

THE CORPORATION OF THE TOWN OF GEORGINA

REPORT NO. CAO-2018-0001

**FOR THE CONSIDERATION OF
COUNCIL**

January 10, 2018

**SUBJECT: LAKE DRIVE SHORELINE JURISDICTION ACTION PLAN – POLICY
STEP 4**

1. RECOMMENDATIONS:

- 1. That Council receive Report No. CAO-2018-0001 prepared by the Office of the CAO dated January 10, 2018 respecting the Lake Drive Shoreline Jurisdiction Action Plan – Policy Step 4;**
- 2. That as per Action Plan Policy Step 4, Council receive the reporting letter from Ritchie, Ketcheson, Hart and Biggart dated January 2, 2018.**
- 3. That in support of Strategic Plan Action Item 4.15, staff be directed to proceed to next steps as determined.**

2. PURPOSE:

The purpose of this report is to provide Council legal opinion with respect to the Lake Drive Shoreline Jurisdiction Action Plan – Policy Step 4 and to determine next steps in the reporting process.

3. BACKGROUND:

On July 19, 2017 Council received Report CAO-2017-0004 which outlined the Action Plan recommended to process the proposed Policies A and B as submitted by the Lake Drive Shoreline Jurisdiction Ad Hoc Committee.

On August 9, 2017 Council received Report CAO-2017-0006 with respect to Action Plan - Policy Step 1 and subsequently directed staff to continue to investigate the potential divestiture of the lakeside lands and to commence the additional steps in the Action Plan.

On October 11, 2017 Council received Report CAO-2017-0013 with respect to Action Plan – Policy Step 2 and directed to staff to report back on Action Plan – Policy Step 4.

4. ANALYSIS:

Lake Drive Shoreline Jurisdiction Action Plan – Policy Step 4 requires that a report be submitted to Council which contemplates policy matters to be considered in order to proceed with the sale or lease of the lakeside lands. Attachment 2 provides this assessment.

5. RELATIONSHIP TO CORPORATE STRATEGIC PLAN:

This report addresses the following strategic goal:

Goal 4: Provide Exceptional Municipal Services “Organizational and Operational Excellence”

Action 4.15: Continue the collaborative efforts for resolution of Lake Drive shoreline jurisdiction issues.

6. FINANCIAL AND BUDGETARY IMPACT:

Financial impacts associated with the potential divestiture of the affected lakeside lands are discussed in Attachment 2.

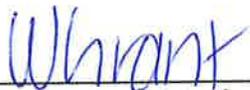
7. PUBLIC CONSULTATION AND NOTICE REQUIREMENTS:

There are no public consultation or notice requirements associated with this report.

8. CONCLUSION:

In support of Strategic Plan Action Item 4.15, staff recommend that reporting continue in support of the Lake Drive Shoreline Jurisdiction Action Plan.

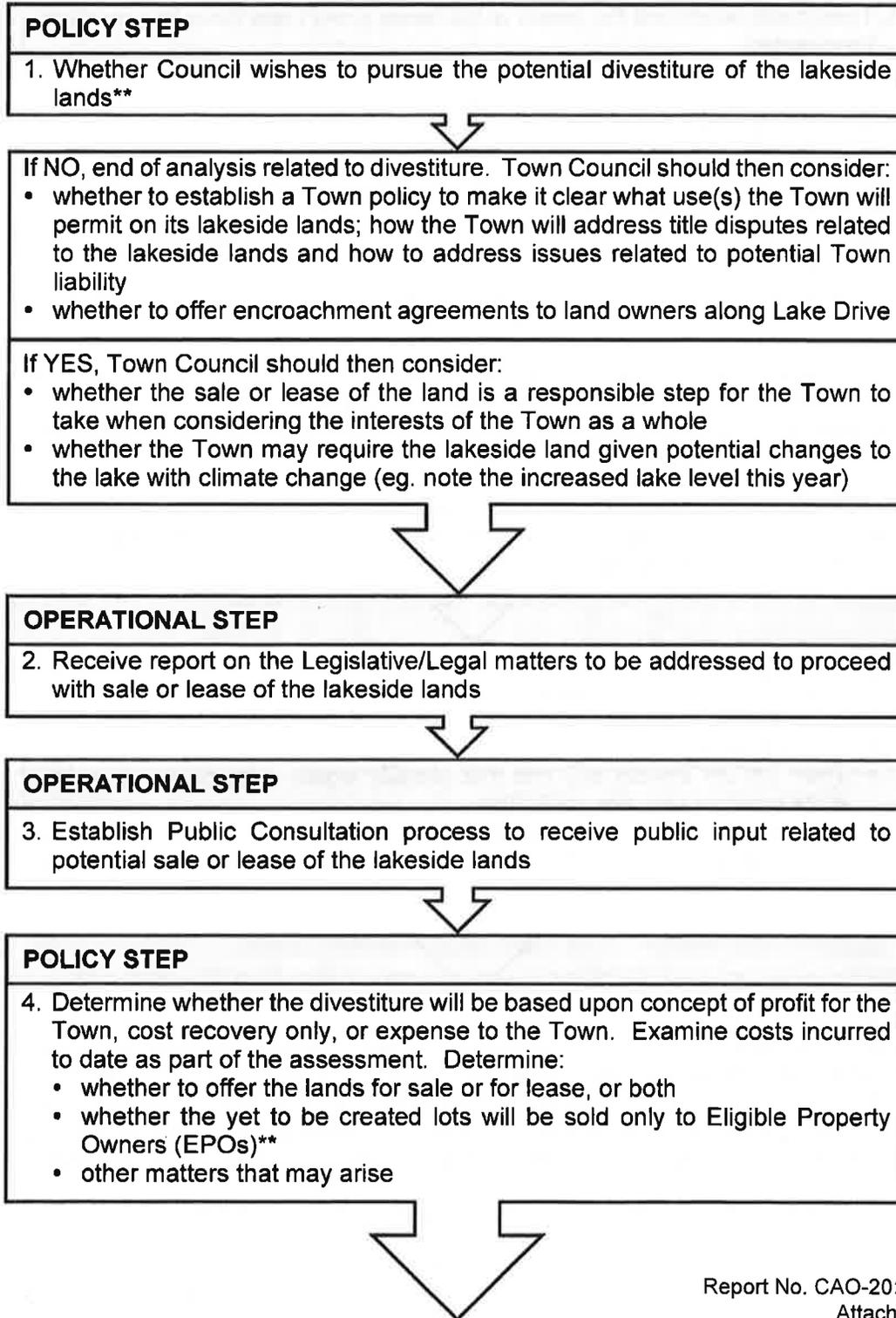
Prepared and Recommended by:



Winanne Grant, B.A., AMCT, CEMC
Chief Administrative Officer

*Attachment 1 – Lake Drive Shoreline Jurisdiction Action Plan
Attachment 2 – Correspondence from Ritchie Ketcheson Hart and Biggart dated
January 2, 2018*

MATTERS TO BE DECIDED BY COUNCIL *



MATTERS TO BE DECIDED BY COUNCIL*

POLICY STEP
5. Town must determine the extent of the lands along Lake Drive to potentially be divested.

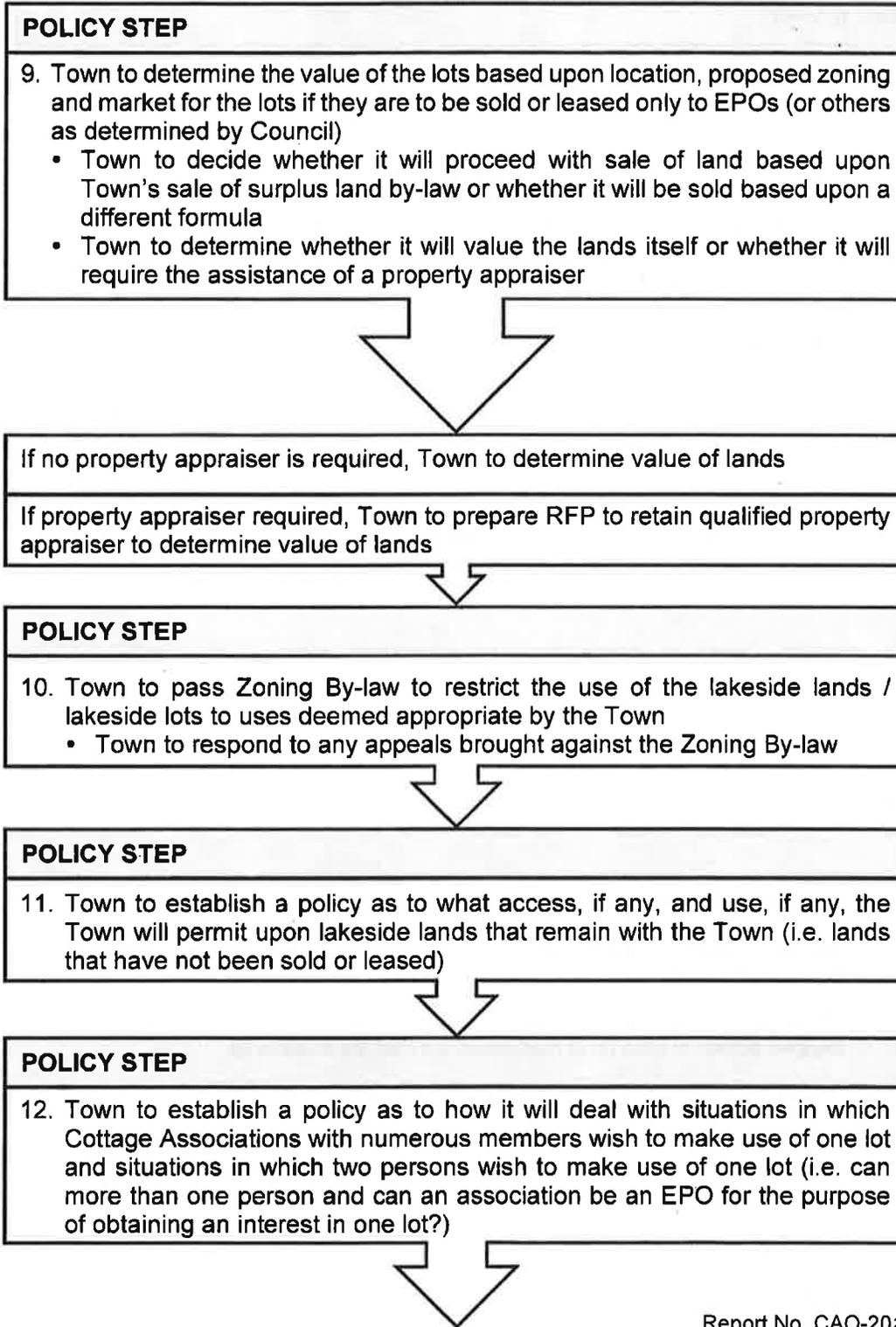
OPERATIONAL STEP
6. Town to send out Notices to all EPOs (or others as determined by Council) to determine which EPOs are interested in obtaining legal interest in lakeside lots. Possibly collect money from EPOs (or others as determined by Council) for purpose of creating R-Plan

If insufficient response from EPOs, Town to decide whether to end process; if decision is to conclude process, Town takes no further steps, except as identified in response to NO in Policy Step 1
If sufficient numbers of EPOs (or others as determined by Council) declare an interest in obtaining a legal interest in a lakeside lot, Town to prepare an RFP to retain qualified Surveyor(s) to create lakeside lots**

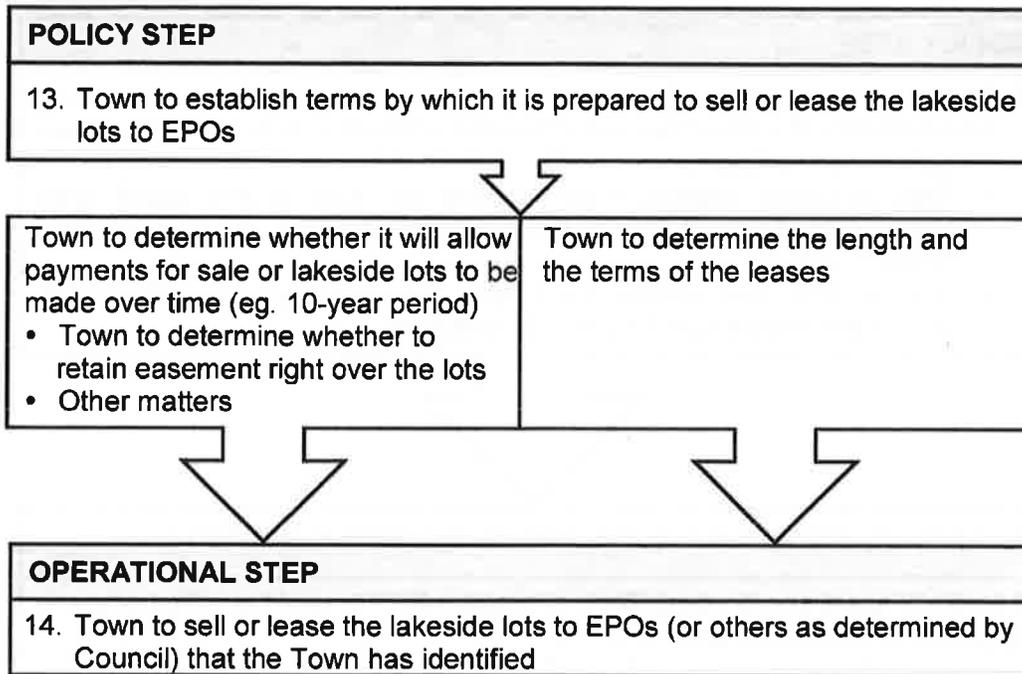
POLICY STEP
7. Town to award contract to Surveyor(s) to create the lakeside lots and have R-Plan registered
• Town should identify any lots that already legally exist on the lakeside while creating new lots via R-Plan
• Town should address any disputes concerning title to lakeside lands that may arise as a result of title searches conducted during R-Plan creation

POLICY STEP
8. Town may decide to receive public input regarding Zoning By-law restrictions that may apply to all lakeside lots. Thereafter, the Town to prepare and give Notice of Zoning By-law which will apply to all lakeside lots (whether Town-owned or currently existing and owned by a different entity) in accordance with the *Planning Act*
• Town to receive comments on the Zoning By-law at a Public meeting

MATTERS TO BE DECIDED BY COUNCIL*



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****Definitions for the Purpose of the above Flow Chart**

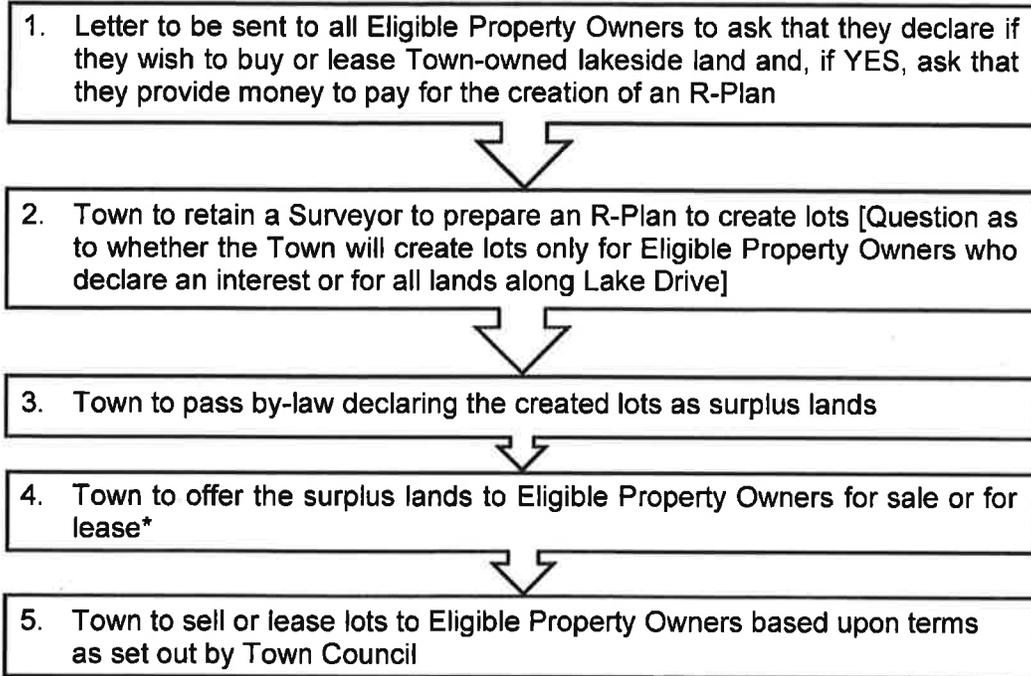
"Lakeside lands" means the lands from the shoreline to the travelled portion of the road allowance.

"Eligible Property Owner" means primarily the owners of property across the travelled portion of Lake Drive road allowance from the lakeside lot.

"Lakeside lots" means lots created upon the Lakeside lands.

*This Flow Chart is to be read as an overview of basic steps that should be undertaken. It is not an exhaustive list of each step that could or should necessarily be taken. Removing certain steps or adding additional steps may be necessary depending upon decisions made by Council and steps taken by third parties.

**PROCESS TO DEAL WITH LANDOWNERS
IF TOWN DECIDES TO DIVEST ITSELF OF LAKESIDE LANDS**



*See separate flow chart of matters to be addressed by Town Council

VIA E-MAIL

R. Andrew Biggart

Tel: (416) 622-6601 Ext. 227
abiggart@ritchieketcheson.com

January 2, 2018

Ms. Winanne Grant, CAO
Town of Georgina
26557 Civic Centre Road
R.R. #2
Keswick, ON L4P 3G1

Dear Ms. Grant

**RE: TOWN OF GEORGINA - LAKE DRIVE
SALE/LEASE OF LAKESIDE LOTS, ELIGIBLE PROPERTY OWNERS AND ISSUE
OF PRICE TO BE OFFERED TO ELIGIBLE PROPERTY OWNERS
POLICY STEP 4 IN FLOW CHART**

You have requested that I prepare a report to address, as directed by Town Council, the following issues as set out in the item number 4 in the flowchart submitted to Town Council for its July 19, 2017 meeting:

Determine whether the divestiture [of Lakeside lots] will be based upon the concept of profit for the Town, cost recovery only, or expense to the Town. Examine costs incurred to date as part of the assessment. Determine:

- *whether to offer the lands for sale or for lease, or both;*
- *whether the yet to be created lots will be sold only to Eligible Property Owners; and*
- *other matters that may arise.*

Summary of Opinion

For the reasons set out below, it is my recommendation that the Town, if it decides to divest itself of the Lakeside lands, offer the lands for sale to only Eligible Property Owners at a price that reflects the fair market value of the lot, taking into account the Zoning restrictions that will be on the property but excluding the fact that the land will be offered for sale only to an Eligible Property Owner.

To be clear, it is my recommendation that the Town not lease any Lakeside lands to any person.

Further, it is my recommendation that the Town enforce its property rights upon any Lakeside property that is not purchased by an Eligible Property Owner. As an example, for discussion purposes, this could entail the removal of structures on Town-owned lands and could result in the prohibition of entry upon the lands. It is recommended that this matter should be the subject of a future report.

1. Sale of Lakeside Lots v. Lease of Lakeside Lots

It is my understanding that one of the primary reasons causing the Town to consider divesting itself of the Lakeside property are the potential liability issues related to those lands. In short, persons are making use of the Town owned lands and, as such, there is a risk that if property damage or personal injuries should occur, the person who allegedly sustained damages may look to the Town for compensation.

Risks and Expenses with Leasing

If the Town were to allow for the creation of Lakeside lots, as described in earlier reports to Council, and then lease the Lakeside lots, the Town would still, obviously, own the property. This would result in the Town continuing to face the possibility of claims for damages allegedly sustained on Town owned property. While the Town could require, in any lease of the property, that the tenant provide proof of insurance listing the Town as a named insured on the policy related to the leased land, the fact is that the Town would still have to deal with any damages claim. For example, if a claim is brought, the Town would have to ensure that the insurance company of the tenant is, in fact, assuming the defence of and holding harmless the Town from any damages claim. The Town would also have to monitor the matter until its conclusion in order to make certain that the Town's interests are properly protected.

The above scenario assumes that the insurance company of the tenant agrees to assume the defence of and hold harmless the Town. It is also possible that the insurance company of the tenant, even if it has named the Town as an insured under a policy, could take the position that an independent act of negligence of the Town caused or contributed to the incident giving rise to the damages claim and, as a result, refuse to protect the interests of the Town. This would result in the Town having to cover its own defence costs and, possibly, pay damages.

In addition to the above, there is a practical cost of being a Landlord that the Town will have to incur related to numerous properties, of various sizes, and with various uses upon the lands. If the Town were to lease Lakeside lots to property owners along Lake Drive, the Town would have to create a legal lot to identify the parcel that is to be leased. This would require a survey of the lot to be performed. Thereafter, the Town would have to prepare and have the tenant execute a Lease in which the parcel of land is legally identified, the term of the lease is set out, the uses permitted on the property are identified and the lease payments are established.

When acting as a Landlord, the Town will have certain obligations to each tenant. The Town must ensure, among other obligations, that it provides exclusive possession and quiet enjoyment of the lands to the tenant. If a third party were to try to utilize the Lakeside lot, it would be the responsibility of the Town, and not necessarily the tenant, to take steps to remove the third party from the property. If the Town does not act quickly enough, the tenant could demand an abatement (reduction) of rent from the Town. This is but one example of a situation that the Town may face when acting as a Landlord.

The Town would also be required to manage the leasing of each parcel of land. This would mean that the Town would be required to collect the rent when due, take steps to collect the rent if it is not paid and negotiate a new lease when the lease expires. While the terms of the leases will determine how much staff time is required in 'managing' the leases, it is certain that the staff time involved will be an on-going obligation of the Town.

Sale of Lands - Eliminate Liability Risk and Ongoing Costs

If the Town were to sell the Lakeside lots, it would no longer have to concern itself with issues of potential liability arising from those lands, it would not have the obligations of a Landlord to numerous tenants over various parcels of land, and it would not have any on-going obligations to collect monies or negotiate terms with a tenant.

The obvious impact of selling the Lakeside lands as separate lots is that the Town will no longer own the land. Town Council will have to satisfy itself before any divestiture that the Town does not now need the land and that the Town will not need the land in the future.

Should Town Council determine that it wishes to proceed with the sale of land rather than the lease of land, it is recommended that, prior to any land being identified by the Town as appropriate to be offered for sale, the Town conduct an assessment of the property to identify if there would be any concerns if the land were to be sold by the Town and transferred into private ownership.

2. Divest to Eligible Property Owners or to Others

It is my recommendation that Lakeside Lots, once they are created, should be offered for sale only to Eligible Property Owners as they have been defined in previous reports.

The *Municipal Act* no longer requires the Town to offer land for sale to adjacent properties owners, as the *Act* had previously. By offering the Lakeside lots for sale to Eligible Property Owners, the Town will be making, in my opinion, a practical choice of selling the land to the person that has likely used it in the past and who will continue to use it.

If the Town were to sell Lakeside Lots to third parties (i.e. not Eligible Property Owners) the Town would be effectively 'cutting off' some Lake Drive residents from having direct access to the lake. If this were to occur, there would be a greater likelihood of land use conflicts with

Lake Drive residents who have been 'cut-off' from the lake seeking and utilizing other properties from which to access the lake. There is also the possibility of a third party purchaser making use of the Lakeside lot that, in some way, conflicts with the Lake Drive resident's use of his or her own property (e.g. noise complaints, blocking views of the lake, etc.).

While it is recognized that offering Lakeside lots only to Eligible Property Owners may not necessarily result in the highest purchase price for the benefit of the Town, it is my opinion that Town Council can still recover a reasonable and fair price for the land using the mechanism that I have set out below to establish the purchase price and, in so doing, comply with Council's obligations under the *Municipal Act*.

3. Profit, Cost Recovery Only or Expense to the Town

In the present case, Town Council must decide whether the Town should divest itself of its ownership of the Lakeside lands to Eligible Property Owners, and, if so, through what mechanism and at what price, if any.

The role of Council is to, among other matters as set out in section 224 of the *Municipal Act*:

- (i) represent the public and to consider the well-being and interests of the municipality;
- (ii) to develop and evaluate the policies and programs of the municipality;
- (iii) to maintain the financial integrity of the municipality.

Given the above, the role of Council is to, among other matters, protect the public interest and, in so doing, establish policies that maintain the financial integrity of the municipality.

What is "in the public interest" is a matter that Council must decide for itself. Council members have been elected to represent their constituents and it is the members of Council that are in the best position to hear from their constituents and decide matters in a manner that best reflects those interests.

In the present case, and examining the facts purely from an economic point of view, there is an inherent conflict between the economic interests of Lake Drive residents who wish to purchase the lots and the other residents of the Town who would wish to see the Town recover as much money as possible when it sells an asset. Town Council, as noted above, must protect the public interest and the Town's financial integrity. Town Council must balance (i) the option of retaining the Lakeside land and the risks and obligations that come with that option, against (ii) the option of selling the land and the benefits and detriments that arise therefrom. That is to say, Town Council is not required to be driven in its decision to necessarily achieve the highest possible purchase price (because the Town is relieving itself of risk/obligations if the land is sold) but it must also act reasonably in trying to achieve a price that is in the public interest and assists in maintaining the financial integrity of the Town.

Given the above, it is my recommendation that Town Council, if it decides to sell Lakeside lots to Eligible Property Owners, establish a policy which ensures that any sale of a Lakeside

lot results in a fair market value price, with complete cost recovery for the Town. This can be achieved by having the particular lot [once created] valued by a Qualified Property Appraiser on behalf of the Town who shall consider, among other relevant factors, the Zoning in effect on the property and excluding the fact that the lot is to be offered for sale only to an Eligible Property Owner.

Excluding the fact that the lot will only be offered for sale to an Eligible Property Owner should be an obvious requirement if the Appraiser is to arrive at a true market value for the land. If the 'market' for the land is comprised of only one person, the Eligible Property Owner, the market price would be whatever the Eligible Property Owner is prepared to pay. This, obviously, is not reflective of true market value.

In terms of making certain that the Town has recovered the fair market value for any lot, the cost of undertaking this entire 'Lake Drive Lands' exercise should also be considered and form part of the purchase price. The Town should include all costs incurred in the "Lake Drive Lands" exercise (i.e. legal costs to date and in the future, Town staff costs, survey costs, registration costs, etc.) as part of the purchase price for each lot. This will result in complete cost recovery for the Town and ensure that the Town actually obtains a positive cash flow arising from the sale of the lands.

Once the true market value of the property has been determined by the qualified Property Appraiser, and once the pro-rated and actual costs related to the lot have been established, the Town should offer the lot for sale at that price. The Eligible Property Owner would then have the option of buying the lot at the stated price or not. If the Eligible Property Owner does not purchase the lot, he or she could be prohibited from accessing the lot.

As noted in previous reports, the purchase price could be, subject to Council's discretion, paid over a period of time as determined by Council. The purchase and sale agreement could also ensure that any unpaid portion of the purchase price could be added to the property as municipal taxes and collected as such.

4. Other Matters - If an Eligible Property Owner declines to Purchase Lot

One question that has remained unanswered throughout this process is what action should be taken if the Town decides to divest itself of Lakeside lands and, for some reason, the Eligible Property Owner decides not to purchase the lot?

The question is, really, what should be done with the Lakeside land that is not purchased?

Another question relevant to Eligible Property Owners is, why should I buy a lot if my neighbour has not purchased the lot that was offered to him or to her and he or she continues to use it?

Equally, the Town should be concerned that there is no real impetus for an Eligible Property Owner to purchase a lot if there are no negative consequences for refusing to purchase a lot; this is especially true if the Eligible Property Owner continues to use the lot.

In order to address this possible outcome, I am recommending that the Town make it clear to all Eligible Property Owners that the Town will enforce its property rights on any property that is not sold to an Eligible Property Owner. If the Town is attempting to divest itself of property to avoid future damages claims, and if Lakeside lots are not purchased, the Town will be in a much better position if it formalizes an enforcement process that will be known to all residents prior to property owners making their individual decisions.

If the Town were to take no action and allow Eligible Property Owners to decline to purchase a Lakeside lot and then use the property as if they had paid for it, there would be no inclination for any Eligible Property Owner to purchase a lot. In addition, if the Town were to allow this to occur, the Town would likely face significant questioning from Eligible Property Owners who actually did purchase their lots and then are wondering why their neighbours, who did not pay anything, continue to use the Lakeside lands as if they had purchased it.

I would be pleased to answer any questions that you may have regarding the matters addressed in this report.

Yours very truly,

**RITCHIE KETCHESON
HART & BIGGART LLP**



R. Andrew Biggart

RAB/bjc