

Meeting of December 3, 2007

File No.: MA-LUB-2007.1

To: Mayne Island Local Trust Committee

From: Robert Kojima
Island Planner
Local Planning Services

Re: LUB Review

Preliminary Report

BACKGROUND: review and update of the Land Use Bylaw (LUB) is the top priority project of the Mayne Island Local Trust Committee (LTC). At the last LTC meeting, staff presented draft Commercial Accommodation (C2) zoning for LTC review. This report will provide the LTC with staff comments and recommendations on technical changes to the LUB.

ISSUES SUMMARY: The following are recommended revisions, additions, or deletions that staff have identified in a review of the current Land Use Bylaw. These are primarily changes involving formatting, layout, or wording, but also include recommended changes to certain permitted uses and regulations.

1. Overall:
 - a. The LUB provisions should be re-formatted to be consistent with the model Land Use Bylaw Template. This template was developed in 2003 and endorsed by Executive Committee (copies of the template were provided to the LTC separately).
 - b. The revised bylaw should strive to use clear language throughout, where appropriate, for example: "the minimum setback is..."
 - c. The revised bylaw should use imperial references in parentheses, but for convenience only.
2. Definitions - the following revisions, additions and deletions to the definitions section are recommended:
 - a. Definitions that do not otherwise appear in the body of the bylaw or are clearly irrelevant should be removed. E.g. "algae culture".

- b. The following definitions should be revised for effectiveness or consistency with definitions in other LUBs:
- i. “agriculture” – other recent definitions are more comprehensive.
 - ii. “building grade” – this should be changed to natural grade, (or finished grade, although natural grade is recommended as it adheres more closely to the intent of height regulations).
 - iii. Cottage – should refer to dwelling unit, for consistency with that definition.
 - iv. “Floor Area” – increase space between floor and ceiling from 1 metre to 1.5 metres for consistency with recent LUBs in southern gulf islands.
 - v. “floor space ratio” – change to floor area ratio for consistency with the use of the term “floor area” elsewhere in the bylaw.
 - vi. “height” – should be measured from natural grade, not building grade (see “building grade” above).
 - vii. “Pumphouse” – revise to “utility shed”, and allow electrical equipment, but limit to a floor area of 100 sq. ft. (ie no building permit would be required).
 - viii. “public service use” – this should be replaced with “community service use”, not all uses falling under this definition are *public* and the courts have severed ‘public’ from certain uses in recent cases.
 - ix. “residential use” - revise wording to prohibit short term rental use.
 - x. “structure” – review wording for consistency with recent LUBs.
 - xi. “tourist accommodation unit” – revise wording as recommended in staff report on C2 zoning.
- c. Definitions should be added for the following uses and terms that currently appear in the bylaw:
- i. Accessory dwelling unit
 - ii. Approving Officer
 - iii. Boathouse
 - iv. Church
 - v. Dock
 - vi. Employee Housing [if this is included as a new use in C2 zone]
 - vii. Float
 - viii. Hall
 - ix. Landscape screen
 - x. Park
 - xi. Principal
 - xii. Recreational Use
 - xiii. Recreational vehicle
 - xiv. Restaurant
 - xv. Retail Sales
 - xvi. School
 - xvii. Tourist Accommodation

- xviii. Use
- xix. Utility
- xx. Watercourse

3. Part 2 (General Provisions) – replace this section with “Administration” provisions from LUB template.

4. Parts 3 and 4 (General Regulations):

- a. Combine provisions into a new single Part 3, consistent with numbering and layout in the LUB template.
- b. Include a section on uses permitted in all zones. This should permit outright utility lines and poles, conservation areas, navigational aids, fences, trails, signs and horticulture.
- c. 3.2- Prohibited uses: this should be reviewed to
 - i. list uses prohibited by policy statement,
 - ii. revise ss 3.2.1 which limits keeping of animals on ½ acre or smaller lots.
 - iii. remove uses that local government cannot regulate.
- d. 3.3 Height exemptions: review and update for relevance.
- e. 3.4 – Fences and Landscape Screens: height of fences should be limited to 2 metres in setbacks. A fence elsewhere on a property should be treated as an accessory structure.
- f. 3.5 Home occupations:
 - i. remove retail sales as a permitted home occupation, other than sales of products produced as part of the business (OCP policy 2.3.1.1).
 - ii. provide for specific permitted and prohibited home occupations.
 - iii. remove ss 3.5.5 which refers to complying with provincial regulations.
 - iv. include a prohibition on noise heard at a lot line.
 - v. zone regulations in the AG and R zones allow animal breeding, boarding and animal clinics as a home occupation; these should be specified in this section rather than in the zones.
- g. 3.6 - Use of travel trailers and recreational vehicles:
 - i. LTC should confirm a policy of continued use of recreational vehicles as a dwelling.
 - ii. The regulation should be revised to use one term only (eg define “travel trailers” as a form of recreational vehicle).

- h. 3.7 – Residential Density – legal review of wording currently on-going.
- i. 3.8 – Height:
 - i. the maximum height provisions should be specified in each zone rather than in the general regulations for ease of reading.
 - ii. Provisions for agricultural buildings: it can prove difficult over time to regulate the use of buildings that were originally constructed as “agricultural” buildings but subsequently evolve into over-height, non-agricultural buildings. The regulations could be more specific and ascertainable by allowing overheight accessory buildings in the ALR or on properties with farm status only and by increasing the setback (see South Pender LUB, ss 3.7(1)).
- j. 3.10 - Accessory buildings:
 - i. Consideration should be given to permitting up to two accessory buildings prior to construction of the principal dwelling. This should be limited however, for example: to one utility building and one building for storage of materials and personal effects.
 - ii. Because of past instances with overheight accessory structures attached to a principal dwelling with tenuous connecting structures, this subsection should be revised to include a provision to ensure that connections are fully enclosed (see NP LUB 3.4.2 and SP LUB 3.5(3)).
- k. 4.1 – Setbacks from watercourses:
 - i. Wording should be reviewed for internal consistency.
 - ii. 4.1.2 - Remove requirement for setback from the sea and for septic fields or domestic water supply. Septic field setbacks from the sea are now governed by Health Act regulations.
 - iii. If the LTC does not use DPA for Riparian Area Regulations, zoning setbacks from watercourses should be used to comply with Riparian Area Regulations (30 m from fish-bearing watercourses).
- l. 4.2 – Setbacks between cottages and other buildings: this regulation should be removed, the building code establishes fire separation between buildings, which can vary depending on the materials used.
- m. 4.3 – Visibility at Intersections: this should be removed: MoT regulates structures within 4.5 metres of a highway.
- n. Other:
 - i. Derelict Vehicles: the revised bylaw should include provisions prohibiting storage of junk and derelict vehicles outside of a building (see SP LUB s.3.11 for sample wording).

- ii. Regulation of uses permitted in the ALR: There are a number of uses that are permitted by the ALC, but may be regulated by the LTC. Of these, the most contentious is often uses associated with a winery, including retail sales, lounges, and outdoor patios, and agri-tourism uses (There is sample wording in the NP Associated Islands LUB s. 3.14)

5. Part 5 – Subdivision regulations

- a. The subdivision regulations should be relocated to a new Part 8, consistent with the LUB model template, and the regulations should be re-organized for consistency with that layout.
- b. Imprecise and uncertain wording (eg “wherever possible”) should be removed. These are regulations, not policies.
- c. 5.5 - Lots Divided by a zone boundary – change to no additional split-zoned lots. Otherwise it implies that no split-zoned lot can ever be subdivided.
- d. 5.6.4 (Lot Size Exceptions) – remove unclear wording: “no lot area deficiency is increased”. This is unclear, but seems to prohibit boundary adjustments between two lots that do not meet the current minimum lot size, of which there are many in the SR zone.
- e. 5.7.1 (Lot Configuration) – remove this reference and replace with an information note: the 1/10 perimeter provision is in the LGA and can be waived by resolution, including it in the LUB is redundant and could create need for a variance. However, there is no other minimum lot frontage regulation; a minimum lot frontage of 20 metres should be established for new lots.
- f. 5.8 (Side Lot lines) – remove this subsection, “radial” is a broad term and requiring straight lot lines, despite topography, is probably not advisable in all cases.
- g. 5.9 (split-lots) – change to read “No additional lot may be created which is divided into two or more portions by a highway or other lot.”
- h. 5.12 – Access to Water Bodies – review wording, this is at the discretion of the Approving Officer. It should be removed if not enforceable (a legal opinion may be sought because the issue of access to foreshore has been raised on other islands).
- i. 5.13 – Roadway Standards – remove and replace with an information note referring to protocol agreement.

- j. 5.15 – Disposal of Sewage – remove and replace with an information note referring to VIHA approval under Health Act provisions.
 - k. 5.16 – Water Supply:
 - i. Revise to allow certification by professional hydrogeologist as well as an engineer.
 - ii. Revise to allow boundary adjustments without requiring proof of potable water where there are existing wells.
 - iii. Include provision for a s.219 covenant requiring installation of water filtration or purification systems where recommended by engineer or hydrogeologist in order to meet standards.
 - l. 5.17 – Drainage Requirements – remove, replace with information note referring to MoT requirements.
 - m. 5.18 – Pedestrian Paths – Miners Bay – the wording appears to be vague and uncertain: should be removed, moved to the OCP as a policy, or replaced with more precise wording, standards, and conditions under which work is required and should be supported by MoT.
6. Part 7 – Parking regulations: The 1 stall per 15 m² of floor area is restrictive in comparison to requirements in other LUB. The APC is apparently reviewing this regulation as well. The LTC should consider directing staff to review the parking requirements in relation to other LTC bylaws and report to the LTC separately.
7. Establishment of Zones:
- a. 8.1 Division into zones:
 - i. Delete Comprehensive Settlement Zone (this is now National Park Reserve)
 - ii. Consolidate Rural 1 into Rural.
 - iii. Senior Citizen’s Housing – designate as a comprehensive development zone (the zoning is too specific to be utilized in any other location)
 - iv. Industrial (I) and Industrial Fabrication (I1) – re-designate I-1 and I-2 for clarity and consistency
 - v. Country Guest House (CGH) – re-designate as C5 for consistency (this is a commercial zone).
 - vi. Country Guest House – B – remove and re-zone this location to the SR.
 - vii. REC – split into two zones: “Community and Regional Park” (P) for dedicated parks and “Community Service” (S1) for community facilities such as school, community halls, etc.

- viii. Create a new National Park (NP) zone for the national park reserve lands.
- b. 8.3.3 – “High water mark” should be changed to “natural boundary of the sea”.
 - c. 8.3.4 –Reference to determination of zoning boundary from “scaling from Schedule B” should be revised to determination by reference to GIS.
8. Part 9 – Zone Regulations
- a. All zones should be revised to :
 - i. Have a format and layout consistent with the LUB model template
 - ii. Remove “parks” and “utility lines and poles” from list of permitted uses in each zone. Utilities and passive recreation parks or conservation areas should be permitted in all zones in the general regulations, active use parks should be permitted by explicit zoning.
 - iii. For ease of interpretation and consistency, include a maximum height in all zones, under siting and size.
 - iv. Specify home occupations as an accessory use, rather than as a separate permitted use.
 - v. Use plain language where possible: e.g. “maximum lot coverage is ...” and split larger subsections into separate clauses for ease of reading and interpretation.
 - vi. Remove redundant provisions, such as the provision in the siting subsections stating that “the general siting provisions in Part 4 apply...”
 - vii. “Public service uses”: some trivial uses, such as utility lines, should be permitted outright in all zones; or specific locations should be zoned for community service uses such as community halls, schools, offices, libraries, cemeteries, and fire halls. There is already an existing zone for community water system tanks and infrastructure (LCS zone).
 - viii. Site specific regulations: these should be formatted as in the LUB template; the locations should be designated on the zoning map as a separate sub-zone using a lower-case letter, and within the zone regulations a table should be used that lays out the specific provisions and identifies the location by legal description.

- b. Rural zone:
 - i. Revise by consolidating site specific regulations into a table and identifying each location on the zoning map with the use of a lower case letter

- c. Agricultural zone:
 - i. 9.8.2(3): remove the requirement that “the owner grants a covenant to use for agricultural use only every 8 hectares of lot area in respect of which a building permit is issued for a dwelling unit or cottage, and not to subdivide the Agricultural portion of the lot.” The principal permitted uses are “residential” and “agriculture and silviculture” in any case, so such a covenant would be redundant. The requirement to not subdivide could be retained, however it is not required in other zones where dwellings equivalent to lots are permitted. Any subdivision in the ALR would require LTC and ALC approval in any case.

- d. Recreation zone:
 - i. Should be two separate zones: community park and community service
 - ii. Remove “golf courses” and “institutional outdoor camps” as permitted uses.
 - iii. Remove “public service use” and replace with “community service use”.
 - iv. 9.15.3: remove density provisions for institutional outdoor camps.

- e. Country Guest House CGH zone: re-name as a commercial zone (e.g. C5).

- f. Country Guest House B zone: this location should be re-zoned to Settlement Residential.

- g. Water zones:
 - i. “Marine recreational uses not involving buildings or structures” should be removed: this is not an activity that can be regulated by zoning.
 - ii. “private floats, wharves, piers and walkways” can be replaced with the term “docks” which would be defined.
 - iii. Boat moorage: this should be removed, vessels cannot be regulated by zoning.
 - iv. Buildings and structures: should be prohibited in the W1 and W2 zones, not just on docks.
 - v. W4 zone – to be reviewed following receipt of comments from Southern Gulf Islands Harbours Commission.

h. Other:

- i. Zoning for Ferry Terminal should be addressed. This may be best addressed as a separate community service zone or a comprehensive development zone, depending on the range of permitted uses.

- 9. Schedules: Schedules C (metric conversion table) and D (community water storage statutory right-of-way agreement) should be removed.

The LTC should review the above recommended changes. Endorse them if appropriate and direct staff to make the changes when preparing the draft bylaw. In terms of next steps:

- (1) Once the APC review is complete, staff will review and provide comments on the APC recommendations. The LTC will have the opportunity to review the comments and direct that appropriate changes be made.
- (2) Staff will continue discussions with the owners of two C2 properties (Marisol and Bennett property) and report back to the LTC once landowner input has been received.
- (3) Staff will commence preparation of a draft bylaw for LTC review.

Recommendation:

- 1. THAT the LTC direct staff to incorporate the revisions outlined in the staff report of November 21, 2007 into the draft Land Use Bylaw.

Respectfully submitted by:



Robert Kojima

November 21, 2007

Date