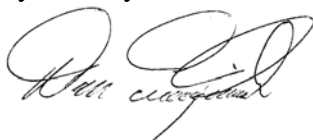


TO: Mayor Kelly and Members of Halifax Regional Council



SUBMITTED BY:

Dan English, Chief Administrative Officer



Wayne Anstey, Deputy Chief Administrative Officer - Operations

DATE: March 13, 2008

SUBJECT: O'Connell Drive Funding Options

SUPPLEMENTARY REPORT

ORIGIN

This report originates from the public hearing held March 4, 2008 at the Regional Council meeting during which Council directed staff to provide additional information regarding the eight (8) cost recovery options outlined in the December 4, 2007 report, and to respond to a number of issues raised during the public hearing discussion.

RECOMMENDATION

It is recommended that Council:

1. Approve second reading of Bylaw S-424 as outlined in Appendix A of the January 15, 2008 report (see attachment) which will provide for a cost recovery of 50% from HRM, 25% from LIC's from the residents residing on the HRM owned portion of O'Connell Drive, and 25% from an area rate from residents on the provincially owned portion of O'Connell Drive and its feeder streets.
2. Direct staff to draft a policy for Council's consideration outlining guidelines for the surveying of LIC/Area Rated projects.

BACKGROUND

On January 15, 2008 staff initiated Bylaw S-424 to begin the formal process to recover costs from residents for the O'Connell Drive paving project which occurred in 2006. Bylaw S-424 was premised on the recommendation provided by staff at the December 4, 2007 Council meeting. At that meeting staff presented several options with a recommendation to "Approve Option No. 1 as described in the Discussion section of this report (50% funding from the advanced 2008/09 HRM Capital Budget, from the 2008/09 account for New Paving of Subdivision Streets Inside the Core Area, 25% funding from an LIC charge levied on properties abutting the HRM-owned portion of O'Connell Drive, and 25% funding from an Area Rate levied on all properties abutting the Provincial owned portion of O'Connell Drive and it's feeder streets)". This motion was put and passed.

On March 4, 2008 the public hearing was conducted, and staff requested that Council approve Bylaw S-424 based on the recovery model as described in Option No. 1. Based on feedback provided by the general public during the hearing, Council requested additional time to review this information in relation to the options outlined in the December 4, 2007 meeting.

As well several issues (parkland subdivision approval, LIC/Area rates being lienable, new information relative to process) were raised during the discussion period of the public hearing which require further clarification. The subdivision application for the parkland dedication was initiated for HRM review on November 10, 2006. With respect to placing a lien on properties having an area rate vs an LIC, both are lienable in accordance with the MGA Sections 75(5) and 81(3)(f). A distinction between the two recovery methods is that an LIC becomes lienable as to the whole amount once it has been levied. An area rate is lienable for the annual levy. The difference is important if a property is sold. In the first case, the entire LIC is payable by the vendor. With the second method, the vendor must pay annual amounts levied to date; however, the purchaser is responsible for subsequent annual levies. Regarding additional information, staff believes there was no new information (related to the process) presented during the public hearing that would impact on the principles outlined in the previous report.

DISCUSSION

The following outlines the preferred funding option to be considered by Council. Additional options are described in Appendix 1 of this report.

Option No. 1 - Funding split between HRM (50%), LIC charge (25%) and Area Rate (25%)

Under this option, HRM would cover 50% of the cost for the paving work conducted on the municipally owned portion of O'Connell Drive, 25% of the funding would stem from an LIC on the 22 properties abutting the HRM owned portion of O'Connell Drive, and the remaining 25% would be recovered from the 43 properties located on the Provincial portion of O'Connell Drive, Exeter Drive, Bali Terrace, Nevan Road and Old Fairbanks Road. The 43 properties receiving the area rate would be assessed as a flat rate. An area rate is more correctly referred to as a uniform charge under

section 75(4) of the *Municipal Government Act* when, as is the case here, the rate is uniform for all properties rather than being based on the assessed value of individual properties. This rate shall not exceed \$160.00 annually. Properties on the HRM owned portion of O'Connell Drive would not pay the area rate as they would be paying the LIC amount (or lot charge) as described above. The LIC amount would equate to \$2,030 plus interest. The LIC payment schedule with interest is provided in Appendix 2 of this report. The principal plus interest must be fully paid over a ten year period

The use of an area rate for the Provincial owned portion of O'Connell Drive and its feeder streets recognizes that all residents of those streets are deriving some benefit from the paving of the HRM owned portion of O'Connell Drive. Residents on the Provincial owned portion of O'Connell Drive would benefit from the elimination of the annual grading maintenance program. It would reduce the requirement for large grading equipment to travel over the paved section that would otherwise subject it to the potential threat of deterioration. Residents of the feeder streets would benefit as a result of increased rideability, and maintenance costs which are normally higher on gravel roads would be reduced.

Implications: - It has not been the practice to area rate the paving of gravel roads.

- Currently there are approximately 40 streets and roads that have been selected and prioritized for a pending paving upgrade. O'Connell Drive was not on that list, and as such would bypass the process if funded from this capital account.

- Residents of the Provincial owned portion of O'Connell Drive and its feeder streets may not concur with the benefits as described above and therefore object to paying the area rate. Council's consideration of this option should take into account that a complaint to the provincial ombudsman's office has been made regarding the appropriateness of HRM charging any of the subject paving costs to the residents on the Provincial owned portion of O'Connell Drive. Legal Services believes this option is defensible. However, if Council does not wish to pursue this option because of the complaint, additional options are outlined in this report.

- Residents of the HRM owned portion of O'Connell Drive may object to paying the LIC if residents on the Provincial owned portion are not required to do so.

BUDGET IMPLICATIONS

The staff recommendation has no implications on the approved 2007/08 Budget; however, the project is included as part of the 2008/09 advanced Capital Budget Account No. CRU01080 - New Paving of HRM Owned Subdivision Streets. The budget availability has been confirmed by Financial Services.

The balance of funds will be used to implement the remaining 2008/09 New Paving projects approved by Council.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation. If approved this report will increase the gross capital budget for 2008/09.

ALTERNATIVES

If Council chooses not to approve option no. 1, Council should decide on an alternative option and direct staff to bring forward a revised Bylaw for approval. Additional options are described in Appendix 1 of this report.

ATTACHMENTS

Appendix 1: Other Funding Options for O'Connell Drive

Appendix 2: Schedule of Annual LIC Payments for Option 1

Appendix 3: December 4, 2007 Regional Council Report - O'Connell Drive Funding Options (including Maps)

Appendix 4: January 15, 2008 Regional Council Report - Proposed ByLaw S424, an Amendment to ByLaw S400, Respecting Local Improvement Charges, New Paving O'Connell Drive Porters Lake (Including Appendix A)

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

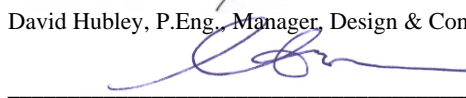
Report Prepared by: David Hubley, P.Eng., Manager, Design & Construction, 490-4845

Report Approved by:



David Hubley, P.Eng., Manager, Design & Construction

Financial Approval by:



Catherine Sanderson, Senior Manager, Financial Services, 490-1562

Report Approved by:



For - Cathie O'Toole., Director, Infrastructure and Asset Management 490-4825]

**Appendix 1
Other Funding Options for O'Connell Drive**

With the exception of Option 2, Council's consideration of the various options presented in this report should take into account that a complaint to the provincial ombudsman's office has been made regarding the appropriateness of HRM charging any of the subject paving costs to the residents on the provincial owned portion of O'Connell Drive. In respect of Local Improvement Charges HRM's past practice has generally been to utilize this process only where the subject residents have received a direct benefit. Based on this practice it would be difficult to justify a LIC on those residents under the particular circumstances of this situation. Conversely the area rate process outlined in Option 1 considers general benefits to an area, both direct and indirect, and would appear to support some dispersal of the paving costs beyond just the residents on the HRM owned portion of O'Connell Drive.

Option No. 2 - Funding from HRM 2008/09 Capital Budget (New Paving of Subdivision Streets Inside the Core Area) and LIC's.

Under this scenario, HRM would cover 50% of the construction costs (\$89,352.63 net HST included) while the remaining 50% would be recovered from all residents on the HRM-owned portion of the street as per the LIC process. This would be consistent with the current HRM policy for the "New Paving of Subdivision Streets Inside the Core Area" program, and is therefore an acceptable option. Based on the costs and property frontage dimensions, the frontage charge would equate to \$23.00 per foot (or \$4,060 if a lot charge was levied as per option no. 1). The funding is available in the 2008/09 capital program (New Paving of Subdivision Streets Inside the Core Area) through the advanced funding process. A map of the properties which would pay the LIC is attached to the December 4, 2007 report as Plan 2.

Implications: - Currently there are approximately 40 streets and roads that have been selected and prioritized for a pending paving upgrade. O'Connell Drive was not on that list, and as such would bypass the process if funded from this capital account.

- Residents are not in favour of paying for the asphalt upgrade; however, to be consistent and equitable with similar situations, it is appropriate they contribute 50% of the total cost.

Option No. 3 - Status Quo as per original recommendation.

Under this option, the residents of O'Connell Drive would pay 100% of the cost as per Council's decision of October 24, 2006. A map of the properties which would pay the LIC is attached to the December 4, 2007 report as Plan 3. Councillor Hendsbee originally requested the total costs associated with the paving of the HRM portion be recovered through the LIC process, and be charged to all residents on O'Connell Drive. The amount to be charged to the residents is \$178,705.25 (net HST included) and equates to \$28.25 per foot of frontage. The Local Improvement

policy which was approved by Council in 1997 enables the recovery of local improvement charges where there is a minimum approval rate of 50% from the residents. The policy also indicates Council does not require this approval if the betterment is deemed a benefit to the Municipality.

Implications: - Under the current policy the costs associated with the paving upgrades of a gravel road are recovered from both HRM and the residents receiving the benefit. Having the residents pay for the entire costs of an HRM owned street without financial support from the Municipality may be deemed unfair.

- Residents of O'Connell Drive are not in favour of paying for the asphalt upgrade.

Option No. 4 - Funding from HRM Capital Budget, deferral of projects in District 3.

HRM would cover 50% of the construction costs (\$89,352.63 net HST included) while the remaining 50% would be recovered from residents by means outlined in either Option 1 or 2. However, the portion to be paid by HRM would be made available by deferring capital projects that would have been designated for district 3 in the 2008/09 capital program, and utilizing these funds to cover the HRM amount. Approximately \$300,000 was allocated for district 3 in the 2007/08 capital program (paving accounts), and assuming a similar appropriation for 2008/09, there would be sufficient funds to cover the balance.

Implications: - Funding the work in this manner pre-commits part of a capital budget that has yet to be approved by Council.

- Currently there are approximately 40 streets and roads that have been selected and prioritized for a pending paving upgrade. O'Connell Drive was not on that list, and would therefore bypass the process.

- Potential road upgrades for district 3 will be deferred for a minimum one year.

- Residents are not in favour of paying for the asphalt upgrade.

Option No. 5 - Funding from District 3 Capital Fund.

Under this scenario, the District 3 Capital Fund would be utilized to cover the HRM amount of \$89,352.63 (net HST included) with the remaining 50% recovered from residents by means outlined in either Option 1 or 2. The District Capital funding equates to \$65,000 per year and as a result, this funding source would have to be capitalized over a minimum two year period.

Implications - There are insufficient funds remaining in 2007/08 District 3 Capital account, and funds from 2008/09 cannot be pre-committed.

- District capital funds are designated for improvements that are to be benefited by the community. While paving qualifies for funding from the district capital account, all funds would be expended on one street, with no additional improvements

observed in district 3 for a minimum two years.

- Residents are not in favour of paying for the pavement work.

Option No. 6 - Funding from each Councillors' District Capital Funds

Under this scenario, each Councillor would equally cover the HRM amount of \$89,352.63 (net HST included) with the remaining 50% recovered from residents by means outlined in either Option 1 or 2. This would equate to approximately \$3,885 from each district.

Implications: - District capital funds are designated for improvements that are to be benefited by the community. A reduction in community improvements will occur in all districts for one year.

- Funds intended for other districts would be transferred to District 3. This could be perceived as unfounded and unfair in the other districts.

- Residents are not in favour of paying for the asphalt upgrade.

Option No. 7 - Funding from existing paving accounts

Once projects are completed from the main capital program list, and if additional funding is available, the monies are normally allocated for shopping list projects. If funding exists beyond the completion of the shopping list projects, monies from the 2007/08 program could be utilized to offset the HRM balance of \$89,352.63. If Council chooses this option, staff will confirm the availability of funding in existing accounts. As with the other options noted above, the remaining 50% would be recovered from residents by means outlined in either Option 1 or 2.

Implications: - If excess funding exists, it would normally be advanced to the ensuing annual capital program to offset demand.

- Currently there are approximately 40 streets and roads that have been selected and prioritized for a pending paving upgrade. O'Connell Drive was not on that list, and as such would bypass the process if funded from this capital account.

- There is uncertainty of funding availability from existing accounts.

- Residents are not in favour of paying for the asphalt upgrade.

Option No. 8 - Combination of options identified above.

Council may wish to incorporate some combination of the options described in this report. For

example, Council could accept the staff recommendation that HRM's 50% share of the cost be pre-committed against the 2008/09 Capital Budget (Option 1), but then specify that any excess funding from existing paving accounts be used to offset the cost if and when it becomes available (Option 7).

Implications: - Refer to implications identified above.

- Some funding implications would be further exacerbated.

**Appendix 2
Schedule of Annual Payments for Option 1
(See Note 1 below)**

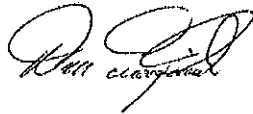
	Principal	Interest	Total Owed
Year 1	\$ 203.07	\$ 0.00	\$ 203.07
Year 2	\$ 203.07	\$ 146.21	\$ 349.28
Year 3	\$ 203.07	\$ 129.96	\$ 333.03
Year 4	\$ 203.07	\$ 113.72	\$ 316.79
Year 5	\$ 203.07	\$ 97.47	\$ 300.54
Year 6	\$ 203.07	\$ 81.23	\$ 284.30
Year 7	\$ 203.07	\$ 64.98	\$ 268.05
Year 8	\$ 203.07	\$ 48.74	\$ 251.81
Year 9	\$ 203.07	\$ 32.49	\$ 235.56
Year 10	\$ 203.07	\$ 16.25	\$ 219.32
Total	\$ 2,030.70	\$ 731.05	\$ 2,761.75

1. The interest amounts shown above are based on prime + 2%. The actual amount of interest charged will be determined at the time the residents are notified in writing that the street has been added to the list for paving. Therefore, the interest amounts shown above are for illustration purposes only.

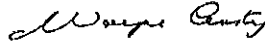
**Halifax Regional Council
December 4, 2007**

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



Dan English, Chief Administrative Officer



Wayne Anstey, Deputy Chief Administrative Officer - Operations

DATE: November 21, 2007

SUBJECT: O'Connell Drive Funding Options

ORIGIN

This report originates from staff as a result of the June 26, 2007 Regional Council meeting.

RECOMMENDATIONS

It is recommended that Council:

1. Approve Option No. 1 as described in the Discussion section of this report (50% funding from the advanced 2008/09 HRM Capital Budget, from the 2008/09 account for New Paving of Subdivision Streets Inside the Core Area, 25% funding from an LIC charge levied on properties abutting the HRM-owned portion of O'Connell Drive, and 25% funding from an Area Rate levied on all properties abutting the Provincial owned portion of O'Connell Drive and it's feeder streets).
2. Endorses the current practice of LIC funding for subdivision streets inside the core areas, and recognizes that the O'Connell Drive situation should not be precedent setting as it is in response to a unique set of circumstances.

BACKGROUND

O'Connell Drive which is located in Porters Lake, District 3 is approximately 1.3 kms in length. It was a gravelled road with the first portion being owned by the Province and having a "J" class designation. The remaining 630 metres is owned by the Halifax Regional Municipality (HRM). Each year HRM submits a prioritized list of gravel streets outside the core area to the Nova Scotia Department of Transportation and Public Works (NSDOT&PW) for cost sharing for paving under the provincial Aid-to-Municipalities Program. O'Connell Drive was not included on this list; however, the paving of O'Connell Drive was included in a provincial tender in the Fall of 2006.

The HRM owned portion of O'Connell Drive was also a local gravel road, and when it was determined the Province was intending to pave their portion, Councillor Hendsbee requested the Province extend the initial construction activities and pave the entire length of O'Connell Drive.

Staff then presented an Information Report to Council on October 24, 2006 outlining this issue, and suggesting the following under the Discussion section of the report:

"If Council wishes to proceed, the following wording is suggested as a motion:

It is recommended that Council:

1. extend the limits of paving on O'Connell Drive to include the HRM owned portion from the school entrance to the end;
2. include the paving of O'Connell Drive (Trunk 7 to the end) in the proposed 2007/08 Aid to Municipalities Program;
3. waive the right to petition;
4. approve the recovery of Local Improvement Charges for the new paving of O'Connell Drive by levy of frontage charges.

MOTION PUT AND PASSED UNANIMOUSLY."

On October 30, 2006, HRM received the proposed Construction Agreement No. 2006-022 from the Province, which enabled the Province to pave O'Connell Drive from the school entrance to the end, and to recover 100% of the costs from HRM at an estimated total cost of \$230,000. O'Connell Drive was not petitioned; however, Councillor Hendsbee had requested the petition be waived in order to allow the paving operations to proceed.

On October 31, 2006 Construction Agreement No. 2006-022 was submitted to Regional Council for approval where it was moved by Councillor Hendsbee, seconded by Councillor Kent, that:

"1. His Worship the Mayor and the Municipal Clerk be authorized, by resolution of Regional Council, to sign on behalf of Halifax Regional Municipality, Construction Agreement No. 2006-022 between HRM and the Nova Scotia Department of Transportation and Public Works (NSDOT & PW) to pave O'Connell Drive - East Region, as outlined in

the Discussion section of the October 30, 2006 staff report.

2. Increase the Approved 2006/07 Capital Budget in Account No. CXU00715, New Paving of Subdivision Streets Inside the Core Area in the amount of \$230,000 to cover the cost for the paving of the HRM portion of O'Connell Drive (from school entrance to end) with no net cost to HRM as per the Budget Implications section of the October 24, 2006 staff report.

MOTION PUT AND PASSED UNANIMOUSLY."

The report also indicated in the Budget Implications section there would be no net cost to HRM since 100% of the cost will be recovered from all residents on O'Connell Drive (from Trunk 7 to the end). Following appropriate approvals from HRM, the Province paved the HRM portion of this road. In April of 2007, the Province submitted an invoice in the amount of \$178,705.25 (including net HST) to HRM staff for payment, and on June 11, 2007, a public information meeting was held with O'Connell Drive residents to discuss the issues surrounding the paving of this road.

The Aid to Municipalities Program is a province wide program for the paving of provincially owned "J" class streets and roads. When the program is offered by the Province, HRM participates as a result of the requirements under Bylaw S-400, and selects streets to be paved based on a rating system. The program is cost-shared between the Province and the Municipality, each paying 50% of the total construction costs. However, HRM's portion is recovered in its entirety by levying local improvement charges to the abutting properties on the relevant streets. With respect to O'Connell Drive it is our understanding the Province elected to pave their portion and cover 100% of the costs (which is contrary to the Aid to Municipalities Program) as a result of high traffic volumes, regular maintenance issues and proximity to a school. In consultation with provincial staff, the Province has covered 100% of the paving costs on streets that were greater than 15 years old; however this program dates back to the early-mid 1990's. The program was cancelled for a number of years but was reinstated in the late 1990's with no provision for NSDOT&PW to cover 100% of the costs regardless of the age of the road. The program was again modified in 2006 with the inclusion of roads "similar to J class" which had become residential streets. It is not clear if provincially owned roads other than O'Connell Drive have been paved with the Province absorbing the entire costs since the reintroduction of the program in the late 1990's.

With respect to the rating system and selection of streets, all roads must be designated "J" class as required by the Province in order to qualify for the Aid to Municipality Program. Within that designation HRM further prioritizes the streets based on four main aspects: required level of maintenance, classification of the road, geographic area/cluster and date of survey. The criteria was approved by Regional Council in April 2006, and includes a provision to select streets that are situated outside a geographical cluster. This condition enables a street to be selected (regardless of its rating) if it is in proximity to another capital improvement. The associated benefit is to take advantage of combining the work into one tender.

Although the HRM owned portion of O'Connell Drive is located outside the core area, a paving upgrade to this section would fall under the "New Paving of Subdivision Streets Inside the Core Area" program. This current account is the only such program that deals with the paving of HRM

owned gravelled roads, and should be utilized for streets located both inside and outside the core areas. Under this initiative, the municipality would pay 50% of the construction costs with the remaining 50% being recovered through the local improvement charge policy. As a note, staff is contemplating a name change to the "New Paving of Subdivision Streets Inside the Core Area" program as HRM owns streets outside the core area.

The Municipality was not made aware of NSDOT&PW's decision to move forward with the paving of the provincially owned portion of O'Connell Drive until after their tender call. The Province is under no obligation to inform HRM of their capital program intentions. However if ample notification was provided during HRM's capital budget process, the potential to include the HRM portion of O'Connell Drive with the Province's tender may have been considered as a result of the new rating criteria, and the ability to combine a project with another under one tender.

As a general note, interest to pave O'Connell Drive was received from some residents in 2003. At that time staff informed those residents that if the street was to be paved, the residents would pay 50% of the cost under the gravel road paving program. Where interest exists to pave a gravel road, the residents are surveyed and if successful, the road is added to the capital list for future paving considerations. As well, Council may waive a petition, and subsequently have the road added to the capital budget list for future paving considerations. It is also noted this report will not speak to the subject of waiving the petition process. This is a separate issue and may be explored with Council at a later date.

DISCUSSION

Residents on O'Connell Drive are not in agreement with having to pay for the costs of this paving upgrade. At the June 26, 2007 Regional Council meeting the following was brought forward under item 10.3.1 of the agenda:

"MOVED by Councillor Hendsbee, seconded by Councillor Mosher, that staff provide a report of a possible scenario whereby HRM may consider making a General Capital Contribution towards the paving of O'Connell Drive because of the Municipality's partial ownership of the roadway. Councillor Younger expressed concern that there is currently a priority rating system for streets and would like this addressed in the report. If the money comes from the General Capital it will by-pass all the other streets in other districts that are currently on a list. He noted any funds would have to come out of District 2 (sic) so as to not to impact other projects in other districts currently on the list. Councillor Johns stated he would like the report to advise when and where the last time was the province paid and paved a street 100%. Councillor Snow suggested staff look at cost sharing and one of the other districts would be bumped. She requested staff look at dividing inside and outside the core and the feasibility of discontinuing petitioning. Councillor Kent clarified that the Councillor was requesting a contribution towards the Municipal share. Councillor Sloane suggested staff examine ways in which HRM can make this happen without posing hardship to the residents.

MOTION PUT AND PASSED UNANIMOUSLY."

The following outlines the preferred funding option to be considered by Council. Additional options

are described in Appendix 1 of this report. As a note, in keeping with the current LIC process staff will return to Council with a draft by-law for the frontage charge or per lot charge provided Council chooses an option that contains this funding recovery method.

Option No. 1 - Funding split between HRM (50%), LIC charge (25%) and Area Rate (25%)

Under this option, 25% of the funding would stem from an LIC charge on properties abutting the HRM owned portion of O'Connell Drive, 25% from an area rate imposed on all residents living on the Provincial owned portion of O'Connell Drive and feeder streets leading from O'Connell Drive. Properties on the HRM owned portion of O'Connell Drive would not pay the area rate as they would already be paying the LIC charge. HRM would provide it's 50% cost sharing from the 2008/09 advanced Capital Budget. A map of the properties which would pay either the LIC or area rate is attached to this report as Plan 1.

The frontage charge for those properties abutting the HRM owned portion of O'Connell Drive would be reduced from \$23.00 per foot to \$11.50 per foot. If converted to a per lot charge, the amount owed by each property would be approximately \$2,031 plus interest. A payment schedule with interest is provided in Appendix 2 of this report.

The area rate for residents of the Provincial owned portion of O'Connell Drive and it's feeder streets would be \$0.192 per \$100 of taxable assessment which equates to \$192.00 per \$100,000. The area rate may also be a flat amount per property which would be approximately \$252.00 per year. These area rates are based on the 25 properties on the Provincial owned portion of O'Connell Drive and its feeder streets which have assessment values. 18 other properties currently are not assessed but some or all of them may be assessed when the assessment role is released to HRM in January 2008. Any that are assessed would lower the area rate and the amount to be paid by the property owners. The area rate would be payable for the same period of time as the LIC charge, which is 10 years.

The use of an area rate for the Provincial owned portion of O'Connell Drive and its feeder streets recognizes that all residents of those streets are deriving some benefit from the paving of the HRM owned portion of O'Connell Drive. Residents on the Provincial owned portion of O'Connell Drive would benefit from the elimination of the annual grading maintenance program. It would eradicate the requirement for large grading equipment to travel over the paved section that would otherwise subject it to the potential threat of deterioration. Residents of the feeder streets would benefit as a result of increased rideability that is associated with asphalt relative to gravel roads.

Implications: - It has not been the practice to area rate the paving of gravel roads.

- Residents of the Provincial owned portion of O'Connell Drive and its feeder streets may not concur with the benefits as described above and therefore object to paying the area rate. Council's consideration of this option should take into account that a complaint to the provincial ombudsman's office has been made regarding the appropriateness of HRM charging any of the subject paving costs to the residents on the Provincial owned portion of O'Connell Drive. Legal Services believes this Option is defensible. However, if Council does not wish to pursue this option because of the

complaint, Option 2 would be an acceptable alternative.

- Residents of the HRM owned portion of O'Connell Drive may object to paying the LIC charge if residents on the Provincial owned portion are not required to do so.

BUDGET IMPLICATIONS

The staff recommendation has no implications on the approved 2007/08 Budget; however, it does pre-commit \$89,352.63 as part of the 2008/09 advanced Capital Budget.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

A listing of other funding alternatives is provided in Appendix 1 of this report.

ATTACHMENTS

Appendix 1: Other Funding Options for O'Connell Drive

Appendix 2: Schedule of Annual LIC Payments for Option 1

Plan 1: Map of Properties Identified for Area Rate and for LIC by Frontage or Lot Charge (Option 1)

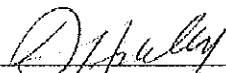
Plan 2: Map of Properties Identified for LIC by Frontage or Lot Charge (Option 2)

Plan 3: Map of Properties Identified for LIC by Frontage or Lot Charge (Option 3: Status Quo)

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: David Hubley, P.Eng., Manager, Design and Construction, 490-4845

Report Approved by:


David Hubley, P.Eng., Manager, Design and Construction, 490-4845

Report Approved by:


Catherine Sanderson., Senior Manager, Finance, 490-1562

Report Approved by:


Cathie O'Toole., Director, Infrastructure and Asset Management 490-4825

DH/pm

**Appendix 1
Other Funding Options for O'Connell Drive**

With the exception of Option 2, Council's consideration of the various options presented in this report should take into account that a complaint to the provincial ombudsman's office has been made regarding the appropriateness of HRM charging any of the subject paving costs to the residents on the provincial owned portion of O'Connell Drive. In respect of Local Improvement Charges HRM's past practice has generally been to utilize this process only where the subject residents have received a direct benefit. Based on this practice it would be difficult to justify a LIC on those residents under the particular circumstances of this situation. Conversely the area rate process outlined in Option 1 considers general benefits to an area, both direct and indirect, and would appear to support some dispersal of the paving costs beyond just the residents on the HRM owned portion of O'Connell Drive.

Option No. 2 - Funding from HRM Capital Budget, from the 2008/09 account for New Paving of Subdivision Streets Inside the Core Area.

Under this scenario, HRM would cover 50% of the construction costs (\$89,352.63 net HST included) while the remaining 50% would be recovered from all residents on the HRM-owned portion of the street as per the LIC process. This would be consistent with the current HRM policy for the "New Paving of Subdivision Streets Inside the Core Area" program, and is therefore an acceptable option. Based on the costs and property frontage dimensions, the frontage charge would equate to \$23.00 per foot. The funding could be made available in the 2008/09 capital program (from the 2008/09 account for New Paving of Subdivision Streets Inside the Core Area) through the advanced funding process, and it is anticipated the advanced Capital Budget will be presented to Council in November 2007. A map of the properties which would pay the LIC is attached to this report as Plan 1.

- Implications:
- Currently there are approximately 40 streets and roads that have been selected and prioritized for a pending paving upgrade. O'Connell Drive was not on that list, and as such would bypass the process if funded from this capital account.
 - Funding the work in this manner pre-commits part of a capital budget that has yet to be approved; therefore, this street would have to be included in the 2008/09 advanced Capital Budget submission to Council.
 - Residents are not in favour of paying for the asphalt upgrade; however, to be consistent and equitable with similar situations, it is appropriate they contribute 50% of the total cost.

The following alternative funding options are not recommended by staff as per the outlined implications:

Option No. 3 - Status Quo to remain.

Under this option, the residents of O'Connell Drive would pay 100% of the cost as per Council's decision of October 24, 2006. A map of the properties which would pay the LIC is attached to this report as Plan 3. Councillor Hendsbee originally requested the total costs associated with the paving of the HRM portion be recovered through the LIC process, and be charged to all residents on O'Connell Drive. The amount to be charged to the residents is \$178,705.25 (net HST included) and equates to \$28.25 per foot of frontage. The Local Improvement policy which was approved by Council in 1997 enables the recovery of local improvement charges where there is a minimum approval rate of 50% from the residents. The policy also indicates Council does not require this approval if the betterment is deemed a benefit to the Municipality.

Implications: - Under the current policy the costs associated with the paving upgrades of a gravel road are recovered from both HRM and the residents receiving the benefit. Having the residents pay for the entire costs of an HRM owned street without financial support from the Municipality may be deemed unfair.

- Residents of O'Connell Drive are not in favour of paying for the asphalt upgrade.

Option No. 4 - Funding from HRM Capital Budget, deferral of projects in District 3.

HRM would cover 50% of the construction costs (\$89,352.63 net HST included) while the remaining 50% would be recovered from all residents on the HRM owned portion of street as per the LIC process. However, the portion to be paid by HRM would be made available by deferring capital projects that would have been designated for district 3 in the 2008/09 capital program, and utilizing these funds to cover the HRM amount. Approximately \$300,000 was allocated for district 3 in the 2007/08 capital program (paving accounts), and assuming a similar appropriation for 2008/09, there would be sufficient funds to cover the balance.

Implications: - The 2008/09 capital program has yet to be developed, and funding the work in this manner pre-commits part of a capital budget that has yet to be approved by Council.

- Currently there are approximately 40 streets and roads that have been selected and prioritized for a pending paving upgrade. O'Connell Drive was not on that list, and would therefore bypass the process.

- Potential road upgrades for district 3 will be deferred for a minimum one year.

- Residents are not in favour of paying for the asphalt upgrade.

Option No. 5 - Funding from District 3 Capital Fund.

Under this scenario, the District 3 Capital Fund would be utilized to cover the HRM amount of

\$89,352.63 (net HST included) with the remaining 50% recovered from all residents on the HRM owned portion of the street as per the LIC process. The District Capital funding equates to \$65,000 per year and as a result, this funding source would have to be capitalized over a minimum two year period.

Implications - There are insufficient funds remaining in 2007/08 District 3 Capital account, and funds from 2008/09 cannot be pre-committed.

- District capital funds are designated for improvements that are to be benefited by the community. While paving qualifies for funding from the district capital account, all funds would be expended on one street, with no additional improvements observed in district 3 for a minimum two years.

- Residents are not in favour of paying for the pavement work.

Option No. 6 - Funding from each Councillors' District Capital Funds

Under this scenario, each Councillor would equally cover the HRM amount of \$89,352.63 (net HST included) with the remaining 50% recovered from all residents on the HRM owned portion of the street as per the LIC process. This would equate to approximately \$3,885 from each district.

Implications: - District capital funds are designated for improvements that are to be benefited by the community. A reduction in community improvements will occur in all districts for one year.

- Funds intended for other districts would be transferred to District 3. This could be perceived as unfounded and unfair in the other districts.

- Residents are not in favour of paying for the asphalt upgrade.

Option No. 7 - Funding from existing paving accounts

Once projects are completed from the main capital program list, and if additional funding is available, the monies are normally allocated for shopping list projects. If funding exists beyond the completion of the shopping list projects, monies from the 2007/08 program could be utilized to offset the HRM balance of \$89,352.63. Staff will be in a position over the next few months to confirm the availability of funding in existing accounts. As with the other options noted above, the remaining 50% would be recovered from all residents on the HRM owned portion of the street.

Implications: - If excess funding exists, it would normally be advanced to the ensuing annual capital program to offset demand.

- There is uncertainty of funding availability from existing accounts. It could be several months before staff can ascertain this potential availability.
- Residents are not in favour of paying for the asphalt upgrade.

Option No. 8 - Combination of options identified above.

Council may wish to incorporate some combination of the options described in this report. For example, Council could accept the staff recommendation that HRM's 50% share of the cost be pre-committed against the 2008/09 Capital Budget (Option 1), but then specify that any excess funding from existing paving accounts be used to offset the cost if and when it becomes available (Option 7).

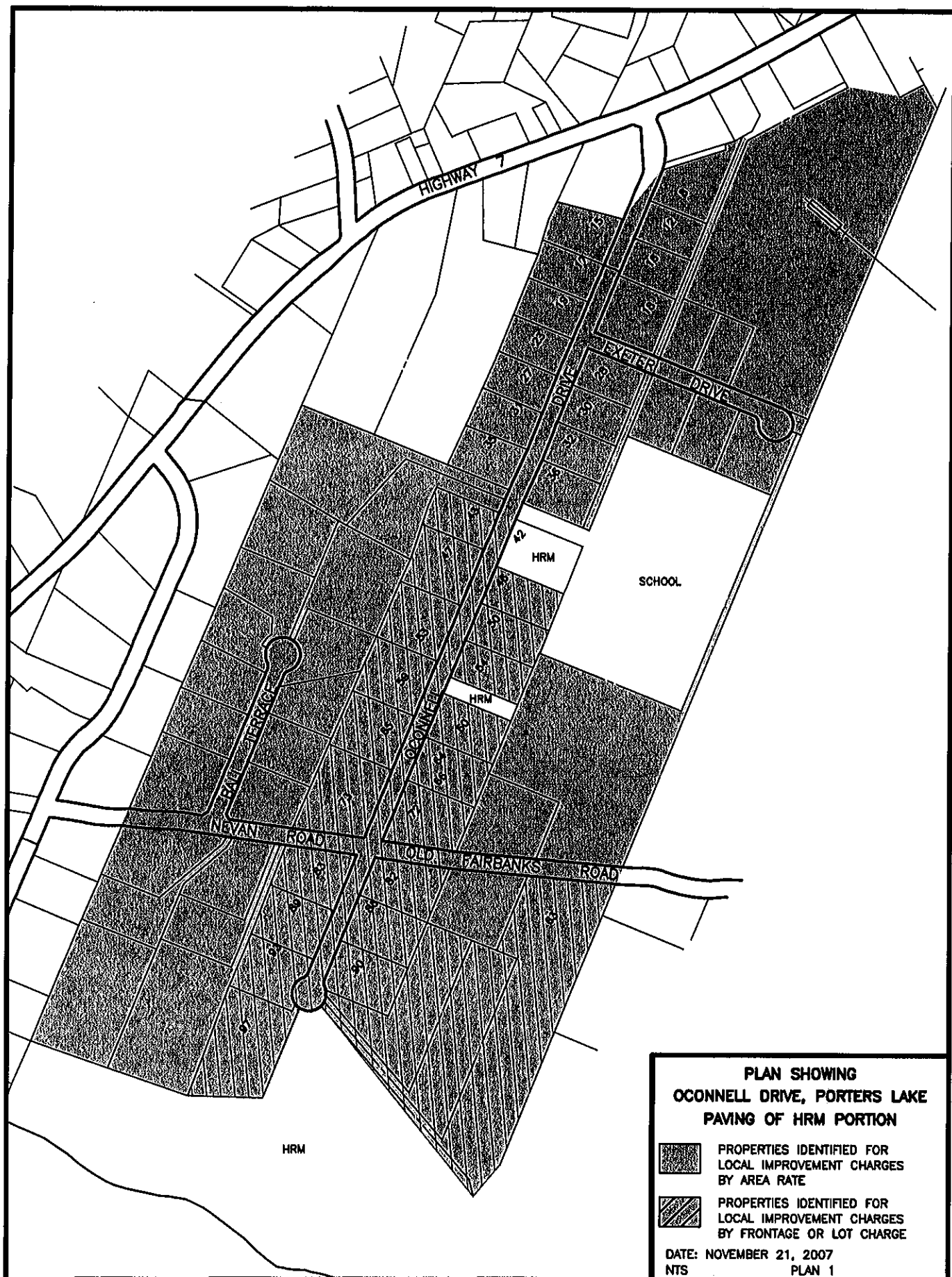
Implications: - Refer to implications identified above.

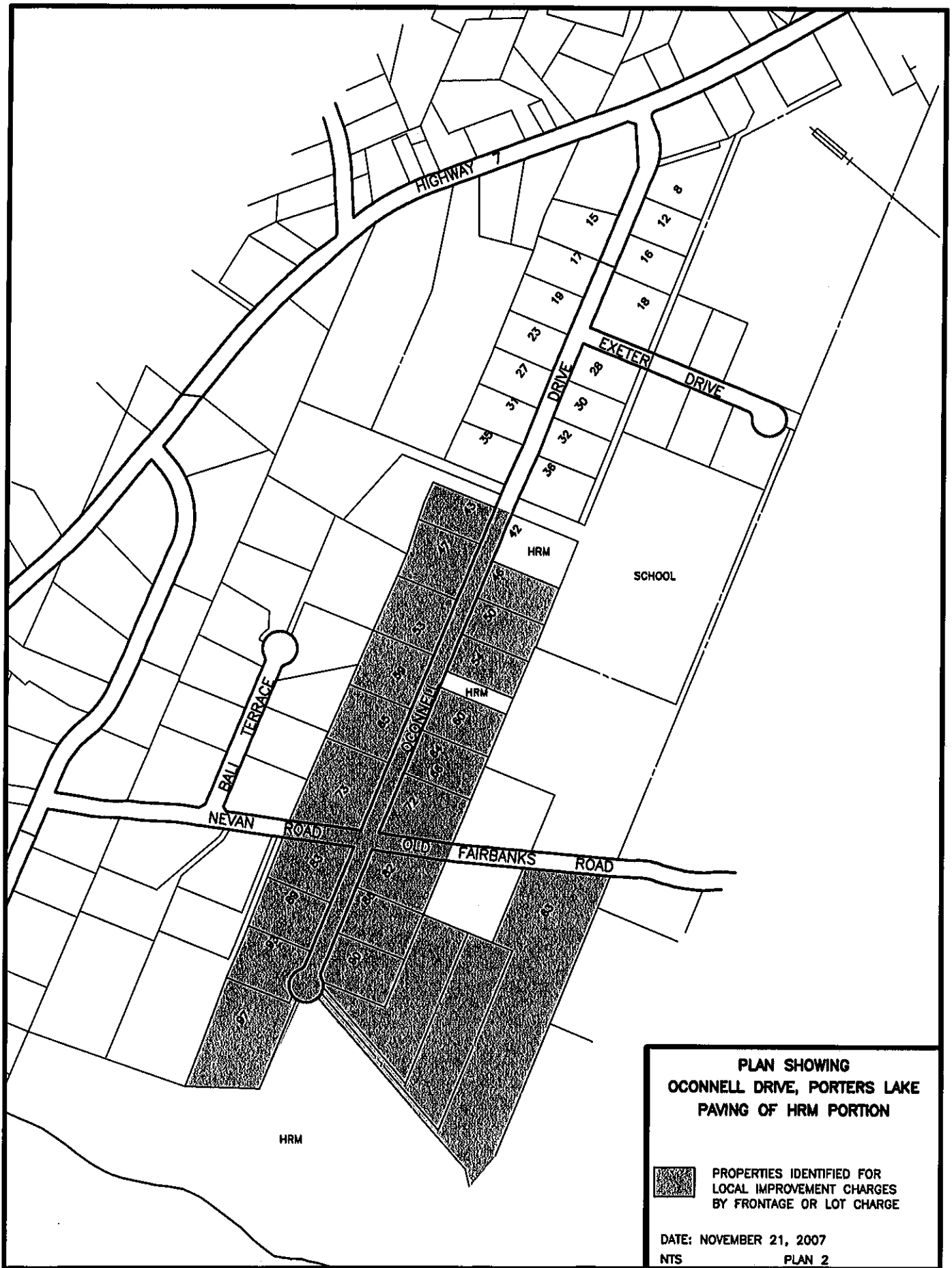
- Some funding implications would be further exacerbated.

Appendix 2
Schedule of Annual Payments for Option 1
(See Note 1 below)

	Principle	Interest	Total Owed
Year 1	\$ 203.07	\$ 82.76	\$ 285.83
Year 2	\$ 203.07	\$ 77.17	\$ 280.24
Year 3	\$ 203.07	\$ 70.83	\$ 273.90
Year 4	\$ 203.07	\$ 63.72	\$ 266.79
Year 5	\$ 203.07	\$ 56.10	\$ 259.17
Year 6	\$ 203.07	\$ 47.98	\$ 251.05
Year 7	\$ 203.07	\$ 39.10	\$ 242.17
Year 8	\$ 203.07	\$ 29.70	\$ 232.77
Year 9	\$ 203.07	\$ 20.06	\$ 223.13
Year 10	\$ 203.07	\$ 10.16	\$ 213.23
Total	\$ 2,030.70	\$ 497.58	\$ 2,528.28

1. The interest amounts shown above are based on interest rates from a recent debenture issue and are therefore for illustration purposes only. The actual amount of interest charged will be based on the debenture interest rates in effect at the time that the final project costs are financed.





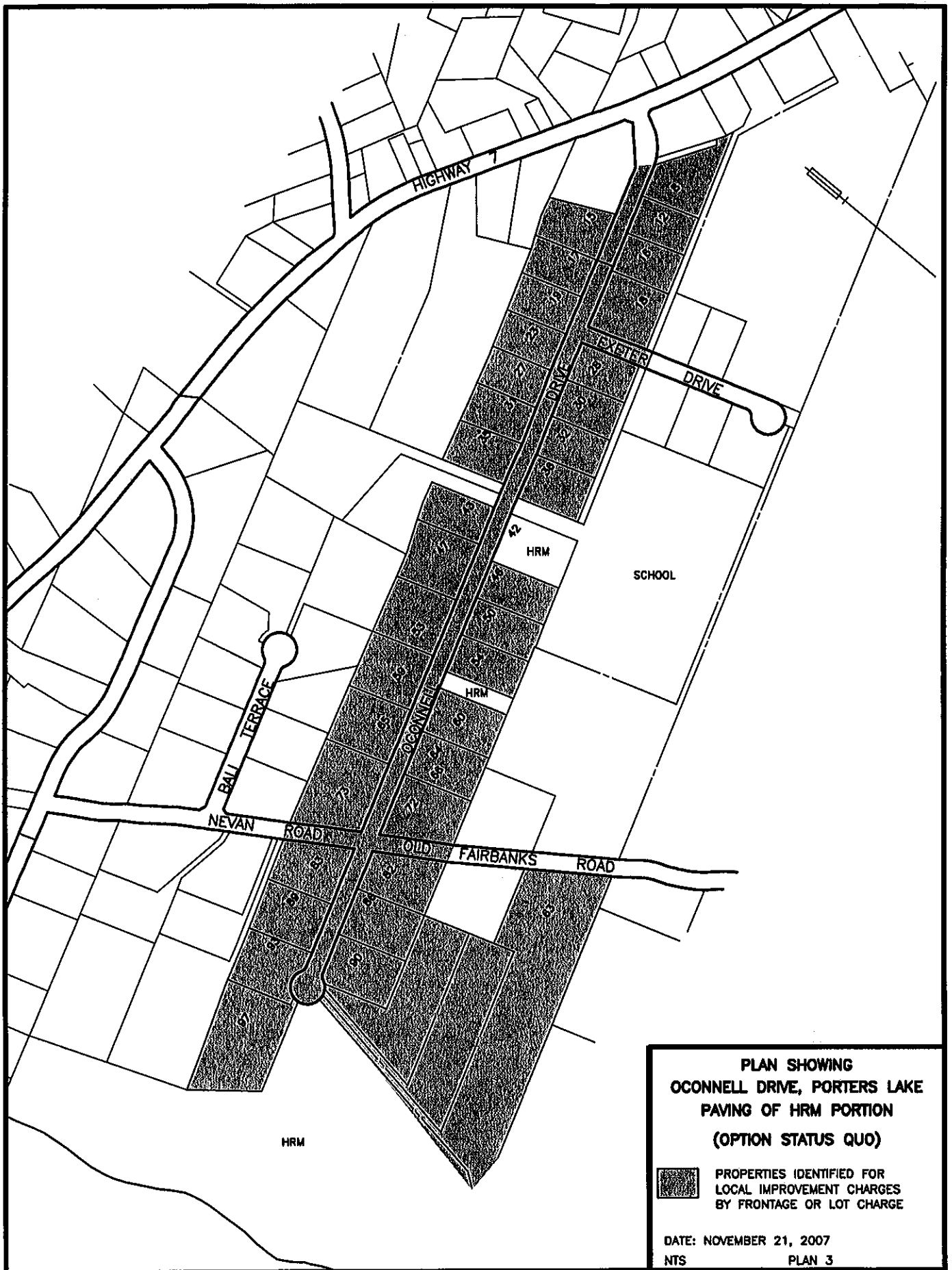
**PLAN SHOWING
O'CONNELL DRIVE, PORTERS LAKE
PAVING OF HRM PORTION**

 PROPERTIES IDENTIFIED FOR
LOCAL IMPROVEMENT CHARGES
BY FRONTAGE OR LOT CHARGE

DATE: NOVEMBER 21, 2007

NTS

PLAN 2



**PLAN SHOWING
O'CONNELL DRIVE, PORTERS LAKE
PAVING OF HRM PORTION
(OPTION STATUS QUO)**

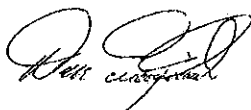
 PROPERTIES IDENTIFIED FOR
LOCAL IMPROVEMENT CHARGES
BY FRONTAGE OR LOT CHARGE

DATE: NOVEMBER 21, 2007
NTS PLAN 3

Item No. 11.1.2

**Halifax Regional Council
January 15, 2008**

TO: Mayor Kelly and Members of Halifax Regional Council



SUBMITTED BY:

Dan English, Chief Administrative Officer



Wayne Anstey, Deputy Chief Administrative Officer - Operations

DATE: January 10, 2007

SUBJECT: Proposed By-Law S-424, an Amendment to By-Law S-400, Respecting
Local Improvement Charges, New Paving O'Connell Drive - Porters
Lake

ORIGIN

HRM Council meeting of December 4, 2007.

RECOMMENDATION

It is recommended that Council approve, in principle, and begin the formal process for adoption of By-Law S-424, Respecting Charges for new paving of the HRM portion of O'Connell Drive, Porters Lake.

BACKGROUND

On October 31, 2006, HRM and the Nova Scotia Department of Transportation and Infrastructure Renewal (NSTIR) entered into a construction agreement (No. 2006-022) to pave the HRM portion of O'Connell Drive. The final cost to HRM for this project was \$178, 705.25 (including net HST). and is subject to Local Improvement Charges (LIC's).

DISCUSSION

This particular project was approved by Council on October 24, 2006 as an LIC project under Construction Agreement 2006-022 with NSTIR.

On December 4, 2007, HRM Council approved a funding split to be recovered from HRM (50%), local improvement charges (LIC) (25%), and an area rate (25%). Under this option, 25% of the funding would stem from an LIC on properties abutting the HRM owned portion of O'Connell Drive, and Councillor Hendsbee has requested these 22 properties be assessed a lot charge of \$2030.74. In accordance with By-Law S-400, the LIC's can be amortized over ten years and the amount to be recovered includes principle plus interest charges at the rate of 2% above the Municipality's Bankers Prime Rate of Interest at the time the project is approved by Halifax Regional Council. The remaining 25% is to be reclaimed from an area rate that is to be imposed on all residents living on the Provincial owned portion of O'Connell Drive, Exeter Drive, Bali Terrace, Nevan Road and Old Fairbanks Road as outlined on Plan 1 (see attached), dated November 21, 2007. Councillor Hendsbee has requested the 43 properties receiving the area rate be assessed as a flat rate. An area rate is more correctly referred to as a uniform charge under section 75(4) of the *Municipal Government Act* when, as is the case here, the rate is uniform for all properties rather than being based on the assessed value of individual properties. This rate shall not exceed \$160.00 annually, and the principle plus interest must be fully paid over a ten year period. Properties on the HRM owned portion of O'Connell Drive would not pay the area rate as they would already be paying the LIC amount. HRM would provide it's 50% cost sharing from the 2008/09 advanced Capital Budget.

By-Law S-424 attached as Appendix 'A' to this report, if adopted, will implement the funding arrangement outlined above.

BUDGET IMPLICATIONS

The staff recommendation has no implications on the approved 2007/08 Budget; however, it does pre-commit \$89,352.63 as part of the 2008/09 Capital Budget account CZU01080, New Paving Inside the Core.

*The total cost for the HRM portion of this street was \$178,705.25

Cost Breakdown:	25% Recoverable from LIC's	\$ 44,676.31
	25% Recoverable from Area Rate	\$ 44,676.31
	Net Cost 50% HRM	<u>\$ 89,352.63</u>
		\$178,705.25

Budget Summary

Capital Account CZU01080 New Paving Inside the Core

Cumulative Unspent Balance	\$800,000
Plus: 25% Recovery from LIC's	\$ 44,676
<u>Plus: 25% Recovery from Area Rate</u>	<u>\$ 44,676</u>
Uncommitted Balance	\$889,352

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

There are no recommended alternatives.

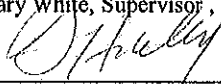
ATTACHMENTS

By-Law S-424
Map

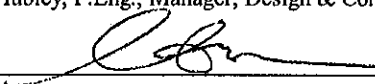
A copy of this report can be obtained online at [http:// www.halifax.ca/council/agendasc/agenda.html](http://www.halifax.ca/council/agendasc/agenda.html) then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Clary White, Supervisor, Design & Construction Services at 490-4865

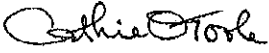
Business Unit Review:


David Hubley, P.Eng., Manager, Design & Construction Services at 490-4845

Report Approved by:


Catherine Sanderson, Sr. Manager, Financial Services, 490-1562

Report Approved by:


Cathie O'Toole, Director, Infrastructure & Asset Management, 490-4825

HALIFAX REGIONAL MUNICIPALITY
By-law Number S-424
Respecting Charges for Street Improvements and New Paving Projects

BE IT ENACTED by the Council of the Halifax Regional Municipality that By-Law Number S-400, the By-Law Respecting Charges for Street Improvements, Section 2 is hereby amended as follows:

1. Section 2 of By-Law S-400 is amended by adding as Subsection (14) the following:

"Notwithstanding Subsection (1), a Local Improvement Charge is hereby imposed on those areas listed in Schedule "K""
2. Section 2 of By-Law S-400 is amended by adding as Subsection (15) the following:

"Notwithstanding Subsection (1), a uniform charge is hereby imposed on those areas listed in Schedule "L""
3. Schedules "K" and "L" are hereby added immediately following Schedule "J".

SCHEDULE "K"

1. The Local Improvement Charges for properties fronting or abutting in whole or in part, for paving of the HRM portion of O'Connell Drive, Porters Lake area identified on the "Plan Showing O'Connell Drive, Plan No 1, Dated November 21, 2007 attached hereto, shall be a lot charge of \$2,030.74 per lot.
2. The Local Improvement Charges imposed under this Schedule may be paid over a 10-year period with interest. Notwithstanding Section 4 of By-Law Number S-400, the unpaid balance is subject to an interest rate based on the maximum of the prime rate as set by the Royal Bank of Canada plus 2% at time of notification.

SCHEDULE "L"

1. The Uniform Charge for properties fronting or abutting in whole or in part on the Provincial owned section of O'Connell Drive, Exeter Drive, Fairbanks Road, Nevan Road and Bali Terrace, Porters Lake area identified on the "Plan Showing O'Connell Drive, Plan No 1, Dated November 21, 2007 attached hereto, shall be a charge of no more than \$160.00 annually for no more than 10 years."
2. The Uniform Charge imposed under this Schedule must be paid over a 10-year period with interest. Notwithstanding Section 4 of By-Law Number S-400, the unpaid balance is subject to an interest rate based on the maximum of the prime rate as set by the Royal Bank of Canada plus 2% at time of notification.

Done and passed by Council

Mayor _____

Municipal Clerk _____

Notice of Motion:
First Reading:
Notice of Public Hearing Publication:
Second Reading:

Approval of Service Nova Scotia and Municipal Relations:
Effective Date:

PLAN SHOWING
O'CONNELL DRIVE, PORTERS LAKE
PAVING OF HRM PORTION



PROPERTIES IDENTIFIED FOR LOCAL
IMPROVEMENT CHARGES AS PER
SCHEDULE "K" OF BY-LAW S-424



PROPERTIES IDENTIFIED FOR LOCAL
IMPROVEMENT CHARGES AS PER
SCHEDULE "L" OF BY-LAW S-424

DATE: NOVEMBER 21, 2007
NTS PLAN 1

