

DEPARTMENT OF PHYSICAL SERVICES

**FILE MEMORANDUM**

Date: November 25, 2014  
RE: Winnie Lake Area Development Plan  
To: Wilfred Hass, Economic Development Officer  
From: Ashley Bilodeau, Planner

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**SUMMARY**

The Town is of the opinion that an Official Plan Amendment, Zoning By-law Amendment and Plan of Subdivision would be necessary in order to proceed with development on Winnie Lake. The Town would further be required to ensure that proper access is developed, including rights to all those who own property within the subdivision. This process would be time-consuming and costly, as the Town or a developer works towards overcoming the numerous challenges identified within provincial and municipal policy documents. This includes the potential undertaking of several studies such as lake capacity, fish habitat analysis, significant habitat area analysis, sewage disposal and well potential, engineering if steep slopes are present, etc.

**WINNIE LAKE**

The area is located approximately 14.5 kilometres northeast of downtown Kirkland Lake, in the Township of Teck. Access is available via Goldthorpe Road, following a seasonally-available forest access road. There is also a secondary forest access road off of Highway 11 north of Lake Sesekinika that travels to the site.

This area has been subject to forestry and exploration activities and has been used recreationally for quite some time. Access via snowmobile and all terrain vehicles is predominant.

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After meeting with Jeff Barton on September 30, 2014 regarding the Forest Management Plan for the Winnie Lake area, Mr. Hass requested information regarding potential residential development on the lake. The following report outlines the pertinent policy, and the challenges that would need to be overcome prior to development being considered.

**POLICY**

*Provincial Policy Statement 2014*

Section 1.1.5 of the *Provincial Policy Statement 2014 (PPS 2014)* provides policies related to development in rural lands in municipalities. Permitted uses include (a) the management or use of resources; (b) resource-based recreational uses (including recreational dwellings); (c) limited residential development; (d) home occupations and home industries; (e) cemeteries; and (f) other rural land uses.

The *PPS 2014* further states:

- 1.1.5.3 Recreational, tourism and other economic opportunities shall be promoted.
- 1.1.5.4 Development that is compatible with the rural landscape and can be sustained by rural service levels should be promoted.
- 1.1.5.5 Development shall be appropriate to the infrastructure which is planned or available, and avoid the need for the unjustified and/or uneconomical expansion of this infrastructure.
- 1.1.5.6 Opportunities should be retained to locate new or expanding land uses that require separation from other uses.
- 1.1.5.7 Opportunities to support a diversified rural economy should be promoted by protecting agricultural and other resource-related uses and directing non-related development to areas where it will minimize constraints on these uses.

Section 1.6.7 of the *PPS 2014* states that “transportation systems should be provided which are safe, energy efficient, facilitate the movement of people and goods, and are appropriate to address projected needs”.

Section 1.6.8.4 states that “the preservation and reuse of abandoned corridors for purposes that maintain the corridor’s integrity and continuous linear characteristics should be encouraged, where feasible”.

#### *Official Plan for the Town of Kirkland Lake*

Section E.5.2 states that the following are considered permitted uses under the *Official Plan*:

- (a) Geo-science and mineral exploration and mining;
- (b) Airports and ancillary structures;
- (c) Forestry, forest management, logging, lumber and sawmills;
- (d) Aggregate resources extraction;
- (e) Rural residential development;
- (f) Recreational activities including hunting, fishing, public and private parks, campgrounds and recreational trailer parks, church camps and institutional camps, race-tracked or courses for motorized vehicles or horses, hiking trails, ski trails, snowmobile trails, canoe routes and other passive leisure pastimes and drive-in theatres;
- (g) Agricultural uses including market gardens, green-housing and aviaries, also kennels, dog training schools, catteries, and riding schools;
- (h) Water supply and sanitary waste disposal facilities and landfill sites; and
- (i) Commercial and industrial uses in accordance with specific policies.

Section E.5.6 states the general policies regarding rural residential development:

Rural residential development in the Rural Area shall include low-density rural estates and cottage developments having a minimum level of municipal services. For the purposes of policies pertaining to rural residential development, all rural residential developments shall be assessed as being of a permanent nature.

It is the intent of this particular section to recognize rural residential development as a new form of development within the rural areas of the municipality and to establish a framework for rationalizing the demands this form of development exert on other rural land uses presently recognized. The need to protect natural resources is paramount with respect to existing uses to ensure a more precise distinction between these uses and competing rural residential uses.

The rural policies respect the fact that the state of the art of planning for rural residential development is ongoing and that there will be a continuing need to incorporate new information and new techniques in refining the approach to rural residential development.

Since the Winnie Lake area is not listed as a site to be developed for rural purposes under the Official Plan, an Official Plan Amendment would be required.

Section E.5.10 of the *Official Plan* states that “the intent of Council is to ensure as far as possible a road network that will adequately accommodate the transportation needs of the Town and to maintain these roads in a good state of repair within the financial capabilities of the Town. The Town is experiencing demands for increased levels of servicing in rural areas such as more frequent snow-plowing, opening of seasonal roads to year-round and maintenance, dust control on roads, and the opening of new road allowances. It has been found that road services in rural areas are sometimes difficult and expensive to provide due to the dispersed development patterns associated with rural development. This can place an additional financial strain on the Town. Any further demands for the Town to open unopened road allowances, assume private roads or increase the level of servicing will be fully assessed in terms of municipal costs and the desirability of the kinds of development which may follow any road upgrading.

- (a) The Town will continue to improve public roads as funds become available.
- (b) Except for seasonal development on a lake or resource related development, all new development in the Town will have suitable access to a year-round, publicly maintained road.”

Section E.5.11 discusses the use of Rural Areas as Forestry. It states that “timber management ensures not only continued timber production but also prevents soil erosion, supplies habitats for wildlife, and maintains the aesthetic quality of the area. It is the intent of Council to recognize the importance of forestry to the future economic position of the Planning Area.

- (a) Forestry has not been identified as a separate land use designation but will be recognized as a permitted use in the Rural Area...
- (b) Forest management practices will be regulated by the Ministry of Natural Resources under the sustained yield principle and a timber management plan.

- (c) Timber harvest practices will be controlled and large clear-cut logging operations may be restricted in the vicinity of watercourses in order that wildlife habitats may be protected and the forest and recreation amenity maintained.”

In terms of subdividing land for the purpose of residential building lots, the Official Plan introduces consent policies in Section H.2. It reads as follows:

“In order to facilitate the orderly, economical and progressive installation of services a consent policy should be following for the granting of land severances. Where a plan of subdivision is not necessary for proper and orderly development, a consent to a land conveyance may be given in accordance with the following applicable policies where:

- a) Regulations: It is clearly apparent that the resulting use of the land will be in accordance with the policies of this Plan, regard shall be had for the provisions of the implementing zoning by-law;
- b) Financial: Approval of the application shall not prejudice the financial status of the Town by undue extension of any major service. It is clearly apparent that no development could result which would lead to significant expense by the Town for additional public works;
- c) Surrounding Uses: Regard shall be had to the compatibility of the proposed use and its effect on surrounding area, and any environmental impact;
- d) Services: All proposed uses shall have an adequate supply of municipal water and sewer facilities for the disposal of waste material, or services approved by the Ministry of the Environment or its designated agent where individual systems are permitted in this *Plan*.
- e) Traffic: Properly designed and located access from the proposed use will be provided so that there will be a minimum hazard to traffic along any road or highway;
- f) Public Roads: The proposed parcel fronts on an open, publicly owned and maintained public road, which is of acceptable standard for construction.
- g) Access: The effect of the severance will not prevent access to any other parcel of land;
- h) Lot Dimensions: The size and shape of the parcel is appropriate for the use proposed;
- i) Soil and Drainage: The soil and drainage of the existing and proposed lots are shown to be suitable for the installation of a private sewage disposal system as well as have an adequate supply of potable water, and the land is suitable to permit the proper siting of buildings.
- j) Exceptions: There are instances in the Planning Area where hardship situations exist or where consents are required for public purposes. In the case of hardships Council is of the opinion

that legitimate hardship situations should be rectified where the persons involved were acting in good faith, the hardship existed on the date of adoption of this amendment, and any buildings constructed or placed on the lot were done so legally. Notwithstanding the above policies of the *Plan*, consents may be granted for the following purposes:

- i. To correct lot boundaries;
- ii. To convey additional lands to an adjacent lot provided the conveyance does not lead to the creation of an undersized or irregularly shaped lot for the purpose for which it is being used;
- iii. To separate dwellings or structures when two or more parcels have been consolidated;
- iv. To clear title;
- v. To rectify other hardship situations;
- vi. For municipal or other government purposes; and
- vii. Severances which do not have the effect of creating an additional building lot may be permitted.

#### Zoning By-law 12-019

Section 7.9.1 of the Town's Zoning By-law states that "no person shall construct or erect upon a lot, a building or structure for any purpose on any zone unless the front lot line of such lot abuts a public street other than a lane or private right-of-way, except that resource related development may be accessed via a private road. A building or structure may be erected or used on an existing separate lot of record which does not front on an opened public road or highway, if the existing separate lot of record does have registered access to an opened public road or highway."

In the *Rural Area*, hunt camps and mobile home parks are listed as a permitted use. A cottage or any type of residential use would require a rezoning to "Rural Recreation Development (RS)" or "Rural Estate Development (RE)".

#### Challenges Posed by Existing Provincial and Municipal Policy

The policy that is currently in place poses several challenges to witnessing future development on Winnie Lake.

1. **Highest and Best Use:** Provincial policy emphasizes that we should ensure that seasonal recreational development is the highest and best use of the property vs. forestry. In order to proceed, we would have to prove that the seasonal residential development is more valuable than the wood that could be harvested in this area.
2. **Access:** Although provincial policy encourages seasonal residential development, our Zoning By-law has provisions within it that restricts development from occurring due the inability to access the properties legally.
3. **Subdivision Control:** The process of developing a subdivision is subject to several other requirements, such as environmental assessments, a lake capacity study, grading and

elevation plans, surveying, septic system approval, well location studies and potentially the imposition of site plan control on all properties to be developed. There is also a potential need for the extension of hydro/gas services, and the development of a legally registered right-of-way/road allowance.

### **HIGHEST AND BEST USE**

An analysis will need to be completed to determine if the value of the property as a recreational hub and/or seasonal cottage development would be the best value for the municipality. Locals have been using this spot as a hunting and fishing area for several years. There are forestry operations occurring on several properties nearby. Although a buffer is in place for forestry near waterways, there are plenty of trees in this area that could be harvested. A detailed analysis should be undertaken to determine what the value of the land is from a forestry perspective and what individual lots would cost us, and sell for, as future seasonal residential development.

### **ACCESS**

Golthorpe Road begins at the junction of Highway 66 and Government Road West leading into Chaput Hughes and continues approximately 1 kilometre up to Macassa Mine. From there, it appears the mine has relocated a portion of the road, which may qualify as an "Access Road" which crosses the railway tracks up to the Amikougami crossing which comprises of a double eight foot culvert system installed by the Municipality. The road is only publicly maintained to the point of the Kirkland Lake Gold Incorporated mine access at the end of the residential subdivision.

The Highway 11 access via a forest access road located north of Lake Seseikinika is partially maintained until a certain point. This forest access road is approximately 23 kilometres in length and takes approximately an hour to travel. The road becomes inaccessible by motor vehicle at a certain point, and only "all-terrain vehicles" are capable of accessing some areas.

These roads are considered forest-access roads only, and have not been declared as road allowances by the municipality or other Townships. It travels over properties with varying ownerships, including private, Crown and Municipal land.

### **Road Access Act**

The *Road Access Act* deals with access roads that were established via old exploration trails or forestry roads and continually used as access points to various properties. Under the *Act*, a "road" needs to be qualified as passable by a motor vehicle as defined under the *Highway Traffic Act*. The two roads that are used to access the Winnie Lake area, as described above, are a challenge to access with a motor vehicle. This would result in the roads not being classified as access roads under the *Road Access Act*.

After discussions with several parties including the MNR, MMAH, Timmins Planner and Rosko Forestry, we identified several additional concerns with respect to the *Act*, should the classification of these roads as access roads be disputed:

- The *Act* does not recognize the fact a road may be temporarily approved such as for forest operations;
- The *Act* allows for cancellation of an access road;
- A road only exists if it is passable by a motor vehicle (as defined under *The Highway Traffic Act* which does not include snow machines);
- It fails to discuss the magnitude of all “other applicable laws”, such as required permits for creek and railway crossings;
- The *Act* does not grant the user rights to repair;
- There is no clarification regarding who would be responsible for maintenance;
- Not all parties may have the rights to use;
- The *Act* does not establish, who holds the liability; and
- The *Act* appears primarily for recreational or land owner’s uses only; not the general public.

The *Road Access Act* fails to meet the necessary requirement for the existing Zoning By-Law. There are no provisions to ensure a road system is established to create safe passage for the residents, whether seasonal or not. More importantly, this lack of road system would not ensure reasonable access for emergency services to respond in a timely manner.

### Zoning Requirements

The language in the Town’s policy states that all roads for access purposes must be publicly maintained and opened road allowances or legally registered as a right-of-way to guarantee continued access to the property in the future. Without the establishment of a permanent access point, there is no guarantee that the properties will continue to be accessible in the future.

The process of establishing a legal right-of-way would be costly in both these instances, as it would require easements set up on all or portions of mining claims where the existing road traverses. Blanket easements may be a more cost effective approach, and would likely be suitable for mining companies who do not utilize surface rights, but for private property owners, this process may prove to be more difficult. If permission is granted by the private property owners to traverse the lands, they would likely request that the existing road be surveyed and an easement registered on that portion of the road only, rather than their entire mining claim. Once the right-of-way is established, development could likely occur along each of the properties that front onto the right-of-way.

It is unlikely that the municipality would assume these roads and/or bring them up to municipal standard. The intent for this area is to keep it seasonal, and to leave the road in private ownership, with a cottage association responsible for maintenance of the road.

It is important to note that the costs associated with surveying the existing road and creation of all legal documents in order for this type of development to occur would be substantial.

**It should further be mentioned that subdivision approval by the Ministry of Municipal Affairs and Housing would be unlikely for anything other than a municipally maintained**

**year-round road, as specified in their application process. However, if we provide proper private right-of-ways and have a cottage association in place, we may be successful.**

### *Maintenance Requirements*

If the road is agreed to be a seasonal private right-of-way, Town staff are further concerned about the future maintenance of the road. Once the road deteriorates and becomes non-passable, who will be responsible for maintaining it? Once the subdivision is established, would there be a requirement for the Town to re-establish and maintain the road? Proper arrangements would need to be made with future residents/cottage associations to ensure the burden does not fall on the Town.

### **SUBDIVISION CONTROL**

The idea of splitting mining claims up into a subdivision for the purpose of selling seasonal cottage lots would likely result in the following requirements from the Ministry of Municipal Affairs and Housing:

#### *Environmental Studies*

A Phase I and Phase II Environmental Assessment would be required on the subject properties prior to the subdivision being approved. Environmental Assessments are undertaken before a project takes place to analyze potential environmental effects as a result of the proposed development.

#### *Mine Hazard Studies*

This area, although not a prime mining area in Kirkland Lake, has been subject to exploration. As a result, a detailed mine hazard study would have to be undertaken to rule out any potential dangers.

#### *Lake Capacity Assessment*

Lake Capacity Assessments are typically undertaken when substantial development plans are being considered near water. The Assessment reviews the effect the proposed development will have on the water body. Ph levels are examined and shoreline buffers are put in place for development to ensure that the lake, its vegetation and species are capable of withstanding the type of development proposed. Lake Capacity Assessments can also be a requirement when adding additional land uses on already-well-developed lakes.

#### *Survey – Road*

As previously described, a survey would likely be required for the majority of the road to provide legal access to the properties. This would be a very large project, as the road from both ends is at least 15 kilometres long.

#### *Survey – Properties*

The proposed subdivision layout would need to be surveyed in order to properly be sold to private individuals.

#### *Dedication of Land to the Municipality*



A certain portion of land would need to be retained by the municipality for "public purposes". Another option would be to collect cash-in-lieu of parkland for the purpose of revamping other parks within the municipality.

#### *Suitability for water and septic systems*

The Temiskaming Health Unit (THU) would be responsible for conducting site visits to ensure that water can be accessed and septic systems can be installed on each of the proposed lots.

#### *Requirements for Blasting and Fill/Grading*

It is likely that blasting and fill would be required to properly develop foundations in this area. The road that will be utilized to access this area more permanently will have to be upgraded in order to accommodate the type of vehicles that deliver such fill and prepare for proper blasting of rock.

#### *Extension of Hydro*

Although not a requirement for seasonal residential development, it may be a priority for some residents. If so, this could be something that the Ministry would require us to look at. Hydro lines run nearby to power surrounding unorganized townships however, to get the proper feed in to the proposed subdivision, Hydro One will need to conduct a study and construct plans. Again, this will likely be a very time consuming and costly project.

#### *Access for Emergency Vehicles*

Although the road access may not be maintained by a municipality or be considered for year-round use, it is important that it is suitable for emergency vehicles, including fire truck and ambulance. There are some insurance companies that do not insure homes if they are located outside of a 12.0 kilometre parameter from a fire hall. This may become a challenge in this area.

### **OTHER APPLICABLE LAW**

#### *Ontario Building Code*

The *Ontario Building Code (OBC)* requires a permit to be issued when all other applicable law is complied with. The issue lies with inspections being mandatory under the *OBC*. If the road conditions affect safe passage of motor vehicles, or if the road is a private right-of-way granting access only to those who live on the lake, the building officials may not be able to legally access the property to inspect.

### **CONCLUSION**

Being so far from Town, and with the existing policy in place, it would be extremely difficult to see this area developed, even as seasonal development. I believe that there is a case to be made however, as provincial policy, along with some Town policy, does encourage seasonal residential development as potential economic development, so long as seasonal legal access is provided. The mining claims would be subject to an application to the Ministry of Municipal Affairs and Housing for a Plan of Subdivision and Official Plan Amendment, a Zoning By-law

Amendment would be required, and further to that, individual Site Plan Control Agreements would likely be a requirement for each individual lot, as per the Plan of Subdivision. This application process would be costly and time consuming, and would likely result in several challenges as we try to push for a Plan of Subdivision on land that is accessed only during spring, summer and fall, an access that will not be maintained by the municipality, and properties that will remain unserviced.

This would be a costly project to take on however it is important for the Town to consider the likelihood of a private developer taking this project on entirely, as well.

### **HOW TO PROCEED?**

If the Town of Kirkland Lake is interested at taking a closer look at the feasibility of such a project, Town staff can dedicate some time to get cost estimates and timeframes for the proposed studies and work that would need to be conducted.

For now, the lands currently remain land locked but remains usable for recreational use such as tenting and camper trailers. It is recommended at this time that Council consider adding a protective designation over the Winnie Lake area, along with a buffer around various lakes throughout the Corporation, which may be suitable for cottage development. These protective buffers would eliminate clear-cutting forestry within that specified buffer.

It may also be beneficial to perhaps look at cottage development on a lake that is closer to the Town's centre, such as Amikougami. Amikougami, although no real direct access, would require far less surveying and road construction than a proposed development on Winnie Lake.

Respectfully,



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**Department of Physical Services**