

Council Policy No.:	CP2021-034 (formerly 205 CAO 044)
Council Policy Name:	Real Property Acquisition Policy
Date Approved by Council:	May 26, 2015, CR2015-588
Date revision approved by Council:	April 20, 2021 CW2021-095/CR2021-195
Related SOP, Management Directive, Council Policy, Forms	

Policy Statement and Rationale:

The City of Kawartha Lakes acquires real property rights as required, for a municipal need consistent with City-mandated programs, projects and policies.

The purpose of this Policy is to ensure that a consistent and equitable framework is followed in acquiring real property interests which support Council-approved projects, programs and policies.

Scope:

This Policy applies where real property is acquired by the City of Kawartha Lakes and includes any right, interest or benefit in land, but is not limited to, fee simple acquisitions, leases, permanent easements, rights-of-way and other limited interests such as joint-use agreements, temporary working easements, consents to enter and licences.

This Policy applies to all City of Kawartha Lakes employees, any agents or assigns acting on behalf of the City and consultants authorized to acquire real property on behalf of the City. Real property such as road dedications and easements that are acquired through the planning/subdivision processes will continue to be dealt with as part of that process and in accordance with the Planning Act and any regulations therein.

In addition, the following municipal and provincial legislations give the City of Kawartha Lakes authority to acquire land:

Municipal Act, 2001, S.O. 2001, c. 25, s. 6, s.8 and s.10

Expropriations Act, 1990, c. E.26

Housing Development Act, 1990, c. H.18, s. 17

Ontario Heritage Act, R.S.O 1990, c. O. 18

Definitions:

Appraisal – an estimate or opinion of value or the act or process of estimating value.

Asset Rationalization – a process to support decision-making related to the acquisition, remediation or disposal of real property, in a cost effective manner, while assuring that essential program and service delivery objectives are not compromised.

Capital Projects – have funding or budgets in place and are included in the City's Capital Budget.

City Mandated Programs – support City of Kawartha Lakes initiatives.

Client Department – a City department that is a client of the Realty Services Division and requires a real property for an approved program or project.

Council Approval Report – a report to Council recommending approval of an acquisition by the City of Kawartha Lakes.

Signing Authority – authority to approve pursuant to By-law 2016-009, as amended, being a By-law to Provide Authority for the Execution of Certain Documents and Affix the Corporate Seal on behalf of the City of Kawartha Lakes.

Departmental Needs Assessment – a client department's report documenting the need for and purpose of acquiring real property.

Expropriation – acquiring real property without the consent of the owner, by an expropriating authority in the exercise of its statutory powers.

Market Value – the amount that land and improvements might be expected to realize, if sold in the open market by a willing seller to a willing buyer.

Public–Private Partnerships – legal agreements between government and private sector entities, for the purpose of providing public infrastructure, community facilities and related municipal services.

Policy:

1. Policy Requirements

The City's Realty Services Division shall undertake the acquisition of real property interests in adherence with this Policy, unless otherwise directed by City Council.

2. Departmental Needs Assessment

Prior to initiating an acquisition other than lands required for infrastructure, acquisition of environmental/waterfront lands and pursuant to the Planning Act, the client department will prepare on its behalf, or on behalf of a partner agency, a departmental acquisition needs assessment that sets out the justification and rationale for the proposed acquisition. All assessments shall be vetted through Land Management Committee in collaboration with the client department to determine whether the City's existing real property inventory, or any capital works initiatives, may fulfill the client's requirements. This process could include an asset rationalization as defined in the Integrated Asset Rationalization and Disposal Strategy of Real Property. Should it be determined that the client's needs cannot be met through the existing inventory, Land Management Committee will initiate the acquisition.

3. Council Approval

City Council approval of a project shall include authority for the appropriate person(s) or body to initiate and undertake legal surveys, appraisals, negotiations, expropriations, legal and other such related activities, as may be required.

A budget item must be approved for the program or project, including the costs of acquiring a real property and operational budget impacts, before action is taken to acquire property.

4. Funding

Funding for the acquisition of real property must be identified through a Council-approved budget item, specific to the program, project or policy defining the need, or allocated from an approved departmental budget.

5. Methods of Acquisition

5.1 Negotiation

Negotiation is the preferred method of obtaining real property rights, with compensation provided as though acquisition was pursuant to the Expropriations Act.

5.2 Expropriation

Where project requirements must be met in a timely manner, or where negotiation is unsuccessful, expropriation may be considered. The City of Kawartha Lakes has the authority to expropriate land in accordance with the provisions of the Expropriations Act. Expropriation will be used as a last resort for acquisition purposes. Where necessary, client departments shall allow for a minimum of 12 months lead time in their project planning, in anticipation that real property acquisition by expropriation may be required.

5.3 Charitable Donations

The City may acquire real property through gifts or donations, subject to Council approval, or that of its delegated authority. Before acceptance or rejection of a gift of real property, an analysis to determine the conditions of the gift, existing restrictions of encumbrances and assumption of liabilities or any tax implications, shall be carried out. A charitable donation receipt may be issued in the amount of the appraised market value of the donated real property. An independent appraisal shall determine the market value of any donated real property. A satisfactory Phase I Environmental Site Assessment will also be required. Any costs associated with the above will be borne by the donor or the client department.

5.4 Development Approval Process

The Development Services department deals with land requirements such as parkland, road widening through conditions of final approval for subdivisions, site plans or other development approvals under delegated authority.

5.5 Tax Sales – Vesting in Municipality

The municipality may acquire real property, pursuant to Part XI of the Municipal Act, 2001 (Sale of Land for Tax Arrears) and by registering a Notice of Vesting, Section 379.

5.6 Public–Private Partnerships

The City of Kawartha Lakes may acquire or dispose of an interest in real property as part of a Public-Private Partnerships to provide infrastructure, community facilities and related services that would benefit the municipality, the private sector and City residents.

5.7 Other Agencies

The City of Kawartha Lakes may acquire real property as the result of a transfer of jurisdiction from one level of government to another, such as transfer of highways, boat launches.

6. Appraisal

Real property acquisitions for consideration or tax receipt shall be supported with a current market value appraisal. An appraisal will be completed by a member in good standing of the Appraisal Institute of Canada with either a CRA or AACI designation, whichever is required for the type of property to be acquired and in accordance with the CUSPAP, Canadian Uniform Standards of Professional Appraisal.

Appraisal reports will be based on the “Highest and Best Use” of the property and will be prepared by a member of the Appraisal Institute of Canada with either a CRA or AACI designation, whichever is required for the type of property to be acquired and in accordance with the CUSPAP, Canadian Uniform Standards of Professional Appraisal.

7. Acquisition at Market Value

Subject to section 5.3 of this policy, real property shall be acquired on the basis of market value, and where applicable, entitlements, as defined by the Expropriations Act, unless other considerations are included in the transaction and approved by City Council.

Where there is a variance between the appraised value and the acquisition price, such that the acquisition exceeds the appraised value, that variance shall be explained in the approval report.

8. Environmental Due Diligence

The City of Kawartha Lakes shall complete environmental pre-screening on all real property to be acquired to identify potential contamination issues associated with real property.

When the acquisition is for the entire fee simple interest (total buyout) a Phase I Environmental Site Assessment (ESA) will be conducted. If the acquisition is of a lesser interest but there is evidence further assessment is required, a Phase 1 ESA may need to be completed. All such ESAs shall be completed in accordance with the Canadian Standards Association (CSA) and site remediation criteria, as set out by provincial regulations. Whenever possible or appropriate, acquisition agreements may provide for the indemnification of the City of Kawartha Lakes by the vendor for environmental conditions.

9. Heritage Properties

The City of Kawartha Lakes Land Management Committee will consider the City's accommodation needs before constructing or leasing new buildings.”

When acquiring real property that may have a heritage designation or historical value, a comprehensive analysis of that property shall be conducted involving the Land Management Committee and appropriate City departments. The analysis will include:

- Identification of the heritage designation or historical value of the real property
- Confirmation of the City of Kawartha Lakes program(s) to be implemented at this heritage property
- Identification of the heritage value of the real property
- Identification of the desired long-term use or protection of the real property
- Assessment of the impact of the operational costs of the real property on the City
- Development of an asset management plan, which forecasts the capital renewal and re-investment requirements, to preserve the heritage property.

Prior to the acquisition of a heritage property, Realty Services Division requires confirmation that the client department and/or City Council have provided the funding and approval for the acquisition.

10. Responsibilities

10.1 Council

City Council approval is required for projects requiring acquisition of real property, including any limited interest therein except where the total cost of the acquisition does not exceed the threshold of delegated authority.

10.2 Signing Authority

The City Solicitor in accordance with the provisions of City of Kawartha Lakes By-law 2016-009, as may be amended from time to time, has the authority to complete the acquisition of real property in accordance with the provisions of that By-law.

10.3 Client Department

The client department is responsible for reviewing, in collaboration with the Realty Services Division and the Asset Manager, the existing real property inventory and other acquisition initiatives, to determine if real property needs can be met through current inventory or initiatives, prior to the initiation of an acquisition. The client department is directly involved in the asset rationalization effort and confirms that the acquisition requirement satisfies its City-mandated program. The client department is responsible for carrying the Capital Budget in support of the real property acquisition.

10.4 Legal Services

The Realty Services Division is a division of the Legal Services Division within the CAO Department and advises the City on real property transactions.

Monitoring/Contraventions

The Realty Services Division will monitor the application of this Policy to ensure that all policy requirements are met.

References

Disposal of Real Property Policy

Legislative and Administrative Authorities

City of Kawartha Lakes Disposition of Property By-law 2018-020

City of Kawartha Lakes Disposition Policy

Expropriations Act, R.S.O. 1990, c. E.26

Environmental Assessment Act, R.S.O. 1990, c. E. 18

Ontario Heritage Act, R.S.O. 1990, c. O.18

Housing Development Act, R.S.O. 1990, c. H.18

Municipal Act, 2001, S.O. 2001, c. 25

Local Planning Appeal Tribunal Act, 2017, S.O. 2017, c. 23, Sched. 1

Planning Act, R.S.O. 1990, c. P.13

Revision History:

Proposed Date of Review:

Revision	Date	Description of Changes	Requested By
1.0	May 2019	Updated formatting to new policy template	Realty Services
2.0	January 2020	Update by-law and legislative references and references to City Divisions and Titles	City Solicitor
3.0	September 2020	Amendments to appraisal requirements (clarification to Section 7 – Acquisition at Market Value)	Realty Services
4.0	April 22, 2021	Updated Policy Number	Council