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Policy for Infilling Bodies of water

POLICY DIRECTIVE

Division:	Water Resources Management	P.D.	W.R. 91-1	
Prepared By:	Martin Goebel, P.Eng.	Issue Date:	April 1, 1991	
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Approved By:	Ken Dominie	ADM	Review Date:	
Authorized By:	Paul L. Dean	DM	Superseded:	
	Oliver Langdon	Minister	Cancelled:	

Subject:

Infilling Bodies of Water.

1.0 OBJECTIVE

To adopt a consistent approach to development proposals involving infilling bodies of water in order to protect the water resource, the adjacent lands and the development itself.

2.0 LEGISLATION

Water Resources Act, SNL 2002 cW-4.01, ("the *Act*") sections 30, 48 and 64

3.0 INTRODUCTION

A recent trend has been observed by the Water Resources Management Division for various developers and proponents to request environmental approval for infilling bodies of water. The purpose of most of such requests is to make new land for property development for a variety of uses. Granting of approvals without reasonable justification gives a mistaken impression that this department is not consistently and adequately protecting the water resources of this province as required under the *Act*.

Proponents can be classified into several categories:

- private individuals
- municipalities or community councils
- voluntary or service organizations

- commercial developers

Infilling projects affect the natural environment in terms of the ecology, hydrology, hydraulics and aesthetics of flood plains, ponds and lakes as well as coastal marine areas. Such infilling often does not give due recognition to the value of the water resource involved nor does it recognize common hazards such as flooding and erosion.

The proximity of water to such developments is creating an additional future liability for the province. Should there be flooding or erosion of the filled area, will the province be obliged to undertake emergency rescue or protection of occupants and property? Would the province be obliged to provide compensation for damage. If flood protection measures are implemented in the future, will the province be forced to expropriate the owners in order to gain access to the body of water?

Current literature on the topic of climate change indicates that global warming may cause increases in sea levels. In a report by Environment Canada entitled "*Socio-Economic Assessment of the Physical and Ecological Impacts of Climate Change on the Marine Environment of the Atlantic Region of Canada - Phase 1*" the impact on coastal infrastructure based on a one metre rise in mean sea level over the next 50 years is projected to cost in the billions of dollars. Losses include urban waterfront land, buildings with a life expectancy of 50-75 years, breakwaters, bridges and causeways, roads and railways. It can be safely assumed that areas presently prone to flooding will be prone to more severe and more frequent flooding in the future.

4.0 POLICY

4.1 The highwater level is taken to be the 1:100 year return period water level. For freshwater this level includes water levels caused strictly by storm runoff or hydraulic effects of ice or both. In marine situations the level must include maximum tides, waves, wind setup, storm surge and ultimate mean sea levels under current global climatic forecasts for a 1:100 year design.

4.2 Any proposed infilling within fifteen (15) metres of a body of water measured horizontally inland perpendicular to the shoreline at the highwater level of that body of water as defined in the *Act* will be subject to Section 48 of the *Act*.

4.3 Any request for approval involving infilling within a minimum of fifteen (15) metres of the highwater level of a body of water may only be permitted in exceptional circumstances where no other reasonable alternative exists. The onus will be upon the proponent to show that land more suitable for the intended purposes cannot be obtained in or near the community or area.

4.4 Infilling required in connection with marine related development such as fishing facilities, wharves, fish plants, boathouses, marinas and such developments, which of necessity must be located on riparian or coastal lands, may be permitted subject to Section 48 of the *Act*.

4.5 Infilling to permit municipal or public sector projects which are essential to the public good such as infilling to permit the placement of roads, bridges, hydro lines, sewer and water facilities or similar undertakings, may be permitted subject to Section 48 provided that no other reasonable alternatives are available and that the land will remain public property.

4.6 Infilling to permit industrial expansion as for instance in mining, oil development, power development or any other beneficial undertaking may be permitted subject to Section 48 of the *Act* provided that the project has been registered and released from all further requirements under the *Environmental Assessment Act* and that the registration and any

subsequent Environmental Preview Reports or Impact Statement clearly discussed all infilling requirements.

4.7 Infilling of very small ponds or freshets that do not appear on 1:50,000 scale Newfoundland topographic maps and where the land is better utilized for agricultural or other purposes may be permitted subject to Section 48 of the *Act*.

4.8 Infilling to permit improvements to the environment may be permitted subject to Section 48 provided that the land and facilities will remain public property. Examples of such projects may include community recreation areas, playgrounds, nature areas, public beaches, breakwaters, and other similar land uses.

4.9 Any land created by approved infilling must not be vulnerable to flooding and related effects such as erosion. Furthermore, permitted infilling may in no way impact on or increase any risk of flooding or alter the drainage of any adjacent property.

4.10 Applicants for Crown Lands will be advised that their application will not be considered for approval unless the proposed use(s) will meet the requirements of this policy directive.

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