

(77) b. Court Application to Modify the Terms of the Mack Laing Trust

WHEREAS the Town of Comox holds money subject to a trust (the "Trust") under the terms imposed by the will of (Hamilton) Mack Laing that was probated on March 2, 1982;

AND WHEREAS the terms of the Trust contemplate the use of the money to develop the dwelling ("Shakesides") in Mack Laing Park as a natural history museum;

AND WHEREAS the natural history museum was not developed because the Town subsequently determined that the amount of money subject to the Trust was insufficient for that purpose;

AND WHEREAS the Council of the Town of Comox, in considering the best interests of the Town, has considered, among other factors, the report and recommendation of the Mack Laing Nature House Advisory Committee.

NOW THEREFORE, in open meeting assembled, the Council of the Town of Comox RESOLVES:

THAT the Council finds the terms of the Trust to no longer be in the best interests of the Town;

THAT the Town's solicitors be directed to make an application to the British Columbia Supreme Court under section 184 of the Community Charter for an order varying the Trust so as to better further both the intention of the will-maker and the best interests of the Town;

THAT the Town propose that the Trust be varied to permit the Town to use the money subject to the Trust for the purpose of constructing a viewing platform in Mack Laing Park on the site of Shakesides, once Shakesides has been removed;

THAT the Town's staff be directed to obtain a design and cost estimate for a viewing platform that has a height and roofline replicating Shakesides' height and roofline and which design may incorporate the use of materials taken from Shakesides;

THAT, if the cost of constructing the proposed viewing platform exceeds the amount of money subject to the Trust, the Town shall pay the difference up to \$75,000; and

THAT, if the variation of the Trust for the purpose of constructing the proposed viewing platform is not accepted by the Court, that the Town propose to be released of the obligations under the Trust upon the Town's transfer of the money subject to Trust to the Attorney General of British Columbia.

(83)

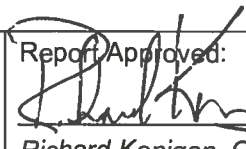
a.



TOWN OF COMOX
Regular Meeting of Council

STAFF REPORT
Meeting Date: February 1, 2017

TO: Mayor & Council	FILE:
FROM: Richard Kanigan, Chief Administrative Officer	DATE: January 26, 2017
SUBJECT: Court Application to Modify the Terms of the Mack Laing Trust	

Prepared by: <u>R. KANIGAN</u>	Supervisor: _____	Financial Approved: _____ Don Jacquest, Fin. Director	Report Approved:  Richard Kanigan, CAO
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Recommendation(s) from the Chief Administrative Officer:

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AND WHEREAS the natural history museum was not developed because the Town subsequently determined that the amount of money subject to the Trust was insufficient for that purpose;

AND WHEREAS the Council of the Town of Comox, in considering the best interests of the Town, has considered, among other factors, the report and recommendation of the Mack Laing Nature House Advisory Committee.

NOW THEREFORE, in open meeting assembled, the Council of the Town of Comox
RESOLVES:

THAT the Council finds the terms of the Trust to no longer be in the best interests of the Town;

THAT the Town's solicitors be directed to make an application to the British Columbia Supreme Court under section 184 of the *Community Charter* for an order varying the Trust so as to better further both the intention of the will-maker and the best interests of the Town;

THAT the Town propose that the Trust be varied to permit the Town to use the money subject to the Trust for the purpose of constructing a viewing platform in Mack Laing Park on the site of Shakesides, once Shakesides has been removed;

THAT the Town's staff be directed to obtain a design and cost estimate for a viewing platform that has a height and roofline replicating Shakesides' height and roofline and which design may incorporate the use of materials taken from Shakesides;

THAT, if the cost of constructing the proposed viewing platform exceeds the amount of money subject to the Trust, the Town shall pay the difference up to \$75,000; and

THAT, if the variation of the Trust for the purpose of constructing the proposed viewing platform is not accepted by the Court, that the Town propose to be released of the obligations under the Trust upon the Town's transfer of the money subject to Trust to the Attorney General of British Columbia.

Background

At the July 20, 2016 Regular meeting of Council, the following resolutions were passed:

That the Town receive the Mack Laing Nature House Advisory Committee provisional report and accept the recommended course of action of disassembling the Mack Laing House, and use the site and some materials to create a viewing platform in conjunction with the existing walkway.

That staff be directed to begin the process to modify, if necessary, the terms of the Trust.

Staff have identified that a court-ordered modification of the Trust is necessary to pursue the recommendation of the Mack Laing Nature House Advisory Committee. Section 184 of the *Community Charter* provides for an application to vary the Trust.

Property accepted in trust

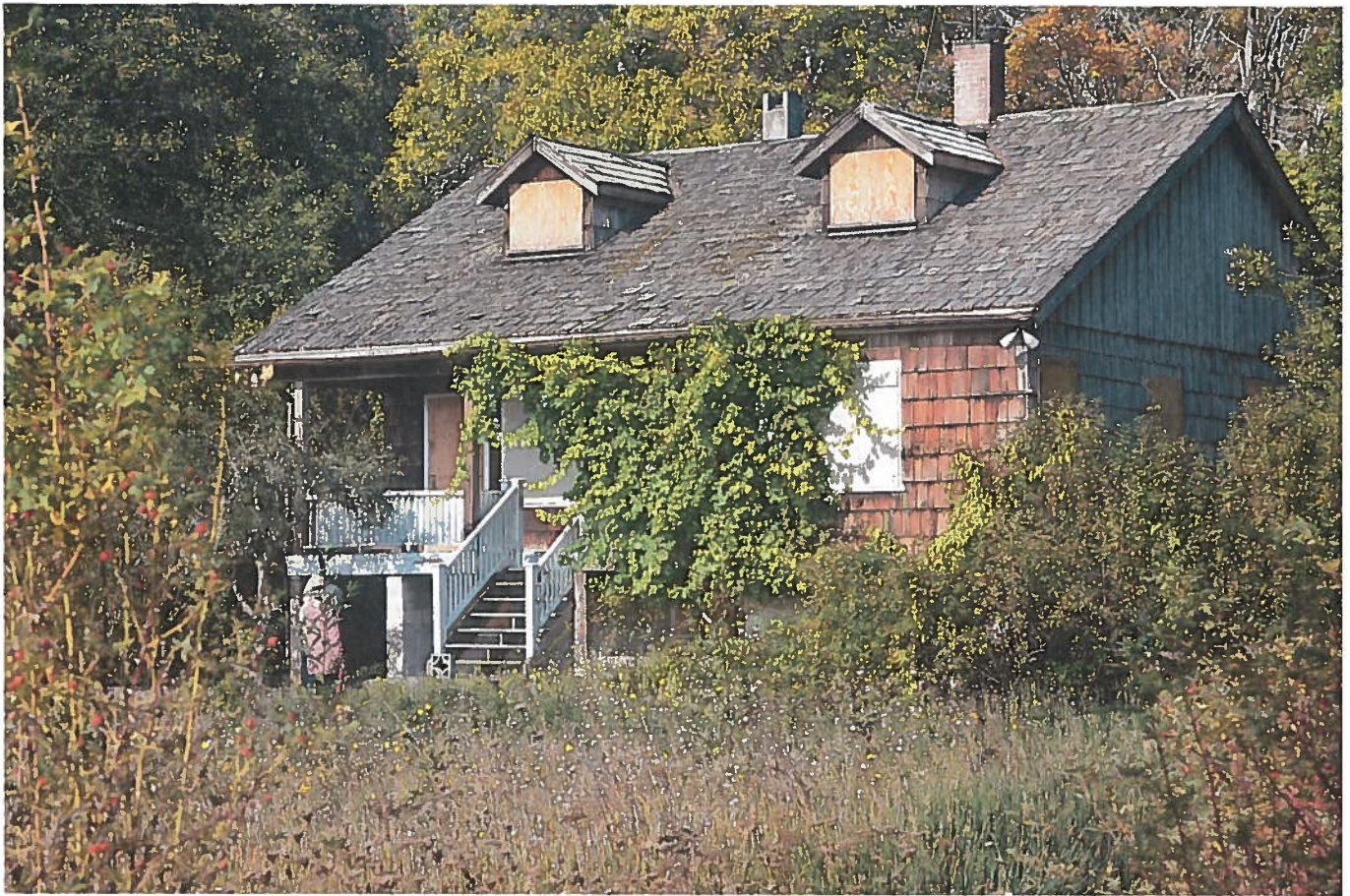
- 184** (1) All money that is held by a municipality and is subject to a trust must be invested in accordance with section 183 until it is required for the purposes of the trust.
- (2) If, in the opinion of a council, the terms or trusts imposed by a donor, settlor, transferor or will-maker are no longer in the best interests of the municipality, the council may apply to the Supreme Court for an order under subsection (3).
- (3) On an application under subsection (2), the Supreme Court may vary the terms or trusts as the court considers will better further both the intention of the donor, settlor, transferor or will-maker and the best interests of the municipality.
- (4) Section 87 [*discharge of trustee's duty*] of the Trustee Act applies to an order under subsection (3).

In order to authorize the court application and advise the court what the Council considers to be a variation that would be in the best interests of the Town, Council should consider making four key determinations and authorizations:

- (a) a finding by the Council that the Trust is not in the best interests of the municipality;
- (b) authorization of an application to the court for a variation of the Trust;
- (c) a proposal as to how the court could vary the Trust in a manner that would be in the best interests the Town, being mindful that the court will also consider the intention of the will maker in deciding whether and what variation is appropriate, and
- (d) authorization of any additional spending of Town funds in support of that proposal.

Preliminary sketches of the viewing platform described in the proposed resolution are currently being prepared. Town staff estimate that the cost of constructing such a viewing platform will be in the range of \$100,000 to \$150,000. This exceeds the present amount of the Trust and will require an additional contribution by the Town. If an application to the court is authorized, Town staff will commission a formal design and cost estimate of the proposed structure.

{NOTE: see attached photograph of the Mack Laing house which shows the roof line that the Town is attempting to capture in the design of a new shelter, combined with the type of timber frame construction shown in the second image.}



Example of a wood frame viewing shelter that could be built on the current foundation of the house

