Gambier Island Local Trust Committee

Special Meeting Addendum

Date:	October 31, 2023
Time:	9:00 am
Location:	Electronic Meeting

To:	Gambier Local Trust Committee Marlis McCargar Renee Jamurat
From:	Joe Bernardo
For:	Special Meeting of October 31, 2023
Subject:	Amendments to Proposed Bylaw 154

BACKGROUND

Bylaw 78 is the land use bylaw (LUB) applicable to Keats Island. Draft Bylaw 154 proposes to amend it.

At the July 21, 2023 community information session, the principal concerns shared by islanders regarding Bylaw 154 were the same as those expressed at previous public meetings.

In summary, Keats Island residents continue to be concerned that:

- The proposed new dock regulations are impractical for smaller waterfront lots on Keats Island.
- The proposed exemption for repairing and maintaining pre-existing structures within proposed Development Permit Area 3 (DPA3) needs to be amended to clarify that maintenance includes the normal course replacement of building components.
- The proposed development permit requirement is overly broad. Additional exemptions and clearer application guidelines are needed to ensure unnecessary financial costs and delays are not imposed on island residents.
- The Trust should work collaboratively with residents to implement effective and environmentally sound shoreline protection measures, instead of relying solely on introducing new restrictions that rely on the threat of enforcement to compel compliance.

These concerns emerge from a widespread recognition within the community that as currently drafted the new regulations proposed by Bylaw 154 do not fully align with actual conditions on the island.

The population of Keats Island is, and has always been, concentrated on or near the shoreline.

- In the areas zoned to allow for residential development, virtually all suitable shoreline properties were developed decades ago. The shoreline is already heavily developed.
- The great majority of waterfront residential lots have been actively occupied for decades.
- It follows that much of the soil and vegetation within 15 metres from the natural boundary of the sea (NBS) has already been significantly disturbed.
    - In all developed waterfront lots, at least some degree of landscaping has taken place within the boundaries of the prospective DPA3.

- In many cases, if not most, the disruption of native vegetation and alteration of the terrain has been substantial.
- Long term human use of the land has also resulted in invasive plant species taking root along the shoreline, with extensive and persistent infestations of non-native blackberry species and English ivy being the most obvious examples.

Notwithstanding these impacts on the environment, in many areas the shoreline and immediate terrain upland of the NBS nonetheless retain much of their natural character. This is not by happenstance.

Keats Island has few roads, no car ferry service, and its shoreline is almost uniformly steep sided. Except in the Eastbourne community, virtually all private residential waterfront lots are boat access only. Apart from a few open fields at Keats Camp and the Barnabas Family Ministries property (Barnabas), the island is completely covered in forest. There is no meaningful commercial activity on the island, and it does not have any retail outlets or other sources of necessities. Residents must either bring supplies with them or travel by boat to shop in Gibsons, which is also the closest community to access medical clinics and other basic services.

As a result of the foregoing factors, the development of the shoreline has historically followed a definite pattern:

- Constructing a dwelling on a waterfront lot confronted property owners with major logistical hurdles. The people most willing to take on those challenges were those for whom being close to the natural environment was their reason for wanting to be on the island in the first place.
- Site preparation was kept to the absolute minimum. Tree clearing was limited to only what was strictly necessary. The areas upland of shoreline dwellings were left entirely undeveloped, and typically remain so.
- Being limited to accessing their properties by boat only, owners out of practical necessity situated their dwellings close to the water. As a result, the majority of shoreline dwellings are at least partially, if not wholly, located within 15 metres from the NBS.
- Often owner built, dwellings were and typically remain, summer cabins not suitable for all season occupation.
- There are very few year round residents on the island. Estimates of the actual number range between 40 and 80 permanent residents. The vast majority of the inhabitants are part-time residents with summer homes who are invested in preserving the integrity of their surrounding natural environment.

A shoreline that has been settled and is subject to the usual impacts of human occupation for decades cannot be characterized as wild. To the extent the shoreline retains substantial elements of its original natural character; it is because of generations of responsible stewardship. The shoreline environment deserves protection not despite property owners, but because of them.

Island residents do not object to stronger environmental protection. They object to the uncertainty caused by rules that are insufficiently precise. They object to overly broad restrictions that would pointlessly impede them from maintaining their properties in a reasonable manner. That is why they have repeatedly asked the Gambier Local Trust Committee (LTC) to take their concerns seriously and recognize them as rational and fact based, instead of dismissing them as reactionary and ill-informed. Keats Islanders want Bylaw 154 to introduce a DPA that is appropriate to the place that they know intimately and care deeply for, the one that actually exists and not an imagined abstract version of it.

Section 3 of the *Islands Trust Act* places the LTC under a duty to develop balanced land regulation that serves to preserve and protect both the natural environment and the quality of life of Keats Island's human residents.

The Islands Trust (Trust) is comprised of 13 different Local Trust Areas for a reason. It is to ensure that bylaws are tailored to address specific and, often, unique local circumstances.

The key local fact of the Keats Island shoreline is that the scale of pre-existing development requires the LTC to be realistic about what can be practically, and appropriately, achieved through a shoreline DPA.

- With respect to already developed waterfront lots, DPA3 cannot protect pristine shoreline ecosystems within 15 metres of the NBS because they no longer exist.
- Lawful human occupation within the area 15 metres from the NBS has been both extensive and long-standing. This requires the provisions of Bylaw 154 to accommodate the continued normal use and maintenance of pre-existing structures and facilities within DPA3.

There is a direct correlation between the efficiency of a regulatory scheme and its effectiveness. To be effective, the regulations introduced through Bylaw 154 must be fair, intelligible, and avoid imposing burdens on island residents that would do nothing to meaningfully protect the environment.

DOCKS

<u>Fairness problems</u>
Under the LUB, residential docks are regulated further to the zoning requirements specified for the Community Residential 1 (CR1), Rural Residential (RR), Rural Comprehensive (RC) and Private Institutional 2(PI2) zones, and Communal Moorage sub-zone M2(a).

The PI2 zone regulates land use at Barnabas. Currently, the maximum size permitted for residential docks in the PI2 zone is greater than that permitted for residential docks in the other zones where residential docks are allowed.

- In the CR1, RR, RC, and M2(a) zones, the specified maximum coverage area for residential "dock floats" is 65 square metres. No allowances are made for differences in lot sizes. The same limit applies regardless.
- By contrast, the PI2 zoning requirements:
    - Do not specify a maximum area for "dock floats".
    - Instead, they refer to the overall maximum coverage area permitted for dock floats, connecting ramps, and piers collectively.
    - The maximum coverage area specified for these marine based structures accessory to residential dwellings is 150 square metres.

- This maximum is subject to a dwelling being situated on a lot that is larger than 40 acres (16 hectares).
- No provision is made for residential lots that are 40 acres or less.

- On its face, it is inequitable to allow residential docks in PI2 to cover up to 150 square metres while limiting them to 65 square metres elsewhere.
    - The inclusion of ramps and piers as part of the maximum coverage area is not sufficient to explain why residential docks in PI2 should be permitted to be up to 85 square metres larger (150 minus 65) than those in other areas.
    - It is also evident that enabling dock sharing by multiple dwellings is not the reason for the 40 acre proviso, because the PI2 zone density requirements specified in section 4.6 of the LUB drastically limit dock sharing. (Lots greater than 40 acres and smaller than 60 acres are permitted only one dwelling, while lots of 60 acres or more are permitted one dwelling for each full 30 acres.) In any case, the maximum 150 square metre dock size is available to single dwellings.

There is no obvious policy reason for this discrepancy in maximum permitted dock sizes.

Bylaw 154 as currently written would only make the discrepancy worse, because it proposes to leave the 150 square metre maximum coverage for residential docks in PI2 untouched while reducing it to 47 square metres in other zones.

Conclusion — If the Staff cannot identify a policy reason for the discrepancy, Bylaw 154 should be amended to:

- **Change the definition of maximum dock size in PI2 to conform with the usage in the CR1, RR, RC, and M2(a) zones that specifies it to mean the size of the dock float.**
- **Reduce the maximum dock size in PI2 size to same 47 square metre limit that Bylaw 154 contemplates for the other zones.**

Although the LUB permits residential docks in the PI2 zone, it is silent with respect to dock sharing and does not prescribe regulations regarding the width of dock access ramps, piers, walkways and stairs within PI2.

Conclusion — Bylaw 154 should be amended to include provisions that will bring the regulations for residential docks in the PI2 zone into conformity with the requirements Bylaw 154 proposes for residential docks in the CR1, RR, RC, and M2(a) zones.

Section 4.6.9 of the LUB incorrectly states that 24 hectares is equivalent to 40 acres.

Conclusion — Bylaw 154 should include a provision that amends section 4.6.9 of the LUB by replacing the words "…and less than 24.0 hectares (30 acres)" with the words "…and less than 12 hectares (30 acres)".

As with residential docks, the institutional dock facilities at Barnabas are regulated by the PI2 zoning requirements. The institutional dock facilities at Keats Camp are regulated by the site specific requirements of Commercial Moorage sub-zone M2(b).

Currently, in both the PI2 and M2(b) zones the maximum coverage area for institutional dock facilities is set at 3000 square metres.

Section 1.17 of Bylaw 154 proposes to reduce the 3000 square metre limit in PI2 to 1500 square metres. No provision has been made, however, to reduce the maximum coverage area in M2(b) by the same amount. Instead, Bylaw 154 as currently drafted would leave the maximum the M2(b) zone at 3000 square metres.

There is no obvious policy reason for this discrepancy.

Conclusion — If Staff cannot identify a policy reason to justify a discrepancy in the maximum sizes permitted for institutional docks in the PI2 and M2(b) zones, Bylaw 154 should be amended to reduce maximum coverage area for the institutional dock facilities in the M2(b) zone to the same 1500 square metre limit contemplated for the PI2 zone.

<u>Distance requirement for docks</u>

There are 110 shoreline residential lots situated on either side of Keats Landing (District Lot 696). These were established in 1926 under a 99 year lease arrangement. With a view to enabling leaseholders to eventually assume title in fee simple, the owner of the property has met the LTA's requirements for property subdivision.

Although the leases will begin to expire in the relatively near future, important transition details still await resolution. Leaseholders who do not now have docks or binding dock sharing arrangements face some uncertainty about adequate boat access to their properties in the future.

A source of intense concern for the leaseholders is that Bylaw 154 proposes to amend section 2.7 of the LUB by adding a subsection that would require new private floats and docks to be sited at least 10 metres from any existing dock or structure. Leaseholders have objected, pointing out that most of their lots have a frontage of 50 feet (about 15 metres). For leaseholders between two lots that already have their own docks, the 10 metre distance requirement may well foreclose them from ever being able to build their own dock.

Leaseholders continue to ask the LTC to change the distance requirement. It is, however, beyond the power of the LTC to do so.

The purpose of adding the distance requirement to the LUB is to bring the bylaw's dock regulations into conformity with section 14(a) of the Minor Works Order issued under the *Canada Navigable Waters Act*. The distance requirement is already in place by virtue of federal legislation. Removing the parallel provisions from Bylaw 154 would do nothing to assist the leaseholders, and the LTC does not have authority to grant variances from federal requirements.

It is regrettable this crucial information was not been clearly communicated to leaseholders when they first expressed their concerns about the distancing requirement.

<u>Sharing docks</u>

What the LTC can and should do is introduce incentives that encourage dock sharing. The maximum size for shared docks that is proposed by Bylaw 154 does the opposite.

- Bylaw 154 provides that the maximum dock float size for a residential dock in the CR1, RR, RC, and M2(a) zones be set at 47 square metres.

- For each additional dwelling sharing a dock an additional 30 square metres may be added to the float size, but only up to an absolute maximum total of 105 square metres.
- Accordingly, the maximum float size for a dock shared by:
    - 2 dwellings would be 77 square metres (47 plus 30), resulting in a space allocation of 38.5 square metres per dwelling.
    - 3 dwellings would immediately hit the 105 square metre limit (47 plus 30 plus 30 = 107), resulting in a space allocation of 35 square metres per dwelling.
    - 4 dwellings would result in a space allocation of 26.25 square metres per dwelling (105 divided by 4).

A shared dock is not practical unless it can accommodate all its users at the same time.

Islanders with boat access only properties face the challenge of carrying families and supplies to and from Gibsons and the Langdale ferry terminal in variable weather conditions. In order to do this safely, a boat should be at least 5 metres in length (more or less). In other words, Bylaw 154 as currently written proposes a maximum float size for shared docks that, for all practical purposes, effectively sets the upper limit for dock sharing at 4 dwellings with boats of relatively modest size.

A scheme under which the usable float space available to each user is materially reduced in lock step with the addition of each participant does not encourage dock sharing by multiple participants. Instead, it constrains sharing by setting a low ceiling on how many participants can make practical use of a shared dock at the same time. This will result in more docks being built overall than would otherwise be the case if shared docks were permitted a larger maximum float size.

Dock sharing does more than provide island island residents with a convenient and economic option for reaching and supplying their boat access only properties. It serves the same environmental protection purpose that justifies reducing the size of new dock floats.

The scientific rationale for that policy is that the shadow cast by dock floats on the sea floor can have a negative effect on the marine habitat. Of particular concern is that shading inhibits the growth of sea grasses that provide foraging areas and spawning surfaces for a variety of fish and invertebrate species. Reducing the maximum surface area for the floats of new docks serves to mitigate such effects by allowing more light to reach the sea floor.

Dock sharing does the same thing, because by reducing the total number of new docks that are built over time it also reduces the total amount of sea floor shading. As stated by the province's "Marine Dock Construction and Maintenance Guidelines":

> Wherever possible proponents are encouraged to develop dock facilities that can facilitate numerous upland owners. In pursuing multi-owner/use facilities the footprint on marine habitats is minimized. These types of facilities also help to alleviate potential cumulative impacts from high density, individual dock infrastructures.

In developing the dock sharing provisions in Bylaw 154, the Staff has determined that for the purpose of enabling 2 dwellings to share one dock it is reasonable and appropriate to increase the default maximum float size of 47 square metres by an additional 30 square metres.

Conclusion — Under the same logic, Bylaw 154 should be amended to enable the pro-rating of the maximum float size for shared docks by an additional 30 square metres per additional participant up to an absolute maximum of 154 square metres, i.e., the LUB's current maximum for shared docks.

This would incentivize greater dock sharing by setting a higher ceiling on how many participants can practically make use of a shared dock at the same time:

- Under the higher maximum, the space allocation for 2 dwellings sharing a dock would remain limited at no more than 38.5 square metres per dwelling.
- For 3, 4, 5, or 6 dwellings, however, the higher maximum would enable dock sharing that resulted in practically useful space allocations of 35.7, 34.25, 30.8, and 25.7 square metres per dwelling, respectively.
- The cost to the environment of increasing the maximum float size for shared docks to accommodate up to 6 dwellings would be the construction of one dock that caused 154 square metres of shading.
- By contrast, to accommodate 6 dwelling under a maximum float size of 105 square metres the cost to the environment would be the construction of one dock for 4 boats (105 square metres) and another one for 2 boats (77 square metres) that caused a total of 182 square metres of shading.

A scheme that maximizes the number of dwellings able to share docks is consistent with the LTC's preserve and protect mandate.

<u>Other dock issues</u>

1. The LUB provisions that allow larger floats for shared docks in the CR1, RR, RC, and M2(a) zones are, in each case, subject to the registration of a restrictive covenant. However, the LUB says nothing about either the purpose or nature of the restrictions. Implicitly leaving it to the Staff to determine the content of restrictive covenants without direction amounts to an improper delegation of legislative discretion.

   Conclusion — Language should be added to Bylaw 154 that amends the relevant provisions such that they specifically identify the conditions to be included in restrictive covenants. Moreover, these conditions should be limited to only advancing the policy purposes that underlie the dock rules, and should not attempt to advance any goals extraneous to those purposes.

2. Some of the provisions in Bylaw 154 under the heading "Guidelines for the Construction and Replacement of Docks and Ramps are problematic.

   The guideline at section 9.3.3(n) states: "To allow for the maximum amount of light penetration to the water surface."

   - This language fails to prescribe anything, because it does not name the thing that is supposed to allow for maximum light penetration.
   - If the guideline is intended to refer to dock floats, it is impossible to follow. The only way to allow maximum light to penetrate is to not have a float at all.

- The guideline contradicts the one immediately above at 9.3.3(m), which provides guidance that is both clear and usefully specific.

Conclusion — Guideline 9.3.3(n) is obscure, gratuitous, and should be deleted.

The guideline at section 9.3.3(r) states: "The access ramps, piers, walkways and stairs for docks should not exceed a maximum width of 1.5 metres."

- This language does not provide guidance, but rather purports to establish a specific regulatory requirement.
- It is also entirely redundant, as it repeats the 1.5 metre width requirement that is provided elsewhere in the proposed amendments to the dock regulations for the CR1, RR, RC, and M2(a) zones.

Conclusion — Guideline 9.3.3(r) is redundant and should be deleted.

REPAIR VS. REPLACE

Section 9.3.1 of Bylaw 154 proposes to make the "construction of, addition to or alteration of a building or structure" within DPA3 subject to the prior application and issuance of a development permit, unless the work is otherwise specifically exempted from the requirement.

With respect to pre-existing structures within DAP3, section 9.3.2(b) proposes the following exemption:

> Repair and maintenance of pre-existing lawful buildings, structures or utilities, except for shoreline protection structures, provided there is no alteration of undisturbed land or vegetation and that they are entirely within the existing building or structure footprint. For clarity, repair, maintenance, alteration or reconstruction of shoreline protection works such as retaining walls, requires a development permit whether or not they meet the definition of 'structure' in the Keats Island Land Use Bylaw;

This language is so general as to create uncertainty about what it intends to exempt from the development permit requirement.

On Keats Island, it is not unusual for the "repair and maintenance" of cabins and other structures to require the replacement of major building components. This is especially the case for the many shoreline cabins built decades ago under outdated building codes, or when rural areas were not even subject to them. These cabins are particularly vulnerable to corrosion failures and decay due to building envelopes that are typically permeable to marine humidity. Docks are by definition exposed to extreme conditions.

Consequently, repair and maintenance within an "existing building or structure footprint" can commonly require replacing:

- A dangerously outdated wiring system.
- A leak prone copper pipe plumbing system with a Pex system.
- Building siding.
- A leaky roof.
- The decking on a patio.

- Patio structural members weakened by decay.
- The decking on dock ramps and floats.
- Individual structural members of a dock weakened by wear, decay, or storm damage.

By definition, any material replacement undertaken in furtherance of building maintenance constitutes an “alteration of a building or structure”. This creates uncertainty regarding the true scope of the section 9.3.2.(b) exemption. That is why residents have asked the LTC to clarify that “repair and maintenance” includes the replacement of building components.

The alternative is to leave the distinction between exempt maintenance and alterations requiring a development permit to the Staff’s interpretive discretion. As a matter of legal principle this is inappropriate.

Exemptions are not guidelines for how to interpret the rules. They are themselves rules whose meaning should be accessible on a plain reading of their language. Section 9.3.2(b) in its current form attempts to confer a statutory right on islanders, but is ambiguous about its scope. This would effectively make the right contingent on the judgments of unelected personnel, which amounts to an improper delegation of rule making authority.

Clear and unambiguous rules are a crucial element of fairness. They are also essential for operational efficiency. Ambiguous rules cause uncertainty for the public and Staff alike. This in turn leads to Staff time being consumed by the need to resolve unnecessary questions and to members of the public having to endure unnecessary delays. As a matter of policy, the LTC should make it easier, not harder, for property owners to maintain legacy structures in DPA3, and bring them closer to current standards, if the work can be done within their existing footprints.

After being asked that section 9.3.2(b) be amended to clarify that repair and maintenance may include the replacement of building components, Staff proposed the following:

> Minor repair and maintenance of lawful buildings, structures or utilities provided there is no alteration of undisturbed land or vegetation and [*sic*] are entirely within the footprint of the existing building or structure;

This language is problematic.

- It does not state what is supposed to happen “entirely within the footprint”.
- It treats utilities differently than buildings and other structures, because it foregoes the existing footprint requirement for them.
- Adding the word “minor” aggravates the problem. First, it would make the exemption even more ambiguous, because whether or not a repair is minor is a matter of subjective opinion. Second, it would definitively require property owners to obtain a development permit for normal course maintenance that includes replacing building components.

One of the specific concerns raised at the July 21 meeting was that islanders need to be able to repair or replace pre-existing septic fields that encroach into DPA3. Staff has helpfully suggested that section 9.3.2 be amended by the addition of the following new exemption.

> **Repair or replacement of a septic field site in the same location as the existing septic field;**

This proposed exemption is appropriate because it recognizes that restricting the work to a septic field's existing footprint achieves the correct balance between environmental protection and the needs of property owners.

Conclusion — Staff's proposed amendment addresses a legitimate public concern with precision and should be adopted.

The underlying logic of the septic field exemption applies equally as well to the replacement of building components in the course of repairing and maintaining pre-existing buildings, structures, and utilities within DPA3.

Conclusion — Section 9.3.2(b) should be rewritten as follows:

> **Repair and maintenance of lawful buildings, structures or utilities, including the replacement of building components in connection with such repair and maintenance, provided always that any such work is conducted entirely within the footprint of the existing building, structure or utility and does not alter undisturbed land or native vegetation;**

CONSTRUCTION WITHIN DPA3

The first reading of Bylaw 154 provoked strong opposition in the community. One of the provisions that particularly alarmed islanders was a proposed amendment that would replace section 2.7.3 of the LUB.

Currently, section 2.7.3 of the LUB establishes a setback of 7.5 metres from the NBS within which no structure is permitted to be constructed, reconstructed, moved, extended or located (limited exceptions are specified). The new version of the section proposed to increase the setback to 15 metres (and reduce the number of exceptions).

As mentioned, many shoreline cabins and structures are situated either wholly or partially within 15 metres from the NBS. These include structures erected in compliance with the LUB, under which it is presently lawful for islanders to undertake construction between 7.5 metres and 15 metres from the NBS (from now on referred to as the upper zone). Islanders were perplexed by the prospect of being abruptly prohibited from improving or renovating the structures that are central to their ability to use their properties, and voiced strenuous objections to the proposed amendment.

Accordingly, there was considerable relief among islanders when the LTC responded to the community's many concerns by rescinding the first reading of Bylaw 154 and passing a revised version. With respect to section 2.7.3 specifically, the proposed new section now reads as follows:

a) No building or structure except a platform with a maximum area of 5 square metres, or a set of stairs or a walkway for the purposes of accessing the foreshore or a permitted float, dock, wharf or other permitted marine related structure, may be constructed, reconstructed, moved, extended or located within 7.5 metres (24.6 feet) of the natural boundary of the sea.

b) Notwithstanding subparagraph a), for properties zoned Rural Comprehensive (Lot 876 and Lot 1829) the setback set out above shall be 15 metres (49.2 feet).

Unfortunately, it was not clearly explained to the public that restoring the setback to 7.5 metres would not mean a return to the status quo. As a result, learning the LTC had backed away from the setback expansion led many islanders to believe that they had been heard and the flexibility they now enjoy with respect to building in the upper zone will continue in the future. This is not the case.

Withdrawing the proposed ban on construction in the upper zone is one thing. The development permit requirement in the new section 9.3.1 is quite another. It states:

> The following activities shall require a development permit whenever they occur within the Development Permit Area 3: Shoreline (DP-3), unless specifically exempted under Subsection 9.3.2:
>
> - construction of, addition to or alteration of a building or structure;
> - land alteration, including vegetation removal and disturbance of soils; and
> - subdivision of land.

Since the word "alteration" is not qualified, it encompasses any and all conceivable changes to a building or structure. The term "land alteration" is likewise unqualified and encompasses any and all changes to land, including changes to previously disturbed land. The language of section 9.3.1 is sweeping. It would make obtaining a development permit mandatory for any kind of construction work or land alteration anywhere in DPA3.

With respect to new construction, a development permit requirement objectively serves the goal of environmental protection by creating a structured dialogue between the Staff and islanders about how to best minimize a development's potential negative impacts on previously undisturbed terrain. This is reasonable.

It is not reasonable, however, to require a development permit for absolutely each and every building or land alteration irrespective of their potential environmental effects.

The sweeping language of section 9.3.1 would require islanders to obtain a development permit before they carried out any of the following in the upper zone:

- Replacing outdated glazing with energy efficient windows.
- Installing solar panels.
- Renovating the interior of a cabin.
- Changing a roof profile or adding a balcony.
- Rebuilding a sun deck on its original footings.
- Digging up a lawn to replace the turf with native ground cover and plants.

These are building or land alterations that all take place within an existing footprint of previously disturbed land and that do not involve removing native vegetation. Requiring a development permit for them would do nothing to preserve or protect the natural environment.

Regulation is reasonable when it takes a balanced approach to managing diverse needs.

The purpose of Bylaw 154 is to improve the regulation of a shoreline environment that has long been materially altered by human activity. A crucial fact of the shoreline environment as it exists today is that people are an integral part of it. The context in which Bylaw 154 seeks to introduce protective measures is one in which preserving the environment is not the only value. Enthusiasm for environmental protection is both understandable and valuable; treating the genuine needs of the shoreline's human residents as an afterthought is not.

Just as it is reasonable to exempt repair and maintenance work that takes place within an existing structural footprint from the development permit requirement, so too is it reasonable to exempt alterations of structures and land when they satisfy the same criterion of taking place on previously disturbed land. Likewise, requiring a development permit for building additions contributes nothing to environmental protection when all the work takes place on previously disturbed land.

Conclusion — The following exemption should be added as a subsection to section 9.3.2 of Bylaw 154:

> **Alterations or additions to buildings, structures, and utilities and alterations to land, provided always that any such alterations or additions take place between 7.5 metres and 15 metres from the natural boundary of the sea and entirely within the footprint of an existing building, structure, utility or on previously disturbed land and do not alter undisturbed land or native vegetation;**

SHORELINE PROTECTION

The term "shoreline protection measures" is used extensively in Bylaw 154, but does not appear to be explicitly defined anywhere in the LUB or in Bylaws 153 and 154. The latter, however, includes a number of guidelines relating to shoreline protection.

In discussing the differences between hard and soft shoreline protection measures, the guideline at section 9.3.3(w) characterizes both as "modifications to the shoreline". It also states that:

> Where shoreline protection or stabilization measures are proposed, they shall be designed by a Professional Engineer with experience in coastal and/or geotechnical engineering

Nothing in section 9.3.3(w) qualifies this directive; and, as already observed, section 9.3.1 proposes a development permit requirement for any and all land alterations within DPA3. It follows, then, that implementing any kind of shoreline protection strategy, even one that relied entirely on soft measures, would require an islander to first obtain a development permit, which would not be granted unless the application is accompanied by an engineering report.

All of this contradicts the Trust's advocacy that urges residents of the Trust Area to "protect their shoreline properties using natural materials, slopes, and plantings", and the Trust's promotion of the Stewardship Centre for British Columbia's Green Shores Program (see https://islandstrust.bc.ca/programs/marine-shorelines/).

The Trust promotes Green Shores to Trust Area residents is not merely because soft measures are the more environmentally sensible alternative. As the Trust's various publications indicate, it is because shoreline erosion due to climate change is increasingly making the need for sound shoreline protection an urgent concern. For the Gambier Local Trust Area, the standard application fee for development permits is $1,020. Engineering reports typically cost substantially more. If the Trust and the LTC want to encourage islanders to step up to help mitigate shoreline erosion by implementing soft shoreline protection measures, then placing gratuitous regulatory and financial barriers in front of them is not the way to do it.

After being asked to add an exemption to Bylaw 154 that would allow islanders to implement soft shoreline protection measures without a development permit, Staff suggested an amendment to section 9.3.1 that would explicitly make the "repair, maintenance or alteration of shoreline protection measures" subject to the development permit requirement.

This language does not address the issue. It is also not clear what the language adds that is not already achieved by section 9.3.1's imposition of a development permit requirement for any construction, addition or alteration in DPA3.

Conclusion — The following exemption should be added as a subsection to section 9.3.2 of Bylaw 154:

> **The implementation of the following soft shoreline protection measures [*Staff to confirm specific practical measures property owners can implement on their own with no meaningful risk of environmental disruption, e.g., log placement, certain beach nourishment measures, and improving drainage/revegetation in DPA3*].**

MISCELLANEOUS DRAFTING ISSUES

<u>Exemptions</u>
Section 9.3.2(a) states: "Development or alteration of land to occur outside the designated Development Permit Area, as determined by a BC Land Surveyor;"

This language has no effect. Any development occurring outside of DPA3 would not be subject to section 9.3.1 in the first place.

Section 9.3.2(a) should be deleted.

<u>Guidelines</u>
1. The guideline at section 9.3.3 states: "Prior to undertaking any applicable development activities within DP-3, an owner of property shall apply to the Local Trust Committee for a development [*sic*], and the following guidelines apply:"

   Section 9.3.3 should be amended by inserting the word "permit" after the word "development".

2. The guideline at section 9.3.3(e) states: " Sea level rise, storm surges and other anticipated effects of climate change should be addressed in all development permit applications."

The phrase “other anticipated effects of climate change” is vague and does not provide meaningful guidance. It would effectively create another improper rule making situation, by putting Staff in the position of having to determine what should count as an “anticipated” climate change effect for any given application. If the Staff declined to do so, then to satisfy the requirement an applicant would be compelled to obtain a costly expert general assessment of the potential “anticipated” climate change vulnerabilities specific to their property.

If there are known anticipated climate change effects relevant to Keats Island, then the guideline should identify them. Otherwise, the public should not be put in the position of having to predict the future to fill in gaps in the LTC’s understanding of local climate change consequences.

Section 9.3.3(e) should be amended by deleting the phrase “other anticipated effects of climate change”.

3. The guideline at section 9.3.3(f) states in part: “All development within this Development Permit Area is to be undertaken and completed in such a manner as to prevent the release of sediment to the shore…”

   The term “in such a manner as to prevent” would place an applicant under an absolute obligation to prevent sediment release, irrespective of whether it is feasible to do so. It is better to use the term “with best efforts”, which instead would require an applicant to do everything that is reasonable in the circumstances to prevent sediment release.

   Section 9.3.3(f) should be amended by replacing the words “and completed in such a manner as” with the words “with best efforts”.

4. The guideline at section 9.3.3(v) requires an application for a shoreline protection development permit to be supported by a professional engineering report that addresses certain specified issues. Subsection (iv) identifies one of these as: “Whether there will be any degradation of water quality or loss of fish or wildlife habitat because of the modification;”

   It is inappropriate to require an engineer to provide a professional opinion about questions only a biologist is qualified to answer, or to ask any expert to predict the future. At most, an expert can talk about probabilities. Asking for an opinion about “degradation” without identifying measurement criteria is not an objective question, but rather a subjective one.

   The purpose of this guideline is to ensure that the materials used in dock construction will have a minimal toxic effect on marine life. Engineers are qualified to render opinions on the performance ratings of construction materials.

   Subsection 9.3.3.(v)(iv) should be deleted and replaced with: “The potential of the proposed construction materials to create toxic effects in marine life over time compared to other materials equally suitable for the planned construction.”

5. The guideline at section 9.3.3(w) establishes broad parameters for the design of shoreline protection measures. Subsection (iii) identifies one of these as: “Not be expected to cause erosion or other physical damage to adjacent or down-current properties, or public land”.

   This wording is awkward, and asks for a prediction instead of prescribing a parameter.

   Subsection 9.3.3(w)(iii) should be deleted and replaced with: “Avoid causing erosion or other physical damage to adjacent or down-current properties, or public land;”