

PURPOSE

The purpose of the *DAR Corridor Legacy Encroachments Policy* is to provide guidance for the review and administration of Legacy Encroachments located within Municipal lands associated with the Former Dominion Atlantic Railway (DAR) Corridor.

This Policy recognizes the presence of legacy encroachments within portions of the former rail corridor. Any such presence, including where it may have existed prior to Municipal ownership, is not intended to confer or imply any legal right, title, interest, or entitlement. This Policy establishes a framework that balances these Legacy Encroachments with the Municipality's responsibility to protect public lands, preserve future trail opportunities, and meet municipal operational requirements.

This Policy is intended to supplement Bylaw A-300, *Encroachment on Municipal Real Property*.

SCOPE

This Policy applies to Legacy Encroachments located within Municipal Real Property known as the former DAR Corridor/Line. This Policy does not apply encroachments located within lands other than the DAR Corridor.

Nothing in this Policy limits the Municipality's authority under Bylaw A-300, any applicable legislation, or the terms of any agreement, covenant, or other legal instrument. Where a conflict exists between this Policy and Bylaw A-300, as amended, the provisions of Bylaw A-300 shall prevail.

DEFINITIONS

Term	Definition
2025 Survey Sketches	The sketches prepared by Williams Nutter Limited dated 2025, or as may be updated per the Municipality, depicting the approximate location of identified encroachments within the DAR Corridor, and, generally, used by the Municipality as the baseline reference for identification of Legacy Encroachments under this Policy.

Term	Definition
DAR Corridor or DAR Line	The Municipal Real Property currently owned by the Municipality that was formally used as the Dominion Atlantic Railway right-of-way, including any associated rail bed, abutting corridor lands, and any ancillary lands expressly identified by the Municipality as forming part of the DAR Corridor for the purposes of this Policy. For greater clarity, the boundaries of the DAR Corridor shall be as determined by the Municipality based on available survey information, historical rail mapping, acquisition records, and other relevant property and title information, and shall not be limited to any single survey plan or depiction.
Encroachment	The placement, advancement, or extension of a structure or installation or object onto land owned by the Municipality that may or may not be approved by the Municipality. An Encroachment may include any type of vegetation, man-made object, or item of personal property; and shall include any aerial, surface, or subsurface Encroachments.
(Encroaching) Property Owner	The person holding legal title to land adjoining Municipal Real Property who is responsible for any encroachment originating from that land. If a tenant, occupant, party, or other person places an encroachment on Municipal Real Property, the Property Owner remains fully responsible.
Immediate Family Member	Means a spouse, common-law partner, parent, child, sibling, grandparent, or grandchild of the Encroaching Property Owner, including relationships established through marriage, adoption, or a blended family arrangement.
Legacy Encroachment	An existing encroachment located within the DAR Corridor that is identified on the 2025 Survey Sketches, or otherwise qualifies under this Policy, and is eligible for consideration by the Municipality for authorization. An encroachment that is in contravention of any Municipal bylaw, permit, agreement, or other applicable law or regulation may not be considered a Legacy Encroachment under this Policy. Note: As per section 1.3., a Legacy Encroachment that is subject to an Encroachment License, agreement, easement, covenant, or other legal instrument entered into with the Municipality shall be deemed a Licensed Encroachment.
(Legacy) Encroachment License	Means a formal written agreement, prepared by the Municipality, between the Municipality and the Property Owner for a Licensed Encroachment under defined terms and conditions. The form and content of the Encroachment License shall be as prescribed by the CAO.
Licensed Encroachment	An encroachment temporarily permitted by the Municipality and documented and subject to the terms of an Encroachment License Agreement. Or as the definition is amended in Bylaw A-300.
Municipal Real Property	Means any real property owned by the Municipality.

Term	Definition
Proposed Encroachment	A newly proposed encroachment not previously licensed or otherwise permitted by the Municipality. Or as the definition is amended in Bylaw A-300. For the purposes of this Policy, it includes an encroachment within the DAR Corridor that is not a Legacy Encroachment or Licensed Encroachment, and includes a modification to an existing encroachment that requires review and approval under Bylaw A-300.
Unauthorized Encroachment	An encroachment not licensed under Bylaw A-300, and/or this Policy, and is subject to removal. Or as the definition is amended in Bylaw A-300.

POLICY

POLICY STATEMENT

1. General Policy

- 1.1. The Municipality acknowledges that certain Legacy Encroachments may exist within the DAR Corridor.
- 1.2. A Legacy Encroachment may be permitted by the Municipality through an Encroachment License, agreement, covenant, or other legal instrument entered into with the Municipality.
- 1.3. A Legacy Encroachment that is subject to an Encroachment License, agreement, easement, covenant, or other legal instrument entered into with the Municipality shall be deemed a Licensed Encroachment.
- 1.4. Approval of a Legacy Encroachment or Licensed Encroachment does not confer or imply any legal right, title, interest, or entitlement to Municipal Real Property. Nothing in this Policy shall be interpreted as acknowledging or establishing any claim for adverse possession, prescriptive rights, or similar interest in Municipal Real Property.
- 1.5. Nothing in this Policy limits the Municipality's ability to require the relocation or removal of a Legacy Encroachment or Licensed Encroachment where required for Municipal purposes in accordance with the applicable agreement, or to determine that any encroachment is an Unauthorized Encroachment where it is in contravention of Municipal bylaws, permits, or other applicable laws or regulations.
- 1.6. Except where otherwise required by law, all decisions made under this Policy, including whether to permit, license, convey, remove, or otherwise resolve an encroachment, are at the sole discretion of the Municipality.

2. Qualifications for a Legacy Encroachment

- 2.1. Qualification as a Legacy Encroachment does not entitle an Encroaching Property Owner permission, continued occupation, or any particular form of agreement with the Municipality.

- 2.2. To qualify as a Legacy Encroachment, the encroachment shall be identified on the 2025 Survey Sketches. Where an encroachment is not shown on the 2025 Survey Sketches, the Municipality may recognize it as a Legacy Encroachment where it is satisfied that the omission resulted from a surveying, drafting, or administrative error. All other encroachments will otherwise be reviewed under Bylaw A-300 as Proposed Encroachments and assessed in accordance with the criteria established therein.
- 2.3. To qualify as a Legacy Encroachment, the encroachment shall not be in contravention of any Municipal bylaw, permit, agreement, or other applicable law or regulation. Where the Municipality determines that an encroachment is in contravention of any such requirement, the encroachment may not qualify as a Legacy Encroachment and will be addressed in accordance with Bylaw A-300 and/or any other applicable Municipal bylaw, policy, permit, agreement, or legal instrument.

3. Criteria for Approval of Legacy Encroachments Within the DAR Corridor

- 3.1. In addition to the criteria established in Section 5 of Bylaw A-300, the Municipality shall consider the following factors when evaluating a Legacy Encroachment or Licensed Encroachment within the DAR Corridor:
- 3.1.1. The encroachment is identified on the 2025 Survey Sketches, or otherwise demonstrated to have existed at such time per section 2.2.;
 - 3.1.2. The encroachment does not interfere with current or planned municipal use of the DAR Corridor, including future trail development, access, infrastructure, or other Municipal requirements;
 - 3.1.3. The encroachment does not create or exacerbate risks to public safety or the environment, or otherwise adversely affect the environmental integrity of the DAR Corridor;
 - 3.1.4. The nature of the encroachment, including its permanence, construction, purpose, location, and impact on Municipal lands; and
 - 3.1.5. Any other corridor-specific consideration relevant to the Municipality's ownership, management, operation, protection, or future use of the DAR Corridor.
 - 3.1.6. Where relevant, the length of time the encroachment has existed within the DAR Corridor.
- 3.2. Notwithstanding any other provision of this Policy, the Municipality may determine that an encroachment is not a Legacy Encroachment and/or is not appropriate for authorization by Encroachment License where the encroachment is temporary, readily moveable, minor in nature, or can reasonably be removed or relocated on the Encroaching Property Owner's property without significant hardship. In such cases, the Municipality may require the encroachment to be removed or relocated within a specified timeframe. The Chief Administrative Officer shall refer the matter back to Council for consideration where the circumstances warrant.

4. Alterations to Legacy Encroachments

- 4.1. Permitting a Legacy Encroachment under this Policy is intended to recognize existing conditions only and does not establish any right to alterations beyond the terms of an executed Encroachment License.
- 4.2. An Encroaching Property Owner shall request authorization from the Municipality prior to undertaking any alteration to a Legacy Encroachment or Licensed Encroachment, other than routine maintenance or repair.
- 4.3. For the purposes of this Policy, routine maintenance or repair to maintain the Encroachment in good and safe condition that does not increase the footprint, height, scale, character, location, use, or overall impact of an encroachment shall not be considered an alteration.
 - 4.3.1. The determination of what constitutes routine maintenance and repair shall be made by the Municipality, acting reasonably, and may be further defined within the terms and conditions of any Encroachment License or other agreement.
- 4.4. Any enlargement, expansion, relocation, reconstruction, or other alteration that increases the footprint, height, scale, character, location, use, or overall impact of an encroachment shall terminate its status as a Licensed Encroachment for the portion affected by the alteration and shall require review as a Proposed Encroachment in accordance with Bylaw A-300, unless otherwise authorized by the Municipality or per the terms of an Encroachment License.
- 4.5. Reconstruction or replacement of a Legacy Encroachment, resulting from deterioration, damage, deconstruction, or the end of its useful life, shall only be permitted with the prior written approval of the Municipality. In considering such approval, the Municipality may impose any conditions it considers appropriate, including requiring that the reconstruction or replacement not materially increase the encroachment's footprint, height, scale, character, location, use, or overall impact.

5. Assignment of Encroachment Licenses

- 5.1. An Encroachment License is granted to the Encroaching Property Owner and does not automatically run with title to the Encroaching Property. An Encroachment License shall not be assigned or transferred without the prior written approval of the Municipality.
- 5.2. Provided the Encroachment remains unchanged and the assignee agrees in writing to be bound by the terms and conditions of the existing Encroachment License, the Chief Administrative Officer is authorized to approve the assignment of an Encroachment License where:
 - 5.2.1. The assignment results from the administration of an estate;

5.2.2. The assignment results from the transfer of the Encroaching Property between Immediate Family Members; or

5.2.3. The Encroachment License relates to a private well servicing the encroaching property or a portion of a primary dwelling;

5.3. Any assignment of an Encroachment License not described in Section 5.2. shall require Council approval and be addressed on a case-by-case basis.

6. Enforcement

6.1. The Municipality will generally prioritize review and formalization of License Agreements for Legacy Encroachments identified on the 2025 Survey Sketches before initiating enforcement action, except where immediate action is required for safety, operational, legal, or liability reasons. Nothing in this section limits the Municipality's authority under Bylaw A-300 to address such matters at any time.

6.2. An encroachment within the former DAR Corridor that is not a Licensed Encroachment or authorized under this Policy, Bylaw A-300, or another agreement with the Municipality is an Unauthorized Encroachment and may be subject to enforcement action under Bylaw A-300.

6.3. A Legacy Encroachment identified on the 2025 Survey Sketches shall not be considered an Unauthorized Encroachment while under review by the Municipality for potential authorization, provided it remains substantially unchanged from the condition shown on the 2025 Survey Sketches and otherwise complies with this Policy and Bylaw A-300.

6.4. Where a Legacy Encroachment is under review and the Encroaching Property Owner fails to respond within prescribed timeframes, refuses to provide reasonably requested information, refuses to execute a required agreement, or otherwise impedes the review process, the Municipality may treat the encroachment as Unauthorized and proceed with enforcement under Bylaw A-300.

6.5. Prior to enforcement under Bylaw A-300 for a Legacy Encroachment, the Chief Administrative Officer shall refer the matter back to Council for consideration where the circumstances warrant, including where the enforcement action may have significant implications for the Encroaching Property Owner, the DAR Corridor, or the Municipality. Nothing in this section limits the Municipality's authority to proceed with enforcement where immediate action is required for safety, operational, legal, or liability reasons.

7. Conveyance of Encroached Lands

7.1. Where a Legacy Encroachment occupies only a minor portion of Municipal property, does not interfere with the Municipality's operation, access, infrastructure, or future use of the DAR Corridor, and the

Encroaching Property Owner provides evidence satisfactory to the Municipality that the encroachment has existed for a period of at least twenty (20) years, the Municipality may, at its sole discretion, consider conveying the encroached portion of lands to the Encroaching Property Owner.

- 7.2. Where a Legacy Encroachment has existed for less than twenty (20) years, the Municipality may consider conveying the encroached lands on a case-by-case basis where it is determined to be in the Municipality's best interests.
- 7.3. Any conveyance under this section shall be subject to Council approval, completion of a legal survey, compliance with subdivision requirements, and all applicable legislation, policies, and Municipal interests.

8. Fees and Expenses

- 8.1. The Municipality shall waive any administrative fee otherwise payable for the review, preparation, processing, or execution of an Encroachment License relating to a permitted Legacy Encroachment, unless otherwise determined by Council and consistent with Bylaw A-300 and the Municipal Fee Policy.
- 8.1.1. Nothing in this section exempts an Encroaching Property Owner from any costs, fees, expenses, penalties, remediation requirements, or other obligations arising from enforcement action under this Policy and Bylaw A-300.
- 8.2. The Encroaching Property Owner shall reimburse the Municipality for actual third-party costs incurred in relation to a conveyance of encroached lands, including legal, survey, subdivision, registration, and other related costs, unless otherwise approved by Council. Reimbursement shall be required prior to execution and registration of any conveyance documents. Municipal staff time associated with processing the conveyance shall be absorbed through existing operating budgets.
- 8.2.1. Nothing in this section limits the Municipality's discretion to require additional conditions or costs as part of any approved conveyance.

ROLES AND RESPONSIBILITIES

Title/Role	Responsibilities
Policy Editor	The Policy Editor is a person having managerial and policy-making responsibility related to the writing, compilation and revision of content and will: • Ensure policies in their care and control are always up-to-date, reviewed annually or sooner if necessary • Draft new or edit existing policy content • Be able to interpret and explain policy content • Ensure policy documents are branded and any supporting documents, ie. applications forms are also branded and content consistent with the policy • Ensure policy content is relevant and accurate • Seek and secure approval recommendation of the policy from the Policy Owner • Seek and secure approval of the policy from the appropriate Approver; and, • Provide the final approved policy document to the Assistant Municipal Clerk
Policy Owner	The Policy Owner will: • Provide oversight to ensure policies in their care and control are always up-to-date, reviewed annually or sooner if necessary by the assigned Policy Editor • Be able to interpret and explain policy content • Provide oversight to ensure policy documents are branded and any supporting documents, ie. application forms are also branded and content consistent with the policy • Provide oversight to ensure policy content is relevant and accurate • Review the policy and make recommendation for approval to the appropriate Approver; and, • Ensure that the final approved policy document has been provided to the Assistant Municipal Clerk
Approver	The Approver will: • Review Policy recommendations for approval consideration (approve, reject or edit); and, • Notify the Policy Editor, Policy Owner and Assistant Municipal Clerk of decision
Assistant Municipal Clerk	The Assistant Municipal Clerk will: • Facilitate an annual Policy Review; and, • Ensure final approved policies are maintained, stored and posted where appropriate
Employees	The Employees will: • Be responsible for administrating encroachments within the former DAR Corridor in accordance with this policy.

RELATED DOCUMENTATION

Related forms, processes, procedures and other documents that support the policy.



EAST HANTS

DAR Corridor Legacy Encroachments Policy

☒ Council ☐ Administrative

Document Name	Document ID	Document Type
Management of Real Property Policy		Policy

VERSION LOG

Version Number	Amendment Description	Amendment/Policy Editor	Amendment/Policy Owner	Approver	Approval Date
1.0	Approval of Policy by Council		Director, Corporate Services	Council	

CERTIFICATION

I, Kim Ramsay, Municipal Clerk for the Municipality of East Hants, hereby certify that this policy was duly approved.

Kim Ramsay
Municipal Clerk