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**Item No. 15.1.4**  
**Halifax Regional Council**  
**October 1, 2024**

**TO:** Mayor Savage and Members of Halifax Regional Council

Original Signed

**FROM:** \_\_\_\_\_  
Cathie O'Toole, Chief Administrative Officer

**DATE:** September 13, 2024

**SUBJECT:** Response to Changes to Provincial Minimum Planning Requirements

### **ORIGIN**

On August 21, 2024, the Minister of Municipal Affairs and Housing amended the *Minimum Planning Requirements Regulations* under Section 229 of the *Halifax Regional Municipality Charter*.

### **EXECUTIVE SUMMARY**

The Municipality has been undertaking a comprehensive review of the Regional Municipal Planning Strategy (Regional Plan) since 2020. Since early 2024, HRM staff have been working to finalize a new Regional Plan and a supporting package of amendments to all planning documents; however, recent events caused staff to delay bringing the Regional Plan package forward for Council's consideration. First, on August 20, 2024, the Province of Nova Scotia issued amendments to the *Minimum Planning Requirements Regulations*, which will require the Municipality to undertake amendments to the Regional Plan and all supporting planning documents to ensure compliance with the new regulations by December 31, 2024 and a suburban plan no later than January 31, 2025. Second, during internal technical review of the proposed Regional Plan, staff identified that due to the decision of the Supreme Court of Canada in *Annapolis Group Inc. v. Halifax Regional Municipality* rendered on October 21, 2022, there may be potential risks related to regulating development on private land which need to be properly assessed. As a result, more due diligence is required before the proposed Regional Plan and amendment package can be presented to Council for review and approval.

This report:

- Outlines the Province's new *Minimum Planning Requirements Regulations* and requests that Council initiate a process to consider amendments to all planning documents to ensure compliance with the requirements, and approve a public participation program to support the amendments;
- Outlines the change to law as a result of the Supreme Court of Canada decision, and highlights that as a result, staff require further time to review the proposed Regional Plan and amendment package;

- Requests that the Mayor send a letter to the Province requesting urgent amendments to the HRM Charter to include immunity from constructive taking claims, to ensure that HRM is able to continue to plan and regulate development.

## **RECOMMENDATION**

It is recommended that Regional Council:

1. Direct the Chief Administrative Officer to:
  - a) Initiate a process to consider amendments to all planning documents, including the Regional Municipal Planning Strategy, all Secondary Municipal Planning Strategies and Land Use By-Laws, and the Regional Subdivision By-Law to ensure compliance with the *Minimum Planning Requirements Regulations* as amended by the Province of Nova Scotia on August 20, 2024; and
  - b) Follow Administrative Order 2023-002-ADM *Respecting Public Participation for Planning Documents, Certain Planning Applications, and Engagement with Abutting Municipalities* for the required public participation program, as outlined in the Community Engagement section of this report; and
  - c) Return to Regional Council with a staff report outlining the risks and potential approaches to land use planning in consideration of the Supreme Court of Canada's decision in *Annapolis Group Inc. v. Halifax Regional Municipality*.
2. Request that the Mayor send a letter to the Province of Nova Scotia requesting amendments to the *HRM Charter* to include immunity from construction taking/ de facto expropriation claims.

## **BACKGROUND**

The Municipality has been undertaking a comprehensive review of the Regional Municipal Planning Strategy (Regional Plan) since 2020. In June 2023, the Phase 4 Draft Regional Plan was released for public engagement, and the results of the engagement were presented to Council in a What We Heard Report in December 2023. Based on feedback gathered from Council, the public, and internal/external stakeholders on the policy concepts contained in the June 2023 Draft, Planning & Development Staff have been preparing to bring forward the new Regional Plan with a full implementation package, which includes amendments to Community Plans, Land Use By-Laws, and the Regional Subdivision By-Law required to implement the new Regional Plan policies. Since early 2024, HRM staff have been working to finalize these documents, however, recent events caused staff to delay bringing the Regional Plan package forward for Council's consideration.

First, on August 21, 2024, the Province of Nova Scotia announced the introduction of a set of regulations that direct action by the Halifax Regional Municipality. Amendments have been made to the *Minimum Planning Requirements Regulations* (MPR), and two new regulations have been adopted – the *Planning Appeals Non-Substantive Matters Regulations* and the *Trusted-Partner Program Bylaw Regulations*. These new regulations are issued under the sections 219B and 251A of the HRM Charter that were added by the Province on November 9, 2023. The changes to the MPR require HRM's municipal planning strategy (i.e. the Regional Plan) to include a number of new provisions, and to implement these requirements by December 31, 2024, and for the adoption of a new secondary municipal planning strategy and a land-use by-law for the suburban area no later than January 31, 2025. The *Planning Appeals Non-Substantive Matters Regulations* identify matters relative to Site Plan Approval for residential developments that are non-substantive and unable to be appealed, including colour, cladding materials, fenestration (windows and doors), and landscaping. The *Trusted-Partner Program Bylaw Regulations* require adoption of a Trusted Partner Program By-law by a date that will be indicated in future by the Minister in writing.

Second, Planning & Development staff have been working with Legal Services to finalize the Phase 4 Regional Plan. The latest review has focused on the impacts of the decision of the Supreme Court of Canada (SCC) ruling in *Annapolis Group Inc. v. Halifax Regional Municipality*, [2022 SCC 36](#) (SCC). Risks have been identified by staff related to managing development, particularly where development would be restricted on privately-owned lands.

This staff report outlines how these two separate events impact the Phase 4 Regional Plan package and suggests a recommended approach and timeline to address them.

## **DISCUSSION**

It was anticipated the Phase 4 Regional Plan would be presented to Council prior to the 2024 Municipal Election, however, recent events have resulted in a need to delay the package. More time is needed to complete the technical review to incorporate the MPR and to adjust the Regional Plan to reflect the risks that have been identified through the review process. The following is a summary of the two events that have occurred over this past July – August which have result in the delay of the Regional Plan package.

### **Provincial Minimum Planning Regulations**

On August 21, 2024, the Province announced amended regulations under Section 229 of the *Halifax Regional Municipality Charter*, related to the MPR (see Attachment A). The new regulations require a heightened emphasis on prioritizing residential development and expediting the supply of housing through prescribed changes to policy and land use regulatory framework and that the following new provisions are implemented by December 31, 2024. The new regulations require that:

- the Municipal Planning Strategy include a statement of policy recognizing that rapid increase in the supply of housing is the Municipality's most urgent priority in municipal land-use planning, regulation and development approval;
- the priority be given to increasing the supply of safe, sustainable and affordable housing in the municipality over other interests identified in the Municipal Planning Strategy for the purposes of processes, approvals and decisions made under the municipal planning strategy;
- residential uses be permitted in all zones, except for industrial, military, park, transportation reserve, utility uses, and zones intended to protect the environment, water supply or floodplains or similar interest;
- the Municipality share with the Province the information used by the Municipality to identify, fund, schedule and deploy the infrastructure to develop an adequate supply of housing to support anticipated population growth;
- maximum building height not be imposed that negatively affects the density of residential buildings using mass timber or any other construction method;
- for residential uses within the urban service area, there be no requirement for on-site parking ;
- temporary housing be permitted in non-permanent structures as a use in all zones, allowing employees to live on or near their worksite during a work assignment, for a period of time that is specified by the development permit and can be reasonably be tied to the duration of the project; and
- manufactured housing be permitted in all residential zones, including modified shipping containers converted into housing.

For developments that commence prior to April 1, 2027, the MPR require that:

- density for Conservation Design developments be based gross lot area;
- that there be no unit mix requirements for residential buildings; and
- the ground floor of multi-unit residential buildings not be required to contain more than 20% commercial space.

Staff have reviewed the MPR and are working to identify how amendments to HRM's existing planning documents can be made to address the requirements. It is anticipated that many of the new requirements can be addressed through the Phase 4 Regional Plan documents, and this technical review has begun.

It should be noted that the timelines associated with the MPR may also not be achievable given the timing of the municipal election and the technical nature of the work and processes required. However, staff will attempt to move forward quickly with an approach that aims to address the regulations within a reasonable timeframe. It is staff's intent to perform an in-depth review, identify potential impacts and opportunities for compliance, identify required amendments to the Regional Plan and supporting documents, conduct engagement on adjustments, and coupled with the technical review below, then bring forward a revised package for community and Council to consider prior to moving forward with formal adoption process.

The regulations also require the adoption of a secondary municipal planning strategy and the implementation of a land-use by-law for the suburban area (the Suburban Plan) of the municipality no later than January 31, 2025. Initiation of the work on the Suburban Plan was approved by Council in July of 2023, and the [initiation report](#) set out the intended workplan and timelines.

It is important to note that the amendments approved by Regional Council on May 23, 2024 in support of the [Housing Accelerator Fund](#) (HAF) program represented the first phase of the Suburban Plan, and were intended to address the housing crisis directly. These amendments created new regulations for "opportunity sites" meant to advance active housing projects. Staff estimate that these sites could provide approximately 5,000 housing units. As part of HAF additional amendments to all planning documents in the suburban area also provided for up to 4 dwelling units per lot in all residential areas and additional flexibility for backyard suites, which created significant additional housing capacity. This approach enabled many active projects, while still allowing for necessary technical study and due diligence to be completed on the remainder of the Suburban Plan.

A report will be presented to Regional Council early in 2025 with a revised work plan and Public Participation Program for the overall Suburban Plan process. While work is underway to advance a second round of suburban opportunity sites as described above, it will not be possible to accelerate the completion of required infrastructure studies, undertake public engagement and deliver the Suburban Plan in advance of the dates set out in the minimum planning requirements. Staff will be working with the Province to request an extension to this timeline and will be reporting on work done to advance the Suburban Plan to demonstrate progress.

### **Technical Legal Review of Regional Plan - Impacts of Supreme Court of Canada (SCC) decision in [Annapolis Group Inc. v. Halifax Regional Municipality \(2022\)](#)**

Over the past few months, Planning & Development staff have been working with Legal Services to understand the implications of the above noted SCC decision, which was rendered on October 21, 2022, on the compensation that may result from the exercise of the Municipality's planning and development powers.

#### ***Impact on Technical Review***

The manner in which the courts apply constructive takings may have financial implications on the regulation of privately-owned land. At this point in time, more due diligence is needed to assess and evaluate the potential impacts of the SCC decision, what the decision means, and how risks should be managed in the current planning environment. Further communication with staff, community, stakeholders, and Regional Council is needed on the perceived risks and any necessary policy adjustments that would mitigate or manage potential risk to the Municipality. To support this, staff recommend an additional report should be brought forward to Regional Council in late 2024/ early 2025 that will outline the risks and potential approaches to land use planning in light of the SCC decision, and seek any further direction, including additional public engagement that may be required.

In the interim, it should be noted that the *HRM Charter*, unlike other municipal legislation in some other jurisdictions like Vancouver, currently does not include certain provisions which would allow the Municipality to undertake planning without risking potential constructive taking/ de facto expropriation claims. Therefore, staff is recommending that Council request the Mayor to write to the Province to request amendments to the *HRM Charter* to include immunity from constructive taking/ de facto expropriation claims. Without this immunity, HRM's ability to advance a response to the housing crisis may be limited in terms of the level of potential risk associated with amendments to any planning documents.

### **Conclusion / Next Steps**

This report recommends that Council initiate amendments to all planning documents as may be necessary to implement the MPR. Further, additional internal discussion is required to understand the implications of the *Annapolis SCC* decision on HRM's planning approach. An additional report will be brought forward to Regional Council to outline the findings of this work and outline any anticipated impacts to the proposed Regional Plan policy and accompanying implementation package. Staff intend to bring forward the Regional Plan Phase 4 amendment package, which will address both the Minimum Planning Requirements Regulations and further technical review to the new Council in late 2024/ early 2025.

### **COMMUNITY ENGAGEMENT**

Should Regional Council choose to initiate the process to amend planning documents to address the MPR, the *HRM Charter* requires that Regional Council approve a public participation program.

Extensive community engagement has been conducted as part of the Regional Plan Review to date, which has included both online and in-person engagement opportunities, including pop-ups and open houses. This engagement included significant feedback regarding the urgent need for affordable, accessible housing in the Municipality. Given this prior engagement, staff recommend following the requirements of Administrative Order 2023-002-ADM *Respecting Public Participation for Planning Documents, Certain Planning Applications, and Engagement with Abutting Municipalities* which directs utilization of the *Planning and Development Engagement Guidebook* to determine the appropriate level of engagement for this particular assessment. As noted above, a separate report on the Suburban Plan Public Participation Program will be presented to Council in early 2025.

Staff have consulted the Guidebook and have assessed the anticipated changes to the Regional Plan, Regional Subdivision By-Law, Community Plans and/or Land Use Bylaws compared to the level of impact that these changes will have on the public against the level of influence members of the public will have on the project outcome. Given that the Minimum Planning Requirements are mandated by the HRM Charter and the Requirements are in some cases require very specific provisions, the public will have limited ability to influence the policy reasons for the amendments. Results from recent community engagement efforts, such as the Regional Plan Review engagement in Summer 2023 and the engagement for the Urgent Changes to Planning Documents in Winter 2024, as well as recent Council direction, will help to inform the proposed approach to the amendments. Therefore, it has been determined the appropriate level of public participation for engagement on these changes is to Inform/Consult with the public and stakeholders. The following work plan has been created to reflect this level of engagement:

- Information will be posted to the Municipality's website regarding the new Minimum Planning Requirements, and the proposed approach to amending planning documents to address these changes.
- A comment period of at least 30 days is proposed, during which the public will be invited to review the proposed approach, and staff will be available for questions via telephone, email, and in-person meetings as requested.
- Staff will also notify the public using social media and through the Regional Plan Review mailing list.
- A public hearing will be held before Regional Council can consider approval of any amendments.

## **FINANCIAL IMPLICATIONS**

The costs associated with undertaking the review of planning documents for compliance to the new Provincial Minimum Planning Regulations can be accommodated within the approved 2024-25 operating budget.

## **RISK CONSIDERATION**

The risks associated with initiating amendments to planning documents to meet the *Minimum Planning Requirements Regulations* are low. These amendments are required by the Province under the authority of the *HRM Charter*. As noted in the body of this report, although it is a requirement of the regulations is to implement the requirements by December 31, 2024, it will be challenging to meet this timeline given the technical review required, as well as the legislative requirements for public consultation and Council approval. Staff will work with the Provincial Department of Municipal Affairs and Housing to ensure that the Director of Planning, as the approval authority, is aware of the timeline and efforts to meet the requirements.

Staff have completed a preliminary assessment of the risks associated with delaying the presentation of the Phase 4 Regional Plan on the Housing Accelerator Fund Program and the Province's Special Planning Areas and do not foresee any significant impacts to this work as a result of the schedule change.

There are several staff and/or Regional Council initiated projects and site-specific changes, as well as applicant driven site-specific changes that may be impacted by a delay in the Regional Plan Phase 4. Staff are continuing to assess the impacts and will bring forward recommendations to Regional Council for any items that should be advanced as standalone reports. Given the process requirements, these reports would be dealt with by the new Council.

## **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications of this report identified at this time. The Regional Plan includes a range of policies that deal both directly and indirectly with the natural environment. The implications of any proposed policy changes will be considered throughout the review process and outlined in future reports to Council.

## **ALTERNATIVES**

1. Regional Council may choose to initiate the consideration of potential policy that would differ from those outlined in this report. This may require a supplementary report from staff.
2. Regional Council may choose not to initiate the process to consider amendments to planning documents to comply with new *Minimum Planning Requirements Regulations* announced by the Province of Nova Scotia on August 21, 2024. This is not recommended as these regulations are a requirement of Provincial legislation.

## **ATTACHMENTS**

Attachment A: Amendment to the *Minimum Planning Requirements Regulations* (August 21, 2024)

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Report Prepared by: Leah Perrin, Manager, Regional Planning, 902.476.3792  
Anne Winters, Principal Planner, Regional Planning, 902.497.3798  
Kate Greene, Director, Regional & Community Planning, 902.225.6217

# Attachment A

N.S. Reg. 178/2024  
**FILED**  
Date: August 21, 2024  
Jane Newton  
Registrar of Regulations  
Province of Nova Scotia

**In the matter of Section 229 of Chapter 39 of the Acts of 2008,  
the *Halifax Regional Municipality Charter***

**-and-**

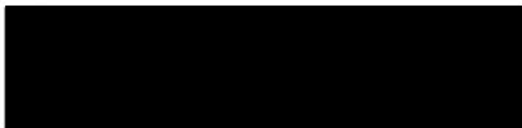
**In the matter of an amendment to the *Minimum Planning Requirements Regulations*  
made by the Minister of Municipal Affairs and Housing under  
Section 229 of the *Halifax Regional Municipality Charter***

## Order

I, John A. Lohr, Minister of Municipal Affairs and Housing for the Province of Nova Scotia, pursuant to Section 229 of Chapter 39 of the Acts of 2008, the *Halifax Regional Municipality Charter*, hereby amend the *Minimum Planning Requirements Regulations*, N.S. Reg. 138/2019, made by the Minister of Municipal Affairs and Housing by order dated August 28, 2019, in the manner set forth in the attached Schedule "A".

This order is effective on and after the date it is filed.

Dated and made August 20, 2024, at Halifax Regional Municipality, Province of Nova Scotia.



Honourable John A. Lohr  
Minister of Municipal Affairs and Housing

Schedule "A"

**Amendment to the *Minimum Planning Requirements Regulations*  
made by the Minister of Municipal Affairs and Housing  
under subsection 229(4) of Chapter 39 of the Acts of 2008,  
the *Halifax Regional Municipality Charter***

The *Minimum Planning Requirements Regulations*, N.S. Reg. 138/2019, made by the Minister of Municipal Affairs and Housing by order dated August 28, 2019, are amended by adding the following Section immediately after Section 4:

**Mandatory content related to housing supply**

**4A (1)** In this Section,

“regional centre” means the area of the Municipality identified as the regional centre on the map attached as Appendix A;

“urban service area” means the area of the Municipality identified as the urban service area on the map attached as Appendix B.

- (2) In addition to the requirements prescribed in subsection 229(1) of the Charter and Section 4, a municipal planning strategy must do all of the following to address the issue of housing supply:
- (a) include a statement of policy that expressly recognizes that the Province and, in particular, the Municipality are experiencing a housing shortage crisis and specifies that the most urgent priority in municipal land-use planning, regulation and development approval is to rapidly increase the supply of housing in the Municipality;
  - (b) require that priority be given to increasing the supply of safe, sustainable and affordable housing in the Municipality over other interests identified in the municipal planning strategy for the purposes of all processes, approvals and decisions made under the municipal planning strategy;
  - (c) permit residential uses in all zones, except for all of the following:
    - (i) areas zoned for industrial, military, park, transportation reserve and utility uses,
    - (ii) zones intended to protect the environment, water supply,

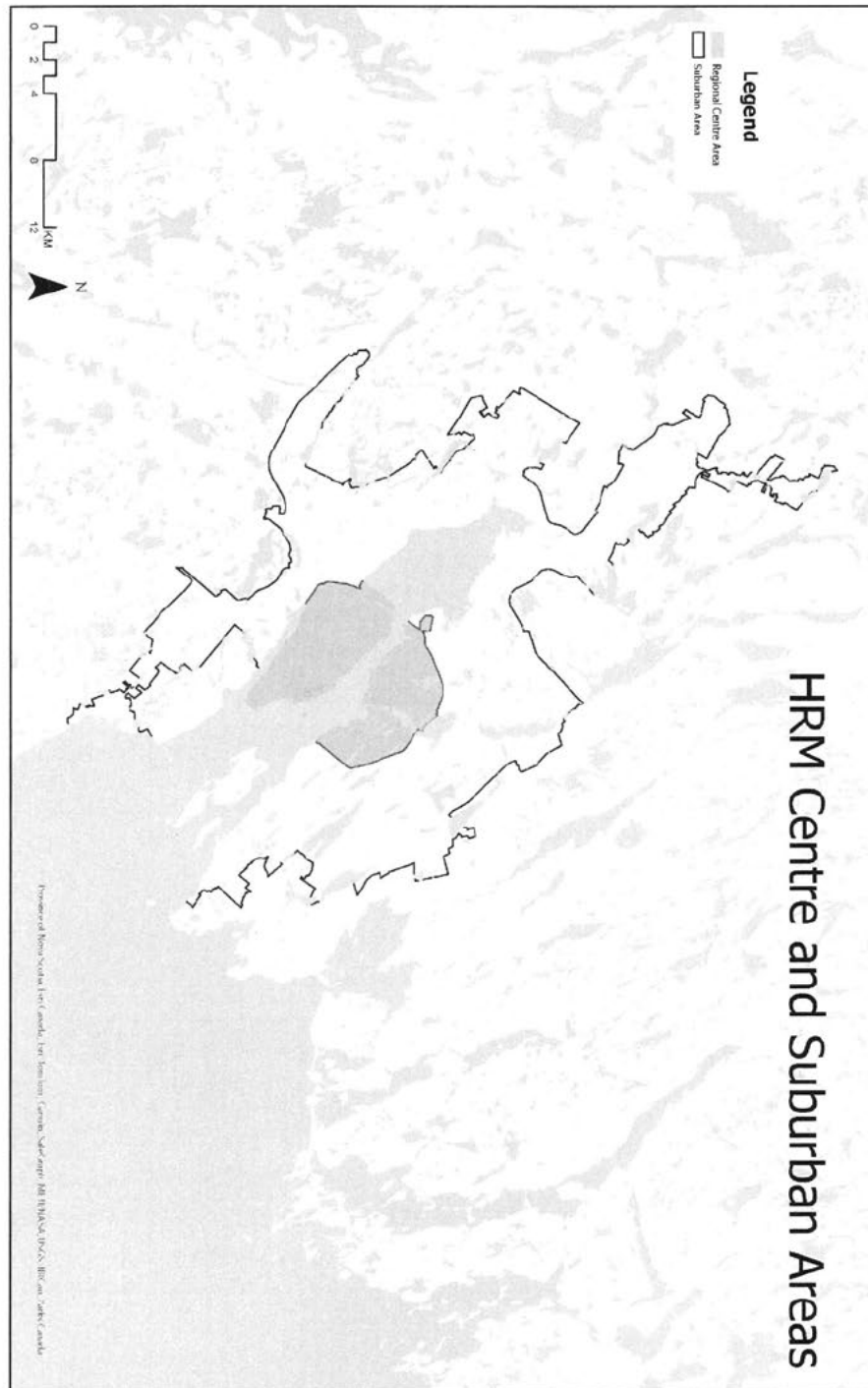


floodplains or another similar interest;

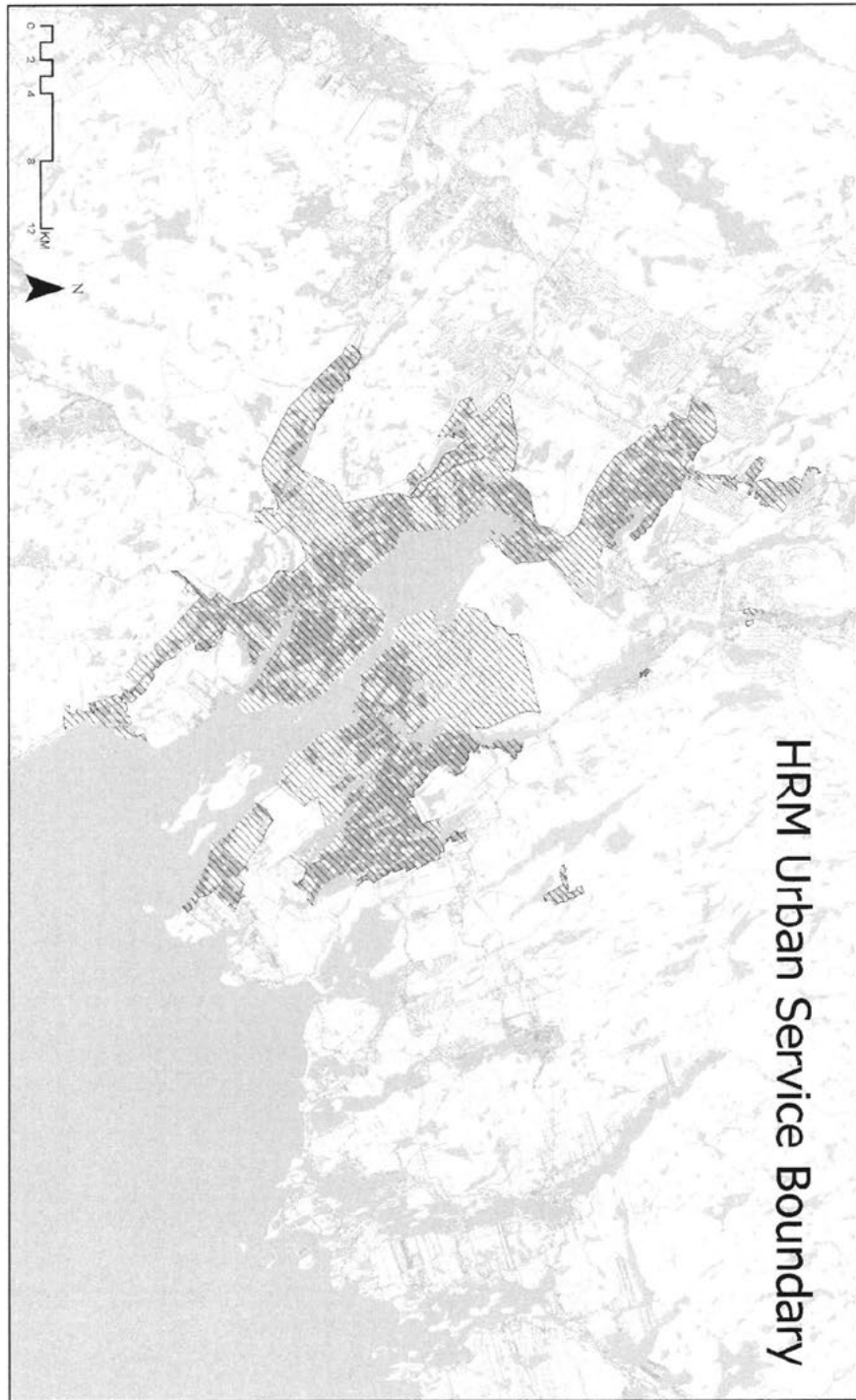
- (d) require that the Municipality share with the Province the information used by the Municipality to identify, fund, schedule and deploy the infrastructure to develop an adequate supply of housing to support anticipated population growth;
- (e) provide for the adoption of a secondary municipal planning strategy and the implementation of a land-use by-law for the area of the Municipality identified as the suburban area on the map attached as Appendix A, or a substantially similar area, no later than January 31, 2025;
- (f) for developments enabled under the Municipality's Conservation Design Development policies in the Regional Municipality Planning Strategy that begin construction before April 1, 2027, permit the following maximum densities:
  - (i) for a site serviced by groundwater, a maximum density of at least 0.4 units per gross hectare, and
  - (ii) for a site serviced by central services, a maximum density of at least 0.4 units per gross hectare;
- (g) not impose maximum height restrictions in a manner that negatively affects the density of residential buildings using mass timber or any other construction method;
- (h) for residential buildings that begin construction before April 1, 2027, provide that no requirement related to unit mix applies;
- (i) provide that no requirement for on-site parking applies to residential uses within the urban service area;
- (j) for multi-unit residential buildings that begin construction before April 1, 2027, not require that the ground floor consist of more than 20% commercial space;
- (k) permit temporary housing in non-permanent structures as a use in all zones where it can be safely established to allow employees to live on or near their worksite during a work assignment for a period of time that can be reasonably tied to the duration of the project and that is explicitly set out in the development permit;

- (1) permit manufactured housing, including modified shipping containers converted into housing, in all residential zones.
- (3) The requirements outlined in subsection (2) must be implemented no later than December 31, 2024.

## Appendix A: Regional Centre



**Appendix B: Urban Service Area**



**In the matter of subsection 229(4) of Chapter 39 of the Acts of 2008,  
the *Halifax Regional Municipality Charter***

**-and-**

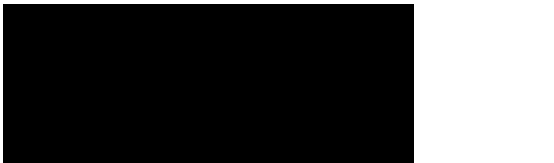
**In the matter of an amendment to the *Minimum Planning Requirements Regulations*  
made by the Minister of Municipal Affairs and Housing under  
subsection 229(4) of the *Halifax Regional Municipality Charter***

**Order**

I, John A. Lohr, Minister of Municipal Affairs and Housing for the Province of Nova Scotia, pursuant to subsection 229(4) of Chapter 39 of the Acts of 2008, the *Halifax Regional Municipality Charter*, hereby amend the *Minimum Planning Requirements Regulations*, N.S. Reg. 138/2019, made by the Minister of Municipal Affairs and Housing by order dated August 28, 2019, in the manner set forth in the attached Schedule “A”.

This order is effective on and after the date it is filed.

Dated and made September 25, 2024, at Halifax Regional Municipality, Province of Nova Scotia.

A large black rectangular redaction box covers the signature area of the document.

Honourable John A. Lohr  
Minister of Municipal Affairs and Housing

## **Schedule “A”**

### **Amendment to the *Minimum Planning Requirements Regulations* made by the Minister of Municipal Affairs and Housing under subsection 229(4) of Chapter 39 of the Acts of 2008, the *Halifax Regional Municipality Charter***

The *Minimum Planning Requirements Regulations*, N.S. Reg. 138/2019, made by the Minister of Municipal Affairs and Housing by order dated August 28, 2019, are amended by repealing clause 4A(2)(f) and substituting the following clause:

- (f) for developments enabled under the Municipality’s Conservation Design Development policies in the Regional Municipal Planning Strategy that begin construction before April 1, 2027, determine the maximum density of a development based on a lot’s gross area and not on its net area;