

## ISSUE BRIEF: Cawley Point Cabins DL4444 (Telus Wilderness Point) - Development Variance Permit Application

This Issue Brief has been prepared by members of the [Community Development Forum \(CDF\) in Halfmoon Bay](#). The purpose of the Brief is to inform the broader community and other interested parties of the relevant facts surrounding Telus' application to the [SCRD](#) in July 2023 for a development variance permit for its proposed development on Cawley Point, Sechelt Inlet. The Brief presents issues related to the development activities on Cawley Point, and the CDF position on each issue. (It should be noted that although Cawley Point is situated on Sechelt Inlet, it is located in [Area B, Halfmoon Bay](#).)

*The CDF's overall recommendation:*

*Given the apparent egregious violation of SCR D bylaws, the CDF believes that the SCR D Board should deny the development variance permit application, that relevant fines should be applied and restoration required, and that Telus should be instructed to abide by all relevant bylaws, regulations and processes.*

## A. References

- R1. SCR D Electoral Area Services Committee [20 July 2023 agenda](#), SCR D staff report titled "Development Variance Permit DVP00085 (Cawley Point Cabins)" of 20 July 2023, pp. 15-43.
- R2. Diamond Head "[Assessment of Shoreline Impacts of Telus Wilderness Point](#)", 23 November 2022 (updated 15 February 2023), pp. 24-43 of SCR D Staff Report.
- R3. Recording of SCR D Electoral Area Services Committee meeting on [youtube](#) (starts at 31m up to 1h07)
- R4. [More review on Telus Cawley Point cabins requested: SCR D directors](#), Coast Reporter, 21 July 2023
- R5. [Telus' Cawley Point cabins variance review set for fall](#), Coast Reporter, 8 August 2023
- R6. [Telus Wilderness Point website](#)

## B. Background

Based on the CDF's review of References 1-6 above, it is our understanding that:

1. Telus is applying for a Development Variance Permit for DL4444 to vary [Zoning Bylaw No. 722](#) (Section 5.16.1(a)) to reduce the setback from 15 m from the natural boundary of the ocean for several structures (see table and map below, and R1).

2. DL 4444 is currently zoned as RU2<sup>1</sup> (rural residential 2 – [see p. 53 of Bylaw 722](#)) which does not allow for “sleeping cabins” as part of a campground. The SCRD advises that “the applicant is in the process of engaging with SCRD and consulting with shísháhlh Nation to bring forward a rezoning application that would permit all uses associated with Telus’ plan to establish a recreational camp facility at the subject location”. ([R1 p.18](#))
3. Telus purchased the property in early 2020, and in 2021-22 constructed eight timber cabins (1, 3, 4, 5, 6, 8, 13, 14)<sup>2</sup> and connecting boardwalks along the shoreline (see map below). This work was done contrary to the RU2 zoning and without obtaining building permits ([R1 p. 18](#)).
4. Of the eight cabins, seven cabins and some boardwalks are non-compliant with the Bylaw 722 (Section 5.16.1(a)) setback requirement of 15 meters from the natural boundary of the ocean ([R1 p. 17-18](#)).
5. DL4444 is remote and only accessible by boat. It is not clear whether SCRD staff were informed or able to visit the property during construction.
6. The property is not included in [Development Permit Areas \(DPA\) of the Halfmoon Bay OCP](#). According to a member of the Official Community Plan (OCP) Advisory Group at the time<sup>3</sup>, due to the area’s remoteness, it was not assessed for a DPA when the 2014 OCP was prepared.
7. Telus contracted Diamond Head (DH) Consulting to prepare an environmental overview assessment in 2020, which was updated in February 2023. [See R2 pp. 24-43](#).
8. According to the DH report, there is a wetland on the Cawley Point property which triggers requirements for an assessment under the provincial Riparian Areas Protection Regulation. DH states that “this wetland requires a 15 m SPEA on all sides, which extends to 30 m directly south to preserve shade for the wetland” ([p. 25](#)).
9. Also according to the DH report, the Fisheries Act protects fish habitat, including harmful alteration, disruption, or destruction of fish or fish habitat including marine foreshore and intertidal zones ([p. 26](#)). The Fisheries Act is administered by the Department of Fisheries and Oceans (DFO). The DH report states that “specific setback requirements are not defined by the DFO, however 30m setbacks off the highest tide line were recommended to meet the DFOs expectations for new development. It was recommended that if development is planned within this setback, DFO should be consulted to mitigate risk associated with the development” ([p. 26](#)). The CDF has not been able to confirm whether this consultation with DFO took place.

## C. Issues and CDF positions

### Issue 1: Development not in accordance with current zoning

Construction has taken place on the site in contravention of the current RU2 zoning.

**Our Position:** *The SCRD should deny the development variance application (see Issue 3 below), order Telus to stop development and to submit a rezoning application to be considered in accordance with the appropriate SCRD process.*

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<sup>1</sup> The allowed use under this zoning which is relevant to the intent of the Telus plan is as a ‘campground’: 1) Parcel area must exceed 1.75 ha. 2) Maximum 10 campsites per hectare. ‘Campground’ means the temporary accommodation of travelers using temporary, moveable tents, trailers, or recreational vehicles with continuous occupancy not exceeding 30 days, but specifically excludes a manufactured home, short term rental or tourist accommodation (p. 125 of bylaw).

<sup>2</sup> The cabins range from 200 ft<sup>2</sup> to 320 ft<sup>2</sup> in size. Several of the cabins were built on the existing elevated tent platforms, while others were built in new locations.

<sup>3</sup> Elise Rudland

## Issue 2: No building permits

Eight cabins and a boardwalk have been constructed without obtaining building permits.

**Our Position:** *The SCRD should issue a Stop Work Order and apply the relevant fines<sup>4</sup>.*

## Issue 3: Building within the 15 m setback of the natural ocean boundary

Seven buildings and boardwalks have been constructed within the 15 m setback required by Bylaw 722 (6 of the buildings are within the 7.5 m setback of the previous Bylaw 320). It is also noted that in 2020, DFO recommended that a 30 m setback from the natural boundary of the ocean be respected ([R2, p. 26](#)). See table below for actual setbacks.

**Our Position:** *The SCRD Board should deny Telus' request for a development variance, appropriate fines should be applied, and Telus should be required to move/remove the non-compliant structures and restore the altered area.*

## Issue 4: Possible damage to fish or fish habitat, including marine foreshore

Given that buildings have been constructed very close to the natural boundary of the ocean, it is possible that damage has been caused to the marine foreshore, and also to fish or fish habitat.

**Our Position:** *File a [complaint with DFO](#) regarding possible harmful alteration, disruption, or destruction of the marine foreshore and intertidal zones, and possibly also to fish or fish habitat.*

## Issue 5: Granting a variance is contrary to four out of five SCRD criteria for a development variance permit

As per [SCRD Board policy BRD- 0340-50-008](#), it is Board policy to “consider Development Variance Permit applications according to the following criteria. Applications which meet most, or all, of the ... criteria will generally be supported”. No exceptions are listed. For the SCRD staff view of the Telus variance application against these criteria, see [R1 pp. 19-20](#). However, the CDF has reviewed the variance application against the same criteria, with different results:

### **Our Analysis:**

*SCRD criteria 4.1 a) “The variance should not defeat the intent of the bylaw standard or significantly depart from the planning principle or objective intended by the bylaw”.*

**Criteria not met.** *The proposed variance would defeat the intent of the bylaw standard by permitting considerable unauthorized construction inside the 15 meter setback which is intended to “enhance protection of properties and buildings from the effect of rising sea level and flooding due to climate change” and “also ensure the local marine ecosystem is protected.” (See [SCRD Zoning Bylaw 722 brief “What we heard, and what we can do”, p. 4- 5](#))*

*SCRD criteria 4.1 b) “The variance should not negatively affect adjacent or nearby properties or public lands”.*

**Unknown.**

*SCRD criteria 4.1 c) “The variance should not be considered a precedent, but should be considered as a unique solution to a unique situation or set of circumstances”.*

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<sup>4</sup> Work Without Permit(s) If land alteration, tree cutting, construction of buildings or structures have commenced without a valid permit pursuant to this bylaw ([Bylaw 522 p. 34](#)) : (1) the pre-application fee for an application for a development variance permit, Board of Variance, rezoning or official community plan amendment will be double the applicable fee; and (2) the base fee and any additional fees for such application will be double the applicable fee.

**Criteria not met.** The applicant has violated provisions of Bylaw 722 by altering land and proceeding with development *prior* to: approval of rezoning (7.11), approval of development variances (5.16), and obtaining building permits. The proposed variance could be viewed as a flagrant precedent by many property owners, developers, and contractors. The CDF is aware of other ‘develop first and request approvals later’ examples on the Sunshine Coast, and a recommendation from a recent review of the SCRD development approvals process that the SCRD be stricter on compliance and adherence to the process ([DAPR recommendation #5, p. 53, July 2023](#)).

*SCRD criteria 4.1 d)* “The proposed variance represents the best solution for the proposed development after all other options have been considered”.

**Criteria not met.** The proposed variance would not be the best solution given Telus’ egregious disregard for zoning, variance and building permit requirements. The best solution is for the SCRD to enforce its established policies, regulations and procedures by 1) issuing fines as per the relevant bylaws, and 2) requiring that Telus:

- moves or removes non-conforming structures;
- restores the altered land to pre-development condition; and
- follows the appropriate SCRD processes going forward.

*SCRD criteria 4.1 e)* “The variance should not negatively affect the natural site characteristics or environmental qualities of the property”

**Criteria not met.** The applicant has negatively impacted the natural qualities of the site through the unauthorized construction of cabins and boardwalks within the required 15m setback. The damage to the natural site characteristics and environmental qualities of the property should be assessed and restored to pre-development condition.

## Issue 6: Incongruities between Telus’ words and its actions

The [public information session](#) organized by Telus in September 2022 and the materials submitted to the SCRD appear to present this project as part of its [‘Telus for Good’ program](#). Telus seems to be presenting itself to the public on the Sunshine Coast and more widely as a “good corporate citizen” by pointing to its “good works” and [featuring this project as one of those “good works”](#). However, in the case of this development, Telus does not appear to have acted in line with its statements about how a good corporate citizen should behave. For example, Telus makes numerous statements about sustainability and environmental values that seem to contradict its subsequent conduct on Cawley Point. In the [Telus OCP Amendment and Rezoning Submissions](#) (Nov 2021), Telus presents a “vision for sustainability” for the property which is described as an “eco-friendly youth camp”. The goal for the property is to “develop and operate a demonstration site, where Telus sustainability initiatives have a place to live and grow.” A mission statement says that the project is to be “rooted in nature” in a manner that would “change the way we connect with the world.” Telus also acknowledges that protection of riparian areas and marine foreshore are specific environmental management priorities ([p. 40](#)). However, Telus proceeded to construct, without the necessary approvals or public consultation, multiple structures within protected buffer zones that Telus was well aware of through its consultants.

In summary, Telus appears to have acted contrary to its own [core guiding principles](#) by constructing buildings and boardwalks prior to rezoning, without building permits, and prior to proper public engagement.

**Our Position:** *This raises a serious question as to whether going forward the community can trust Telus to adhere to its own proposals and abide by its own principles.*

### **Issue 7: Concerns regarding the apparently excessive number of expert disclaimers**

The expert assessment of shoreline impacts performed by DH and submitted to the SCRD by Telus appears to have an excessive number of disclaimers, including one that could call to question whether the SCRD should rely upon the report. The disclaimers are noted in nine locations over two pages ([R2, pp. 40-41](#)). Of particular concern is disclaimer #2 (or limiting condition) which states:

... The work undertaken in connection with this report and preparation of this report have been conducted by Diamond Head for the “Client” as stated in the report above. It is intended for the *sole and exclusive use by the Client* for the purpose(s) set out in this report. *Any use of, reliance on or decisions made based on this report by any person other than the Client, or by the Client for any purpose other than the purpose(s) set out in this report, is the sole responsibility of, and at the sole risk of, such other person or the Client, as the case may be. Diamond Head accepts no liability or responsibility whatsoever for any losses, expenses, damages, fines, penalties or other harm (including without limitation financial or consequential effects on transactions or property values, and economic loss) that may be suffered or incurred by any person as a result of the use of or reliance on this report or the work referred to herein.* ... [Emphasis added]

As DH’s “client” is Telus, this disclaimer appears to preclude the SCRD from relying upon the report<sup>5</sup>.

**Our Position:** *Given the significant and unauthorized development at Cawley Point, the SCRD should commission an independent expert review, for which Telus should be required to provide reimbursement.*

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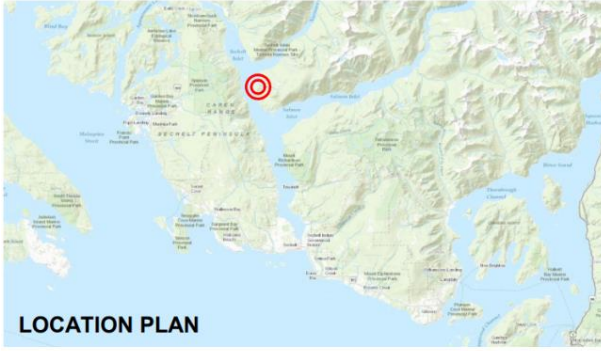
<sup>5</sup> The professional reliance model used in B.C. allows government bodies to rely upon duly qualified experts who are members of statutorily regulated professions. Members of those professional bodies adhere to standards which are often prescribed in their enabling statutes relating to mandatory requirements to carry particular amounts of professional liability insurance. That is, when a government body such as the SCRD accepts and relies upon an expert report that has been submitted by a member of a regulated profession, this is done to ensure that there will be a “deep pocket” to pay for any damages if the expert has not met proper professional standards. By submitting a report that appears to exclude liability to the SCRD, Diamond Head has sought to remove access to this “deep pocket” should there be any problem with their work.

## Table: Overview of Structures on Cawley Point

Structure	Year built/ by whom	Actual setback from natural boundary of ocean	SCRD Bylaw 310 (up to Oct 2022) requires setback of 7.5 m	SCRD Bylaw 722 (as of Oct 2022) requires setback of 15m	Action proposed by Telus (July 2023)
Cabin 1	2022 Telus	2.7 m	Non-conforming	Non-conforming	Seek variance
Cabin 3	2022 Telus	?	conforms	conforms	remain
Cabin 4	2022 Telus	8 m	Conforms	Non-conforming	Seek variance
Cabin 5	2022 Telus	2.5 m	Non-conforming	Non-conforming	Seek variance
Cabin 6	2022 Telus	?	Non-conforming	Non-conforming	Remove
Cabin 8	2022 Telus	3.9 m	Non-conforming	Non-conforming	Seek variance
Cabin 13	2022 Telus	?	Non-conforming	Non-conforming	Remove
Cabin 14	2022 Telus	4 m	Non-conforming	Non-conforming	Seek variance
Yurt 1	Pre-2020	?	Conforming	Non-conforming	Legal non-conforming status
Yurt 2	Pre-2020	2.7 m	Non-conforming	Non-conforming	Seek variance
Parts of Boardwalk	2021-22 Telus		Non-conforming	Non-conforming	Seek variance
Tent 3	2022 Telus	?	conforming	Non-conforming	Remove
Tent 4	2022 Telus	?	Non-conforming	Non-conforming	Remove
Tent 5	2022 Telus	?	Non-conforming	Non-conforming	Remove

Source: [SCRD Staff report, 20 July 2023, pp. 15-43](#). “The cabins range from 200 ft<sup>2</sup> to 320 ft<sup>2</sup> in size. Several of the cabins were built on the existing elevated tent platforms, while others were built in new locations.” (p.17)

Map of structures on Cawley Point (Source: [SCRD Staff Report, 20 July 2023](#))



BUILDING SCHEDULE					
REFERENCE	STATUS	YEAR BUILT	APPROX. SIZE (m)	ELEVATION (m)	NOTES
ACCESSORY CABIN #1	SEEKING VARIANCE	Adopted Dec. 2022	4.88 x 6.10	4.18	MODIFY FOUNDATION AND STRUCTURE TO MEET CODE
ACCESSORY CABIN #3	TO REMAIN	Adopted Dec. 2022	4.88 x 6.10	6.19	MODIFY FOUNDATION AND STRUCTURE TO MEET CODE
ACCESSORY CABIN #4	SEEKING VARIANCE	Adopted Dec. 2022	4.88 x 6.10	6.39	MODIFY FOUNDATION AND STRUCTURE TO MEET CODE
ACCESSORY CABIN #5	SEEKING VARIANCE & FOUNDATION MODIFICATION	Adopted Dec. 2022	4.88 x 6.10	6.83	MODIFY AND RELOCATE FOUNDATION, STRUCTURE AND DECK SUPPORTS TO MEET CODE
ACCESSORY CABIN #6	TO BE REMOVED	Adopted Dec. 2022	4.88 x 6.10	2.16	POSSIBLE RELOCATION
ACCESSORY CABIN #8	SEEKING VARIANCE & FOUNDATION MODIFICATION	Adopted Dec. 2022	4.88 x 6.10	12.85	MODIFY AND RELOCATE FOUNDATION, STRUCTURE AND DECK SUPPORTS TO MEET CODE
ACCESSORY CABIN #13	TO BE REMOVED	Adopted Dec. 2022	3.63 x 3.73	4.50	
ACCESSORY CABIN #14	SEEKING VARIANCE & FOUNDATION MODIFICATION	Adopted Dec. 2022	6.10 x 7.32	10.81	MODIFY AND RELOCATE FOUNDATION, STRUCTURE AND DECK SUPPORTS TO MEET CODE
TENT #3	TO BE REMOVED	Adopted Dec. 2022		7	
TENT #4	TO BE REMOVED	Adopted Dec. 2022		3.19	
TENT #5	TO BE REMOVED	Adopted Dec. 2022		3.21	
YURT #1	EXISTING PRE 2020	Prior to Dec. 2020		7.97	
YURT #2	EXISTING PRE 2020	Prior to Dec. 2020		4.57	

