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Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 13.1.1
Harbour East - Marine Drive Community Council
Special Meeting
August 5, 2021

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

SUBMITTED BY: - Original Signed -
Kelly Denty, Executive Director of Planning and Development

DATE: June 8, 2021

SUBJECT: **Case 23401: Non-substantive amendments to an existing Development Agreement for 249, 251 and 257 Windmill Road, Dartmouth**

ORIGIN

Application by Stephen Adams Consulting Services Inc.

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 amending development agreement, as set out in Attachment A, to allow a non-substantive amendment to an existing development agreement extending the commencement and completion dates for development;
2. Approve, by resolution, the proposed amending development agreement, which shall be substantially of the same form as set out in Attachment A; and
3. Require the amending development agreement be signed by the property owner within 240 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Stephen Adams Consulting Services Inc., on behalf of Olympic Property Management Limited, is applying for a non-substantive amendment to an existing development agreement at 249-257 Windmill Road, Dartmouth, to extend the date of commencement of construction by one year and the date of completion of development by two years.

Subject Site	Three parcels at 249, 251, and 257 Windmill Road, Dartmouth (PID's 40811085, 41086018, and 40175887)
Location	The eastern side of Windmill Road, mid-block between Grove Street and Nivens Avenue
Regional Plan Designation	US (Urban Settlement) and HARB (Halifax Harbour)
Community Plan Designation (Map 1)	HR (Higher Order Residential) within the Regional Centre Plan Package A, and R (Residential) within the Dartmouth Municipal Planning Strategy
Zoning (Map 2)	HR-1 within the Regional Centre Plan Package A Land Use Bylaw, and R-4 and C-2 within the Dartmouth Land Use Bylaw
Size of Site	28,041 sq. m (6.92 acres)
Street Frontage	30.6m on Windmill Road (100.4 feet)
Current Land Use(s)	A three-storey 207-unit residential apartment building and a two-unit dwelling
Surrounding Use(s)	The surrounding area is predominately mixed use: <ul style="list-style-type: none">- To the south is a federal government facility- To the north is multiple unit residential building- To the east across Windmill Road are low density residential buildings- To the west is a rail cut and Halifax Harbour

Existing Development Agreement

In 2009, Harbour East - Marine Drive Community Council approved a development agreement for a 12-storey, 103-unit residential building at 249-257 Windmill Road (Case 01230). The agreement also allowed for an existing three-storey, 207-unit residential building and an existing two-unit dwelling on the property. The original agreement required construction to commence within five (5) years from the date of registration of the agreement and to be completed within ten (10) years from the date of registration of the agreement. This resulted in a commencement date of January 21, 2015 and a completion date of January 21, 2020.

In 2019, Council approved a 3-year extension to the commencement date and a 6-year extension to the completion date resulting in a commencement and completion date of February 14, 2023 and February 14, 2026 respectively (Case 22463). Section 6.2 of the existing agreement identifies time extensions to commencement and completion dates as non-substantive and may be amended by resolution of Council.

Enabling Policy and LUB Context

The existing development agreement was approved under Policy IP-5 and IP-1(c) of the Dartmouth Municipal Planning Strategy. As a part of the application, the properties were redesignated from Industrial to Residential, and the properties were zoned both C-2 and R-4 under the Dartmouth Land Use By-law.

The Regional Centre Plan 'Package A' was adopted on September 17, 2019, and at that time the two larger parcels of land were re-designated HR (Higher Order Residential) and zoned HR-1 (Higher Order Residential 1) within the Regional Centre Land Use By-law. A smaller portion of the subject site on the south side of the CN rail lines remains within the Dartmouth Municipal Plan Area and is designated R (Residential) and zoned C-2 and R-4.

When the RCSMPS was adopted, the policies which enabled the original development were repealed. However, the RCMPS does provide specific 'transition' policies enabling non-substantive amendments to approved development agreements. Policy 10.27 enables applications for non-substantive amendments to

existing development agreements to be considered under the policies at the time the agreement was approved. Policy 10.28 enables Council to consider applications to extend construction commencement and completion dates by one year and two years respectively.

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 creation of a HRM planning applications website and signage posted on the subject site. A public information meeting and public hearing are not required for a non-substantive amendment to a development agreement. The decision on the amendment is made by resolution of Community Council.

DISCUSSION

Staff has reviewed the proposal relative to all relevant policies and advise that it is reasonably consistent with the intent of the Regional Centre SMPS and the Dartmouth MPS policies. Attachment B provides an evaluation of the proposed amending development agreement in relation to the relevant MPS policies.

Proposed Development Agreement

Attachment A contains the proposed amending development agreement for the subject site. The proposed amending agreement allows for an extension to the commencement and completion dates by one year and two years, respectively. As stated previously, the current construction commencement date is February 14, 2023 and the completion date is February 14, 2026. Since the last amending agreement, the property has changed ownership. The applicant has stated that due to the ongoing pandemic and matters associated with other development projects, the new owners will be unable to begin and complete the project within the allotted timeframe. The applicant is requesting a 1-year extension to the commencement date and a 2-year extension to the completion date. This would result in a new construction commencement date of 2024 and a completion date of 2028. The precise date will be based on the date of registration of the amending agreement.

Timeframe for Agreement Execution

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

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is reasonably consistent with the intent of the RCSMPS and with the Dartmouth MPS policies that were in effect at the time of the approval of the existing development agreement. This is the second request to extend the dates for commencement and completion and the proposed structure remains unchanged from the original development agreement which is consistent with the applicable policies. Therefore, staff recommend that the Harbour East – Marine Drive Community Council approve the proposed amending development agreement.

FINANCIAL IMPLICATIONS

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this proposed development agreement. The administration of the proposed amending development agreement can be carried out within the approved 2021-2022 budget and with existing resources.

RISK CONSIDERATION

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

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

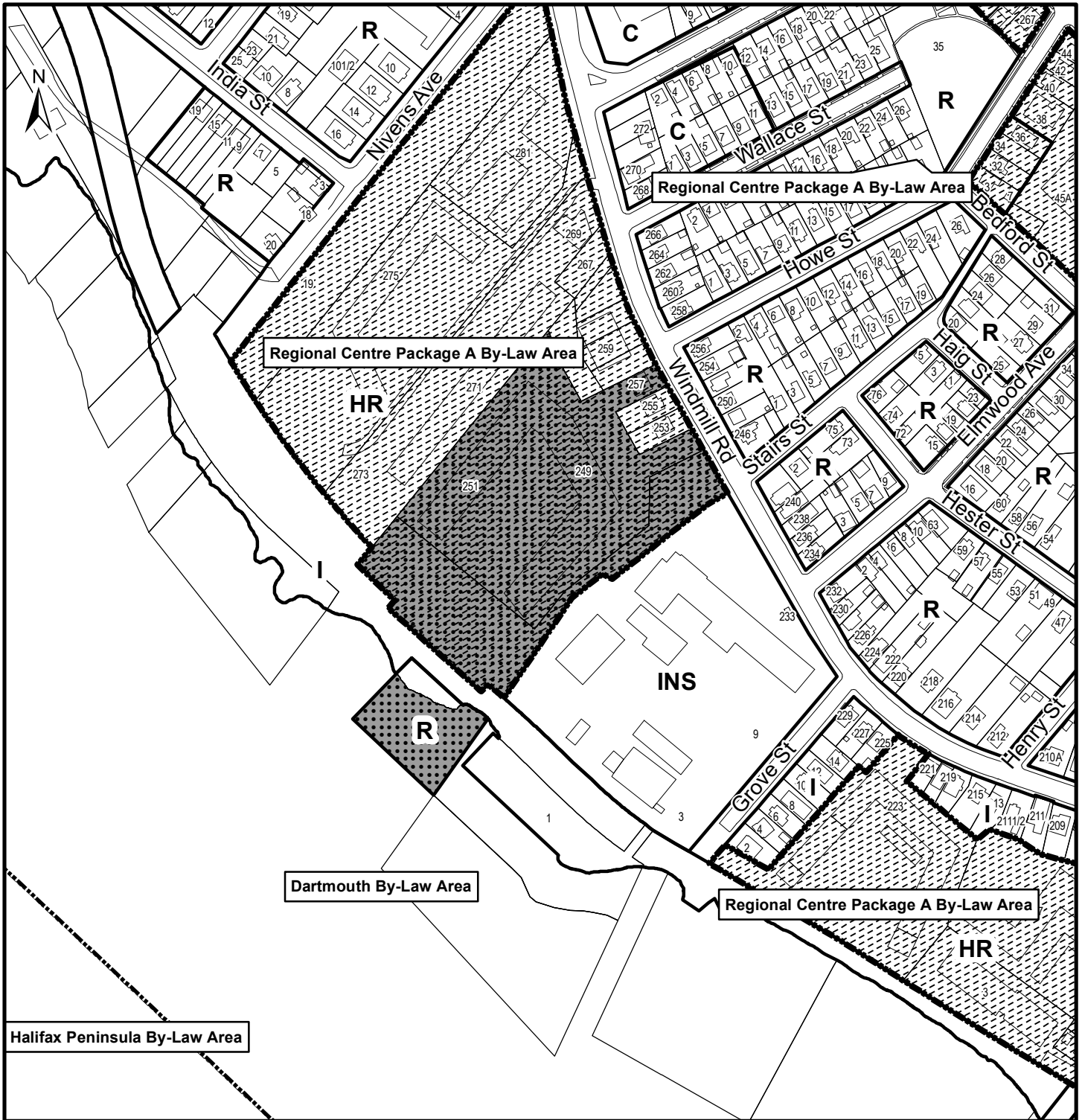
1. Harbour East – Marine Drive Community Council may choose to approve the proposed development agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or another public hearing. A decision of Council to approve 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 Area
Attachment A:	Proposed Amending Development Agreement
Attachment B:	Review of Relevant MPS Policies

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Melissa Eavis, Planner III, 902.237.1216



Map 1 - Generalized Future Land Use

249, 251 & 257 Windmill Rd Dartmouth
 PIDs: 40811085, 41086018, 40175887

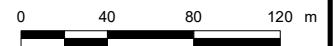
 Subject Properties

Designation - Regional Centre

COR Corridor
 HR High-Order Residential

Designation - Dartmouth

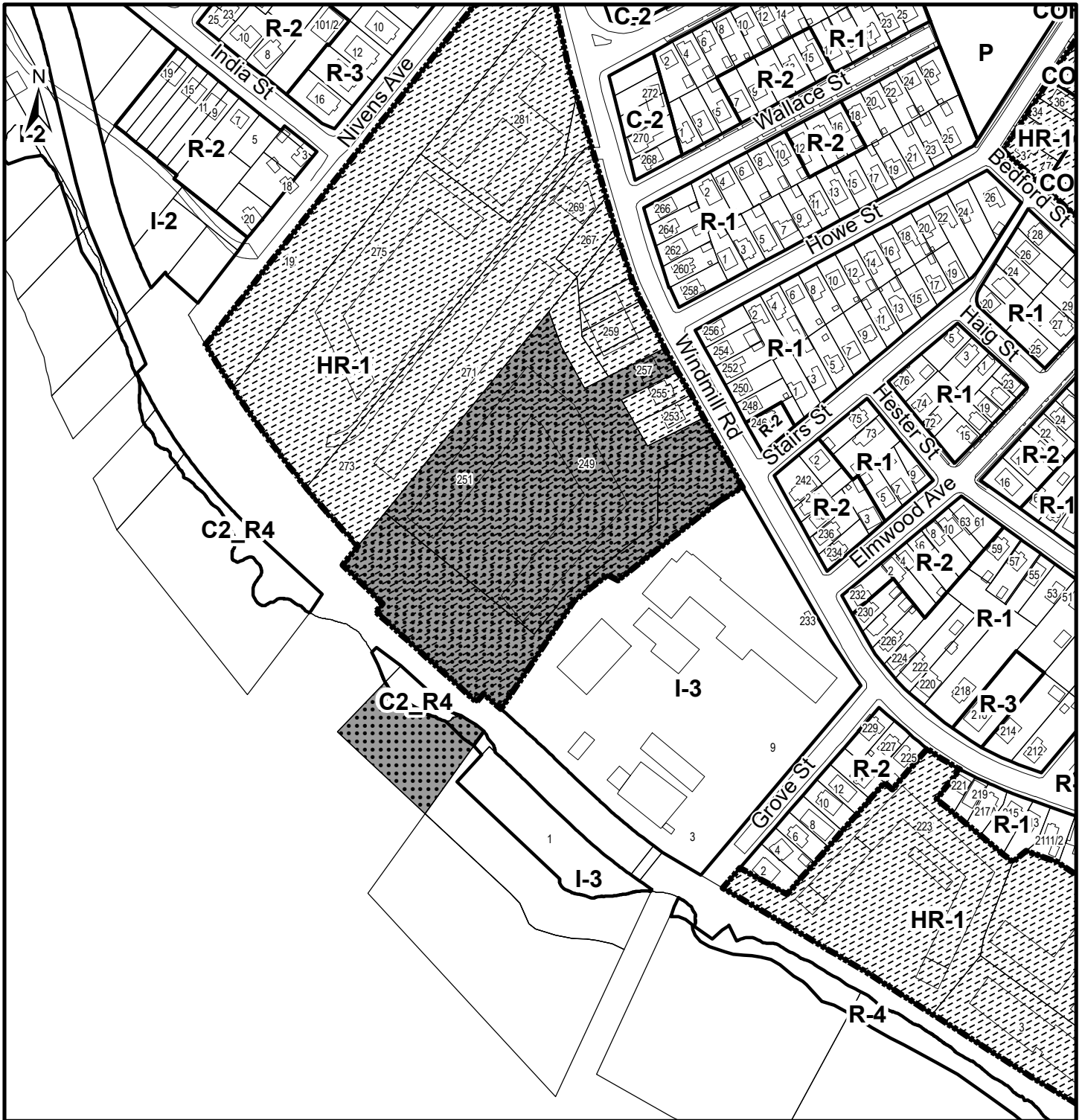
C Commerical
 I Industrial
 INS Institutional
 R Residential



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.


Regional Centre Package A Plan Area,
 Dartmouth Plan Area



Map 2 - Zoning and Notification

249, 251 & 257 Windmill Rd Dartmouth
 PIDs: 40811085, 41086018, 40175887

 Subject Properties

 Area of Notification

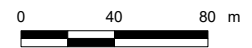
Zone - Dartmouth

- C-2 General Business
- I-2 General Industrial
- I-3 Harbour-Oriented Industrial
- P Park
- R-1 Single Family Residential
- R-2 Two Family Residential
- R-3 Multiple Family Residential (Medium Density)
- R-4 Multiple Family Residential (High Density)

Zone - Regional Centre

- COR Corridor
- HR-1 High-Order Residential 1

HALIFAX



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

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

Attachment A: Proposed Amending Development Agreement

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

BETWEEN:

OLYMPUS PROPERTIES MANAGEMENT LIMITED

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 249, 251 and 257 Windmill Road, Dartmouth and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Harbour East – Marine Drive Community Council approved an application to enter into a Development Agreement to allow for a new 12 storey, 103 unit apartment building and recognize an existing 3 storey, 207 unit apartment building and an existing two unit building on the Lands (Municipal Case 01230), which said Development Agreement was registered at the Land Registration Office in Halifax on January 21, 2010 as Document Number 95153384 (hereinafter called the "Original Agreement");

AND WHEREAS the Harbour East – Marine Drive Community Council approved an application to amend the Original Agreement to allow for a three year extension to the Date of Commencement and a six year extension to the Date of Completion on the Lands (Municipal Case 22463), which said Amending Development Agreement was registered at the Halifax County Land Registration Office in Halifax on February 14, 2020 as Document Number 115912066 (hereinafter called the "First Amending Agreement"), and which does apply to the Lands;

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

AND WHEREAS the Developer has requested further amendments to the Existing Agreement to allow for a one year extension to the Date of Commencement and a two year extension to the Date of Completion on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies 10.27 and 10.28 of the Regional Centre Municipal Planning Strategy, and Section 6.2 of the Original Agreement;

AND WHEREAS the Harbour East Marine Drive Community Council approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 23401;

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

1. Except where specifically varied by this Second Amending Agreement, all other conditions and provisions of the Existing Agreement as amended shall remain in effect.
2. The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Second Amending Agreement, and the Existing Agreement.
3. Section 8.3 of the Existing Agreement shall be amended by deleting the text shown in strikeout, and inserting the text shown in bold as follows:

8.3 In the event that construction on the Lands has not commenced within ~~three (3)~~ **four (4)** years from the date of registration of ~~this the~~ **the** First Amending Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this agreement, whereupon the Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction.

4. Section 8.3.1 of the Existing Agreement shall be amended by deleting the text shown in strikeout, and inserting the text shown in bold as follows:

8.3.1 If the Developer fails to complete the development after ~~six (6)~~ **eight (8)** years from the date of registration of ~~this the~~ **the** First Amending Agreement with the Registry of Deeds, whichever time period is less, Council may review this Agreement, in whole or in part, and may:

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

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

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Registered Owner Name)

Witness

Per: _____

HALIFAX REGIONAL MUNICIPALITY

SIGNED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax

Regional Municipality, duly authorized in that behalf, in the presence of:

Witness

Witness

Per: _____
MAYOR

Per: _____
MUNICIPAL CLERK

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, personally came and appeared _____, the subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that _____ of the parties thereto, signed, sealed and delivered the same in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this _____ day of _____, A.D. 20____, before me, personally came and appeared _____, the subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that Mike Savage, Mayor and Iain MacLean Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

A Commissioner of the Supreme Court
of Nova Scotia

Attachment B: Review of Relevant MPS Policies

Regional Centre SMPS Package A	
Policy	Staff Comment
<p>10.27 Applications for non-substantive amendments to existing development agreements shall be considered under the policies in effect at the time the agreement was approved.</p> <p>In addition to those items listed as non-substantive in an existing development agreement, the following amendments to those existing development agreements may be considered under the policies in effect at the time the agreement was approved:</p>	<p>As per Section 6.2 of the existing development agreement, the request to extend the construction commencement and completion dates is not substantive. Therefore, this application is to be considered under the Dartmouth MPS policies that were in effect at the time the agreement was approved, namely IP-5 and IP-1(c)</p>
a) changes to architectural requirements that do not impact the massing of the building;	N/A
b) changes to landscaping requirements;	N/A
c) changes to sign requirements;	N/A
d) reduction in motor vehicle parking requirements; and	N/A
e) changes to building lighting and illumination.	N/A
<p>10.28 Applications for amendments to existing development agreements to extend the project commencement and completion dates shall only consider project commencement dates not exceeding one year and project completion dates not exceeding two years, and only one application per development agreement shall be considered.</p>	<p>The request is to extend the project construction commencement date by one year and the completion date by two years. This is the second time extension application but the first since this policy has been in effect.</p>

Dartmouth MPS – Implementation Policies	
Policy	Staff Comment
<p>Policy IP-5 It shall be the intention of City Council to require Development Agreements for apartment building development in R-3, R-4,</p>	<p>The approved development remains unchanged. Although policies that enabled the application have been amended, the community and surrounding context remain</p>

<p>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 & egress to the site, landscaping, amenity space, parking and location of site features such as refuse containers and fuel storage tanks for the building.</p> <p>In considering the approval of such Agreements, Council shall consider the following criteria:</p>	<p>unchanged. See previous Case 01230 for full analysis against these policies.</p>
<p>(a) adequacy of the exterior design, height, bulk and scale of the new apartment development with respect to its compatibility with the existing neighbourhood;</p>	
<p>(b) adequacy of controls placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of:</p> <ul style="list-style-type: none"> (i) the height, size, bulk, density, lot coverage, lot size and lot frontage of any proposed building; (ii) traffic generation, access to and egress from the site; and (iii) parking; 	
<p>(c) adequacy or proximity of schools, recreation areas and other community facilities;</p>	
<p>(d) adequacy of transportation networks in, adjacent to, and leading to the development;</p>	
<p>(e) 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;</p>	
<p>(f) that mature trees and other natural site features are preserved where possible;</p>	

(g) adequacy of buffering from abutting land uses;	
(h) the impacts of altering land levels as it relates to drainage, aesthetics and soil stability and slope treatment; and	
(i) the Land Use By-law amendment criteria as set out in Policy IP-1(c).	
Policy IP-1(c)	The approved development remains unchanged. Although policies that enabled the application have been amended, the community and surrounding context remain unchanged. See previous Case 01230 for full analysis against these policies.
(1) that the proposal is in conformance with the policies and intent of the Municipal Development Plan	
(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	
(3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries	
(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 (ii) the adequacy of sewer and water services and public utilities (iii) the adequacy and proximity of schools, recreation and other public facilities (iv) the adequacy of transportation networks in adjacent to or leading to the development (v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas	

<ul style="list-style-type: none"> (vi) preventing public access to the shorelines or the waterfront (vii) the presence of natural, historical features, buildings or sites (viii) create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized (ix) the detrimental economic or social effect that it may have on other areas of the City 	
<p>(5) that the proposal is not an obnoxious use</p>	
<p>(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 nearby land uses and public facilities. Such controls may relate to, but are not limited to, the following:</p> <ul style="list-style-type: none"> (i) type of use, density, and phasing (ii) emissions including air, water, noise (iii) traffic generation, access to and egress from the site, and parking (iv) open storage and landscaping (v) provisions for pedestrian movement and safety (vi) management of open space, parks, walkways (vii) drainage both natural and sub-surface and soil-stability (viii) performance bonds 	
<p>(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</p>	
<p>(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</p>	

<p>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</p>	
<p>(9) that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide:</p> <ul style="list-style-type: none">(i) Council with a clear indication of the nature of proposed development, and(ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community	
<p>(10) 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</p>	