



DATE OF MEETING: September 24, 2021
TO: South Pender Island Local Trust Committee
FROM: Kim Stockdill, Island Planner
Southern Team
COPY: Robert Kojima, Regional Planning Manager
SUBJECT: South Pender LUB Amendments – Project Update

RECOMMENDATION

- 1. That the South Pender Island Local Trust Committee request staff to prepare a draft bylaw for the Land Use Bylaw Amendments Project.**

REPORT SUMMARY

This report is intended to provide options to the South Pender Island Local Trust Committee (LTC) regarding the LUB Amendment project and a request to provide further direction to the staff.

BACKGROUND

At the July 9, 2021 Special Meeting, staff presented a staff report outlining options for the LTC's consideration. No resolutions were made regarding this project.

Background information regarding the project, staff reports, correspondence, and the Project Charter can be found on the South Pender Project webpage: <https://islandstrust.bc.ca/island-planning/south-pender/projects/>

ANALYSIS

Land Use Bylaw:

The South Pender LTC has indicated that the following topics should be included in the LUB amendment project:

Maximum floor area regulations

The following are floor area regulations for dwelling units in the South Pender LUB:

Definition – “floor area means the sum of the horizontal areas of all storeys in a building, measured to the outer surface of the exterior walls, exclusive of any floor area occupied by a cistern used for the storage of water for domestic use or fire protection, and exclusive of all areas of a storey having a floor and a ceiling less than 1.5 metres apart.”

Agriculture Zone - Subsection 5.5(9) - The floor area of a dwelling may not exceed 560 m² (6028 ft²).

Forestry Zone - Subsection 5.6(7) - The floor area of a dwelling may not exceed 560 m² (6028 ft²).

Natural Resource Zone - Subsection 5.7(6) - The floor area of a dwelling may not exceed 560 m² (6028 ft²).

Table 1 – Rural Residential Maximum Floor Areas

Siting and Size			<u>RR1</u>	<u>RR2</u>	<u>RR3</u>
(5) Maximum Floor Area per lot:			✓	✓	✓
Lot Area	The total floor area of all buildings may not exceed:	The floor area of a dwelling may not exceed:			
Less than 0.4 ha (1 acre)	465 m ² (5000ft ²)	353 m ² (3800ft ²)			
0.4 ha to 0.79 ha (1 to 2 acres)	557 m ² (6000ft ²)	418 m ² (4500ft ²)			
0.8 ha to 1.59 ha (2 to 4 acres)	743 m ² (8000ft ²)	520 m ² (5600ft ²)			
1.6 ha to 3.9 ha (4 to 10 acres)	836 m ² (9000 ft ²)	543 m ² (5845ft ²)			
4.0 ha (10 acres) or greater	1858 m ² (20000ft ²)	560 m ² (6030ft ²)			

The LTC has expressed an interest in reducing the floor area for a dwelling unit in the Rural Residential 1 (RR1), Rural Residential (2), and Rural Residential (3) zones. As shown in Table 1, the LUB currently regulates floor areas in two ways: by establishing a maximum floor area for a dwelling, and also by establishing a total floor area of all buildings located on the property.

If the LTC would like more information to help inform their consideration of amendments to reduce floor area, the LTC should give direction to staff by resolution. For example, reviewing floor area sizes relative to property size for other rural communities through analysis of issued Building Permits for other Local Trust Areas (LTAs) or reviews of available BC Assessment data. Depending on the scope, this could be a lengthy exercise, therefore the LTC should give clear direction to staff. A draft motion is included in the ‘Alternatives’ section of the staff report (Alternatives No. 1).

Other options the LTC may want to consider to reduce the impact of the built form on rural properties:

1. The current definition of floor area in the South Pender LUB measures the floor area to the outside surface of the external walls. The LTC could amend this definition to measure floor area to the interior surface of the exterior walls which could encourage environmentally friendly building practices (use of thicker insulation within walls). Currently Gabriola, Galiano (for Environmentally Friendly Buildings), Lasqueti, and Saturna all measure floor area to the interior side of the external walls. The North Pender LTC also gave direction to staff to amend the definition of floor area to measure to the interior side as part of their LUB amendments.
2. Establish a maximum permitted lot coverage for residential properties. Lot coverage is a measure of the proportion of a lot that may be covered by buildings or structures, but excludes paving or similar surfaces. It differs from floor area in that it is measured on a horizontal plane only (from a bird’s-eye view), includes all structures, and is measured to the drip line. Re-establishing a maximum lot coverage may be an option that supports the objectives of retaining rural character and minimizing the impacts of massive or extensive building and development. It would also indirectly limit the size of dwellings, protect greenspace and encourage on-site retention of drainage. In terms of impacts, existing properties could potentially be rendered non-conforming – although existing buildings

and structures could be repaired and maintained. Such a change may increase demand for variances as owners would more readily run up against lot coverage limits during development. Administratively, there would be increased requirements at time of development (including during minor additions or construction of accessory buildings) in order to determine compliance with the regulation. For example, survey plans showing all buildings and structures would need to be required more often than currently in order to determine compliance.

3. Establish lot coverage regulation and include impervious surfaces.
This would support two objectives of the lot coverage provision: to retain greenspace and encourage on-site retention of drainage, but would not alter the regulation for current owners with respect to buildings or other structures. There is the potential that if there were existing properties with extensive paving they could be rendered non-conforming – however the effects of non-conformity would be minimal as existing structures could be repaired or maintained. In terms of administration, there would be increased requirements at time of development (including during minor additions or construction of accessory buildings) in order to determine compliance with regulations. For example, survey plans would have to include the area and extent of all paved surfaces. Also, as there is no permitting of new paving, there is no ready mechanism for administering the regulation in absence of a building permit for a building or structure.
4. Remove all storeys below natural grade (subterranean space) from the calculation of floor area.
The LTC could reduce the maximum floor area for dwelling units, and also remove any storey located below natural grade from the calculation. This would allow property owners who would like to increase the floor area of their proposed dwelling unit by adding a basement level. Disadvantages with this approach is that it is bias to those properties with the ability to add such space. Properties or building areas comprised of bedrock would be subject to expensive construction costs and disruptive techniques (blasting, rock removal, etc.) to adhere to the regulations, or would be required to apply for a Development Variance Permit or Board of Variance to increase the maximum floor area.
5. Adding a provision for built dwelling units to retain current floor area.
An option for consideration is to include a provision in LUB that would permit existing dwelling units to retain its current floor area prior to the newly established maximum floor area. The provision can be drafted in a number of ways; for example:
Option No. 1 – LUB would have two different maximum floor area regulations: retain the current regulations for houses constructed prior to the LUB amendment bylaw, and a second set of more restrictive maximum floor area regulations for dwelling units constructed after the LUB amendment.
Option No. 2 – Reduce current maximum floor area regulations but add a provision that states that all legal dwelling units constructed prior to the LUB amendment may maintain the floor area (at the time of bylaw adoption).
Option No. 3 – Create site-specific zones in the LUB permitting existing floor areas for all constructed dwelling units that are known to exceed the newly established maximum. This option would be most effective if the number of dwellings exceeding new maximum floors areas is relatively limited.

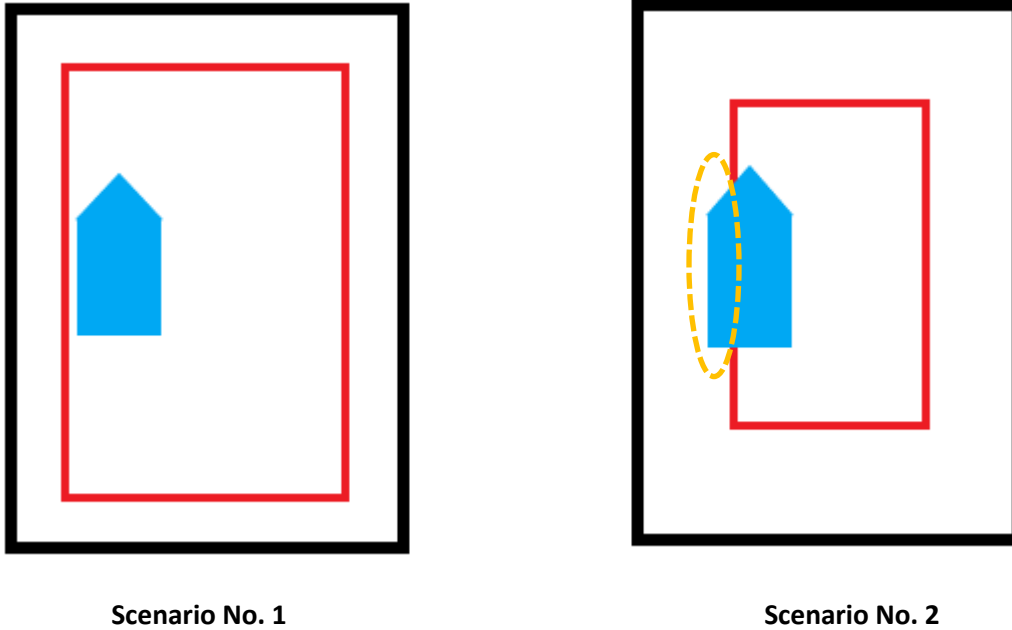
Legal Non-conforming – see attached FAQ document

A number of community members expressed concern regarding the LTC establishing a maximum floor area that is less than the floor area of their home; more specifically, concerns regarding legal non-conforming status and their ability to rebuild to the prior floor area. Section 529 of the *Local Government Act* (LGA) provides legal non-conforming protection for buildings or structures that exceed new siting, size or dimensions regulations. That section states that buildings or structures may be maintained, extended or altered, but only to the extent that

the repair, extension or alteration involves no further contravention of the bylaw. In other words, you could renovate, maintain or repair your non-conforming house, but you could not put on an addition that would increase the floor area. See attached FAQ document.

In terms of setback regulations, if the LTC amends the Land Use Bylaw to increase setback regulations for a building or structure, then the Section 529 of the LGA would also apply. Graphic no. 1 below demonstrates how more restrictive setback requirements would apply to an existing dwelling or structure.

Graphic No. 1



Scenario No. 1

Setbacks (red line) – 3 metres from property line (black line)
House – conforms to current setbacks

Scenario No. 2:

Setbacks (red line) – LTC amends the LUB by increasing the setback to 6 metres from property line (black line)
House – portion of house does not conform to new setback regulations. House is protected under 529 of the LGA and the house may be maintained, extended (although not further into the setback), or altered as long as it's not increasing the non-conformity. If property owner wants to add an addition to the portion of the house located within the setback (as indicated by the orange dashed line shown above) a Development Variance Permit (DVP) or Board of Variance order is required to vary the new setback. Any additions to the home that meet the 6 metre setback regulation would not require a DVP.

Setback regulations

There are a number of ways to amend setback regulations:

- Establishing different setback regulations for dwelling units and accessory buildings. For example, accessory buildings and structures could have less restrictive setbacks in order for greater siting options on a lot.
- Establish varying setback requirements based on lot size.

- Increase/decrease setback regulations based on lot size or if a property is abutting a certain zone.
- Establish setback regulations as a percentage of the lot depth. There are many issues with this type of regulation. First, South Pender properties generally have an irregular lot shape making it difficult to determine the lot depth. Secondly, there will be interpretation issues as determine lot depth and the percentage may be too complex for some to easily interpret. It will also increase staff's time to ensure the calculation for the setback was completed correctly. Setback regulations as a percentage of lot depth are more often seen in urban areas based on the reasons outlined above and may not be well suited for rural areas.

Agricultural lands regulation

The table below outlines the current agriculture regulations, the ALC policy and recommendations and options for the LTC to consider. The LTC should give direction to staff if other agriculture topics should be considered.

Table 2 – Agriculture Zone and ALC Considerations

	<i>Agriculture (A) Zone</i>	<i>ALC Policy & Regulations</i>	<i>LUB - Regulatory Options</i>
<i>Cottage</i>	Allowed use in zone	ALR amendment on December 31, 2021 that would allow a second residence on an ALR lot.	No amendment required as cottage is already a permitted accessory use.
<i>Farm Worker Housing</i>	Permitted use 'c' allows a Cottage or other dwelling for the housing of persons engaged in on-going agricultural activities.	ALC Act amend. (Feb 2019) - By application to ALC	Consider amendment to A zone to include use with note "only by ALC Approval".
<i>Non-Adhering Residential Use (NARU)</i>	No reference in A zone.	Policy L-26 decision-making guidelines for consideration of non-adhering uses (second dwellings, temporary farm dwellings, dwellings over 500 m ² , etc.)	No Action
<i>Dwelling Size</i>	Maximum floor area for a dwelling is 560m ²	Total floor area of a dwelling is 500 m ² in ALR	Consider amendment to A zone to reduce the maximum floor area to 500 m ² .
<i>Agri-Tourism</i>	No reference in zone, but may be considered a farm use which is permitted in the A zone.	Policy L-04. A farm use. Must have farm status. Limited to list of approved activities including heritage farm equip. displays, farm tours, educational or demonstration of farm operations, rides (tractor, etc.), activities that promote or market livestock, harvest festivals, etc.)	Consider adding a 'agri-tourism' definition and regulations in A zone to harmonize with ALC Regulation by defining and restricting use.

	Agriculture (A) Zone	ALC Policy & Regulations	LUB - Regulatory Options
Agri-Tourism Accommodation	Not a permitted use in the A zone.	ALC Act – A permitted farm use. Must be in relation to <i>Agri-Tourism Activity</i> ; total developed area 5% of parcel; 10 units maximum; seasonal or short-term.	Consider amending the A zone to harmonize with ALC Regulation by defining and restricting agri-tourism accommodation use.
Home Business (Occupation)	Yes - Home business is permitted in the A zone with a maximum floor area of 65 m ² .	Policy L-07: Permitted as a non-farm use up, accessory to residential or farm use on the property and a maximum area of 100 m ² or maximum by Local Government (whichever is less) Further limits on facilities (no daycares, preschool/schools, group homes and health and community care facilities) and size	Consider amending the General Regulations (size and types) to be consistent with ALC for Home Business and Home Industry in ALR
Farm Retail Sales	Yes - permitted as a home business but provided that at least 70% of the goods or products for sale are produced, processed or repaired as part of the home business	Policy L-02 A permitted farm use. If all products originate or are produced on the farm on which the sales are taking place, there is no limitation for the retail sales area. Thresholds if farm or non-farm products offered for sale originate elsewhere, there is a retail sales area limitation (based on origin - max. 300 m ²)	Consider adding definition of 'farm retail sales' and add regulations to align with ALC (farm retail sales must not exceed 300 m ²).
'Farm Use'	Definition in LUB	'Farm Use'	Amend definition to harmonize with ALC definitions for 'farm use' and allowable uses.

Shipping containers

The South Pender LUB does not currently regulate the density or use of shipping containers. Shipping containers are permitted on South Pender as they are considered a structure, and must meet the siting regulations (setbacks, floor area, lot coverage, height, etc.) of that zone. Due to the concern of the possible proliferation of shipping containers on properties, specifically on residential properties, the LTC may want to regulate the maximum number of shipping containers permitted on a lot and require vegetative screening. The following LTC should consider the following points:

- Differentiate the density of shipping containers for different zones. For example, the LTC may want to limit the number of shipping containers on residential lots to two (2) whereas have a higher limit, or no limit for agricultural properties.
- Determine the type of screening required, if any. The South Pender LTC outlines the following requirements for vegetative screening:

Subsection 3.9(1) - *Where vegetative landscape screening is required by this Bylaw, it shall be provided in the form of:*

(a) Existing vegetation of the required height that provides a complete visual screen between the uses being separated in all seasons of the year; or,

(b) A row of drought-tolerant evergreen plants that will attain the required height, planted and maintained continuously so as to provide a complete visual screen in all seasons of the year between the uses being separated; and such screening.

Subsection 3.9(1) could be required for all shipping containers or could be required only for shipping containers in certain zones, or abutting certain zones.

Setback to the natural boundary of the sea - Stairways

Currently the South Pender Land Use Bylaw No. 114 exempts stairways from complying to the setback from the natural boundary of the sea (Subsection 3.3.(3)):

“Buildings or other structures, except a fence, pump/utility house, stairway, wharf and dock ramps or their footings, shall not be sited within 7.6 metres (25 feet) of the natural boundary of the sea and, for this purpose only, paved areas of asphalt, concrete or similar material are "structures”.

The following are options or items to consider with regards to regulating stairways within the natural boundary of the sea:

- Currently regulations do not regulate size (width or length) of stairways permitted within the setback from the natural boundary of the sea;
- The LUB does not regulate best practices for stairway construction in terms of vegetation retention, location of stairway, sensitive ecosystems and land alteration. Best practices to construct stairways are best regulated through the Development Permit process.
- Reviewing stairway regulations and best practices may be better addressed through the Shoreline Review project.

As per direction from the LTC, staff requested the South Pender Advisory Planning Commission (APC) to consider implications of stairways located within the setback from the natural boundary of the sea and has expressed concern with stairways located within steep slope hazard areas along the foreshore. The South Pender APC provided the following resolutions at their July 16, 2021 meeting:

SP-APC-2021-012

It was Moved and Seconded,

Recommended that the SPI LTC defer further any amendments to the SPI LUB until there can be coordination with the current Islands Trust Shoreline Project.

CARRIED

If the LTC would still like to proceed with amending regulations related to stairways, staff recommend removing ‘stairways’ as being exempted from the natural boundary of the sea setback. By doing this, if a property owner wishes to construct stairways to the foreshore a Development Variance Permit would be required. Any further analysis of stairway located within shoreline setbacks, specifically in steep slope or other hazardous areas, may be better addressed as part of the Coastal Area Review project.

Other minor, technical amendments

Staff will review the LUB to correct any numbering errors, incorrect legislation references, or other technical amendments.

Consultation

Staff are recommending early consultation with community members beyond what is required by statutory requirements. The LTC should consider scheduling a Community Information Meeting, as indicated on the Project Charter, as the project proceeds.

Statutory Requirements

In the first stage of the project (i.e. reviewing proposed documents, and undertaking community consultation) there are no statutory requirements to consider. If at a later stage the LTC resolves to undertake bylaw amendments, statutory notification requirements of the Local Government Act will need to be considered including appropriate agency and First Nation referrals, public hearing requirements and bylaw adoption procedures.

Rationale for Recommendation

If the LTC is satisfied with the scope of work proposed (the potential LUB amendments identified above), direction by resolution to prepare a draft bylaw is recommended to allow work to proceed in a timely manner. Alternatively the LTC could ask staff to report back with changes to the project scope and to the charter.

ALTERNATIVES

1. Request further information

The LTC may request further information prior to making a decision. Staff advise that the implications of this alternative are potential delays to commencing and completing the project. If selecting this alternative, the LTC should describe the specific information needed and the rationale for this request. Recommended wording for the resolution is as follows:

That the South Pender Island Local Trust Committee request that the staff provide further information regarding...

-an analysis on dwelling unit floor area in relation to lot size for X LTA for the period of 20XX to 20XX.

2. Give specific direction as what to include in the bylaw amendment.

If the LTC gives direction to staff to draft bylaws, the LTC should also give direction on specific regulations to be included. Example wording is as follows:

That the South Pender Island Local Trust Committee direct staff to include the XXX in the draft bylaw for the Land Use Bylaw Amendment Project.

3. Remove stairway regulations from Project

If the LTC wishes to remove the review of stairway regulations as part of this project, and to add it to the Coastal Area Review Project, the following motion is recommended:

That the South Pender Island Local Trust Committee request staff to remove the review of stairway regulations from the Land Use Bylaw Amendment Project and add it to the Coastal Area Review Project.

4. Reconsideration of project

The LTC may choose to focus on different priorities instead of a technical review of the LUB. If selecting this alternative, recommended wording for the resolution is as follows:

That the South Pender Island Local Trust Committee not pursue the LUB Amendments Project and to remove the project from the Top Priority Project List.

5. Receive for information

The LTC may receive the report for information

NEXT STEPS

Next steps include:

- Receive further direction from the LTC on how to proceed with the project.

Submitted By:	Kim Stockdill, Island Planner	September 17, 2021
Concurrence:	Robert Kojima, Regional Planning Manager	September 17, 2021

ATTACHMENTS

1. Legal Non-Conforming FAQ



Legal Non-Conforming FAQ

Will my house be “grandfathered” if the Land Use Bylaw is amended to establish a maximum floor area?

Yes, if a Local Trust Committee (LTC) amends the Land Use Bylaw (LUB) to establish a maximum floor area for dwellings a dwelling that was lawfully constructed before the date of the adoption of the bylaw, and which would exceed the new maximum floor area, would be considered legally non-conforming.

Section 529 of the *Local Government Act* (LGA) provides legal non-conforming protection for buildings or structures that exceed new siting, size or dimensions regulations. That section states that buildings or structures may be maintained, extended or altered, but only to the extent that the repair, extension or alteration involves no further contravention of the bylaw. In other words, you could renovate, maintain or repair your non-conforming house, but you could not put on an addition that would increase the floor area.

What if my house burns down more than 75%, is my house still grandfathered?

The reference to a building that is destroyed to 75% or more of its value is from Section 532 of the Local Government Act, and applies only to situations where there is a **non-conforming use** (for example a residential use in an area only zoned for commercial use). This section would not apply to a dwelling that has been legally constructed but becomes non-conforming as the result of changes to setback or floor area regulations.

If a dwelling was damaged beyond 75%, it may still be possible to be repaired, provided the repair would not increase the floor area of the house. The words “repair” and “maintain” are not defined or limited by the LGA and so what would be considered “repair” would include anything that could commonly and reasonably be considered repairs.

What if I need to build a new house?

A new dwelling would have to meet the current regulations in the Land Use Bylaw. However, an owner could apply for a Development Variance Permit or make an application to the Board of Variance if they felt that they needed a larger floor area. See links below for information regarding variance applications.

What if I sell my house, and the house size is greater than the maximum floor area?

Legal non-conforming protection is not limited to a specific owner, it “runs with the land” (or property).

Do I need to apply for legal non-conforming status?

No, it is legal protection that exists because of provincial legislation. But if an owner needed to repair or maintain a dwelling, it is the responsibility of the owner to demonstrate that it is legal non-conforming. A building permit or other documentation could provide proof of non-conforming status.

Local Government Act: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/r15001_00
DVP or BOV Application Forms & Guides: <https://islandstrust.bc.ca/island-planning/land-use-application-guides-and-forms/>