



LEGAL NON-CONFORMING FREQUENTLY ASKED QUESTIONS

January 15, 2021

July 7, 2022

LUB Review Project (OCP Implementation)



You are here: [Home](#) > [Islands](#) > [Local Trust Areas](#) > [North Pender](#) > [Projects & Initiatives](#) > [Official Community Plan Implementation Project](#)

Project Charter:

[Project Charter](#) - January 2020

Correspondence:

- [Combined Correspondence](#) - January 2021
- [K. Allinson](#) - December 18, 2020
- [Combined Correspondence](#) - Sept to Dec, 2020
- [Combined Correspondence](#) - (Floor Review Discussion) - Sept to Oct, 2020
- [K. & S. Allinson](#) - September 23, 2020
- [Doreen B.](#) - September 19, 2020

Community Engagement:

The North Pender Local Trust Committee held (5) electronic meetings for the Land Use Bylaw Review (Official Community Plan Implementation) Project in 2020; one in conjunction with the South Pender LTC. A second Community Information Meeting in conjunction with the South Pender LTC is scheduled for January 15, 2021 to collect comments from the community regarding maximum floor area regulations.

Discussion Papers & Background:

Legal Non-Conforming FAQ

- [FAQ - January 2021](#)

Residential Floor Area Review

- [Discussion Paper](#) - May 21, 2020
- [PowerPoint Presentation](#) - September 19, 2020

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Will my house be “grandfathered” if the LUB is amended to establish a maximum floor area?



- Yes, if a LTC amends the LUB to establish a maximum floor area a dwelling that was lawfully constructed before the date of the adoption of the bylaw, and which would exceed the new maximum floor area, would be considered legally non-conforming.
- Section 529 of the *Local Government Act* (LGA) states that buildings or structures may be maintained, extended or altered, but only to the extent that the repair, extension or alteration involves no further contravention of the bylaw. In other words, you could renovate, maintain or repair your non-conforming house, but you could not put on an addition that would increase the floor area.

What if my house burns down more than 75%, is my house still grandfathered?



- The reference to a building that is destroyed to 75% or more of its value is from Section 532 of the LGA, and applies only to situations where there is a non-conforming use.
- If a dwelling was damaged beyond 75%, it may still be possible to be repaired, provided the repair would not increase the floor area of the house. The words "repair" and "maintain" are not defined or limited by the LGA and so what would be considered "repair" would include anything that could commonly and reasonably be considered repairs.

What if I need to build a new house?

- A new dwelling would have to meet the current regulations in the LUB. However, an owner could apply for a Development Variance Permit or make an application to the Board of Variance if they felt that they needed a larger floor area.

What if I sell my house and the house size is greater than the maximum floor area?



- Legal non-conforming protection is not limited to a specific owner, it “runs with the land” (or property).

Do I need to apply for legal non-conforming status?



- No, it is legal protection that exists because of provincial legislation. But if an owner needed to repair or maintain a dwelling, it is the responsibility of the owner to demonstrate that it is legal non-conforming. A building permit or other documentation could provide proof of non-conforming status.

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