Introduction

A Development Agreement is a legally binding agreement between the landowner and the municipality which says how a piece of land can be used and may include details around land use, building design, the layout of streets and roads and the density of various land uses.

A Heritage Development Agreement is a subtype of Development Agreement which encourages the conservation and adaptive re-use of registered heritage properties in exchange for additional development rights. This agreement is registered on title and, if the land is sold, all future owners will be responsible for the content of the agreement.

What do Heritage Development Agreements allow and why do they exist?
Heritage Development Agreements allow a property owner to apply for a particular land use or the construction of a building/addition that may not otherwise be permitted in the Land Use Bylaw. Property owners are required to undertake restoration of the heritage property/building and ongoing maintenance, in exchange for the additional development rights they may get through the Development Agreement. These Development Agreements are available to:

- Help increase the financial viability of owning, maintaining, and using a heritage property, given that the age of such properties often makes them more burdensome to maintain;
- Help to incentivize property owners away from demolishing their heritage property, and instead to encourage restoring it in exchange for added development rights; and
- May encourage more owners of non-registered heritage properties to consider requesting registration which would result in the future protection of those properties.

Under the Nova Scotia Heritage Property Act, a Council can enter into an agreement with an owner of a municipal heritage property whereby the owner incurs an obligation respecting the use, preservation or protection of the heritage property. This is where the Heritage Development Agreement comes into play, in that it's an agreement which permits additional or alternative development rights along with a requirement regarding the protection of maintenance of a heritage property.

Heritage Properties in East Hants

There are three types of heritage properties in East Hants.

- Provincially Registered Heritage Property – there are 5 of these located in East Hants.
- Municipally Registered Heritage Properties – there are 38 of these located in East Hants.
- Properties located in the Maitland Heritage Conservation District – there are 73 properties.

The majority of municipally registered heritage properties in East Hants are located in the Rural Use North (RU-2) Zone, with 26 properties. The RU-2 zone is fairly permissive in terms of development rights. Development pressure is also not high in this area so the potential benefits may be limited.

The following table summarises the remaining municipal heritage properties:

Zone	Number of Properties	Communities
Agricultural Reserve (AR)	1	Gore
High Risk Floodplain (HF)	1	Shubenacadie
Institutional Use (IU)	2	Mount Uniacke, Lakelands
Open Space (OS)	2	Burntcoat, Walton
Established Residential Neighbourhood (R1)	1	Shubenacadie
Two Dwelling Unit Residential (R2)	1	Milford
Rural Use (RU)	2	Nine Mile River, Admiral Rock
Village Core (VC)	1	Enfield
Watercourse Greenbelt (WG)	1	East Noel

The greatest potential for successes relating to heritage development agreements would likely be in the Growth Management and Growth Reserve Areas as these are the areas whereby developer interest is greater and the zones are in some cases more restrictive.

Alternative Development for Historic Buildings

Policies TH17 and TH18 of the Municipal Planning Strategy enable an existing heritage building to be used for a use not otherwise permitted in the zone in which the property is located. This is enabled through a development agreement. This enables the protection and adaptive re-use of the building.

Village Core (VC) Zone Regulations

The Land Use Bylaw has regulations to protect historically important properties by enabling more development on a property. Current regulations for the Village Core (VC) Designation and Zone, enable additional floor area where the property has a building with historical importance. The gross floor area of the building which is deemed to have the historical importance shall not be counted towards the gross floor area or commercial flood area of the site. The Heritage Coordinator reviews the details of the building and determines if the building has historical importance. The building does not need to be a registered heritage property as not all historically important buildings are registered. This policy is enabled in an attempt to preserve some of the historical buildings in the Village Cores.

Heritage Development Agreements in Halifax Regional Municipality

Heritage Development Agreements are enabled in HRM and have been for several years. Initially Heritage Development Agreements were enabled in the urban core but in 2019 they were expanded to include the rest of the HRM. Planning staff have spoken with staff at HRM and they explained that the vast majority of these types of agreements are submitted for properties within the urban core of HRM.

Some examples of heritage development agreements have been noted below which demonstrate how they have been used in HRM:

- 173 St. Margarets Bay Road – this agreement enabled a different built form that otherwise permitted. No additional density was approved. This helped to protect the area around the heritage building from development.

- 1262 Bedford Highway – this agreement is currently under appeal by the developer. The developer requested a taller apartment building than what was permitted as-of-right. Council refused due to community compatibility.

- 5522-5540 Russell Street – a significant investment into the maintenance of the church on the property ($1M) was achieved by approving an apartment building which was over the maximum height for the area and additional flexibility in setbacks and stepbacks.

In the HRM, an applicant can apply for any use or built form that is not permitted under the Land Use Bylaw through this type of development agreement. HRM have policies to guide the consideration of the development agreement so it's not an open-door for any land use or built form that Council considers is not appropriate for that location.

Any approved and signed development agreements are registered at the land registration office and acts as an Agreement under the Nova Scotia Heritage Property Act. Depending on the wording of the agreement it may incur an obligation regarding the use, preservation or protection of the heritage property.

The HRM staff noted that a potential risk of having this policy being so permissive is that it opens the potential for more appeals, as developers apply for developments which may not be appropriate for the community. Heritage development agreements in HRM have been generally successful at securing funding for the maintenance and improvements of heritage buildings along with encouraging more property owners to seek registration of their property.

The relevant policy in the HRM Regional Centre Secondary Plan is CHR-7. This plan covers the Halifax Penninsular and areas of Dartmouth. The policy for the Regional Plan is very similar but has less details. The Regional Centre Secondary Plan is a more recent policy.

Policy CHR-7

On any lot containing a registered heritage building located outside of (RC-May23/24;E-June13/24) 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:

a) the development proposal maintains the heritage value of any registered heritage property of which it is part, including a registered heritage streetscape, and does not propose to demolish any registered heritage buildings that exist on the lot;

b) 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;

c) any new construction, additions, or renovations facing a street substantially maintain the predominant streetwall height, setbacks, scale, and the rhythm of the surrounding properties, especially of registered heritage properties;

d) the development complies with Pedestrian Wind Impact and Shadow Impact Assessment Protocol and Performance Standards of the Land Use By-law;

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;

f) any un-registered, historic buildings on the lot that contributes to neighbourhood character are preserved to retain the visual integrity of the lot;

g) the development complies with policies relating to the Citadel View Planes and Ramparts Sight Lines, protected public views and view terminus sites; (RC-May23/24;E-June13/24)

h) incentive or bonus zoning is provided consistent with the requirements of the Land Use By-law;

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; and

j) the general development agreement criteria set out in Policy IM-7 in Part 9 of this Plan.

Proposed Amendments - Heritage Development Agreements in East Hants

As noted earlier in this report, staff consider that the biggest potential for benefits to heritage properties, from enabling additional or alternative development opportunities, is in areas outside of the Rural Use (RU) Zone and the Rural Use North (RU-2) Zone. Although the number of heritage properties outside of the RU and RU-2 Zones is small, enabling additional development opportunities has the potential to encourage more heritage registration requests. This in turn has the potential to protect more heritage buildings in East Hants.

Planning staff are recommending amending the policies relating to historic building development agreements to include new policies regarding the development of the heritage property land. Policy TH17 is not proposed to be changed and policy TH18 is proposed to be renumbered.

Municipal Planning Strategy Amendments

~~Alternative Development for Historic Buildings~~ Heritage Property Development Agreements

Preservation of buildings of historical significance is in the public interest. While every possible means shall be explored to allow a building to be used for a use normally permitted within the zone in which the property is located, it is recognized that alternative development may ~~be considered to~~ provide an opportunity to preserve ~~a~~an historic building. Such alternative developments may include multi-unit residential, institutional, tourist accommodation and tourist commercial uses which enhance the cultural or historic heritage of East Hants.

In addition to the re-use of a heritage building, the development of the heritage property land provides an opportunity for the long-term retention of the heritage building and the investment in the conservation of the built heritage resource.

Policy Goal

Council's goal is to encourage the preservation and conservation of historic buildings through the re-use of buildings and ~~alternative development~~ through additional development opportunities, which ~~is~~ are appropriate for the building.

TH18. To encourage the conservation of municipal heritage properties, on any lot containing a municipally registered heritage building, located outside of the Maitland

Heritage Conservation District, Council may consider a development agreement for the following:

a) The maximum floor area permitted in the land use bylaw may be increased in size by the gross floor area of the registered heritage building or by 25%, whichever is greater. In addition to this, the gross floor area of the heritage building does not contribute towards the total maximum gross floor area or commercial floor area.

b) An increase in building height by 3 m for residential and 4 m for commercial.

c) Any Land Use Bylaw design requirements and form-based zone requirements may be varied.

In considering such development agreement proposals, Council shall have regard to:

i. the development proposal maintains the heritage value of any registered heritage property of which it is part, and does not propose to demolish any registered heritage buildings that exist on the lot;

ii. any new construction shall respect and complement the design and character of the heritage building. The design, scale and use of materials shall not have an adverse visual impact on the registered heritage buildings.

iii. any new construction, additions, or renovations facing a street substantially maintain the predominant streetwall height, setbacks, scale, and the rhythm of the surrounding properties, especially of registered heritage properties;

iv. Information shall be submitted with the application, prepared by a professional, which demonstrates how the additional development rights are supporting investment in the conservation of the heritage building. Council will consider whether that investment in conservation measures is proportional with the additional development rights provided through the agreement;

v. any un-registered, historic buildings on the lot that contributes to neighbourhood character are preserved to retain the visual integrity of the lot;

vi. 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; and

vii. all other applicable policies of this Plan.

Planning staff recommend that these policies not apply to properties in the Maitland Heritage Conservation District. In the Rural Use North (RU-2) Zone, permitted land uses are fairly permissive and there are relevant design guidelines for new buildings in the district.

If Heritage Development Agreements are enabled, a policy or tool will need to be developed to guide whether the increase in development rights is reasonable. This doesn't mean that dollar for dollar the investment is the same, as staff suggest this would not promote investment into heritage properties. In the HRM they have a tool developed that helps them calculate the financial level of investment they would be looking for.

Recommendation

Recommend that policies to enable Heritage Development Agreements are included in the draft updates to the East Hants Official Community Plan.

Recommended Motion

Planning Advisory Committee recommends to Council that:

- policies to enable Heritage Development Agreements, as outlined in Background Paper # 3 regarding heritage development agreements, are included in the draft updates to the East Hants Official Community Plan.