



## BY-LAW

NO. 2023 –

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### Being a By-law to Adopt a Sale and Disposition of Land Policy for The Corporation of the Municipality of Kincardine

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**Whereas** pursuant to the said Municipal Act, Sections 8 and 9 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

**Whereas** Section 270 of the Municipal Act, 2001 (the “Act”) requires that all municipalities adopt and maintain a number of specific policies which provide a basis for decision-making to support clear and consistent implementation processes; and

**Whereas** Section 270 (1) of the Municipal Act 2001, S.O. 2001, c. 25, as amended, requires a municipality to adopt and maintain a policy with respect to the manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public; and

**Whereas** Section 270(1)1. of the Act requires the Municipality of Kincardine to adopt and maintain a policy setting out how it will sell and dispose of land.

**Whereas** the Council of the Corporation of the Municipality of Kincardine desires to adopt a new Sale and Disposition of Land Policy; now therefore be it

**Resolved** that the Council of The Corporation of the Municipality of Kincardine **Enacts** as follows:

1. That the Sale and Disposition of Land Policy for The Municipality of Kincardine, attached hereto as Schedule ‘A’ and forming part of this By-law be adopted.
2. That this By-law shall come into full force and effect upon its final passing.
3. That the Sale and Other Disposition of Land Policy passed by By-law #2008 - 141 and all other Policies passed by By-law and Resolutions inconsistent with this By-law, be repealed.
4. That By-law may be cited as the “Sale and Disposition of Land Policy By-law”.

**Read a First and Second Time** this 5<sup>th</sup> day of July, 2023.

**Read a Third Time and Finally Passed** this 5<sup>th</sup> day of July, 2023.

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Mayor

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Clerk

**Policy No.:** ADMIN.03

**Section:** Your Government and People

**Policy Title:** Sale and Disposition of Land Policy

**Adopted Date:** July 5, 2023

**By-law No.:** 2023 -

**Revision Date:**

### 1. Purpose

The Sale and Disposition of Land Policy provides the framework for ensuring that transparent and accountable processes are followed in the disposal of all real property and to ensure that returns are fair, reasonable and in the best interest of the Municipality.

Section 270 of the *Municipal Act, 2001* requires all municipalities to adopt and maintain a policy with respect to the sale and other disposition of land.

### 2. Scope

This policy applies to The Corporation of the Municipality of Kincardine and any of its local boards where applicable.

The Municipality shall adhere to any applicable legislative requirements governing the disposition of land at all times and, where this Policy is in conflict with the requirements of such legislation, the legislation shall supersede the provisions of this Policy and any disposition will proceed in accordance with the legislated requirements.

### 3. Definitions

**“Abutting Owner”** shall mean in the case of the disposal of a closed road or highway, an abutting owner refers to an owner, the front, rear or side of whose property is immediately beside the closed road or highway, but does not include an owner whose property touches either end of the road or the highway. With respect to any other non-viable or viable real property disposal, an abutting owner is any owner whose real property touches the municipality’s real property;

**“Act”** shall mean the *Municipal Act, 2001*, as amended;

**“Appraisal”** shall mean a written estimate of current market valuation of the land that is satisfactory to the Chief Administrative Officer of The Corporation of the Municipality of Kincardine;

**“Chief Administrative Officer” or “CAO”** shall mean the Chief Administrative Officer of The Corporation of the Municipality of Kincardine;

**“Council”** shall mean the Council of The Corporation of the Municipality of Kincardine;

**“Disposition”** shall mean the sale, transfer, conveyance or exchange of the fee simple interest in land or the granting of a lease for a term of twenty-one (21) years or longer, but does not include the granting of an easement or right of way, and “disposal” shall have a similar meaning;

**“Land”** shall mean any real property owned by the Municipality;

**“Market Value”** shall mean the highest price a willing buyer would pay and a willing seller would accept, both parties being fully informed, and the real property being marketed for a reasonable period of time;

**“Meeting”** shall mean the same as defined in the *Municipal Act, 2001*;

**“Municipality”** shall mean The Corporation of the Municipality of Kincardine;

**“Newspaper”** shall mean a document that:

- (a) Is printed in sheet form, published at regular intervals of a week or less and is available through general circulation; and
- (b) Consists primarily of news of current events of general interest;

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**“Non-viable Real Property”** shall mean real property for which a building permit cannot be granted because it is either landlocked, or it is of insufficient size and shape to permit development unless developed in conjunction with abutting land;

**“Notice”** shall mean an announcement containing information about a future event;

**“Real Property”** shall mean land and/or buildings and all improvements thereon;

**“Kincardine”** shall mean The Corporation of the Municipality of Kincardine;

**“Surplus Real Property”** shall mean real property that the municipality no longer requires to meet its current or future program or operational needs and that has been declared surplus by Kincardine Council or its delegated authority;

**“Treasurer”** shall mean the Director of Corporate Services/Treasurer of The Corporation of the Municipality of Kincardine;

**“Value”** shall mean the valuation of the fair market value of land, and includes the value assigned by the Municipal Property Assessment Corporation (MPAC), the opinion of value by a license real estate agent, or such other means as may be specifically determined as appropriate by Council or the CAO;

**“Valuation”** shall mean an independent appraisal or written opinion of the market value of the land by an appraiser or qualified professional;

**“Viable Real Property”** shall mean real property for which a building permit can be granted;

**“Website”** shall mean the Municipality of Kincardine’s official website at [www.kincardine.ca](http://www.kincardine.ca)

#### **4. Responsibility**

Staff are responsible for adhering to the parameters of this policy and for ensuring the processes outlined within are followed. Council approval is required for the disposal of real property where the total amount exceeds the maximum amount pursuant to any delegated authority.

The Chief Administrative Officer shall be responsible for receiving complaints and/or concerns related to this policy. Upon receipt of such complaint and/or concern, the CAO shall notify Council.

#### **5. Procedure/ Policy**

##### **5.1. General**

**5.1.1.** Where real property is proposed to be disposed of, it shall first be determined to be viable or non-viable by the CAO.

**5.1.2.** Subject to Section 5.1.3, real property shall be disposed of at market value.

**5.1.3.** Notwithstanding Section 5.1.2, Council may, unless prohibited by the *Municipal Act, 2001*, authorize the disposal of real property at less than market value if, in its opinion, it is in the best interested of the municipality to do so.

**5.1.4.** All municipally owned real property is a corporate asset and not an asset of any individual department. Monies received from the disposal of any real property shall be deposited to the municipality’s Lifecycle Reserve Fund, unless otherwise directed by Council.

**5.1.5.** This Policy shall not apply to the disposal of real property which is the subject of an agreement entered into by the municipality for the provision of municipal capital facilities pursuant to section 110 of *Municipal Act, 2001*.

##### **5.2. Conditions for the Disposal of Real Property**

Unless otherwise stated in this Policy, the following conditions must be met before the disposal of any real property:

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5.2.1. The real property shall be declared surplus to current or future program or operational requirements of the municipality; and

5.2.2. At least one (1) appraisal of the real property shall be obtained; and

5.2.3. Notice of the proposed disposal shall be provided to the public.

**5.3. Authority to Declare Surplus**

5.3.1. All viable real property shall be declared surplus by Council by passing a resolution in an open meeting to declare any such real property surplus to the needs of the municipality.

5.3.2. Non-viable real property shall be declared surplus by Council passing a resolution. In addition:

5.3.2.1. Notice of the proposed disposal of the non-viable real property is provided to all abutting land owners.

5.3.2.2. An appraisal is obtained for the non-viable real property.

5.3.2.3. The disposal of the non-viable real property is at market value.

5.3.3. Once the real property has been declared surplus the CAO shall forward a copy of the council resolution to the Treasurer.

**5.4. Appraisals**

5.4.1. At least one (1) appraisal estimating current market value of the property shall be obtained. Appraisal reports shall remain confidential until the disposal is completed.

5.4.2. The appraised report shall come to Council for approval to proceed.

5.4.3. Notwithstanding Section 4.1, the requirement to obtain an appraisal shall not apply to the disposal of real property for the following classes of land:

(a) Land 0.3 metres or less in width, acquired in connection with an approval or decision under the *Planning Act*;

(b) Closed highways, road and road allowances;

(c) Land to be used for sites for the establishment and carrying out of industries and of industrial operations and incidental uses;

(d) Cemetery plots;

(e) Land formerly used for railway branch lines if sold to an owner of land abutting the former railway land;

(f) Land that does not have direct access to a highway if sold to the owner of land abutting that land;

(g) Land re-purchased by an owner in accordance with Section 42 of the *Expropriations Act*;

(h) Disposal to a municipality as defined by the *Municipal Act, 2001*;

(i) Disposal to a local board as defined in the *Municipal Affairs Act*; disposal to an authority under the *Conservation Authorities Act*; and

(j) Disposal to the Crown in Right of Ontario or of Canada and their agencies.

**5.5. Notice of Proposed Disposal**

5.5.1. Prior to the disposal of any real property the Chief Administrative Officer, or designate, shall give notice of the proposed disposal to the public by one or more of the following methods:

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- (a) Posting of a "For Sale" sign on the real property in question for a period of not less than ten (10) days;
- (b) Advertising the real property for disposal in one newspaper or other appropriate media;
- (c) Posting a notice on the municipal website at [www.kincardine.ca](http://www.kincardine.ca).

**5.5.2.** No notice shall be required for real property that is re-purchased by an owner in accordance with Section 42 of the *Expropriations Act*.

**5.5.3.** Notice of the proposed disposal of non-viable real estate is provided to all abutting owners by regular mail.

**5.5.4.** Notwithstanding the foregoing, no notice to the public of the proposed disposal of any land zoned for industrial uses is required, other than the general marketing of such land by the Municipality.

**5.5.5.** Despite Sections 5.5.1 and 5.5.3, notice of the disposal of real property that has been vested in the Municipality, pursuant to Part XI – Sale of Land for Tax Arrears – of the *Municipal Act, 2001*, shall, at a minimum, be by posting notice on the Municipality of Kincardine website.

#### **5.6. Methods of Sale**

**5.6.1.** Depending on the nature of the land, various methods may be employed for the disposal of land, including: public auction; electronic auction; tender process; listing through the Multiple Listing Service (MLS); listing with real estate firm or broker; direct advertising; direct negotiations with an abutting property owner; other direct negotiations when authorized by Council.

**5.6.2.** Council shall determine by resolution the method of sale of the surplus real property. Appendix "A" of this policy sets out the procedures for the specific methods of sale.

### **6. Exemptions for Declaration of Surplus Land**

- 6.1.** The following classes of land shall be exempt from the requirement to be declared surplus prior to sale:
- (a) Land that is transferred to another government body or public utility in exchange for other land for road allowance or road widening purposes within the geographic limits of the Municipality of Kincardine;
  - (b) Land that is transferred by the Municipality to a developer through the site plan or subdivision development process in exchange for land of equal or greater value;
  - (c) Land acquired as a road widening or part of a road widening in connection with an approval or decision under the *Planning Act*, as amended, including road widening lands being conveyed, in whole or in part, back to the original owner of the land or their successor in title;
  - (d) Land being expropriated from the Municipality by another governmental body pursuant to the *Expropriations Act* or any other legislation;
  - (e) Closed highways or unopened road allowances, if sold to an owner(s) of land abutting the closed highway or unopened road allowance;
  - (f) All land owned by the Municipality that is zoned for industrial uses;
  - (g) All cemetery plots owned by the Municipality;

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- (h) Land that does not have direct access to a highway if sold to the owner(s) of land abutting that land;
- (i) Land conveyed by the Municipality to fulfill the conditions of an existing agreement sanctioned by the Municipality;
- (j) Lands formerly used for railway lands, if sold to an abutting owner.

**7. Related Documents/Legislation**

- 7.1.** *Conservation Authorities Act*
- 7.2.** *Expropriations Act*
- 7.3.** *Heritage Act*
- 7.4.** *Municipal Act, 2001*
- 7.5.** *Municipal Affairs Act*
- 7.6.** *Planning Act*
- 7.7.** **Appendix "A"** – Procedures for Disposal and Agreements of Purchase and Sale

## **Procedures for Disposal and Agreements of Purchase and Sale**

### **1. Procedures for Disposal by Public Auction**

Should Council determine to dispose of the surplus land by public auction, the following shall apply:

- (a) The CAO shall be authorized to retain a licensed real estate auctioneer to conduct the auction;
- (b) All costs of advertising being borne by the municipality on the understanding that the method and format of advertising will be agreed to by the auctioneer and approved by the CAO prior to publication;
- (c) Kincardine shall maintain the right to establish a reserve bid based on the results of an appraisal and on the understanding that the reserve bid will remain confidential until the conclusion of the auction;
- (d) The conditions of sale being established, in each case, by Kincardine;
- (e) The Treasurer shall report the results of the auction to Council.

### **2. Procedures for Disposal by Electronic Auction**

Should Council determine to dispose of the surplus land by electronic auction, the following shall apply:

- (a) All costs of advertising being borne by Kincardine on the understanding that the method and format of advertising will be agreed to by the CAO prior to publication and/or web posting;
- (b) Kincardine shall maintain the right to establish a reserve bid based on the results of an appraisal;
- (c) The conditions of sale being established, in each case, by Kincardine;
- (d) The Treasurer shall report the results of the auction to Council.

### **3. Procedures for Disposal by Public Tender**

Should Council determine to dispose of the surplus land by public tender, the following shall apply:

- (a) Costs incurred or anticipated for disposal of the surplus land, such as legal fees, survey fees, appraisal fees, encumbrances, advertising, and improvements, shall be established;
- (b) An estimated bid price shall be established which shall not be less than the appraised value or valuation plus the additional costs referred to in Clause 3 (a) above. Notwithstanding the foregoing, Council may accept an amount less than the estimated bid amount;
- (c) An advertisement shall be published, as per the notice requirements for the policy, including within a Newspaper or appropriate media and posted on the municipal website at [www.kincardine.ca](http://www.kincardine.ca). The advertisement shall include a brief description of the property including a small location sketch and shall specify the final date that offers will be accepted and shall include the following statement "the highest or any offer may not necessarily be accepted";
- (d) The tender documents shall be delivered in person to the Chief Administrative Officer, or designate, by the date specified therein; and
- (e) Any tender otherwise acceptable to Kincardine shall be submitted to Council for approval of the sale price.

### **4. Procedures for Disposal by Real Estate Firm or Broker**

Should Council determine to engage a real estate firm or broker to dispose of the surplus land, the following shall apply:

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- (a) Costs incurred or anticipated for disposal of the surplus land such as legal fees, survey fees, appraisal fees, encumbrances, advertising, commissions and improvements shall be established;
- (b) A listing price shall be established which shall not be less than the appraised value plus the additional costs referred to in Clause 3 (a) above;
- (c) The CAO, or designate, shall be authorized to sign the listing agreement or agreement of purchase and sale once approved by Council;
- (d) The offers to purchase the surplus land shall be submitted to the CAO, or designate, on a standard offer to purchase form or form drafted by a lawyer and shall provide for an irrevocable period of at least twenty-one (21) days;
- (e) Kincardine may make a counter offer subject to the Council approving the sale price; and
- (f) All offers otherwise acceptable to the Council shall be submitted to the Council for approval of the sale price.

### **5. Procedures for Disposal by Direct Negotiation**

Should the Council determine to negotiate directly with a landowner to dispose of the surplus land, (other than a mortgagee or charge) who abuts the surplus land or an owner of other land in close proximity (other than a mortgagee or charge) who claims legal interest in the property such as, but not limited to: an easement, a right-of-way, possessory title or a restrictive covenant. The following shall apply:

- (a) Costs incurred or anticipated for disposal of the Surplus Land such as legal fees, survey fees, Appraisal fees, encumbrances, advertising and improvements shall be established;
- (b) An estimated sale price shall be established which shall not be less than the appraised Value plus the additional costs referred to in Clause 5 (a) above. Notwithstanding the foregoing, the Council may accept an amount less or higher than the estimated sale price;
- (c) In the event that no appraisal is obtained, as per the policy, the estimated sale price shall not be less than that referred to in Clause 5(a) above; and
- (d) All agreements otherwise acceptable to Kincardine shall be submitted to Council for approval of the sale price.

### **6. Procedure for Direct Sale to the Public**

Should Council determine to dispose of the surplus land directly to the public, the following shall apply:

- (a) Costs incurred or anticipated for disposal of the surplus land such as legal fees, survey fees, appraisal fees, encumbrances, advertising and improvements shall be established;
- (b) An estimated sale price shall be established which shall not be less than the appraised value plus the additional costs referred to in Clause 5(a) above. Notwithstanding the foregoing, Council may accept an amount less or higher than the estimated sale price;
- (c) An advertisement shall be published, as per the notice requirements for the policy, including within a Newspaper or appropriate media and posted on Kincardine's website at [www.kincardine.ca](http://www.kincardine.ca). The advertisement shall include a brief description of the property including a small location sketch and shall specify the final date that offers will be accepted and shall include the following statement "the highest or any offer may not necessarily be accepted";
- (d) The Chief Administrative Officer, or designate, shall be authorized to sign the agreement of purchase and sale once approved by Council.



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- (e) Kincardine may make a counteroffer subject to Council approving the sale price;  
and
- (f) All offers otherwise acceptable to Kincardine shall be submitted to Council for approval of the sale price.

**Agreements of Purchase and Sale**

In Agreements of Purchase and Sale (the "APS") or e-auction posting for the sale of Surplus Land, the municipality shall include a provision which states that the Surplus Land in question is being sold strictly on an "as is, where is" basis and that, except as expressly set out in the APS, no representations or warranties of any nature or kind have been made or will be made by the municipality, or anyone acting on behalf of the municipality, whether before or after execution of the APS or closing, to or for the benefit of the purchaser with respect to the Surplus Land including, without limitation, any representation or warranty relating to soil or ground water quality in, on or under the Surplus Land.