



THE CORPORATION OF THE CITY OF COURTENAY

STAFF REPORT

To: Council

File No.: 1670-01/3900-20-2981

From: Chief Administrative Officer

Date: November 18, 2019

Subject: Asset Management Bylaw No. 2981, 2019 for Adoption

PURPOSE:

To meet Council's direction outlined below to provide an Asset Management Bylaw for their consideration and adoption.

POLICY ANALYSIS:

This will be one of the few local government Asset Management Bylaws adopted in Canada and the first in British Columbia. Therefore, it has been critical to carefully draft the content so it will: rest upon a solid legal foundation; stay within Council's authority; be readily understood and ensure it will be consistent with existing legislation and other City bylaws and policies.

CAO RECOMMENDATIONS:

THAT based on the November 18th, 2019 staff report, "Asset Management Bylaw No. 2981, 2019 for Adoption" Council approve OPTION 1 and proceed to First, Second and Third Readings of the attached Asset Management Bylaw No. 2981, 2019; and

THAT Council direct staff to bring Asset Management Bylaw No, 2981, 2019 back to Council for Final Adoption prior to its consideration of the 2020-2024 Five-Year Financial Plan.

Respectfully submitted,

David Allen, BES, CLGEM, SCLGM
Chief Administrative Officer

BACKGROUND:

At its Regular Meeting of March 2, 2019 Council carried the following motion:

Moved by Cole-Hamilton and seconded by Morin that

“Whereas the City of Courtenay practices Asset Management in order to ensure that it provides services in a financially sustainable manner; and,

Whereas a Bylaw which requires consideration of the full life-cycle costs of all asset renewals, upgrades and acquisitions would serve to consolidate and strengthen the City’s Asset Management policy and practice;

Therefore be it resolved that Council direct staff to draft an Asset Management Bylaw which incorporates the existing Asset Management Policy and which would require taking into account full life-cycle costs when making decisions regarding renewal, upgrade and acquisition of Tangible Capital Assets; and,

That full life-cycle costs are considered to include the planning, procurement, creation, operation, maintenance, renewal and decommissioning of Tangible Capital Assets.”

DISCUSSION:

The first step in research to meet the Resolution was to identify the distinction between a policy and a bylaw. This was particularly important because there is little experience across Canada¹, and none in BC, at writing an Asset Management bylaw.

A policy is a general statement of objectives to guide decisions on a particular matter. A policy may be readily altered by Resolution or at Council’s discretion, and disregarded in decision-making with little or no legal consequence.² However, a bylaw is a “regulation” enacted in execution of a power conferred under an Act (such as the *Community Charter*). It has the same effect on persons to whom it is directed as both a federal or provincial statute has on such persons³. A bylaw is *not* discretionary. It must only be altered following the correct statutory procedures (including public debate, multiple readings and final adoption).

In consultation with the City legal advisors, staff proposed various means to satisfy Council’s intent. After much discussion, the legal foundation and scope of Council’s authority were identified and are provided in Attachment 1 to this report. The outcomes may be paraphrased as follows:

1. The purposes of a municipality include providing for stewardship of its public assets;
2. Council is responsible for asset stewardship, except as otherwise statutorily provided;
3. Every council member is responsible to contribute to meeting this purpose; and
4. The CAO is responsible for overall operations, ensuring Council’s directions are implemented plus advising and informing Council on the operation and affairs of the municipality.

¹ The City of Selkirk MB adopted an Asset Management Bylaw in April 2017, but it was written in compliance with Manitoba provincial legislation and has not yet been tested by the courts. Selkirk is generally accepted as the only Canadian Community that has as yet adopted such a bylaw.

² This is not the case for policies contained in the Official Community Plan which is adopted by bylaw. See: *Local Government Act* R.S.B.C. 2015, s. 478.

³ *Interpretation Act* R.S.B.C. 1996, c. 238 [Re *Tenenbaum and Local Board of Health for Toronto* [1955] O.R. 622-633 (Ont.C.A.); *Kovinic v. Niagara Falls (City)* (1999), 3 M.P.L.R. (3d) 285 (On. Sup. Ct.)].

Unfortunately, the aim of achieving bylaw simplicity was partially confounded because certain concepts either contained within the existing Policy or others newly desired, have not been defined in existing law⁴. This included Council's direction to require consideration of full life-cycle costs in its decision-making, the notion of using natural assets where possible as an alternative to constructed assets, or practicing "Asset Management for Sustainable Service Delivery" (The BC Framework)⁵ as set out in Council's 2015 AM Policy. These issues were overcome by defining the terms within the bylaw – thus adding minimal complexity to its understanding – and assigning appropriate responsibility to meet them within the Bylaw.

Overall, this bylaw assigns the *practice* of Asset Management principles and advice related to Council decision-making to the CAO and staff (internally, staff operational responsibilities are assigned via CAO Directives). The Council role is to receive and consider the information and advice, then express their collective decisions via adoption of strategic priorities and approval of the five-year financial plan.

FINANCIAL IMPLICATIONS:

Potentially far reaching, but not specific to adoption of this bylaw.

ADMINISTRATIVE IMPLICATIONS:

Development of appropriate CAO Directives to meet responsibilities assigned by the bylaw.

ASSET MANAGEMENT IMPLICATIONS:

Minimal because the principles contained within the proposed bylaw are already present practice.

STRATEGIC PRIORITIES REFERENCE:

- Support and encourage initiatives to improve efficiencies
- Responsibly provide services at levels which the people we serve are willing to pay
- Focus on asset management for sustainable service delivery
- ▲ Support social, economic and environmental sustainability solutions
- ▲■ Advocate and cooperate with local and senior governments on regional issues affecting our community

- **AREA OF CONTROL:** The policy, works and programming matters that fall within Council's jurisdictional authority to act
- ▲ **AREA OF INFLUENCE:** Matters that fall within shared or agreed jurisdiction between Council and another government or party
- **AREA OF CONCERN:** Matters of interest that are outside Council's jurisdictional authority to act

OFFICIAL COMMUNITY PLAN REFERENCE:

Nil

REGIONAL GROWTH STRATEGY REFERENCE:

Nil.

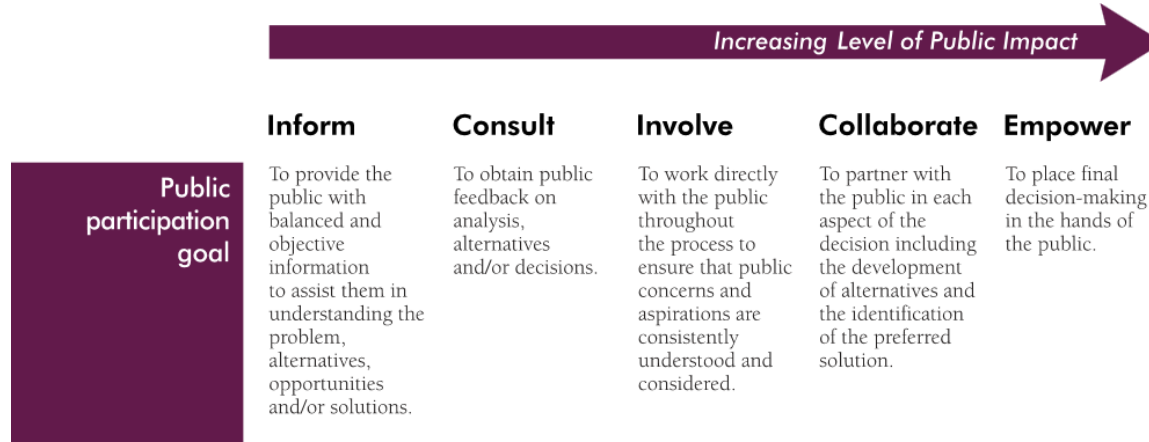
⁴ BC Interpretation Act [RSBC 1996] CHAPTER 238

⁵ <https://www.assetmanagementbc.ca/>

CITIZEN/PUBLIC ENGAGEMENT:

Staff would Inform the public based on the IAP2 Spectrum of Public Participation:

http://c.ymcdn.com/sites/www.iap2.org/resource/resmgr/imported/IAP2%20Spectrum_vertical.pdf



OPTION 1: (Recommended)

THAT Council proceed to First, Second and Third Readings of Asset Management Bylaw No. 2981, 2019; and,

THAT Council direct staff to bring Asset Management Bylaw No, 2981, 2019 back to Council for Final Adoption prior to its consideration of the 2020-2024 Five-Year Financial Plan.

OPTION 2: Return Bylaw No. 2981, 2019 to staff as amended for further legal review and reconsideration.

OPTION 3: Defer Bylaw No. 2981, 2019 for future consideration.

Prepared by:

David W. Love, CD, BA, LGM(Dip), MM, PE, PCAMP
Senior Advisor, Strategic Initiatives

Attachments:

1. *Legal Rationale for Asset Management Bylaw 2981, 2019 - Community Charter*
2. *Asset Management Bylaw 2981, 2019*

Municipal purposes

- 7** The purposes of a municipality include
- (b) providing for services, laws and other matters for community benefit,
 - (c) providing for stewardship of the public assets of its community, and
 - (d) fostering the economic, social and environmental well-being of its community.

Council as governing body

- 114** (1) The members of a municipal council are the mayor and the councillors.
- (3) The powers, duties and functions of a municipality are to be exercised and performed by its council, except as otherwise provided under this or another Act, and a council, in exercising or performing its powers, duties and functions, is acting as the governing body of the municipality.

Responsibilities of council members

- 115** Every council member has the following responsibilities:
- (b) to contribute to the development and evaluation of the policies and programs of the municipality respecting its services and other activities;

Responsibilities of mayor

- 116** (1) The mayor is the head and chief executive officer of the municipality.
- (2) In addition to the mayor's responsibilities as a member of council, the mayor has the following responsibilities:
- (a) to provide leadership to the council, including by recommending bylaws, resolutions and other measures that, in the mayor's opinion, may assist the peace, order and good government of the municipality;

Chief administrative officer

- 147** A bylaw under section 146 may establish the position of chief administrative officer of the municipality, whose powers, duties and functions include the following:
- (a) overall management of the operations of the municipality;
 - (b) ensuring that the policies, programs and other directions of the council are implemented;
 - (c) advising and informing the council on the operation and affairs of the municipality.

THE CORPORATION OF THE CITY OF COURTENAY

BYLAW NO. 2981

A bylaw to provide for an asset management program aimed at sustainable service delivery

WHEREAS Council wishes to promote best practices in asset management at the local government level, including by supporting the work of Asset Management BC and the standards set by NAMS Canada;

WHEREAS the City of Courtenay is a host community for a pilot project of the Municipal Natural Assets Initiative;

AND WHEREAS Council has previously provided for asset management within the Corporation of the City of Courtenay by means of Council Policy 1670.00.02;

NOW THEREFORE the Council of the City of Courtenay enacts as follows:

Citation

1. This bylaw may be cited for all purposes as *“Asset Management Bylaw No. 2981, 2019”*.

Definitions

2. In this bylaw:
 - (a) **“Asset Management”** means the systematic and coordinated activities and practices of an organization to optimally and sustainably deliver on its objectives through the cost-effective lifecycle management of Tangible Capital Assets;
 - (b) **“Asset Management Plan”** means a long-term plan that outlines assets, asset conditions, levels of service, asset and service risks, activities and programs for each service area, and resources required to provide a defined level of service in the most cost-effective way;
 - (c) **“Asset Management Program”** means a corporation-wide program for the management of the City’s Tangible Capital Assets aimed at achieving Sustainable Service Delivery;
 - (d) **“Chief Administrative Officer”** means the Chief Administrative Officer of the City or a person designated to act in the place of the Chief Administrative Officer;
 - (e) **“City”** means the Corporation of the City of Courtenay;
 - (f) **“Council”** means the Council of the City;

- (g) **“Full Lifecycle Cost”** means the total cost of a Tangible Capital Asset throughout its life, including planning, design, construction, acquisition, operation, maintenance, rehabilitation, and disposal;
- (h) **“Natural Assets”** means the stocks of natural resources or ecosystems that have the potential to contribute to service delivery;
- (i) **“Sustainable Service Delivery”** means an approach to service delivery whereby current community service needs are met in a socially, economically, and environmentally responsible manner that does not compromise the ability of future generations to meet their own needs; and
- (j) **“Tangible Capital Asset”** has the meaning established under the accounting standards applicable to local governments by the Public Sector Accounting Board.

Asset Management Program

- 3. The Chief Administrative Officer will establish and maintain an Asset Management Program.
- 4. In complying with section 3, the Chief Administrative Officer will endeavour to:
 - (a) establish and maintain Asset Management Plans, directives, practices, and procedures in accordance with best practices;
 - (b) ensure personnel, financial resources, and other operational capabilities deemed necessary by the Chief Administrative Officer are provided and that responsibilities under the Assessment Management Program are effectively delegated;
 - (c) create a corporate culture where all departments, officers, and employees have a role to play in Asset Management by providing awareness and professional development opportunities; and
 - (d) regularly identify new opportunities for achieving Sustainable Service Delivery, including by identifying opportunities for incorporating Natural Assets into the Asset Management Program.

Lifecycle Costing

- 5. The Chief Administrative Officer will endeavour to provide or to coordinate the provision to Council of all available information and advice pertaining to Lifecycle Costs to facilitate decision-making related to the renewal, upgrade, and acquisition of Tangible Capital Assets.

- Council will consider Lifecycle Costs in all decisions related to the renewal, upgrade, and acquisition of Tangible Capital Assets and in doing so will consider information provided to Council under section 5.

Severability

- If any portion of this bylaw is declared invalid by a court of competent jurisdiction, then the invalid portion must be severed and the remainder of the bylaw is deemed valid.

Read a first time this ____ day of _____, 2019.

Read a first time this ____ day of _____, 2019.

Read a first time this ____ day of _____, 2019.

Finally passed and adopted time this ____ day of _____, 2019.

Mayor

Corporate Officer