

TO: MAYOR & COUNCIL

FROM: GENERAL MANAGER CORPORATE SERVICES

SUBJECT: ALTERNATIVE APPROVAL PROCESS FINDINGS REPORT

PURPOSE: To provide Council additional information on the Alternative Approval Process for removal of park dedication for a portion of 4800 Riverbend Drive required for the proposed Green Recycling and Organics (GRO) facility.

RECOMMENDATIONS:

1. **THAT** the report titled “Alternative Approval Process Findings Report” dated May 8, 2023, 2023 from the General Manager Corporate Services, be received for information; and
2. **THAT** staff be directed to develop an acceptance of electronic signatures policy for future public engagement opportunities that require identity verification through signatures; and
3. **THAT** for future decisions of Council that require assent of the electors, staff be directed to develop and provide cost estimates and procedures for Referendum and/or Alternative Approval Process options.

CHIEF ADMINISTRATIVE OFFICER’S COMMENTS

I concur with the recommendations of the General Manager Corporate Services.

1.0 POLICY SECTION

Pursuant to section 30(2) of the *Community Charter*, a council may adopt a bylaw to dedicate property as a park. Section 30(3) of the *Community Charter* established that the dedication of park under section 30(2) may only be removed by a bylaw adopted with the approval of the electors.

Under the *Community Charter*, there are two ways the approval of the electors can be obtained:

- 1) by way of a vote using the assent voting process (i.e., referendum) under section 85, or
- 2) through the alternative approval process (i.e., former counter petition process) under section 86.

Pursuant to section 131 of the *Community Charter*, and section 24 of the *Burnaby Procedure Bylaw*, the mayor may require the council to reconsider and vote again on a matter that was the subject of a vote.

2.0 BACKGROUND

Beginning in 2021, Council adopted the following decisions to direct staff to begin planning for a green recycling and organic facility for Burnaby to handle its own recycling rather than paying for the shipment and removal of organics into other communities.

At the April 2021 meeting Council resolved:

“THAT Council direct staff to proceed with conceptual design work on a City-owned 150,000 tonnes per year Green Waste processing facility.

THAT Council direct staff to investigate utilization of portions of the 4800 Riverbend Drive property for the facility.”

Staff then undertook the direction and returned to a newly elected Council seeking further direction on proceeding with the project. Council resolved at the open meeting on February 6, 2023:

“THAT Council authorize staff to continue advancing work on developing the Green Recycling Organic Waste (GROW) project at 4800 Riverbend Drive, as described in the report.”

At the Open Council meeting held on February 27, 2023, Council authorized staff to proceed with the Alternative Approval Process (AAP) for a proposed green recycling and organics processing facility (“GRO” Facility) to be located on a portion of 4800 Riverbend Drive. During this time, the name was changed to reflect that the facility would be handling green recycling and organics and removed the word “waste” from the project. The decision of Council included:

“THAT Council direct the City Solicitor to prepare a bylaw to remove the park dedication for that portion of 4800 Riverbend Drive required for the proposed Green Recycling and Organics (GRO) facility.

THAT Council authorize staff to proceed with the Alternative Approval Process as described in Section 3.1 of this report.

THAT Council determine the Alternative Approval Process apply to the whole of the City of Burnaby and there is a total of 162,503 eligible electors for this Alternative Approval Process.

THAT Council approve a single elector response form for the Alternative Approval Process, in the form attached as Attachment 1.

THAT Council establish a deadline of 4:00 p.m. on Friday, April 28, 2023, for receiving elector responses under the Alternative Approval Process.”

The park dedication removal bylaw was required because the 40.3-hectare (99.7 acre) property located at 4800 Riverbend Drive was dedicated for park and recreation used by *Burnaby Parks Dedication Bylaw 2005* (Bylaw No. 11988), and was adopted by an affirmative vote of at least 2/3 of all members of Council in 2005.

To facilitate the development of the GRO facility, it was necessary to remove the park dedication from the GRO Development Area, which could only be done by a bylaw adopted with the approval of the electors as per section 30 of the *Community Charter*. At the February 27, 2023 meeting, the Park Dedication Removal Bylaw was provided first, second and third reading to allow staff to move into the Alternative Approval Process (AAP).

On March 13, 2023, the Chief Administrative Officer submitted a report from the General Manager Lands and Facilities and General Manager Corporate Services providing Council with information relating to the feasibility of a mail-in ballot process associated with the AAP and enhanced public education for the GRO project.

On March 15, 2023, Mayor Mike Hurley called for a reconsideration vote to be held on March 20, 2023 at a Special Open meeting of Council.

At the March 20, 2023 meeting, Council reconsidered the February 27, 2023 decision of item 6.2 which initiated the AAP, effectively ending the AAP.

During the March 27, 2023 Open meeting, Council rescinded all three readings of the Park Dedication Removal Bylaw, thus striking the bylaw from the record and cancelling the process in its entirety.

Additionally at the March 27, 2023 meeting Council, under the Other Business section adopted the following resolution:

***“WHEREAS** the recent alternative approval process deployed to receive public consent to remove a portion from the previously dedicated parklands area was met with vigorous opposition and public cynicism; and*

***WHEREAS** many Burnaby residents voiced that a referendum is a more appropriate option than the alternative approval process to receive public consent to “undedicated” parklands;*

***THEREFORE BE IT RESOLVED THAT** Council direct staff to report on the advisability of changing the Park Dedication Bylaw such that a referendum must be the only option available to Council to receive public consent to remove any or all of the dedicated parklands.”*

Based on the recommendation above, staff have developed this report to advise Council of the impacts, costs and procedures undertaken during the first AAP for the City, and is providing recommendations to Council on how to proceed with public engagement or future assent of the elector requirements.

3.0 GENERAL INFORMATION

The AAP is a tool that can be used to help local governments understand where the community views a particular matter as “significant”, and if necessary, where the matter then warrants being taken to an assent vote (i.e., referendum) for broader citizen engagement. The AAP is set out in section 86 of the *Community Charter* and must be completed after the third reading, but prior to final adoption of the proposed part dedication removal bylaw.

To proceed with the AAP for the *Burnaby Park Dedication Removal Bylaw 2023*, Council by resolution:

- i. established the deadline for receiving elector responses as 4:00 p.m. on Friday, April 28, 2023;
- ii. determined that the area to which the AAP applies, be the whole of the City of Burnaby so that in order for approval to be obtained, 16,250 elector responses be received;
- iii. established an elector response form, which involved formulating the elector response in opposition to the adoption of *Burnaby Park Dedication Removal Bylaw 2023*; and
- iv. determined to allow for single elector responses on each form.

Under section 86(5) of the *Community Charter*, the electors of the area to which the AAP applies are the person who would meet the qualification in section 172(1)(a) of the *LGA*.

To meet the qualifications in section 172(1)(a) of the *LGA*, a person must be either a resident elector or non-resident property elector, in relation to the voting area for which the voting is to be conducted.

The AAP operates similarly to assent voting (i.e., referendum) in that both qualified resident electors and non-resident property electors may submit a response. The criteria for determining whether someone qualifies either as a resident elector or non-resident property elector are set out in section 65 and 66 of the *LGA*, respectively.

Identify verification is required to ensure the submissions of responses could be counted and verified, by providing essential personal information, which is also required under general elections. It is important to note that general practice for municipalities that routinely offer AAPs who do not expect to receive 10% of opposition votes are not required to verify the responses and do not have verification methods planned in their responses. As this was the first AAP for the City of Burnaby, Legislative Services staff planned for the scenario where the number of response forms would require identity verification. Therefore, the required identity information was included on the forms to be submitted with physical signatures to ensure verification could take place.

The collection of all personal information required on the form was authorized under section 26(c) of the *Freedom of Information and Protection of Privacy Act (FIPPA)* of BC and subsequent notice requirements were added to all elector response forms.

Electronic submission of forms was not accepted. The City of Burnaby did not have an Acceptance of Electronic Signatures Policy or Privacy Impact Assessment for the AAP which became legislated requirements as of February 1, 2023 (*FIPPA* was amended). This capability would have required an information sharing agreement should a third-party service provider been acquired to accept digital signatures. While electronic signature acceptance would have been preferable for ease of submission, the protection of individual privacy took priority.

The total number of unverified elector response forms that were received by Legislative Services at the time that the AAP was reconsidered at 12:00 noon on Monday, March 20, 2023, was:

Non-Resident Property Elector Forms	11
Resident Elector Forms	1,131
TOTAL UNVERIFIED ELECTOR RESPONSE FORMS RETURNED	1,142

For clarity purposes, these forms were not reviewed by staff to ensure eligibility to vote as the process was deemed cancelled and there was no authority for staff to proceed with verification or review the personal information on the forms. In accordance with the City's Records Classification and Retention Schedule, all received forms and any forms received thereafter, were securely destroyed.

Total <u>unverified</u> Elector Response Forms destroyed	1,142
Total <u>unfilled</u> Elector Response Forms that were ordered but upon cancellation of AAP, were subsequently recycled	7,200
Total <u>unfilled</u> Non-Resident Property Elector Response Forms that were ordered but upon cancellation of AAP, were subsequently recycled	4,535
Total cost of staff to conduct internal destruction and recycling	\$33.56

4.0 COMMUNITY ENGAGEMENT & COMMUNICATION

On February 6, 2023, the City launched a webpage dedicated to the GRO project. The webpage provided a high-level overview of the GRO project and its potential benefits, and was available at www.burnaby.ca/GRO. Information about the AAP and how it works, as well as answers to frequently asked questions was included on the webpage.

Notice of the AAP was published in full-page ads in the Burnaby Now on March 2 and March 9, 2023. Elector response forms were made available online on the City's webpage beginning at 8:00 a.m. on March 2, 2023, and in-person at the Legislative Services Department at Burnaby City Hall beginning at 8:00 a.m. on March 2, 2023 as well as at all four Burnaby Public Library locations beginning at 10:00 a.m. on March 2, 2023.

At the February 27, 2023 Open Council meeting, Council passed the following resolutions:

“THAT staff explore a feasibility of mail-in ballot process, similar to mail in ballot in election.

THAT GRO staff develop an engagement plan to educate public about GRO facility and Alternative Approval Process.”

As AAPs require participation by “opposition letters” only, if elector response forms are sent out to the entire electorate, it could be perceived that Legislative Services is pre-supposing how each elector would “vote”. Therefore, it was not recommended to send the form in the same manner as mail-in ballots related to a local government election (where ballots are blank and must be completed by each eligible voter).

However, Legislative Services provided the following enhanced services in relation to AAP:

a. Pre-Paid Postage Envelopes

Legislative Services provided packages to all locations where electors can pick up forms. The packages included the following:

- Elector Response Form (instructions on how to submit are contained in the form);
- Non-Resident Property Elector Form (this is only required for properties with multiple owners); and
- Pre-paid postage return envelopes address to the Legislative Services Office.

b. Language/Translation Services

As a courtesy service, Legislative Services provided a translated version of the Elector Response Forms in the same six languages as provided in the last Local General Election. These languages included:

- Mandarin
- Cantonese
- Korean
- Filipino (Tagalog)
- Spanish
- Persian

c. Accessibility Accommodations

For members of the public who were not physically able to appear at any of the five locations to pick up a form and envelope package, they were encouraged to contact Legislative Services directly via phone or email to have a staff member assist.

Accessibility accommodations were made on a case-by-case request and only available to eligible electors.

In addition to the enhanced services above, staff were planning to host two public open houses to provide the public an opportunity to learn more about the GRO project, get clarification on the AAP, and ask questions to the project team. Legislative Services staff would have been present to provide AAP forms to any individual who requested them on site and to provide answers to any procedural questions.

Additionally, a video about the GRO project information was being produced by the Marketing and Corporate Communications Department to be shown at the public open house events and made available on the City's website, and shared through other digital channels for those not able to attend the events.

After the AAP was cancelled by Council, public notice on the cancellation of the AAP was published in the Burnaby Now on March 30 and April 6, 2023.

5.0 BULK FORM REQUESTS

On the first day of the AAP opening, library locations and municipal hall had individuals appear and request bulk quantities of forms with the intent to canvass their respective community areas. As this was the first AAP in Burnaby, this behaviour was unforeseeable and unprecedented for the City. In an effort to alleviate pressure on the libraries, Legislative Services developed a printing on demand service for bulk order requests and began printing thousands of forms and envelopes from the City's printshop. The printshop provided on demand services and received an overwhelming number of requests for bulk forms from 52 individuals (Attachment #1) within the first three weeks of the AAP, indicated in the table below:

Elector Response Forms	44,600
Non-Resident Property Elector Consent Forms	890
Return Envelopes	36,995
TOTAL PRINTED MATERIALS REQUESTED	82,485

As the neutral party administering the AAP, Legislative Services ensured that all members of the public who were seeking individual forms were able to access and have them readily available when appearing at library locations or City Hall.

As a result of the overwhelming number of requests for bulk order forms and envelopes, Legislative Services limited the number of orders to each individual to a maximum of 1,000 forms for their initial order. Once initial orders were processed, and staff were confident that forms were readily available to the community at pick-up locations, additional requests were considered.

Should a future AAP take place, Council may establish a policy by resolution to restrict the number of counter-petition forms that may be picked up by an individual and/or an organization to:

- protect personal information about identifiable individuals;
- restrict undue influence; and

- enable the Corporate Officer to be able to make a fair and reasonable decision regarding the sufficiency of the counter petitions.

Pursuant to section 86(6) of the *Community Charter*, individuals can make accurate copies of the forms, therefore the Council policy restriction would only apply to the number of forms that may be picked up at City Hall.

6.0 ELECTRONIC VOTING AND SIGNATURES

An AAP requires identity verification similar to an election, in which identities and eligibility to vote must be affirmed and require a real, physical signature of the electors. As the City of Burnaby does not accept electronic voting for local elections, electronic voting submissions were not accepted during the AAP to ensure the integrity of the vote as well as the protection of participant's privacy. Given the relatively outdated guidance documents from the Province (published in 2018 and did not account for new privacy legislation requirements), the City of Burnaby was unable to ensure the integrity of an electronic submission.

The *Freedom of Information and Privacy Protection Act* was recently amended to increase levels of security for personal information and a policy would need to be developed in compliance with new privacy regulations.

7.0 USE OF REFERENDUM ONLY FOR REMOVAL OF PARK DEDICATIONS

At the March 27, 2023 meeting Council, under the Other Business section, adopted a resolution to direct staff to report on the advisability of changing the Park Dedication Bylaw such that a referendum must be the only option available to Council to receive public consent to remove any or all of the dedicated parklands.

As section 30 of the *Community Charter* authorizes removal of a park dedication after approval of the electors and section 84 of the *Community Charter* permits elector approval to be obtained by way of either assent voting (i.e. referendum) or AAP, it is not possible to include in the City's park dedication bylaws a provision requiring the use of assent voting only or prohibiting AAP for obtaining elector approval for the removal of the park dedications. The legislation specifically provides that either elector approval option may be used.

Despite the above, Council can, by resolution, identify assent voting (i.e. referendum) as the preferred option for seeking elector approval for removal of park dedications in the future. Although not binding on future Councils, this resolution would be persuasive as Council's position on the matter and need to be taken into consideration in any future process where removal of park dedication is contemplated.

8.0 FINANCIAL CONSIDERATIONS

Financial costs related to the AAP are detailed and totalled below:

Alternative Approval Process Form Design and Process Development	\$ 6,434.00
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Total Printing Costs (46,900 Elector Response Forms, 6,000 Non-Resident Property Elector Consent Forms, and 40,000 Return Envelopes)	15,438.00
Notice of AAP Publications (2)	4,399.42
Notice of AAP Cancellation Publications (2)	4,399.42
Legal Advice and Review	733.05
Translation of Elector Response Forms into 6 languages	3,547.20
TOTAL COST	\$ 34,951.09

Approximate staff labour costs shown are only in relation to the administration of the AAP and have been detailed below:

Legislative Services Staff (440+ hours) <ul style="list-style-type: none"> • General Manager Corporate Services • Director and Sr. Manager Legislative Services • Administrative Officer and Council Support Assistants 	\$22,320.00
Marketing and Communication (10+ hours) <ul style="list-style-type: none"> • Director, Marketing and Communications • Digital Marketing Coordinator • Marketing Assistant 	\$352.02
Printshop (40+ hours) <ul style="list-style-type: none"> • Senior Digital Printshop Operator • Printshop and Digital Printshop Operators • Digital Reprographics Operators 	\$1,658.90
APPROXIMATE TOTAL COST	\$24,330.92

If Burnaby were to conduct another assent voting process and direct staff to initiate an AAP or Referendum, it is recommended that Council request and establish a comprehensive budget that includes costs such as printing, staff labour, legal review, marketing, and other relevant expenses. This measure will ensure that all necessary resources are accounted for, and that future assent voting processes can be executed in a manner that is both efficient and effective.

Respectfully submitted,

Nikki Best, Director Legislative Services
 for
 Juli Halliwell, General Manager Corporate Services

ATTACHMENT

Attachment 1– Alternative Approval Process Bulk Form Order Requests

REPORT CONTRIBUTORS

This report was researched and prepared by Samantha Thompson, Administrative Officer

AAP BULK FORM ORDER REQUESTS

NAME	HOUSEHOLD	RETURN ENVELOPES QTY	ELECTOR RESPONSE FORM QTY	NRPE CONSENT FORM
PERSON 1		1,000	1,000	
PERSON 2	HOUSEHOLD 1	500	1,000	
PERSON 3	HOUSEHOLD 1	100	1,000	
PERSON 4		600	600	
PERSON 5		500	50	
PERSON 6		1,000	1,000	
PERSON 7		750	1,000	100
PERSON 8		1,000	1,000	
PERSON 9		1,000	1,000	
PERSON 10		1,000	1,000	
PERSON 11		1,000	1,000	
PERSON 12		100	150	
PERSON 13		1,300	2,000	600
PERSON 14		500	1,000	
PERSON 15		500	1,000	
PERSON 16		500	500	
PERSON 17		1,000	1,000	
PERSON 18		500	1,000	
PERSON 19		500	500	
PERSON 20		1,200	1,200	
PERSON 21		1,000	1,000	
PERSON 22		1,000	1,000	
PERSON 23		1,000	1,000	
PERSON 24		1,000	1,000	
PERSON 25		100	1,000	
PERSON 26		1,000	500	
PERSON 27		500	1,000	
PERSON 28		500	500	
PERSON 29		1,000	1,000	
PERSON 30		1,000	1,000	
PERSON 31		1,000	1,000	100
PERSON 32		300	300	
PERSON 33		50	200	
PERSON 34	HOUSEHOLD 2	1,000	1,000	
PERSON 35	HOUSEHOLD 2	1,000	1,000	
PERSON 36		200	200	
PERSON 37		100	200	

PERSON 38		1,000	1,000	
PERSON 39		100	50	
PERSON 40		70	100	20
PERSON 41		500	1,000	
PERSON 42		500	1,000	
PERSON 43		500	1,000	50
PERSON 44		1,000	1,000	
PERSON 45		1,000	1,000	
PERSON 46		25	50	
PERSON 47		500	500	
PERSON 48		500	1,000	
PERSON 49	HOUSEHOLD 3	1,000	1,000	
PERSON 50	HOUSEHOLD 3	2,000	2,000	
PERSON 51		500	1,000	
PERSON 52		1,500	2,000	20
52 INDIVIDUALS		36,995	44,600	890

Staff members reached out to individuals who had submitted bulk form requests to seek their consent for the inclusion of their names in the report. However, it is worth noting that only 22% of the requestors granted authorization to disclose their names publicly.