Citation: Denman Island Loc. Trust v. 4064 Investments Ltd.
2000 BCSC 1618

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Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DENMAN ISLAND LOCAL TRUST COMMITTEE

PLAINTIFF

AND:

4064 INVESTMENTS LTD.

DEFENDANT

REASONS FOR JUDGMENT
OF THE
HONOURABLE MR. JUSTICE BAUMAN

Counsel for the Plaintiff	B.S. Williamson and F.V. Marzari
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Date and Place of Hearing/Trial:	11 January, 8 & 9 March, 6 June and 7 July 2000 Vancouver, B.C.

I. INTRODUCTION

[1] On 13 May 1999, the Denman Island Local Trust Committee enacted a series of amendments to its ***Official Community Plan Bylaw***. These amendments are found in Bylaws 110 to 114 inclusive (collectively the "Amending Bylaws").

[2] The Amending Bylaws create various Development Permit Areas (hereafter "DPAs") on Denman Island. The areas of land so designated are then subject to the provisions of s. 920 of the ***Local Government Act***, R.S.B.C. 1996, c. 323, which prevents their development for uses permitted under the applicable zoning bylaw (that is, the bylaw containing land use regulations) until the owner obtains a Development Permit, which in turn adds additional conditions to the use and development of the lands.

[3] The Amending Bylaws are an integrated package of initiatives designed to regulate various aspects of forest land use on Denman Island. Indeed, they are aptly called the "Forest Bylaws" in the ***Technical Report on Denman Island Forest Bylaws***, which was prepared by the Denman Island Local Trust Committee's consultant, Doug Hopwood, a registered professional forester. That report is dated 11 November 1998.

[4] I will describe in more detail how the bylaws operate below, but for now I stress the provisions of Bylaw 113 in particular. It creates the so-called ***Forest Cover*** DPA and so designates what I would estimate to be approximately one-half of the land area of the island.

[5] Bylaw 113 seeks to achieve a number of objectives, but chief among them is the goal of ensuring that forestry practices on the designated lands are sustainable.

[6] The defendant in these proceedings is the largest landowner on Denman Island.

[7] Before the adoption of the Amending Bylaws, it was engaged in an aggressive program of logging its lands. I mean nothing pejorative in the use of that phrase.

[8] The Amending Bylaws and, in particular, Bylaw 113, have the effect of significantly limiting the defendant's ability to carry on that logging program.

[9] For a time after the adoption of the Amending Bylaws, the defendant carried on with its operation in alleged contravention of the new regulations.

[10] This action was brought by the Local Trust Committee to enjoin that conduct.

[11] This application by the defendant ("4064") is under Rule 18A of the ***Rules of Court*** for an order dismissing the action. 4064 attacks the validity of the Amending Bylaws on jurisdictional grounds. In the alternative, it argues that the Amending Bylaws cannot be applied to its existing tree cutting operations.

[12] It also argues that the bylaws are bad for other reasons and, in particular, that they are uncertain from the perspective of determining exactly which lands on the island are actually designated in the schedules to the bylaws.

[13] The Amending Bylaws fill what some would characterize as a regulatory gap in the control of logging operations on private lands in rural areas of the province.

[14] To the extent that such lands are not within a tree farm licence or a woodlot licence under the ***Forest Act***, R.S.B.C. 1996, c. 157, the logging thereon is not subject to the detailed regulations found in the ***Forest Practices Code of British Columbia***, R.S.B.C. 1996, c. 159 (the "***Code***").

[15] Apart from some provincial environmental controls and federal ***Fisheries Act***, R.S.C. 1985, c. F-14 considerations, all the landowner requires before enjoying the fruits of the timber harvesting of his private lands is a timber mark from the Ministry of Forests.

[16] That was exactly what 4064 was engaged in when the Denman Island Local Trust Committee adopted the Amending Bylaws.

[17] The Local Trust Committee, in adopting the Amending Bylaws, relies largely on s. 879(1)(a) of the ***Local Government Act***. That section was amended in 1997 as part of Bill 26, the ***Local Government Statutes Amendment Act***.

[18] Section 879(1)(a) provides that a community plan may designate areas for:

> (a) protection of the natural environment, its ecosystems and biological diversity;

[19] Section 920 of the ***Local Government Act*** then regulates what a landowner may not do without a Development Permit within these DPAs and, as well, regulates what the local government may include as conditions on development within such permits.

[20] The principal question before me is whether the amendment to s. 879(1)(a) of the ***Local Government Act*** in 1997 establishes a proper enabling legislative foundation for the detailed forest management regulations found in the Amending Bylaws.

II. FOREST MANAGEMENT BEFORE BILL 26

[21] Cutting tenures for timber on Crown lands historically have been regulated under the ***Forest Act***.

[22] That legislation deals with various forms of permission available for the cutting of Crown timber and the payment of stumpage fees in respect thereof. In particular, s. 12 deals with these forms of agreement. They include, amongst others, forest licences, timber sale licences, tree farm licences, woodlot licences and licences to cut.

[23] The method by which one takes Crown timber, that is the manner in which the harvesting is to take place, is now regulated in exceedingly fine detail by the ***Code***.

[24] The ***Code*** also applies in many respects to the logging of timber on private fee simple lands which are subject to a tree farm licence, a woodlot licence, or a community forest agreement. As I understand the scheme, the inclusion of private lands within at least a tree farm licence or a woodlot licence, is often a required *quid pro quo* in the negotiation and issuance of such licences over tracts of Crown lands.

[25] Another form of control over the logging of private lands is found in the ***Assessment Act***, R.S.B.C. 1996, c. 20.

[26] In particular, the assessment of "forest land" is dealt with in s. 24. "Forest Land" is defined as being within the Forest Land Reserve under the ***Forest Land Reserve Act***, R.S.B.C. 1996, c. 158, or if not within the reserve, the highest and best use of which is the production and harvesting of timber.

[27] Section 24 then introduces the concept of "managed forest land", that is, "forest land" managed in accordance with a forest management plan under s. 24 of the ***Assessment Act***.

[28] The forest management plan must be prepared in accordance with regulations under the ***Assessment Act*** and it must be approved by the assessor.

[29] Pursuant to B.C. Regulation 349/87, the forest management plan must include various undertakings by the applicant, including commitments to reforest the land, maintain and harvest the tree crop in accordance with established principles and to protect the soil and forest crop from decease, insects and fire.

[30] The incentive for a private landowner to include his or her forest lands within a forest management plan is a much more favourable property tax treatment than would be the case in respect of unmanaged forest lands.

[31] The price then of the more favourable tax treatment of such lands is the subjection of the owner to the "regulations" on timber harvesting found in the forest management plan.

[32] As noted above, B.C. Reg. 318/99 was brought into force on 1 April 2000 under the ***Forest Land Reserve Amendment Act, 1999***, S.B.C. 1999, c. 11 (the "***Amendment Act***").

[33] That regulation is entitled the "***Private Land Forest Practices Regulation***" and it sets out forest management requirements for "identified lands".

[34] That phrase in turn is defined in the ***Amendment Act*** as either forest reserve land (other than a tree farm licence area, a woodlot licence area or a community forest agreement area) or agriculture reserve land that is "managed forest land" under the ***Assessment Act***.

[35] The thrust of the scheme continues to be the regulation by the province of forest land use on some, but not all, private lands not contained within the Forest Land Reserve.

[36] Before the adoption of the amendments to the ***Municipal Act*** (now the ***Local***

Government Act) in 1985, there was no direct control of the cutting of timber on private lands which were not within a tree farm licence, a woodlot licence, or classified as managed forest land under the ***Assessment Act***.

[37] In 1985, the legislature adopted what is now s. 923 of the ***Local Government Act*** (see S.B.C. 1985 c. 79 s. 8).

[38] Initially, it extended to both municipalities and Regional Districts. The latter are the local governments in areas not within incorporated municipalities (in addition to exercising certain powers on a regional basis covering both municipalities and unorganized areas).

[39] Section 923 provides a limited power to control the cutting of timber in these words:

> Tree cutting permits
>
> 923 (1) A board may, by bylaw, designate areas of land that it considers may be subject to flooding, erosion, land slip or avalanche as tree cutting permit areas.
>
> (2) A bylaw may, in respect of an area designated under subsection (1),
>
> (a) regulate or prohibit the cutting down of trees, and
>
> (b) require an owner to obtain, on payment of a fee set by the bylaw, a permit before cutting down a tree.
>
> (3) The bylaw may allow the board, at its discretion, to require an applicant to provide at the applicant's expense, a report certified by a qualified person, agreed upon by both parties, that the proposed cutting of trees will not create a danger from flooding or erosion.

[40] It will seen that the ability to regulate the cutting of trees under s. 923 is limited to areas where it is considered that the land may be subject to flooding, erosion, land slip or avalanche. The section does not permit the broad regulation of all timber harvesting on private lands.

[41] The cutting of trees within urban areas became a more controversial issue in the 1980's and early 1990's.

[42] This led to the adoption of what is now Division 2 of Part 22 of the ***Local Government Act*** in 1992.

[43] It is necessary to set out ss. 708 to 715, inclusive, which I do in Appendix I to these reasons.

[44] The sections make up Division 2 of Part 22 and they are headed "***Protection of Trees***".

[45] These provisions give local government broad powers to prohibit and regulate the cutting of trees and to require their replacement.

[46] The adoption of the provisions is clearly a recognition by the legislature of the importance of trees or forest cover in the urban landscape.

[47] There are two features to these provisions which are of significance to the discussion here.

[48] The first is the fact that the powers in Division 2 of Part 22 may only be exercised by the councils of municipalities.

[49] They may not be exercised by Regional Districts within unorganized areas. In

particular, they may not be exercised by Local Trust Committees under the ***Islands Trust Act***, R.S.B.C. 1996, c. 239.

[50] The second feature is reflected in the fact that the legislature, in an exceptional provision, recognized that tree protection measures may interfere unduly with the right of the landowner to viably develop his or her lands as otherwise permitted under the applicable land use regulations.

[51] In such a case the legislature, through s. 714, has created a regime in which the local government must elect to either pay compensation for the resulting reduction in market value (or allow, in some manner, development to proceed) or have the tree protection bylaw deemed not to apply to the lands "to the extent necessary to allow a permitted use or the permitted density of development."

[52] This is clearly a recognition of the basic unfairness inherent in requiring the landowner to effectively underwrite the cost of maintaining tree cover by foregoing his or her development potential. The legislature has said that this is a cost which the community as a whole must bear.

[53] With the adoption of Division 2 of Part 22, s. 923, the much narrower tree protection enabling provision, was left to apply only to Regional Districts, including Local Trust Committees under the ***Islands Trust Act*** (s. 29 of the ***Islands Trust Act***).

[54] That legislative scheme in place before Bill 26 in 1997 led to this result: An owner of private lands on Denman Island who had a timber mark under the ***Forest Act*** could log the timber thereon at will, subject only to laws of general application (*i.e.* provincial environmental laws and the federal ***Fisheries Act***).

[55] This was so, so long as such lands were not within a tree farm licence, a woodlot licence, a forest management plan under the ***Assessment Act*** (that is, they were not "managed forest lands") or within an area designated under s. 923.

[56] The question, then, is what impact Bill 26 had on the regulatory regime covering the logging of private lands.

III. BILL 26

[57] The ***Local Government Statutes Amendment Act,*** 1997, added, as I have earlier set out, a new s. 879(1)(a) which allows local governments, including the Denman Island Local Trust Committee, to designate DPAs for "the protection of the natural environment, its ecosystems and biological diversity."

[58] It is that enabling provision upon which the plaintiff primarily relies as supporting the Amending Bylaws, and in particular as supporting Bylaw 113.

[59] The amendment to s. 879(1)(a) is in a bill which contains a number of amendments to the ***Municipal Act*** (now called the ***Local Government Act***) dealing with tax exemptions for riparian properties, the enactment of runoff control requirements for property developers (s. 10) and the provision of "development approval information" dealing with anticipated impacts of proposed activity or development on the community (s. 13).

[60] Counsel have referred me to extracts from ***Hansard*** dealing with the introduction and debate on Bill 26.

[61] The Bill was introduced at the same time as Bill 25, the ***Fish Protection Act***.

[62] The Honourable Mike Farnworth, then Minister of Municipal Affairs, called Bill 26 "a companion act to Bill 25." At second reading he stated of Bill 26: "This is the local government planning practices and development approval process in terms of fish and habitat protection." (British Columbia Debates, 17 July 1997, 5915).

[63] On moving first reading, Minister Farnworth said this of the legislation:

> ... This bill is an important part of the fisheries renewal strategy recently announced by the Premier, and I'm proud to join my hon. colleagues in presenting legislation that will make British Columbia the national leader in fish habitat protection.
>
> Local governments, through planning practices and development approval processes, have a critical role to play in the protection of the natural environment, and this bill strengthens the powers of local government to protect the environment, including but not restricted to fish habitat. For the first time ever, local government will have the power to strike a balance between fish habitat and human habitat, something extremely important to all of us. I move that the bill be read a first time now.
>
> (British Columbia Debates, 15 May 1997, 3440)

[64] These statements suggest that Bill 26 was intended by its framers to address the balancing between fish habitat and human development.

[65] It is true that the Minister stated that the Bill "strengthens the powers of local government to protect the environment, including but not restricted to fish habitat" [emphasis added] but there is no doubt that the primary thrust of the Bill is to provide local government with tools to address fish habitat issues.

[66] During second reading debate, Minister Farnworth made these comments:

> ...
>
> One of the greatest challenges in terms of protecting urban streams in this province is the fact that so many of our urban streams occur within high-growth areas. This is especially true on southern Vancouver Island and in particular on the lower mainland, where in some areas we have already lost considerable numbers of streams through development at the turn of the century and in subsequent decades. The fact is that we didn't give much consideration at that time to fish and habitat protection. They were sort of relegated down the list, and we lost a great deal of the resource in the lower mainland.
>
> There is a significant amount of the resource left, however. There are significant streams on the lower mainland. I know that in my own particular area, Port Coquitlam and Coquitlam, there are numerous salmon-bearing streams that contain significant wild stocks of salmon. There are streams that have significant work being done on them by community volunteers to ensure that wild stocks remain or where stocks have been depleted, that enhanced stocks - hatchery-raised fish - can survive.
>
> ...
>
> How do we go about ensuring that those streams are not only able to have the stocks in them identified but also able to have what is required to make them viable over the long term? What is required to make them sustainable over the long term? How much development impact can they in fact sustain before they are irrevocably damaged, before the stocks are threatened and before special enhancement measures have to be taken?
>
> There is a role for all three levels of government. We have signed an agreement with the federal government that recognizes the province's vital jurisdiction within the fisheries of this province, and now there is joint work taking place. It is not just the province, because so much depends on the local government level. That's where the land use planning decisions are made that affect small, local urban streams, and that's where there is a vital role for communities - an extremely important role.
>
> That's what this legislation does. It's an enabling piece of legislation that

> gives municipalities the powers and tools to ensure that we protect fish habitat in this province. It is not done through a coercive top-down approach; it is being done jointly with consultation. It is building on what already exists at the local level, and there are some excellent examples of communities currently working to ensure that we do the proper planning processes.
>
> We need to do long-term environmental studies before development takes place to ensure that developers are doing the right practices, whether it be setbacks, building, densification or being innovative in how we look at developing in particular zones, whether it be old established neighbourhoods or new neighbourhoods. Three communities I can think of right off the top of my head, for example, are North Vancouver, which has taken a very proactive role, the community of Burnaby and the communities of Port Coquitlam and Port Moody in my own particular area. They have all been extremely supportive.
>
> What this legislation does is give further tools to these communities to ensure that proper practices can be put in place - for example, the ability to regulate how much of a particular lot is covered, blacktopped or made impervious to rainfall, and things like setbacks that are taking place in existing land use planning processes, but over the long term. These are all extremely important.
>
> (British Columbia Debates, 17 July 1997, 5915)
>
> ...

[67] These comments from the Minister introducing the legislation assist in my task of interpreting the breadth of the powers accorded local government under the Bill and, in particular, under s. 879(1)(a) and s. 920(7). It is these sections which the plaintiff relies upon to support its detailed regulatory scheme for the logging of private forests under the Amending Bylaws.

[68] It is my task to determine whether the legislation on its face reasonably bears an interpretation supporting such a scheme and whether the drafters ever intended that it should.

[69] As to the propriety of referring to the Minister's statements and ***Hansard's*** reporting of the debates, the traditional exclusionary rule has been eroded by the courts in recent years, particularly in constitutional cases where one is undertaking a pith and substance analysis. In ***R. v. Morgentaler***, [1993] 3 S.C.R. 463, 107 D.L.R. (4th) 537, 157 N.R. 97, 125 N.S.R. (2d) 81, 85 C.C.C. (3d) 118, 25 C.R. (4th) 179, Justice Sopinka said (at S.C.R. 483 - 4):

> ...
>
> The former exclusionary rule regarding evidence of legislative history has gradually been relaxed (*Reference re Upper Churchill Water Rights Reversion Act*, [1984] 1 S.C.R. 297, at pp. 317-19), but until recently the courts have balked at admitting evidence of legislative debates and speeches. Such evidence was described by Dickson J. in *Reference re Residential Tenancies Act, 1979, supra*, at p. 721 as "inadmissible as having little evidential weight", and was excluded in *Reference re Upper Churchill Water Rights Reversion Act, supra*, at p. 319, and *Attorney General of Canada v. Reader's Digest Association (Canada) Ltd.*, [1961] S.C.R. 775. The main criticism of such evidence has been that it cannot represent the "intent" of the legislature, an incorporeal body, but that is equally true of other forms of legislative history. Provided that the court remains mindful of the limited reliability and weight of Hansard evidence, it should be admitted as relevant to both the background and the purpose of legislation. Indeed, its admissibility in constitutional cases to aid in determining the background and purpose of legislation now appears well established. See *Reference re Anti-*

Inflation Act, *supra*, at p. 470, *per* Beetz J. (dissenting); *R. v. Edwards Books and Art Ltd.*, *supra*, at p. 749; *Starr v. Houlden*, *supra*, at pp. 1375-76, 1404 (distribution of powers); *R. v. Whyte*, [1988] 2 S.C.R. 3, at pp. 24-25; *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at pp. 983-84 (*Charter*); and *R. v. Mercure*, [1988] 1 S.C.R. 234, at pp. 249-251 (language rights).

(See also ***R.J.R. MacDonald Inc. v. Canada (A.G.)***, [1995] 3 S.C.R. 199 per LaForest J. at 242-3, and in particular ***M. v. H.***, [1999] 2 S.C.R. 3 at paras. 323 and 324.)

[70] As to the reference to such extrinsic materials in other than constitutional cases, in ***Lewis (Guardian ad litem of) v. British Columbia*** (1995), 12 B.C.L.R. (3d) 1, (1996) 1 W.W.R. 489, (1995) 63 B.C.A.C. 241, Justice Southin, in a concurring judgment, examined the legislative history of the ***Highway Act*** and the ***Occupiers' Liability Act*** and said (at 41):

> As to the propriety of referring to a ministerial statement, see *Pepper v. Hart*, [1993] 1 All E.R. 42 (H.L.). I am aware that the ministerial statement was there looked at to resolve an ambiguity but, in principle, I see no reason why a ministerial statement should not be looked at to discover the object or purpose of a statute which has no preamble.

[71] The task with which I am faced here very much requires a purposive approach to interpreting the powers accorded local government under Bill 26 and it seems to me to be a singularly well suited case for proper reference to legislative history and ministerial statements on the introduction of and debate on the Bill.

[72] The "protection of fish habitat" thrust to Bill 26 and, in particular, the amendment to s. 879(1)(a), is reflected in the Bill's amendments to s. 920 of the ***Act***.

[73] Section 879 does no more than permit the Local Trust Committee to designate areas for various purposes, to describe the special conditions or objectives that justify the designation and to specify guidelines respecting the manner by which the special conditions or objectives will be addressed (s. 879(2)).

[74] The section does not tell us what form the actual regulations might take. That is left to s. 920 of the ***Act***.

[75] Section 920(7) (as amended by Bill 26) provides:

> Development permits 920 ...
>
> (7) For land designated under section 879 (1) (a), a development permit may do one or more of the following:
>
> (a) specify areas of land that must remain free of development, except in accordance with any conditions contained in the permit;
>
> (b) require specified natural features or areas to be preserved, protected, restored or enhanced in accordance with the permit;
>
> (c) require natural water courses to be dedicated;
>
> (d) require works to be constructed to preserve, protect, restore or enhance natural water courses or other specified natural features of the environment;
>
> (e) require protection measures, including that vegetation or trees be planted or retained in order to
>
> (i) preserve, protect, restore or enhance fish habitat or riparian areas,

(ii) control drainage, or

(iii) control erosion or protect banks.

[76] Subsections (7)(a),(c),(d) and (e) certainly reflect the fish habitat thrust of Bill 26. They do not suggest a legislative foundation for the detailed regulation and management of the logging of private lands found in the Amending Bylaws.

[77] Arguably, s. 920(7)(b) would extend to permit regulations preserving, protecting, restoring or enhancing private forest lands as a specified "natural feature or area", but that seems like a pretty shallow foundation on which to support the very intrusive regulatory scheme found in the Amending Bylaws.

[78] In his ***Technical Report on Denman Island Forest Bylaws*** to the Local Trust Committee, Doug Hopwood says this under the heading "***Regulatory Tools for Local Government***" (at 2-3):

> It is said that a local government, such as the Denman Island Local Trust Committee, is a 'child' of senior governments, that is, the governments of British Columbia and Canada. A local government has only the powers and scope of authority specifically granted to it. In the case of the Islands Trust, most of its powers are defined in the *Islands Trust Act* or the *Municipal Act* of B.C. This means that the Denman Local Trust Committee has to work with a limited 'tool kit' to promote sustainability in the use of forest land.
>
> Two important pieces of provincial legislation for this process are the *Islands Trust Act* containing the Trust mandate mentioned previously, and amendments to the *Municipal Act* contained in Bill 26--1997, which authorize local governments to designate development permit areas for the 'protection of the natural environment, its ecosystems and biological diversity'. It is beyond the scope of this report to describe these tools from a legal point of view in any detail. However, readers should be aware that the form and content of the Forest Bylaws are very much a reflection of this restricted tool kit. For example, many people who reviewed drafts of the bylaws suggested that it would be desirable to require owners of forest land to submit a forest management plan to the Local Trust Committee, and once the plan was accepted to be able to harvest trees in accordance with the plan, with no further permits required. While this might indeed be a desirable way to regulate forest practices, the Trust Committee lacks the legal authority to implement such an arrangement.
>
> ...

[79] Clearly, Mr. Hopwood, as one of the drafters of the bylaw took some significant comfort in the power to designate areas for the "protection of the natural environment, its ecosystems and biological diversity." In his view, that was the tool in the Local Trust Committee's kit by which the Local Trust Committee could promote sustainability in the use of forest lands. And it was a tool introduced, he believed, through the amendments to the ***Local Government Act*** contained in Bill 26.

[80] I have already noted that such a far reaching view of the purpose of the Bill 26 amendments was not something to which the Minister of Municipal Affairs ever gave voice.

[81] In this regard, it is telling, as well, to look at s. 879(1)(a) before the Bill 26 amendments.

[82] The section and the current DPA process was initially introduced in 1985, in the ***Municipal Amendment Act, 1985*** S.B.C. 1985, c. 79.

[83] A new Part 29 "***Management of Development***" was added to the ***Municipal Act***.

[84] Section 945(4)(a) then provided:

(4) A community plan may, for the purposes of section 976, designate areas for the

(a) protection of the natural environment.

[85] That power was continued in the ***Municipal Act*** through various amendments: 1987-14-11; 1992-15-1; 1993-59-29; 1994-43-65; 1994-52-105; 1995-9-9; 1995-23-17; 1996-323-879; until the adoption of Bill 26.

[86] The Local Trust Committee would have us conclude that the addition of the words "... its ecosystems and biological diversity" to the phrase "protection of the natural environment" somehow transforms s. 879(1)(a) into an enabling power for the detailed regulation of logging on private lands.

[87] On its face, that conclusion seems a considerable reach, indeed it seems a considerable leap.

[88] The words in s. 879(1)(a) "protection of the natural environment, its ecosystems and biological diversity" are of course very broad, and on their face they certainly arguably extend to include some general concept of the protection of the forest ecosystem on Denman Island.

[89] I am engaged in interpreting the breadth of the powers accorded by the words and in determining what limits, as a matter of statutory interpretation, ought to be read into them. In this context, I am assisted by the fact that the legislature, notwithstanding the presence of s. 945(4)(a) from 1985 onwards, found it necessary to add express powers to permit local government to regulate the cutting of trees.

[90] The first was the power now found in s. 923 which I have reproduced above. It is a limited power for Regional Districts and Local Trust Committees to regulate or prohibit the cutting of trees on lands subject to flooding, erosion, land slip or avalanche.

[91] The second regulatory power, not enjoyed by Regional Districts or Local Trust Committees, is the very broad power to prohibit or regulate the cutting and removal of trees found in Division 2 of Part 22 of the ***Act*** reproduced in Appendix I to these reasons.

[92] The natural inference one draws from the juxtaposition of these powers (s. 879(1)(a), s. 923 and ss. 708 and following) is that the legislature did not deem s. 879(1)(a) (or any other powers in the ***Act***) to be broad enough to found forest management regulation and it accordingly added express powers in that regard.

[93] The fact that the legislature did not expressly give Regional Districts and Local Trust Committees the broad tree cutting regulatory powers found in Division 2 of Part 22, leads to the further inference that it did not intend them to have these powers.

[94] This militates against interpreting s. 879(1)(a) and s. 920(7) as including such regulatory powers.

[95] Now, in so concluding, I am mindful of three points.

[96] The first arises out of s. 3 of the ***Islands Trust Act***.

[97] It provides:

The object of the trust is to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of British Columbia generally, in co-operation with municipalities, regional districts, improvement districts, other persons and organizations and the government of British Columbia.

[98] That objects clause was given significant effect by the Court of Appeal in ***MacMillan Bloedel Ltd. v. Galiano Island Trust Committee*** (1995), 28 M.P.L.R. (2d) 157,

126 D.L.R. (4th) 449, 10 B.C.L.R. (3d) 121, 28 M.P.L.R. (2d) 157.

[99] But here, of course, I am interpreting a provision that applies to both Local Trust Committees and to local governments under the ***Local Government Act*** and it cannot have one meaning for the latter and a broader meaning for the former. All the Local Trust Committees are given, in the ***Islands Trust Act***, are the powers of a Regional District under this part of the ***Local Government Act*** (see s. 29 of the ***Islands Trust Act***).

[100] The second point is that the ***Local Government Act*** itself now contains a broad objects clause in ss. 1 and 2, and s. 3(1) of the ***Act*** provides:

> Broad powers
>
> 3 (1) The powers conferred on local governments by this Act are to be interpreted broadly in accordance with the purposes of this Act and the purposes of local government, subject to the specific limitations and conditions established by or under this Act.

[101] But within the context of a broad and beneficial approach to construing the powers in the ***Act***, I must still have regard to the limits on particular powers which a purposive interpretation dictates.

[102] Here, as well, I am mindful of the views expressed by McLachlin J. (as she then was) in ***Shell Canada Products Ltd. v. Vancouver (City)***, [1994] 1 S.C.R. 231, 110 D.L.R. (4th) 1, 3 W.W.R. 609, 163 N.R. 81, 41 B.C.A.C. 81, 88 B.C.L.R. (2d) 145, 20 Admin.L.R. (2d) 202, 20 M.P.L.R. (2d) 1.

[103] At para. 5, speaking in dissent for herself, Lamer C.J. and L'Heureux-Dubé and Gonthier JJ., Justice McLachlin said:

> 5. As will become apparent, I take the view that this case requires us to consider the appropriate approach to judicial review of municipal decisions. Broadly speaking, two approaches may be drawn from the cases: a narrow confining approach, and a broader more deferential approach. My colleague Justice Sopinka, as I understand his reasons, takes a narrow view of municipal powers and a strict approach to judicial review of municipal decisions. I advocate a more generous view of municipal powers and a more deferential approach to judicial review. In my view, the latter approach is the better of the two, having regard both to the authorities and to the modern conception of cities and municipalities.

[104] Although this was said in dissent, the sentiment there expressed is echoed in the court's unanimous decision in ***Nanaimo (City) v. Rascal Trucking Ltd.***, [2000] 1 S.C.R. 342, 183 D.L.R. (4th) 1, N.R. 42, 132 B.C.A.C. 298, 76 B.C.L.R. (3d) 201, 9 M.P.L.R. (3d) 1. There, Justice Major stated (at paras. 18 to 20):

> 17. The first step is to consider the approach the courts should take when construing municipal legislation. As noted by Iacobucci J. in *R. v. Sharma*, [1993] 1 S.C.R. 650, at p. 668:
>
> ... as statutory bodies, municipalities "may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation".
>
> 18. The process of delineating municipal jurisdiction is an exercise in statutory construction. There is ample authority, on the interpretation of statutes generally and of municipal statutes specifically, to support a broad and purposive approach.
>
> 19. While *R. v. Greenbaum*, [1993] 1 S.C.R. 674, favoured restricting a

municipality's jurisdiction to those powers expressly conferred upon it by the legislature, the Court noted that a purposive interpretation should be used in determining what the scope of those powers are. See Iacobucci J. (at pp. 687-88):

As Davies J. wrote in his reasons in *City of Hamilton v. Hamilton Distillery Co.* (1907), 38 S.C.R. 239, at p. 249, with respect to construing provincial legislation enabling municipal by-laws:

In interpreting this legislation I would not desire to apply the technical or strict canons of construction sometimes applied to legislation authorizing taxation. I think the sections are, considering the subject matter and the intention obviously in view, entitled to a broad and reasonable if not, as Lord Chief Justice Russell said in *Kruse v. Johnson* [1898] 2 Q.B. 91], at p. 99, a "benevolent construction", and if the language used fell short of expressly conferring the powers claimed, but did confer them by a fair and reasonable implication I would not hesitate to adopt the construction sanctioned by the implication.

> Accordingly, a court should look to the purpose and wording of the provincial enabling legislation when deciding whether or not a municipality has been empowered to pass a certain by-law ... [A] somewhat stricter rule of construction than that suggested above by Davies J. is in order where the municipality is attempting to use a power which restricts common law or civil rights.

20. This conclusion follows recent authorities dictating that statutes be construed purposively in their entire context and in light of the scheme of the Act as a whole with a view to ascertaining the legislature's true intent. See *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at paras. 21-23, *M & D Farm Ltd. v. Manitoba Agricultural Credit Corp.*, [1999] 2 S.C.R. 961, at para. 25, and the B.C. *Interpretation Act*, s. 8.

[105] However Justice Major also said this (at paras. 27 and 30):

27. The standard of judicial review applicable to municipal policy making decisions was reviewed and set out in *Shell*, *supra*. See Sopinka J. (at p. 273):

As creatures of statute, however, municipalities must stay within the powers conferred on them by the provincial legislature. In *R. v. Greenbaum*, [1993] 1 S.C.R. 674, Iacobucci J., speaking for the Court, stated, at p. 687:

Municipalities are entirely the creatures of provincial statutes. Accordingly, they can exercise only those powers which are explicitly conferred upon them by a provincial statute.

> It follows that the exercise of a municipality's statutory powers...is reviewable to the extent of determining whether the actions are *intra vires*.

...

30. A consideration of the nature of municipal government and the extent of municipal expertise further militates against a deferential standard on the question of jurisdiction. Furthermore, these factors reflect the institutional realities that make municipalities creatures distinct and unique from administrative bodies.

[106] On questions of jurisdiction to enact any particular municipal regulation, the test is correctness. This speaks to the court enjoying a still meaningful supervisory jurisdiction, on judicial review, over the exercise of local government powers.

[107] The third point, which I have not overlooked, centres on s. 3(2) of the ***Local Government Act***.

[108] It reads:

> Broad powers
>
> 3(2) For certainty, subject to subsection (1), if this Act confers a specific power on local governments in relation to a matter that can be read as coming within a general power also conferred by this Act, the general power is not to be interpreted as being limited by the specific power.

[109] The plaintiff relies on that section in responding to the argument that if the legislature found it necessary to create specific tree cutting regulatory powers in Division 2 of Part 22, one must construe the more general power, flowing from s. 879(1)(a) and s. 920, as implicitly excluding the specific powers created in ss. 708 and following.

[110] Such an argument has been well received in other cases interpreting local government powers: for example, see ***Vernon (City) v. Okanagan Excavating (1993) Ltd.*** (1993), 84 B.C.L.R. 130 (S.C.), 17 M.P.L.R. (2d) 216, aff'd (1995) 61 B.C.A.C. 240, 9 B.C.L.R. (3d) 331 a case cited in argument (at paras. 18-20).

[111] Section 3(2) was undoubtedly added to the ***Act*** to counter that trend.

[112] But here it is not a case of the specific power being used to restrict or limit the general power found in s. 879(1)(a). It is rather a case where the specific power - the ability to broadly regulate tree cutting - has been given to some local governments, but not to Local Trust Committees, which in turn have been given a much narrower express power to deal with the subject in s. 923 of the ***Act***. And it is the inference from that which is being used, in part, to divine the intention of the legislature in enacting s. 879(1)(a) of the ***Act***.

IV. THE AMENDING BYLAWS

[113] It is useful at this point to set out in more detail the scheme created by the Amending Bylaws, in particular, Bylaw 113.

[114] Under the ***"Justification"*** section Bylaw 113 states:

> The development permit area includes forested lands that have been designated in the Denman Island Official Community Plan as suitable for sustainable forest harvesting. ...

[115] Under the ***"Objectives"*** clause, we find:

> ...
>
> 3. To ensure that forestry practices are sustainable
>
> 4. To maintain a balance and diversity of forest age classes
>
> ...

[116] Under the heading ***"When is a Development Permit Required?"***, the bylaw specifically exempts land that:

> ...

- is within the Forest Land Reserve under the *Forest Land Reserve Act*;
- is classified as managed forest land under the *Assessment Act*; or
- is the subject of a valid and subsisting woodlot license or tree farm license under the *Forest Act*.
- is classified as farm land under the *Assessment Act* where the cutting or removing of trees is for the purpose of farm activities that are consistent with normal farm practices under the *Farm Practices Protection (Right to Farm) Act*.

[117] It will be seen that the bylaw properly recognizes that its provisions regulating forestry practices cannot apply to lands within these classes, where the legislature has occupied the regulatory field to the exclusion of local governments.

[118] However, this also underlines the fact that the Denman Island Local Trust Committee is, in Bylaw 113, purporting to fill the forest practices regulatory gap by extending regulation to private forest lands not otherwise touched by the provincial scheme.

[119] Section 3 of Bylaw 113, under the heading ***"Guidelines"***, sets out the critical table which is designed to ensure forest sustainability by requiring the retention, from time to time, of set percentages of various "Forest Stages". It provides:

Land Condition	Guideline (percent of net forest area)
major access structures	< 7
major access structures and initial stage forest combined	< 15
young, middle and advanced stage forest combined	> 85
middle and advanced stage forest combined	> 65
advanced stage forest	> 15

[120] The terms "young", "middle" and "advanced stage forest" are defined in the companion regulations in Bylaw 110.

[121] The complexity of the definitions of these terms, and others in that bylaw, belies description. I set out only the definition of "young stage forest":

> "young stage forest" means an area of forest other than high-graded forest that is not an advanced or middle stage forest; that has characteristics typical of the early stage of re-growth following a major disturbance; and where:
>
> (a) on higher productivity sites, the forest meets one or both of the following criteria:
>
> i. the number of healthy, well-spaced trees that are 3 m or taller is equal to or greater than 400 trees/ha,
>
> ii. the basal area of all live trees measuring 40 cm or larger dbh is equal to or greater than 18 m^2/ha.
>
> (b) on lower productivity sites, the forest meets one or both of the

following criteria:

i. the number of healthy, well-spaced trees that are 2 m or taller is equal to or greater than 400 trees/ha,

ii. the basal area of all live trees measuring 30 cm or larger dbh is equal to or greater than 16 m^2/ha.

[Bolding in original.]

[122] The definition of "basal area" in turn, is:

"basal area"' means the cross-sectional area of the stem of a tree or trees, including the bark, measured at breast height, using standard accepted forestry techniques;

[Bolding in original.]

[123] For a more complete appreciation of the complexity of the definitions, which in turn speaks to the incredible detail of forest practices regulation which Bylaw 113 descends to, I refer to Appendix II to these reasons which includes a more complete extract from Bylaw 110.

[124] The ***Technical Report on Denman Island Forest Bylaws*** succinctly sets out the purpose and thrust of Bylaw 113:

BYLAW No.113

Introduction

Bylaw No. 113 is a bylaw to designate a Development Permit Area that regulates logging and other forestry activities. Its primary purpose is to require that a certain amount of forest cover will always be present on each property in the DP area, and that the forest cover will include a significant area of mature and old forests in particular. This portion of the bylaw is based on the concept of 'Seral Stage Targets' from the Biodiversity Guidebook of the Forest Practices Code. However, the details have been significantly changed from the FPC to fit better with local conditions and to be consistent with the regulatory tools available to local government.

The second purpose of Bylaw No. 113 is to regulate some aspects of forest roads and landings, to prevent some of the more serious form of environmental damage that can result from poor practices.

...

[Bolding in original.]

[125] The report further states:

...

One of the main effects of these bylaws will be to prevent wholesale removal of all the valuable timber from a parcel of land at one time, whether by clear-cutting or high-grading (Bylaw No. 113). Although the purpose of this requirement is to maintain forest cover for its ecological value, there may be a beneficial side effect of retaining some of the trees for their economic value. That is, as long as there is some standing timber on the land at all times, the owner always has the option to derive some economic benefit from managing the forest. Thus, the pressure to convert the land permanently to non-forest uses may be reduced.

...

[126] In addition to the "Forest Stages" provision in Bylaw 113 to which I have referred, the bylaw goes on to deal with (amongst other items):

- replanting of recommended tree species;
- partial cutting;
- "wildlife trees" defined in Bylaw 110 as "a tree, live or dead, that has special characteristics that provide valuable habitat for the conservation or enhancement of wildlife, such as a large stem or branches, a hollow trunk, a dead, broken or deformed top, internal decay, or loose or sloughing bark;
- salvage logging;
- roads and landings.

[127] I will not refer to the other bylaws in any detail.

[128] There is no doubt that they take a more focused approach to the regulation of logging in specific areas like streams and wetlands (Bylaw 112) and steep slopes (Bylaw 111).

[129] And there is no doubt that aspects of these more focused bylaws are within the letter and spirit of the powers granted under s. 879 of the ***Act*** and, in particular, under s-ss.(1)(a) and (b).

[130] However, it is clear that the Amending Bylaws are an integrated package and their primary thrust, their pith and substance, is the regulation of forest practices on private lands. That is clear from the first paragraph in the ***Technical Report*** which accurately describes the bylaws:

> Introduction
>
> Denman Island Local Trust Committee Bylaws No. 110 through 114-collectively referred to in this document as the Forest Bylaws, or just the bylaws-are a series of bylaws developed by the Denman Island Local Trust Committee to regulate certain aspects of forest land use with the overall goal of promoting sustainability in the use of forest land on Denman Island.
>
> [Bolding in original.]

V. CONCLUSION

[131] I have concluded that the pith and substance of the Amending Bylaws, in particular Bylaw 113, is not within the legislative competence of the Islands Trust under ss. 879 and 920 of the ***Local Government Act***, or otherwise.

[132] My reasons have been touched upon in the preceding paragraphs, but I would highlight them in this way:

> (i) Section 879(1)(a), the principal purported authority for at least Bylaw 113, did not, before Bill 26, authorize the regulation of logging on private lands, witness the need to add Division 2 of Part 22 and s. 923 for this purpose; I add that to a lesser extent the plaintiff relies upon s. 879(1)(b), the ability to designate DPAs for "protection of development from hazardous conditions," this is a much narrower consideration than that found in s. 879(1)(a) and everything I said about the latter section as a source of authority for the Amending Bylaws applies with even greater force to s. 879(1)(b); as well, that subsection has been present in this form from the initial DPA legislation in 1985;
>
> (ii) In adding the phrase "its ecosystems and biodiversity" to the phrase

"protection of the natural environment" in s. 879(1)(a), Bill 26 was not intended to create a broad power in local governments to closely regulate forestry practices on private lands; the thrust of these amendments, as those to s. 920(7) make clear, was to enhance the ability of local government to protect fish habitat;

(iii) The legislature has put in place through the ***Forest Practices Code of British Columbia*** and other legislative initiatives a detailed regulatory scheme for logging on rural lands in British Columbia; it must be taken to have intentionally left largely unregulated the logging of private lands not within the Forest Land Reserve, a woodlot licence, a tree farm licence, or a forest management plan under the ***Assessment Act***; and

(iv) Much clearer authority would be required to support the detail and breadth of forest practices regulation found in the Amending Bylaws, specifically in Bylaw 113. This is particularly so because, where the legislature has created those powers, in Division 2 of Part 22, it has done so with a keen appreciation for the fact that it is potentially interfering with valuable development rights and it has created a scheme of compensation to respond to that concern. This is something totally absent from the development permit provisions found in s. 879 and it is a further reason to conclude that the legislature simply did not intend to create such powers under s. 879.

[133] At this point, let me digress into a bit of "real time" reporting on the development of this analysis. I have reached this conclusion on the limits of s. 879(1)(a), and in so doing I have placed primary reliance upon the inference which I have drawn from the legislature creating the broad tree cutting protection powers found in Division 2 of Part 22 and not extending those powers to Local Trust Committees under the ***Islands Trust Act***.

[134] I now cast about for further evidence or indications of legislative intent, which might confirm or deny the correctness of my conclusion.

[135] As plaintiff's counsel has specifically invited me to look at the Minister's statements in ***Hansard*** on the introduction of Bill 26, and as I have concluded that that was proper, I look to the Minister's statements upon the introduction of the provisions which are now found in Division 2 of Part 22, the tree protection powers.

[136] These provisions were included in the ***Municipal Amendment Act (No. 2) 1992***.

[137] On second reading of that Bill, the then Minister of Municipal Affairs, Robin Blencoe, said this:

...

This tree legislation addresses the concerns of municipalities and the public, who have been pressing for action as growth pressure in urban areas heightens the impact of tree removal on heritage, aesthetics, views and the environment. It was also developed in consultation with the Union of B.C. Municipalities, which has actively sought protection for trees in urban areas.

This amendment is an urban tree-cutting measure. The rural tree-cutting issue involves a greater complexity of interests including commercial, forestry, private land, local government, environmental and aboriginal interests. Although I support the desire for more control over tree-cutting in rural areas, this must be addressed in a broader process and in a coordinated and comprehensive way which is beyond the scope of this legislation.

My colleague the Minister of Forests is currently looking into the broader issues and will be seeking input form the various stakeholders, including regional districts and the Islands Trust, on the complex issue of logging on private land.

...

(British Columbia Debates, 24 June 1992, 3051

[138] That statement makes the precise point. The tree protection powers were intentionally restricted to urban governments and it was specifically recognized that tree cutting in rural areas, that is within Regional Districts and the Islands Trust, was a complex issue which had to be "addressed in a broader process and in a coordinated and comprehensive way."

[139] That is strong support for the conclusion that the amendments to s. 879(1)(a) in 1997 simply cannot be viewed as the legislature's response to the difficult issue of the regulation of logging on private lands within rural areas.

[140] I have said that there are undoubtedly aspects of the Amending Bylaws properly within the development permit powers of the Local Trust Committee, in particular, in Bylaws 111 and 112. How should that affect my disposition in this matter?

[141] I have also said that the Amending Bylaws are an integrated collection of regulations advanced by the Denman Island Local Trust Committee as a package, indeed staff have called them collectively the "Forest Bylaws".

[142] They were passed at one time. They are closely interrelated. For example, Bylaw 110 contains the definitions for various terms in the other bylaws.

[143] The Amending Bylaws are intended to create a regulatory scheme that is cumulative. It is provided in Bylaw 110 that:

> In the event that a parcel of land is subject to more than one development permit area, only one development permit containing conditions based on all of the relevant guidelines in all applicable development permit areas will be required.

[144] In ***Paul Esposito Restaurants Ltd. v. Abbotsford (District)*** [1990] B.C.J. No. 1658 (Q.L.) (B.C.S.C.), Justice Fraser dealt with a case where one of a series of municipal actions was found to be invalid. He stated (at 7):

> The rezoning bylaw, the Development Permit and the Development Variance Permit all came into existence as components of a package through which the Park Inn Hotel was to be allowed to add a beer and wine store to its existing operation. They seem to me to be schematically connected and to have a functional unity, a "three-legged stool", in the words of McKenzie, J. in *Rathlef v. Cowichan District*, [1986] B.C.J. No. 1775, S.C.B.C., Vancouver Registry No. A860602, 20th May 1986). Accordingly, as in *Rathlef*, I hold that the invalidity of one invalidates all.

[145] In my view, that reasoning applies here and I should not sever off such bylaws or parts thereof that might be good from those that are bad.

[146] To give but one example of the inappropriateness of leaving part of the Local Trust Committee's legislative package in place, I note that prior to the adoption of the Amending Bylaws, the DPA setback from streams and watercourses was set at 60 metres. The Amending Bylaws reduced that setback to 30 metres, presumably because, as a whole, the new regulations made a 30 metres setback appropriate. To strike down significant portions of the new regulations while leaving this setback reduction in place, for example, would serve to totally frustrate the scheme which the Local Trust Committee members thought they were promulgating.

[147] There will be a declaration as to the invalidity of the entire package.

[148] In light of my conclusion on this fundamental aspect of the matter, it is not necessary for me to deal with the defendant's other arguments. A consideration of those

arguments does not require the finding of any facts in controversy.

[149] In the result the plaintiff's action is dismissed. The defendant is entitled to its costs and that issue may be spoken to as counsel may advise.

"R.J. Bauman, J."
The Honourable Mr. Justice R.J. Bauman

Vancouver, B.C.
7 November 2000

APPENDIX I

Division 2 - Protection of Trees

General protection of trees

708 (1) A council may, by bylaw applicable to all or part of the municipality, do one or more of the following:

(a) prohibit the cutting and removal of trees;

(b) regulate the cutting and removal of trees;

(c) prohibit the damaging of trees;

(d) regulate activities that may damage trees;

(e) require the replacement, in accordance with the bylaw, of trees that have been cut, removed or damaged in contravention of a bylaw under this subsection or a permit referred to in section 709 (1);

(f) require the maintenance of replacement trees required under paragraph (e) or by permit referred to in section 709 and of significant trees identified under section 710;

(g) require specified amounts of cash deposits, letters of credit or other forms of security for the replacement of trees under paragraph (e) and their maintenance under paragraph (f);

(h) specify circumstances in which assessments or inspections of trees or sites may be undertaken by the municipality;

(i) establish exemptions from the application of a bylaw under this subsection.

(2) A bylaw under this section may be different in relation to one or more of the following:

(a) different areas of the municipality;

(b) different species of trees;

(c) different classes of trees;

(d) different sizes of trees;

(e) different significant trees identified under section 710.

(3) Interest on security under subsection (1) (g) becomes part of the security.

(4) Security under subsection (1) (g) may be used for the purposes referred to in that subsection, but any amount not required for those purposes must be returned to the person who provided the security.

Regulation of tree cutting and removal

709 (1) Without limiting the generality of section 708 (1) (b), a bylaw under that section may do one or more of the following:

(a) require permits to cut or remove trees;

(b) [Repealed 1999-37-153.]

(c) establish terms and conditions for the granting, refusal and use of these permits, which may include requirements for the replacement of trees that are cut or removed or that are damaged in the course of these actions;

(d) require applicants for these permits to provide plans identifying

(i) the trees proposed to be cut or removed,

(ii) the trees proposed to be retained, and

(iii) the trees proposed to be provided in replacement of the trees that are to be cut or removed;

(e) establish circumstances in which a permit under this section may be cancelled.

(2) A fee for a permit under subsection (1) must not include charges for an assessment or inspection required as a condition of the permit or authorized under section 708 (1) (h) or 713 (1).

Significant trees

710 (1) A council may, by bylaw, identify trees that the council considers significant because of their importance to the community, including importance for heritage or landmark value or as wildlife habitat.

(2) The council may provide for the placement of a plaque or other marker indicating a tree identified under subsection (1), subject to the requirement that permission for this be obtained from the owner of the real property on which the marker is placed.

Hazardous trees and shrubs

711 (1) A council may, by bylaw, require the owner or occupier of real property to trim, remove or cut down a tree, hedge, bush or shrub on the property if the council considers that it is

(a) a hazard to the safety of persons,

(b) likely to damage public property, or

(c) seriously inconveniencing the public.

(2) A bylaw under section 708 (1) (a) or (b) does not apply to a tree that is subject to a bylaw under this section.

Removal or replacement of trees at owner's expense

712 (1) A council may take action under this section if a person does not comply

(a) with a requirement of a bylaw under section 708 (1) (e) or a permit referred to in section 709 (1) to provide replacement trees, or

(b) with a requirement of a bylaw under section 711 to trim, remove or cut down trees, hedges, bushes or shrubs.

(2) In the circumstances described in subsection (1), the council may serve the person with notice that the municipality will be entitled to take the required action at the expense of the person given the notice if the person does not take that required action,

(a) in the case of a requirement referred to in subsection (1) (a), within 30 days of service, or

(b) in the case of a requirement referred to in subsection (1) (b), within 5 days of service.

(3) The Supreme Court may, on application, order that the notice under subsection (2) may be served by substituted service in accordance with the order.

(4) If the person given notice does not take the required action within the time period referred to in subsection (2), the municipality, by its employees or others, may enter the real property and effect that action at the expense of the person given notice.

(5) [Repealed 1999-37-154.]

Assessment and inspection of trees

713 (1) In addition to the authority under section 708 (1) (h), a council may direct that an assessment or inspection of specified trees or sites be undertaken by the municipality for the purposes of this Division.

(2) The municipality, by its employees or others, may enter onto real property and make an assessment or inspection authorized under subsection (1) or section 708 (1) (h) or required as a condition of a permit referred to in section 709 (1).

Limits on powers under this Division

714 (1) If a bylaw under section 708 would have the effect on a parcel of land of

(a) preventing all uses permitted under the applicable zoning bylaw, or

(b) preventing the development to the density permitted under the applicable zoning bylaw, the bylaw does not apply to the parcel to the extent necessary to allow a permitted use or the permitted density.

(2) As an exception to subsection (1), a bylaw that has an effect referred to in that subsection applies without limit to a parcel if the council, by resolution, commits the municipality to

(a) pay compensation to the owner of the parcel for any reduction in the market value caused by the prohibition, or

(b) provide, by development permit, development variance permit or otherwise, alternative means for the parcel to be used for a permitted use or developed to the permitted density.

(3) For the purposes of subsection (2) (a), the compensation must be as determined and paid as soon as reasonably possible in an amount set

(a) by agreement between the owner and the municipality, or

(b) if no agreement is reached, by the Expropriation Compensation Board.

(4) For the purposes of subsection (2) (b), the council may issue a development permit or development variance permit on its own initiative without an application from the owner.

(5) Except as provided in subsection (2), no compensation is payable to any person for a reduction in the value of any interest in land that results from a bylaw under this Division or the issuance or refusal of a permit under this Division.

(6) A bylaw or permit under this Division does not apply to land and the trees on it if the land is land to which section17 of the *Forest Land Reserve Act* applies.

Reconsideration of delegate's decision

715 If a council delegates powers, duties or functions under this Division, the owner or occupier of real property that is subject to a decision of a delegate is entitled to have the council reconsider the matter.

APPENDIX II

2. Definitions Relating to Forest Stages

"initial stage forest" means an area of forest or land that is capable of supporting forest and that is not an advanced, middle, or young stage forest;

"young stage forest" means an area of forest other than high-graded forest that is not an advanced or middle stage forest; that has characteristics typical of the early stage of re-growth following a major disturbance; and where;

(a) on higher productivity sites, the forest meets one or both of the following criteria:

(i) the number of healthy, well-spaced trees that 3 m or taller is equal to or greater than 400 trees/ha,

(ii) the basal area of all live trees measuring 40 cm or larger dbh is equal to or greater than 18 m2/ha.

(b) on lower productivity sites, the forest meets one or both of the following criteria:

(i) the number of healthy, well-spaced trees that are 2 m or taller is equal to or greater than 400 trees/ha,

(ii) the basal area of all live trees measuring 30 cm or larger dbh is equal to or greater than 16 m2/ha.

"middle stage forest" means an area of forest other than high-graded forest that is not less than 3 ha in area and 80 m in width; that is not an advanced stage forest; that has to varying degrees the characteristics of a forest of intermediate age, including a sheltered micro-climate beneath the forest canopy, moderately or well developed understory vegetation, and trees that

have shed their limbs from the lower one-quarter or more of the stem height; and that meets one or more of the following criteria;

(a) trees that are 60 years old or older account for 70 percent or more of the total basal area of all live trees, and the forest structure and species composition have not been significantly affected by human activity or major natural disturbance during the past 60 years;

(b) on higher productivity sites, the basal area of all live trees measuring 20 cm or larger dbh is equal to or greater than 40 m2/ha, and the basal area of all live trees measuring 40 cm or larger dbh is equal to or greater than 25 m2/ha;

(c) on lower productivity sites, the basal area of all live trees measuring 20 cm or larger dbh is equal to or greater than 36 m2/ha, and the basal area of all live trees measuring 40 cm or larger dbh is equal to or greater than 18 m2/ha;

"advanced stage forest" means an area of forest other than high-graded forest that is not less than 80 m in width and not less than the lesser of 3 ha or 15 percent of the net forest area in area; that has coniferous trees that are large for the site and species and some or all of the characteristics of an old forest, including large standing and fallen dead trees, areas with a sheltered micro-climate beneath the forest canopy, well developed understory vegetation, gaps in the canopy, and more than one layer in the canopy; and that meets one or more of the following criteria:

(a) trees that are 100 years old or older account for 70 percent or more of the total basal area of all live trees, and the forest structure and species composition have not been significantly affected by human activity or major natural disturbance during the past 100 years;

(b) on higher productivity sites, the basal area of all live trees measuring 20 cm or larger dbh is equal to or greater than 45 m2/ha, and the basal area of all live trees measuring 80 cm or larger dbh is equal to or greater than 30 m2/ha;

(c) on lower productivity sites, the basal area of all live trees measuring 20 cm or larger dbh is equal to or greater than 40 m2/ha, and the basal area of all live trees measuring 60 cm or larger dbh is equal to or greater than 30 m2/ha;

3. Definitions Relating to Forest

"forest interior habitat" means the habitat found in middle or advanced stage forests at a distance greater than two tree heights from the edge with an adjacent area of young or initial stage forest;

"high grade forest" means an area of forest that has been logged and in which trees with one or more of the following characteristics account for more than 40% of the basal area:

(a) a gouge on the stem, or a wound caused by logging that girdles more than one third of the stem circumference or exceeds more than 400 cm2 in area,

(b) a wound or gouge on a supporting root within 1 m of the stem,

(c) a broken top at a point on the tree larger than 10 cm diameter,

(d) a height to diameter ratio larger than 125:1.

(e) a live crown ratio less than 15 percent;

"net forest area" means that portion of a parcel of land that is within the development permit area, minus

(a) land occupied by the fields, pasture, and structures of a farm,

(b) 2 ha of land for each dwelling permitted on the parcel, and

(c) the portion of the parcel that is in a lake or wetland, or other site that is not capable of supporting a forest by reason of natural soil and environmental conditions;

"small opening" means one or other of the following definitions:

(a) a patch of initial stage forest that is;

(i) within an area of an older stage of forest,

(ii) no wider than the greater of 20 m or twice the average height of the surrounding trees,

(iii) no larger than 0.5 ha, and

(iv) further than 20 m from the nearest patch that is of a younger stage of forest than the surrounding area;

(b) a patch of young or middle stage forest that is:

(i) within an area of an older stage of forest,

(ii) no wider than the greater of 30 m or three times the average height of the surrounding trees,

(iii) no larger than 1 ha, and

(iv) further than 20 m from the nearest patch that is of a younger stage of forest than the surrounding area;

"large opening" means a patch of initial, young, or middle stage forest that is within an area of an older stage of forest and that is not a small opening;

"patch" means a discrete area of forest or forestland that is distinct from surrounding area and that belongs to one forest stage;

Polygons:

"polygon" means a map area of forest or forest land that is distinct from surrounding area; whose boundaries coincide with boundaries between different stages of forest or other distinct boundaries; and that may contain one stage of forest or a mosaic of small patches of two forest stages;

"complex polygon" means a polygon that contains a mosaic of two different stages of forest, other than advanced stage forest, and that has, for the polygon as a whole, not less than 70 percent of the basal area requirements needed to meet the definition of the older state of the two stages of forest;

"simple polygon" means a polygon that contains a single stage of forest and that meets, for the polygon as a whole, the definition of that stage of forest;

Productivity Sites:

"higher productivity site" means an area of forest land where the site index for Douglas Fir is larger than 28 m at 50 years of age measured at breast height, or if the site is not suitable for Douglas Fir, the site index for Western Red Cedar is larger than 26 m at 50 years of age measured at breast height;

"lower productivity site" means an area of forest land where the site index for Douglas Fir is less than or equal to 28 m at 50 years of age measured at breast height, or if the site is not suitable for Douglas Fir, the site index for Western Red Cedar is less than or equal to 26 m at 50 years of age measured at breast height;

"width" in respect to a patch, opening, or polygon means the largest dimension of a patch, opening, or polygon in a forest that can be measured along the ground perpendicular to its longest axis;

4. Definitions Relating to Forestry Practices and Other Land Alteration

"clear-cutting" means a logging method that creates an area of initial stage forest greater in width than the greater of 20 m or twice the average height of the surrounding trees, and greater in area than 0.5 ha;

"land clearing" means the preparation of land for farm production including the removal of vegetation and stumps necessary and the preparation of soil appropriate for the intended farm operation;

"partial cutting" means the felling or removal of trees by systems other than clear-cutting, and includes thinning, single tree selection, small group selection, or shelterwood systems;

"thinning" means a method or system of cutting trees in which the crowns of the trees that are left are expected to grow outwards into the spaces created by tree removal, such that regeneration of new seedlings or release of small trees under the canopy is not needed for the stand to achieve complete or nearly complete occupancy of the site by trees (usually within a period of fifteen years or less);

5. Definitions Relation to Specific Trees:

"dangerous tree" means a tree that is hazardous to human safety because of location or lean, physical damage, overhead hazards, deterioration of the limbs, stem or root system, or a combination of these;

"wildlife tree" means a tree, live or dead, that has special characteristics that provide valuable habitat for the conservation or enhancement of wildlife, such as a large stem or branches, a hollow trunk, a dead, broken or deformed top, internal decay, or loose or sloughing bark:

"veteran tree" means a live or dead tree more than 180 years old;

6. Definitions Relating to Tree or Forest Characteristics

"breast height" means a point on a tree at 1.3 m above the point of germination, measured along the axis of vertical growth;

"dbh" means the diameter at breast height measured outside the bark around the trunk of the tree at 1.3 m above the point of germination;

"basal area" means the cross-sectional area of the stem of a tree or trees, including the bark, measured at breast height, using the standard accepted forestry techniques;

"gouge" means an injury to the stem of a tree that penetrates into the sapwood or deeper;

"site Index" means a measure of the productive capacity of forest land, expressed as the average height of healthy, free-growing, dominant trees of a given species reference age and determined by using standard accepted forestry techniques and by referring to the tables cited in Appendix E;

"supporting root" means a root that originates from the base of a tree and has a diameter greater than 3 cm at 1 m from the stem;

"well-spaced trees" means trees that are counted in a sample as indicated in the Denman Island Development Procedures Bylaw and are not less than 2 m apart;

"wound" means an injury to the stem or a tree that removes a portion of the bark and cambium but does not penetrate into the sapwood;

7. Definitions Relating to Structures

"constructed top width" means the width of the relatively level portion of a road, measured between the insides of the ditches, shoulders, cutbanks, or fills;

"constructed total width" means the width of a road, including the constructed ditches, shoulders, cutbanks, or fills;

"ground-based machinery" means powered vehicles that move by means of wheels or tracks in contact with the ground, including trucks, skidders, loaders, excavators, backhoes, and tractors;

"landing" means an area that is constructed for storage, processing, or loading of logs; that has an area equal to or greater than 500 m2; and from which the forest floor, topsoil or vegetation has been removed or displaced by blading, excavation or the effects of vehicle traffic;

"major access structure" means a major skid trail, a landing or a gravel pit or borrow pit;

"minor skid trail" means a surface that is intended to carry vehicle traffic, excluding a public road, and that is not a road or major skid trail;

"road or major skid trail" means a surface that is intended to carry vehicle traffic, excluding a traffic road, and that has one or more of the following characteristics:

(a) the constructed top width is equal to or more than 3.2 m,

(b) the constructed total width is equal to or more than 4.5 m,

(c) the forest floor or topsoil has been removed or displaced by blading or excavation,

(d) gravel, rock, crushed rock, asphalt, concrete, or other similar material

has been placed on the surface,

(e) ruts or grooves caused by traffic are greater than 30 cm deep below the forest floor of adjacent areas;

"rehabilitate" in respect of a skid trail, road, or landing means restoring the natural contours and drainage patterns of the land surface, de-compacting the soil if necessary, and re-vegetating the soil with native plants;

8. Definitions Relating to Professionals

"Registered Professional Biologist" means a person who is a professional biologist registered with the Association of Professional Biologists of British Columbia;

"qualified wildlife/dangerous tree assessor" means a person who has successfully completed a Wildlife/Dangerous Tree Assessor's Course, and is certified by the Wildlife Tree Committee of British Columbia, or its successor agency, as being qualified to assess wildlife and dangerous trees;

"Registered Professional Forester" means a professional forester as defined in the Foresters Act.