

# HALIFAX

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

**Item No. 11.1.9**  
**Halifax Regional Council**  
**June 8, 2021**

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

**SUBMITTED BY:** Original Signed by   
\_\_\_\_\_  
Jacques Dubé, Chief Administrative Officer

**DATE:** May 13, 2021

**SUBJECT:** **Case 20374: Change to Post-Bonus height Public Benefit, Incentive or Bonus Zoning Agreement, 1452 Brenton Street, Halifax**

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## **ORIGIN**

- March 11, 2021 HRM Design Review Committee approval of a change to the post bonus height public benefit at 1452 Brenton Street, Halifax.
- Construction Permit Application No. 165823.

## **LEGISLATIVE AUTHORITY**

- *Halifax Regional Municipality Charter:*
  - Section 245A(1): Where a municipal planning strategy so provides, a land-use by-law may provide for incentive or bonus zoning agreements respecting the HRM by Design Downtown Plan Area;
  - Section 245B(1): The Council may, by resolution, adopt or amend an incentive or bonus zoning agreement; and
  - Section 245C(1): An incentive or bonus zoning agreement is in effect until discharged by the Council.
- Section 12(7), Downtown Halifax Land Use By-law (LUB) (Attachment A)

## **RECOMMENDATION**

It is recommended that Halifax Regional Council adopt and authorize the Mayor and Clerk to enter into and execute the Incentive or Bonus Zoning Agreement, which shall substantially be of the same form as set out in Attachment B of this report for the sixteen storey, mixed-use building at 1452 Brenton Street, Halifax.

## **BACKGROUND**

On July 7, 2016, the Design Review Committee (DRC) approved the qualitative elements for a substantive site plan approval for a mixed-use development located at the corner of Brenton Place and Brenton Street.

The major elements of the proposal include:

- Overall height of 16 storeys plus a 1-unit penthouse on the top floor;
- A total of 161 residential units;
- Commercial floor space at street level with pedestrian access points along each street and separate residential lobby area;
- Two underground parking levels containing 92 vehicular parking spaces in addition to bicycle parking, with driveway access from Brenton Place;
- Landscaped areas abutting sidewalks at grade, to the rear of the building, on residential terraces, and on rooftop levels (penthouse level and communal amenity space on level 12); and
- Exterior cladding materials which include glass window wall and curtain wall systems, high-pressure laminate (HPL) panels (glossy and matte finishes), aluminum frames, glass/ metal canopy and glass balconies with metal railings. The side and rear elevations will also incorporate brick/ stone veneer or ceramic tile.

## **Proposed Public Benefit**

Within the Downtown Halifax Plan Area, maximum permitted building heights may only be attained when a developer provides a public benefit. The list of eligible public benefit categories is set out in subsection 12(7) of the LUB (Attachment A). Where a public benefit is not provided, the developer may only build to a lower building height. This approach is often referred to as “density bonusing” but is enabled under the *Halifax Regional Municipality Charter* as “incentive or bonus zoning.”

The original public benefit proposal was approved as the provision of public art. The approval by the DRC on July of 2016 along with the Post Bonus Height Agreement being approved by Council on September 11, 2018 led to the issuance of a Construction Permit (#165823) for the project. There have been difficulties in realizing the public art on site. The LUB requires that the building be located in close proximity to the streetline. As outlined in Attachment C, the public art in the limited space at grade will diminish the value of the art and conflict with building articulation. As a result, an alternate public benefit category has been requested, in the form of undergrounding of overhead electrical and communication distribution systems.

## **Role of Design Review Committee, Development Officer & Council**

Under clause 4(13)(c) of the LUB, the Design Review Committee is responsible to provide the Development Officer with advice on matters pertaining to bonus zoning in relation to substantive site plan approvals. The DRC’s advice is provided in the form of a recommendation on the public benefit category for the development at the time the Committee makes its decision on the substantive site plan application.

The Development Officer is responsible for determining if a proposal meets the land use and built form requirements of the LUB. Subsection 12(9) of the LUB requires that prior to the issuance of a development permit requiring a public benefit, the developer must enter into an agreement with the Municipality to specify the terms and conditions by which the public benefit is to be provided.

The *Halifax Regional Municipality Charter* requires Council approval of an incentive or bonus zoning (public benefit) agreement. This report seeks to obtain Council’s approval of the agreement.

## **DISCUSSION**

### **DRC Approval**

The LUB requires developments that exceed the maximum pre-bonus height limitations provide a public benefit as part of the project. In this case, the developer proposes that the alternate public benefit contribution be in the form of undergrounding of overhead electrical and communication distribution systems. The DRC recommended that the Development Officer accept the provision of undergrounding of overhead electrical and communication distribution systems. Specifically, their motion in this regard is as follows:

*MOVED by Marilee Sulewski, seconded by Marcel Tarnogorski*

*THAT the Design Review Committee recommend that the Development Officer accept undergrounding of overhead electrical and communication distribution systems as the post bonus height public benefit category for the development at 1452 Brenton Street, Halifax.*

*MOTION PUT AND PASSED.*

The developer has submitted a new request to underground overhead electrical and communication distribution systems. The details of this request along with a rendering of the building are included in Attachment C of the report.

### **Public Benefit Details**

The extent of the required public benefit is determined by a formula set out in the Downtown Halifax LUB. The by-law determines the extent of the required public benefit by assigning a value to any proposed floor area beyond the maximum pre-bonus floor area ratio. Projects that exceed the maximum pre-bonus floor area ratio are required to contribute a public benefit with a value equivalent to, or greater than the minimum value set out in the By-law. The LUB establishes a public benefit value that is the equivalent of \$4.47 for every 0.1 square metres of gross floor area created by extending above the pre-bonus height. The maximum pre-bonus height for the proposal is 39 metres while the post-bonus height is 49 metres. The gross floor area to be gained is approximately 1,490 square metres. A calculation of the value of the required public benefit is approximately \$66,603.

The updated proposal from the developer in the form of undergrounding overhead electrical and communication distribution systems exceeds this amount in the amount of \$414,453. As the proposed public benefit exceeds the minimum required benefit, staff recommend that Regional Council adopt, by resolution, the Incentive or Bonus Zoning Agreement as provided in Attachment B of this report.

## **FINANCIAL IMPLICATIONS**

The HRM costs associated with processing this application can be accommodated within the approved operating budget for C420 Land Development and Subdivision.

## **RISK CONSIDERATION**

There are no risks associated with the recommendation contained within this report.

### **COMMUNITY ENGAGEMENT**

Community Engagement as described by the Community Engagement Strategy is not applicable to the public benefit contribution component of the site plan approval process.

### **ENVIRONMENTAL IMPLICATIONS**

No environmental implications were identified.

### **ALTERNATIVES**

Regional Council may defeat the staff motion recommending the Incentive or Bonus Zoning Agreement substantially of the same form as set out in Attachment B of this report. This would delay construction of the project as scheduled, necessitate further submissions by the developer, and require advisement by the Design Review Committee, as well as a supplementary report from staff.

### **ATTACHMENTS**

Attachment A	Section 12(7) of the LUB- Public Benefit Categories
Attachment B	Incentive or Bonus Zoning Agreement
Attachment C	Details of Proposed Public Benefit

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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Sean Audas, Principal Planner & Development Officer, 902.476.9553

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**Attachment A**  
**Section 12(7) of the LUB- Public Benefit Categories**

- 12(7) Subject to meeting all applicable requirements of this By-law, development pursuant to subsection (1) shall be permitted where the developer provides one or a combination of the following public benefits:
- (a) where the development includes a registered heritage property which is to be maintained, the reservation or enhancement of the heritage resource;
  - (b) the provision of publicly accessible amenity or open space, where a deficiency in such spaces exists;
  - (c) the provision of residential units at a subsidized cost to contribute to housing affordability in the Downtown Halifax Secondary Municipal Planning Strategy plan area;
  - (d) the provision of 3 and 4 bedroom units with direct access to outdoor amenity space;
  - (e) the provision of rental commercial space made available at a subsidized cost for arts or cultural uses;
  - (f) the provision of public art;
  - (g) the provision of public parking facilities, where a deficiency in such facilities exists;
  - (h) investment in public transit or active transportation infrastructure;
  - (i) the provision of exemplary sustainable building practices.
  - (j) the undergrounding of overhead electrical and communication distribution systems.

**Attachment B- Incentive or Bonus Zoning Agreement**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, A.D., 2021.

**BETWEEN:**

**W.M. FARES FAMILY INCORPORATED, a body corporate,**

(hereinafter called the “Developer”)

OF THE FIRST PART

- and -

**HALIFAX REGIONAL MUNICIPALITY, a body corporate,**

(hereinafter called the “Municipality”)

OF THE SECOND PART

**WHEREAS** the Developer is the owner of the Property and has proposed a Development related that exceeds the maximum pre-bonus height identified on Map 4 of the *Downtown Halifax Land Use By-law*;

**AND WHEREAS** Section 12 of the *Land Use By-law* requires that a Public Benefit be provided on the Property being developed for all or part of any storey above the Pre-Bonus Height;

**AND WHEREAS** it is feasible to provide the Public Benefit required by the *Land Use By-law* on the Property being developed;

**AND WHEREAS** the Developer has selected to provide the undergrounding of overhead electrical and communication distribution systems to satisfy the Public Benefit required by the *Land Use By-law*;

**AND WHEREAS** on July 7, 2016 the Design Review Committee approved the Development;

**AND WHEREAS** the Developer will provide the undergrounding of overhead electrical and communication distribution systems as the Public Benefit for the Development;

**AND WHEREAS** on March 11, 2021 the Design Review Committee recommended to the Developer Officer of the Municipality acceptance of the Public Benefit, and by approving this Agreement, the Council of the Municipality has accepted the provision of undergrounding of overhead electrical and communication distribution systems as the Public Benefit for the Development;

**WITNESS THAT** in consideration of the benefits accrued to each Party from the mutual promises and covenants herein contained and the sum of \$1.00 now paid by the Developer to the Municipality (the receipt and sufficiency of which is hereby acknowledged), the Parties hereto agree as follows;

## **Definitions**

1. In this Agreement all words shall carry their ordinary meaning except those defined in the *Downtown Halifax Land Use By-law* and, unless the context otherwise requires, the following words shall have the following meanings:

- (a) “Council” means the Council of the Municipality;
- (b) “Development” means a sixteen (16) storey plus penthouse mixed use residential building on the Property;
- (c) “Employee” includes all the agents, servants, employees and officers of the Municipality;
- (d) “Incentive or bonus zoning” means requirements that permit the relaxation of certain requirements if an applicant exceeds other requirements or undertakes other action, in the public interest, as specified in the requirements;
- (e) “Land Use By-law” means the *Downtown Halifax Land Use By-law*, as amended from time to time;
- (f) “Municipality” means the Halifax Regional Municipality;
- (g) “Property” means the land(s) comprising the site where the Public Benefit is to be provided being 1452 Brenton Street, Halifax, Nova Scotia, known as Block 2, PID 00125815 the said lands being recorded at the Registry of Deeds (or Land Registration Office) for the Halifax Regional Municipality and is more particularly set out in Schedule “A” attached hereto; and
- (h) “Public Benefit” means:
  - (a) one or a combination of the public benefits provided by the Developer pursuant to subsection 12(7) of the *Land Use By-law*; and
  - (b) as agreed, to by the Parties pursuant to section 2 of this Agreement.

## **Public Benefit**

2. The Parties agree that the Developer will provide the undergrounding of overhead electrical and communication distribution systems as the Public Benefit required under subsections 12(1) and 12(7) of the *Land Use By-law* for the Property and as more particularly described in Schedule B.

3. The Developer agrees to provide the Public Benefit in accordance with Schedule B in exchange for exceeding the Maximum Pre-Bonus Height for the Property.

### **Term of Agreement**

4. This Agreement is in effect until discharged by the Council.

### **Reporting of Public Benefit**

5. Prior to the issuance of the Occupancy Permit the Developer agrees to provide a report to a Development Officer confirming that the Public Benefit has been completed.

### **Construction of Public Benefit**

6. The Developer agrees:

(a) to install and construct the Public Benefit:

- (i) at its own cost;
- (ii) in a good and workmanlike manner;
- (iii) in accordance with Schedule B;
- (iv) as sustainable building practises; and
- (v) in compliance with all Applicable Laws;

(b) to complete construction of the Public Benefit by the time of the issuance of the first Occupancy Permit on the Property pursuant to the *Building By-law* (HRM By-law B-201).

### **Restoration of Public Benefit During the Term of the Agreement**

7. If, at any time during the term of this Agreement:

- (a) any of the Public Benefit fails to function or fails to function properly, in whole or in part, or
- (b) the Development Officer determines that any repairs or to the Public Benefit are required to ensure that the Public Benefit does and will continue to function properly,

the Developer shall, within thirty (30) calendar days after receipt of notice, in writing, from the Development Officer, make such repairs or alterations as may be required, and if the Developer fails to do so, the Municipality may make such repairs or alterations.

8. If the Municipality undertakes any repairs or alterations, the Developer shall be responsible for the whole and entire cost thereof and the Developer shall reimburse the amount expended by the Municipality within fourteen (14) calendar days after a demand therefor by the Municipality.

### **Release and Indemnity**

9. The Developer hereby agrees to assume, and does hereby assume, any and all liability and to indemnify, protect and save and keep harmless the Municipality and its Employees from and against any and all liabilities, obligations, losses, damages, penalties, proceeding, claims, actions (including negligence and wrongful death), suits, costs and expenses (including legal expenses)

of whatsoever kind and nature imposed or assumed by, incurred by or asserted against the Municipality, or its Employees, in any way relating to or arising out of the failure by the Developer to observe, fulfill or perform any agreement, condition, covenant, obligation, promise, provision, representation or warranty contained in this Agreement to be observed, fulfilled or performed by the Developer, is required by the Municipality, or resulting from the breach of any agreement, condition, covenant, obligation, promise, provision, representation or warranty contained herein on the part of the Developer.

## **GENERAL PROVISIONS**

### **Costs, Expenses, Liabilities and Obligations**

10. The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Property.

### **Applicability of Laws**

11. This Agreement shall be construed pursuant to the laws of the Province of Nova Scotia.

12. Nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Property or any statute or regulation of the Provincial or Federal Government and the Developer or lot owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Property.

### **Schedules**

13. The following Schedules shall form part of this Agreement:

- Schedule "A" - Legal Description of the Property;
- Schedule "B" - Post Bonus Cost Estimates

### **Amendments**

14. This Agreement may only be amended with the mutual consent of the Developer and the Council of the Municipality.

### **Conflict**

15. Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

16. Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

### **Provisions Severable**

17. The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

### **Registration and Subsequent Owners**

18. A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

19. This Agreement shall run with the land and be binding upon the Parties hereto, their heirs, administrators, executors, successors, assigns, mortgagees, lessees and all subsequent owners.

20. Upon the transfer of title to any part of the Property, the subsequent owner(s) thereof shall observe and perform all the terms and conditions of this Agreement to the extent applicable to the transferred part of the Property.

### **Discharge of Agreement**

21. If the Developer fails to complete the Development after **three (3)** years from the date of registration of this 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.

22. Council may, at any time, review this Agreement, in whole or in part, and may:

- (a) negotiate a new Agreement; or
- (b) discharge this Agreement.

### **Breach of Agreement and Failure to Comply**

23. The Developer agrees that:

- (a) any Employee appointed by the Municipality to enforce this Agreement shall be granted access onto the Property during all reasonable hours without obtaining consent of the Developer;
- (b) upon receiving written notification from an Employee to inspect the interior of any building located on the Property, the Developer agrees to allow for such an inspection during any reasonable hour within twenty-four hours of receiving such a request.

24. If the Developer fails to observe, fulfill or perform any agreement, condition, covenant, obligation, promise, provision, representation or warranty of this Agreement after the Municipality has given the Developer thirty (30) calendar days written notice of the failure or default, then in each such case:

(a) the Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defence based upon the allegation that damages would be an adequate remedy;

(b) the Municipality may enter onto the Property and perform any of the agreement, condition, covenant, obligation, promise, provision, representation, or warranty contained in this Agreement or take such remedial action as is considered necessary to correct a breach of this Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Property or from the performance of the agreement, condition, covenant, obligation, promise, provision, representation or warranty, or any other remedial action, shall be a first lien on the Property and be shown on any tax certificate issued under the *Assessment Act*; and

(c) in addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

### **Time**

25. Time shall be the essence in this Agreement.

**THE REST OF THIS PAGE IS BLANK.**

**IN WITNESS WHEREOF** the parties have executed this agreement as of the day and year first above written.

**SIGNED, SEALED AND DELIVERED in**

**W. M. FARES FAMILY  
INCORPORATED**

the presence of

**Per:** \_\_\_\_\_

**Name:**

**Office held:**

\_\_\_\_\_  
Witness

**Per:** \_\_\_\_\_

**Name:**

**Office held:**

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**SEALED, DELIVERED AND**

**HALIFAX REGIONAL  
MUNICIPALITY**

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

**Per:** \_\_\_\_\_

Mayor

\_\_\_\_\_  
Witness

**Per:** \_\_\_\_\_

Clerk

\_\_\_\_\_  
Witness

**SCHEDULE A**

**PID:** 125815  
**CURRENT STATUS:** ACTIVE  
**EFFECTIVE DATE/TIME:** 2020-08-25 14:32:02

Registration County: HALIFAX COUNTY  
Street/Place Name: BRENTON STREET /HALIFAX  
Title of Plan: PLAN OF SURVEY OF BLOCK 2 CONSOLIDATION OF LAND  
ACQUIRED BY WIDIH FARES FAMILY INCORPORATED  
BRENTON STREET & BRENTON PLACE, HALIFAX

Designation of Parcel on Plan: BLOCK 2  
Registration Number of Plan: 112414710  
Registration Date of Plan: 2018-04-10 14:58:32

TOGETHER with an encroachment and service easement, as described in the easement registered as Document Number 100138636.

SUBJECT TO an encroachment and service easement, as described in the easement registered as Document Number 100138636.

SUBJECT TO an easement in favour of Nova Scotia Power Incorporated, as described in the easement registered as Document Number 116782187.

\*\*\* Municipal Government Act, Part IX Compliance \*\*\*

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act

Registration District: HALIFAX COUNTY

Registration Year: 2018

Plan or Document Number: 112414710

## **SCHEDULE B – Post Bonus Cost Estimates**

### **Brenton Suites** Site Plan Approval Case 20374 **Post-Bonus Height Public Benefit**

In response to the Post Bonus Height Public Benefit requirement as stipulated under section 12 of the Downtown Halifax Land Use Bylaw, WM Fares Group would like to amend the existing agreement to utilize the provision of the undergrounding of overhead electrical and communication distribution systems along Brenton Street and Clyde Street.

The following outlines our understanding and proposed approach:

- The gross floor area gained as a result of the post bonus height option is 1490 square meters;
- Based on \$4.47/0.1sq.m of gross floor area, the value of the public benefit is \$66,603.00;
- The cost of undergrounding is \$414,453.00;
- Undergrounding of overhead electrical and communication distribution systems and installing new light standards at this prominent corner site will enhance the streetscape and pedestrian experience.

## **ATTACHMENT C- Details of Proposed Public Benefit**

### **1452 Brenton Street Site Plan Approval Case 20374 Post-Bonus Height Public Benefit**

In response to the Post Bonus Height Public Benefit requirement as stipulated under section 12 of the Downtown Halifax Land Use Bylaw, WM Fares Group would like to amend the existing agreement to utilize the provision of the undergrounding of overhead electrical and communication distribution systems along Brenton Street and Clyde Street.

The following outlines our understanding and proposed approach:

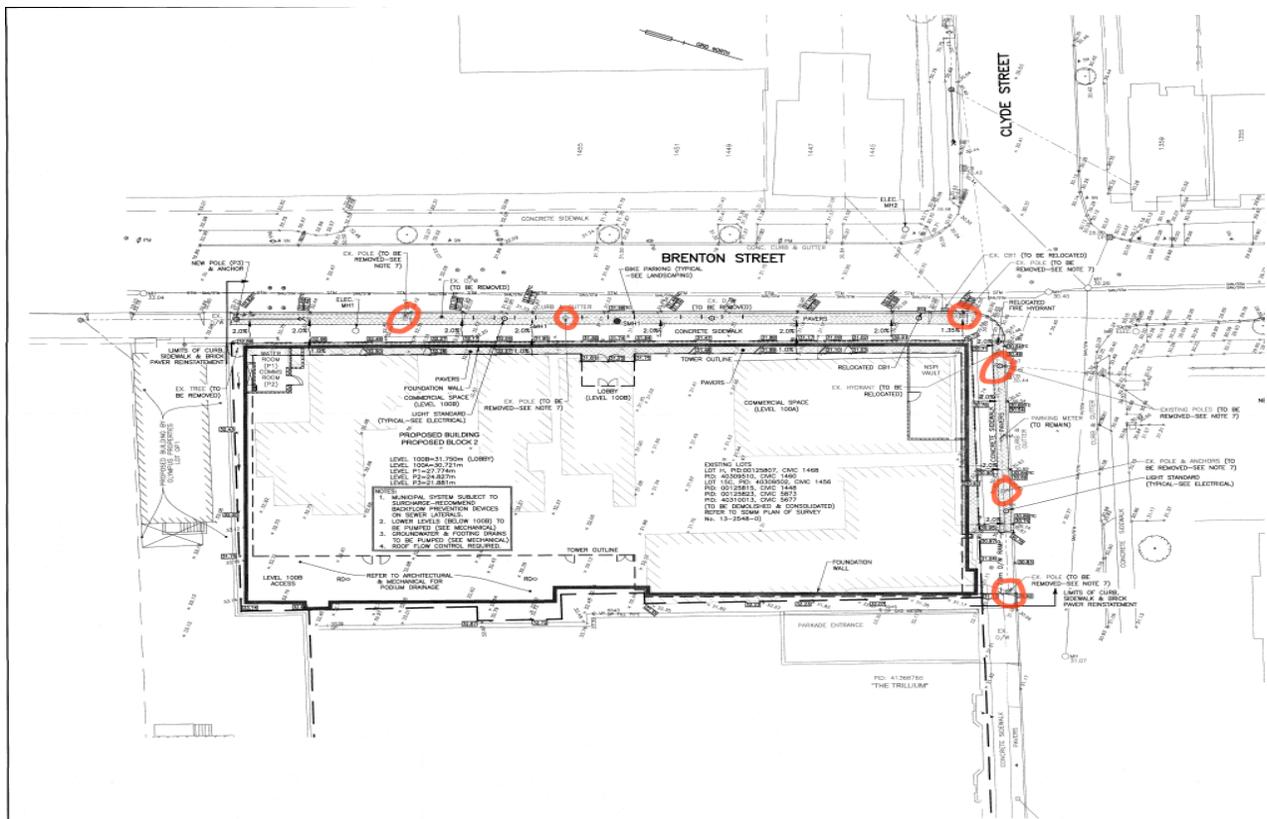
- The gross floor area gained as a result of the post bonus height option is 1490 square meters;
- Based on \$4.47/0.1sq.m of gross floor area, the value of the public benefit is \$66,603.00;
- The cost of undergrounding is \$414,453.00;
- Undergrounding of overhead electrical and communication distribution systems and installing new light standards at this prominent corner site will enhance the streetscape and pedestrian experience.

Our request is consistent with the Downtown Halifax Design Manual; we offer the following supporting analysis:

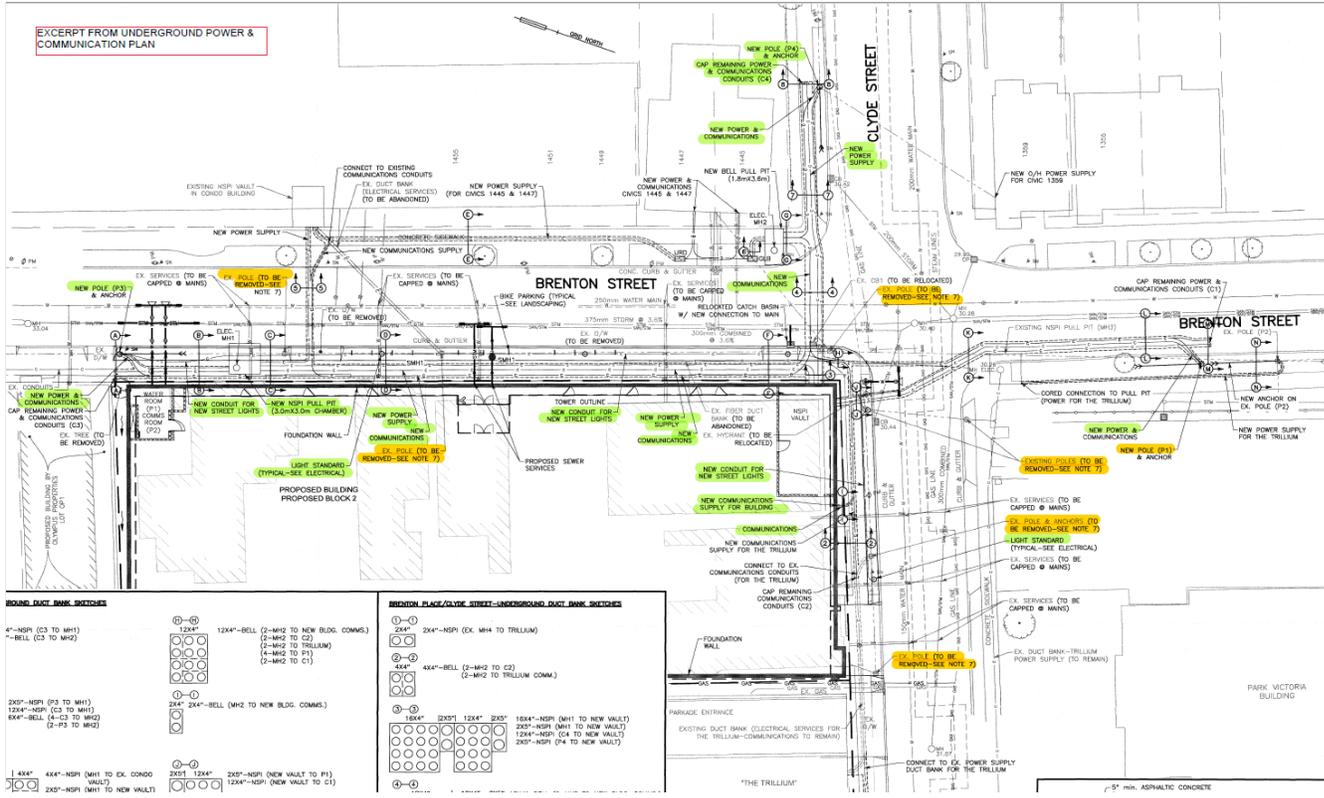
- The Design Manual calls for well designed pedestrian-oriented streetwalls to enhance the pedestrian environment. It encourages buildings close to the street with commercial uses that engage and animate the sidewalk. The approved building is very close to Brenton and Clyde Streets (setback ranging between 1 and 1.5 meters). After further analysis, public art in the limited space at grade will diminish the value of the art and conflict with building articulation. Removing 6 power poles and burying electrical and communication wires along both streets would enhance the pedestrian experience.
- The Design Manual calls for strengthening the visual prominence of prominent sites. Burying the utilities along Clyde Street (3 power poles with a clutter of wires) would enhance the visual prominence strengthen the visual connectivity with Victoria Park.
- The Design Manual puts emphasis on corner buildings due to the greater visual prominence and exposure. Removing the existing 2 poles from the corner of Brenton

and Clyde Streets will enhance the visual prominence of this corner site and emphasize building articulation and connectivity.





**EXCERPT FROM UNDERGROUND POWER & COMMUNICATION PLAN**



**ROUND DUCT BANK SWITCHES**

4" NSRP (C3 TO M#1)  
 4" BELL (C3 TO M#2)

24" NSRP (C3 TO M#1)  
 24" NSRP (C3 TO M#1)  
 24" BELL (C3 TO M#2)  
 24" BELL (C3 TO M#2)

4" NSRP (M#1 TO EX. CONDO VAULT)  
 24" NSRP (M#1 TO NEW VAULT)

24" BELL (2-M#2 TO NEW BLDG. COMMS.)  
 24" BELL (2-M#2 TO C2)  
 24" BELL (2-M#2 TO T1)  
 24" BELL (2-M#2 TO C1)

24" NSRP (M#2 TO NEW BLDG. COMMS.)  
 24" NSRP (NEW VAULT TO P1)  
 24" NSRP (NEW VAULT TO C1)

**RELOCATION PLACE/CLYDE STREET-UNDERGROUND DUCT BANK SWITCHES**

24" NSRP (EX. M#4 TO T1)  
 4" NSRP (2-M#2 TO C2)  
 4" NSRP (2-M#2 TO T1)  
 4" NSRP (2-M#2 TO C1)

18" NSRP (M#1 TO NEW VAULT)  
 24" NSRP (M#1 TO NEW VAULT)  
 24" NSRP (C4 TO NEW VAULT)  
 24" NSRP (P4 TO NEW VAULT)