

City of Nanaimo

Alternative Approval Process Review

Lisa M. Zwarn

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1.0 EXECUTIVE SUMMARY

The City conducted an alternative approval process (the “AAP”) in September 2023 to authorize borrowing of \$48.5 million for renovations and upgrades to the Nanaimo Operations Centre. The City posted the official notice of the AAP in accordance with its Public Notice Bylaw. Some citizens raised concerns about what they perceived as inadequate notice to the public about the AAP and about the postings of the official notice. Staff sought a legal opinion about those concerns. Based on the legal advice provided, staff advised Council to cancel the AAP and begin a new AAP later in the year.

The City began a second alternative process for that same borrowing bylaw towards the end of 2023. Based on the advice received concerning the issues concerning the first AAP, the City publishes the notice for the second AAP twice in January. Issues were raised that the elector response form was not ready on the date required under the legislation. Again, staff sought legal advice regarding these issues. As such, the Council cancelled the second AAP.

Staff acted upon the legal opinions that they had at the time, even though the initial legal advice differed from the subsequent legal advice. A misunderstanding as to when the elector response forms should have been made available impacted the second AAP.

While the use of these two AAPs was subject to their challenges, an AAP is still an appropriate tool for the City to use to obtain assent of the electors.

Several recommendations have been made to avoid the issues arising from these two AAPs and to strengthen the processes for future AAPs.

2.0 SCOPE

The purpose of this report is to examine the circumstances around the most recent alternative approval processes pertaining to the borrowing for the Nanaimo Operations Centre and to offer recommendations, where appropriate, to assist in the use of future alternative approval processes.

The opinions expressed in the report by the author are based on her experiences as a former Corporate Officer and instructor in the area of local government corporate administration. The author is not providing legal advice on this matter. While the legal opinions were provided during the AAP, the author will not be commenting on content or the quality of those legal opinions. The author's comments will only be based on the staff's conduct in light of those legal opinions.

3.0 GLOSSARY OF TERMS

30-day period – Refers to the time period set to receive the completed ERFs which starts after the second notice is published and which may be 30 days or longer.

AAP – Refers to alternative approval process as set out in section 86 of the Community Charter, commonly known as a counter-referendum.

AAP No. 1 – Refers to the AAP pertaining to the NOC Bylaw that occurred between September and November 2023.

AAP No. 2 – Refers to the AAP pertaining to the NOC Bylaw that was scheduled to occur in January 2024.

AAP Guidelines – Refers to the Ministry document entitled “Alternative Approval Process; A Guide for Local Governments in British Columbia,” updated June 2023.

Assent Voting - Refers to obtaining the consent of the electors by means of a vote as set out in section 85 of the Community Charter, commonly known as a referendum.

The Bulletin – Refers to the Nanaimo News Bulletin which is the weekly newspaper published within the City.

City – Refers to the City of Nanaimo.

Community Charter – Refers to the Community Charter, S.B.C. 2003, c. 26, as amended.

EFR – Refers to the electoral response form as used in an AAP.

Law Firm No. 1 – Refers to the law firm which provided the initial legal advice in AAP No. 1.

Law Firm No. 2 – Refers to the law firm which provided a legal opinion about AAP No. 1 and AAP No. 2 in February 2024.

Ministry – Refers to the Ministry of Municipal Affairs.

NOC – refers to the Nanaimo Operations Centre located at 2020 Labieux Road, Nanaimo.

NOC Bylaw – refers to the Nanaimo Operations Centre Phase One Borrowing Bylaw 2023, No. 7362.

Howard Avenue AAP – Refers to the AAP pertaining to the 502 Howard Avenue – Te'tuxwtun Project that occurred during around the same time as AAP No. 1.

The Project – refers to the proposed multi-million-dollar upgrades and renovations to the NOC.

PN Guidelines – Refers to the “Public Notice Guidance Materials: For BC Local Governments,” dated February 2022

PNP Bylaw – Refers to the Public Notification Bylaw, 2022, No. 7325m as amended.

4.0 METHODOLOGY

This review was conducted based on the following steps:

- (a) Interviews with staff members and one elected official;
- (b) Review of the documents generated by the City during the course of both AAPs;
- (c) Review of documents received by the City during the course of both AAPs;
- (d) Review of the Ministry’s website about Alternative Approval Process, last updated on July 11, 2023
(<https://www2.gov.bc.ca/gov/content/governments/local-governments/governance-powers/consent-approval-electors/approval-of-the-electors/alternative-approval-process>)
- (e) Review of the following Ministry’s publications:
 - i. AAP Guidelines;
 - ii. “Approval Process: Processes & Considerations for Local Governments in British Columbia”, dated August 2018; and
 - iii. PN Guidelines;
- (f) Review of various news articles pertaining to the project and both AAPs in the Bulletin; and
- (g) Review of the recorded Council Meetings of May 1, 2023, June 19, 2023, December 4, 2023, and February 12, 2024.

5.0 BACKGROUND

5.1 The Applicable Legislation

Section 94 of the Community Charter is the provision usually involved with issuing official notice by a local government to the public. If the local government is required to give notice pursuant to the Community Charter or another Act, the local government must post the notice in the public notice posting place and comply with either section 94.1 or section 94.2.

Section 94.1 is the default provision, if a local government has not adopted a bylaw pursuant to section 94.2. Section 94.1 states that a local government must post the notice once a week for two consecutive weeks in a newspaper that is distributed at least weekly.

Section 94.2 enables a local government to adopt a bylaw which provides for an alternative means of publication to the method contained in section 94.1. The public notice bylaw must specify at least two means of publication, not including the posting in the public notice posting place. The notice that would have been published in the weekly newspaper must now be published by the means specified in the bylaw and must be published at least 7 days before the date of the matter for which the notice is required unless the Community Charter or another Act provides otherwise.

Section 86 of the Community Charter sets out the regulations regarding an AAP. A local government obtains approval of the electors through an AAP if:

- (a) notice is given in the manner specified in the legislation;
- (b) electors are provided an opportunity to indicate that Council may not proceed with the bylaw, agreement, or other matter by means of an ERF; and

- (c) at the end of the time period for receiving the elector responses, the number of elector responses (which are eligible and valid) is less than 10% of the number of electors of the area to which the AAP applies.

This section articulates the content of the notice. This section also requires Council to do the following:

- (a) establish a deadline for receiving the ERFs which is at least 30 days after the second publication of the notice;
- (b) establish the ERF which may allow for only a single elector response or multiple elector responses, and which must be available to the public from the time of the first publication of the notice until the deadline; and
- (c) make a fair determination of the total number of electors of the area to which the AAP applies.

Subsection 3.1 of this section also notes that if a public notice bylaw has been adopted, the second publication of the notice for the AAP is considered to occur on the date when the notice has been published by two of the means of the publication set out in the bylaw.

5.2 Prior to AAP No. 1

5.2.1 WORK DONE BY THE PROVINCE WHICH IMPACTS THE AAP

In February of 2022, the Province amended section 94 to allow for local governments to adopt a bylaw which provided for alternative means of publishing notices. To assist local governments in developing these bylaws, the Province prepared and released the PN Guidelines. Contained with the PN Guidelines are comments about how section 94.2 would operate in terms of timing for AAP. On page 7, the Province noted the following.

30 days after publication by two of the methods

For some matters, the legislation specifies the notice deadline to be “at least 30 days after the second publication of the notice” (e.g., alternative approval process), or “within 30 days after the second publication” (e.g., local area service – subject to petition against).

If a local government has adopted a public notice bylaw, the 30-day period starts on the date when the notice has been published by two means. If notice is published on:

- *two different dates, the 30-day period starts on the day the second notice is published (as long as the first notice is still published at the same time); or,*
- *the same day, the 30-day period starts on the day both the notices are published.*

Where a local government has established more than two methods in its public notice bylaw, only the first two methods used must be considered with respect to the timing requirements. However, the notice must still be published by all the methods specified in the bylaw.

To determine how to count 30 days from the start date, please refer to the Interpretation Act for that specific section of the legislation. For example, “at least” and “within” are counted slightly differently.¹

The Ministry also provided Questions and Answers to assist the local government. One of the questions has a bearing on the issue of time of notices. It reads as follows:

Q: Have the timing and content requirements for public notice changed?

A: No. The timing and content requirements specified in the Community Charter, Islands Trust Act, Local Government Act, and Vancouver Charter continue to apply regardless of whether the local government has adopted a public notice bylaw or is

¹ Please note that this particular description, unlike the other descriptions within PN Guidelines pertaining to the timing of publications, does not include a calendar example to demonstrate how the determination of the timing would work.

using the default rules. Amendments have been made to some sections of the legislation to provide clarity on the timing rules for local governments that adopt a public notice bylaw (refer to the public notice timing section of this document for further information).

The PN Guidelines provide some insight into how the Ministry envisions a legislative provision operating in theory. However, it is not until a local government applies the new provisions to a specific set of facts that questions, concerns, and uncertainties arise. Moreover, a local government must rely upon the actual wording of the legislation, rather than any instructions provided by the Ministry through its guidelines.

The Ministry adjusted the AAP provisions to accommodate the new section 94.2. In February, 2022, section 86 was amended by adding subsection 3.1 which reads as follows:

If the notice under subsection (2) is published in accordance with a bylaw adopted under section 94.2 [bylaw to provide for alternative means of publication], the second publication is considered to occur on the date when the notice has been published by 2 of the means of publication specified in the bylaw.

In June 2023, the Province revised the AAP guidelines to provide clarity on certain points. In particular the AAP Guidelines specifically highlight that the two notices for the AAP can be published on the same day. Also, these guidelines have included a calendar example to demonstrate that the notices by the two means published at the same time have the effect of publishing two separate notices.

5.2.2 WORK DONE BY THE CITY

In the fall of 2020, the City began the planning work for the Project. At that time, the City allocated about \$200,000 to develop the plan for the project. In the fall of the following year, 2021, the completed planning work gave the City a business case which sets out the potential costs for the Project. Staff indicated, at that time, that they would be presenting possible funding strategies to Council for its consideration.

The staff developed and presented a feasibility study for the Project in June 2022.

In the spring of 2022, the City adopted the PN Bylaw instead of having to comply with the default provisions of section 94.1. This bylaw enables the City to use instead two methods of advertising, in this case, a notice printed in the Bulletin and a notice posted on the City's website. These are the only means by which the City can post an official public notice. However, the City may use other means of communication to inform the public about the content of any public notice as a courtesy.

In the summer of 2023, the Deputy Corporate Officer retired, thereby leaving the Corporate Officer as the only senior staff member for Legislative Services.

It is worthwhile to note that:

- (a) The City has been working on the Project since 2021 and this Project has been reported in the Bulletin multiple times.
- (b) There have been several successful AAPs since the one assent vote held (referendum) in 2018.

5.3 AAP No. 1

On May 1, 2023, staff presented a report to Council explaining the need for the Project, the phases which would be undertaken to complete the Project, and the need to adopt a borrowing bylaw for \$48.5 million dollars to finance the Project. Given the amount required and the time needed to repay the loan, the City would have to obtain the approval of the electors. At that meeting, Council authorized staff to proceed with phase 1 of the Project.

At the June 19, 2023, meeting, Council gave first, second and third reading to the NOC bylaw which was then forwarded to Inspector of Municipalities. Council also passed a motion to authorize staff to proceed with AAP No. 1

The Inspector of Municipalities approved the NOC Bylaw on July 14, 2023.

The procedure associated with AAP No. 1 started in September 2023. The City published the official notice in the Bulletin and on the City's website on September 27, 2023. On that same day (September 27), the ERFs for AAP No. 1 were available at the City's offices and on the website. From September 27 to November 3, 2023, the City received the completed ERFs. The last day to receive the completed ERFs was November 3, 2023.

In addition to posting the official notice as required by the NOC bylaw, the City also had a webpage specifying set out for AAP No. 1, posted information at various civic facilities². There were also news releases during the 30-day period.

² This included the Social Centre, Pool, General Complex Centennial Building, Clif McNabb Area, and Frank Crane Arena located at Beban Park, Bowen Park Complex, Services and Resource Centre, City Hall, Nanaimo Aquatic Centre, Nanaimo Ice Centre, Oliver Woods Community Centre, the Public Works Facility, Fire Administration Building, the Art Gallery, the Museum, the Vancouver Island Conference Centre, and the Port Theatre.

At the conclusion of the 30-day period, the Corporate Officer reviewed the ERFs to determine if the ERFs had been submitted by eligible electors and if the 10% threshold necessary to require an assent vote before proceeding had been reached. On November 8, 2023, the Corporate Officer certificated the following:

Estimated number of eligible electors	78,990
10% of eligible electors	7,899
Number of valid ERFs received by deadline	3,035
Percentage of estimated electors who validly submitted ERFs	3.8%

On that basis, the Corporate Officer determined that the 10% threshold had not been met and that the City could proceed with the NOC Bylaw.

On November 15, 2023, the City received a letter from a resident with concerns about the AAP. The resident requested an extension to the time period for receiving ERFs, citing inadequate efforts to notify the public about AAP No. 1³. The resident also alleged that AAP No. 1 was invalid because the City did not meet the statutory notice requirements. In particular, the resident had interpreted the provincial legislation to say the public notice had to be published on two different days in order to have a first publication date and a second publication date.

Staff sought a legal opinion from Law Firm No. 1 about the validity of AAP No. 1. On November 18, 2023, the City received that legal opinion. Based upon the legal advice, the staff advised Council that there were concerns with the validity of AAP No. 1 and offer suggestions on what steps could be taken going forward.

5.4 AAP No. 2

At the December 4, 2023, meeting, Council provided direction to staff to proceed with AAP No. 2 for the NOC Bylaw. The City posted the public notices on January 10 and January 17, 2024, in the Bulletin and on the

³ An extension is not permitted, once the 30-day period has commenced.

City's website with the 30-day period to start on January 18, 2024 and to end on February 20, 2024. Law Firm No. 1 reviewed these dates prior to the dates being presented to Council.

During this time (December and January), the Corporate Officer, who was only to be off for 2 weeks, had their leave from the office extended for 3 more weeks in order to deal with personal business. The recently retired Deputy Corporate Officer returned to work on special projects and to assist with the workload for the Council Meetings; however, they did not assume supervision of the entire department, nor did they take over the workload of the Corporate Officer. A staff member from the Legislative Services worked on AAP No. 2 in addition to their regular assigned work along with the work of preparing the Council Agendas and supporting documentation.

On January 18, 2024, Law Firm No. 1 indicated that the publication of the public notice on the same day but done by the two methods stipulated in the PN Bylaw would be defensible for the Howard Avenue AAP. The City had been conducting that AAP at the same time as AAP No. 1, which used that same publication method.

The City published the public notice on January 10 and January 17, 2023, but the EFRs were not available to the public until January 18, 2024 both at the City's offices and on the City's website.

The City received multiple emails from a resident on various aspects of AAP No. 2. In particular, the resident expressed concerns about the ERFs in terms of wording on the document, the availability of the ERF only starting on January 18, and the number of ERFs available to any one person attending City Hall.

Also, during the 30-day period for AAP No. 2, it came to light that there was an issue with the availability of the ERFs. As such, staff sought a legal opinion from Law Firm No. 2. The publication of the notice on

January 10 was intended to be a courtesy notice and January 17 was intended to be the date of the official notice. However, the ERFs should have been made available sooner than January 18. Staff could not go back in order to rely on the results of AAP No. 1, even though AAP No. 1 had met the legislative requirements, since the City had abandoned that particular process.

Staff informed Council of this error on February 5 and recommended to Council that the City cancel AAP No. 2 and take some time to determine the next steps. AAP No. 2 was cancelled.

6.0 IMPACTING FACTORS OUTSIDE OF THE CITY'S CONTROL

Both AAP No. 1 and AAP No. 2 were significantly impacted by circumstances which were outside of the City's control.

6.1 Legal Opinions

If a staff member is uncertain as to how a legal provision should be interpreted, that staff member should seek legal advice. However, until a matter has been tried in court and a judge has rendered a ruling on that provision, the staff member is receiving legal advice based on that lawyer's reading of the legislation. Needless to say, the interpretation of that provision may differ from lawyer to lawyer, even within the same law firm.

As for the concerns regarding AAP No. 1, a prudent staff member would rely on legal advice given to them at that time (even if that legal opinion would be different at a later date). In light of the knowledge and experience of the lawyer providing that legal advice, it is highly unlikely that a staff member would question the legal advice received. Given the magnitude of the situation⁴ and the legal received, a prudent staff member would re-do the process out of an abundance of caution, rather than rely upon the validity of the AAP for which there had been concerns.

⁴ This is in reference to the dollar amount for the project, the fact this was to be the first phase in a lengthy project, and the real likelihood that there could be a challenge in the courts by the residents.

6.2 The Public

During AAP No. 1, a number of residents became aware of the AAP process at a later point during the time period for receiving ERFs. It was this group's opinion that not enough was done by staff to notify the residents about the upcoming AAP No. 1.

One of these residents requested that the Council extend the time period for receiving the ERFs. This request was not granted since once the time period has begun, changes cannot be made to the length of the time period. This particular resident also provided their personal interpretation of section 94.2 as it pertains to the timing of the posting of the public notice along with the number of postings required. This interpretation raised uncertainty. So consequently, the staff sought a legal opinion from Law Firm No. 1.

During AAP No. 2, there were residents, including those who raised the concerns during AAP No. 1, who formed a group which took on a more active role during AAP No. 2. Some of these residents attended City Hall to obtain a substantive number of copies of the ERFs to distribute to others. Some residents sent multiple, repetitive emails wanting access to a voters' list, questioning how the process was being done, and indicating that a Freedom of Information request may be necessary in order to obtain what they wanted. Some residents appeared as delegations about the AAP No. 2. At least one resident of this group held the opinion that the City must send a letter with an accompanying ERF to each address in the City.

The behaviour of some of the residents was less than civil towards the staff. They alleged that staff could not be trusted to receive the ERFs⁵ and that the residents should give the ERFs to their group instead for

⁵ Allegedly going so far as saying the staff were shredding the ERFs that staff was receiving from the public.

safekeeping until their group submits the ERFs on the residents' behalf. There was disruptive behaviour at the Council meetings at which the AAP was discussed. At times, some of these residents spoke disrespectfully and aggressively, at times, to staff when interacting with the staff at the City Hall. This type of behaviour creates confusion and uncertainty in the process.

In an effort to address the concerns about the degree of notification to the public caused the staff to attempt to anticipate the public's concerns and to address their unspoken complaints. The focus on potential concerns of the public led staff to lose focus on the legislative requirements to the detriment of AAP No. 2. The City tried to provide more notice than required and in doing so, missed the posting of the ERF when it should have been posted.

There seems to be a misunderstanding as to the actual effect of an AAP. AAP is just a means by which a certain portion of the public indicates whether a decision on a particular subject matter should be brought before the rest of the residents by means of an assent vote. Achieving the 10% threshold does not mean that the electorate has rejected the project outright. If there is to be assent voting, then the result could still be in favour of the question asked. There is no guarantee that more than 10% of the public will be willing to vote "No" if assent voting were held. If the 10% threshold is not obtained, that only means that the Council can proceed with its decision without having to take the additional step of an assent vote.

One of the biggest concerns expressed by the residents was that they were not aware of AAP No. 1; therefore, the notice was not effective. The effectiveness of the notice in terms of the public's reaction generated by the notice is not a factor which impacts the validity of the notice. When an individual citizen becomes personally aware of the notice is not a factor to determine whether notice was properly given.

In terms of the notice, the only requirements which are necessary for the notice to be given properly (thereby ensuring one aspect of the validity of the AAP) are:

- the notice contains the required content; and
- the notice is published in accordance with the legislation.

These are the only factors which need to be considered from a legislative point of view.

The City is not required to do anything beyond what is set out in the legislation in terms of notification. The Council may choose to provide additional information from an educational, communications or a political point of view; but that information does not constitute the notice. Nonetheless, whether the Council provides that additional information is a policy choice, not a requirement of the legislation. The local government should take care to ensure that it is not doing more than is required to the detriment of what is required in terms of giving notice.

The public is absolutely entitled to engage in the AAP, to take steps to convince others to submit a completed ERF, and to ask questions about the process. What is at issue is the manner in which they conduct themselves. They are not entitled to speak in disrespectful language. They are not entitled to engage in disruptive behaviour during a Council meeting. They are not entitled to create an unsafe work environment for the staff who are trying to carry out their tasks in administering the AAP. Unless there is evidence to substantiate an allegation, making allegations that the staff is destroying the ERFs is inappropriate and having the effect of undermining the process to achieve a particular political end. The City should have a plan in place to deal with uncivil behaviour during the course of any AAP or assent voting.

It is reasonable to assume that these residents will take an active interest in any future AAPs or assent votes and will be reviewing every step during the process to ensure the strictest compliance with the legislation. Moreover, it is a real possibility that these residents may challenge a third AAP in court.

7.0 OBSERVATIONS AND COMMENTS

7.1 Initial Comments

The following are comments on the various aspects of the situation. For the most part, staff carried out the necessary tasks in accordance with the legislation. However, when administering an AAP, the standard to achieve is perfection in terms of compliance with the legislation. Any mistake, however small, creates a situation in which the process could be declared invalid. Nonetheless, Council and staff still need to carry on with the business of the City, focusing on what they can do and control.

7.2 AAP No. 1

It is not uncommon for staff to rely on procedures that have been used in the past, in particular when the process is not done on a regular basis. In this situation, staff used the process for the AAP for the Fire Station Rebuild in 2018 as a starting point rather than starting from scratch. However, in 2018, the City did not have the PN bylaw in place so to some degree, the City was starting from scratch in terms of notification. Staff who are not familiar with the procedures for an AAP may not have the same appreciation for the nuances of the legislative provisions.

The retirement of the Deputy Corporate Officer in the summer of 2023 created a gap in terms of managerial supervision within the department. This gap in terms of human resources has an impact on the daily operations, never mind on tasks which are done on occasion. As such, that is a lot of pressure to place on the remaining senior manager, trying to cover everything at that time. Moreover, there were fewer people to deal with administering an uncommon task such as an AAP.

It is worthwhile to note what went right with the AAP No.1:

- (a) The method for determining the 10% threshold was logical.
- (b) The necessary resolution from Council to establish the deadline, establish the ERF; and to determine the total number of electors to which the AAP applied was obtained.
- (c) The content of the notice complied with the legislation.
- (d) The ERF was prepared and ready on the date of publication of the notice.
- (e) The ERF complied with requirements for a valid ERF.
- (f) Staff sought a legal opinion as soon as concerns were raised.
- (g) Staff followed the legal advice that was provided by Law Firm No. 1.
- (h) Staff had a well-articulated procedure for how the staff were to process a completed ERF when the resident submitted the ERF.
- (i) Ultimately, it was determined that notice had been provided in accordance with the legislation and with the PN Bylaw.

In terms of what went wrong, staff doubted the strength of their processes when one resident applied pressure to the system. This is not unusual since the standard is 100% compliance with the legislation. Unfortunately, the legal opinion upon which staff relied has been changed upon further reflection. However, at the time, the staff behaved prudently in the circumstances based on what they knew and relied upon that legal advice. If staff had received the later legal advice at this time, it is likely that the City would have continued on with AAP No. 1 and deal with any challenges made by the public afterwards. Unfortunately, hindsight is 20-20 and the staff cannot change what was done.

Even though the issue about validity was defensible, and the results had been certified before the validity of the AAP came into question, there was no going back to pick up from where they left off on AAP No. 1, once it became apparent that there was a problem with AAP No. 2.

7.3 AAP No. 2

Since the City has already cancelled one AAP, it would have been prudent to review the legislation and the AAP guidelines very closely to ensure that every aspect of the legislative requirements is addressed. Unfortunately, that is not what happened on this occasion. The requirement to ensure that the ERF was ready and posted on the correct date was glossed over and missed.

The timing of AAP No. 2 was unfortunate. The preparation of AAP No. 2 occurred during the month of December with the actual AAP to occur at the start of the new year. As is common in many local governments, often there is not a full complement of staff at that time of year. The City was already missing a full-time senior management position (Deputy Corporate Officer) during AAP No. 1 and AAP No. 2. So, any additional absences from the workplace could have an impact on the work being done.

The absence of the Corporate Officer during that time frame was unfortunate but personal circumstances cannot be helped. While the former Deputy Corporate Officer came back to work on special projects after AAP No. 1, this person was only helping with reviewing Council agendas prior to release to the Council for the meeting and special projects. This person did not assume full responsibility for the department in order to cover for the absence of the Corporate Officer. This created a gap in the supervision of the AAP.

Often managers will give staff an opportunity to try new things in order to grow in their current position and to get ready for future positions. However, there is a time and a place for such opportunities for staff. In this situation, a lack of experience on the part of the staff member who was looking after AAP No. 2 had an impact on the situation. This staff member relied on what was done for the AAP for the Fire Hall, which was a process based on the old notice provisions. The staff member

did not always know when to ask questions. This staff member was also trying to balance the daily responsibilities for the work at the same time as preparing the AAP with fewer people than usual in the office. They did the best that they could. The staff member did not have ready access to someone with whom to check in on the AAP. The person working on the special projects did not have any knowledge about the issues arising during AAP No.1; so, they would not have been aware of all the issues which could impact AAP No.2.

In an effort to address pre-emptively any complaints about inadequate notice and to follow the legal advice that the City had at that time, the staff provided notice twice – once as a courtesy and another time as the official notice. This created a problem in terms of the timing of the availability of the ERFs, in that the first occasion when the notice was given actually could constitute first notice, thereby triggering the requirement for the ERF to be ready. This requirement had been missed by everyone who was reviewing the timing of the publication of the notices.

It is worthwhile to note what went right with the AAP No.2:

- (a) The method for determining the 10% threshold was still logical.
- (b) The necessary resolution from Council to establish the deadline, establish the ERF; and to determine the total number of electors to which the AAP applied had been obtained.
- (c) The content of the notice complied with the legislation.
- (d) Staff had legal counsel review the dates prior to publication of the notice to ensure that there would be no problems.
- (e) Staff sought a legal opinion to ensure that the Howard Avenue AAP was not in jeopardy.
- (f) Staff sought a second legal opinion when the legal opinion for the Howard Avenue AAP differed from the legal opinion on AAP No. 1.
- (g) Senior staff took steps to make changes to the physical environment to protect staff from untoward behaviour exhibited by some of the residents.

- (h) Staff had a well-articulated procedure for how the staff were to process a completed ERF when the resident submitted the ERF and to assess whether the person was a qualified elector.

Challenges involving the AAP No. 2 process can be summarized as follows:

- (a) Staff provide more official notices than required, in an effort to stem the potential complaints from the residents in AAP No. 1. Staff thought that the official notice was given on January 17 with the notice given on January 10 as a supplemental courtesy. However, this additional notice on January 10 could have triggered the start of AAP No. 2.
- (b) The ERF was still not available on either date of publication of the notice. Even if January 10 was only a supplemental courtesy notice, the ERF was still not available on January 17.
- (c) Staff thought that not making the ERF available until after the publication would protect people from being disenfranchised for submitting the ERF before the start of the 30-day period. However, this is a misunderstanding of the legislation.
- (d) The experience level of the staff member dealing with the AAP during AAP No. 2 was not at a level which would enable that staff member to work independently and without review on an AAP, in particular on an AAP which was an attempt to fix a previous, problematic AAP.
- (e) Staffing gaps and absences during the lead-up to AAP No. 2 happening in January had a definite impact on the viability of the process.

7.4 Communication Plan

During AAP No. 1, in addition to the official public notice, the City undertook the following to get information about the AAP into the hands of the residents:

- (a) a binder containing information about the subject matter of the AAP placed near where the residents could obtain a ERF;
- (b) a website homepage banner with a link to the general AAP information page;
- (c) a dedicated webpage to focus on AAP No. 1, links to the notice, various reports, the bylaw itself, a background information sheet, and details about the AAP and elector eligibility on the general AAP page;
- (d) a schedule of social media posts and tweets on Facebook and X;
- (e) a series of news releases during the time period for receiving completed ERFs;
- (f) posters placed at 18 different civic facilities; and .
- (g) clips for YouTube about the AAP.⁶

Based on comments made by the Council during one of the meetings, there had been open houses at the NOC for the public to see what the public works crews do and how they operate.

Some residents have put forward the suggestion that one of the only acceptable ways in which to notify the public is to send a letter with an accompanying ERF form to each and every address in the City. They held the opinion that the costs would not be any different than the costs for mailing out voter cards during an election. This would be true, if the City mailed out voter cards during the elections but the City does not do so in a general local election.⁷ So, the City does not know at this time what would be the actual costs for doing this.

⁶ AAP No. 2 was going to include all of this along with mentions in the eNewsletter, published brochures, and open house information session.

⁷ This is because electors can vote at any voting place, unlike the Provincial and Federal elections which require the voter to vote in their assigned voting area.

While the costs of mailing out letters and ERFs would be only one factor, there are also several other factors to consider with mail-outs:

- (a) There is no legislation to govern how this would be administered so would the rules of procedural fairness bind the City? This could open up potential legal challenges.
- (b) Someone could argue that it is a form of official public notice and should therefore be subject to all of the restrictions contained in the legislation.
- (c) Timing is critical in terms of when would the City send out these letters – before the first day the notice is published, on the day the first notice is published; after the first day but before the second day the notice is published, on the second day that the notice is published, or after the second day that the notice is published. The appropriate timing for this is unknown.
- (d) Would those letters even arrive in sufficient time to allow people to complete the ERF and return to City Hall before the deadline? Given the fact that Canada Post is contemplating changes to the frequency of the delivery of the mail, this could become problematic.
- (e) People could try to challenge the AAP process by saying they did not receive their letter with the ERF and are thereby denied their opportunity to participate in the AAP.
- (f) Mail is not always the preferred manner for communications, given that more people receive their correspondences, statements, and bills via email. If that is the case, how would the City handle those people who do not prefer to receive this letter in the regular postal fashion?
- (g) Should the City give the citizens the choice about receiving this letter via regular postal service or by email? How would the staff be able to administer a hybrid model? Then what about posting the letter and the ERF to social media or should there just be some information and then a link to the City's website for more information and access to the ERF.

Given the potential for challenges to the process and the additional administrative costs in terms of time, effort, and money, the City should stick to having the ERF be ready on the first day of publication at City Hall in the meantime until there are changes to the legislation which address some of these concerns.

8.0 WHETHER TO CONTINUE TO USE AAP

If assent voting were easy to do and cheap to administer, there would be no need for an AAP. The fact that the legislation allows for AAP as a legitimate means for the public to have a say on certain issues would lead one to think that the Province recognizes the challenges associated with administering assent voting.

A local government needs to be aware of the variety of projects or work which requires approval of the electorate in one way or another such as:

- Boundary extension;
- Change of municipal classification;
- Disposal of certain utilities other than water or sewage systems;
- Exchange of other disposal of parkland;
- Grant of a franchise;
- Heritage property tax exemption lasting from 1 to 10 years;
- Loan authorization bylaws;
- Removal of reservations or dedication of such as parks, public squares, or heritage properties;
- Riparian property tax exemption from lasting 1 to 10 years
- Sale or lease of forest reserve; and
- Unexpended funds.

The types of projects or works that require approval of the electorate is not inconsequential.

In spite of what has happened with AAP No. 1 and AAP No. 2, the City has successfully used AAPs in the past. While the City may have some reluctance to use an AAP again for the NOC Bylaw, the City should still consider its use, in particular, if the City would like to be included the fall borrowing by the Regional District and to get started on the Project sooner rather than later to address increasing construction costs.

If the City chooses to use assent voting, instead of AAP, to obtain approval for the NOC Bylaw, there will be an expectation that every matter, whether it pertains to core infrastructure or non-core capital projects, that could have gone to AAP will go to assent voting instead. That approach could become quite costly to the City in terms of financial and human resources. The costs for assent voting are comparable to that of holding a general election or a by-election for electing someone to Council.

Unless the City hires an outside contractor to administer the assent voting, it will fall upon staff to organize and hold the assent voting within a period of 80 days. If the City uses voting machines, the City will need more than 80 days to get assent voting organized. While it is easier and less expensive to include assent voting with a general local election than to hold a separate assent vote, waiting every four years to hold assent voting is not practical nor efficient in terms of operating a local government and servicing the community. Moreover, the City would likely have to establish a fund in the financial plan to be funded on a yearly basis to ensure that there are adequate financial resources to conduct assent voting.

In spite of the results of AAP No. 1 and AAP No. 2, the City should still consider using an AAP in the future. The benefits that an AAP provides includes the following:

- (a) An AAP allows the public to provide direction to the Council at a cost which is less than what it would cost to have assent voting on the matter.
- (b) The timeframe to receive the completed ERFs is spread out over 30 days, enabling the local government to provide quality information about the subject matter and to respond to questions raised by the public.
- (c) This provides the local government with an opportunity to see how the public feels about the subject matter (aka test the waters) before having to commit to assent voting.

- (d) If the threshold to trigger a referendum is achieved, then the Council still has the opportunity to reconsider whether it wishes to go ahead with the project.

The costs of assent voting are about the same as the costs of holding a general local government election (the election that occurs every 4 years to elect mayor and council).

While a local government can include a referendum question at the same time the electorate is going to the polls to select their elected officials, this is not always the best approach for the following reasons:

- Timing – if a local government only holds referendums at the same time; and
- Potential to politicize the decision – a referendum could become an election issue.

If the local government holds assent voting, there are several points to be considered which include:

- (a) There is a very short timeframe in which to hold the assent voting – either within 80 days following the deadline established in the AAP or 80 days after the Inspector of Municipalities approves the bylaw.
- (b) There are more opportunities for people to challenge the validity of the process, more so than during an AAP.
- (c) Much logistical planning is required in advance of the assent voting. If voting machines are used, the City needs to have the necessary contracts signed well before the 80 days in order to meet the very short deadlines that are in place.
- (d) Voting is limited only to general voting day, special and advanced voting days, and mail in ballots whereas AAP allows for people indicate their preference at any time during the 30-day period.
- (e) The potential is high for an extremely low turnout. Turnouts for by-elections and assent voting is usually substantively lower than the already low voter turnout for general local elections.

Consider this - if the City had only 8,000 eligible electors come out to vote and 4,001 of them vote in favour of the subject matter, then there could be a situation in which only 5 percent of all the eligible electors made a decision impacting the rest of the community (4,001/78,990)⁸.

⁸ This percentage becomes smaller when you consider that number in light of the total population of approximately 107,865.

9.0 RECOMMENDATIONS

In light of the recent events involving AAP No. 1 and AAP No. 2, there is a need to treat an AAP as a formal process, not just a task to be completed. The City would do well to assume that there could always be a strong public reaction, in particular if the AAP involves the potential for increased taxation. The City should be ready in case the 10% threshold is met, thereby necessitating assent voting, if the City wishes to proceed with any project.

It is worth noting that there is currently a legal case before the courts concerning the legislated requirements of AAP. A decision from that case could impact how AAPs are administered in the future. As such, the recommendations are based on the current situation, without knowing what could possibly happen in that case. Some of these recommendations may no longer be suitable depending upon the outcome of that case.

9.1 Review the Reference Materials at the Start

9.1.1 REVIEW OF LEGISLATION AND ESTABLISHMENT OF DATES

While an AAP can be a process with which staff has familiarity, it is not a process which is used on a regular basis, unlike the processes for holding Council meetings as a comparison example. The purpose of the review is to ensure that those staff members are aware of each of the legislative requirements and that there have not been any changes to the legislation since the last time an AAP was held.

At the start of every AAP, staff should review the following:

- Section 94 of the Community Charter;
- Section 86 of the Community Charter;
- AAP Guidelines; and
- PN Bylaw.

The review is more than just re-reading the applicable parts. It is applying the pertinent parts to the current situation. For example, the staff should have a paper calendar to mark up with the key dates such as:

- Third reading of the bylaw;
- Approval of the Inspector, if necessary;
- Availability of the EFR;
- Posting of the notice;
- First day of the 30-day period in which to receive completed ERFs;
- Last day of the 30-day period in which to receive completed ERFs; and
- The date by which the Corporate Officer can certify the results.

While a paper calendar is an old-fashioned tool, it is a visible and tangible way to discuss the dates at a glance. Just putting the dates in a list does not demonstrate the connection between the tasks like a paper calendar does. It is easier to count the days in accordance with the Interpretation Act and adjust the dates accordingly when using a paper calendar. Once those dates are set via the paper calendar, those dates can be entered into Outlook as an appointment for all of those involved in the AAP. In this way, specific tasks will not be forgotten.

For the next AAP that the City conducts, it would be appropriate to have a lawyer review the calendar establishing the dates before the matter is brought to Council for additional certainty that the key legislative requirements have been met.

9.1.2 EXPAND THE GANTT CHART TO BECOME A CHECKLIST

The City currently uses a Gantt chart to determine the workflow of an AAP. Also, the City has a schedule which sets out the key dates for major tasks for the entire borrowing bylaw process of which the AAP is

only one part of the process. The City should combine these two items in order to use them as the basis of a detailed checklist. The tasks set out in the Gantt Chart can be designated as major tasks; the dates from the calendar and the schedule can be included as a column within the chart. Underneath the major tasks should be listed the various subtasks needed to be done in order to complete the major task. Two additional columns can be included to show the date the subtask was completed and the date that the completion of the subtask was confirmed. For example, a Major task relates to notices. Subtasks of notices could include the preparation of the notice, review of the notice to ensure all required content is included, review of the notice to ensure correct dates have been added, and posting of notices with each of those tasks signed off by the person who completed the work and the person reviewing the work. An expanded checklist would be one way of ensuring that no steps are missed.

9.2 Assess the City's Capacity to Perform the AAP

9.2.1 NUMBER OF STAFF MEMBERS INVOLVED

Not having enough people on hand during AAP No. 1 and AAP No. 2 did have an impact on the City's ability to react to the events that occurred during those AAPs. The hiring of a new Deputy Corporate Officer will assist in ensuring that there is sufficient supervisory capacity for a future AAP.

At a minimum, there should be at least:

- two people in Legislative Services working on an AAP, one person to do the work and one person, ideally a manager, to review the work; and
- one person in Communications, for communications on the AAP, itself (not the subject matter of the AAP.).

With regards to the number of people involved from Legislative Services, this is not an indication that a single person cannot do all of the work on their own. However, this is a big responsibility to leave solely in the hands of one person. This recommendation is to make sure that there is back-up system in place. The two people from Legislative Services will both have to sign off on the completion of the tasks. This approach of multiple persons involved in the process in this manner is often done during an election or an assent of the elector vote. Since the results of AAP can have a significant impact as if it is an asset vote, having more people involved in the AAP would be on par with the conduct of assent voting.

With regards to having a person from Communications focused on the AAP, this person ideally should be some other than that the person who is working on the communications plan for the subject matter. In this way, the neutrality of the AAP can be reinforced while the communications of the subject matter can focus on providing the information that the citizens need to decide whether they wish to complete an ERF or not.

Timing is another factor impacting the City's capacity. For the bulk of the year, staffing is at its usual level. The months of July, August and December are frequently times which staff often take time off. Even though there are fewer staff members to do the work, the amount of regular work to be done does not reduce correspondingly. Steps should be taken to ensure that the staffing complement is maintained for dealing with the AAP. An AAP contains a number of intensive tasks to be completed in addition to the regular work. So, if the preparation of the AAP falls within those months, the City may wish to consider:

- assign one staff member to focus on the AAP only and bring a temporary staff member to take care of the work that the AAP staff member is not doing; or
- hiring an outside person just to do the required work on that AAP and the staff members focus on the regular business of the City.

Irrespective of who does the preparatory work, there still needs to be signed off by at least one manager. Once the notices have been posted and the 30-day period is under way, that additional person will no longer be needed.

9.2.2 TIMING OF THE AAP

The City cannot always control when it will start an AAP. In order to be part of the borrowing by the Regional District and to meet the timing of the Municipal Finance Authority going to market to secure the funding, the City needs to accommodate the borrowing timelines as part of determining when to start an AAP. However, whenever possible, the City should consider the preparation and the timing of an AAP, not only from the public's availability to engage in an AAP but also from the staff capacity perspective.

9.3 Communications

It is important to remember that no matter how robust a communications plan a local government puts in place, the local government may not be able to ensure that the residents understand what has been communicated not that every resident has been notified.

9.3.1 USE THE COMMUNICATION PLAN FROM AAP No. 2

Once the dates have been established, it is preferable to have a meeting with the Legislative Services and Communications to go over what will be the communication plan for the AAP. The communication plan for AAP No. 2 is a strong approach to use going forward and can be the initial process to use for communications.

Once the AAP communication plan is established, then a meeting between the people working on the AAP and the people working on the subject matter should be in contact to know what the other person is doing.

9.3.2 POSTING RESPONSES TO INQUIRIES

If the City receives questions about the AAP or the subject matter of the AAP, in addition to reply to the person asking the question, the City should summarize the question (to protect the personal information of the person asking the question) and then post the summarized question and answer on the website. This will ensure that all citizens have the opportunity to see the response.

9.3.3 PROACTIVELY DISCLOSE FREEDOM OF INFORMATION REQUESTS

If the City receives a Freedom of Information request pertaining to the AAP, in addition to responding to the request, the City should proactively disclose the response by posting the details to the website. It is likely that there may be more people who would like the same information as the requestor.

9.3.4 EXPAND THE FREQUENTLY ASKED QUESTIONS (“FAQ”) ON THE WEBSITE

The City has a good starting point for the FAQ currently on its website. The City may wish to include a few additional FAQ in order to provide more information about the process to its citizens.

The first source of the additional FAQ are the FAQs currently included in the AAP Guidelines. The City does not need to include the FAQs that apply to regional districts only, but the other FAQs would be helpful. These FAQs can go towards the end of the list.

The second source of additional FAQs are the responses given to citizens during previous AAPs. For example, in AAP No. 2, a citizen asked questions about receiving a copy of the elector list. Since this is not an election process, there is no electors' list available to view. Any disclosure of lists of electors used by the Corporate Officer to determine whether the persons signing the ERF are qualified electors involves the disclosure of personal information which is not authorized under the legislation. So, the answer is no. This question can easily form a FAQ

to include with the current FAQs. Another possible FAQ is that while the City can have a period in which to receive the completed ERF that is longer than 30 days, the City cannot extend this time period once the time period starts. Another possible FAQ is that the completed ERFs are only accepted if they are submitted to the Corporate Officer. Having an individual citizen gather the completed ERFs does no guarantee that the Corporate Officer will receive those ERFs within the time frame. Those residents are taking the chance that the ERFs are received in time.

If the City updates its FAQ section with questions like these during any future AAPs, the City is building the citizen's knowledge base on AAP in general.

9.3.5 GETTING THE MESSAGE OUT AHEAD OF THE AAP

Even if the Council and staff have been dealing for an extended period time with subject matter that forms the basis of an AAP, it cannot be assumed that the public has the same level of awareness of the subject matter or the anticipated AAP. As such, if an AAP is necessary, then the City should take steps to provide information about the subject matter as soon as possible and preferably at the same time that the Council is considering whether to authorize staff to proceed with an AAP. A briefing sheet with key points should be available not only to the Council but also to staff so that the same information is consistently provided to the public.

This approach may not be necessary for every AAP but if the AAP involves third parties or any type of borrowing which will impact taxes, the more information the City can provide in advance will assist in addressing concerns and misinformation in the public realm.

9.4 Legislative Requirements

9.4.1 NOTICE

The City should publish the official notice only the minimum number of times required for the time specified pursuant to section 94.2 of the Community Charter. This is to ensure that there is no confusion about when the 30-day period for receiving completed ERFs commences, about when the official notice took place or about when the ERF must be available. It will be easier for the City to demonstrate that it has met the legal requirements.

This does not mean the City is stopped from providing the information about the AAP by other means, as set out in a communications plan. However, the City should present that information in terms of a different style and method of notice used to emphasize the point that the information is not the official notice.

Also, staff should take a screenshot of the notice on the City's website to document compliance with the legislation.

9.4.2 ERF

Readiness of the ERF

The City should have the ERF ready and posted on the date that the City posts the official notice. This is a legislated requirement which cannot be missed.

The error that was made in AAP No.2 consists of two parts:

- a. publication of a supplemental notice that was not necessary; and
- b. having the ERF available on the start date of the 30-day period.

These errors occurred because staff were trying to address the issues raised by citizens concerning their awareness of AAP No. 1. The complaint was that the citizens did not find out about AAP No. 1 until late in the process. However, the City provided a variety of means to let the public know about AAP No. 1. Nonetheless, in an attempt to pre-empt criticisms from these citizens arising during AAP No. 2, staff thought that they were only providing earlier, supplemental notification on January 10 rather than providing one official notice on January 17. In this case, doing too much to appease a few members of the public created a situation in which supplement notice became the official notice to start the process. Sticking to only what is mandated by law would have avoided this error.

As for the availability of the ERF, staff thought that making the ERF available well in advance of the start of the 30-day period would create a situation in which people would be submitting the completed ERF before the start of the 30-day period, which is outside of the time legislated to receive the E, thereby causing those citizens to lose the ability for their ERF to be included in the count. In an effort to protect a few individuals from losing their opportunity to have their ERF accepted, compliance with the legislation was lost. Again, the City needs to focus only on what they are legally required to do rather than trying to help those residents who do not meet their obligations under the legislation.

Number of ERF Available

Even though the ERF was available online, several citizens, upon attending City Hall, wanted the City to take all of the copies that they wanted. The question became how many copies of the ERF that a single citizen should be reasonably expected to receive upon request. The City determined that 100 copies to one individual per day would be an appropriate number. However, those citizens were of the opinion that they should have as many as they want. At some point, the City has to balance the provision of the service with the reasonableness of

the request. The restriction of 100 copies per citizen per day seems to be a manageable compromise. Anything more than that is becoming excessive.

ERF for Multiple Signatures

Up until now, the City has only used an ERF which allows for only a single elector response. In order to avoid this debate as to how many copies of a single ERF a resident should be entitled, the City may wish to consider preparing an ERF which allows for multiple elector response, in essence a petition, as permitted pursuant to section 86(3)(b)(i).

There are some benefits to using an ERF with multiple signatures:

- (a) This would reduce the number of copies that the City would supply to people making a request.
- (b) A revised ERF to allow for multiple signatures can still be used for only a single signature.⁹

There are some challenges to using an ERF with multiple signatures:

- (a) If the person obtaining those signatures loses the ERF, then, unless that person can obtain all of the lost signatures, those signatories would have to be informed and take steps to complete a new ERF¹⁰.
- (b) There are privacy concerns. Using a multiple signature ERF means that those signing the ERF will have the ability to see who else has signed the ERF. Some people may find that this is an invasion of their privacy. The ERF may have to include some

⁹ This revised ERF would be instead of having two types of ERFs – one for single signature and one for multiple signatures. Having two different ERFs would create additional work and increase the potential for mistakes.

¹⁰ However, this is not the City's responsibility.

language that their personal information is not protected from others seeing it¹¹.

- (c) It will be more work for the Corporate Officer when making the determination as to the number required to meet the 10% threshold. The Corporate Officer will have to ensure that the person has not signed more than ERF. While the Corporate Officer still have to do this in any event, it is easier to see if a person has filled out more than one form than to scan multiple pages to see if the person has signed more than once.

If the City decides to continue to use ERF with a single signature, this will not have a significant impact one way or another on the conduct of the AAP.

“Wet Signature” ERF

The City’s current policy is to only accept an ERF with the original signature in “wet ink” as the submitted copy. As such, the City does not accept emailed or faxed copies of the ERF. According to the AAP Guidelines, the City cannot count a mailed-in ERF that is date-stamped by Canada Post before the deadline but is received after the deadline.

Also, according to the AAP Guidelines, the City can choose to allow, by policy, emailed or faxed ERF as this aspect is not governed by legislation. However, the policy would have to set out what is necessary to have the ERF submitted electronically. The policy can include details such as:

- (a) The City is not responsible for any technological failure which interferes with the receipt of the ERF.
- (b) The original signed ERF must be received by the Corporate Officer as soon as possible after the submission was received.

¹¹ Even though this personal information is not being collected by the City, it is still being used by the City for business purposes.

There are some questions that need answers before considering whether to accept electronically submitted ERF such as:

- (a) Whether an electronically submitted ERF is still valid if the original signed ERF is being submitted after deadline;
- (b) If the answer is yes, how long would be a reasonable time to wait for getting the original signed: and
- (c) Does waiting to receive the original signed ERF have an impact on the date when the Corporate Officer can declare the final determination?

These questions should be answered before the City considers permitting electronic submission of ERFs.

When Assessing the Elector Eligibility

In addition to the information already being recorded on the eligible elector spreadsheet, the City may wish to include a column on the reasons as to why an ERF was not accepted. Reasons for why an ERF was not accepted could include the following:

- (a) The person who signed the ERF does not live in the City.
- (b) The person did not have the necessary permission from the other non-resident property electors.
- (c) The person did not sign the ERF.
- (d) The person did not submit the ERF by the deadline.

While the Corporate Officer will not be disclosing how many ERFs were not accepted as part of the certification of the results process, this information is good to have in case of any judicial proceedings afterwards.

9.5 Request for Changes to the Legislation

While the courts can provide their rulings on how certain provisions of the legislation are to be interpreted, the Ministry still retains the ability to suggest to their elected officials amendments that can be made to the legislation. It would be worthwhile for the City to request amendments to the Community Charter to clarify:

- how section 94.2 interacts with section 86 in terms of publication of the first and second notice;
- the timing as to whether a local government can receive a completed ERF before the second publication; and
- whether an ERF is still valid if local government receives an emailed or faxed ERF within the deadline but receives the original ERF after the deadline.

10.0 SUMMARY OF RECOMMENDATIONS

1. The City should determine in advance how it would like to deal with inappropriate behaviour on the part of residents during an AAP and how it can take steps to ensure staff's safety.
2. The City should be ready for potential challenges from the public concerning the NOC bylaw, irrespective of the method used for approval of the electors – AAP or assent voting.
3. The City should not engage in a mail-out of a letter about the AAP with an accompanying ERF.
4. Staff should ensure that they review the legislation every time they commence an AAP process and develop the dates for all of the required tasks.
5. The tasks for the AAP should be added to a departmental calendar to assist with monitoring completion of the tasks and to act as a reminder of what still needs to be done.
6. For the next AAP, the City should engage a lawyer to work with staff throughout the entire process to ensure that all requirements are met.
7. Staff should expand the Gantt chart and the calendars of dates into a simple checklist to be used for the various steps in the AAP.
8. Staffing capacity and ability should be assessed at the start of each AAP in light of the time of year.
9. There should be at least two people in Legislative Services working on the AAP in terms of one person to do the work and another

person to review the work and one person for communications pertaining only to the AAP.

10. The City should continue to use the communications plan that was developed in AAP No. 1 and modified in AAP No. 2.
11. The City should post its replies to inquiries made about the AAP on the City's AAP webpage.
12. The City should proactively disclose the responses made to any Freedom of Information requests about the AAP or the subject matter of the AAP.
13. The City should expand its frequently asked questions on the City's website.
14. When it becomes apparent that an AAP will become necessary, the City should take steps to provide concise information about the subject matter and to prepare a briefing sheet with key points for the elected officials.
15. The City should limit itself to only posting the official notice for the minimum times required to achieve compliance.
16. Staff should take screenshots of the notice on the City's website when the notice is published.
17. Staff should have the ERF ready to go well in advance and posted on the date required.
18. The City should maintain its limit of a maximum of 100 copies per day per person.

19. The City should consider whether to use an ERF that allows for multiple signatures.
20. Staff may wish to document additional information as to why an ERF was not accepted in its record-keeping during the ERF count.
21. The City should request that the Province amend the applicable legislation pertaining to AAP to remove the issues which have arisen during the most recent AAP.