

ADMINISTRATIVE REPORT



TO: Planning & Development Committee

FROM: B. Newell, Chief Administrative Officer

DATE: October 19, 2023

RE: Regulating the creation of new private utilities – For Discussion

Administrative Recommendation:

THAT amendments to the Regional District’s Official Community Plan (OCP), Zoning and Subdivision Servicing bylaws be initiated in order to prohibit the development of new private utilities.

Purpose:

To present options in relation to the regulation of private water and sewer utilities.

Background:

Under Section 3A-3 of the South Okanagan Sub-Regional Growth Strategy, the Regional District has committed to “encourage publically operated utilities and discourage the establishment of private utilities and services.”

In support of this, various official community plans (OCP) include an objective to “discourage the development of private systems for the provision of water and sewer services” based on an understanding that essential services should be operated by a local government.

Despite these policy directions, under the Regional District’s Subdivision Servicing Bylaw No. 2000, 2002, the definitions of “community sewer system” and “community water system” both make allowances for private utilities such as a strata corporation or an incorporated company.

Statutory Authority:

Under Section 479 (Zoning bylaws) of the *Local Government Act*, a bylaw may make different provisions for, amongst other things, “different standards of works and services provided”.

Under Section 306 (Special drainage and sewerage authority) of the Act, a regional district may, by bylaw, “regulate and prohibit the design and installation of drainage and sewerage works provided by persons other than the regional district ...”

Under Section 335(2) of the Act, a regional district may, by bylaw, “regulate and prohibit in relation to a regional district service other than a regulatory service.”

Other Considerations:

At its meeting of May 5, 2022, the Planning and Development (P&D) Committee of the Regional District Board resolved “that a review of Low Density Residential Zones and servicing requirements in Kaleden be considered for inclusion on the Regional District’s 2023 Business Plan.”

The request for this project was prompted by community concern in Kaleden following the submission of four (4) subdivision applications that proposed to create individual “community sewer systems” to be owned and operated by the strata.

At present, the initiation of a Kaleden Zone Review is dependent upon the completion of other Board priority projects, such as the RGS Review, Electoral Area “E” OCP Review, ESDP Review, Subdivision Servicing Bylaw Review, Vacation Rental Review and Housing Options.

In August of 2023, the Okanagan Basin Water Board (OBWB) advised the Regional District that it was deemed to be in contravention of the “1.0 ha Policy” for reasons related to policies and regulations in its land use bylaws that speak to private utilities (see above). OBWB was subsequently requested to provide a formal statement on this and has recently provided the following:

The current OBWB 1.0 Hectare policy does not address private utilities. This policy is under review and will address this issue in the near future. Most local government is the Okanagan define “Community Sewer” as those systems owned, operated and maintained by the local governments. We recommend that local governments do not authorize new private wastewater systems. If they are authorized, we recommend that the local government require security from the utility to ensure maintenance and replacement of the system to protect community water.

Analysis:

It is a standing policy of the Regional District Board that “essential services are best provided by government, where citizens can elect representatives interested in their well-being and will operate the service in the most effective and efficient manner possible.”

Further, “potable water and sanitary sewerage systems are determined to be essential to a high quality of life ...” yet, many of the private water and sewer systems within the Regional District struggle “to meet environmental and public health standards ... and do not meet increasing minimum provincial regulation or standard municipal design.”

It has been the Regional District’s experience that “system owners often find that they no longer have the financial ability, technical expertise or interest required to meet current regulation”.

By the time a private or non-profit utility approaches the regional district to acquire a water or waste water system, the infrastructure is often undersized, in disrepair or in contravention of provincial standards.

For these reasons, there is seen to be a strong argument to regulate, going forward, in favour of publicly operated utility systems versus those operated by business or strata corporations or other private water or sewer utilities.

The authority to prohibit the creation of new private water and sewer utilities appears under the *Local Government Act* and required amendments to the Regional District’s land use bylaws are outlined at Attachment Nos. 1-3.

A prohibition on new private utilities will create pressure on the Regional District to support and immediately acquire such infrastructure when needed for development to proceed in certain zones. Newly constructed water or sewer infrastructure would be expected to be financially sustainable upon completion (i.e. viable and affordable for residents to be served by the system).

A new policy addressing proposals that the Regional District assume ownership and operation of a new utility should identify standards, such as the system being financially sustainable upon completion (i.e. viable and affordable for residents to be served by the system).

The Columbia Shuswap and Thompson Nicola Regional District's employ thresholds to help determine the viability of a utility (e.g. it must serve a minimum of 50 or 100 units).

Public Engagement:

Notification of any amendments would be distributed in the typical manner (i.e. agency referrals, notification on VoyentAlert and social media, creation of a project webpage, etc.) as well as:

- a public information meeting with local engineering firms; and
- direct written notification to subdivision applicants whose current proposal may be impacted by such a change.

The results of this engagement processe, along with draft amendment bylaws would then be presented at a forthcoming meeting of the P&D Committee, likely in Q1 of 2024 for consideration and further direction.

Alternatives:

1. Status quo.

Respectfully submitted:



C. Garrish, Senior Manager of Planning

Attachments:

- No. 1 – Official Community Plan (OCP) Bylaw Policies
- No. 2 – Zoning Bylaw Definitions & Regulations
- No. 3 – Subdivision Servicing Bylaw Definitions & Regulations

Attachment No. 1 – Official Community Plan (OCP) Bylaw Policies

CURRENT	PROPOSED
The Regional District: Strongly discourages the creation of new private community water utilities.	The Regional District: Will not support the creation of new private community water utilities, including those owned and operated by strata corporations.
[Not applicable]	The Regional District: Will not support the creation of new private community sewer utilities, including those owned and operated by a strata corporation, utility or corporation (Private or Public).

Attachment No. 2 – Zoning Bylaw Definitions & Regulations

CURRENT	PROPOSED
[Not applicable]	<p>“community sewer system” means a system of works owned operated and maintained by the Regional District, a municipality, an Indigenous governing body or an improvement district and which is established and operated for the collection, treatment and disposal of sanitary sewage and which serves more than one <i>parcel</i>, and for certainty excludes such system of works owned and operated by a strata corporation, private sewer utility or business corporation.</p>
[Not applicable]	<p>“community water system” means a water supply system owned, operated and maintained by the Regional District, a municipality, an Indigenous governing body or an improvement district, and for certainty excludes a water supply system owned and operated by a strata corporation, private water utility or business corporation.</p>
<p>Section 8.1.3</p> <p>If a provision in this Bylaw establishes a minimum parcel size of less than 1.0 ha for a new parcel to be created by subdivision, that minimum parcel size only applies to a new parcel that will be connected to community water and sewer systems.</p>	<p>Section 8.1.3</p> <p>If a provision in this Bylaw establishes a minimum parcel size of less than 1.0 ha for a new parcel to be created by subdivision:</p> <ul style="list-style-type: none"> a) that minimum parcel size only applies to a new parcel that will be connected to both community water and community sewer systems; and b) in all other circumstances the minimum parcel size for a new parcel to be created by subdivision is the 1.0 ha or greater minimum parcel size established by this Bylaw for the zone in which the parcel would be located.

Attachment No. 3 - Subdivision Servicing Bylaw Definitions & Regulations

CURRENT	PROPOSED
<p>“community water system” means a system of waterworks, within the meaning of the "Health Act", which is owned, operated and maintained by the Regional District, an Improvement District, Irrigation District, or Utility operating under the Jurisdiction of the Ministry of Environment Lands & Parks as well as a water works system operated and maintained by a Strata Corporation.</p>	<p>“community sewer system” means a system of works owned operated and maintained by the Regional District, a municipality, an Indigenous governing body or an improvement district and which is established and operated for the collection, treatment and disposal of sanitary sewage and which serves more than one <i>parcel</i>, and for certainty excludes such system of works owned and operated by a strata corporation, private sewer utility or business corporation.</p>
<p>“community sewer system” means a system of sewage collection, treatment and disposal where:</p> <ul style="list-style-type: none"> a) it is approved under <i>Municipal Sewage Regulation</i> (B.C. Reg. 129/99), the system serves more than one parcel and the system is owned, operated and maintained by a provincial or local government or improvement district as defined by the <i>Local Government Act</i>, or a strata corporation, as defined by the <i>Strata Property Act</i>, or an incorporated company; and b) which is established and operated under the <i>Health Act</i> and regulations or <i>Environmental Management Act</i>; and c) be acceptable under regulations or other provincial legislation that may apply. 	<p>“community water system” means a water supply system owned, operated and maintained by the Regional District, a municipality, an Indigenous governing body or an improvement district, and for certainty excludes a water supply system owned and operated by a strata corporation, private water utility or business corporation.</p>