

2 Whitney Avenue (135 Glen Road) – Proposed Revisions to Encroachment Agreement – Supplementary Report

Date: July 16, 2026

To: City Council

From: City Solicitor

Wards: All Wards

REASON FOR CONFIDENTIAL INFORMATION

The report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding litigation that affects the City.

SUMMARY

This is a supplementary report to the report from the Chief Planner and Executive Director, City Planning at this same meeting of Council.

The City Solicitor submits this supplementary report because the registered owner of 2 Whitney Avenue (together with her spouse, the “**Applicants**”) are requesting certain revisions to the standard language of encroachment agreement permitting construction of the encroachments that are the subject of the Chief Planner and Executive Director, City Planning’s report at this same meeting of Council. The authority for entering into an encroachment agreement was provided by Toronto and East York Community Council to staff at its meeting of May 7, 2024, and entered into in October 2024.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff contained in Confidential Attachment 1 to this report from the City Solicitor.
2. City Council authorize the public release of the confidential instructions to staff contained in Confidential Attachment 1, if adopted by City Council.

3. City Council direct that all other information contained in Confidential Attachment 1 to this report from the City Solicitor is to remain confidential, as it is about litigation or potential litigation that affects the City of Toronto and contains advice or communications that are subject to solicitor-client privilege.

FINANCIAL IMPACT

There are no financial impacts arising from the recommendations contained in this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the information as presented in the Financial Impact Section.

DECISION HISTORY

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 Applicants: [Agenda Item History - 2024.TE13.21](#)

On March 26 and 27 2025, City Council adopted motion item MM28.38 directing the General Manager, Transportation Services, to require the Applicants to remove all the encroachments constructed on City property. City Council's decision may be found here: [Agenda Item History - 2025.MM28.38](#)

On October 8 and 9, 2025, City Council 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. City Council's decision may be found here: [Agenda Item History - 2025.CC33.22](#) An appeal was made to the Ontario Land Tribunal by the Applicants, and a determination and validity of the appeal by the Applicants remains outstanding.

On November 12 and 13, 2025, City Council directed that the City agree with the Applicants that it will not require the removal of encroachments on the City's right-of-way adjacent to the Property, pending the outcome of a Court Application brought by the Applicants against the City, and any appeals thereof. City Council's decision may be found here: [Agenda Item History - 2025.CC34.2](#)

COMMENTS

In July 2023, the Applicants approached the City with an application to construct encroachments adjacent to their property at 2 Whitney (the "**Property**"), 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

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agreement with the Applicants, which was signed in October 2024 (the “**Encroachment Agreement**”).

Pursuant to section 6 of the Encroachment Agreement, the General Manager, Transportation Services, is authorized to order the Applicants to remove the encroachments upon receiving fourteen days notice in writing from the General Manager, Transportation Services, to do so.

In November 2024, Heritage Planning staff were notified of the construction of a wall. Heritage Planning staff conducted site visits at the Property to confirm the extent of the work. In January 2025, City staff asked the Applicants to cease work and the Applicants were asked to apply for a heritage permit as staff determined that the wall was a structure constructed without a required permit under the Ontario Heritage Act.

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

On April 25, 2025, the General Manager, Transportation Services sent a notice to the Applicants 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 Applicants submitted a heritage permit application, seeking retro-active approval for the retention and completion of the encroachments (the “**2025 Heritage Permit Application**”). Despite submitting the 2025 Heritage Permit Application, the Applicants also issued a Court Application in August 2025, seeking a declaration that they do not require any permits for the encroachments under the Ontario Heritage Act and a declaration that the City is bound by its representation to them in October 2024 that they had the required permits to construct their encroachments (the “**Court Application**”).

On October 8 and 9, 2025, City Council refused the 2025 Heritage Permit Application.

On July 2, 2026, the Applicants submitted a new heritage permit application to permit the Revised Encroachments (the “**2026 Heritage Permit Application**”). The 2026 Heritage Permit Application will be considered by City Council at this same meeting, after receiving advice from the Toronto Preservation Board on July 23, 2026.

Along with the 2026 Heritage Permit Application, the Applicants are requesting certain revisions to the standard language of the encroachment agreement permitting construction of the Revised Encroachments.

This report seeks further direction from City Council on this matter that is currently in litigation.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Confidential instructions from the City Solicitor