

To: **Richmond Planning Advisory Committee  
Richmond County Council**

From: **Planning Staff (EDPC)**

Date: **April 25, 2023**

Reference: **Permitting Utility Wind Turbines As-of-Right in Point Tupper in the Richmond County Municipal Planning Strategy and Land Use By-law Addressing the Development of Wind Energy**

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**Recommendation:**

The purpose of this presentation is to inform the Planning Advisory Committee and receive feedback on the proposed draft utility scale wind turbine overlay policy. No recommendation is required at this time. Any feedback proposed will inform a revised version of the draft utility scale wind turbine overlay policy and staff report.

**Background Information:**

On November 8, 2022, Director John Bain made a presentation to the Richmond County Planning Advisory Committee on wind resource mapping. Council then directed the Eastern District Planning Commission to research as-of-right wind turbine zone areas and report back to the Planning Advisory/Heritage Committee at a future meeting.

**Analysis:**

The Planning Advisory Committee requested additional information on Guysborough County’s Wind Turbine Regulations. Guysborough County typically permits Large Scale Wind Turbines (the approximate equivalent to Richmond County’s Utility Wind Turbines) within the County by Development Agreement only. However, Guysborough County has implemented a “Wind Resource Overlay Schedule” in which Large Scale Turbines are permitted as-of-right subject to General Lot Requirements. These General Lot Requirements include setbacks from dwellings, public roads, other turbines and institutions as well as signage and rotor clearance regulations.

Guysborough County is not the only Municipality in Nova Scotia to utilize a Wind Turbine Overlay to permit Large or Utility Scale Wind Turbines as-of-right. For example, Kings County also has a Large-Scale Wind Turbine Overlay that permits Large Scale Turbines as-of-right subject to certain criteria. This includes setbacks, a decommissioning plan, rotor blade clearance, and other similar provisions. Kings County does not permit Large Scale or Utility Scale Wind Turbines outside of this Overlay Zone.

Both Counties use a set of criteria to determine the Overlay Zone. These considerations include setback distances from dwellings, the wind resource potential of the area, location of crown lands, and other similar criteria. Figure 1 is a table that compares the criteria used to guide the determination of the Overlay Zone for Kings County and Guysborough County.

<b>Figure 1. Wind Resource Overlay Criteria</b>	
<b>Kings County</b>	<b>Guysborough County</b>
(a) the lands consist primarily of Crown lands;	a) That the Wind Resource overlay is outside the boundaries of the designated Residential Growth Centre.
(b) the boundaries of the Large-Scale Wind Turbine Overlay area are located a minimum of three (3) km from dwellings existing on November 15, 2018;	b) The wind resource potential of the area is adequate to establish a commercially viable facility;
(c) the boundaries of the Large-Scale Wind Turbine Overlay area are located a minimum of three (3) km from the boundaries of the Cloud Lake Wilderness Area existing on November 15, 2018;	c) The remoteness of the area is adequate to provide adequate separation distances from existing dwellings or communities;
(c) development opportunities are limited due to few existing public and private roads, as defined by the Municipality’s Subdivision By-law,	d) The adequacy of existing and or proposed electrical infrastructure; and
(e) in addition to (c) above, no new public or private roads, as defined by the Subdivision By-law shall be permitted	e) Any other matter as determined by Council relating to the impact of a designated Wind Resource area upon surrounding uses or upon the general community.

Overlay zones can and are often used to promote specific types of development projects, in this case large or utility scale wind turbines and farms. Overlay zones would be implemented in areas determined to be appropriate for large scale or utility scale wind energy development. This would permit large or utility scale wind energy development as-of-right without requiring developers and staff to negotiate on a case-by-case basis through lengthy rezoning processes. Overlay zones that permit large or utility scale wind energy developments as-of-right may attract developers and will encourage this type of development in areas the County desires. Once an overlay zone is established, additional areas can be included by zone amendment in the future.

The regulations of the Port Hawkesbury Watershed were also noted as a matter of concern regarding wind turbine development in the area. Therefore, more research on the topic was conducted.

The Port Hawkesbury Watershed was designated by the Province of Nova Scotia as a Protected Water Area under subsections 106(5) and (6) of the Environment Act, originally Section 17 of the Water Act in 1985. For regulatory purposes the watershed has arbitrarily been divided into two sections “A” and “B”. Only Section “B” is within the boundaries of Richmond County, meaning the regulations for Section “A” are not relevant.

These regulations are developed under Section 106 of the Environment Act. Such regulations can only be applied under specific circumstances and can only apply to activities that are known to or have the potential

to impair water quality. Regulations made under Section 106 (6) cannot directly control types of land uses but can be used to control impacts associated with development. Attached in Appendix A is Section 106 of the Environment Act “Designation of Protected Water Area”.

When looking over the restricted and prohibited activities regulated in Section “B”, the most important regulation worth noting is:

*“The construction and maintenance of railways, highways, communication lines, power lines, waterworks, and other works of a like nature is prohibited except with the written permission of the Minister”*

Considering Large Scale Wind Turbines and Farms often already need an Environmental Assessment approved by the Minister, this does not seem like a major deterrent to Wind Turbine Development. Of course, the policy in a wind turbine overlay zone including the Port Hawkesbury Watershed Section “B” would refer to these regulations.

**Conclusion:**

An example of what this “overlay zone” could look like has been included in the report as Appendix B. A draft overlay zone has been integrated into the Richmond County Municipal Planning Strategy (MPS) and Land Use By-law (LUB) Addressing the Development of Wind Energy. These changes to the Richmond County MPS and LUB have been attached as amending pages in Appendix B. As stated at the start of the report, Staff are seeking comment on the draft.

**Appendices:**

**Appendix A - Section 106 of the Environment Act “Designation of Protected Water Area”**

**Appendix B: Amending Pages**

**Appendix A - Section 106 of the Environment Act “Designation of Protected Water Area”**

- (1) The Minister, when requested by an operator of a water works or proposed water works, may designate an area surrounding any source or future source of water supply for a water works as a protected water area.
- (2) The operator of a water works or proposed water works named in a designation made pursuant to subsection (1) shall
  - (a) give notice of the designation of the area as a protected water area by publishing the notice in a newspaper having circulation in the county or counties in which the area is located and in the Royal Gazette;
  - (b) have the notice of designation recorded at the registry of deeds and the land registration office in the county or counties in which the area is located; and
  - (c) post signs in the area indicating that it has been designated a protected water area.
- (3) The operator of a water works or proposed water works is responsible for taking all measures to protect the area designated, and the enforcement of any regulations made pursuant to subsection (6).
- (4) When requested by an operator of a water works or proposed water works, the Minister may cancel a designation made pursuant to this Section, in whole or in part.
- (5) Any protected water area designated pursuant to the Water Act, prior to the coming into force of this Act remains so designated.
- (5A) Any area surrounding a source of public water supply defined and prescribed pursuant to Section 16 of Chapter 42 of the Acts of 1963, An Act to Amend the Water Act, is deemed to be a protected water area designated pursuant to the Water Act and remains so designated.
- (5B) Any designation of a protected water area and any regulations regulating an activity in a designated protected water area that is referenced in subsection (5A) or were in effect on April 1, 1977, are deemed to have been filed pursuant to subsection 24(1) of the Regulations Act before April 1, 1978.
- (6) At the request of the operator of the water works or proposed water works, the Minister may make regulations to prohibit, regulate or require the doing of any act or acts in a protected water area that may impair or prevent the impairment, as the case may be, of the quality of the water in the protected water area.
- (7) Before designating a protected water area, the Minister shall ensure that the operator of the water works or proposed water works has provided opportunities for public consultation.
- (8) No claim for injurious affection lies against any person as the result of a designation of a protected water area.
- (9) The exercise by the Minister of the authority contained in subsection (6) is regulations within the meaning of the Regulations Act. 1994-95, c. 1, s. 106; 2001, c. 6, s. 103; 2006, c. 30, s. 35.

## Appendix B: Amending Pages

### A BYLAW TO AMEND THE RICHMOND COUNTY MUNICIPAL PLANNING STRATEGY ADDRESSING THE DEVELOPMENT OF WIND ENERGY

The Municipal Planning Strategy for Richmond County Municipal Planning Strategy Addressing the Development of Wind Energy is hereby amended by:

1. Adding to the following preamble and policy immediately after Policy R-9 the subsequent and renumbering the section accordingly:

#### Policy R-10

Within the General Development designation, it shall be the policy of Council to establish the “Utility Scale Wind Development (WD-2) Zone” in the Land Use By-law. It shall be the policy of Council to permit within the Wind Development Zone utility scale wind turbines as of right by way of development permit. All other uses shall also be permitted as of right, subject to area specific requirements outlined in the Secondary Planning Strategies.

2. Adding to the following **text in bold** to Policy R-11 the subsequent:

#### Policy R-11

The Wind Development (WD-1) Zone **and Utility Scale Wind Development (WD-2) Zone** shall regulate the location of utility scale wind turbines by establishing a setback from residential uses. Council shall establish setback thresholds within the Land Use By-law from residential dwellings based on the size of the project and whether it requires an environmental assessment.

**A BY-LAW TO AMEND THE RICHMOND COUNTY LAND USE BY-LAW  
ADDRESSING THE DEVELOPMENT OF WIND ENERGY**

1. The “Table of Contents” of the Land Use By-law is hereby amended by removing the following text shown in strikethrough and adding the following **text in bold**:

PART 6. UTILITY SCALE WIND DEVELOPMENT (WD-2) ZONE .....14  
**Uses Permitted and Not Subject to Development Permits.....14**  
**Uses Permitted and Subject to Development Permits.....14**  
**Requirements Relating to Domestic Scale Wind Turbines .....14**  
**Requirements Relating to Utility Scale Wind Turbines .....14**  
**Special Provisions .....15**  
~~PART 6~~ **PART 7. DEFINITIONS .....13 16**

2. Part 3: “Interpretation” of the Land Use By-law is hereby amended by adding the following **text in bold** to Subsection 3.1:

Zones

- 3.1 For the purpose of this By-law, the Municipality of the County of Richmond is divided into the following zones, the boundaries of which are shown on the zoning map.

General Development	GD-1
Wind Development	WD-1
<b>Utility Scale Wind Development</b>	<b>WD-2</b>

3. Part 3: “Interpretation” of the Land Use By-law is hereby amended by removing the following text shown in strikethrough and adding the following text in bold to Subsection 3.1:

Interpretation of Certain Words

- 3.2 In this By-law, words used in the present tense include future; words in the singular number include the plural except where otherwise clearly stated; words in the plural include the singular number; and the word “used” includes “arranged,” “designed or intended to be used.” The word “shall is mandatory and the word “may” is permissive. All other words carry their customary meaning excepted those defined in ~~Part 5~~ **Part 7** of this By-law, entitled “Definitions.”

4. The Land Use By-law is hereby amended by adding the following part:

**PART 6. UTILITY SCALE WIND DEVELOPMENT (WD-2) ZONE**

**Uses Permitted and Not Subject to Development Permits**

- 6.1 All developments are permitted in the Utility Scale Wind Development (WD-2) Zone as-of-right, subject to area specific requirements outlined in the Secondary Planning Strategies.

**Uses Permitted and Subject to Development Permits**

- 5.2 Notwithstanding Section 5.1, the following uses shall be permitted in the WD-2 Zone subject to development permit:
- a) Domestic scale wind turbines
  - b) Utility scale wind turbines

**Requirements Relating to Domestic Scale Wind Turbines**

- 5.3 No person shall erect a domestic scale wind turbine in the Utility Scale Wind Development (WD-2) Zone except in accordance with the requirements specified in Section 4.4 of this By-law.

**Requirements Relating to Utility Scale Wind Turbines**

- 5.4 No person shall erect a utility scale wind turbine in the Utility Scale Wind Development (WD- 2) Zone except in accordance with the following requirements
- a) Minimum setback from all residences, except residences located on the same lot as the wind turbine, shall be 600 metres (1969 feet). There is no setback requirement from residences located on the same lot;
  - b) Minimum setback for wind turbine developments with a nameplate capacity greater than two (2) megawatts, or turbines requiring an Environmental Assessment as stipulated in the Nova Scotia Environment Act from all residences, except residences located on the same lot as the wind turbine, shall be 1000 metres (3280 feet). There is no setback requirement from residences located on the same lot;
  - c) There are no setback requirements for new residences constructed subsequent to a utility scale wind turbine development;
  - d) Minimum setback from all property lines shall be one times the height of the turbine;
  - e) Minimum setbacks from all watercourses and public highways shall be 60 metres or two times the height of the turbine, whichever amount is greater;
  - f) The minimum separation distance between turbines shall be equal to the height of the tallest turbine;
  - g) There shall be no signs, advertisements or objects attached to or added to the turbine(s)

**Special Provisions:**

Expansion of Wind Turbine Development

- 5.5 Notwithstanding the setback requirement from a residence contained in Section 6.4 (a) and 6.4 (b), where a residence is constructed within the setback distance of utility scale wind turbine development erected after the effective date of this Strategy, the wind turbine development may expand. The setback requirement for any expansion shall be equal to or greater than the setback between the initial wind turbine development and the residence.

Setback on Land Leased for Wind Turbine Development

- 5.6 The setback requirements from property lines contained in Section 5.4 (d) are waived where wind turbine development occurs on land where the adjacent property is subject to a lease for that purpose for a term of 19 years or greater. The setback requirement shall apply to any property which is not leased for wind turbine development.

Removal of Wind Turbines

- 5.7 The owner shall remove a wind turbine from the lot following one year of inactivity. All supporting structures on the lot shall be removed within 60 days of the date of notification by the County and the surface site restored to a reasonable natural state within 18 months. A new application shall be submitted and approved before a new turbine is installed or a wind turbine is restarted after the expiration of the one year period.

The Construction of Wind Turbines in the Port Hawkesbury Watershed

- 5.8 Prior to the issuance of a development permit, any wind turbine proposed to be erected in the Port Hawkesbury Watershed Section “B” is required to get written permission from the Minister of Environment of the Province of Nova Scotia for approval in accordance to the “Port Hawkesbury Watershed Protected Water Area Designation and Regulations” made under Subsections 106(5) and (6) of the *Environment Act*.



5. The Land Use By-law is hereby amended by amending the “Zoning Map” attached as Schedule “A” to the following “Zoning Map”: