



CORPORATION OF THE TOWNSHIP OF ESQUIMALT

Municipal Hall
1229 Esquimalt Road
Esquimalt, B.C. V9A 3P1

Legislation Text

File #: 21-096, Version: 1

REQUEST FOR DECISION

DATE: February 23, 2021

Report No. CSS-21-005

TO: Laurie Hurst, Chief Administrative Officer

FROM: Blair McDonald, Director of Community Safety Services

SUBJECT:

Alternative Approval Process - Public Safety Building Improvements

RECOMMENDATION:

Motion No. 1:

That Council give first, second and third readings to Public Safety Building Improvements Loan Authorization Bylaw, 2021, No. 3021 as outlined in Staff Report No. CSS-21-005.

Motion No. 2:

WHEREAS the Corporation of the Township of Esquimalt has given three readings to Loan Authorization (Public Safety Building) Bylaw, 2021, No. 3021, which proposes a debenture not to exceed \$35,000,000, be obtained to finance a Public Safety Building which will be repaid over a period not to exceed thirty (30) years.

AND WHEREAS the Corporation of the Township of Esquimalt cannot adopt Bylaw No. 3021 until the approval of the electors has been obtained;

THEREFORE, BE IT RESOLVED that the Corporate Officer undertake an Alternative Approval Process (AAP) to determine the opinion of the electors regarding this matter including approval of the determination of the number of eligible electors and the Elector Response Form as outlined in Staff Report No. CSS-21-005;

AND THAT IT BE FURTHER RESOLVED that a minimum of 32 days for submitting receiving the Elector Response Forms is established.

RELEVANT POLICY:

Community Charter
Local Government Act
Financial Plan Bylaw 2020, No. 2986

STRATEGIC RELEVANCE:

Healthy, Livable and Diverse Community: fully utilize the McLoughlin amenity funds to maximum potential |

BACKGROUND:

When the decision to build the Waste Water Treatment plant in the Township was made, the Township pursued robust public consultation surrounding disposition of the Amenity Funds. During negotiations relating to disposition of the funding, a portion was set aside for construction of a new Public Safety Building (PSB).

Staff initiated a process to proceed with the construction of a new PSB taking several steps thus far including, formation of an advisory committee, contracting a Project Manager, a feasibility study, contracting an architecture firm which produced preliminary construction drawings (preliminary drawings are Attachment No. 1), public consultation processes including Advisory Planning Commission and Design Review Committee meetings, as well as initiating a rezoning process for the land upon which the new PSB will be situated.

ISSUES:

1. Rationale for Selected Option

The total budget amount estimate is \$42 million. There are numerous costs associated with a project of this nature; demolition and abatement of the old PSB, construction of the new PSB, outfitting and equipping the building, temporary police and fire facilities and consultant costs, to name a few. There is \$7.1 million in amenity funding dedicated to the PSB project. The remaining funding shortfall is approximately \$35 million. This amount exceeds the Township's threshold to borrow without seeking public approval therefore, there is a legislated requirement to seek that approval. Staff is seeking Council direction to embark on the alternative approval process (AAP).

Legislation identifies 13 circumstances where the elector approval *may* be obtained by an AAP. This process enables Local Governments to directly engage citizens about a proposed bylaw intended to undertake long-term borrowing.

To proceed, Council is required to have approval of the electors prior to bylaw adoption, in accordance with the Community Charter. Approval of the electors may be received by way of an AAP, or assent voting (i.e., referendum). Approval is obtained and Council may proceed with bylaw adoption, if less than 10% of the electors oppose the funding proposal by submitting a signed Elector Response form. (Attachment No.5).

An AAP involves but is not limited to:

- Fair determination of the number of Electors: (Attachment No. 8). The Corporate Officer is required to determine the number of eligible electors in the service area as per the *Community Charter* s. 86 (3)(c). It has been determined that the geographical boundary for the number of eligible electors impacted for this process would be on a municipal-wide basis. Council approval for the calculation of eligible electors is required by majority resolution.
- Eligible Electors:
A Resident Elector:

1. You are 18 years of age or older;
2. You are a Canadian citizen;
3. You have been a resident of British Columbia for at least six months immediately before signing the Elector Response Form;
4. You have been a resident of the Township of Esquimalt for at least 30 days immediately before signing the Elector Response Form; and,
5. You are not disqualified from voting by any statute or law.

A Non-Resident Property Elector:

1. You are 18 years of age or older;
 2. You are a Canadian citizen;
 3. You are a resident of BC for at least six months immediately before signing the Elector Response Form;
 4. You are a registered owner of real property in the Township of Esquimalt for at least 30 days immediately before signing the Elector Response Form;
 5. You are not eligible to vote as a resident elector in the Township of Esquimalt;
 6. You must only register in relation to one piece of property; and
- If more than one person owns the property, only one owner may register and that person must have the written majority consent of the other owners.

**No corporation is entitled to be registered as an elector or have a representative registered as an elector, and no corporation is entitled to vote.

- Elector Response Form: (Attachment No. 5). As per the *Community Charter* s. 86 (3)(b) and s.86 (7) the Corporate Officer is required to draft an Elector Response Form containing such information as the elector's name, address, eligibility to vote, purpose of the process and signature. Elector Response Forms must be submitted to the Corporate Officer within the established timeframe for the AAP, at least 30 days from the day on which the second Notice was published. The Corporate Officer is responsible for the safe keeping of the Elector Response Forms throughout the AAP and only the Corporate Officer may review or otherwise access the Elector Response Forms during or following the AAP. The forms must be maintained in the manner set out in the *Freedom of Information and Protection of Privacy Act*. Council approval of the Elector Response Form is required by majority resolution.
- Public Safety Building Improvements Loan Authorization Bylaw, 2021, No. 3021: (Attachment No.2). The 1st, 2nd and 3rd readings of the bylaw must be passed by a Council majority vote prior to publication of public notices.
- Statutory Approval from the Minister of Municipal Affairs and Housing:
As per the *Community Charter* s. 135, once the bylaw has been read a third time by the Municipal Council, the Corporate Officer will forward the certified copy of the bylaw to the Ministry of Municipal Affairs and Housing for review and approval of the bylaw by the Inspector.
- Public Notice:
(Attachment No.6). As per *Community Charter* s. 86 (2), section 94(2) and the *Local*

Government Act s. 345 the public must be informed of this process in the form of a written and published Notice. The notice must also be published in keeping with the provisions for posting public notices set out in the Township's Council Procedure Bylaw, 2009, No. 2715. Notification at Municipal Hall on the official exterior Notice Board and in the local newspaper is mandatory. Once the bylaw has received statutory approval, the same notice will be scheduled in the Vic News for two consecutive Thursday editions. The notice will also be posted to the municipal website. The Notice will state that the Township will proceed with the matter unless, by the deadline date, at least 10% of eligible electors indicate that the Municipal Council must obtain the elector approval by assent voting.

- Elector Response Form Submission Period: (Attachment No. 4 & No. 5). Under the *Interpretation Act* rules for counting time, the day the second notice is published, and the deadline date itself *do not* count as part of the 30-day period minimum requirement; an AAP can therefore not be completed in less than 32 days. Statutory holidays and weekends are included in the 30-day count. The deadline must be extended to the next business day when the deadline day falls on a statutory holiday. Elector Response Forms can be submitted in-person or sent by mail to the Township, 1229 Esquimalt Road, Esquimalt, BC, V9A 3P1. The submitted form can be counted as long as it was signed by an eligible elector and received before the established deadline. Mailed-in forms date-stamped by Canada Post before the deadline and received after the AAP deadline has passed can be counted. Residents may also submit their signed Elector Response Forms via email to corporate.services@esquimalt.ca <<mailto:corporate.services@esquimalt.ca>> for the attention of the Corporate Officer.
- Determination and Certification of Elector Approval Responses (10% threshold): (Attachment No. 7). 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. Only, the Corporate Officer, or their designate, can review or verify Elector Response Forms during an AAP. When the number of elector response forms submitted by the AAP deadline reaches or exceeds the 10% threshold, the Corporate Officer must review and certify the individual forms to determine the form was signed by an eligible resident or non-resident property elector. The Corporate Officer's determination is final and conclusive as per the *Community Charter* s. 86(9).
- Reporting the Results:
As per the *Community Charter* s. 86(8) the Corporate Officer is not required to report out the results within a specific timeframe; however, the announcement will occur as soon as reasonably possible after the Corporate Officer has determined and certified whether elector approval has been obtained. There is no legislated requirement that the Corporate Officer report the percentage of elector responses received during the AAP.
- Electoral Approval Obtained (less than 10%):
The Township may proceed with the process to borrow funds when less than 10% of the eligible electors signed and submitted Elector Response Forms by the AAP deadline. This means that Council may adopt Bylaw No. 3021 as presented. As this is a loan authorization bylaw, a Certificate of Approval is required from the Inspector before the Township can borrow

the necessary funds associated with the public safety building improvements, as set out in the bylaw, through the Municipal Finance Authority (MIA) as per the *Local Government Act* s. 760 (1-6).

- Elector Approval Not Obtained (10% or more):

Council does not have the immediate authority to adopt Bylaw No. 3021 or proceed with the borrowing of such funds when 10% or more of the eligible electors in an AAP signed and submitted an Elector Response Form prior to the established deadline.

Staff will return to Council should elector approval *not* be obtained with the AAP. If Council decides to proceed with the borrowing, they must authorize the Corporate Officer *at that time* to proceed with assent voting, which must occur no later than 80 days after the deadline established for submitting Elector Response Forms during the AAP, as outlined in the *Local Government Act*, s. 174.

At this time, the Corporate Officer is unable to set an Elector Response Form deadline or dates for publishing statutory notices until the Inspector as designated by the Ministry of Municipal Affairs, has granted statutory approval of Bylaw No. 3021.

2. Organizational Implications

This process can be accomplished within existing department work plans and staffing levels; however, it is quite an involved process and the timeline is dependent on statutory approvals from the Province.

3. Financial Implications

As the Township does not have sufficient statutory reserves to fund this project, debt borrowing would be required. Obtained through the Municipal Finance Authority, the debt issuance of \$35,000,000 would be repaid over a maximum duration of 30 years. During this term, interest and principal payments would be made annually and would be funded using the existing statutory capital reserves.

The exact amount of interest over the borrowing period can only be estimated. The borrowing can only be locked in for a period of 5 or 10 years at a time at the interest rate in effect at the time of borrowing by the Municipal Finance Authority. We would plan to lock in for a 10-year term and the current rate for such a term is 1.81% however when this term expires, we would have to lock in for another term at the rate in effect at that time. Based on this rate, the annual debt servicing for the first 10 years of the loan is projected to cost approximately \$1,530,000 for borrowing proceeds of \$35,000,000. While their rate projections are constantly changing, MFA includes a 30-year indicative rate of 2.66% which could be used to project an annual servicing amount of \$1,828,000.

The annual servicing amount could be funded from the existing capital reserves and would not necessarily require increased taxation. However, this annual repayment would represent a significant portion of the reserve balance and could potentially impact the number and magnitude of other capital projects. Council would have the option of using taxation revenue to increase the capital reserves.

Separate from the borrowing discussion, holding an AAP would allow the opinion of the public to be obtained at a lower short-term cost than by conducting assent voting. AAP costs generally

include the two notices that must be published in a locally circulated newspaper and printing costs towards hard copy information packages and elector response forms. An estimated cost for advertising would be approximately \$1,500.

4. Sustainability & Environmental Implications

Construction designs are currently being refined with an aim to minimizing environmental impacts.

5. Communication & Engagement

There are legislated communication requirements attached to the AAP process as outlined above. These, of course, will be met. Additionally, staff will use a combination of print and digital communication to ensure the AAP process and intent are communicated. Including but not limited to print ads (Lookout and Vic News); other print media (Experience Esquimalt, The Current) and digital communication (Social Media, Corporate e-newsletter), additionally, a Township Website page will be created dedicated to the PSB and the AAP. An information package will be available at Municipal Hall (hard copy) and on the Township's website including a copy of Bylaw No. 3021 and the Elector Response Form for public inspection. The Corporate Officer will be available to address any questions relating to the AAP.

ALTERNATIVES:

1. Motion No. 1:

That Council give first, second and third readings to Public Safety Building Improvements Loan Authorization Bylaw, 2021, No. 3021 as outlined in Staff Report No. CSS-21-005.

Motion No. 2:

WHEREAS the Corporation of the Township of Esquimalt has given three readings to Loan Authorization (Public Safety Building) Bylaw, 2021, No. 3021, which proposes a debenture not to exceed \$35,000,000, be obtained to finance a Public Safety Building which will be repaid over a period not to exceed thirty (30) years.

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AND THAT IT BE FURTHER RESOLVED that a minimum of 32 days for submitting receiving the Elector Response Forms is established.

2. That Council does not give first, second and third readings to Bylaw No. 3021 and does not support an AAP towards long-term borrowing for the public safety building improvements.