

Trustees,

We have now had an opportunity to review the Staff Report and Project Charter for the Land Use Bylaw Amendments Project posted on November 3 for consideration at the November 10 LTC meeting. It is apparent from the Staff Report and Project Charter that the focus of the LTC work for the next 18 months will be reviewing and quite likely undoing the changes to the LUB enacted through Bylaw No. 122 and approved by the former LTC and authorized by Trust Executive Council a year ago.

It is in our view very unfortunate that our trustees have placed these progressive changes to LUB No. 114 under review before they have been given a chance to work. These changes were designed to comply with the Trust “preserve and protect” mandate and support our OCP goals of maintaining our Island rural character, protecting sensitive ecosystems, ensuring growth and development are gradual and sustainable and reducing greenhouse gas emissions.

The LUB changes enacted through BL 122 were reached after 15 meetings where issues on dwelling size, building height, and setbacks were considered. These electronic meetings were accessible to all community members and trustees received a wide range of views they considered before finally approving the changes enacted in BL 122.

It is worth considering the background to dwelling size, building height and setbacks in effect in Bylaw No. 114-2016 before the former trustees enacted BL 122. The values reached in the 2016 version of Bylaw 114 were the subject of much discussion and debate in 2015-16. One of the key concerns, particularly by property owners with larger dwellings, was that their dwelling would become legally non-conforming which some believed could complicate the replacement of the dwelling if it was destroyed by fire.

In response to concerns about legally non-conforming, trustees in 2016 set the maximum floor area very high to minimize the number of legally non-conforming dwellings. This had the effect of defaulting to larger dwelling size on the Island. Recent property assessment data shows that the average house size on South Pender was just under 2,000 ft<sup>2</sup>. Architects and builders will confirm that a modern 3-bedroom 2 bath home can be built in under 2,400 ft<sup>2</sup>. However, the 2016 maximum dwelling size was set at 3,800 ft<sup>2</sup> on lots less than one acre. These lots are often on the coastline with sensitive ecosystems that can be impacted by development. BL 122 set the maximum dwelling floor area at 2,500 ft<sup>2</sup> for a lot under 1 acre.

Property owners have the option of applying for a variance if there are special circumstances that merit an increase in dwelling floor area above the maximum. Importantly, a variance request gives adjacent property owners an opportunity to identify any concerns which can be taken into consideration before a decision is made to grant or deny a variance request. There have been two variance applications in 2023 and both requests have been granted under the BL 122 regulation. No variance request has been denied.

The former trustees added an important protection for dwellings that are legally non-conforming. They included a provision in the LUB that ensures the owner of a dwelling that is legally non-conforming can rebuild the dwelling to the same floor area as the dwelling that

existed prior to the loss of the dwelling. Thankfully such a loss is a very rare event, but in the event of such a loss the homeowner is protected.

The changes to the LUB enacted through BL 122 establish an important balance between adhering to our OCP goals and maintaining the rights of property owners. The maximum dwelling floor area values for different size lots ranging from 2,500 ft<sup>2</sup> on smaller lots to 3,500 ft<sup>2</sup> on larger lots are well above the current average house size values and more in keeping with maintaining the rural character of our community than the range between 3,800 ft<sup>2</sup> and 6,030 ft<sup>2</sup> under the 2016 BL 114. The rush to undo the changes enacted through BL 122 is in our view a step in the wrong direction.

#### Staff Report and Project Charter

It is unclear to us why staff are recommending excluding from the work program any other regulatory changes other than those contained in BL 122 for the next 18 months. The Provincial government has recently authorized LTCs to enact policies related to rock removal (blasting). Salt Spring has already enacted a bylaw addressing this issue. It would be very timely for the South Pender LTC to consider an amendment to the LUB to ensure adequate notice to nearby homeowners and adequate protections are in place before blasting is carried out. We urge the trustees to be open to dealing with important issues other than the review of BL 122 changes in the next 18 months.

A close reading of the staff report suggests there is a presumed problem with the Bylaw changes enacted through BL 122. The APC is first to identify the problem with the bylaw provision and then to consider the purpose of the provision. That appears to put the cart before the horse. The real question is - was there a problem with the 2016 LUB provisions and do the BL 122 changes better adhere to the Trust Mandate and our OCP goals.

There appears to be a built-in presumption in the Report that the amendments enacted through BL 122 should revert to the 2016 LUB provisions suggesting a predetermined conclusion to the Amendment Review Project. ("How the amendment could be changed – ex. Revert floor area to the previous regulations in BL 114-2016"). This would be consistent with the preemptive attempt to repeal the BL 122 amendments without due process in June 2023. It is important that the trustees adhere to the principal of impartiality and fair process as provided in the Trust Administrative Fairness policy.

Perhaps the bigger question is why the LTC is spending \$8,500 of our tax dollars and valuable staff and LTC time to relitigate legally enacted amendments to our LUB before they have been given a chance to prove their value. The amendments enacted through BL 122 are based on a compromise that provides a balance between the rights of property owners and protection of the rural character of our island, protection of sensitive ecosystems, ensuring that growth and development are gradual and sustainable, and reducing GHG emissions. This compromise should be given an opportunity to work before upsetting the apple cart.

At the September 1 LTC meeting Chair Elliott wisely suggested that the trustees might consider a less contentious and divisive work program issue that would serve to bring the community

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closer together, rather than immediately pursue the divisive relitigating of the BL 122 amendments. That suggested approach would provide an opportunity for those amendments to work and identify any apparent issues that require further consideration. In our view, that approach would better serve our community as a whole and practice more effective governance. It is not too late for trustees to reverse directions and follow that guidance.

Whichever path the trustees choose to take, we will continue to work with the community and the LTC to support the Trust Mandate and the goals in our OCP.

Thank you for considering our views.

Paul Petrie  
Monica Petrie

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