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Item No. 7.1.2
Halifax and West Community Council
November 18, 2020

TO: Chair and Members of Halifax and West Community Council

Original Signed

SUBMITTED BY:

Kelly Denty, Director of Planning and Development

DATE: May 26, 2020

SUBJECT: **Case 22851: Non-substantive amendments to an existing development agreement for 2250-2260 Maitland Street, Halifax**

ORIGIN

Application by Mitch Dickey Urban Planning.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. Give notice of motion to consider the proposed amending development agreement, as set out in Attachment A, to allow a non-substantive amendment to an existing development agreement extending the commencement and completion dates for development;
2. Approve, by resolution, the proposed amending development agreement, which shall be substantially of the same form as set out in Attachment A; and
3. Require the agreement be signed by the property owner within 240 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

Mitch Dickey Urban Planning on behalf of the Housing Trust of Nova Scotia is applying for a non-substantive amendment to an existing development agreement for 2250-2260 Maitland Street, Halifax, to extend the date of commencement of construction by one year and the date of completion of development by two years.

Subject Site	A single, through-lot at 2250, 2254, 2256, 2258, 2260 Maitland Street, Halifax (PID 00154393)
Location	Mid-block between Cornwallis Street and Prince William Street, fronting onto Maitland Street and Gottingen Street on the Halifax Peninsula
Regional Plan Designation	Urban Settlement
Community Plan Designation (Map 1)	CEN (Centre) of the Regional Centre Municipal Planning Strategy, Package A
Zoning (Map 2)	CEN-2 (Centre 2) of the Regional Centre Land Use By-law, Package A
Size of Site	2,165.8 square metres (23,312 square feet)
Street Frontage	45.72 metres (150 feet) on Maitland Street and 24 metres (78.74 feet) on Gottingen Street
Current Land Use(s)	Vacant
Surrounding Use(s)	The surrounding area is diverse mix of commercial, residential, community, and institutional uses. More specifically: <ul style="list-style-type: none">• to the east is St. George's Round Church and St. Patrick's Catholic Church;• to the west and north is a mix of residential, commercial, community, and institutional uses; and• to the north is the St. Patrick's-Alexandra's School site.

Existing Development Agreement

On February 17, 2015, Halifax and West Community Council approved a development agreement (Case 18547) to construct a mixed-use development with ground floor commercial space and up to 117 residential units ("existing development agreement"). The existing development agreement required commencement of construction within four years from the date of registration of the agreement at the Land Registration Office and completion of development within six years from the date of registration. The existing development agreement was registered on June 2, 2016. The applicant proposes to extend the commencement of construction date by one year and the completion date by two years.

Section 6.2 of the existing development agreement identifies a change to the commencement and completion of development dates as non-substantive amendments. Section 7.3.3 stipulates Council can consider an extension of the commencement date if the Municipality receives a written request from the Developer at least 60 calendar days before the commencement deadline. An application to extend the existing dates was received more than 60 days before the deadline.

Enabling Policy and LUB Context

When the existing development agreement was approved in 2015, the site was designated Major Commercial under the Halifax Municipal Planning Strategy (HMPS). The lands were located in Area 8 of the Peninsula North Secondary Planning Strategy and zoned C-2 (General Business) under the Halifax Peninsula Land Use By-law (HPLUB).

The Regional Centre Plan 'Package A' was adopted on September 17, 2019, and at that time the site was re-designated CEN (Centre) under the Regional Centre Secondary Municipal Planning Strategy (RCSMPS) and zoned CEN-2 (Centre 2) under the Regional Centre Land Use By-law. When the RCSMPS was adopted, the policies which enabled the original development were repealed. However, the RCMPS does

provided specific 'transition' policies enabling non-substantive amendments to approved development agreements. Policy 10.27 enables applications for non-substantive amendments to existing development agreements to be considered under the policies at the time the agreement was approved. Policy 10.28 enables applications to extend project commencement dates up to one year and project completion dates up to two years to be considered.

Accordingly, the policies under which the existing development agreement was considered are the policies used to review the current request. Generally, these policies encourage commercial and residential intensification in this area, as well as encourage development of new housing stock that appeals to all income levels. The application for the existing agreement was made pursuant to Policy 2.3.1 of Section XI of the HMPS. This policy allowed Council to identify areas designated Major Commercial for comprehensive site planning through the development agreement process. This process is achieved through the application of Schedule Q of the Halifax Peninsula LUB. Since the proposal is to only extend the timeline for commencement and completion of development, the original policy review remains valid.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was information sharing, achieved through providing information and seeking comments through the HRM website and signage posted on the subject site. A public information meeting and public hearing are not required for a non-substantive amendment to a development agreement. The decision on the amendment is made by resolution of Community Council.

DISCUSSION

Staff has reviewed the proposal relative to all relevant policies and advise it is reasonably consistent with the intent of the Regional Centre SMPS and with the Halifax MPS policies that were in place at the time the existing development agreement was approved. Attachment B provides an evaluation of the proposed development agreement in relation to the relevant MPS policies.

Proposed Development Agreement

Attachment A contains the proposed amending development agreement for the subject site. The proposed amending agreement allows for an extension to the commencement and completion dates by one year and two years, respectively. The commencement date is five years from the date the original agreement was registered. The completion date is eight years from the date the original agreement was registered. The extensions of time provided in the proposed amending agreement meets the intent of the policy. The amending development agreement does not enable any other changes to the existing development agreement.

The proposed time extensions can be considered by Community Council as non-substantive amendments as provided for in Section 6.2 (g) and (h) in the existing development agreement. Section 10.27 of the RCSMPS enables the application to be considered against the enabling policies in effect at the time the original agreement was approved. These enabling policies - 2.3.1, 2.3.2, and 2.3.3 of Section XI of the HMPS, as well as Section 92 of the Halifax Peninsula LUB – have been repealed, but Policy 10.27 of the RCSMPS enables this application to be considered against these policies. The proposal remains consistent with the enabling policies that were in effect at the time the original agreement was approved.

Timeframe for Agreement Execution

The COVID-19 pandemic has resulted in difficulties in having legal agreements signed by multiple parties in short periods of time. To recognize this difficulty these unusual circumstances presents, staff are recommending extending the signing period for agreements following a Council approval and completion of the required appeal period. While normally agreements are required to be signed within 120 days, staff recommend doubling this time period to 240 days. This extension would have no impact on the development

rights held within the agreement, and the agreement could be executed in a shorter period of time if the situation permits.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is reasonably consistent with the intent of the RSCMPS and with the Halifax MPS policies that were in effect at the time of the approval of the existing development agreement. The proposed amendment is to the dates of commencement and completion of development. The architecture, siting, and use of the structure are unchanged from that which is set out in the existing development agreement. This is the first request to extend the commencement and completion dates. Staff recommend that the Halifax and West Community Council approve the proposed first amending development agreement.

FINANCIAL IMPLICATIONS

There are no budget 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 proposed development agreement. The administration of the proposed development agreement can be carried out within the approved 2020-2021 budget and with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed amending development agreement are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

1. Halifax and West Community Council may choose to approve the proposed amending 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 amending development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Halifax and West Community Council may choose to refuse the proposed amending development agreement, and in doing so, must provide reasons why the proposed agreement does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed amending development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

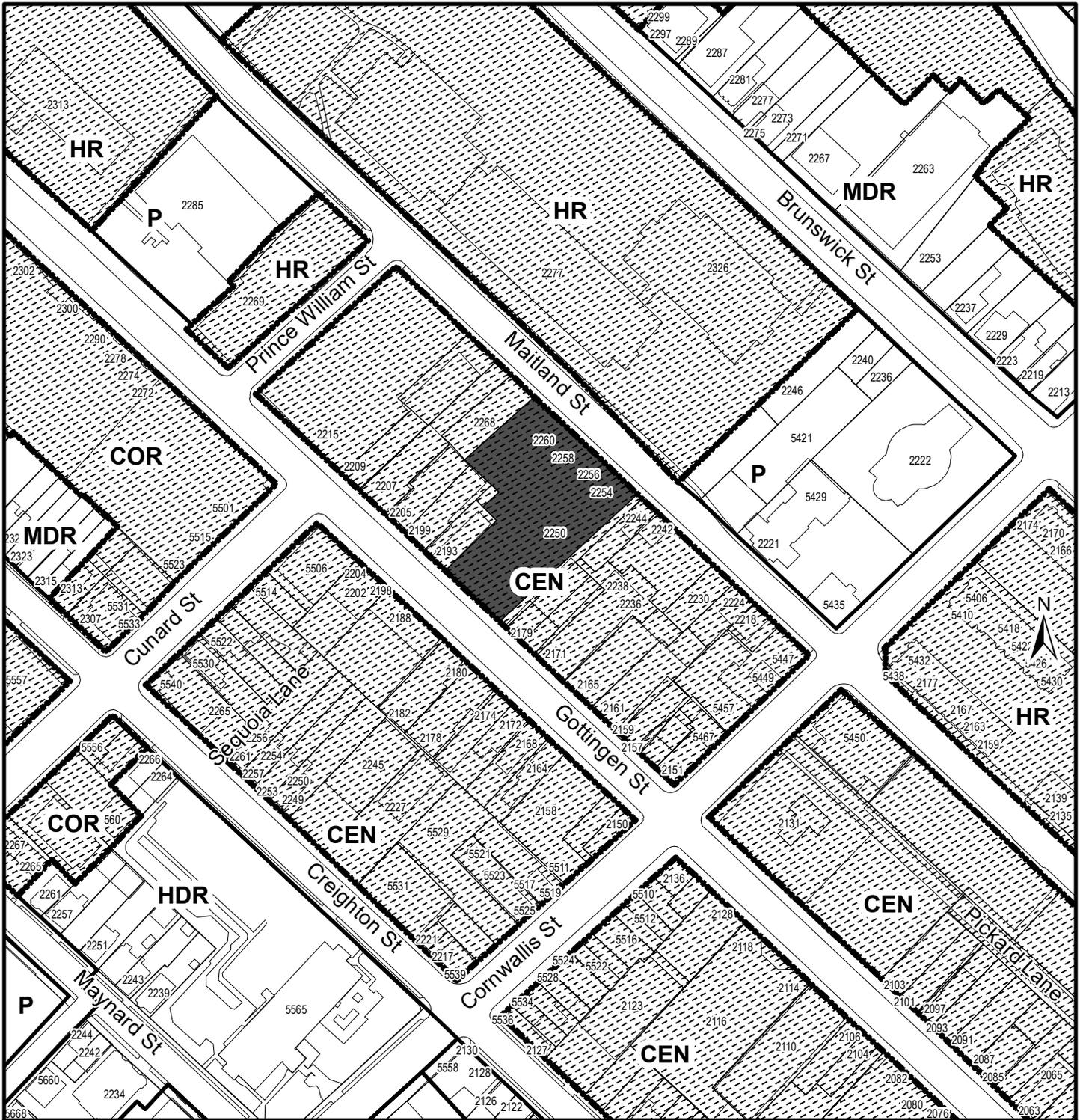
ATTACHMENTS

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

Attachment A: Proposed Amending Development Agreement
Attachment B: Review of Relevant Policies from the Regional Centre SMPS Secondary and
Halifax MPS

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: Meaghan Maund, Planner II, 902.233.0726



Map 1 - Generalized Future Land Use

HALIFAX

2250-2260 Maitland Street,
Halifax

Regional Centre Package A Designation

 Subject Property

- CEN Centre
- COR Corridor
- HR Higher-Order Residential

 Regional Centre Package A

Halifax Peninsula Detail Plan Designation

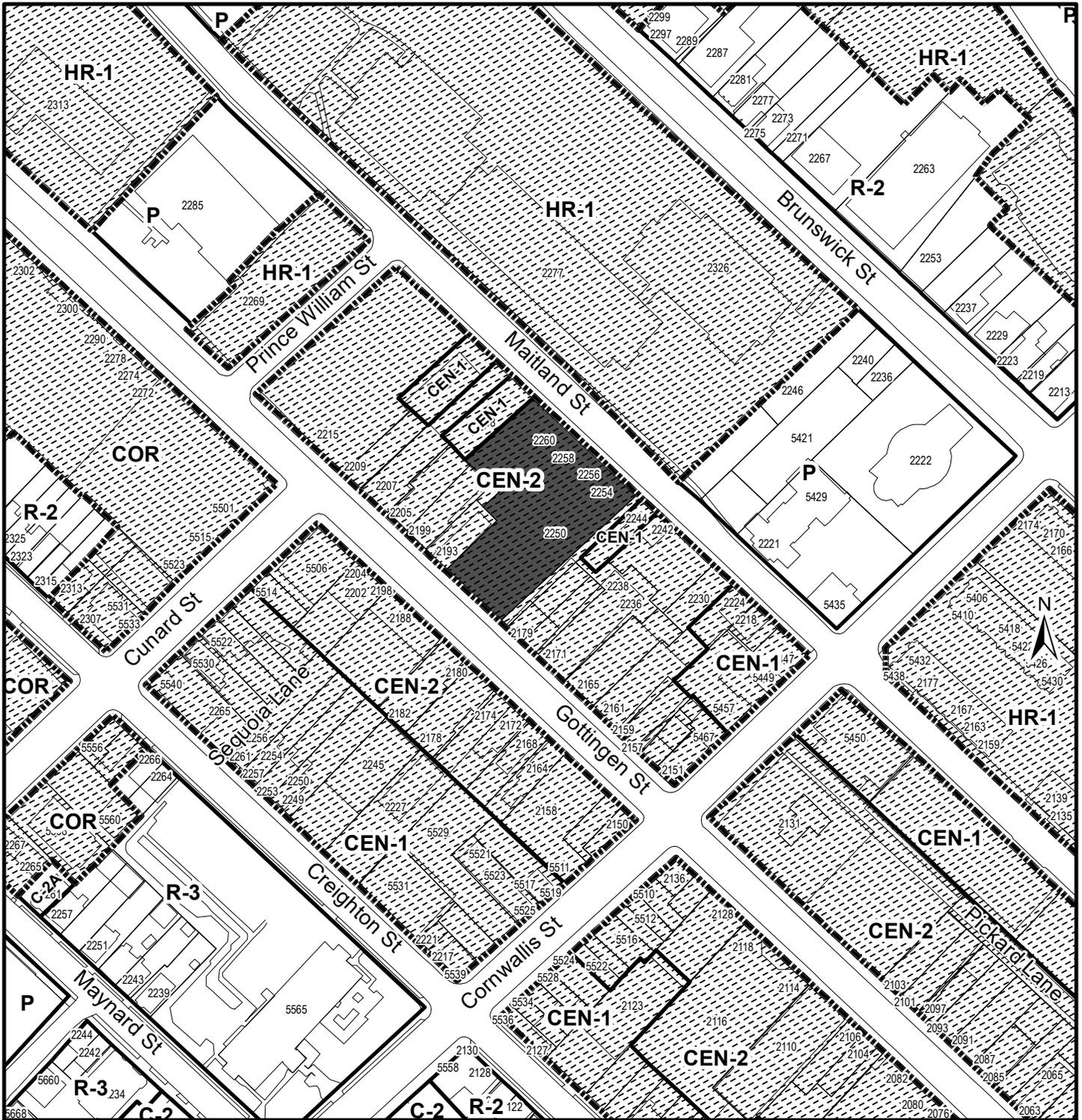
- MDR Low Density Residential
- HDR Medium Density Residential
- P Park and Institutional



Halifax Peninsula Detail Plan Area
Regional Centre Plan Package A Plan Area

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.



Map 2 - Zoning and Notification

2250-2260 Maitland Street,
Halifax

 Subject Property

 Regional Centre Package A

Halifax Peninsula Land Use By-Law
Regional Centre Package A Land Use By-Law

Regional Centre Package A Zone

- CEN-1 Centre 1
- CEN-2 Centre 2
- COR Corridor
- HR-1 Higher-Order Residential 1

Halifax Peninsula Zone

- R-2 General Residential
- R-3 Multiple Dwelling
- C-2 General Business
- P Park and Institutional

HALIFAX



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 Amending Development Agreement

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

BETWEEN:

THE HOUSING TRUST OF NOVA SCOTIA

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 2250-2260 Maitland Street, 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 at a meeting on February 17, 2015, to allow for mixed-use development on the Lands (municipal case 18547), which said Development Agreement was registered at the Halifax County Land Registration Office on June 2, 2016 as Document Number 109033861 (hereinafter called the "Original Agreement");

AND WHEREAS the Developer has requested that amendments to the Original Agreement to allow for an extension to the commencement and completion of development dates on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter*, and pursuant to Policies 10.27 and 10.28 of the Regional Centre Municipal Planning Strategy, Policies 2.3.1, 2.3.2, and 2.3.3 of Section XI of the Halifax Municipal Planning Strategy, Section 92 of the Halifax Peninsula Land Use By-law, and Section 6.2 of the Original Agreement;

AND WHEREAS the Halifax and West Community Council approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 22851;

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

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1. Except where specifically varied by this First Amending Agreement, all other conditions and provisions of the Original 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 First Amending Agreement, and the Original Agreement.

3. Section 7.3.1 of the Original Agreement shall be amended by deleting the text shown in strikeout, and inserting the text shown in bold as follows:

7.3.1 In the event that development on the Lands has not commenced within ~~four~~ **five** years from the date of registration of ~~this~~ **the Original** 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.

4. Section 7.5 of the Original Agreement shall be amended by deleting the text shown in strikeout, and inserting the text shown in bold as follows:

If the Developer fails to complete the development after ~~six~~ **eight** years from the date of registration of ~~this~~ **the Original** Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:

- (a) Retain the Agreement in its present form;
- (b) Negotiate a new Agreement; or
- (c) Discharge this Agreement.

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: _____

HALIFAX REGIONAL MUNICIPALITY

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

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, 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

Attachment B
Review of Relevant Policies from the Regional Centre SMPS Secondary and Halifax MPS

Review of Relevant Policies from the Regional Centre Secondary Municipal Planning Strategy (Package A)	
Policy	Staff Comment
<p>10.27 Applications for non-substantive amendments to existing development agreements shall be considered under the policies in effect at the time the agreement was approved.</p> <p>In addition to those items listed as non-substantive in an existing development, the following amendments to those existing development agreements may be considered under the policies in effect at the time the agreement was approved:</p> <ul style="list-style-type: none"> a) changes to architectural requirements that do not impact the massing of the building; b) changes to landscaping requirements; c) changes to sign requirements; d) reduction in motor vehicle parking requirements; and e) changes to building lighting and illumination. 	<p>Satisfied.</p> <p>This application is for a non-substantive amendment to an existing development agreement, therefore it is eligible to be reviewed under the policies in effect at the time the original agreement was approved.</p> <p>Section 6.2 of the existing development agreement (Case 18547) lists those items considered non-substantive amendments. Specifically, the following two items apply:</p> <p><i>The granting of an extension to the date of commencement of construction as specified in Section 7.3; and</i></p> <p><i>The length of time for the completion of development as specified in Sections 7.4 and 7.5.</i></p> <p>No other changes to the existing development agreement are proposed. The original policy review for Case 18547 remains relevant and has been included below for reference.</p>
<p>10.28 Applications for amendments to existing development agreements to extend the project commencement and completion dates shall only consider project commencement dates not exceeding one year and project completion dates not exceeding two years, and only one application per development agreement shall be considered.</p>	<p>Satisfied.</p> <p>The existing development agreement was registered at the Land Registration Office on June 2, 2016.</p> <p>As per Section 7.3 of the existing development agreement, development is to commence within four years from the date of registration which would be June 2, 2020. The applicant has requested to extend the date of commencement of construction by one year to</p>

	<p>June 2, 2021. The proposed amending agreement extends the date of commencement by one year, providing the developer five years from the registration date of the original agreement to commence construction.</p> <p>As per Sections 7.4 and 7.5 of the agreement, development is to be completed within six years from the date of registration, which would be June 2, 2022. The applicant has requested to extend the date of completion by two years to June 2, 2024. The proposed amending agreement extends the date of completion by two years, providing the developer eight years from the registration date of the original agreement to complete construction.</p> <p>This is the first and only application to extend the commencement and completion dates for this agreement.</p>
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<p>Review of Relevant Policies from the Halifax Municipal Planning Strategy in Effect at the Time the Original Development Agreement was Approved by Council</p>	
<p>Please Note - This text has been copied directly from the Staff Report for Case 18547. Since no changes have been proposed to the design of the building, the original review is still relevant.</p>	
<p>Policy</p>	<p>Staff Comment</p>
<p>Policies for the application of Schedule Q</p>	

<p>2.3 <i>In areas designated major commercial, uses consistent with Section II, Policy 3.1.3 shall be permitted.</i></p> <p><i>[Section II, Policy 3.1.3: Major commercial centres should service a market area comprising most or all of the City. These centres may include major offices and hotels, in addition to uses suggested for minor commercial centres. The City should encourage parking facilities in these centres to serve several businesses in order to limit nuisance impact. The City's policy for major commercial centres in all other respects should be identical to Policy 3.1.2.]</i></p>	<p>In the Peninsula North Secondary Planning Strategy (Section XI of the Halifax MPS), the site is designated for Major Commercial land uses. The site is zoned C-2 (General Business), which permits major and minor commercial land uses as well as residential uses. Underground parking will be provided for and utilized by residential and commercial tenants and the general public.</p>
<p>2.3.1 <i>In order to promote investment in commercial and residential redevelopment and to prevent conflict between new and existing uses, the city may, through the land use by-law, identify areas that provide an opportunity for and will benefit from comprehensive site planning.</i></p>	<p>The site is appropriate for and will benefit from comprehensive site planning. The site is located within a major commercial area, with a variety of commercial and residential land uses, and has prominent street frontage on both Gottingen Street and Maitland Street. The development agreement process can help alleviate and minimize potential land use conflicts.</p>
<p>2.3.2 <i>In those areas identified in the land use by-law pursuant to Policy 2.3.1, all residential and mixed residential-commercial development over four units shall be by agreement.</i></p>	<p>Contingent upon approval of the LUB amendment implemented as Schedule Q, Council may consider the proposed development agreement, which is included as Attachment C. The proposal is for a 6 to 8 storey mixed-use building.</p>
<p>Policies for the consideration of the Development Agreement</p>	

<p>2.3.3 <i>In considering agreements pursuant to Policy 2.3.2, Council shall consider the following:</i></p> <p><i>(i) the relationship of new development to adjacent properties and uses; and, the mitigation of impacts on the amenity, convenience and development potential of adjacent properties through effective urban design and landscape treatment;</i></p>	<p>This criteria is satisfied. Refer to staff report [for Case 18547] for a detailed discussion.</p>
<p><i>(ii) the appropriate integration of the development into the traditional grid street system of the Peninsula;</i></p>	<p>The proposal utilizes the existing frontage on both Gottingen Street and Maitland Street and therefore integrates with the existing street grid.</p>
<p><i>(iii) the design and layout of the development should encourage vehicular traffic to use Principal Streets and discourage traffic from infiltrating through existing neighbourhoods;</i></p>	<p>The entrance to the proposed parking garage is located off Maitland Street, which is not a Principal Street. However, Bylaw S-300 (The Streets Bylaw) discourages driveway access off a principal street where access off a secondary street is possible, and a parking garage entrance would detract from the pedestrian character of Gottingen Street. Maitland Street is therefore a more appropriate location for the driveway. A Traffic Impact Statement, prepared by the applicant's consultant, was reviewed by HRM and was deemed acceptable. The Study concludes that there are no issues with the proposed development on the local street network. All parking is to be located within the building.</p>

<p><i>(iv) the creation of high quality design detail at street level through attention to such matters as landscaping, signs, building entrances, and vehicle layby areas;</i></p>	<p>The proposed design ensures an attractive development at street level, with extensive windows, variety in cladding materials and colours. The development as proposed will on both streets provide “eyes on the street” and a sense of animation and engagement that will improve the pedestrian character of the streets.</p> <p>The proposed agreement also requires adherence to detailed landscaping requirements, which includes the provision of landscaping along the HRM right-of-way for both Gottingen street and Maitland Street and along an HRM-owned walkway that forms the south boundary of the site. Signs are limited to awnings, fascia and projecting signs. The back lighting is limited to the lettering of each sign. There will be no on-street vehicle lay-by areas off either public street.</p>
<p><i>(v) the provision of high quality open space and leisure areas of a size and type adequate for the resident population;</i></p>	<p>Open space and leisure areas will consist of landscaped areas at grade and on terraces, indoor amenity space, and individual private balconies for residential units. A total of 900 square metres (9700 square feet) of landscaped space and amenity space is required. The provisions in the agreement ensure the use of high quality materials and landscape design. These spaces/areas will be adequate for the resident population.</p>
<p><i>(vi) residential and commercial densities consistent with municipal services;</i></p>	<p>A sewer capacity analysis for the proposed development, prepared by the developer’s consultant, was reviewed by Halifax Water and deemed acceptable.</p>
<p><i>(vii) encouraging high quality exterior construction materials such as masonry; and</i></p>	<p>Primary exterior materials include clapboard style fibre cement siding, corrugated metal siding, and architectural panels. Concrete walls are proposed in locations where the building will be constructed to the property line and it is anticipated that adjacent lots will be redeveloped to the property line as well.</p>

<p><i>(viii) other relevant land use considerations which are based on the policy guidance of this Section.</i></p>	<p>See below for additional policy evaluation.</p>
<p>Additional policy evaluation</p>	
<p>Policy 1.1.4 <i>In the area bounded by North, Robie, Cogswell and Barrington Streets, with exception of the portion falling outside of Peninsula North Area, housing options for all income levels will be encouraged; developments that address the needs of surrounding community and help promote neighbourhood stability shall also be encouraged.</i></p>	<p>Based on the applicant`s agreement with the Province, this proposal will provide housing that appeals to a wide range of income groups. In addition, the redevelopment of a vacant lot will foster neighbourhood stability and encourage further investment in the community.</p>
<p>1.4.8 <i>In Area 8 of this Section, the land use by-law shall include a height limit to maintain and promote a medium rise form of residential and commercial development for properties designated High Density Residential and Major Commercial and located south of Prince William Street on the west side of Maitland Street.</i></p>	<p>The MPS does not specify an actual height limit, which provides council with flexibility to reconsider the 40 foot height limit that is applied to the Maitland Street portion of the site. The proposed development is 8 storeys on Maitland Street, which is within the mid-rise range and is well mitigated through the provision of at grade setbacks and upper floor stepbacks which ensure a well scaled, pedestrian friendly streetwall as intended by the MPS.</p>
<p>2.9 <i>In Area 8 of this Section, a height limit shall be established for the Major Commercial area of Gottingen Street and for the Residential/Commercial mix area along Gottingen Street to maintain a medium rise building form and to ensure compatibility with surrounding residential properties.</i></p>	<p>The MPS does not specify an actual height limit, which provides council with flexibility to reconsider the 50 foot height limit that is applied to the Gottingen Street portion of the site. The proposed development is 6 storeys on Gottingen Street frontage which is within the mid-rise range. The height is mitigated through the provision of upper floor stepbacks which ensure a pedestrian friendly streetwall as intended by the MPS.</p>