



TO: Mayor Adelaar and Members of Council
FROM: Judy McLeod, Contract Planner
SUBJECT: **The Review and Approval of Private Moorage Facilities**
DATE: February 4, 2013

RECOMMENDATIONS:

1. That Council request staff to bring forward, for consideration, amendments to Bowen Island Land Use Bylaw No. 57, 2002 that are generally in line with the following directions:
 - 1.1 Add a definition of “Private Moorage Facility” as a float on the surface of the water that is connected to the shoreline by such means as a pier, ramp or gangway, and that is used as a landing or wharfing space for watercraft for private personal use by the owner or crown lessee of the adjacent upland residential property, and includes uncovered floats as well as accessory boat houses”.
 - 1.2 Add a definition of “Group Moorage Facility” as multi-berth floats on the surface of the water connected to the shoreline by such means as a ramp or gangway that is used as a landing or wharfing space for watercraft for personal use by a group or association of residents from the surrounding community.”
 - 1.3 Amend the WG and WC – Coastal Marine zones to replace “boat moorage, docking” with “Private Moorage Facility” as a principal use, and to replace “community dock” with “Group Moorage Facility” as a principal use.
 - 1.4 Permit only one Private Moorage Facility per property or parcel providing all setback requirements can be met;
 - 1.5 Replace the current 1.5 metre requirement that all structures (i.e. docks, boat launches, lifts, ramps, floats) to be a minimum of 5 metres (16.5. feet) from side property lines including water lot lease lines, and a minimum 10 metres (33 feet) from any existing dock structures;
 - 1.6 Add a requirement that all Private and Group Moorage Facilities be located a minimum of 6 metres (20 ft) adjacent to a dedicated public beach access or park;
 - 1.7 Cap the area of a float or a combined area of all floats for a Private Moorage Facility, including uncovered floats and accessory boathouses but excluding piers, ramps, walkways and gangways at 37m² (400 sq ft);

- 1.8 Limit the width of all approaches, gangways or other connections.
- 1.9 Remove breakwaters as a permitted use in the WG1 Zone.
- 2 That Council direct staff to bring forward the following amendments to Bowen Island Building Bylaw No. 65, 2002 for consideration:
 - 2.1 Require the submission of a building permit for Private Moorage Facility and for a Group Moorage Facility; and
 - 2.2 Pursuant to section 55 of the *Community Charter*, require certification by a qualified professional that the plans submitted with the permit application comply with current provincial building code and other applicable enactments respecting safety.
- 3 That Council formally request the Islands Trust to proceed with a project to inventory and map the Bowen Island coastline with regard to the identification sensitive or fragile coastal vegetation and ecosystems and other sites of significance and to bringing forward recommendations regarding further steps that may be required to protect these areas.

PURPOSE:

On December 10, 2012 Bowen Island Council requested staff to research and develop recommendations to deal with shoreline and maritime issues and report back to Council.

The purpose of this report is to:

1. Document current federal and provincial legislation, and municipal policies, bylaws and practices used in reviewing applications for private moorages along Bowen Island's shoreline;
2. Identify options to enhance or update policies, bylaws and regulations to protect Bowen Island's shoreline while providing options for communal and private boat moorage; and
3. Seek Council's direction with regard to options for further regulating private moorages.

ATTACHMENTS:

1. Land Use Bylaw Map
2. Map of current moorages on Bowen Island
3. Provincial "Requirements and Best Management Practices" for designing docks and boat launches

BACKGROUND:

In September of 2011 the Provincial Ministry of Forests, Lands and Natural Resource Operations (the Province) received applications for private moorage facilities adjacent to four lots in the Cape Roger Curtis (CRC) subdivision. As per normal procedure, the applications were referred to Bowen Island Municipality for review and comment, and were advertised by posting notice on the site and in the local newspaper.

Through this process, concerns were expressed by municipal staff and by members of the public regarding the size of the proposed ramps, floats and associated breakwaters, their location immediately adjacent to the three points of public access negotiated as part of the CRC subdivision approval, the

location of one of the moorages adjacent to the Cape Roger Curtis Lighthouse, the potential for multiple boats at each dock, concerns regarding the exposed location of the moorages, concern regarding the potential for environmental and maritime damage and the precedent these docks could set for other large moorage facilities along this coastline.

Upon reviewing the applications, in June of 2012, Bowen Island Municipality requested that the Province withhold approval of the private moorage applications in this area pending a complete review of the options available for moorage for this neighbourhood. The review and assessment was to be undertaken by qualified professionals and was to include environmental and coastal impacts, aesthetics, views and safety, and a review of the compatibility of private docks and public access points with specific regard to the impact of these facilities on public access along the beach.

In November of 2012 the Province issued Licenses for 5 year terms commencing in January of 2013, for the purpose of constructing, operating and maintaining a dock, wharf or pier including walkway ramp for four lots at Cape Roger Curtis. Reasons given for the approval of the four applications were that:

- There was no indication of ecological considerations that could not be mitigated through use of “best management practices”;
- Public access would not be impeded by the moorage facilities; and
- With regard to the requirements of BIM Land Use Bylaw No. 57, the necessary dive studies had been undertaken to determine that the applications would not negatively impact eelgrass meadows, kelp beds and clam or mussel beds if certain mitigation measures were followed.

In short, the Province concluded that the moorage facilities were not in contravention of Bowen Island Municipality’s zoning. The approvals did, however, specify that *“The Clients have been notified to consult with BIM prior to constructing their private moorages to ensure that their facility designs are in compliance with BIM’s bylaws and to determine if they need to seek additional approvals or authorizations from BIM.”*

To date, BIM has not been contacted by any of the applicants or their agents.

In December Transport Canada approved applications under the *Navigable Waters Protection Act* for the proposed docks at these four properties. It is noted that the plans for the works as approved by Transport Canada contained approach wharves, gangways, floats and mooring buoys, but did not include the large breakwaters that were included in the referral by the Province.

On December 10, 2012 Bowen Island Council directed staff to research and develop recommendations to deal with shoreline and maritime issues and report back to Council.

DISCUSSION:

1. Context

The Letters Patent incorporating Bowen Island as a municipality identify the boundaries of the municipality as, “the entire area of Bowen Island, Finisterre Island and Hutt Island and an area of foreshore and land covered by water extending 300 metres from the natural high water marks of said Islands”.

This 300 metre wide ribbon of land covered by water, extending out from the high water mark, is owned by the Provincial Crown. Licenses to use the land for the purpose of constructing, operating or maintaining a dock, wharf, pier, walkway or ramp are administered by the Province.

Crown land tenures are subject to all federal, provincial and municipal regulations and bylaws. In determining whether to issue a licence, the Ministry refers the applications to the local municipality to determine compliance with municipal bylaws and regulations, to First Nations and to applicable Provincial and Federal Ministries including the Ministry of Environment for works that fall under the *Water Act*, Transport Canada for works that fall under the *Navigable Waters Protection Act*, and the federal Department of Fisheries and Oceans for works that fall under the *Fisheries Act*. A separate submission is required by Transport Canada under the *Navigable Waters Protection Act* to ensure that the proposed construction will not impact public safety and public use of the water.

In addition to regulating commercial moorages, the Province issues licenses of occupation for:

- **Group Moorage Facilities**, which are multi-berth moorages for personal use by a group or association of residents from the surrounding community; and
- **Private Moorage Facilities** which are docks and/or permanent way (i.e. Boat ramp) permanently affixed to aquatic Crown land, and any ancillary structures such as a boat lift and anchor lines, for private personal use.

These permissions are only available to the owners or Crown lessees of waterfront property with riparian rights. Permissions do not convey a right to land, and do not allow the holder to curtail public access over the permission area. The permission holder must ensure public passage around or over any structure on the foreshore, which can include passage below a raised ramp or walkway.

The Province's Land Use Operation Policy for Private Moorages contains Appendix 3 - "Requirements and Best Management Practices", which is included as Attachment 3 of this Report. The Best Management Practices state that applicants must comply with all applicable laws and zoning, and that local requirements will supersede any less restrictive provincial or federal government requirements.

Private moorage applications must provide accurate site information including, but not limited to the location of sensitive habitats, the nature of the seabed and water depths to "enable a review process that adequately considers environmental, cultural and cumulative impacts".

2. Existing Permissions On Bowen Island:

In addition to the major marina at Snug Cove and the municipal lease at Sandy Beach, the following communal and private moorages are currently located on Bowen Island:

- The Mt Gardiner Dock, which is a municipal dock at Galbraith Bay;
- Private Community Docks at Bowen Bay, Tunstall Bay and Eagle Cliff. (The municipality is currently going through the process to obtain approval for a municipal boat launch for recreational and emergency use at Tunstall Bay); and
- Approximately 40 Provincial licences for private moorages.

The map included as Attachment 1 of this report shows the location and distribution of these facilities.

3. Current Bowen Island Policies, Bylaws and Regulations:

Official Community Plan:

With the exception of two areas at Galbraith Bay and Snug Cove that are designated “MC – Marine Commercial”, the area extending 300 metres from the natural high water mark is designated “CS – Coastal Area” in the Bowen Island Official Community Plan, Bylaw No. 282, 2010 (the OCP).

OCP Objectives 35 through 38 seek to protect the natural and scenic values of the coastline that provide the rural maritime atmosphere of the island; to protect coastline habitat areas for marine wildlife; and to identify, protect and preserve sensitive coastal vegetation.

To support these Objectives, the OCP contains policies which state that:

- Non-moorage uses such as beach houses, storage sheds, decks, commercial uses, long term camping, beach creation, sand importation, groyne construction, private boat launches, and substrate disturbance (shore spawning) are not acceptable.
- Commercial marinas will be located to minimize conflict with other recreation uses and areas of ecological significance.

With regard to private moorages and docks, OCP Policy 76 states:

- Private moorages will not impede pedestrian access along the beach portion of the foreshore;
- The siting of new private moorages will be undertaken in a manner that is consistent with the orientation of neighbouring private moorage and is sensitive to views and other impacts on neighbours; and
- The Land Use Bylaw will set out detailed provisions related to the siting, setbacks, size, configuration, width, materials and projections for private moorage. Owners and builders will refer to best management practices, published by Transport Canada Navigable Waters Protection Division prior to construction of any foreshore moorage works.

Policy 77 states that natural coastal processes will be left undisturbed to the maximum extent possible, with no deposit of material below the natural boundary of the sea unless permitted for purposes of a breakwater or seawall. Artificial reefs are not acceptable.

Policy 82 states that, in cooperation with the Islands Trust Fund, provincial regulators and federal ministries, the Municipality will develop and inventory and mapping of the sensitive coastal vegetation zones to protect and preserve fragile coastal ecosystems from further degradation.

With regard to the Cape Roger Curtis lands and shoreline, the OCP contains Objective 40 – To encourage the retention of portions of Cape Roger Curtis in a natural state accessible to the public, including ecologically sensitive coastal bluffs, other sensitive ecosystems...portions of the shorelines.....and significant marine shorelines.

Land Use Bylaw:

In reviewing the acceptability of applications to lease land for private moorages the Province relies on zoning bylaw regulations. Bowen Island Land Use Bylaw No. 57, 2002 zones the majority of the marine

coastal area extending 300 metres seaward from the natural high water mark as “WG1 – Water General Coastal 1” (See Attachment 2 – Land Use Bylaw Map).

The WG1 zones permits the following Principal Uses:

- Boat moorage, docking and launching
- Neighbourhood Dock , defined as a private dock which serves a Bowen Island neighbourhood
- Community (public) Dock
- Marine Navigation

Accessory Uses including a Boat House, Floating Breakwater and Marine Navigation Structures are also permitted.

The boat moorage or accessory boat house may only be accessory to an upland residential use.

A community dock, neighbourhood dock and a moorage must be located so that it will not limit use of or physically divide a beach, or negatively impact eelgrass meadows, kelp beds, clam beds or mussel beds.

All buildings and structures must be set back a minimum of 1.5 metres from any lot line or water lease boundary line.

The Land Use Bylaw also requires that “*structures* made of newly-treated wood shall bear the BMP certification mark ensuring that appropriate treatment and post-treatment measures have been employed in producing the preserved wood.”

Part 3 – General Regulations, Section 3.26 permits stairways and walkways not exceeding a height of 2.0 metres on any portion of a lot.

Group moorages and water taxi uses are permitted under WG1(a)zone at Bowen Bay and Tunstall Bay and WCi zone at provides for a public wharf Galbraith Bay. Snug Cove harbor is zoned “WC1 a and b – Water Commercial (Marina) and “WCi – Water Civic” which provide for a range of additional uses including marinas, public wharfs, water taxi, accessory live aboard and float home uses, the sale of personal watercraft, boat sheds the site specific moorage for seaplane and hovercraft and a ferry dock.

Building Bylaw:

Bowen Island Building Bylaw No. 65, 2002 defines a *structure* as:

“...any construction installed on, supported by or sunk into land or water, but does not include a fence or flat areas intended for pedestrian or vehicle movements surfaced by concrete, asphalt, brick or tile or other materials and retaining structures less than 1.5 metres in height.”

The Bylaw states that a person shall apply for and obtain a building permit before constructing a building or structure. Bowen Island Municipality has traditionally not required building permits to be issued for the construction of docks, wharfs, ramps, gangways, etc.

Cape Roger Curtis Covenant – Ocean Front Lands:

With the registration of the CRC subdivision, a restrictive covenant pursuant to section 219 of the *Land Title Act* was registered against the Lands within 30 metres from the natural boundary of the 30

waterfront lots at Cape Roger Curtis. Covenant BB340390 states that the owners of these lots, among other things:

- “(a) will not build, place or install any building or structure of any kind on, over or under the Covenant Area;*
- (b) will not excavate, remove soil or place fill from or on the Covenant Area;*
- (c) will not cut, trim, prune or remove any vegetation or tree from, or plant any non-native vegetation within the Covenant Area”*

Under the terms of the covenant, the owners of these waterfront properties are only permitted to clear a 2 metre wide strip of land within the Covenant Area for the statutory right-of-way for the pedestrian trail along the shoreline, and may cut trim prune and remove trees for a maximum width of 30 metres create sight lines. No clearing, placing or removal of fill or construction would be allowed for ramps, gangways or pathways leading to the private moorages on the Covenant area.

The CRC moorage applications confirmed that all proposed structures associated with the moorages are to be located below/outside the Natural Boundary as surveyed. While there is nothing in the covenant that would appear to prevent the owners of these properties from crossing over the covenant area to gain access to the water, they would not be allowed, to undertake any construct or excavation to clear pathways or to build trails or walkways or to construct any structures across the covenant area.

OPTIONS FOR UPDATING REGULATIONS AND REQUIREMENTS FOR PRIVATE MOORAGES

Based on the discussion in this report, the following actions could be taken to further protect Bowen Island's shoreline while providing opportunities for reasonable access to the water.

1. Land Use Bylaw:

This section focuses primarily on the Water General Coastal - WG1 Zone which constitutes the majority of Bowen Island's shoreline. This is the zone in which virtually all applications for private or group moorage facilities would be made.

The Land Use Bylaw currently only defines "moorage" as a means of tying of a vessel to a wharf or similar object that is anchored to the bed of the sea. It does not contain definitions of docks and floats. With the exception of provision for a minimum setback of 1.5 metres (5 feet) for buildings and structures from any lot line or water lease boundary, the Land Use Bylaw does not contain any regulations governing the location, setback or size of private moorages.

In reviewing the Crown Land Use Operational Policies Best Practices and the bylaws of other coastal municipalities including North Pender and Salt Spring Islands, Bowen Island could consider addition the following new definitions and regulations to its Land Use Bylaw:

1.1 Definition of "Private Moorage Facility"

Add a definition of "Private Moorage Facility" as a float on the surface of the water that is connected to the shoreline by means of an elevated pier, platform, ramp or gangway, and that is used as a landing or wharfing space for watercraft for private personal use by the owner or crown lessee of the adjacent upland residential property, and includes uncovered floats as well as an accessory boat house".

1.2 Definition of "Group Moorage Facility"

Add a definition of "Group Moorage Facility" as multi-berth floats on the surface of the water connected to the shoreline by means of a platform, ramp or gangway that is used as a landing or wharfing space for watercraft for personal use by a group or association of residents from the surrounding community."

1.3 Regulations for Private Moorages:

In keeping with the Provincial Best Practices add the following regulations to the WG1 zone:

- Permit only one Private Moorage Facility per property;
- Amend the current 1.5 metre requirement to require that all structures (i.e. docks, boat launches, lifts, ramps, floats) are a minimum of 5 metres (16.5 feet) from side property lines including water lot lease lines, and 10 metres (33 feet) from any existing dock structures. (Transport Canada Regulation);
- Add a requirement that all Private and Group Moorage Facilities will be located a minimum of 6 metres (20 ft) adjacent to a dedicated public beach access or park.

(It is noted that the Provincial Best Management Practices would require that all Private a Group Moorages be located a minimum of 20 metres (66 ft) from site property lines adjacent to a dedicated public beach access or park. The Bowen Island Conservancy has recommended that private moorages not be located within a minimum of 125 metres (410 ft) of the mid centre point of a beach (defined as a beach with public access). Given that the *Land Title Act* would require public access every 200 metres, this could mean that options for beach access could be significantly limited in many parts of the Island. With the recommendations for a cap on the size of moorage facilities, a distance slightly greater than the provincial best practices and equal to the required width of a road access is being put forward for consideration.)

Consistent with other coastal communities:

- Consider capping the size of Private Moorage Facilities. For example, North Pender Island in its W1 zone limits the maximum water area that may be covered by floats and wharves to 37m² (400 sq ft). Salt Spring Island, in its zoning categories that apply to private moorages, limits the area of a float or a combined area of all floats for a non-commercial , private boat moorage to 35m² (375 sq ft).

By comparison, the proposed floats at Cape Roger Curtis, excluding ramps and breakwaters, range in size from 110m² to 205m² (1,184 to 2,200 sq ft).

Should Council adopt a cap on the size of Private Moorage Facilities, any applications exceeding this limit would have the option of applying to the municipality for a development variance permit. The 37m² (400 sq ft) limit is suggested as a basis for discussion and consultation.

Additional regulations:

- Consider the removal of breakwaters as a permitted use in the WG1 Zone.

A major concern in reviewing the recent moorage application was the size and location of the breakwaters. The issues associate with these installations included concern for aesthetics, impact on the appearance and wave action at private beaches and along the shoreline, and concern that the large pontoons could break loose and cause environmental or property damage or a navigational hazard. Where wharfs and summer moorages may be found acceptable, there was considerable concern regarding permanent moorages in exposed locations that would require the construction of substantial breakwaters. (It is noted that the breakwaters were not part of the final approval by Transport Canada.)

2. The Building Bylaw

While private and group moorage facilities should be considered *structures* by the Building Bylaw, to date building permits have not been required for these types of structures.

Requirement for a building permit would provide BIM with the opportunity to review all applications to ensure consistency with the municipalities bylaws and regulations, and to receive assurance that all applicants were meeting environmental and safety standards and implementing best practices of the senior levels of government.

In order to ensure that this does not increase staffing requirements or impact the municipality from a liability perspective, Building Bylaw No. 65, 2002 could be amended to require the submission of a building permit for private and group moorage structure, and pursuant to section 55 of the Community Charter, require certification by a qualified professional that the plans submitted with the permit application comply with current provincial building code and other applicable enactments respecting safety.

The submissions could be required to certify that the applications meet all applicable Best Management Practices and safety standards.

3. Development Permit Area

It has been recommended by the Bowen Island Conservancy that an Environmentally Sensitive Areas Development Permit area be assigned to foreshore and upland areas and that all buildings or structures except marine navigation aids and mooring buoys require a development permit.

This would require of OCP amendment to designate a new development permit area, and a considerable amount of time and effort to develop the necessary guidelines. With the adoption of stricter zoning regulations and requirement for permit review it is hoped that the environmental protection objectives intended by these recommendations could be achieved without the designation of a development permit area.

4. Coastal Mapping and Protection

OCP Policy 82 calls for cooperation with the Islands Trust Fund, provincial regulators and federal ministries, to develop and inventory and mapping of the sensitive coastal vegetation zones to protect and preserve fragile coastal ecosystems from further degradation. There have been recent discussions with the Islands Trust with regard to proceeding with this mapping. Such mapping may identify areas that are unsuitable for the construction of private or group moorages in order to protect sensitive ecological habitats or the aesthetics of certain areas.

It is recommended that Council formally request the Islands Trust to proceed with a project to inventory and map the Bowen Island coastline with regard to the identification and recommendations regarding further steps that may be required to protect areas of sensitive or fragile coastal vegetation and ecosystems.

CONCLUSION:

Concerns have been raised with regard to the potential size and location of private moorages that may be permitted under the current provisions in the Land Use Bylaw. Amendments to the Land Use and Building Bylaws could provide a basis for greater municipal review and for limiting the size and impact of future applications. This report discusses a number of options for Council's consideration.

SUBMITTED BY:

_____(ORIGINAL SIGNED)_____
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REVIEWED BY:

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