



Gambier Island Local Trust Committee

Regular Meeting Addendum

Date: April 29, 2024 continued on May 14, 2024
Time: 10:00 am
Location: Electronic Meeting

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| 16. RESUMED - MAY 14, 2024 | 10:00 AM - 11:00 AM |
| 16.2 <i>Trustee Bernardo Memorandum dated May 14, 2024 regarding Proposed Bylaw 154</i> | 2 - 5 |



To: Gambier Local Trust Committee
Marlis McCargar

From: Joe Bernardo

For: May 14, 2024 Special Meeting

Subject: Proposed Bylaw 154 – Outstanding Issues

MINOR EDITS FOR CLARITY & CONSISTENCY

Per the numbering used in the Staff’s latest draft:

- Section 9.3.3(b) should read: “New construction and ~~r~~ additions to ~~d~~ upland buildings or structures...”
- Section 9.3.3(e) should read: “Development design ~~shall~~ **should** prevent the release of...”
- Section 9.3.3(f) should read: “...then development and mitigation measures ~~shall~~ **should** be undertaken under...”
- Section 9.3.5(f)(iv) should be deleted because:
 - The first part says “Replacement structures should utilize a non-structural approach...”. This language is self-contradictory and undercuts the purpose of Section 9.3.5(f), which is to provide guidelines for situations in which a need to replace an existing shoreline protection structure with another *structure* has already been identified.
 - The second part that says “...should abut the existing shoreline protection structure” assumes an abutting structure exists beside the one to be replaced, which is not necessarily the case. The provision is also redundant, because the point is already covered by Section 9.3.5(d)(iv).

DOCK MATERIALS

The version of proposed Bylaw 154 that received second reading last term includes a guideline under Section 9.3.3(q) that says:

Docks should not use unenclosed plastic foam or other non-biodegradable materials that have the potential to degrade over time. Docks should be constructed of stable materials that will not degrade water quality. The use of creosote-treated pilings is not permitted.

The Staff has proposed that this language be replaced (and renumbered as Section 9.3.4(f)) with the following:

Docks materials should be constructed from:

- i. Biodegradable and stable materials that will not degrade water quality; and
- ii. Creosote-free pilings

Adopting this wording would change the meaning of the proposed guideline.

The original language did not express an intention that docks should be constructed using biodegradable materials. Rather, it advised that non-biodegradable construction materials should be avoided if they have the potential to harm water quality over time (e.g., exposed Styrofoam).

The value of biodegradable materials is that exposure to natural processes breaks them down to natural organic molecules that can safely re-enter the environment. By definition, that makes such materials inherently unstable and unsuitable for the wear and tear that comes from permanent exposure to harsh marine conditions. It is simply not feasible to build functional docks without using pressure-treated wood, metal, and other non-biodegradable materials. If adopted, the new wording would therefore create a guideline that would be basically impossible to follow.

At the November 21, 2023 meeting, I proposed alternative language that more clearly expressed the original intention of Section 9.3.4(f). The language carried over the term “water quality” used in the original language. Trustee Stamford observed that this term is problematic. I agree it is too narrow and fails to articulate the intended level of environmental protection. I propose that the following amended alternative language be adopted:

Docks should be constructed of stable materials that do not have the potential to degrade ~~water quality~~ the marine ecosystem or the ecology of the foreshore over time. Specifically, dock floats should not use unenclosed plastic foam or creosote treated pilings.

The less than comprehensive term “water quality” is used elsewhere in proposed Bylaw 154. I propose that it be replaced in:

- Sections 9.3.3(h) and 9.3.5(c)(iii) with the term “the marine ecosystem”; and
- Section 9.3.5(g) with the term “the marine ecosystem or the ecology of the foreshore”.

CONSTRUCTION WITHIN DPA3

Section 9.3.1 of proposed Bylaw 154 states:

The following activities shall require a development permit whenever they occur within the Development Permit Area 3: Shoreline (DP-3), unless specifically exempted under Subsection 9.3.2:

- construction of, addition to or alteration of a building or structure;
- land alteration, including vegetation removal and disturbance of soils; and
- subdivision of land.

Alterations

The word “alteration” in Section 9.3.1 is not qualified. Rather, it encompasses all conceivable changes to a building, structure or land within DP3, including any changes to already disturbed land.

As I have previously emphasized, many shoreline cabins on Keats Island are lawfully situated either wholly or in part within 15 metres of the natural boundary of the sea (NBS). Although these homes were built in compliance with the relevant land use regulations in force at the time, the unqualified use of the word “alteration” in Section 9.3.1 would going forward require their owners to obtain a development permit before undertaking normal course changes. Among other things, this would include:

- Replacing outdated glazing with energy efficient windows.
- Installing solar panels.
- Renovating the interior of a cabin.
- Changing a roof profile or adding a balcony.
- Rebuilding a sun deck on its original footings.
- Altering a lawn in order to put in a fire pit or horseshoe pitch– or to replace turf with native ground cover and plants.

Trust Council has interpreted Section 3 of the *Islands Trust Act* in accordance with the normal principles of statutory interpretation, namely, by taking the plain meaning of the text at face value.

Different words mean different things. By defining the preserve and protect mandate to encompass both the Trust Area’s environment and its unique amenities, Section 3 makes clear that those are different values and that neither should be understood as superseding the other. Rather, both the environment and the particular character of rural life as it exists on each individual island deserve to be preserved and protected. Moreover, the purpose of the mandate is not to advance abstract ideals disconnected from the lives of the people who actually live on the islands. The explicitly stated purpose of the mandate is to benefit the residents of the Trust Area and the people of British Columbia generally.

When approving a bylaw, therefore, a Local Trust Committee must be mindful that it is obligated to strike a balance that respects all the elements of the Trust Object as set out in Section 3.

With respect to new construction on previously undisturbed land, requiring a development permit is consistent with, and will objectively serve, the goal of environmental protection. This is reasonable regulation, because there is a tangible connection between the rule and the purposes of the Trust Object.

It is not reasonable, however, to impose a development permit requirement for building or land alterations that will take place wholly within previously developed land. That is because there is no rational connection between the Trust Object and a requirement that does not serve to preserve or protect the natural environment (i.e., the stated purpose for establishing DP3. If anything, imposing on property owners the trouble, expense and uncertainty of needing to

obtain a development permit when it serves no discernible Trust Object purpose is, arguably, contrary to Section 3. How does imposing a gratuitous requirement benefit the residents of Keats Island?

This is why I propose that Section 9.3.2 include an exemption from Section 9.3.1 that provides as follows:

Alterations of previously disturbed land and to pre-existing buildings, structures and utilities located between 7.5 metres and 15 metres from the natural boundary of the sea, provided always that the alteration:

- **takes place entirely within the perimeter of previously disturbed land or within the footprint of a pre-existing building, structure, or utility;**
- **does not alter, disturb or otherwise harm previously undisturbed land or native vegetation anywhere within DP3; and**
- **does not result in environmental degradation of any kind anywhere within DP3 or to the ecology of the foreshore.**

The point of an exemption along these lines is proportionality. It would deliver the environmental protection that is the justification for introducing DP3 without imposing unnecessary hardships on owners wishing to carry on normal course work on their properties.

Additions

The reasoning discussed above applies equally to the construction of additions to pre-existing cabins located either wholly or part within DP3.

Accordingly, I also propose the following exemption to Section 9.3.1:

Additions to pre-existing dwellings located between 7.5 metres and 15 metres from the natural boundary of the sea, subject to the following conditions:

- **an addition cannot exceed [50 square meters (540 square feet)] in area;**
- **the work takes place entirely within the perimeter of previously disturbed land;**
- **the work does not alter, disturb or otherwise harm previously undisturbed land or native vegetation anywhere within DP3;**
- **the work does not result in environmental degradation of any kind anywhere within DP3 or to the ecology of the foreshore; and**
- **no part of the work involves the use of earth moving or other heavy machinery.**