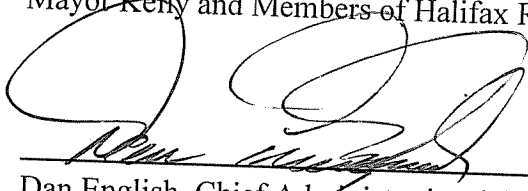


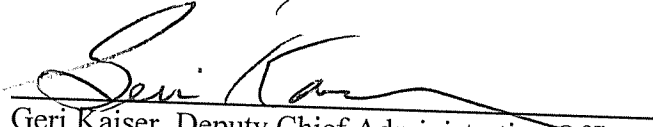


PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

Halifax Regional Council  
November 13, 2007

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:**   
Dan English, Chief Administrative Officer

  
Geri Kaiser, Deputy Chief Administrative Officer

**DATE:** November 13, 2007

**SUBJECT:** Tax Status of Wastewater Assets

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**ORIGIN**

- March 27, 2007 Renewal of the HRWC Water Dividend.
- HRWC Waste Water Merger

**RECOMMENDATION**

It is recommended that Regional Council approve the Halifax Regional Water Commission's intention to seek tax exempt status for wastewater and stormwater assets within HRM.

## **BACKGROUND**

When HRWC and HRM staff were working with Service Nova Scotia Municipal Relations staff to effect the transfer of wastewater assets to the HRWC, it was recognized that as the Halifax Regional Water Commission Act, Municipal Government Act, and Assessment Act are currently written, there is a possibility of automatic assessment and taxation of wastewater assets upon the expiry of the current tax/dividend agreement. Recognizing that this was not the intention of either HRM Council or HRWC, we pursued language to mitigate such an event.

As the issue was reviewed, it became apparent that there could be substantial negative impacts on HRM's uniform assessment if the new legislation was silent on the uniform assessment treatment of wastewater and stormwater assets. As a result, wording has been developed to eliminate any potential for uniform assessment impacts for HRM.

It was determined that a motion from Council would be required to provide clarity that the intention of the transfer was not to tax wastewater/stormwater assets in the long term, which would be reflected in the new Act. This does not preclude HRM's ability to enter into a dividend grant-in-lieu of taxes agreement, as is currently in place for water assets. If such an agreement were executed, it would likely be based on a return-on-rate base which mirrors the current agreement for water, which is acceptable to the Nova Scotia Utility and Review Board (NSUARB).

## **DISCUSSION**

On March 27, 2007 HRM Council approved of a renewal of the Water Dividend Renewal Agreement with the Halifax Regional Water Commission which establishes a dividend based on 1.56% of Rate Base, subject to approval of the Nova Scotia Utility and Review Board (NSUARB), for a three year term (April 1, 2007 - March 31, 2010). The NSUARB has, in the past, expressed concern with the previous dividend arrangement based on 10% of operating revenues. The NSUARB's concern was that the Grant in Lieu of Taxes/Dividend is for the value of the property and assets of HRWC, but the calculation method is linked to revenue. The last 5 years history shows there is no correlation between assessment of the assets and the dividend to HRM. The dividend grew 31.1% from 2001/02 to 2004/05.

In June 2006, HRM Council passed a motion that will see the HRWC dividend gradually being fully committed to 100% funding of wastewater projects until 2008/09, based on an estimated water dividend of \$3.6 million per year. This was part of a waste water funding strategy developed to take some immediate steps to provide additional funding to address critical waste water priorities.

The March 27<sup>th</sup>, 2007 Report approved by Council states that “After waste water services move to HRWC, and a sufficient rate is gradually put in place to meet the sewer/waste water infrastructure requirements, the HRWC dividend should be available to HRM to be included in general revenues. Until a sufficient waste water rate is in place to support infrastructure requirements in compliance with Council’s direction on a 4 year strategy, \$3.6 million of the dividend should be directed to funding waste water projects.”

When the current HRWC Dividend Agreement expires on March 31, 2010 the inclusion of waste water and stormwater assets will be discussed as part of the renewal negotiation.

### **BUDGET IMPLICATIONS**

There are no changes to HRM’s budget for 2007/08.

### **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**

HRM Council could object to the intention of the HRWC to seek tax exempt .

### **ATTACHMENTS**

March 27, 2007 Council Report - HRWC Water Dividend Renewal

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: Cathie O’Toole, CGA - Director of Infrastructure, 490-4825

Report Approved by:

  
Dale MacLennan, CA - Director of Finance, 490-6308

10.1.11





PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

Halifax Regional Council  
March 27, 2007

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:**

  
\_\_\_\_\_  
Dan English, Chief Administrative Officer

  
\_\_\_\_\_  
Geri Kaiser, Deputy Chief Administrative Officer

**DATE:** March 27, 2007

**SUBJECT:** HRWC Water Dividend Renewal

**ORIGIN**

- The existing Water Dividend Agreement with HRWC expires on March 31, 2007.

**RECOMMENDATION**

- It is recommended that Regional Council approve execution of the attached Water Dividend Renewal Agreement with the Halifax Regional Water Commission which establishes a dividend based on 1.56% of Rate Base, subject to approval of the Nova Scotia Utility and Review Board (NSUARB), for a three year term (April 1, 2007 - March 31, 2010).

## **BACKGROUND**

Some of the events/influences shaping the negotiation of this agreement are described below:

- **The NS UARB has expressed concern with the current dividend arrangement.** Previously, the dividend was based on 10% of operating revenues as published in the annual audited statements for the previous fiscal year. The NS UARB's concern is that the Grant in Lieu of Taxes/Dividend is for the value of the property and assets of HRWC, but the calculation method is linked to revenue. The last 5 years history shows there is no correlation between assessment of the assets and the dividend to HRM. The dividend grew 31.1% from 2001/02 to 2004/05.
- In June 2006, HRM Council passed a motion that will see the HRWC dividend gradually being fully committed to 100% funding of waste water projects until 2008/09, based on an estimated water dividend of \$3.6 million per year.
- Waste Water Services are likely transferring to the HRWC by July 31, 2007.

## **DISCUSSION**

There are two issues that need to be considered. 1) How the dividend is calculated?, and 2) Does the dividend continue to be dedicated to waste water projects? If so, for how long?

### **Calculation Method**

Revenues are projected to be more or less flat over the next 5 years, as water consumption is declining. The decline in water consumption is partially offset by growth, and is also offset by the level at which the water rate is set.

The HRWC had proposed that in order to meet the UARB concerns re: linkage to asset values, the dividend calculation could be based on Return on Rate Base. The Rate base is currently in the order of \$230 million approximately. HRWC initially proposed a return on the current rate base set at 1.55% which would yield \$3.6 million. The Rate Base is not anticipated to grow significantly. HRM staff support a rate based method, but preferred a higher rate. After some discussion, HRM and HRWC staff arrived at a proposed rate of 1.56% of Rate Base, consistent with the NSUARB decision on HRWC's last rate application. The table below shows the resulting water dividend calculation. An agreement period of 3 years to align with the gas tax funding commitment makes sense. At the end of the 3 year period, the waste water funding strategy as it relates to gas tax and the HRWC water dividend would have to be revisited.

	2007/08	2008/09	2009/10
10% of Op Revenue	\$3,752,397	\$3,919,368	\$4,059,026
1.6% of Rate Base	\$3,727,466	\$3,816,145	\$3,877,891
1.56% of Rate Base	<b>\$3,634,279</b>	<b>\$3,720,742</b>	<b>\$3,780,944</b>

Due to the change in method from a revenue based approach to a rate based approach, the water dividend will grow at a slower rate, however if water conservation efforts continue to take hold, a change to a rate based method may provide more stability to HRM's budget than the previous method. Additionally, the proposed agreement should satisfy the NSUARB. NSUARB had expressed concern with the previous method of 10% of operating revenues, and have approved HRWC's most recent submission which included an assumed tax agreement estimated at 1.56% of rate base.

**Distribution of the Dividend**

On an annual basis, \$3.6 million dollars of the Water Dividend, as per the Waste Water Funding Strategy approved by Council in June 2006, would be dedicated to waste water projects until 2009/10. HRM staff propose that any remaining balance from the Water Dividend over and above the \$3.6 million, would be used to offset some of the potential transition costs as a result of the transfer of waste water to the HRWC or go into HRM general revenues. Transition costs are unknown at this time.

	2007/08	2008/09	2009/10
1.56% of Rate Base	\$3,634,279	\$3,720,742	\$3,780,944
Dedicated to Waste Water Services	\$3,600,000	\$3,600,000	\$3,600,000
Balance	\$34,279	\$120,742	\$180,944

HRM should not forego or relinquish in perpetuity the right to receive a dividend from HRWC and utilize it as Council sees fit. After waste water services move to HRWC, and a sufficient rate is gradually put in place to meet the sewer/waste water infrastructure requirements, the HRWC dividend should be available to HRM to be included in general revenues. Until a sufficient waste water rate is in place to support infrastructure requirements in compliance with Council's direction on a 4 year strategy, \$3.6 million of the dividend should be directed to funding waste water projects.

**BUDGET IMPLICATIONS**

Under the previous method, HRM would have budgeted \$3,752,397 for the water dividend in 2007/08. Under the proposed method, HRM is budgeting \$3,634,279 for the water dividend in 2007/08, with \$3,600,000 being transferred to waste water services, and the balance of \$34,279 flowing into general revenues in Fiscal Services.

**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**

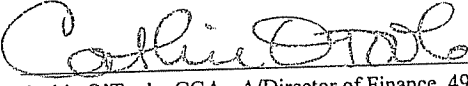
HRM Council could direct staff to negotiate an alternative dividend agreement if the proposed approach is not satisfactory.

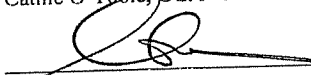
**ATTACHMENTS**

Proposed Dividend Renewal Agreement

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: Cathie O'Toole, CGA - A/Director of Finance

Report Approved by:   
Cathie O'Toole, CGA - A/Director of Finance, 490-6308

Financial Approval by:   
Catherine Sanderson, Senior Manager, Financial Services, 490-1562

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THIS AGREEMENT made this                      day of March, 2007

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate, (HRM)

OF THE FIRST PART

-            AND -

HALIFAX REGIONAL WATER COMMISSION, a body corporate (HRWC)

OF THE SECOND PART

WHEREAS HRM and HRWC did enter into an agreement (the Agreement) dated the 29th day of August, 2001 a copy of which is attached hereto as Schedule "A";

AND WHEREAS HRM and HRWC have agreed that the Agreement which expires on March 31, 2007 should be amended and to provide for a different manner of calculating the annual grants payable there under by HRWC to HRM.

NOW THEREFORE WITNESS the parties agree as follows:

1.        The provisions of the Agreement are rescinded;
2.        Commencing with the fiscal year 2007/2008 and continuing through to the year 2009/2010, the HRWC shall pay to the HRM as a grant, by way of dividend, made in lieu of commercial and business occupancy rates and taxes against its property and assets within the geographic boundaries of the HRM, an amount equal to 1.56 percent of the HRWC rate base allocated to the water system at March 31 of the previous year.
3.        This Agreement will expire March 31, 2010 and a new agreement shall be negotiated at least 90 days prior to the fiscal year end of the HRM.



Grant in Lieu of Commercial and Business Occupancy Rates and Taxes

THIS AGREEMENT made this      day of      200

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate (“HRM”)

OF THE FIRST PART

-and-

HALIFAX REGIONAL WATER COMMISSION, a body corporate (“HRWC”)

OF THE SECOND PART

**WHEREAS** the Halifax Regional Council did, on October 21, 1997, approve the following resolution:

“MOVED by Councilor Heatherington, seconded by Deputy Mayor Greenough that Council:

1. formally endorse the arrangement concluded between the Halifax Regional Water Commission and the Halifax Regional Municipality, namely, that
  - (a) a total of \$2.5 million will be paid annually by the Commission to the Municipality for a five-year period, commencing in 1997/98 and concluding with the fiscal year 2001/2002.
  - (b) in the interim, this arrangement will be reviewed by HRM and a recommendation formulated on the feasibility of its continuance after the initial five-year term has expired;
2. direct staff to arrange for the introduction before the Nova Scotia Legislature of the proposed amendments to the *Halifax Regional Municipality Act*, attached to the staff report as Appendix “A”, which will give the Municipality the jurisdiction to enter into the foregoing arrangement.”

**AND WHEREAS** HRM acquired the jurisdiction under Section 532 of the *Municipal Government Act*, S.N.S. 1998, C. 18 (the “Act”), to enter into agreements with HRWC “providing for the payment of grants in lieu of commercial and business occupancy rates and taxes against the property and assets of the Halifax Regional Water Commission within the

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geographical boundaries of the Halifax Regional Municipality in such amounts annually as shall be agreed upon between the council and the Halifax Regional Water Commission.”;

**AND WHEREAS** the HRM and the HRWC wish to determine an amended formula for the calculation of future payments beyond the fiscal year 2001/2002, in order to provide a degree of stability to the HRWC in calculating its long-range financial needs and obligations;

**AND WHEREAS** the HRM and the HRWC have agreed that, in all of the circumstances, a levy of an annual grant equal to ten percent (10%) of the operating revenue of the HRWC, as published in its annual audited statement, would provide a fair and reasonable rate of return to the HRM for the years 2003/2004, and following;

**NOW THEREFORE** witness in consideration of One Dollar (\$1.00) paid by each party to the other, the receipt whereof is whereby acknowledged, and for other good and valuable consideration, the parties agree as follows:

1. The HRWC shall continue to pay to the HRM an annual payment of \$2.5 million in accordance with the terms of the resolution approved by the HRM on the 21<sup>st</sup> of October, 1997, which payments shall continue to and including the fiscal year 2001/2001.
2. The aforesaid payments are made as grants, by way of dividends, in lieu of commercial and business occupancy rates and taxes against the property and assets of the HRWC within the geographical boundaries of the HRM, and are made in accordance with the provisions of Section 532(2) of the Act.
3. For the fiscal year 2002/2003, the HRWC shall pay to the HRM as a grant, by way of dividend, made in lieu of commercial and business occupancy rates and taxes against its property and assets within the geographic boundaries of the HRM, the sum of \$2,750,000.
4. Commencing with the fiscal year 2003/2004, the HRWC shall pay to the HRM as a grant, by way of dividend, made in lieu of commercial and business occupancy rates and taxes against its property and assets within the geographic boundaries of the RM, an amount equal to ten percent (10%) of its operating revenue as published in its annual audited statement for the previous fiscal year.
5. This agreement will expire March 31, 2007 and shall continue year to year therefrom until one party gives notice of permanent termination, such notice to be given at least 90 days prior to the fiscal year end of the Halifax Regional Municipality of March 31.
6. During the term of this agreement should the Halifax Regional Water Commission request capital or operating contributions from the Halifax Regional Municipality over and above that as contained in the application for an order approving a schedule of rate changes, September 2001, this agreement may be terminated upon 30 days notice by either party.

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**IN WITNESS WHEREOF** the parties hereto have executed these presents as of the day and year first above written.

**SIGNED, SEALED and DELIVERED** )

in the presence of: )

) HALIFAX REGIONAL MUNICIPALITY  
)  
)

) Per: \_\_\_\_\_  
)

) Per: \_\_\_\_\_  
)  
)

) HALIFAX REGIONAL WATER  
) COMMISSION  
)

) Per: \_\_\_\_\_  
)  
)