

Tony Law



To: Hornby Island Local Trust Committee

2 April 2024

I imagine the LTC's 22 March meeting was very challenging with difficult decisions to be made.

But I am very worried that the directions given to staff at that meeting will lead to undesirable consequences. I am inclined to believe that they do not reflect the intent of the LTC.

I am writing to support you in revisiting those directions to provide more clarity about the LTCs intentions.

As I see it, if the March directions stand unchanged they will result in:

- the APCs recommendations not being implemented,
- the LTC not having the ability to cap the number of short term rentals (STRs) on Hornby Island,
- continuing compliance challenges, and
- Hornby Island being the only jurisdiction in our region without effective management of STRs.

I believe it is premature to base the LTC's responsibility to address its STR land use policy on the uncertain future possibility that CRD might adopt a business licensing service to regulate this particular land use.

An examination of Temporary Use Permits suggests that they do not compare as unfavourably with other options (zoning regulations, business licenses) as some are suggesting.

I hope the information in this submission will assist the LTC in adjusting its directions.

At the end of this letter is a suggestion of possible steps for a way forward.

1. The March 2024 Directions

My understanding is that the following resolution was carried:

That the Hornby Island Local Trust Committee request staff to prepare draft amendments to the Official Community Plan and Land Use Bylaw Review Project Charter to reflect: *Option 3: not opting in to the principal residence requirement and incorporating the Advisory Planning Commission recommendations *but excluding the temporary use permit***.**

**Option3:*

Amend existing vacation home rental regulations and choose whether or not opt-in/out of principal residence requirement.

*** Advisory Planning Commission recommendations:*

Short Term Rentals as a permitted use is revoked in all zones.

At the same time all STR operators apply for TUP effective

2. Consequences of the March 2024 Directions

I believe the consequences of these directions are as follows:

a) The APC recommendations cannot be implemented

The APC recommendations are based upon using Temporary Use Permits (TUPs) to permit STRs rather than allowing them as a permitted use in zoning regulations.

By deciding to not use TUPs, the only option to allow STRs is by continuing to permit them in zoning regulations.

This negates the core recommendation of the APC upon which all the others are predicated. This means that the resolution, as stated, cannot be readily implemented by staff as it is not possible to both exclude TUPs and implement the APC recommendations.

b) The LTC cannot cap the number of STRs on Hornby Island

A local government can cap the number of operations, such as STRs, by limiting the number of TUPs issued for that activity.

The only land use planning alternative to TUPs is to permit the use in zoning regulations which apply to every property in a zone. The use can be limited by, for example, not permitting STRs in some zones or by only allowing them on properties over a certain size. But this does not enable a cap on the total number.

The number of advertised STRs has increased by about 50% since they were permitted in Hornby Island's zoning regulations. It seems prudent for our local government to use TUPs to have the ability to cap this activity to a level that is considered acceptable to the community.

c) Rampant non-compliance cannot be effectively enforced

The Islands Trust has not had the enforcement capacity to address the widespread non-compliance with zoning regulations. Common violations are: over-occupancy, advertised use outside the permitted months, lack of signage, and absence of proof of sewage treatment capacity where required. If STRs continue to be permitted through zoning regulations these enforcement challenges will likely persist.

If TUPs are required, enforcement can be addressed through non-compliance resulting in a permit being revoked, not renewed or not reissued.

c) Hornby Island will be the only jurisdiction without effective STR management

Other local governments have taken measures to protect rural and small town communities from excessive STR activity. Some have not permitted the activity. Some have not permitted the use in zoning regulations, but allow it through a TUP. Some have permitted it in zoning regulations, but only when it is a home based business (ie on lots with two permitted dwellings and a resident operator of the STR living in one of them). Some municipalities have permitted the use in zoning regulations, but require a business license.

Only Hornby Island allows STRs as an outright permitted use on residential lots in zoning regulations.

Local governments - Islands Trust Area, Central Vancouver Island, the Sunshine Coast	
Regulation of STRs:	Jurisdictions:
Not permitted in zoning regulations	Denman Island, Salt Spring Island, Lasqueti Island, Courtenay, Qualicum, Comox, Parksville, Comox Valley Regional District, Nanaimo Regional District, Sunshine Coast Regional District
Not permitted in zoning regulations, but allowed through TUPs	Gabriola Island, *North Pender Island, South Pender Island, Galiano Island, Alberni-Clayoquot Regional District
Permitted in zoning regulations, but only when a resident is living on the lot	Saturna Island, *North Pender Island, Mayne Island, Gambier Island, Thetis Island
Permitted in zoning regulations, but only if a business license is obtained	Bowen Island, Tofino, Ucluelet, Port Alberni, Cumberland, Nanaimo, Powell River, Sechelt, Gibsons
Permitted in zoning regulations on any lot	Hornby Island

* On North Pender Island: where a resident is living in a permitted dwelling on the lot, STRs are permitted as home-based business in zoning regulations; all other STRs require a TUP.

.....
How did Hornby Island end up being so out of line with other jurisdictions?

Hornby Island was one of the first jurisdictions in BC to tackle short term rentals. There were no established models to follow of similar communities in the province addressing the issue. STRs had been happening a non-permitted land use on Hornby Island for a long time in a low-key, off-the-radar, word-of-mouth kind of activity. But the availability of property management and internet advertising had cranked them up to a hard-to-ignore level as impacts on neighbourhoods were being reported.

The LTC began exploring, with planning staff and the community, ways to legalize and regulate them.

Planning staff recommended using Temporary Use Permits. A survey of residents and non-residents indicated that 55% supported using TUPs for short term rentals of a dwelling that is not a primary residence, or not permitting the use. 57% supported using TUPs for short term rentals on small lots, or not permitting the use.

A strong lobby objected to TUPs, stating a) that the objective was to simply legalize existing operations, and b) there was very little money to be made from short term rentals so the number was unlikely to grow beyond those already operating.

A review of what was happening elsewhere in the world indicated that growth in this activity had become problematic for affected communities. But there were strong feelings expressed that this should not be a concern for Hornby Island.

The LTC decided to permit vacation rentals at a limited level through zoning regulations while requiring TUPs for a more commercial level.

Because of uncertainty of how the regulatory framework would play out, the LTC included a policy in the OCP to review the regulations in 2017. The review has not yet been completed.

Since then...

STRs have become an issue for many other communities which have had to find ways to address it. It is worth noting that none have followed Hornby Island's model, presumably because they want to have more control over the activity than we have been able to achieve.

...Now...

The present LTC is in a much better position to address this issue in an informed way because:

- *there is evidence of how the regulations have actually worked – or not worked:*
 - *the number of vacation rentals have drastically increased;*
 - *a considerable proportion of operations are exceeding regulatory requirements;*
 - *none of these have applied for a TUP;*
 - *enforcement is a challenge.*

 - *there are models of how other local governments have managed short term rentals:*
 - *none have followed Hornby Island's "pioneering example";*
 - *all have either prohibited the use or limited it to where a resident is on the property – and/or are requiring a TUP or business licence*

 - *there are studies on the impacts of vacation rentals and options for addressing them*

 - *the provincial government has enacted legislation to support local governments to address short term rentals, recognizing the seriousness of the challenge.*

 - *the APC has provided recommendations resulting from a diligent, consultative process.*
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3. Permitting STRs cannot be based on business licence availability

Some local governments permit STRs in zoning regulations based on the requirement that the use can only be conducted if a business license is obtained. Hitherto, this option was only available to municipalities. A recent change in provincial legislation enables regional districts, but not, local trust committees, to establish business license services.

However, whether or not the CVRD will establish a service that could issue business licences for STRs on Hornby Island is yet to be determined – and that determination could take some time. Although one trustee emailed me this statement just before the March LTC meeting:

" Something you may not be aware of but CVRD has agreed to issue business licenses on Hornby for STVRs so that alters the discussion",

the reality is that on March 11, the 3-member Electoral Area Services Committee (not the full 10-member CVRD Board) carried the following motion:

“That staff be directed to engage with Islands Trust staff to explore the concept of a business regulation service on Hornby Island for the regulation of short-term rental accommodations; and further that staff report back on the broad findings respecting the potential establishment of such a regulatory service, including considerations for a formal feasibility study.”

There is a long process involving many steps from this explorative direction to the possibility of an actual service being in place:

Step 1. Feasibility study

- *Scope and funding for the study will have to be established*
- *There is no precedent of a regional district establishing a business licensing service*
- *There is no precedent of one local government using business licenses to manage the land use regulations of a different local government (CVRD Staff Report: “Added complexity is noted by the separation of regulatory and land use policy jurisdiction.”)*
- *Division of responsibilities between the two local governments will have to be agreed upon:*
 - *who will be responsible for monitoring and enforcement?*
 - *what input will the CVRD have on the land use regulations they would be licensing?*
 - *what input will the Hornby LTC have on the licensing regulations?*
- *These requirements for a business licensing service will have to be determined (according to the CVRD Staff Report)*
 - *the purpose of the service,*
 - *how it will be delivered,*
 - *what the maximum cost will be,*
 - *how the costs will be recovered*
 - *how fair and lasting arrangements can be put in place.*
- *The policy and regulatory framework (i.e. land use authority of Islands Trust) and related public engagement regarding the land use is a key consideration to inform the feasibility study (according to the CVRD Staff Report).*

Step 2. Possible CVRD Board consideration?

The results of the feasibility study will be reported back to the Electoral Areas Services Committee. The Committee would then likely consider whether to:

- a) require more information;*
- b) direct further discussions with the Islands Trust*
- c) proceed no further with this possible service*
- b) support options and a recommendation being presented to the CVRD Board*

Step 3. Establishing a Business Licensing service

If the CVRD Board does decide to proceed with this possible service, the provincial government identifies details that needs to be considered in establishing a new service and specifies these steps:

- *a service-establishing bylaw must be drafted*
- *the board must give it three readings*
- *the electoral area director must provide consent*
- *the Province will conduct a review*
- *the Inspector of Municipalities must approve the bylaw*
- *elector approval must be obtained, such as through a referendum*
- *the bylaw can then be adopted by the board*
- *a period of one month must be allowed for possible court challenges*
- *the adopted bylaw must be submitted to the Ministry of Municipal Affairs*

Step 4. Setting up the service

Before the service could be implemented:

- *a regulatory bylaw must be drafted*
- *the board would give it readings (as is or amended)*
- *the public would be given notice of an opportunity to make representations*
- *the board could then consider approval*
- *policies, procedures, budgeting, fees and staff resources would need to be determined*

In other words:

CVRD business licensing to manage STRs on Hornby Island is a distant and uncertain possibility.

It is distant, because of the many steps involved.

It is uncertain because:

- the feasibility study may not be favourable;
- cost recovery might make fees unattractively high;
- there is no precedent of a local government regulating another government's land use activity;
- responsibilities for monitoring and enforcement may be hard to establish.
- it is unlikely to be a top priority of the CVRD Board;
- it is unlikely to be a top priority for the Islands Trust; other LTCs use IT planning authority;
- the CVRD may note that the LTC has authority to use TUPs to permit STRs.

In these circumstances, it would be inappropriate to establish zoning regulations for STRs based on the possibility that at some point in the future another local government will go to significant lengths to establish a new service in order to regulate one particular land use in one particular community.

4. Temporary Use Permits are a viable option

After careful consideration, the Advisory Planning Commission has recommended the use of Temporary Use Permits to allow STRs. TUPs were originally recommended by planning staff and generally supported by the community when legalizing STRs was first being explored in communities.

TUPs have been characterized as being more expensive, having an onerous application process burdensome and more restrictive than business licenses. Business licenses are not currently available and may or may not be available in the future. But how do Tups actually compare with business licenses?

- Cost

A TUP only needs to be applied for every six years ((involving a 3-year renewal after 3 years, which may or may not require a fee. A business licenses need to be applied for every year and the required fee paid. The total fees for a short term rental TUP over 6 years are \$800 in Alberni-Clayoqut Regional District and \$1,065 on North Pender Island. The municipalities in our region who issue business licences for short term rentals charge an annual fee of between \$210 (Cumberland) and \$505 (Tofino). That amounts to total fees for a short term rental business licence of between \$1,260 and \$3,030 over 6 years.

Thus a TUP can be significantly cheaper than a business licence.

- Application process

A TUP has a statutory notification* requirement that is not needed for a business licence. However, a TUP only needs to be applied for every six years while an annual application is required for a business licence. The licensing authority may have additional requirements such - as health and safety inspections, proof of sewage treatment capacity.

Thus a TUP's application process can be less onerous than for a business license, particularly if the application process is streamlined through batching.

- Restrictiveness

On North Pender Island, a TUP is only required for situations where there is not a resident living on site. (An STR where a resident is living on the lot is permitted in zoning regulations as a home-based business).

On the other hand, all the nearby jurisdictions that use business licenses only issue them to operations involving a principal residence and/or a resident living in a permitted dwelling on the lot and operating the STR.

TUPs can be less restrictive than business licenses. Guidelines for issuing them can be similar to requirements for a business license.

(*The notification requirement for TUPs can be of value when a subsequent TUP is being applied for to identify any problems the operation has been causing in the neighbourhood.)

Short Term Rental Use permitted by Business License or Temporary Use Permit				
Jurisdiction	Permitting tool	Fees		Requirement for short term rental use
North Pender Island (Local Trust Committee within the Islands Trust)	Temporary Use Permit - Valid for 3 years - Renewable for a further 3 years	Year 1	\$900	Required <u>except</u> when operator is living on site <i>“Short term vacation rentals, shall not be permitted as a principal use except where authorized by a Temporary Use Permit.” “Short term vacation rentals may be permitted [without TUP] as accessory home businesses where the operator or other person responsible for the vacation rental is living on the same property in a permitted dwelling or cottage.”</i>
		2		
		3		
		4	\$165	
		5		
		6		
		Total:	\$1,065	
Tofino (Municipality)	Business License - Valid for 1 year <i>(Fee is for one sleeping unit. There is a \$166 fee for each additional unit.)</i>	Year 1	\$505	Must be conducted by a permanent resident <i> (“Short Term Rental use is permitted only where a Residential Use, occupied by a Permanent Resident, is occurring in a dwelling unit on the lot other than the dwelling unit in which the Short Term Rental use is occurring; Short Term Rental use is only permitted on a lot that contains two dwelling units.”</i>
		2	\$505	
		3	\$505	
		4	\$505	
		5	\$505	
		6	\$505	
		Total:	\$3,030	
Ucluelet (Municipality)	Business License - Valid for 1 year <i>(There is an additional \$10 fee for each additional sleeping unit)</i>	Year 1	\$245	Must be conducted by a permanent resident <i> (“A vacation rental use must be “accessory to a permanent residential use and administered by the full-time and present resident”)</i>
		2	\$245	
		3	\$245	
		4	\$245	
		5	\$245	
		6	\$245	
		Total:	\$1,470	
Cumberland (Municipality)	Business License - Valid for 1 year <i>(Including \$100 for fire and safety inspection)</i>	Year 1	\$210	Must be conducted by a permanent resident <i> (“A vacation rental use is permitted only when a Residential Use is occurring, with a permanent resident present, on the same lot”)</i>
		2	\$210	
		3	\$210	
		4	\$210	
		5	\$210	
		6	\$210	
		Total:	\$1,260	
Bowen Island (Municipality within the Islands Trust)	Business License - Valid for 1 year	Year 1	\$300	Restricted to principal residence <i>(On 25 March 2024, Council voted to: - “opt in to the “principal residence requirement”; - “amend the Land Use Bylaw, Business Licence Bylaw, and Bylaw Notice Enforcement Bylaw to include a principal residence requirement for the Residential Guest Accommodation Use.”)</i>
		2	\$300	
		3	\$300	
		4	\$300	
		5	\$300	
		6	\$300	
		Total:	\$1,800	

5. A course correction

In my view, a course correction is required because the directions provided at the LTC's March 2024 meeting would move things in a direction that does not reflect what I assume to be the LTC's intent.

- Permitting STRs as an outright use through zoning regulations will not provide effective management; it is not being used by any other jurisdiction.
- Permitting STRs using business licences is not available, may never be available, and if it becomes available will take a long process to establish and may not be acceptable.
- TUPs are a viable option that is recommended by the APC.

I support the LTC in finally implementing the APC recommendations, made two years ago.

Here are my suggestions:

- 1. Amend the OCP by including a policy requiring that short term rentals be addressed either:
a) by requiring a Temporary Use Permit, or
b) by permitting the use in zoning regulations, only if and when the CVRD has established a service whereby a business license is required for the use.
Include a policy stating in general terms the issues (as identified by the APC) that should be addressed through either a Temporary Use Permit or zoning/licensing regulations.**

(Such a policy will mean that the OCP will not have to be amended if, in the future, business licensing becomes available.)

- 2. Amend the LUB by
a) deleting short term rentals (aka "vacation home rentals") as a permitted use in zoning regulations, and
b) adding specific TUP guidelines to address the identified issues.**

(This will implement the APC recommendations)

- 3. Continue explorations with the CVRD with respect to possible business licensing, and if/when this appears to be likely, consult with the community and CVRD on drafting zoning regulations that address identified issues.**

(The LUB could then be amended to include new zoning regulations for short term rentals to be in place if and when business licensing becomes available.
It may turn out that business licensing is not needed if a well-administered TUP process is in place.

I also encourage replacing the term "*vacation home rentals*" (I don't know where that came from!) with "*short term rentals*" which provides an accurate description of the use and is now broadly used.

Thank you for considering this input I hope it is helpful.
Sincerely, Tony Law