

KITS POINT RESIDENTS' ASSOCIATION

June 1, 2026

Via Email To:

Vancouver City Council

Re : **Proposed Rezoning of Hadden Park for Barge Spa Proposal**

CD-1 Rezoning: 1905 Ogden Avenue

<https://www.shapeyourcity.ca/1905-ogden-ave?tool=qanda>

Dear Mayor and Council,

As you may know, Kits Point Residents' Association is an association representing the residents of the Kits Point area of the City of Vancouver. This is the area bounded by Cornwall to the south, Arbutus to the west and Chestnut to the east.

As residents of this area we have in the past addressed issues related to the parks of Kits Point and so are perhaps more aware of the history of the parks than many other City residents. As such we are writing on a matter of relevance to the present and future residents of the City of Vancouver.

In April we met with Chee Chan , Matt Shilito and Scott Erdman (City of Vancouver, Planning, Urban Design & Sustainability) to advise of our concerns relating to the proposed rezoning of Hadden Park from the standpoint of the public trusts that protect those lands. At that meeting we expressed our view that the proposed use is not permitted under the public trusts governing the area of Hadden Park which is subject to the rezoning application and the adjacent water lot areas where the proposed barge would be situated. It is further our view that the considerations being relied on by the City as trustee to advance this proposal place it in a position of breach of the City's fiduciary duties as trustee.

It was our suggestion at that meeting that in view of the importance of issues of public trust that if the City had any uncertainty about the correctness of this view that it would be appropriate to seek the guidance of the court under section 86(1) of the Trustee Act which governs the duties, powers, and liabilities of trustees managing a trust. The relevant section is as follows:

Application for directions

86 (1) A trustee, executor or administrator may, without commencing any other proceeding, apply by petition to the court, or by summons on a written statement to a Supreme Court judge in chambers, for the opinion, advice or direction of the court on a question respecting the management or administration of the trust property or the assets of a will-maker or intestate.

We urge Council to seek this advice before approving the application to go to public hearing.

Discussion

The starting point for the discussion is that **what can be done in other City Parks cannot necessarily be done in Hadden Park** because Hadden Park was created by deeds and grants which placed this park under public trust conditions. The specifics of the legal situation must be looked at to ensure that the City complies with its duties as trustee with respect to the particular lands in question.

The City must be concerned about its fiduciary duties as trustee and none of the material before Council to this point recognizes that.

The Trusts

Hadden Park was established with a deed of transfer from Harvey Hadden of Lots 1-15 of Block 136 and Lots 1-89 of Block 137. Those lands are subject to a trust under the relevant deed - the lands were transferred to the City forever “so long as the Grantee shall use and maintain the same for Park purposes and the beach for bathing, more especially for women and children”. Under the deed the City agreed that the property would be used “as and for a Public Park or recreation ground for all time and shall not be used for any other purpose whatsoever” and that the property would be kept “as near as possible in its present state of nature”.

At the time of those transfers the adjoining lands to the north were water lots.

We understand that the lands deeded by Hadden are not subject to the proposed rezoning. The rezoning is to apply to the adjoining areas of Hadden Park to the north: Lots 5780, 5781 and 5594 (the “Rezoning Site”), which now include both land (as a result of filling for the museum and archive and to form Heritage Harbour) and water lot areas. Those areas were originally transferred to the City under crown grants of water lots, and are subject to public trusts under the crown grants.

The crown grant of the water lots comprising the Rezoning Site was part of a larger grant of water lots along the waterfront parks of Vancouver, which were applied for by the Park Board at the time to preserve the waterfront areas for public use.

The Order in Council approving the Crown grant of the water lots dated May 14, 1935 (copy attached) recites that the application was made by the Board of Park Commissioners on behalf of the City of Vancouver “for a grant of certain foreshore lands and lands covered by water at English Bay and Kitsilano Beach abutting on lands owned by the City, and used for park and recreation purposes”. The grants were approved under Section 65 of the Land Act.

The Crown grant itself (copy attached) was granted on June 12, 1935 and the lands were granted to the City of Vancouver **“in trust for the use, recreation and enjoyment of the public”** consistent with the park use of the uplands properties.

Meaning of the Trust Conditions

In interpreting the meaning of the words “in trust for the use, recreation and enjoyment of the public”, the relevant question is the meaning of the words at the time the trust was established.

In coming to the conclusion that the intention was to create a public trust to ensure the water lots were available for the recreation and enjoyment of the public, for purposes consistent with

the adjoining park uses, the following are relevant circumstances at the time the trusts were created:

1. The Park Board was the body that applied for the crown grants of the water lots abutting public parks. Further archival research would likely reveal more particulars on the plans of the Park Board.
2. The trust language contained in the crown grants is the language that was used at the time to establish public trusts for parks:
 - (a) The *Public Parks Act, 1876*, 39 Vict., c. 6 is the original legislation respecting public parks in British Columbia. In s. 1 of the Act, the Legislature authorized the Lieutenant-Governor in Council to appoint trustees “of any public park or pleasure ground for the recreation and enjoyment of the public.” Parks established under that legislation were granted in trust “for the use, recreation and enjoyment of the public”. See *British Columbia v. Friends of Beacon Hill Park*, 2023 BCCA 83 (CanLII), <<https://canlii.ca/t/jvpp7>>
 - (b) The *Municipal Act* (RSBC 1979, section 683) also formerly provided for the creation of public parks using this trust condition : parks created under that section were granted and conveyed “on trust to maintain and preserve it for the use, recreation and enjoyment of the public”.

The grant of the lands comprising the Rezoning Site, being fully water lots at the time, was made under the Land Act (R.S. 1924) but the public trust conditions used in the grant were the same as used for parks at the time: “**for the use, recreation and enjoyment of the public**”.

There are several cases that have considered the meaning of these words.

In *British Columbia v. Friends of Beacon Hill Park* (a decision of the BC Court of Appeal (supra)) it was decided that the word “use” does not expand the trust beyond recreation and enjoyment. It was found that the meaning of the phrase “for the use, recreation and enjoyment of the public” means “for the use of the public for recreation and enjoyment”.

In *Anderson v. Victoria (City)* (1884), 1 B.C.R. (Pt. 2) 107 (S.C.) which also concerned Beacon Hill Park the court found that a permanent agricultural exhibit was not consistent with the trust condition that the lands be held for the use, recreation and enjoyment of the public. It was stated at page 110 that :

“The park, *alias* the pleasure ground, is to be used for recreation and enjoyment; and therefore, I think, in no other manner; not for general purposes of profit, or utility, however great the prospect of these may be. A trustee cannot go beyond his express trust; at least, cannot do anything inconsistent with it.”

The court stated that all establishments addressing themselves to profit or utility are excluded by the terms of the trust, except profit or utility from open air recreations and buildings as are ancillary to public recreations there.

The terms of the same trust were considered in *Victoria (City) v. Capital Region Festival Society* (1998), 1998 CanLII 6836 (BC SC), 62 B.C.L.R. (3d) 143 (S.C.) (“*Festival Society*”). The Capital Region Festival Society had proposed a music festival in the Park. The City had approved the proposal in principle, but sought the direction of the Court under s. 86 of the *Trustee Act* on

whether the trust conditions permitted such a use. The Court held that it did not. Justice R.D. Wilson reviewed *Anderson (supra)* and the trust conditions that required that the Park be maintained and preserved for the use, recreation and enjoyment of the public. He found a music festival was not consistent with those objectives.

This quotation from the decision is of particular relevance:

[44] Finally, I am urged to note that "...contemporary standards of what may constitute appropriate public recreation and enjoyment of the public will not necessarily be the same as those held in the 1880's". I have serious reservations about the applicability of that notion with respect to this park. Because, as the late Will Rogers observed, in a different context, they aren't making these any more. Further, I understand the jurisprudential major premise of Anderson to be conservation, not innovation.

I will touch briefly on the decision of the BC Supreme Court court in *Save Our Waterfront Parks Society v. The City of Vancouver et al.*, 2004 BCSC 430 (CanLII), which concerned the restaurant at Kitsilano Beach. That case involved *different trust language* but the court found that having regard to the deed itself and the surrounding circumstances, the CPR intended the land to be held in trust by the City for the purposes of a "public park".

The court stated that the question in that case was whether a restaurant as part of the proposed facility at Kitsilano Beach would be ancillary to the purposes of a public park **and that this determination must be made according to the standards of the day in 1919 when the trust was established**. The decision in *Victoria (City) v. Capital Region Festival Society (supra)*, in particular paras. 44-45, was cited with approval.

In that case the trust was specifically for "public park" purposes and the court found as a matter of fact, after reviewing the historical evidence, that "it is likely that a restaurant would have been considered ancillary to park purposes at the time the Kitsilano Beach Park trust was established, given the fact that the refreshment pavilion was already in existence in Stanley Park".

Here the trust language is "for the use, recreation and enjoyment of the public" rather than simply "public park", and all these cases confirm that contemporary standards of recreation and enjoyment do not apply and the determination of what is contemplated by the terms of the trust must be made in accordance with the standards of the day.

We think the principles set out in *Victoria (City) v. Capital Region Festival Society (supra)* apply here .

As a starting point there is a very serious question whether the original beach front of the Hadden Park (established under the deed from Hadden) could properly have been filled for use as a maritime museum and archive, removing that beach, in the first instance. The trust established under the Hadden deed clearly provided the lands were to be kept as near as possible in its then present state so that the public could enjoy the same in its natural state and condition, and so that its beach could be used for bathing.

There is also a serious question of whether, under the trusts applying to the water lots granted in 1935 , those water lots could be later filled for use as a maritime museum, archive and heritage boat harbour. These are not public recreational purposes.

All of this provides context for the rezoning application and for consideration of the proposed barge spa use to support museum revenues.

The proposed use is a health and wellness use and not a purely recreational use. As stated in *Victoria (City) v. Capital Region Festival Society (supra)* the use must be considered according to the standards of the day in which the trust was created, and in that light this type of business cannot be considered a use of the water lot for the recreation and enjoyment of the public. Contemporary standards, should they differ, will not be applied.

The barge will be affixed in the water lot area but is not in any way ancillary to the public's enjoyment of the water. In fact it can be expected to diminish the public's use of the park and water lot areas for recreation and enjoyment.

The size of the proposed barge business is completely out of scale with the existing harbour and will block views of the public enjoying the park and the small beach to the east - Teetotaler Beach. Water views are of course an important element of enjoyment of our city's waterfront parks, and in particular Hadden Park which is a park used for quiet recreation of natural areas as compared to some other City parks. The size of the barge will also lead to greater congestion of the harbour and be expected to diminish the swimming experience at that beach. This kind of health and wellness use could be established anywhere in the City and is not ancillary to the recreation and enjoyment of the public in Hadden Park and the adjoining water lot areas in which the barge will be affixed.

Beyond this question it is clear, however, that *what is being proposed for the Rezoning Site is primarily a use for the purpose of profit.*

The stated purpose of the barge proposal, throughout all materials on the subject, is that the proposal has been brought forward by the Vancouver Maritime Museum (VMM) to address the need of the museum (itself not a use for the recreation and enjoyment of the public) to generate revenue. This is not a case of revenues being generated from open air recreations or buildings ancillary to such public recreations, but is primarily a proposal for a business addressing itself to profit. *As such this proposal cannot be considered a use consistent with the public trusts which govern use of all of Hadden Park and the adjoining water lot areas. (See Anderson v. Victoria (City), supra.)*

Obligations of the Trustee

The trustee is the City of Vancouver and the City of Vancouver must be concerned about its fiduciary duties as trustee.

A Trustee must be cognizant of both the duties of the trustee as established by the trust, discussed above, and the duties of a trustee at law generally, discussed below.

First and foremost, a trustee *cannot advance the interests of any person or party other than the beneficiaries of the trust.* In particular a trustee must not act in its own interests and therefore place itself in conflict with its duties as trustee. Trustees must act with diligence and seek advice where necessary.

In this case the staff report put before Council for your June 2, 2026 meeting recommends approval of the application for rezoning for the barge business on the following basis :

“The proposed land uses are consistent with the Vancouver Official Development Plan. The proposed spa can provide sustained funding to the Vancouver Maritime Museum, provide marina infrastructure upgrades and increase waterfront activation and foot traffic for the museum. “

None of this speaks either to the terms of the trust or to the interests of the beneficiary which is the present and future public.

The rationale speaks to the funding requirements of the Vancouver Maritime Museum, upgrading marina infrastructure and increasing business for the museum. These are the interests of the VMM that are being considered and not those of the beneficiaries of the trust .

Looking back at how this came forward the same considerations have been put forward throughout the process.

This proposal first came forward to Council with a motion dated November 26, 2025. The motion is directed to supporting the business opportunity of the VMM in order to help them meet their funding requirements. No mention is made of the trust under which the lands are held. The clear driver is revenue generation to support this cultural institution, rather than increasing City funding.

The rezoning application is a City initiated application at the request of VMM and the Application Booklet gives the following as the rezoning rationale:

"The Museum currently operates as an existing non-conforming use under R1-1 zoning which does not reflect the long-standing legacy of a civic museum, or contemporary waterfront programming.

The proposed rezoning from R1-1 to CD-1 would provide a land use framework that:

- 1. Aligns the existing Museum or Archives use on site with zoning, and*
- 2. Enables limited, complementary Beauty and Wellness Centre (Hydrotherapy) use to support the long-term funding, stewardship, and operations - securing the VMM as a civic and cultural asset."*

Again the City of Vancouver as trustee is not directing itself to the trust conditions and is taking into account considerations not relevant to the trust. None of the mentioned uses are “recreation and enjoyment of the public” and the City is proposing to act in the interests of a party (the VMM) which is not a beneficiary of the trust. As stated above, a trustee cannot advance the interests of any person or party other than the beneficiaries of the trust.

The Application Booklet also speaks to the City’s goals of finding alternative funding strategies for its cultural institutions:

“Through its strategic directions, the Culture|Shift Plan emphasizes building resilient, self-sustaining cultural organizations through investment, diversified revenue, prevention

of displacement, and reducing regulatory barriers to secure cultural spaces into the future. Consistent with these Plan directions and the Vancouver Plan, the application responds to a unique partnership opportunity to address the VMM's operating deficits while strengthening its capacity to deliver dynamic programming and continue to share Vancouver's maritime history with local residents and visitors. Supporting the VMM's proactive approach to business development advances both the Culture|Shift Plan and the Vancouver Plan's goals for long-term cultural vitality and public access."

These policy considerations may be a sound approach for the City overall, but with respect to lands held under public trusts, the City may not take into account its own interest in finding alternative funding arrangements for City cultural institutions in times of tax restraint, nor may it take into account the interests of any third party - in this case the VMM. Under the trust by which it is bound the City may only consider the express purposes of the trusts and the interests of the beneficiaries in that regard.

As trustee the City must also have regard to its duty of care and the standard for that is as a fiduciary. In this case, even if the use were permitted the City has not undertaken any review of alternate proposals for use of the water lot area, or undertaken any public tendering for the specific proposal. The reason for this is that the City is - incorrectly - advancing the interests of the third party, the VMM and their independent business decision and interests. None of this meets the standards of the duty of a trustee.

Conclusion

In our view the barge spa rezoning proposal is not consistent with the public trusts under which the City holds the land it seeks to rezone. In addition the city will be in breach of their duties as trustee in approving the rezoning in that they are taking into account the interests of third parties and their own interest in finding alternate funding arrangements for cultural institutions. The only interests that can be considered in applying the trust condition that the lands be used for the recreation and enjoyment of the public are the interests of the present and future public. Funding considerations for a museum are not properly part of that consideration.

Request

Before referring the rezoning application to public hearing we respectfully request that City Council follow the example of the City of Victoria and seek the guidance of the court under section 86 of the Trustee Act as to the proper management of the public trusts applying to Hadden Park. The same conditions apply to other foreshore areas so these issues are ones that will continue to have public importance into the future . This approach will be consistent with the City's duty of care as trustee of a public trust.

Respectfully,

Eve Munro

Eve Munro
Chair, Kits Point Residents' Association