

HALIFAX

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

Item No. 14.1.5
Halifax Regional Council
August 1, 2017

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: June 21, 2017

SUBJECT: Request for Permanent Encroachment for Dartmouth General Hospital

ORIGIN

Application by Nova Scotia Transportation and Infrastructure Renewal (NSTIR) for a permanent encroachment under Pleasant Street and Mount Hope Avenue to provide power and communication services to the Dartmouth General Hospital.

LEGISLATIVE AUTHORITY

Under HRM By-Law E-200 Respecting Encroachments Upon, Under or Over a Street, Section 3, no person shall construct or maintain any encroachment or make use of a street for construction or restoration purposes in the municipality unless an encroachment license has been issued by the Municipality.

RECOMMENDATION

It is recommended that Halifax Regional Council approve the attached Encroachment License Agreement, subject to non-substantive amendments, if any, allowing NSTIR to install the proposed underground power and communication services to the Dartmouth General Hospital.

BACKGROUND

A new extension to the Dartmouth General Hospital requires additional electrical power and communication services be installed between the hospital and the central heating plant on the opposite side of Pleasant Street.

DISCUSSION

All power for the Dartmouth General Hospital is supplied from the central heating plant on the west side of Pleasant Street. The extension to the hospital on the east side of the street requires the supply of essential services to be increased.

The preferred routing for the additional power and communications services is underground from the central heating plant under Pleasant Street to the new addition to the hospital off Mount Hope Avenue (See attached drawings). Underground services are proposed as there is less potential loss of service due to damage caused by weather or vehicle collisions. Emergency power will also be supplied through the new conduit. The routing of services will follow under the sidewalk on Mount Hope Avenue to minimize excavation and disruption to green space used as a therapeutic area on hospital property. The area is available for patients, families and staff to have access to fresh air. The garden area was constructed by the Dartmouth General Hospital Charitable Foundation with public donations and contains elements recognizing donors, as well as mature trees and landscaping. The majority of this area will remain undisturbed by placing the conduits along the sidewalk.

There is an existing overhead structure over Pleasant Street that carries steam and water pipes to Dartmouth General from the heating plant. The structure is not ideal to use to carry additional power and communication services. It is possible for the structure to be damaged, resulting in loss of essential services. It has been struck by a vehicle at least once in the past. If the overhead structure was used, there would need to be a large excavation near the foundation of the hospital in order to bridge the gap from the overhead structure to the new addition, which is located on the other side of the hospital. It also has not been confirmed that the existing structure is structurally capable of supporting the additional load.

The area of encroachment is approximately 324 square meters. The applicant would typically pay a one-time application fee of \$125.00 and an annual encroachment fee of \$3,240.00 (as prescribed by HRM Administrative Order 15, the current encroachment fee is \$1 per 0.1 square meters). These fees are not applicable to this encroachment as the applicant is the Crown. All costs associated with the installation, reinstatement, and maintenance of the encroachment will be the responsibility of the Province.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this report. The risks considered rate Low.

COMMUNITY ENGAGEMENT

Community engagement was not deemed necessary in this process as there is no long-term impact to the community.

ENVIRONMENTAL IMPLICATIONS

Implications not identified.

ALTERNATIVES

Council could choose not to approve the proposed Encroachment Agreement. This would prevent the Applicant from supplying essential services to the new addition of the hospital. This alternative is not recommended.

ATTACHMENTS

Attachment A – Encroachment Agreement with proposed plans

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by:

Harrison McGrath, EIT, Engineering Assistant, Traffic Management, 902.490.6853
Megan Soroka, P.Eng., PMP, Right of Way Engineer, Traffic Management, 902.490.6219
Christopher Davis, P.Eng., Supervisor, Right of Way Services, Traffic Management, 902-490.7462

This **Encroachment License Agreement** made this _____ day of _____, 2017.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate
("HRM")

and

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
NOVA SCOTIA AS REPRESENTED BY THE MINISTER OF
TRANSPORTATION AND INFRASTRUCTURE RENEWAL ("TIR")**

Recitals

- A. **Whereas** the Province owns property at 325 Pleasant Street, Dartmouth (PID 00247932) ("TIR's Land") and wishes to install, operate, inspect and maintain underground utility services (the "**Encroachment**"), more particularly shown on engineered drawings in "Schedule A", from TIR's central heating plant at 300 Pleasant Street, Dartmouth (PID 002417687) within the HRM street right of way on Pleasant Street and Mount Hope Avenue (PIDs 40937559, 41025313 and 40937534) in the location shown in Schedule "B" (the "**HRM Lands**");
- B. **And Whereas** by resolution of the Halifax Regional Municipal Council on _____, the HRM agreed to grant TIR an encroachment license in accordance with the terms and conditions as contained in this license agreement.

In consideration of the mutual promises contained in this agreement and other good and valuable consideration the parties agree as follows:

"Encroachment" means a structure or facility upon, under or over a street and also includes any portion of the street required by the encroachment as a clearance from other structures by good engineering practice.

"Engineer" means the Engineer for the Halifax Regional Municipality and includes a person acting under the supervision and direction of the Engineer.

License

1. (1) Subject to the terms of this encroachment license agreement, HRM hereby grants to TIR, its officers, servants, agents and contractors, the non-exclusive right at all times to enter on, over and under that portion of Pleasant Street, Dartmouth identified in Schedule "A" to install and maintain the Encroachment.

(2) TIR acknowledges that its agents and contractors are subject to all municipal By-laws, including By-law E-200 and By-law S-300, as amended by Council from time to time.

Ownership

2. (1) TIR retains ownership of the Encroachment.

(2) HRM retains ownership of the HRM Lands and all right, title and interest in and to the HRM Lands upon which TIR will install the Encroachment.

(3) TIR and those claiming by, through or under TIR, have the full enjoyment of the Encroachment provided TIR and those claiming by, through or under TIR do not interfere with HRM Lands or interfere with or disrupt public use of the HRM Lands, in accordance with Section 5 of this License Agreement.

Relocation

3. (1) If the Encroachment must be relocated for a major HRM project or for substantial grading purposes, after consulting with TIR, such relocation will be at the sole expense of the Province. Should TIR wish to relocate the Encroachment, such shall be done in consultation with HRM, and said relocation shall be at the sole expense of TIR.

(2) In the event the Encroachment must be relocated for HRM purposes as noted in clause 3(1), HRM shall provide three hundred and sixty-five days (365) prior written notice to TIR in order to complete the required consultation with TIR.

Disruption of Encroachment

4. (1) In the event HRM, its employees, contractors, agents, servants or those granted access to the street right of way by HRM, are required to temporarily interfere with or disrupt TIR's use of the Encroachment for the purposes of maintaining the HRM Lands or allowing other necessary work, HRM shall provide one hundred and twenty days (120) prior written notice to TIR.

(2) In the event HRM, or those granted access to the street right of way by HRM, are required to temporarily interfere with or disrupt TIR's use of the Encroachment for the purposes of responding to an emergency situation where immediate action must be taken to preserve the environment, public health, safety or an essential service, HRM shall provide notice to TIR immediately upon which HRM shall be entitled to take whatever such action it requires.

(3) Subject to the foregoing, HRM shall not build, erect or maintain, or suffer or permit any activity that would materially adversely affect or restrict TIR's use and enjoyment of the HRM Lands in Schedule B.

Permits

5. (1) TIR agrees that its agents and contractors must comply with all municipal By-laws including the Streets By-law, S-300 for the original construction and maintenance of the Encroachment and all subsequent work which involves the excavation of the street.

(2) The application for a Streets & Services permit shall include an engineering plan and profile of the Encroachment stamped by a professional engineer. The engineering plan shall clearly indicate area (in square metres) of the Encroachment proposed over, on, or under the HRM street right of way.

(3) The final location of the Encroachment shall be subject to the approval of the Engineer of the HRM as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the “Engineer”).

(4) For the purposes of the construction of the Encroachment, TIR agrees:

(a) to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia;

(b) to file with the Engineer a written undertaking stating that the professional engineer has been engaged by TIR to supervise and set out the Encroachment;

(c) that the Encroachment will be done in accordance with the approved plans; and

(d) that the reinstatement of HRM infrastructure shall be subject to full time inspection and approval by the professional engineer or his representative.

(5) For the purposes of the construction of the Encroachment, TIR agrees to arrange a preconstruction meeting with HRM staff.

(6) Upon completion, TIR shall provide HRM with a certificate from a professional engineer certifying that HRM infrastructure located above the Encroachment was reinstated according to the approved drawings, any applicable municipal services specifications and standard drawings, and approved changes.

Record Drawings

6. TIR shall provide a copy of the record drawings within one (1) year upon completion of the Encroachment, and within one (1) year upon completion of any temporary or minimal relocation.

Maintenance

7. TIR agrees, at its sole expense, to maintain the Encroachment in a safe condition and so that it is not dangerous or hazardous to traffic, pedestrians or the public at large.

8. HRM may at any time and without notice inspect the Encroachment and, to the extent required to inspect the Encroachment, enter upon TIR's Land.

9. If HRM determines in its sole discretion that the Encroachment is unsafe or dangerous, HRM may:

(1) Notify TIR that TIR, at its sole expense, shall repair or alter the Encroachment in any manner that HRM determines in its sole discretion is necessary to make it safe; and

(2) If TIR does not, within 15 business days of receiving notice to repair or alter the Encroachment, begin the repair or alteration, HRM may cause the work to be done and TIR shall be fully responsible for all costs of the repair, alteration and restoration of the street right of way, and for all expenses incurred by HRM for the work.

10. TIR agrees to reimburse HRM for the cost of all work done by HRM and all expenses incurred by HRM under section 9 within 15 business days of receiving notice of the costs of the work or expense incurred.

Street Maintenance

11. HRM shall not be responsible for any loss or damage to the Encroachment, however caused, which may occur as a result of required street maintenance, floods, snow and ice removal, and street cleaning or by the acts or negligence of any third party.

Indemnity

12. (1) When TIR or anyone on its behalf enters the HRM Lands for the purpose of constructing, operating, inspecting or maintaining the Encroachment, TIR covenants and agrees, at its own cost and charge, to fill in all excavations made and to restore the HRM Lands to the same condition as to prior to the commencement of construction and to make good and to indemnify and save HRM harmless from any claims, damages, loss, injury, or detriment suffered or incurred by HRM or any persons or property or occasioned to the HRM Lands or any part thereof when the same is caused by the action or negligence of TIR, its servants or agents.

(2) The aforesaid indemnity set out in section 12 (1) shall survive the termination of this encroachment license agreement.

Insurance

13. As TIR does not carry insurance, Halifax Regional Municipality requires a Letter of Commitment at time of signing of this Agreement.

The Letter of Commitment will state that TIR accepts all responsibility and will indemnify and save harmless the Halifax Regional Municipality for any and all claims, events, incidents, injuries, losses, negligence, actions, omissions, or damages caused by the action or negligence of TIR, its servants or agents, or the Encroachment.

Termination

14. (1) TIR may terminate this license agreement under the following conditions:
- (a) notification to HRM in writing of its intention to terminate this licence agreement;
 - (b) payment to HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 9;
 - (c) TIR shall, at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within sixty calendar days of notice to HRM, unless otherwise agreed to between the parties; and
 - (d) any other terms and conditions as may be necessary in the opinion of the Engineer for the restoration of the street.

(2) The termination of this license agreement shall not be effective until TIR has paid all fees, costs and expenses owed to HRM under this license agreement and restored the street right of way to the satisfaction of HRM.

Notices

15. Any written notice or communication relating to the administration of this license 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 Transportation & Public Works
P.O. Box 1749
Halifax, N.S. B3J 3A5

and

Nova Scotia Transportation and Infrastructure Renewal
1672 Granville Street, 3rd Floor
Halifax, Nova Scotia
B3J 2N2

16. This license agreement shall not be assigned without the written permission of the Engineer. Where the Engineer grants such permission, the assignee takes the place of TIR under this encroachment license agreement.

17. This license agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors in title and permitted assigns.

18. TIR shall not acquire any right, title or interest in or to HRM property or HRM's public road allowance, or the portion thereof affected by the Encroachment, except the right to maintain the Encroachment in accordance with this license agreement.

19. This license agreement shall be construed according to the laws of the Province of Nova Scotia.

20. The parties agree this is a public document within the meaning of Part XX of the *Municipal Government Act*, SNS 1998, C. 18.

IN WITNESS WHEREOF each of the parties hereto has caused its respective duly authorized officers to execute this encroachment license agreement on their behalf as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in
The presence of:

**HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF NOVA SCOTIA, AS
REPRESENTED BY THE MINISTER OF
TRANSPORTATION AND
INFRASTRUCTURE RENEWAL**

Witness

Minister of Transportation and Infrastructure
Renewal

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

**PROVINCE OF NOVA SCOTIA
HALIFAX REGIONAL MUNICIPALITY**

On this _____ day of _____, 2017, before me, personally came and appeared _____, a subscribing witness to the foregoing Indenture, who having been duly sworn by me, made oath and said that Her Majesty the Queen in Right of the Province of Nova Scotia, one of the parties thereto, caused the same to be executed in Her name and on Her behalf by the Minister of Transportation and Infrastructure Renewal, in the presence of the subscribing witness.

A Commissioner of the Supreme Court of
Nova Scotia

**PROVINCE OF NOVA SCOTIA
HALIFAX REGIONAL MUNICIPALITY**

On this _____ day of _____, 2017, before me, personally came and appeared _____, a subscribing witness to the foregoing Indenture, who having been duly sworn by me, made oath and said that Halifax Regional Municipality, one of the parties thereto, caused the same to be executed in its name and on its behalf and its corporate seal to be thereto affixed by the hands of _____, its _____, and _____, its the proper officer(s) duly authorized in that behalf and in the presence of the subscribing witness.

A Commissioner Of The Supreme Court Of
Nova Scotia

Schedule A – Engineered Drawing of the Encroachment

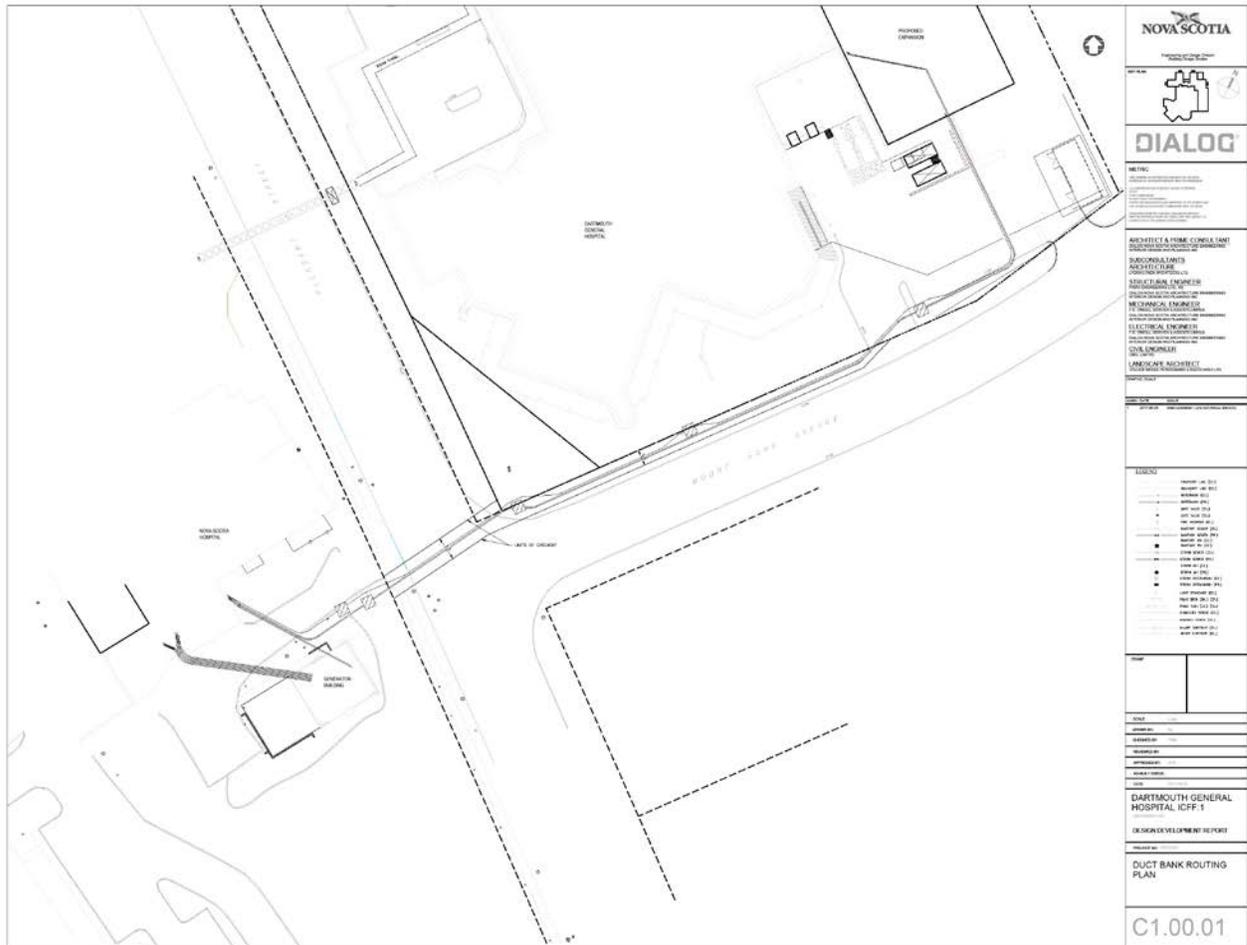


Figure 1 - Full Engineered plan showing the plan view location of the proposed encroachment

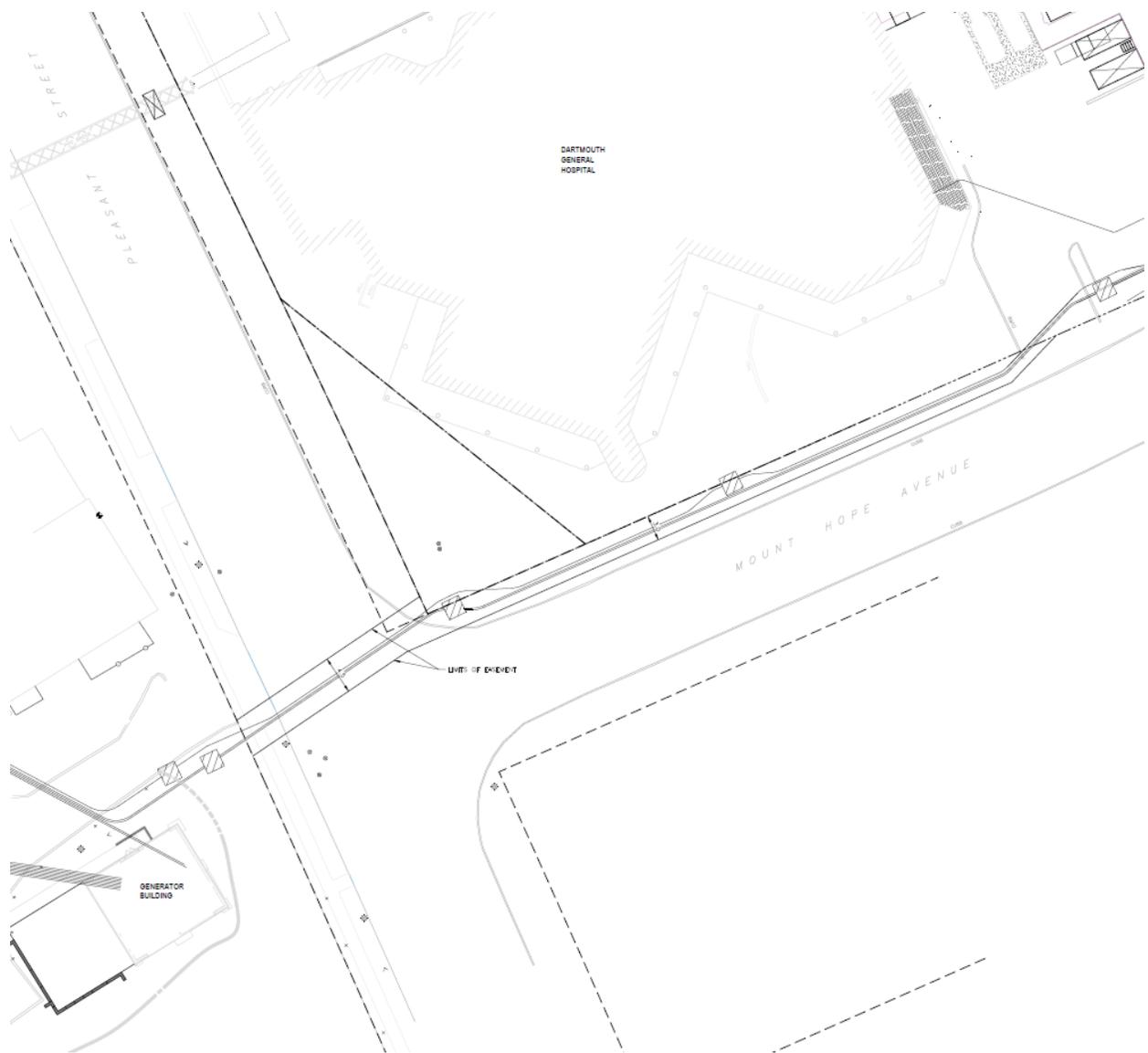


Figure 2 - Zoomed in section of the engineered plan showing the location in plan view of the proposed encroachment

Schedule B – Showing HRM Right of Way Parcels

