



**Subject:** *Private Road Standard*  
**To:** Executive Committee  
**Date Prepared:** November 2017  
**Related Motions:** C17(174)  
**Prepared by:** Jesse Hulsman, Director of Infrastructure & Operations  
**Approved by:** Connie Nolan, Chief Administrative Officer

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### Summary

The Municipality documented its intent to create and implement a technical standard for Private Roads as part of updates made to the Subdivision Bylaw, which was driven by the recent Planning Review process. The MGA enables Municipalities to create standards for private roads through the Subdivision Bylaw.

Staff focused on developing a concise list of standards that referenced design criteria of lower speeds than 50km/h to enable a small footprint for the road right of way which was discussed as a way to balance establishing good standards with the economics of private roads. Research has gone into approaches for speed signage, with the recommendation of requiring warning signs as the most reasonable means of informing the public of the designed driving conditions.

Where this has been identified as a technical standard, the approved document will be posted publicly as a stand alone document. The long term intent is for this standard to be amalgamated within an Engineering Standards document that will also include specifications for water, sewer, storm, public roads, and sidewalks. That amalgamation will involve detailed review of the other standards and updating is required which is why the private road standard is presented on its own.

Staff have kept the standard prohibiting a private road from being an extension of a private road in a standard as the third listed standard, but have separated it from intersection angle criteria as those are 2 independent standards that got mixed together in previous discussions on version of a draft standard. Technical staff have reviewed this again, and have determined the safety and operational concerns are valid.

East Hants is taking a unique position in the Province by moving forward with more detailed standards and governance towards private roads where other units continue to contemplate what to do or have moved away from permitting Private Roads altogether. Based on this scenario, staff have put forward a standard that is both innovative and responsible in its approach.

### Financial Impact Statement

n/a

### Recommendation

For the private road standards be adopted as presented

### Recommended Motion

*Move that the Infrastructure & Operations Committee recommend that Council approve the adoption of private road standards as attached to the Executive Committee agenda for Dec 12, 2017.*

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## Background

The idea of the Municipality developing and adopting standards for the construction of private roads was brought up through the Planning Review. One of the background papers put together and reviewed with Council members during this process was on private roads.

Through the adoption of the Planning Review, Council has directed staff to develop standards for private roads and it is now listed within the conditions of the Subdivision Bylaw that all new private roads must meet Municipal standards for private roads.

Staff have found through benchmark discussions that adopting private road standards isn't common practice across Nova Scotia and there really isn't a best practice available that could apply for the direction East Hants has chosen to go. The only local benchmark is recent updates by HRM which has moved away from allowing future private roads. Having said that, HRM did need to make an amendment to enable special circumstances so that already subdivided land holdings did have some options for accessing their land to build homes due to a specific land use dispute.

A legal opinion was sought to validate the Municipality's ability to create standards for private roads. It was confirmed that through the Municipal Government Act, Section 271 (3) (g), that a Municipality does have the authority to create standards for private roads if it so chooses.

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## Discussion

### Ability to create standards for Private Roads

The Municipal Government Act enables Municipalities to create standards for private roads as per section 271(3). This enabling function is through the adoption of a subdivision bylaw. The Subdivision Bylaw for East Hants already references a requirement for approval of final subdivision as having designed and constructed in accordance with Municipal standards for private roads.

The Municipality is not required to allow the creation of private roads for a subdivision, however as long as private roads are enabled within the subdivision bylaw, the Municipality has taken on managing the criteria to allow them to be considered. The alternative would be to amend the Subdivision Bylaw to no longer allow for the creation of and subdivision on a private road. Jurisdictions, such as HRM, have moved towards limiting any type private road with the exception of very specific circumstances, with a focus on limiting liability and also limiting exposure to civil disputes between neighbors.

### Maintenance of Private Roads

There are times where groups of residents on a shared private road struggle collect funds from each other in order to maintain a road. In these situations, the Municipality does offer a collection service through Bylaw F-300 that can collect funds on behalf of a road association that has voted in support of seeking this service. The road association is still required to determine the required maintenance budget and coordinate the work.

Road maintenance can be a contentious issue for private roads as each road has its unique history. There are instances where someone with equipment takes it upon themselves to maintain a private road for a while. Then there are issues if this person becomes unavailable or moves away. There can be instances where the developer of the road still lives on the road and maintains the road on their own for a time and then stops or moves away. These types of scenarios can be confusing and frustrating for residents who may not be fully aware of the responsibilities they take on once they move on to a private road. This can make it harder for a group of residents to come together to form a functional road association. These instances will continue for as long as there are private roads in East Hants.

### Speed Limits on Private Property

Private roads are listed within the definition of “Highways” in the Motor Vehicle Act, therefore properly installed and assigned speed limit signs on private roads can be enforced.

A detailed program for posting and managing speed limits on private roads is not typically done across the Province, as verified with the Provincial Traffic Authority. That said, leveraging design standards from the Transportation Association of Canada will better enable a review of posting speed limits if it becomes a service expectation in the future.

That said, if nothing is posted the normal expectation of a driver would be for the speed limit to be 50km/h. With the design methodology being specifically lower than for a 50km/h sign, it is recommended to post a warning sign of the expected driving conditions of 30km/h.



Although the RCMP could enforce a speed limit sign on a private road if it was approved and posted by the Traffic Authority, it would be difficult operationally if standards differ from one private road to the next, and with other regional jurisdictions not having speed limits assigned on private roads it would create confusing situation for both the public and the police. So a warning sign approach for private roads that follow a new standard going forward would be a reasonable approach.

### Road Right-of-way/Ownership Turnover

The proposed requirement for minimum right-of-way width for private roads is narrower than the requirement for public roads.

Previously, the municipality required a design with a road right-of-way that would meet public road standards with the thought that if the road association upgraded the road in the future to public road standards, it could in theory be turned over to the Municipality.

The challenge with that thought process is that although there was designated width, the cost to bring up a road to public road standards would be cost prohibitive and would likely require a charge against the general tax rate to spread out the costs enough across all Municipal tax payers to be able to move work such as this forward.

The Municipality has not had a historically private road transition to a public road. It is not likely that it will ever be feasible, thus staff do not believe requiring the same right-of-way width to preserve the ability to transition to a public road in the future is necessary. The appeal of private road ownership is typically either price point related to ability to enter the housing market or creating a unique community experience. Both scenarios have happened across the Municipality, and both provide a unique value proposition that can be marketed to encourage areas of growth.

The challenges that staff hear about come after a private road is taken over where it hasn't been built to an acceptable standard and/or there isn't an organized method for road maintenance. Road conditions can deteriorate regardless of any technical standard for construction. The long term condition will depend on what

balance of engagement and capabilities exist within a group of residents choosing to live on the same private road.

#### Extending a private road from the end of a public road

There is significant concern from Staff that allowing a private road to extend straight off the end of a public road would cause both a safety hazard and create operational challenges.

The level of maintenance of private roads can vary greatly from one private road to the next, as it relates back to each residential groups varying combinations of engagement and capabilities. It is foreseeable that if private roads where to extend straight for a public road that the road condition will go from a publicly monitored and maintained condition to one that is unpredictable. With the changes to the width of the travel surface slower speeds will be required on private roads. The speed design, along with the overall maintained condition differences, change the environment for a driver and that may not be visually obvious to a driver to enable them to react to adjust their driving as needed to maintain safe operation of their vehicle.

Operationally it is ideal to maintain linked road network for maintenance efficiency. There will be obvious conflicts that would result during snow plowing of roads where a road would transition from public to private in a straight line as there will be dumping of snow at the end by both parties. The Snow Clearing bylaw can be enforced by the Municipality to indicate ownership, but those disputes would still happen and can be avoided by not enabling the situation to occur in the first place.

#### Gates

Currently there is nothing restricting the use of gates within the Subdivision By-Law. The use of gates is a choice versus a technical need, so staff are assuming that allowing gates will be a continued practice. Where it is assumed that gates will continue to be used, the technical requirement that staff have drafted are that the gates are to not open towards a public road right-of-way. Staff do not believe there is a requirement for a more detailed standard on positioning of a gate due to the fact that if the private road is at an intersection there will be a full car length within the public ROW that is not on the main road travel surface for a queue before entering a gated area on private property.

There are 3 gates on private roads in East Hants. Two of the gates are used for controlled access to provide privacy for land owners, and there is one that is used as a toll business in providing a short cut that accesses a link to a short Provincial road. The following is a picture of the toll and the other is a picture of one of the entrance to one of the gated communities;



Staff had considered adding to the technical standard a section on restricting gates from opening towards a Public Road. However, through further discussion it is believed that this is highly unlikely, and is already covered within the Public Highways Act (Provincial) under section 40 “Obstructions on or near a Highway”. For residential gates what would be expected would be a sliding gate or a lift gate so that the drivers accessing the area would not need deal with the swing distance of a gate.

## Governance

Previously a private road needed to have a design that would meet Public Road standards, and then would be built however the developer wanted, with verifications or approvals. This will change with the adoption of a Private Road Standard. Moving forward a developer will not receive final subdivision approval until it is confirmed that the road has been built to the required standard. Where no lots can be sold until subdivision is approved, this is the leverage the Municipality has to enforce this new standard. This is not planned to be an increase in municipal staff involvement, as the requirement will be for the developers engineer to sign off on completion, using their certification that the road has been built to standard.

An option for future consideration for ensuring construction to the required standard is to setup a bond. Staff currently don't see this as the right application. Currently the Municipality leverages bonds in situations where the Municipality will ultimately receive and take over an asset. The Bond is used to cover the risk of the Municipality having to complete or repair the construction if issues arise nearing the end of a project. In those situations on a public road subdivision approval can be granted after the first layer of asphalt is laid so construction of dwellings can start and it is in the best interest of the Municipality for the second layer to be laid after the bulk of construction has already happened in an area. Bonding may never be required for Private Roads, but it is the option to explore if unforeseen scenarios arise where leveraging final subdivision approval isn't effective.

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## Alternatives

### Do not permit Private Roads

Move to have staff return with amendments to the Subdivision Bylaw that would not allow for the creation of private roads within East Hants moving forward.

Due to the challenges associated with Private Roads some Municipalities, such as HRM do not allow for Private Road development, opting to deal with unique situations as they arise. HRM did recently create a “Conservation Design Development” category for a specific scenario that enabled negotiating the standards for a private driveway through a Development Agreement. But ultimately HRM has not allowed new private roads since 2006 with the adoption of their Regional Plan.

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## Conclusion

Where the Municipality currently intends to have a technical standard for private roads, staff have presented a standard that focus' on that intend. There will always be preferences and opinions for different variations of a standard based on the nature private roads being viewed as an option for lower capital investment for development. With the feedback through the Planning Review, which was adopted by Council, staff are putting forward a technical standard that will limit the wide variations in quality seen from previously built private roads which will make the Municipality a better place be live in for the future.

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## Recommendation

For the Private Road Standards be adopted as presented.