

**Southern Community Sewer Local Service Secondary Treatment Capital Improvement
Temporary Borrowing Bylaw No. 1860, 2022**

RECOMMENDATION(S)

1. That “Southern Community Sewer Local Service Secondary Treatment Capital Improvement Temporary Borrowing Bylaw No. 1860, 2022” be introduced and read three times.
2. That “Southern Community Sewer Local Service Secondary Treatment Capital Improvement Temporary Borrowing Bylaw No. 1860, 2022” be adopted.

BACKGROUND

On June 14, 2022 the Regional District of Nanaimo (RDN) Board received the staff report entitled *2022 RDN Fall Borrowing* included as attachment 2 to this report. The purpose of that report was to obtain readings and adoptions for a number of RDN financial bylaws. Since the time of that report, staff have determined that the “Southern Community Sewer Local Service Secondary Treatment Capital Improvement Temporary Borrowing Bylaw No. 1858, 2022” (Bylaw 1858) is a nullity due to an error in its preparation, therefore staff is presenting “Southern Community Sewer Local Service Secondary Treatment Capital Improvement Temporary Borrowing Bylaw No. 1860, 2022” (Bylaw 1860) shown as attachment 1, for three readings and adoption in its place.

Bylaw 1858 included an administrative error in section 5, which mistakenly identified the “Southern Community Sewer Local Service Secondary Treatment Capital Improvements Loan Authorization Bylaw No. 1756, 2017” (Bylaw 1756) as being repealed instead of identifying the “Southern Community Sewer Local Service Secondary Treatment Capital Improvements Interim Financing Bylaw No. 1763, 2017” as being repealed. Bylaw 1860 has been presented to fix this error and properly authorize the temporary borrowing.

Staff sought legal advice on the state of Bylaw 1858, and our legal advice has determined that the bylaw is a nullity due to the following reasons.

- 1) If section 5 of Bylaw 1858 is taken to have been intended to effect the repeal of Bylaw 1756, section 137 of the *Community Charter* would be applicable. That section states that the power to repeal Bylaw 1756 must be exercised by bylaw and is subject to the same approval and other requirements as were applicable to the original adoption of Bylaw 1756, which included the requirement for Ministerial approval and the requirement of third reading and adoption occurring on different days. Neither of those requirements were met in adopting Bylaw 1858. Consequently, Bylaw 1858 is a nullity.
- 2) The repeal of Bylaw 1756 creates a paradox within Bylaw 1858 as Bylaw 1756 is its enabling bylaw.

REVIEWED BY:

- J. Hill, Manager, Legislative Services
- D. Wells, General Manager, Corporate Services
- T. Osborne, Acting Chief Administrative Officer

ATTACHMENTS

1. Southern Community Sewer Local Service Secondary Treatment Capital Improvement Temporary Borrowing Bylaw No. 1860, 2022
2. June 14, 2022 Board Report - 2022 RDN Fall Borrowing