



Quinto M. Annibale*
*Quinto Annibale Professional Corporation
Direct Line: (416) 748-4757
e-mail address: qannibale@loonix.com

VIA EMAIL (nina.lecic@erin.ca)

June 5, 2024

Mayor Michael Dehn and Members of Council
Town of Erin
5684 Trafalgar Road
Hillsburgh, Ontario
N0B 1Z0

Dear Mr. Mayor and Members of Council,

**RE: Dedication of Blocks 8 and 9, PL 814, Town of Erin as a public highway pursuant to section 31(2) of the *Municipal Act*, 2001, S.O., c. 25
Grant of Utility Easement in favour of Enbridge Gas Inc. over Block 357, Plan 61M-258, Town of Erin**

The purpose of this report is to seek direction from Council with respect to the following:

1. the dedication of Blocks 8 and 9, PL814, Town of Erin (“Erinville Drive Extension Lands”) located in the Village of Erin as a public highway pursuant to section 31(2) of the *Municipal Act*, 2001, S.O., c.25 (“Municipal Act”); and,
2. The grant of a blanket utility easement to Enbridge Gas Inc. (“Enbridge”) over Open Space Block 357, Plan 61M-258.

The Erinville Drive Extension Lands were previously dedicated to the Town through the approval and registration of plan of subdivision PL814. A copy of PL814 is attached to this report as **Attachment “1”** for reference. The Erinville Drive Extension Lands are currently being improved to an urban standard by Solmar as a condition of the approval of its draft plan of subdivision for the Erin Glen Community. Grading and construction of the road to a base gravel standard has already been completed.

The dedication of the Erinville Drive Extension Lands as a public highway will have the effect of legally extending Erinville Drive eastward to connect to the Erin Glen Community being developed by Solmar Development Corp.

The dedication of the Erinville Drive Extension Lands as a public highway is required at this time in order to allow for the installation of natural gas distribution lines by Enbridge



which are required to service the Erin Glen Community. Enbridge has advised that it will not extend services along the Erinville Drive Extension Lands until the Town either grants it an easement to permit this installation or until the lands are dedicated as a public highway.

In our view the most expedient and cost-effective way for the Town to move forward is to dedicate the lands as a public highway at this time, subject to the qualification described in detail below. This would allow the works to proceed pursuant to the current Natural Gas Franchise Agreement between the Town of Erin and Enbridge Gas Inc., which grants a general permission for Enbridge to install and operate natural gas infrastructure under public highways.

I note that the dedication of the Erinville Drive Extension Lands as a public highway will trigger maintenance obligations on the part of the Town pursuant to section 44 of the Municipal Act. With this, comes a potential liability risk if the Town fails to meet its maintenance obligations and an individual is injured while travelling on the Erinville Drive Extension Lands. This liability risk can, however, be substantially mitigated by drafting the dedication by-law in a manner that generally restricts the common law right of passage over the Erinville Drive Extension Lands pursuant to section 35 of the Municipal Act. This restriction would include a specific carve out for the works that Enbridge will be undertaking.

A physical barrier would be erected to enforce the prohibition against public access. The physical barrier and the prohibition would automatically be removed when the adjacent roadway on the Erinville Drive Extension Lands are opened for travel. This will be addressed through the draft by-law .

In addition to dedicating the Erinville Drive Extension as a public highway as described above, Enbridge has requested that the Town grant it a blanket utility easement over open space Block 357 on Plan 61M-258, in the form as attached hereto as **Attachment “2”**. The easement is required in order to allow Enbridge to construct a proposed district station that will service the new Erin Glen Community with natural gas. The grant of this easement is also required before Enbridge will commence construction of the infrastructure needed to service the new Erin Glen Community and supply it with natural gas. We have reviewed the form of easement and can confirm that it is acceptable and would recommend that the requested easement be granted to Enbridge for nominal consideration. For reference, a copy of Plan 61M-258 is attached hereto as **Attachment “3”**.

Recommendations

1. That Council pass a by-law to do the following:



- a. Establish Blocks 8 and 9, PL 814, Town of Erin as a public highway pursuant to section 31(2) of the Municipal Act, 2001, S.O., c. 25; and,
 - b. Restrict the common law right of passage over Blocks 8 and 9, PL 814, Town of Erin by the public over a highway with the qualification that this restriction shall not prevent Enbridge Gas Inc. or its agents from installing its works on the lands in the same manner as any other public highway.
2. That Council authorize the conveyance of a blanket utility easement in favour of Enbridge Gas Inc. in the form as attached hereto as Attachment "2" over the lands legally described as Block 357, Plan 61M-258.
 3. That the Mayor, Clerk, and Town Solicitor be authorized to take such steps and execute such documents as may be necessary to give effect to the direction in #2 above.

I trust this is satisfactory, however, should you have any questions please don't hesitate to contact me.

Yours truly,

LOOPSTRA NIXON LLP

Per: Quinto M. Annibale

QMA/br