

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

From: **Planning Staff (EDPC)**

Date: **March 22, 2016**

Reference: **Options to integrate public consultation into the approval process for wind energy projects in the Municipality of the County of Inverness.**

Recommendation:

That Council **consider** the following options for increasing public consultation in the approval of wind energy projects and if deemed advisable, direct planning staff to prepare the necessary documents or amendments to implement one of these options:

- 1) Change to a regulatory approach wherein a public hearing is required as a criterion for consideration. Public consultation in addition to the public hearing should also be incorporated. Available regulatory approaches include:
 - a. rezoning, or
 - b. development agreement.

- 2) Change to a regulatory approach wherein developers are required to conduct public consultation before applying for a licence or development permit and the criteria for granting the licence or permit include considering the outcome of the public consultation. Available regulatory approaches include:
 - a. licencing, or
 - b. amending the current of as-of-right process.

Planning staff recommend option **2) b.** as it respects the Council's previous decision to regulate wind energy development as-of-right. This option would allow Council to implement effective requirements for public consultation into the existing planning documents with relatively simple amendments.

Background:

This report was prepared at the direction of Council following a discussion regarding public opposition to wind energy developments. Planning staff were directed to prepare a report regarding methods of better integrating public consultation into the approval process, specifically regarding ways to incorporate public feedback received during public consultation into the decision-making and approval process.

This report is structured in three parts: 1.) summary of why public consultation is important, 2.) review of how other Nova Scotia municipalities integrate public consultation into the development process, and 3.) recommendations for integrating public consultation into the development process in the Municipality of the County of Inverness.

Analysis:

Value of Public Consultation

In 2008, the Union of Nova Scotia Municipalities (UNSM),¹ in collaboration with the Nova Scotia Department of Energy, Service Nova Scotia and Municipal Relations, and the Halifax Regional Municipality contracted Jacques Whitford to prepare model wind turbine by-laws and best practices² to help municipalities develop regulatory approaches to wind energy development. In the chapter entitled “The Role of Consultation, Education, and Communication,” the report stresses the importance of communicating the positive aspects of wind energy as a renewable energy source, and doing so as early as possible. The reasoning is that the public should be well informed with facts both for and against wind energy development. The report indicates that public hearings may not be the most effective method of public consultation as they often take place late in the development process when it is more difficult to change public opinion or alter development plans. By the time a public hearing takes place, people have already made a decision for or against the development regardless of whether the decision is based on balanced and factual information.

In 2015, the UNSM contracted Verterra Group to prepare wind energy fact sheets to provide municipalities with information about wind energy development compared with other sources of energy. The fact sheet devoted to community engagement³ stresses the importance of “early and open community involvement.” It suggests that communication with the public should take place before a specific development is proposed and that the public is given opportunity to have meaningful input into the decision making process. The fact sheet suggests that municipal planning documents can encourage developers to consult the public early in the process by requiring notification of neighbouring property owners. The example given is from Halifax Regional Municipality, where developers are required to notify neighbours before installing a preliminary weather monitoring station.

Both resources make the case that public consultation is an important aspect of the wind energy development process. Not only does consultation encourage dialogue about wind

¹ The UNSM has a web page devoted to reference material about renewable energy. The resources cited in this section can be accessed from this page at: <<http://www.unsm.ca/renewable-energy.html>>

² Document will download from: <www.unsm.ca/doc_download/1569-unsm-wind-by-laws-best-practices.html>

³ Document will download from: <http://www.unsm.ca/doc_download/1573-wind-energy-fact-sheets-for-nova-scotia-municipalities.html>

energy in which residents learn about the benefits of renewable energy sources and developers learn about the concerns of the community, it also increases the potential for conflict resolution. The sooner residents know about a proposed development, the more time they have to gather information regarding the pros and cons of the development and express any personal concerns they may have. The sooner developers communicate with the public regarding their proposal, the greater the possibility they will be able to alter their plans to respond to concerns the residents may have.

Currently, the Municipality of the County of Inverness does not require wind energy developers to conduct public consultation during the development process. There is a provincial requirement, however, that if the wind energy project is rated for two (2) MW or greater, it is required to undergo an Environmental Assessment. This is a public process that involves notifying the public and inviting feedback.

Public Consultation for Wind Energy Developments Across Nova Scotia

Appendix A consists of a summary review of how other municipalities across Nova Scotia regulate wind turbine development. Specific attention is paid to how the public is informed or consulted during the process. The review is not exhaustive, and only includes municipalities of a regional scale comparable with the Municipality of the County of Inverness (for example, the review includes the Municipality of the District of Digby but not the Town of Digby). The review is organized alphabetically and focuses on the regulation mechanism (i.e. how the municipality regulates wind turbine development), and public consultation (i.e. how the public is involved in the regulatory process). Due to the fact that wind turbines vary greatly in scale and generating capacity, the following table makes three distinctions: mini scale, small scale, and large scale. While the actual definition of these distinctions differs between municipalities, Appendix A simply acknowledges that the distinctions exist. The intention is to make comparisons between municipalities as simple as possible.

Based on this review, there are five regulatory approaches in use within the province. These are permitting wind turbines as-of-right, by licencing, by rezoning, by development agreement, or by site plan approval. For as-of-right and licencing development, proof of public consultation may be required as part of a completed application to receive a development permit or licence. For rezonings and development agreements, there are requirements for notifying the owners of neighbouring properties of the public hearing held before the rezoning or development agreement can be approved. For site plan approval, there are requirements for notifying the owners of neighbouring properties of their right to appeal the site plan approval.

It should be noted that it is uncommon for a municipality to link the outcome of public consultation with criteria for approving wind energy developments (i.e. to include criteria that

public consultation must result in favourable public reception in order for a development to be approved). Even in municipalities where the development agreement process is in place, planning staff found no examples where the outcome of the public consultation is linked to the criteria for approving a development agreement. It is implicit that the public hearing is intended to help Council incorporate public opinion into their final decision, but the planning documents do not include the outcome of the public hearing in the decision-making criteria.

Among the different regulatory approaches in use within the province, there are also different types of public consultation required and different scales at which the consultation is conducted. These options can be “mixed and matched” to suit individual situations in different municipalities. The various options are listed in the tables below:

Regulatory Approaches	Types of Consultation	Scales of Consultation
As-of-right	Notification by letter mail	Owners of adjacent properties
Licencing	Public information meeting	Owners of properties within a specified radius
Rezoning	Public hearing	Given number of property owners
Development agreement	Written consent required from neighbours to grant exceptions to requirements	Notification by newspaper advertisement
Site Plan Approval		

Recommendations for Integrating Public Consultation into the Approval Process

Based on this review, planning staff have identified two practical options available to Council to increase public consultation in the approval of wind energy projects.

The first option is to change the regulatory approach to one that requires a public hearing (i.e. allowing wind turbines by rezoning or development agreement). Further public consultation beyond the public hearing should also be incorporated. This consultation should include notifying owners of neighbouring properties of the proposed development and advertising the time and location of a public information meeting where the proposed development will be presented to the community. The consultation would be included in the criteria for approving the rezoning or development agreement.

The second option is to change the regulatory approach to one that requires proof that the developer has conducted a public consultation process as part of the application for a licence or

development permit. The required public consultation would involve notifying neighbouring property owners of the proposed development and advertising the time and location of a public information meeting where the proposed development will be presented to the community. The public consultation would also be required to be carried out a set time before the developer applies for the licence or development permit.

Since the Municipality of the County of Inverness has already chosen the as-of-right process to regulate the development of wind energy projects, planning staff are recommending amending the existing approach to incorporate a public consultation requirement as outlined above. The amendments would change the *Municipal Planning Strategy for the County of Inverness Concerning the Regulation of Wind Turbine Development* (MPS) and associated *Land Use By-law* (LUB) to require developers to conduct a public consultation process before applying for a development permit. Under Section 220(5)(j) of the *Municipal Government Act* municipalities are authorized (where a municipal planning strategy so provides) to “[s]et out conditions, including performance standards, to be met by a development before a development permit may be issued.” Under this provision, the amendments would identify conducting a public consultation process as a condition to be met before a development permit is issued.

For reference, planning staff have included three examples in the table below that summarize the public consultation required in other Nova Scotia municipalities. This information will be helpful in determining the scale and details of the public consultation to be required in the Municipality of the County of Inverness.

Halifax Regional Municipality (HRM)	
HRM requires developers to mail notification of their proposal to neighbouring property owners at least sixty (60) days before applying for a development permit. The notification must contain a description of the project, a site plan showing property lines and the proposed location of turbines, and the developer’s contact information. No public meeting is required. The notification is required to be mailed to property owners within the following radii of the proposed site depending on the scale of the proposed development:	
<i>Scale of Facility:</i>	<i>Notification Radius (m):</i>
Micro (single accessory turbine 10kW or less, up to 23m tall)	140
Small (10-30kW, up to 35m tall)	360
Medium (30-300kW, up to 60m tall)	500
Large (more than 300kW, more than 60m tall)	2000

Municipality of the County of Colchester
Colchester permits small and large scale wind turbines by licence. The municipality requires the developer to send notification of a public meeting to neighbouring property owners before their licence application is complete. At the public meeting the developer must present a description of the proposed development including a proposed site plan. The public

meeting must be advertised twice in a local daily newspaper in addition to notification being mailed three (3) weeks before the public meeting to property owners within the following radii of the proposed site. If the licence is granted, notice of such is mailed to the same property owners.

<i>Scale of Facility:</i>	<i>Notification Radius (m):</i>
Small (1-100kW)	2000
Large (more than 100kW)	2000

Municipality of the County of Yarmouth

Yarmouth permits large scale wind turbines by development agreement, small scale wind turbines by site plan approval, and micro scale wind turbines as-of-right. A public consultation component is required for both small and large scale wind turbines. For small scale wind turbines, notification is sent to all habitable dwellings within 500m of the proposed turbine upon approval of a site plan. For large scale wind turbines, property owners within 305m of the site (or radius large enough to include fifty [50] owners) are notified of the proposed development agreement. In addition, the Planning Advisory Committee holds a public information meeting prior to the public hearing to present the proposed development agreement to the community.

<i>Scale of Facility:</i>	<i>Notification Radius (m):</i>
Small (less than 60m tall and more than 10kW)	500
Large (more than 60m tall or more than 100kW)	305*
*or radius large enough to include fifty (50) property owners (whichever is greater)	

Conclusions:

Uncertainty about the possible long-term effects of wind turbines has resulted in public concern as they become more common. Public consultation can help address these concerns by starting the conversation about the pros and cons of wind energy. The sooner this conversation begins, the more time is available for developers and residents to benefit. The sooner residents know about a proposed development, the more time they have to gather information and express concerns. The sooner developers communicate their plans to the public, the more time they have to alleviate concerns or alter their plans to respond to them.

Planning staff are of the opinion that the best way for the Municipality of the County of Inverness to integrate public consultation into the wind turbine approval process is by requiring developers to conduct public consultation before applying for a development permit. This public consultation should include notifying property owners within a given radius of the proposed site and hosting a publicly advertised information meeting. The information meeting should be scheduled in collaboration with the Municipality and advertised at least twice in a local newspaper. Records of this public consultation should be submitted as part of the application to obtain a development permit.

Appendix A: Summary of Public Consultation for Wind Energy Projects in Nova Scotia

Municipality (Alphabetical order)	Approval Mechanism			Public Consultation		
	Mini Scale	Small Scale	Large Scale	Mini Scale	Small Scale	Large Scale
<i>Annapolis</i>	(1 – 25 kW) As-of-right in all zones	(25 – 100 kW) As-of- right in all zones	(>100 kW) As-of-right in some zones	None required	None required	None required
<i>Antigonish</i>	(<1 kW) As- of-right	(1-100 kW) As-of-right	(>100 kW) As-of-right in one zone (rezoning required)	None required	None required	Public hearing held for rezoning (if applicable)
<i>Argyle</i>	No mention	(<100 kW) As-of-right in all zones	(>100 kW or taller than 60m) As-of- right in all zones	No mention	None required	None required
<i>Barrington</i>	(<10kW, <20m tall) As-of-right in all zones	(10 kW – 1 mW, 20-60m tall) By site plan approval in some zones	(>60 m tall) By development agreement in one zone	None required	Adjacent dwellings within 5x height of turbine notified when site plan approved	Property owners notified of application within 152m of site. Public information meeting held regarding application. Public hearing held for development agreement
<i>CBRM</i>	No mention	No mention	(>750 kW) As-of-right in all zones	No mention	No mention	None required
<i>Chester</i>	(<1 kW) As- of-right in all zones	(1-10 kW) By development agreement in some zones	No mention	None required	Public hearing held for development agreement	No mention
<i>Clare</i>	No mention	No mention	No mention	No mention	No mention	No mention
<i>Cumberland</i>	(<10 kW, <27.4m tall) As-of-right as accessory uses in some zones	(10-100 kW, <60m tall) As-of-right in some zones	(>27.4m tall) As-of-right in some zones	Written consent required from adjacent property owners	Adjacent property owners notified when development permit issued	Adjacent property owners notified when development permit issued

<i>Colchester</i>	(<1 kW) By licence	(1-100 kW) By licence	(>100 kW) By licence	If test tower is proposed, applicant notifies all property owners within 2 km of test site	If test tower is proposed, applicant notifies all property owners within 2 km of test site. Applicant holds public meeting as part of application. All property owners notified within 2km of the site when licence is granted and also before construction	If test tower is proposed, applicant notifies all property owners within 2 km of test site. Applicant holds public meeting as part of application. All property owners notified within 2km of the site when licence is granted and also before construction
<i>Digby</i>	No mention	(<100 kW) As-of-right	(>100 kW) By development agreement	No mention	None required	Public hearing held for development agreement
<i>East Hants</i>	(<1 kW) No mention	(1-100 kW) As-of-right in one zone	(>100 kW) As-of-right by site plan approval in one zone	No mention	None required	None required
<i>Guysborough</i>	(<100W, <2.5m rotor diameter) As-of-right in all zones	(<100 kW, <60 m tall) As-of-right in all zones	(>100 kW) As-of-right in some zones, if taller than 60m by development agreement in some zones	None required	None required	Public hearing held for development agreement
<i>HRM*</i> *Note that HRM distinguishes between micro, small, medium, and large wind energy facilities	(<10 kW, <23m tall) As-of-right in some zones	(10-30 kW, <35m tall = small), (30-300 kW, <60m tall = medium) As-of-right in some zones	(>300 kW, >60m tall) As-of-right in some zones	Applicant notifies all property owners within 140m of the property before applying for development permit (60 days in	Applicant notifies all property owners within 360-500m (depending on turbine size) of the property before applying for	Applicant notifies all property owners within 2km of the property before applying for development permit (60 days in advance of

				advance of applying)	development permit (60 days in advance of applying)	applying)
<i>Inverness</i>	(<1kw) As-of-right	(1-100 kW) As-of-right	(>100 kW)As-of-right in one zone	None required	None required	None required
<i>Kings</i>	No mention	(<100 kW) As-of-right in some zones	(>100 kW) Currently not permitted	No mention	All property owners notified within 500' (152m) when development permit is issued	Currently not permitted
<i>Lunenburg (no regional planning – data is sample of planning areas)</i>	No mention	As-of-right in some zones	By development agreement in some zones	No mention	None required	Public hearing held for development agreement
<i>Pictou</i>	No mention	As-of-right in some zones	As-of-right in some zones	No mention	None required	None required
<i>Queens</i>	As-of-right in all zones	As-of-right in some zones	By development agreement in some zones	None required	Applicant notifies all property owners within 183m radius of the site	Applicant holds public meeting and notifies all property owners within 305m of the site as part of application. Public hearing held for development agreement
<i>Richmond</i>	As-of-right	As-of-right	As-of-right in one zone (rezoning required)	None required	None required	Property owners notified within 200m of property of rezoning application. Public hearing held for rezoning

<i>Saint Mary's</i>	As-of-right in some zones	As-of-right in some zones	As-of-right in some zones	None required	None required	None required
<i>Shelburne</i>	(up to 100kW) As-of-right	(100kW – 2mW) As-of-right	(more than 2mW) By development agreement	None required	Applicant holds public meeting and notifies all property owners within 1km of the property as part of application	Applicant holds public meeting and notifies all property owners within 1km of the property as part of application. Public hearing held for development agreement
<i>Victoria</i>	No licence required	By Licence	By Licence	Applicant notifies all property owners within 140-360m radius of the site (depending on size)	Applicant notifies all property owners within 500m radius of the site. Applicant holds public meeting advertised twice in local newspaper as part of application	Applicant notifies all property owners within 2000m radius of the site. Applicant holds public meeting advertised twice in local newspaper as part of application
<i>West Hants</i>	No mention	As-of-right in some zones	By development agreement in some zones	No mention	None required	None required
<i>Yarmouth</i>	As-of-right	By site plan approval in some zones	By development agreement in some zones	No mention	Adjacent dwellings within 500m notified when site plan approved	50 property owners notified (or all property owners within 305m, whichever is greater). Public information meeting required in addition to public hearing