



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 3

**Halifax and West Community Council
Harbour East-Marine Drive Community Council
North West Community Council
September 18, 2018**

TO: Chair and Members of the Halifax and West Community Council,
Harbour East-Marine Drive Community Council, and
North West Community Council

Original Signed

SUBMITTED BY:

Kelly Denty, Director, Planning and Development

Original Signed

Jacques Dubé, Chief Administrative Officer

DATE: August 27, 2018

SUBJECT: **Case 21648 – Land Use By-law Housekeeping Amendments – Coastal Area Requirements**

ORIGIN

Staff-initiated housekeeping process to amend Land Use By-law provisions for new residential development within the coastal elevation for lands designated Harbour consistent with the Regional Municipal Planning Strategy (RMPS) .

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Halifax and West Community Council; Harbour East-Marine Drive Community Council, and North West Community Council:

1. Give First Reading to consider the proposed Land Use By-law amendments as set out in Attachment A of this report and schedule a Joint Public Hearing; and
2. Approve the proposed Land Use By-law amendments as set out in Attachment A of this report, to the extent of each Community Council's jurisdiction.

BACKGROUND

In 2014, Regional Council adopted a revised version of the Regional Municipal Planning Strategy (RMPS). As part of this process, Regional Council adopted policy E-22 (Attachment B), which creates controls for areas susceptible to coastal inundation. This is achieved by managing development on lands that are lower lying and prohibiting certain uses, such as residential uses, within these lower elevations. Under the initial 2006 Regional Plan, residential uses were prohibited to occur in the lower elevations, except for residential uses located within the Harbour Designation, which were allowed. However, in the 2014 RMPS, the reference to the Harbour Designation was removed, which meant that all residential uses were prohibited within the lower elevations.

It has come to the attention of staff that errors occurred when the Regional MPS and accompanying Land Use By-law (LUB) amendments were approved by Regional Council in June 2014. At the time, Council approved new policy and by-law regulations regarding coastal inundation and coastal area requirements. These by-law amendments formed part of the overall amendment package, referenced as Attachment E of the Staff Report dated January 14, 2014.¹ The amendments were intended to ensure the newly adopted RMPS policies were carried out through the Municipality's various Land Use By-laws. However, some regulations allowing residential development in areas susceptible to coastal flooding and inundation (provided they were designated Harbour under the Regional MPS) were carried forward from the previous version of the Land Use By-laws in error. These regulations contradict Policy E-22 of the 2014 Regional MPS, which directs that all residential development shall be prohibited within a 3.8 metre elevation above sea level. An excerpt of Policy E-22 is provided as part of Attachment B.

DISCUSSION

To mitigate the potential impact of coastal inundation, Section 2.3.5 of the 2014 Regional MPS contains the following policy:

“E-22: HRM shall through the applicable land use by-law, prohibit all residential development on the coast within a 3.8 metre elevation above Canadian Geodetic Vertical Datum (CGVD 28). Provisions shall be made within the by-law to permit residential accessory structures, marine dependant uses, open space uses, parking lots and temporary uses within the 3.8 metre elevation. Consideration may be given to amending the by-law requirements where an updated system of measurement has been adopted or studies have been undertaken which recommend that such amendments are deemed prudent to provide a reasonable level of safety or to conform with guidelines or statements of interest adopted by the Province.”

This policy directs that all residential development within a 3.8 metre elevation above CGVD shall be prohibited. However, six LUB's including: Planning District 5 (Chebucto Peninsula); Halifax Mainland; Halifax Peninsula; Bedford; Dartmouth; Downtown Dartmouth and Eastern Passage/Cow Bay currently allow for residential development within the 3.8 metre elevation, provided the subject lands are designated Harbour under the Regional MPS' Generalized Future Land Use Map. The previous version of the Regional MPS, approved in the summer of 2006, allowed for this exemption under Policy E-16, it stated:

“HRM shall, through the applicable land use by-law, prohibit all residential development on the coast within a 2.5 metre elevation above the ordinary high water mark, except for lands designated Halifax Harbour on the Generalized Future Land Use Map and industrial lands within the port of Sheet Harbour.”

¹ A copy of Attachment E, of the January 14 Staff Report titled *RP+5: HRM Regional Municipal Planning Strategy*, can be obtained at the following web link: <http://legacycontent.halifax.ca/council/agendasc/documents/140211ca-rp-11.pdf>

With the adoption of the revised Regional MPS in 2014, the above Policy E-16 was deleted and replaced with Policy E-22. The staff report dated January 14, 2014, provides background regarding the intent of the new policy (E-22), it states:

“The current Regional Plan prohibits residential development, apart from those located within the Harbour Designation, from being established along the coast at an elevation of less than 2.5 metres above the ordinary high-water mark (OHWM). The revised Regional Plan is proposing to replace the existing system of elevation above the OHWM with a more precise Canadian Geodetic Vertical Datum (CGVD) standard. A CGVD 28 value of 3.8 metres is being proposed. The 3.8 metres CGVD 28 value is nominally higher than the 2.5 metres above OHWM, and it better reflects potential impacts of future sea level rise and storm surge events. The revised Regional Plan expands this control on elevation to residential uses located within the Harbour Designation.”

Correcting the Errors

Affected Plan Areas

Following adoption of the 2014 Regional MPS, subsequent amendments to the applicable LUB's were approved by Regional Council to ensure consistency and proper implementation of plan policy. However, an amendment removing the exemption provision for properties designated Harbour was omitted from the list of proposed LUB amendments. As such, the exemption still appears in the following LUB's:

- Halifax Peninsula;
- Halifax Mainland;
- Planning District 5 (Chebucto Peninsula);
- Dartmouth;
- Downtown Dartmouth;
- Eastern Passage/Cow Bay; and
- Bedford.

Discussions with staff who worked on the 2014 Regional MPS review and associated LUB amendments confirm that the absence of such amendments, removing the exemption provision for residential development within a 3.8 metre elevation above CGVD, represents an error.

HRM Charter

Section 234(1) of the Halifax Charter states that:

“Where the Council adopts a municipal planning strategy or a municipal planning strategy amendment that contains policies about regulating land use and development, the Council shall, at the same time, adopt a land-use by-law or land-use by-law amendment that enables the policies to be carried out.”

In 2014, Regional Council adopted a new Regional MPS containing new policy regarding development in areas susceptible to coastal inundation. At the same time, Regional Council adopted LUB amendments that enabled the policies to be carried out. However, the approved amendments did not prohibit all residential development on the coast within a 3.8 metre elevation above CGVD 28, and therefore did not enable the policies to be carried out. As previously noted, this represents an error.

Proposed Resolution

Staff are proposing that Community Council approve the proposed Land Use By-law amendments as set out in Attachment A of this report, to the extent of each Community Council's jurisdiction. If approved, the housekeeping amendments, as set out in Attachment A of this report, will correct the errors identified above. Further, the proposed amendments are consistent with Section 234(1) of the Halifax Charter.

Planning Advisory Committee

These staff-initiated housekeeping amendments were reviewed by the North West Planning Advisory Committee (PAC) on May 2, 2018, and the Halifax Peninsula PAC on May 28, 2018. Both Committees recommended that the application be approved with no conditions or considerations. Reports from the North West PAC and Halifax Peninsula PAC will be provided to Community Council under separate cover.

Conclusion

Staff have reviewed the proposed housekeeping amendments and the existing policy context and advise that the applicable LUB's should be amended to prohibit residential development in areas susceptible to coastal flooding and inundation, consistent with the RMPS policy. Further, to ensure consistency with Section 234(1) of the Halifax Charter, it is recommended that Community Council approve the proposed LUB housekeeping amendments, as set out in Attachment A of this report, to the extent of each Community Council's jurisdiction.

FINANCIAL IMPLICATIONS

The HRM costs associated with processing this planning application can be accommodated within the approved 2018/2019 operating budget for C310 Urban and Rural Planning Applications.

RISK CONSIDERATION

To ensure the Municipality's Land Use By-laws enable Regional Plan policies around coastal inundation to be carried out, Community Councils must amend the Land Use By-laws referenced in this report. If the proposed Land Use By-law amendments are refused, aspects of the applicable Land Use By-laws will remain inconsistent with specific Regional Plan policy, and as such, will continue to be in contravention with Section 241(1) of the Halifax Charter. Further, if the proposed Land Use by-law amendments are refused, residential development may be permitted to occur within lower elevations, which is contrary to the intent of Regional Plan policy.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy, the *HRM Charter*, and the Public Participation Program approved by Council on February 25, 1997. The level of community engagement on this file included providing information and seeking comments through the HRM website.

A public hearing must be held by Community Council before they can consider approval of the proposed LUB amendments. Should the Halifax and West Community Council, Harbour East-Marine Drive Community Council and the North West Community Council decide to proceed with a public hearing to consider the proposed LUB housekeeping amendments, local residents and property owners will be notified by published newspaper advertisements.

The proposal will potentially impact local residents and property owners.

ENVIRONMENTAL IMPLICATIONS

No additional concerns were identified beyond those identified in this report.

ALTERNATIVES

The Halifax and West, Harbour East Marine-Drive and North West Community Councils may choose to:

1. Modify the proposed LUB amendments, as set out in Attachment A of this report. If this alternative is chosen, specific direction regarding the requested modifications is required. Substantive amendments may require another public hearing to be held before approval is granted. A decision of Community Council to approve or refuse the proposed LUB amendments is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Refuse the proposed LUB amendments, as set out in Attachment A of this report. A decision of Community Council to refuse the proposed LUB amendments is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*. Refusal of the proposed LUB amendments contravene Section 234(1) of the Halifax Charter, as the existing LUB provisions regarding coastal area requirements do not effectively enable the policies regarding coastal inundation, as approved in 2014, to be carried out.

ATTACHMENTS

Map 1	Harbour Designation - Halifax Mainland and Peninsula
Map 2	Harbour Designation - Halifax Mainland and Peninsula
Map 3	Harbour Designation – Planning District 5 (Chebucto Peninsula)
Map 4	Harbour Designation - Dartmouth and Downtown Dartmouth
Map 5	Harbour Designation - Eastern Passage/Cow Bay
Map 6	Harbour Designation - Bedford
Attachment A	Proposed LUB Amendments
Attachment B	Excerpts from the Regional MPS

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: Tyson Simms, Planner III, Regional Planning, 902.490.6983

Original Signed

Report Approved by: _____
Kate Greene, Policy & Strategic Initiatives Program Manager, 902.225.6217

Original Signed

Report Approved by: _____
Eric Lucic, Manager, Regional Planning, 902.430.3954
