



City of Hamilton Report for Information

To: Chair and Members
Public Works Committee

Date: May 20, 2025

Report No: PW25034

Subject/Title: 94 Kingsview Drive, Hamilton Encroachment Update

Ward(s) Affected: Ward 9

Recommendations

- 1) That Report PW25034 respecting 94 Kingsview Drive, Hamilton Encroachment Update **BE RECEIVED** for information.

Key Facts

- 94 Kingsview Drive is a residential property in Ward 9, constructed around 2013, and located adjacent to City-owned lands in the Red Hill Valley.
- The adjacent City lands are designated as "Local Natural Area - Environmentally Significant Area" and zoned as Parkland under the Urban Hamilton Official Plan.
- City staff identified a significant unauthorized encroachment involving multiple unpermitted structures -including a driveway, fencing, a detached "3-season" building, patio, and garden shed - built on City property without approvals or building permits.
- The extent of the encroachment impacts environmentally sensitive land and municipal infrastructure, including a stormwater sewer located beneath the site.
- This report provides an update on the City's enforcement actions and outlines the rationale for rejecting the property owners' proposals to purchase the encroached lands.

Financial Considerations

The enforcement of the unauthorized encroachment will require staff time and effort, including from Environmental Services Division, Legal & Risk Management Services Division, Hamilton Water, and Building Division. Any costs incurred by the City for the removal of the structures and restoration of the lands, if needed, will be billed back to the resident according to the existing Encroachments on City Property Policy.

Background

The City of Hamilton's Encroachments on City Property Policy and Encroachments on City Property Procedure provide the guidelines that staff follow with respect to encroachments. The Policy and the Procedure were established through Report PW11024, approved by Public Works Committee on April 4, 2011. Sometime around September 2023, staff in the Building Division discovered that the property owners of 94 Kingsview Drive had constructed a detached "3-season" room building without building permit. Additional encroachments include a driveway, patio and fencing. At the time staff first visited the property they were unaware that the structures were built on City property. Building staff advised the property owners that a building permit was required.

In or about late 2023, staff became aware of the above noted structures were located on City property, specifically, property zoned and identified as Parkland. Publicly available images, included in Appendix "A" of Report PW25034 show that the property owners of 94 Kingsview began removing vegetation and landscaping the City-owned properties around 2015. The chain link fence denoting the property boundary with the City parkland was also removed, sometime after 2015. Staff estimate that the driveway, landscaping, and the "3-season room" building were built between 2021 and 2022. Additionally, a garden shed structure was located outside the fenced-in encroached area, further onto City property. The City also discovered that infrastructure for Hamilton Water was also located under the encroached upon City property. The encroachments on City property are significant.

Around March 2024, the property owners submitted an unsolicited proposal to purchase the lands from the City. As per the typical process, the proposal was reviewed through the Portfolio Management Committee, and was considered in April 2024. Several staff groups provided input in reviewing the proposal, including Corporate Real Estate & Property Management Section, Landscape Architectural Services Section, and Hamilton Water, and the Portfolio Management Committee determined that a sale of the lands could not be supported, and recommended the removal of the encroachments. The decision of the Committee is consistent with the Guidelines in the Encroachments on City Property Policy and Procedure and Portfolio Management Strategy (2004).

In mid-March 2025, following extensive discussions involving Legal Services & Risk Management Division, Corporate Real Estate & Property Management Section, Parks Section and Building Division, the City delivered a notice letter to the property owners, formally notifying them of the encroachment and the City's intention to restore the lands to their original state. The City, in that letter, invited the property owners to contact

Parks staff within two weeks to discuss the process of removing the encroachment and restoring the lands.

In response to the notice letter, on March 28, 2025, counsel for the property owners made a further Without Prejudice offer to purchase the encroached lands for \$150,000. The offer included the granting of an easement from the property owners to the City so that the City could access any water infrastructure following the sale. On April 8, 2025, the City advised counsel for the property owners that their offer had been rejected and invited them to contact staff within two weeks to discuss the process of removing the encroachment and restoring the lands.

Following further discussions between Legal & Risk Management Services Division staff and counsel for the property owners, City staff advised the owners in mid-April 2025 that the City would review its decision again and would not take further action for the removal of the encroachments until this review was complete.

Analysis

The Portfolio Management Committee thoroughly reviewed both proposals submitted by the property owners to purchase the encroached lands. The Committee determined that a sale could not be supported based on the following considerations:

- **Parks Master Plan Alignment:** Disposing of Parkland would not align with the Parks Master Plan, which directs staff to preserve and acquire more Parkland City-wide to address parkland deficiencies. The affected lands contain a hiking trail and serve as a park maintenance access at Kingsview Drive.
- **Municipal Infrastructure Needs:** The lands are not surplus to the City's needs, as a storm water sewer runs beneath the lands in question. Any disposition of the lands would require an access or permanent right of way to maintain access for ongoing maintenance of the local sewer infrastructure.
- **Encroachment Policy Compliance:** The sale of the lands would not align with the Council-approved Policy ([Encroachment on City Property Policy - Report PW11024](#)) regarding parks, which discourages encroachments on City property unless applicants can prove they are reasonable, feasible, no alternatives exist, the encroachment does not jeopardize public health or safety, is in the public's best interest, and is minor in nature – conditions which are not met in this case.
- **Environmental Implications:** The disposition of the property does not align with the City's Climate Change strategy and the Biodiversity Action Plan, both of which emphasize the protection of natural areas.
- **Precedent Risk:** Approving a sale of the lands under these circumstances could establish an undesirable precedent, encouraging future encroachments by suggesting that unauthorized development on City land may lead to eventual ownership.

Subject to any reconsideration or further direction from Council, if an agreement cannot be reached with the property owners to remove the encroachments and restore the lands, the City will pursue alternative enforcement mechanisms to restore the lands and reestablish the property boundary.

While staff typically manage encroachments without bringing individual cases forward to Council, the scale and circumstances of this case are exceptional. As such, this update is provided for Council's information. Staff have the authority needed to pursue the enforcement of this encroachment, through the existing policy and procedure.

Alternatives

Council may direct staff to address this matter in an alternative way, such as by issuing an easement for continued use of the lands or by directing the sale of the property. To proceed with either option, the lands would first need to be formally declared surplus by Council. Staff do not recommend these alternatives due to reasons outlined in this report, including misalignment with City policies and the Parks Master Plan, infrastructure requirements, and precedent risk. As Report PW25034 is provided for information only and does not include any recommendations, any alternate direction would require a Council Motion.

Relationship to Council Strategic Priorities

The enforcement to remove the unauthorized encroachment at 94 Kingsview Drive, Hamilton, will support and improve Strategic Priorities identified by Council in the following areas:

1. Sustainable Economic & Ecological Development
 - 1.1. Protect green space and waterways
2. Safe & Thriving Neighbourhoods
 - 2.1. Provide vibrant parks, recreation and public space
3. Responsiveness & Transparency
 - 3.1. Prioritize customer service and proactive communication

Previous Reports Submitted

[PW11024 Encroachment on City Property Policy](#), Public Works Committee, April 4, 2011

Consultation

Staff from the following City Departments were consulted in the development of this report:

- Rob Lalli, Director, Building Division and Chief Planner, Planning and Economic Development Department
- Kaush Parameswaran, Deputy City Solicitor, Corporate Services Department
- Ray Kessler, Chief Corporate Real Estate Officer, Planning and Economic Development
- Rino Dal Bello, Director, Development Planning, Planning and Economic Development Department

- Rory Doucette, Manager of Parks, Environmental Services Division, Public Works Department

Appendices and Schedules Attached

Appendix A: Images showing 94 Kingsview Drive Unauthorized Encroachment

Prepared by: Cynthia Graham, Director
Public Works, Environmental Services

Submitted and recommended by: Cynthia Graham, Director
Public Works, Environmental Services