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STAFF REPORT: ENGINEERING & PUBLIC WORKS DEPARTMENT



REPORT TO: Committee of the Whole
MEETING DATE: September 29, 2014
REPORT NO.: EPW.14.074
SUBJECT: Hunter Weale Easement
PREPARED BY: Jeffery Fletcher, Manager of Solid Waste and Environmental Initiatives

A. Recommendations

THAT Council receive Staff Report EPW.14.074 entitled, "Hunter Weale Easement";

AND THAT Council advise Staff to create an attenuation area related to the Town's Solid Waste Disposal Site to be registered on title;

AND THAT Council approve execution of the related agreement by Mayor and Clerk.

B. Background

As part of the new Environmental Compliance Approval (ECA) related to the Landfill expansion project approval, a number of new conditions were included related to placing existing attenuation zone agreements on registered land title. The Town has had an easement agreement since 1999 on the adjacent lands to the north. A map of these lands can be seen in Schedule C of the Hunter Weale Easement Agreement which is in Attachment 1 of this Staff Report. The existing agreement could not be placed on title as it was executed by the former land owner. Town Staff have negotiated a new agreement with the existing landowner. This new agreement is effectively the same as the previous agreement.

The agreement is a subsurface contamination easement that is required by ECA and the Environmental Protection Act and the Reasonable Use Guideline B-7. These easement zones create an area that assists with natural attenuation of landfill contamination. The easement also allows the Town to place monitoring wells and access the monitoring wells for sampling.

Town Staff have worked with the Town's Solicitor to develop the land easement and recommend that Council endorse the signing of this agreement by Mayor and Clerk.

C. The Blue Mountains' Strategic Plan

None.

D. Environmental Impacts

If the Town does not have attention agreements on title, the Disposal Site will be out of compliance with the ECA.

E. Financial Impact

The landowner is compensated in the agreement annually through land tax refund of the municipal portion, the compensation in 2014 was \$1,074.44.

F. In Consultation With

John Metras, Town's Legal Solicitor

G. Attached

1. Hunter – Weale Easement Agreement

Respectfully submitted,

Jeffery Fletcher
Jeffery Fletcher
Manager of Solid Waste and Environmental Initiatives

Reg Russwurm
Reg Russwurm
Director, Engineering and Public Works

Engineering & Public Works
Office: 519-599-3131 Ext.238
Fax: 519-599-7723
jfletcher@thebluemountains.ca

THIS EASEMENT AGREEMENT made this day of August, 2014

BETWEEN:

JOHN ROYDEN HUNTER and DEBORAH ANN WEALE

(hereinafter called the "Owners")

- and -

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

(hereinafter called the "Town")

WHEREAS the Owners own the lands described in Scheduled "A" attached hereto (the "Owners Lands");

AND WHEREAS the Town owns lands described in Schedule "B" hereto (the "Town Lands") which lands are adjacent to the Owners Lands;

AND WHEREAS the Town operates a Municipal Landfill Site on the Town Lands;

AND WHEREAS it is in the mutual best interests of the Parties to continue previous agreements associated with the established Contaminant Attenuation Zone, appurtenant to the Municipal Landfill Site, as an easement in accordance with the terms and conditions set out in this Agreement.

NOW THEREFORE this Agreement witnesseth that in consideration of the mutual covenants contained herein and the exchange of two dollars (\$2.00) now paid by each Party to the other the receipt of which is hereby acknowledged and other good and valuable considerations the Parties hereby agree as follows:

1. Definitions

For the purposes of this Agreement, including the recitals, the following definitions shall apply:

- a) "Contaminant Attenuation Zone" means a three-dimensional zone described in Schedule "C" hereto that,
 - (a) is located on the Owners Lands adjacent to the Municipal Landfill Site
 - (b) is in the subsurface or extends into the subsurface, and
 - (c) is used or is intended to be used for the attenuation of contaminants from the Municipal Landfill Site to levels that will not have an unacceptable impact beyond the boundary of the zone;
- b) Groundwater Zone means that part of the Contaminant Attenuation Zone which is the saturated area below the high ground water level.
- c) Groundwater means the natural water running through the subsurface of the lands.

2. The Parties acknowledge the accuracy of the recitals.

3. The Owners hereby grant, transfer and convey to the Town the free, unencumbered, uninterrupted and unobstructed right, license, easement or rights in the nature of an easement in gross, in, on, over, under, upon and through the Owners Lands for the purposes and on the terms and conditions set out in this Agreement. Despite the registration of this Agreement on the title to the Owners Lands, the Parties agree that the aforesaid rights and easements hereby granted shall only be exercised by the Town on the Contaminant Attenuation Zone.

4. This Agreement shall expire on the 31st day December, 2021. Following expiration of this Agreement either of the Parties may propose revision(s) and the agreement will be continued only upon mutual consent of both Parties.
5. The Owners agree to execute all necessary documents to give effect to this Agreement and the Town agrees to be responsible for the costs of preparation of all such documents and the registration of such documents and this Agreement, and any survey plans deemed necessary. The Owners agree that this Agreement, together with any schedules thereto, will be registered upon title to the Owners Lands and the Owners hereby authorizes the Town Solicitor or his designate to execute on behalf of the Owners all documents necessary to register this Agreement in the Land Registry Office.
6. The Town further agrees to pay to the Owners an amount equal to the municipal portion of annual property taxes levied to the Owners Lands. .
7. The Owners agree to allow the Town, it's employees, contractors and agents, the right to have access to the Contaminant Attenuation Zone to install, construct, maintain, monitor, alter and repair any and all monitoring devices and related infrastructure in and upon the surface and subsurface area of the Contaminant Attenuation Zone , by allowing access or entrance onto the Contaminant Attenuation Zone from time to time, as may be necessary and only with the Owners permission, which permission will not be unreasonably withheld, so as and in order to carry out and conduct such monitoring as may be deemed necessary by the Town or any provincial authority.
8. The Town agrees that reasonable notice shall be given to the Owners when it is proposing to enter upon the Contaminant Attenuation Zone. All efforts will be made to coordinate any works that may disrupt a crop to a time that is outside of the crop growing season. It is further agreed that any testing locations shall be located away from any improvements made to the Contaminant Attenuation Zone by the Owners, as far as is practicable, so as to minimize any disruption of the enjoyment of the Owners Lands and shall at all times co-operate with the Owners in this regard. The Town further agrees to fill in all excavations and to restore the surface of the Contaminant Attenuation Zone to the same condition as prior to the commencement of any work conducted therein.
9. The easement granted herein is declared to be appurtenant to and for the benefit of the Town Lands.
- 10(a) The Town agrees that any leachate contamination or any other contamination existing in or on or under the Contaminant Attenuation Zone and originating from or as a result of or in connection with Municipal Landfill Site operations shall be attributed to the Town. The Town agrees to and shall indemnify and save harmless the Owners, and all successors from and against all liabilities, damages, suits, claims, demands, costs, actions, proceedings, causes of action, losses, expenses and injury (including death) of any kind or nature whatsoever whether arising before or after termination of this Agreement, including any provincially ordered cleanup. This indemnity shall relate to any and all claims arising from, i) any leachate or other contamination on or under the Owners Lands and ii) any liabilities upon the Owners arising from the activities of the Town pursuant to this Agreement.
- (b) The Owners shall be enabled to use groundwater taken from the Contaminant Attenuation Zone, at their own risk, as the Owners may require, in a manner that causes no disruption to the installations or operations of the Town, and with the permission of the Town, which permission will not be unreasonably withheld.
- (c) The Town further agrees to provide the Owners with an annual Municipal Landfill Report when requested by the Owners.
11. The Town agrees that the Owners shall have the right to use the Contaminant Attenuation Zone for ordinary purposes, including extraction of aggregate


material under licence, and shall be entitled to place upon it such structures as are ordinarily associated with such uses, and to excavate the surface area to place foundations or other such structures on the property, and the Owners agrees that such use shall not act to interfere with or damage any works placed by the Town in compliance with the terms of this Agreement.

12. The Owners agree the Town shall peacefully hold and enjoy the rights, liberties, privileges and easements hereby granted, in performing and observing the covenants and conditions herein described, without hindrance, disruption or interruption.
13. The Town agrees to save the Owners harmless from any and all liability for work done on the Contaminant Attenuation Zone pursuant to this Agreement, and such liability will include compensation for any crop damage occurring on the Contaminant Attenuation Zone as a result of activity conducted by the Town and as determined by an agricultural inspector accredited by the Ontario Federation of Agriculture or its designate.
14. The foregoing terms and conditions are and shall be of the same force and effect to all intents and purposes as a covenant running with the Owners Lands and this indenture, including all covenants and conditions herein contained, shall extend to be binding upon and shall endure to the benefit of the successors in title and assigns of the Parties hereto, respectively, and any reference to singular or gender shall include, where the context might require, reference to the plural and any gender reference so required.
15. The Owners and the Town mutually agree that this agreement supersedes a previous agreement made with the Town registered as Instrument 0467761 and further supersedes an unregistered agreement made between Mary Elizabeth Hunter Armstrong and the Town dated March 13, 2007.
16. The covenants, agreements, conditions and undertakings herein contained on the part of the Owners shall run with the Lands and shall be binding upon it, its successors and assigns as owners and occupiers from time to time and this covenant shall be to the benefit of the Town and its lands and highways appurtenant and adjacent to the Owners Lands.
17. The following schedules are attached hereto and form part of this Agreement:
 - "SCHEDULE A" being a description of the Owners Lands.
 - "SCHEDULE B" being a description of the Town Lands.
 - "SCHEDULE C" being a description of the Contaminant Attenuation Zone

IN WITNESS WHEREOF the Corporate Party hereto has affixed its respective Corporate Seal duly attested to by the hands of its authorized signing officers in that regard and the Natural Parties hereto have affixed their hand and seal the day and year first before written.

SIGNED, SEALED AND DELIVERED

JOHN ROYDEN HUNTER



DEBORAH ANN WEALE



Witness



**THE CORPORATION OF THE TOWN OF
THE BLUE MOUNTAINS**

.....
Ellen Anderson, Mayor

.....
Corrina Giles, Clerk

SCHEDULE "A"

DESCRIPTION OF THE OWNERS LANDS

PIN 37143-0199 LT

Part Lot 26, Concession 10, as in R54697

Town of The Blue Mountains (former Township of Collingwood),

County of Grey,

SCHEDULE "B"

DESCRIPTION OF THE TOWN LANDS

PIN 37143- 0201LT

Part Lot 26, Concession 10, as in R133611

Town of The Blue Mountains (former Township of Collingwood),

County of Grey,

SCHEDULE "C"

DESCRIPTION OF THE CONTAMINANT ATTENUATION ZONE

The eastern most 1050 metres of the Owners Lands
Being part of the Owners Lands as described on Schedule "A"
and shown in hatching on Assessment Map # 42-42-30-000

(A Copy of this Assessment Map is on file with the Town Clerks Office and may be viewed during normal office hours)

