



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 11.1.5
Halifax Regional Council
February 1, 2011

TO: Mayor Kelly and Members of Halifax Regional Council
Original Signed by 

SUBMITTED BY: Wayne Anstey, Acting Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: January 19, 2011

SUBJECT: Easement – Armour Group Limited, Waterside Center

ORIGIN

This report originates from the November 2, 2010 In Camera Item “Legal Matter” (Councillor Uteck) regarding The Armour Group’s request to proceed with the necessary agreements to permit a service easement across Historic Properties for the purposes of drawing sea water for cooling and heating for its proposed Waterside Development.

RECOMMENDATION

It is recommended that Regional Council authorize the Mayor and Municipal Clerk to enter into an Easement Agreement and Lease Amendment between HRM and The Armour Group Limited as per the key terms and conditions outlined herein.

BACKGROUND

The Armour Group Limited, developers for the proposed Waterside Center and the current Lessee of the Historic Properties development, has an approved Development Agreement for the construction of the Waterside Center office building. A critical LEED component for the project is the use of sea water for cooling and heating purposes. To that end, The Armour Group needs to construct a sea water piping loop through Historic Properties and across Upper Water Street to the Waterside project.

The Armour Group is seeking a less than market easement fee that recognizes the environmental benefits of the system; the potential future capability of the system to service Historic Properties; and *their* position that, under the Historic Properties Lease, the Municipality is receiving reasonable compensation for the lands.

DISCUSSION

In order to enable the infrastructure for the Waterside Center, HRM has to:

- Formally grant an easement to The Armour Group Limited for the piped infrastructure in favor of the Waterside project across Historic Properties and approve an Amendment to the Lease consenting to the new easement on the lands.
- Approve an Encroachment License under By-law E-200. This is presently being addressed by Development Engineering and Traffic and ROW staff and will be considered at today's Regional Council meeting.

Furthermore, at its November 2, 2010 session, Council (Councillor Hendsbee) requested staff consider the broader picture when granting the easement as it relates to additional sea water cooling opportunities within the downtown.

Staff subsequently proposed, in writing to The Armour Group, that the proposed nominal easement act as a common service corridor to allow the Municipality or other parties access at their sole expense. The Armour Group reviewed staff's proposal and indicated in writing that this approach is not reasonable or practical, owing to the location of the easement and the limited scope of same, as such is not acceptable (See Attachment A, December 23, 2010 correspondence from The Armour Group Limited).

Staff appreciate the points raised by The Armour Group and their notion that the 20 foot sewer easement to the south be used as an alternate for future systems, whether private or public.

The infrastructure that has been put in place to date by The Armour Group does not have capacity to service buildings beyond the Waterside Center block. The other property within the Waterside block is the Morse's Tea building. The owner of the Morse's Tea building has expressed an interest in the Waterside system. Staff believe any arrangement between the two developments within the same block may ultimately have to be left to the private property owners to resolve;

otherwise, it is very unlikely that The Armour Group and HRM will reach agreement on the easement through Historic Properties.

RECOMMENDED EASEMENT TERMS AND CONDITIONS	
Property Location	Parent Parcel PID 00003459
Easement	Parcel SE – 1 (as per Attachment B)
Area	2,318 square feet
Grantor of Easement	Halifax Regional Municipality
Grantee of Easement	The Armour Group Limited, Waterside Center
Proposed Fee	\$27,000 As per Ingram Varner Appraisal January 20, 2011
Use	Service Easement for sea water cooling
Conditions	<ul style="list-style-type: none">• The Lessor and Lessee agree to Amend the Lease Agreement dated May 17, 1974 to identify and to consent to the new Service Easement, identified herein as Parcel SE-1, and furthermore agree to redefining (broadening the use) the existing 20' "sewer easement" to the south as a "municipal service easement" to allow for both traditional public infrastructure as well as green technologies.• The maintenance and capital repair of the system infrastructure shall be the sole responsibility of the Grantee.• Upon expiry of the Historic Properties Lease the Grantee will pay an annual Easement Administration fee set by the parties acting reasonably.• The proposed Easement and Lease Amendments herein are subject to approval by CMHC.

BUDGET IMPLICATIONS

Since the property is jointly owned between HRM and CMHC the easement revenue will be evenly distributed. The proposed fee is \$27,000 + applicable HST. As such the recommended action will result in a contribution to the Sale of Land Reserve Q101 of \$13,000 less appraisal and soft costs.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

ALTERNATIVES

1. **Council could choose to apply a discounted fee.** The Armour Group's position is that the fee should be off set by the investment and public environmental benefits of a "green" development solution for the building; the potential future capability of the system to service Historic Properties, which is a permitted improvement under the Lease; and their consent to the broadening of the permitted use of the 20' easement to the south in favor of HRM for general municipal services.
2. **Council could choose not to approve the easement** but this is not recommended as it will unnecessarily impact development of the Waterside Building with respect to timely urban development and the provision of a "green" HVAC solution for the building.

ATTACHMENTS

Attachment "A" - Armour Group correspondence dated December 23, 2010

Attachment "B" - Site Plan

If the report is released to the public, a copy can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared & Reviewed by:

Peter Stickings, Manager, Real Estate & Facility Services, TPW – 490-7129

Report Reviewed by:

Austin French, Manager, Planning Services, Community Development

Report Reviewed by:

Kirby Eileen Grant, Senior Solicitor, Legal Services 490-4831

Financial Approval by:

Jerry Blackwood for/ Cathie O'Toole, CGA, Director of Finance, 490-6308

Report Approved by:

Paul Dunphy, Director, Community Development

Report Approved by:

Ken Reashor, Director, Transportation & Public Works – 490-4855



**THE
ARMOUR
GROUP
LIMITED**

A.

CONSTRUCTION DEVELOPMENT & MANAGEMENT
P.O. BOX 665 HALIFAX, N.S. B3J 2T3

PHONE 422-4424
FAX 423-8379

December 23, 2010

Austin French
Manager of Planning & Community Development
Halifax Regional Municipality
P.O. Box 1749
Halifax, NS B3J 3A5

Fax: 490-4346

Dear Mr. French,

RE: Waterside Centre

Thank you for your letter of Dec. 15, 2010.

Your letter does not deal with the easement issue after termination of the Land Lease which is, as explained previously, the main issue for Armour Group. We had proposed that Waterside Centre pay an annual fee to HRM after the Land Lease was terminated. We are told HRM Council accepted that proposition.

The narrow (6 ft.) easement through the Centre Court Pedestrian Walkway covers the area where piping was installed in 2006 as part of a major capital facelift at Historic Properties. All of the concrete walking surfaces were replaced and the piping was installed to avoid further major disruption of pedestrian travel in the Courtyard to the detriment of the public and our tenants.

The condition you proposed, that this very small easement become a common easement/utility corridor is not reasonable and is not acceptable to Armour Group for the following reasons:

- i. The six foot wide easement cannot provide the space capacity for more than the two (2) 8" pipes that presently exist to supply Waterside Centre.

A.

2. The Land Lease already provides for a 20 foot wide easement for HRM from Upper Water Street to the Harbour on the South side of the property under the Historic Properties surface parking lot. HRM could easily use this large easement for future requirements with far less problems for Historic Properties in dealing with the public and our tenants than digging up the Pedestrian Courtyard.

With respect to the easement across Upper Water Street it was our specific understanding from your planners (Luke Ouellet) that this easement could have been handled in the Development Agreement.

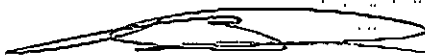
Your letter suggests that Armour Group has asked staff to provide forgiveness of the encroachment fee associated with the pipes crossing Upper Water Street. This is totally inaccurate. Please read previous correspondence (3) including our letter of October 20, 2010. Our understanding is that members of HRM Council, in considering the letter of October 20, 2010 determined that HRM should waive this street crossing encroachment fee to provide some very small incentive for developing "Green" buildings.

Resolving the issue of easements for the salt water piping across the Leased Lands has been ongoing for 8/9 months. The work on the project has stopped as the issue of using sea water as the primary method to be employed in cooling of Waterside Centre and attaining LEED® Gold Certification as set out in the Development Application and in our marketing materials is at risk.

Unfortunately, we started the required demolition and now have lost a construction season and are left with a huge unsightly mess that is fast becoming a public issue. There is no need for this to be further delayed but if it is further delayed we will board up the buildings with a public statement issued by Armour and wait for resolution.

Yours truly,

ARMOUR GROUP LIMITED



Doug MacIsaac, CA

President

DM/cb

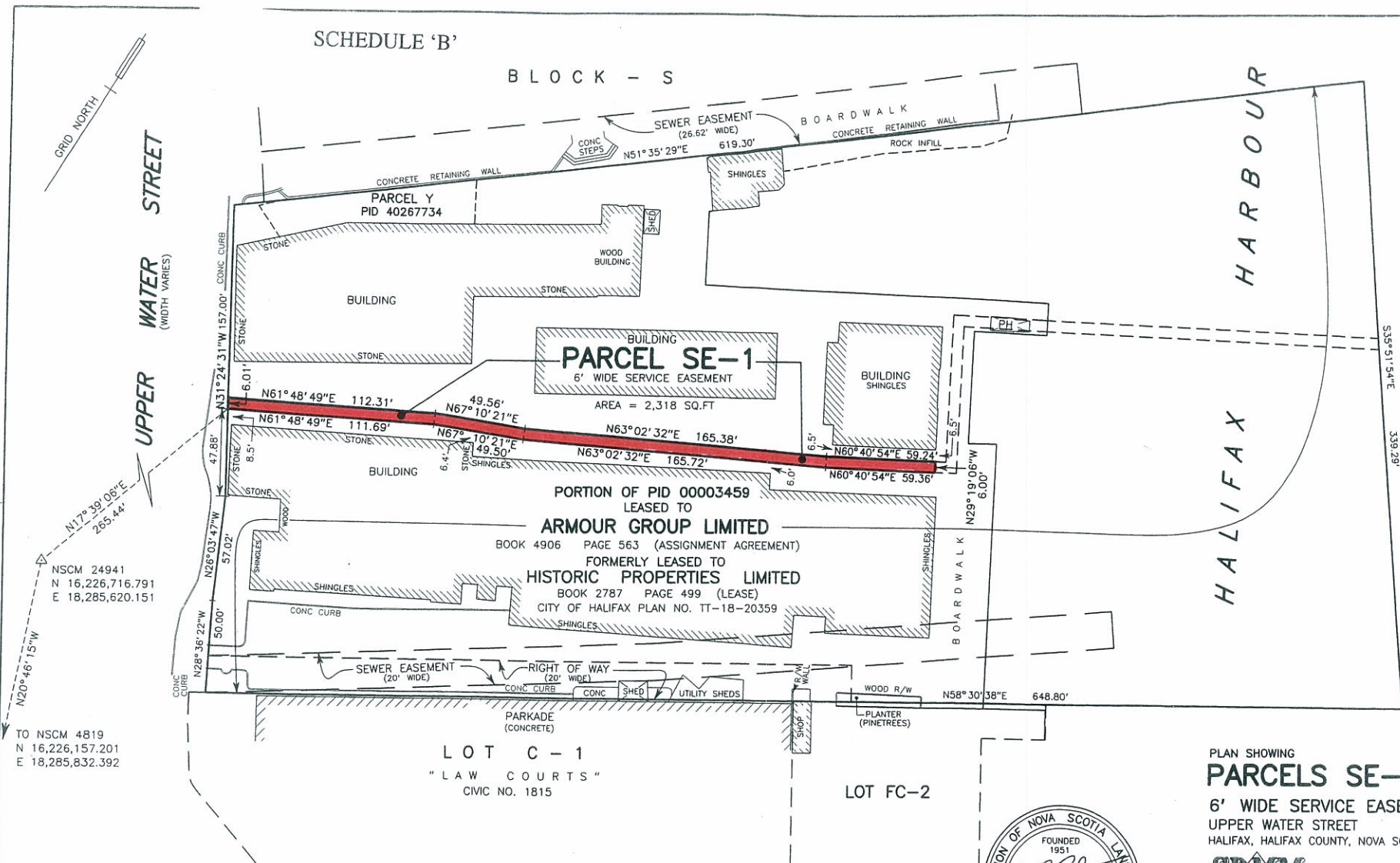
cc: Mr. Peter Stickings, Manager of Real Estate, HRM – Fax: 490-6030

cc: Kelly Denty, Supervisor Planning Services, HRM – Fax: 490-4406

cc: Armour Group Executive Committee

SCHEDULE 'B'

BLOCK - S

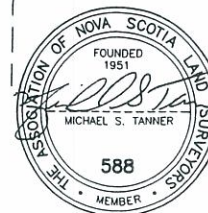


LEGEND

PID . . . Parcel Identification Number
 CONC . . . Concrete
 R/W . . . Retaining Wall
 PH . . . Pumphouse

NOTE

Bearings are from Coordinate Monuments No. 24941 and 4819 (1979 values) of the Nova Scotia Coordinate Survey System and are referred to Central Meridian 64°30' West.



PLAN SHOWING

PARCELS SE-1

6' WIDE SERVICE EASEMENT
 UPPER WATER STREET
 HALIFAX, HALIFAX COUNTY, NOVA SCOTIA



Servant, Dunbrack, McKenzie & MacDonald Ltd.

NOVA SCOTIA LAND SURVEYORS & CONSULTING ENGINEERS
 36 OLAND CRESCENT
 BAYERS LAKE BUSINESS PARK
 HALIFAX, NS B3S 1C6
 PHONE: (902) 455-1537
 FAX: (902) 455-8479
 WEB: www.sdmm.co

OCTOBER 7, 2010
 FILE NO. 1-1-274(28044)
 SCALE 1" = 50'
 PLAN NO. 7-1832-4

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