

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

Item No. 13.1.1
Halifax and West Community Council
March 1, 2016

TO: Chair and Members of the Halifax and West Community Council

SUBMITTED BY: Original signed

Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: February 16, 2016

SUBJECT: Case 19857: LUB Amendment and Development Agreement for 3085-3077

Oxford Street and 6393-6387 Young Street, Halifax

SUPPLEMENTRY REPORT

ORIGIN

- Application by Breakhouse Inc.
- January 19, 2016 Halifax and West Community Council approval of an amendment to the Halifax Peninsula Land Use By-law to include 3085-3077 Oxford Street and 6393-6387 Young Street, Halifax, within Schedule L.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Halifax and West Community Council:

- 1. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A, to allow for a mixed-use development at 3085-3077 Oxford Street and 6393-6387 Young Street, Halifax; and
- Require that the proposed development agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND / DISCUSSION

On January 19, 2016 Halifax and West Community Council held a public hearing to consider the proposed amendment to the Halifax Peninsula Land Use By-law (LUB), as well as a proposed development agreement, to permit a 4-storey, mixed-use building containing 29 residential units with ground-level commercial space at 3085-3077 Oxford Street and 6393-6387 Young Street in Halifax. Following the public hearing, Halifax and West Community Council approved the amendments to the Halifax Peninsula LUB (amendment to Map ZM-2) to include the subject properties within Schedule L.

- 2 -

As noted in the November 27, 2015 staff report, Halifax and West Community Council could not make a decision on the proposed development agreement until the LUB amendment became effective. With the lapse of the appeal period, the LUB amendment became effective on February 8, 2016. Halifax and West Community Council is now able to consider the proposed development agreement as contained in Attachment A of this report.

During both first reading and the public hearing for this application Halifax and West Community Council requested changes to the proposed development agreement contained in the November 27, 2015 report regarding the ability to change the unit mix and add additional units. The requested changes are as follows:

- 1) Remove the ability to consider the addition of up to 3 units as a non-substantive amendment;
- Remove the ability to reduce the proposed number of 3 bedrooms units at the permitting stage; and
- 3) Allow for the consideration of the changes to the unit mix as a non-substantive amendment.

These changes are agreeable to the applicant and are included in the proposed development agreement as contained in Attachment A of this report. Accordingly, it is recommended that Community Council approve the proposed agreement.

FINANCIAL IMPLICATIONS

There are no financial implications. The Applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this development agreement. The administration of the development agreement can be carried out within the approved 2015/16 budget with existing resources.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through a Public Information Meeting (PIM) held on June 18, 2015 and a sign posted on the site. Notices of the Public Information Meeting were posted on the HRM website, in the newspaper and mailed to property owners within the notification area shown on Map 2.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

- 1. Halifax and West Community Council may choose to approve the proposed development agreement subject to modifications. Such modifications may require further negotiations with the Developer, and may require a supplementary report and a public hearing. A decision of Community Council to approve the proposed development agreement is appealable to the NS Utility and Review Board as per Section 262 of the *HRM Charter*.
- 2. Halifax and West Community Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons why either or both do not reasonably carry out the intent of the MPS. A decision of Community Council to refuse the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

Report Approved by:

Attachment A Proposed Development Agreement

A copy of this report can be obtained online at http://www.halifax.ca/commcoun/index.php then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Jillian MacLellan, Planner, Development Approvals, 902.490.4423

Original signed

Kelly Denty, Manager of Development Approvals, 902.490.4800

ATTACHMENT A Proposed Development Agreement

THIS AGREEMENT made this day of, 20,		
BETWEEN:		
[Insert Name of Corporation/Business LTD.], an individual, in the Halifax Regional Municipality in the Province of Nova Scotia (hereinafter called the "Developer")		
OF THE FIRST PART		
- and -		
HALIFAX REGIONAL MUNICIPALITY, a municipal body corporate, in the Province of Nova Scotia (hereinafter called the "Municipality")		
OF THE SECOND PART		
WHEREAS the Developer is the registered owner of certain lands located at 3085-3077 Oxford Street and 6393-6387 Young Street, Halifax and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");		
AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for a mixed commercial and residential building on the Lands pursuant to the provisions of the <i>Halifax Regional Municipality Charter</i> and pursuant to Policies 3.7, 4.6 of Part II, Section II, and Policy 3.12 of the Halifax Municipal Planning Strategy and Section 87A (Schedule L) of the Halifax Peninsula Land Use By-law;		
AND WHEREAS the Halifax and West Community Council for the Municipality approved this request at a meeting held on, referenced as Municipal Case Number 19857;		
THEREFORE, in consideration of the benefits accrued to each party from the covenants hereir contained, the Parties agree as follows:		

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By law and Subdivision By law

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Halifax Peninsula Land Use By law and the Regional Subdivision By law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

- 1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by law of the Municipality applicable to the Lands (other than the Land Use By law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.
- 1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the onsite and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

- 1.4.1 Where the provisions of this Agreement conflict with those of any by law of the Municipality applicable to the Lands (other than the Land Use By law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.
- 1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 Costs, Expenses, Liabilities and Obligations

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

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

2.2 Definitions Specific to this Agreement

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

"Repair Service" means an establishment primarily engaged in the provision of repair services to individuals and households, rather than businesses, but excluding automotive and equipment repair use types. Typical uses include appliance repair shops, shoe repair, watch or jewelry repair shops, or repair of musical instruments.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop and use the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 19857:

Schedule A	Legal Description of the Lands	
Schedule B	Properties to be Consolidated	
Schedule C	Site Plan and Ground Floor Plan	
Schedule D	West Elevation (Oxford Street)	
Schedule E	East Elevation	
Schedule F	North and South Elevations	

3.2 Requirements Prior to Approval

- 3.2.1 Prior to the issuance of a Building Permit, the Developer shall:
 - (a) Provide a detailed Landscape Plan prepared by a Landscape Architect in accordance with Section 3.6 and Schedule C of this Agreement to the Development Officer; and
 - (b) Obtain subdivision approval from the Municipality in accordance with Section 3.7 of this Agreement.
- 3.2.2 At the time of issuance of an Occupancy Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:
 - (a) Certification from a Landscape Architect indicating that the Developer has complied with the Landscape Plan required pursuant to Section 3.6 of this Agreement.
- 3.2.3 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality.

3.3 General Description of Land Use

- 3.3.1 The use(s) of the Lands permitted by this Agreement are the following:
 - (a) Commercial uses as follows:
 - (i) Retail Uses
 - (ii) Repair Service
 - (iii) Personal service uses
 - (iv) Offices
 - (v) Financial institutions
 - (vi) Restaurants
 - (vii) Commercial recreation uses
 - (viii) Any use accessory to any of the permitted uses
 - (b) Multiple-unit residential uses up to a maximum of 29 residential units.
- 3.3.2 The ground floor shall generally conform with the floor plan shown in Schedule C and the following requirements:
 - (a) Any commercial uses shall be located on the ground level and have direct access to Oxford Street; and
 - (b) Residential units shall abut the common outdoor amenity space.
- 3.3.3 The residential units shall be comprised of a mix of bachelor units, one-bedroom units, two bedroom units and three bedroom units as follows:
 - (a) 1 bachelor unit;
 - (b) 12 one-bedroom units;
 - (c) 11 two-bedroom units; and
 - (d) 5 three-bedroom units.
- 3.3.4 Further to Section 3.3.3, an increase or decrease in each type of unit, excluding 3 bedroom units, to a maximum of 2 units shall be permitted provided the total number of units does not exceed 29 units. The total number of 3 bedroom units may be increased but not decreased.

3.4 Architectural Treatments

- 3.4.1 The exterior design and materials of the building shall be as generally shown on Schedules D, E, and F.
- 3.4.2 Each building material, as shown on the Schedules, shall be a distinct tone or colour.
- 3.4.3 All vents, down spouts, flashing, electrical conduits, meters, service connections, and other functional elements shall be treated as integral parts of the design.
- 3.4.4 The building shall be designed such that the mechanical systems (HVAC, exhaust fans, vents etc.) shall be located on the rooftop and are not visible from all abutting streets and abutting properties. This requirement shall exclude individual residential mechanical systems.
- 3.4.5 Fixed or retractable awnings and canopies are permitted at the ground floor level, provided that the awnings and canopies are designed as an integral part of the building façade.
- 3.4.6 All roof mounted mechanical or telecommunication equipment shall be visually integrated into the roof design or screened so that they are not visible from all adjacent streets or properties.
- 3.4.7 All exposed concrete surfaces shall be architecturally textured. Any exposed foundation in excess of two (2) feet in height shall be architecturally detailed.

- 3.4.8 There shall be no outdoor storage, other than outdoor storage for individual residential units, on the Lands.
- 3.4.9 Each commercial occupancy shall have its own entrance from Oxford Street. A minimum of two commercial entrances shall be provided along the commercial façade.

3.5 Parking, Circulation, and Access

- 3.5.1 Parking on the Lands shall be limited to underground parking and the Developer shall provide a minimum of 30 parking spaces.
- 3.5.2 Of the 30 required parking spaces, 5 spaces must be reserved for the proprietors and employees of the commercial occupancies, visitors, service provider parking or a combination thereof.
- 3.5.3 Bicycle parking shall be provided pursuant to the requirements of the Land Use By-law for Halifax Peninsula as amended from time to time.

3.6 Landscaping

- 3.6.1 Prior to the issuance of a Development Permit, the Developer shall submit a Landscape Plan, which complies with the provisions of this section. The Landscape Plan shall be prepared by a Landscape Architect which shall provide details of all landscaped areas as shown on Schedule C.
- 3.6.2 Existing trees on the Lands shall be preserved where possible, as determined by the Urban Forester of the Municipality.
- 3.6.3 A minimum 0.91 metres (3 foot) wide vegetative buffer shall be provided where the landscaped area abuts a residential property.
- 3.6.4 A wooden fence shall be placed along the eastern property line as shown on Schedule C.
- 3.6.5 Further to the required landscaped areas as shown on Schedule C, a minimum of 3 planter boxes shall be located on the Lands where it fronts Oxford Street.
- 3.6.6 Planting details for each type of plant material proposed on the Landscape Plan shall be provided, including a species list with quantities, size of material, and common and botanical names (species and variety).
- 3.6.7 All plant material and soil volume shall conform to the Canadian Nursery Trades Association's Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.
- 3.6.8 At the time of issuance of an Occupancy Permit, the Developer shall submit to the Development Officer a letter prepared by a member in good standing of the Canadian Society of Landscape Architects certifying that all landscaping has been completed according to the terms of this Agreement.
- 3.6.9 Notwithstanding the above, where the weather and time of year does not allow the completion of the outstanding landscape work to be completed at the time of issuance of the Occupancy Permit the Developer may supply a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping as shown on the Landscape Plan. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the landscaping as described herein and as approved by the Development Officer. Should the Developer not complete the landscaping within twelve months of

issuance of the Occupancy Permit, the Municipality may use the deposit to complete the landscaping. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.

3.7 Subdivision of the Lands

A subdivision application to consolidate the properties shown on Schedule B into one parcel shall be submitted to the Development Officer in accordance with the Regional Subdivision By-law. No Development Permit shall be issued until the subdivision plan is approved.

3.8 Signage

Exterior signs shall meet the requirements of the C-2A Zone of the Land Use By-law for Halifax Peninsula.

3.9 Screening

Propane tanks, natural gas service hookups, and electrical transformers shall be located on the Lands in such a way to ensure minimal visual impact from all adjacent streets. These facilities shall be secured in accordance with the applicable approval agencies and screened by means of opaque fencing or masonry walls with suitable landscaping.

3.10 Outdoor Lighting

Lighting shall be directed to driveways, parking areas, loading areas, building entrances. Walkways shall be arranged so as to divert the light away from streets, adjacent lots and buildings and shall be of a full cut-off design.

3.11 Maintenance

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, recreational amenities, driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting of walkways and driveways.

3.12 Deliveries and Solid Waste Collection

- 3.12.1 The private collection of refuse and recyclables on the Lands shall occur only between the hours of 8:00 a.m. and 7:00 p.m., seven (7) days a week.
- 3.12.2 Loading for commercial uses shall be located on Oxford Street.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

- 4.1.1 All construction shall conform to the most current edition of the HRM Municipal Design Guidelines and Halifax Water's Design and Construction Specifications and shall receive written approval from the Development Engineer prior to undertaking any work.
- 4.1.2 Any disturbance to existing off-site infrastructure resulting from the development, including streets, sidewalks, curbs and gutters, street trees, landscaped areas (including vegetative berms) and utilities, shall be the responsibility of the Developer and shall be reinstated, removed,

replaced, or relocated by the Developer as directed by the Development Engineer. Furthermore, the Developer shall be responsible for all costs and work associated with the relocation of on-site/off-site underground services, overhead wires and traffic signals to accommodate the needs of the development.

4.1.3 Hoarding or a tree protection zone must be provided along all public trees within the HRM right-of-way in accordance with the Tree By-law (By-law T-600).

4.2 Failure to Conform to Plans

If the Developer fails at any time during any site work or construction to fully conform to the approved plans as required under this Agreement, the Municipality shall require that all site and construction works cease, except for works which may be approved by the Development Engineer to ensure compliance with the environmental protection measures.

4.3 Archaeological Resources

The Developer shall contact the Curator of Special Places with the Heritage Division of the Department of Communities, Culture and Heritage of the Province of Nova Scotia prior to any disturbance of the Land and the Developer shall comply with the requirements set forth by the Province in this regard.

PART 5: AMENDMENTS

5.1 Non-Substantive Amendments

The following items are considered by both parties to be non-substantive and may be amended by resolution of Council:

- (a) Changes to the unit mix as described in Section 3.3.3, other than as set out in Section 3.3.4 of this Agreement;
- (b) The consideration of additional minor commercial uses;
- (c) Changes to the parking requirements as described in Section 3.5 of this Agreement;
- (d) Changes to the landscaping requirements including fencing and screening requirements as detailed in Section 3.6 of this Agreement:
- (e) The granting of an extension to the date of commencement of development, as identified under Section 6.3.1 of this Agreement;
- (f) The granting of an extension to the length of time for the completion of the development, as identified under Section 6.4.1 of this Agreement;

5.2 Substantive Amendments

Amendments to any matters not identified under Section 5.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 6: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

6.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia, and the Developer shall incur all costs in recording such documents.

6.2 Subsequent Owners

This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.

6.3 Commencement of Development

- 6.3.1 In the event that development on the Lands has not commenced within four (4) years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.
- 6.3.2 For the purpose of this section, commencement of development shall mean the excavation and construction of the footings and foundation for the building.
- 6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 5.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

6.4. Completion of Development

- 6.4.1 If the Developer fails to complete the development after six (6) 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.
- 6.4.2 For the purpose of this section, completion of development shall mean the issuance of the first Occupancy Permit.
- 6.4.3 For the purpose of this section, Council may consider granting an extension of the completion of development time period through a resolution under Section 5.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the completion of development time period.

6.5 Discharge of Agreement

Upon the completion of the development, 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 and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Peninsula Halifax.

PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an

officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty-four (24) hours of receiving such a request.

7.2 Failure to Comply

SIGNED SEALED AND DELIVEDED in the

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, then in each such case:

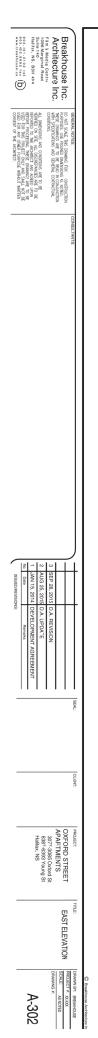
- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy:
- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the Assessment Act;
- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; or,
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the Halifax Regional Municipality Charter or Common Law in order to ensure compliance with this Agreement.

(INCERT RECIETERED CAMPER MANCE)

presence of:	(INSERT REGISTERED OWNER NAMES)
	Per:
Witness	
	Per:
Witness	
======================================	
SEALED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in	HALIFAX REGIONAL MUNICIPALITY
the presence of:	Per: Mayor
Witness	
	Per: Municipal Clerk
Witness	

Schedule B - Properties to be Consolidated Breakhouse Inc.
Architecture Inc.
Film & Media Centre
1006 Barginal Read
Suite 140
Hallitz, NS, BSH 464
802-61-3102 (c)
802-61-3102 (c) 00 NOT SCALE THIS DRAWING FOR CONSTRUCTION PURPOSES. USE FIGURED DIMENSIONS US NOTED. HESE DRAWINGS ME TO BE REDU IN CONJUNCTION WITH SPECIFICATIONS AND GENERAL CONTRACTUAL CONDITIONS. BAYERS ROAD 7702 PROPERTY LINE
[CA. 3085] -STRUCTURE TO BE REMOVED P.I.D. 00153405 C.A. 3077 OXFORD ST -STRUCTURE TO BE REMOVED P.I.D. 00153379 C.A. 6387+6389 P.I.D. 00153395 C.A. 6393 YOUNG STREET OXFORD STREET APARTMENTS 3077-3085 Oxford St 6387-6393 Young St Halflax, NS SITE PLAN DEMOLITION







Schedule F - North and South Elevations

