



# Township of Havelock-Belmont-Methuen

On-Water Structures

Background Report

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The intent of this process is to regulate new, on-water structures, as a result of a decision by the Ontario Superior Court of Justice in 2015. It is the Township's intent to treat existing docks as legal non-conforming and legal non-complying ("grandfathered") uses if they exceed the provisions described in this report.

## 1. Purpose

This Background Report has been prepared to provide information to the Township of H-B-M regarding a recent decision of the Ontario Superior Court of Justice ("OSCJ" or "the Superior Court") regarding municipal jurisdiction and application of zoning by-laws with respect to on-water structures in Ontario's lakes and waterways, arising out of a legal challenge in the neighbouring Township of North Kawartha. This Report is also intended to inform members of the public, Council, and staff of the OSCJ's decision, the implications for the Township of H-B-M, and to provide policy recommendations.

It is recognized that many residents of the Township currently possess on-water structures such as docks, boathouses, swimming rafts, and other marine facilities. The intended policy direction for the Township is that existing rights and structures be recognized and "grandfathered" to the greatest extent that can be permitted, within the confines of the Superior Court's ruling. Section 4.10(d) of the Comprehensive Zoning By-law regulates the repair, restoration, reconstruction, and replacement of non-conforming uses or non-complying uses, buildings or structures, and such regulations will apply to on-water structures.

## 2. Background Report Context

The Township of H-B-M has retained Landmark Associates and FOTENN Consultants Inc. to submit amendments to the Official Plan ("OP") and Comprehensive Zoning By-law in order to address the policy gap that has resulted from the Superior Court's decision. As an initial step, this Background Report will examine H-B-M's current policies regarding on-water structures, the OSCJ's decision, the current on-water structure policies of a sampling of comparable municipalities in Ontario, the implications for H-B-M given the Township's current policies, and will make recommendations, including draft Official Plan and Zoning By-law text.

The Township is located in an area of Ontario which greatly benefits from natural amenities, including an abundance of lakes. Historically, the Township's waterfront areas have been occupied by smaller cottages catering to seasonal residents. Over

time, new development and the redevelopment of older cottages has led to the intensification of waterfront areas and their year-round use.

In 2012, the Township initiated a Comprehensive Review of the Official Plan and Zoning By-law, pursuant to the requirements of the *Planning Act*. The purpose of the comprehensive review was to bring the documents into conformity with provincial planning directions as well as the County of Peterborough Official Plan. The updated Official Plan and Comprehensive Zoning By-law were adopted by the Township of H-B-M in 2012. The OP was approved by the County of Peterborough in 2014. Both the Official Plan and Comprehensive Zoning By-law are currently under appeal and are therefore not fully in force and effect.

Previously, the Township did not apply its zoning by-law, or provide enforcement of the *Building Code Act*, to on-water structures. Shore lands that consist of all lands in a waterbody below the high water mark are Crown lands. The Ministry of Natural Resources and Forestry (“MNRF”) has jurisdiction over Crown lands in Ontario and requires work and/or occupancy permits for all new shore land construction exceeding 15 square metres in area. For construction less than 15 square metres in area, the MNRF made use of the *Free Use Policy*, a directive issued by the Minister of Natural Resources which allows for private use of Crown lands without a permit. A dock or single-storey boathouse must meet certain criteria under the *Free Use Policy* in order to be considered a free use. Like many other municipalities in Ontario, H-B-M defers decision-making for on-water structures to the MNRF as the long-held belief has been that the MNRF is the sole body responsible for regulating shore land or on-water construction in waterways that are not under the jurisdiction of the federal Department of Fisheries and Oceans or Parks Canada.

### 3. Ontario Superior Court Decision

The OSCJ decision, cited as *Glaspell v. Ontario, 2015 ONSC 3965* or simply *Glaspell v. Ontario*, provides detailed consideration of shore land jurisdiction in Ontario.

#### Context

The OSCJ decision arose due to the construction of an on-water boathouse on Big Cedar Lake in the Township of North Kawartha. The floating boathouse was constructed over a floating dock. Both structures were tethered to the shore by a steel cable which was anchored below the 30-metre setback of the high water mark. The MNRF ruled that the boathouse was subject to the *Free Use Policy* because it did not occupy 15 square metres of lakebed or shore land. As the boathouse ostensibly met the requirements of the *Free Use Policy*, the MNRF ruled that neither a work permit nor an

occupancy permit were required. Since the boathouse was located over the lakebed below the highwater mark and tethered to land within the MNR's jurisdiction, the Township determined that the boathouse was on Crown land and therefore not subject to the zoning by-law or the *Building Code Act*. The MNR allows municipalities to determine how zoning and *Building Code* regulations apply to Crown lands, on the understanding that the Crown and its agents are not subject to those regulations. As such, the boathouse was allowed to be constructed without permits from either the MNR or the municipality. Glaspell, a neighbour unhappy with the responses he received from MNR and the Township, sought a decision and declaratory orders from the Superior Court on the following five questions:

- 1) Does the *Ontario Building Code Act, 1992* apply to construction of structures (e.g. docks, marine facilities, houses) to be built on, over, in, or under Ontario lakes, and in particular, Big Cedar Lake?
- 2) Does the Township have jurisdiction under the *Planning Act* and *Municipal Act* to enact and apply by-laws to these structures (e.g. docks, marine facilities, houses) to be built on, over, in, or under Big Cedar Lake?
- 3) Do each of the dock and house require building permits, and compliance with the comprehensive Township zoning by-laws, as they are each attached or anchored to land without a permit contrary to applicable by-laws?
- 4) Does the boathouse built on Big Cedar Lake require an occupancy permit under the *Public Lands Act* to occupy public lands?
- 5) Does the boathouse built on Big Cedar Lake require a work permit under the *Public Lands Act* regarding construction of a structure on shore lands?

## Zoning

The Superior Court ruled that the Township has jurisdiction to zone lands under Big Cedar Lake as well as all Crown lands within the jurisdiction of the zoning by-law. The zoning by-law states that it applies to all lands within the corporate limits of the Township. The OSCJ determined that the zoning by-law already applied to the lakebed of Big Cedar Lake and all Crown lands within the Township. The OSCJ acknowledged that while the zoning by-law cannot apply to the Crown or its agents, the regulations do apply to all lands within the Township and to all persons or users, other than the Crown or agents acting on the Crown's behalf. Therefore, the Township's zoning by-law applies to Crown lands and on-water structures and to any users or persons that are not

the Crown or its agents. The Superior Court ruled that on-water structures are therefore required to comply with the Official Plan and the zoning by-law.

### ***Ontario Building Code Act***

The OSCJ was also called upon to rule on the application of the *Building Code Act* for on-water structures. The *Building Code Act* states that permits are required for the construction of all buildings and that permits must be obtained from the Chief Building Official (“CBO”). The CBO must ensure that structures comply with zoning prior to issuance of a permit. The Superior Court determined that on-water structures such as docks and boathouses are structures that occupy space and therefore that these are subject to the *Building Code Act*. The question of ownership arose as well, specifically permission to apply for a permit when not on land owned by the applicant. The OSCJ ruled that while the owner of on-water boathouse may not own the land over which the boathouse is constructed, because it is on Crown land, the “owner of the property for which the proposed construction is to take place” must obtain a building permit. Therefore, the OSCJ ruled that the *Building Code Act* applies for on-water structures.

### ***Public Lands Act***

Public lands in Ontario are governed by the *Public Lands Act*. Ontario Regulation 239/13 is issued under the authority of the *Public Lands Act* and requires that work permits be issued for activities, such as building construction, that take place on Crown lands by persons that are not agents of the Crown. Regulation 239/13 specifically excludes docks and boathouses from its definition of a “building” however the regulation also explicitly applies to any “structure that occupies more than 15 square metres on shore lands”. The OSCJ determined that the regulation applies to any structure that displaces more than 15 square meters of water over a lakebed or shore land. Therefore, any boathouse that displaces more than 15 square metres of water is subject to both a work permit and an occupancy permit through the MNRF. The Superior Court noted that a work permit should not be issued by the MNRF in contravention of local zoning by-laws, as doing so would be in contravention of the OP and the law.

### **Implications for the Township of H-B-M**

The Superior Court ruled that zoning by-laws and the *Building Code Act* apply to Crown lands, including shore lands below the high water mark and lake beds. As such, it is incumbent on the Township to ensure that its Official Plan and Comprehensive Zoning By-law provide guidance and regulations regarding on-water structures. Specifically, the Official Plan should provide policy direction concerning on-water structures and recognition of the Township’s jurisdiction. The Comprehensive Zoning By-law regulates the type of construction and the height, bulk, location, size, floor area, spacing, character, and use of buildings or structures on all lands in the Township. Township will

need to ensure that regulations regarding on-water structures are in place and consistent with the policy direction of the Official Plan.

## 4. Current H-B-M Policies

The Township's OP and Comprehensive Zoning By-law, which are presently under appeal, pre-dated the Superior Court decision and therefore defer authority for on-water structures to the MNRF. Specific policies concerning on-water structures are reproduced below:

### Official Plan

The Township's Official Plan recognizes the importance and value of the Township's water bodies and its natural environment. Section 1.2.4 outlines the Township's intent to protect lake water quality, shorelines and riparian areas.

Section 3.3 Shoreline of the OP provides policy direction for "lands [...] extending inland 150 metres (492 feet) from any standing waterbody and held in private ownership". Subsection 3.3.4.2 Marine Facilities provides specific direction regarding On-Water Structures (3.3.4.2.a) and On-Land Structures (3.3.4.2.b). For the purpose of the proposed Official Plan Amendment, subsection 3.3.4.2.a is reproduced in its entirety below:

#### 3.3.4.2.a) On-Water Structures

In general, the beds of most lakes and rivers are owned by the Crown and as such are subject to the Public Lands Act, as amended, and administered by the Ministry of Natural Resources and Forestry. By virtue of their status, the ultimate use of Crown Lands can only be determined by the Province of Ontario. Consequently, the following provisions provide direction to the Province:

- i) Due to its high regard for the natural systems that occur in the Township, the Township strongly discourages and otherwise does not support the Province in approving on-water boathouse structures.
- ii) In approving docks, the Township requests the Province to consider the following:
  - docks should be of a type and scale that minimizes both navigational and environmental impacts.
  - docks should also be located at least 4.5 metres (15 feet) from a neighbouring property line as it extends from the high water mark.

- where communal docking facilities are proposed, such facilities should be located a suitable distance from the nearest residential use.
- it shall be the developer's responsibility to obtain all necessary approvals for the location and construction of such facilities.

#### 3.3.4.5 Commercial Uses

Commercial uses in the Shoreline Designation will generally be limited to recreation and resort type uses. The Zoning By-law establishes the requirements for these uses. Newly proposed uses will respect the need to protect visual, environmental and navigational impacts.

##### a) Marinas

i) Marinas shall be encouraged to expand in a manner to provide additional boat storage thereby alleviating the pressure for docking facilities. Marinas should be of a type and scale that minimizes their environmental, navigational and visual impacts.

ii) New marina development shall generally meet the following criteria;

iii) A lot area of 4 hectares (10 acres);

iv) A water frontage of 100 metres (328 feet);

v) A buffer to ensure compatibility with adjacent residential uses; and

vi) Increased setbacks for boat facilities located on land.

b) New marinas shall ensure buffers are maintained when they abut lands that are zoned for residential purposes.

Section 3.8 Crown Lands provides policy direction for lands designated as Crown Lands in the OP. The following policies are included in this section:

##### 3.8.1 Purpose

The purpose of the Crown Land designation is to identify lands in the Municipality which, pursuant to the Public Lands Act, as amended from time to time are administered by the Ministry of Natural Resources and Forestry.



### 3.8.1 Permitted Uses

The Municipality has no authority to regulate land use on Crown Land, but encourages Federal and Provincial governments and agencies to be consistent with the policies of this Plan as it relates to the issuance of tenure, occupational authority and permitted undertakings on Crown Land.

### 3.8.3 Development Policies

Where lands are proposed to be patent in accordance with applicable legislation and regulations, an Official Plan Amendment and Zoning By-law Amendment will be required to recognize the uses or uses proposed for the patent land. In reviewing an Official Plan Amendment and Zoning By-law Amendment application in this context, Council will expect the proponent to conform to other applicable policies in this Plan.

It is the intent of this Plan that the use of lands lying adjacent to Crown Lands be limited to those activities that are compatible with the resource management practices being undertaken by the Crown or its agents.

Council acknowledges the expectation and need for the delivery of certain municipal services to Crown Land; for which the Township would expect to receive financial compensation from the Province.

### 3.8.4 Implementing Zoning By-law

All lands within the Crown Land designation shall be placed in a separate category in the implementing Zoning By-law.

Subsection 3.3.4.2 Marine Facilities is currently under appeal to the Ontario Municipal Board.

## **Comprehensive Zoning By-law**

The Township of Havelock-Belmont-Methuen has adopted Comprehensive Zoning By-law 2012-55, which is not yet in effect. This Background Report is intended to provide direction with respect to updating the Comprehensive Zoning By-law as it relates to on-water structures per the ruling of the OSCJ. Therefore, the Zoning By-law which is currently in effect will not be examined in detail. Instead, relevant policies from Zoning By-law 2012-55 will be reproduced below and discussed later in this report. The Zoning By-law must conform to the Official Plan and serves to describe land uses and performance standards for the enforcement of OP policies.

## **EXPLANATORY NOTE**

Introduction: The material herein includes a copy of By-law No. 1995-42, as amended, together with the land use zoning schedules, which governs land use throughout the Township of Havelock-Belmont-Methuen, being the area to which the by-law applies.

### 2. Definitions

“Boathouse” means a single storey detached accessory building or structure intended to house, shelter or protect a boat or other form of water transportation and may contain equipment incidental to the repair and maintenance of such transportation but shall not contain sleeping, cooking, plumbing or sanitary facilities and in which human habitation is prohibited. This definition is intended to include both on-land boathouses found above the high water mark as well as on-water boathouses.

“Dock” means a structure, floating or fixed, where boats can remain for loading, unloading, repair, or storage on or adjacent to water, but does not include connecting ramps, stairs, walkways or boardwalks.

“Pump House” means an accessory building constructed to enclose a water pump and associated hoses and fire suppression tools only. A pump house is not intended for general storage.

“Shoreline” means the point where the water meets the land regardless of the original or high water mark.

“Shoreline Area” means the portion of the lot lying within 30 metres (98 feet) of the high water mark measured horizontally.

“Waters, Navigable” means any body of water capable of being navigated by floating vessels of any description for the purpose of transportation, recreation or commerce; and shall include a canal and any other body of water created or altered as a result of the construction of any work.

“Water Setback” means a horizontal distance between the normal or controlled high water mark of a navigable waterway and the nearest wall or support of any building or structure.

#### **4.22 Marine Facilities**

Unless otherwise stated in this By-law marine facilities in all zones are subject to the following:

- (a) On-land boathouses which are further limited to:
  - (i) A single boathouse at a location entirely above the high water mark on a lot containing at least 60 metres (197 feet) of frontage; which will require a survey to define the high water mark and setback provisions required by this By-law.
  - (ii) A boathouse shall be located no closer than 6.0 metres (20 feet) to a side lot line that is not a shoreline;
  - (iii) Shall be of a width not exceeding 7.5 metres (25 feet) and an area not exceeding 75 sq. metres (807 sq. feet);
  - (iv) Shall be of a height not exceeding 4.5 metres (15 feet) and contain a pitched roof;
  - (v) Shall not contain any roof top deck or balcony;
  - (vi) A boat house shall contain no habitable areas.
  
- (b) Marine facilities shall not exceed 4.5 metres (15 feet) in height;
  
- (c) The area of a pump house shall not exceed 6 sq. metres (65 sq. feet) in area and 3 metres (10 feet) in height;
  
- (d) The total combined width of marine facilities, stairs, decks, boardwalks or other structures shall not occupy more than 20% of the width of the shoreline or 12 metres (39 feet), whichever is lesser, or any lot which abuts a waterbody;
  
- (e) No marine facilities shall be located within 3 metres (10 feet) of a side lot line except on-land boathouses which must be at least 6 metres (20 feet) from a side lot line. There shall be no minimum yard requirement for the yard adjacent to water.

#### **4.35 Shoreline Frontage and High Water Mark Setback**

Notwithstanding the provisions of Section 4.9 of this By-law, the minimum water frontage for any lot shall be 61 metres (200 feet).

Notwithstanding the provisions of Section 4.9, 4.10 and 4.43 of this By-law, the minimum water setback shall be 30 metres (98 feet) for all buildings and structures, including sewage disposal systems save and except for the following:

- (a) Decks, hot tubs and gazebos which are unattached to a main building and which have a combined horizontal surface area of less than 15 sq. metres (161 sq. feet).
- (b) Marinas, pump houses, marine facilities, stairs and boardwalks.
- (c) The minimum water setback shall be 21.3 metres (70 feet) for lots created before 2009 (up to the passing of By-law 2009-65).
- (d) The minimum water setback shall be 15 metres (49 feet) for lots created before 1995 (up to the passing of By-law 1995-42).
- (e) Except in relation to water setbacks, sewage disposal systems shall not be subject to the provisions of this By-law.
- (f) Notwithstanding any provisions of this By-law to the contrary, on any lot abutting a water body and used for purposes other than a marina, a maximum width of 20% or 12 metres (39 feet) of the shoreline area, whichever is lesser, shall be occupied by marine facilities, pump houses, stairs, decks, patios, gazebos and all other accessory buildings and structures.

# 5. Policy Comparison

## Official Plan Comparable Chart

Municipality	Township of Rideau Lakes	Township of North Kawartha*	Township of Muskoka Lakes	Township of Dysart et al	Current Township of H-B-M OP (under appeal)	Township of Leeds & Thousand Islands
<b>Non-Conforming and Non-Complying Uses</b>	Legal non-conforming uses should cease to exist in the long term. Non-complying lots will generally be required to meet setbacks if possible.	Legal non-conforming uses should cease to exist in the long term. Non-complying lots are required to meet setbacks if possible.	Legal non-conforming uses should cease to exist in the long term. Every effort should be made to comply with the zoning by-law with respect to non-complying uses.	Legal non-conforming uses should cease to exist in the long term. Details are left to the zoning by-law with respect to expansion etc.	Legal non-conforming uses should cease to exist in the long-term. Minor variance permitted to extend or enlarge a non-complying or non-conforming use.	Legal non-conforming uses should cease to exist in the long-term, but these can be changed or expanded if the impact is minimized. Non-complying uses will be permitted to continue and may be zoned to recognize the existing standards so long as no adverse effect results.
<b>Boathouse</b>	Water setback requirements shall not apply; dwelling units are not permitted.	Permitted use and may encroach into the 30 m setback without a minor variance provided that it does not negatively affect the waterfront environment.	Two storey boathouses are permitted on Category 1 Lakes, with a minimum water frontage of 90 m; Single storey boathouses are permitted on Category 1, 2 and 4 Lakes with a minimum water frontage of 30m; Boathouses are not permitted on Category 3 Lakes; Additional provisions apply to each Lake Category.	Boathouses are not permitted in the shoreline setback or in the water.	On-Land, limited to lots with 60 m waterfrontage, boathouse limited to 1 storey, single-slip, peak roof, no dwelling units. Zoning By-law will establish standards. Permits from MNRF or Conservation Authority may be required. On-water, strongly discouraged but to be determined by MNRF.	Should be of a type and scale that minimizes their environmental, navigational and visual impacts.
<b>Dock</b>	Water setback requirements shall not apply.	Permitted use and may encroach into the 30 m setback without a minor variance provided that it does not negatively affect the waterfront environment.	Permitted to lesser of 25 percent or 23 m of the lot's water frontage; Exceptions apply based on land use and location; Large docks, used as decks over the water shall be discouraged.	Exempt from shoreline setback requirements; Implemented through the Zoning By-law.	Asks Province to consider type/scale of dock to minimize environmental/navigational impacts, 4.5m setback from neighbouring property line, suitable setback for communal docks, developers responsible for obtaining approvals	Should be of a type and scale that minimizes their environmental, navigational and visual impacts.

\*The County of Peterborough Official Plan acts as the Official Plan for the Township of North Kawartha.

### Zoning By-law Comparable Chart

Municipality	Township of Rideau Lakes	Township of Kawartha	Township of North Lakes	Township of Muskoka	Township of Dysart et al	Current Township of H-B-M (under appeal)	Township of Leeds & Thousand Islands
<b>Minimum Front Yard (shoreline setback)</b>	30 m	Front Yard: 9 m Water: 30 m	20 m	30 m	30 m (98 ft)	30 m	
<b>Minimum Interior Side Yard</b>	6 m	4 m	4.5 m	4.5 m	6 m (20 ft)	3.0 m	
<b>Minimum Exterior Side Yard</b>	6 m	9 m	9 m	7.5 m	6 m (20 ft)	7.5 m	
<b>Minimum Rear Yard</b>	7.5 m	9 m	4.5 m	7.5 m	7.5 m (25 ft) 15 m (50 ft) if a public road	7.5 m	
<b>Non-Conforming and Non-Complying Uses</b>	May not be changed to another use unless to a permitted use in the zone in which it is located, except with the permission of the Committee of Adjustment. Detailed General Provisions provide guidance with respect to non-complying standards.	May expand non-complying uses towards side lot lines, if resulting building is not wider than 40% of the shoreline up to a maximum of 18.3 m. Attached decks & existing decks cannot be within 9 m of the high water mark, inclusive of a 12 m <sup>2</sup> screened porch or gazebo. No enlargement permitted within 9 m of the high water mark.	Reconstruction and repair of non-conforming structures is permitted as long as the structure remains within its original location and dimensions. Detailed General Provisions provide guidance with respect to non-complying standards.	Reconstruction and repair of non-conforming structures is permitted as long as the structure remains within its original location and dimensions. Detailed General Provisions provide guidance with respect to non-complying standards.	Lots predating the by-law are permitted a max. lot coverage of 15%. Minor extensions/expansions permitted so long as zone provisions are met.	May repair or restore legal non-conforming/complying uses without increasing height or building footprint. May reconstruct such a use but a permit is required and it must not increase the height or building footprint. If within a floodplain or erosion hazard, the use must be moved outside of said hazard or require flood proofing or engineering measures.  May expand legal non-conforming use with permission of the Committee of Adjustment.  May alter or enlarge legal non-complying building or structure so long as it does not further reduce provision(s) with which the building is not in compliance. Extensions along a non-complying setback are limited to 1/3 of the length of the respective wall.	
<b>On-Land Boathouse</b>	No minimum yard or water setback provisions, except a minimum side yard shall be 4.5 m; Lot coverage of all accessory buildings not	Not permitted.	Boathouses are permitted on land and in the water within the Waterbody Open Space and Waterfront Residential Zones; Regulations vary based	Permitted accessory structure on land only; To be located entirely above the high water mark; Not to be located closer than 7.5 m to a side lot line that is not a	Permitted on a lot with 60m or more of waterfront, no closer than 6 m to side lot line, max. width 7.5 m, max. area 75 m <sup>2</sup> , max. height 4.5 m, no roof top deck or balcony, no habitable areas.	(a) The maximum total perimeter of all docks, boathouses and swimming platforms including all approach ramps, rock-filled cribs, etc., shall be 60.0 metres (196.85 ft.) with a maximum total area of 75.0 square metres (807.3 sq. ft.). The length of the dock shall not exceed the	

	to exceed 10%; Maximum height 6 m.		on Lake category and lake frontage; Dwelling units are not permitted.	shoreline; Front lot line shall not exceed 6 m; Structure not to exceed 4.5 m in height; Additional provisions apply under each waterfront zone.		width of the water frontage of the lot containing the subject dock. For the purpose of this subsection, perimeter shall mean all surfaces which abut water.
<b>On-water Boathouse</b>		Not permitted.	Boathouses are permitted on land and in the water within the Waterbody Open Space and Waterfront Residential Zones; Regulations vary based on Lake category and lake frontage; Dwelling units are not permitted.	Not permitted.	N/A	(i) Islands have different requirements from shoreline dwellings. Where shoreline dwellers have garages and laneways to park their various vehicles, Island dwellers require storage and parking (docking) space for the many types of marine vehicles. Visitors to shoreline facilities may overflow onto the roads next to dwellings. Islanders have requirements for marine facilities, which shall have the following limitations: Islands and lots on Islands having an area of 1 ha. (2.5 acres) and above, the maximum perimeter will be 120.0 metres (400.0 ft) with a maximum total area of 150 sq. metres (1614.00 sq.ft).
<b>Dock</b>	Permitted within shoreline setback; Minimum side yard shall be 4.5 m.	Permitted. Subject to: -Side yard setback (4.5m) -Max width of dock ramp (2.5m); -Max extension inland from the highwater mark for dock ramp (8m); -Max total area (70m <sup>2</sup> ) for lots with 46m waterfront or more; -Max total area (45m <sup>2</sup> ) for lots with less than 46m waterfront; -Max combined width of dock & marine facility (40% of front lot line); -If front lot line exceeds 150m, a second dock is permitted provided total area of both docks does not exceed 70m <sup>2</sup> ; -Max area of swim raft	Docks are permitted within the Waterbody Open Space and Waterfront Residential Zones; Regulations vary based on Lake category and lake frontage.	Permitted; To be located entirely below the high water mark; Not to be located closer than 7.5 m to a side lot line that is not a shoreline; Sum total of all marine facility widths is not exceed 30% of the lot frontage or 12 m, whichever is less.	Total combined width of marine facilities, stairs, decks, boardwalks or other structures shall not occupy more than 20% of the width of the shoreline or 12 metres (39 feet), whichever is lesser, or any lot which abuts a waterbody.	For Islands and lots on islands having an area between 1 ha and 0.1 ha, the area of any dock or marine structure shall not exceed 3% or a maximum of 150 square metres, whichever is less, of the total area of the island or lot.  Any undeveloped island smaller than 0.1 ha or 0.25 acres will be limited to a single dock not exceeding 2% of the island's total area.  (b) marine facilities shall not exceed 6.0 metres (20 ft) in height measured from high water geodetic;  (c) the area of a pump house shall not exceed 6.0 square metres in area and 3.0

		(10m <sup>2</sup> ); Must demonstrate that will not negatively affect waterfront environment and permitted use.				metres (9.84 ft.) in height;
<b>Deck</b>	Permitted within shoreline setback; A maximum of 20% or 15 m of the shoreline area, whichever is lesser, can be occupied by all accessory buildings and structures; May project from the main building into any minimum required yard or water setback by up to 3 m.	Detached open deck is permitted with a max. area of 10 m <sup>2</sup> , max height of 3 m, may encroach into 30 m water setback but no closer than 9 m, shall be non-permanent.	Permitted; Minimum setback of 5 m from the high water mark, except when projecting from a dock.	Permitted within minimum setback areas if unattached to a building and if located within a minimum water setback area abutting a shoreline or high water mark; Maximum gross floor area not to exceed 20 m <sup>2</sup> ; Decks attached to a building may extend not more than 3 m into a minimum setback area	Total combined width of marine facilities, stairs, decks, boardwalks or other structures shall not occupy more than 20% of the width of the shoreline or 12 metres (39 feet), whichever is lesser, or any lot which abuts a waterbody.	(d) the total and combined width of marine facilities, stairs, decks or other structures shall not occupy more than 20% of the width of the shoreline or 15.0 metres (49.21 ft.), whichever is lesser, of any lot which abuts a waterbody;  (e) no marine facility shall be located within 4.6 metres of a side lot line and from the straight line projection of a side lot line into the abutting waterbody. There shall be no minimum yard requirement for the yard adjacent to the water.
<b>Boardwalk</b>	Permitted in the Open Space – Temporary 1 Zone; Must be attached to the spit and not exceed 49.5 m in length and 1.4 m in width.	N/A	N/A	Permitted in minimum setback areas; Maximum width of 1.5 m.	Total combined width of marine facilities, stairs, decks, boardwalks or other structures shall not occupy more than 20% of the width of the shoreline or 12 metres (39 feet), whichever is lesser, or any lot which abuts a waterbody.	
<b>Water Access</b>	N/A	N/A	N/A	N/A	Where a lot has both street and water access, the minimum lot frontage and front yard requirements shall apply for each access.	N/A

\*A specific waterfront zone is not provided. Mainly four categories about water bodies: Seasonal Residential (SR); Island Residential (IR); Special Districts (S.D.) and Rural (RU). In the above chart, regulations specific to SR are provided with IR regulations in parentheses. Regulations for S.D. and RU zones vary dependent on use.



## Discussion

The above tables summarize the on-water policies and zoning regulations of six municipalities, including the Township of H-B-M. The municipalities examined cover a range of policies and contexts. For example, the Township of Leeds and Thousand Islands (TLTI) has a longer history of more intensive waterfront development along a major navigable river, as well as numerous lakes. By comparison, the Township of North Kawartha is a neighbour of H-B-M, with a similar history and pattern of waterfront development. The Township of North Kawartha is also comparable to H-B-M in that it does not include a major navigable waterway such as the Trent-Severn Waterway or the St. Lawrence River and is instead dotted by countless lakes and smaller rivers. The TLTI is influenced by a greater range of jurisdictions than the Township of H-B-M as well as most other municipalities in Ontario's cottage country yet TLTI's on-water structure policies strike a balance between clarity and flexibility. Taking inspiration from TLTI, the proposed OP and Zoning By-law Amendments for H-B-M are intended to provide clear policy and regulatory direction.

## 6. Preliminary Open House

A preliminary Open House was jointly hosted by the Township of H-B-M, Landmark Associates and FOTENN Consultants on Friday June 17, 2016. The open house took place at the Havelock Community Centre. It was intended to raise awareness in the community about the proposed changes to the Official Plan and Zoning By-law as a result of the Superior Court decision.

The open house was attended by approximately 20 Township residents as well as by members of Council. Six poster boards were placed on display (see below) and staff from the Township, FOTENN and Landmark were present to answer questions. The majority of attendees were residents with existing docks. Consequently, the majority of comments and questions were in relation to existing rights.



FIGURE 1: ON-WATER STRUCTURE TYPOLOGIES

# Proposed Official Plan Amendment

1.2.2.3 The Township will encourage the Ministry of Natural Resources to ensure good stewardship of Crown land resources. The Township may regulate land use within the boundaries of the municipality, including Crown land, on the understanding that such regulations do not apply to the Crown or its agents, including the Ministry of Natural Resources.

## 1.3.8 Crown Land

The Crown Land designation applies to lands which remain in the ownership and jurisdiction of the Province of Ontario and to which the policies of this Plan ~~do not directly~~ apply. ~~The policies of this Plan are not directly binding upon the Crown Lands; unless such lands are transferred to private ownership.~~ The policies of this Plan refer to two types of Crown Land: (1) river and lake beds, and (2) all other Crown Lands. The municipality may regulate land use on Crown Land, on the understanding that such regulations do not apply to the Crown or its agents. On (1) river and lake beds, the Township will describe policies regarding the use of in-water structures. On (2) all other Crown Lands, the Township will restrict use of land to those uses permitted under the *Public Lands Act*, as amended from time to time and as administered by the Ministry of Natural Resources.

## 3.3 SHORELINE

### 3.3.4.2 Marine Facilities

Marine facilities such as marines, pump houses, docks and boathouses require direct access to the water and are exempt from the 30 metre (98) feet shoreline setback. However, all marine facilities shall be of a type and scale that minimizes their environmental, navigational and visual impacts.

#### (a) On-Water Structures

In general, the beds of most lakes and rivers are owned by the Crown and as such are subject to the Public Lands Act, as amended, and administered by the Ministry of Natural Resources. The Township may regulate land use on Crown Lands, on the understanding that said regulation does not apply to the Crown or its agents. ~~By virtue of their status, the ultimate use of Crown Lands can only be determined by the Province of Ontario.~~ Consequently, the following provisions describe the Township's policy towards on-water structures ~~provide direction to the Province:~~

i) Due to its high regard for the natural systems that occur in the Township, the Township ~~strongly discourages and otherwise~~ does not ~~permitted~~ ~~support~~ ~~the Province in approving~~ on-water boathouse structures.

ii) In approving docks, the Township ~~requests the Province to consider~~ provides the following direction, to be further regulated through the implementing Zoning By-law:

- docks should be of a type and scale that minimizes both navigational and environmental impacts.
- docks should also be located at least 4.5 metres (15 feet) from a neighbouring property line as it extends from the high water mark.
- where communal docking facilities are proposed, such facilities should be located a suitable distance from the nearest residential use.
- it shall be the developer's responsibility to obtain all necessary approvals for the location and construction of such facilities.
- proposals for docks exceeding 15 square metres will require special planning approval along with approvals from MNR and possibly Conservation authority.

# Proposed Official Plan Amendment

## 3.8 CROWN LANDS

### 3.8.1 Purpose

The purpose of the Crown Land designation is to identify lands in the Municipality which, pursuant to the Public Lands Act, as amended from time to time are administered by the Ministry of Natural Resources.

### 3.8.2 Permitted Uses

The Municipality has ~~no~~ authority to regulate land use on Crown Land, ~~but~~. The Township encourages Federal and Provincial governments and agencies to be consistent with the policies of this Plan as it relates to the issuance of tenure, occupational authority and permitted undertakings on Crown Land.

### 3.8.3 Development Policies

Where lands are proposed to be patent in accordance with applicable legislation and regulations, an Official Plan Amendment and Zoning By-law Amendment will be required to recognize the uses or uses proposed for the patent land. In reviewing an Official Plan Amendment and Zoning By-law Amendment application in this context, Council will expect the proponent to conform to other applicable policies in this Plan.

It is the intent of this Plan that the use of lands lying adjacent to Crown Lands be limited to those activities that are compatible with the resource management practices being undertaken by the Crown or its agents.

Council acknowledges the expectation and need for the delivery of certain municipal services to Crown Land; for which the Township would expect to receive financial compensation from the Province.

### 3.8.4 Implementing Zoning By-law

All lands within the Crown Land designation shall be placed in a separate category in the implementing Zoning By-law. The exception to this shall be river and lake beds, which shall be placed in a separate zone category.

## Proposed Zoning By-law Amendment

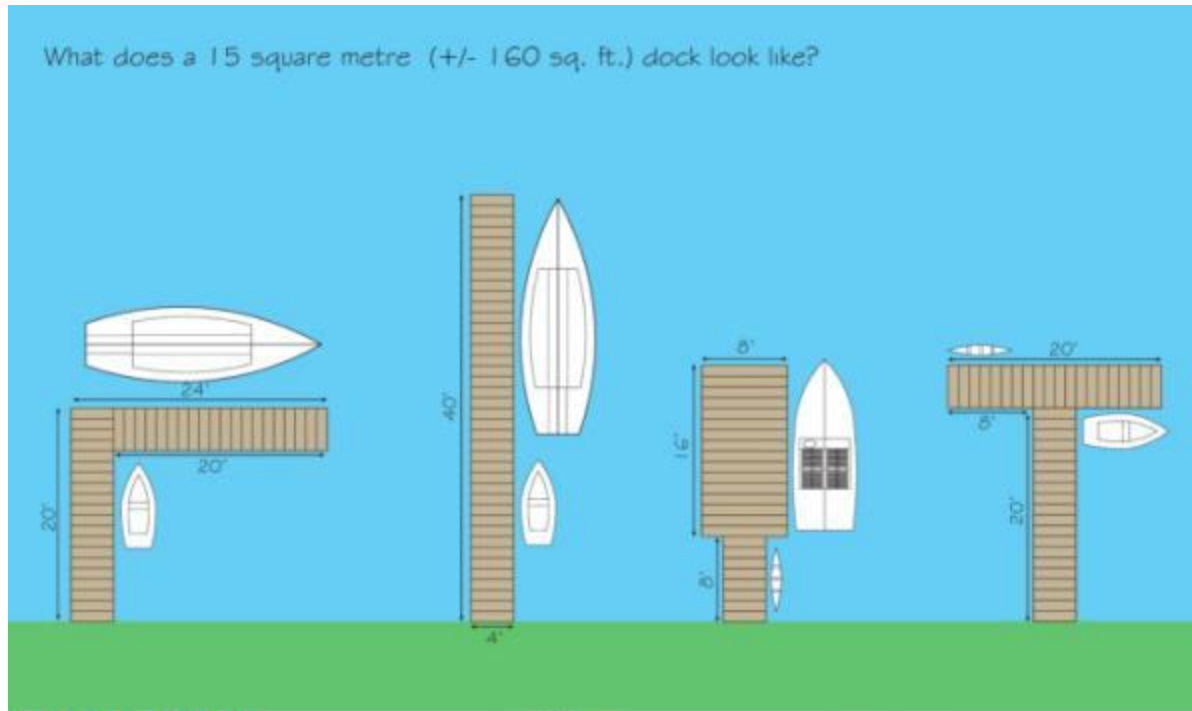
### 4.22 Marine Facilities On-Land

Unless otherwise stated in this By-law marine facilities in all zones are subject to the following:

- (a) On-land boathouses which are further limited to:
  - (i) A single boathouse at a location entirely above the high water mark on a lot containing at least 60 metres (197 feet) of frontage; which will require a survey to define the high water mark and setback provisions required by this By-law.
  - (ii) A boathouse shall be located no closer than 6.0 metres (20 feet) to a side lot line that is not a shoreline;
  - (iii) Shall be of a width not exceeding 7.5 metres (25 feet) and an area not exceeding 75 sq. metres (807 sq. feet);
  - (iv) Shall be of a height not exceeding 4.5 metres (15 feet) and contain a pitched roof;
  - (v) Shall not contain any roof top deck or balcony;
  - (vi) A boat house shall contain no habitable areas.
- (b) Marine facilities shall not exceed 4.5 metres (15 feet) in height;
- (c) The area of a pump house shall not exceed 6 sq. metres (65 sq. feet) in area and 3 metres (10 feet) in height;
- (d) The total combined width of marine facilities, stairs, decks, boardwalks or other structures shall not occupy more than 20% of the width of the shoreline or 12 metres (39 feet), whichever is lesser, or any lot which abuts a waterbody;
- (e) No marine facilities shall be located within 3 metres (10 feet) of a side lot line except on-land boathouses which must be at least 6 metres (20 feet) from a side lot line. There shall be no minimum yard requirement for the yard adjacent to water.

### 4.23 Marine Facilities On-Water

- (a) On-water boathouses are prohibited in all zones.
- (b) All lands with waterfrontage are permitted to construct a dock, pursuant to the following guidelines:
  - (i) the maximum area of a dock shall be 15 square metres, including all structural supports and projections, unless stated otherwise in this by-law;
  - (ii) docks must be set back a minimum of 4.5 metres from side lot lines;
  - (iii) docks larger than 15 square metres are not permitted as-of-right but may be permitted pursuant to further planning approval (rezoning or minor variance). The following agencies must be contacted when seeking to construct a dock on a lake within the Township:
    - Ministry of Natural Resources
    - Crowe Valley Conservation Authority
    - Department of Fisheries and Oceans



**FIGURE 5: SAMPLE 15 SQUARE METRE DOCK AREAS**



**FIGURE 6: DOCK ENVELOPE DIAGRAM**

### Dock Approval Process

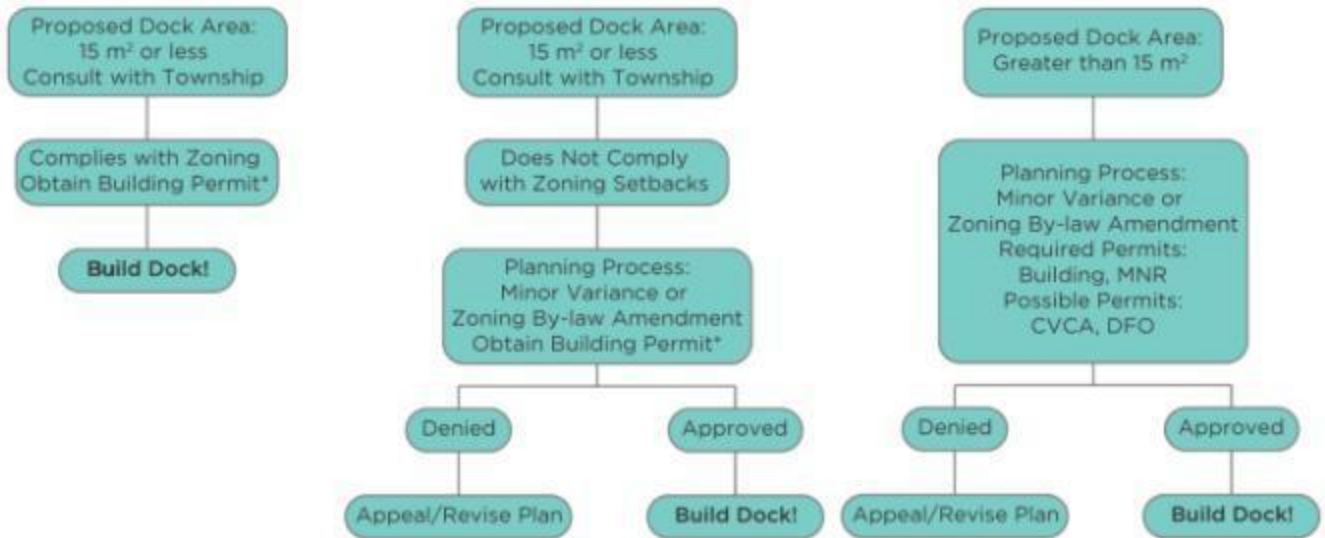


FIGURE 7: DOCK CONSTRUCTION FLOWCHART

## 7. First Public Meeting & Second Open House

A second open house and a public meeting were held at the Township on July 11, 2016. Both events were well attended with 23 people having signed in at the open house and a comparable number present for the public meeting. The open house was held from 4:00pm to 6:00pm at the Township office in the Village of Havelock. The purpose and format of this second open house were similar to the first, in that it was intended to inform members of the public of the proposed amendments to the Official Plan and Zoning By-law and to solicit feedback on the proposed policy direction. The same display boards as those shown in Figure 2 through Figure 7 above were on display and members of the consultant team and Township staff were on hand to answer questions.

The public meeting was held during a Special Meeting of Council, on July 11, 2016 from 6:00pm to 8:00pm. The purpose of the public meeting was to formally introduce the

proposed amendments and process to the public and to solicit formal comments and questions. FOTENN Consultants provided a presentation followed by a question and answer period with the public and Council.

The overwhelming majority of concerns related to the impact of the proposed amendments to the rights of existing property and dock owners. A number of additional concerns and questions were also raised, for example, with respect to the specific wording of the proposed Zoning By-law Amendment.

The following questions and comments were raised at various stages during the public meeting. Note that the answers and questions are not verbatim:

Q: What is the cost of a minor variance?

A: \$720

Q: It was mentioned that existing on-water structures are not affected. What if you have two docks and need to replace one due to its age?

A: Existing docks will be 'grandfathered' in. If replacing only a few boards, there should be no need for approval. If replacing a complete structure, you would need to contact the Building Department to inquire about obtaining a building permit to reconstruct a dock on the existing footprint. It is recommended that residents document their existing docks and on-water structures for protection from hypothetical disputes.

Q: Would Council consider a reduced fee for dock variances?

A: Council will have that discussion. The cost is intended to recover costs to the Township from processing applications, including site visits.

Q: With respect to grandfathered structures, will the Official Plan and Zoning By-law amendments include language to that effect?

A: The Zoning By-law currently includes language relating to non-complying and non-conforming uses. The intent of this language is for existing structures to be exempt from additional planning approvals, however building permits may still be required. The onus is on the builder/owner to verify with the Township.

Q: The Zoning By-law Amendment should include text referring to these grandfathering policies.

A: A policy note will be added to the proposed Zoning By-law Amendment to this effect.

Q: For people building new docks. What are the requirements under the Building Code?

A: The OBC does not provide specification for docks.



Q: What about the use of pressure-treated wood for docks?

A: Not specified in the OBC. The Chief Building Official (CBO) is within his rights to require engineered drawings and designer stamps for a complex structure.

Q: Will these policies apply to boatlifts? These structures have a footprint as well.

A: We will need to do some follow up research on this matter. As these are typically pre-constructed structures, a building permit is not usually required and, therefore, zoning approval is not likely to be required.

Q: What about putting a roof on a boatlift?

A: That would qualify as a boathouse and would not be permitted.

Q: If I have a boat larger than 160 square feet (15 square metres), will I need zoning approval?

A: No. Boats are excluded from the zoning requirements as they are vehicles, not structures.

Q: What about a roll-up 'lily-pad' or other portable, floating platform such as a trampoline?

A: From a zoning perspective, these are not structures and there is no intent to regulate platforms such as these through the Zoning By-law Amendment. Similarly, building permits would not be required. MNRF should be contacted to determine whether a permit would be required.

Q: Most of my property is located within the Crowe Valley Conservation Area's jurisdiction. If a permit from MNRF is required, will a CVCA permit also be required, and vice versa?

A: Yes. The MNRF and CVCA have jurisdiction over different areas, for example the CVCA regulates shoreline work whereas the MNRF regulates lands below the highwater mark. If you are constructing a dock below the highwater mark with a ramp connecting to the shoreline above the highwater mark, approval from both the CVCA and MNRF would be required.

Q: Has this By-law been appealed?

A: The proposed By-law is in draft form and has not yet been approved, therefore there has not yet been an opportunity for an appeal.

Q: Is there a time limit resulting from the Superior Court's decision, by which time municipalities must have their policies in place?

A: While the judge has made a decision, an order has not yet been issued. When that order is issued, it is anticipated that it will include a compliance date for municipalities and the province to implement appropriate policies.

Q: Is the CVCA subject to the same regulations as MNRF?

A: No, the CVCA is subject to different legislation than the MNRF.

Q: Does each municipality then have to implement the same MNRF regulations in different ways, as they understand the policies?

A: Yes.

Q: Is it possible that each municipality will be dealing with the MNRF's policies and the 15 square metre threshold differently?

A: In theory, yes. It is important to note that the policies that are appropriate for one municipality may not be appropriate in a different context. It is also important to note that we are only proposing the 15 square metre threshold for planning processes as this threshold already exists for the MNRF permitting process and we are seeking to keep things as simple as possible.

Q: There is no need to implement a complicated Zoning By-law as what is being proposed in North Kawartha. If it is possible to keep it simple, you should.

A: We have monitored other municipalities, including North Kawartha, but are taking inspiration from other municipalities that have regulated on-water structures for a long time, such as the Township of Leeds and Thousand Islands.

Q: What is the process moving forward?

A: Tonight is a public meeting. Please give your mailing address to the Clerk. We are gathering comments and will make recommendations to Council. Another public meeting may be held or the Amendments may be approved at the next Council meeting. Our intention is for these proposed policies to be approved this summer. Comments will continue to be received for a minimum of 30 days following the public meeting.

Q: Would it be possible to hold a public meeting on a weekend for those unable to attend during the week?

A: This is a challenge for Council but if it is decided to hold a public meeting on a weekend, it will be done. FOTENN's report will address all comments received and provide guidance as to how to address any comments that cannot be addressed here at the public meeting.

Q: Will there be enough time to make comments after we have reviewed the draft policies?

A: The next public meeting will not be before September. The revised policies will be made available in advance of that meeting.

Q: Do these policies affect marine railways?

A: We will look into it.

Q: Will the Township try and coordinate with other municipalities?

A: Yes. Where a lake is bordered by more than one municipality, there are important considerations. However, as we are seeking to keep the process as simple and straightforward for residents, we will seek a solution that works for H-B-M.

Q: If you have a property on a lake that has different regulations, could this affect your property values?

A: Possibly. This question is outside the scope of the proposed Amendments.

Q: I am confused about what I heard about 807 square feet vs 160 square feet. If North Kawartha approves 807 square feet as their threshold, what does that mean?

A: Should North Kawartha determine that 807 square feet (75 square metres) is appropriate for their context, MNRFP permits would still be required for any structure larger than 15 square metres below the high water mark. Other approvals from the CVCA, the Department of Fisheries and Oceans may still be required but a Minor Variance or Zoning By-law Amendment would not be required for a structure less than 75 square metres.

Q: Would MNRFP issue a permit for a dock of that size?

A: Unknown. We have experience working on larger boathouses in the Thousand Islands, but that is a very different context. One of the tests for a Minor Variance is 'neighbourhood character'. If other nearby docks are larger than 807 square feet, then you could obtain a Minor Variance.

Q: Because of the increased number of applications to MNRFP, will they simply choose to approve or deny all applications?

A: MNRFP is in the process of determining how they will proceed. It is likely that they will issue a new regulation within 3-5 years. H-B-M will have its Official Plan policies and Zoning regulations in place before then. MNRFP will observe how municipalities choose to proceed.

Q: I spoke to someone who waited 6-8 weeks for an MNRF permit for a large dock, but it was approved.

A: Noted.

## 8. Recommendations

### Official Plan

The Official Plan should be updated to contemplate the Superior Court’s ruling with respect to the application of zoning by-laws and the *Building Code Act* on all lands within the municipality. In particular, the OSCJ determined that municipalities are responsible for regulating land use for all lands within their jurisdiction. The Township of H-B-M Comprehensive Zoning By-law claims jurisdiction ‘over all lands within the Township’. According to the Superior Court, this jurisdiction extends to Crown Lands such as lakebeds. As such, it would be in the best interest of the Township to provide policy direction with respect to on-water structures, an area which has traditionally been considered to be solely under the jurisdiction of the Crown through the Ministry of Natural Resources and Forestry. Suggested Amendment text is provided below:

1.2.2.3 The Township will encourage the Ministry of Natural Resources and Forestry to ensure good stewardship of Crown land resources. **The Township may regulate land use within the boundaries of the municipality, including Crown land, on the understanding that such regulations do not apply to the Crown or its agents, including the Ministry of Natural Resources and Forestry.**

### 1.3.8 Crown Land

The Crown Land designation applies to lands which remain in the ownership and jurisdiction of the Province of Ontario and to which the policies of this Plan ~~do not directly~~ apply. ~~The policies of this Plan are not directly binding upon the Crown Lands; unless such lands are transferred to private ownership.~~ **The policies of this Plan refer to two types of Crown Land: (1) river and lake beds, and (2) all other Crown Lands. The municipality may regulate land use on Crown Land, on the understanding that such regulations do not apply to the Crown or its agents. On (1) river and lake beds, the Township will describe policies regarding the use of on-water structures. On (2) all other Crown Lands, the Township will restrict use of land to those uses permitted under the *Public Lands Act*, as amended from time to time and as administered by the Ministry of Natural Resources and Forestry.**

### 3.3 SHORELINE

### 3.3.4.2 Marine Facilities

Marine facilities such as marinas, pump houses, docks and boathouses require direct access to the water and are exempt from the 30 metre (98) feet shoreline setback. However, all marine facilities shall be of a type and scale that minimizes their environmental, navigational and visual impacts.

#### (a) On-Water Structures

In general, the beds of most lakes and rivers are owned by the Crown and as such are subject to the Public Lands Act, as amended, and administered by the Ministry of Natural Resources. **The Township may regulate land use on Crown Lands, on the understanding that said regulation does not apply to the Crown or its agents.** ~~By virtue of their status, the ultimate use of Crown Lands can only be determined by the Province of Ontario.~~ Consequently, the following provisions **describe the Township's policy towards on-water structures** ~~provide direction to the Province:~~

i) Due to its high regard for the natural systems that occur in the Township, the Township ~~strongly discourages and otherwise~~ does not ~~permitsupport the Province in approving~~ on-water boathouse structures.

ii) In approving docks, the Township ~~requests the Province to consider~~ **provides** the following **direction, to be further regulated through the implementing Zoning By-law:**

- docks should be of a type and scale that minimizes both navigational and environmental impacts.
- docks should also be located at least 4.5 metres (15 feet) from a neighbouring property line as it extends from the high water mark.
  - **Minor variances for projecting into a neighbour's view plane, or otherwise project into the 4.5-metre setback, will generally be discouraged.**
- where communal docking facilities are proposed, such facilities should be located a suitable distance from the nearest residential use.
- it shall be the developer's responsibility to obtain all necessary approvals for the location and construction of such facilities.
- **proposals for docks exceeding 15 square metres will require planning approval from the Township of H-B-M along with approvals from MNR and possibly Conservation authority.**

### 3.8 CROWN LANDS

#### 3.8.1 Purpose

The purpose of the Crown Land designation is to identify lands in the Municipality which, pursuant to the Public Lands Act, as amended from time to time are administered by the Ministry of Natural Resources.

#### 3.8.2 Permitted Uses

The Municipality has ~~no~~ authority to regulate land use on Crown Land, ~~but~~. **The Township** encourages Federal and Provincial governments and agencies to be consistent with the policies of this Plan as it relates to the issuance of tenure, occupational authority and permitted undertakings on Crown Land.

#### 3.8.3 Development Policies

Where lands are proposed to be patent in accordance with applicable legislation and regulations, an Official Plan Amendment and Zoning By-law Amendment will be required to recognize the uses or uses proposed for the patent land. In reviewing an Official Plan Amendment and Zoning By-law Amendment application in this context, Council will expect the proponent to conform to other applicable policies in this Plan.

It is the intent of this Plan that the use of lands lying adjacent to Crown Lands be limited to those activities that are compatible with the resource management practices being undertaken by the Crown or its agents.

Council acknowledges the expectation and need for the delivery of certain municipal services to Crown Land; for which the Township would expect to receive financial compensation from the Province.

#### 3.8.4 Implementing Zoning By-law

All lands within the Crown Land designation shall be placed in a separate category in the implementing Zoning By-law. **The exception to this shall be river and lake beds, which are subject to the zone categories as designated on Schedule A. Provisions concerning river and lake beds are described in the General Provisions of the implementing Zoning By-law.**

### Zoning By-law

The Township of H-B-M Comprehensive Zoning By-law implements the policy direction of the Official Plan. The Zoning By-law must be consistent with the Official Plan and therefore must be amended to reflect the proposed changes in the draft Official Plan Amendment. The proposed Zoning By-law Amendment text is provided below:

## 2.3 Definitions

**“DOCK”** means a structure, floating or fixed, where boats can remain for loading, unloading, repair or storage on or adjacent to water and below the high water mark, but does not include connecting ramps, stairs, walkways or boardwalks above the high water mark. For clarity, all structures located below the high water mark shall be deemed to be part of the dock unless it is a boathouse or accessory marine facility. For the purpose of Section 4.10(d), and in compliance with the *Building Code Act*, a dock shall be considered a structure. Floating toys such as trampolines, foam pads, etc. are not considered structures and therefore not regulated by the *Building Code Act* or this Zoning By-law.

**“BOATHOUSE”** means a single storey detached accessory building or structure intended to house, shelter or protect a boat or other form of water transportation and may contain equipment incidental to the repair and maintenance of such transportation but shall not contain sleeping, cooking, plumbing or sanitary facilities and in which human habitation is prohibited. This definition is intended to include both on-land boathouses found above the high water mark as well as on-water boathouses. This definition also includes boat ports, both above the high water mark and on-water.

**“ACCESSORY MARINE FACILITY”** means a non-commercial accessory building or structure located on, over, under, or immediately adjacent to a waterbody but does not include a DOCK or BOATHOUSE as defined herein. An accessory marine facility includes a boat lift, a marine railway, or similar structure but shall not include any building used for human habitation or used only for winter boat storage nor any boat service, repair or sales facility. An accessory marine facility shall also include a water intake, flood or erosion control structure approved by the Crowe Valley Conservation Authority and/or the Ministry of Natural Resources and Forestry, or similar use.

### 4.22.1 Marine Facilities On-Water

(a) On-water boathouses are prohibited in all zones.

(b) All lands with waterfrontage are permitted to construct a dock, pursuant to the following guidelines:

- (i) the maximum aggregate area of all docks below the high water mark shall be 15 square metres, including all structural supports and projections, unless stated otherwise in this by-law;
- (ii) docks platforms must be set back a minimum of 4.5 metres from side lot lines and from the straight line projection of a side lot line into the abutting waterbody;

(c) No accessory marine facility shall be located within 4.5 metres of a side lot line or from the straight line projection of a side lot line into the abutting waterbody. The Ministry of Natural Resources and Forestry must be contacted when seeking to construct a new accessory marine facility.

**Explanatory Note to the By-law:** All existing docks larger than 15 square metres are subject to Section 4.10 of this by-law. New docks larger than 15 square metres are not permitted as-of-right but may be permitted pursuant to further planning approval (amendment to this by-law or minor variance). The following agencies must be contacted when seeking to construct or repair dock on a lake within the Township:

- Township of H-B-M Building Department
- Ministry of Natural Resources and Forestry

It may also be necessary to contact the following authorities:

- Crowe Valley Conservation Authority
- Department of Fisheries and Oceans

## 9. Conclusion

The Ontario Superior Court of Justice has released its decision that:

- Municipal Zoning By-laws apply to Crown Lands, however zoning does not apply to the Crown or its agents;
- The *Building Code Act* applies to all structures, including those constructed on Crown Lands, however the Crown and its agents are not subject to the *Act*;
- Municipalities are responsible for enforcing their Zoning By-laws as well as the *Building Code Act*;
- Any building or structure located on Crown Land, including a river or lake bed, with an area greater than 15 square metres must obtain the necessary permits from the Ministry of Natural Resources and Forestry.



The decision overrules the long-standing interpretation by the Township and the Ministry of Natural Resources and Forestry that Township zoning and the *Building Code Act* do not apply to Crown Lands. The decision also overrules the MNRF's previous interpretation of works requiring work and/or occupancy permits on Crown Land under the MNRF's jurisdiction. The result of the OSCJ's decision is that the Township must amend its Official Plan and Zoning By-law to recognize their shared jurisdiction over Crown Lands. Declaratory orders will be issued in the future, providing further direction.

This report proposes amendments to the Official Plan and Comprehensive Zoning By-law that implement the Superior Court's ruling while meeting the Township's on-water development goals. The proposed Official Plan policies are consistent with the Council adopted Official Plan in that they seek to prohibit the construction of new boathouses. The construction of new docks will be permitted per the prescribed processes illustrated in Figure 7. The proposed Zoning By-law amendment seeks to implement the Official Plan by revising the General Provisions as they relate to on-water structures, especially docks. In general, existing docks are permitted to remain and any expansion or extension could require additional planning process. All structures are subject to the *Building Code Act*, therefore all structures must seek to obtain a building permit.