

**Delegation submission to the Islands Trust Council from
Michael Sketch for an electronic quarterly meeting,
7:00 p.m. session on Tuesday, 8 June, 2021**

**Constructive criticism for the structure of
Council's trust policy statement draft bylaw 183
and remedy in a different policy statement draft**

Trust councillors, the trust programs committee and trust executive -

I shall speak to draft 1.0 of the revised trust policy statement bylaw 17, released by staff for comment at the May 3rd Trust Programs Committee meeting. Committee members complimented the content, now at 45 pages. There are 19 pages of policies.

Staff have advised that about 1,000 hours of staff time were expended in the last quarter and that work began 2 years ago. Reconciliation, climate change and other were added to the content of Bylaw 17, which is intended for adoption by Council as Bylaw 183. Such an investment won't be repeated soon, so it is incumbent upon Council decision makers to ensure efficacy of a draft policy statement before advancing the bylaw.

My criticism is constructive, directed primarily at the structure of draft 1.0 of the revised policy statement bylaw. I offer remedy for the structure and to some extent¹ the content, in the appendix to this submission.

Are both content and structure of the draft policy statement effective?

For the public, a first question is whether or not policies they read in the policy statement are manifest in the day to day actions of trust bodies and in the advice given by staff to local area decision makers. Is what I've just said a policy? Is it presumption? Or is it a hope? The answer, councillors, should be in the Act.

The context. Federal and local trust area jurisdictions.

To put Council's policy statement bylaw in context, the Act establishes a two level, hierarchical, federal governance; wherein Council presides over the local area jurisdictions. There are checks and balances, one level monitoring the other in the public interest. That is the strength of federalism.

¹ The content of a draft trust policy statement is rewritten (compared with Islands Trust staff version 1.0 revision) in the first few pages of the appendix. Thereafter, relevant excerpts from the draft 1.0 directive policies can be added as indicated in the appendix. The caveat is the phrase "shall be addressed in ... OCP and regulatory bylaws", or words with the same effect; are deleted when transferring the directive policy to the format in the appendix.

Although counter intuitive, the staff person who “holds” - that is responsible for – the trust policy statement is not the director of trust area services at the federal governance level, but rather the director of local² planning services³.

The Islands Trust Act is clear in its direction that Council adopt a trust policy statement bylaw to carry out the object of the trust in the trust area. “Implement” is a synonym for “carry out”. Therefore in and of themselves the policies are to implement preservation and protection.

However the draft policy statement bylaw before you relies on five pages of Council’s 1994⁴ Policy Statement Implementation policy. It is Council policy 1.3.1 and is found in the trust policy manual. But the trust policy statement and implementation policies of 1.3.1 are joined at the hip; they must be read together. As important, the trust policy statement bylaw must be reviewed by the minister before adoption, but separate implementation policies are not subject to ministerial oversight. That is not as the Act intends.

There is more.

Policies may differ for different local area jurisdictions

The Act allows that policies may differ for different local area jurisdictions of the trust area.

In part, implementation policy 1.3.1 allows the local area jurisdiction to excuse itself from trust policies, if the local area jurisdiction gives reason. Again counter intuitive. Council alone should have the power to forgive its own policies in local area jurisdictions.

The notion that a local area jurisdiction can pick and choose trust area policies to suit and set aside those that don’t with reason, negates the federal governance model. Comparison with Canadian federalism makes the point.

The Canadian parliament presides over the provinces. Would Canadians accept⁵ that provinces may pick and choose which federal laws suit them and which not? Of course not.

2 Although apparently unquestioned, overlooked, or both; this is a consequence of the current Islands Trust staff administrative structure. 75% of the budget is devoted to local planning services, which is the dominant administrative part of local area governance. The federal level of Islands Trust governance is afforded neither budget nor staff seniority to be effective in presiding over the local area administration. The advantages of federalism intended in the Act are lost.

3 It is true that in the mid 1980s the province stepped away from regional plans such as the policy statement, in favour of enhanced local government controls. But it wasn’t long before the advantages of checks and balances in a more effective two level federal governance model were manifest. In 1989 the province required that Council secure the preserve and protect mandate with a trust policy statement bylaw.

4 and as amended

5 But the provinces may choose to. There is a lesson for Islands Trust governance.

The structure of the draft policy statement

The structure of separate i) trust policy statement and ii) implementation⁶ policies, is counter intuitive. As per the Act, the policy statement bylaw must include the requisite implementation policies; there must be implementation certainty in the wording of the trust policies. Council's trust policy statement should be held at the federal governance level – in present staff terms, by the director of trust area services.

The structure of the draft policy statement can be improved. The 19 pages of policies are divided amongst Council commitments, Council coordination and directive policies. The divisions are unnecessary.

The two categories of policies intended by the Act are i) those for the entire trust area and ii) those which may be excused for one or more local trust areas.

Nineteen pages can be trimmed to policies which are seen to implement the object of the trust, while at the same time clarifying wording of the object of the trust.

Policies – the content. The word “environment”.

An essence of the Islands Trust Act is to preserve and protect environment. But the glaring omission in 45 pages of content is failure to give policy clarity to the word “environment”. Given that the Act was written as response to the threat of a built environment overwhelming the natural environment, then “built” and “natural” are necessary components of policies⁷ to preserve and protect the environment⁸.

Effective preserve and protect policies

To implement the Act is to address the effect of changes in land use on the persons or entities immediately affected. Were there no change in land use in the trust area; de facto the unique amenities in all their numbers and the environment in all its parts would be preserved and protected.

As important, implementing the Act will address the effect of changes in land use with a particular bias. A bias to preserve and protect the unique amenities and environment. A bias which has persuaded the province for nearly five decades.

6 Implementation as opposed to administrative policies

7 In the context of legislation to preserve and protect the trust area in response to development pressure, “built” and “natural” are first categories of “environment” and are sufficient to inform the content of policies which will carry out the object of the trust. It is understood that when the Islands Trust Act was adopted, much of the natural environment had been modified and that the built environment had incorporated elements of the natural environment.

8 On adoption of the Islands Trust Act, a small scale, predominantly rural, built environment was held by some to be a unique amenity of the trust area and worthy of preservation and protection.

The stage is set for effective preserve and protect policies.

The trust policy statement. A fresh start on a few clean sheets of paper.

The appendix is my second draft for a rewritten policy statement which addresses failures in structure and content in the current trust policy statement revision 1.0.

The policies begin with a statement of the persons or entities whose interests are affected by changes in land use, consistent with the object of the trust. The next policy invokes a duty of care owed by staff and decision makers to the persons and entities whose interests are affected by changes in land use.

Then a duty to consult, in order that all parties are informed and may contribute, when changes in land use are considered.

The structure includes implementation direction in less than a page of schedule to the trust policy statement bylaw.

Thank you for hearing my submission and for considering the structure and content of a rewritten trust policy statement bylaw in the appendix.

Michael Sketch

North Pender Island


Appendix – A draft rewrite of the Trust Policy Statement, version 2.0

The Islands Trust Act establishes a federal governance wherein Trust Council presides over a union of local area land use jurisdictions, each with authority over land use conferred by the Local Government Act.

Council's Trust Policy Statement bylaw is required at Section 15 of the Act and is a general statement of Council's policies to carry out the object of the trust. Council may establish different policies for different parts of the trust area. The Trust Policy Statement is a regional plan for the trust area.

For this trust policy statement bylaw; the trust council, trust executive and local trust committees are known as trust bodies and trust council is known as Council.

1.1 For the entire trust area, Council holds and recommends to the Conservancy board that:

1.1.1 The persons and entities whose interests are affected by changes in land use in the trust area are:

- (a) the natural environment and
- (b) the predominantly rural built environment and
- (c) first nations and
- (d) residents and
- (e) the people of British Columbia generally.

1.1.2 Duty of Care: Trust bodies and the employees of trust council shall exercise a duty of care to the persons and entities whose interests are affected by changes in land use; in particular but not limited to the interests of the natural environment, which can not speak for themselves.

1.1.3 Duty to Consult: When considering changes in land use, trust bodies shall first deliberate whether or not consultation is needed and where indicated, shall meaningfully consult with those whose interests are affected. Consultation shall be early and ongoing. Where the interests of the natural environment are deemed affected, consultation shall begin with full disclosure to those who can speak on behalf of the natural environment.

1.1.4 When considering changes in trust area land use which would augment the built environment at the expense of the natural environment, trust bodies shall give priority to the preservation and protection of the natural environment.

1.1.5 Where there is perception but not necessarily certainty, that the built environment will prejudice the ability of natural environment to sustain development, then precaution shall inform limitation of growth of the built environment.

1.1.6 In order that this regional plan for the trust area be effective in carrying out the object of the trust and given that trust bodies are continued for the purpose of carrying out the object of the trust, policies of the trust policy statement shall be adhered to in the day to day actions of trust bodies and their employees. For certainty, policies of this trust policy statement shall be adhered to by land use planning staff in staff report and other advice to decision makers in the entire development and deliberation of draft bylaws pertaining to applications for changes in land use.

1.1.7 Paramountcy: Where there is conflict between policies of the trust policy statement and policy or regulation of a local trust area, trust policy statement policies shall prevail and local trust area policy or regulation, or both, shall be inoperative to the extent that they conflict with policies of the trust policy statement.

1.1.8 To further accountability and transparency in the day to day actions of trust bodies and their employees, the written meeting minutes for all trust bodies shall be published and be consistent with Roberts Rules of Order for meeting minutes which are to be published. For certainty, meeting minutes shall be a comprehensive written record of what was said, in addition to a strict record of what was done.

1.1.9 The predominantly rural communities, with small scale industrial and commercial development which does not detract from the scenic attributes of the trust area, is one of the unique amenities of the trust area to be preserved and protected.

1.1.10 Indigenous cultural heritage is one of the unique amenities of the trust area.

1.1.11 Consistent with the object of the trust and recitals of the 1996 protocol agreement on agricultural land reserve lands in the trust area, the agricultural land reserve is one of the unique amenities of the trust area.

1.1.12 Given the certainty of a climate emergency and the potential for uncertainties of transportation and distant sources of food, the 13% of trust area lands which are in the agricultural land reserve shall be protected in the long term as a reserve and not treated as a resource for development.

1.1.13 Trust bodies and their employees shall be diligent in respecting and cooperating with shared jurisdiction authorities, including but not limited to the agricultural land commission and regional districts.

2.1 For the entire trust area, save where Council excuses specific local trust areas from compliance upon application to Council by the local trust area; Council holds and recommends to the Conservancy board:

Directive Agriculture Policies of the Trust Policy Statement

2.1.0 Directive agriculture policies of the trust policy statement are subject to the implementation policies of the schedule attached to this trust policy statement bylaw.

2.1.1 That productive agricultural soils shall be protected, particularly but not limited to protection through bylaws relating to soil removal and deposit.

2.1.2 That applications to trust bodies or referrals by trust bodies for other use than agriculture shall not be supported on trust area land in the agricultural land reserve which is determined by the agricultural land commission to include prime improved agricultural capability class 1 - 3 soils.

2.1.3 That applications to trust bodies or by trust bodies for exclusion from the agricultural land reserve shall not be supported where the subject land is determined by the agricultural land commission to include prime improved agricultural capability class 1 - 3 soils.

2.1.4 For land in the agricultural land reserve which does not include prime improved agricultural capability class 1 - 3 soils as determined by the agricultural land commission; land uses and activities that support the economic viability of farms, without compromising the agriculture capability of agricultural land, shall be encouraged.

2.1.5 The design of road systems and servicing corridors shall avoid agricultural lands unless the need for roads outweighs agricultural considerations, in which case appropriate mitigation measures shall be required to derive a net benefit to agriculture.

2.1.6 Agricultural land shall be identified and preserved for current and future use.

2.1.7 The permitted land uses on adjacent properties shall minimize any adverse affects on agricultural land.

2.1.8 Farming shall be preserved, protected and encouraged.

2.1.9 That the use of Crown lands for agricultural leases shall be encouraged.

3.1 For the entire trust area, save where Council excuses specific local trust areas from compliance upon application to Council by the local trust area; Council holds and recommends to the Conservancy board:

Freshwater Ecosystem Preservation and Protection Policies of the Trust Policy Statement

3.1.0 Directive freshwater ecosystem preservation and protection policies of the trust policy statement are subject to the implementation policies of the schedule attached to this trust policy statement bylaw.

3.1.1 ...

4.1 For the entire trust area, save where Council excuses specific local trust areas from compliance upon application to Council by the local trust area; Council holds and recommends to the Conservancy board:

Forest Ecosystem Preservation and Protection Policies of the Trust Policy Statement

4.1.0 Directive freshwater ecosystem preservation and protection policies of the trust policy statement are subject to the implementation policies of the schedule attached to this trust policy statement bylaw.

4.1.1 ...

5.1 For the entire trust area, save where Council excuses specific local trust areas from compliance upon application to Council by the local trust area; Council holds and recommends to the Conservancy board:

Coastal and Marine Ecosystem Preservation and Protection Policies of the Trust Policy Statement

5.1.0 Directive coastal and marine ecosystem preservation and protection policies of the trust policy statement are subject to the implementation policies of the schedule attached to this trust policy statement bylaw.

5.1.1 ...

*for completion with remainder directive policy groups
in the format of 2.1 to 2.1.9 inclusive*

Schedule to the Trust Policy Statement bylaw

Implementation Policies for Directive Policies of the Trust Policy Statement

- i) Each local trust committee and island municipality shall effectively implement directive trust policy statement policies in their official community plans, however a local trust committee or island municipality may 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
- ii) Each local trust committee and island municipality shall effectively implement directive trust policy statement policies in their regulatory bylaws, however a local trust committee or island municipality may 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 regulatory bylaws and
- iii) where a directive policy requires an action not within the local trust committee or island municipality jurisdiction, that directive policy implementation shall consist of advocacy in official community plan policy which details the necessary statutory changes or inter-agency agreements and
- iii) that all staff reports which advise decision makers respecting a change in land use or a policy change, shall include the relevant directive policies and corresponding address in official community plan and regulatory bylaws of the local trust committee or island municipality jurisdiction and
- v) where a local trust committee or island municipality 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, until such time as the instruction is carried out.

End of Appendix 1 and of this delegation submission to Trust Council for 8 June, 2021