

Town of Huntsville Official Plan Review - POLICY BACKGROUND PAPER

Public Access to Water and Unopened Road Allowances

BACKGROUND:

- Huntsville recognizes the importance of providing a high quality of life for its residents and visitors. Both economic and environmental health must be balanced to create a community that can grow responsibly while providing for the needs of its residents. Expectations for the planning, development and ongoing maintenance of a variety of types of public green spaces are also ever increasing.
- Huntsville is well known as a nature, recreation and resort destination, and continued development of our trails, parks and waterfront is important, as open waters and rivers characterize many of the natural spaces of Huntsville.
- Through the visioning phase of the Official Plan review a consistent theme was to enhance and preserve opportunities for continued public access to water
- There are numerous road allowances leading to water as well as original shore road allowances that abut the shorelines of the many lakes and rivers located within the Town.

POLICY CONTEXT:

Provincial Policy Statement (2014):

- 1.5 Healthy, active communities should be promoted by:
- a) Planning public streets, spaces and facilities to be safe, meet the needs of pedestrians, and facilitate pedestrian and non-motorized movement, including but not limited to, walking and cycling;
 - c) Providing opportunities for public access to shorelines

Current Muskoka Official Plan:

- D.18 The Waterfront is a major recreation resource area, it should be made accessible to both public and private users.
- F.4.b Maintain and improve public access to and opportunities for public enjoyment and use of lakes and rivers of Muskoka in a manner which is compatible with established uses and the recreational carrying capacity of these waterways
- F.4.c Preserving and encouraging public use of scenic views and of scenic land and water routes in the District from or on public lands.
- G.1 Provides policy to protect and maintain a functional transportation network throughout Muskoka.
- G.75-79 Water transportation – the MOP policies primarily identify certain challenges associated with the recreational use of the surface of waterbodies and do not specifically address waterbodies in terms of other non-recreational forms of water transportation.

- G.80 Area Municipalities are encouraged to facilitate the provision of docking, pump-out facilities, park areas and boat launch sites to serve the boating public.
- K.46 Where original road allowances have been laid out in the original survey of a municipality, reserved in a patent from the Crown or otherwise dedicated, by-laws passed by municipalities to stop up and sell such road allowances shall be supported by the District provided that:
- a) the portion of the road allowance to be closed has no significant present or foreseeable municipal function for public travel, public use, public access, or any other municipal purpose; and
 - b) where the road allowance leads to or is located adjacent to water:
 - i) the portion of the road allowance to be closed has no present or foreseeable function as a public waterfront area, portage or harbour; and
 - ii) only the portion of the road allowance above the normal or controlled high water mark may generally be conveyed out of public ownership.
- K.47 Where original road allowances have been laid out in the original survey of a municipality, reserved in a patent from the Crown or otherwise dedicated, by-laws passed by municipalities to stop up and lease such road allowances shall be supported by the District where no present municipal use exists for a specific portion of such road allowance but there may be a foreseeable municipal use or the municipality otherwise does not wish to stop up and sell the road allowance. Such road allowance may be stopped up and leased only for such length of time, not exceeding thirty years, as the municipality deems reasonable; and
- a) where the road allowance leads to or is located adjacent to water:
 - i) only that portion of the road allowance above the normal or controlled high water mark may generally be leased.
- K.48-54 Policies regarding licenses of occupation for District road allowances

First Draft Muskoka Official Plan:

D6.7 d) Maintenance of public water access if resorts convert to other uses

F1.1 Recognize that all people have should live in a healthy natural environment including clean air and water, access to natural spaces, and minimal exposure to pollutants and contaminants;

I4.4.1 f) The maintenance of public accesses to the shoreline is encouraged to allow for the use and enjoyment of the District's waterbodies to those who not own shoreline properties. The provision of new public accesses to the shoreline shall be considered where appropriate.

I4.4.1 h) each Area Municipal Official Plan will contain detailed and appropriate policies on the following:

- v) Public access to lakes and rivers;

J Continues to provide policy to protect and maintain a functional transportation network throughout Muskoka.

- J2.10 i) In order to plan for and encourage active transportation, Area Municipalities are encouraged to:
- ii) Provide for public access to shoreline areas in appropriate locations taking into account the nature of surrounding development;

Town Strategic Documents:

Strategic Plan

Health Care and Wellness

- Goal 2 Create a comprehensive Community Services Master Plan that promotes long term strategies for healthy and active living in Huntsville.
- Objective Complete a needs assessment of public spaces to determine if expanded services or facilities are warranted to encourage social participation, creativity and active living

Roads and Infrastructure

- Goal 1 Develop and implement a Roads and Transportation Master Plan to guide short term development, construction and maintenance schedules, and to inform long term capital planning
- Objective Play a leadership role in the implementation of an Active Transportation Strategy that connects the entire region through sidewalks, trails and bike lanes

Unity Plan

- Goal 9 Healthy Active Community: Huntsville will continue to support and encourage healthy, active lifestyles through supporting the availability of fresh, nutritious and local food, and the continued provision, maintenance and expansion of opportunities for recreation for all residents of all ages, cultures and abilities.

Parks Master Plan

For the purposes of this plan, “parkland” is defined as:

- d) Unopened Road allowances leading to water
 - e) Road / Shore road allowances where a traveled municipal road runs within it and provides public access to the water
- 5.1.1 To preserve Huntsville’s heritage and protect our natural environment, while developing a modern, vibrant and competitive community.
- 5.1.2 To foster an environment that encourages and enhances recreational and cultural growth.
- 5.1.3 Lakes, rivers and Crown lands are public resources that provide year round leisure and recreational opportunities to both residents and visitors and enhance quality of life.
- 5.1.4 Improved access to water as a public resource is a high priority.

- 5.1.7 Parkland shall be accurately identified both by survey and on the ground as resources permit. Until such a time as this is accomplished, a disclaimer shall be given whenever disseminating information about its location, particularly in relation to water access points.
- 5.1.9 Acquisition and development priorities on waterfront should be linked to lake capacity guidelines, as set by the District Municipality of Muskoka.
- 5.2.3 Road allowances leading to water shall be retained in public ownership whether or not they have potential for access to the water, and shall remain as part of the open space/non development land base around the lake, except where alternate access is provided by an applicant to the satisfaction of the Town.
- 5.2.4 Existing portages shall be protected from encroachment by other land uses, and may be acquired by the Town or secured through a land trust or conservation easement.
- 5.2.5 In order to increase the amount of public parkland or conservation lands around a lake, the Town will acquire waterfront land where appropriate as the parkland dedication rather than requiring a cash-in-lieu contribution through the consent and subdivision approval process. This would be particularly applicable where the property is located immediately adjacent to an existing public access to water, such as a road allowance. As an alternative to this requirement, particularly in more remote areas or where limited parcels would be created, consideration may be given by the Town to taking a cash-in-lieu contribution and/or a lakefront conservation easement.

[Policy and Procedure for Closing Road and Shore Road Allowances](#)

[Purchase of Shore Road Allowances as a Condition of Planning Applications](#)

[License of Occupation Policy](#)

Huntsville Official Plan:

- 10.11.1 The Town may, at its sole discretion, and subject to whatever conditions are deemed appropriate, open and improve any portion of a road allowance to permit its use by public vehicular traffic. Nothing shall limit the right of the Town to open, improve or maintain any roadway as part of its capital works program(s).
- 10.11.2 An Amendment to this Plan is not required if the Town opens and improves any portion of an unopened road allowance.
- 10.11.3 Where original shore road allowances have been laid out in the original survey of a Town or reserved in a patent from the Crown, the Town may pass by-laws to stop up and sell such road allowances in accordance with applicable Municipal Act requirements, provided that:

- a) the portion of the road allowance to be closed has no present or foreseeable future municipal use of public road or pedestrian travel, public waterfront areas, public access and portage, or any other municipal purpose; and
 - b) only the portion of the road allowance above the controlled or normal high water mark is conveyed out of public ownership.
- 10.11.4 Where the portion of the road allowance to be closed abuts or provides access to significant fish spawning areas, wildlife habitat, other environmentally significant features or significant historical or cultural features, such road allowance may be closed provided the impact of the road closing on these features is mitigated to the satisfaction of the Town.
- 10.11.5 In certain cases, portions of the shoreline road allowance or crown reserve could be closed to deal with existing building encroachments. In these instances, only a small building envelope should be closed.
- 10.11.6 Where no present municipal use exists for a specific portion of such a road allowance but there is a foreseeable future municipal use, such portion may be stopped up and leased only for such length of time as the Town deems reasonable, provided that only the portion of the road allowance above the controlled or normal high water mark is leased.
- 10.11.7 Road allowances leading to water shall be retained in public ownership whether or not they have potential for access to the water, and shall remain as part of the open space/non development land base around the lake, except where alternate access is provided by an applicant to the satisfaction of the Town. Where there are existing building encroachments, the Town may consider leasing the area of the encroachment to the abutting property owner. When such a property is redeveloped, the encroachment should be discontinued.
- 10.11.8 Existing public access points, which may include boat docking and launching facilities, shall be protected from encroachment by other uses. Such facilities shall be maintained to reduce the impact of the uses on the surrounding natural environment.
- 10.11.9 Existing portages shall be identified and protected from encroachment by other land uses, and may be acquired by the Town or through a land trust or conservation easement.
- 10.11.10 The Town may consider, as a condition of closing and selling a shore road allowance, retaining a conservation easement over those parts of the road allowance that are to remain in their natural state or be otherwise protected, to ensure the long term protection of the shorelands.
- 11.7.1 Where possible, lands developed for public park purposes shall be consolidated into acreage of sufficient size to facilitate the desired recreational use and parks maintenance.
- 11.7.2 Significant natural features may be designated Open Space, and potentially acquired as public open space. Where any lands under private ownership are designated as Open Space, this Plan shall not

be construed to imply that such lands will necessarily be purchased by the Town. If at any time, proposals are made to develop any such lands, and the Town does not wish to purchase the lands in order to develop or maintain the Open Space, then an application for the redesignation of such lands for other purposes will be given due consideration by the Town.

- 11.7.3 Lands designated as Open Space may be used for municipal utilities provided that structural coverage of the land is minimized, and screened in such a way so as to maintain the open space character of the designated area.
- 11.7.4 Lands to be conveyed as part of the parkland dedication related to development shall only be considered acceptable as public Open Space if the topography, shape, location and function of the lands are deemed suitable for public recreational purposes by the Town.
- 11.7.5 Public Open Space uses, parks and recreational trail facilities may be permitted in any land use designation in this Plan.
- 11.7.6 Public Open Space uses are encouraged to locate in or adjacent to:
- a) existing public parks;
 - b) areas with adequate public access;
 - c) areas with natural amenities or scenic areas; and
 - d) areas which are presently lacking in sufficient passive open space, particularly where evidenced by local demand for improved public open space facilities.
- 11.7.7 Where possible, municipal lands adjacent to water bodies will be kept in a natural state.
- 11.7.8 The maintenance, enhancement or restoration of vegetative buffers along shorelines in municipal parks and other municipal lands is strongly encouraged.
- 11.8.5 In order to increase the amount of public or conservation lakefront lands around the lake, the Town will acquire lakefront land where appropriate as the 5% parkland dedication rather than requiring a cash-in-lieu contribution. As an alternative to this requirement, particularly in more remote areas or where limited parcels would be created, consideration may be given by the Town to taking a cash-in-lieu contribution and/or a lake front conservation easement.
- 11.8.7 Municipal road allowances which could become a link in a trail system will not be conveyed out of public ownership.
- 11.8.8 Where application is made to close and convey a road allowance, if the road allowance would not contribute to a trail system, regard shall be had for conducting an exchange for alternative land that could become part of a trail system where deemed appropriate.

CONSIDERATIONS:

- Access to lakes and rivers should be readily available for the public, as water is a public resource and therefore maintaining or establishing public access points should remain a priority.
- The Town incurs significant liability from private use of unopened public road allowances. Typically, where an abutting owner wishes to build infrastructure on or use a portion of a unopened road allowance, they will apply to the Town to close and purchase this property. Through the sale of the land above the normal high water mark, Town receives payment and the liability for use of the land transfers to the new owner. The land below the high water mark cannot be sold by the Town and therefore remains in its ownership. However, if selling the portion of the road allowance above the high water mark is not possible, another option for the abutting property owner and the Town to consider is the granting of a licence of occupation on that land.
- Council recently adopted a new policy concerning Licences of Occupation on road and shore road allowances.
- Section 10.11.6 of the Town's Official Plan states that the sale of original shore road allowances should only occur where there is no present or anticipated future public use or benefit. Further, Section 10.11.4 indicates that if a portion of a road allowance abuts or leads to a significant environmental feature, it may be closed if mitigation measures are implanted to the satisfaction of the Town. This is in conflict with Section 1.1 g) of the Town's Road and Shore Road Allowance Closure policy which states, Shore road allowances will not be closed when it abuts or provides access to significant fish spawning areas, wildlife habitat, or other environmentally significant features or contains significant historical, cultural, or recreational features.
- Council's Strategic Plan envisions the creation of a Community Master Plan. It is envisioned that through the process to complete this Plan, a review of existing public water accesses will be undertaken and consideration will be given as to whether additional facilities are required to further facilitate residents and visitors in leading active and healthy lifestyles.
- Council's Strategic Plan envisions the creation of a Transportation Master Plan. It is envisioned that through the process to complete this Plan, a review of the active transportation network and its connectivity to public spaces including water accesses will be undertaken.

SUMMARY:

A review of best practices from other municipalities across Muskoka has revealed that the following policy approaches may assist in addressing some of the considerations:

- All of the Town policies and strategic documents should be reviewed and updated so that they are consistent.

- When considering a land division application in an area without public water access, or where an enlargement to an existing water access point is needed, the Town should request parkland instead of cash-in-lieu.
- Road allowances leading to water, particularly those providing the only public access to a waterbody should not be conveyed out of public ownership. In some instances, if a land swap is proposed that would provide more appropriate public access to the waterbody, conveyance of the road allowance should be considered.
- Information clearly identifying public access points should be available to the public.
- A new public water access should be only be created if it is determined to be in the public interest; and will not have a negative impact on any environmentally sensitive feature, and is compatible with abutting properties.