

ROTHESAY BY-LAW 01-19
A BY-LAW DESCRIBING THE PROCEDURE FOR DIRECTING THE UNDERTAKING OF A WORK
AS A LOCAL IMPROVEMENT

The Council of the town of Rothesay (hereinafter called the "Council") pursuant to the authority vested in it under the provisions of the Local Governance Act, S.N.B. 2017, c. 18 (hereinafter referred to as the "Act") enacts the following By-Law:

1. This By-Law may be cited as the 'Local Improvement Procedures By-Law - 2019'.
2. In this By-law "owner" means the person or persons in whose name real property is assessed under the Assessment Act, R.S.N.B. 1973, c. A-14 and amendments thereto.
3. Where this By-Law provides that to enact a By-Law two-thirds of the Council must vote in favour thereof, it shall be sufficient compliance with such provision if two-thirds of the Council vote in favour of the By-Law on third reading by title.
4. The Council may authorize and direct the undertaking of any capital work of greater benefit to a specific area of Rothesay than to the whole municipality as a Local Improvement and order that the cost thereof or such portion of the cost as determined by By-Law be raised by special assessment.
5. The Director of Operations, upon the completion of the work, shall determine the cost of the work and file with the Clerk a certificate showing:
 - (a) the date of completion of the work, and
 - (b) the cost of the work done.
6. Such certificate referred to in paragraph 5 is conclusive evidence of such cost and of the amount payable by each owner.
7. The cost of a work is deemed to include:
 - (a) the actual cost of construction;
 - (b) the cost of engineering and surveying;
 - (c) the compensation for lands taken for the purpose of the work or injuriously affected by it and the expenses incurred by the municipality in connection with determining such compensation;
 - (d) the estimated cost of the issue and sale of debentures and any discount allowed the purchasers of them;
 - (e) the interest on all borrowings in connection with such work and any expenses incidental to the entering on, carrying out and completing the work and raising the money to pay the cost thereof; and
 - (f) such other cost as Council deems appropriate to attribute to the work.

8. Council may cause a notice of its intention to undertake a work as a local improvement to be delivered to all benefiting real property owners who will be liable to pay the cost of the local improvement:
 - (a) on its own initiative; or
 - (b) upon presentation of a petition to Council asking that a work be undertaken, signed by at least two-thirds of the owners of the parcels proposed to be specially assessed.
9. The notice referenced in paragraph 8 shall include:
 - (a) a summary of the local improvement;
 - (b) the costs specified in a By-Law as set out under paragraph 14; and
 - (c) a statement that the owner may file a written objection to the local improvement with the Clerk within 30 days after receiving the notice.
10. The notice referenced in paragraph 8 shall be left at the residence or place of business of the owner or mailed to the owner at his or her last known residence or place of business.
 - (a) A notice left at a residence or place of business is deemed to have been given to the owner on the day it was left.
 - (b) A notice mailed shall be deemed to have been given to the owner seven days after the day it was mailed.
11. If an owner of a parcel proposed to be specially assessed, files an objection against proceeding with the proposed work with the Clerk within thirty (30) days of the notice, Council shall set a time for a public hearing.
12. Council shall provide notice of the public hearing to the benefiting real property owners of the proposed local improvement at least thirty (30) days before the date set for the hearing.
 - (a) Notice of the hearing shall be given in accordance with paragraph 10.
13. Council may, by By-Law passed by the affirmative vote of not less than two-thirds of the Council, make a By-law respecting a local improvement:
 - (a) if no objection has been received within the time specified in paragraph 11; or
 - (b) if an objection is received within the time specified in paragraph 11, after holding a public hearing under paragraph 11.
14. A By-Law adopted under paragraph 13 shall:
 - (a) declare a work to be necessary in the interest of the specific area of the Town in which it is to be made;
 - (b) authorize and direct the undertaking of such work;
 - (c) order that the cost thereof shall be raised by special assessment, or such portion of the cost as may be fixed by by-law;

- (d) describe the local improvement,
 - (e) define the area of Rothesay which is the subject of the local improvement and the parcels of land that will be affected,
 - (f) state the total cost of the local improvement and the mechanism for determining that cost, and
 - (g) state the proportion of the total cost to be levied against each parcel of land that will benefit from the local improvement and the mechanism for determining and recovering that cost.
15. The owners' portion of the cost of any work undertaken as a local improvement shall be one hundred percent (100%) or such lesser share as shall be prescribed by Council in a particular local improvement by-law.
16. If any lot or parcel of land that has not been assessed by way of special assessment for any part of the cost of a local improvement connected therewith, Council may by resolution order that such lot or parcel of land be assessed by a special assessment as was assessed against the lands to which the local improvement was constructed and the Clerk shall add to the local improvement assessment roll for the work, the name of the owner of each parcel of land when benefited by the local improvement and the notice provisions of paragraph 8 shall apply.
17. Except as hereinafter provided the owners' portion of the cost of the work shall be paid by equal annual instalments over the term fixed for payment.
18. Except as herein otherwise provided, every parcel shall be assessed according to a formula set out in the By-Law and which shall be established by Council so as to render a result Council considers to be fair and equitable.
19. Where a lot is for any reason wholly or in part unfit for construction purposes a reduction shall be made in the special assessment which would otherwise be chargeable thereon, sufficient to adjust its assessment as compared with the lots fit for building purposes on a fair and equitable basis. The Clerk shall make a reduction under the provisions of this paragraph.
20. Every parcel other than a parcel belonging to Canada or to the Province shall be liable to special assessment.
21. Where Council has adopted a special assessment By-Law, the Clerk shall:
- (a) cause to be prepared a special assessment roll to be known as the local improvement assessment roll for the work; and
 - (b) within ninety days after the passing of the By-Law directing the undertaking of a work as a local improvement, deliver to the owner of each parcel to be assessed a notice in the form set out in 'Schedule A' that shall contain the following information:
 - i. a description in general terms of the work;
 - ii. the estimated cost of the work;
 - iii. the owners' portion of the cost expressed in dollars or as a percentage of the total cost to be specially assessed; and
 - iv. the number of annual instalments in which the assessment is payable.

22. The notice referred to in paragraph 21(b) shall be delivered in the same manner as set out in paragraph 10.
23. Any person to whom a notice of a special assessment has been delivered may within thirty (30) days after delivery thereof petition the Clerk for revision of the local improvement assessment roll in the following matters:
 - (a) the names of the owners of affected parcels; and
 - (b) the application of the calculation to any affected parcels.
24. The Clerk shall consider such petition and if she finds any error in respect of the matters referred to in paragraph 23 such that an adjustment should be made, she shall make such alterations or amendments in the roll as appear proper but the charge to any parcel shall not be altered on the roll until notice of such intended alteration is first given to the owner of such parcel.
25. In the manner prescribed by paragraph 22, the Clerk shall deliver notice of her decision to the applicant and to the owner of any parcel whose charge is affected by an alteration or amendment.
26. Each year on or before February 15th, Council shall by resolution determine the owners' portion of the cost of each work completed within the preceding twelve months and shall direct the Clerk by warrant of assessment in the form set out in Schedule B to assess and levy such cost in accordance with this part.
27. The warrant of assessment shall be executed by the Mayor and Clerk under the corporate seal of Rothesay and attached to the local improvement assessment roll. A local improvement assessment roll shall be prepared in the form set out in Schedule C.
28. When the Clerk receives a warrant of assessment she shall determine the charge and compute the total assessment to be levied on each parcel and the amount of each annual instalment in accordance with the form set out in Schedule D.
29. The Clerk after having completed the local improvement assessment roll shall certify the roll to be correct and thereupon the roll and the special assessment shall be valid and binding upon all persons concerned, and upon the parcels specially assessed; and the work in respect of which the local improvement assessment roll has been made and certified shall be conclusively deemed to have been lawfully undertaken and proceeded with pursuant to and in accordance with the Act.
30. The Clerk shall on or before the first day of March in each year in which an instalment is payable, deliver to the Treasurer an assessment roll containing the names of the owners of each parcel that has been assessed, identifying it, and the addresses of such owners together with the amount of the instalment payable in such year and shall endorse on such assessment roll a precept in the form as set out by Schedule D. The Treasurer shall cause the special assessment to be levied and collected in accordance with paragraph 31.
31. The terms and conditions for collection and payment of special assessments are as follows:
 - (a) special assessments shall be paid annually as a component of the utility accounts;
 - (b) annual installments shall be paid to the Town on or before the first day of June in

- each year,
- (c) installments in arrears shall bear interest at the same rate as that for outstanding utility account per month or part thereof until paid;
 - (d) the same terms and conditions respecting the collection of accounts in default of payment as set out in Rothesay Sewage and Water By-Laws, shall also apply to the special assessment component of the invoice.
32. The proportion of the total cost referred to in paragraph 14 (g) that is due and payable for a period of sixty (60) days constitutes a special lien and charge on the land in priority to every claim, privilege, lien or encumbrance of any person whether the right or title of that person has accrued before or accrues after the lien arises, and the lien is not defeated or impaired by any neglect or omission of the local government or of any officer or employee of the local government or by want of registration.
 33. A special assessment, except so much as is in arrears and unpaid, shall not as between a vendor and a purchaser or in respect of a covenant against encumbrances or for the right to convey, or for quiet possession, free from encumbrances, be deemed to be an encumbrance upon the lands upon which the special assessment is made.
 34. Rather than basing the special assessment on the cost of the work, Council may by By-Law fix a uniform unit rate for a class of work that may be undertaken as a local improvement.
 35. The omission to deliver any notice in no way affects the liability of any person to pay any special assessment or the validity of any proceeding taken hereunder to enforce payment of any assessment imposed under this By-Law or local improvement By-Laws prepared in accordance with this By-Law.
 36. When a parcel against which a special assessment is in effect divided, the Clerk, with the written consent of the owners of each parcel, may apportion the balance of the special assessment between such owners in such manner as she shall determine, and thereafter the lien for the balance of the special assessment payable by each owner shall extend only to the parcel of such owner.
 37. Where an owner of a property pays an amount determined by the Clerk to be the full sum of the outstanding balance of the special assessment calculated under paragraph 14 (g), no further payments against the property will be assessed under the By-Law.
 38. The Treasurer will cause any payments received in accordance with paragraph 37 to be deposited in a reserve account solely for the purpose of retiring the debt associated with the work.
 39. This By-Law applies to any local improvement by-laws enacted under authority of the Act after January 1, 2019.

Rothesay Local Improvement By-Law #1-19

FIRST READING BY TITLE 11 March 2019

SECOND READING BY TITLE 11 March 2019

BY-LAW SUMMARY READ:
(Advertised as to content on the Rothesay
website in accordance with *Local
Governance Act S.N.B. (2017) Chapter 18*)

THIRD READING BY TITLE
AND ENACTED

Dr. Nancy Grant, MAYOR

Mary Jane Banks, CLERK

Schedule A. FORM OF NOTICE TO PROPERTY OWNERS

Please be advised that:

The Council of the town of Rothesay pursuant to the authority vested in it under the provisions of the Local Governance Act, S.N.B. 2017, c. 18 and By-Law 1-19 has undertaken a local improvement to be paid by special assessment against affected properties.

Account #

The work to be done is as follows:

By-Law #

description in general terms of the work

a description in general terms of the area affected

The estimated total cost of the work is: \$ *the estimated cost of the work*

As the owner of: *Civic address* PID:

You are to be assessed \$ *amount in \$* per year which is % % of the total cost
approximately of the work

A total of is being assessed for this work.

This special assessment is payable in # equal annual installments.

Issued at Rothesay *date* signed *Signature of clerk* Clerk

Schedule B. FORM OF WARRANT OF ASSESSMENT

The warrant of assessment shall be in the following form:

Moved by _____, seconded by _____

Whereas projects were undertaken as local improvements in accordance with the pertinent By-Laws, Rothesay Council hereby directs that a special warrant be issued for the sums set out in the local improvement assessment roll for 20XX and further directs the Clerk to cause such special assessments to be collected in accordance with By-Law 1-19.

Local Improvement By-Law #	Amount to be collected

Dated _____

Mayor

.....
Clerk

Schedule C. FORM OF LOCAL IMPROVEMENT ASSESSMENT ROLL

For the Year 20__ Rothesay Local Improvement By-Law # _____

1	2			3	4	5	6	7	8	
Assessment account number	PID of Assessed Property	Owner name	Owner Address	Civic Address of Assessed Property	Total of Variables	Variables reduced or exempted	Net Variables	\$ per Variable	total assessment (\$)	amount of each annual instalment (\$)

 prepared by

 date

 Clerk

 date

Schedule D. FORM OF PRECEPT

The precept required by paragraph 30 shall be set out in the form as shown below.

Rothesay Letterhead

To the Treasurer for Rothesay:

I hereby certify that the attached assessment roll accurately identifies the properties subject to the special assessment in the amounts shown and I hereby direct you to collect from the several owners named in the annexed assessment roll the sums set against their respective names.

Clerk
Rothesay