

Tony Law



To: Islands Trust Council
and Hornby Island Local Trust Committee

09 March 2023

re: Temporary Use Permits for Housing and for Short Term Rentals
- advocacy for changes to the *Local Government Act*

Temporary use permits (TUPs) are a potentially valuable tool for local trust committees, Bowen Island Municipality, and other local governments, to address non-permanent housing solutions and the use of dwellings for short term rentals.

However, provincial regulations governing the use of temporary use permits - *Part 14, Division 8, of the Local Government Act* - specify requirements originally put in place for commercial and industrial uses. These requirements create challenges in using TUPs for housing and short term rentals.

I encourage the Islands Trust to approach the Ministry of Municipal Affairs - and to work with other local government (such as through AVICC and UBCM) - to advocate for amendments to the *Local Government Act* to make TUPs a more useful tool for local governments to address the important issues of housing and short term rentals.

At the end of this letter are suggested amendments to the *LGA*.

First, here is some background and rationale.

- Housing and TUPs

Most LTA's and many other communities are facing housing challenges. Permanent solutions are hard to achieve.

In the meantime, desperate residents are seeking at least a short term option. There are owners of larger lots who are willing to provide an option by allowing a housing-challenged resident to temporarily place a removable dwelling unit (tiny home, mobile unit, caravan, recreational vehicle, etc) on their land as interim measure. Alternatively, an existing accessory building could be temporarily adapted for residential use.

In many cases, situations are so desperate, and landowners keen to help, that such solutions are being put in place despite not conforming with land use regulations. But non-permitted uses don't provide a secure situation. In other cases, landowners are holding off because the use is not permitted.

Generally, additional residential density on a property is considered through a rezoning application. But this is an onerous and expensive process for the applicant and the local government. A public hearing would likely reveal concerns about the inappropriateness of adding permanent density to a property in order to address a non-permanent arrangement between a current landowner and resident.

TUPs are a more appropriate permitting tool for this purpose. In fact, this option has been used by some local governments elsewhere. It is available in the Hornby Island and Denman Island LTAs, but there have been few, if any applications in these LTAs.

These seem to be the barriers:

- the requirement for a public hearing;
- the limited term of TUPs (3 years + renewal for 3 years);
- the assumption that a subsequent TUP cannot be applied for.

- Short term rentals and TUPs

Local governments in the Trust Area and throughout BC are faced with the challenge of whether to permit the burgeoning activity of short term rentals and if so how. Some communities are deciding to not permit the use at all. Others are trying to find ways to manage it.

Many municipalities are using business licences enabled under the community charter. These are not available to regional districts or local trust committees. The Ministry of Municipal Affairs has made it clear that the Islands Trust's "authorities in legislation are in relation to land use and planning" (business licenses are not a land use planning authority) and that if a regional district were to request business license authority, the Ministry and the regional district would need "to come to a common understanding of matters such as costs, impacts and enforcement implications of business licensing in a more rural context before pursuing a more general authority."

As it is, there is a limit to what can be regulated by business licenses authority compared to what can be addressed through land use authority.

With respect to using land use authority to allow and manage short term rentals, there are two options:

- a) to allow the use through zoning regulations;
a local government would have limited capacity to manage the vacation rentals because any tightening up of regulations or discontinuation of the permitted use would result in existing uses being lawfully non-conforming.
- b) to allow the use on a site-specific basis through temporary use permits;
a local government would be able to manage the use through having the ability to decide when, where and how to issue permits that would eventually expire.

Some local governments are already using TUPs to manage vacation rentals, including:

The Town of Gibsons
Alberni-Clayoquot Regional District
Regional District of Okanagan-Similkameen
Thompson- Nicola Regional District
Columbia Shuswap Regional District
Gabriola Island Local Trust Committee
Galiano Island Local Trust Committee
North Pender Island Local Trust Committee

However, as with housing, there are issues that make them a much less-than-perfect fit for this use:

- the requirement for a hearing;
- the limited term of TUPs (3 years + renewal for 3 years);
- the assumption that a subsequent TUP cannot be applied for.

- Temporary Use Permits - background

In 1985, the *Municipal Amendment Act* added s.975 to the *Municipal Act* to enable local governments to issue “temporary commercial and industrial permits”. These provided a way to consider allowing commercial and industrial uses that were not permitted in a zoning bylaw.

The legislation requires:

- a) a hearing – on the basis that a proposed use would not have been subject to a public hearing in conjunction with establishing the OCP and zoning regulations;
- b) a term limitation of 2 years for a permit – and a further two years for its renewal - on the basis that a particular use being proposed was expected to be of short duration or subject to potential rezoning if an applicant wished to continue it permanently after a test period.

In 1998, the legislated provision for temporary commercial and industrial permits was continued in the new *Local Government Act*.

In, 2010 , the *Miscellaneous Statutes Amendment Act* , made a number of amendments to the *Local Government Act*. Temporary permit powers were amended to eliminate all references to commercial and industrial uses. What is now referred to as a temporary use permit (TUP) can allow any use that is not permitted by a zoning bylaw, including for example residential, agricultural and institutional uses. The maximum period for a TUP and a renewal were both increased from 2 to 3 years. All other regulations relating to TUPs remained the same.

- The changed context for Temporary Use Permits

The context for Temporary Use Permits has changed.

There are two meanings for the word “temporary”:

- “lasting for only a limited period of time”;
- “not permanent”.

When temporary commercial and industrial permits were first introduced, it was with the expectation that they would be applied to uses lasting for only a limited period of time.

Now, a number of local governments are utilizing TUPS to permit housing and vacation rentals as a valued alternative to permanently entrenching the use in zoning regulations.

TUPs are the only available land use planning tool for managing non-permanent uses.

- Suggested changes to Part 14, Division 8, Temporary Use Permits

In order to enable temporary use permits to be more useful for permitting non-permanent housing and short term rentals, here are three suggested additions to the legislation.

These would not impact how the regulations would be applied to other uses.

- Suggested addition to address requirements for a hearing:

(6) Section 494 (1), (2), (3), (4), and (5) with respect to public notice and hearing requirements do not apply if a local government proposes to pass a resolution under section 493 (1) (a) with respect to issuing a temporary use permit that would:

a) permit the short-term rental use of an existing permitted residential dwelling unit, provided the official community plan or zoning bylaw has designated areas where a temporary use permit may be issued for this particular purpose and has specified general conditions regarding the issue of permits for this use.

b) permit one temporary dwelling unit to be used for residential purposes, provided the official community plan or zoning bylaw has designated areas where a temporary use permit may be issued for this particular purpose and has specified general conditions regarding the issue of permits for this use.

Section 494 was put in place to provide an opportunity for a hearing about proposed commercial and industrial uses that had not been subject to a hearing when an OCP and zoning regulations were established. Although an additional dwelling unit or the use of an existing unit for paying guest accommodation are not as significant uses as commercial and industrial activities, there is still a case to be made for an opportunity for public input on whether and how such uses should be permitted.

This public input can be considered at a public hearing for an OCP/LUB amendment to establish policies to specify where temporary use permits for non-permanent housing and short term rentals may be considered and guidelines for permit conditions in advance of any permits being considered.

For example,

- policies could make statements like:

“Temporary use permits for non-permanent dwelling units shall only be considered on...lots larger than 2ha....or....on lots in the R2 zone....or.....on lots outside of areas known to have problems with the quantity and quality of water supply....or....?”

“Temporary use permits for short term rental of dwelling units shall only be considered on...lots zoned for residential use.....or....on lots in the R2 and Agricultural zones....or....?”

- guidelines for non-permanent dwellings could include requirements such as

...the dwelling must be removable or an existing accessory building that can be reconverted for non-residential use...

....the dwelling must be no larger than xxx square metres....

....the dwelling must be set back at least xx metres from any lot line...

- guidelines for short term rentals could include requirements such as:

...the short term rental use should not involve more than x bedrooms...

...the short term rental should not operate for more than x months in a year...

Having such policies and guidelines in the OCP, subject to a public hearing, will eliminate the need for a public hearing for each individual application because there will have been public input into establishing where and how the use would be conducted (as would have been the case in establishing zoning regulations).

- **Suggested addition to address the term of a permit:**

(2.1) Despite 497(2), a temporary use permit may be renewed up to 3 times if the permit permits either:

a) the short-term rental use of an existing permitted residential dwelling unit;

b) one temporary dwelling unit to be used for residential purposes.

Allowing a local government discretion to renew such a permit three times, rather than once, would provide an applicant with a sense that, while the use is not being permitted permanently there is an opportunity for it to be extended. This would also allow local governments to review the appropriateness of the permit on a regular basis, including consideration of evidence of non-compliance with permit conditions.

- **Suggested addition address to possible subsequent permits:**

(2.2) Following the expiration of a permit, the person to whom the temporary use permit has been issued may apply for a new permit to be considered for the same use.

A frequently stated reason for apprehension about the use of temporary use permits for non-permanent housing or for short term rentals is the assumption that when the permit expires, that's it – the use can not be subsequently re-permitted on the lot.

As I read it, the *Local Government Act* is silent on this matter. which suggests that there is no prohibition of a subsequent application. But this would be usefully clarified by a definitive statement.

- Local Government Act, Part 14, Division 8,

Here is the text of this division.

Suggested additions are inserted in ***bold italic***.

Temporary Use Permits

Designation of temporary use permit areas

492

For the purposes of section 493, an official community plan or a zoning bylaw may

- (a) designate areas where temporary uses may be allowed, and
- (b) specify general conditions regarding the issue of temporary use permits in those areas.

Temporary use permits for designated areas and other areas

493

(1) On application by an owner of land, a local government may issue a temporary use permit as follows:

- (a) by resolution, in relation to land within an area designated under section 492;
- (b) by bylaw, in relation to land within an area outside a municipality, if there is no official community plan in effect for the area.

(2) A temporary use permit may do one or more of the following:

- (a) allow a use not permitted by a zoning bylaw;
- (b) specify conditions under which the temporary use may be carried on;
- (c) allow and regulate the construction of buildings or structures in respect of the use for which the permit is issued.

(3) If a local government delegates the power to issue a temporary use permit under this section, the owner of land that is subject to the decision of the delegate is entitled to have the local government reconsider the matter.

Public notice and hearing requirements

494

(1) If a local government proposes to pass a resolution under section 493 (1) (a), it must give notice in accordance with subsections (2) to (4) of this section.

(2) The notice must state

- (a)** in general terms, the purpose of the proposed permit,
- (b)** the land or lands that are the subject of the proposed permit,
- (c)** the place where and the times and dates when copies of the proposed permit may be inspected,
- (d)** the time and date when and, if applicable, the place where the resolution will be considered, and
- (e)** if the meeting at which the resolution will be considered is conducted by means of electronic or other communication facilities, the way in which the meeting is to be conducted by those means.

(3) The notice must be published in accordance with section 94 [requirements for public notice] of the Community Charter at least 3 days and not more than 14 days before the adoption of the resolution to issue the permit.

(3.1) If the local government has adopted a bylaw under section 94.2 [bylaw to provide for alternative means of publication] of the Community Charter, the notice must be published by at least one of the means of publication specified in the bylaw not less than 3 days and not more than 14 days before the adoption of the resolution to issue the permit.

(3.2) If the local government has not adopted a bylaw under section 94.2 of the Community Charter, the last publication of the notice must be not less than 3 days and not more than 14 days before the adoption of the resolution to issue the permit.

(4) Section 466 (4) to (8) [specific requirements in relation to notice of public hearing] applies to the notice as if the resolution were a bylaw.

(5) If a local government proposes to adopt a bylaw under section 493 (1) (b), the following sections apply:

- (a)** section 464 [requirement for public hearing];
- (b)** section 465 [public hearing procedures];
- (c)** section 466 [notice of public hearing];
- (d)** section 469 [delegating the holding of public hearings];
- (e)** section 470 [procedure after public hearing].

(6) Section 494 (1), (2), (3), (4), and (5) with respect to public notice and hearing requirements do not apply if a local government proposes to pass a resolution under section 493 (1) (a) with respect to issuing a temporary use permit that would:

a) permit the short-term rental use of an existing permitted residential dwelling unit, provided the official community plan or zoning bylaw has designated areas where a temporary use permit may be issued for this particular purpose and has specified general conditions regarding the issue of permits for this use.

b) permit one temporary dwelling unit to be used for residential purposes, provided the official community plan or zoning bylaw has designated areas where a temporary use permit may be issued for this particular purpose and has specified general conditions regarding the issue of permits for this use.

Permit conditions: undertakings respecting land

495

(1) As a condition of issuing a temporary use permit, a local government may require the owner of the land to give an undertaking to

(a) demolish or remove a building or other structure, and

(b) restore land described in the permit to a condition specified in the permit by a date specified in the permit.

(2) An undertaking under subsection (1) must be attached to and forms part of the permit.

(3) If the owner of the land fails to comply with all of the undertakings given under subsection (1), the local government may enter on the land and carry out the demolition, removal or restoration at the expense of the owner.

Permit conditions: additional security requirements

496

(1) In addition to any security required under section 502, a local government may require, as a condition of issuing a temporary use permit, that the owner of the land give to the local government security to guarantee the performance of the terms of the permit.

(2) If there is a requirement for security under subsection (1), the permit may provide for

(a) the form of the security, and

(b) the means for determining

(i) when there is default under the permit, and

(ii) the amount of the security that forfeits to the local government in the event of default.

Term of permit and renewal of permit

497

(1) The owner of land in respect of which a temporary use permit has been issued has the right to put the land to the use described in the permit until the earlier of the following:

- (a) the date that the permit expires;
- (b) 3 years after the permit was issued.

(2) A person to whom a temporary use permit has been issued may apply to have the permit renewed, subject to the restriction that a temporary use permit may be renewed only once.

(2.1) Despite 497(2), a temporary use permit may be renewed up to 3 times if the permit permits either:

- a) the short-term rental use of an existing permitted residential dwelling unit;***
- b) one temporary dwelling unit to be used for residential purposes.***

(2.2) Following the expiration of a permit, the person to whom the temporary use permit has been issued may apply for a new permit to be considered for the same use.

(3) Subsection (1) and sections 495 [permit conditions: undertaking respecting land] and 496 [permit conditions: additional security requirements] apply in relation to a renewal under subsection (2).

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Thank you for considering this.

I hope it is helpful.

Sincerely,

Tony Law

Formerly:

- Hornby Island Local Trustee (1996-2018)
- Chair, Islands Trust Council's Task Force on Community Housing
- President, Islanders Secure Land Association (a Community Land Trust)
- Executive Director, Hornby Island Community Economic Enhancement Corporation
- Appointee, Comox Valley Regional District Select Committee on Homelessness and Housing