A. Recommendations

THAT Council receive Staff Report CSPW.19.035, entitled “Draft Correspondence regarding Winter Maintenance Standards and Level of Service”;

THAT Council direct staff to submit the correspondence as presented to the Ministry of Transportation and the Ministry of Municipal Affairs and Housing for consideration;

AND THAT Council direct staff to circulate the Resolution as presented.

B. Overview

On January 30th, 2019 adopted Policy POL.COR.19.01 entitled “Winter Maintenance Standards and Level of Service” which addressed the recent changes to Provincial Minimum Maintenance Standards for Municipal Highways (O. Reg. 239/02). At which time, Council raised concerns with the language of the Minimum Maintenance Standards for Municipal Highways (O. Reg. 239/02), specifically with the requirements for snow and ice removal, and directed Staff to draft correspondence to the Ministry of Transportation and to draft a resolution for circulation to all Ontario Municipalities requesting a clarification of the requirements under the Regulation to avoid undue hardship on municipalities.

C. Background

Recent changes were made to the Provincial Minimum Maintenance Standards for Municipal Highways (O. Reg. 239/02) (“the MMS Regulation”) made under the Municipal Act, 2001. The changes to the MMS Regulation came into effect May 3rd, 2018.

The MMS Regulation is designed to provide municipalities with a “due diligence” defense in the event of a vehicular accident, slips, trips and falls, or other incidents. The standards outlined in the MMS Regulation are not mandatory. As such, the Town does need to explicitly follow the MMS Regulation. If the Town cannot meet the MMS Regulation as set out, it can still use Section 44(1) of the Municipal Act to demonstrate that the service provided was reasonable in
the circumstances for both weather and road conditions. In short, the Town can set its own Winter Maintenance Standards based on its needs and resources.

On January 30th, 2019 adopted Policy POL.COR.19.01 entitled “Winter Maintenance Standards and Level of Service” which addressed the recent changes to Provincial Minimum Maintenance Standards for Municipal Highways (O. Reg. 239/02).

D. Analysis

On January 30th, 2019 adopted Policy POL.COR.19.01 entitled “Winter Maintenance Standards and Level of Service” which addressed the recent changes to Provincial Minimum Maintenance Standards for Municipal Highways (O. Reg. 239/02). At which time, Council raised concerns with the language of the Minimum Maintenance Standards for Municipal Highways (O. Reg. 239/02), specifically with the requirements for snow and ice removal.

For example, the Minimum Maintenance Standards for Municipal Highways (O. Reg. 366/18) sets out that a Class 4 Road should be cleared within 16 hours or before the accumulation of snow reaches a depth of 8cm. Where as the policies of most municipalities indicate that a Class 4 Road would be plowed within 16 hours after it has been determined that there is 8cm of snow accumulated on the road surface.

When a municipality is not resourced or able to adopt the MMS Regulation as written, the municipality can set a municipal specific prescribed level of service.

The Town’s policy does not achieve one aspect of the MMS Regulation - Snow Accumulation and Icy Roadways (Section 4). This continues the level of services established in previous policies and mirrors the level of service established in the pre-2013 MMS Regulation. The 2013 amendments to the MMS Regulation made it difficult for municipalities without dedicated 24/7 winter maintenance coverage to achieve the winter maintenance requirements for snow and ice removal.

Additionally, as the language of the Regulation is unclear, the regulation may present an undue hardship to Ontario Municipalities who have not invoked section 44(1) of the Municipal Act and may unknowingly be providing a level of service which is inconsistent with the Regulation.

For example, municipalities may either be providing an insufficient level of service, potentially opening them up to litigation involving incidents on municipal transportation networks; or, providing a more excessive level of service than is reasonable in the circumstances, potentially costing municipalities in undue winter maintenance costs.

The Minimum Maintenance Standards are established within the Municipal Act regulated by the Ministry of Municipal Affairs and Housing. While the MMS are central to the operations of the Ministry of Transportation and are reviewed every 5 years by the Ministry of Transportation they are created by the Ministry of Municipal Affairs and Housing.

Therefore, The Council of the Corporation of Town of The Blue Mountains is requesting that the Ministry of Transportation through the Ministry of Municipal affairs and Housing clarify the
requirements under Section 4 of the Minimum Maintenance Standards for Municipal Highways (O. Reg. 366/18) to avoid unnecessarily burdening small municipalities with the significant costs of moving towards 24/7 winter maintenance activities or unforeseen litigation costs without the defense afforded by the Municipal Act or Minimum Maintenance Standards for Municipal Highways Regulation (O. Reg. 366/18).

E. The Blue Mountains Strategic Plan

Goal #5: Ensure Our Infrastructure is Sustainable
Objective #2 Avoid Unexpected Infrastructure Failure and Associated Costs and Liability
Objective #3 Implement Best Practices in Sustainable Infrastructure

F. Environmental Impacts

Winter Patrolling and Maintenance Operations involve the use of vehicles and equipment which generate greenhouse gas emissions. Salt used to treat roads and sidewalks can have a detrimental effect on the environment as well as on infrastructure and private property. Additionally, the mining and transportation of salt and abrasives generate greenhouse gas emissions.

G. Financial Impact

The Town’s Policy was written to conform to the MMS Regulation while also recognising that the Policy doesn’t achieve Section 4 - Snow Accumulation and Icy Roadways as amended in 2013. The Policy describes the level of service resourced within the Roads and Drainage Winter Maintenance budget.

The stated purpose of MMS Regulation is to clarify the scope of the statutory defense available to a municipality under the maintenance clause (44) of the Municipal Act, 2001 through the establishment of maintenance standards. These are non-prescriptive as to the methods or materials to be used in complying with the MMS Regulation or Policy but instead describe a desired outcome. By not fully complying with the MMS Regulation the Town may be open to litigation involving incidents on its road network. The Town is limiting its due diligence defense. However, the adoption and adherence to a Town set maintenance standard for winter maintenance, the Town is mitigating liability concerns.

In order to achieve the level of service outlined in the MMS Regulation, the Town would need to spend at least $470,000 annually in labour costs alone for 10 contract winter maintenance operators and one fulltime supervisor. A full accounting of the costs can be prepared at the direction of Council.

H. In Consultation With

Senior Management Team
Jim McCannell, Manager of Roads and Drainage
Corrina Giles, Town Clerk
Serena Wilgress, Manager of Purchasing and Risk Management

I. Public Engagement

The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required. Comments regarding this report should be submitted to Jim McCannell, jmccannell@thebluemountains.ca.

J. Attached

1. Attachment #1 – CSPW.19.006 Council Resolution (POL.COR.19.01)
2. Attachment #2 – DRAFT Correspondence to the Ministry of Transportation and the Ministry of Municipal Affairs and Housing.
3. Attachment #3 – DRAFT Resolution for Circulation to Ontario Municipalities

Respectfully submitted,

__________________________________________
Shawn Everitt, CAO

Respectfully submitted,

__________________________________________
Jim McCannell, Manager of Roads and Drainage

For more information please contact:
Jim McCannell, Manager of Roads and Drainage
Infrastructure and Public Works Department
32 Mill Street, Box 310
Thornbury, ON N0H 2P0
519-599-3131 ext 271
managerroadsdrainage@thebluemountains.ca
January 30, 2019

Moved by: Rob Potter  Seconded by: Jim Uram

(A) THAT Council receive Staff Report CSPW.19.006, entitled “Updates to the Town’s Winter Maintenance Standards and Level of Service Policy”;

AND THAT Council repeal Policy POL.COR.13.22 entitled “Minimum Winter Maintenance Standards and Level of Service”;

AND THAT Council adopt Policy POL.COR.19.XX entitled “Winter Maintenance Standards and Level of Service” as attached to this Staff Report CSPW.19.006, Carried.

(B) THAT with respect to Staff Report CSPW.19.006, entitled “Updates to the Town’s Winter Maintenance Standards and Level of Service Policy”, Council direct the Infrastructure and Public Works Department on behalf of the Town, to draft correspondence to the Ministry of Transportation and copied to all Ontario municipalities for support, regarding the undue hardship the updated Minimum Maintenance Standards imposes on Ontario municipalities;

AND THAT the draft correspondence will be provided to Council at a future meeting for review and consideration, CARRIED.
August 26, 2019

Ministry of Municipal Affairs and Housing
17th Floor, 777 Bay Street
Toronto, Ontario M5G 2E5
Email: xxxx@gmail.com

AND

Ministry of Transportation
777 Bay Street, 5th floor
Toronto, Ontario M7A 1Z8
Email: xxxx@gmail.com

To whom it may concern,

RE: Resolution by Town of The Blue Mountains Council, January 30th, 2019 regarding the Minimum Maintenance Standards for Municipal Highways (O. Reg. 366/18)

On January 30th, 2019 adopted Policy POL.COR.19.01 entitled “Winter Maintenance Standards and Level of Service” which addressed the recent changes to Provincial Minimum Maintenance Standards for Municipal Highways (O. Reg. 239/02). At which time, Council raised concerns with the language of the Minimum Maintenance Standards for Municipal Highways (O. Reg. 239/02), specifically with the requirements for snow and ice removal.

For example, the Minimum Maintenance Standards for Municipal Highways (O. Reg. 366/18) sets out that a Class 4 Road should be cleared within 16 hours or before the accumulation of snow reaches a depth of 8cm. Where as the policies of most municipalities indicate that a Class 4 Road would be plowed within 16 hours after it has been determined that there is 8cm of snow accumulated on the road surface.

Council understands that the Regulation is designed to provide municipalities with a “due diligence” defense in the event of a vehicular accident, slips, trips and falls, or other incidents and that the standards outlined in the Regulation are not mandatory. Council is also aware that it can still use Section 44(1) of the Municipal Act to demonstrate that the service provided was reasonable in the circumstances for both weather and road conditions. In short, the Town can set its own Winter Maintenance Standards based on its needs and resources.
However, as winter maintenance expenditures are a significant cost for municipalities and as municipal insurance premiums are among the fastest growing municipal costs, owing largely to joint and several liability, and constitute a significant burden on municipalities especially small municipalities.

Additionally, as the language of the Regulation is unclear, the regulation may present an undue hardship to Ontario Municipalities who have not invoked section 44(1) of the Municipal Act and may unknowingly be providing a level of service which is inconsistent with the Regulation. For example, municipalities may either providing an insufficient level of service, potentially opening them up to litigation involving incidents on municipal transportation networks; or, providing a more excessive level of service than is reasonable in the circumstances, potentially costing municipalities in undue winter maintenance costs.

Therefore, The Council of the Corporation of Town of The Blue Mountains requests clarification of the requirements under Section 4 of the Minimum Maintenance Standards for Municipal Highways (O. Reg. 366/18) to avoid unnecessarily burdening small municipalities with the significant costs of moving towards 24/7 winter maintenance activities or unforeseen litigation costs without the defence afforded by the Municipal act or Regulation.

Yours Truly,

Shawn Everitt, CAO
Town of The Blue Mountains, ON

SE/ws

CC: Mayor and Council, Town of The Blue Mountains (via e-mail)
Resolution No.

WHEREAS concern and debate over the level of winter maintenance to be provided by municipalities is not a new phenomenon;

AND WHEREAS in 2018, revised Minimum Maintenance Standards Regulations (O. Reg. 366/18) came into effect;

AND WHEREAS winter maintenance expenditures are a significant cost for municipalities;

AND WHEREAS municipal insurance premiums are among the fastest growing municipal costs, owing largely to joint and several liability and constitute a significant burden on municipalities especially small municipalities;

AND WHEREAS under subsection 44(1) of the Municipal Act, a municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge;

AND WHEREAS under subsection 44(3) of the Municipal Act, a municipality has three of the statutory defences including following the minimum standards as established by the Minister of Transportation;

AND WHEREAS a strict reading of the Minimum Maintenance Standards for Municipal Highways (O. Reg. 366/18) makes it very difficult for municipalities without dedicated 24 /7 winter maintenance coverage to achieve the winter maintenance requirements for snow and ice removal and that this is not clear in the language of the Regulation.

NOW THEREFORE BE IT RESOLVED that the Council of the Corporation of the Town of The Blue Mountains request clarification of the requirements under Section 4 of the Minimum Maintenance Standards for Municipal Highways (O. Reg. 239/02) to avoid unnecessarily burdening small municipalities with the significant costs of moving towards 24/7 winter maintenance activities;

AND FURTHER Council requests an update be provided from the Ministry of Transportation;

AND FURTHER that this resolution be circulated to all Ontario Municipalities for their consideration and support,