



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

**Item No. 11.1.1**  
**Harbour East-Marine Drive Community Council**  
**November 10, 2016**

**TO:** Chair and Members of Harbour East-Marine Drive Community Council

**SUBMITTED BY:** Original signed by  
\_\_\_\_\_  
Bob Bjerke, Chief Planner and Director, Planning and Development

**DATE:** October 21, 2016

**SUBJECT:** **Case 19599: Development Agreement for 335 and 337 Portland Street, Dartmouth**

---

**ORIGIN**

Application by Sunset Towers Apartments Ltd.

**LEGISLATIVE AUTHORITY**

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

**RECOMMENDATION**

It is recommended that Harbour East-Marine Drive Community Council:

1. Give notice of motion to consider the proposed development agreement, as set out in Attachment A of this report, to develop one additional residential dwelling unit within the existing two unit residential building at 335 Portland Street and up to two additional residential dwelling units in the existing two unit residential and office mixed use building at 337 Portland Street, and schedule a public hearing;
2. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
3. Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, which is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND**

Sunset Towers Apartments Ltd. is applying to enter into a development agreement for the properties at 335 and 337 Portland Street, Dartmouth, to add 1 additional dwelling unit to the existing 2 dwelling unit residential building at 335 Portland Street and to add up to a total of 2 new dwelling units to the existing two dwelling unit residential and office mixed use building at 337 Portland Street. The existing office space at 337 Portland Street is to be converted to residential use.

<b>Subject Site</b>	335 and 337 Portland Street, Dartmouth
<b>Location</b>	The northeast corner of Brenton Street and Portland Street, Dartmouth
<b>Regional Plan Designation</b>	Urban Settlement (US)
<b>Community Plan Designation (Map 1)</b>	Commercial (C) under the Dartmouth Municipal Planning Strategy (MPS)
<b>Zoning (Map 2)</b>	C-2 (General Business) under the Dartmouth Land Use By-law (LUB)
<b>Size of Site</b>	335 Portland Street is 510.96 square metres (5,500 square feet); 337 Portland Street is 613.16 square metres (6,600 square feet)
<b>Street Frontage</b>	335 Portland Street and 337 Portland Street have 119.28 feet combined frontage on Portland Street and 335 Portland Street has 139.20 feet frontage on Brenton Street.
<b>Current Land Use(s)</b>	Residential use at 335 Portland Street and residential and commercial use at 337 Portland Street.
<b>Surrounding Use(s)</b>	<ul style="list-style-type: none"> <li>• To the northeast along Brenton Street, which leads to Maynard Lake Park access, is a two unit dwelling and on the west side of Brenton Street are several single unit dwellings;</li> <li>• To the east of the site is an apartment building and several two unit dwellings on lands zoned C-2;</li> <li>• To the southeast along Portland Street is an auto sales lot zoned C-2 and several two unit dwellings zoned R-2;</li> <li>• To the southwest the neighbourhood is primarily single and two unit dwellings in the R-2 Zone.</li> </ul>

## **Proposal Details**

The applicant wishes to enter into a development agreement with the Municipality to permit the renovation of the existing two unit dwelling at 335 Portland Street into a three unit residential dwelling and the existing two unit dwelling with commercial office space at 337 Portland Street into a four unit residential dwelling. This would entail converting existing office space into residential use. Flexibility is also sought to allow the commercial office space at 337 Portland Street to be re-established should its conversion to residential units prove not be financially successful. The major aspects of the proposal are as follows:

- the existing building at 335 Portland Street will be permitted to have three residential units within the existing building footprint on the 510.96 square metre lot;
- the existing building at 337 Portland Street will be permitted to have four residential within the existing building footprint on the 613.16 square metre lot;
- the existing commercial office at space 337 Portland Street will be permitted to be re-established and the additional two dwelling units removed;
- no external changes to the building footprints, walls, accesses or general external appearance of either of the existing buildings is proposed as all changes are for internal renovations to the existing buildings.

## **Enabling Policy and LUB Context**

The application is being considered under Policy IP-1(c) and Policy IP-5 of the Municipal Planning Strategy for Dartmouth. While the C-2 Zone permits office commercial and multiple unit dwellings, Policy IP-5 requires that all apartment buildings beyond three units in C-2 zones be considered by development agreement. Attachment B contains staff's detailed analysis of the relevant policies.

## **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, signage posted on the subject site, letters mailed to property owners within the notification area. The public comments received include the following topics:

- concern that an increased number of units will lead to on-street parking and add traffic volume to the already busy Portland Street;
- screening of the lands from neighbouring properties;
- concern that the additional units will create noise disturbing neighbouring properties; and
- lack of sufficient off-street parking.

A public hearing must be held by Harbour East-Marine Drive Community Council before they can consider approval of the proposed development agreement. Should Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail.

The proposal will potentially impact local residents and property owners.

## **DISCUSSION**

Staff has reviewed the proposal relative to all relevant policies and advise that it is reasonably consistent with the intent of the MPS. 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 development agreement for the subject site and the conditions under which the development may occur. The proposed development agreement addresses the following matters:

- permitted land uses;
- outdoor lighting requirements;
- landscaping requirements;
- signage provisions that allow one ground sign for each building;
- the flexibility to re-establish the commercial office space (2 offices) at 337 Portland Street is identified as a non-substantive amendment; and
- the list of non-substantive amendments includes changes to the site plan, landscaping and architectural design which do not conform to the DA schedules.

The attached proposed development agreement will permit one additional dwelling unit at 335 Portland Street and two additional dwelling units at 337 Portland Street, with the ability to renovate these units back to office commercial space through a non-substantive amendment. Of the matters addressed by the proposed development agreement to satisfy the MPS criteria as shown in Attachment B, the following have been identified for detailed discussion.

### **Traffic, Site Access and Parking**

Policy criteria calls for adequate controls in the DA to reduce conflict with any adjacent or nearby land uses in terms of traffic generated, vehicular trips per day, or access and egress to and from the site and parking. The potential for higher, or higher than current, traffic volumes is negligible and a traffic impact statement was waived for this application by staff because of the low volumes and minor increase in the intensity of the use. The low volume of trips generated to and from the site did not require alterations to existing accesses or new accesses. Concern regarding on-street parking issues arising because of inadequate parking spaces within the site may be allayed as this location is ideally located to take

advantage of active transportation opportunities as the site is centrally located with access to transit, the Alderney Ferry Terminal and the downtown.

#### Amenity Space, Landscaping and Buffering

The size of the properties located at 335 and 337 Portland Street are small and not conducive to any types of private amenity space beyond passive sitting areas or play spaces for toddlers. However, the western length of the site at 335 Portland Street abuts Brenton Street that leads to an access to Maynard Lake Park that contains a developed trail. The proposed agreement requires that all area within the subject site be landscaped with either soft or hardscaping and that all existing trees must be retained. The existing trees do provide some degree of privacy between the existing buildings and the street, however because this is a residential use similar to the surrounding uses, there is no need to screen these compatible uses from one another.

#### **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 MPS. There is merit in proceeding with a development agreement for the subject site as the mechanism provides for control of site development, ensures that the existing compatibility is retained with neighbouring properties and the number of units is controlled by the permitted use. Because the additional units will require interior renovation only with no changes to the footprint or exterior features of the existing buildings, there is negligible visible impact from surrounding neighbourhood and the street character is maintained. The number of traffic trips per day or volume generation will have insignificant impact on local traffic system from the additional new units and the proposal is well located for pedestrian usage, transit access and walking or biking to downtown amenities. Therefore, staff recommend that the Harbour East-Marine Drive Community Council approve the proposed 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 2016 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 development agreement are contained within the Discussion section of this report.

#### **ENVIRONMENTAL IMPLICATIONS**

No environmental implications are identified.

## **ALTERNATIVES**

1. Harbour East-Marine Drive Community Council may choose to approve the proposed development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or another public hearing. A decision of Council to approve this development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Harbour East-Marine Drive Community Council may choose to refuse the proposed 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 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
Attachment A:	Proposed Development Agreement
Attachment B:	Review of Relevant MPS Policies

---

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Darrell Joudrey, Planner II, 902.490.4181

Report Approved by: Original signed by  
\_\_\_\_\_  
Kelly Denty, Manager, Current Planning, 902.490.4800

---




**Map 1 - Generalized Future Land Use**

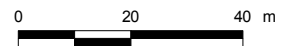
**HALIFAX**

335 and 337 Portland Street,  
Dartmouth

**Designation**

 Area of Proposed Development Agreement

Dartmouth R Residential  
C Commercial

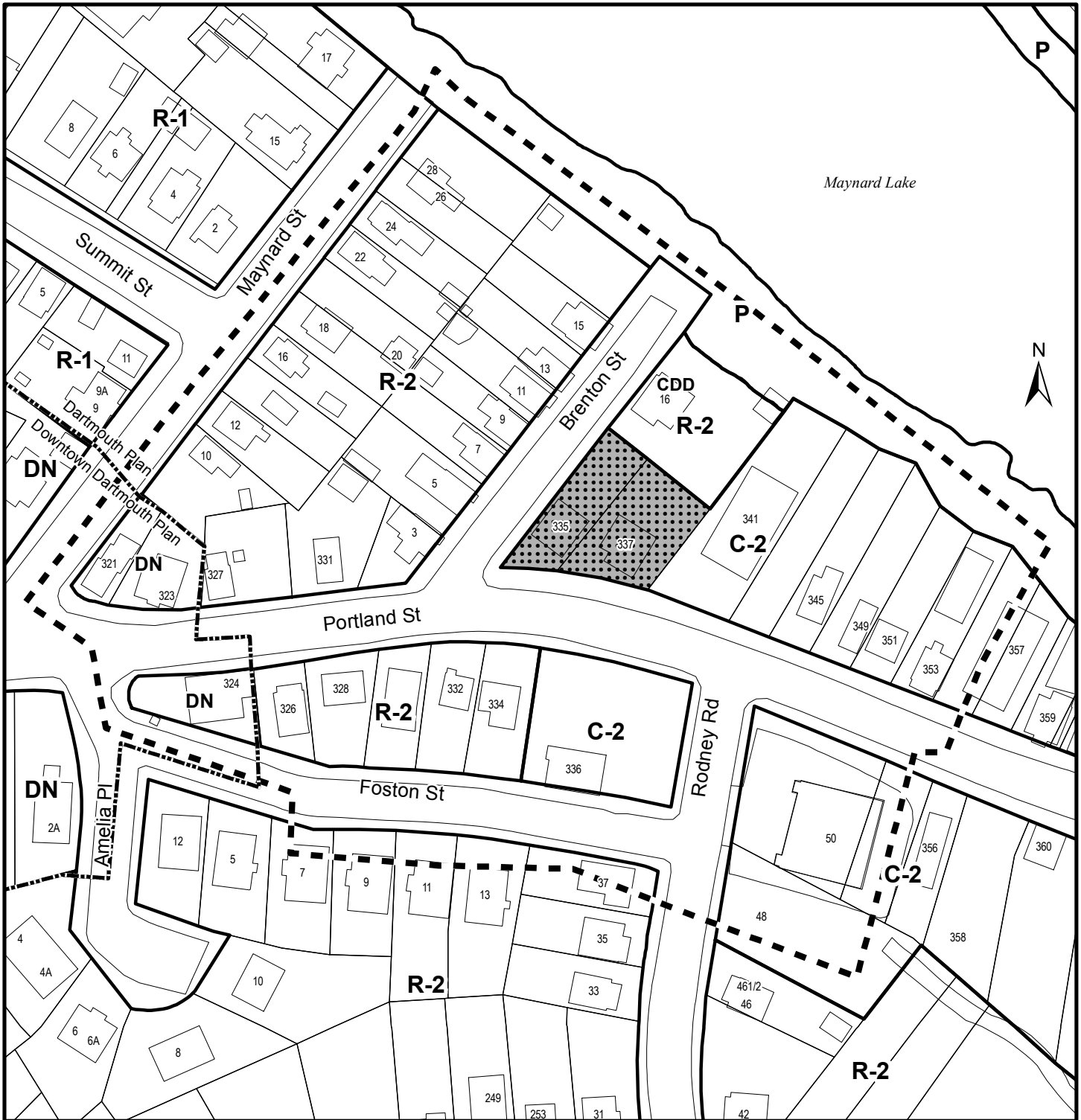


Dartmouth  
Plan Area

Downtown Dartmouth DN Downtown Neighbourhood

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.


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




### Map 2 - Zoning and Notification

**HALIFAX**

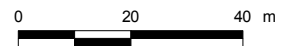
335 and 337 Portland Street,  
Dartmouth

 Area of Proposed Development Agreement

 Area of Notification

**Zone**

Dartmouth	R-1	Single Family Residential
	R-2	Two Family Residential
	C-2	General Business
	P	Park
Downtown Dartmouth	DN	Downtown Neighbourhood



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.

Dartmouth  
Plan Area

**Attachment A: Proposed Development Agreement**

THIS AGREEMENT made this      day of **[Insert Month]**, 2016,

BETWEEN:

**[INSERT DEVELOPER NAME]**

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 335 and 337 Portland Street, Dartmouth, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for a multiple unit dwelling on each parcel of the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy IP-5 of the Dartmouth Municipal Planning Strategy;

AND WHEREAS the Harbour East-Marine Drive Community Council for the Municipality, approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 19599;

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

**PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION**

**1.1 Applicability of Agreement**

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

**1.2 Applicability of Land Use By-law and Subdivision By-law**

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the applicable Land Use By-law and the Regional Subdivision By-law, as may be amended from time to time.

**1.3 Applicability of Other By-laws, Statutes and Regulations**

1.3.1 Further to Section 1.2, 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 Lands (other than the Land Use By-law to the extent varied by this Agreement), 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 Lands.

- 1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

#### **1.4 Conflict**

- 1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

- 1.4.2 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.

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

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 Lands.

#### **1.6 Provisions Severable**

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.

### **PART 2: DEFINITIONS**

#### **2.1 Words Not Defined under this Agreement**

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Regional Subdivision By-law, if not defined in these documents their customary meaning shall apply.

### **PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS**

#### **3.1 Schedules**

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms to the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 19599:

Schedule A	Legal Description of the Land(s)
Schedule B	Site Plan

Schedule C  
Schedule D

Front and Side Elevations 335 Portland Street  
Front and Side Elevations 337 Portland Street

### **3.2 Requirements Prior to Approval**

- 3.2.1 Prior to the issuance of any Occupancy Permit, the Developer shall provide written confirmation from a qualified professional that the Development Officer may accept as sufficient record of compliance with the landscaping requirements set out in Section 3.8 of this Agreement to the Development Officer, unless otherwise permitted by the Development Officer:
- 3.2.2 The Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By law (except to the extent that the provisions of the Land Use By law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

### **3.3 General Description of Land Use**

- 3.3.1 The use(s) of the Lands permitted by this Agreement shall be as generally illustrated on the Schedules, being the following:
- (a) A multiple unit building with a maximum of 3 dwelling units located at 335 Portland Street;
  - (b) A multiple unit building with a maximum of 4 dwelling units located at 337 Portland Street;
  - and
  - (c) Surface parking with a maximum of 8 spaces.
- 3.3.2 The Developer shall not be permitted to increase the existing area of the building footprint for either building or increase the height of either building.
- 3.3.3 Unless otherwise stated in this Agreement, development of the Lands shall conform to the applicable provisions of the Dartmouth Land Use By-law as amended from time to time.

### **3.4 Siting and Architectural Requirements**

- 3.4.1 The Developer agrees that the design of the buildings shall, in the opinion of the Development Officer, conform to the Buildings Elevations included with this Agreement as Schedules C and D.
- 3.4.2 All vents, down spouts, flashing, electrical conduits, metres, service connections and other functional elements shall be treated as integral parts of the building design. Where appropriate these elements shall match the colour of the adjacent surface, except where used expressly as an accent.
- 3.4.3 The buildings shall be designed such that the mechanical systems (HVAC, exhaust fans, etc.) are not visible from Portland Street or Brenton Street or adjacent residential properties.
- 3.4.4 Containers for five (5) stream waste sorting shall be provided for both buildings in rear or sideyards and shall be fully screened from adjacent streets by means of opaque fencing or masonry walls with view obstructing landscaping.

### **3.5 Issuance of Development Permit**

The Municipality shall not issue a Development Permit for the Buildings unless the Developer has submitted the Site Grading Plan for the buildings at 335 and 337 Portland Street and the Development Officer has accepted these requirements.

### **3.6 Parking, Circulation and Access**

- 3.6.1 Surface parking areas shall be sited as generally shown on Schedule B.
- 3.6.2 The surface parking area shall be hard surfaced with asphalt, concrete, pavers or an acceptable equivalent and shall be surrounded by concrete curbing.

### **3.7 Outdoor Lighting**

- 3.7.1 Lighting shall be directed to driveways, parking areas, loading areas, building entrances and walkways and shall be arranged so as to divert the light away from public streets, adjacent lots and buildings.
- 3.7.2 The information used to satisfy the requirements of this section may be included on the site plan or building elevations provided that the Development Officer is satisfied of compliance with this Agreement.

### **3.8 Landscaping**

- 3.8.1 Prior to the issuance of any Development Permit, the Developer agrees to generally conform with the overall intentions of the preliminary landscaping shown on Schedule B.
- 3.8.2 Occupancy Permits shall not be issued for the Buildings until the Developer shall submit to the Development Officer a letter, prepared by a qualified professional, certifying that all landscape requirements have been completed in accordance with this Agreement.
- 3.8.3 All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications required pursuant to subsection 3.8.1.
- 3.8.4 All portions of the Lands not used for structures, parking areas, driveways, curbing, or walkways shall be landscaped except for areas where natural vegetative cover is maintained. Landscaping shall be deemed to include grass, mulch, decorative stone or water features, planting beds, trees, bushes, shrubs or other plant material or decorative element deemed acceptable by the Development Officer.
- 3.8.5 The Developer shall maintain all landscaping, shrubs, plants, flower beds and trees and shall replace any damaged, dead or removed stock.
- 3.8.6 Specifications for all fabricated landscaping elements such as fencing, retaining walls, benches, and lighting shall be provided to the Development Officer, and shall describe their design, construction, specifications, materials and placement.
- 3.8.7 Retaining walls shall be permitted on private property only, unless otherwise approved by the Development Engineer, and any retaining wall shall be constructed of concrete or modular stone retaining wall system or an acceptable equivalent in the opinion of the Development Officer.
- 3.8.8 Details of any retaining wall systems that exceed a height of three (3) feet shall be identified, including the height and type of any fencing proposed in conjunction with it. A construction detail

of any wall and fence combination shall be provided and certified by a Professional Engineer prior to the issuance of an Occupancy Permit.

- 3.8.9 Planting materials shall be carefully selected for their ability to survive in their specific location relative to such factors including, but not limited to, sunlight/shade conditions, existing vegetation and sea exposure conditions.
- 3.8.10 Notwithstanding section 3.8.2, where the weather and the time of year do not allow the completion of outstanding landscape works at the time of issuance of the Occupancy Permits for the Building the Developer may supply a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The cost estimate is to be prepared by a member of the Canadian Society of Landscape Architects. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by the Development Officer. Should the Developer not complete the landscaping within twelve months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this section of the Agreement. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.

### **3.9 Maintenance**

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, de-icing of walkways and driveways.

### **3.10 Signs**

- 3.10.1 One (1) permanent ground sign shall be permitted at 335 Portland Street and one at 337 Portland Street to denote the development name. The location of such sign shall require the approval of the Development Officer in consultation with the Development Engineer. The maximum height of any such sign inclusive of support structures shall not exceed 6 (six) feet and the face area of any sign shall not exceed 20 square feet. All such signs shall be constructed of natural materials such as wood, stone, brick, enhanced concrete or masonry. The only illumination permitted shall be low-wattage shielded external fixtures.
- 3.10.2 Temporary signs under the Temporary Sign By-law are not permitted.

## **PART 4: STREETS AND MUNICIPAL SERVICES**

### **4.1 General Provisions**

All design and construction of primary and secondary service systems shall satisfy the latest edition of the HRM Municipal Design Guidelines unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work.

### **4.2 Off-Site Disturbance**

Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by

the Developer as directed by the Development Officer, in consultation with the Development Engineer.

#### **4.3 Other Approvals**

The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including sanitary sewer system, water supply system, stormwater, sewer and drainage systems, streets, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of HRM and other approval agencies, except as provided herein. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All construction shall be in accordance with Municipal Specifications and By-laws.

#### **4.4 Municipal Water Distribution, Sanitary Sewer and Storm Sewer Systems**

The Municipal water distribution, sanitary sewer and storm sewer systems shall conform with Halifax Water's latest edition of their Design and Construction Specifications unless otherwise deemed acceptable by Halifax Water and the Municipality.

#### **4.5 Solid Waste Facilities**

4.5.1 Each building shall provide designated space for five (5) stream source separation services. This designated space for source separation services shall be shown on the building plans and approved by the Development Officer and Building Inspector in consultation with Solid Waste Resources as per By-law S-600.

4.5.2 Refuse containers and waste compactors shall be screened from public view by means of opaque fencing or masonry walls with view obstructing landscaping.

#### **4.6 Private Infrastructure**

All private services and infrastructure located on the Lands, including but not limited to the private circulation driveway(s), laterals for water and sewer, and any private stormwater pipes or collection systems, shall be owned, operated and maintained by the Developer. Furthermore, the Municipality shall not assume ownership of any of the private infrastructure or service systems constructed on the Lands.

### **PART 5: ENVIRONMENTAL PROTECTION MEASURES**

#### **5.1 Erosion and Sedimentation Control Plan**

Prior to the commencement of any onsite works on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated offsite works, the Developer shall have prepared by a Professional Engineer and submitted to the Municipality a detailed Erosion and Sedimentation Control Plan. The plans shall comply with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by Nova Scotia Environment. Notwithstanding other Sections of this Agreement, no work is permitted on the site until the requirements of this clause have been met and implemented.

#### **5.2 Erosion Control**

No Occupancy Permit shall be issued unless a Professional Engineer certifies that the entire lot is stabilized in accordance with all applicable standards and regulations of the Province of Nova Scotia and with the terms of this Agreement. Any temporary stabilization of the Lands shall be replaced with final landscaping within six (6) months of the issuance of the Occupancy Permit. If final landscaping cannot be completed due to seasonal conditions then the owner of the Lands shall be responsible for ensuring that any temporary stabilization materials are replaced and/or

maintained on an as-required basis to ensure that exposed soil is adequately stabilized at all times.

### **5.3 Failure to Conform to Plans**

If the Developer fails at any time during any site work or construction to fully conform to the requirements set out under Part 5 of this Agreement, the Municipality shall require that all site and construction works cease, except for works which may be approved by the Development Officer, in consultation with the Development Engineer, to ensure compliance with the approved engineering plans.

## **PART 6: AMENDMENTS**

### **6.1 Non-Substantive Amendments**

The following items are considered by both parties to be non-substantive and may be amended by resolution of Council:

- (a) Changes to the Site Plan, beyond those required by the Landscape requirements, as illustrated on Schedule B;
- (b) Changes to the architectural design of the building which, in the opinion of the Development Officer, do not conform with the Schedules;
- (c) Reversion of residential use, for up to 2 residential units, to office commercial use on the lower floor of the building located at 337 Portland Street;
- (d) The granting of an extension to the date of commencement of construction as identified in Section 7.3 of this Agreement; and
- (e) The length of time for the completion of the development as identified in Section 7.4 of this Agreement.

### **6.2 Substantive Amendments**

Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

## **PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

### **7.1 Registration**

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.

### **7.2 Subsequent Owners**

7.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.

7.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

### **7.3 Commencement of Development and Extension of Commencement Date**

- 7.3.1 In the event that construction has not commenced within one year from the date of registration of this 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.
- 7.3.2 For the purpose of this section, commencement of development shall mean issuance of a Development Permit for either of the buildings.
- 7.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1, if the Municipality receives a written request from the Developer at least 60 calendar days prior to the expiry of the commencement of development time period.

### **7.4 Completion of Development and Discharge of Agreement**

- 7.4.1 If the Developer fails to complete the development after two 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.
- 7.4.2 Upon the completion of the whole development or complete phases of the development, 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;
  - (c) discharge this Agreement; or
  - (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Dartmouth, as may be amended from time to time.

## **PART 8: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

### **8.1 Enforcement**

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

### **8.2 Failure to Comply**

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty 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 defense based upon the allegation that damages would be an adequate remedy;

- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- (c) The Municipality may by resolution discharge this Agreement whereupon this 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; or
- (d) 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.



**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**





Front and Side View



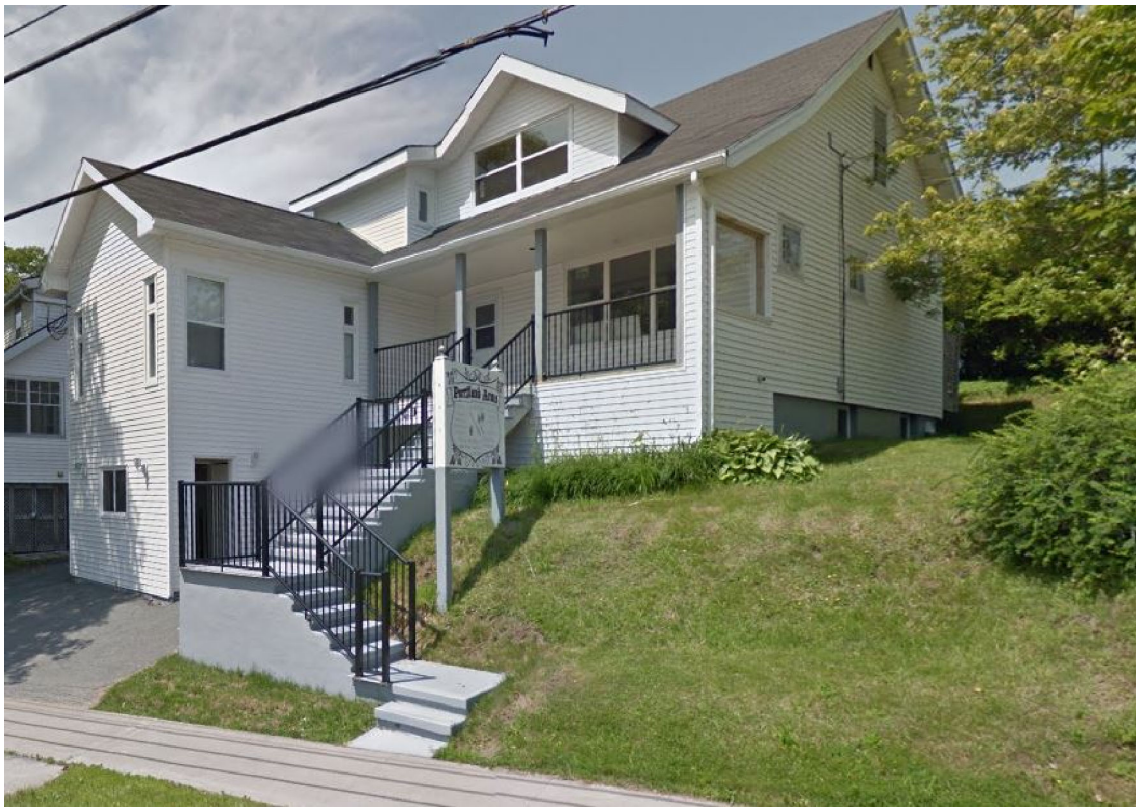
Side View

**Schedule C : Front and Side Elevations  
335 Portland Street**

Not to Scale

HRM does not guarantee the accuracy of any base information.





Front and Side View



Front View

**Schedule D : Front and Side Elevations  
337 Portland Street**

Not to Scale

HRM does not guarantee the accuracy of any base information.

**Attachment B:  
MPS Policy Evaluation**

**Implementation**

Policy IP-1(c)

In considering zoning amendments and contract zoning, Council shall have regard to the following:	
(1) that the proposal is in conformance with the policies and intent of the Municipal Development Plan	The proposal is in conformance with the aspects and nature of the policies and intent of the Dartmouth MDP.
(2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal	The proposed residential units do not alter or modify the footprint or external appearance of the existing building and they remain compatible and consistent with adjacent uses and existing development form
(3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries	The proposed DA will provide that existing vegetative buffer/screening be retained and landscaping carried out where applicable. Access control is already in place to reduce impact with adjacent land uses and traffic arteries as the access points are not changing on Portland Street.
(4) that the proposal is not premature or inappropriate by reason of:	
(i) the financial capability of the City is to absorb any costs relating to the development	All costs associated with the proposed development will be the responsibility of the Developer.
(ii) the adequacy of sewer and water services and public utilities	Halifax Water has provided comments on the proposal and has no issues with capacity of either water or sewer.
(iii) the adequacy and proximity of schools, recreation and other public facilities	Public facilities such as schools, recreation complexes and other public facilities are adequate and within walkable proximity.
(iv) the adequacy of transportation networks in adjacent to	A Traffic Impact Statement was waived as staff believed the development's proposed additional apartments will have insignificant

	or leading to the development	impact in terms of vehicle trips per day.
(v)	existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas	n/a
(vi)	preventing public access to the shorelines or the waterfront	n/a
(vii)	the presence of natural, historical features, buildings or sites	n/a
(viii)	create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized	The nature of the proposed development is the re-use of two existing building with the conservation of embodied energy. Public services are already in place in the area and need not be extended.
(ix)	the detrimental economic or social effect that it may have on other areas of the City.	Staff feel the additional multiple unit building units will provide moderate cost housing to the neighbourhood.
(5)	that the proposal is not an obnoxious use	n/a
(6)	that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:	
(i)	type of use, density, and phasing	The land use will be controlled by the development agreement as will the number of units which, effectively, is the density. Changes to land use, or number of units,

	requires a substantive amendment under the terms of the Agreement.
(ii) emissions including air, water, noise	The Agreement requires the permitted use to abide by all by-laws, laws and statutes including those pertaining to environmental matters.
(iii) traffic generation, access to and egress from the site, and parking	Traffic generation, site ingress and egress has been reviewed and impact is noted as insignificant by staff.
(iv) open storage and landscaping	No open storage is permitted. The 5 stream HRM waste recycling containers must be located within the backyard or sideyard.
(v) provisions for pedestrian movement and safety	There are existing sidewalks, trails and walkways within the surrounding community with fairly good connectivity. Maynard Lake Park is in close proximity.
(vi) management of open space, parks, walkways	There is a hierarchy of HRM parks and open spaces linked by walkways and trails in the surrounding community.
(vii) drainage both natural and sub-surface and soil-stability	The subject lands are fully developed. Soil stability has also been managed in the past and has not been disturbed.
(viii) performance bonds.	n/a
(7) suitability of the proposed site in terms of steepness of slope, soil conditions, rock outcroppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors	The site was developed within an urban context having municipal street and piped services.
(8) that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the "voluntary" public hearing process established by City Council for the purposes of information exchange between the applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council	No public information meeting was held in this matter and instead a mailout notification and fact sheet served to inform abutting property owners and residential buildings of the proposal.
(9) that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide:	

(i) Council with a clear indication of the nature of proposed development; and	Yes, the staff report to Community Council and the proposed DA provide a clear picture of the proposed development.
(ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community.	Sufficient detail was provided to evaluate the proposal and potential impact on surrounding lands and the community.
<b>(10) <i>Within any designation, where a holding zone has been established pursuant to “Infrastructure Charges - Policy IC-6”, Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the “Infrastructure Charges” Policies of this MPS. (RC-Jul 2/02, E-Aug17/02</i></b>	

Policy IP-5

<b><i>It shall be the intention of City Council to require Development Agreements for apartment building development in R-3, R-4, C-2, MF-1 and GC Zones. Council shall require a site plan, building elevations and perspective drawings for the apartment development indicating such things as the size of the building(s), access &amp; egress to the site, landscaping, amenity space, parking and location of site features such as refuse containers and fuel storage tanks for the building.</i></b>	
<b><i>In considering the approval of such Agreements, Council shall consider the following criteria:</i></b>	
<b><i>(a) adequacy of the exterior design, height, bulk and scale of the new apartment development with respect to its compatibility with the existing neighbourhood</i></b>	<b><i>See IP-1(c)2 above. The outward appearance of the existing buildings will not be changing so the existing buildings will remain compatible with the existing neighbourhood.</i></b>
<b><i>(b) adequacy of controls placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of:</i></b>	
<b><i>(i) the height, size, bulk, density, lot coverage, lot size and lot frontage of any proposed</i></b>	<b><i>There will be no changes</i></b>



	<i>building</i>	
(ii)	<i>traffic generation, access to and egress from the site; and</i>	<i>The volume of trips per day generated will not significantly impact existing traffic flow.</i>
(iii)	<i>parking</i>	<i>Parking (8 surface spaces) is adequate to service the development.</i>
(c)	<i>adequacy or proximity of schools, recreation areas and other community facilities</i>	<i>See IP-1(c)4iii above</i>
(d)	<i>adequacy of transportation networks in, adjacent to, and leading to the development</i>	<i>See IP-1(c)4iv above</i>
(e)	<i>adequacy of useable amenity space and attractive landscaping such that the needs of a variety of household types are addressed and the development is aesthetically pleasing</i>	<i>Useable amenity space and landscaping addressing the household types, mostly single and two persons households, is in place.</i>
(f)	<i>that mature trees and other natural site features are preserved where possible</i>	<i>Existing vegetation will be preserved.</i>
(g)	<i>adequacy of buffering from abutting land uses</i>	<i>Some vegetative buffering from abutting land uses already in place. Buffering from compatible surrounding residential use is not necessary.</i>
(h)	<i>the impacts of altering land levels as it relates to drainage, aesthetics and soil stability and slope treatment; and</i>	<i>Land levels will not be altered by this proposal beyond landscaping maintenance.</i>
(i)	<i>the Land Use By-law amendment criteria as set out in Policy IP-1(c).</i>	<i>See IP-1(c) above</i>
<i>(As amended by By-law C-692, Dec. 4, 1991)</i>		