



Subject: *Disposal of Surplus Real Property Policy*
To: Corporate & Residential Services Committee
Date Prepared: September 10, 2024
Prepared by: Amy Pyne, Manager, Real Estate & Corporate Projects
Approved by: Kim Ramsay, Chief Administrative Officer

Summary

This report presents proposed revisions to the Disposal of Surplus Property Policy, conducted as part of the Policy Review Program and to reflect on lessons learned from surplus disposals conducted during the current Council term.

In addition to content changes, staff recommend making a slight revision to the policy name, naming the proposed revised policy the Disposal of Surplus Real Property Policy (the “Policy”) to align with nomenclature of Council’s recently approved Management of Real Property Policy.

Financial Impact Statement

There is no immediate financial impact associated with this report.

Recommendation

Staff recommend that the Corporate and Residential Services Committee recommend to adopt the proposed revised Disposal of Surplus Real Property Policy.

Recommended Motion

Regular Meeting of Council (Policy & In-Camera) - September 17, 2024

Move that the Corporate & Residential Services Committee recommends to Council that Council give notice of intent to repeal the Council Disposal of Surplus Property Policy and approve the new Disposal of Surplus Real Property Policy as attached to the Executive Committee agenda dated September 17, 2024.

Regular Meeting of Council - September 25, 2024

Move that the Corporate & Residential Services Committee recommends to Council that Council repeal the Council Disposal of Surplus Property Policy and approve the new Disposal of Surplus Real Property Policy as attached to the Executive Committee agenda dated September 17, 2024.

Background

Since real estate service functions were centralized in Corporate Services in 2021, as of the date of this report, East Hants has disposed of four (4) Real Properties under the current Disposal of Surplus Property Policy (South Rawdon Community Hall, former Burntcoat School Property, Shubenacadie Community Hall, and E.H. Horne School). Open space disposals and business park land disposals are not subject to the current Disposal of Surplus Property Policy.

The current Disposal of Surplus Property Policy describes when, why, how, and to whom East Hants can dispose of Surplus Real Property. This policy was adopted in June 2010, with no formal updates brought to Council since its adoption. An update to the policy is recommended, under the Policy Review Program and to address lessons learned from the aforementioned surplus disposals. Staff recommend making a slight revision to the policy name, naming the proposed revised policy the Disposal of Surplus Real Property Policy (the “Policy”) to align with nomenclature of Council’s recently approved Management of Real Property Policy.

As part of the review and update of the Policy, the Manager of Real Estate & Corporate Projects engaged the following staff members:

- Policy Analyst (prior to their departure);
- Manager of Economic & Business Development;
- Procurement Officer;
- Director Team; and
- CAO.

Discussion

The proposed revisions stem from wanting the Policy to reflect the lessons learned from surplus disposals conducted during the current Council term, with the intent of establishing a revised Policy to provide guidance to future Council(s).

GENERAL REVISIONS

Template Changes

This Policy required housekeeping edits to align with current Municipal policy templates.

Staff also re-structured the sections of the Policy to align content under like-categories.

Revised - Purpose Section

The “Purpose” section was modernized with current Municipal policy trends and aligns with the language and content of the recently approved Management of Real Property Policy. Some of the “Objectives” in the current Disposal of Surplus Property Policy were better suited for the Management of Real Property Policy and thus were captured there rather than the proposed revised Disposal of Surplus Real Property Policy, such as current objective numbers 1 and 2.

Added - Scope Section

The current policy does not have a “Scope” section. A “Scope” section was added to the proposed revised Policy to align with current Municipal policy templates and provide clarity of what is included or excluded.

The proposed revised Policy notes that the Policy applies to all staff with the responsibility for or involvement in the management and disposal of Real Property. It further clarifies what is exempt from the Policy, including Real Property disposed of in Municipal Business Parks (managed under the Business Parks Pricing Policy), Real Property disposed of via tax sale procedures (managed under the *Municipal Government Act*), Real Property expropriated from East Hants (managed under the *Expropriations Act*), etc.

The Policy notes Real Property that was acquired via dedication or transfer to East Hants through the development application, site plan, or subdivision process, such as Open Space lands, shall follow the Policy as a form of guideline to support fair, open, and transparent approaches to disposals; however, the disposal of such lands is ultimately the decision of Council under the *Municipal Government Act* (“MGA”) section 273(13).

Added - Definitions

The current policy does not have a “Definitions” section. A “Definitions” section was added to the proposed revised Policy to align with current Municipal policy templates and provide clarity of terms throughout the Policy. Staff ensured alignment between definitions in the Policy and the recently approved Management of Real Property Policy.

Removed - Power to Acquire

Policy Statement number 1 in the current policy outlined a municipality’s power to acquire property, copying the applicable sections from the MGA. This has been removed from the proposed revised Policy.

Revised - Unsolicited Proposals

Policy Statement number 1.4 in the current policy is a standalone section to address unsolicited proposals. In the proposed revised Policy the same intent around unsolicited proposals is streamlined and noted in the General Policy Statements Section, in clause 1.2.

Revised - Sale to Non-Profit Organizations

The current policy identifies Sale to Non-Profit Organizations as a disposal method in Policy Statement 1.3(g); the statement summarizes a municipality’s power to dispose at a price less than market value per *Municipal Government Act* section 51. In the proposed revised Policy, there is more direct discussion around the disposal value, grouped under the Surplus Considerations section in clause 2.6.

Revised - Disposal Proceeds

The current policy contains section 1.5. entitled “Investment Proceeds from the Sale of Municipally-Owned Property”. The intent of this section has been transferred to the proposed revised Policy under section 5, streamlining the language to minimize copying from the MGA.

SIGNIFICANT CONTENT CHANGES

Added - Determining Fair Market Value

In the current policy, determination of market value is specific to the method of disposal. Market value itself is not defined in the current policy.

The proposed revised Policy defines Fair Market Value and provides clarity on how to determine Fair Market Value, including applicable requirements for an Appraisal or an Opinion of Value in sections 2.7 through 2.9.

Added - Real Property Disposal Categories

The proposed revised policy introduces the idea of categorizing Real Property prior to its disposal based on its disposal potential, in clauses 1.3.2 and 2.5. The categories are:

- Economic Development Disposal (excludes land in business parks);
- Community Interest Disposal;
- Ordinary Disposal;
- Remnant Disposal;
- Extraordinary Disposal; and
- Intergovernmental Transfer.

These categories are further outlined in Table 1 of the proposed revised Policy.

The recommendation to categorize Real Property comes from lessons learned from recent disposals under the current Disposal of Surplus Property Policy, an opportunity to increase transparency for disposal methods, and is based on trends from a jurisdictional scan of municipal disposal of property policies and guidelines.

Added - Disposal Methods

In the current policy, section 1.3 outlines the “Powers of a Municipality to Dispose of Property” and outlines a number of methods available to facilitate disposal in sections 1.3(a) through (g).

The proposed revised Policy connects disposal methods and disposal categories, providing transparency on how Surplus Real Property could be disposed of. The majority of the disposal methods themselves have remained unchanged, with points of clarity added. The disposal methods are:

- Calls for Expression of Interest: Community Return
- Request for Proposals: Economic Return
- Direct Sale: Unsolicited Offer
- Direct Sale: Abutting Property Owner
- Sale by Land Exchange
- Open Market: Sale by Listing Agent
- Open Market: Sale by Staff

These categories are further outlined in Table 2 of the proposed revised Policy.

Added - As-Is, Where-Is Condition

All recent disposals under the current policy have been disposed of in an As-Is, Where-Is Condition; while this was not explicitly noted in the current policy, it was in the best interest of East Hants per municipal legal counsel.

To reflect current practice and provide transparency to potential purchasers, the proposed revised Policy includes the following new clause:

2.10. Surplus Real Property shall be disposed of in an As-Is, Where-Is condition, unless otherwise noted.

Added - Refundable Deposit

The current policy does not reference deposits. While it has not been required under recent disposals under the current policy, it is practice under the Business Park Pricing Policy to require purchasers to submit a ten (10%) deposit as part of agreement terms and conditions. A deposit can be considered be a risk management approach that provides security to East Hants that a purchaser has incentive to follow agreement terms and conditions.

The proposed revised Policy includes the following new clause:

2.11. East Hants may require the Purchaser to submit a refundable deposit of up to ten percent (10%) of the value of their respective offer.

Added - Cost Recovery Option

The current policy does not reference any opportunities to recover the costs of disposing of Real Property. Oftentimes there are expenses to prepare a property for migration to the Land Registry and/or to complete certain requirements to proceed with an agreement of purchase and sale. While we have not historically looked to recover any costs, there may be instances, in particular with Unsolicited Offers, where Council may wish to recover certain expenses, such as a survey or migration expenses.

As such, the proposed revised Policy includes the following new clause:

2.12. East Hants reserves the right to recover certain costs relating to the disposal of Surplus Real Property from a Purchaser. These costs include, but are not limited to, appraisal, legal survey, title searches, public notice advertisement, and legal costs, unless such costs are waived in writing within the conditions of an Agreement of Purchase and Sale.

Added - Disposal Terms and Conditions

The current policy does not reference specific terms and conditions for Agreements of Purchase and Sale.

To reflect current practice, the proposed revised Policy includes the following new clauses:

4.1. East Hants reserves the right to negotiate disposals, development, and other agreements with any potential Purchaser.

4.2. Council may indicate specific key terms and conditions for an Agreement of Purchase and Sale, such as covenants to be registered against title.

4.3. The CAO shall have the authority to negotiate the terms and conditions in the agreement of Purchase and Sale on behalf of East Hants and execute the Agreement of Purchase and Sale on behalf of East Hants, subject to the CAO Authority Policy, the Delegation of Signing Authority Policy and any direction from Council.

MUNICIPAL HOUSING WORKING GROUP

Staff recognize that the proposed Policy is being presented before Council has received recommendations from the Municipal Housing Working Group. The proposed Policy is currently drafted at a high-level to ensure the Policy is applicable as municipal objectives change, as shown in Policy Purpose statement 2: “ensure Real Property is used and disposed of in a manner that supports municipal objectives.” Staff intend to bring forward further amendments to the Policy once East Hants adopts a Housing Strategy.

STRATEGIC ALIGNMENT

The draft Policy aligns with the Municipal Key Strategy of Corporate Excellence.

LEGISLATIVE AUTHORITY

Section 51 of the MGA outlines the rules for the sale or lease of municipal property.

The CAO Authority Policy includes the authority of the CAO to implement Real Property Transactions on behalf of Council.

Alternatives

Committee may recommend any other policy amendments as appropriate.

Attachments

Current Disposal of Surplus Property Policy

DRAFT Disposal of Surplus Real Property Policy