

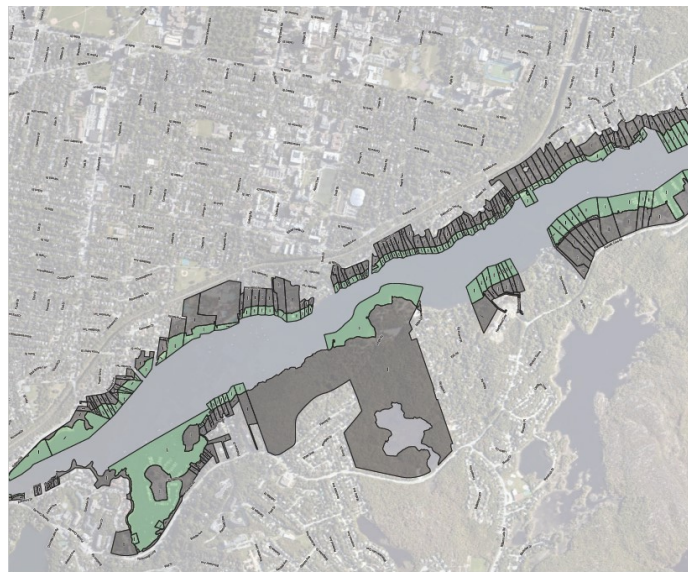
Item No. 14.2

| Request for Consideration | | | |
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| <input type="checkbox"/> Agenda Item (Submitted to Municipal Clerk's Office by Noon Monday one week prior to the meeting) | X | Added Item (Submitted to Municipal Clerk's Office by Noon Monday one day to the meeting) | <input type="checkbox"/> Request from the Floor <input type="checkbox"/> Notice of Motion |
| Council or Committee: Regional Council | | Date of Meeting: June 8, 2021 | |
| Subject: Letter supporting cessation of infill applications on the North West Arm | | | |
| <p>Motion: Halifax Regional Council request the Mayor write a letter The Honourable Omar Alghabra, Minister of Transport to support the request that the Federal Government immediately invoke a cessation on all infill application approvals on the Northwest Arm of Halifax until such time as appropriate governance can be put in place to prohibit all future infilling of the Northwest Arm</p> <p>Reason: Recently the Ecology Action Centre, after meeting with concerned community members of the Northwest Arm and on behalf of citizens who use the Arm's available recreational resources, asked if Council would endorse the call for a pause on all Northwest Arm water lot infill projects on lands referred to as 'pre-confederation water lots' while a review by federal, provincial and municipal government of this governance gap is undertaken.</p> <p>Federal jurisdiction of this segment of the coastline invokes regulation under the Navigable Waters Act (Transport Canada) and the Fisheries Act (Fisheries and Oceans Canada), both of which have undergone significant changes in recent years. Depending on the location of the infilling, there could also be Species at Risk Act implications.</p> <p>This situation will continue to plague the coastline of the Northwest Arm until appropriate governance measures are put in place to reduce this destructive and unnecessary practice.</p> <p>If this problem is not resolved, the Northwest Arm is at risk of being radically altered over the coming years. If all of these water lots were infilled, the surface water area of the Arm would decrease by 31% and the width of the entrance to the Arm would shrink by more than 50%.</p> <p>A briefing note and map are attached.</p> <p>Outcome Sought: Letter to the Minister</p> | | | |
| <i>Moved Councillor Waye Mason</i> | | <i>District 7</i> | |
| ORIGINAL SIGNED | | | |

Information for Councillor Mason's office regarding Northwest Arm Infilling Issue

Infilling for development along the coastline has been taking place for more than half a century in many of Nova Scotia's coastal towns. While this practice may have seemed sound at one point in time, in the face of coastal climate change, that is no longer the case. Coastal climate change impacts, such as sea level rise, storm surge, coastal flooding and increased frequency and intensity of weather events, put structures along our coastline at risk. For more than a decade, municipal and provincial governments have been creating regulations in an effort to mitigate risky development practices and enhance public safety. Creation of artificial land through infilling to extend development out into the ocean is dangerous and damaging to coastal ecosystems. This ill-advised practice puts people and structures at risk, strains our coastal ecosystems, damages fish and fish habitat and threatens water quality. Yet the practice of infilling for development continues regularly along Halifax Harbour and in the Northwest Arm.

Numerous properties along Halifax's Northwest Arm include a 'water lot' in the property's deed. This map shows water lots lining the Northwest Arm:



These 'water lots' are portions of the seabed that extend outward from the shoreline. Governance of these water lots is complex. The municipality does not govern them, as they are submerged lands or seabeds and as such do not fall under municipal land use bylaw regulation. However, if the water lot is partially or fully infilled, the municipality is then responsible to govern use and development of the newly created 'land' that results from the infilling activity. Ordinarily, the submerged land in the intertidal zone would fall on the cusp of provincial governance, with potential implications under the Environment Act, the Crown Lands Act, the Beaches Act and the incoming Coastal Protection Act, but the unique 'water lot' designation granting private ownership instead puts the water lot in an odd governance space between federal jurisdiction and property rights. Federal jurisdiction of this segment of the coastline invokes regulation under the Navigable Waters Act (Transport Canada) and the Fisheries Act (Fisheries and Oceans Canada), both of which have undergone significant changes in recent years. Depending on the location of the infilling, there could also be Species at Risk Act implications.

This odd federal designation of the seabed with municipal jurisdiction over infilled land on a water lot and no provincial environmental assessment of impact has left a 'governance gap' or loophole in the system. It takes very little for a property owner to gain approval for an infilling permit, despite the tremendous damage and great risk associated with an infilling project. At this time, there is no provincial assessment of damage or risk associated with water lot infilling, despite the vast array of potential impacts under the above mentioned pieces of provincial legislation. Both the municipal and provincial government respond to any 'water lot' inquiry by quickly pointing out that this is not an issue they have jurisdiction over while confirming that it is environmentally problematic.

In order to receive a permit to infill a water lot on the Northwest Arm, a property owner must apply to Transport Canada under the guidance of the Navigable Waters Act for a permit to infill. Transport Canada considers whether the infilling will cause problems with navigation of the waters. Water navigability impacts are the only criteria for this assessment and Transport Canada's mandate does not address environmental impacts or any other risks or damage caused by the infill project. Transport Canada reviews an application and offers a 30-day feedback period for the public to express their concerns, but the parameters of those concerns are restricted to impacts to the navigability of the water.

Additionally, a proponent (developer/property owner wishing to infill) is responsible for contacting Fisheries and Oceans Canada to request a review of the potential impacts of the infilling project on fish and fish habitat. If the project could result in the death of fish and/or the harmful alteration, disruption or destruction of fish habitat, the proponent must obtain authorization from Fisheries and Oceans Canada. The authorization includes terms and conditions the proponent must follow to avoid, mitigate, offset and monitor the impacts to fish and fish habitat resulting from the project. Failure to abide by these terms and conditions may result in fines. Failure to apply for the DFO project review can result, if DFO becomes aware of the project, in a stop of work and could potentially result in a removal of infill and restoration of the site. However, it is unclear how often DFO enforcement applies that measure. This 'fox guarding the henhouse' system is not sufficient to protect coastal ecosystems. At minimum, any infill permit to Transport Canada should immediately trigger a robust environmental assessment conducted by both DFO (for fish and fish habitat) and by NS Environment (to assess other environmental impacts).

In Halifax's Northwest Arm, infilling water lots for development purposes became an issue that the municipality had to address in 2005-2007, with numerous community complaints and increasing media attention to the problem. At that time, the municipality increased its governance over the land created by infills by adding land use bylaws to restrict the use of the infilled area. These bylaws limited development on the infilled land to boathouses, gazebos, parks, wharves, docks, historical sites and monuments, trails, public works and utilities and ferry terminal facilities. Height of allowable structures was also restricted. It was set out in these new regulations that the infilled water lot would not change the minimum setback requirements of the previously existing lot and that the infilled water lot would not be included in the calculation of the minimum lot area requirements.

<http://legacycontent.halifax.ca/council/agendasc/documents/Case00596HalifaxMPSWaterLotsNorthwestArm.pdf>

Despite the municipality's efforts to strengthen the land governance of infilled areas, property owners have continued to infill water lots along the shores of the Northwest Arm. Despite HALIFAX's land

development limitations on the infilled land, the additional land has a financial value and this appeal serves as financial incentive to some of the Arm's property owners and developers. The by-laws have not limited the risky and damaging act of infilling and determined developers have been testing the strength and boundaries of these regulations. As an example, in 2016, a developer and property owner launched a lawsuit challenging HALIFAX's governance of an infilled water lot on the Arm. The property owner's request for a permit to build a pool had previously been denied due to the setback requirement along the shoreline. The property owner then attempted to make his property eligible for the pool by infilling his water lot. When the property owner's second pool permit request was denied by HALIFAX, because the infilling does not change the original shoreline and therefore does not exempt the pool from the required setback, the property owner took the municipality to court. Thankfully, the bylaws held and the lawsuit was unsuccessful.

<https://nsuarb.novascotia.ca/sites/default/files/Decision%20Ghosn.pdf>

This problem has not been resolved and one can logically assume that motivated developers will continue to test the boundaries, costing taxpayers and straining HALIFAX's resources unnecessarily.