

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** September 12, 2022

**CASE NO(S).:** OLT-22-002969  
(Formerly) PL180898

**PROCEEDING COMMENCED UNDER** subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Langmaid's Island Corporation
Subject:	Request to amend the Official Plan - Failure of the Township of Lake of Bays to adopt the requested amendment
Existing Designation:	Waterfront (and identified as 'Muskoka Heritage Area')
Proposed Designation:	Waterfront (and identified as 'Muskoka Heritage Area')
Purpose:	To clarify and refine policy relating to the Langmaid's Island Muskoka Heritage Area, to establish site specific policy for the development of 36 lots for residential uses and to provide for the protection of conservation blocks
Property Address/Description:	Big Langmaid's Island & Little Langmaid's Island
Municipality:	Township of Lake of Bays
Approval Authority File No.:	OPA 01/18 LOB
OLT Case No.:	OLT-22-002969
Legacy Case No.:	PL180898
OLT Lead Case No.:	OLT-22-002969
Legacy Lead Case No.:	PL180898
OLT Case Name:	Langmaid's Island Corporation v. Lake of Bays (Township)

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Langmaid's Island Corporation

Subject:	Application to amend Development Permit By-law No. 04-180 - Neglect of the Township of the Lake of Bays to make a decision
Existing Zoning:	Waterfront Residential (with 'Heritage Site' overlay)
Proposed Zoning:	Waterfront Residential with an Exception (WR-E___), Waterfront Environmental Protection with an Exception (WEP) and Waterfront Environmental Protection (WEP)
Purpose:	To establish site specific development provisions for the proposed 36 lots for residential uses and to provide for the protection of conservation blocks
Property Address/Description:	Big Langmaid's Island & Little Langmaid's Island
Municipality:	Township of Lake of Bays
Municipality File No.:	Z 01/18 LOB
OLT Case No.:	OLT-22-002970
Legacy Case No.:	PL180899
OLT Lead Case No.:	OLT-22-002969
Legacy Lead Case No.:	PL180898

**PROCEEDING COMMENCED UNDER** subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Langmaid's Island Corporation
Subject:	Proposed Plan of Subdivision - Failure of the District of Muskoka to make a decision
Purpose:	To permit a development of 36 lots for residential uses with site specific development provisions and to provide for the protection of conservation blocks
Property Address/Description:	Big Langmaid's Island & Little Langmaid's Island
Municipality:	Town of Huntsville and Township of Lake of Bays
Municipality File No.:	S2018-1
OLT Case No.:	OLT-22-002976
Legacy Case No.:	PL180916
OLT Lead Case No.:	OLT-22-002969
Legacy Lead Case No.:	PL180898

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Langmaid's Island Corporation
Subject:	Application to amend Zoning By-law No. 2008-66P - Neglect of the Town of Huntsville to make a decision
Existing Zoning:	Shoreline Commercial One
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a waterfront landing to access Langmaid Island
Property Address/Description:	4215 South Portage Road
Municipality:	Town of Huntsville
Municipality File No.:	Z/12/2018/HTE
OLT Case No.:	OLT-22-002974
Legacy Case No.:	PL180912
OLT Lead Case No.:	OLT-22-002969
Legacy Lead Case No.:	PL180898

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Langmaid's Island Corporation
Subject:	Application to amend Zoning By-law No. 2008-66P - Neglect of the Town of Huntsville to make a decision
Existing Zoning:	Residential (R1) Zone
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a waterfront landing to access Langmaid Island
Property Address/Description:	3933 South Portage Road
Municipality:	Town of Huntsville
Municipality File No.:	Z/11/2018/HTE
OLT Case No.:	OLT-22-002972
Legacy Case No.:	PL180911
OLT Lead Case No.:	OLT-22-002969
Legacy Lead Case No.:	PL180898

**Heard:** February 1 to March 1, 2021 by video hearing

**APPEARANCES:****Parties****Counsel**

Langmaid's Island Corporation

M. Melling  
A. Margaritis  
G. O'Brien (student-at-law)

Township of Lake of Bays

J. Ewart

Town of Huntsville

J. Ewart

The Lake of Bays Association

H. Elston  
M. Hodgson  
C. Emmett

The Lake of Bays Heritage Foundation

H. Elston  
M. Hodgson  
C. Emmett

Kelly Zytaruk

Self-represented

**DECISION DELIVERED BY G.C.P. BISHOP AND PARTIAL ORDER OF THE TRIBUNAL**

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[1] The Tribunal convened a Phase 1 hearing of the merits in this matter.

Langmaid's Island Corporation (the "Applicant") has appealed:

- a. in the Township of Lake of Bays ("Lake of Bays") – an Official Plan Amendment ("OPA") pursuant to s. 22 (7), with the District of Muskoka ("Muskoka") as approval authority, and a Development Permit By-law Amendment pursuant to s. 34 (11) of the *Planning Act* ("the Act");
- b. in the District of Muskoka as approval authority, a draft Plan of Subdivision ("PofS") pursuant to s. 51 (34) of the Act; and
- c. in the Town of Huntsville ("Town") – two Zoning By-law Amendments pursuant to s. 34 (11) of the Act.

[2] The proposal would permit the development of a 32-lot draft PofS on Langmaid's Island (the "Island") in Lake of Bays. The proposed development includes water access; four conservation blocks and two water access points from the mainland located in the Town at 4215 South Portage Road (the "Beauview Cottage Resort property") and 3933 South Portage Road (the "3933 property"). The use of the dwellings would be seasonal. Muskoka is the approval authority for both the draft PofS and the proposed OPA, submitted to Lake of Bays.

[3] There are six parties of record in this matter, and all are represented in these proceedings, with the exception of Kelly Kztaruk, who is self represented. There are a number of interested participants who provided participant statements. A comprehensive participant statement book is found at Exhibit 63.

## **KEY ISSUES**

[4] The Procedural Order had a defined Issues List that was agreed upon by the parties. During the five-week hearing, it became evident that the key issues are best described as does the proposed development:

- a. respect the general intent of the relevant Provincial, Muskoka, Town, and Lake of Bays statutory planning documents and are the various background reports of sufficient detail to ensure the proposed development is appropriate for the Island;
- b. respect and protect the cultural heritage values of interest found on the Island – is the proposal suitable development for the Island;
- c. respect the natural heritage features of the Island and appropriate in an area that has currently undisturbed natural heritage and hydrological features;
- d. have sufficient engineering capacity to accommodate a dwelling and septic system; respect flood prone lands and steep slopes thereby not representing an over development of the Island; and

- e. provide sufficient operational requirements in the Town that are appropriate to service the seasonal residents.

## **THE WITNESSES AND STATEMENTS**

[5] The following witnesses provide witness statement (“WS”) and provided expert evidence during this proceeding. The Tribunal will make reference to both oral and written testimony in this decision.

[6] For the Applicant:

- a. Stefan Szczerbak (WS Exhibit 2, Tab 6A and Reply Witness Statement (“RWS”) Tab 6B) regarding land use planning focused on the proposed Zoning By-law Amendments for the mainland properties, contemplated for waterfront landings; and James C Dymont and Debra Walker (Joint WS Exhibit 2, Tab 7A and Joint RWS Tab 7B) as a panel with respect to land use planning, more focused on the elements of the proposed development of the Island;
- b. Dan Currie (WS Exhibit 2, Tab 2A and RWS Tab 2B) with respect to cultural heritage and cultural heritage planning;
- c. Bill Van Ryn with respect to engineering matters relating to municipal services for land development focusing on site servicing and water systems (WS Exhibit 2, Tab 1A and RWS Tab 1B);
- d. Gord Nielson (WS Exhibit 2, Tab 3A) with respect to boating impact and navigation matters;
- e. Al Shaw (WS Exhibit 2, Tab 4A and RWS Tab 4B) with respect to ecology and aquatic biology; and
- f. Michael Hannay (WS Exhibit 2, Tab 5A) regarding visual impact.

[7] For Lake of Bays – Melissa Markham (WS Exhibit 8 – a report to Lake of Bays Council) with respect to land use planning.

[8] For the Town – Kirstin Maxwell (WS Exhibit 7 – report to the Town Planning Committee) with respect to land use planning.

[9] For the Lake of Bays Heritage Foundation (“Foundation”) and the Lake of Bays Association (“LOBA”):

- a. Stephen Fahner (WS Exhibit 13 and an updated WS Exhibit 57) with respect to land use planning and appropriate weight will be given as an avid boater in the District;
- b. Derek Coleman (WS Exhibit 9 and RWS Exhibit 11) with respect to ecology and environmental planning; and
- c. two area residents with interest in the proposed development being: Judith Mills (WS Exhibit 10) – President of the Foundation and Board of Directors and Mary Ann Peden (WS Exhibit 12) – President of the LOBA. Both provided lay testimony to the Tribunal.

[10] For Kelly Zytaruk:

- a. Jennifer Ellard-Alexis (WS, part of Exhibit 15) – Sustainable Development Specialist; and
- b. Rick Esselment (WS, part of Exhibit 15) – with respect to site servicing.

[11] A comprehensive Participant Statement Book was submitted on behalf of the Participants by LOBA and the Foundation (Exhibit 63).

## **RULING ON JENNIFER ELLARD-ALEXIS’S EVIDENCE AND TESTIMONY AS AN EXPERT**

[12] During the course of the hearing and before Ms. Ellard-Alexis testified, the Tribunal was informed that Ms. Ellard-Alexis was posting screen shots of the hearing

event and commenting on the progress and presentation of documents and evidence in contravention of Rule 22.5 of the Tribunal's *Rules of Practice and Procedure* ("Rules"). The Tribunal also found the contents of those Facebook posts problematic. The Facebook posts were recorded as Exhibit 60. Paragraphs [13] through [24] of this Decision is the oral ruling from the Tribunal finding that Ms. Ellard-Alexis will be limited to give advocate evidence on behalf of her client.

[13] Shortly after the commencement of this hearing, Ms. Ellard-Alexis posted photographs of the hearing event on Facebook with comments included, contrary to Rule 22.5 of the Rules. This section of the Rules deals with Photographic, Audio or Video Recording of a Tribunal hearing event.

[14] While the Tribunal may accept her ignorance of the Rules on the posting of the photographs on Facebook, it is the content of those postings that is most disturbing to the Tribunal.

[15] On November 30, 2020, Ms. Ellard-Alexis signed an Acknowledgement of Expert's Duty, in accordance with Rule 7.5 of the Rules, to provide opinion evidence that is fair, objective and non-partisan.

[16] On February 4, 2021, on Facebook, Ms. Ellard-Alexis quotes:

Langmaid's Tribunal continues – questions arising about successional forests and biodiversity. Praying to god that means my report got some traction!! In my opinion Langmaid's a island was appropriately identified as a key biodiversity area and should not never become a subdivision. Thank God we have some progressive laws and policies on the books – now we need to get the system to recognize that.

[17] The Tribunal sees this as a statement of both self importance and self promotion as evidenced by the number of hashtags added to the statement itself. All in the face of a signed Acknowledgement of Expert's Duty to this Tribunal to deliver unbiased opinion evidence. She is praying that her report has got some traction when she has never been in the stand to present her evidence nor has been cross-examined.



[18] Later the same day, she posts:

It's a public and opposing party (Lake of Bays Association) has just dropped what I think will be a conservation bomb on the proceeding.

[19] This is in reference to the full Ministry of Natural Resources and Forestry ("MNR") report that was found in the archives of MNR Office in Peterborough.

[20] This again shows total lack of self control, judgement and the ability to give independent and unbiased opinion evidence to this Tribunal.

[21] The Tribunal also received an updated *Curriculum Vitae* ("CV") of Ms. Ellard-Alexis from her representative with a file date of February 1, 2021. The top of this updated CV has Ms. Ellard-Alexis's name on the top, followed immediately by the words – Change Maker, Team Player, Capacity Builder and Advocate.

[22] The Tribunal does suggest to Ms. Ellard-Alexis the word "Advocate" be removed from her CV, as this alone is grounds for dismissal by this Tribunal to allow this witness to be elevated to the level of delivering unbiased opinion evidence.

[23] The Tribunal will not accept Ms. Ellard-Alexis as an expert in this hearing but as an advocate to her client.

[24] The Tribunal will allow Ms. Ellard-Alexis to give evidence at this hearing but the evidence-in-chief will be limited to the same amount of time set aside in the hearing work plan for the lay witnesses, being 1.5 hours in-chief.

## **SITE AND AREA CONTEXT**

[25] The lands subject to this application is found on two islands which are located in Lake of Bays. The total area of the two islands is approximately 53.79 hectares ("ha") in

size and have approximately 6,180 metres (“m”) of waterfront frontage. The Applicant owns both islands, the larger island being approximately 50.74 ha and the smaller is 3 ha in size. It is the Tribunal’s understanding that, by raising the water level of Lake of Bays, through the placement of a controlled dam system, flooding has occurred to create the artificial water boundary between the two islands. As mentioned earlier, the Tribunal will refer to both islands as the “Island” throughout this Decision, being the limits of the proposed development. The Applicant also owns a third small island known as Seagull Island and is located to the north of the large island, between it and the mainland. Seagull Island has no existing structures, nor are proposed in this application.

[26] The central portion of the Island was previously developed with three cottages, a generator building and a boat house. All buildings are in disrepair and have been abandoned and heavily vandalized. The Island is predominantly treed with mixed forest with a variable thickness of overburden. There are areas of exposed bedrock and a ridge with peaks that runs along the middle of the large island with all surface water draining to the lake. The main Island has typical Muskoka Landscape with hills 50 m high in the central and eastern portion of the Island with the hill in the western portion being approximately 25 m high.

[27] Included as part of this proceeding are lands located in the Town. The first is the 3933 property that has historically been used to provide access to the Island and the Beauview Cottage Resort property has been secured to provide additional boat access and parking for the proposed draft PofS.

[28] The surrounding land uses include:

- North - within the Town permanent and seasonal waterfront residential dwellings and accessory buildings;
- South - within Lake of Bays permanent and seasonal waterfront residential dwellings and accessory uses;

- East - within the Town and Lake of Bays, the closest property is Roothog Island; and
- West - within the Town and Lake of Bays permanent and seasonal waterfront dwellings and accessory uses.

## **AGREED UPON STATEMENT OF FACTS**

[29] The expert witnesses did meet as required by the Procedural Order and prepared a number of Agreed Upon Statement of Facts (“ASOF”) by discipline in an effort to further clarify and scope issues. These ASOF were of assistance to the Tribunal and the final versions are as follows:

- a. of the Land Use Planners (Exhibit 4);
- b. of the Ecologists (Exhibit 5); and
- c. of the experts related to servicing of the proposed development. (Exhibit 6).

## **PLANNING INSTRUMENTS**

[30] The Planning Instruments before the Tribunal in these proceedings are found in Exhibit 73 and are:

- a. an OPA to Lake of Bays Official Plan (“Lake of Bays OP”) that serves to correct the Island description, reflect the findings of the Environmental Impact Study (“EIS”), provide additional policy, regulatory and character guidelines to assist in the development process on the Island;
- b. an amendment to Lake of Bays Development Permit By-law No. 04-180 (“Lake of Bays DPBA”) placing the Island lands into a site-specific Waterfront Residential (WR) designation and providing for a series of specific regulations to implement the proposed development;

- c. an amendment to the Town's Zoning By-law No. 2008-66P ("Town ZBA #1) for the 3933 property placing these lands into a Residential One (SR1) Zone with a site-specific Exception Number to permit 10 docking slips and a restriction of the cumulative width of all shoreline structures and amenity areas;
- d. an amendment to the Town's Zoning By-law No. 2008-66P ("Town ZBA #2) for the Beauview Cottage Resort property placing these lands into a Shoreline Commercial One (CS1) Zone with a site-specific Exception Number to permit waterfront landing as an additional permitted use; and
- e. a proposed draft PofS which provides for 32 waterfront residential lots and four conservation blocks on the Island and also includes the mainland parking blocks in the Town. The proposed draft PofS will be subject to Phase 2 of the hearing and Muskoka is the approval authority for PofS. The draft PoS will be heard in Phase 2 of the hearing following a decision of this Tribunal on the other matters and Planning Instruments now before it and considered in this Decision.

## **BACKGROUND**

[31] Suffice it to say this matter has an extensive history. A brief review is as follows:

- a. prior to submitting applications, the planner for the Applicant met with Lake of Bays, the Town and the Muskoka staff; consulted with the LOBA, the Muskoka Conservatory and held a stakeholders' workshop with interested members of the community. A public open house was held in December 2017;
- b. applications were made to Lake of Bays to amend the Lake of Bays OP and the Lake of Bays Development Permit By-law along with an application for draft PofS to Muskoka in January 2017. All of these applications were deemed complete in February 2018;

- c. applications to the Town were submitted in February 2018 and deemed complete in March 2018;
- d. a complete series of background reports were submitted including a Planning Justification Report; EIS; Functional Servicing Report; Stage 1 – 2 Archaeological Assessment; a Heritage Impact Assessment (“HIA”); and a Boating Impact Assessment (“BIA”). The requisite reports including the HIA and BIA were peer reviewed;
- e. subsequent to internal and peer reviews of background reports, technical reports were updated and resubmitted to Lake of Bays, the Town, Muskoka, and the peer reviewers in August 2018;
- f. further submissions were made to Lake of Bays, the Town and Muskoka in October and November 2018 in response to Lake of Bays staff and peer reviewers’ comments;
- g. as of October 29, 2018, all of the consultants retained by Lake of Bays and Muskoka “had completed their peer reviews and indicated that they had no objections to the applications proceeding to approval, subject to conditions that could be imposed on the Draft Plan approval or by Development Permit By-law Amendment regulations”;
- h. Town staff recommended that both ZBAs’ applications be denied in November 20, 2018 and Lake of Bays staff made a similar recommendation with respect to the amendment to the Lake of Bays OP and Lake of Bays DPBA on November 13, 2018, but dated November 20, 2018; and, due to the appeals to the Tribunal, councils for the Town and Lake of Bays did not make decisions on their respective applications;
- i. council for the respective approval authorities failed to make decisions within the prescribed timeframes. Appeals on all of the Planning Instruments were made to the Tribunal in November of 2018 in three separate notices of appeal. On November 13, 2018, the appeal was submitted for Lake of Bays OPA and DPBA applications; on November 19, 2018, the appeal was submitted for the Town ZBA applications; and on

November 22, 2018, the appeal was submitted for Muskoka draft PofS application.

## **LAND USE PLANNING POLICY**

[32] Many of the issues in the Issues List are related to the statutory planning documents of the Province, Muskoka, the Town, and Lake of Bays. All planning witnesses provided either oral or written evidence in their review, analysis, and opinion in respect of relevant planning documents, proposed Planning Instruments and the proposed development. The Tribunal will review this evidence in keeping with the Issues in the Issues List and the Key Issues identified earlier in this Decision. Much of the land use planning evidence presented on behalf of the Applicant, with respect to relevant statutory planning documents is presented as a panel made up of Mr. Dymant and Ms. Walker (the “planners”).

### ***The Planning Act***

[33] The planners for the Applicant provided a detailed summary of how the proposal has appropriate regard for s. 2 of the Act. Opinion evidence noted the relevant subsections including: natural features and their functions are identified and the necessary mitigation measures incorporated; no features of significant cultural, historical, archeological or scientific interest were identified on the Island; there is confirmation that private sewage and water services can be appropriately accommodated; there are significant and recurring financial and economic benefits that accrue to Lake of Bays and Muskoka; all municipal authorities have been involved in a complete and iterative planning process; there has been an extensive planning process, the proposed development standards go well beyond the standard requirements of the Lake of Bays Development Permit By-law and a large portion of the Island will remain forested and in a natural state. In conclusion, it is opined that the proposed development has appropriate regard for the Act.

[34] Neither Mmes. Markham and Maxwell nor Mr. Fahner spoke to s. 2 of the Act.

[35] The Tribunal accepts the uncontested evidence of Applicant's planners and finds the proposed development has appropriate regard for s. 2 of the Act.

### **Provincial Policy Statement 2020**

[36] The planners for the Applicant described how the Provincial Policy Statement ("PPS") provides overarching policy on land use planning in Ontario, with a general goal to enhance the quality of life of those living in the Province. Evidence of the planners is articulated through a detailed analysis in the WS, where they spoke to all of the relevant sections of the PPS. Many of the themes of the PPS follow the direction found in s. 2 of the Act. The Tribunal notes that much of the PPS discussion relates to the issues with respect to the Island where the majority of the hearing is focused, but many of the principles of the analysis can be applied to both the Town ZBAs.

[37] The planners (including Messrs. Hanney, Currie, and Szczerbak in respect of their discipline) provided evidence to the Tribunal on behalf of the Applicant are of the opinion that all of the proposed Planning Instruments are consistent with the PPS. Reasons that the proposed seasonal residential lots and waterfront landings and access are consistent with the PPS include:

- a. are capable of being serviced privately and water access makes use of existing municipal infrastructure resulting in minimal servicing cost to the municipality. Necessary hydro and communication facilities can be made available to the Island;
- b. will be located only on lands that are suitable for residential development and will not intrude into environmentally sensitive areas and the features with the highest ecological value will be maintained. Close to 90% of the Island will not be developed and maintained in a natural state. All these considerations are identified in a detailed comprehensive EIS (s. 1.1.1);

- c. an important economic driver in Muskoka is recreational development and the economic benefits have been established. An appropriate balance has been met between economic growth while ensuring the natural environment has been protected; development will make use of existing cultural and natural assets to create a desirable seasonal recreational development. It represents controlled growth in a waterfront community and leverages the recreational assets historically offered in Muskoka and the Town (s. 1.1.4);
- d. all of subject lands would be considered “Rural Lands” within the context of the PPS. In evidence it is demonstrated that this means recreational dwelling units is a permitted use. In the ASOF, it is noted both the Island and the waterfront landings are “Rural Lands” by definition as they are outside of a settlement and prime agricultural areas. Should development be deemed appropriate through an analysis of the PPS, new recreational dwelling lots and landings are permitted uses in the applicable Waterfront designation. The use of ‘promoted’ in the PPS strongly supports all proposed uses in a way which is compatible with the landscape that is typical for a waterfront community in Lake of Bays and the Town. The lotting pattern provides for what exists and is permitted in the Waterfront designation to ensure they can be properly serviced and have access to the mainland (s. 1.1.5);
- e. the Applicant has taken a coordinated approach to ensure all the various jurisdictions involved were informed, comments considered to ensure the Planning Instruments are properly integrated into existing documents, consistent, and comprehensive (s. 1.2.1);
- f. much of the evidence heard at the hearing related to natural heritage which will be discussed in greater detail later in this Decision. The planners did speak to their opinion with respect to consistency as follows. “Natural heritage features and areas” are identified, and appropriate mitigation measures are recommended in the EIS to ensure any impact is minimized or avoided. Clearance was received from the MNRF on the EIS



recommendations to address species at risk and the peer reviewer determined the EIS and subsequent information provide as acceptable.

The proposed Planning Instruments are designed along with the Construction Mitigation Plan to protect fish habitat. The EIS evaluated both the Island and adjacent lands concluding no negative impacts on natural features and their ecological functions (s. 2.1);

- g. the Functional Servicing Report (“FSR”) made recommendations to ensure the protection of lake water quality and provides for a comprehensive Construction Mitigation Plan. The proposal as implemented by the Planning Instruments, has a minimum lot area of 0.8 ha which is twice the area required in the Township OP on a Category 1 lake (s. 2.2);
- h. a HIA and Stage 1 – 2 Archeological Assessment were completed in support of the proposed development. The planners deferred to the authors of these studies, but in their review found them to be consistent with the PPS (s. 2.6);
- i. the Applicant has completed a more detailed analysis and evaluation than has been previously undertaken for similar applications in an effort to demonstrate where development can or cannot occur. The proposed Planning Instruments serve to update the Lake of Bays OP with the more accurate and current information made available in these detailed studies (s. 4.6); and
- j. the Lake of Bays OP is more restrictive than the PPS. The Lake of Bays OP does contemplate the development of Muskoka Heritage Areas (“MHA”). Criteria to be met are established both in a general way and specifically to the Island. The Applicant conforms to the Lake of Bays OP by completing the requisite impact assessment (s. 4.9).

[38] Mr. Fahner on behalf of the Foundation and the LOBA provided evidence with respect to the PPS. He took a much more specific analysis of the proposed

development, speaking to s. 1.1.5, s. 2.6 5 and s. 4.6 of the PPS in relationship to development in “Rural Areas”.

[39] He is of the opinion that the proposed instruments are not consistent with the PPS for the following reasons:

- a. there is a recognition that in “Rural Areas”, resource-based recreational uses are permitted and recreational opportunities should be promoted but only in a form “that is compatible with the rural landscape”. His evidence questioned the compatibility of the proposed development with the rural landscape on and surrounding the Island. One must take into account that the extremely low density of development that exists today on this very large Island and the “Special Heritage Area” status of the property. He maintained the position that “Special Heritage Area” is part of the rural landscape and should be maintained as such;
- b. the PPS states that significant cultural heritage landscapes shall be conserved subject to an evaluation that demonstrates the heritage attributes of the Island will be preserved. He opined that the proposed draft PofS and the implementing Planning Instruments do not adequately preserve the significant cultural heritage landscape, nor the many of the heritage attributes on the Island; and
- c. the official plan of a given municipality is the most important vehicle for the implementation of the PPS and must be kept up-to-date to reflect current Provincial policy. The Lake of Bays OP was updated in 2016 containing many polices related to the preservation of heritage areas in general and specifically to the Island.

[40] Ms. Markham is the planner for Lake of Bays, completed a comprehensive review and evaluation of the proposed development with respect to the policy framework of the PPS. She is of the opinion that the in-force Lake of Bays OP is consistent with the PPS. Therefore, the proposed development is not consistent with the

PPS. Her opinion is based on three themes: environmental impact, compatibility with the existing surrounding heritage area of which the Island is part thereof and its character/visual impact is not in keeping with the policies of the Lake of Bays OP (to be discussed later in this Decision) and therefore is not consistent with the PPS.

[41] Ms. Maxwell, the planner for the Town notes that the two properties in the Town are considered as 'Rural Lands' and development that is compatible to the rural landscape are to be promoted. In her opinion, the proposed waterfront landing and parking area is not compatible with the rural landscape of the area. Since the proposal does not conform to the Town's Official Plan ("Town OP"), it is her opinion that the proposed development is not consistent with the intent of the PPS.

[42] The Tribunal notes specifically that in the planners' ASOF is determined that: "if development is deemed 'appropriate' through analysis of the PPS, new recreational dwelling lots and landings are permitted land uses in the applicable Waterfront designation".

[43] The Tribunal prefers the evidence of the planners for the Applicant and finds that the proposed development and Planning Instruments have appropriate regard to s. 2 of the Act and are consistent with the PPS.

## **MUNICIPAL POLICY**

### **District of Muskoka Official Plan – 2014**

[44] The Muskoka OP 2014 (consolidation October 3, 2014) sets the general direction for physical development and growth in Muskoka by providing land use designations along with environmental and infrastructure policies to ensure long-term sustainability and to achieve desired growth in the District. The Muskoka OP 2014 was in-force at the time the applications were deemed complete. Hence, the Planning Instruments and the

applications were evaluated within the context of these in-force policies in keeping with the *Clergy* principle.

[45] The policies of the Muskoka OP 2014 were consistent with the PPS in-force at that time and the proposed Planning Instruments and development are evaluated earlier in this Decision against the PPS 2020. Hence, many of the themes of the witnesses' evidence with respect to conformity to the Muskoka OP 2014 are similar. The Tribunal in its review will attempt not to be repetitive.

[46] The planners for the Applicant are of the opinion that the proposed OPA, the Lake of Bays DPBA and both Town ZBAs conform to the Muskoka OP 2014 and gave detailed evidence to demonstrate how they came to this conclusion. Reasons that the proposed seasonal residential lots and waterfront landings and access are in conformity with the Muskoka OP 2014 include:

- a. promotes residential growth in a Waterfront designation that is compatible with the existing character and context, protects the natural features as lands of environmental significance are identified and appropriate buffers established. A total of 24% of the Island is to be protected through conservation easements. Thereby respecting the quality of the landscape and natural environment by maintaining a large portion of the land base as forests ensuring growth is consistent with the area's growth strategy;
- b. access to the mainland is provided by two waterfront landings in the Town and are shown as blocks on the draft PofS. These blocks would be subject to easements in favour of lots within the draft PofS;
- c. the lots and building plans have been evaluated by various professionals engaged in the application process and municipal staff to ensure 'the suitability of lot(s) for development in areas of "Natural Constraint". It was found private servicing solutions will provide a higher level of treatment; water will be provided from the lake; access is established; appropriate setbacks are found in the Lake of Bays DPBA; construction can be

adequately mitigated; significant habitat has been identified protected; and a further Development Permit for the development of each lot would be a condition of the draft PofS.

- d. significant study was completed by a variety of expert consultants to ensure that the Significant Heritage Areas defined in the Muskoka OP 2014 are properly identified and respected. The proposed development proposes to re-designate 16.0 ha to Waterfront Environmental Protection designation;
- e. areas of significant biotic interest have been identified with accurate mapping of fish habitat in consultation with the MNRF. Impact is kept to a minimum by ensuring waterfront amenity areas are well-removed from identified fish habitat; and
- f. Muskoka, when considering an appropriate designation, determined that a Waterfront residential designation with restrictions was appropriate for the Island, rather than a Significant Heritage Area that is found in the Lake of Bays OP.

[47] Mr. Fahner took a more nuanced review of the Muskoka OP 2014 to base his opinion with respect to the proposed development. He is of the opinion that the proposed development does not conform to the Muskoka OP 2014 OP for the following reasons:

- a. it is an important policy objective that the quality of the landscape is important and should be protected. The proposed development does not define adequately views and viewing points and all the views are not being enhanced (s. C. 4 and C. 7);
- b. the proposed development is not compatible with the immediate community area. The Island is part of an area that has numerous and different bays. The Island being part of this 'bay and island' community has little development, hence this character must be taken into account as a heritage area and is part of Lake of Bays community. (s. C. 9);

- c. due to the shallowness of the water and the density of the proposed development, there is not adequate access to the Island properties. The uses in the Town are not compatible in scale and intensity of use with the existing residential uses on the bay hence the proposed access is not proper (s. C. 10);
- d. he is not aware of another similar PofS being developed in Muskoka and the background material prepared by the Applicant is inadequate with respect to demonstrating the impact on Heritage Areas (s. C. 13);
- e. an important policy statement is that Heritage Areas should be maintained and protected in their current state. Although this is not a mandatory statement, the proposed development will not protect nor maintain the character and beauty of the Heritage Areas (s. F. 2b); and
- f. does not preserve nor improve the scenic views or vistas of the significant waterfront landscape of this part of Lake of Bays; is not a compatible use and there has not been adequate regard for the viewing potential of the Island, especially when considering the impact of dwellings and docks and boat houses on the shoreline. The Muskoka OP 2014 defers to the local official plan for the protection of heritage resources and the Lake of Bays OP does provide this additional level of protection and as such, these resources have not been adequately addressed (s. F. 4, F. 77, F. 97, F. 114 and F. 115).

[48] Ms. Markham in her evidence supported Mr. Fahner's reasons why the proposed development is not in conformity with the Muskoka OP 2014. Ms. Markham made special reference to:

- a. the negative impact on the environment and scenic values that have been identified on the Island's Heritage Area, negative environmental impact of the proposed development on a currently undisturbed area, and the impact as a result of the introduction of shoreline structures, buildings, and septic facilities on a largely undisturbed Island;

- b. the Island was identified by Muskoka as a Significant Heritage Area and the Muskoka OP 2014 states “that the areas possessing or encompassing such values shall generally be protected from incompatible uses or activities”. The Island’s recognition is based on the values and criteria which include habitat diversity, biotic quality and lack of disturbance, fish and wildlife concentrations and scenic landscapes. The proposed development does not protect the Island from incompatible uses or activities;
- c. where environmental or heritage areas have been approved and inventoried for protection in the local official plan, special consideration should be incorporated into implementation documents to adequately protect the heritage resource. They should be recognized in special zoning categories within implementing municipal zoning or development permit by-laws; and
- d. in conformity with the Muskoka OP 2014, the Lake of Bays OP has designated the Island as “Langmaid’s Island Muskoka Heritage Area” recognizing the importance of the Island and the need to ensure its protection.

[49] Ms. Maxwell spoke to the section within the Muskoka OP 2014 that relates to “new uses or interests in land will be compatible with other legally existing land uses in the vicinity” and the “type and character of the community or area in which the use is being proposed”. She is of the opinion that the Applicant has not met the intent of the Muskoka OP 2014 based on its use, compatibility and character which are detailed in the review of evidence with respect to the Town OP.

[50] The Tribunal prefers the evidence of the planners for the Applicant but has some reservations with respect to the impact of the waterfront landings in the Town and their compatibility with respect to provide sufficient operational requirements, most notably vehicular traffic and sufficient parking that the proposed development will generate. This theme is found throughout the decision and findings of the Tribunal.

**District of Muskoka Updated Official Plan – 2019 (“Muskoka OP 2019”)**

[51] Issue 4 of the Issue List relates to the proposed development and its conformity with the policies of the updated Muskoka OP 2019, which was not in-force when the application was deemed complete. The planners for the Applicant took some considerable effort to evaluate the proposed development against these new policies. The Tribunal is of the view that the Applicant must have regard to these updated official plan policies. Upon completing their review, the planners saw no change to their opinion and recommendation with respect to the Planning Instruments.

[52] The planners’ policy evaluation considered the following with respect of the Muskoka OP 2019: the overarching Natural Heritage objectives; Natural Heritage features within Muskoka; significant wildlife habitat; EIS requirements, consideration of cumulative impacts; land securement; requirements of planning authorities; general development policies; standard protection policies; objectives related to the conservation of cultural heritage resources; the protection of ecological features and functions; and general policies related to permitted uses within the Waterfront Area designation.

[53] The planners took the Tribunal through how the Planning Instruments had appropriate regard for all relevant policies and how the studies required by Lake of Bays and the Town demonstrated the Planning Instruments have had complete regard for the policies found in the Muskoka OP 2019.

[54] The Tribunal heard little evidence from either Lake of Bays, the Town, or the Foundation witnesses with respect to Muskoka OP 2019.

[55] The Tribunal accepts the uncontested evidence of the planners for the Applicant and finds that the Planning Instruments have appropriate regard to Muskoka OP 2019.



## **Township of Lake of Bays Official Plan**

[56] The Lake of Bays OP consolidated on July 5, 2016 was in effect at the time the applications were deemed complete. The Island is designated “Waterfront” and permits residential uses; waterfront commercial uses; open space; or conservation and related accessory uses. The Island is identified as a “Muskoka Heritage Area” in the Lake of Bays OP.

[57] Ms. Markham provided testimony with respect to her opinion of how the proposed development cannot be considered to be in conformity with the Lake of Bays OP. Her reasons are as follows.

- a. substantial development will be discouraged on the Island in order to retain its natural and undisturbed area and retain its important values. Therefore, the creation of new lots on the Island or substantial development will be discouraged in order to retain the Island has a natural undisturbed area and retain its important values (s. D. 98);
- b. any further development on the Island beyond the existing development site requires an independent assessment to determine, identify, locate and evaluate the values and to ensure any development can occur in a location and manner which will preserve these values. The Applicant did submit an EIS and HIA, an effort to demonstrate that the values of the Island would be preserved but in her opinion, these studies were insufficient to demonstrate that the Island will be maintained in a natural and undisturbed manner. The proposed development does not maintain the Island’s natural and undisturbed area and the Lake of Bays has been provided no justification as to why the Applicant could not preserve the whole Island in its natural state (s. D. 99);
- c. the preservation of the values related to the landscape and shoreline which has little existing disturbance along with the preservation of the

scenic value of the hills on the Island have not been appropriately addressed;

- d. the creation of 32 waterfront residential lots on the Island does not support the existing landscape nor shoreline which show little recent disturbance. The proposed development will result in removal of significant vegetation and trees resulting in a substantially modified landscape. It will also require a septic system and allow for accessory structures along with the main dwelling unit;
- e. there is another island in Lake of Bays that is developed by a PofS that makes use of a “special policy area” to ensure it appropriate within the context of the natural environment where an appropriate shoreline yard setback was established, and no cutting of vegetation was permitted. In the case of potential development on the Island, there are no common corridors for construction or access that could limit the impact of the proposed development. Therefore, each individual lot will require waterfront access and the clearing area for the dwelling unit, accessory buildings, and the septic system; and
- f. two significant hills have been included for preservation but the third has been divided into several residential lots.

[58] It is Ms. Markham’s opinion that the proposed development and supporting Planning Instruments do not adequately protect and preserve the values identified by the Island’s Muskoka Heritage Area designation therefore, the Planning Instruments do not conform to the policies of the Lake of Bays OP.

[59] Ms. Markham went on to testify that any development on islands located in Lake of Bays must conform to s. H. 46 which includes the consideration of whether the Island is suitable for the proposed development. In determining suitability of development, character and compatibility must be thoroughly evaluated.

*Compatibility*

[60] Ms. Markham in her evidence stated that an important consideration of the Lake of Bays OP is that waterfront landings are compatible with surrounding properties. The proposed development is that of shoreline lots on the Island with only water access. Water access to the Island will be permitted where: adequate private or commercial docking and parking facilities are secured on the mainland to the satisfaction of the Lake of Bays. Mainland parking and docking facilities for water access properties including islands may be provided through commercial marinas, private individual access points serving a maximum of three properties, or waterfront landings serving four or more properties. In this matter, parking is being provided in a different municipality, but the Lake of Bays OP states that adequate private or commercial docking and parking facilities are to be secured on the mainland to the satisfaction of Lake of Bays.

[61] Ms. Markham spoke to the Lake of Bays OP policies related to waterfront landings and access that would be suitable for consideration in Lake of Bays. These policies include consideration of: adequate frontage and area to accommodate the facility; sufficient docking and parking facilities; adequate access to and from landing points by both water and land that is suitable; the landing and access point will not have a negative impact on natural heritage areas or is located in a area affected by a development constraint; is compatible with abutting properties; is set back in accordance with the policy and has as appropriate stormwater management and construction mitigation.

[62] Ms. Markham noted that it is important to this proposed development that there are no resulting issues as they relate to parking or incompatibility with the surrounding uses on the mainland. The Applicant proposes to use the mainland docking and landing facilities solely for the use of docks, parking and loading for septic pump out purposes. The proposed instruments do not account for the use of these facilities for support services. All commercial traffic at the waterfront landings must be required to be

accessed from other Lake of Bays public access points. Therefore, it is her opinion that there is insufficient docking provided to serve the proposed residential uses.

[63] Ms. Markham's position is that the mainland landing facilities are not designed in a manner that is compatible with the abutting properties as follows:

- a. 3933 property - this property is currently vacant and not zoned to permit a waterfront landing. The proposed development would include parking for 20 vehicles, garbage and recycling area for residents, small storage sheds, and docks to accommodate mooring of 10 boats; and
- b. the Beauview Cottage Resort property - will provide parking for a minimum of 104 parking spaces, garbage, and recycling area for residents a dock dedicated to a shuttle boat and a second dock for temporary mooring of up to 6 boats.

[64] The proposed development suggests a reduced parking standard, nor does it have sufficient buffers to adjacent neighboring lots. Access to the Island will be largely by automobile to the landings. The Applicant has not submitted sufficient parking justification to support a reduction in the parking standards. It is her opinion that the addition of a parking area, docking and garbage facilities, and the required parking spaces for water access lots on the Island will not be compatible with the surrounding waterfront residential use.

[65] Ms. Markham recognized that a BIA was prepared, and peer reviewed on behalf of Lake of Bays. It concluded that the influences of additional traffic in all areas of potential congestion have been appropriately considered in determining how to accommodate a combination of mainland waterfront landings and shuttle facilities along with the development of other appropriate mitigation measures. It was noted by the peer reviewer that the Narrows would be somewhat more congested than estimated and the public is concerned that the shuttle should not use the Narrows to access the Island. Lake of Bays does not have the authority to enforce the operation of the shuttle service.

*Character/Visual Impact*

[66] Ms. Markham described how the Lake of Bays OP identifies a desired outcome for growth and development. It strikes a balance between growth and environmental protection by “encouraging growth that enhances economic opportunity while respecting the character in heritage of the Township of Lake of Bays”. In the Lake of Bays OP, there are objectives to conserve the rich landscape, preserve the natural panorama and setting of the land and lake, conserve the waterfront as a valuable resource and accommodate development which respects the basic character and traditional mix of uses. Character is established over time and is determined such consideration as physical setting and landscape characteristics, historic development patterns, cultural heritage, architecture and design, intensity of use, level of services and infrastructure along with open space, natural areas and recreation areas and facilities.

[67] Ms. Markham recognizes that the character of rural and waterfront designations is not static overtime but adapts to new circumstances. She is of the view that the proposed development does not maintain “the essence and fundamental features of the designation”. As the area grows, only development which is compatible with and complements this character should be fostered.

[68] In conclusion, Ms. Markham is of the opinion that the proposed development is not a good planning and is not appropriate for the Island. When evaluated against the Lake of Bays OP, it does not retain the Island as a natural and undisturbed area, is not compatible with the identified values of the Island, does not propose access that is compatible with the surrounding properties, and does not preserve the character of the area.

[69] Mr. Fahner's evidence closely followed that of Ms. Markham. He emphasized the objectives and policies of the Lake of Bays OP which refer to:

- a. preserving the landscape of lakes, maintaining the natural anesthetic qualities of the area, preserving the cultural heritage including landmarks and landscapes and the preservation of natural settings of the lakes;
- b. both the basis and principles of the policies of the Lake of Bays OP are heavily oriented to the environment, when development and the environment conflict, the environment is primary in the Township's evaluation of proposed developments;
- c. character is exceedingly important especially within the context of the Waterfront designation. The historical development pattern around most of the shoreline on the mainland is a ring of development in the form of single detached residences. This is not happened on the Island and has remained that way for many years. The Lake of Bays OP (s. C. 8) states that areas with relatively undeveloped land should be preserved for conservation. In his opinion, the Island meets this description;
- d. an open space strategy for the Island with a dedicated parkland would protect the scenic areas, as well as a historic site and special landmark. He noted that issues around maintenance and liability must be considered;
- e. environmental protection policies are found in Section D of the Lake of Bays OP identify that "the conservation of the natural environment will take precedence over development when the two are in conflict and mitigation measures are unable to protect environmentally sensitive or significant natural heritage features and functions". It is his opinion that the protection of the natural shoreline in scenic locations are not being adequately addressed in the proposed development;
- f. many policies related to Natural Heritage are related to the proposed development. He questioned whether the studies prepared by the Applicant were sufficient to identify natural heritage areas and determine the impact of the proposed development on the natural heritage areas; and

- g. with respect to “Langmaid’s Island Muskoka Heritage Area” specific policies, it is his evidence that substantial development will be discouraged, and an impact assessment will need to be completed for any future limited development. A 32-lot PofS along with accessory uses, boathouses, and docks are not what is contemplated in this policy.

[70] Mr. Fahner is of the same opinion as Ms. Markham and the proposed development is not good planning and is not appropriate for the Island.

[71] The planners for the Applicant followed the Issues on the Issues List when evaluating how the proposed development meets the policies of the Lake of Bays OP. Their detailed evidence describing how the proposed development and Planning Instruments conform to Township OP policy includes the following:

- a. respects and suitably protects the heritage values identified in the Lake of Bays OP. A comprehensive HIA was completed in support of the application and provided input into the Planning Instruments. All of the recommended mitigation measures from the HIA have been included as part of in the recommended Planning Instruments. A complete evaluation of these measures is found in Exhibit 2, Tab 7 (Issue 5);
- b. an important policy found in the OPA states that “Development shall be designed and constructed in accordance with Character Guidelines approved by the Township of Lake of Bays. Suggested Character Guidelines were submitted to address issues from the peer reviewer and comments from the community.” (Issue 6);
- c. the OPA establishes a set of foundational policies on which the subsequent implementing Planning Instruments will follow. Policy includes: each lot has waterfront access in an area that is outside of fish habitat or significant wildlife habitat; care in accessing the lots for construction and long term maintenance purposes will minimize the impact on the shoreline’s vegetative buffer; each lot has at least a 90 m frontage

and a minimum area of 0.8 ha; there is an adequate building envelope; there is a suitable location for the required septic system on each lot without the requirement for major alteration; individual cottages are designed to minimize visual impact of the development from the lake; and adequate provision has been made for mainland access to the lots (Issue 7);

- d. there is a requirement for a Development Permit for each individual lot. This process ensures that Lake of Bays will have the opportunity to ensure that the current policies of the Lake of Bays OP with respect to matters such as flood-prone lands and steep slopes are addressed appropriately. Each lot must have an adequate building envelope and septic system that may be installed without the requirement for major site alteration (Issue 8);
- e. the proposed development is not considered as over-development. Specific policies are in place to ensure that the physical and environmental constraints are appropriately considered in the PofS in keeping with the Lake of Bays Development Permit By-law and required Development Permit processes. A variety of comprehensive studies have been prepared that demonstrate the environmental features and their functions are protected throughout the development process. These studies were peer reviewed to ensure that the level of development is appropriate for the Island (Issue 9);
- f. development is appropriately controlled to respect and reinforce the sensitivities of the environmental features on the Island. The EIS provides the most current detailed assessment of these features, and that work was the subject of an independently peer reviewed. The EIS was undertaken and completed in accordance with Muskoka OP 2014 and Lake of Bays OP policies. Great care was taken to ensure that the development of lands adjacent to the environmental features identified in the EIS is done in a manner that will not adversely affect those features or their natural functions (Issue 10);



- g. more specific policies have been incorporated into the Lake of Bays DPBA to ensure that the visual, natural heritage, hydrological features and functions of the Island are not inappropriately impacted. Proposed policies include visual impact for Character Guidelines; ensuring development minimizes visual impact. A development permit is required for each lot to implement these policies, and natural heritage and hydrological features are being included in those areas subject to conservation easements. It is the planners' opinion that the proposed OPA will be more restrictive than standard Waterfront designation requirements found in Section D of the Lake of Bays OP (Issue 11);
- h. proposed policies are designed to ensure that the visual impact is minimized through the number of lots proposed, protection of conservation blocks, the maintenance and restoration of vegetation, and the proposed conceptual lot layout. It is the planners' opinion that the proposed development will have less impact on the natural features and functions of the adjacent lands, water quality of the lake and have less visual impact compared to the existing pattern of shoreline development in the surrounding area (Issue 12);
- i. adequate provision has been made for mainland access to the lots to a sufficient policy level. Enforcement as necessary and the boat shuttle operation is more appropriately addressed in a subdivision agreement (Issue 13);
- j. appropriate ownership and management arrangements for the blocks identified for conservation are established in order to preserve these lands in perpetuity. Additions to existing policy require these blocks will be subject of a conservation easement in favor of a registered Land Trust to ensure ongoing conservation and prohibition of public access (Issue 15).

[72] The planners opined "that good planning must be supported by good science". The Applicant has completed exhaustive environmental assessment work that concluded that Muskoka criteria, for designating the lands as a natural heritage area,

have been met. That conclusion was peer reviewed and supported by the peer reviewer. The current natural heritage area designation comes from an apparent previous landowners expressed wishes to maintain the property in a natural condition and that the Foundation would have the first right of refusal on the land should they be made available for purchase.

[73] Therefore, the planners for the Applicant have concluded “based on all the extensive study that is been done by the consulting team”, it is their opinion that the proposed OPA conforms to the Lake of Bays OP, represents good planning and is appropriate for the development of the Island.

[74] The Tribunal prefers the evidence of the planners for the Applicant and finds that the Planning Instruments and proposed development conform to the Lake of Bays OP. There are previous reports produced about the Island such as the 1993 Daniel F. Brunton and the 1994 Reid and Bergsma Reports which provided the basis and foundation of classifying the Island as regionally significant candidate as an Area of Natural and Scientific Interest (“ANSI”) and the evaluation as a natural heritage area. These will be further discussed later in this Decision.

### **Town of Huntsville Official Plan**

[75] The Town OP as consolidated in 2015 was in-force when the applications were deemed complete. The two proposed landings are designated “Waterfront” which permits such uses as residential, waterfront commercial, open space, and conservation. Waterfront landings may also be permitted that provided that a series of tests are satisfied through a zoning by-law amendment that satisfy the applicable criteria.

[76] The proposed development and Planning Instruments would accommodate the following:

- a. with respect to the use of the Beauview Cottage Resort property, the Town OP promotes the preservation of quality tourist commercial land uses essential to the long-term health of the Town's tourism industry. Rezoning of commercial properties along the water is generally not supported. The Applicant is proposing to construct a parking lot adjacent to South Portage Road and west of the tourist commercial buildings. A docking facility will accommodate a boat shuttle service from the mainland to the Island with a second dock to accommodate up to six temporary boats along the shoreline. The Applicant has indicated the resort use will continue and the proposed facilities will not hinder the resort's viability; and
- b. with respect to the 3933 property, the Applicant proposes that a waterfront landing would be the primary use. There would be parking provided for up to 20 vehicles with a dock that would accommodate moorings for 10 boats. There are no additional structures proposed on this lot.

[77] Ms. Maxwell spoke to the Town OP policies as they relate to 3933 property and the Beauview Cottage Resort property as follows:

- a. the Town OP contains a number of tests for new waterfront landings, which require they are designed to be compatible with the abutting properties and have generous yards maintained in a way to provide screening and buffering of neighbouring residential properties. With respect to 3933 property, the conceptual site plan does not illustrate sufficient room to accommodate the parking spaces or appropriate room for turning vehicles. There is not sufficient space to maintain the required vegetated buffer abutting the residential uses on either side. The proposed docking structure is in excess of zoning by-law standards with respect to shoreline activity and dock width;
- b. the Town OP also speaks to the character and development principles in the waterfront. The character of an area will be maintained by retaining a

traditional mix of land uses, an overall low-density form of development, and preservation of the natural environment, vegetation, and natural shorelines. These are important considerations the Applicant must assess in determining the impact of a proposal with respect to the character of the area. The scale of the proposed waterfront landings and associated increase in intensity of use in these locations. The planner is of the opinion that the proposed development is not in keeping with the residential character of the area; and

- c. the Town OP provides details and provisions with respect to shoreline activity areas. The extent of shoreline development of the proposal is significant and is not in consistent with development in the bay. The very nature of shoreline structures and activity means no buffering can be provided and proposed setbacks are not large enough to provide suitable transition.

[78] Mr. Fahner's evidence is consistent with respect to compatibility and maintenance of the character of immediate waterfront residential areas. The waterfront landings are out of scale with the surroundings, may not have sufficient provision for stormwater retention and may not be sufficient for the demand, especially during the high demand times. He noted that construction materials may not be barged from either of the waterfront landings sites due to water depth and a municipal landing located between these properties cannot be used for barging, as it has been recently prohibited in a recent by-law passed by the Town.

[79] The planner noted waterfront landings may only be permitted provided that a series of criteria are met including being adequate in area and frontage, sufficient docking and parking facilities are available, is suitable for the use, will not have a negative impact on environmentally sensitive areas, designed in a manner that is compatible with abutting properties, a minimum of a 20 m setbacks from the shoreline and a natural vegetative buffer is maintained within the setback area, stormwater

management and construction mitigation is addressed, and generous yards shall be maintained to provide for screening and buffering of neighboring residential properties.

[80] Both Ms. Maxwell and Mr. Fahner do not support either Town ZBA #1 or Town ZBA #2 as neither conform to the intent of the Town OP.

[81] Mr. Szczerbak, a planner for the Applicant, in his evidence spoke to the Town OP. It is his opinion that the Lake of Bays OP does not apply to the Landings or the Landings applications. He did evaluate the Town ZBA #1 and Town ZBA #2 and the development of a new waterfront landing against relevant Town OP policies. He made specific reference to the following relevant policies.

- a. the landings are designated “Waterfront” which permits landing uses;
- b. there is considerable policy direction with respect to the creation of new mainland access points “waterfront landings”. The Applicant has taken into account all of the policy “tests” with respect to the development of a new waterfront landing in the Town;
- c. the proposed landings will not have an impact on any environmental sensitive area, habitat, or heritage feature;
- d. the proposed landings have maintained a balance between the natural shoreline and built form along the waterfront;
- e. the Planning Instruments contain appropriate limits for new shoreline structures to ensure the development does not impact the environment and visual features when viewing the property from the water; and
- f. existing policies within the Town OP contemplate the creation of waterfront landings subject to a series of tests. The Applicant has demonstrated, through a variety of technical studies, that proposed waterfront landings to not impact the visual, natural heritage, and functions of the adjacent land and the shoreline.

[82] Mr. Szczerbak opined that the Town ZBA #1 and Town ZBA #2 conforms with the Town OP and meets all of the required policy tests.

[83] The Tribunal prefers the evidence of Mr. Szczerbak and finds that the Planning Instruments and proposed development conform to the Town OP. That being said, the Tribunal does have some reservations with respect to the impact of the waterfront landings in the Town and their compatibility with respect to providing sufficient operational requirements, most notably parking and vehicular traffic at the Beauview Cottage Resort property and the maintenance of a 20 m shoreline buffer at the 3933 property.

### **IMPLEMENTING BY-LAWS**

[84] The Tribunal has before it, three implementing by-laws that make use of two different planning regimes. The Town makes use of a traditional zoning by-law while Lake of Bays use a development permit by-law system. The Tribunal heard evidence from the various planning witnesses with respect to these three Planning Instruments.

#### **Town of Huntsville Zoning By-law Amendments**

[85] The planners in their ASOF agreed that a new waterfront landing use is not permitted in either the SR1 or the CS1 zone. Therefore, a site-specific zoning amendment is required to establish this use.

[86] Both Town ZBA and Amended Zoning By-law No. 2008-66P state as follows:

- a. Town ZBA #1 amends the property known as 3933 South Portage Road from a Shoreline Residential One (SR1) to a Shoreline Residential One (SR1) zone with an exception that allows for a waterfront landing to be a permitted use along with applicable accessory structure(s), a maximum of

10 docking slips and sets a maximum cumulative width of all shoreline structures and amenity areas; and

- b. Town ZBA #2 amends the property known as the Beauview Cottage Resort from a Shoreline Commercial One (CS1) zone with an exception that allows for a waterfront landing to be a permitted use along with applicable accessory structure(s).

[87] The planners for the Applicant have concluded and are of the opinion that the proposed Town ZBA #1 and Town ZBA #2 are appropriate in keeping with the requirements of the Town OP and are proper in their construct to serve the proposed development.

[88] Ms. Maxwell and Mr. Fahner provided evidence that the waterfront landings on both properties are too extensive for the proposed use. Issues related to parking especially at peak times, and the safety of pedestrians either walking along or crossing the roads to access the waterfront. It is their view that the size of the two waterfront landings is not sufficient to account for the number of habitable buildings that are proposed for each lot on the Island. This may result in traffic and parking sufficiency issues. The depth of water at the proposed waterfront landings may not be sufficient for either barges and public landings, which may result in constraints to access to the Island and put pressure on public landings in the area.

### **Lake of Bays Development Permit By-law Amendments**

[89] The planners in their ASOF noted that a development permit by-law differs from a traditional zoning by-law in a number of ways. In addition to permitted uses, it permits discretionary uses and allows variations from standards, provided certain conditions are met. It also regulates removal of vegetation and alteration of the landscape. The Development Permit By-law applies to lands falling within the waterfront designation as set out in the Lake of Bays OP.

[90] The Island is currently zoned/designated “Waterfront Residential Development Permit Area” in the Lake of Bays Development Permit By-law No. 2004-180.

[91] The proposed Lake of Bays DPBA would further amend the Lake of Bays Development Permit By-law for the Island from “Waterfront Residential (WR)” Development Permit area to “Waterfront Residential with Exception (WR-XXXX)” Development Permit area and to the “Waterfront Environmental Protection (WEP)” Development Permit area to the “Waterfront Environmental Protection with Exception (WR-XXXX)” Development Permit area. The exception establishes minimum lot area and minimum water frontages for new lots, minimum shoreline yard setbacks, maximum lot coverage, maximum shoreline activity area frontage, minimum shoreline buffers, the minimum off street parking requirement for a waterfront landing shall be two parking spaces for each property served, plus one visitor parking space for every three properties served, a maximum of 32 lots are permitted, a development permit will be required for each lot, a maximum of three sleeping cabins shall be permitted on a lot subject to conditions, and establishes certain regulations with respect to conservation easements.

[92] Ms. Markham in her testimony presented considerable evidence with respect to the waterfront landings on the mainland as it relates to the Lake of Bays DPBA. She is of the opinion that the proposed waterfront landings are not compatible with the surrounding properties. Shoreline lots with only water access including islands will be permitted only when there are adequate private or commercial docking and parking facilities secured on the mainland to the satisfaction of the Lake of Bays.

[93] Ms. Markham noted that sufficient docking and parking facilities may not be provided to sufficiently serve the proposed residential and resort commercial use. She questioned whether there is sufficient parking provided and properly secured in the interest of the potential property owners in the proposed development. She also questioned how building materials, construction equipment and maintenance vehicles can access the Island by barge. The proposed waterfront landings for the proposed



development may not be appropriate for heavy commercial traffic as the water is quite shallow and there is limited ability to maneuver vehicles. Therefore, the Applicant has not provided sufficient docking facilities to serve the residential use.

[94] Ms. Markham noted there are up to 124 parking spaces to be located on the two waterfront landing properties. Although she agrees that current planning practices are moving away from requiring large parking areas and towards a reduced parking standard, these changes are generally found where there is a greater reliance on non-automobile forms of transportation. The proposed development is located in a resource based recreational area that is dependent only on the automobile for access. There was no parking justification report submitted by the Applicant to support a reduction in parking standards. Only when such a study is completed and reviewed demonstrating that a reduction in parking may be considered, the waterfront landings must be designed to accommodate the number of parking spaces required by the Lake of Bays.

[95] The planners for the Applicant undertook an exhaustive analysis of how the Lake of Bays DPBA conforms to the requisite planning policies of the Muskoka OP and the Lake of Bays OP. Key considerations of the analysis of the Lake of Bays DPBA include:

- a. when one considers how the proposed development permit by-law is constructed along with the required setbacks and vegetative buffers, approximately 90% of the Island would remain undeveloped;
- b. the proposed development seeks to permit waterfront landings on the mainland. The Lake of Bays Development Permit By-law does not apply to these lands. Water access is permitted;
- c. imposes significant setbacks and limits alteration to vegetation along the shoreline;
- d. a further Development Permit is required for each individual lot;
- e. serves to protect significant habitat, important identified features and values, respects the identified cultural and natural heritage values,

important significant sites or values and natural landscape features have been identified and accommodated;

- f. protects from development and tree removal of lands along the shoreline where Type 1 fish habitat and a potential trout spawning shore currently exist. Establishes appropriate setbacks from identified fish habitat;
- g. implements the findings of the EIS and strikes an appropriate balance between the economic benefits of encouraging responsible growth and natural heritage protection. Areas identified through the EIS and HIA are restricted to appropriately control the scale, density, and setbacks of development;
- h. Lake of Bays anticipates growth in the Waterfront designation and describes in more detail how growth will occur. The standards for growth and development in a waterfront designation are implemented in the Lake of Bays Development Permit By-law and are considered fully in the proposed development;
- i. all required background and technical studies were submitted, peer reviewed and found sufficient to ensure that the proposed development and the impact thereof has been properly reviewed, considered, and provided for in the Lake of Bays DPBA;
- j. the proposed DPBA generally has greater standards then required by the Lake of Bays Development Permit By-law. The proposed development can be serviced by private water and septic services;
- k. the proposed buildings and structures will be constructed in keeping with the proposed Character Guidelines that ensure exterior and wall finishes generally implements the design principles established in the Development Permit By-law; and
- l. with respect to building construction, no roads are proposed on the Island to minimize vegetation and tree removal, hydroelectric services are provided for underwater or underground to each lot and stormwater management will be accommodated as part as the recommended Construction Mitigation Plans indicate.

[96] In conclusion, the planners opined that all principles of the Muskoka OP, Lake of Bays OP and Development Permit By-law have been collectively considered in all of the proposed submissions, technical reports and are reflective of the recommendations being implemented in the proposed Planning Instruments.

[97] The Tribunal prefers the evidence of the planners for the Applicant with respect to the construct of the Lake of Bays DPBA and how it serves to implement the proposed development on the Island.

### **TESTIMONY ON BEHALF OF THE LAKE OF BAYS HERITAGE FOUNDATION AND LAKE OF BAYS ASSOCIATION**

[98] The Tribunal had the benefit of hearing testimony from two lay witnesses, Mmes. Peden and Mills, along with receiving a comprehensive Participant Statement Book submitted on behalf of the participants by LOBA and the Foundation. Their evidence demonstrates the importance to the residents of the area, whether seasonal or permanent residents, have to Lake of Bays and its environs. All written material and oral evidence have been considered in this Tribunal's Decision.

[99] Ms. Peden is the President of the LOBA, which is a non-for-profit organization that represents the interests of seasonal and permanent residences on Lake of Bays and the surrounding area. It has a membership of 1,175 families. LOBA has participated in the development of land use planning policy in Muskoka and Lake of Bays since the 1960s. It is principally interested in identifying, evaluating, and responding to land use and waterfront development issues on Lake of Bays and its shoreline. Her testimony includes the following:

- a. the Island is an iconic part of Lake of Bays landscape and is virtually the only undeveloped island on the lake and represents a classic Muskoka shoreline and landform;

- b. the proposed development does not satisfy the intent of its Heritage Area designation. The Heritage Areas are identified with the goal of protecting features as development occurs in Muskoka and need to be recognized in advance of development pressures is that they are protected into the future. There are very limited Heritage Areas remaining on a lake, making it essential to maintain those that are available;
- c. the diversity, quality, and undisturbed nature of the Island, when taken in its entirety, are unique and these natural heritage values will be lost with the development of a 32-lot subdivision;
- d. the greater Lake of Bays community has expressed its opposition to the proposed development with many written and oral submissions received before or during the statutory public meeting. Community issues with respect to boating included increased boat traffic, the proposed marine shuttle service and the safety hazard it may present to anyone swimming or boating in the narrows especially at peak times, the negative impact of increased boat traffic on the shoreline and wildlife habitat along the shoreline, increased soil erosion as a result of increased boat traffic, and damage caused by huge waves to the shoreline, moored boats, and docks;
- e. on the mainland there is expressed issues with respect to the increased car traffic on South Portage Road and potential safety hazards. There is significant pedestrian traffic during all seasons as residents' access either the water or their residences. The proposed total parking of 124 spaces being provided is not sufficient. In short, the uses proposed for the waterfront landings are not compatible with the surrounding community and will negatively impact the Beauview Cottage Resort property as a viable commercial resort; and
- f. issues related to the placement and maintenance of septic systems on the Island has identified in the FSR.

[100] In conclusion, Ms. Peden testified that when the proposed development is considered and analyzed as a whole, it represents a density and intensity of development that negatively impacts the natural heritage values of the Island, presents public safety and environmental issues and is not compatible with the surrounding community.

[101] Ms. Mills is the President of the Foundation, which is a registered charity and Land Trust. It is focused on preserving the heritage of Lake of Bays region, was founded in 1985 and presently has 865 members. Its mission is to engage the community in the preservation of the area's natural and community heritage for the enjoyment of present and future generations. It presently stewards three properties comprised of 128.3 ha. and 5.3 kilometres of shoreline. The foundation had many meetings with the representatives of the Applicant in an effort to find consensus on an appropriate proposal. Her testimony includes the following:

- a. the Island is the second largest island on Lake of Bays, a MHA and in her view qualifies as a Cultural Heritage Landscape;
- b. there is a long history of the previous owner's wish that the Island be preserved in a natural state. The Foundation was given first right of refusal on the purchase of the Island, but did not have sufficient time to raise the required funds. This resulted in the property being sold to the current owner;
- c. during the community consultation, the Foundation proposed that significantly fewer lots be developed on the Island. At that time, it was proposed that there be 36 waterfront residential lots and conservation land to be identified as Open Space zone;
- d. has concerns that the proposed structure for the land set aside for conservation would not conform with the Canada Land Trust standards; and
- e. agrees with the opinion of the planner for Lake of Bays that the proposed development does not conform with the policies of the Township OP.

[102] Ms. Mills stated that the reason the Foundation became a party to this matter is to ensure adherence to the relevant planning policy with respect to the Island that is found in the Lake of Bays OP. She also advised the Tribunal that should some development be deemed meeting the Lake of Bays OP policy, and the proposed land conservation be structured under the *Ontario Conservation Land Act* and meets the Canada Land Trust Standards, the Foundation would be willing to partner as a Land Trust in preserving the conserved portions of the Island.

### **ENVIRONMENTAL IMPACT AND NATURAL HERITAGE**

[103] The Tribunal heard considerable expert evidence from two qualified witnesses, Dr. Coleman on behalf of the Foundation and Mr. Shaw on behalf of the Applicant with respect to the environmental and natural heritage features mainly for the Island. It also had the benefit of testimony from Ms. Ellard-Alexis, who has considerable experience in the discipline of sustainable development on behalf of Mr. Zytaruk. Ms. Ellard-Alexis was not accepted as an expert in this proceeding but as an advocate for her client.

[104] Mr. Shaw provided an extensive background assessment for the Tribunal to describe how he came to his conclusions and opinion. He noted there were three EIS documents completed by RiverStone Environmental Solutions (“RiverStone”), a consulting firm that specializes in the assessment of natural features and functions and the impacts of land use change. Mr. Shaw completed a comprehensive EIS for the Island which included many field studies (in excess of 90 hours) to document the Island’s natural features and prepared a wide-ranging written report. Similar EIS studies were completed for the 3933 property and the Beauview Cottage Resort property. The peer review firm also visited the landings and the Island as part of their review of the EIS.

[105] Mr. Shaw advised the Tribunal from the outset that the EIS demonstrated there are natural features on the Island that require protection under the applicable legislation,

as well as the Muskoka OP, the Lake of Bays OP, and the Town OP, which include habitat of species at risk (barn swallows in abandoned boat house), fish habitat (three areas related to aquatic vegetation, complex habitat features and potential for lake trout spawning habitat), and a candidate significant wildlife habitat (rock barren and cliff habitats). The EIS concluded that identified natural heritage features can be protected while allowing the proposed development of the waterfront lots to occur. A number of recommendations were provided to avoid and protect these features and functions, as well as lake water quality.

[106] With respect to the 3933 property, the EIS concluded the natural features identified can be provided while allowing for the development of the lot as a mainland parking and boat docking location. A series of recommendations are provided to protect these features and functions, as well as the water quality of the lake.

[107] With respect to the Beauview Cottage Resort property, it is by noted by Mr. Shaw that the property is developed with several old cabins, open space areas to provide required parking and a grassed lake frontage. The EIS concluded that the natural features identified on the property can be protected while allowing it to be developed as a mainland parking area and boat docking location.

[108] Mr. Shaw testified that Muskoka requested the three EISs be peer reviewed to ensure conformity to current practices, the adequacies of studies completed and the proper assessment of impacts. Also, the EISs were provided to the MNRF to comment on the adequacy of the study and conformity with the *Endangered Species Act*. All peer reviews and agency comments were finalized, and it was determined that these studies were complete, and all issues were satisfied. Therefore, they had no objections to the proposal proceeding for approval subject to conditions that could be imposed on a draft PofS or by the DPBA regulations.

[109] Mr. Shaw proffered considerable and compelling evidence with respect to all of the relevant issues found in the Issues List. His review both orally and in his WS is

extremely detailed and complete. He is of the opinion that the environmental and natural heritage considerations of the proposed development meet all the requirements of the requisite Provincial, Muskoka, Lake of Bays, and Town statutory planning documents for reasons which include:

- a. the identification of ecological systems, natural areas, features, and functions was undertaken by RiverStone through the completion of an EIS to ensure their protection. The EIS methodology followed provincial standards where applicable and addressed areas of provincial interest. Mitigation measures were also recommended to ensure the natural features and functions on the Island and the mainland properties will be protected;
- b. a natural features and areas review, which included Type 1 fish habitat assessment, was completed for the entire Island and both mainland parcels and identified portions of the shoreline where this habitat exists. Habitat of identified species at risk and candidate significant wildlife habitat have been thoroughly reviewed and subsequently identified and protected. Measures have been applied to ensure proper mitigation of any impacts;
- c. all components of the natural heritage system on the Island are proposed to be protected and buffered. Docking envelopes for each proposed lot are designed to ensure they are outside of Type 1 fish habitat. The proposed development includes a 23-m set back from the entire shoreline of the Island. The vast majority of the shoreline area on the Island will be maintained in its natural state and form with only limited tree removal to provide access;
- d. the Construction Mitigation Plan which serves to implement the EIS ensures protection of the identified Type 1 fish habitat through a series of conditions found either in the PofS or the DPBA;
- e. the RiverStone EIS and the follow up reports considered adjacent lands with the assessment of species at risk, significant wildlife habitat, and fish



habitat. Mitigation measures were included to prevent the proposed development from impacting any of the features identified. The proposed development protects these features and functions in an effort to conserve their health, integrity, and biodiversity;

- f. Muskoka has specific policies with respect to best management practices in relation to water quality. These practices establish a set of triggers related to high phosphorus concentrations. The EIS for the Island implements the best management practices;
- g. all Island and mainland parcels include an assessment of other sensitive features and functions that should be protected;
- h. there are no provincially significant wetland or, areas of natural or scientific interests identified through the EIS on the Island or the mainland parcels;
- i. a detailed review illustrated that the Island characteristics did not meet the criteria for being included as a natural heritage area as defined by the Muskoka OP;
- j. all areas requiring protection that are identified in the EIS are included in the proposed Planning Instruments and will be subject to a conservation easement to ensure ongoing conservation and prohibiting public access;
- k. all general development policies for both the Island and the mainland parcels such as shoreline and septic system setbacks have been incorporated in the proposed development to ensure proper implementation. Each lot on the Island will be required to obtain a Development Permit which includes a comprehensive list of requirements;
- l. the OPA respects development constraints such as flood prone lands and steep slopes, does not permit over-development when considering environmental constraints, respects the sensitivities of the environmental features, does not permit development that will unacceptably impact natural heritage features of the Island, Lake of Bays or adjacent properties;

- m. there are no conflicts between development and the natural environment. All natural features requiring protection are identified in the RiverStone EIS and will be protected through the Planning Instruments;
- n. the EIS identified features and functions which require protection that are different than those attributed to the Island through the MHA program. It is Mr. Shaw's evidence that the RiverStone EIS considered a more up-to-date accurate identification of these features which are identified and protected through the Planning Instruments;
- o. the EIS recommended mitigation measures to ensure any potential impact of the proposed development on natural features and their functions can be appropriately avoided or minimized; and
- p. through the EIS, associated with additional studies, there was an evaluation of historical studies, peer reviews, and the MNRF review. The Island was re-evaluated based on current standards and, in his oral evidence, he provided an analysis of significance as recommended by the Natural Heritage Evaluation completed in 1994.

[110] In conclusion, Mr. Shaw is of the opinion that the Planning Instruments have appropriate regard for s. 2 of the Act, are consistent with the PPS, conforms to the Muskoka OP 2014, has appropriate regard to Muskoka OP 2019, conform to the Town OP and Lake of Bays OP. The RiverStone EIS is comprehensive and a complete review and analysis of the proposed development, meets the requirements of Provincial regulations and guidelines. The Applicant has incorporated the recommendations into the Planning Instruments presented at this Hearing.

[111] Dr. Coleman provided expert evidence to the Tribunal with respect to environmental impact and natural heritage on behalf of the Foundation and the LOBA. His evidence is based upon a series of reports that he reviewed which are within his area of expertise being ecology and environmental planning. He did advise the Tribunal that he did not have the benefit of visiting the Island and relied entirely on the reports, planning documents, and letters filed by local residents who are most knowledgeable of

the local environment. His evidence is entirely directed towards the issues related to the Island.

[112] Dr. Coleman reviewed the proposed development against the PPS, Muskoka OP 2014, and the Lake of Bays OP, and Lake of Bays Development Permit By-law. He took three areas as general directions from his review as they relate to the proposed development and Planning Instruments, being:

- a. the Island is identified for various reasons as a significant natural area with identified values;
- b. the various documents he reviewed recognize that significant character and contain policies that limit any development on the Island. Conservation is to be given priority over development; and
- c. development beyond the current use of a single cottage and associated structures requires that first, the entire Island to be protected and if not, a demonstration that the Island values are protected.

[113] Dr. Coleman testified that the Island has previously been reviewed a number of times with respect to its environmental significance. Once a site is identified as a candidate site, there is further evaluation and confirmation to determine whether it is of Provincial or local significance. This confirmation process appears not to have occurred for the Island, so in his opinion, it does not receive direct protection under the PPS.

[114] By making use of a variety of sources, Dr. Coleman concluded that the Island is unusual in terms of its size, natural conditions and lack of development. He went on to state that the identification of the Island as a MHA is warranted given the descriptions available to him and the scarcity of undisturbed shoreline in Lake of Bays. He completed a detailed review of the RiverStone EIS and the various site-specific inventories that were intended to provide direction to the proposed development. The inventories reviewed include terrain drainage in soils; ecological communities; wildlife;

fish and fish habitat; habitat of endangered and threatened species; significant wildlife habitat; and MHA.

[115] Upon completing this review, Dr. Coleman is of the opinion that the information and surveys are not sufficiently robust and detailed to allow him to assess value of the various inventories and the implications of potential impacts. As a result, his first major concern with respect to the RiverStone EIS is that it does not contain a complete analysis of the environmental constraints necessary to satisfy the policies of the various relevant planning policies.

[116] Dr. Coleman went on to review the proposed development against relevant studies in detail and identified the following observations and issues:

- a. there is no documentation that the preservation of the entire Island is not feasible;
- b. there is no presentation of the extent of the proposed development in determining the impact on the environment and the proposed development and environmental constraints, as described, is also incomplete. To be completely accurate, each lot should be tested in detail as each will have a large influence on the footprint of development and the resulting impacts;
- c. he produced evidence to illustrate the extent of disturbance which in his opinion shows the fragmentation of the Island resources;
- d. in order to support the conclusions of the EIS, the Development Permit By-law should be amended to require greater setbacks;
- e. there is an inconsistent and variable treatment of access through the Shoreline Protection Zone within the various documents;
- f. it is his opinion that the proposed controls on how to implement the proposal are weak; and
- g. the areas to be preserved through conservation easements are fragmented. Therefore, are several problems with this approach in respect

of implementing the long-term protection of the Island's values.

Dr. Coleman is not aware any examples of the use of conservation easements in development role in the manner suggested by the Applicant.

[117] In conclusion, Dr. Coleman opined that there are four reasons why the Planning Instruments should be refused and returned for further refinement, as outlined in his evidence and witness statement. The four reasons are:

- a. the inventories of the features in values of the Island are not sufficient to determine environmental impacts;
- b. relevant policies require an assessment impact on the values for which the Island was determined to be important and protected. These values are not properly addressed in either the RiverStone EIS or the Planning Justification Report prepared on behalf of the Applicant;
- c. the various documents do not provide a description of the proposed development to sufficiently analyze potential impacts. More detail study is necessary on a lot-by-lot basis. Therefore, the proposal is not consistent with the PPS and does not conform to the Muskoka OP 2014 or the Lake of Bays OP; and
- d. the proposed Planning Instruments are unlikely to be effective in protecting natural values. He provided a development concept that does meet the planning policies and will be effective in protecting the environment.

[118] Mr. Fahner, in his evidence, is of a similar view to that of Dr. Coleman.

[119] Ms. Ellard-Alexis is a Sustainable Development Specialist and provided advocacy evidence (reasons noted earlier in the decision) for Mr. Zytaruk. Although sustainability is not a specific issue on the Issues List, the Tribunal is pleased to have the benefit of her expertise with respect to this consideration of any proposed development. Sustainability principles are found in the relevant planning documents.

The Tribunal will consider the weight it will give to this evidence with respect to the advocacy perspective that this witness brings to the proceedings.

[120] Ms. Ellard-Alexis completed an extensive review of the proposed development against the PPS, the *Federal Sustainable Development Act*, 2008 and the principles of sustainable development. She provided testimony through her witness statement and at the hearing, with respect to an ecosystem based analysis, her views of significant wildlife habitat, the presence of species at risk, presented a series of aerial inventories with respect to various bird species, deer wintering areas, old growth forest, socio-economic considerations, the appropriate mix of housing, public safety, water quality, and climate impacts as it relates to the proposed development and requisite Planning Instruments.

[121] Ms. Ellard-Alexis' conclusions included:

- a. there is a direct ecological impact of the proposed development on a variety of terrestrial species. There is insufficient inventory for the habitat requirements of eight confirmed species. Such an inventory would ensure a key local biodiversity area is supported by appropriate inventories being completed for the Island;
- b. additional human activity presents a risk of additional nutrient loading in Lake of Bays;
- c. the proposed development is not in alignment with the housing and development priorities articulated by all levels of government. It would further gentrify the area and enhance the demand on an already saturated service market;
- d. there is a lack of alignment with the sustainable principles of the *Federal Sustainable Development Act*, the PPS, the Muskoka OP 2014 and the Lake of Bays OP; and

- e. there is an absence of evidence in any of the documentation with respect to the economic multipliers that would support the cost associated with the proposed development.

[122] Ms. Ellard-Alexis does not recommend the proposed development or the requisite Planning Instruments required to implement it for the Island.

[123] During the course of the hearing, full copies of two reports were presented and placed into evidence. The first is the 1993 Daniel F. Brunton Report which is "A Review and Assessment of Significant Natural Areas in Site District SE-8". This report included a multitude of sites across the Region, including Langmaid's Island. Although Mr. Shaw did not have the final and full report, he was in possession of the excerpt from this report indicating that the subject property is considered a candidate ANSI. This report was followed by a 1994 report authored by Reid and Bergsma titled "Muskoka Heritage Areas Program" and also reviewed the specific criteria to consider this Island as a candidate ANSI.

[124] Although never acted upon by the MNR, Lake of Bays did act on the recommendations and identified the subject property as a "Muskoka Heritage Area" together with policy considerations and thus the requirement of a wholesome and up-to-date EIS. The argument put forward to contradict Mr. Shaw's report is the list of criteria that was met in a very limited review of the Island. It is obvious from the Reid and Bergsma Report that the major sources of information come from a desktop exercise reviewing various pieces of data that have been collected over a number of years prior to the completion of this report. The Tribunal finds that this report, along with the Daniel F. Brunton Report carry little weight in concluding that the subject property may be considered a regionally significant ANSI, given the limited time spent investigating the Island and, just as important, length of time that has passed.

[125] Dr. Coleman considered the EIS not robust enough and should be sent back for further detailed and refined work. Although this may be true to better assist him for his

peer review of the report, the Tribunal disagrees with his findings. The amount of detail is sufficient for all reporting agencies and the peer reviewer where they visited the Island to better critique the EIS, its contents and recommendations.

[126] The Tribunal considered all of the expert evidence, the lay and advocacy testimony and prefers the evidence of Mr. Shaw with respect to environmental impact and natural heritage with the exception of a concern of the fragmentation of the conservation easements. This will be discussed further in the Tribunal's finding and recommendations.

## **CULTURAL HERITAGE, LANDSCAPE ARCHITECTURE AND VISUAL IMPACT**

### **Cultural Heritage and Landscape Architecture**

[127] Mr. Currie provided expert evidence on behalf of the Applicant with respect to both cultural heritage and landscape architecture. He provided the Tribunal with considerable detail regarding both subjects and is qualified as an expert in both disciplines.

[128] Mr. Currie prepared a comprehensive HIA with the express purpose of evaluating the Island in accordance with Ontario Regulation 9/06 made under the *Ontario Heritage Act*. This Act provides the legislative criteria for determining cultural heritage value or interest, identifying potential impacts of the proposed development on any of the cultural heritage resources that may be present, and provide mitigation recommendations where necessary.

[129] Mr. Currie noted that the HIA confirms the heritage attributes of the Island and determines that the Island qualifies as a cultural heritage landscape in keeping with the definition in the PPS. However, the landscape is not an early, rare, or unique example of seasonal development patterns. The Island has cultural heritage value for its



contextual value, scenic qualities and is a representative of the pattern of waterfront residential and recreational development integrated with the natural landscape.

[130] Mr. Currie went on to testify that conclusions in the HIA state that the proposed development on the Island can be supported provided each lot reflects the established pattern of seasonal recreational development that is characteristic of the lake. He went on to state that buildings should be integrated within the natural setting of the Island to take advantage of the topography, natural features, and views to the lake. There are a number of recommendations in the HIA intended to ensure the proposed development will achieve this result. The HIA was the subject of a peer review. The Lake of Bays Heritage Advisory Committee considered the proposed development and recommended that any development on the Island maintain the character of the area including the natural features and scenic quality.

[131] Mr. Currie noted that the comments of the peer review and the Heritage Advisory Committee which have been considered by the Applicant and reflected in the Planning Instruments and the design of the proposed dwelling units.

[132] Mr. Currie testified that the Planning Instruments implement the recommendations of the HIA and ensure that the features of the natural environment that contribute to the scenic quality of the Island are retained and conserved. New development is integrated into the natural environment, maintains the character of the Island, and conserves its heritage attributes. The planner noted that the HIA identifies the Island as a significant cultural landscape and the HIA concluded that the proposed development can preserve the heritage attributes of the Island provided the recommendations of the HIA are implemented which has been done. Therefore, it is his opinion that with respect to cultural heritage and landscape architecture, the proposed Planning Instruments:

- a. have appropriate regard to the *Planning Act*;
- b. are consistent with the PPS;

- c. conform to the Muskoka OP 2014 and has appropriate regard for the Muskoka OP 2019; and
- d. Conforms to the Lake of Bays OP.

[133] Neither Muskoka, Lake of Bays, or the Foundation provided specific expert evidence related to cultural heritage and landscape architecture. The planners' evidence of Mr. Fahner, Ms. Markham, and Ms. Maxwell is discussed earlier in this Decision is the extent of the evidence heard from these parties.

[134] The limited evidence that was heard attempted to isolate the Island by leveraging the existing development in a purely local context with no consideration of the broader context. It is incumbent on the Tribunal to take into consideration the existing development pattern on the mainland that directly faces and is clearly visible to the Island. One of the arguments that the Tribunal heard was that some of this existing development is visible and close to the water's edge, due to the proximity of South Portage Road to the rear of these existing, developed lots. The Tribunal does not find this as a reason to ignore what exists.

[135] The intensity, density and visibility of the existing development on the mainland has a direct affect in the proper assessment of the intensity, density and visibility of the development proposed on the Island. It is not the number of proposed lots that bears any weight or significance, it is how the proposed development fits into its natural environment with proper protection of the cultural heritage and landscape features.

[136] The Tribunal prefers the evidence of Mr. Currie with respect to cultural heritage and landscape architecture.

### **Visual Impact**

[137] Mr. Hanney provided expert evidence to the Tribunal with respect to visual impact. He directed the technical preparation of the Islands Visual Impact Assessment

("VIA"), which is found as an attachment to his WS. The VIA is a comprehensive document that includes an analysis of the policy framework, an explanation of the methodology used, a series of simulated views, analysis and interpretation of the simulated views, and a complete evaluation of the various views.

[138] Mr. Hanney testified that the VIA assessment of the Island concluded that there will be very limited potential for adverse visual impact from the proposed development. He is in agreement with the potential mitigating measures contained in the Islands Character Guidelines prepared by MHBC (August 2018) in support of the application. These guidelines serve to provide a further level of additional protection that are appropriate to the scenic resources of Lake of Bays. He also is of the opinion that the proposed development will not unacceptably impact visual features of Lake of Bays or the adjacent shoreline properties.

[139] Mr. Hanney testified that the proposed development and the resulting Planning Instruments, have considered all of the relevant Provincial, Muskoka, and Lake of Bays planning policy to ensure there is limited potential for negative visual impacts. Any tree cutting that may result from implementation of the Planning Instruments, are tested within the VIA from the perspective of potential visual impacts. It is his opinion that the proposed development has been found to meet the design principles of the VIA.

[140] In conclusion, Mr. Hanney is of the opinion that VIA for the Island demonstrates that there is very limited potential for negative visual impacts resulting from the development. Therefore, the character of the area and the Island's visual landmark in Muskoka will be maintained.

[141] Dr. Coleman with the assistance of Mr. Fahner, undertook a review and careful analysis of the VIA prepared by Mr. Hanney. With respect to the simulations presented in the VIA, they have an issue with the size of envelopes shown. Dr. Coleman testified there are issues related to alterations to the Island's environment and the vegetation view, being:

- a. that the actual height of the roof peak can be several metres higher than presented in the simulation;
- b. did not include various alterations that are described and committed to in the FIR. Therefore, the analysis is incomplete in terms of the extent of alterations that will occur;
- c. the colour, species and sizes of the vegetation simulated is very dense and not representative of the Island. His review demonstrated that the trees in the VIA appear to be too tall and tree widths would be out of scale to a similar degree. There is no evidence of tree removal or thinning for shoreline activity areas nor have they been adjusted for the effect of season on foliage;
- d. the importance of FireSmart requirements is not allowed for in the simulations. They will be required clearing around all of the structures and those related to construction and a requirement for additional zones of thinning and pruning of up to 100 m; and
- e. The stimulation did not include many other elements that contribute to visual impact of the proposal and its perception such as boats and watercraft, docks, swim rafts, staircases to buildings and steep slopes, etc.

[142] Dr. Coleman concluded that the factors he pointed out will significantly increase the visual impact of the proposal and are not accounted for in the VIA. Therefore, the VIA should not be relied upon to assess the proposed development and its conformity to relevant policies related to the Island as they do not show the totality of the visual impact.

[143] Neither Muskoka nor Lake of Bays provided specific expert evidence related to visual impact at the hearing. The planners' evidence of Mmes. Markham and Maxwell is discussed earlier in this Decision and is the extent of the evidence heard from these parties.

[144] The Tribunal prefers the evidence of Mr. Hanney with respect to visual impact and will be further discussed in the Tribunal findings. One issue and argument with respect to cultural landscape that will also be dealt with in the Tribunal findings later in this Decision. This is similar to the issue of fragmentation of the conservation easements mentioned in paragraph [126].

## **ENGINEERING AND SITE SERVICING**

[145] The Tribunal heard testimony from two witnesses with respect to engineering and site servicing: Mr. Van Ryn on behalf of the Applicant and Mr. Esselment on behalf of Mr. Zytaruk. The Tribunal notes that in the ASOF of these two witnesses, all issues appear to have been appropriately addressed in the FSR and incorporated into the Planning Instruments. A series of construction mitigation and stormwater management requirements for 3933 property and the Beauview Cottage Resort property are addressed in the FSR.

[146] Mr. Van Ryn in his evidence described the extent of the review and analysis and how the FSR provided a series of important conclusions and recommendations that include:

- a. each of the proposed 32 lots are large enough to accommodate an appropriate building envelope and can be serviced with private water supply and sewage treatment systems, comply with the PPS and the Ontario Building Code and meet good engineering practice. The private systems can be constructed outside of environmental features and their buffers;
- b. communal private systems were initially considered for the proposed development but rejected in favor of individual private tertiary sewage treatment systems because of the additional tree loss and ground disturbance that would result. There will be no negative impacts to the

health and safety of residents or the natural environment, as leaching beds will be located 30 m from the waters edge, systems will produce good quality effluent and high-quality leaching beds will be provided and the retaining soil will result in an estimated 40-year capacity for the sequestering phosphorus;

- c. stormwater management and construction mitigation for the Island was addressed in the FSR. The proposed controlled access corridors, docks, boathouses for each proposed lot have been identified to provide a balance between limited tree removal, ground disturbance and minimizing visual impacts from the waterfront;
- d. mitigation and erosion control will be provided for during construction to contain sediment; and
- e. the proposed development for the mainland landings do not require separate water and sewage systems. Parking areas will be serviced with grass and gravel to promote infiltration and improved water quality.

[147] In response to Mr. Zytaruk's issues, Mr. Van Ryn's testimony confirmed that:

- a. he reviewed the proposed development and the conclusions of his FSR against policies found in the Muskoka OP 2019. He is of the opinion that the FSR addresses issues of servicing that relate to climate change and has had appropriate regard for this policy document;
- b. he confirmed that a site evaluation and a terrain analysis were completed, which demonstrated that the proposed development conforms to the Lake of Bays OP;
- c. the proposed sewage treatment disposal systems fully comply with the siting and setback requirements of the Muskoka OP 2019 nor do they pose any health risks; and
- d. Lake of Bays requires high quality sewage treatment systems, requires the completion of annual inspections to monitor the operation of the

treatment and when accumulated soils need to be pumped out, it is done by a licensed sewage hauler contractor.

[148] In conclusion, Mr. Van Ryn is of the opinion that the proposed development of both the Island and the landings are consistent with the PPS, conform to all relevant municipal planning and regulatory documents, include appropriate mitigation measures to comply with all applicable design criteria, and represent good engineering practices.

[149] Mr. Esselment provided testimony on behalf of Mr. Zytaruk. He is well experienced in health unit matters but it is not qualified to give expert evidence with respect to engineering or site servicing. In the ASOF, he either confirmed or had no opinion with respect to Mr. Van Ryn's evidence.

[150] Mr. Esselment's whole focus was on duplication or redundancy of the retention of phosphorous. The retention of phosphorous is controllable through the use of horizon "B" soils, which is found naturally on the subject property. The effectiveness of the use this soil can be determined and used in either a natural state or imported to the subject site. Mr. Esselment argued that the dependence and reliance on a new technology is a concern and should not be used as the only tool to retain phosphorous and that the soils capacity should be the first critical step. It is his view that the proposed system, although will assist in removing phosphorous, could fail and not function properly and the default should be focused on the proper quantity of soils as the first line of defence with the new technology becoming the redundant safety valve.

[151] The Tribunal accepts Mr. Van Ryn's uncontested expert evidence in its entirety. This is an issue that can be resolved through the conditions of draft PofS as the tools are available to meet all the requirements from a functional perspective.

## **BOATING IMPACT ASSESSMENT**

[152] Mr. Nielson on behalf of the Applicant, provided evidence to the Tribunal with respect to the boating impact of the proposed development. Two BIA reports were completed by his firm in support of the proposed development, the associated shuttle service and waterfront landings. The purpose of the studies was to consider potential increases in boat traffic that may be associated with the proposed development. The initial BIA was prepared and completed in January 2018. A second addendum BIA (Exhibit 22) was prepared and completed in June 2018. The Addendum spoke to issues and comments from the municipal peer review, and provided baseline boating information for busier boating days in the summer of 2018.

[153] Mr. Nielson noted that there is presently a significant amount of boat traffic on the lake, which by its nature negatively impacts the enjoyment of cottaging and boating while contributing to increased concerns regarding boating safety. The Lake of Bays is a relatively large lake but has certain areas where boat traffic is considerable. The lake has a number of communities on its periphery, cottage lots on the mainland fronting lake, many water access only island-based cottages that require boat access, extensive existing backshore development and public access to the lake.

[154] Mr. Nielson in his evidence, advised that the BIA included the collection of information on existing boat traffic within two areas of potentially more congested waters that are in the vicinity of the Island, namely Little Whiskey Bay and the Narrows between the Island and the mainland. The surveys were completed on good weather days during the peak of boating season which provide a reasonable approximation of “worse case” conditions.

[155] Mr. Nielson described the conclusions of these studies showed that the volume of traffic observed in Little Whiskey Bay was low but due to its small size, there were frequent situations where it is deemed “over capacity” particularly within the afternoon on weekends. Boat traffic with the Narrows was lower than within Little Whiskey Bay but



the observers noted somewhat more frequent over capacity situations particularly in the afternoon on weekends. Over the course of three days of observations, they did not witness any conditions they deemed to be particularly unsafe, or no circumstances of potential for collisions, as boats generally decrease their speeds when traveling through these areas. He advised the Tribunal that over capacity situations are a normal occurrence in many lake settings, particularly in areas of small size but these situations are not inherently dangerous as boaters tend to act in an appropriate manner and make the necessary adjustments in speed or direction to mitigate against any risk of collision.

[156] Mr. Nielson went on to provide testimony regarding predicted future boat traffic. Assumptions made by the BIA included 32 new lots on the Island along with a shuttle servicing up to 22 cottage properties, four transit slips for short term parking to accommodate the shuttle service and the 3933 property servicing up to 10 cottage properties. The BIA concluded that when all sources of predicted new boat traffic are added together, the resulting implications on existing capacity utilization is relatively small.

[157] Mr. Nielson spoke to the comments in the participant statements to the critique of his firm's BIA. In his view, the neighbouring resident's analysis greatly exaggerates the potential of boating-related conflicts. In an effort to rationalize these differences, the municipal peer reviewer took an alternative approach to Mr. Nielson's capacity projections. The conclusion of the peer review is that the additional analysis "demonstrates results that are not dramatically different from the Milchalski Nielson Associates Limited's...the MNAL approach is well-founded overall and the results are plausible".

[158] Mr. Nielson noted a series of recommendations were made in the BIA to mitigate against the impacts of the predicted increased boat traffic on a full build out of the proposed lots on the Island. These recommendations include training of operators of the shuttle service, how the shuttle should access the Island, improved signage to properly identify the landings, monitoring and logging of boating activity, installing large

permanent and prominent signs on the shoreline of the Island, the placement of safety buoys at each approach to the narrows and in the marina area.

[159] Mr. Nielson in his testimony spoke to how his conclusions related to the Issues in the Issues List and Planning Instruments before the Tribunal.

- a. with respect to the Muskoka OP 2014, the BIA demonstrates that traffic increases resulting from the proposed development will be quite modest and the impacts of this additional traffic can be mitigated. Appropriate consideration is given to narrow water body issues within the area identified as the Narrows to ensure conformity to policy;
- b. the boat shuttle operations will be monitored and enforced. The proposed draft PofS has a number of conditions to ensure this happens;
- c. with respect to the Lake of Bays OP, the BIA recognizes that there are narrow waterbody issues in relation to the Narrows and recommends a number of mitigation measures. These measures fully address the narrow waterbody issues and help address existing issues with respect of sightlines and the associated potential for boating-related accidents or incidents within the Narrows; and
- d. with respect to the Planning Instruments related to the Town, there is a provision for private waterfront landings that service more than one property as proposed for the Island, access to and from the facility both by water and land is suitable, conditions of the draft PofS specifically addresses boat traffic and parking, and the BIA demonstrates the feasibility of water access, most notably on matters relating to boating congestion and safety, as they can be appropriately addressed.

[160] Mr. Fahner spoke to the BIA in his evidence. He is of the opinion that the findings of the BIA and peer review cannot be relied upon. He is not a qualified expert preparing BIAs nor the evaluation thereof, although recognized as a boater and the Tribunal notes his apprehension on the findings of the BIA.

[161] The Tribunal accepts Mr. Nielson's expert evidence in its entirety. The findings of his report will be incorporated in the conditions of draft PofS.

## **THE TRIBUNAL FINDINGS**

[162] As with most lengthy hearings, the flow of the event becomes an iterative process. As evidence was presented, through the parties in opposition to the proposed development, adjustments were made to the planning instruments to accommodate those concerns. Although in some instances, these adjustments seemed minor and immaterial, one amendment was important to assist the Tribunal in assessing the various reports and recommendations.

[163] This relates to the proposed amendment to the Lake of Bays Development Permit By-law, under s. 2(i) e) – Maximum Shoreline Activity Area Frontage. The original proposal allowed “Selective removal, trimming and limbing and pruning of trees for the purpose of views...” This section now reads “Selective trimming, limbing and pruning of trees for the purpose of views...”

[164] Prior to this amendment, augmented with the testimony of Dr. Coleman, the Tribunal struggled with parts of the VIA prepared by Mr. Hannay. The whole focus of Mr. Hannay's visual evidence was to mimic the existing tree cover, including specie type, and place a proposed dwelling into this natural environment. The exercise was to illustrate, through computer modeling, the visual impact the proposed dwelling may have when viewed from the water. Although the Tribunal accepts Mr. Hannay's evidence on the functional aspect of the program with respect to elevations and tree cover, the Tribunal was concerned that the modeling did not properly reflect the potential removal of trees within the shoreline activity area. The Tribunal fully understands that this activity area may not always be directly in front of the proposed dwelling and may be skewed or angled towards the shoreline, thus changing the direction of view to and from the dwelling. The Tribunal was concerned that the visual

impact study may not have properly reflected these potential modifications within the shoreline activity area, given the wording in the original proposed implementing by-law. With the proposed amendment to the Development Permit By-law, the Tribunal finds the results of the VIA acceptable.

[165] There was ongoing discussion about whether the preservation of the views was either from or to the Island. There is no doubt that all of the Appellants in this case are concerned with views to the Island. The main concern, throughout this hearing, is to preserve as much as the natural environment as possible.

[166] Dr. Coleman opined that further way to preserve the views to the Island is to protect the rear yards of the proposed lots and restrict the removal of trees in this area. With the rear yard setback being 10 m, it was his opinion that this would greatly enhance the views to the Island. On this issue, the Tribunal agrees. The preservation of this linear strip of treeline will strengthen the continuity and connectivity of this tree line between the two designated open space blocks, further enhance and conserve the cultural landscape and ecology. This directly relates to Dr. Colman's concern over the fragmentation of the conservation easements.

[167] Although the Tribunal does not see this as an issue with respect of the 3 ha Island, this issue relates to the large island where is the substantial part of the development is proposed. The large island is long and narrow with essentially three bubbles of wider landmass. There are two higher peaks of approximately 50 m in height, located in two separate areas on the center and most eastern bubbles. These two peaks are protected through the proposed creation of two open space blocks, being Blocks "A" and "B", on the most current version of the draft PofS. Located between these two peaks is a series of six proposed lots where, by definition, their rear lot lines abut each other. With the protection of the rear 10 m of these six lots, this would preserve and enhance this connectivity between the two peaks located within the two open space areas.

[168] The Tribunal does not see the necessity of a special zone. This restriction can be inserted in the proposed amendment to the Development Permit By-law under the “Development Permit Area Provisions” where the “Standard” will include the 10 m rear yard of the proposed lots with the removal of trees is for safety reasons, subject to the recommendations of a qualified ecologist. The Tribunal recognizes the need for the potential removal of specific trees for both the safety and security of buildings and their inhabitants.

[169] Lastly, Dr. Coleman criticized Mr. Hannay’s modelling when considering the potential of clearing and setback that may be required in relation to the FireSmart guidelines. His peer review of the tree inventory and conclusions of Mr. Shaw was, for the Tribunal, shocking. The Tribunal could not reconcile the massive difference in opinion when dealing with Dr. Colman’s application of FireSmart guidelines. In short, the Tribunal concludes that a visit to the Island may have put this in better perspective. The Tribunal relies on Mr. Shaw’s evaluation, conclusions and recommendations and the peer reviewer that attended on site and commented on the study.

[170] With respect to Mr. Fahner, the Tribunal found that his position was shaken in cross-examination. The Tribunal found that he was flustered at times and his position on the subject matter was not consistent and his objectivity, as an expert in his field, sometimes came into question. Many times, Mr. Fahner used other cases as examples to bolster his opinion on this appeal, but none of those examples were brought into evidence to be tested by the parties and the Tribunal. As an example, during his cross-examination of the subject property located at 3933 South Portage Road, he changed his opinion a number of times. He also opined that the parking requirement for a water access property needs to be greater than the three parking spaces and required visitor spaces, as contemplated in Lake of Bays comprehensive zoning by-law. It is his opinion that even the most restrictive by-law, for parking requirements is insufficient.

[171] Although the Tribunal agrees with the Applicant’s experts, with respect to the proposed zoning by-law amendments on the two waterfront landings, the evidence and

recommendations from Mmes. Maxwell and Markham and Mr. Fahner require consideration in the ultimate design and areas designated for parking at the site plan and draft PofS stage.

[172] The parking envelope for property at 3933 South Portage Road is constrained. The illustration that was provided to the Tribunal showed the clearing for the proposed parking encroaching into the 20 m waterfront setback. The Tribunal agrees with the three planners that the extent of the parking area remain outside this setback and the Applicant has built this into the revised ZBAs. There is an indication that a road widening may also be required, resulting in restricting the depth of the available parking area even further. Although the proposed amendment to Zoning By-law No. 2008-66P states “a maximum of ten (10) docking slips shall be permitted”, a final design is required to determine the number of Island properties this property will ultimately sustain.

[173] The Tribunal is satisfied with the contents of the ZBAs for the property at 4215 South Portage Road. Further work is required at the draft PofS stage to flush out the final design of the parking and the flow of the traffic. There was concern from the three planners with the potential for “tandem parking”, whereby two vehicles could be stacked in a line by increasing the length of the parking stall. The Tribunal agrees with the planners on this issue with one exception. If the tandem parking is dedicated and tied to a specific subdivision lot on the Island, the Tribunal sees merit in reducing the overall footprint. The Tribunal offers this as direction for the ultimate design as part of Phase 2 of this appeal and relates to both waterfront landing properties.

[174] The Tribunal also agrees with the three planners with respect to the potential of over capacity for parking at the two waterfront landings and finds that a proper assessment is required as part of the conditions of draft PofS and will be further discussed later in this Decision.

[175] The Tribunal finds that the consulting team for the Applicant completed a comprehensive planning and technical review of this application and gave clear, consistent and compelling evidence of how the proposed development met all of the public agencies' policy and technical tests. This review was supported by in-depth peer reviews where necessary and input by various government agencies who were careful and considered in their advice to Lake of Bays and the Town. All municipal authorities have been involved in a complete and iterative planning process. In a word the process was extensive. The conclusion of this extensive review and process is a proposed development where standards go well beyond the typical requirements of the Lake of Bays' Development Permit By-law and a large portion of the Island will remain forested and in a natural state.

[176] The evidence heard with respect to the PPS demonstrated that both seasonal residential lots and waterfront access are permitted uses and the proposed Planning Instruments are consistent with it. Many reasons were provided in testimony by the Applicant's consulting team. Those important to the Tribunal's findings include:

- a. being capable of private water and sewage disposal services;
- b. residential development is only located on areas that are suitable for such a use and will not intrude into environmental sensitive areas or the features with the highest ecological value. Hence, these features will be maintained;
- c. all of the areas subject to this hearing are considered 'Rural Lands' within the context of the PPS; and
- d. the Applicant has taken a coordinated approach to ensure all of the various jurisdictions involved were informed, comments considered, and these comments properly integrated into the Planning Instruments; the natural heritage features of the Island were identified and protected and clearance from the MNRF was obtained as required.

[177] The Tribunal agrees that the proposal is appropriate with respect to the policies found in the PPS. Therefore, new recreational dwelling lots on the Island and the waterfront landings on the mainland are considered permitted uses in the applicable Waterfront designation. Provincial policy albeit at a higher level, does carry weight in the Tribunal's consideration of this matter.

[178] The Tribunal concurs with the opinion that the in-force official plan at the district level is Muskoka OP 2014, which promotes residential growth in a Waterfront designation that is compatible with existing character and context, protects the natural features, identifies lands of environmental significant and establishes appropriate buffers. All of these policy tests are evaluated in detail by the Applicant's consulting team as follows: appropriate access is provided to the Island; proposed lots and building plans have been evaluated by qualified professionals to ensure suitability of the lot(s) for areas of "Natural Constraint"; significant study was completed by the Applicant to ensure the Significant Heritage Areas are properly defined and respected; and areas of significant biotic interest have been identified with accurate mapping of fish habitat to ensure impact is kept to a minimum. Therefore, the Tribunal finds that the proposed Planning Instruments and development conform to Muskoka OP 2014.

[179] The Tribunal accepts the uncontested evidence of the planners for the Applicant, that the Planning Instruments have appropriate regard to Muskoka OP 2019.

[180] With respect to the Lake of Bays OP, the Tribunal agrees with the Applicant's consulting team that the proposed Planning Instruments strike an appropriate balance between the environment and what could be considered limited growth. Considerable effort has been made to conserve the rich landscape of the Island, recognize the character, and features of the rural and waterfront designations and conserve both the waterfront and the vast majority of the natural features of the Island. This demonstrates the commitment of the Applicant to respect the character and traditional mix of uses of Lake of Bays.



[181] The Tribunal finds that the proposed Planning Instruments and development have met all of the tests and therefore conform to the Lake of Bays OP for reasons including:

- a. the OPA establishes a set of foundational policies on which the subsequent implementing Planning Instruments will follow. Access to individual lots is in areas that are outside of fish habitat or significant wildlife habitat and ensures long term access to the Island lots for both construction and recreational use while minimizing the impact on the shorelines vegetative buffer. The proposed standards in the Lake of Bays DPBA exceed those that are normally required for lot frontage and area. These policy directions ensure that there is a suitable location for the required septic system on each lot and individual cottages are designed to minimize visual impact of development from the lake;
- b. respect and suitably protect the natural heritage values and have Included appropriate mitigating measures;
- c. have provided a comprehensive series of suggested Character Guidelines that could be used as a basis for further design and construction of buildings;
- d. the proposed development is not considered as over-development of the Island as specific policies are in place to ensure that the physical and environmental constraints are appropriately considered in the PofS;
- e. the proposed Planning Instruments provide sufficient control to ensure the protection of the natural features of the Island. The EIS prepared for the Applicant provides the most current detailed assessment of the environmental features and that assessment was the subject of a comprehensive peer review. Great care is taken to ensure that the development of any land adjacent to the environmental features identified in the EIS is done in a manner that will not adversely affect those features or their natural functions. Therefore, impact of the proposed development

- is minimized by a reduced number of lots, protection of conservation blocks, and then maintenance and restoration of vegetation;
- f. the Applicant has made appropriate provision for suitable mainland access to the lots at an appropriate policy level. Enforcement as necessary will be established in the conditions of draft PofS; and
  - g. the Applicant is prepared to determine appropriate ownership and management arrangements for the blocks identify for conservation to ensure they are preserved in perpetuity.

[182] With respect to the Town OP, the Tribunal accepts the evidence of the Applicant's planners and agrees that:

- a. the proposed waterfront landings conform to the Town OP as the waterfront designation permits landing uses;
- b. the Applicant has taken into account all of the policy "tests" with respect to the development of new waterfront landings in the Town. The various technical studies prepared on behalf of the Applicant have demonstrated that the proposed waterfront landings do not impact the visual, natural heritage, and functions of the adjacent land and shoreline;
- c. the proposed landings have maintained a balance between the natural shoreline and the built form along the waterfront; and
- d. the proposed planning instruments contain appropriate limits for new shoreline structures to ensure that any development does not impact the natural and visual features when viewing the property from the water.

[183] The Tribunal finds that the Town ZBA #1 and the Town ZBA #2 conform to the Town OP. That being said, the Tribunal does have some reservations with respect to the impact of the waterfront landings in the Town and their compatibility with respect to providing sufficient operational requirements most notably parking and amount of vehicular traffic activity that the proposed development will generate.

[184] Therefore, the Tribunal directs that as a condition of draft PofS, Muskoka and the Applicant should determine the appropriate phasing of development on the Island along with the appropriate technical studies that will be required to fulfill this condition. The Tribunal heard that an appropriate phasing plan could include the development of 20 lots on the Island as Phase 1. A Phase 2 that would allow for the development of the remaining lots would be conditional on the Applicant submitting to the satisfaction of the approval authority with necessary technical studies to ensure that adequate parking, vehicular access, and boating volumes are maintained at an appropriate level. This condition and the requirements to satisfy the Tribunal may be considered as part of the Phase 2 of this hearing as required.

[185] The Tribunal is impressed with the extent of study on the Island and the considerable and compelling evidence proffered by Mr. Shaw with respect to environmental impact and natural heritage of the proposed. In evidence, Mr. Shaw advised the Tribunal that he spent in excess of 90 hours on the Island comprehensively mapping and evaluating natural heritage features and determining the appropriate mitigation of these features. It is important to note that Palmer Environmental Consulting Group Inc., also attended the Island as part of their peer review process.

[186] With the exception of the proposed amendment to the 10 m rear yards, the Tribunal accepts his opinion that the environmental and natural heritage considerations of the proposed development and Planning Instruments meet all the requirements of the requisite Provincial, Muskoka, Lake of Bays, and the Town's statutory planning documents for the reasons he presented at the hearing and are articulated within the body of this Decision.

[187] The Tribunal agrees with the evidence of Mr. Currie with respect to cultural heritage and landscape architecture. A comprehensive HIA was prepared with the express purpose of evaluating the Island in accordance with Ontario Regulation 9/06 made under the *Ontario Heritage Act*. He was clear in his evidence that the Island qualifies as a cultural heritage landscape but is not an early, rare, or unique example of

seasonal development patterns. It is his conclusion that the proposed development on the Island can be supported, provided each lot reflects the established pattern of seasonal recreational development that is characteristic of the lake.

[188] The Tribunal concurs with the expert evidence of Mr. Hanney with respect to visual impact of the proposed development. A comprehensive VIA was prepared to analyze the proposed policy framework. Conclusions of the study are that the proposed development and Planning Instruments have considered all of the relevant Provincial, Muskoka, and Lake of Bays planning policy to ensure there is limited potential for negative visual impacts. As a result, the proposed development will not unacceptably impact visual features of the Lake of Bays or adjacent shoreline properties. The conservation of the 10 m rear yards will only lessen the visual impact and the removal of vegetation.

[189] The Tribunal accepts in its entirety the uncontested expert evidence of Mr. Van Ryn. A detailed FSR was completed on behalf of the Applicant, and it is noted that in the ASOF submitted by the expert witnesses stated that all issues appear to have been appropriately addressed in the FSR and incorporated into the Planning Instruments. Each of the proposed 32 lots are large enough to accommodate an appropriate building envelope, can be serviced with private water supply and sewage treatment systems, there is no negative impact to the health and safety of residents or the natural environment, stormwater management and construction mitigation for the Island is addressed in the FSR, mitigation and erosion control will be provided for during construction to contain settlement and the proposed development for the mainland landings do not require separate set of water and sewage systems and parking areas will be serviced with grass and gravel to promote infiltration and improved water quality.

[190] The Tribunal accepts in its entirety the expert evidence of Mr. Nielson. The Applicant prepared an extensive BIA which concluded that traffic increases resulting from the proposed development will be modest and any impact of this additional traffic can be appropriately mitigated and the boat shuttle operations will be monitored and

enforced through conditions in the draft PofS. There is a recognition of the narrow water body and recommends a number of mitigating measures. There is a provision in the existing Town's planning documents that provide for waterfront landings that service more than one property similar to what is being proposed for the Island. In his opinion, both water and land access are suitable for the proposed development and found in the Planning Instruments.

[191] The Tribunal was impressed with the testimony and commitment to their community of Mmes. Mills and Peden and Mr. Zytaruk, and the many participants written contribution writing. Their representation of their community in this proceeding was indeed fulsome and articulately presented. Therefore, the Tribunal has gone into considerable detail in an effort to clearly articulate the reasons for its Decision and Order.

[192] It is unfortunate that the Foundation was unable to succeed in acquiring the Island as it was given first right of refusal in its purchase. That being said, one must recognize that is the Tribunal's legislative responsibility to evaluate the matters before it against the statutory public policy of the Province, Muskoka, Lake of Bays and the Town. The Planning Instruments and the proposed development has been evaluated completely and exhaustively reviewed with the benefit of the testimony of many experts during the course of this proceeding.

[193] The Tribunal hopes that the Applicant and the Foundation will continue to work together to determine an appropriate legal mechanism for the Foundation to become the long-term stewards of the conservation areas defined on the Island. There is no doubt in the Tribunal's mind that the Foundation would steward these areas in the best interest of the residents, both of the Island and the larger community.

[194] Phase 2 of this proceeding is to determine the suitability of the draft PofS and the conditions assigned thereto. This Decision gives considerable direction to that

subsequent phase and must be considered by both the Applicant and the applicable municipal jurisdiction in the construct of these documents.

[195] In conclusion, the Tribunal finds that the proposed Planning Instruments and development meet all the requisite planning policies of the Province, Muskoka, Lake of Bays, and the Town and represents good planning.

## **ORDER**

[196] Accordingly, the Tribunal Orders that:

- a. the appeal is allowed in part, and the Official Plan for the Township of Lake of Bays is amended as set out in Tab 1 of Schedule “A”, appended to this Decision;
- b. the appeal against By-law No. 04-180 (known as the Development Permit By-law) of the Township of Lake of Bays, as amended, is allowed in part as set out in Tab 2 of Schedule “A”, appended to this Decision, but the final Order is withheld until a further amendment is incorporated into the proposed instrument to reflect the limited tree removal in the 10 metres rear yards of the proposed subdivision lots, as described in the findings of this Decision. If any issue arises between the parties as to the wording of this section, the Tribunal may be spoken to;
- c. the appeal against By-law No. 2008-66P of the Town of Huntsville, as amended, for the property known as Part of Lot 24, Concession 1, Geographic Township of Brunel, Town of Huntsville is allowed in part as set out in Tab 3 of Schedule “A”, appended to this Decision;
- d. the appeal against By-law No. 2008-66P of the Town of Huntsville, as amended, for the property known as Part of Lot 21, Concession 1, Geographic Township of Brunel, Town of Huntsville is allowed in part as set out in Tab 4 of Schedule “A”, appended to this Decision; and

- e. the Tribunal authorizes the Clerks of the respective municipalities to administratively assign by-law numbers to the 3 of the 4 aforementioned Planning Instruments where Final Orders have been issued.

[197] Phase 2 of this matter will proceed in keeping with the directions and orders found in this Decision. The Tribunal requests of the parties to contact the Case Coordinator to set up a Case Management Conference to complete the necessary details for the scheduling of Phase 2.

[198] The Member will remain seized in the event any matters arise which are related to the implementation of this Order, the Tribunal may be spoken to.

*“G.C.P. Bishop”*

G.C.P. BISHOP  
ALTERNATE CHAIR

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

**OLT-22-002969 – Schedule A**

**PROCEEDING COMMENCED UNDER** Subsection 34(11) of the *Planning Act*, R.S.O.  
1990, c. P.13, as amended

<b>Appellant:</b>	Langmaid's Island Corporation
<b>Subject:</b>	Proposed Development Permit By-law Amendment No. Z /0118 LOB
<b>Property:</b>	Langmaid's Island
<b>Municipality:</b>	Township of Lake of Bays
<b>L.P.A.T. Case No.</b>	PL180898
<b>L.P.A.T. File No.</b>	PL180899

**PROCEEDING COMMENCED UNDER** Subsection 34(11) of the *Planning Act*, R.S.O.  
1990, c. P.13, as amended

<b>Appellant:</b>	Langmaid's Island Corporation
<b>Subject:</b>	Proposed Zoning By-law Amendment No. Z/11/2018/HTE
<b>Property:</b>	3933 South Portage Road
<b>Municipality:</b>	Town of Huntsville
<b>L.P.A.T. Case No.</b>	PL180898
<b>L.P.A.T. File No.</b>	PL180911

**PROCEEDING COMMENCED UNDER** Subsection 34(11) of the *Planning Act*, R.S.O.  
1990, c. P.13, as amended

<b>Appellant:</b>	Langmaid's Island Corporation
<b>Subject:</b>	Proposed Zoning By-law Amendment No. Z/12/2018/HTE
<b>Property:</b>	4215 South Portage Road
<b>Municipality:</b>	Town of Huntsville
<b>L.P.A.T. Case No.</b>	PL180898
<b>L.P.A.T. File No.</b>	PL180912

**PROCEEDING COMMENCED UNDER** Subsection 51(34) of the *Planning Act*, R.S.O.  
1990, c. P.13, as amended

<b>Appellant:</b>	Langmaid's Island Corporation
<b>Subject:</b>	Plan of Subdivision No. S201 8-1
<b>Property:</b>	Langmaid's Island, 3933 and 4215 South Portage Road
<b>Municipality:</b>	District of Muskoka
<b>L.P.A.T. Case No.</b>	PL180898
<b>L.P.A.T. File No.</b>	PL180916



# INDEX

TAB	DESCRIPTION
1	Revised Proposed Township Official Plan Amendment
2	Revised Proposed Township Development Permit By-law Amendment
3	Revised Proposed Town Zoning By-law Amendment (3933 South Portage Road)
4	Revised Proposed Town Zoning By-law Amendment (4215 South Portage Road)

# TAB 1

**AMENDMENT NUMBER \_\_\_\_**  
**TO THE OFFICIAL PLAN FOR THE**  
**TOWNSHIP OF LAKE OF BAYS**

Prepared for Langmaid's Island Corp.

**THE CORPORATION OF THE TOWNSHIP OF LAKE OF BAYS**  
**BY-LAW NO. \_\_\_\_\_**

A By-law to adopt Amendment No. \_\_\_\_\_ to the Township of Lake of Bays Official Plan.

The Council of the Corporation of the Township of Lake of Bays, pursuant to the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, does hereby enact as follows:

1. THAT Amendment Number \_\_\_\_ to the Township of Lake of Bays Official Plan, consisting of the attached maps and explanatory text, is hereby adopted.
2. THAT this By-law shall come into force and take effect in accordance with the requirements of the *Planning Act*.

READ A FIRST AND SECOND TIME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

READ A THIRD TIME AND PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK

**AMENDMENT NUMBER \_\_\_\_ TO THE  
TOWNSHIP OF LAKE OF BAYS OFFICIAL PLAN**

**INDEX**

**PART A - THE PREAMBLE**

The Preamble provides an explanation of the proposed Amendment, including the purpose, location and background information, but does not form part of the Amendment.

**PART B - THE AMENDMENT**

The Amendment describes the changes and/or modifications to the Township of Lake of Bays Official Plan which constitute this Official Plan Amendment No. \_\_\_\_.

## **PART A - THE PREAMBLE**

### **PURPOSE**

The purpose of Official Plan Amendment No. \_\_\_\_ is to amend the Township's Official Plan to:

- (i) clarify policies relating to lands within the Langmaid's Island Muskoka Heritage Area;
- (ii) allow for the subdivision of up to 32 seasonal recreational dwelling lots on the two islands that make up Langmaid's Island; and
- (iii) update and scope values identified in the *Natural Heritage Evaluation of Muskoka* (February 1994) by Reid and Bergsma to reflect the findings of more detailed and recent study and assessment.

### **LOCATION**

The land subject to this Amendment is located at Island A (Langmaid's Island), Geographic Township of McLean, now in the Township of Lake of Bays. The applicant is Langmaid's Island Corp.

### **BASIS**

Langmaid's Island Corp. owns Langmaid's Island (the "Island"), which was divided into two islands when Lake of Bays was artificially raised by a dam in Baysville in the late 1800's. In total, the Island has an area of approximately 54 hectares (135 acres), with 6,160 metres (20,200 feet) of frontage on Lake of Bays.

The Island is currently designated Waterfront as defined in Section H.2 of the Official Plan, and is also identified as a "Muskoka Heritage Area". The background information that supported the "Muskoka Heritage Area" designation on the Island speaks mainly to natural environment features, and also makes reference to scenic vistas from high hills on the Island.

Section A.14 of the Official Plan states:

The exact limits or boundaries of a natural heritage area or site, environmentally sensitive area, habitat area, or influence areas of constraints such as flooding, sewage lagoons or landfill sites will be confirmed, as required by the Township. Confirmation may require a site inspection by Township staff and/or an impact assessment. Final determination of exact limits of boundaries or areas of influence will be made by the Township, or other applicable authority as specifically noted in this plan, and will not require amendment to this plan.

Recently, RiverStone Environmental Solutions Inc. ("RiverStone") completed detailed environmental impact studies of the Island (January 2018) and concluded that certain

values identified in the *Natural Heritage Evaluation of Muskoka* (1994) do not exist on the Island, specifically:

- Langmaid's Island is not a regionally-significant forest;
- Langmaid's Island does not support a deer wintering yard; and
- While Langmaid's Island does support potential Lake Trout spawning locations in certain areas, these can be protected without the need to prohibit development of all shoreline areas of the Island.

RiverStone identified areas where fish habitat is present, as well as other environmentally-significant features. These features, as well as the peaks of high hills, as described in the *Natural Heritage Evaluation of Muskoka* (1994) will continue to be protected through this Official Plan Amendment and the accompanying proposed Development Permit By-law Amendment.

While not a prohibition, Section D.98 of the Official Plan indicates that:

Creation of new lots on Langmaid's Island or substantial development will be discouraged in order to retain this as a natural and undisturbed area and retain its important values. Any further development or site alteration on the island should be focused on the area, which has already been disturbed by development.

Further, notwithstanding Section D.98, Sections D.99 and D.100 clearly contemplate that further development may be considered if an impact assessment is undertaken to better identify, locate and evaluate the values of the area, and if appropriate tools can be used to protect those values. Detailed studies have been completed to further inform the values originally listed in the *Natural Heritage Evaluation of Muskoka* (1994) and provide recommendations on how they can be protected in accordance with Sections D.99 and D.100. These studies have been independently peer reviewed by the District of Muskoka.

The interrelationship of these policies of the Official Plan was noted by members of the public during the statutory public meeting on June 2, 2018. In order to reflect the findings of more detailed study, and remove any potential or perceived conflict or confusion among these policies, the Township prefers to see the Official Plan amended to provide more specific guidance with respect to protection and responsible development of the Island.

The Amendment will also revise Section D.96 (and any other related references) in the Official Plan by removing sub-policies (c) and (d) to reflect more accurate and current assessments conducted by RiverStone since the *Natural Heritage Evaluation of Muskoka* (1994).

Subsection (c) currently states:

- c) Langmaid's Island was evaluated as a regionally significant forest and



recommended as a candidate ANSI;

The history of environmental studies on the Island reveals that a recommendation was made in 1993 that the Island be considered as a candidate ANSI. However, the recommendation was never implemented by the Ministry of Natural Resources and Forestry. Thus, the Island remained a candidate ANSI. The most recent Environmental Impact Study (RiverStone 2018) determined that the ecological basis for the recommendation that the Island be considered as a candidate ANSI is not supported.

There is no definition of a “regionally significant forest” in the District of Muskoka. Furthermore, the *Provincial Policy Statement, 2020* reference to “significant woodlands” excludes lands on the Canadian Shield and north thereof from being categorized as such.

Subsection (d) currently states:

- d) Langmaid's Island supports a deer wintering area as well as a potential Lake Trout spawning location;

RiverStone Environmental completed a deer study in February 2018, and concluded that the Island does not support a deer wintering area, nor has it ever been identified as such by the Ministry of Natural Resources and Forestry. Riverstone's findings are supported by the District of Muskoka peer review.

Although not an operative part of the Official Plan, the introductory paragraph of “Langmaid's Island Muskoka Heritage Area” should be updated to reflect the findings of the RiverStone work and remove the reference to the Town of Huntsville.

Finally, the boundary between the Town of Huntsville and the Township of Lake of Bays is shown on older maps going through the center of the Island. This is inaccurate. The correct boundary was established when the District of Muskoka was created, and the Island is entirely within the Township of Lake of Bays.

## PART B - THE AMENDMENT

All of this part of the document, entitled **Part B - The Amendment**, consisting of the following text, constitutes Amendment No. \_\_\_\_ to the Township of Lake of Bays Official Plan.

## DETAILS OF THE AMENDMENT

The Official Plan of the Township of Lake of Bays is hereby amended as follows:

1. The paragraph following Section D.95 entitled "Langmaid's Island Muskoka Heritage Area" is hereby deleted and replaced with the following:

"Langmaid's Island is located in the Township of Lake of Bays. This Heritage Area also includes Seagull Island, an associated and small rocky island that historically functioned as a Herring Gull loafing area, and which is protected from development.

Langmaid's Island is valued for its wide range of topography and natural features, as well as the habitat that it offers, particularly for fish. It supports long stretches of undeveloped shoreline and natural beaches, and is sensitively-developed with recreational properties. It is highly valued for its scenic and aesthetic qualities, and its cultural history of recreational use."

2. Delete subsections (c) and (d) from Section D.96, and renumber accordingly.
3. Delete Sections D.98 - D.99 and replace with the following new Sections D.98 - D.99:

"D.98 An impact assessment has been undertaken in order to better identify, locate and evaluate the features and values of the Island. In order to ensure that development can occur in a location and manner which will ensure the preservation of the features and values identified in the impact assessment, the following planning tools will be implemented prior to the approval of further development proceeding on the Island:

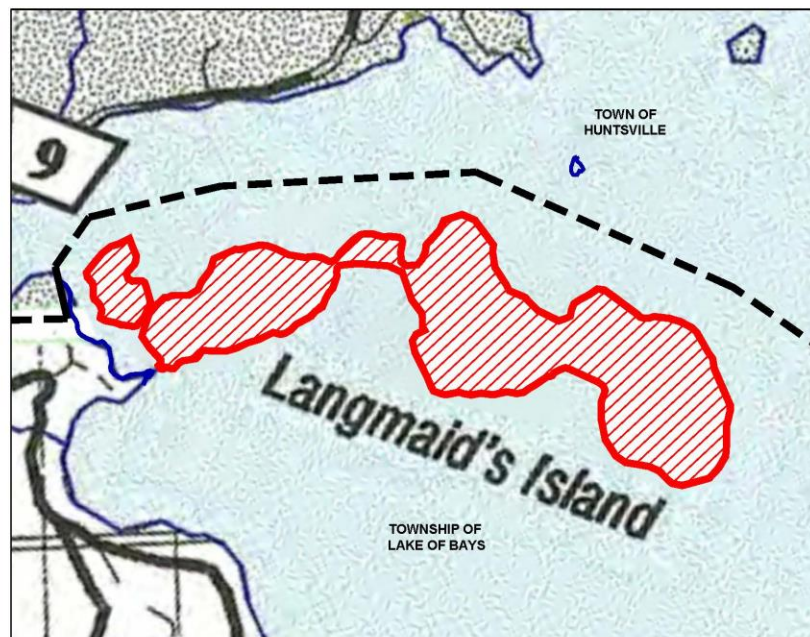
- a) Development Permits will be required for each lot, and shall implement recommendations made through the impact assessment;
- b) Development shall be designed and constructed in accordance with Character Guidelines approved by the Township of Lake of Bays; and,
- c) Areas identified for protection from development through the impact assessment will be subject to a Conservation Easement in favour of a registered Land Trust that ensures ongoing conservation and the prohibition of public access.

D.99 Development of Langmaid's Island shall be designed to ensure that:

- a) each lot has waterfront access in an area that is outside of fish habitat or significant wildlife habitat;
- b) accessing the lots for construction and long-term maintenance purposes will minimize the impact on the shoreline vegetative buffer;
- c) a maximum of 32 waterfront residential lots may be permitted on the Island, with each lot having a minimum lot frontage of 90 m and a minimum lot area of 0.8 ha;
- d) there is an adequate building envelope and septic system site on each lot without the requirement for major site alteration;
- e) individual cottages are designed to minimize the visual impact of the development from the Lake;
- f) adequate provision has been made for mainland access to the lots; and
- g) crests of significant hills together with other identified environmental features and functions are to be protected to the greatest extent possible."

- 4. Schedule C1, "Wetlands and Natural Heritage" is hereby amended to correct the boundary between the Town of Huntsville and Township of Lake of Bays as shown on **Schedule "A"** attached to and forming part of this Amendment.
- 5. Schedule D2, "Narrow Waterbodies and Waste Disposal" is hereby amended to correct the boundary between the Town of Huntsville and Township of Lake of Bays, and to identify the narrow waterbody between Langmaid's Island and the mainland as shown on **Schedule "B"** attached to and forming part of this Amendment.

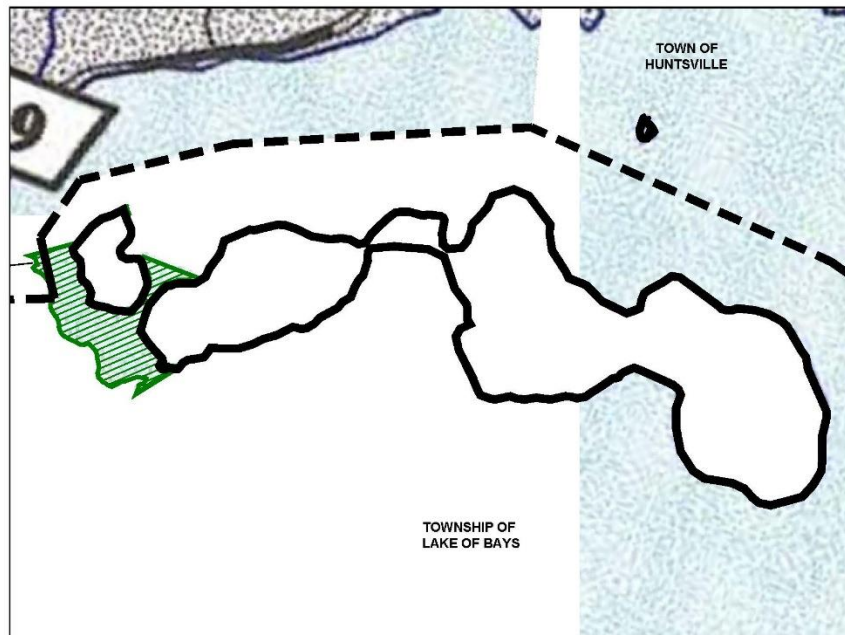
**SCHEDULE "A"**  
Township of Lake of Bays Official Plan  
Amendment # \_\_\_\_\_  
Amendment to Schedule C-1, Wetlands and  
Natural Heritage



- Lake of Bays Municipal Boundary  
Muskoka Heritage Area

**SCHEDULE "B"**

Township of Lake of Bays Official Plan  
Amendment # \_\_\_\_\_  
Amendment to Schedule D2, Narrow  
Waterbodies and Waste Disposal



- Lake of Bays Boundary  
Narrow Waterbody

# TAB 2

**THE CORPORATION OF THE TOWNSHIP OF LAKE OF BAYS  
BY-LAW 20\_\_-\_\_**

**BEING A BY-LAW TO AMEND BY-LAW 04-180 KNOWN AS THE  
DEVELOPMENT PERMIT BY-LAW (Langmaid's Island Corp.)**

**WHEREAS** it is deemed expedient to amend By-law 04-180;

**NOW THEREFORE** the Council of the Corporation of the Township of Lake of Bays enacts as follows:

1. Schedule "A" to By-law 04-180 as amended, is hereby further amended by re-designating Island A (Langmaid's Island), Geographic Township of McLean, now in the Township of Lake of Bays, from "Waterfront Residential (WR)" Development Permit Area to the "Waterfront Residential with Exception (WR-EXXX)" Development Permit Area, and to the "Waterfront Environmental Protection (WEP)" Development Permit Area, and to the "Waterfront Environmental Protection with Exception (WEP-EXXX)" Development Permit Area as shown on the attached **Schedule "A"**.
2. Section 7 of By-law 04-180 be amended by the addition of the following:
  - (i) "Notwithstanding any provision of this By-law to the contrary, on lands designated "WR-EXXX", as shown on **Schedule "A"** attached to this By-law 20\_\_-\_\_, no person shall use any *lot* or erect, alter or use any *building* or *structure* except in accordance with the Waterfront Residential (WR) Development Permit Area subject to the following exceptions:

i) Development Permit Area Provisions:

a) **MINIMUM LOT AREA FOR NEW LOTS**

SITUATION	STANDARD	STAFF VARIATION	COUNCIL VARIATION
<i>Lot</i> located in WR-EXXX Development Permit Area	0.8 ha	None	None

b) **MINIMUM WATER FRONTAGE FOR NEW LOTS**

SITUATION	STANDARD	STAFF VARIATION	COUNCIL VARIATION
<i>Lot</i> located in WR-EXXX Development Permit Area	90 M	None	None

c) **MINIMUM SHORELINE YARD SETBACK**

SITUATION	STANDARD	STAFF VARIATION	COUNCIL VARIATION
<i>Lot</i> located in WR-EXXX Development Permit Area	23 metres (75.5 ft)	None	Up to 10%

d) *MAXIMUM LOT COVERAGE*

SITUATION	STANDARD	STAFF VARIATION	COUNCIL VARIATION
<i>Lot</i> located in WR-EXXX Development Permit Area	A maximum of 510 sq. m. (5499 sq. ft). <i>footprint</i>	None	Up to 10%

e) *MAXIMUM SHORELINE ACTIVITY AREA FRONTAGE*

SITUATION	STANDARD	STAFF VARIATION	COUNCIL VARIATION
<i>Lot</i> located in WR-EXXX Development Permit Area	Selective, trimming, limbing and pruning of trees for purpose of views and/or the removal of trees for safety reasons, are permitted within a <i>shoreline activity area</i> no wider than 23 metres, in both cases subject to recommendations of a qualified ecologist. Trees and vegetation may be removed within a <i>shoreline activity area</i> for the purpose of providing a temporary construction access to a maximum width of 6 metres for each activity area. When not in use, the temporary construction access will be revegetated with the exception of a pathway with a maximum width of 2 metres	None	None

- f) Notwithstanding Section 4.79 of the By-law, the *shoreline buffer* width shall be a minimum of 20 metres.
- g) Notwithstanding Section 4.59 of the By-law, the 'minimum off-street parking requirement' for a '*waterfront landing*' use shall be 2 *parking spaces* for each property served, plus 1 visitor *parking space* for every 3 properties served.
- h) There shall be a maximum of 32 *lots* permitted within the WR-EXXX designation.
- i) A Development Permit will be required for each *lot*. Development shall be designed and constructed in accordance with Character Guidelines approved by the Township of Lake of Bays. Development Permits shall implement the recommendations in the "Environmental Impact Study" prepared by Riverstone Environmental Solutions Inc. (January 2018), the "Functional Servicing Report" prepared by C.C. Tatham & Associates Ltd. (January 2, 2018; the "Addendum to January 2, 2018 Functional Servicing Report" prepared by C.C. Tatham & Associates Ltd. (August 9, 2018), and any subsequent addendums to those reports as updated, supplemented, and amended over time.



j) Within the WR- EXXX designation, a maximum of 3 *sleeping cabins* shall be permitted on a *lot* subject to the following provisions:

- i) Only one *sleeping cabin* may be situated further than 6 metres from the exterior wall of the *detached dwelling* and the other 2 *sleeping cabins* shall be connected to the *detached dwelling* by a deck or walkway, or
- ii) Each of the 3 *sleeping cabins* shall be situated no further than 6 metres from any exterior wall of one other *sleeping cabin* and all 3 *sleeping cabins* shall be connected together by a deck or walkway.

(ii) On lands designated "WEP-EXXX", as shown on **Schedule "A"** attached to this By-law 20\_\_-\_\_, no person shall use any *lot* or erect, alter or use any *building* or *structure* except in accordance with the Waterfront Environmental Protection (WEP) Development Permit Area designation and subject to the following:

- a) The lands shall be subject to a Conservation Easement in favour of a registered Land Trust to the satisfaction of both the District of Muskoka and to the Township of Lake of Bays that ensures ongoing *conservation* of the lands in perpetuity; and,
- b) No trees shall be removed save and except as permitted by the Conservation Easement.

3. **Schedule "A"** hereby forms part of this By-law.

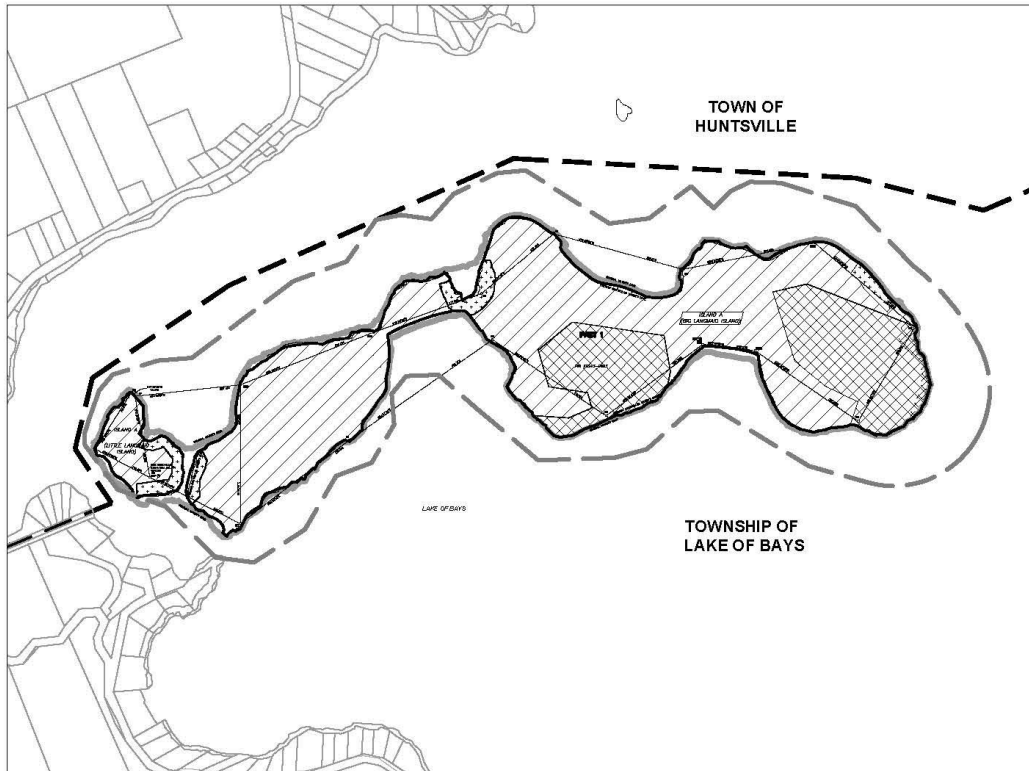
4. All other provisions of By-law 04-180, as amended, shall apply.





**READ** a FIRST, SECOND and THIRD time this \_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Deputy Clerk

**SCHEDULE "A"**  
**By-law Amendment No. 2021- XXX**  
**File**  
**Property Roll No. 040-016-08700**  
**Island "A", Langmaid's Island, Geographic Township**  
**of McLean, Now in the Township of Lake of Bays**



- |   |   |
|---|---|
|  | Lands to be redesignated from the "Waterfront Residential (WR)" Development Permit Area to the "Waterfront Environmental Protection (WEP)" Development Permit Area                        |
|  | Lands to be redesignated from the "Waterfront Residential (WR)" Development Permit Area to the "Waterfront Environmental Protection with an Exception (WEP-EXXX)" Development Permit Area |
|  | Lands to be redesignated from the "Waterfront Residential (WR)" Development Permit Area to the "Waterfront Residential with an Exception (WR-EXXX)" Development Permit Area               |
|  | Heritage Area   |

# TAB 3



**CORPORATION OF THE TOWN OF HUNTSVILLE**

**BY-LAW NUMBER 2021-XX**

**(Langmaid's Island Corp.)**

**Being a by-law to amend Zoning By-law 2008-66P  
as amended, of the Corporation of the Town of Huntsville**

**WHEREAS** the council of the Corporation of the Town of Huntsville finds it expedient to amend Zoning By-law 2008-66P, as amended;

**AND WHEREAS** authority to pass this by-law is provided by Section 34 of the Planning Act, E.S.O, 1990. c. P. 13 and amendments thereto;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF HUNTSVILLE ENACTS AS FOLLOWS:

1. Map No. "M-9" of Zoning By-law 2008-66P, as amended, are further amended by rezoning Part of Lot 24, Concession 1, Geographic Township of Brunel, Town of Huntsville, from a **Shoreline Residential One (SR1) Zone to a Shoreline Residential One (SR1) Zone with an exception**, as shown **blackened** on Schedule "I" attached hereto.
2. Section 6 – "Special Exceptions" is hereby further amended by the following:  
  

**Exception No. "xxxx"**

A Waterfront Landing is permitted as the only use, together with applicable accessory structure(s).  
A maximum of ten (10) docking slips shall be permitted.

Notwithstanding the requirements of Section 3.1.18.5, the maximum cumulative width of all shoreline structures and amenity areas shall not exceed 33% of the lot frontage.
3. Schedule "I" attached hereto, is hereby made part of this by-law.
4. THIS BY-LAW SHALL COME into force on the date of passage and take effect the day after the last date for filing of appeals where no appeals are received, or, where appeals are received, upon the approval of the Ontario Municipal Board.

**READ a first time this xx<sup>th</sup> day of XXXXXXXX, 2021.**

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**Mayor**

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**Clerk**

**READ** a **second** and **third** time and **finally passed** this xx<sup>th</sup> day of **XXXXXX, 2021**.

By-law 2021-xx – Langmaid’s Island Corp. – South Portage Road  
Page 3

**Schedule “I” to By-law 2021-xx (Langmaid’s Island Corp.)**



**TAB 4**



**CORPORATION OF THE TOWN OF HUNTSVILLE**

**BY-LAW NUMBER 2021-XX**

**(Langmaid's Island Corp.)**

**Being a by-law to amend Zoning By-law 2008-66P  
as amended, of the Corporation of the Town of Huntsville**

**WHEREAS** the council of the Corporation of the Town of Huntsville finds it expedient to amend Zoning By-law 2008-66P, as amended;

**AND WHEREAS** authority to pass this by-law is provided by Section 34 of the Planning Act, E.S.O, 1990. c. P. 13 and amendments thereto;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF HUNTSVILLE ENACTS AS FOLLOWS:

1. Map No. "M-9" of Zoning By-law 2008-66P, as amended, are further amended by rezoning Part of Lot 21, Concession 1, Geographic Township of Brunel, Town of Huntsville, from a **Shoreline Commercial One (CS1) Zone to a Shoreline Commercial One (CS1) Zone with an exception**, as shown **blackened** on Schedule "I" attached hereto.
2. Section 6 – "Special Exceptions" is hereby further amended by the following:  
  
**Exception No. "xxxx"**  
  
A Waterfront Landing is an additional permitted use, together with applicable accessory structure(s).
3. Schedule "I" attached hereto, is hereby made part of this by-law.
4. THIS BY-LAW SHALL COME into force on the date of passage and take effect the day after the last date for filing of appeals where no appeals are received, or, where appeals are received, upon the approval of the Ontario Municipal Board.

**READ a first time** this xx<sup>th</sup> day of XXXXXXX, 2021.

\_\_\_\_\_  
**Mayor**

\_\_\_\_\_  
**Clerk**

**READ a second and third time and finally passed** this xx<sup>th</sup> day of XXXXXXX, 2021.



By-law 2021-xx – Langmaid's Island Corp. – South Portage Road  
Page 2

**Schedule "I" to By-law 2021-xx (Langmaid's Island Corp.)**

