

DATE OF MEETING DECEMBER 4, 2023

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LEGISLATIVE SERVICES

SUBJECT **Nanaimo Operations Centre Alternative Approval Process**

OVERVIEW

Purpose of Report

To provide Council with options to proceed with Nanaimo Operations Centre Phase One Borrowing Bylaw 2023 No. 7362.

Recommendation

That Council move forward with a second Alternative Approval Process in relation to “Nanaimo Operations Centre Phase One Borrowing Bylaw 2023 No. 7362” and:

1. determine the total number of electors of the area to which the approval process applies (the whole of the City of Nanaimo) to be 78,892;
2. establish a deadline of 4:30 p.m. on Tuesday, 2024-FEB-20 for receiving elector responses for the Alternative Approval Process in relation to “Nanaimo Operations Centre Phase One Borrowing Bylaw 2023 No. 7362”; and,
3. approve the Elector Response Form as attached to the Staff report titled “Nanaimo Operations Centre Alternative Approval Process” dated 2023-DEC-04.

BACKGROUND

Further to Council direction provided at its Regular Council Meeting held 2023-JUN-19, the City conducted an Alternative Approval Process (AAP) to obtain approval of the electors for the adoption of “Nanaimo Operation Centre Phase One Borrowing Bylaw 2023 No. 7362”. This bylaw would authorize the City to borrow up to \$48,500,000 for phase one construction of the Nanaimo Operations Centre.

Mayor and Council received correspondence on November 15, 2023, questioning the validity of the notice provided for the Nanaimo Operations Centre (Public Works buildings) AAP. Staff reviewed the matter and found that despite the notification requirements outlined in City of Nanaimo Public Notice Bylaw 2022 No. 7325, and the 37 days allotted above the 30 days required for the AAP process, an administrative error was made when the notices were combined and the timing of such notices did not meet the legislative requirements.

The AAP for phase one of the Nanaimo Operations Centre began on September 27th and closed on November 3rd. Eligible voters had a 37-day period to vote against the borrowing bylaw (the Provincial requirement for an AAP, as outlined in the *Community Charter*, is 30 days). The AAP was advertised through a number of ways including:

- a published Notice in the Nanaimo News Bulletin, City Hall public notice board and the City of Nanaimo website
- an open house information session held 2023-SEP-13
- a published brochure outlining the AAP process
- posters placed at all City owned facilities
- five news releases issued by the City of Nanaimo
- a banner strategically placed on the home page of the City's website
- a number of Facebook, Twitter and Instagram posts
- a number of mentions on a weekly basis in the City's weekly eNewsletter "My Nanaimo This Week"
- a video regarding the Nanaimo Operations Centre posted to YouTube
- two videos on the City's website regarding information on how to participate in the Nanaimo Operation Centre (NOC) AAP and what an AAP is

In addition to the items noted above, staff and Council provided information through responses to a large volume of phone calls, emails and in-person inquiries. Staff followed and attempted to work beyond the requirements provided in the Provincial Guidelines for conducting an AAP.

Response forms, in accordance with the legislation, were available daily in-person at City Hall, or available to print from home. Any person could pick-up or print as many forms as they would like; hand them out to as many as they would like; return the forms for themselves or on behalf of others; or, mail the response forms in to City Hall.

Following the deadline of November 3, 2023, and as outlined in section 86(8) of the *Community Charter* and reiterated in the Provincial Guidelines for the Alternative Approval Process, an AAP is not a vote and therefore there are no provisions to allow for scrutineers to be appointed to verify the acceptance or rejection of response forms by the Corporate Officer. Privacy considerations must be taken into account during the results determination as well. As it is not a vote and not a ballot, the information contained on the response forms is personal information to the individuals completing the form and not anonymous like a ballot. Consent would have to be provided for the information to be shared and would cause barriers to those responding and wishing to be anonymous. The Corporate Officer may be assisted in the review of elector response forms by other staff familiar with the process (e.g. Deputy Corporate officer). Only the Corporate Officer can determine the results and the Corporate Officer's determination is final and conclusive pursuant to section 86(9) of the *Community Charter*.

The legislation only requires the Corporate Officer to review and certify individual response forms if the number of response forms reaches or exceeds the 10% threshold. We received 3,058 response forms in the original AAP and though reviewing each response was unnecessary, there were obvious copy duplicates and non-eligible electors (residents from Parksville, Qualicum Beach and Ladysmith) that were blatant during the count and were removed. The total number of valid response forms was 3,035.

A number of comments were received regarding dissatisfaction with the AAP process and the Nanaimo Operations Centre project itself. The following information is to provide further clarification on *some* concerns we have heard:

The AAP:

- The Province provides guidelines for best practices on when to hold an AAP versus a Referendum (Assent Vote). When Council determined the process to be followed, Council considered these best practices, the costs associated with them, and took into account that a City service (for example: RCMP/Operations Center, Water Treatment Plant, Fire Station) is a service that is required to continue to serve the community and elector approval is best done through an AAP. City amenities, conversely, generally go to a referendum as they are not needed to maintain operations of the City.
- AAPs offer increased accessibility over Assent Voting (Referendum) by having a minimum 30 days (37 days in the case of the Nanaimo Operations Centre AAP) for electors to express their views rather than being limited to 3 designated days to cast a ballot.
- Each project requiring electoral approval is subject to Council's direction regarding which approval process is used.
- If a project is necessary to continue to provide services to the community the alternative to borrowing the funds (and seeking electoral approval) is a tax increase over a few years, which could be an undesirable alternative.

The Nanaimo Operations Centre:

Attachment C – Nanaimo Operations Project Overview

Borrowing:

- The maximum amount that may be borrowed under the borrowing bylaw if elector and Council approval is attained is \$48.5 million. For the typical home in Nanaimo with an assessed value of \$808,873, the estimated impact is \$77 per year based on a 20 year borrowing term at 4.78% (at November 27, 2023). The City will draw on the borrowing as the funds are required and only borrow the amount required to complete the project, which may be less than the \$48.5 million. The actual rate at the time of borrowing will vary from the rate used to calculate the estimate impact per typical house and may vary between borrowings.
- Debt servicing costs will be funded through property taxation. Currently the City has two long-term borrowing funded by property taxation – the Port of Nanaimo Centre (VICC) which will be retired in 2026 and 2027 and Fire Station #4 which will be retired 2027. The City also has short-term borrowing included in the 2023 – 2027 Financial Plan.

DISCUSSION

Due to the error in meeting the notice requirements in the legislation and to ensure an open and transparent process, staff recommend a second AAP process commencing in January 2024.

In order to proceed with borrowing to construct phase one of the Nanaimo Operations Centre project, Council is required to have approval of the electors prior to bylaw adoption in accordance with the *Community Charter*.

The new AAP process would involve at minimum the following:

- Information sharing/Communication: Above and beyond the communication efforts noted above for the last AAP, additional newspaper notices would run on a weekly basis in the Nanaimo News Bulletin throughout the AAP timeframe; radio ads outlining the AAP process and information about the Nanaimo Operations Centre project will be done; and other communications strategies such as utilizing “Get Involved Nanaimo” would be undertaken.
- Public Notice: Notification is mandatory as outlined in the City’s Public Notice Bylaw and section 94 of the *Community Charter*. To avoid the holiday season, and ensure more eligible electors can participate, Staff are planning to publish the notices in January. The notices would appear in the Wednesday, 2024-January 10th and 17th edition of the Nanaimo News Bulletin, and on the City of Nanaimo website. The Notice will also be posted at City Hall.
- Elector Response form Submission Period: Council must establish the deadline for receiving elector responses, a minimum of 30 days after the publications of the second notice and the period set by Council cannot be extended. Tuesday, 2024-FEB-20 is 34 days after the notice publications.
- Determination of Certification of Elector Approval Responses (10 per cent threshold): The Corporate Officer must determine and certify the number of valid Elector Response Forms received by the deadline, and whether electoral approval has been obtained. A report to Council will follow, likely at the 2024-MAR-04 Council meeting.
- Council Decision on Next Steps: Elector approval is deemed to have been obtained if less than 7,889 valid Elector Response Forms in opposition to Bylaw No. 7362 are received prior to 4:30 p.m. on Tuesday, 2024-FEB-20. Council would then be able to consider bylaw adoption. Should 7,889 or more opposition responses be submitted, Council could only move forward with the project through a successful referendum (assent voting).

Fair Determination of the Total Number of Electors:

Section 86(3) of the *Community Charter* requires that a fair determination be made of the total number of electors within the City of Nanaimo, which forms the basis of the 10 per cent threshold. It was determined that there are 78,892 electors based on the following:

- 76,522 electors on the City of Nanaimo voter’s list for the 2022 Municipal Election;
- 697 new electors registrations for the 2022 Municipal Election;
- 689 new electors since the Municipal Election (approx. 13 months), based on a 1.9% population increase per year according to census data;
- 82 registered non-resident property electors in the 2022 Municipal Election; and,
- Therefore, the fair determination of electors is 78,892.

Should direction from Council be received to look into other methods of receiving response forms, this could be done; however, it is recommended that it be for future AAPs. The Provincial Guidelines state:

*“Local governments **may** choose to allow electors to submit response forms by e-mail or by fax. These methods for submitting elector response forms are not covered by provincial legislation, and any policies related to electronic submissions would best be set out by local governments in a formal policy document. This policy may also set out certain provisions around electronic submissions, including a requirement that an original signed response form be submitted to the Corporate Officer as soon as reasonably possible after the electronic submission was sent.”*

As noted above, a formal policy would be best to set out these alternative ways of submitting forms that are not covered by the legislation. Work with our IT department to determine the ability to ensure emails are not blocked by our firewall and/or no spamming could occur, yet continuing to maintain cyber security would also need to be determined. The requirement that an original signed response form be submitted to the Corporate Officer as soon as reasonable after the electronic submission was sent, and/or receiving duplicates from drop-off/mail-in/and email would increase the administrative time and may complicate the process for the electors. Any policy regarding electronic submissions would need to be stated on the elector response form.

OPTIONS:

1. That Council move forward with a new Alternative Approval Process in relation to “Nanaimo Operations Centre Phase One Borrowing Bylaw 2023 No. 7362” and:
 1. determine the total number of electors of the area to which the approval process applies (the whole of the City of Nanaimo) to be 78,892;
 2. establish a deadline of 4:30 p.m. on Tuesday, 2024-FEB-20 for receiving elector responses for the Alternative Approval Process in relation to “Nanaimo Operations Centre Phase One Borrowing Bylaw 2023 No. 7362”; and,
 3. approve the Elector Response Form as attached to the Staff report titled “Nanaimo Operations Centre Alternative Approval Process” dated 2023-DEC-04.
 - The advantages of this option: Electors would have 34 days to submit their response form and the AAP process does not require them to appear in person on designated days to express their opinion, making this method of elector consent more convenient for electors and suitable for a project that is considered necessary to the community.
 - The disadvantages of this option: If the AAP is unsuccessful Council will have the option to proceed to a referendum which would then increase costs significantly.
 - Financial Implications: Holding an AAP is done with much lower costs than by conducting a referendum.
2. That Council not move forward with the Alternative Approval Process. Council may wish to not pursue this matter.
 - The advantages of this option: There would be no impact to the City’s borrowing capacity.
 - The disadvantages of this option: The current Public Works, and the Parks Operations Yard are no longer able to meet operational or seismic requirements and therefore Staff would need to return with alternative options to address these issues as this project is considered necessary to the community.

- Financial Implications: There would be no impact to the City's borrowing capacity and future projects could access this borrowing room; however, future upgrades or improvements to the Public Works and Parks Operations Yards could result in higher cost estimates.
3. That Council moves forward through an Assent Voting Process – “Assent Voting” is often referred to as a referendum. Council is not obligated to conduct an AAP, and instead could proceed to an Assent Voting process.
- The advantages of this option: A referendum provides a process similar to an election and can list more than one question on the ballot.
 - The disadvantages of this option: Conducting a referendum involves the same resources and more costs than holding a general election (approximately \$297,000).
 - Financial Implications: The costs and Staff resources associated with Assent Voting are significant and more than a general election.

SUMMARY POINTS

- A challenge to “Nanaimo Operations Centre Phase One Borrowing Bylaw 2023 No. 7362” could be brought forward due to an administrative error with the combined notices completed and the timing of such notices not meeting the legislative requirements.
- The Province provides guidelines for best practices on when to hold an AAP versus a Referendum (Assent Vote).
- AAPs offer increased accessibility over Assent Voting (Referendum) with having the minimum 30 days (37 days in the case of the Nanaimo Operations Centre AAP) for electors to express their views rather than being limited to 3 designated days to cast a ballot.
- Should Council proceed, the new AAP would commence 2024-JAN-18 following the publication of the second notice and elector approval is deemed to have been obtained if less than 7,889 valid Elector Response Forms in opposition to Bylaw No. 7362 are received prior to 4:30 p.m. on Tuesday, 2024-FEB-20.

ATTACHMENTS:

- Attachment A – Draft Elector Response Form
- Attachment B – Draft Notice to Electors
- Attachment C – Nanaimo Operations Centre Overview

Submitted by:

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