



Town of Whitby Policy

Policy Title:	Acquisition, Sale or Other Disposition of Land Policy
Policy Number:	F 190
Reference:	Section 270 of the Municipal Act, 2001 and adopted by Council Resolution #270-18, and amended by Council Resolution #173-22 and #119-23 and #243-24
Date Approved:	July 23, 2018
Date Revised:	December 16, 2024
Approval:	Council
Point of Contact:	Chief Administrative Officer

Policy Statement

To manage the real estate interests of The Corporation of the Town of Whitby in a manner that is fiscally responsible, transparent and accountable.

Purpose

To provide a framework for the Town's real estate transactions and to delegate and define the responsibilities of Council and the Chief Administrative Officer with regard to the Acquisition, Sale or Other Disposition of Lands.

Scope

This policy shall apply to all Departments of the Town, and in absence of a Local Board of the Town adopting its own policy respecting the Acquisition, Sale or Other Disposition of Land, this policy shall apply to the Local Board.

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1 Definitions

- 1.1 **“Acquisition”** means the act of purchasing or otherwise acquiring an interest in Land, including acquiring an interest in Land by way of a Lease.
- 1.2 **“Act”** means the Municipal Act, 2001, S.O. 2001, c. 25, as amended.
- 1.3 **“CAO”** means the Chief Administrative Officer of the Town appointed in accordance with Section 229 of the Act.
- 1.4 **“Council”** means the Council of The Corporation of the Town of Whitby.
- 1.5 **“Council Election Recess”** refers to the period of time from the last Regular Council meeting before Election Day in an election year until after the Inaugural Council meeting.
- 1.6 **“Council Summer Recess”** refers to the period of time in the summer months when there are no regularly scheduled Council meetings for approximately two months (July & August).
- 1.7 **“Department Head”** means an officer or employee of the Town who will generally hold the title of ‘Commissioner’, appointed by the Chief Administrative Officer or Council, as required, to oversee a department, or a person appointed or designated to act in place of the Commissioner when the Commissioner is absent or is unable to act.
- 1.8 **“Disposition”** means the act of selling, transferring, conveying or otherwise disposing of an interest in Land, whether or not such disposition or sale involves the exchange of money or another form of consideration, and includes the Disposition of Land by way of a Lease.
- 1.9 **“Easement(s)”** means an interest in land that is owned by a third party, consisting of the right to use or control such land, or an area above or below it, for a purpose to be defined in a document setting out the permitted use of such land.
- 1.10 **“Employee”** means a person employed by the Town including those on contract, but does not include the Mayor and Members of Council.
- 1.11 **“Highway(s)”** has the same meaning as set out in the Act.
- 1.12 **“Land(s)”** mean real property and real estate, and shall include all buildings, or any part of any building, and all structures, machinery and fixtures erected or placed upon, in, over, under or affixed to Land which is not deemed Personal Property.

- 1.13 “Lame Duck Council Period”** refers to the Restricted Acts period in accordance with Section 275 of the Municipal Act if, from Nomination Day to Voting Day and from Voting Day to the end of the Term it can be determined with certainty, that the new Council will include less than three-quarters of the outgoing Council Members (i.e. less than 7 members for the Town of Whitby), ‘lame duck’ applies and Council is restricted from taking certain actions until the new term of Council begins on November 15th.
- 1.14 “Lease”** means a contractual agreement by which a person conveys to a third party the right to use the person’s property for a limited period of time subject to various conditions, but the owner of the property retains legal ownership of the property.
- 1.15 “Local Board”** means a municipal service board, public library board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any statute with respect to the affairs or purposes of the Town.
- 1.16 “Non-Viable Land”** means Land, which, on its own, would not be eligible for a building permit or Land, which, when sold and combined with an adjoining parcel, cannot be rendered as a viable parcel for a building permit by means of consent under the Planning Act.
- 1.17 “Park Land”** means any Land that is used by the Town for active or passive recreational purposes or for any purpose ancillary thereto.
- 1.18 “Personal Property”** means tangible or intangible property, other than Land, and includes moveable property subject to ownership, with exchange value.
- 1.19 “Treasurer”** means the Treasurer of the Town appointed in accordance with Section 286 of the Act, or his/her designate.
- 1.20 “Town”** means The Corporation of the Town of Whitby.

2 Application

- 2.1.** No Disposition of Lands owned by the Town or Acquisition of Land shall be authorized unless it is in compliance with this policy.
- 2.2.** Where this policy is in conflict with the requirements of legislation, the legislation shall supersede the provisions of this policy and any Acquisition or Disposition of Land shall proceed in accordance with the legislated requirements.

3 Public Land Register

- 3.1.** The Town shall establish and maintain a Public Land Register which shall contain the following information:

3.1.1 A list of all Lands owned by the Town save and except:

- Lands that are identified as reserve blocks, road widenings, or sightline triangles;
- Highways; and,
- Easements.

3.1.2 The municipal address or a legal description of the location of Town owned Land and its approximate size by reference to dimensions or area, or both.

3.1.3 Lands declared surplus.

3.2 The Public Land Register shall be made available to the public upon request.

4 Council Authority

4.1. Council shall approve the Disposition of Town owned Lands and the Acquisition of Lands through the passing of a resolution or enactment of a policy, unless the authority for the Acquisition or Disposition has been delegated by Council.

5 Delegated Authority

5.1. The CAO shall be granted the authority for the Disposition of Town owned Lands or the Acquisition of the following Lands, including the execution of such documents necessary to give effect to such Disposition or Acquisition:

5.1.1 Any Acquisition or Disposition of Land, or the granting or taking the benefit of an Easement over Land, that is related to an approved land development planning application;

5.1.2 Closed highways, if sold to an owner(s) of Land abutting the closed highways;

5.1.3 Lands that do not have direct access to a highway (i.e. landlocked Lands) if sold to an owner of Land abutting the landlocked Lands;

5.1.4 A purchaser has a statutory or legal right to acquire the Lands;

5.1.5 Easements over Town owned Lands granted to any person for a specific purpose, or Easements granted to the Town for a specific purpose over Land owned by a third party;

5.1.6 Other Lands deemed to be Non-Viable Land, save and except Park Land;

5.1.7 As otherwise delegated by Council and noted in the Delegation of Powers and Duties Policy;

- 5.1.8** During any Council Summer Recess, Council Election Recess, or Lame Duck Council Period, any Acquisition or Disposition of Land, or the granting or taking the benefit of an Easement over Land, that is related to a Town infrastructure project in a Council-approved budget; and;
- 5.1.9** Any negotiation and/or execution of future lease agreements for the Pro Shop at Iroquois Park Sports Centre made with similar terms to the most recent lease agreement (see Council Resolution #119-23).
- 5.2.** In accordance with the Delegation of Powers and Duties Policy G 020 and Council Resolution # 209-15, the Treasurer shall be granted the authority to negotiate and enter into updated lease agreements based on the same general terms and conditions approved by Council for existing Town tenancies if deemed necessary.

6 Declare Surplus

- 6.1.** Prior to any Disposition of Town owned Land by sale, Council in accordance with Section 4 of this policy or the CAO in accordance with Section 5 of this policy, as applicable, shall declare such Land to be surplus to the needs of the Town.
- 6.2.** A declaration of surplus Lands by Council shall be in the form of a resolution, and a declaration of surplus Lands by the CAO shall be in the form of a certificate duly signed by the CAO.
- 6.3.** To determine that the Lands are surplus to the needs of the Town, and prior to considering a resolution or certificate declaring the Lands to be surplus, the CAO shall undertake a circulation to all Town Departments, and other such agencies or governments as the CAO deems appropriate.
- 6.4.** Each declaration of surplus Lands by the Town shall be valid for a period of ten (10) years, after which time the Land shall no longer be deemed surplus.

7. Notice Requirements

- 7.1.** Upon declaring the Lands to be surplus in accordance with Section 6 of this policy, the following notice shall be provided to the public:
- 7.1.1** Posting a sign on the Lands for not less than ten (10) days;
- 7.1.2** An advertisement in a newspaper having general circulation in the Town; and,
- 7.1.3** Posting notice on the Town's website.

- 7.1.4.** A notice prepared in accordance with Section 7.1 of this policy shall identify the location of the subject Lands, the intent to declare such Lands surplus to the Town's needs, the name and contact number of a person at the Town who can respond to any questions, and a time for receiving any questions or objections.
- 7.1.5.** Notice under Section 7.1 of this Policy may be dispensed with by the CAO for Non-Viable Lands where such interest in Lands is generally limited to the abutting property owner(s), but at the discretion of the CAO written notice by regular mail to the abutting property owners may be provided.
- 7.1.6.** Prior to a date and time established by the CAO, being not earlier than twenty (20) days after the day that the giving of notice occurs in the newspaper in accordance with Section 7.1 of this policy, any person may submit an objection to the Clerk and the objection shall be in writing and include the person's name, address and reason(s) for objecting. If no objection is received, Council's decision to declare the Lands surplus shall be final.
- 7.1.7.** Upon receiving an objection in accordance with Section 7.4 of this policy, the CAO shall prepare a report to Council outlining the objection(s) received and provide a recommendation to Council regarding the subject Land.
- 7.1.8.** The CAO shall consult the Accessibility Advisory Committee for the Acquisition or Disposition of Land where such Land transaction is governed by this policy as required in accordance with subsection 29(5) of the Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c. 11, as amended when purchasing a building, structure or premise, or when Council enters into a new Lease.
- 7.2.** Section 7.1 does not apply if the intended use at the time of the land surplus declaration is for future residential development or mixed use that is mainly residential development.
- 7.2.1.** For Lands intended for future residential development or mixed use that is mainly residential development, prior to declaring the Lands to be surplus in accordance with Section 6 of this policy the following notice shall be provided to the public:
- a) A sign be posted on the property for not less than 20 days;
 - b) Posting notice on the Town's website;
 - c) Circulating notice by mail to residents within 120 metres of the subject lands.

7.2.2. Notice under Sub-Section 7.2.1. of this policy shall identify the location of the subject Lands, the intent to declare such lands surplus to the Town's needs, the date of the meeting that the land surplus declaration is to be considered, Staff contact information to obtain further information, and how residents may provide comments and/or their objections.

7. Fair Market Value

- 7.1.** The Disposition of Town owned Land shall be for no less than the fair market value of the Land determined through at least one (1) independent appraisal completed by an accredited appraiser through the Appraisal Institute of Canada, or such other method of valuation as determined by the CAO for Non-Viable Land or a Lease.
- 7.2.** Prior to the Acquisition of Land by the Town, the Town shall obtain at least one (1) independent appraisal completed by an accredited appraiser through the Appraisal Institute of Canada, or other such method of valuation as determined by the CAO.
- 7.3.** Notwithstanding Sections 8.1 and 8.2 of this policy, where not prohibited by the Act from doing so (i.e. anti-bonusing provisions), the Acquisition or Disposition of Land may be different than fair market value if, in Council or the CAO's opinion, as applicable, it is in the best interest of the Town to do so.

8. Restrictions and Exceptions

- 8.1.** For Lands other than Non-Viable Lands where an expression of interest is received by the Town, the CAO shall prepare a report to Council recommending whether or not the Land be declared surplus, if required, and that a period of market exposure occur to ensure best use or value for the Land.
- 8.2.** This policy shall not apply to:
- 9.2.1** Purchasing or selling Personal Property. Personal Property interests of the Town shall be acquired or disposed of in accordance with the Purchasing Policy, as may be amended or successor thereof, together with any other applicable process or policy dealing with the purchase or sale of Personal Property, which are separate from this policy;
 - 9.2.2** Acquisition or Disposition of Land under the Expropriations Act, R.S.O. 1990, c. E.26, as amended;
 - 9.2.3** A Land donation to the Town or a donation of Land by the Town to a registered charity or not-for-profit organization;
 - 9.2.4** Lands pursuant to Part XI, Sale of Land for Tax Arrears, of the Act;

- 9.2.5** The Disposition of Lands in accordance with Sections 107, General Power to Make Grants, and Section 108, Small Business Counselling, of the Act; and,
- 9.2.6** The Disposition of Lands which are subject to an agreement pursuant to Section 110, Agreements for Municipal Capital Facilities, of the Act.
- 8.3.** An Employee who has an interest in Land being acquired by the Town, or an Employee who has an interest in acquiring Land that the Town is attempting to dispose of, shall declare a conflict of interest to the CAO and their Department Head, and such persons shall not participate in the Town's processes to which the conflict of interest relates.
- 8.4.** From the time bid documents for Lands are released until after the award by the Town, no solicitations or lobbying may be made to any Town staff, Council member, Town consultant, or to the news media by any director, officer, principal, employee, agent, family relation, or other representative of a bidder (including any other parties that may be involved in a business relationship with the bidder) with respect to the merits or value of the bidder's bid. Any such communication in violation of this section will entitle the Town to disqualify the offending bidder from consideration for award. This subsection does not apply to presentations or delegations expressly requested by Town staff or by Council, whether in the bid documents or otherwise.

9. Disposition Methods

- 9.1.** In consideration of the Disposition of Town owned Lands, an appropriate market exposure technique will be selected based on the unique requirements of the property and relative marketplace. Examples of appropriate market techniques include open tender, auctions, proposal calls, and listing with a licensed real estate broker.
- 10.2.** Notwithstanding Section 10.1, a direct sale of Town owned Land may occur for:
- 10.2.1.** The Disposition of Town owned Land as part of an approved land development planning application;
 - 10.2.2.** The Disposition of Land to other governments or public bodies;
 - 10.2.3.** After an unsuccessful public offer, subject to the approval of Council;
 - 10.2.4.** Land acquired as a road widening or part of a road widening in connection with an approval or decision under the Planning Act, including road widening Lands being conveyed, in whole or in part, back to the original owner of the Land or their successor in title;

- 10.2.5. Closed highways, if sold to an owner(s) of Land abutting the closed highways;
- 10.2.6. The Land is needed to restore access or frontage to property cut off by realignment or closure;
- 10.2.7. Lands that do not have direct access to a highway (i.e. landlocked Lands) if sold to the owner of Land abutting the landlocked Lands;
- 10.2.8. A purchaser has a statutory or legal right to acquire the Lands;
- 10.2.9. A Land exchange; or,
- 10.2.10. For other Lands deemed to be Non-Viable Land save and except Park Land.

11. Transitional Matters

- 11.1. For the purpose of transitioning to this policy, any Acquisition or Disposition of Land that commenced (being the earlier of the date of Council approval or an offer or agreement executed by the Town) prior to approval of this policy shall be subject to the provisions specific to that transaction as defined by Council or otherwise.

This Policy is hereby approved by Council Resolution #270-18 on this 23rd day of July, 2018.