# STAFF REPORT

File No.: 6500-20 (Keats Island Shoreline Protection Project)

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| DATE OF MEETING: | November 21, 2023 |
| TO: | Gambier Island Local Trust Committee |
| FROM: | Marlis McCargar, Island Planner<br>Northern Team |
| SUBJECT: | Keats Shoreline Protection Project – Proposed Bylaws Nos. 153/154 |

**RECOMMENDATION**

1. **That the Gambier Island Local Trust Committee endorse edits and request staff prepare the amended bylaw for a subsequent LTC meeting.**

2. **That the Gambier Island Local Trust Committee request staff conduct a final analysis and legal review on Proposed Bylaw No. 154 to present for amended 2nd Reading at a subsequent meeting.**

**REPORT SUMMARY**

This staff report provides the Gambier Island Local Trust Committee (LTC) with an update on the Keats Shoreline Protection Project. Staff are recommending the LTC review the changes proposed by staff and Trustee Bernardo (Attachment 2) and endorse the desired changes so that staff may proceed with the next steps to prepare a final amended bylaw for readings.

**BACKGROUND**

The purpose of the Keats Island Shoreline Protection Project is to establish a Shoreline Development Permit Area (DPA) to protect the natural environment, its ecosystems and biological diversity, and protect development from hazardous conditions. Work was initiated with Phase 1 of the Keats Shoreline Protection Project in 2018 which involved the Keats Island Shoreline Protection Working Group. At that time, staff drafted a Discussion Paper as a means for providing baseline information to the LTC and the Keats Island Shoreline Protection Working Group with respect to options for shoreline protection regulations and policies on Keats Island. At that time, the LTC and Working Group decided to move forward with a Development Permit Area.

The project is currently in Phase 3 which has involved bylaw amendments, community, stakeholder and First Nations engagement, bylaw review with a Qualified Environmental Professional (QEP) specializing in Aquatic Biology and further staff review resulting in an annotated version of the proposed bylaws Nos 153/154. At their regular business meeting on June 20, 2023, the LTC reviewed a Staff Memo which included the requested annotated proposed bylaws Nos. 153 and 154 as well as, a letter from Madrone Environmental Services discussing the Biological Benefits of Marine Foreshore Areas.

Four Community Information Meetings (CIMs) were held September 29, 2021 (online), October 14, 2021 (in person), on September 15, 2022 (online) and July 21, 2023 (in-person).

Proposed Bylaw No. 153 to amend the Keats Island Official Community Plan Bylaw No. 77 (OCP), and Proposed Bylaw No. 154 to amend the Keats Island Land Use Bylaw No. 78 (LUB), were given first reading at the July 22, 2021 LTC meeting. First reading of Proposed Bylaw No. 154 was rescinded at the October 14, 2021 LTC meeting, amended by the LTC, and then given first reading at that same meeting. Proposed Bylaw Nos. 153 and 154 were both given second reading at the September 1, 2022 LTC meeting.

At their regular business meeting held August 29, 2023, the LTC passed the following resolutions:

**GM-2023-029**

**It was MOVED and SECONDED**

that Trustee Bernardo work with Island Planner McCargar to review the information obtained from the public information meeting, as itemized on page 2 of the staff report, and propose such amendments to the draft bylaws as may be required, and to bring that revised draft of the bylaws to the Local Trust Committee for consideration at the October 17, 2023 meeting.

**CARRIED**

**GM-2023-030**

**It was MOVED and SECONDED**

that the Gambier Island Local Trust Committee schedule a Public Hearing for Proposed Bylaw Nos. 153 (OCP) and 154 (LUB) for the November Local Trust Committee meeting.

**CARRIED**

Staff worked with Trustee Bernardo in September 2023 to amend the proposed bylaws according to the community feedback received. Staff presented Proposed Bylaw No. 154, as amended at the October 17, 2023 LTC Meeting. It was determined, at that meeting, that further LTC discussion was required to discuss the proposed changes. A Special Meeting was scheduled for October 31, 2023.

At their regular business meeting held October 17, 2023, the LTC passed the following resolutions:

**GM-2023-034**

**It was MOVED and SECONDED**

that the Gambier Island Local Trust Committee request staff to schedule an electronic Special Meeting to discuss and give direction for additional amendments to Proposed Bylaw No. 154.

**CARRIED**

**GM-2023-035**

**It was MOVED and SECONDED**

that the Gambier Island Local Trust Committee request that staff defer the Public Hearing scheduled for November 21, 2023 to a date in 2024.

**CARRIED**

At their special meeting held October 31, 2023, the LTC passed the following resolutions:

**GM-2023-039**
**It was MOVED and SECONDED**
that Proposed Bylaw 154 be amended to: 1) change the definition of maximum residential dock size in P12 to conform with the usage in the CR1, RR, RC, and M2(a) zones that specifies it to mean the size of the dock float; and 2) reduce the maximum residential dock size in P12 zone to the same 47 square metre limit that Bylaw 154 contemplates for the CR1, RR, RC, and M2(a) zones.

**CARRIED**

**GM-2023-040**
**It was MOVED and SECONDED**
that Proposed Bylaw 154 be amended to include provisions that will bring the regulations for residential docks in the P12 zone into conformity with the regulations Proposed Bylaw 154 proposes for residential docks in the CR1, RR, RC, and M2(a) zones.

**CARRIED**

**GM-2023-041**
**It was MOVED and SECONDED**
that Proposed Bylaw 154 be amended to reduce maximum coverage area for the institutional dock facilities in the M2(b) zone to the same 1500 square metre limit contemplated for the P12 zone.

**CARRIED**

**GM-2023-042**
**It was MOVED and SECONDED**
that Proposed Bylaw 154 be amended to enable the pro-rating of the maximum float size for shared docks by an additional 30 square metres per additional participant up to an absolute maximum of 154 square metres.

**CARRIED**

Staff have made the amendments as per October 31, 2021 LTC meeting resolutions above (see highlighted yellow text in Attachment 2). Trustee Bernardo submitted a number of additional suggested amendments and comments after the October 31, 2023 Special Meeting. Those changes are include in Attachment 2 (see purple text and comment boxes).

No changes are being proposed to Bylaw No. 153; however, it is attached for information to this report (Attachment 1).

Reports and associated information for the Keats Island Shoreline Protection project are available on the Islands Trust website, under Gambier Projects. Additional information about the project is also available on a project webpage.

**ANALYSIS**

**Issues and Opportunities**

***Amendments to Proposed Bylaw No. 154***

The proposed amendments to Proposed Bylaw No. 154 are a result of community feedback, Trustee discussions during LTC meetings, comments provided by Trustee Bernardo and minor staff edits to clean up grammatical errors, formatting and omissions.

Staff have included a "track changes" copy of the proposed bylaw. The "track changes" copy provides a reference of the proposed bylaws at second reading and highlight the staff proposed amendments in red, Trustee Bernardo proposed amendments in purple and LTC endorsed amendments in highlighted yellow.

Staff note, the most recent changes and comments provided by Trustee Bernardo (purple text in Attachment 2) have not been run through an internal planning analysis nor have they been through an internal legal review. Planning staff analysis provides an opportunity to apply best planning practices, ensure consistency with the Keats Island Official Community Plan, Trust Council Policies and consideration of re-referral to agencies and First Nations.

***Outstanding Considerations***

In addition to considering a number of amendments for clarity and grammar, it is staff's understanding that there are a few remaining larger issues the LTC would like to consider before moving forward with the proposed bylaws. Some of these issues listed below were discussed at the October 31, 2023 LTC Special Meeting. The issues are as follows:

1. Shared Dock Size

Discussed and resolved at the October 31, 2023 LTC Special Meeting.

2. Exemption for Additions

Discussed at the October 31, 2023 LTC Special Meeting, but not resolved; LTC direction is needed.

As currently proposed, Bylaw No. 154 has an exemption for alterations and repairs provided they are entirely within the footprint of the existing building. Additions to structures and buildings in the Development Permit Area (DPA) that fall within the 7.5m to 15m area is not recommended by staff as a means to better achieve the objectives of the DPA.

The objectives of the DPA are:

- to plan and regulate new development in a manner that preserves, protects and restores the long-term physical integrity, connectivity, and ecological and marine resource values of shorelines and associated foreshore and upland areas;

- to balance development opportunities with the ecological conservation and restoration of the shoreline and marine environment;

- to minimize the disruption of natural features and processes and to retain, wherever possible, natural vegetation and natural features;

- to maintain the public's safe use and access to important recreation areas in a way that does not compromise the ecological integrity of the shoreline;

- to adapt to the anticipated effects of climate change;

- to protect coastal properties and development from damage and hazardous conditions that can arise from erosion and flooding.

As currently proposed in Bylaw No. 154, a Development Permit will be legislatively required for any additions or alterations related to the development of a parcel and work outside the existing footprint of the building would be considered new ground disturbance therefore requiring a Development Permit. One of the purposes of the proposed Development Permit Area is to protect an ecologically important and sensitive area intended to guide development outside of the DPA. If it is not possible to build outside the DPA, there are certain guidelines set out in the Development Permit that must be followed.

3. Exemption for Repair and Maintenance on Existing Shoreline Modifications

Discussed at the October 31, 2023 LTC Special Meeting, but not resolved; LTC direction is needed.

Shoreline structures have a finite lifespan. When repairs are needed on a shoreline structure, staff recommend a Development Permit to ensure all repairs are conducted following guidelines and up to current standards. For example, a geotechnical survey may be needed to ensure that the current structure can withstand repairs.

Staff note that the shoreline is a highly sensitive ecosystem. First Nations place high archaeological and cultural value and significance on the areas located along the foreshore. Structural shoreline modifications have been built in the past and many do not meet current standards. Staff recommend these structures obtain a Development Permit before they are repaired.

4. Exemption for Shoreline Modifications using Non-Structural Measures

This item has not yet been discussed by LTC; LTC direction is needed.

The Development Permit Area in Proposed Bylaw No. 154 stipulates that shoreline protection measures must be designed by a Qualified Professional; this includes non-structural or 'soft' shoreline protection measures. Given the sensitive shoreline ecosystem, staff recommend the development permit guidelines require that Qualified Professionals provide the related design and reports on development permit applications for any shoreline project, as is currently proposed (red text in Attachment 2). Depending on the site, it may need a coastal/shoreline engineer or geologist, biologist, geotechnical expert whether using a structural or non-structural approach. The proposed guidelines state that when feasible, a non-structural shoreline protection measure is preferred; however, at this time, no exemptions for the use of non-structural shoreline modifications are being proposed.

5. Alternate Wording for Repair and Maintenance

Discussed at the October 31, 2023 LTC Special Meeting, but not resolved; LTC direction is needed.

Consider alternate wording for Section .2a) regarding repair and maintenance.

Exemption 9.3.2(a) regarding what would be considered "repair and maintenance" was discussed at the CIM. Repair and maintenance is generally considered to be minor works for preventative and routine upkeep, and/or preservation of an existing building or structure. The proposed exemption is clear that it only applies to a pre-

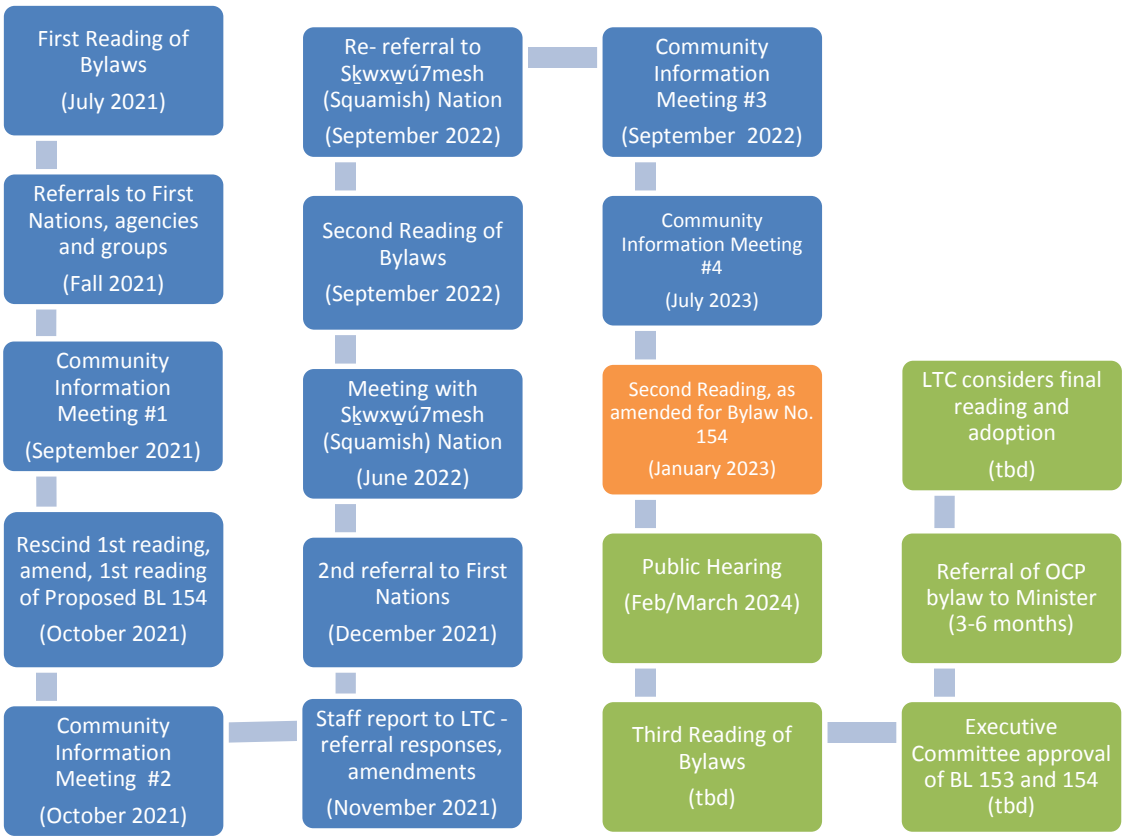
existing lawful building and must not involve any alteration or disturbance of land or vegetation. In addition, it may not expand or alter the building footprint. As best practice, it is suggested that property owners contact Island Trust staff before doing any work in a Development Permit Area to determine if development would fall under an exemption. The LTC has the option to propose more prescriptive guidelines in what would be considered repair and maintenance; however, there are many unique scenarios and it may be difficult to include them all. Staff have amended the exemption for clarity as follows:

a) *Minor repair and maintenance of lawful buildings, structures or utilities provided there is no alteration of undisturbed land or vegetation and are entirely within the footprint of the existing building or structure;*

Discussion at the October 31, 2023 Special LTC Meeting, contemplated "undisturbed land or vegetation". There was concern that this wording was too vague. The LTC discussed that it can be difficult to determine what is disturbed versus undisturbed land. Additionally, non-native vegetation can play an important part in maintaining the integrity the foreshore.

**Timeline**

Preliminary research, scoping and drafting was initiated with Phase 1 of the project in 2018. The following timeline outlines the bylaw amendment process milestones to date along with next steps and approximate timing which may assist in managing community expectations in how an OCP and LUB amendment such as this is processed. The blue steps identify completed milestones, the orange identifies the current stage, and the green identifies potential next steps or milestones in the process.



**Rationale for Recommendation**

Staff and Trustee Bernardo have provided a track changes version of Proposed Bylaw No. 154 with a number of edits and proposed changes. Staff are requesting that the LTC provide direction and endorse the proposed changes that will come back to the LTC for 2nd reading, as amended. Staff also recommend, depending on the final amendments that the LTC endorses, it may be necessary for Proposed Bylaw No. 154 to receive additional staff analysis and legal review.

The staff recommendations are found on Page 1 of this report.

**ALTERNATIVES**

The LTC may consider the following alternatives to the staff recommendation:

1. **Proceed with amendments as shown in Attachment 2 of this report**

   The LTC may amend the proposed bylaw as is detailed in Attachment 2 of this report and give second reading. Recommended wording for the resolution is as follows:

   *That the Gambier Island Local Trust Committee Bylaw No. 154 cited as "Keats Island Land Use Bylaw, 2002, Amendment No. 1, 2021" as shown in Attachment 1 of the staff report dated October 17, 2023, be read a second time as amended.*

2. **Further Amend Proposed Bylaw 154, give Second Reading**

   The LTC may further amend the proposed bylaw beyond what is detailed in this report and give second reading. If selecting this alternative, the LTC should include specific wording in the resolution wording based on the recommendations on page 1 of this report.

3. **Request further information**

   The LTC may request further information prior to making a decision. Staff advise that the implications of this alternative are further potential delays to the LTC's work plan timeline in the Project Charter. If selecting this alternative, the LTC should describe the specific information needed and the rationale for this request. Recommended wording for the resolution is as follows:

   *That the Gambier Island Local Trust Committee request the following information [list].*

**NEXT STEPS**

Should the LTC concur with the staff recommendations, staff will make the amendments, as directed by the LTC, to Proposed Bylaw No. 154 and conduct any necessary planning analysis and legal review. Staff will then bring Proposed Bylaw No. 154 back to the LTC for 2nd Reading, as amended and schedule a Public Hearing.

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| Submitted By: | Marlis McCargar, Island Planner | November 9, 2023 |
| Concurrence: | Renee Jamurat, RPP MCIP, Regional Planning Manager | November 14, 2023 |

**ATTACHMENTS**

1. Proposed Bylaw No. 153 – for information

2. Proposed Bylaw No. 154, amended (track changes version)
3. Trustee Bernardo Memo, submitted for October 31, 2023 Special Meeting

# PROPOSED

**GAMBIER ISLAND LOCAL TRUST COMMITTEE**
**BYLAW NO. 153**

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**A BYLAW TO AMEND KEATS ISLAND OFFICIAL COMMUNITY PLAN, 2002**

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The Gambier Island Local Trust Committee, being the Local Trust Committee having jurisdiction in respect of the Gambier Island Local Trust Area under the *Islands Trust Act,* enacts as follows:

1. Bylaw No. 77, cited as "Keats Island Official Community Plan, 2002" is amended as per Schedules "1" and "2" attached to and forming part of this bylaw.

2. This bylaw may be cited for all purposes as "Keats Island Official Community Plan, 2002, Amendment No. 1, 2021".

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|---|---|---|---|---|
| READ A FIRST TIME THIS | 22ND | DAY OF | JULY | , 2021 |
| READ A SECOND TIME THIS | 1ST | DAY OF | SEPTEMBER | , 2022 |
| PUBLIC HEARING HELD THIS | _____ | DAY OF | _____ | , 20XX |
| READ A THIRD TIME THIS | _____ | DAY OF | _____ | , 20XX |
| APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS | | | | |
| | _____ | DAY OF | _____ | , 20XX |
| APPROVED BY THE MINISTER OF MUNICPAL AFFAIRS AND HOUSING THIS | | | | |
| | _____ | DAY OF | _____ | , 20XX |
| ADOPTED THIS | _____ | DAY OF | _____ | , 20XX |

_____ _____

**Chair** **Secretary**

**GAMBIER ISLAND LOCAL TRUST COMMITTEE**
**BYLAW NO. 153**

**Schedule "1"**

1. Schedule "A" of "Keats Island Official Community Plan, 2002" is amended as follows:

1.1 **PART A – ADMINISTRATION AND INTERPRETATION,** is amended by replacing *Local Government Act* references to "Section 911" with "Section 528".

1.2 **PART B – GOALS, OBJECTIVES AND POLICIES,** is amended by replacing *Local Government Act* references to "Section 946" with "Section 514".

1.3 **PART C – DEVELOPMENT PERMIT AREAS,** is amended by replacing *Local Government Act* references to "Section 919.1(1)" with "Section 488(1)" and "Section 920.01" with "Section 485".

1.4 **PART C – DEVELOPMENT PERMIT AREAS,** is amended by adding a new subsection 3:

"**3. DEVELOPMENT PERMIT AREA 3: SHORELINE**
The development permit area (DPA) is established, pursuant to Section 488(1)(a) of the *Local Government Act* for the protection of the natural environment, its ecosystems and biological diversity; and Section 488(1)(b) of the *Local Government Act* for the protection of development from hazardous conditions.

The Shoreline DPA (DP-3) is designated as an area for which development approval information may be required as authorized by Section 484 of the *Local Government Act*.

**Location**
The Shoreline Development Permit Area (DP-3) includes all land designated on **Schedule E – Development Permit Areas** of this plan.

The Shoreline Development Permit Area applies to all land measured 15 metres upland of the present natural boundary of the sea, the foreshore area and all that area of land covered by water between the natural boundary of the sea and a line drawn parallel to and 100 metres seaward of the natural boundary of the sea.

**Justification**
It is the Object of the Islands Trust to "preserve and protect the Trust Area and its unique amenities and environment for the benefit of the residents of the Trust Area and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the government of British Columbia."

It is the policy of the Islands Trust Council that protection must be given to the natural processes, habitats and species of the Trust Area, and that development activity, buildings or structures should not result in a loss of significant marine or coastal habitat, or interfere with natural coastal processes.

It is also policy of the Islands Trust Council that local trust committees shall in their Official Community Plans and regulatory bylaws, address:

- the protection of sensitive coastal areas;
- the planning for and regulation of development in coastal regions to protect natural coastal processes;
- the protection of public access to, from and along the marine shoreline and minimize impacts on sensitive coastal environments; and
- the identification of areas hazardous to development, including areas subject to flooding, erosion or slope instability, and to direct development away from such hazards.

Keats Island includes a mix of rock (hard) and sediment (soft) shorelines that offer a range of natural habitats, ecological functions, cultural heritage and aesthetic values. The shoreline has environmental and cultural significance for forage fish, eelgrass, shorebirds and shellfish, marine mammals such as seals and many other marine organisms, as well as values that define the character of the Keats Island community. The Keats shoreline has been the location of cultural sites, canoe landings and gathering places for First Nations since time immemorial. The shoreline also includes area that are transition zones of uplands and wetlands that may be susceptible to erosion or flooding.

Development activities on the upland such as land clearing and increasing impermeable surfaces can have harmful impacts on site drainage, bank stability, nesting habitat, sensitive natural areas, shading of intertidal areas critical for fish habitat and cultural and heritage sites.

Since the adoption of the OCP, there has been an increase in residential development on Keats Island along the shoreline. As of 2020, there were over 120 individual parcels fronting the natural boundary of the sea on Keats Island. The subdivision and development of these parcels in combination with the development that has already occurred, may, cumulatively, have a detrimental impact on the 13.72 km of shoreline habitat and function.

In 2013, approx. 9% of the Keats shoreline was identified to have been modified by 30% or more by development, principally by boat ramps, seawalls, rip rap and revetments. Applications for private docks and shoreline protection structures have increased since that time. Shoreline armouring, such as retaining walls, alter the shoreline and can result in loss of habitat and upland connectivity and may increase wave action and erosion on adjacent properties. Marine structures, such as ramps or docks, and their supporting pilings can have significant impact on fish movement and their habitat, and damage important marine vegetation.

Anticipated sea level rise and more frequent severe storm events as a result of climate change, may increase coastal flooding and erosion. It is recognized that there is a need for balance between ecological protection or other environmental values and the use of privately owned land.

**Objectives**
**The objectives of this development permit area are as follows:**

**OBJ 3.1** TO PLAN AND REGULATE NEW DEVELOPMENT IN A MANNER THAT PRESERVES, PROTECTS AND RESTORES THE LONG-TERM PHYSICAL INTEGRITY, CONNECTIVITY, AND ECOLOGICAL AND MARINE RESOURCE VALUES OF SHORELINES AND ASSOCIATED FORESHORE AND UPLAND AREAS;

**OBJ 3.2** TO BALANCE DEVELOPMENT OPPORTUNITIES WITH THE ECOLOGICAL CONSERVATION AND RESTORATION OF THE SHORELINE AND MARINE ENVIRONMENT;

**OBJ 3.3** TO MINIMIZE THE DISRUPTION OF NATURAL FEATURES AND PROCESSES AND TO RETAIN, WHEREVER POSSIBLE, NATURAL VEGETATION AND NATURAL FEATURES;

**OBJ 3.4** TO MAINTAIN THE PUBLIC'S SAFE USE AND ACCESS TO IMPORTANT RECREATION AREAS IN A WAY THAT DOES NOT COMPROMISE THE ECOLOGICAL INTEGRITY OF THE SHORELINE;

**OBJ 3.5** TO ADAPT TO THE ANTICIPATED EFFECTS OF CLIMATE CHANGE;

**OBJ 3.6** TO PROTECT COASTAL PROPERTIES AND DEVELOPMENT FROM DAMAGE AND HAZARDOUS CONDITIONS THAT CAN ARISE FROM EROSION AND FLOODING.

**Development Approval Information**

Development Permit Area 3 is designated as an area for which development approval information may be required as authorized by Section 485 of the *Local Government Act*. Development approval information in the form of a report from a Qualified Professional may be required due to the special conditions and objectives described above.

**INFORMATION NOTE:** Development Permit Area guidelines for DP-3 Shoreline are in the Keats Island Land Use Bylaw."

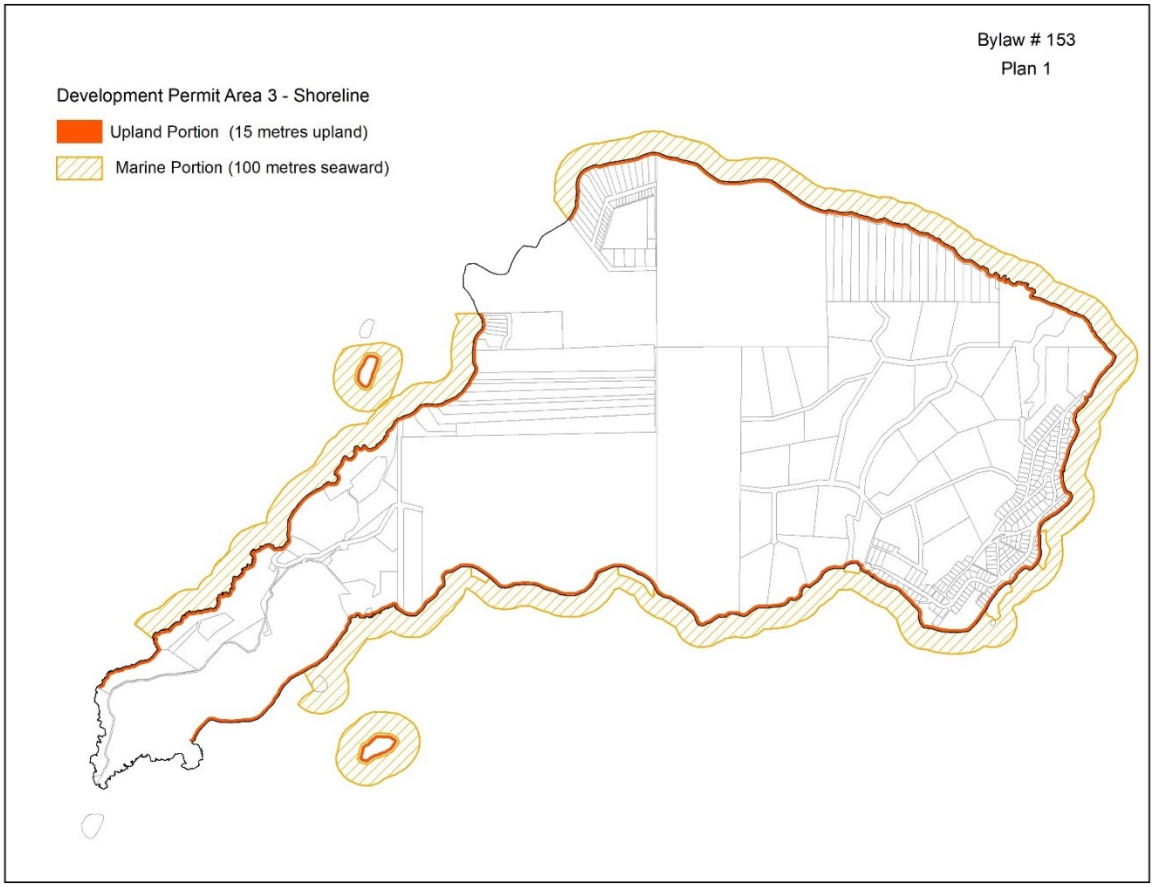
**GAMBIER ISLAND LOCAL TRUST COMMITTEE**
**BYLAW NO. 153**

**Schedule "2"**

1. **Schedule "E" – DEVELOPMENT PERMIT AREAS,** is amended by designating a new Development Permit Area 3: Shoreline as shown on Plan No. 1 attached to and forming part of this bylaw and by making such alterations to Schedule "E" of Bylaw No. 77 as are required to effect this change.

**GAMBIER ISLAND LOCAL TRUST COMMITTEE**
**BYLAW NO. 153**

**Plan No. 1**



# PROPOSED

**GAMBIER ISLAND LOCAL TRUST COMMITTEE**
**BYLAW NO. 154**

**A BYLAW TO AMEND KEATS ISLAND LAND USE BYLAW, 2002**

Legend

- LTC changes via resolution at Oct 17 LTC Meeting
- Staff Edits
- Trustee Bernardo Edits

The Gambier Island Local Trust Committee, being the Local Trust Committee having jurisdiction in respect of the Gambier Island Local Trust Area under the *Islands Trust Act,* enacts as follows:

1. Bylaw No. 78, cited as "Keats Island Land Use Bylaw, 2002" is amended as per Schedule "1" attached to and forming part of this bylaw.

2. This bylaw may be cited for all purposes as "Keats Island Land Use Bylaw, 2002, Amendment No. 1, 2021".

| | | | | |
|---|---|---|---|---|
| READ A FIRST TIME THIS | 14TH | DAY OF | OCTOBER | , 2021 |
| READ A SECOND TIME THIS | 1ST | DAY OF | SEPTEMBER | , 2022 |
| PUBLIC HEARING HELD THIS | _____ | DAY OF | _____ | , 20XX |
| READ A THIRD TIME THIS | _____ | DAY OF | _____ | , 20XX |

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS

| | | | |
|---|---|---|---|
| _____ | DAY OF | _____ | , 20XX |
| ADOPTED THIS _____ | DAY OF | _____ | , 20XX |

_____ _____

**Chair** **Secretary**

**GAMBIER ISLAND LOCAL TRUST COMMITTEE**
**BYLAW NO. 154**

**Schedule "1"**

1. Schedule "A" of Keats Island Land Use Bylaw, 2002 is amended as follows:

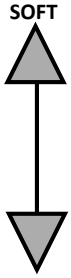
1.1 **PART 1 – ADMINISTRATION AND INTERPRETATION,** Section 1.5 **DEFINITIONS,** Subsection 1.5.1 is amended by adding the following definition in alphabetical order:

**"Platform** means an unenclosed flat surface raised from the ground to serve for the loading and offloading of materials and supplies."

"**Shoreline Protection Measures** means ~~development comprised of~~ hard or soft modifications to the shoreline, or adjacent seaward or landward areas, for the purpose of protection and stabilization against erosion. 'Hard' measures refers to the use of materials with impermeable surfaces (e.g., stone, concrete) whereas ~~Structural protection measures referred to as 'hard' include solid, hard surfaces, such as concrete bulkheads, and~~ 'soft' measures refer to less rigid materials such as biotechnical vegetation measures (i.e. the specialized use of woody plant materials to stabilize soil) or beach enhancement."

Commented [JB1]: Clarifying that that hard isn't limited to structures.

-Range of measures varying from soft to hard include:

| | |
|---|---|
| • **Vegetation enhancement**<br>• **Upland drainage control**<br>• **Biotechnical measures**<br>• **Beach enhancement**<br>• **Anchor trees**<br>• **Gravel placement**<br>• **Rock (rip rap) revetments**<br>• **Gabions**<br>• **Concrete groins**<br>• **Retaining walls or bulkheads**<br>• **Seawalls** | **SOFT**<br>  <br>**HARD** |

1.2 **PART 2 – GENERAL LAND USE REGULATIONS,** Section 2.7 **MEASUREMENT OF SETBACKS Buildings and Structures,** Subsection 2.7.3 is amended by removing it in its entirety and replacing it with the following:

"a) No building or structure may be constructed, altered, extended or located within 7.5 metres (24.6 feet) of the natural boundary of the sea, except a platform with a maximum area of 5 square metres, or a set of stairs or a walkway for the purposes of accessing the foreshore or a permitted float, dock, wharf or other permitted marine related structure, ~~may be constructed, reconstructed, moved, extended or located within 7.5 metres (24.6 feet) of the natural boundary of the sea~~.

b) Notwithstanding ~~subparagraph~~ subsection 1.2a), for properties zoned Rural Comprehensive ~~(Lot 876 and Lot 1829)~~ the setback ~~set out~~ above shall be 15 metres (49.2 feet)."

1.3 **PART 2 – GENERAL LAND USE REGULATIONS,** Section 2.7 **MEASUREMENT OF SETBACKS Buildings and Structures,** Subsection 2.7.5 is amended by replacing "3.0 metres" with "5.0 metres".

1.4 **PART 2 – GENERAL LAND USE REGULATIONS,** Section 2.7 **MEASUREMENT OF SETBACKS Buildings and Structures,** is amended by inserting the following new subsection as follows:

"**2.7.6** Private floats and docks shall be sited at least 10 metres from any existing dock or structure."

1.5 **PART 2 – GENERAL LAND USE REGULATIONS,** Section 2.7 **MEASUREMENT OF SETBACKS Buildings and Structures,** is amended by renumbering Subsection 2.7.6 – Sewage Disposal Fields to Subsection 2.7.7.

1.6 **PART 2 – GENERAL LAND USE REGULATIONS,** Section 2.9 **SITING COMPLIANCE,** Subsection .1 is amended by inserting the words "and development permit" after "development variance permit".

~~1.6~~1.7 **PART 4 – ZONE REGULATIONS,** Section 4.1 **COMMUNITY RESIDENTIAL 1 (CR1) ZONE,** Subsection 4.1.4 is amended by inserting the words ", dock ramps" after "docks" ~~and before "and stairs~~".

~~1.7~~1.8 **PART 4 – ZONE REGULATIONS,** Section 4.1 **COMMUNITY RESIDENTIAL 1 (CR1) ZONE,** Subsection 4.1.6 is amended by replacing "65 square metres (700 square feet)" with "47 square metres (505.9 square feet)".

~~1.8~~1.9 **PART 4 – ZONE REGULATIONS,** Section 4.1 **COMMUNITY RESIDENTIAL 1 (CR1) ZONE,** Subsection 4.1.7 is amended by removing it in its entirety and replacing it with the following: Despite Subsection 4.1.6, the maximum float area may be increased by 30 square metres (322.9 square feet) per residential dwelling served up to a maximum float size of 154 square metres (1130.2 square feet), provided a covenant is registered on the titles of the participating properties identifying the property on which the shared dock shall be situated, foreclosing the construction of a dock on any of the other properties, and granting the occupants of each participating property the right to the use the shared dock freely.~~restrictive covenant, subject to Section 1.2.4, is registered on the title of the benefiting parcels to limit the total number of private docks~~.

**Commented [JB2]:** We should be specific about what these covenants must achieve, so people know up front what they need to commit to enable dock sharing.

Section 1.2.4 makes all covenants subject to its terms, so it's not necessary to reference it.

~~1.9~~1.10 **PART 4 – ZONE REGULATIONS,** Section 4.1 **COMMUNITY RESIDENTIAL 1 (CR1) ZONE,** Subsection 4.1.8 is amended by replacing "2.4 metres (8 feet)" with "1.5 metres (4.9 feet)".

~~1.10~~1.11 **PART 4 – ZONE REGULATIONS,** Section 4.4 **RURAL RESIDENTIAL (RR) ZONE,** Subsection 4.4.6 is amended by replacing "65 square metres (700 square feet)" with "47 square metres (505.9 square feet)".

~~1.11~~1.12 **PART 4 – ZONE REGULATIONS,** Section 4.4 **RURAL RESIDENTIAL (RR) ZONE,** Subsection 4.4.7 is amended by removing it in its entirety and replacing it with the following: Despite Subsection 4.4.6, the maximum float area may be increased by 30 square metres (322.9 square feet) per residential dwelling served up to a maximum float size of 154 square metres (1130.2 square feet), provided a covenant is registered on the titles of the participating properties identifying the property on which the shared dock shall be situated, foreclosing the construction of a dock on any of the other properties, and granting the occupants of each participating property the right to the use the shared dock freely~~restrictive covenant, subject to Section 1.2.4, is registered on the title of the benefiting parcels to limit the total number of private docks~~.

~~1.12~~1.13 **PART 4 – ZONE REGULATIONS,** Section 4.4 **RURAL RESIDENTIAL (RR) ZONE,** Subsection 4.4.8 is amended by replacing "2.4 metres (8 feet)" with "1.5 metres (4.9 feet)".

~~1.13~~1.14 **PART 4 – ZONE REGULATIONS,** Section 4.5 **RURAL COMPREHENSIVE (RC) ZONE,** Subsection 4.5.7 is amended by replacing "Article 6 of this subsection" with "Subsection 4.5.6".

~~1.14~~1.15 **PART 4 – ZONE REGULATIONS,** Section 4.5 **RURAL COMPREHENSIVE (RC) ZONE,** Subsection 4.5.6 is amended by replacing "65 square metres (700 square feet)" with "47 square metres (505.9 square feet)".

~~1.15~~1.16 **PART 4 – ZONE REGULATIONS,** Section 4.5 **RURAL COMPREHENSIVE (RC) ZONE,** Subsection 4.5.7 is amended by replacing "47 square metres (500 square feet)" with "30 square metres (322.9 square feet)" and by replacing "158 square metres (1,700 square feet)" with "~~105~~ 154 square metres (1130.2 square feet)".

~~1.16~~1.17 **PART 4 – ZONE REGULATIONS,** Section 4.5 **RURAL COMPREHENSIVE (RC) ZONE,** Subsection 4.5.8 is amended by replacing "2.4 metres (8 feet)" with "1.5 metres (4.9 feet)".

1.18 **PART 4 – ZONE REGULATIONS,** Section 4.6 **PRIVATE INSTITUTIONAL 2 (PI2) ZONE,** first bullet in Subsection 4.6.5 is amended by removing it in its entirety and replacing it with the following: dock floats, that are accessory to a private institutional use on the adjacent upland lot, is 1500 square metres (16,145 square feet). ~~"3,000 square metres (32,970 square feet)" with "1500 metres (16,145 square feet)".~~

1.19 **PART 4 – ZONE REGULATIONS,** Section 4.6 **PRIVATE INSTITUTIONAL 2 (PI2) ZONE,** second bullet in Subsection 4.6.5 is amended by replacing "150 square metres" with "47 square metres (500 square feet)".

1.20 **PART 4 – ZONE REGULATIONS,** Section 4.6 **PRIVATE INSTITUTIONAL 2 (PI2) ZONE,** Subsection 4.6.5 is amended by adding a third bullet with the following: Despite Subsection 4.6.5, the maximum float area may be increased by 30 square metres (322.9 square feet) per residential dwelling served up to a maximum float size of 154 square metres (1130.2 square feet), provided a covenant is registered on the titles of the participating properties identifying the property on which the shared dock shall be situated, foreclosing the construction of a dock on any of the other properties, and granting the occupants of each participating property the right to the use the shared

dock freely ~~restrictive covenant, subject to Section 1.2.4, is registered on the title of the benefiting parcels to limit the total number of private docks.~~

1.21 **PART 4 – ZONE REGULATIONS,** Section 4.6 **PRIVATE INSTITUTIONAL 2 (PI2) ZONE**, first bullet in Subsection 4.6.9 is amended by replacing "24.0 hectares" with "12.0 hectares" ~~"30 acres" with "60 acres"~~.

Commented [JB3]: Since the second bullet addresses lots of between 30 acres and 60 acres or more, the first bullet logically should cover lots less than 30 acres.

1.22 **PART 4 – ZONE REGULATIONS,** Section 4.10 **PROVINCIAL MARINE PARK (P2) ZONE,** Subsection 4.10.6 is amended by replacing "dock floats" with "a wharf float".

~~**PART 4 – ZONE REGULATIONS,** Section 4.10 **PROVINCIAL MARINE PARK (P2) ZONE,** Subsection 4.10.6 is a8~~
~~1.17~~
~~ended by replacing "dock floats" with "a wharf float".~~

~~1.18~~1.23 **PART 4 – ZONE REGULATIONS,** Section 4.10 **PROVINCIAL MARINE PARK (P2) ZONE,** Subsection 4.10.7 is amended by replacing "dock" with "wharf".

~~1.19~~1.24 **PART 4 – ZONE REGULATIONS,** Section 4.12 **MARINE 2 – COMMUNAL MOORAGE (M2) ZONE,** Subsection 4.12.5 is amended by replacing "2.4 metres (8 feet)" with "1.5 metres (4.9 feet)".

~~1.20~~1.25 **PART 4 – ZONE REGULATIONS,** Section 4.12 **MARINE 2 – COMMUNAL MOORAGE (M2) ZONE,** Subsection 4.12.6, **Table 4.1,** Site Specific Regulation M2(a) a) is amended by replacing "65 square metres (700 square feet)" with "47 square metres (505.9 square feet)" and by replacing "47 square metres (500 square feet)" with "30 square metres (322.9 square feet)" and by replacing "158 square metres (1,700 square feet)" with "~~105~~ 154 square metres (1130.2 square feet)". Site Specific Regulation M2(b) c) is amended by replacing "3,000 square metres (32,970 square feet)" with "1500 square metres (16,145 square feet)"

~~1.21~~1.26 **PART 9 – DEVELOPMENT PERMIT AREA GUIDELINES,** is amended by adding a new Section **9.3 DP-3 SHORELINE** ~~as shown on Appendix 1~~ attached to and forming part of this bylaw.

**GAMBIER ISLAND LOCAL TRUST COMMITTEE**
**BYLAW NO. 154**

~~**Appendix 1**~~

**9.3 DP-3 SHORELINE**

**Applicability**

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

- new~~,~~ construction, ~~of,~~ addition ~~to~~ or alteration of a building~~, or~~ structure, utility, or shoreline protection measure;
- ~~repair, maintenance or alteration of shoreline protection measures;~~
- land alteration, including vegetation removal and disturbance of soils; and
- subdivision of land.

**Exemptions**

**.2** The following activities are exempt from the requirement to obtain a development permit for DP-3:

~~a) Development or alteration of land to occur outside the designated Development Permit Area, as determined by a BC Land Surveyor;~~

a) ~~Minor r~~Repair ~~and maintenance of pre-existing lawful buildings, structures or utilities, except for shoreline protection structures, provided~~utilities provided ~~there is no alteration of undisturbed land or vegetation and that they are entirely within the~~ footprint of the ~~existing building or structure footprint. For clarity, repair, maintenance, alteration or reconstruction of shoreline protection works such as retaining walls, requires a development permit whether or not they meet the definition of 'structure' in the Keats Island Land Use Bylaw~~Repair and maintenance of lawful buildings, structures or utilities, including the replacement of building components as may be necessary to implement such repair and maintenance, provided always that any work is conducted entirely within the footprint of the existing building, structure, or utility and does not alter undisturbed land or native vegetation or otherwise degrade the ecology of DP-3;

b) Repair and maintenance of soft shoreline protection measures that were designed and implemented at the direction of a Qualified Professional, provided always that any such work is limited to maintaining the original design parameters of the measure;

~~b)~~c) Repair or replacement of a septic field site in the same location as the existing septic field;

~~c)~~d) The installation of a mooring buoy;

~~d)~~e) ~~Construction, reconstruction or~~Construction or repair of the following structures sited within the setback from the natural boundary of the sea:

i. A platform not exceeding 5 square metres in area;
ii. A set of stairs or a walkway for the purpose of accessing the foreshore or a permitted marine related structure;

~~e)~~f) Small-scale, manual removal of non-native, invasive plants or noxious weeds, conducted in accordance with best land management practices ~~for removal~~;

**Commented [JB4]:** At first, I thought explicitly adding shoreline protection measures isn't necessary, because the word "alteration" in the first bullet of section 9.3.1 encompasses the reconstruction of any structure in the DPA. But on reflection, I realize:
1) That's sufficient to require a DP for the reconstruction of structures like sea walls, but not for rock revetments and gravel placement.
2) Still, the language proposed by staff would be unreasonably onerous, because it would require a DP for even the repair or maintenance of professionally designed green shoreline protection.

**Commented [JB5]:** Adding this exemption allows the kind of upkeep of green shores we want to property owners to undertake.

My original request for an exemption for soft shoreline protection measures was too broad. Kate's comment at the end of the meeting resonated. Effectively protecting shoreline through biotechnical or beach enhancement measures requires implementing them at scale.

I think this exemption for a limited class of maintenance still makes sense, though. To make it less burdensome for residents to implement green shores, later in the guidelines I also propose that we waive permit fees for them.

**Commented [JB6]:** The words "for removal" don't add any meaning. Inserting "land" before "management" clarifies the standard we want people to follow.

f)g) Construction of a fence provided no native tree ~~so long as no trees or~~of native species are removed and the disturbance of native vegetation is restricted to 0.5 metres on either side of the fence;

g)h) The construction of a trail provided always the trail is ~~subject to satisfying the following: if all of the following apply:~~

i. ~~t~~Trail designed and situated to ~~location must~~ minimize vegetation disturbance, and entirely avoid the removal of native trees and the erosion of soil on sloping terrain;

ii. ~~No native trees are removed shall not remove native~~ trees;

iii. a width of ~~t~~The trail is ~~less than~~ 1 metre or less; wide ~~or less~~;

iv. ~~t~~The trail is for personal and ~~,~~ non-vehicular use only; and

v. ~~t~~The trail is constructed of surfaced with soil, gravel, mulch or other ~~pervious~~ natural materials permeable to water~~surface; and~~

~~vi. t~~The trail is designed to prevent soil erosion where slopes occur.~~;~~

h)i) Repair and maintenance of existing roads, driveways, paths and trails, provided always there is no expansion of the width or length ~~of the road, driveway, path or trail,~~ and no increase in the total area ~~creation of additional~~ surfaced with concrete, pavers, asphalt or other materials impervious to water~~surfacing, including pavingpavement, asphalting or similar surfacing~~;

i)j) Gardening and property maintenance activities, not involving artificial fertilizer, pesticides or herbicides, within a pre-existing landscaped area, including lawn mowing, weeding, shrub pruning, vegetation planting and minor soil disturbances that do not alter the general contours of the land;

j)k) The pruning, trimming or limbing of trees provided it cannot reasonably be expected to result in the death or removal of the tree;

k)l) The removal of trees that pose an immediate threat to life or property, as determined ~~have been examined~~ by an International Society of Arboriculture (ISA) certified arborist or registered professional forester and certified in writing ~~to pose an immediate threat to life or property~~;

~~l) Vegetation removal to prevent wildfire or other potential emergencies;~~

m) Vegetation removal to protect dwellings and other structures that is conducted in accordance with provincial guidance regarding wildfire prevention and mitigation;

m)n) Emergency works required to prevent, control or reduce an immediate threat to human life, the natural environment or public or private property, including:

i. Forest fire, flood and erosion protection works;
ii. Protection, repair or replacement of public facilities;
iii. Clearing of an obstruction from a bridge, culvert, dock wharf or stream;
iv. Bridge repairs.

n)o) A farm operation as defined in the *Farm Practices Protection (Right to Farm) Act*;

o)p) Forest management activities, as defined in the *Private Management Forest Land* Regulation, on land classified as managed forest land under the *Private Managed Forest Land Act;*

p)q) The subdivision of ~~land~~ parcels with ~~that hold~~ a ~~where a~~ conservation covenant on title ~~and registered satisfactory to and in favour of the Gambier Island Local Trust Committee or the Islands Trust Conservancy Board~~Islands Trust ~~has already been registered~~ for the maintenance of natural drainage and protection of environmentally sensitive areas;

q)r) ~~Subdivision involving lot consolidation~~ Consolidation of legal lots by subdivision;

r)s) Works conducted and/or authorized by the Province and its Ministries or Agencies, and by Fisheries and Oceans Canada (or subsequent federal department), with respect to trail construction, stream enhancement and fish and wildlife habitat

**Commented [JB7]:** Staff's proposed wording change would drastically change the meaning of the provision by extending the protection to non-native trees, and also make the provision less than coherent. The purpose of DPA3 is to preserve the native ecosystem. If it's an acceptable trade off to allow native vegetation to be disturbed to allow a fence to be built, then there is no reason in principle to forbid the removal of non-native trees. We should retain the original meaning.

**Commented [JB8]:** The new language is imperative. That's inconsistent with the rest of the language, which itemizes conditions in the present tense. Note also the reference here is limited to native trees.

**Commented [JB9]:** This change would also change the meaning to no useful purpose. Trails of 99 cm are permitted, but not 1 m?

**Commented [JB10]:** This exemption was one of the changes introduced after the uproar caused by the original first reading. Climate change makes wildfire, not human occupation, the single biggest risk to the shoreline. The first version of Bylaw 154 restricted vegetation and tree removal to such a degree that it made it impossible for property owners follow the province's FireSmart guidance. I agree the language of the exemption as currently written is too loose, but we need the exemption. It's crucial.

**Commented [JB11]:** Not appropriate to require a covenant to be in favour the Islands Trust, because section 1.2.4 of the LUB explicitly requires any covenant required by the LUB to be in favour of the Gambier LTA. For the same reason, it's not necessary to say for whom a covenant is in favour since it's hardwired to always be the GLTA.

restoration. For clarity, private moorage, shoreline protection measures or placement of fill below the natural boundary of the sea authorized by the Province and its Ministries or Agencies, requires a development permit.

**General Guidelines**

**.3** The following guidelines apply to applications for development permits: ~~Prior to undertaking any applicable development activities within DP 3, an owner of property shall apply to the Local Trust Committee for a development permit, and the following guidelines apply~~:

~~***General Guidelines:***~~

a) ~~In general, d~~Development ~~of the~~in the shoreline ~~area should be limited, should~~area should minimize negative impacts on the ecological health ~~of the immediate area, should not~~ and disruption to coastal sediment transport processes~~, and should not impede public access~~.

~~a)~~b) ~~Shall not impede public access to the shoreline.~~

~~b) It should be demonstrated that locating development entirely outside of the Development Permit Area has been considered, and a description of why that is not being proposed should be provided.~~

c) New construction and, ~~, or~~ additions to~~,~~: upland buildings or structures should be located and designed to avoid the need for shoreline protection ~~works~~ measures throughout the life of the structure.

d) New development on steep slopes or bluffs ~~should shall~~ should be set back sufficiently from the top of the slope or bluff ~~to prevent erosion to the shoreline~~ and to ensure that shoreline protection measures will not become necessary during the life of the structure, as demonstrated by a geotechnical analysis ~~and recommendations for the site~~ by a Geotechnical Engineer or Professional Geoscientist.

e) Sea level rise and~~,~~ storm surges ~~and other anticipated effects of climate change~~ should be addressed ~~in all development permit applications~~.

f) ~~All d~~Development design ~~within this Development Permit Area is to be undertaken and completed in such a manner as to~~shall prevent the release of sediment to the shore ~~or~~ and to any watercourse or storm sewer that flows to the marine shore. An erosion and sediment control plan that includes actions to be taken prior to land clearing and site preparation~~,~~ may be required.~~.~~ ~~including actions to be taken prior to land clearing and site preparation and the proposed timing of development activities to reduce the risk of erosion, may be required as part of the development permit application.~~

g) ~~Where this Development Permit Area~~ Areas that include~~s~~ critical habitat of any Species at Risk, including terrestrial or aquatic provincial red- and blue-listed species or SARA-listed species; or where a ~~unique, sensitive or~~ rare species has been identified by Islands Trust mapping, ~~these areas~~ should be left undisturbed. If disturbance cannot be ~~entirely~~ avoided, then development and mitigation ~~and/or compensation~~ measures shall be undertaken ~~only~~ under the supervision of a Registered Professional Biologist with advice from applicable government~~senior environmental~~ agencies.

h) Development activities along the foreshore or in marine areas should be conducted during the low risk timing window for spawning and nursery periods.

i) All development ~~that takes place~~ below the natural boundary of the sea should ~~be done in a way that~~ minimize~~s~~ degradation of water quality and disturbance of the substrate.

~~***Guidelines for the***~~ Guidelines - **Construction and Replacement of Docks and Ramps**

**Commented [JB12]:** Some of the guidelines use mandatory language ("shall" or "must"), while others are prescriptive without being mandatory ("should"). The latter are appropriate, but the former are not. Guidelines are not intended to impose regulatory requirements, but rather to provide guidance on interpreting sections 9.3.1 and 9.3.2 in specific contexts. Mandatory language isn't necessary, because the very point of having guidelines is to leave staff with discretion on how they should apply in any given case.

I've gone through the guidelines to remove the mandatory language.

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**Commented [JB13]:** The point of this edit is to remove the awkward and unnecessary repetition of the directive intent of section 9.3.1.

**Commented [JB14]:** This makes no sense. The public does not have a right to access the shoreline through private property.

**Commented [JB15]:** Setting a structure at the edge of a shoreline slope does not create a risk of erosion. It makes the structure vulnerable over time to sliding down to the foreshore due to natural shoreline erosion. The purpose of this guideline is not to prevent erosion. It is to eliminate any potential future need to construct a sea wall or some other hard shoreline protection measure to hold up vulnerable structures.

**Commented [JB16]:** The heading "General Guidelines" only applies to the subsections under section 9.3.3. Without the word "Guidelines" in the headings for the proposed new sections 9.3.4, 9.3.5, and 9.3.6, we risk creating uncertainty in the public and among future staff as to whether their respective subsections are guidelines or meant to be something else. That's why I'm returning the word to each heading. We need to be clear that these are not mandatory provisions, but rather guidelines over which staff will have discretion to adapt to the specific circumstances of an application.

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**.4**

~~a) Construction details such as design, materials, methods, timing of construction and access shall be provided at the time of permit application.~~

a) Docks, floats and ramps should ~~be sited to~~ sited to avoid interference with sensitive ecosystems such as eelgrass beds, forage fish habitat, and ~~and to avoid interference with~~ natural processes such as currents and littoral drift. This will require an environmental assessment by a Qualified Environmental Professional ~~Biologist to identify such features and processes on the site in question~~.

b) Docks should be designed to avoid interfering with public movement along the foreshore.

~~c) Docks must be designed to ensure that public access along the shore is maintained.~~

~~d)~~c) Decking materials ~~must~~ should allow for a minimum of 43% open space to allow for light penetration to the water surface. Light transmitting materials may be made of various materials shaped in the form of grids, grates, and lattices to allow for light passage to the water surface.

~~e) To allow for the maximum amount of light penetration to the water surface.~~

~~f)~~d) Piers on pilings and floating docks are preferred over solid-core piers or ramps. Piers should use the minimum number of pilings necessary, with preference to ~~large spans~~greater distance between pilings over ~~more~~ increasing the number ~~increasing the number of pilings~~of pilings.

~~g)~~e) ~~All d~~Docks ~~shall~~ should be constructed so that they do not rest on the ~~bottom of the~~ seabed at low water/low tide levels and ~~. Dock and float design shall~~ to allow the free flow of water beneath dock floats at all times~~it~~.

f) Docks should be constructed of stable materials that do not have the potential to degrade water quality over time. Specifically, dock floats should not use unenclosed plastic foam and creosote treated pilings should not be used. ~~materials should be constructed from:materials should be constructed from:~~

- ~~biodegradable and stable materials that will not degrade water quality; and~~
- ~~should not use unenclosed plastic foam or other non-biodegradable materials that have the potential to degrade over time~~

i. ~~. Docks should be constructed of stable materials that will not degrade water quality. The use of creosote-treated~~Creosote-free pilings ~~is not~~ ~~permitted~~.

~~h)~~g) ~~The access ramps, piers, walkways and stairs for docks should not exceed a maximum width of 1.5 metres.~~

~~i)~~h) Preference is given to mooring buoys that are considered "seagrass-friendly" and are designed to reduce scouring of the sea floor. These include buoys with a mid-line float so as to prevent unnecessary damage to eelgrass habitat.

~~Guidelines for~~ Guidelines - **Shoreline Modifications**

**.5**

a) Shoreline protection or stabilization measures should not be undertaken ~~shall not be permitted~~ for the sole purpose of changing the measurement of ~~reducing the~~ setbacks on a property ~~regulations in the Land Use Bylaw~~ or to ~~for~~ reclaim~~ing~~ land lost due to erosion.

b) Shoreline protection measures should not be allowed for the purpose of extending lawns or gardens, or to provide space for additions to existing or new structures.

c) ~~Applications for s~~Shoreline protection ~~or stabilization works~~ measures may be considered to protect existing structures ~~and shall include~~ as provided by a report, prepared by a Qualified Professional(s) ~~Engineer with experience in coastal and/or~~

**Commented [JB17]:** Staff's suggestion would cause this guideline to lose its meaning. It is specifically intended to provide guidance for the siting of docks, not to create a performance standard. Those are different things. Taking out the word "and" also makes for an awkward sentence.

**Commented [JB18]:** The original language wasn't great, but the guideline addresses a genuine value that should be protected and the idea should be retained.

**Commented [JB19]:** Staff's suggested changes would undercut the guideline's intended meaning. The point of the original wording (which isn't great) is not to force the use of biodegradable materials. The word non-biodegradable should never have been used in the first instance, as it makes no sense in the context of dock construction. That would make a dock's lifespan uselessly brief. It is not possible to build functional docks without pressure treated wood or metal. Also, dock materials are not constructed, they are used.

The purpose of this guideline is to prevent water degradation from unstable materials being used in dock construction. That's why it originally referred to unenclosed plastic being unacceptable; it's fine to use it enclosed plastic foam for dock floats, what we don't want is Styrofoam loose in the water.

**Commented [JB20]:** This doesn't work as currently written. The provision will be part of the LUB, and undertaking shoreline protection measures can't change setback regulations.

~~geotechnical engineering~~, which describes the following: ~~proposed modification and shows:~~

i. ~~The~~ need for the proposed modification to protect existing structures;
ii. ~~If~~ any natural hazards, erosion, or interruption of geohydraulic processes that may arise from the proposed modification, including at sites on other properties or foreshore locations;
iii. ~~The~~ cumulative effect of shoreline protection ~~or stabilization~~ along the drift sector where the works are proposed; and~~;~~
iv. w~~W~~hether there will be any degradation of water quality or loss of fish or wildlife habitat because of the modification.~~;~~

~~v. Whether conditions should be incorporated into the development permit to achieve the objectives of this Development Permit Area.~~

d) ~~Where s~~Shoreline Shoreline protection ~~or stabilization~~ measures ~~are proposed, they~~ should ~~shall~~ be designed by a ~~Professional Engineer with experience in coastal and/or geotechnical engineering~~Qualified Professional, and should~~shall~~:

i. ~~L~~limit the size of the works to the minimum necessary to prevent damage to existing structures or established uses on the adjacent upland;
ii. ~~Apply the 'softest' possible~~ rely on ~~use~~ non-structural shoreline protection measures ~~that will still provide satisfactory protection~~re when feasible;
iii. ~~Not be expected to~~be designed to ~~cause erosion~~avoid erosion or other physical damage to adjacent or down-current properties, or public land; and
iv. ~~A~~address compatibility with adjacent shoreline protection works.

e) ~~Entirely~~ ~~'hard' s~~Structural shoreline protection measures such as concrete walls, lock block or stacked rock (rip rap), may be considered ~~as a last resort only~~ when a geotechnical and biophysical analysis provided by a Qualified Professional demonstrates ~~that~~ the following:

i. ~~An~~ an existing structure is at immediate risk from shoreline erosion caused by tidal action, currents or waves~~;~~. ~~Evidence of normal sloughing, erosion or steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not sufficient demonstration of need~~;

~~ii. It is not feasible to instead construct a retaining wall that meets the land use bylaw setback;~~

~~iii.~~ii. ~~The~~ erosion is not being caused by upland conditions, such as the loss of vegetation and uncontrolled drainage associated with upland development;

~~iv.~~iii. All possible on site drainage solutions by directing drainage away from the shoreline have been exhausted;

~~v.~~iv. Non-structural ~~or 'soft'~~ shoreline protection measures are not feasible or not sufficient to address the stabilization issues;

~~vi.~~v. The shoreline protection measure is designed so that neighbouring properties are not expected to experience additional erosion; and

~~vii.~~vi. All shoreline protection structures are installed upland of the present natural boundary of the sea.

f) An existing shoreline protection structure may be replaced ~~if the existing structure can no longer adequately serve its purpose,~~ provided that:

i. The replacement structure is of the same size and footprint as the existing structure;
ii. The replacement structure is designed, located, sized and constructed to mitigate the loss of ecological functions, and include habitat restoration measures when feasible ~~when feasible~~;

**Commented [JB21]:** We should not make habitat restoration compulsory when it isn't feasible.

iii. Replacement walls or bulkheads do not encroach seaward of the natural boundary or seaward of the existing structure unless there are significant safety or environmental concerns.; and In such cases, the

iii.iv. replacement structures should utilize a non-the 'softest' approachstructural approach possible and should abut the existing shoreline protection structure; Where impacts to critical marine habitats would occur by leaving the existing works in place, they can be removed as part of the replacement measure.

g) Materials used for shoreline protection should be constructed of stable and uncontaminated materials that do not have the potential to degrade water quality over time. or stabilization shouldmeasures should consist of the following:

inert materials; and. M

iv.i. aterials should not consist of debris or non-contaminated materials that could result in pollution of tidal waters.

g)h) Placement of fill upland of the natural boundary of the sea greater than (10) cubic metres in volume shouldshall only be considered when necessary to assist in the enhancement of the natural shoreline's stability and ecological function. Fills shall be located, designed and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration. This may require a sediment and erosion plan prepared by a Professional Engineer or Geoscientist with experience in coastal and/or geotechnical engineering.

h)i) Placement of fill below (seaward of) the natural boundary of the sea should shall be considered only when necessary to assist in the enhancement of the natural shoreline's stability and ecological function, as allowed by the relevantappropriate , typically as part of a beach nourishment design. All fill proposals below the natural boundary are subject to approval by the appropriate provincial and/or federal authorities.

j) All upland fill and beach nourishment materials should be clean and free of debris and contaminated material.

i)k) The submission fee required for development permit applications should be waived when the application is made for the purpose of implementing shoreline protection measures that will rely exclusively on soft measures.

**Commented [JB22]:** I'm adding this because we should do what we can to incentivize people to think of green shores as their first option.

**Guidelines for Guidelines - Vegetation Management and, Restoration and Enhancement .6**

a) Existing native vegetation and trees should be retained or replaced wherever possible to protect against erosion and slope failure, and to minimize disruption to fish and wildlife habitat.

b) Existing vegetation and trees to be retained should be clearly marked prior to development, and temporary fencing installed at the drip line to protect them during clearing, grading and other development activities.

c) In areasIf the area has been previously cleared of native vegetation, or is cleared during the process of development, the development permit may specify replanting requirements and a security deposit to restore or enhance the natural environment or control erosion, may be required.

d) Areas of undisturbed bedrock exposed to the surface or sparsely vegetated areas should notmay will not require planting.

c) The Local Trust Committee may require provision of a security to be used to fulfill the replanting and vegetation maintenance conditions of the permit if the permit holder fails to do so.

d)e) Vegetation species used in replanting, restoration or enhancement should be selected to suitsuitable forto the soil, light and groundwater conditions of the site,

**Commented [JB23]:** No. Granting staff discretion to impose security deposits is not a drafting improvement, it is a material policy change from what Bylaw 154 originally contemplated. The need for a security deposit and the amount, which can potentially be significant, should be reserved for the LTC to decide.

Also, the rationale for the bylaw has never been land remediation, but protection of existing undisturbed environment. It's not appropriate to require enhancements to the DPA's environment.

**Commented [JB24]:** It's wrong to leave open the possibility that a property owner could be required to plant on bedrock that is natively bare.

~~should be~~ native to the area, and be selected for erosion control and/or fish and wildlife habitat values as needed. The use of suitably adapted non-invasive, non-native vegetation may be permitted in a replanting program when conditions render the use of non-native species materially less suitable for erosion control and habitat strengthening. ~~While native species are preferred, suitably adapted, non-invasive, non-native vegetation may be acceptable.~~

e) ~~All Where a security deposit is taken, the amount of security shall be 100% of the cost estimate provided by a Qualified Professional and~~ replanting shall be maintained by the property owner for a minimum of 2 years from the date of completion of the planting to ensure survival. This may require removal of invasive, non-native plant species, ~~weeds and~~ irrigation, and the replacement of ~~. U~~unhealthy, dying or dead stock ~~will be replaced~~ at the owner's expense., ~~within that time in the next regular planting season~~. ~~The Local Trust Committee may require provision of a security to be used to fulfill the replanting and vegetation maintenance conditions of the permit if the permit holder fails to do so.~~

***~~Guidelines for Subdivision~~***

~~f) All lots in a proposed subdivision must be configured to have sufficient area for permitted principal and accessory uses without encroaching into land use bylaw setbacks, the Development Permit Area, or creating a likelihood of shoreline protection measures for the permitted level of development.~~

~~g)~~f) ~~New roads, driveways and wastewater disposal (septic) systems should not be located within the Development Permit Area.~~

**Commented [JB25]:** Why was this deleted? Again, this isn't a drafting fix, it's a substantive change that comes out of nowhere without the LTC being consulted and without a prior staff explanation and recommendation. It would prevent effective replanting in areas where native species aren't optimal. Why mess with that?

**Commented [JB26]:** Where did the new 100% deposit and QP estimate idea come from? Once more, this is a substantive change.

A bigger question: DPA3 basically captures the front yards of shoreline dwellings. All the paragraphs after c) are overly elaborate for that context. They look like parts of a cut and paste job from a different DPA elsewhere that should have been edited out but got overlooked. They're just not relevant. Unless staff can explain how they add value, I'm inclined to cut everything from d) onwards. They're of a piece with the subdivision guidelines below that are irrelevant, should never have in Bylaw 154 in the first place, and we're now agreed should be cut.

| | |
|---|---|
| **To:** | Gambier Local Trust Committee<br>Marlis McCargar<br>Renee Jamurat |
| **From:** | Joe Bernardo |
| **For:** | Special Meeting of October 31, 2023 |
| **Subject:** | Amendments to Proposed Bylaw 154 |

**BACKGROUND**

Bylaw 78 is the land use bylaw (LUB) applicable to Keats Island. Draft Bylaw 154 proposes to amend it.

At the July 21, 2023 community information session, the principal concerns shared by islanders regarding Bylaw 154 were the same as those expressed at previous public meetings.

In summary, Keats Island residents continue to be concerned that:

- The proposed new dock regulations are impractical for smaller waterfront lots on Keats Island.
- The proposed exemption for repairing and maintaining pre-existing structures within proposed Development Permit Area 3 (DPA3) needs to be amended to clarify that maintenance includes the normal course replacement of building components.
- The proposed development permit requirement is overly broad. Additional exemptions and clearer application guidelines are needed to ensure unnecessary financial costs and delays are not imposed on island residents.
- The Trust should work collaboratively with residents to implement effective and environmentally sound shoreline protection measures, instead of relying solely on introducing new restrictions that rely on the threat of enforcement to compel compliance.

These concerns emerge from a widespread recognition within the community that as currently drafted the new regulations proposed by Bylaw 154 do not fully align with actual conditions on the island.

The population of Keats Island is, and has always been, concentrated on or near the shoreline.

- In the areas zoned to allow for residential development, virtually all suitable shoreline properties were developed decades ago. The shoreline is already heavily developed.
- The great majority of waterfront residential lots have been actively occupied for decades.
- It follows that much of the soil and vegetation within 15 metres from the natural boundary of the sea (NBS) has already been significantly disturbed.
    - In all developed waterfront lots, at least some degree of landscaping has taken place within the boundaries of the prospective DPA3.

- In many cases, if not most, the disruption of native vegetation and alteration of the terrain has been substantial.
- Long term human use of the land has also resulted in invasive plant species taking root along the shoreline, with extensive and persistent infestations of non-native blackberry species and English ivy being the most obvious examples.

Notwithstanding these impacts on the environment, in many areas the shoreline and immediate terrain upland of the NBS nonetheless retain much of their natural character. This is not by happenstance.

Keats Island has few roads, no car ferry service, and its shoreline is almost uniformly steep sided. Except in the Eastbourne community, virtually all private residential waterfront lots are boat access only. Apart from a few open fields at Keats Camp and the Barnabas Family Ministries property (Barnabas), the island is completely covered in forest. There is no meaningful commercial activity on the island, and it does not have any retail outlets or other sources of necessities. Residents must either bring supplies with them or travel by boat to shop in Gibsons, which is also the closest community to access medical clinics and other basic services.

As a result of the foregoing factors, the development of the shoreline has historically followed a definite pattern:

- Constructing a dwelling on a waterfront lot confronted property owners with major logistical hurdles. The people most willing to take on those challenges were those for whom being close to the natural environment was their reason for wanting to be on the island in the first place.
- Site preparation was kept to the absolute minimum. Tree clearing was limited to only what was strictly necessary. The areas upland of shoreline dwellings were left entirely undeveloped, and typically remain so.
- Being limited to accessing their properties by boat only, owners out of practical necessity situated their dwellings close to the water. As a result, the majority of shoreline dwellings are at least partially, if not wholly, located within 15 metres from the NBS.
- Often owner built, dwellings were and typically remain, summer cabins not suitable for all season occupation.
- There are very few year round residents on the island. Estimates of the actual number range between 40 and 80 permanent residents. The vast majority of the inhabitants are part-time residents with summer homes who are invested in preserving the integrity of their surrounding natural environment.

A shoreline that has been settled and is subject to the usual impacts of human occupation for decades cannot be characterized as wild. To the extent the shoreline retains substantial elements of its original natural character; it is because of generations of responsible stewardship. The shoreline environment deserves protection not despite property owners, but because of them.

Island residents do not object to stronger environmental protection. They object to the uncertainty caused by rules that are insufficiently precise. They object to overly broad restrictions that would pointlessly impede them from maintaining their properties in a

reasonable manner. That is why they have repeatedly asked the Gambier Local Trust Committee (LTC) to take their concerns seriously and recognize them as rational and fact based, instead of dismissing them as reactionary and ill-informed. Keats Islanders want Bylaw 154 to introduce a DPA that is appropriate to the place that they know intimately and care deeply for, the one that actually exists and not an imagined abstract version of it.

Section 3 of the *Islands Trust Act* places the LTC under a duty to develop balanced land regulation that serves to preserve and protect both the natural environment and the quality of life of Keats Island's human residents.

The Islands Trust (Trust) is comprised of 13 different Local Trust Areas for a reason. It is to ensure that bylaws are tailored to address specific and, often, unique local circumstances.

The key local fact of the Keats Island shoreline is that the scale of pre-existing development requires the LTC to be realistic about what can be practically, and appropriately, achieved through a shoreline DPA.

- With respect to already developed waterfront lots, DPA3 cannot protect pristine shoreline ecosystems within 15 metres of the NBS because they no longer exist.
- Lawful human occupation within the area 15 metres from the NBS has been both extensive and long-standing. This requires the provisions of Bylaw 154 to accommodate the continued normal use and maintenance of pre-existing structures and facilities within DPA3.

There is a direct correlation between the efficiency of a regulatory scheme and its effectiveness. To be effective, the regulations introduced through Bylaw 154 must be fair, intelligible, and avoid imposing burdens on island residents that would do nothing to meaningfully protect the environment.

**DOCKS**

Fairness problems

Under the LUB, residential docks are regulated further to the zoning requirements specified for the Community Residential 1 (CR1), Rural Residential (RR), Rural Comprehensive (RC) and Private Institutional 2(PI2) zones, and Communal Moorage sub-zone M2(a).

The PI2 zone regulates land use at Barnabas. Currently, the maximum size permitted for residential docks in the PI2 zone is greater than that permitted for residential docks in the other zones where residential docks are allowed.

- In the CR1, RR, RC, and M2(a) zones, the specified maximum coverage area for residential "dock floats" is 65 square metres. No allowances are made for differences in lot sizes. The same limit applies regardless.
- By contrast, the PI2 zoning requirements:
    - Do not specify a maximum area for "dock floats".
    - Instead, they refer to the overall maximum coverage area permitted for dock floats, connecting ramps, and piers collectively.
    - The maximum coverage area specified for these marine based structures accessory to residential dwellings is 150 square metres.

    - This maximum is subject to a dwelling being situated on a lot that is larger than 40 acres (16 hectares).
    - No provision is made for residential lots that are 40 acres or less.
- On its face, it is inequitable to allow residential docks in PI2 to cover up to 150 square metres while limiting them to 65 square metres elsewhere.
    - The inclusion of ramps and piers as part of the maximum coverage area is not sufficient to explain why residential docks in PI2 should be permitted to be up to 85 square metres larger (150 minus 65) than those in other areas.
    - It is also evident that enabling dock sharing by multiple dwellings is not the reason for the 40 acre proviso, because the PI2 zone density requirements specified in section 4.6 of the LUB drastically limit dock sharing. (Lots greater than 40 acres and smaller than 60 acres are permitted only one dwelling, while lots of 60 acres or more are permitted one dwelling for each full 30 acres.) In any case, the maximum 150 square metre dock size is available to single dwellings.

There is no obvious policy reason for this discrepancy in maximum permitted dock sizes.

Bylaw 154 as currently written would only make the discrepancy worse, because it proposes to leave the 150 square metre maximum coverage for residential docks in PI2 untouched while reducing it to 47 square metres in other zones.

**Conclusion — If the Staff cannot identify a policy reason for the discrepancy, Bylaw 154 should be amended to:**

- **Change the definition of maximum dock size in PI2 to conform with the usage in the CR1, RR, RC, and M2(a) zones that specifies it to mean the size of the dock float.**
- **Reduce the maximum dock size in PI2 size to same 47 square metre limit that Bylaw 154 contemplates for the other zones.**

Although the LUB permits residential docks in the PI2 zone, it is silent with respect to dock sharing and does not prescribe regulations regarding the width of dock access ramps, piers, walkways and stairs within PI2.

**Conclusion — Bylaw 154 should be amended to include provisions that will bring the regulations for residential docks in the PI2 zone into conformity with the requirements Bylaw 154 proposes for residential docks in the CR1, RR, RC, and M2(a) zones.**

Section 4.6.9 of the LUB incorrectly states that 24 hectares is equivalent to 40 acres.

**Conclusion — Bylaw 154 should include a provision that amends section 4.6.9 of the LUB by replacing the words "…and less than 24.0 hectares (30 acres)" with the words "…and less than 12 hectares (30 acres)".**

As with residential docks, the institutional dock facilities at Barnabas are regulated by the PI2 zoning requirements. The institutional dock facilities at Keats Camp are regulated by the site specific requirements of Commercial Moorage sub-zone M2(b).

Currently, in both the PI2 and M2(b) zones the maximum coverage area for institutional dock facilities is set at 3000 square metres.

Section 1.17 of Bylaw 154 proposes to reduce the 3000 square metre limit in PI2 to 1500 square metres. No provision has been made, however, to reduce the maximum coverage area in M2(b) by the same amount. Instead, Bylaw 154 as currently drafted would leave the maximum the M2(b) zone at 3000 square metres.

There is no obvious policy reason for this discrepancy.

**Conclusion — If Staff cannot identify a policy reason to justify a discrepancy in the maximum sizes permitted for institutional docks in the PI2 and M2(b) zones, Bylaw 154 should be amended to reduce maximum coverage area for the institutional dock facilities in the M2(b) zone to the same 1500 square metre limit contemplated for the PI2 zone.**

Distance requirement for docks

There are 110 shoreline residential lots situated on either side of Keats Landing (District Lot 696). These were established in 1926 under a 99 year lease arrangement. With a view to enabling leaseholders to eventually assume title in fee simple, the owner of the property has met the LTA's requirements for property subdivision.

Although the leases will begin to expire in the relatively near future, important transition details still await resolution. Leaseholders who do not now have docks or binding dock sharing arrangements face some uncertainty about adequate boat access to their properties in the future.

A source of intense concern for the leaseholders is that Bylaw 154 proposes to amend section 2.7 of the LUB by adding a subsection that would require new private floats and docks to be sited at least 10 metres from any existing dock or structure. Leaseholders have objected, pointing out that most of their lots have a frontage of 50 feet (about 15 metres). For leaseholders between two lots that already have their own docks, the 10 metre distance requirement may well foreclose them from ever being able to build their own dock.

Leaseholders continue to ask the LTC to change the distance requirement. It is, however, beyond the power of the LTC to do so.

The purpose of adding the distance requirement to the LUB is to bring the bylaw's dock regulations into conformity with section 14(a) of the Minor Works Order issued under the *Canada Navigable Waters Act*. The distance requirement is already in place by virtue of federal legislation. Removing the parallel provisions from Bylaw 154 would do nothing to assist the leaseholders, and the LTC does not have authority to grant variances from federal requirements.

It is regrettable this crucial information was not been clearly communicated to leaseholders when they first expressed their concerns about the distancing requirement.

Sharing docks

What the LTC can and should do is introduce incentives that encourage dock sharing. The maximum size for shared docks that is proposed by Bylaw 154 does the opposite.

- Bylaw 154 provides that the maximum dock float size for a residential dock in the CR1, RR, RC, and M2(a) zones be set at 47 square metres.

- For each additional dwelling sharing a dock an additional 30 square metres may be added to the float size, but only up to an absolute maximum total of 105 square metres.
- Accordingly, the maximum float size for a dock shared by:
    - 2 dwellings would be 77 square metres (47 plus 30), resulting in a space allocation of 38.5 square metres per dwelling.
    - 3 dwellings would immediately hit the 105 square metre limit (47 plus 30 plus 30 = 107), resulting in a space allocation of 35 square metres per dwelling.
    - 4 dwellings would result in a space allocation of 26.25 square metres per dwelling (105 divided by 4).

A shared dock is not practical unless it can accommodate all its users at the same time.

Islanders with boat access only properties face the challenge of carrying families and supplies to and from Gibsons and the Langdale ferry terminal in variable weather conditions. In order to do this safely, a boat should be at least 5 metres in length (more or less). In other words, Bylaw 154 as currently written proposes a maximum float size for shared docks that, for all practical purposes, effectively sets the upper limit for dock sharing at 4 dwellings with boats of relatively modest size.

A scheme under which the usable float space available to each user is materially reduced in lock step with the addition of each participant does not encourage dock sharing by multiple participants. Instead, it constrains sharing by setting a low ceiling on how many participants can make practical use of a shared dock at the same time. This will result in more docks being built overall than would otherwise be the case if shared docks were permitted a larger maximum float size.

Dock sharing does more than provide island island residents with a convenient and economic option for reaching and supplying their boat access only properties. It serves the same environmental protection purpose that justifies reducing the size of new dock floats.

The scientific rationale for that policy is that the shadow cast by dock floats on the sea floor can have a negative effect on the marine habitat. Of particular concern is that shading inhibits the growth of sea grasses that provide foraging areas and spawning surfaces for a variety of fish and invertebrate species. Reducing the maximum surface area for the floats of new docks serves to mitigate such effects by allowing more light to reach the sea floor.

Dock sharing does the same thing, because by reducing the total number of new docks that are built over time it also reduces the total amount of sea floor shading. As stated by the province's "Marine Dock Construction and Maintenance Guidelines":

> Wherever possible proponents are encouraged to develop dock facilities that can facilitate numerous upland owners. In pursuing multi-owner/use facilities the footprint on marine habitats is minimized. These types of facilities also help to alleviate potential cumulative impacts from high density, individual dock infrastructures.

In developing the dock sharing provisions in Bylaw 154, the Staff has determined that for the purpose of enabling 2 dwellings to share one dock it is reasonable and appropriate to increase the default maximum float size of 47 square metres by an additional 30 square metres.

**Conclusion — Under the same logic, Bylaw 154 should be amended to enable the pro-rating of the maximum float size for shared docks by an additional 30 square metres per additional participant up to an absolute maximum of 154 square metres, i.e., the LUB's current maximum for shared docks.**

This would incentivize greater dock sharing by setting a higher ceiling on how many participants can practically make use of a shared dock at the same time:

- Under the higher maximum, the space allocation for 2 dwellings sharing a dock would remain limited at no more than 38.5 square metres per dwelling.
- For 3, 4, 5, or 6 dwellings, however, the higher maximum would enable dock sharing that resulted in practically useful space allocations of 35.7, 34.25, 30.8, and 25.7 square metres per dwelling, respectively.
- The cost to the environment of increasing the maximum float size for shared docks to accommodate up to 6 dwellings would be the construction of one dock that caused 154 square metres of shading.
- By contrast, to accommodate 6 dwelling under a maximum float size of 105 square metres the cost to the environment would be the construction of one dock for 4 boats (105 square metres) and another one for 2 boats (77 square metres) that caused a total of 182 square metres of shading.

A scheme that maximizes the number of dwellings able to share docks is consistent with the LTC's preserve and protect mandate.

<u>Other dock issues</u>

1. The LUB provisions that allow larger floats for shared docks in the CR1, RR, RC, and M2(a) zones are, in each case, subject to the registration of a restrictive covenant. However, the LUB says nothing about either the purpose or nature of the restrictions. Implicitly leaving it to the Staff to determine the content of restrictive covenants without direction amounts to an improper delegation of legislative discretion.

   **Conclusion — Language should be added to Bylaw 154 that amends the relevant provisions such that they specifically identify the conditions to be included in restrictive covenants. Moreover, these conditions should be limited to only advancing the policy purposes that underlie the dock rules, and should not attempt to advance any goals extraneous to those purposes.**

2. Some of the provisions in Bylaw 154 under the heading "Guidelines for the Construction and Replacement of Docks and Ramps are problematic.

   The guideline at section 9.3.3(n) states: "To allow for the maximum amount of light penetration to the water surface."

   - This language fails to prescribe anything, because it does not name the thing that is supposed to allow for maximum light penetration.
   - If the guideline is intended to refer to dock floats, it is impossible to follow. The only way to allow maximum light to penetrate is to not have a float at all.

- The guideline contradicts the one immediately above at 9.3.3(m), which provides guidance that is both clear and usefully specific.

**Conclusion — Guideline 9.3.3(n) is obscure, gratuitous, and should be deleted.**

The guideline at section 9.3.3(r) states: "The access ramps, piers, walkways and stairs for docks should not exceed a maximum width of 1.5 metres."

- This language does not provide guidance, but rather purports to establish a specific regulatory requirement.
- It is also entirely redundant, as it repeats the 1.5 metre width requirement that is provided elsewhere in the proposed amendments to the dock regulations for the CR1, RR, RC, and M2(a) zones.

**Conclusion — Guideline 9.3.3(r) is redundant and should be deleted.**

**REPAIR VS. REPLACE**

Section 9.3.1 of Bylaw 154 proposes to make the "construction of, addition to or alteration of a building or structure" within DPA3 subject to the prior application and issuance of a development permit, unless the work is otherwise specifically exempted from the requirement.

With respect to pre-existing structures within DAP3, section 9.3.2(b) proposes the following exemption:

> Repair and maintenance of pre-existing lawful buildings, structures or utilities, except for shoreline protection structures, provided there is no alteration of undisturbed land or vegetation and that they are entirely within the existing building or structure footprint. For clarity, repair, maintenance, alteration or reconstruction of shoreline protection works such as retaining walls, requires a development permit whether or not they meet the definition of 'structure' in the Keats Island Land Use Bylaw;

This language is so general as to create uncertainty about what it intends to exempt from the development permit requirement.

On Keats Island, it is not unusual for the "repair and maintenance" of cabins and other structures to require the replacement of major building components. This is especially the case for the many shoreline cabins built decades ago under outdated building codes, or when rural areas were not even subject to them. These cabins are particularly vulnerable to corrosion failures and decay due to building envelopes that are typically permeable to marine humidity. Docks are by definition exposed to extreme conditions.

Consequently, repair and maintenance within an "existing building or structure footprint" can commonly require replacing:

- A dangerously outdated wiring system.
- A leak prone copper pipe plumbing system with a Pex system.
- Building siding.
- A leaky roof.
- The decking on a patio.

- Patio structural members weakened by decay.
- The decking on dock ramps and floats.
- Individual structural members of a dock weakened by wear, decay, or storm damage.

By definition, any material replacement undertaken in furtherance of building maintenance constitutes an "alteration of a building or structure". This creates uncertainty regarding the true scope of the section 9.3.2.(b) exemption. That is why residents have asked the LTC to clarify that "repair and maintenance" includes the replacement of building components.

The alternative is to leave the distinction between exempt maintenance and alterations requiring a development permit to the Staff's interpretive discretion. As a matter of legal principle this is inappropriate.

Exemptions are not guidelines for how to interpret the rules. They are themselves rules whose meaning should be accessible on a plain reading of their language. Section 9.3.2(b) in its current form attempts to confer a statutory right on islanders, but is ambiguous about its scope. This would effectively make the right contingent on the judgments of unelected personnel, which amounts to an improper delegation of rule making authority.

Clear and unambiguous rules are a crucial element of fairness. They are also essential for operational efficiency. Ambiguous rules cause uncertainty for the public and Staff alike. This in turn leads to Staff time being consumed by the need to resolve unnecessary questions and to members of the public having to endure unnecessary delays. As a matter of policy, the LTC should make it easier, not harder, for property owners to maintain legacy structures in DPA3, and bring them closer to current standards, if the work can be done within their existing footprints.

After being asked that section 9.3.2(b) be amended to clarify that repair and maintenance may include the replacement of building components, Staff proposed the following:

> Minor repair and maintenance of lawful buildings, structures or utilities provided there is no alteration of undisturbed land or vegetation and [*sic*] are entirely within the footprint of the existing building or structure;

This language is problematic.

- It does not state what is supposed to happen "entirely within the footprint".
- It treats utilities differently than buildings and other structures, because it foregoes the existing footprint requirement for them.
- Adding the word "minor" aggravates the problem. First, it would make the exemption even more ambiguous, because whether or not a repair is minor is a matter of subjective opinion. Second, it would definitively require property owners to obtain a development permit for normal course maintenance that includes replacing building components.

One of the specific concerns raised at the July 21 meeting was that islanders need to be able to repair or replace pre-existing septic fields that encroach into DPA3. Staff has helpfully suggested that section 9.3.2 be amended by the addition of the following new exemption.

**Repair or replacement of a septic field site in the same location as the existing septic field;**

This proposed exemption is appropriate because it recognizes that restricting the work to a septic field's existing footprint achieves the correct balance between environmental protection and the needs of property owners.

**Conclusion — Staff's proposed amendment addresses a legitimate public concern with precision and should be adopted.**

The underlying logic of the septic field exemption applies equally as well to the replacement of building components in the course of repairing and maintaining pre-existing buildings, structures, and utilities within DPA3.

**Conclusion — Section 9.3.2(b) should be rewritten as follows:**

**Repair and maintenance of lawful buildings, structures or utilities, including the replacement of building components in connection with such repair and maintenance, provided always that any such work is conducted entirely within the footprint of the existing building, structure or utility and does not alter undisturbed land or native vegetation;**

**CONSTRUCTION WITHIN DPA3**

The first reading of Bylaw 154 provoked strong opposition in the community. One of the provisions that particularly alarmed islanders was a proposed amendment that would replace section 2.7.3 of the LUB.

Currently, section 2.7.3 of the LUB establishes a setback of 7.5 metres from the NBS within which no structure is permitted to be constructed, reconstructed, moved, extended or located (limited exceptions are specified). The new version of the section proposed to increase the setback to 15 metres (and reduce the number of exceptions).

As mentioned, many shoreline cabins and structures are situated either wholly or partially within 15 metres from the NBS. These include structures erected in compliance with the LUB, under which it is presently lawful for islanders to undertake construction between 7.5 metres and 15 metres from the NBS (from now on referred to as the upper zone). Islanders were perplexed by the prospect of being abruptly prohibited from improving or renovating the structures that are central to their ability to use their properties, and voiced strenuous objections to the proposed amendment.

Accordingly, there was considerable relief among islanders when the LTC responded to the community's many concerns by rescinding the first reading of Bylaw 154 and passing a revised version. With respect to section 2.7.3 specifically, the proposed new section now reads as follows:

a) No building or structure except a platform with a maximum area of 5 square metres, or a set of stairs or a walkway for the purposes of accessing the foreshore or a permitted float, dock, wharf or other permitted marine related structure, may be constructed, reconstructed, moved, extended or located within 7.5 metres (24.6 feet) of the natural boundary of the sea.

b) Notwithstanding subparagraph a), for properties zoned Rural Comprehensive (Lot 876 and Lot 1829) the setback set out above shall be 15 metres (49.2 feet).

Unfortunately, it was not clearly explained to the public that restoring the setback to 7.5 metres would not mean a return to the status quo. As a result, learning the LTC had backed away from the setback expansion led many islanders to believe that they had been heard and the flexibility they now enjoy with respect to building in the upper zone will continue in the future. This is not the case.

Withdrawing the proposed ban on construction in the upper zone is one thing. The development permit requirement in the new section 9.3.1 is quite another. It 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.

Since the word “alteration” is not qualified, it encompasses any and all conceivable changes to a building or structure. The term “land alteration” is likewise unqualified and encompasses any and all changes to land, including changes to previously disturbed land. The language of section 9.3.1 is sweeping. It would make obtaining a development permit mandatory for any kind of construction work or land alteration anywhere in DPA3.

With respect to new construction, a development permit requirement objectively serves the goal of environmental protection by creating a structured dialogue between the Staff and islanders about how to best minimize a development’s potential negative impacts on previously undisturbed terrain. This is reasonable.

It is not reasonable, however, to require a development permit for absolutely each and every building or land alteration irrespective of their potential environmental effects.

The sweeping language of section 9.3.1 would require islanders to obtain a development permit before they carried out any of the following in the upper zone:

- 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.
- Digging up a lawn to replace the turf with native ground cover and plants.

These are building or land alterations that all take place within an existing footprint of previously disturbed land and that do not involve removing native vegetation. Requiring a development permit for them would do nothing to preserve or protect the natural environment.

Regulation is reasonable when it takes a balanced approach to managing diverse needs.

The purpose of Bylaw 154 is to improve the regulation of a shoreline environment that has long been materially altered by human activity. A crucial fact of the shoreline environment as it exists today is that people are an integral part of it. The context in which Bylaw 154 seeks to introduce protective measures is one in which preserving the environment is not the only value. Enthusiasm for environmental protection is both understandable and valuable; treating the genuine needs of the shoreline's human residents as an afterthought is not.

Just as it is reasonable to exempt repair and maintenance work that takes place within an existing structural footprint from the development permit requirement, so too is it reasonable to exempt alterations of structures and land when they satisfy the same criterion of taking place on previously disturbed land. Likewise, requiring a development permit for building additions contributes nothing to environmental protection when all the work takes place on previously disturbed land.

**Conclusion — The following exemption should be added as a subsection to section 9.3.2 of Bylaw 154:**

> **Alterations or additions to buildings, structures, and utilities and alterations to land, provided always that any such alterations or additions take place between 7.5 metres and 15 metres from the natural boundary of the sea and entirely within the footprint of an existing building, structure, utility or on previously disturbed land and do not alter undisturbed land or native vegetation;**

**SHORELINE PROTECTION**

The term "shoreline protection measures" is used extensively in Bylaw 154, but does not appear to be explicitly defined anywhere in the LUB or in Bylaws 153 and 154. The latter, however, includes a number of guidelines relating to shoreline protection.

In discussing the differences between hard and soft shoreline protection measures, the guideline at section 9.3.3(w) characterizes both as "modifications to the shoreline". It also states that:

> Where shoreline protection or stabilization measures are proposed, they shall be designed by a Professional Engineer with experience in coastal and/or geotechnical engineering

Nothing in section 9.3.3(w) qualifies this directive; and, as already observed, section 9.3.1 proposes a development permit requirement for any and all land alterations within DPA3. It follows, then, that implementing any kind of shoreline protection strategy, even one that relied entirely on soft measures, would require an islander to first obtain a development permit, which would not be granted unless the application is accompanied by an engineering report.

All of this contradicts the Trust's advocacy that urges residents of the Trust Area to "protect their shoreline properties using natural materials, slopes, and plantings", and the Trust's promotion of the Stewardship Centre for British Columbia's Green Shores Program (see https://islandstrust.bc.ca/programs/marine-shorelines/ ).

The Trust promotes Green Shores to Trust Area residents is not merely because soft measures are the more environmentally sensible alternative. As the Trust's various publications indicate, it is because shoreline erosion due to climate change is increasingly making the need for sound shoreline protection an urgent concern. For the Gambier Local Trust Area, the standard application fee for development permits is $1,020. Engineering reports typically cost substantially more. If the Trust and the LTC want to encourage islanders to step up to help mitigate shoreline erosion by implementing soft shoreline protection measures, then placing gratuitous regulatory and financial barriers in front of them is not the way to do it.

After being asked to add an exemption to Bylaw 154 that would allow islanders to implement soft shoreline protection measures without a development permit, Staff suggested an amendment to section 9.3.1 that would explicitly make the "repair, maintenance or alteration of shoreline protection measures" subject to the development permit requirement.

This language does not address the issue. It is also not clear what the language adds that is not already achieved by section 9.3.1's imposition of a development permit requirement for any construction, addition or alteration in DPA3.

**Conclusion — The following exemption should be added as a subsection to section 9.3.2 of Bylaw 154:**

> **The implementation of the following soft shoreline protection measures [*Staff to confirm specific practical measures property owners can implement on their own with no meaningful risk of environmental disruption, e.g., log placement, certain beach nourishment measures, and improving drainage/revegetation in DPA3*].**

**MISCELLANEOUS DRAFTING ISSUES**

Exemptions

Section 9.3.2(a) states: "Development or alteration of land to occur outside the designated Development Permit Area, as determined by a BC Land Surveyor;"

This language has no effect. Any development occurring outside of DPA3 would not be subject to section 9.3.1 in the first place.

**Section 9.3.2(a) should be deleted.**

Guidelines

1. The guideline at section 9.3.3 states: "Prior to undertaking any applicable development activities within DP-3, an owner of property shall apply to the Local Trust Committee for a development [*sic*], and the following guidelines apply:"

   **Section 9.3.3 should be amended by inserting the word "permit" after the word "development".**

2. The guideline at section 9.3.3(e) states: " Sea level rise, storm surges and other anticipated effects of climate change should be addressed in all development permit applications."

The phrase “other anticipated effects of climate change” is vague and does not provide meaningful guidance. It would effectively create another improper rule making situation, by putting Staff in the position of having to determine what should count as an “anticipated” climate change effect for any given application. If the Staff declined to do so, then to satisfy the requirement an applicant would be compelled to obtain a costly expert general assessment of the potential “anticipated” climate change vulnerabilities specific to their property.

If there are known anticipated climate change effects relevant to Keats Island, then the guideline should identify them. Otherwise, the public should not be put in the position of having to predict the future to fill in gaps in the LTC’s understanding of local climate change consequences.

**Section 9.3.3(e) should be amended by deleting the phrase “other anticipated effects of climate change”.**

3. The guideline at section 9.3.3(f) states in part: “All development within this Development Permit Area is to be undertaken and completed in such a manner as to prevent the release of sediment to the shore…”

   The term “in such a manner as to prevent” would place an applicant under an absolute obligation to prevent sediment release, irrespective of whether it is feasible to do so. It is better to use the term “with best efforts”, which instead would require an applicant to do everything that is reasonable in the circumstances to prevent sediment release.

   **Section 9.3.3(f) should be amended by replacing the words “and completed in such a manner as” with the words “with best efforts”**.

4. The guideline at section 9.3.3(v) requires an application for a shoreline protection development permit to be supported by a professional engineering report that addresses certain specified issues. Subsection (iv) identifies one of these as: “Whether there will be any degradation of water quality or loss of fish or wildlife habitat because of the modification;”

   It is inappropriate to require an engineer to provide a professional opinion about questions only a biologist is qualified to answer, or to ask any expert to predict the future. At most, an expert can talk about probabilities. Asking for an opinion about “degradation” without identifying measurement criteria is not an objective question, but rather a subjective one.

   The purpose of this guideline is to ensure that the materials used in dock construction will have a minimal toxic effect on marine life. Engineers are qualified to render opinions on the performance ratings of construction materials.

   **Subsection 9.3.3.(v)(iv) should be deleted and replaced with: “The potential of the proposed construction materials to create toxic effects in marine life over time compared to other materials equally suitable for the planned construction.”**

5. The guideline at section 9.3.3(w) establishes broad parameters for the design of shoreline protection measures. Subsection (iii) identifies one of these as: “Not be expected to cause erosion or other physical damage to adjacent or down-current properties, or public land”.

   This wording is awkward, and asks for a prediction instead of prescribing a parameter.

   **Subsection 9.3.3(w)(iii) should be deleted and replaced with: “Avoid causing erosion or other physical damage to adjacent or down-current properties, or public land;”**