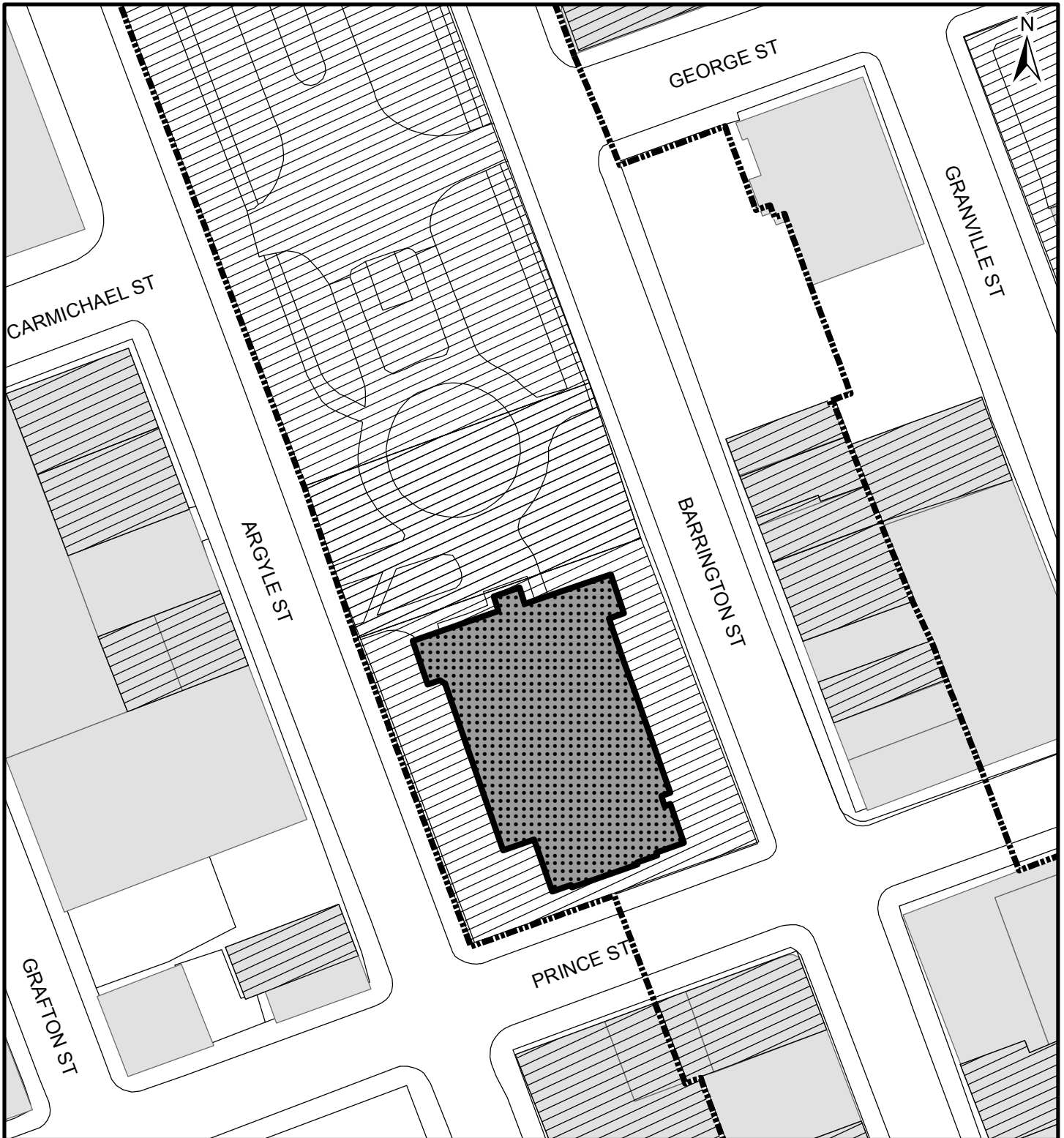
1. Council could choose to provide funding for the project directly to the Church so that they may directly undertake the restoration project. The Church would then be responsible to enter into a contribution agreement with the federal government, subject to agreement by the federal government. This is not the recommended action. HRM has a long, proven record of undertaking substantial restoration projects on National Historic Sites and, as project manager for the restoration project, can ensure a high-quality project and protection for the abutting HRM sidewalk asset.
2. Council could refuse to provide the financial assistance and to enter into the heritage agreement. However, this is not the recommended action. The Church does not have the financial capacity to undertake the restoration project, and the further deterioration of the wall may require HRM to undertake future work to support the sidewalk as outlined in this report. Without matching funds from HRM, the federal money would not be available to the Church.

ATTACHMENTS

Map 1: Location Map
Attachment A: Heritage Agreement
Attachment B: Letter of request from the Parish of St. Paul's Church
Attachment C: Photographs of the Church walls

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Aaron Murnaghan, Principal Planner, Heritage, Planning & Development, 902-292-2470
John MacPherson, Manager, Corporate Facility Design & Construction, 902-209-0763



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Map 1 - Location Map

- St. Paul's Church - 1749 Argyle Street
- Barrington Street Heritage Conservation District
- Existing Municipally Registered Heritage Property
- Building

HALIFAX
 Planning & Development
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Attachment A

THIS AGREEMENT made this _____ day of _____, 2017

BETWEEN:

PARISH OF ST. PAUL'S (HALIFAX)
(hereinafter called the "Owner")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY a
municipal body corporate,
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Owner is the registered owner of a lot of land located in the Halifax Regional Municipality at civic number 1749 Argyle Street, Halifax, represented by PID 00002790, including St. Paul's Church (hereinafter called the "Property"), more fully and particularly described in Schedule "A" attached hereto;

AND WHEREAS the Property is a municipal heritage property, registered in the Halifax Regional Municipality Registry of Heritage Property pursuant to the Nova Scotia *Heritage Property Act*, R.S.N.S. 1989, c. 199, and Halifax Regional Municipality Bylaw H-200, the Heritage Property Bylaw;

AND WHEREAS the Property is located in the Barrington Street Heritage Conservation District, which is established pursuant to the Nova Scotia *Heritage Property Act*, R.S.N.S. 1989, c. 199, and Halifax Regional Municipality Bylaw H-500, the Heritage Conservation District (Barrington Street) Bylaw;

AND WHEREAS the Property is a provincial heritage property, registered in the Province of Nova Scotia Provincial Registry of Heritage Property pursuant to the Nova Scotia *Heritage Property Act*, R.S.N.S. 1989, c. 199;

AND WHEREAS the Property is a National Historic Site of Canada pursuant to the *Historic Sites and Monuments Act*, R.S.C. 1985, c. H-4;

AND WHEREAS Section 17 of the *Heritage Property Act* states that municipal heritage property shall not be substantially altered in exterior appearance or demolished without the approval of the Municipality;

Attachment A

AND WHEREAS pursuant to section 22 of the *Heritage Property Act* the Municipality may provide financial assistance to owners of municipal heritage properties or properties located in a heritage conservation district upon such terms and conditions as the council deems fit;

AND WHEREAS pursuant to section 20 of the *Heritage Property Act* the Council of the Municipality may enter into Agreements with the owner of a registered municipal heritage property or properties located in a heritage conservation district whereby the owner grants to the Council of the Municipality a right or incurs an obligation respecting the use, preservation or protection of the heritage property or property located in a heritage conservation district;

AND WHEREAS the Owner has requested financial assistance from for the Property from the Municipality;

AND WHEREAS the parties involved recognize the historical and cultural significance of the Property and St. Paul's Church to the Municipality, the Province, and the Country of Canada;

AND WHEREAS the parties involved recognize the necessity of the restoration of the 1843 ironstone and cast iron perimeter wall and fence surrounding the Property as shown in red on the drawing prepared by Dumaresq Architect Ltd. and attached at Schedule "B" hereto;

AND WHEREAS by resolution of Council dated _____, the Municipality approved a request from the Owner for financial assistance for the restoration of a portion of the 1843 ironstone and cast iron perimeter wall and fence in the amount of five hundred thousand dollars (\$500,000.00), with a net municipal project cost of two hundred fifty thousand dollars (\$250,000.00) subject to the execution of a Heritage Agreement with the Owner, and a Contribution Agreement between the Municipality and the Government of Canada.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada now paid by the Municipality to the Owner (the receipt and sufficiency of which is hereby acknowledged), and for other good and valuable consideration, the Owner and the Municipality agree to the following terms and conditions:

Restoration Project

1. The parties agree that the portion of the stone and cast iron wall located on the perimeter of the Property, on Argyle Street, as identified by the dotted line on the perimeter wall as shown on Schedule "B" hereto (hereinafter called the "Perimeter Wall"), is to be restored.
2. The terms and conditions of the restoration are as follows:
 - (a) The details of the Restoration Project to be undertaken to restore the Perimeter Wall is as set out in Schedule "C" (hereinafter the "Restoration Project").
 - (b) The Municipality will provide in kind financial assistance to the Owner for this Restoration Project, of a value up to but not exceeding five hundred thousand dollars (\$500,000.00), with a net municipal project cost of a value up to but not

Attachment A

exceeding two hundred fifty thousand dollars (\$250,000.00), subject to the execution of a Contribution Agreement between the Municipality and the Government of Canada for the remaining two hundred fifty thousand dollars (\$250,000.00).

- (c) The Municipality will be responsible for the delivery of the Restoration Project.
 - (d) The parties agree to cooperate with each other on any applications to programs identified by either the Owner or the Municipality as potential sources of additional funding for the Restoration Project.
 - (e) The parties agree that any additional funding obtained for the Restoration Project, whether from public or private sources, shall be assigned to the Municipality to expand the scope of the Restoration Project.
3. The Owner hereby grants to the Municipality, its heirs and assigns, servants and agents, a Temporary Construction Easement over the lands described in Schedule "A", excepting the St. Paul's Church building, for the purpose of ingress and egress of vehicular and pedestrian traffic, excavation, installation, construction, removal, revision, alteration, maintenance, inspection and any other items as required by the Municipality, its assigns, servants or agents that are deemed appropriate for the Restoration Project, including generally to do all acts necessary or incidental to the Restoration Project.
- (a) The Municipality will indemnify and hold harmless the Owner from all liabilities, damages, claims, suits and actions arising out of its activities within the easement, other than liabilities, damages, claims, suits and actions resulting from the negligence of the Owner.
4. Should the cost of the Restoration Project exceed the amount approved by Halifax Regional Council by resolution dated _____ and set out in clause 2(b) of this Agreement, the scope of the project may be reduced or additional funding may be requested by the Owner, and such request shall be considered by Regional Council in its sole discretion. Should additional funding not be approved, the Restoration Project shall be considered complete, and the Municipality's obligations under clause 2(c) complete. The Municipality shall ensure that the Restoration Project is left in a safe and secure condition.

Owner's use of the Property

- 5. The Owner agrees that following the completion of the Restoration Project, it will expand public access during daylight hours to the gardens within the churchyard bounded by the Perimeter Wall.
- 6. The Owner, for itself, its successors and assigns, agrees that it shall, at all times, maintain the Perimeter Wall in as good and sound a state of repair as a prudent owner would normally do, to ensure that no deterioration of the basic structural elements, external condition or appearance of the Perimeter Wall shall take place.

Attachment A

- (a) The Municipality may assess the Perimeter Wall from time to time for the purpose of determining compliance with the terms and conditions of this Agreement, and may require the Owner to make any repairs or restoration of the Perimeter Wall for the purpose of conforming to this provision.
- 7. The Owner shall, at all times, keep the Property, including the Perimeter Wall and St. Paul's Church, insured against normal perils that are coverable on an all risk policy basis, including fire, in an amount equal to its replacement cost. The Owner shall provide evidence of insurance, completed and certified by its insurance company and deliver to the Municipality on execution of this Agreement, and thereafter evidence satisfactory to the Municipality of the renewal of insurance shall be delivered to the Municipality from time to time upon request by the Municipality.
- 8. The Owner covenants and agrees that it shall not make application to demolish, nor shall it demolish, the Property, including the Perimeter Wall and St. Paul's Church located on the Property described in Schedule "A" attached hereto, or alter its exterior appearance in any manner without the written consent of the Halifax Regional Municipality. The Owner further expressly waives any rights it may have under Section 18 of the said *Heritage Property Act* to make any alteration or carry out demolition as provided therein.

Right of First Refusal

- 9. The Owner grants to the Municipality a right of first refusal on any sale of the Property as shown in Schedule "A", which includes St. Paul's Church, and covenants and agrees with the Municipality as follows:
 - (a) Where the Owner receives a bona fide offer to purchase the Property shown in Schedule "A", or any part thereof, (hereinafter referred to as the "Purchase Offer") which it is prepared to accept, before accepting the Purchase Offer, the Owner shall provide written notice to the Municipality offering to sell the Property to the Municipality for the price set out in the Purchase Offer and on the other terms and conditions contained in the Purchase Offer, providing a copy of the Purchase Offer and indicating that the Purchase Offer is acceptable to the Owner.
 - (b) If the Municipality desires to purchase the Property, it shall, within sixty (60) days after receipt of the Purchase Offer, give written notice (the "Notice of Acceptance") to the Owner of such desire to purchase on the terms and conditions set out in the Purchase Offer.
 - (c) If the Municipality delivers a Notice of Acceptance within the time period set forth in clause (b) above, the Owner shall be bound to sell, and the Municipality shall be bound to purchase, the Property in accordance with the terms set forth in the Purchase Offer.

Attachment A

- (d) If the Owner does not receive a Notice of Acceptance within the time period set forth in clause (b) above, the Owner shall be at liberty to accept the Purchase Offer and sell the Property in accordance with the terms and conditions thereof. If the Purchase Offer is not complete by the Owner within 180 days following the delivery of the Purchase Offer to the Municipality, the Seller shall not complete any sale, transfer or conveyance of the Property without again complying with the provisions of this Agreement.
 - (e) Notwithstanding the foregoing, the Owner may convey the Property or any part thereof to any entity governed by the *Anglican Church Act*, S.N.S. 1967, c. 130, without complying with this provision, provided that the transferee shall continue to be bound by this Agreement in its entirety, including the provisions of this clause 9.
 - (f) The conveyance of the Property or any part thereof by the Owner is subject to the consent of the Bishop of Nova Scotia and Prince Edward Island.
10. This right of first refusal shall terminate and be of no further force and effect on the date where, in accordance with this Agreement, the Property, or part thereof, is transferred to a third party, but only in respect of that portion of the Property transferred to the third party.

General

11. The Owner and the Municipality agree that all covenants, warranties and conditions contained in this Agreement shall be severable, and that should any covenant, warranty or condition in this Agreement be declared invalid or unenforceable, the remaining covenants, warranties and conditions shall not terminate thereby.
12. Any notices which may be given under the provisions of this Agreement shall be sufficiently given if mailed by registered, or certified, mail postage prepaid:
- (a) in the case of the Municipality, addressed to:

Municipal Clerk
P.O. Box 1749
Halifax, Nova Scotia
B3J3A5
 - (b) in the case of the Owner, addressed to:

The Parish of St. Paul's Church
1749 Argyle Street,
Halifax, Nova Scotia
B3J 3K4

Attachment A

or to such other address as either party may notify the other in writing and shall be deemed to be received on the second business day following which the notice was sent.

13. The failure of the Municipality at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Municipality of performance of any obligation hereunder be taken or be held to be a waiver of performance of the same or any other obligation hereunder at any later time.
14. The Municipality acknowledges that the Owner or a subsequent owner may, from time to time, apply to the Municipality to have this Agreement or any provision hereof altered or waived as many be reasonable in the circumstances, and the Municipality shall give reasonable consideration to such application.
15. The parties herein agree that the Owner shall record this Agreement in the Land Registration Office in and for the Municipality of the County of Halifax, and it shall remain in full force and effect until discharged by the Municipality.
16. It is expressly understood that pursuant to and in accordance with section 20 of the *Heritage Property Act*, this Agreement shall be registered on title to the Property and that the rights granted by the Owner to the Municipality herein, and the obligations incurred by the Owner herein, shall bind the Owner and subsequent owners and successors in title to the Owner and may be enforced by the Municipality against the Property and against the Owner or any subsequent owners of the Property.
17. This Agreement enures to the benefit of, and binds the parties and their respective executors, administrators, successors and assigns.
18. This Agreement shall be governed by the laws of the Province of Nova Scotia.

IN WITNESS WHEREOF each of the parties hereto have caused this Agreement to be executed by its duly authorized officers on its behalf on the day and year first above written.

Attachment A

SIGNED, SEALED AND DELIVERED

in the presence of:

PARISH OF ST. PAUL'S

Witness

Per: _____

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

HALIFAX REGIONAL MUNICIPALITY

Witness

Per: _____
MAYOR

Witness

Per: _____
MUNICIPAL CLERK

Attachment A

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that _____, _____ of the parties thereto, signed, sealed and delivered the same in his/her presence.

A Commissioner of the Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, the subscriber personally came and appeared _____ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that Mike Savage, Mayor and Kevin Arjoon, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

A Commissioner of the Supreme Court of Nova Scotia

Schedule A

St. Paul's Anglican Church, 1749 Halifax, Nova Scotia PID: 00002790

Parcel Description

All that certain lot or piece of land situate in the Town of Halifax which is abutted and bounded as follows, to wit:

On the east by Barrington Street there running 180 feet;

On the south by Prince Street and there running 158 feet;

On the west by Argyle Street and there running 188 feet;

On the north by the present parade and there measuring 158 feet more or less containing one-half of an acre and 34 rods of land according to the plan annexed.

Subject to the notice of Heritage Property recorded on July 11, 1983 in Book 3719 at Page 600 as Document no. 35791.

Being the same land granted by Crown Grant from King George the Third to the Reverend Robert Stanson et al, dated the 2 day of September, 1799, recorded in Old Book 21 at Page 52 of the records of the Crown Lands Office for the Province of Nova Scotia on September 2, 1799.

The parcel is exempt from the requirement for subdivision approval under the Municipal Government Act because it predates the requirement for subdivision approval.

Textual Qualifications on Title

Qualifications Text

THE ENABLING INSTRUMENT IS A CROWN GRANT DATED SEPTEMBER 2, 1799, RECORDED AT THE CROWN LANDS RECORD OFFICE ON SEPTEMBER 2, 1799 IN OLD BOOK 21 AT PAGE 52. THE GRANT IS NOT RECORDED AT THE REGISTRY OFFICE FOR THE REGISTRATION DISTRICT OF HALFAX. THE CROWN GRANT WAS MADE TO THE REVEREND ROBERT STANSON AND OTHERS AS THE RECTOR CHURCH WARDENS AND VESTRY MEN OF THE SAID PARISH OF ST. PAULS, WHICH BY VIRTUE OF THE ANGLICAN CHURCH ACT IS NOW KNOWN AS THE PARISH OF ST. PAUL'S CHURCH, HALIFAX.

Schedule C

Scope of the Restoration Project

Restoration Project Description

The St. Paul's Anglican Church's historical perimeter boundary ironstone wall and cast iron fence has fallen in disrepair due to the exposure of time, weather and street and sidewalk maintenance. Portions of the wall have shown significant signs of deterioration and partial collapse. It is critical the ironstone wall and fencing receive immediate stabilization actions to prevent further deterioration which could pose a hazard. HRM intends to undertake the Restoration Project to repair and restore a portion (estimated 50 feet, actual length dependent on budget) of the ironstone wall and cast iron fencing located along the Argyle Street side starting at the corner of Argyle Street and Prince Street running north as identified by the dotted line on the perimeter wall as shown on Schedule B hereto.

HRM shall act as the project manager for the Restoration Project, and manage the consultants and construction process. The Restoration Project consists of the following Scope of Work:

1. Engage a restoration architect experienced in conservation projects to research, design and administer the restoration and conservation of a portion of the ironstone wall and cast iron fence as noted above. The architect will complete a wall design that replicates the existing. The architect will prepare tender/contract documents and provide contract administration for the construction.
2. Engage an archaeological consultant to monitor and observe the excavation of an exploratory trench, ensuring that the excavation proceeds with sufficient care to allow observation and identification of potentially significant archaeological resources; the work will include the application for a Heritage Research Permit, background research of the site, archaeological monitoring and a report. The same consultant will be engaged to provide on going archaeological monitoring of the excavation and wall restoration during construction and provide a final report.
3. Complete an exploratory trench by excavation of the existing wall's foundation within the proposed section of the wall area noted above. The purpose of the exploratory work is to investigate the existing conditions of the wall's foundation. The information is critical for the architect to design the new wall's foundation and possibly drainage system if required.
4. HRM to issue tender document for the repair and restoration of the ironstone wall to be completed by March 31, 2018.

The restored wall will match the existing by using the existing wall materials (ironstone and cast iron cap and fence) where applicable and if replacement material is required it will be of a standard consistent with a building of this historic significance with an emphasis on conservation. The restoration will be conducted in accordance with *Standards and Guidelines for the Conservation of*

Historic Places in Canada, 2nd Edition, and the *Special Places Protection Act*, R.S.N.S. 1989, c. 438.

The work will entail the repair and restoration of the ironstone wall which will include the full or partial dismantlement of the wall. The restoration will include a new adequate foundation and drainage system which will have a stabilizing effect and make future conservation and preventive maintenance more efficient and manageable. All attempts will be made to retain, stabilize and re-use the original ironstones. A suitable method of securing the metal cap and iron fence, compatible with the original design.

Attachment B



St Paul's Church

1749 Argyle Street, Halifax, Nova Scotia B3J 3K4

Telephone: (902) 429-2240

Facsimile: (902) 429-8230

E-mail: office@stpaulshalifax.org

Terry Gallagher
Manager, Facility Design and Construction
Halifax Regional Municipality

By Hand

Dear Mr. Gallagher,

As you will know, St. Paul's Church on the Grand Parade has been at the centre of life in Halifax for well over 250 years. As a National Historic Site, and a repository of the history and life of Halifax, it is a magnet to both the citizens of the City of Halifax and to tens of thousands of visitors from many countries. It is in the top five most visited tourist destinations in our City.

Unfortunately, the long-standing stone wall at the south end of the Grand Parade, which encircles the Church, has deteriorated to the point where it has become a significant safety hazard; this problem is most pronounced on the Argyle Street side, where pedestrian traffic is growing rapidly. We therefore request that St. Paul's and the City enter into a Heritage Agreement so that we may work together to rebuild the wall and fence as needed to ensure that it is safe, and to ensure that its heritage value is preserved for the benefit of all users of the Grand Parade. As a part of such an agreement, we would be happy to make the east (Barrington) side of the Church yard accessible to the public during daylight hours, something we have wanted to offer the public for some years—provided that we can agree on suitable design and security elements.

As a wooden building, St. Paul's presents continual challenges to its congregation, requiring us to maintain it to a standard suitable for our visitors, and new ways to highlight the historic and current position it occupies in the centre of the city. We have active programs to keep the building open and expand our reach within the community – whether for tourists, pilgrims, concert-goers, our own parishioners, or disadvantaged citizens. We have been pleased to spend our budget on keeping our building open daily to the public for some years, keeping it as an active part of the life of the city.

We firmly believe that this represents a unique opportunity to work together to promote and preserve our shared heritage and is in the interest of all of the people of Halifax. We thank you for receiving this letter, and trust that the City will be able to assist in this public project. We would be most grateful for your support.

Sincerely,

Dr. Peter Secord *EGPA*
Senior Warden

Original
signed

The Rev'd Dr. Paul Friesen
Rector

Original
signed

Attachment C: Photographs of the Church walls



Figure 1: Wall section on Barrington Street abutting the Church.



Figure 2: Sandstone pillar on Barrington Street.



Figure 3: Wall section Barrington Street.

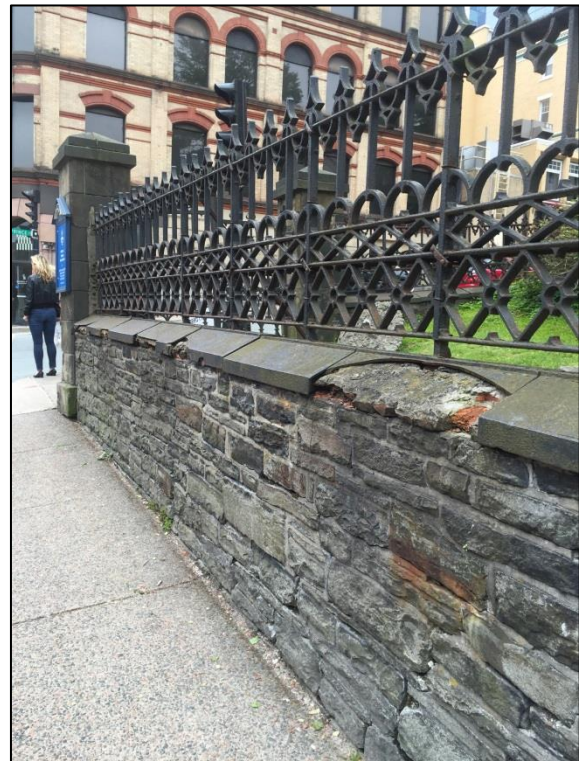


Figure 4: Wall section Barrington Street at Prince Street.



Figure 5: Gates at the corner of Barrington and Prince Streets.



Figure 6: View up Prince Street.



Figure 7: Wall section on Prince Street.



Figure 8: Wall sections on Prince Street.



Figure 9: Gates at the corner of Prince and Argyle Streets.



Figure 10: Ironwork failing at the Prince Street gates.



Figure 11: Failed wall section on Argyle Street.



Figure 12: Bowed wall section & broken metal wall cap.



Figure 13: Failed metal cap and brick top course.



Figure 14: Wall section along Argyle Street.



Figure 15: Wall section at Argyle Street abutting the Church.