



Item No. 10.1.5
Halifax Regional Council
March 5, 2013

TO: Mayor Savage and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: January 31, 2013

SUBJECT: **Administrative Order 51: Respecting Private Bridge Financing**

ORIGIN

Council Report dated June 2, 2009, entitled “Clearwater Drive Bridge (Private Road) - Timberlea”, recommendation number 5 which states: “Staff be directed to return to Council at a later date with an analysis of costs, benefits and implications of providing financing assistance for the recapitalization of private roads and bridges, and a proposed policy to establish criteria and process for exceptional circumstances where involvement of the municipality may be warranted.”

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter subsections 79(1)(ab), 104(1)(g), and 307(2)(e), and By-Law L-100, Respecting Charges for Local Improvements.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Approve Administrative Order 51, Respecting Private Bridge Financing, for financing the repairs, upgrades, or replacement of private bridges as attached to this report which includes a provision to charge to a one-time fee of \$200 for expenses associated with administering Administrative Order 51, and
2. Limit HRM’s involvement with private bridges to providing financing through By-Law L-100, Respecting Charges for Local Improvements, and to verify that the requirements of Administrative Order 51 for financing the replacement and/or upgrade of private bridges as attached to this report have been satisfied.

BACKGROUND

There are an unknown number of private bridges within Halifax Regional Municipality. On four separate occasions, HRM has funded the replacement of private bridges by property owners through the use of local improvement charges: By-Law L-116 (Kings Road, Wellington), By-Law L-119 (Rockwood Hills Drive, Timberlea), By-Law L-131 (Clearwater Drive, Timberlea), and By-Law L-135 (Kings Road, Wellington). In the case of the first three, Fire and Emergency Services had informed the residents by letter that because of the condition of these bridges, heavy firefighting vehicles would no longer be permitted to cross until adequate repairs to the bridge were completed. Also, oil delivery trucks along with other heavy service trucks would not cross the bridges. When homes are on a private road, it is the homeowner's responsibility and best interest to address any issue regarding maintenance of the private road along with any bridge work that is required. The major issue around this work is the cost to the property owners and their ability to obtain financing. As a result of this, residents made requests to HRM to provide financing assistance.

Section 104(1)(g) of the HRM Charter does allow Council to make by-laws imposing, fixing and providing methods of enforcing payment of charges for constructing, repairing, improving and maintaining bridges associated with private roads. However, Section 79(1)(ab) does not provide for HRM to expend general tax rate money on bridges associated with private roads. Therefore, while Council could engage in passing a by-law to deal with the recovery of local improvement charges for such a bridge, HRM itself cannot fund the bridge, other than through the use of a local improvement charge. Justification for providing financing assistance to property owners for this purpose has also been derived from Section 307(2)(e) of the Charter which states:

“Policies for fire department and emergency service providers may include such other matters as are necessary and expedient for the provision of emergency services in the municipality.”

Because Councillors and staff continue to receive inquiries from residents for financing assistance to repair private bridges, staff committed to returning to Council at a later date with a draft policy for evaluating such requests based on a uniform set of criteria.

DISCUSSION

Section 104(1)(g) provides Council with sufficient authority to impose local improvement charges for constructing, repairing, improving and maintaining bridges associated with private roads. Therefore, no changes to the Charter are required to enact proposed Administrative Order 51 included with this report.

Section 79(1)(ab) does not provide for HRM to expend money on bridges associated with private roads. This is not an issue if any money expended by HRM on bridges associated with private roads is fully recovered from benefiting property owners using local improvement charges. This is the approach being recommended by staff because of the large number of private roads in HRM and an unknown number of private bridges associated with those roads. It continues to be fiscally challenging for HRM to maintain its current inventory of public roads to an acceptable standard, and therefore there is no capacity to take on responsibility for private bridges. HRM

also lacks the necessary in-house expertise to construct or repair bridges.

HRMs involvement with private bridges should continue to be limited to LIC financing for exceptional circumstances where the health and safety of individuals is at risk. To ensure HRMs involvement is restricted in this way, a LIC based Administrative Order has been developed for Council's consideration as attached to this report.

FINANCIAL IMPLICATIONS

Since HRM will only be providing a means for property owners to finance the replacement or upgrade of their private bridges, there are no financial implications to HRM. Property owners will be responsible for reimbursing HRM for 100% of the cost plus interest through a Local Improvement Charge. The interest compensates HRM for not having access to these funds for other purposes and/or not being able to invest the funds in accordance with the HRM Investment Policy.

It is proposed that a one-time fee of \$200 per project be charged by HRM for expenses associated with administering the Administrative Order. The fee would be included in the final total cost of the project and therefore divided up amongst all the properties to be charged the LIC.

COMMUNITY ENGAGEMENT

At the time application is made by a group of property owners serviced by a private bridge, a formal mail-out ballot will be conducted of all affected property owners. Information provided with the ballot will include pertinent details as prescribed in Administrative Order 51 including the date, time, and location of a public meeting to provide additional information, and to respond to any questions or concerns from property owners.

ENVIRONMENTAL IMPLICATIONS

Procedure 13 of Administrative Order 51 specifies that the Association is responsible for obtaining all necessary permits and adhering to the requirements. This would include any permits required from the Provincial or Federal Departments of Environment.

ALTERNATIVES

1. Council could decide not to provide any financing mechanism for property owners of private bridges which need to be upgraded or replaced in order that large firefighting trucks can safely travel over them. However, this is not recommended as most property owners do not have the funds readily available upfront and are not able to obtain financing on their own. Financial institutions will generally not accept a private bridge as security for the loan, therefore property owners would have to pledge other real property for this purpose. This creates significant risk for individual property owners should one or more property owners default on their loan payments.

2. Council could decide to forego the use of a formal survey and impose the local improvement charge on the properties serviced by the private bridge. All other aspects of Administrative Order 51 would remain in place. Given the serious risk associated with not being able to provide full firefighting service, this would be an acceptable alternative.

ATTACHMENTS

Administrative Order 51: Respecting Private Bridge Financing

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: Gordon Roussel, Senior Financial Consultant, 490-6468

Report Approved by: _____
Bruce Fisher, Manager, Fiscal Policy & Financial Planning, 490-4493

Financial Approval by: _____
Greg Keefe, Director of Finance & Information Technology Services/ CFO, 490-6308

**HALIFAX REGIONAL MUNICIPALITY
ADMINISTRATIVE ORDER NUMBER 51
RESPECTING PRIVATE BRIDGE FINANCING**

WHEREAS subsection 1 of section 104 of the *Halifax Regional Municipality Charter* states that “The Council may make by-laws imposing, fixing and providing methods of enforcing payment of charges for ... (g) laying out, opening, constructing, repairing, improving and maintaining private roads, curbs, sidewalks, gutters, bridges, culverts and retaining walls that are associated with private roads, where the cost is incurred (i) by the Municipality, or (ii) under an agreement between the Municipality and a person”;

AND WHEREAS the Council of the Municipality wants to create procedures for property owners applying for financing of bridges that are associated with private roads;

NOW THEREFORE BE IT RESOLVED as an Administrative Order of the Council of the Halifax Regional Municipality as follows:

Short Title

1. This Administrative Order may be cited as Administrative Order Number 51, the Private Bridges Administrative Order.

Purpose of Administrative Order

2. The purpose of this Administrative Order is to provide property owners with a mechanism to apply to the municipality to finance the repairing, upgrading or replacement of a privately owned bridge that is:

- (a) required to access their properties; and
- (b) has been determined by a Professional Engineer to be unsafe for vehicle traffic or will be unsafe for vehicle traffic within the near future.

Definitions

3. In this Administrative Order,

- (a) “Local Improvement Charge” means:
 - (i) a form of property tax to fund the capital cost of municipal infrastructure including bridges which benefit a specific area of the municipality;
 - (ii) is charged only to the properties receiving the benefit of such infrastructure; and
 - (iii) the cost of such infrastructure is typically charged as a uniform charge per property, on a frontage basis, or a combination of both a uniform charge and frontage basis;

(b) “Private Bridge” means a bridge which is not owned and/or maintained by the Halifax Regional Municipality, the Province of Nova Scotia, the Government of Canada, or any other publicly funded entity; and

(c) “Professional Engineer” means:

(i) an individual who has obtained the P.Eng designation and who is currently registered in the Province of Nova Scotia and is in good standing with Engineers Nova Scotia; and

(ii) has expertise in bridge construction.

Application of Administrative Order

4. (1) This Administrative Order only applies where property owners have been advised in writing by a Professional Engineer that the private bridge providing access to their properties is unable to meet the load requirements necessary for the passage of vehicular traffic, or may be unable to do so within the near future.

(2) Where a Professional Engineer advises the property owners that the private bridge is unable to meet the load requirements, the property owners so affected may apply under this Administrative Order to have 100% of the cost of the repairs, upgrades, or replacement of the bridge (less any external funding received) financed over a period of up to 20 years through the implementation of a Local Improvement Charge applied to their properties. HRM will **not** provide any funding towards the cost of the repairs, upgrades, or replacement of the bridge except for those amounts to be recovered from the property owners through the Local Improvement Charge.

(3) For greater clarity, the property owners are responsible for the entire cost of repairs, upgrades or replacement of the bridge. HRM’s role is restricted solely to providing a financing mechanism to the property owners through By-Law L-100, Respecting Charges for Local Improvements.

Procedure to Apply

5. The procedures set out in Schedule “A” to this Administrative Order are part of this Administrative Order and are the requirements which must be satisfied before HRM will consider financing repairing, upgrading or replacing a private bridge.

Schedule "A"

Requirements

1. Where property owners have been advised in writing by a Professional Engineer under subsection 1 of section 4 of this Administrative Order that the private bridge providing access to their properties is unsafe for the passage of motor vehicles, or does not, or may not in the near future, meet the load requirements necessary for the passage of motor vehicles, the property owners may request assistance from HRM to finance the cost of the repairs, upgrades or replacement necessary to provide safe passage.
2. The property owners must obtain a cost estimate from a contractor qualified to repair, upgrade or replace bridges along with a written description and schematics of the work to be completed as provided by a Professional Engineer. The cost estimate must be based on the work required to be completed as detailed in the Professional Engineer's report. The property owners are encouraged to obtain at least three quotes to ensure value for money.
3. The Professional Engineer's report and contractor's quote must be submitted to HRM for review of the cost estimate (Note: HRM does not provide design and construction review). The cost estimate is used to determine the interim amount of the Local Improvement Charge which is communicated to property owners and included in the by-law to enact the Local Improvement Charge.
4. A one-time fee of \$200 will be charged by HRM to the property owners collectively for expenses associated with administering the Administrative Order. The fee would be included in the final total cost of the project and therefore divided up amongst all the properties to be charged the Local Improvement Charge.
5.
 - (a) The cost estimate provided under procedure 3 will be reviewed to ensure that the amount of the Local Improvement Charge for any one property does not exceed 80% of the assessed value of that property.
 - (b) Where the Local Improvement Charge does exceed 80% of the assessed value of any property, the amount in excess of 80% will be divided among the remaining properties to be charged.
6. A formal survey of the property owners will be conducted by HRM. Each property owner will receive written information by regular mail which will include the following:
 - (a) The purpose of the survey;
 - (b) The total estimated cost of the work which will include a reasonable contingency based on the Professional Engineer's report and the contractor's cost estimate;
 - (c) A statement that the property owners are 100% responsible for the cost of the work;

- (d) The estimated Local Improvement Charge which will be based on the total estimated cost including full HST (less any external funding) divided by the total number of properties to be serviced by the bridge;
 - (e) A statement that the actual amount of the Local Improvement Charge will be based on the final actual cost of the project including surveying, engineering, permits, construction, inspection, contract administration, and any other costs required to be incurred to complete the work;
 - (f) A statement that the implementation of a Local Improvement Charge results in a lien on all properties subject to the charge;
 - (g) The financing interest rate to be charged and how it is determined (prime rate Plus 2%) along with other terms of the Local Improvement Charge such as the maximum financing period (up to 20 years), minimum annual instalments required, payment options, and due dates;
 - (h) Details of the process including what constitutes a majority in favour of the Local Improvement Charge (a simple majority 50%+1 of properties subject to the charge) and approval of an amending by-law by Regional Council;
 - (i) The date, time and location of a public meeting to provide additional information, and to respond to any questions or concerns from property owners;
 - (j) A statement that the survey results are non-binding and that Regional Council may consider other information in deciding on whether or not to approve the Local Improvement Charge;
 - (k) A statement that HRM assumes no responsibility or liability for the work completed;
 - (l) A ballot which requests that the property owner indicate with a check mark or "X" whether or not they agree to the Local Improvement Charge to finance their individual shares of the cost for repairs, upgrades or replacement of the bridge;
 - (m) Instructions as to how the ballot can be submitted and the deadline for doing so;
 - (n) Contact information for questions, and
 - (o) Any other information which may be pertinent to the survey.
7. (a) For the request to proceed to the by-law stage, ballots indicating agreement to pay the Local Improvement Charge must be received from property owners representing at least 50% + 1 of the properties that would be subject to the Charge.

(b) For greater clarity, the 50% + 1 requirement applies to the number of properties that would be subject to the charge, and not to the number of respondents.

8. To implement the Local Improvement Charge, Regional Council must approve a by-law to amend By-law L-100, Respecting Charges for Local Improvements. Prior to approval, at Regional Council's sole discretion, a public hearing may be held to allow members of the general public to address Regional Council with any concerns or comments in favour of or against the project and the Local Improvement Charge to finance the cost.

9. While Regional Council will consider the results of the formal survey and the comments provided at the public hearing, if one is held, such surveys and comments are non-binding on Regional Council. Regional Council may also consider other pertinent information in deciding whether or not to approve the amending by-law, including advice from staff and other qualified individuals regarding the condition of the bridge.

10. Following final approval by Regional Council of the by-law, the property owners will be advised of Council's decision and further requirements which are outlined in the remainder of this document.

11. If they have not already done so, the property owners serviced by the bridge must form an Association as defined under the Societies Act, and register with the Registry of Joint Stock Companies for the purpose of dealing with the Professional Engineer, contractor, regulatory agencies and any other agents necessary for the project, and for the ongoing maintenance and upkeep of the bridge.

12. The Association will be responsible for all facets of the project including, but not limited to, relevant surveying, engineering design, regulatory approvals (if necessary), construction, contract administration/construction inspection, and certification. However the Association will be required to engage the services of qualified professionals who ultimately will be responsible for the overall management of the bridge project.

13. The Association is obligated to ensure that all municipal, provincial and federal permits are obtained, and that the requirements are adhered to. Any costs associated with the permitting process are to be borne by the property owners and may be included in the Local Improvement Charge.

14. HRM assumes no responsibility or liability related to the project.

15. Upon completion of the bridge replacement or upgrade, the Association must provide HRM with certification through a Professional Engineer that the bridge was constructed as per the engineering drawings and specifications, and that the bridge meets all loading requirements as described in applicable bridges codes and regulations.

16. The Association will forward all project invoices to HRM for payment, and HRM will use the invoice amounts including full HST to calculate the final Local Improvement Charge. All

actual project costs, including surveying, engineering, permits, construction, inspection, contract administration, etc., will be used to determine the final Local Improvement Charge to be paid by the property owners.

17. All invoices for payment must be billed jointly to both the Association and the Halifax Regional Municipality.

18. The Association is responsible for carrying the necessary liability insurance for the bridge and to maintain it. By-Law P-1100, Respecting Charges for Private Road Maintenance, is available to the Association for this purpose.

19. This procedure will be updated from time to time as and when required.