

## Staff Report

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**Report To:** City Council

**Report From:** Kristen Van Alphen, Manager of Legislative Services  
Adam Parsons, Manager of Parks and Open Space

**Meeting Date:** May 8, 2023

**Report Code:** CR-23-038

**Subject:** Encroachment Applications and Transport Canada Lease –  
Sound Street Beach (ENC2022-001 & ENC2022-002)

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### Recommendations:

THAT in consideration of Staff Report CR-23-038 respecting encroachment applications and a Transport Canada Lease for Sound Street Beach, City Council:

1. Denies both encroachment applications;
2. Designates Sound Street Beach as a public open space area subject to the City's Parks By-law;
3. Directs staff to:
  - a. Bring forward a by-law to execute a lease with Transport Canada for Sound Street Beach;
  - b. Add Sound Street Beach to the City's inventory of parks and open spaces as a neighbourhood park; and
  - c. Create a municipal address for Sound Street Beach.

### Highlights:

- The City has received two encroachment applications for the use of Sound Street Beach and a lease for Sound Street Beach from Transport Canada.

- Council direction is required on how the City wishes the lands to be used.
- City staff recommend denial of the encroachment applications as they do not meet the criteria of the Encroachment By-law.
- City staff recommend that the lease with Transport Canada be executed and the area be designated as a public access area and made available for use as a neighbourhood park.

## **Strategic Plan Alignment:**

This report supports the delivery of Core Service.

## **Climate and Environmental Implications:**

This supports the objectives of the City's Corporate Climate Change Adaptation Plan by strengthening the natural infrastructure, including the urban forest.

## **Previous Report/Authority:**

[Encroachment By-law](#)

[Parks By-law](#)

## **Background:**

The area subject of this report is known as Sound Street Beach, which extends from the northerly boundary of the Georgian Yacht Club to the northerly terminus of 2<sup>nd</sup> Avenue West (see diagram attached). The lands consist of the shoreline east of 2<sup>nd</sup> Avenue West, between 26<sup>th</sup> and 27<sup>th</sup> Street West. There is an irregular rocky shoreline with some trees and scrub vegetation. The lands are designated Hazard in the City's Official Plan.

The City has received two encroachment applications from residents living on the west side of 2<sup>nd</sup> Avenue West (2620 and 2650 2<sup>nd</sup> Avenue West) respecting outdoor activity features proposed to be placed or constructed on the east side of 2<sup>nd</sup> Avenue West between the road and the shoreline. These outdoor activity features include a dock to moor a boat, fire pits, kayak/paddleboard rack and deck chairs. One applicant has also requested the right to remove vegetation and landscape the area.

The encroachments do not affect the integrity of any buildings on the owners' property and therefore staff recommend that the encroachments, if approved, be subject to a Limited Encroachment Agreement, meaning that the encroachments may remain provided that the City may request their removal in the future on six (6) months' notice to the owners. The land upon which the encroachments are meant to sit does not abut the owners' lands, making this a novel request.

Most of Sound Street Beach has traditionally been off-limits to the public save for the small public area at the intersection of 2<sup>nd</sup> Avenue West and 27<sup>th</sup> Street West. The land along Sound Street Beach is divided in ownership between the City and Transport Canada.

In late 2020, Transport Canada met with City staff about the licence that provides public access to the north end of Sound Street Beach. Transport Canada suggested at that time that they would be amenable to transitioning the licence into a lease for the entire portion of Sound Street Beach under their ownership. The lease would give the City the opportunity to use the land as a public area and would require the City to maintain the land and manage the area.

## **Analysis:**

### **City's intent and purpose in holding public lands**

The matter for discussion is the City's vision for how the Sound Street Beach area will be used.

Options:

1. leave the majority of Sound Street Beach off limits to the public and licence the public area at the north end (status quo);
2. leave the majority of Sound Street Beach off-limits to the public except for those with encroachment agreements;
3. recognize the entire Sound Street Beach area as a public access shoreline area and allow encroachments for those with encroachment agreements; or
4. recognize the entire Sound Street Beach area as a public access shoreline area and keep the area free of encroachments.

Option 4 is the staff recommendation. Staff believe that encroachments are not a compatible use in public spaces and believe that the higher use of Sound Street Beach is as a public access area.

If the encroachment applications are approved, it is anticipated that other residents will apply for the same rights and further diminish the area available for enjoyment by other members of the public. There is also a liability concern as there is nothing preventing members of the public from using the private encroachments. Staff anticipate that this arrangement will lead to user conflicts.

Regardless of whether the land is declared a public access area, the encroachments are not recommended by staff. This is because the proposed encroachments do not meet the criteria in the Encroachment By-law. Specifically, staff are of the opinion that the encroachments interfere with the City's intent and purpose in holding the public lands, the encroachments create liabilities for which the City cannot assign full responsibility to the applicants; the encroachments will interfere with work, plans, efforts and initiatives of the City to maintain the public lands; and, the applicants are unable to reasonably demonstrate a need for the encroachments.

If Council wishes to approve the encroachment requests, staff recommend that the approvals be conditional on:

1. a reference plan being created for each application, delineating the City's lands to be encroached upon;
2. approval of the encroachments by Transport Canada, where they span the property line between Transport Canada and the City;
3. all encroachments abiding by the City's by-laws including the Building By-law (no structures permitted) and the Open-Air Fire By-law (no fires without written approval);
4. no trees or vegetation being removed; and
5. any alteration to the grounds being subject to approval by the City and the Grey Sauble Conservation Authority.

Attached are comments from Building, By-law Enforcement, Engineering, Fire, Planning and Parks & Open Space. All comments support a denial of the encroachment applications and approval of the lease between Transport Canada and the City.

## **Transport Canada Lease**

The Transport Canada lease will enable the City to open the area for public use, which is supported by the Official Plan. The Official Plan states that the City will maintain public accessibility to the water's edge to the greatest extent possible, and identify and protect view corridors to and across the water where possible.

The Transport Canada lease has a five-year term running from October 2021 – October 2026. The licence for the area expired in 2021 and, due to the pandemic, it has taken until now to prepare this lease to replace the licence. In the meantime, staff has mocked up signage for the area (photo attached) identifying the public boundaries and conditions of use per the Parks By-law. The only information missing is a municipal address for the area. If the lease is approved by City Council, locates for signage can be requested immediately and the signs can be installed within five (5) working days of the City receiving the complete set of locates.

## **Public Access Area**

The City's Recreation, Parks and Facilities Master Plan includes parkland requirements based on population. Neighbourhood Parks – parks intended to be used primarily by residents of the surrounding neighbourhood (0.5 m radius) – are currently undersupplied. The current inventory is 8.41 hectares and the required inventory is 10.6 hectares. The addition of Sound Street Beach as a neighbourhood park will bring the City closer to the minimum recommended acreage for this class of park.

Respecting the landscaping of the area, the land is intended to stay in its natural state and will continue to be maintained at its current level of vegetation management twice per year. Therefore, there will not be an increase in costs related to the maintenance of the area. Staff will monitor the use of the existing City waste receptacle at Sound Street Beach and will respond if the waste being deposited between pick-ups exceeds the capacity of the receptacle.

Staff are recommending that Sound Street Beach be designated as a public access area; this will recognize the known use of the area and will allow the City to enforce activity under the Parks By-law, in addition to other regulatory by-laws such as the Noise By-law, Dog By-law, Encroachment By-law, etc.

## **Financial Implications:**

The applicants have paid an application fee and will be required to pay an agreement fee if the applications are approved. The agreement fee will cover all costs to have the agreements registered on title to the property.

The costs associated with the Transport Canada lease are:

2021-22	\$750.00
2022-23	\$775.50
2023-24	\$801.87
2024-25	\$829.13
2025-26	\$857.32

## **Communication Strategy:**

The applicants will be notified of Council's decision directly and all neighbours who front onto the Sound Street Beach area will receive a letter respecting the public nature of the area if the lease is approved. Transport Canada will be notified with the return of the signed lease or request to renew the licence. OSPS, By-law Enforcement and Parks & Open Space staff will be advised of the change directly and, if the lease is signed, signage will be posted showing the entire area as public.

## **Consultation:**

Transport Canada, City Solicitor, City Clerk, Building, By-law Enforcement Engineering, Fire and Planning staff.

## **Attachments:**

1. Diagram of Sound Street Beach
2. Diagram of proposed encroachment – ENC 2022-001
3. Diagram of proposed encroachment – ENC 2022-002
4. Consolidated staff comments
5. Draft signage for public access

## **Recommended by:**

Kristen Van Alphen, Manager of Legislative Services

Adam Parsons, Manager of Parks & Open Space

Briana Bloomfield, City Clerk  
Pam Coulter, Director of Community Services

**Submission approved by:**

Tim Simmonds, City Manager

For more information on this report, please contact Kristen Van Alphen,  
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