



**Options for District 69 Swimming Pool Local Service Area Establishment Bylaw No. 899
Amendment following Public Engagement**

RECOMMENDATIONS

That the Staff Report dated April 18, 2023, “Options for District 69 Swimming Pool Local Service Area Establishment Bylaw No. 899 Amendment following Public Engagement” be received and that the Chair re-establish the District 69 Swimming Pool Service Select Committee and the report be referred to the Committee to further review options and models for the District 69 Swimming Pool Service and provide recommendations to the Board.

BACKGROUND

This report has been developed in response to the Regional District of Nanaimo (“RDN”) Board’s direction and is presented concurrently with the results of the Engagement Plan and Schedule in support of the Board’s consideration of changes to the *Regional District of Nanaimo District 69 Swimming Pool Local Service Area Establishment Bylaw No. 899* (“Bylaw 899”) (Attachment 1). At the September 6, 2022, Regular Board Meeting, the following resolution was adopted by the Board:

22-534

That the Board approve the Engagement Plan (Attachment 1) and Detailed Schedule (Attachment 2) for community input from existing service contributors and Electoral Area E on changes being considered to the Regional District of Nanaimo District 69 Swimming Pool Local Service Area Establishment Bylaw No. 899.

Additional resolutions with respect to changes being considered to Bylaw 899 are included as Attachment 2.

Public Engagement

The results of Public Engagement are detailed in a separate report on this agenda. In summary, respondents from Electoral Area E are strongly opposed to the addition of Electoral Area E to the service, whereas the majority of other respondents support the addition of Electoral Area E. Survey respondents from Electoral Area E are also strongly opposed to the proposed change of the funding model of the service, whereas the majority of other respondents are in support of the proposed change.

RDN Board and Legislative Approval

Further to the Engagement Plan and Schedule approved by the RDN Board on September 6, 2022, and the subsequent receipt of the Engagement Report dated March 2023 by the Board, the Board's direction is now being sought on changes to Bylaw 899 and on the proposed *Regional District of Nanaimo District 69 Swimming Pool Service Amendment Bylaw No. 899.02, 2022* ("Bylaw 899.02") which is currently sitting at third reading (Attachment 3). Staff is seeking the Board's direction on both changes being considered by the Board (as below) and on the method of elector approval for proposed changes to Bylaw 899. Should the Board so direct, a report will be brought back for the Board's consideration with the proposed changes in bylaw amendment(s) for the Board's consideration at a future meeting.

The Board is currently considering two changes to Bylaw 899, pursuant to the Engagement Plan:

- Adding Electoral Area E (Nanoose Bay) as a participating area
- Changing apportionment of cost recovery to 1/3 assessment, 1/3 usage, 1/3 population based

It is staff's understanding that the first change being considered to include Electoral Area E as a participating area is based on Electoral Area E benefitting from the service but not contributing to the costs by way of taxation, resulting in the current participating areas subsidizing the use of the facility by Electoral Area E residents. Further, that the second change is being considered to incorporate an equitable method of apportioning the costs across all of the participating areas (existing and proposed).

The Board directed at the June 14, 2022 Board meeting "that a referendum be held with public engagement, at the "involve" level of participation within the Board's engagement policy, to amend the Regional District of Nanaimo District 69 Swimming Pool Service Establishment Bylaw No. 899, 1993 (Bylaw 899), to include Electoral Areas E, F, G, H, City of Parksville and Town of Qualicum Beach, based on an apportionment model of 1/3 assessment, 1/3 population, and 1/3 usage".

On September 6, 2022, the Board subsequently approved the Engagement Plan and Schedule for community input from existing service contributors and Electoral Area E on changes being considered to Bylaw 899, after which the Board would consider alternate direction. Other options for obtaining participating area approval for the amending Bylaw 899.02 could be considered, including Board authorized participating area consent, or Alternate Approval Process; the Board could also choose not to pursue an amendment to Bylaw 899. These options are discussed below.

Options for Next Steps

Initial considerations for proposed changes: Each of the proposed changes can be considered as a separate amendment to Bylaw 899, or the two amendments can be considered in the same amendment bylaw. There may be a desire on the part of the current participants to change the apportionment of costs whether Electoral Area E becomes a participant in the service or not. There appeared to be support for this change through the Engagement Plan other than in Electoral Area E. Staff is firstly seeking whether to prepare the proposed changes jointly for the Board's consideration or separately and if separately, in which order to draft the bylaw amendments for the Board's consideration:

- a) That Staff be directed to bring forward the amendment to Bylaw 899 for adding Electoral Area E (Nanoose Bay) as a participating area, followed by the amendment changing apportionment of cost recovery to 1/3 assessment, 1/3 usage, 1/3 population based, *OR*

- b) That Staff be directed to bring forward the amendment to Bylaw 899 changing apportionment of cost recovery to 1/3 assessment, 1/3 usage, 1/3 population based, followed by the amendment adding Electoral Area E (Nanoose Bay) as a participating area, *OR*
- c) That Staff be directed to bring forward the two amendments to Bylaw 899 concurrently for consideration - the amendment for adding Electoral Area E (Nanoose Bay) as a participating area and the amendment changing apportionment of cost recovery to 1/3 assessment, 1/3 usage, 1/3 population based.

The two proposed changes, if considered in separate bylaw amendments may, but are not required to, follow different methods of elector approval (see below).

Other Considerations regarding "Regional District of Nanaimo District 69 Swimming Pool Service Amendment Bylaw No. 899.02, 2022" (Bylaw 899.02): Bylaw 899.02 provided for Electoral Area E to be added to the service by way of at least 2/3 of the participants consenting, for apportionment for Electoral Area E to be phased in over five years and starting in 2022, and for such apportionment to continue with 50% on the basis of converted value of land and improvements for hospital purposes and 50% on the basis of the percentage of usage of the service as determined by a survey of usage carried out by RDN. At this time, the Board could consider passing a resolution abandoning Bylaw 899.02, by way of resolution, with further direction on the options provided for amendment(s) to Bylaw 899. Such further direction could include any of the options outlined in this report, including no amendment(s) to Bylaw 899.

Draft Resolution:

That the RDN Board abandon "Regional District of Nanaimo District 69 Swimming Pool Service Amendment Bylaw No. 899.02, 2022".

Method of Elector Approval

1. Consent of the Participants

History: Bylaw 899.02 as it currently sits at third reading requires the consent of at least 2/3 of the participants to proceed in accordance with section 349(1)(b) of the *Local Government Act*. Because Electoral Area E is proposed to be added to the service, this area is deemed a 'participating area' for the purposes of providing consent, along with Electoral Area F, G, H, Parksville, and Qualicum Beach; at least four of these six would need to approve an amendment to change the participating areas to include Electoral Area E. Should any electoral area director refuse to give consent, the Board may dispense with the electoral area director's consent by passing a resolution, adopted by at least 2/3 of the votes cast of the Board, and give participating area approval by consenting to adoption of the bylaw on behalf of the electors in the proposed participating area.

Concurrently, notice is sent to the two member municipalities to provide consent. There is no authority for the Board to dispense with a municipal participating area member's consent in the way it can with an electoral participating area under s. 347 of the *Local Government Act*. However, if council notifies the regional district that it is refusing to seek participating area approval, or fails to give any notice to the regional district with respect to how participating area approval is to be obtained, the Board may arrange to have participating area approval obtained on behalf of the municipal participating area member pursuant to section 343 (3) and (4) of the *Local Government Act* by passing a resolution, adopted by at least 2/3 of the votes cast of the Board, providing that the participating area approval is to be obtained for the entire proposed service area.

After participating area consents are obtained, the amendment Bylaw is forwarded to the Inspector for approval, and, if approved, then returns to the Board for consider of adoption.

Consent of the participants is the most commonly used method of amending a Service Establishment Bylaw, is the fastest and most efficient, and has the least impact on human resources and financial resources. The Minister can order that either Assent Voting or an AAP be conducted.

Process: The process that the bylaw would follow, should the Board direct this option is as follows:

1. The amendment to Bylaw 899 is drafted and the Board considers first three readings of the bylaw;
2. Consent of at least 2/3 of the participants is obtained - Electoral Area Directors sign consent forms, and Council for the municipal participating areas consider providing consent;
3. Upon receipt of Consents, staff forward a package for Provincial review and statutory approval by the Inspector of Municipalities (may take up to twelve weeks); the Inspector of Municipalities may provide approval or may require option 2, 3 or 4 below to be conducted before providing approval;
4. The amendment to Bylaw 899 is brought back to the Board for consideration of adoption.

Draft Resolution for amendments to Bylaw 899 as presented in the community engagement process:

That the RDN Board direct staff to bring back an amendment to Bylaw 899 [adding Electoral Area E into the service as a Participating Area; and/or changing the apportionment method to 1/3 assessment, 1/3 population, and 1/3 usage] under section 349(1)(b) of the Local Government Act with the consent of at least 2/3 of the participants.

2. Assent Voting (Referendum)

History: Bylaw 899 was originally adopted in 1993 after obtaining assent of the electors for the entire service area by way of Assent Voting. Prior to the Public Engagement Plan approved by the Board on September 6, 2022, there was a resolution passed on June 14, 2022 that a referendum be held to amend the bylaw, as per section 349(1)(a) of the *Local Government Act* which permits a service establishment bylaw to be amended in accordance with the requirements applicable to the adoption of the bylaw that it amends (including referendum). Funds have been included in the 2023-2027 Financial Plan to accommodate this process, should that be the Board's direction. This method of amending a Service Establishment Bylaw is the most resource intensive from both a financial and human resource perspective.

Process: The process that the bylaw would follow, should the Board direct this option is as follows:

1. The amendment to Bylaw 899 is drafted and the Board considers first three readings of the bylaw;
2. Staff forwards the bylaw amendment as at third reading for Provincial review and statutory approval by the Inspector of Municipalities (may take up to twelve weeks);
3. Appointment of Election Officials; set General Voting Day (must be within 80 days of Inspector approval of the bylaw); adopt election bylaw amendment if applicable (must be adopted at least 6 weeks before General Voting Day); approve Assent Voting question(s);
4. Order Ballots and election supplies; Notify Ministry and Elections BC;
5. Prepare Statutory Notices and communication packages;
6. Arrange voting locations, travel and accommodation for election officials (if applicable), ballot boxes, forms, and all other necessary materials;
7. Hold Advance and General Voting opportunities;

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8. Ballot count and declaration of results;
9. Providing the majority is in favour (50% plus one), bring back the bylaw amendment to the Board for consideration of adoption.

Draft Resolution(s) for amendments to Bylaw 899 as presented in the community engagement process:

That the RDN Board direct staff to bring back an amendment to Bylaw 899 [adding Electoral Area E into the service as a Participating Area; and/or changing the apportionment method to 1/3 assessment, 1/3 population, and 1/3 usage], and that elector approval for the amendment bylaw be obtained by Assent Voting (referendum) under section 349(1)(a) of the Local Government Act; and

That the participating area approval is to be obtained for the entire proposed service area.

Note: If the Board does not pass a resolution, adopted by at least 2/3 of the votes cast of the Board, providing that the participating area approval is to be obtained for the entire proposed service area, participating area approval must be obtained separately for each participating area in the proposed service area. As noted above, Bylaw 899 was originally adopted after obtaining assent of the electors for the entire proposed service area.

3. Alternate Approval Process

History: Bylaw 899 was not established by way of Alternate Approval Process (“AAP”) but is an option available to the Board under section 349(1)(a) of the *Local Government Act* which permits a service establishment bylaw to be amended in accordance with the requirements applicable to the adoption of the bylaw that it amends (including AAP as permitted). Like the requirements of a referendum, the AAP could be conducted separately in each participating area or for the entire proposed service area inclusive of Electoral Area E. This method of approval is more resource intensive than consent of the participants but significantly less so than Assent Voting. 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.

Process: The process that the bylaw would follow, should the Board direct this option is as follows:

1. The amendment to Bylaw 899 is drafted and the Board considers first three readings of the bylaw;
2. Staff forwards the bylaw amendment as at third reading for Provincial review and statutory approval by the Inspector of Municipalities (approval may take up to twelve weeks);
3. The AAP is conducted (approximately 8 weeks); statutory notices and Elector Response Forms prepared;
4. Results of AAP are tallied, and the Corporate Officer certifies the results;
5. Providing the AAP is successful (less than 10% of the electors are opposed) the bylaw is brought back to the Board for consideration of adoption.

Draft Resolution(s) for amendments to Bylaw 899 as presented in the community engagement process:

That the RDN Board direct staff to bring back an amendment to Bylaw 899 [adding Electoral Area E into the service as a Participating Area; and/or changing the apportionment method to 1/3 assessment, 1/3 population, and 1/3 usage], and that elector approval for the amendment bylaw be obtained by Alternative Approval Process (AAP) under section 349(1)(a) of the Local Government Act; and

That the participating area approval is to be obtained for the entire proposed service area.

Note: If the Board does not pass a resolution, adopted by at least 2/3 of the votes cast of the Board, providing that the participating area approval for the AAP is to be obtained for the entire proposed service area, participating area approval must be obtained separately for each participating area in the proposed service area. As noted above, Bylaw 899 was originally adopted after obtaining assent of the electors (referendum) for the entire proposed service area.

4. Ministerial Order for other Elector Approval Options

In addition to the options available to the Board noted in sections 1-3 above, the Board may request that the Minister make an order under section 349(5)(a) of the *Local Government Act* that elector approval be obtained in one or more specified participating areas (such as in Electoral Area E only). 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 AAP or Assent Vote can be undertaken for each participating area separately, or by resolution of the Board to provide that participating area approval is to be obtained for the entire proposed service area.

A Ministerial order would be required under section 349(5) of the *Local Government Act* in order to proceed with this method of approval. In consultation with the Ministry of Municipal Affairs, and given the particular circumstances of the proposed changes to Bylaw 899, the Ministry could be receptive to considering this process, should the Board so direct.

This method of approval is more resource intensive than consent of the participants but significantly less so than Assent Voting in the entire proposed service area.

1. The amendment to Bylaw 899 is drafted and the Board considers first three readings of the bylaw;
2. The Board passes a resolution directing that a letter be sent to the Ministry of Municipal Affairs requesting an order be made under section 349(5) of the *Local Government Act* and identifying the Board's preference of elector approval and participating area(s);
3. Staff forwards the bylaw amendment as at third reading for Provincial review and statutory approval by the Inspector of Municipalities together with the Board authorized letter requesting a Ministerial order under section 349(5) of the *Local Government Act* (approval may take up to twelve weeks);
4. Providing the Inspector Approval is granted, and the Minister so directs an elector approval process to be conducted as requested by the Board under section 345(5) of the *Local Government Act*, the electoral approval process (Assent Vote or AAP) is held as outlined in section 2 or 3 above;
5. Results of elector approval process are determined, and if successful, the bylaw is brought back to the Board for consideration of adoption.

Draft Resolution for amendments to Bylaw 899 as presented in the community engagement process:

*That the RDN Board direct staff to bring back an amendment to Bylaw 899 [adding Electoral Area E into the service as a Participating Area; and/or changing the apportionment method to 1/3 assessment, 1/3 population, and 1/3 usage] and request the Minister make an order under section 349(5) of the *Local Government Act* that the bylaw receive the approval of the electors in one or more specified participating areas [i.e. Electoral Area E only] by assent of the electors or by alternative approval process.*

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FINANCIAL IMPLICATIONS

The RDN has allocated \$120,000 for a referendum to occur in 2023. Should the Board decide not to hold a referendum, and depending on the direction provided by the Board, the majority of these funds would not be required and could be reallocated within the service or would otherwise result in a surplus.

The Bylaw amendment, if ultimately adopted by the Board, would be anticipated to apply to the 2024 revised roll and be applicable to 2024 tax requisitions. The first proposed change to Bylaw 899 would result in new taxation for this service in Electoral Area E; for the other participating areas, there would be more participants that can contribute to the costs of operating and maintaining the Ravensong Aquatic Centre.

The second proposed change to the Bylaw, from 1/2 assessment and 1/2 usage, to 1/3 assessment, 1/3 usage, and 1/3 population will shift the apportionment amongst the participants according to when changes occur with respect to these factors.

Two tables related to the financial implications of the changes being considered to Bylaw No. 899 were presented during the open houses of the community engagement and are presented below. The intent was to illustrate using 2022 dollar value financial implications linked to changes to resident assessments.

Open House Display Panel Data 2022 Current Allocation Model (½ Usage and ½ Assessment) - Excluding EA E:

Participant	Members Share	2022 Average Residential Value	Residential Cost per \$100K Assessment	Average Residential Assessment
City of Parksville	\$886,937	\$669,603	\$15.28	\$102.32
Town of Qualicum Beach	\$781,510	\$877,310	\$16.99	\$149.05
Electoral Area F	\$529,855	\$693,016	\$17.72	\$122.80
Electoral Area G	\$592,691	\$942,810	\$15.88	\$149.72
Electoral Area H	\$294,089	\$807,643	\$13.20	\$106.61
TOTAL REQUISITION (2022)	\$3,085,082			

Open House Display Panel Data 2022 Proposed Allocation Model (1/3 Assessment, 1/3 Usage and 1/3 Population) - Including EA E:

Participant	Members Share	2022 Average Residential Value	Residential Cost per \$100K Assessment	Average Residential Assessment
City of Parksville	\$802,447	\$669,603	\$13.82	\$92.54
Town of Qualicum Beach	\$655,080	\$877,310	\$14.24	\$124.93
Electoral Area E	\$367,089	\$1,133,873	\$8.82	\$100.01
Electoral Area F	\$484,327	\$693,016	\$16.20	\$112.27
Electoral Area G	\$516,954	\$942,810	\$13.85	\$130.58
Electoral Area H	\$259,185	\$807,643	\$11.63	\$93.93
TOTAL REQUISITION (2022)	\$3,085,082			

The two tables have been updated to reflect the financial implications of the approved 2023 Financial Plan.

Current 2023 Allocation Model (½ Usage and ½ Assessment) - Excluding EA E:

Participant	MEMBERS SHARE	2023 Average Residential Value	Residential Cost per \$100K Assessment	Average Residential Assessment
City of Parksville	985,261	\$753,356	\$14.99	\$112.93
Town of Qualicum Beach	853,442	\$960,113	\$16.96	\$162.84
Electoral Area F	580,941	\$761,627	\$17.61	\$134.12
Electoral Area G	645,648	\$1,024,653	\$15.88	\$162.71
Electoral Area H	328,298	\$920,365	\$12.94	\$119.10
TOTAL Requisition (2023)	3,393,590			

Proposed 2023 Allocation Model (1/3 Usage, 1/3 Assessment and 1/3 Population) - Including EA E:

Participant	Members Share	2023 Average Residential Value	Residential Cost per \$100K Assessment	Average Residential Assessment
City of Parksville	\$886,198	\$753,356	\$13.48	\$101.55
Town of Qualicum Beach	\$715,734	\$960,113	\$14.22	\$136.53
(2023) Electoral Area E	\$409,858	\$1,302,858	\$8.54	\$111.26
Electoral Area F	\$530,793	\$761,627	\$16.09	\$122.55
Electoral Area G	\$563,961	\$1,024,653	\$13.87	\$142.12
Electoral Area H	\$287,046	\$920,365	\$11.31	\$104.09
TOTAL Requisition (2023)	\$3,393,590			

STRATEGIC PLAN ALIGNMENT

People and Partnerships: Improve the governance and awareness of RDN activities for citizens throughout the region.

Social Well-Being: Make the region a safe and vibrant place for all, with a focus on children and families in planning and programs.

REVIEWED BY:

- D. Banman, Manager, Recreation Services
- T. Moore, Chief Financial Officer
- S. Nixon, Acting General Manager, Corporate Services
- T. Osborne, General Manager, Recreation and Parks Services
- D. Holmes, Chief Administrative Officer

ATTACHMENTS

1. *Regional District of Nanaimo District 69 Swimming Pool Local Service Area Establishment Bylaw No. 899*
(consolidated for convenience)
2. Board resolutions with respect to changes being considered to the Regional District of Nanaimo District 69 Swimming Pool Local Service Area Establishment Bylaw No. 899
3. *Regional District of Nanaimo District 69 Swimming Pool Service Amendment Bylaw No. 899.02, 2022* at third reading