

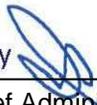
HALIFAX

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

Item No. 9.1.5
Halifax Regional Council
June 9, 2020

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed
Kelly Denty, Director, Planning & Development

Original Signed by 
Jacques Dubé, Chief Administrative Officer

DATE: April 30, 2020

SUBJECT: **Case 22322: Incentive or Bonus Zoning Agreement 1872-1874 Brunswick Street, Halifax**

ORIGIN

- July 25, 2019 Design Review Committee approval of the qualitative elements of the substantive site plan application for a twelve (12) storey hotel development on the site bounded by Brunswick Street and Gottingen Street; and
- Construction Permit Application No.178292

LEGISLATIVE AUTHORITY

- *Halifax Regional Municipality Charter:*
 - Section 245A(1): Where a municipal planning strategy so provides, a land-use by-law may provide for incentive or bonus zoning agreements respecting the HRM by Design Downtown Plan Area;
 - Section 245B(1): The Council may, by resolution, adopt or amend an incentive or bonus zoning agreement; and
 - Section 245C(1): An incentive or bonus zoning agreement is in effect until discharged by the Council.
- Section 12, Downtown Halifax Land Use By-law (LUB) (Attachment A)

RECOMMENDATION

It is recommended that Halifax Regional Council authorize the Mayor and Clerk to execute, the Incentive or Bonus Zoning Agreement as provided in Attachment C of this report for the twelve-storey hotel at 1872-1874 Brunswick Street, Halifax.

BACKGROUND

An application for substantive site plan approval for a 12-storey hotel at the corner of Brunswick Street and Gottingen Street was approved by the Design Review Committee on July 25, 2019.

The following highlights the major elements of the proposal:

- 12-storey building containing 169 hotel rooms;
- Reception/main lobby and bar on first floor at-grade off Brunswick Street, with restaurant on the second floor off Gottingen Street;
- Meeting/lounge space and banquet/food & beverage facilities available on the 2nd, 6th and 12th floors; and
- Public Aboriginal Visual and Performing Arts Gallery.

Proposed Public Benefit

Within the Downtown Halifax Plan Area, maximum permitted building heights may only be attained when a developer provides a public benefit. A list of eligible public benefits is found in subsection 12(7) of the LUB (Attachment A). Where a public benefit is not provided, the developer may only build to a lower building height. This approach is often referred to as “density bonusing” and is enabled under the *Halifax Regional Municipality Charter* as “incentive or bonus zoning”.

The proposed public benefit is an Aboriginal Visual and Performing Arts Gallery, which falls within the public benefit category of “rental commercial space at a subsidized cost for arts or cultural uses”.

Role of Design Review Committee, Development Officer & Council

Under clause 4(13)(c) of the LUB, the Design Review Committee (DRC) is responsible to provide the Development Officer with advice on matters pertaining to bonus zoning in relation to substantive site plan approvals. The DRC’s advice is provided in the form of a recommendation on the public benefit category at the time the Committee makes its decision on the substantive site plan application.

The Development Officer is responsible for determining if a proposal meets the land use and built form requirements of the LUB. Subsection 12(9) of the LUB requires that prior to the issuance of a development permit requiring a public benefit, the developer must enter into an agreement with the Municipality to specify the terms and conditions by which the public benefit is to be provided.

The *Halifax Regional Municipality Charter* requires Council approval of an incentive or bonus zoning (public benefit) agreement. This report seeks to obtain Council’s approval of the agreement.

DISCUSSION

DRC Approval

The LUB requires developments that exceed the maximum pre-bonus height limitations provide a public benefit as part of the project. In this case, the developer proposes a public benefit contribution in the form of rental commercial space at a subsidized cost for arts or cultural uses. The DRC recommended that the Development Officer accept the proposed public benefit in this form. Specifically, the approved motion from the DRC is as follows:

“MOVED by Tara Ralph, seconded by Ade Olatunde

THAT the Design Review Committee:

...Recommend that the Development Officer accept the proposed public benefit of the provision of rental commercial space made available at a subsidized cost for arts or cultural uses as the post-bonus height public benefit for the development with consideration given to its prominent location and visual within the public realm.

MOTION PUT AND PASSED AS AMENDED.”

Public Benefit Value

The LUB lists the required public benefit categories and establishes a public benefit value that is the equivalent of \$4.78¹ for every 0.1 square metres of gross floor area above the pre-bonus height. The maximum pre-bonus height for the project is 26 metres and the maximum post-bonus height is 34 metres. The gross floor area to be gained with this increase is approximately 2,385 square metres. A calculation of the value of the required public benefit has been determined to be approximately \$114,003.00.

The developer proposes to contribute a dedicated public Aboriginal Visual and Performing Arts Gallery featuring pieces that showcase local and national aboriginal artists and to coordinate public engagements at the gallery to showcase their talents within the community. The value of the total benefit as proposed is at least \$121,000 which will exceed the minimum public benefit of \$114,003.00 (see attachment B). Therefore, staff recommend that Regional Council adopt, by resolution, the Incentive or Bonus Zoning Agreement as provided in Attachment C of this report for the development located at 1872-1874 Brunswick Street, Halifax.

FINANCIAL IMPLICATIONS

The HRM costs associated with processing this application can be accommodated within the approved operating budget for C420 Land Development and Subdivision.

RISK CONSIDERATION

There are no risks associated with the recommendation contained within this report.

COMMUNITY ENGAGEMENT

Community Engagement as described by the Community Engagement Strategy is not applicable to the public benefit contribution component of the site plan approval process.

ENVIRONMENTAL IMPLICATIONS

None identified.

ALTERNATIVES

Regional Council may choose not to enter into the Incentive or Bonus Zoning Agreement as provided in Attachment C of this report. This would delay construction of the project as scheduled, necessitate further

¹ Amount adjusted in 2019 as per the Statistics Canada, Province of Nova Scotia Consumer Price Index

submissions by the developer, and require advisement by the Design Review Committee, as well as a supplementary report from staff.

ATTACHMENTS

Attachment A	Section 12 of the LUB- Public Benefit Categories
Attachment B	Public Benefit Details
Attachment C	Incentive or Bonus Zoning Agreement

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

Report Prepared by: Andrew Faulkner, Principal Planner & Development Officer, 902.490.4341

Report Approved by: Steven Higgins, Manager Current Planning, 902.490.4382

Report Approved by: Kelly Denty, Director of Planning and Development, 902.490.4800

Attachment A
Section 12(7) of the LUB- Public Benefit Categories

- 12(7) Subject to meeting all applicable requirements of this By-law, development pursuant to subsection (1) shall be permitted where the developer provides one or a combination of the following public benefits:
- (a) where the development includes a registered heritage property which is to be maintained, the reservation or enhancement of the heritage resource;
 - (b) the provision of publicly accessible amenity or open space, where a deficiency in such spaces exists;
 - (c) the provision of residential units at a subsidized cost to contribute to housing affordability in the Downtown Halifax Secondary Municipal Planning Strategy plan area;
 - (d) the provision of 3 and 4 bedroom units with direct access to outdoor amenity space;
 - (e) the provision of rental commercial space made available at a subsidized cost for arts or cultural uses;
 - (f) the provision of public art;
 - (g) the provision of public parking facilities, where a deficiency in such facilities exists;
 - (h) investment in public transit or active transportation infrastructure;
 - (i) the provision of exemplary sustainable building practices.
 - (j) the undergrounding of overhead electrical and communication distribution systems.

PUBLIC BENEFIT

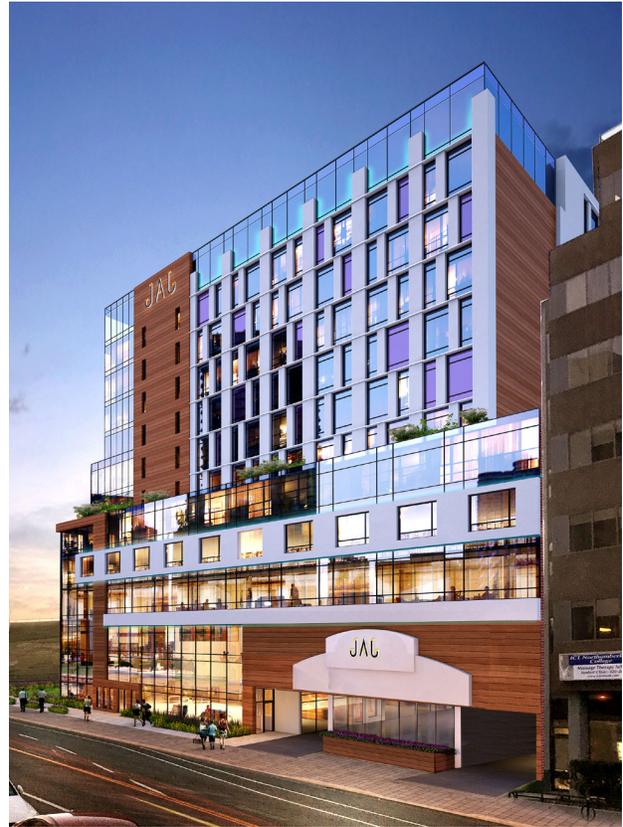
JAG HOTEL HALIFAX

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CONTRIBUTION OVERVIEW

The proposed development exceeds the pre-bonus height of 26 meters. The developer is requesting a post-bonus height of 34 meters and a total square meter increase of 2385 m². This equates to a public benefit with a minimum value of \$112,095.00 using \$47.00 a square meter.

The developer believes that the best way in providing this value to the public is through the recognition of the aboriginal arts. The developer has included in the design a dedicated Public Aboriginal Visual and Performing Arts Gallery. This gallery will be open to the public during business hours and the gallery will feature pieces selected and acquired by the developer that showcase local and national Aboriginal Artists. The gallery will be a space that embodies the spirit of the Visual and the Performing Arts talent in Canada.

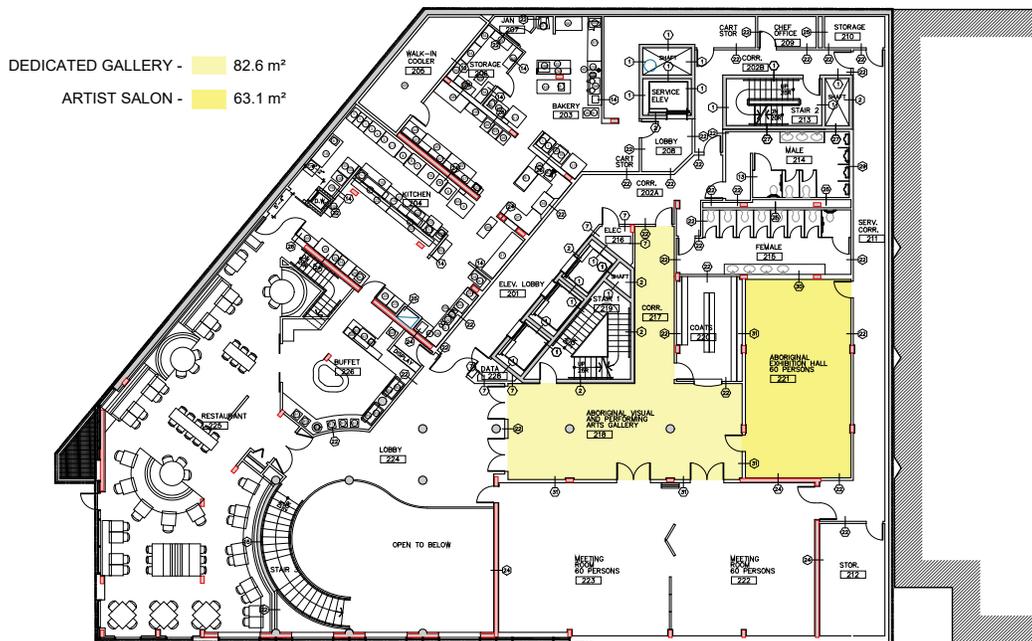


This gallery will be managed by an on-site coordinator/Manager, a person who will also work to involve the community with public engagements at the gallery and hotel. Such as a quarterly, 1 week revolving art exhibition where the Hotel will offer at no cost the use of a meeting salon so that selected pieces from the new, and up and coming, aboriginal artists can be displayed and showcase their talents with the community. With the cost of the art acquisitions, the construction, on-going use, a dedicated coordinator/manager and public engagement events within the provided salon will certainly bring added benefit to the Aboriginal Arts community, the value of which exceeding the minimum public benefit of \$112,095.00.

Rendering of the Gallery Space



Floor Plan of Dedicated Gallery Space shown in yellow



DEDICATED PUBLIC ABORIGINAL VISUAL AND PERFORMING ARTS GALLERY BUDGET

(NOTE: ALL ITEMS BELOW PAID FOR BY THE OWNER)

Items

1	Art hanging hardware and mounting blocking for 10 pieces of art. Included in this is the special lighting controls for the art work and associated lighting.	\$10,000
2	10 Pieces of Art, averaging \$8000 per piece.	\$80,000
3	Cost of the Salon for the Quarterly Artist one week for each quarter. This will be exclusively for the artists, and is valued at \$800 per fay for a regular customers, so for a 5 day period would be valued at \$4000 per weekly period. The usage for this 4 times per year would be \$16,000.	\$16,000
4	The wage cost of the on-site coordinator/ manager to administrate the gallery and the events in the Salon and Gallery Facility would be 15% of the annual salary of \$100,000 which would equate to \$15,000	\$15,000

ESTIMATED BUDGET:

\$121,000

Attachment C – Incentive or Bonus Zoning Agreement

THIS AGREEMENT made this ____ day of _____, A.D., 2020.

BETWEEN:

STEELE HOTELS LIMITED, a body corporate,

(hereinafter called the “Developer”)

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY, a body corporate,

(hereinafter called the “Municipality”)

OF THE SECOND PART

WHEREAS the Developer is the owner of the Property and has proposed a Development that exceeds the maximum pre-bonus height identified on Map 4 of the *Downtown Halifax Land Use By-law*;

AND WHEREAS Section 12 of the *Land Use By-law* requires that a Public Benefit be provided on the Property being developed for all or part of any storey of the Development above the Pre-Bonus Height;

AND WHEREAS it is feasible to provide the Public Benefit required by the *Land Use By-law* on the Property being developed;

AND WHEREAS the Developer has selected to provide the provision of rental commercial space made available at a subsidized cost for arts and cultural uses to satisfy the Public Benefit required by the *Land Use By-law*;

AND WHEREAS on July 25, 2019 the Design Review Committee approved the Development;

AND WHEREAS the Developer will provide rental commercial space made available at a subsidized cost for arts or cultural uses as the Public Benefit for the Development;

AND WHEREAS on July 25, 2019 the Design Review committee recommended to the Development Officer of the Municipality acceptance of the Public Benefit, and by approving this Agreement, the Council of the Municipality has accepted the rental commercial space made available at a subsidized cost for arts or cultural uses as the Public Benefit for the Development;

WITNESS THAT in consideration of the benefits accrued to each Party from the mutual promises and covenants herein contained and the sum of \$1.00 now paid by the Developer to the

Municipality (the receipt and sufficiency of which is hereby acknowledged), the Parties hereto agree as follows;

Definitions

1. In this Agreement all words shall carry their ordinary meaning except those defined in the *Downtown Halifax Land Use By-law* and, unless the context otherwise requires, the following words shall have the following meanings:

- (a) “Council” means the Council of the Municipality;
- (b) “Development” means a twelve (12) storey hotel on the Property;
- (c) “Employee” includes all the agents, servants, employees and officers of the Municipality;
- (d) “Incentive or bonus zoning” means requirements that permit the relaxation of certain requirements if an applicant exceeds other requirements or undertakes other action, in the public interest, as specified in the requirements;
- (e) “Land Use By-law” means the *Downtown Halifax Land Use By-law*, as amended from time to time;
- (f) “Municipality” means the Halifax Regional Municipality;
- (g) “Property” means the land(s) comprising the site where the Public Benefit is to be provided being 1872-1874 Brunswick Street, Halifax, Nova Scotia, known as PID #00002030 the said lands being recorded at the Registry of Deeds (or Land Registration Office) for the Halifax Regional Municipality as Document Number 83557836 and is more particularly set out in Schedule “A” attached hereto; and
- (g) “Public Benefit” means:
 - (i) one or a combination of the public benefits provided by the Developer pursuant to subsection 12(7) of the *Land Use By-law*; and
 - (ii) as agreed to by the Parties pursuant to section 2 of this Agreement.

Public Benefit

2. The Parties agree that the Developer will provide rental commercial space to be made available at a subsidized cost for arts or cultural uses, as the Public Benefit required under subsections 12(1) and 12(7) of the *Land Use By-law* for the Property and as more particularly described in Schedule “B”.

3. The Developer agrees to provide the Public Benefit in accordance with Schedule “B” in exchange for exceeding the Maximum Pre-Bonus Height for the Property.

Term of Agreement

4. This Agreement is in effect until discharged by Council.

Reporting of Public Benefit

5. Prior to the issuance of the Occupancy Permit, the Developer agrees to provide a report, to a Development Officer of the Municipality confirming that the Public Benefit has been completed.

Construction of Benefit

6. The Developer agrees:
 - (a) to install, construct and maintain the Public Benefit:
 - (i) at its own cost;
 - (ii) in a good and workmanlike manner;
 - (iii) in accordance with all the drawings, attached as Schedule "C";
 - (iv) as sustainable building practises; and
 - (v) in compliance with all applicable laws; and
 - (b) to complete construction of the Public Benefit prior to the issuance of the first Occupancy Permit on the Property pursuant to the *Building By-law* (HRM By-law B-201).

Restoration of Public Benefit During The Term of the Agreement

7. If, at any time during the term of this Agreement:
 - (a) any of the Public Benefit fails to function or fails to function properly, in whole or in part, or
 - (b) the Development Officer determines that any repairs to the Public Benefit are required to ensure that the Public Benefit does and will continue to function properly,

the Developer shall, within thirty (30) calendar days after receipt of notice, in writing, from the Development Officer, make such repairs or alterations as may be required, and if the Developer fails to do so, the Municipality may make such repairs or alterations.

8. If the Municipality undertakes any repairs or alterations, the Developer shall be responsible for the whole and entire cost thereof and the Developer shall reimburse the amount expended by the Municipality within fourteen (14) calendar days after a demand therefor by the Municipality.

Release and Indemnity

9. The Developer hereby agrees to assume, and does hereby assume, any and all liability and agrees to indemnify, protect and save and keep harmless the Municipality and its Employees from and against any and all liabilities, obligations, losses, damages, penalties, proceeding, claims, actions (including negligence and wrongful death), suits, costs and expenses (including legal expenses) of whatsoever kind and nature imposed or assumed by, incurred by or asserted

against the Municipality, or its Employees, in any way relating to or arising out of the failure by the Developer to observe, fulfill or perform any agreement, condition, covenant, obligation, promise, provision, representation or warranty contained in this Agreement to be observed, fulfilled or performed by the Developer, required by the Municipality, or resulting from the breach of any agreement, condition, covenant, obligation, promise, provision, representation or warranty contained herein on the part of the Developer.

GENERAL PROVISIONS

Costs, Expenses, Liabilities and Obligations

10. 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 Property.

Applicability of Laws

11. This Agreement shall be construed pursuant to the laws of the Province of Nova Scotia.

12. Nothing in this Agreement shall exempt or be taken to exempt the Developer, the owner of the Property or any other person from complying with the requirements of any by-law of the Municipality applicable to the Property or any statute or regulation of the Provincial or Federal Government and the Developer or lot owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Property.

Schedules

13. The following Schedules shall form part of this Agreement:

- Schedule "A" - Legal Description of the Property
- Schedule "B" - Post Bonus Cost Estimates
- Schedule "C" - Floor Plan Showing Gallery

Amendments

14. This Agreement may only be amended with the mutual consent of the Developer and the Council of the Municipality.

Conflict

15. Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

16. 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.

Provisions Severable

17. 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.

Registration and Subsequent Owners

18. 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.

19. This Agreement shall run with the land and be binding upon the Parties hereto, their heirs, administrators, executors, successors, assigns, mortgagees, lessees and all subsequent owners.

20. Upon the transfer of title to any part of the Property, the subsequent owner(s) thereof shall observe and perform all the terms and conditions of this Agreement to the extent applicable to the transferred part of the Property.

Discharge of Agreement

21. If the Developer fails to complete the Development after **three (3)** years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement; or
- (c) discharge this Agreement.

22. Council may, at any time, review this Agreement, in whole or in part, and may:

- (a) negotiate a new Agreement; or
- (b) discharge this Agreement.

Breach of Agreement and Failure to Comply

23. The Developer agrees that:

- (a) any Employee appointed by the Municipality to enforce this Agreement shall be granted access onto the Property during all reasonable hours without obtaining consent of the Developer; and
- (b) upon receiving written notification from an Employee to inspect the interior of any building located on the Property, the Developer agrees to allow for such an inspection during any reasonable hour within twenty-four hours of receiving such a request.

24. If the Developer fails to observe, fulfill or perform any agreement, condition, covenant, obligation, promise, provision, representation or warranty of this Agreement after the Municipality has given the Developer thirty (30) calendar 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 Property and perform any of the agreement, condition, covenant, obligation, promise, provision, representation, or warranty contained in this Agreement or take such remedial action as is considered necessary to correct a breach of this Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Property or from the performance of the agreement, condition, covenant, obligation, promise, provision, representation or warranty, or any other remedial action, shall be a first lien on the Property and be shown on any tax certificate issued under the *Assessment Act*; and

(c) 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.

Time

25. Time shall be of the essence in this Agreement.

THE REST OF THIS PAGE IS BLANK.

IN WITNESS WHEREOF the parties have executed this agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in

STEELE HOTELS LIMITED

the presence of

Per: _____

Name:

Office held:

Witness

Per: _____

Name:

Office held:

SEALED, DELIVERED AND

**HALIFAX REGIONAL
MUNICIPALITY**

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

Witness

Per: _____

Mayor

Witness

Per: _____

Clerk

SCHEDULE A- Legal Description of the Property

PID 2030

All of that certain lot, piece or parcel of land situate lying and being on the western side of Brunswick Street between Rainnie Drive and Cogswell Street in Halifax in the County of Halifax, Province of Nova Scotia, being a consolidation of Lot 4B, Lot 4D and Lot A and being more particularly described as follows:

Beginning at a point on the proposed western street line of Brunswick Street distant 35 feet northwardly from the intersection of the said proposed western street line of Brunswick Street and the northern street line of Rainnie Drive.

THENCE westwardly for a distance of 42.7 feet more or less, or to a point on the said northern street line of Rainnie Drive distant 55.2 feet northwestwardly from the said intersection of the proposed western street line of Brunswick Street and the northern street line of Rainnie Drive.

THENCE northwestwardly along the said northern street line of Rainnie Drive for a distance of 94.9 feet more or less or to the southeastern corner of Lot 4A.

THENCE northwardly along the eastern boundary of Lot 4A for a distance of 83 feet more or less or to the southern boundary of Lot B as depicted on the Plan showing subdivision of a Lot 4-C of the R.R. Power property into Lots A and B, Halifax, NS drawn by F. Nolan, dated the 19th day of February, 1962 and recorded at the Registry as Plan 5879 in Drawer 92;

THENCE westwardly along the southern boundary line of Lot B for a distance of 115 feet more or less or to the western official street line of Brunswick Street;

THENCE southerly along the said western official street line of Brunswick Street for a distance of 142.32 feet more or less or to the point of beginning.

The parcel is exempt from the requirement for subdivision approval under the Municipal Government Act because of section 268(A) of the Municipal Government Act, a statutory declaration effecting a de facto consolidation having been filed at the Registry as document no. 83557836.

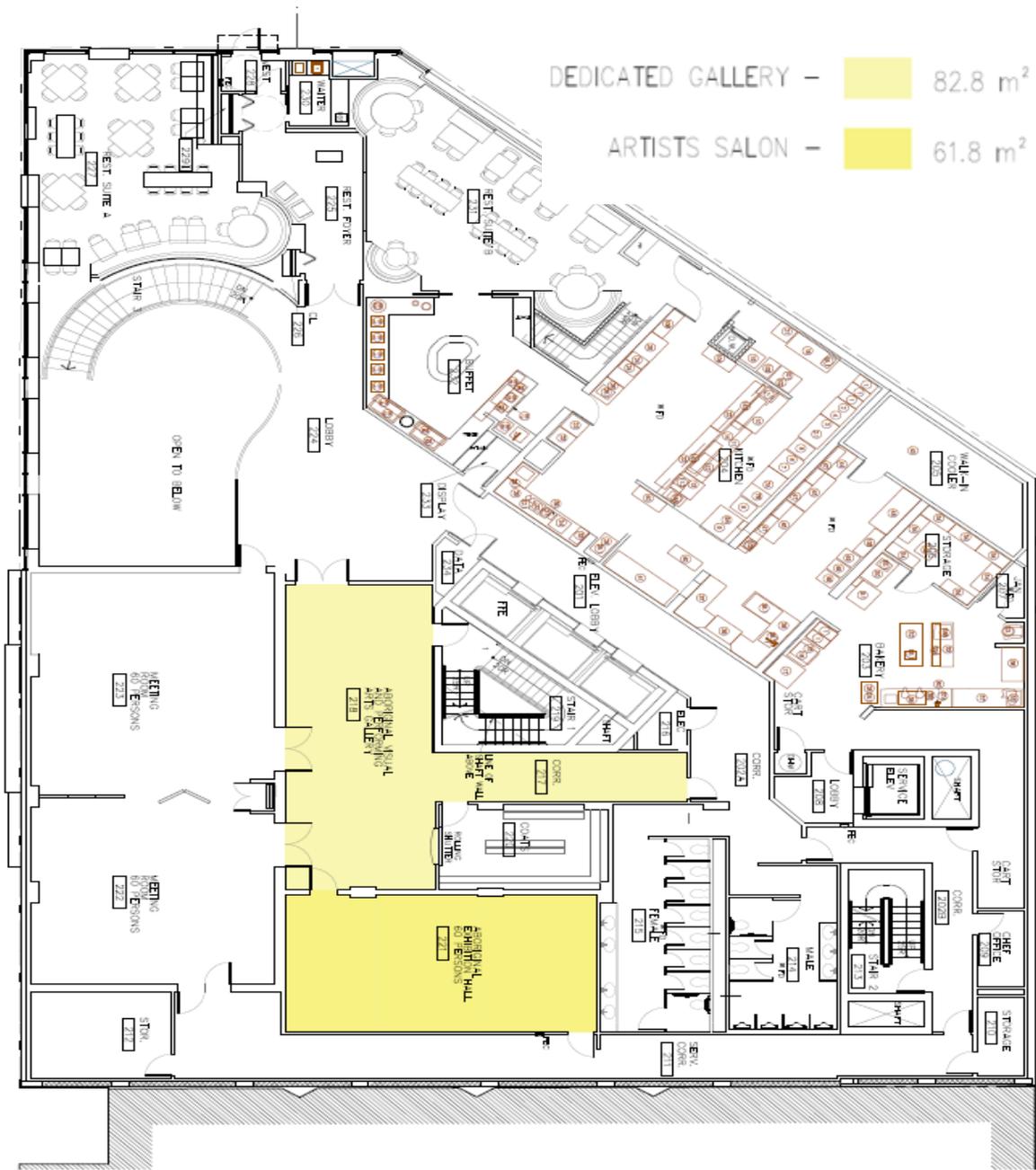
SCHEDULE B- Public Benefit Description

The Jag Hotel

1872-1874 Brunswick Street
Site Plan Approval Case 22322
Post-Bonus Height Public Benefit

1. The Developer shall provide the provision of rental commercial space made available at a subsidized cost for arts or cultural uses as the Public Benefit of the Property.
2. The gross floor area gained as a result of the post bonus height shall not exceed 2,385 square meters.
3. Based on \$4.78/0.1 square meters of gross floor area, the value of the public benefit shall be at least \$114,003.
4. The final design of the public benefit shall be subject to the approval of the Development Officer.
5. The public benefit shall be:
 - a) A dedicated Public Aboriginal Visual and Performing Arts Gallery which will be opened to the public during business hours. The Gallery will be located on the second level of the lobby and accessible from both Brunswick Street and Gottingen Street.
 - b) The Gallery will be managed by an on-site coordinator who will involve the community with public engagements to showcase talents from new, up and coming aboriginal artists.

SCHEDULE C- Floor Plan Showing Gallery



DEDICATED GALLERY - 82.8 m² (891 ft²)

ARTISTS SALON - 61.8 m² (665 ft²)