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## REPORT TO PERFORMING ARTS FACILITIES SELECT COMMITTEE MEETING OF WEDNESDAY, SEPTEMBER 08, 2021

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**SUBJECT**     **Proposed Performing Arts Facilities Service: Establishing Bylaw No. 4445 and Service Plan**

### **ISSUE SUMMARY**

The Performing Arts Facilities Select Committee directed staff to prepare a service plan and draft an establishing bylaw to plan, develop and fund regional performing arts facilities through a new region-wide service.

### **BACKGROUND**

On April 14, 2021, the Capital Regional District (CRD) Board approved a Governance Committee recommendation to create a Performing Arts Facilities Select Committee. Approved Terms of Reference give the Select Committee a mandate to “provide recommendations to the CRD Board on the scope of a service that will plan, develop and fund regional performing arts facilities in order to provide staff direction in the creation of an establishing bylaw.”

On May 19, 2021, the Performing Arts Facilities Select Committee provided direction that “staff develop a service bylaw, service plan and a process to consult with municipalities, electoral areas, arts organizations, and other bodies.” See Appendix A for proposed Bylaw No. 4445, to establish a regional performing arts facilities service, and Appendix B for the proposed Service Plan.

### *Consultations*

In 2020, the CRD Regional Arts Facilities Select Committee commissioned Strategic Moves to conduct consultations and provide a report on performing arts facilities. The resulting report stated:

Regional Performing Arts Facilities are important to the social, cultural, economic health and well-being of all across the region... This Stage One process has made clear that there is a great need and desire among participants and survey respondents for full regional participation in arts and culture, in general, and performing arts, in particular. Proliferating ad hoc facility arrangements is not going to provide the strategic and coordinated service that will help the arts community grow and develop its work.

This report confirmed strong community support for the CRD to take on an expanded role in supporting performing arts facilities, specifically in providing capital funding to build new facilities and for ongoing annual operating expenses to support existing facilities.

### *Current CRD Funding for Performing Arts Facilities*

Through two sub regional services, the CRD provides a total of \$1,330,000 in operating and minor capital funding for the Royal Theatre and McPherson Playhouse (see Table 1 for overview and Appendix C for additional details). The Royal Theatre is owned by the CRD and the McPherson Playhouse is owned by the City of Victoria. Both facilities are managed by a non-profit organization, the Royal and McPherson Theatre Society.

**Table 1. Current CRD Funding for Royal Theatre and McPherson Playhouse**

Performing Arts Facility	Operating Funding	Minor Capital Funding*	Participants
Royal Theatre	\$100,000	\$480,000	Oak Bay, Saanich, Victoria
McPherson Playhouse	\$350,000	\$400,000	Victoria

\* Minor Capital Funding refers to building maintenance, renovation, and accessibility.

Additionally, through the Arts and Culture Support Service, the CRD supports several performing arts production companies who operate performing arts facilities. CRD funding is directed to support the public programming component of their organization, not the operation and maintenance of their facilities. However, this CRD funding allows these organizations to direct other streams of revenue to support their facilities, indirectly supporting the capacity of organizations to operate and maintain performing arts facilities.

*Government Funding for Performing Arts Facilities*

The Stage One report notes that to be eligible for federal operational funding requires a curatorial presentation program. This is also true of operational funding from provincial sources, such as the BC Arts Council. The result is that performing arts producing companies that operate facilities have access to public funding from multiple levels of government for both operations and capital. It also means there is a notable funding gap for organizations that operate performing arts facilities in the “roadhouse” model which means a venue available for rental or use by travelling and local productions, and not possessed or controlled by a single performing arts producing company or organized group of such companies (see Table 2).

**Table 2. Government Funding for Operators of Performing Arts Facilities in CRD**

Organization Type	CRD		Provincial		Federal	
	Operating	Capital	Operating	Capital*	Operating	Capital*
Non-profit Producer	Yes, Indirect	No	Yes, Indirect	Yes	Yes, Indirect	Yes
Non-profit Roadhouse	Partial**	Partial**	No	Yes	No	Yes

\* Provincial and Federal capital funding is on a project basis through highly competitive grant programs.

\*\* Royal Theatre and McPherson Playhouse only.

In summary, non-profit organizations that operate performing arts facilities in the roadhouse model do not have access to operating funding from provincial or federal levels of government, making them reliant on local and regional governments for financial sustainability.

*Support for Full Regional Participation*

Several jurisdictions have signaled support for the concept of this new service, while others have indicated that they are not interested in participating. On June 21, 2021, Langford sent a letter to the CRD Board, indicating that Langford City Council “does not support the establishment of a new performing arts service” (see Appendix D for full letter). On July 14, 2021, Director Holman read into the record a Motion with Notice: Electoral Areas Exclusion from New Regional Arts Facility Service that “the proposed new regional arts facility service exclude electoral areas, while leaving open the possibility that they can opt into the service voluntarily (see Appendix E for full text).

## **ALTERNATIVES**

### *Alternative 1*

The Performing Arts Facilities Select Committee recommends to the Capital Regional District Board:

1. That Bylaw No. 4445, “Regional Performing Arts Facilities Service Establishing Bylaw No. 1, 2021”, be read a first, second, and third time;
2. That staff canvas participants of the Royal Theatre and McPherson Playhouse services to gauge interest in participation in the regional service to be established by Bylaw No. 4445;
3. That if service participants of the Royal Theatre and McPherson Playhouse services informally consent to creation of the service to be established by Bylaw No. 4445, staff are directed to forward Bylaw No. 4445 to the Inspector of Municipalities for review and approval; and
4. That staff be directed to initiate a region-wide Alternate Approval Process (AAP) in accordance with Sections 342(4) and 345 of the *Local Government Act* to meet the legislated requirement for elector approval of Bylaw No. 4445.

### *Alternative 2*

That this report be referred back to staff for other revisions or additional information.

## **IMPLICATIONS**

### *Financial Implications*

The estimated starting expense of the new service is \$3,060,000. This would absorb the existing expenses of \$1,330,000 in the core budget to fund the Royal Theatre and McPherson Playhouse. The net fiscal impact to the CRD core budget would be \$1,730,000 (see Appendix F: Financial Simulation of Full Regional Participation).

The cost sharing simulation has been calculated based on 50% assessment and 50% population, the same formula used for the existing Arts and Culture Support Service. The average cost per household of the new service (calculated based on average residential assessment) ranges from \$7.80 to \$24.20, depending on jurisdiction, with the median average cost estimated at \$16.16.

This simulation includes a contribution to the Charlie White Theatre at 10% of their operating budget, which is comparable to an average of the current operating funding levels for the Royal Theatre and McPherson Playhouse. Minor capital funding for the Charlie White Theatre has been estimated according to the current municipal contribution to the Capital Improvement Fund. Funding levels through the proposed Performing Arts Facilities Service for the Charlie White Theatre would be reviewed, in consultation with North Saanich and Sidney, as part of the budget planning process once the new service has been adopted.

The legislative processes of approving and adopting this new bylaw may involve additional costs, depending on the approval route and staff capacity required. The choice of elector approval process, as well as the timeline of bylaw and service plan revisions, will affect when these costs will be incurred. There is no viable approval process to have this new service and its cost recovery incorporated into the CRD Budget for 2022.

*Service Delivery Implications*

The proposed new service would launch four new programs to meet the mandate to plan, develop and fund regional performing arts facilities (see Table 3 for overview, see Appendix B for details).

**Table 3. Overview of Programs in Performing Arts Facility Service**

Function	Program	New or Expanded	Annual Budget
Plan	Planning Grants	New	\$120,000
Develop	Major Capital Access Program	New	\$1,000,000
	Minor Capital Grants Program	Expanded*	\$1,180,000
Fund	Operating Grants	Expanded*	\$630,000

\*Includes service levels and expenses from current Royal Theatre and McPherson Playhouse services.

The proposed service would also provide grant-writing support for groups pursuing new performing arts facilities to apply to provincial and federal infrastructure funding programs.

These services focus solely on regional performing arts facilities, which have certain distinguishing attributes. A regional performing arts facility must attract audiences from beyond its local area and must have the capacity to present a wide range of community and commercial productions. The building must have been designed or adapted so that its primary purpose is the presentation of performing arts productions with specialized equipment and spaces necessary to support a wide variety of shows (i.e. audiovisual systems, seating, lobby, loading dock, dressing rooms, etc.). Additional eligibility criteria are the result of funding gap analysis, which indicates that the CRD should focus on performing arts facilities in the roadhouse model (see Appendix B – Service Plan for detailed eligibility criteria).

*Alignment with Board & Corporate Priorities*

The Performing Arts Facilities Select Committee was established as an outcome of Board Initiative 12a-1 in the 2019-2022 Corporate Plan:

“Facilitate a discussion of the region’s art facility needs & explore partnerships to support 100% participation in the CRD arts function.”

*Legislative Implications*

*Service Impacts*

A new Performing Arts Facilities Service would impact several current bylaws, including:

- Bylaw No. 2587, “Royal Theatre Local Service Area Establishment Bylaw No. 1, 1998”, which permits the operation and funding of the Royal Theatre on behalf of Victoria, Oak Bay, and Saanich;
- Bylaw No. 2685, “McPherson Playhouse Local Service Area Establishment Bylaw No. 1, 1999”, which permits the operation and funding of the McPherson Playhouse on behalf of the City of Victoria.

The new Performing Arts Facilities Service is proposed to absorb the existing Royal Theatre and McPherson Playhouse services operated under Bylaws No. 2587 and 2685, meaning it would

begin providing the annual minimum operating and capital funding required by both theatres to existing established levels, with the option to increase such funding in future. Those two services would need to be repealed with consent of the service participants, and assets currently held by the services transferred to the participants of Bylaw 4445. A condition could be placed on the transfer of the assets from the two theatre services that they would revert back to the current participants should they cease to be used for performing arts facilities purposes. Alternatively, should the participants in the Royal and McPherson services not wish to transfer assets to the new service, the two services could requisition operating and capital funds under the new facilities granting service but continue to exist. This may address a potential concern of the existing participants of the theatre services that the equity they have put into the ownership and operation of the theatre facilities since service establishment are not transferred without consideration into the new regional service, where potentially (however unlikely) participants in the new service may choose to dispose of these assets. It may also make governance of the two facilities simpler, in that it would split the governance of the theatres from the governance of the facilities granting service.

Further, in order to dissolve the existing Royal and McPherson services and incorporate assets into the new service, consent of the participants of those respective services would need to be obtained. It is recommended that prior to conducting an alternative approval process on the creation of a new service, Victoria, Saanich, and Oak Bay councils be canvassed for their willingness to incorporate the operation of the Royal (and in Victoria's case, the McPherson) into a new regional service, including transfer of existing assets—such as the Royal Theatre and associated trade fixtures—to the new service. The consent of two municipal participants would be required for the Royal service, while only Victoria's consent is necessary for a change to the McPherson service.

Due to timing issues surrounding participant approval for the creation of the new service and for the winding up of existing services—three separate processes, one for each service—there may be a period of time where one or both of the Royal Theatre or McPherson Playhouse are not fully encompassed in the new service. As such, the draft establishing bylaw is set up to adjust the requisition amount to ensure the new service participants are not charged for amounts requisitioned under the existing services, while those services exist. This may also provide the option for the Royal and McPherson Theatre Services to choose to keep the services on the books to hold the assets, and merely accept contribution from the regional service for continued operation of the facilities.

#### *Operations and Management of Royal and McPherson Theatres*

At present, the Royal and McPherson Theatre Services permit the CRD to operate and fund the two theatres, as well as undertake activities associated with the operation of such theatres. The CRD undertakes operations by way of a management agreement with the Royal and McPherson Theatre Society, a non-profit society staffed with theatre management professionals, where CRD and the service participants appoints a majority of its governing body and manage the use of the public funds by way of contribution agreement. It is not expected nor recommended to change this relationship as a result of creation of a new service.

Were the new regional service to undertake the supervision of the management of the service, the Royal and McPherson Theatres Services Advisory Committee's terms of reference may need

updating to accommodate new participants in the service, or be replaced with a commission or standing committee with a focus on regional arts facilities granting and operations. Some changes may be necessary to modify the structure of the society (for example, at present, each municipal participant is able to appoint members to the society's board of directors). The Royal and McPherson Theatres Society itself is an independent non-profit: while local governments may appoint a majority of directors to the society, the society through its membership would need to approve of any proposed fundamental governance change to its constitution or bylaws.

#### *Governance of the Service*

The existing Royal and McPherson Theatre Services are overseen by the Royal and McPherson Theatres Society Advisory Council. The inclusion of the two theatres in the Performing Arts Facilities Service would change this.

At the present time, it is proposed that the administration of the new regional service be undertaken by the Capital Regional District Board, which would include supervision of the operation of the Royal and McPherson Theaters. A proposed governance structure may include the administration of the service in a commission model, or supervision of the service by way of a standing committee, or the delegation of portions of the service (such as approving grants) could be undertaken once the service is underway at its one year review. It is also possible a single committee or commission could be created to oversee this proposed service and other arts granting services.

#### *Participant Approval Process*

Before the new service bylaw can be adopted, it must receive approval of the electors and the Inspector of Municipalities. The *Local Government Act (LGA)* provides three ways to obtain approval, to be decided by the Board:

1. *LGA* Section 344: Referendum;
2. *LGA* Section 345: Alternative Approval Process (AAP);
  - A region-wide AAP requires Board resolution and two-thirds majority Board acceptance; or
3. *LGA* Section 346: Consent by Municipal Counsel (on behalf of electors) and by AAP within the Electoral Areas (Municipal Consent/EAs).

The choice on the method of participating area approval for a regional service is made by the Board, but subject to review of the Inspector of Municipalities at the time of Inspector approval of the bylaw.

#### *Procedural Considerations*

An AAP process requires two rounds of advertising followed by a 30-day window for eligible voters to register their opinion that the matter is of such significance that a referendum should be held. Typically, if more than 10% of eligible voters sign a petition, either a referendum is conducted or no further action is taken to pursue a service.

### *Timing and Cost Implications*

A region-wide AAP would take approximately three to five months and would cost approximately \$15,000. This cost includes advertising and establishing areas for drop off throughout the region.

A referendum would take four to six months and would likely cost more than \$250,000. Even if deferred, running a referendum in conjunction with the 2022 local government elections is not likely to result in significant savings, as the CRD cannot require municipalities to participate nor can the CRD be assured that the question provided on the ballot would be the same throughout the region.

Municipal consent/EA AAP would take approximately three to five months and is estimated to cost approximately the same as the region-wide AAP depending on the level of support requested by the municipalities and electoral areas. This timing and cost assumes that the bylaw is approved on a first go-around.

Under a municipal consent/EA AAP, lack of support from even one part of the region would mean that the establishing bylaw would have to be amended to reflect a smaller service area, then again sent out for approval. It is possible that some who supported the bylaw when all were party to the service may not support if one or more chose not to participate. The multiple iterations (if pursued) would increase costs. This dynamic renders this method of elector approval an unpromising option for gaining elector approval for a regional service. Lack of support by even one municipality or EA would prevent the service from being established region-wide.

### *Staffing*

While a region-wide AAP can be coordinated through CRD's Legislative Services Division using existing staff, it is possible additional resources and temporary staffing would be required if there is a high level of elector response. In addition, Legislative Services has other elector approval processes currently planned or running in the region for the remainder of 2021. Early in 2022 staff will begin the work required for the General Local Election in October.

A region-wide referendum would require temporary staff and contractors.

### *Proposed Region-Wide Service*

Participation of all municipalities and EAs is necessary to obtain the region-wide engagement and focus of this proposed service. A region-wide AAP can be advanced by the Board with a two-thirds majority vote of Directors, and is most likely to achieve the Board priority of establishing a region-wide service.

## **CONCLUSION**

The Stage One: A Public Conversation about Performing Arts Facilities report showed strong community support for the CRD taking on an expanded role in supporting performing arts facilities with regional impact. The current service levels for the Royal Theatre and McPherson Playhouse, as well as the capital requirements for new and existing facilities, are key considerations. A framework for a new Performing Arts Facilities Service that includes four funding programs has

been brought forward by staff. The Performing Arts Facilities Select Committee will provide feedback on the draft service and accompanying process for consultation.

**RECOMMENDATION**

The Performing Arts Facilities Select Committee recommends to the Capital Regional District Board:

1. That Bylaw No. 4445, “Regional Performing Arts Facilities Service Establishing Bylaw No. 1, 2021”, be read a first, second, and third time;
2. That staff canvas participants of the Royal Theatre and McPherson Playhouse services to gauge interest in participation in the regional service to be established by Bylaw No. 4445;
3. That if service participants of the Royal Theatre and McPherson Playhouse services informally consent to creation of the service to be established by Bylaw No. 4445, staff are directed to forward Bylaw No. 4445 to the Inspector of Municipalities for review and approval; and
4. That staff be directed to initiate a region-wide Alternate Approval Process (AAP) in accordance with Sections 342(4) and 345 of the *Local Government Act* to meet the legislated requirement for elector approval of Bylaw No. 4445.

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**ATTACHMENT(S)**

- Appendix A: Establishing Bylaw No. 4445
- Appendix B: Service Plan
- Appendix C: Arts and Culture Funding throughout the CRD
- Appendix D: Letter from Langford
- Appendix E: Notice of Motion by Director Holman
- Appendix F: Financial Simulation of Full Regional Participation