



**Town of Aurora
General Committee Report No. FS18-015**

Subject: Information regarding accessing Hydro Reserve funds
Prepared by: Dan Elliott, Director of Financial Services - Treasurer
Department: Financial Services
Date: April 17, 2018

Recommendation

- 1. That Report No. FS18-015 be received; and**
- 2. That Council provide direction regarding alternative by-law amendments presented in this report; and**
- 3. That, as applicable, staff be directed to bring forward the necessary draft bylaw for adoption to the Council meeting of April 25, 2018.**

Executive Summary

Final design and cost estimate reports seeking funding are shortly expected for the Armoury project and the Library Square project. A report was recently presented outlining funding strategies for these projects, which indicated use of Aurora Hydro Sale Investment Reserve Funds. These funds have restrictive rules attached to them. Staff were asked to present a report for information regarding the funds, their conditions and rules, and copies of the bylaws.

- Proceeds of sale of Aurora Hydro placed into two reserve funds
- The smaller Council Discretionary Reserve Fund has fewer constraints
- The larger Hydro Sale Investment Reserve Fund has complex constraints
- The restrictive voting rule could result in project delays
- Restrictive rules of the bylaw can be changed at any time by simple majority
- Change options are provided

Background

It has been noted in other reports that in the coming weeks, final pretender design and funding requirements are expected to be brought to Council for both the Armoury update, and the Library Square which will include a new community use building.

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Report No. FS18-011 was presented at April 3, 2018 General Committee outlining funding strategies for these projects.

At its meeting of April 3, 2018, Council asked staff to prepare an information report regarding the funds, their conditions and rules, and copies of the bylaws. For clarity, much of the text of this report has been lifted directly from the reserve fund bylaws.

Proceeds of sale of Aurora Hydro placed into two reserve funds

The Town of Aurora sold its interest in Aurora Hydro Connections Limited to Powerstream Inc. in June 2005. Ultimately, 90% of the proceeds were placed into the Aurora Hydro Sale Investment Reserve Fund, with the remaining 10% placed into the Council Discretionary Reserve Fund. In July, 2012, Staff Report CFS12-022 was presented to Council which reviewed all history of the evolution, purposes and intents of these reserves, and any restrictions imposed by Council. At the time, there were mixed recollections of what had actually been approved by Council. Report CFS12-022 resulted in the formal adoption of two reserve fund bylaws which outlined the purposes, restrictions and rules governing the use of each of the two reserve funds. The passage of these bylaws put to an end the uncertainty of the past Councils actions in this regard, and actually rescinded all prior bylaws and resolutions of Council related to the conditions and purposes of the proceeds of the sale of the hydro. Both reserve funds earn and retain interest. Both reserve funds distinguish between the principal portion and the earned interest portions in their rules.

The smaller Council Discretionary Reserve Fund has fewer constraints

The Council Discretionary Reserve Fund was formalized in 2012 by By-law 5440-12, included here as Attachment #1. It has a current balance of \$877,400.

Use of Interest Portion:

The earned interest portion of the balance may be allocated or expended for any purpose as determined, at the sole discretion of Council, to be in the best interest of the Town.

Use of Principal Portion:

The principal portion of the fund may be allocated or expended for any purpose as determined, at the sole discretion of Council, to be in the best interest of the Town, and should Council wish to allocate or expend any of the principal from the Fund for any

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purpose, public notice published in a local newspaper having general circulation throughout the community shall be provide at least thirty (30) days in advance before the allocation or expense is approved at an open Council meeting.

Other conditions:

Any donations, expenditures, or allocations from the Fund must recognize in program or project advertising that the contribution was made from the proceeds of the sale of Aurora Hydro Connections Limited.

The larger Hydro Sale Investment Reserve Fund has complex constraints.

The Hydro Sale Investment Reserve Fund was formalized in 2012 by By-law 5439-12, included here as Attachment #2. It has a current balance of \$36,013,800.

Use of Interest Portion:

The unspent interest (from prior years) portion of the balance may be allocated or expended at the sole discretion of Council for new initiatives identified in the prevailing Strategic Plan. Such approval is by simple majority vote of Council.

The interest portion from prior years may also be used for any other purpose determined by Council to be in the best interest of the Town, subject to adoption in accordance with the restrictive voting rule described below.

Use of Principal Portion:

The principal of the fund may be allocated or expended for any purpose as determined, at the sole discretion of Council, to be in the best interest of the Town, subject to adoption in accordance with the restrictive voting rule described below. Further, public notice must be published in a local newspaper having general circulation throughout the community shall be provided at least thirty (30) days in advance before the allocation or expense is approved at an open Council meeting.

Restrictive Voting Rule

Any allocation or expenditure of the principal portion, or ‘non-Strategic Plan’ uses of the interest portions shall be made by resolution of Council, as adopted by a vote of not less than two-thirds (2/3) of the entire Council, and further that,

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- a) "entire Council" shall mean all members of Council being present in Council Chambers at the time of the vote;
- b) Should the entire Council not be present in Council Chambers at the time of the vote, the vote shall be deferred until the entire Council is so present; and
- c) In the event the entire Council is not present for three (3) consecutive Council meetings, the requirement for all Council members to attend such meeting shall be reduced by one (1) member of Council.

There is no recognition condition regarding investments, donations or allocations from this reserve.

Analysis

The restrictive voting rule could result in project delays

The restrictive voting rule clearly requires that any vote requires a two-thirds (2/3) majority of Council. This would put 'veto power' in the hands of any four members of Council of the nine seat Council.

The intent of the voting rule appears to want all members of Council to be present for the vote. If any member simply excuses themselves or wanders from the table just prior to the vote, the vote cannot happen. This technically grants veto power to the proposed funding allocation to any one member in this manner. If this happens three meetings in a row, the 'veto through absence' power goes to any two members, which lasts indefinitely. This clearly is in conflict to the intent of the two-thirds majority part of the rule and has the potential to stall the initiative of Council where support exists from two-thirds or more of the members.

It would appear the intent of the rule was that all members of Council should be given the opportunity to attend the meeting at which the vote is expected to take place, and that two-thirds of the members of Council support the allocation proposal. Consideration should be given to changing the text of the rule as set out in the by-law.

Restrictive rules of the bylaw can be changed at any time by simple majority

Changes to the current by-law and the subject restrictive rules may be made by a simple majority of Council at any time and adoption of the amending bylaw.

At least three options exist at this point for Council to consider:

Option 1: Make no changes to the restrictive voting rule.

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Option 2: Require affirmative votes from two thirds of the total membership of Council, without the requirement for all members be in attendance at the time of the vote. If time permitted, it is likely that Council would extend courtesy to a member, if they were unable to attend the meeting due to a personal emergency, by delaying the vote to the next meeting. It may be less likely such courtesy would be extended for several meetings.

Option 3: Require only a two-thirds vote of the members present, with the caveat that the vote must take place at a regularly scheduled Council meeting, or one which was specifically called, but scheduled at least some determined period in advance, such as 15 days. This approach keeps the two-thirds vote concept, yet prevents the vote to be scheduled on short notice, allowing all members a fair opportunity to attend, participate in the discussion and vote.

Legal Considerations

The rules governing the use and access of the hydro reserve funds were established by Council through the adoption of the two Town of Aurora approved by-laws noted in this report. There are no other specific provincial or federal regulations or legislation which restrict the use or allocation of these funds. Council has full autonomy in this regard; the rules are entirely established by local Council, and can be changed or eliminated by Council. The current by-laws do not include any conditions or restrictions in making changes to them. Accordingly, they may be amended at any time in accordance with the Town's Procedure By-law.

Financial Implications

There are no direct financial implications arising from this report. Allowing the current restrictive voting rule to remain in effect may expose the municipality to delays in moving desirable projects forward. Such project delays may have direct or indirect financial impacts to the Town.

Communications Considerations

Members of the community who have registered for notifications regarding use of hydro funding have received notification of the availability of this report at the time of its public release through the agenda process. Information regarding funding allocations for both the Armoury and Library Square will be posted to the Town website.

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Link to Strategic Plan

Outlining and understanding the Town's two hydro reserves and their rules and conditions contributes to achieving the Strategic Plan guiding principle of "Leadership in Corporate Management" and improves transparency and accountability to the community.

Alternative(s) to the Recommendation

1. To effect Option 1, this report should be received only, with Recommendations #2 and #3 of this report deleted
2. To effect Option 2, Recommendation #2 of this report should be replaced with the following text:

That Section 7 of By-law No. 5439-12 be removed and replaced with the following:

That any expenditure or allocation of monies from the principal, or earned interest portions of the Fund as specified in paragraph 5 of this By-law, shall be made by resolution of Council, as adopted by a vote consisting of affirmative votes cast equal to two-thirds (2/3) or more of the membership of Council.

3. To effect Option 3, Recommendation #2 of this report should be replaced with the following text:

That Section 7. Of By-law No. 5439-12 be removed and replaced with the following:

That any expenditure or allocation of monies from the principal, or earned interest portions of the Fund as specified in paragraph 5 of this By-law, shall be made by resolution of Council, as adopted by a vote of two-thirds (2/3) or more majority of those in attendance at the time of the vote. Such vote may only take place at a regularly scheduled meeting, or one which was duly called with at least fifteen calendar days prior notice to all members of Council.

4. Council may propose any other amendments to the two hydro reserve fund by-laws as deemed appropriate. Changes only require a simple majority vote.

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Conclusions

This report presents the information requested by Council regarding the rules and conditions of use of the two reserve funds holding the proceeds of the 2005 sale of Aurora Hydro Connections Limited. These rules and conditions are set out in two reserve fund by-laws. In outlining the rules and conditions, it has been highlighted that the restrictive voting rule contained within the larger Hydro Sale Investment Reserve Fund by-law could result in potentially lengthy delays of projects desired by a majority of Council. This report presents options for changes and provides an opportunity for Council to make amendments to the by-laws if desired.

Attachments

Attachment #1 By-law 5440-12 Council Discretionary Reserve Fund

Attachment #2 By-law No. 5439-12 Aurora Hydro Sale Investment Reserve Fund

Previous Reports

CFS12-022 Hydro Reserve Funds Conditions and Proposed Reserve Fund Bylaws,
July 17, 2012

Pre-submission Review

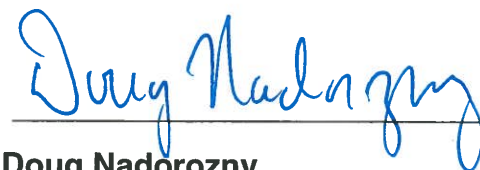
CAO, Solicitor and Clerk only due to time constraints, April 6, 2018

Departmental Approval



Dan Elliott
Director - Treasurer
Financial Services

Approved for Agenda



Doug Nadorozny
Chief Administrative Officer

Attachment #1

THE CORPORATION OF THE TOWN OF AURORA

By-law Number 5440-12

**BEING A BY-LAW to
establish the Council
Discretionary Reserve
Fund.**

WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "Act"), provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act or any other statute, and subsection 11(2) of the Act provides that lower-tier municipalities may pass by-laws respecting, among other items, the financial management of the municipality and its local boards;

AND WHEREAS The Corporation of the Town of Aurora (the "Town") sold all of its shares in Aurora Hydro Connections Limited to PowerStream Inc. in June 2005;

AND WHEREAS at its meeting of September 26, 2006, the Council of the Town adopted resolutions to establish the Council Discretionary Reserve Fund (the "Fund") to hold the amount of ten percent (10%) of the proceeds of the Aurora Hydro Sale Investment Fund;

AND WHEREAS no specific by-law has been adopted to create or set out the terms of the Fund;

AND WHEREAS the Council of the Town deems it necessary and desirable to use the proceeds of the Fund in specified manners and provide funding for specified special purposes;

AND WHEREAS the money in the Fund shall be allocated and expended subject to the provisions of this By-law;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AURORA ENACTS AS FOLLOWS:

1. THAT the Fund be established with a balance of \$3,522,155.00, which represents ten percent (10%) of the net proceeds of the concluded sale of the Town's interest in Aurora Hydro Connections Limited.
2. THAT all balances in the Fund earn investment income to the credit of the Fund, as calculated by the Town's Treasurer based on the annual performance of the Town's investment portfolio comprised of balances of all reserves and reserve funds, and surplus operating and unspent cash balances throughout the year.
3. THAT the principal of the Fund may be allocated or expended for any purpose as determined, at the sole discretion of Council, to be in the best interest of the Town, and should Council wish to allocate or expend any of the principal from the Fund for any purpose, public notice published in a local newspaper having general circulation throughout the community shall be provided at least thirty (30) days in advance before the allocation or expense is approved at an open Council meeting.
4. THAT the earned interest portions of the balance of the Fund may be allocated or expended for any purpose as determined, at the sole discretion of Council, to be in the best interest of the Town.
5. THAT any donations, expenditures, or allocations from the Fund must recognize in program or project advertising that the contribution was made from proceeds of the sale of Aurora Hydro Connections Limited.

By-law Number 5440-12

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6. THAT all past resolutions and by-laws of Council in connection with the creation of the Fund are hereby superseded and replaced by this By-law.
7. THAT this By-law is deemed to have come into force *nunc pro tunc* on December 31, 2006.

READ A FIRST AND SECOND TIME THIS 18th DAY OF DECEMBER, 2012.

READ A THIRD TIME AND FINALLY PASSED THIS 18th DAY OF DECEMBER, 2012.



GEOFFREY DAWE, MAYOR



JOHN D. LEACH, TOWN CLERK

Approved as to Form
By Legal Services
Signature: NAME MA
Date: Dec. 14, 2012

Attachment #2

THE CORPORATION OF THE TOWN OF AURORA

By-law Number 5439-12

**BEING A BY-LAW to
establish the Aurora Hydro
Sale Investment Reserve
Fund.**

WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "Act"), provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act or any other statute, and subsection 11(2) of the Act provides that lower-tier municipalities may pass by-laws respecting, among other items, the financial management of the municipality and its local boards;

AND WHEREAS The Corporation of the Town of Aurora (the "Town") sold all of its shares in Aurora Hydro Connections Limited to Powerstream Inc. in June 2005;

AND WHEREAS at its meeting of June 28, 2005, the Council of the Town adopted resolutions to establish the Aurora Hydro Sale Investment Reserve Fund (the "Fund") to hold the proceeds obtained from the said sale of shares in Aurora Hydro Connections Limited;

AND WHEREAS the Council of the Town made modifications to the conditions related to the Fund by adopting resolutions on September 26, 2006, with adjustments to the balance in the Fund to be completed at December 31, 2006;

AND WHEREAS no specific by-law has been adopted to create or set out the terms of the Fund;

AND WHEREAS the Council of the Town deems it necessary and desirable to use the proceeds of the sale of Aurora Hydro Connections Limited in specified manners and provide funding for specified special purposes;

AND WHEREAS the money in the Fund shall be allocated and expended subject to the provisions of this By-law;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AURORA ENACTS AS FOLLOWS:

1. THAT the Fund be established with a balance of \$31,699,391.67, which represents ninety percent (90%) of the net proceeds of the concluded sale of the Town's interest in Aurora Hydro Connections Limited.
2. THAT all balances in the Fund earn investment income to the credit of the Fund, as calculated by the Town's Treasurer based on the annual performance of the Town's investment portfolio comprised of balances of all reserves and reserve funds, and surplus operating and unspent cash balances throughout the year.
3. THAT the earned interest portions of the balance of this Fund from a prior year may be allocated or expended at the sole discretion of Council for new initiatives identified in the Town's Strategic Plan, as may be amended from time to time.
4. THAT proposed Strategic Plan initiatives be budgeted as separate projects for separate consideration, and should all the funds available in the current year not be used, that those unallocated funds be carried forward and remain available in the next budget year.
5. THAT, other than Strategic Plan initiatives, the earned interest portions of the balance of this Fund from a prior year may be allocated or expended for any purpose as may be determined by Council to be in the best interest of the

By-law Number 5439-12

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Town, provided that such allocation or expenditure is approved in accordance with paragraph 7 of this By-law.

6. THAT the principal of the Fund may be allocated or expended for any purpose as determined, at the sole discretion of Council, to be in the best interest of the Town, and should Council wish to allocate or expend any of the principal from the Fund for any purpose, public notice published in a local newspaper having general circulation throughout the community shall be provided at least thirty (30) days in advance before the allocation or expense is approved at an open Council meeting.
7. THAT any expenditure or allocation of monies from the principal, or earned interest portions of the Fund as specified in paragraph 5 of this By-law, shall be made by resolution of Council, as adopted by a vote of not less than two-thirds (2/3) of the entire Council, and further that,
 - (a) "entire Council" shall mean all members of Council being present in Council Chambers at the time of the vote;
 - (b) should the entire Council not be present in Council Chambers at the time of the vote, the vote shall be deferred until the entire Council is so present; and
 - (c) in the event the entire Council is not present for three (3) consecutive Council meetings, the requirement for all Council members to attend such meeting shall be reduced by one (1) member of Council.
8. THAT all past resolutions and by-laws of Council in connection with the creation of the Fund are hereby superseded and replaced by this By-law.
9. THAT this By-law is deemed to have come into force *nunc pro tunc* on December 31, 2006.

READ A FIRST AND SECOND TIME THIS 18th DAY OF DECEMBER, 2012.

READ A THIRD TIME AND FINALLY PASSED THIS 18th DAY OF DECEMBER, 2012.



GEOFFREY DAWE, MAYOR



JOHN D. LEACH, TOWN CLERK

Approved as to Form
By Legal Services
Signature Walls Mr
Date: Dec. 14, 2012