

STAFF REPORT

**To: Richmond Planning Advisory Committee
Richmond County Council**

From: Planning Staff (EDPC)

Date: March 1, 2011

**Reference: Construction and Demolition Disposal and Reclamation Sites
in the Sporting Mountain Plan Area**

Background:

January 10th 2011, Planning Staff received a request from the Chief Administrative Officer for Richmond County to investigate options for accommodating a proposed construction and demolition (C&D) waste material disposal and reclamation facility in Thibeaucville, within the Sporting Mountain Plan Area. This facility, proposed by Bernard Burke (see attached map), would involve the processing, reclamation and disposal of construction and demolition debris at the same site as the previously proposed oily soil remediation facility. While this project does not involve oily soils, it does involve the processing of extracted or raw materials and as such would meet the definition of a heavy industrial use, which is prohibited in the Plan Area.

Heavy Industry is defined in the *Sporting Mountain Land Use By-law* as, “... a use which is obnoxious, presents an environmental threat or which receives or treats hazardous product or a use engaged in the basic processing and manufacturing of materials of products predominately from extracted or raw materials, or a use engaged in storage of, or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions, and without limiting the generality of this definition includes the processing of car batteries and automobile tires and for the purpose of this definition, environmental threat, hazardous product and obnoxious use are defined as follows:

- (a) *Environmental threat means any industrial use which imperils the quality of water (either ground water or surface water) flowing off Sporting Mountain. This includes the industrial storage, treatment, manufacturing or temporary containment of substances which pose a threat to the purity of Sporting Mountain water and/or threaten existing natural, or man-made, channels both at and below the surface.*
- (b) *Hazardous Product means any material, product or substance which is contaminated by an organic or inorganic material to include, but not limited to, petroleum product and its*

derivatives, chlorine products or compounds, solvents, industrial by-products, chemical additives or human or animal waste.

- (c) *Obnoxious use means a industrial use which, from its nature or operation, creates a nuisance or is liable to become a nuisance, or is offensive or is liable to become offensive by reason of the emission of gas, objectionable odour, fumes, dust, oil, or by the unsightly storage of goods, wares, merchandise, salvage, refuse matter, waste or other materials and shall include operations which produce wastes which are not intended to be treated by an approved on-site sewage disposal system or which involve the handling of hazardous materials or which receive or treat contaminated product.*

C&D debris disposal facilities can deal with a wide variety of materials including concrete, wood, mortar, glass and asphalt and while they are often required for the safe disposal of these materials, a good deal of it can be recycled or re-used. The facilities themselves can include transfer, processing and disposal operations (often all three on one site) and the use is regulated and licensed by the Department of Environment. Under “Regulated Activities” in the *Solid Waste-Resource Management Regulations* made under Section 102 of the *Environment Act*, Section 31(2)(a) states, “No person shall own, construct, manage, operate, alter or modify a disposal site for construction and demolition debris without obtaining approval from the Minister.” Also the Province has guidelines where matters such as ground and surface water protection, separation distances from buildings and hours of operations can be addressed. Additionally, the *Municipal Government Act* gives municipalities the right to regulate the locations of disposal operations and many do. According to the Department of Environment, there are four construction and demolition debris disposal sites on Cape Breton Island, including the Richmond Waste Management Facility in West Arichat.

It should be noted that Policy 6 of the *Sporting Mountain Municipal Planning Strategy* prohibits the development of heavy industrial uses within the Plan Area. This exclusion was deliberate and results from concerns such development would have on the surrounding environment, particularly regarding surface and groundwater contamination. Should Council wish to accommodate Mr. Burke’s proposed development, Staff are presenting a number of options to amend the *Municipal Planning Strategy and Land Use By-law* to allow C&D debris processing facilities while mitigating potential impacts. These policy options address the use in general and not Mr. Burke’s particular proposal. Should Council decide to permit C&D debris facilities in the Plan Area, Mr. Burke’s proposal would subsequently be evaluated against whatever policy is adopted. These policy options are presented below.

Option 1: Permitting as of Right

Council may choose to amend the *Sporting Mountain Municipal Planning Strategy* to allow C&D debris disposal facilities as of right within the Plan Area. Currently there are two zones within the Plan Area: General Development (G-1), which permits all uses except medium and heavy industrial uses and Resource Industrial (RD-1) which permits all uses including medium industrial but excluding heavy industrial uses. Within the Land Use By-law, medium industrial uses are defined to include fabrication, treatment, repair or storage of finished parts or products and heavy industrial uses include the processing or manufacturing of extracted or raw materials, which potentially involve hazardous products, threats to the environment or an obnoxious impact (i.e. nuisance) on surrounding uses.

While C&D waste treatment facilities fall within the definition of heavy industrial uses, such facilities serve a role throughout Nova Scotia in that they divert waste that would normally go to a landfill to a facility that can reclaim or recycle some of it. Consequently, given that the Department of Environment would be approving and licensing such operations and C&D waste is generally less hazardous than some other heavy industrial uses, an argument can be made to include such developments within the Plan Area. Before issuing an approval the Department requires the following information:

1. Copy of the property deed, lease or letter proving the applicants legal right to conduct the activity on the site;
2. If applicable, certified copy of the article of the incorporation of the company;
3. Copies of all existing Approvals relating to the activity that have been issued by any agencies (including Municipal Approval);
4. Site Plan (scaled drawing, minimum scale 1:2,000) including (but not limited to):
 - a. Property boundaries, contours of the site and adjacent properties
 - b. Location of all relevant industrial, commercial and residential structures
 - c. Location of nearby watercourses, wetlands, dwellings, wells, water supplies, public roads & highways;
5. Site Assessment evaluating potential impacts on wells, watercourses, roads, residences or other environmental or ecological features;
6. Predesign Study or Pollution Control Study;
7. Scaled engineering drawings, plans, and specifications that are stamped by a qualified N.S. Licensed professional engineer including (but not limited to):
 - a. Plans & drawings for structures & equipment used to obtain satisfactory treatment of wastes.
 - b. Sufficient data to demonstrate the feasibility of a process to supply satisfactory treatment

- c. Reports on the proposed treatment facilities indicating design capacities, flows, & concentrations of wastes expected to be emitted to the environment
 - d. Calculations, factors, & parameters used in the design.
- 8. Geotechnical Report;
- 9. Hydrogeological Report;
- 10. Description of the waste reduction, recycling, and environmental controls from the facility;
- 11. Operations Procedure & Maintenance Manual, including (but not limited to):
 - a. Inspection & monitoring procedures
- 12. Contingency plan, including (but not limited to):
 - a. Scope of the plan (purpose, geographic area, and persons, groups, etc., that have responsibility)
 - b. Notification procedures (what is to be reported, when, to whom, internal & external reporting procedures and a 24 hour telephone response number)
 - c. Notification list including names & telephone numbers for all key internal response team personnel, telephone number for reporting environmental emergencies in N. S., relevant municipal/local telephone numbers (fire, police, ambulance, medical hospital, clean-up contractors, etc.) and government assistance services such as CANUTEC
 - d. Identification of a response team leader and the role of the response team leader respecting decision making, focal point, report preparation and submission, etc.
 - e. Proposed containment and clean-up procedures
 - f. Proposed transportation procedures
 - g. Site restoration plan (in case of an accidental discharge) that will ensure that the area is rehabilitated to its pre-spill condition
 - h. Proposed disposal procedures
 - i. Available resources including manpower, contractors, treatment materials, expertise, communications, countermeasure equipment, etc.
 - j. Public relations including the identification of an individual who can speak on behalf of the approval holder
 - k. Incident reporting procedures and investigative follow-up procedures
- 13. Preliminary development of an abandonment or rehabilitation plan including a report outlining the requirements as per current Environment guidelines.

Permitting these uses would involve amending the Municipal Planning Strategy (see Appendix 1 for a model amendment) to establish an exception for C&D disposal facilities in the sections prohibiting heavy industrial development and amending the Land Use By-law to include the use as permitted within the G-1 Zone. One implication of this approach is that it excludes the Municipality completely from any decisions made relative to a possible project. If a developer were to propose a C&D disposal facility anywhere in the Plan Area and meet the zone requirements, a development permit would be issued, the proponent would receive Municipal Approval (Item #3 above) and there would be no Municipal public process involved. The Minister of Environment may require public consultation as part of their process however.

Option 2: Permitting through Rezoning

One way of establishing a greater control over C&D debris disposal uses is through the rezoning process. To this end, C&D debris disposal and reclamation related uses would be defined as medium industrial uses permitted only within the RD-1 Zone. As with any medium industrial proposal, any proponent would need to rezone to RD-1 in order to be allowed the use. Policies 5, A-5, A-6 and A-7 of the Municipal Planning Strategy address rezonings from G-1 to RD-1 and establish criteria by which a rezoning is considered. In these cases, a developer would need to demonstrate to Council that, among other things, the proposal does not lead to contamination of watercourses, does not create a nuisance nor cause any difficulties for the road network.

As part of the rezoning process, Planning Staff would circulate the proposal to various government agencies, including for example, the Department of Transportation and Public Works and the Department of Environment as well as the County's own Finance department to solicit their feedback on the proposed development. Once this information is received and a staff report prepared, Richmond PAC and Council would have the opportunity to review the proposal. The approval process is covered under the *Municipal Government Act* and according to the *Act* a public hearing must be held for the proposal and Council will vote on it after the hearing. Rezoning offers some degree of certainty to the developer in that if they can meet all the criteria as stated in the MPS and LUB, they will be able to get the zone. Council's refusal to grant the rezoning can be appealed to the Utility and Review Board. Likewise, if the rezoning is granted, aggrieved neighbours can also appeal to the Board. If Council were to favour the option of allowing C&D debris facilities through rezonings, the MPS would need to be amended to establish provisions allowing this use (see Appendix 2). Planning Staff feel the evaluation criteria already in place for rezonings (Policies 5 and A-7) are sufficient to address C&D debris facilities.

Option 3: Permitting through Development Agreement

A development agreement is a third option Council may wish to consider in regulating C&D debris facilities and while the process is similar to a rezoning, Council will have a much greater control over the nature of the individual development. In the other plan areas in Richmond County, development agreements are a planning tool used to regulate larger scale uses or those that may have the greatest degree of impact on neighbouring land uses. Like rezonings, development agreements are addressed in the *Municipal Government Act*, where two readings of Council and a public hearing are required prior to approval. They are also appealable. The process to reach a development agreement however is more involved in that terms of the

agreement are negotiated between the municipality and the developer. In addition to ensuring environmental, transportation and other issues are addressed, development agreements can govern more site specific matters including building use and appearance, any landscaping, hours of operation and the siting of buildings or storage facilities. Development agreements can also deal with maintenance of the buildings and performance or security bonding. Unlike through a rezoning where once the new zone is in place anything permitted in the zone can be built (regardless of what the original proposal was), development agreements are recorded against title and developers are legally bound to their terms.

One advantage of this process is that a significant degree of flexibility is allowed to address local issues, which might not be possible through rezonings or were C&D debris facilities permitted as of right. For instance, issues of buffering and setbacks might be regulated a lot more strictly if a C&D debris facility was to be proposed in a more built up area as opposed to in a more remote location. A drawback to development agreements is that the process leaves less certainty to the developer in regards to the ultimate outcome of their proposal. Since development agreements are currently not included in the *Sporting Mountain MPS*, amendments would need to be included to govern the terms of the development agreement as well as establishing C&D facilities as permitted through this process (See Appendix 3).

Public Participation Process

Should Council wish to permit construction and demolition debris processing facilities through rezoning or development agreement in the Sporting Mountain Plan Area, it may be advisable to consider requirements for holding public information meetings as part of the evaluation process for the development. Such a provision could also be extended to other industrial developments requiring rezonings. While the *Municipal Government Act* addresses the advertising and mandatory public hearing pursuant to rezonings, plan amendments and development agreements, some municipalities have adopted additional public participation requirements, including holding supplemental public meetings or information sessions. The Sporting Mountain Plan, immediately prior to Policy A-5, identifies the value of public review of large development proposals both to the benefit of the community as well as to the developer, in giving them the opportunity to address any concerns before Council's vote. Should Council wish to adopt supplemental public participation requirements, the Plan will need to be amended further to what is being suggested in the subsequent appendices.

APPENDIX 1: PERMITTING C&D DEBRIS DISPOSAL AND RECLAMATION FACILITIES AS OF RIGHT- Proposed Amendments

► The Sporting Mountain Municipal Planning Strategy is hereby amended by:

In Chapter 2, inserting the following paragraph immediately prior to Policy 2:

While heavy industrial uses are considered undesirable for the Sporting Mountain Plan Area, Council will allow construction and demolition (C&D) debris disposal facilities to locate within the General Development (G-1) Zone. The definition of Industry (Heavy) in the Land Use By-law is such that C&D debris facilities could be interpreted to fall within the definition, however the type of material handled is much less hazardous compared to other traditional heavy industrial uses. Further, Richmond County's Integrated Community Sustainability Plan identifies the reduction of solid waste and the diversion of waste from landfills to be a desirable goal. It is in the interest of the greater public that all aspects of an integrated waste management system, especially opportunities to maximize diversion and to encourage the reuse or recycling of construction debris, operate effectively. Council considers the licensing requirements of the Department of Environment to be sufficient to mitigate against any possible negative impacts of these land uses.

In Chapter 2, inserting the following new policy:

Policy 2A: It shall be the policy of Council not to consider construction and demolition debris disposal and reclamation processing facilities as Industrial Uses and further it shall be the Policy of Council to permit them within the General Development (G-1) Zone.

► The Sporting Mountain Land Use By-law is hereby amended by:

Adding the following to Part 6, Sec 4, „Uses Permitted and subject to development permits“:

- **Construction and demolition debris disposal facilities**

Adding the following to Part 8, „Definitions“:

***Construction and Demolition Debris Disposal Facility* means a site licensed by the NS Department of Environment pursuant to the Environment Act for the disposal, stockpiling, storage, separation and processing of materials which are normally used in the construction of buildings, structures, roadways, walls and other landscaping material and includes, but is not limited to, soil, asphalt, brick, mortar, drywall, plaster, cellulose, fiberglass fibers, lumber, wood, asphalt shingles and metals.**

APPENDIX 2: PERMITTING C&D DEBRIS DISPOSAL FACILITIES THROUGH REZONINGS- Proposed Amendments

► The Sporting Mountain Municipal Planning Strategy is hereby amended by:

In Chapter 2, inserting the following paragraph immediately prior to Policy 3:

While heavy industrial uses are considered undesirable for the Sporting Mountain Plan Area, Council will allow construction and demolition (C&D) debris disposal facilities to locate within the Resource Industrial (RD-1) Zone. Richmond County's Integrated Community Sustainability Plan identifies the reduction of solid waste and the diversion of waste from landfills to be a desirable goal and the permitting of facilities which recycle and reclaim C&D waste is desirable. The definition of Industry (Heavy) in the Land Use By-law is such that C&D debris facilities could be interpreted to fall within the definition, however the type of material handled is much less hazardous compared to other traditional heavy industrial uses. As such, through the rezoning process and Department of Environment licensing process, the impacts such developments have on neighbouring properties should be limited.

In Chapter 2, amending Policy 3 to add the following:

Policy 3 It shall be the policy of Council to establish a Resource Industrial (RD-1) Zone and permit within the zone the following and similar types of uses: larger medium-intensity industrial uses, including construction and demolition debris disposal facilities and residential [...]

► The Sporting Mountain Land Use By-law is hereby amended by:

Adding the following to Part 7, Sec 1, „Uses Permitted“

- **Construction and demolition debris disposal facilities**

Adding the following to Part 8, „Definitions“:

***Construction and Demolition Debris Disposal Facility* means a site licensed by the NS Department of Environment pursuant to the Environment Act for the disposal, stockpiling, storage, separation and processing of materials which are normally used in the construction of buildings, structures, roadways, walls and other landscaping material and includes, but is not limited to, soil, asphalt, brick, mortar, drywall, plaster, cellulose, fiberglass fibers, lumber, wood, asphalt shingles and metals.**

APPENDIX 3: PERMITTING C&D DEBRIS DISPOSAL FACILITIES BY DEVELOPMENT AGREEMENT- Proposed Amendments

► The Sporting Mountain Municipal Planning Strategy is hereby amended by:

In Chapter 2, inserting the following immediately after Policy 6:

Construction and Demolition Debris Disposal Facilities

Notwithstanding the above policy, Council will allow construction and demolition (C&D) debris disposal facilities to locate within the Plan Area. Richmond County's Integrated Community Sustainability Plan identifies the reduction of solid waste and the diversion of waste from landfills to be a desirable goal and the permitting of facilities which recycle and reclaim C&D waste is desirable. The definition of Industry (Heavy) in the Land Use By-law is such that C&D debris facilities could be interpreted to fall within the definition, however the type of material handled is much less hazardous compared to other traditional heavy industrial uses. That being said, this use should still be regulated carefully to ensure the impacts such developments have on neighbouring properties be limited. As such, Council shall allow any C&D disposal facilities in the plan area only through development agreement to address any land use concerns.

Policy 7: *It shall be the policy of Council to consider approval of new construction and demolition debris disposal facilities within the General Development Designation according to the development agreement provisions of the Municipal Government Act. In considering such an agreement, Council shall have regard to the following:*

- a) A minimum 500 foot separation distance is maintained between the lands subject to the development agreement and any residential use;*
- b) consideration is given to design and provisions of barriers, berms, fences and/or landscaping to minimize effects on adjacent land uses;*
- c) protection of surface and groundwater quality;*
- d) issues related to noise, odour, dust, vibration, smoke or other emission;*
- e) rehabilitation of the site upon closure, abandonment or otherwise termination of the development agreement;*
- f) the proposed development meets all provincial requirements including any guidelines and conditions attached to licenses required under the provincial Environment Act.*
- g) the proposal is consistent with the evaluation criteria for development agreement, Policy A-7B*

In Chapter 3, inserting the following immediately after Policy A-7:

Policy A-7A *The following use shall be considered subject only to the entering into of a development agreement:*

- a) construction and demolition debris disposal facilities according to Policies 7, A-7B, A-7C and A-7D*

Policy A-7B *In considering development agreements, in addition to all other criteria set out in various policies of this planning strategy, Council shall have regard for the following matters:*

- a. The proposal is in conformance with the intents of this Strategy and with the requirements of all other Municipal by-laws and regulations;*

- b. *The proposal is not premature or inappropriate by reason of:*
 - i. *the financial capability of the Municipality to absorb any costs relating to the development;*
 - ii. *the adequacy of on-site or municipal sewer and water services to support the proposed development;*
 - iv. *the adequacy of road networks adjacent to, or leading to the development; and*
 - v. *the potential for the contamination of watercourses or the creation of erosion or sedimentation.*

Policy A-7C *It shall be the policy of Council, when considering an application for a development agreement or an amendment to a development agreement, that the agreement may include but not be limited to the following:*

- a. *the specified use and size of any structure, either new or an expansion of an existing structure, and the maximum floor area of additional or accessory uses;*
- b. *the location of any structures within the development;*
- c. *the external appearance of, in particular the compatibility with adjacent structures;*
- d. *access to streets and parking;*
- e. *the landscaping or buffering of development which may include fencing, trees, shrubs and outdoor lighting;*
- f. *signs;*
- g. *open storage and screening;*
- h. *hours of operation;*
- i. *maintenance;*
- j. *minimum lot sizes;*
- k. *minimum area of land to be required for any class of use or size of structure;*
- l. *regulating or prohibiting the use of land or the erection or use of structures except for such purposes as may be set out;*
- m. *any other similar matter that may be addressed in a Land Use By-law which Council feels is necessary to ensure the general compatibility of the use and structures with adjacent areas.*

Policy A-7D *Council may require that any or all of the following information be submitted by the developer or property owner with respect to any proposed development which is subject to a development agreement:*

- a. *information as to the physical and environmental characteristics of the proposed site including information regarding topography, contours, elevations, dimensions, natural drainage, soils, existing watercourses, vegetative cover, size and location of lands;*
- b. *information as to the proposed location, height, dimensions and use of all buildings or structures proposed to be built or erected on the lands;*
- c. *for lands on which municipal servicing is not provided, information regarding the provision of water and sewage disposal;*
- d. *information as to the proposed access and egress to and from the lands and estimated traffic flows to be generated and parking provisions;*
- e. *information as to the intended hours of operation, open storage, signs; and*
- f. *information as to the provision for an appropriate buffer.*

► The Sporting Mountain Land Use By-law is hereby amended by:

Adding the following to Part 6, Sec 2, „Uses Conditionally Permitted“:

2A. The following use shall not be permitted except by development agreement subject to Policy 7 of the Municipal Planning Strategy:

- **Construction and demolition debris disposal facilities**

Adding the following to Part 7, immediately after Sec. 1:

Uses Conditionally Permitted:

1A. The following use shall not be permitted except by development agreement subject to Policy 7 of the Municipal Planning Strategy:

- **Construction and demolition debris disposal facilities**

Adding the following to Part 8, „Definitions“:

***Construction and Demolition Debris Disposal Facility* means a site licensed by the NS Department of Environment pursuant to the Environment Act for the disposal, stockpiling, storage, separation and processing of materials which are normally used in the construction of buildings, structures, roadways, walls and other landscaping material and includes, but is not limited to, soil, asphalt, brick, mortar, drywall, plaster, cellulose, fiberglass fibers, lumber, wood, asphalt shingles and metals.**

Location Map

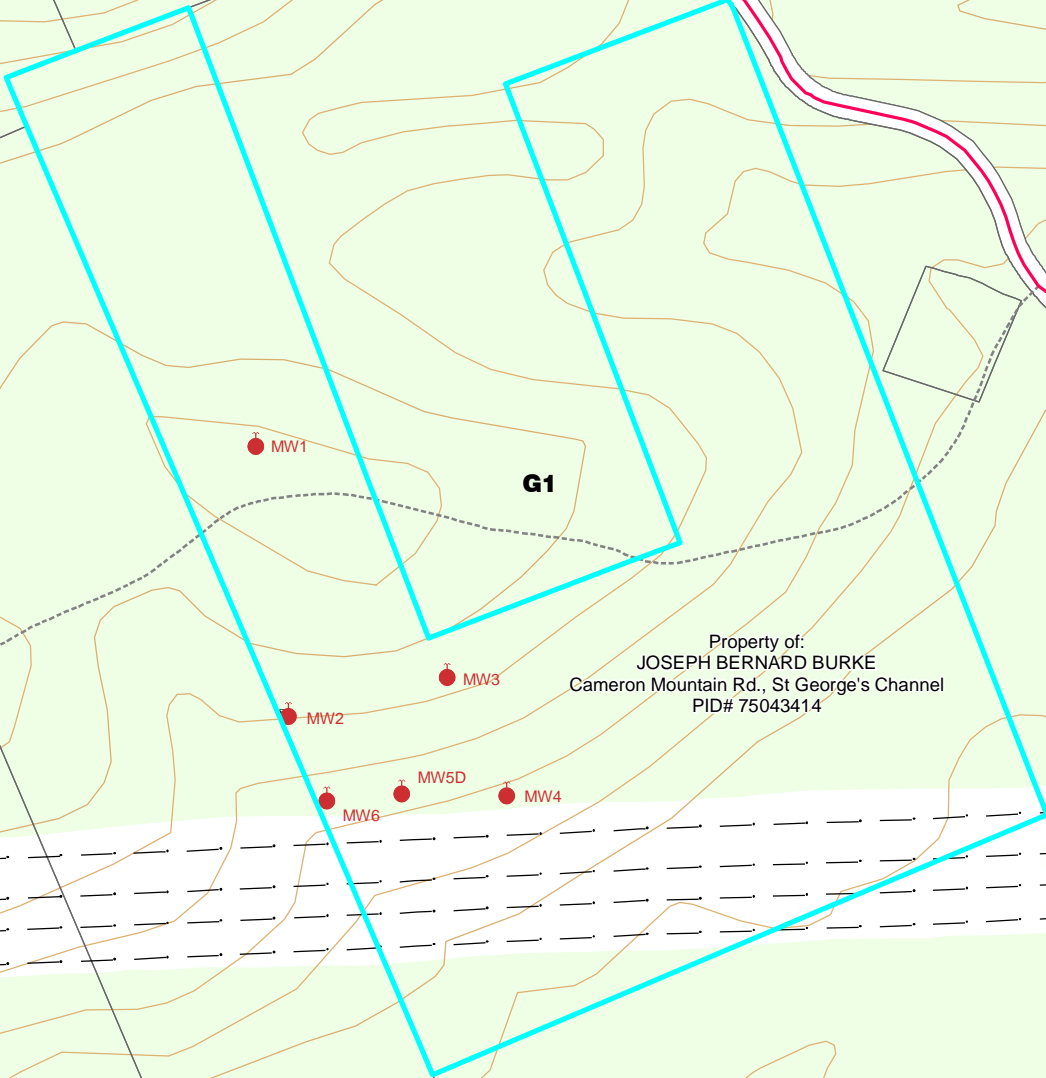
SPORTING MOUNTAIN PLAN AREA
St Georges Channel
Richmond County, Nova Scotia

0 100 200 300
Metres



CAMERON MOUNTAIN RD

CAMERON MOUNTAIN RD



Property of:
JOSEPH BERNARD BURKE
Cameron Mountain Rd., St George's Channel
PID# 75043414

False
Bay
Brook

LOCATION MAP

SPORTING MOUNTAIN PLAN AREA

Richmond County, Nova Scotia

