

Arguments Against House Size Reductions In South Pender Island Bylaw #122

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Restrictions on house size and setbacks for residences on South Pender Island are codified by the Island's Land Use Bylaw #114, as amended by Bylaw #122

The original provisions for house size in Land Use Bylaw #114 were reached by community consensus. The amendments brought in by Bylaw #122 have been criticized for their being brought in against the majority of South Pender Island resident's objections.

A review of the binder of submissions during the public consultations shows a clear majority of residents who responded by email and written submissions were either directly opposed to the reduction in house size amendments contained in Bylaw #122, or opposed to the process by which it was adopted. Verbal submissions in public hearings showed a similar majority of resident opposition. Some submissions verbal, or in writing, came from non-residents of South Pender Island.

The flawed process by which Bylaw #122 was adopted should not be allowed to stand. To leave the bylaw in place, without review, simply validates that flawed process and encourages similar behaviour by local trustees in the future.

Only by making it clear that bylaws adopted without community consensus, or against the wishes of a majority of property owners, are subject to reversal will prevent such actions by elected Trustees in the future.

It is suggested that a revisitation of the amendments brought by Bylaw #122 should follow these principles:

1. Submissions should be invited from South Pender Island property owners exclusively. Submissions from other jurisdictions, or interest groups, or rental tenants should be discounted, as it is the responsibility of the registered owners to make land use decisions on the property they own.
2. Multiple submissions from any individuals constitute a single point of view, and should be counted as a single submission. Flooding the records with a plurality of documents representing a single person's viewpoint should not increase the weighting of those submissions.
3. Petitions with multiple signatories or copies of a single submission submitted from different individuals should be weighted as to their number of supporters only if the signatories meet the criteria of principle #1 (above), i.e. that they are registered property owners on South Pender Island.
4. Unsupported or erroneous arguments may be viewed as a legitimate opinion of an individual proponent, but should not given the same weight as well supported or reasoned arguments. Hitchen's razor states "That which can be asserted without evidence, can be dismissed without evidence."
5. Bylaw 122's amendments should be unpacked and considered individually, with a view to which should be retained, modified or, in effect, repealed by a later bylaw amendment. It is suggested that the Trustees follow these guidelines:
 - a) Bill 122 amendments that receive little or no opposition may be left unchanged. *An example would be Bylaw #122's increased oceanfront setback provisions, on which there seems little disagreement.*
 - b) Bill 122 amendments that, after in-meeting discussions, a consensus is reached as to what an acceptable replacement should read, should be replaced by the new, consensus amendment in a subsequent bill. *This would be considered a win-win scenario.*
 - c) Bill 122 amendments that implacable opposition and unwavering support prevents coming to a consensus, then the decision should be left to the judgement of South Pender LTC, as arbiters, to amend that section in Bylaw 114 with the original language prior to Bill 122, or leave the Bylaw 122 amendment to that section unchanged. *This provides incentives for opposing points of view to come to a consensus, or live with the consequence of not doing so.*

Legal Considerations

Property owner's rights are not unfettered. In fact, in Canada it is recognized that there may be reasonable restrictions on private property rights related to considerations of public interest. These may include zoning regulations for the purpose of environmental protection, public health and safety, and the need for orderly development.

Some examples of restrictions that have been upheld as reasonable by Canadian courts include:

1. Zoning laws that regulate land use and development to ensure compatibility of land uses, protect the environment, and promote orderly urban development.
2. Building codes and regulations that establish standards for construction and renovation to ensure the safety and structural integrity of buildings.
3. Environmental regulations that impose restrictions on activities that may harm the environment, such as pollution controls and habitat preservation measures.
4. Expropriation rules that insure that when governments take private property for public use, that fair compensation is paid to the property owner.
5. Restrictions on alterations or demolition of buildings with historical or cultural significance to preserve the heritage character of a community.

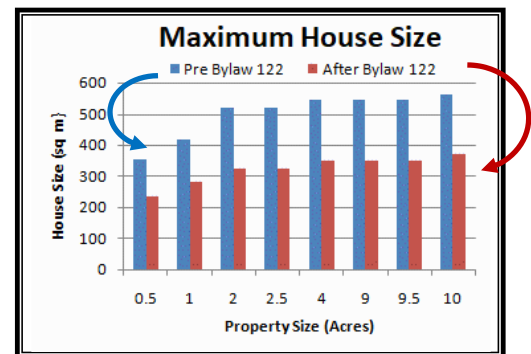
However, when making bylaws, the Trustees should consider that, when restrictions on private property rights are put under judicial review, the courts may consider factors such as the purpose of the restriction, its impact on the property owner, and **whether there are less intrusive means of achieving the desired objectives**.

A good test of whether a zoning regulation amendment meets the legal definition as "reasonable" is to ascertain whether or not such amendments reflect provisions that are in place in a significant number of other jurisdictions. Bylaws that are restrictive beyond the norm in other communities should be examined very carefully.

Arguments against Bill #122 amendments to house size.

Philosophical viewpoints of individuals with no financial stake in a property should not normally be permitted to use amendments to the zoning regulations as a weapon to prevent other land owners from making informed and reasonable decisions regarding the property they own.

Bill #122 reduced the maximum house sizes for rural residential dwellings by approximately 33% across the board, and applied these new values to Forestry, Agriculture and Natural Resource zones



To justify these reductions during the public consultation for Bill #122, a number of arguments were made, often by non residents of South Pender Island. Many cited a negative environmental impact of larger houses. These arguments continue in current discussions of Bill #122. The arguments seem to revolve around the concepts that larger houses negatively impact the environment in the following categories:

a. Consumption of Natural Resources.

There was no numerical data presented to support this. While there is some "face validity" to the concept that using more materials consumes more resources, none of the usual building materials are derived from resources that are considered "rare" or "in short supply".

b. Contributions to Climate Change.

The production of concrete emits carbon dioxide. Concrete is normally used in footings and foundations, less commonly in other parts of the building. The amount of concrete used is dependent on the house site and

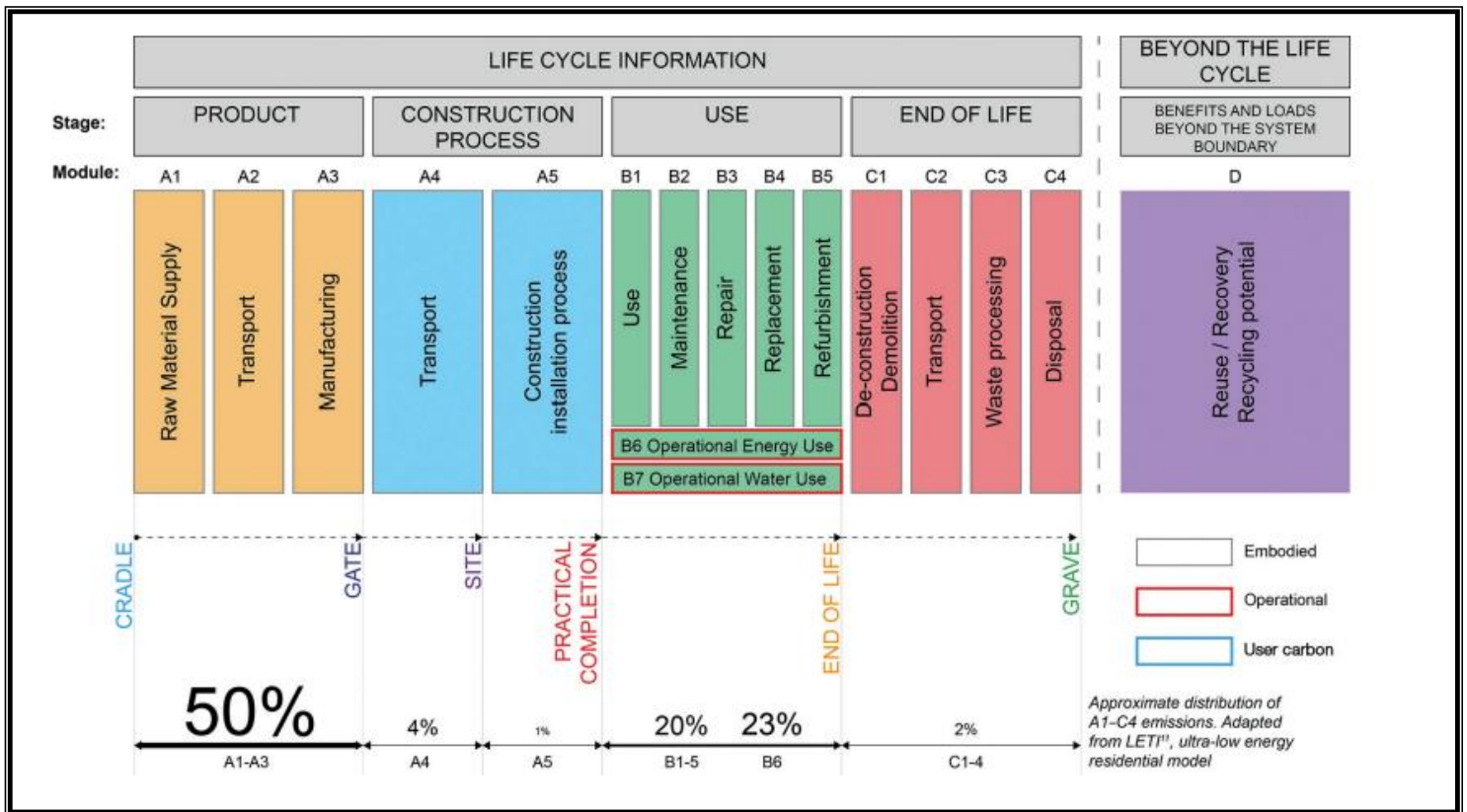
foundation footprint. Two story houses can have the same foundation footprint as a single story house. Concrete manufacturers have also pointed out that curing concrete absorbs carbon dioxide from the atmosphere, thus sequestering it.

Of course, neither position is supported by sufficient data to warrant a definitive answer. Carbon emissions must take into account the emissions associated with the energy used to produce the materials, the emissions generated by the construction process and the emissions produced by clearing and disposal of construction debris and waste.

These are all specific to the construction techniques, building design and site preparation, and there is no simple direct relationship to dwelling size. Moreover, the carbon content of the finished dwelling effectively sequesters carbon in the materials used in its construction for the lifetime of the dwelling.

"Embodied carbon" refers to the greenhouse gas (GHG) emissions, measured in carbon dioxide equivalents (CO₂e), associated with materials and construction processes throughout the whole lifecycle of a building.

Fully half the embodied carbon emissions occur in the manufacture of building products across the continent. It is naive to equate a 33% decrease in rural residential house size anywhere would move this figure significantly, as it includes materials used in road and transportation infrastructure, strip malls, office, residential towers and so on. Construction processes on the island would not appreciably differ with a decrease in average house size. Large houses may or may not see a significant increase in the "Use" category, depending on the efficiency of operation involved in hydroelectric power vs. fossil fuels, and heat pump infrastructure.



Source: Fonesca, V. "What is embodied carbon in the real estate sector and why does it matter?". GRESB Foundation March 2023. [Online] Available: https://www.gresb.com/nl-en/what-is-embodied-carbon-in-the-real-estate-sector-and-why-does-it-matter/#_

All the arguments are rendered moot by the fact that South Pender Island's forested nature easily absorbs all the carbon emissions involved in construction of any size dwelling on the island. Only if the heavy industry involved in the production of building materials was relocated to South Pender Island would the island become a net contributor of carbon dioxide and other greenhouse gases.

c. Increased water consumption / pressure on aquifers.

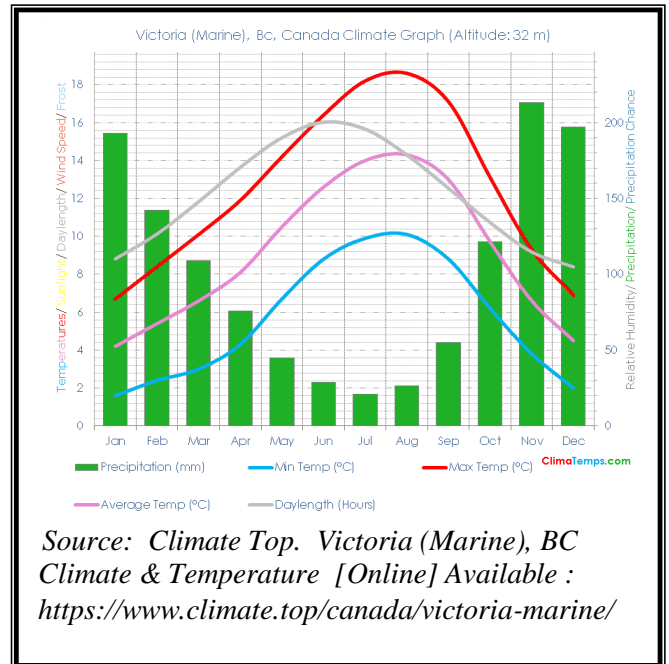
Physical size of a house is not directly correlated with water consumption. Water consumption studies show that the relationship is with the number of members of the household. While there is an increase in total consumption with larger households, (especially those that include teenagers!), the per capita consumption is reduced due to economies in dishwashing and laundry activities: (See table, below)

Larger houses have the potential to shelter more people and reduce the per person water consumption or, if they are are occupied below capacity, the fewer people will consume less total water.

Household Size and water consumption

Climatograph, Victoria, BC

Size of household	Total consumption (m ³ /day)	Per capita consumption (m ³ /day)	Variation in per capita consumption (m ³ /day)
1	0.1845	0.1845	—
2	0.2640	0.1320	-0.0525
3	0.3326	0.1109	-0.0211
4	0.3998	0.0999	-0.0110
≥5†	0.4831	0.0909	-0.0090



Source: Arbués, et al. "Household size and residential water demand: an empirical approach", *Australian Journal of Agricultural and Resource Economics*, January 2010. [Online] Available: <https://doi.org/10.1111/j.1467-8489.2009.00479.x>

Source: Climate Top. Victoria (Marine), BC Climate & Temperature [Online] Available : <https://www.climate.top/canada/victoria-marine/>

Watered lawns and gardens can have an effect on water consumption, but only during the dry summers. For most of the year, there is sufficient precipitation to keep lawns and gardens viable. The climatograph for Victoria, with a similar climate to the Southern Gulf Islands, shows six months of sufficient precipitation to recharge aquifers, 2 months of break-even conditions and 4 months of potential draw-down of the aquifers due to household use.

Anyway, lawn and garden activities bear little relationship to physical house size.

d. Species at Risk, Species Diversity.

Increasing **setbacks** from waterfront and riparian ecosystems may have the effect of benefiting some species and reducing environmental degradation. However, there is no provable relationship between house size and environmental diversity. No species normally considered indigenous to South Pender Island are on the BC CDC Red list of "at risk" species, including Coastal Douglas Fir, although some combinations of individually non-endangered species may be considered to form "at risk" ecosystems.

Conclusion

There was little justification to reduce maximum house sizes in Bill #122 by 33%. Superficial appeals to justify the reduction for "environmental responsibility" do not stand up to scrutiny, and justifications that refer to preserving the "rural character" of the island ignore the fact that our current "rural character" is the product of the house sizes and setbacks embodied in Bylaw #114 prior to Bylaw #122's amendments.

Accordingly, I urge the current Local Trustees to amend Bylaw #114 with a new bylaw that reverses the house size amendments of Bylaw #122, unless a general consensus as to more appropriate language is reached within workshops and public hearings of involving South Pender Island property owners.