

**Town of Ladysmith
COUNCIL AGENDA
LATE ITEMS
JANUARY 25, 2022**

Recommendation:

That Council amend the agenda to add the following items, received after publication of the agenda:

	Page
7.1. Development Variance Permit Application – 303 Chemainus Road Add additional public submissions.	1-20

Received December 30, 2021

Within Circulation Area

From: Don Mercer

Sent: December 30, 2021 7:59 PM

To: Town of Ladysmith <info@ladysmith.ca>; Don Mercer

Subject: File DVP 3090-21-14 Development Variance Permit adjacent to 303 Chemainus Road

To the Town of Ladysmith:

Thank you for the notice, left at our front door advising us of this permit and informing us re how to provide written submissions:

We as property owners and residents at 318 Roland Road, Ladysmith have comments as follows re DVP 21-14:

1. Since the earlier notice, mostly focused on the beach area below the upland property, there have already been a number of impacts our neighbourhood and our enjoyment of our property which overlooks the dock area and beach area to the west and southwest of us:

-previously we could not see the cottage on the waterfront; now there is a constant stream of light in evenings from there.

-three mooring buoys and the float dock at the ocean end of the legacy pilings resulting in up to three larger powered vessels coming and going as well as small craft traffic between the beach and the float dock and related recreational activities with resulting noise levels. This noise plus propellor action will be having as well impact on the adjacent seeded Marine Harvesting Zone which our property overlooks and which is a source of employment and of shell fish - clams and oysters. We note this dramatic increase in activity with the existing float dock, beach arrangements and the three mooring buoys.

2. Several years ago the neighbourhood dealt with two zoning applications for apartments on the 303 Chemainus Road property, the first of which also sought to have as we recall a public as opposed to private marina. The marina was rejected in the first of those processes. We wonder if this DVP 21-14 and its recent predecessor process is in fact a way to gain by a back door that which could not be achieved by a front door. We say this in the context of much increased activity both on the upland property and in the adjacent ocean and beach including a film crew and company permanently there and many vehicles and personnel for this purpose as well as for changes to the property for purposes of this filming.

3. In short the activity to date has already impacted the neighbourhood - some positive including rejuvenation of a previously run-down property with the keeping of historical property elements and some negative with cutting of 80 trees, increase of noise level from the highway resulting therefrom, site line changes as well from that tree cutting that bring Gill Road into view and which removed the buffer of trees between neighbourhood on the King Road side and 303 Chemainus Road.

4. Right now we have in front of our home a float dock and pilings that resulted from a long-abandoned fixed dock. Judging by the five points proposed for the private dock, the result will be:

-a dock almost seven times the area of the existing dock and extending close to or to the beach.

-a dock over 50% higher than the existing dock with a guardrail. This will potentially obstruct views/site lines and impact wind flows in the area.

-a dock over 2.5 times longer and as noted coming much closer to the shore. If a float dock it will negatively impact water flows and currents which will inevitably impact on the beach area and the Marine Harvesting zone. This is already noticeable from the float dock added in the past year. We hope

that the Town has fully consulted with the Province of BC environmental and conservation authorities and Fisheries and Oceans Canada as well as the managers, employers and employees utilizing the Marine Harvesting zone.

-reduction of the minimum setback from the Marine Harvesting zone from 125m to be 19m will impact and disrupt ocean currents, sand formation and current flows from Holland Creek. If the lengthened dock is on floats this could create a significant dead zone. It will also block a route well used by kayakers and canoeists. If the dock is on the pilings it will also block their routes and disrupt wind flows. And: 5. an uncertain impact of reducing the clearance between the dock and the seabed from 2.0m to 1.8m "only for a 1.5m segment adjacent to the existing boathouse". For one thing this looks to mean further disruption of both the beach at low tide and flow of people in the area.

6. With a larger dock how many and how large will be the vessels docking in the private marina is of great concern. The design shows 13 boat slips - marine residential moorage, and aluminum bridge to the dock and micro mesh decking plus the float dock and gangway. The three vessels that show up now can already be disruptive and pose as well a noise pollution and direct ocean and beach contamination risk and impact enjoyment of the ocean throughout low and high tides. So 13 slips plus activity on the float dock is to us alarming. What also is the meaning of marine residential zone - is it boats or boat houses or both? A huge difference to noise levels, pollution risk and sight line destruction plus traffic is to be the result. Looks much more like a very public marina even if private space with related boat traffic and risks. Benefit to one property owner to the potential detriment of many people - employers, employees, citizens and residents.

In conclusion, disruption to people using the beach and the water, to the Marine Harvesting zone and to those using that zone, to sight lines that impact enjoyment of property and noise and water pollution would all be results of what is proposed. And, the Town of Ladysmith has an obligation to protect the interests of all citizens and residents. Accordingly, we recommend the rejection of the DVP 14-21 application.

Thank you for this opportunity to respond to the application.

Regards

Don and Susan Mercer
318 Roland Road
Ladysmith BC

Received January 10, 2022

Inside Circulation Area

From: MIKE TIPPETT
Sent: January 10, 2022 12:39 PM
To: Town of Ladysmith <info@ladysmith.ca>
Cc: Julie Thompson <jthompson@ladysmith.ca>
Subject: DVP 21-14 303 Chemainus Road

Dear Mayor and Council,

Thank you for referring the proposed Development Variance Permit for 303 Chemainus Road to us for comment.

We have the following comments:

1. It is absolutely top priority that any docks or other private features on the foreshore area not impede in any way shape or form the passage of the public on foot at low tide. Any proposed structure that would do that is at odds with the common law right to pass through such areas unimpeded and must be avoided.
2. the proposed increase to the surface area of the dock is excessive, roughly 6-fold. This seems to be far out of proportion to reason, at least within that particular zone. Covering foreshore areas damages the intertidal communities of plants and animals of one of the most productive biomes by virtue not only of construction disturbances but also by increased shading and increased levels of human and boat activity associated with larger docks. We would respectfully suggest that a far smaller increase be considered, and further, that if any dock replacement or expansion is approved, that the docks and associated floats be composed of translucent expanded metal, in order to reduce the shading effect upon the benthos.
3. the proposed increase to the maximum height of the dock seems reasonable.
4. the proposed 47 m increase to the length of the dock from the maximum of 30 is also excessive, on a par with or larger than most commercial docks such as Fishermans Wharf in Cowichan Bay.. One wonders how many boats or yachts could tie up against a 77 metre dock and the attendant effects upon the aforementioned ecology. A reasonable dock length for a parcel of land such as this should be in line with the expectation of perhaps a maximum of two vessels for private use, and a 30 m dock surely will fit that need. The only exception that in our consideration that would justify such a large increase would be if the foreshore was so shallow that the extension is necessary so that a normal pleasure boat without a keel could not moor within the first 30 metres.
5. The tenure holder for the shellfish area (W-4 Zone) should be notified of the proposed setback reduction, but insofar as 125 metre setback was considered adequate, the 5-fold reduction does seem massively excessive.
6. As noted earlier, clearance to the seabed and the shading effects of structures over the water is an important limiting factor for the benthos and associated ecological productivity and such structures should be minimized if not totally avoided.

Thank you for the opportunity to comment on this.

Sandra and Mike Tippett

294 Gill Road

Received January 12, 2022

Within Circulation Area

From: Debby Baker
Sent: January 12, 2022 12:56 PM
To: Council <towncouncil@ladysmith.ca>
Subject: 303 Chemainus Road dock

Thank you for the opportunity to comment on the proposed dock.

Given that Ms. Anderson's "boat house" property already impedes on the public's ability to walk the waterfront at high tide, I do not believe that the proposed dock will enhance use of area by the public.

Ms. Anderson's boat house does not have an occupancy permit, however, it appears that it is being lived in.

The size of the proposed project leads one to believe that the use is much more than that of a residential owner.

Thank you for the opportunity to comment.

Debby A. Baker

Received January 12, 2022

January 12, 2022

5483-001

Via email: jthompson@ladysmith.ca

Town of Ladysmith
410 Esplanade,
PO Box 220
Ladysmith, BC
V9G 1A2

Attn: Mayor Stone and Council

**Re: Development Permit Variance Application
Anderson Dock Re-Build
303 Chemainus Road, Ladysmith, BC**

Dear Mayor Stone and Council,

I am acting on behalf of my client, Ms. Pamela Anderson to firstly thank Mayor and Council in considering Ms. Anderson's application for a Development Permit Variance at the above property that would allow her to rebuild her dock that has deteriorated over the years that both Ms. Anderson and her family have owned for over 60 years.

Secondly, we would like to thank the excellent Staff at Ladysmith who we have been working with for the last five months in preparing this application.

For the past two years, we have been working diligently with the BC Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD), the Department of Fisheries and Oceans, Transport Canada, Stz'uminus First Nation and the Five Hul'qumi'num Treaty Group Nations in our application to rebuild the dock.

Our outreach to First Nations and other Government Departments was done concurrently with FLNRORD's Referral Process which included public notices posted locally in Ladysmith.

Due to the very shallow nature of the foreshore, the dock needs to be re-built at a distance out into the channel and similar to where the dock was originally constructed to avoid the floating dock from resting on the seabed. This was at variance to FLNRORD requirements but was accepted by FLNRORD and all of the other Departments and subsequently approval to rebuild the dock was granted by FLNRORD about five months ago.

A Contractor was lined up to start driving piles in October 2021 to take advantage of driving piles at high tides during day light hours but unknowingly we missed submitting to the Town for their approval.

Unfortunately, the geometry and siting of the dock upgrade could not meet certain criteria in the Towns Zoning Bylaw for Marine Residential Moorage (W-1) due to the shallow nature of the foreshore and some variances are required in order to reconstruct the dock in the same position it was for the past 60 years.

All of the above along with the due diligence completed by Staff and letters received from the Public will help Council to make an informed decision on our DP Variance application.

We are hopeful that Council will have enough information to make a decision at the January 25, 2022 Council Meeting.

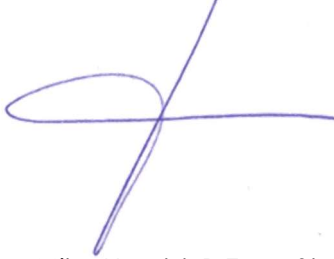
Without trying to rush the process, I would like to point out that again we are hoping to start construction in early February since we have a Contractor available to start pile driving to take advantage of the higher spring tides during day light hours.

If the marine pile driving work is not completed in February, it could force the marine work to complete in the Fall of 2022 and could risk the cancellation of the project altogether.

Thank you for your consideration.

Yours truly,

HEROLD ENGINEERING LIMITED



Mike Herold, P.Eng., Struct.Eng., M.I.Struct.E., LEED AP

Cc: amccarrick@ladysmith.ca
jbelobaba@ladysmith.ca

From: John Hill, 295 Gill Road, Ladysmith BC, V9G 1X9

16 January 2022

Dear Ladysmith Town Council members,

Regarding the application to develop a jetty at 303 Chemainus Road—This significant development is wanted because of the shallowness of the water, but the water is shallow because it is on the edge of the Holland Creek estuary. There is an extensive area of the ecologically vital eel grass (these are known as “salmon highways”) in the zone impacted by the jetty: the Islands Trust report on eel grass (<https://islandstrust.bc.ca/document/nearshore-eelgrass-inventory-fr-2012-2014/>) describes the damage done to the species by boat propellers and dock construction. Nature Conservancy Canada describe it as a species “highly susceptible to human interference” and mention “shade from docks” as one threat.

The Ladysmith town website links to this “great resource:” [Biodiversity BC: Nature’s Pulse, and Atlas, and Ecological Principles](#) which points out that

Even though estuaries make up only 2.3% of the length of B.C.’s coastline, they are used by an estimated 80% of all coastal wildlife. B.C.’s 440 plus estuaries are rare ecosystems, threatened by conversion to human uses and by potential impacts of climate change such as erosion, sedimentation and flooding.

Holland Creek is a salmon stream, and it supports a wide range of wildlife in addition, from the harbor seals that feed on the fish, to the shellfish in the mudflats, to the otters that feed on the shellfish, and to the herons (a species at risk) that hunt there too. We are lucky to have an example of this rare ecosystem in our town. It is a valuable resource for community members who live nearby and who visit (a small town park allows access), and it contributes significantly to the health and variety of the local ecosystem, but beyond this, it has a value in and of itself. The days of elevating our own benefits over that of the wider natural environment are surely over-- not least in that we now recognize the powerful relationship between the two.

We should be extending our protection of the estuary rather than encroaching on it. At almost 3 times the length and 7 times the area of the existing ruin, with a much-reduced setback from the shellfish harvesting area, and with accommodation for up to ten boats, the proposed jetty will necessarily result in additional impacts on the estuarine environment.

The development will also have an intrusive and negative aesthetic and emotional impact on community members who enjoy the beach and ocean in this area. It is public not private property and we should have a very strong reason for building there. I see no such reason in this application.

It also sets a bad example for others: perhaps I should ask for a permit to build a jetty from my property since it seems that the only reason needed is the wish for such a thing. We could have a forest of jetties along the beach here. In practice, other boatowners manage with buoys and rowing between boat and shore. I want my neighbours to be able to enjoy their property, but I do

not see the need to grant this special and very significant divergence from normal practice in this ecologically important intertidal estuary zone. I recommend the rejection of development permit FILE NO: 3090-21-14.

Yours faithfully

John Hill

Ann Rogers
295 Gill Road

17 January 2022

Dear Mayor and Council

**Re: proposed Development Variance Permit
for 303 Chemainus Road**



Writing not as a property owner, but as one of the hundreds of kayakers, rowers, canoeists, swimmers, paddleboarders, dog walkers, photographers and beachcombers who know the shallow waters around Hwsaaqw’um (Holland creek and its estuary) as a place of tranquility and abundance, I ask the Council to refuse this application. More importantly, I’m asking this on behalf of the countless species who rely on this complex local ecosystem for their survival. While the estuary is hardly pristine or untouched, its location — shielded by a sewage treatment plant, a highway and disused railway, and high bank waterfront properties — has allowed it to sustain an amazing variety of plant and animal life in spite of constant human encroachment. This proposal poses a massive threat to the waters and lands around the estuary at a time when our priorities are shifting to water sustainability, wildlife recovery and species at risk management.



Most immediately, the removal of the existing pilings and the construction of a large, new structure will destroy and damage important parts of the forage fish habitat, notwithstanding the feeble gestures made towards “protecting” the eel grass that is key to marine species survival. Longer term, concentrating a large amount of power boat activity in a hitherto quiet area will drive off the birds, mammals and fish who frequent the area, as well as destroy its serenity and beauty — all for the pleasure use of a single private household.

For years federal, provincial and state governments have failed to protect the Salish Sea, and despite countless studies and programs, the number of marine species at risk continues to rise. Conservationists point out that the reason is not lack of scientific evidence but political will.



If the Mayor and Council define their responsibility simply as weighing the whims of taxpayers and property owners, it could feel that this application, by satisfying provincial and federal regulations, is fit to go forward. Increasingly, however, community leadership means managing how we interact with each other on the land and water. Through your work on Council you serve because you know and love the community, and you have already demonstrated a far bigger sense of responsibility that includes stewardship of the harbour, along with the creeks, forests and mountains, often in partnership with the Stz’uminus



people. You are, with every decision, defining Ladysmith not just for now, but for future generations.

The applicant already has a large floating dock for tying up to, along with easy access to it from their home. Their interests will be only lightly impacted by your refusal of their application, yet this refusal will deliver significant, tangible benefits to the wider community of all our relations going forward.

Yours sincerely

Ann Rogers



The existing boathouse with living quarters (above) and raft (left) already provide ample, convenient private access and moorage to the applicant.



Received January 20, 2022

Within Circulation Area

Town of Ladysmith
PO Box 220
Ladysmith BC
V9G1A2

January 19, 2022

ATTN: Julie Thompson, Planner

RE: Notice of Development Variance Permit DVP 21-14

Dear Ms. Thompson

Please accept this letter as a response to your letter dated December 23, 2021 regarding the above-mentioned application for a Development Variance Permit DVP 21-24. We received this letter January 7, 2022, and have been looking further into this DVP to ensure that it will not affect our shellfish lease, located right next to the proposed dock location.

In our line of business, we constantly have to be proactive, wearing many different hats, ultimately to ensure that our shellfish beds, our livelihood, are protected now and into the future. We first learned of the proposed dock construction by Pamela Anderson in May 2021 – we did not receive any information directly, we just happened upon it in the Ladysmith Chronicle. We then did our homework, contacting all ministries involved in this application to gain further insight and clarification on how this might affect our lease. As of August 3, 2021, permission was granted by the Province for Ms. Anderson to proceed with the construction of this dock. Upon receipt of the letter, we then reviewed the facts in front of us again, as there were some questions we had regarding the sheer size of the dock. The main concern we were facing was the fact that if this dock ends up having more than 10 vessels moored at it, it is then considered a commercial dock, and our eligible harvest boundary has to be moved 125m away from the commercial dock. This is very disconcerting, as that would mean one of our most prolific harvesting leases neighboring the dock would then not be eligible for harvesting at all. This is unacceptable, and that is why we are asking the Town to ensure that if this DVP is granted, that there be a covenant written into the permission to ensure that this dock can only have 2 boats moored at any given time, and that no vessels can be tied up along the length of the dock. We are also asking that it be written into the covenant that no seaplanes can be tied to this dock.

We thank you for the opportunity to comment on this application, as it has the potential to negatively impact our shellfish farm and business in the future. We feel it important that the Town of Ladysmith have information from all sides involved to make the best decision for its residents, new and old.

Regards

Leo Limberis, President / Owner
Limberis Seafood Processing LTD.

From: Marisa and Mike
Sent: January 22, 2022 12:45 PM
To: Town of Ladysmith <info@ladysmith.ca>
Subject: DVP 303 Chemainus Road

Good morning. I have just reviewed the information on the DVP application for 303 Chemainus Road in Ladysmith that is in the Council Agenda email I received yesterday.

I do not believe that this development application serves the community. The size of the dock is very large and will likely have a negative effect on the marine environment. Private dock use is available to the property owner already, but the plans mean a possible reduction in waterfront/beach access for other citizens and property owners. I believe that the dock development has too great an impact on the estuary and the waterfront vistas that the entire community and its First Nation partners treasure.

Thank your for your consideration of these opinions in your decision.

Marisa Paitson
484 Hillcrest Avenue, Ladysmith

-----Original Message-----

From: Lynn Nelson

Sent: January 24, 2022 10:43 AM

To: Town of Ladysmith <info@ladysmith.ca>; Mayor <Mayor@ladysmith.ca>

Subject: Vote no on build at 303 Cimos Rd. Town of Ladysmith

Dear Town of Ladysmith,

As a proud member of our community and homeowner I am voicing my concerns and opposition to the proposed dock at 303 Chemainus Rd.

The dock is over scale, Proposed amendments to reduce zones to protect marine wildlife are unacceptable and the needs of one individual homeowner do not outweigh the needs for the Town of Ladysmith to protect the marine ecosystem adjacent to our town.

Therefore, I urge the entire town council and mayor to vote no on this proposal.

Sincerely,

Lynn Nelson
1130 2nd Avenue
Ladysmith V9G 1A1

From: Anna Walker

Sent: January 24, 2022 9:57 AM

To: Council <towncouncil@ladysmith.ca>; Aaron Stone <astone@ladysmith.ca>; Amanda Jacobson <ajacobson2@ladysmith.ca>; Rob Johnson <rjohnson@ladysmith.ca>; Tricia McKay <tmckay@ladysmith.ca>; Duck Paterson <dpaterson@ladysmith.ca>; Marsh Stevens <mstevens@ladysmith.ca>; Jeff Virtanen <jvirtanen2@ladysmith.ca>

Subject: Please do NOT allow DVP 3090-21-14

Dear Mayor Stone and Council,

I'm shocked to learn about the structure being requested in file no DVP 3090-21-14. This proposed dock goes far beyond not meeting several Zoning Bylaw regulations, it is 7 times larger in surface area than the current allowable restrictions; 50% taller, more than twice the allowable length, and massive changes to the setback allowances for marine harvesting zone and seaward extension! If allowed, it will set a dangerous precedent. I can understand something of this magnitude being proposed for the use of the whole town, but this is to benefit one citizen. I'm shocked that she would even request it.

My two favourite things about living in Ladysmith are Holland Creek Trail and Transfer Beach. This dock would forever mar the view from Transfer Beach and set a dangerous precedent for future builds.

I urge you to deny this application.

Sincerely,
Anna Walker

Received Jan 24, 2022

From: NOEL McKenna

Sent: January 24, 2022 12:14 PM

To: Council <towncouncil@ladysmith.ca>

Subject: comment on Variance for Dock .

Hi, I'd just like to comment on this proposal before council. My concerns would be that this is setting a precedent for much larger docks than what are currently permitted. Would it be possible to have the applicant provide renderings of what the view would be like from Transfer Beach showing what the proposed dock would look like. I think this would be a reasonable request so that people have the opportunity to have an idea of what is proposed. Thanks,, Noel McKenna

-----Original Message-----

From: Diana MacTavish

Sent: January 24, 2022 1:40 PM

To: Council <towncouncil@ladysmith.ca>

Subject: Dock at 303 Chemainus Rd

Nothing should block the view from Transfer Beach. It is a gem with wide vistas for all to enjoy.

Diana MacTavish

1367 Cedarwood Rd

Ladysmith.

From: Pam Kozdrowski
Sent: January 24, 2022 3:05 PM
To: Town of Ladysmith <info@ladysmith.ca>; Council <towncouncil@ladysmith.ca>
Subject: Dock Request - Opposition

Hello Ladysmith Counsel,

Please accept this email as my **strong opposition** to the request of a neighbour to erect a larger personal dock.

Granting this request does not service or community or our neighbourhood. It would a eye sore from homes and Transfer Beach, which is advertised as our beautiful ocean access. Our community and the tourists stopping by appreciate the open, natural setting of Transfer Beach. Let's not mar that view with personal choices inflicted on others.

Thank you,

Pam Kozdrowski
327 Chemainus Road

Received January 25, 2022

Outside Circulation Area

Dear Mayor Stone and Members of Council,

Today through Facebook I learned an application was being put forward by my neighbour at 303 Chemainus Road that involves the construction of a very large private dock. I have read the current proposal, the environmental studies, the previously denied applications and many eloquently written letters with sound and detailed reasons for concern.

I do not wish to be repetitive, but I would like to add that building a 450+ foot dock is going to impact a very unique and sensitive ecosystem, one we should protect at all cost.

The private dock will benefit a select few individuals, but it's construction will be devastating to the clam and oyster beds covering that beach. The environmental study revealed that there are many aquatic animals in that area.

Has the impact on Holland Creek's salmon been considered?

Allowing this application to go through will adversely affect one of Ladysmith's most diverse and fragile ecologies.

Is this the direction the town of Ladysmith wants to go?

Please do not allow this application to be passed.

Sincerely,

Tonya Soules
306 Roland Road

Town of Ladysmith
PO Box 220
Ladysmith BC
V9G1W4

January 24, 2022

Att'n: Julie Thompson, Planner
Town Council, Ladysmith

Re: Notice of Development Variance Permit Application - 303 Chemanius Rd. DVP-21-14

Dear Ms. Thompson and Ladysmith Town Council

Please accept this letter as notice of our objection to this application for a variance permit relating to a dock located on the waterfront of 303 Chemanius Rd.

Our understanding of granting development variances to established zoning rules is to permit some small measure of flexibility to accommodate some site condition or consideration. What we witness in this application isn't a variance to the rules associated to W-1 marine residential moorage, it is re-writing the whole marine moorage zoning rules of W-1.

For example:

1. Surface area of dock structure from 20 m² to 138m² is a variance of almost 7 times the surface size.
2. Height of dock structures from 2.0m to 3.1m is over 1.5 times the permitted height.
3. Maximum dock length increased from 30m to 77 m. is a nearly 2.6 times the length.
4. Minimum setback from Marine Harvesting (W-4) zone reduced to 19m from 125m. Is a loss of 106m or essentially the loss of a regulation size football field in separation distance. This is obviously a critically established distance to subvert.
5. Minimum clearance above the seabed reduced from 2.0m to 1.8m a 10% reduction.
6. Minimum setback from seaward extension from 6m to 0m, essentially wipes out the requirement for any setback whatsoever.

It is clear that the applicant for this development variance permit is intending to change the usage of the property from it's established zoning conditions to the clear detriment of the surrounding properties, ecosystem and the environmental setting it exists within.

We would ask that the development variance be denied.

Respectfully submitted,

Brian and Sandra Smith
552 Ridgway Place, Ladysmith

Received January 25, 2022

Outside Circulation Area

From: Pam Kozdrowski
Sent: January 25, 2022 11:49 AM
To: Town of Ladysmith ; Council
Subject: Re: Dock Request - Opposition

Following up on my note from yesterday, I understand the province has closed applications for new docks anywhere in the province.

This knowledge increases my opposition to the application.

Thank you,

Pam