

DATE OF MEETING: October 25, 2021
TO: Mayne Island Local Trust Committee
FROM: Narissa Chadwick, Island Planner
Local Planning Services
COPY: Robert Kojima, Regional Planning Manager
SUBJECT: Report subject: MA-RZ-2020.1 (MIHS)

RECOMMENDATION

1. That the Mayne Island Local Trust Committee require that a housing agreement related to the use of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 with a focussed approach to identifying rental unit types be adopted prior to adoption of rezoning bylaws.
2. That the Mayne Island Local Trust Committee request that the Section 219 covenant be granted by the owners of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 address water treatment and monitoring, location of development on Lot 2 and 3, wetland protection, areas to be preserved, site remediation and development restrictions on Lot 2 prior to the adoption of the rezoning bylaws.
3. That the Mayne Island Local Trust Committee Bylaw No. 181, cited as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021” be read for a first time.
4. That the Mayne Island Local Trust Committee Bylaw No. 183, cited as as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021” be read for a first time.
5. That the Mayne Island Local Trust Committee request staff to schedule a Community Information Meeting concurrently with the Public Hearing for Bylaw No. 181, cited as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021” and Bylaw No. 183, cited as as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021”.
6. That the Mayne Island Local Trust Committee request staff to schedule a Public Hearing for Bylaw No. 181, cited as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021” and Bylaw No. 183, cited as as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021”.

REPORT SUMMARY

This staff report presents the draft Housing Agreement and Section 219 Covenant to the LTC. It identifies two key issues raised by the Mayne Island Housing Society related to the housing agreement and provides options related to addressing these concerns. It identifies items included in the Section 219 Covenant and provides the LTC the opportunity to suggest changes or additions to the covenant.

The report also brings back the draft bylaws for consideration of first reading and provides the opportunity for the LTC to address the MIHS's interest in having an additional Community Information prior to public hearing.

BACKGROUND AND ANALYSIS

Housing Agreement (Attachment 1)

At their November 30th, 2020 meeting the LTC passed a resolution requiring ***“that a housing agreement related to the use of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 be adopted prior to the adoption of the rezoning bylaws”***. At the June 21, 2021 meeting staff identified that a draft housing agreement had been sent for legal review, initial comments were received and discussed with staff and further revisions were made. The revised housing agreement was then provided to the MIHS for their review.

In their review of the Draft Housing Agreement the MIHS identified a number of issues of concern. Some of the smaller issues have been addressed in the draft housing agreement attached. Two major issues, requiring decision by the LTC, are as follows:

Housing Agreement Issue 1: Removing Sean McHugh's name as party to the agreement.

The MIHS has identified that they do not want Sean McHugh, the current property owner, to be named as party to the agreement. Given that the relevant party to the housing agreement, other than the LTC, needs to be the property owner, not having Sean McHugh's name on the agreement would require the transfer of land. The transfer of land can only happen after subdivision and rezoning.

The MIHS has proposed that they enter into an “Agreement-in-Principle” related to the registration of the housing agreement. In the “Agreement-in-Principle”, the parties would agree to register the housing agreement on title upon the completion of the rezoning and subdivision.

With the “Agreement-in-Principle” approach there is no guarantee that the lands will be subdivided to create Lot 3 unless a covenant is required prior to or immediately after zoning adoption. There is also no clear mechanism for the LTC to use to ensure the transfer of land to the MIHS or prevent the selling of Lot 3.

Options for the LTC are as follows:

Support the existing process. A housing agreement must be with the current property owner, Sean McHugh; consequently, the LTC would only be able to require that the housing agreement bylaw be adopted, and notice of the agreement be registered on title, prior to the adoption of the rezoning bylaw (as previously supported through resolution) by entering into the agreement with the current property owner. It is important to point out that while the housing agreement places restrictions on the type of housing that can be provided it does not impose any obligation on the part of the landowner to provide that housing.

Defer adoption of the housing agreement. The mechanism would be for the owner to grant a covenant to the LTC, prior to adoption of rezoning, restricting any development or registration of a subdivision until the housing agreement is adopted and notice registered on title. The housing agreement would be attached to the covenant. Another option would be to integrate a density bonus approach into the new zoning so that the density in the form of the additional two lots and the addition residential density is contingent on the housing agreement being adopted and notice registered against lot 3 in addition to the Lot 3 housing being constructed. Neither of these options guarantee that the subdivided land will be sold to the MIHS.

Recommended option:

Support existing process. Entertaining options to remove Sean McHugh's, the property owner, name as party to the housing agreement will result in additional process. The LTC would not be able to adopt the housing agreement concurrently with the rezoning bylaws leaving the process open to change prior to the transfer of ownership and potentially leaving the approval of the housing agreement to the next elected Local Trust Committee.

Housing Agreement Issue 2: Flexibility in Defining the Rental Unit Rates

The draft housing agreement currently identifies the rental unit types as per the information provided by the MIHS to staff, the LTC and the community. The MIHS has identified that funding is anticipated to be received from BC Housing. As such, rental unit types would reflect BC Housing's required mix of rental rates as follows:

- 20% of units will be Deep Subsidy Units for Deep Subsidy Income
- 50% of units will be Rent Geared to Income Units for Low Income households
- 30% of units will be Market Units for Moderate Income households

Given the possibility that BC Housing may change their requirements and/or the project may be funded by other means, the MIHS has identified that they would like a more flexible approach to defining the rental rates and type of rental units.

In a meeting held with Islands Trust staff and BC Housing staff, BC Housing staff identified that BC Housing would prefer flexibility in housing agreements between local governments and affordable housing providers to allow for a range of funding programs and affordable rent structures to be utilized. However, BC Housing also recognizes that local governments have an obligation to ensure that housing agreements reflect the conditions being proposed at the time of rezoning and consistency with OCP policies. B.C. Housing staff stressed that the key elements of a success proposal are land (secure tenure to a site), zoning and water in unserved areas. Islands Trust staff will continue to work with BC Housing staff to ensure that they are supportive of the Islands Trust approach to the development of the housing agreement.

Options for the LTC are as follow:

1. **Focussed approach supporting the draft housing agreement as written.** The mix of rental unit types is defined in the housing agreement. The mix of rental unit types is based on the current BC Housing funding formula and corresponds with information originally provided by the MIHS. If this option is chosen and the BC Housing rates change in future or a different funding option emerges the housing agreement can be amended.
2. **Flexible approach supporting the MIHS proposal.** With this approach, instead of defining the type of rental units, the LTC would default to supporting a more broad definition of "affordable rental housing". The definition proposed by the MIHS is *"a Dwelling Unit on the Lands which is available as a permanent, principal and sole residence for rent to a Qualified Renter below median market rents as determined by CMHC"*. By adopting this approach the LTC is demonstrating an openness to supporting a housing mix and rental rate ratios that can change over time based on BC Housing standards for affordability. The LTC would need to consider if this approach is consistent with OCP policies related to rural land use and amenity zoning guidelines.
3. **Alternative approach.** The LTC could choose to have the definition of rental units clearly defined but based on a different approach identified by the MIHS. As opposed to the flexible approach where the housing agreement does not include a clear indication of the type of rental units to be provided, the LTC could

request that the MIHS come back with other options that provide details related to the type of rental units to be provided.

Covenant (Attachment 2)

The Mayne Island LTC has adopted two resolutions related to items to be contained in a Section 219 Covenant. These are as follow:

November 30, 2020 - ***“that the Mayne Island Local Trust Committee request that a Section 219 covenant be granted by the owners of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 that would identify the location of development, require water treatment and monitoring and areas to be preserved, as condition of adoption of the bylaws”.*** Related staff report: [https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/mayne/current-applications/MA-RZ-2020.1%20\(Mayne%20Island%20Housing%20Society\)/1.%20Staff%20Reports/2020-11-30_Staff%20Report.pdf](https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/mayne/current-applications/MA-RZ-2020.1%20(Mayne%20Island%20Housing%20Society)/1.%20Staff%20Reports/2020-11-30_Staff%20Report.pdf)

June 21, 2021 – ***“that the Mayne Island Local Trust Committee request that the owner of Lot B, Plan 27091 grant to the Local Trust Committee a suitably worded Section 219 covenant which would restrict development of proposed lot 2 until the construction of rental housing on proposed Lot 3 is completed and that the S.219 covenant be registered on title as a condition of rezoning and that building site for Lot 2 should be that identified as 'A' on map dated July 15, 2020 and wetlands area is to be preserved as shown on same map”.***

Related Staff Report: [https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/mayne/current-applications/MA-RZ-2020.1%20\(Mayne%20Island%20Housing%20Society\)/1.%20Staff%20Reports/2021-06-21_Staff%20Report.pdf](https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/mayne/current-applications/MA-RZ-2020.1%20(Mayne%20Island%20Housing%20Society)/1.%20Staff%20Reports/2021-06-21_Staff%20Report.pdf)

The draft covenant addresses the following:

Water quality – To address concerns identified in the hydrogeologist’s report the draft covenant requires the design and installation of a water management system prior to occupancy or any building or structure on Lot 3.

Lot 2 building location, site remediation and ecosystem protection – To address the LTC’s interest in limiting the building footprint on Lot 2 and requiring wetland/ forest protection and remediation the draft covenant requires that *“No building or structure shall be constructed, placed or Located on Lot 2 except within the area of Lot 2 shown as “Building Zone” on the Subdivision Plan”* and that the recommendations of the *Wetland Restoration Design Report* by Robyn Annschild, be implemented on Lot 2 in the area identified as “Remediation Zone” and “Forest Protection Zone” on the Subdivision Plan (see covenant schedule A¹).

Lot 2 building restriction – To address the LTC’s interests in restricting development on Lot 2 until the rental housing has been constructed, the draft covenant states that *“The Owner of Lot 2 shall not start the construction of any building or structure on Lot 2 until the Owner of Lot 3 has completed the construction of, and received any occupancy permit required by the Capital Regional District for, at least XX units of affordable housing, on Lot 3”.*

¹ Note that there are currently two maps in covenant schedule A. Staff are still working with legal advisor to identify how maps should be presented in the covenant. It has been identified to staff that the Land Title Office may require a reference or explanatory plan prepared by a surveyor where a covenant charges to only part of a parcel. The applicants will be advised if this is identified to be necessary.

Building Footprint on Lot 3 – To ensure that the building footprint is minimized the draft covenant requires that all buildings be constructed within the location shown on the Subdivision Plan (see covenant schedule A). The covenant allows for minor alternations subject to LTC authorization .

Ecological Protection and Restoration on Lot 3 – To support LTC interests in maintaining as much of the ecological integrity of the site as possible, the draft covenant requires that the MIHS adhere to all of the recommendations made in the “*Ecological Assessment Report*” prepared by Keith Erikson and dated September 21st, 2020 and the “*Wetland Restoration Design Report*”, prepared by Robin Annschild and dated March 8, 2021;.

Questions for the LTC regarding the draft covenant:

How many units of affordable housing need to be required before building on Lot 2 can commence?

Is there anything the LTC would like to add to, change or take away from the requirements identified in the draft covenant?

Draft Bylaws 181 and 183 (Attachment 4 &3) and Process

At the November 2020 LTC meeting, the LTC requested staff prepare draft bylaws to amend Land Use Bylaw and Official Community Plan.

The draft bylaws include:

1. ***An amendment to the Land Use Bylaw*** which would:
 - Create a new zone (Comprehensive Development Three (CD3) Zone) to support multi-family rental housing.
 - Introduce additional definitions
 - Create a split zoned lot
 - Rezone the portion of the property being contemplated for multi-family rental from Rural (R) to Comprehensive Development Three (CD3)
 - Rezone the parent portion of the property to R(f) to enable the subdivision of the lot into two (in concurrence with amenity zoning provisions in the OCP)
 - Remove the new CD3 zone from the area permitted to have secondary suites
2. ***An amendment to the Official Community Plan*** which:
 - Designates the proposed multi-family rental housing portion of the parent property from Rural designation to Rural – Multi-family residential (R-MR) designation.

At the January 25th LTC meeting the LTC passed a resolution that ***the Mayne Island Local Trust Committee ask staff to amend the draft bylaws to account for a buffer zone.*** Staff revised the bylaw to include an 8 metre setback from interior side lot lines. Bylaws 181 and 183, with this amendment, were last presented to the LTC at the June 21, 2021 LTC meeting,

A Community Information Meeting (CIM) was held on April 26th 2021. A second CIM can be held concurrently with the Public Hearing.

ALTERNATIVES

RE: Approval of Housing Agreement

1. The LTC may defer the adoption of the housing agreement until after rezoning and subdivision. In this case Sean McHugh would not have to be party to the agreement. The housing agreement would be adopted once ownership is transferred. The LTC could agree to sign an “agreement-in-principal” with the MIHS to provide some certainty that the MIHS will adopt the housing agreement as drafted. This option does not guarantee that the housing agreement won’t be changed prior to transfer of ownership or that ownership will be transferred to the MIHS.

That the Mayne Island Local Trust Committee defer the adoption of the housing agreement related to the use of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 to after subdivision and transfer of land.

RE: Definition of Unit Types

1. The LTC may choose to support a more flexible approach to defining the type of rental units. This approach would support what has been proposed by the MIHS and will require amendments to the housing agreement as well as legal review .

That the Mayne Island Local Trust Committee require that a housing agreement related to the use of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 support the a flexible approach to identifying rental unit types as identified in the October 25, 2021 staff report be adopted

2. The LTC may choose to explore an alternative approach to defining type of rental. This will require the MIHS returning with another proposal related to how rental units are defined. Amendments to the housing agreement will be made and legal review will be required.

That the Mayne Island Local Trust Committee request staff work with the MIHS to identify an alternative approach to defining rental units.

RE: Covenant

1. The LTC could direct staff to add additional elements to the covenant.

That the Mayne Island Local Trust Committee request staff to add the following additional elements to the covenant:

RE: First Reading of Bylaws

1. The LTC receive the proposed bylaws for information. The LTC may choose to receive the draft bylaws and wait until the process has moved further along before suggesting changes to the bylaws.

That the Mayne Island Local Trust Committee receive for information Bylaw No. 181, cited as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021”.

That the Mayne Island Local Trust Committee receive for information Bylaw No. 183, cited as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021”.

2. The LTC wait until the housing agreement has been finalized before moving to first reading.

That the Mayne Island Local Trust Committee Bylaw 181, cited as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021” and Mayne Island Local Trust Committee Bylaw No. 183, cited as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021”, be brought back for first reading once the housing agreement has been finalized.

3. The LTC may decide to send the housing agreement and the covenant to the APC. Due to timing of meetings the draft housing agreement and covenant have not yet been shared with the APC . The APC was provided with an overview of what the covenant contained or their October 13th meeting.

That the Mayne Island Local Trust Committee request staff to send the Section 219 covenant and the housing agreement associated with MA-RZ-2020.1 (MIHS) to the Advisory Planning Commission for review.

NEXT STEPS

- Amendments will be made to the housing agreement as required.
- Amendments will be made to the covenant as required.
- The housing agreement and covenant will be reviewed by legal counsel before adoption.
- If bylaws are read for the first time staff will schedule public hearing.

Submitted By:	Narissa Chadwick RPP, Island Planner	October 15, 2021
Concurrence:	Robert Kojima, Regional Planning Manager	October 15, 2021

ATTACHMENTS

- 1. Housing Agreement**
- 2. Draft Covenant**
- 3. Draft Bylaw 181**
- 4. Draft Bylaw 183**

Housing Agreement and Section 219 Covenant

THIS AGREEMENT DATED FOR REFERENCE THE _____ DAY OF _____, 20____, IS
BETWEEN:

SEAN MCHUGH
375 Village Bay Road, Mayne Island, V0N 2J2

(the “Owner”);

AND

MAYNE ISLAND LOCAL TRUST COMMITTEE, a corporation under the Islands Trust Act,
having an office at 2nd floor, 1627 Fort Street, Victoria, BC, V8R 1H8

(the “Local Trust Committee”)

WHEREAS;

- A. The Owner is the registered owner of the lands situated on Mayne Island, British Columbia, and legally described as:
- PID: 002-552-256
- Lot B Plan VIP 27091 Section 7, Land District 16, Portion Mayne Island
- (the “Lands”);
- B. The Lands will be rezoned by the Local Trust Committee, with permission of the Owner, by means of Mayne Island Land Use Bylaw No. 146, 2008 Amendment No. 1, 2021, to permit the development of affordable multi-family rental housing (the “**Rezoning**”);
- C. The Mayne Island Housing Society (MIHS) intends to rent units on the Lands, by way of rental agreement, to Qualified Renters at affordable market and subsidized rates;
- D. The Local Trust Committee may pursuant to Section 29 of the *Islands Trust Act* and Section 483 of the *Local Government Act*, enter into a housing agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure and availability to specified classes of persons of dwelling units located on the land;
- E. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Local Trust Committee in respect of the use of land or construction on land;
- F. The Owner and Local Trust Committee wish to enter into this Agreement to provide rental

housing on the Lands on the terms and conditions of this Agreement to have effect as both a covenant under Section 219 of the *Land Title Act* and as housing agreement under Section 483 of the *Local Government Act*; and

- G. The Local Trust Committee has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement.

THIS AGREEMENT is evidence that in consideration of \$1.00 paid by the Local Trust Committee to the Owner (the receipt of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the Local Trust Committee and the owner, agree as covenants granted by the Owner to the Local Trust Committee under Section 219 of the *Land Title Act*, and as a housing agreement between the Owner and the Local Trust Committee under Section 483 of the *Local Government Act*, as follows:

Article 1: Definitions and Interpretation

1.1 Definitions

in this Agreement:

"Annual Household Income"	means the combined gross income of all adult members of a Household, as shown on line 150 of the preceding year's T1 General Income Tax and Benefit return.
"BC Housing"	means the British Columbia Housing Management Commission or BC Housings' successor in function. For clarity, a "successor in function" of BC Housing will be a Crown Corporation, governmental department or other entity with a mandate from the provincial government to provide British Columbians with access to affordable, safe and appropriate housing that is accountable to the provinces' Minister responsible for Housing or their successor.
"Building" or "Buildings"	means any building located or constructed on the Lands containing a Rental Unit.
"Business Days"	means Monday to Friday inclusive except for those excluded days declared by lawful authority as holidays.
"CPI"	means the All-items Consumer Price Index for British Columbia as calculated by Statistics Canada, or its successor in function.
"Deep Subsidy Income Limit"	means the Deep Subsidy Income Limits most recently published by BC Housing, provided that: a) The Deep Subsidy Income Limit amounts shall be adjusted annually to reflect the applicable Deep Subsidy Income Limits published by BCH Housing.

- b) In the event that BC Housing ceases to publish the Deep Subsidy Income Limits but replaces the Deep Subsidy Income Limits with similar income limits or standards that are acceptable to the Local Trust Committee for the purposes of this Agreement, such replacement limits or standards shall replace the Deep Subsidy Income Limits for the purposes of this Agreement.
- c) In the event that BC Housing ceases to determine the Deep Subsidy Income Limits and the Deep Subsidy Income Limits are not replaced by similar income limits or standards published by BC Housing that are acceptable to the Local Trust Committee, then the Maximum Income for Eligible Tenants of Deep Subsidy Units shall be determined by reference to the final the Deep Subsidy Income Limits published by BC Housing and thereafter increased annually by an amount below or equal to the increase, if any, in the CPI for the period of January 1 to December 31 of the previous calendar year

“Deep Subsidy Unit”	means a Rental Housing Unit occupied and operated as a Deep Subsidy Unit in accordance with this Agreement.
“Dwelling Unit”	means a dwelling unit as defined in the Mayne Island Land Use Bylaw 146, 2008.
“Eligible Tenant”	means for a Deep Subsidy Unit, Market Unit, and RGI Unit, a Household with an Annual Household Income equal to or less than the Permitted Rent applicable to such unit as set out in this Agreement.
“Household”	means one or more individuals occupying the same Dwelling Unit.
“HILs”	<p>Means the Housing Income Limits for Victoria published annually by BC Housing, provided that:</p> <ul style="list-style-type: none">a) The HILs shall be adjusted annually on January 1 of each calendar year to reflect the applicable Housing Income Limits for Mayne Island published by BC Housing.b) If BC Housing ceases to publish HILs but replaces HILs with a similar income limits or standards that are acceptable to the Local Trust Committee for the purposes of this Agreement, such replacement limit or standards shall replace HILs for the purposes of this Agreement.c) If BC Housing ceases to determine HILs and the HILs are not replaced by similar income limits or standards published by BC Housing that are acceptable to the Local Trust Committee, then the Maximum Income of Eligible Tenants of RGI Units shall be determined by reference to the final HILs published by BC Housing and thereafter increased annually by an amount equal to the increase, if any, in the

CPI for the period of January 1 to December 31 of the previous calendar year.

“Income Assistance” Social assistance, social security or another form of payment that the provincial or federal government provides to people in need who don’t have any other resource.

“Lands” has the meaning ascribed in Recital A.

“Lot 3 Equivalent” has the meaning ascribed to it in section 3.3 b).

“Market Rent” means a rent that is generally similar to the rent of other comparable Dwelling Units in the private (non-subsidized) housing market of Victoria or the Southern Gulf Islands.

“Market Rental Unit” means a Rental Housing Unit occupied and operated as a Market Rental Unit in accordance with this Agreement.

“Maximum Income” means:

- a) for a Dwelling Unit occupied and operated as a Deep Subsidy Unit, an Annual Household Income lower than the Deep Subsidy Income Limit applicable to the relevant unit;
- b) for a Dwelling Unit occupied and operated as a Market Unit, an Annual Household Income lower than the Middle Income Limits applicable to the relevant unit; and
- c) for a Dwelling Unit occupied and operated as a RGI Unit, an Annual Household Income lower than the HILs applicable to the relevant unit.

“Middle Income Limits” means the applicable Middle Income Limits published annually by BC Housing, provided that:

- a) The Middle Income Limits shall be adjusted annually on January 1 of each calendar year to reflect the applicable Middle Income Limits published by BC Housing.
- b) If BC Housing ceases to publish Middle Income Limits but replaces Middle Income Limits with a similar income limits or standards that are acceptable to the Local Trust Committee for the purposes of this Agreement, such replacement limit or standards shall replace Middle Income Limits for the purposes of this Agreement.
- c) If BC Housing ceases to determine Middle Income Limits and the Middle Income Limits are not replaced by similar income limits or standards published by BC Housing that are acceptable to the Local Trust Committee, then the Maximum Income of Eligible Tenants of

RGI Units shall be determined by reference to the final Middle Income Limits published by BC Housing and thereafter increased annually by an amount less than or equal to the increase, if any, in the CPI for the period of January 1 to December 31 of the previous calendar year.

“Permitted Housing Operator” means Mayne Island Housing Society, BC Housing, a housing society, a non-profit housing corporation, or other entity approved by the Local Trust Committee in writing.

“Permitted Rent” means:

- a) for a Dwelling Unit occupied and operated as a Deep Subsidy Unit, a monthly rent equal to or less than:
 - i. the monthly “Shelter Allowance” dictated by *Employment and Assistance Regulation*, BC Reg 263/2002, or equivalent housing allowance provided to families by the provincial government that receive Income Assistance, if the Eligible Tenant, collectively, is eligible to receive such Shelter Allowance, or
 - ii. 1/12 of 30% of the Eligible Tenant’s Annual Household Income;
- b) for a Dwelling Unit occupied and operated as a Market Unit, a monthly rent equal to or less than the applicable Market Rent; and
- c) for a Dwelling Unit occupied and operated as a RGI Unit, a monthly rent equal to or less than 1/12 of 30% of the Eligible Tenant’s Annual Household Income.

“Qualified Renter” means a Household:

- a) which meets the eligibility criteria for a Tenant of a Rental Housing Unit set out in Schedule A of this Agreement, and
- b) that has an Annual Household Income equal to or less than the Maximum Income applicable to such Rental Housing Unit as outlined in this Agreement. For clarity, the Maximum Income of a Rental Housing Unit is determined based on whether the unit is Deep Subsidy Unit, a Market Rental Unit, or a RGI Unit.

“Release” has the meaning ascribed in section 3.3 b).

“Rental Housing Unit” means a Dwelling Unit on the Lands in respect of which the construction, tenure, rent and occupancy are restricted in accordance with of this

Agreement.

"Rent-Geared-to-Income Unit" or "RGI Unit" means Rental Housing Unit occupied and operated as a Rental Unit where rent is related to income earned.

"*Residential Tenancy Act*" means the *Residential Tenancy Act* of British Columbia.

"Rezoning" has the meaning ascribed in Recital B.

"Subdivide" means to divide, apportion, consolidate or subdivide the Lands or any building on the Lands, or the ownership or right to possession or occupation of the Lands or any building on the Lands, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act* (British Columbia), or otherwise, and includes the creation, conversion, organization or development of "cooperative interests" or a "shared interest in land" as defined in the *Real Estate Development Marketing Act* (British Columbia);

"Tenancy Agreement" means a tenancy agreement as defined in, and subject to, the *Residential Tenancy Act*.

"Tenant Default" has the meaning ascribed section 2.3(g).

1.2 Interpretation

Reference in this Agreement to:

- a) A "party" is a reference to a party to this Agreement;
- b) A particular numbered "article" or "section" or to a particular lettered "schedule" is a referent to the corresponding numbered or lettered article, section, or schedule of this Agreement;
- c) An "enactment" is a reference to an enactment as defined in the *Interpretation Act* and is a reference to any revision, amendment or re-enactment of, or replacement for, that enactment;
- d) Wherever the singular or the masculine is used in this Agreement, it shall be deemed to include the plural or the feminine, or the body politic or corporate, where the context or the parties so require; and
- e) The Local Trust Committee includes a reference to its successors in function, including a municipality.

1.3 Headings

The division of this Agreement into articles, sections and schedules is for convenience of reference only and does not affect its interpretation. The article and section headings used in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.

1.4 Entire Agreement

This is the entire Agreement among the parties concerning its subject and may be amended only by a document executed by all parties.

Article 2 – Rental Housing

2.1 Agreement over the Lands

Pursuant to Section 219 of the *Land Title Act* and Section 483 of the *Local Government Act*, the Owner covenants and agrees that:

- a) The Lands will not be developed, and no building or structure will be constructed on the Lands unless as part of and concurrently with the development and construction on the Lands, the Owner also constructs and completes 10 Rental Housing Units on the Lands.
- b) No building on the portion of the Lands zoned as Comprehensive Development Three (CD3) may be occupied or used for any purpose until and unless the Rental Housing Units are constructed in accordance with subsection 2.1 a) above.
- c) Neither the Lands nor any building thereon may be Subdivided without prior approval of the Local Trust Committee.
- d) It will maintain the Rental Housing Units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards, applicable to the Lands.
- e) If a Building is demolished or is otherwise replaced, this Agreement shall continue to apply to the Lands and the construction on the Lands shall be subject to the requirements of this Agreement.

2.2 Minimum Construction Requirements

The Rental Housing Units will be designed and constructed in accordance with the following requirements:

- a) all of the Rental Housing Units will be designed and constructed to the same standard, in terms of layout, workmanship, and materials;
- b) Rental Housing Units will consist of a mix of one bedroom units, two bedroom units and

at least one three bedroom unit

2.3 Occupancy and Management of Rental Housing Units

The Owner covenants and agrees not to rent or lease any Rental Housing Units except to a Qualified Renter and in accordance with the following additional requirements:

- a) The Rental Housing Units will be occupied as follows:
 - i. two of the Rental Housing Units will be occupied as Deep Subsidy Units, with each unit having not less than one bedroom;
 - ii. five of the Rental Housing Units will be occupied as Rent Geared to Income Units,
 - iii. three of the Rental Housing Units will be occupied as Market Rental Units.
- b) The monthly rent charged for a Rental Housing Unit will not exceed the Permitted Rent applicable to the Rental Housing Unit, and the Permitted Rent applicable to a unit is determined by the class of Eligible Tenant that occupies such unit. The Owner may increase the monthly rent under an existing Tenancy Agreement 12 months after the existing rent was initially established for the existing Tenants or 12 months after the date of the last rent increase allowed under this Agreement and by the maximum rent increase amount dictated by the *Residential Tenancy Act*.
- c) The Rental Housing Unit will be used or occupied only pursuant to a Tenancy Agreement.
- d) The Rental Housing Unit will be rented on a month-to-month basis or for a fixed term of one year or less.
- e) The Rental Housing Unit will only be occupied and rented to a Qualified Tenant, who will occupy the Rental Housing Unit as their permanent, principal and sole residence.
- f) The Owner will not require any Tenant under a Tenancy Agreement to pay any extra charges or fees for use of any common area or amenity, or for sanitary sewer, storm sewer, water utilities, property taxes and similar services. For clarity, this limitation does not apply to cablevision, telecommunications, laundry, or gas or electricity utility fees or charges.
- g) The Tenancy Agreement shall include a clause entitling the Owner to terminate the Tenancy Agreement if any of the following occur (each of which constitutes a "Tenancy Default"):
 - i. the Tenant subleases the Rental Housing Unit or assigns the Tenancy Agreement in whole or in part, without the Owner's consent; and
 - ii. the Tenant makes the Rental Housing Unit available, use, or allows it to be used as a short-term or vacation rental.
- h) In the event of a Tenancy Default, the Owner will end the Tenancy Agreement by

providing notice to the Tenant that ends the tenancy on the earliest date possible permitted under the *Residential Tenancy Act* and will cause the Tenant to vacate by that date.

- i) The Owner will not consent to the assignment of a Tenancy Agreement or the subletting of a Rental Housing Unit.
- j) The Owner will deliver to the Local Trust Committee a true copy of every Tenancy Agreement entered into in respect of any Rental Housing Unit within 10 business days of any request to do so.

2.4 Policies/Rules and Regulations/Administration by Owner

The Owner is authorized to make and administer rules, regulations and policies necessary to fully implement and achieve the policy goals set out in this Agreement. Such rules, regulations and policies may include, but are not limited to, the following:

- a) Establishing and maintaining a wait list of potential Qualified Renters; and,
- b) Establishing, administering and enforcing a rental policy applicable to the terms of this Agreement and in accordance with the *Residential Tenancy Act*.

2.5 Monitoring and Reporting to the Local Trust Committee

The Owner must deliver to the Local Trust Committee upon request, a completed statutory declaration, substantially in the form attached as **Schedule "A"**, sworn by the Owner. The Local Trust Committee may request this statutory declaration up to four times in any calendar year, and the Owner must complete and supply the completed statutory declaration within 30 business days of receiving a request from the Local Trust Committee. The Owner irrevocably authorizes the Local Trust Committee to make reasonable inquiries it considers necessary in order to confirm compliance with this Agreement.

2.6 Owner May Request Revision of Terms

The Owner may request that the Local Trust Committee modify the terms of this Agreement, aside from section 2.1 and 2.2, in order to meet requirements imposed by an entity that has conditionally agreed to provide the funding to the Owner to construct the Rental Housing Units or operate the Rental Housing Units, or to do both, so that the terms of this Agreement do not conflict with such requirements.

Article 3 – General Terms

3.1 Demolition

The Owner will not demolish a Building or a Rental Housing Unit unless:

- (a) the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length to the Owner that it is no longer reasonable or practical to repair or replace any structural component of the Building or such Rental Housing Unit without demolishing same, and the Owner has delivered to the Local Trust Committee a copy of the engineer's or architect's report; or
- (b) the Building or such Rental Housing Unit is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the Local Trust Committee, in its sole discretion,

and, in each case, a demolition permit for the Building or such Rental Housing Unit has been issued by the Capital Regional District. Upon the issuance of such demolition permit, the Owner will completely demolish the Building or such Rental Housing Unit, as the case may be, under that permit.

3.2 Management

The Owner covenants and agrees that:

- a) it will furnish, or cause a Permitted Housing Operator to furnish, good and efficient management of the Rental Housing Units and will permit the Local Trust Committee to inspect the Rental Housing Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*; and
- b) if the Owner is not a Permitted Housing Operator, the Owner will at all times cause a Permitted Housing Operator to administer, manage and operate the Rental Housing Units and will cause that Permitted Housing Operator to administer, manage and operate the Rental Housing Units in accordance with all of the restrictions and requirements of this Agreement and the Owner's obligations under this Agreement. For clarity, the Owner's engagement of a Permitted Housing Operator pursuant to this Agreement will not relieve the Owner from any of the Owner's obligations under this Agreement or any of the restrictions or requirements of this Agreement.

3.3 Discharge

- a) After the Rezoning, the Owner intends to subdivide the Lands as shown on the proposed subdivision plan attached hereto as Schedule "C" to create parcels equivalent in size and configuration to those labelled Lot 1, Lot 2, and Lot 3.
- b) Upon subdivision of the Lands and creation of a legal parcel equivalent in size, location and configuration of the parcel shown as Lot 3 on the proposed subdivision plan attached hereto (the "Lot 3 Equivalent"), the Owner may, at its sole cost, direct its solicitor to prepare a release of this Agreement from any parcel that is not the Lot 3 Equivalent (the "Release"), and deliver it to the Local Trust Committee.

- c) Upon review of the Release, if the Local Trust Committee is satisfied that the Lot 3 Equivalent is equivalent to the Lot 3 shown on the proposed subdivision plan and that, after the Release is filed, this Agreement will remain on title and continue to bind the owner of the Lot 3 Equivalent, the Local Trust Committee will execute the Release and return it to the Owner within a reasonable time.
- d) Upon receipt of the executed Release from the Local Trust Committee, the Owner may file the Release in the LTO.

3.4 Order to Comply

If the Owner is in default of the performance or observance of this Agreement, the Local Trust Committee may give the Owner a notice of default requiring the Owner to comply with this Agreement within the time stated in the notice. The Owner agrees that any breach or default in the performance of this Agreement on its part must be corrected, to the satisfaction of the Local Trust Committee, within the time stated on the notice of default provided to the Owner by the Local Trust Committee.

3.5 Society Standing

If the Owner is a society, the Owner must maintain its standing as a society under the *Society Act* (British Columbia) and must not amend its Constitution in any manner that would prevent, or adversely affect, the ability of the Society to perform its obligations under this Agreement.

3.6 Specific Performance of Agreement

The Owner agrees that the Local Trust Committee is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement, in view of the public interest in restricting the occupancy of the Rental Housing Units. The Owner further acknowledges that a breach of this Agreement may constitute a breach of the Local Trust Committee's Land Use Bylaw, as amended from time to time.

3.7 Assignment

The Owner acknowledges that the Local Trust Committee may delegate or assign the administration and management of this Agreement to a third party, and in that event, any reference in this Agreement to the Local Trust Committee shall be interpreted as a reference to that party provided that the Local Trust Committee has also advised the Owner.

3.8 Indemnity

The Owner shall indemnify and save harmless the Local Trust Committee and each of its elected officials, officers, directors, employees and agents from and against all claims, demands, actions, loss, damage, costs and liabilities for which any of them may be liable by reason of any act or omission of the Owner or its officers, directors, employees, agents or contractors or any other person for whom the Owner is by law responsible, including breaches

of this Agreement. This clause will survive the termination clause of this Agreement.

3.9 Release

The Owner releases and forever discharges the Local Trust Committee and each of its elected officials, officers, directors, employees and agents and each of their heirs, executors, administrators, personal representatives, successors and assigns from all claims, demands, damages, actions or causes of action arising out of advice or direction respecting the ownership, lease, operation or management of the Land or the Housing Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them. This clause will survive the termination clause of this Agreement.

3.10 Local Trust Committee Powers Unaffected

This Agreement does not limit the discretion, rights, duties or powers of the Local Trust Committee under any enactment or the common law, impose on the Local Trust Committee any duty or obligation, affect or limit any enactment relating to the use of the Lands, or relieve the Owner from complying with any enactment.

3.11 No Public Law Duty

Wherever in this Agreement an act, determination, consent, approval or agreement of the Local Trust Committee is provided for, such act, determination, consent, approval or agreement may be done or made in accordance with the terms of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice shall have any application.

3.12 No Waiver

No condoning, excusing or overlooking by the Local Trust Committee of any default under this Agreement, nor any consent, approval or agreement whether written or otherwise shall be taken to operate as a waiver by the Local Trust Committee of any subsequent default or of the necessity for further consent, approval or agreement in respect of a subsequent matter requiring it under this Agreement, or in any way to defeat or affect the rights or remedies of the Local Trust Committee.

3.13 Notice on Title

The Owner acknowledges and agrees that this Agreement constitutes both a covenant under Section 219 of the *Land Title Act* and a housing agreement under Section 483 of the *Local Government Act*, the Trust Committee is required to file a notice of housing agreement in the Land Title Office against title to the Lands, and once such a notice is filed, this Agreement binds all persons who acquire an interest in the Lands as a housing agreement under Section 483 of the *Local Government Act*.

3.14 Covenant Runs with the Land

Every obligation and covenant of the Owner in this Agreement constitutes both a contractual

obligation and a covenant granted by the Owner to the Local Trust Committee in accordance with Section 219 of the *Land Title Act* in respect of the Lands and this Agreement burdens the Lands and runs with it and binds the Owner's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including, by subdivision or by strata plan.

3.15 Limitation of the Owners' Obligations

The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands.

3.16 Amendment and Termination

This Agreement may not be modified or amended except by bylaw of the Local Trust Committee, upon an agreement in writing between the Local Trust Committee and the Owner.

3.17 Notices

Any notice required to be given pursuant to this Agreement shall be in writing and shall be given to the Owner or the Local Trust Committee, as the case may be, at the address first above written, or to any other address of which either the Owner or the Local Trust Committee may advise the others in writing in accordance with this paragraph. Notice to the Local Trust Committee must be addressed to the Secretary of the Islands Trust. If given in person or by facsimile transmission, such notice will be deemed to have been received when delivered and, if mailed, such notice will be deemed to be received only when actually received by the party to whom it is addressed.

3.18 Enurement

This Agreement is binding upon and enures to the benefit of the parties and their respective successors and permitted assigns.

3.19 Remedies Cumulative

The remedies of the Local Trust Committee specified in this Agreement are cumulative and are in addition to any remedies the Local Trust Committee at law or in equity. No remedy shall be deemed to be exclusive, and the Local Trust Committee may from time to time have recourse to one or more or all of the available remedies specified herein or at law or in equity.

3.20 Severability

If any term or provision of this Agreement, or its application to any person or circumstance shall to any extent be found to be invalid and unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

3.21 Joint and Several

In the case of more than one Owner, the grants, covenants, conditions, provisions, agreements, rights, power, privileges and liabilities of the Owner shall be construed and held to be several as well as joint.

3.22 Further Acts

The Owner will do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

3.23 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia.

3.24 Joint Venture

Nothing in this Agreement shall constitute the Owner as an agent, joint venture or partner of the Local Trust Committee or give the Owner any authority or power to bind the Local Trust Committee in any way.

3.25 Time of Essence

Time is of the essence in this Agreement.

3.25 Further Assurances

The parties shall execute and do all such further deeds, acts, things and assurances as they reasonably require to carry out the intent of this Agreement.

3.26 Priority

The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement is registered against title to the Lands with priority over all financial charges, liens and encumbrances, and any leases and options to purchase, registered or pending at the time of application for registration of this Agreement.

3.26 Deed and Contract

By executing and delivering this Agreement, each of the parties intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

CONSENT AND PRIORITY AGREEMENT

WHEREAS COMPUTERSHARE TRUST COMPANY OF CANADA, Inc. No. A052313 (the “Chargeholder”) is the holder of a Mortgage (the “Charge”) encumbering the lands (the “Lands”) described in item 2 of the *Land Title Act* Form C attached hereto, which was registered in the Victoria Land Title Office under number CA2493482.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant attached hereto (the “Covenant”) and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder’s right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form C above which is attached hereto and forms part of this Agreement.

CONSENT AND PRIORITY AGREEMENT

WHEREAS THE TORONTO-DOMINION BANK (the “Chargeholder”) is the holder of a Mortgage (the “Charge”) encumbering the lands (the “Lands”) described in item 2 of the *Land Title Act* Form C attached hereto, which was registered in the Victoria Land Title Office under number CA7179193.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant attached hereto (the “Covenant”) and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder’s right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form C above which is attached hereto and forms part of this Agreement.

SCHEDULE “A”

OWNER STATUTORY DECLARATION

CANADA

IN THE MATTER OF A HOUSING AGREEMENT

PROVINCE OF BRITISH COLUMBIA

WITH THE MAYNE ISLAND LOCAL TRUST
COMMITTEE (“Housing Agreement”)

I, _____ declare that:

1. I am the _____ [director, officer, employee] of the [Owner’s], the owner of the land, known as _____ [address], Mayne Island, legally described as
Parcel Identifier: _____
Legal Description: _____
 (“the Lands”).
2. I make this declaration to the best of my personal knowledge.
3. This declaration is made pursuant to the Housing Agreement registered against the Lands.
4. For the period from _____ to _____, the Rental Housing Units were only used by Qualified Renters (as defined in the Housing Agreement).
5. At no time during the last year were any of the Rental Housing Units used as a short-term vacation rental.
6. The rental payments charged for the Rental Housing Units were in compliance with the Housing Agreement and are listed in the attached list.
7. No subletting of the Lands has been permitted.
8. I acknowledge and agree to comply with all of the Owners’ obligations under the Housing Agreement, and other charges registered against the Lands and confirm that the Owner has complied with all of its obligations under these Agreements.
9. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at _____, British Columbia, this _____ day of _____, 20____.

A Commissioner for taking Affidavits in
British Columbia

Signature of person making declaration

SCHEDULE “B”

Definition of a Qualified Renter

A Qualified Renter means a person aged 19 years or older who fits into at least one of the following categories, which are not listed in any particular priority order:

- 1) Has been living on Mayne Island for a minimum of one year; or
- 2) Is registered or is eligible to be a registered member of a First Nation with rights and responsibilities in and around what is known as Mayne Island, or, is considered by members of these First Nation communities to be part of the First Nation community regardless of current location of residence or work.

Except that where there are no persons meeting the categories specified in clause 1), 2), who make an application to rent an available unit and the lack of applications would result in the unit being vacant for more than one month, then a Qualified Renter may be a person aged 19 years or older who fits into at least one of the following categories, which are not listed in any particular priority order:

- a. Previous resident of Mayne Island who has lived away from the island for a maximum of three consecutive years; or
- b. Non-resident of Mayne Island who is hired to begin at least half-time work (20 hours per week) on Mayne Island; or
- c. A person who has been living on Mayne Island for less than a year but more than 6 months;
- d. A person with immediate family already living on Mayne Island. Immediate family means an individual to whom the person is related by blood, or by marriage, or common-law relationship, or by adoption.

Except that where there are no persons meeting the categories specified in clause 1), 2), or 3), nor a., b., c., d., e., or f. who make an application to rent an available unit and the lack of applications would result in a unit being vacant for more than one month, then a Qualified Occupant may be any person permitted by the funding organization

SCHEDULE “C”

Proposed Subdivision Plan

[Attach Proposed Full Size version of Subdivision Plan]

Commented [NC1]: This may be included with the covenant instead. Still to be determined.

PART 2 - TERMS OF INSTRUMENT

SECTION 219 COVENANT (Water Supply)

This Agreement dated for reference March 9, 2021 is between:

(the “**Owner**”)

AND:

MAYNE ISLAND LOCAL TRUST COMMITTEE, a corporation under the *Island Trust Act*, R.S.B.C. 1996, c. 239, having an office at Suite 200, 1627 Fort Street, Victoria, British Columbia, V8R 1H8

(the “**Local Trust Committee**”)

GIVEN THAT:

- A. The Owner is the registered owner of land on Mayne Island more particularly described as:
(the “**Land**”).
- B. The Owner proposes to subdivide and develop the Land for residential use.
- C. The Owner wishes to grant the Local Trust Committee and the Capital Regional District a covenant under s. 219 of the *Land Title Act* (British Columbia) to regulate the use of the Land.

NOW THEREFORE, in consideration of the payment of \$2.00 by the Local Trust Committee to the Owner (the receipt and sufficiency of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the Owner covenants and agrees with the Local Trust Committee in accordance with s. 219 of the *Land Title Act* (British Columbia) as follows:

Approvals

- 1. Where this Agreement requires the approval of the Local Trust Committee, approval may be given by the Islands Trust’s Regional Planning Manager, Southern Team and must, if given, be in writing.

Restriction on Use and Subdivision

- 2. The Owner shall not use or occupy the Land or any area into which the Land may be subdivided, for any residential or domestic purpose, unless the Owner is in full compliance with the terms of this Agreement.
- 3. The Land shall not be subdivided except to create lots having boundaries generally in accordance with the subdivision plan attached to this Agreement as Schedule A (the “**Subdivision Plan**”).
- 4. In this Agreement a reference to a numbered “Lot” is a reference to that Lot or area of the Land as shown on the Subdivision Plan, whether or not the Land has been subdivided.

Lot 3 Water Supply

5. The Owner of Lot 3 shall not start the construction or placement of any new residential building or structure on Lot 3 until the Owner has submitted to the Local Trust Committee and received the Local Trust Committee's approval of, a design for a water treatment system (the "**Water Treatment System**") for Lot 3 which is effective to make the water from any well that is proposed to supply domestic water in respect of any use of Lot 3 potable. Reference to the term "**potable**" in this Agreement shall mean that the water is safe to drink and suitable for domestic purposes and, without limiting the foregoing, meets a standard for potability no less than that specified in both the Land Use Bylaw and the Guidelines for Canadian Drinking Water Quality, as those standards may be revised from time to time. The design for the Water Treatment System shall be prepared by a certified water treatment specialist having professional qualifications acceptable to the Local Trust Committee acting reasonably (a "**Specialist**"), and shall include recommendations for ongoing maintenance to ensure the Water Treatment System continues to function as designed (the "**Maintenance Recommendations**").

6. No part of Lot 3, or any building or structure on Lot 3, shall be used or occupied for residential purposes, nor shall the Owner of Lot 3 request an occupancy permit for any building or structure on Lot 3, until the Owner of Lot 3 has installed the Water Treatment System and provided to the Local Trust Committee written confirmation from a Specialist that the Water Treatment System is operating as designed, and in particular, is capable of delivering sufficient potable water for residential uses on Lot 3.

7. The Owner of Lot 3 shall maintain the Water Treatment System in accordance with the Maintenance Recommendations and any manufacturer's instructions, and shall within 30 days of receiving a written request from the Local Trust Committee, provide written confirmation from a Specialist that the Water Treatment System has been properly maintained and is functioning as designed and intended.

Remediation and preservation of Land

8. No building, land alteration, construction or development is permitted on Lot 2 or Lot 3 except in accordance with all of the recommendations contained in the each of the following two reports (together, the "Environmental Reports"), excerpts of which are attached to this Covenant as Schedule B, and copies of which are held on file at the offices of the Local Trust Committee:

- (a) "Ecological Assessment Report for Proposed Affordable Housing Property", prepared by Keith Erickson and dated September 21st, 2020;
- (b) "Wetland Restoration Design Report", prepared by Robin Annschild and dated March 8, 2021;

except that in respect of Lot 2, the requirement to follow the recommendations of the Wetland Restoration Design Report for wetland remediation only applies to the area labelled "Wetland Remediation Zone Lot 2" on the Subdivision Plan.

9. Neither of Lot 2 or Lot 3 may be used or occupied for residential purposes until:

- (a) the Local Trust Committee has received written confirmation from a suitably qualified professional that the recommendations in the Environmental Reports have been adhered to and implemented where applicable; and
- (b) if required by the Local Trust Committee in its sole discretion, the title of Lot 2 or Lot 3 is charged with a further covenant to ensure ongoing preservation of any areas of land,

trees, or other vegetation on Lot 2 or 3 that are identified for preservation in the Environmental Reports.

Lot 3 Construction

10. No buildings shall be constructed or developed on Lot 3, except in the areas of Lot 3 where buildings are shown on the Subdivision Plan, and subject to such further minor alterations as may be authorized by the Local Trust Committee.

Lot 2 Construction

11. No building or structure shall be constructed, placed or Located on Lot 2 except within the area of Lot 2 shown as "Building Zone" on the Subdivision Plan.

12. The Owner of Lot 2 shall not start the construction of any building or structure on Lot 2 until the Owner of Lot 3 has completed the construction of, and received any occupancy permit required by the Capital Regional District for, at least XXX units of affordable housing, on Lot 3.

No Effect on Laws or Powers

13. This Agreement does not

- (a) affect or limit the discretion, rights, duties or powers of the Local Trust Committee under any enactment or at common law, including in relation to the use or subdivision of the Land except as expressly set out herein;
- (b) impose on the Local Trust Committee any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement except as expressly set out herein;
- (c) affect or limit any enactment relating to the use or subdivision of the Land;
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

Limitation on Obligations

14. The Owner is only liable for breaches of this Agreement caused or contributed to by the Owner or which the Owner permits or allows. The Owner is not liable for the consequences of the requirements of any enactments or law or any order, directive, ruling or government action thereunder. The Owner is liable only for breaches of this Agreement which occur while the Owner is the registered owner of any interest in the Land and then only to the extent of that interest.

No Liability in Tort

15. The parties agree that this Agreement creates only contractual obligations. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract.

Covenant Runs With the Land

16. Unless it is otherwise expressly provided in this Agreement, every obligation and covenant of the Owner in this Agreement constitutes a personal covenant and also a covenant granted under s. 219 of the Land Title Act (British Columbia) in respect of the Land. This Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated.

Registration

17. The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered or pending registration in the Land Title Office at the time of application for registration of this Agreement.

Waiver

18. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

Severance

19. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

No Other Agreements

20. This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

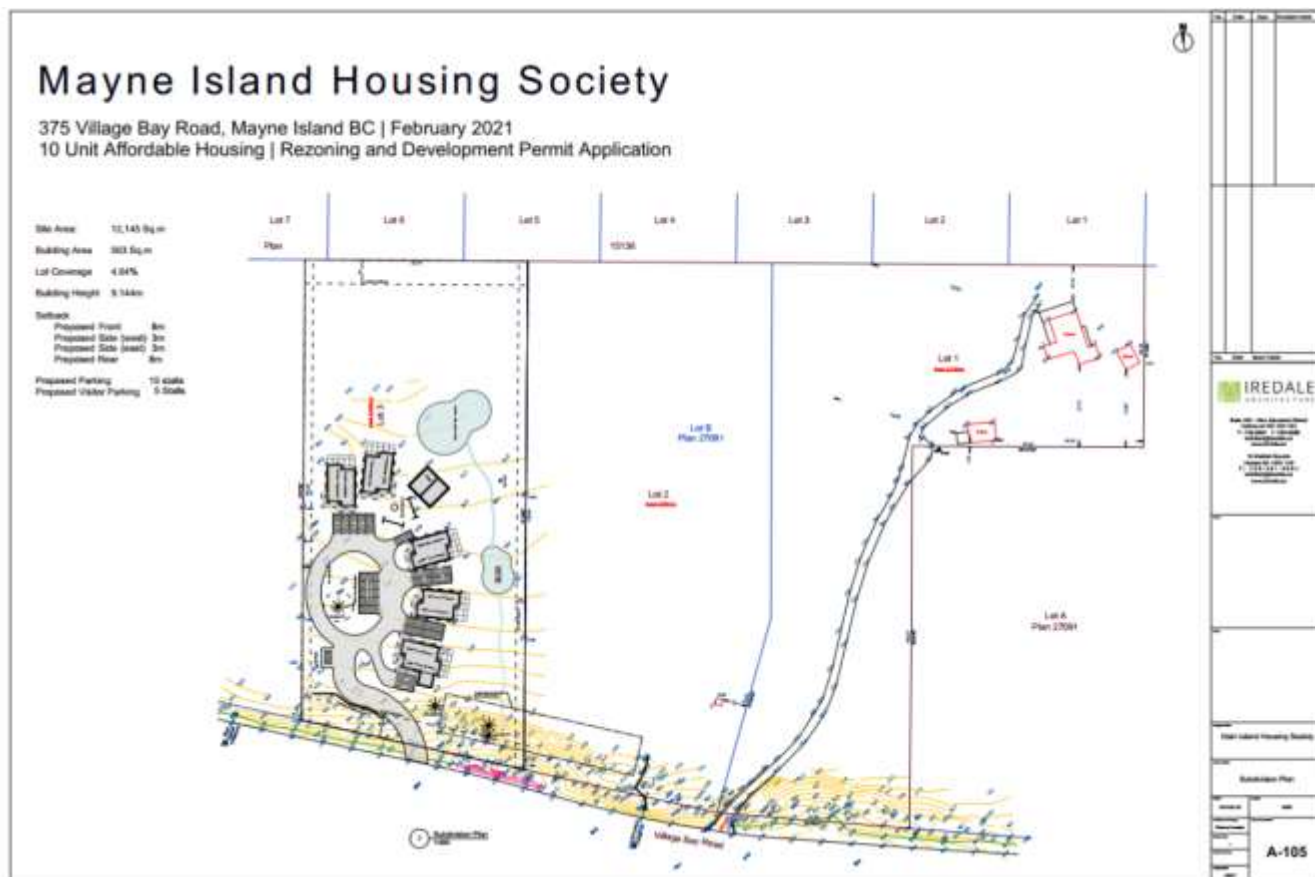
Binding of Successors

21. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

Execution Using Form C

22. As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement by executing Part 1 of the Land Title Act Form C to which this Agreement is attached and which forms part of this Agreement.

SCHEDULE A – THE SUBDIVISION PLAN



Schedule B – Environmental Report Excerpts

To be completed

DRAFT

MAYNE ISLAND LOCAL TRUST COMMITTEE BYLAW NO. 181

A BYLAW TO AMEND MAYNE ISLAND OFFICIAL COMMUNITY PLAN BYLAW NO. 144, 2007

The Mayne Island Local Trust Committee enacts in open meeting assembled as follows:

1. CITATION

This Bylaw may be cited for all purposes as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021”.

2. SCHEDULES

Mayne Island Official Community Plan No. 144, 2007 is amended as shown on Schedule 1, attached to and forming part of this bylaw.

3. SEVERABILITY

If any provision of this Bylaw is for any reason held to be invalid by a decision of any Court of competent jurisdiction, the invalid provision must be severed from the Bylaw and the decision that such provision is invalid must not affect the validity of the remaining provisions of the Bylaw.

READ A FIRST TIME THIS _____ DAY OF _____ 2021.

READ A SECOND TIME THIS _____ DAY OF _____ 2021.

READ A THIRD TIME THIS _____ DAY OF _____ 2021.

PUBLIC HEARING HELD THIS _____ DAY OF _____ 2021.

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS _____ DAY OF _____ 20__

APPROVED BY THE MINISTER MUNICIPAL AFFAIRS AND HOUSING
THIS _____ DAY OF _____ 20__

ADOPTED THIS _____ DAY OF _____ 20__

Chair

Secretary

**MAYNE ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 181**

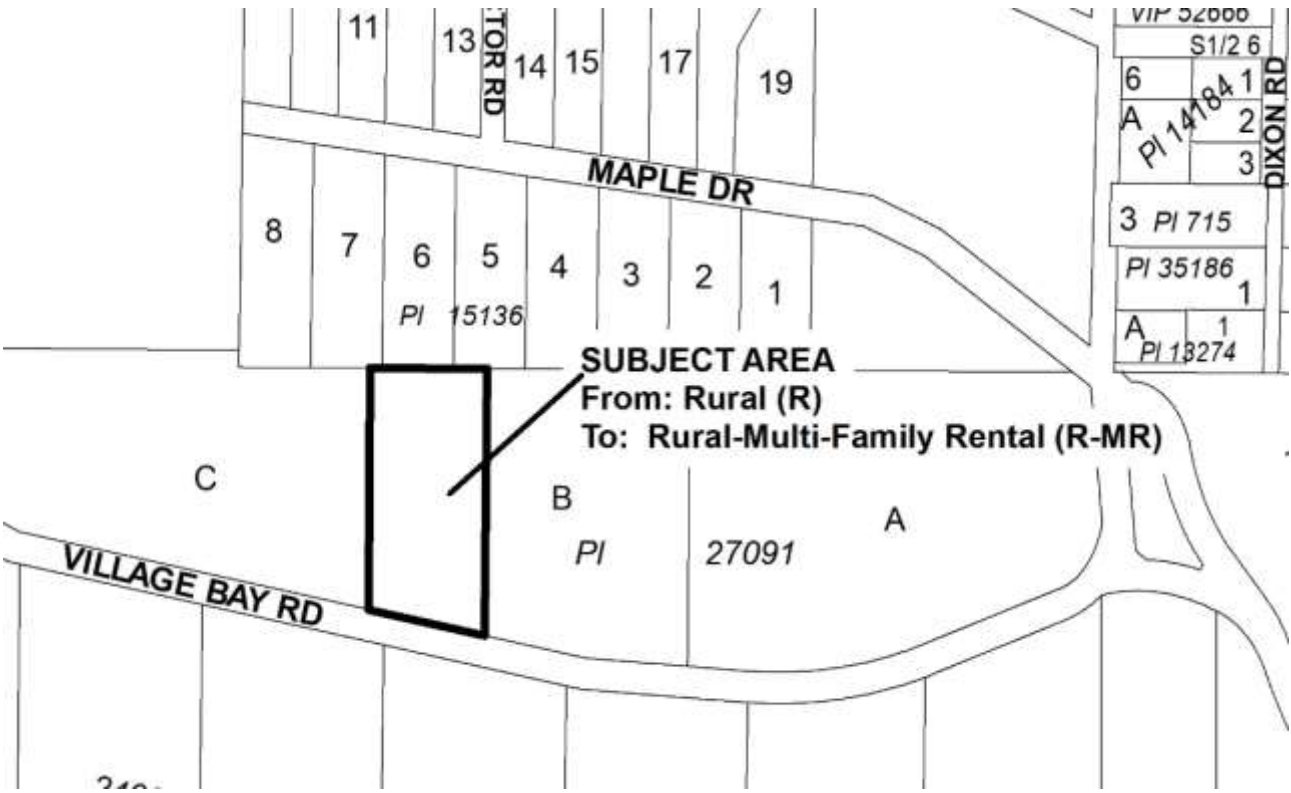
SCHEDULE 1

The Mayne Island Official Community Plan No. 144, 2007, is amended as follows:

1. By amending Schedule B by changing the land use designation on a portion of Lot B, Section 7, Mayne Island, Cowichan District Plan 27091 from Rural (R) to Rural – Multi-Family Residential (R-MR) as shown on Plan No. 1, which is attached to and forms part of this bylaw.

MAYNE ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 181

Plan No.1



DRAFT

MAYNE ISLAND LOCAL TRUST COMMITTEE BYLAW NO. 183

A BYLAW TO AMEND MAYNE ISLAND LAND USE BYLAW NO. 146, 2008

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

1. Citation

This bylaw may be cited for all purposes as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021”.

2. Mayne Island Local Trust Committee Bylaw No. 146, cited as “Mayne Island Land Use Bylaw No. 146, 2008,” is amended as follows:

2.1 By adding to Definitions ““Multi-family rental housing” means residential use of attached dwelling units that are limited to residential rental tenure.’

2.2 By adding to the definition of Dwelling unit “multi-family housing” after “secondary suite”

2.3 By adding to Definitions ““Residential rental tenure” means the granting of a right to occupy a dwelling unit as living accommodation where the minimum occupancy period is thirty consecutive days, and where the dwelling unit is not owned by a dwelling unit occupant, but where regular payments are made to the owner for the use of the dwelling unit.’

2.4 By inserting a new row in the table in subsection to 5.5 (14) in the Rural (R) zone as follows:

Column 1	Column 2	Column 3
Site-Specific Zone	Location Description	Site Specific Regulations
R (f)	A portion of Lot B, Section 7, Mayne Island, Cowichan District Plan 27091	(1) Despite 5.5(13) above the average lot area must not be less than 1.3 hectares (3.3 acres).

2.5 By adding “5.28 Comprehensive Development Three (CD3) Zone” as a new zone following subsection 5.27:

“The purpose of the Comprehensive Development Three Zone is to provide for and regulate the development of multi-family rental housing.

Permitted Uses

(1) The following uses are permitted, subject to the regulations set out in this Section and the general regulations, and all other uses are prohibited:

- (a) Multi-family rental housing
- (b) Accessory uses, buildings and structures

Density

- (2) The maximum number of dwelling units in the CD3 zone is 10
- (3) The maximum lot coverage is 20%.

Size and Siting

- (4) The minimum setback for any building or structure is:
 - (a) 8 metres (26 feet) from any front, rear or exterior side lot line;
 - (b) ~~8.3~~ metres (~~26.49~~ feet) from any interior side lot line;
- (5) The maximum height for any dwelling unit is 9 metres (29.5 feet).
- (6) The maximum height for any accessory building or structure is 5 metres (16.5 feet).

Subdivision Lot Area Requirements

- (7) The minimum lot area is 1.3 hectares (3.3 acres).

Form of Tenure

- (8) All dwelling units in the Comprehensive Development Three (CD3) Zone shall be limited to residential rental tenure."

- 2.6 By adding "Comprehensive Development Three CD3" to 4.1(1) (Division into Zones) following "Comprehensive Development Two CD2"
- 2.7 Schedule "B" – Zoning Map, is amended by changing the zoning classification of a portion of Lot B, Section 7, Mayne Island, Cowichan District Plan 27091, from Rural (R) to Comprehensive Development Three (CD3) as shown on Plan No.1, which is attached to and forms part of this bylaw, and by making such alterations to Schedule "B" to Bylaw No. 146 as required to effect this change.
- 2.8 Schedule "B" – Zoning Map, is amended by changing the zoning classification of a portion of Lot B, Section 7, Mayne Island, Cowichan District Plan 27091, from Rural (R) to (R(f) as shown on Plan No.1, which is attached to and forms part of this bylaw, and by making such alterations to Schedule "B" to Bylaw No. 146 as required to effect this change.
- 2.9 Schedule "D" – Zoning Map, is amended by removing a portion of Lot B, Section 7, Mayne Island, Cowichan District Plan 27091 from " areas where secondary suites are permitted" as shown on Plan No.2, which is attached to and forms part of this bylaw, and the making of such alterations to Schedule "D" to Bylaw No.146 as required to effect this change.

3. SEVERABILITY

If any provision of this Bylaw is for any reason held to be invalid by a decision of any Court of competent jurisdiction, the invalid provision must be severed from the Bylaw and the decision that such provision is invalid must not affect the validity of the remaining provisions of the Bylaw.

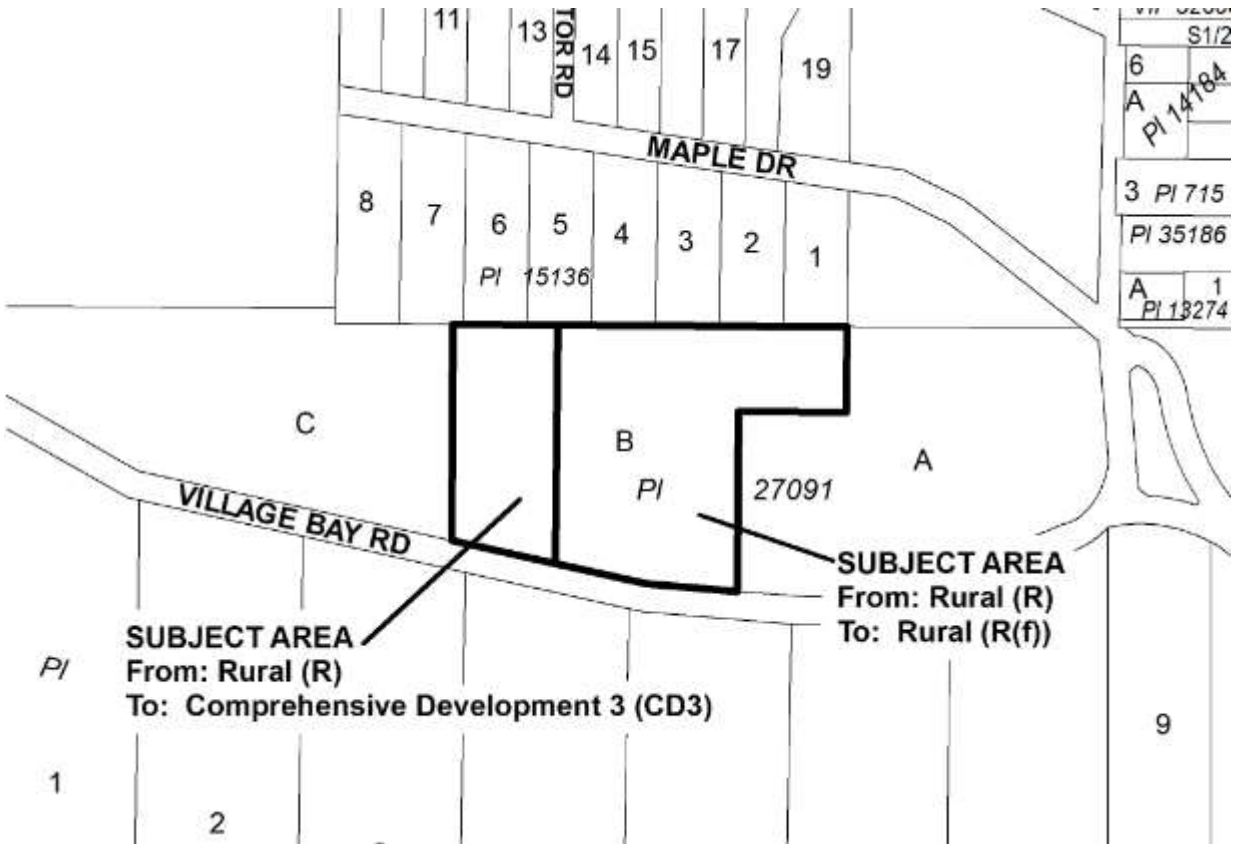
READ A FIRST TIME THIS	DAY OF	2021.
READ A SECOND TIME THIS	DAY OF	2021.
READ A THIRD TIME THIS	DAY OF	2021.
PUBLIC HEARING HELD THIS	DAY OF	2021.
APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS	DAY OF	20__
ADOPTED THIS	DAY OF	20__

Chair

Secretary

MAYNE ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 183

Plan No. 1



MAYNE ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 183

Plan No. 2

