

# South Pender Advisory Planning Commission (APC)

## The South Pender LTC Referral: SP Minor LUB Amendments

### LTC Referral Topics

*“To date the LTC has noted the following major topics identified during phase one and two is requesting further deliberation:*

- *setback from the natural boundary (NB) of the sea*
- *interior side lot line setbacks for rural residential zoned dwellings and cottages*
- *total floor area and maximum floor area for dwellings”*
- see **Appendix A** (P. 9) for Referral Chart

### Commission Members:

Gordie Duncan (Chair), Rod Kirkwood (Vice-Chair), Audrey Green, Donna Spalding, Paul Petrie

### Staff:

Kim Stockdill - South Pender Planner, Carly Bilney - Secretary

### Introduction:

After five APC meetings we believe that the APC has made recommendations that are a reasonable compromise and will address the communities concerns both for and against the changes made with the adoption of Bylaw 122. It is felt that the recommendations will address the concerns, especially about non-conforming, with its many varied interpretations of “legal non-conforming or some form of hyphenated non-conforming”, by removing its significance from the current Bylaw 114, almost entirely.

The recommendations meet the goals of the OCP and have little if any impact on the Rural Nature of South Pender

**Re: SP LTC Referral of SP Minor LUB Amendments to the SP APC**

The SP APC received the referral on July 15, 2024. At the first APC meeting (Electronic) held on August 9, 2024, Chairman – Gordie Duncan and Vice Chairman - Rod Kirkwood were elected. Staff Member Carly Bilney was appointed as Secretary. Commissioners Audrey Green, Donna Spalding and Paul Petrie along with Duncan and Kirkwood form the SP APC Commission.

Under the direction of the Islands Trust Staff, it was determined that any further APC meetings must be held “in person” only. Further it was determined at the LTC meeting on May 10, 2024, that the APC need not seek further public comment, given the large amount of information already available via Community Information Meetings and Correspondence.

In their referral the LTC identified three major topics that they wished the APC to address:

- Setback from the natural boundary of the sea
- Interior side lot line setbacks for rural residential zoned dwellings and cottages
- Total floor area and maximum floor area for dwellings

The APC made twelve recommendations in addition to identifying some anomalies in Bylaw 114. There was a total of nineteen LUB related motions made during the APC deliberations.

**Summary of Recommendations:**

**Note:** Because of excellent note taking by Secretary Bilney the minutes will reflect more detail of the discussions that formed the basis for the APC recommendations. The main points used to form each recommendation are shown under **Notes:**

**Part 3 General Regulations – Siting and Size Regulations 3.3(5)****Aug. 09, SP-APC-2024-003**

The APC recommended that the LTC amend “Subsection 3.3(5) in the South Pender Land Use Bylaw by deleting “~~to submit a certification from an appropriately qualified person~~” and replacing it with “*substantive evidence to establish the location of the dwelling.*”

**Notes:**

- 1.1 It is expected that this change would also be applied to the exception clauses contained in the appropriate zones in Part 5 Zone Regulations (Rural Residential, Agriculture, Forestry and Natural Resources)

**3.3 Siting and Setback Regulations****Aug. 23, SP-APC-2024-004**

The APC recommended that the LTC retain the 50-foot setback from the natural boundary of the sea as written in Bylaw 114.

**Notes:**

- 1.1 At the APC Meeting on November 12 an agenda item “*Consider Two Tables (Pre and Post Bylaw Amendment date) for Setbacks to the Sea*” was to be considered as an amendment to Recommendation 004.
- 1.2 A potential motion to amend Recommendation 004 was denied because it was stated that Roberts Rules do not allow for a previous motion to be amended, unless done so at the same meeting. Given the short notice of this statement and that we did not have staff available for advice, no further action was taken with this item. Research after the meeting, however, indicated that perhaps a motion to amend Recommendation 004 could have been entertained.
- 1.3 The intent for amending Recommendation 004 was to suggest the inclusion of two regulations in Siting and Setback Regulations 3.3(3) - *7.6 metres (25 feet) prior to September 15, 2022, and 15 metres (50 feet) after*. Making this change to Bylaw 114 would resolve the non-conforming status of many dwellings (approximately 22) rendered so by Bylaw 122. Items 3.3(4) and 3.3(5) may require minor changes.

**5.1 Rural Residential Zones – 5.1(9)**

**Aug. 23, SP-APC-2024-007**

The APC recommended that the LTC revert *dwelling and cottage* lot lines to 3.0 metres (10 ft.) for interior side and 4.5 metres (15 ft.) for exterior side lot lines or as shown in 5.1(8).

**Notes:**

- 1.1 Planner Stockdill reported on the viability and the challenges of implementing landscape screening and natural buffers regulations within the Setback corridors. The conclusion being that it would be difficult to manage.
- 1.2 General reasons for Recommendation 007 were consistency, large number of properties removed from non-conforming status (approximately 30)

**5.1 Rural Residential Zones Continued: Oct 04, 2024, SP-APC-2024-008**

To help with the decisions regarding the maximum allowable dwelling floor area, the APC decided that a discussion about the meaning of (legal) non-conforming was in order.

**5.1 Rural Residential Zones Continued: Oct 04, 2024, SP-APC-2024-009**

The APC decided to refer the interpretation of legally conforming and legally non-conforming to the Planner for the information of the APC.

Included in the referral letter were two maximum dwelling size tables, one for a proposed increase of maximum dwelling size of the current bylaw and one referring to

legally built dwellings prior to September 15, 2022. Also, an example of an exception clause which adjusted for the two-table proposal was included. See **Appendix C** (P. 12)

**5.1 Rural Residential Zones Continued: Oct 04, 2024, SP-APC-2024-010**

The APC decided to request the Planner consider recent legal cases and jurisprudence and how those relate to the current bylaw for people who do not conform with the current bylaw.

**Notes:**

- 1.1 The APC appears to have overstepped our mandate by asking Staff to consider Recommendation 009 and 010, rather than requesting the information via the LTC. We sincerely apologize to staff for the breach in protocol.
- 1.2 Thank you to Planner Stockdill for responding to the Recommendation 009 request, by providing answers to our request. See **Appendix C** (P.12)
- 1.3 Planner Stockdill verified that a dual dwelling size table with a before and after date as an option

**5.1 Rural Residential Zones Continued: Oct 04, 2024, SP-APC-2024-013**

The APC recommended to the LTC that attached garages not be included in the floor area of a dwelling and that staff provide a definition of garage in the land use bylaw.

**Notes:**

- 1.1 For clarity the recommendation refers to "Attached Enclosed Garages"
- 1.2 The recommendation addresses the issue created by the inclusion of "*and exclusive of a storey that is not fully enclosed by a floor, ceiling, and four walls or glass.*" clause with the adoption of Bylaw 122.
- 1.3 An example of the clause addition effect: For a 2000 ft<sup>2</sup> dwelling with a two-car garage (625 ft<sup>2</sup>) -
  - 1.3.1 With an attached garage, the ft<sup>2</sup> must be added to the dwelling total ft<sup>2</sup> leaving 1375 ft<sup>2</sup> available for the dwelling ft<sup>2</sup>
  - 1.3.2 With a detached garage, the ft<sup>2</sup> is added to the *total "floor area of all buildings"*, or lot coverage leaving 2000 ft<sup>2</sup> available for the dwelling ft<sup>2</sup>

**5.1 Rural Residential Zones Continued: Oct 21, 2024, SP-APC-2024-014**

The APC recommended that the LTC adopt a new table under Siting and Size Section 5.1(5) "Maximum Floor Area per Lot" for all Rural Residential Zones as shown in Table 1 effective after Bylaw Amendment Date MM/DD/YY, and a second table under Siting and Size Section 5.1(x) "Maximum Floor Area per Lot" for all Rural Residential Zones as shown in Table 2 for all legal dwellings built prior to the Bylaw Amendment Date September 15, 2022.

**Table 1****5.1.(5) Maximum Floor Area per Lot After Bylaw Amendment Date MM/DD/YY**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
		After Bylaw Amendment Date MM/DD/YY
Lot Area	The total floor area of all buildings may not exceed:	The floor area of a dwelling may not exceed:
Less than 0.4 ha (1 acre)	465 m <sup>2</sup> (5000 ft <sup>2</sup> )	<b>279 m<sup>2</sup> (3000 ft<sup>2</sup>)</b>
0.4 ha to < 0.8 ha (1 to 2 acres)	557 m <sup>2</sup> (6000 ft <sup>2</sup> )	<b>325 m<sup>2</sup> (3500 ft<sup>2</sup>)</b>
0.8 ha to < 1.6 ha (2-4 acres)	743 m <sup>2</sup> (8000 ft <sup>2</sup> )	<b>372 m<sup>2</sup> (4000 ft<sup>2</sup>)</b>
1.6 ha to < 4 ha (4-10 acres)	836 m <sup>2</sup> (9000 ft <sup>2</sup> )	<b>418 m<sup>2</sup> (4500 ft<sup>2</sup>)</b>
4.0 ha (10 acres) or greater	1394 m <sup>2</sup> (15000 ft <sup>2</sup> )	<b>465 m<sup>2</sup> (5000 ft<sup>2</sup>)</b>

**Table 2****5.1.(6) Maximum Floor Area per Lot Prior to Bylaw Amendment Sept 15, 2022**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
		Prior Bylaw Amendment Date September 15, 2022
Lot Area	The total floor area of all buildings may not exceed:	The floor area of a dwelling may not exceed:
Less than 0.4 ha (1 acre)	465 m <sup>2</sup> (5000 ft <sup>2</sup> )	<b>353 m<sup>2</sup> (3800 ft<sup>2</sup>)</b>
0.4 ha to < 0.8 ha (1 to 2 acres)	557 m <sup>2</sup> (6000 ft <sup>2</sup> )	<b>418 m<sup>2</sup> (4500 ft<sup>2</sup>)</b>
0.8 ha to < 1.6 ha (2-4 acres)	743 m <sup>2</sup> (8000 ft <sup>2</sup> )	<b>520 m<sup>2</sup> (5600 ft<sup>2</sup>)</b>
1.6 ha to < 4 ha (4-10 acres)	836 m <sup>2</sup> (9000 ft <sup>2</sup> )	<b>543 m<sup>2</sup> (5845 ft<sup>2</sup>)</b>
4.0 ha (10 acres) or greater	1394 m <sup>2</sup> (15000 ft <sup>2</sup> )	<b>560 m<sup>2</sup> (6030 ft<sup>2</sup>)</b>

**Notes:**

- 1.1 Proposed Table 1 Column 3 (*The floor area of a dwelling may not exceed:*) represents a logical 500 ft<sup>2</sup> maximum dwelling size increase per lot category over the current regulation
- 1.2 Maximum Dwelling Sizes would match North Pender's for similar lot categories
- 1.3 Using only the proposed increased Table 1 dwelling sizes would reduce the non-conforming status of dwellings exceeding the maximum dwellings size of the current bylaw by approximately 40% (from 20 dwellings to 8)
- 1.4 The proposed Table 1 maximum dwelling size increases represent on average a 19% increase over the current bylaw and 22% decrease over the pre-122 bylaw (Table 2)
- 1.5 Including Table 2 into Bylaw 114 recognizes the status of all legal dwellings built prior to September 15, 2022, and therefore would not require the protection of the Siting and Size 5.1(6) clause. They would no longer hold non-conforming status under the current bylaw
- 1.6 With the inclusion of Table 2 into Bylaw 114 approximately 9% of all South Pender (for Rural Residential, Agriculture, Forestry, Natural Resource zones) dwellings built prior to Sept 15, 2022, would be removed from the non-conforming status.

**5.1 Rural Residential Zones Continued: Oct 21, 2024, SP-APC-2024-016**

The APC recommended that the LTC replace Clause 5.1.(6) under Siting and Size - Section (5) with the following clause:

Despite Subsection 5.1(6){Table 2} on a lot that contains a legal dwelling constructed prior to September 15, 2022 a replacement dwelling may be constructed or the existing dwelling reconstructed or altered, provided the floor area of the replaced, reconstructed or altered dwelling does not exceed the floor area of the dwelling on the lot on September 15, 2022 OR the floor area permitted on such lot by Subsection 5.1(5){Table 1}, whichever size is greater. For this purpose, the Local Trust Committee may require an owner to submit substantive evidence to establish the floor area of the dwelling at the time of the adoption of this bylaw.

**Notes:**

- 1.1 The above proposed clause is intended as an example only, not the final clause to be included in the bylaw.
- 1.2 The proposed revised clause is required as it addresses the conditions of use for dwellings built prior to September 15, 2022
- 1.3 The objective of the revised clause is:
  - 1.3.1 to ensure that pre-September 15, 2022, legal dwellings exceeding the current bylaw maximum dwelling size can only rebuild to their size as of that date and not to the sizes shown in Table 2
  - 1.3.2 or: to ensure that pre-September 15, 2022, legal dwellings can rebuild or expand to the current bylaw dwelling sizes

- 1.4 The combined effect of Recommendations 015 and 016 virtually eliminates the non-conforming status created for many dwellings with the adoption of Bylaw 122, yet maintains the intent of Bylaw 122, except for slightly larger maximum dwellings sizes

**5.5 Agriculture Zones: Oct 21, 2024, SP-APC-2024-017**

The APC recommended that the LTC review the maximum dwelling size for the Agricultural Zones recognizing requirements by the Agricultural Land Reserve and that those can change from time to time and that they should be cognizant of not getting out of step

**Notes:**

- 1.1 As the ALR is a provincial regulation, it is thought that it might be pragmatic to simply follow the ALR dwelling size regulations, for South Pender's Agricultural Zone, rather than having to adjust our bylaws with any future ALR changes
- 1.2 The ALR maximum dwelling size for under 100 Acres = 5380 ft<sup>2</sup>. With the proposed changes to the South Pender the maximum dwelling size would = 5000 ft<sup>2</sup> for Agriculturally Zoned property greater than 10 acres, which is only 7.5% lower than the ALR maximum. Perhaps ALR figures could also apply to *Lot Size Category 4 – 10 acres* with an Agriculture zoning

**5.5 Agriculture 5.6 Forestry and 5.7 Natural Resources: Oct 21, 2024, SP-APC-2024-018**

The APC recommended that the LTC use the same tables that the Advisory Planning Commission recommended for Rural Residential zones for Forestry and Natural Resources zones.

**Notes:**

- 1.1 The tables and clause referred to in the recommendation are those shown in Recommendation 014 and 016
- 1.2 The same reasons stated in Notes: for recommendations 014 and 016 apply

**5.5 Agriculture, 5.6 Forestry and 5.7 Natural Resources: Oct 21, 2024, SP-APC-2024-020**

The APC recommended that the LTC identify and consider the anomalies outlined in the note SP APC - Nov 5 RE Agricultural, Forestry and Natural Resources shared between Commission members for clarification.

**Notes:**

- 1.1 See **Appendix B** (P.10)
- 1.2 It is evident that the two regulations, one under Density and the other under Siting and Size in each zone are confusing
- 1.3 The APC felt it best that the LTC with the aid of staff decide what the best resolution, if any, for resolving the discrepancy.

**Topics Discussed, no Recommendations:**

**Dwelling Footprint:**

- 1.1 Commissioner Kirkwood introduced a concept of a maximum dwelling footprint size for each lot category, based on the maximum dwelling sizes
- 1.2 The scenario discussed was a 60/40 ratio, meaning that the maximum footprint of a dwelling would be (max dwelling size for each lot category) \* (60%) = dwelling footprint ft<sup>2</sup>
- 1.3 Some of issues discussed with this proposal included:
  - 1.3.1 Lot coverage needs to be considered.
  - 1.3.2 How would an attached enclosed garage, even with APC Recommendation 013 add to the equation?
  - 1.3.3 Is a proposed dwelling which has a significantly smaller ft<sup>2</sup> than the maximum allowable still required to use the 60/40 ratio? I.E. Would 1800 ft<sup>2</sup> dwelling built on a 1,5-acre lot still be required to use the 60/40 ratio or use 1080 ft<sup>2</sup>?
  - 1.3.4 Non-conforming issues for current dwellings?
  - 1.3.5 It was decided that the Maximum Footprint scenario is for the LTC to pursue if they wish

**Maximum Dwelling Height, Basement Floor Area Definition and Floor Area Definition:**

- 1.1 These topics were discussed, and we refer you to the APC November 12, 2024 Minutes items 4.4, 4.5.1 and 4.5.2 respectively for APC comments.

**In Conclusion:**

With these recommendations and this report the APC has concluded our deliberations on the Minor LUB Amendments Referral. APC members will be glad to address any questions or concerns the LTC may have.



## Appendix A

Bylaw No. 122 Section	Amendment Summary (for exact regulation refer to Bylaw No. 122)	Retain	Remove	Amend	Undecided	Staff Comments
2.1	New definitions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No major discussions regarding the definitions
2.2	Definition - cottage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	General support for keeping this definition.
2.3	Definition – floor area	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	General support for keeping this definition.
2.4	Changing setback to the natural boundary of the sea from 25 feet to 50 feet	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	A mix of opinions to keep, change or remove this amendment. Further discussion and recommendation from the APC required.
2.5	Clause permits buildings and structures that were sited prior to September 15, 2022 to retain the 25 feet setback.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Dependent on decision of Section 2.4. If the LTC recommends to retain the setback of 50 feet from the natural boundary of the sea, then staff recommend to retain this regulation.
2.6	Clause that permits a legal dwelling, cottage or accessory building constructed prior to Sept 15/24 to be replaced or altered.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Dependent on decision of Section 2.4. If the LTC recommends to retain the setback of 50 feet from the natural boundary of the sea, then staff recommend to retain this regulation.
2.7	Addition to height regulation – restricts a dwelling or cottage to not exceed 9.2 metres at any point.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	General support to remove this regulation and reverting the height regulation as it was prior to the adoption of Bylaw No. 122.
2.8	Shipping container regulations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	General support to keep the shipping container regulations with the option to change the lot sizes so they are the same as the lot sizes displayed the maximum floor area regulations.
2.9	Freshwater catchment regulations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	General support for keeping this regulation. Possible amendments are to add definitions for “freshwater” and “cistern”.

Bylaw No. 122 Section	Amendment Summary (for exact regulation refer to Bylaw No. 122)	Retain	Remove	Amend	Undecided	Staff Comments
2.10	RR Zones – more restrictive maximum floor area and total floor area	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Further comments and recommendations from the APC required.
2.11	Clause that allows legal dwellings to be constructed with the same floor area as it was at the time of Bylaw No. 122 adoption.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Dependent on decision of Section 2.10. If the LTC recommends to retain regulation or amend the maximum floor area and total floor area, then staff recommends to retain this regulation.
2.12	Maximum floor area of a cottage in the RR zones	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Technical amendment and support to retain as is.
2.13	Setback from interior lot line for dwellings and cottages to be 20 feet.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Further comments and recommendations from the APC required.
2.14	Clause that allows legal dwellings and cottages to be sited as they were prior to the adoption of Bylaw No. 122 (Sept. 15/22).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Dependent on decision of Section 2.13. If the LTC recommends to retain setback of 20 feet to interior lot line for new dwelling and cottages, then staff recommends to retain this regulation.
2.15	Adding permitted accessory agri-tourism use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Retain but remove reference to “subject to Subsections 5.5(13) to 5.5(16)”.
2.16	Adding permitted accessory agri-tourist accommodation use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Retain but remove reference to “subject to Subsections 5.5(15) to 5.5(22)”.
2.17	Adding farm retail sales as accessory use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	General support to retain.
2.18	Maximum floor area and total floor area for dwellings in the Agriculture zone.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Some support to remove this regulation as it was expressed at the Agricultural Land Commission (ALC) regulates maximum floor area for dwellings located in the Agricultural Land Reserve (ALR).
2.19	Clause that allows legal dwellings to be constructed with the same floor area as it was at the time of Bylaw No. 122 adoption.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Dependent on decision of Section 2.18. If the LTC recommends to retain regulation or amend the maximum floor area and total floor area, then staff recommends to retain this regulation.
2.20	Maximum floor area of cottage in the Agriculture zone	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Technical amendment and support to retain as is.

Bylaw No. 122 Section	Amendment Summary (for exact regulation refer to Bylaw No. 122)	Retain	Remove	Amend	Undecided	Staff Comments
2.21	Information Note	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Technical amendment and support to retain as is.
2.22	Farm retail sales regulation related to indoor and outdoor floor area permitted for the use.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	General support to remove all conditions that are currently regulated by the ALC.
2.23	Conditions of use for agri-tourism and agri-tourist accommodation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	General support to remove all conditions that are currently regulated by the ALC <u>except</u> to retain the condition that limits the number of guests and bedrooms for an agri-tourist accommodation use.
2.24	Maximum floor area and total floor area for dwellings in the Forestry zone.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Further comments and recommendations from the APC required.
2.25	Clause that allows legal dwellings to be constructed with the same floor area as it was at the time of Bylaw No. 122 adoption.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Dependent on decision of Section 2.24. If the LTC recommends to retain regulation or amend the maximum floor area and total floor area, then staff recommends to retain this regulation.
2.26	Maximum floor area of cottage in the Forestry zone	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Technical amendment and support to retain as is.
2.27	Maximum floor area and total floor area for dwellings in the Natural Resource zone.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Further comments and recommendations from the APC required.
2.28	Clause that allows legal dwellings to be constructed with the same floor area as it was at the time of Bylaw No. 122 adoption.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Dependent on decision of Section 2.27. If the LTC recommends to retain regulation or amend the maximum floor area and total floor area, then staff recommends to retain this regulation.
2.29	Maximum floor area of cottage in the Natural Resource zone	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Technical amendment and support to retain as is.

Box shaded dark blue - a priority for APC comment	Box shaded light blue – comment from APC may be required	Box shaded white – no comments from APC required
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## Appendix B

November 05, 2024

RE: Agricultural, Forestry and Natural Resources

At our Oct 21 APC meeting we passed motions SP-APC-2024-017 and SP-AC-2024-018. It has since been pointed out to me that there are discrepancies with respect to lot coverage for these zones in Bylaw 114.

Lot Coverage is not only defined under **Siting and Size**, but also under **Density** for these zones and appears to be contradictory.

The highlighted graphic for Agriculture below shows the inconsistency

Bylaw 114 Link: [SP-BL-114-LUB-Consolidated](#) P.30 ->

- (3) One *cottage* or other *dwelling* is permitted on each *lot* for the housing of persons engaged in on-going agricultural activities on the *lot*.
- (4) For a parcel less than 4.0 ha (10 acres) in area, the *lot coverage* of all *buildings* and *structures* may not exceed 8 percent.
- (5) For a parcel 4.0 ha (10 acres) or greater in area, the *lot coverage* of all *buildings* and *structures* may not exceed 3 percent.

**Siting and Size**

- (6) The minimum *setback* for any *building* or *structure*, except a *fence* or *pump/utility house*, shall be:
  - (a) 7.6 metres (25 ft.) from any front or rear *lot line*;
  - (b) 6.1 metres (20 feet) of any side *lot line*.
- (7) Despite Subsection 5.7(6), *buildings* or *structures* used for housing livestock, poultry or for manure storage may not be located within 30 metres (98 feet) of:
  - (a) a front *lot* or exterior side *lot line*;
  - (b) an interior side *lot line* or rear *lot line* abutting a residential, *park* or institutional use;
  - (c) a lake or natural *watercourse*; or
  - (d) a well or source of domestic water supply.
- (8) Despite Article 5.5(6)(a), roadside stands for *accessory* sale of farm products may be sited within the setback from a front *lot line* or exterior side *lot line*.

- (9) ~~The floor area of a dwelling may not exceed 560 m<sup>2</sup> (6028 ft<sup>2</sup>).~~ **Maximum Floor Area per lot:**

BL 122

Lot Area	The total floor area of all buildings may not exceed:	The floor area of a dwelling may not exceed:
Less than 0.4 ha (1 acre)	465 m <sup>2</sup> (5000 ft <sup>2</sup> )	222 m <sup>2</sup> (2500 ft <sup>2</sup> )
0.4 ha to < 0.8 ha	557 m <sup>2</sup> (6000 ft <sup>2</sup> )	279 m <sup>2</sup> (3000 ft <sup>2</sup> )

Using the Agricultural Zoning Lot Coverage Regulations for a **9 Acre** lot:

**Density** - “*Lot Coverage of all buildings and structures*” = 8%

- 43560 \* 9 = 392040 \* 8% = **31363 ft<sup>2</sup>** – Total Lot Coverage

**Siting and Size** – “*total floor area of all buildings may not exceed:*”

- **9000 ft<sup>2</sup>** – Total Lot Coverage

The significant difference between the two “maximum floor areas” allowed between the two regulations is obvious and begs the question of which one takes precedence.

I would suggest some options that are available to us. Because these Zones were included in the referral chart, all be it, specifically for Dwelling Max Floor Area we could do one of the following:

November 23, 2024

South Pender APC Referral  
Minor LUB Amendments

1. Ignore this Lot Coverage anomaly for those zones and leave our motions as passed at the Oct 21 meeting
2. Pass additional motions with a recommended solution – such as removing one regulation or at the very least make them compatible for these zones.
3. Pass a recommendation to the LTC pointing these anomalies and suggest they clarify these regulations

If you feel that we should take further action such as in item 2 or 3, please prepare you motion in advance. I would like to suggest that the motion be as succinct as possible.

We would have to add this item to agenda

Thanks

Gordie

## Appendix C

RE: APC Motions: **SP-APC-2024-009** and **SP-APC-2024-010** with respect to Legal Non-Conforming

Hi Kim

I wonder if you have had a chance to consider the South Pender's APC request for clarification of Legal Non-Conforming? The two motions, referenced above, were made at the APC meeting on October 04, 2024.

- **SP-APC-2024-009**  
**It was Moved and Seconded,**  
that the South Pender Advisory Planning Commission refer the interpretation of legally conforming and legally non-conforming to the Planner for the information of the Advisory Planning Commission.
- **SP-APC-2024-010**  
**It was Moved and Seconded,**  
that the South Pender Advisory Planning Commission request the Planner consider recent legal cases and jurisprudence and how those relate to the current bylaw for people who do not conform with the current bylaw.

Further to our request above, at our meeting on Oct 21, 2024, the APC made two recommendations which, it is believed, would have a significant impact on the many dwellings that were rendered non-conforming with the adoption of Bylaw 122. Your thoughts and comments on these recommendations would be appreciated.

Summarizing the intent of Oct 21 recommendations, which is to reduce or eliminate those legally built dwellings prior to Bylaw 122 adoption, rendered non-conforming by it. The intent is not only to provide the protection of the current clause 5.1(6), but also to ensure that no legal pre-122 dwelling could build or expand to the dwelling sizes referred to in the new pre-122 table rather than using the current bylaw table, except under the provisions of 5.1(6).

The APC recommendations were created based on a recommendation included in a Staff Report to the LTC at the time. [eSCRIBE Agenda Package \(islandtrust.bc.ca\)](https://islandtrust.bc.ca)  
Page 81 #5 Option 1

(Staff Report Sept 24, 2021 - Option 1 – “*The LUB would have two different maximum floor area regulations: retain the current regulations for houses constructed prior to the LUB amendment bylaw, and a second set of more restrictive maximum floor area regulations for dwelling units constructed after the LUB amendment.*”

Based on this option 1: Two recommendations were made:

1. Adding a 2<sup>nd</sup> table to Section 5 Siting and Size showing maximum dwelling sizes pre-122
  - 1.1. It also included a change to the current Section 5 Max Dwelling Size Table bylaw increasing and equalizing the maximum dwelling size by an additional 500 ft<sup>2</sup> per lot category.

**Siting and Size Table Changes:**

5.1.(5) Maximum Floor Area per Lot After Bylaw Amendment Date MM/DD/YY

Column 1	Column 2	Column 3
		After Bylaw Amendment Date MM/DD/YY
Lot Area	The total floor area of all buildings may not exceed:	The floor area of a dwelling may not exceed:
Less than 0.4 ha (1 acre)	465 m <sup>2</sup> (5000 ft <sup>2</sup> )	279 m <sup>2</sup> (3000 ft <sup>2</sup> )
0.4 ha to < 0.8 ha (1 to 2 acres)	557 m <sup>2</sup> (6000 ft <sup>2</sup> )	325 m <sup>2</sup> (3500 ft <sup>2</sup> )
0.8 ha to < 1.6 ha (2-4 acres)	743 m <sup>2</sup> (8000 ft <sup>2</sup> )	372 m <sup>2</sup> (4000 ft <sup>2</sup> )
1.6 ha to < 4 ha (4-10 acres)	836 m <sup>2</sup> (9000 ft <sup>2</sup> )	418 m <sup>2</sup> (4500 ft <sup>2</sup> )
4.0 ha (10 acres) or greater	1394 m <sup>2</sup> (15000 ft <sup>2</sup> )	465 m <sup>2</sup> (5000 ft <sup>2</sup> )

2.

Table 1

5.1.(6) Maximum Floor Area per Lot Prior to Bylaw Amendment Sept 15, 2022

Column 1	Column 2	Column 3
		Prior Bylaw Amendment Date September 15, 2022
Lot Area	The total floor area of all buildings may not exceed:	The floor area of a dwelling may not exceed:
Less than 0.4 ha (1 acre)	465 m <sup>2</sup> (5000 ft <sup>2</sup> )	353 m <sup>2</sup> (3800 ft <sup>2</sup> )
0.4 ha to < 0.8 ha (1 to 2 acres)	557 m <sup>2</sup> (6000 ft <sup>2</sup> )	418 m <sup>2</sup> (4500 ft <sup>2</sup> )
0.8 ha to < 1.6 ha (2-4 acres)	743 m <sup>2</sup> (8000 ft <sup>2</sup> )	520 m <sup>2</sup> (5600 ft <sup>2</sup> )
1.6 ha to < 4 ha (4-10 acres)	836 m <sup>2</sup> (9000 ft <sup>2</sup> )	543 m <sup>2</sup> (5845 ft <sup>2</sup> )
4.0 ha (10 acres) or greater	1394 m <sup>2</sup> (15000 ft <sup>2</sup> )	560 m <sup>2</sup> (6030 ft <sup>2</sup> )

Table 2

3. Changing the existing Bylaw clause 5.1(6) to reflect the two tables.
4. **Despite Subsection 5.1(Table 2)** on a lot that contains a legal dwelling constructed prior to September 15, 2022 a replacement dwelling may be constructed or the existing dwelling reconstructed or altered, provided the floor area of the replaced, reconstructed or altered dwelling does not exceed the floor area of the dwelling on the lot on September 15, 2022 **OR** the floor area permitted on such lot by Subsection 5.1(5), whichever size is greater. For this purpose, the Local Trust Committee may require an owner to submit **substantive evidence to establish the floor area of the dwelling at the time of the adoption of this bylaw.** (a previous recommendation by the APC)

It is understood that the APC’s purpose is not to write bylaws and bylaw clauses and that is not our intent with the above recommendations. It is the APC’s intent however, to demonstrate a viable option and to offer a solution and recommendation to the LTC that is acceptable to the community.

November 23, 2024

South Pender APC Referral  
Minor LUB Amendments

Thank you for your attention to our request for clarification.

Gordie Duncan  
SP-APC Chair

**From:** South Pender Planner  
**Sent:** Thursday, November 7, 2024 11:25 AM  
**To:** APC members  
**Subject:** FW: SP-APC request for your consideration

Hello APC,

I would like to refer the APC to the FAQ document I put together regarding the 'legal non-conforming' questions: [https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/south-pender/current-projects/Minor%20LUB%20Amendments%20Project/6%20-%20Other%20Information/2024-05-08\\_Legal%20Non-Conforming%20FAQ.pdf](https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/south-pender/current-projects/Minor%20LUB%20Amendments%20Project/6%20-%20Other%20Information/2024-05-08_Legal%20Non-Conforming%20FAQ.pdf). **Bylaw No. 122 did not create 'legal non-conforming' situations in terms of maximum floor area.** The only situation where the adoption of Bylaw No. 122 created non-conformity is in regards to a dwelling's height.

The reason why the previous LTC created the clause was to make it implicitly clear that the floor area of a legal dwelling constructed prior to the adoption of Bylaw No. 122 (Sept 15/22) is permitted. The dwelling's floor area is legal. This protection also reflects Section 529 of the Local Government Act (LGA). Secondary and most important, the LGA does not protect the siting, size, dimension (so floor area) of a dwelling if the dwelling is removed entirely from the property. A dwelling could be removed from the property due to extreme fire damage, aging structure, or other reasons to rebuild. The LGA does not grant legal non-conforming siting, size, or dimension rights to a dwelling if the dwelling is removed from the property. Therefore the clause goes a step beyond the LGA and states that a dwelling may be replaced, reconstructed or altered to the same floor area as it was on Sept 15/22.

Please be aware of the difference between 'non-conforming **use or density**' and 'non-conforming **siting, size and dimension**'. I go over this in the FAQ document.

As for the tables displayed in the word document, the APC could recommend to the LTC to amend the LUB to regulate maximum floor area and total floor area for two different scenarios: 1. For lots with a dwelling unit located on the lot prior to September 15/22; and 2. For new dwellings constructed on or after September 15/22.

In regards to APC motions and resolutions, as a reminder the APC is making recommendations to the LTC. The APC cannot direct staff or request staff to complete work. The LTC has the authority to direct/request staff to complete a task. Future

November 23, 2024

South Pender APC Referral  
Minor LUB Amendments

motions should be drafts in the following manner: “That the South Pender APC recommend to the LTC to request an interpretation of legally conforming and legally non-conforming”.

Thank you,

**Kim Stockdill** (*she/her*)  
Island Planner

Forgot to mention.. I believe there was a request to clarify the following terms (in terms of a dwelling):

“legal non-conforming” – when a dwelling was constructed legally (dwelling complied with the LUB as it was at time of construction) but now no longer complies to the regulations in the current LUB. This happens when a LUB is amended over time and now includes more restrictive regulation(s) than what was in the LUB at the time of construction. “Legal non-conforming” also refers to a situation where a dwelling was constructed prior to any bylaws, but does not comply with the current LUB.

“legal conforming” – when a dwelling was constructed legally (conformed to the LUB at time of construction) and continues to comply with the current LUB.

“illegal non-conforming” – when a dwelling did not comply with the LUB at the time of construction and continues to not comply with the current LUB.

Kim