



**Subject:** *Andrew Kim - Development Agreement for mixed-use proposal*  
**To:** CAO for Planning Advisory Committee, October 17, 2023  
**Date Prepared:** September 29, 2023  
**Related Motions:** PAC23(31) June and C23(208)  
**Prepared by:** Rachel Gilbert, Manager of Planning  
**Approved by:** John Woodford, Director of Planning and Development

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### Summary

The Municipality has received an application from Andrew Kim which requests approval for a multi-unit commercial building, including a drive-thru, at 251 Highway 214, Elmsdale. The application includes a drive-thru. A development agreement has been drafted.

### Financial Impact Statement

Further information on the financial impact is provided in page 7 of this staff report. The development agreement commits the municipality to \$324,000 plus HST for the construction of a section of Active Transportation Trail.

The estimated value of the property once constructed is \$3.5 million and based on the Elmsdale Commercial Serviced Rate (2023) this could result in \$119,245 in annual tax revenue. However, construction value does not necessarily equal tax assessment value, so this estimate is subject to change based on PVSC's assessment determination.

### Recommendation

That Council approve the application.

### Recommended Motion

Planning Advisory Committee recommends to Council that Council:

- give final consideration and approve entering into a Development Agreement for a multi-premise commercial building at 251 Highway 214, Elmsdale; within one year of Council's approval.

## Subject Property

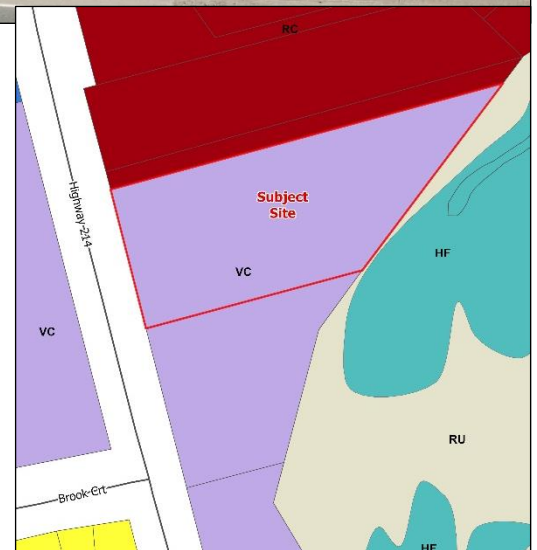
The property is located at 251 Highway 214, Elmsdale. The existing house and garage on the property has been removed. The image to the right is taken from google streetview imagery dated Fall 2022.



The land is located in the Village Core (VC) Zone. To the north of the property is a McDonalds restaurant and drive-thru which is located in the Regional Commercial (RC) Zone. Opposite the property on Highway 214 is an Irving Oil property which has a Circle K gas station and an A&W restaurant and drive-thru. The Irving Oil property is zoned Village Core (VC). To the south of the application property is a residential property which has a dwelling and detached garage located on it.

The ground sign for the McDonalds property is estimated at 8 metres tall. The permitted maximum ground sign height for the A&W use is 7.6 metres.

To the rear of the property the land slopes downwards and this land is zoned either High Risk Floodplain (HF) or Rural Use (RU) with a Moderate Risk Floodplain (MF) overlay zone.



The land is approximately 0.48 hectares (1.9 acres) in size and has approximately 49 metres (160 feet) of frontage.

## Development Proposal

The municipality has received an application from Dr. Andrew Kim for a multi-unit commercial building which will include a dental office and a coffee shop and a drive-thru. Dr. Kim owns and operates the existing Elmsdale Dental Clinic in the Sobeys mall. Elmsdale Dental Clinic has been in the community for many years. The clinic will relocate to the new building once completed.

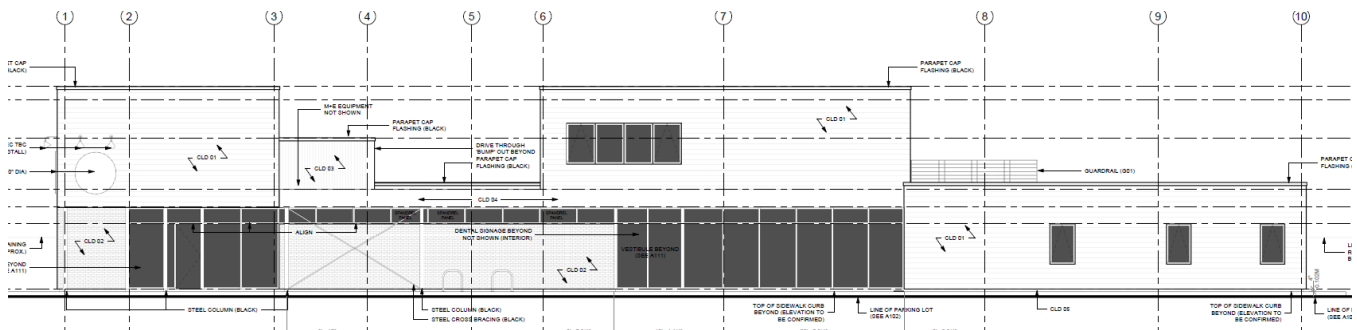
A coffee shop is proposed for the front section of the building with a drive-thru along the rear and north side of the building. The rear portion is for the dental clinic. The floor plan for the dental clinic shows 12 practitioner rooms, plus other rooms/areas such as



reception, staff lunch room and meeting space. The applicant does not believe there will be 12 practitioners in any given time but the additional rooms will allow for overflow or overlapping appointment. The applicant does have plans to expand the practice but as this point in time no specific details are available.



The building is mostly single storey but there is a second floor for the dental office which will provide an area for staff room/kitchen, a meeting room and an outdoor patio. The front portion and the two storey section is approximately 7.5 metres (25 feet) tall. The single storey height sections are 3.7 metres (12 feet high)



In the Village Core (VC) Zone the following are enabled to be considered by Council by a development agreement:

1. In the Village Core (VC) Zone drive-thru restaurants require a development agreement.
2. VC uses beyond 835 m<sup>2</sup> - the proposal is for an 840 m<sup>2</sup> gross floor area building.
3. Institutional uses that do not meet the form-based zone requirements but will contribute to the vitality and overall goal of the VC Zone' to be considered by development agreement - this has policy has been amended in the newly updating MPS. The application was submitted prior to these changes.

There is an easement on the property over a municipal water main transmission. The site plan proposes the drive-thru driveway over the easement. The driveway is intended to be paved by the developer. The draft development agreement includes details on responsibilities regarding paving the easement area.

An Active Transportation (AT) network is being developed connecting the communities of Lantz, Elmsdale and Enfield. The development agreements with the FH Development Group, Clayton Developments and Armco included the establishment of the AT route through these developments. An element of the Clayton Developments open space contribution is the construction of an AT bridge over the Nine Mile River. The concept plan for the streetscaping of Highway 214 also includes Active Transportation sidewalks. Municipal staff have been working on connecting the AT trail from the western side of the Nine Mile River through to Highway 214. The application site offers an opportunity to make that critical connection.

The proposed site plan is being presented following many discussions with municipal staff and the developer. The discussions were regarding the drive-thru driveway being constructed over the water main easement and



design of the development. Policies in the MPS provide direction when considering the development. For this application the above bulleted elements can be negotiated through the development agreement process and there are policies in the Municipal Planning Strategy to enable this.

Policy UD15 of the Municipal Planning Strategy enable 'institutional uses that do not meet the form-based zone requirements but will contribute to the vitality and overall goal of the VC Zone' to be considered by development agreement. Health Care Services is listed as a permitted use in the Institutional Use Zone. This is the same policy which enabled the design of the Enfield Family Dental Centre to be considered. This policy enables uses that don't meet the design requirements but do meet the goal intent of the VC Zone. Development agreement applications in the VC Zone where an institutional use is not being proposed are required to meet the form-based zone requirements.

PAC and Council should note that the newly amended MPS policies for the Village Core no longer enable development agreements to vary the design for all uses identified as Institutional Uses. This application was submitted prior to those amendments and are therefore being considered and negotiated under the old policies.

Policy IM28.d of the MPS enables development agreements to include any matters that may be addressed in the Land Use Bylaw, such as signage. Council should weigh this variation from the Land Use Bylaw against the impact on the local area and whether the variation is appropriate. Planning staff consider the items being varied through this development agreement to be acceptable due to the location of the property, the site design of the surrounding uses and the community benefit from the inclusion of the AT Trail.

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## Discussion - Policy Analysis

The Planning and Development Department have reviewed the proposed application based on the applicable policies contained in the Municipal Planning Strategy. A detailed table of the evaluative criteria from the enabling policies and corresponding comments from Staff and reviewing agencies is provided in Appendix of this staff report.

Staff requested comments from internal departments and external agencies, including Nova Scotia department of Public Works (NSPW) and the internal East Hants Department of Infrastructure and Operations (I&O). Along with planning staff, staff from Infrastructure and Operations and also Parks, Recreation and Culture have been actively involved in discussing this application with the developer.

Elmsdale Fire and Emergency Services have confirmed they have no objections or concerns. The former acting District Commander for the Enfield RCMP raised concerns about the amount of traffic on Highway 214 and he makes suggestions regarding highway improvements to plan for increased traffic. The NS Department of Public Works is the traffic authority for Highway 214 and they have raised no concerns following the submission of a Traffic Impact Study.

### **Active Transportation (AT) Trail**

The site plan identifies the location of the negotiated AT Trail. The draft development agreement enables an easement to be secured for the benefit of the municipality which will enable the trail to be used by the public. The cost for the construction of the Trail and future maintenance will be the responsibility of the municipality. An easement will be secured to enable the future maintenance.

The cost of constructing the AT trail through 251 Hwy 214 is \$324,000 plus HST and this financial amount has been included in the draft DA. There is a significant grade change along the south side of the property which requires a substantial retaining wall to be built with a fence due to the height of the wall. Municipal staff have reviewed the cost breakdown and the developers estimate is in alignment with comparable projects.

## NS Department of Public Works

The Nova Scotia Department of Public Works has been in direct discussion with the applicant on the development of their site plan including the location of the driveway onto Highway 214. These discussions were undertaken before the application was submitted so many of the requirements of NSPW were addressed up-front.

Design Point prepared a Traffic Impact Study (TIS) for the application. Their conclusions state that “A level of service analysis has been completed for three volume scenarios: 2022 Existing Traffic Volumes, 2029 Background Traffic Volumes, and 2029 Total Traffic Volumes. The analysis results indicate that all study area intersections and most individual movements operate at an acceptable level of service for each volumes scenario overall, but the westbound left turn movement from the Highway 102 southbound off-ramp to Highway 214 operates poorly and below the acceptable level of service measures (LOS ‘F’) in most scenarios, including the PM peak hour of the 2022 Existing Traffic Volumes. The delays for this movement increase significantly under the 2029 Background and Total Traffic Volume scenarios, and operations deteriorate. This shows that the poor level of service is not a result of site-generated traffic.”

The TIS also states that “the traffic study results show that the only required upgrades to the street network within the study area are focused on the intersection of Highway 214 and the Highway 102 southbound ramp. The analysis shows that the upgrades are warranted without adding site-generated traffic associated with the proposed commercial development and should not be the developer’s responsibility.”

Comments were sought from NSPW during the processing of this application. They confirmed that “the traffic impact study has been reviewed and no additional comments were provided in response; however the development agreement should include the requirement for a revised TIS should the tenants be other than a dental clinic with the coffee shop”. This has been included in the development agreement with a requirement for any change in use to be considered as an unsubstantial amendment, with the requirement for the submission of a revised TIS.

## Impact on adjacent residential property

At the June 2023 meeting of Planning Advisory Committee a comment was made by a member of the committee regarding the impact on the adjacent residential property due to the difference in elevation. The



comment was made when discussing the proposed black chain link fence. The site plan indicates a preliminary parking lot elevation of 18.25m which is approximately the same elevation as the sidewalk along the front of the property.

The distance between the property boundary and the side elevation of the adjacent dwelling is approximately 25 metres (82 ft) and approximately 28 metres (92 ft) from the top of the retaining wall.

The elevation to the north side of the adjacent dwelling at 245 Highway 214 is 17.35m. This means that the difference in land elevation is approximately 0.9m.

The photograph is looking through the application property towards the sidewalk. The left side of the

photograph shows the garage for the adjacent residential property. The dwelling is located further to the south than the garage.

This is a Village Core zoned property where commercial development is to be expected.

### STRATEGIC ALIGNEMENT

One of the Key Strategies from the Strategic Plan is Economic Prosperity. This development will change an existing single unit residential use into a commercial use. This supports the Economic Prosperity key strategy.

The 2021-2024 East Hants Strategic Plan supports AT by planning for and creating infrastructure that improves the connectivity and accessibility of AT networks.

The East Hants Parks, Open Space and Active Transportation Master Plan indicates that in order for AT to be successful in a community, routes are required to create a system that connects amenities, residential neighborhoods, recreation facilities and core commercial areas.

Entering into a development agreement that includes a municipal contribution for completion of an AT trail between Lantz and Elmsdale completes the connection between the adjacent developments and Hwy 214.

### LEGISLATIVE AUTHORITY

The legislative authority and process for entering into a development agreement is set out in the Municipal Government Act, Part VIII.

### FINANCIAL CONSIDERATIONS

From the developer and contractor, the estimated value of the property once constructed is \$3.5 million and based on the Elmsdale Commercial Serviced Rate (2023) this could result in \$119,245 in annual tax revenue. However, construction value does not necessarily equal tax assessment value, so this estimate is subject to change based on PVSC's assessment determination.

The development of the site includes the construction of a new section of AT Trail. The municipal contribution required to construct the final connection of the AT Trail is \$324,000 plus HST. Municipal staff have reviewed the estimates and with the project likely not moving forward for another year, the construction estimate is not unrealistic.

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## Citizen Engagement

Planning staff have complied with the Citizen Engagement Policies of the Municipal Planning Strategy when processing this application. An advertisement outlining the proposal and indicating that it is under review by staff was placed in the Chronicle Herald.

A letter and questionnaire has been mailed to all property owners within a 300m of the subject property asking for comments on the proposed development agreement amendment. 47 questionnaires were mailed out and four (4) questionnaire responses have been returned. These responses have been scanned and provided to PAC for review. The comments include:

- Concern regarding the increase in traffic;
- Difficult to turn out of existing streets right now;
- Request a stop light;
- In favour of the dental office and trail;

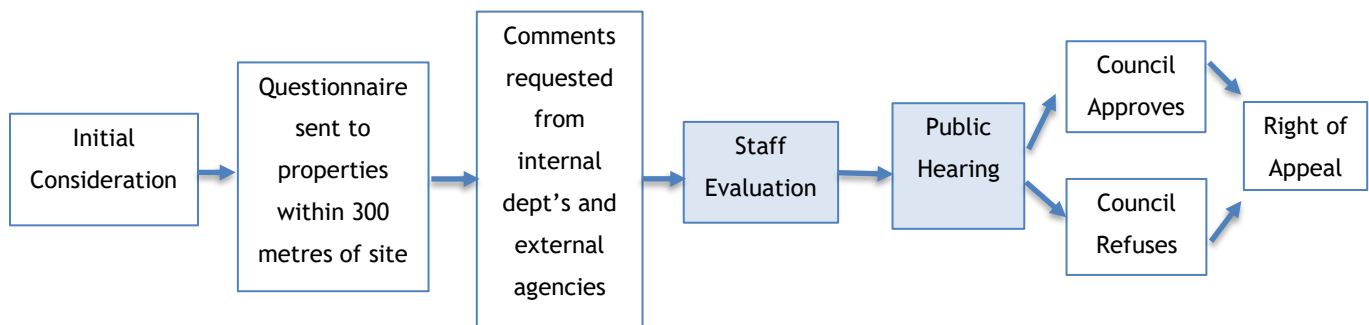
- New business should be located in the Business Park;
- There are already 3 places within a small area that serve good coffee.

A letter confirming details of the public hearing will be mailed to property owners within 300 metres of the application site. In addition to this letter a notice will be placed in the Chronicle Herald for two consecutive weeks with details of the public hearing.

## Conclusion

Staff have completed the review of this application which includes seeking comments from external and internal departments. Through the development of this site the applicant is enabling the AT trail system to be connected. The development also proposes an expanded dental practice plus a new coffee shop. Staff are recommending approval of this development agreement application.

Any decisions to approve or not the development agreement application is appealable to the Utility and Review Board.



## Alternatives

Alternatives would be for the application be recommended for refusal or for staff to be directed to amend the draft development agreement. Staff do recommend either of these

## Attachments

- Appendix B - Copy of application plans
- Appendix C - Draft Development Agreement



## Appendix A - Policy Analysis

Policy	Comments
Community Priority 2 - Support well designed, pedestrian friendly small town centres.	The proposed building meets the building design elements of the Form-Based Zone Requirements. It will include glazing and an entrance fronting onto Highway 214 and provides a pedestrian link to the sidewalk to the front of the property.
Community Priority 4 - Develop healthy transportation networks including walking and cycling.	The development of this site with the inclusion of a section of AT Trail will enable the connection of the AT Trail being constructed and planned from the Clayton Developments property through to Highway 214.
<p>UD15. Council shall consider the following by development agreement in the Village Core (VC) Designation, subject to the criteria of the implementing policies and the Village Core Form. Based Zone Requirements:</p> <ul style="list-style-type: none"> <li>a) VC uses beyond 835 m2 of gross floor area;</li> <li>c) Automobile service stations and drive-thru restaurants are required to conform with Village Core Form-Based Zone Requirements; and</li> <li>d) Institutional uses that do not meet the Form-Based Zone Requirements but will contribute to the vitality and overall goal of the VC Zone.</li> </ul>	<p>This is the policy which enables the development agreement to be considered.</p> <ul style="list-style-type: none"> <li>a) The proposed building has a gross floor area of 840 m2.</li> <li>c) The proposal includes a drive-thru. The drive-thru elements of the proposal meet the form-based zone requirements for this element.</li> <li>d) The proposal includes an Institutional Use (dental office). This institutional use enables the design to be varied. Staff have reviewed the location of the parking and fencing (see report) and consider both of these elements to be acceptable.</li> </ul>
Village Core Policy Goal - Council's goal is to take measures to protect the current and future viability and identity of the existing village commercial centers by ensuring that small-scale commercial development is focused in the Village Core Zones. In order to enhance the role of the Village Core as an essential provider of goods and services within the community and to protect the existing built and natural character of the area.	
UD1. Council shall establish the Village Core (VC) Designation for the purpose of allowing for a diverse mixture of retail, service, business, and residential uses in an environment serving both pedestrian and vehicle needs within an aesthetically pleasing, socially interactive streetscape serving both a local and a communitywide population	The proposed commercial use building addresses the Form Based Zone requirements with a building which has an active frontage with a large amount of glazing onto Highway 214. The development connects pedestrians to the sidewalk in front of the property. An active transportation trail is included which serves needs of cyclists and other non-motorized transportation users in not only the immediate local area but further out to other nearby neighbourhoods.
OS12. Council shall support the long-term development of a middle trail that will connect the communities of Enfield, Elmsdale and Lantz.	The development of this site, with the inclusion of a section of AT Trail, will enable the connection of the AT Trail being constructed and planned from the Clayton Developments property through to Highway 214.

<p>IM27. Council shall consider the following evaluation criteria for any development agreement application:</p>	
<p>a) The impact of the proposed development on existing uses in the area with particular regard to the use and size and of proposed structure(s), buffering and landscaping, hours of operation for the proposed use, and other similar features of the proposed use and structures.</p>	<p>An analysis of the impact on the adjacent residential property is provided in page 6 of this staff report. The property is located in a commercial zone where commercial development is to be expected. The distance between the application top of the retaining wall and the side of the adjacent dwelling unit is approximately 28 metres. Staff consider that the impact from the proposed development will not have a significant adverse impact on the adjacent residential property.</p>
<p>b) The impact of the proposed development on existing infrastructure with particular regard to Municipal piped water and wastewater systems, fire protection, refuse collection, school capacities, and recreation amenities. Council shall consider comments from the Municipal Engineer and other agencies as applicable.</p>	<p>The development agreement indicates that water and wastewater capacity will be reviewed prior to a permit being issued.</p>
<p>c) The impact of the proposed development on pedestrian and motor traffic circulation with particular regard to ingress and egress from the site, traffic flows and parking, adequacy of existing and proposed road networks to service the proposed development, adequacy of pedestrian infrastructure including walkways and sidewalks where required. Council shall consider comments from Municipal Engineer(s) and/or the Provincial Transportation Departments as applicable.</p>	<p>A Traffic Impact Study was submitted to NS Department of Public Works (NSPW) in support of this application. The NSPW have indicated that the traffic impact study has been reviewed and no additional comments were provided in response.</p>
<p>d) Council shall consider, where appropriate, the impact of the development on the comfort and design of proposed streets and existing street users. This shall include whether the proposed development is human-scaled, is easily accessible to active transportation users, and if it promotes visual variety and interest for active transportation users.</p>	<p>No new streets are proposed. The proposed building will connect to the sidewalk on Highway 214 with a walkway that runs from the proposed building to the sidewalk. An active Transportation Trail will eventually connect to a larger AT Trail network. The proposed building is human-scaled with an active frontage facing onto Highway 214.</p>
<p>e) The suitability and availability of other appropriately zoned sites for the proposed use.</p>	<p>The zoning on the property enables a development agreement to be considered for this commercial use.</p>
<p>f) The submission of a professionally drawn site plan showing the location of all new and existing structures on the lot, parking areas, proposed and existing walkways, areas of tree retention, watercourses or environmentally sensitive areas, buffering, and landscaping and building plans, including signage plans, if applicable, showing the nature and design of the proposed structure.</p>	<p>A professionally drawn site plan has been submitted showing the location of the proposed building, walkways, landscaping, fencing and the location of the AT Trail.</p>

g)	Adequacy of the size of the lot to ensure required buffering and screening can be carried out.	The property is adequately sized for the proposed development. Buffering is not required in the Village Core (VC) Zone.
h)	Potential for significantly reducing the continuation of agricultural land uses.	Not applicable.
i)	The proposed density and urban form, including height, massing, bulk, stepbacks and setbacks, are compatible with (not necessarily the same as) existing development forms.	The size and scale of the building is similar to the McDonalds building to the north. The proposed building will be sited closer to Highway 214 than the McDonalds property but this is supported by the intent and regulations for the Village Core (VC) Zone.
j)	If the proposal is inappropriate by reason of the financial capability of the Municipality to absorb any costs relating to the development.	The fiscal impact of the proposed development will have a positive impact to the Municipality of approximately (using assumptions) \$119,245 in annual tax revenue. This is significantly more than a single unit dwelling on the property.
IM28.	Terms and conditions of the agreement to ensure consistency with Strategy policies and the employment of sustainable development practices shall include, but are not limited to the following where applicable:	
a)	The use and size of any new structures or any expansions of existing structures.	The proposed building is mostly single storey building. The use is a multi-unit commercial building which will include a dental office and a coffee shop with a drive-thru.
b)	The compatibility of the structure in terms of design elements including, but not limited to roof type, exterior cladding material, and overall architectural form and elements that are reasonably consistent with the style and character of the community.	The design of the proposed building complies with the Form Based Zone requirements. The form and scale of the building is compatible with the adjacent McDonalds building.
c)	Provisions for adequate buffering and screening to minimize the impacts of the development on adjacent uses, such buffering and screening to be designed with consideration given to the types of impacts that may be felt by adjacent properties (ie. noise, headlights, dust, etc.).	Buffering and screening is not required in the Village Core (VC) Zone. Landscaping is proposed to the front of the building but is provided more for aesthetics than for buffering/screening.
d)	Any matter that may be addressed in the Land Use Bylaw, such as yard requirements, outdoor storage, height, bulk and lot coverage, etc.	The site plan included in the development agreement includes details on the siting of the building, lot coverage and bulk. The development agreement includes requirements regarding the screening for refuse containers.
e)	Time limits for the application for a development permit and the initiation and completion of construction.	One year to enter into the agreement, two years to apply for a development permit and two years to make the property consistent with the terms of the development agreement.
f)	The establishment of hours of operation and maintenance of the proposed use.	Hours of operation are not included as an element of the development agreement.

g)	The provision of adequate parking and parking lot design to include maximum ease and safety of traffic flow and dust control.	The site plan details the number and location of parking stalls. The proposed parking meets the requirements of the land use bylaw.
h)	Provisions regarding signage that may be sensitive to the overall visual amenity of the immediate area and safety issues.	<p>The development agreement includes details on the permitted signage. The proposed ground sign is taller than what would be permitted as-of-right. The signage however is approximately the same height as the adjacent McDonalds ground sign. Further discussion on the ground sign is provided in the staff report.</p> <p>The development agreement includes the maximum permitted signage area for a facial wall sign. The area for this type of sign meets the land use bylaw requirements. The development agreement does enable this area to be used on two elevations without the maximum area being exceeded.</p>
i)	Methods of protection of the land and watercourses and mitigation practices during and after construction of the proposed development.	As per NSE regulations.
j)	Methods of stormwater management on-site during and after construction and methods used to control erosion and sedimentation.	A stormwater management plan is a requirement of the development agreement. This is required prior to a permit being issued.
k)	Provisions regarding tree removal, devegetation, and tree planting on the site and overall adequacy of landscaping.	The development of the site will require the removal of any existing trees. Landscaping is being provided to the front of the site and alongside the boundary with the McDonalds property.