

DATE OF MEETING: July 25, 2022
TO: Mayne Island Local Trust Committee
FROM: Narissa Chadwick, Island Planner
Southern Team
COPY: Robert Kojima, Regional Planning Manager
SUBJECT: Mayne Island Housing Society Rezoning - Covenant Options

RECOMMENDATION

1. That the Mayne Island Local Trust Committee request staff draft a suitably worded s. 219 covenant.

REPORT SUMMARY

The purpose of this report is to review MIHS's proposal for additional amendments to the Section 219 Covenant and identify next steps.

BACKGROUND

At the June 27, 2022 regular meeting the LTC gave first reading to the bylaws supporting the rezoning of 375 Village Bay Road to allow for subdivision into three lots and to support the development of 10 units of rental housing. The LTC requested staff schedule a Community Information Meeting and Public Hearing following the receipt of final drafts of the Housing Agreement and Covenant. Following a discussion related to the water on the site as a potential community amenity, the LTC also requested staff send a letter to all water providers to identify the value of having an on island water source versus trucking water in from off island.

The contents of the Housing Agreement have been agreed to by the MIHS and the LTC. The contents of the Covenant are still being discussed.

Since the last draft of the Covenant was presented to the LTC there were three items to be addressed.

1. Commitment to maintenance and monitoring of septic system.
2. Identification of the time at which Lot 2 can be built on.
3. A "sunset clause" for Lot 3.

ANALYSIS

The three issues identified are discussed below.

Commitment to maintenance and monitoring of septic system

The LTC had raised concerns related to the maintenance and monitoring of the septic system to ensure that there would be no impact to neighbouring properties. The MIHS has added to the covenant language that addresses this commitment to (see below). Staff feel that the covenant language provided by the MIHS addresses the LTC's interest. As the Province and Health Authority have roles in regulating septic systems the MIHS will have additional requirements to adhere to with respect to septic installation and maintenance.

The covenant language proposed by the MIHS is as follows:

Lot 3 Septic

1. *No building or structure shall be constructed on Lot 3 until the Owner of Lot 3 has had a design for a septic system prepared by a Septic Specialist that shall include recommendations for ongoing maintenance to ensure the system continues to function and to ensure the system is sufficient for residential uses on Lot 3 (the "Septic System Design").*
2. *The Owner of Lot 3 shall maintain a septic system in accordance with the Septic System Design and any manufacturer's instructions, as may be amended from time to time and when the septic system reaches the end of its life, the Owner of Lot 3 shall replace the septic system in accordance with the recommendations of a Septic Specialist.*
3. *The Owner of Lot 3 shall ensure that any replacement septic system is sufficient for residential uses on Lot 3 and shall maintain any replacement septic system in accordance with the recommendations of a Septic Specialist, at the time of replacement, and any manufacturer's instructions, as may be amended from time to time.*
4. *The Owner of Lot 3 shall, within 30 days of receiving a written request from the Local Trust Committee, provide written confirmation from a Septic Specialist that the septic system has been properly maintained and is functioning as designed and intended. The Local Trust Committee may make a written request not more than once every calendar year.*

Identification of time at which Lot 2 can be built on

The creation of and ability to build on Lot 2 is tied to the provision of a community amenity.

As indicated in the Official Community Plan Amenity Zoning Guidelines:

- 2.10.1 *In the case where a property owner offers to provide a voluntary community amenity as a condition of subdivision or rezoning, consideration may be given to increasing the permitted density on a parcel in any designation other than Public Service, Park or Resource Conservation.*
- 2.10.2 *The following community amenities represent a list of potential community amenities which may be acceptable for consideration under this section:*
 - i) *the provision of land for preservation of unique natural environments and sensitive areas,*
 - ii) *the provision of land to preserve forests, watersheds and wetlands,*

- iii) *the provision of land for community park or public open space,*
- iv) *the provision of land for sewage treatment facilities or community water systems,*
- v) *the provision of community wells for domestic water supply,*
- vi) *the provision of fire fighting storage reservoirs,*
- vii) *the provision of easements or rights of way for utilities or trails,*
- viii) *the provision of community buildings,*
- ix) *the provision of land for community buildings or structures,*
- x) *the provision of community space in a commercial building,*
- xi) *the provision of affordable and special needs housing, and*
- xii) *the provision of any other amenity which is similar in nature to the foregoing and/or is consistent with the objectives and policies of the OCP.*

The MIHS has indicated that the holders of powers of attorney for Sean McHugh would like to build on Lot 2 within the next five years. At the June 27, 2022 LTC meeting the LTC indicated that they were open to discussing options related to permitting building on Lot 2 within 5 years. The creation of Lot 2 is predicated on the provision of affordable housing. The LTC has resolved that a community amenity (currently identified as built housing) be provided before any building on Lot 2 can occur.

The covenant language proposed by the MIHS (see below) would restrict construction on Lot 2 until the construction of 5 units on Lot 3. However, in the proposed covenant language, this restriction would expire five years after the date of subdivision. This expiration provision would not be consistent with the LTC's past resolution. While legal advice is that the OCP would support the provision of land zoned for affordable housing itself as a community amenity, the interpretation of what is a suitable community amenity is at the discretion of the LTC. The LTC has resolved that they do not consider zoning alone as an amenity.

LTC June 21, 2021 Resolution

MA-2021-038

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.

MIHS'a Proposed Covenant Language

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 5 units of affordable housing, on Lot 3. This restriction shall expire five (5) years after the date when the Land is subdivided in accordance with the Subdivision Plan.

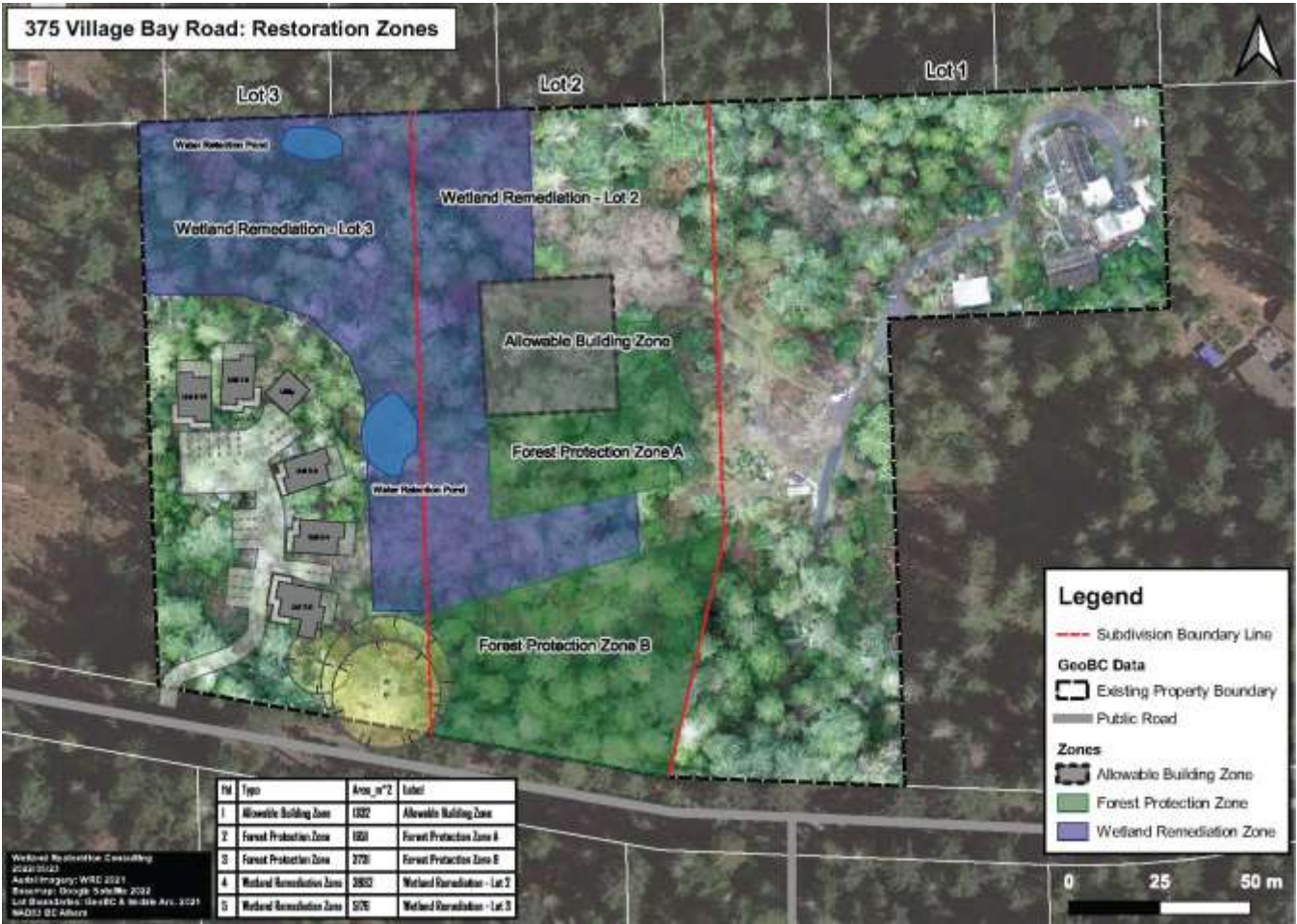
If the LTC still considers that zoning is not a community amenity and the applicant wants to have the ability to build on Lot 2 within 5 years the LTC could consider the following:

- 1) A different measure of the delivery of the affordable housing identified (e.g. funding being secured, water system developed, building permits received)
- 2) Another amenity provided within five years (options discussed below).

Water - The potential of water shared with neighbours and the greater community being a community amenity has been discussed. The MIHS has since indicated that they are not interested in entertaining this option given the multiple issues and challenges related to sharing water. Staff identify that the development of a water service and other alternatives would required additional analysis. Staff point out that the Land Use Bylaw 3.2 (7) prohibits “Retail sale or wholesaling of groundwater extracted on Mayne” in all zones. Staff recommend that until the MIHS is willing to engage in further discussion about sharing water any work to identify interests of water service providers or research related to options such as easements for neighbour access or the development of a water service be put on hold.

Land for conservation - Land for conservation purposes would be an alternative amenity contribution enabling the development on Lot 2. This was originally with reference to Lot 3 being preserved for conservation purposes if affordable housing is not built within 10 years. Discussion of whether the lands already identified as Forest Protection and Wetland Restoration on the Subdivision Plan attached to the Covenant could be considered an amenity has not be discussed in detail. These areas are identified in Figure 1 which is proposed to be included as Schedule A of the Section 219 Covenant. The MIHS has indicated on a number of occasions that they would like the LTC to consider this as a community amenity.

Figure 1: Wetland Restoration and Forest Protection Zones



The MIHS has indicated that if Lot 2 cannot be built on within five years the MIHS may lose the opportunity to move forward with the project.

The LTC should provide direction on what would be considered a suitable community amenity to allow building on Lot 2. Until this direction is provided and agreed to by MIHS, the project can not move forward given the direction of the LTC to have a final draft of the covenant available prior to the Community Information Meeting and the Public Hearing.

A “sunset clause” for Lot 3

The “sunset clause” refers to language in the Section 219 covenant which would address what is to happen if the affordable housing is not built. A ten year timeframe had previously been discussed. The LTC has stated that the land should be used for conservation if the housing is not built within ten years. Legal counsel has yet to provide advice on how this can be done for the full lot, as it is not a common approach.

The MIHS has provided staff with draft covenant language which outlines a process which would see the Owner of the property requesting direction from the LTC if housing is not completed within ten years from the date the Land is subdivided. The proposed draft language also suggests that if construction has not begun within 10 years, adequate funding has not been secured or the LTC is of the opinion that the housing will not be built within a reasonable timeframe, the LTC may require that the Owner of Lot 3 transfer the lot to a willing Permitted Housing Operator. If there is no Permitted Housing Operator willing to take over Lot 3, the proposed draft covenant language suggests the LTC could rezone Lot 3.

Staff opinion is that the covenant language proposed by the MIHS, and a “sunset clause” in general, is not necessary and not recommended for the following reasons:

- Identifying a 10 year timeline for engagement with a future LTC would simply be a suggestion, as it is not restriction on the use of the land and cannot bind a future LTC’s land use decisions.
- There are practical challenges with even holding such consultation given changes in LTC membership, staff and MIHS membership over time.
- Given that the only development that will be allowed on Lot 3 is that permitted by the zoning, housing agreement and covenant, if the housing is not built the land would sit undeveloped until such time as the owner applies for amendments to the zoning, housing agreement and covenant.
- Any future LTC has the ability initiate a process to rezone the land should the development not occur, however it could not be rezoned to conservation-only without the landowner’s agreement, as all economic uses cannot be removed from a property without compensation.

ALTERNATIVES

1. Request further information from the applicant

That the Mayne Island Local Trust Committee request that the applicant submit...

2. Request further information from staff

That the Mayne Island Local Trust Committee request that staff provide..

3. Proceed no further

That the Mayne Island Local Trust Committee proceed no further with the application.

NEXT STEPS

If the LTC defines the amenity to be provided prior to development being permitted on Lot 2:

- Staff will draft covenant language
- Draft covenant language will be discussed with the MIHS
- If the MIHS agrees to the draft covenant language, the revised covenant will be shared with the LTC
- If the LTC endorses the draft covenant the draft covenant will be sent for legal review
- If any changes are to be made following legal review they will be shared with the MIHS and the LTC
- Once the MIHS and the LTC agree to the language in the covenant dates for the CIM and the PH will be set

Submitted By:	Narissa Chadwick, Island Planner	July 14, 2022
Concurrence:	Robert Kojima, Regional Planning Manager	July 18, 2022