



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### 2 Whitney Avenue (135 Glen Road) – Injunction to Prevent Removal of Encroachments Pending Court Application

**Date:** November 3, 2025

**To:** City Council

**From:** City Solicitor

**Wards:** All Wards

#### REASON FOR CONFIDENTIAL INFORMATION

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This report is about litigation or potential litigation that affects the City or one of its agencies or corporations.

This report contains advice or communications that are subject to solicitor-client privilege.

#### SUMMARY

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In March 2025, City Council directed the General Manager, Transportation Services, to require the owners of 2 Whitney Avenue, formerly 135 Glen Road (2 Whitney) to remove all of the encroachments constructed on City property on the grounds that the encroachments were constructed contrary to the Ontario Heritage Act. The registered owner of 2 Whitney (together with her spouse, the “Owners”) recently filed a court application seeking a declaration that they do not require any permits for the encroachments under the Ontario Heritage Act and that the City is bound by its representation to the Owners in October 2024 that they had the required permits to construct their encroachments (the Application). The Owners have also filed a motion for an urgent injunction, preventing the City from requiring the removal of the encroachments pending the outcome of the Application and any appeals thereof.

#### RECOMMENDATIONS

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The City Solicitor recommends that:

1. City Council adopt the confidential recommendations contained in Confidential Attachment 1 to this report from the City Solicitor;

2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1, if adopted by City Council; and
3. City Council direct that the balance of Confidential Attachment 1 to this report from the City Solicitor remain confidential as it contains advice about litigation or potential litigation that affects the City of Toronto and contains advice or communications that are subject to solicitor-client and litigation privilege.

## **FINANCIAL IMPACT**

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There is no financial impact arising from the information contained in this report.

## **DECISION HISTORY**

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At its meeting on May 7, 2024, Toronto and East York Community Council adopted Item 2024. TE13.21 with amendments, authorizing the General Manager, Transportation Services, to negotiate and enter into an encroachment agreement with the Owners. [Agenda Item History - 2024.TE13.21](#)

In March 2025, City Council adopted motion MM28.38 and directed the General Manager, Transportation Services, to require the Owners to remove all the encroachments constructed on City property. [Agenda Item History - 2025.MM28.38](#)

In October 2025, City Council adopted item CC33.22 and refused a proposal to construct a structure on lands subject to the encroachment agreement, in accordance with Section 42 of the Ontario Heritage Act, as outlined in the Applicants' Submission by the Owners on July 25, 2025. [Agenda Item History - 2025.CC33.22](#)

## **COMMENTS**

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In July 2023, the Owners approached the City with an application to construct encroachments adjacent to 2 Whitney, on the City's right-of-way.

In May 2024, Toronto and East York Community Council authorized the General Manager, Transportation Services, to negotiate and enter into an encroachment agreement with the Owners.

The City and the Owners entered into an encroachment agreement in October 2024, whereby the City granted the Owners permission to install and maintain heated driveways, concrete and metal iron fences, automated gates, stone/concrete/brick pillars (the Wall), and beech tree privacy hedge on the City's right-of-way (the Encroachments). Pursuant to s. 6 of the encroachment agreement, the General Manager, Transportation Services, is authorized to order the Owners to remove the

encroachments upon receiving fourteen days notice in writing from the General Manager to do so.

In November 2024, Heritage Planning staff were notified of the construction of the Wall.

In November 2024, Heritage Planning staff conducted site visits to the subject property to confirm the extent of the work on the Wall. Subsequently, City staff asked the Owners to cease work and in January 2025 the Owners were asked to apply for a heritage permit as staff determined that the Wall was constructed without the required permissions under the Ontario Heritage Act.

In March 2025, City Council directed the General Manager, Transportation Services, to require the Owners to remove all encroachments, including the Wall, constructed on City property.

On April 25, 2025, the General Manager of Transportation Services sent a notice to the Owners to remove encroachments in accordance with the March 2025 Direction of Council, and pursuant to section 6 of the encroachment agreement.

On July 25, 2025, the Owners submitted a heritage permit application, seeking retro-active approval for the retention and completion of the Wall.

Despite submitting a heritage permit application, the Owners filed the Application on September 5, 2025, seeking a declaration that they do not require any permits for the encroachments under the Ontario Heritage Act. They also seek a declaration that the City is bound by its representation to the Owners in October 2024 that they had the required permits to construct their encroachments.

At its meeting of October 8-9, 2025, City Council refused the Owners' permit application proposal to construct the Wall, in accordance with Section 42 of the Ontario Heritage Act.

On October 22, 2025 the General Manager of Transportation Services served a notice of removal to the Owners, resuming the requirement to remove of the encroachments constructed on the City's right of way, in accordance with the March 2025 Direction of Council, and pursuant to section 6 of the encroachment agreement.

On November 1, 2025, the Owners served a motion for an urgent interlocutory injunction preventing the City from requiring the removal of the encroachments pending the outcome of the Application and any appeals thereof.

## **CONTACT**

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Confidential Attachment 1 - Confidential instructions from the City Solicitor