

**Request for an Encroachment Agreement for
Subsurface Environmental Investigation,
1030 Birchmount Road**

Date:	May 25, 2010
To:	Scarborough Community Council
From:	Acting Director, Transportation Service, Scarborough District
Wards:	Ward 37 – Scarborough Centre
Reference Number:	P:\2010\Cluster B\TRA\Scarborough\sc1069

SUMMARY

This staff report is about a matter that the Community Council has delegated authority to make a final decision, provided that it is not amended so that it varies with City policy or by-laws.

The purpose of this report is to consider a request by the owner(s) of 1030 Birchmount Road, to install monitoring wells within the City of Toronto right-of-way on Ashtonbee Road and Birchmount Road. The approval process requires that the adjacent property owner, CGU Canada Services Inc. enter into an encroachment agreement with the City of Toronto in order to obtain a Utility Cut Permit, so that soil samples can be excavated and monitoring wells be installed. This will lead to establishing a course of action on how to mitigate any potential contamination of the Birchmount Road and Ashtonbee Road right-of-ways and any other City land.

RECOMMENDATIONS

Transportation Services, Scarborough District, recommends that Scarborough Community Council:

1. Approve the application for an encroachment agreement for 1030 Birchmount Road, subject to the following conditions:
 - a. That the owner(s) enter into an encroachment agreement with the City to the satisfaction of the City Solicitor and the General Manager of Transportation Services;

- b. That the life of the Agreement be limited to 5 years from the date of registration on title or to the date of removal of the encroachment(s) at which time, the City may consider the Agreement for further extension, if requested by the applicant;
 - c. The appropriate staff be directed to assist with establishment of a mitigation plan;
 - d. That indemnification be provided to the City for all liability relating in any way to the encroachment with the City of Toronto added as additional insured for such liability for the lifetime of the Agreement in a form as approved by the City Solicitor, in an amount no less than \$5,000,000.00 or such greater amount as the City Solicitor may require;
 - e. That in the event of sale or transfer of the property abutting the encroachment, Legal Services be authorized to extend the Encroachment Agreement to the new owner, subject to the approval of the General Manager of Transportation Services; and
 - f. The owner(s) pay the following fees:
 - a. Application Fee of \$2,068.59.
 - b. Legal Administration Cost and Registration on Title, plus disbursements including G.S.T.
 - c. Encroachment deposit of \$225.00 per monitoring well.
2. Authorize the City Solicitor to prepare and execute the encroachment agreement.

Financial Impact

There is no financial impact anticipated resulting from the adoption of this report.

DECISION HISTORY

The application to encroach within the public right-of-way was received from a representative of the property owner(s) CGU Canada Services Ltd. on January 14, 2010.

ISSUE BACKGROUND

In early 2009, Transportation Services was approached by Stantec Consulting Ltd., acting on behalf of the owner advising that underlying soil within the Birchmount Road and Ashtonbee Road right-of-way may contain contamination from the adjacent property at 1030 Birchmount Road.

The property at 1030 Birchmount Road has undergone several environmental investigations since 2006. The resulting reports indicate that soil contamination exists on their land. It is highly probable that it may have also migrated off-site and into the road

right-of-ways of both Birchmount Road and Ashtonbee Avenue. Due to the proximity of Massey Creek, it may also be possible that the contamination has migrated from the road right-of-way into the Toronto Conservation Authority regulated area of Massey Creek and Maidavale Park.

In order to confirm if any contamination exists, and if so, to what extent, Stantec Consulting has requested permission to take soil samples and to install several monitoring wells at varying distances from the private lands on both Ashtonbee Road and Birchmount Road.

In accordance with the Municipal Consent Requirements for work involving excavation of the road allowance, consent is required through a utility cut permit. Utility cut permits are only issued to applicants having authority to construct, operate and maintain their plant within City streets, as established through legislation or the terms of a Municipal Access Agreement or Encroachment Agreement. In order to allow CGU Canada Services Inc. to take soil samples and install the monitoring wells within the Ashtonbee Road and Birchmount Road right-of-way, Council approval for the encroachment agreement is required.

As a condition of the encroachment agreement CGU Canada Services Inc will be required to apply for a utility cut permit. Upon approval of the permit, CGU Services Canada Inc. has agreed to comply with conditions established in that permit. Specifically, City staff will have access to the resultant soils report, which will provide the information necessary to determine a course of action.

In order to expedite the installation of the monitoring wells, Stantec Consulting has circulated and obtained approval for the installation of the monitoring wells from the utility companies which are known to have their plant in the area. In their application to the City of Toronto for the encroachment agreement, the approval documentation has been submitted along with a plan showing the proposed locations of the monitoring wells. CGU Services Canada Inc. has provided an insurance certificate naming the City of Toronto as additional insured under their existing insurance policy and has paid the appropriate fees.

As legally required, the previous reports have been forwarded to the Ministry of the Environment for their comment. The City of Toronto has not been given access to these reports, as they pertain only to the land at 1030 Birchmount Road and are the property of CGU Canada Services Inc. Currently there is no legal requirement for the owner to provide the City of Toronto access to these reports, as no contamination of the adjacent Birchmount Road and Ashtonbee Road right-of-ways has been confirmed.

COMMENTS

In order to fully determine the extent of the contamination, Stantec Consulting acting on behalf of the property owner, CGU Canada Services Inc. has proposed to excavate soil samples and to install monitoring wells. These wells will remain within the road right-of-way until such time that the contamination has been mitigated. The next step in the process will be determined after a complete analysis of the samples has been completed and a report generated.

As a requirement of the Utility Cut Permit, The City of Toronto will receive the resultant report of the sample analysis, and will be able to determine the best course of action in consultation with CGU Canada Services Inc. and the Ministry of the Environment.

CONTACT

Dave Twaddle
Manager, Traffic Planning/Right-of-Way Management
Transportation Services, Scarborough District
Tel: 416-396-5670
Fax: 416-396-5641
Email: Twaddle@toronto.ca

SIGNATURE

Steven T. Kodama, P.Eng.
Acting Director, Transportation Services, Scarborough District

DT/BT:lab

ATTACHMENTS

1. Location Map – 1030 Birchmount Road