

## Case 01231 and the Policies in the Municipal Planning Strategy

Re: Proposal to construct a tower above the Zellers Building, 1595 Barrington Street

An application has been made to place an 11-storey apartment building on top of the three-storey Zellers Building (Discovery Centre) on Barrington Street. The developer has also requested an option to construct an office tower instead. This document will test the application against the policies in the *Regional Municipal Planning Strategy (RMPS)*<sup>1</sup> and subsidiary Strategies. The present analysis is not intended to be complete.

This exercise is being undertaken because Policy 90A<sup>2</sup> of the new *Downtown Halifax Secondary Planning Strategy (DHSPS, HalifaxbyDesign)*<sup>3</sup>, quoted below, says this application shall be considered under the **policies** in effect when the application was received. These policies are those in the *RMPS*, the *Halifax Municipal Planning Strategy (HMPS)*<sup>4</sup>, and the *Central Business District Secondary Planning Strategy (CBDSPS)*<sup>5</sup>.

The policies will be grouped and discussed under several themes: the proportion of heritage buildings, Barrington Street, wind effects, protection of views, and economics. We will show that **the application for a development agreement should be rejected because:**

1. **The proposed development would not reinforce or respect the proportion, scale, massing and profile of the Keith Building and the other adjacent heritage buildings, contrary to Policy 7.2.1 in the *CBDSPS* and Policy CH-2 in the *RMPS*.**
2. **The development application does not protect pedestrians from adverse wind effects, contrary to Policy 8.6 of the *HMPS* and Policy 7.5 of the *CBDSPS*.**
3. **The proposed development would not preserve views from Citadel Hill, contrary to Policies 6.2, 6.3 and 6.3.1 of the *HMPS*.**



<sup>1</sup> *Regional Municipal Planning Strategy*, Halifax Regional Municipality, 2006, [http://www.halifax.ca/regionalplanning/documents/Regional\\_MPS.pdf](http://www.halifax.ca/regionalplanning/documents/Regional_MPS.pdf)

<sup>2</sup> *DHSPS* Policy 90A: Applications for development agreements on file on or before March 31, 2009 shall be considered under the **policies in effect** at the time the complete application was received. Where any such application is withdrawn, significantly altered, or rejected by Council, any new development proposal shall be subject to all applicable requirements of the Land Use By-law. [emphasis added]

<sup>3</sup> *Downtown Halifax Secondary Planning Strategy*, Halifax Regional Municipality, 2009, [http://www.halifax.ca/planning/documents/DowntownHalifax\\_MPS.pdf](http://www.halifax.ca/planning/documents/DowntownHalifax_MPS.pdf)

<sup>4</sup> *Halifax Municipal Planning Strategy*, Halifax Regional Municipality, amended to 2011, [http://www.halifax.ca/planning/documents/Halifax\\_MPS.pdf](http://www.halifax.ca/planning/documents/Halifax_MPS.pdf)

<sup>5</sup> *Central Business District Secondary Planning Strategy*, City of Halifax and Halifax Regional Municipality, 1978-2009.

It is important to distinguish between **policies** and **facts**. Although we will discuss the **policies** in effect when the application was received, we will discuss them in terms of the **facts** of today. **A decision today must be based on the facts today.**

### **Reinforcing the Proportion of Heritage Buildings:**

Several policies in the *Strategies* deal with the relationship of new buildings with heritage buildings.

*CBDSPS*<sup>5</sup> Policy 7.2.1 is specific: “The exterior architectural design of new buildings should be complementary to any **adjacent** ones which are **designated** as being of historic significance or important to the character of the CBD; in such instances, the careful use of **materials, colour, proportion**, and the **rhythm** established by surface and structural elements should **reinforce** those same aspects of the existing buildings.”<sup>6</sup>

In Policy 7.2.1 certain key words are highlighted. The word **adjacent** has been interpreted by the provincial Utility and Review Board to mean buildings within easy viewing range of each other, or buildings that have a visual impact on each other, “buildings in the same street picture”.<sup>7</sup> This has sometimes included buildings more than a block away from each other.

Buildings can be **designated** as of historic significance or important to the character of the CBD by registering them as municipal or provincial heritage properties or national historic sites or by including them in a Heritage Conservation District.

The word, **proportion**, is defined in the *RMPS*<sup>1</sup> as “the relationship of two or more dimensions, such as ...the ratio of the height of one building to another.”

The use of the word, **reinforce**, means these properties should strengthen or be similar to the properties of the registered buildings. This doesn’t require replication, but it does call for **harmony**.

In the ATC case and the Midtown Tower case, the Board turned down developments because of Policy 7.2.1.

**The ATC Properties Case:** “The Board is of the opinion that the proposed development does not meet the intent of Policy 7.2.1 of Section III because it is not complementary to the adjacent School Board Building and Welfare Building both of which have been designated as heritage buildings. These heritage buildings are constructed of red brick three stories high and would be **completely overwhelmed** by the relatively massive 170’ and 195’ towers proposed by the Appellant despite the effort of the Appellant’s architects to achieve some complementarity with the heritage buildings by creating a three storey brick façade on the office tower building. Notwithstanding this attempt to make the proposed development complementary to the heritage buildings the proposed development by its very size will be **out of proportion** to the adjacent heritage buildings.”<sup>8</sup>

**The Midtown Tower Case:** “While the Board is mindful that the design of the Midtown Project incorporates various architectural elements in the lower seven storeys to help reduce its impact upon pedestrians at street level, the Board determines that the 17-

<sup>6</sup> Here and elsewhere, certain words are emphasized that were not emphasized in the original.

<sup>7</sup> *Decisions*, Nova Scotia Utility and Review Board, 2007, <http://www.canlii.org/en/ns/nsuarb/doc/2007/2007nsuarb122/2007nsuarb122.html>.

<sup>8</sup> *Decisions*, Nova Scotia Municipal Board, 1984, p 250-254.

storey proposal, in its entirety, would still **dominate** buildings which contribute to the general character of the Central Business District, as observed from various vantage points, including the remainder of Market and Grafton Streets, from Brunswick Street and, most notably, from Citadel Hill.”<sup>9</sup>



**The Present Case:** The proposal abuts the Keith Building, or Green Lantern Building, a registered heritage property (second from left in the streetscape above). The height of the parapet of this building is approximately 61 feet above Barrington Street. As shown in the elevation at the same scale below, the top of the penthouse of the proposed tower would be **173 feet** above Barrington Street, **2.8 times as high** as the Keith Building. The situation is parallel to the ATC and Midtown cases. Clearly **the proposed tower would not “reinforce” the “proportion” of the adjacent Keith Building**, contrary to the Policy. The proposed tower would be **out of proportion** to the Keith Building; it would **completely overwhelm and dominate** the Keith Building.



Heights of other buildings in the same streetscape as the Zellers Building, and within the Barrington Street Heritage Conservation District, are listed in an Appendix. The main roof of the proposed tower would be 157 feet above Barrington Street, 2.6 times taller than the tallest building in the present streetscape, and **4.0 times as high** as the average heights of these buildings.

<sup>9</sup> *Decisions*, Nova Scotia Utility and Review Board, 2005, <http://www.canlii.org/en/ns/nsuarb/doc/2005/2005nsuarb105/2005nsuarb105.html>

The heights of some other adjacent buildings are also listed in the appendix. The highest adjacent registered heritage property is 75 feet high. The average height above mean grade for the adjacent heritage buildings is 50 feet. The top of the proposed tower would be **182 feet above mean grade, 3.6 times as high** as the average of the registered heritage buildings.

The proposed tower would not “reinforce” the proportions of any of the adjacent buildings. It would not “respect the proportion” of these buildings. It would be “out of proportion” to them and would dominate and overwhelm them.

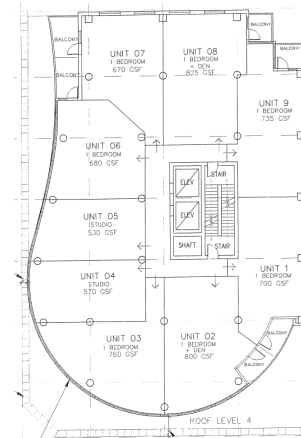
The glass material, colour and rhythm of the proposed tower also would not reinforce the materials, colour and rhythm of the adjacent buildings.

Robert Grant, QC, commented on behalf of the applicant about the Armour Group appeal. In response we note that Policy 7.2.1 was not discussed in the decision on the Armour Group appeal.<sup>10</sup>

**The proposal does not comply with Policy 7.2.1 and should be turned down.**

The *RMPS* discusses compatibility in Policy CH-2.<sup>11</sup> The proposed tower would not respect the **scale, massing, proportions, profile and building character** of the abutting Keith Building, in contravention of this policy.

The staff report, on page 58, leaves a blank opposite section CH-2(a) with the words “scale, massing, proportions, profile and building character”. Opposite subsection CH-2(a)(iii) the report praises the fact that the proposed tower be “stepped in” from Barrington and Sackville Streets. However, this “step in” would be minimal, only 5.5 feet from Barrington Street and 1.5 feet from Sackville Street. There would be no “step-in” from Granville Street or from the southern lot line. We may compare



<sup>10</sup> *Decisions*, Nova Scotia Utility and Review Board, <http://www.canlii.ca/en/ns/nsuarb/doc/2009/2009nsuarb35/2009nsuarb35.html>.

<sup>11</sup> *RMPS* Policy CH-2: For lands abutting federally, provincially or municipally registered heritage structures, 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 structures by considering the following:

(a) 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) incorporate fine-scaled architectural detailing and human-scaled building elements within the pedestrian realm;
- (ii) consider, within the pedestrian realm, the structural rhythm (i.e., expression of floor lines, structural bays, etc.) of abutting federally, provincially or municipally registered heritage structures; and
- (iii) any additional building height proposed above the pedestrian realm mitigate its impact upon the pedestrian realm by incorporating design solutions, such as setbacks from the street wall and modulation of building massing, to help reduce its apparent scale; [Sections (b) to (i) have been omitted for brevity.]

these setbacks with those specified in the *Land Use By-law*.<sup>12</sup> In the General Business (C-2) zone elsewhere on the peninsula, for example, a setback of one foot for every two feet of height above the basic height is specified. A building 182 feet above grade, like the present proposal, would be required to be stepped back from all four lot lines by 51 feet, nine times the setback from Barrington Street and **34 times as great as the setback from Sackville Street in the present application**. From Spring Garden Road and South Park Street, setbacks are required to be even greater, 127 times as great as the setback from Sackville Street proposed in this application. The minimal setback proposed for this tower would not “reduce its apparent scale”, contrary to subsection CH-2(a)(iii).

### **Existing Barrington Street Streetscape:**

Policy 7.4 of the CBD section of the *Strategy* calls for the preparation of design criteria “that **respect the proportion and character** of the existing Barrington Street streetscape”.<sup>13</sup>

The Nova Scotia Municipal Board successfully cited a parallel policy for Brunswick Street in rejecting the ATC tower proposal.<sup>8</sup> That Policy was worded, “The City shall prepare height and design criteria that reflect the relationship of Brunswick Street to the Citadel, and that maintain the quality of heritage buildings on Brunswick Street.” The Board used that policy to aid in interpreting another policy in the Plan. The Board also cited a document with height and design criteria prepared in response to these policies.

The situation is similar on Barrington Street. Policy 7.4 underlines the importance of **proportion and character**. The *Barrington Street Heritage Conservation District Revitalization Plan (BSHCDRP)*<sup>14</sup> was the result of Policy 7.4. The Steering Committee for the *BSHCDRP* extensively discussed the policies in the existing *HMPS* and *CBDSPS*, and attempted to carry forward these policies in the *BSHCDRP*. The *BSHCDRP* was approved in principle by Regional Council in January, 2006, three years before an application was made for a development agreement on this site. This Plan can also be used as an aid in interpreting the policies in the *HMPS* and *CBDSPS*.

The Board gave little weight to an earlier draft of the *BSHCDRP* in a decision about the TexPark site.<sup>7</sup> The Board noted that the *BSHCDRP* had not been adopted, and that the provisions might be changed. The TexPark site was outside the boundaries of the draft *BSHCDRP*. However, the *BSHCDRP* has now been adopted; we know its final form.

The basic decision-making approach of the *HMPS*<sup>4</sup> is stated as follows: “In consideration of development matters, **alternative** courses of action shall be identified and evaluated, whereupon the proper course of action can be selected.” In the present

<sup>12</sup> Halifax Peninsula Land Use By-law, Halifax Regional Municipality, 1995-2009, [http://www.halifax.ca/planning/documents/HalifaxPeninsula\\_LUB.pdf](http://www.halifax.ca/planning/documents/HalifaxPeninsula_LUB.pdf)

<sup>13</sup> *CBDSPS* Policy 7.4: The City shall prepare design criteria, including guidelines for street furniture and signs, that respect the proportion and character of the existing Barrington Street streetscape.

<sup>14</sup> *Barrington Street Heritage Conservation District Revitalization Plan*, Halifax Regional Municipality, 2009.

case, one alternative is to turn the application down. If this development application is turned down, the *BSHCDRP* will apply to 1595 Barrington Street. Thus it is important to consider its provisions.

The *BSHCDRP* sets a height limit of 22 m (72 ft) on the Barrington Street half of the block and 28 m (92 ft) on the Granville Street side. **This low scale is the unifying characteristic of the heritage conservation district.** This height limit would allow a modest roof-top addition to the Zellers Building of about two or three storeys. Grants and tax concessions would assist with repairs.

**The *BSHCDRP* would not allow the present development.** The main roof of the proposal, as described on the HRM web site, would be 157 feet above Barrington and 166 feet above mean grade, **2.3 times the allowed height** on the Barrington Street side. To allow the construction of a high rise of 14 storeys at a central location in the district would **eliminate the primary characteristic of the district.** The high rise would dominate the other buildings in the district. **The tower would defeat the purpose of Policy 7.4** and would jeopardize the future of this fledgling historic district.

The staff report omits Policy 7.4.

### **Wind:**

Policies in the planning strategies attempt to protect pedestrians from adverse wind effects.<sup>15</sup> Buildings should be designed so that “normal wind levels” on pedestrian routes are “acceptable”.

A pedestrian wind assessment was performed in December, 2009, by SimuTech Group for the developer, and is included in the staff report. Section 2.1 of this letter is out of date, as the development rights under the TexPark agreement have expired.

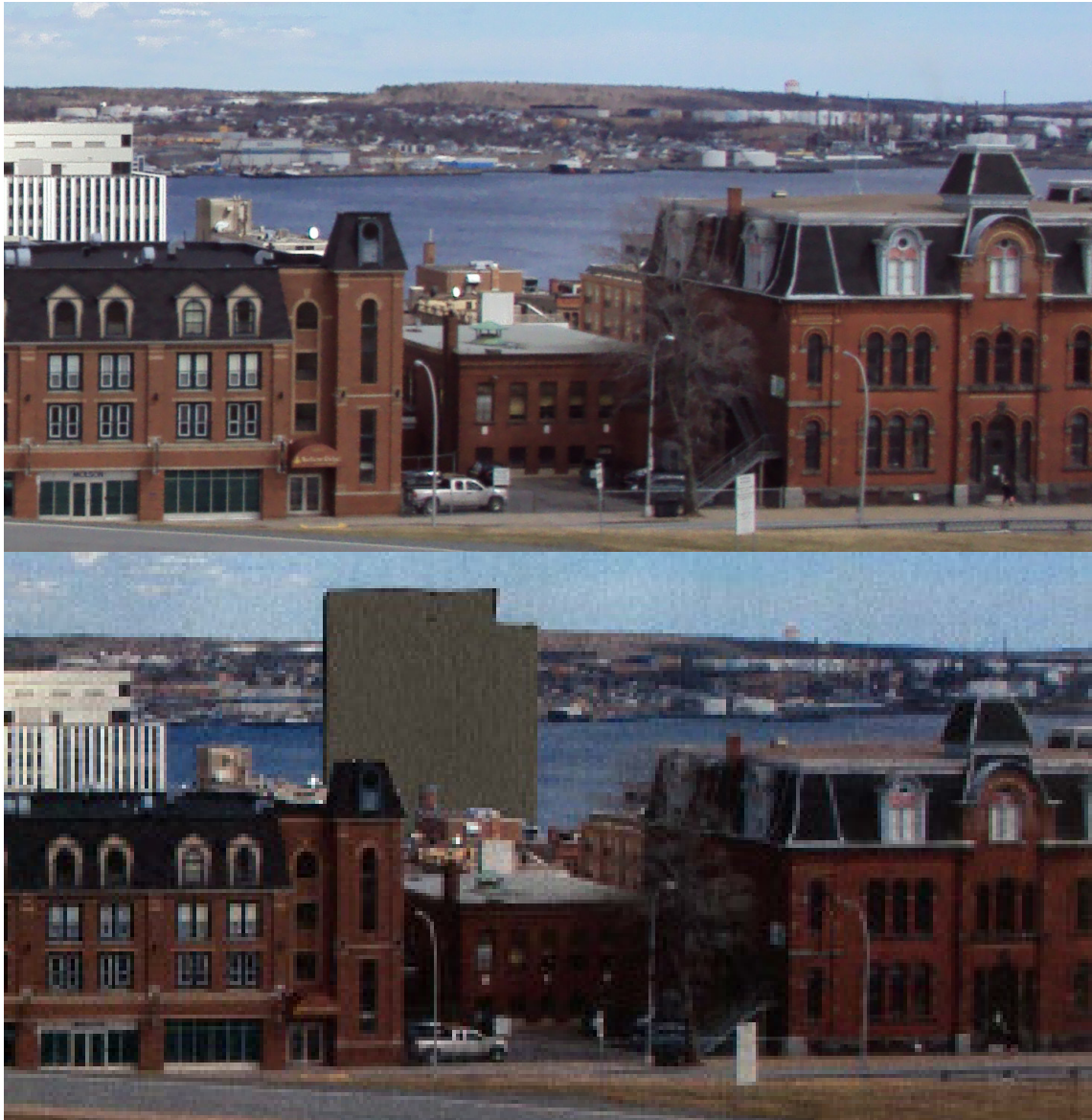
Furthermore, the first sentence of the study describes it as a “visual assessment”. The final page describes it as a “qualitative review”, instead of a “detailed wind study, either by computer simulation or wind tunnel”. The staff report incorrectly calls this letter a “wind study”. The consultants did not carefully consider Halifax wind conditions, stating in the second paragraph of section 2.2 that “winter winds are primarily from the south”, even though Figure 9 shows that winter winds are mostly from the west-north-west, north and east.

Wind effects from high buildings can be a risk to public safety. According to *HMPS* Policy 8.6, the City should “make every effort to ensure that developments do not create adverse wind ... effects”. The applicant has not demonstrated that there will not be adverse wind effects. Protection of public safety requires a proper study in a wind tunnel with a range of permissible developments on the TexPark site. HRM should “make the effort” to have a wind tunnel test. The public should know the results of the wind tunnel test before any public hearing.

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<sup>15</sup> *CBDSPS* Policy 7.5: The design of new developments in the CBD should be such that normal wind levels on outdoor pedestrian routes and in public open spaces will be acceptable.  
*HMPS* Policy 8.6: The City should make every effort to ensure that developments do not create adverse wind and shadow effects. The means by which this policy shall be implemented shall be considered as part of the study called for in Part III.

### Protection of Views:



The top picture shows the view from official viewing position C on the roadway south of the Citadel today. The lower picture has an overlay in gray showing the outline of the proposed tower above the Zellers Building. The proposed tower would block a substantial amount of the view of Halifax harbour from Citadel Hill.

Several policies<sup>16</sup> in the *HMPS* and *CBDSPS* provide for the protection of views and for the control of heights in the vicinity of Citadel Hill. The Zellers Building was

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<sup>16</sup> *HMPS* Policy 6.2: The City shall continue to make every effort to preserve or restore those conditions resulting from the physical and economic development pattern of Halifax which impart to Halifax a sense of its history, such as views from Citadel Hill, public access to the Halifax waterfront, and the street pattern of the Halifax Central Business District.

within the study area when *HMPS* Policies 6.3 and 6.3.1 and *CBDSPS* Policy 7.3 were proposed and adopted.<sup>17</sup>

The top of the penthouse of the proposed building would be 241 feet above sea level. This would be 33 and 25 feet above the two nearest official viewing positions on the roadway around Citadel Hill. It would be 42 feet higher than the top of the penthouse of the white Centennial Building, diagonally across the Granville/Sackville intersection.

In order to “**make every effort to preserve ... views from Citadel Hill**”, according to the mandatory Policy 6.2, HRM Council should refuse this development agreement. The proposed building clearly does not “**reflect the historic and traditional scale of development**”, in the words of Policy 6.3. The proposal does not “**establish a generally low to medium rise character of development in the area**”, in the words of Policy 6.3.1. In order to “**maintain or recreate a sensitive and complimentary setting for Citadel Hill**”, in the words of Policy 6.3, HRM Council should refuse this development agreement.

The commentary in the staff report on page 54 replaces the word “vicinity” in Policy 7.3 with the word “foreground”, and underlines this word. **This word does not appear in the Policy.**

### **Economics:**

There are now about 2.8 million square feet of residential space in the Downtown Halifax planning area.<sup>18</sup> The Trillium on South Park Street will add about 250,000 square feet of space, mostly residential. Dixel Developments are constructing an apartment building at the corner of Morris and Hollis Streets and will be building another above Pete’s Frootique. Halkirk Properties has permission to build a 296,000 square-foot apartment building on the Brewery Market property. Westwood Developments have announced plans for an apartment at the apex of Rainnie Drive and Cogswell Streets; this would comply with the *DHSPS* and *Land Use By-law*. United Gulf has not proceeded with a 562,000 square-foot apartment/hotel complex on the TexPark site. Centennial Properties, a company related to the applicant in the present case, will not be proceeding with a 552,000 square-foot apartment/hotel complex on the waterfront. The new *DHSPS* allows for the construction of 13,555,791 square feet of residential or other space in the downtown planning area.<sup>18</sup> A million square feet of vacant land is available for development.

The present proposal would have about 128,000 square feet of space. If the proposal is turned down, the applicant can continue to lease the present building, which has had long-term tenants. Alternatively, the applicant can add two or three storeys to the

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Policy 6.3: The City shall maintain or recreate a sensitive and complimentary setting for Citadel Hill by controlling the height of new development in its vicinity to reflect the historic and traditional scale of development.

Policy 6.3.1: The intent of such height controls shall be to establish a generally low to medium rise character of development in the area of approximately four traditional storeys in height immediately adjacent to Citadel Hill and increasing with distance therefrom.

*CBDSPS* Policy 7.3: The City shall control the height of new development within the CBD in the vicinity of Citadel Hill, pursuant to Policies 6.3, 6.3.1, 6.3.2 and 6.3.3 of Section II of this Plan.

<sup>17</sup> *Minutes*, Planning Advisory Committee, City of Halifax, November 14, 1984.

Zellers Building under the *DHSPS* and *Land Use By-law*, providing a total of about 68,000 square feet of space. The difference, 60,000 square feet, is only 0.4% of the 13,555,791 square feet already available for development.

Demand for downtown residential space is expected to increase by only 580,000 to 700,000 square feet before 2018.<sup>18</sup> This demand can easily be met by the supply of additional space already under construction or approved for construction.

There are currently about 7 million square feet of office space in the Downtown Halifax planning area.<sup>18</sup> The office vacancy rate is 6.92%,<sup>19</sup> meaning that about 500,000 square feet of office space is available for rent. This will increase to about 600,000 square feet when Nova Scotia Power moves from Scotia Square to their renovated premises in the former power plant on the waterfront. Empire Group has a long-standing approval to construct a 450,000 square-foot office tower at the north end of Granville Street.<sup>18</sup> The *DHSPS* allows for the addition of 10,281,313 square feet of commercial space (office and other uses) in Downtown Halifax, within the height and stepback limits of HRMbyDesign.<sup>18</sup>

Demand for downtown office space by 2018 is expected to increase by only 400,000 to 600,000 square feet,<sup>18</sup> which can be met easily without the present application.

Economic activity in downtown Halifax is not limited by height or heritage regulations or by the supply of office or residential space. There is lots of supply. Downtown economic activity is limited by demand.

Creating more demand for residential and office space means making downtown as attractive as possible to potential tenants. “In our opinion, **a key driver of demand for all types of space in Downtown Halifax is its unique character** ... which in turn is defined in large part by the heritage buildings and their relationship with the harbour,” commented Turner Drake.<sup>18</sup> “**The environment thus created is Downtown Halifax’s major competitive advantage which, once destroyed, will never be reincarnated.**” The Policies in the Strategies are designed to protect the desirable assets of downtown Halifax, to make downtown an attractive place to live and work, to attract tenants, and thus to promote economic growth. **Generating economic activity means protecting these assets, following the Policies, and turning down this development agreement application.**

### Summary:

**The application for a development agreement should be rejected because:**

- 1. The proposed development would not reinforce or respect the proportion, scale, massing or profile of the Keith Building or the other adjacent heritage buildings, contrary to Policy 7.2.1 in the *CBDSPS* and Policy CH-2 in the *RMPS*.**
- 2. The development application does not protect pedestrians from adverse wind effects, contrary to Policy 8.6 of the *HMPS* and Policy 7.5 of the *CBDSPS*.**

<sup>18</sup> *Market Survey of Downtown Halifax (Demand, Supply & Baseline Indicators)*, Turner Drake & Partners Ltd., Halifax, 2008,

<http://www.halifax.ca/council/agendasc/documents/090324cai05.pdf>.

<sup>19</sup> *Market Survey (December 2010) H.R.M. Offices*, Turner Drake & Partners Ltd., [www.turnerdrake.com](http://www.turnerdrake.com), Halifax, 2011.

**3. The proposed development would not preserve views from Citadel Hill, contrary to Policies 6.2, 6.3 and 6.3.1 of the *HMPS*.**

**Appendix:**

Buildings in the Same Streetscape as the Zellers Building, with Heights above Barrington Street, in Feet

Zellers	44	Mediterraneo	30
Keith Building	61	MacAlpine	31
Paramount	44	Carsand Mosher	28
Sievert's Tobacco Store	35		

Some Registered Heritage Properties Adjacent to the Zellers Building, with Heights above Mean Grade, in Feet

Keith Building	64
Sievert's Tobacco Store	38
Farquhar Building	54
St. Mary's Benevolent Society	44
City Club	42
Church of England Institute	42
Colwell Brothers	41
Halifax Club	43
Harrison Building	35
Acadia Insurance	39
Nova Scotia Furnishing	75
Wright (Marble) Building	60
St. Paul's Building	74

