

Stem to Stern: Crown Land Allocation and the Victoria International Marina

Introduction

Stem to Stern: Crown Land Allocation and the Victoria International Marina is the report of the Ombudsperson's investigation into the decision of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development to approve a lease of a Crown water lot to be used as part of the Victoria International Marina.

The investigation was into complaints from the public that the ministry did not adequately consider Crown land allocation principles in their decision making, approved the application when other approvals were still pending, and made the decision without adequate public consultation.

The Ombudsperson's investigation found a number of shortcomings with the ministry's decision-making processes, including the:

- adequacy and timeliness of information made available by the ministry,
- consultation process used by the ministry in arriving at its decision, and
- adequacy of reasons provided to support the ministry's decision.

Recommendations

The Ombudsperson's investigation resulted in eight recommendations:

1. The Ministry of Forests, Lands, Natural Resource Operations and Rural Development ensure that its website contains relevant, up-to-date information about the status of Crown land allocation applications, their outcomes, the reasons for any decisions on applications and whether successful applicants are meeting, or have met, the terms on which allocations were made. The ministry should post new documents within two weeks and ensure the website is managed consistently across all regions to provide the same level of service to the public.
2. The Ministry of Forests, Lands, Natural Resource Operations and Rural Development develop a policy or procedure for determining when a public consultation process is necessary, and create a framework that outlines the process to be followed when allocating Crown land. A framework to consider adopting is one similar to that proposed by the Auditor General of British Columbia, *Public Participation: Principles and Best Practices for British Columbia* (2008, Report 11). The policy or procedure should not allow the ministry to rely on the approval and consultation processes of other agencies unless the ministry tells the public in advance that it intends to do so.

The B.C. Ombudsperson provides independent and impartial oversight of public authorities to ensure every person is treated fairly in the provision of public services. In addition to being an independent avenue for individuals with complaints with B.C. public services, the Ombudsperson reports to the Legislative Assembly and the people of British Columbia to bring attention to matters of administrative fairness. These reports provide oversight of public bodies and assurance to legislators and the public regarding the fairness of provincial and local public administration.

3. The Ministry of Forests, Lands, Natural Resource Operations and Rural Development develop a policy to guide decision makers in considering when, to what extent and by what method the ministry should measure and evaluate the risks, costs and benefits of a Crown land allocation application, including when to seek independent assessments.
4. The Ministry of Forests, Lands, Natural Resource Operations and Rural Development decision makers should indicate in their decision the evidence relied on in making the decision; whether the proponent's information was tested or verified or on what basis it was determined to be reliable; and include additional information considered but not relied on. Decision makers should clearly record how decisions reflect the five principles of land allocation and the requirement in the *Land Act* that dispositions of Crown land be in the public interest.
5. The Ministry of Forests, Lands, Natural Resource Operations and Rural Development amend its Tenure Administration Procedure to ensure that when staff consider replacement of a tenure, request evidence of diligent use, conduct a site visit, or assess whether the tenure holder is meeting environmental stewardship obligations, staff will:
 - consider whether it is necessary to obtain confirmation that the proponent is compliant with the terms and conditions set by other agencies,
 - determine whether any relevant environmental or other assessments that were incomplete at the time of the original decision have been completed and if not, assess the need for additional assessment(s), and
 - document the information considered and relied upon in reaching a decision.
6. The Ministry of Forests, Lands, Natural Resources, and Rural Development amend its policies and procedures to identify the land allocation decision maker and how the decision is to be recorded (for example, Land Use Report, Notice of Final Review letter to the applicant, internal memo). Decision makers should, for each Crown land allocation decision, set out the source of their authority to make the decision and the scope of that authority if they are one member of a larger decision-making team.
7. The Ministry of Forests, Lands, Natural Resource Operations and Rural Development develop policy or guidelines to ensure decision makers clearly explain lease terms in the decision – either standard terms based on the policy or a clear rationale when there is deviation from the standard.
8. The Ministry of Forests, Lands, Natural Resource Operations and Rural Development set out, in policy or guidelines, conditions under which decision makers may consider departing from the standard marina lease length of 30 years, and the factors to take into account when a proponent requests a non-standard lease term. Alternatively, the ministry add this information to the Policy Variance.

All eight recommendations have been accepted by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development. The Office of the Ombudsperson will monitor progress and report publicly.

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