


CANADA'S MUNICIPAL MAGAZINE SINCE 1891

MUNICIPAL WORLD

A helicopter is shown in flight, dropping water from a bucket onto a forest fire. The fire is visible as a bright orange glow in the lower center of the image. The background is a dense forest of evergreen trees, and the sky is filled with smoke and a hazy, orange glow from the fire.

**Wildfires, climate
change, and
resilience**

Designing safer
streets puts
people first

Scaling up
community-led
tree planting

Cumberland
County Landfill
divestiture

MAY 2022 | \$11.25
www.municipalworld.com



Compost Facility

Scale House

Little Forks Rd

Former Recycling Facility

Little Forks 1

Landfill

Office

Construction & Demolition
Disposal

Septage Facility

Cumberland County landfill divestiture offers new model

Waste management often eats up an awful lot of municipal fiscal and human resources. Faced with the continuing and growing challenges associated with owning and operating a municipal solid waste management system, Nova Scotia's Cumberland County and the towns of Amherst and Oxford concluded taxpayer interests could best be protected through a different business model.

The three municipalities face challenges typical of many rural Canadian municipalities. Urbanization is eating away at the municipalities' population and the demographic is generally older than, for example, the urban population of Halifax. Declining population means less waste to dispose, meaning higher costs per unit of waste. They also face higher costs due to necessary but demanding regulations to protect the environment.

Guiding Principles

With leadership provided by their chief administrative officers, the municipal councils agreed that other options should be explored for the landfill in Little Forks, Cumberland County, which, for about 50 years, had

been jointly operated by the tripartite Cumberland Joint Services Management Authority (CJSMA). The councils agreed that they would test private sector interest in the waste disposal system by issuing a Request for Proposals, but only after the municipalities had clarified among themselves exactly how they would proceed and what they would need as part of any agreement with a private sector operator.

The councils, through a public procurement process, selected an outside "lead negotiator," someone who could guide the councils through the nuances of the proposed transaction and help them find the outcome that would best meet the needs of their communities. To oversee this process, the councils formed a steering committee consisting of the municipalities' mayors and chief administrative officers and the general manager of the CJSMA. The steering committee made every decision by consensus, with the understanding that any final agreement would need to be approved by all three municipal councils.

The councils understood the importance of getting the right deal for their region and individual communities. They

were under no pressure to sell quickly; there would be no "fire sale." A transaction could only happen with a private sector partner committed to the public sector goals articulated by the municipalities. To ensure this happened, the three councils established guiding principles that defined the problems they were trying to solve and the issues that had to be addressed by any prospective partner. The guiding principles would guide the process at every turn, negotiation, and decision.

The guiding principles required the councils to consider the real costs associated with per-unit waste disposal fees, and how they could ensure a favourable tipping fee arrangement for businesses and residential taxpayers for years into the future. The guiding principles also ensured that existing CJSMA staff were retained on comparable terms to ensure



Kevin Latimer (klatimer@coxandpalmer.com), Q.C., is a partner with Cox & Palmer and was Lead Negotiator for the Cumberland Central Landfill divestiture in April 2020.

continuity of existing facility expertise. The councils wanted to optimize the proceeds of the proposed sale while divesting themselves of environmental liabilities. The councils also agreed that, consistent with protocols required in commercial negotiations, residential and commercial

that every important term was discussed and addressed in the early stages of the negotiation.

In June 2021, following due diligence reviews, discussions with regulators, meetings, analysis, and negotiations, the steering committee brought forward the

around the essential elements in any agreement. We knew what we wanted and, to their credit, the municipal councils stuck to our guns until we got what we wanted.”

For local citizens, success comes in the form of better coordination of waste management services and long-term certainty around tipping fees. For local businesses, success includes the improved coordination of local rules, by-laws, and policies within the region. Businesses operating anywhere in the region can expect predictability and coordination across multiple locations.

The regionalization of assets business model adopted by the Cumberland municipalities may be a great option for other municipalities looking to create incremental value for the community, and cost certainty for taxpayers ...

taxpayers would be kept informed.

These guiding principles were embedded into the request for proposals seeking a private sector owner/operator. Any prospective partner responding to the RFP understood that these minimum conditions would need to be met. The councils and the steering committee were not willing to compromise on these points.

RFP Process

In June 2020, the councils collectively called for proposals for the sale of the Cumberland Central Landfill. This was not a sale at any cost or even a sale to the highest bidder. The steering committee was looking for a “preferred proponent” – not just a buyer, but a trusted proponent to help the municipalities achieve their goals. The steering committee received three proposals, two of which were compliant. In September 2020, after careful deliberation, the preferred proponent was identified, and the team set out to negotiate an agreement for the sale.

Early in the negotiation process, both the proponent and the steering committee (on behalf of the councils) concluded a term sheet. The term sheet set out the principal terms of the proposed transaction regarding the acquisition of the facility and the entering into of a long-term waste/resource benefits agreement. Principal terms of the deal included price, staff retention, tipping fee schedule, royalties, community and economic development, and the establishment of a community liaison committee. The term sheet was signed in February 2021, and it effectively aligned both parties with the guiding principles so

unanimous recommendation to approve the sale. This process officially concluded with the signing and execution of four agreements with the proponent: an asset purchase agreement for the facility; a waste resource benefits agreement; a septage asset purchase agreement; and a septage receiving and pre-treating agreement.

These agreements gave legal effect to the sale of the landfill, including septage assets owned by the municipalities, as well as a 25-year agreement to receive and manage solid waste for the region. The agreements, which took effect in February 2022, provide for:

- continuing employment for those working in the system;
- reduced regulatory and environmental risk for the municipalities;
- greater certainty around long-term waste disposal costs; and
- a growing business for the municipalities.

Municipal leaders say they are pleased with the outcome. Amherst Mayor David Kogon said, “We will have long-term certainty around tipping fees. That wasn’t possible before.” Cumberland Mayor Murray Scott focused on the financial risks that have now been transferred to the private operator: “Had we not done this deal, we would have faced ever growing costs. Our taxpayers are now better protected.” And Oxford Mayor Gregory Henley said, “We’re hopeful that the new operator will invest in our communities and grow this business.”

Cumberland CAO Greg Herrett said, “We went through a thoughtful process that began with the municipalities building a clear understanding, and consensus,

Consolidated and Centralized Approach to Waste Management

The new private operator sees Cumberland County as a future composting hub within the provincial waste management ecosystem. The envisioned model of regionalized assets would include high-tech, high-volume facilities that take a consolidated and centralized approach for each waste management stream benefitting from increased scale. At the same time, the processing centre will work at higher environmental standards, which will contribute to reducing Nova Scotia’s environmental footprint.

The divestment of the Cumberland County landfill over the roughly two-year process demonstrates that as municipalities across Canada face increasing fiscal, operational, and environmental liabilities and uncertainties, the business model of regionalized assets can provide a more predictable and higher value outcome. With this deal, the three municipalities will enjoy real financial benefits over the next 25 years for their constituents and local businesses. The regionalization of assets business model adopted by the Cumberland municipalities may be a great option for other municipalities looking to create incremental value for the community, and cost certainty for taxpayers, by shifting costs and operational responsibility to the private sector.

The three municipal councils are proud of this deal, and they should be. Transactions like this bring stability and predictability to local governments. The benefits are clear, and citizens will enjoy the fruits of the deal for many years to come. **MW**