



Reply to the Attention of: Joan M. Young  
Direct Line: 604.893.7639  
Email Address: joan.young@mcmillan.ca  
Our File No.: PHARA  
Date: January 10, 2024

## EMAIL

[WLRs.minister@gov.bc.ca](mailto:WLRs.minister@gov.bc.ca)

Honourable Nathan Cullen  
Minister of Water, Land and Resource  
Stewardship  
Room 310 Parliament Buildings  
Victoria, BC V8V 1X4

Dear Hon. Minister Cullen,

### **Re: Pender Harbour Dock Management Plan**

We are legal counsel for the Pender Harbour and Area Residents Association (PHARA) and are writing in relation to the Province's November 24, 2023 correspondence regarding proposed amendments to the Pender Harbour Dock Management Plan. Our understanding is that the consultation process is set to close on January 12, 2024. Our clients have recently asked your staff to extend the consultation period further and set a meeting involving legal counsel. So far, however, staff have been unable to confirm whether that request will be accommodated.

We strongly encourage you to ensure an extension is put in place, so that the Plan and proposed amendments can be the subject of meaningful discussion, including with the parties' legal counsel. In our view, the November 24 correspondence and materials referenced raise - on their face - significant administrative law problems given your common law obligations in respect of applications under s. 11 of the *Land Act*. These include issues of fettering of discretion (for example, through statements indicating certain applications will not even be accepted for consideration, setting maximum float areas, and setting maximum tenure terms). We also hold concerns about potential improper sub-delegation of statutory decision-making powers to the sishalh Nation, and a failure of the government to respect the Supreme Court of Canada's directions related to the limits of the Crown's duty to consult Indigenous groups.

It is also noteworthy that there is a clear discrepancy between the proposed Pender Harbour Dock Management Plan and the Crown land policies and procedures otherwise adopted and applied by the Province in respect of *Land Act* decision making. (See Crown Land Policies ([Crown land policies - Province of British Columbia \(gov.bc.ca\)](https://www.gov.bc.ca/crown-land-policies)) and Crown Land

Procedures [Crown land procedures - Province of British Columbia \(gov.bc.ca\)](#)) These documents are drafted in a manner that better respects the legal limitations of policy or guidance material, something the "Plan" seems wholly unalive to.

PHARA believes it is in everyone's best interests to have these discussions now –to hopefully avoid adverse consequences and reduce the risk of resulting litigation.

PHARA is aware of other parties that have similar concerns and PHARA hopes this letter, as well as the many other communications you are likely receiving, will cause government to press the pause button now and engage with PHARA and its legal counsel, as has been proposed.

Yours truly,

A handwritten signature in blue ink that reads "Joan Young". The signature is written in a cursive, flowing style.

Joan M. Young\*  
\*Law Corporation

cc. Pender Harbour and Area Residents Association

Robin Junger, McMillan LLP