

## **Expropriation of Permanent and Temporary Easements in the Properties known as 19, 21, 23, 25 and 27 Halford Avenue - Stage 2**

**Date:** May 15, 2023

**To:** Government General Committee

**From:** Executive Director, Corporate Real Estate Management

**Wards:** 4 - Parkdale-High Park

### **REASON FOR CONFIDENTIAL INFORMATION**

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This report deals with a proposed or pending acquisition or disposition of land by the City of Toronto (the "City").

### **SUMMARY**

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On October 1 and 4, 2021, City Council authorized the initiation of expropriation proceedings for permanent and temporary easements required from the owners of the properties known municipally as 19, 21, 23, 25 and 27 Halford Avenue (the "Property Requirements"). The acquisition of these easements is essential to Transportation Services' project to (i) the removal of the current retaining wall, (ii) the construction and of a new retaining wall, and (iii) all works ancillary thereto (the "Project").

This report relates to the second stage of the expropriation process. During the first stage and in accordance with the Expropriations Act (the "Act"), Notices of Application for Approval to Expropriate were served on all applicable "registered owners", who had 30 days to request an inquiry into whether the proposed taking is fair, sound, and reasonably necessary.

On February 3, 2021, a hearing was held by the Ontario Land Tribunal (the "OLT") with respect to the temporary and permanent easements required from the owner of the property municipally known as 19 Halford Avenue. The City subsequently received a report from the Ontario Land Tribunal on April 19, 2023 concluding that the proposed temporary and permanent easements required from the owner of 19 Halford Avenue was fair, sound and reasonably necessary.

To comply with the legislative requirements of the Act, the report of the Ontario Land Tribunal, attached as Appendix A to this report, must be considered by City Council before it exercises its discretion as approving authority to authorize the expropriation by this Stage Two Report. If authorized, the Expropriation Plans will be registered and associated notices served. Statutory Offers of Compensation must be served prior to the City taking possession of the expropriated properties.

The Property Requirements have changed slightly since Council's initial approval of the expropriation in October 2021 and are set out in Appendix B and shown on Appendices B1 to and including B5.

## **RECOMMENDATIONS**

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The Executive Director, Corporate Real Estate Management recommends that:

1. City Council, as approving authority under the Expropriations Act, consider the report of the Ontario Land Tribunal attached as Appendix A.
2. City Council, as approving authority under the Expropriations Act, approve the expropriation for permanent and temporary easements required from the owners of the properties known municipally as 19, 21, 23, 25 and 27 Halford Avenue (the "Property Requirements") as set out in Appendix B for municipal purposes including (i) the removal of the current retaining wall, (ii) the construction and of a new retaining wall, and (iii) all works ancillary thereto (the "Project").
3. City Council authorize the City of Toronto, as expropriating authority under the Expropriations Act, to take all necessary steps to comply with the Expropriations Act, including but not limited to the preparation and registration of an Expropriation Plan, and service of Notices of Expropriation, Notices of Election and Notices of Possession, as may be required.
4. City Council authorize the Director, Transaction Services, Corporate Real Estate Management, or their designate to obtain an appraisal report to value the Property Requirements, and to prepare and serve an Offer of Compensation on all registered owners of 19, 21, 23, 25 and 27 Halford Avenue, at the appraised value, all in accordance with the requirements in the Expropriations Act.
5. City Council authorize the Director, Transaction Services, Corporate Real Estate Management, or their designate to sign the Offer of Compensation for the owners of 19, 21, 23, 25 and 27 Halford Avenue, on behalf of the City.
6. City Council authorize the public release of the confidential information contained in Confidential Attachment 1 once there has been a final determination of all claims and compensation payable to the owners of 19, 21, 23, 25 and 27

Halford Avenue by arbitration, appeal or settlement to the satisfaction of the City Solicitor.

## **FINANCIAL IMPACT**

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Confidential Attachment 1 to this report identifies the initial estimated value of the Property Requirements.

Funding to expropriate the Property Requirements and disburse all anticipated costs associated with the proposed expropriation has been included in the Transportation Services Approved 2023-2032 Capital Budget and Plan under State of Good Repair project for Retaining Walls Rehabilitation (CTP516-02).

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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At its meeting held on October 1 and 4, 2021, City Council adopted Item GL25.13 "Expropriation of Permanent and Temporary Easements in the properties known as 19, 21, 23, 25 and 27 Halford Avenue" thereby authorizing the Executive Director, Corporate Real Estate Management to continue negotiations for the acquisition of the Property Requirements and to initiate the expropriation process if deemed necessary. <https://secure.toronto.ca/council/agenda-item.do?item=2021.GL25.13>  
[www.secure.toronto.ca/council/agenda-item.do?item=2021.GL25.13](https://secure.toronto.ca/council/agenda-item.do?item=2021.GL25.13)

## **COMMENTS**

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### **Background**

City staff commenced negotiations with the owners of the properties known municipally as 19, 21, 23, 25 and 27 Halford Avenue in an effort to acquire the Property Requirements needed to demolish the existing retaining wall which adjoins those properties and construct a new one. In accordance with Council direction, it was eventually deemed appropriate to commence expropriation proceedings.

Pursuant to City Council's authority and in accordance with the Act, Notices of Application for Approval to Expropriate were served on all the property owners and published in the newspaper.

### **The Hearing of Necessity**

On February 9, 2022, the City received notice of a request for a hearing as to whether the proposed takings were fair, sound and reasonably necessary (the "Hearing of

Necessity") from all the property owners, through their counsel. The request for a Hearing of Necessity was eventually withdrawn by all owners except the owner of 19 Halford Avenue.

On February 3, 2023, The Hearing of Necessity was held and the OLT heard evidence on behalf of the City. Subsequently, the OLT provided its report (the "Report") to the City on April 19, 2023, which is attached as Appendix A. In the Report, the OLT found that the City's proposed taking of the Property Requirements was reasonable and met the test of subsection 7(5) of the Act, which stipulates the proposed taking be "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority".

The Act also requires the City to render its Stage Two approval decision and serve it on the applicable owners within 90 days of receiving the Report.

### **Revised Property Requirements**

The Property Requirements have changed slightly since Council's initial approval of the expropriation in October 2021. The changes are as follows:

- Roughly the same area is required from each property, in all cases except 19 Halford Avenue;
- There is no longer a need for a permanent easement and is now shown as a temporary easement for all the properties, except 19 Halford Avenue; and
- And in the case of 19 Halford Avenue, the dimensions of the permanent easement has been decreased.

The revised Property Requirements are set out in Appendix B and shown on Appendices B1 to and including B5.

### **Conclusion**

To ensure that the Project's construction schedule is maintained, it is recommended that City Council, as Approving Authority under the Act, approve the expropriation of the Property Requirements, and authorize the City, as the Expropriating Authority, to take all necessary steps to proceed with Stage Two of the expropriation. If authorized, the Expropriation Plans will be registered and associated notices served. Statutory Offers of Compensation must be served prior to the City taking possession of the expropriated properties.

### **CONTACT**

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Ashley Curtis, Director, Director Transportation Planning & Capital Program, Infrastructure and Development Services, 416-392-0170, [Ashley.Curtis@toronto.ca](mailto:Ashley.Curtis@toronto.ca)

## **SIGNATURE**

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Patrick Matozzo  
Executive Director, Corporate Real Estate Management

## **ATTACHMENTS**

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Confidential Attachment 1 - Financial Implications  
Appendix A - Report of the Ontario Land Tribunal  
Appendix B - Legal Description of Property Requirements  
Appendix B1, B2, B3, B4 and B5 - Easement Drawings of Property Requirements  
Appendix C - Location Map and Street View of Retaining Wall

## Appendix A - Report of the Ontario Land Tribunal

### Ontario Land Tribunal Tribunal ontarien de l'aménagement du territoire



ISSUE DATE: April 19, 2023

CASE NO(S):

OLT-22-002979

PROCEEDING COMMENCED UNDER subsection 7(1) of the Expropriations Act,  
R.S.O. 1990, c. E.26, as amended

Owner(s):	Andrew MacQuarrie
Expropriating Authority:	City of Toronto
Property Address/Description:	19 Halford Avenue
Municipality:	Toronto
OLT Case No.:	OLT 22-002979
OLT Case Name:	MacQuarrie v Toronto (City)

Heard: February 3, 2023 by video hearing

#### APPEARANCES:

Parties	Counsel*/Representative
City of Toronto	J. Jakubowski* N. Muscat*
Andrew MacQuarrie	Self-represented

#### **REPORT DELIVERED BY G. BURTON AND ORDER OF THE TRIBUNAL**

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This is a Report of a Hearing of Necessity under subsection 7(1) of the Expropriations Act, held February 3, 2023, upon the request of Andrew MacQuarrie, owner of 19 Halford Ave, City of Toronto.

## The City of Toronto

The City of Toronto (“City”) proposes to take both a temporary and permanent easement over the subject property to reconstruct a failing retaining wall running along Halford Avenue. The Notice of Grounds served by the City [as required by subsection 7(4)] summarized these improvements as the removal of the existing wall, stabilization of the ground soils and construction and maintenance of a new retaining wall.

The Hearing originally was to include similar requests from the owners of 21, 23, 25 and 27 Halford Avenue. However, the other owners withdrew their requests for Hearings.

The owner of 19 Halford Avenue continued his request following service of the Notice of Intent to Expropriate a temporary and permanent easement.

Evidence for the City was provided by Scott Mitchell, Senior Project Manager for large design and construction projects. Halford Avenue had been inspected in 2017. Significant degradation of the retaining wall along this street was noted, as well as issues with the slope stability. A detailed description of the proposed solution, including several drawings of the new retaining wall, was entered in Exhibit 1, the Document Book.

Mr. Mitchell provided the Tribunal with his consideration of several options for the construction. The original proposal was for a permanent construction easement of 5 metres (“m”) behind a new retaining wall. Revisions now result in only a one m wide, 33 square metre (“sq m”) in area, permanent taking on the east side of the wall on the MacQuarrie property, for future inspection and maintenance. A larger 5 m segment behind it would be for a temporary construction easement.

Mr. Mitchell acknowledged that in many cases the City requires a larger permanent easement of approximately five m. He explained that the permanent easement could be reduced here, due to the existing steep grade and heavy vegetation.

The new wall would front onto a public right of way. Thus a reduced permanent easement was all that was required.

Mr. Mitchell indicated that the failed retaining wall had been constructed in approximately 1930 and was not an engineered structure.

The new wall would be constructed using today’s engineering techniques. Thus the life cycle of the new wall is projected to be 50 years, although Mr. Mitchell indicated that it would be structurally sound for much longer. In his opinion, this supported a one m setback from the property boundary.

The benefit of the permanent easement is that the City would have control over the rest of the wall, which is needed to maintain access to the wall at any time. The temporary easement is needed for construction, regrading, drainage and for control over the vegetation.

## The Owner

Mr. MacQuarrie had several questions related to the height of the wall, the timing of the project, the relationship of SNC Lavalin to the contractor and the budgetary consideration of the project.

## Opinion and Finding

None of Mr. MacQuarrie's issues as raised are related to the statutory test of necessity of the taking. The evidence demonstrated to the Tribunal that the reconstruction of the retaining wall requires both the temporary and permanent easements. The current location of the existing wall is partly on the public right of way, and, due to its degraded condition, represents a safety hazard to the public. The Tribunal has no doubt that the reconstruction of the retaining wall is required, and that a permanent easement of one m is sufficient.

Mr. MacQuarrie's preference for a five m permanent easement as opposed to the one m permanent easement is not supported by the technical evidence.

After considering all of the evidence and arguments, the Tribunal concluded that the proposal meets the test in the Act and the summation of it as set out by the courts. The test in s. 7(5) of the Act is whether the proposed taking is "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority." Court decisions such as *Parkins v. the Queen in right of Ontario et al.*, 1978 CanLII 1254 (ON CA), 85 DLR (3d) 581, 19 O.R. (2d) 473 determined that the test that the inquiry officer must apply can be expressed as to whether the proposal is "reasonably defensible" in achievement of the City's objectives.

For the reasons given above, the Tribunal finds that the taking of the following land, known municipally as 19 Halford Avenue, Toronto and legally described under PIN 10523-0050(LT), is reasonably defensible in the City's construction of the new retaining wall, for

1. A temporary exclusive easement or rights in the nature of a temporary exclusive easement in gross, on, in, over, under and through the lands identified as Part 1 on Sketch No. 6048074-06 prepared by SNC-Lavalin dated November 2020 for the purpose of facilitating the demolition of an existing retaining wall and the construction of a new retaining wall and all works ancillary thereto, including without limitation, alterations to and removal of hard and soft landscaping, re-grading work and the right to enter and occupy with all vehicles, materials, machinery, tools and equipment necessary. Such temporary easement shall commence upon the issuance of this decision and will continue for SIX (6) MONTHS not to extend beyond December 31, 2023; and



2. A permanent easement or rights in the nature of a permanent easement in gross, on, in, over, under and through the lands identified as Part 2 on Sketch No. 6048074-06 prepared by SNC-Lavalin dated November 2020,

for the construction, installation, maintenance, inspection, repair, removal, replacement or reconstruction of a retaining and all works ancillary thereto including, without limitation, alterations to and removal of hard and soft landscaping, re-grading work and the right to enter and occupy with all vehicles, materials, machinery, tools and equipment necessary.

“G. Burton”

G. BURTON VICE-CHAIR

Ontario Land Tribunal

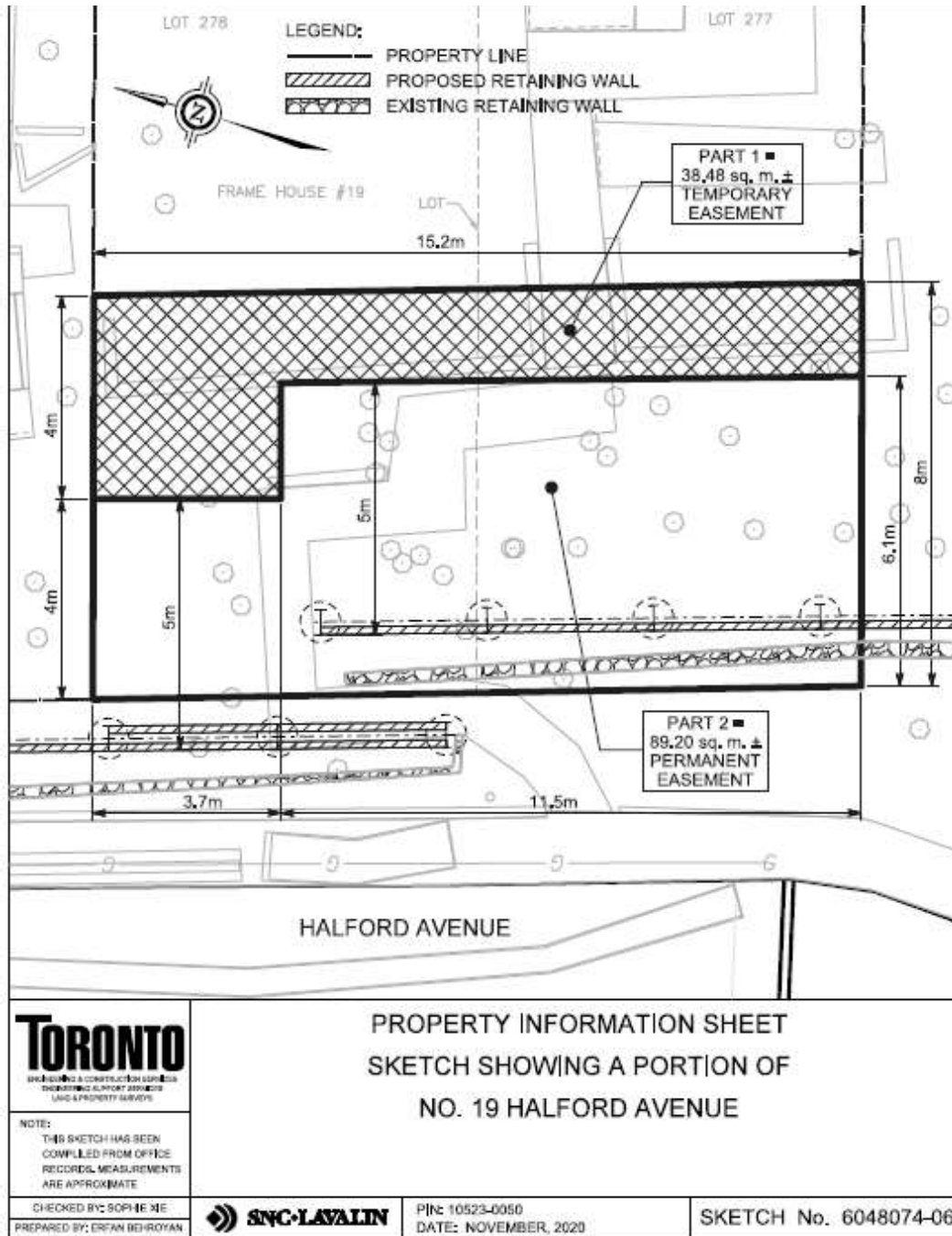
Website: [olt.gov.on.ca](http://olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

Expropriation of 19, 21, 23, 25 and 27 Halford Avenue - Stage

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Appendix 1

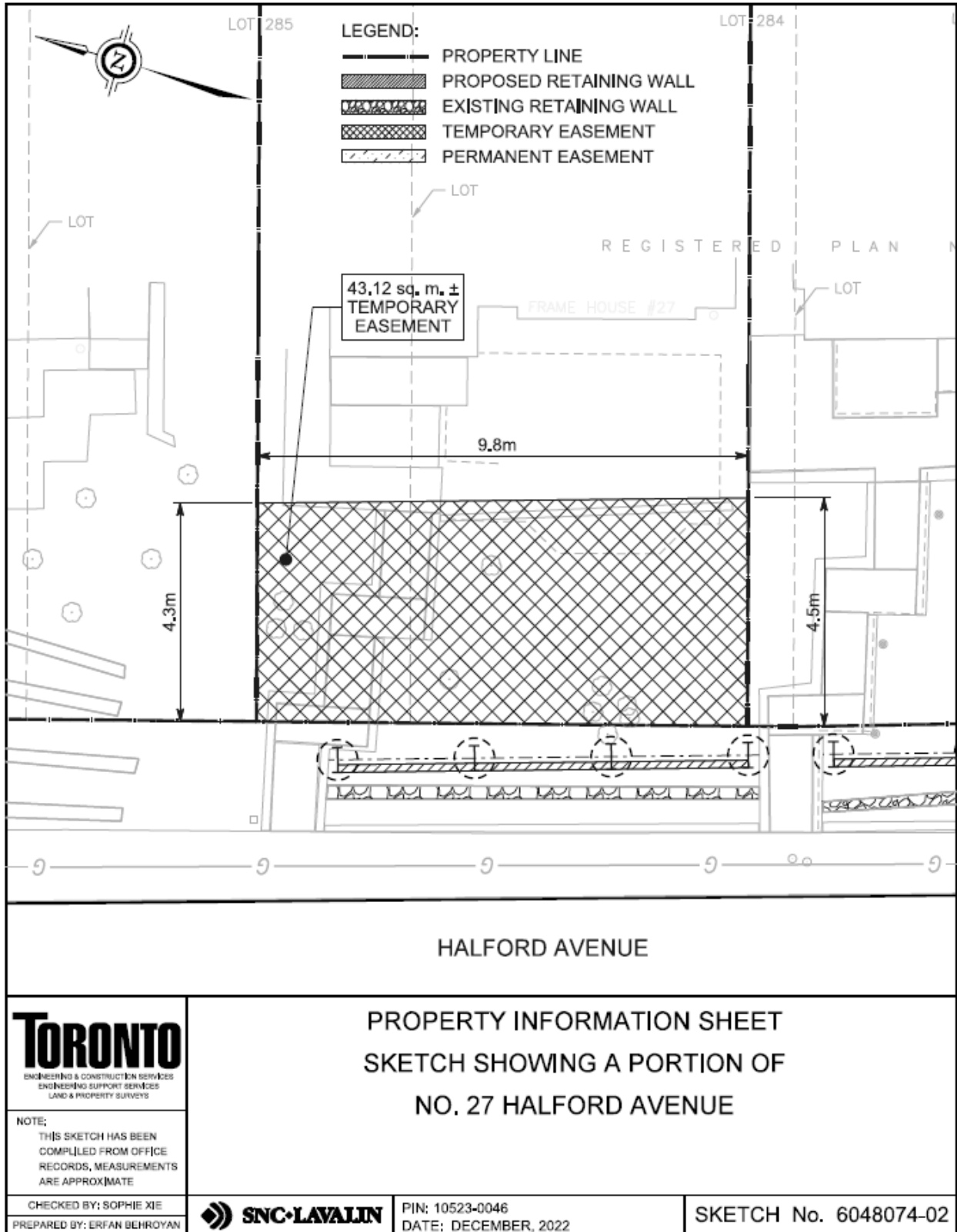


## Appendix B - Legal Description of Property Requirements

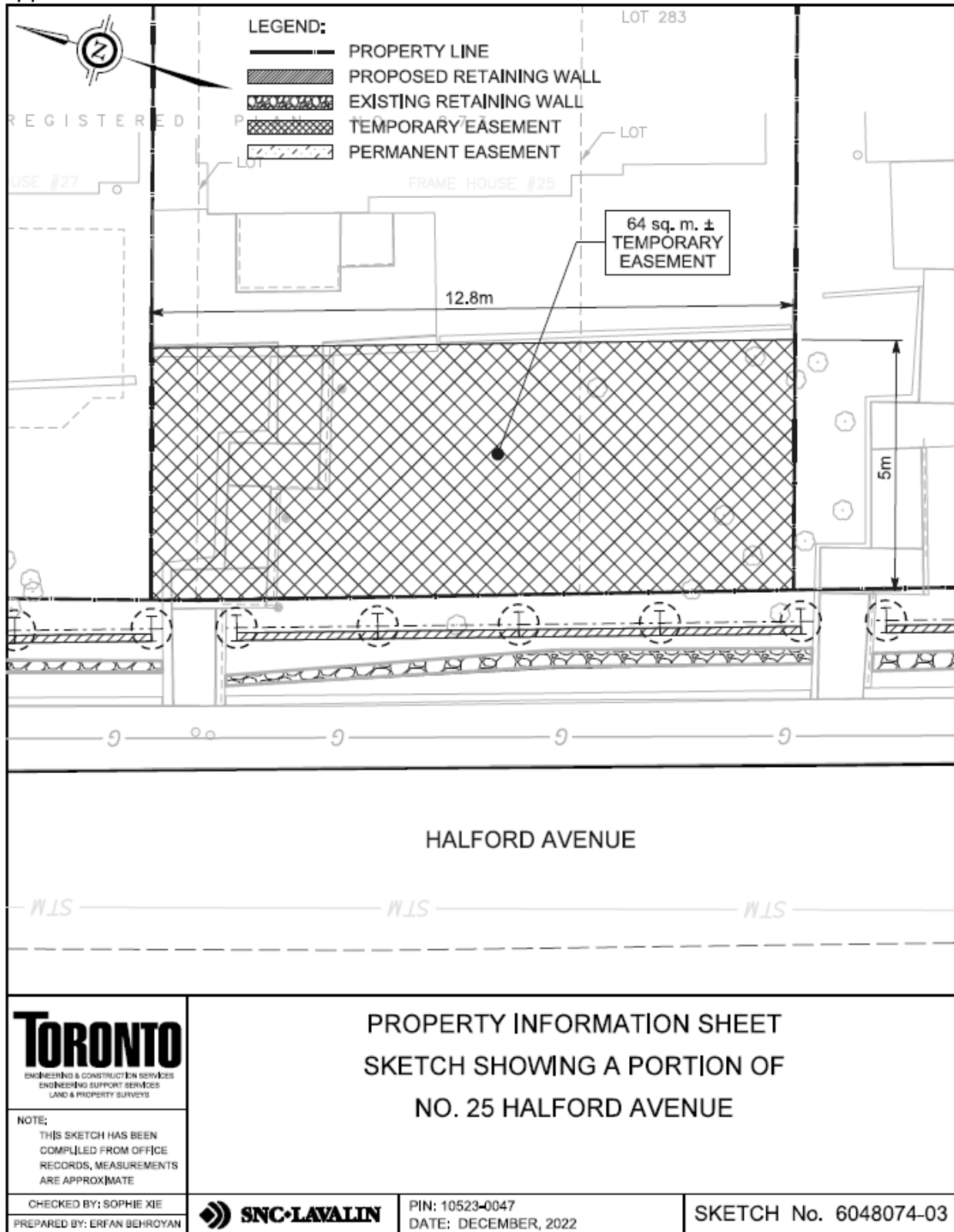
Municipal Address	Property Interests
19 Halford Avenue	i) Temporary Easement of approximately 87.72 square metres shown as Part 1 on Appendix B1 ii) Permanent Easement of approximately 33.88 square metres shown as Part 2 on Appendix B5
21 Halford Avenue	(i) Temporary Easement of approximately 83.60 square metres shown on Appendix B4
23 Halford Avenue	i) Temporary Easement of approximately 55 square metres shown on Appendix B3
25 Halford Avenue	(i) Temporary Easement of approximately 64 square metres shown on Appendix B2
27 Halford Avenue	(i) Temporary Easement of approximately 43.12 square metres shown on Appendix B1

Temporary Easement Areas are required for construction purposes including final grading and, at this time, are projected to be required until December 31, 2023.

Appendix B1



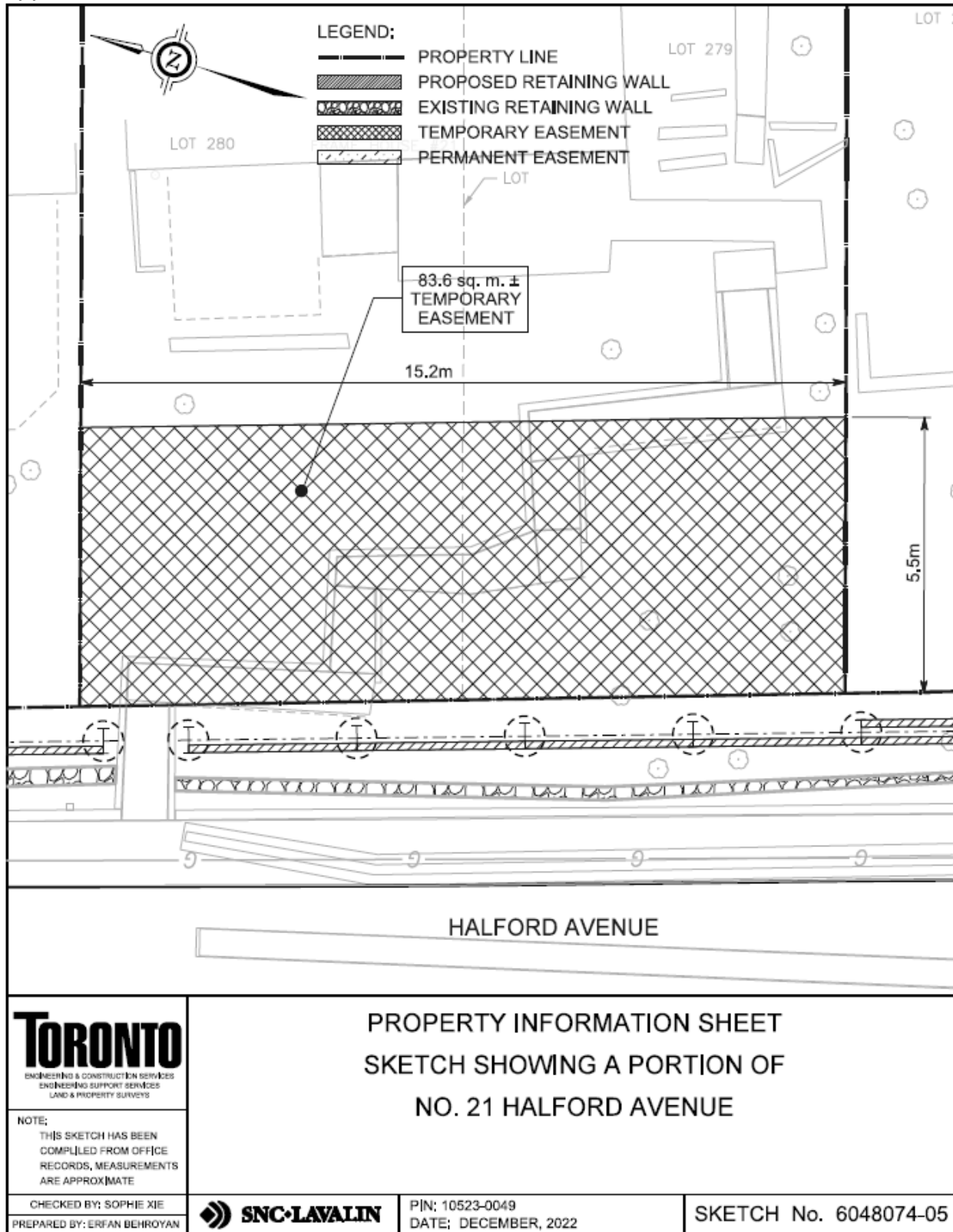
Appendix B2



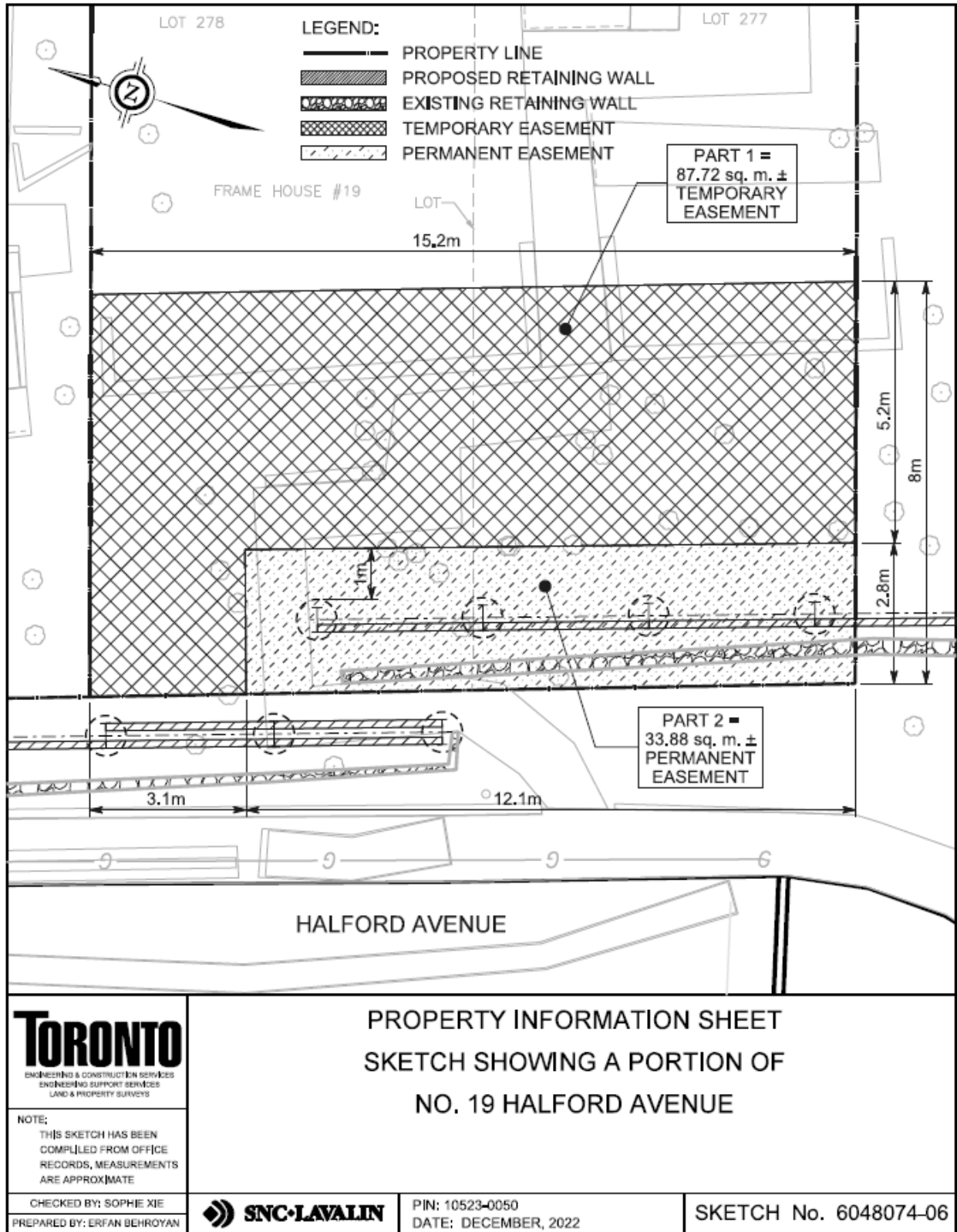
Appendix B3



Appendix B4



Appendix B5





# Appendix C - Location Map and Street View of Retaining Wall

