



## Governance and Priorities Committee Report

---

**Date:** April 8, 2014      **From:** Neil Turner  
**Subject:** Grant of Easement – 111 Barkley Terrace

---

### **Purpose of Report**

The purpose of this report is to seek Council approval to grant an easement in respect of part of a residential building at 111 Barkley Terrace encroaching into the road right of way.

### **Executive Summary**

Distinctive (Abstract) Developments Ltd is currently undertaking the renovation and extension of the house at 111 Barkley Terrace. The lot on the west side of the road is located on a steep slope which is 20 to 25 metres below the right of way at the west boundary of the lot. The house is built into the steep slope. A location plan is attached in Schedule A.

Parts of the original building at 111 Barkley Terrace extend beyond the property line into the road right of way, and the developer now wishes to legalize that situation by means of an easement as shown on the reference plan in Schedule B. No part of the new construction extends into the right of way.

The proposed easement and permitted encroachments would include an existing stone stairway almost entirely within the easement area. Typically, encroachment easements are granted because the foundation of an older building was constructed over the property line or, as is typical in Victoria, bay windows on existing heritage buildings encroach into the road right of way. In these situations, the potential liability of the City resulting from the encroachment is minimal. With respect to the property at 111 Barkley Terrace, however, the existing stairs do pose an increased risk of liability.

The terms of the easement will require the property owner to carry third party liability insurance, with the City named as an additional insured, and to indemnify the City against claims. However, since the stairs are for the most part within City right of way, an injured third party would most likely make a claim against the City for any loss. The City would then seek indemnification from the property owner under the terms of the easement.

Transportation staff have been consulted and have no objection to the proposed easement being granted. The developer has agreed to pay a set fee of \$1,000.00 for the easement.

The area proposed for the easement is set out in the reference plan (Schedule B). The legal documentation will be drafted by the developer's lawyer and submitted to the City Solicitor for approval, thus minimising the City's costs. The proposed easement will endure for the life of the building.

The recommended course of action is to enter into the proposed easement as it will remedy an unauthorized encroachment on the City's right of way and indemnify the City against any potential claims arising from the encroachment. The publication of notices of Council's intention to enter into the easement is a precondition of its final execution.



**Recommendation:**

That Council authorizes staff to enter into an easement with Distinctive (Abstract) Property Management Ltd for an encroachment into the road right of way adjacent to 111 Barkley Terrace defined in Schedule B, in a form satisfactory to the City Solicitor, subject to the publication of the notices required under the Community Charter.

Respectfully submitted,



Neil M Turner  
Property Manager



Robert G Woodland  
Corporate Administrator

Report accepted and recommended by the City Manager:



Date: April 16, 2014



Schedule A  
Location Plan





Schedule B  
Reference Plan of Easement

0 2 10 20  
All distances are shown in metres.  
The intended plot size of this plan is 580mm in width by 432mm in height (C size) when plotted at a scale of 1:200.

