



**REVIEW OF OPTIONS FOR DISTRICT 69 SWIMMING POOL SERVICE AMENDMENT BYLAW  
NO. 899.02**

**RECOMMENDATION**

That the Board receive the report titled “Review of Options for District 69 Swimming Pool Service Amendment Bylaw No. 899.02” dated April 26, 2022.

**OVERVIEW**

This report has been developed resulting from direction from the Regional District of Nanaimo (RDN) Board Chair who requested a staff report to provide comprehensive information on legislative processes, service cost apportionment and potential electoral engagement as it relates to the RDN Board’s decision to proceed with the proposed *Regional District of Nanaimo District 69 Swimming Pool Service Amendment Bylaw No. 899.02, 2022 (Bylaw 899.02)* (Attachment 3). In the future, a separate report will be provided to facilitate discussion on the expansion of the Ravensong Aquatic Centre.

**EXECUTIVE SUMMARY OF OPTIONS**

On the assumption that the Board has, by unweighted vote of the full Board, agreed upon the parameters for governance and for its cost allocation for the service, the process options available to the Board for amending the service establishing bylaw to enact those parameters are as follows:

- a) Consent on behalf of the electors by at least 2/3 of the participants, approval by the Inspector of Municipalities, adoption by Board (process currently being followed pursuant to Board direction on January 11, 2022);
- b) Consent on behalf of the electors by at least 2/3 of the participants, Minister order to obtain elector approval in one or more participating areas by Assent or Alternative Approval Process (AAP), conduct elector approval process, adoption by Board;
- c) Consent on behalf of the electors by at least 2/3 of the participants, send letter to Ministry to request Minister order to obtain elector approval in one or more participating areas by Assent or AAP, Minister order to obtain elector approval in one or more participating areas by Assent or AAP, conduct elector approval process, adoption by Board;
- d) Consent on behalf of the electors by at least 2/3 of the participants, obtain informal public input, resubmit for approval by the Inspector of Municipalities with results of informal public input, adoption by Board;
- e) Consent on behalf of the electors by at least 2/3 of the participants, conduct non-binding plebiscite in the entire regional district, resubmit for approval by the Inspector of Municipalities the with results of the non-binding plebiscite, adoption by Board; or

- f) Rescind third reading of Bylaw 899.02, change the language in the bylaw to indicate how elector approval is to be obtained, re-read third reading as amended, resubmit for approval by the Inspector of Municipalities, conduct elector approval process, adoption by Board.

## **BACKGROUND**

At the December 14, 2021, RDN Board meeting options were presented that would provide for Electoral Area E to participate in the funding of aquatic services in the RDN. From the discussions and deliberations on the topic, the following resolution was adopted by the Board:

*That staff be directed to amend “Regional District of Nanaimo District 69 Swimming Pool Local Service Area Establishment Bylaw No. 899, 1993” to include Area E as a participant over a five-year phase in period at twenty (20) percent per year with an apportionment based on fifty (50) percent assessment and fifty (50) percent usage formula commencing in 2022.*

As a result, staff prepared an amendment to Bylaw 889, 1993 (Attachment 4) and at the January 11, 2022, RDN Board meeting the Board resolved to proceed with three readings of *Bylaw 899.02* and to forward the bylaw to the Inspector of Municipalities (Inspector) for approval. At the time of this report, the Inspector of Municipalities had not yet advised on a date to consider this amendment and did not do so before the statutory deadline for the Board to adopt its financial plan (March 31, 2022) budget.

## **DISCUSSION**

### **1. Service Establishment Bylaws**

#### **1.1 Establishing a Service**

A regional district must adopt a service establishing bylaw to provide a new service to the community. The decision to establish a new service is voted on by the entire regional district board of directors by a majority vote, (unweighted). Approval from the Inspector is also required for all service establishment bylaws. For most service establishment bylaws, the regional district is required to obtain *participating area approval* from electors in the participating areas of the service before the regional district board can adopt the bylaw.

#### **1.2 Participating Area Approval Processes**

Participating area approval may be obtained under [Section 342\(2\)](#) of the *Local Government Act (LGA)* by several methods, depending on the type of service to be established and the type of participant (e.g. municipality or electoral area). Generally, the creation of a new service must be obtained by:

- [Assent Voting \(Referendum\)](#);
- [Alternative Approval Process \(AAP\)](#); or
- Consent of behalf of municipal and/or electoral participating area(s).

Approval by assent of the electors is always an option. If the bylaw meets the requirements of [Section 345](#) of the *LGA*, (either be below a dollar threshold or be a service for ‘water, sewer or solid waste’), then approval by alternative approval process is an option. For both an assent vote and AAP process, participating area approval must be obtained separately for each participating area in the proposed service area unless the board, by resolution adopted by at least 2/3 of the votes cast, provides that the participating area approval is to be obtained for the entire proposed service area.

Under the consent process, if the Board receives a sufficient petition from property owners under *LGA Section 347* or meets other requirements under *LGA Sections 347* and *339(2)*, (consent on behalf of electoral participating area by sufficient petition or establishing a bylaw for a service with no requisition limit such as a regulatory service, social planning services, economic development, etc. if the participating area includes all of the electoral area, and can be established without borrowing) then participating area approval may be given by the electoral area director consenting in writing to adoption of the proposed bylaw. A petition is not required for a municipal participating area (council) to consent on behalf of the electors to adoption of the proposed bylaw.

## **2. Amendment of a Service Establishment Bylaw**

Once a service bylaw has been established, the regional district board can amend or repeal the bylaw which is voted on by the entire regional district board of directors by a majority vote, (unweighted). *Section 349* of the *LGA* outlines the process for amending service establishment bylaws as follows:

*349 (1)* Subject to an order by the Minister, an establishing bylaw may be amended or repealed, at the option of the board,

- a) in accordance with the requirements applicable to the adoption of the bylaw that it amends or repeals (see Section 1.2 of this report – Participating Area Approval Processes); or
- b) with the consent of at least 2/3 of the participants (which includes any proposed participating area)\*.

*\*Note that option b) above is the current trajectory for Bylaw 899.02.*

A bylaw amending an establishing bylaw has no effect unless it is approved by the Inspector. In accordance with *Section 349(4)* of the *LGA*, the Minister may order that a bylaw amending an establishing bylaw may be adopted only in accordance with the requirements applicable to the adoption of the bylaw that it amends (see Section 1.2 of this report – Participating Area Approval Processes).

In addition to the above, under *LGA Section 349(5)* the Minister may order that, before the bylaw is adopted, it must receive the approval of the electors

- a) in one or more specified participating areas, or in specified parts of one or more participating areas, or
- b) in the entire service area,

obtained in accordance with *LGA Section 344 [approval by assent of the electors]* or *345 [approval by alternative approval process]*, as specified by the minister.

Ministry staff have advised that, if the board elects to use an elector approval process (AAP or assent vote) to gain participating area approval under the *LGA*, the Board would have to rescind third reading of *Bylaw 899.02*, change the language to indicate how elector approval is being obtained, then resubmit to the ministry for Inspector approval. If an AAP is chosen and it fails, and the board decides to proceed with the bylaw, the board must proceed with an assent vote no later than 80 days after the APP closes. The board can also decide not to proceed with the bylaw. If the assent vote fails, the board must wait at least six months before seeking elector assent on another bylaw for the same purpose<sup>1</sup>.

A key factor is that in any event, the approval of the Inspector is required for amendments to establishing bylaws. Legal advice has indicated that, in politically sensitive circumstances, the Minister may order that the

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<sup>1</sup> The Minister may approve that the bylaw be submitted to the electors within a period of less than six months.

amendment bylaw be adopted only in accordance with the requirements applicable to the adoption of the bylaw it amends (see Section 1.2 of this report – Participating Area Approval Processes). If the Board decides to wait for the Inspector to consider approval of *Bylaw 899.02* by the 2/3 consent of participants option (current option), and if it is rejected by the Inspector, this does not prevent the board from proceeding with an elector approval option (AAP or assent voting).

According to legal advice, the establishment bylaw amendment process must be uniformly applied through all of the participating areas unless the Minister orders otherwise under *LGA Section 349(5)* as noted above. There is no authority on an amendment for the board to distinguish between participating areas for different or distinctive classes of approval or consent, except to the extent that participating area approval via an AAP or assent vote can be undertaken for each participating area separately, or by resolution adopted by at least 2/3 of the votes cast, the board can provide that the participating area approval is to be obtained for the entire proposed service area.

Another option suggested by the Ministry is in reference to *LGA Section 349(5)* which provides that “the Minister may order that, before the bylaw is adopted, it must receive the approval of the electors, a) in one or more specified participating areas, or in specified parts of one or more participating areas, or b) in the entire service area, obtained in accordance with *LGA Section 344* [assent vote] or *Section 345* [AAP], as specified by the Minister”. The Ministry has advised, that through a Minister’s Order, a legally-binding AAP (or assent vote) can be held in Electoral Area E to obtain elector approval for amending the bylaw. If the AAP were to fail and the board decides to proceed with the bylaw, then the board must proceed with an assent vote no later than 80 days after the AAP closes. If the board wishes to proceed with this option, the board can direct staff to write to the Ministry to request the Minister to issue an order under *LGA Section 349(5)* to require an AAP (or assent vote) be held in Electoral Area E to receive the approval of the electors to adopt the bylaw. Ministry staff advised that while this is not common, this particular situation may warrant the Minister issuing such an order.

### **3. Public Engagement**

#### **3.1 Informal Public Input**

Local governments may engage with citizens in a variety of informal and formal ways on various matters. Informal engagement includes open houses and advisory bodies, while formal engagement includes legislatively required local government consent or elector approval. Local governments may involve citizens informally in decisions they make by:

- a) Collecting community and regional opinions;
- b) Accepting petitions;
- c) Holding community open houses or public information-sharing sessions; or
- d) Establishing advisory bodies.

These informal communication opportunities assist regional district boards to better understand citizens’ views or perceptions about a specific matter or bylaw. At any time, local governments may initiate a process to understand community opinions on issues and needs. The results of these opinion gathering processes are a useful indicator of whether there is broad support for local government initiatives.

Ministry staff have advised that public consultation on contentious issues is not uncommon and provides a way for those being impacted to voice their opinions. If the RDN proceeds with informal public input for *Bylaw 899.02*, the Inspector would want to see how the RDN has engaged with the residents, and whether the RDN has taken the time to explain the rationale and intended purpose. The Inspector would want to see some evidence that the RDN has taken the necessary steps to engage with the affected residents to ensure their

voices are being heard and their needs and concerns are being considered. The results of informal input would be submitted with the bylaw for Inspector consideration. If the Board wishes to proceed with an amendment against the results of informal public input, then the Inspector would likely have some questions.

### 3.2 Non-Binding Plebiscite

The Board may also seek regional district opinion on a question that the board considers affects the regional district through a non-binding opinion poll (non-binding plebiscite), or another process the board considers appropriate under *LGA Section 293*. If a regional district undertakes this process, the *LGA* specifies that the board must seek the opinion of the electors of the entire regional district, and not just of a portion of it. In practice, participants of an opinion poll process are likely to be those affected by a proposed change. Additionally, the RDN has a practice of requesting information to identify where residents are located, so that input collected may be assigned to specific areas.

Ministry staff suggested that the RDN seek legal counsel for a clear understanding of the use of [Section 293](#) to obtain a non-binding plebiscite in regards to *Bylaw 899.02*. Our legal advice has confirmed that seeking elector opinions under [Section 293](#) must be held throughout the entire regional district, and not just a new participating area, or participating areas of a service. The advice has confirmed that results of this process are not binding on the board. In relation to the budget, this process is covered under “general administration” as described in *LGA Section 338 (2)(a)*.

### 3.3 Public Engagement Policy

The RDN *Public Engagement Policy* (Attachment 2) establishes a framework for public engagement at the RDN. The RDN is committed to improving communication or engagement with residents and stakeholders using a collaborative, transparent and authentic approach. In accordance with this policy, public engagement approaches are developed on a case-by-case basis. The RDN uses the International Association of Public Participation (IAP2) model as the foundation for planning and delivering engagement. IAP2’s spectrum was designed to assist with the selection of the level of participation that defines the public’s role in any public participation process.

<b>IAP2 Spectrum of Public Participation</b>	<b>Public Participation Goal</b>	<b>Promise to the Public</b>
<i>Inform</i>	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	We will keep you informed.
<i>Consult</i>	We will keep you informed. To obtain public feedback on analysis, alternatives and/or decisions.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.
<i>Involve</i>	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.
<i>Collaborate</i>	To partner with the public in each aspect of the decision including the	We will look to you for advice and innovation in formulating solutions and

	development of alternatives and the identification of the preferred solution.	incorporate your advice and recommendations into the decisions to the maximum extent possible.
<i>Empower</i>	To place final decision making in the hands of the public.	We will implement what you decide.

As per the guidelines in the RDN *Public Engagement Policy*, the RDN has undertaken public engagement related to *Bylaw 899.02* at the ‘inform’ level of the IAP2 spectrum.

Historically, the RDN Board endorsed the five general principles that had been developed by the steering committee in the [Guide to Regional Service Arrangements and Service Reviews](#) (2001). At that time, the RDN Board indicated an intention to undertake extensive public consultation and review processes before considering final adoption of the bylaws and service agreements in relation to this service review.

#### **4. Apportionment of Service Costs**

##### **4.1 Methods of Cost Recovery**

A service establishment bylaw must indicate the method(s) of cost-recovery that will be used to fund the service. The most common methods of funding local services are property taxes, user fees and charges, and parcel taxes. The *LGA* provides discretion so that local governments can design innovative service arrangements. The [Guide to Regional Service Arrangements and Service Reviews](#) (2001) states that there are considerations required when determining service arrangements including assessing both the nature of the service and the characteristics of participating communities. While allocating costs using a converted assessment formula is the standard practice for regional district services, using alternative and mixed methods is a common practice linking the cost to the service itself or to population. In many cases, “the standard, or default, provisions in the legislation will represent the most appropriate approach to follow. In other situations, particularly where tensions have arisen in the past, some customization will be beneficial” (p. 23). In the guide, the Ministry of Municipal Affairs (MMA) states that there is no right way to allocate costs, and that many factors need to be considered in each circumstance including: “the nature and history of the service being considered, the demographic, social and economic characteristics of the participating communities, the extent to which there is a shared philosophy among the partners on public service provision and financing, and the extent to which the parties have cooperated successfully on other issues” (p 20).

Ministry staff had advised that the method of apportionment should be able to be expressed as text or a mathematic formula in the bylaw. The factors in the method should be obtainable each year from a dependable source so that their accuracy is not in question. The legislation does not provide guidance on specific methods, and some common examples includes:

- a) Various configurations of assessed value – land, improvements, or both; assessed value; converted value;
- b) Population; and
- c) Property count.

##### **4.2 Electoral Area E Participating Apportionment in Aquatic Services**

Options for apportioning costs related to the Regional District of Nanaimo District 69 Swimming Pool Local Service were presented for the Boards consideration at the December 14, 2021, meeting as presented in the staff report entitled *Review of Electoral Area E Participating in Funding of Aquatic Services* (Attachment 1). This report outlined five potential options of Electoral Area E contributions and to the pool service(s). The formulas

presented were based on combinations of assessment and usage, as well as phase in periods for contributions. The Board may direct staff to examine further options for its consideration.

Our legal advice has indicated that if the board wishes to review the proposed *Bylaw 899.02* amendment and change the formula for apportionment, the board would have to rescind second and third reading, re-read as amended, and then refer the amended bylaw to the Inspector for approval.

## **CONCLUSION**

This report has been provided to overview the legislative and electoral engagement processes applicable to service establishment bylaws and amendments. This information has been prepared to contextualize the RDN Board's decision to proceed with *Bylaw 899.02* and has been provided to the Board for information. Staff have confirmed legislative processes with the MMA and legal counsel to provide the most accurate information to the Board.

## **STRATEGIC PLAN ALIGNMENT**

People and Partnerships - Improve the governance and awareness of RDN activities for citizens throughout the Region.

## **ATTACHMENT(S)**

1. Staff Report - Review of Electoral Area E Participating in Funding of Aquatic Services
2. Policy A1-23 Public Engagement Policy (February 2020)
3. Bylaw 899.02, 2022
4. Bylaw 899-0 (consolidated to .01)

## **REVIEWED BY:**

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