

Staff Report for Decision

DATE OF MEETING | MARCH 20, 2019 |

AUTHORED BY | CHRIS SHOLBERG, CULTURE & HERITAGE PLANNER |

SUBJECT | CULTURAL FACILITY MULTI-YEAR LEASE AGREEMENTS |

OVERVIEW

Purpose of Report

To respond to Council's request to explore opportunities for granting longer-term lease agreements to various arts organizations in the City. |

Recommendation

That the Finance & Audit Committee recommends that Council direct Staff to utilize a 10 year term of occupancy, with the option to renew for 10 additional years at the City's discretion, as the standard for future co-management and lease agreements related to City-owned cultural facilities such as the Port Theatre, Nanaimo Museum, Vancouver Island Military Museum, Nanaimo Art Gallery, and Harbour City Theatre buildings.

BACKGROUND

At its regular meeting held 2019-JAN-14, Council passed the following motion related to cultural facilities and multi-year lease agreements:

"That staff engage with Arts and Culture groups who lease property from the City of Nanaimo by May 1, 2019 to determine if the groups would benefit from multi-year lease agreements in order to be eligible to apply for grant funding from senior levels of government."

As directed by Council, Staff have engaged with Arts and Culture groups that lease property from the City of Nanaimo, including the Port Theatre, Nanaimo Museum, Vancouver Island Military Museum, Nanaimo Art Gallery and Harbour City Theatre, and can confirm the following information with respect to Council's motion.

Provincial/Federal Government Capital Funding Programs:

Two key capital funding programs exist for cultural facilities at senior levels of government. One is the Federal Government's *Canada Cultural Spaces Fund* and the other is the Provincial Government's *Community Gaming Grants related to Capital Projects*.

Under the *Canada Cultural Spaces Fund* eligible projects include construction and/or renovation projects, and specialized equipment purchases related to cultural infrastructure intended for professional arts and/or heritage activities.

To be eligible, organizations who apply for a construction and/or renovation project must demonstrate that they own the building or have a long-term lease (minimum of 10 years, or

5 years with a 5 year optional renewal period). Specialized equipment purchases are not subject to this long-term lease requirement.

Under the *Community Gaming Grant* program, eligible capital projects, including renovation or maintenance projects, require that the facility be leased to the cultural organization on a long-term basis.

- More specifically, the grant applicant must have a signed unconditional fixed-term (10 year minimum) lease and provide a stated intention to maintain the facility into the future.
- Organizations with fewer than 10 years remaining on their lease must include a signed letter (tenant and landlord) indicating a commitment to renew the lease upon its expiration.
- The applicant must also have authorization from the owner of the property, authorizing the applicant to perform work, or apply for permits to perform work on the project/property.

Co-Management Agreements and the Right to Occupy Terms:

For the past two decades, the City has used co-management style lease agreements with respect to its key cultural facilities including the Port Theatre, Nanaimo Museum, and Nanaimo Art Gallery. The purpose of the co-management agreement, which is a binding legal contract, is to permit non-profit cultural organizations to operate and maintain City-owned cultural facilities for a specified period of time under mutually agreed upon terms and conditions. A co-management lease agreement recognizes that the arts group is managing the facility on the City's behalf and involves the City providing operational funding.

Historically, the term of occupancy for leasing cultural facilities has been 5 years, with the option to extend the term for an additional 5 years. Currently, both the Port Theatre and the Nanaimo Museum operate under this model.

In 2013, a new lease agreement was adopted for the Nanaimo Art Gallery which expanded the term of occupancy to 10 years, with the option to extend the term for an additional 10 years at Council's discretion. This was done in part to address the Gallery's need to access a wider variety of funding opportunities to undertake internal renovations and to ensure the gallery met professional exhibition requirements.

In 2013, the City also entered into a 10 year license of use lease agreement (with the option to extend the term for an additional 10 years at the City's discretion) with the Vancouver Island Military Museum operating from the old Museum building at 100 Cameron Road. This lease agreement does not currently include any operating grant commitments.

Finally, in 2013 the City sought a new theatre operator for what is now the Harbour City Theatre at 25 Victoria Road. The Harbour City Theatre Alliance was selected and commenced operation in 2014. At the time, it was decided that a 5 year license of use style lease agreement would be the best vehicle for managing the operation of the City-owned theatre building in the short-term, given that the Alliance was a new organization and untested. Unlike the Military Museum, a small operating grant is attached to this license of use agreement. After five years of successful operation, the Alliance has proved their ability to sustain the theatre operation and are keen to continue operating and growing the theatre in a longer-term relationship with the City. The

Alliance has indicated a desire to seek capital funding for improvements to the facility in future, and requires a minimum 10 year term of occupancy to be eligible for a wider range of funding streams.

For Council's reference, a summary of the terms of occupancy for Nanaimo's cultural facilities and associated operating grants is provided as Attachment A.

Expanding the Term of Occupancy:

Based on discussion with the non-profit arts/cultural groups who operate the City's key cultural facilities, there is support for longer-term multi-year co-management style lease agreements.

The general consensus is that these types of agreements have been beneficial to both the City and the facility operators, and have fostered a cost-effective and positive working relationship between both parties. Lengthening of the City's traditional terms of occupancy for leases is also considered a positive step, which will increase operational certainty for the culture groups and ensure that they can access funding opportunities for capital improvements to City-owned cultural facilities from senior levels of government where the opportunity arises. |

OPTIONS

1. That the Finance & Audit Committee recommends that Council direct Staff to utilize a 10 year term of occupancy, with the option to renew for an additional 10 years, as the standard for future co-management and other types of lease agreements related to cultural facilities such as the Port Theatre, Nanaimo Museum, Vancouver Island Military Museum, Nanaimo Art Gallery, and Harbour City Theatre buildings).
 - **Policy Implication:** Creating a standard form of agreement will ensure that all future agreements are consistent amongst the Arts community.
 - **Budget Implication:** The 2019-2023 Financial Plan reflects operating grants and maintenance required of the facilities.
 - **Legal Implication:** The City Solicitor will prepare the co-management agreement. By entering into the agreement, the City is required to post a Notice of Disposition for two consecutive weeks as outlined in the *Community Charter*.
 - **Strategic Priorities Implication:** A longer term of occupancy provides increased operational certainty for the cultural groups involved. This furthers Cultural Vitality goals in the 2016-2019 Strategic Plan Update, and the 2014 Cultural Plan's support for collaborative partnerships and sustaining the arts and culture groups through investment in cultural facilities and access to affordable spaces for cultural groups.
 - **Political Implication:** This approach would be well received by the arts community who have been advocating for secure, subsidized/affordable space to support arts and culture.
 - **Other Implications:** Commits Council to 10 year financial obligation with a specific cultural group along with provision of associated operating grant and lost potential income from market rental of City-owned assets. Limits flexibility in accommodating future requests for space/use of these assets from other non-profit organizations.
2. That the Finance & Audit Committee recommends that Council direct Staff to continue having a variety of different terms of occupancy for co-management and lease agreements

related to cultural facilities such as the Port Theatre, Nanaimo Museum, Vancouver Island Military Museum, Nanaimo Art Gallery, and Harbour City Theatre buildings.

- **Policy Implication:** This would maintain the existing terms of occupancy that vary from 5 years to 10 years, with the option to renew for 5 or 10 additional years respectively at Council's discretion. Provides flexibility for negotiating different types of lease agreements for different organizations.
- **Budget Implication:** The 2019-2023 Financial Plan reflects operating grants and maintenance required of the facilities.
- **Legal Implication:** Co-management and other lease agreements to be prepared by the City solicitor regarding Notice of Disposition in local newspapers as outlined in the Community Charter.
- **Strategic Priorities Implication:** Providing access to operating funding and space in City-owned facilities is consistent with supporting Cultural Vitality values in the 2016-2019 Strategic Plan Updates, and the 2014 Cultural Plan's support for collaborative partnerships, sustaining the arts and culture groups through investment in cultural facilities, and access to affordable spaces for cultural groups. However, shorter terms of occupancy for leases do not provide longer-term operational certainty for cultural groups and limits their ability to pursue a wider range of funding opportunities.
- **Political Implication:** This approach may not be well received by the arts community who have been advocating for secure, subsidized/affordable space to sustain and support the growth of community arts.
- **Other Implications:** Provides Council with opportunity to have shorter commitments for leases on some cultural facilities. This would reduce the timeframe for financial obligations related to provision of associated operating grants and the lost potential income from market rental of City-owned assets. Provides more flexibility in accommodating future requests for space/use of these assets from non-profit organizations. Limits opportunities of cultural groups to pursue a wider range of funding for capital improvements.

SUMMARY POINTS

- Council directed Staff to engage with Arts and Culture groups who lease property from the City of Nanaimo by 2019-MAY-01 to determine if the groups would benefit from multi-year lease agreements in order to be eligible to apply for grant funding from senior levels of government.
- Based on review of two key federal and provincial capital funding programs and input from arts/culture groups operating City-owned cultural facilities, it is apparent that multi-year co-management or lease agreements with a minimum 10 year term of occupancy, plus the option to renew for an additional 10 years at the City's discretion, would be beneficial by increasing operational certainty and ensuring all the arts/culture group operators can access funding opportunities for capital improvements to City-owned cultural facilities.

ATTACHMENTS

ATTACHMENT A – Summary of Cultural Facilities Terms of Occupancy and Operating Grants

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