



Committee of the Whole Report

Report Number: RS2023-040
Meeting Date: September 12, 2023
Title: Request for License Agreement – 51 Cambridge Street South
Description: Report addressing the encroaching fence at 51 Cambridge Street South
Author and Title: Lucas Almeida, Realty Services Law Clerk

Recommendations:

That Report RS2023-040, **Request for License Agreement – 51 Cambridge Street South**, be received; and

That an encroachment agreement not be offered and the encroaching fence be relocated to within the applicant's property boundaries.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

The property owners at 51 Cambridge Street South received a notice of violation due to an encroaching fence that extends onto the road allowances for Cambridge Street South and Glenelg Street West. In response, they applied for a license agreement to legitimize the fence's position. At their meeting on July 10, 2023, the Land Management Team (LMT) denied the request, citing concerns over obstruction of the intersection's sight triangle and the potential hindrance of access to utilities and infrastructure located within the road allowances.

Subsequently, the Kennedy family, owners of the property, submitted a deputation request to present their case. This report is being prepared to accompany their deputation and to provide necessary background information to facilitate an informed decision.

Rationale:

The recommendation to relocate the fence is grounded in prioritizing safety and preserving access to essential infrastructure. By relocating the fence, the concerns raised by the Land Management Team (LMT) are effectively addressed. Specifically, the relocation ensures an unobstructed sight triangle at the intersection, mitigating potential risks for pedestrians and drivers. Additionally, this action safeguards access to critical utilities and infrastructure situated within the road allowances.

Other Alternatives Considered:

Council could choose to offer a license agreement to allow the fence to remain in place. This would be consistent with Council's previous decision in 2018 on a similar matter involving an encroaching fence. In that other instance, LMT rejected the application for a license agreement, citing concerns over the lack of visibility at the intersection and the presence of various utilities between the property line and the fence line, including a gas line, a water service valve, a Bell line, and fiber. Despite these concerns, Council passed the following resolution:

CR2018-365

Moved By Councillor Dunn

Seconded By Councillor James

That Report RS2018-016, Fence Encroachment – 59 Cambridge Street North, Lindsay, be received; and

That Staff be directed to enter into a License Agreement with the owner of 59 Cambridge Street North, Lindsay, to allow the fence at the South West corner of Cambridge Street and Bond Street to remain in its current location.

Council could follow a comparable approach in this case. The agreement would be designed to ensure that the City and third party utility companies are entitled to continued access, and is insured and indemnified against any third-party claims arising from the encroachment, such as resulting from collisions at the intersection. Further, any License Agreement will require the owner of 51 Cambridge Street South to waive their rights for compensation in the event that the fence needs to be removed for location/relocation of utilities or road widening.

This would be achieved by passing the Council Resolution: "That Staff be directed to enter into a License Agreement with the owner of 51 Cambridge Street South, Lindsay, to allow the fence at the South West corner of Cambridge Street South and Glenelg Street West to remain in its current location."

Alignment to Strategic Priorities

This Report does not specifically align with any of the goals in the Council Adopted Strategic Plan. This Report is in alignment with the strategic enabler of "efficient infrastructure and asset management".

Financial/Operation Impacts:

If the encroachment is permitted, then the License Agreement will provide that the City and third party utility companies are entitled to continued access. The License Agreement will be structured in a way to attempt to make the City insured and indemnified for any third party claim (such as a collision at the intersection) resulting from the encroachment.

Similarly, any License Agreement will require the owner of 51 Cambridge Street South to waive their rights for compensation in the event that the fence needs to be removed for location/relocation of utilities or road widening.

Further, any License Agreement will require the owner of 51 Cambridge Street North to waive their rights for compensation in the event of damage to the fence as a result of snow clearing activities.

Consultations:

Land Management Team

Attachments:

Appendix A – Photos of Fence



RS2023-040 -
Appendix A.pdf

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Department Head: Robyn Carlson

Department File: L17-23-RS168