



DATE OF MEETING: March 26, 2018
TO: Mayne Island Local Trust Committee
FROM: Gary Richardson, Island Planner
Victoria Office
SUBJECT: Proposed Bylaw 171 – Riparian Area DPA for the Mayne Island Local Trust Area
Applicant: MILTC Project
Location: Mayne Island Local Trust Area

RECOMMENDATION

1. That the Mayne Island Local Trust Committee Proposed Bylaw No. 171 cited as “Mayne Island Official Community Plan Bylaw 144, 2007, Amendment No.1, 2017” be read a Second time.
2. That the Mayne Island Local Trust Committee Proposed Bylaw No. 171 cited as “Mayne Island Official Community Plan Bylaw 144, 2007, Amendment No.1, 2017” be read a Third time.
3. That the Mayne Island Local Trust Committee Proposed Bylaw No. 171 cited as “Mayne Island Official Community Plan Bylaw 144, 2007, Amendment No.1, 2017” be forwarded to the Secretary of the Islands Trust for Executive Committee Approval.
4. That the Mayne Island Local Trust Committee Proposed Bylaw No. 171 cited as “Mayne Island Official Community Plan Bylaw 144, 2007, Amendment No.1, 2017” be forwarded to the Minister of Municipal Affairs and Housing.

REPORT SUMMARY

Proposed Bylaw (171) amends the Mayne Island OCP by adding a Riparian Area Development Permit Area. This report recommends steps to be taken following public hearing.

BACKGROUND

The Local Trust Committee is considering a bylaw to amend the Mayne OCP .

The Riparian Areas Regulation, enacted under Section 12 of the Riparian Areas Protection Act in July 2004, requires local governments to protect riparian areas during residential, commercial and industrial development by ensuring that proposed activities are subject to a science based assessment, conducted by a Qualified Environmental Professional (QEP). There have been various staff reports prepared summarizing the RAR and the LTC’s options for implementation (available on the Mayne Island LTC webpage).

Statutory notification has been carried out and no comments have been received as a result of the notification.

A public hearing is scheduled for March 26, 2018.

A public hearing is a quasi-judicial process within and following which specific procedures must be followed.

Following the hearing, the LTC may choose to give further readings to a bylaw, defeat a bylaw, or alter a bylaw within certain parameters. The procedural steps following the close of the hearing are as follows:

1. Consideration of Second Reading (this may include amendments to alter a bylaw).
2. Consideration of Third Reading.
3. Forwarding of the bylaw to Executive Committee for approval.
4. Forwarding to the Minister of Municipal Affairs and Housing for approval.
5. Reconsideration and adoption.

Following the close of the hearing, the LTC may not hear further submissions without holding a new hearing. The principle is that if new information is considered by the LTC, all other interested parties also need to have the opportunity to consider any new relevant material and to make further representations to the LTC. The courts have clarified that this does not open the door to endless public hearings: a local government body can legitimately decide that after a hearing it wishes to hear further from staff on issues raised at the hearing.

A bylaw may be altered after the hearing, based on information received or heard by the LTC at any point prior to the close of the hearing, provided that the amendments do not alter use or increase density, or decrease density without a landowner's consent.

If the Executive Committee and Minister approve the bylaw, the next step for the LTC would be to adopt the bylaw.

Rationale for Recommendation:

- The community has had to opportunity to comment on this project and the proposed bylaw.
- The DP areas are based on reports prepared by Qualified Environmental Professionals.
- First Nations and Agencies have been consulted.
- Statutory notification has been carried out and as of the date of this report no comments had been received as a result of the notification.
- A Public Hearing has been held.

NEXT STEPS

- Forward the proposed bylaw to the Executive Committee of the Islands Trust for approval.
- Forward the Bylaw to the Minister of Municipal Affairs and Housing for approval.
- Place on future LTC agenda for adoption.

Submitted By:	Gary Richardson, Island Planner	March 20, 2018
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ATTACHMENTS

1. Proposed Bylaw 171

PROPOSED

MAYNE ISLAND LOCAL TRUST COMMITTEE BYLAW NO. 171

A BYLAW TO AMEND MAYNE ISLAND OFFICIAL COMMUNITY PLAN BYLAW NO. 144, 2007

The Mayne Island Local Trust Committee enacts in open meeting assembled as follows:

1. CITATION

This Bylaw may be cited for all purposes as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2017”.

2. SCHEDULES

Mayne Island Official Community Plan No. 144, 2007 is amended as shown on Schedule 1, attached to and forming part of this bylaw.

3. SEVERABILITY

If any provision of this Bylaw is for any reason held to be invalid by a decision of any Court of competent jurisdiction, the invalid provision must be severed from the Bylaw and the decision that such provision is invalid must not affect the validity of the remaining provisions of the Bylaw.

READ A FIRST TIME THIS	29 th	DAY OF	JANUARY	2018
PUBLIC HEARING HELD THIS	_____	DAY OF	_____	20__
READ A SECOND TIME THIS	_____	DAY OF	_____	20__
READ A THIRD TIME THIS	_____	DAY OF	_____	20__
APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS	_____	DAY OF	_____	20__
APPROVED BY THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING THIS	_____	DAY OF	_____	20__
ADOPTED THIS	_____	DAY OF	_____	20__

Chair

Secretary

**MAYNE ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 171**

SCHEDULE 1

The MAYNE Island Official Community Plan No. 144, 2007, is amended as follows:

1. Schedule A (Policy Document) of Mayne Island Official Community Plan No. 144, 2007 is amended by inserting the following as new Sections 2.8.7, 2.8.8 and Section 2.8.9 following Section 2.8.6:

“2.8.7 Riparian Area Development Permit Area

Designation

This development permit area includes all land that is designated as the Riparian Area Development Permit Area on Schedule I. The Development Areas shown on Schedule I have been designated as a result of: 1) a detailed assessment carried out by Madrone Environmental Services Ltd. (Madrone) which are detailed in a March 7, 2017 report prepared by Madrone; and 2) mapping carried out by Islands Trust staff December 15, 2017. In the report Madrone identified Streamside Protection and Enhancement Areas (SPEAS) for the Riparian Area designated watercourses on Mayne Island. The Development Permit Areas on Schedule I consist of the SPEAs. The actual location of the streams and water bodies may need to be determined on a site-specific basis by a qualified environmental professional or a surveyor.

Authority

This development permit area is established, pursuant to Section 488(1)(a) of the *Local Government Act*, for the purpose of establishing objectives for the protection of the natural environment, its ecosystems and biological diversity.

Objectives

The objective of this development permit area is to protect the biological diversity and habitat values of aquatic ecosystems.

It is the Object of the Islands Trust to “Preserve and protect the Trust Area and its unique amenities and environment of the Trust Area for the benefit of the residents of the Trust Area, and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the government of British Columbia.”

It is a policy of the Islands Trust Council that local trust committees shall in their Official Community Plans and regulatory bylaws, address means to prevent further loss or degradation of freshwater bodies or water courses, wetlands or riparian zones and to protect aquatic wildlife.

Furthermore, the province of British Columbia’s Riparian Area Regulation (RAR), under the *Riparian Areas Protection Act*, requires that local governments establish

regulations to protect riparian areas. The reason for this designation is to protect riparian areas from development so that the areas can provide natural features, functions and conditions that support fish life processes.

General Applicability

The following residential, commercial, and/or industrial activities shall require a development permit whenever they occur within the DPA, unless specifically exempted below:

- (a) construction of, addition to, or alteration of a building or other structure;
- (b) removal, alteration, or destruction of vegetation;
- (c) soil removal, soil deposit or soil disturbance;
- (d) development of drainage systems;
- (e) creation of non-structural impervious or semi-impervious surfaces;
- (f) subdivision, as defined in the *Local Government Act*; and
- (g) development, as that term is defined under the provincial *Riparian Areas Regulation*.

Work Not Requiring a Permit (Exemptions)

The following activities are exempt from any requirement for a development permit:

- a. The reconstruction, repair or maintenance of a pre-existing permanent structure on its existing foundation
- b. Interior or structural exterior alterations, renovations, maintenance, reconstruction or repair to a pre-existing permanent building or structure on an existing foundation or footprint to an extent that does not alter, extend or increase the footprint. For clarity, this includes pre-existing septic and water systems.
- c. The removal of trees that have been examined by an arborist and certified to pose an immediate threat to life or property.
- d. Emergency procedures to prevent, control or reduce immediate threats to life or property including: emergency actions for flood-protection and erosion protection, clearing of an obstruction from a bridge or culvert or an obstruction to drainage flow, and repairs to bridges and safety fences carried out in accordance with the *Water Act*.
- e. Gardening and yard maintenance activities not involving the cosmetic application of pesticides, within an existing landscaped area, including mowing, pruning, planting and minor soil disturbance that does not alter the general contours of the land.
- f. Restoration and enhancement activities by persons undertaking to only restore and enhance the natural features, functions and conditions of riparian areas as approved in a signed and sealed letter from a Qualified Environmental Professional.
- g. Proposals for the subject property which have an existing development permit and demonstrate that the proposed development shall not in any way compromise the permit and continue to demonstrate meeting or beating all protective measures and recommendations in accordance with a Riparian Assessment Report from a Qualified Environmental Professional submitted to the *Riparian Areas Regulation* Notification System.

- h. Farm Operations as defined in the *Farm Practices Protection (Right to Farm) Act* and farm uses as defined in the Agricultural Land Reserve Use, Subdivision, and Procedure Regulation. For clarity, a farm operation or farm use means agricultural activities conducted by a farm business.
- i. forest management activities, as defined in the *Private Managed Forest Land Regulation*, on land classified as managed forest land under the *Private Managed Forest Land Act*;
- j. forest management activities on land that is the subject of a woodlot license or tree farm license under the *Forest and Range Practices Act*;

2.8.8 Guidelines

Prior to undertaking any development activities within the Riparian Area DPA an owner of property shall apply to the LTC for a development permit, and the following guidelines apply:

1. The property owner shall be required, in addition to any other application requirements enacted or imposed by the Local Trust Committee, to provide at their expense an assessment report from a Qualified Environmental Professional which has been submitted per the *Riparian Areas Regulation*.
2. The Local Trust Committee should impose permit conditions based on the assessment report including:
 - a. Require specified natural features or areas to be preserved, protected, restored or enhanced in accordance with the permit.
 - b. Require natural water courses to be dedicated.
 - c. Require works to be constructed to preserve, protect, restore or enhance natural water courses or other specified natural features of the environment.
 - d. Require protection measures, including that vegetation or trees be planted or retained in order to:
 - i. preserve, protect, restore or enhance fish habitat or riparian areas;
 - ii. control drainage, or;
 - iii. control erosion or protect banks.
3. The Local Trust Committee may require a security for developments clearing greater than 280m² (3,012 ft²) of land within the Development Permit Area. Security shall be returned upon confirmation by a Qualified Environmental Professional that assessment report conditions have been satisfactorily addressed.
4. Security shall be provided to secure satisfactory completion of habitat protection works, restoration measures, or other works for the streams and streamside habitat (the “required works”). The security shall be 150% of the estimated value of the required works as determined by the Local Trust Committee.
5. The development permit should not allow any development activities to take place within any Streamside Protection and Enhancement Area identified by the Qualified Environmental Professional and the property owner should be

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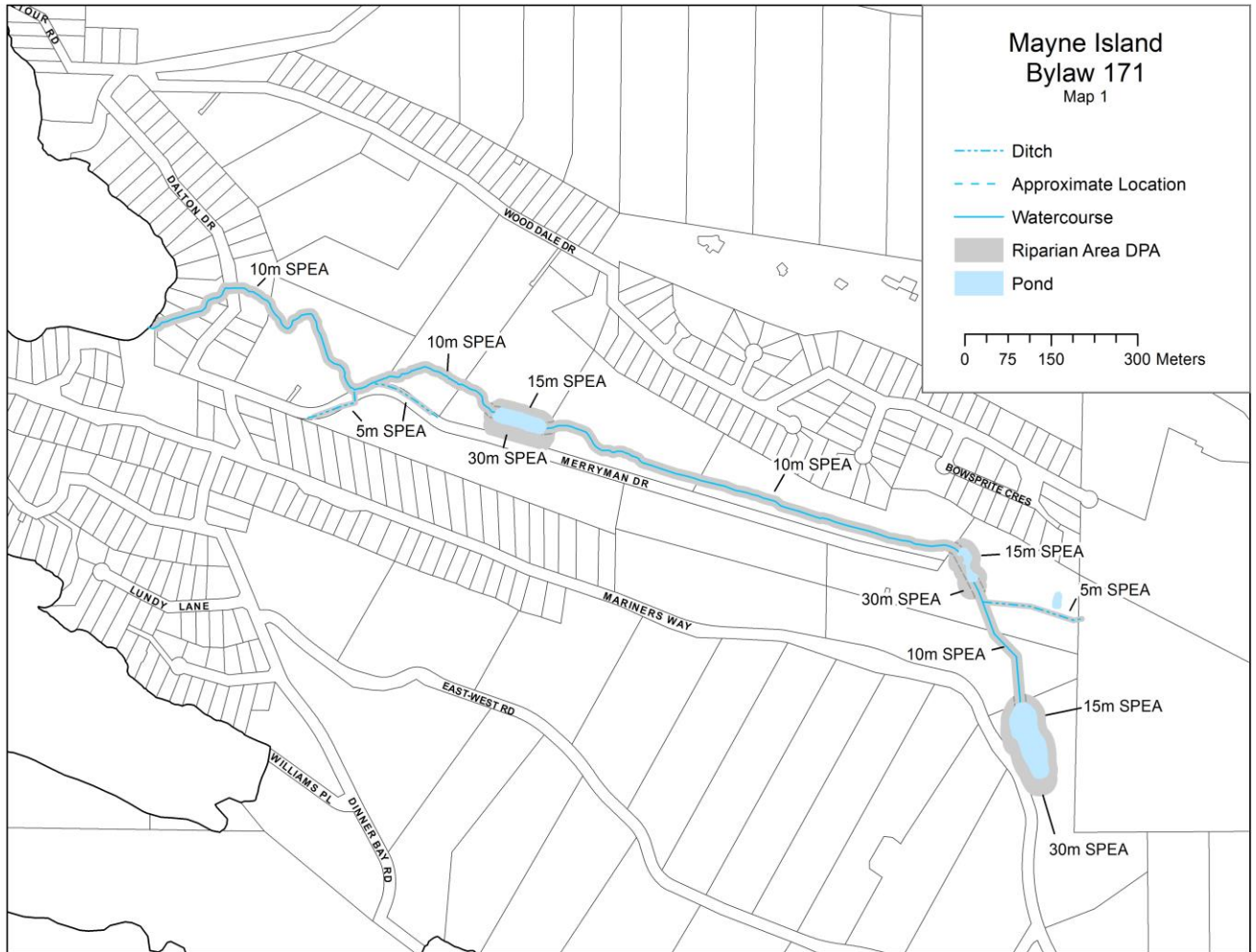
required to follow any measures identified by the Qualified Environmental Professional for protecting the Streamside Protection and Enhancement Area over the long term and these measures should be included as conditions of the development permit. The width of the Streamside Protection and Enhancement Area may be less than the width of the Development Permit Area.

6. Where a Qualified Environmental Professional or other professional's report describes an area within the Development Permit Area as suitable for development, that is, where the Streamside Protection and Enhancement Area is less than the width of the Development Permit Area, the development permit should only allow the development to occur in compliance with the measures described in the report. Monitoring and regular reporting by a Qualified Environmental Professional or other professional at the property owner's expense may be required during construction and development phases, as specified in a development permit.
 7. If the nature of the proposed project within the Development Permit Area changes after the professional report has been prepared such that it is reasonable to assume that the professional's assessment of the impact of the development may be affected, the Local Trust Committee may require the property owner to have the professional update the assessment at the property owner's expense and development permit conditions may be amended accordingly.
 8. The Local Trust Committee may consider variances to the subdivision, siting or size regulations of this Bylaw where the variance may result in enhanced protection of a Streamside Protection Enhancement Area, riparian buffer or riparian ecosystem in compliance with recommendations of a professional's report.
 9. If a proposed land subdivision is to create additional new lots within this Development Permit Area, then any new lots, roads, building sites, septic fields and driveways should be located and constructed in a way that meets the objectives of this Area."
2. Mayne Island Official Community Plan No. 144, 2007 is amended by adding the following Maps as Schedule I - Riparian Area Development Permit Areas.

Bylaw No. 144

SCHEDULE I

RIPARIAN AREA DEVELOPMENT PERMIT AREAS



MAYNE ISLAND OFFICIAL COMMUNITY PLAN

Bylaw No. 144

SCHEDULE I

RIPARIAN AREA DEVELOPMENT PERMIT AREAS

