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File No.: 01011

Islands Trust
Hornby Island Local Trust Committee
LTC Trustees, Tim Peterson (LTC Chair), Alex Allen, Grant Scott

Dear Local Trust Committee,

RE: Rogers Communications Radiocommunications Tower – Hornby Island

I have been retained by a local residents' group, known as the Concerned Residents of Hornby Island, who have formed to protest and oppose the proposed 63 metre Rogers Communications Radiocommunications Tower to be erected on Hornby Island. I submit the following comments and concerns on their behalf. This letter is provided in conjunction with my client's submission of the same date.

I understand that the proposed Rogers tower will be used for expanding services to include 4G, and ultimately 5G, coverage to Hornby Island and the surrounding area. I also understand that there has already been approval and commencement of construction for a fibre optic project in the area that will provide dependable internet access and coverage, and that there is existing cell coverage available to Hornby Island via other towers located off island. It is not clear at this time, if there are other off-island alternatives to the proposal, or whether alternatives have been assessed.

Fair Process and Public Consultation Concerns

There has been some confusion or differing messages about whether this project would be on the agenda for the LTC meeting to be held on March 24, 2023 and whether there is a possibility that a decision could be made to approve/provide written concurrence in favour of the project. Similarly there are 'indications' that in time for this LTC meeting, the LTC may have a report

from its Islands Trust technical staff as well as a report from the Proponent, represented by Sitepath Consulting. It remains unclear how the public may gain access to these reports, to fully understand the status and nature of the project, and to meaningfully participate and provide comment.

Most simply there is no clarity as to a process that sets out what will be considered, and at what stage the proposed project is being reviewed by the LTC, if at all on March 24, 2022 or what the future process steps will involve.

I also understand that there is a set protocol for public consultation set by Innovation, Science and Economic Development Canada (ISED) who has federal jurisdiction and authority for installations of this nature as proposed. Before authorizing the installation, letter(s) of concurrence are requested by local government authorities once an adequate public consultation process is completed. The ISED has a default process or set of minimum requirements, however there is room for expansion of the consultation process for the local government authority if it is warranted given context.

To this end, the Hornby Island LTC has approved the Model Strategy for Antenna Systems Local Planning Committee (as of September 9, 2022) which incorporates the ISED protocol and has further augmented requirements for public consultation.

As we know, considering the principles of administrative law, applicable to both federal level and local level decision makers, it is a fundamental component of the permitting approval process to ensure that proper and adequate public consultation is achieved, that affected residents have the opportunity to review the proposal, to provide comments and questions, and to meaningfully participate.

Beyond the process concerns noted regarding the upcoming LTC meeting, there are other process concerns as per the following, which do not appear to be unique given the widespread controversy, opposition and concerns regarding inadequate information related to the tower proposals on Vancouver Island, within the CVRD for example:

- There are indications that many Hornby islanders have limited to no information on this tower installation; including missing proposal packages and a lack of information to adequately participate within notice periods or otherwise; essentially, if the quality of the information sharing is lacking then the rest of the public consultation process is undermined;
- There have been no in-person public sessions to adequately engage the proponent and the LTC, to ensure there is sufficient information to meaningfully participate and provide relevant comments. While there were a couple of virtual Teams sessions, not all residents know or have the technical capacity to properly engage in this format. Furthermore there were technical difficulties and parties could not sign on or participate effectively on-line.

These are substantive and significant limitations on the efficacy and integrity of adequate public consultation. Regardless of notice in local newspapers and time within which to comment, if impacted residents are not able to meaningfully participate to hear and engage with the Proponent, then continuity of information could easily be lost and the ability to provide full comment and questions is compromised.

The Model Strategy contemplates that the ISED protocol could be restrictive and that adequate consultation could take longer. To this end the LTC has the ability to adjust the consultation process appropriate to its context, including expanding the radius , notice time periods and information/consultation sessions. Currently the Model Strategy objectives are not being met:

G. Consultation Process

1. Consultation Objectives

The *protocol* for public consultation is designed to:

- inform;
- incorporate local knowledge;
- harmonize with ISED regulations and guidelines;
- be transparent;
- be consistent;
- be predictable; and
- be expeditious.

The process does not inform, incorporate local knowledge, is not transparent, consistent or predictable.

We therefore request that the LTC delay any concurrence decisions until a clear process is confirmed for the public, along with updated information, and associated reports to be provided to island residents, with reasonable time for review, along with proper in-person public consultation meeting(s) to be held with the Proponent and the LTC .

Adequate Assessment – Environmental Impacts

As previously noted, we are not aware of the LTC's review and assessment of the project in relationship to its *Islands Trust Act* statutory object, to preserve and protect the environment, and

its OCP and Land Use Bylaw requirements and policies in this regard. For example, it would be useful to understand how the LTC plans to reconcile Hornby Island OCP – advocacy policy at 5.5.5, pg 41 “Industry Canada is encouraged to prohibit commercial microwave towers and satellite antennae on Hornby Island.” Industry Canada is now the ISED.

We also know that the project is proposed to be located within environmentally sensitive ecosystems. There will also be detrimental impacts on view and scenic quality as the tower will be visible throughout the island’s central district. What is the assessment on these valued components, and cumulative impacts? Given the special mandate of the Islands Trust and the LTCs as decision makers, we know that impacts on the environment and cumulative impacts are necessarily scaled much higher in magnitude given the fragility and limited capacity of small islands such as Hornby Island. My client’s submission provides further details on the significant public concern regarding impacts on birds, pollinators, and fire risk, in particular.

We therefore request that the LTC ensures that a full and proper environmental assessment in accordance with its unique mandate under the *Islands Trust Act*, be fulfilled, and that such assessment is made available for public review and comment, so that the LTC can make a fully informed decision about this project.

Significant Public Concern and Risk

If the fundamentals of public engagement are not achieved, such as adequate information and time to engage, then the concerns and worries mount. The protests and opposition will invariably increase because the efficacy of the process is in question. It also taints the decision making because the decision maker cannot adequately decide or effectively balance risks. For example, ISO 31000 sets out the fundamentals of risk management to include both quantitative and qualitative risk assessment in making sound evidence-based decisions. In this case the necessary and critical qualitative risk assessment, coming from local and affected parties, is missing because the public consultation process is inadequate.

As a result of growing controversy of these towers, for health and environment reasons, the failure to provide a fulsome in-person public consultation on this matter also impacts public concern and exacerbates worries about the risks of these types of projects. While it is clear that the federal authority ISED states that Code 6 is sufficient and that inquiries and concerns should be directed to Health Canada, in writing any kind of concurrence letter it is imperative that local LTC decision makers properly and fully assess risks with these types of developments. To this end, it is not a matter of dissecting whether Code 6 is sufficient, but to recognize that if the public consultation is deficient there will be corresponding impact on trust and diminishing efficacy for decisions made without this integral consideration. In other words the public consultation becomes an optics exercise, without substance.

Insurance, Liability and Responsibility

Another basis for concern is about what happens if there are damages and injury in the short or longer term resulting from the project? Again a failed public consultation process exacerbates these public concerns. My client is interested in being proactive and preventative and they and other residents wish to impart the critical local knowledge that needs to inform decision making.

However, if the project moves ahead without adequate assessment, has the LTC considered exposure and appropriate and adequate safeguards for responsibility of Rogers in terms of Hornby Island and its residents? One of the concerns is whether there can be adequate insurance and security in place to effectively protect the public and environmental interests. For example, there are indications that insurers will not cover health effects, environmental damage and injury arising from RFR and 5G related illnesses or impacts. This is a very controversial issue that is driving significant concern. This is a long-term issue that requires consideration in terms of impacts, including cumulative impacts.

Is the LTC certain that in providing its concurrence, or in essence, its approval that the residents and the environment of Hornby Island are protected should damage occur? Should there be insufficient impact knowledge and evidence, it would seem that this would be a ripe occasion to implement the Precautionary Principle. Alternatively, how is the LTC risk managing exposure?

We therefore request that the LTC provide information about insurance and security coverage and adequacy for public information and comment.

We know that there is significant discord growing over the environmental and health impacts arising from these tower installations. Process concerns abound. For example, the Telus tower proposed for Qualicum Beach, represented by the same consultant, Sitepath Consulting, indicates that the ISED process has not been followed, that there have been allegedly deliberate attempts to mislead the public, proposal packages not being received by residents within the distance parameters, lack of notice for residents within the ranges; incomplete newspaper notifications etc.

Most recently, earlier in March of 2023, the CVRD deferred another tower project decision with Telus in Area B until adequate environmental impact information from a qualified environmental risk assessor, and adequate consultation with the K'omoks First Nation is addressed. Of course the CVRD does not have the unique mandate of the Islands Trust regarding its statutory object in s. 3 of the *Islands Trust Act*. As such, environmental considerations, given the unique amenities and environment of the trust area, require overriding attention on the preservation and protection of the delicate environmental balance, islands such as Hornby require.

In coming to the end of my comments, I understand that a petition has been provided with hundreds of signatures voicing the concerns of residents who desperately want the LTC to oppose Rogers' project. Additional residents have also supported other letters submitted against the project, and still other residents are coming on board to support future letters of protest.

As a final request at this time we ask that the full consultation record provided by the Proponent, be provided for public review and comment.

In light of the foregoing, should a decision be made to approve this project without, at a minimum, addressing the concerns outlined, then there would be more than sufficient evidence to challenge on the basis of a lack of due process and unreasonable decision making.

Thank you for considering this submission, along with my client's submission.

Please note that this legal assistance is being supported by West Coast Environmental Law and the Environmental Dispute Resolution Fund, to provide access to justice to those who would not otherwise be able obtain legal support.

Respectfully yours,



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cc. William Thomas c/o Concerned Residents of Hornby Island via email
West Coast Environmental Law via email