

## INFILLING ACTIVITIES IN THE NORTHWEST ARM, HALIFAX HARBOUR, NOVA SCOTIA OVERVIEW AND SUMMARY OF MARCH 30, 2022 WORKSHOP

### Introduction and Objectives

The objective of the workshop, conducted on March 30, 2022, was to bring together identified stakeholders, government departments, and Indigenous Peoples to discuss issues and concerns related to infilling activities in the Northwest Arm portion of Halifax Harbour, and to explore possible means of addressing identified issues through existing or potential regulatory processes or other initiatives.

The workshop was part of an engagement process carried out by the Impact Assessment Agency of Canada (IAAC), as directed by the Minister of Environment and Climate Change Canada in his recent decision regarding a request for a regional assessment of infilling activities in Halifax Harbour. Further context and background are provided in the following section.

### Background

- On May 27, 2021, a request was submitted to the Minister of Environment and Climate Change under the Impact Assessment Act (IAA) to conduct a regional assessment of the infilling of “water lots” in a section of Halifax Harbour known as the Northwest Arm ([139291E.pdf \(iaac-aeic.gc.ca\)](#)).
- The Northwest Arm is a narrow inlet within Halifax Harbour, approximately 3.5 km in length and located on the western side of the Halifax peninsula.
- The request was submitted by Jamie Simpson of Juniper Law on behalf of several local residents and the Ecology Action Centre.
- Shoreline properties in the Northwest Arm have an associated (underwater) water lot that was deeded, pre-confederation, to landowners. In recent years, a number of these water lots have been infilled as an extension of the landowners’ property.
- The regional assessment request cited concerns regarding the environmental and socioeconomic effects (including cumulative effects) of infilling activities, a perceived lack of existing regulation of these activities under federal, provincial and municipal legislation, and questions around associated jurisdictional matters.
- Upon receipt of this regional assessment request, IAAC undertook a detailed review and analysis of it to inform the Minister’s decision and associated response to the requestors.

- In addition to the original request, letters of support were also received from the following parties:
  - Twila Gaudet - Director of Consultation, Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO);
  - Councillor Shawn Cleary – Councillor for District 9, Halifax West – Armdale;
  - Senators Mary Coyle, Colin Deacon, and Stan Kutcher (joint letter);
  - Andy Filmore - Halifax MP; and
  - Dennis Campbell - CEO of Ambassadors Gray Line.
- On November 30, 2021 the Minister issued his decision and response to the requestors, stating that a regional assessment would not take place, for the following reasons:
  - Infilling activities are not subject to federal impact assessment requirements, and thus there is no potential for a regional assessment to inform or influence future impact assessments.
  - A regional assessment is not intended to be viewed and used as a means of addressing gaps in, or other issues regarding the application of, federal, provincial, or municipal regulation or policies.
- The Minister's response however, acknowledged the public interest in these infilling activities and the potential effects, while also recognizing that the nature and location of such activities and associated jurisdictional considerations have created a unique regulatory situation.
- In his response, the Minister encouraged the requestors to continue to communicate and work with applicable government departments and agencies regarding their concerns.
- To help facilitate this, the Minister directed IAAC officials to coordinate discussions involving applicable federal, provincial, and municipal agencies as well as non-governmental organizations to discuss these issues further, and to explore potential means of addressing them through other existing or potential regulatory and planning processes.

## Engagement Process

As directed by the Minister in his decision on the above noted regional assessment request, IAAC staff began planning and conducting the post-decision engagement process in early 2022. Activities included:

- Hiring an independent facilitator to support the planning of the engagement process and to lead the associated discussions.
- Initial outreach to identified participants in January 2022 (attachment 1) to confirm their participation, provide an overview of the planned engagement process, and to seek any input into its design and suggestions for others that should be contacted and invited.

- The planning and conduct of initial, “One on One” meetings with participants to gather preliminary information.
- Notice of Engagement activities posted to the Registry ([Notice of Engagement Activities - Canada.ca \(iaac-aeic.gc.ca\)](https://www.aec.gc.ca/iaac-aeic.gc.ca)) to invite additional stakeholders to participate.
- Development of a “What We Heard” summary document to summarize the key outcomes of the above noted “One on One” meetings, to help inform, focus and guide an eventual group workshop.
- The planning and conduct of the March 30, 2022 workshop, including development and distribution of associated material, and preparation of this summary.

A timeline of key activities is provided in Attachment 2.

### Preliminary Engagement Sessions

In advance of and preparation for the workshop, 11 preliminary one-on-one meetings were arranged and undertaken by IAAC staff and the facilitator with identified participants.

These meetings were conducted virtually (through Microsoft Teams) between February 16 and 28, 2022, with the following questions sent to participants in advance to help frame the discussions:

1. What is your / your organization’s role or interest related to previous or future infilling activities in the Northwest Arm?
2. What particular questions or concerns do you have around the environmental, social, or economic effects of these activities?
3. What views do you have around associated jurisdictional or regulatory matters – including any perceived gaps, or issues related to the existence, application or effectiveness of appropriate regulatory processes for these infilling activities?
4. What suggestions do you have around how infilling activities should be planned, regulated, or otherwise managed, to address your concerns?
5. What other information, views, or perspectives do you wish to provide on this issue?

The outcomes of these one-on-one meetings were summarized in a short “What We Heard” document (Attachment 3), which highlighted the key questions and issues raised by participants, as well as the existing regulatory and management processes that apply to infilling activities. This document was sent to all participants prior to the workshop.

### Workshop – March 30, 2022

A workshop was conducted (through Microsoft Teams) on March 30, 2022, from 9:00 am to 12:30 pm Atlantic time. Participants included elected officials; members of municipal, provincial and federal government departments; KMKNO; non-government organizations; and local residents. A full participant list is provided in Attachment 4.

The emphasis of the workshop was on discussion of shared goals, and exploring potential means of addressing concerns and gaps through existing or potential regulatory and planning approaches.

The workshop began with a brief overview of the “What We Heard” summary document, and then proceeded to a question and comment period on the main issues noted. While it was clear that participants had varying interests and viewpoints on the effectiveness of existing regulation and preferred next steps, the discussion was productive and respectful with a shared objective of ensuring that infilling activities were subject to a robust and holistic review, and sound decision-making.

The minutes from the workshop are provided in Attachment 5. Key points from the workshop include:

- There was interest from some stakeholders in an immediate interim moratorium on all infilling activities until a robust regulatory process can be established that includes all levels of government. There was a stated sense of urgency to do this, before other infilling applications are submitted and potentially approved.
- In addition to calls for a full moratorium, others appeared to understand allowing some, reasonable and small-scale infilling activities to occur for the purposes of shoreline and property protection. The main concern is around very large infilling applications being approved.
- There were many concerns related to effects on safe navigation. Discussions included a visual presentation from Halifax Regional Municipality (HRM) outlining the use of the Arm for recreational sailing activities, and the issues surrounding navigation within the Arm that could arise from increased infilling.
- Participants reiterated environmental concerns related to infilling, including its effect on the overall area of the Arm, and potential for increased damage from storm surges and erosion rates on the shoreline.
- KMKNO noted that their concerns are focused on impacts to Section 35 Treaty Rights and loss/damage to underwater archeology from infill footprints. This organization also noted that it is being consulted by Transport Canada on current infilling applications, under the Navigation Protection Program regulatory process.
- Cumulative effects was raised as a concern, and it was noted that infilling applications seem to be reviewed in isolation, whereas proposed infills should be considered in the context of the total effects of all infills on the Arm as a whole.
- Some participants raised concerns over the precedent that has been set through past infilling applications, as it seems that all projects are eventually approved, with or without conditions, and that there appears to be little desire to reject an application. It was suggested that federal government departments have more powers than they choose to use, and that other levels of government do have jurisdiction, but do not assert it. Approving a large infill will continue to set precedent for future activities within the Arm.
- DFO spoke about the *Fisheries Act* and associated regulations, and noted that this legislation is currently under review, and that there is ongoing opportunity to provide

feedback on the process. This includes discussion on how regulations under the Act are applied and what should be considered (links for providing comments were provided).

- Transport Canada also indicated that the *Navigable Waters Convention Act* will also be coming under review in 2024, and that there will be an opportunity for public input to that process.
- For infilling activities, DFO and Transport Canada stated that their review and analysis must remain within the scope of applicable legislation but that there can be and has been collaboration between federal and provincial government agencies on infill applications, when required, on issues and assessment of potential effects to fish and fish habitat and navigation.
- Nova Scotia Environment noted that the Arm is viewed as a federally regulated harbour meaning that there is no provincial jurisdiction, and that the province does not have jurisdiction over pre-confederation water lots. It was noted that the new *Coastal Protection Act (2023)* will not apply because the Act will work through other legislation on submerged provincial Crown land via permits related to the *Crown Lands Act*.
- HRM discussed the 2007 bylaw process that resulted in restrictions on what could be built on infilled land. The process had involved the creation of a committee with the mandate to improve communications, review legislation and regulations, and to facilitate collaboration between different levels of government to address issues around infilling. It was suggested that an outcome to this workshop could be to re-initiate that committee. Transport Canada officials indicated they were not aware of this committee, and were interested to learn more about the 2007 process.
- Participants continued to express the urgent need for all levels of government to work together to create a process that allows all levels of government to have oversight on infilling activities.

## Potential Next Steps

Further investigation into the 2007 working group is suggested as a potential next step. This committee included all levels of government with a mandate to work collaboratively once the new HRM by-laws were amended, but this did not materialize. Transport Canada indicated that they would be interested in learning more about the committee and future conversations with HRM could be possible.

Elected officials indicated that they would continue to use their position to help highlight issues of infilling activities to government officials, and to push for a stop to infilling activities in the Arm.

IAAC staff will compile the notes from the meeting and distribute this document to participants prior to finalizing.

Attachment 1 – Initial Outreach Email

Janes,Jeffrey (IAAC/ AEIC)

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From: Bonnell,Stephen (IAAC/ AEIC)  
Sent: January 19, 2022 1:36 PM  
To: matthew.beyer@dfo-mpo.gc.ca; stuart.lane@tc.gc.ca; tamara.McFarland@pwgsc-tpsgc.gc.ca; stephen.zwicker@ec.gc.ca; john.appleby@pwgsc-tpsgc.gc.ca; Maclean,Lachlan (IAAC/ AEIC); alexander.mackinnon.205@parl.gc.ca; jamie@juniperlaw.ca; ashaw@shawgroupLtd.com; [REDACTED]; [REDACTED]; p.saunders@dal.ca; coastal@ecologyaction.ca; dcampbell@ambassatours.com  
Cc: Janes,Jeffrey (IAAC/ AEIC); Burgess,Carys (IAAC/ AEIC)  
Subject: Regional Assessment Request under IAA - Infilling in NW Arm, Halifax Harbour

Hello All –

In late May 2021 a request for a Regional Assessment of Infilling Activities in Northwest Arm was submitted to the Minister of Environment and Climate Change Canada under Section 97(1) of the Impact Assessment Act.

On November 29, 2021 the Minister issued a response to this request, determining that a Regional Assessment should not be carried out. <http://iaac-aeic.gc.ca/050/evaluations/document/140996?culture=en-CA>

In his response letter, the Minister did, however, state that he has:

“..asked Agency officials to coordinate discussions involving applicable federal, provincial, and municipal agencies as well as non-governmental organizations to discuss these issues further, and to explore potential means of addressing them through other existing or potential regulatory and planning processes.”.

IAAC is currently in the process of planning these discussions, including identifying and contacting potential participants.

As you have been identified as an interested party who may wish to participate in this process, I am writing to provide an update on this initiative, and to seek your involvement.

We are in the process of contacting a professional facilitator to help coordinate and support these discussions, and propose that the process would occur as follows:

- 1) Participant Confirmation / Suggestions: Please confirm (in response to this email) whether you will be participating + Feel free to suggest any other persons or organizations that should be invited (contact information would be appreciated)
- 2) Planning and Logistics: An IAAC representative will then contact you in the coming days to arrange an initial discussion, and to identify any preferred dates, times and approaches for the eventual group workshop discussions
- 3) Initial “One on One” Discussions: An IAAC representative and/or the facilitator will arrange a call with you at the date and time you’ve identified above, to walk through a few questions and gather some preliminary information. The information received from individual participants will then be “rolled up” and brought forward to the overall group to help guide and focus the workshops
- 4) Group Workshop(s): IAAC and the facilitator will schedule one or more (virtual) workshops involving all participants, likely in February 2022, to explore the issues raised and potential means of addressing them.
- 5) Summary: The results of these workshops will be summarized and distributed to the group for review before being finalized.

It would be appreciated if you could let us know asap if you do indeed wish to participate in this initiative, and if you have any suggestions for other participants.

If so, a member of the team will be in contact with you shortly to discuss and arrange. We would also welcome any comments or suggestions on the approach outlined above.

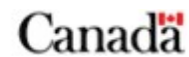
Thank you in advance for your reply, and future participation

Steve Bonnell

Steve Bonnell, PhD

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Impact Assessment Agency of Canada / Government of Canada  
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Agence d'évaluation d'impact du Canada / Gouvernement du Canada  
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## Attachment 2 – Timeline

The following bullets provide a summarized timeline of key dates and activities:

- May 27, 2021: Request for regional assessment received by the Minister of Environment and Climate Change.
- November 30, 2021: Minister's response to the request posted on the Registry [Minister's Response with reasons - Canada.ca \(iaac-aeic.gc.ca\)](https://www.canada.ca/iaac-aeic.gc.ca).
- January 19, 2022: Initial outreach to identified participants to confirm their participation; provide an overview of the planned engagement process; seek input into the design of the process; and suggestions for others that should be contacted and invited.
- February 1, 2022: Calls made to KMKNO and other Indigenous contacts to describe the engagement process and invite participation.
- February 7, 2022: Follow-up e-mails sent out to KMKNO and other Indigenous contacts.
- February 16 and 28, 2022: One-on-one meetings with participants initiated.
- March 14, 2022: Notice of engagement activities posted on the Registry (Notice of Engagement Activities - Canada.ca (iaac-aeic.gc.ca)) to invite any additional stakeholders to participate.
- March 25, 2022: "What We Heard" document finalized and sent to participants.
- March 30, 2022: Workshop completed.

## Attachment 3 – “What We Heard” Document

**Agence d'évaluation  
d'impact du Canada**

**Impact Assessment  
Agency of Canada**

## Infilling Activities in the Northwest Arm, Halifax Harbour, Nova Scotia

### Engagement Process

In February 2022, the Impact Assessment Agency of Canada commenced an engagement process with identified stakeholders and Indigenous Peoples to discuss infilling activities in the Northwest Arm. This process was initiated as directed by the Minister of Environment and Climate Change Canada in his November 2021 decision on a request for a Regional Assessment of infilling activities in the Northwest Arm of Halifax Harbour. In that response, the Minister asked Agency officials "...to coordinate discussions involving applicable federal, provincial, and municipal agencies as well as non-governmental organizations to discuss these issues further, and to explore potential means of addressing them through other existing or potential regulatory and planning processes."

As part of that process, Agency staff held "pre-engagement" one-on-one meetings with all participants to get initial information and input on this issue, the results of which are summarized in this brief "*What We Heard*" document. This summary document will be used to help inform a group discussion with all participants at a workshop planned for March 30, 2022.

### Legislation & Regulatory Requirements

The following legislation was identified as considered and/or applied to infilling in the Northwest Arm:

- *Canadian Navigable Waters Act* (Transport Canada)
- *Species at Risk Act* (SARA) (Environment and Climate Change Canada and Fisheries and Oceans Canada)
- *Fisheries Act* (Fisheries and Oceans Canada and Environment and Climate Change Canada)
- *Migratory Birds Convention Act* (Environment and Climate Change Canada)
- *Coastal Protection Act* (Nova Scotia Environment)
- *Environment Act* (Nova Scotia Environment)
- *Regional Centre Land Use By-Law* (Halifax Regional Municipality)
- *Canadian Environmental Protection Act* (Environment and Climate Change Canada)

The main regulatory bodies involved in the review of infilling activities in the Northwest Arm include:

- Transport Canada (TC) – potential interference with navigation.
- Fisheries and Oceans (DFO) – potential effects to fish and fish habitat and aquatic species at risk.

- Halifax Regional Municipality – regulates what can or cannot be built on lands created by infills through zoning, setbacks and/or land use requirements.
- Environment and Climate Change Canada – potential for marine pollution (from potential disposal-at-sea activities).

### Summary of the Infill Permitting Process

- Transport Canada
  - Processes applications through the Navigation Protection Program (NPP).
  - Applications are reviewed and assessed based on potential interference with both commercial and recreational navigation.
  - Process includes Indigenous engagement and a public comment period.
  - Approved applications may have conditions associated with them.
- Fisheries and Oceans Canada
  - Assesses applications through the Fish and Fish Habitat Protection Program (FFHPP).
  - Evaluates projects based on potential impacts to fish and fish habitat (Harmful Alteration, Disruption, or Destruction).
  - Can be contacted by Transport Canada or a proponent to review applications and determine whether an authorization is required.
  - Applications are processed with possible outcomes of site-specific advice to avoid or mitigate potential impacts to fish and fish habitat, or *Fisheries Act* authorizations can be required, which can have an outcome of being approved with conditions, or rejected.
- Halifax Port Authority
  - Regulates traffic within Halifax Harbour.
  - Deals only with post-confederation water lots or any lots non-granted when it comes to infill activities.
  - Only regulates infilling for marine industrial purposes; no mandate over residential infilling.
- Nova Scotia Environment
  - Responsible for approvals and monitoring of some infilling activities under provisions of the *Environment Act* and its associated regulations, including disposal of sulphide-bearing materials.
  - Does not have jurisdiction over pre-confederation water lots within a federally regulated harbour.
  - The *Coastal Protection Act* regulations for shoreline structures will be designed to apply to the foreshore (the area between the low-tide and high-tide marks).
  - Regulations under the *Coastal Protection Act* will not be applicable to pre-confederation lots.
- Halifax Regional Municipality
  - By-laws do not currently apply to submerged lands.
  - By-laws do apply to newly created lands (resulting from infill activities) through zoning, setbacks and or land use requirements.
- Environment and Climate Change Canada
  - Reviews activities to determine applicability to the *Canadian Environmental Protection Act*, and whether a Disposal at Sea Permit may be required.

## WHAT WE HEARD

- Activities must be carried out in compliance with the *Canadian Environmental Protection Act, SARA, and Migratory Birds Convention Act and Section 36(3) of the Fisheries Act.*
- Has an advisory role to other departments / proponents on these mandated issues and coordinates/consults on regulatory process if a Disposal at Sea Permit is required.

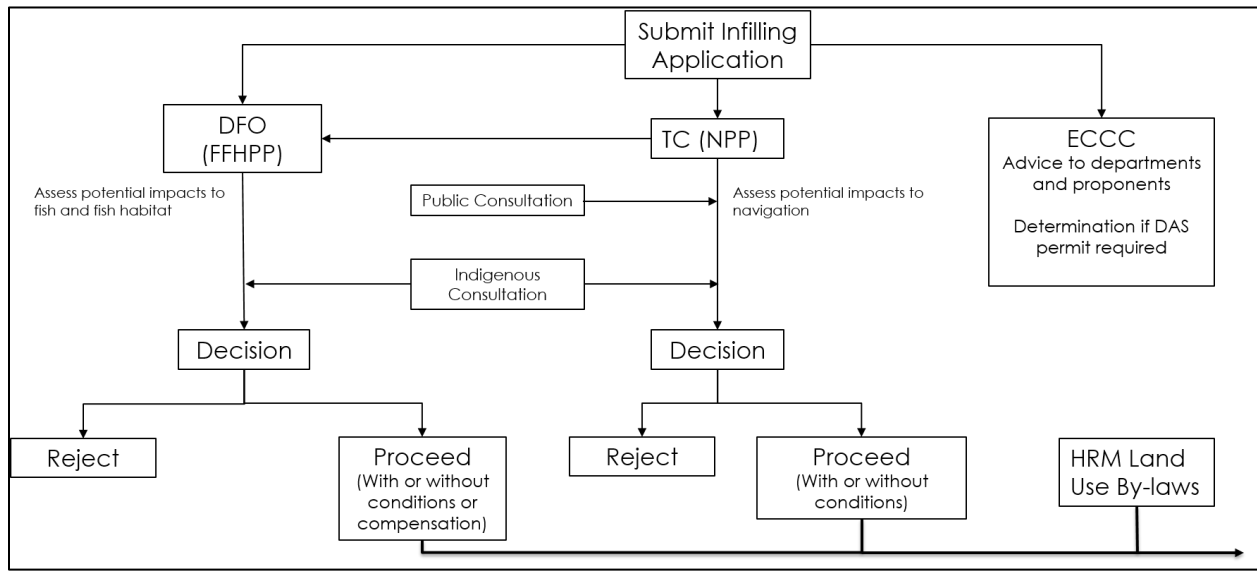


Figure 1: Overview of Applicable Regulatory Roles and Responsibilities

## Concerns and Comments Related to the Infilling Application Process

- Concerns that current infill approval processes do not consider and evaluate all relevant environmental issues and potential effects. There is an urgent request to address this immediately.
- There is a desire by some to see an increased regulatory role for Halifax Regional Municipality in the review of infill proposals, alongside the existing processes of TC and DFO.
- Desire to see an immediate moratorium off infilling activities within the Northwest Arm, until a better process can be established for reviewing infilling applications.
- Would like to see better alignment of all levels of government in reviewing infilling applications.
- Cumulative effects should be considered when reviewing infilling applications.
- Proposed infilling activities should be evaluated in relation to the rest of the activities occurring within the Northwest Arm.

## Concerns and Comments Related to Navigation

Navigation in the Northwest Arm includes that by recreational users, tourism operators, local boating organizations, commercial fishers, and others.

- Concern that infilling activities will further narrow the Arm and eventually impede the ability for all vessels to safely navigate this area.
- Interaction of commercial and recreational vessel traffic has been increasing in the Arm.
- Tourism operators concerned over ability of vessels to navigate safely into the Arm, and associated safety and economic risks.
- Concerns that adjacent property owners may have to infill to maintain safer access to their own water lots, due to the potential of larger, adjacent infilling projects.
- Potential impacts on yacht clubs, sailing programs, and race events due to less navigable space, especially during busy times of the year.
- Increased liability / insurance concerns if there is an accident due to difficult navigation.
- Potential accidents as future infilling narrows navigable space within the Northwest Arm.

### Concerns and Comments Related to Environmental Impacts

All identified stakeholders have a shared goal of protecting the environment.

- Fragility of the coastline and the impact of permanent alterations.
- The need to prevent unnecessary, large scale interference with the coastline.
- Potential impacts to the overall ecosystem (aquatic, avian, etc.).
- Potential negative impacts on both commercial (e.g., lobster) and recreational fisheries due to impacts on fish and fish habitat.
- Narrowing of the Arm could increase storm surge damage, and increase tides and currents flowing into the Arm. This could increase rate of erosion on the coastline.
- Disturbance to seabed and associated release of trapped contaminants, from infilling activities.
- A desire to maintain and improve the condition of the Arm, especially following clean-up activities undertaken in recent years.
- Types and quality of materials being used for infilling activities and associated effects to marine environment.
- Loss of aesthetically important viewsapes.

### Other Concerns and Comments

- Concern about setting a precedent if large-scale infilling is approved.
- This issue is divisive amongst residents and users on the Arm.
- The Arm is a place of historic significance, with a strong connection to the Mi'kmaq culture, and there are many archaeological sites in the area (e.g., Deadman's Island, Melville Prison). There are concerns about a potential loss of areas of historical / cultural significance if multiple, large infilling activities are permitted in the Arm.
- Fishing and boating have long histories in Nova Scotia.
- Public points of access must be maintained.
- A general openness to reasonable activities to protect property and shoreline, but proper regulation must be in place before it can commence.
- The Arm is an attraction for current and new residents in the province, and so maintaining the accessibility and value of the area is important.
- Action needs to happen now, to prevent future large scale infilling from occurring.

Attachment 4 – March 30th Workshop Attendance Sheet

Date: March 30, 2022 Time: 9:00 am ADT In-person  VirtualSpicer Facilitation  Client IAAC

Facilitator(s): Carole Spicer

Signature:

*Carole R. Spicer*

	Name	Organization	Signature
1.	Andy Fillmore	MP, Halifax	
2.	Alex MacKinnon	MP's office, Halifax	
3.	Colin Deacon	Senator, NS	
4.	Stanley Kutcher	Senator, NS	
5.	Steve Bonnell	Impact Assessment Agency	
6.	Jeffrey Janes	Impact Assessment Agency	
7.	Carys Burgess	Impact Assessment Agency	
8.	Jamie-Lynn Bruce	Impact Assessment Agency	
9.	Lauchlan MacLean	Impact Assessment Agency	
10.	Martyna Krezel	Impact Assessment Agency	
11.	Mona Sidarous	Environment and Climate Change	
12.	Stephen Zwicker	Environment and Climate Change	
13.	Isabelle Hurley	Environment and Climate Change	
14.	Mark McLean	Fisheries and Oceans	



	Name	Organization	Signature
15.	Mike Wambolt	Fisheries and Oceans	
16.	Donna McLean	Transport Canada	
17.	Melanie Leblanc	Transport Canada	
18.	Norm Thebeau	Transport Canada	
19.	Lydia MacKay Swiatkowska	Transport Canada	
20.	Gerald Gloade	Millbrook First Nation	
21.	Patrick Butler	Kwilmu'kw maw-klusuaqn (Mi'kmaq Rights Initiative)	
22.	Angela Birch	Government of NS	
23.	John Somers	Government of NS	
24.	Elise Martino	Halifax Regional Municipality	
25.	John Traves	Halifax Regional Municipality	
26.	Patty Cuttell	Halifax Councillor	
27.	Lane Farguson	Halifax Port Authority	
28.	Allan Shaw	Community Member	
29.	Anthony Rosborough	Community Member	
30.	Justin Stewart	Community Member	

	Name	Organization	Signature
31.	Leslie Shaw	Community Member	
32.	Michelle Raymond	Community Member	
33.	Phillip Saunders	Community Member	
34.	Will Balser	Ecology Action Centre	

## Attachment 5 – Workshop Meeting Notes

### Infilling Activities within Halifax Harbour – Workshop Meeting Notes

March 30, 2022, 9:00 am to 12:30 pm AST

**Opening Remarks:** S. Bonnell (IAAC)

**Workshop comments and expectations:** C. Spicer (Facilitator)

#### *Expectations*

- This session is to provide everyone an opportunity to come together to discuss identified issues surrounding infilling activities in the Northwest Arm. This session is not intended to change legislation, regulations, or the permitting process. It is, however, a chance to become more informed about the complexity of these activities and the current legislated processes that regulate them.
- This workshop is not intended to address any specific infilling application, past, current or future.

#### *What We Heard Summary*

- there are several acts considered and/or applied in the Northwest Arm;
- the main regulatory bodies are Transport Canada, Fisheries and Oceans Canada (DFO), and the Halifax Regional Municipality (HRM);
- a diagram has been provided outlining the application process;
- concerns have been raised during the one-on-one meetings that relate mainly to navigation and environmental impacts; and
- there is a common desire amongst participants to work together towards a solution.

#### *Meeting Notes*

##### *Comments/Discussion:*

- Participants noted that there is good environmental stewardship of property owners, but asked what the outcome and timeline is for this engagement process. There is worry that action will not be taken quickly enough to avoid current infilling applications from being approved.
- The Facilitator confirmed that the outcome of this engagement process is to gather feedback and focus on respectful dialogue. Following the workshop, a report will be provided to participants for review before being finalized.
- Participants asked if there was anyone that participated, or was met with who were in favour of infilling in the Arm? The Facilitator noted that she wasn't going to speak for

anyone specifically and that the results of the one-on-one meetings were provided in the What We Heard summary document.

- ECCC offered to provide a better summary of its mandate and could address questions or facilitate discussions as needed. ECCC will update the What We Heard summary document to reflect this information.
- HRM spoke about navigation and related safety concerns. The concerns related to navigation were focused on sailing activities in the Arm, and when boats move in/out of the harbour, particularly during foggy conditions. It was noted that the Arm is already a narrow body for sailing, and that multiple infills will make it even smaller. Sailboats rarely move in a straight line, and increased infilling could further restrict the room that boats have to navigate safely within the Arm.
- HRM agrees with the issues raised, and has initiated discussion with Transport Canada regarding jurisdiction. They noted that they are looking for a consensus with federal partners, and have engaged and collaborated with various provincial and federal departments on harbour issues. They also noted that a moratorium has been asked for by Mayor Savage, as the city feels that the infill application process is not working to adequately address the potential impacts.
- Some participants highlighted the need for a short-term consideration / solution. With respect to the What We Heard summary, it was stressed that there needed to be some urgency towards a solution. It was asked if there was a common acknowledgement around the path forward and what the next steps would be.
- The Facilitator confirmed that there would not be a commitment today from government agencies. The workshop would focus on a review of the updated What We Heard summary document and an overall discussion. A report will be provided to participants following the workshop.
- The Senators provided context as to why they are involved. They look at how the government functions and how processes proceed and if the legislation is achieving what it is designed to do. However, understanding the impact of how legislation is or is not achieving its purpose is a complex process. The importance of regulations was stated but it was noted that it is troubling to see that the regulations are not effectively serving the public in this case.
- Participants noted the importance of the cumulative effects of these infills over time (e.g., loss of a third of the Arm, reduction of less than half the space of the mouth) and what is considered the "private appropriation of public waters". It was stated that cumulative effects and the view of the Arm as a whole needs to be considered when infill applications are reviewed.
- Elected officials noted that in past discussions with the Minister of Transport, a decision not to pursue a navigation study was taken. It was noted that we shouldn't miss this opening to provide more information to the Minister and that this process will hopefully lead to that broader study moving forward.

- HRM stated that the municipality would be happy to proceed with a broader navigational study as there is no larger process that is contemplated when infill applications are reviewed (i.e., applications are assessed in isolation).
- Some Participants noted and appreciated the concerns on navigation. There was a discussion of the legal case: *Thibeault vs Canada*, which established that federal jurisdiction does not mean that navigable considerations are the only ones to consider and therefore the Minister does have the ability/discretion to look at other considerations, in addition to navigation. However it was also noted that:
  - it is a struggle to get this approach of considering other concerns such as environment, Indigenous rights etc., advanced; and
  - there are multiple levels of jurisdiction that apply to the Northwest Arm but not all levels of government choose to apply their jurisdiction. Specific reference was made to the province and the municipality (which derives from the province). Inland waters, like the Arm, fall within the jurisdiction of local authorities and it was suggested that HRM is overly cautious in applying municipal bylaws and that both federal and provincial approaches/legislation can co-exist. The Participant noted that there is a fundamental misunderstanding of these submerged lots and that they do in fact exist under provincial legislation.
  - It was suggested that the lots not be considered as "pre confederation" lots (as that term is actually for lake lots) but that the province and municipality do have Constitutional jurisdiction - these levels of government can refuse to approve an infill application under their own legislation. It was stated that this is where the conversations need to focus.
- Participants noted that proper regulation requires a coordinated approach. In the past, there was a policy that the federal government would not make a decision without approval of local governments (i.e., City of Halifax). Applications were approved, denied or modified. It was suggested that Transport Canada has the ability to take into account these lateral considerations with respect to the province and the municipality and also suggested engaging municipal affairs.
- A Senator suggested that this may be an action that can come from this meeting and agreed that there is a responsibility that falls to the Senators to promote the public good through legislation and regulations. The Northwest Arm is a public good and it was noted that there are other numerous benefits of the Arm including historic importance, Indigenous significance, a draw to immigrants, cultural value etc. It was highlighted that time is short, and if we take too much time to try to figure things out, more of the Arm will be lost.
- HRM supported the comments from Senators and noted that the 2007 bylaw process resulted in amendments to dis-incentivize infilled lots. However, the amendments have not worked as intended and infill applications continued to be submitted regardless of the restrictions. During the bylaw amendment process, it was recognized that more work needed to be done on the infill issues. To address this a committee was created with the mandate to improve communications; review of legislation and regulations; and to facilitate collaboration between different levels of government to address the infill issue.

It was suggested at this workshop that another outcome to the engagement process could be to re-initiate that 2007 committee.

- Nova Scotia Environment noted that, from a provincial perspective, the Arm is regarded as a federally regulated harbour so there is no provincial jurisdiction and that the lots are indeed considered to be "pre-confederation". It was noted that the new *Coastal Protection Act* (coming into effect in 2023, has been passed and now they are working on the regulations) doesn't apply in this case because the Act works through other legislation on submerged provincial Crown land via permits related to the *Crown Lands Act*.
- Participants mentioned the cascading effect of infrastructure in the Arm (docks, infills etc.) and the resulting reduction of the surface water of the Arm and the mouth. The indirect effects of this include reduced flushing ability of the Arm, causing water levels to continue to rise with more infills, which then increases the risk of significance of flooding, leads to impacts of wave energy on adjacent properties and increased erosion rates and affects to hydrology.
- KMKNO noted that they were attending this workshop to observe, and to let other participants know that they are in consultation with Transport Canada with regard to individual infilling applications, and have concerns that include impacts to Section 35 Treaty Rights, and underwater archeology from infill footprints.
- A Participant noted that in response to the remarks from Nova Scotia Environment that there is a need for provincial legislation and that there are some legislative options in place, although agreed that the *Coastal Protection Act* is not the legislation to address infilling activities. It was suggested to consider the municipal power over docks and that since HRM is taxing these lots, that this provides the jurisdiction to regulate them.
- Participants asked again if there were any arguments in support of infilling. The Facilitator noted that there were some that weren't in favour of a full moratorium but would not provide names. Some Participants wanted to clarify the "reasonability" for infilling – they are not interested in who has argued in favour of infilling, but what kinds of arguments have been advanced.
- Transport Canada noted that it has to stay within the scope of the legislation but that people have been heard and perspectives/concerns will be shared in the Department. Staff also noted that they did not know about the working group that had been formed in 2007, and would be interested in learning more about it.
- DFO commented on the process for protection of Fish and Fish Habitat and that the department must work within the confines of its legislation. It was confirmed that regulatory reviews are conducted for all infill projects, and that there is collaboration with Transport Canada and provincial government departments on issues with infilling applications. There is application of federal legislation and assessment of potential impacts under the *Fisheries Act* and the *Species at Risk Act*. Links (see below) to this information on-line were provided by DFO and it was further noted that there is an ongoing public comment process on regulations around protection of shorelines.

- Both Transport Canada and DFO noted that their legislation and regulations are or will be undergoing review. The *Fisheries Act* is currently under legislative review, and the *Canadian Navigable Waters Act* will be undergoing review in 2024. These processes will include public engagement, where stakeholders can provide feedback on the types of things that should be considered in both legislation and regulations.
- Other participants noted that while regulatory review will be important, the timing of it will not likely address the immediate issues that are occurring right now in the Northwest Arm.
- Both DFO and Transport Canada noted that they have to look at things with a national perspective.
- Some Participants stated concern with the precedent that has been set (to approve applications and consider to look at ways to accommodate, such as compensation) and suggested that government departments have more leeway than they exercise, to approve or reject applications. It was stated that almost everyone wants a moratorium and asked if there could be a step to look at what the people want and not at the precedent. Legislation is broad but it was suggested that the interpretation is not correct and encouraged a new precedent to be set.

#### *Wrap Up:*

- It was asked if the report from this engagement process will be publically available. The Agency noted that they will follow-up on this question, and that it is possible that the report would be posted publicly.
- The Agency committed to updating and finalizing the What We Heard summary document and providing it to attendees as well as posting the document on the Agency's Registry.
- There was a request made from participants to have the meeting attendance list provided to them. This was completed.

#### *Links provided by DFO:*

- DFO's Fish and Fish Habitat Protection Program's Engagement Platform (<https://talkfishhabitat.ca/>).
- Info on DFO's review of Projects Near Water to protect fish and fish habitat: Projects near water ([Projects near water \(dfo-mpo.gc.ca\)](https://www.dfo-mpo.gc.ca/projects-near-water)).