

**The Corporation of the City of Kawartha Lakes**  
**Council Report**

**Report Number RD2020-005**

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**Meeting Date:** July 28, 2020  
**Title:** Limited Service Agreement Update – Killarney Bay Road  
**Description:** Update entering into an agreement and service level  
**Ward Number:** 3  
**Author and Title:** Bryan Robinson, Director of Public Works

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**Recommendation(s):**

**That** Report RD2020-005, Limited Service Agreement Update – Killarney Bay Road be received;

That Staff be directed to continue to work with the road representative(s) to attempt to enter into a limited service agreement; and

That should an agreement not be reached by the end of September 30, 2020, that the City cease service on the private section of Killarney Bay Road running north from Whitetail Road.

**Department Head:** \_\_\_\_\_

**Financial/Legal/HR/Other:** \_\_\_\_\_

**Chief Administrative Officer:** \_\_\_\_\_

## **Background:**

Within the townships of the prior County of Victoria, the individuals at those townships managed unassumed and private roads differently. The City of Kawartha Lakes inherited varying levels of service for road infrastructure within its boundary.

The current administration is trying to document and establish consistency related to service levels. Documentation is essential to outline exactly what services are to be provided. This is key for both residents and staff to ensure services are provided in a fair and consistent manner.

At the Council Meeting of July 16, 2019 Council adopted the following resolution:

CC2019-18.14.2.4

Memo - Level of Service for Gillis Street, Killarney Bay Road and Grove Road  
Doug Elmslie, Deputy Mayor

CR2019-457

Moved By Deputy Mayor Elmslie

Seconded By Councillor Yeo

That the memorandum dated July 16, 2019 from Deputy Mayor Elmslie regarding Level of Service for Gillis Street, Killarney Bay Road, and Grove Road be received;

That Gillis Street, Killarney Bay Road and Grove Road continue to receive the level of service they have traditionally received until an agreement with the City can be enacted; and

That if an agreement is not reached by Spring 2020, the matter be referred back to Council for further direction or resolution.

Carried.

This report addresses that direction.

Killarney Bay Road, running north from Whitetail Road is a private road (Attachments 1 & 2). The road crosses multiple private residential properties. In addition, the road is on a large portion of road that is owned by the estate of a deceased individual.

The City has historically trespassed on private property in order to complete maintenance and is exposed to liability in the event of an accident/incident on the roadway. A limited service agreement is needed to protect the interest of both

parties. In order to enter into a legal agreement (Limited Service Agreement), the legal owner is required to sign or authorize another to sign on their behalf.

The City met with the association representatives on October 9, 2019 to review the matter. As the legal owner is not available to sign the agreement, the City has advised the cottage association that they need to undertake a vesting order to obtain ownership of the road in order to execute the agreement. The association has indicated they believe the requirement is unreasonable.

### **Rationale:**

The City is not legally obligated to provide service to private roads that have not been assumed for maintenance purposes by historical service, as in the present case. In order to provide service, the City established a legal agreement process known as a Limited Service Agreement. The City requires a signed agreement to protect against liability as we work on private property.

The City and the association have negotiated in an attempt to find a resolve, but have reached a standstill. Staff are continuing to provide service to this private road as directed by Council, however we caution Council that we are currently exposed to cost and liability while we perform the work.

In order to execute the agreement, there is one option available to the road association. Specifically, they can vest ownership of the road allowance into the name of the road association. This is likely the best long term solution for the association as it guarantees ownership and access.

Staff have a draft agreement ready for execution which requires all impacted owners to sign. Once the above issue has been resolved, we will execute the agreement.

### **Other Alternatives Considered:**

Council has several options available. Staff do caution that any decision other than that recommended above could be considered precedent setting.

#### Alternative 1:

Noting that the road is private and the road representatives have not taken any action to enable execution of an agreement, Council could choose to cease service immediately. Staff do not recommend this alternative, to allow the road association time to secure maintenance through the commercial market. Decisions on service levels for private roads will form part of the service level review within the road maintenance database to be presented to Council at a future meeting.

#### Alternative 2:

Council could opt to direct staff to continue to provide limited maintenance to the private road without an agreement. This alternative is strongly discouraged as it places the City in a position of liability with respect to work on the road and is also precedent setting for other roads.

#### Alternative 3:

Being a private road, the residents could opt to pursue following City Policy CP2017-010 – Assumption of Private and Unassumed Roads. This would offer residents full municipal service but would require the residents to bring the road to the requires physical conditions identified in the policy at their expense. This alternative is not preferred due to the expense involved.

### **Financial/Operation Impacts:**

The City is currently providing limited winter service to Killarney Bay Road. The road is part of an in house winter maintenance route. Individually (without considering all serviced private roads), there is no additional financial or operating impact to remaining status quo. Should the City cease this service delivery, it will help improve cycle response times for other residents on the plow route.

### **Relationship of Recommendation(s) To The 2020-2023 Strategic Plan:**

This report aligns with the Strategic Plan's key initiative:

- Goal 4 – Good Government

Providing effective, efficient and timely service to our residents is essential. Council should note that this report aligns with Good Government which focuses on appropriate allocation of municipal resources and appropriate management of our assets. Although this road is not a municipal asset, any allocation of resource to this endeavour means that we are utilizing resources that could be redeployed to other endeavours.

## **Consultations:**

City Solicitor

## **Attachments:**

Appendix 1 – Killarney Bay Road Map



Appendix 1  
RD2020-005 Killarney

Appendix 2 – Killarney Bay Road Aerial



Appendix 2  
RD2020-005 Killarney

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**Department Head:** Bryan Robinson

**Department File:** Limited Service Agreement – Killarney Bay Road