



**Denman Island
Local Trust Committee
Minutes of a Regular Meeting**

- Date of Meeting:** Tuesday, November 26, 2013
- Location:** Denman Seniors Hall
1111 Northwest Road, Denman Island, BC
- Members Present:** Peter Luckham, Chair
Laura Busheikin, Local Trustee
David Graham, Local Trustee
- Staff Present:** Linda Adams, Chief Administrative Officer
Rob Milne, Island Planner
Courtney Simpson, Regional Planning Manager
Katherine Vogt, Recorder
- Media and Others Present:** Approximately (60) members of the public-am
Approximately (40) members of the public-pm

1. CALL TO ORDER

Chair Luckham called the meeting to order at 10:34 am. He welcomed the public and introduced himself, the Local Trustees, Staff and Recorder. He acknowledged that the meeting is being held in traditional territory of Coast Salish First Nations.

2. APPROVAL OF AGENDA

The following additions to the agenda were presented for consideration:

- 10.10 Compilation of Correspondence November 12, 2013 to November 21, 2013 regarding Aquaculture Applications 1414123, 1414124, 1414125, 1414126, 1414127, and 1414128
- 10.11 Email letter from David Critchley dated November 21, 2013 regarding article published in the Comox Valley Record on November 18, 2013 regarding the aquaculture plans of Salish Sea Farms Ltd.
- 10.12 Late letter correspondence from Ralph McQuaig regarding vacation accommodation cooking facilities
- 13.2 Local Trust Committee Submission to BC Ferries Public Engagement Process

By general consent the agenda was approved, as amended.

3. CHAIR'S REPORT

Chair Luckham reported that as Vice Chair of the Trust Council, he had been preparing for the upcoming Islands Trust Council meeting to be held December 3 -5, 2013, especially dealing with the details of the Trust Council's Draft Budget for 2014-2015.

4. TRUSTEES' REPORT

Trustee Graham reported that he had been attending Trust Council committee meetings online in preparation for the upcoming Islands Trust Council meeting. He acknowledged the recent groundswell of concern on Denman Island regarding aquaculture issues.

Trustee Busheikin reported that she had been attending meetings of the Denman Island Resident's Association and Ferry Advisory Committee, as well as an annual meeting with the RCMP to discuss policing issues. She expressed concern over aquaculture conflicts and had been seeking information from regional directors of the Strathcona Regional District in order to learn how they had dealt with similar conflicts. She acknowledged that the Denman Island Ferry Advisory Committee was handling a great deal of public submissions and that there were many concerns over possible impending cuts to local ferry service.

5. MINUTES

5.1 Local Trust Committee Meeting Minutes dated October 22, 2013

By general consent the minutes were adopted, as presented.

5.2 Section 26 Resolutions Without Meeting Log dated November 14, 2013

The Resolutions Without Meeting Log was reviewed for information.

5.3 Denman Island Advisory Planning Commission Minutes - None

5.4 Denman Island Marine Advisory Planning Commission Minutes - None

6. BUSINESS ARISING FROM MINUTES

6.1 Follow-up Action List dated November 14, 2013

Planner Milne reviewed the Follow-up Action List dated November 14, 2013, provided updates and responded to questions that arose. He reported that the stream mapping of Denman and Hornby Islands had begun the day before and would likely be finished within one week.

Planner Milne requested direction from Trustees on establishing communication with K'omoks First Nation.

Trustee Graham expressed appreciation that planning staff were reengaging with K'omoks First Nation.

Trustee Busheikin supported the establishing of contact with K'omoks First Nation and intended to participate in any future meetings that might be scheduled.

Chair Luckham commented that he had attempted to communicate with K'omoks First Nation and had not received any response, but was prepared to try again.

There was brief discussion on Bylaw enforcement, with Chair Luckham noting that there was now an extended deferral of discussion related to Bylaw enforcement. It was suggested that the target date for the June 5, 2012 item "Discussion of Bylaw Enforcement" be changed to May 1, 2014.

DE-074-2013

It was MOVED and SECONDED,

that the Denman Island Local Trust Committee request staff to remove from the Follow Up Action Report, Item number 1 of September 12, 2011 and item number 1 of February 26, 2013 and to amend item number 1 of June 5, 2012 so as to change the target date to May 1, 2014.

CARRIED

Planner Milne reported that the letter to the Department of Fisheries and Oceans through which the Denman Island Local Trust Committee (DILTC) was requesting a moratorium on Geoduck cultivation until environmental impacts could be assessed was completed. He noted that the 'State of the Bayne Sound' conference to be hosted by Vancouver Island University had been indefinitely postponed.

6.2 Henry Bay Aquaculture Tenure 1411213

6.2.1 Memorandum dated November 8, 2013

Planning Manager Simpson explained that the K'omoks First Nation assertion to aboriginal rights to fishing activities in Henry Bay through their October 11, 2013 letter to Chief Administrative Officer, Linda Adams, was beyond the mandate of local government agencies and could only be dealt with by provincial and federal agencies.

Trustee Busheikin agreed that aboriginal rights issues were not a local government matter, but wondered how local concerns might be addressed.

Trustee Graham expressed confusion about the last paragraph of the letter from the K'omoks First Nation which asserts that they would hold the DILTC responsible for any acts of vandalism against Pentlatch Seafoods Ltd. fishing gear. He suggested that a process to engage the K'omoks First Nation as a neighbor would be beneficial.

7. APPLICATIONS AND PERMITS – None

PRESENTATION BY FOREST LANDS AND NATURAL RESOURCE OPERATIONS (FLNRO)

Aquaculture Practices and the FLNRO Land Tenuring Process and Procedures presented by Ken Albrecht, Technical Land Officer

Land Officer Albrecht gave an hour long power-point presentation to the DILTC and members of the public on the aquaculture tenure and licensing system in British Columbia, as well as an overview of current tenure sites and the various shellfish species grown on them. The presentation was interspersed with questions and discussion between Land Officer Albrecht and members of the public.

Land Officer Albrecht noted that previous to 2010, aquaculture tenures were managed by the Province, with the Federal Department of Fisheries and Oceans (DFO) acting more in an advisory capacity to prevent conflicts between fisheries. But the 2010 landmark British Columbia Supreme Court ruling in which Provincial regulation of the ocean fin-fish aquaculture industry was deemed unconstitutional and which transferred jurisdiction of management and protection of fisheries onto the DFO has left many gray areas in the shellfish tenure process, because shellfish aquaculture was included in the final court ruling.

Land Officer Albrecht noted that presently, the DFO issues aquaculture licenses while the Province issues aquaculture tenures from which it collects rent. An extensive application process involves referrals to the DFO, Transport Canada, Environment Canada, BC Parks, BC Ministry of Forests, BC Ministry of Environment and Municipal and local governments. Members of the public are informed about the application through advertising and staking. After all of these referral responses are scrutinized, the Land Officer writes a review and land use report and recommends approval or non-approval of the tenure. If the Province issues the tenure, the DFO is notified to issue the appropriate aquaculture license.

Land Officer Albrecht noted that approximately eleven aquaculture applications over the last decade around Baynes Sound have been halted due to local zoning issues. Applicants have been unwilling to apply for rezoning so decide to proceed no further with their application and it never reaches the public. In regard to the Pentlatch Seafoods Ltd. application, the land tenure boundary of the Pentlatch Seafoods Ltd. application was altered and relocated to make allowances for boater recreation and to preserve eelgrass, while possible conflicts with the herring fishery are being looked at.

In response to one public member questioning why rezoning was not an initial and integral part of the aquaculture application process, Land Officer Albrecht noted that the DFO and provincial agencies cannot be fettered by local governments.

Other issues raised by members of the public were:

- the problem of tenure creep where applicants go beyond their allotted tenure boundaries;

- high cadmium levels in oysters;
- how aboriginal treaty negotiations would affect the aquaculture application process;
- that the Salish Sea Farms applications are unprecedented and massive while the advertising and staking requirements to inform the public were insignificant and too small; and
- that aquaculture operations could affect local parks and salmon spawning streams.

Land Officer Albrecht responded to these public concerns by noting:

- that tenure creep could be handled by a letter from the DFO and requests for compliance or fining for non-compliance;
- that high cadmium levels in oysters was a DFO responsibility;
- that long-term aboriginal treaty negotiations could tie up the applications process for years but that he himself had nothing to do with that process, though he does work with interim measures agreements;
- that he was in agreement that the public advertising part of the aquaculture applications process was too minimal and could be improved in the future; and
- that local parks and stream sites would be preserved and protected from aquaculture operations.

By general consent the meeting was recessed at 12:17 pm and reconvened at 12:30 pm.

AQUACULTURE DISCUSSION UPDATE

Linda Adams, CAO, Islands Trust regarding Meeting with FLNRO Ministry regarding Aquaculture Tenures

Chair Luckham introduced Linda Adams, Chief Administrative Officer of the Islands Trust, to members of the public, noting the wealth of experience she had to share and her 23 years of service with the Islands Trust.

Chief Administrative Officer Adams provided an update on the Henry Bay/Pentlatch Seafoods Ltd. issue from the Islands Trust perspective.

She noted that whereas it used to be common practice that crown license applications were referred to local governments before being issued; that since 2002/2003, coincident with a change in government and a province-wide backlog of applications, this referral process was discontinued and crown licenses were granted without local government rezoning always being in place. Rather, the license contained a clause which expected the license holder to observe and comply with local ordinances after obtaining their license. Despite local government frustration, the Province has maintained this new process, which applies to all crown licenses, not just aquaculture tenures.

With regard to the K'omoks First Nation license, the Islands Trust had been expecting them to apply for rezoning and were surprised when rafts started to appear in Henry Bay. A letter was sent to K'omoks First Nation as per the regular bylaw enforcement

process and was responded to by them in terms of their assertion of Aboriginal rights to fishing activity in the territory of Henry Bay. Given that the First Nations of British Columbia have never actually ceded their rights to territory and that major treaty negotiations are ongoing between the Provincial and Federal Governments and various First Nations, the K'omoks First Nation claims to Henry Bay fishing rights is beyond the scope of local government to adjudicate.

Also, there is a huge initiative for First Nations communities to become economically sustainable which further complicates matters and adds to the idea that a legal challenge by the Islands Trust against the K'omoks First Nation may not be advisable, successful, or affordable. The Islands Trust is seeking further dialogue with the K'omoks First Nation and Aboriginal treaty negotiators.

There was some discussion on the lack of local government input into these treaty processes.

Planning Manager Simpson noted that provincial and federal treaty negotiators had expressed the need for local governments to be updated on the ongoing treaty process and that the Islands Trust would have an opportunity in the near future to ask questions and provide some input to the negotiators.

8. DELEGATIONS

8.2 The Association of Denman Island Marine Stewards regarding Marine issues

Edi Johnston spoke on behalf of the Association of Denman Island Marine Stewards (ADIMS) by reading out their written submission titled "ADIMS Delegation notes for November 26, 2013 LTC Meeting".

The submission called for more effort from the Province, the Department of Fisheries and Oceans, the Denman Island Local Trust Committee and the Islands Trust Council to preserve and protect the local marine environment. It questioned why there were no marine parks around the island and called for a complete ban on vehicular driving on local foreshores.

John Johnston spoke on behalf of the (ADIMS) by reading from prepared notes regarding Pentlatch Seafoods Ltd. tenure in Henry Bay. He described in terms of a positive historical precedent how K'omoks First Nation and the DILTC had negotiated for two years to allow for the 2004 rezoning of three areas in the Sandy Island and Seal Islets as W 3 (1) aquaculture which prohibited the use of structures or predator netting.

He suggested that based on these previous negotiations and past compliance, that the K'omoks First Nation was now in clear violation of their Provincial tenure terms and should have it withdrawn by the Province. Also, that it was imperative that:

- the DILTC take legal action to force, by injunction, a Cease and Desist Order against any further construction by Pentlatch Seafoods Ltd. in Henry bay;
- that the DILTC immediately inform the DFO about the tenure non-compliance; and
- that the Trust Council set as a priority for 2014 the establishment of

memorandums of understanding between local trust committees and First Nations communities.

9. TOWN HALL DISCUSSION

On the topic of housing, the following comments were noted:

- Louise Bell spoke regarding her short term concerns over the two local draft bylaws on secondary dwelling units and suites. She submitted a written copy titled "Town Hall Presentation to the Denman Island Local Trust Committee: Tuesday, November 26, 2013" which asserts that Draft Bylaw Nos. 206 and 208 are inconsistent with Objective 3 and Policy 11 in Part E.1 of the Official Community Plan (OCP) because these bylaws are not explicitly for special needs and affordable housing. The submission also points out various errors and inconsistencies within Draft Bylaw Nos. 206 and 208, and suggests certain specific revisions and clarifications.
- Harlene Holm spoke regarding her submission to the DILTC dated November 26, 2013 regarding the Staff report and proposed bylaw amendments dated November 7, 2013. It points out numerous problems with the new draft bylaws dealing with affordable housing and suggests that the DILTC set aside its review and conduct an open community forum to discuss these issues.

On the topic of marine issues the following comments were noted:

- Concern was expressed that funds for mapping forage fish beaches may be removed from the year two budget.
- It was suggested that there was a need for more local scientific research regarding the use of PVC pipes in the aquaculture industry, as there are concerns about the use of cadmium and lead stabilizers in the construction of this pipe, as well as the fine particle breakdown of such pipe.
- It was noted that the assertion by K'omoks First Nation that they have aboriginal rights to harvest shellfish in Henry bay is not supported by ethno historical evidence. Also, that the courts have rejected aboriginal rights to commercially harvest Geoduck because of their location below the tidal zone.

By general consent the meeting was recessed at 2:01pm and reconvened at 2:14pm.

10. CORRESPONDENCE

Chair Luckham spoke to members of the public about the importance of presenting their concerns to the DILTC in writing and that any correspondence, including emails, be specifically addressed to the DILTC to ensure placement on the agenda.

Planner Milne added that all submissions, including late submissions that are addressed to the DILTC get placed on the agenda.

10.1 Letter dated September 27, 2013 from Simon Palmer, President of Denman WORKS! Regarding Bylaw 186 and Visitor Accommodation Providers

Committee members received the above noted email for information.

- 10.2 Email dated October 25, 2013 from Simon Palmer, President of Denman WORKS! Regarding Visitor Accommodation, Bylaw 186 and Cooking Facilities**

Committee members received the above noted email for information.

- 10.3 Email dated October 25, 2013 from Helen and Peter Mason to Authorizing Agency Nanaimo regarding Project #102799 Salish Sea Farms**

Committee members received the above noted email for information.

- 10.4 Letter dated October 30, 2013 to Habitat Conservation Trust Foundation from Trustee Busheikin regarding Support for The Association of Denman Island Marine Stewards' Sustainable Shellfish Farming in Baynes Sound Project**

Committee members received the above noted letter for information.

- 10.5 Letter dated November 2, 2013 from The Association of Denman Island Marine Stewards regarding Pentlatch Seafoods Ltd. in Henry Bay**

Committee members received the above noted letter for information.

- 10.6 Letter from City of Salmon Arm dated October 28, 2013 to Agricultural Advisory Committees regarding Agricultural Land Commission (ALC) Budget**

Committee members received the above noted letter for information.

- 10.7 Email dated November 12, 2013 from John Allan regarding Aquaculture Licenses**

Committee members received the above noted email for information.

- 10.8 Email dated November 13, 2013 from Doug Hay to FLNRO regarding Geoduck Aquaculture vs Herring Spawning in Lambert Channel**

Committee members received the above noted email for information.

- 10.9 Email dated November 12, 2013 and Report from Simon Palmer, President, Denman Housing Association**

Committee members received the above noted email for information.

- 10.10 Compilation of Correspondence November 12, 2013 to November 21, 2013 Regarding Aquaculture Applications 1414123, 1414124, 1414125, 1414126, 1414127, and 1414128**

Committee members received the above noted compilation for information.

10.11 Email dated November 21, 2013 from David Critchley regarding K'omoks First Nations plans for Geoduck preparation in Spring of 2014

Committee members received the above noted email for information.

10.12 Email dated November 16, 2013 from Ralph S. McCuaig regarding visitor accommodations and cooking facilities.

Committee members received the above noted email for information.

11. REPORTS

11.1 Work Program Reports

11.1.1 Top Priorities Report and Projects Report dated November 14, 2013

Planner Milne summarized the report and provided updates.

DE-075-2013

It was MOVED and SECONDED,

that the Denman Island Local Trust Committee add Review of Visitor Accommodations Regulations with a focus on allowing the provision of cooking facilities for guests to the projects list.

CARRIED

11.2 Applications Log

11.2.1 Report dated November 14, 2013

The Applications Log was received for information.

11.3 Trustee and Local Expenses

11.3.1 Expenses posted to October 31, 2013

The expenses posted to September 30, 2013 were received for information.

11.4 Policies and Standing Resolutions

11.4.1 Report

The Policies and Standing Resolutions Report was received for information.

12. LOCAL TRUST COMMITTEE PROJECTS

12.1 Housing Regulation Amendments for Land Use Bylaw

12.1.1 Staff Report dated November 7, 2013 regarding Draft Bylaws for the Implementation of Secondary Suites and Secondary Dwelling Units

Planner Milne summarized the report which contained two newly crafted bylaws intended to provide for the implementation of secondary suites and secondary dwelling units on lands designated as Rural or Sustainable Resource by the Official Community Plan, through the use of Temporary Use Permits. He noted that the language and fee structure for Temporary Use permits was in need of revision and any changes would need approval from the Executive Committee.

He suggested that once these bylaws were amended and revised, that they could be forwarded to the Advisory Planning Committee and other stakeholder agencies after the February local Trust meeting, and then be taken through a public hearing type process on March 31, 2013 or April 1, 2013.

Trustee Graham appreciated the focus and clarity of the report and preferred to send it directly to the Advisory Planning Committee (APC) for perusal since they would have a broader community perspective than his own. He expressed the need to step back a bit from the report in order to gain greater objectivity on it.

Trustee Busheikin expressed satisfaction with the general direction of the report but was concerned that any revisions that needed to be made should be done before being handed to the APC. She offered a number of specific revisions to various sections of the report and the proposed bylaws, noting that their clarity and consistency was important since members of the public would go to the bylaws to find out what they could and could not do.

There was some general discussion on the use and utility of Temporary Use Permits (TUPs) and whether they might be used in such a way so as not to create more affordable housing options in the community, which was their intent. There was also some concern that they might be prejudicially issued or not issued. It was noted that a TUP could be turned down if it did not meet community needs but that trustees could not dictate landlord behavior towards tenants or the amount of rent that might be charged for a suite or dwelling. TUPs were ambiguous, but they did allow for flexibility and individual permits could be withdrawn if they created too many problems.

DE-076-2013

It was MOVED and SECONDED,

that the Denman Island Local Trust Committee request staff to bring a revised Denman Housing Needs Consultation Report and Draft Bylaws reflecting changes proposed and discussed at the November 26, 2013 meeting.

CARRIED

13. NEW BUSINESS

13.1 Advisory Planning Commission – Ad for Expressions of Interest

Planner Milne advised that three Advisory Planning Commission terms will expire in February, 2014.

13.2 Local Trust Committee Submission to BC Ferries Public Engagement Process

There was discussion regarding a proposed submission to BC Ferries Public Engagement Process, that Trustees Graham and Busheiken will work together and finalize the submission.

14. BYLAWS

14.1 Draft Bylaw No. 207 (Aquaculture Practices)

14.1.1. Staff Summary report dated November 7, 2013

Planner Milne presented his report on the proposed Draft Bylaw No. 207 which would ban beach modification, ban driving on the foreshore, and remove predator netting from the beach. He noted that staff had sent out 25 referrals regarding the proposed bylaw and had received nine responses to date. They had not yet received a response from the Tenuring Branch of the Forests Lands and Natural Resource Operations (FLNRO). Of all responses received to date, only the BC Shellfish Growers Association gave non-approval and they had not been sent a referral by Islands Trust.

Trustee Graham expressed concern that there had been no response from the Department of Fisheries and Oceans (DFO) Management Agency. He suggested that the Province was indifferent to the management practices on the tenures they issued, but that the DFO should be more responsive, yet they responded that their interests were unaffected by the draft bylaw.

It was noted that the DFO would only be interested in issues regarding extreme harmful alteration and destruction of habitat that had already occurred.

Trustee Busheikin noted that a previous legal review had determined that the DILTC had no legal authority to ban aquaculture-oriented beach activities, but

that the DILTC decided to move ahead anyway because there were no other options.

There was some discussion that the bans proposed in Draft Bylaw No. 207 were beyond the scope of the DILTC and that the committee could waste time and resources by attempting to do things outside of their jurisdiction, as well as unrealistically raise the expectations of the community.

There was some discussion about whether beach netting could be considered a "structure".

Trustee Graham expressed that of the three recommendations given by planning staff in regard to going forward on this issue that he preferred option number two, which would defer further consideration of Draft Bylaw 207 until referral comments had been received from FLNRO Tenures Branch. He also suggested going back to the Aquaculture Management Branch of the DFO to seek a more detailed response from them regarding their support for predator netting.

Chair Luckham commented that Draft Bylaw No. 207 was spearheaded by the appalling management practices of industrialized aquaculture operations and that ideally it would not be necessary if other authorities would enforce best management practices on the industry, but that it was a gambit that had unfortunately failed. He preferred option number one, which was to choose not to proceed at this time due to questions related to legislative authority.

DE-077-2013

It was MOVED and SECONDED,

that the Denman Island Local Trust Committee proceed no further with Draft Bylaw No. 207 due to questions regarding legislative authority.

CARRIED

15. ISLANDS TRUST WEBSITE

15.1 Denman Page - None

16. NEXT BUSINESS MEETING DATE

The next meeting of the Denman Island Local Trust Committee will take place on Tuesday, January, 21, 2014 at 10:30 am at the Denman Seniors Centre, 1111 Northwest Road, Denman Island, BC.

17. TOWN HALL DISCUSSION - None

18. ADJOURNMENT

By general consent the meeting was adjourned at 3:32 pm.

Peter Luckham, Chair

CERTIFIED CORRECT:

Katherine Vogt, Recorder