

## **Encroachment Agreement: 18 Graydon Hall Drive**

**Date:** August 16, 2017

**To:** North York Community Council

**From:** Acting Director, Transportation Services, Scarborough District

**Wards:** Ward 34 - Don Valley East

### **SUMMARY**

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This staff report is about a matter for which 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.

Transportation Services is requesting authority to enter into an encroachment agreement relating to 18 Graydon Hall Drive (the "Property") for a proposed permanent private groundwater dewatering system consisting of pumps, pipes and monitoring wells. A portion of this system is to be located within the Don Mills Road and Graydon Hall Drive public right-of-way.

This report will also address questions raised in item NY23.41 of the June 13, 2017 meeting of North York Community Council.

This report has been prepared in consultation with the City Planning, Engineering and Construction Services, Toronto Building, and Toronto Water Divisions.

### **RECOMMENDATIONS**

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The Acting Director, Transportation Services, Scarborough District recommends that North York Community Council:

1. Authorize the General Manager of the Transportation Services Division, or his or her designate (the "General Manager"), to enter into and execute an encroachment agreement with Residences at Argento Inc. (the "Property Owner") and the corporation named pursuant to recommendation 1a) to permit the installation, maintenance and repair of a planned, permanent, private dewatering system consisting of pumps, pipes, monitoring wells, and related materials, systems, and appurtenances in the Don Mills Road and Graydon Hall Drive public right-of-way (the "Encroachment Installations") in a form and content satisfactory to the General Manager, and the City Solicitor, or his or her designate (the "City Solicitor"), including, without limitation, the following terms and conditions:

a) The Property Owner shall provide the General Manager with a lawyer's letter confirming the legal corporate name of its parent company (the "Parent Company").

b) The Property Owner shall construct the entire private dewatering system consisting of pumps, pipes, monitoring wells, and related materials, systems, and appurtenances originating at 18 Graydon Hall Drive and terminating at the Don River (the "Groundwater Installations") in accordance with the construction drawings prepared by AI Underhill and Associates stamped and dated August 9, 2017 submitted as part of the encroachment agreement application and accepted by the City (the "Drawings").

c) The Property Owner shall submit to the General Manager a report, from an independent professional engineer, licensed to practise in the province of Ontario and qualified, experienced and skilled in the responsibilities to be undertaken, sealed and certifying to the City, that the Groundwater Installations have been constructed and installed in accordance with the Drawings.

d) The Property Owner shall submit to the General Manager a report, from an independent professional engineer, licensed to practise in the province of Ontario and qualified, experienced and skilled in the responsibilities to be undertaken, sealed and certifying to the City, that the SCADA testing has been completed following municipal guidelines after the Groundwater Installations are completed.

e) As soon as practicable, but in no event longer than three (3) months, after the construction and installation of the Groundwater Installations, and every year thereafter, the Property Owner shall submit to the General Manager a report, from an independent professional engineer, licensed to practise in the province of Ontario and qualified, experienced and skilled in the responsibilities to be undertaken, sealed and certifying to the City that the Groundwater Installations are functioning, and being operated, monitored and maintained, as designed and intended.

f) As soon as practicable, but in no event longer than three (3) months after the construction and installation of the Encroachment Installations, deliver to the General Manager the as-constructed drawings of the Encroachment Installations in a form satisfactory to the General Manager.

g) The Property Owner shall maintain, repair, and replace the Groundwater Installations, as required, to ensure that they are functioning as designed and intended, and in a manner that is not detrimental to, and does not interfere with, municipal lands and infrastructure and third party rights, all to the satisfaction of the General Manager.

h) The Property Owner shall maintain and update, to the level of a prudent and careful owner, and as otherwise required, an Operations Manual (the "Operations Manual") that documents all steps and actions to be taken with regard to the operation of the Groundwater Installations, including steps and actions to be

taken in the case of a malfunction or any reduction in or loss of functionality of the Groundwater Installations, or an emergency, such manual to be produced to the City upon request of the General Manager.

i) the Property Owner shall obtain and, where required, maintain in good standing, the following;

i) an easement from the Toronto and Region Conservation Authority ("TRCA") permitting that portion of the Groundwater Installations situated within the TRCA lands ("TRCA Installations"); and a permit from TRCA to construct the TRCA Installations on its lands;

ii) a Permit to Take Water from the Ministry of Environment and Climate Change authorizing the taking of water by the Groundwater Installations;

iii) any required approvals under the Species at Risk Act and the Fisheries Act (Canada) and the regulations thereunder;

iv) permit(s) allowing street work under Chapter 743 of the City of Toronto Municipal Code ("Chapter 743"), where required;

v) insurance in the amount of ten million dollars (\$10,000,000.00) in a form as required by the General Manager and the Chief Financial Officer of the City; with the City named as an additional insured party;

vi) any and all other permits, consents, or approvals as may be required by law, including municipal by-laws;

j) the Property Owner shall deposit a reference plan within which the Groundwater Installations shall be located, satisfactory to the General Manager, at the applicable Land Registry Office;

k) the Property Owner shall comply, as owner of the Groundwater Installations, with the Ontario Underground Infrastructure Notification System Act, 2012;

l) the Property Owner shall pay to the City eleven dollars and ninety two cents (\$11.92) per lineal metre of pipe within the public right-of-way as a onetime fee;

m) the Property Owner shall provide to the City an indemnity in a form and content satisfactory to the General Manager and the City Solicitor;

n) the Property Owner shall, if required by the General Manager, remove the Encroachment Installations and restore the street pursuant to Article VIII of Chapter 743;

o) the Property Owner shall pay all applicable fees specified in Chapter 441, Fees and Charges;

- p) the Property Owner shall pay all costs associated with the City preparing the encroachment agreement and registering it on title to the benefitting lands;
- q) the City shall not be responsible for repairing or replacing any part of the Encroachment Installations damaged as a result of street or other City of Toronto infrastructure construction, alteration, repair, or replacement;
- r) the City shall maintain the right to place pipes, cables, wires, poles and other surface and subsurface infrastructure within the right-of-way;
- s) the encroachment agreement creates a non-exclusive licence to install, operate and maintain the Encroachment Installations and in no way grants an easement or other proprietary interest in the City right-of-way;
- t) the Groundwater Installations shall be operated, monitored, and maintained by a person trained, skilled and experienced in the operation and functionality of such systems on a 24 hour/7 day per week basis in accordance with the Operations Manual;
- u) the satisfaction of all conditions and obligations of the encroachment agreement shall be at no expense to the City;
- v) every subsequent owner of 18 Graydon Hall Drive, including any condominium corporation, but not the individual unit owners of the condominium, shall assume the encroachment agreement on the same terms and conditions;
- w) the Parent Company shall be a party to the encroachment agreement as guarantor of the obligations of the Property Owner or any subsequent owner of 18 Graydon Hall Drive, including any condominium corporation, until June 13, 2038;
- x) prior to commencement of construction the Property Owner shall provide and deliver to the City an unconditional and irrevocable letter of credit, as determined by the General Manager, in a form and content, and from a financial institution satisfactory to the General Manager and the City Solicitor, and such letter of credit shall be in addition to and not in lieu of any other insurance or other security provided by the Property Owner to the City;
- y) any other conditions considered appropriate by the General Manager or the City Solicitor.

2. Authorize the General Manager to enter into and execute any agreements relating to the Encroachment Installations, including assumption agreements.

## FINANCIAL IMPACT

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There is no financial impact to the City as a result of this report.

## DECISION HISTORY

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A rezoning application was approved by City Council for 20 Graydon Hall on March 3, 2008. This [decision](#) permitted the development of a 24-storey apartment building containing 251 units and 24 townhouse units to move forward to construction and the existing apartment building on the site to remain. The lands at 20 Graydon Hall Drive were severed in 2010 into two properties, to be known as 18 Graydon Hall (the lands for the new development) and 20 Graydon Hall Drive (the lands of the existing apartment building to remain).

In September of 2011 a minor variance application was approved by the Committee of Adjustment to allow for an additional storey on the building increasing it to 25 storeys. In August of 2012 a minor variance application to allow for an increase in height to 27 storeys was refused by the Committee of Adjustment. The application was subsequently appealed to and approved by the Ontario Municipal Board in January of 2013.

In addition to the minor variance approvals associated with this development, there is also an active site plan application 15 113120 NNY 34 SA and a draft plan of condominium application 14 212731 NNY 34 CD, both are currently under review for 18 Graydon Hall Drive.

North York Community Council, at its meeting of June 13, 2017, requested that information be included in this report concerning: the water discharge being released into the East Don River and its quality, and what will happen when the Ministry of the Environment and Climate Change ("MOECC") Permit to Take Water ("PTTW"), which includes conditions that address the taking and the discharge of this water into the Don River, expires.

The information requested from this [Decision](#) has been incorporated into this report

## COMMENTS

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Transportation Services received an application to construct and maintain the Encroachment Installations within the public right of way on Graydon Hall Drive and Don Mills Road, as part of the Groundwater Installations also traversing TRCA lands to the Don River. This system is in relation to the above noted rezoning and site plan application.

This is a unique request from the Property Owner to address a construction issue that cannot be feasibly mitigated on the Property. Under normal circumstances, developers often dewater the construction site by pumping groundwater offsite until the foundation

is constructed, upon which such dewatering is no longer required, can be managed on site, or can be discharged to a City sewer through the granting of an approval by the General Manager of Toronto Water.

### ***Events During Construction of the Building***

In this specific case, during the installation of shoring to support the building construction, a high artesian pressure aquifer was pierced, which resulted in a large accumulation of groundwater on the Property that necessitated the groundwater being discharged off site. In order to drain the groundwater away from the building, additional deep wells were authorized to be installed as a temporary measure in the public right of way on Graydon Hall Drive, to supplement the existing dewatering for the site, with the groundwater being discharged to the Don River through a set of temporary pipes and related infrastructure.

### ***Review of the Permanent Groundwater Control System***

Once the construction of a site is completed, as indicated above, under normal circumstances, the dewatering would generally no longer be required. Alternatively, it would be managed completely on private property or discharged to a City sewer where approved by the General Manager of Toronto Water. In this case, a permanent groundwater control system, ultimately proposed as the Groundwater Installations, was needed despite completion of the construction. The Property Owner has requested to maintain a portion of the Groundwater Installations within the public right of way given that it was not feasible to discontinue the pumping of the water offsite, and the proposed system could not be contained completely on the Property.

The original volume of water being discharged from this site was approximately 5000 l/min to keep the ground water at an acceptable level around the building. It is currently 1200 l/min. Given the significant volume, and at the request of the developer, City Planning, through the Site Plan application process entered into discussions with numerous other Divisions to consider and review proposed solutions to this complex problem.

The developer provided numerous reports and made several proposals (discussed below). The current proposal identified a system that would include the existing temporary boulevard wells in the right of way on Graydon Hall Drive and existing conduits that traverse down Graydon Hall Drive to the TRCA lands east of Don Mills Road and discharging to the Don River. The developer has obtained the approval of the MOECC (through the PTTW) and the TRCA (through the easement and subsequent discussions) for the permanent system.

In addition to this, the City has engaged a peer reviewer with the expertise required to undertake a review of the system, its components and numerous documents along with the history of the temporary system and construction of the buildings and whether the system will have a negative impact on the buildings and municipal infrastructure in the future. The peer reviewer has concluded that "there is not expected to be any adverse impact to the integrity and the operations of the buildings and municipal infrastructure within the zone of influence of the [Groundwater Installations]." and that "the building is

safe for occupancy". It is on the basis of the City's expert peer reviewer's conclusions that City staff accept that the Encroachment Installations, as part of the Groundwater Installations, can be recommended as safe for installation within the public right of way. Like any mechanical system, it would need to be maintained and monitored to ensure continued proper functioning and to avoid system failure.

### ***Permanent Operations and Maintenance of the System***

The permanent system requires upgrades to ensure its longevity and ability to be located by other utilities and contractors working on Graydon Hall Drive in the future. The Property Owner has agreed to undertake these modifications and become a member of Ontario One Call. One Call is a one-stop call service for underground infrastructure locates that Ontarians are required by provincial legislation to contact prior to undertaking any excavation.

In addition to this, an operation manual for the system has been created including an emergency operation protocol for both technical people and in layman terms to ensure the system will be working properly and that proper protocols will be followed in the event of an emergency or main break. On this specific note, the developer has indicated that, should there be a failure of the system, it will be identified and rectified within 24 hours of the occurrence.

Within the maintenance manual, the Property Owner also has indicated that a "Permanent Groundwater Management Team" comprised of the following people will be selected and maintained at the discretion of the owner of the system: technical consultants, environmental consultants, well contractor, wastewater contractor, and building manager.

### ***Item NY23.41 of the Meeting of North York Community Council on June 13, 2017***

The following information is being provided in response to the request contained in the above item:

#### **a) The Water Discharge Being Released Into the Don River**

The description of the quantity of water being released is set out in the section "Review of the Permanent Groundwater Control System" above.

Under current provincial legislation, in order to remove more than 50,000 litres of water per day from the ground, the owner of the Property requires a PTTW from the MOECC. The Property Owner does have a current and valid PTTW, which expires in June of 2027 and authorizes the taking of the groundwater, subject to conditions on the PTTW. Currently, PTTWs are issued for at most 10 years at a time.

#### **b) The Quality of the Water Being Released into the Don River**

Earlier proposals by the Property Owner to deal with the discharge contemplated all or some of the groundwater draining into the City's sewers. As part of that process, the quality of the groundwater was sampled by the City and it was determined that it did not meet the standards set out in Chapter 681 of the City of Toronto Municipal Code (the "Sewers By-law") for storm sewer discharge. Filtration systems installed by the Property Owner were not effective in treating the water to a level that would meet the City's storm sewer limits. Pursuant to the Sewers By-law, discharge into the City's sanitary sewer would be subject to, among other things, compliance with the City's sanitary sewer limits, available capacity in the City's sanitary sewer system for the volume of groundwater proposed to be discharged and, if approved, would require an ongoing payment to the City (a sanitary discharge fee) for the treatment of the groundwater. While the Property Owner considered proposals for discharge of the groundwater to the City's sanitary sewer, the Property Owner ultimately decided on the current proposal which drains the groundwater directly into the Don River and not the City's sewers.

Because the current proposal is to drain the groundwater directly into the Don River, the discharge is now under the jurisdiction of the MOECC and not the City.

Accordingly, in response to North York Community Council's direction, City staff wrote to the MOECC on July 6, 2017 to ask it to provide information on the water quality of the groundwater discharged into the Don River from the Property. The MOECC's response letter, dated August 2, 2017 (without attachments is found in Attachment 4 to this report.

In short, the MOECC advised that:

- The potential environmental effects of the discharge have been evaluated as part of the review of the PTTW.
- The PTTW includes appropriate conditions to ensure the discharge continues to be managed in a manner that meets the MOECC's requirements.
- Environmental concerns relating to the discharge waters were identified by MOECC staff during site visits from September, 2015 to Spring, 2016.
- As a result of such observations, the MOECC's investigation of those earlier discharges is ongoing.
- MOECC staff required the Property Owner to address and mitigate the MOECC's concerns, which the MOECC advises the Property Owner did.
- MOECC staff will continue to monitor the situation through proactive inspections.
- Water quality data collected by the Property Owner in April and May, 2017 indicated compliance with the limit for total suspended solids specified in the PTTW.
- The owner's consultant is working with ministry staff to develop the monitoring and maintenance plan required by the PTTW.

Iron is found in the discharge waters, which has caused and is causing a visible dark reddish plume within the water column of the Don River at the outfall location. The Property Owner has designed a method to remove the iron as part of the proposed permanent system design, which has been approved by the TRCA and the City's peer reviewer. While the concentration of iron creates an aesthetic issue, the MOECC has not indicated that the level of iron is unacceptable for discharge into the Don River.

### c) Expiry of the Discharge Permit

There is no "discharge permit" per se. The only permit held by the owner is the PTTW. The MOECC has previously advised that the discharge into the Don River was assessed as part of the PTTW process and that no environmental compliance approval or ECA is required for this discharge system. The MOECC has included, within the current PTTW, conditions which specify the quality of water which is permitted to be discharged to the East Don River. City staff rely on the MOECC's opinion in this regard.

The MOECC also advised that PTTWs are issued for a finite period of time, but can be renewed. The renewal application is to be accompanied by a report from a qualified person (eg. a professional geoscientist or equivalent) assessing all data collected. If the owner of the property to which the PTTW relates changes, the permit can be amended to reflect that change. Such changes do not require a supporting technical report and are purely administrative, and as such will not result in any change to an existing PTTW condition.

Given that the discharge is under the jurisdiction of the MOECC, the impacts upon expiry of the PTTW, if not renewed, are unknown at this time. It will be up to the MOECC and the then holder of the PTTW to resolve. As noted above, currently, without a valid PTTW, no taking of groundwater in an amount greater than 50,000 l/day is permitted.

However, if the impediment to renewal is a decline in the quality of the groundwater being discharged into the Don River, the Property Owner would have to consider the feasibility of other alternatives that may allow the renewal of the PTTW, such as removal of the groundwater by trucks on a continuous basis so the water does not go into the Don River, redesign of a filtration system to clean the groundwater before discharge into the Don River, or redirection of the discharge into the City's sewers, subject to available capacity in the receiving sewer and compliance with the Sewers By-law.

## **Conclusions**

In light of this unique situation, and understanding there are no provisions for this type of encroachment governed by the criteria set out in the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, Transportation is requesting authority from North York Community Council where this item is delegated.

## **CONTACT**

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## **SIGNATURE**

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Carly Hinks  
Acting Director

## **ATTACHMENTS**

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- Attachment 1: Overall Area Site Plan
- Attachment 2: Proposed System
- Attachment 3: Reference Plan
- Attachment 4: Letter from MOECC dated August 2, 2017 (without attachments)