



**Subject:** *Riverstone 214 Ltd. - Development Agreement Amendment*  
**To:** CAO for Planning Advisory Committee, June 18, 2024  
**Date Prepared:** June 4, 2024,  
**Related Motions:** None  
**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 Riverstone 214 Ltd. to amend an existing development agreement which was approved by Council in April 2020. The approved development agreement was for a Regional Commercial development with residential. The applicant is requesting to move the required commercial element to a different building and to enable short term rental be considered commercial.

### Financial Impact Statement

A financial impact analysis has not been undertaken for this proposal. A summary of any financial impacts will be provided in the final staff report.

### Recommendation

That the application by Riverstone 214 Ltd. request to amend an existing development agreement be refused.

### Recommended Motion

*Planning Advisory Committee recommends to Council that Council:*

- *Refuse the application by Riverstone 214 Ltd. to amend an existing development agreement on land within the Elmsdale Regional Commercial (RC) Designation and Zone.*

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## Background

The land the subject of this application has been zoned for commercial use for several years. Amendments were made to the Regional Commercial (RC) Zone in the 2016 Official Community Plan to enable a mixed-use development on the Nine Mile River side of Highway 214. This amendment to the policies and regulations of the RC Zone was following a request at that time from a developer to enable some residential on the Nine Mile River side of Highway 214.

Approval was given in April 2020 by Council for a mixed-use development on the property in the Regional Commercial (RC) Zone. This decision was appealed by local residents to the NSUARB but this appeal was not successful and the development agreement was signed and entered into in March 2021. The developer purchased the property with the approved development agreement in place.

The development agreement requires:

- that at least 50% of the total ground floor area of all building be commercial. At no point shall the total residential ground floor area surpass the combined commercial ground floor area for all buildings.
- that the single storey building is commercial and that the ground floor of the four-storey building is commercial.

This means that the single-storey commercial building and the four-storey mixed-use building have to be constructed before the six-storey residential building is completed. The developer has been constructing the single-storey commercial building and the four-storey mixed-use building as these will provide all the required ground floor commercial for the whole development.

The developer has indicated that despite active promotion for over a year they haven't found tenants for the plaza (commercial floor area of four-storey building) due to low demand for commercial floor area. They suggest that the commercial component is not supported by market need.



(Above - approved four-storey building)



(Above - approved six-storey building)



(Above - approved site plan)

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## Subject Property

The existing development agreement (DA) is applied to 3 properties along Highway 214 which are identified as 411 & 427 Highway 214 and the property located behind # 427 (PID 45428810). These were originally one property but since the approval of the DA in 2020 the property has been subdivided.

The subject site and surrounding properties are zoned Regional Commercial (RC). A small portion of the rear of PID 45428810 is zoned High Risk Floodplain (HF) which is the area of the property over the bank on the rear of the property.

The two buildings adjacent to Highway 214 are under construction.



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## Development Proposal

The applicant has requested a substantial amendment to their development agreement dealing with the following two items:

1. **Relocation of Commercial Activities:** The applicant is applying to move commercial activities from the four-storey building to the proposed six-storey building. This adjustment will enable the conversion of the four-storey building entirely to residential use. To enable this change, the amendments to the DA will also include amendments to the approved external designs for both buildings; amendments to the parking allocation; and amendments to the common amenity area for the buildings.
2. **Introduction of Short-term Rentals:** The applicant is seeking to add a definition of commercial use into DA to include short-term rental accommodations. The developer has indicated that this will give greater flexibility to lease the commercial floor area.

Further details of the request has been included within the application letter which has been added as Appendix A to this staff report.

The external design of the buildings are proposed to be amended as detailed in the drawings below:



The site plan submitted with the application mostly remains the same as permitted but notes that the mixed-use is now moved to the six-storey building. Changes to the site plan may be needed to address amended parking requirements and amenity area but staff have not yet assessed the site plan in detail.

## Discussion

The Policy Goal for the Regional Commercial (RC) Designation and Zone is to “facilitate the development of a regional, large-scale service-based commercial area with a wide range of retail goods and services, and business uses in a land-intensive, vehicular dependant environment. A regional-scale commercial area will

allow for a convenient shopping environment for East Hants residents and the traveling public and for large-scale commercial with minimum impact to the built and natural environment.”

This goal means that the Regional Commercial area Zone is a commercial zone and not a mixed-use zone. Policy ED24. does provide an exception to this by enabling some residential uses in areas adjacent to the Nine Mile River. It's under this policy that the original property owner was able to negotiate a development agreement for the 3 properties (originally one property).

ED34. Council shall consider mixed Use Developments in the Regional Commercial (RC) designation provided the requirements below, as well as the requirements regarding Walkable Comprehensive Development District developments are met.

- a) The property must be serviced by water and wastewater services.
- b) The property shall connect to an existing sidewalk or trail network, if such a network is accessible.
- c) Proposed residential uses should have frontage on the Nine Mile River.
- d) Mixed use areas shall not be serviced by a right-of-way easement. All lots shall have public road frontage.
- e) The proposed commercial ground floor must equal or surpass the residential ground floor area.
- f) Proposed residential uses should be in the rear yard, or above commercial uses.

The current developer has indicated that they have been unable to secure commercial tenants for the commercial area of the four-storey building. The four-storey building fronts onto Highway 214 and the six-storey building is located behind that building and adjacent to the Nine Mile River. The ground floor of the four-storey building will be visible to people using Highway 214 but staff are unsure if the ground floor of the six-storey building will be visible from Highway 214. Removing the required ground floor commercial from the building fronting onto Highway 214 and moving to a building to the rear with reduced visibility from the roadway is not ideal in attracting people from using the commercial use of the property.

Council's Policy ED34. c & f is that:

- the residential use building needs to be provided in the rear six-storey building as the four-storey building does not have frontage on the Nine Mile River; and
- the proposed residential four-storey building is not located in the rear yard or above commercial uses. This is supported by the goal and intent of the policies of the Regional Commercial (RC) Zone as a commercial area.

One potential issue with approving the change in location for the commercial use is that the four-storey building is currently under construction and if the developer delays the construction of the six-storey building or does not construct the six-storey building, the development would not meet the requirement under ED34.e - the proposed commercial ground floor must equal or surpass the residential ground floor area.

However, PAC and Council may determine that as both policies ED34.c and ED34.f use the word 'should' instead of 'shall' or 'must' that there is enough flexibility in the wording of the policy to enable them to consider the application further.

### Short-term Rentals

In addition to requesting that the commercial floor area be moved to the six-storey building, the applicant is requesting that ‘short-term rentals’ be considered a commercial use. Short term rentals have emerged in popularity over the past number of years as they provide alternative options for accommodations amongst travelers or those working in a specific location for a short period of time. The popular short term rental sites include AirBnB, VRBO and Booking.com.

Short-term rentals are a residential use, they pay residential taxes and not commercial taxes. The rental units are permitted where residential uses are permitted. Staff do not recommend enabling short-term rentals to be located in the commercial floor area as they are essentially a residential use and creating a definition to enable them does not change the nature of the use. There are several concerns with enabling an amendment in the DA for this use and one of such is that once the units are created it would require some level of monitoring to make sure the units do not become full time residential units.

Enabling this change for this one location in the development agreement also sets a precedent that other developers or property owners may make similar requests for their commercial uses.

Hotels are a permitted use in the Regional Commercial (RC) Zone.

### STRATEGIC ALIGNEMENT

One of the Key Strategies from the Strategic Plan is Economic Prosperity. This proposal compromises the intent of the Regional Commercial (RC) Zone.

### 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

A financial impact analysis would be provided with a final staff report. There are no immediate financial impacts from refusing this application.

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## Citizen Engagement

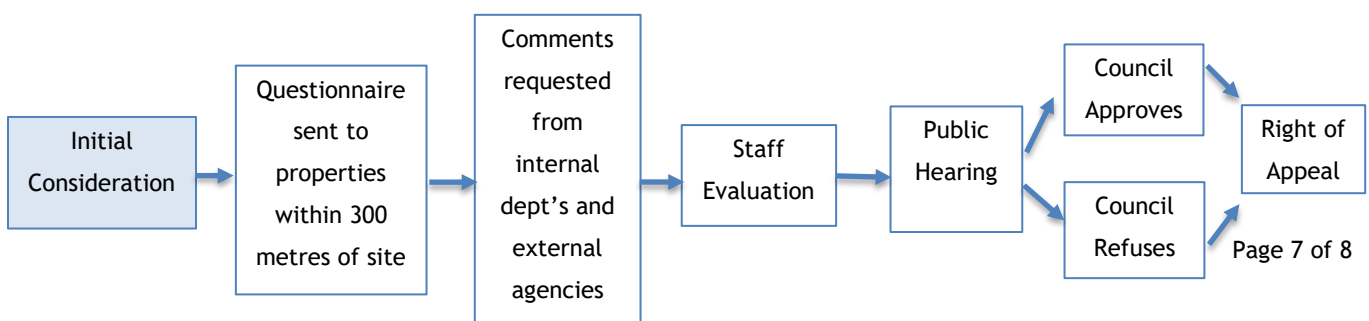
Should PAC and Council direct staff to continue processing this application, planning staff will comply with the Citizen Engagement Policies of the Municipal Planning Strategy when processing the application.

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## Conclusion

Despite the challenges the developer is experiencing the intent and goal of the Regional Commercial Zone should not be compromised. The Regional Commercial area along Highway 214 has been identified for commercial use for several years and based on Council’s policies in the MPS it is recommended that changes to the development agreement not be made.

Alternatives have been identified for PAC and Council.



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## Alternatives

There are some alternatives that staff have identified should PAC and Council decide to review the proposal further:

- 1) Direct staff to continue to process the development agreement application which would include seeking comments from property owners within 300 metres of the site; consult with stakeholders; and draft a development agreement for consideration with a final report.
- 2) Direct staff to begin the process to amend the MPS to remove the statement regarding where the residential 'should' be located. This would still require the development agreement to be amended but would have criteria in the MPS which is more flexible for the locating of the commercial elements. The first step with this alternative would be to schedule a Public Information Meeting to talk to the community about the potential change to policy.

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## Attachments

- Appendix A - Copy of original development agreement.
- Appendix B - Copy of application letter