

DATE OF MEETING DECEMBER 2, 2024

AUTHORED BY KAREN ROBERTSON, DEPUTY CORPORATE OFFICER

SUBJECT ALTERNATIVE APPROVAL PROCESS RESULTS – “PUBLIC WORKS YARD UPDATES BORROWING BYLAW 2024 NO. 7386”

OVERVIEW

Purpose of Report

To report the results of the Alternative Approval Process for “Public Works Yard Updates Borrowing Bylaw 2024 No. 7386” and to provide options for next steps.

Recommendation

That Council abandon “Public Works Yard Updates Borrowing Bylaw 2024 No. 7386”; and direct staff to report back on options for alternative ways to complete the public works project.

BACKGROUND

Further to Council direction provided at its Special Council Meeting held 2024-JUL-29, the City conducted an Alternative Approval Process (AAP) to obtain approval of the electors for the adoption of “Public Works Yard Updates Borrowing Bylaw 2024 No. 7386” – a bylaw to authorize the City to borrow up to \$90,000,000 for Public Works Yard updates.

Prior to the commencement of the AAP, Council endorsed a new Alternative Approval Process Policy (COU-242) on 2024-JUL-22. The policy established processes related to conducting an AAP which included providing for forms to be submitted electronically. Council also endorsed the Public Works Yard AAP Communication and Engagement Strategy at its meeting on 2024-JUL-29 which outlined the various methods of engagement to be used during this AAP. Some of the highlights of the communication strategy included:

- Open houses/tours of the Public Works Yard
- Advertising with Nanaimo News Bulletin and Nanaimo News Now
- Social media advertising and posts
- Radio advertising and “Sweet Layered Podcast” episodes
- Flyers sent to households with information regarding the AAP and project

The AAP for the Public Works Yard Updates began at 8:30 am on September 18th and closed at 4:30 pm on October 31st. Eligible voters had a 42-day period to vote against the borrowing bylaw (the Provincial requirement for an AAP, as outlined in the *Community Charter*, is 30 days). Official notice of the AAP was published in the Nanaimo News Bulletin and appeared on the City’s website and public notice board on September 18th in accordance with Section 94.2 of the *Community Charter* and the City’s “Public Notice Bylaw 2022 No. 7325.

AAP Results:

To receive the assent of the electors, the number of elector response forms received could not exceed 10% of the electors for the City of Nanaimo. Section 86 (1) of the *Community Charter* states:

“Approval of the electors by alternative approval process under this section is obtained if... at the end of the time for receiving elector responses, the number of elector responses received is less than 10% of the number of electors of the area to which the approval process applies.”

For the purpose of conducting the alternative approval process, the number of eligible electors was determined to be 79,736. For the bylaw to receive the assent of the electors, less than 10%, or 7,974, elector response forms must have been received by the deadline of October 31, 2024, at 4:30 pm. The total number of valid elector response forms received by that date was 8,655.

Based on the above, the Deputy Corporate Officer has determined and certified that elector approval, in accordance with Section 86 of the *Community Charter*, has not been obtained.

DISCUSSION

With elector approval not obtained through the alternative approval process, the following options are for Council’s consideration:

Option 1:

That Council abandon “Public Works Yard Updates Borrowing Bylaw 2024 No. 7386” and direct staff to report back on options for alternative ways to complete the public works project.

- As outlined in Section 174 (2)(b) of the *Local Government Act*, when 10% or more of the eligible electors in an AAP signed and submitted an elector response form prior to the established deadline, and Council still wishes to proceed with the same bylaw, it must hold an assent vote no later than 80 days after the deadline established for submitting elector response forms, which was October 31, 2024. It must also be held on a Saturday as outlined in Section 174(2)(a). This means that the latest that an assent voting opportunity could be held is Saturday, January 18, 2024. This date could potentially be extended with Ministerial approval.
- Given the timeframe required, it is not practical to prepare and conduct a referendum by 2025-JAN-18. As such, staff are recommending that Council abandon the existing bylaw. It is important to note that this does not preclude Council from seeking elector approval on a revised project through a new bylaw in the future or bring forward a new bylaw for the same project to the electors, subject to waiting a period of 6 months as outlined in Section 171(2) of the *Local Government Act*.
- The disadvantage to bringing forward the same project after the mandatory six-month waiting period is that the fall 2025 borrowing opportunity would be missed which will delay the project and potentially increase costs.

Option 2:

That Council direct staff to proceed with an assent voting opportunity (referendum) to seek elector approval for “Public Works Yard Updates Borrowing Bylaw 2024, No. 7386”.

- Should Council still wish to consider borrowing \$90,000,000 for the construction of the Public Works Yard updates through “Public Works Yard Updates Borrowing Bylaw 2024 No. 7386”, electoral approval must be sought through an assent voting opportunity which must be considered no more than 80 days after the deadline for receiving elector responses as outlined in Section 274(2)(b) of the *Local Government Act*, unless Ministerial approval for an extension is sought and obtained.
- The advantages to this option would be that the bylaw has already received its first three readings and Inspector Approval, the project has already been extensively advertised through the methods outlined in the background section of the report; and should electoral approval be successful through a referendum, the City would be able to borrow in the fall of 2025.
- The disadvantages to this option are the challenges associated with setting up an assent voting opportunity in an extremely tight timeframe. Unfortunately, most of the elector response forms weren’t submitted until the last day which resulted in a significant amount of the 80-day window spent on the certification process. It would also be challenging for the following reasons:
 - Difficulty in finding locations to hold the assent voting on short notice;
 - Staff capacity to oversee the process during the busy budget meeting schedule and holiday season;
 - Difficulty in meeting the legislative timeframe for developing and publishing notices; and
 - Limited time to hire and train staff to run the voting locations.
- Given the above, should Council choose this option, staff recommend that Minister approval be sought to grant an extension of the certification deadline from 80 days to 120 days so that there would be enough time to prepare for holding a referendum.
- The cost to hold a referendum would be approximately \$300,000.00.

SUMMARY POINTS

- At its Special Council Meeting held 2024-JUL-29, Council directed staff to conduct an Alternative Approval Process (AAP) to obtain approval of the electors for the adoption of Bylaw 7386 to authorize the City to borrow up to 90 million dollars for the construction of the Public Works Yard Updates.
- 8,655 valid elector response forms were received by the deadline of October 31, 2024 as certified by the Deputy Corporate Officer.
- The total number of valid elector response forms required to proceed with adoption of the bylaw must be under 10% at 7,974. With 8,655 valid forms, elector approval in accordance with Section 86 of the *Community Charter* has not been obtained.

- Council is unable to proceed with the adoption of Bylaw No. 7386 without electoral approval through an assent voting opportunity (referendum) which must be held not more than 80 days after the deadline for receiving elector responses under section 86 of the *Community Charter* unless Ministerial approval for an extension is sought and obtained.

ATTACHMENTS:

Alternative Approval Process Results - Certification

Submitted by:

Karen Robertson
Deputy Corporate Officer

Concurrence by:

Laura Mercer
General Manager, Corporate Services

Bill Sims
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Dale Lindsay,
Chief Administrative Officer