

THE CORPORATION OF THE TOWN OF GEORGINA

REPORT NO. CAO-2018-0009

**FOR THE CONSIDERATION OF
COUNCIL**

JUNE 20, 2018

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

1. RECOMMENDATIONS:

- 1. That Council receive Report No. CAO-2018-0009 prepared by the Office of the CAO dated June 20, 2018 respecting the Lake Drive Shoreline Jurisdiction Action Plan – Policy Step 4 updates;**
- 2. That as per Action Plan Policy Step 4 Updates, Council receive the reporting letter from Ritchie, Ketcheson, Hart and Biggart dated June 13, 2018;**
- 3. That Council receive and consider Report No. DS-2018-0060 - Lake Drive Shoreline Jurisdiction Action Plan – Approaches for Zoning the Lakeside Lots/Lands in tandem with Report CAO-2018-0009;**
- 4. That in support of Strategic Plan Action Item 4.15, staff be directed to proceed to next steps as follows:**
 - (a) Hold a public meeting to provide information to interested persons regarding Staff's recommendations and to seek input from those persons in relation to:**
 - (b) The Town creating and then selling or leasing Lakeside Lots to Eligible Property Owners;**
 - (c) The price to be established for the sale or lease of Lakeside Lots;**
 - (d) Land use controls to be placed upon Lakeside Lots either through a Zoning By-law Amendment or through a Development Permit System; and,**
 - (e) The identification of property along Lake Drive that should be reserved for future Town needs or use.**

- 5. That Staff report to Council after the public meeting to advise Council of the issues raised by interested persons and present a final recommendation report concerning the possible creation of and then sale or lease of Lakeside Lots.**

2. PURPOSE:

The purpose of this report is to provide Council with legal opinions and updates with respect to the Lake Drive Shoreline Jurisdiction Action Plan – Policy Step 4 and to determine/direct 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.

On January 10, 2018 Council received Report CAO-2018-0001 with respect to Action Plan – Policy Step 4 and directed staff to report back on a Strategic Plan in support of Action 4.15, and to proceed with the Next Steps.

4. ANALYSIS:

The Lake Drive Shoreline Jurisdiction Action Plan (LDSJAP) – Policy Step 4 and Council's Strategic Plan 4.15 requires that a report with various additional policy recommendations be submitted to Council which contemplates the matters to be considered by Council in relation to report CAO-2018-0003 and Council resolutions in order to proceed with the LDSJAP and next steps. 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 and considerations with the potential the LDSJAP and 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 at this time.

8. CONCLUSION:

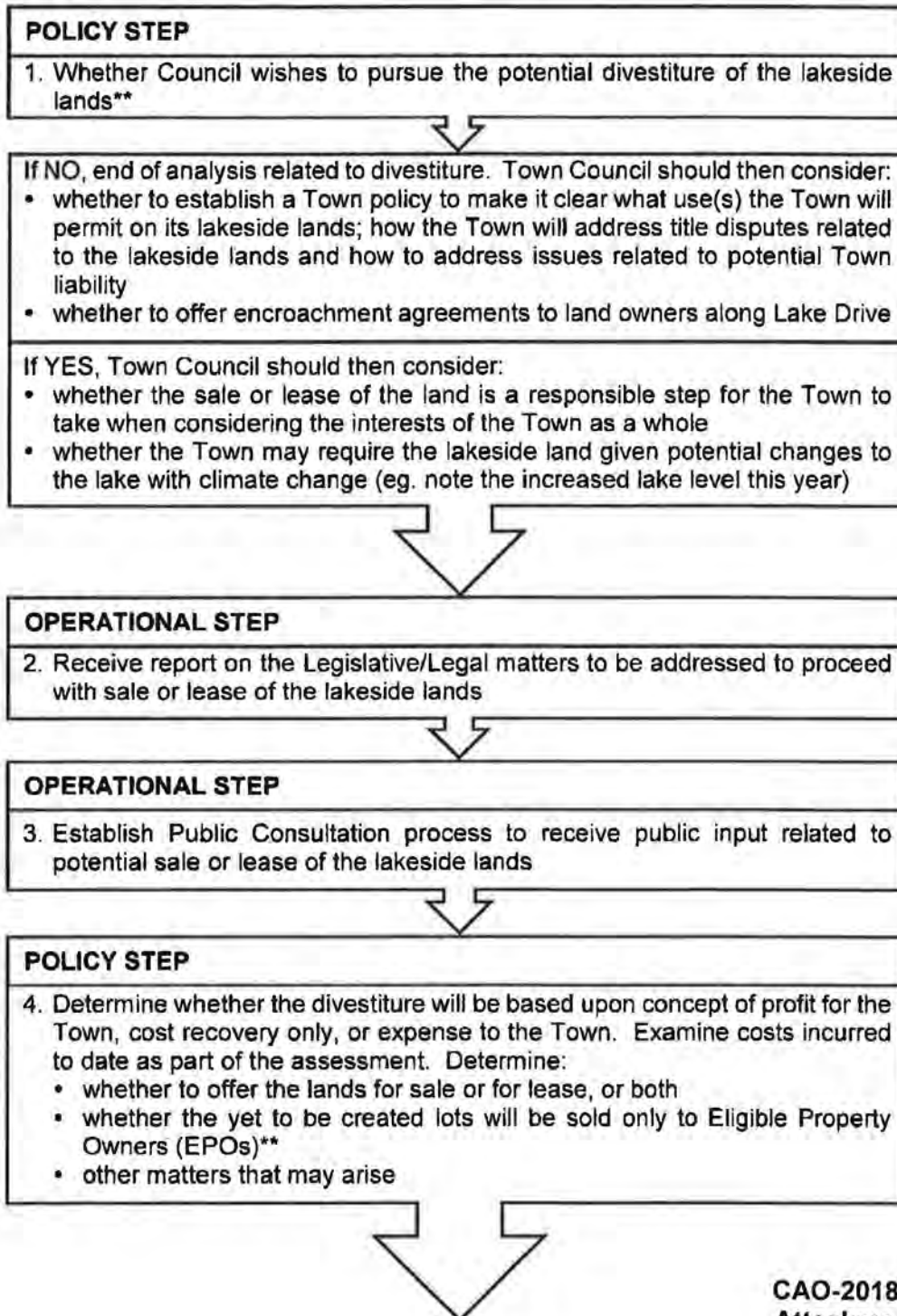
In support of Strategic Plan Action Item 4.15, staff recommend that reporting continue in support of the Lake Drive Shoreline Jurisdiction Action Plan.

Prepared and Approved by:

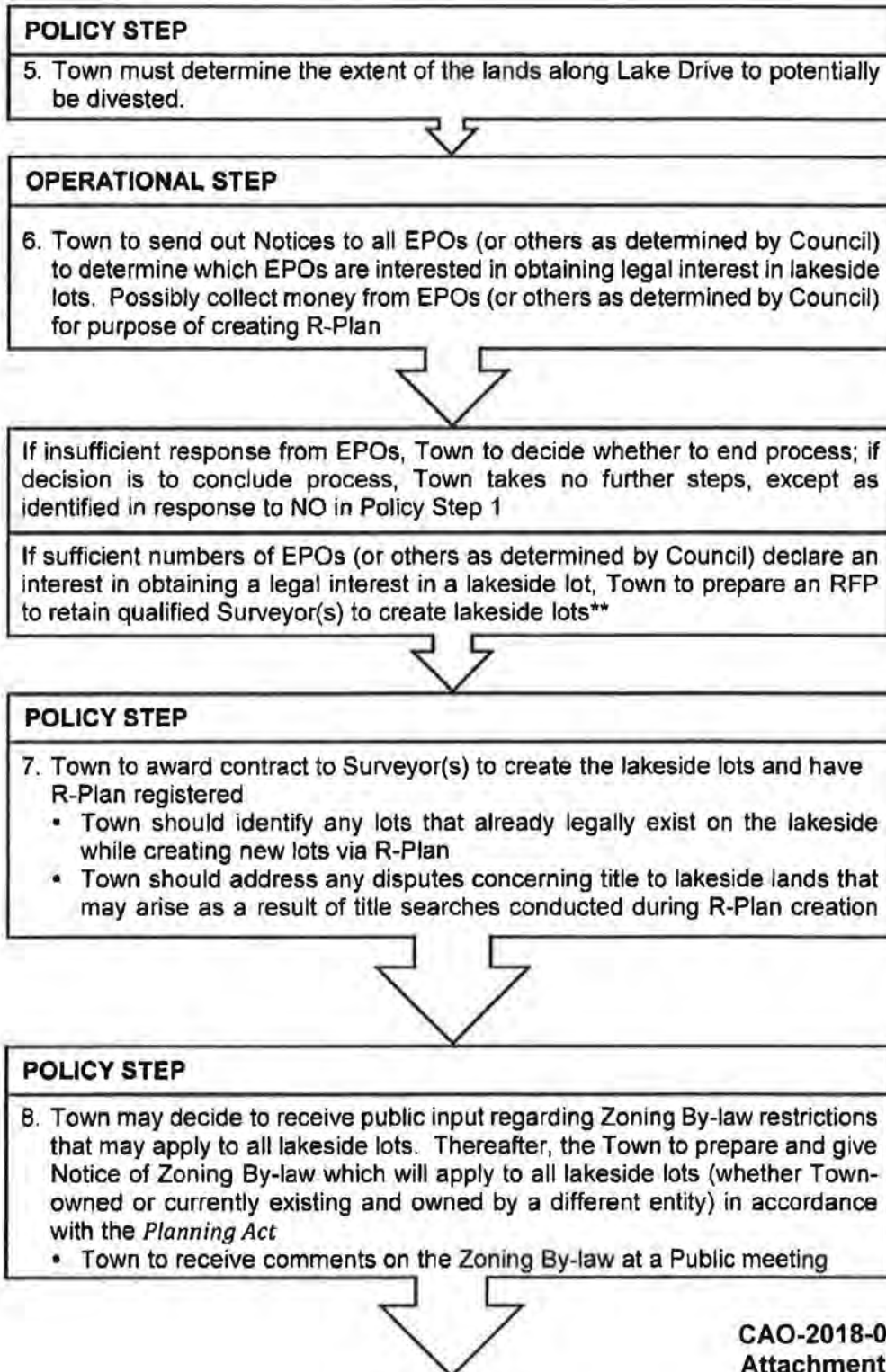


**Dave Reddon
Deputy C.A.O./Director of Corporate Services**

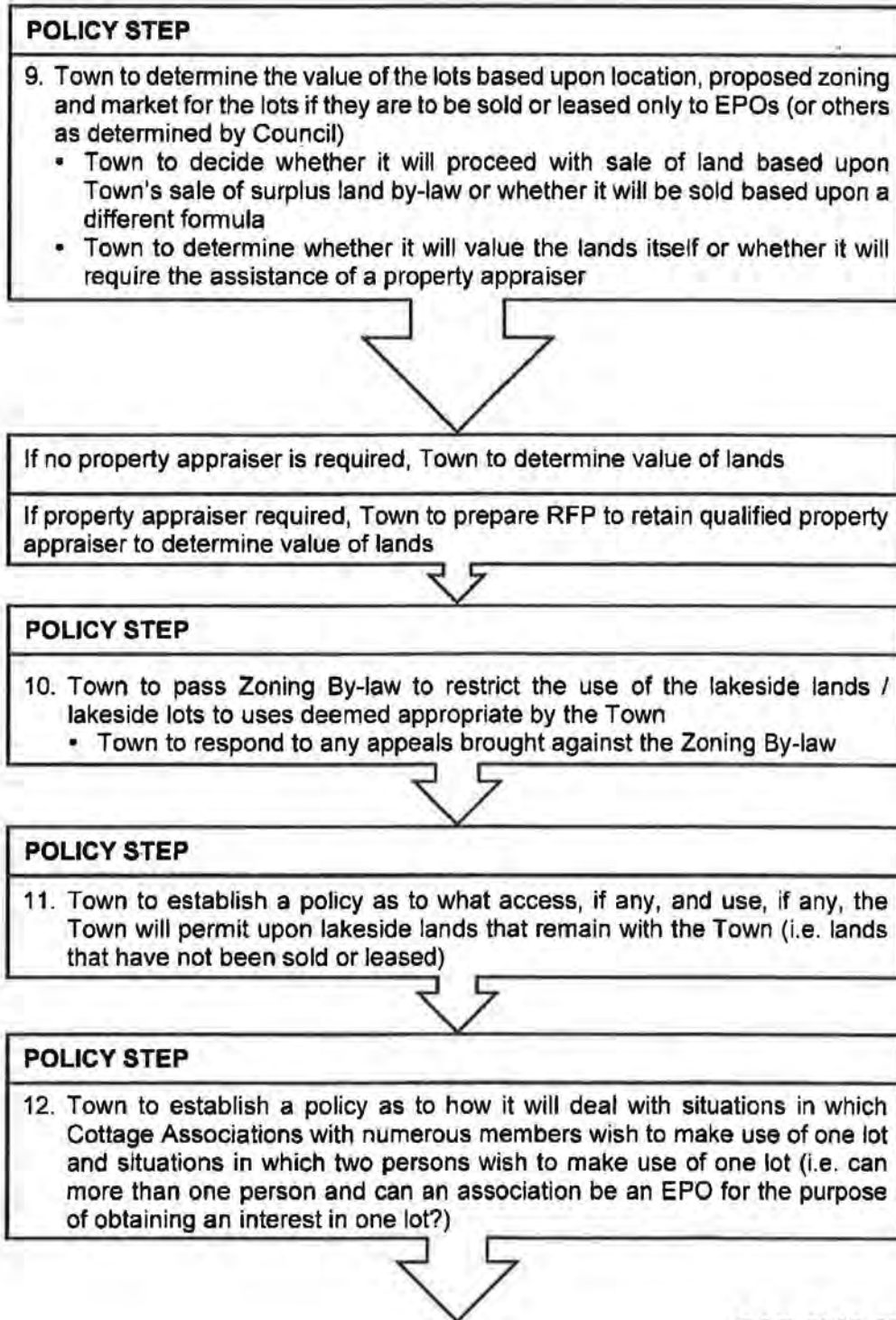
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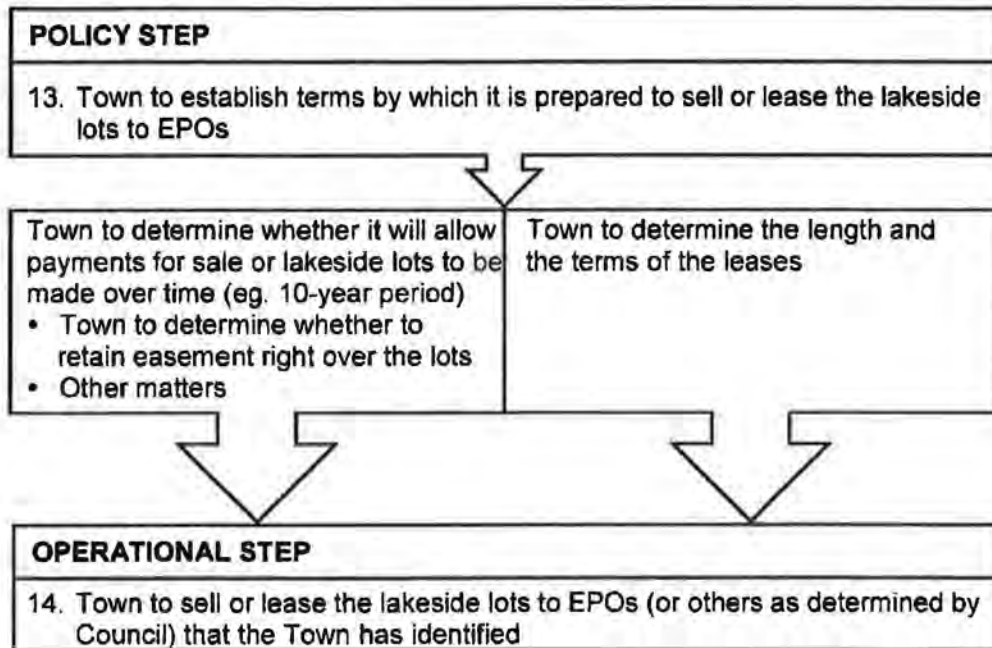
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MATTERS TO BE DECIDED BY COUNCIL*



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

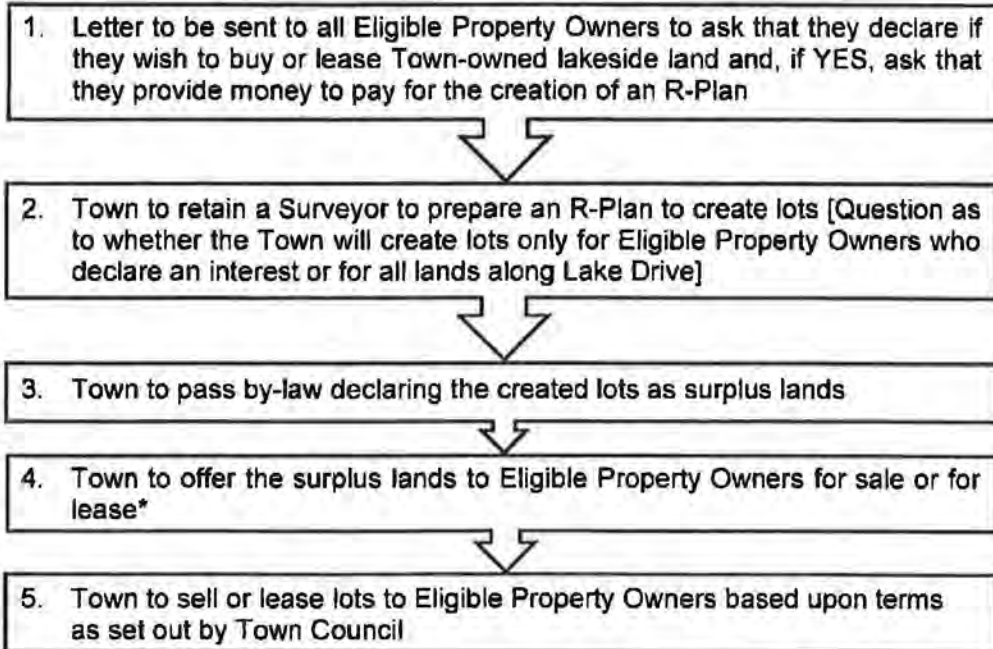
"Lakeside lands" means the lands from the shoreline to the travelled portion of the road allowance.

"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

June 13, 2018

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

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

Dear Ms. Grant:

**RE: TOWN OF GEORGINA - LAKE DRIVE
SALE / LEASE OF LAKESIDE LOTS
RESPONSE TO MATTERS IN JANUARY 10, 2018 MINUTES**

As requested, I am addressing matters 3(i), (ii) and (iii) as set out at Page 7 of the Minutes of Council from its meeting of January 10, 2018 regarding the Lake Drive Shoreline Jurisdiction Action Plan.

The issues to be addressed and my recommendation concerning each issue are set out below, together with the Schedule attached to this report.

Item 3(i) Transfer of Lots (cost recovery only, cost recovery plus percentage, fair market value)

On Page 7 of the Minutes of the Council meeting from January 10, 2018, at section 3(i) of the Minutes, note that Town Council directed:

That Town staff draft a policy based upon the transfer of the lots, examining cost recovery plus percentage, cost recovery only and fair market value.

The draft policy, based upon the discussion below, is attached as Schedule 1 to this report.

The issue of what to charge for the transfer of title of any Lakeside lot, once created, is a matter that has attracted significant attention amongst residents along Lake Drive. It is also a matter that has been seriously considered by staff given the obligation of the Town to maintain the financial integrity of the municipality for the benefit of all residents of the Town. Ultimately, however, the decision as to what to charge purchasers for a Lakeside lot is a matter that must be decided by Council after it has considered both the benefits to the Town by divesting itself of the Lakeside property and the requirement of the Town to act in a fiscally responsible manner. The balancing of these interests, as well as other interests, have been addressed in earlier reports.

Proceeding on the assumption that the vast majority of Lakeside lots will be sold (rather than leased) to Eligible Property Owners, the issue is whether to proceed with the transaction with a sale price based upon (i) costs recovery only; (ii) cost recovery plus a percentage of the costs; or (iii) fair market value. Each of these three options, and a fourth recommended option, are addressed below.

(i) Cost Recovery

Cost recovery, for the purpose of this exercise, means the recovery of all costs incurred by the Town in the creation and sale of the lot (e.g. survey costs, legal costs, etc.). If the Town were to transfer title to the Lakeside lots based solely upon cost recovery for the Town, there would be no recognition of the value of the underlying asset in the sale price. Further, the Town would likely be charging Eligible Property Owners the same amount notwithstanding the size of the lot that is transferred. Whether a lot is 60 feet by 10 feet or 20 feet by 3 feet, the cost of surveying and the cost to sale the lot is likely to be the same.

Given the above, it is my recommendation that the Town not proceed by way of cost recovery only with respect to the creation and sale of Lakeside lots.

(ii) Cost Recovery plus a Percentage

The issues identified with a costs recovery method are the same for the costs recovery plus a percentage method. While the value of the underlying asset may be recognized to some degree by way of the additional percentage charged to the purchaser, the actual price may not reflect that value. As noted above, the purchase price will likely be the same for each lot, notwithstanding the size of the lot that is created and transferred.

Given the above, it is my recommendation that the Town not proceed by way of costs recovery plus a percentage with respect to the creation and sale of Lakeside lots.

(iii) Fair Market Value - Based Upon Appraisal

A fair market value approach has been the approach that I have recommended as this process has been ongoing. Such an approach will recognize the value of the underlying asset and will reflect the size of the lot that is the subject of the transfer. However, a fair market value approach in which an appraiser must attend at each lot and assess the value of each created lot may result in costs that are not justifiable in many circumstances. For example, some lots are very narrow and do not amount to much more than a few feet of sand. Other potential Lakeside lots are narrow and are covered predominantly with stones, rather than any truly 'usable' walking surface. Other lots are, admittedly, reasonably large and 'usable' for placing lawn furniture or walking, etc.

If each lot to be sold were to be appraised, and if each appraisal were to cost between \$750 to \$1,000, this would add to the purchase price for each lot as part of the cost recovery for the Town.

Increasing the costs incurred by the Town for each and every lot to be sold is not necessarily beneficial to the Town and is certainly not beneficial to the Eligible Property owners.

Given the above, it is my recommendation that the Town not proceed by way of a pure assessed fair market value approach with respect to the creation and sale of Lakeside lots.

(iv) Fair Market Value Based upon a Price Per Square Metre

After considering the above options and considering the costs of determining the value of each newly created Lakeside lot, it is my recommendation that the Town proceed a policy that would have the Lakeside lots sold based upon cost recovery, plus a price per square metre. The draft policy is attached as “Schedule 1” to this report.

The benefits of costs recovery for the Town are self-evident and will not be addressed further. As for a purchase price based, in part, upon a price per square metre, there are several benefits to this approach. First, the purchase price will recognize a value of the underlying asset and allow for a recovery of that value by the Town. Second, the purchase price will reflect the size of the lot that is purchased. Third, the administration of such an approach is relatively easy. Fourth, the utilization of such an approach will treat all Eligible Property owners equally. Fifth, the approach is cost effective as it will not require an appraisal for each lot that is created and transferred.

If the Town is prepared to proceed with such an approach, there are several ways in which the price per square metre could be calculated. Some examples are as follows:

1. The price could be calculated based upon an appraisal of selected existing or potential Lakeside lots and then dividing the value of those properties by their total square metres to arrive at an average square metre value which would be applied to all future sales of Lakeside lots.
2. The Town could examine the recent purchase prices of properties along Lake Drive, divide the price by the number of square metres and then apply that number to the newly created Lakeside lot.
3. The Town could simply make a policy decision that it wishes to divest itself of the Lakeside lands and apply a price per square metre to those lands as surplus property to be sold.

Of the options, it is my recommendation that the Town proceed with the first option as this would result in a purchase price that is likely to come closest to reflecting the actual value of the land to be transferred. This approach also allows for the relatively easy application of a purchase price to newly created Lakeside lots after they have been surveyed and created by the Town.

As noted earlier, the draft policy to implement this approach is attached as Schedule 1 to this report.

Item 3(ii) Beach Associations that Wish to Use the Lakeside Lots

On Page 7 of the Minutes of the Council meeting from January 10, 2018, at section 3(ii) of the Minutes, Town Council directed:

That Town staff prepare a report to address how [the] policy should deal with beach associations that wish to use the lakeside lots.

The above issue has arisen because of circumstance where Beach Associations have used one parcel of land for access to the lake and for general purposes. It has also been brought to the Town's attention during the on-going public process that some of these Beach Associations are not incorporated bodies and that they lack the funds to purchase a Lakeside Lot. The concept of leasing Lakeside Lots to the Beach Associations has been raised during several meetings.

Given the fact that some of the Beach Associations have transient membership (due to people buying and selling properties) it appears to be most practical for the Town not to sell Lakeside Lots to these Associations. In my opinion, issues of ownership or an interest in the ownership of a Lakeside Lot, by members of a Beach Association are likely to cause confusion and potential legal questions that the Town and members of the Beach Associations are best to avoid.

It would appear that the practical solution to issues surrounding Beach Associations is for the Town to lease Lakeside Lots to the various Beach Associations. However, the Town should, in my opinion, require the Beach Associations to incorporate for the purpose of having it enter into a Lease with the Town. The Beach Associations should be able to incorporate as a not-for-profit corporation for a reasonably small cost and, thereafter, police and manage themselves as they have done previously in terms of accessing and using the waterfront lands.

Once a Lakeside Lot is created for the Beach Association, the Town can recoup the cost of creating the Lot (surveying, etc.) and preparing the Lease (legal costs) as part of the Lease with the Beach Association. The Town can then establish an annual payment due from the Beach Association which will permit members of the Beach Association exclusive use of the Lakeside Lot. It would be my recommendation that the term of the lease be approximately ten (10) years with a right to renew the Lease for another ten (10) year period subject to certain conditions having been satisfied and an appropriate increase in the lease payment.

The amount that the Town should charge to lease the Lakeside Lot is a matter that, obviously, is at the discretion of Council. However, in my opinion, the Lease should be based upon the value of the land as determined by *Average Value Per Square Metre* and the term of the Lease. For example, the Town may wish to consider recovering the Town's costs of creating the Lakeside Lot plus the *Average Value Per Square Metre* multiplied by the size of the lot by the end of a twenty year lease. This would have the effect of the Town recovering, over a twenty year period, an amount equal to what would have been the *Lakeside Lot Price*, with the option to repeat that process through a new Lease.

If a Beach Association fails to incorporate and Lease a Lakeside Lot from the Town, the Town should, in my opinion, take the same steps as I have recommended the Town take with respect to an Eligible Property Owner that refuses to purchase a Lakeside Lot. Such steps, as set out in detail below, may well encourage Beach Associations to organize themselves and Lease lands that are available to them for their exclusive use if they take appropriate action.

Item 3(iii) Enforcement Options for Lands not Purchased

On Page 7 of the Minutes of the Council meeting from January 10, 2018, at section 3(iii) of the Minutes, Town Council directed:

That Town staff draft a report addressing enforcement options including consideration of eligible property owners who cannot purchase land or choose not to purchase land.

The problem previously identified regarding the sale or lease of any Lakeside Lots is what the Town should do, if anything, in circumstances when a Lakeside Lot is offered for sale to an Eligible Property Owner and the Eligible Property Owner refuses to purchase the lands. As noted in previous reports, there will be little, if any, reason for an Eligible Property Owner to purchase a Lakeside Lot if he or she can refuse to purchase the Lot and thereafter continues to use it as if he or she owns it. Further, Eligible Property Owners who have purchased Lakeside Lots may well question why they purchased a lot when their neighbours who did not purchase a lot appear to enjoy the same benefits as those that did purchase.

In short, there will need to be some repercussions upon Eligible Property Owners who fail to respond to, or who reject, an offer to sell a Lakeside Lot. If the Town does not take some action, it is likely that few, if any, Eligible Property Owners will pay for the Lot. The question, of course, is what action should be taken. The Town has a range of options, from doing nothing, to fencing off the property, to prohibiting access.

Having considered the various options available to the Town, it is my opinion that it is best to advise Eligible Property Owners as early in the process as possible that if they fail to purchase a Lakeside Lot when offered for sale by the Town, the Town will assume control of the land and treat the land as its own. As an owner of the land, the Town will be able to remove any material or structures on the lands and utilize the land as the Town best sees fit. The Town will also have the option of serving and enforcing trespass notices upon persons who enter upon the land without the consent of the Town.

It is my recommendation that in circumstances where the Town is the owner of the land and where the Eligible Property Owners has refused to purchase a Lakeside Lot that the Town prohibit the installation of any docks at the property or the mooring of any boats. Further, the Town should place a sign on the lot indicating that it is owned by the Town and that no entry is permitted on the property.

Once the Town has assumed physical control of Lakeside Lots it is certainly possible that Eligible Property Owners may reconsider their decision not to purchase the lands. If that occurs, the Town can then decide whether it wishes to sell the Lakeside Lot to the Eligible Property Owner or whether it wishes to retain control over the land for any particular purpose. If the Town does decide to sell the land to an Eligible Property Owner at this later date, the Town's costs of assuming control of the property and placing signs on the property should be recovered as part of the purchase price.

As for Eligible Property Owners who cannot purchase Lakeside Lots due to financial constraints, the Town has several options available. The Town could sell the lot to an Eligible Property Owner with payments for the land to occur over a set period of time. The Town could have the Eligible Property Owner enter into an Agreement in which the Eligible Property Owner will pay for the land over a number of years, with a set interest rate applying to the unpaid purchase price. Such an Agreement should allow for the collection of any unpaid monies in the same manner as property taxes if the Eligible Property Owner does not make payments in accordance with the Agreement.

The Town could also transfer title to the Lakeside Lot to an Eligible Property Owner and register the Town's interest (i.e. the purchase price) upon both the Lakeside Lot and the Lot on the other side of the street (the House Lot). The registered document would require payment for the Lakeside Lot to be made to the Town, with interest, upon any transfer in title of the House Lot and the Lakeside Lot. This would allow an Eligible Property Owner to take title to the Lakeside Lot, but not have to actually pay for the land until the title in the House Lot and the Lakeside Lot are transferred. The money owed to the Town would be paid out of the proceeds of the sale of the property. For those familiar with the concept, this approach would be akin to a 'reverse mortgage' in favour of the Town. This approach would allow Eligible Property Owners to acquire title to the Lakeside Lots, without having to 'open their wallets' when they acquire title.

Item 3(iv) Identification of Lands Which May be Required for Future Town Use

I have been advised that various Town staff (e.g. the Works Department and the Fire Department) initiated a review of which lands along Lake Drive would likely be required for future Town use. It quickly became apparent that this exercise cannot be completed at this time due to the matters that remain unknown. For example, not all property along Lake Drive has been identified as being either 'Town owned' or 'Privately owned'. This is an exercise that will have to be undertaken on a parcel by parcel basis. In addition, the answer as to whether there is a need for 'future use' requires the input of more than one department in some instances because some departments may have complimentary demands and others may have demands that conflict.

Given the above, it is best, in my opinion, to review the issue of 'need for future Town use' at a later date, once the issues of ownership, lot creation and zoning permissions have been further clarified. Obviously, prior to any sale or lease of any Lakeside Lots, the Town should establish criteria by which it will assess certain properties to determine if the land should be sold or leased. The issue of lands required for 'future Town use' should also address the issue as to whether the 'need for future use' should prohibit the sale or lease of any particular site, or if the retention of an

easement in favour of the Town would be sufficient. This is another example of a site-specific issue that is best left to be determined at a later date depending upon the attributes of a site and the Town's needs.

Conclusion

It is my understanding that Town planning staff will be presenting a separate report to address the issue of the Zoning to be applied to the Lakeside Lots.

With respect to Item 3(vi) in the Minutes from January 10, 2018, it is my understanding that the Town will be establishing a public consultation process to receive public input regarding the matters addressed in my report and the other matters addressed by Town staff.

After the Town has received public input concerning the matters related to:

- (i) the creation and sale of Lakeside Lots to Eligible Property Owners;
- (ii) the method by which the Town will determine the sale price;
- (iii) the steps to be taken by the Town if Lakeside Lots are not purchased by Eligible Property Owners;
- (iv) the Leasing of Lakeside Lots to Beach Associations;
- (v) the method by which the Lease Price will be determined;
- (vi) the steps to be taken by the Town if Beach Associations do not Lease Lakeside Lots;
- (vii) the potential Zoning to be applied to all Lakeside lands; and,
- (viii) the identification of lands that may be required for future Town use (and, therefore, not to be sold or leased by the Town)

it is my recommendation that Town Council then determine whether it is appropriate to create Lakeside Lots and sell or lease them to Eligible Property Owners and Beach Associations, respectively. If so, Council should then, in my opinion, direct Town staff to prepare a complete policy for the process of creating and selling and leasing lots to be presented to Town Council for approval.

I would be pleased to answer any questions that you may have regarding the above.

Yours truly,

**RITCHIE KETCHESON
HART & BIGGART LLP**



R. Andrew Biggart

**DRAFT POLICY FOR
SALE PRICE OF LAKESIDE LOTS**

Definitions:*Average Value Per Square Metre:*

means the value that is arrived at when one adds the value of each of the three (3) Appraisal Reports referenced in paragraph 1 in the policy and divides that amount by the total number of square metres of each of the appraised Lakeside Lots that are the subject of the Appraisal Reports.

Lakeside Lot Price: means *Town Cost Recovery* plus the *Average Value per Square Metre* multiplied by the total number of square metres of the Lakeside Lot measured to the second decimal.

Qualified Appraiser: means a member of the Appraisal Institute of Canada - Ontario.

Town Cost Recovery: means the costs to be charged by the Town to an Eligible Property Owner as part of the Purchase Price of a Lakeside Lot, which costs shall include all costs, expenses and disbursements incurred by the Town related to the creation, valuation and transfer of any Lakeside Lot and, for greater certainty, shall include the costs and expenses related to any time spent by Town staff and external consultants retained by the Town, or any subconsultants, related to the creation, valuation and transfer of any Lakeside Lot.

Determination of Lakeside Lot Price Prior to Transfer:

1. The Town shall retain the services of a *Qualified Appraiser* to prepare a separate Appraisal Report for three (3) Lakeside Lots that have yet to be legally established by the Town or that currently exist. Each appraisal report shall include both an appraised fair market value for the entire Lakeside Lot that has yet to be legally established or that currently exists and its exact size in square metres to at least the second decimal.
2. The three (3) Lakeside Lots referenced in paragraph 1, above, shall be separated by at least one kilometer from the other.
3. Upon receipt of the three (3) Appraisal Reports from the *Qualified Appraiser*, the Town shall determine the *Average Value Per Square Metre*.
4. Each Lakeside Lot for which an Eligible Property Owner wishes to acquire title shall be transferred by the Town to an Eligible Property Owner in exchange for the *Lakeside Lot Price*, plus any applicable taxes.
5. The process described in paragraphs 1 to 4, above, shall be repeated if the Town wishes to transfer title of the Lakeside Lot and any of the appraisal reports from which the *Average Value Per Square Metre* is calculated are more than four (4) years old as of the date of the execution of the Agreement of Purchase and Sale, or as otherwise determined by Town Council in its absolute discretion.