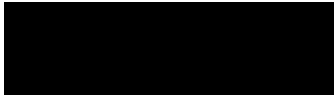


Councillors - Herein my submission to you for Thursday, 08Jul2021 and my oral delegation submission on the same topic for 08Jun2021. The oral submission for 08Jun2021 explains my rationale for a rewritten trust policy statement (TPS) bylaw better than did the written version in the agenda package.

While I understand the importance of new reconciliation and climate change content for Council's TPS bylaw, some trustees and public feel the advantage of new content must be advanced to first reading immediately, despite obvious failing in the structure of the policy statement bylaw.

When Council first deliberated amendment updates for the TPS, there was an assumption that the present TPS bylaw need only be revised with additional content and appropriate edits. Council didn't deliberate the basics; whether or not Council TPS bylaw 17 has, for two decades, satisfied the requirements of section 15 of the Act. I argue it has not and more work is needed before consideration of first reading.

Michael Sketch
North Pender Island



**Submission to the Islands Trust Council from Michael Sketch
for an electronic quarterly meeting on Thursday, 8 July, 2021**

**Failure of draft trust policy statement (TPS) bylaw 183
to meet Council's responsibilities under S.15 of the Act**

Please refuse first reading for the draft TPS bylaw. Reconsider, rewrite.

Councillors – In 1989 the Islands Trust Act was amended to require a trust policy statement Council bylaw. At S.15, a statement of general policies to carry out – to implement – the object of the trust in the trust area. It follows that the policies in and of themselves are to implement the trust object and that such further implementation as is necessary will be part of the bylaw.

But effective implementation is not part of the current Council bylaw 17 TPS. Such implementation as there is, is minimal. Trust area policies are to be addressed in local area bylaws, anticipating implementation at the local level. For decades planning staff advice and trustee deliberation should have been routinely guided by the TPS bylaw, but there are too many examples in local trust areas where trust policies have been ignored.

Effectiveness of the policy statement bylaw is measurable. Have trust area policies been manifest in the day to day business of trust bodies and staff? The public don't think so. Nor do clear cut lots, removal of agricultural capability, extirpation of red listed species, over dense development and salt water intrusion of drinking water wells.

Three decades on, you have directed revision of your current TPS bylaw. But here is no record that Council deliberated whether or not the current TPS bylaw meets Council's responsibilities under S.15 of the Act. Council moved that the 2003 version was to be revised, with structure unchanged.

Council's "trust policy statement implementation policy" 1.3.1 in the trust policy manual

Although not referenced in the current Council bylaw 17 TPS, there is a council 'trust policy statement implementation policy' in the trust policy manual. Five pages of instruction. There is sufficient flexibility in policy 1.3.1 that local trust areas can decide for themselves which trust area policies are implemented. No wonder there can be trustee and public confusion when a "trust policy statement checklist" is included with staff reports, purportedly demonstrating compliance with the TPS.

Decades of local trust area compliance – or not - with trust area policies has been predicated on council policy which is separate from the TPS bylaw itself. Whereas the TPS bylaw is subject to ministerial review, council implementation policies are not. How could the minister meaningfully assess if a TPS bylaw would be effective in preserving and protecting if implementation policy 1.3.1 wasn't disclosed?

The current draft TPS bylaw V.2.0 does disclose Council implementation policy 1.3.1 (and amendment policy 1.2.1). At section 2.3 of draft TPS bylaw 183, "These are separate policies approved by Trust Council and do not require a legislative approval process." But disclosure that implementation policy is remote from the TPS bylaw doesn't satisfy the legislated requirement for ministerial review of a bylaw which includes implementation.

First reading for a Council TPS bylaw which does not, within the bylaw, implement policies as required at S.15 of the Act

The issue before you on 8 July, 2021 is first reading for a Council TPS bylaw which does not, within the bylaw, implement preserve and protect policies as required at S.15 of the Act.

That is a serious criticism of the structure of draft bylaw 183.

There is remedy. My draft policy statement bylaw submitted (appendix to oral submission) to Council for 08Jun2021

There is remedy. My oral submission to Council for 08Jun2021 is attached and better explains the rationale for rewriting the TPS so as to be consistent with the Act, than did my written submission published in the agenda package.

The appendix is a draft trust policy statement bylaw. Policies are succinct. Duties of care and to consult are explicit. The first two pages are core preserve and protect policies, binding upon the entire trust area. They are followed by directive policies which the individual local trust areas can petition Council to be excused from. There is a schedule with less than a page of necessary implementation directions.

A draft TPS of 10 pages is manageable. Ten pages which would be consistent with the Act and would have force and effect at each LTC table.

Councillors, please refuse first reading for policy statement draft bylaw 183. Reconsider, rewrite.

The stakes are high. History would smile on your contribution to trust area preserve and protect governance,

So would Canada.

In prospect, thank you for deliberating the content of my submission, particularly the draft policy statement bylaw.

Michael Sketch

North Pender Island


Attached: 1) Oral submission to Council for the Town Hall session of 08Jun2021, with an appendix which gives a draft trust policy statement.

2) Trust Council 'policy statement implementation' policy 1.3.1, from the trust policy manual, for reference.

**Oral 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**

Councillors -

I shall speak to draft 1.0 of the revised trust policy statement, prepared by staff.

Staff advised that work began 2 years ago and that 1,000 hours were expended in the last quarter. Such an investment won't be repeated soon, so it's incumbent upon Council to ensure efficacy before advancing the policy statement bylaw to first reading.

My criticism is constructive, directed primarily at the structure of both current bylaw 17 and draft 1.0. I offer remedy in the appendix to this submission.

Criticism of structure is a serious matter, because the province intends that the policy statement be the instrument of preserve and protect. Council has endorsed the appointment of expert consultants to assess whether the Act is effectively implemented. An assessment deliberately at arms length from the potential of conflicting internal trust interests.

My first request is that Council delay first reading until there is at least a preliminary report to Council from the consultants.

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.

There are too many case studies that say the answer is no.

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.

Although counter intuitive, the staff person responsible for the trust policy statement is not the director of trust area services at the federal governance level, but rather the director of local¹ planning services².

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

However draft 1.0 relies on five pages of Council’s 1994³ implementation policy 1.3.1 in the trust policy manual. But the trust policy statement and implementation policies are joined at the hip; they must be read together. As important, the 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.

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 jurisdiction to excuse itself from trust policies, if the local jurisdiction gives reason. Again counter intuitive. Council alone should have the power of decision to forgive its own policies in local area jurisdictions.

The notion that a local 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 accept⁴ that provinces may pick and choose which federal laws suit them and which not? Of course not.

1 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.

2 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.

3 and as amended

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

The structure of the draft policy statement

The structure of the draft policy statement can be improved. Nineteen pages of policies are divided amongst Council commitments, Council coordination and directive policies. The divisions are unnecessary and nineteen pages should be trimmed to essentials under the Act.

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

Policies – the content. The word “environment”.

An essence of the Act is to preserve and protect environment. But in 45 pages of content there is no policy clarity for 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 policies⁵ to preserve and protect the environment⁶.

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.

The stage is set for effective preserve and protect policies.

5 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.

6 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 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 draft 1.0.

The policies begin with a statement of the persons or entities whose interests are affected by changes in land use, followed by policy clarification of the trust area environment.

The next policy invokes a duty of care owed by staff and decision makers.

Then a duty to consult, in order that all parties are informed and may contribute, when changes in land use are considered. The remainder page and half of policies for the entire trust area complete the heart of effective preserve and protect.

To complete a different draft policy statement, select directive policies must be added from draft 1.0, each in their category.

Implementation direction is less than a page of schedule for the policy statement bylaw.

Please compare this rewritten content and structure with current draft 1.0 and ask the opinion of your governance consultants.

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 2.4

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. Trust council is known as Council and is a trust body.

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

1.1.1 Adherence to trust area policies is first in Council's federal oversight responsibilities for local trust areas. Council shall ensure that island municipalities have regard for the trust policy statement and trust object in respect of all actions of the municipality.

1.1.2 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.

1.1.3 Trust Area Environment. For purposes of this bylaw, the trust area environment is the sum of its parts and is subdivided for policy clarification as follows:

trust area environment

1a) built

1b) natural

2a) predominantly rural

2b) more dense urban

2c) anthropogenically modified

2d) unmodified

1.1.4 Where there is built environment, a small scale, rural, built environment shall predominate in the trust area; despite a more dense, urban, built environment in nearby areas.

1.1.5 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.

1.1.6 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.

1.1.7 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.

1.1.8 Trust bodies shall not support changes in land use justified by community need, where the community need rationale is seen to take precedence over preservation and protection of elements of the natural environment and ecosystems.

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

1.1.10 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.

1.1.11 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.

1.1.12 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.

1.1.13 The small scale of built environment in predominantly rural communities, 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.

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

1.1.15 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.

1.1.16 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.

1.1.17 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 or an island municipality from compliance upon application to Council; Council holds and recommends to the Conservancy board that:

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 Agricultural capability shall be encouraged in the trust area where farming operations are small scale and give priority to local area food security.

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

2.1.3 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.

2.1.4 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.

2.1.5 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.

2.1.6 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.

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

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

2.1.9 Farming shall be preserved, protected and encouraged.

2.1.10 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 or an island municipality from compliance upon application to Council; Council holds and recommends to the Conservancy board that:

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 or an island municipality from compliance upon application to Council; Council holds and recommends to the Conservancy board that:

Forest Ecosystem Preservation and Protection Policies of the Trust Policy Statement

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

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 2.1.10 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, or a part thereof, 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, or a part thereof, 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 oral delegation submission to Trust Council for 8 June, 2021

**Oral 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**

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Council's trust policy statement draft bylaw 183
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There are too many case studies that say the answer is no.

The context. Federal and local trust area jurisdictions.

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Michael Sketch

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

1.1.15 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.

1.1.16 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.

1.1.17 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 or an island municipality from compliance upon application to Council; Council holds and recommends to the Conservancy board that:

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 Agricultural capability shall be encouraged in the trust area where farming operations are small scale and give priority to local area food security.

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

2.1.3 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.

2.1.4 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.

2.1.5 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.

2.1.6 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.

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

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

2.1.9 Farming shall be preserved, protected and encouraged.

2.1.10 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 or an island municipality from compliance upon application to Council; Council holds and recommends to the Conservancy board that:

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 or an island municipality from compliance upon application to Council; Council holds and recommends to the Conservancy board that:

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 or an island municipality from compliance upon application to Council; Council holds and recommends to the Conservancy board that:

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 2.1.10 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, or a part thereof, 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, or a part thereof, 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 oral delegation submission to Trust Council for 8 June, 2021