

HALIFAX

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

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FOIPOP Review: [REDACTED]

Approved to Release: [REDACTED]

Date: July 5, 2024

Item No. 17.3
Halifax Regional Council
September 28, 2021
In Camera (In Private)

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: September 1, 2021

SUBJECT: Memorial Library Property – Next Steps

PRIVATE & CONFIDENTIAL

ORIGIN

Halifax Regional Council requested a staff report regarding the former Memorial Library that would make recommendations regarding:

1. A formal withdrawal of the approval to return the land and building of the Memorial Library property to the Province of Nova Scotia.
2. Requesting the covenant with the Province of Nova Scotia restricting the property to park and library use be amended to include "other public use".
3. Implementing a process to explore HRM or other public use of the space.
4. In the event no appropriate use can be found proceed with the demolition of the library as approved by Council in March 2013.

Item 10.3.1, March 5, 2013, MOVED by Councillor Mason, seconded by Councillor Nicoll that Regional Council:

1. Declare the Memorial Library building, excluding the lands, surplus to municipal needs;
 2. Direct staff to grant an Option Period ending December 16, 2013, to the Assembly of Mi'kmaq Chiefs, to allow for the Assembly to develop potential conditions of occupancy for the Memorial Library building;
 3. Direct staff to advance alternative plans including the demolition of the Halifax Memorial Library and the restoration of the full site as a public park, should the Assembly Agreement fail to produce agreeable terms; and defer sending a recommendation on demolition to Regional Council until after December 16, 2013.
- MOTION PUT AND PASSED UNANIMOUSLY.

Item 11.1.7, December 10, 2013, Halifax Regional Council authorized an extension of the December 13, 2013, Option Period deadline to June 30, 2014. If the June 30 commitment is not met, staff will return to Council for direction. MOTION PUT AND PASSED UNANIMOUSLY.

Item 13.2.1, December 9, 2014, Future Use of the Halifax Memorial Library – Private and Confidential Report, Motion: That Halifax Regional Council convene to in camera.

RECOMMENDATION ON PAGE 2 and 3

Item 16.2, November 13, 2018, Regional Council's motion, moved by Councillor Walker and seconded by Councillor Mason, directing the CAO to develop a proposal for the reuse and redevelopment of the former

Memorial Library building in partnership with the Province of Nova Scotia and Dalhousie University that would include a major redevelopment and repurposing of the building to include a public atrium, educational space, HRM premises, commercial and retail space. The proposal should include an analysis of both a P3 arrangement and an HRM design build own option. MOTION PUT AND PASSED.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter:

19 (1) Except as otherwise provided in this Section, Council meetings and meetings of committees appointed by the Council are open to the public.

(2) The Council or any committee appointed by the Council may meet in closed session to discuss matters relating to

(a) acquisition, sale, lease and security of municipal property...

61 (1) The Municipality may acquire and own property granted or conveyed to the Municipality either absolutely or in trust for a public or charitable purpose.

(2) Where property is conveyed to the Municipality in trust for a public or charitable purpose, the Municipality holds the property according to the terms of the trust and may do anything necessary to carry out the objects of the trust.

(3) The property vested in the Municipality, absolutely or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise.

(4) Possession, occupation, use or obstruction of property of the Municipality does not give an estate, right or title to the property.

(5) The Municipality may (a) acquire property, including property outside the Municipality, that the Municipality requires for its purposes or for the use of the public; (b) sell property at market value when the property is no longer required for the purposes of the Municipality; (c) lease property owned by the Municipality at market value.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Direct the CAO to terminate the exploration of a major redevelopment and repurposing of the former Memorial Library building with Dalhousie University and the Province of Nova Scotia that was to include a public atrium, educational space, HRM premises, commercial and retail space via a P3 arrangement.
2. Authorize the Mayor on behalf of Regional Council, to communicate with the Province of Nova Scotia to request that the Province:
 - a. accept title, subject to subdivision approval, to that portion of the property at 5381 Spring Garden Road that includes:
 - i. the Memorial Library building, in its existing condition, pursuant to the reversionary ownership interest reserved to the Crown in the 1882 Letters Patent, and
 - ii. the former 'Fire Engine House Property' within Grafton Park at a market value sale price, excluding Lot L-3, per survey shown in Attachment 2; and
 - b. release any reversionary interest to the southeast portion of Grafton Park, identified as Lot L-2 as shown in the survey at Attachment 2 to this report; and,

3. If the Province declines the request as per recommendation 2 of this report, then direct the CAO to:
 - a. investigate options that would repurpose the site in accordance with the Crown Grant and retain the heritage value of the former Halifax Memorial Library site and structure while meeting the recommendations of the Archaeological Resource Impact Assessment dated December 2020, and assess the Province's willingness to accommodate such options, and
 - b. return to Council with a recommendation report respecting the options.

It is further recommended that this report be released to the public after communications with the Province have been completed pursuant to recommendation 2 above.

BACKGROUND

The property's history and recent events are summarized in the following chronology:

18th/19th c. Public Burial Ground:

In the 18th and early 19th centuries, the site had formed part of the grounds for the poor asylum or poor house and was a public burial ground for the residents of those institutions since the late 1700s. The property also contains the graves of soldiers and victims of epidemics dating back to the early 1760s. Historical analysis has found that the remains of over 4,500 deceased people may be buried on the property, some of whom are likely of Mi'kmaw ancestry.

1882 Public Park:

By 1882 the cemetery had been turned into a public park with a gravel walkway crossing the site from Grafton Street to Spring Garden Road and was referred to as Grafton Park.

1882 Grant:

On the 31st day of October 1882, Her Majesty the Queen in Right of the Province of Nova Scotia, granted to the City of Halifax, one and one-quarter acres of land on the corner of Spring Garden Road and Grafton Streets in Halifax. The Grant specifically stipulated that:

...the lands be protected by the City of Halifax and held for the use and enjoyment of the citizens of Halifax, as a public square or gardens forever and for no other purposes whatsoever.

The land grant was also subject to the following additional reservation to the Crown:

*...and further reserving all rights, privileges, and easements heretofore granted by Us, or lawfully, acquired in, to, or upon the said Lands and premises provided always that if at any time hereafter the lot of land hereby granted or any part thereof shall be built upon conveyed away or used for any purpose than as a Public Square or Garden, or if the City of Halifax or its successors shall cease to protect the same and keep it in order for the use and enjoyment of the Citizens these presents **shall thereupon be and become void and of no effect and the land and premises hereby granted shall revert to us our heirs and successors.** [emphasis added]*

1949 Memorial Library:

In 1949 the City of Halifax petitioned the Province to allow the building of a public library on Grafton Park as a living memorial to the deceased soldiers of the First and Second World Wars. Pursuant to section 60 of "An Act to Amend the Law Relating to the City of Halifax", passed on the 14th day of April 1949, the Province granted the City's request as follows:

60 *Notwithstanding the restrictions set out on Letters Patent bearing date the 31st of October, A.D. 1882, granted by Her Majesty the Queen in the right of the Province of Nova Scotia, to the*

City, and recorded in the Registry of Deeds for the County of Halifax on the 29th day of May, A.D. 1884, whereby the lands now comprising Grafton Park are required to be held for the use and enjoyment of the citizens of Halifax as a Public Square or Garden forever and for no other purposes whatsoever, the City may erect upon the said lands in a location north-west of the southeastern margin of the existing diagonal walk across the said Park, a public library for use by the citizens of the City.

Further, pursuant to section 59 of the said legislative amendment, the Province declared that a lot of land on the corner of Hastings Street (now Brunswick Street) and Spring Garden Road containing an area of 42 feet by 41.9 feet, which was the site of the 'Fire Engine House', be vested in the City of Halifax. This parcel is delineated on plans within Attachments 2 and 3 to this Report. That parcel of land was also conveyed subject to the following restrictive covenant:

(2) No new building, structure or other work whatsoever shall be constructed or made upon the said property and the building presently situate thereon shall be removed within a period of ten years from the 1st day of May, 1949, after such removal the said property shall be held by the City as a part of Grafton Park for the use and enjoyment of the citizens of Halifax as a Public Square or Garden forever and for no other purposes whatsoever.

As this 'Fire Engine House' parcel was not part of the original 1882 Crown Grant to the City of Halifax, it is not subject to any reversionary interest in the Crown. However, if Council approves this report's recommendation [2]—that is, to offer the library portion of the subject property to the Province pursuant to the reversionary ownership interest reserved to the Crown in the 1882 Letters Patent—and if the Province so accepted reversionary ownership, then it would be reasonable for the Municipality to also offer the former 'Fire Engine House' property for sale to the Province at market value, saving Lot L-3 (6.5 square metres) in municipal ownership for municipal right-of-way (i.e., sidewalk) purposes, as per the survey presented in Attachment 2.

2010 Heritage Consideration:

In March of 2010, in anticipation of plans to construct a new Central Library and to subsequently close the Memorial Library, the Heritage Advisory Committee (HAC) passed a motion to consider registering the site as a municipal heritage property. Following the submission of a staff report, HAC evaluated the property and scored it 59 points out of a possible 100 and forwarded the report to Regional Council for consideration. Regional Council subsequently decided to defer holding a heritage hearing until staff returned to Council with a report outlining options around the future use of the property. The property had not, therefore, been registered as a municipal heritage property at this time. (See also **2020 Municipal Heritage Designation** below.)

2013 Council Request for Report:

In 2013, Halifax Regional Council requested a staff report for recommendations regarding:

1. A formal withdrawal of the approval to return the land and building of the Memorial Library property to the Province of Nova Scotia.
2. Requesting the covenant with the Province of Nova Scotia restricting the property to park and library use be amended to include "other public use".
3. Implementing a process to explore HRM or other public use of the space.
4. In the event no appropriate use can be found proceed with the demolition of the library as approved by Council in March 2013.

2014 Memorial Library Closure:

With the opening of the new Halifax Central Library in the fall of 2014, the existing Halifax Memorial Library closed. The building has since been decommissioned and is fully winterized. A series of Regional Council reports regarding the Halifax Memorial Library have articulated the limitations which exist on re-use of the Library property and discussed the need to examine the options available to HRM.

2018 Partnership to Explore Reuse:

Regional Council requested a staff report on November 13, 2018 to explore reuse and redevelopment of the former Memorial Library building in partnership with the Province of Nova Scotia and Dalhousie University that would include a major redevelopment and repurposing of the building to include a public atrium, educational space, HRM premises, commercial and retail space. The proposal was to consider a P3 arrangement and an HRM design-build-own alternative. If no appropriate use could be found, staff was to then proceed with the demolition of the library, as had previously been approved by Council in March 2013. As a result, several potential uses for the building were considered over the past few years, including HRM occupancy, use by not-for-profits, and use by the Nova Scotia Assembly of First Nations Chiefs as a seat of government, among others. All potential interests felt it was uneconomical and thus inviable.

Dalhousie University together with HRM and the Province also considered a concept of shared occupation of the site for the School of Architecture, HRM municipal space, and leasable commercial floor area. Redevelopment for university, municipal or commercial use would require the Province to remove current library restrictions on the site, subject to the development parameters below. This interest ultimately dissipated owing to the inherent challenges, lack of funding, significant cost to redevelop the building, and the Province's assertion that it would not participate in the project financially (as per the 7th bullet in the Provincial Development Parameters listed in Table 1, below.)

A summary of the initial development parameters placed on the property by the Province—should the Library building be converted to an alternative building use—are outlined in Table 1, below, for reference. These restrictions would ultimately need to be amended and updated to reflect the specific property recommendations, were there to be an alternative use eventually found.

Table 1 – Provincial Development Parameters
<ul style="list-style-type: none">• Triangle Park in front of the existing library building remain as HRM open space for public use.
Development Parameters for Future Use:
<ul style="list-style-type: none">• The Province, as represented by the Minister of Business, will be consulted on any future changes in use of the site.• The existing footprint of the building is not increased below grade.• Historical and cultural significance of the site, such as burial grounds and war memorials, is respected and acknowledged in any design and future use. The façade will be preserved.• Comprehensive and inclusive public engagement (including KMKNO¹) process will be central to any decisions respecting future use.• The Province's accessibility objectives will be met.• The Province will not be required to bear any costs related to the future changes in the use of the site. "Future changes in the use of the site" includes the first use of the site after the Agreement has been entered and any subsequent changes in use of the site.• A professional archaeologist will carry out an Archaeological Resource Impact Assessment and include the development of an archaeological / human remains contingency plan (in consultation with the Nova Scotia Department of Communities, Culture and Heritage).• The planning and development of the future changes in the use of the site must consider placemaking principles, a commitment to social inclusivity, and an appropriate public engagement process (inclusive of, but not limited to: Nova Scotians with disabilities; Indigenous community; African Nova Scotian community; immigrant and refugee community; children and youth, seniors and veterans; low income Nova Scotians; entrepreneurs and the social enterprise community).

¹ The Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) takes direction from the Assembly of Nova Scotia Mi'kmaw Chiefs (the highest level of decision-making in the Made-In-Nova Scotia Process) in their work on behalf of the Mi'kmaq of Nova Scotia. Source: <https://mikmaqrights.com/#home>

2019 Access and Service Easement:

The Municipality, with the consent of Her Majesty the Queen in Right of the Province of Nova Scotia, granted an access and service easement for purposes of a driveway and parking over a portion of the Grafton Park property, along its northern boundary, to an abutting landowner, the Congregational Trustees of the Congregation of the Presbyterian Church of St. David.

2020 Municipal Heritage Designation:

Planning and Development staff received an application to consider registering the building. The Heritage Advisory Committee considered the application and staff recommendation report and brought forward to Council a recommendation to designate the entire property as a municipal heritage property, part of which included the former library building as a Character Defining Element (CDE). After holding a public hearing, Council approved the property's heritage status in February 2020.

2020 Building Assessment:

The building has been unused for several years and a significant investment would be required to bring the building to a state of good repair, meeting today's functional and performance requirements. The cost implications of this are discussed below. Most salient to this discussion would be the need to trench the property and lay new water and sewer lines.

2020 Archaeological Resource Impact Assessment:

An Archaeological Resource Impact Assessment (ARIA) was completed in December 2020 and is discussed in greater detail in the Discussion section. Above all, the ARIA recommends non-disturbance of the property grounds in respect of human remains, some of which are believed to be Indigenous.

2021 Centre Plan Package B:

The property is currently zoned Institutional, Cultural and Open Space (ICO) and Downtown Halifax (DH-1) under the Downtown Halifax Land Use By-Law (LUB) with a mixed height of 11m and 28 m. On June 22, 2021, Halifax and West Community Council passed the following motion during their review of Centre Plan Package B:

5. Consider the following amendments to proposed Land Use Bylaw and Secondary Municipal Planning Strategy (as applicable) as follows:
 - a) such that the entirety of Grafton Park (the former Memorial Library lands) including the side of the lot with the old library building PID 00076943 be rezoned PCF (Parks and Community Facility).

The motion was brought forward based on the original agreement with the Province, which restricts the property use to a park and library.

In response to the above motion, staff recommended that the PCF Zone be applied to the entirety of Grafton Park, including the portion containing the former library building, given that the PCF Zone is intended to support park, library and other community facility uses. In addition, to align with Centre Plan policies related to maximum permitted height on PCF-zoned lands, staff also recommended that the maximum height at the rear of the site be lowered to 17 metres. On August 17, 2021, Regional Council considered the above recommendation and directed staff to implement this zoning change prior to returning to Council for first reading.

DISCUSSION

This discussion presents staff's explorations to address Council's request of November 2018. Those explorations inform what reuse options may have been with respect to the building. More importantly, the discussion articulates restrictions associated with the property's historical burial grounds. These restrictions limit or negate any reconstruction (and thus reuse) considerations of the building.

Of primary consideration is that under terms of the ownership grant from the Province, HRM enjoys restricted title to the property as a public library within a public park or solely as a public park. Otherwise, ownership reverts to the Province. If the Province accepts ownership of the building—in its as-is condition—the Province is also bound by the *Heritage Property Act* as well as non-disturbance restrictions recommended by the ARIA in respect of human remains, some of which are believed to be Indigenous.

Leaving the existing southeast, triangular park unencumbered by buildings was, in 1949, a deliberate decision; it reflected the pedestrian crossroad and gathering place of Grafton Park. Today, that south-eastern portion of the property continues to function as a vital and vibrant park. As a result, this report recommends municipal retention of this portion of Grafton Park to continue as public parkland.

Since the Memorial library's closure [in favour of the new main library] in 2014, its reuse was explored in response to Regional Council's request of November 13, 2018: to explore reuse and partnership opportunities with the Province of Nova Scotia and Dalhousie University. Since the initial presentation of concepts in 2018, a clear path forward on viable reuse of the building has been considerably affected by:

- Apparent extinguished interest from Dalhousie in pursuing the 2018 concept.
- Deterioration of the building and considerable budget required to rehabilitate and modernize the structure.
- The pandemic's underlying social and economic impacts on the commercial real estate market and governments' fiscal capability to provide capital investment of this magnitude.
- 2020 Registration as a municipal heritage property.
- 2020 Archaeological Resource Impact Assessment (ARIA) conclusions, which impose limitations on—and warn of risk to—site disturbance, thus limiting the property's redevelopment potential; resulting from the KMKNO consultations are fundamental decrees of Mi'kmaq leaders about the sacred nature of the land on account of Mi'kmaq remains found in the area.

Building Assessment:

Any reuse of the building would require comprehensive renovation, given its age. The Halifax Memorial Library was originally constructed in 1949 with an addition in 1974. The gross floor area of the building is roughly 39,600 square feet. The facility has been unused for several years and requires a significant investment to bring the building to a state of good repair, meeting today's functional and performance requirements. The following list summarizes the work, including a high-level cost estimate, which would be required to bring the facility to a standard that would allow for tenant occupancy.

1. Utilities: Given their age, condition and arrangement of water and sewer lines, new underground lines would be required, which would involve trenching from the mains located in the street.
2. Under-slab Piping: Given the age, condition, and arrangement of drain lines under the lower level floor slab, it is assumed significant replacement would be required, which would involve trenching of the floor slab, and connection to the storm sewer lateral.
3. Façade: A series of façade restoration projects occurred between 2005 and 2012 to repair sandstone, repair weatherproofing and replace windows. If building reuse was approved by Council, remaining phases would need to be addressed along with window replacements and exterior stair repairs.
4. Roof: A full replacement of the roof would need to be anticipated with increased insulation levels.
5. Accessibility: The front entrance is not accessible due to the existence of exterior stairs/elevation change, as well as stairs both up and down within the entrance lobby. A side entrance (facing Grafton Street) is the only accessible entry. It may be possible to provide an exterior ramp and additional elevator off the main entrance lobby, however, this has not been validated nor priced as part of this report.

6. Elevator: A full replacement of the elevator and associated equipment would be required.
7. Interiors: All interior finishes and partitions along with mechanical and electrical building systems would need to be removed back to the building structure. The interior would have to be rebuilt to a base level suitable for future tenant fit-up.
8. Energy Efficiency: The building envelope, mechanical and electrical building systems, as well as solar panels, would have to be designed to meet goals of HalifACT.
9. Perimeter Stone Wall: The perimeter stone wall is generally in fair condition except for the wall along Grafton Street. This will need to be rebuilt within 5 years, regardless of the future of the building. This cost has not been included herein, as the work is not directly required for building occupancy and can be performed separately.

The estimate for the costed components, above, is \$15-20 million.

This estimate would also not include costs associated with addressing further archaeological work and consultations as recommended by the Archaeological Resource Impact Assessment, the findings of which are further discussed below.

Archaeological Resource Impact Assessment:

The Archaeological Resource Impact Assessment (ARIA) was completed in December 2020. The ARIA was conducted under the terms of the Heritage Research Permit issued through Nova Scotia Special Places. The process involved a background study, Mi'kmaq engagement, and consultation with HRM and Nova Scotia Special Places. Based on the background study, the archaeologist confirmed there is a high potential for encountering human remains during any subsurface disturbance on the property. The property and surroundings served as the Poor House Burying Ground for over 80 years. Based on a previous archaeological assessment in the vicinity, and recent findings of Mi'kmaw ancestral remains—during the neighbouring Grafton Park development on the St. David's Presbyterian Church property—there is a possibility that additional Mi'kmaw ancestral remains may have been interred on the property. It is understood that the remains of Mi'kmaw ancestors are not to be disturbed.

The ARIA made the following recommendations:

1. That ground-disturbing activities do not occur (except as noted below).
2. In the event of *necessary* ground disturbance, additional archeological investigation is recommended in advance to further assess the proposed impacted areas. This should first involve non-invasive forms.
3. According to the Principles of Mi'kmaw Ancestral Remains Protocol, distributed by KMKNO-ARD² on behalf of the Assembly of Nova Scotia Mi'kmaw Chiefs, Mi'kmaw ancestors are not to be disturbed. Based on the likelihood of Mi'kmaw ancestral remains having been discovered on the adjacent property, ground disturbance to the study area would not be supported without justification and consultation with the Assembly of Nova Scotia Mi'kmaw Chiefs through KMKNO.
4. Any future site alteration or development [should] involve engagement with numerous parties, including, but not limited to: Special Places, KMKNO-ARD, Sipekne'katik First Nation, Mi'kmaw Native Friendship Centre, Office of African Nova Scotian Affairs, Office of Aboriginal Affairs, Office of Acadian Affairs and Francophonie, the Black Cultural Centre for Nova Scotia and the Atlantic Jewish Council.

² Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) – Archaeology Research Division (ARD)

Property Re-Use Options:

Considering the recent constraints as articulated within the 2020 Archaeological Resource Impact Assessment (ARIA), and the failing condition of the building itself, there are few, if any, viable options to be explored for the redevelopment of the building itself.

At a high level, those options include:

1. To allow the property to revert to the Province pursuant to the Land Grant. The Province would be bound by the same archaeological constraints, limitations, consultations, and by the Heritage Property Act. However, the Province has in place governance structures (e.g., with the Office of L'nu Affairs) and relationships with Provincial Mi'kmaw to better engage First Nations on reuse options and their impacts.
2. To identify a government-funded, not-for-profit organization who may benefit from the asset to further advance municipal, provincial or federal interests. This option would, however, require recapitalization of the building, which would be an arduous undertaking with severe limitations deemed economically unviable in response to the ARIA's recommendations.
3. To explore whether any construction (i.e., site disturbance) options would be permitted, engagement through the KMKNO process would be necessary to understand what protocols, restrictions and conditions would be required. Table 2 below proposes a host of presumed site disturbance scenarios and corresponding site disturbance implications; they are presented on a continuum of intensity of site disturbance, starting from more impactful (item 1) to less impactful (item 6).

Table 2 – Site Disturbance Options and Impacts to Property		
	SITE DISTURBANCE OPTIONS	PROPERTY IMPACTS
1	Recapitalization for adaptive reuse by expanding structure	Replace underground utilities by trenching, foundation redevelopment, ground disturbance
2	Rehabilitate existing structure	Replace underground utilities by trenching, ground disturbance
3	Partial demolition (e.g., retain all or portion of front façade as park/memorial feature)	Abandon underground utilities in-situ & shut-off in-street, some ground disturbance may be necessary
4	Full demolition + slab burial for Park	Abandon underground utilities in-situ & shut-off in-street, some ground disturbance is possible
5	Perimeter Stone Wall (Grafton St.) Renovation	Some ground disturbance along base of wall
6	Redevelopment of perimeter rights-of-way (e.g., burial of utilities around perimeter streets)	Some ground disturbance beyond the existing property boundaries

However, the clear assertion that *site disturbance* is not recommended, suggests that very few—if any—site disturbance options (i.e., table items 1-2 would be agreeable.)

4. To seek approval from Regional Council to substantially alter the former library building under the *Heritage Property Act* to permit a partial deconstruction of the structure (e.g., to preserve some portion of the façade as a memorial feature, thereby retaining some of its heritage value), and to then expand the park over the entire property with appropriate heritage and cultural interpretation and commemoration.

Given the ARIA's conclusions and recommendations about site disturbance restrictions, any option requiring adaptive reuse of the building would require site disturbance. At very least, trenching to replace underground laterals for sewer and water would be necessary, which—in turn—would risk transgressing the ARIA's recommended site disturbance restrictions.

Process to Substantially Alter or Demolish a Heritage Building:

The heritage registration that was approved by Regional Council in 2020 identifies the former library building as a Character Defining Element (CDE), along with significant landscape features and the burial ground. Depending on the chosen course of action with regard to the former library building, including potential subdivision, a process to either substantially alter or to demolish the building may be required under the *Act*.

Heritage Substantial Alteration

The *Standards and Guidelines* are found at Schedule B-1 of By-law H-200, the Heritage Property By-law. There are 13 standards which provide direction on appropriate means of conservation and preserving heritage value. Any proposal for a substantial alteration of the former library building, including the subdivision of the lands, would be evaluated by heritage planning staff, and a report and recommendation would be forwarded to the Heritage Advisory Committee (HAC) for its consideration based on the proposal's consistency with the *Standards and Guidelines*. HAC would subsequently provide a recommendation to Regional Council. The timeline for this process would typically be about six months and would not require public consultation. Adding to, changing, or demolishing portions of the building while retaining its intact architectural features would constitute a substantial alteration requiring approval through this process.

Heritage Demolition

Depending on the extent of the alterations, it may constitute a demolition under the *Heritage Property Act*. Much like the process for substantial alteration described above, an application to demolish would be evaluated by heritage planning staff against the *Standards and Guidelines*, followed by a public information meeting hosted by HAC. Staff would then provide a recommendation through a report to HAC, who would in-turn provide a recommendation to Regional Council for consideration. As the *Standards and Guidelines* do not provide for the complete removal of intact CDEs, staff would be obligated to recommend against any proposal that would completely deconstruct or demolish the former library building.

Demolition/Deconstruction Estimate:

Given the sensitive nature of the grounds around the building, any potential for the structure's deconstruction (i.e., careful, systematic demolition to limit ground disturbance)—depending on options and recommendations regarding reuse of the property—may be examined in a subsequent report, if necessary. The process of deconstruction would include hiring a consultant to detail the scope of construction, providing an estimate for potential budget approval, and preparing a tender package, if necessary. Such consulting service is anticipated in the Financial Implications section of this report if any options that include full or partial building removal are approved.

Park Development & Public Engagement:

As an extension of any potential approved demolition that may take place in the future, any subsequent use of the property as additional park would require further consideration. This would also depend on whether the Municipality or Province would be the property owner of that portion of the site. If full ownership resided with the Municipality, site improvements would have to be considered in a future business plan and capital budget. In addition to capital costs, maintenance and recapitalization expenses would need to be estimated for inclusion, as is done for any HRM park development.

Reversion to Province per Crown Grant:

As stated, the Crown Grant of 1882 included a reversionary clause in the first paragraph (top of page 2). It states that if at anytime the lot of land is built upon, conveyed away or used for any purpose, other than as a Public Square or Garden, or if the City of Halifax ceases to protect the lot and keep it for the use and enjoyment of the citizens, the Grant shall thereupon become void and of no effect, and the land and premises shall revert to the Province.

The Province and L'nu Affairs

Further to the reversionary pronouncement, the Province of Nova Scotia has dedicated staff within the Office of L'nu Affairs (formerly Office of Aboriginal Affairs), who have cultivated a relationship with the Mi'kmaw of Nova Scotia on the following fronts: Negotiation, Consultation, Aboriginal and Intergovernmental Relations, and Public Education and Awareness.

Given that the 2020 ARIA recommends no site disturbance of the property on account that the Mi'kmaw have decreed the property as sacred, then it stands to reason that the Province would be best positioned to hold talks with the Mi'kmaw about the future of the property and resultant impacts. Furthermore, the Province have several outstanding negotiations with the Mi'kmaw, which may also open opportunities by which to advance mutual interests between the parties.

Conclusion:

The options for the property's reuse are highly constrained from a variety of directions, most notably:

- 1) the property must be used as a park or library [which ended in 2014], otherwise ownership reverts to the Province;
- 2) the building is at the end of its useful life, and any reuse would require comprehensive recapitalization in the order of \$15-20 million, which renovation would require new underground laterals (thus trenching) to be installed across the property, thus substantially impacting the grounds, contrary to the *Archaeological Resource Impact Assessment (ARIA)* recommendations;
- 3) As a municipally registered heritage property, any substantial changes to the site's character defining elements, including the former library building, will require a formal process including a recommendation to Council by the Heritage Advisory Committee, pursuant to the *Heritage Property Act of Nova Scotia*;
- 4) the ARIA recommends that ground-disturbing activities do not occur, and according to the Principles of Mi'kmaw Ancestral Remains Protocol, distributed by KMKNO-ARD³ on behalf of the Assembly of Nova Scotia Mi'kmaw Chiefs, "Mi'kmaw ancestors are not to be disturbed." Given that the Municipality seeks to pursue better relations with First Nations, favouring redevelopment options at the expense of these ARIA recommendations may risk being regarded as offensive and damaging pursuits of truth and reconciliation with First Nations; and,
- 5) should the Province refuse reversionary ownership, the CAO will investigate options that would retain the heritage value of the former Halifax Memorial Library site and structure while meeting the recommendations of the ARIA, for example, keeping a portion of the building's façade as an ongoing memorial with use of the balance of the property as park, which would be subject to additional processes and Council approvals.

FINANCIAL IMPLICATIONS

These financial implications are associated with the potential that [recommendation 3] an application to consider substantial demolition/deconstruction of all or portion of the building, would require consulting work to perform planning and estimating for demolition, which is estimated at \$85,000. Funding for this work is available in project account # CB190009 – Environmental Remediation/Bldg./ Demo. Staff will inform Council of future financial implications in a subsequent report.

³ Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) – Archaeology Research Division (ARD)

Budget Summary: Project Account No. CB190009

Cumulative Unspent Budget	\$ 147,807
Less: Estimated consulting costs	<u>\$ 85,000</u>
Balance	\$ 62,807

RISK CONSIDERATION

The building envelope and its interior systems are at the end of their life cycle. Continued deferral of maintenance and recapitalization work increases the liability and risk of holding a vacant building.

Demolition or deconstruction of the building without fully considering any possible alternatives that would retain the property's heritage value will bring into question the Municipality's role and interest in heritage conservation, which would cause some reputational damage to the municipal Heritage Property Program, especially when dealing with other private owners of registered or potential heritage properties.

However, on balance—as taken against the heritage risks—potentially more profound risks relate to matters of factual or perceived desecration of [held-sacred] Mi'kmaw remains if the building was to be recapitalized for adaptive reuse, since any building rehabilitation would require interference with the surrounding grounds. Any options considered by the CAO in response to recommendation #3 will consider this risk.

COMMUNITY ENGAGEMENT

Any future change in use would be subject to inclusive public and stakeholder engagement as set out in the development parameters herein and the recommendations emanating from the 2020 Archaeological Resource Impact Assessment (ARIA) if HRM were to retain title and pursue building recapitalization.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications arising from this report, currently. The historical and cultural significance of the site, namely the burial grounds, would be assessed going forward by further undertaking archaeological work if necessary. However, building reuse is not recommended by this report.

ALTERNATIVES

1. Council may request the Province of Nova Scotia to accept reversionary ownership interest of the property *after* staff have had an opportunity to make recommendations to Regional Council with respect to options that would retain the heritage value of the former Halifax Memorial Library site and structure while meeting the recommendations of the Archaeological Resource Impact Assessment dated December 2020, including the Province of Nova Scotia's willingness to accommodate such options.
2. Council may elect to *not* offer the Province reversionary title, and rather to immediately decide to proceed with authorizing staff to investigate options that would retain the heritage value of the former Halifax Memorial Library site and structure while meeting the recommendations of the Archaeological Resource Impact Assessment dated December 2020, assess the Province of Nova Scotia's willingness to accommodate such options, and to provide a recommendation report to Regional Council. For example, this might entail interpreting the property's heritage with an architecturally designed *portion* of the building façade as an ongoing Character Defining Element of the property, and perhaps as an ongoing memorial. The balance of the building would be carefully removed (so as to not disturb the surrounding grounds) and a park and gathering place could be extended throughout the entirety of the property. Adding to, changing, or demolishing portions of the building, while retaining its intact

architectural features, would constitute a substantial alteration requiring approval through the Heritage Advisory Committee and subsequent approval by Regional Council.

3. Council may elect to outright redevelop the building by first consulting the Assembly of Nova Scotia Chiefs via the KMKNO process, among other consultations as recommended by the ARIA, and to explore construction/site disturbance options, seeking to understand what constraints and conditions would be necessary, if at all possible. This would also require legislative amendments. However, based on the clear assertion that Mi'kmaw ancestors are not to be disturbed, site disturbance options (especially items 1 and 2 of Table 2 from above Discussion) would not be acceptable, essentially rendering the site economically inviable from a commercial standpoint.

ATTACHMENTS

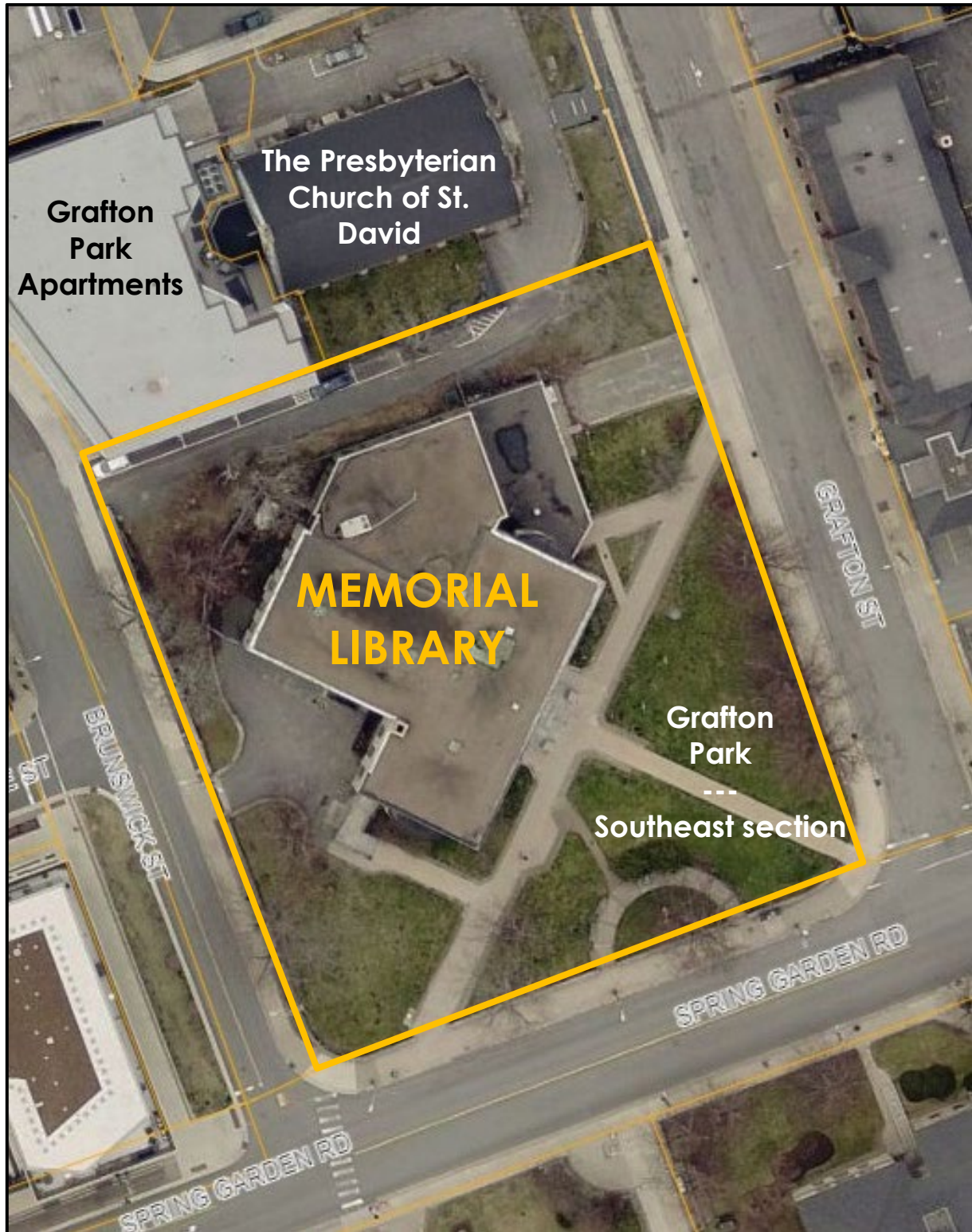
1. Site Plan
2. Survey (approximate location of underground laterals)
3. Crown Grant (1883 map and revisionary clause)

If the report is released to the public, a copy can be obtained by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by:

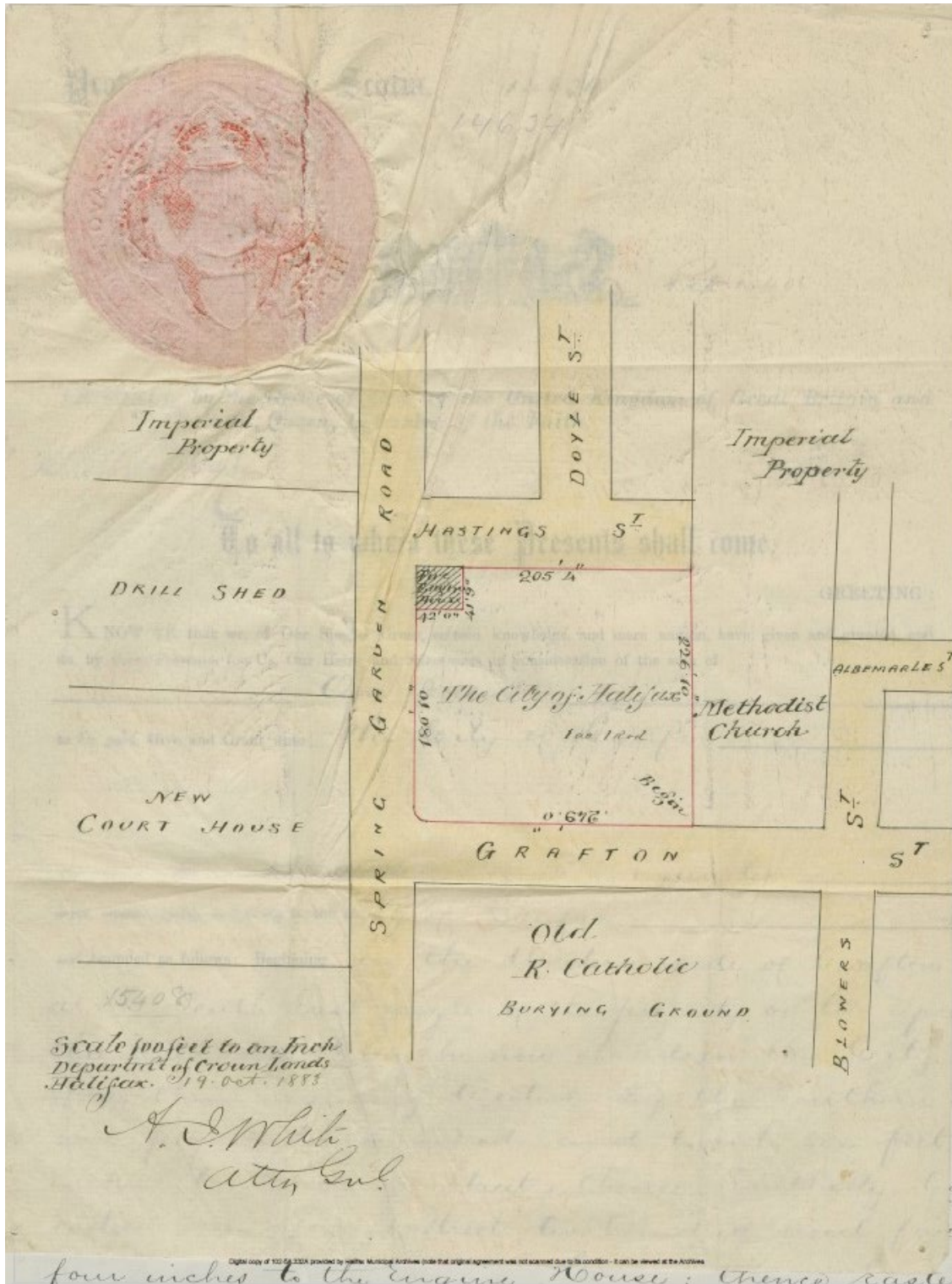
Rudy Vodicka, Project Manager, Corporate Real Estate, Corporate and Customer Services
Peter Stickings, Director, Corporate Real Estate, Corporate and Customer Services
John MacPherson, Executive Director, Corporate and Customer Services
Kurt Pyle, Program Manager, Social & Heritage, Regional Planning, Planning & Development

ATTACHMENT 1 – Site Plan
Property Matter RE-12 (Memorial Library Site)
Regional Council In Camera (In Private) Report



**ATTACHMENT 3 – Crown Grant
Property Matter RE-12 (Memorial Library Site)
Regional Council In Camera (In Private) Report**

1883 MAP AND REVERSIONARY CLAUSE



COPY.



R6 35-102(5A.5)332A.2

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain
and Ireland, Queen, Defender of the Faith.

(sgd) M.H. Richey.

TO ALL TO WHOM THESE PRESENTS SHALL COME,

GREETING:

KNOW YE, that we, of Our Special Grace, certain knowledge, and mere motion, have given and granted, and do, by these Presents, for Us, Our Heirs, and Successors, in consideration of the sum of -- One Dollar -- to us paid, Give and Grant unto The City of Halifax, a lot of land containing one and one quarter acres, situate, lying, and being in the county of Halifax, and bounded as follows: Beginning on the Western side of Grafton Street at the South East angle of the property or lot upon which the Methodist Church now stands, in the City of Halifax; thence running Westerly by the Southern line of said property two hundred and twenty six feet ten inches to Hasting's Street; thence Southerly by the Eastern side of said Street two hundred and five feet four inches to the Engine House; thence Easterly by the Northern side of the same forty-one feet nine inches; thence Southerly by the Eastern side of the said Engine House forty-two feet to Spring Garden Road; thence Easterly by the Northern side of the same, one hundred and eighty feet ten inches to Grafton Street; thence Northerly by the Western side of the last mentioned Street, two hundred and forth nine feet to the place of beginning not including any Public Road - which said Lot is particularly marked and described in the annexed plan; together with all hereditaments and appurtenances whatever thereunto belonging, or in any wise appertaining; TO HAVE and TO HOLD the said Lot of Land, and all and singular the premises hereby granted, with their appurtenances, unto the City of Halifax and its successors to be improved and protected by the City of Halifax and held for the use and enjoyment of the Citizens of Halifax as a Public Square or Garden forever and for no other purposes whatsoever yeilding and paying for the same, to Us, Our Heirs and Successors, one Peppercorn of yearly rent on the 25th day of March in each year, or so soon thereafter as the same shall be lawfully demanded; and We do hereby SAVE and RESERVE to Us, Our Heirs and Successors, all and singular the Mines of Gold, Silver, Coal, Iron, Tin, Copper, Lead and Precious Stones, and all beds and seams of Gold, Silver, Coal Iron, Tin, Copper, Lead, and Precious Stones, in or under the said Land, with full liberty at all times to search and dig for, and carry away the same and for that purpose to enter upon the said Land, or any part thereof; and further reserving to Us, Our Heirs, and Successors, the right of opening and completing any Road or Roades through the same that may be found necessary to be made. And further reserving all the rights, interests, claims, privileges, easements, possessions, and other liberties heretofore granted, leased or licensed, or hereafter to be granted, leased or licensed, or in any other manner conveyed, or intended so to be, to any and every person, company, or body corporate, their Successors, Executors, Administrators or Assigns, in, to, upon, of, appertaining to, or in respect of all and every Mining area, so heretofore granted, leased or licensed, or hereafter to be granted, leased or licensed, for the purpose of enabling such grantees, lessees, or licensees to dig up, search for, win and take all and singular the same Minerals above reserved under and by virtue of the Statutes of this Province, made, enacted, consolidated, and now in force, touching and relating to the Mines and Minerals thereof; and under and by virtue of all rules and regulations now made, and which shall or may be hereafter made, and published in respect of the same, and under and in accordance with the covenants conditions, agreements, promises, and stipulations in the said grants, leases or licenses, made,

-2-

contained and expressed; and further reserving all rights, privileges, and easements heretofore granted by Us, or lawfully, acquired in, to, or upon the said Lands and premises provided always that if at any time hereafter the lot of land hereby granted or any part thereof shall be built upon conveyed away or used for any purpose than as a Public Square of Garden, or if the City of Halifax or its successors shall cease to protect the same and keep it in order for the use and enjoyment of the Citizens these presents shall thereupon be and become void and of no effect and the land and premises hereby granted shall revert to us our heirs and successors.

Given under the Great Seal of our said Province of Nova Scotia. Witness our trusty and well-beloved His Honor Matthew Henry Ritchey, Esquire, Lieutenant Governor of Nova Scotia, this Nineteenth day of October, in the Forty-seventh year of our Reign, and in the year of our Lord One Thousand Eight Hundred and Eighty Three.

BY HIS HONORS COMMAND.

(sgd). Charles E. Church.

Provincial Secretary.

The Above described lot was granted by order of the Governor in Council, the 31st day of October, 1882.

Registered in the Registry of Deeds at Halifax, N.S. at twelve o'clock (Noon) of the Twenty Ninth day of May, A.D. 1884, in Grant Book, No.5 page 54.

(sgd) John C. Davis,

Deputy Registrar.



Date June 11, 1946.

From: Carl P. Bethune
City Solicitor

Re : Grafton Park.

To Mr. W. P. Publicover
City Clerk.



D
Dear Sir:

I am returning herewith for your files Grant No. 14634, Pet. 15408, from the Provincial Government to the City of Halifax, dated October 19th, 1883, and registered in the Registry of Deeds on May 29th, 1884, in Grant Book No. 5, page 54, conveying the property on Spring Garden Road known as Grafton Park.

I wish to thank you for lending this
to me.

Yours very truly,

Carl P. Bethune
CARL P. BETHUNE
CITY SOLICITOR.

/EHJ
Encl.