

Summary Assessment of Provincial Legislative Framework NOVA SCOTIA¹

Overall, the strength of Nova Scotia’s legislative framework for protecting farmland is moderate to weak, with some critical gaps. The strongest aspect of the framework is its stability, but this aspect is undermined by weaknesses in other areas, especially integration of public priorities across jurisdictions. A profile of the provincial legislative framework is provided at the end.

Strength of Provincial Legislative Framework: Summary Assessment

	Maximise stability	Integrate across jurisdictions	Minimise uncertainty	Accommodate flexibility
Nova Scotia	***	**	**	**

* = Very weak; ***** = Very strong

Maximise stability

The most important legislative document is the *Municipal Government Act* (MGA). The MGA covers all legislation relevant to municipalities, including the adoption of Municipal Planning Strategies. The MGA also includes a schedule of Provincial Interest Statements (SPIs) dealing with the following areas: preserving high quality farmland, preventing development on known floodplains, protecting municipal drinking water supply areas, providing for affordable housing, and making the best use of existing infrastructure. The SPIs “serve as guiding principles to help Provincial Government departments, municipalities and individuals in making decisions regarding land use” (MGA, 1998, p. 282). No SPI is intended to take precedence over any other.

The goal of the SPI for farmland is “To protect agricultural land for the development of a viable and sustainable agriculture and food industry.” The statement applies to all active agricultural land and land with agricultural potential. However, an undated report by the Department of Agriculture states that the SPI does not formally require land preservation but rather measures to protect land for a viable and sustainable food industry. If this is not possible then a municipal government must justify why such measures cannot be incorporated into their plans. However, the SPI does not make municipal governments consider existing land already under development or do an analysis of future needs.

The SPI represents a requirement for ‘best efforts’ on the part of municipal governments. Three provisions in the SPI for agriculture provide direction to land use planning:

1. Planning documents must identify agricultural lands within the planning area.
2. Planning documents must address the protection of agricultural land.
3. Existing land-use patterns, economic conditions and the location and size of agricultural holdings means not all areas can be protected for food production, e.g., when agricultural land is located within an urban area. In these cases, planning documents

¹ From: Cameron, Greg, and David. J. Connell (2016). “Agricultural Land Use Planning in Canada: Case Study of the Municipal County of Antigonish, Nova Scotia.” Truro, NS: Dalhousie University.

must address the reasons why agriculture lands cannot be protected for agricultural use (MGA).

The first two provisions above contribute to stability by clearly stating what planning documents “must” do for agricultural lands. As will be discussed further below, the third provision is related to other similar statements that serve to undermine the stability of the SPI.

A major limitation of the MGA is that the SPIs apply only to municipalities that have adopted a development plan. Another shortcoming of the land use planning in Nova Scotia is that while all municipalities have municipal plans, some, particularly rural municipalities, have plans that apply only to single issues (i.e., not agriculture) or do not apply to the entire municipality. This means that the SPI to protect agriculture cannot be applied to all areas of the province.

In sum, the framework contributes to stability because the importance of protecting agricultural land is clearly stated and the SPI is enforceable. However, this contribution to stability is constrained by some ambiguity, limitations of provisions, and minimal requirements set by the framework.

Integrate public priorities across jurisdictions

A few statements in the MGA integrate land use planning between the province and local governments. Section 190(a) states that the purpose of planning and development is to enable the province to identify and protect its interests in the use and development of land. Section 190(b) enables municipalities “to assume the primary authority for planning within their respective jurisdictions, consistent with their urban or rural character, through the adoption of municipal planning strategies and land-use by-laws consistent with interests and regulations of the Province” (MGA, p. 112). Furthermore, for agricultural land use planning to protect farmland, as noted above, the SPI also has provisions that require planning documents to address agricultural lands.

While the integration across jurisdictions appears to be sound, the mechanisms to balance governance between two levels of government weaken the framework. The primary statement that links the SPIs and local planning is the following, “Development undertaken by the Province and municipalities should be reasonably consistent with the statements” (MGA, 2008, p. 282). The term “reasonably consistent” weakens the required level of integration. The original intent of keeping the language imprecise in relation to farmland protection in the SPI was to incrementally bring municipalities on board to the idea of planning for farmland protection. What happened instead was that most rural municipalities now avoid planning for farmland altogether, perhaps due to the restraints the planning framework puts on the disposal of farmland for non-agricultural uses.

The authority of the province to ensure consistency with the SPI for the protection of farmland comes from section 198 of the MGA, which states that planning documents must be “reasonably consistent” with the SPIs. Under the MGA (s208), planning documents are subject to review by the Provincial Director of Planning and go to the Minister if a planning document affects, or is against, an SPI. If council does not comply, or development is inconsistent with the SPI, the Minister may establish an interim planning area to regulate, prohibit, or block an action to protect the SPI (MGA). In other words, there are consequences if municipalities do not adopt planning documents that are consistent with the SPIs, but such outcomes are rare.

In the past, under certain circumstances, the Province took the view that refusing to approve a plan because of non-compliance with an SPI was not in the best interest of the municipality; actually having an MPS was considered the most important thing. In those cases a municipality was notified that compliance was expected in a reasonable length of time. Currently, planning across rural municipalities in relation to farmland in Nova Scotia is a patchwork of different planning systems. The levels of protection for farmland include no zoning, permissive zoning, and comprehensive planning. For

comprehensive planning, a rural municipality must address all of the SPIs in the MGA and agricultural land is identified and given specific zoning with the intention to protect it. Only Kings County has comprehensive planning in place that protects agricultural land (West Hants and East Hants counties have district level exclusive zoning for agricultural land).

Minimise uncertainty

A weak aspect of the provincial legislation to protect farmland is that several important elements contribute to uncertainty. The general view is that the province would take an incremental approach to planning with the hope that the extent and quality of planning would improve over time. With this in mind, the legislation was designed to be less prescriptive regarding the SPIs.

The SPI states that planning documents “must address” the protection of agricultural land and “give priority” to agricultural related land uses, including curbing minimum lot sizes and setting out separation distances between agricultural and non-agricultural land use. This would seem to increase stability in relation to farmland protection. However, among the provisions of the SPI, a lack of comprehensiveness leads to uncertainty in municipal legislation and practice in relation to the protection of farmland. Provisos around “striking a balance” with non-agricultural land uses, and requiring planning documents to address why agricultural land cannot be protected against urban development, introduces uncertainty in relation to the protection of farmland. The wording around requesting that planning documents “where possible” direct non-agricultural development to “lands with the lowest agricultural value” suggests potentially lax provincial oversight in relation to the preserving of agricultural land for future generations. The SPI appears to allow municipalities to opt out if they do not have farmland as defined in the SPI or have valid planning reasons for not providing protection.

Another element that introduces uncertainty is juxtaposing active versus inactive agricultural land. According to the definition of ‘agricultural land’ in the introductory to the SPI section, “agricultural land means active farmland and land with agricultural potential as defined by the Canada Land Inventory as Class 2, 3 and Class 4 land in active agricultural areas, specialty crop lands and dykelands suitable for commercial agricultural operations as identified by the Department of Agriculture and Marketing” (MGA, p 289). What is not clear, and that may reduce stability, is whether Class 2 land, or lower, that is not being farmed in non-active agricultural areas, can be used for non-farm activities. Recent reports (e.g., Williams et al., 2010) recommend that the SPI for farmland protection be either amended or expanded in order to more clearly delineate the parameters for the identification, protection and preservation of farmland; minimum steps should also be put in place that municipalities must follow to protect agricultural land.

Accommodate flexibility

Accommodating flexibility is an important feature of the provincial legislative framework, as reflected in the following statements from the MGA regarding the SPIs. “As the statements are general in nature, they provide guidance rather than rigid standards. They reflect the diversity found in the Province and do not take into account all local situations. They must be applied with common sense. Thoughtful, innovative and creative application is encouraged” (MGA, 1998, p. 282). Furthermore, s212 of the MGA states that a municipality may adopt an MPS for all or part of a municipality and there may be separate strategies for different parts of the municipality. These provisions serve to accommodate flexibility. However, this open-ended approach to land use planning, without further direction or conditions, is weak, and at risk of introducing more uncertainty than warranted. In addition, given weak elements in other parts of the framework, the potential downside is that attempts to accommodate flexibility increase uncertainty rather than strengthen the framework.

Summary Assessment of Provincial Legislative Framework: Nova Scotia

Legislative framework for Nova Scotia

	POLICY	LEGISLATION	GOVERNANCE
PROVINCIAL	<p>A Review of Initiatives to Preserve Agricultural Land (2008)</p> <p>Homegrown Success (2010)</p> <p>Preservation of Agricultural Land in NS (2010) [Williams Report]</p> <p>Protecting and Preserving Agricultural Land in NS: A Policy Framework [no year; recent]</p> <p>Response to Protecting and Preserving Agricultural Land in NS (2014)</p>	<p><i>Municipal Government Act (includes Statement of Provincial Interest Regarding Agricultural Land, Schedule B (MGA))</i></p> <p><i>Farm Practices Act</i></p>	<p>Provincial Director of Planning</p> <p>Utilities Review Board</p>
REQUIRED INTEGRATION	<p><i>MGA C.18, s.193:</i> “The Governor in Council, on the recommendation of the Minister, may adopt or amend a statement of provincial interest necessary to protect the provincial interest in the use and development of land.</p> <p><i>MGA 196</i> Provincial activities reasonably consistent The activities of the Province shall be reasonably consistent with a statement of provincial interest.</p> <p><i>MGA [Statement of Provincial Interest Regarding Agricultural Land, Schedule B]:</i> To protect agricultural land for the development of a viable and sustainable agriculture and food industry [...] 1. Planning documents must identify agricultural lands within the planning area [...] 2. Planning documents must address the protection of agricultural land.</p>		
LOCAL		<p><i>Municipal Planning Strategy</i></p> <p>Zoning Bylaw</p>	<p>Area/Planning Advisory Committees</p>

Acts (provincial laws), bylaws (local government laws, e.g., official municipal plan) [italicised]

Enforceable policy, regulations pursuant to acts [bold]

Aspirational policy at all levels [plain text]