

Section 5.3

Development Control Techniques

1. Introduction

This is a “how to” document describing the basic development control techniques that can be used in a Land-Use By-law (By-law) in Nova Scotia. This includes zoning, development agreements, comprehensive developments districts (CDDs), site-plan approval and performance standards. These represent the basic planning tools enabled under the *Municipal Government Act (Act)*.

The type of control to use is largely determined by the nature of your municipality.

A Municipal Planning Strategy (Strategy) should address the land-use issues in the community and indicate how these will be resolved. The development control techniques used to implement the policies in a Strategy should fit the municipality. For example, it may not be appropriate to incorporate a number of development agreement provisions in a Strategy when zoning provisions can achieve the desired results. This is particularly true if a municipality is adopting a Strategy for the first time. Similarly, is it necessary to create twelve land-use zones for a town of 1200 people? In essence, the Strategy should attempt to resolve the planning issues but not over-address them.

The approaches described and examples cited in this document are not the only methods but they are presented as illustrations to guide the reader.

2. Zoning

Land-Use (Zoning) By-laws establish the Land-Use zones which are set out in the Strategy with a number of permitted land-uses in each zone (some zones list the uses that are prohibited rather than the permitted uses). They also include provisions governing such things as building height, setbacks, yard sizes, lot sizes, lot frontage, site-plan approval criteria and items that may be addressed in site-planning and other development standards for the respective zones established. Such by-laws are accompanied by Zoning Maps which graphically show how the lands within the municipality are zoned.

Pre-zoning for desirable future uses.

There are a number of basic zoning techniques that can be employed which are outlined below. These techniques require supporting policies in the Strategy.

2.1 Pre-zoning

Pre-zoning is the zoning of land such that the predominant existing use of the land is not consistent with the zone placed on the land. It is zoning land for some future use, and in most instances this involves the zoning of vacant land. This is a way of directing certain types of development to certain lands. Examples of pre-zoning are the zoning of vacant land for commercial or industrial use or zoning an urban transitional area for commercial use despite the fact, for example, that a portion of the area may be in residential use.

In built-up communities, this approach may not always be appropriate. For example, it could result in a number of non-conforming uses or the zone placed on the land may be too rigid and limit the range of developments that could be considered by Council. More flexibility may be achieved by using different planning tools. In larger communities where more development is occurring, it may be appropriate to pre-zone land for such things as industrial parks, multiple unit housing and institutional uses.

One advantage of pre-zoning is that all developers, citizens, landowners and council know in advance where certain types of development are going. If carried out in a flexible style, with a range of permitted uses, it will reduce the need for Strategy and by-law amendments and development agreements.

2.2 Cumulative Zoning

Cumulative Zoning is based on the intensity and diversity of uses.

Another zoning approach that has been employed extensively in the past and used less frequently today is cumulative or stacked zoning. This approach permits an increasing range of uses in zones through the progression from residential to industrial. That is, a commercial zone would permit, for example, R-1, R-2, and R-3 uses as-of-right as well as commercial uses or an industrial zone would allow R-1, R-2, R-3, C-1, C2, or C-3 uses as-of-right as well as industrial uses. (The term “as-of-right” means that the use is permitted and a development permit must be issued if it meets all the other zone requirements).

In many instances, uses may be mutually incompatible (heavy industrial and new residential or commercial uses, for example), which suggests the need for mutually exclusive zones. Consequently, this technique is not often used by municipal planners, except in areas where a variety of different land-uses within an area reflect traditional accepted patterns of land development.

In many areas stacking of permitted uses may create problems. For example, is it desirable to allow new single unit residential development in areas that are zoned and designated for general commercial use? If this is done, in the long term the Strategy may be creating new land-use conflicts rather than trying to minimize existing ones. If in the former example, the intent is to allow only existing single unit dwelling (R-1) uses in an area zoned Commercial General (C-1), there are other and better ways of dealing with this situation. At the same time there are instances where a mixture of uses is what is desired (i.e. residential and commercial uses in a downtown to create a vibrant downtown). This may be done by stacked zoning. Alternatively the C-1 zone could state that residential uses are permitted but only on the second floor or at the rear of the commercial uses. (See Section 2.4 of this *Guideline*.) If it is to only allow residential uses above or at the rear of a business, then this also can be accomplished by specifying in the zone's list of permitted uses that Residential Dwellings are permitted above or at the rear of C-1 permitted uses.

2.3 Zoning With Special Provisions

When using this approach, a use is permitted as-of-right in a zone but subject to special provisions. For example, there are often special provisions (or development standards) in the By-law for guest homes within an R-1 (Residential) zone such as “no exterior alterations and no parking in front or side yards.” Other special provisions may include: height restrictions, buffering (e.g. opaque fence), parking and outdoor storage, retention of trees, incentive or bonus zoning. These special provisions require supporting policies in the Strategy. Often in rural communities, a special provision in residential zones allows the outdoor storage of fishing gear or agricultural equipment in the side and rear yards. This is in recognition of an historically accepted “way of life” in Nova Scotia.

Zoning with special provisions provides control for uses with unique requirements to maintain compatibility.

Zoning with listed uses minimizes non-conformity and limits specific uses to specific sites or areas of the municipality.

2.4 Zoning With Listed (Scheduled) Uses

A common issue, particularly in areas that have never had planning, is that a less than desirable mixture of uses may be present. One way of addressing this, without creating a number of non-conforming uses, is zoning with listed uses. This is a technique by which certain existing uses, for example, apartment buildings or certain commercial or industrial uses are specifically listed as uses permitted in a particular zone. For example, the list of permitted uses in the By-law for a zone might include the use: "Existing Apartment Building (As Listed in Schedule ____ of this By-law)." The attached Schedule would then list these existing apartment buildings by civic address and the list would also include the number of dwelling units in each building. This approach can be used to eliminate the number of non-conforming uses within a zone, the number of spot zoned parcels or it might even be used to eliminate the need for a separate zone for some of these uses.

The advantage is that the listed uses are conforming uses and permitted as-of-right and as such they can expand on their lot in accordance with the other zone requirements such as minimum rear and side yard requirements, unless some restrictions on expansion are placed on the use. This method is applicable in situations where Council does not wish to make long-standing uses non-conforming, since the long-term intention behind creating non-conforming uses is that they should cease to exist in that location.

As an example, there are several planning options available to a Council when dealing with a low density residential area in which there are several existing apartment buildings.

1. Zone the whole neighbourhood for single detached dwellings (e.g. R-1) which will make the apartment buildings non-conforming uses.
2. Zone the area containing the apartment buildings for multiple unit use (e.g. R-3) and the rest of the neighbourhood R-1. In this situation the R-3 zoning may allow not only more dwelling units on the property than are already there, but it may also allow additional uses that may not be desirable, such as commercial uses on the ground floor. On the other hand, the buildings are permitted as-of-right and capable of expanding on the lot in accordance with the R-3 zone requirements.

3. Zone the whole neighbourhood R-1 but include in the R-1 list of permitted uses “existing apartment buildings.” These existing uses must then be listed in a schedule to the By-law by civic address, PID number, and the type of use. In this instance, unless special provisions (enabled by policy) are included in the R-1 zone, provisions such as "Existing apartment buildings may expand on their lot in accordance with the R-3 zone lot requirements," the listed building could not expand on its lot except in compliance with the R-1 lot requirements. Furthermore, the use of the property could only be changed as of-right to another R-1 permitted use. Also, if the apartment building happens to be destroyed, a permit could be issued to rebuild to the extent to which it existed prior to destruction.

2.5 Floating Zones

In this instance, a zone is established in the Bylaw at the time of the adoption of the Strategy and By-law but no land within the municipality is placed in that respective zone category. This technique is frequently applied to such uses as salvage yards and manufactured housing parks. For example, a Strategy could create a salvage yard (I-4) zone which includes a number of special conditions with respect to siting and landscaping. In this instance, the municipality created the new zone but no land within the municipality was zoned for salvage yards. In the future, when someone wants to establish a new salvage yard or expand an existing one, it will be necessary to apply for a By-law (map) amendment.

Another example is the creation of a manufactured housing park zone in a municipality where there are no existing mobile home parks and no lands are zoned for this use. This eliminates the need for a Strategy amendment when a development proposal for a park is received. The proposal is processed as a By-law (map) amendment.

A Strategy may specify specific criteria to be considered in evaluating these By-law (map) amendment requests. These criteria would only apply to this type of By-law amendment. Examples of such criteria, in the case of a re-zoning for a salvage yard are a certain minimum lot size, public road frontage and distance from

Floating zones permits Council to consider uses where land has not been zoned for that use. This minimizes the need to constantly amend the Strategy.

residential uses.

Note: In some cases, a municipality may choose to use development agreements, performance standards or special provisions within a zone to implement a policy to allow such uses as salvage yards and heavy industrial uses.

2.6 Other Techniques

There are other tools that are available through the MGA, for example:

- bonus or incentive zoning (see Information Bulletin # 27 in the MGA Resource Binder);
- dual zoning which is sometimes used where an underlying environmental constraint zone such as a flood plan is used in conjunction with other zones; and
- holding zones where the provision of municipal water and sewer service would be premature.

3. By-law (Zoning Amendments)

It may be desirable to use the By-law (zoning map) amendment process as a development control technique. This would involve policies setting out the requirement that By-law amendments (re-zonings) are required for developments such as apartment buildings, shopping centres, industrial parks, schools, fire halls or manufactured housing parks. If some of these uses are already existing, they are zoned according to their use but there is no pre-zoning of lands for such uses. This means that any new proposal for such a use must be handled by an amendment to the By-law (zoning map).

As an example, policies pertaining to multiple unit residential development might be worded as follows:

Policy 1 It shall be the intention of Council in the By-law to zone existing multiple family dwellings R-3 (Multiple Unit).

Policy 2 It shall be the intention of Council to permit the development of new multiple unit dwellings in the

Limited zoning for more intensive uses encourages their control through the re-zoning process.

Residential designated areas on the Future Land-use Map only by amendment to the by-law. Such amendments are to be evaluated according to the following criteria:

- (a) That the development will not involve a building whose height exceeds the Town's fire fighting capability;
- (b) That the development is within ____ metres (e.g. walking distance defined by a specified distance) of the downtown area as defined on the Generalized Future Land Use Map;
- (c) That the development is served by municipal sewer and water services and that it will not strain the capacities of those services when judged in relation to the requirements of other permitted uses to be served by these facilities;
- (d) That the development is within ____ metres (walking distance) of recreational areas, schools, churches and other community facilities;
- (e) That there is sufficient land for the development to meet the open space provisions of the appropriate zone; and
- (f) That the development has direct access to a collector road as shown on Map 1 (Transportation Map).

In the rural context the Strategy might contain a certain degree of flexibility by allowing a wider range of uses in a designated area than might be found in a built-up area. For example, policy might allow salvage yards and industrial uses in a rural area or non-resource uses in resource areas by an amendment to the By-law subject to certain conditions. The following policy illustrates this concept.

Policy	It shall be the intention of Council to allow the development of salvage yards (but such use shall not include a smelter or any type of chemical treatment or rendering that produces noxious wastes) and
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industrial uses in the areas designated Rural on the Generalized Future Land Use Map by amendment to the By-law provided:

- a) That all applicable criteria of Implementation Policy "X" (the general policy outlining the criteria Council shall have regard to when considering a By-law amendment) have been taken into consideration;
- (b) That the proposed development and the proposed zone do not infringe on adjacent residential, institutional or recreational areas and the proposed development is not incompatible by reason of noise, traffic generated, or odour;
- (c) That the development fronts on a public street.

Similarly, this approach can be used in an urban area, for example, to control the rate of change occurring in an Urban Transitional area which contains a mixture of residential and commercial uses. In this instance, the Urban Transitional area may have been given a General Commercial future land-use designation but Council wishes to retain a certain degree of control over the transition to commercial use. One way Council may achieve this is outlined in the following policy.

Policy It shall be the intention of Council to zone the uses in the Urban Transitional area according to their existing use and to consider requests to zone properties Commercial (C-1) in this area by amendment to the By-law subject to:

- (a) Implementation Policy "X" (General policy outlining the criteria Council shall have regard to when considering a re-zoning request); and
- (b) Additional criteria may be specified if so desired, such as: The proposed development is immediately adjacent to a property already zoned for commercial use.

A Development Agreement can be used for site specific developments.

Although re-zonings are a legitimate planning tool, care must be taken that some areas are pre-zoned so that every use outside of the basic residential uses do not have to go through the re-zoning process. Good “upfront” planning should be done to reduce the need for a larger number of amendments.

4. Development Agreements

A development agreement is a legal agreement between a Council and a property owner. It is an instrument through which a Council can consider a proposal that would not otherwise be allowed because the proposed development is not a permitted use in the zone placed on the land or it cannot meet the requirements of the zone. A development agreement restricts the developer to the use or types of uses actually proposed or outlined in the development agreement. In addition it allows Council to exercise more specific control over not only the type of use or uses but over the character and form of the development. The development agreement runs with the land, that is, the conditions do not cease if the land is sold or if the property owner dies. To re-establish the existing zoning, the Council must first discharge the development agreement.

Appendix 5.3a provides examples of draft development agreements.

4.1 *Municipal Government Act* Requirements

The *Act* is quite specific about the requirements for a development agreement (D.A.) and what must be done in order to use it. The *Act* specifies what must be included in the Strategy and By-law, namely, the types of development, evaluation criteria, the area or areas where the developments may be located and items that may be included in a development agreement. Each of these is addressed in the subsections to follow. (See also Section 225 and 227 of the *Act*.)

4.1.1 Types Of Development

A D.A. requires policy support.

The *Act* (Section 225(1)) specifies that a Strategy's policies must indicate the types of development a municipality will consider by development agreement. This identification can be specific in nature, for example, the use of agreements to permit the expansion of designated nonconforming uses and structures in a specific

Why use a D.A.?

identified future land-use area or anywhere in the municipality. Alternatively, identification may be general in nature, for example, all commercial development over 2,500 square metres in the areas designated Commercial shall be considered by development agreement.

There are many instances when a municipality may wish to use the development agreement process. They include:

- To permit an obnoxious use that Council would not want to pre-zone anywhere.
- To control large scale developments on a single lot which might place excessive demands on municipal services.
- To enable the development of a single mixed use building which might not be permitted under conventional zoning (or allow the development of several multiple use buildings on a single lot).
- To allow non-conforming uses or structures to expand on their existing lots (the development agreement can only deal with the expansion of the use or structure).
- To allow but also limit a particular use or uses in an area because the development agreement would limit the use or uses to the exact use or uses specified in the development agreement. In contrast, a By-law (re-zoning) amendment to a particular zone would permit any of the listed permitted uses in that zone to develop as-of-right.
- To control certain types of development on environmentally sensitive lands and watershed lands.
- To offer some protection for specific historical buildings, for example, by allowing expansions, alterations and conversions to other uses only by development agreement and by controlling the architectural design and use so it will be compatible to adjacent developments by development agreement.

D.A. policies should provide clear direction.

Policies in the Strategy must clearly indicate under what circumstances the property owner has the right to apply for a development agreement. It cannot be left to the individual, or to a Council to decide whether the proposed development should be processed by a development agreement or by a By-law amendment.

Development agreements are a useful technique; however, extensive use of development agreements may prove to be very time consuming, costly and cumbersome to administer. Their use should be carefully considered and if zoning techniques or site-plan approval can achieve the desired objective then they should be used.

4.1.2 Evaluating Criteria

D.A. policies should provide framework for evaluation.

In order to satisfy the requirements of Section 225 (1)(c) of the *Act*, the Strategy must also contain policies that provide a framework for Council to evaluate each proposal which is subject to the development agreement process.

The criteria should include the proposed use of the land and such things as: the traffic the proposal would generate, the proposed exits and accesses, the proposed parking, signage, outdoor lighting, and the adequacy of existing services, outdoor storage, proposed buffering and external appearance such as exterior material to be used, roof-line and compatibility with adjacent uses in terms of height, bulk and lot coverage.

Motherhood types of criteria, like “the proposal should be beneficial to the community”, should be avoided because they may be difficult to defend. If the decision of Council is appealed, unclear criteria may result in differing interpretations by the Utility and Review Board (Board). Therefore, the criteria should deal with specific locational attributes, capacities of existing infrastructure and other municipal services like schools, police, fire and compatibility with adjacent uses in terms of use, size, height and design. In this way, Council's decision concerning the development agreement can be more easily defended before the Board and Council's decision is more likely to be upheld.

4.1.3 By-law Provisions

To implement development agreement policies there must be provisions in the By-law indicating the types of uses and where they will be allowed by development agreement. See section 225 (2) of the *Act*.

4.1.4 Items In A Development Agreement

The evaluating criteria should not be confused with the items that may be included in a development agreement. The items that may be included in a Development Agreement (see Section 227 of the *Act*) are:

- plans and maps of the proposal
- hours of operation
- maintenance requirements
- provisions for adequate buffering or screening
- time limits for the initiation of construction
- any matter which may be addressed in a By-law
- easements for the construction and maintenance or improvement of watercourses, ditches, land drainage, stormwater systems, wastewater facilities, water systems and other utilities
- grading or land alterations
- subdivision of land
- security or performance bonding

The D.A. should provide a limited degree of flexibility to reduce the need for amendments on issues which are not significant.

A development agreement can be written in such a way as to provide a degree of flexibility or conversely it can be written to be restrictive. In the latter case it can tie a developer to only one specific use of the land and also go so far as to specify the amount of floor space that may be devoted to that use. This may be desirable but in some instances such rigidity may not always be practical or in the best interest of a municipality. This can be overcome by building in some flexibility. For example, a development agreement may specify that only an accounting firm may be located on a property. However, if at some later date the firm moves to a new location and a consulting firm wants to set up an office on the property, this would not be permitted. It could only be permitted if the development agreement were amended and a consultant's office included as a permitted use. (Such an amendment would also have to be consistent with the policies in the Strategy.) In this instance, it might have been more appropriate to

have originally specified the permitted use as a professional office. Similarly, some flexibility might be obtained in a development agreement, if for example in a development agreement for a shopping centre, a wide range of permitted uses are listed or alternatively, list those uses that are not desired.

Under the *Act* (Section 227 (3) (a)) a development agreement may indicate matters which are not considered substantive or those matters that are substantive. To change the substantive matters a development agreement requires an amendment to the original agreement which means repeating the adoption process including holding a public hearing. However, those matters identified in a development agreement as non-substantive or that were not identified as being substantive may be altered without a formal amendment process. For example, there may be provisions whereby the setbacks indicated on the site-plan attached to the development agreement may be varied as a non-substantive amendment by plus or minus 10% to accommodate any unforeseen excavation problems such as a substantial amount of bedrock.

4.2 The Development Agreement Process

The D.A. must follow the process delineated by the *Act*.

A development agreement is processed in the same manner as a By-law amendment with the accompanying notification and public hearing. The decision to enter into (or approve) a development agreement is done by a policy of Council following the public hearing. The decision is appealable to the Nova Scotia Utility and Review Board; therefore, the criteria used by Council to evaluate a proposal should be clear and concise. When Council rejects a development agreement it must give reasons for doing so based on policies in the Strategy. (Section 230 (6) of the *Act*).

In order to make a substantive amendment to a development agreement the adoption process must be repeated. The only exception to this is where the initial agreement outlines those matters that the parties have identified as not substantive or not identified as being substantive. (See also Section 4.1.4 of this *Guideline*.)

The development agreement should not be signed until the appeal period has elapsed and until all appeals have been disposed of and Council's decision to enter into the development agreement upheld

A D.A. can be discharged under certain conditions.

(*Act*, Section 228 (3) (a)). In addition, where a Strategy amendment has been adopted to enable the development agreement it should not be signed until the Strategy amendment is in effect and the appeal period for the development agreement has elapsed. Once the development agreement is signed, the Clerk registers it at the Registry of Deeds and it remains in effect until discharged by Council.

A discharge can only occur in accordance with the terms of the development agreement or with the concurrence of the property owner. The development agreement may also include provisions that identify the time and conditions under which the development agreement may be discharged with or without the concurrence of the property owner. It may also state that upon the completion of the development or phases of the development, the development agreement or portions of it may be discharged. If such provisions are not included, the development agreement must be amended and the discharging provisions added. The actual discharging of a development agreement requires a resolution of Council and the resolution discharging the agreement is also registered by the Clerk. Once discharged, the property is subject to the provisions in the By-law. (Sections 227 (3) (b), 227 (3) (c), and 229 of the *Act*.)

When discharging a development agreement there are two basic concerns to consider:

- the effect the discharge will have on any requirements which may have been placed on the development concerning such things as maintenance and hours of operation (i.e. these will be removed); and,
- whether or not the underlying zoning on the property will make the development a nonconforming use, structure or both.

The Strategy may be written to address the second issue by permitting a re-zoning of the property at the time the development agreement is discharged. Still, the development may not fit any existing zones and consequently it may become a nonconforming use or structure or both. Therefore, the Strategy could provide that the By-law be amended such that:

- the development is listed as a permitted use in the zone in which it is situated; or

What types of provisions could be included?

- a zone appropriate for that development is created and the development is re-zoned to that new zone.

Such amendments would result in the development being conforming instead of non-conforming. In light of these two concerns and their implications few agreements are discharged. The one situation where a development agreement might be discharged is a development agreement associated with a Comprehensive Development District (CDD) where the development agreement consists of a site-plan for the whole area and it provides that uses be developed according to existing zone requirements. For example, townhouses in a CDD shall be developed in accordance with the municipality's Townhouse Zone. (See Section 5.4 of this *Guideline*.)

4.3 Examples Of Provisions

The following examples illustrate how development agreement provisions might be set out in policies in a Strategy and then carried through into the By-law. These examples have been taken from existing Strategies or proposed amendments to Strategies.

- Policy 1 It shall be the intention of Council to consider proposals for fish reduction plants anywhere in the Municipality (or the policy could limit it, for example, to “areas designated Industrial on the Future Land Use Map”) only by development agreement.
- Policy 2 It shall be the intention of Council when evaluating proposals under Policy 1 to have regard to the following:
- (a) the proposed development is not located within 500 metres of an existing residential, institutional or recreational use including cottages. *Note: the separation distance used should not be so great so as to effectively prohibit development of the use in the municipality;*
 - (b) the proposed development abuts and fronts upon a public street; and

- (c) the proposed development conforms with all relevant criteria of Policy “X” in the Implementation portion of the Strategy. (The policy outlining the general criteria Council shall have regard to when considering a development agreement request.)

Policy 3 It shall be the intention of Council to consider proposals for day nurseries (other than those allowed as home occupations) in areas designated Residential by development agreement. *Note: This applies for example, in instances where the operator of the nursery does not reside in the building in which the use is located.*

Policy 4 It shall be the intention of Council when evaluating proposals under Policy 3 to have regard to the following:

- (a) the compatibility of external appearance and scale of the building with existing residential development;
- (b) the hours of operation;
- (c) the provisions made for parking;
- (d) the proposed development does not include an illuminated sign; and
- (e) the criteria set out in Policy “X” in the Implementation portion of the Strategy.

Policy 5 It shall be the intention of Council to consider development proposals for shopping centres in the area designated Commercial General on the Generalized Future Land Use Map by development agreement.

Policy 6 It shall be the intention of Council when evaluating a proposal under Policy 5 to consider the following matters where applicable:

- (a) the proximity of the proposed development to local schools and churches.

- (b) the impact of the proposed development on:
 - (i) the existing residential uses in the area with particular regard to the use and size of the structure or structures that are proposed, buffering and landscaping, hours of operation for the proposed use (where applicable) and other similar features of the use and structure.
 - (ii) the adequacy of municipal services with particular regard to demands on the sewer system, fire protection, refuse collection and police protection.
 - (iii) pedestrian and vehicular traffic circulation with particular regard to ingress and egress from the site, traffic flows and parking areas.
- (c) the submission of a site-plan showing the location of the use and the structure or structures on the lot, parking areas and building lay-out.
- (d) the lot is large enough to ensure that adequate screening and landscaping can be done.

Policy 7 It shall be the intention of Council that development agreements under Policies 1, 3 and 5 contain such terms and conditions as are necessary to ensure that the development is consistent with the policies of this Strategy. To this end, the development agreements shall include some or all of the following where applicable:

- (a) the specific use of the land;
- (b) the size of the structure or structures if a new or an expansion of an existing structure or structures are proposed;

- (c) provisions for adequate buffering to screen the development from adjacent conflicting land-uses;
- (d) any matter which may be addressed in a By-law, i.e. parking requirements, yard requirements;
- (e) time limits for the initiation of construction;
- (f) the hours of operation and the maintenance requirements of the proposed use; and
- (g) all other matters enabled by the *Act* in Section 225 to 230.

To implement these policies a Development Agreement Part must be added to the By-law. This might be worded similar to the following:

Part X. Development Agreements
Uses Considered By Development Agreement

The Strategy provides that the following uses shall be dealt with by development agreement:

- (a) fish reduction plants anywhere in the municipality (in accordance with Policies 1 and 2);
- (b) day nurseries (other than as home occupations) in areas designated Residential (in accordance with Policies 3 and 4).
- (c) shopping centres in areas designated Commercial General (in accordance with Policies 5 and 6).

5. Comprehensive Development Districts

Section 226 and of the *Act* enable a Council to include policies in its Strategy which would permit it to establish comprehensive development districts (CDD's).

CDD s combines zoning and development agreements.

A CDD represents a combination of the zoning and development agreement methods. It is concerned with the development of larger areas of land (which may include multiple property owners) and may allow a mixture of uses within that area. While on the other hand, a development agreement, as outlined in Section 4 above tends to be more closely associated with the control of a specific use on a particular property. The development agreement in the CDD approach can apply to all or part of the lands zoned CDD. The zone may permit some types of development to proceed on an as-of-right basis. (Section 226 (1) of the *Act*)

The CDD approach is generally applied to an area of land in which Council anticipates development pressures and perhaps desires a mixture of uses which could not be adequately controlled through the establishment of a mixed use zone under conventional zoning. This approach enables Council to permit and plan for a mixture of uses in an area and to vary provisions such as side yards and setbacks to encourage innovative designs.

This tool is normally used on large areas of land (eg. 5 to 100 acres or more) and usually allows for a wide range of land-uses (eg. everything but industrial uses or everything but residential uses). A CDD and its agreement or agreements can involve a single land owner or a number of different landowners. It depends on the area to be zoned CDD. Once a development agreement is in place development permits in the CDD agreement area would be issued to the landowners if their proposed developments conformed with the development agreement.

5.1 *Municipal Government Act* Requirements

Like the development agreement provisions, the Strategy must identify when and where the CDD provisions apply and the classes of uses that would be considered within a CDD. As well the criteria for evaluating a proposal for a CDD must be set out in policy. For example, a criterion might be that the proposal includes a mixture of residential housing types (including single detached, semi-detached, townhouses and apartment dwellings) and moreover to ensure this, the criterion might specify that no more than half the dwelling types be single detached units.

CDD's have been most frequently employed to control large planned

The CDD process is delineated by the M.G.A.

residential areas on “undeveloped” land. But, they could be used for example, to control the development or redevelopment of industrial areas, heritage areas and downtown redevelopment. Where CDD’s are being used for different purposes, policies must be contained in the Strategy that outline the application for each one.

5.2 Items In A CDD Agreement

The CDD approach involves a development agreement. Therefore, it may include all the items that are covered by a development agreement as outlined in Section 4.1.4 of this *Guideline* including provisions for phasing the development. These agreements may include a complete description, street layout and the subdivision of the lands (Section 281 of the *Act*) in order to ensure the development proceeds consistent with the agreed upon concept plan for the CDD.

5.3 CDD Process

To implement the CDD policies in a Strategy a separate zone must be established in the By-law. This zone might be called a CDD or simply a Special Area Zone. An area or areas may be pre-zoned CDD on the Zoning Map or the zone may be left as a floating zone with the potential to be used at a later date by way of a By-law (zoning map) amendment. (See Section 2.5 of this *Guideline*.)

If, for example, a developer wishes to have their property zoned CDD there are two possibilities:

- (1) If the municipality's Strategy and By-law provide for a CDD zone but the land in question has not been pre-zoned CDD then the developer could apply for a re-zoning. This request would be evaluated in light of the CDD criteria set out in policy; or
- (2) If the municipality's Strategy and By-law do not provide for a CDD zone then Council could decide to amend its planning documents to establish a CDD zone and if amended the land in question could be zoned accordingly.

Note: It is possible that a Strategy and Bylaw may provide for more than one CDD zone category. For example there may be a Residential CDD Zone and an Industrial CDD Zone.

Once the land is zoned CDD, Council and the owner or owners of the land negotiate a development agreement(s). The development agreement is processed in a manner outlined in Section 4.2 of this Guideline. The decision of Council to approve or refuse to enter into the development agreement is appealable to the Utility and Review Board. If a development agreement is rejected by Council the reasons for doing so must be given and these should be based on policies in the Strategy (Section 230 (6) of the *Act*).

The approval of a re-zoning to a CDD and the development agreement may be done concurrently. However, a separate public hearing is required for each.

If Council approves both the re-zoning and the development agreement at the same time, the development agreement should not be signed until both the appeal process for the re-zoning and the appeal process for the development agreement have elapsed. See also the *Guideline* in this series "The Strategy and By-law Approval Process".

5.4 Examples

An illustration of how a CDD may be used and how the CDD process works can be seen in the case of a small Nova Scotian town where the construction of a limited access highway created an opportunity for the Town. The Town wished to control both the type and appearance of the uses in an area adjacent the new highway. Originally, the area was designated and zoned for Highway Commercial uses in the Town's Strategy and Bylaw. In order to achieve the desired control Council amended its Strategy and By-law. Provisions were added to provide for the establishment of a CDD on the land adjacent the new highway that had previously been designated Highway Commercial. Under the CDD provisions the land was re-zoned CDD and the Town negotiated a development agreement with the landowner (in this instance there was only one property owner) in the CDD zone. The development agreement outlined the proposed uses for the land and where they would be located. Before entering into the CDD agreement Council followed the procedures as outlined previously in Section 4.2 of this

An example of a CDD.

What types of policies are required?

Guideline, The Development Agreement Process. The owner of the land was then issued a development permit when the proposed development conformed with the terms of the development agreement.

In this instance there was only one property owner involved. However, if the area zoned CDD had included several properties, the property owner who wanted to develop his or her property first would have negotiated a development agreement (and concept plan) for his or her land. The other property owners in the CDD area could then negotiate a separate agreement when they in turn wished to develop their properties.

An example of policies setting up provisions for a Comprehensive Development District (CDD) are outlined below.

- Policy 1 It shall be the intention of Council to enable development by a Comprehensive Development District in areas designated General Residential on the Generalized Future Land Use Map and allow by development agreement a mixture of residential uses and related recreational, commercial and open space uses, with an emphasis on a mix of dwelling types and to establish in the By-law a CDD zone which will allow such development.
- Policy 2 When considering an amendment to the By-law (a re-zoning) to establish a Comprehensive Development District, Council shall have regard for the following: *Note: This applies when no lands have been pre-zoned CDD.*
- (a) That the district is within the areas designated General Residential;
 - (b) That the district includes a minimum area of two hectares;
 - (c) That adequate municipal services are available (eg. sewer, water and schools); and
 - (d) That the development is consistent with the general policies of this Strategy.

- Policy 3 Pursuant to Policy 1, it shall be the intention of Council when evaluating a development agreement for a development in the Comprehensive Development District to have regard to:
- (a) The proposed housing mixture;
 - (b) The adequacy of the existing and proposed street network to handle the traffic to be generated by the development; and
 - (c) See Section 4.3 Policy 6 of this *Guideline* for examples of other criteria that might be included here.
- Policy 4 Pursuant to Policy 1, it shall be the intention of Council that such a development agreement include the following information:
- (a) A legal description of the land;
 - (b) The total number and type of dwelling units, lot size, proposed lot coverages, approximate gross and net population densities, total amount of open space and useable open space, total amount of commercial and where applicable institutional facilities;
 - (c) A site-plan and supporting maps to describe existing topographic conditions and vegetation, lot lines, location and size of all existing and proposed buildings and structures including maximum heights, types of dwelling units, density per type and non-residential structures; and
 - (d) The location and size of all areas to be dedicated or reserved as common open spaces, public parks, recreational areas, and other public uses; existing and proposed circulation systems including parking and serviced areas, and major points of ingress and egress to the development; existing and proposed pedestrian circulation systems

including its interrelationship with the vehicular circulation system; existing and proposed public utility system and general schematic landscape plan indicating the treatment of private and public open spaces and the development agreement may include any other matter that may be dealt with in a land-use by law and as enacted in Section 227 of the *Act*.

Policy 5 It shall be the intention of Council that any agreement made pursuant to Policies 1, 2 and 3 may be discharged upon completion of the development or upon completion of particular specified phases of the development. Upon discharging part or all of any agreement, Council shall zone the lands to reflect the intent of the development agreement. (Note: If the development has been developed in accordance with the By-law's various zone requirements, for example, townhouses have been built according to the townhouse zone requirements (eg. side yards, front yard setbacks, etc.) the structures would not become nonconforming when the development agreement is discharged and the appropriate zoning is applied. This is assumed to be the case here but it may not always be so, consequently it may not be desirable to discharge the development agreement.)

Provisions in the By-law to implement these policies might be worded along the following lines:

Land-use By-law

Part X. Comprehensive Development District (CDD) Zone

- (1) The following uses shall be permitted in the CDD zone: in accordance with the development agreement.
- any residential dwelling type;
 - single detached dwelling units do not require a development agreement but are subject to the provisions of the R-1 Zone; and

Performance standards are based on the notion, what type of development can the land handle?

- recreational, commercial and open space uses, accessory to the foregoing.

- (2) Notwithstanding any other provision of the By-law, Council may, by adopted policy, approve any specific development application pursuant to Policies 1, 3, 4 and 5 of the Municipal Planning Strategy (above).

6. Performance Standards

Performance standards are in essence design standards and are used predominantly when dealing with land capability. Such standards have not been employed in Nova Scotia though they are enabled under the *Act* (Section 220 (5) (j)). They could be employed in rural areas to obtain development designed to fit a site's environmental capacities. This is in contrast to development superimposed on a site and environmental characteristics and capacities changed to meet the use.

For example, a municipality may want to allow development in accordance with specific environmental performance standards. To achieve this there first should be an enabling policy in the Strategy and then the establishment of the specific standards in the By-law. The latter might be: no more than 20% of the area's surface shall be impervious; the run-off shall not be more than 5% above the natural level of run-off existing prior to development; and the slope of the land shall not be greater than 1:3. If a development met these standards a development permit would then be issued.

In urban areas performance standards might be used to control the effects of wind-tunnelling created by high rise developments or to establish minimum sun-light provisions. In both these instances measurable standards would have to be established.

7. Site-planning

In the past, municipalities have used the development agreement process to gain control over items other than the use of land itself (i.e., items related to the site such as landscaping, the location of parking lots or storage areas, number of parking spaces, signage,

Site-plans provide an alternative to development agreements and zoning.

What elements can a site-plan include?

hours of operation, building design, etc.). The development agreement process, however, can be a lengthy and expensive process which results in a legal contract between the developer and the municipality.

Site-planning is a new development control technique that is enabled by the *Act* (Section 231, 232, 233) (also see Bulletin #38 of the *Municipal Government Act Resource Guide*). It is a process that lets the development officer and the developer agree on certain site related aspects of the development prior to the issuance of the development permit. It should be noted that this process does not apply to one and two unit dwellings (Section 231 (2) of the *Act*).

Section 231 (4) of the *Act* lists those elements of a development that site-plan may deal with. They are such things as:

- the location of structures on the lot;
- location of parking areas and driveways;
- fences;
- vegetation;
- retention of existing vegetation;
- management of storm or surface water
- signs; and
- maintenance.

The site-planning process is a way of dealing with these site-related issues in a less formal way than would be required by the development agreement process. The site-planning approval is also limited to dealing with only one lot at a time, whereas a development agreement can involve a subdivision or multiple lots.

It must be remembered that this is as-of-right development and there is no question of whether the use is allowed or not. The standard time frames for issuing a municipal development permit also still apply to site-planning. This process provides the developer greater flexibility on the actual position of the structure, the parking facilities, signage, driveway access and maintenance. These aspects are negotiated between the developer and the development officer and set out in a site-plan. These various components of the development are then shown on a site-plan and the developer is obliged to meet the specified elements of the development as shown on the plan.

Site-plans require policy support in the strategy and guidelines in the by-law.

One further distinction of the use of site-planning from simple zoning and the issuance of municipal development permits is that when the site-plan is agreed to, the development officer must notify adjacent property owners in the same way as a variance to the By-law is dealt with. Those people who received the notice are able to appeal the approval of the site-plan to the municipal council in the same fashion as a variance. The actual permit is not issued until the time of the appeal has lapsed or the appeal disposed of (Section 233).

To use this tool, a municipality must have policy support in its strategy, identifying the use(s) and/or zone or area where the municipality wants to have greater control over site specific items. The policy provisions of the strategy must explain why the municipality requires this extra control. The by-law provisions should also provide guidelines for the development officer to evaluate site-plans.

The site-plan is not a written contract, rather it is a drawing or plan and may include some written notations. The site-plan is specific to the property and would continue to apply even in the event that the property was sold, unless the site-plan was discharged by Council (Section 234). The owner of the property, however, may at a later date wish to change the use of the property to another permitted as-of-right use in the zone. If the new use is subject to site-plan approval, the original negotiated site-plan would have to be revisited.

Appendix 5.3a

Draft Development Agreements

The following draft development agreement formats are examples of what could be used as a base for developing a town's or municipality's own development agreement format. Depending on the nature of the case, the policies of the Strategies and the municipality's preference, there can a wide variation in development agreement formats. It is suggested, however, the more standardized the general format, the easier it would be for all concerned in a municipality to better understand them.

The reader is also cautioned that the preparation of these examples containing practical suggestions must necessarily involve interpretation of legislation as it applies in general situations. Specific situations may require careful legal analysis and therefore reference should be made to the *Municipal Government Act*, other relevant legislation and to legal advisors.

A. Development Agreement (based on the format used by the Planning and Development Services of the Halifax Regional Municipality)

THIS AGREEMENT made this _____ day of _____, 20____,

BETWEEN:

(ENTER NAME OF PROPERTY OWNER)
(hereinafter called the "Developer")

OF THE FIRST PART

-and-

(MUNICIPALITY/TOWN).
a body corporate, in the County of _____
Province of Nova Scotia
(hereinafter called the "Municipality/Town")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at _____ (enter approximate description of property and community name) and which said lands are more particularly described in Schedule "A" to this Agreement (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality/Town enter into a development agreement to allow for _____ (enter brief synopsis of project) on the Lands pursuant to the provisions of the *Municipal Government Act (Act)* and the Strategy and By-law for _____ (enter name of plan area if more than one for municipality);

AND WHEREAS the _____ (enter name of council) approved this request at a meeting held on _____ (enter date),

THEREFORE in consideration of the benefits accrued to each party from the terms herein contained, the Parties agree as follows:

Part 1: Definitions

- a. Use definitions for items which are unique to the development agreement or are not defined in the Strategy, By-law or Subdivision By-law.
- b. Use definitions to define specific Municipal Planning Strategies or By-laws or Subdivision By-laws, if the Municipality/Town has more than one.
- c. If included, define what is meant by the commencement and completion of a project.

Part 2: General Requirements and Administration

- 2.1 The Developer agrees that the Lands shall be subdivided (where applicable), developed and used only in accordance with and subject to the terms and conditions of this Agreement.
- 2.2 Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the By-law, as may be amended from time to time.
- 2.3 Except as otherwise provided for herein, the subdivision of the Lands shall comply with the requirements of the Subdivision By-law, as may be amended from time to time. (This is only required if the subject property is to be subdivided or consolidated as part of the development agreement.)
- 2.4 Pursuant to Section 2.2 and 2.3, 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/Town applicable to the Lands (other than the By-law and Subdivision By-law to the extent varied by this Agreement), or any statute or regulation of the Province of Nova Scotia, and the Developer or lot owner agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.
- 2.5 Where the provisions of this Agreement conflict with those of any by-law of the Municipality/Town applicable to the Lands (other than the By-law and Subdivision 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.

- c. a maximum of _____ apartment buildings, containing a maximum of _____ units
- d. a commercial building to serve the local convenience needs of the neighbourhood
- e. parkland and open space

3.3 Detailed Provisions for Land-uses (this may be more applicable to a Comprehensive Development District)

This entails specific site development standards for each land-use.

- a. _____
- b. _____
- c. _____
- d. _____

3.4 Parkland and Open Space

- Refer to Schedule for locations
- Specify when lands are to be deeded
- Specify what improvements are the responsibility of the Developer (plans, walkways, tree retention, grading, stabilization, installation, security deposit, etc.)

3.5 Phasing (this may be more applicable to a Comprehensive Development District)

- If the development entails multiple phases of construction, these should be illustrated in a Schedule
- Include provisions describing the requirements /approvals necessary for each phase, including timing or time limits is applicable.

3.6 Streets and Municipal Services (this may be more applicable to a Comprehensive Development District)

- This section specifies provisions respecting the design and construction of streets, sidewalks, sanitary sewer system, water distribution system, utilities (street lights, power) and street trees
- Provisions regarding the stormwater system can be included here or cross-referenced to the “Erosion and Sedimentation Control” section.

3.7 Environmental Protection

- An “Erosion and Sedimentation Control Plan” should be required from the Developer, and should form a Schedule to the Agreement.
- The Plan should address items such items as tree retention and grade alteration (site disturbance boundaries), stormwater management (piped and surface systems), erosion and sediment control measures to be undertaken during construction, timing of soil stabilization/landscaping, security deposits, and approvals.

3.8 Maintenance

- This section specifies what elements of the development the Developer/Owner is responsible for in terms of on-going maintenance.

3.9 Approvals/Permits

- Suggested timing and requirements for approvals/permits should be addressed in the applicable sections above. However, should this not be the case, this section would specify the requirements for various approvals and when such approvals are necessary.
- This section could also make reference to other required approvals such as the Lot Grading By-law, Grade Alteration (Topsoil Removal) By-law, etc.

PART 4: AMENDMENTS

4.1 The provisions of this Agreement relating to the following matters are not deemed to be substantial and may be amended by resolution of the Council:

- a. _____
- b. _____
- c. _____

4.2 Amendments to any matters not identified under Section 4.1 shall be deemed substantial and may only be amended in accordance with the approval requirements of the *Act*.

Part 5: Registration, Effect of Conveyances and Discharge

- 5.1 A copy of this Agreement and every amendment and discharge of this Agreement shall be recorded at the office of the Registry of Deeds at Halifax, Nova Scotia and the Developer shall pay or reimburse the Municipality/Town for the registration cost incurred in recording such documents.
- 5.2 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the land which is the subject of this Agreement until this Agreement is discharged by the Council.
- 5.3 (use the following where the Development Agreement involves the subdivision of lots, such as in a Comprehensive Development District)

Notwithstanding any subdivision approvals granted pursuant to this Agreement or any transfer or conveyance of any lot or of all or any portion of the Lands, this Agreement shall continue to apply to and bind the Developer, the Lands and each lot and, subject to Section 5.4, the Developer shall continue to be bound by all terms and conditions of this Agreement until discharged by the Council.

- 5.4 Upon the transfer of title to any lot, the owner thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.
- 5.5 In the event that construction of the development has not commenced within _____ (enter number of years or months) from the date of approval of this agreement by the Municipality/Town, as indicated herein, the Municipality/Town may, by resolution of Council, either discharge this Agreement whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction. For the purposes of this section, “commencement of construction” shall mean _____ (enter description, in consultation with developer and Development Officer).
- 5.6 Upon the completion of the development or portions of the development, or within _____ (enter number of years or months) from the date of approval of this Agreement, whichever time period is less, Council may review this Agreement, in whole or in part, and may:
- a. retain the Agreement in its present form;
 - b. discharge this Agreement on the condition that for those portions of the development that are deemed complete by Council, the Developer’s rights hereunder are preserved and the Council shall

apply appropriate zoning pursuant to the Strategy and By-law.

Part 6: Enforcement And Rights And Remedies On Default

- 6.1 The Developer agrees that any officer appointed by the Municipality/Town 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/Town 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 _____ (specify time frame) days of receiving such a request.
- 6.2 If the Developer fails to observe or perform any condition of this Agreement after the Municipality/Town has given the Developer thirty (30) days written notice of the failure or default, then in each such case:
- a. the Municipality/Town 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/Town may enter onto the Property and perform any of the covenants contained in this Agreement whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants may be recovered from the Developer by direct suit and such amount shall, until paid, form a charge upon the Property and be shown on any tax certificate issued under the *Act*.
 - c. the Municipality/Town 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 By-law; and/or
 - d. in addition to the above remedies the Municipality/Town reserves the right to pursue any other remediation under the *Act* or common law in order to ensure compliance with this Agreement.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written:

Signed, sealed and delivered)	(enter name of property
in the presence of:)	owner)
)	
)	
per: _____)	per: _____
)	
)	
)	
Sealed, Delivered and Attested)	(Municipality/Town)
by the proper signing officers of)	
_____Municipality/Town)	
duly authorized on that behalf))	per: _____
in the presence of)	MAYOR
)	
)	
_____)	per: _____
)	-
)	MUNICIPAL CLERK

B. Development Agreement

THIS AGREEMENT MADE THIS _____ DAY OF _____, 20__

BETWEEN:

_____ a body corporate with head office in the _____ in the County of _____ (hereinafter referred to as the "Developer").

- and -

_____ (hereinafter referred to as the "Municipality/Town")

WHEREAS the Developer is the registered owner of certain lands (hereinafter called the "Property") which lands are more particularly shown in Appendix "A" attached hereto;

AND WHEREAS the Developer wishes to obtain approval of and a Development Permit for the construction of a _____ as shown on a site-plan attached as Appendix "A"; pursuant to the Municipal Planning Strategy and the Land-use Bylaw of the Municipality/Town;

AND WHEREAS a condition of the granting of approval by the Municipality/Town Council is that the Registered Owner of the Property enter into an agreement with the Municipality/Town;

AND WHEREAS the Municipality/Town Council at its meeting held on the _____ day of _____, 20__ approved the Developer's application for a Development Agreement to permit construction of the Development;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants and agreements herein contained the Developer and the Municipality/Town acknowledge and agree as follows:

1. General

- 1.1 In this Agreement, “Developer” means _____ .
This Development Agreement shall bind each and every Developer jointly and severally with the other parties hereto.

2. Plans

- 2.1 The main building (or “buildings for the Development”) shall be located and constructed in conformity with the side, rear and front yard setbacks as shown on the site-plan attached as Appendix “A” to this agreement.
- 2.2 The height of the main building (or “any buildings”) of the Development shall not be greater than _____ metres.
- 2.3 Notwithstanding subsection (2.1) of this agreement the location of the main building (or “any building”) may be varied by not more than three metres without being considered a substantial change to this agreement.

3. Use

- 3.1 The permitted uses for this property shall be _____ .

4. Parking

- 4.1 The Developer shall construct and maintain in good repair a parking area and a loading laneway as shown on Appendix “A” and in accordance with the following requirements:
- i) there shall be _____ parking spaces;
 - ii) the driveways leading to the parking area shall be in the locations shown on Appendix “A” and shall be a minimum of eight metres and a maximum of ten metres in width; and,
 - iii) the loading space be as shown on Appendix “A”.

5. Signs and Lighting Requirements

- 5.1 A maximum of two wall signs shall be placed as shown on Appendix “A”.
- 5.2 All signs shall not exceed _____ square metres in area.
- 5.3 All exterior lighting fixtures shall be constructed and located in accordance with the manner shown on Appendix “A” and in accordance with the following requirements:
- i) lighting standards shall be no higher than _____ metres above the finished grade of land and shall be arranged so as to divert the light away from streets and adjacent lots and residential buildings.

6. Servicing

- 6.1 The Development shall be serviced by a _____.
- 6.2 The Development shall be connected, at the Developer's expense, to the Municipality/Town's sanitary sewer system.
- 6.3 Solid waste disposal shall be the responsibility of the management of the Development.
- 6.4 Outdoor storage shall be allowed at the rear of the main building and a _____ metre wooden fence shall be built as shown on Appendix “A” to screen the storage area such that the goods being stored are not visible from the street or from any existing abutting residential properties.

7. Landscaping

- 7.1 The Developer shall retain and maintain a treed buffer at the western end of the property as shown on Appendix “A”.
- 7.2 The Developer shall carry out and maintain in a neat and tidy manner a _____ metre landscaped strip abutting the front of the building as shown on Appendix “A”.

8. Hours of Operation

- 8.1 The Development shall be open from _____.

9. Permits and Construction

- 9.1 Notwithstanding any other provision of this Development Agreement, the Development shall not undertake or carry out any development on the Property which does not comply with:
- i) this Development Agreement,
 - ii) any statutes and regulations of the Province of Nova Scotia to the extent that the same are properly the subject of a development agreement, and
 - iii) with appropriate Municipality/Town By-laws, including without restricting the generality of the foregoing, the Building By-law.
- 9.2 The Municipality/Town shall issue the necessary permits for the Development as soon after the expiration of the appeal period set out in the *Municipal Government Act*, as required by the Developer or upon the withdrawal or dismissal of any appeal which may be taken.
- 9.3 The Developer shall commence construction of the Development within _____ months subject to weather conditions and following the issuance of the necessary permits for the Development. If construction does not begin within the period set out herein, this Development Agreement may be discharged by the Municipality/Town Council.
- ## **10. Miscellaneous**
- 10.1 The Municipality/Town shall cause this Development Agreement to be registered, at the expense of the Municipality/Town, in the Office of the Registrar of Deeds for the registration district in which the Property is located.
- 10.2 Pursuant the *Municipal Government Act*, where the Property or any part thereof which is subject to this Development Agreement is conveyed to a person not a party to this Development Agreement, this Development Agreement shall continue to apply to the Property until discharged by the Municipality/Town Council.
- 10.3 This Development Agreement is subject to the provisions of the *Municipal Government Act*.
- 10.4 All words appearing in this Development Agreement which are defined in the

Municipality/Town's Land-use By-law shall be deemed to have the same meaning as in the Municipality/Town's Land-use By-law.

- 10.5 If any clause or part of a clause or any covenant or obligation of this Development Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable for the remainder of the Development Agreement, the application of such clause or covenant or obligation to persons or circumstances other than those as to which it was held invalid or unenforceable shall not be affected, and each clause, covenant and obligation of this Development Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

- 10.6 This Development Agreement shall extend to and enure to the benefit of and be binding upon the Developer and the Municipality/Town and their respective successors and permitted assigns.

DATED at _____, Nova Scotia, the day and year first above written.

<p>SIGNED, SEALED AND DELIVERED</p> <p>_____</p> <p>_____</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Municipality/Town of</p> <p>_____</p> <p>_____</p> <p style="text-align: center;">The Developer</p> <p>_____</p> <p>_____</p>
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