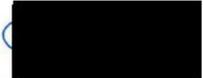


# HALIFAX

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

**Item No. 9.1.2**  
**Heritage Advisory Committee**  
**July 27, 2022**

**TO:** Chair and Members of the Heritage Advisory Committee

**SUBMITTED BY:**  (Original Signed)

\_\_\_\_\_  
Jacques Dubé, Chief Administrative Officer

**DATE:** June 20, 2022

**SUBJECT:** **Case 22728: Development Agreement for 5241-5247 South Street (Stairs House), 5230 Harvey Street, and 5240-5246 Harvey Street, Halifax for a multi-unit dwelling and restoration of a registered heritage property**

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## **ORIGIN**

An application by WSP Canada, Inc. for a development agreement on the properties located at 5241-5247 South Street (Stairs House), 5230 Harvey Street, and 5240-5242-5244-5246 Harvey Street, Halifax, to allow an eight storey (plus penthouse) multi-unit dwelling as an addition to a Registered Heritage Building.

## **LEGISLATIVE AUTHORITY**

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

## **RECOMMENDATION**

It is recommended that the Heritage Advisory Committee recommend that the Halifax & West Community Council (HWCC):

1. Give notice of motion to consider the proposed development agreement, as set out in Attachment A, to enable an eight-storey plus penthouse multi-unit residential building as an addition to the Registered Heritage Building located at 5241-5247 South 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; 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, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND**

WSP Canada Inc., on behalf of the property owner Summer Wind Holdings, has applied to enter into a development agreement to construct an eight storey plus penthouse multi-unit residential building on the registered heritage property at 5241 South Street, Halifax. If approved, the heritage building will be restored and preserved on site. The property is currently subject to an existing development agreement to permit a smaller multi-unit dwelling. This agreement will be discharged by the Chief Administrative Officer in accordance with the HRM Charter prior to approval of the new agreement.

This application is being considered under Policy CHR-7 of the Regional Centre Secondary Municipal Planning Strategy (SMPS) which allows uses other than those permitted under the existing land use by-law specifically for registered heritage properties to encourage the retention, conservation, and viability of registered heritage properties.

<b>Subject Site</b>	5241 South Street, Halifax (registered heritage property) 5243-5247 South Street, 5230 Harvey Street, 5240-5246 Harvey Street, Halifax (additional properties)
<b>Location (Map 1)</b>	The subject properties are located in South End Halifax with frontage on South Street and Harvey Street near the intersection with Barrington Street.
<b>Regional Plan Designation</b>	Urban Settlement
<b>Regional Centre SMPS Designation (Map 2)</b>	Higher-Order Residential
<b>Zoning (Map 3)</b>	Higher-Order Residential 1 (HR-1)
<b>Size of Site</b>	2,185 sqm (23,519 sf)
<b>Street Frontage</b>	South Street - 30 m (100 ft) Harvey Street - 30 m (100 ft)
<b>Current Land Use(s)</b>	Four residential buildings
<b>Surrounding Use(s)</b>	A variety of residential uses, ranging from multi-unit to single-unit dwellings.

## **Proposal Details**

In the proposal, the heritage building at 5241 South Street (known as Stairs House) will be rehabilitated and restored and the additional buildings on the site (located on civic addresses 5243-5247 South Street, 5230 Harvey Street, 5240-5246 Harvey Street, Halifax) will be demolished, and the lots will be consolidated to make room for an eight storey plus penthouse building with a rear connection to the heritage building. The heritage building will be used for residential purposes and the primary entrance for the new multi-unit building (the modern addition) will be located on Harvey Street.

The modern addition will be set back at least 3.5 m from the rear of Stairs House and the integrated multi-unit development will contain a maximum of 112 dwelling units. The proposal includes underground parking beneath the modern addition, which will be accessed from Harvey Street.

Restoration of the heritage building will include repairing and renovating the exterior including cladding, roof, windows, chimneys, and the reinstatement of Character Defining Elements that were removed in the past, including the front and eastern porches. It will also include upgrades to meet Building Code requirements for constructing a new addition.

## **Heritage Planning**

Stairs House, is listed on the Registry of Heritage Property for the Halifax Regional Municipality and as such, is protected under the *Heritage Property Act of Nova Scotia*. Stairs House is a strong example of early 19<sup>th</sup> century residential development in South End Halifax. Having been built in 1838, Stairs House is considered one of the older existing buildings in the South End and is also notable for its one-and-a-half storey cottage form and Georgian architectural style.

Staff processed a concurrent application for a substantial alteration to the registered municipal heritage property. In accordance with the *Heritage Property Act*, this application (Case H00483<sup>1</sup>) was reviewed by the Heritage Advisory Committee (HAC) and approved by Regional Council on November 17, 2020. Regional Council approved the following alterations to the registered heritage property:

- remove the existing rear addition (c. 1863), reinstate the dwelling's original two-storey height, and construct a new eight-storey addition to the building's rear elevation;
- partially restore the wooden hipped roof and trim over the arched window on the western elevation;
- restore the original wooden hipped roof and one of two original dormers on the northeast elevation;
- reinstate two original chimneys above the roofline, provided that stable bases remain inside;
- reinstate the original front porch, including the installment of classical detailing, curved stairs, iron railings, and an eastern door; and
- remove the one-storey addition on the eastern elevation and reinstate the original open-porch.

The proposed development agreement requires ongoing maintenance in accordance with the *Standards and Guidelines for the Conservation of Historic Places in Canada, 2<sup>nd</sup> Ed.* for the restored heritage building to preserve its heritage value and integrity.

### **Enabling Policy and LUB Content**

This proposal is being considered under Policy CHR-7 of the Regional Centre SMPS. This policy allows owners of registered heritage properties to apply for a development agreement to permit a development or use not otherwise permitted by the underlying zone. In this case, the proposed multi-unit residential building is of greater height and density than would be permitted under the existing zoning.

The subject site is designated Higher-Order Residential. This designation encourages a mix of residential uses, including low to tall mid-rise buildings, in addition to a limited range of commercial and institutional uses. Buildings are typically limited to between 11-14 metres in height. The existing heritage building on the registered heritage property is a converted multi-unit dwelling, as are the three additional buildings on the subject site.

The property is currently zoned Higher-Order Residential 1 (HR-1) under the Regional Centre LUB, which permits the construction of multi-unit buildings as-of-right, provided that the use, lot, built form and siting requirements are met. The HR-1 Zone does not require parking for the first 12 units, and beyond 12 units requires a minimum of 1 space for every additional 3 units. The amount of required parking for the proposed 112 units under the Regional Centre LUB would be 34 spaces.

## **DISCUSSION**

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

- proposed use and number of units in the integrated multi-unit development;

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<sup>1</sup> <https://www.halifax.ca/sites/default/files/documents/city-hall/regional-council/201117rc-mins.pdf>

- requirements for design and materiality of the proposed new building and its location on the site;
- requirements for the restoration of the heritage building; and
- requirements for landscaping, lighting, parking, signage, environmental protections, solid waste, and maintenance of the site, including the heritage building.

The proposed development agreement also identifies amendments that would be considered non-substantive and may be amended by decision of the Development Officer. In this case, non-substantive amendments include:

- changes to the uses permitted provided the proposed use is permitted in the underlying zone;
- changes to Schedules B-D, inclusive, provided the changes do not conflict with the text of the development agreement; and,
- changes to the parking, amenity space, landscaping, and sign requirements of the development agreement.

### **Land Use Impacts**

The Regional Centre SMPS recognizes the important role that heritage buildings and sites play in defining Halifax's character and identity. To help support the retention, preservation and rehabilitation of heritage buildings in the Regional Centre, Policy CHR-7 of the SMPS allows for the consideration of land uses and densities which are not permitted by the underlying zone for municipally registered heritage properties, subject to certain criteria.

One of the criteria is that any development does not unduly disrupt adjacent uses, especially residential uses. The subject property is in an area with various residential designations, including Higher-Order Residential and Established Residential, along with the mixed-use Downtown Designation under the Regional Centre SMPS. The neighbourhood around the subject site contains several comparable multi-unit residential buildings of similar scales, including the multi-unit building abutting the subject property on South Street and the building at the corner of South and Barrington Streets. The proposal maintains the residential nature of this neighbourhood and the form is consistent with the policies for the Higher-Order Designation. Additionally, the integrated multi-unit development has been designed to be compatible with the existing neighbourhood through materiality and rhythm, while reducing the overall impact of the modern addition on adjacent land uses through:

- substantial setbacks from both South Street and Harvey Street;
- setbacks and stepbacks from adjacent properties in the interior lot lines;
- stepbacks above the streetwall and above the sixth storey;
- locating the primary mass of the building in the mid-block portion of the site; and,
- maintaining the setback of Stairs House on South Street while introducing an increased setback on Harvey Street in line with adjacent buildings to create additional open space.

Comments received from members of the public expressed concerns including:

- increased traffic congestion and decreased availability of on-street parking;
- the impact of the height of the new building on views and sunlight for existing residents; and
- the impact of construction on noise levels and traffic/pedestrian circulation.

While the applicant has indicated an intent to provide underground parking for future residents, the proposed Development Agreement does not require on-site parking. The policies of the Regional Centre SMPS and the Integrated Mobility Plan encourage the use of active transportation and transit, specifically in the downtown area, and aim to reduce the reliance on personal vehicles. Individuals living in the proposed multi-unit dwelling are not anticipated to require a personal vehicle to meet their daily needs as there are several amenities, including grocery stores, restaurants, shops, schools, and parks, within walking distance of the subject site.

Consideration was given to the impact on existing views and sunlight. The Agreement requires setbacks and stepbacks which are anticipated to reduce the shadowing impact of the building on the pedestrian realm. The subject site is located close to the downtown area, where new development is permitted and

encouraged by the Regional Centre SMPS and will meet the requirements for the Citadel Hill ramparts and view planes policies in the Regional Centre SMPS. The applicant will be required to meet all relevant policies pertaining to construction noise and circulation during the construction of the development.

### **Relevant Regional Plan Policies**

Policy CH-16 of the Regional Municipal Planning Strategy requires that applications for development agreements consider a range of design solutions and architectural expressions that are compatible with the abutting municipally registered heritage properties. Attachment C contains an evaluation of the proposed development agreement in relation to the Policy CH-16, which includes the following:

- The proposed design sets the modern addition a minimum of 3.5 m back from the rear of the heritage building, maintaining the existing streetwall on South Street;
- the proposed design generally maintains the established cornice line heights and front yard setbacks in the existing heritage context of Harvey Street;
- the proposed modern addition utilizes understated architectural detail to allow Stairs House and other heritage buildings in the vicinity to be more prominent in the streetscape; and
- the new building will include the use of historic materials, including brick and masonry, and maintains historic window proportions to complement the historic buildings in the neighbourhood.

### **Relevant Policies of the Regional Centre SMPS**

Section 2.7 of the Regional Centre SMPS includes objectives and policies which encourage:

- a variety of housing choices;
- a built form which reflects and integrates the surrounding context;
- the allowance of integrated commercial uses that support complete communities; and
- improved access to the pedestrian, active transportation, and transit networks.

The subject site is located within an established residential neighbourhood and an existing complete community with many amenities within walking distance. The proposed modern addition has been designed to minimize the impact on adjacent residential uses and to be compatible with the character of the registered heritage property and within the historic context of South, Harvey, and Barrington Streets. The streetline setback on Harvey Street is in keeping with nearby setbacks in the historic context of the street and will include landscaping and grade-oriented residential units. The site offers direct access to the transit network on South and Barrington Streets and is well-situated within established pedestrian and active transportation networks. Staff advise that the development is not anticipated to have negative impacts on adjacent uses, including traffic generation, land uses, parks, community facilities, and water and stormwater services.

Under Policy CHR-7 of the Regional Centre SMPS, any development approved must maintain the heritage value of any registered heritage property of which it is part. As discussed previously, a substantial alteration application was reviewed by the Heritage Advisory Committee and approved by Regional Council in accordance with the *Heritage Property Act*, for the purpose of restoring the heritage building to its original state. The proposal includes the restoration of Stairs House, including the restoration of several character defining elements, and the ongoing maintenance of the building. The three additional older buildings on the subject site were reviewed for their contributions to neighbourhood character. One building (5240-5246 Harvey Street) was identified as having heritage value within the context of the neighbourhood, however, it was determined by staff that the front portion of the building is located within the HRM right-of-way, and therefore, the restoration and maintenance of the building within the context of a new development would be prohibitive. Therefore, the proposed development agreement will permit the demolition of the three additional existing buildings on the site.

### **Halifax Peninsula Planning Advisory Committee**

On July 13, 2020, the Halifax Peninsula Planning Advisory Committee (HPPAC) reviewed the application and recommended that it be approved<sup>2</sup> with consideration given to increasing the setback on Harvey Street, increasing the setback along Harvey Street, and increasing the number of two- or more-bedroom units. As a result, the applicant increased the setback from the lot line on Harvey Street to maintain the setback established by existing adjacent properties. The applicant elected to maintain the unit type distribution and the setback on Harvey Street above the streetwall, given that both were in keeping with the requirements of the underlying zone in the Regional Centre LUB.

### **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 SMPS. The main intent of Policy CHR-7 is to incentivize the retention and restoration of heritage properties through additional land use flexibility beyond the permitted uses and densities in the underlying zone. In this case, the proposed development represents infill development in a residential neighbourhood that will be compatible with the heritage character of the subject site and other heritage assets in the area. Therefore, staff recommend that the Heritage Advisory Committee recommend that Halifax and West Community Council approve the proposed development agreement as contained in Attachment A.

### **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 2022-2023 budget and with existing resources.

### **RISK CONSIDERATION**

There are no significant risks associated with the recommendations contained within this report. This application is being considered under existing SMPS policies. Community Council has the discretion to make decisions that are consistent with the SMPS, and such decisions may be appealed to the NS 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.

### **COMMUNITY ENGAGEMENT**

The community engagement process for this application is consistent with the intent of the SMPS and 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 which contained a questionnaire requesting feedback on the development proposal. Attachment B contains a summary of the feedback received from members of the public. Feedback was received on five broad topics, including building design, land use impacts, context sensitivity, history, and other. Generally supportive public comments included:

- the registered heritage building will be preserved as part of the proposal;
- the new building fits the historic character of the neighbourhood; and

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<sup>2</sup><https://www.halifax.ca/sites/default/files/documents/city-hall/boards-committees-commissions/200713hppacspmins.pdf>

- the new façade on Harvey Street is in keeping with setbacks and rhythm in the area.

The public comments received also expressed concerns about the development proposal:

- the impact of the multi-unit building on traffic congestion and on-street parking;
- the impact of the height of the new building on views and sunlight for existing residents and overall negative effect on neighbourhood character; and
- the impact of construction on noise levels, traffic and pedestrian circulation, as well as emergency vehicle access.

Halifax and West Community Council must hold a public hearing before it can consider approval of the proposed development agreement. If Community Council decides to proceed with a public hearing, staff will publish a newspaper advertisement for the hearing and notify property owners within the notification area (as shown on Map 3) about the hearing by regular mail.

### **ENVIRONMENTAL IMPLICATIONS**

No environmental implications have been identified.

### **ALTERNATIVES**

1. The Heritage Advisory Committee may recommend that the Halifax and West Community Council choose to approve the proposed development agreement subject to modifications. Such modifications may require further negotiation with the applicant.
2. The Heritage Advisory Committee may recommend that the Halifax and West Community Council refuse the proposed development agreement.

### **ATTACHMENTS**

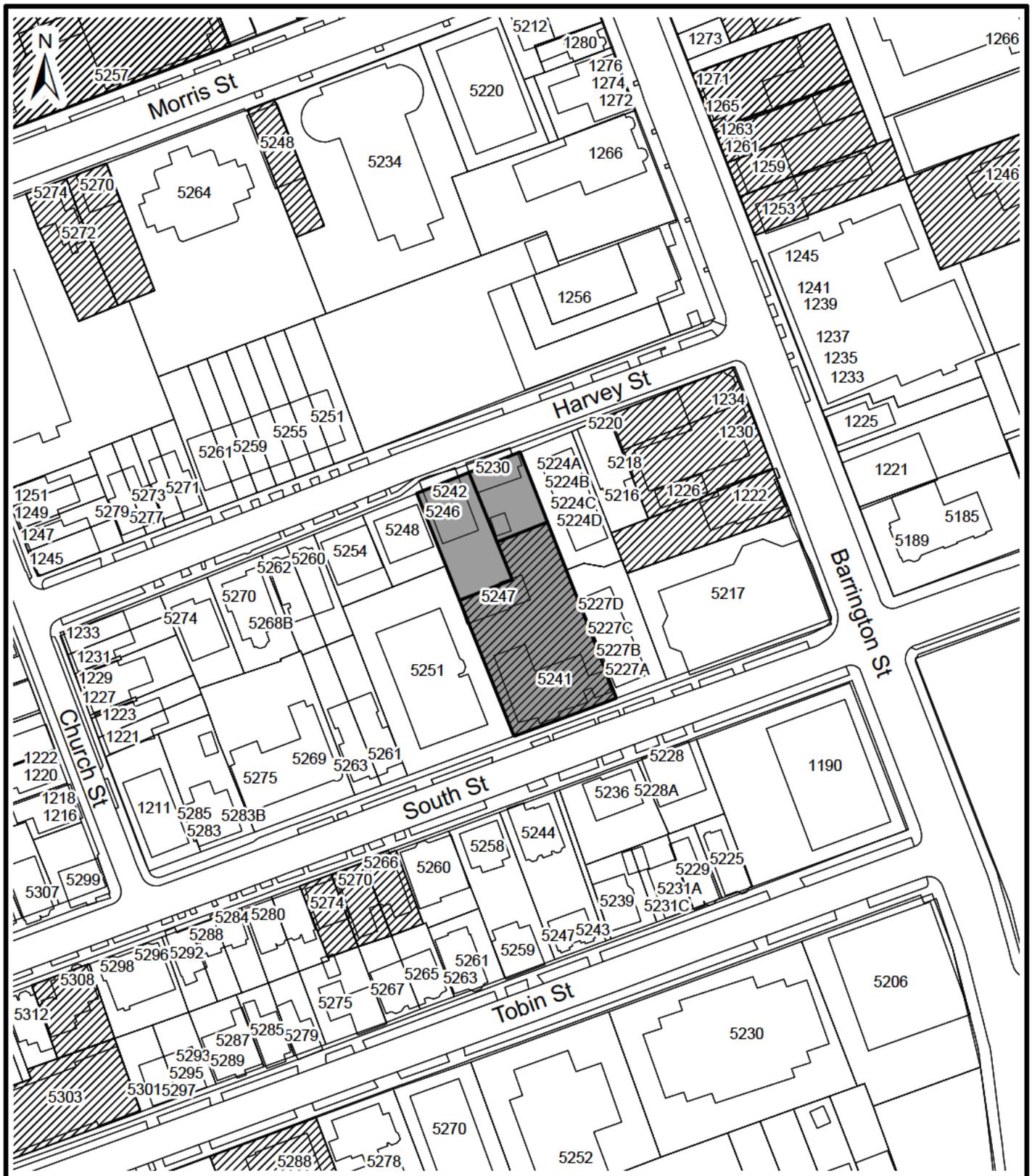
Map 1:	Location Map
Map 2:	Generalized Future Land Use
Map 3:	Zoning and Notification
Attachment A:	Proposed Development Agreement
Attachment B:	Engagement Mailout Summary
Attachment C:	Review of Relevant Municipal Policies

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

Report Prepared by: Aaron Murnaghan, Principal Heritage Planner, 902.292.2470

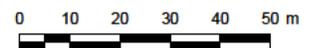
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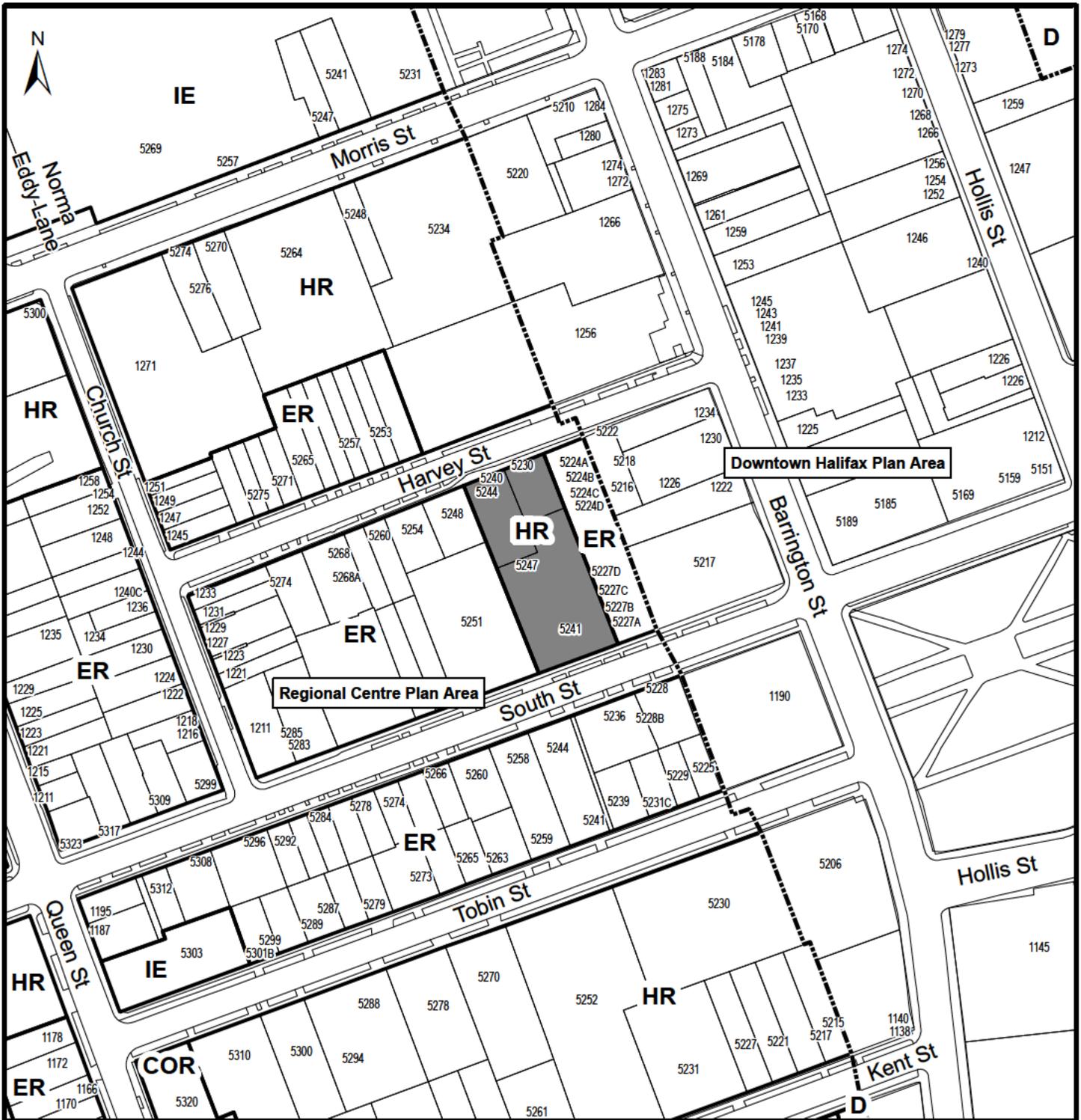
**Map 1 - Location Map**

5241-5247 South Street, 5230 Harvey Street  
and 5240-5246 Harvey St  
Halifax

- Registered Heritage Property
- Subject Properties



HRM does not guarantee the accuracy of any representation on this plan.



**Map 2 - Generalized Future Land Use**

5241-5247 South Street, 5230 Harvey Street  
and 5240-5246 Harvey St  
Halifax

-  Subject Property
-  Regional Centre Package A  
Land Use By-Law Area

**Designation - Regional Centre**

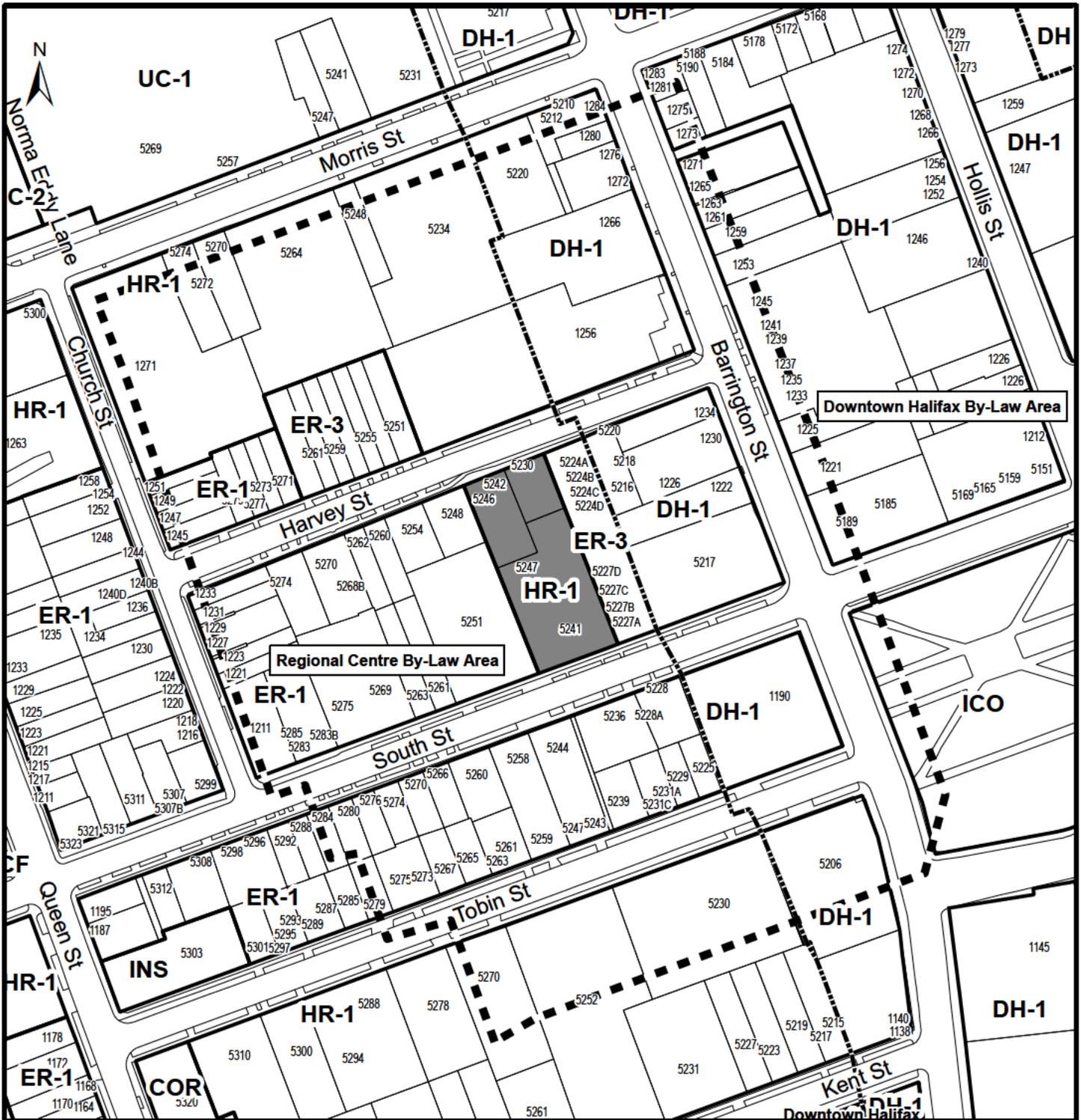
- COR Corridor
- HR Higher-Order Residential
- ER Established Residential



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 Plan Area



**Map 3 - Zoning and Notification**  
 5241-5247 South Street, 5230 Harvey Street  
 and 5240-5246 Harvey St  
 Halifax

- Subject Properties
- Area of Notification

- Zone - Downtown Halifax**
- DH-1 Downtown Halifax
  - ICO Institutional, Cultural and Open Space
- Zone - Regional Centre**
- COR Corridor
  - HR-1 Higher-Order Residential 1
  - ER-1 Established Residential 1
  - ER-3 Established Residential 3
  - UC-1 University and College 1



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.

Regional Centre Land Use By-Law Area

**Attachment A: Proposed Development Agreement**

THIS AGREEMENT made this      day of **[Insert Month]**, 20\_\_,

BETWEEN:

**[INSERT PROPERTY OWNER NAME]**

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 5241-5247 South Street, 5230 Harvey Street, and 5240-5242-5244-5246 Harvey Street, Halifax, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

**AND WHEREAS** a portion of the Lands (i.e., 5241-5247 South Street, Halifax) have been registered as a municipal heritage property pursuant to the provisions of the Municipality's Heritage Property By-law (By-law H-200) as amended from time to time;

**AND WHEREAS** the Municipality entered into a development agreement with Simon Spatz to allow a third-storey addition and conversion of the existing building to 9 units on a portion of the Lands (i.e., 5241-5247 South Street, Halifax) on June 30, 1982, and which said development agreement was registered at the Registry of Deeds in Halifax on July 6, 1982 in Book No. 3590 at pages 572-575 as Document #27159 (hereinafter called the "Existing Agreement"), and which applies to a portion of the Lands;

**AND WHEREAS** the Developer has requested that the Municipality discharge the Existing Agreement and enter into a new Development Agreement to allow for an eight-storey (plus penthouse) multi-unit dwelling on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy 5.9 of the Regional Centre Municipal Secondary Planning Strategy and Section 241 of the Regional Centre Land Use By-law;

**AND WHEREAS** the Halifax & West Community Council approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 22728;

**AND WHEREAS** the Developer has requested approval by the Municipality to undertake substantive alterations to the Lands;

**AND WHEREAS** the Regional Council for the Municipality granted the substantial alteration request under the *Heritage Property Act of Nova Scotia* at a meeting held on November 17, 2020;

**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**

- 1.1.1 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**

- 1.2.1 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 amended from time to time.
- 1.2.2 Variances to the requirements of the applicable Land Use By-law shall be permitted in accordance with the *Halifax Regional Municipality Charter* on the Lands as shown on Schedule B.

### **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/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**

- 1.5.1 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**

- 1.6.1 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**

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

### **2.2 Definitions Specific to this Agreement**

2.2.1 The following words used in this Agreement shall be defined as follows:

- (a) "Character Defining Elements" mean the materials, forms, location, spatial configurations, uses and cultural associations or meanings that contribute to heritage value and that shall be sustained in order to preserve heritage value;
- (b) "Integrated Multi-Unit Dwelling" means a new multi-unit dwelling which is physically integrated with Stairs House.
- (c) "Modern Addition" means the modern construction that will be attached to Stairs House's rear (northern) wall pursuant to this Agreement;
- (d) "Stairs House" means the existing municipally registered heritage building located at 5241 South Street, Halifax, which is located on a portion of the Lands; and
- (e) "Substantial Alteration" means any action that affects or alters the character-defining elements of a property.

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

### **3.1 Schedules**

3.1.1 The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement **and filed in the Halifax Regional Municipality as Case Number 22728:**

Schedule A	Legal Description of the Lands
Schedule B	Site Plan
Schedule C	Preliminary Landscape Plan
Schedule D	Elevation Drawings
Schedule E	Stairs House Restoration Drawings

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

3.2.1 Prior to the issuance of any site work on the Lands, the Developer shall provide the documents required under Section 5.2 of this Agreement to the Development Officer, unless otherwise permitted by the Development Officer.

3.2.2 Prior to the issuance of a Development Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:

- (a) An approved Plan of Survey showing the consolidation of the Lands in accordance with the Regional Subdivision By-law;
- (b) An Outdoor Lighting Plan in accordance with the requirements of Section 3.10 of this Agreement;
- (c) A Final Landscape Plan prepared by a Landscape Architect in accordance with Section 3.11 of this Agreement;

- (d) Written confirmation from a Structural Engineer indicating that the building is able to support any additional weight caused by rooftop amenity areas, rooftop landscaping, and required drainage;
  - (e) A pedestrian wind study prepared by a Professional Engineer in accordance with the Regional Centre Land Use By-law, and acceptable to the Development Officer;
  - (f) A site servicing plan prepared by a Professional Engineer and acceptable to the Development Engineer;
  - (g) Written confirmation from a Licensed Professional Land Surveyor confirming that the building complies with the Regional Centre View Plane and Rampart requirements; and
  - (h) A public benefit in accordance with the Regional Centre Land Use By-law.
- 3.2.3 Prior to the issuance of the first Occupancy Permit for the integrated multi-unit dwelling, the Developer shall provide the following to the Development Officer:
- (a) Written confirmation from a Licensed Landscape Architect, which the Development Officer may accept as sufficient record of compliance with the Final Landscape Plan;
  - (b) Written confirmation from HRM's Heritage Planner indicating that the Stairs House preservation and restoration work is complete and acceptable; and,
  - (c) Written confirmation from HRM's Heritage Planner indicating that the stone wall preservation and restoration work is complete and acceptable.
- 3.2.4 Notwithstanding any other provision of this Agreement, 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 are the following:
- (a) An Integrated Multi-Unit Dwelling, up to a maximum of 112 dwelling units, as generally shown on the Schedules; and
  - (b) Any use accessory to the foregoing.
- 3.3.2 At least 30% of all dwelling units, rounded up to the nearest whole number, shall contain two-or-more bedrooms.
- 3.3.3 Amenity space shall be provided in accordance with Section 3.9.

### **3.4 Heritage**

- 3.4.1 The Developer agrees not to alter the exterior appearance of or demolish Stairs House as provided for under Sections 16, 17 and 18 of the *Heritage Property Act*, in the event that an application for a deregistration, substantial alteration or demolition is denied by the Municipality.
- 3.4.2 All Character Defining Elements shall be maintained and/or repaired, but not removed without approval from the Development Officer, in consultation with a Heritage Planner. The Character Defining Elements of the Lands and Stairs House include, but are not limited to:
- (a) Original Georgian cottage structure;
  - (b) Symmetrical façade with five bays, central porch entryway, and 6/6 windows;
  - (c) 1.5-storey profile and sloped gable roof on the southern (front) portion of the dwelling;

- (d) Central pediment gable with Palladian window;
  - (e) Two uniform Scottish dormers;
  - (f) Round headed window on western wall;
  - (g) Second-storey bay window on the western wall;
  - (h) Ironstone foundation with plaster parging and faux stonework coursing;
  - (i) Brick chimney with four fumes; and
  - (j) Wood shingle siding.
- 3.4.3 Missing Character Defining Elements, such as the original front and eastern porches, shall be restored as shown on Schedule E using historical documentation and traditional materials.
- 3.4.4 Any non-substantial alteration to the Lands and Stairs House, in accordance with the requirements of the *Heritage Property Act* and By-law H-200, shall be submitted to the Development Officer for review and approval in consultation with a Heritage Planner.
- 3.4.5 Prior to the issuance of a building permit, the developer shall submit a construction management plan prepared by a qualified heritage professional outlining the process for the documentation, disassembly, reinstatement and maintenance of the stone wall along the northern portion of the western lot line in keeping with the *Standards and Guidelines for the Conservation of Historic Places in Canada, 2nd ed.*
- 3.4.6 Notwithstanding Section 3.2.3, where the weather and time of year do not allow the completion of the outstanding works associated with restoration of the stone wall prior to the issuance of the Occupancy Permit, the Developer may supply a security deposit in the amount of 110 percent of the estimated cost to complete the wall restoration. The cost estimate is to be prepared by a qualified archaeology/restoration professional. 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 stone wall restoration within twelve months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the restoration as set out in Section 3.4.5 of this 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.
- 3.4.7 All maintenance, repair and restoration of Stairs House shall be conducted with the written approval of the Heritage Planner, in accordance with the *Standards and Guidelines for the Conservation of Historic Places in Canada, 2<sup>nd</sup> ed.*
- 3.4.8 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of buildings, the stone wall, fencing, walkways, 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 removal/sanding of walkways and driveways.

### **3.5 Building Siting**

- 3.5.1 The Modern Addition shall be sited as shown on Schedule B.
- 3.5.2 All portions of the Modern Addition below grade may be setback a minimum of 0 metres from the Harvey Street lot line and side lot lines. No portion of the Modern Addition below grade shall extend past Stairs House's rear (northern) foundation, towards South Street.
- 3.5.3 The Modern Addition's streetwall shall be setback a minimum of 3 metres and a maximum of 6 metres from the Harvey Street lot line.

- 3.5.4 The Modern Addition's minimum setbacks (both at-grade and above the fourth storey) from the side lot lines shall be as shown on Schedule B.
- 3.5.5 The Development Officer may permit unenclosed structures attached to a main building such as verandas, decks, porches, steps, and mobility ramps to be located within the required minimum front and side yards, in conformance with the provisions of the applicable Land Use By-law, as amended from time to time.
- 3.5.6 Where 0 metre setbacks are permitted, they are subject to a detailed review by the Development Officer to ensure compliance with all relevant by-laws. Any excavation, construction or landscaping will be carried out in a safe manner, with the appropriate measures put into place to ensure the protection and preservation of the adjacent properties.

### **3.6 Building Bulk & Scale**

- 3.6.1 Stairs House's height and bulk shall be as shown in the Schedules.
- 3.6.2 Subject to Section 3.6.3 and 3.6.4, the Modern Addition shall have a streetwall height of four storeys to a maximum of 12.5 metres along Harvey Street.
- 3.6.3 The maximum required streetwall height may be exceeded by 1.5 metres to permit a parapet or clear glass guard and railing system.
- 3.6.4 The Modern Addition shall have a minimum horizontal stepback of 3 metres from the edge of the Harvey Street streetwall.
- 3.6.5 Subject to Section 3.6.6 through 3.6.7, the Modern Addition, excluding the rooftop mechanical penthouse and elevator enclosure, shall have a maximum building height of 8 storeys and 26 metres as shown in the Schedules.
- 3.6.6 The Modern Addition's maximum height may be exceeded by rooftop architectural features, rooftop amenity areas, landscape elements, and combined mechanical penthouse and elevator enclosure but must comply with the Regional Centre Land Use By-law rampart and view plane requirements.
- 3.6.7 A combined mechanical penthouse and elevator enclosure shall, as per Schedules B and D:
- (a) Have a maximum height of 4.5 metres;
  - (b) Not exceed 30% of the area of the roof upon which it is located;
  - (c) Be setback a minimum of 6 metres from the Harvey Street roofline;
  - (d) Be setback a minimum of 4 metres from the eastern roofline;
  - (e) Be setback a minimum of 7 metres from the western roofline;
  - (f) Be setback a minimum of 6.5 metres from the southern roofline; and
  - (g) Be setback a minimum of 12 metres from Stairs House's northern wall.
- 3.6.8 The minimum setback between Stairs House's rear (northern) wall and the Modern Addition shall be a minimum of 3.3 metres as shown on Schedule B.

### **3.7 Architectural Requirements**

- 3.7.1 Large blank or unadorned walls shall not be permitted. The scale of large walls shall be tempered by the introduction of architectural detail to create shadow lines (implied windows, cornice lines, or offsets in the vertical plane) as generally shown on Schedule D.

- 3.7.2 The Modern Addition's façade shall be designed and detailed as the primary façade. Further, architectural treatment shall be continued around all sides of the Modern Addition as generally shown on Schedule D.
- 3.7.3 The exterior walls of the Modern Addition shall be clad in high quality materials as shown on Schedule D. Such materials shall include non-combustible clapboard siding, high-fibre cement panels, and masonry or brick.
- 3.7.4 The Modern Addition's exterior building materials shall not include vinyl siding, plastic, plywood, concrete blocks, and EIFS (exterior insulation and finish systems).
- 3.7.5 Stairs House's façade and side walls shall be restored as shown on Schedule E and be used as a secondary building entrance.
- 3.7.6 Stairs House shall be clad with wooden shingle siding as shown on Schedules D and E.
- 3.7.7 Stairs House's rear (northern) wall shall be integrated into the Modern Addition using a one-storey connection as shown on Schedule D.
- 3.7.8 All vents, down spouts, flashing, electrical conduits, metres, service connections, and other functional elements on the Modern Addition shall be treated as integral parts of the design. Where appropriate these elements shall be painted to match the colour of the adjacent surface, except where used expressly as an accent.
- 3.7.9 Mechanical systems (HVAC, exhaust fans, etc.) and telecommunications equipment shall be prohibited on Stairs House.
- 3.7.10 The Modern Addition shall be designed so that mechanical systems and telecommunications equipment are not visible from South Street, Harvey Street, or abutting residential properties. Furthermore, no mechanical equipment or telecommunications equipment shall be located between the building and the adjacent residential properties unless screened as an integral part of the building design and noise reduction measures are implemented. This shall exclude individual residential mechanical systems.

### **3.8 Parking**

- 3.8.1 Outdoor vehicular parking shall be prohibited.
- 3.8.2 Subject to Section 3.8.3 and 3.8.4, underground vehicular parking may be provided.
- 3.8.3 Access to underground vehicular parking shall be provided from Harvey Street only as generally shown on Schedule B.
- 3.8.4 If underground vehicular parking is provided, the dimensions of each vehicular parking space shall adhere to the requirements of the Regional Centre Land Use By-law as amended from time to time.
- 3.8.5 Subject to Section 3.8.6, bicycle parking shall be provided in accordance with the Regional Centre Land Use By-law as amended from time to time.
- 3.8.6 Class B bicycle parking spaces are prohibited between Stairs House's rear wall and the South Street streetline.

### **3.9 Amenity Space**

- 3.9.1 A common rooftop amenity space, with a minimum area of 300 square metres, shall be provided on the Modern Addition's rooftop, as generally shown on Schedule C.
- 3.9.2 Common indoor amenity spaces, with a minimum combined area of 230 square metres, shall be provided. Indoor amenity space may include fitness rooms, community rooms, or similar shared spaces.
- 3.9.3 Excluding amenity space associated with an individual dwelling unit, all common amenity spaces shall:
- (a) Be provided in increments of at least 30 contiguous square metres;
  - (b) Have no linear dimension less than 3 metres; and
  - (c) Be fully accessible to all building residents.

### **3.10 Outdoor Lighting**

Lighting shall be directed to driveways, parking areas, loading area, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

### **3.11 Landscaping**

- 3.11.1 The Lands shall be landscaped as generally shown on Schedule C.
- 3.11.2 All plant material shall conform to the Canadian Nursery Landscape Association's Canadian Nursery Stock Standard (ninth edition).
- 3.11.3 Prior to the issuance of a Development Permit, the Developer agrees to provide a Final Landscape Plan which complies with the provisions of this section and generally conforms with the overall intentions of the Preliminary Landscape Plan shown on Schedule C. The Final Landscape Plan shall be prepared by a Landscape Architect (a full member, in good standing with Canadian Society of Landscape Architects) and comply with all provisions of this section.
- 3.11.4 Prior to issuance of the first Occupancy Permit the Developer shall submit to the Development Officer a letter prepared by a member in good standing of the Canadian Society of Landscape Architects certifying that all landscaping has been completed according to the terms of this Agreement.
- 3.11.5 Notwithstanding Section 3.11.3 and Section 3.2.3(a), where the weather and time of year do not allow the completion of the outstanding landscape works prior to the issuance of the Occupancy Permit, 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 in good standing 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.
- 3.11.6 All landscape areas designed to be installed upon any portion of the building must be supported by documentation from a Structural Engineer indicating that the building design is able to support any required drainage or additional weight caused by the landscaped area.

3.11.7 All disturbed areas shall be reinstated to original condition or better.

### **3.12 Signs**

3.12.1 Subject to Sections 3.12.2 and 3.12.3, sign requirements shall be in accordance with the Regional Centre Land Use By-law as amended from time to time.

3.12.2 Signs depicting the name or corporate logo of the Developer shall be permitted while a sales office is located on the site.

3.12.3 Signs shall only be externally illuminated.

### **3.13 Temporary Construction Building**

3.13.1 A building shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction and sale of the development in accordance with this Agreement. The construction building shall be removed from the Lands prior to the issuance of the last Occupancy Permit.

### **3.14 Screening**

3.14.1 Refuse containers located outside the Integrated Multi-unit Dwelling shall be fully screened from adjacent properties and from streets by means of opaque fencing or masonry walls with suitable landscaping.

3.14.2 Propane tanks and electrical transformers shall not be affixed to Stairs House and shall have no visual impact from South Street. Propane tanks and electrical transformers shall be located on the Lands in a way to ensure minimal visual impacts from Harvey Street and residential properties alongside property lines. These facilities shall be screened by means of opaque fencing or masonry walls with view obstructing landscaping.

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

### **4.1 General Provisions**

All design and construction of primary and secondary service systems shall satisfy the most current edition of the Municipal Design Guidelines and Halifax Water Design and Construction Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineering 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 Undergrounding Services**

All secondary or primary (as applicable) electrical, telephone and cable service to the building shall be underground installation.

#### **4.4 Solid Waste Facilities**

- 4.4.1 The Modern Addition shall include designated space for five stream commercial waste containers (1. Garbage, 2. Blue Bag Recyclables, 3. Paper, 4. Corrugated Cardboard, and 5. Organics) to accommodate source separation program in accordance with By-law S-600 as amended from time to time. This designated space for five (5) waste containers shall be shown on the building plans and approved by the Development Officer and Building Inspector in consultation with HRM Solid Waste Resources.
- 4.4.2 Refuse containers and waste compactors shall be confined to the loading areas of the Modern Addition and be screened from public view, where necessary, by means of opaque fencing or masonry walls with suitable landscaping.
- 4.4.3 All refuse and recycling materials shall be contained within a building, or within suitable containers which are fully screened from view from any street or sidewalk. Further, consideration shall be given to locating of all refuse and recycling material to ensure minimal effect on abutting property owners by means of opaque fencing or masonry walls with suitable landscaping.

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

#### **5.1 Private Stormwater Facilities**

All private stormwater facilities shall be maintained in good order in order to maintain full storage capacity by the owner of the lot on which they are situated.

#### **5.2 Stormwater Management Plans and Erosion and Sedimentation Control Plan**

- 5.2.1 Prior to the commencement of any site work on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated off-site works, the Developer shall:
- (a) Submit to the Development Officer a detailed Site Disturbance Plan, prepared by a Professional Engineer indicating the sequence and phasing of construction and the areas to be disturbed or undisturbed;
  - (b) Submit to the Development Officer a detailed Erosion and Sedimentation Control Plan prepared by a Professional Engineer in accordance 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 Lands until the requirements of this clause have been met and implemented. The Erosion and Sedimentation Control Plan shall indicate the sequence of construction, all proposed detailed erosion and sedimentation control measures and interim stormwater management measures to be put in place prior to and during construction; and
  - (c) Submit to the Development Officer a detailed Site Grading and Stormwater Management Plan prepared by a Professional Engineer.

#### **5.3 Archaeological Monitoring and Protection**

The Lands fall within the High Potential Zone for Archaeological Sites identified by the Province of Nova Scotia. The Developer shall contact the Coordinator of Special Places of the Nova Scotia Department of Communities, Culture, Tourism and Heritage prior to any disturbance of the Lands

and the Developer shall comply with the requirements set forth by the Province of Nova Scotia in this regard.

## **PART 6: AMENDMENTS**

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

6.1.1 The following items are considered by both parties to be non-substantive and may be amended in accordance with the *Halifax Regional Municipality Charter* :

- (a) Additional uses permitted within the Lands' existing zone, subject to the provisions of the applicable Land Use By-law as amended from time to time;
- (b) Changes to Schedules B, C, D and E provided that the changes do not conflict with the text of this Agreement;
- (c) Changes to the parking requirements identified in Section 3.8;
- (d) Changes to the amenity space requirements identified in Section 3.9;
- (e) Changes to the outdoor lighting requirements under Section 3.10;
- (f) Changes to landscaping requirements identified in Section 3.11;
- (g) Changes to sign requirements listed in Section 3.12;
- (h) The granting of an extension to the date of commencement of construction as identified in Section 7.3 of this Agreement; and
- (i) The length of time for the completion of the development as identified in Section 7.4 of this Agreement.

6.1.2 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**

7.3.1 In the event that development on the Lands has not commenced within five years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, 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 the issuance of a demolition permit for 5230 and 5242-5246 Harvey Street.

7.3.3 For the purpose of this section, the Municipality 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 sixty (60) calendar days prior to the expiry of the commencement of development time period.

#### **7.4 Completion of Development**

7.4.1 Upon the completion of the whole development, the Municipality 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 For the purpose of this section, completion of development shall mean the issuance of the first Occupancy Permit.

7.4.3 Upon the completion of the whole development or complete phases of the development, or at such time that policies applicable to the Lands have been amended, the Municipality 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.

7.4.4 In the event that development on the Lands has not been completed within ten years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Lands shall conform with the provisions of the Land Use By-law.

#### **7.5 Discharge of Agreement**

7.5.1 If the Developer fails to complete the development after ten years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office the Municipality 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.

### **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 60 days written notice of the failure or default, then in each such case:

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

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

**HALIFAX REGIONAL MUNICIPALITY**

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
MAYOR

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
MUNICIPAL CLERK

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, the subscriber personally came and appeared \_\_\_\_\_ a 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, the subscriber personally came and appeared \_\_\_\_\_ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that Mike Savage, Mayor and Sherryll Murphy, Acting 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



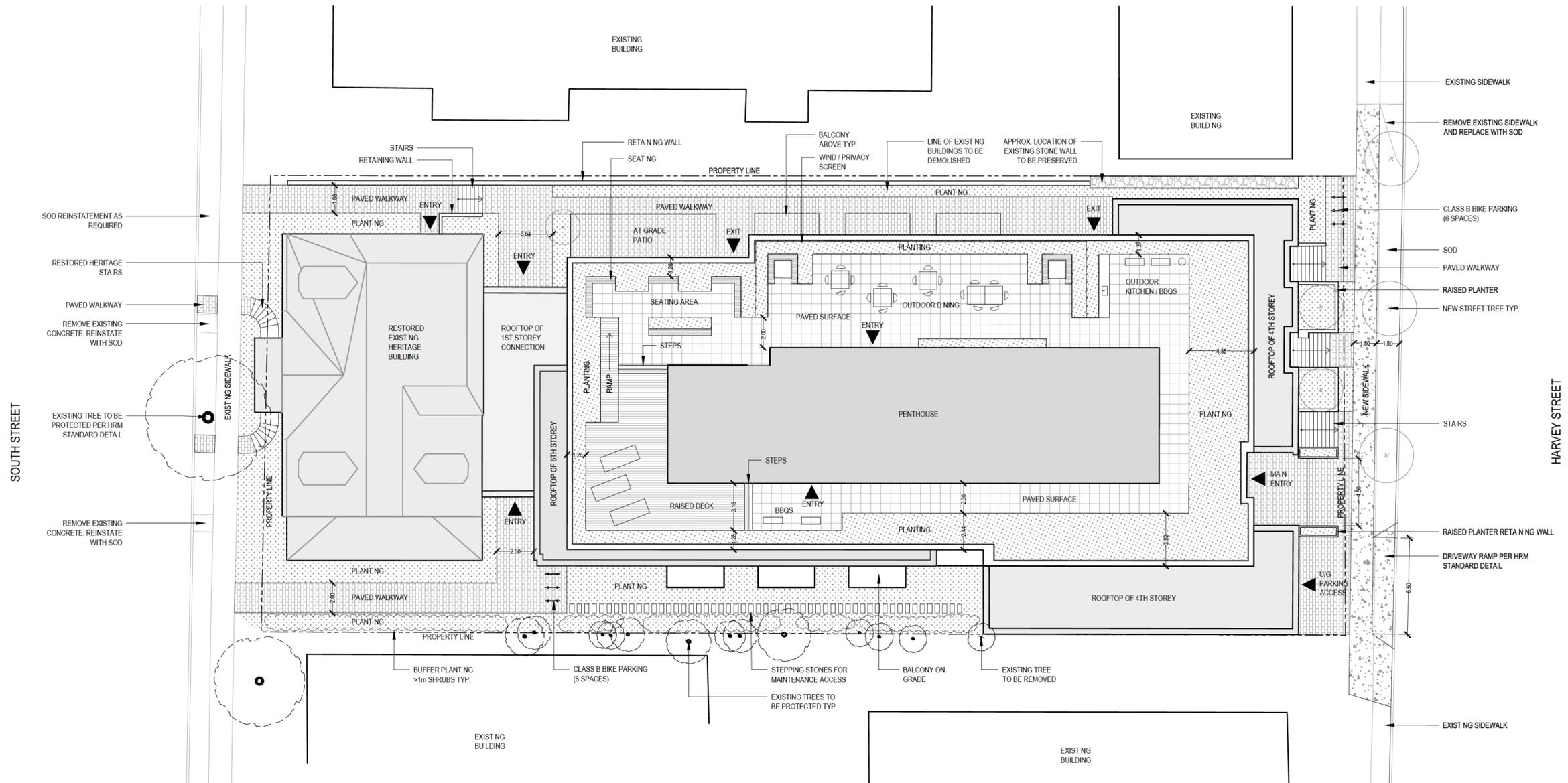
# Schedule C: Preliminary Landscape Plan

fathomstudio.ca  
1 Starr Lane  
Dartmouth, NS  
B2Y 4V7

fathom

Consultants

**FLAT ROOF AREA**  
TOTAL AREA: .....  
COMMON AMENITY SPACE: .....  
COMMON CIRCULATION: .....  
SOFT LANDSCAPING: .....



Client

Southwest Properties

Suite 100, 1475 Lower Water Street,  
Halifax, Nova Scotia, Canada  
B3J 3Z2

SCALE: N.T.S.

Seal



Original  
Signed

DEVIN  
SEGAL

Revisions

No.

DATE

1 ISSUED FOR DEVELOPMENT APPLICATION APPROVAL 2022-03-15

NOT FOR CONSTRUCTION

Project

South & Harvey Proposal  
South Street  
Halifax, NS

Drawing Name

LANDSCAPE PLAN

Scale

AS NOTED

Project number

Drawn By

BM/DS

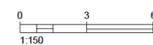
Checked

DS

Approved

DS

Drawing Number









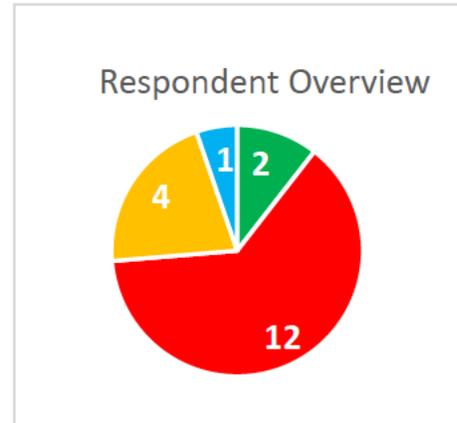


**Attachment B**  
**Case 22728 - Engagement Mail Out Summary**

**Overview**

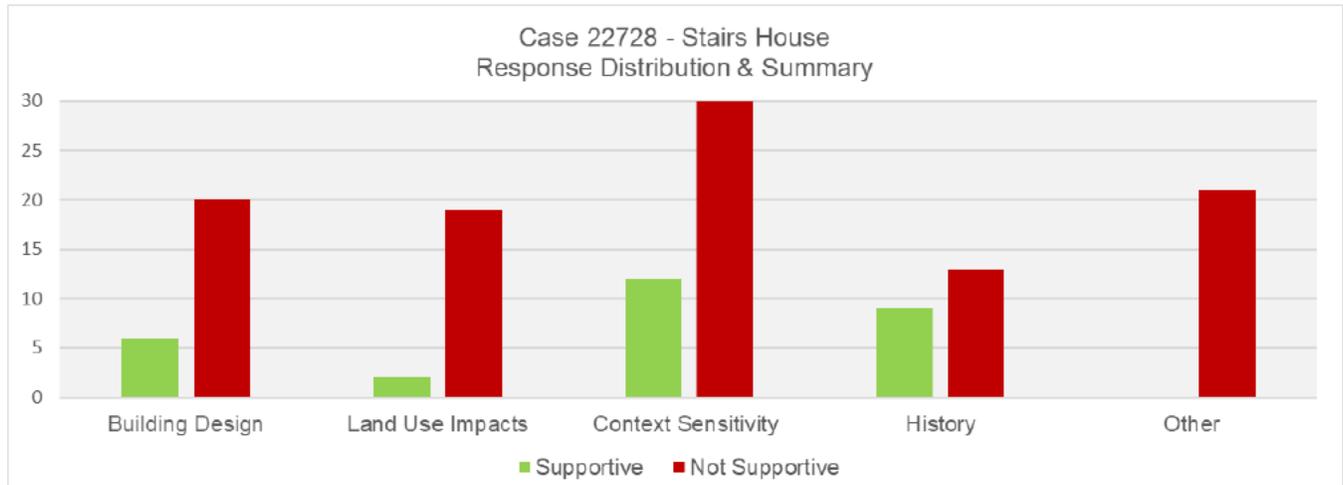
The Heritage Team requested public input on Case 22728 via mail out and webpage notifications. At the conclusion of the 30-day submission period, staff received 19 submissions regarding the applicant's proposed development:

- Twelve respondents **did not support** the proposal;
- Two respondents **supported** of the proposal;
- Four respondents offered **mixed support**; and
- One respondent took **no stance** on the proposal.



**Response Summary**

The 19 respondents provided comments on a variety of topics, which are summarized below:



**General Building Design**

- A few respondents liked the overall building design; the Harvey Street parking entrance, light-coloured stone, and Stairs House's integration into a modern development were notable highlights.
- Most respondents, however, were concerned about the proposed building design. Commenters noted:
  - The building lacks character and is architecturally uninteresting;
  - The building doesn't incorporate architectural features (i.e., pitched roofs, overhangs, cornices, bay windows) that complement that neighbourhood's architecture;
  - The building suffers from the absence of wood materials and clapboard siding;
  - The townhouses have a generic appearance;
  - Stairs House shouldn't be integrated into a new modern building;
  - Insufficient greenspace; and
  - The parking entrance on Harvey Street is problematic.

**Land Use Impacts**

- A couple respondents said the proposal wouldn't produce negative land use impacts.
- Several individuals thought the proposal would lead to significant traffic congestion, while a few others noted the on-street parking shortage would intensify.
- Several individuals said a long construction period will adversely effect resident's quality of life.

- A couple respondents believed the development would add noise to a quiet neighbourhood;
- One respondent is concerned about small side yard setbacks and another is concerned that the proposal is too large for the lot.

### **Context Sensitivity**

- One respondent liked that the proposal aligns with Harvey Street's existing setbacks.
- Several respondents liked the proposed streetwall and setbacks on the Harvey Street façade, though one thought they were ineffective;
- Several respondents felt that proposal complements the neighbourhood. Conversely, most felt it's incompatible with the neighbourhood's established character;
- Most respondents believed that the proposal is too tall for the neighbourhood (some suggested a height between three and six storeys).
- Many respondents said that the proposal has a negative impact on the appearance and rhythm of the Harvey Street streetscape;

### **History**

- Many respondents were pleased that Stairs House is going to be restored.
- Many individuals felt that the proposal is insensitive to the area's history and architectural styles.
- A few individuals were concerned about Stairs House; its modernization could be classified as facadism.
- A couple respondents said the existing Harvey Street buildings should be preserved.
- One individual felt that the proposal is insensitive to Old South Suburb Heritage Conservation District, which is located near the subject site.

### **Other Comments**

- Many respondents are worried that the proposal will block existing views and sunlight.
- A few respondents said the proposal will contribute to the affordable housing shortage.
- A couple residents noted that the proposal sets a bad precedent for future developments.
- A couple residents noted concerns related to snow removal.
- A couple residents cautioned that the proposal placed economics over environmental sustainability and climate change impacts caused by new development.

**Attachment C**  
**Review of Relevant Municipal Policies**

**REGIONAL MUNICIPAL PLANNING STRATEGY**

<b>CHAPTER 7: CULTURAL AND HERITAGE RESOURCES</b>	
<b>7.3 Protection of Heritage Resources</b>	
<b>Policy</b>	<b>Staff Comment</b>
<p><i>CH-5</i> <i>HRM shall consider the retention, preservation, rehabilitation and restoration of those buildings, public building interiors, streetscapes, cultural landscapes, areas and districts of historic, architectural or cultural value in both urban and rural areas and encourage their continued use.</i></p>	<p>The existing registered heritage building, Stairs House, will be rehabilitated and preserved in accordance with an approved substantial alteration (Case H00483).</p>
<b>7.4 Development Abutting Registered Heritage Properties</b>	
<b>Policy</b>	<b>Staff Comment</b>
<p><i>CH-16</i> <i>For lands abutting federally, provincially or municipally registered heritage properties, HRM shall, when reviewing applications for development agreements, rezonings and amendments pursuant to secondary planning strategies, or when reviewing the provision of utilities for said lands, consider a range of design solutions and architectural expressions that are compatible with the abutting federally, provincially or municipally registered heritage properties by considering the following:</i></p> <p>a) <i>the careful use of materials, colour, proportion, and rhythm established by surface and structural elements should reinforce those same aspects of the existing buildings;</i></p>	<p>The application for a development agreement includes the following alterations to the registered heritage building at 5241 South Street and adjacent properties (5243-5247 South Street, 5230 Harvey Street, and 5240-5242-5244-5246 Harvey Street):</p> <ul style="list-style-type: none"> <li>• Consolidation of the lots on South and Harvey Streets;</li> <li>• Restoration of the heritage building to its original state;</li> <li>• Construction of a new modern addition (eight-storey plus penthouse multi-unit apartment) to the heritage building on the property; and</li> <li>• Alterations to meet Building Code requirements.</li> </ul> <p>a) A mixture of contemporary and historical materials were chosen for the modern addition, including brick and stone masonry and cement board cladding, similar to the variability within the historic context of the neighbourhood. The modern addition maintains roof height datums from adjacent buildings and represents a</p>

<p>b) <i>ensuring that new development is visually compatible with yet distinguishable from the abutting registered heritage property. To accomplish this, an appropriate balance must be struck between mere imitation of the abutting building and pointed contrast, thus complementing the abutting registered heritage property in a manner that respects its heritage value;</i></p> <p>c) <i>ensuring that new developments respect the building scale, massing, proportions, profile and building character of abutting federally, provincially or municipally registered heritage structures by ensuring that they:</i></p> <ul style="list-style-type: none"> <li>i) <i>incorporate fine-scaled architectural detailing and human-scaled building elements.</i></li> <li>ii) <i>reinforce, the structural rhythm (i.e., expression of floor lines, structural bays, etc.) of abutting federally, provincially or municipally registered heritage properties; and</i></li> <li>iii) <i>any additional building height proposed above the pedestrian realm mitigate its impact upon the pedestrian realm and abutting registered heritage properties by incorporating design</i></li> </ul>	<p>simplified, contemporary Georgian form in keeping with the more architecturally ornate heritage building;</p> <p>b) The integrated multi-unit dwelling is compatible with the existing streetscapes on South and Harvey Streets, which have a range of multi-unit and single-unit dwellings, and with the heritage building through the use of historic materials and historic fenestration patterns and proportions. It will be distinguishable from the heritage building due to its contemporary materials and the setback distance between the heritage building and the modern addition.</p> <p>c) The integrated multi-unit dwelling respects the character of the abutting heritage properties:</p> <ul style="list-style-type: none"> <li>i) Incorporates cornice, vertical cladding, streetline setbacks and pedestrian entrances akin to neighbouring properties, and masonry on the Harvey Street façade;</li> <li>ii) Cornice height, rhythm of windows, and roof height datums from nearby buildings is reinforced; and</li> <li>iii) Height above the pedestrian realm (heritage building on South Street and streetwall on Harvey Street) is mitigated with setbacks above four-storeys and above six-storeys.</li> </ul>
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<p><i>solutions, such as setbacks from the street wall and abutting registered heritage properties, modulation of building massing, and other methods of massing articulation using horizontal or vertical recesses or projections, datum lines, and changes in material, texture or colour to help reduce its apparent scale;</i></p> <p>d) <i>the siting of new developments such that their footprints respect the existing development pattern by:</i></p> <p>i) <i>physically orienting new structures to the street in a similar fashion to existing federally, provincially or municipally registered heritage structures to preserve a consistent street wall; and</i></p> <p>ii) <i>respecting the existing front and side yard setbacks of the street or heritage conservation district including permitting exceptions to the front yard requirements of the applicable land use by-laws where existing front yard requirements would detract from the heritage values of the streetscape;</i></p> <p>e) <i>not unreasonably creating shadowing effects on public spaces and heritage resources;</i></p> <p>f) <i>complementing historic fabric and open space qualities of the existing streetscape;</i></p>	<p>d) The siting of the new building respects the existing development pattern:</p> <p>i) The setback of the proposed modern addition is consistent with the setbacks of other buildings on Harvey Street, and the modern addition is setback from the heritage building on South Street, maintaining the streetwall rhythm on South Street; and,</p> <p>ii) The proposed design maintains the existing setback for the heritage building and sites the modern addition to have a front yard (on Harvey Street) and side yard setbacks that are consistent with the streetscape.</p> <p>e) The modern addition is not anticipated to unreasonably create shadowing effects on public spaces (e.g. the pedestrian sidewalks) or existing heritage resources.</p> <p>f) The modern addition will include historic materials and maintains the front yard on South Street and introduces a new front yard on Harvey Street, maintaining the rhythm of adjacent historic buildings and the</p>
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<p>g) <i>minimizing the loss of landscaped open space;</i></p>	<p>open space qualities of the existing streetscape.</p> <p>g) The new development will increase the amount of landscaped open space on the Harvey Street frontage and maintains the open space on the South Street frontage;</p>
<p>h) <i>ensuring that parking facilities (surface lots, residential garages, stand-alone parking and parking components as part of larger developments) are compatible with abutting federally, provincially or municipally registered heritage structures;</i></p>	<p>h) The underground parking will be located exclusively under the modern addition and will not extend under the heritage building foundation;</p>
<p>i) <i>placing utility equipment and devices such as metering equipment, transformer boxes, power lines, and conduit equipment boxes in locations which do not detract from the visual building character or architectural integrity of the heritage resource;</i></p>	<p>i) The development agreement includes a clause that regulates the location and appearance of utility equipment so that it is screened from public view and does not detract from the character or integrity of the registered heritage property;</p>
<p>j) <i>having the proposal meet the heritage considerations of the appropriate Secondary Planning Strategy, as well as any applicable urban design guidelines; and</i></p>	<p>j) Provisions of Policy CHR-7 of the Regional Centre SMPS are addressed herein; see below;</p>
<p>k) <i>any applicable matter as set out in Policy G-14 of this Plan.</i></p>	<p>k) Policy G-14 (pertaining to Regional Plan amendments requiring subsequent amendments to other planning documents for consistency), does not apply in this case.</p>

**REGIONAL CENTRE SECONDARY MUNICIPAL PLANNING STRATEGY**

<b>Part 2: Urban Structure Policies</b>	
<b>2.7 Higher Order Residential Designation</b>	
<b>Objectives</b>	<b>Staff Comment</b>
<p>1. Protect and increase housing choices.</p>	<p>The size of the subject site (which includes three properties) provides an appropriate opportunity for infill development in an established residential neighbourhood. While the proposal will remove some older residential units, it will introduce several</p>

	times the number of units which currently exist. The modern addition will include a mixture of unit types (1, 2 and 3 bedroom units), including at least 30% of units with 2 or more bedrooms.
2. Support a built form that reflects and integrates with the surrounding context, and allows for transition to adjacent residential neighbourhoods and commercial areas.	The proposed building has been designed to be compatible with the heritage building on the site and the residential character of the neighbourhood, which already includes several multi-unit buildings.
3. Allow home offices, work-live units, daycares, grocery stores and other commercial uses that support complete communities.	There are no commercial uses proposed, however there are several existing community commercial uses near the site.
4. Improve access to pedestrian, active transportation and transit networks.	The subject site is located in the South End of Halifax along the existing pedestrian network and with access to the existing transit network (on South and Barrington Streets). The site is in proximity of several community commercial uses in the Downtown, including grocery stores, restaurants, shops, and services, which encourages the use of active transportation.
<b>Part 4: Culture and Heritage Resources</b>	
<b>Policy</b>	<b>Staff Comment</b>
<i>Policy CHR-7 On any lot containing a registered heritage building located outside of the DH Zone and any approved Heritage Conservation District, Council may consider a development agreement for any development or change in use not otherwise permitted by the Land Use By-law to support the integrity, conservation and adaptive re-use of registered heritage buildings. This includes development proposals that exceed the maximums floor area ratios or the maximum building heights on Map 3 and Map 4 of this Plan. In considering such development agreement proposals, Council shall consider that:</i>	The proposal is for the consideration of a development agreement to allow a multi-unit modern addition to a historic building on an existing registered heritage property.
<i>Policy CHR-7(a) The development proposal maintains the heritage value of any registered heritage property of which it is part, including a</i>	The proposal includes the restoration and maintenance of the heritage building on the site, including the reinstatement of several character-defining elements that were

<p><i>registered heritage streetscape, and does not propose to demolish any registered heritage buildings that exist on the lot;</i></p>	<p>removed over time. The heritage building will retain its residential use.</p> <p>The applicant will be required to sign a waiver for Section 18 of the <i>Heritage Property Act</i>, waiving the property owner's right to alter or demolish a registered heritage property without the approval of the municipality, three years following the date of the application.</p>
<p><i>Policy CHR-7(b)</i>  <i>The impact on adjacent uses, particularly residential uses, is minimized in terms of intensity of use, scale, height, traffic generation, noise, hours of operation, and such other land use impacts as may be required as part of a development;</i></p>	<p>The proposal features a residential multi-unit building within a residential neighbourhood.</p> <p><b>Intensity of use:</b> the proposal represents an increase of the intensity of use in the neighbourhood, but remains compatible, due to the presence of several multi-unit buildings both abutting and within immediate proximity of the subject site.</p> <p><b>Scale &amp; Height:</b> the proposal includes an eight-storey plus penthouse building, featuring a four-storey streetwall on Harvey Street and the maintenance of the heritage building along the streetscape on South Street. Directly abutting the site, there is a six-storey multi-unit building and a 3-4-storey townhouse block. The proposed modern addition is situated in the mid-block portion of the site, reducing the impact of its scale on the street.</p> <p><b>Traffic generation:</b> the applicant submitted a Traffic Impact Statement from a qualified Traffic Engineer which confirmed that there was no expected significant impact to the level of performance of adjacent streets or intersections.</p> <p><b>Noise:</b> the proposal is a residential multi-unit building and will be regulated under Bylaw N-200 respecting noise.</p> <p><b>Hours of Operation:</b> there are no commercial uses proposed.</p>
<p><i>Policy CHR-7(c)</i>  <i>Any new construction, additions, or renovations facing a street substantially maintain the predominant streetwall height, setbacks, scale and the rhythm of the</i></p>	<p>On South Street, the streetwall height and setback are established through the restoration and maintenance of the heritage building.</p>

<p><i>surrounding properties, especially of registered heritage properties;</i></p>	<p>On Harvey Street, a new streetwall and ground-oriented premises will be introduced. The proposed streetwall maintains the cornice line heights and front yard setback of adjacent buildings, and the ground-oriented dwellings establish a human scale and rhythm in line with the residential nature of the street.</p>
<p><i>Policy CHR-7(d) The development complies with Pedestrian Wind Impact and Shadow Impact Assessment Protocol and Performance Standards of the Land Use By-law;</i></p>	<p>A Pedestrian Wind Impact Assessment was completed by the applicant. The assessment made recommendations for the mitigation of wind, specifically concerning the design of the rooftop amenity space. The applicant will be required by the DA to submit an additional Wind Impact Assessment to confirm that mitigation has been put in place at the time of permitting.</p> <p>No Shadow Impact Assessment is required per the LUB.</p>
<p><i>Policy CHR-7(e) The level of proposed investment in conservation measures on the property and through the required incentive or bonus zoning requirements is generally proportional with the additional development rights provided through the agreement, especially in cases of new construction;</i></p>	<p>Based on staff's evaluation, the proposed investment in conservation measures is generally proportional with the additional development rights. The applicant will be required to comply with the incentive or bonus zoning requirements of the LUB.</p>
<p><i>Policy CHR-7(f) Any unregistered, historic buildings on the lot that contribute to neighbourhood character are preserved to retain the visual integrity of the lot;</i></p>	<p>The buildings located at 5247 and 5249 South Street (mid-block buildings) and 5230 and 5240-5246 Harvey Street were evaluated by the applicant in the Heritage Impact Statement (HIS). The HIS identified that the building at 5240-5246 Harvey Street was constructed in the late 19<sup>th</sup> century and had retained classical detail and trim work. It was considered a contributing asset to the neighbourhood character.</p> <p>In conversations with the applicant, it was indicated that the modern addition to the heritage building on South Street could be designed to retain this contributing asset on Harvey Street. However, it was determined by staff that there would be significant challenges due to the location of the building,</p>

	the front of which is located within the public right-of-way. Therefore, it was concluded that the application would proceed with the intention to demolish all buildings on the site, with the exception of the registered heritage property building at 5241 South Street.
<i>Policy CHR-7(g) The development complies with policies relating to protected public views and view terminus sites.</i>	The proposal complies with the LUB requirements pertaining to the Citadel Hill ramparts and the view planes. The subject site is not identified as a view terminus site.
<i>Policy CHR-7(h) Incentive or bonus zoning is provided consistent with the requirements of the Land Use By-law.</i>	The applicant is required to comply with the LUB requirements for incentive or bonus zoning.
<i>Policy CHR-7(i) The development agreement requires a waiver under Section 18 of the Heritage Property Act to be registered on the property before a development permit is issued for any portion of the development.</i>	The development agreement requires that the applicant comply with Section 18 of the <i>Heritage Property Act</i> .
<i>Policy CHR-7(j) The general development agreement criteria set out in Policy IM-7 in Part 9 of this Plan.</i>	The provisions of this Policy have been evaluated herein. See below.
<b>Part 9: Implementation</b>	
<b>Policy IM-7</b>	<b>Staff Comment</b>
<i>In considering proposals to amend the Land Use By-law, amend the zoning boundaries, or enter into development agreements, Council shall consider that:</i>	The proposal is for a development agreement.
<i>IM-7(a) The proposal is consistent with the Vision, Core Concepts, Urban Design Goals, and all applicable objectives and policies set out in the Regional Plan and this Plan;</i>	The proposal is for infill development and heritage restoration within an established residential neighbourhood. The subject site is within proximity of an existing complete community where the pedestrian transportation network is well established. The design of the proposed modern addition and heritage building restoration have prioritized human-scale using setbacks, stepbacks, and ground-oriented premises on both Harvey and South Streets. The proposal broadly meets the applicable objectives and policies set out in the Regional Plan and the Regional Centre MPS (specific policies have been explored herein).
IM-7(b)	

<p><i>The proposal is appropriate and not premature by reason of:</i></p> <ul style="list-style-type: none"> <li><i>i) The financial capacity of the Municipality to absorb any costs relating to the development;</i></li> <li><i>ii) The adequacy of municipal wastewater facilities, stormwater systems, or water distribution systems;</i></li> <li><i>iii) The proximity of the proposed development to schools, parks, and community facilities, and the capacity of these services to absorb any additional demands;</i></li> <li><i>iv) The adequacy of transportation infrastructure for pedestrians, cyclists, public transit and vehicles for travel to and within the development;</i></li> <li><i>v) The impact on registered heritage buildings, heritage streetscapes, and heritage conservation districts;</i></li> </ul>	<ul style="list-style-type: none"> <li>i) The applicant is responsible for all associated costs of the development.</li> <li>ii) The proposal was reviewed by Halifax Water. Municipal wastewater facilities and stormwater systems were considered adequate to accommodate this development and will be reviewed again at the time of building permitting.</li> <li>iii) The subject site is located within an established residential neighbourhood that is well served by local schools, parks, and community facilities.</li> <li>iv) The subject site is located in the South End of Halifax along the existing pedestrian network and with access to the existing transit and street network. Underground parking provided will be accessed via Harvey Street and will be designed in conformance with the Land Use By-law requirements.</li> <li>v) The proposal includes the restoration and maintenance of the registered heritage building located at 5241 South Street and represents sensitive infill development within an established residential and heritage context.</li> </ul> <p>Substantial alterations of the heritage building, and the design of the new building were approved under the <i>Heritage Property Act</i> (Case H00483).</p>
<p><i>c) The subject lands are suitable for development in terms of the steepness of grades, soil, and geological conditions, locations of watercourses, wetlands, and susceptibility to flooding;</i></p>	<p>The subject site is currently developed, containing four separate residential buildings. There are no wetlands or watercourses on the site. Staff does not have concerns with</p>

	regards to grades, soils, or other geological considerations.
<p><i>d) That development regulations in the proposed rezoning or development agreement will adequately mitigate potential conflict between the proposed development and nearby land uses, by reason of:</i></p> <p><i>i) type of use(s),</i></p> <p><i>ii) built form of the proposed building(s),</i></p> <p><i>iii) impacts on adjacent uses, including compatibility with adjacent residential neighbourhoods, parks, community facilities, and railway operations,</i></p> <p><i>iv) traffic generation, safe access to and egress from the site, and parking,</i></p> <p><i>v) open storage and signage, and</i></p> <p><i>vi) impacts of lighting, noise, fumes and other emissions.</i></p>	<p>i) proposed use is residential, which is in keeping with nearby land uses, therefore no conflict is anticipated;</p> <p>ii) the proposed building is eight-storeys plus penthouse and has taken measures, including setbacks and stepbacks, to mitigate the mass of the building from the pedestrian realm. This is in keeping with other multi-unit residential buildings abutting and near the subject site.</p> <p>iii) there are no anticipated negative impacts on adjacent uses. The proposal includes a residential building and is located within an existing residential neighbourhood that it well served by parks and community facilities;</p> <p>iv) the applicant submitted a traffic impact statement which does not anticipate any significant impacts on the adjacent street network. Design of the underground parking garage will follow the land use by-law regulations;</p> <p>v) there is no open storage proposed; proposed signage is required to follow the provisions of the land use by-law;</p> <p>vi) the proposal is for a residential building within a residential neighbourhood, therefore it is not anticipated that lighting, noises, fumes, or other emissions will have negative impacts.</p>