THE RURAL MUNICIPALITY OF LAC DU BONNET

POLICY & PROCEDURES MANUAL

Reference Public Works	*Classification* Policy
Subject Public Reserve Policy	*Pages* 10
Authority Council Rural Municipality of Lac du Bonnet	*Effective Date September 21, 2022*
Approved Resolution No. 2022 - 0520	*Index*

1) BACKGROUND

Section 138(1) of the Manitoba Planning Act outlines that Public Reserves land may only be used for a public park, public recreation area, a natural area, a planted buffer strip separating incompatible land uses or Public Works.

If land that is registered in the name of a municipality is used as a public park or public recreation area and has not been designated a Public Reserve land as a result of a registered plan of subdivision, it is deemed to be public reserve land for the purposes of the Manitoba Planning Act (Section 138(2)).

As per Section 135(6)(b) of the Manitoba Planning Act, as a condition in the subdivision process, the municipality may request a landowner dedicate land, without compensation, for Public Reserve purposes, not exceeding 10% of the land being subdivided but only if the land is being divided into parcels of less than 4 hectares.

Section 139 and 140 of the Manitoba Planning Act outlines the process for Closing Public Reserves and the money in place of reserve land.

2) PURPOSE

The purpose and use of Public Reserve land is often misunderstood by ratepayers and the public.
The Municipality is responsible for ensuring the Public Reserves remain safe and available for public enjoyment.

3) POLICY STATEMENT

The Rural Municipality of Lac du Bonnet recognizes there is a need to carefully manage the municipality's Public Reserve lands to provide benefits for existing and future residents of the municipality and the public, and to protect the natural environment.

The Policy provides direction for the ongoing management of Public Reserve land, the removal of existing encroachments on Public Reserves, the potential disposal of existing Public Reserve lands and the acquisition of Public Reserve lands in new subdivisions.

4) PUBLIC RESERVES

4.1 THE MUNICIPALITY'S INTENT

The management of Public Reserve land is intended to provide a suitable land base for the use and enjoyment of municipal residents and the public.

Public Reserves may provide important access links to other lands, including water access and/or drainage and can also offer undeveloped green spaces that act as buffers between different land uses.

5) GENERAL USE AND MANAGEMENT OF PUBLIC RESERVES

5.1 The RM of Lac du Bonnet may choose to provide public recreation facilities on Public Reserve lands where there is sufficient interest and demand, as determined by the municipality. Public recreation facilities the municipality may consider include sports fields, play structures, picnic sites, swimming beaches, skating rinks, community fire pits, trails, pathways, and associated facilities such as parking lots, toilets or washrooms.

Public recreation facilities will be approved by council resolution while taking into consideration the following factors:

a) Any facility must not interfere with public works infrastructure including but not limited to drainage, buffer zones and weed control.
b) Any facility must be in compliance with the RM of Lac du Bonnet Zoning By-Law.
c) The municipality will review the availability of municipal resources required to create and maintain the public facility.
d) The municipality with review the environmental effects that may be caused by the development of the facility.
e) The municipality will conduct a review and determine if the facility may cause any public safety issues.
f) The municipality will consider the overall benefit and enjoyment use of the facility will bring to the general public.
g) The municipality will consider any objections received opposing the development of any facilities.

5.2 Commercial facilities and services will generally not be permitted on Public Reserve lands. Exceptions may be considered under unique situations where there is support from local residents and at the sole discretion of the municipality. Local residents will be considered residents of the relevant subdivision or surrounding area as determined by the municipality. Commercial facilities and services will be approved by council resolution while taking into consideration the factors outlined in Section 5.1 (a-e)

5.3 Activities that are unsafe and disruptive to the public or adjoining properties, such as archery, camping or overnight use of Public Reserves lands are not permitted.

5.4 Special events such as weddings, family reunions, community events may be permitted by Council Resolution.

5.5 In Public Reserve locations that are in their natural state for purposes of green space, the removal of vegetation will not be permitted. However, vegetation removal may be considered where there is a public safety hazard as determined by the municipality. Mowing will only occur to control weeds and to reduce fire hazards. Removal of vegetation and mowing will be undertaken by the municipality or as approved by the municipality. Placement of fill material and other yard wastes (e.g. grass clippings, tree prunings) or the removal of any material will not be allowed.

6) DEVELOPMENT OF PATHWAYS ON PUBLIC RESERVES (Cottage Associations Only)

6.1 In certain situations, the municipality will approve the development of a trail or pathway through Public Reserve. Written approval from the municipality must be obtained and will be based on the following requirements:

6.2 General Guidelines (Pathways)

a) Only Cottage Associations with a minimum of three (3) members may submit a request,
b) Upon approval, the Cottage Association must provide a Certificate of Insurance listing the RM of Lac du Bonnet as an additional insured with a minimum $2,000,000 per occurrence.
c) The development and clearing of the pathway is the responsibility of the Cottage Association.
d) All approved pathways must meet the Municipal Standards for Design and Construction of Public Works Infrastructure.
e) Maintenance of the approved pathway will be the responsibility of the Cottage Association and will be outlined in a signed land use agreement.
f) All costs incurred in the development and regular maintenance of the trail will be that of the Cottage Association.
g) The Cottage Association will acknowledge that they hold no exclusive rights to the trail and that any person of the public shall not be denied access, physically or verbally, to utilize the trail.
h) The protection of the natural environment is of the upmost importance to the municipality.

6.3 Procedure for Municipal Approval (Pathways)

a) The Cottage Association must complete an application (Schedule "A") and submit to the CAO for initial review and register as a Delegation to present to Council.
b) The CAO, or delegate will advise the Cottage Association the date of the delegation.
c) Public notification of the proposed pathway will be shared with the community via social media, the RM website and through the public agenda.
d) Any objections to the proposed pathway will be considered by Council prior to approval.
    - Objections can be received by letter or email directed to the CAO.
    - All objections will be provided to Council for review at or prior to the delegation.
e) Those in objection to the proposal may attend the Delegation but may not be permitted to speak at the Council meeting in accordance with the Procedures By-Law.

f) The Public Works Department will review the proposed pathway and report to Council any concerns or perceived issues with any public works.
g) The pathway application will be brought to council by way of request for decision. Consideration will be given to, but not limited to the following factors

(1) The proposed pathway must not interfere with public works infrastructure including but not limited to drainage, buffer zones and weed control.
(2) The municipality will review the environmental effects that may be reasonably attributed to the development of the pathway.
(3) The municipality will conduct a review and determine if the pathway may cause any public safety issues.
(4) The Cottage Association must demonstrate a need for the pathway.
(5) The municipality will consider any objections received opposing the development of the pathway.

h) A decision will be made by council resolution.

6.4 Procedure after Council Decision (Pathways)

a) The Cottage Association will receive a letter notifying whether the application was approved or rejected.
b) Upon approval, a land use agreement will be signed between the RM and the Cottage Association which will include, but is not limited to the following items:

- Land use agreement for any trails that cross through Public Reserve
- Insurance requirements (section 6.2 (b))
- Acknowledgment that the trail is available for the public to use
- Maintenance requirements as determined by Public Works

c) Once the agreement is signed, the Public Works Department will mark the tree(s) and notify the Cottage Association that they (the Cottage Association) can start clearing and developing the pathway.
d) The Cottage Association will notify the Public Works Department when the trail is complete for final inspection. If the Public Works Department notes any deficiencies, the Cottage Association will be required to make corrections immediately.

7) TREE(S) AND BRANCH REMOVAL FROM PUBLIC RESERVES

7.1 Removal of any standing tree(s) or branches on the Public Reserve that are dangerous or a nuisance to the public or to private adjoining properties will be the responsibility of the municipality.

7.2 In certain situations, property owners may request permission to remove deadfall, branches and/or standing tree(s) that are a danger or a nuisance to their private adjoining property.

7.2 General Guidelines

a) No standing trees, branches or deadfall are to be removed from Public Reserve land without written approval from the municipality.
b) Any tampering with standing tree(s) is not permitted. Tampering includes, but is not limited to scoring, notching, salting and burning. If tampering or unauthorized removal occurs, it will be considered an offence and violation of municipal by-laws and will result in enforcement. The municipality may require the responsible persons to re-vegetate the area within one growing season at their own expense.

7.3 Procedure for Municipal Approval

a) Property Owners must complete an application form (Schedule "B") and submit to the CAO for initial review.
b) The CAO and Public Works Department will consider the following factors when determining approval:

    (1) The municipality will review the availability of municipal resources required to perform the work.
    (2) The municipality will assess the potential risk and danger involved in the removal of the tree(s) or branches and determine whether the work should be performed by an arborist, or other professional.
    (3) The municipality with review the safety measures planned by the applicant to perform the work.
    (4) The municipality will assess the degree of danger or nuisance the tree(s), branches or deadfall are causing on the public reserve and/or to the adjoining private property.
    (5) The municipality will review the environmental effects that may be caused by the removal of the tree(s) or branches.

c) The municipality will provide written approval including a waiver of liability agreement between the ratepayer and the RM/CAO.
d) Once the waiver of liability agreement is signed, the Public Works Department will the mark the tree(s) and notify the property owner that the work may begin.

8) Encroachments and Unauthorized Structures on Public Reserves

8.2 Encroachments and Unauthorized Structures on Public Reserves

Private structures and private facilities are occasionally found to be located on Public Reserve lands.

"Private Structures" being houses, garages, shops, sheds, barns, driveways, material storage
"Private Facilities" being decks, fire pits, storage sheds, fences, gardens

This part of the policy deals primarily with encroachments and unauthorized structures that existed on a Public Reserve **before the adoption of this policy**. Developments that occur after adoption of this policy will be expected to adhere to this policy, thereby avoiding new encroachments and unauthorized structures on Public Reserve lands.

8.2.1 The owner of an unauthorized structure on a Public Reserve will be issued a notice of violation and will be asked to remove the structure. If the owner does not comply by the date on the Order, the municipality may take the necessary enforcement actions and charge the owner for its costs. The owner will have the opportunity to Appeal the order as outlined in the Enforcement By-Law.

8.2.2 Following the Appeal, the municipality may consider allowing an encroachment to remain on the Public Reserve if there are extremely unusual or extenuating circumstances. Council will conduct a thorough review of the special circumstances, consider all documentation provided and make a decision by Council resolution.

Council may also consider the following factors:

a) If removal of a private structure will result in an unacceptable level of environmental effects (as determined by the municipality), the municipality may enter into an agreement that allows the structure to remain on Public Reserve lands.

8.3 If the municipality considers it appropriate to allow an encroachment to remain, the owner shall enter into a written agreement with the municipality.

Conditions of the agreement would include:

a) Legal descriptions of all lands, the permitted use of the building or structure, and insurance requirements.

b) The agreement will specify that minor maintenance may be undertaken, but the building or structure could not be improved, expanded, or replaced.

c) When the building or structure reaches the end of its useful life, the owner will be required to demolish the building or structure by obtaining a Demolition permit through the Planning Department.

d) The municipality may allow the transfer of the agreement to another party.

8.4 All other private facilities like lawns, decks, fire pits and storage sheds will be removed from the Public Reserve lands. The property owner will be issued a notice of violation and will asked to remove the private facilities. If the owner does not comply by the date on the Order, the municipality will take the necessary enforcement actions. The owner will have the opportunity to Appeal the order as outlined in the Enforcement By-Law.

9) LANDLOCKED PUBLIC RESERVES

The municipality may encounter unique situations where historical subdivisions allowed for Public Reserve land dedications that do not serve a functional use to the municipality and/or create a developmental restraint on new and/or current property owners. A policy outlining steps on how to manage these unique situations is required and are outlined as follows:

9.1 Procedure for Municipal Approval (Landlocked Public Reserves)

a) The property owners may appear to Council as a Delegation outlining the request.

b) The municipality will review and determine if the Public Reserve:

i) Affects other adjacent properties

ii) Serves a functional use to the municipality

ii) Was a historical subdivision land dedication that serves no purpose.

c) Once a thorough review is conducted, the municipality may by Council resolution provide the following option to the property owner:

i) Closing the Public Reserve and transferring the land to the property owner(s) or dividing the land amongst adjoining affected properties. (Section 11) Costs incurred from legal, land surveys, land transfers will be the responsibility of the property owners.

ii) Due to the lengthy process involved in carrying out Section 9.1 (c)(i) the municipality will allow the property owner(s) to obtain a temporary permit and enter into a written agreement allowing the temporary encroachment onto a Public Reserve.

d) Conditions of the agreement would include:

i) Agreement to proceed with the closing of the Public Reserve process (section 9.1.3 a)).
ii) The permitted use of the building or structure
iii) The municipality may allow the transfer of the agreement to another party.

10) DEDICATION OF PUBLIC RESERVES IN NEW SUBDIVISIONS

10.1 As new subdivisions are proposed, the municipality has the opportunity to either:

a) Acquire new public reserve lands
b) Money in lieu of land dedication or
c) Combination of land and money.

10.2 The municipality continues to encounter many historical subdivisions with land dedications that serve no purpose due to size and location resulting in development restraints for homeowners. The following policy will guide Council in determining Public Reserve requirements for new subdivisions:

a) Council will thoroughly review each proposed subdivision plan individually and all recommendations from the Regional Planning office.

b) Upon review, Council will take note of any proposed land dedications and determine if such land dedications serve any purpose, such as required buffers and drainage systems.

c) In cases where land dedication serves no required purpose, Council will not accept new reserve lands but rather accept money in lieu of land dedication.

11) CLOSING PUBLIC RESERVES

The Manitoba Planning Act provides that subject to section 138 (2) of the Manitoba Planning Act, a municipality may close a Public Reserve by passing a by-law to close the Public Reserve land. The municipality will also be required to follow the legislative requirements such as obtaining written approval of the by-law from the minister, register the approved by-law, and if required by a district registrar, register the plan in the appropriate land titles office.

Before giving second reading of the by-law to close a Public Reserve land, Council must hold a public hearing to hear representations from the public and provide the required notices as set out in the Manitoba Planning Act.

12) DISPOSAL OF PUBLIC RESERVES

The Manitoba Planning Act allows the municipality to prepare a by-law to sell or lease Public Reserve lands. The Acts requires that Council give notice of its intent to sell or lease Public Reserve lands and hold a public hearing.

12.1 PROCEDURES FOR DISPOSING OF RESERVES

The municipality may consider the disposal of public reserves based on the following procedures:

a) The municipality will not normally dispose of reserve lands. Disposal will only be considered in exceptional circumstances where the municipality has carefully considered existing and future use of the property, and as outlined in Section 9.

b) The municipality may consider subdividing surplus reserves for a use that conforms with the use of surrounding lands, as outlined in Section 9.

c) Money raised from the sale or lease of the surplus reserve lands will be placed in a municipal reserve trust fund as required in the Manitoba Planning Act. Proceeds may be used to support recreation development for existing reserves or for the acquisition of lands for new parks or open spaces.

13) POLICY IMPLEMENTATION

13.1 The municipality may develop an ongoing public information campaign on the purpose of public reserve lands and the appropriate use and management of public reserves.

Signature
Reeve

Signature
Chief Administrative Officer

Public Reserve Policy
Schedule "A"
Application Form - Pathway/Trail on Public Reserve Approval

Applicant Name: _____ Date: _____

Cottage Association ☐ YES ☐ NO Manitoba Association of Cottage Owners (MACO): ☐

If YES, name of Cottage Association: _____

Number of Members: _____

Phone Number: _____ Email Address: _____

Mailing Address: _____

Civic Address: _____

Location of the Proposed Project:

Please enter a description of proposed project (include any maps and drawings of proposed pathway):

On behalf of all members of the Cottage Association, I _____hereby acknowledge and understand that we, the Cottage Association, hold no exclusive rights to the trail and that any person of the public shall not be denied access, physically or verbally, to utilize the trail.

Additionally, we acknowledge that the Cottage Association will be required to enter into an agreement with the Municipality for land use, maintenance requirements, waiver of liability and insurance requirements upon approval.

Date: _____ Signature: _____

OFFICE USE

Date Received: _____ Reviewed by CAO: _____

Delegation Date: _____

☐ Approved Resolution Number: _____

☐ Denied Reason Denied: _____

Public Reserve Policy
Schedule "B"
Application Form – Tree or Branch Removal on RM Public Reserves

Applicant Name: _____ Date: _____

Phone Number: _____ Email Address: _____

Mailing Address: _____

Civic Address: _____

Please enter the location of the Public Reserve:
(Include any maps and drawings)

Please enter the reason(s) for the proposed work:
(For example: safety concerns, damages to property, unsightly, etc.)

I, _____, hereby certify that the information included in this application is true and correct. I acknowledge and understand that I will be required to enter into an agreement with the municipality to perform work on municipal land and sign a waiver of liability upon approval of this application.

Date: _____ Signature: _____

OFFICE USE
Date Received: _____ Reviewed by CAO: _____

☐ CAO Approval

☐ Denied Reason Denied: _____