



DATE OF MEETING: February 16, 2021  
TO: Salt Spring Island Local Trust Committee  
FROM: Geordie Gordon, Planner 2  
Salt Spring Island Team  
COPY: Stefan Cermak, Regional Planning Manager  
SUBJECT: Rezoning for second dwelling unit.  
Applicant: Jamie Colligan and Robyn Kelln  
Location: 2188 North End Rd.

## RECOMMENDATION

1. **That the Salt Spring Island Local Trust Committee proceed no further with rezoning application SS-RZ-2017.3 (2188 North End Rd.) for the following reasons:**
  - a) **The subject property has been out of compliance with the Land Use Bylaw for 25 years and bylaw enforcement has been continuous throughout that time;**
  - b) **Proceeding with the rezoning could set a precedent within the community that decades long bylaw violations have no impact;**
  - c) **The applicant has not provided the requested information, required by OCP policy, in a reasonable period of time;**
  - d) **The Salt Spring Island Local Trust Committee has adopted Standing Resolution SS-2020-147 deferring bylaw enforcement on unlawful dwellings, except where there are concerns regarding health and safety, while there is a declared public health emergency for COVID-19;**
  - e) **The Salt Spring Island Local Trust Committee is in the process of developing a Salt Spring Island wide housing strategy project.**
  
2. **That the Salt Spring Island Local Trust Committee request Islands Trust Bylaw Compliance and Enforcement staff contact any and all current occupants of the unlawful dwelling at 2188 North End Rd., when deemed appropriate by the BCE manager, to apprise them of the LTC resolution and to achieve a mutually satisfactory agreement about when to end the tenancy of the unlawful dwelling.**

## REPORT SUMMARY

This report brings forward further information on a rezoning application to permit the continued use of an existing structure as a dwelling unit. Staff recommend that the Salt Spring Island Local Trust Committee proceed no further with the application due to the Bylaw Compliance and Enforcement history, a lack of information of supplied by the applicant, and inefficient use of staff resources.

If the LTC resolves to proceed with the application, staff have provided recommended resolutions in the Alternatives section.



Figure 1: Location of subject property



Figure 2: 2017 Orth photo of Subject Property

**BACKGROUND**

The application is proceeding as a result of Islands Trust Bylaw Compliance and Enforcement action. The subject property has a long history of BCE action. A timeline summary is provided here:

Year	Action
1992	Covenant granted by Salt Spring Island Local Trust Committee allowing a building (not otherwise permitted by zoning) for residential use by subject property owner’s parents only. Use to be decommissioned when terms of dwelling no longer met (owners parents no longer live there).
1994	Subject property sold, new owner continues to use building for residential use in contravention of covenant and Land Use Bylaw.
1996	Bylaw Compliance and Enforcement action on subject property in attempt to get property into conformance with Land Use Bylaw through decommissioning structure to remove ability for residential use.
1998	BCE continuing action.

- 2004** BCE continuing action. Owner informed property is permitted one dwelling and accessory buildings. Lot is not permitted two dwellings.
- 2009** BCE continuing action, including against what is now a current owner (not on title at that time).
- 2010** Court order prohibiting “cottage” for use as a dwelling. Owners ordered to render “cottage” unusable as a dwelling.
- 2016-2017** Continuing BCE action.
- April 2017** Re-zoning application submitted to Islands Trust. Application lacking required information.
- April 2018** BCE action requesting information (hydrogeological report, building code and sewerage info).
- January 2019** First re-zoning staff report to SSI LTC. Staff recommend proceed no further. LTC passes following resolution:

**SS-2019-29**

**It was MOVED and SECONDED,**

that the Salt Spring Island Local Trust Committee request staff to work with the applicant regarding rezoning application SS-RZ-2017.3 (2188 North End Road).

**CARRIED**

- December 2019** Second re-zoning staff report to SSI LTC. Staff recommend proceed no further. LTC passes following resolutions:

**SS-2019-284**

**It was MOVED and SECONDED,**

that the Salt Spring Island Local Trust Committee request staff to prepare a draft bylaw to amend Salt Spring Island Land Use Bylaw, 1999 to rezone Lot 3, Section 7, Range 1, North Salt Spring Island, Cowichan District, Plan 34166 from Rural to a new Rural zone variant in order to permit a second dwelling unit for affordable housing.

**CARRIED**

**SS-2019-285**

**It was MOVED and SECONDED,**

that the Salt Spring Island Local Trust Committee request that the applicant provide a report from a Professional Engineer or Professional Geoscientist with relevant experience containing the following:

1. A new pump test conducted confirming adequate supply of potable water with a minimum duration of 12 hours. The pump test should have automatic water level readings during pumping and recovery using a data logger. At least one neighbouring well should be monitored during the entirety of the pump test, including during the recovery period.
2. A qualified professional should confirm that the well head meets the Groundwater Protection Regulation, including that it is appropriately sealed from surface water intrusion, that surface water drains away from the well head, and that the well is not vulnerable to contamination.

**CARRIED**

**SS-2019-286**

**It was MOVED and SECONDED,**

that the Salt Spring Island Local Trust Committee request staff to enter into a cost recovery agreement with J. Colligan and R. Kelln for Islands Trust legal review of a Housing agreement and Land Title Act Section 219 covenant providing the following requirements:

1. Provision of affordable housing in the dwelling unit at a rate of \$1150 per month plus increases in accordance with the Consumer Price Index for Greater Victoria;
2. Installation and continued use of Environmental Protection Agency WaterSense® certified plumbing fixtures, including bathroom faucet, showerhead, and toilet; and
3. Installation and continued use of EnergyStar® certified appliances, including washer, dryer, dishwasher, refrigerator.
4. Discharge the existing covenant restricting use of the second dwelling.

**CARRIED**

**SS-2019-287**

**It was MOVED and SECONDED,**

that the Salt Spring Island Local Trust Committee discharge covenant EF117631 from Lot 3 Section 7 Range 1 North Salt Spring Island Cowichan District Plan 34166.

**CARRIED**

<b>December 2020</b>	Staff request applicant provide pump test to staff. Applicant’s professional conducting pump test contacts staff regarding pump test requirements.
<b>February 2021</b>	Requested pump test document not provided by applicant. Planning staff seek file closure.

Previous staff reports can be reviewed here:

Staff report 1 (January 2019): [http://www.islandstrust.bc.ca/media/347090/ss-ltc\\_2019-01-29\\_rm-agd\\_pkg.pdf#page=609](http://www.islandstrust.bc.ca/media/347090/ss-ltc_2019-01-29_rm-agd_pkg.pdf#page=609)

Staff report 2 (December 2019): [http://www.islandstrust.bc.ca/media/348661/ss-ltc\\_2019-12-17\\_rm\\_agd\\_pkg.pdf#page=380](http://www.islandstrust.bc.ca/media/348661/ss-ltc_2019-12-17_rm_agd_pkg.pdf#page=380)

## **ANALYSIS**

### ***Islands Trust Policy Statement:***

If the LTC resolves to proceed with the application, staff will provide a report assessing compliance with the Policy Statement based on the Directives Only Checklist as set out in section 1.9 of Trust Council Policy 1.3 in a future report.

### ***Official Community Plan:***

Previous staff reports have highlighted OCP policies that relate to rezoning for affordable housing units:

- Affordable housing is strongly encouraged and supported to address a variety of housing needs within a framework that limits growth and protects the natural environment.
- Any application that proposes an increase in water use should include evidence that existing wells, springs, and neighbouring uses will not be affected.
- Rezoning applications that propose increased density should address climate change and include energy and water efficient features.

### ***Land Use Bylaw:***

Staff have begun drafting a Land Use Bylaw No. 355 amendment establishing a Rural zone variant for the subject property to permit an affordable housing unit not exceeding 70 m<sup>2</sup> and consistent with the Land Use Bylaw No. 355 definition:

**“dwelling unit, affordable housing”** Is a deed restricted and/or a rent controlled dwelling unit that is secured by a housing agreement registered on title, and may include special needs housing and seniors dwelling units.

If the LTC does not accept staff recommendation to proceed no further, staff will bring a draft bylaw to the LTC for first reading in a future staff report.

### ***Affordable Housing Agreement:***

Staff have begun drafting an affordable housing agreement, but have not entered into a cost recovery agreement with the applicant for legal review of the agreement and covenant.

## Issues and Opportunities

### *Bylaw Compliance and Enforcement*

Bylaw Compliance and Enforcement action has been consistent and continuous over the past 25 years. The sole intent of this bylaw enforcement action has been to address the unlawful use of a structure on the property as a second dwelling. Combined with the legally dubious nature of zoning through covenant, the terms of the covenant make it clear that the use of the building as a dwelling has been unlawful for 25 years. Given this long history, making lawful the use as a dwelling at this point would not send an appropriate message to the community regarding the long-term effectiveness of Bylaw Compliance and Enforcement and might convince other land owners to continue unlawful uses in the face of bylaw action with little consequence.

### *Housing Strategy*

In the time since the LTC last considered this rezoning application, the LTC has embarked on the [Housing Challenges and Solutions Initiative](#). As the name implies, the project is intended to examine the challenges to providing housing on Salt Spring Islands and to further examine possible solutions to these challenges.

Staff are cognizant of the dire lack of housing options on Salt Spring Island, and the difficulty in recommending to proceed no further with an application that purports to offer a unit of affordable housing. Given the scope of policy work that planning staff could be undertaking, staff's opinion is that resources would be better allocated in support of pursuing broader policy objectives that are intended to provide more housing options. Continuing to allocate staff resources to a rezoning for one unit that is already four years into the process with little progress is not deemed an efficient allocation of staff time.

### *COVID-19 Health Emergency*

Not advancing a rezoning applicant to legalize existing unlawful housing during a global pandemic should not adversely affect the current occupants of the unlawful dwelling. In order to address issues related to bylaw enforcement while a provincial health order is declared, at the October 6, 2020 LTC meeting, the LTC adopted the following standing resolution:

**It was MOVED and SECONDED,**

that the Salt Spring Island Local Trust Committee adopt the following enforcement policy while there is a public health emergency declared for COVID-19: Enforcement activities will be deferred for all unlawful dwellings; there will be no evictions, except where there are concerns regarding health and safety, lack of septic services and possible contamination of wells and drinking water supplies and that the Salt Spring Island Local Trust Committee may change this policy at any time and may give direction to resume enforcement activities at any time.

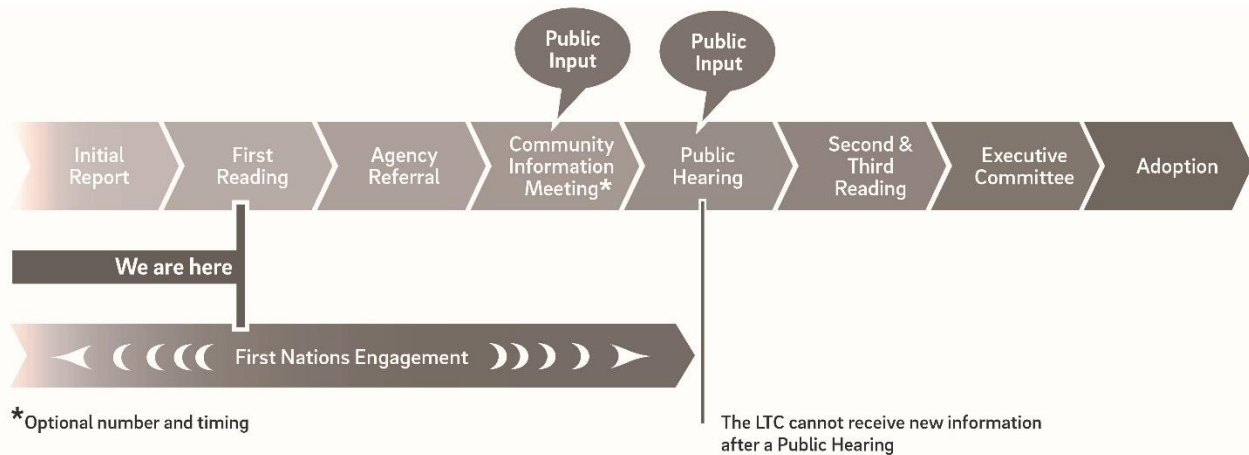
**CARRIED**

Therefore, enforcement action will only resume once it is reasonable to do so.

## Consultation

No referrals have been conducted to date, pending LTC consideration of a draft bylaw in a future staff report.

## Timeline



The rezoning application was initiated in 2017. Nearly four years later, staff have yet to receive the information required to properly assess the application. As such, the application has not proceeded to first reading.

Correspondence received on this application can be viewed at <http://www.islandstrust.bc.ca/islands/local-trust-areas/salt-spring/current-applications/current-application-documents/>

Correspondence may be sent to [ssiinfo@islandstrust.bc.ca](mailto:ssiinfo@islandstrust.bc.ca).

## Rationale for Recommendation

Staff's opinion is that while the need for additional housing is well established on Salt Spring Island, adding a unit in this manner after decades of unlawful use does not set a feasible precedent for solving the crisis. The lack of information, as requested by the LTC and recommended under OCP policy, necessary to process the application has stalled this application for nearly four years. Staff recommend that the LTC proceed no further with the application.

## ALTERNATIVES

The LTC may consider the following alternatives to the staff recommendation:

### 1. Request further information

The LTC may request further information prior to making a decision. Staff advise that the implications of this alternative are increased processing time and increased cost to the applicant. If selecting this alternative, the LTC should describe the specific information needed and the rationale for this request. Recommended wording for the resolution is as follows:

*That the Salt Spring Island Local Trust Committee request that the applicant submit to the Islands Trust [insert report requested], completed by [insert professional designation required], which [insert rationale].*

**2. Rescind previous request for information.**

The LTC may rescind the previous resolution SS-2019-285 requiring a pump test in the manner specified. Staff advise that the implications of this alternative are that the policies and objectives of the OCP for rezoning for affordable housing may not be fulfilled. If the resolution is rescinded, staff recommend replacing it with a request for information consistent with alternative resolution above. Recommended wording for the resolution is as follows:

*That the Salt Spring Island Local Trust Committee rescind resolution **SS-2019-285** and request that the applicant submit to the Islands Trust [insert report requested], completed by [insert professional designation required], which [insert rationale].*

**3. Receive for information**

The LTC may receive the report for information

**NEXT STEPS**

If the LTC accepts staff’s recommendation, the application will be closed and assessed for any applicable refund.

Submitted By:	Geordie Gordon, Planner 2	February 1, 2021
Concurrence:	Stefan Cermak, Regional Planning Manager	February 3, 2021

**ATTACHMENTS**

- 1. Site Context



## ATTACHMENT #1 – SITE CONTEXT

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### LOCATION

Legal Description	Lot 3, Section7, Range 1, North Salt Spring Island, Cowichan District, Plan 34166
PID	000-276-901
Civic Address	2188 North End Rd

### LAND USE

Current Land Use	1 dwelling unit and 2 accessory buildings (1 of which is being used illegally as a dwelling unit)
Surrounding Land Use	The surrounding lands are zoned Rural and are within the Rural Neighbourhoods OCP Designation. Surrounding properties range in size from about 0.2 to 3.9 ha.

### HISTORICAL ACTIVITY

File No.	Purpose
None	None

### POLICY/REGULATORY

Official Community Plan Designations	<i>Rural Neighbourhoods (RL)</i> : The objective of the RL land use designation is “to provide adequate land zoned for medium density residential use and other traditional and compatible rural land uses.” The subject property does not contain any Development Permit Areas (DPAs).
Land Use Bylaw	<i>Rural (R)</i> : The Rural zone permits a number of uses, which include one single-family dwelling. On lots with an area of 1.2 hectares or more, a seasonal cottage with a maximum floor area of 56 m <sup>2</sup> is permitted. The subject property is 2.48 acres (1.00 ha).
Covenants	<i>Covenant EF117631</i> : This covenant authorized the use of a second dwelling unit for the parents of the property owner at that time. Islands Trust signed release of Covenant EF117631 on December 15, 1995 and forwarded the release to the property owner for processing at the Land Title and Survey Authority. The release was never registered. <i>Judgement CA5621471 (Helmut Hoeller) 2016</i>
Bylaw Enforcement	<i>SS-BE-2005.39</i> : The application for rezoning was initiated on April 7, 2017 as a result of bylaw enforcement action pertaining to the unlawful use of a second dwelling unit. There is a long history of bylaw enforcement related to the unlawful second dwelling unit. Between June 2003 and December 2010, a court order was issued to the previous property owner stating that the accessory building could not be used as a dwelling. The file was closed in December 2010 when it appeared that the building had been decommissioned as a dwelling unit. In the intervening years, the current landowner has recommissioned the

	building as a dwelling unit and used it for rental housing. This use resulted in the complaint that generated the most recent enforcement activity. (SS-BE-2005.39)
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**SITE INFLUENCES**

Islands Trust Fund	Islands Trust mapping indicates no Islands Trust Fund properties within the vicinity of the subject property and no sensitive ecosystems are present.
Regional Conservation Strategy	Not applicable
Species at Risk	Islands Trust mapping does not indicate the presence of species at risk.
Sensitive Ecosystems	Islands Trust mapping does not indicate the presence of sensitive ecosystems.
Hazard Areas	Islands Trust mapping does not indicate the presence of hazardous areas.
Archaeological Sites	N/A. The proposal will not result in additional development.
Climate Change Adaptation and Mitigation	The application does not address climate change. It is not located in proximity to a riparian area or the shoreline. The property is about 2.5 km to the nearest transit stop (about a 31 minute walk or 8 minute cycle).
Shoreline Classification	Not Applicable
Shoreline Data in TAPIS	Not applicable