



**HORNBY ISLAND  
LOCAL TRUST COMMITTEE  
AGENDA**

Revised – June 28, 2011

**AGENDA**  
**Special Business Meeting**  
**Tuesday, June 14, 2011 at 10:30 am**  
**at Marcus Isbister Old School Centre**  
**5901 Denman Road, Denman Island, BC**

	<i>Page No.</i>	<i>Approx. Time</i>
<b>1. CALL TO ORDER</b>		10:30 am
<b>2. APPROVAL OF AGENDA</b>		
<b>3. BYLAWS</b>		
3.1 Memorandum dated June 6, 2011 regarding Proposed Bylaw No. 141 - <i>attached</i>	1-7	
3.2 Email from Brodie dated June 13, 2011 regarding Local Trust Committee Meeting June 14, 2011		
3.3 (Hornby Island Resort Ltd.) Proposed Bylaw No. 141 cited as “Hornby Island Land Use Bylaw No. 86, 1993, Amendment No. 1, 2010.” – <i>for consideration of third reading and submission to Executive Committee</i>	8-10	
<b>4. NEXT BUSINESS MEETING</b>		
▪ Wednesday, June 29, 2011 at 12:15 pm at Joe King Clubhouse Central Road, Hornby Island, BC		
▪ Wednesday, August 3, 2011 at 12:15 pm in New Horizons, 1765 Sollans, Hornby Island, BC		
<b>5. ADJOURNMENT</b>		

\*Approximate time is provided for the convenience of the public only and is subject to change without notice.



# Memorandum

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Date June 6, 2011 File Number HO-RZ-2008.2

To Hornby Island Local Trust Committee

From Brodie Porter  
Island Planner  
Northern Team

Re Proposed Bylaw 141 - Off Site Parking

## Issue

Presently there is a section 215 covenant registered on the Hornby Island Resort property described as Lot B, Section 4-A, Hornby Island, Plan 24913 that provides that the lands will not be used for a dining facility for guests of the Resort or for the public generally if a lease on a nearby property registered in the Victoria Land Titles Office on October 1, 1992 under number EF128275 expires. The owner must deliver to the LTC on October 1 of every year a statement signed by the grantor of the Lease certifying that the Lease is in full force and effect and in good standing and that the Owner has not breached any provision of the Lease.

While the covenant provides the requirement for a lease to allow for the dining facility, Section 906 of the Local Government Act stipulates that if parking is to be provided elsewhere than on the property of the use that the bylaw should provide conditions that would allow for such parking. These conditions normally specify a specified maximum distance from the benefiting property to the parking site and require that the owner or occupier of the benefiting property obtain a private easement over the parking site for the exclusive use of the benefiting property. It is also beneficial if the Local Trust Committee (LTC) secures a statutory right of way over the parking site to protect the public interest in case the easement arrangement breaks down. An easement can be discharged without consent of the LTC so the added protection of the statutory right of way protects the public interest.

Clause 5.5.2 of the Hornby Island Land Use Bylaw 86 provides that parking can be provided on another lot within 100 metres of the use provided that a restrictive covenant in favour of the LTC restricting the use of the lot to motor vehicle parking and the two owners register a easement agreement satisfactory to the LTC securing the use of the parking area for the owner of the lot on which the use is located.

At present there is no easement in place for the benefit of the Hornby Island Resort property and the existing covenant does not restrict the use of the lot, although such use is regulated by zoning, but rather restricts the use of the Hornby Island Resort property subject to a lease existing that provides for parking.

## Staff Comment

1. The applicant for rezoning has advised that they intend to subdivide and purchase the parking area that is currently under lease and subject to the requirements of the existing covenant. The applicant, irrespective of whether he owns the parking area, must register an easement on the parking area in

N:\Common\LTC\Northern Hornby\Applications & Referrals\Rezoning\HO-RZ-2009.2 (Hornby Island Resorts Ltd)\Staff reports\Memo June 14 2011 propsoed amendments.doc

- accordance with section 5.5.2 of the land use bylaw that's secures the parking for the benefit of the Hornby Island Resort, if parking is required for purposes of the intended uses on the Resort property
2. In order to protect the public interest, it is also recommended that clause 5.5.2 of the land use bylaw be amended to provide that a statutory right of way be granted to the Hornby Island Local Trust Committee for purposes of provision of right of access for public parking. Wording can also be provided that allows zoning in lieu of a covenant to restrict the use of a lot to parking. Suggested amended wording as outlined in red is:

"5.5 All required motor vehicle parking spaces must be located:

5.5.1 on the same lot as the use for which they are provided; or

5.5.2 on another lot within 100 m (328 ft) of the use provided that:

5.5.2.1 a restrictive covenant in favour of the Hornby Island Trust Committee is registered against the other lot restricting the use of the lot or a portion of it to motor vehicle parking or zoning restricts the use of the lot or a portion of it to motor vehicle parking in compliance with the requirements of this bylaw with respect to the lot on which the use is located;

5.5.2.2 the owners of the two lots execute and register in the Land Title Office an easement agreement satisfactory to the Hornby Island Trust Committee securing the use of the parking spaces for the owner of the lot on which the use is located; and

5.5.2.3 the owner of the lot that provides the parking spaces grants a statutory right of way to the Hornby Island Local Trust Committee for right of access for public parking."

## Recommendation

1. That the Hornby Island Local Trust Committee amend Schedule A of proposed bylaw 141 cited as "Hornby Island Land Use Bylaw No. 86, 1993, Amendment No. 1, 2010" by inserting a new section 2 with all subsequent sections renumbered accordingly that states:

2. Section 5.0 PARKING REGULATIONS of the Hornby Island Land Use Bylaw No. 86, 1993 is amended by replacing Section 5.5 which reads:

"5.5 All required motor vehicle parking spaces must be located:

5.5.1 on the same lot as the use for which they are provided; or

5.5.2 on another lot within 100 m (328 ft) of the use, provided that a restrictive covenant in favour of the Hornby Island Trust Committee is registered against the other lot restricting the use of the lot or a portion of it to motor vehicle parking in compliance with the requirements of this bylaw with respect to the lot on which the use is located, and the owners of the two lots execute and register in the Land Title Office an easement agreement satisfactory to the Hornby Island Trust Committee securing the use of the parking spaces for the owner of the lot on which the use is located."

with the following:

"5.5 All required motor vehicle parking spaces must be located:

5.5.1 on the same lot as the use for which they are provided; or

5.5.2 on another lot within 100 m (328 ft) of the use provided that:

5.5.2.1 a restrictive covenant in favour of the Hornby Island Trust Committee is registered against the other lot restricting the use of the lot or a portion of it to motor vehicle parking or zoning restricts the use of the lot or a

portion of it to motor vehicle parking in compliance with the requirements of this bylaw with respect to the lot on which the use is located;

5.5.2.2 the owners of the two lots execute and register in the Land Title Office an easement agreement satisfactory to the Hornby Island Trust Committee securing the use of the parking spaces for the owner of the lot on which the use is located; and

5.5.2.3 the owner of the lot that provides the parking spaces grants a statutory right of way to the Hornby Island Local Trust Committee for right of access for public parking.”

2. That proposed bylaw 141 cited as “Hornby Island Land Use Bylaw No. 86, 1993, Amendment No. 1, 2010” be read a 3<sup>rd</sup> time as amended.
3. That proposed bylaw 141 cited as “Hornby Island Land Use Bylaw No. 86, 1993, Amendment No. 1, 2010” be referred to the Secretary for approval by the Executive Committee

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**HORNBY ISLAND LOCAL TRUST COMMITTEE**

**BYLAW NO. 141**

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**A BYLAW TO AMEND THE HORNBY ISLAND LAND USE  
BYLAW NO. 86, 1993**

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WHEREAS the Hornby Island Local Trust Committee is the Local Trust Committee having jurisdiction on and in respect of the Hornby Island Local Trust Area, pursuant to the Islands Trust Act;

AND WHEREAS Section 29 of the *Islands Trust Act* gives the Hornby Island Local Trust Committee the same power and authority of a Regional District under Part 26, except sections 932 to 937 and 939, of the *Local Government Act*;

AND WHEREAS the Hornby Island Local Trust Committee wishes to amend the Hornby Island Land Use Bylaw No. 86, 1993;

AND WHEREAS the Hornby Island Local Trust Committee has held a Public Hearing;

NOW THEREFORE the Hornby Island Local Trust Committee enacts in open meeting assembled as follows:

1. CITATION

This Bylaw may be cited for all purposes as "Hornby Island Land Use Bylaw No. 86, 1993, Amendment No. 1, 2010."

2. SCHEDULES

Hornby Island Land Use Bylaw No. 86, 1993 is amended as shown on Schedule A, attached to and forming part of this bylaw.

3. SEVERABILITY

If any provision of this Bylaw is for any reason held to be invalid by a decision of any Court of competent jurisdiction, the invalid provision must be severed from the Bylaw and the decision that such provision is invalid must not affect the validity of the remaining provisions of the Bylaw.

READ A FIRST TIME this	7th	day of	July	, 2010.
PUBLIC HEARING HELD this	24th	day of	August	, 2010.
READ A SECOND TIME this	11th	day of	May	, 2011.
READ A THIRD TIME this		day of		, 201X.
APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST this		day of		, 201X.
ADOPTED this		day of		, 201X.

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**SECRETARY**

\_\_\_\_\_  
**CHAIR**

**HORNBY ISLAND LOCAL TRUST COMMITTEE  
BYLAW NO. 141**

**SCHEDULE A**

1. Section 2 DEFINITIONS of the Hornby Island Land Use Bylaw No. 86, 1993 is amended by replacing the definition for “visitor accommodation unit” which currently reads:

“**visitor accommodation unit** means a lodge, resort, hotel, or motel room or any other room or set of rooms used to provide for a rental charge temporary overnight accommodation of not more than 4 consecutive weeks to transient guests;”

with the following text:

“**visitor accommodation unit** means commercial accommodation sited on a property zoned for commercial use that consists of the temporary rental of a room or set of rooms for not more than four (4) consecutive weeks to traveling public whose permanent domicile or home life is elsewhere;”

2. Section 5.0 PARKING REGULATIONS of the Hornby Island Land Use Bylaw No. 86, 1993 is amended by replacing Section 5.5 which reads:

“5.5 All required motor vehicle parking spaces must be located:

5.5.1 on the same lot as the use for which they are provided; or

5.5.2 on another lot within 100 m (328 ft) of the use, provided that a restrictive covenant in favour of the Hornby Island Trust Committee is registered against the other lot restricting the use of the lot or a portion of it to motor vehicle parking in compliance with the requirements of this bylaw with respect to the lot on which the use is located, and the owners of the two lots execute and register in the Land Title Office an easement agreement satisfactory to the Hornby Island Trust Committee securing the use of the parking spaces for the owner of the lot on which the use is located.”

with the following:

“5.5 All required motor vehicle parking spaces must be located:

5.5.1 on the same lot as the use for which they are provided; or

5.5.2 on another lot within 100 m (328 ft) of the use, provided that:

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5.5.2.2 the owners of the two lots execute and register in the Land Title Office an easement agreement satisfactory to the Hornby Island Trust Committee securing the use of the parking spaces for the owner of the lot on which the use is located; and

5.5.2.3 the owner of the lot that provides the parking spaces grants a statutory right of way to the Hornby Island Local Trust Committee for right of access for public parking.”

3. Section 9.16 COMPREHENSIVE COMMERCIAL (C3) ZONE (Hornby Island Resort) of the Hornby Island Land Use Bylaw No. 86, 1993 is amended by replacing with the following text:

“9.16 COMPREHENSIVE COMMERCIAL (C3) ZONE (Hornby Island Resort)

#### **PERMITTED USES**

- 9.16.1 The following uses are permitted, subject to the regulations set out in this Section and Part 3.0, and all other uses are prohibited:
- 9.16.1.1 Retail, including liquor sales;
  - 9.16.1.2 Pub;
  - 9.16.1.3 Restaurant;
  - 9.16.1.4 Office;
  - 9.16.1.5 Accessory uses including visitor accommodation units accessory to a pub use; residential use of visitor accommodation units, provided the visitor accommodation unit contains only one kitchen and is capable of being used for human habitation by one or more individuals living in common occupancy as a single domestic unit; and residential use.

#### **PERMITTED BUILDINGS, STRUCTURES AND DENSITY**

- 9.16.2 A maximum of fifteen visitor accommodation units are permitted on property described as Lot B, Section 4-A, Hornby Island, Nanaimo District, Plan 24913.
- 9.16.3 Despite section 3.2.3 accessory buildings and structures on property described as Lot B, Section 4-A, Hornby Island, Nanaimo District, Plan 24913 may include the occupancy of a maximum of one accessory residential dwelling unit attached to a building used for a pub or restaurant and the occupancy of accessory visitor accommodation units for human habitation.
- 9.16.4 Lot coverage must not exceed 40% of any lot.

#### **SITING AND SIZE**

- 9.16.5 The minimum setback for any building or structure, except for a fence or pump/utility house shall be:
- 9.16.5.1 6.0 metres from a front lot line;
  - 9.16.5.2 6.0 metres from a rear lot line;
  - 9.16.5.3 15.0 metres from and 1.5 m above the natural boundary of the sea;
  - 9.16.5.4 3.0 metres from an interior side lot line; and
  - 9.16.5.5 6.0 metres from an exterior side lot line.
- 9.16.6 On property described as Lot B, Section 4-A, Hornby Island, Nanaimo District, Plan 24913 the following shall apply:
- 9.16.6.1 Despite 9.16.5.3 the setback for a restaurant/pub shall be 0.0 metres from the natural boundary of the sea.
  - 9.16.6.2 The maximum floor area of each visitor accommodation unit and any accessory dwelling unit shall be 93 square metres (1000 square feet).
  - 9.16.6.3 The minimum seating capacity of a pub shall be fifty (50) indoor seats.
  - 9.16.6.4 The maximum floor area of all buildings including the area of any accessory dwelling unit and excluding the floor area of visitor accommodation units shall not exceed 465 square metres (5000 square feet).
- 9.16.7 Where fill is used to achieve the elevation required in Section 9.16.5.3, no portion of the fill slope may be less than 15 m from the natural boundary of the sea.

### **MINIMUM LOT SIZE**

9.16.8 No lot having an area less than 1 hectare may be created by subdivision.

### **PARKING AND SCREENING REGULATIONS**

9.16.9 Motor vehicle parking spaces must be provided for all permitted uses in accordance with Part 5.0 of this bylaw.

9.16.10 Outdoor storage and parking areas must be screened in accordance with Part 6.0 of this bylaw.”



**From:** Brodie Porter  
**Sent:** Monday, June 13, 2011 11:12 AM  
**To:** Hornby Island Local Trust Committee  
**Subject:** LTC Meeting Tomorrow - June 14

Hello

You should all have a copy of the agenda for tomorrow's special meeting of the LTC to consider proposed bylaw 141 for the Hornby Island Resort. A few administrative matters:

1. I will attend the meeting by telephone link. Can I ask that you call me when you are ready to start the meeting at 10:30 am? You can contact me by Enquiry BC (1-800-663-7867) and request connection to my telephone (250-405-5170). If any general concerns please let me know. If you have any concerns and feel that it would be worthwhile for me to come to the meeting, let me know and I will attend.
2. Edits to Bylaw 141 - apologies but some further minor edits should be addressed when bylaw 141 is further considered. The edits are to use the word "metres" for consistency in certain sections (5.5 as amended; 9.16.5.3 and 9.16.7) of the bylaw where the abbreviation "m" was used and expand a reference to "Section 2" to "Section 2.0" in section 1. The amendments are noted in red in the attachment. I will assist you with a resolution tomorrow to address these additional suggested amendments.
3. I am advised that some members of the public may attend tomorrow's meeting. There is no Town Hall session scheduled and staff have examined whether the LTC should allow any public comment to be expressed at tomorrow's meeting regarding bylaw 141. Staff recommendation is that the LTC not allow public comment for the following reasons:
  - a. If the LTC receives public comment tomorrow it is essentially receiving some comment to influence their thinking by certain individuals while not advising the public in general that the LTC is open to receiving such comment. The Legislation provides that if the LTC wished to receive public comment, then a public hearing should be held.
  - b. If for any reason the LTC feels that it does want to receive public comment, then it is recommended that it present the bylaw at a public hearing that would have to be scheduled for a later date.
  - c. The legislation does not preclude an individual Trustee from hearing unsolicited comment from individual members of the public prior to tomorrow's meeting, but it is suggested that individual Trustees not seek out such comment in any formal manner .

If you have any questions, please let me know.

Brodie Porter  
Island Planner  
Tel: 250-405-5170

# PROPOSED

## HORNBY ISLAND LOCAL TRUST COMMITTEE

### BYLAW NO. 141

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SECRETARY

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CHAIR

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