

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by _____
John Traves, Q.C. Acting Chief Administrative Officer
Original Signed by _____
Jane Fraser, Acting Deputy Chief Administrative Officer

DATE: May 17, 2016

SUBJECT: Old Sackville Road Bridges (BR39 and BR40)

ORIGIN

This report originates from staff.

LEGISLATIVE AUTHORITY

Section 73(1) of the *Halifax Regional Municipality Charter* provides that:

"The Municipality may enter into and carry out agreements for highway construction, improvement and maintenance and other purposes pursuant to the *Public Highways Act*."

Section 28 of the *Public Highways Act* provides that:

"28 (1) A municipality shall not effect improvements of a permanent character on any highway, unless it

(a) submits to the Minister plans, specifications, estimates and other particulars respecting the proposed improvements;

(b) satisfies the Minister that suitable provision will be made for the future maintenance of such highway after it has been so improved; and

(c) obtains from the Minister his written consent.

(2) The municipality may, after compliance with the conditions set out in subsection (1), enter into an agreement with the Minister for the carrying out of such improvement by the municipality, the Minister or some other person upon such terms and subject to such conditions as the Minister prescribes and the Governor in Council approves.

(3) The costs of any such improvements shall be apportioned between the municipality and the Province in the manner agreed upon by them.

RECOMMENDATION ON PAGE 2

(4) Any sum payable by the Province shall not exceed one half of the whole cost of the improvement.”

Section 79(1) of the *Halifax Regional Municipality Charter* provides that:

“The Council may expend money required by the Municipality for ... (aa) streets, culverts, retaining walls, sidewalks, curbs and gutters.”

RECOMMENDATION

It is recommended Halifax Regional Council direct staff to proceed with the design and subsequent tendering of the capital improvements required for two bridges located on Old Sackville Road, Lower Sackville (referenced as BR39 and BR40) as outlined in this report, notwithstanding the unresolved dispute with the Province about ownership and responsibility for the structures.

BACKGROUND

The surfaces of two bridges on the Old Sackville Road (referenced as BR 39 and BR 40) require capital improvements which involves replacing the railing system, relocating the curb and widening the sidewalk for enhanced accessibility. The current state of these elements of the bridges is a safety concern. HRM staff and Nova Scotia Department of Transportation and Infrastructure Renewal (NSTIR) disagree, however, about the ownership of these bridges and whose responsibility it is to maintain them. NSTIR's position is that the ownership of Old Sackville Road (including the bridges thereon) and a number of other public highways were conveyed to HRM as a result of Maintenance Agreement No. HRM-01 (dated June 24, 1996), Order in Council No. 96-531 (dated July 9, 1996), and a Quit Claim Deed (dated July 10, 1998). These public highways were not formally accepted by Council, which is a requirement of section 319(3) of the *HRM Charter*, nor were they accepted by the HRM Coordinator appointed under the 1995 *HRM Act*. In any event, there is no evidence that the parties agreed or intended to transfer any bridge infrastructure to HRM.

Maintenance Agreement No. HRM-08 (dated February 2, 2001) is an agreement between HRM and the Nova Scotia Department of Transportation and Public Works (now known as Nova Scotia Department of Transportation and Infrastructure Renewal) that outlines specifics on the maintenance of bridges and traffic signs on former cost shared routes within HRM. Under HRM-08, the Minister pays the full cost of any repairs to the substructure and superstructure, including bridge painting. The Municipality pays for maintaining the bridge riding surface and the bridge rail, and the cost to maintain these components are shared equally by the Minister and the Municipality. Bridges BR 39 and BR 40 are not located on the former cost-shared routes and therefore they fall outside of the scope of HRM-08.

DISCUSSION

HRM-08 identifies twenty-two cost shared bridge structures. Staff from HRM and NSTIR have held several discussions to review the agreement, the associated list of cost shared bridges, and other bridges that are not currently part of HRM-08. As an outcome of those discussions it was determined a new agreement should be drafted that would provide greater clarity with respect to the current levels of responsibility, and outline the accountability for bridges (road and pedestrian) that are not identified in HRM-08 (including BR 39 and BR 40). A draft agreement has been prepared; however, it is still being reviewed by HRM and NSTIR, and additional time and effort is required to finalize the document prior to submitting to Regional Council for review and approval.

In the interim, upgrades are required on the two Old Sackville Road bridges as described above. Based on HRM staff's position that the Province is the owner of these bridges, HRM staff requested the Province provide a *Public Highways Act* agreement (as required section 73 of the *HRM Charter* and section 28 of

the *Public Highways Act*) to enable HRM to proceed with the work. NSTIR responded by indicating that its position is that HRM is the owner of the bridges and therefore a *Public Highways Act* agreement is not required. In NSTIR's view, all that is required is a "Work within the Highway Right-of-Way Permit" since the bridge passes over Provincial Highway 101 and HRM will need to enter that ROW in order to do some of the proposed work on the bridges.

Given the impasse with the Province on bridge ownership and the pending status of a revised HRM-08 cost sharing agreement, HRM staff is therefore requesting approval from Council to proceed with the design and subsequent tendering of the project without a formal *Public Highways Act* agreement. Under this scenario HRM would pay 100% of the costs upfront, and may or may not be reimbursed depending on the outcome of a revised HRM-08 agreement (should one be achieved).

It is estimated that once approval to proceed is granted, it will take approximately 10-12 weeks to conduct the consulting/tendering phase of the work followed by construction.

FINANCIAL IMPLICATIONS

The estimated cost for the design of the scope of work as defined above is \$50,000 (net HST included). Funding is available in the Approved 2015/16 Project Budget from Project Account No. CRU01077 - Bridges which also includes funds for the construction phase of this project (Total Estimated Budget \$500,000). The budget availability has been confirmed by Finance.

Budget Summary:

Project Account No. CRU01077 - Bridges

Cumulative Unspent Budget	\$ 4,436,024
Less: Design Phase Costs	<u>\$ 50,000</u>
Balance	\$ 4,386,024

The balance of funds will be used to implement the remainder of the Bridge Repair Program as approved by Council including the construction phase of this project

RISK CONSIDERATIONS

Although staff is not aware of any incidents, the current state of the bridges represents a safety concern. As outline in the discussion section, there is a very real risk that HRM will not be able to recover the cost to repair the bridges from the Province of Nova Scotia.

COMMUNITY ENGAGEMENT

N/A

ENVIRONMENTAL IMPLICATIONS

Implications not identified

ALTERNATIVES

1. Council could direct staff not to proceed with the capital improvements and continue to ask that the Province proceed with the work.
2. Council could direct staff not to proceed with the capital improvements unless a revised HRM-08 cost

sharing agreement regarding bridge maintenance is achieved with the Province (including BR39 and BR40).

ATTACHMENTS

Attachment 1 - Location Plan – BR39 and BR40.

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

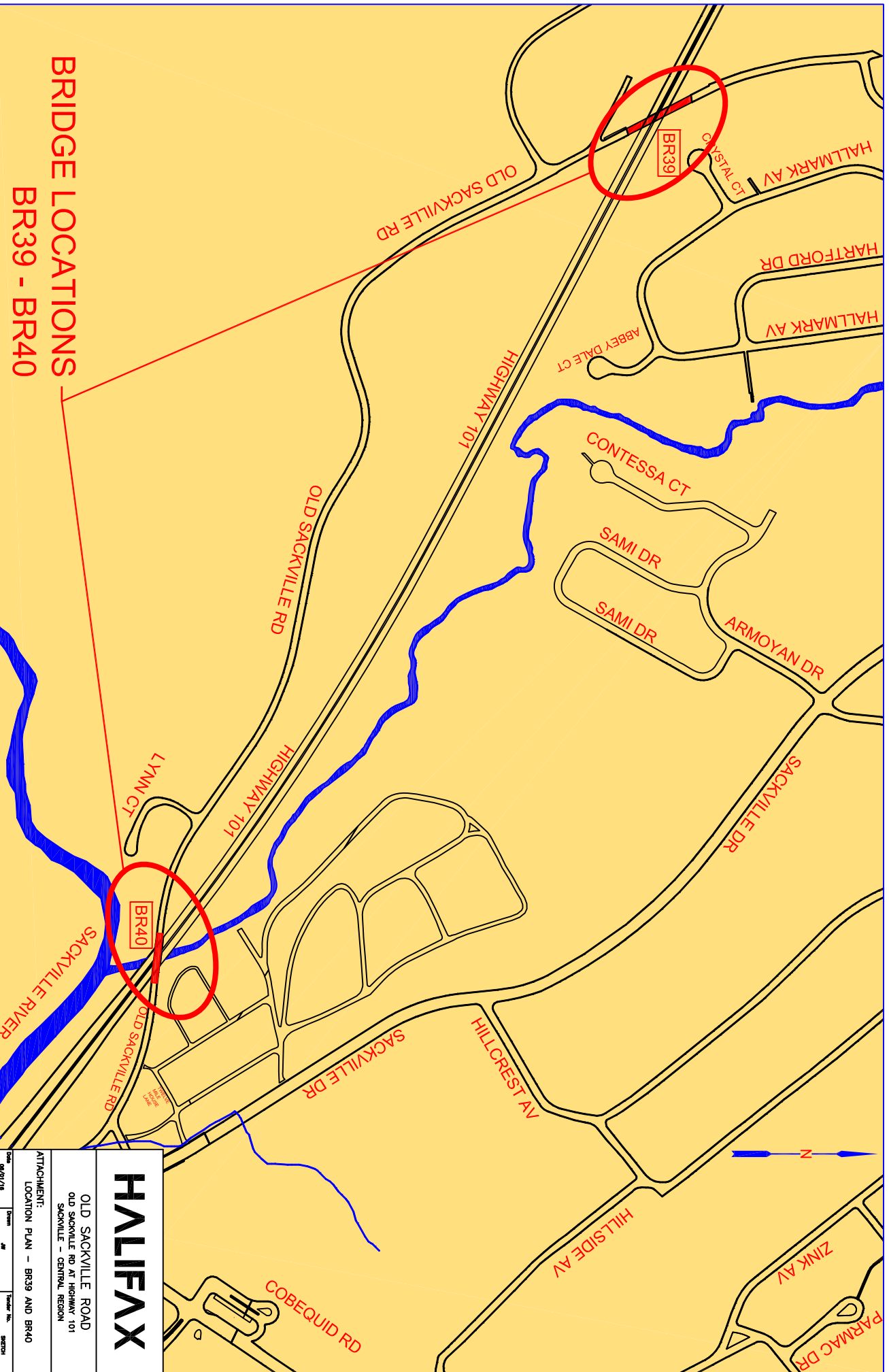
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BRIDGE LOCATIONS
BR39 - BR40

HALIFAX

OLD SACKVILLE ROAD
 OLD SACKVILLE RD AT HIGHWAY 101
 SACKVILLE - CENTRAL REGION

ATTACHMENT:
 LOCATION PLAN - BR39 AND BR40

Scale	Sheet	#	Sheet No.	Section
04/01/18				