

Ecology Action Centre

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EAC Wants Sustainable Buildings to be Mandatory

On March 24th HRMbyDesign's plan for downtown Halifax was presented to the Committee of the Whole. The Ecology Action Centre (EAC) is concerned that despite HRM's contribution to Nova Scotia's total CO2 emissions, there is no demand for the reduction of greenhouse gas levels within the Downtown Plan. The EAC is advocating that sustainable building practices be made mandatory in the Plan—at present they are not. Alec Brown, Co-Chair of the Ecology Action Centre's Built Environment Committee states, "HRMbyDesign promises a rush of development, but before we open the door to this, we first ought to establish the kind of development we want to see". Without the addition of mandatory sustainable building practices, the EAC cannot support the Plan.

The first principle identified by participants in the initial HRMbyDesign workshop is that development must be sustainable. The EAC agrees. However, the EAC feels that in order to address this first principle, mandatory building requirements must be included in the Plan.

HRM has stated it cannot act until the Province makes changes to the Building Code. The EAC disagrees that HRM does not have the authority to take action. Under Section 197 of the Halifax Regional Municipality Charter, Council has the power to make by-laws concerning "the health, well being, safety and protection of persons". Jen Powley, TRAX Coordinator states that "environmental health certainly falls within this provision". Recognizing that sustainability is fundamental to the ongoing health of the community, the EAC calls on HRM to adopt a by-law requiring that all new or newly renovated buildings in the municipality adhere to a certain level of energy efficiency, water conservation and sustainable building practices.

The Plan should require that *all* new construction and renovation projects meet a standard such as LEED Silver with a provision that energy points have been awarded for building design, construction and operations. LEED (Leadership in Energy and Environmental Design) is an internationally recognized set of criteria for environmentally sustainable construction and energy efficiency. HRM would not be setting a precedent with such a provision. The city of Vancouver's Eco-Density Guidelines require a standard of LEED Gold or BuiltGreen BC Gold. While HRM is willing to wait for the Province to act, the EAC wants action now.

The EAC feels that the Plan does not ensure sustainability but instead depends on developers to implement it based on the lure of additional height. The Plan allows all developments to reach a height of 70 per cent of the maximum without regard for the building's conservation attempts. Developers can only build the additional 30 per cent if they provide certain public amenities that may or may not include green building standards.

The EAC contends that sustainability should not be optional. Ecological sustainability **must** be a requirement for *all* development across the municipality, whether a building is two storeys or ten. The EAC recognizes that the Downtown Development Plan is relevant only to a specific area, but feels that it sets a precedent for the municipality as a whole. Powley states that, "if HRM desires to be sustainable, they need to start demanding it, not merely hoping that developers will opt for it".

The EAC would like HRM to stand up to the Province and necessitate that *all* new construction downtown meet responsible standards of sustainability.

For an interview, please contact Alec Brown at (902) 482-4061 or Jen Powley at (902) 429-0924.

Background

HRM has stated it cannot act to mandate sustainability in building practices until the Province makes changes to the Building Code. Mandating building sustainability can happen in one of two ways:

1. The province can change the building code so that sustainability is a part of constructing all new buildings, or
2. HRM can require all buildings across the municipality be sustainable. This move could lead to a Charter challenge in the Supreme Court. This has occurred when the town of Hudson, Quebec outlawed the use of cosmetic pesticides, resulting in the case of *Canada Spraytech v. The Town of Hudson*. The supreme court of Canada ruled in favor of the town.

The position of the Urban Design Task Force (UDTF)

In response to the concerns over the sustainability of HRMbyDesign, Dale Godsoe, Chair of the Urban Design Task Force, wrote on February 10, 2009:

The UDTF and HRMByDesign project staff understand and agree that more sustainability measures should be included in the Downtown Plan, and as a result this issue is and will continue to be pursued with the provincial government. However at the present time, the Plan cannot require mandatory sustainable building design under the HRM Charter or Provincial Building Code as it currently stands.

Example of municipality that mandates sustainable building

Vancouver, British Columbia requires that all buildings wanting rezoning adhere to strict sustainability criteria. In clause A1 of Vancouver's EcoDensity charter, it states:

That it be Council Policy that all re-zonings for buildings that meet the minimum requirements to participate in the LEEDTM for New Construction (NC) program, be required to establish designs that would achieve a minimum equivalent of LEEDTM Silver, with a minimum of 3 optimize energy performance points, 1 water efficiency point and 1 storm water point. Buildings that are not eligible to participate in LEEDTM NC due to form of development shall achieve BuiltGreen BC GoldTM with a score of Energuide 80, or an equivalent achievement in green design.¹

In order for the EAC to support HRMbyDesign's plan for the downtown, sustainability criteria for new buildings must be mandated such as they are in Vancouver. Vancouver is given the power to make bylaws for the health of its citizens similar to the way in which HRM could. Vancouver City Charter states in section 306:

- (1) The Council may make by-laws
 - (a) for regulating the construction of buildings
 - (i) where the safety of persons or property is concerned;
 - (ii) where the health of occupants or others is concerned;

¹ City of Vancouver. 2008. *Part A. 1. Ecodensity Initial Actions*. Pg 2. Retrieved from <http://www.vancouver-ecodensity.ca/webupload/File/actions-FINAL.pdf> on February 17, 2009.

- (iii) where the protection of persons or property against fire is concerned;
- (iv) where the provision of access to a building, or to part of a building, for a person with disabilities is concerned;
- (v) where the conservation of energy or water is concerned;
- (vi) where the reduction of greenhouse gas emissions is concerned;²

The province of Nova Scotia gave HRM similar powers in HRM's Charter. In section 197-198 of Bill 179 it states:

- 197 (1)** The Council may make by-laws, for municipal purposes, respecting
- (a) the health, well being, safety and protection of persons;
 - (b) the safety and protection of property;
 - (c) persons, activities and things in, on or near a public place or place that is open to the public.³

The Bill continues to state:

- (2)** Without restricting the generality of subsection (1) but subject to Part VIII, the Council may, in any by-law
- (a) regulate or prohibit;
 - (b) regulate any development, activity, industry, business, animal or thing in different ways, divide each of them into classes and deal with each class in different ways.⁴

Under section 197 of the Halifax Regional Municipality Charter, Council has the power to make by-laws concerning "the health, well being, safety and protection of persons."⁵ Environmental sustainability should fall under this.

Example of municipality that has challenged jurisdictional issues

The case of 1 14957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town), 2001 SCC 40 (CanLII)⁶ demonstrates that municipalities can, and do put the health of the environment and their citizens

² Province of British Columbia (2009). Part 9: Buildings. Vancouver Charter. Retrieved from http://www.bclaws.ca/Recon/document/freeside/--%20v%20--/vancouver%20charter%20%20sbc%201953%20%20c.%2055/00_act/vanch_10.xml#section306 on 23Feb.

³ Province of Nova Scotia. 2008. Bill 179. *Halifax Municipality Charter*. Retrieved from http://www.gov.ns.ca/legislature/legc/bills/60th_2nd/3rd_read/b179.htm on Jan. 15, 2009.

⁴ Province of Nova Scotia. 2008. Bill 179. *Halifax Municipality Charter*. Retrieved from http://www.gov.ns.ca/legislature/legc/bills/60th_2nd/3rd_read/b179.htm on Jan. 15, 2009.

⁵ Province of Nova Scotia. 2008. Bill 179. *Halifax Municipality Charter*. Retrieved from http://www.gov.ns.ca/legislature/legc/bills/60th_2nd/3rd_read/b179.htm on Jan. 15, 2009.

⁶ 114957 Canada (Spraytech) v. Town of Hudson, (2001) 19 M.P.L.R. (2d) 1 (S.C.C.). Retrieved from

before jurisdictional issues.⁷ In this case, the Town of Hudson fought for the right to limit the use of pesticides within the community. The Town successfully defended its right to govern for the well being of its populous.

<http://www.canlii.org/eliisa/highlight.do?text=Hudson+pesticide+&language=en&searchTitle=Search+all+CanLII+Databases&path=/en/ca/scc/doc/2001/2001scc40/2001scc40.html> on February 28, 2009.

⁷ 114957 Canada (Spraytech) v. Town of Hudson, (2001) 19 M.P.L.R. (2d) 1 (S.C.C.)