

Sale and Other Disposition of Land Policy



Section Development Services	DATE December 12, 2017	Approved by By-law Number: 158-2017	PAGE 1	OF 11
Subsection Sale and Other Disposition of Land	Supersedes By-law Number: 138-2000		Policy Number DS-4-1	

1.0 Purpose

- 1.1 To provide a procedure for governing the sale and other disposition of land in the ownership of The Corporation of The City of Kenora.

2.0 Policy

- 2.1 The Council of The Corporation of the City of Kenora will consider at its sole and absolute discretion, the sale and other disposition of land in the ownership of The Corporation of The City of Kenora.
- 2.2 The Council of The Corporation of the City of Kenora will also consider, as part of its disposition of land policy, the closure and conveyance of roads owned by the Corporation of The City of Kenora.

3.0 Definitions

3.1 In this policy:

3.1.1 **Act** means *Municipal Act, 2001*, S.O 2001, Chapter 25, as amended;

3.1.2 **Appraisal** means an opinion as to the fair market value of the Land given by an individual with training and experience in valuing real estate acceptable to the City;

3.1.3 **City** means the City of Kenora

3.1.4 **Clerk's Department** means the Staff and Office of the City Clerk;

3.1.5 **City Solicitor** means the Solicitor and firm as designated;

3.1.6 **City Staff** means the Chief Administrative Officer, Manager of Community and Development Services, City Planner, or designate;

3.1.7 **Council** means the elected municipal City Council for The Corporation of The City of Kenora;

Sale and Other Disposition of Land Policy

Policy Number	Page	Of
DS-4-1	2	11

- 3.1.8 **Reference Plan** means a deposited plan of survey of the portion of land to be declared surplus;
- 3.1.9 **Land** includes any lands owned by The Corporation of the City of Kenora or its interest in land;
- 3.1.10 **Road**, where used in this policy, shall have the meaning ascribed to it as more broadly defined in Schedule "D"
- 3.1.11 **Sale** includes a lease of 2 years or longer, but does not include a quit claim for the purpose of confirmation of title ownership;
- 3.1.12 **Tariff of Fees and Charges By-Law** means the "Tariff of Fees By-Law", as amended or replaced from time to time, of The Corporation of the City of Kenora.

4.0 Exclusions

- 4.1 This policy shall not apply to:
- 4.1.1 The sale of Land under Part XI (Sale of Land for Tax Arrears) of the Act and any related Ontario Regulation made by the Minister;
- 4.1.2 Land 0.3 metres or less in width acquired in connection with an approval or decision under the *Planning Act*;
- 4.1.3 The sale of Land under Section 110 (Agreements for Municipal Capital Facilities) of the *Municipal Act*;
- 4.1.4 Land transferred to the City for security or for temporary roads or other works in connection with any agreement to which the City is a part under the *Planning Act*;
- 4.1.5 Land transferred to, or vested in, the City which neither the City nor the true owner intended to vest or be transferred;
- 4.1.6 The sale of Land to be used for the establishment and carrying on of industrial operation and incidental uses;
- 4.1.7 Cemetery plots owned by the City; or

Sale and Other Disposition of Land Policy

Policy Number	Page	Of
DS-4-1	3	11

4.1.8 Lake access points owned by the City.

5.0 Standards

- 5.1 The specific policy relating to the closure and sale of any road or portion thereof owned by the City is more particularly described in Schedule "A" to this policy.
- 5.2 Prior to selling any Land, Council shall pass a resolution, consistent or similar to the forms attached to this policy, declaring the Land to be surplus.
- 5.3 A new Reference Plan may be required, at the sole and absolute discretion of the City Planner or designate.
- 5.4 Notwithstanding Section 5.2 of this policy, where the laws of the Province of Ontario specify a particular method of disposition, those laws shall govern.
- 5.5 All costs associated with the disposition of Land, including Land transferred at nominal consideration, shall be borne by the part or parties acquiring the Land, unless otherwise directed by Council.
- 5.6 In order to avoid potential conflict of interest issues, before Council considers the disposition of Land, any employee of the City considering the acquisition of any parcel of Land from the City shall have first advised the City Planner (or designate, where the City Planner may have an interest) of his/her interest. The City Planner shall determine what, if any, steps are necessary to remove the employee from the decision-making and administrative processes related to the disposition of the Land and said process shall be disclosed to Council if requested.
- 5.7 The Applicant shall submit an application to the City for consideration. The application shall be in standard form as determined by the City Planner from time to time.
- 5.8 The Application will be evaluated for its consistency with all applicable legislation, City By-laws and policy.

Sale and Other Disposition of Land Policy

Policy Number	Page	Of
DS-4-1	4	11

6.0 Appraisals

- 6.1 Subject to Section 6.2, prior to selling any Land, at least one (1) Appraisal of the fair market value of the Land shall be obtained.
- 6.2 Section 6.1 of this policy shall not apply to the sale of the following types of Land:
 - 6.2.1 Closed highways if sold to an owner of land abutting the closed highway;
 - 6.2.2 Land that does not have direct access to a highway if sold to the owner of land abutting that Land;
 - 6.2.3 Land repurchased by an owner in accordance with Section 42 of the *Expropriations Act*, as amended;
 - 6.2.4 Land sold under Sections 107, 108, and 109 of the Act;
 - 6.2.5 Easements granted to public utilities, telephone companies or other like agencies; or
 - 6.2.6 Land sold to a municipality, a local board, conservation authority, the Crown or other similar agencies.
- 6.3 Any Appraisals obtained shall be used solely as a guide and shall not be determinative of the terms or price upon which Council may agree to sell any particular piece of Land. Without limiting the generality of the foregoing, other factors, including but not limited to, the history of the Land or related lands may be determinative.

7.0 Notice

- 7.1 Notice shall be given to abutting property owners and owners within 60 metres, of the receipt of an application to purchase and/or the City's intent to declare land surplus.
- 7.2 Notice shall be given to a proposed sale at minimum, as per this policy and the City's Notice By-law, including posting in the newspaper for two consecutive weeks, and the City's website.

Sale and Other Disposition of Land Policy

Policy Number	Page	Of
DS-4-1	5	11

7.3 Sections 7.1 and 7.2 of this policy does not apply to the sale or granting of easements to public utilities, telephone companies, or other like agencies.

8.0 Affidavit of the City Planner

8.1 The City Planner or designate is authorized, directed and empowered to sign an affidavit, in a form substantially similar to that attached to this policy as proof that this policy has been complied with.

9.0 General

9.1 The provisions of this policy shall only apply to land owned by the city and shall not extend to or apply to any personal property of the city.

9.2 The manner in which the city carries out the sale of its land, if consistent with this policy, is not open to review by any court if the city may lawfully sell the land, the purchaser may lawfully buy the land and the city acted in good faith.

10.0 Administration

This policy shall come into force and take effect under by-law

11.0 Schedules

Schedule "A": Policy relating only to the closure and sale of roads

Sale and Other Disposition of Land Policy

Policy Number	Page	Of
DS-4-1	6	11

Schedule A

Policy and Procedure for the Closure and Conveyance of Roads

1. Definitions Specific to This Schedule

1.1 In addition to the definitions outlined above, in this Schedule:

(a) **Applicant** means the owner of the abutting land to the Road applying to the City for the road to be stopped up, closed and transferred;

(b) **Draft Reference Plan** means a draft plan of survey of the portion of Road to be stopped up, closed and transferred as prepared by an Ontario Land Surveyor and submitted by the Applicant to the City for approval;

(c) **Letter of Authorization** means a letter from the Applicant appointing a representative to act as their agent in this process. The appointed agent shall receive all communication from the City throughout the process as defined herein; and

(d) **Road** means all original road allowances, road allowances, streets, highways, laneways, access roads, colonization roads or any other road or highway as defined by the Act or other relevant legislation that is owned by the City.

2. General Provisions

2.1 The Applicant is responsible for paying the application fee, legal services where required and tracked by City Staff, surveying, appraisal, advertising and land conveyancing costs involved in the Road closing and conveyance of surplus land by the city. In the event that an Applicant fails to pay the costs incurred within one (1) year of Council passing the applicable by-law, all outstanding costs will be added to the tax roll and collected in the same manner as taxes pursuant to Section 398 of the Act.

2.2 The required by-law to approve the closure and conveyance of the Road will not be passed until the current realty taxes on the Applicant's property are paid and the account is up to date.

Sale and Other Disposition of Land Policy

Policy Number	Page	Of
DS-4-1	7	11

2.3 The land disposition costs are calculated on the square footage of the Road to be closed and conveyed as determined by the Reference Plan and subject to the fees set out in the City's Tariff of Fees By-law if applicable, through an appraisal, or at Council's discretion.

2.4 Applications will be considered **terminated** if inactive for a period of **one (1) year**.

2.5 Applicant **must** own the property directly abutting the Road.

2.6 Applications will not be approved if the closure of the road would deprive other land owners of their sole access to their properties.

2.7 Generally, the portion of Road to be closed and conveyed will be determined by straight lot line projections. However, in some instances deviations from straight extension of existing lot lines may be considered and may be required by the City in determining the description of the portion of the Road to be closed and conveyed.

3. Procedure

3.1 The Applicant shall submit an application to the City for consideration. The application shall be in a standard form as determined by the City Planner from time to time. The initial application fee shall include:

- (a) Review of the application and creation of new file;
- (b) Circulations to various departments;
- (c) Correspondence with Applicant regarding pre-approval;
- (d) Site visit to the subject land(s);
- (e) Written notice to abutting neighbour(s) regarding the potential Road closure;
- (f) Preparation of preliminary approval report to Council, if required;
- (g) Review of Draft Reference Plan;
- (h) Preparation of final surplus report and resolutions;
- (i) Presentation of by-law to Council and public meeting;
- (j) Passing of by-law by Council; and

Sale and Other Disposition of Land Policy

Policy Number	Page	Of
DS-4-1	8	11

(k) Registration of By-law on title.

3.2 Application

The application shall be submitted to the city accompanied by:

(a) Application fee, as per the City Tariff of Fees By-law;

(b) Seasonal (summer) pictures of the Road;

(c) A detailed sketch or site plan "to scale" which clearly shows the following:

(i) the location and measurements of **all** existing buildings/structures (including accessory buildings and septic) on the **Applicant's property**;

(ii) the location and measurements of **all** existing structures on the **City's property**;

(iii) the distance from the structures to the abutting lot lines;

(iv) vegetation, driveways and paths; and

(d) Letter of Authorization, if the Applicant has engaged the services of an agent to act on their behalf.

3.3 Applications shall be circulated to City Departments including Planning, Roads, Water, Waste Water and Building for their comment and consideration. Applications may be granted subject to conditions of such departments (e.g. deeming by-law, site plan agreement or development permit, etc.) in the sole and absolute discretion of City Staff and/or Council as outlined in this policy.

3.4 Once preliminary approval is granted, the City will provide a letter notifying the Applicant or their named agent that preliminary approval has been granted.

3.5 The Applicant will engage the services of an Ontario Land Surveyor familiar with Road closings to prepare a Draft Reference Plan of the subject Road that must include:

(a) City Staff or Council pre-approved property lot line extensions; and

(b) All structures on the Applicant's property, if advised by City Staff; and

(c) All structures on the Road.

Sale and Other Disposition of Land Policy

Policy Number	Page	Of
DS-4-1	9	11

Note: the structures may be removed from the Draft Reference Plan once the City has reviewed and approved the plan. The Draft Reference Plan **must not** be deposited in the local registry office until final approval is received from the City.

3.6 City Staff Responsibilities

(a) Contact the Applicant or their named agent/solicitor in writing, requesting the name of their surveyor, establish costs relating to the legal fees and advertising and advise of the requirement for appraisal or purchase price for the Road;

(b) Upon receipt of the Draft Reference Plan and following its approval by the City, advise surveyor to proceed to deposit the Draft Reference Plan. Advise surveyor to provide City with two (2) copies of the Reference Plan (including an electronic version);

(c) Perform sub-search of title to confirm the Applicant is the owner of the property abutting the subject Road;

(d) Provide notice of the application to the following agencies as applicable:

- (i) Kenora Hydro or Hydro One as applicable;
- (ii) Bell Alliant;
- (iii) Shaw Cable;
- (iv) Union Gas;
- (v) Ministry of Natural Resources and Forestry;
- (vi) Ontario Power Generation
- (vii) Lake of the Woods Control Board
- (viii) Other agencies with an interest in the road.

(e) If agencies listed above have an interest in the Road, City Staff shall facilitate the registration of such interest against title to the Road after the closing thereof and prior to the transfer of the land to the Applicant;

(f) Request a public meeting date from Clerk's Department;

(g) Prepare the public notice which shall include the property description of the portion of Road to be stopped up and closed and the Council date when the matter will come before Council for consideration;

(h) Post the public notice on the City's website for two (2) consecutive weeks and advertise in a local newspaper for the same period; and

Sale and Other Disposition of Land Policy

Policy Number	Page	Of
DS-4-1	10	11

(i) Prepare the by-law, report and any attachments for the Clerk's Department for the Council meeting.

3.7 At the scheduled public meeting, Council is required to give consideration to written comments that may be provided to the City Planner.

3.8 If Council is in agreement, the resolution declaring the land surplus and the by-law are then passed consecutively in that order by Council at the scheduled public meeting.

3.9 The Clerk's Department will forward the resolution and executed by-law(s) to the City Planner or City Solicitor for preparation of the necessary documents for registration.

3.10 City Staff, the City Solicitor or the Applicant's Solicitor, shall then:

(a) Prepare:

(i) If necessary, the application for the City to be entered as owner; and

(ii) The application to register the road closing by-law;

(b) Register a certified copy of the road closing by-law in accordance Section 34(1) of the Act;

(c) Prepare the affidavit of City Planner, acknowledgements and directions, transfer/deed and land transfer tax affidavit. The name of the transferee and manner in which title is to be taken shall be identical to the registered ownership of the Applicant's abutting lands;

(d) Prepare interim reports to the Applicant, or their named agent or solicitor. The interim reports shall include copies of the registered applications, the acknowledgement and direction to which is attached a draft transfer/deed for execution and the request for the land acquisition fees from the Applicant;

(e) Upon receipt of executed documents from Clerk's Department and the Applicant together with all applicable fees and funds payable relating to the file, confirm that all municipal taxes relating to the Applicant's land are current;

(f) Register the required easements (if any);

(g) Register transfer/deed;

Sale and Other Disposition of Land Policy

Policy Number	Page	Of
DS-4-1	11	11

(h) Complete a Merger Agreement and consolidation of the PIN Parcel Registers of the Land and existing Applicant land(s);

(i) Prepare and forward a final report to the Applicant, or their named agent or solicitor attaching the registered documents.