



REGIONAL DISTRICT OF MOUNT WADDINGTON
REGIONAL PLANNING COMMITTEE MEETING MINUTES

June 20, 2017

RDMW Office – 2044 McNeill Road, Port McNeill, BC

PRESENT: Chair Heidi Soltau and Directors Shirley Ackland, Jan Allen, Michael Berry, Hank Bood, Pat Corbett-Labatt, Andrew Hory, Phil Wainwright

STAFF: Greg Fletcher - Administrator; Jeff Long - Manager of Planning & Development Services, Nadine Weldon - Recording Secretary

REGRETS: Director Dave Rushton

PUBLIC: Derek LeBoeuf, RPBio - Pacificus Biological Services Ltd.; Warren Goossen, Project Manager - Buttle Services Ltd.

A. CALL TO ORDER

Chair Soltau called the meeting to order at 12:10pm

B. APPROVAL OF AGENDA

Moved/Seconded/Carried
THAT the agenda be approved as presented.

C. ADOPTION OF MINUTES

1. Minutes of the Regional Planning Committee meeting held May 16, 2017.

Moved/Seconded/Carried
That the minutes of the Regional Planning Committee meeting held on May 16, 2017 be adopted.

D. DELEGATIONS – None

E. CORRESPONDENCE – None

F. REPORTS

1. Development Application - Zoning Bylaw Amendment, Pacificus Biological Services Ltd. c/o Mike & Linda Buttle, West Cracroft Island / Port Harvey, Electoral Area 'A' (June 13, 2017)

Chair Soltau called upon Jeff Long, Manager of Planning & Development Services, to present his staff report and review information included on the agenda, all in relation to the Development Application by Pacificus Biological Services Ltd., agent on behalf of the property owners, Mike and Linda Buttle. Mr. Long explained that this application relates to a request to amend RDMW Zoning Bylaw No. 21, 1972 to rezone a portion of the owners' property on West Cracroft Island described as District Lot 498, Range 1, Coast District, as well as adjacent marine area in Port Harvey, to a zoning category that will permit marine industrial uses. He reminded the Regional Planning Committee (RC) that this application was first discussed at the RPC meeting on February 16, 2016 and that the minutes in relation thereto are included in the agenda package for today's meeting. At the February 16, 2016 meeting, several issues were raised with respect to the proposal. It was left that the applicant would review the issues and provide information as to how these would be addressed. The RPC adopted a resolution recommending the Board of Directors give first reading to RDMW Zoning

RPC-2017-15
JUNE 20, 2017
RPC AGENDA
APPROVED

RPC-2017-16
MAY 16, 2017
RPC MINUTES
ADOPTED

Bylaw No. 21, Amendment Bylaw No. 895, 2016 (Bylaw No. 895) and that staff be directed to refer Bylaw No. 895 to external agencies for review and comment. Bylaw No. 895 was prepared in response to the application, and if adopted by the Board, would implement the applicant's request. As a result, the Board gave first reading to Bylaw No. 895 and directed staff to conduct the referral. Mr. Long advised of the status of responses as a result of the referral as follows:

Da'naxda'xw-Awaetlala First Nation: No response

Dzawad'enuxm First Nation: No response

Kwikwasut'inuxw Haxwa'mis First Nation: No response

Mamalilikulla-qwe'qwa'sot'em Band: February 18, letter by Chief Harold Sewid – *The Mamalilikulla- qwe'qwa'sot'em Band would like to offer our full support to Mike Buttle and his proposed barge repair and upgrade / maintenance facility which will be located on Cracroft Island.*

'Namgis First Nation: No response

Nanwakolas Council: After several attempts to obtain input, particularly in light of the fact that the Nanwakolas Council was a major partner in preparation of the North Vancouver Island Marine Plan, no formal comments were provided and comments were deferred to the local First nation having traditional territory, that being the Tlowitsis Nation.

Tlowitsis Nation: September 26, 2016 letter by Councillor Thomas Smith – *This letter is to provide support for Mr. Mike Buttle's development in Port Harvey. We have reviewed all his plans. He has provided us with all the information required by Government regulations for the development. Port Harvey is in the middle of the Tlowitsis traditional territory and we have a reserve in area. We have a long working relationship with Mr. Buttle and have ongoing dialogue about economic opportunities for our Nation along with job opportunities for our members. We will work closely with Mr. Buttle to ensure that all safer guards and environmental practices are adhered to.*

Wei Wai Kum (Campbell River Indian Band): October 13, 2016 letter by Chief Bob Pollard - *We currently have no concerns with this application proceeding.*

Island Health: April 8, 2016 Email from Eric Bergsma - *As it relates specifically to the waste disposal system, industrial camp, and water supply system, I do not have any concerns with this zoning amendment provided that a waste discharge authorization is obtained, the requirements for operating an industrial camp are met, and a permit to operate a water supply system is obtained.*

Ministry of Environment: April 5, 2016 email from Brett Yerex - *Please be advised that the Environmental Protection Division of MOE will no longer receive or comment on referrals so we are unable to respond specifically to this request.*

Referrals were not submitted to federal agencies due to the fact that the applicant or the Province had consulted with Environment Canada, Fisheries and Oceans Canada and Transport Canada and generally received favourable responses from these agencies as follows:

Environment Canada: January 29, 2016 letter by A. Leung: *Environment and Climate Change Canada does not object to the proposal as written. In that context, we offer the following advices...Mr. Leung continues by including information and requirements that may apply to the proposal.*

Fisheries and Oceans Canada: May 20, 2015 letter – *To avoid the potential of serious harm to fish and their habitat, we are recommending that you adhere to the mitigation measures included in your plans. Provided that these mitigation measures are implemented, the (Fisheries Protection) Program is of the view that your proposal will not result in serious harm to fish. No formal approval is required from the Program under the Fisheries Act in order to proceed with your proposal.*

Please note that the Program has not considered the potential impact to fish and fish habitat resulting from facility operation as part of this review because information pertaining to operations was not provided in your Request for Review. It is your responsibility to employ appropriate mitigation measures during operations to ensure serious harm to fish does not result in impact to sensitive fish habitats (i.e. eelgrass beds). If this is not possible and serious harm is likely, you should consider submitting a separate application to the Program.

Transport Canada (Navigation Protection Program): May 5, 2015 letter - *Our assessment of your work has determined that it is not likely to substantially interfere with navigation. Therefore your work is permitted under section 9(1) Construction, of the Navigation Protection Act and you may proceed per the attached plans (5) in accordance with the following terms and conditions.*

Mr. Long provided an update on Crown Land Tenure Application related to the marine portion of the proposed development. He advised the Province issued an offer of tenure in February, 2017 which included several conditions to be satisfied including payment of \$18,310.71 in fees plus a \$50,000 security deposit to guarantee the performance of obligations associated with issuance of a licence tenure. Since then the Province issued a Crown land tenure (Licence of Occupation) to Mike Buttle Services Ltd. with respect to the 5.583 hectare marine component of the project. The term of this tenure is for a five-year period and the purpose of the tenure is to allow docks, boat launch, barge loading ramp, marine ways, and repair and storage of marine structures ancillary to logging, shipping, aquaculture and float camps / homes. The Licence is subject to compliance with the Approved Management Plan which is comprised of a report titled, "General Industrial Management Plan" prepared by the applicant and dated February 2015, which was submitted with the original Crown Land Tenure Application.

Mr. Long advised that since its last appearance before the RPC fourteen months ago, the applicant (Mr. LeBoeuf – Pacificus Biological Services Ltd.) has prepared and provided an addendum report titled, "Information Package For The Zoning Amendment Application For A Proposed Barge Maintenance Facility" dated April 30, 2017 which is included in the RPC meeting agenda package. This report was prepared in part, to address issues / concerns raised by the RPC at its meeting on February 16, 2016, including suggestions for what could be included in a development agreement between the property owners and the RDMW. Mr. Long noted that a development agreement can be used as a tool to help ensure that detailed development and operational matters are adhered to once a rezoning has been granted, and a draft development agreement has been prepared and is also included agenda package. Mr. Long provided the following summary of the issues / concerns that were raised and the responses by the applicant, and whether it is an item that has been specifically addressed in the draft development agreement included in the RPC's agenda package:

1) Boater Navigation, Anchorage, and Safety:

The applicant acknowledges that with development of the marine industrial business, there will be an increase in marine traffic in Port Harvey however, it contends that there will not be a significant increase over the present traffic levels associated with the proponent's current activities. Interference with navigation is expected to

be minimal and compliance with Transport Canada's requirements will be adhered to. The applicant advises that available anchorage will not be significantly reduced based on an analysis that it has conducted.

2) Port Harvey As Only Safe Anchorage:

The applicant contends that Port Harvey is not the only safe haven for boaters in relation to the Johnstone Strait which can be a challenge to boaters, and cites different examples associated with safe moorage opportunities in relation to Johnstone Strait.

3) Storage of Additional Barges, Etc.:

While the combination of the proposed upland and marine based areas would be available for storage, there is a concern that there may be overflow. The applicant contends that a significant increase in industrial traffic from the proponent's current activities is not anticipated and the facility is proposed to only increase barge traffic by one barge a week. This having been said, it has been noted that as part of past operations, barges and other structures have been temporarily stored in marine areas throughout Port Harvey that are not tenured for such purpose. The applicant contends that the newly tenured area should be sufficient to accommodate vessel storage needs.

4) Noise:

Concern about noise that would emanate from the operation was cited. The proponent proposes to mitigate and manage these effects by committing to reasonable hours of operation, but notes that operations cannot be completely limited as there are times that barges need to be moved from the dock moorage to the marine rails to be lifted or lowered in conjunction with suitable tidal conditions that may happen outside of preferred hours of operation. The applicant advises that this activity involves one or two tugs and the running of a winch to pull the barge up the rails. This matter has been addressed in the development agreement by imposing hours of operation for different periods of the year. An exception has been provided for the removal from, or placement in the ocean of barges, float camps, float homes and marine structures in the context of tidal conditions.

5) Appearance:

The storage of materials on the subject property was a significant concern to the RPC due to its visual impact on the area residents and recreational boaters who visit Port Harvey. The applicant acknowledges that the majority of people would consider it unappealing due to the disorganized storage of materials in plain sight of the ocean. The applicant advises that a clean-up of the subject property is being undertaken and materials will be removed for recycling or disposal and that the plan is to have the majority of the site cleaned up by September, 2017. The applicant advises that the following will be undertaken to address the issue of visual impacts:

- a) The storage of salvaged material and new material will be located behind the facility and buildings and in a manner that it will not be visible from the water;
- b) Visual screens such as fences or planted trees will be included in the design and layout to further hide unappealing areas such as salvage piles; and,
- c) Moorage of vessels will be neat and orderly.

The storage of materials is a matter that has been addressed in the draft development agreement.

Director Allen asked about the present state of the property given the untidiness that was witnessed in the photos that were presented the last time this application was discussed at RPC. Mr. LeBoeuf took the opportunity to show a display of before and after photos that indicate that the appearance of the property from the water has improved substantially since that time.

6) Engineering Design:

There is concern about the need to have the facilities designed by a qualified professional engineer. This includes addressing any geotechnical matters as part of that design. The applicant has committed to doing so and undertaking construction in accordance with approved engineering design. This matter has been addressed in the development agreement.

7) Protection of the Environment:

Environmental assessment work has been conducted as part of this proposal and recommendations have been made in regard to the proposed development. An operational management plan that seeks to provide recommendations for continued protection of the environment as part of operations has yet to be prepared. It would include detailed mitigation measures such as a system or systems that must be implemented to ensure that chemicals, toxic materials / waste, hazardous substances and / or other pollutants that are used in, or result from, engaging in the operations, are captured, treated and disposed of in ways that prevent them from migrating into the ocean or the foreshore area associated with the ocean (intertidal zone), and preventing them from permeating the soils or water table associated with the land or adjacent lands. The applicant contends that an operational management plan will be prepared and implemented. This matter has been addressed in the draft development agreement which would also require the facility to be designed by a qualified professional engineer. Any changes to the contemplated design of the facility as a result of the engineering design would have to be reassessed by a qualified professional biologist and any recommendations resulting therefrom implemented as part of the project. A qualified environmental monitor would also be in attendance during the construction phase of the facility.

8) North Vancouver Island Marine Plan (NVIMP):

While the proposed facility may be considered as a use that is not acceptable for the area in which it is proposed, the partners involved in preparation of the NVIMP, namely the Nanwakolis Council and Province of BC, did not object to the development. The Tlowitsis First Nation has provided a letter of support for the development and the Province of BC has issued a tenure (License of Occupation) for the marine based portion of the operation.

There was discussion related to the NVIMP and Mr. Long pointed out that implementation still seems to be in the works given his experience in dealing with this application. There is provision for undertaking a variance to the NVIMP, but that was not employed in this case even though this would seem the appropriate case in which to do so. Mr. LeBoeuf advised that when he was dealing with the Province on the Crown land tenure that it had no requirement in relation to the NVIMP, including the need for a variance.

9) Sewer and Water Services:

The applicant has committed to the provision of sewer and water services in accordance with Provincial requirements as part of the development of the facility. This matter has been addressed in the development agreement

Mr. Long advised that since the Board gave first reading to Bylaw No. 895, staff prepared a revised version of the Bylaw which is included in the agenda package. Given evolution of matters as the process has unfolded, he indicated that he made potential changes to a revised version of the Bylaw to address various items as follows:

- 1) More specifically describe the principal uses that are to be undertaken as part of the marine industrial operation, and to more closely align these uses in association with those uses permitted by the Crown land tenure that has been issued by the Province for the marine area that is subject to Bylaw No. 895;
- 2) To more specifically describe the accessory uses, including buildings and structures, that would be utilized as part of the marine industrial operation;
- 3) Require that chemical, fuel and related spills shall be reported to the appropriate authority immediately;
- 4) Relate sewage treatment / disposal services requirements directly to staff accommodation buildings and elaborate on the servicing requirements as per Island Health's comments.
- 5) Require that materials be stored in a manner that is tidy and orderly and where possible, prevents them from being openly visible from the ocean and land based residences in the vicinity, to the satisfaction of the Regional District; and,
- 6) Inclusion of hours of operation (given concerns raised by the RPC and public about the potential for noise).
- 7) Inclusion of a setback exception for structures required to facilitate the movement of vessels and equipment to and from the upland to the marine area.

Mr. Long advised that the revised Bylaw was reviewed with the applicant who is in agreement with it.

Mr. Long advised that the draft development agreement prepared by staff and included in the RPC agenda package has been reviewed by the applicant and proponent and is acceptable to them. It was also sent to Mr. Peter Stockdill, a representative of the Council of BC Yacht Clubs. While Mr. Stockdill has other concerns which he has outlined in his April 30, 2017 and May 22, 2017 submissions included in the RPC agenda package, he is in agreement with the content of the development agreement should the Board of Directors proceed to adopt Bylaw No. 895. The development agreement was then sent to legal counsel for review and a revised version was just received this morning. Mr. Long then proceeded to review the draft development agreement in more detail with the RPC.

There was discussion around the need for the proponent to work around the tides, weather and emergency situations insofar as the movement of vessels to and from the water is concerned. It was suggested that the development agreement should acknowledge and provide an exception for these circumstances. Mr. Long advised that there is already an exception for tidal conditions. It was also suggested that it may be useful to model the tidal conditions ahead of time as part of operations. Mr. LeBoeuf explained the circumstances as they pertained to tidal and weather conditions. There was more discussion about the potential to determine vessel movement opportunities based on tidal modelling. This would ensure that the proponent's concerns regarding the impacts of tidal conditions may have on operations are addressed, and that there is more certainty about the timing for vessel movements.

Mr. Long discussed the penalty provisions associated with the development agreement and advised that direct penalties for breach of conditions was not possible like he had thought. In this regard, a security deposit could be taken to guarantee performance in accordance with the conditions and that penalties could be administered for breaches, but only as they relate to a genuine pre-estimate of damages that the RDMW would suffer by reason of such breach.

The matter of jurisdiction was brought up and the layers of requirements that must be undertaken to satisfy different government agencies. It was expressed that items included in the draft development agreement may be addressed as part of the requirements of other government agencies and that this may be excessive. The idea of having rules piled onto rules was suggested as not being reasonable and favourable to accommodate proposals that may be good for the North Island.

Mr. Long reviewed the options available to the RPC in dealing with the application and Bylaw No. 895 and concluded the presentation of his report.

Director Wainwright advised that he feels that the proposal is an appropriate place for this sort of development. This area is not an ideal anchorage, as per the Coastal Pilot. However, Director Wainwright does feel that the covenant is currently too restrictive in it's current format, and allowances should be made for tidal, weather and emergency conditions.

Director Bood advised that he feels that the covenant is attempting to micromanage the development, which is not ideal, nor should this be something that the Regional District is involved in. Director Bood feels that the provisions in place by the Federal Government and the Provincial Government are more than adequate.

Chair Hory advised that he feels that the Regional District's involvement is warranted and that the covenant can be reviewed, but in principal is a requirement. He pointed out that he thinks that as a Regional District, we have a responsibility to step in and mitigate where we can.

Derek LeBoeuf addressed the RPC to advise the following: All requirements as set forth by the Federal and Provincial Governments will be met, as well as all conditions set forth by the RDMW, and Vancouver Island Health Authority. The furthest edge of the marine development will be marked with a boom stick or dock anchoring structure. The width of the proposed development will not impede boat traffic, and in fact, a minimum width of 700 feet of navigable water will be maintained between the marine development and any land mass in the area. Land use will be mostly focused around cleaning, repairs, maintenance of vessels. Marine use will be mostly focused around storage for vessels coming in for repairs/maintenance as well as vessels that are in limbo from one area to another. Mr. LeBoeuf advised that the commitment by the proponent is in place and that he hopes that it provides the level of assurance needed that he will deal with these things.

There was discussion regarding particulars associated with the proposed operations and Mr. LeBoeuf clarified how operational matters would be undertaken. Activities that will take place on the land once the barges are removed from the water will mostly include pressure washing, sanding, welding, patching holes, painting and superstructure maintenance and repair. There will be temporary storage of marine structures like float camps in between use on occasion. It is anticipated that one barge will be removed from the water every two weeks and another barge will utilize moorage on a temporary basis. Mr. LeBoeuf advised that the rest of the operational details are outlined in his April 30, 2017 report.

A question was asked about the need for the provision of habitat compensation. Mr. LeBoeuf clarified that under current requirements, given there is no anticipated

serious harm to fish habitat, that there will be no that no offsetting of habitat or associated security deposit required.

A question was asked about the ability to do sandblasting and related hull treatment activities in the foreshore. Mr. LeBoeuf clarified that while the Province did lump these activities in as part of the approval for the Licence of Occupation which applies to the marine area, in reality, it does not mean that these kinds of activities can actually occur there. In this regard, allowing unfiltered substances to flow into the ocean is covered under the Fisheries Act which does not allow it and comes with substantial fines.

There was discussion about process. Mr. Long clarified that the RDMW does not have to require the development agreement, or that items included in it could be removed or altered. The RPC suggested that staff undertake changes to the agreement in relation to vessel movements to and from the water to include weather and emergency considerations. Mr. Long advised that after conclusion of the public hearing, staff would prepare the minutes and compile any written submissions and provide these to the RPC. Bylaw No. 895 would then be discussed at the RPC meeting in August. At the that time the RPC could recommend that Bylaw No. 895 be defeated, or table the Bylaw pending the provision of further information. Alternatively, it could direct staff to make changes to Bylaw No. 895 or not, and that the Bylaw proceed to second and third readings. It could also recommend that Bylaw No. 895 proceed to adoption, or that adoption of Bylaw No. 895 be subject to:

- 1) The proponent entering into a development agreement with the RDMW and registered on title, including any changes to the draft development agreement if deemed desirable; and,
- 2) The removal of the portion of the subject property subject to Bylaw No. 895 being removed from the Private Managed Forest Land designation.

The RPC considered the options available to it as outlined in the staff report and adopted the following resolution:

Moved/Seconded/Carried

RPC-2017-17
BYLAW NO. 895

THAT the Board of Directors directs staff to undertake preparations for advertising and conducting a public hearing with respect to Regional District of Mount Waddington Zoning Bylaw No. 21, Amendment Bylaw No. 895, 2016 at 3:30pm on July 18, 2017 at the Regional District office addressed as 2044 McNeill Road, Port McNeill, BC, in accordance with the requirements of the Local Government Act.

G. BUSINESS ARISING – None

H. NEXT MEETING DATE: July 18, 2017

I. ADJOURNMENT

RPC-2017-18
ADJOURNMENT

Moved

THAT the meeting be adjourned.

Time: 1:32 pm

CORRECT

APPROVED

SECRETARY: J. LONG

CHAIR: DIRECTOR H. SOLTAU