



P.O. Box 1749
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Item No. 7.1.1
Halifax and West Community Council
May 14, 2020
September 8, 2020

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: Original Signed

Kelly Denty, Director of Planning and Development

Original Signed

Jacques Dubé, Chief Administrative Officer

DATE: March 24, 2020

SUBJECT: **Case 22682: Amendments to the Halifax Municipal Planning Strategy, Halifax Peninsula Land Use By-law, and associated second amending development agreement for 5534-5558 Bilby Street and 2819-2827 Isleville Street, Halifax**

ORIGIN

- Application by Lindsay Construction
- January 14, 2020, Regional Council initiation of the Municipal Planning Strategy amendment process:

THAT notwithstanding Halifax Regional Council's June 25, 2019 motion directing the Chief Administrative Officer to not accept requests for site-specific amendments to the Municipal Planning Strategies in Centre Plan Package B areas while the planning process to adopt Package B is underway, Regional Council directs the Chief Administrative Officer to:

- a) initiate a process to consider amendments to applicable Municipal Planning Strategies and Land Use By-laws for 5534 to 5558 Bilby Street and 2819 to 2827 Isleville Street, Halifax. The process will consider amendments that would allow the 7 storey mixed-use development permitted within the Development Agreement originally approved by West Community Council in Case 17511, and subsequently amended by Halifax and West Community Council in Case 20326; and
- b) request staff to implement a public participation plan using community mail outs to the notification area.

MOTION PUT AND PASSED UNANIMOUSLY.

RECOMMENDATIONS ON PAGE 2

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development

RECOMMENDATION

It is recommended that Halifax and West Community Council recommend that Regional Council:

1. Give First Reading to consider the proposed amendments to the Halifax Municipal Planning Strategy and Halifax Peninsula Land Use By-law, as set out in Attachments A and B, to enable an extension to the date of commencement of construction for a Development Agreement at the southeast corner of Bilby and Isleville Streets in, Halifax and schedule a public hearing; and
2. Adopt the proposed amendments to the Halifax Municipal Planning Strategy and Halifax Peninsula Land Use By-law, as set out in Attachments A and B.

It is further recommended that Halifax and West Community Council:

3. Give Notice of Motion to consider the proposed amending development agreement, as set out in Attachment C, to enable an extension to the date of commencement of construction for a previously approved seven-storey residential building at the southeast corner of Bilby and Isleville Streets, Halifax. The public hearing for the development agreement shall be held concurrently with that indicated in Recommendation 1.

Contingent upon the amendments to the Halifax Municipal Planning Strategy and Halifax Peninsula Land Use By-law being approved by Regional Council and becoming effective pursuant to the requirements of the *Halifax Regional Municipality Charter*, it is further recommended that Halifax and West Community Council:

4. Approve the proposed amending development agreement for an extension to the date of commencement of construction, which shall be substantially of the same form as contained in Attachment C; and
5. Require the amending development agreement be signed by the property owner within 120 days or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later, otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Lindsay Construction, on behalf of the property owner, is applying to request the development rights held within a previously approved development agreement to be continued via an extension to the date of commencement of construction by one year.

Subject Site	5534-5558 Bilby Street and 2819-2827 Isleville Street (PID 00161406), Halifax
Location	At the southeast corner of Bilby and Isleville Streets- East of Bilby Street, North of Isleville Street
Regional Plan Designation	Urban Settlement (US)
Community Plan Designation (Map 1)	Designated Major Commercial under the Halifax Municipal Planning Strategy (MPS), within the Peninsula North Secondary Plan (Sub Area 5)

Zoning (Map 2)	General Business (C-2) under the Halifax Peninsula Land Use By-law (LUB)
Size of Site	1666.3 square metres (17,935.9 square feet)
Street Frontage	Approx. 84.8 metres (278 feet)
Current Land Use(s)	Vacant
Surrounding Use(s)	<p>The existing neighbourhood is comprised of a mix of two unit, multi unit buildings, and a few construction sites/vacant lots/temporary surface parking lots with approved multi unit apartment buildings that have not yet been constructed.</p> <p>A few retail commercial shops are scattered throughout the neighbourhood and a gas station is located on Gottingen Street, across the street from the Canadian Royal Armed Forces Base (Stadacona).</p>

Proposal Details

The applicant is requesting permission to allow an extension to the date of commencement of construction that was set out in a previously approved development agreement by one year. The development agreement allowed for a seven-storey residential building at the corner of Bilby and Isleville Streets, Halifax. The major aspects of the proposal are as follows:

- The previously approved development agreement required construction to be commenced within five years from the date of registration of the agreement. The agreement was registered on July 5, 2013. The five-year mark occurred on July 6, 2018, and construction had not yet commenced. The option to apply for a time extension as a non-substantive amendment through a resolution of Council has also expired. Therefore, a substantive amendment to the agreement is required.
- Commencement is defined in the agreement as “installation of the footings and foundations”. While site preparation did commence, unforeseen contaminated soils were discovered and were required to be removed before starting construction.
- Environmental remediation of the site was completed in August 2019, which exceeded the five-year commencement date in the agreement. The applicant is now asking for a time extension of one year from the date of registration of the requested second amending agreement.

Previously Approved Development Agreement

On March 18, 2013 Halifax West Community Council approved a development agreement (Case 17511) enabling a seven-storey residential building containing a maximum of 56 units which included 48 apartment units and 8 townhome units. As part of the same case, Halifax West Community Council approved the adoption of the lands into Schedule “Q” of the Halifax Peninsula LUB which enables residential buildings in the C-2 Zone by development agreement.

On November 15, 2016, Halifax and West Community Council approved amendments to the approved development agreement (Case 20326) to allow a change in residential units to a maximum of 71 which are to be comprised of 64 apartment units, and 7 “live-work” units. “Live-work” units permit community facility, medical clinic, offices or personal service shop uses within the units.

The development agreement also regulates site requirements, architecture, signage, lighting, parking (bicycle and vehicular), circulation, site access, landscaping, waste facilities, and building maintenance, as well as dates for commencement and completion of construction.

MPS and LUB Context

The property is within the major commercial designation of the Halifax MPS and is zoned C-2 (general business) under the LUB. The previously approved development agreement was enabled under Policies 2.3, 2.3.1, 2.3.2, and 2.3.3 of Section XI of the MPS, and Section 92 of the Halifax Peninsula LUB. These policies allowed Council to identify areas designated Major Commercial for comprehensive site planning through a development agreement process. This process is achieved through the application of Schedule “Q” of the Halifax Peninsula LUB. Schedule “Q” was established to address the challenge of introducing

new residential uses into existing commercial and industrial areas by negotiating, on a site-by-site basis, the conditions of a development agreement including:

- the creation of an adequate environment for residential living on sites which may be surrounded by commercial and industrial uses; and
- providing for the continued operation of adjacent commercial and industrial uses without being encumbered by new residential uses.

On September 18, 2019, Regional Council approved Package A of the Regional Centre Secondary Municipal Planning Strategy (RCSMPS). Notwithstanding the fact that the subject site is not located within the boundaries of the new plan, adoption of the new document did result in changes to the existing Halifax MPS policies. These changes included repealing Sections 2.3, 2.3.1, 2.3.2, 2.3.3, and 2.4 from the Halifax MPS and Section 92 of the Halifax Peninsula LUB. These were the policies which enabled the adoption of Schedule Q lands and subsequently, development agreements for comprehensive site planning. The policies were repealed with the adoption of Package A to ensure that Schedule Q would no longer apply within that geography. This indirectly affected those remaining lands outside of Package A but within Schedule Q with approved development agreements. Amendments to those previously approved development agreements are now no longer enabled as the policies that the agreements were originally approved under, have since been repealed.

On January 14, 2020 Regional Council approved a motion on item 18.1¹ of the agenda to consider site-specific amendments to the Halifax MPS and LUB for 5534-5558 Bilby Street and 2819-2827 Isleville Street, Halifax. The motion requests the that site specific amendments to be made allow for the consideration of the 7-storey mixed-use development permitted under the same development agreement conditions approved by Halifax West Community Council in Case 17511, and subsequently amended by Halifax and West Community Council under Case 20326. To this end, both MPS and LUB amendments are required to create enabling policy by which Council could then consider an extension to the date of commencement of development.

Approval Process

The approval process for this application involves two steps:

- a) First, Regional Council must consider and, if deemed appropriate, approve proposed amendments to the MPS and LUB; and
- b) Secondly, Halifax and West Community Council must consider and, if deemed appropriate, approve a proposed development agreement once the MPS amendments are in effect.

Notwithstanding the two-stage approval process, a joint public hearing can be held by both Regional and Community Council to consider both the proposed MPS and LUB amendments as well as the development agreement. In the event Regional Council approves the MPS and LUB amendments, and following their coming into effect, Halifax and West Community Council may then decide on a proposed amending development agreement. A decision on proposed MPS and LUB amendments is not appealable to the Nova Scotia Utility and Review Board (Board). However, the decision on the proposed amending development agreement is appealable to the Board.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the engagement strategy and public participation program approved by Regional Council at the January 14, 2020 meeting. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, signage posted on the subject site, and postcards mailed to property owners within the

¹ See Council minutes online at <https://www.halifax.ca/sites/default/files/documents/city-hall/regional-council/200114rc-mins.pdf>

notification area. Staff received four (4) calls and two (2) emails from the public regarding the application. The public comments received include the following topics:

- Concerns for blasting nuisance;
- Concerns for reduced sunlight from the height of the building;
- Concerns regarding the length of time construction equipment will be located at the property;
- Concerns that construction equipment has been stored in the neighborhood for years due to the number of properties under construction, and that this is unsightly for residents; and
- Concern that the unit prices will be high and that rental prices in the neighborhood are unaffordable.

A public hearing must be held by Regional Council before they can consider approval of the proposed MPS and LUB amendments. Should Regional Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail.

The proposal will potentially impact local residents and property owners.

DISCUSSION

The MPS is a strategic policy document that sets out the goals, objectives and direction for long term growth and development in Municipality. Amendments to an MPS are significant undertakings and Council is under no obligation to consider such requests. In this case Council has requested specific amendments for their consideration to enable amendments to the existing development agreement.

Proposed Amendments

Attachments A and B contain the proposed MPS and LUB amendments. A summary of the proposed amendments is as follows:

- Both the MPS and LUB amendments are site specific meaning the subject property is the only site where Council may consider amending previously approved development agreements;
- The MPS amendment enables Council to consider a time extension to the date of commencement of development under the policies in effect at the time the agreements were approved; and
- The LUB amendment enables the consideration of a time extension to the date of commencement of development in accordance with the MPS amendment policy.

Repealed Policy

The previously approved development agreement was considered and approved under repealed Policies 2.3.1, 2.3.2, and 2.3.3 of Section XI of the Halifax MPS and Section 92 of the Halifax Peninsula LUB. The look, size, and siting of the development remains unchanged by this application and therefore remains reasonably consistent with the policies in effect at the time the agreements were approved.

Policy Intent

The MPS and LUB amendments (Attachment A and B) fulfils Council's request to enable the previously approved development and was written in a manner that is consistent with Regional Centre Secondary Municipal Planning Strategy policy for lands under Package A.

Policy 10.27 of the RCSMPS (Package A) provides enabling policy for items listed as non-substantive in an existing development agreement that may be considered under policies in effect at the time the agreement was approved. The application for the time extension is substantive and the proposed MPS amendment has been written to enable a request for time extension to the date of commencement of development in a site-specific, single case request only.

Policy 10.28 of the RCSMPS (Package A) restricts commencement and completion date extensions to not exceeding one year. The proposed MPS amendment policy does not restrict the length of time extension

considered, however the proposed amending development agreement is limited to a one year extension to the date commencement.

Proposed Amending Development Agreement

Attachment C contains the proposed amending development agreement for the subject site and the conditions under which the development may occur. The proposed amending development agreement addresses the following matters:

- Section 6.3.1 of the proposed amending development agreement provides a time extension to the date of commencement of development by one (1) year from the date of registration of the agreement at the Registry of Deeds; and
- All other conditions and provisions of the existing agreement remain in effect.

Halifax Peninsula Planning Advisory Committee

On March 9, 2020, the Halifax Peninsula Planning Advisory Committee (PAC) recommended that the application be approved. A report from the PAC to Community Council will be provided under separate cover.

Conclusion

Staff have reviewed the application and the existing policy context and have provided the attached amendments pursuant to the direction of Council. In this case, new Centre Plan policies have designated areas of the Regional Centre in which higher density residential development is planned to occur in the short to medium term future. The subject site discussed within this report was not designated as one of these areas. As such, in the absence of a clear planning rationale for the proposed policy amendment, the question before Council is whether the previously granted approval should be allowed to carry over into the new, recently adopted policy framework. Council's decision on this request should be informed by the knowledge that there are likely other sites in similar predicaments, though perhaps not as far advanced in the design and construction process as is the case for the subject site.

FINANCIAL IMPLICATIONS

There are no financial implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Development Agreement. The administration of the development agreement can be carried out within the approved 2020-2021 budget with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This application involves proposed MPS amendments. Such amendments are at the discretion of Regional Council and are not subject to appeal to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed amendments are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

The Halifax and West Community Council may choose to recommend that Regional Council:

1. Modify the proposed amendments to the Halifax MPS and LUB for Halifax Peninsula, as set out in Attachments A and B of this report. If this alternative is chosen, specific direction regarding the requested modifications is required. Substantive amendments may require another public hearing to be held before approval is granted. A decision of Council to approve or refuse the proposed amendments is not appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Refuse the proposed amendments to the Halifax MPS and LUB for Halifax Peninsula. A decision of Council to approve or refuse the proposed amendments is not appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

The Halifax and West Community Council may choose to:

3. Approve the proposed development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or another public hearing. A decision of Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
4. Refuse the proposed development agreement, and in doing so, provide reasons why the proposed agreement does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

Map 1: Generalized Future Land Use
Map 2: Zoning and Notification Area

Attachment A: Proposed Amendment to the Halifax Municipal Planning Strategy
Attachment B: Proposed Amendment to the Halifax Peninsula Land Use By-law
Attachment C: Proposed Amending Development Agreement

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: Brittney MacLean, Planner II, Urban Enabled Applications, 902.490.4919

Report Approved by: Steven Higgins, Manager, Current Planning, 902.490.4382

Financial Approval by: Jane Fraser, Director of Finance, Asset Management and ICT, 902.490.6308



Map 1 - Generalized Future Land Use

5558 Bilby Street,
Halifax

-  Subject Property
-  Regional Centre Package A
Secondary Municipal Planning Strategy
-  Peninsula North Secondary Plan Area

Regional Centre Package A Plan Area,
Halifax Plan Area
Peninsula North Secondary Plan Area

Designation Halifax-Peninsula North

- CFB Canadian Forces Base
- LDR Low Density Residential
- MDR Medium Density Residential
- MJC Major Commercial
- P Park and Institutional

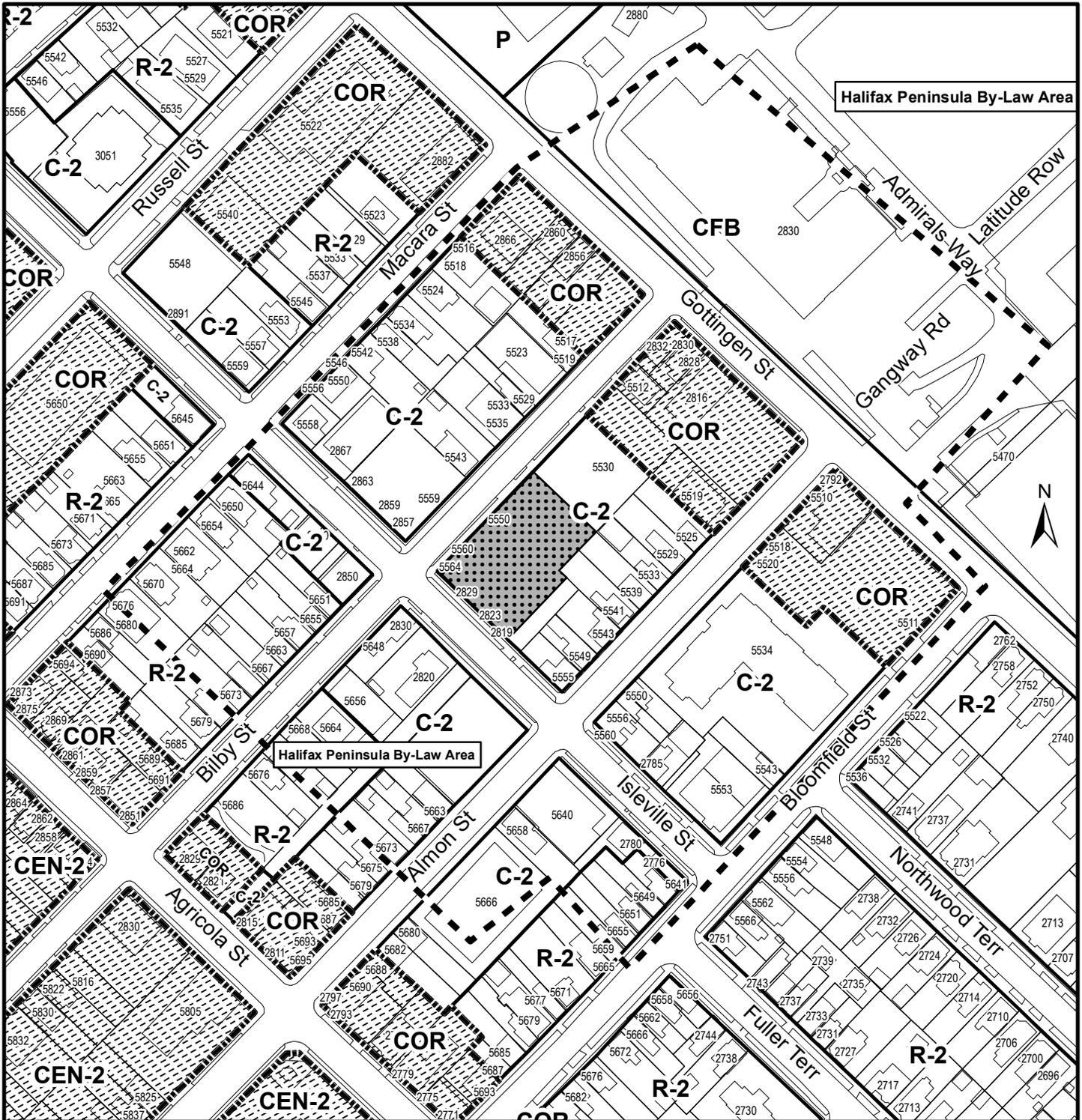
Designation Regional Centre

- COR Corridor
- CEN-2 Centre 2



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

The accuracy of any representation on this plan is not guaranteed.



Halifax Peninsula By-Law Area

Halifax Peninsula By-Law Area

Map 2 - Zoning and Notification

5558 Bilby Street,
Halifax

-  Subject Property
-  Area of Notification
-  Regional Centre Package A

Halifax Peninsula By-Law Area
Regional Centre Package A By-Law Area

Zone

HPEN	R-1	Single Family Dwelling
	R-2	General Residential
	C-2	General Business
	P	Park and Institutional
	CFB	Canadian Forces Base
RCPA	COR	Corridor
	CEN-2	Centre 2



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

The accuracy of any representation on this plan is not guaranteed.

ATTACHMENT A

Proposed Amendment to the Halifax Municipal Planning Strategy

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

1. Within Section XI: Peninsula North Secondary Planning Strategy, Subsection 2. Commercial Facilities, the text shown in bold below shall be added immediately after Policy 2.5 and before Subsection 3. Institutions:

2.17 An application for substantive amendments to existing development agreements (Municipal Cases 17511 and 20326) registered to the property identified by PID no.00161406, located on the corner of Bilby and Isleville Streets, for a time extension to the date of commencement of development, shall be considered under the policies in effect at the time the agreements were approved.

I, Sherryl Murphy, Municipal Clerk for the Halifax Regional Municipality, hereby certify that the above-noted amendment was passed at a meeting of the Halifax Regional Council held on [DATE], 201[#].

Sherryl Murphy
Municipal Clerk

ATTACHMENT B

Proposed Amendment to the Halifax Peninsula Land Use By-law

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

1. Within the Development Agreement Provisions Section, the text shown in bold shall be added immediately after Section 98F:

98G Council may permit substantive amendments to existing development agreements (Municipal Case 17511 and 20326) registered to the property identified by PID no.00161406, located on the corner of Bilby and Isleville Streets, for a time extension to the date of commencement of development in accordance with Policy 2.17 of Section XI: Peninsula North Secondary Planning Strategy, Subsection 2. Commercial Facilities, of the Halifax Municipal Planning Strategy.

I, Sherryl Murphy, Municipal Clerk for the Halifax Regional Municipality, hereby certify that the above-noted by-law was passed at a meeting of the Halifax Regional Municipality held on [DATE], 201[#].

Sherryl Murphy
Municipal Clerk

Attachment C: Proposed Amending Development Agreement

THIS SECOND AMENDING AGREEMENT made this day of **[Insert Month]**, 20___,

BETWEEN:

3276428 NOVA SCOTIA LTD.

a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 5534, 5558, Bilby Street, and 2819-2827 Isleville Street (PID 00161406), Halifax, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Halifax and West Community Council approved an application to enter into a Development Agreement to allow for a multi-unit residential building on the Lands (Municipal reference number 17511) on March 18, 2013 pursuant to the provisions of the Halifax Regional Municipality Charter and pursuant to Policies 2.3.1, 2.3.2 and 2.3.3 of Section XI of the Halifax Municipal Planning Strategy and Section 92 of the Halifax Peninsula Land Use By-law, which said Development Agreement was registered at the Land Registration Office in Halifax on July 5, 2013 as Document Number 103368016 (hereinafter called the "Original Agreement");

AND WHEREAS the of the Halifax and West Community Council approved an application to amend the Original Agreement to allow for a mixed-use development that consists of residential and home-based business uses, and to enable changes to the building design on the Lands (Municipal reference number 20326) on November 15, 2016, and which said Development Agreement was registered at the Land Registration Office in Halifax on April 7, 2017 as Document Number 110575405 (hereinafter called the "First Amending Agreement"), and which does apply to the Lands;

AND WHEREAS the Original Agreement and the First Amending Agreement together comprise the Existing Development Agreement (hereinafter called "the Existing Agreement");

AND WHEREAS the Developer has requested that further amendments to the Existing Agreement to allow for a time extension to the date of commencement of development on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy 2.17 of Section XI of the Halifax Municipal Planning Strategy and Section 98G of the Halifax Peninsula Land Use By-law;

AND WHEREAS the Halifax and West Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 22682;

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

1. Except where specifically varied by this Second Amending Agreement, all other conditions and provisions of the Existing Agreement as amended shall remain in effect.
2. The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Second Amending Agreement, and the Existing Agreement.
3. Section 6.3.1 of the Existing Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in bold as follows:

6.3.1 In the event that development on the Lands has not commenced within ~~five (5)~~ **one (1)** years from the date of registration of this **Second Amending** Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.

IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

[Insert Registered Owner Name]

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

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this ____ day of _____, A.D. 20____, before me, personally came and appeared _____, the 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, personally came and appeared _____, the subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that Mike Savage, Mayor and Sherrill Murphy, Acting 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