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From: Michael Sketch

Sent: Tuesday, November 10, 2020 4:03 PM

To: Lori Foster <lfoster@islandstrust.bc.ca>

Cc: Michael Sketch

Subject: M Sketch delegation request for 01Dec2020 trust council

Lori - May I please be given a delegation opportunity at the 01Dec2020 7pm to 9pm evening session of Trust Council's electronic) quarterly meeting?

My delegation submission is attached.

Thank you

Michael Sketch

North Pender Island

**Delegation submission to the Islands Trust Council from
Michael Sketch for an electronic quarterly meeting,
7:00 p.m. session on Tuesday, 1 December, 2020**

***structure and implementation of the trust policy statement
are trust area policies effective?***

Trust councillors, staff and the Trust Programs Committee,

My September delegation argued that the trust policy statement is a regional plan for the trust area. The historical context is clear, as is the moral imperative.

The public believe that trustees have a duty of care to preserve and protect nature's interest, which can not speak for itself. Nature does react when the built environment over extracts natural resources needed to sustain development.

But by then it's too late.

In 1989 the province amended the Islands Trust Act (the Act). A watershed amendment which gave statutory force and effect to the electorate's sense of a duty of care.

At S.15 of the Act, trust council *must, by bylaw, adopt* a trust policy statement.

Trust bodies are continued to further the trust object. The trust policy statement is a general statement of policies to carry out the object of the trust and may establish different policies for different parts of the trust area.

The legal logic is clear. The trust council corporation is continued to further the trust object and must adopt a statement of policies for the same purpose. It follows that if implementation of explicit preserve and protect policies is shown to be ineffective, that the buck stops at the trust council table.

One day the courts may affirm that a statement of policies to preserve and protect is 'no mere piety'.

Trust policies are best known for their role in local trust area bylaw review by Trust Executive. Draft local trust area bylaws submitted for review must not be contrary to or at variance with the trust policy statement.

Structure of Trust Council Bylaw 17, the Trust Policy Statement

Directive policy is the gist of Trust Council's trust policy statement bylaw 17, but the bylaw includes a hundred weight of advocacy, interpretations, explanation and good intentions.

In its current policy statement review, I hope the Trust Programs Committee will recommend publishing the valuable extras on the Trust website. A policy statement bylaw would be less ambiguous and mercifully shorter.

Over decades, the structure of directive policies has persisted. Each numbered preserve and protect policy has two components. The first component is arguably not policy but procedure, for there is direction that the subsequent policy component be addressed in the policy and regulatory bylaws of each local trust area jurisdiction.

Each directive policy delegates implementation to the local trust area.

The procedural component is the same for each directive policy and the eye is drawn to the policy component. The first impression is a comprehensive list of preserve and protect policies.

But a regional plan for the trust area should be just that. In time, there may be a regulatory bylaw for the trust area and wording of each directive policy should be unencumbered policy.

There is a more serious problem with the procedural encumbrance of each directive trust policy. Interpretation.

Implementing the procedural component alone may be conflated with implementation of the policy component.

Implementation of trust area policies

Policy 1.3.1 in the Trust Policy Manual implements the policy statement. At (see appendix) S.B1.4, the trust policy statement requires that local trust area policy and regulatory bylaws address certain matters from the policy statement. The "certain matters" are the preserve and protect policies. Then "A bylaw will not be contrary to or at variance with the policy statement if it fails to include a particular policy or regulation, as long as the bylaw contains sufficient reason for not doing so".

Is the preserve and protect policy component effective? Not at all.

At best, the policy component of directive policies would be included in local trust area policy and regulatory bylaws. But in practice, a development proposal may include application to amend the OCP, the LUB or both.

When last were directive policies included in your island bylaws?

The Act directs that the executive committee of trust council review local area bylaws consequent to the preserve and protect trust area policies. I argue that the safety of that closed loop protection has been compromised by directive policy wording. Compromised, even negated.

It is significant that trust policy implementation policy 1.3.1 is held by the director of trust area services. Do trust area services influence the local planning service respecting inclusion of directive policies in local area policy and regulatory bylaws?

Even worse, although the Act intends that trust area policy be implemented in the day to day advice giving and decision making of trust bodies and staff, the wording of directive policies insulates preserve and protect trust policy from the action at hand.

Remedy is straightforward and begins with stripping out the procedural component from each directive policy. The procedural component is probably best implemented in an adjunct procedural bylaw under S.11 of the Act.

Effective implementation of trust area policy is a serious matter and I ask Trust council to give direction to your Trust Programs Committee to draft necessary changes to the Trust Policy Statement.

Thank you for hearing my submission.

Michael Sketch

North Pender Island


Afterword

These three comments illuminate aspects of what can be accomplished in trust area policies:

1) In deliberating and adopting a trust policy statement bylaw, trust council recognizes that imbalance between built environment and natural environment precipitated the Islands Trust Act. While the connotation of trust object wording is clear, denotation for “preserve and protect the trust area and its unique amenities and environment” is an ongoing debate. *Trust area policy can clarify interpretation of the trust object.*

2) *Trust area policies can mitigate intrinsic conflicting interests for staff advice givers and for LTC decision makers.* Sometimes planning staff advise decision makers in order to protect their own interest, be it preservation of local control or preservation of development potential. Sometimes decision makers lose sight of their trustee helmet, in favour of the local politician hat.

3) Of course local politics play a role and may bring pressure which unduly favours the built environment at the expense of nature’s interest. The province recognized conflicting interests in 1989. Local interests are balanced by the regional policy imperative. *That is the strength of a regional plan which is effective in guiding local action.* But local interest isn’t divorced from the regional plan; it’s joined at the trust council hip.

Appendix



Policy:	1.3.1
Approved By:	Trust Council
Approval Date:	June 11, 1994
Amendment Date(s):	March 11, 1995; December 8, 2000; June 16, 2005; and March 23, 2016
Policy Holder:	Director of Trust Area Services

POLICY STATEMENT IMPLEMENTATION

Purpose

To establish policy and procedures for statutory bylaw referrals and other implementation strategies in connection with the Islands Trust Policy Statement Bylaw No. 17.

Excerpts

Policy and Procedures

1. Statutory Bylaw Referrals

1.4 The Islands Trust Policy Statement requires local trust committees in their official community plans and regulatory bylaws, and island municipalities under Section 38(1) of the *Islands Trust Act*, to address certain matters from the Policy Statement, or give explicit reasons and justifications for not doing so. A bylaw will not be contrary to or at variance with the Policy Statement if it fails to include a particular policy or regulation, so long as the bylaw contains sufficient reason or justification for not doing so.

Policy Statement Directives Checklist

1.6 The primary responsibility for demonstrating that an official community plan or regulatory bylaw is not contrary to or at variance with the Islands Trust Policy Statement rests with each local trust committee, or island municipality.