

From: Sharlein Smith [REDACTED]
Sent: Saturday, November 13, 2021 7:41 PM
To: Dan Rogers; Kate-Louise Stamford; Sue Ellen Fast; northinfo
Subject: Keats Island - proposed bylaws
Attachments: LT Islands Trust 31.10.21 2.pdf; ATT00001.txt

Hello Trustees,

Please find attached by comments and submissions regarding the Proposed By-laws for Keats Islands. I hope you will take some time to seriously consider them.

I look forward to continuing dialogue between the Trustees and Keats Islanders so that we can work together going forward.

Regards,
Sharlein

drogers@islandstrust.bc.ca
kstamford@islandstrust.bc.ca
sfast@islandstrust.bc.ca

31 October 2021

To: Gambier Island Local Trust Committee — Dan Rogers, Kate-Louise Stamford, and Sue Ellen Fast

Re: Proposed Bylaws 153 and 154 (Proposed Bylaws)

I write to urge the members of the Gambier Island Local Trust Committee (LTC) to direct the staff of the Islands Trust (Staff) to amend the Proposed Bylaws.

This is necessary to bring them into alignment with the *Islands Trust Act*, RSBC 1996, c. 239 (the Act)

Background

My family has owned a property on Plumper Cove, Keats Island since 1938. Many of the other families on the Cove are of similar longstanding. I am good friends with many of them, for the simple reason we grew up together playing on the beach, exploring the woods, and cherishing the uniqueness of Howe Sound island life. We are not the first generation to have that experience. All of us have parents who spent much of their childhood on Plumper Cove. Our roots in Keats Island run very deep.

We all support the intention behind the Proposed Bylaws. None of us consider ourselves principally as the owners of property, but rather the custodians of something close to a sacred legacy. Our properties were handed down to us by thoughtful forbears who were responsible stewards of the land. They expected us to be equally responsible for the benefit of future generations. We recognize the need to preserve and, when feasible, enhance the local environment.

I belong to a family, like the other families on the Cove, that has always considered itself a guardian of the natural tranquility and beauty of the Cove and its surrounding forest. Long before the formation of the Islands Trust in 1974, the residents of Plumper Cove were strong advocates for the protection of its natural habitat.

For example, the Plumper Cove Marine Park did not come into existence in 1960 because a planning office in Victoria thought it would be a good idea. It happened because a handful of war veterans, my grandfather among them, were determined to end the use of the Cove as a booming ground. They met in the evenings in cabins they'd built with their own hands and, because Keats Island did not yet have electricity in those days, sat around tables lit by kerosene lamps to discuss what could be done. They lobbied the provincial government, and today Plumper Cove is a beautiful natural haven as a direct consequence of their work. This was no small achievement, when one considers the power and influence of the forest companies of the day.

Another example is the trail from the Marine Park that crosses our properties to link up with the trail to the public dock at Keats Landing. That the trail exists at all is due solely to the sharing spirit of the residents of Plumper Cove. We conceived of the idea, cleared the route, and continue to do much of the work of maintaining it. In other places, property owners put up fences. Instead, for decades Cove residents have not just permitted but encouraged visitors to Keats Island to traverse our properties to enjoy the forest. The reason is simple: we feel friendly towards people who enjoy nature as much as we do.

For myself and others in the Cove, citizen stewardship is a personal legacy. Unfortunately, elements of the Proposed Bylaws would threaten that legacy by imposing impractical and unreasonable restrictions on responsible land management.

Over the decades, the residents of Plumper Cove have been conscientious about maintaining their properties in ways that respect the ecology at our doorstep and support community values, all without any need for threats or restrictions to control our behaviour. If adopted, however, the Proposed Bylaws would impose aggressively onerous restrictions on the ability of residents to continue to manage their properties responsibly. This is because, as is evident on an even cursory review, the Cove's actual physical conditions were not seriously considered when the Proposed Bylaws were developed.

The residents of Plumper Cove are alarmed by this indifference towards practical reality, and troubled by the apparent lack of respect for their ongoing stewardship and generosity. We have consistently done the right thing in the past because we have had the flexibility to do so. The Proposed Bylaws would take that away. This would force residents to consider whether they should change their own approach going forward.

Objections

Adoption of the Proposed Bylaws would designate the land 15 metres up from the shoreline and 100 metres seaward as a new Development Permit Area (DP-3), and result in significant amendments to the Keats Island Land Use Bylaw (Land Use Bylaw).

The Staff originally recommended that Proposed Bylaw 154 include new height and length restrictions for docks. The LTC declined to do so after receiving public commentary that the restrictions were unworkable given Keats Island's geography. Recently, the LTC also decided to amend the construction restrictions for DP-3, such that it now proposes to prohibit building activity within 7.5 metres of the shoreline instead of the entire 15 metres of DP-3. While helpful and encouraging, these changes do not address other fundamental problems with Proposed Bylaw 154.

Docks

- Section 1.10: Some docks in Plumper Cove are shared in common by multiple property owners. This has the happy result of reducing overall environmental impact. Reducing the maximum permitted size of dock floats to 35 square metres would render this more or less impossible, both with respect to new docks and existing ones in need of major repairs.

- Section 1.11: The size of a dock float may be increased by an additional 25 square metres, but only “per residential lot” and even then the property owner must first enter into a restrictive covenant with the LTC. The specific terms of the covenant are not disclosed, which means in any given instance it would be left to the LTC’s discretion. In other words, property owners would not be permitted to jointly own a shared dock; and any individual property owner willing to build a dock capable of being shared with neighbours would face the disincentive of being forced to accept full legal liability for whatever terms the Staff might arbitrarily choose to impose. For all practical purposes, this provision effectively bars shared docks.
- These proposed amendments to the Land Use Bylaw are contrary to the stated purpose of Proposed Bylaw 154, which is environmental protection. They should be removed.

DP-3 requirements

Appendix 1 to Proposed Bylaw 154 would change the Land Use Bylaw by adding a set of guidelines for the administration of the new DP-3.

Section 9.3.1 of these guidelines would obligate property owners to undergo the time-consuming and expensive process of obtaining a development permit before conducting any repairs to pre-existing buildings, removing vegetation or disturbing the soil within the 15 metre DP-3 zone, unless the activity is specifically exempted by the guidelines.

- Section 9.3.2(d): An exemption is available for the reconstruction or repair of platforms at the land end of docks, provided the platform does not exceed 5 square metres.
 - ▶ Many pre-existing platforms are larger in area than this.
 - ▶ The exemption should be changed to include the repair of pre-existing platforms of any size.
- Section 9.3.2(h): The repair of a path or trail is exempt, provided there is no expansion of its width.
 - ▶ A path or trail often needs repair because part of it has slumped away or the ground has otherwise become unsafe to traverse. This typically requires the path or trail to be recut in that area, which is indistinguishable from widening it.
 - ▶ The exemption should be changed to be consistent with Section 9.3.2(g), and state that the repair of a path or trail is exempt provided the width of the repaired area does not exceed 1 metre.
- Section 9.3.2(j): Tree pruning is exempt, provided not more than 2 trees are pruned per year.
 - ▶ This provision is unrealistically narrow. Proposed Bylaw 153 explicitly states that one of the justifications for creating DP-3 is “to adapt to the anticipated effects of climate change”. Keats Island is heavily forested. Adapting to the anticipated effects of climate change necessarily includes taking steps to mitigate the very real risk of catastrophic forest fires as increasingly hotter and dryer summers become a reality.
 - ▶ Apart from the cluster of homes immediately south of the Marine Park, the dwellings in Plumper Cove are all virtually enveloped by forest. Those same homes are all within the proposed DP-3. Human activity always presents some level of accidental fire risk, and it is always greatest in the areas that see the most active use. It is not unusual for

a lawnmower blade hitting a rock to kick off a spark. With climate change, it is entirely possible that some such similar incident a hot August afternoon could lead to a conflagration that destroys much of what the Proposed Bylaws intend to preserve.

- ▶ Developing a fire fighting capability is not feasible for Plumper Cove, which is water access only. Instead, the focus of residents must be on prevention. As written, the restrictiveness of the exemption increases the risk of catastrophic fire on Keats Island, because it would deny residents the flexibility they need to mitigate potential dangers arising from branches overhanging their homes or encroaching on areas of human activity.
- ▶ The exemption also fails to account for the fact that Plumper Cove lies at the foot of the northern slope of a coastal rain forest. Tree growth is constant, as is dampness in every season except for summer. It follows that homes surrounded by trees are under constant threat from wind throw and moisture damage. This means maintaining the integrity of homes, preserving light and views, and keeping trails usable requires constant pruning of nearby trees. It also must be recalled that many properties have trees that are already topped, and maintaining these also requires pruning.
- ▶ The exemption should be amended to simply permit tree pruning.
- Section 9.3.2(k): The taking down of trees is exempted from the development permit requirement only if, in the opinion of a qualified professional arborist or forester, they pose an immediate threat to life or property.
 - ▶ The same objections to Section 9.3.2(j) apply to this exemption as well.
 - ▶ Moreover, the Land Use Bylaw does not provide a definition of “tree” and, it appears, neither does relevant provincial legislation. This creates considerable ambiguity as to what would count as a tree for the purposes of the exemption, which does not distinguish between trees and saplings. There is a proposed exemption for the trimming of shrubs, but none for their outright removal. It appears, therefore, that the removal of even the smallest specimen of a tree species or any shrub or hedge would require the trouble and expense of obtaining a professional opinion.
 - ▶ The exemption should be amended to permit the removal of any vegetation a property owner deems a hazard in their own judgment.
- Section 9.3.2(l): This provision states that the removal of vegetation to prevent “wildlife” is exempted.
 - ▶ Presumably, this is a typographical error. The exemption should be corrected to read “wildfire”.

These elements of the Proposed Bylaws all share the same defects: disdain for the historical good judgment and stewardship of property owners, and an intention to micromanage local conditions without any real understanding of them.

Discussion

I attended a public consultation Zoom meeting at which the Staff was questioned about the rationale behind the Proposed Bylaws. The Staff did not respond by referring to the actual environmental conditions of Plumper Cove or identify other concrete local issues

that need to be addressed in the public interest. Instead, the reason offered was that the same changes had already been introduced to the land use plans of other islands, and this supposedly made the changes a “best practice” that should also be imposed on Keats Island.

The Staff’s response does not accord with either the purpose or scheme of the Act.

Section 3 of the Act states that:

The object of the trust is to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of British Columbia generally[.]

The Islands Trust is not permitted to implement policies that subordinate the interests of island residents to abstractions. It is, instead, obligated to consider the effects of its actions on residents to ensure they will benefit from them. The justifications cited in Proposed Bylaw 153, however, make clear that the motivation behind the new rules is an exclusive preoccupation with theoretical environmental protection. That is why this letter is necessary: every one of the problems it identifies arises from a failure to seriously consider the real life effects of the Proposed Bylaws on residents.

The residents of Plumper Cove understand the importance of environmental protection. But to be effective regulations must fit the actual environment. Unfortunately, instead of being drafted with regard to the actual geography and circumstances of Keats Island, the Proposed Bylaws were devised by following what has been done elsewhere. This is exemplified by the height and length dock requirements originally recommended by the Staff, which failed to account for the steep inclines of Keats Island’s shores and the effects of tidal action.

With respect to shoreline protection, it is worth observing that the singular focus of the Proposed Bylaws is to preserve private property, not public lands, against the presumed ignorance and negligence of the very people who own it. As far as I am aware, there is no scientific evidence that supports the inference that property owners are putting the Keats Island shoreline at risk. With respect to Plumper Cove, an evidence based assessment would have disclosed environmental issues of greater concern:

- Violent wave action caused by increasing boat traffic, and ferries in particular, is a greater threat to the shoreline than residents who occasionally get ambitious with their pruning shears.
- The commercial log booms travelling through Shoal Channel do far more to disrupt sea life than private docks, while also contributing to wave action.
- The high number of pleasure boats that moor in the marine reserve routinely dump raw sewage directly into the Cove, threatening sea life and putting residents and visitors alike at risk. Of particular concern are boats that moor in the Cove for an entire summer whose holding tanks are necessarily being emptied into our recreational waters during that time.

- The current advice provided to property owners regarding shoreline protection is limited to generic information on the Islands Trust website. A program that provided them with some measure of individualized practical scientific guidance on how to best prevent erosion of their respective shorelines, and foster the local native habitat, would be far more helpful. Property owners want, and deserve, a collaborative relationship with the Islands Trust, not an adversarial one premised on official distrust of the very people the Trust is supposed to help.

Doing something about these problems would be very much in line with the Island Trust's mandate of preserving and protecting "the trust area and its unique amenities and environment". As it is, however, the Proposed Bylaws fail to account for the objective local conditions of Keats Island. This failure to account for local conditions is contrary to the scheme of the Act, which divides the trust area into 13 different local trust areas and gives each local trust committee the same independent power and authority as a regional district. The purpose of this division of responsibility is precisely to account for differences among the islands.

With respect to environmental protection specifically, the BC government has provided [guidance](#) to assist local governments in adapting to climate change. This guidance takes it for granted that land use restrictions will necessarily vary from area to area, and that zoning for environmental protection purposes must be balanced against the needs of the affected local population. Moreover, land use regulation should be based on expert topographic and engineering assessments of the actual area being regulated, not guess work that is labelled as a "best practice".

At the Zoom meeting I attended, the Staff was asked to explain the scientific evidence upon which the Proposed Bylaws are based. There was no answer.

The staff were also unaware as to the number of properties affected by the Proposed Bylaws, which I also found very concerning as staff and the LTC should assess and make themselves aware of the consequences of any proposals.

Conclusion

In considering whether the Proposed Bylaws should be adopted, the LTC is obligated to exercise independent judgment as to whether they are appropriate for Keats Island in all their particulars. The fact that similar regulations have been adopted elsewhere says nothing about whether they are appropriate for Keats Island. Contrary to Staff's claim, a one size fits all attitude to regulation is the opposite of how local trust areas are supposed to be governed.

As currently written, the Proposed Bylaws treat property owners as potential culprits who need to be restrained and as a solution to a non-existent problem offer rules that are simply disconnected from practical reality. The objective evidence is that the people of Plumper Cove have always shown the utmost care and good judgment in following

environmentally sound practices in their land management practices. In order for them to continue to do so, the Proposed Bylaws must be amended.

There is much that is good in the Proposed Bylaws. I ask that the LTC show genuine leadership and direct the Staff to make them as good as they can and should be.

Regards,
Sharlein Smith
Plumper Cove, Keats Island

