

**REPORT TO FIRST NATIONS RELATIONS COMMITTEE
MEETING OF WEDNESDAY, SEPTEMBER 30, 2020**

SUBJECT **First Nations Inclusion in CRD Governance**

ISSUE SUMMARY

To amend the CRD Board Procedures Bylaw No. 3828 (the Procedures Bylaw) and the identified Board Standing Committee and Advisory Committee Terms of Reference to enable increased inclusion of First Nations' elected representatives in CRD governance beginning in January 2021.

BACKGROUND

On March 11, 2020, the CRD Board accepted the recommendation of the First Nations Relations Standing Committee (Appendix A):

“That staff bring back implications and draft amendments to the Capital Regional District Procedures Bylaw No. 3828 to enable the inclusion of First Nations' elected representatives on Board Standing Committees, Select and Advisory Committees, Commissions and other appointed bodies of the Board.”

Core to the Model of First Nations Inclusion (Appendix B) is the creation of a First Nation Member definition within the Procedures Bylaw that will enable First Nations' elected representatives to participate on matters that are of particular interest to their First Nation in a flexible way while ensuring the CRD's ability to provide essential regional services is maintained. It is important to note that the committees listed in Appendix B do not include each and every discussion topic that could be of potential interest to a First Nation. The intent is to begin with a select number of committees where it has been identified there is a high-degree of interest and to prototype a model of more inclusive governance that can then be refined going forward to reflect the evolving interests of First Nations and the CRD and the growing government-to-government relationship.

At present time, full participation of First Nations in CRD governance is not possible, but there remain opportunities to advance this interest through advocacy for amendments to provincial legislation outlined on the First Nations Inclusion Chart (Appendix C).

ALTERNATIVES

Alternative 1

The First Nations Relations Committee recommends to the Capital Regional District Board:

1. That Bylaw No. 4368, Capital Regional District Board Procedures Bylaw, 2012, Amendment Bylaw No. 11, 2020 be introduced and read a first, second and third time;
2. That Bylaw No. 4368 be adopted;
3. That the Terms of Reference for the First Nations Relations Committee, Governance and Finance Committee, Environmental Services Committee, Solid Waste Advisory Committee, Planning Transportation and Protective Services Committee, and Regional Parks Committee be amended to allow for First Nations Membership starting in January 2021; and,
4. That staff be directed to include \$75,000 in the 2021 Provisional Budget to support the planned amendments to the Board Remuneration and Travel Reimbursement Policy.

Alternative 2

The First Nations Relations Committee recommends to the Capital Regional District Board:
That this report be referred back to staff for additional information.

IMPLICATIONS

Intergovernmental Implications

The proposed amendments outlined in Bylaw 4368 (Appendix D) will permit First Nations' elected representatives to identify specific issues that are of interest and participate fully in those deliberations. This model of flexible and open participation will enable First Nations to better define their level of engagement on matters being discussed within CRD governance, while also supporting the development of new relationships or strengthening existing ones between CRD Directors, their alternates and First Nations' representatives. It is critical to note that this approach to more inclusive decision-making will not replace the need for direct engagement and, where necessary, consultation as may be required by the Crown. Staff will continue to engage First Nations' staff to share information and discuss various matters in an effort to support a multi-faceted approach to enhanced relationships at both an operational and political level.

Legislative Implications

Though s.196(1) and s.253(1) of the *Local Government Act (LGA)* establish limitations restricting CRD Board members to only municipal or electoral area Directors or Treaty First Nation Directors, s.218(3) enables persons who are not directors to be appointed by the Board to a Select Committee or by the Chair to a Standing Committee. S.229(1) of the *LGA* permits the CRD to, by bylaw, delegate its powers, duties and functions subject to any limitations identified in s.229(2). When exercising its power under s.229(1) of the *LGA*, s.229(4) allows the board to establish any terms and conditions it considers appropriate. CRD Commissions may include persons other than a director subject to compliance with the qualifications detailed in the enabling bylaw and any related provincial legislation that would otherwise limit membership. The CRD is acting within its authority to include First Nations' elected representatives as appointed members of the tables outlined in Appendix C.

First Nation Members would not attend the closed session of Committee meetings due to sections 90 and 91 of the *Community Charter* which contain restrictions on sharing *in camera* information with non-CRD Directors. However, in the event the Committee wished to request the attendance of a First Nation Member in a closed Committee meeting, it may do so with a vote of the Committee taken at the start of the closed session. At the start of their term, First Nations Members will be asked to sign a confidentiality agreement as an acknowledgement of their duty to maintain *in camera* information in confidence.

Social Implications

Moving toward more inclusive governance could be thought to be introducing uncertainty into existing CRD processes. While there will likely be a need for enhancements of current processes, this is a critical step in improving the understanding how First Nations and the CRD can work together more effectively on matters of shared interest. Establishing space for First Nations to participate will begin to build a shared understanding of how the interests, priorities, values, beliefs

and rights of First Nations can be implemented and expressed within a CRD process to better inform its outcome.

Financial Implications

On endorsement of the recommendation in this report, staff will bring forward a report to the Committee in November 2020 proposing amendments to the CRD Board Remuneration and Travel reimbursement Policy to support the remuneration of First Nations' elected representatives on various CRD tables. It is estimated that the participation of First Nations' elected officials could cost up to \$75,000 in 2021. To ensure these funds are available in the event the proposed amendments to Bylaw No. 3828 and subsequent amendments to the CRD Board Remuneration and Travel Reimbursement Policy are approved, staff are recommending the CRD's provisional 2021 budget include an allocation toward this effort as the costs are expected to begin being incurred in January 2021.

Service Delivery Implications

It is not anticipated that there will be significant implications associated with this proposal to move toward more inclusive governance that would prohibit the CRD from continuing to effectively deliver services. However, there are a number of important considerations that should be reviewed within the context of moving in this direction. There may be an increase in reports being sent back to staff for additional information that would result from First Nations not feeling their interests were adequately considered. Though the frequency of work being sent back to staff as a direct result of First Nations participation in decision-making would likely diminish overtime as CRD staff processes became more inclusive and as First Nations develop their understanding of CRD roles and responsibilities, it could still lead to some uncertainty and/or a rethinking of established corporate processes.

Not every item on a given agenda will be of interest to a First Nation and it could be considered inappropriate for a First Nation to be expected to vote for or against a matter that may not relate to, or impact them. The LGA is explicit that each director present must vote on a matter being considered and when a director does not indicate a vote that person is deemed to have voted in the affirmative. The LGA defines director as a Municipal Director, Electoral Area Director or a Treaty First Nation Director and does not extend to include members of a Standing Committee, Select Committee, Advisory Committee or Commission. First Nations' elected representatives will be extended the opportunity to abstain from a vote. This will add an additional component when recording votes at meetings, but will permit First Nations an opportunity to clearly determine the nature of their participation on any given issue.

The proposed model of First Nations participation in CRD governance will not fetter CRD Board decision-making or limit its ability to provide critical regional services. The CRD Board can exercise discretion on how it weighs the recommendations from a Standing or Select Committees. Commissions do exist with delegated authority as defined in the establishing bylaw, but the approach being taken ensures the CRD will not be limited in moving initiatives forward. However, moving towards greater inclusivity is expected to enhance the process by which the CRD makes its decisions in a way that is more collaborative and respectful of First Nations' interests.

Appointment Implications

The appointment of First Nations' elected officials to CRD Standing, Select and Advisory Committees will mirror that of the existing CRD process. The Board Chair will make the appointments to Standing Committees as outlined in s.26(2) of the Procedures Bylaw. The Board shall make appointments to Advisory Committees and Select Committees though these appointments could be delegated to the Board Chair through s.27(2) or s.28(3) of the Procedures Bylaw.

Through October and November, staff will work to further engage First Nations to solicit a First Nations elected official to participate as an appointed member and another as their alternate to each CRD Standing and Advisory Committees identified on Appendix B. Staff will then provide this list to the Board Chair or to the Board for appointment as appropriate. This process will enable the CRD to host a First Nations Orientation Session in December where those identified as First Nation Members or their alternates could be formally introduced to CRD committee processes and systems.

It is expected this process of identifying First Nation Members and their alternates will take place annually to coincide with the existing CRD appointment schedule.

Alignment with Board & Corporate Priorities

The 2019 – 2022 CRD Board Priorities include Reconciliation with First Nations, specifically:

- 3a Look to First Nations for leadership in understanding how to create new regional planning and decision-making systems together on their Traditional Territories.
- 3b Seek partnerships, share information and deliver fair and equitable services in working with First Nations on achieving their economic goals.
- 3c Work with First Nations on taking care of the land and water while providing space for cultural and ceremonial use, food and medicine harvesting, traditional management practices and reclaiming Indigenous place names.

Alignment with Existing Plans & Strategies

The following strategies have been identified as related to the Reconciliation with First Nations Board Priority:

- Special Task Force on First Nations Relations Final Report and the Statement of Reconciliation
- Regional Climate Action Strategy
- Regional Food and Agricultural Strategy
- Regional Growth Strategy
- Regional Housing Affordability Strategy
- Regional Parks Strategic Plan
- Regional Water Supply Strategic Plan
- Organizational Development Plan
- Corporate Asset Management Strategy

CONCLUSION

First Nations have expressed a desire for an increased role in regional decision-making.

Provincial legislation limits full First Nations participation on the CRD Board except through a modern treaty, but there are significant opportunities for the CRD to create space for more inclusive discussions at Standing, Select and Advisory Committees. Though the proposed model of First Nations involvement in CRD governance does have the potential to impact ongoing or upcoming projects, First Nations participation will support a more collaborative and, ultimately, a more effective process. This effort to facilitate increased participation of First Nations in CRD governance is an important and measurable step towards the Board priority of First Nations Reconciliation and in working toward strong relationships with First Nations based on trust and mutual respect, partnerships and working together on shared goals.

RECOMMENDATION

The First Nations Relations Committee recommends to the Capital Regional District Board:

1. That Bylaw No. 4368, Capital Regional District Board Procedures Bylaw, 2012, Amendment Bylaw No. 11, 2020 be introduced and read a first, second and third time;
2. That Bylaw No. 4368 be adopted;
3. That the Terms of Reference for the First Nations Relations Committee, Governance and Finance Committee, Environmental Services Committee, Solid Waste Advisory Committee, Planning Transportation and Protective Services Committee, and Regional Parks Committee be amended to allow for First Nations Membership starting in January 2021; and,
4. That staff be directed to include \$75,000 in the 2021 Provisional Budget to support the planned amendments to the Board Remuneration and Travel Reimbursement Policy.

| | |
|---------------|---|
| Submitted by: | Don Elliott, MUP, Manager, First Nations Relations |
| Concurrence: | Kristen Morley, J.D., General Manager, Corporate Services & Corporate Officer |
| Concurrence: | Robert Lapham, MCIP, RPP, Chief Administrative Officer |

ATTACHMENT(S)

Appendix A: Report to First Nations Relations Committee Meeting of Wednesday, February 26, 2020

Appendix B: Model for First Nations Inclusion

Appendix C: First Nations Inclusion Chart

Appendix D: Bylaw No. 4368