

Rapid Assessment of Local Legislative Framework for Protecting Farmland Town of Cornwall, Prince Edward Island

SUMMARY

Overall, the strength of the local legislative framework to protect farmland for the Town of Cornwall, Prince Edward Island, is **somewhat weak**. In general, this weakness stems from the Town's challenge in balancing urban and rural development. Trying to cater to both types of development hinders the Town's ability to effectively protect agricultural land. A profile of the legislative framework is provided at the end of this report.

Strength of Local Legislative Framework: Summary Assessment

	Maximize Stability	Integrate Across Jurisdictions	Minimise Uncertainty	Accommodate Flexibility
Town of Cornwall, PE	****		*	**

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

ABOUT THE SITE

The Town of Cornwall is located in Queens County, next to PEI's capital city, Charlottetown (Figure 1). The Trans Canada Highway passes through Cornwall, connecting it directly to Charlottetown in the east and Borden and the Confederation Bridge to the west. Being located on the province's main transportation route, the Town of Cornwall faces unique opportunities and challenges, including pressures to develop and advantages for economic activity.

Farming has been a dominant land use throughout Cornwall's history, and continues to be a significant land use, with 57 percent of the Town's total area being in active agricultural use. This agricultural land and other land uses are governed by the Town of Cornwall's Official Plan and Zoning and Subdivision Control (Development) Bylaw. Provincial oversight is very limited and, therefore, has been excluded as part of this rapid assessment.

Figure 1. Town of Cornwall, Prince Edward Island

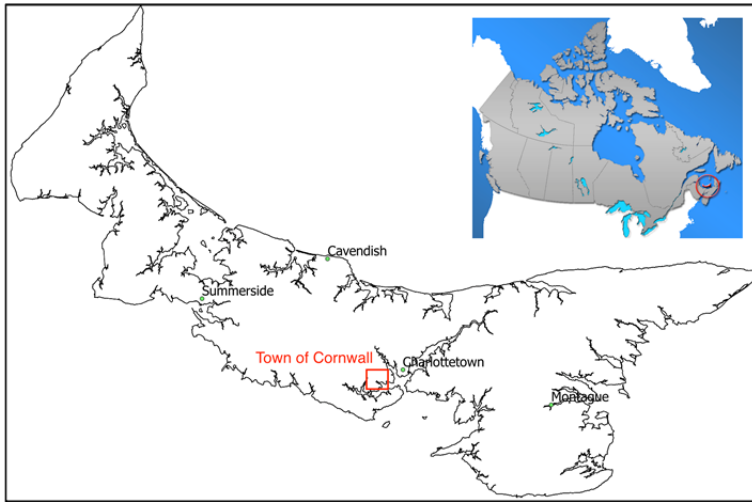
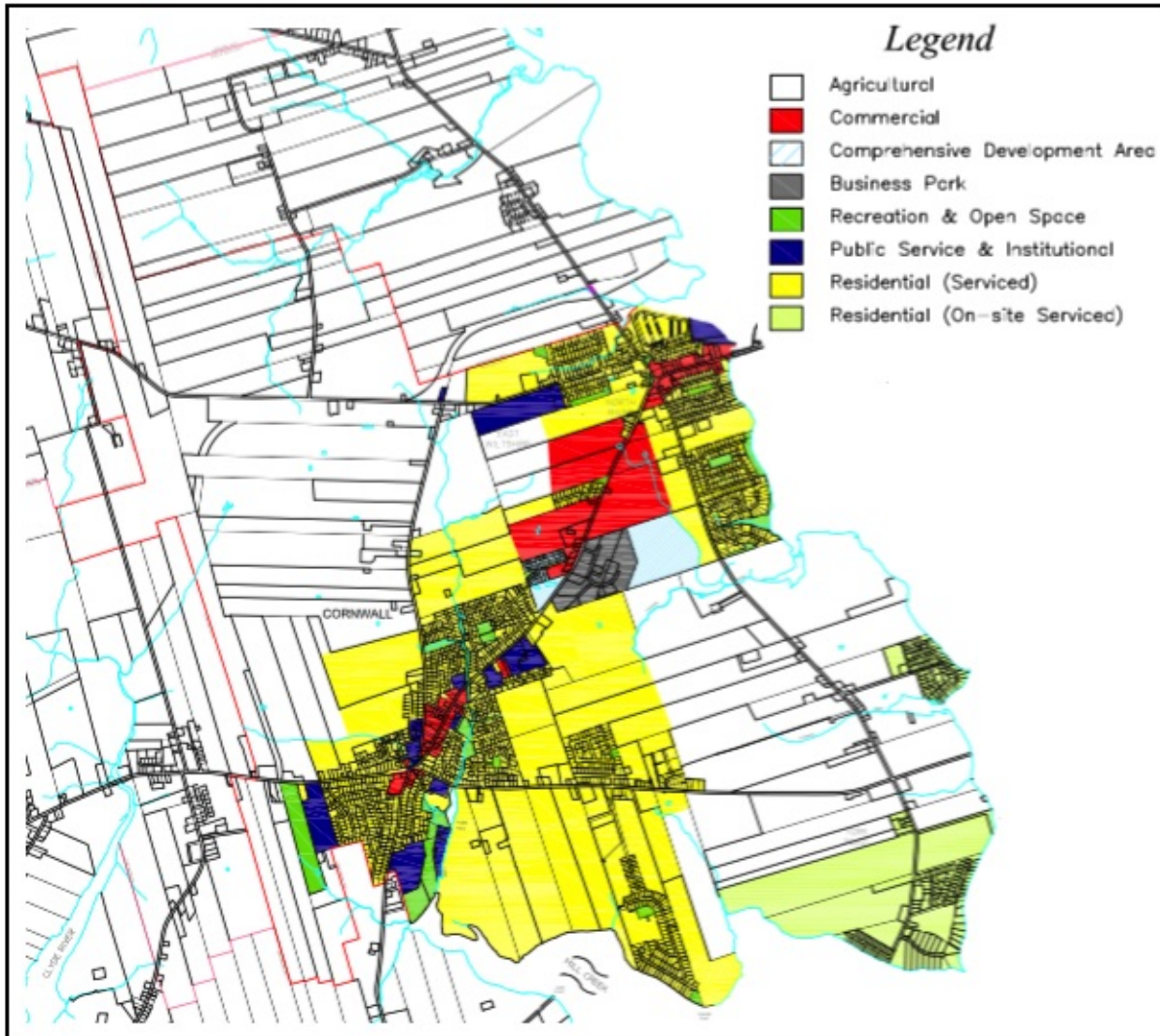
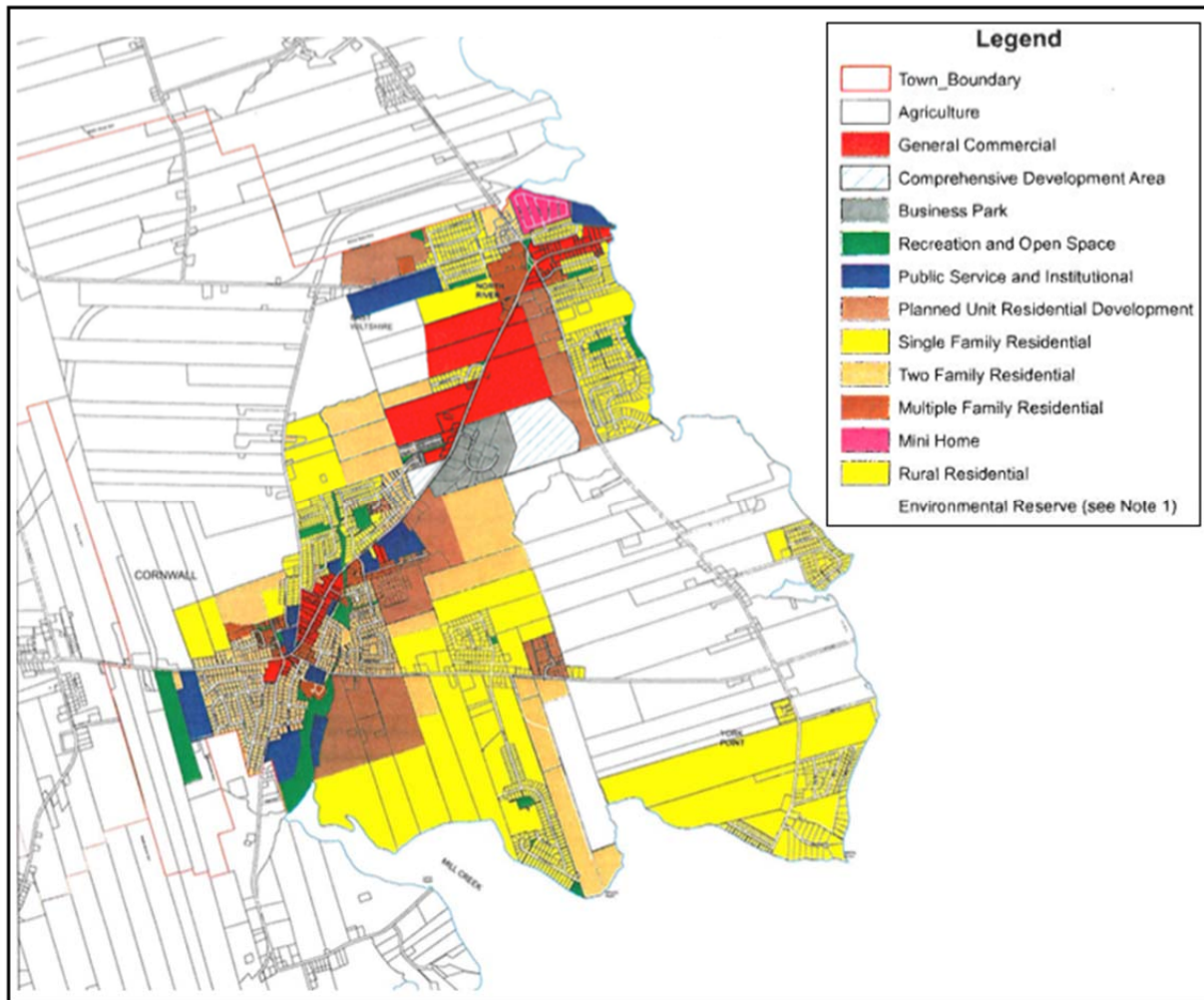


Figure 2. Town of Cornwall General Land Use Plan



Source: Town of Cornwall Official Plan (2014)

Figure 1. Town of Cornwall Zoning Map



Source: Town of Cornwall Zoning & Subdivision Control (Development) Bylaw (2015)

RESULTS

Maximise stability

A stable legislative framework for protecting farmland is one that is not easily changed at the whim of shifting political interests; it is well-entrenched in acts of legislation, policy, and governance structures that are based on clear, concise language, and can hold up to court challenge. A key element of stability is a clear statement of purpose regarding farmland protection among the primary goals and objectives within each enforceable document. Thus, stability is a critical measure of the strength of an agricultural land use planning framework.

The Town of Cornwall's legislative framework is strong for maximising stability. There are three elements of the framework that contribute to this stability. First, one of the Official Plan's goals is "to protect and enhance the long term viability of farming in the Town" (s.3.3.3). This is the strongest language in regards to protecting agricultural land in the legislative framework. Being one of the Plan's goals, it is evident that agriculture is a priority. Second, stated in the Plan's agriculture section, "Council will support higher density infilling in order to lower the development pressures on productive

farm land” (s.4.2). This statement, while not directly protecting agricultural land, suggests that Council’s land use decisions will not impede on agricultural land.

Third, Agriculture section (4.2) of the Official Plan outlines policy for the creation of an agricultural reserve. “Council shall identify an area primarily for agricultural and resource uses” that will include “all those lands which are not currently approved for urban or rural residential use.” This stable policy statement suggests that agricultural land will be protected under this designation. Despite the appearance of strength suggested by the high level of stability, it is not well supported throughout the legislative framework. The following sections suggest that this strength is diminished by inconsistencies and uncertainty.

Integrate public priorities across jurisdictions

Integrating policies and priorities across jurisdictions is a foundation for building cohesion across provincial, regional, and local governments. One can also think of integration as a formal “linkage” that provides consistency among them. In order to successfully integrate policies across jurisdictions there must be sufficient details about the legislative context that guides and constrains local government plans and strategies. The Town of Cornwall’s legislative framework minimally references provincial legislation. The lack of integration can be attributed to a lack of relevant provincial legislation. Therefore, for the purpose of our assessment, we have chosen to exclude this planning principle.

Minimise uncertainty

The presence of uncertainty, typically introduced via ambiguous language, exceptions or gaps, is a critical measure of the weakness of an agricultural land use planning framework. Thus, in addition to maximising the stability of a legislative framework through enforceable policies, people want to know they can rely on these rules and regulations to be applied consistently under different circumstances.

The Town of Cornwall’s legislative framework is very weak in terms of minimizing uncertainty. Internal inconsistencies, ambiguous language, and weak statements contribute to its uncertainty, and significantly undermine the stability described above. Much of this uncertainty is located in the agriculture section of the Official Plan (s.4.2). The description of agriculture in the Town states, “established farming operations must be protected from premature residential encroachment.” This is furthered under agricultural objectives, the first one being “to keep productive farmland in active agricultural use until it is appropriate to develop”. These statements suggest the inevitability of developing agricultural land, which contributes to uncertainty for current or future agricultural landowners. Additionally, if based on these statements we assume that development will occur, there are no guidelines, qualifiers, or regulations to limit the type or location of development. Based on this and other Official Plan goals, the Town appears to be more concerned with protecting its “rural and urban character” than with protecting agricultural land.

While designating all agricultural land as Agricultural Reserve (A1) appears stable, it is undermined by the uncertainty that follows. While “no further lands shall be taken out of Agricultural zoning” the policy also states, “unless Council deems the said lands are required for urban development use within ten years of the date of application.” This open-ended, ambiguous policy statement contributes to uncertainty regarding how Council will make decisions, and opens up agricultural land to be further development in spite of the Agricultural Reserve zoning designation.

A lack of detail in the Development Bylaw leaves the enforceable document open-ended and inconsistent with the Official Plan, thus contributing to uncertainty. Zoning bylaws can include purpose statements for each zoning designation in order to provide context; the Town of Cornwall’s Development Bylaw does not. The Agricultural Reserve designation, for example, could be

strengthened if there was a clear purpose to protect agricultural land, thereby aligning with the goals of the Official Plan. The Development Bylaw also includes parks and open spaces in the list of permitted uses under the Agricultural Reserve designation, which can alienate productive agricultural land. Also included in the list of permitted uses is wind energy; however, there is no mention of this land use in the Official Plan. There are also no qualifiers and regulations under this designation for permitted uses that are non-agricultural, which contributes to uncertainty. Protecting agricultural land by ensuring that wind energy does not occur on prime agricultural land would strengthen the legislative framework.

The General Land Use Plan (Figure 2) and subsequent Zoning Map (Figure 3) minimise uncertainty and help to clarify some of the uncertainty described above by displaying where development will occur. There is nothing in the framework, however, to suggest that development will stop encroaching onto agricultural land. Ensuring that agricultural land is protected from continued development pressures would strengthen Cornwall's legislative framework and could be achieved through implementing a growth boundary.

Accommodate flexibility

Creating an effective legislative framework is an act of balance, without being too stable so that it cannot be changed when needed or too strict so that it cannot be applied in a range of circumstances. Thus, flexibility is necessary in order to moderate the restrictive effects of maximising stability and minimizing uncertainty. The means to accommodate flexibility is typically done through governance mechanisms.

Overall, the Town of Cornwall's legislative framework is weak in accommodating flexibility. On the one hand, the Town accommodates the growth it desires very well. The General Land Use Plan and Zoning Map display how and where this growth is accommodated. Thus, the framework is clear on its efforts to accommodate growth; however, it is less clear on how to support urban development without compromising its goal to protect the agricultural sector and land.

Also, there is no governance mechanism in place to help protect farmland. While this structure is not essential to accommodate flexibility, its absence is a concern in the midst of the recognised development pressure. Without a governance structure, decisions are referred to Council without recommendations from a committee dedicated to representing agricultural interests, and, given the high level of uncertainty discussed above, raises concerns over how Council's decisions will impact agricultural land.

Rapid Assessment: Town of Cornwall, PE

Table 1. Town of Cornwall, Prince Edward Island, Legislative Framework

	POLICY	LEGISLATION	GOVERNANCE
PROVINCIAL	<p>New Foundations The Report of the Commission on Land and Local Governance (Thompson Report)(2009)</p> <p>The Gift of Jurisdiction Report of the Commission on the Lands Protection Act (The Carver Report)(2013)</p> <p>The Report of the Task Force on Land Use Policy (2014)</p>	<p><i>The Planning Act</i></p> <p><i>PEI Lands Protection Act</i></p> <p><i>Farm Practices Act</i></p> <p>Subdivision and Development Regulations</p>	<p>Island Regulatory and Appeals Commission</p>
REQUIRED INTEGRATION	<p><i>Planning Act</i> 9(1.1) Where</p> <p>(a) a provincial land use and development policy pursuant to clause 7(1)(a);</p> <p>(b) minimum requirements applicable to official plans pursuant clause 7(1)(b); or</p> <p>regulations pursuant to clause 7(1)© have been adopted, established or made, the land use policy of a council or the official bylaw of a municipality shall, subject to subsection 7(2), be consistent with them.</p>		
LOCAL		<p><i>Town of Cornwall Official Plan</i></p> <p><i>Zoning & Subdivision Control (Development) Bylaw</i></p>	<p>Planning Committee</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]