

DATE: April 29, 2021

FILE: 0540-20 / SEW

TO: Chair and Commissioners
Sewage Commission

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

RE: Sewage Commission Governance – Final Report

Purpose

To introduce the Sewage Commission Governance Report that provides a recommended model for the potential expansion of the Comox Valley Sewerage Service.

Recommendation from the Chief Administrative Officer:

None. This report is provided for information purposes.

Executive Summary

- In 2020 the Sewage Commission agreed to accept wastewater from parts of Electoral Area A and K'ómoks First Nation (KFN) lands and established criteria, principles and process for such expansion of the Comox Valley Sewerage Service. Aligned with this a governance review was initiated for the existing and prospective participants to jointly devise a commission structure for an expanded sub-regional service.
- Leftside Partners and Neilson Strategies were hired to support the governance review in which two separate workshops were held with representatives of the various parties to explore the following concepts:
 - Delegation of decisions;
 - Commission composition; and
 - How decisions are made.
- Based on the feedback from the workshops the final report, enclosed as Appendix A, generally recommends the continuation of the existing service governance structure, including a similar role and level of delegated authority and the continued practice of unweighted or “equal” votes on all decisions. Recommended changes to the Commission structure include:
 - The addition of a KFN representative on the Commission (if that is their preference);
 - The addition of the Electoral Area A Director on the Commission (to take effect only once the service for local improvements to connect to the sewage treatment service is approved); and
 - Use a formula to trigger future reviews of the commission composition.
- During the first workshop and through a subsequent meeting with Chief and Council, KFN expressed some concern regarding their potential inclusion on the Sewage Commission under the conventional terms which have been generally based on the volume of wastewater flow and corresponding financial contribution to the service. Respecting this feedback and the ongoing cooperative pursuit of sewer infrastructure to south of Courtenay, it is suggested that the CVRD continue to engage in dialogue with KFN Council in an effort to identify and appreciate KFN's preferences for involvement in the Commission, and seek a model that

involves and respects KFN’s authority and jurisdiction. The governance report articulates a number of potential approaches for consideration of the parties through such dialogue.

- As the recommended changes largely hinge on further dialogue with KFN and advancement of a local sewer service in Electoral Area A, the Commission can remain as is for now, with the amendments to Bylaw No. 650 (delegation bylaw) and Bylaw No. 2541 (service establishment bylaw) occurring when agreement on KFN’s participation is confirmed, or subsequent to the approval of the local sewer establishing bylaw in Electoral Area A.

Prepared by:

J. Martens

Jake Martens
General Manager of Corporate
Services

Government Partners and Stakeholder Distribution (Upon Agenda Publication)

| | |
|--|---|
| K’ómoks First Nation Chief and Council | ✓ |
| Electoral Area A Director | ✓ |

Attachments: Appendix A – Sewage Commission Governance Report

SEWAGE COMMISSION GOVERNANCE: RECOMMENDED MODEL

1.0 Introduction

The purpose of this paper is to share recommendations for a new commission governance model for the Sewage Commission, based on two workshop discussions with the City of Courtenay, Town of Comox, K'ómoks First Nation (KFN) and Comox Valley Regional District.¹ The jurisdictions are working together to jointly devise a commission governance structure for an expanded regional sewage treatment service that benefits the broader sub-regional community.

This paper reiterates some key principles that brought the parties together at this point in the service and that inform the process, the model that was affirmed by the workshop participants, as well as some next steps to help implement the changes.

2.0 How did we get here?

As noted in both of the workshop discussion papers, the City of Courtenay and the Town of Comox have been partners in the treatment of sewage for almost 40 years. The two jurisdictions, together with contributions from CFB Comox (DND), became partners in the sub-regional CVRD service that was created to develop and build a treatment plant. The CVRD received the authority for sewage treatment in the 1979 letters patent. Courtenay and Comox were the two participating municipalities in the sewage “interception, treatment and disposal” service, and the treatment facility was built on lands acquired within Electoral Area B. Service agreements were prepared and signed with CFB Comox and K'ómoks First Nation. The service was, and continues to be, operated by the CVRD. The Sewage Commission was created in 1982 (to take effect in 1983) to “oversee the operation and maintenance of the Sewage Interception, Treatment and Disposal facilities.”

The decision to explore expansion is built upon several years of discussions, options, and principles. Most recently, the potential for expansion has been raised in the context of the CVRD's Liquid Waste Management Plan update as well as a Community Benefit Agreement developed between CVRD and KFN. It was not the intention or purpose of the workshops to revisit these decisions, but rather to recognize the progress and the principles upon which they are based and move forward in evaluating options for a governing commission. The following reiterates the principles acknowledged in the first workshop discussion paper, to serve as a reminder for evaluating the proposed model.

¹ A representative from CFB Comox (DND) is currently a member of the Sewage Commission and was invited to attend and participate in the workshop. A Council member from the K'ómoks First Nation participated in the first workshop only.

- **Capacity**

It is acknowledged that the regional service and the associated infrastructure were initially created primarily to service the communities of the City of Courtenay, the Town of Comox, and federal DND lands. There is no desire of K'ómoks First Nation or the Electoral Area A expansion area to impact the capacity of the City of Courtenay, Town of Comox, or DND lands, or their ability to expand and service their communities with sewage treatment.

- **Recognizing founding partners and investments**

The expansion area communities acknowledge the substantial investments that have been made in the existing regional sewage treatment infrastructure and recognize the asset stewardship provided by the Sewage Commission over those years.

- **Economies of a shared service**

The Valley communities recognize the economies of scale that result from minimizing duplication and operating one treatment plant, and acknowledge that upgrading and expanding the current facility is in their collective interest. The Valley communities are committed to sharing the capital and operational costs, and the associated liabilities and responsibilities involved in operating and expanding a shared facility. New users will be responsible for upgrades to accommodate their connections. They will also be responsible for developing their own local collection systems (to tie into the sub-regional infrastructure), and for contributions to capital and operational costs that benefit the shared regional service.

- **Environmental**

The coastline along the Salish Sea is one of the Valley's greatest natural assets and vital resources; together all Valley communities share in the responsibility to protect this asset. It is acknowledged that there are environmental benefits to sharing one treatment plant and to ensuring that sewage generated by the Valley communities is effectively and consistently treated to minimize impacts on the Valley's coastal waters.

3.0 Workshops 1 and 2 – What We Heard

The first workshop explored three main aspects of governance:

- Delegation of decisions
- Commission composition
- How decisions are made

During that workshop, participants agreed on a number of points to help guide the preparation of a draft model.

1. Delegation:
 - The Commission should continue to be delegated the fullest extent of authority from the Board (consistent with current structure).
 - Ensure the topics considered and decisions made are not just token, and the Commission is engaged in meaningful discussion and decision-making.
 - Provide opportunities to involve KFN and DND – neither of which is represented on the CVRD Board – in decisions regarding the service.

2. Composition:
 - Important to ensure a manageable and efficient size – seven to 10 members is considered ideal.
 - Those who pay for the service should be entitled to representation in decision-making (including those who contribute through service agreements as well as those who pay user fees and taxes).
 - Those who are participants in the service (by *Local Government Act* definitions), will have political representation on the Commission to encourage a relationship where commissioners, as decision-makers, are accountable to their residents.
 - Provide an opportunity for KFN and DND to consider their participation and representation on the Commission, providing flexibility to KFN to identify a representative who is not necessarily a Council member, recognizing that KFN may not wish to be represented in the same way as local governments on the Commission.
 - The value of having an equal number of representatives from Comox and Courtenay was highlighted by Comox.

3. How decisions are made:
 - Maintain a structure where no one player has decision-making control (i.e. in a situation where all members from one municipality vote together as a block, they must build support from other jurisdictions to decide any given issue).
 - Create a model that has the opportunity to grow or recognize changing roles over time.
 - Consider how to involve, respect and support KFN as a meaningful decision maker if that is a role it chooses to accept. Provide KFN with the flexibility to determine how it would like to be involved, given that it is not represented on the CVRD Board, and that it is not a local government.

In preparation for the second workshop, the existing commission model was outlined, the pros and cons of potential changes were highlighted in a discussion guide, and a proposed model was put forward for discussion. During the workshop, the relative merits of each aspect of the commission were debated and tested, resulting in refinements to the model. A summary of the proposed model that was presented is shown in Table 1.

Table 1

| | Current Situation | Proposed Model |
|-----------------|---|---|
| Delegation | All matters pertaining to administration and operation of the regional sewage treatment system | All matters pertaining to administration and operation of the regional sewage treatment system |
| Composition | <ul style="list-style-type: none"> - 3 commissioners from Courtenay - 3 commissioners from Comox - 1 commissioner from DND - No provisions for changing membership or future members | <ul style="list-style-type: none"> - 3 commissioners from Courtenay - 3 commissioners from Comox - 1 commissioner from Area A - 1 commissioner from KFN (if they choose) - 1 commissioner from DND - Reference to changing membership with growth |
| Decision-making | <ul style="list-style-type: none"> - Unweighted votes on all matters. - Every Commission member who is eligible must vote. Abstention is counted as an affirmative vote. - No one jurisdiction has a majority, and each must receive support from at least one other jurisdiction (assuming block voting), or a total of four of the seven members, before a decision can be made. | <ul style="list-style-type: none"> - Unweighted votes on all matters. - Every Commission member who is eligible must vote. Abstention is counted as an affirmative vote. - No one jurisdiction has a majority, and each must receive support from at least one other jurisdiction, or a total of five of the nine members, before a decision can be made. - KFN has the option to participate on the Commission as non-voting member. |

A few of the points that received considerable discussion during the workshop included:

- Whether to enable DND and KFN to participate as non-voting members (if a non-voting capacity is their preference)
- The merits of having a structure with an even number of members (i.e., with the potential for tie votes and the ensuing need for greater compromise and consensus-building)
- An appropriate way to allow for future changes to the composition, such as a formula to recognize growth, or to build in a more frequent (or required) review process
- Weighted vs. unweighted votes
- Different thresholds (e.g. majority, 2/3 majority) for different decisions

4.0 Conclusion

Based on the workshop discussions, the recommended approach is for the Sewage Commission to maintain a similar role and delegated authority, and to continue the practice of unweighted or “equal” votes on all issues. There is value to the simplicity of this approach, and to having each of the commission members considered as equals.

The proposed model is highlighted in the Table 2 below. It involves three main changes to the CVRD’s existing commission structure:

- Provide for a KFN member on the Commission (if that is their preference)
- Provide for the Electoral Area Director of Area A as a member of the Commission (to take effect only once the service for local improvements to connect to the sewage treatment service is approved)
- Use a formula to trigger a review of commission composition

Table 2

| Recommended Model | |
|-------------------|---|
| Delegation | All matters pertaining to administration and operation of the regional sewage treatment system |
| Composition | <ul style="list-style-type: none"> - 3 commissioners from Courtenay - 3 commissioners from Comox - 1 commissioner from Area A - 1 commissioner from KFN (depending on preference) - 1 commissioner from DND - Include a formula to trigger a review of commission composition. Initiate a review of composition when annual dry weather flows from any service participant or contributor (Area A, KFN or DND) reach at least 50% of the dry weather flows from the Town of Comox |
| Decision-making | <ul style="list-style-type: none"> - Unweighted votes on all matters. - Every commission member who is eligible must vote. Abstention is counted as an affirmative vote. - No one jurisdiction has a majority, and each must receive support from at least one other jurisdiction before a decision can be made. - KFN has the option to participate on the Commission as non-voting member if that is their preference. |

At the end of the second workshop, it was noted that the recommended approach needed to be confirmed with CFB Comox, to give representatives time to seek direction from within the Department of National Defence.

CFB Comox confirmed they are interested in maintaining membership on the Commission as a voting member. Likewise, no representatives from KFN were able to participate in the second workshop, so continued dialogue is required to ensure that the wishes of the First Nation are captured and respected regarding its participation on the Commission.

KFN Participation

On February 18, the CVRD and K'ómoks First Nation announced a sewer agreement that, among other purposes, provides support for moving the Liquid Waste Management Plan forward. In that agreement (signed December 15, 2020), CVRD and KFN agree to work together toward KFN becoming a full member of the Sewage Commission, and the agreement references a governance review. On February 24, CVRD met with KFN's new Council to briefly review the Commission/governance review project and its recommendations. KFN Council noted that membership on the Commission, together with the allocation of one vote, was not supported, and that the approach did not respect their authority and jurisdiction.

Although KFN can decline membership on the Sewage Commission, or can choose to become a non-voting member, given the recent agreement on sewage service, including on liquid waste management plan alignments, extension to KFN lands, and compensation and community benefit agreement, it is recommended that the CVRD continue to engage in dialogue with KFN Council in an effort to identify and appreciate KFN's preferences for involvement in the Commission, and strive toward a model that involves and respects KFN's authority and jurisdiction within the Valley. In addition, the continued dialogue may provide the opportunity to also share the limitations of the current regional district service legislation with respect to decision making and delegation and highlight where flexibility exists.

As discussed during the workshops, possible approaches to bridge the gap could include:

- having a KFN member with more than one vote, or to provide options to increase votes as population and servicing evolve over time
- creating different voting rules, such as a veto, for specific topics on which KFN's jurisdiction and authority are paramount (i.e. separating and itemizing some issues from sewage treatment operational decisions). Decisions could include broad topics such as discharge of effluent, or could include matters that relate specifically to the connection of KFN lands to the service
- consideration of providing a more significant role for the KFN Commission member, such as chair or co-chair
- in addition to a KFN voting member on the Commission also invite a K'omoks community advisor to Commission meetings, and enable KFN to designate a K'omoks

- Elder or community member as that advisor, in a non-voting role, to provide input, share traditional knowledge and inform the Commission's decisions
- outline a stepped approach that provides KFN comfort of an increasing role in the Commission over time (as KFN grows or increases reliance upon sewage treatment)

Finding a resolution to involve KFN would help to recognize KFN as a partner in services, and in future growth of the Comox Valley, and may help set the stage for involvement in other regional services as KFN continues on the path towards a treaty agreement. While this service is limited to sewage treatment, KFN involvement in the Commission has the potential to provide a precedent on how the CVRD incorporates KFN interests within the governance of individual services. There may also be opportunities to build upon or broaden the scope of any joint decision-making structure to provide opportunities to collaborate on more than one service. Once a better sense of KFN's preferences is determined, a revised proposal can be brought back to the CVRD and current Sewage Commission for discussion and comment from the service's participants, prior to proceeding with changes.

5.0 Implementation

The CVRD currently has two bylaws related to the sewage treatment service and the governing Commission.

- No. 650 - Sewage Commission Bylaw
- No. 2541 - Comox Valley Sewage Service Establishment Bylaw

Bylaw 2541 establishes the sewage service; Bylaw 650 establishes the Commission. Bylaw 650 delegates authority to the Commission and sets out the voting rules for that body. Bylaw 650 is considered a delegation bylaw, and as such, can be amended with a majority vote (as per Section 230 of the *Local Government Act*). Establishing bylaws such as No. 2541, however, have added requirements for amendment, including how participating areas can provide consent or approval for amendments, in addition to the requirement to have approval for any amendments from the Inspector of Municipalities.

Ultimately the establishment bylaw will need to be amended to include Area A as a participant (assuming Area A approves a local service to provide sewage collection). The *Local Government Act* does provide the ability for establishing bylaws to reference the voting structure and appointments for any commission or body delegated authority for the operations and administration of the service. The updated composition and voting references could therefore be added to Bylaw No. 2541 at the same time as Area A is added as a participant. However, given that the recommendation is to revisit the Commission composition in the future, as the demand for and impact on sewer services change, it is easier to amend a delegation bylaw than an establishing bylaw. It is therefore simpler to leave references to composition and voting within Bylaw No. 650.

As a delegation bylaw, Bylaw No. 650 can be amended with a majority of votes. Once an approach is confirmed with KFN, this bylaw could be amended. The amendment could provide for all of the changes referenced in the previous section:

- Provide for a KFN member on the commission (including any changes to voting rules)
- Provide for the Electoral Area Director of Area A as a commission member (to take effect only once the service for local improvements to connect to the sewage treatment service is approved).
- Identify a trigger for a subsequent review of Commission composition

The addition of the Electoral Area A Director to the Commission could either be done as an amendment subsequent to approval of the local sewer establishing bylaw, or it could be done in advance using language that would ensure that the Area A Director would only become a Commission member once they are regional sewer treatment service participants. Amendments to Bylaw No. 650 would require support from a majority of votes cast. The full CVRD would vote on the bylaw.

Bylaw No. 2541 will need to be amended to expand the service boundary, and to name Area A as a service participant. Consent will need to be provided by the Town of Comox, the City of Courtenay and Electoral Area A (even though they are not yet a participant, they are treated as such where the amendment proposes to expand the service boundary). While the Board can obtain approval using a variety of different approaches, the most typical would be to receive consent from Comox and Courtenay councils on behalf of their communities. Area A approval could be provided through alternative approval process or assent of the electors.²

CVRD recognizes that KFN is moving toward signing a treaty. If, as part of the treaty, the final agreement provides for the membership of KFN in the CVRD as a treaty first nation, then those changes would need to be incorporated into the establishment and delegation bylaws.

The *Local Government Act* does enable the Minister to require that the bylaw amending the establishing bylaw receive the approval of the electors in one or more of the participating areas, or indeed in the entire service area. It is not anticipated that this extra process would be required. The affected areas of Area A will already have to go through a similar assent process to create a local sewer collection service, so it is likely that the process for that service can be used to also obtain approval for the expansion of Bylaw No. 2541, and that

² Consent from the a proposed electoral participating area is also possible if the Board receives a petition signed by the owners of at least 50% of the affected parcels that would receive and be charged for the service, and the persons signing the petition must be owners of parcels that, in total, represent at least 50% of the net taxable value of the land and improvements within the proposed service area.

approval for that community of a local sewer service would indicate support for the related inclusion within the sewage treatment service. It is anticipated that the Ministry would be willing to accept consent through the Courtenay and Comox municipal councils for amending the establishing bylaw.

The changes to Bylaw No. 2541 would then need to be approved by the Inspector of Municipalities.

Until KFN's participation is confirmed and agreed to, the Commission could remain as is, with the understanding that the need to amend the bylaws will be triggered either by:

- agreement on KFN's participation on the Commission, or
- Area A is ready to connect to the treatment system.

The steps for amending the bylaws are therefore:

1. Initiate the changes to Bylaw No. 650 only when direction has been received from KFN to confirm whether they are wanting to become members of the Commission. At that time, the Director of Area A can also be added as a member of the commission (if and when Area A is approved as a participant in the regional sewage treatment service), as well as a clause regarding the trigger for review of Commission composition. Follow up with the amendment to Bylaw No. 2541 if and when the affected portion of Area A is ready to proceed.
2. Amend Bylaw No. 2541 when Area A is ready to proceed with the creation of a local area sewer collection service. At that time Area A will create a local area sewer collection service, as well as amend the service boundary and participating area in Bylaw No. 2541.