

**Subject: Nesbitt Street Encroachment Agreement**

**File Number: ACS2023-PRE-RHU-0028**

**Report to Transportation Committee on 24 August 2023**

**and Council 13 September 2023**

**Submitted on August 15, 2023 by Court Curry, Director, Right of Way, Heritage, and Urban Design Services, Planning, Real Estate and Economic Development**

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**Ward: Bay (7)**

**Objet: Entente concernant l'empiétement sur la rue Nesbitt**

**Dossier : ACS2023-PRE-RHU-0028**

**Rapport au Comité des transports le 24 août 2023**

**et au Conseil le 13 septembre 2023**

**Soumis le 15 août 2023 par Court Curry, Directeur, Services des emprises, du patrimoine, et du design urbain, Services de la planification, des biens immobiliers et du développement économique**

**Personne ressource: Laureen DiNardo, Coordonnatrice des permis et des ententes au poste d'emprises, Domaine public et design urbain**

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**Quartier: Baie (7)**

## **REPORT RECOMMENDATION(S)**

**That the Transportation Committee and Council receive this report for information.**

## **RECOMMANDATION(S) DU RAPPORT**

**Que le Comité des transports et le Conseil prennent connaissance du présent rapport.**

## **BACKGROUND**

A Councillor introduced motion was carried by City Council on June 28, 2023, to allow Transportation Committee to review staff's determination with respect to a requested encroachment agreement associated with two stone retaining walls and landscaping features located on a portion of Nesbitt Street adjacent to the Ottawa River. The following report outlines staff's rationale for Committee's information. The considerations outlined below are predicated on the City's Water Access Policy (2006) [ACS2006-CPS-PAR-0011](#), the City's Encroachment By-law (2003-446) and the recent changes to the Use and Care of Roads By-law (as amended) adopted by Council.

## **DISCUSSION**

In June 2020, Right of Way, Heritage and Urban Design Services staff were asked to review concerns brought forward by the Crystal Bay Community Association (CBCA) regarding existing encroachments as well as signage that was installed by the owners of 2 Nesbitt Street. The subject private property signage was installed on private property abutting the right of way (ROW). This signage resulted in questions related to the limit of public ownership vs. private and the extent and use of the ROW in addition to existing landscaping features and retaining walls.

The subject portion of the ROW is considered to be a water access based on the City's Water Access Policy (2006) [ACS2006-CPS-PAR-0011](#).

There are 326 publicly accessible waterfront properties on the Ottawa and Rideau rivers, with 192 properties being road allowance or ROW. The intention of the access points is to ensure that Ottawa's two rivers remain accessible to the public in alignment with the City's Water Access Policy.

The subject areas of encroachment as identified as Part 1 on registered plan 4R-34519-Part 1 on Document 1, include a stone retaining wall along the east side of the water access, a retaining wall adjacent to 2 Nesbitt Street, and a number of shrubs and a hedge adjacent to 2 Nesbitt Street as shown on Documents 2 and 3. The CBCA

expressed concern that the encroachments should not be permitted as they prevent the public from accessing the ROW.

Staff conducted a thorough review of the site, prepared a survey of the water access (Document 4) and the history and function of the encroachments to determine their appropriateness based on the intent of the City's Water Access Policy in addition to meeting relevant City by-laws pertaining to the right of way.

Based on the review conducted by staff of the relevant policies and by-laws, the following was decided regarding the subject encroachments:

- The existing stone retaining walls should remain in place subject to an encroachment agreement to be entered into between the Owners of 2 Nesbitt Street and the City of Ottawa.
- The existing landscaping features may remain and no further landscape features shall be permitted.

The following additional measures have been put in place to address concerns raised by both the CBCA and the owners of 2 Nesbitt Street:

- To address concerns related to private property delineation, the City would install four bollards along the common property line between 2 Nesbitt Street and the City's ROW.
- City staff have worked to ensure new and existing water access signage was visible to the public.

#### Rationale

The following rationale is provided regarding the decision to allow the existing encroachments to remain with the City's ROW:

- The stone retaining walls and landscaping do not impede the public's use of the water access at this location.
- The stone retaining walls and landscaping do not interfere with City operations.
- The abutting owners have committed to entering into an encroachment agreement with the City of Ottawa.
- The location of the right-of-way/water access containing the subject landscape elements including large sections of armour stone is located within the 1/100-year flood plain limits of the Ottawa River. As a result, any site/grade alterations within the floodplain would require permitting from the Rideau Valley

Conservation Authority (RVCA). This would necessitate the need for extensive engineering study to ensure that flood storage is maintained and there is no increased risk of flooding and/or erosion to abutting properties. It has also been indicated that alterations could result in possible erosion loss to the beach area. The Rideau Valley Conservation Authority has no concerns with the location of the existing landscape elements including the armour stone.

- If the retaining walls and landscaping were removed, the City would be responsible for any new retaining wall(s) to be constructed to address grading challenges and flood mitigation, and would also be responsible for maintenance of landscaping (grass, trees) etc.
- The combined area of the two Retaining walls is approximately 33.8 square metres. The area of the entire Part 1 (as expressed on the schedule of Plan 4R-34519) is approximately 168.2 square metres. This is a small area relative to the entire ROW water access in this location.

## **FINANCIAL IMPLICATIONS**

The Owner of 2 Nesbitt Street will be required to pay an annual Encroachment fee for the areas associated with the two stone retaining walls (33.8 square metres).

## **LEGAL IMPLICATIONS**

The authority to deal with this encroachment is currently delegated to staff through the Encroachment By-law and the Delegation of Authority By-law. As noted in the Disposition below, subject to Council direction in this matter, staff would proceed to finalize the encroachment agreement as discussed in this report.

## **COMMENTS BY THE WARD COUNCILLOR(S)**

The Councillor is aware of the applications of this report.

## **ADVISORY COMMITTEE(S) COMMENTS**

N/A

## **CONSULTATION**

Staff and the Councillor's Office have worked with the CBCA over the past 3 years to address concerns raised. A public meeting was hosted by Councillor Kavanagh in December 2021 to present staffs' findings and the rationale behind the decision to allow the encroachments to remain and respond to questions from the community. The CBCA has advised that they do not support staff's position.

## **ACCESSIBILITY IMPACTS**

This report deals with water access under the City's Water Access Policy. The site does not include any accessibility features or an accessible path of travel. The retaining walls, landscaping and City-installed bollards do not create any new accessibility barriers.

## **ASSET MANAGEMENT IMPLICATIONS**

The subject retaining wall and landscaping will be subject to an encroachment agreement, which will require the on-going maintenance of the features by the abutting Owner of 2 Nesbitt Street. This addresses the City's need to maintain and/or repair the subject assets. If the retaining walls and landscaping were removed, the City would be responsible for any new retaining wall(s) to be constructed to address grading challenges and flood mitigation, and would also be responsible for maintenance of landscaping (grass, trees) etc.

## **CLIMATE IMPLICATIONS**

Removal of the existing retaining walls presents a significant risk due to changing climate conditions through increased exposure to temperature, precipitation, flooding, or extreme weather.

## **ENVIRONMENTAL IMPLICATIONS**

The existing encroachments are located within the identified 100-year flood plain. Discussions with the Rideau Valley Conservation Authority have indicated that removal of the retaining walls is not supported. This could have impacts on the water access and abutting properties. Re-location of the walls would require review and approval by the RVCA to determine if appropriate flood plain storage is maintained in this location.

## **RISK MANAGEMENT IMPLICATIONS**

Removal of the existing retaining walls will alter the existing flood plain, and as a result may present a potential risk of flooding to abutting properties and the City's ROW.

## **RURAL IMPLICATIONS**

There are no rural implications.

## **TERM OF COUNCIL PRIORITIES**

The proposed recommendation meets the City Council's strategic objective to create a city that is green and resilient. Ottawa is experiencing warmer, wetter and more unpredictable weather. It's critical that the City continues to prepare for extreme heat, wind, rain and snow and continues with efforts to reduce greenhouse gas emissions and build climate resiliency. Also, Ottawa's trees and their habitat are shared resources that provide a wide range of benefits and services to the community. A focus during this Term of Council is to plant, grow and preserve the tree canopy in neighbourhoods with low tree cover. The proposed recommendation addresses both of these strategic objectives.

## **SUPPORTING DOCUMENTATION**

Document 1 – Reference Plan

Document 2 – Site Images

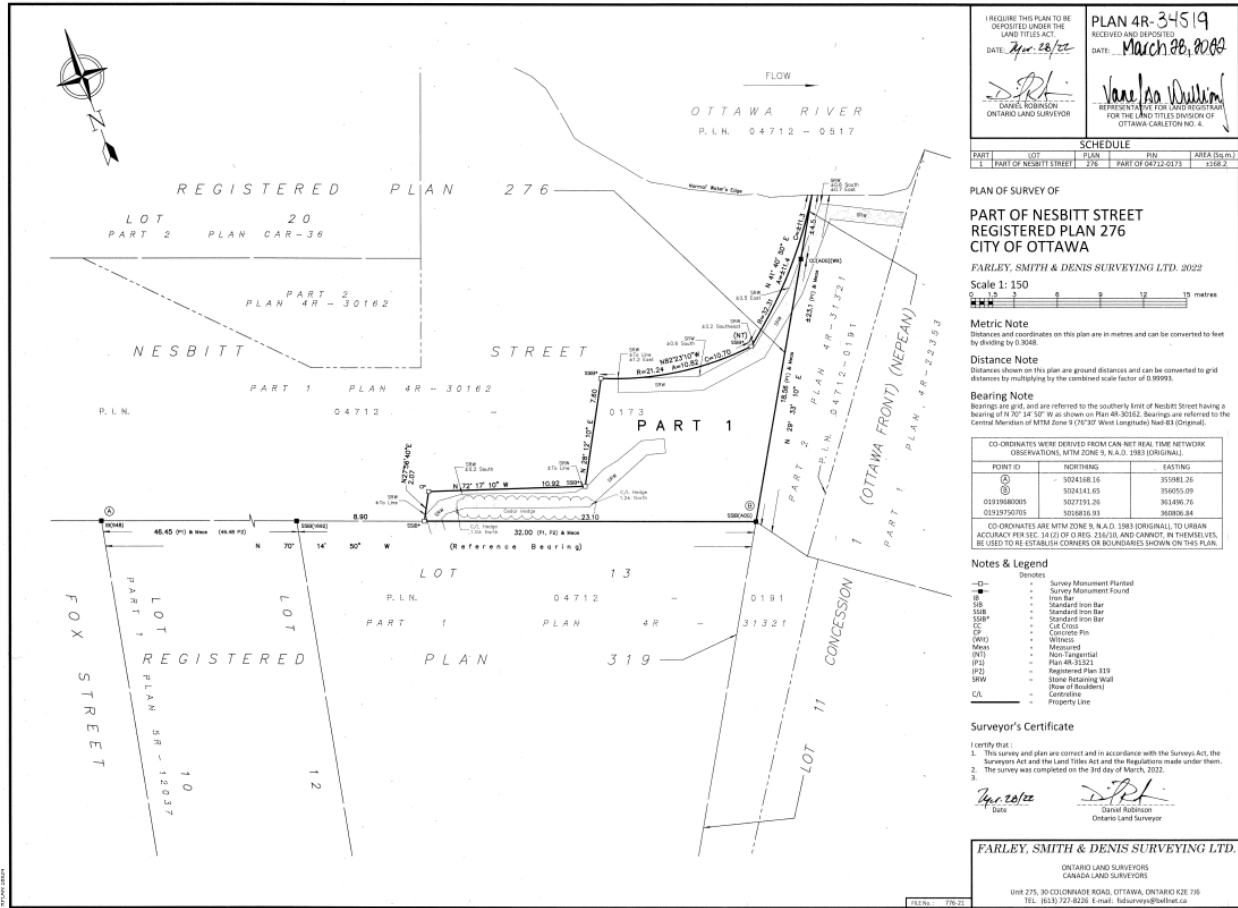
Document 3 – Reference Plan

## **DISPOSITION**

Following Council's receipt of this report, staff within the Right of Way Branch shall formalize the encroachment agreement for 2 Nesbitt Street for all related decorative features in the ROW.

Document 1

Figure 1 - Reference Plan – 4R-34519 – Part 1



3/2022/176-21\_2\_Nesbitt St\_2022/03/03/176-21\_2\_Nesbitt Street\_13 14 15 16 17 18 19 20 Con 11 Con 12 Con 13 Con 14

**Document 2**

**Images of Water Access and Encroachments Adjacent to 2 Nesbitt**



Image #1



Image # 2



**Images of Encroachments Adjacent to Nesbitt Water Access**



Image #3 – Rock Wall



Image #4 – Landscaping features in ROW

