

<i>COUNCIL AGENDA</i>	
Date: <u>October 21, 2024</u>	Item: <u>3.</u>



DISTRICT OF WEST VANCOUVER
 750 17TH STREET, WEST VANCOUVER BC V7V 3T3

COUNCIL REPORT

Date:	August 28, 2024
From:	Hanna Demyk, Planning Technician
Subject:	Proposed Amendments to the M1 Marine Zone Adjacent to Pasco Road and Official Community Plan Foreshore Areas Policy
File:	1610-20-5361 and 5362

RECOMMENDATION

THAT proposed “Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 5361, 2024” be read a first time.

RECOMMENDATION

THAT proposed "Official Community Plan Bylaw No. 4985, 2018, Amendment Bylaw No. 5362, 2024" be read a first time.

RECOMMENDATION

THAT opportunities for consultation on the proposed Official Community Plan amendment, with persons, organizations, and authorities, as outlined in the report dated August 28, 2024, be endorsed as sufficient consultation for purposes of section 475 of the *Local Government Act*.

RECOMMENDATION

THAT proposed “Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 5361, 2024” and “Official Community Plan Bylaw No. 4985, 2018, Amendment Bylaw No. 5362, 2024” be presented at a public hearing scheduled for November 18, 2024 at 7:00 p.m. in the Municipal Hall Council Chamber and via electronic communication facilities (WebEx video conferencing software), and that notice be given of the scheduled public hearing.

1.0 Purpose

This report proposes a Zoning Bylaw amendment to the M1 (Marine) Zone to allow for private improvements to be placed on the public foreshore adjacent to Pasco Road where access to the ocean may be required when road access is restricted. An amendment to the Official Community Plan is also proposed to update community-wide direction for foreshore areas (Policy 2.6.10) to change the current policy that restricts private encroachments on the public foreshore.

2.0 Legislation/Bylaw/Policy

Legislation

BC Head Lease No. 242266 is an agreement between the Province and the District. The purpose of the Head Lease is to provide the District with the authority to: (a) maintain and improve the shoreline within the Land (i.e., foreshore); (b) grant and administer subtenures; (c) control private improvements (i.e., structures) on the Land (i.e., foreshore); and (d) use and improve the Land for community purposes within the foreshore area adjacent to the District's boundaries. The Head Lease imposes terms, conditions, and restrictions upon the District's ability to grant a licence for the use of the foreshore and makes the District responsible and liable to the Province for any breaches of its terms and conditions by those granted permission to use the Land.

Part 14, Division 3, of the *Local Government Act* (LGA) requires that a public hearing be held on the proposed Zoning Bylaw amendment and OCP amendment bylaw, in accordance with sections 464 through 470.

Zoning Bylaw

Zoning Bylaw No. 4662, 2010 regulates land use and development of property and buildings in the municipality, regulates use of the foreshore, and restricts new private encroachments except where required for practical access.

Policy

The Coastal Marine Management Plan is a policy framework informed by past and recent initiatives to guide District Council and staff in the management of coastal areas and assets.

3.0 Official Community Plan

The Official Community Plan (OCP) recognizes the value of the natural environment and provides high-level policies regarding strengthening existing environmental regulations and facilitating the protection, restoration, and enhancement of the community's natural assets, including the foreshore. Specifically, as it relates to this report:

- Policy 2.6.10 - Protect the shoreline and its significant environmental and cultural features through: a. Seeking strategic land acquisition where appropriate; b. Restricting private encroachment except where required for access; and c. Regulating existing structures to minimize impact.
- Policy NE 2: Foreshore Development Permit Area Guidelines: To protect development from the risks of coastal flooding and sea level rise and protect the natural environment of the foreshore, with the following objectives to:

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- Minimize risk to people and property from coastal hazards including sea level rise, storms, wave effects, and flooding.
- Support coastal management in reducing flooding risks.
- Preserve and enhance the integrity of the intertidal habitat of the foreshore and minimize shoreline erosion.

4.0 Financial Implications

Should the proposed bylaw and policy amendments be adopted by Council, the additional permitting through the Planning & Development Services Department will be managed using existing resources noting that the fees for permitting are generally intended to cost-recover required staff resources.

5.0 Background

5.1 Previous Decisions

Council, at its November 7, 2022, regular meeting, passed the following resolution:

THAT staff be directed to report back on options and implications associated with the renewal of water lot leases at Pasco Road and Eagle Island.

Council, at its June 24, 2024, regular meeting, passed the following resolution:

- (1) THAT staff be directed to bring forward an amendment to the Zoning Bylaw for the M1 Zone over the foreshore by allowing an exclusion clause for access encroachments for Pasco Road properties;*
- (2) THAT staff be directed to engage with the Province on the bylaw amendment to align with the Head Lease and the Province's approval requirements for new access encroachments;*
- (3) THAT staff be directed to bring forward an amendment to the Official Community Plan to reflect the change in current policy that restricts private encroachments on the foreshore; and*
- (4) THAT staff be directed to define the appropriate access structures that minimize the environmental impacts to the foreshore.*

This report, dated August 28, 2024, proposes Zoning Bylaw and OCP amendments to address items (1) and (3). Additionally, this report provides a summary of staff's consultation with the Province on the Head Lease requirements and new foreshore encroachment application requirements to address items (2) and (4).

5.2 History

The foreshore is the area of the shore between the high and low water marks. The public land which comprises the foreshore is owned by the Province and leased to the District under a Head Lease for the purpose of managing the use of the foreshore. Under the Head Lease, the District may grant licences (referred to as “subtenures” in the Head Lease) to individual waterfront property owners for the placement of private improvements (referred to as “encroachments”) on the foreshore from the adjacent private property for the owners use. The licence is for the use of the foreshore area but not ownership of the land on which the encroachment is located. Minor encroachments, such as private moorage facilities, may be considered as a subtenure under the Head Lease and the District may grant subtenures for these types of encroachments without prior notification to the Province.

In addition to the use and occupancy rights granted to the District through the Head Lease, the District retains its usual regulatory rights to create land use bylaws which regulate the area of the foreshore and determine when an encroachment may be permitted. In alignment with the Head Lease objective to control private improvements on the foreshore and the OCP policy to restrict new encroachments on the foreshore, the M1 Zone was established in the District’s Zoning Bylaw to manage the majority of the foreshore adjacent to residential properties. The conditions of use under the M1 Zone dictates when an encroachment can be placed on the foreshore.

For example, private floats, wharves, piers and walkways in the M1 Zone are currently restricted as per Section 451.02(4) of the Zoning Bylaw:

- (4) *Private floats, wharves, piers and walkways are only permitted where necessary for practical access to property immediately abutting the foreshore lying within the District boundaries, but only within the boundaries of a water lease or licence of occupation issued by the District. Private floats and wharves shall be used for purposes of private access only and no commercial or industrial activity or use shall take place thereon.*

Since adoption of the M1 Zone, the District has interpreted this section of the Zoning Bylaw to mean that if a private property has road access, any encroachment used for ocean access is not in compliance with the Zoning Bylaw and is therefore prohibited. Staff have consistently applied this interpretation when receiving requests to construct docks on the foreshore and have only considered applications for new docks for properties on Eagle Island where no road access is available. All other waterfront properties in the District have some form of road access; therefore, not requiring access to/from the ocean that would comply with the “conditions of use” of the M1 Zone.

6.0 Analysis

Concerns of Pasco Road Residents

Pasco Road is a privately-owned road from the Sea-to-Sky Highway, west of Horseshoe Bay. There are currently 21 private properties on this road and one public park (Sampson Park), all with waterfront access (Figure 1). The road is steep and narrow, allowing for only one vehicle to pass at a time.

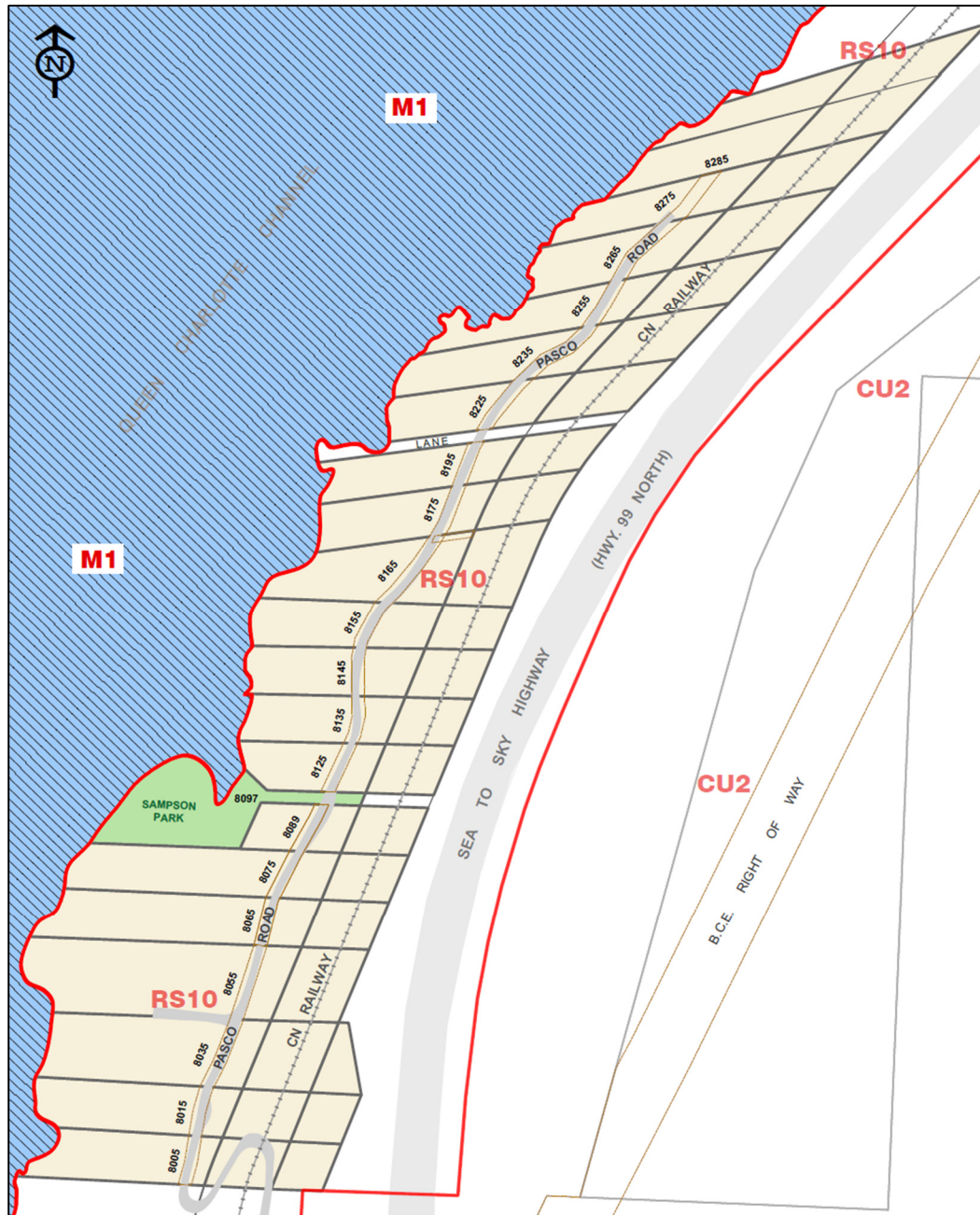


Figure 1. Map of Parcels on Pasco Road and the M1 Marine Zone Area.

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It is staff's understanding that residents of Pasco Road have growing concerns that road access may be inadequate at times or during an emergency situation. Expressed concerns include lack of emergency access and evacuation options due to the conditions of the road and limitations to provide improved access because the road crosses property owned by CN Rail and the Ministry of Transportation and Infrastructure (MOTI). The residents of Pasco Road are seeking alternate access options, such as the use of the foreshore, to install structures adjacent to their properties to provide alternate access via the ocean.

It is also staff's understanding that the foreshore adjacent to Pasco Road is considered unusable by the public due to the topography. As such, any encroachments would not impede public access, aligning with the conditions of the Head Lease.

6.1 Proposed Amendments

An amendment to the M1 Zone is proposed to allow for the placement of structures on the foreshore adjacent to properties on Pasco Road as an alternate access option. Specifically, Section 451.02(4)(a) of the Zoning Bylaw would be revised to include an exception for the parcels along Pasco Road between the foreshore and the Sea-to-Sky Highway to allow private floats, wharves, piers and walkways, to be placed regardless of other accessibility (**Appendix A**). The remaining sections of 451.02 would be renumbered and reorganized to provide greater clarity on the M1 Zone Conditions of Use. The intent of the proposed amendment to the M1 Zone is to address concerns from Pasco Road residents regarding the need to have other access options should there be an emergency where Pasco Road is inaccessible, and evacuation is necessary.

Additionally, an amendment to the Official Community Plan is proposed to update community-wide direction for foreshore areas (Policy 2.6.10) to reflect the change in current policy that restricts new private encroachments on the public foreshore. Specifically, Official Community Plan Policy 2.6.10(b) would be revised to specify that private encroachments in foreshore areas are restricted except where necessary for practical access and for parcels along Pasco Road between the foreshore and the Sea-to-Sky Highway (**Appendix B**).

6.2 Discussion

Consultation with the Province

As per Council's resolution, staff consulted with the Province prior to preparing the proposed amendment to the M1 Zone to ensure that any granted licences for new encroachments for Pasco Road properties would comply with the conditions of the Head Lease. The Province confirmed that the proposed amendment would comply with the District's obligations under the Head Lease if adopted by Council. Additionally, the Province recommended that:

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- Any structures authorized under subtenure should conform to good land use, align with the *Navigable Waters Protection Act*, and not obstruct public access;
- Any private moorage facilities authorized by the District align with guidelines outlined in the Crown land Operational Policy for Private Moorage and associated Best Management Practices and Guidelines for “General Permissions” for docks; and
- Proposals for private moorages along Pasco Road take into consideration the Átl’ka7tsem/Howe Sound Biosphere Region Best Management Practices (BMPs) for marine docks.

Foreshore Encroachment Application Checklist

To address the Province’s recommendations for foreshore encroachment proposals and ensure that any new encroachments align with the District’s Head Lease over the public foreshore, staff have prepared a Foreshore Encroachment Application Checklist (**Appendix C**). The checklist includes submission requirements for a building permit to allow an encroachment structure to be located on the public foreshore adjacent to a private property. The checklist will ensure compliance with the Head Lease and is based on feedback from the Province and their expectations. As part of the building permit application, the owner of the encroachment structure will be required to complete a subtenure licence under the District’s Head Lease, which requires the owner to indemnify the District and obtain and maintain commercial general liability insurance.

6.3 Climate Change & Sustainability

Structures in the marine environment are susceptible to damage from storm events, tides, and wave action, which results in an accumulation of debris in the ocean, particularly in more recent years when weather events have been increasing in intensity and frequency. In addition, structures can also impact marine habitat if not properly located and built to minimize disturbance. The requirements in the Foreshore Encroachment Application Checklist help to ensure that structures will be built with sustainable materials and located in areas to minimize disturbance to the marine environment and withstand storms and waves to decrease damage and resulting debris in the ocean.

6.4 Public Engagement and Outreach

Public engagement was not completed in preparation of the proposed bylaw amendments included in this report.

7.0 Options

7.1 Recommended Option

That Council give the recommended readings to the proposed bylaws and set the date for public hearing for the Zoning amendment bylaw and Official Community Plan amendment bylaw.

7.2 Considered Options

- a) That Council give readings to the proposed bylaws and set an alternate date (to be specified) for a public hearing; or
- b) Defer consideration pending the receipt of additional information (to be specified) to assist in consideration of the proposed bylaws; or
- c) Reject the proposed amendments.

Author:



Hanna Demyk, Planning Technician

Concur:



Heather Keith, Senior Manager, Climate Action & Environment

Appendices:

- A. Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 5361, 2024
- B. Official Community Plan Bylaw No. 4985, 2018, Amendment Bylaw No. 5362, 2024
- C. Foreshore Encroachment Application Checklist



District of West Vancouver

**Zoning Bylaw No. 4662, 2010,
Amendment Bylaw No. 5361, 2024**

Effective Date:

District of West Vancouver

Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 5361, 2024

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District of West Vancouver

Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 5361, 2024

A bylaw to amend to amend the M1 Marine Zone to allow access encroachments to be placed on the public foreshore for properties on Pasco Road.

Previous amendments: Amendment bylaws 4672, 4677, 4678, 4679, 4689, 4701, 4680, 4710, 4697, 4716, 4712, 4737, 4726, 4736, 4757, 4752, 4767, 4787, 4788, 4784, 4772, 4791, 4805, 4809, 4828, 4854, 4873, 4866, 4895, 4839, 4898, 4927, 4944, 4905, 4974, 4967, 4982, 4962, 4928, 4992, 5001, 5021, 5024, 5028, 5009, 4938, 5044, 5055, 5051, 5068, 5065, 5087, 5069, 5110, 5106, 5132, 5161, 5160, 5013, 5122, 5155, 5169, 5192, 5175, 5171, 5201, 5230, 5081, 5223, 5270, 5281, 5321, 5328, 5338, 5336, and 5351.

WHEREAS the Council of The Corporation of the District of West Vancouver deems it expedient to provide for Marine Zone 1 amendments along Pasco Road;

NOW THEREFORE, the Council of The Corporation of the District of West Vancouver enacts as follows:

Part 1 Citation

- 1.1 This bylaw may be cited as Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 5361, 2024.

Part 2 Severability

- 2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

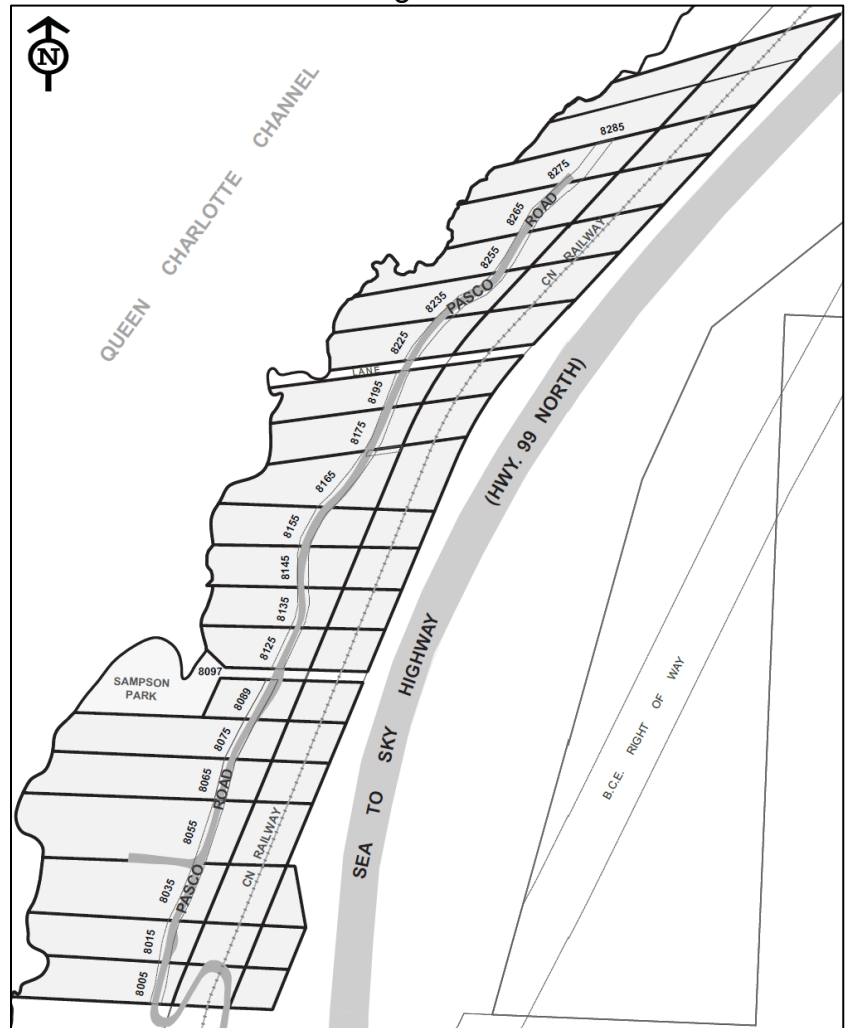
Part 3 Amendment of Zones

3.1 Zoning Bylaw No. 4662, 2010, Section 451 (Marine Zone 1) is amended by:

3.1.1 Deleting section 451.02(4) and replacing with the following:

- (4) Private floats, wharves, piers and walkways are only permitted:
 - (a) where necessary for practical access to property immediately abutting the foreshore lying within the District boundaries, with the exception of the parcels along Pasco Road between the foreshore and the Sea-to-Sky Highway, which are depicted in the map shown in Figure 1, where such improvements may be placed regardless of other accessibility; and
 - (b) within the boundaries of an area held or occupied by the upland owner under a water lot lease from the Province or a licence or subtenure issued by the District.

Figure 1



3.1.2 Adding section 451.02(5) after section 451.02(4) as follows:

- (5) Private floats and wharves may be used for purposes of private access only and no commercial or industrial activity or use shall take place thereon.

READ A FIRST TIME on

PUBLICATION OF NOTICE OF PUBLIC HEARING on

PUBLIC HEARING HELD on

READ A SECOND TIME on

READ A THIRD TIME on

APPROVED by the Ministry of Transportation and Infrastructure on

ADOPTED by Council on

Mayor

Corporate Officer



District of West Vancouver

**Official Community Plan Bylaw No. 4985, 2018,
Amendment Bylaw No. 5362, 2024**

Effective Date:

District of West Vancouver

Official Community Plan Bylaw No. 4985, 2018, Amendment Bylaw No. 5362, 2024

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District of West Vancouver

Official Community Plan Bylaw No. 4985, 2018, Amendment Bylaw No. 5362, 2024

A bylaw to amend the Official Community Plan to update policy in the “Community-Wide Directions” regarding private encroachments on the public foreshore.

Previous amendments: Amendment bylaws 5008, 5045, 5054, 5057, 5064, 5074, 5076, 5120, 5135, 5128, 5172, 5231, 5222, 5280, 2301, 5335, and 5291.

WHEREAS the Council of The Corporation of the District of West Vancouver deems it expedient to provide for an amendment to the Official Community Plan to update community-wide directions for Foreshore Areas to reflect the change in current policy that restricts private encroachments on the public foreshore;

NOW THEREFORE, the Council of The Corporation of the District of West Vancouver enacts as follows:

Part 1 Citation

- 1.1 This bylaw may be cited as Official Community Plan Bylaw No. 4985, 2018, Amendment Bylaw No. 5362, 2024.

Part 2 Severability

- 2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

Part 3 Amends Section 2 [Community-Wide Directions]

- 3.1 Schedule D (Parks & Environment) of Official Community Plan Bylaw No. 4985, 2018, is amended by:

3.1.1 Deleting Policy 2.6.10 in its entirety and replacing with the following:

Protect the shoreline and its significant environmental and cultural features through:

- a. Seeking strategic land acquisition where appropriate;
- b. Restricting private encroachments except where necessary for practical access and for parcels along Pasco Road between the foreshore and the Sea-to-Sky Highway; and
- c. Regulating existing structures to minimize impact.

READ A FIRST TIME (MAJORITY VOTE IN THE AFFIRMATIVE) on

PUBLICATION OF NOTICE OF PUBLIC HEARING on

PUBLIC HEARING HELD on

READ A SECOND TIME (MAJORITY VOTE IN THE AFFIRMATIVE) on

READ A THIRD TIME (MAJORITY VOTE IN THE AFFIRMATIVE) on

ADOPTED by the Council (MAJORITY VOTE IN THE AFFIRMATIVE) on

Mayor

Corporate Officer

Foreshore encroachment application checklist

To apply for a building permit for an encroachment structure to be located on the public foreshore, adjacent to a private property, the following documents are required:

1. Building permit application for a “structure”, as defined in Building Bylaw No. 4400, 2004, with applicable supporting documents, including property plans, BC Land Survey, construction drawings, and all other documents, as required by the District’s Building Department.
2. A letter outlining the alignment of the structure design with the following best management practices, to confirm compliance with the District’s Head Lease with the Province for the management of the public foreshore:
 - a. Provincial Best Management Practices and Guidelines for “General Permissions” for docks: <https://www2.gov.bc.ca/gov/content/industry/crown-land-water/crown-land/crown-land-uses/residential-uses/private-moorage#Requirements>.
 - b. Appendix 3 of the Crown land Operational Policy for Private Moorage: https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/private_moorage.pdf
 - c. Átl’ka7tsem/Howe Sound Biosphere Region Best Management Practices (BMPs) for marine docks: <https://www.howesoundbri.org/webinars/2021/3/31/best-practices-for-marine-dock-management>.
3. Approval under the federal *Navigable Waters Protection Act* for the location of the encroachment structure on the foreshore and in the marine environment.
4. Approved Foreshore Development Permit if any development associated with the encroachment extends to adjacent private property.
5. Proof of archeological due diligence.
6. Demonstration that the encroachment structure does not conflict with any District infrastructure or utilities.
7. An environmental effects determination that includes mitigation measures to address potential adverse environmental effects during construction and use of the structure.
8. If applicable, any other permits or requirements and authorizations associated with the proposed works.

Once all documentation has been submitted and approved and prior to issuance of the building permit, the owner of the structure will be required to complete a subtenure license under the District’s Head Lease with the Province over the foreshore, which requires the owner to indemnify the District and the Province and obtain and maintain commercial general liability insurance.

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