**DECISION** **2026 NSRAB 146**
**M12896**

**NOVA SCOTIA REGULATORY AND APPEALS BOARD**

**IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT**

**- and -**

**IN THE MATTER OF AN APPEAL** by **JONATHAN MACKENZIE** from a decision of the Council of the Municipality of the County of Antigonish to approve an application for a Land Use By-law Amendment to rezone twenty-four (24) 3.14 hectare portions of 18 separate properties to allow for the construction of 22 wind turbines generally located between Connors Mountain Road, Maple Ridge Road and MacQuarrie Road in Antigonish County

| | |
|---|---|
| **BEFORE:** | Stephen T. McGrath, K.C., Chair |
| **APPELLANT:** | **JONATHAN MACKENZIE**<br>Eric Gillespie, Counsel |
| **APPLICANT:** | **RENEWABLE ENERGY SYSTEMS**<br>Nancy G. Rubin, K.C. |
| **RESPONDENT:** | **MUNICIPALITY OF THE COUNTY OF ANTIGONISH**<br>Dillon Trider, Counsel<br>Rob Jollimore, Counsel |
| **HEARING DATE:** | July 7, 2026 |
| **FINAL SUBMISSIONS:** | August 24, 2026 |
| **DECISION DATE:** | **October 22, 2026** |
| **DECISION:** | **The appeal is dismissed for lack of standing.** |

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## 1.0 INTRODUCTION

[1] On June 1, 2026, the Municipality of the County of Antigonish, in a motion by its Council, amended its Land Use By-law to allow Eigg Mountain Wind Inc. to construct 22 wind turbines on private lands on Eigg Mountain. Jonathan MacKenzie appealed Council's decision to the Nova Scotia Regulatory and Appeals Board on June 11, 2026.

[2] The Municipality and Eigg Mountain Wind argued that Mr. MacKenzie did not have standing to bring this appeal. They also asserted that the ground of appeal he raised was not sustainable and that the appeal should be dismissed without proceeding to a final hearing.

[3] When challenged, the onus is on an intended appellant to demonstrate that they hold a *bona fide* belief that Council's decision will:

(a) adversely affect the value of their property, or their reasonable enjoyment of property they own or occupy; or

(b) cause, or seriously threaten, a form of harm prejudicial to their interests, whether or not a legal right is called into question.

The adverse effect or threatened harm must be distinct from that experienced by the general public as a result of the decision.

[4] Mr. MacKenzie asserted that he was especially impacted by Council's decision because it affected his ability to travel through the area of the proposed wind farm to go back and forth between his home and a woodlot that his company owns. However, the Board is not satisfied that the evidence he presented demonstrates that it is essential for him to travel through the development area to use and enjoy the woodlot. His evidence also lacked enough detail to allow the Board to objectively assess whether his belief that he would be adversely affected was *bona fide*. The Board finds that Mr.

MacKenzie has not met the burden he faced to show that he had standing to bring this appeal and it is therefore dismissed.

[5] In assessing the ground of appeal Mr. MacKenzie raised in this proceeding, the Board found that, while there were aspects that are without merit, it is not absolutely unsustainable. As such, had the Board concluded that Mr. MacKenzie had standing to continue with this appeal, it would have allowed it to proceed, but only on a limited basis.

## 2.0 BACKGROUND

### 2.1 Application to Amend the Land Use By-law

[6] On March 9, 2026, Eigg Mountain Wind Inc. applied to the Municipality to amend its Land Use By-law to allow for the development of wind turbines on private lands (Eigg Mountain Wind Project or wind project). The company described the wind project in its application to the Municipality:

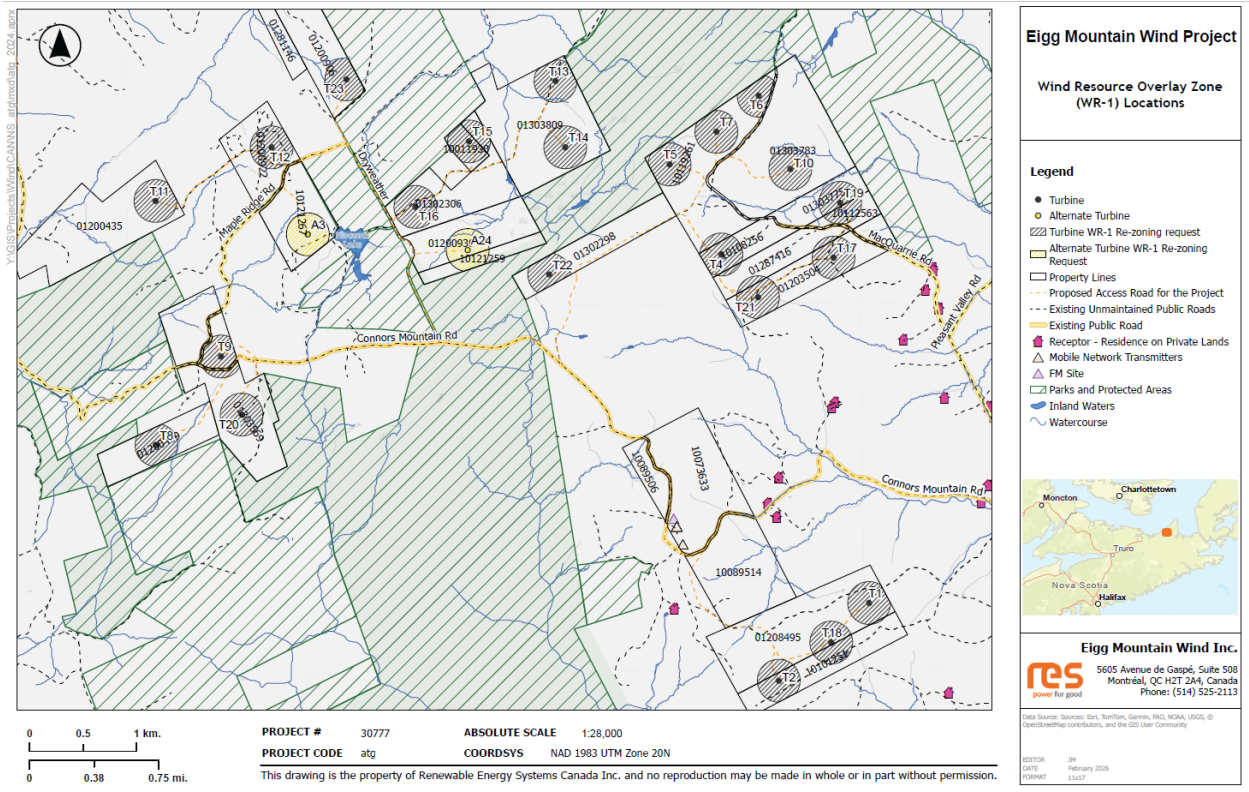
> The proposed Eigg Mountain Wind Project has an installed capacity of 154MW and would consist of 22 x 7MW wind turbines, to be installed on several private lands located on Eigg Mountain. The Project is currently in its advanced phase of development and seeks to start initial construction works in the fall of 2026. The turbine being proposed on this Project, and for which this request is made, has the following dimensions:
>
> - Tower height: 118 m
> - Rotor diameter: 163m
> - Blade length: 81.5m
> - Total turbine height: 199.5 m
>
> [Exhibit M-4, p. 2]

[7] The application described the locations to be rezoned more particularly:

> A map of the areas of land requesting to be rezoned is attached to this request. Per the current WR-1 zones found in the LUB, the Proponent is hereby requesting 24 individual zones, for each of the 24 turbine locations being considered for this Project (which includes two alternate locations, as described in the paragraph below). Each area of land requested is a circle with a diameter of 200m, slightly larger than the rotor diameter of the turbines (163m), to allow for late-stage micro-positioning, if needed. Changes if any to the current positioning of the turbines would comply to all applicable setback provisions.

> The 24 turbine locations are located on lands owned by 12 private landowners who have entered into an option to lease agreement with the Proponent. As such, all turbine locations are on lands with confirmed land rights and with partner landowners that are supportive of the Project. The list of PIDs and landowners with turbine locations is appended to this request.
>
> It should be noted as well that the requested 24 areas include two areas for "alternate" turbines. The two alternate positions are not expected to be needed at this stage, but the Proponent would appreciate the flexibility to include these two areas for alternate turbines if that is receivable by Council, in the event that a late-stage turbine change is needed.
>
> [Exhibit M-4, p. 3]

[8] A reproduction of the map included with the application is below:




[Exhibit M-4, p. 16]

[9] The company's application also noted it had registered the wind project as an undertaking under the *Environment Act*, SNS 1994-95, c 1, and that it understood that the Municipality would not rule on its application before the Provincial Government approved its undertaking. On April 9, 2026, the Minister of Environment and Climate Change approved the undertaking [Exhibit M-4, p. 30]. In doing so, the Minister

determined “that there are no adverse effects or significant environmental effects which may be caused by the undertaking or that such effects are mitigable and the undertaking is approved subject to specified terms and conditions and any other approvals required by statute or regulation” (*Environmental Assessment Regulations*, NS Reg 26/1995, s 13(1)(b)).

[10] Council considered the rezoning application in a public hearing on June 1, 2026. Council received a presentation about the application. It also heard from several residents who spoke against the proposed rezoning and some who were in favour of the application. Mr. MacKenzie spoke against the application.

[11] Council approved the application in a recorded motion:

> **Min # 2026-76**
>
> Moved and Seconded
>
> > That that Municipal Council approves an application by Eigg Mountain Wind Inc. to amend the boundaries of the Wind Resource Overlay in the Plan Antigonish Land Use By-law by rezoning twenty-four (24) 3.14-hectare portions of eighteen separate properties to allow for the construction of 22 Wind Turbines.
>
> **Motion Carried**
>
> [Exhibit M-4, p. 25]

[12] Mr. MacKenzie appealed to the Board from this decision on June 11, 2026.

### 2.2 The Board’s Appellate Jurisdiction and the Interpretation of Municipal Planning Strategies

[13] The *Municipal Government Act*, SNS 1998, c 18, authorizes the Board to hear appeals from municipal council decisions amending a land-use by-law but limits its authority. Under s. 250(1)(a) of the *Act*, an appellant may only appeal the amendment of a land-use by-law on the grounds that the decision of the council does not reasonably carry out the intent of the municipal planning strategy. Similarly, the Board may only allow

an appeal if it finds that the decision does not reasonably carry out the intent of the municipal planning strategy (s. 251(2)).

[14] Well-recognized principles of statutory interpretation guide the Board in its assessment of the intent of a municipal planning strategy. Using these principles to interpret municipal legislation has been accepted in judicial proceedings (e.g., *J & A Investments Ltd. v Halifax (Regional Municipality)*, [2000] NSJ 92 (SC); *United Taxi Drivers' Fellowship of Southern Alberta v Calgary (City)*, 2004 SCC 19; *Halifax (Regional Municipality) v 3230813 Nova Scotia Ltd.*, 2017 NSCA 72).

[15] The majority of the Supreme Court of Canada summarized these principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*). These reasons assumed that legislators intended that administrative decision makers, such as this Board, would interpret legislation consistent with the general principles of statutory interpretation:

> [117] A court interpreting a statutory provision does so by applying the "modern principle" of statutory interpretation, that is, that the words of a statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21, and *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26, both quoting E. Driedger, Construction of Statutes (2nd ed. 1983), at p. 87. Parliament and the provincial legislatures have also provided guidance by way of statutory rules that explicitly govern the interpretation of statutes and regulations: see, e.g., Interpretation Act, R.S.C. 1985, c. I-21.
>
> [118] This Court has adopted the "modern principle" as the proper approach to statutory interpretation, because legislative intent can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context: Sullivan, at pp. 7-8. Those who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose, regardless of whether the entity tasked with interpreting the law is a court or an administrative decision maker. An approach to reasonableness review that respects legislative intent must therefore assume that those who interpret the law — whether courts or administrative decision makers — will do so in a manner consistent with this principle of interpretation.

[16] The majority, in *Vavilov*, noted that the application of these principles by administrative decision makers may look different than interpretive exercises undertaken

by courts because of their specialized functions. They emphasized that regardless of the form of analysis, the interpretation must be consistent with the text, context and purpose of the contested provision:

> [119] Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. As discussed above, formal reasons for a decision will not always be necessary and may, where required, take different forms. And even where the interpretive exercise conducted by the administrative decision maker is set out in written reasons, it may look quite different from that of a court. The specialized expertise and experience of administrative decision makers may sometimes lead them to rely, in interpreting a provision, on considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise.
>
> [120] But whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. Where, for example, the words used are "precise and unequivocal", their ordinary meaning will usually play a more significant role in the interpretive exercise: Canada Trustco Mortgage Co. v. Canada, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements.
>
> [121] The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome.

[17] As noted in *Vavilov*, the Parliament of Canada and the provincial legislatures have also provided guidance by way of statutory rules that explicitly govern the interpretation of statutes and regulations. In Nova Scotia, this guidance is in the *Interpretation Act*, RSNS 1989, c 235, including ss. 9(1) and 9(5):

> **9 (1)** The law shall be considered as always speaking and, whenever any matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent, and meaning
>
> …
>
> **(5)** Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters
>
> (a) the occasion and necessity for the enactment;
>
> (b) the circumstances existing at the time it was passed;

> (c) the mischief to be remedied;
>
> (d) the object to be attained;
>
> (e) the former law, including other enactments upon the same or similar subjects;
>
> (f) the consequences of a particular interpretation; and
>
> (g) the history of legislation on the subject.

[18] Consistent with these principles, the Board may consider background information often found in preambles to the policies when interpreting them. While the Board must be mindful that a municipal council is guided by the policy itself, a preamble to the policy may identify a problem that the policy is intended to solve, as stated by Oland, J.A., in *Can-Euro Investments Ltd. v Nova Scotia (Utility and Review Board)*, 2008 NSCA 123:

> [47] Moreover, the statement regarding access upon which Can-Euro relies is not found within Policy H-18 itself, but only in its preamble. A preamble to a policy may provide context for understanding the policy; however, it is the policy itself that guides council. In *Kynock v. Bennett*, 1994 NSCA 114 (CanLII), 1994 CanLII 4008 (NS CA), [1994] N.S.J. No. 238 (Q.L.), 131 N.S.R. (2d) 334 (C.A.), the respondent referred to the preamble to a policy in arguing that the Board failed to consider a factor. This Court stated:
>
> > [43] With respect, the council was required to have regard to those matters set out in Policy P-24 in determining whether or not to approve a quarry operation in a mixed use area. The preamble merely identified what problems have given rise to the need for controls but it is Policy P-24 which spells out the matters that Council is to consider. ...
>
> [48] In my view, in determining whether Council's approval of the Agreement reasonably carries out the intent of the MPS, the Board did not commit any error of law in its approach to the weight, if any, to be given to the preamble to Policy H-18.

[19] Planning appeals in Nova Scotia also recognize that reflexivity exists between a municipal planning strategy and a concurrently adopted land-use by-law. In *J & A Investments Ltd.*, where the meaning of a land-use by-law was in issue, Justice Davison reasoned that s. 219(1) of the *Municipal Government Act* means that a municipal planning strategy may be used to help determine the intent of the land-use by-law. Under s. 219, when a municipal council adopts a municipal planning strategy or makes

amendments to its strategy involving policies regulating land use and development, the municipality must, at the same time, also adopt or amend a land-use by-law to implement those policies.

[20] The language of s. 219(1) of the *Municipal Government Act* is similar, but not identical to, s. 51(1) of the *Planning Act*, RSNS 1989, c 346, which requires council to "concurrently" adopt or amend the land-use by-law. Referring to s. 51(1) of the *Planning Act*, the Court of Appeal, in *Mahone Bay Heritage & Cultural Society v 3012543 Nova Scotia Limited,* 2000 NSCA 93, stated that a review of the land-use by-law may assist in "throwing light on the intent" of the municipal planning strategy and, therefore, used a provision of Mahone Bay's land-use by-law to assist in interpreting its municipal planning strategy:

> [95] A search for the intent of a municipal planning strategy requires a careful review of the strategy represented by the policies of the municipality and, very often, a review of the By-laws implementing the strategy as the by-laws adopted concurrently with the MPS may assist in throwing light on the intent of the strategy.

[21] Thus, according to Nova Scotia's present case law, the Board considers one may use a municipal planning strategy to help determine the intent of the land-use by-law (*J & A Investments*) and use the land-use by-law to help determine the intent of the municipal planning strategy (*Mahone Bay*).

[22] The deference the Board must show to municipal councils as the primary authorities for planning decisions in their territories also impacts the Board's interpretation of municipal planning strategies. The Board has no ability to allow an appeal if Council interpreted and applied the Municipal Planning Strategy in a manner the language of the policies can reasonably bear:

> In reviewing a decision of the municipal council … the Board … cannot interfere with the decision if it is reasonably consistent with the intent of the municipal planning strategy. A plan is the framework within which municipal councils make decisions. The Board is

> reviewing a particular decision; it does not interpret the relevant policies or by-laws in a vacuum. In my opinion the proper approach of the Board to the interpretation of planning policies is to ascertain if the municipal council interpreted and applied the policies in a manner that the language of the policies can reasonably bear…. There may be more than one meaning that a policy is reasonably capable of bearing…. In my opinion the *Planning Act* dictates that a pragmatic approach, rather than a strict literal approach to interpretation, is the correct approach. The Board should not be confined to looking at the words of the Policy in isolation but should consider the scheme of the relevant legislation and policies that impact on the decision…. This approach to interpretation is consistent with the intent of the *Planning Act* to make municipalities primarily responsible for planning; that purpose could be frustrated if the municipalities are not accorded the necessary latitude in planning decisions…. In short, the Board must determine if a municipality's interpretation and application of a planning policies with respect to the development agreement decision in issue was one that the language of the policies would reasonably bear.
>
> [*Heritage Trust of Nova Scotia et al. v Nova Scotia Utility and Review Board et al.*, 1994 NSCA 11, para. 99]

## 2.3 The Planning Context

### 2.3.1 The Municipal Planning Strategy

[23] While the Board must consider and interpret the Municipality's Municipal Planning Strategy in its entirety, the following paragraphs discuss the most relevant policies for the purposes of this appeal.

[24] Section 4 of the Municipal Planning Strategy includes topic-specific policies. Energy related policies are addressed in s. 4.6, and wind turbines in particular, in s. 4.6.2. The preamble to the wind turbine policies notes that the Municipality classifies wind turbines as either "utility-scale" or "domestic scale":

> For the Municipality's land use planning purposes, there are two scales of wind turbine development. The larger turbines are often called 'utility scale' wind turbines, and they are designed to supply power commercially for Nova Scotia Power Inc. (NSPI). These turbines typically reach up to 100 metres (330 feet) in height and are typically developed by companies that have agreements in place with NSPI for the sale of the electricity. Many turbine developments are stand-alone operations where there is only one turbine at a location, while others may be grouped into a larger "wind farm". As of 2022, the Municipality of the County of Antigonish is home to utility scale turbines at Maryvale, Fairmont, and Browns Mountain.
>
> Even a small increase in wind velocity has a great impact on energy produced, so location and design are very important. As of 2022, the largest wind farm in Nova Scotia is South Canoe in Lunenburg County, with a nameplate capacity of 102 megawatts of electricity (the output of one megawatt of wind power is enough electricity to power approximately 350 homes). The Province requires that wind turbines producing 2 megawatts or more undertake an environmental assessment. Federal requirements may also apply.

> Smaller scale turbines, or 'domestic' turbines, are also being installed throughout the province. As the term implies, these turbines generate power primarily for private use by homes, farms and businesses. Many of these turbines are installed "behind the meter" and can substantially reduce or entirely replace power consumption from the grid. In addition, some domestic wind turbines have been constructed in remote areas not serviced by NSPI. Nova Scotia Power's Enhanced Net Metering program also allows domestic turbines, generating 100 kilowatts or less, to be interconnected with the main utility and only draw from the provincial power grid when needed. Surplus energy generated by the turbine gets delivered to the provincial grid and the customer can credit that energy against any future use.
>
> [Exhibit M-6, p. 67]

[25] The wind turbines proposed by Eigg Mountain Wind are utility-scale turbines under the Municipality's policies. The Municipality regulates the placement of utility-scale wind turbines through the establishment of a Wind Resource Overlay on the Zoning Map of the Land Use By-law:

> Policy 4-39: Council shall, notwithstanding uses permitted in each zone of the Land Use By-law, regulate the placement of utility-scale and domestic-scale wind turbines through the establishment of the Wind Resource Overlay on the Zoning Map of the Land Use By-law.
>
> …
>
> Policy 4-41: Council shall, through the Land Use By-law, establish the Wind Resource Overlay to identify locations where utility-scale wind turbines are permitted.
>
> Policy 4-42: Utility-scale wind turbines shall be considered to [be] those with a nameplate capacity of 100 kilowatts or greater, and shall be permitted in all land use zones, but only on lands within the Wind Resource Overlay.
>
> Policy 4-43: Council shall, through the Land Use By-law, establish noise requirements and setbacks for utility-scale wind turbines from residential dwellings, watercourses, and public roads.
>
> …
>
> Policy 4-46: Council shall, through the Land Use By-law, allow consenting landowners to waive setback rules for wind turbines.
>
> …
>
> Policy 4-48: In considering a proposal to amend the boundaries of to the Wind Resource Overlay, it shall be the policy of Council to have regard for the following:
>
> > (a) the adequacy of the area of land being rezoned in relation to the number of turbines being proposed;
> >
> > (b) the potential for electromagnetic interference on radio, telecommunications or radar systems;

> (c) the proposal meets the setback and other requirements in the Land Use By-law; and
>
> (d) the proposal meets the implementation criteria listed in Section 6.2.3.
>
> [Exhibit M-6, pp. 68-69]

[26] The land use policies in the Municipal Planning Strategy are primarily implemented through the Municipality's Land Use By-law and its Subdivision By-law. Section 6.2.3 of the Municipal Planning Strategy contemplates that, from time to time, its Land Use By-law may be amended to accommodate development trends or specific development proposals. This section sets out the policies that will apply to proposed amendments to the Land Use By-law:

> Policy 6-13: Council shall amend the text of the Land Use By-law if the proposed amendment meets the general criteria set out in Policy 6-22.
>
> Policy 6-14: Council shall consider amendments to the maps of the Land Use By-law when the proposed zoning change is not specifically prohibited within this Plan and at least one of the following three conditions is true:
>
> (a) the proposed zone is enabled by this Plan for use within the same designation;
>
> (b) a non-conforming use appears to have been created by an inadvertent administrative oversight in the Municipal Planning Strategy and Land Use By-law preparation process, resulting in a property being zoned inconsistent with stated policies in this Plan; or,
>
> (c) notwithstanding the zones permitted within a designation, the land to be rezoned is not in the Source Water Protection Zone or Conservation Zone, is under 2 hectares in area and is adjacent to a designation that permits the proposed zone. For greater clarity, land that abuts a right-of-way, such as a street, is considered to be adjacent to the designation on the other side of the right-of-way.
>
> Policy 6-15: Council shall not amend the maps of the Land Use By-law if the lot and existing buildings do not meet the requirements of the proposed zone.
>
> Policy 6-16: Council shall not amend the maps of the Land Use By-law unless Council is satisfied that:
>
> (a) the proposal meets the zone intent and any applicable zone placement criteria set out in policies, elsewhere in this Plan, applicable to the proposed zone; and
>
> (b) the proposed zone and the uses it permits meet the general criteria set out in Policy 6-22.
>
> [Exhibit M-6, pp. 81-82]

[27] Policy 6-22 sets out general criteria for Council to consider when amending the Land Use By-law or adopting development agreements:

> Policy 6-22: Council shall not amend the Land Use By-law or enter into a development agreement unless Council is satisfied the proposal:
>
> (a) is consistent with the intent of this Municipal Planning Strategy;
>
> (b) does not conflict with any Municipal or Provincial programs, by-laws, or regulations in effect in the municipality;
>
> (c) in case of development proposals on soils with agricultural potential, complies with Policy 3-18,
>
> (d) is not premature due to:
>
> i. the ability of the Municipality to absorb public costs related to the proposal;
>
> ii. impacts on existing drinking water supplies, both private and public;
>
> iii. the adequacy of central water and sewage services or, where such services are not available, the suitability of the site to accommodate on-site water and sewage services;
>
> iv. the creation of excessive traffic hazards or congestion on road, cycling, and pedestrian networks within, adjacent to, or leading to the proposal;
>
> v. the adequacy of fire protection services and equipment;
>
> vi. the adequacy and proximity of schools and other community facilities;
>
> vii. the creation of a new, or worsening of a known, pollution problem in the area, including, but not limited to, soil erosion and siltation of watercourses;
>
> viii. site-specific climate change risks such as projected sea level rise on the subject site;
>
> ix. the potential to create flooding or serious drainage issues, including within the proposal site and in nearby areas;
>
> x. impacts on known habitat for species at risk, as identified in the Department of Natural Resources Significant Species and Habitats Database, or any successor database; and
>
> xi. the suitability of the site in terms of grades, soil and geological conditions, the location of watercourses and wetlands, and proximity to utility rights-of-way.
>
> [Exhibit M-6, pp. 86-87]

[28] Policy 6-23 gives Council the discretion to require certain other information in considering Policy 6-22(d):

> Policy 6-23: In evaluating Policy 6-22(d), Council may determine that the proposal, due to its scale or nature, does not on the face of it conflict with any or all of the potential concerns identified in the subclauses. Where Council has concern about the potential for conflict with any or all of the Policy 6-22(d) subclauses or compliance with any other policy of this Plan, Council may require any or all of the following information, prepared by an appropriate qualified professional at the applicant's cost, and at a level sufficiently detailed to evaluate whether the criteria for amending the Land Use By-law or entering into a development agreement have been met:
>
> (a) a detailed site plan showing features such as, but not limited to:
>
> i. topography;
>
> ii. location and dimensions of existing and proposed property and/or unit lines;
>
> iii. location of zoning boundaries;
>
> iv. use, location, and dimensions of existing and proposed structures;
>
> v. existing and proposed watercourses and wetlands;
>
> vi. location of minimum coastal elevation;
>
> vii. location and dimensions of existing and proposed road, bicycle, and pedestrian networks;
>
> viii. location and dimensions of driveways, parking lots, and parking spaces;
>
> ix. type and amount of site clearing required, if any;
>
> x. location of buffers;
>
> xi. location and dimensions of existing and proposed parks and recreation lands, whether public or private;
>
> xii. location of utilities;
>
> xiii. development densities;
>
> (b) elevation drawings of existing and proposed structures including, but not limited to, dimensions and exterior materials;
>
> (c) a site grading plan;
>
> (d) a landscaping plan;
>
> (e) a drainage and stormwater management plan;

(f) a hydrological assessment to determine groundwater resource volumes, availability, quality, and sustainability pre- and post-development;

(g) a traffic impact assessment that evaluates the ability of existing road, bicycle, and pedestrian networks to accommodate traffic generated by the proposed development;

(h) a geotechnical study;

(i) environmental studies, including, but not limited to, studies addressing Species at Risk, climate change, and environmental contamination;

(j) a shadow study;

(k) a wind study;

(l) a vibration study; and

(m) a noise study.

[Exhibit M-6, pp. 87-88]

### 2.3.2 The Land Use By-law

[29] As noted previously, the Municipality's Land Use By-law implements the policies in its Municipal Planning Strategy. The requirements for utility-scale wind turbines are included in s. 7.4 of the Municipality's Land Use By-law:

**7.4 Requirements for Utility-scale Wind Turbines**

7.4.1 Utility-scale wind turbines shall only be permitted on lands within the Wind Resource Overlay, as identified on Schedule 'B'.

7.4.2 Utility-scale wind turbines, where permitted, shall be subject to the following requirements:

(a) The 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) The minimum setback for larger turbines or wind farms requiring environmental assessment from all residences, except residences located on the same lot as the wind turbine, shall be 1,000 metres (3280 feet). There is no setback requirement from residences located on the same lot.

(c) The minimum separation distance between turbines shall be equal to the height of the tallest turbine.

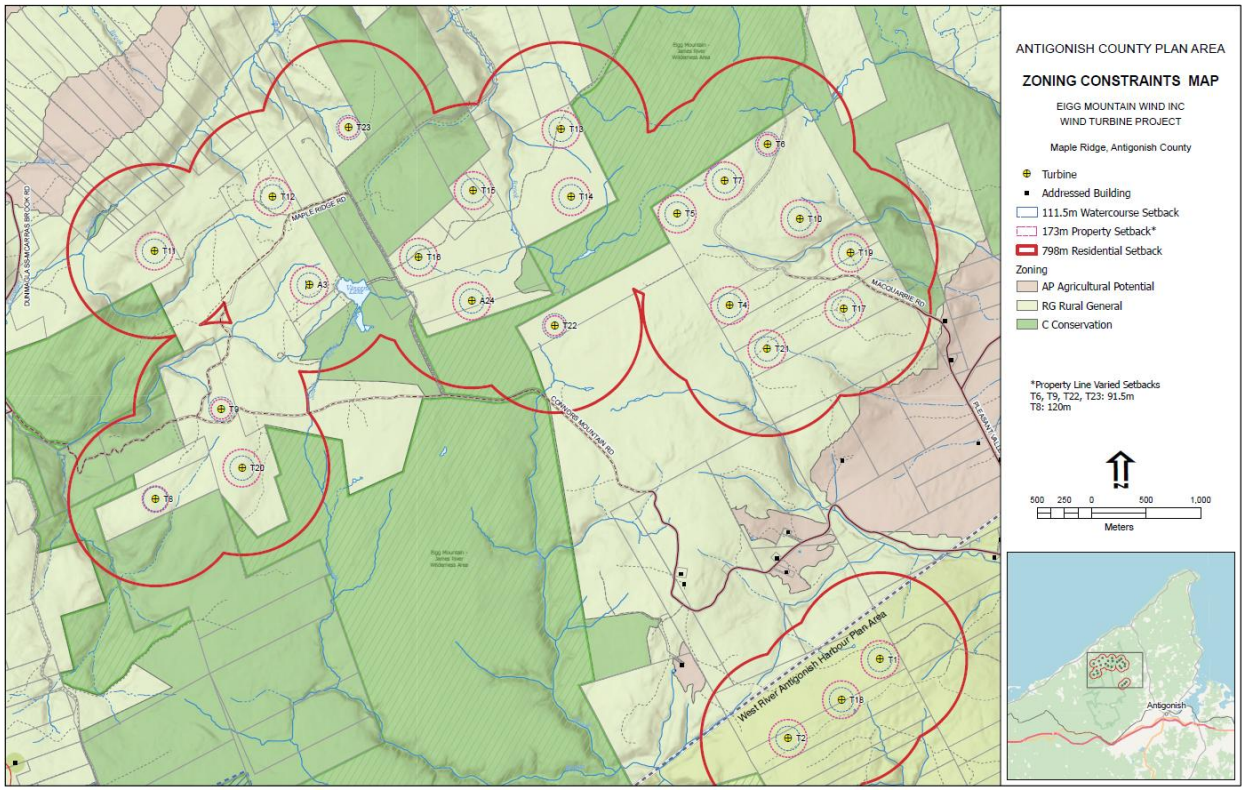
(d) The minimum setback from all property lines shall be 10 metres (32.8 feet) plus one times the height of the rotor.

> (e) There are no setback requirements for new residences constructed subsequent to a utility scale wind turbine development.
>
> (f) The minimum setbacks from public highways shall be 60 metres or two times the height of the turbine, whichever amount is greater.
>
> (g) Minimum setbacks from watercourses shall be 30 metres plus the blade length.
>
> (h) The minimum setback from all coastlines shall be 100 metres.
>
> (i) The mean value of sound pressure level from a wind turbine shall not exceed 40dBA or above the existing background noise, whichever is greater, at the nearest residence.
>
> (j) There shall be no signs, advertisements or objects attached to or added to the turbine(s).
>
> [Exhibit M-5, p. 27]

[30] Despite the existence of the Wind Resource Overlay, the Municipality has not predetermined the permitted locations of utility-scale wind turbines. Wind turbine locations existing when the Municipal Planning Strategy and Land Use By-law were adopted on June 11, 2024, appear to have been accounted for on the Zoning Map and Wind Resource Overlay and new locations may be added through amendments to the Land Use By-law following the policies for doing so in the Municipal Planning Strategy.

### 2.3.3 Municipal Staff Assessment

[31] The Appeal Record includes a report prepared by the Municipality's planning staff to the Antigonish County Planning Advisory Committee that assesses the application against the Municipality's planning requirements and recommends that the committee recommend that Council approve the application. The May 5, 2026, report includes a constraints map showing various setback requirements from each proposed turbine (and alternate) locations:




[Exhibit M-4, p. 39]

[32] This map does not explicitly show the required setback from public highways under s. 7.4.2(f) of the Land Use By-law. In this case, that limit is twice the turbine height, or 399 m. This would put it at half the size of the setback shown for residences.

### 2.4 The Preliminary Motions

[33] The Municipality and Eigg Mountain Wind question the Board's ability to consider this appeal. They assert that Mr. MacKenzie does not have standing, or the right to bring this appeal, under the *Municipal Government Act*. They also argue that the Notice of Appeal does not raise any grounds of appeal that are within the Board's authority to address. In other words, they say the appeal does not raise a proper question about whether Council's decision does not reasonably carry out the intent of the Municipal

Planning Strategy. The Board established a process and timeline for the parties to address these issues on a preliminary basis.

[34] Mr. MacKenzie filed an affidavit to support his position that he has the right to bring this appeal to the Board [Exhibit M-3]. His submissions to the Board about whether the appeal raised any ground the Board can consider also claimed that the evidentiary record for the standing issue is also relevant to whether his ground has “any chance” of demonstrating that Council’s decision fails to reasonably carry out the intent of the Municipal Planning Strategy.

[35] In summary, Mr. MacKenzie’s affidavit sets out that he uses a route through the proposed wind farm to access a woodlot owned by a company he owns. His affidavit describes safety concerns and other difficulties accessing the woodlot by other routes, especially in winter conditions. It also describes other sporting and recreational uses in the area.

[36] Mr. MacKenzie said that he regularly uses the woodlot property for forestry activities, hunting, trapping, and recreational activities involving snowmobiles and all-terrain vehicles. He notes he has a hunting and fishing guide’s license. Mr. MacKenzie said his son joins him in many of these activities. The Board understands from the affidavit that Mr. MacKenzie believes the access route he uses through the proposed wind farm would put him and his son “within the predicted ice-throw of the turbines for this proposed project”.

## 3.0 STANDING

[37] Section 247(1) of the *Municipal Government Act* limits the parties who may appeal a municipal council's decision to approve a land-use by-law amendment:

> **Appeals to the Board**
> **247 (1)** The approval or refusal by a council to amend a land-use by-law may be appealed to the Board by
>
> (a) an aggrieved person;
>
> (b) the applicant;
>
> (c) an adjacent municipality;
>
> (d) a village in which an affected property is situated;
>
> (e) the Director.

[38] Mr. MacKenzie may only bring this appeal if he is an aggrieved person under s. 247(1)(a). The Municipality and Eigg Mountain Wind urge the Board to dismiss this appeal because they say Mr. MacKenzie is not an aggrieved person under the *Act*. The burden of proof is on Mr. MacKenzie to show, on a balance of probabilities, that he is (*Re Taylor*, 2015 NSUARB 82).

[39] The Nova Scotia Utility and Review Board considered who is an "aggrieved person" in *Re Thompson*, 2020 NSUARB 52, which discussed the historical development of standing to appeal municipal planning decisions. The standing provisions in the *Planning Act*, RSNS 1989, c 346, and earlier versions of that statute, preceded the provisions in the *Municipal Government Act*. Under the *Planning Act*, SNS 1969, c 16, s 35, "any interested person" could appeal certain municipal planning decisions. The *Planning Act*, SNS 1983, c 9, did not use this language, but instead provided for a right to appeal by an "aggrieved person" (s.63(1) and s.71(1)).

[40] The change to "aggrieved person" in the 1983 statute suggested the Legislature intended to limit who could appeal municipal planning decisions. Decisions of

the Municipal Board, shortly after the 1983 enactment, interpreted the standing requirement restrictively. A detailed discussion of this is found in an article written by E. Anne Bastedo and A. Wayne MacKay, *Citizen Access to Nova Scotia Planning Appeals: from Interested to Aggrieved Persons* (1987).

[41] In 1987, the Legislature added s. 63(1A) and s. 71(1A) to the *Planning Act,* SNS 1987, c 51. These sections established a definition for “aggrieved person” that is essentially the same as the one that is currently in s. 191(a) of the *Municipal Government Act*. The Nova Scotia Utility and Review Board discussed these changes in *Re Ollive Properties Ltd*., 2012 NSUARB 186:

> [78] Ollive directed the Board to the *Cann* decision which cites a portion of the comments of the Minister of Municipal Affairs when the current definition of aggrieved person was introduced to the Legislature. The Minister describes the mischief to be remedied as being in response to "the general consensus ... that the status of an aggrieved person to appeal has proved to be too restrictive in its interpretation by the Municipal Board" (April 28, [1987] Hansard p. 2104). Consequently with the new definition, while placing reasonable limits to prevent frivolous appeals, the Legislature sought to broaden those who could bring an appeal, including those who believe their property value and/or enjoyment of it will be affected by council's decision. The portion of the Minister's remarks cited in the *Cann* decision read as follows:
>
> > Some of the more significant clauses in the bill, Clauses 12 to 15, are in response to the general consensus that government [has] determined, in the public's mind, that the status of an aggrieved person to appeal has proved to be too restrictive in its interpretation by the Municipal Board.
> >
> > I do, I must admit, support the position that reasonable limits should be placed on those who can appeal the decisions of a municipal council relating to the amendment of land use by-laws or rezonings or the approval of development agreements. The proposed amendment defines aggrieved person in a way which allows persons who believe their property value or the enjoyment of their property or their enjoyment of their place of residence, i.e., people who are renting, if they feel they are going to be affected by a decision of council they will have the right to appeal that decision, if they are not satisfied with it, to the Municipal Board.

[42] Municipal Board decisions following these changes took a more liberal approach to this issue (e.g., *MacIsaac Funeral Home Ltd. v Antigonish (Town)*, 1991 Carswell NS 759).

[43] The Nova Scotia Utility and Review Board also commented, in *Ollive*, that the right to appeal is a "check and balance" within the municipal planning process that plays an important part in achieving the purpose and objects of the legislation. It helps to ensure that a municipality reasonably carries out the intentions of its planning strategy.

[44] The *Municipal Government Act* defines "aggrieved person" in s. 191(a) as:

> (a) "aggrieved person" includes
>
> (i) an individual who bona fide believes the decision of the council will adversely affect the value, or reasonable enjoyment, of the person's property or the reasonable enjoyment of property occupied by the person,
>
> (ii) an incorporated organization, the objects of which include promoting or protecting the quality of life of persons residing in the neighbourhood affected by the council's decision, or features, structures or sites of the community affected by the council's decision, having significant cultural, architectural or recreational value, and
>
> (iii) an incorporated or unincorporated organization in which the majority of members are individuals referred to in subclause (i)

[45] Since Mr. MacKenzie is an individual, only s.191(a)(i) applies.

[46] The adverse effects of a council decision mentioned in s. 191(a)(i) are rooted in the ownership and use of real property. In *Federation of Nova Scotian Heritage v Peninsula Community Council*, 2004 NSUARB 108, the Board held that s. 191(a)(i) referred to "real property and not to intellectual or personal property" (para. 55). The Board reiterated this in *Re Heartland Resources Inc.*, 2005 NSUARB 39 (para. 30). In *Re Brison*, 2006 NSUARB 113, the Nova Scotia Utility and Review Board observed:

> [56] The definition of aggrieved person in the *MGA* only lists two of the potentially protected interests. First, it incorporates the language of the tort of nuisance as noted by Stanley M. Makuch, in *Canadian Municipal and Planning Law*, 2nd ed., Toronto, Ont.: Thomson Carswell, 2004 p. 190. He states nuisance "exists where a person unreasonably interferes with the use and enjoyment of another's land". "Enjoyment" includes the "use" of one's lands as the term "enjoy" in the *Oxford Dictionary*, supra, means: (1) take delight or pleasure in; (2) to the use or benefit of; and (3) experience. Second, it lists a person's interest in the value of his/her property.

[47] The Nova Scotia Utility and Review Board has also recognized that the word "includes" in the definition of "aggrieved person" signals that s. 191(a) is not an exhaustive

list of the categories of aggrieved persons. As a result, the Board also considers whether an appellant is an aggrieved person based on the common law, which takes into account a range of interests not limited to the ownership and use of property or the establishment of legal rights.

[48] In many cases, the Nova Scotia Utility and Review Board referred to the Supreme Court of Canada decision in *British Columbia Development Cooperation v Friedmann (Ombudsman)*, 1984 CanLII 121 (SCC), [1984] 2 SCR 447 (e.g., *Re Taylor*, 2015 NSUARB 82, *Re Lunenburg Heritage Society*, 2010 NSUARB 224 and *Re Johanson*, 2010 NSUARB 123). In *Friedmann*, Justice Dickson said, on behalf of the court, "a party is aggrieved or may be aggrieved when he genuinely suffers, or is seriously threatened with, any form of harm prejudicial to his interest, whether or not a legal right is called into question" (p. 469).

[49] Justice Thomas A. Cromwell, in his book, *Locus Standi: A Commentary on the Law of Standing in Canada* (Toronto: Carswell, 1986), discussed the term "person aggrieved" in the context of standing in judicial review proceedings for prerogative relief in the nature of certiorari. He observed that deciding who is a person aggrieved is a contextual assessment of the relationship between the griever and the impugned decision:

> A "person aggrieved" has been said to be one who suffers some "peculiar grievance of their own beyond some grievance suffered by them in common with the rest of the public." The similarity of this formulation to the standing rule in public nuisance is obvious, but it has been interpreted less strictly in certiorari cases. For example, there has been no debate about whether injury different in kind as opposed to different in degree has been necessary. The tendency instead has been to give the test a fairly broad reading. It has been held to be sufficient if the applicant has "a real interest", a "substantial interest" or a "more special and more intense interest" than that of the general public. It has been held to be sufficient if the challenged act causes the applicant "hardship and inconvenience" or if the "use and value" of the applicant's lands are adversely affected. "Person aggrieved" includes any person "whose interests may be prejudicially affected."

> The various attempts to elaborate upon the term “person aggrieved” or to catalogue the types of interests or interferences therewith that qualify the applicant as “aggrieved” do not help to reconcile the cases…. The cases are not decided upon verbal formulae or lists of protected interests, but on the basis of the Court’s perception of the relationship between the applicant and the challenged decision, the nature of the statutory scheme out of which the decision issued, and the merits of the complaint. In addition to these factors, the courts are recognizing that who is a person aggrieved is a matter of degree rather than a test, the application of which results in clear-cut answers.
>
> [Cromwell, *Locus Standi*, pp. 106-107, citations omitted]

[50] An appellant’s belief that a council decision will adversely affect their interests must be *bona fide*. This is an explicit requirement for affected interests under s. 191(a)(i) and applies to the Board’s consideration of affected interests under the common law as well (*Re Brison*, para. 59).

[51] A *bona fide* belief has both subjective and objective elements:

> [T]he inclusion of the words “bona fide” in front of the word “belief” suggests that there must be some reasonable basis for the belief held by the person claiming to be adversely affected. In other words, there must be an objective aspect to the determination of whether the belief is bona fide in addition to the subjective aspect noted by the sincerity with which the belief is held. Otherwise, the belief, no matter how misguided, if sincerely held, would qualify a person as an aggrieved person. The Board does not consider the Legislature could have intended such a consequence.
>
> [*Re Ruffman*, [1995] NSURBD No. 15, pp. 5-6]

[52] The Nova Scotia Utility and Review Board discussed the nature of the objective assessment of an appellant’s belief that a planning decision would affect them in *Ollive*. That case involved an appeal from a decision to approve a development agreement for a 27-storey mixed-use building. The owner of an adjoining property, that was itself the subject of a development agreement for a proposed seven-storey mixed use building, brought the appeal.

[53] The developer of the appealed project and the municipality argued that to objectively demonstrate that they had a *bona fide* belief, the appellant had to prove, on a balance of probabilities, that the development would adversely affect the reasonable enjoyment or value of the appellant’s property. The Nova Scotia Utility and Review Board

disagreed and found that the objective element of an appellant's *bona fide* belief would be satisfied if the belief was objectively related to the proposed development. The Nova Scotia Utility and Review Board noted that as planning appeals deal with future developments, proof of actual adverse effects was not possible.

[54] Furthermore, the Nova Scotia Utility and Review Board said requiring appellants to show that there would be adverse effects would not only eliminate frivolous appeals, but legitimate appeals as well:

> [108] The Board concurs with Ollive that as planning appeals deal with potential future harms, not existing ones; requiring proof of actual adverse effect places the bar too high, is excessive and unworkable. Legitimate and valid claims could not come forward. This would, in turn, diminish the only mechanism to ensure council reasonably carries out the intent of the [municipal planning strategy].

[55] The Nova Scotia Utility and Review Board also said that requiring an appellant to supply objective evidence for each belief to prove that there will be an adverse effect had other undesirable consequences. First, it would change the focus of the test from whether an appellant's belief was reasonable to whether the planning decision would affect the appellant. Second, it would encourage preliminary hearings to become mini trials including evidence and cross-examination, and sometimes including experts. This, in turn, would extend the appeal process beyond the efficient process and timeline set out in the legislation. Additionally, some of this evidence would not be relevant to the consideration of the appeal on its merits, so it could unnecessarily increase costs as well.

[56] In general, the Nova Scotia Utility and Review Board considered it should assess an appellant's belief in a prompt and inexpensive manner based mainly on the information in the appeal record in the proceeding. The Nova Scotia Utility and Review

Board also discussed the facts it should examine to determine whether an appellant was an aggrieved person:

> [120] I find the basic facts to be examined in determining the aggrieved person status are the development, including the type of structure (a dam, waste disposal site, residential, commercial, etc.), its physical characteristics (dimensions, features, etc.), and how it will be used (by whom, numbers, frequency, etc.). It also includes a review of the area affected by the development and the use of the properties within that affected area.
>
> [121] A large dam may affect property owners many kilometers in either direction. At the other extreme is the area affected by a small single family bungalow.
>
> [122] The use of the lands within the affected area can vary from the effects on nearby world class natural canoe course, Monaco Investments Partnership, 2012 NSUARB 155, to rarely used vacant woodlands.
>
> [123] Within the affected area the above elements determine the beliefs objectively related to the development. Misguided beliefs, in addition to the building height affecting telephone reception, can be wind from a bungalow affecting an owners' enjoyment of a vacant woodlot.

[57] The Nova Scotia Utility and Review Board specifically noted it should not review the evidence for the purpose of concluding that there will be adverse effects:

> [131] As one example, Can-Euro and the Municipality asked the Board to consider Can-Euro's expert traffic report to find that the Can-Euro development will not adversely affect the traffic for Ollive's future occupants and, therefore, Ollive cannot be an aggrieved person.
>
> [132] The Board concurs with Ollive that in determining aggrieved person status, the Board should not review the evidence to conclude whether there will, in fact, be an adverse effect on Ollive's property created by the Can-Euro development.
>
> [133] The Board finds that level of analysis should not be done for a number of reasons. Firstly, as outlined above, it is not the test for the standard of an aggrieved person. The Board is not required to find that the development will adversely affect the Appellant. The standard is a bona fide belief.
>
> [134] Secondly, a determination of traffic effects should be done at the hearing of the appeal on its merits when all the evidence, including all expert reports, are available and before the Board. Thirdly, these issues should not be concluded summarily with only the Applicant's expert evidence.

[58] In this case, the Board concurs with the reasoning in *Ollive* about the nature of the objective aspect of an appellant's belief that a planning decision will adversely affect them. As in other legal contexts, the objective assessment of an appellant's belief considers the reasonableness of that belief. In some contexts, the question that is posed

is what a reasonable person would think or do in the shoes of the person whose belief or action is being considered.

[59] As with other reasonableness tests, the evidence that an appellant in a planning appeal must present to satisfy the objective aspect of the *bona fide* belief requirement will vary with the circumstances. In some cases, the nature of an appellant's concerns will be so connected to the impugned decisions that the reasonableness of their belief that they will be adversely affected will be self-evident. In other cases, a more searching review may be required to assess the reasonableness of the belief held by the appellant, mindful that the nature of the inquiry is focused on whether it is reasonable for the appellant to hold the belief that they do, not whether they will actually be adversely affected.

[60] In the present case, Mr. MacKenzie refers to the Board's decision in *Re Timothy Peck et al.*, 2025 NSRAB 7, to note that proximity to the proposed development site is a relevant factor to consider, but it is not determinative. He notes that his interest in this proceeding does not depend on proximity alone, but on a "direct, personal and recurring" interest in the lands proposed to be used for the wind project, including a safety risk associated with the continued use of a route that he uses to access a woodlot his company owns. Mr. MacKenzie submits this "particular link" or "intrinsic relationship" is sufficient to find standing even absent fee ownership of neighbouring land, citing *Re Northern Construction Enterprises Inc.*, 2012 NSUARB 149, and *Ollive*.

[61] Mr. MacKenzie submits his concern over personal safety is genuinely held, engaging the subjective element of the *bona fide* requirement. Objectively, he submits his affidavit demonstrates that traversing the lands proposed to be used for the wind farm is

his only practical means of accessing the woodlot his company owns, particularly in winter when he says alternative routes are unsafe. He says he will regularly be within the range of the predicted ice-throw radius of turbines while doing so. Additionally, Mr. MacKenzie says that his use of the lands is “frequent, specific and functional”, distinguishing his interest from the “passive or aesthetic interest of a distant community member”.

[62] In its submissions, the Municipality said that Mr. MacKenzie lived more than four kilometres from the nearest proposed wind turbine and that his woodlot was more than one kilometer from the nearest wind turbine. The Board was unable to locate this information in the Appeal Record [Exhibit M-4], but notes that, in his affidavit, Mr. MacKenzie provided his home address and the property identification numbers for the four parcels making up his woodlot. The distances referenced by the Municipality may be derived from this information.

[63] The Municipality also submitted that Mr. MacKenzie has not asserted any legal rights over the proposed wind farm lands he claims to traverse and has not identified the route he takes to his woodlot or where this route passes through the proposed wind farm lands. The Municipality also noted the existence of alternate routes and said Mr. MacKenzie did not explain why these unmaintained roads or trails were safer than the alternate routes he said he preferred to avoid in winter conditions.

[64] The Municipality argued that Mr. MacKenzie’s affidavit failed to disclose enough evidence to satisfy the test for standing. It asserted that, given the distance between Mr. MacKenzie’s properties is significant and the fact that his affidavit does not identify the location of the specific trails or K-class roads he used to travel between his properties, it was “practically impossible” to assess whether his use of the lands is

sufficiently proximate to the location of the wind turbines. It argued there was no evidentiary basis for the Board to determine whether Mr. MacKenzie's route takes him through any relevant setback or potential ice-throw area associated with the proposed wind turbines. It submits his interest in the proposed wind farm site is no different in kind from the use that may be made by any member of the general public.

[65] Eigg Mountain Wind argues that Mr. MacKenzie has not met the burden upon him to demonstrate that he has standing to bring this appeal. First, Eigg Mountain Wind submits that Mr. MacKenzie has not identified any real property interest of his own that Council's decision could affect. Second, it asserts that Mr. MacKenzie's interest is generalized and shared with recreational users of the same trail network, rather than distinct from the community in the manner required. Third, Eigg Mountain Wind submits the asserted interest is not connected to the ground of appeal Mr. MacKenzie has pleaded.

[66] Eigg Mountain Wind submits that Mr. MacKenzie needs to demonstrate that Council's decision adversely affects the value or reasonable enjoyment of property he personally owns or occupies. Eigg Mountain Wind notes that Mr. MacKenzie has no proprietary interest in the trails and K-class roads he uses to pass through the lands proposed to be used for the wind farm and submits he has no unique and personal interest at risk from Council's decision. Eigg Mountain Wind argues that Mr. MacKenzie's use of these trails is not connected to the use or enjoyment any property he owns, but is instead an independent interest in publicly accessible land that passes through the property of others.

[67] Like the Municipality, Eigg Mountain Wind is also critical of the evidentiary support provided by Mr. MacKenzie to demonstrate standing:

> 20. There is no evidence on this record from which the Board could infer that the EJS Fishing Ltd. woodlot lies proximate to any rezoned parcel, or within the predicted ice-throw radius of any turbine. MacKenzie affirms he “uses ‘an access’ through the proposed wind farm”. The premise of MacKenzie's Affidavit and Brief, that he and his son "will be regularly within the predicted ice-throw of the turbines," is not supported by anything in the Appeal Record itself. It is an assertion for which no scientific or expert evidence, map, coordinate, or other record evidence exists.
>
> …
>
> 23. MacKenzie's affidavit contains no comparable evidence of physical adjacency or interconnection between any EJS Fishing Ltd. PID, the rezoned parcels and the Project turbines; it establishes only that a (and not the only) travel route to the woodlot happens to cross the general Project site.
>
> [Eigg Mountain Wind Submissions, August 24, 2026]

[68] Eigg Mountain Wind asserts that Mr. MacKenzie’s claims in the present case are distinguishable from the circumstances presenting in the cases he relies upon. It submits Mr. MacKenzie’s situation is most closely tied to the proposed intervenor in *Northern Construction*, where the Nova Scotia Utility and Review Board determined that the concerns to be raised were not within its jurisdiction to address.

### 3.1 Findings

[69] An “aggrieved person” is someone who is adversely affected by the decision sought to be appealed to the Board. As noted earlier, the adverse effects contemplated in s. 191(a)(i) are rooted in the ownership and use of real property. However, given the use of the word “includes” in s. 191(a), the Board may also consider whether an intended appellant could be an aggrieved person under common law principles that are not limited to the ownership and use of property or the establishment of legal rights. In either case, the intended appellant’s belief that they will be adversely affected by the decision must

be *bona fide* (subjectively and objectively) and the grievance suffered by them must be beyond some grievance suffered by them in common with the rest of the public.

[70] In his affidavit, Mr. MacKenzie notes that he resides in Arisaig and his company owns a woodlot (comprised of four legal parcels) on Dunmaglass Road. He states, and the Board fully accepts, that he uses his woodlot for forestry, hunting, trapping and recreational activities regularly and frequently throughout the year, less often in the summer and more often in the fall and winter. The preferred route he uses is "an access through the proposed wind farm". He considers this necessary, as set out in paragraph 6 of his affidavit:

> 6. Access through the proposed wind farm is necessary because we primarily travel to the property by ATV or snowmobile, particularly during snowy or icy conditions. Nova Scotia regulations generally do not permit ATVs or snowmobiles to be operated on paved roads, and the last part of the route from the pavement to our property is also unmaintained and often extremely icy. Consequently, particularly in the winter months we access our woodlot by use of trails that pass directly through the proposed project. While there is an alternative ATV route that at certain times we might be able to use to avoid the project area, the topography is unsafe during winter conditions.
>
> [Exhibit M-3, p. 2]

[71] This paragraph, tied to Mr. MacKenzie's concerns about ice-throw from the turbines, suggests that Council's decision will adversely affect his ability to safely travel between his home and his company's woodlot during winter conditions. This is the crux of the standing issue before the Board. If the potential for adverse impacts to a route that it is necessary for Mr. MacKenzie to take to use and enjoy his company's woodlot was fully accepted, this could support Mr. MacKenzie's standing to bring this proceeding. It would be an adverse effect tied to his use of property that he controls that would be distinct from any use of the area by the general public. But there are challenges with how much weight this evidence can be given because it is lacking in detail.

[72] As noted by the Municipality and Eigg Mountain Wind, this evidence does not clearly situate either Mr. MacKenzie's residence or his woodlot to any of the proposed wind turbines. While the affidavit does not explicitly address this, the Municipality may have inferred a degree of proximity, or perhaps a lack thereof, from information about the properties in the affidavit. The information provided by the Municipality suggests these properties are some distance from the nearest turbine. The evidence does not demonstrate that these properties will be impacted in any way by the proposed wind farm. Rather the claimed impact appears limited to being "within the predicted ice-throw of the turbines for the proposed project" while using access trails or roads through the proposed wind farm.

[73] There is little in the affidavit to support the claim that it is necessary for Mr. MacKenzie to traverse the proposed wind farm lands to travel between his properties beyond his claim that this is so. It is not possible to objectively assess the need for Mr. MacKenzie to take such a route from either the information in his affidavit or in the Appeal Record.

[74] From paragraph 6 of Mr. MacKenzie's affidavit, it appears that the woodlot can be accessed other than by using an ATV or snowmobile (presumably via Dunmaglass Road although no detail is provided about this). It is not clear from the affidavit whether Mr. MacKenzie primarily travels to the woodlot by ATV or snowmobile during snowy or icy conditions because it is not possible to use Dunmaglass Road or because he simply prefers to use an ATV or snowmobile. If the choice is driven by a preference, as opposed to necessity, the claimed adverse impact becomes more comparable to that of general

recreational ATV or snowmobile users in the area as opposed to a more unique need to traverse the wind farm lands in order to use and enjoy the woodlot.

[75] Assuming Mr. MacKenzie can only access the woodlot "during snowy or icy conditions" using an ATV or snowmobile, the affidavit provided by Mr. MacKenzie does not specifically identify the route he says he needs to use or where it goes through the proposed wind farm lands. Given that his properties appear to be located kilometers away from each other and some distance from the nearest proposed turbine, Mr. MacKenzie's need to travel through the proposed wind farm lands, and why there is only one possible alternative, which he considers unsafe in winter conditions, warrants more compelling justification. Additionally, the information in the Appeal Record notes that the proposed turbines will be located on private lands, none of which are owned by Mr. MacKenzie or his company. Mr. MacKenzie's right to use the trails or roads he uses is unclear.

[76] As can be seen from the scales provided on the maps reproduced earlier in this decision, the overall footprint of the proposed wind turbine development runs about five or six kilometers east to west and a two or three kilometers north to south (excluding a pocket of three proposed wind turbines in the southeast corner of each map that are further away from the others). The affidavit provided by Mr. MacKenzie does not indicate how close the route he says he takes through the wind farm lands comes to any of the proposed wind turbines. Since the adverse impact he has identified (ice-throw) is based on proximity to a turbine, this missing information again makes it impossible to objectively assess if his claim that he will be within the "predicted ice-throw of the turbines" is *bona fide*.

[77] Without evidence demonstrating that an access route essential to Mr. MacKenzie's ability to access, use, and enjoy the woodlot could be adversely affected, the remainder of his affidavit fails to identify any harm that is distinct from that which may be experienced by the public generally. Indeed, paragraphs 7 and 8 are focused on describing a broader and consistent public recreational use of the area by Mr. MacKenzie and his son, and "hunters, trappers, winter campers, hikers, cyclists and other outdoor enthusiasts".

[78] The Board finds that Mr. MacKenzie has not met the burden upon him to demonstrate, on a balance of probabilities, that his connection with the decision he seeks to appeal is close enough to consider him to be an "aggrieved person" under 247(1) of the *Municipal Government Act*. The affidavit he filed to support his claim for standing provides limited information about the adverse impact the decision may have on him and his ability to access the woodlot, when the circumstances beg for more details.

## 4.0 GROUND OF APPEAL

[79] Since the Board has determined that Mr. MacKenzie failed to meet the burden imposed on him to demonstrate that he has sufficient standing to bring this appeal, it is not necessary to consider the Municipality's and Eigg Mountain Wind's assertions that Mr. MacKenzie has not alleged a ground of appeal that is in the Board's jurisdiction to address. However, in case of an appeal from the Board's decision on standing, and since the parties extensively addressed the issue, the Board has also rendered a decision on this issue as well.

[80] The Municipality and Eigg Mountain Wind have asked the Board to strike this appeal because, in their view, Mr. MacKenzie's Notice of Appeal does not include any ground within the Board's authority to address. The Board considered principles relating to applications to strike notices of appeal in planning matters in *Re Dow*, 2008 NSUARB 48, and after an extensive analysis, concluded:

> [251] With respect to an application to quash all or some of the grounds of appeal, the party bringing the application has the burden of proof. It is a summary proceeding. The Board is not testing the evidence or considering the merits of the case. Rather the Board must assume that the appellant can prove the grounds plead. The Board is to give the notice of appeal a liberal and broad interpretation so as to ensure that a legitimate appeal is not quashed.
>
> [252] The Board finds that modifying the Court's principles to planning appeals for quashing a notice of appeal, the question the Board must ask is: Assuming the ground is proven, is it absolutely unsustainable or clear beyond any doubt that it cannot show that Council's decision does not reasonably carry out the intent of the MPS? If there is any chance that the ground could demonstrate that Council's decision does not reasonably carry out the intent of the MPS, then the ground should not be struck.
>
> [253] If it is absolutely unsustainable or clear beyond any doubt that it could not show that Council's decision does not reasonably carry out the intent of the MPS, then the ground should be quashed. If there is doubt, the notice should not be quashed.
>
> [254] Even at this stage in the proceedings the Appellants should be permitted to amend their Notice of Appeal to correct a defect in form, subject to any prejudice to the parties that cannot be addressed by other remedies.

[81] In *Elderkin v M.I.R. I Developments Inc.*, 2004 NSUARB 65, the Nova Scotia Utility and Review Board recognized that a notice of appeal in a planning matter is different from a statement of claim in a judicial proceeding. It would not be appropriate to impose the same test as a court might when considering an application to strike a statement of claim.

[82] In municipal planning appeals to the Board, appellants are often self-represented and frequently appear without the assistance of lawyers or planners. In *Re Thompson*, 2020 NSUARB 52, the Nova Scotia Utility and Review Board noted:

> [87] The Board does not consider that the purpose of a notice of appeal is to evaluate an appellant's ability to meticulously examine and show every aspect of a municipal

> planning strategy that may have a bearing on their concerns. These are not always easy documents to work with, especially for those not used to them. The notice of appeal should, however, articulate concerns that can form grounds of appeal that have a basis in the municipal planning strategy. They should be clear enough that the respondent understands the issues to be addressed in the appeal.

[83] In his Notice of Appeal, Mr. MacKenzie alleged:

> Council has only identified a safety setback for maintained public roads. I am seeking a setback for public access areas associated with outdoor recreation, hunting, and trapping activities, including established recreational trails, public or Crown land, parks, protected areas, and K-class roads that are not maintained by either the municipality or the province.
>
> [Exhibit M-1, p. 1]

[84] To frame this in the context of the permitted grounds of appeal under the *Municipal Government Act* and this application to strike the appeal, the Board must accept as fact that Council failed to establish setbacks from any public access areas associated with outdoor recreation, hunting and trapping activities, including established recreational trails, public or Crown land, parks, protected areas, and K-class roads that are not maintained by either the Municipality or the Province. The Board must assess whether there is a legitimate question that, to reasonably carry out the intent of the Municipal Planning Strategy, Council was required to establish such setbacks.

[85] The Municipality submits that Council considered the relevant setback requirements. It said Policy 4-43 in the Municipal Planning Strategy requires Council to establish noise requirements and setbacks for utility-scale wind turbines from residential dwellings, watercourses and public roads and this is implemented in s. 7.4.2 of the Land Use By-law.

[86] The Municipality argued that Mr. MacKenzie's appeal is premised on the suggestion that Council was required to establish broader setback requirements than those established under the Municipal Planning Strategy and Land Use By-law. It submitted this is a challenge to the policy choices reflected in the Land Use By-law and

not a planning appeal within the Board's limited jurisdiction under ss. 250(1)(a) and 251(2) of the *Municipal Government Act*.

[87] Similarly, Eigg Mountain Wind asserted that the setbacks required in Policy 4-43 are a "closed list" and that recreational or access area setbacks were never required. It argued that Mr. MacKenzie's Notice of Appeal did not point to any policy in the Municipal Planning Strategy that Council failed to reasonably carry out, rather the alleged failure is to apply a standard the Municipal Planning Strategy never adopted.

[88] Mr. MacKenzie argued the positions taken by the Municipality and Eigg Mountain Wind are inappropriately narrow. He submitted that, in considering whether the decision of Council reasonably carried out the intent of the Municipal Planning Strategy, the Board must interpret that intent purposively, considering the Municipal Planning Strategy in its entirety and consistent with the statutory purpose of such planning documents. He emphasized that the statutory and planning framework places significant weight on public safety and the protection of existing residents. In particular, he noted that the statute is intended to develop and maintain safe communities, that the Municipal Planning Strategy seeks to prevent development in areas that may pose hazards to humans, and that s. 4.6.2 of the Municipal Planning Strategy permits the development of wind turbines only where doing so does not "jeopardiz[e] the rights of ... residents to fully enjoy their property and way of life".

[89] As further justification for a broader scope than suggested by the Municipality and Eigg Mountain Wind, Mr. MacKenzie noted the Municipal Planning Strategy supported public trails and active transportation as legitimate land use interests. He noted Policy 4-18, which states:

> Policy 4-18: Council shall, through the Land Use By-law, permit trails as a land use in all zones.
>
> [Exhibit M-6, p. 55]

[90] Mr. MacKenzie submitted he was not asking Council to establish a new policy. He said his ground of appeal:

> … is anchored in the MPS's foundational statement of purpose in Section 1 (Introduction and Context), the MPS's own express statement of intent for wind turbine development (s. 4.6.2), informed by the statutory safety purpose in s. 2(c)(iii) of the MGA, the open-ended language of Policy 4-48(c), and the general criteria of Policies 6-22 and 6-23 which Section 6.2.3 confirms are incorporated into Policy 4-48(d) as mandatory conditions of Council's approval … [and do] not ask the Board to write new policy into the MPS; … [but] to determine, on a full record, whether Council's decision reasonably carried out the intent already expressed in all of these many provisions.
>
> [Appellant's Submissions, August 24, 2026, p. 10]

[91] Citing interpretive principles discussed by the Nova Scotia Court of Appeal in *Archibald v Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, *Heritage Trust of Nova Scotia v Nova Scotia (Utility and Review Board) (NSCA)*, [1994] NSJ No. 50, and *Heritage Trust of Nova Scotia v AMK Barrett Investments Inc.*, 2021 NSCA 42, Mr. MacKenzie said:

> These authorities confirm that the moving parties' approach, isolating the enumerated setback table in LUB s. 7.4.2 and treating it as the sole measure of the MPS's "intent" for this Project, is not the approach the Court of Appeal has directed the Board to take. The intent of s. 4.6.2, informed by s. 2(c)(iii) of the MGA and read together with the balance of the Plan, is squarely engaged by MacKenzie's ground.
>
> [Appellant's Submissions, August 24, 2026, p. 5]

[92] Mr. MacKenzie argued that the Municipality and Eigg Mountain Wind incorrectly limit the intent of the Municipal Planning Strategy to what they consider to be a closed list of setbacks in s. 7.4.2 of the Land Use By-law. He submitted such an approach gives no meaning to Council's obligation to consider other requirements in the Land Use By-law in Policy 4-48(c) and the criteria in Policy 6-22 for amending the Land

Use By-law. In this regard, Mr. MacKenzie said Council had to consider whether the proposal created excessive traffic hazards under Policy 6-22(d)(iv).

[93] Mr. MacKenzie also submitted that the meaning of “public roads” in Policy 4-43 was a live issue. The policy requires Council to establish setbacks for utility-scale wind turbines from “public roads”. However, s. 7.4.2(f) of the Land Use By-law sets out a setback for “public highways”.

[94] While highways are referenced in the Municipal Planning Strategy, the Board was unable to locate a reference to “public highways” in the document. Section 4.2 of the Municipal Planning Strategy, which discusses transportation related policies, describes “public roads” in s. 4.2.1:

> **4.2.1 Public Roads**
>
> Public roads are roads owned by a municipal, provincial, or federal government. They provide the primary transportation links between communities in the municipality, and often also serve as the roads within neighbourhoods.
>
> Since 1995, any new public road created through the process of subdivision becomes the responsibility of the Municipality. This creates a need for the Municipality to maintain these roads and to replace them when they reach end-of-life. Council, therefore, intends to be thoughtful about the development of new public roads and ensuring that development enabled by such roads is of a sufficient scale to provide for financially-sustainable maintenance of the roads.
>
> [Exhibit M-6, p. 54]

[95] In the context of the discussion to which this excerpt relates, “public roads” are roads that are publicly maintained. Indeed, the Municipality expresses the need to be thoughtful about the creation of new public roads through its subdivision process, due to its obligation to maintain them. This is in contrast to the discussion about “private roads” that follows in s. 4.2.2 of the Municipal Planning Strategy, in which the Municipality expresses concerns about the safe use and maintenance of these roads.

[96] Part 30 of the Land Use By-law defines various terms used in the by-law. There is no definition for “public highway”, but “public road” is defined:

> **Public Road** means a public street or road as defined in the Subdivision By-law of the Municipality of the County of Antigonish.
>
> [Exhibit M-5, p. 106]

[97] The definition of “public street” in the Subdivision By-law states:

> 36. “Public street” includes any street or road owned and maintained by the Municipality or the province; and
>
> (a) “Municipal public street” means any street or road owned and maintained by the Municipality; and
>
> (b) “provincial public street” means any street or road owned and maintained by the Department of Transportation excluding designated controlled access highways pursuant to Section 20 of the Public Highways Act R.S., c. 371, s. 1.
>
> [Exhibit M-10, p. 8]

[98] The Municipality submits that its planning documents use a variety of terms to refer to public throughfares but do not provide consistent definitions for them. The Municipality describes this as a mere “drafting oversight” and submits that these terms can be used interchangeably as they relate to wind development in its planning documents. As such, it submits that the setback requirement set out in Policy 4-43 and implemented in s. 7.4.2(f) is directed at roads, highways or streets that are owned or maintained by the Municipality or the Province.

[99] Eigg Mountain Wind also submits that these terms are interchangeable when read reflexively. This recognizes the objective of implementing the policies in the Municipal Planning Strategy through the Land Use By-law, which is generally adopted at the same time.

[100] Mr. MacKenzie's submissions raise the possibility that unmaintained "K-class roads" are within the meaning of "public road". He said this issue is not free from doubt and, as such, it would be inappropriate to decide it on a summary motion.

### 4.1 Findings

[101] As noted in *Dow*, *Elderkin* and *Thompson* the Board should give a liberal and broad interpretation to a notice of appeal and should not approach it as if it were a statement of claim in a civil proceeding. Imprecision can be excused, but the grounds should be clear enough that the issues to be addressed are understood. The Notice of Appeal filed in this proceeding does not explicitly reference any specific policy in the Municipal Planning Strategy but alleges that Council should establish a setback "for public access areas associated with outdoor recreation, hunting, and trapping activities, including established recreational trails, public or Crown land, parks, protected areas, and K-class roads that are not maintained by either the municipality or the province". The Board accepts that the Notice of Appeal was filed by Mr. MacKenzie without the benefit of counsel.

[102] While dealing with this preliminary issue, three policies were identified by Mr. MacKenzie that the Board finds to be reasonably connected to the ground as plead: Policies 4-43, 4-48(c) and 6-22(d)(iv). As discussed in more detail below, the Board finds the arguments relating to Policies 4-43 and 4-48(c) are not sustainable, but Policy 6-22(d)(iv), at least as it relates to trails and roads, is not absolutely unsustainable, and could have been pursued had Mr. MacKenzie demonstrated that he had sufficient standing to proceed with this appeal.

[103] While *Dow* and other cases caution the Board should not test the evidence or consider the merits of an appeal in an application to strike, in order to consider whether

the alleged ground of appeal raises a question about whether Council's decision does not reasonably carry out the intent of the Municipal Planning Strategy, the Board must give some consideration to what the Municipal Planning Strategy requires, necessarily involving some interpretation of the strategy.

[104] Mr. MacKenzie's references to general statements in the *Municipal Government Act* and the Municipal Planning Strategy relating to the development and maintenance of safe communities, the prevention of hazards to humans and the enjoyment of property and way of life provide important context for interpreting the Municipal Planning Strategy. But they are not freestanding obligations on Council and, as discussed earlier in this decision, in making planning decisions Council must apply and follow its specific policies. Similarly, those policies are the focus of the Board's review in an appeal, even though the interpretation of the policies might be informed by purposive and general statements in the *Municipal Government Act* and in the preamble to the policies.

[105] In adopting its Municipal Planning Strategy, Council recognized the importance of wind energy and benefits related to the construction and use of such infrastructure. But is also said that "… it is important that this source of energy be developed without jeopardizing the rights of their residents to fully enjoy their property and way of life". It went on to say:

> … Council intends to provide for the development of wind turbines and to regulate them in such a way that other uses, especially residential development, will not be adversely affected. Council is aware that there will be no perfect solution acceptable to all residents and the developers of wind energy, but will strive to arrive at a reasonable balance in their approach to control future wind turbine development.
>
> [Exhibit M-6, p. 68]

[106] Upon making these statements, Council adopted Policy 4-43 directing the establishment of noise requirements and setbacks for utility-scale wind turbines from residential dwellings, watercourses and public roads. At the same time, it implemented this policy by prescribing explicit setbacks in s. 7.4.2 of its Land Use By-law.

[107] In this appeal, Mr. MacKenzie is asking the Board to require Council to implement other setbacks after it had already turned its (collective) mind to setting what it believed to be a reasonable balance in controlling wind turbine development in the municipality. The Board's predecessor considered a similar issue in *Re Armco Capital Inc.*, 2021 NSUARB 147. In that case, the Nova Scotia Utility and Review Board allowed an appeal after the municipality refused to allow a rezoning based on land use conflicts after it had already addressed how those conflicts would be mitigated in its municipal planning strategy and land-use by-law, as discussed in the following excerpt:

> [49] In terms of the compatibility of Light Industry Zone uses with adjacent residential properties, Policy IM-11 directed the Community Council to have appropriate regard to several matters, including that controls are placed on the proposed development to reduce conflict with any adjacent or nearby land uses. For the proposed rezoning of the Subject Properties, the I-1 (Light Industrial) Zone in the Land-use By-law (Part 18) supplies such controls.
>
> [50] Policy IND-3 expressly addresses the compatibility of industrial uses with adjacent residential uses and directs Council to establish a light industrial zone with the requirements found in Policy IMD-1 for increased separation and buffering from adjacent residential land uses.
>
> [51] Armco's closing submissions also highlighted Policy IND-7, which requires minimum separation distances for industrial development that abuts other zones:
>
> > IND-7 It shall be the intention of Council that, where the general or light industry zone abuts any other zone, except an industrial zone, no development within the general or light industry zone shall be less than fifty (50) feet from the abutting zone, and no bulk fuel storage tank within the general industry zone shall be less than one hundred (100) feet from the abutting zone.
>
> [52] The Land-use By-law for the I-1 (Light Industry) Zone provides for minimum lot area, coverage, frontage, and front, rear and side yard distances. Additionally, s. 18.4 and 18.5 supply specific rules when there is an abutting residential use:
>
> > 18.4 <u>OTHER REQUIREMENTS: INDUSTRIAL USES</u>

> Notwithstanding the provisions of Section 18.2, where industrial or commercial uses permitted within any I-l Zone abut a residential use, the following shall apply:
>
> (a) No building or structure shall be located within fifty (50) feet (15.2 m) of the rear or the side lot line which abuts the residential use.
>
> (b) An effective visual screen consisting of either a landscaped buffer or fence shall be provided along the rear or side lot line which abuts the residential use. The said landscaped buffer shall be a minimum of twenty-five (25) feet (7.6 m) and shall consist of either existing or replanted vegetation or a combination thereof, so long as it provides an effective visual screen.
>
> (c) Where the side or rear lot line of an I-l zoned use is separated from a residential use by a street or highway, the I-l Zone shall be deemed to be abutting the residential use.
>
> …
>
> [Exhibit A-3, p. 209]

[53] Mr. Markides reviewed the requirements for the Light Industry Zone and concluded they are consistent with Policy IND-3. Mr. Markides' report states:

> Policy IND-3 provides guidance to Council to establish the I-1 (Light Industrial) zone in the Land Use Bylaw and that the zone's application is to support expanded industrial uses specifically adjacent to residential uses within the industrial designation.
>
> My review of the I-1 zone requirements identified specific building siting and buffering requirements for industrial uses adjacent to residential uses. These requirements are consistent with policy IND-3.
>
> Council's concern that the I-1 zone is incompatible with the surrounding R-1 zone is contrary to the stated policy direction. The policy context clearly identifies the I-1 zone as the land use tool to address compatibility between Industrial uses and Residential uses.
>
> [Exhibit A-6, p. 5]

[54] The Board also observes that the separation distances from abutting residential uses in s. 18.4 and 18.5 meet or exceed the required distance in Policy IND-7.

[55] Mr. Markides' opinions are consistent with statements made in the report prepared by HRM's planning staff. That report acknowledged that the Industrial Designation supports industrial development and provides for the transition of pre-existing residential uses in the designation to light industrial uses:

> Although the designation is intended to support industrial development, it is also meant to establish an appropriate transition to mitigate the conflict between general industrial development and the existing residential community. For this reason, the extension of general industrial zoning is not permitted outside of the designation. However, the MPS acknowledges that existing residential zoning is located within the industrial designation and references the potential transition of residential use to light industrial. The MPS establishes a light industry zone which allows light industrial

> uses through rezoning but limits future expansion beyond the boundaries of the Industrial designation.
>
> [Exhibit A-2, p. 75]

[56] HRM planning staff also said the Light Industry Zone requirements were designed to reduce conflict with adjacent residential development:

> Furthermore, the LUB includes zoning requirements specifically intended to reduce potential land-use conflicts for any new industrial lands created pursuant to these MPS policies. These provisions include increased setbacks and screening from residential use. Additionally, consideration is given to the protection of watercourses and wetlands within the MPS and LUB. The Environmental Conservation Zone was applied to appropriate areas, and watercourse setbacks are established in the LUB for all other watercourses/wetlands.
>
> Under these circumstances, staff advise the proposed rezoning is reasonably consistent with the intent of the industrial designation. Any use permitted in the zone would be required to meet the LUB provisions as a condition of permit issuance. Therefore, staff recommend that the Harbour East Marine Drive Community Council approve the proposed LUB amendment.
>
> [Exhibit A-2, p. 77]

[57] In its closing submissions in this appeal, Armco described the Light Industry Zone this way: “Simply put, the I-1 zone serves as a transition zone between industrial and residential uses.” The Board agrees that this is the intent of the Municipal Planning Strategy, and also accepts Mr. Markides’ opinion that the Light Industrial Zone was identified in the Municipal Planning Strategy as the land use tool to address compatibility between industrial and residential uses.

[58] To the extent that Policy IM-11 directs the Community Council to consider that controls are placed on the proposed development to reduce conflict with any adjacent or nearby land uses, it may be argued the Community Council is vested with the discretion to consider whether the controls are adequate. To some extent that may be true. However, in the circumstances of this case, the intention of the Municipal Planning Strategy constrains the scope for discretion, as discussed by the Court of Appeal in *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27:

> When planning perspectives in the MPS intersect, the elected and democratically accountable Council may be expected to make a value judgment. Accordingly, barring an error of fact or principle, the Board should defer to the Council's compromises of conflicting intentions in the MPS and to the Council’s choices on question begging terms such as "appropriate" development or "undue" impact. By this, I do not suggest that the Board should apply a different standard of review for such matters. The Board’s statutory mandate remains to determine whether the Council’s decision reasonably carries out the intent of the MPS. But the intent of the MPS may be that the Council, and nobody else, choose between conflicting policies that appear in the MPS. <u>This deference to Council’s difficult choices between conflicting policies is not a license for Council to make ad hoc decisions unguided by principle. As Justice Cromwell said, the “purpose of the MPS is not to confer authority on Council but to provide policy guidance on how Council’s authority should</u>

> be exercised" (Lewis v. North West Community Council of HRM, 2001 NSCA 98, ¶ 19). So, if the MPS' intent is ascertainable, there is no deep shade for Council to illuminate, and the Board is unconstrained in determining whether the Council's decision reasonably bears that intent. [Emphasis in original]
>
> [*Archibald*, para. 24]

> [59] Having established Light Industry Zone requirements to mitigate conflicts with adjacent residential uses, if there was a principled basis for the Community Council to conclude that these requirements in the Land-use By-law were ill-suited to the purpose for which they were intended, it is not apparent to the Board. No explanation was provided by the Community Council in the reasons it gave Armco. There is also nothing in the appeal record suggesting the existing Land-use By-law was inadequate (indeed the HRM planning report states "…the Land-use By-law includes zoning requirements specifically intended to reduce potential land-use conflicts for any new industrial lands created pursuant to these MPS policies."). And lastly, nothing was offered by HRM on this point in evidence or submissions in this appeal.
>
> [60] The Board finds that, in concluding the proposed rezoning of the Subject Properties would be incompatible with adjacent residential uses, the Community Council ignored the policy intention in the Municipal Planning Strategy to prioritize industrial development in this area and the land-use controls in the Light Industry Zone that HRM was directed under the Municipal Planning Strategy to establish to reduce conflicts with any adjacent residential uses. It was not open to the Community Council to simply disregard the priority for industrial development within the Industrial Designation because it was "out of date" and "does not reflect the current community need for housing as opposed to industrial uses which are already prevalent in the area."
>
> [61] That is not to say that HRM Council does not have the ability to decide that a community's needs have changed. That is certainly within its purview, and it is a decision that is best left to Council. However, if the Community Council feels the policies in its Municipal Planning Strategy are no longer appropriate, its recourse is for HRM to amend them, following the processes set out in the HRM Charter. Until that happens, the Community Council must make decisions that reasonably carry out the intent of the existing Municipal Planning Strategy. Disregarding the policies does not reasonably carry out the intent of the Municipal Planning Strategy and the Board finds the Community Council's decision, as it relates to compatibility issues, does not reasonably carry out the intent of the Municipal Planning Strategy.

[108] In this case, there is nothing in Policy 4-43 that requires Council to establish setbacks other than from "residential dwellings, watercourses, and public roads". Moreover, any suggestion that the reference to "public roads" in Policy 4-43 includes privately owned road or publicly owned but unmaintained roads is not sustainable as a ground of appeal. It is inconsistent with the description of "public roads" in s. 4.2.1 of the Municipal Planning Strategy and the definition of "public road" in the Land Use By-law (which adopts the definition of "public street" in the Subdivision By-law).

[109] Any suggestion that the reference to “public highways” in s. 7.4.2(f) of the Land Use By-law includes privately owned roads or publicly owned but unmaintained roads is similarly unsustainable. While the shift from “public roads” to “public highways” might be said to raise the possibility of a different intended meaning, several considerations foreclose that interpretation: the absence of any definition of “public highways”; the direct implementation of Policy 4-43 of the Municipal Planning Strategy through s. 7.4.2 of the Land Use By-law; the need to read those instruments as complementary parts of a coherent planning framework; and the Board's obligation to defer to Council's reasonable interpretation of its own planning documents. Accordingly, this argument has no prospect of success on appeal.

[110] Mr. MacKenzie’s reliance on Council’s obligation in Policy 4-48(c) to consider “other requirements” in the Land Use By-law also discloses no sustainable ground of appeal. While the Board accepts that this policy requires Council to ensure that any proposal to amend the boundaries of the Wind Resource Overlay meets any requirements in the Land Use By-law, there is nothing in the alleged ground of appeal or in Mr. MacKenzie’s submissions in this matter that specifically identify any requirement in the Land Use By-law the proposal did not meet.

[111] There is some rationale to Mr. MacKenzie’s argument that Council might have been required, under Policy 6-22(d)(iv), to address “excessive traffic hazards … on road, cycling and pedestrian networks within, adjacent to, or leading to the proposal” through the establishment of a setback. The Board understands that Mr. MacKenzie’s concern about hazards is focused on the risk posed by ice-throw from turbines.

[112] The Board notes that the Appeal Record identifies potential mitigation measures for ice-related risks. These include the use of vibration sensors to detect conditions such as ice accumulation and automatically shut down the turbine and anti-icing systems that use sensors and forecasts to detect potential icing and heat the turbine blades in advance of those conditions [Exhibit M-4, p. 276].

[113] As required, for an application challenging the grounds of appeal, the Board assumes that ice-throw could pose an excessive hazard to traffic on road, cycling and pedestrian networks within a certain distance of a turbine. Likewise, the Board also assumes that the use of the trails and K-class roads as described in the Notice of Appeal falls within the road, cycling and pedestrian networks noted in Policy 6-22(d)(iv) (although that is not certain). In these circumstances, a claim that Council failed to reasonably carry out the intent of the Municipal Planning Strategy by failing to establish a setback for those trails and K-class roads to address “excessive traffic hazards … on road, cycling, and pedestrian networks” in the face of Policy 6-22(d)(iv) cannot be said to be absolutely unsustainable.

## 5.0 CONCLUSION

[114] The Board finds that Mr. MacKenzie has not met the burden to show, on a balance of probabilities, that he has standing to bring this appeal, therefore, this appeal is dismissed. Had the Board concluded that Mr. MacKenzie had standing to continue with this appeal, the ground set out in Mr. MacKenzie’s Notice of Appeal is not absolutely unsustainable but the appeal would have been limited to whether Council failed to follow

Policy 6-22(d)(iv), and if so, whether the resulting decision failed to reasonably carry out the intent of the Municipal Planning Strategy.

[115] An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 22nd day of October 2026.

Stephen T. McGrath