



STAFF REPORT

File No.: 2023 LUB Minor
Amendments

DATE OF MEETING: September 24, 2023
TO: Mayne Island Local Trust Committee
FROM: Narissa Chadwick, Island Planner
Southern Team
COPY: Robert Kojima
SUBJECT: 2023 LUB Minor Amendment Project

RECOMMENDATION

1. That the Mayne Island Local Trust Committee request staff to prepare a bylaw to amend the Land Use Bylaw in accordance with the staff report dated September 24th, 2023 and any further direction from the LTC provided at the September 24th, 2023 LTC meeting.
2. That the Mayne Island Local Trust Committee request staff to refer to the Advisory Planning Committee (APC) the September 24, 2023 staff report and request that the APC provide recommendations on “Expanding Permission for Contractor Yards” and that the APC report back by November 10th, 2023.
3. That the Mayne Island Local Trust Committee request staff to add to the Mayne Islands Local Trust Committee’s Housing Options Project rezoning , to permit multiple dwelling units, of the portion of the Capital Regional District’s (CRD) land in the Upland zone at the end of Wooddale Drive that the CRD has identified as “surplus land” .

REPORT SUMMARY

The purpose of this report to provide options and recommendations on the items identified by the LTC to include in the 2023 LUB Minor Amendment Project. These items are divided into: Technical Amendments, Amendments to Zoning of Specific Properties, and Amendments Requiring Further Analysis/Discussion. The report also reviews items previously considered for this project but which are out of scope.

BACKGROUND

The LUB minor amendments project is projected to reach first reading by the end of the 2023/24 fiscal year. At their May, June and July 2023 meetings, the LTC identified and discussed topics to include in the project. The project charter as adopted at the July 2023 meeting and the list of options to address was amended at that time.

ANALYSIS AND RECOMMENDATIONS

Technical Amendments


The technical amendments identified below address the need to clarify provisions in the LUB.

TOPIC: CURRENT BYLAW/APPROACH	RECOMMENDATIONS/OPTIONS
<p><u>Shipping Containers</u> Issue: Clarity needed with respect to regulating shipping containers. Current Regulation: Shipping containers are accessory structures and are regulated as such.</p>	<p>Permission could be more explicit like in South Pender’s LUB: <i>“Shipping containers are a permitted accessory use on a lot subject to the following:</i> <i>(a) On a lot less than 0.8 ha (2 acre) in area, a maximum of one (1) shipping container is permitted.</i> <i>(b) On a lot 0.8 (2 acres) or greater in area, but less than 1.2 ha (3 acres) in area, a maximum of two (2) shipping containers are permitted.</i> <i>(c) On a lot with an area greater than 1.2 ha (3 acres), a maximum of three (3) shipping containers are permitted”.</i></p> <p>The LTC will need to decide if they would like to adopt the same approach or something different.</p>
<p><u>Permitted Livestock</u> Issue: List of livestock permitted is restricted to certain types of livestock. Current Regulation: 3.2 <i>Prohibited in All Zones “ For certainty, the following uses, buildigns and structures are prohibited in any zone, except where expressly permitted in Part 5: (1) In all zones except the R and A zones, the keeping on a lot having an area of less than 2000m2 (0.5 acres) of cattle, sheep, goats, pigs, donkeys, llamas, ostriches, emus and more than one horse;</i></p>	<p>North Pender Example: <i>"livestock" means grazing animals kept either in open fields or structures for training, boarding, home use, sales, or breeding and production, including but not limited to: cattle, horses, goats, sheep, hogs, llamas, and alpacas</i></p> <p>Option: Add definition of livestock similar to North Pender definition and amend 3.2 (1) as follows:</p> <p>3.2 Prohibited in All Zones (1) <i>In all zones except the R and A zones, the keeping on a lot having an area of less than 2000m2 (0.5 acres) of cattle, sheep, goats, pigs, donkeys, llamas, ostriches, emus livestock and more than one horse;</i></p>
<p><u>Personal Watercraft</u> Issue: There have been no issues with personal watercraft, no need to regulate Current Regulation: .</p>	<p>Removal of definition of “personal watercraft”</p> <p>Removal of 3.2 (3)</p>

<p>3.2 Prohibited in All Zones (except where expressly permitted) (3) The rental or sale of personal watercraft;</p>	
<p>Definition of Motor Vehicle Issue: Need to regulate derelict boats on land as well as trailers, RVs and vehicles Current Regulation: 3.14 Derelict Vehicles <i>Lots under 1 acre/ 0.4 hectares shall not be used for:</i> (1) the storage of more than one unlicensed motor vehicle, unless the vehicles are stored within a permitted building; (2) the wrecking or storage of derelict or abandoned vehicles, trailers or other discarded machinery or equipment; and (3) the storage of detached or salvaged motor vehicle parts or scrap, unless the parts are stored within a permitted building that is completely enclosed.</p>	<p>Motor Vehicle Act Definition of Motor Vehicle :"motor vehicle" means a vehicle, not run on rails, that is designed to be self-propelled or propelled by electric power obtained from overhead trolley wires, but does not include mobile equipment, a motor assisted cycle or a regulated motorized personal mobility device;</p> <p>The definition of Motor Vehicle appears to include RVs as they are self-propelled. This definition does not include trailers or boats.</p> <p>Option: 3.14 Derelict Vehicles, Boats and Trailers <i>Lots under 1 acre/ 0.4 hectares shall not be used for:</i> (1) the storage of more than one of the following: unlicensed motor vehicle, trailer or boat, unless the vehicles they are stored within a permitted building; (2) the wrecking or storage of derelict or abandoned vehicles, trailers, boats, or other discarded machinery or equipment; and (3) the storage of detached or salvaged motor vehicle, boat or trailer parts or scrap, unless the parts are stored within a permitted building that is completely enclosed.</p>

Amendments Related to Zoning of Specific Properties

The proposed options for amendments identified below are related to technical changes to zoning on specific properties and rezoning of properties to permit uses that are currently permitted through temporary use permit.

PROPERTY/ISSUE	OPTIONS/RECOMMENDATIONS
<p>Bennett Estate (Naylor Road) Issue: CD2 zone is divided into A and B Areas. Residential use only permitted in B.</p> 	<p>Remove Areas A and B and allow all uses throughout CD2 zone. This will provide more flexibility for the development of housing.</p> <p>Currently in "A" - (a) Tourist accommodation; (b) Retail sales; (c) Restaurant; (d) Offices, including financial services and travel agencies; (e) Personal services; (f) Medical and dental clinics; (g) Employee housing; (h) Accessory dwelling units; (i) Accessory uses, buildings and structures.</p>

	Currently in "B" - (a) Residential; (b) Uses, buildings and structures accessory to residential use
<p>Church Property (360 Georgina Point Road) Issue: Property is currently zoned for "Seniors Citizens Housing". Zoning could be made more flexible to accommodate all affordable housing that is not seniors housing exclusively. Property would still have Housing Agreement and Covenant registered on title which restrict occupancy to Seniors.</p>	<p>LTC can make technical changes to language related to use. However the existing housing agreement and covenant would still restrict the type of housing and occupancy. If property is proposed to be developed for affordable housing that is not seniors the Housing Agreement and Covenant can be amended with the consent of the property owner.</p> <p>By changing the zoning the LTC is signally support for amending the housing agreement and covenant at a later date. The housing agreement and covenant will have to be changed in cooperation with the property owner.</p>
<p>Thrift Store (437 Fernhill Road) Issue: Property is zoned settlement residential. Use was permitted through TUP in 2021.</p>	<p>The LTC can make the temporary use permanent by creating a site specific zone in the settlement residential zone. Staff will follow up with the property owner to see if there is interest in an amendment to make the use permanent.</p>
<p>Vet Clinic (500 Felix Jack Road) Issue: Property is zoned settlement residential. Use was permitted through TUP in 2022.</p>	<p>The LTC can make the temporary use permanent by creating a site specific zone in the settlement residential zone. Staff will follow up with the property owner to see if there is interest in an amendment to make the use permanent.</p>
<p>Campbell Bay Musicfest (327 Campbell Bay Road). Property is zoned rural. The original TUP permitting an annual music festival was issued in 2017 and renewed in 2022.</p>	<p>The LTC can make the temporary use permanent by creating a site specific zoning in the rural zone. Staff will follow up with the property owner to see if there is interest in an amendment to make the use permanent.</p>

Amendments Requiring Further Analysis/Discussion

The amendments discussed below would require further analysis and discussion. In some cases staff has recommended no change be made to the LUB. In other cases further analysis, potentially involving the APC, is recommended.

TOPIC: CURRENT BYLAW/APPROACH	ANALYSIS/RECOMMENDATION
<p>BC Ferries Property (487 Letour rd) Issue: Property is currently zoned settlement residential. Property has TUP permitting temporary housing for workers. Area could be used to support other community interests in the future.</p>	<p>This is more than a simple technical amendment as it would require discussions with the property owners (BC Ferries) and the community about the types of uses the property could support and an OCP amendment.</p> <p>Staff Recommendation: Remove from LUB technical review and initiate discussion with BC Ferries about the kinds of uses they would support. Encourage an application for rezoning or add to list for future OCP/LUB update.</p>

<p>Definition of Seawall</p> <p>Issue: There is no definition of seawall in the LUB. Property owners sometimes take measures to protect property from erosion. Greater certainty over what types of approaches are permitted may be useful.</p> <p>Current Regulation: A seawall would be considered a structure. Structures are not permitted in the setback from the sea without a variance, nor on the foreshore without a rezoning.</p>	<p>Issues related to shoreline protection should be part of a shoreline review and may require OCP amendment, including the development of a shoreline DPA.</p> <p>The Mayne OCP 4.2.1.2 (a) permits the LTC to <i>“amend its bylaws to allow erosion protection structures to be regulated through development permits” and (b) “consider on a case by case basis applications from property owners to provide protection of existing structures from foreshore erosion in situations where the erosion protection works will not disrupt natural coastal processes”.</i></p> <p>The Galiano Shoreline DPA identifies hard structures related to the shoreline protection as including rock (rip rap) revetments, gabions, concrete groins, retaining walls or bulkheads and seawalls.</p> <p>Staff Recommendation: the LTC could address shoreline protection and potential development of a shoreline DPA as a major project.</p>
<p>Height of Accessory Buildings in SR</p> <p>Issue: Volume of DVP applications</p> <p>Current Regulation: In zones excluding Rural and Agricultural <i>“The maximum height for any accessory building or structure is 5 metres (16.5 feet)”.</i></p>	<p>In the past five years there have been four applications for development variance permits related to the height of accessory buildings outside the rural and agricultural zones (where permitted height is higher). In all cases the variance did not exceed 6 metres.</p> <p>The LTC could consider permitting an increase in the height of accessory buildings in zones outside rural and agricultural. However, consideration of impacts such as visual and environmental should be considered.</p> <p>Staff recommendation: Make no change at this time. As there are on average less than one DVP related to height of accessory building a year, changing the bylaw is not necessary to address workload. If a change is considered it should not exceed 6 metres as all applications for DVP in the last 5 years were less than 6 metres.</p> <p>As Mayne Island has the second highest number of DVPs (37 in the last 5 years) in the Southern Islands (with Salt Spring being the highest) the LTC may want further analysis and identification of options to address the volume of applications.</p>
<p>Mooring Buoys</p> <p>Issue: Lack of clarity regarding what is permitted</p> <p>Current Regulation: Mooring buoys are not permitted in the Water Protection Zone (W1)</p>	<p>The LTC could choose to permit mooring buoys in the Water Protection Zone (W1). However, unless some kind of regulatory approach is designed to limit the number of buoys providing outright permission for mooring buoys in W2 could lead to a proliferation.</p> <p>Staff recommendation: Make no changes to the bylaw with respect to mooring buoys. This provides the opportunity to enforce if there are issues.</p>
<p>Woodsheds in Setbacks</p> <p>Issue: Perceived volume of applications</p> <p>Current Regulation: woodsheds are not permitted in setbacks</p>	<p>Over the past 5 years there have be 5 applications for development variance permits related to sheds in setbacks. It is not clear how many of these are woodsheds.</p> <p>Option: <i>3.3 (2) No building or structure, except a fence, a patio, utility line, navigational aid, water storage tank not exceeding 3 metres (10 feet) in height,</i></p>

	<p><i>woodshed, or utility shed, may be constructed, reconstructed, moved, extended or located within the setback areas established in the regulations in Part 5 of this Bylaw.</i></p> <p>Staff recommendation: Make no change at this time. As the number of applications for sheds is limited, there does not appear to be a need to permit woodsheds in setbacks. The application for DVP provides an opportunity to consider the impacts. If the LTC would like exempt woodsheds from setbacks a size maximum should be identified.</p>
<p><u>Outhouses</u> Issue: Enforcement issues related to outhouses.</p> <p>Current Regulation: Outhouse is considered an accessory structure and is regulated as such.</p>	<p>Currently any Islands Trust initiated enforcement related to outhouses is limited to size and siting. They are currently permitted as accessory buildings. Provincial regulation could be enforced by Island Health (see below).</p> <p>Outhouses, also known as a ‘privy’, are regulated by the Sewerage System Regulation administered by Island Health. The intent of the regulation is to regulate sewerage systems for residential use of a maximum size. The Sewerage System Regulation prior to 2004 did include, by definition, a privy to be a sewerage system. However the current Sewerage System Regulation, adopted in 2004, does not consider a privy to be a ‘sewerage system’. The Regulation defines a sewerage system as “a system for treating domestic sewage that uses one or more treatment methods and a discharge area, but does not include a holding tank or a privy”; therefore, a privy is not a permitted use for a sewerage system.</p> <p>Staff recommendation: Make no change.</p>
<p><u>Agricultural Society Lands Setbacks</u> (430, 437 Fernhill Rd) Issue: Concerns with setbacks</p>	<p>Buildings on this property that are currently located in setbacks are legally non-conforming because of their existence pre-bylaws. A DVP was recently approved to permit the deck on the Thrift Store to extend into the setback from the front lot line.</p> <p>Staff recommendation: Make no change. A DVP can be applied for to address any future desired variance to setback regulations. As the Mayne Island Agricultural Society is a non profit society providing benefit to the community the application fee can be waived by the Islands Trust Executive Committee. As this is a highly trafficked area it will be useful to the LTC to retain the ability to decide on variances to existing setbacks on a case by case basis.</p>
<p><u>Patios in Setback from the Sea</u> Issue: Patios are not permitted in the setback from the sea</p> <p>Current Regulation: <i>““Patio” means a horizontal developed area constructed directly on the ground, which can be attached or detached from a building. A patio may not exceed a</i></p>	<p>The topic of wooden patios came up with respect to the DVP application (MA-DVP-2020.6 (Beardsley)). Given that wooden platforms were considered structures under the LUB, the platform on the property in question which was in the front yard setback had to be removed. This raised questions with Trustees at the July 27, 2020 meeting related to the definition of “structure” which includes wooden platforms/patios, but excludes concrete and asphalt paving.</p> <p>As the defined in the LUB <i>““Structure” means anything that is constructed or erected and that is fixed to, supported by or sunk into land or water but does</i></p>

<p><i>maximum height of 45 cm above natural grade and may not have walls, railings or a roof”.</i></p> <p>“3.3 (2)” permits patios in the setback areas.</p> <p>“3.3 (3)” does not exempt patios from the setback from the sea.</p>	<p><i>not include septic fields, septic tanks, sewage absorption fields, wells, underground water storage tanks and related appurtenances below ground, paved parking areas or similar surfacing, concrete and asphalt paving, or similar surfacing of the land”.</i></p> <p>During the last LUB review staff recommended not amending the bylaw to exclude low level stand-alone decks (“patios”) from the definition of structure. This could result in this type of structure being built to any size and anywhere on a lot including in the setback from the sea, potentially having negative impacts on neighbours and the environment. The bylaw was amended to include a definition for “patio” and permit “patios” in setbacks but not in the setback from the sea.</p> <p>Option: If the LTC would like to permit patios in the setback from the sea the bylaw could be amended to add “patios” to the list of items under 3.3 (3) “3.3 (3) <i>No building or structure may be constructed, reconstructed, moved, extended or located within 7.5 metres (25 feet) of the natural boundary of the sea except:”</i></p> <p>Staff recommendation: Make no changes. The shoreline is a sensitive ecosystem. Permitting patios in the setback from the sea may be seen as contrary to OCP policies related to foreshore protection as well as Island Trust Policy Statement Directive Policy “3.4.5 <i>Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the planning for and regulation of development in coastal regions to protect natural coastal processes”.</i></p> <p>Property owner can apply for a DVP if they are wanting to extend patios into the setback from the sea. This process provides the opportunity for impacts to be assessed. Allowing patios in setbacks outright will mean that the size, unless specified, cannot be regulated.</p> <p>If the LTC would like to consider this topic further, staff recommend it be referred to the APC for review.</p>
<p><u>Expanding Permission for Contractor Yards</u></p> <p>Issues: Contractor yard use as a home business is limited.</p> <p>Current regulations: <i>““Contractor’s yard” means the use of land for the storage of materials and equipment used by a building contractor or subcontractor”</i></p> <p>Currently permitted in the Commercial 3 (C3) Zone only.</p>	<p>Including contractor yards as a home business would require consideration of impacts and how potential impacts could be mitigated. Things to consider include: amending the use, the area a contractor yard could take up on a lot, setbacks, what size of lots could accommodate contractor yard, if there should be restricted uses, which uses should be indoors only and other issues that may impact neighbours and the surrounding area.</p> <p>Staff recommendation: If the LTC would like to consider this topic further staff recommend it be directed to the APC for consideration of where the expansion of contractor yards would be appropriate and the conditions under which permission for contractor yards could be expanded.</p>

Items Beyond the Scope of this Project

The three items below were identified by the LTC as items to be considered for this minor amendments project. However, staff recommend that they be excluded as out of scope.

Lot line adjustments between neighbours

This issue is about addressing concerns related to the boundary adjustment process. Boundary adjustments follow the same process as subdivisions. As this process is outside the Islands Trust's jurisdiction it is beyond the scope of this project.

First Nations Acknowledgement in OCP

While staff support this as much needed action, staff recommend that the current project focus on LUB amendments only as there is interest in substantially completing the project by the summer. The housing project will involve both OCP and LUB amendments as well as First Nations (FN) engagement. This will be an opportunity to involve FNs in the review of the previously drafted FN acknowledgement at the same time as the proposed amendments related to housing.

Statement in OCP Requiring Applicants for Rezoning to consult with Neighbours

Staff recommends that this be considered along with the OCP amendments related to housing to increase efficiency with process which includes Provincial approval. The LTC can also consider, as a minor project, updating their Development Procedures Bylaw No. 83 to include this as a minor project. The LTC could also request rezoning applicants undertake this on a case-by-case basis when the preliminary report is considered.

Rezoning of CRD Surplus Lands

The Capital Regional District (CRD) recently acquired a large parcel of land adjacent to their Mt. Parke property. This parcel is zoned as Upland. The CRD has identified a portion of this land as "surplus land". This land is located at the end of Wooddale Drive and could be easily serviced by the CRD water system. Given this, it could be a potential location for multi-family or clustered housing. The LTC had identified the rezoning of this parcel to be of interest for the LUB review. As it will also require a change to the OCP Land Designation and because the CRD is still in the process of surveying the land staff recommend that it be added to the Housing Options Project. Passing the related recommended resolution will facilitate the initiation of discussion with the CRD related to this rezoning.

Timeline

Staff review of proposed LUB and OCP amendments	July – October 2023
Draft LUB and OCP amendments reviewed by LTC	October – November 2023
Community Information Meeting	January 2024
LTC review community comments and consider further changes	February – March 2024
Consideration of First Reading	April 2024
Referrals	April – May 2024
Public Hearing, Second and Third Readings, referral to EC, Minister (OCP)	June 2024
Consideration of Adoption	September 2024

Rationale for Recommendation

Recommendations reflect staffs interest in supporting an efficient process that will enable the project to arrive at first readying by April 2024.

ALTERNATIVES

1. Request further information

The LTC could request further information on any of the recommendations identified above.

2. Request alternative amendments

The LTC could request amendments alternative to what has been presented by staff.

3. The LTC's request regarding APC's involvement could be different from staff recommendation

The LTC could choose not to send the application to the APC. The LTC could request the APC's focus on issues beyond those suggested by staff.

NEXT STEPS

If staff recommendations are supported:

- Staff will send staff report to the APC for review
- Staff will draft supported amendments
- Staff will return with additional options for discussion as requested

Submitted By:	Narissa Chadwick, Island Planner	September 11, 2023
Concurrence:	Robert Kojima, Regional Planning Manager	September 13, 2023