

GALIANO ISLAND LOCAL TRUST COMMITTEE

DOCK REVIEW PROJECT

DISCUSSION PAPER

FEBRUARY 2017



Islands Trust

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## 1. Background

At the March 7, 2016 regular meeting of the Galiano Island Local Trust Committee (LTC) a resolution was passed which moved the item “Dock Review” from the Projects List to the LTCs “Top Priorities” list as item No. 3. This action was taken in response to concerns related to private docks.

The concerns are understood to include environmental impacts, particularly on eelgrass or forage fish spawning areas as well as impacts upon archaeological sites which are frequently located along shorelines. Increasingly, First Nations are expressing concerns about the proliferation of private docks as they impact their ability to engage in traditional food gathering activities, and other cultural impacts, as well as generating rights and title implications. The protection of public access to the shoreline is also a concern for community members, and visitors to the Island. Visual impacts of docks can be significant for neighbours and there is interest, in some parts of the community, to have the opportunity to speak to the specifics of dock construction, design, and location.

Subsequent to the March 7<sup>th</sup> meeting the LTC was in receipt of two staff reports which were presented at the July 4<sup>th</sup> and August 29, 2016 regular meetings of the LTC. The staff report dated June 23, 2016 which was received at the July 4<sup>th</sup> meeting responded to the following resolution which was passed at the June 6, 2016 meeting.

**GL-2016-61**

*that the Galiano Island Local Trust Committee requests staff to provide a project charter on dock review.*

That report included the requested draft project charter (Attachment 1) for the consideration of the LTC and sought direction from the LTC to report back to the LTC with a report outlining policy and regulatory options for the Dock Review project.

At the August 29<sup>th</sup> meeting a staff report dated August 19, 2016 was received which responded to the direction received from the LTC at the July 4<sup>th</sup> meeting. Following a review and discussion of that report and the attached draft project charter the LTC passed the following resolutions:

**GL-2016-067**

*that the Galiano Island Local Trust Committee endorses the project charter attached to the staff report dated June 23, 2016.*

**GL-2016-068**

*that the Galiano Island Local Trust Committee request that staff report back with a report outlining policy and regulatory options for the Dock Review project.*

The project charter contains the three objectives listed below. It should be borne in mind when considering this discussion paper that the focus of this project, and paper, is specific to the matter of private docks as identified in those objectives.

- To identify options for further regulating private docks
- To consider amendments to the OCP and LUB
- To implement potential regulatory changes to restrict private docks.

The scope of the project is defined as being:

- Review of options for regulating docks
- Public consultation on options to further regulate docks

- Consultation with agencies and first nations
- Bylaw amendment process

The first deliverable identified in the Workplan Overview of the project charter is “Early Consultation – trustee newsletter, survey, first Nations, FLNRO”. An online survey was conducted in December 2016 with responses from 165 respondents (Attachment 2). The results of the survey are reviewed in Section 7 of this discussion paper. The results bring into question whether there exists adequate community support for at least one of the objectives of the project as currently defined and raise concerns about the ultimate success of the project.

## 2. Current Policy and Regulatory Regime

### Islands Trust Policy Statement

The Policy Statement provides a number of policies which speak to the implementation, regulation and use of private docks, as follows below.

- 3.4.4 - Local Trust Committees and Island Municipalities shall, in their official community plans and regulatory bylaws, address the protection of sensitive coastal areas.
- 3.4.5 - Local Trust Committees and Island Municipalities shall, in their official community plans and regulatory bylaws, address the planning for and regulation of development in coastal regions to protect natural coastal processes.
- 4.5.8 - Local Trust Committees and Island Municipalities shall, in their official community plans and regulatory bylaws, address the needs and locations for marine dependent land uses.
- 4.5.10 - Local Trust Committees and Island Municipalities shall, in their official community plans and regulatory bylaws, address the location of buildings and structures so as to protect public access to, from and along the marine shoreline and minimize impacts on sensitive coastal environments.
- 4.5.11 - Local Trust Committees and Island Municipalities shall, in their official community plans and regulatory bylaws, address opportunities for the sharing of facilities such as docks, wharves, floats, jetties, boat houses, board walks and causeways.
- 5.1.3 - Local Trust Committees and Island Municipalities shall, in their official community plans and regulatory bylaws, address the protection of views, scenic areas and distinctive features contributing to the overall visual quality and scenic value of the Trust Area.
- 5.5.4 - Local Trust Committees and Island Municipalities shall, in their official community plans and regulatory bylaws, address the location and type of recreational facilities so as not to degrade environmentally sensitive areas, and the designation of locations for marinas, boat launches, docks and anchorages so as not to degrade sensitive marine or coastal areas.
- 5.5.5 - Local Trust Committees and Island Municipalities shall, in their official community plans and regulatory bylaws, address the identification of sites providing safe public access to beaches, the identification and designation of areas of recreational significance, and the designation of locations for community and public boat launches, docks and anchorages.

### Official Community Plan

The following are policies related to private docks may be found in Galiano Island Official Community Plan (OCP), Bylaw No. 108:

- The establishment of group or shared docks shall be encouraged.

- The Local Trust Committee may consider amending the existing Marine zone to not permit new individual private docks. Applications for rezoning for shared docks should be considered.

The OCP also includes specific Shoreline & Marine Development Permit Area (DPA) guidelines for dock construction or replacement:

42. For residential properties, preference is to be given to the placement of mooring buoys and floats instead of docks.
43. Docks and wharves should be designed to ensure that public access along the shore is maintained except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions.
44. Docks and wharves should be sited to minimize impacts on sensitive ecosystems such as eelgrass beds, fish habitat and natural processes such as currents and littoral drift.
45. Docks should be constructed in a manner that permits the free flow of water beneath. Supports should be located on a hard substrate.
46. Floating docks should not rest on the sea bed at any time and a minimal, moveable ramp rather than a fixed wharf or pier should be utilized to connect the dock with the shore.
47. Piers and pilings and floating docks are preferred over solid-core piers.
48. Docks should not use unenclosed plastic foam or other non-biodegradable materials that have the potential to degrade over time. Docks should be constructed of stable materials that will not degrade water quality. The use of creosote-treated pilings is discouraged.
49. Boat launch ramps are the least desirable of all water access structures and should be located on stable, non-erosional banks where a minimum amount of substrate disturbance or stabilization is necessary. Ramps should be kept flush with the slope of the foreshore to minimize interruption of natural geo-hydraulic processes.
50. Construction of a private ramp on an individual residential lot or parcel is discouraged. Owners are urged to seek opportunities to use public ramps or to share existing private ramps.
51. Residential docks should be located and designed to avoid the need for shore defence works or breakwaters.
52. Residential docks should not extend from shore any further than necessary to accommodate a small pleasure craft. Residential docks should not be designed to accommodate boats with a draft greater than 2.2 metres or have floats more than 35 square metres total surface area unless more than two parcels have legal access to the dock, in which case permitted total surface area should be a multiple of the number of lots the dock serves.

#### Galiano Land Use Bylaw No. 127

The Land Use Bylaw (LUB) provides regulations for docks within three zones. The primary zone is the Marine (M) zone which provides the following:

- 12.2.1 In the Marine zone the following uses are permitted, subject to the regulations set out in this section and the general regulations set out in Parts 2 and 3, and all other uses are prohibited.

- 12.2.1.1 docks, private floats, wharves, piers and walkways accessory to the residential use of an abutting upland lot and providing access to that lot
- 12.2.1.2 moorage of boats accessory to the residential use of an upland lot
- 12.2.2 Despite Subsection 12.2.1 one private float and walkway is permitted, not to exceed a total length of 35 metres from the natural boundary of District Lot 145, Cowichan District, without the establishment of a residential use on the upland lot.
- 12.2.3 Without limiting the generality of the foregoing, no commercial or industrial activity is permitted in this zone in connection with the use of docks, floats or wharves and the residential use of a watercraft of any kind, whether temporary or permanent, is prohibited.

#### Minimum Setbacks

- 12.2.4 Docks, floats and wharves must be sited entirely within the boundaries of the owner's water lot lease, licence of occupation or other Crown tenure and at least 3 metres from the seaward projection of any side lot line of the abutting upland lot.

Docks are also currently permitted in the Marine Service (MS) zone and the Marine Commercial Land (MCL) zone although these are for commercial purposes, not intended to regulate private residential docks.

The Marine Service zone provides the following relevant regulations:

- 12.3.1 In the Marine Service zone the following uses are permitted, subject to the regulations set out in this section and the general regulations set out in Parts 2 and 3 and subject to all marine services facilities provided being available to the general public and not operated privately for profit, and all other uses are prohibited.
  - 12.3.1.1 docks, floats, wharves, piers, ramps and walkways
  - 12.3.1.2 wharfage facilities for water taxis, ferries, fishing boats, float planes and pleasure craft
- 12.3.2 All structures must be sited within the boundaries of the owner's water lot lease, licence of occupation or other Crown tenure and at least 3 metres from the seaward projection of any side lot line of the abutting upland lot.

The Marine Commercial Land (MCL) zone provides the following relevant regulation:

- 12.5.1 In the Marine Commercial Land zone the following uses are permitted, subject to the regulations set out in this section and the general regulations set out in Parts 2 and 3, and all other uses are prohibited.
  - 12.5.1.1 marinas

## Discussion

The eight relevant policies contained within the Islands Trust Policy Statement (ITPS) provide direction on the matters which should be considered with respect to docks and their potential impacts. They also provide specific direction as to necessary OCP content and LUB regulations which must be included in those documents.

Not surprisingly, given the Object of the Islands Trust, there is a clear focus upon mitigating or preventing any environmental impacts that may be associated with dock use. The policies require the OCP and LUB to address the protection of sensitive coastal areas and to protect natural coastal processes.

It is the direction of the ITPS that the LTC take a wide view of the protection of those sensitive coastal areas and their natural processes by including within the OCP and LUB policies and regulations which consider public access to beaches and foreshore areas, and, “the identification and designation of areas of recreational significance, and the designation of locations for community and public boat launches, docks and anchorages”. This includes the designation of potential locations for marinas, boat launches, docks and anchorages including the opportunity for shared facilities.

The OCP follows on the direction of the ITPS by encouraging, in Section 1.3, “Water Transportation Policies” the establishment of group or shared docks. Section 2, “Shoreline and Marine Policies”, provides that:

- c) *The Local Trust Committee may consider amending the existing Marine zone to not permit new individual private docks. Applications for rezoning for shared docks should be considered.*

This policy empowers the LTC to consider broader restrictions upon the approvals of docks through the zoning bylaw without amendment to the current OCP text. The potential need for the use of this option is, however, moderated by the provisions of Development Permit Area 2 – Shoreline and Marine DPA.

As noted earlier in this section DPA 2 contains guidelines (42 to 52) which are specific to “Construction and Replacement of Docks and Boat Launch Facilities”. These guidelines also speak to the issues of mitigating or preventing any environmental impacts associated with these activities through the provision of criteria regarding location, construction materials and form such as the “preference” for the use of piers, pilings and floating docks over solid-core piers (Guideline 47).

DPA 2 and its provisions for dock and boat launch facilities were introduced into the Galiano Island OCP in November 2011. Since their introduction four years ago the Island Trust has developed new mapping resources which can aid in mitigating or preventing environmental impacts which may be associated with the installation of new docks. These include the Integrated Shoreline Mapping and the Nearshore Eelgrass Inventory and Mapping projects.

The shoreline mapping examines three shoreline characteristics- distribution of shoreline types, energy and sediment movement and, shoreline values and vulnerabilities. The eelgrass mapping and inventory provides locational and characteristic information on eelgrass beds. Together these tools provide site specific information that can be used to mitigate or prevent environmental impacts associated with new docks.

The language contained within the DPA guidelines is important to note as it refers to “preferences” and makes use of the word “should” rather than the more definitive “shall” when articulating guideline criteria. This is an important distinction. Should an application for a dock be deemed to be generally compliant with the requirements identified for the “Construction and Replacement of Docks and Boat Launch Facilities” the LTC is obligated to issue the permit. As well, although a development permit application is posted to the LTC agenda and the content available to the public, there is no statutory requirement for the LTC to provide public notification of the application.

As may be seen in the review of the LUB regulations the Marine (M) zone in the bylaw is generally permissive of “docks, private floats, wharves, piers and walkways accessory to the residential use of an

*abutting upland lot*” as well as the *“moorage of boats accessory to the residential use of an upland lot”*. The Marine zone also provides the following regulatory statement with respect to minimum setbacks:

*12.2.4 Docks, floats and wharves must be sited entirely within the boundaries of the owner's water lot lease, licence of occupation or other Crown tenure and at least 3 metres from the seaward projection of any side lot line of the abutting upland lot.*

The Galiano Island LUB provides the following definitions which are generally related to dock use:

*17.1.32 “moorage” means the tying of a boat to a buoy or similar object that is in turn anchored to the bed of the sea.*

*17.1.53 “wharfage” means the tying of a boat or seaplane to a wharf, float or dock that is in turn connected to an upland lot by a ramp or walkway.*

In general terms all of the waters within the Galiano Local Trust Area have a blanket Marine (M) zoning although some shoreline areas have other zonings such as Marine Protection (MP) and smaller areas with other marine use zones. However, the vast majority of the foreshore area surrounding Galiano has the Marine zoning which allows for private dock use subject to obtaining a development permit. Given this circumstance Galiano Island could be considered to be generally permissive of private dock use.

### 3. The Roles of DFO and FLNRO

As the LTC will be aware the Islands Trust has the authority to zone and regulate land uses in offshore areas, beyond the natural boundary, within the boundaries of the Galiano Land Trust Area. Some of those zones can be exclusionary in nature limiting uses to those which are passive in nature, such as the Marine Protection (MP) zone which allows only marine navigational aids as a use. In zones such as these there is limited to no interaction required with other agencies or authorities. However, in zones such as the Marine (M) zone which allows for a number of marine oriented uses, including docks, other agencies such as the Department of Fisheries and Oceans (DFO) and the Ministry of Forest Lands and Natural Resource Operations (FLNRO) may have a role in the approval process for those uses.

DFO is most commonly involved in the licensing of aquaculture and other fisheries activities as well as in the protection of marine habitat which supports those activities. Their role in the dock approval process would typically be limited to assessing concerns about possible impacts upon marine habitats associated with marine fisheries.

FLNRO has historically been the agency with which the Islands Trust has had the most interaction when processing applications for aquaculture and foreshore leases to allow for docks and other marine based uses. The Province through FLNRO has the authority to require and issue tenures for those aquatic foreshore uses. With respect to docks the past practice has been that FLNRO would refer copies of crown tenure applications to the Islands Trust for review and comment. This referral package typically included a form with a set of questions which explored the local government’s interests, including compliance with zoning. Local governments were also provided with the option to respond to these referrals online. More recently local governments were advised of a change to that historic process in a notice sent out January 20, 2017 which was titled “Notice of amendments to the Private Moorage Program – Applications-only Areas in West Coast Natural Resource Region”. That memo is discussed in the following section.

## 4. Applications-only Policy and Procedure

On January 17, 2017 local governments received correspondence from Greg Kockx, Manager, Land Tenures Branch for FLNRO. The correspondence was titled, “Notice of amendments to the Private Moorage Program – Application-only Areas in West Coast Natural Resource Region” and was a notice to all local governments of the change to private moorage policy to that of General Permissions. Copies of this notice and its attachments are currently being placed upon all Local Trust Committee agendas.

The notice advises that FLNRO has recently amended its private moorage policy to no longer require applications for private moorage tenures for docks. Those uses are now authorized as “General Permissions” and no referral will be made to local governments. However, most islands within the southern gulf islands, including Galiano Island, are included within an “Applications-only Area”. Applications (permissions) will continue to be required in these “Applications-only Areas” and all proposed new private docks, regardless of size, will continue to be subject to review and decision under the *Land Act*. All proponents of new private docks within the Galiano Island Local Trust Area will still be required to submit an application to FrontCounter BC. Regardless of whether or not an application is required, prospective dock owners continue to have the responsibility to ensure their dock is in compliance with local zoning bylaws.

It should be noted that although the January 20<sup>th</sup> notice advises that new dock applications will, “continue to be subject to review and decision under the *Land Act*” the notice does not explicitly state, or imply, that local governments will continue to be part of that review process. There were instances under the previous process that Islands Trust was not referred on some applications and on other occasions local government concerns, such as compliance with local zoning, were not addressed in that review and approval process.

## 5. First Nations Consultation

The Islands Trust is working to develop a better relationship with First Nations as well as a greater understanding as to what meaningful engagement with First Nations means, and looks like, in practice. As part of this process Trust Council adopted a set of First Nations Engagement Principles at its December 2016 meeting. Those principles are as follows:

1. Islands Trust is committed to becoming aware of what it does not know or understand about First Nations.
2. Islands Trust is committed to proving sincere desire for reconciliation
3. Islands Trust is committed to integrating, where possible, activities that support First Nations reconnecting with the Trust Area lands and waters

Trust Council has also developed a First Nations and Public Engagement Project to facilitate this relationship and understanding which is currently being implemented.

The move towards an improved understanding has been both aided and motivated by recent decisions of the courts which have emphasized the need for meaningful consultation with First Nations. These decisions have also seen the Ministry of Community Sport and Cultural Development set higher standards for First Nations consultation associated with the approval of Island Trust Official Community Plan (OCP) and OCP amending bylaw approvals. This process has had the effect of pushing the Islands Trust towards the level of the Provincial “duty to consult” which has been established by the courts.

Principle 3 of Trust Council's engagement principles is very relevant to the docks discussion recognizing as it does First Nations desires to reconnect with their traditional lands and waters. Specifically, First Nations have clearly articulated the value of shoreline areas to their traditions and the importance of that access to their culture for food gathering.

As noted the current provisions of the zoning bylaw are permissive of private docks on areas zoned Marine (M). New docks are simply required to comply with the provisions of that zone, most significantly regulation 12.2.4 which speaks to the minimum setback requirements. It is the understanding of staff that FLNRO did refer tenure applications to First Nations. It may reasonably be assumed that the practice of referrals to First Nations on applications under the new process will continue, given the Crown's duty to consult.

The specific nature of the consultation process with First Nations will be largely dependent upon the decision of the LTC as to how private docks on Galiano Island are to be regulated. The requirement for a rezoning for each new private dock, for instance, may require a different and more interactive consultative process with First Nations, likely to include site visits, than the current permissive approach to those docks. Staff will be able to provide a much more robust discussion on the matter of First Nations consultation at such time as the matter of how private docks are to be regulated has been determined.

## 6. Other LTC Approaches to Private Docks

To aid in the review of this issue staff examined the approaches to private docks taken by four other southern Gulf Island LTAs. These included Mayne, Saturna and North and South Pender Islands.

### Mayne Island

The Mayne Island LUB contains three definitions related to docks. These include "berth", "dock" and "wharfage". The bylaw also contains four zones which address variants of dock use. These are the Water Moorage (W2) zone, Water Commercial (W3) zone, Community Wharf (W4) zone and the National Park Waters (W5) zone. Of these zones the W2 zone speaks specifically to private residential docks and, as its name indicates, the W4 zone provides regulations geared towards community use docks, which also includes commercial usage. The W2 zone fronts onto the shoreline of the majority of Mayne Island's perimeter.

Although the Mayne Island OCP contains a development permit area for the "Protection of the Natural Environment it applies only to upland activities related to upland structures and the alteration of land. As such there is no development permit requirement associated with private docks although a recent amendment to the OCP has created a site specific DPA over the foreshore for an area rezoned for a new community dock (Anson Road).

Mayne Island's approach to private docks could reasonably be described as "generally permissive" given the scope of the W2 zoning and the lack of a development permit.

### South Pender Island

The South Pender Island LUB contains two definitions related to docks. These are "dock" and "wharfage". The LUB contains four marine zones of which only the Marine General (W1) allows for private docks while the Marine Protection (W2) zone only allows for moorage of a boat to a "buoy or similar object" that is secured to the bed of the sea. The W1 zone runs along most of the northern

shoreline of Mayne Island and in two small strips, one on the northwest tip of the island along Ainslie Point and another just north of Egeria Bay.

The OCP does not contain a DPA related to private docks. The OCP does contain language in Section 4.2 of Part 4 – “Marine based Use and Development” which addresses moorage in areas designated as Marine General (MG), item 4.2(b)(iv) of which states in part:

b) Docks or wharves are to be allowed in the following circumstances:

iv) private moorage purposes in those areas designated as Marine General (MG) on Schedule “B” provided their:

- purpose and use is only for providing access and/or private moorage to the adjoining upland lot. *An exception is situations of new waterfront residential lot development where installation of communal docks would be encouraged* [emphasis added]; and
- location, size, siting and shoreline development is regulated.

It is interesting to note that the W1 zoned area which is permissive of private docks appears to be wholly contained within the area designated MG by the OCP, a designation which is somewhat more restrictive of private docks.

Given the lack of a development permit requirement and the lack of a need for rezoning to allow for private docks within the W1 zone, and the extent of the W1 zoning, South Pender Island could be considered “somewhat permissive” of private docks. However, the LTC is considering a proposed LUB amendment which would restrict W1 zoning to existing docks and require rezonings for new docks. A proposed amendment to the OCP would establish guidelines for new dock rezonings.

#### North Pender

The North Pender Island LUB contains two relevant definitions related to private docks. These are “moorage” and “wharfage”, the latter of which includes the concept of “tying a boat...to a wharf, float or dock that is in turn connected to an upland lot by a ramp or walkway”.

The LUB contains six water zones only one of which, the Water 1 (W1) zone, is specific to private docks. The W1 zone allows for “private floats, wharves, ramps and walkways accessory to the residential use of an abutting upland lot”. The Water 2 (W2) zone addresses larger commercial scale marine use such as marinas and yacht clubs but allows for private docks with the same criteria as the W1 zone. The W1 zone surrounds North Pender Island and is in direct contact with the vast majority of the islands shore line.

Unlike Mayne and South Pender Islands the North Pender Island OCP does contain a development permit requirement for private docks – DPA Six – Intertidal Ecosystems. The DPA contains a number of guidelines specific to the construction and siting of docks. However, that DPA is not a blanket permit area along all of the shorelines area and significant gaps exist where no development permit is required for installing a dock.

Given the scope of the shoreline and the large number of lots along that shoreline, the zoning of which allows for private docks, and the limited DPA requiring a permit, North Pender could be considered to be “generally permissive” of private docks.

## Saturna Island

The Saturna Island LUB does not contain any definitions which could be considered relevant to private docks. The LUB does contain five water zones of which one, the Water (WA) zone, specifically addresses, “private or communal floats, wharves, piers and walkways accessory to residential use and providing access to properties adjacent to the foreshore”. The WA zone has limited distribution but can be found in Narvaez Bay, Lyall Harbour/Boat Cove, Breezy Bay and Irish Bay. The WA zone does not include restrictions on size or other aspects of docks. There are no DPAs relevant to the issue of private docks.

Given the foregoing Saturn Island could be considered to be “restrictive” on the issue of private docks given the limited opportunity and locations to develop such docks.

## 7. Survey Results

Notices were placed in the November 30, 2016 edition of the *Galiano Active Page* seeking community input on two of the LTC’s Top Priority Projects – the Dock Review Project, which is the subject of this paper, and the Telecommunication Strategy project. URL links were provided to online surveys for each of these projects in the notices. The closing date on the survey(s) was January 2, 2017. The survey is a qualitative rather than quantitative tool and can be considered to be non-representative in nature.

As may be seen from the attached summary of the survey results a set of 13 questions were provided which sought community input on various aspects of the subject of private docks. There was also an opportunity afforded to provide general comments for more in-depth feedback for five of the questions, as well as an opportunity to provide general comments on the topic of docks at the end of the survey. The total number of survey respondents was 165 of which 68 also provided general comments. The survey question responses were almost evenly split between full time and part time residents (Question 1) at 49.68 and 47.85% respectively.

When considering the responses to the survey, and some of the comments that were provided, it is important to bear in mind that the scope of this project, as defined by the project charter, is limited to private docks. Some of the comments in the survey results appear to conflate the survey questions with community docks.

### General Observations

A number of key questionnaire results are summarized below. These responses are particularly helpful in providing context for better understanding community sentiments regarding the implementation of private docks on Galiano Island.

- 154 of the 165 respondents own their own home on Galiano Island
- 34% of 163 respondents did not own waterfront property
- 47% of 104 respondents use their dock for the purpose of water access to their property.
- 67% of 107 respondents who owned waterfront property had no concerns with private docks
- 30% of 66 non-waterfront property owner respondents had no concerns with private docks while 24.24% had concerns regarding environmental impacts and 21.21% had concerns regarding restrictions on public access.
- 6.33% of 158 respondents thought that community input was not at all important while 56.33% felt it was not important if docks meet all regulations and policies. Only 20.25%

of respondents to this question felt that community input on private dock design siting and construction was important, although 114 of 159 respondents felt that neighbours should be notified if their neighbour plans to construct a private dock.

- 74.5% of 157 respondents felt that docks should be allowed with regulations

Question 13 of the survey asked as to how docks should be regulated and provided nine different factors that could be considered for regulations and provided an option for other suggestions. Seventy four (49%) of 150 respondents felt that the size (footprint) should be regulated and 45% of the 150 respondents felt that setbacks from side lot lines should similarly be regulated. Other main factors identified for regulation were float and ramp widths and lengths (32.67% and 37.33%). These concerns appear to speak to issues that cannot be directly addressed through the development permit approval process. It should be noted that in the comments section, which was not restricted to the nine choices provided, the sentiments between additional regulations for private docks and those who felt that docks were currently adequately regulated was generally evenly divided.

It is the view of staff that these particular results do not provide an indication of significant general concerns or resistance to the current allowance for private docks within the community. It does suggest that there is some level of interest in considering additional regulations for private docks.

In addition to the responses to the survey question set a total of 68 general comments were also submitted and may be found in Attachment 2. Within those responses there is a readily identifiable sentiment that docks are a part of island living, are essential for access and should be permitted. It was also suggested in a number of responses that docks were considered to be already adequately regulated. It is recognized that some of these responses could reflect the sentiments of owners from associated islands (Gossip, Parker and Wise and the water access neighbourhood at Fillmore Point) where docks are considered a near necessity as compared to Galiano proper where they might be more accurately considered an amenity

Taken as a whole the survey results seem to indicate a strong level of support of the allowance of private docks on Galiano Island among the respondents, with an indication of some level of community support for some additional regulations.

## 8. Analysis

The Background section of the Project Charter for this project states, in part:

*In the past few years issues concerning private docks have arisen from First Nations, protecting sensitive ecosystems, addressing neighbours' concerns, and private dock best management practices.*

The Project Charter goes on to provide the following objectives.

- To identify options for further regulating private docks
- To consider amendments to the OCP and LUB
- To implement potential regulatory changes to restrict private docks.

The assumption of the Project Charter expressed through its background section and the stated objectives is that the current regulatory framework for private docks is either inadequate or not functioning effectively in some way. The online questionnaire that was conducted, as per the project charter, as part of the early consultation process to identify community concerns and the results of that survey process do not necessarily support the stated objectives of the project charter.

Specifically, the results of the survey do not seem to support the third listed objective of the project charter to “implement potential regulatory changes to restrict private docks”, or the OCP Shoreline and Marine Policy, which provides, in part, that:

*The Local Trust Committee may consider amending the existing Marine zone to not permit new individual private docks.*

That apparent incongruity between what seems to be the respondents’ view of current private dock regulations and the intent of at least one project objective to make changes to those regulations may prove to be a challenge to moving this project forward. There is very little support expressed in the survey results for the restriction of private docks.

That apparent disconnect resulted in a staff decision to prepare this discussion paper, rather than first proceeding with referrals to FLNRO and First Nations. The purpose of this document is to introduce the results of the survey and to provide a broader background review of the implementation and regulation of private docks on Galiano Island and to review possible options.

A review of the approaches taken by other LTCs (Part 6) to the regulation of private docks shows the approach taken on Galiano Island is not significantly different than the other Islands. Similar to Mayne and North Pender Islands the majority of the foreshore area is zoned to allow for private docks. Of all of the Islands reviewed, Galiano Island has the most stringent development permits guidelines for development permits requiring a permit for all private docks.

#### First Nations Concerns

The background section of the Project Charter identifies that First Nations concerns have arisen regarding private docks. The background does not identify the specific source of those concerns but First Nations have clearly articulated the value of shoreline areas to their traditions and history, and the importance to their culture of access to shoreline areas for food gathering. First Nations have also suggested the potential for crown foreshore to provide either treaty settlement lands or that these could be areas of FN title under Douglas Treaties. As has been noted in this paper the duty to consult with First Nations currently falls to FLNRO through what was the tenure application review process. It cannot be assumed that FN will continue to be referred applications by FLNRO in the “Applications-only Areas” policy recently adopted by the Province.

What the referral processes for other application types such as rezoning have shown is that First Nations often times do not always have the resources necessary to deal with the requests from a variety of agencies for information on how their interests may be affected by certain proposals. Should it, ultimately, be the wish of the LTC to amend the LUB so as to require site specific zonings for private docks consideration should be given as to the specific nature of the First Nations consultation process associated with the LUB amendment process to regulate docks as well as on an ongoing basis after the bylaw has been amended should that be the case. The preferred approach would be to incorporate the results of consultation undertaken in this process, and have FN interests reflected in the resulting regulations or policies, rather than undertake consultation for each application.

#### Neighbours’ Concerns

It is understood that the protection of public access to the shoreline is a concern for some community members and visitors to the Island. As well, visual impacts of docks and their location can be considered to be significant concerns for some neighbours. In the past community members have expressed a desire to have the opportunity to speak to the specifics of dock construction, design, and location. Indications of these concerns may be seen in some of the comments provided in the survey.

As has been noted in this document the current regulations related to private docks do not allow for community consultation on development permit applications for those structures. Nor is there a need to provide notification of applications for a development permit. This does not represent a gap in the development permit approval and regulatory processes. Rather, it is a reflection of the fact that there is no statutory *Local Government Act* requirement to do so.

As was noted in Section 2 as long as a development permit application is deemed to adequately address the DPA guidelines, and the zoning allows the use, the LTC is obligated to approve the development permit. Providing notification of an application and the creation of an expectation that additional criteria and conditions not required by the OCP DPA guidelines, or the zoning, could be placed upon the construction of a private dock would be misleading and any such permit which did so could be successfully challenged in the courts. If it is the wish of the LTC to allow for further regulation of private docks it would require amendments to the LUB to add additional 'conditions of use'. The challenge would be to determine what those additional criteria are. Potential options include setbacks from lot line extensions, limits on float dimensions, sizes and ramp lengths. Also an ongoing issue regarding the portion of the ramp on the upland not being permitted in the setback from the sea is an issue that should be also be addressed. Several comments submitted in the survey correctly observed that the circumstances related to a private dock can be specific to the location and property in question as well as to the nature of the vessel that is expected to be moored to that dock.

#### Environmental Impacts

While the OCP development permit guidelines speak to the issues of mitigating or preventing any environmental impacts associated with private docks, and the review process used to modify the size and siting of a dock to prevent or mitigate those impacts, a development permit cannot simply prevent a private dock. Areas of environmental significance may be more effectively protected by the use of zoning to preclude docks from specific areas by utilizing the data from the Integrated Shoreline Mapping and the Nearshore Eelgrass Inventory and Mapping projects.

## 9. Options

#### No further action (No change to Regulations)

This option would be to opt for the status quo with respect to the current regulatory regime for private docks and to not continue with this project. Choosing this option would represent a tacit acknowledgement that the current system while not perfect is functioning well enough to leave alone. The choice of this option should also include a clear understanding of the number and nature of complaints that have been received with respect to private docks.

#### Amend the OCP Development Permit Area guidelines

This approach can be recognized as an option but in reality it probably has limited utility as a solution. Development permit guidelines are intended to be exactly that. OCP's are not intended to be a regulatory document like a zoning bylaw but rather they are intended to provide guidelines and policies to achieve the community's goals and objectives and vision. The language and approach to the development permit guidelines could likely be tightened up but it should not be attempted to turn the guidelines into a set of specific regulations for private docks.

### Amend the zoning bylaw

There are a number of possible approaches to the amendment of the LUB with respect to the regulation of private docks on Galiano Island. The option of amending the land use bylaw to address the general permissibility for private docks has been discussed in this document and despite supportive OCP policies the approach of requiring all new dock applications to go through a rezoning process seems to have found very limited support from the respondents to the recent survey.

Implementation of this approach would require a sweeping rollback of the current Marine zoning surrounding Galiano Island. As well, it presents the challenge of deciding how to deal with existing docks. They could simply be deemed legally non-conforming once the Marine zoning is removed and all new docks required to apply for a rezoning.

A variant of this approach which is being used on South Pender Island, is to research and map existing dock locations and tenures and draft an amended zoning map to reflect the boundaries of current tenure boundaries and retain their current Marine zoning. This option is considered to be viable but could prove to be unpopular with the community.

Another option would be to add additional standardized regulatory criteria, yet to be determined, to the LUB for private docks which could address such items as the dimensions, area and the siting of the docks and ramps. If it is the wish of the LTC is to provide opportunity to allow for public input into the private dock application process this would be the best option to achieve that goal, aside from forcing a rezoning.

An additional approach would be to identify specific areas where docks should be permitted by rezoning application only: i.e., environmentally sensitive areas, areas where a proliferation of docks may be an issue (e.g. Montague Harbour) and areas identified by FN consultation as culturally or economically significant.

In the “standardized regulatory criteria” approach, if a property owner is not satisfied with some aspect of the conditions of use for a private dock as they apply to their property they would have the option of applying for a development variance permit to vary the zoning bylaw specific to their property and the proposed addition of a dock. Pursuant to Section 498 of the *Local Government Act* a local government may issue a development variance permit to vary the provisions of a zoning bylaw as long as it does not seek to vary use or density. S.499 of the *Act* also requires that notice must be provided to adjacent property owners. This approach and the requirement of public notice would provide the opportunity for those who feel their interests would be affected by the requested variance to have a voice in the approval process. The caveat being that this would not be an interactive dialogue with the applicant but rather a presentation, written or verbal, of their concerns to the LTC who would consider their input during their consideration of the DVP application. It should be noted that, unlike a development permit, a development variance permit is a discretionary decision making process.

One other approach would be to identify “no dock” (i.e., sensitive) areas utilizing the data from the Integrated Shoreline Mapping and the Nearshore Eelgrass Inventory and Mapping projects. This approach would include amendments to the foreshore zoning and could be done in conjunction with the approach where the Marine zoning is generally rolled back to existing docks and tenures with the requirement for a rezoning for new docks.

This new mapping information could also be used to identify and rezone sensitive areas and locations to the Marine Protection zone without a general rollback of the Marine zone.

It should be noted that combinations of these options could be used to distinguish between associated islands/water access subdivisions and Galiano Island itself where there is public road access

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**ATTACHMENTS**

- 1. Project Charter
- 2. Survey Results