

Policy

A Policy to Govern the Use of Municipal Land



Policy No.: P-003
By-law #:
Department: Planning
Effective Date:
Revision Date:

Purpose:

The Corporation of the Municipality of Highlands East owns many road allowances, shore road allowances, trails and other parcels of property within its borders. This policy shall provide Council's guidance to the public and staff in dealing with matters related to the use, occupation of, or encroachment onto municipal land.

Policy Statement:

The purpose of this policy is to establish the fees, costs and procedures for applications to use portions of unopened road allowances, original shore road allowances and other municipal lands.

The intent of this policy is to limit the municipality's exposure to liability claims made by individuals making use of or occupying municipal lands and to ensure that any use or occupation of municipal land does not impinge on public access or create demands to improve and maintain unopened road allowances and other municipally owned lands.

Scope:

This policy shall apply to applications to use or occupy an unopened municipal road allowance, municipally owned shore road allowance or any other municipally owned lands.

This policy excludes the sale of road allowances, shore road allowances and the disposition of municipal land, all of which are dealt with in separate policies.

Definitions:

Alteration shall mean the construction of roads or trails, the removal of vegetation, clearing of land or filling or removing of soil from a site.

Encroachment shall mean any use, structure or alteration to municipally owned lands by a private landowner. For clarity, the unpermitted construction of roads or trails, the clearing of land, and the construction of any structure, on, above or underground would constitute an encroachment onto Municipal Land.

Encroachment Agreement shall mean a binding legal agreement between the Municipality and the applicant addressing the Municipality's requirements to permit an encroachment on Municipal land, subject to the requirements outlined in this document.

Entrance shall mean any access to private property from a municipal road, road allowance or other municipally owned access point. An entrance permit shall be required for any access created from a municipal road, road allowance, or other municipal land, including multi-use trails.

Land Use Agreement shall mean a binding legal agreement between the Municipality and applicant addressing all the Municipality's requirements to permit the use of Municipal land, subject to the requirements outlined in this document.

Municipality shall mean the Corporation of the Municipality of Highlands East.

Multi-use Trail shall mean any municipally owned land that is utilized by the public for passive recreation purposes, such as the IB&O Trail. Multi-use Trails are typically used by walkers, cyclists and ATV users with limited or no automobile traffic.

Municipal Land shall mean any land that is owned by the Municipality of Highlands East that is not a road allowance or shoreline road allowance. Municipal land may currently be in use or it may be vacant.

Shoreline Road Allowances are public highways as defined by the Municipal Act that are located along the shore of a navigable waterway.

Unopened Road Allowance as defined by the Municipal Act is a public highway that has not been opened and assumed for maintenance purposes by By-law of the Municipality.

Unassumed Road shall mean any roadway on private or public land that has not been assumed for maintenance by the Municipality or other public authority having jurisdiction.

Policy Principles:

Policy Principles - General

1. The use of municipal land or unopened road allowances shall comply with current Provincial, County and Municipal planning regulations and policies, including but not limited to, the Provincial Policy Statement, the County of Haliburton Official Plan and The Municipality of Highlands East Official Plan.
2. The Municipality may at its sole discretion, and subject to whatever conditions are deemed appropriate, permit use of an unopened road allowance, shore road allowance or other municipal land for uses including but not limited to privately maintained roads, driveways, recreation trails or access to waterbodies.
3. The Municipality will not enter into an encroachment agreement or land use agreement for the use of any municipally owned property that would effectively block public access to public lands, including lakes and rivers.
4. An encroachment agreement or land use agreement for the use or occupation of municipal road allowances, shore road allowances or other municipal land does not infer ownership or exclusive use to the applicant/benefiting landowner.

Prohibitions - General

5. No person shall alter, improve or construct any structure on a municipally owned road allowance, shore road allowance or other municipal land unless specific approval is granted by Council and in compliance with this policy and any other relevant policies (ie, the County of Haliburton's Shoreline Tree Preservation Bylaw, as amended).
6. No person shall erect a dock or construct any kind of structure on an unopened road allowance, or municipal land leading to water unless specific approval is granted by Council and in compliance with this policy.
7. No person shall park or store any vehicle, boat, trailer, ice hut, etc., on an unopened road allowance or municipal land unless specific approval is granted by Council and in compliance with this policy.
8. The Municipality will not open road allowances or assume roadways in most circumstances. Requests for the Municipality to assume a roadway must be made in writing to Council. Such requests shall be considered on a case-by-case basis and shall require that benefiting users improve the roadway at their own cost prior to assumption.

Consultation

9. Where Council has approved in principle a request to use a road allowance, shore road allowance or other municipal land for access purposes, a notice shall be provided by mail to all landowners who abut the subject road allowance or municipal land providing them with an opportunity to provide comment to Council prior to the execution of an agreement.
10. Where Council has approved in principle a request for an encroachment agreement, a notice shall be provided by mail to all landowners within 60 m of the encroachment site providing them with an opportunity to provide comment to Council prior to the execution of an agreement.
11. Council shall receive all comments provided, however the final decision on an application is at Council's discretion and this decision is final and not subject to appeal.
12. Where the road allowance or municipal land to be used for access or driveway also serves as a **multi-use trail** that serves pedestrians, cyclists, ATV and snowmobile users, applicants shall be aware that the protection of recreational trails is a priority for Council, and that enhanced consultation with user groups and parks and recreation staff may be required prior to the approval of an application.

Application Requirements:

Requirements – Access Roads and Driveways

13. The Municipality will consider applications permitting the use of an unopened municipal road allowance, shore road allowance, or other municipal land for driveway or access road purposes provided the following criteria are met:

- (a) The distance to be traveled along the road allowance or municipal land is the shortest, safest route possible and does not constitute an encroachment onto a private property owner.
 - (b) Access to the road allowance or municipal land shall be from a maintained Municipal, County or Provincial roadway, and appropriate entrance approval shall be applied for and received by the benefiting landowners prior to any improvements being made to the entrance or proposed access.
 - (c) Where access to the road allowance or municipal land is by private road or right-of-way, the benefiting landowner shall provide proof of legal access to the Municipality upon submission of their application.
 - (d) The actual location of use on a road allowance or municipal land is the responsibility of the applicant to obtain a survey by an Ontario Land Surveyor, at the expense of the applicant and to the satisfaction of the municipality.
14. In the event that Council grants permission in principle to use an unopened road allowance or municipal land for driveway/access roadway purposes, the following conditions may apply, as determined by the Municipality:
- (a) The benefiting owners shall enter into a land use agreement to be registered on title and binding subsequent owners of their property not to demand future improvement of the road allowance by the Municipality and protecting the Municipality from liability claims of users of the road allowance or municipal land. The person applying to use the road or municipal land will pay the full legal costs of the Municipal Solicitor in drawing and registering the agreement(s).
 - (b) The boundaries of the portion of road allowance or municipal land to be used are surveyed and marked by an Ontario Land Surveyor at the expense of the applicant, prior to the commencement of any work to avoid trespassing on additional municipal or neighbouring land. A plan of survey will be provided to the Municipality and will be included within the legal agreement.
 - (c) If a new entrance way is required, the approval of the Municipal Public Works Department as to its location, width, size and length of culvert to be installed and the grade at which it intersects the Municipal Road is mandated. Where entry is upon a roadway not under the jurisdiction of the Municipality, the standards and specifications of the County of Haliburton or the Ministry of Transportation shall apply.
 - (d) Once the legal entrance way has been established a 911 number shall be obtained from the County of Haliburton for the entrance.
 - (e) If brushing and clearing of the road allowance or municipal land is undertaken, all wood larger than 4 inches in diameter shall be piled for pick-up by the Municipality. Alternatively, the Municipality may agree to sell the wood to the applicant at a pre-set fee per face cord, the volume of wood sold to be determined jointly by the applicant and the Public Works Department. All brush and stumps shall be cleared to the satisfaction of the Municipality.

- (f) If the application is for the provision of an access road, driveway or right-of-way, the minimum width of clearance shall be 16 feet. This 16 feet shall be located in the centre of the road allowance, leaving an equal buffer on either side of the cleared area, unless otherwise approved by Council.
- (g) The applicant shall with the signing of the application assume all costs for any and all improvements to the road allowance or municipal land and all such improvements must be approved by the Municipality. The applicant also is in agreement that any member of the general public has the right to use the subject road allowance and land.
- (h) The applicant must post the road allowance with a notice, in a form acceptable to the Municipality, advising all users of the road allowance that the roadway is an un-assumed Municipal roadway and is used at their own risk.
- (i) The applicant also is in agreement that the Municipality assumes no liability, responsibility or obligation to construct, maintain or repair the road allowance or municipal land.
- (j) The applicant must agree to indemnify and save harmless the Municipal Corporation from any and all manner of actions, causes of actions, claims or demands whatsoever for or by reason of any personal injury and/or property damage of or in any way arising out of any accident whatsoever occurring on the road allowance.
- (k) That the applicant is required to provide proof of insurance with the naming of the municipality as a third party in the amount of five million dollars (\$5,000,000.00) each year upon renewal of their policy for the duration of ownership.
- (l) The application and legal agreement for access purposes shall be binding between the parties and their legal representatives, successors, and assigns. With respect to any sale, lease, mortgage or other disposition of applicant's lands as noted above, or any part thereof, the applicant shall advise the new owner, lessee, chargee/mortgagee or other party of the terms of this application and legal agreement. The application and legal agreement for an encroachment shall be binding between the parties and their legal representatives but shall not be transferred to subsequent landowners without the consent of the Council of the Municipality of Highlands East.
- (m) Final approval of the required by-law and legal agreement will not be given until the realty taxes on the applicant's property are paid in full.
- (n) Any other conditions deemed appropriate by Council.

Encroachments onto Road Allowances and Municipal Land (Excluding Shore Road Allowances and Road Allowances Directly Abutting Lakes or Rivers)

15. The Municipality will consider applications to enter into a legal agreement to resolve encroachments onto road allowances or municipal land provided the following criteria is met:
- (a) The applicant must be the registered land owner directly adjacent to the encroachment and the agreement shall only apply to land located directly in front of the registered owner's property.

- (b) The applicant acknowledges that entering into an encroachment agreement does not infer any ownership or exclusive right to the land subject to the agreement.
- (c) The encroaching structure is otherwise compliant with the uses and structures that the applicant's abutting property is zoned to permit.
- (d) The applicant understands and acknowledges that encroachment agreements do not grant legal status to structures constructed in violation with the provisions of Ontario Building Code or other applicable law.
- (e) The applicant understands and acknowledges that should the encroachment be a permanent structure (ie, the main structure of a dwelling, or substantial structure such as a garage), an application should be made to purchase the land underneath the encroachment, rather than to enter into an encroachment agreement in perpetuity.
- (f) The applicant acknowledges that failure to comply with the provisions of an encroachment agreement will result in the termination of the agreement and requirement that the applicant remove the encroachment, at their cost.

16. In the event that Council grants permission in principle to enter into an encroachment agreement for road allowances and municipal land, the following conditions may apply, as determined by the Municipality:

- (a) The applicant agrees to enter into an encroachment agreement to be registered on title. The agreement will be in place for a fixed period of time, renewable by Council at their discretion. The agreement may require that the landowner pay a yearly fee for the use of the municipal land for their encroachment and will require that the landowner furnish the Municipality with proof of acceptable liability insurance on a yearly basis.

All costs associated with the agreement, including but not limited to legal fees, consulting costs, and insurance, will be borne by the encroaching landowner.

- (b) The agreement for the encroachment shall not be transferrable, and upon sale of the private property with the encroaching structure, the new land owners must either remove the encroachment or enter into a new agreement with the Municipality.
- (c) The boundaries of the encroachment are surveyed by an Ontario Land Surveyor and a legal plan of survey illustrating the encroachment is produced. This survey will be attached to the encroachment agreement. All costs associated with the survey shall be borne by the encroaching landowner.
- (d) The applicant must agree to indemnify and save harmless the Municipal Corporation from any and all manner of actions, causes of actions, claims or demands whatsoever for or by reason of any personal injury and/or property damage of or in any way whatsoever occurring on the road allowance or municipal land being occupied by the applicant.
- (e) That the applicant is required to provide proof of insurance with the naming of the municipality as a third party in the amount of five million dollars (\$5,000,000.00) each

year upon renewal of their policy for the duration of the agreement.

- (f) Should the agreement not be renewed by either the landowner or the Council of the Municipality of Highlands East, the encroaching structure must be removed. All costs associated with the removal of the encroachment shall be borne by the encroaching landowner.
- (g) The applicant is wholly responsible for requesting renewal of the agreement with the Municipality, and failure to request renewal of the agreement at the expiry of the agreement may result in the removal of the encroachment at the encroaching landowner's expense.
- (h) Final approval of the required by-law and legal agreement will not be given until the realty taxes on the applicant's property are paid in full.
- (i) Any other conditions deemed appropriate by Council.

Shoreline Encroachments

- 17. Where a landowner directly abutting a shoreline road allowance wishes to make improvements to or construct/repair structures on a shore road allowance, an application to close and purchase the shoreline road allowance should be made.
- 18. Where a landowner is directly adjacent to a shoreline road allowance but is separated from this road allowance by a municipally maintained road, Council may consider an application to permit a dock or other shoreline structure provided the following criteria are met:
 - (a) The applicant must be located directly across the roadway from the subject portion of shore road allowance; the purpose of this policy is not to permit backlot owners to utilize municipal land for docking purposes.
 - (b) The applicant acknowledges that entering into an encroachment agreement does not infer any ownership or exclusive right of use to the land subject to the agreement.
 - (c) The dock or any other structures must otherwise comply with the provisions of the zoning bylaw that is in place at the time of the application.
 - (d) Equipment storage structures and sheds are not permitted on the shore road allowance.
 - (e) The shoreline shall be maintained in a natural state; removing natural vegetation and trees, installing grass, turf, asphalt or concrete, filling with beach sand, or installing retaining walls or substantially changing the grade of the subject shore road allowance is prohibited. A cleared pathway from the roadway to the water's edge shall be permitted to a maximum width of 2 m.
 - (f) No structures may be constructed that could interfere with the maintenance and use of the roadway. Existing ditches shall not be interfered with in any way.

- (g) The applicant acknowledges that failure to comply with the provisions of an encroachment agreement will result in the termination of the agreement and requirement that the applicant remove the encroachment, at their cost.

19. In the event that Council grants permission in principle to enter into an encroachment agreement for a shoreline road allowance, the following conditions may apply, as determined by the Municipality:

- (a) The applicant agrees to enter into an encroachment agreement to be registered on title. The agreement will be in place for a fixed period of time, renewable by Council at their discretion. The agreement may require that the landowner pay a yearly fee for the use of the municipal land for their encroachment and will require that the landowner furnish the Municipality with proof of acceptable liability insurance on a yearly basis.

All costs associated with the agreement, including but not limited to legal fees, consulting costs, and insurance, will be borne by the encroaching landowner.

- (b) The agreement for the encroachment shall not be transferrable, and upon sale of the private property with the encroaching structure, the new land owners must either remove the encroachment or enter into a new agreement with the Municipality.
- (c) The boundaries of the shore road allowance in front of the applicant's property are surveyed by an Ontario Land Surveyor and a legal plan of survey illustrating the location of any docks or improvements is produced. This survey will be attached to the encroachment agreement. All costs associated with the survey shall be borne by the encroaching landowner.
- (d) Should the agreement not be renewed by either the landowner or the Council of the Municipality of Highlands East, the encroaching structure must be removed. All costs associated with the removal of the encroachment shall be borne by the encroaching landowner.
- (e) The applicant is wholly responsible for requesting renewal of the agreement with the Municipality, and failure to request renewal of the agreement at the expiry of the agreement may result in the removal of the encroachment at the encroaching landowner's expense.
- (f) The applicant must agree to indemnify and save harmless the Municipal Corporation from any and all manner of actions, causes of actions, claims or demands whatsoever for or by reason of any personal injury and/or property damage of or in any way arising out of any accident whatsoever occurring on the road allowance.
- (g) That the applicant is required to provide proof of insurance with the naming of the municipality as a third party in the amount of five million dollars (\$5,000,000.00) each year upon renewal of their policy for the duration of the agreement.
- (h) Final approval of the required by-law and legal agreement will not be given until the realty taxes on the applicant's property are paid in full.
- (i) Any other conditions deemed appropriate by Council.

Application Procedures:

- 20. Upon receipt of a completed application and fee, staff will complete a preliminary review of the application and bring the request to a Council meeting.
- 21. Should Council approve of the application in principle, staff will circulate a notice to the public as per the policy. Staff will also circulate the proposal to pertinent departments (parks and recreation, fire, public works and building/bylaw) for comment. A site visit may be made by staff.
- 22. The applicant will be advised of conditions required and if they consent to the conditions outlined, a land use or encroachment agreement shall be drafted, at the applicant's cost.
 - (a) If a survey is required prior to the execution of the agreement, the applicant shall arrange for the survey work to be completed prior to a draft agreement being submitted to Council.
- 23. A draft agreement and report will be provided to Council for approval and execution.
- 24. Once an agreement has been executed and registered, if required, the applicant may begin work. Work or improvements shall not be undertaken prior to the execution of the agreement.

Administrative Information:

Mandatory:
No

Revision Log:

Number	Date	Description