

- Scope: would a bylaw apply to your entire local trust area or selected areas?
- If your local trust area and the region implemented a regulatory authority for trees, how would you measure success?
- What would be acceptable exemptions to a tree cutting bylaw?
- Given that a new regulatory process would need to be implemented are you in favor of additional staff resources including forestry expertise be added to the Islands Trust?
- What would be some benefits of such a regulatory power in connection with wildfire risk, resiliency, and healthy forests?
- How could this authority assist with culturally modified tree protection in your local trust area?

BACKGROUND:

By way of information the following provides a brief review of the key elements of a potential Section 8 Community Charter authority. Much of this has been provided to trustees under an earlier report.

Limits on Section 8 of the Community Charter Bylaws

A bylaw enacted under Section 8 of the Community Charter cannot prohibit the uses permitted in the zoning bylaw. If the tree protection bylaw does prohibit the use, the landowner would be entitled to compensation. The Section 8 bylaw also has no effect on Crown lands, woodlots, and Private Managed Forest Lands.

Municipalities

In municipalities, trees located on private lots, road rights-of-way and in municipal parks have an aesthetic quality, as well contributing to the character of the place. Trees also act to reduce heat and retain moisture in the built environment. Municipalities use the authority under Section 8 of the Community Charter to protect these trees. There are a variety of approaches to doing this, from outright prohibiting cutting of trees over a certain size without a permit, to prohibiting cutting, topping or pruning of certain species of trees. Because Section 8 bylaws are not limited in the approach or reason for the bylaw, the local government may consider a wide variety of approaches to the tree protection.

Most municipalities are made up of private land and land owned by the municipality or regional district, and a tree protection bylaw can be applied to all of these ownerships. If there is Crown land inside a municipality (woodlot, BC park, Federal park for examples), the tree protection bylaw would have no effect on those lands.

Local Trust Committees

If the Ministry amends legislation to give local trust committees the same power as municipalities to regulate trees under Section 8 of the Community Charter, then:

1. Local trust committees would have ability to draft bylaws to protect trees for any reason in their local trust areas, provided that the restrictions did not prohibit uses as permitted in the zoning bylaw; and
2. Local trust committees could draft bylaw to prohibit tree cutting, regulate tree cutting, and/or require a permit for the cutting or modifications of trees, but would have no effect on woodlots, land in under the *Private Managed Forest Land (PMFL) Act*, or land covered under the *Forest Act* (e.g. Crown land, community woodlots, road rights-of-way owned by the Ministry of Transportation and Infrastructure).

The tree protection bylaw under Section 8 could not prohibit the uses permitted on the land. For example, for land zoned residential, tree removal would likely be required and would need to be permitted under the bylaw to allow the land to be used as per the zoning. Land in the Agricultural Land Reserve (ALR) may need to be cleared to permit the agricultural use of the

property; this use is protected in the *Agricultural Land Commission Act* and local bylaws cannot prohibit the agricultural uses.

Enacting a Tree Protection Bylaw

To enact a tree protection bylaw under Section 8 of the Community Charter, if the power was granted to local trust committees, the local trust committee would go through the bylaw process to adopt a tree protection bylaw for all or part of the islands, recognizing that such a bylaw cannot prevent the property being used for the zoned purpose, cannot prevent tree cutting on PMFL land, cannot prevent tree cutting on a woodlot, cannot prevent tree cutting on Crown land (including the road rights-of-way) and cannot prevent clearing for agricultural purposes in the ALR. The bylaw could be specific in types of trees and whether a permit would be required or not. Exemptions could be included for things like firewood gathering, pruning trees, trees under a certain size or any other.

Administration and Enforcement in the Islands Trust Areas

Such a bylaw could then apply to all other land, or on targeted locations. On larger lots, enforcement of the bylaw could be problematic; a clear cut would be obvious and likely warrant enforcement action, but removal of a few trees selectively may have little impact and not worth the resources to enforce the bylaw.

Tree protection bylaws would require staff support for administration and enforcement. Likely a tree protection bylaw would have a permit system included, where a permit would be issued to allow cutting or tree modification in certain instances. Therefore, there would likely be the need to allocate staff resources to a tree protection bylaw program.

Development permit vs tree cutting bylaw

Development permits can protect trees, but only for the reasons provided in the justification for the particular development permit (protection of natural environment, protection of development from hazardous conditions, landscaping for multi-family, commercial, industrial and intensive residential uses, reduction of green-house gas emissions). Some of the protections available under Section 8 for trees could be done by development permit areas. However, Section 8 tree protection bylaws are less restricted on the reasons for the protection, and could be applied more widely. For example, Section 8 of the Community Charter tree protection bylaw could be purely for aesthetic or visual landscape reasons.

A Section 8 of the Community Charter tree protection bylaw wouldn't do anything much different to using a development permit (other than not as limited in reason for the protection), and is subject to the same restrictions on use, PMFL, woodlots and Crown lands. A tree cutting bylaw could expand on the reason for tree protection, whereas a development permit would need to be for one of the specified objectives. So a tree cutting bylaw could deal with aesthetics, whereas a as DPA (other than form and character for commercial, industrial and multi-family development) could not.

Given this, the tree protection bylaw would likely be more limited to situations where protection of trees is for a reason that cannot be covered by the development permit area designations.

ATTACHMENT(S):

1. **Appendix 1. Benefits, Costs and Risks to the Islands Trust**
2. **Development of a tree cutting authority for implementation by Islands Trust – session outline**

FOLLOW-UP:

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APPENDIX 1: Benefits, Costs and Risks to the Islands Trust

Excerpt from “*Tree Protection Bylaw Authority: Discussion Paper*”, attached to report to Executive Committee “*Potential legislative and procedure change by the Islands Trust in relation to forest protection*” dated November 18, 2020.

1. Benefit to the Islands Trust

The question arises as to what greater benefit could be derived from granting the Islands Trust the same authority as a Municipality under Section 8 (3) (c). While local trust committees may currently adopt tree cutting bylaws in relation to hazardous land or for screening, they do not have the same broad discretion as municipalities. In addition to the ability to regulate tree removal in hazardous areas as per s. 500 of the *LGA*, to regulate screening or landscaping for the purposes noted in s. 527 of the *LGA*, and to designate DPAs which may result in tree protection, the broader power to protect, prohibit or regulate the removal of trees could provide the following benefits:

- Greater control during site development (e.g. establishment of requirements for a minimum treed area or specification of types of trees to be planted, or requirement for disturbed areas to be replanted);
- The ability to regulate the volume or rate of tree removal (e.g. general permission to landowners to remove two trees per year);
- The ability to protect specific varieties of trees, wildlife trees, heritage or culturally-significant landmark trees;
- The ability to require compensation for trees that are removed either through tree replacement or through financial compensation; and
- Greater control over the visual appearance or rural aesthetic qualities of islands, which is intrinsically related to both islanders’ quality of life and local economics (i.e. tourism, the arts, recreation, etc.).

2. Costs of change, including general resource considerations.

Provided local trust committees would wish to adopt tree protection bylaws, this would require a community consultation process. Such bylaws should reflect community goals and objectives for tree protection and, more broadly, conservation. Community consultation would logically be led by Islands Trust planners or consultants.

Once adopted, tree protection bylaws would need to be administered by Islands Trust staff. This would ideally include a certified arborist to review tree permits and to conduct any necessary inspections prior to or following tree removal or planting. On the applicants’ side, it is anticipated that professionals such as arborists or foresters would need to be retained in order to advise on tree health assessment, and removal, retention and replanting options and plans.

Furthermore, tree protection bylaws would require a combination of education and enforcement in order to be effective.

3. Risks or challenges of change.

A significant challenge would be obtaining public buy-in regarding the adoption of tree protection bylaws. Many islanders believe that they are already good stewards of their land and do not wish to have further regulations imposed upon them. In fact, many islanders may have moved to the islands where they believe there are less onerous requirements or costs related to land development.

Particular challenges would need to be overcome dealing with waterfront property owners with entrenched property rights as they relate to their ability to maintain views as justified by their property values and taxes.

In un-serviced areas such as Lasqueti Island, there is a particular challenge related to the use of trees as a source of heat energy. It is expected that many islanders would be opposed to a tree protection bylaw that would limit their ability to cut trees for firewood.

There is a risk that if tree protection bylaws are proposed, this may have the unintended consequence of land-clearing where property owners attempt to beat the clock by cutting their trees before they need to apply and pay for a permit.

There is also a challenge with enforcement of tree protection bylaws. It should be expected that bylaw violation complaints would rise in response to illegal cutting or clearing. In some cases, it may be challenging for Islands Trust staff to follow-up on bylaw complaints due to the remoteness of some islands or because of perceived personal safety risks.