

# Staff Report

Presented By: Jay Pausner, Manager, Planning and Development

Meeting Date: April 28, 2024

Subject: No Services Agreement and Easements – Miramichi Shores Land Development Ltd.

Attachment(s): Plan 3R-10970  
Plan 3R-10886

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## **Recommendation**

That Council adopt By-law 42-2025, a By-law to authorize a No Demand for Services Agreement and Easements with Miramichi Shores Development Ltd; and

That Council adopt By-law 43-2025, a By-law to restrict access pursuant to Section 35 of the Municipal Act.

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## **Report Summary**

The Town is the registered owner of an unopened road allowance known as “Shady Lane”. The owner of Block 18, Plan 3M-268 (Miramichi Shores Land Development Ltd.), which abuts Shady Lane, requires access over a portion of Shady Lane for the purpose of ingress and egress to its property. The Town is obtaining a permanent easement over a portion of Block 18 to access the Woodland Trail system. The by-laws, easement agreements and No Demand For Services agreement referenced herein are in the By-law portion of the Agenda.

## **Background/Analysis**

### Town’s Land - Shady Lane

Shady Lane is a road allowance created on registered plan of subdivision, Plan 508 (Figure 1 – highlighted area). A portion of Shady Lane is travelled and forms part of Miramichi Bay Road, whereas the portion of Shady Lane, which is the subject of this report, identified as Parts 1 and 2 on reference plan 3R-10970 can be characterized as unopened and untraveled (Plan 3R-10970 attached). These parts have not been assumed by the Town by the passing of a by-law.

### Block 18, Plan 3M-268

Miramichi Shores Land Development Ltd. (“Miramichi”) is the registered owner of Block 18 on registered plan of subdivision, Plan 3M-268 (Figure 2 – yellow highlighted area/Shady Lane is highlighted in blue). The only means of access to Block 18 is over that portion of Shady Lane that is “unopened/untraveled”. As a result, an easement was requested by, and has been negotiated with, Miramichi, along with a No Demand for Services Agreement. The easement and No Demand for Services Agreement relate to a small triangular portion of Shady Lane identified as Part 2 on Plan 3R-10970.

The proposed easement is for an indefinite period, and grants the owner of Block 18 access over, and the ability to construct, repair and maintain a road surface of gravel or asphalt at its cost, over Part 2 on Plan 3R-10970.

The No Demand for Services Agreement includes, but is not limited to, the following:

- Miramichi shall have the right to use Part 2 on Plan 3R-10970 for access purposes
- access is non-exclusive
- permission to construct, maintain and repair a road surface of gravel or asphalt, subject to Town approval
- no requirement for the Town to maintain Shady Lane
- Miramichi to post and maintain signage
- Miramichi to maintain appropriate insurance (\$2 million, subject to increase)
- an indemnity provision to protect the Town from any liability
- the agreement will be terminated on consent of the parties or if the Town assumes and establishes Shady Lane as a public highway
- all costs to be borne by Miramichi
- any successor in title must be bound by the agreement

### Town – Trail Easement

The Town is obtaining a permanent easement from Miramichi over Part 1 on Plan 3R-10886 (attached). This easement represents a connecting link from Miramichi Bay Road to the Woodland Trail system, which is located east of Block 18 on Block 17, Plan 3M-268 (identified in Figure 2). The easement provides access and the ability to construct and maintain a public trail. The Town did have a temporary entrance and trail connection on Block 18 with Miramichi; however, the agreement has been terminated, and the trail has been closed. A new trail entrance has been constructed on Part 1 on Plan 3R-10970 (on Shady Lane), and a new trail has been constructed on Part 1 on 3R-10886. This work was completed by Miramichi, at no cost.

### Municipal Act By-law

There is a conflict in use involving Shady Lane. To address this issue, it is recommended that that a portion of Shady Lane, that forms part of Miramichi Bay Road be assumed by by-law and established as a public highway. The remaining portion of Shady Lane, specifically Parts 1 and 2 on Plan 3R-10970 will not be established as a public highway, instead the use will be defined as a public trail and access to Block 18, Plan 3M-268 relying upon the Municipal Act which authorizes the Town to remove or restrict the common law right of passage by the public over a highway and the common law right of access to the highway by an owner of land abutting the highway. To reduce safety concerns for those accessing the Woodland Trail using the Shady

Lane entrance and for the broader public benefit of a contiguous trail system with access to the waterfront, it is recommended that Council rely upon section 35 and restrict vehicular access on Part 1, Plan 3R-10970 save and except for Town vehicles to access the Woodland Trail for construction, maintenance and repairs. In addition, as Part 2 on Plan 3R-10970 will be used by the owner of Block 18, Plan 3M-268 for ingress and egress purposes and the Owner will be responsible for maintaining Part 2, and the fact that Parts 1 and 2 on Plan 3R-10970 are not providing through travel, as the lands to the east of Shady Lane are privately owned, it is recommended that the by-law include a provision to restrict the general public's access over Part 2 as well. The Town's use, and access by emergency vehicles, however, will not be restricted.

### Recommendation

Based on the above, it is recommended that Council authorize the following:

1. Enter into an Easement Agreement with the Owner of Block 18, Plan 3M-268 wherein the Town grants the Owner an indefinite easement over Part 2 on Plan 3R-10970 for access and to permit the construction, maintenance and repair of a road surface;
2. Enter into of a No Demand for Services Agreement with the Owner of Block 18, Plan 3M-268 related to Part 2 on Plan 3R-10970;
3. Enter into of an Easement Agreement with the Owner of Block 18, Plan 3M-268 granting a permanent easement in favour of the Town to access and construct, maintain and repair a public trail on Part 1 on Plan 3R-10886; and
4. Pass a By-law pursuant to the Municipal Act, to restrict the public's common law right of passage and the abutting owners' access over Parts 1 and 2 on Plan 3R-10970.

### **Linkages**

- Strategic Plan Alignment: Pillar 1: Meeting the Needs of a Growing Community
- Business Plan Alignment: Development Services Business as Usual

### **Financial Impacts/Source of Funding**

No costs or revenue is associated with this report. The owner of Block 18, Plan 3M-268 is responsible for all surveying and legal costs associated with the above-noted transactions.

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Prepared By: Tammy Grove, Municipal Solicitor

Reviewed By: Jay Pausner, Manager of Planning and Development

Approved By: Kara Van Myall, Chief Administrative Officer

**SURVEYOR'S CERTIFICATE**

I, Robert S. J. Street, of the County of Bruce, do hereby certify that the above is a true and correct copy of the original plan of subdivision as filed in my office, and that the same is in accordance with the provisions of the Act in that behalf made.

Dated at London, Ontario, this 27th day of May, 1958.

Robert S. J. Street  
Surveyor

**PLAN OF SUBDIVISION**  
OF A PART OF  
**LOTS 57, 58 AND 59 LAKE RANGE**  
TOWNSHIP OF SAUGUENAY  
COUNTY OF BRUCE

**AFFIDAVIT**

I, James A. J. Street, of the County of Bruce, do hereby certify that the above is a true and correct copy of the original plan of subdivision as filed in my office, and that the same is in accordance with the provisions of the Act in that behalf made.

Dated at London, Ontario, this 27th day of May, 1958.

James A. J. Street  
Affiant

**OWNER'S CERTIFICATE**

I, James A. J. Street, of the County of Bruce, do hereby certify that the above is a true and correct copy of the original plan of subdivision as filed in my office, and that the same is in accordance with the provisions of the Act in that behalf made.

Dated at London, Ontario, this 27th day of May, 1958.

James A. J. Street  
Owner

**REGISTRAR'S CERTIFICATE**

I, James A. J. Street, of the County of Bruce, do hereby certify that the above is a true and correct copy of the original plan of subdivision as filed in my office, and that the same is in accordance with the provisions of the Act in that behalf made.

Dated at London, Ontario, this 27th day of May, 1958.

James A. J. Street  
Registrar

MINISTER OF PLANNING & DEVELOPMENT

### Figure 2 – Section of Plan 3M-268

