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## CITY OF KELOWNA

# MEMORANDUM

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**Date:** November 15, 2001  
**File No.:** 6740-20  
**To:** City Manager  
**From:** Planning and Development Services Department  
**Subject:** Status of Head Lease Discussions

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### RECOMMENDATION

THAT Council pass the following resolution and forward it to the Minister of Sustainable Resource Management:

Whereas existing management of the Lake Okanagan foreshore has proven unsatisfactory; and

Whereas only the Province of British Columbia is currently equipped to address foreshore trespass issues along Lake Okanagan; and

Whereas provincial staff have indicated that they currently do not have the resources to take proactive action on Lake Okanagan foreshore issues; and

Whereas proper management of the Lake Okanagan waterfront is of critical importance to the economic and environmental health of the City of Kelowna;

Be it resolved that the City of Kelowna urges the Province of British Columbia to devote the resources necessary to improve long-term management of the City of Kelowna's Lake Okanagan foreshore.

AND THAT Council reaffirm that pursuit of a foreshore head lease be predicated upon negotiation of acceptable revenue-sharing arrangements and upon Provincial determination of the legal status of all existing foreshore structures and upon Provincial resolution of non-conforming structures.

## **BACKGROUND**

The Lake Okanagan Shore Zone Plan (1997) recommended that the City of Kelowna:

“pursue negotiations toward obtaining a head lease for the Okanagan Lake foreshore within Kelowna’s boundaries. The agreement would be predicated on arriving at acceptable revenue-sharing arrangements and upon taking over a system that has been fully surveyed to determine the legal status of all existing foreshore structures. Non-conforming structures would have to be addressed by the Province before the City assumes any administrative responsibilities.”

At this point, none of the above conditions have been fulfilled. The Province has not fully surveyed foreshore structures to determine their legal status and they have not addressed all non-conforming structures.

## **SUMMARY OF PROGRESS SINCE ADOPTION OF THE SHORE ZONE PLAN**

Since the Shore Zone Plan was adopted in 1997, City staff have been collecting information essential to head lease negotiations. This has included updating inventories of shore zone structures, estimating likely revenue streams, identifying expenses associated with managing the shore zone, and obtaining information on the experiences of other municipalities (three other BC municipalities currently have head lease agreements).

The City has now completed the steps which it can undertake without the Province’s active participation. There remains an important matter awaiting resolution. This matter pertains to the City’s requirement for the Province to ensure that non-conforming structures are addressed before the City assumes any administrative responsibilities. The Province initiated action on this step in 1999, but shortly thereafter pulled back because of budget cut-backs.

In response to the lack of provincial resources for dealing with foreshore obstructions, it was proposed that the City obtain a head lease over lakefront not complicated by foreshore obstructions. The Province agreed to this approach. The portion of the downtown waterfront where the City is the upland owner was proposed as a reasonable place to start. The idea was that if a head lease could be negotiated for this portion, then it might be possible to gradually expand the head lease as obstructions were resolved on other portions of the waterfront. To facilitate the resolution of a head lease within the downtown area, the City commissioned a survey of the affected area and forwarded this information to the Province, with a request to negotiate a head lease (summer 2000). The City offered to draft a head lease agreement. The Province rejected that offer on the basis that the agreement had to be drafted by the Attorney General’s office. The head lease negotiation process stalled when provincial staff were unable to give priority to that initiative.

In June 2001, City staff were informed by BC Assets and Lands (BCAL) that the Province was, once again, interested in furthering head lease negotiations. BCAL staff had been directed to prepare a strategy for the resolution of foreshore obstructions. BCAL intended to pursue action

to remove or legalize all foreshore obstructions along the City of Kelowna Lake Okanagan waterfront once a strategy was prepared and signed off by affected parties. In their attempts to deal with foreshore obstructions, the Province promised to give top priority to Kelowna's lakefront.

During the summer of 2001, BCAL noted that the first step in developing a formal strategy would be obtaining agreement on how the strategy was to be prepared. BCAL prepared a discussion paper on that topic and forwarded it to City staff for comment. Staff responded by noting that we were encouraged that Okanagan Lake, and in particular the City of Kelowna, was getting top priority. Staff noted that the proposed approach, apart from some minor concerns, seemed reasonable and consistent with Council's policy direction. Staff further indicated that they looked forward to initiating the program as soon as possible. Although the initiative was seen by all to be one primarily to be handled by the Province, BCAL was offered some municipal staff assistance in identifying and inventorying key areas of concern. Despite the prompt and supportive follow-up from the City, Provincial staff have been unable to further this initiative. Since the summer, all Provincial ministries and agencies have been subjected to a "Core Services Review" and provincial staff's efforts have been directed elsewhere (see attached letter).

The City will not be able to obtain a head lease agreement until the Province can devote the required resources to address existing trespass issues and to draw up an agreement.

Over the past four years, City staff have spent considerable time identifying existing trespasses, potential revenue-sharing arrangements, lease terms, opportunities, and responsibilities. Staff have now gone as far as they can in moving the head lease negotiations forward without further Provincial cooperation. Despite the City's interest, the Province has not made any substantial progress with the head lease since the Shore Zone Plan was adopted in 1997.

For the head lease discussion to move ahead, the Province would need to come to the table. Provincial staff would need to be available to sort out the legal aspects of the head lease and to work with the City to draft an agreement that would ultimately be forwarded for Council's and the provincial Executive Committee's review.

## **IMPACTS OF A HEAD LEASE AGREEMENT**

It is expected that the main impact of a head lease would be that the City would become responsible for the day-to-day management of the foreshore. This would carry with it the responsibility for establishing appropriate regulations (within the confines of rules set up by the Province), issuing licenses of occupation, and enforcing against infractions.

A head lease would, for example, provide control over the construction of docks. This same objective can be realized if the City requires those building docks to obtain a building permit. If the City were to require dock building permits today, then applicants would be required to obtain two permits – one from the City (building permit) and one from the Province (dock permit).

Under a head lease, the City could have control while only requiring the applicant to obtain one permit. Taking on a head lease would give the City sole control of dock licenses.

A head lease would provide the City with dock license revenue. Dock licenses are currently issued for 10-year tenures. The Province charges \$695 for a ten-year license. The Province has suggested that it is unlikely that the City would ever be given all the revenue that would be obtained from the issuance of dock licenses. (The Province considers the Crown foreshore a provincial resource, revenue from which must be used to benefit provincial taxpayers as a whole). Other locations in the Province with head lease agreements have been able to retain only 35-50% of total revenues. Based on current dock licenses and fees, it is estimated that total revenue streams from Kelowna docks are approximately \$25,000/year. If the Province retained 50% of that, the City would be left with less than \$13,000/year<sup>1</sup>. The City would be free to set fees at whatever level was deemed appropriate, and could therefore boost these revenues, but there would likely be significant pressure from waterfront property owners to keep fees consistent with those in other jurisdictions.

In assuming a head lease, the City would also be assuming responsibility for the management of the licensing process and enforcement of any infractions. Discussions with other jurisdictions indicate that such duties, assuming that a “clean” system was handed over by the Province, would require the equivalent of at least one half-time position (estimated at \$25,000).

It is clear from these initial estimates that the above-noted revenues would not even cover the costs associated with managing the foreshore to the extent that it is being taken care of today. It is not surprising that discussions with other municipalities who have head leases reveal that none are happy with their current revenue-sharing arrangements. All indicate that costs have exceeded revenue.

This information suggests that if the City were to pursue a head lease, it would have to be for reasons other than obtaining the revenue necessary to take over responsibilities now assigned to the Province. Another motivation to pursue a head lease could be to gain the powers necessary to enforce against infractions which currently only the Province is entitled to enforce against. (The issue for Kelowna hasn't been that the Province has the power, but rather that the power has not resulted in tangible action). Taking on responsibilities would likely require additional financial resources which, based on the above discussion, would not likely be forthcoming from associated revenue streams. Taking on responsibility for enforcing against infractions would also require a legal mandate to take such action. At this point, the Province would not likely be in a position to offer that. Before the Province can pass on such powers, it must be satisfied as to the extent of its holdings. It is the City's understanding that this matter was to have been addressed as part of the initiative that the Province was embarking on earlier this year, but which has now apparently been placed on an indefinite “hold”.

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<sup>1</sup> In actual fact, license fees are paid only once every ten years. This creates a very irregular revenue stream since most docks were initially licensed in 1993. The next major revenue inflow will therefore come in 2003. The nature of the revenue stream would have to be taken into consideration in any negotiations with the Province.

## ALTERNATIVE FORESHORE MANAGEMENT TOOLS

In the absence of a head lease, foreshore issues will continue to be managed in the way that they are today. Foreshore management tools currently available include:

- City can control use of the foreshore through zoning.
  - This has already been done. The City is limited in that it cannot prohibit uses permitted by the Province, but the same restrictions would apply under a head lease.
- City can apply Development Permit Guidelines to construction taking place in the Shore Zone.
  - This has already been done.
- City could require those constructing docks to obtain a building permit.
  - This is not done currently.
- City can enforce against any activity that contravenes its bylaws.
  - This is currently done – sometimes in conjunction with Provincial staff (where Provincial regulations are also being contravened).

## SUMMARY

Under ideal circumstances, a head lease could provide a valuable tool for a municipality to assume greater local control over the shore zone. A head lease needs not, however, be the sole focus. There may well be other ways in which the Province and City could coordinate efforts to improve management of the shore zone. Any further improvements would, however, require the cooperation of the Province. It does not appear that such cooperation is forthcoming. Until the Province establishes a clearer legal framework and provides a greater commitment to address foreshore issues proactively, the City's hands will be tied. It is concluded that foreshore management will only be improved by applying political pressure to Provincial decision makers.

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Signe K. Bagh, MCIP  
Long Range Planning Manager

Approved for inclusion ☐

R.L. (Ron) Mattiussi, ACP, MCIP  
Director of Planning & Development Services

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