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Halifax, Nova Scotia
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Item No. 12.2
Halifax Regional Council
December 12, 2023
January 9, 2024

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Cathie O'Toole, Chief Administrative Officer

DATE: December 6, 2023

SUBJECT: **PLPROJ 2023-01544: MPS and LUB amendments to restrict water lot infilling on the Northwest Arm**

ORIGIN

- June 8, 2021, Motion at Regional Council – Item 14.2 Councillor Mason – Letter Supporting Cessation of Infill Applications on the Northwest Arm

MOVED by Councillor Mason, SECONDED by Councillor Russell

THAT Halifax Regional Council request the Mayor write a letter to 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.

MOTION PUT AND PASSED UNANIMOUSLY.

- November 14, 2023, Regional Council initiation of amendments to the Regional Centre Secondary Municipal Planning Strategy and the Halifax Municipal Planning Strategy to restrict water lot infilling on the Northwest Arm.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Give First Reading to consider proposed amendments to the Regional Centre Secondary Municipal Planning Strategy, the Halifax Municipal Planning Strategy, the Regional Centre Land Use By-law, and the Halifax Mainland Land Use By-law, as set out in Attachments A, B, C, and D of this report, to restrict water lot infilling on the Northwest Arm and schedule a public hearing; and

2. Adopt the proposed amendments to the Regional Centre Secondary Municipal Planning Strategy, the Halifax Municipal Planning Strategy, the Regional Centre Land Use By-law, and the Halifax Mainland Land Use By-law, as set out in Attachments A, B, C, and D of this report.

BACKGROUND

The Northwest Arm is a narrow ocean inlet of the larger Halifax Harbour characterized by recreational uses, including major urban parks (Sir Sandford Fleming Park and Point Pleasant Park), historical assets, and predominantly residential uses. These uses contrast with marine-related and mixed-use developments occurring around other parts of the harbour. The Northwest Arm is also home to four boat/sailing clubs, which generate significant boating traffic in the harbour.

The Northwest Arm is currently impacted by 155 water lots that were created prior to Confederation in 1867. Often referred to as pre-confederation water lots, the Regional Centre Land Use By-law (LUB) defines water lots as:

“any lot or portion of a lot located on a lake or on the Halifax Harbour, the title of which is separately conveyable, and that is normally fully or partly submerged under water.”

Water lots can typically be infilled with various natural material (rocks and soil) and become land if the owners obtain the proper approvals. Due to a lack of municipal jurisdiction, zoning is typically not applied to water lots. However, once a water lot is infilled and joined to the shoreline, it then falls under municipal jurisdiction from the aspects of land use control.

The water lots within the Northwest Arm cover a combined area of 51.56 hectares. Consequently, infilling activity have a more direct impact on community character and recreational activities in the Northwest Arm than it would elsewhere in the harbour.

Issues related to the infill of water lots along the Northwest Arm have been the subject of continued interest by both Council and the public. In general, concerns have been expressed about the following matters:

- restricting the navigability and use of the Northwest Arm for sailing and other boating activities by narrowing its width; and
- potential negative environmental impacts.

However, authority over the above noted matters falls under the jurisdiction of the Federal Government through Transport Canada and Fisheries and Oceans Canada (DFO). The mandate of Transport Canada, as set out in the *Canadian Navigable Waters Act (CNWA)*, is to ensure that infilling does not significantly impede navigation. Formal approval to infill under the CNWA is only required if infilling will cause problems with navigation. The mandate of DFO, under the Fish and Fish Habitat Protection Program, is to review any project for potential impact on fish and fish habitat. The *Fisheries Act* provides mechanisms that allow development projects to occur while protecting fish and fish habitat. DFO does not approve developments, but instead assesses proposals for their potential to harm fish or fish habitat, and may authorize the harmful alteration, disruption, or destruction (HADD) of fish habitat if deemed appropriate under the circumstances.

Justice Canada, on behalf of Transport Canada, recently indicated a willingness to recognize or otherwise permit a limited jurisdiction for the Municipality over infilling on the Northwest Arm. Staff of the Department has indicated a willingness to recommend to the Minister the issuance of conditional approvals under the CNWA over water lot infilling activities on the Northwest Arm. This approach would see Ministerial approvals require applicants to be compliant with the Municipality's land use regulations. To date, the Department has only committed to a conditional approval process under the CNWA applying to water lot infilling activities over the Northwest Arm and not the other portions of Halifax Harbour.

On November 14, 2023, Regional Council initiated the process to consider amendments to the Regional Centre Secondary Municipal Planning Strategy (SMPS), the Halifax Municipal Planning Strategy (MPS), the Regional Centre Land Use By-law (LUB), and the Halifax Mainland Land Use By-law (LUB) to restrict water lot infilling given the new position on the Municipal role from the Federal government. This report responds to this direction and recommends amendments to the above noted planning documents for Council's consideration.

Site Context

Subject Site	Water lots within the Northwest Arm.
Location (Map 1)	The subject water lots are located on both the Halifax Peninsula and Halifax Mainland sides of the Northwest Arm.
Regional Plan Designation MPS Designation (Map 2)	Halifax Harbour Water Access (both in the Regional Centre SMPS and the Halifax MPS)
Zoning (Map 3)	WA – Water Access (both in the Regional Centre LUB and the Halifax Mainland LUB)
Size of Site	515,700 square metres (51.57 hectares)
Street Frontage	While some water lots have street frontage, it is not an important consideration for this project.
Current Land Use(s)	Infilled and unfilled water lots used for both private and public recreational uses, including four boat/sailing clubs.
Surrounding Use(s)	A variety of residential, park, and institutional uses, including four boat/sailing clubs.

MPS and LUB Context

In May 2007, Regional Council adopted amendments to the Halifax Municipal Planning Strategy (MPS) and both the Halifax Mainland Land Use By-law (LUB) and the Halifax Peninsula Land Use By-law (LUB) to control the use, subdivision, and development of water lots along the Northwest Arm once infilled. The policies and land use by-law regulations controlling the use, subdivision, and development of water lots along the Peninsula side of the Northwest Arm were later carried forward into the Regional Centre Secondary Municipal Planning Strategy (SMPS) and the Regional Centre LUB, with minor amendments.

The policies and land use by-law regulations now in existence in the Halifax MPS, the Regional Centre SMPS, the Halifax Mainland LUB, and the Regional Centre LUB accomplished the following:

1. Designated and zoned the water lots in the Northwest Arm as Water Access, which limits the use of land created by infilling of the Northwest Arm to wharves, docks, historic sites and monuments, passive recreation uses, public works and utilities, and ferry terminal facilities.
2. Established a 9-metre static setback from the Northwest Arm in which only boathouses, public works and utilities, ferry terminal facilities, parks on public lands, historic sites and monuments, wharves, docks, gazebos, and existing structures are permitted. The four existing boat/sailing clubs are exempt from the setback regulation.
3. Controlled the size, height, and number of boathouses and gazebos that can be erected within the 9-metre setback of the Northwest Arm.
4. Restricted the use of infilled water lots for lot area, lot coverage, and setback calculations.
5. Restricted the erection of buildings on wharves, pillars, piles, or any other type of structural support located on or over a water lot. Public works, public utilities, and ferry terminal facilities are exempt from this restriction.

The core rationale for the 2007 amendments was that, while the Municipality did not have any control over the activity of infilling itself, it could nonetheless disincentivize infilling by restricting what a property owner

could do with their land once infilling had occurred. The desired outcome has not been achieved, as infilling continues to be a concern in the Northwest Arm.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the Public Participation Administrative Order (2023-002-ADM), the *HRM Charter*, and the Public Engagement Guide. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website and letters mailed to 464 property owners within the notification area (as shown on Map 1).

Emails were received from a total of 103 individuals. There were also 11 telephone calls received. 108 of the individuals that contacted Planning and Development were supportive of the proposed MPS and LUB amendments, 2 individuals were opposed, and 4 individuals did not specify either way if they were supportive or opposed to the proposed MPS and LUB amendments. The main concerns raised with the proposed MPS and LUB amendments included the following:

- the impact of infilling restricting the ability to use the Northwest Arm for recreational uses by the public (i.e., sailing, boating, etc.);
- the impact of infilling restricting the ability of the Northwest Arm to be used for lobster fishing;
- the negative environmental impacts that infilling would have on the Northwest Arm;
- the impact that infilling would have on the effects of climate change;
- how the proposed amendments would be enforced with regards to erecting a retaining wall, maintaining a pre-existing boat house, and constructing a wharf;
- a request for greater clarification on what would be considered as “infilling” and a “retaining wall”;
- if similar restrictions for infilling could be extended to Dartmouth Cove; and
- if current applications for infilling with Transport Canada would be put on hold until these proposed amendments are adopted.

A public hearing must be held by Regional Council before it can consider the approval of the proposed MPS and LUB amendments. Should Council decide to proceed with a public hearing on this project, in addition to a notice of the public hearing being published on the Municipality’s website at least seven days in advance, property owners within the notification area shown on Map 1 will be notified of the hearing by regular mail.

DISCUSSION

Both the Regional Centre SMPS and the Halifax MPS are strategic policy documents that set out the goals, objectives, and direction for long term growth and development in the Municipality. Amendments to municipal planning strategies are significant undertakings and Council is under no obligation to consider such requests. Amendments should only be considered within the broader planning context and when there is reason to believe that there has been a change to the circumstances since the municipal planning strategies were adopted, or last reviewed.

In this case, staff advise that there is indeed a change in circumstances. Staff also advise that the proposed amendments are reasonably consistent with the *HRM Charter*, the Regional Municipal Planning Strategy policies, and good planning principles. Staff have also considered the Priorities Plan policies in the development of the proposed amendments.

The following reviews of the rationale and contents of the proposed municipal planning strategy and land use by-law amendments.

Proposed Amendments

The proposed amendments to the Regional Centre SMPS (Attachment A), the Halifax MPS (Attachment B), the Regional Centre LUB (Attachment C), and the Halifax Mainland LUB (Attachment D) would add new restrictions regarding water lots on the Northwest Arm. These restrictions would be in addition to those first introduced in 2007. More specifically, the proposed amendments would prohibit most water lot infilling activities on the Northwest Arm, subject to Ministerial incorporation in the federal permitting process. Only water lot infilling activities to enable the following would be allowed on the Northwest Arm under the proposed amendments:

- public infrastructure;
- utility use;
- publicly owned or operated ferry terminals;
- parks on public land;
- municipal, provincial, and national historic sites and monuments; and
- retaining walls.

Housekeeping amendments are also proposed as part of this report to bring the Halifax MPS and Halifax Mainland LUB in line with the policies and provision of the Regional Centre SMPS and LUB, which do not allow for any portion of a water lot in the Water Access Designation or Zone to count towards lot coverage. In addition, housekeeping amendments are proposed to the Halifax Mainland LUB to update the allowable sizes of boathouses and gazebos located within the 9-metre setback of the shoreline of the Northwest Arm to bring them in line with those found under the Regional Centre LUB.

Change of Circumstances

During recent discussions between the Municipality and staff for Transport Canada, Transport Canada has indicated a willingness to recognize a limited jurisdiction for the Municipality over the infilling of water lots on the Northwest Arm through the issuance of conditional approvals under the CNWA over infilling activities on the Northwest Arm. This would result in applicants being required to be compliant with the Municipality's land use regulations as a condition of the Ministerial permit.

In the run-up to the 2007 amendments, the Municipality had requested that the Federal Government recognize a limited jurisdiction for the Municipality over the infilling of water lots on the Northwest Arm. However, this was denied by the Federal Government at the time. This change of position by Transport Canada represents a change of circumstances and an appreciation of the historic recreational and other uses of the Northwest Arm, as a result of the community input during recent federal consultations.

Statutory Support for the Prohibition of Water Lot Infilling

Section 235 of the *HRM Charter* deals with the content of a land use by-law. More specifically, Clause 235(5)(g) of the *HRM Charter* states the following:

235(5) Where a municipal planning strategy so provides, a land-use by-law may

- (g) in relation to a development, regulate or prohibit the altering of land levels, the excavation or filling in of land, the placement of fill or the removal of soil unless these matters are regulated by another enactment of the Province;*

Furthermore, Clause 209(c) of the *HRM Charter* provides the following definition:

209 In this Part and Part IX, unless the context otherwise requires

- (c) "development" includes the erection, construction, alteration, placement, location, replacement or relocation of, or addition to, a structure and a change or alteration in the use made of land or structures;*

Based on the above *HRM Charter* clauses, the common understanding of what constitutes a water lot, and

the jurisdictional boundaries of the Halifax Regional Municipality, staff advise that the following are either factual or reasonable interpretations of existing legislation:

1. A water lot is considered land fully or partly submerged under water.
2. The water lots located along the Northwest Arm are fully contained within the boundaries of the Halifax Regional Municipality and fall under the jurisdiction of either the Regional Centre SMPS or the Halifax MPS.
3. Clause 235(5)(g) of the *HRM Charter* allows the Municipality to regulate or prohibit the infilling of water lots that are included within its boundaries, if the higher level of government that has recognized jurisdiction over such infills (the Federal Government in this case, as Halifax Harbour falls under Federal jurisdiction) agrees to make approvals conditional on being compliant with municipal land use regulations.
4. The mere activity of infilling a water lot can be considered a change of use, from a navigable waterway to something else.

There is some precedence in Nova Scotia for a municipality to control the infilling of water lots, albeit when the infilling activity has reached an elevation above the water column. The Municipality of Chester has since 2004 limited the infilling of water lots within its Water Access Zone to a depth no greater than 0.3 metres above the Mean High Water Line, except for internal ballasting of cribwork and piers essential to wharf and slipway construction. The statutory powers that permitted the Municipality of Chester to control the infilling of water lots in 2004 is supported by the *Municipal Government Act* (MGA), which contains identical key clauses and definitions as the *HRM Charter*.

Regional Municipal Planning Strategy

The Regional Municipal Planning Strategy (RMPS) states the following under Section 2.3.3 regarding water lots:

HRM recognizes that development and water lots that have been infilled may result in undesirable impacts on the marine environment and the aesthetic character of the surrounding environment.

E-20 HRM may, through secondary planning strategies and land use by-laws, consider measures to regulate development of water lots that have been infilled, including establishing setbacks of buildings and structures from the water.

Policy E-20 of the RMPS responds to circumstances that existed at that time of adoption in 2014, i.e., that the Municipality did not have any jurisdiction in prohibiting water lot infilling. However, Policy E-20 does not preclude the Municipality from taking further action through secondary municipal planning strategies and land use by-laws if circumstances were to change.

Recreation and Environmental Protection

The proposed amendments build upon the 2007 amendments by prohibiting water lot infilling activities that are not in the public interest. This prohibition will help in furthering the protection of the historical recreational character of the Northwest Arm by ensuring that the narrow ocean inlet continues to serve the needs of all residents of the Municipality.

The proposed amendments should also result in the reduction of several negative environmental impacts on the Northwest Arm that are related to the infilling of water lots. These include:

- the destruction of coastal ecosystems;
- changes in coastal dynamics;
- the increased risk of coastal erosion;
- the destruction of fish and fish habitats;
- increased sedimentation; and
- other negative impacts on water quality.

Priorities Plans

In accordance with Policy G-14A of the RMPS, the proposed amendments were assessed against the objectives, policies, and actions of the priorities plans, inclusive of the *Integrated Mobility Plan*, the *Halifax Green Network Plan*, *HalifACT*, and *Halifax's Inclusive Economic Strategy 2022-2027*. While these priorities plans often contain policies that are intended to apply at a regional level and inform the development of municipal planning strategy policies, there are still components of each plan that can and should be considered for smaller scale projects. Where conflict between municipal planning strategy policy and priorities plan policy exists, staff must weigh the specificity, age, and intent of each policy, and consider how they would be applied to a specific geographic context. In this case, the following policies were identified to be most relevant to this neighbourhood planning project, and as such, were used to inform the recommendation within this report:

- Maps 12 and 13 of the *Halifax Green Network Plan* identify the Northwest Arm Waterscape as a priority area for a cultural landscape.

Conclusion

Staff have reviewed the opportunity discussed on behalf of the Federal Minister of Transport to recognize a limited jurisdiction for the Municipality over infilling on the Northwest Arm and advise that there is merit in considering the opportunity to further control the infilling of water lots. Therefore, staff recommend that Regional Council approve the proposed amendments to the Regional Centre SMPS, the Halifax MPS, the Regional Centre LUB, and the Halifax Mainland LUB, as set out in Attachments A, B, C, and D of this report.

FINANCIAL IMPLICATIONS

The HRM costs associated with this planning project can be accommodated within the approved 2023-2024 operating budget for Planning and Development.

As the Municipality does not currently regulate water lot infilling, there may be costs related to enforcement and incorporating review processes into the Municipal permitting (POSSE) system.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This application involves proposed MPS amendments. Such amendments are at the discretion of Regional Council and are not subject to appeal to Nova Scotia Utility and Review Board. Information concerning risks and other implications of adopting the proposed amendments are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No negative environmental implications are identified at this time. Staff anticipate that the proposed amendments will have positive impacts on the environment of the Northwest Arm.

ALTERNATIVES

1. Regional Council may choose to modify the proposed amendments to the Regional Centre Secondary Municipal Planning Strategy, the Halifax Municipal Planning Strategy, the Regional Centre Land Use By-law, and the Halifax Mainland Land Use By-law, as set out in Attachments A, B, C, and D of this report. If this alternative is chosen, specific directions regarding the requested modifications is required. Substantive amendments may require another public hearing to be held

before approval is granted. A decision of Regional Council to approve or refuse the proposed amendments is not appealable to the Nova Scotia Utility and Review Board as per Section 262 of the *HRM Charter*.

2. Regional Council may choose to refuse the proposed amendments to the Regional Centre Secondary Municipal Planning Strategy, the Halifax Municipal Planning Strategy, the Regional Centre Land Use By-law, and the Halifax Mainland Land Use By-law. A decision of Regional Council to approve or refuse the proposed amendments is not appealable to the Nova Scotia Utility and Review Board as per Section 262 of the *HRM Charter*.

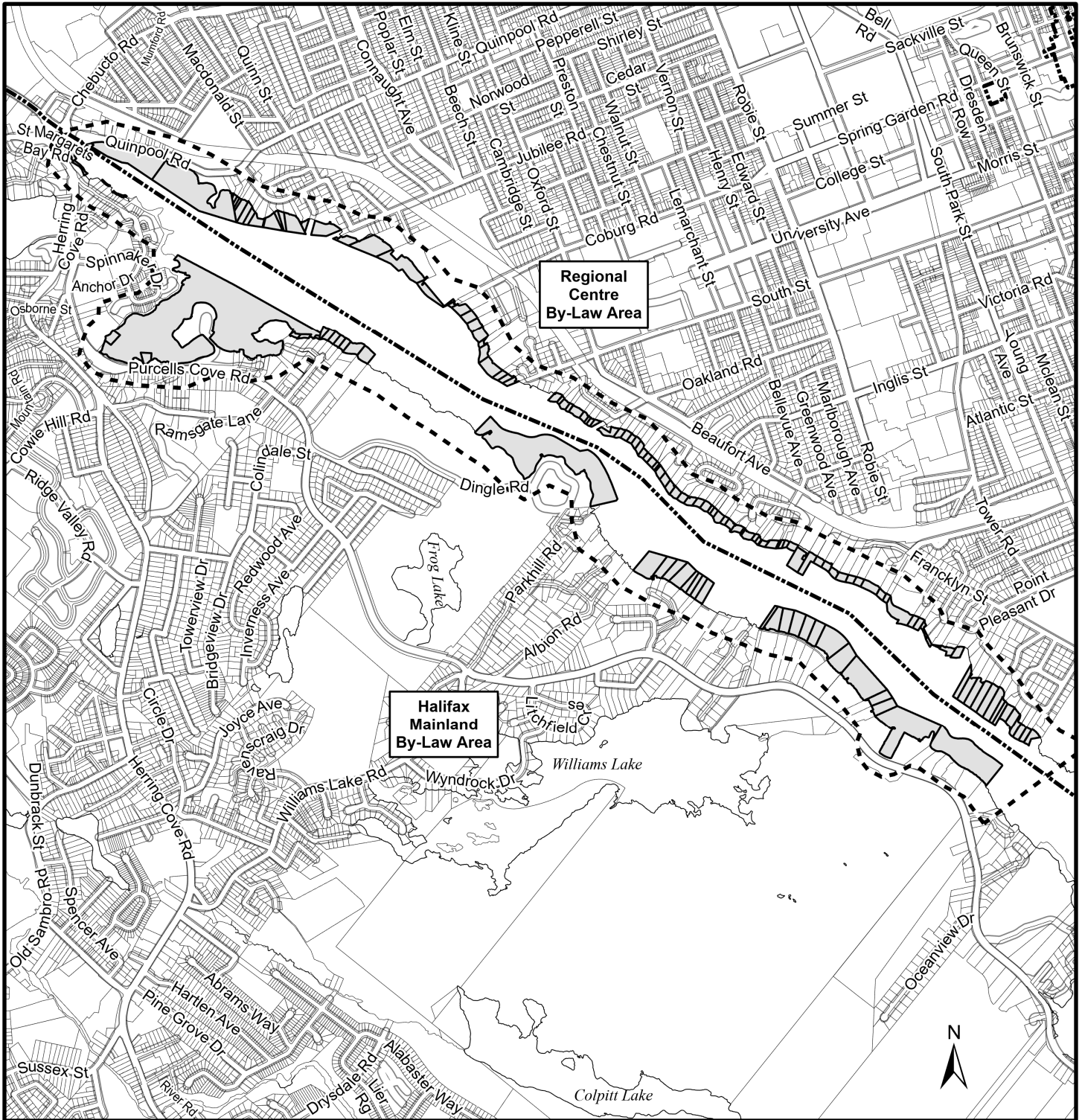
ATTACHMENTS

Map 1:	Location and Notification
Map 2:	Generalized Future Land Use
Map 3:	Zoning
Attachment A:	Proposed Amendments to the Regional Centre Secondary Municipal Planning Strategy
Attachment B:	Proposed Amendments to the Halifax Municipal Planning Strategy
Attachment C:	Proposed Amendments to the Regional Centre Land Use By-law
Attachment D:	Proposed Amendments to the Halifax Mainland Land Use By-law

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.




Report Prepared by: Rhys Burnell, Planner II, Planning and Development, 902.233.0561
Luc Ouellet, Principal Planner, Planning and Development, 902.717.4357

Map 1



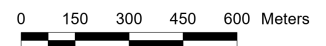
Map 1 - Location and Notification

Northwest Arm Water Lots,
Halifax

-  Subject Properties
-  Area of Notification
-  By-Law Boundary

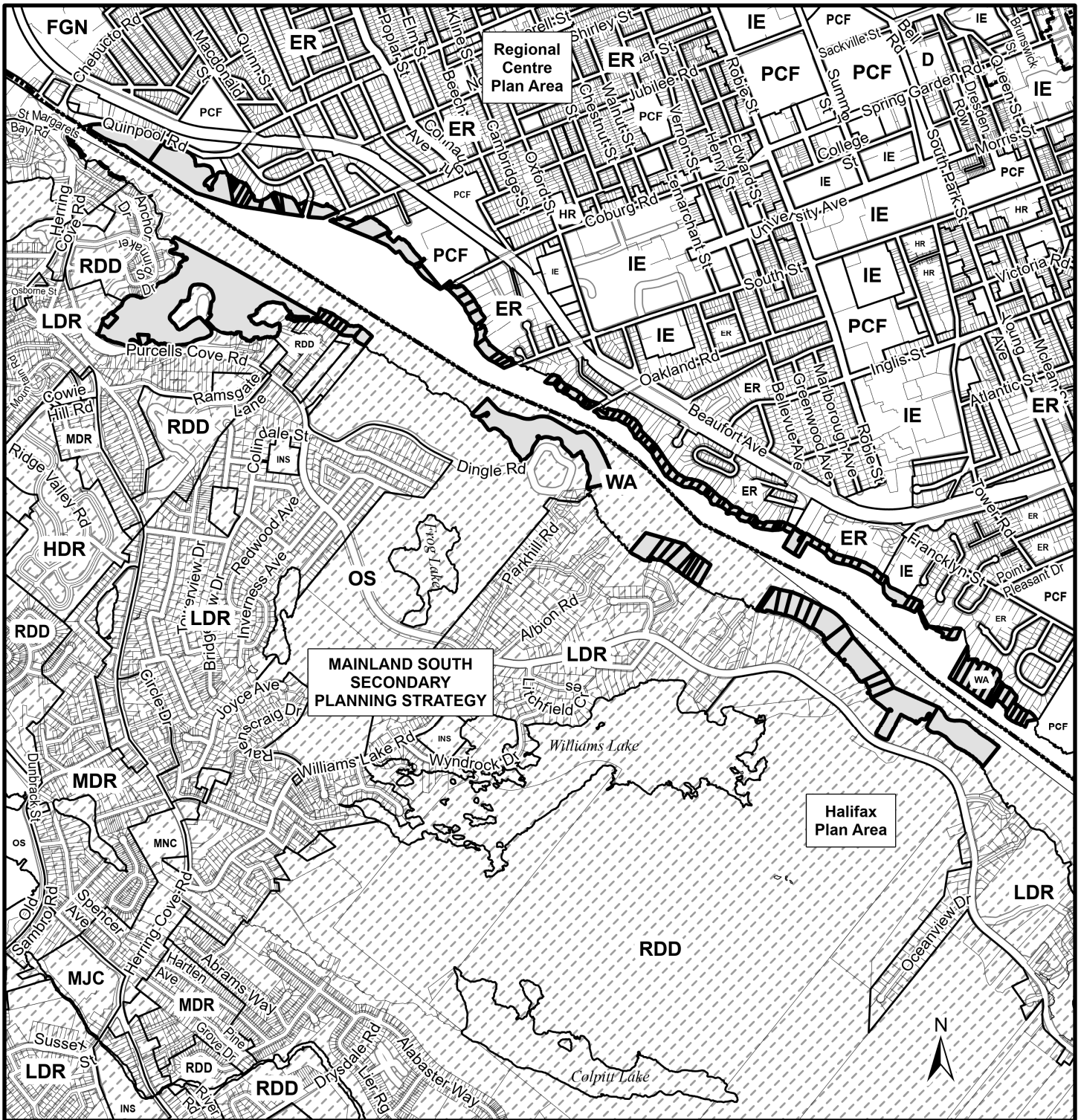
Halifax Mainland Land Use By-Law Area
and Regional Centre Land Use By-Law Area

HALIFAX






The accuracy of any representation on
this plan is not guaranteed.

Map 2



Map 2 - Generalized Future Land Use

Northwest Arm Water Lots,
Halifax

-  Subject Properties
-  Plan Area Boundary
-  Detailed Plan Area

Halifax Mainland Plan Area
and Regional Centre Plan Area

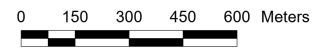
Mainland South Detailed Plan Area

- HDR High Density Residential
- INS Institutional
- LDR Low Density Residential
- MDR Medium Density Residential
- MJC Major Commercial
- MNC Minor Commercial
- OS Major Community Open Spaces
- RDD Residential Development District
- WA Water Access

Regional Centre Plan Area

- D Downtown
- ER Established Residential
- FGN Future Growth Node
- HR Higher-Order Residential
- IE Institutional Employment
- PCF Park and Community Facility
- WA Water Access

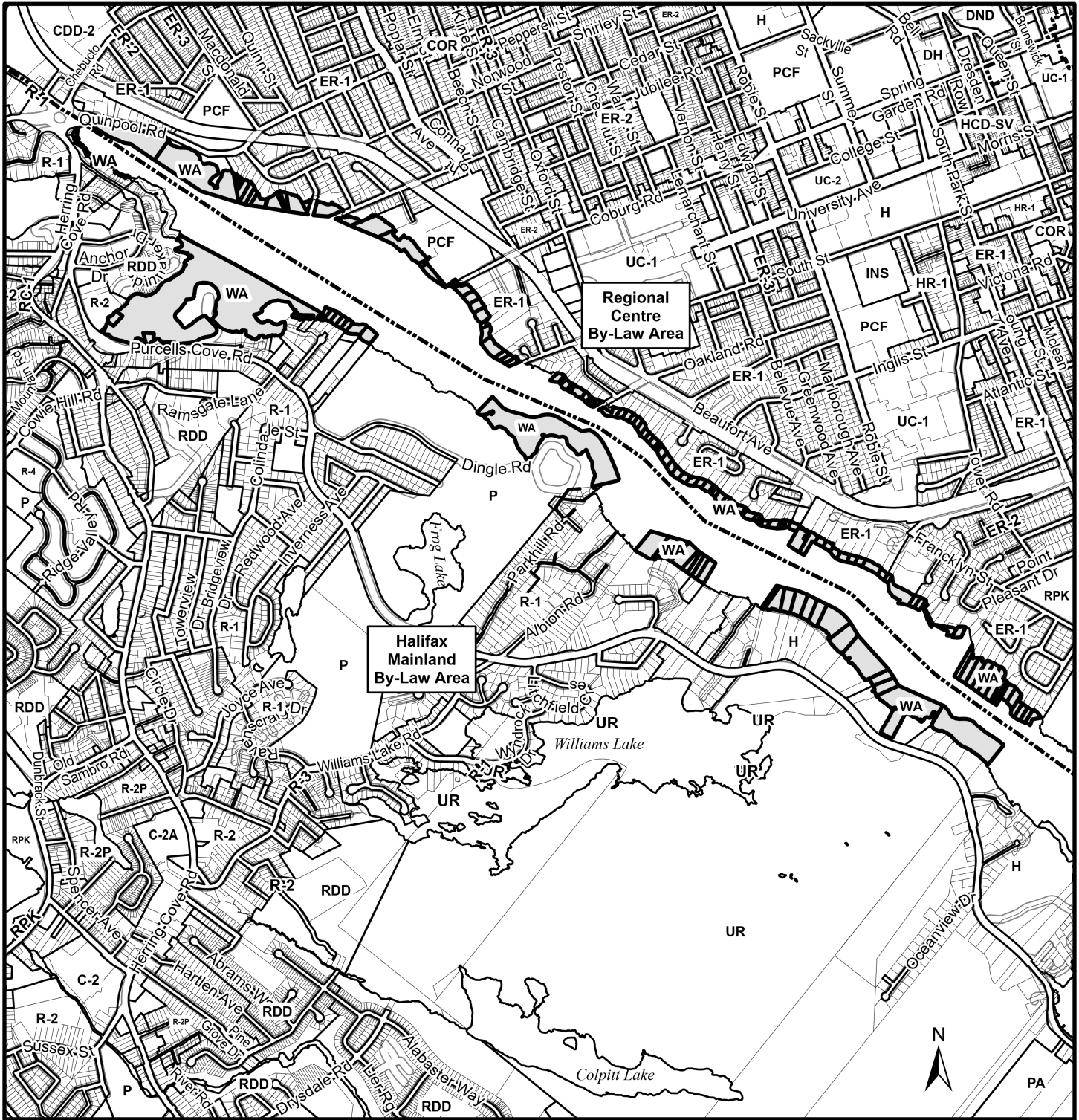
HALIFAX



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.


The accuracy of any representation on this plan is not guaranteed.


Map 3



Map 3 - Zoning

Northwest Arm Water Lots,
Halifax

 Subject Properties

 By-Law Boundary

Halifax Mainland Land Use By-Law Area
and Regional Centre Land Use By-Law Area

HMAIN


- C-2A Minor Commercial
- H Holding
- P Park and Institutional
- PA Protected Area
- R-1 Single Family Dwelling
- R-2 Two Family Dwelling
- R-2P General Residential
- R-3 Low-Rise Apartment
- R-4 Multiple Dwelling
- RC-1 Neighbourhood Commercial
- RDD Residential Development District
- RPK Regional Park
- UR Urban Reserve
- WA Water Access

RC

- CDD-2 Comprehensive Development District 2
- COR Corridor
- DH Downtown Halifax
- DND Department of Natural Defense
- ER-1 Established Residential 1
- ER-2 Established Residential 2
- ER-3 Established Residential 3
- H Hospital
- HCD-SV Heritage Conservation District -Schmidtville
- HR-1 Higher-Order Residential 1
- HR-2 Higher-Order Residential 2
- INS Institutional
- PCF Parks and Community Facilities
- UC-1 University and College 1
- UC-2 University and College 2
- WA Water Access

HALIFAX

0 150 300 450 600 Meters



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

ATTACHMENT A
PROPOSED AMENDMENTS TO THE REGIONAL CENTRE SECONDARY MUNICIPAL PLANNING STRATEGY

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Regional Centre Secondary Municipal Planning Strategy is hereby further amended as follows:

1. The preamble of Section 2.12 (WATER ACCESS DESIGNATION) is amended, as shown below in **bold** and ~~strikeout~~, by:
 - (a) deleting the words “by limiting the development of infilled water lots” in the first sentence of the first paragraph;
 - (b) adding a new sentence at the end of the first paragraph; and
 - (c) adding a new paragraph immediately below the third paragraph.

2.12 WATER ACCESS DESIGNATION

The Water Access Designation, shown on Map 1, is intended to protect the unique character and environment of waterfront neighbourhoods ~~by limiting the development of infilled water lots~~. The Designation is applied to water lots located in the Northwest Arm of Halifax Harbour, Lake Banook and Lake Mic Mac. **On Lake Banook and Lake Mic Mac, the Designation limits the development of infilled water lots. In the Northwest Arm, the Designation restricts water lot infilling and limits the development of infilled water lots.**

While waterfront property ownership now typically stops at the shoreline, a number of lots exist around these waterbodies that were created prior to Confederation in 1867. Known as pre-confederation water lots, these lots can be infilled if approval is granted by the Federal Government on the Northwest Arm, or by the Provincial Government on Lake Banook and Lake Mic Mac.

In 2007, a Water Access Designation and related zone were first established for the Northwest Arm area of the Halifax Harbour under former planning policies and land use regulations that were in effect at the time. The intent was to preserve the unique character and environment of the shoreline, and support recreation opportunities. While infilling of water lots could not be prevented, the designation and zone discouraged infilling by limiting development on infilled areas to park and recreational uses. Under this Plan, the Water Access Designation and related zone are maintained for the Northwest Arm of the Halifax Harbour, and extended to water lots located on Lake Banook and Lake Mic Mac.

In 2023, Justice Canada indicated on behalf of Transport Canada a willingness to recognize or otherwise permit a limited jurisdiction for the Municipality over infilling on the Northwest Arm. Staff of the department have indicated a willingness to recommending to the Minister the issuance of conditional approvals under the *Canadian Navigable Waters Act (CNWA)*, over water lot infilling activities on the Northwest Arm. This approach would see Ministerial approvals require applicants to be compliant with the Municipality’s municipal land use regulations.

Policies under this designation provide direction and framework to control development on lands that abut water lots by establishing Special Areas regulations in the Land Use By-law. Each

of these Special Areas will establish reference lines that approximately represent the existing shorelines, which will be used for calculating minimum lot area and setbacks. To support recreational development, an exemption is made for existing boat clubs.

2. The Objective of Section 2.12 (WATER ACCESS DESIGNATION) is amended, as shown below in **bold** and ~~strikeout~~, by:

- (a) adding the letter “s” at the end of the word “Objective”; and
- (b) deleting the current Objective and replacing it with two new ones.

Objectives:

- ~~▪ Protect the unique character, environment and recreation opportunities of the communities around the Northwest Arm of Halifax Harbour, Lake Banook, and Lake Mic Mac by limiting development on infilled water lots.~~
- 1. Protect the unique character, environment and recreation opportunities of the community around the Northwest Arm of Halifax Harbour by restricting water lot infilling and limiting development on infilled water lots.**
- 2. Protect the unique character, environment and recreation opportunities of the communities around Lake Banook and Lake Mic Mac by limiting development on infilled water lots.**

3. Policy W-2 of Section 2.12 (WATER ACCESS DESIGNATION) is amended, as shown below in **bold** and ~~strikeout~~, by:

- (a) deleting the word “and” in Clause b) immediately after the semi-colon;
- (b) deleting the period at the end of Clause c) and replacing by the semi-colon and word “; and”; and
- (c) adding a new Clause d) immediately below Clause c).

Policy W-2

The Land Use By-law shall establish the Northwest Arm (NWA) Special Area, the Lake Banook (LB) Special Area, the Lake Micmac (LM) Special Area, and the Boat Clubs (BC) Special Area over the WA Zone and abutting zones and properties. These special areas shall:

- a) establish the shoreline reference line and additional land use permissions and requirements related to setbacks from the shoreline reference line, structures and land uses permitted in those areas;
- b) prohibit the inclusion of the area of infilled water lots when calculating minimum lot area, setbacks from the shoreline reference line, and rear lot setbacks; ~~and~~

- c) establish exemptions for shoreline reference line setbacks for the Boat Clubs (BC) Special Area; **and**
- d) **restrict water lot infilling activities in the Northwest Arm (NWA) Special Area to those related to the following developments:**
 - (i) **public infrastructure,**
 - (ii) **utility uses,**
 - (iii) **publicly owned or operated ferry terminals,**
 - (iv) **parks on public land,**
 - (v) **municipal, provincial, and national historic sites and monuments, and**
 - (vi) **retaining walls.**

4. Section 2.12 (WATER ACCESS DESIGNATION) is amended, as shown below in **bold**, by adding a new policy immediately below Policy W-2.

Policy W-3

The Municipality shall encourage the respective provincial and federal approval authorities to refer any marine related infrastructure or water lot infilling requests and applications occurring within the Northwest Arm (NWA) Special Area, the Lake Banook (LB) Special Area, and the Lake Micmac (LM) Special Area to the Development Officer for review of compliance with the Land Use By-law.

ATTACHMENT B
PROPOSED AMENDMENTS TO THE HALIFAX MUNICIPAL PLANNING STRATEGY

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Halifax Municipal Planning Strategy is hereby further amended as follows:

1. Section 8.12 of the City-Wide Objectives and Policies is amended, as shown below in **bold**, by adding the words and comma “lot coverage,” in the last sentence after the words and comma “non-infilled water lots from being used in lot area,” and before the words “and setback calculations” in the last sentence.
 - 8.12 The Northwest Arm is a narrow, recreational inlet characterized by major urban parks (Sir Sandford Fleming, Point Pleasant, Deadman’s Island and Horseshoe Island Parks), historical assets and predominantly residential uses. The Northwest Arm is also home to a number of boat/sailing clubs which generate significant boating traffic in the Arm. Consequently, the Halifax Regional Municipality recognizes that subdivision, development and water lot infilling activities along the Northwest Arm may result in undesirable impacts on the aesthetic character and traditional built form of the Northwest Arm, on its recreational use and navigability and on its marine environment. As a means of protecting the character of the Northwest Arm, the Municipality shall control development and subdivision on lots and water lots along the Northwest Arm. Specific measures will include limiting the type of structures that will be allowed on both infilled and non-infilled water lots, implementing a setback from the Northwest Arm, limiting the type and size of structures to be built within the Northwest Arm setback, and preventing infilled and non-infilled water lots from being used in lot area, **lot coverage**, and setback calculations.
2. Section 8.12.3 of the City-Wide Objectives and Policies is amended, as shown below in **bold**, by adding the words “water lot” after the words “refer any marine related infrastructure or” and before the words “lot infilling requests and applications occurring within Halifax Harbour”.
 - 8.12.3 The Municipality shall also encourage the respective provincial and federal approval authorities to refer any marine related infrastructure or **water lot** infilling requests and applications occurring within Halifax Harbour, including the Northwest Arm, to the Development Officer for review of compliance with the Land Use By-law.
3. The City-Wide Objectives and Policies are amended, as shown below in **bold**, by adding a new Policy 8.12.4 immediately below Policy 8.12.3.
 - 8.12.4 **In 2023, Justice Canada indicated on behalf of Transport Canada a willingness to recognize or otherwise permit a limited jurisdiction for the Municipality over infilling on the Northwest Arm. Staff of the department have indicated a willingness to recommending to the Minister the issuance of conditional approvals under the Canadian Navigable Waters Act (CNWA), over water lot infilling activities on the Northwest Arm. This approach would see Ministerial approvals require applicants to be compliant with the Municipality’s municipal land use regulations. Consequently, the Municipality will prohibit, through its Land Use By-law, most water lot infilling**

activities in the Northwest Arm. The only water lot infilling activities that will be permitted to proceed through the development permit process will be those related to the following developments:

- (a) public works and utilities;**
- (b) ferry terminal facilities;**
- (c) parks on public land;**
- (d) municipal, provincial, and national historic sites and monuments; and**
- (e) retaining walls**

ATTACHMENT C
PROPOSED AMENDMENTS TO THE REGIONAL CENTRE LAND USE BY-LAW

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Regional Centre Land Use By-law is hereby further amended as follows:

1. Table 1C is amended by deleting the black dot (●) in the cell where the row identified by the words “Transportation facility use” intersects with the column identified by the header “WA”, and replacing it with a white circle containing the number “25” in black text (e.g., ②~~5~~).
2. Table 1C is amended, as shown below in **bold**, by adding the following footnote at the end of the table, immediately below Footnote ②~~4~~:

②~~5~~ Use is restricted to publicly owned or operated ferry terminals in the Northwest Arm Special Area, as shown on Schedule 3E, beyond the reference line of the Northwest Arm, as shown on Schedule 12.

3. Section 10 is amended as show below in bold, by adding a new clause immediately before clause 10(m) and immediately above clause 10(n):

(ma) approval from the Government of Canada for infill of a water lot in the Northwest Arm Special Area;

4. Section 76 is amended, as shown below in **bold**, by adding three new subsections immediately below Subsection 76(4) and immediately above Subsection 76(5):

- 76 (1) Within the Northwest Arm (NWA) Special Area, as shown on Schedule 3E, the reference line of the Northwest Arm is as shown on Schedule 12.
- (2) Subject to Subsections 76(3) and 76(4), a structure shall not be located within 9.0 metres of the reference line of the Northwest Arm, as shown on Schedule 12, except:
- (a) public infrastructure;
 - (b) utility uses;
 - (c) boathouses;
 - (d) publicly owned or operated ferry terminals;
 - (e) parks on public land;
 - (f) water access structures;
 - (g) gazebos; and
 - (h) municipal, provincial, and national historic sites and monuments.
- (3) Subject to Subsection 76(4), a lot is limited to a maximum of one boathouse and one gazebo located within 9.0 metres of the reference line of the Northwest Arm, as shown on Schedule 12, with each boathouse or gazebo not to exceed:
- (a) a footprint of 48 square metres;

- (b) a width of 6.0 metres on the side that is most parallel to the reference line;
- (c) a length of 8.0 metres; and
- (d) a height of 4.2 metres.

(4) The requirements of Subsections 76(2) and 76(3) do not apply within the Boat Clubs (BC) Special Area, as shown on Schedule 3E.

(4.1) Water lot infilling, in whole or in part, of a water lot in the Northwest Arm Special Area, as shown on Schedule 3E, beyond the reference line of the Northwest Arm, as shown on Schedule 12, is prohibited unless a development permit has been issued for a permitted use listed in Subsection 76(4.2).

(4.2) Water lot infilling, in whole or in part, of a water lot in the Northwest Arm Special Area, as shown on Schedule 3E, beyond the reference line of the Northwest Arm, as shown on Schedule 12, is only permitted for:

- (a) public infrastructure;**
- (b) utility uses;**
- (c) publicly owned or operated ferry terminals;**
- (d) parks on public land;**
- (e) municipal, provincial, and national historic sites and monuments;**
- (f) retaining walls associated with any uses referenced in Clauses 76(4.2)(a) to 76(4.2)(e); and**
- (g) subject to Subsection 76(4.3), retaining walls not associated with uses referenced in Clauses 76(4.2)(a) to 76(4.2)(e).**

(4.3) Retaining walls under Clause 76(4.2)(g), including any associated engineering support structure, shall not be located more than 2.0 metres beyond the reference line of the Northwest Arm, as shown on Schedule 12.

(5) Any portion of a water lot that has been infilled beyond the reference line of the Northwest Arm, as shown on Schedule 12, shall not be included in the:

- (a) calculation of the minimum lot area requirements of Part IV;
- (b) calculation of lot coverage; or
- (c) measurement of a side or rear setback.

(6) The requirements of this Section continue to apply regardless of whether a water lot is consolidated with an abutting land lot.

5. Section 499 is amended, as shown below in **bold**, by adding a new Subsection (67.5) immediately below Subsection (67) and immediately above Subsection (68):

(67.5) Cribbing means a framework underneath a wharf for the purpose of providing structural support that permits the flow of water through the structure.

6. Section 499 is amended, as shown below in **bold**, by adding a new Subsection (84.5) immediately below Subsection (84) and immediately above Subsection (85):

(84.5) Fill Material means sand, gravel, rock, clay, soil, or other natural materials.

7. Section 499 is amended, as shown below in **bold**, by adding a new Subsection (213.5) immediately below Subsection (213) and immediately above Subsection (214):

(213.5) Retaining Wall means a vertical, or near vertical structure, that holds back sand, gravel, rock, clay, soil, or other fill material, and prevents movement of material down slope or erosion on a site.

8. Section 499 is amended, as shown below in **bold**, by adding a new Subsection (279.5) immediately below Subsection (279) and immediately above Subsection (280):

(279.5) Water Lot Infilling means the placing of any fill material within a water lot, but does not include cribbing for an approved wharf under the *Canadian Navigable Waters Act*.

ATTACHMENT D
PROPOSED AMENDMENTS TO THE HALIFAX MAINLAND LAND USE BY-LAW

BE IT ENACTED by the Council of the Halifax Regional Municipality that the Halifax Mainland Land Use By-law is hereby further amended as follows:

1. Section 14U is amended, as shown below in **bold** and ~~strikeout~~, by:
 - (a) Adding a new definition (i.1) in 14U(a) for “Cribbing” immediately below the definition for “Boathouse” and immediately above the definition for “Fill Material”;
 - (b) Adding a new definition (i.2) in 14U(a) for “Fill Material” immediately below the definition for “Cribbing” and immediately above the definition for “Gazebo”;
 - (c) Adding a new definition (ii.1) in 14U(a) for “Retaining Wall” immediately below the definition for “Gazebo” and immediately above the definition for “Shoreline”;
 - (d) Adding a new definition (v) in 14U(a) for “Water Lot Infilling” immediately below the definition for “Water Lot”;
 - (e) Deleting the brackets, number, and word “(30 feet)” in 14U(b)(i);
 - (f) Deleting the second word “within” in 14U(b)(i) and replacing it with the word “of”;
 - (g) Deleting the words “Water Access Zone” in 14U(b)(i) and replacing them with the words “Northwest Arm Water Access Area or the Bedford Basin Water Access Area”;
 - (h) Deleting the brackets, number, and word “(30 feet)” in 14U(b)(ii);
 - (i) Deleting the words “within the Water Access Zone” in 14U(b)(ii) and replacing them with the words with the words “of the Northwest Arm Water Access Area or the Bedford Basin Water Access Area”;
 - (j) Deleting the number “121.92” in 14U(b)(ii) and replacing it with the number “48”;
 - (k) Deleting the brackets, number, and words “(400 square feet)” in 14U(b)(ii);
 - (l) Deleting the brackets, number, and word “(20 feet)” in 14U(b)(ii);
 - (m) Deleting the number “7.8” in 14U(b)(ii) and replacing it with the number “8”;
 - (n) Deleting the brackets, number, and word “(26 feet)” in 14U(b)(ii);
 - (o) Deleting the brackets, number, and word “(14 feet)” in 14U(b)(ii);
 - (p) Deleting the brackets, number, and word “(30 feet)” in 14U(c);
 - (q) Adding four new clauses [(c.1), (c.2), (c.3), and (c.4)] immediately below 14U(c) and immediately above 14U(d);
 - (r) Deleting the word and comma “and,” at the end of 14U(d)(ii);
 - (s) Adding a new Subclause (ii.1) in 14U(d) immediately below 14U(d)(ii) and immediately above 14U(d)(iii); and
 - (t) Adding a new Clause (f) under 14U.

- 14U For any development or subdivision within the Northwest Arm Water Access Area or the Bedford Basin Water Access Area, in addition to all other applicable requirements of this By-law, the following requirements shall apply:
 - (a) Definitions:
 - (i) “Boathouse” means a building or structure, whether permanent or temporary, which is located on a waterfront lot, which is roofed, which does not contain toilet, bathroom, kitchen or sleeping facilities and which is used for the shelter or storage of boats, watercrafts and

associated marine accessories and equipment, but not for the accommodation of persons, animals, or vehicles as defined by the *Motor Vehicle Act*.

- (i.1) **“Cribbing” means a framework underneath a wharf for the purpose of providing structural support that permits the flow of water through the structure.**
- (i.2) **“Fill Material” means sand, gravel, rock, clay, soil, or other natural materials.**
- (ii) “Gazebo” means a freestanding, roofed accessory building or structure, which is not enclosed, which does not contain toilet, bathroom, kitchen or sleeping facilities, and which is not used for the accommodation of animals or vehicles as defined by the *Motor Vehicle Act*.
- (ii.1) **“Retaining Wall” means a vertical, or near vertical structure, that holds back sand, gravel, rock, clay, soil, or other fill material, and prevents movement of material down slope or erosion on a site.**
- (iii) “Shoreline” means the Ordinary High Water Mark as defined under the *Nova Scotia Land Surveyors Regulations* and as it existed on the effective date of this Section.
- (iv) “Water Lot” means any part or parcel of land located seaward of the Shoreline as illustrated on Map 9 the Generalized Future Land Use Map for the Halifax Plan Area.
- (v) **“Water Lot Infilling” means the placing of any fill material within a water lot, but does not include cribbing for an approved wharf under the *Canadian Navigable Waters Act*.**

(b) In addition to all other applicable requirements of this by-law:

- (i) No structure, with the exception of boathouses, public works and utilities, ferry terminal facilities, a multi-use trail system and associated facilities, parks on public lands, wharves, docks, gazebos, municipal, provincial and national historic sites and monuments, and existing structures may be located within 9 metres (~~30 feet~~) of the Shoreline ~~within of the Water Access Zone~~ **Northwest Arm Water Access Area or the Bedford Basin Water Access Area.**
- (ii) Where boathouses and gazebos are to be located within 9 metres (~~30 feet~~) of the Shoreline ~~within the Water Access Zone~~ **of the Northwest Arm Water Access Area or the Bedford Basin Water Access Area**, they shall be limited to one boathouse and one gazebo per lot and each structure may have a maximum area of ~~121.92 square metres (400 square feet)~~ **48 square metres**, a maximum width of 6 metres (~~20 feet~~) on the side that is most parallel to the Shoreline, a maximum depth of ~~7.8 metres (26 feet)~~ **8 metres**, a minimum roof pitch of 5/12 and a maximum height of 4.2 metres (~~14 feet~~);

(c) Notwithstanding Subsection (b), the 9-metre (~~30-foot~~) Northwest Arm Shoreline setback shall not apply to the properties identified by the following P.I.D. numbers: 00251868 (leased to the Armdale Yacht Club),

00274548 and 00270942 (Royal Nova Scotia Yacht Squadron).

- (c.1) **Notwithstanding 14U(b) and 62EE(1), 62EE(2), 62EE(3), and 62EE(4) but subject to 14U(c.2), water lot infilling, in whole or in part, of a water lot within the Northwest Arm Water Access Area is prohibited unless a development permit has been issued for a permitted use listed in 14U(c.2).**
- (c.2) **Water lot infilling, in whole or in part, of a water lot within the Northwest Arm Water Access Area is only permitted for:**
 - (i) **public works and utilities;**
 - (ii) **ferry terminal facilities;**
 - (iii) **parks on public land;**
 - (iv) **municipal, provincial, and national historic sites and monuments;**
 - (v) **retaining walls associated with any uses referenced in 14U(c.2)(i) to 14U(c.2)(iv); and**
 - (vi) **subject to 14U(c.3), retaining walls not associated with uses referenced in 14U(c.2)(i) to 14U(c.2)(iv) .**
- (c.3) **Retaining walls under Subclause 14U(c.2)(vi), including any associated engineering support structure, shall not be located more than 2.0 metres seaward from the shoreline.**
- (d) No portion of a water lot shall:
 - (i) be included within the calculation of the minimum setback required by clause (b)(i);
 - (ii) be included within the calculation of the minimum lot area requirements of this by-law; ~~and~~,
 - (ii.1) be included within the calculation of lot coverage requirements of this by-law; and**
 - (iii) have frontage on any street not opened for vehicular use as of January 1, 2010.
- (e) The requirements of this Section shall continue to apply to water lots following any subsequent consolidation with abutting land lots.
- (f) No person shall in the Northwest Arm Water Access Area:**
 - (i) carry out, or cause or permit to be carried out, any development for any purpose other than one or more of the uses set out in 14U (c.2);**
 - (ii) use or permit to be used any land or building in whole or in part for any purpose other than one or more of the uses set out in 14U (c.2); or**
 - (iii) construct or erect a building, with the exception of public works and utilities or ferry terminal facilities, on a wharf, on pillars, on piles, or on any other type of structural support located on or over a water lot.**

2. Section 63 is amended to add clause (fa) after clause (f) and before clause (g) as shown in bold below:

63 Each application for a development permit shall include the following particulars:

- (a) The location, dimensions, and abutters of the lot on which the building is or is proposed to be situated;
- (b) When and by what means the boundaries of the lot were established;
- (c) Whether the lot has been approved by the Committee, and, if so, the date of such approval;
- (d) The owner of the lot;
- (e) The dimensions of the proposed building and the relation of such proposed building to the lot lines or, in the case of an alteration or repair, the nature of such alteration and repair;
- (f) The purpose for which the building is to be used;
- (fa) approval from the Government of Canada for infill of a water lot in the Northwest Arm Water Access Area;**
- (g) Any other information as may be necessary to comply with the provisions of this by-law