

**Meeting of** February 4, 2008

**File No.:** MA-LUB-2007.1

**To:** Mayne Island Local Trust Committee

**From:** Robert Kojima  
Island Planner  
Local Planning Services

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**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 provided a report outlining recommended technical changes to the LUB, and the LTC directed staff to proceed with preparation of a draft. In addition to the changes recommended in the staff report, the LTC specifically directed that the draft LUB:

1. Provide definitions of both active use parks and passive recreation parks.
2. Allow animal clinics as a home occupation use in any zone.
3. Allow accessory buildings up to 9 metres in height on any lot in the Rural and Agriculture zones, replacing the existing 15 metre maximum for farm buildings.
4. Provide an information note in the LUB concerning septic field setbacks established under the sewage disposal regulations.
5. Remove the limit on the number of accessory buildings on larger lots in the Rural and Agricultural zones
6. Establish a larger maximum floor area (1000 square feet) for cottages on lots over 2.5 acres.

Preparation of a draft bylaw for LTC review is underway and a copy of the draft prepared to date is attached for LTC review. This draft includes:

- Part 1: Interpretation (including definitions)
- Part 2: Administration
- Part 3: General Regulations:

- Part 4: Establishment of Zones
- Part 5: Zone Regulations, up to and including Section 5.7 (C1 zone)

The next draft will include the remaining zone regulations, and parking, sign and subdivision regulations.

This report will summarize the significant and substantive changes to the new version of the LUB prepared to date. It will also provide options and recommendations to the LTC concerning the potential changes to the current C2 zoning on one of the properties where the LTC has requested owner input.

Changes in the attached draft LUB are shown by the use of strike-throughs for wording proposed to be deleted and bold for proposed new wording.

### **ISSUES SUMMARY:**

1. Part 1 - Definitions: the proposed revisions to the definitions sections outlined in the previous staff report consist of inclusion of new definitions where there are none in the current LUB, removal of definitions for terms that are not included in the LUB, and revisions to the wording of some existing definitions. The new or revised definitions are based on wording from existing Islands Trust Land Use Bylaws.
2. Part 2 – the provisions in the Administration section of the draft are standard wording from the LUB template.
3. Part 3 – General Regulations: the substantive changes to this part of the LUB are:
  - a. Inclusion of a new section (3.1) listing uses permitted in all zones. In the current LUB all permitted uses are listed separately for each zone. These are basic uses and structures.
  - b. Revisions to the list of “Uses Prohibited in all zones” (3.2) to remove activities not subject to local government control (aircraft) and to include some additional basic prohibitions on hazardous waste, personal watercraft, fin fish aquaculture and bridges, addressing Islands Trust Policy Statement directives.
  - c. Siting and setbacks (3.3): two changes are proposed in this section. The first would include some structures which are typically sited within the required setbacks but have otherwise been ignored, such as fences and the upland portions of dock ramps. Second the inclusion of a setback from watercourses of 30 metres to meet the Riparian Area Regulation would be required if DPA are not implemented as an alternative. New

mapping will identify specific watercourses that are subject to the Riparian Area Regulations.

- d. Height Regulations (3.4): this section has been revised to include some additional structures not included or contemplated when the current LUB was drafted.
  - e. Accessory Uses, Buildings and Structures (3.5): in this section there are two new provisions. The first allows the construction of two accessory structures on a lot prior to constructing a principal building. The second would require that all building connections are fully enclosed. This would address instances with overheight accessory structures are attached to a principal dwelling with tenuous connecting structures.
  - f. Home Occupations (3.6): changes include specific permitted and prohibited home occupations, removal of references to complying with provincial regulations, inclusion of a prohibition on noise heard at a lot line, and inclusion of veterinary clinics.
  - g. Derelict Vehicles and Junk (3.10): the proposed provisions would permit the outside storage of a maximum of two unlicensed vehicles on a lot and would prohibit the outside storage of junk. These regulations are typical of those found in other LUB and provide regulations to assist the LTC and bylaw enforcement in dealing with properties where abandoned vehicles or parts are an issue.
  - h. Calculation of density (3.11): two changes are proposed. The first would entail the inclusion of wording establishing that in determining dwellings equivalent to lots, there is no use of the fractional area nor rounding up; this is consistent with long-standing interpretation. The second is new wording for the calculation of density on split-zoned lots, the wording in the current draft is common to that in other recent LUB, and is subject to a legal review.
  - i. Regulation of uses permitted in the ALR (3.13): the Agricultural Land Reserve (ALR) regulations establish a number of activities as farm uses that cannot be prohibited by local governments, but may be regulated. Existing setbacks would provide regulation of many; however the LTC may wish to establish limits on uses that have not yet been initiated in the ALR on Mayne. The most commonly regulated Farm Use is wineries, and this section establishes some basic floor area limits on retail sales and beverage areas.
4. Part 4 – Establishment of Zones: several changes to the current zoning scheme are proposed:

- a. The removal of the Comprehensive Settlement Zone (CS), this property is now part of the National Park Reserve.
  - b. The re-designation of the Senior Citizens Housing zone (SCH) as a comprehensive development (CD) zone; this is a unique zone that will not be used on any other lands.
  - c. Incorporation of the current Rural One (R1) zone into the Rural zone as a site specific regulation.
  - d. The re-naming of the Water Conservation (W1) zone as Water Protection.
  - e. The replacement of the two Country Guest House zones: one into the Settlement Residential zone, the other into a new C5 zone.
  - f. The re-designation of the two industrial zones (I and I1) as I1 and I2.
  - g. The splitting of the existing Recreation (REC) zone into Community Service (S1), Community and Regional Park (P) and National Park (NP).
5. Zone Regulations: generally, the layout and format of the zone regulations would change to comply with the LUB template. Some of the wording is also proposed to be changed to present tense and plainer wording where possible. More specifically:
- a. Settlement Residential (SR): the substantive change is to the maximum floor area of cottages. The proposed change would increase the maximum floor area for cottages on larger properties (2.4 acres or larger) to 1000 square feet from the current 646 square feet. The existing floor area limit would remain for lots less than 2.4 acres in area. This revision was proposed by the LTC at the November meeting and is intended to provide an opportunity for owners of larger properties to provide long term rentals that are more appropriate for families.
  - b. Rural Residential (RR): the substantive change is to the maximum floor area of cottages, with the proposed changes the same as those in the SR zone.
  - c. Miners Bay Rural Comprehensive (MBRC): the substantive change is to the maximum floor area of cottages, with the proposed changes the same as those in the SR zone.
  - d. Rural (R): the substantive changes are:
    - i. To increase the maximum floor area of cottages (the same provisions as those in the SR zone).
    - ii. To increase the maximum permitted height of accessory buildings to 9 metres from the 5 metres to accommodate farm buildings, but also eliminating the current provision allowing for 15 metre farm buildings.
    - iii. Allowing an unrestricted number of accessory buildings on lots greater than 4 hectares (10 acres) in area. The current zoning limits the number of accessory buildings to 4.

- iv. Re-organizing the various site-specific provisions into a table, with a unique sub-zone designating each location on the zoning map.
- e. Upland (UP): the only substantive change is to increase the maximum floor area of cottages on lots 2.4 acres and larger (the same provisions as those in the SR zone).
- f. Agricultural (A): the substantive changes are:
  - i. To revise the existing wording permitting residential buildings for farm workers. In the current bylaw the provision for farm worker housing is under the density provisions of the zone and uses the some uncertain language: “the number reasonably necessary to accommodate employees of a farm business”. The proposed revision would establish employee housing for farm workers as a permitted use and would set a density maximum at 4 dwelling units per lot. The LTC should consider the implications of this provision: once dwelling units are constructed, their occupancy can evolve into a more general use, and the draft density limit of four should be considered in light of the fact that many farm businesses consist of several different lots, so the number of permitted units could exceed four per farm.
  - ii. To increase the maximum floor area of cottages (the same provisions as those in the SR zone).
  - iii. To revise the accessory building provisions to allow an unrestricted number of accessory buildings on lots over 20 acres. The current LUB permits an unrestricted number of accessory buildings “used exclusively for the purposes of agriculture”.
  - iv. To increase the maximum permitted height of accessory buildings to 9 metres from the 5 metres; but also eliminating the current provision allowing for 15 metre farm buildings.
- g. Settlement Commercial (C1): the only substantive change in C1 zone is to delete one of the site-specific locations. This is a portion of Lot 4, Plan 15263 (616 Fernhill Road) which is currently zoned C1, with restricted uses and density. The OCP re-designated this location to Settlement Residential, consistent with the rest of the property. The draft zoning would also rezone this to Settlement Residential and consequently eliminate the site specific regulations.

The other changes in the draft of this zone are formatting or wording:

- i. Updating permitted uses – retail stores to retail sales (consistent with the definition) and banks to financial institutions.
- ii. Cross-reference in the landscaping provisions to the general regulations section 3.8, and
- iii. Inclusion of the site-specific provisions in a table.

The LTC has received a submission from the owners of Lot 3, Plan 715 (454 Village Bay Road) requesting two changes to the current C1 zoning: removing or modifying the site specific restrictions on uses and permitting dwelling units on the second storeys of buildings.

From a planning perspective both changes would have merit:

- The other two lots on which there are site-specific limitations on uses have been zoned commercial for many years and are designated commercial on the OCP Land Use Schedule. None of the permitted uses in the C1 zone are noxious and, as a general principle, there should be specific impacts or concerns to support limiting the uses in a retail commercial location. Second, with the development of new DPA guidelines, the form and character of new development can be controlled in a more consistent manner. This is a fairly straightforward change and I would recommend that the LTC provide direction to proceed with removing the site specific provisions.
- Permitting residential uses on the second storey of commercial buildings, this would be a more significant change to the current zoning, which only permits an accessory dwelling unit for owner, operator or employee. Permitting general residential uses on second storeys would be possible through the use of vertical zoning – which simply allows different uses above or below other permitted uses. The advantages are that it could lead a greater diversity of housing types without drastically altering the existing development patterns, encourage more residential use close to services, and may provide opportunities for more affordable housing. If the LTC wishes to consider allowing residential uses on second storeys, staff should be given direction to prepare a report outlining options and providing more details on the potential benefits and issues.

6. C2 zoning: the LTC has requested comment from owners of three specific Visitor Accommodation properties. One, currently zoned Country Guest House has already provided comment that the intended use of the property is residential, and the draft zoning map will zone the property SR. Marisol Village is in the process of gathering comments from shareholders and will be providing comment to the LTC shortly. I have had discussions with the current owners of the remaining C2 property (the 'Bennett' property) and they have provided some comments with respect to potential new zoning for the property. The owners are suggesting the following changes:

- a. Density: Maintain the current maximum density of 2500m<sup>2</sup> / hectare (10891 ft<sup>2</sup>/acre) – this is the current maximum density for all uses. This would be the same as an FAR of 0.25 and would allow a maximum development potential of approximately 4750 m<sup>2</sup> (51,130 ft<sup>2</sup>) on this site.

- b. Tourist Accommodation Units: maximum floor area of 100m<sup>2</sup> (1076 ft<sup>2</sup>) with no reduction to the overall density limit of 2500 m<sup>2</sup> or reduction in the maximum number of units. The current zoning limits commercial guest accommodation units to 61m<sup>2</sup> and caps the number of units at 37/hectare.
- c. Seniors' Housing units: the owners are suggesting permitting some of the density in the form of units for seniors housing, these are proposed to not be pre-designated in terms of location, and 'senior' would be 55+.
- d. Restaurant: permit some of the density to be in form of a restaurant, this is currently not a permitted use in this location.
- e. Permit some of the density in the form of commercial/retail uses, in a pre-designated location.
- f. Permit some of the density in the form of second storey residential units located above commercial.
- g. Change the two storey maximum to two-and-a-half storeys, with no change to current maximum height.

Staff Comments: the LTC (and staff) have expressed concerns about the existing development potential of up to 69 tourist accommodation units (61 without subdivision) on this property. As an alternative to simply reducing the density on the property, staff have suggested that the number of commercial guest accommodation units could be limited and that other uses that the community considers desirable, needed, or that could contribute to the integration of the site into the surrounding uses could be considered. Specifically:

- Maintaining the current maximum floor area is supportable, provided that the the density would be realized in a number of diverse of uses, not all as commercial guest accommodation. This site is centrally located, is within Miners Bay village, and has long been zoned for this density, so the overall density is not so much an issue as its potential concentration in 60+ tourist units.
- Increasing the maximum floor area of guest accommodation units generally in the C2 zone has already been discussed by the LTC. It would achieve several objectives: providing accommodation that is more oriented to families, and thus provide an alternative to vacation rentals in residential zones; reduce the overall number of units (in other words fewer, but larger, units) and thus reduce impacts such as traffic; and, support the new DPA guidelines that all for a diverse mix of unit types. However, I would suggest that there remain an overall limit on the number of units, to avoid a situation opposite to what is intended: a proliferation of extremely small units.
- Seniors Housing: there is a zone for Seniors Housing currently, which has not been developed. There may be a need for such housing and Miners Bay is the logical location. However, I would recommend that it

be pre-designated on the site, that a housing agreement either be in place or that the zoning be structured so that a housing agreement is a condition of implementing the density and that the overall number of units be capped at a relatively low number so that the site and the density are not in effect converted to market housing.

- The current zoning does not permit a restaurant at this location. I can see no land use reason why there should not be a restaurant permitted in this C2 location, provided it is accessory to commercial guest accommodation uses.
- The current zoning permits limited retail uses in conjunction with tourist accommodation uses. The proposed change would be permit some of the density to be realized as retail commercial zoning, in a pre-designated location. I would recommend that it be permitted along Village Bay Road, providing the opportunity, in conjunction with development permit area guidelines, to create a more defined, integrated, diverse and well-designed entrance to Miners Bay.
- The owners are also supportive of having zoning that would permit some of the zoning to be realized in the form of residential units above retail spaces. This potential is also discussed above in the context of the C1 zoning and the same benefits and issues would apply, but on a more limited scale. If the LTC is supportive of considering such housing in the C1 zone, it should be considered here as well if retail commercial zoning is also supported.
- Buildings with over two storeys could be considered by variance as part of a future DP application, as the rationale for this is based on improving site layout.

Generally, I support the approach of mitigating the potential impacts of the current tourist accommodation density by providing for other uses that could benefit the community in general, provide for an improved built environment on this prominent site, and better integrate the site with the adjacent lands. If the LTC is supportive of this general approach, staff should be provided with direction on any specifics and be asked to work on draft zoning for the site. The zoning would be comprehensive and unique to the site and may involve additional instruments such as covenants and housing agreements.

## Next Steps

1. Staff will complete the first draft of the LUB.

2. The APC review of the LUB should be complete. Staff will review and provide comments on the APC recommendations. Any additional changes stemming from APC comments can be incorporated into the draft LUB.
3. LTC and staff complete the review of the C2 zoning and incorporate revisions into the draft LUB.
4. The LTC reviews the completed draft LUB.
5. Scheduling of community information meetings.

**Recommendations**

1. The LTC should review the attached draft LUB and give staff any direction for further changes.
2. The LTC should provide staff with direction with respect to changes to the C1 zoning to eliminate the site specific restrictions and to permit residential uses on second storeys.
3. The LTC should provide staff with direction with respect to drafting zoning for the Bennett Property.

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Respectfully submitted by:



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Robert Kojima

January 24, 2007

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Date

Attachments:        Draft LUB (separate distribution)