

**Delegation submission from Michael Sketch for the Trust Council meeting,  
Coast Bastion Hotel, 11 Bastion Street, Nanimo,  
7:00 P.M. Session, on Tuesday, 7 March, 2023**

**On a positive obligation given by the Act for  
Local Trust Committees to carry out the Object and  
therefore not to delegate the consequent decision making**

Councilors – I speak to a draft bylaw on offer to Local Trust Committees (LTCs) which allows delegation of LTC deliberation and decision making to staff; respecting issuance of development permits in a Development Permit Area (DPA).

Provincial legislation provides for optional DPAs and the mandatory Trust Policy Statement to carry out the Object of the Trust.

Two Trust Area jurisdictions have adopted the DPA permit delegation bylaw and one LTC has delayed decision on adoption for a year.

In this submission, I argue - based on the Act - that i) delegation of LTC decision making to staff on matters directly relating to the preserve and protect Trust Object is inappropriate at best and ii) that the recent enabling legislation<sup>1</sup> for a DPA permit delegation bylaw should be rescinded.

My submissions to Council have shown why the Trust Area Policy Statement (TPS) hasn't been as effective as it could and should have been<sup>2</sup> at protecting sustaining elements of the natural environment in the face of overdevelopment pressure. The credibility of the Trust in carrying out the Object is at even greater risk if Council supports local bylaws which may diminish the effectiveness of DPA protection.

The consultants for Council's recent governance review commented that, to a person, whatever their differences on collateral matters, Councilors supported the legislated preserve and protect Trust Object.

The realistic caveat is that disagreement amongst Councilors, amongst land use planning staff and amongst public advice givers has confounded an effective implementation of the Object in the TPS. The disagreements can be traced to conflicting interests. In the decades since a TPS was legislated (1989), Council should have recognized the conflicting interests. Council should have implemented the Object in TPS Trust Area policies with a rationale which is securely based on the Act, rather than at the sometime behest of conflicting interests.

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<sup>1</sup> Amendment 275/2021 of 8 February, 2021; to Islands Trust Regulation 119/90. See Exhibit 1.

<sup>2</sup> Council bylaw 17, 1994. Ineffective in large part because Council delegates its responsibility to implement Trust Area policies to the Local Trust Areas for implementation. Inappropriate delegation is a common denominator for both less effective TPS implementation and less effective Development Permit Area protection for sensitive ecosystems. Less effective than they might be without delegation that is.

The consequence of Council not doing so has been a flexible implementation, to the extent that key preserve and protect policies may be adhered to in Local Trust Area jurisdiction bylaws, or reason given by the local area not to adhere. But under S. 15 of the Act, TPS policies are to carry out the Object.

Contrary to a flexible implementation of Trust Area policies for local jurisdictions, Section 4 of the Act<sup>3</sup> states that Council and LTC Trust Bodies are established (the 1989 Act) and continued (current Act) for the purpose of carrying out the Object. It follows that LTC decision making must carry out the Object. No flexibility there.

With potential for failure of the TPS to carry out the Object, the Trust mustn't fail to be fully effective in LTC decision making for DPA permit issuance.

### **Development Permit Area (DPA) legislation is consistent with the Object**

In part, DPA legislation in the Local Government Act (LGA) and authorized in the Islands Trust Act, is intended to protect the natural environment. As such, DPA assignment can be consistent with carrying out the Trust Object. So too is subsequent LTC deliberation and decision making for granting – or not - a development permit within a DPA.

Deborah Curran, UVIC environmental law, advises:

A LTC “can have a significant impact on how and how much development may occur on a property within a DPA”<sup>4</sup>.

Under the LGA and the Act, a LTC may designate a DPA in the OCP for a part of a Local Trust Area “where the LTC has evidence before them that would convince a reasonable person that a DPA designation is necessary<sup>5</sup>” to carry out the Object.

Given the Object and Section 4 of the Act, a LTC must take particular care with both i) assignment of natural environment protection DPAs and ii) subsequent decisions to allow development within a DPA - or not - and conditions thereon.

The Object and Section 4 of the Act, constrains a LTC in land use deliberation and decisions, compared with greater flexibility for municipal councils.

Witness that Part 7 the LGA allows an elected municipal council to delegate development permit issuance and other decision making to employees (Exhibit 1).

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<sup>3</sup> There is no analogue in the Local Government Act for S. 3 (Object) and S. 4 of the Islands Trust Act. The positive obligation for LTCs to carry out the Object contrasts with a very flexible implementation regime for a municipal council where, say, a Regional Growth Strategy is mandated.

<sup>4</sup> “Development Permit Areas: Guidelines and Permit Conditions” Deborah L. Curran, Environmental Law Centre, University of Victoria, January, 2009. See pages 2 & 3 and Section 4 of the Islands Trust Act.

<sup>5</sup> *ibid*

But the Islands Trust Act does not authorize the general delegation permissions in Part 7 of the LGA<sup>6</sup>, as is reasonable given the Object and Section 4 of the Act. Nor does the Act give specific permission to a LTC to delegate the issuance of DPA land use permits, to staff<sup>7</sup>.

If the rules and principle of the Act don't give that delegation authority directly, then there must be a very compelling argument to invoke delegation authority by the 'back door' of Islands Trust Regulation, as has been done. Let's look at how the delegation authority was given and then whether or not the argument to permit LTC delegation authority to staff is in fact compelling. I argue it is not.

The answer to "how", is that the Act provides<sup>8</sup> for a request to the Province that the Lieutenant Governor in Council can amend, by order, the Islands Trust Regulation to give specific permission (Exhibits 2&3) for LTCs to delegate permit issuance in a DPA to staff, or to give other qualified powers.

But there is an important caveat. The request to the Lieutenant Governor in Council should only be made where a condition of the Interpretation Act is met<sup>9</sup> (see excerpt from S. 41, Exhibit 2); namely that the proposed delegation authority regulation is ancillary to the Act. I argue that delegation to staff of LTC decision making germane to implementing the Object is entirely unnecessary to that preeminent purpose under S. 4 of the Act. In that circumstance, delegated authority isn't ancillary to the Act.

Further, note the staff rationale for delegated DPA permit issuance Policy 4.1.15 which guides staff in their exercise of their new power. Principles 1 and 3 (Exhibit 3) read:

- 1) to improve land use planning efficiency, reduce the number of items on LTC agendas and streamline permit processing and
- 2) that delegation of the power to issue development permits to staff has been recommended by external reviews

It appears the staff interest is served, but neither rationale is based on Section 4 of the Act, which requires that a LTC carry out the Object, with no provision in the Act for delegation of decision authority to employees of Council in matters germane to that purpose. Neither rationale reasonably compensates for the loss of cooperative LTC and staff deliberation in open meeting to decide on issuance of development permits in a DPA.

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<sup>6</sup> The LGA Part 7, S. 229(1)(b), is so referenced as to give direct authority to a municipal council to delegate its powers, duties and functions to employees, with qualifications.

<sup>7</sup> That said, note that S. 54(3) of the Act enables the Lieutenant Governor in Council to provide, by regulation, the power to delegate specific LTC decision making to another Trust Body, such as Trust Executive. But S. 54(3) doesn't authorize delegation to (staff) employees of Council.

<sup>8</sup> The Islands Trust Act, Part 8, Power to make regulations, at S. 53(1)(j)

<sup>9</sup> Application of Section 41(1)(a) of the Interpretation Act enables the Lieutenant Governor in Council to make regulations pursuant to the Islands Trust Act, but only where such proposed regulation is considered necessary and advisable, is ancillary to the Act, and is not inconsistent with the Act. Therefore the onus is on the Trust, who made the request for regulation, to be diligent in that request respecting the terms of S. 41(1)(a) of the Interpretation Act.

## **Conclusion**

Councilors, please give direction to begin the process to rescind provincial Order in Council 597/2021 and thereby Regulation 175/2021, which now amends Islands Trust Regulation 119/90, so returning certainty that it is the LTC who decides on issuance of development permits for land in a DPA, not staff.

Michael Sketch

North Pender Island

## **Exhibits**

**Exhibit 1** – i) Excerpt from the Islands Trust Act which gives a LTC all the power and authority of a regional district board, subject to conditions and ii) an excerpt from the Local Government Act which authorizes a regional district board to delegate its powers, duties and functions, with conditions, to an employee of the board or to another.

**Exhibit 2** – Regulation 275/2021 pursuant to Islands Trust Act S. 53 (2), amends Islands Trust Regulation 119/90, enabling the LTC to delegate, pursuant to a part of S. 229 of the Local Government Act (DPA), its powers, duties and functions under S. 490 and S. 491 [development permits] of the LGA, as adopted by S. 29 of the Islands Trust Act. Order in Council 597/2021 approved and ordered 1 November, 2021.

**Exhibit 2 continued** - Excerpt from the Islands Trust Act, S. 53, Part 8, General

**Exhibit 2 continued** – Excerpt from S. 41 of the Interpretation Act. Powers to make regulations

**Exhibit 3** – Islands Trust Policy 4.1.15, 22 June, 2022. Delegation of issuance of land use permits by a LTC to staff. Note the rationale in Principles 3 and 1.

**Exhibit 1** – i) Excerpt from the Islands Trust Act which gives a LTC all the power and authority of a regional district board, subject to conditions and ii) an excerpt from the Local Government Act which authorizes a regional district board to delegate its powers, duties and functions, with conditions, to an employee of the board or to another.

## **Islands Trust Act**

**[RSBC 1996] CHAPTER 239**

This Act is current to February 8, 2023

### **Corporate status**

**25** (1) Each local trust committee is a corporation.

### **Land use and subdivision regulation**

**29** (1) Each local trust committee has, in respect of its local trust area, all the power and authority of a regional district board under the following enactments:

## **Local Government Act**

**[RSBC 2015] CHAPTER 1**

This Act is current to February 8, 2023

### **Part 6 — Regional Districts: Governance and Procedures**

#### **Division 7 — Delegation of Board Authority**

##### **Delegation of board authority**

**229** (1) Subject to the specific limitations and conditions established under this or another Act, a board may delegate its powers, duties and functions, including those specifically established by an enactment, to

- (a) a board member or board committee,
- (b) an officer or employee of the regional district, or
- (c) another body established by the board.

**Exhibit 2** – Regulation 275/2021 pursuant to Islands Trust Act S. 53 (2), amends Islands Trust Regulation 119/90, enabling the LTC to delegate, pursuant to a part of S. 229 of the Local Government Act (DPA), its powers, duties and functions under S. 490 and S. 491 [development permits] of the LGA, as adopted by S. 29 of the Islands Trust Act. Order in Council 597/2021 approved and ordered 1 November, 2021.

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The British Columbia Gazette, Part II  
November 2, 2021

**B.C. Reg. 275/2021**, deposited November 1, 2021, under the **ISLANDS TRUST ACT** [section 53 (2)]. Order in Council 597/2021, approved and ordered November 1, 2021.

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the Islands Trust Regulation, B.C. Reg. 119/90, is amended as set out in the attached Schedule.

— J. OSBORNE, *Minister of Municipal Affairs*; M. FARNWORTH, *Presiding Member of the Executive Council*.

#### SCHEDULE

**1 Section 11 of the Islands Trust Regulation, B.C. Reg. 119/90, is amended**

**(a) in subsection (3) by adding the following items to the table:**

<b>Local Government Act provision</b>	<b>applies to</b>
section 229 [delegation of board authority], other than subsection (1) (a) and (c)	the local trust committees
section 230 [bylaw required for delegation]	the local trust committees
section 232 [reconsideration of delegate's decisions]	the local trust committees

**, and**

**(b) by adding the following subsection:**

(5.1) For the purposes of the application of section 229 of the *Local Government Act*, a local trust committee may delegate only its powers, duties and functions under sections 490 and 491 [development permits] of that Act, as adopted by section 29 of the *Islands Trust Act*.

## **Exhibit 2 continued** - Excerpt from the Islands Trust Act, S. 53, Part 8, General

### **Power to make regulations**

**53** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the [Interpretation Act](#).

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(j) making further provisions of the [Community Charter](#) or [Local Government Act](#) apply under this Act in relation to one or more of the bodies of the trust referred to in section 4 (1) and in relation to this, provide exceptions to or modifications of a provision of that Act.

## **Exhibit 2 continued** – Excerpt from S. 41 of the Interpretation Act. Powers to make regulations

### **Interpretation Act**

This Act is current to February 8, 2023

### **[RSBC 1996] CHAPTER 238**

### **Powers to make regulations**

**41** (1) If an enactment provides that the Lieutenant Governor in Council or any other person may make regulations, the enactment must be construed as empowering the Lieutenant Governor in Council or that other person, for the purpose of carrying out the enactment according to its intent, to

(a) make regulations as are considered necessary and advisable, are ancillary to it, and are not inconsistent with it,

(b) provide for administrative and procedural matters for which no express, or only partial, provision has been made,

(c) limit the application of a regulation in time or place or both,

(2) A regulation made under the authority of an enactment has the force of law.

## **End of Exhibit 2**



**Exhibit 3 – Islands Trust Policy 4.1.15, 22 June, 2022. Delegation of issuance of land use permits by a LTC to staff. Note the rationale in Principles 3 and 1.**



Policy:	4.1.15
Approved By:	Trust Council
Approval Date:	June 22, 2022
Amendment Date(s):	
Policy Holder:	Director of Planning

## **DELEGATION OF LAND USE PERMITS**

### **Purpose**

To provide policy for local trust committee consideration of the delegation of the power to issue certain land use permits to staff.

### **Principles**

1. Local trust committee delegation of the issuance of development permits to staff is intended to improve overall efficiency, reduce the number of items on local trust committee agendas and streamline processing of permits.
2. Delegation may be warranted as the scope of determining the approval or refusal of permits is determined by consistency with guidelines adopted by local trust committees.
3. Delegation of the power to issue development permits to staff has been recommended by external reviews, and amendments to the *Islands Trust Regulation* now provide local trust committees with the authority to delegate the issuance of development permits to staff.
4. The delegation of the issuance of development permits to staff by local trust committees should only be implemented where development permit area provisions are consistent with the criteria outlined in this policy.
5. The delegation of the power to issue minor development variance permits to staff may be considered by future amendment of this policy and amendment of delegation bylaws.

### **A. Definitions**

### **B. Policy**

#### **1. Delegation by Bylaw**

- 1.1 Delegation of the power to issue development permits may only be implemented by the adoption of a delegation bylaw by a local trust committee.
- 1.2 Delegation bylaws adopted by local trust committees should be substantially consistent with the bylaw template attached to this policy.
- 1.3 A delegation bylaw should only delegate to staff the power to issue permits for development permit areas (DPA) that meet the criteria outlined in this policy.



## Exhibit 3 continued

- 1.4 A delegation bylaw should only delegate the authority to issue permits to the Director and in their absence to Regional Planning Managers.
- 1.5 The staff person reviewing the application shall not also approve or refuse the permit.
- 1.6 A delegation bylaw should not delegate authority to issue form and character development permits except where a local trust committee considers the guidelines to be sufficiently objective.
- 1.7 A delegation bylaw should not delegate permits requiring variances unless the local trust committee has also delegated the issuance of minor development variance permits to staff.
- 1.8 The bylaw must include the opportunity for the owner of the land subject to the decision to have the local trust committee reconsider the decision.
2. **Local trust committees should only consider delegation of issuance of permits to staff for development permit areas that meet the following criteria:**
  - 2.1 The development permit area provisions are relatively current.
  - 2.2 A development approval information bylaw has been adopted, or the application requirements are equivalent (e.g. a DPA enacted consistent with the *Riparian Area Protection Regulation* or geo-technical hazard area DPA).
  - 2.3 Professional reports can be required to provide an assessment of impacts and to recommend measures that can be included as conditions of a permit.
  - 2.4 Guidelines have been assessed by staff to be relatively thorough, clear, current and certain.
3. **Local Planning Services staff should prioritize drafting of delegation bylaws for:**
  - 3.1 Local trust committees that have indicated support for delegation.
  - 3.2 Local trust committees that receive higher volumes of permit applications.
4. **Local Planning Services shall implement the following procedures where delegation has been authorized by a local trust committee bylaw:**
  - 4.1 Checklists for compliance or non-compliance with guidelines for each DPA shall be prepared prior to implementing delegation.
  - 4.2 The local trust committee shall be provided with a copy of permit applications and copied on the decision to issue or to refuse a permit.
  - 4.3 Where the planner reviewing the application determines that the application does not comply with one or more of the guidelines, applicants shall be provided with advice as to why the application does not comply and shall be given the opportunity to revise the application before a decision to issue or refuse the application is made.

## Exhibit 3 continued

- 4.4 The planner reviewing an application shall provide the checklist, draft permit and a written recommendation with reasons to the Director or Regional Planning Manager prior to the delegate making a decision to approve or refuse issuance of a permit.
- 4.5 Where the Director or Regional Planning Manager determines that an application is contrary to one or more of the guidelines, the application shall be refused unless the delegate is satisfied that the permit would be consistent with the overall objectives of the development permit area, that the non-compliance is minor, and that compliance with the guideline would result in the application being contrary to other, more relevant guidelines.
- 4.6 If issuance of a permit is refused, the owner of the subject property shall be provided written reasons for the refusal and informed of the opportunity to request a reconsideration by the local trust committee.
- 4.7 The Director may recommend that an applicant for a refused permit apply for reconsideration by the local trust committee.
- 4.8 Procedures for reconsideration, consistent with the bylaw, shall be established by the Director.

### **C. Legislated References**

*Local Government Act* sections 229 [delegation of authority], 230 [bylaw required for delegation], 232 [reconsideration of delegate's decision] 490(5) [development permits: general authority] and 498.1 [delegation of power to issue development variance permit].

*BC Reg 119/90* as amended by *B.C. Reg 275/21* [delegation of authority]

### **D. Attachment:**

Attachment A: Delegation Bylaw Template

**End of Exhibit 3**