

HALIFAX

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

Item No. 11.1.5
Halifax Regional Council
March 9, 2021

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: February 25, 2021

SUBJECT: **Case 22708: Incentive or Bonus Zoning Agreement**
1325 Lower Water Street, Halifax

ORIGIN

- July 30, 2020 Design Review Committee approval of the qualitative elements of the substantive site plan application for a sixteen-storey, mixed-use building with ground floor retail and commercial space; and
- September 29, 2020 Halifax Regional Council decision to allow the appeal of the approval of the Design Review Committee
- September 29, 2020 Halifax Regional Council decision to approve the qualitative elements of the substantive site plan application for a sixteen-storey, mixed-use building with ground floor retail and commercial space, with conditions, and recommend the Development Officer accept the public benefit as described in Attachment B of the staff report dated August 20, 2020.

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(7), Downtown Halifax Land Use By-law (LUB) (Attachment A)

RECOMMENDATION

It is recommended that Halifax Regional Council adopt and authorize the Mayor and Clerk to enter into and execute the Incentive or Bonus Zoning Agreement as provided in Attachment B of this report for the sixteen-storey, mixed-use building at 1325 Lower Water Street, Halifax.

BACKGROUND

On July 30, 2020, HRM's Design Review Committee (DRC) approved an application for substantive site plan approval for a 16-storey mixed-use building containing 254 residential units along with ground floor retail and office space at 1325 Lower Water Street. That approval included a recommendation that sustainable building practices be accepted as the public benefit category associated with the portions of the building that exceeded the maximum pre-bonus height limitations.

The DRC's approval was subsequently appealed to Halifax Regional Council. After hearing the appeal, Regional Council approved design elements of the building with conditions and accepted exemplary sustainable building practices as the public benefit category associated with the portions of the building that exceeded the maximum pre-bonus height limitations.

The subject site is located on the Halifax waterfront, is currently used as a surface parking lot, and is located between Bishops Landing and The Discovery Centre/NS Power building.

The following highlights the major elements of the proposal:

- Mixed use building, with residential, ground floor retail, office use and restaurant use;
- 254 residential units;
- Parking is located in the midrise section of the building on levels 3 and 4;
- The building is 55.385 m tall at Lower Water St. for the tower portion which then changes to 30.67 m at the Northwest corner and steps down to 35.03 m at the lowest part of the eastern portion of the building;
- 36 642 sq. m of gross floor area of which 18 957.3 sq. m is residential and 8 265.4 sq. m is commercial;
- Floor Area Ratio of 5.93;
- Building materials include: large format porcelain tile; pre-finished composite metal panel system; aluminum window wall system; and vision glazing;
- Approximately 8 093.7sq. m of plaza space; x 229 indoor parking spaces; and x 276.3 sq. m of amenity space.

Proposed Public Benefit

Within the Downtown Halifax Plan Area, maximum permitted building heights may only be attained when a developer provides a public benefit. The list of eligible public benefit categories is set out 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" but is enabled under the *Halifax Regional Municipality Charter* as "incentive or bonus zoning."

The applicant proposes the public benefit to be in the form of the provision of exemplary sustainable building practices. This proposed public benefit is allowed under the LUB.

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 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.

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.

At the September 29, 2020 appeal hearing, Regional Council accepted the DRC's recommendation and authorized the Development Officer to accept the proposed public benefit as described in this report as a condition of the Site Plan Approval. 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 proposed, and DRC recommended approval of the public benefit category of exemplary sustainable building practices. Specifically, DRC's motion in this regard is as follows:

MOVED by Erica Armstrong, seconded by Jessica Harper

That the Design Review Committee:

1. *Approve the qualitative elements of the substantive site plan approval application for Case 22708 as shown in Attachment A with consideration given to the following:*
 - a) *adding public access to the penthouse level,*
 - b) *adding articulation to the banding,*
 - c) *providing vertical articulation to break up the horizontal massing within floors 3 and 4 of the development, and*
 - d) *subject to an approved license agreement with Nova Scotia Power Inc, the applicant shall consider minor modifications to the streetwall of the building abutting the Morris Street Waterfront View Corridor, such as streetwall articulation, materials including glazing, and public art features that serve to further activate the terminus area of the Morris Street Waterfront View Corridor.*
2. *Approve 11 of the 12 variances requested by the applicant but refuse the variance that is requested to section 10.13 of the Land Use By-law which allows balconies to be permitted encroachments into a setback or stepback provided that the aggregate length of the balconies does not exceed 50% of the building face and approve the following variances:*
 - a) *Variance Category 3: Maximum Height Variance is consistent with section 3.6.8d of the Design Manual,*
 - b) *Variance Category 4: Precinct 1 Built Form Variance is consistent with section 3.6.7b of the Design Manual,*
 - c) *Variance Category 5: Tower Width and Separation is consistent with section 3.6.7b of the Design Manual, and*
 - d) *Approve the 4 variances as per the staff recommendation.*
3. *Accept the findings of the qualitative Wind Impact Assessment, as contained in Attachment C.*
4. *Recommend that the Development Officer accept sustainable building practices as the post-bonus height public benefit for the development.*

MOTION PUT AND PASSED

Regional Council Appeal Hearing and Approval

In accordance with the *HRM Charter*, notice of the decision of the DRC was given to the applicant and the community. Notice of appeal was filed by 22 separate property owners regarding the DRC decision. Regional Council held an appeal hearing and made the following motion:

MOVED by Councillor Mason, seconded by Deputy Mayor Blackburn

THAT the Site Plan be approved with the following conditions:

- a) approve the qualitative elements of the substantive site plan approval application for a 16 storey, with rooftop penthouse, mixed use building, in Downtown Halifax as shown in Attachments A and B of the August 20, 2020 Staff report, with the exception that the western Lower Water Street elevation be augmented on the ground floor through the provision of a combination of increased visual permeability by multiple windows and doors at the sidewalk level and providing more active uses at grade that relate to the sidewalk, stepping with the slope;*
- b) approve the proposed variances outlined in Attachment C of the August 20, 2020 Staff report, with the exception of variances #3, #4, and #8 related to the Tower Width. For additional clarity, no portion of the "tower" shall exceed dimensions beyond 38 metres. The mass of the remainder of the building shall remain consistent with that found in Attachment A;*
- c) accept the findings of the quantitative wind assessment included in Attachment D; and*
- d) recommend the Development Officer accept the public benefit as described in Attachment B.*

MOTION PUT AND PASSED

Public Benefit Value

The value of the required public benefit is calculated in accordance with a formula set out in the Downtown Halifax LUB. The by-law determines the extent of the required public benefit by assigning a value to any proposed floor area beyond the maximum pre-bonus floor area ratio. For every 0.1 square metres of floor area that exceeds the pre-bonus maximum, \$4.76 of public benefit value is required. For this project, the maximum pre-bonus allowance is exceeded by 2 745 square metres, resulting in a minimum public benefit value contribution of \$130,662.

The applicant has proposed to meet the bonus requirements under Section 12 of the LUB by providing LEED Gold Certification with credit for both durable building envelope and advanced commissioning, measurement and verification. While detailed costs for this remain to be calculated, they are estimated to be in the order of \$3.75M and as noted in Attachment C, the consulting costs alone associated with the certification will exceed \$143,000.

As the proposed public benefit exceeds the minimum required benefit, staff recommend that Regional Council adopt, by resolution, the Incentive or Bonus Zoning Agreement as provided in Attachment B of this report for the development located at 1325 Lower Water 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 defeat the staff recommendation to enter into the Incentive or Bonus Zoning Agreement as provided in Attachment B of this report. This would delay construction of the project as scheduled, necessitate further 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(7) of the LUB- Public Benefit Categories |
| Attachment B | Incentive or Bonus Zoning Agreement |
| Attachment C | Details of Proposed Public Benefit |

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: Sean Audas, Principal Planner & Development Officer, 902.476.9553

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.

Attachment B – Incentive or Bonus Zoning Agreement

THIS AGREEMENT made this ____ day of _____, A.D., 2021.

BETWEEN:

4009423 NOVA SCOTIA 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 related 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 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 exemplary sustainable building practises to satisfy the Public Benefit required by the *Land Use By-law*;

AND WHEREAS on September 10, 2020 the Design Review Committee approved the Development;

AND WHEREAS the Developer will provide exemplary sustainable building practises as the Public Benefit for the Development;

AND WHEREAS on September 29, 2020 the Halifax Regional Council recommended to the Developer Officer of the Municipality acceptance of the Public Benefit, and by approving this Agreement, the Council of the Municipality has accepted the provision of exemplary sustainable building practises 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 sixteen (16) storey plus penthouse, mixed-use residential/commercial/office building 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 1325 Lower Water Street, Halifax, Nova Scotia, known as PID 00003640, the said lands being recorded at the Registry of Deeds (or Land Registration Office) for the Halifax Regional Municipality and is more particularly set out in Schedule “A” attached hereto; and
- (h) “Public Benefit” means:
 - (a) one or a combination of the public benefits provided by the Developer pursuant to subsection 12(7) of the *Land Use By-law*; and
 - (b) as agreed to by the Parties pursuant to section 2 of this Agreement.

Public Benefit

2. The Parties agree that the Developer will provide exemplary sustainable building practices 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 the 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 Public Benefit

6. The Developer agrees:

(a) to install and construct the Public Benefit:

- (i) at its own cost;
- (ii) in a good and workmanlike manner;
- (iii) in accordance with all the Drawings;
- (iv) as sustainable building practices; and
- (v) in compliance with all Applicable Laws;

(b) to complete construction of the Public Benefit which shall be completed at the time of 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 or 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 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, is 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, lot owner 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

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;
- (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 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

4009423 NOVA SCOTIA 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

Municipality/County: Halifax
Designation of Parcel: Block C-24
Registration District: Halifax
Registration Reference of Plan: Plan No. 18807

Subject to restrictive covenants as found in Deed at Book 6207 page 522.

Municipal Government Act, Part IX Compliance

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act

Registration District: HALIFAX COUNTY
Registration Year: 1981
Plan or document Number: 18807

SCHEDULE B – Post Bonus Cost Estimates



DATE: January 18, 2021

TO: Adam Sadler – Building Official
HRM

FROM: Ben Young – Senior Vice President – Development
Southwest Properties Ltd.

RE: Cunard – Proposed Public Benefit Contribution

We are constructing the Cunard project to the post-bonus height of 49 metres. This represents an additional gross area of 2,745 sm when compared to the pre-bonus height of 39 metres.

The Downtown Halifax Land Use By-Law references a required public benefit of \$4.76 for each 0.1 square metre of gross floor area. For this project, the amount would equate to \$130,662.00. We are proposing approval under section 12 (7) (i) – the provision of exemplary sustainable building practices. The project will seek LEED Gold certification with credits for both durable building envelope and advanced commissioning, measurement and verification.

For your reference, consulting costs associated with this certification alone will exceed \$143,000.00 before any consideration is given to the capital investments required to achieve the referenced certification.

Sincerely,



Ben Young
Senior Vice President – Development

BY/lm

ATTACHMENT C- Details of Proposed Public Benefit



DATE: January 18, 2021

TO: Adam Sadler – Building Official
HRM

FROM: Ben Young – Senior Vice President – Development
Southwest Properties Ltd.

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Sincerely,



Ben Young
Senior Vice President – Development

BY/lm