

**STAFF REPORT:      ENGINEERING AND PUBLIC WORKS DEPARTMENT**

**REPORT TO:**                    Infrastructure and Recreation  
   Committee

**MEETING DATE:**            February 12<sup>th</sup> 2013

**REPORT NO.:**                EPW.13.010

**SUBJECT:**                    Temporary Access Agreements  
   for the Wensley Drive and Peaks  
   Road Reconstruction

**PREPARED BY:**              Reg Russwurm, Director of  
   Engineering and Public Works

**A.      Recommendations**

THAT Council receive Report EPW.13.010 entitled “Temporary Access Agreements for the Wensley Drive and Peaks Road Reconstruction”;

AND THAT the Mayor and Clerk be authorized to execute the Temporary Access Agreements upon the recommendation of the Director of Engineering and Public Works and the Town’s solicitor.

**B.      Background**

The purpose of this Report is to gain Council’s approval to enter temporary access agreements to Wensley Drive to facilitate the installation of new works and the reconstruction of the road.

The properties along Wensley Drive, located in the Town of The Blue Mountains to the south of the intersection of Peaks Road and Highway 26, are currently serviced by municipal water supply, but not sanitary. Most properties maintain aging septic systems and the Town has designated this area to be connected to the municipal sewer system. This undertaking will coincide with improvements to the existing water supply to provide fire protection to areas currently without a hydrant, as well as drainage improvements, road reconstruction and resurfacing.

As part of the works, a deep sanitary sewer is to be installed on Peaks Road. This is short section of road but is the only entrance to the project site. To avoid traffic management costs associated with trying to maintain an open road for the public and emergency services, Staff approached representatives of Grey Condominium 28 (GC28) and the Georgian Peaks Ski Club (Club) to inquiry about the creation of an access from Old Lakeshore Road west of GC28. There was recognition that permitting an alternate access would be beneficial to all parties involved and thereby no payment will be involved in the use of the lands. With this endorsement, Staff prepared draft easement agreements and forwarded the documents to GC28 and the Club.

### Temporary Access Agreements

The draft agreement for the Club is provided as Attachment #1 for reference. A map of the proposed route is provided as Schedule A within the draft agreement.

The key clauses in the Agreement provide that:

- General public can utilise access route;
- Town indemnifies the owner from liability with respect to use of the lands for a temporary access;
- Town will instruct the Town's Contractor to not use the access route for truck or heavy equipment;
- Town will make repairs as warranted;
- Town will pay legal reasonable costs for the owner to review the Agreement;
- Easement term is April 1 until October 31, 2013; and,
- Town will stop up the access once work is completed on Peaks Road and the road is reopened – expected by June 15;

The Agreement is also customised for each owner to enable other activities. For the Club, the Agreement seeks agreement to facilitate restoration of works on Club lands with respect to the sanitary sewer installation and drainage improvements. For GC28, the Agreement describes: i) the level of work required to open the access from Old Lakeshore Road into GC28, ii) permitting the access to be utilised by GC28 to construct their on-site sanitary servicing extension until October 2014, and iii) removal of the access on Town lands by CG28 when their work is completed.

Staff recommend that the Mayor and Clerk be authorised to execute the Temporary Access Agreements upon the recommendation of the Director of Engineering and Public Works and the Town's solicitor.

### **C. The Blue Mountains' Strategic Plan**

Completing this project assists with the Town's Strategic Plan Goal #2 "Addressing the Town's Municipal Infrastructure needs".

### **D. Environmental Impacts**

None.

### **E. Financial Impact**

None for the actions recommended in this Report.

**F. In Consultation With**

None

**G. Attached**

1. Draft Temporary Access Agreement for the Georgian Peaks Ski Club

Respectfully submitted,

**Reg Russwurm**

Reg Russwurm  
Director of Engineering & Public Works

For more information, please contact:

Reg Russwurm  
[russwurm@thebluемountains.ca](mailto:russwurm@thebluемountains.ca)  
(519) 599-3131 x260

## TEMPORARY ACCESS AGREEMENT

**Dated** , 2013

**Between**

**THE GEORGIAN PEAKS CLUB  
(the "Club")**

**And**

**THE CLUB OF THE TOWN OF THE BLUE MOUNTAINS  
(the "Town")**

**Whereas** the Club is a registered owner of Part of Lot 25, Concession 5 in the Town of The Blue Mountains described as Parts 10, 11 and 12 Plan 16R-2875 on which the Club has an access running between the lands of Grey Condominium Corporation No. 28 and Wensley Drive in the location and described as Roadway No..2 on the plan attached as Schedule "A" to this Agreement (the "Roadway");

**And Whereas** the Town proposes to temporarily close Peaks Road from Highway 26 to Wensley Drive in the location shown on Schedule "A" for the purpose of installing a sanitary sewer thereon (the "Sewer Works") and requires a temporary access over the Roadway for persons and vehicles to and from Old Lakeshore Road and Wensley Drive for the use and benefit of the public until the Sewer Works are completed;

**And Whereas** the Town has issued a tender for the Sewer Works which provides that the Sewer Works must be completed and Peaks Road rebuilt and open to the public by no later than June 15, 2013;

**And Whereas** the Club has agreed to the Town using the Roadway for the temporary access on the terms and conditions of this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the premises and the mutual covenants hereinafter contained and the sum of TEN DOLLARS (\$10.00) of lawful money of Canada, now paid by each Party to the other Parties, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree with each other as follows.

1. The Parties agree that the recitals are true and accurate and form part of this Agreement.
2. The Club grants, transfers and conveys to the Town, the free, uninterrupted and unobstructed right, or rights in the nature of a non-exclusive temporary easement on, over, upon and through the Roadway for the purposes of using, operating and maintaining a temporary access for persons and vehicles to and from Old Lakeshore Road and Wensley Drive for the use and benefit of the Town and the public (the "Temporary Access").
3. The aforesaid rights and easements are hereby granted on the following terms and conditions which are hereby mutually covenanted and agreed to by and between the Club and the Town.
  - (a) The Town and its employees, agents, contractors and workmen and other persons duly authorized by the Town, at all times and from time to time, may enter on the Roadway with their plant, machinery, material, vehicles and equipment for all purposes necessary or incidental to the exercise of the rights and easements herein granted, including making improvements to the Roadway the Town considers necessary with the agreement of the Club to

provide unencumbered access (the "Improvements"). At the preparation of this Agreement no improvements are anticipated on the Roadway.

- (b) The public at all times, and from time to time, may enter on the Roadway with their vehicles for travelling to and from Old Lakeshore Road and Wensley Drive.
  - (c) The Club shall not in any way interfere with the rights and easements hereby granted to the Town.
  - (d) The rights and easements hereby granted shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns including successors in title from time to time of the Club's Lands.
5. The Town shall:
- (a) Indemnify and save completely harmless the Club, including defending the Club from and against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly or in any way connected with the use by the public and the operation of the Temporary Access by the Town. The Town shall defend at its expense any actions, suits, claims or demands whatsoever against the Club resulting from the use by the public and the operation of the Temporary Access by the Town.
  - (b) Provide and keep in full force and effect until this Agreement is terminated, at its sole cost and expense, Commercial General Liability insurance applying to all operations of the Temporary Access which shall include coverage for bodily injury liability, property damage liability, products and completed operations liability, contractor's protective liability, contractual liability, non-owned automobile liability, contingent employers liability and employees as additional insured.  
  
This policy shall have limits of not less than FIVE MILLION DOLLARS (\$5,000,000) exclusive of interest or costs, per occurrence and shall include the Club as an additional insured.
  - (c) Provide instruction in the tender for the Sewer Works that the Town's Contractor will not utilize the Temporary Access for the provision of heavy equipment, trucks or materials to the Town's construction site.
  - (d) Undertake works as warranted to the satisfaction of the Club to make repairs on the Roadway for damages that occur due the use of the Roadway as a Temporary Access.
6. The Club agrees that heavy equipment, trucks or materials, as part of public traffic may, travel the Roadway to gain access to privately held lands adjacent to Wensley Drive for reasons related to other works on those private lands and not connected with the Town's project.
7. The rights and easements hereby granted shall commence on April 1, 2013 and shall terminate at such time as that the Sewer Works are completed and Peaks Road is rebuilt and open to the public. In any event this Agreement shall terminate on October 31, 2013.
8. The Town shall forthwith after the Sewer Works are completed and Peaks Road is rebuilt and open to the public remove all the signage included in the Improvements and block the entrance from Old Lakeshore Road to all traffic.
9. The Club agrees to grant permission for the Town to undertake restoration and drainage works on their lands in relation to the installation of the Sewer Works as described on the construction drawings, and agrees that the Club has had adequate

opportunity to review the construction drawings to satisfy itself of the proposed works. The Town agrees to indemnify and save completely harmless the Club for the works on its lands to the extent and in a manner similar to that provided in Section 5 (a).

10. The Town shall pay all its costs associated with the preparation of this Agreement and the Town agrees to reimburse the Club for 100% of any reasonable legal fees incurred by the Club to review and revise this agreement.

**IN WITNESS WHEREOF** of the parties hereto have executed this Agreement by affixing thereto their hands and corporate seals as duly attested by the hands of their proper signing officers in that behalf.

**THE GEORGIAN PEAKS CLUB**

\_\_\_\_\_  
Per

Name:

Title:

I have authority to bind the Club

**THE CLUB OF THE TOWN OF THE BLUE MOUNTAINS**

\_\_\_\_\_  
**Ellen Anderson – Mayor**

\_\_\_\_\_  
**Corrina Giles – Clerk**

Schedule A

Wensley Drive and Peaks Road Reconstruction  
Temporary Access Agreement

