
District of Lantzville

REPORT TO CAO

In-Camera Council Agenda Item
October 20, 2014

File: 2280-20-NANWA
Q: Reports/14/Elector Approval Exemptions

AUTHOR: Jedha Holmes, Director of Financial Services

SUBJECT: Exemptions from Elector Approval Requirement

Recommendation

THAT Council receives this report for information.

Alternative

n/a

Purpose

To provide Council with information regarding exemptions from elector approval requirements as they apply to the District of Lantzville's Water Agreement with the City of Nanaimo ("Water Agreement").

Background

At its September 8, 2014 Regular Council Meeting, Council approved the signing of the Water Agreement between the District of Lantzville and the City of Nanaimo. The term of the agreement is 20 years plus, at Lantzville's option, the ability to extend for an additional 20 year term. However, the District does not have a financial liability to the City of Nanaimo until the Commencement Date of the agreement.

Discussion

Section 175 (2) of the *Community Charter* addresses "liabilities under agreements" and provides that if a liability is incurred in an agreement with a term of more than 5 years, the Council may only incur the liability with the approval of the electors. However, the *Community Charter* Municipal Liabilities Regulation (B.C. Reg. 254/2004) Part 2 provides further guidance with respect to when approval of the electors is required for different types of municipal commitments and liabilities.

Section 6 of Part 2 ("Commitments that are not calculation liabilities") states the following:

Approval of the electors is not required under section 175(2) [*liabilities under agreements*] of the *Community Charter* unless the liability is one of the following:

- (a) a liability of a capital nature, whether or not it is or includes a contingent commitment;
- (b) a loan guarantee given by a municipality.

The payments that would be required to proceed with a water connection in accordance with the Water Agreement (i.e. the connection fees of about \$1.3 M and DoL infrastructure costs of about \$800,000) are not considered capital in nature. The District's legal counsel has affirmed this assessment. Therefore, approval of the electors is not required per Section 6 of the Regulation.

It follows then that the commitments in the Water Agreement are considered operating in nature, and Section 7 of Part 2 ("Approval-free liability zone") provides further that:

Approval of the electors is not required under section 175 (2) [*liabilities under agreements*] or section 180 (1) [*loan authorization bylaws*] of the *Community Charter* if

- (a) at the time it proposes to incur the liability,
 - (i) the annual cost of servicing the aggregate liabilities of the municipality for the year, as determined in accordance with section 3 of this regulation does not exceed
 - (ii) 5% of the annual calculation revenue of the municipality for the previous year, as determined in accordance with sections 4 and 5 of this regulation, and
- (b) incurring the liability would not cause the annual cost referred to in paragraph (a)(i) to exceed the limit established by paragraph (a)(ii).

The District of Lantzville is currently debt-free. Although the District has used some internal borrowing of reserve and accumulated surplus funds in prior years, these "loans" are not considered liabilities of the District (note: this has been confirmed with staff of the Ministry of Community, Sport, and Cultural Development). Therefore, the District's current annual cost of servicing aggregate liabilities is nil.

The District's Liability Servicing Limit is calculated each year as part of the legislated Provincial data filing (see attached Liability Servicing Limit Certificate). This certificate calculates the liability servicing limit at 25% which is the maximum for all debt, regardless of the need for elector approval. The District's maximum 5% servicing limit, related to the "approval-free liability zone," is \$155,931. Note that these "limits" are the costs of servicing the liability (i.e. annual payments), not the amount of the liability itself.

However, staff is of the opinion that the District will not need to incur external liabilities if Council chooses to move forward with implementing the Water Agreement because of the availability of Gas Tax funds and accumulated surplus. Therefore, approval of the electors is not required per Section 7 of Part 2 as noted above (i.e. cost of servicing the District's liabilities will continue to be nil). This conclusion has been vetted by the District's legal counsel, a representative at one of the leading BC audit firms, and the Ministry.

Notwithstanding the conclusions in the above discussions, as part of a conservative approach to this analysis, staff also considered other possible scenarios in case Council made the decision to borrow externally for any of the amounts required for implementation of the Water Agreement. Given the District's maximum 5% servicing limit is \$155,930 and that none of the scenarios exceed that amount, the District would also be exempt from the requirement for elector approval per Section 7 of BC Reg 254/2004 if Council were to proceed with any of these.

Financial Implications

The following table provides possible scenarios and related annual liability servicing amount (using current MFA borrowing rates over 20 year term). These scenarios are provided just as examples and not intended as complete list of alternatives.

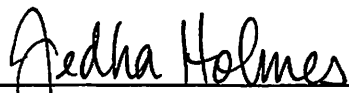
Scenario	Annual Liability Servicing Amount
Internal loan for initial connection fees - \$1,330,260	nil
External loan for initial connection fees - \$1,330,260	\$94,290
Gas Tax Funds used for estimated infrastructure construction costs - \$800,000	nil
External loan for 50% of estimated water infrastructure construction costs - \$400,000	\$28,350

Although it is *possible* that a payment could be required per section 14.1 of the Water Agreement, no exact amount is included in the terms of the Agreement. District staff and legal counsel are of the opinion that a payment pursuant to this section is highly unlikely because of representations provided by City of Nanaimo staff that all expected costs related to their water infrastructure are reflected in the connection fee of \$5,912 for five years. Given the unlikely and relatively minor amount of payments, if any, expected from this section, the District's legal counsel concluded that the District does not require elector assent related to this section.

Summary

This report summarizes the *Community Charter* legislation and regulation related to municipal agreement commitments and liabilities and how those apply to the Water Agreement between the District of Lantzville and the City of Nanaimo, specifically as it relates to the requirement for elector approval. The conclusion of the District's legal counsel is that the District is exempt from the requirement for elector approval of the Water Agreement per Section 6 and 7 of the Municipal Liabilities Regulation.

Respectfully submitted



Jedha Holmes
Director of Financial Services
District of Lantzville

Reviewed By:

CAO		Dir. CA		Dir. of PW	
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LIABILITY SERVICING LIMIT CERTIFICATE

The District of Lantzville (the "Municipality")
 In relation to District of Lantzville Water Agreement with Nanaimo - Approval Free Liability Zone

The undersigned Financial Officer assigned responsibility for financial administration under section 149 of the Community Charter, SBC 2003, Chapter 26 (the "Charter") or Auditor appointed for the Municipality under section 169 of the Charter of the Charter hereby certifies as follows:

Calculation revenue for the previous year <i>(section 4 & 5, BC Reg 254/2004)</i>	<u>\$3,118,622.00</u>	a	
Liability Servicing Limit (a x 25%) <i>(section 2, BC Reg 254/2004)</i>	<u>\$779,655.50</u>	b	
Annual Servicing cost for previous year	<u>\$0.00</u>	c	<u>\$155,931</u> 5% (S.7 B.C. Reg 254/2004)

Plus: New liabilities incurred, other than current request

Liability Type and reference	Annual servicing cost		
_____	_____	d	
_____	_____	e	
_____	_____	f	
_____	_____	g	
_____	_____	h	
_____	_____	i	
_____	_____	j	
_____	_____	k	
_____	_____	l	
Total of lines d through l	<u>\$0.00</u>	m	

Less: Liabilities which have matured

Liability type and reference	Annual servicing cost		
_____	_____	n	
_____	_____	o	
_____	_____	p	
_____	_____	q	
_____	_____	r	
Total of lines n through r	<u>\$0.00</u>	s	

Amount of new liability <i>(section 3, BC Reg 254/2004)</i>	<u>\$0.00</u>	t	
Annual servicing cost of new liability <i>(section 3, BC Reg 254/2004)</i>	<u>_____</u>	u	
Total liability servicing cost including current request (lines c+m-s+u)	<u>\$0.00</u>	v	

which is less than the annual liability servicing limit stated on line b.

OR

which exceeds the annual liability servicing limit stated on line b, and the undersigned hereby requests approval of the Inspector of Municipalities under section 174 of the Charter to exceed the limit established under the section.

In accordance with section 179(5) or section 175(1)(b) of the Charter, as applicable, the debt to be contracted under the loan authorization bylaw, or other liability for which certification is being made, referred to above will not exceed the lesser of 30 years and the reasonable life expectancy of the capital asset, activity, work or service, or the remaining term of the applicable agreement, as the case may be, for which the debt is to be contracted.

The undersigned Financial Officer or Auditor also hereby authorizes the law firms of Farris, Vaughan, Wills & Murphy and Bryant & Company to rely on this Certificate in giving any opinion in connection with any borrowing by the Municipal Finance Authority of British Columbia ("MFA") and the issuance of bonds, debentures, and other securities by the MFA in respect of the loan authorization bylaw, or other liability for which certification is being made, referred to above.

DATED this _____ day of _____, 200_.

 Financial Officer

OR

 Auditor

(Please print full name)

(Please print full name & company)