
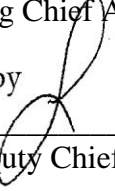


Item No. 10.1.4
Halifax Regional Council
November 16, 2010

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 
Wayne Anstey, Acting Chief Administrative Officer
Original Signed by 
Mike Labrecque, Deputy Chief Administrative Officer

DATE: October 27, 2010

SUBJECT: Encroachment Agreement - Lands of Ultramar, Carlisle Drive

ORIGIN

- May 15, 2007 Regional Council Approval of Encroachment Agreement
- Application by Barwil Developments on behalf of Ultramar Ltd.

RECOMMENDATION

It is recommended that Halifax Regional Council approve the attached amended Encroachment Agreement to allow Ultramar Ltd. to maintain use and access of their waterline located in the extension of Carlisle Drive for the purpose of supplying process water to their facility.

BACKGROUND

The Encroachment Bylaw (Bylaw E-200) requires that any proposed encroachments outside of those listed in the by-law be approved by Regional Council. The crossing of an HRM owned street by a privately owned pipe is one type of encroachment which requires an encroachment agreement and Regional Council approval.

The development of Pearl Park involved the extension of the existing Carlisle Drive. With their agreement, the road extension crossed over an existing waterline and lands belonging to Ultramar Ltd. The waterline supplies process water to Ultramar's facility. Ultramar Ltd. agreed to convey the parcel of land for the road construction at no cost provided HRM permanently permitted Ultramar to maintain its waterline. This agreement was formalized by Regional Council in 2007 with the approval of an Encroachment Agreement to allow Ultramar Ltd to maintain their waterline located in the extension of Carlisle Drive.

DISCUSSION

During the review portion of the registration of the approved Encroachment Agreement by Ultramar's legal counsel, concern was raised related to two specific clauses. Ultramar Ltd. informed HRM staff that the Encroachment Agreement as approved was not acceptable. Staff has been working with Ultramar Ltd. counsel to find an alternative acceptable to both HRM and Ultramar. An amended Encroachment Agreement is the best alternative. The concerns and proposed changes are outlined below.

Relocation of Waterline

HRM's standard encroachment agreement outlines the requirement for an owner to relocate their infrastructure if requested by HRM and at the owner's cost. Due to the significant role of this waterline, Ultramar has no intention of relocating it. In addition, with no alternative locations, any requirement to relocate the waterline would have to be for very significant reasons only. With the current clause, Ultramar is concerned about HRM requesting the waterline to be relocated and is unwilling to risk being required to relocate the waterline at their cost.

Therefore, they have requested to change the wording to reflect that should HRM require the relocation of the waterline, that it be at HRM cost. Should Ultramar chose to relocate the waterline, it would be at their cost.

Termination of Agreement

The standard encroachment agreement provides for the ability for either party to terminate the agreement. If termination by either party does occur, the agreement provides HRM with the option to have the owner remove the infrastructure or abandon all claim to it.

Ultramar is concerned that the agreement provides HRM the ability to unilaterally terminate the agreement. This right is contrary to Ultramar's expectation and condition that HRM provide permanent permission for location of the waterline within the street right of way.

Therefore, they have requested to change the wording to remove HRM's ability to terminate the license.

Impact of Changes

The waterline is critical to the function of the Ultramar plant. As such, it is highly unlikely that the line will be relocated during the life of the plant. With no alternatives for relocation at this time, there is concern and risk for Ultramar with the wording of the existing encroachment agreement. The waterline has been in place for several years and has not provided any issues for HRM. Therefore, there is minimal risk that HRM would need the waterline relocated during the life of the plant. In fact, due to the significant function of the line and without alternatives for relocation, it would be more likely that other options would be explored should an issue arise.

Typically the standard encroachment agreement is used for infrastructure within HRM right of way that can be moved with relative ease and can be placed in a variety of locations. In this particular case, there are several factors that create a unique situation so HRM could opt to enter into a non-standard agreement. They include:

- The waterline has been existing for several years and was in place prior to the street construction.
- Ultramar agreed to provide the land for the street connection in return for permanent permission to maintain the pipe within the right of way.
- The significant function of the waterline and the fact that there are no alternative locations for the pipe indicate that it is highly unlikely that there will be a need to relocate it and that other solutions would likely be determined if issues arose.
- Ultramar is unwilling to agree to the standard conditions due to the unique features of the infrastructure.
- HRM will not become the free and clear owner of the property on which the street is located until an agreement with Ultramar is reached.
- Ultramar Ltd. could require HRM to remove our street if an agreement cannot be reached.

The street over which the waterline is located has been fully functioning and used by the public for years. Without an agreement between HRM and Ultramar Ltd, there is risk that Ultramar Ltd will require HRM to relocate the street from their property. Such relocation of the street would be very costly and challenging for HRM. Due to the layout of existing streets and houses in the area, an alternative street design could not be achieved. This would result in the removal of a portion of Carlisle Drive which would adversely impact the traffic flow in the area.

Therefore, as this situation has unique factors associated with it, staff recommends that Regional Council approve the amended encroachment agreement which is attached to this report. This would allow the water line and street to continue as existing. All other clauses within the standard encroachment license are maintained meaning Ultramar Ltd. will indemnify HRM for all claims, record information on the waterline will be provided, annual encroachment fees will be paid and Ultramar Ltd. agrees to abide by HRM by-laws for work on the waterline.

BUDGET IMPLICATIONS

Based on the size of the proposed encroachment area, there would be annual fee of \$260 associated with the encroachment. This would be a revenue source for HRM (C450).

There are no costs to HRM at this time. Should an agreement not be reached and Ultramar Ltd. require HRM to remove a portion of the street, the work would have to be carried out within the HRM Project Budget. A supplementary report would be provided to outline the budgetary implications at that time.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation..

COMMUNITY ENGAGEMENT

The encroachment agreement between HRM and Ultramar Ltd. did not require any community engagement. If the amended Encroachment Agreement is approved, there would be no impact to the public. However, should Regional Council not approve the amended Encroachment Agreement, public communication related to the impact on Carlisle Street would be undertaken.

ALTERNATIVES

1. Regional Council could approve the amended encroachment agreement as proposed. Staff recommends this option.
2. Regional Council could choose to not approve the amended encroachment agreement. Staff does not recommend this alternative for the reasons outlined in the report.

ATTACHMENTS

Attachment 1: Map

Attachment 2: Encroachment Agreement

**Encroachment Agreement
Lands of Ultramar, Carlisle Drive
Council Report**

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November 16, 2010

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: Denise Schofield, P.Eng, Manager – Development Engineering 490-6252

Report Approved by: Paul Dunphy, Director, Community Development

Financial Approval by: Cathie O'Toole, CGA, Director of Finance, 490-6308


Report Approved by: Ken Reashor, P.Eng, Director Public Works & Transportation


Attachment 1



Location

Carlisle Drive
Cole Harbour

 Lands of Ultramar Ltd.

 Area proposed to be transferred to HRM for street purposes

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

0 50 m


HRM does not guarantee the accuracy of
any representation on this plan.

Attachment 2

This **Encroachment License Agreement** made this day of , 2010

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY

Of the One Part

and

Ultramar Ltd.

Of the Other Part

Recitals

1. (1) Whereas Ultramar Ltd. wishes to maintain access to and use of their waterline which is located under the recently extended Carlisle Drive in Cole Harbour ;

(2) And Whereas by resolution of the Halifax Regional Municipal Council on _____, 2010, the Halifax Regional Municipality agreed to give Ultramar Ltd. an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality Bylaw E-200, being the Encroachment Bylaw, and as contained in this license agreement.

Definitions

2. In this agreement, unless the context otherwise requires:

- (a) "HRM" means the Halifax Regional Municipality
- (b) "Ultramar Canada" means Ultramar Ltd., its successors and assigns

License

3 Subject to the terms of this encroachment license agreement, HRM hereby grants to Ultramar Ltd. the non-exclusive and permanent right by its officers, servants, agents and contractors at all times to enter on, over and under that portion of Carlisle Drive, Cole Harbour identified on Schedule "A" to maintain a waterline used for processes in their refinery.

Relocation

4 Should HRM require the relocation of the waterline, such a relocation will be at the expense of HRM. Should Ultramar Ltd. wish to relocate the waterline, it shall be done only upon receipt of the written consent of HRM, which consent shall not be unreasonably withheld and said relocation shall be at the expense of Ultramar Ltd. The pipe shall be placed a minimum of 1.5 m below the surface of the street.

Permits

5. Ultramar Ltd. agrees to comply with all municipal bylaws including the Streets Bylaw, S-300 for the all maintenance work which involves the excavation of the street.

Record Drawings

6. Ultramar Ltd. shall provide a copy of the record drawings of the completed work and immediately upon completion of any relocation, both in hard copy and electronic format.

Indemnity

7. Ultramar Ltd. agrees to indemnify and save HRM harmless from all claims, liabilities and expenses of any kind in any way related to or connected with the grants of the rights set forth in this license agreement or from the existence or operation of the waterline however caused, except to the extent that the loss arises out of the negligence of HRM.

Fees

8. Ultramar Ltd. agrees to pay the fees set out in Encroachment Bylaw E-200, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the line is 26 square metres, at a rate of \$1.00 per 0.1 square metres, resulting in an annual fee of \$260.00 to be paid by March 1st annually.

Occupational Health & Safety Act

9. Ultramar Ltd. agrees to comply with the requirements of the Occupational Health & Safety Act and all regulations enacted pursuant thereto. Specifically, Ultramar Ltd. agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the Occupational Health & Safety Act and its regulations are followed by its contractors or agents.

Termination

10. Should Ultramar Ltd. abandon its rights as per the terms of this encroachment license agreement, Ultramar Ltd. shall at HRM's option either:

- (a) remove the waterline and restore the surface of Carlisle Drive
- (b) abandon all claim to title in the waterline to HRM.

Notices

11. Any written notice or communication relating to the administration of this agreement to be given or delivered by one party to the other shall be deemed to be duly given or delivered by hand, by fax or by courier to the following addresses or such other address that may subsequently be provided:

Halifax Regional Municipality
Director of Public Works and Transportation
PO Box 1749
Halifax, N.S. B3J 3A5

and

Ultramar Ltd.
1356 Pleasant Street
Eastern Passage, NS B3G 1M4

Legal notices in respect of HRM must given in compliance with the HRM Charter.

12. This agreement shall ensure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this License agreement as of the day and year first above written.

HALIFAX REGIONAL MUNICIPALITY

Mayor Peter Kelly

Municipal Clerk, Cathy Mellett

Ultramar Ltd.

