



Town of Niagara-on-the-Lake

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REPORT #: OPS-26-011 **COMMITTEE DATE:** 2026-04-21
REPORT TO: COTW-General **DUE IN COUNCIL:** 2026-04-28
SUBJECT: Encroachment Agreement for 61 Melville Street

1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 Council approves the attached encroachment agreement for the property known as 61 Melville Street to permit the installation of items such as landscaping features, planting beds, pedestrian walkways and other building appurtenances which are proposed within the municipal road allowance, and that the agreement be forwarded to the Owner(s) for signature; and
- 1.2 The draft by-law attached as **Appendix I** hereto be forwarded to Council for adoption; and
- 1.3 Council requests the Lord Mayor and Town Clerk to sign the agreement.

2. EXECUTIVE SUMMARY

- The property was subject to a site plan application to permit the development of a three-story twelve (12) unit residential apartment building.
- The proposed development includes the installation of items such as landscaping features, planting beds, pedestrian walkways and other building appurtenances which are proposed within the municipal road allowance as attached as **Appendix III**.
- The Owner(s) is required to enter into an Encroachment Agreement with the Town of Niagara-on-the-Lake to address the future utilization and maintenance of the proposed encroachments.
- Encroachment agreements permit regulated occupancy without requiring the removal of landscape features or renovation of heritage buildings, irrigation systems and other structures while indemnifying the Town against liability and outlining clear expectations.
- This report is seeking Council approval to permit the proposed encroachments into the municipal right-of-way as part of a site plan approval for the property by entering into a permanent encroachment agreement with the property Owner(s) to permit the use of the proposed encroachments and protect the Town's interests.
- All costs for the preparation and registration of the encroachment agreement will be borne by the Owner(s) of 61 Melville Street.

3. PURPOSE

The purpose of this report is to request Council's approval to permit encroachments through an agreement concerning a property located at 61 Melville Street.

4. BACKGROUND

The subject lands are located at 61 Melville Street, in the urban area of Old Town, in what is known as the Dock Area.

The need to enter into an encroachment agreement arose from a site plan application (SP-06-2024) for a property located at 61 Melville Street and is necessary to govern the proposed installation of items such as landscaping features, planting beds, pedestrian walkways, and other building appurtenances which are proposed within the municipal road allowance. This section of Melville Street has a 60-foot wide (18.288m) road allowance with a curb and gutter profile which includes an existing 1.25 metre sidewalk fronting the property along Melville Street. Proposed modifications and reconfiguration of the frontage will result in additional street parking spaces and a 1.5-metre sidewalk that meets the Town's current minimum standards.

The proposed site plan was granted conditional site plan approval with the following condition:

That the Owner(s) enter into a permanent Encroachment Agreement with the Town, subject to review and approval by the Town's Public Works and Infrastructure Services Department (formerly Operation Department), to address the future installation and maintenance requirements of the proposed encroachments and acknowledge that their continued use will be permitted until such time as the Town deems that it requires the lands for its own purposes.

The encroachments are to be located within Parts 1-5 on 30R-16502, attached as **Appendix II**. Specific details regarding the type of landscape features contained within those parts of the reference plan are shown in **Appendix III**. There are currently no anticipated additional improvements expected on Melville Street beyond the necessary servicing requirements to facilitate the development. The Town has no planned improvements in the near future, and the proposed encroachments do not interfere with current Town operations.

5. DISCUSSION / ANALYSIS

An encroachment agreement protects the Town's interest by:

- Providing indemnification against harm should anything untoward occur on the portion of the road allowance being occupied by the encroachments;
- Providing a mechanism to recover the use of the occupied portion of the road allowance for Town purposes upon 90 days' notice to the Owner(s); and
- Asserting the Town's Owner(s)hip of the occupied portion of the road allowance to prevent a claim of adverse possession.

It should be noted that a claim of adverse possession arises primarily where historic buildings were erected before the implementation of rigorous site control. A draft agreement for the subject property has been prepared and is attached as **Appendix I**.

6. STRATEGIC PLAN

The content of this report supports the following Strategic Plan initiatives:

Pillar

3. Enrich Community Assets, Environment, & Infrastructure

Priority

3.3 Infrastructure

7. OPTIONS

- 7.1 **Option 1:** Regulate the encroachments through the attached draft agreement.
(Recommended)

- 7.2 **Option 2:** Do not permit the regulation of the encroachments through an agreement and request the applicant to submit a revised overall site and landscape plan that removes those features from the municipal right-of-way. *(Not Recommended)*

8. FINANCIAL IMPLICATIONS

The Owner(s) of 61 Melville Street will bear all costs associated with the preparation and registration of the encroachment agreement. No costs to the Town are anticipated.

9. ENVIRONMENTAL IMPLICATIONS

There is no environmental impact associated with this report.

10. COMMUNICATIONS

Upon Council passing a resolution, Staff will advise the property Owner(s) of Council's decision and execute and register the encroachment agreement attached hereto as a draft.

11. CONCLUSION

It is in the interest of both the Town and the Owner(s) that the proposed occupancy of any portion of the road allowance be subject to an encroachment agreement. Such agreements permit regulated occupancy without requiring the removal of landscape features or the renovation of heritage buildings, irrigation systems, and other structures, while indemnifying the Town against liability and outlining clear expectations should the Town require the use of the occupied portion of the road allowance for its own purposes.

Planning-related applications continue to provide an opportunity to identify and appropriately regulate encroachments.

12. PREVIOUS REPORTS

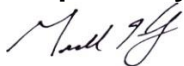
- N/A.

13. APPENDICES

- **Appendix I** – Draft Encroachment Agreement - 61 Melville Street
- **Appendix II** – 30R-16502
- **Appendix III** – Landscape Plan for 61 Melville Street

Respectfully submitted:

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Recommended by:



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Director, Public Works & Infrastructure Services

Submitted by:



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