

**DATE:** March 2 , 2018

**FILE:** 0530-01

**TO:** Chair and Directors  
Committee the Whole

**FROM:** Russell Dyson  
Chief Administrative Officer

Supported by Russell Dyson  
Chief Administrative Officer

R.DYSON

**RE: Project Scope for Utilities Governance Review**

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### **Purpose**

To introduce and seek approval on a review of governance options for administration and operation of the Comox Valley Regional District (CVRD) water supply and sewage conveyance and treatment services.

### **Recommendation from the Chief Administrative Officer**

THAT the project scope as shown in Appendix A to the staff report dated March 2, 2018 for a utilities governance study and options analysis be approved;

AND FURTHER THAT the utilities governance study results and findings be presented to a future Committee of the Whole meeting for further consideration.

### **Executive Summary**

The CVRD operates the Comox Valley water supply system and sewerage service (functions 300 and 335 respectively). Generally, these services operate with standard parameters as put forward in the *Local Government Act* (RSBC, 2015, c.1) where topics are discussed at committee and commission meetings as established by bylaw. Final decisions regarding the strategic priorities and policies are made during the committee meetings or at CVRD board meetings, if required.

During a strategic planning session in June 2017, the CVRD elected officials considered the manner in which decisions related to the water and sewer utilities are made. Discussions were specific to the Comox Valley water supply system (function 300) and the sewerage service (function 335). Interest was expressed for a model that included independent professionals setting the administrative and operational priorities for the services. A 'utilities commission' concept was discussed in June and staff committed to presenting a pathway for further exploration. This report describes such a pathway and recommends the project scope, attached as Appendix A to this report, be approved.

The scope aims to:

- Identify relevant governance models for local government water and sewer utilities, building on the work presented by Colin Stewart (dated August 2014 and excerpts from study attached as Appendix B);
- Review commissions operating in other jurisdictions to identify best practices and challenges;
- Engage with member municipalities and existing CVRD committees and commissions, including DND as an existing Sewage Commission member, to understand concerns or challenges with current governance framework and impacts and application of the utilities commission model;

- Engage with K’ómoks First Nation to understand interests associated with infrastructure, economic development and decision-making/governance partnership opportunities;
- Develop a ‘utilities commission’ terms of reference, in collaboration with member municipalities and industry representatives that would place a decision-making role with such a commission; and
- Recommend to the CVRD board a best approach for addressing the concerns raised for water and sewer services.

Should the CVRD board support any changes to the current governance and service delivery framework for the water supply (function 300) and/or sewerage service (335), a thorough and complete legislative review and update would be required. Appendix C illustrates some of the key steps associated with the process for amending regional district services. Further, it should be noted that all of the legislative abilities in the *Local Government Act* (RSBC, 2015, c.1) related to regional district services to a) deliver the water and sewer services and b) review or amend the services would continue to be available during a governance review.

Prepared by:

*J. WARREN*

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James Warren  
 General Manager of Corporate  
 Services

**Stakeholder Distribution (Upon Agenda Publication)**

City of Courtenay and Town of Comox Administrators	✓
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**Background/Current Situation**

The CVRD delivers services associated with water supply and sewage treatment to municipalities and rural areas under the Comox Valley Water Committee and Sewage Commission.

Since June 2017, a ‘utilities commission’ concept has been considered to possibly resolve some concerns related to efficiency, accountability and effectiveness for the decision-making processes related to water and sewer services. The proposed project scope, which is described in more detail further in this report, would focus its attention on the water supply system (function no. 300) and sewage treatment service (function no. 335), recognizing that a change in the governance framework may impact just the water service, or the sewer service, or both, depending on the governance project findings and the will of the service participants.

**Policy Analysis**

During the South Sewer Project, research was undertaken into governance options for delivering a sewer service with multiple participants in a range of communities. Colin Stewart provided a range of models and his report is included in Appendix B.

This report and the subsequent project findings are to be considered by the Committee of the Whole because the initial direction arose at a Board strategic planning session and because the findings will have relevance to the corporation as a whole. This report will be presented to both the Water Committee and Sewage Commission for information purposes. It should be noted that the

June 2017 strategic planning session for the CVRD Board was constructed, in part, on matters related to the

- Sewage Commission (May 16, 2017 – correspondence regarding electoral area representation on the commission) and
- Comox Valley Water Supply System (April 11, 2017– correspondence regarding water distribution from Comox Lake).

### **Options**

The CVRD Committee of the Whole and Board may proceed with the recommendation in this report, which is to support the project scope (Appendix A) of identifying relevant governance models for water and sewer utilities and working extensively with member municipalities (both at the administrative and elected officials levels) to define a model that places a decision-making role with independent professional engineers rather than with elected officials. Alternatively, direction may be given that additional analysis be provided to refine the proposed project scope or the utilities commission notion not be advanced and the status quo continue, meaning the CVRD's water supply and sewerage services continue to have operational and administrative decisions made by their respective elected official committees and the board, as required.

The CVRD Committee of the Whole may also consider referring this report to the Sewage Commission and Comox Valley Water Committee to enable those bodies to consider giving independent direction on a utilities governance review. If the recommendation presented in this report is approved by the Committee of the Whole, CVRD staff will engage with a governance consultant to begin the works contained in the project scope.

### **Financial Factors**

Proceeding with the proposed scope for a utilities commission review requires contracted services under the general government (function 100/130) service. All services potentially benefit from this analysis and review and as such the general government service can fund the project. This work falls within the delegated authority for contracting services and will be managed through the Chief Administrative Officer.

### **Legal Factors**

Any analysis and findings associated with this work will align with the *Local Government Act* and CVRD bylaws and regulations. Bylaw updates will be presented for consideration, if necessary to implement any aspects of this review.

### **Regional Growth Strategy Implications**

The Comox Valley Regional Growth Strategy promotes coordinated and efficient infrastructure development and establishes a framework for guiding development at a regional scale. A key underpinning of the RGS is the establishment of three settlement nodes that will accommodate moderate growth, which is supported by publicly owned water and sewer infrastructure. A new governance structure could also include servicing standards to guide and clarify the obligations for land development in the settlement nodes.

### **Intergovernmental Factors**

As participants in the CVRD water and sewer services, the City of Courtenay and Town of Comox are integral to the discussions and eventual resolution of utilities governance. Staff and elected officials from all parties will be heavily involved with the project scope as it evolves.

Further, as the Department of National Defence is a member of the Sewage Commission, discussions will include the DND representative and DND interests will be factored into any forthcoming recommendations.

K'ómoks First Nation (KFN) also has expressed interests in economic development opportunities, infrastructure and governance roles. The proposed scope of work includes KFN during the discussions and participation at a governance level. While the timelines envisioned for this project would not result in KFN being formally part of the decision-making body in 2018, the results of this project may describe the pathway to achieve such a partnership in the future.

### **Interdepartmental Involvement**

The Chief Administrative Officer is working closely on this file with input and supports from the Corporate Services and Engineering Services Branches.

### **Citizen/Public Relations**

The water supply and sewage treatment systems are fundamental services delivered by the CVRD. Any public changes or impacts to the systems that could result from this utilities governance project would have to be communicated to the public. Most of that communication would likely be at an inform level, on the International Association of Public Participation (IAP2) spectrum of public participation. Should there be a need to consult with the public or collaborate on potential solutions, a more comprehensive communications plan will be presented to the Committee of the Whole at a future date.

### **Attachments:**

Appendix A – Proposed Utilities Commission Project Scope

Appendix B – Excerpts from Governance Options Study by Colin Stewart dated August 2014

Appendix C – Process requirements to establish, continue or change regional district services

## Appendix A – Proposed Utilities Commission Project Scope

- Obtain the services of a local government governance consultant to
  - o Understand the specific services and service delivery models utilized for the Comox Valley water supply system (function no. 300) and the Comox Valley sewerage system (function no. 335) (the services), including discussions with staff at the Comox Valley Regional District, Town of Comox, City of Courtenay and Department of National Defense (for Sewage Commission only) as necessary
  - o Review the Colin Stewart material from August 2014 with a focus on ‘utilities commission’ concept
  - o Interview individual Chief Administrative Officers and elected officials in regards to concerns / suggestions around the current governance model for the services, include consideration for Comox Valley-wide representation at decision-making table
  - o Interview K’ómoks First Nation to
    - understand interests associated with infrastructure development, growth, decision making, and governance; and
    - identify opportunities to incorporate interests into the utilities commission concept
  - o Solicit interest and / or feedback from local industry representatives about participation on a utilities commission, including consideration of potential complications that might arise in respect of real or perceived conflicts of interest in competing roles of decision making and service delivery
  - o Develop
    - A strengths, weaknesses, opportunities and threats (SWOT) matrix to illustrate various factors associated with utilities governance concept
    - Sample flowcharts or procedures to illustrate how decisions could be made under a utilities commission (compared with status quo) – special emphasis on recent projects such as Water Treatment Facility, Hudson and Greenwood trunk lines, and Comox pump station two; compare and contrast the current model whereby an advisory committee provides technical advice to elected decision-makers versus a technical body making decisions under policies established by elected officials
    - Comparative model showing the options to proceed with a governance framework that could apply to the water supply system, the sewage system or both
  - o Compile findings for presentation to Courtenay and Comox councils and the Comox Valley Water Committee and the Sewage Commission in June 2018, asking for feedback and input to framework
  - o Finalize materials and recommendations for future Committee of the Whole consideration
- It is anticipated the final materials and recommendations would be presented to the Committee of the Whole by July 2018.

## GOVERNANCE CONSIDERATIONS

1) STRUCTURE			
Options	Corporation (includes society and corporation)	One local service	Multiple local services (collection, treatment, main collection system)
<b>Advantages</b>	<ul style="list-style-type: none"> <li>- remove from direct political control</li> <li>- corporation may have a higher perceived neutrality</li> <li>- useful structure to enable a legal 'person' to operate a facility</li> <li>- third parties can participate as shareholders and on board of directors</li> </ul>	<ul style="list-style-type: none"> <li>- similar to a 'municipality'</li> <li>- simplicity of administration</li> <li>- spreading of cost burden among more parcels/taxpayers</li> </ul>	<ul style="list-style-type: none"> <li>- cost allocation and decision making power more closely reflects beneficiaries of service</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>- loss of some direct local government control</li> <li>- loss of political accountability</li> <li>- relationship would be governed by 'contractual obligations' rather than public interest</li> <li>- conflict of interest concerns may arise because of <i>Schlenker v. Torgrimson</i></li> </ul>	<ul style="list-style-type: none"> <li>- cost allocation may create burden distortion: some taxpayers will pay for service infrastructure that exclusively benefits others</li> <li>- non benefitting participant has influence in decision</li> <li>- difficult for parties not represented at Board table to have any say</li> </ul>	<ul style="list-style-type: none"> <li>- more complex administration</li> <li>- some questions will cross service boundaries</li> <li>- difficult for parties not represented at Board table to have any say</li> </ul>

<b>2) PARTICIPATION IN STRUCTURE</b>		
<b>Options</b>	<b>Contract</b>	<b>Director Membership</b>
<b>Advantages</b>	<ul style="list-style-type: none"> <li>- relations can be set out in agreement</li> <li>- articulated rights and responsibilities provide certainty and can provide greater protection of interests of minor parties (KFN) against unilateral changes</li> <li>- mutuality required for any amendments</li> </ul>	<ul style="list-style-type: none"> <li>- director membership in a political structure (board or commission) provides direct decision making involvement and accountability</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>- reduces relationship to one based on interpretation of 'legal rights' rather than 'mutual interests' and 'political compromise'</li> <li>- board/council cannot fetter a legislative discretion</li> <li>- over time contract relationship may not suit changing/evolving circumstances, but no party can change the agreement and one party may find itself locked into a bad or disadvantageous bargain</li> </ul>	<ul style="list-style-type: none"> <li>- director membership on Board of Directors of Society as corporation has potential for conflict of interest</li> </ul>

<b>3) REPRESENTATION</b>		
<b>Options</b>	<b>Board</b>	<b>Commission</b>
<b>Advantages</b>	<p><u>Statutory Rules</u></p> <ul style="list-style-type: none"> <li>- “simple” known result</li> </ul> <p><u>Modified Rules in Establishing Bylaw</u></p> <ul style="list-style-type: none"> <li>- can tailor voting on administration and operation of service to achieve equal weighting between Cumberland and Electoral Area A</li> </ul>	<ul style="list-style-type: none"> <li>- decision making authority can be delegated and weight assigned to vote can be adjusted to allow vote weight to reflect cost burden</li> <li>- other stakeholders can be directly represented in decision making forum</li> <li>- additional expertise or perspectives can be added</li> </ul>
<b>Disadvantages</b>	<p><u>Statutory Rules</u></p> <ul style="list-style-type: none"> <li>- unfair where weighted vote would allow participant with smaller tax base to decide issues</li> </ul> <p><u>Modified Rules in Establishing Bylaw</u></p> <ul style="list-style-type: none"> <li>- may become complex; complexity increases risk of error in voting</li> <li>- additional staff time to sort out if rules made highly complex</li> </ul>	<ul style="list-style-type: none"> <li>- not all decisions can be delegated to Commission</li> <li>- Regional Board retains control over bylaws, borrowing, financial plan</li> <li>- having a voice on a decision making body leaves smaller parties vulnerable to being outvoted</li> </ul>



<b>4) DELEGATION OF DECISIONS</b>			
	<b>Corporate</b>	<b>Administration</b>	<b>Financial</b> (operational and capital contracts, fees and charges taxation)
<b>Advantages</b>	<ul style="list-style-type: none"> <li>- decisions regarding the acquisition of interests in land, entering into service contracts can be delegated to representatives of service area participants</li> <li>- weighting to be given to vote can reflect relative contribution by each participant</li> </ul>	<ul style="list-style-type: none"> <li>- decisions regarding the administration of the service may be delegated</li> <li>- weighting to be given to votes can reflect relative contribution by each participant</li> </ul>	<ul style="list-style-type: none"> <li>- adoption of financial plan, loan authorization bylaws, regulatory bylaws and the setting of fees and charges cannot be delegated.</li> <li>- adoption of development cost charge bylaws would remain under authority of Board (directors voting under Part 26 matters)</li> <li>- corporate and administrative decisions, including the authority to enter into contracts can be delegated</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>- full Board loses some ability to ensure that corporate decisions remain consistent with overall board policy</li> </ul>	<ul style="list-style-type: none"> <li>- full Board loses some ability to ensure that administrative decisions remain consistent with overall board policy</li> </ul>	<ul style="list-style-type: none"> <li>- important decisions (borrowing, regulation, fees and charges) remain outside the final control of service participants</li> <li>- weighted vote means that Cumberland, in particular, is disadvantaged on decisions involving a weighted Board vote</li> </ul>

<b>5) CAPITAL</b>			
<b>REGIONAL DISTRICT</b>	<b>Ownership</b>	<b>Funding</b> (borrowing capacity, cost sharing model)	<b>Asset Management</b> (Reserve Policy)
<b>Advantages</b>	<ul style="list-style-type: none"> <li>- public ownership of public asset</li> <li>- K'ómoks First Nation (and City of Courtenay) could be given a share of ownership commensurate with its direct financial contribution</li> </ul>	<ul style="list-style-type: none"> <li>- access to senior government grants</li> <li>- no liability for property taxes</li> <li>- EMA can permit bylaws to be adopted without elector assent where purpose is to implement approved Waste Management Plan</li> </ul>	<ul style="list-style-type: none"> <li>- CVRD directly responsible</li> <li>- ability to expropriate private property</li> <li>- ability to hold rights of way, covenants or expropriate</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>- unless given a share other partners (KFN) don't have 'ownership' interest</li> <li>- other CVRD stakeholders (Cumberland) have no direct ownership because no direct financial contribution</li> <li>- joint ownership with KFN will require a co-owner's agreement – risk that 'legal rights' will replace 'common public interest'</li> </ul>	<ul style="list-style-type: none"> <li>- risk lies on Regional District and in particular on service area taxpayers</li> </ul>	<ul style="list-style-type: none"> <li>- responsibility, and entire cost risk lies on service area taxpayers</li> </ul>

<b>5) CAPITAL (cont'd)</b>			
<b>CORPORATION</b>	<b>Ownership</b>	<b>Funding</b> (borrowing capacity, cost sharing model)	<b>Asset Management</b> (Reserve Policy)
<b>Advantages</b>	<ul style="list-style-type: none"> <li>- level of independence</li> <li>- would allow KFN a direct ownership stake</li> </ul>	<ul style="list-style-type: none"> <li>- a corporation may borrow money (but not through MFA)</li> </ul>	<ul style="list-style-type: none"> <li>- third party management relieves Board and staff of responsibility, reducing direct costs to CVRD</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>- no longer under direct full general public ownership</li> <li>- loss of political accountability</li> <li>- loss of control by elected officials</li> <li>- serious concerns re potential for conflict of interest on part of Board directors/ municipal Councillors</li> <li>- service agreement creates risk of 'legal rights' conflict replacing common public interest</li> </ul>	<ul style="list-style-type: none"> <li>- no ability to raise money through MFA</li> <li>- no access to government grants</li> <li>- statutory prohibition against "assistance to commercial enterprise" creates some legal issues to manage</li> <li>- local taxes require specific exemption from CVRD Board and are only available for land used for public purposes</li> </ul>	<ul style="list-style-type: none"> <li>- no (or less) ability to control</li> <li>- potential conflict of interest issues of elected CVRD or municipal officials participate on board of directors</li> <li>- loss of direct public control</li> <li>- management by contract</li> <li>- no ability to hold rights of way, covenants or expropriate</li> </ul>

<b>6) LIABILITY/RISK MANAGEMENT</b>		
<b>REGIONAL DISTRICT</b>	<b>Insurance</b> (decision makers, property, third party)	<b>Risk Management</b>
<b>Advantages</b>	- coverage through MIA	- Regional District control means risks can be addressed by elected officials  - “policy decisions” of elected officials are recognized by courts as offering defences to claims
<b>Disadvantages</b>	- premiums and deductibles paid by taxpayer	- no reason to think that elected officials or public officials are ‘better’ at risk management than corporate directors or employees  - damages paid by taxpayers
<b>CORPORATION</b>	<b>Insurance</b> (decision makers, property, third party)	<b>Risk Management</b>
<b>Advantages</b>	- third party would look after securing and paying for coverage  - corporation owned by local government is an ‘insured’	- private sector corporation would assume risk
<b>Disadvantages</b>	- securing coverage for waste treatment plants may be an issue (?) unless corporation is owned by a local government	- taxpayers may be forced to pay for losses if not insured

Should the Utilities Commission Project findings be received by the Comox Valley Water Committee and / or Sewage Commission and a recommendation is provided to the CVRD Board to proceed with changing the current governance structure for the Comox Valley Water Supply System and / or the Sewerage Service, the following procedural steps are provided:

Action	By Whom	Local Government Act (LGA) Requirement
Recommend changes to water and / or sewer service governance structure to implement utilities commission project findings	Comox Valley Water Committee and Sewage Commission	
Consider changes to water and / or sewer service establishment bylaw to implement recommended utilities commission project findings	CVRD Board	✓
Consider and provide advice to Comox Valley Water Committee and Sewage Commission on proposed changes to service bylaws	Water and sewer management advisory committees (relating to operational and technical advice) – include CAOs to provide advice specific to governance	
Support changes to service establishment bylaws by recommending that the CVRD Board adopt amending bylaws	Comox Valley Water Committee and Sewage Commission	
Give three readings to water and sewer service establishment amendment bylaws	CVRD Board	✓
Obtain participating area approval for changing service establishment bylaws	CVRD Board  Options include: Electoral Area Directors (in writing) and member municipalities (by council motion); OR public via alternative approval process or referendum – as decided by the CVRD Board upon recommendation from the existing participants	✓
Provincial government approval of service establishment amendment bylaws	Inspector of Municipalities	✓
Adopt service establishment amendment bylaws (may	CVRD Board	✓

include adopting other bylaws to implement utilities commission concept, in whatever form that takes)		
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Notes:

- All of the legislative abilities in the Local Government Act related to regional district services to
  - a) deliver the water and sewer services and
  - b) review or amend the serviceswould continue to be available during a governance review
- The process described in this appendix would only commence after the utilities commission project findings are delivered to the CVRD Board and only if the Board endorses the findings and resolves to initiate changes to the current governance structure for the water and / or sewer systems
- This process would likely take between four and six months, or longer depending on the utilities commission model complexity and degree of stakeholder support