



IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Comox Valley Regional District

Plaintiff

And:

Union Bay Industries Ltd. and Deep Water Recovery Ltd.

Defendants

AMENDED RESPONSE TO CIVIL CLAIM

Filed by: The Defendants, Union Bay Industries Ltd. ("Union Bay Industries") and Deep Water Recovery Ltd. ("Deep Water")

PART 1: AMENDED RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants' Response to Facts

1. The facts alleged in the following paragraphs of Part 1 of the Amended Notice of Civil Claim are admitted: 2, 3, ~~10~~, and 11, and 12.
2. The facts alleged in the following paragraphs of Part 1 of the Amended Notice of Civil Claim are denied: 5, 6, 7, 8, 9, 10, ~~14~~, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 45, 46, 47, and 48.
3. The facts alleged in the following paragraphs of Part 1 of the Amended Notice of Civil Claim are outside the knowledge of the Defendants: 1, 4, ~~12~~, 13, 14, 22, and 23, 24, 25, 40, and 44.

Division 2 – Defendants' Version of Facts

4. Unless expressly admitted herein, the Defendants deny each and every allegation of fact, argument, and all other matters contained in the Plaintiff's Amended Notice of Civil Claim.

I. Background

5. Union Bay Industries is a company incorporated pursuant to the laws of British Columbia with a registered and records office at 1500-570 Granville Street, Vancouver, British Columbia, V6C 3P1.

6. Union Bay Industries is the registered owner of lands and premises located at 5084 Island Highway South, Union Bay, British Columbia, and legally known and described as follows:

Parcel A (D.D. 27784N) of Lot 11, Nelson District, Except Parts Outlined in Red on Plans 397 R.W. and 1414 R, and Except Those Parts in Plans 7190, 8906, 21511, 22414, 28338, 29341 and 29342, PID 004-758-901

(the “**Property**”).

7. Union Bay Industries previously operated a log sorting business at the Property.

8. Deep Water is a company incorporated pursuant to the laws of British Columbia with a registered and records office at 1500-570 Granville Street, Vancouver, British Columbia, V6C 3P1.

9. Deep Water is the tenant at the Property.

10. Deep Water’s operations at the Property include a barge loading facility, a storage and works yard and warehousing facility, a waterfront freight handling facility, and marine vessel services. Deep Water has, on occasion, been tasked with performing emergency rescue services on behalf of the Canadian government and the Canadian Coast Guard. To date, Deep Water’s activities have never included work on any motorized vessels, with the exception of one small wooden vessel delivered by the Canadian Coast Guard, as referenced above.

II. The Plaintiff is Acting Inappropriately

11. The Plaintiff’s commencement of this action is not the product of neutral, good faith regulatory enforcement.

12. The Plaintiff previously approved Deep Water’s operations and, on its own admission, considered those operations to be compliant with the Zoning Bylaw (as defined below). However,

after sustained lobbying by local residents and organized community groups, the Plaintiff succumbed to external pressure and saw Deep Water's operations as politically unpopular.

13. The Plaintiff has now advanced an enforcement position driven without any legitimate regulatory objective. Instead, the Plaintiff has invoked enforcement and other mechanisms, including the Court's processes, not to enforce its bylaws, but to try to eliminate a disfavoured, yet lawful, business after previously approving it.

14. The Plaintiff's conduct is inconsistent with its own established bylaw enforcement policy. That policy requires that enforcement decisions be exercised in a fair, unbiased, and proportionate manner. That has not occurred.

15. The Plaintiff's conduct forms part of a broader, coordinated campaign to force Deep Water out of Union Bay by curtailing its ability to continue its business.

16. Consistent with that objective, the Plaintiff has targeted Deep Water through external channels to secure the shutdown of Deep Water's operations.

17. The actions of the Plaintiff have been taken in bad faith and for an improper purpose.

18. Deep Water's operations are compliant with the Zoning Bylaw (as defined below).

H.III. The Zoning Bylaw

11.19. The Property is subject to the Rural Comox Valley Zoning Bylaw No. 520, 2019 (the "Zoning Bylaw").

12.20. Pursuant to the Zoning Bylaw, the Property is split into three separate zones:

- (a) the shoreline portion of the Property is designated an "IM" zone, described as "Industrial Marine" (the "**Industrial Marine Zone**");
- (b) the upland portion of the Property is designated a "RU-20" zone, described as "Rural Twenty" (the "**RU-20 Zone**"); and
- (c) the minor remaining portion of the Property is designated a "CR-1" zone, described as "Country Residential One" (the "**CR-1 Zone**").

~~13.21.~~ The Property is one of the only commercial sites in the Comox Valley Regional District currently in the Industrial Marine Zone.

~~14.22.~~ The Industrial Marine Zone is described in Part 900 of the Zoning Bylaw, in the category of “Commercial / Industrial Zones”.

~~15.23.~~ Pursuant to s. 908.1 of the Zoning Bylaw, the permitted principal uses on any lot in the Industrial Marine Zone are the following.

- (a) Boat building and repairs and service and sales.
- (b) Seafood processing and sales.
- (c) Marina.
- (d) Barge facility.
- (e) Waterfront freight handling facility.
- (f) Log handling and storage facility.
- (g) Storage and works yard and warehousing.
- (h) Offices.

[Emphasis added.]

~~16.24.~~ The italicized words are defined in Part 200 of the Zoning Bylaw. The relevant definitions are:

“**boat**” means a vessel used for recreation or the transportation of people or goods but does not include any permanent residential or commercial accommodation;

“**barge facilities**” means an area on the surface of the water together with a ramp facility at an adjacent upland location or a dock facility from an upland location extending into the water which allows for the movement of equipment or goods between a floating barge and the upland;

“**storage and works yard**” means the use of land for storage, repairs, maintenance and vehicle parking; and

“**warehousing**” means the use of a building for bulk storage of material, products, goods or merchandise which will be sold elsewhere or, subsequently, transported to another location for sale or consumption, but excludes mini-storage.

~~17.25.~~ Without limiting the generality of the foregoing, Deep Water's activities fall within the uses permitted in the Industrial Marine Zone pursuant to s. 908.1 of the Zoning Bylaw, under "[b]oat building and repairs and service and sales", "[b]arge facility", "[w]aterfront freight handling facility", and/or "[s]torage and works yard and warehousing".

~~18.26.~~ At all material times, Deep Water has conducted its activities on the portion of the Property zoned Industrial Marine Zone.

~~19.27.~~ Deep Water has not conducted its services on the portions of the Property that are in the RU-20 Zone and/or CR-1 Zone.

~~20.28.~~ All of Deep Water's uses of the Property comply with the provisions of the Zoning Bylaw.

III.IV. The Water Lease Is Approved For Deep Water's Activities

~~21.29.~~ In addition to the Zoning Bylaw, access and use of the Property is was previously governed by a water lease agreement with the Province of British Columbia, which was cancelled on or around July 3, 2025.

~~22.30.~~ In October 2019, Deep Water applied to the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the "**Ministry**") for tenure replacement from Industrial Log Handling to Industrial General and in order to modify the water lease to allow for the following:

- (a) the moorage and storage of vessels on the water; and
- (b) the transit of vessels or barges from the water to the land for the specific purposes of vessel repair and recycling.

~~23.31.~~ Deep Water submitted an Environmental Management Plan with its application. The Environmental Management Plan is a site-specific plan to protect the local marine environment and sets out, among other things, that:

- (a) Deep Water's facility provides a vessel decommissioning service for the marine industry on the coast of British Columbia;

- (b) Deep Water's services consist of the decommissioning of derelict vessels or those at the end of their serviceable life, which is an essential service in that it enables the safe disposal and recycling of those vessels; and
- (c) Deep Water conforms with international quality management standards for effective environmental management.

24.32. The application process for the tenure replacement and modification to the water lease included consultations with First Nations and the Plaintiff. The Plaintiff did not disagree with or object to Deep Water's use of the Property during the Ministry's consultation process.

25.33. Rather, on March 29, 2021, the Plaintiff wrote to the Ministry in response to Deep Water's proposed tenure replacement from Industrial Log Handling to Industrial General at the Property and confirmed, among other things, that:

- (a) both the water tenure area and the upland area of the Property are in the Industrial Marine Zone under the Zoning Bylaw;
- (b) this particular zone allows for a "barge facility"; and
- (c) the proposed Environmental Management Plan for tenure replacement is consistent with the Zoning Bylaw.

26.34. In October 2021, the Ministry granted Deep Water's application. The water lease was modified to allow for the storage and transit of vessels or barges from the water to the land to facilitate Deep Water's upland activities.

35. The Plaintiff's position in the Ministry approval process, which confirmed that Deep Water's operations are compliant with the Zoning Bylaw, directly contradicts the Plaintiff's position in this litigation. That reversal in position is not grounded in any change in Deep Water's operations or the regulatory framework. Instead, it is responsive to subsequent public pressure directed at shutting down those same operations, leading Deep Water's operations to fall out of political favour.

IV.V. The Plaintiff Has Approved of Deep Water's Business And Has Admitted That Deep Water's Activities Are Compliant With The Zoning Bylaw

~~27.~~36. Since at least March 2020, the Plaintiff has had full knowledge of the activities being conducted on the Property, and has approved of them, including as follows.

- (a) In March 2020, staff and representatives of the Plaintiff attended at the Property for a site visit. At that time, there was at least one barge that had been transferred from the water to the Property. Deep Water indicated to the Plaintiff that the barge would be dismantled and would then be stored/warehoused or shipped. At the conclusion of the site visit, the Plaintiff's staff and representatives did not identify any concerns with Deep Water's operations.
- (b) On January 13, 2021, six representatives of the Plaintiff, including senior staff from its Planning and Bylaw Services departments and Director Daniel Arbour representing Electoral Area A (Baynes Sound-Denman Hornby Islands), attended at the Property for another site visit. At that time, there were at least five barges transferred from the water to the Property, one of which was partially dismantled, and approximately one thousand tonnes of prepared material from the dismantling activities, which were being stored/warehoused. During the site visit, Deep Water demonstrated to the Plaintiff what it was doing. At the conclusion of the site visit, the Plaintiff's staff and representatives did not identify any concerns with Deep Water's operations.
- (c) Following the site visit, Director Arbour made a public Facebook post, confirming that Deep Water's "[c]urrent activities are in line with zoning" and attaching two photographs depicting two barges transferred from the water to the Property and materials from modified or dismantled barges, among other things, all of which are characteristic of Deep Water's services.

~~28.~~37. After the site visits referenced at paragraph 36 herein, the Plaintiff represented that Deep Water's activities comply with the Zoning Bylaw to other levels of government. As set out in further detail above, on March 29, 2021, the Plaintiff expressly confirmed Deep Water's compliance with the Zoning Bylaw in a letter to the Ministry in response to the Property's proposed

tenure replacement application. The Plaintiff reviewed Deep Water's Environmental Management Plan submitted in support of the application to amend the water tenure, which described some of Deep Water's services (specifically, the sort of services that the Plaintiff complains about in its Amended Notice of Civil Claim), and told the Ministry that "[t]he proposed management plan for tenure replacement is consistent with the Zoning Bylaw."

~~29.~~38. At all material times, the Plaintiff has had ample knowledge of Deep Water's operations and activities, including multiple site visits by the Plaintiff's staff and elected officials, after which several representations were made confirming Deep Water's compliance with the Zoning Bylaw.

39. The Plaintiff's attempt to now characterize Deep Water's same operations and activities as non-compliant with the Zoning Bylaw is inconsistent with its prior approvals and representations. This reversal in position is not the product of a good faith re-interpretation of the Zoning Bylaw or any change in Deep Water's operations. Rather, it reflects the Plaintiff's response to external pressure to curtail or eliminate Deep Water's operations.

V.VI. The Plaintiff Seeks To Improperly Re-Interpret The Zoning Bylaw In Bad Faith And For An Improper Purpose

~~30.~~40. Beginning in or around January 2021, Deep Water became aware that a small number of community residents wrote and communicated with the Plaintiff and later the press, expressing unjustified concerns about Deep Water's operations and making baseless accusations of potential adverse impacts, all in an attempt to shut down Deep Water's operations.

~~31.~~41. The fact that the Plaintiff was supportive of Deep Water's operations in early January and March 2021 stands in stark contrast to the Plaintiff's recent reversal of that position, a reversal which coincides with:

- (a) increased pressure and demands from a small number of community residents that the Plaintiff shut down Deep Water's operations; and
- (b) the Plaintiff's upcoming general local election on October 15, 2022.

~~32.~~42. The Plaintiff has acted in bad faith and for an improper purpose in seeking to improperly re-interpret and, in turn, enforce the Zoning Bylaw without complying with the Bylaw

Enforcement Policy (as defined below). Its about face turn is driven by the potential for personal gain of Directors who planned to run for re-election, including, but not limited to, Director Arbour.

43. In particular, in relation to the alleged bylaw infractions advanced in this litigation, the Plaintiff has failed to adhere to the procedural and substantive requirements of the Bylaw Enforcement Policy (as defined below). The Plaintiff did not provide timely or adequate notice of alleged non-compliance, did not pursue a progressive or graduated enforcement response, and did not afford the Defendants a meaningful opportunity to respond or achieve voluntary compliance prior to commencing litigation.

VI.VII. The Defendants Are Not Allowing Unpermitted Residential Occupancies On The Property

33.44. The Defendants are not using any portion of the Property that is zoned Industrial Marine Zone to house individuals in recreational vehicles, as alleged or at all.

45. In any event, s. 302 of the Zoning Bylaw prohibits certain uses of property in certain zones, unless one of those uses is otherwise permitted in the Zoning Bylaw.

34.46. Accordingly, in the alternative, if the Defendants are allowing the residential use of a recreational vehicle on the Property, which is not admitted, but is denied, it is solely for the purpose of carrying out business and other professional activities and is therefore a permitted use of the Property pursuant to s. 908.1(i)(h) of the Zoning Bylaw.

35.47. Further, and in the alternative, if the Defendants are allowing the residential use of a recreational vehicle on the Property, which is not admitted, but is denied, it is a permitted accessory use under s. 908.2(i)(a) of the Zoning Bylaw, and is incidental to and necessary for Deep Water's operations.

VIII. No Removal of Screening

48. The Defendants did not remove screening between a portion of the Property that is zoned as the Industrial Marine Zone and the abutting properties to the north (the "Alleged Screen Removal Area"), as alleged or at all.

VII-IX. No Trespass, and Alteration, and Tree Cutting To in Glover Park

36-49. The Property is adjacent to Glover Community Nature Park, legally known and described as follows:

Lot 9, District Lot 11, Nelson District, Plan 8906, PID 005-481-252

(“Glover Park”).

50. Glover Park is a public park. Accordingly, the Defendants could not and have not trespassed upon Glover Park, as alleged or at all.

37-51. The Defendants have not made any alteration to Glover Park, as alleged or at all. Accordingly, the Defendants had no obligation to obtain a development permit, as alleged or at all.

52. The Defendants have not cut trees within Glover Park, as alleged or at all. Accordingly, the Defendants had no obligation to obtain written permission from the Plaintiff, as alleged or at all, and have not breached the Electoral Areas Parks Regulations Bylaw No. 103, 2010 (the “Parks Bylaw”), as alleged or at all.

53. In any event, since at least March 2020, representatives of the Plaintiff have attended the Property for site visits. That being the case, if the Defendants have: (i) trespassed upon Glover Park, which is not admitted but is denied; (ii) made any alteration to Glover Park, which is not admitted but is denied; or (iii) cut trees within Glover Park, which is not admitted but is denied, the Plaintiff has had ample knowledge of the Defendants’ conduct, and the Plaintiff’s claim is barred by operation of the *Limitation Act*, S.B.C. 2012, c. 13 (the “*Limitation Act*”).

54. In the alternative, if the Defendants have trespassed upon Glover Park, which is not admitted but is denied, and the Plaintiff’s claim is not time-barred, which is not admitted but is denied, that trespass was accidental.

38-55. In the alternative, if the Defendants have: (i) trespassed upon Glover Park, which is not admitted but is denied; (ii) made any alteration to Glover Park, which is not admitted but is denied; or (iii) cut trees within Glover Park, which is not admitted but is denied, and the Plaintiff’s claim is not time-barred, which is not admitted but is denied, that alteration and tree cutting was inadvertent.

39-56. Further, and in the alternative, if the Defendants have made any alteration to Glover Park, which is not admitted but is denied, and the Plaintiff's claim is not time-barred, which is not admitted but is denied, that alteration has been remedied to its original or near original state.

X. No Alteration and Tree Cutting within the Freshwater Development Permit Area ("DPA 1") or Coastal Development Permit Area ("DPA 2")

57. The Defendants have not: (i) made any alteration to the Property within the DPA 1 or the DPA 2, as alleged or at all; or (ii) cut trees on the Property within the DPA 1 or the DPA 2, as alleged or at all.

58. Accordingly, the Defendants had no obligation to obtain a development permit, as alleged or at all.

59. In any event, since at least March 2020, representatives of the Plaintiff have attended the Property for site visits. That being the case, if the Defendants have: (i) made any alteration to the Property within the DPA 1 or the DPA 2, which is not admitted but is denied; or (ii) cut trees on the Property within the DPA 1 or the DPA 2, which is not admitted but is denied, the Plaintiff has had ample knowledge of the Defendants' conduct, and the Plaintiff's claim is barred by operation of the *Limitation Act*.

60. In the alternative, if the Defendants have: (i) made any alteration to the Property within the DPA 1 or the DPA 2, which is not admitted but is denied; or (ii) cut trees on the Property within the DPA 1 or the DPA 2, which is not admitted but is denied, and the Plaintiff's claim is not time-barred, which is not admitted but is denied, that alteration and tree cutting was inadvertent.

61. Further, and in the alternative, if the Defendants have made any alteration to the Property within the DPA 1 or the DPA 2, which is not admitted but is denied, and the Plaintiff's claim is not time-barred, which is not admitted but is denied, that alteration has been remedied to its original or near original state.

62. Further, and in the alternative, if the Defendants cut trees on the Property within the DPA 1 or the DPA 2, which is not admitted but is denied, and the Plaintiff's claim is not time-barred, which is not admitted but is denied, that tree cutting was necessary because the trees were dead and threatening the building structure on the Property that Deep Water operates from.

XI. No Construction of a Building

63. The Defendants have not constructed a building on the Property, as alleged or at all. Accordingly, the Defendants had no obligation to obtain a development permit or a building permit, as alleged or at all, and have not breached the Comox Valley Regional District Building Bylaw No. 681, 2024 (the “**Building Bylaw**”), as alleged or at all.

64. In the alternative, if the Defendants have constructed a building on the Property, which is not admitted but is denied, the construction of the building was necessary for the provision of security personnel onsite to address a series of security breaches that had occurred on the Property, including trespass and vandalism.

XII. The Plaintiff’s Conduct is in Breach of its Own Enforcement Policy

65. The Plaintiff published a Bylaw Compliance and Enforcement Policy (the “**Bylaw Enforcement Policy**”).

66. The Bylaw Enforcement Policy is represented to provide clarity to the public regarding the expectations, procedures, and standards for bylaw enforcement.

67. The Bylaw Enforcement Policy contains, among others, the following directives or statements with respect to the Plaintiff’s enforcement of its bylaws:

- (a) the Plaintiff will employ fair, reasonable, transparent, equitable, and objective methods in receiving complaints, conducting investigations, and carrying out enforcement proceedings as they relate to regulatory bylaws;
- (b) the Plaintiff will apply bylaws consistently;
- (c) the Plaintiff will enforce bylaws in an unbiased manner;
- (d) the Plaintiff will ensure timely notification of alleged bylaw infractions, offer opportunities to be heard throughout the process, and guaranteed unbiased decision-making; and

- (e) elected officials may not direct, influence, or prioritize enforcement actions unless, and until, the matter is put on the agenda for the entire board of directors of the Plaintiff to consider.

68. The Plaintiff's conduct, as described herein, is inconsistent with and departs from its own Bylaw Enforcement Policy.

69. The Plaintiff has failed to follow the Bylaw Enforcement Policy. The Plaintiff has not applied bylaw enforcement measures in a transparent, progressive, and good faith manner. The Plaintiff has not applied bylaws consistently. The Plaintiff has not provided timely notification of alleged infractions, offer opportunities to be heard, nor has it acted in an unbiased manner. Elected officials have directed, influenced, and prioritized action against the Defendants without putting the matter on an agenda for the entire board of directors.

70. Among other things, and as stated elsewhere herein, the Plaintiff and its elected officials have actively campaigned against the Defendants at community group meetings and with senior federal and provincial officials. They have provided no explanation and have no legitimate basis for treating the same conduct that they previously approved as now warranting enforcement through litigation. Rather, the Plaintiff's and its elected officials' conduct reflect an arbitrary approach to enforcement, commenced in response to public pressure, and undertaken to advance an improper objective rather than to secure compliance with the bylaws.

VIII.XIII. The Plaintiff Has Not Delivered a Bylaw Offence Notice

40-71. Further, and in any event, the Plaintiff has never delivered a Bylaw Offence Notice to the Defendants in respect of the Defendants' alleged contraventions of the Zoning Bylaw, including Deep Water's activities and services at the Property, the alleged residential occupancies on the Property, and/or the alleged alteration to Glover Park, or at all.

72. The Plaintiff has departed from its ordinary enforcement framework under the Bylaw Enforcement Policy, reflected in its failure to issue a Bylaw Offence Notice to the Defendants prior to commencing this litigation. The Plaintiff's own policies contemplate a graduated and proportionate approach to enforcement, including notice, engagement, and an opportunity to achieve voluntary compliance. None of those steps were pursued.

73. The Plaintiff's decision to instead invoke this Court's processes at the outset is inconsistent with its enforcement framework and underscores that this litigation is not directed at achieving compliance, but at attempting to curtail or eliminate Deep Water's operations in response to public pressure.

XIV. The Plaintiff is Discriminatorily Enforcing its Bylaws

74. The Plaintiff's conduct in commencing this litigation constitutes discriminatory and selective enforcement of the Zoning Bylaw, the Parks Bylaw, and the Building Bylaw, carried out in bad faith and for an improper purpose.

75. Having previously approved and confirmed the lawfulness of Deep Water's operations, the Plaintiff has embarked on a coordinated campaign to bring about the shutdown of those same operations in response to sustained lobbying and political pressure from a small group of residents. The Plaintiff's campaign against Deep Water has included not only the selective re-interpretation and enforcement of the Zoning Bylaw, but also efforts to lobby with senior federal and provincial officials for the purpose of achieving that same result.

76. The Plaintiff now employs this proceeding as a further instrument of its campaign to bring about the shutdown of Deep Water's operations, advancing claims not to secure compliance with its bylaws, but to eliminate a disfavoured yet lawful business that it previously approved of.

77. The Plaintiff's conduct constitutes a selective and arbitrary departure from its own enforcement framework under the Bylaw Enforcement Policy.

78. Rather than applying its bylaws in a consistent manner, the Plaintiff has targeted Deep Water through a disproportionate enforcement response that is out of step with its stated approach. That departure is not grounded in the regulatory framework or change in Deep Water's conduct, but reflects an exercise of discretion directed at the curtailing or elimination Deep Water's lawful and previously approved use of the Property in response to public pressure.

79. In particular, the Plaintiff has failed to pursue comparable enforcement measures against other landowners and business operators alleged to be in similar non-compliance with the same or analogous bylaw provisions, without explanation or lawful basis. This selective and unequal

enforcement underscores that the Plaintiff's conduct is not guided by neutral regulatory considerations, but by an improper purpose directed specifically at Deep Water.

80. The actions of the Plaintiff have been taken in bad faith and for an improper purpose.

XV. Despite the Plaintiff's Conduct, the Defendants Remain Cooperative

81. Notwithstanding the Plaintiff's inappropriate campaign to bring about the shutdown of Deep Water's operations, at all material times, the Defendants have acted in good faith and remained cooperative in their dealings with the Plaintiff. The Defendants have engaged with the Plaintiff in respect of regulatory and operational issues as they have arisen, and have sought to address those issues with oversight from the Plaintiff.

82. For example, beginning in or around September 2024, the Defendants contacted the Plaintiff and held meetings to discuss a potential coastal development permit to complete certain clean-up work on the foreshore of the Property. However, the Plaintiff was unable to determine if a development permit was required.

83. Further, beginning in or around August 2025, at the Plaintiff's recommendation, the Defendants contacted the Plaintiff about using the flat pad located on the Property to park a trailer for the provision of security personnel onsite to address a series of security breaches that had occurred on the Property, including trespass and vandalism. However, despite the Defendants following up, the Plaintiff stopped communicating/engaging with the Defendants after the Defendants advised the Plaintiff of their intentions for the flat pad.

XVI. The Plaintiff Delayed Advancing its Claims

84. At all material times, the Plaintiff had an obligation to advance this litigation quickly, including by seeking injunctive relief, but it has failed to do so. The Plaintiff has filed two Notices of Intention to Proceed since this claim was filed.

85. Beginning in or around February 2026, Deep Water became aware that a small number of community residents wrote and communicated with the Plaintiff, expressing concerns about the lack of progress of this litigation in the four years since the claim was filed. Shortly thereafter, the Plaintiff filed an Amended Notice of Civil Claim.

86. The timing of the Plaintiff's Amended Notice of Civil Claim, following expressions of concern from members of the public regarding the pace of this litigation, is consistent with the Plaintiff's broader pattern of conduct described above at paragraphs 11-16.

87. The Plaintiff has acted in response to external pressure as part of its ongoing effort to curtail and ultimately bring about the shutdown of Deep Water's operations.

88. The conduct of the Plaintiff is in bad faith and for an improper purpose.

PART 2: RESPONSE TO RELIEF SOUGHT

41-89. The Defendants consent to the granting of the relief sought in the following paragraphs of Part 2 of the Amended Notice of Civil Claim: NONE.

42-90. The Defendants oppose the granting of the relief sought in the following paragraphs of Part 2 of the Amended Notice of Civil Claim: ALL.

43-91. The Defendants take no position on the granting of the relief sought in paragraphs of Part 2 of the Amended Notice of Civil Claim: NONE.

PART 3: LEGAL BASIS

IX.I. Deep Water's Operations Are Compliant with the Zoning Bylaw

44-92. At all material times, Deep Water's operations have been compliant with the Zoning Bylaw. Deep Water's services are permitted uses of the Property in the Industrial Marine Zone.

45-93. Section 908.1 of the Zoning Bylaw prescribes the principal uses for lots in the Industrial Marine Zone, which include, *inter alia*, "[b]oat building and repairs and service and sales", "[b]arge facility", "[w]aterfront freight handling facility", and "[s]torage and works yard and warehousing". Deep Water's activities fall squarely within these uses.

46-94. The Plaintiff has expressly confirmed that the Defendants' use of the Property is compliant with the Zoning Bylaw. It has communicated its approval to the Defendants, other governmental agencies, and community residents.

~~47.95.~~ The Defendants are not using any portion of the Property that is zoned Industrial Marine Zone to house individuals in recreational vehicles, as alleged or at all.

~~48.96.~~ In the alternative, if the Defendants are allowing the residential use of a recreational vehicle on the Property, which is not admitted, but is denied, it is solely for the purpose of carrying out business and other professional activities and is therefore a permitted use of the Property pursuant to s. 908.1(i)(h) of the Zoning Bylaw.

~~49.97.~~ Further, and in the alternative, if the Defendants are allowing the residential use of a recreational vehicle on the Property, which is not admitted, but is denied, it is a permitted accessory use under s. 908.2(i)(a) of the Zoning Bylaw, and is incidental to and necessary for Deep Water's operations.

II. The Defendants Have Not Trespassed, Altered, or Cut Trees in Glover Park

~~98.~~ The Defendants have not removed screening in the Alleged Screen Removal Area, as alleged or at all.

~~99.~~ Glover Park is a public park. Accordingly, the Defendants could not and have not trespassed upon Glover Park, as alleged or at all.

~~50.100.~~ The Defendants have not made any alteration to Glover Park, as alleged or at all. Accordingly, the Defendants had no obligation to obtain a development permit, as alleged or at all.

~~101.~~ The Defendants have not cut trees within Glover Park, as alleged or at all. Accordingly, the Defendants had no obligation to obtain written permission from the Plaintiff, as alleged or at all, and have not breached the Parks Bylaw, as alleged or at all.

~~102.~~ In any event, since at least March 2020, representatives of the Plaintiff have attended the Property for site visits. That being the case, if the Defendants have: (i) trespassed upon Glover Park, which is not admitted but is denied; (ii) made any alteration to Glover Park, which is not admitted but is denied; or (iii) cut trees within Glover Park, which is not admitted but is denied, the Plaintiff has had ample knowledge of the Defendants' conduct, and the Plaintiff's claim is barred by operation of the *Limitation Act*.

103. In the alternative, if the Defendants have trespassed upon Glover Park, which is not admitted but is denied, and the Plaintiff's claim is not time-barred, which is not admitted but is denied, that trespass was accidental.

51.104. In the alternative, if the Defendants have: (i) trespassed upon Glover Park, which is not admitted but is denied; (ii) made any alteration to Glover Park, which is not admitted but is denied; or (iii) cut trees within Glover Park, which is not admitted but is denied, and the Plaintiff's claim is not time-barred, which is not admitted but is denied, that alteration and tree cutting was inadvertent.

52.105. Further, and in the alternative, if the Defendants have made any alteration to Glover Park, which is not admitted but is denied, and the Plaintiff's claim is not time-barred, which is not admitted but is denied, that alteration has been remedied to its original or near original state.

III. The Defendants Have Not Altered or Cut Trees within the DPA 1 and the DPA 2

106. The Defendants have not: (i) made any alteration to the Property within the DPA 1 or the DPA 2, as alleged or at all; or (ii) cut trees on the Property within the DPA 1 or the DPA 2, as alleged or at all. Accordingly, the Defendants had no obligation to obtain a development permit, as alleged or at all.

107. In any event, since at least March 2020, representatives of the Plaintiff have attended the Property for site visits. That being the case, if the Defendants have: (i) made any alteration to the Property within the DPA 1 or the DPA 2, which is not admitted but is denied; or (ii) cut trees on the Property within the DPA 1 or the DPA 2, which is not admitted but is denied, the Plaintiff has had ample knowledge of the Defendants' conduct, and the Plaintiff's claim is barred by operation of the *Limitation Act*.

108. In the alternative, if the Defendants have: (i) made any alteration to the Property within the DPA 1 or the DPA 2, which is not admitted but is denied; or (ii) cut trees on the Property within the DPA 1 or the DPA 2, which is not admitted but is denied, and the Plaintiff's claim is not time-barred, which is not admitted but is denied, that alteration and tree cutting was inadvertent.

109. Further, and in the alternative, if the Defendants have made any alteration to the Property within the DPA 1 or the DPA 2, which is not admitted but is denied, and the Plaintiff's claim is

not time-barred, which is not admitted but is denied, that alteration has been remedied to its original or near original state.

110. Further, and in the alternative, if the Defendants cut trees on the Property within the DPA 1 or the DPA 2, which is not admitted but is denied, and the Plaintiff's claim is not time-barred, which is not admitted but is denied, that tree cutting was necessary because the trees were dead and threatening the building structure on the Property that Deep Water operates from.

IV. The Defendants Have Not Breached the Building Bylaw

111. The Defendants have not constructed a building on the Property, as alleged or at all. Accordingly, the Defendants had no obligation to obtain a development permit or a building permit, as alleged or at all, and have not breached the Building Bylaw, as alleged or at all.

112. In the alternative, if the Defendants have constructed a building on the Property, which is not admitted but is denied, the construction of the building was necessary for the provision of security personnel onsite to address a series of security breaches that had occurred on the Property, including trespass and vandalism.

V. The Plaintiff's Claims are Undermined by its Own Conduct

113. The Plaintiff's claims are undermined by its prior approval of, and express confirmation that, the very activities it now challenges are compliant with the Zoning Bylaw. There has been no change in the regulatory framework or in Deep Water's operations that justify the Plaintiff's reversal in position. The only material change is the emergence of political pressure in opposition to Deep Water's operations. The Plaintiff now seeks to deploy this Court's processes and other enforcement mechanisms to give effect to that pressure.

114. The conduct of the Plaintiff is in bad faith and for an improper purpose.

115. The Plaintiff's failure to adhere to the Bylaw Enforcement Policy further undermines the relief sought. Here, the Plaintiff has failed to follow its own framework, has bypassed incremental enforcement measures (i.e., by proving notice and an opportunity for voluntary compliance), and has advanced this litigation as a first resort for some of the alleged bylaw infractions. That conduct is inconsistent with good faith and unbiased bylaw enforcement, and weighs against the exercise of this Court's discretion to grant injunctive relief.

X.VI. The Plaintiff Is Not Entitled To Injunctive Relief

~~53.116.~~ There is no factual or legal basis in the Amended Notice of Civil Claim to grant the injunctive relief sought by the Plaintiff.

~~54.117.~~ The Plaintiff is not entitled to an injunction against the Defendants for the following reasons, among others.

- (a) The Defendants are not in breach of the Zoning Bylaw. Deep Water's activities fall squarely within the uses permitted in the Industrial Marine Zone, which the Plaintiff has confirmed.
- (b) The Defendants have not trespassed, altered, or cut trees in Glover Park.
- (c) The Defendants are not in breach of the Building Bylaw.
- (d) The Defendants are not in breach of the Parks Bylaw.
- (b)(e) The Plaintiff has never provided a Bylaw Offence Notice to the Defendants in respect of the activities conducted on the Property, or at all.
- (e)(f) In any event, the Plaintiff has acted in bad faith and for an improper purpose in seeking to re-interpret and enforce the Zoning Bylaw against the Defendants, and throughout the course of its dealings with Deep Water. The Plaintiff has refused to engage with Deep Water in respect of its activities.

~~55.118.~~ Further, and in the alternative, there are exceptional circumstances that justify the refusal of an injunction including, but not limited to, the following.

- (a) The Plaintiff held that Deep Water's operations are in compliance with the Zoning Bylaw and confirmed compliance with other levels of government for the purpose of granting Deep Water a change of tenure for the Property.
- (b) The Plaintiff's change in position is not grounded in any change in Deep Water's operations or the regulatory framework.
- (c) The Plaintiff has failed to explain a now four-year delay in seeking the injunction.

~~(b)~~(d) The injunction would cause Deep Water significant hardship.

~~(e)~~(e) The injunction would not actually serve any public interest.

119. The extraordinary remedy of an injunction is particularly inappropriate where the Plaintiff previously approved the very conduct that it now seeks to enjoin and seeks that relief only after Deep Water's activities and operations have become politically unpopular.

XI.XII. If Injunctive Relief Is Granted, Its Effect Should Be Suspended

~~56.~~120. If Deep Water's operations are held to be in violation of the Zoning Bylaw, the Building Bylaw, or the Parks Bylaw, which is not admitted, but is denied, this Court should exercise its discretion to delay the granting of an injunction.

~~57.~~121. Where an injunction is warranted, the Court has the discretion to suspend the imposition of the injunction. Courts have in numerous cases delayed the application of an injunction to allow a rezoning or relocation to take place.

~~58.~~122. In the event that the Plaintiff is successful in establishing that it is entitled to injunctive relief against the Defendants, this is an appropriate case for a delay, in light of circumstances including, but not limited to, the following.

- (a) If Deep Water's operations violate the Zoning Bylaw, which is not admitted, but is denied, it was not clear, given the Plaintiff's conduct and representations confirming that Deep Water's services were compliant with the Zoning Bylaw, including statements made to the Ministry.
- (b) The substantial expenditures that Deep Water has incurred in good faith to keep its operations compliant with the requirements of other regulatory authorities, and to prevent its operations from having impacts beyond the Property's boundaries.
- (c) Deep Water's operations produce no meaningful external and/or adverse impacts to other properties.
- (d) The significant hardship and negative implications for Deep Water's ongoing business and its employees.

- (e) The unavailability of alternative properties in the Comox Valley Regional District with appropriate zoning or in other areas in close proximity.

59.123. The Plaintiff's claim must be dismissed, with costs to the Defendants.

Defendants' address for service:

BORDEN LADNER GERVAIS LLP
1200 Waterfront Centre
200 Burrard Street
P.O. Box 48600
Vancouver, BC V7X 1T2
Attention: Matthew G. Swanson

Fax number for service (if any):

None

E-mail address for service (if any):

None mswanson@blg.com

Date: ~~May 11, 2022~~ July 14, 2026



Signature of Matthew G. Swanson

☐ defendants ☒ lawyer for defendants, Union Bay Industries Ltd. and Deep Water Recovery Ltd.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

No. VLC-S-S-223114
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Comox Valley Regional District

Plaintiff

And:

Union Bay Industries Ltd. and Deep Water Recovery Ltd.

Defendants

AMENDED RESPONSE TO CIVIL CLAIM

BORDEN LADNER GERVAIS LLP

1200 Waterfront Centre

200 Burrard Street

P.O. Box 48600

Vancouver, British Columbia

V7X 1T2

Telephone: (604) 687-5744

Attn: Matthew G. Swanson