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Item No. 13.1.4
Halifax and West Community Council
January 18, 2022

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: Original Signed

Kelly Denty, Executive Director of Planning and Development

DATE: January 5, 2022

SUBJECT: **Case 23936: Amending Development Agreement for 2858-2866 Gottingen Street and 5516-5518 Macara Street, Halifax**

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 Halifax and West Community Council:

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

BACKGROUND

Stephen Adams Consulting Services Ltd., on behalf of the property owners, is applying for non-substantive amendments to an existing development agreement for 2858-2866 Gottingen Street and 5516-5518 Macara Street, Halifax, to extend the date of commencement and the date of completion by two years.

Subject Site	Three properties: <ul style="list-style-type: none">- 2858-2860 Gottingen Street (PID 00127514)- 2866 Gottingen Street (PID 00127506)- 5516-5518 Macara Street (PID 00127498)
Location	Southwest corner of Gottingen and Macara Street on the Halifax Peninsula
Regional Plan Designation	US (Urban Settlement)
Community Plan Designation (Map 1)	2858-2866 Gottingen Street: COR (Corridor) and 5516-5518 Macara Street: ER (Established Residential) of the Regional Centre Secondary Municipal Planning Strategy
Zoning (Map 2)	2858-2866 Gottingen Street: COR (Corridor) and 5516-5518 Macara Street: ER-3 (Established Residential 3) of the Regional Centre Land Use By-law
Size of Site	Approximately 1,403 sq. m (15,102 sq. ft.)
Street Frontage	Approximately 30.2 m (10 ft.) on Gottingen Street and 45.5 m (149 ft.) on Macara Street
Current Land Use(s)	Two dwellings and a vacant commercial building – to be demolished
Surrounding Use(s)	Low and medium density residential to the west on Macara Street, four-storey office building to the north, Canadian Forces Base Stadacona to the east, and vacant lands to the south that are subject to a development agreement for an eight-storey mixed-use development.

Proposal Details

On May 30, 2017 Halifax and West Community Council approved an amendment to the Halifax Peninsula Land Use By-law (HPLUB) to apply Schedule Q to the subject site. This amendment enabled a development agreement process to consider a proposed mixed-use development. On October 10, 2017 Halifax and West Community Council approved a development agreement to permit an 8-storey residential building with ground floor commercial uses on the subject site.

The existing agreement required commencement of construction within five years of registration of the agreement at the Land Registration Office and completion of development within seven years from the registration date. Section 6.1 of the existing agreement identifies a change to the commencement and completion dates as non-substantive amendments. Section 7.3 states Council can consider an extension to the commencement date if the Municipality receives a written request from the developer at least 60 calendar days before the commencement deadline. An application to extend the existing dates was received more than 60 days before the deadline.

Enabling Policy and LUB Context

When the existing development agreement was approved in 2017, the site was designated Major Commercial under the Peninsula North Secondary Planning Strategy of the Halifax Municipal Planning Strategy (HMPS). The lands were zoned C-2 under the Halifax Peninsula (HPLUB).

The Regional Centre Plan 'Package A' was adopted on September 17, 2019, and at that time, 2858-2866 Gottingen Street was re-designated COR (Corridor) under the Regional Centre Secondary Municipal Planning Strategy (RCSMPS) and zoned COR (Corridor) under the Regional Centre Land Use By-law (RCLUB). On October 26, 2021, the Regional Centre Plan 'Package B' was adopted, and 5516-5518 Macara Street was re-designated ER (Established Residential) under the RCSMPS and zoned ER-3 (Established Residential 3) under the RCLUB.

When the RCSMPS was adopted, the policies that enabled the original development agreement were repealed. However, the RCSMPS provided specific 'transition' policies that enable non-substantive amendments to approved development agreements. Policy IM-33 enables applications for non-substantive amendments to existing development agreements to be considered under the policies at the time the agreement was approved. Policy IM-34 enables consideration of applications to extend project commencement and completion dates up to two years.

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

COMMUNITY ENGAGEMENT

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

DISCUSSION

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

Proposed Development Agreement

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

The proposed time extensions can be considered by Community Council as non-substantive amendments as provided for in Section 6.2 (h) and (i) in the existing development agreement. Section IM-33 of the RCSMPS enables the application to be considered against the enabling policies in effect at the time the original agreement was approved. These enabling policies - 2.3.1, 2.3.2, and 2.3.3 of Section XI of the HMPS – have been repealed, but Policy IM-33 of the RCSMPS enables this application to be considered against these policies. The proposal remains consistent with the enabling policies that were in effect at the time the original agreement was approved.

Timeframe for Agreement Execution

The COVID-19 pandemic has resulted in difficulties in having legal agreements signed by multiple parties in short periods of time. To recognize this difficulty these unusual circumstances 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 the proposal is reasonably consistent with the intent of the RCSMPS and with the HMPS policies that were in effect at the time of the approval of the existing development agreement. The proposed amendment is to extend the dates of commencement and completion of development. The architecture, siting, and use of the structure are unchanged from that which is set out in the existing development agreement. This is the first request to extend the commencement and completion dates. Therefore, staff recommend that the Halifax and West 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 2021-2022 operating budget for Planning and Development.

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 were identified.

ALTERNATIVES

1. Halifax and West 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. Halifax and West 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*.

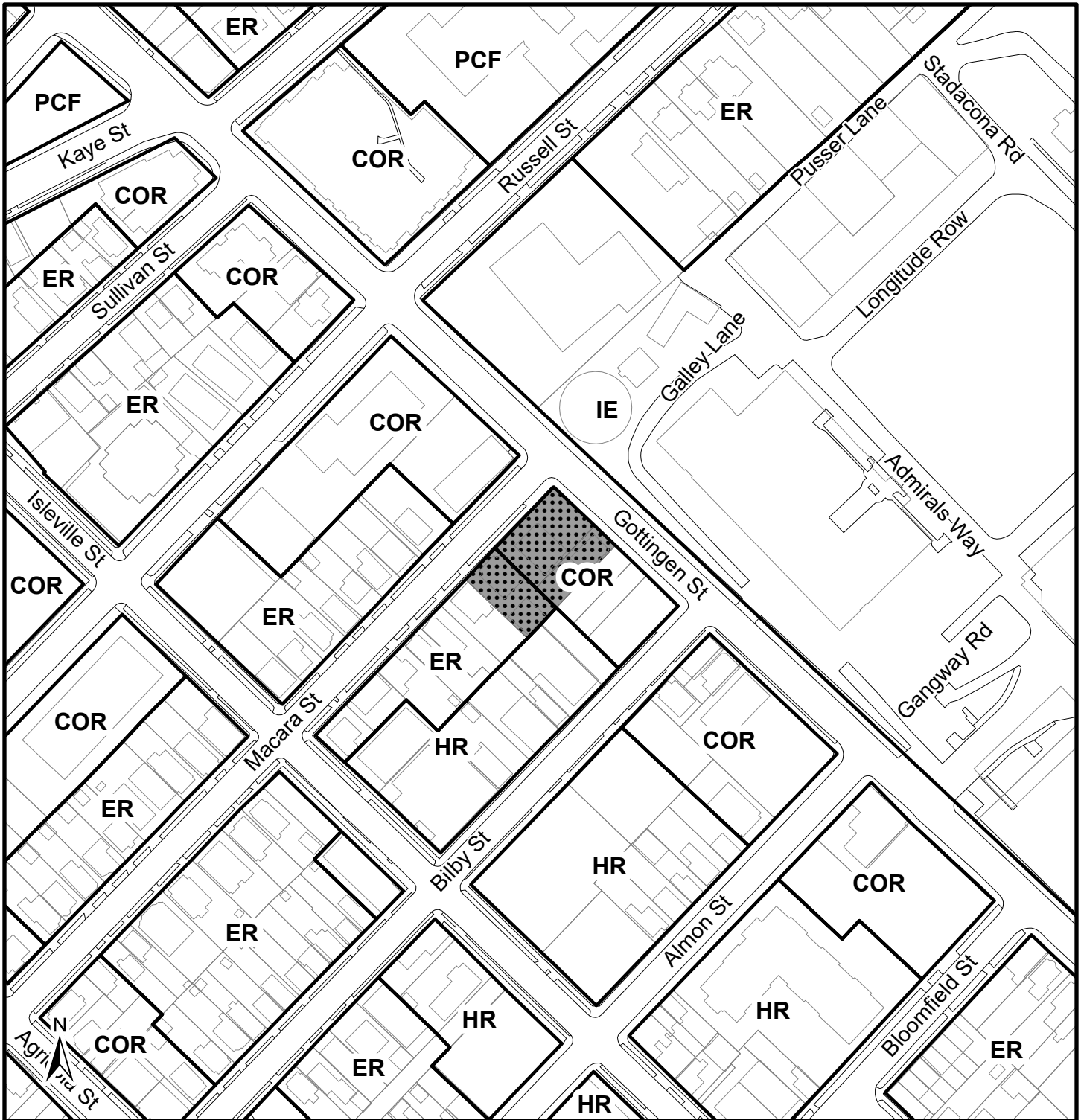
ATTACHMENTS

Map 1: Generalized Future Land Use
Map 2: Zoning

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

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

Report Prepared by: Meaghan Maund, Planner II, 902.233.0726



Map 1 - Generalized Future Land Use

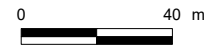
2858-2866 Gottingen Street,
5516-5518 Macara Street,
Halifax

 Subject Property

Designation Regional Centre

- CEN Centre
- COR Corridor
- ER Established Residential
- HR Higher-Order Residential
- IE Industrial Employment
- PCF Park and Community Facility

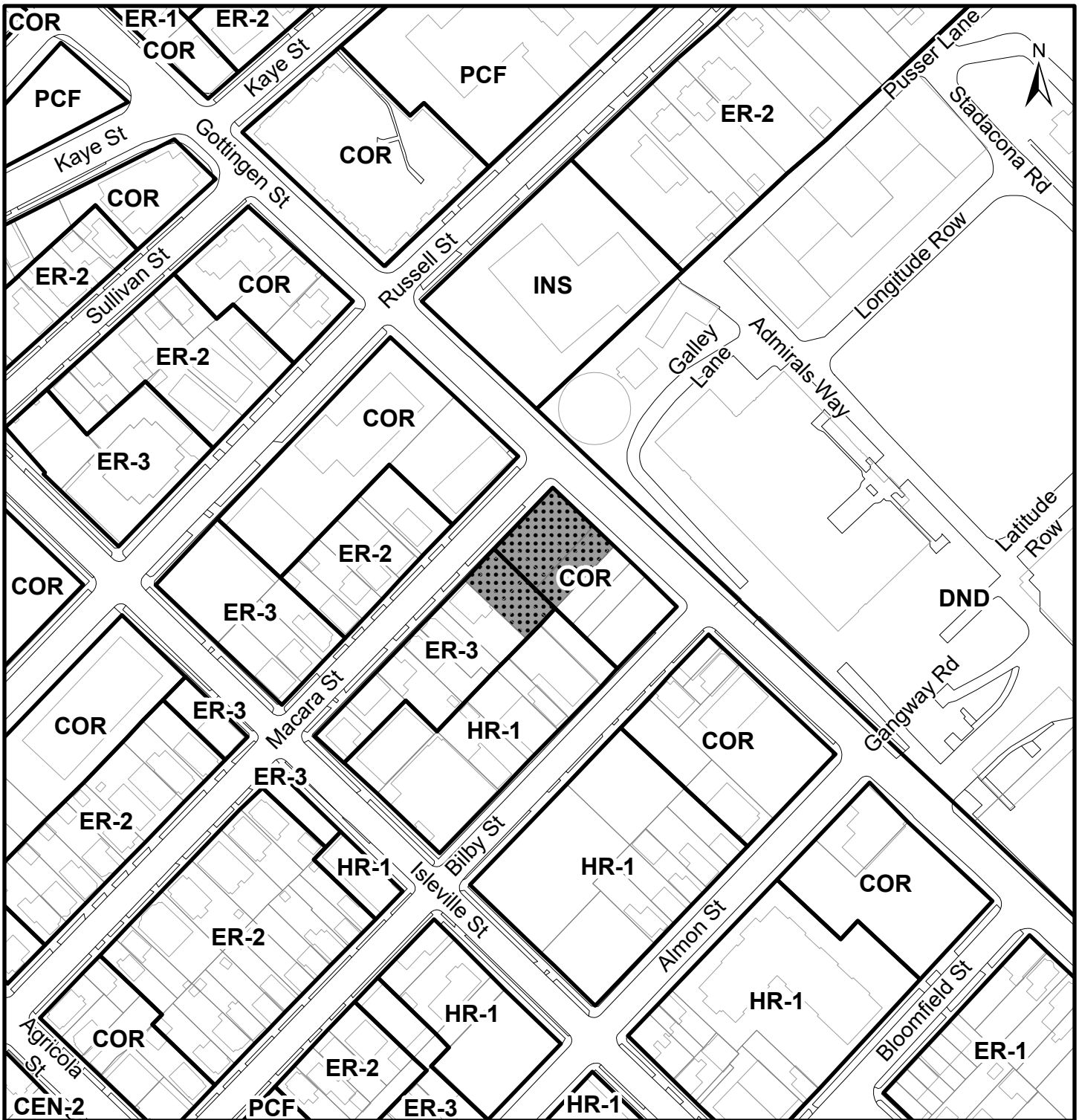
HALIFAX



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
Land Use By-Law Area



Map 2 - Zoning

2858-2866 Gottingen Street,
5516-5518 Macara Street,
Halifax

 Subject Property

Regional Centre
Land Use By-Law Area

Zone Regional Centre

- CEN-2 Centre-2
- COR Corridor
- DND Department of National Defense
- ER-1 Established Residential 1
- ER-2 Established Residential 2
- ER-3 Established Residential 3
- HR-1 Higher-Order Residential 1
- INS Institutional
- PCF Parks and Community Facilities

HALIFAX



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

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

Attachment A: Proposed Amending Development Agreement

THIS FIRST AMENDMEING AGREEMENT made this day of **[Insert Month]**, 20__,

BETWEEN:

[Insert Name of Corporation/Business LTD.]

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 2858, 2860, and 2866 Gottingen Street and 5516 and 5518 Macara Street and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Halifax and West Community Council approved an application to enter into a Development Agreement to allow for a mixed-use development on the Lands (municipal case 20149), which said Development Agreement was registered at the Land Registration Office on December 11, 2017 as Document Number 111867025 (hereinafter called the "Original Agreement");

AND WHEREAS the Developer has requested that further amendments to the Existing Agreement to allow for an extension to the commencement and completion of development dates on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies IM-33 and IM-34 of the Regional Centre Secondary Municipal Planning Strategy, Policies 2.3.1, 2.3.2, and 2.3.3 of Section XI of the Halifax Municipal Planning Strategy, Section 92 of the Halifax Peninsula Land Use By-law, and Section 6.1 of the Original Agreement;

AND WHEREAS the Halifax and West Community Council approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 23936;

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 First Amending Agreement, all other conditions and provisions of the Original Agreement as amended shall remain in effect.
 2. The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this First Amending Agreement, and the Original Agreement.

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

7.3.1 In the event that development on the Lands has not commenced within ~~five (5)~~ **seven (7)** years from **December 11, 2017** ~~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.

4. Section 7.5.1 of the Original Agreement shall be amended by deleting the text shown in strikeout, and inserting the text shown in bold as follows:

7.5.1 If the Developer fails to complete the development after ~~seven (7)~~ **nine (9)** years from **December 11, 2017** ~~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.

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

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Registered Owner Name)

Witness

Per: _____

HALIFAX REGIONAL MUNICIPALITY

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

Witness

Per: _____

MAYOR

Witness

Per: _____

MUNICIPAL CLERK

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

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

A Commissioner of the Supreme Court
of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this ____ day of _____, A.D. 20____, before me, personally came and appeared _____, the subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that Mike Savage, Mayor and 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 Policies from the Regional Centre SMPS and Halifax MPS

Review of Relevant Policies from the Regional Centre Secondary Municipal Planning Strategy	
Policy	Staff Comment
<p><i>Policy IM-33</i> <i>Applications for non-substantive amendments to existing development agreements shall be considered under the policies in effect at the time the agreement was approved. Applications for substantive amendments to existing development agreements may be considered under the policies in effect at the time the agreement was approved for the following matters:</i></p> <ul style="list-style-type: none"> <i>a) changes to architectural requirements;</i> <i>b) changes to landscaping requirements;</i> <i>c) changes to sign requirements;</i> <i>d) reduction in motor vehicle parking requirements; and</i> <i>e) changes to building lighting and illumination.</i> 	<p>This application is for a non-substantive amendment to an existing development agreement, therefore, it is eligible to be reviewed under the policies in effect at the time the original agreement was approved.</p> <p>Section 6.1 of the existing development agreement (Case 20149) lists items considered non-substantive amendments. Specifically, the following two items apply:</p> <p style="padding-left: 40px;"><i>Changes to the date of commencement of development specified in Section 7.3; and</i></p> <p style="padding-left: 40px;"><i>Changes to the date of completion of development specified in Section 7.5.</i></p> <p>No other changes to the existing development agreement are proposed. The original policy review for Case 20149 remains relevant and has been included below for reference.</p>
<p><i>Policy IM-34</i> <i>Applications for amendments to existing development agreements to extend the project commencement and completion dates shall only be considered by Council if:</i></p> <ul style="list-style-type: none"> <i>a) the project commencement date is proposed to increase by no more than two years;</i> <i>b) the project completion dates proposed to increase by no more than two years; and</i> <i>c) there is only one application per development agreement to be considered.</i> 	<p>As per Section 7.3 of the existing agreement, development is to commence within five (5) years from the date of registration. The requested amending agreement would give the developer two years from the date of registration of the original agreement (December 11, 2017) to commence construction, which would be December 11, 2024.</p> <p>As per Section 7.4 of the existing agreement, development must be completed within seven (7) years from the date of registration, which would be December 11, 2026.</p> <p>This is the first and only application to extend the commencement and completion dates.</p>

Review of Relevant Policies from the Halifax Municipal Planning Strategy in Effect at the Time the Original Development Agreement was Approved by Council

Note: This text has been copied directly from the Staff Report for Case 20149. Since no changes have been proposed to the design of the building, the original review is still relevant.

Section XI (Peninsula North Secondary Planning Strategy)

Policy	Staff Comment
<p><i>Policy 2.3.1 In order to promote investment in commercial and residential redevelopment and to prevent conflict between new and existing uses the city may, through the land use by-law, identify areas that provide an opportunity for and will benefit from comprehensive site planning.</i></p>	<p>The surrounding neighbourhood consists of a mixture of uses including residential, commercial, and institutional of varying intensities. There is an opportunity for comprehensive site planning by introducing a mixed use project to the site, as well as built form and design requirements, to ensure a design that is suitable and compatible with the area.</p> <p>Schedule 'Q' is currently applied to a large area of Peninsula North which is designated Major Commercial. Therefore, the proposal represents a small expansion of the Schedule 'Q' area.</p> <p>The development agreement process can alleviate potential land use conflicts through mitigation measures implemented by land use, design, and built form requirements.</p>
<p><i>Policy 2.3.2 In those areas identified in the land use by-law pursuant to Policy 2.3.1 all residential and mixed residential-commercial development over four units shall be by agreement.</i></p>	<p>Contingent upon approval of the LUB amendment to apply as Schedule 'Q', Council may consider the proposed development agreement.</p> <p>The proposal is for an 8-storey residential building containing ground floor commercial uses. The proposed development presents an appropriate and beneficial opportunity for comprehensive site planning.</p>
<p><i>Policy 2.3.3 In considering agreements pursuant to Policy 2.3.2, Council shall consider the following:</i></p> <p><i>(i) the relationship of new development to adjacent properties and uses; and, the mitigation of impacts on the amenity, convenience and development potential of</i></p>	<p>The immediate neighbourhood contains a mix of land use (see Staff Report).</p> <p>Substantial building heights and massing are achievable through the as-of-right permitting process in the major commercial portion of this area (C-2 Zone). However, the proposed building's height and mass is less</p>

<p><i>adjacent properties through effective urban design and landscape treatment;</i></p>	<p>than that which could be achieved in an as-of-right commercial situation.</p> <p>An at-grade setback and substantial stepback above the 1st floor is provided in order to mitigate impacts on an abutting single unit dwelling. Effective urban design treatment is created by a two storey streetwall along Gottingen Street and much of Macara Street, while upper floors are stepped back from internal property lines.</p> <p>To minimize potential land use conflicts, the proposed development agreement restricts land uses on the ground floor to select minor commercial uses, and a lounge in association with a restaurant. Hours of operation for a restaurant/lounge have also been restricted to midnight. The nature of the building's noncombustible construction materials will also assist with noise attenuation. Signs are limited to fascia signs at select locations, with additional limitations on size.</p>
<p><i>(ii) the appropriate integration of the development into the traditional grid street system of the Peninsula;</i></p>	<p>The site fronts Gottingen Street and Macara Street. The proposed development integrates with the existing street grid.</p>
<p><i>(iii) the design and layout of the development should encourage vehicular traffic to use Principal Streets and discourage traffic from infiltrating through existing neighbourhoods;</i></p>	<p>The entrance to the proposed parking garage is located off Macara Street, which is not a Principal Street while Gottingen Street is a Principal Street. However, Bylaw S-300 (The Streets Bylaw) discourages driveway access off a principal street where access off a secondary street is possible.</p> <p>A Traffic Impact Statement, prepared by the applicant's consultant, was reviewed by HRM and was deemed acceptable. The Study concludes that there are no issues with the proposed development on the local street network. All parking is to be located within the building.</p>
<p><i>(iv) the creation of high quality design detail at street level through attention to such matters as landscaping, signs, building entrances, and vehicle layby areas;</i></p>	<p>The design of the buildings at street level provides a fine grained pedestrian-oriented frontage through the use of small storefronts on Gottingen Street and individual townhouses with private entrances on Macara Street. The proposed agreement</p>

	requires adherence to detailed landscaping requirements, which includes the provision of new street trees along each frontage. Signs are limited to fascia signs at select locations, with additional limitations on size.
<i>(v) the provision of high quality open space and leisure areas of a size and type adequate for the resident population;</i>	Open space and leisure areas consist of the common rooftop landscaped area, landscaped terraces, balconies, and common indoor amenity space. These spaces/areas will be adequate for the resident population. Provisions in the agreement ensure the use of high quality materials and landscape design.
<i>(vi) residential and commercial densities consistent with municipal services;</i>	With respect to municipal wastewater services, Halifax Water has reviewed the proposal, with no concerns identified at this time. Halifax Water requires evidence of wastewater capacity at the time of connection (at the building permit stage).
<i>(vii) encouraging high quality exterior construction materials such as masonry; and</i>	Proposed exterior materials are of high quality and include brick, stone, glass, composite panels, and metal/glass railings.
<i>(viii) other relevant land use considerations which are based on the policy guidance of this Section.</i>	None identified.