

 M O N C T O N	POLICY	Owner Department: Legal
	Disposition and Acquisition of Municipal Land	
Effective Date: June 20, 2022	Last Reviewed Date: N/A	City Council Approval Dates: June 20, 2022
Approving Authority: Moncton City Council	Replaces: Acquisition/Disposition of City-owned Land	

1. Purpose Statement

The purpose of this policy is to provide direction to City Council and Administration in the disposition and acquisition of municipal land. Specific protocols for the disposition of surplus land, as per respective surplus designations, are also contained herein.

2. Application

This policy applies to City Council and Administration in the disposition and acquisition of municipal land.

3. Definitions

Affordable housing: means low-cost housing oriented toward low income or non-income generating residents that is operated by a non-profit corporation whose primary mandate is to supply affordable housing.

As-is: means with all defects and without any written or oral representation or warranty of any kind, expressed or implied, from the City as to the condition, zoning, environmental or other of the land.

Acquisition: means the acquisition of land or an interest in land for municipal purposes.

Land for Public Purposes: means “land for public purposes” as defined in the *Community Planning Act*, SNB 2018, c. 19 or any amendments thereto or successor legislation.

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Surplus land designation: means the category assigned by Council for the disposition of surplus land, which relates to the method of disposition and intended future use after disposition.

Surplus land: means land that the City does not have a need for and would be of interest to potential purchasers/recipients due to size, shape, location, typology, environmental condition, permitted land uses, or any other factor.

4. Policy

4.1 LAND DISPOSITION

4.1.1 Identification and Recommendation for the Declaration and Designation of Surplus Land

- (a) Potential surplus land may be identified by:
- a. Council; or
 - b. Administration through a(n):
 - i. Internal review of municipal land; or
 - ii. Request for the disposition of municipal land by an interested party.
- (b) Following the identification of surplus land under (a), Administration shall coordinate an interdepartmental review of the surplus land by, at minimum, requesting feedback from all General Managers to determine:
- a. If any department wishes to retain the land for a specific purpose pursuant to its mandate, which may entail environmental considerations including, but not limited to, the preservation of land for environmental purposes (e.g. retention of naturalized areas such as wetlands and urban forests); and
 - b. Where no department expresses interest to retain land under a., the recommended surplus designation(s) under (c) and any conditions to be considered in the conveyance of land.
- (c) Surplus designations are as follows:
- a. **Economic Development** – Properties having economic development potential ought to be sold to:
 - i. Maximize use or value;
 - ii. Achieve the attraction of targeted industries and employment or the regeneration of neighbourhoods;
 - iii. Advance development opportunities; or
 - iv. Generate financial return to the City.

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- b. **Affordable Housing** – Properties known to have potential for residential development respecting types of dwelling units and types of residential uses where:
 - i. Community need, supportive infrastructure, and conditions for affordable housing are demonstrable; or
 - ii. There exists a higher market value cost for housing in certain areas of the City as compared with the rest of the City or a scarcity of housing types or residential uses or uses that limits property ownership or tenancy in the area where the property is located; or
 - iii. The future growth in any given area is anticipated to create demands for housing, housing options through proposed development appear to be limited in variety and financial accessibility, and consideration for affordable housing would reasonably arise.

 - c. **Extraordinary** – Properties having a legal distinction that include conditions or extraordinary process with respect to their preservation or disposition including, but not limited to:
 - i. Land held in trust, or upon condition, or with reserving interests, or like constraints; and
 - ii. Land for Public Purposes acquired through the subdivision process, the disposition of which is governed by section 76 of the *Community Planning Act*.

 - d. **Remnant** – Properties that are remaining or subdivided land that by the nature of their size, dimensions, or location have limited or no reasonable use, but which may have utility for abutting property owners and can be sold less than market value.

 - e. **Intergovernmental Transfer** – Properties requested by another level of government that will be used for a public purpose and sold for market value.
- (d) In establishing a recommendation for surplus designation(s) under (c), Administration shall take into consideration, but not limited to, the following criteria:
- a. Potential economic return to the City from the expected:
 - i. Sale of the land; and
 - ii. Long-term tax generation from future land improvements;

 - b. Current zone under the ‘Schedule A – Zoning Map’ of the Zoning By-law and future land use designation under ‘Schedule 1 – Generalized Future Land Use Map’ of the Municipal Plan;

 - c. Potential for the future use of the land to achieve the goals and objectives of the City as articulated in its plans and strategies including, but not limited to, the Municipal Plan,

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Affordable Housing Implementation Plan, Destination 2040 – Regional Transportation Master Plan, and Downtown Core Community Improvement Plan and other Secondary Municipal Plans;

- d. Developability of the potential surplus land regarding:
 - i. Size, shape, and topography;
 - ii. Existing buildings or structures and natural assets (e.g. urban forest);
 - iii. Development constraints including, but not limited to, easements, rights-of-way, encumbrances, natural physical features, flood zones, and heritage resources; and
 - iv. Availability of water, stormwater, sanitary, and electrical servicing;
 - e. Proximity to transportation networks (e.g. existing and future streets, transit routes, active transportation routes and facilities);
 - f. Proximity to essential services (e.g. medical, educational, financial, food);
 - g. Proximity to public amenities (e.g. parks, playgrounds, public open space);
 - h. Proximity to heritage resources such as, but not limited to, designated heritage properties under the Heritage Conservation By-law and any amendments or successors thereto;
 - i. Adjacent land uses and compatibility with the expected future use of the surplus land; and
 - j. Existing neighbourhood character.
- (e) The recommendation for declaration and surplus designation of surplus land by Administration to Council shall be brought forward in a private session and shall include in the Council Report Form:
- a. The rationale for the recommended declaration of surplus land;
 - b. The rationale for the recommended surplus designation;
 - c. If a consensus cannot be reached by Administration in establishing recommended surplus designation(s) under b., an analysis of the potential benefits and drawbacks associated with the various surplus designation options;

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- d. The method of disposition under subsection 4.1.3; and
- e. Where applicable, the composition of the interdepartmental team or committee.

4.1.2 Council Declaration and Designation of Surplus Land

- (a) Upon recommendation or Administration under paragraph 4.1.1 (e), Council may declare land owned by the City as surplus land.
- (b) Despite the recommendation under paragraph 4.1.1 (e), Council may choose to retain the land for a specific purpose, which may entail environmental considerations including, but not limited to, the preservation of land for environmental purposes (e.g. retention of naturalized areas such as wetlands and urban forests).
- (c) The declaration of surplus land under (a) shall also include the approval of surplus designation(s) under paragraph 4.1.1 (c).
- (d) In declaring surplus land under (a), Council shall direct Administration to proceed with the disposition of the land according to the surplus designation(s) per subsection 4.1.3.

4.1.3 Method of Disposition

- (a) Following direction from Council, Administration shall proceed with the disposition of the surplus land in accordance with the methods determined by the surplus land designation(s):
 - a. **Economic Development:** The process outlined in Schedule A shall be followed for the disposition of these properties.
 - b. **Affordable Housing:** The process outlined in Schedule B shall be followed for the disposition of these properties.
 - c. **Extraordinary:** These properties shall be dealt with as required by legislation, common law, or contract that governs any disposition by the City and may be omitted from this policy.
 - d. **Remnant:** Administration shall negotiate the sale of such properties with any interested abutter of such properties and at such price as supported by appraisal or comparable land valuations.
 - e. **Intergovernmental Transfer:** These properties shall be dealt with as directed by Council.
- (b) Subject to Schedule A and Schedule B, following the declaration and designation of surplus land, Administration is authorized to:

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- a. Negotiate land transactions; and
 - b. Finalize and close land transactions that are not less than fair market value by more than 10%.
- (c) Except for surplus land designated as Remnant, offers received that involve a land swap or are less than fair market value by more than 10% shall be subject to Council approval.
- (d) Despite (b), further approval is required from Council in accordance with the method of disposition under Schedule A and Schedule B.
- (e) All surplus land shall be sold on an as-is basis.
- (f) **Sale Proceeds** - Except for proceeds collected for the Affordable Housing Reserve fund under Schedule A, all proceeds from the sale of surplus land should be deposited into a specific account.

4.2 LAND ACQUISITION

- (a) An Acquisition will be considered by Council if there is an identifiable municipal purpose connected to the specific property, which may entail environmental considerations including, but not limited to, the preservation of land for environmental purposes (e.g. retention of naturalized areas such as wetlands and urban forests).
- (b) The policy applies whether the acquisition process is through an agreement (e.g. agreement of purchase and sale, an easement, etc.), the subdivision approval process, expropriation or any other method that may be applicable.
- (c) An Acquisition may be identified by:
- a. Council;
 - b. A third party offer to dispose of its land to the City; or
 - c. A department requirement for the Acquisition for a specific purpose pursuant to its mandate.
- (d) Following the identification of an Acquisition under (c) a., Administration shall coordinate an interdepartmental review of the offer, at minimum, requesting feedback from all General Managers to determine:

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- a. If any department wishes to proceed with the Acquisition for a specific purpose pursuant to its mandate, Administration shall present a recommendation for the Acquisition before Council; and
 - b. Where no department expresses interest to proceed with the Acquisition, the third-party offer shall be refused.
- (e) Following the identification of an Acquisition under (c) b., Administration shall present a recommendation for the acquisition for Council.
- (f) The recommendation for the Acquisition under (d) a. and (e) by Administration to Council shall be brought forward in a private session and shall include, but is not limited to, in the Council Report Form:
- a. The rationale for the recommendation for the Acquisition; and
 - b. Where a consensus cannot be reached by Administration in favour of the recommendation for the Acquisition, an analysis of the potential benefits and drawbacks associated with the Acquisition for Council's consideration.

5. Administration and Contact

City Clerk's Office

655 Main St., Moncton, NB E1C 1E8

Telephone: 506.853.3550

Email: info.clerk@moncton.ca

SCHEDULE A – Disposition of Economic Development Properties

Land Appraisal

- (a) Appraisals shall be standard on all surplus land designated for Economic Development to ensure that the City obtains the best value for the land.
- (b) Despite (a), the requirement of an appraisal may be waived by Council in consideration of, but not limited to, instances where comparable land valuations are readily available.

Method of Disposition

- (c) Administration shall determine if the surplus land designated for Economic Development should be disposed through:
 - a. Expressions of Interest and Request for Development Proposals; or
 - b. Marketing and/or Direct Sale.
- (d) In considering the appropriate disposition method under (c), Administration shall take into consideration the criteria under paragraph 4.1.1 (d).
- (e) The recommendation and rationale for the method of disposition under (c) shall be included in the recommendation to Council for the declaration and designation of surplus land under subsection 4.1.2.

Public Advertisement

- (f) Public advertisement is required for the disposition of surplus land designated for Economic Development as per the following:
 - a. Advertisement on the City's website for 30 days;
 - b. Advertisement published in local newspapers within 14 days of the first day of advertisement under a.; and
 - c. Sign on the land for 21 days.
- (g) Despite (f), the public notice requirement may be waived by Council upon recommendation by Administration taking into consideration, but not limited to, the following:
 - a. Access to the land (e.g. only abutting landowners are in a position to purchase and assemble the land for development purposes); or
 - b. The proposed sale of land to a specific landowner for the purposes of a strategic land swap/acquisition to achieve the goals and objectives of the City as articulated in its plans and strategies, including but not limited to the Municipal Plan, Affordable Housing

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Implementation Plan, Destination 2040 – Regional Transportation Master Plan, and Downtown Core Community Improvement Plan and other Secondary Municipal Plans.

- (h) A recommendation under (g) to waive the public notice requirement shall be included in the recommendation to declare and designate surplus land under subsection 4.1.2.

Finalizing the Disposition of Surplus Land via Marketing and/or Direct Sale

- (i) Where Council approves the disposition of surplus land for Economic Development by way of Marketing and/or Direct Sale under (c) b., Administration shall be directed to sell the land, which may include a listing contract with a licensed real estate broker.
- (j) The sale price, negotiation, finalization and closing of land sales under this method of disposition are subject to subparagraph 4.1.1 (c) a. and subsection 4.1.3.

Expressions of Interest and Request for Development Proposals

- (k) Administration shall form an interdepartmental team or committee to establish criteria for the Expressions of Interest and Request for Development Proposals and to review and evaluate any submissions received.
- (l) Either through public advertisement under (f) or direct request to specific landowners/developers, Expressions of Interest shall be solicited for the disposition of surplus land.
- (m) A request for Expressions of Interest under (l) may include, but is not limited to, the:
 - a. City of Moncton's preference for the site, if defined; and
 - b. Submission requirements for proponents including, but not limited to:
 - i. Composition of proposed project team; and
 - ii. Proponent's experience in carrying out similar developments.
- (n) Following the review of Expressions of Interest submissions, Administration shall create a short list of proponents, who meet the minimum requirements, which the City will solicit development proposals from.
- (o) If the short list under (n) includes only one (1) proponent, the City shall solicit a development proposal directly from said proponent.
- (p) If the short list under (n) includes two (2) or more proponents, the City shall issue a Request for Development Proposals to said proponents through the City's standard procurement process.

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- (q) Development proposal(s) received under (o) or (p) shall be evaluated by the interdepartmental team or committee using established evaluation criteria, which may include, but is not limited to, the following:
- a. Compliance with all minimum mandatory requirements;
 - b. Financial proposal;
 - c. Proponent's expertise and capacity; and
 - d. Land development proposal (e.g. proposal for inclusion of affordable housing and preservation of natural assets such as urban forest).

Recommendation to Council for Finalizing the Disposition of Surplus Land via Development Proposal(s)

- (r) Through a Council Report Form for consideration in a private session, Administration shall bring forward a recommendation to Council for awarding a successful submission/proponent and finalizing the disposition of surplus land for development proposal(s).
- (s) The recommendation under (r) shall include, but is not limited to, the following:
- a. Where applicable, an overview of the submissions received through the Expressions of Interest and Request for Development Proposals process;
 - b. Where applicable, final scoring from the evaluation of any development proposals received;
 - c. The recommended successful submission/proponent; and
 - d. The proposed provisions of an agreement for finalizing the disposition of surplus land.
- (t) Where no successful submission/proponent is awarded or where no development proposals were received under (o) or (p), Council shall provide direction to Administration, which may include, but is not limited to the following:
- a. Re-issuing the Expressions of Interest and Request for Development Proposals;
 - b. Re-designating the land under subsection 4.1.1 (c); and
 - c. Tabling the initiative and directing Administration accordingly (e.g. until such time market conditions improve).

Finalizing the Disposition of Surplus Land via Request for Development Proposal(s)

- (u) The successful proponent shall enter into agreement(s) with the City for the disposition of surplus land (e.g. Agreement of Purchase and Sale, Option to Purchase Agreement, Right of First Refusal Agreement), which may include conditions such as, but is not limited to the following:
- a. Performance deposit and conditions of release by a date of substantial completion and conformance;

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- b. An option to repurchase the land if construction has not commenced by a specific date. All other terms and conditions of the option to repurchase shall be determined at the City's sole discretion, on a case-by-case basis.
 - c. The requirement of Environmental Site Assessment prior to land conveyance;
 - d. The requirement of the execution of ancillary agreements associated directly with the conveyance of the land (e.g. easement agreement);
 - e. The requirement of a covenant indicating that no major design alterations shall be made to the plans and drawings submitted to the City through Request for Development proposals process;
 - f. The payment, and conditions thereof, of any costs associated with the conveyance of the land and to give effect to this policy, which may include, but is not limited to:
 - i. Survey fees;
 - ii. Land appraisal fees; and
 - iii. Legal fees for land conveyance and any ancillary agreements.
- (v) The entire disposition process under this method of disposition—including the determination of the sale price, the negotiation of the terms and conditions, finalization and the closing of the sale transaction—is subject to subparagraph 4.1.1 (c) a. and paragraph 4.1.3 (b).
- (w) A minimum of 10% of the proceeds received from the sale of the surplus land designated for Economic Development shall be placed into an Affordable Housing Reserve Fund to be used exclusively for the purposes of facilitating municipal affordable housing programs and strategies.
- (x) Where there is a requirement to provide affordable housing or cash in-lieu through by-law (incentive-bonus zoning or inclusionary zoning), the requirement of (w) shall not apply.

SCHEDULE B – Disposition of Affordable Housing Properties

List of Affordable Housing Non-profit Corporations

- (a) Administration shall develop and maintain a list of affordable housing, not-for-profit corporations currently or interested in operating in the City of Moncton.
- (b) Creating and updating of the list under (a) may be done through an annual public call for Expressions of Interest indicating the City's broad intent to proceed with the disposition of land for the development of affordable housing.

Expressions of Interest and Request for Development Proposals

- (c) Administration shall form an interdepartmental team or committee to establish criteria for the Expression of interest and Request for Development Proposal and to review and evaluate any submissions received.
- (d) Using the list under (a), Administration shall issue a direct call for Expressions of Interest to affordable housing, not-for-profit corporations for the disposition and development of the surplus land for affordable housing.
- (e) A call for Expressions of Interest under (c) may include, but is not limited to the:
 - a. City of Moncton's preference for the site, if defined;
 - b. City of Moncton incentives available for affordable housing projects; and
 - c. Submission requirements for proponents including, but not limited to:
 - i. Proof of registered status as a non-profit corporation;
 - ii. A description of the non-profit corporation and its programs and services; and
 - iii. Summary of demonstrated experience developing and operating affordable housing.
- (f) Following the review of Expressions of Interest submissions, Administration shall create a short list of proponents that the City wishes to solicit development proposals from.
- (g) If the short list under (f) includes only one (1) proponent, the City shall solicit a development proposal directly from said proponent.
- (h) If the short list under (f) includes two (2) more proponents, the City shall issue a Request for development proposals to said proponents through the City's standard procurement process.

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- (i) Development proposal(s) received under (g) or (h) shall be evaluated by Administration using established evaluation criteria, which may include, but is not limited to, the following:
 - a. Compliance with all minimum requirements;
 - b. Financial proposal;
 - c. Proponent's expertise and capacity;
 - d. Land development proposal; and
 - e. Operation management plan.

Recommendation to Council for Finalizing the Disposition of Surplus Land for Affordable Housing

- (j) Through a Council Report Form for consideration in a private session, Administration shall bring forward a recommendation to Council for awarding a successful submission/proponent and finalizing the disposition of surplus land for the development of affordable housing.
- (k) The recommendation under (j) shall include, but is not limited to, the following:
 - a. Where applicable, an overview of the submissions received through the Expressions of Interest and Request for Development Proposals process;
 - b. Where applicable, final scoring from the evaluation of any development proposals received;
 - c. The recommended successful submission/proponent; and
 - d. The proposed provisions of an agreement for finalizing the disposition of surplus land for the development of affordable housing.
- (l) Where no successful submission/proponent is awarded or where no development proposals were received under (g) or (h), Council may table the initiative and direct Administration accordingly.
- (m) Further to (l), it is the intent of Council to retain surplus land designated for Affordable Housing until such time the land can be conveyed to a non-profit corporation for the purposes of developing affordable housing.

Finalizing the Disposition of Surplus Land via Request for Development Proposals

- (n) The successful proponent shall enter into agreement(s) with the City for the disposition of surplus land (e.g. Agreement of Purchase and Sale, Option to Purchase Agreement, Right of First Refusal Agreement), which may include conditions such as, but is not limited to the following:
 - a. The requirement of the proponent to operate affordable housing as per the submission;

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- b. An option to repurchase the land for a \$1 whereby construction has not commenced by a specific date;
 - c. If the non-profit corporation intends to sell or is required to transfer ownership of the land, the right of first refusal of the City to repurchase the land for a \$1, plus the value of capital improvements less annual depreciation, within a specific timeframe;
 - d. The requirement of Environmental Site Assessment prior to land conveyance;
 - e. The requirement of the execution of ancillary agreements associated directly with the conveyance of the land (e.g. easement agreement);
 - f. The requirement of a covenant indicating that no major design alterations shall be made to the plans and drawings submitted to the City through Request for Development proposals process;
 - g. The payment, and conditions thereof (e.g. repayment plan), of any costs associated with the conveyance of the land and to give effect to this policy, which may include, but is not limited to:
 - i. Survey fees; and
 - ii. Legal fees for land conveyance and any ancillary agreements.
- (o) Surplus land designated for Affordable Housing shall be sold for \$1.
- (p) Administration is authorized to finalize and close the land transaction.