

The Corporation of the City of North Bay

By-law No. 2022-47

A By-law to Delegate Authority to the Outgoing Council to Pass By-laws(s) to Authorize the Issue of Debentures for Capital Works

Whereas section 5 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, (the “Act”) provides that a municipal power shall be exercised by by-law unless the municipality is specifically authorized to do otherwise;

And Whereas subsection 401 (1) of the Act provides that a municipality may incur a debt for municipal purposes, whether by borrowing money or in any other way, and may issue debentures and prescribed financial instruments and enter prescribed financial agreements for or in relation to the debt;

And Whereas paragraph 6 of subsection 270 (1) of the Act provides that a municipality shall adopt and maintain a policy in respect of the delegation of its powers and duties and The Corporation of the City of North Bay (the “Municipality”) has adopted and is maintaining such a policy;

And Whereas subsection 408 (2.1) of the Act provides that a municipality may issue a debenture or other financial instrument for long-term borrowing only to provide financing for a capital work;

And Whereas subsection 275 (1) of the Act provides that the council of a municipality shall not take any action described in subsection 275 (3) of the Act after the first day during the election for a new council on which it can be determined that one of the following applies to the new council that will take office following the election:

1. If the new council will have the same number of members as the outgoing council, the new council will include less than three-quarters of the members of the outgoing council.
2. If the new council will have more members than the outgoing council, the new council will include less than three-quarters of the members of the outgoing council or, if the new council will include at least three-quarters of the members of the outgoing council, three-quarters of the members of the outgoing council will not constitute, at a minimum, a majority of the members of the new council.
3. If the new council will have fewer members than the outgoing council, less than three-quarters of the members of the new council will have been members of the outgoing council or, if at least three-quarters of the members of the new council will have been members of the outgoing council, three-quarters of the members of the new council will not constitute, at a minimum, a majority of the members of the outgoing council;

And Whereas subsection 275 (2) provides that if a determination under subsection 275 (1) of the Act is made,

(a) after the nomination day but before the voting day, the determination shall be based on the nominations to the new council that have been certified and any acclamations made to the new council; or

(b) after the voting day, the determination shall be based on the declaration of the results of the election including declarations of election by acclamation.

And Whereas in summary, it is only when it becomes mathematically impossible for three-quarters of the members of the outgoing council to be re-elected will the council be subject to the limitations contained in subsection 275 (3) of the Act and this may occur as early as the nomination day, or as late as the announcement of the results after the voting day;

And Whereas subsection 275 (3) of the Act provides that the actions referred to in subsection 275 (1) of the Act are,

(a) the appointment or removal from office of any officer of the municipality;

(b) the hiring or dismissal of any employee of the municipality;

(c) the disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal; and

(d) making any expenditures or incurring any other liability which exceeds \$50,000.

And Whereas subsection 275 (4) of the Act provides that clauses 275 (3) (c) and 275 (3) (d) do not apply if the disposition or liability was included in the most recent budget adopted by the council before the nomination day in the election;

And Whereas subsection 275 (6) of the Act provides that nothing in section 275 prevents any person or body exercising from any authority of a municipality that is delegated to the person or body prior to the nomination day for the election of the new council;

And Whereas the council of The Corporation of the City of North Bay (the "Council") has authorized various capital works of The Corporation of the City of North Bay and the issue of debentures therefor (individually a "Capital Work", collectively the "Capital Works") and may desire to issue debentures for the Capital Works in the maximum principal amount of \$23,885,824 which represents the amount of unissued long-term debt for such Capital Works under the authority of the 2020, 2021 and the 2022 Capital Budgets, during the period of time from the nomination day on August 19, 2022 until November 14, 2022 in light of the fact that the new term of Council commences on November 15, 2022 (the "Period");

And Whereas there is concern that a determination may be made under subsection 275 (1) of the Act that it is mathematically impossible for three-quarters of the members of the outgoing Council to be re-elected in which case the Council shall not take any action described in subsection 275 (3) of the Act after the first day during the election for a new Council unless the Council has delegated authority in accordance with subsection 275 (6) of the Act, it is now deemed expedient, before such day, for the outgoing Council to authorize long-term borrowing through one or more issues of debentures for any one or more of the Capital Works in the maximum principal amount of \$23,885,824 provided that the principal amount of debentures to be issued in respect of any Capital Work does not exceed the amount approved to be financed through the issue of debentures for such Capital Work, provided that the term of years of the debentures issued for any such Capital Work does not exceed the lesser of the useful life of the Capital Work and the term of 10 years, and provided that the debentures will be issued with an average annual interest rate that is consistent with then prevailing interest rates for Ontario municipalities;

And Whereas by Resolution No. 2022-185 passed by Council at its Regular Meeting held on June 1st, 2022, Council approved a By-Law to delegate authority to the outgoing Council to pass a By-Law to authorize the issue of debentures for capital works of the City of North Bay.

Now, Therefore, the Council of The Corporation of the City of North Bay Hereby Enacts as Follows:

1. That in the event that a determination is made under subsection 275(1) of the Act based on which the Council is prohibited from taking any action described in subsection 275(3) of the Act, at any time during the Period, the outgoing Council is hereby authorized to pass a by-law or by-laws, as the case may be, to authorize long-term borrowing through one or more issues of debentures in respect of any one or more of the Capital Works and the outgoing Council is hereby authorized during the Period to pass any by-laws to authorize one or more issues of debentures in respect thereof in the maximum principal amount of \$23,885,824 (the "Debentures"), provided that the principal amount of debentures to be issued in respect of any Capital Work does not exceed the amount approved to be financed through the issue of debentures for such Capital Work, provided that the term of years of the Debentures to be issued for any such Capital Work does not exceed the lesser of the useful life of the Capital Work and 10 years, and provided that the Debentures will be issued with an average annual interest rate that is consistent with then prevailing interest rates for Ontario municipalities. For purposes of fulfilling the obligations of The Corporation of the City of North Bay in respect of the Debentures, The Corporation of the City of North Bay shall, in accordance with the Act, provide for raising in each year as part of the general levy, the amounts of principal and interest payable in each year under the Debentures, to the extent that the amounts have not been provided for by any other available source including other taxes or fees or charges imposed on persons or property by a by-law of any municipality.
2. That in the event that a determination is made under subsection 275(1) of the Act based on which the Council is prohibited from taking any action described in subsection 275(3) of the Act, at any time during the Period, any one or more of the Mayor or

Deputy Mayor, as the case may be, and the Treasurer are hereby authorized to cause the Debentures to be issued, the Clerk and the Treasurer are hereby individually or jointly authorized to generally do all things and to execute all other documents and papers in the name of The Corporation of the City of North Bay in order to carry out the issuance of the Debentures, and the Treasurer or the Clerk is authorized to affix The Corporation of the City of North Bay's municipal seal to any such documents and papers.

3. That for greater certainty, the Council hereby delegates to the outgoing Council authority to pass any by-laws during the Period deemed to be necessary or appropriate in connection with the issuance of Debentures in respect of any one or more of the Capital Works in accordance with this By-law and the Act.
4. That this By-law comes into force and takes effect on the date of its final passing and be limited to the Period and shall expire on Monday, November 14th, 2022.

Read a First Time in Open Council this 1st day of June, 2022.

Read a Second Time in Open Council this 1st day of June, 2022.

Read a Third Time in Open Council and Enacted and Passed this 1st day of June, 2022.

Johanne Brousseau
Chair, Community Services Committee

City Clerk Karen McIsaac