

From: Michael Sketch [REDACTED]

Sent: Tuesday, September 15, 2020 11:57 PM

To: Sue Ellen Fast <sfast@islandstrust.bc.ca>; Michael Kaile <mkaile@islandstrust.bc.ca>; Laura Busheikin <lbusheikin@islandstrust.bc.ca>; David Critchley <dcritchley@islandstrust.bc.ca>; Scott Colbourne <scolbourne@islandstrust.bc.ca>; Kees Langereis <klangereis@islandstrust.bc.ca>; Dan Rogers <drovers@islandstrust.bc.ca>; Tahirih Rockafella <trockafella@islandstrust.bc.ca>; Jane Wolverton <jwolverton@islandstrust.bc.ca>; Kate-Louise Stamford <kstamford@islandstrust.bc.ca>; Alex Allen <aallen@islandstrust.bc.ca>; Grant Scott <gscott@islandstrust.bc.ca>; Peter Johnston <pjohnston@islandstrust.bc.ca>; Timothy Peterson <tpeterson@islandstrust.bc.ca>; Peter Luckham <pluckham@islandstrust.bc.ca>; Jeanine Dodds <jdodds@islandstrust.bc.ca>; David Maude <dmaude@islandstrust.bc.ca>; Benjamin McConchie <bemconchie@islandstrust.bc.ca>; Deb Morrison <dmorrison@islandstrust.bc.ca>; Laura Patrick <lpatrick@islandstrust.bc.ca>; Peter Grove <pgrove@islandstrust.bc.ca>; Paul Brent <pbrent@islandstrust.bc.ca>; Lee Middleton <lmiddleton@islandstrust.bc.ca>; Cameron Thorn <cthorn@islandstrust.bc.ca>; Steve Wright <stwright@islandstrust.bc.ca>; Doug Fenton <dfenton@islandstrust.bc.ca>
Cc: Russ Hotsenpiller <rhotsenpiller@islandstrust.bc.ca>; Lori Foster <lfoster@islandstrust.bc.ca>; Lisa Wilcox <lwilcox@islandstrust.bc.ca>; David Marlor <dmarlor@islandstrust.bc.ca>; Clare Frater <cfrater@islandstrust.bc.ca>; Kate Emmings <kemmings@islandstrust.bc.ca>; Linda Adams <ladams@islandstrust.bc.ca>; Donald Clarke <dclarke@islandstrust.bc.ca>; Susan Hannon <shannon@islandstrust.bc.ca>; Carmen Thiel <cthiel@islandstrust.bc.ca>; Robert Kojima <rkojima@islandstrust.bc.ca>; Stefan Cermak <scermak@islandstrust.bc.ca>; akjerulf@islandstrust.bc.ca; Michael Sketch [REDACTED]

Subject: M Sketch submission to Trust Council for 16Sep2020

Councillors, staff, the Trust Programs Committee and Conservancy,

Attached is my written submission to Trust Council for 16Sep2020 and a precursor from 04Dec2019.

My address is a brief review of development of the statutory requirement for trust area policy, sufficient to demonstrate the provincial intention that Trust Council's regional plan be effective in preserving and protecting amenities and environment in each of our local area jurisdictions. First trust area policy, then implementation in local trust area bylaws. Where implementation of the Act has been ineffective, remedy is recommended.

The province delegates its legal responsibility for land use planning, but the ebb and flow of provincial policy determines the relative weight given to i) regional plans and ii) local planning.

In the mid 1980s, there was a time when regional plans were rescinded.

However, unambiguously, a 1989 amendment to the Islands Trust Act asserted a regional plan for the trust area as would be adopted by Trust Council as the Trust Policy Statement.

However well intentioned the provincial direction, implementation of the Act is subject to conflicting interests among Trust bodies and the employees of Trust Council.

In part for that reason, I submit that the potential of the Act to preserve and protect has been compromised.

Given ambiguities in interpretation of the Trust object, the efficacy of “preserve and protect” depends on effective implementation of directive trust policies local trust area bylaws.

I think there is opportunity and reason to ask the Islands Trust Conservancy to contribute more broadly to better realize potential of the Islands Trust Act.

Here are my suggestions to Trust Council for remedy, from my submissions to Trust Council for 04Dec2019 and 16Sep2020.

From my submission to Trust Council for 04Dec2019:

**Delegation submission to the Islands Trust Council from
Michael Sketch for an electronic quarterly meeting,
1:00 p.m. session on Wednesday, 16 September, 2020**

(“Background and Evolution” section omitted for oral presentation)

A Regional Plan of Trust Area Policies: History and Implementation

Councillors, staff, the Trust Programs Committee, Conservancy and members of the public,

My address is a brief review of development of the statutory requirement for trust area policy, sufficient to demonstrate the provincial intention that Trust Council’s regional plan be effective in preserving and protecting amenities and environment in each of our local trust area jurisdictions. First trust area policy, then implementation in local trust area bylaws. Where implementation of the Act has been ineffective, remedy is recommended.

For thousands of years the built environment on Salish Sea islands tread lightly on land and water. But the post-colonial built environment has weighed ever more heavily. For some islands, the Islands Trust Act was crisis management.

There were Islands Trust policy initiatives in 1975 and 1983, but the province gave prescriptive force and effect to preservation and protection in a 1989 amendment to the Act. A regional growth plan was the optional mandate for regional districts which share the trust area. But for the trust area¹, 1989 provincial law required Trust Council to adopt a very different regional plan – a statement of policies to further the Trust object to preserve and protect. Not only adopt a policy statement, but a Council committee would review local area bylaws consequent to the policies. Day to day land use planning and advice to decision makers was to be consistent with the policies. Preserve and protect should be secure.

In November last year I addressed Trust Council on the limited effectiveness of trust area policies to preserve and protect. Limited, that is, by the language of directive policies and by local planning staff process. It was constructive criticism and I suggested remedy to Council, continued as follows.

Where there is overbuilt environment, offence to law and ecosystems; ineffectiveness of trust policy directives are your immediate concern, Trust Council.

¹ The “trust area” descriptor is used as in the Act. For clarity in this presentation, the terms “local area” and “local trust area” are used loosely to describe the island jurisdictions which are not incorporated and are not among the smaller islands associated with the larger island jurisdictions. However the critique and recommendations of this presentation are intended for all jurisdictions within the trust area, whether presided over by a local trust committee or a municipal council.

Borrowing from the spirit of a 1973 environmental publication (Exhibit 1):

*‘The Act is only as effective
as public consciousness allows it to be
and a quorum of Trust Council insists that it be’*

Anecdotally, senior staff have referred to directive policy as “higher level policy”.

The implication may be that directive policies are a secondary concern in local area planning. The effect of a ‘local planning centric’ interpretation of the Act is to diminish the importance of the federal component compared with local areas in Islands Trust (IT) governance.

However the balance between local and regional control of land use is a provincial matter and the 1989 amendment to the Act was definitive.

Yes, there was a time in the mid 1980s when the province steered clear of regional plans in favour of local control, but the combination of regional oversight and local planning has proved more effective.

That was a lightning look at background and evolution of the IT Act.

Background and Evolution of the Islands Trust Act

Amongst revolutionary changes following the heady 1960s, a societal imperative was recognized to protect the natural environment whose resources had sustained explosive growth in the post second world war built environment.

Witness the Gaia Hypothesis², resurrection of the public trust doctrine³ and environmental legislation in several American states. In 1976 a slim volume⁴ from the U. of Vermont set out the basis for rural environmental planning in the face of urban encroachment.

In 1969, British Columbia responded to uncontrolled development on the Gulf Islands. A 10 acre minimum lot size freeze was introduced as a precursor to environmental legislation.

In 1973 the Land Commission Act was enacted to protect provincial farmland.

² e.g. Lovelock and Margulis, 1972; which can be interpreted in terms of the interaction between built and unbuilt environments

³ which asserts the public interest in natural resources. Note: “The Coming Out of Hibernation: The Canadian Public Trust Doctrine”
Kate Smallwood, master of laws thesis, UBC, 1993.

⁴ FO Sargent, Rural Environmental Planning, U. Vermont, 1976

The IT Act of 1974 established a federal governance structure for the trust area. It's a variation of the Regional District (RD) model introduced by the province in 1965. In the early days, the legislated federal component consisted of the preserve and protect object statement and a council which oversaw furtherance of the object in the local land use jurisdictions. The province tread carefully, hedging its governance permissions to balance guidance for decision making between regional trust area and local area jurisdictions.

The province also tread carefully in an arguably deliberate lack of precise wording for the trust object. Legal counsel for the Trust gave a 30 year review⁵ of the Act, commenting that the object had been referenced, but not tested in the courts.

I say the Act established a variation of the RD model because before 1974 the RD provided land use planning *and* services. The Islands Trust Act deliberately separates service provision from land use jurisdiction.

The rationale for separating service provision from land use jurisdiction, was the ever increasing need for services in a developing local area. The local area response was to plan for an increased tax base to pay for increased services. By separating the land use and service provision jurisdictions, one facet of development pressure should be diminished.

The 1980s saw significant changes of provincial intention⁶. In 1984, the Trust's power to require compliance with the local area official community plan was repealed by order in council. Land use planning, first held by the regional districts, was transferred to the Trust in 1977 and – controversially – given to the Ministry of Municipal Affairs in 1985, then later returned to the Trust. Arguably based on the differing interests of local and regional governance, regional plans were rescinded for a time.

Despite the provincial trend, it is significant that the Trust of the day was committed to trust area regional planning to guide local area planning. “The Policy of the Islands Trust”⁷ (Exhibit 2) was adopted in 1983, revising the 1975 document. Semantics aside, the policy statement was a regional plan.

5 “The Islands Trust: 30 Years of Protecting B.C.’s Gulf Islands”, Bill Buholzer, Digest of Municipal and Planning Law, Vol.10, Issue 3, March, 2005.

6 Sustainability and local government.: The case of the British Columbia Islands Trust. Michael McGonigle, Canadian Public Administration, Vol.32, No.4, Pgs. 524-544, 1989.

7 “The Policy of the Islands Trust” was adopted under By-law No.9 18Aug1983 and cited as “Islands Trust Policy Adoption By-Law. 1983”. Also “The Policy of the Islands Trust”, Aug1975.

But late in the 1980s, the province returned to the benefit of regional plans. A 1989 amendment to the IT Act deliberately enhanced the federal component. By bylaw, Trust Council was to adopt a statement of general policies to carry out the trust object in the trust area. A preservation and protection based regional plan for the trust area. The federal component of the IT is now the Trust Council, trust object and Trust Policy Statement.

The current Trust Policy Statement concurs⁸, interpreting that the 1989 IT Act amendment assigned “a regional level planning function to the Islands Trust Council”.⁹

By comparison, a RD board is guided by a ‘regional growth plan’. Growth which would pay for services. For the post 1989 IT, the regional plan is the trust object reinforced by a general statement of policies for the entire trust area. If necessary, policies which could limit growth. A very substantial variation of the RD model.

There’s an important distinction here. The Local Government Act (LGA) is enabling statute and contains a framework for developing regional land use plans that have legal status. The RD can adopt a regional growth strategy, but is not required to do so, unless so ordered by the minister¹⁰. However the post 1989 IT Act *requires* Trust Council to adopt a trust policy statement bylaw that applies to the trust area.

8 Islands Trust Policy Statement, consolidated 2003, Trust Council Bylaw 17, 11Jun1994 as amended

9 It appears the Islands Local Planning Service has lost sight of the IT Act imperative that (the policy component of) directive trust policies be effective in the policy and regulation of each local area jurisdiction and in the advice given by staff to decision makers during deliberation of proposed land use changes.

10 “Legal Framework for Local Government Land Use Planning”. Chapter 2 of “The Smart Growth Guide to Local Government Law and Advocacy” Nolan, Rolfe, Grant; West Coast Environmental Law, 2001.

Two measures to better preserve and protect

First measure - An environmental body to oversee local area land use planning

Potential for conflicting interests for local area land use planning. The Act intends that Trust Council oversee – albeit a delegated oversight – the advice given by planning staff to decision makers and that the advice effectively implements preservation and protection. But there is potential for conflicting interests between:

- i) preservation and protection based planning and
- ii) the perceived need to expedite development applications coupled with the need for continued development potential to plan for.

If manacled by expediting development applications and planning to secure continued development potential, Trust Council will preside over ever more dense development. Probable if Trust Council is silent, but not necessary.

There is an important initiative suggested in Glover's 1974 UBC thesis¹¹. The thesis reviewed 1973 provincial legislature consideration of the anticipated Gulf Islands Trust. Protection of the environment was a recognized criteria in decision making¹² but in 1973 – as today - “legitimizing environmental interests” was difficult. Glover recommended¹³ environmental committees in each local area jurisdiction. That coupled with truly local planning committees. The two committees would cooperate by both inclination and design. Of course that model has its problems.

Today, I think Glover would petition the Conservancy board to give force and effect to environmental protection by recommending that its mandate¹⁴ be expanded¹⁵ to provide:

- i) environmental assessment controls in proposals for changes in land use use and
- ii) oversight for local area land use planning.

Conservancy is well placed in the Trust governance structure to give ‘at arms length’ conservation for the trust object and directive policies. Potential for conflicting interests for local area planners should be diminished.

11 The Islands Trust Concept. A proposed institutional arrangement to implement a policy of controlled development for the Gulf Islands of British Columbia. Julia Mary Glover, M.Sc. thesis, School of Community and Regional Planning, UBC, May, 1974.

12 *ibid*, page 131

13 *ibid*, page 135

14 Islands Trust Act at S.41

15 Islands Trust Act at S.8(2)(d); Trust Council recommend to the Lieutenant Governor in Council that the Conservancy mandate be enhanced to provide environmental assessment controls and oversight for local area land use planning in order to better carry out the object of the trust and to better implement trust area directive policies. Also the Act at S.41(1)(d) by order of the minister or Lieutenant Governor in Council.

Second measure

A Trust Council bylaw under S.11 of the Act to establish procedures which have the effect of:

1. requiring each local trust area to include directive trust area policies and corresponding effective regulation in their official community plans and land use bylaws respectively and
2. where a directive policy requires an action not within the local trust area jurisdiction, that directive policy implementation will consist of advocacy in official community plan policy which details the necessary statutory changes or inter-agency agreements and
3. requiring that all staff reports which advise decision makers respecting a change in land use or a policy change, will tabulate the relevant directive policies and a corresponding address in official community plan and regulatory bylaws and
4. allowing a local trust area to petition Trust Council to absolve, given a 2/3 majority vote, the local area jurisdiction from responsibility to implement the subject directive policy in their official community plan and regulatory bylaws and
5. where the local area jurisdiction refuses instruction from Trust Council to implement one or more directive policies in their official community plan and regulatory bylaws, then Trust Council reserves the right to withhold sums from the budget allotment to the local area jurisdiction and to the responsible land use planning authority.

Please, Trust Council deliberate the terms of a procedural bylaw which insists upon the effectiveness of directive policies throughout the trust area, based on the above five points.

A question for the Chair of Council and of the Trust Executive Committee respecting local area bylaw review.

At the last North Pender LTC meeting, I asked the chair why staff hadn't recommended inclusion of all directive policies in the land use bylaw, given a current review. Staff responded that the bylaws are consistent with the Trust Policy Statement because they have been approved by trust executive. But there are obvious gaps in our land use bylaw.

The Act intends adherence to the object and trust policy in the entire process from assessment of development applications to draft bylaws. The backbone of preserve and protect.

But in staff report practice, the default acknowledgement of statute is to use a checklist to demonstrate that the consequent bylaw itself doesn't offend trust policy.

Chair Luckham, please tell us the criteria used to determine whether draft local area bylaws reviewed by trust executive are contrary to or at variance with the trust policy statement.

Specifically, I ask if trust executive checks whether directive policies are addressed in the local area OCP *and* LUB? Does trust executive further check that the policy component of directive policies is addressed? Or is a staff checklist relied on?

Thank you

Michael Sketch

[REDACTED]
North Pender Island
B.C. V0N 2M1
[REDACTED]

Exhibit 1

A law is only as effective as public consciousness allows it to be and a sufficient number of concerned people insist that it be.

(Burhenne and Irwin, 1973)

Burhenne, W.E. and Irwin, W.A., "The Coordination of Legislative Policy and the Regulation of Private Interests: Some Suggested Pragmatic Principles for Environmental Policy," in Utton, A.E. and Henning, D.H. (eds.), *Environmental Policy: Concepts and International Implications*, New York: Praeger Publishers, 1973.

Exhibit 2

THE POLICY OF THE ISLANDS TRUST

The Policy of the Islands Trust was officially adopted by the Islands Trust Committee on August 18, 1983 under By-law No. 9 cited as: "Islands Trust Policy Adoption By-law, 1983".

Excerpt from pages 6 and 7 of "Introduction"

In 1978, the Trust was given the obligation to prepare a Regional Plan for the Trust Area. Since that time the need for such a Plan and its content have been discussed at many meetings involving Local Trustees and representatives of many government departments. In brief, the Plan was viewed as being a general statement of goals and policies, sufficient in scope to provide an integrating context for local planning, capable of dealing with factors common to two or more islands, yet clearly establishing the ways in which both local and provincial interests could be defined and protected. It was recognized that whereas conventional planning instruments were probably adequate at the local level, a regional planning approach would be needed to protect both the local and broader public interest in the Trust Area as a whole.

Recently, however, because of proposed amendments to the Municipal Act, it has become quite clear that the role and nature of regional planning in British Columbia is quite uncertain. It was consequently decided as there was an urgent need for general policies and guidelines for the future management of the Trust Area, that the present document should proceed as a policy document rather than as a regional plan document.

Abstract

submitted for review by staff and the Trust Executive Committee 24Aug2020

The Islands Trust Act establishes a federal governance structure which is a variation of the Regional District model introduced by the province in 1965. There are significant differences, necessary to support the trust object.

In the late 1960s a societal imperative was recognized to protect the natural environment which had sustained an explosive post second world war built environment. Unique in Canada, the 1973 Land Commission Act and the 1974 Islands Trust Act each legislate protection; for farmland and for the environment and unique amenities of the trust area respectively. Some 13% of the superior ALC jurisdiction is within the trust area and the protected Agricultural Land Reserve is formally recognized as a unique amenity.

The 1980s saw significant changes of provincial intention, arguably based on the differing interests of local and regional governance. Regional plans were rescinded for a time, but in 1989 the IT Act was significantly amended to include a requirement that, by bylaw, Trust Council adopt a statement of general policies of Trust Council for the trust area to carry out the trust object. The clear provincial intention was to establish a preservation and protection based regional plan for the trust area.

It is incumbent upon all trust bodies, and therefore the staff employees of Trust Council, to further the trust object. The Act makes clear that policies of Trust Council are intended to apply to all actions of trust bodies and therefore to the advice given to land use decision makers by planning staff. There is separate provision in the Act to ensure that local area bylaws don't offend trust area policy.

The 1989 amendment to the IT Act should better inform the administration structure of the Islands Trust. The province intended that the federal component - the object, trust policy statement and Trust Council - be a significant determinant in local area planning and consequent land use decisions.

Neither expediting development proposals nor a perceived need to preserve and protect development potential should be seen to justify sidestepping the ALC jurisdiction, circumventing directive trust policies and/or offending the natural environment.

A Trust Council procedural bylaw is proposed which would have the effect of requiring each local trust area to include directive trust area policies and corresponding effective regulation in their official community plans and land use bylaws respectively. Local trust areas wishing to be relieved of one or more trust area directive policy obligations may petition Trust Council for a 2/3 majority vote. Both a procedural bylaw and opportunity for relief from adherence to trust area policies are consistent with the Act.

end of abstract

Glover's 1974 UBC thesis² reviewed provincial consideration of the anticipated Gulf Islands Trust. Glover recommended³ environmental committees in each local area jurisdiction. That coupled with truly local planning committees. The two committees would cooperate by both inclination and design. Of course that model has its problems.

Today, I think Glover would petition the Conservancy board to give force and effect to environmental protection by recommending that its mandate⁴ be expanded⁵ to provide:

- i) environmental assessment controls in proposals for changes in land use and
- ii) oversight for local area land use planning.

Conservancy is well placed in the governance structure to give 'at arms length' conservation for the trust object and directive policies. Potential for conflicting interests for local area planners should be diminished.

Second measure

A Trust Council bylaw under S.11 of the Act to establish procedures which have the effect of:

requiring each local trust area to include directive trust area policies and corresponding effective regulation in their official community plans and land

**Written Town Hall submission to the Islands Trust Council
from Michael Sketch at 1 p.m. on 4 December, 2019 at the
Coast Victoria Hotel, 146 Kingston St., Victoria, British Columbia
with introductory email letter and preamble**

Implementation of Trust Policy Statement directive policies

December 16, 2019 at 9:36 PM

To: sfast@islandstrust.bc.ca, mkaile@islandstrust.bc.ca, lbusheikin@islandstrust.bc.ca, David Critchley, scolbourne@islandstrust.bc.ca, klangereis@islandstrust.bc.ca, drogers@islandstrust.bc.ca, trockafella@islandstrust.bc.ca, Jane Wolverton, kstamford@islandstrust.bc.ca, aallen@islandstrust.bc.ca, gscott@islandstrust.bc.ca, Peter Johnston, tpeterson@islandstrust.bc.ca, pluckham@islandstrust.bc.ca, jdodds@islandstrust.bc.ca, dmaude@islandstrust.bc.ca, Benjamin McConchie, Deb Morrison, Laura Patrick, pgrove@islandstrust.bc.ca, pbrent@islandstrust.bc.ca, lmiddleton@islandstrust.bc.ca, cthorn@islandstrust.bc.ca, stwright@islandstrust.bc.ca, dfenton@islandstrust.bc.ca

cc: rhotsenpiller@islandstrust.bc.ca, lwilcox@islandstrust.bc.ca, dmarlor@islandstrust.bc.ca, cfrater@islandstrust.bc.ca, kemmings@islandstrust.bc.ca, Carmen Thiel, Robert Kojima, scermak@islandstrust.bc.ca, hkauer@islandstrust.bc.ca, jchonk@islandstrust.bc.ca, lfooster@islandstrust.bc.ca,

From: Michael Sketch, North Pender Island

Trustees, staff and the Trust Programs Committee -

In submissions to Trust Council last term and this, I gave examples where applications to change land use and subsequent planning staff process on five trust area islands resulted in offence to one or more of environment, provincial legislation, or trust area policy.

Given the clear intent of the Islands Trust Act to preserve and protect and to cooperate with provincial law, how has implementation of the Act failed?

In pages 5&6, “directive policy” of the Trust Policy Statement is examined; while the Act requires that Trust Council adopt a statement of policies for the trust area which will further the trust object, the directive component of each policy is a construct accepted by Trust Council. In effect the policy component of each directive policy is delegated to each local trust area for implementation.

Pages 3&4 are a preamble to set the stage for directive policy. I think the first sentence is very important and accurately interprets the intention of the Act:

The Act establishes a federation political entity in the trust area wherein Trust Council federal governance presides over the union of partially self-governing Local Trust Committees (LTCs), each with jurisdiction over land use in their local trust area – and for islands associated with a local trust area where applicable.

This first sentence contrasts with the Islands Trust webpage interpretation: *"The Islands Trust is a federation of local governments ..."*

The Islands Trust webpage interpretation of the "*Islands Trust is ...*" omits the federal component (Trust object, Trust Council, Trust Policy Statement) of the Islands Trust federation. That is consistent with the delegation of Trust Council policy to the LTCs.

I believe there is serious consequence for effective implementation of the potential of the Act to preserve and protect.

My submission to Trust Council for 04Dec2019 is attached.

Michael Sketch


**Written Town Hall submission to the Islands Trust Council
from Michael Sketch at 1 p.m. on 4 December, 2019 at the
Coast Victoria Hotel, 146 Kingston St., Victoria, British Columbia**
Oral version; excerpts from Pgs. 3&4 as 2 minutes allowed by the Chair

Implementation of Trust Policy Statement directive policies

Currently, each directive policy has i) directive and ii) policy components.

Although the Act contemplates direct implementation of each policy in the trust area, the Trust Policy Statement uses the directive component to delegate implementation to each island jurisdiction.

*Implementation is once removed from Trust Council
and from the potential for trust area regulation.*

Preamble: The Islands Trust is . . . and Trust policy

The Act establishes a federation¹ political entity in the trust area wherein Trust Council federal governance presides over the union of partially self-governing Local Trust Committees (LTCs)², each with jurisdiction over land use in their local trust area – and for islands associated with a local trust area where applicable.

Under the Act, trust bodies are continued for the purpose of carrying out the trust object, therefore measures taken to establish a balance between Trust Council governance and the degree of LTC autonomy must be shown to further the object.

Trust Council is required to adopt a trust policy statement (the Act, S.15) applicable to the trust area, with the caveat that policies may differ (the Act, S.15(2)(b)) for different parts of the trust area.

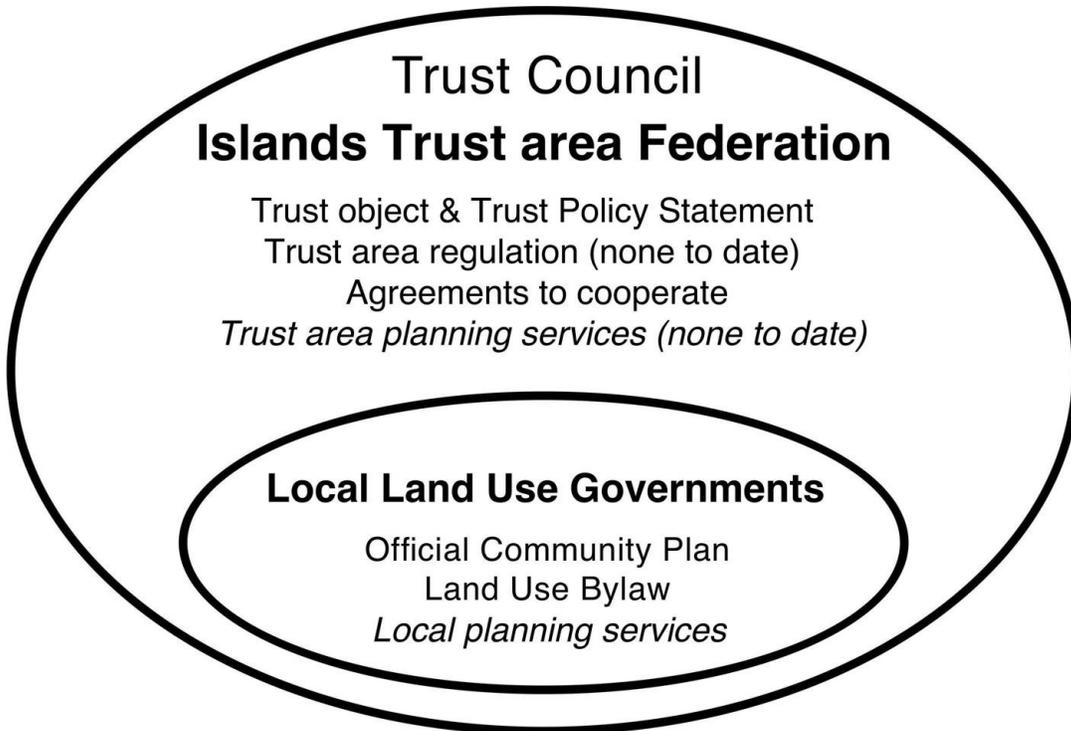
These general policies adopted by Trust Council are to carry out the object of the trust (the Act, S.15(2)) and it follows that it is a responsibility of Trust Council to ensure the effectiveness of measures to implement the force and effect of trust policy in each local trust area.

The current Trust Policy Statement utilizes “directive” policies which have the effect of delegating implementation of core trust policy to each LTC to address in their local bylaws. While the technique does allow for different trust policies to be addressed by each local trust area (the Act, S.15(2)(b)), the act of delegation by Trust Council to individual LTCs respecting directive policy can and has resulted in less effective adherence to the individual policies. In which cases, the perceived benefits of LTC autonomy are offset by more frequent transgressions of trust policy than would be the case were the same directive policies implemented and regulated within the entire of the trust area, subject to direct Trust Council oversight.

¹ See the Wikipedia page for Federation

² The Executive Committee of Trust Council functions as an LTC for the Associated Islands area

The Islands Trust Act establishes a federation wherein Trust Council federal governance presides over the union of partially self-governing Local Trust Committees, each with jurisdiction over land use in their local trust area



The Act intends that the Trust object and Trust area policy be binding upon the actions of Local Trust Committees and upon draft bylaws

Draft bylaws must be submitted to a committee of Trust Council which ensures bylaws don't offend Trust area policy

End of preamble

Trust Council, Staff and members of the public – In submissions to Trust Council last term and this, I gave examples where applications to change land use and planning staff process on five trust area islands resulted in offence to one or more of environment, provincial legislation, or trust area policy.

But the trust object requires protection of environment and amenities and requires cooperation with the province. Further, the Act requires that Trust Council adopt a policy statement to ensure protection and cooperation within the trust area.

Then how were environment and law offended during processing of land use applications on five islands?

In part, the answer lies in how the flagship ‘directive policies’ of the Trust Policy Statement are implemented. Each directive policy has two components; a common directive and the individual policy.

Directive policy is usually presumed an imperative in trust actions to preserve and protect and Council is charged with the responsibility of implementation. But in fact the directive component simply instructs each LTC to address the policy component in local bylaws. The directive component delegates policy implementation to each island jurisdiction. Trust councillors, please check your own OCP and LUB. Are all Trust directive policies addressed? If not, trust directive policy may be the moral imperative, *but there will be no bylaw enforcement.*

With each draft LTC bylaw, staff prepare a directive policy checklist; at face value intended to demonstrate adherence – or not – to trust policy. But look at the staff understanding of the checklist purpose: “to highlight issues addressed in staff reports and as a means to ensure LTCs address certain matters in their OCPs and regulatory bylaws”.

Is this the intent of the Act? Is the trust object furthered? I think not.

More to the point, offences to trust directive policy during local bylaw deliberations might be swept under the carpet.

Finally, when last did you see implementation of trust policy in your OCP and LUB as a direct result of directive policy checklist scrutiny?

There is remedy at hand. Trust Council has directed review of the Trust Policy Statement. Please consider removing the directive component from each directive policy and insert a new Trust policy at the beginning of the directive policy section, as follows:

New trust policy – Each directive policy shall be implemented in the policy and regulatory bylaws of each LTC or Trust Executive jurisdiction, save where Trust Council concurs by a 2/3 majority that a policy in question not be implemented for that jurisdiction. For certainty, the intent and letter of each directive policy are to be implemented in the actions of all trust bodies in the jurisdictions agreed by Trust Council and directive policy shall be implemented in the entire local planning process; from application review to bylaw adoption.

Now, the door is open to implement directive trust policy in the entire trust area, with enforcement enabled both locally and by new trust area regulation. A trust area land use bylaw. And of course trust area land use planning. As I think the Act intends.

We would be closer to the heart of a better balance between Trust Council's trust area governance and autonomy for each island jurisdiction.

Please take charge, trust councillors, as the pendulum swings.

Thank you for considering my submission.

Michael Sketch
North Pender Island



There is remedy at hand. Trust Council has directed review of the Trust Policy Statement. Please consider removing the directive component from each directive policy and insert a new Trust policy at the beginning of the directive policy section, as follows:

New trust policy – Each directive policy shall be implemented in the policy and regulatory bylaws of each LTC or Trust Executive jurisdiction, save where Trust Council concurs by a 2/3 majority that a policy in question not be implemented for that jurisdiction. For certainty, the intent and letter of each directive policy are to be implemented in the actions of all trust bodies in the jurisdictions agreed by Trust Council and directive policy shall be implemented in the entire local planning process; from application review to bylaw adoption.