



REQUEST FOR DECISION

To: Regional Planning Committee **For the Meeting of:** September 4, 2024

From: Anthony Fotino, Island Planner **Date Prepared:** August 23, 2024

SUBJECT: Bylaw Compliance and Enforcement Policy Review Updates

RECOMMENDATION:

1. That Regional Planning Committee review and provide direction on the draft Trust Council Bylaw Compliance and Enforcement Policy (Policy 5.5.1) to Trust Council.
2. That Regional Planning Committee review and provide direction on the draft Local Trust Committee Handling of Administrative Fairness Complaints Policy (Policy 7.1.2) to Trust Council.
3. That Regional Planning Committee review and provide direction on the draft Bylaw Compliance and Enforcement Best Practices manual and confirm referral to Ombudsperson's Office for comment in September 2024 as per the Project Charter work plan.
4. That Regional Planning Committee request that Trust Council approve the attached amended Project Charter at their September 2024 meeting.

DIRECTORS COMMENTS: The draft amendments to bylaw compliance and enforcement policies and procedures advances the approved project goals and is on target meeting project deliverable timelines.

1. PURPOSE:

To bring forward the draft Local Trust Committee Bylaw Compliance and Enforcement Policy update (Policy 5.5.1), draft Bylaw Compliance and Enforcement Best Practices Manual, and draft Handling of Administrative Fairness Complaints policy update (Policy 7.1.2) for the Regional Planning Committee's (RPC) review and comment. Additionally, to update the RPC on updates to the Draft Local Trust Committee (LTC) Bylaw Compliance and Enforcement Template, as there have been changes made since the May RPC meeting.

2. BACKGROUND

At the regular May 2024 meeting, the RPC received a report from staff providing recommendations on next steps for bylaw enforcement policies and practices using the Office of the Ombudsperson's Consultation and Training Team ('Ombudsperson') report recommending changes to Trust Council policies and Bylaw Enforcement practices and procedures. RPC adopted the following resolutions:

RPC 2024-010**It was MOVED and SECONDED,**

that Regional Planning Committee request staff to amend the deliverables of the project to include the development and review of a Local Trust Committee Bylaw Compliance and Enforcement Policy.

RPC 2024-011**It was MOVED and SECONDED,**

that Regional Planning Committee request staff to complete the draft Local Trust Committee Bylaw Compliance and Enforcement Policy template for review at the September 4, 2024 regular business meeting.

In terms of **RPC 2024-010**, the project charter has been updated to reflect what RPC asked for at the May 2024 regular meeting. Based on the project charter workplan, Staff are currently on schedule, as the current milestone is "Draft Policies and Manual to RPC for Review and Changes". The Project Charter (version 2 (V2)) can be found in Attachment 5.

3. ANALYSIS AND OPTIONS IDENTIFICATION

Staff went through the process of drafting an updated version Trust Council policy 5.5.1 (Attachment 1) that was presented to the RPC at the May regular meeting. Specifically, there have been three notable additions to the policy based on the Ombudsperson recommendations:

- 1) Three definitions have been included in the definitions section: *Vexatious Complaint*, *Respondent*, and *Bylaw Notice*;
- 2) Use of Discretion policy has been added as Section 8; and
- 3) Frivolous, Repeat, or vexatious complaints has been added as Section 11

Trust Council Handling of Administrative Fairness Complaints Policy (7.1.2) has been amended to reflect the recommendation by the office of the Ombudsperson to identify more of a general complaints policy versus its current form. In the Ombudsperson report, it was suggested that the policy's title and content be amended to reflect its function as a general complaints policy. The report also suggested using the Office's Model Complaints Policy should Trust Council decide to revise the Administrative Fairness Complaints Policy. The draft changes can be found in Attachment 2. Amendments to the existing policy include:

- 1) Revising the purpose statement;
- 2) Adding "Guiding Principles"; and
- 3) Adding the Roles and Responsibilities of Organizational Staff.

The Draft Bylaw Compliance and Enforcement Best Practices Manual (Attachment 4) has incorporated all of the recommendations from the Ombudsperson report to make a more robust and transparent document. Additionally, updates have been incorporated to make it more consistent with the amendments made to Trust Council policy 5.5.1. Amendments to the manual include:

- 1) Removal of references to internal documents;
- 2) Adding references to frivolous, repeat or vexatious complaints;
- 3) Added references to the review of Trust Council and LTC policies.
- 4) Updated the hyperlinks for public available documents.

Based on feedback from LTCs, the updated Draft LTC Bylaw Compliance and Enforcement Template (Attachment 3) has been modified and expanded since the RPC reviewed it in May. Changes to the document include:

- Formatting;
- Revised Purpose Statement;
- Inclusion of definitions and abbreviations; and
- Expansion of sections five (5) through nine (9)

The Regional Planning Committee has also received feedback from the Mudge Island Community Association regarding proposed policy amendments. The feedback will be available in the correspondence section of the agenda package.

4. ATTACHMENT(S):

- 1) **Draft TC Policy 5.5.1 - Bylaw Compliance and Enforcement Policy**
- 2) **Draft TC Policy 7.1.2 - Handling of Administrative Fairness Complaints Policy**
- 3) **Draft LTC Bylaw Compliance and Enforcement Template;**
- 4) **Draft Bylaw Compliance and Enforcement Best Practices Manual**
- 5) **Project Charter v.2**

RESPONSE OPTIONS

Recommendations:

That Regional Planning Committee review and provide direction on the draft:

- Trust Council Bylaw Compliance and Enforcement Policy (Policy 5.5.1),
- Local Trust Committee Handling of Administrative Fairness Complaints Policy (Policy 7.1.2),
- Bylaw Compliance and Enforcement Best Practices manual, and
- Local Trust Committee Bylaw Compliance and Enforcement Policy Template; and confirm referral to Ombudsperson’s Office for comment in September 2024 as per the Project Charter work plan.

A resolution to help enact the recommendation:

1. That the Regional Planning Committee recommend the following changes to (name policy, manual, or template):
 - a. Item 1
 - b. Item 2
 - c. Item 3...
2. That the Regional Planning Committee forward the (name policy manual, or template) to the Ombudsperson’s Office for comment, and to Trust Council
3. That Regional Planning Committee request that Trust Council endorse the attached amended Project Charter (V2) at their September 2024 regular business meeting.

Alternatives:

That the RPC not make any changes’ to the draft policies, manual, or template and forward them to the Ombudsperson’s Office for comment, and to Trust Council.

Or that:

That RPC request staff to provide Trust Council with further information.

Prepared By: Anthony Fotino, Island Planner

Reviewed By/Date: Stefan Cermak, Director, Planning Services / August 27, 2024



Policy:	5.5.1
Approved By:	Trust Council
Approval Date:	March 11, 1995
Amendment Date(s):	June 6, 1997; June 6, 1998; June 13, 2003; December 5, 2003; December 10, 2004; June 17, 2005; March 10, 2006; March 13, 2019, December 2, 2021: September X, 2024
Policy Holder:	Director of Planning Services

BYLAW COMPLIANCE AND ENFORCEMENT

Purpose

The purpose of the bylaw compliance and enforcement program is to support the object of the Islands Trust to preserve and protect the Trust Area and its unique amenities and environment for the benefit of residents of the trust area and of the province generally by ensuring compliance with Local Trust Committees' Bylaws.

A. Definitions

1. *Long-form information* means a complaint sworn before a Provincial Court judge by a bylaw compliance and enforcement officer
2. *Vexatious complaint* means frivolous, repeat or false complaints, or ones made in bad faith that are meant to harass, annoy, or irritate any person, or are for retaliatory purposes
3. *Respondent* means those responding to allegations of bylaw contraventions
4. *Bylaw Notice* means a ticket, with penalty, issued under the *Local Government Bylaw Notice Enforcement Act*.

B. Policy

1. COMPLIANCE

- 1.1 Compliance is sought through a combination of education, mediation and enforcement techniques. Bylaw compliance is primarily sought through an attempt to achieve voluntary compliance. Voluntary compliance is indicated by a commitment to corrective action as soon as reasonably possible and the cessation of unlawful activity.

2. BEST PRACTICES MANUAL

- 2.1 The Manager of Bylaw Compliance and Enforcement will maintain a best practices manual in accordance with the administrative fairness principles outlined in the BC Ombudsperson's report "[Bylaw Enforcement: Best Practices Guide for Local Governments](#)", March, 2016.

3. COMMENCING INVESTIGATIONS

- 3.1 Investigations are commenced on a complaint-basis, with the exception provided below.
- 3.2 Bylaw investigations may be commenced at the discretion of the Manager of Bylaw Compliance and Enforcement and an investigation file opened in one or more of the

following circumstances:

- 3.2.1 In response to written complaints of an alleged contravention made by any person that is within the jurisdiction of Islands Trust and that is not vexatious nor anonymous;
 - 3.2.2 Bylaw contraventions appear to occur in setbacks from water bodies or in development permit areas;
 - 3.2.3 Bylaw contraventions appear to cause health and safety issues;
 - 3.2.4 Bylaw contraventions appear to occur as part of a building permit process or other permitting process administered by a local government or Islands Trust siting and use permit applications;
 - 3.2.5 A referral is received from a permitting agency that identifies alleged land use bylaw contraventions;
 - 3.2.6 Advertising of unlawful uses; or
 - 3.2.7 Local Trust Committee directs staff to commence an investigation.
- 3.3 Respondents and complainants will be notified in writing if an investigation has been commenced and they will be notified in writing of the determination of an investigation.
- 3.4 Respondents may request that a determination of a contravention be reviewed by the Manager of Bylaw Compliance and Enforcement.
- 3.5 Complainants may request the Director of Planning Services to review a file if no contravention has been determined by the Manager of Bylaw Compliance and Enforcement.

4. CLOSING INVESTIGATIONS

- 4.1 Bylaw investigation files can be closed, and notice will be given, in the following circumstances:
- 4.1.1 If no contravention existed;
 - 4.1.2 If compliance has been achieved;
 - 4.1.3 On direction of a Local Trust Committee;
 - 4.1.4 If the Director of Planning Services concurs with the Manager of Bylaw Compliance and Enforcement that the contravention is of a minor character and does not suit the public interest to enforce.
 - 4.1.5 Complainants may request that a closing of a file be reviewed by the Manager of Bylaw Compliance and Enforcement.
- 4.2 Respondents and complainants will be notified in writing when a file has been closed.

5. PRIORITY OF INVESTIGATION

- 5.1 The workload for bylaw investigations will be prioritized as follows:
- 5.1.1 Health and safety issues;
 - 5.1.2 Adverse environmental impact that could result in irreversible damage if not prevented in a timely fashion;
 - 5.1.3 Contraventions of land use bylaws and other bylaws.
 - 5.1.4 By specific direction of a Local Trust Committee;

6. MEDIATION

- 6.1 Efforts to gain compliance should be conducted using the principles and techniques employed in mediation.

- 6.2 Persons alleged to have committed contraventions and complainants may be invited by staff to participate in a process designed to:
 - 6.2.1 Provide full information and exchange of information;
 - 6.2.2 Confirm facts;
 - 6.2.3 Explore opportunities for compliance;
 - 6.2.4 Negotiate a timeline for compliance;
 - 6.2.5 Reach compliance solutions.

7. LEGAL ACTION

- 7.1 If unlawful activity does not cease or if compliance is not achieved, a Bylaw Compliance and Enforcement Officer may make recommendations to the Local Trust Committee on how to proceed, including taking civil action or closing the investigation without compliance.
- 7.2 Immediate legal action may be recommended to Local Trust Committees if impacts of unlawful activity risk serious harm to persons or the environment.

Offence Act prosecutions may be recommended to the Local Trust Committees under the following conditions:

- 7.2.1 Offence Act prosecutions are to be used only for serious land use permit contraventions.
- 7.2.2 A long-form information may be sworn only after approval by a local trust committee; and
- 7.2.3 Executive Committee has approved legal funding for the prosecution; and
- 7.2.4 The long-form information has been reviewed and prepared by legal counsel.

8. USE OF DISCRETION

- 8.1 Local Trust Committees may adopt discretionary enforcement policies using the following guidelines:
 - 8.1.1 The nature and urgency of the complaint or alleged contravention.
 - 8.1.2 The impact of the contravention on the complainant and community.
 - 8.1.3 Previous decisions or legal precedents on similar complaints.
 - 8.1.4 The matter appears to be a civil dispute, frivolous or vexatious in nature (see policy 11.0).
 - 8.1.5 The impact of the contravention on the complainant or other persons.
 - 8.1.6 The impact of the complaint or alleged contravention on public health, safety, or the environment.
 - 8.1.7 There are limited resources available to resolve the matter.

9. BYLAW NOTICE DEBT

- 9.1 Debts incurred as the result of default on bylaw notices are payable to Trust Council and they may be cancelled if the Director of Planning Services and the Manager of Bylaw Compliance and Enforcement concur that contraventions on the subject property no longer exist, and it is not in the interest of Islands Trust to pursue the debt.

10. CONFIDENTIALITY

10.1 Information in regards to a complainant is kept confidential. However, confidentiality cannot be guaranteed should litigation proceed or where a request for information is received under the *Freedom of Information and Protection of Privacy Act*.

11. FRIVOLOUS, REPEAT, OR VEXATIOUS COMPLAINTS

11.1 Investigations and Enforcement Files may not be opened if a complaint is considered vexatious.

11.2 Persons may be declared vexatious complainants if the Director of Planning Services and the Manager of Bylaw Compliance and Enforcement concur and the vexatious complainant will be advised that no further submissions will be accepted from them.

12. LOCAL TRUST COMMITTEES, TRUST COUNCIL, AND TRUSTEES

12.1 Trustees will be immediately advised when a bylaw investigation file is opened indicating the type and area where the contravention is alleged to occur but names and addresses of the complainant and alleged violator will not be shared.

12.2 Local Trust Committees will be advised of when a bylaw investigation file has been closed.

12.3 Trustees may make a written complaint alleging a bylaw contravention.

12.4 Local Trust Committees and trustees will not be involved in the investigation of a complaint or the preparation of bylaw enforcement reports.

12.5 Local Trust Committees may make bylaw enforcement policies to direct compliance and enforcement.

12.6 Local Trust Committees may request reports about specific investigations or about general enforcement activity in the Local Trust Area.

12.7 Trust Council will be informed of the volume and type of bylaw enforcement files bi-annually.

C. Legislated References

1. [Islands Trust Act](#)
2. [Offence Act](#)

D. Attachments/Links to Supporting Forms, Documents, Websites, Related Policies and Procedures

- [BC Ombudsperson's report "Bylaw Enforcement: Best Practices Guide for Local Governments", March, 2016](#)
- [Best Practices Manual](#)
- [BC Local Government Bylaws>Bylaw Enforcement](#)



Policy:	7.1.2
Approved By:	Trust Council
Approval Date:	June 11, 1994
Amendment Date(s):	March 9, 2001; XXXX
Policy Holder:	Legislative Services Manager

HANDLING OF COMPLAINTS

Purpose

The purpose of this policy is to ensure Islands Trust provides a fair, effective and transparent response to complaints and concerns raised by our service users. This policy sets out the procedures for receiving, reviewing, recording and responding to complaints about our service. To ensure that best effort is used to handle formal complaints regarding Islands Trust administrative practices, processes and procedures (excluding land use bylaw infractions) in a fair, equitable and timely manner in accordance with the Administrative Fairness Principles Policy.

Guiding Principles

Islands Trust is committed to high standards of practice in our work. We value feedback and complaints from our service users and continuously strive to improve our services. Our complaints process is guided by the following principles:

<u>Accessible</u>	Islands Trust complaints process is publicly available on our website, and service users are informed of their right to complain about our organization. Complaints are accepted in a variety of ways (i.e., submission of an online complaint form, submission of an email to the appropriate manager of CAO, or mail or delivery of a letter to any Islands Trust office.)<List Ways>.
<u>Fair</u>	All complaints will be handled in a manner that is impartial and fair. Our process provides the opportunity for service users to submit relevant information and have an opportunity to be heard before the review of the complaint is finalized. We thoroughly and objectively review the complaints we receive, and are committed to keeping people informed of the progress of their complaint.
<u>Person-Focused</u>	We recognize that service users have different needs, and each person has their own unique history that they bring to the interaction with our agency. We commit to listen to our service users' concerns, treat them with dignity and respect, and maintain confidentiality throughout the complaints process.
<u>Responsive</u>	We will respond to complaints within XX business days, and will seek to resolve the complaint at the earliest opportunity. Complaints that cannot be resolved at first contact, or those that raise more serious concerns about our organization, will be forwarded for further review/investigation within XX business days. Islands Trust is committed to these time frames and will inform our service users of the progress of their complaint and reasons for any delay in the complaint resolution process.

Roles and Responsibilities of Staff

<u>Step 1</u>	Islands Trust staff are responsible for receiving, recording and assessing complaints, and will attempt to resolve the matter if possible. At this stage, staff have responsibility for explaining the complaints process to the person reporting the concern. will forward complaints that are not resolved or that require further
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	review/investigation to Stage 2 of the complaints process.
Step 2	Islands Trust Management are responsible for reviewing and conducting investigations of complaints that are not resolved by staff. If a complaint is not resolved to the satisfaction of the person raising the concerns following investigation, further internal review may be conducted by management. If appropriate, alternative dispute resolution (ADR) will be offered to attempt to resolve the complaint.
Step 3	At any point in the complaints process, a person may choose to seek external review of the matter through the following review options: Include Options

A. Definitions

Formal complaints are limited to those submitted in writing and directed to the Chief Administrative Officer (CAO).

Islands Trust refers to the following decision-making bodies: Trust Council, a local trust committee and the Executive Committee, as well as trustees or staff.

Ombudsperson Office referrals of complaints should be directed to the CAO.

Review Bodies include the CAO and the Executive Committee whose roles are explained in Section B.

Verbal concerns should be handled by trustees and staff within the spirit of this policy.

B. Principles

1. **Confidentiality** - To protect the privacy of the complainant, formal complaints should be handled in a confidential manner by trustees and staff upon receipt from the complainant and upon referral by the CAO or the Executive Committee, unless the complainant provides a written waiver of this provision to the CAO. The complainant and complaint will be made known to the affected staff, trustees or local trust committee.
2. **Availability** - The provisions of this policy should be available to every person or organization, including Islands Trust trustees and staff affected by a decision or action of the Islands Trust.
3. **Notification** - Trustees and staff should advise parties who might be adversely affected by a decision or action of the Islands Trust, or upon request, of the provisions of this policy should they wish to dispute a matter.
4. **Acknowledgement** - All formal complaints should be acknowledged, stating the expected process and time-frame to be taken to respond to the complaint, as well as any limitations of the review process with respect to the complaint.
5. **Accountability** - All formal complaints should be responded to, with reasons, with a view to using best efforts to resolve the complaint.
6. **Ombudsperson Office** - Referrals from, requests for assistance to, or complaint file communications with the Ombudsperson, shall be directed through the CAO, or, alternatively, the Islands Trust Chairperson.

7. **Corporate secretary's Role** - The Corporate secretary is to coordinate the handling of administrative fairness complaints in an objective manner.
8. **Executive Committee's Role** - The Executive Committee's role, within the provisions of Section 4(3) of the *Islands Trust Act*, is to review matters related to the day-to-day business of the Islands Trust and activities of a local trust committee, and, in that context, it may observe, advise and offer recommendations on such matters to a local trust committee or Trust Council, and seek remedies as required in matters for which it has jurisdiction.
9. **Access to Information** - Complainants should be given access to public information that would assist them in stating their complaint in a timely manner within the provisions of the Islands Trust's Freedom of Information and Protection of Privacy bylaw(s), policies and procedures, and the *Freedom of Information and Protection of Privacy Act*.
10. **Ombudsperson Act** - Complainants, while being encouraged to utilize the provisions of this policy to have their complaints addressed by the Islands Trust, should also be advised of the services of the Ombudsperson's Office and provisions of the *Ombudsperson Act*.
11. **Scope of Authority** - The review bodies, being the CAO and Executive Committee, do not have the power to judicially review the conduct of Trust Council, a local trust committee, or a trustee or staff person and are limited to making recommendations to decision-making bodies of the Islands Trust, to modify their own decisions or actions, and to direct staff on remedial efforts appropriate to their respective personnel authority - Executive Committee to CAO and CAO to all other staff.
12. **Consultation** - It is expected that the primary purpose of this policy's processes is to maximize communication among all affected parties to a complaint.
13. **Accessibility** - The cost and complexity of the Islands Trust's administrative fairness complaint handling process should not constitute a deterrent or present unreasonable obstacles to a complainant submitting a formal complaint.
14. **Chief Administrative Officer's Role** – The CAO's role is to request staff action, as required, and to conduct reviews involving staff matters.

C. Procedure

1. Receipt of Formal Complaints

1.1 **Informal Complaints** - Every effort should be made to direct verbal complaints to the appropriate Islands Trust decision-making body, trustee or staff person, and to notify the complainant of the provisions of this policy for pursuing a formal complaint.

1.2 **Formal Complaint** - Complainants should be informed that, in order to have complaints formally processed under the provisions of this policy, they must be in writing directed to the CAO for complaints regarding staff, and to the Chair for complaints regarding local trust committees or trustees.

1.2.1 **Complaint Content** - Complainants must state the specific nature of a formal

complaint and provide their name, address and phone number before complaints will be processed under the provisions of this policy.

- 1.2.2 Confidentially - Complainants must also acknowledge in writing that such complaints are not considered confidential with respect to affected staff or local trust committees.
- 1.2.3 Complaint File - A copy of the formal complaint should be forwarded to the corporate secretary, who is to open a file respecting the complaint.
- 1.2.4 Complaint Tracking - The corporate secretary is responsible for logging the complaint in an Administrative Fairness Complaint Log, and for tracking all steps of the complaint-handling process to its conclusion.
- 1.2.5 Referral - The corporate secretary will refer the formal complaint to the appropriate decision-making body, and/or trustee or staff person, for consultation in acknowledging the complaint.
- 1.2.6 Acknowledgement - The corporate secretary should acknowledge the formal complaint within 10 days, unless otherwise communicated to the complainant, in writing, advising the complainant as to whom the complaint has been referred to, the complaint handling process, expected timelines to deal with the complaint, and legal, legislative and/or policy limitations with respect to responding to the complaint.

2. Stage I Investigation

2.1 **Staff-Related Complaints** - Staff investigation of formal complaints, as requested by the CAO, are expected to adhere to the following process:

2.1.1 Referral

The CAO should refer appropriate complaints to the relevant staff person and his/her supervisor with a copy of the acknowledgement letter for the investigation within timelines provided by the CAO.

2.1.2 Complainant Contact

The staff person and/or supervisor should promptly contact the complainant to arrange a meeting by telephone, or, if desired by the complainant, with a view to addressing the complaint.

2.1.3 Investigation

The staff person should thoroughly ascertain the facts and issues, and prepare a report containing the facts, issues, and results of efforts to address the complaint in consultation with his/her supervisor.

2.1.4 Response

The staff person should communicate, in writing, his/her efforts to address the complaint, with reasons, to the complainant, with a copy to the CAO, corporate secretary, his/her immediate supervisor, and the appropriate decision-making body, as required.

2.2 **Decision-making Bodies** - Staff investigations at the request of the Executive Committee involving matters directly related to decisions of decision-making bodies are expected to adhere to the following process.

2.2.1 Notice to Complainant

Reasonable and timely notice, in writing, should be given to the complainant of a complaint investigation by a decision-making body.

2.2.2 Complainant Contact

If required or requested by the corporate secretary or the complainant, the complainant should be given an opportunity to provide information to support his/her position, in person, or in writing, in addition to the original written complaint.

2.2.3 Investigation

Staff reports as per clause 2.1.3 should be directed to the appropriate decision-making body with a copy to the CAO and the corporate secretary.

2.2.4 Decision

The decision-making body, in consideration of the relevant facts, issues and staff advice should determine, by resolution, its response to the complainant.

2.2.5 Response

The staff person should communicate to the complainant, in writing, the decision-making body's decision, with reasons in response to the complaint, with a copy to the CAO, the corporate secretary, and the Executive Committee.

2.3 **Trustee Related Complaints** - Must be directed to the Islands Trust Chair or the Executive Committee. The Chair or Executive Committee will refer complaints to the relevant trustee, with a copy of the acknowledgement letter for his/her investigation and response to the complainant, using steps 2.1.1 to 2.1.4. Reviews will be handled by the Executive Committee.

3. **Appeals**

3.1 **To the Chief Administrative Officer** - In the event the complainant is not satisfied with the efforts of the designated staff person and/or supervisor to address the complaint, the CAO is to address the complaint utilizing steps outlined in 2.1.1. to 2.1.4 with a copy of the written documentation to the Executive Committee, corporate secretary and appropriate staff, trustee and/or decision-making body.

3.2 To the Executive Committee

3.2.1 CAO Efforts

In the event the complainant is not satisfied with the efforts of the CAO to address the complaint, the Executive Committee is to conduct a review of the matter in accordance with clause 3.2.4.

3.2.2 Decision-Making Body Efforts

In the event the complainant is not satisfied with the efforts of an Islands Trust decision-making body to address the complaint, or at the request of that decision-making body by way of resolution, the Executive Committee is to conduct a review of the matter in accordance with clause 3.2.4.

3.2.3 Trustee Efforts

In the event the complainant is not satisfied with the efforts of a trustee to address the complaint, or at the request of that trustee, the Executive Committee is to conduct a review of the matter in accordance with clause 3.2.4.

3.2.4 Executive Committee Review

Executive Committee review is to proceed in the following manner:

3.2.4.1 The Executive Committee should give reasonable and timely notice to persons, including the complainant, who might be affected by the review process.

3.2.4.2 The Executive Committee should advise the complainant of the Executive Committee's limited mandate as appropriate to deal with the complaint.

3.2.4.3 Persons who might be affected by the review should be given an opportunity to provide information to support their positions in addition to the original written complaint of the complainant.

3.2.4.4 A member of the Executive Committee who was involved in the local trust committee land use planning decision, resolution or bylaw complained of, or is the subject of the complaint, is not to take part in the review. The Conflict of Interest Guidelines apply to members of the Executive Committee conducting the review.

3.2.4.5 The Executive Committee, in consideration of the relevant facts, provides advice to staff and, in its scope of authority, should determine, by resolution, its response to the complainant.

3.2.4.6 The Islands Trust Chair should communicate, in writing, the Executive Committee's decision, with reasons, to the complainant, with a copy to the CAO, corporate secretary, and relevant staff and/or decision-making body.

4. Coordination

- 4.1 **Tracking** - The corporate secretary is to maintain a tracking system to ensure attention is being given to all complaints and to monitor communications with the complainant.
- 4.2 **Regular Reporting** - The corporate secretary is to keep statistical and qualitative descriptions of complaints and the results of internal complaint processes, and to report quarterly to the Executive Committee and Trust Council via the CAO.
- 4.3 **Annual Reporting** - The corporate secretary is to provide information on the statistical and qualitative descriptions of complaints, including reviews, to be included in the Islands Trust's annual report.
- 4.4 **Complaint Files** - The corporate secretary is responsible for maintaining files containing documentation related to a formal complaint.
- 4.5 **Complaint Records** - All trustees and staff are to provide a record of discussions and meetings relevant to a formal complaint to the corporate secretary.

D. Legislated References

Ombudsperson Act

Policy and Procedures Manual:

Administrative Fairness Principles (7.1.1)

Bylaw Compliance and Enforcement (5.5.1)

Freedom of Information and Protection of Privacy (7.6.1)

E. Links to Supporting Forms, Documents, Websites, Related Policies and Procedures n/a

PROPOSED

Local Trust Committee Bylaw Compliance & Enforcement Policy

Bylaw Compliance & Enforcement Policy No. 1, effective ____XXX_____, 2024

Version No. 1

Purpose

To establish policies and procedures for bylaw compliance and enforcement in the [\[name\]](#) Local Trust Area in accordance with the adopted Trust Council Policies contained in Policy 5.5.1, ~~and that are within the authority of the Local Trust Committee to enforce, and to ensure that policies and procedures are efficient, transparent, reasonable, and consistent with local community standards.~~

PART A

1.0 Application

This policy will apply to the [\[name\]](#) Local Trust Area and the enforcement of all applicable regulatory bylaws.

2.0 Definitions & Abbreviations

BEN – bylaw enforcement notice [\(as defined in the Local Government Bylaw Enforcement Act\)](#)

LUB – Land Use Bylaw

LTC – Local Trust Committee

Minor structure – any structure that does not require a building permit, and that is not located in a development permit area or located within any other environmentally sensitive area

Respondent – a property owner whose property is subject to a bylaw enforcement complaint

Health & Safety concerns – fire, unsafe construction, hazards relating to steep slopes or cliffs

Approved septic system – one that has been registered with the Vancouver Island Health Authority

3.0 References

[This section will cite references to the relevant LTC bylaws that are affected by the compliance and enforcement policies.](#)

4.0 Priorities

4.1 [This section will contain the priorities established by LTC standing resolutions on bylaw enforcement or the deferrals established in the adopted resolutions.](#)

5.0 Inspection

- 5.1 Bylaw Enforcement Officers are authorized under the Land Use Bylaw to enter any lot at any reasonable time to determine if regulations are being observed.
- 5.2 At the start of any investigation, Bylaw Enforcement Officers will determine if entry is necessary to investigate the alleged contravention or if the investigation can be conducted from a public road or other lands.
- 5.3 Bylaw Enforcement Officers are encouraged to request mutually agreeable times to arrange site inspections and provide 24 hours notice if appropriate.
- 5.4 Investigations into health and safety issues and matters that may cause adverse environmental impact and result in irreversible damage are a priority and may be investigated without notice.
- 5.5 Enforcement on non-compliant short-term vacation rentals is a priority and inspections may be investigated without notice.
- 5.6 Holders of temporary use permits will be held accountable for any violations of their Permit. Bylaw Enforcement Officers may enter properties between the hours of 9:00 am and 5:00 pm, on any day, without prior consultation with the holder of a Temporary Use Permit for the purpose of investigating a complaint.
- 5.7 If a respondent has indicated that they will work towards compliance, and have agreed on a time to comply, a site inspection is only required to confirm compliance.
- 5.8 If a respondent provides photographic evidence, a survey, or a professional report that confirms compliance, a site inspection is not required.

6.0 Enforcement Procedures

- 6.1 If a bylaw contravention is confirmed, ~~r~~there will be notice in writing, and Respondents will be given a minimum of 90 days to comply with the relevant LUBregulatory bylaw.
- 6.2 Bylaw Enforcement Officers can use their discretion to consider any reasonable time to comply request from Respondents but the term cannot be for more than one year.
- 6.3 If there are contraventions in environmentally sensitive areas, or development permit areas, or if there is a risk to health and safety, there will be a demand for the respondent to cease the use or activity immediately.
- 6.4 If the Respondent wishes to consider a planning application that will bring the property into compliance, the Bylaw Enforcement Officer will advise planning staff and they will arrange a meeting to discuss together the feasibility of such an application.
- 6.5 If there is no agreement on time to comply, a Respondent will be provided written notice that enforcement action will be escalated and this may include a request for legal action or the use of the BEN system.
- 6.6 Respondents will be given a Bylaw Warning Notice with a minimum of 45 days to comply before a Bylaw Violation Notice is issued, unless there are health and safety concerns, or contraventions in environmentally sensitive areas, that may require more immediate action.
- 6.7 Bylaw Violation Notices will not be issued more than once per week unless authorized by the Manager of Bylaw Compliance and Enforcement.

7.0 Closing Files

- 7.1 If the identity of a complainant cannot be confirmed during the course of an investigation, or if a complainant used a false name, the file will be closed.
- 7.2 If the contravention is for a minor structure that has only received one written complaint from one person, the file can be closed.
- 7.3 If it is unreasonable for a Respondent to comply, whether due to specific circumstances or finances, Bylaw Enforcement Officers or the Manager of [Bylaw](#) Compliance and Enforcement can use their discretion to close the file.
- 7.4 If a contravention has been identified that is subject to deferred enforcement by the LTC, the file can be closed unless there are contraventions that exist in environmentally sensitive areas or there are concerns about health and safety.
- 7.5 If it is determined during an investigation that the complaint was frivolous, repeat, or vexatious in nature, the Manager of Bylaw Compliance and Enforcement can use their discretion to close the file unless there is work in a development permit area, or work in an environmentally sensitive area, or there are health and safety concerns.

~~The LTC will be notified when any file is closed.~~

8.0 Frivolous, Repeat or Vexatious Complaints

- 8.1 Complaints that are made in bad faith, false, or made for retaliatory purposes may be considered vexatious.
- 8.2 Repeated complaints that form a part of a pattern of conduct by the complainant that amounts to an abuse of the complaint process may be considered frivolous or vexatious.
- 8.3 Frivolous, repeat or multiple complaints about the same issue or a matter that has been investigated with no offence found may be considered vexatious.
- 8.4 If a decision is made to not act upon a complaint that is considered frivolous, repeat, or vexatious, the complainant will be advised of the decision, the reason for it, and may be advised of the circumstances under which it may be reconsidered.

9.0 Communications

- 9.1 When a file is opened and an investigation commenced, ~~r~~Respondents will be advised of the Trust Council Policy that authorized the opening of the file and that an investigation has commenced.
- 9.2 Respondents will receive as much information about complaints against their properties as possible without revealing the identity of the complainant.
- 9.3 If there are questions or concerns regarding individual files, Trustees or the LTC will communicate with the Manager of [Bylaw](#) Compliance and Enforcement.
- 9.4 The Manager of [Bylaw](#) Compliance and Enforcement will arrange public information and education sessions regarding bylaw enforcement when appropriate and time permitting.

10.0 Reporting

10.1 The LTC will receive regular reporting on open files where investigations have been completed, and the reporting will state whether or not enforcement or legal action of any kind is recommended.

10.2 The Manager of [Bylaw](#) Compliance and Enforcement will report to the LTC any concerns, trends, or issues with enforcement that they believe the LTC needs to be aware of.

10.3 The Manager of [Bylaw](#) Compliance and Enforcement will maintain ~~the Bylaw~~ [the Bylaw Compliance and Enforcement Policy](#) and will report to the LTC if amendments are recommended or required.

Bylaw Compliance & Enforcement
Best Practices Manual

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Islands Trust

July-September 2024

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Definitions

Bylaw Notice means a ticket, with penalty, issued under the Local Government Bylaw Notice Enforcement Act

Formal eComplaints are limited to those submitted in writing and directed to the Chief Administrative Officer (CAO).

Islands Trust refers to the following decision-making bodies: Trust Council, a local trust committee and the Executive Committee, as well as trustees or staff.

Ombudsperson Office referrals of complaints should be directed to the [Islands Trust Chief Administrative Officer \(CAO\)](#). Review Bodies include the CAO and the Executive Committee whose roles are explained in Section B.

Respondent means those responding to allegations of bylaw contraventions

Vexatious Complaint means frivolous, repeat or false complaints, or ones made in bad faith that are meant to harass, annoy, or irritate any person, or are for retaliatory purposes.

Roles and Responsibilities

Trustees

- Policy Development and Approval: Trustees of the Islands Trust are primarily involved in the governance aspects, including setting policies that guide bylaw enforcement. They approve bylaws that regulate land use and community planning within the Trust Area.
- Strategic Oversight: Trustees oversee the general strategic direction of the Trust, ensuring that bylaw enforcement aligns with the broader goals of conservation and sustainable community development.
- Community Representation: Trustees also represent the interests and concerns of their constituents in matters related to bylaws and their enforcement, acting as a liaison between the community and enforcement officers.

Staff

- Bylaw Compliance and Enforcement Officers: These are specialized staff responsible for the practical aspects of enforcing the bylaws approved by the Trustees. Their duties include investigating complaints, gathering evidence, and ensuring compliance through educational and regulatory means.
- Planning Staff: While not directly involved in enforcement, planning staff play a critical role in interpreting the bylaws and providing recommendations to both the public and enforcement officers. They ensure that the enforcement practices align with the planning objectives set by the Trustees.
- Administrative Support: This includes staff members who assist in the administration of bylaw enforcement, such as processing complaints, maintaining records, and supporting communication between the public, trustees, and enforcement officers.

Roles in Context

- Cooperation and Communication: Effective bylaw enforcement within the Islands Trust requires ongoing communication and cooperation between Trustees and staff. While Trustees provide the legislative framework and policy direction, staff members carry out these policies through direct enforcement and support roles.

Introduction

What is the purpose of the Islands Trust Bylaw Compliance & Enforcement program?

The **purpose** of the Bylaw Compliance and Enforcement program is to support the object of the Islands Trust to preserve and protect the trust area and its unique amenities and environment for the benefit of residents of the trust area and of the province generally by ensuring compliance with Local Trust Committees' Bylaws. The policy is to establish the procedures for effectively and fairly receiving, reviewing, recording, and responding to bylaw complaints, and addressing possible and confirmed bylaw violations within the Islands Trust. The **goal** of the Bylaw Compliance & Enforcement process is for the violator to gain compliance with these regulations through the relevant action (for example, by moving a structure, obtaining a variance permit, or discontinuing a use that is not permitted).

The goal of the policy is to establish the procedures for effectively and fairly receiving, reviewing, recording, and responding to bylaw complaints, and addressing possible and confirmed bylaw violations within the Islands Trust. The Islands Trust has legal authority to enforce bylaws under several pieces of legislation, primarily the Islands Trust Act and the Local Government Act of BC.

The Bylaw Compliance & Enforcement program **investigates alleged or apparent contraventions** of the land use bylaws of the Local Trust Committees (LTCs) comprising the Islands Trust. The regulations are found in LTC Land Use Bylaws; in Development Permit Areas within Official Community Plans; siting and use permit bylaws for Denman and Hornby; and and in the Salt Spring Island Soil Deposit and Removal Bylaw. For an overview of the BCE Process, refer to the BCE Process Overview Flow Chart.

Islands Trust Council policy 5.5.1 Bylaw Compliance & Enforcement can be found [here](#).

Item B.2.1 of the policy indicates that the Manager of Compliance and Enforcement (Manager) will maintain this best practices and procedures operating manual in accordance with the administrative fairness principles outlined in the [BC Ombudsperson's report "Bylaw Enforcement: Best Practices Guide for Local Governments", March, 2016](#).

What initiates a Bylaw Compliance & Enforcement case file?

Like all local governments [in British Columbia](#), the Islands Trust uses a '**complaint-based**' Bylaw Compliance & Enforcement process. This means that almost all case files result from complaints from individuals in the community. This system gives priority to those bylaw infractions of greatest concern to island communities. There is no residency nor citizenship requirement to be a complainant.

Trust Council's policies also allow a Bylaw Compliance & Enforcement Officer (BCEO) to initiate a case file **without a complaint if:**

- bylaw contraventions appear to cause health and safety issues;
- bylaw contraventions appear to occur in setbacks from water bodies;
- bylaw contraventions appear to occur in development permit areas;
- bylaw contraventions appear to occur as part of a building permit process or other permitting process administered by a local government or the Islands Trust;
- a referral is received from a permitting agency that identifies alleged land use bylaw contraventions associated with the permit request;
- advertisements exist for apparently unlawful uses;
- a Local Trust Committee directs staff to commence an investigation

How can complaints be sent to the Islands Trust?

Anyone who wishes to make a complaint can:

- complete the Bylaw Compliance & Enforcement Complaint form on the Islands Trust web site at <https://islandstrust.bc.ca/mapping-resources/report-a-concern/>;
- send an e-mail to bylawenforcement@islandstrust.bc.ca ;
- mail or deliver a letter to any of the Islands Trust offices;
- complete a [complaint form](#) at any of the Islands Trust offices.

Complaints must be submitted in writing. verbal complaints are not sufficient to open a file. Staff will support anyone with language issues, such as English as their second language or illiteracy, by transcribing the complainant's information.

Confidentiality

Complainants must identify themselves. Anonymous complaints will not be accepted. Every effort will be made to ensure confidentiality to the complainant. However, confidentiality cannot be guaranteed should litigation proceed against the violator or where a request for information is received under Freedom of Information legislation.

Note that we also receive referrals from other agencies (typically regional districts) when they receive a complaint in which that agency recognizes that the nature of the complaint is within the jurisdiction of the Islands Trust.

What is not a complaint?

Many common queries or messages from the public are not complaints [about an unlawful use or activity](#). Some individuals simply want to understand an aspect of the pertinent land use bylaw or OCP. They may be considering taking some action on their property and want to know if the LUB allows such activity. In this case, a case file is not opened.

A sample response:

You can find the Land Use Bylaws for Denman Island here:

<http://www.islandstrust.bc.ca/islands/local-trust-areas/denman/bylaws/>

If you would like assistance in understanding any particular aspect of the Denman Island Land Use Bylaw #186, please call the Gabriola Island office of the Islands Trust to ask to speak with a planner: 250-247-2063 or email denmanplanner@islandstrust.bc.ca

However, if the person is wondering if their issue or concern in regards to a property within the Islands Trust Area is an apparent contravention of a LUB, then it should be treated as a complaint as BCE work or investigation will be required to be able to answer that question. Essentially, all complaints result in a case file being opened.

Note also that once informed of a possible contravention or offence against a Local Trust Committee bylaw, Islands Trust cannot decline to open a case file or decline to conduct an investigation because a complainant has changed their mind. Complainants cannot “withdraw” their complaint as they are not victims of the offence.

Vexatious or Frivolous complaints-

If complaints or complainants are designated as vexatious or frivolous by policy, the decision will be communicated to the complainant in writing, outlining the nature of any restrictions on communications, reasons for the restrictions, and when the restrictions would be reconsidered. Any such restriction does not prevent or limit other necessary contact with staff that is unrelated to the person’s complaints.

How is compliance achieved?

Compliance is sought through a **combination of education, mediation and enforcement** techniques. Bylaw compliance is primarily sought through an attempt to achieve voluntary compliance. Voluntary compliance is indicated by a commitment to corrective action as soon as reasonably possible and the cessation of unlawful activity.

How are Bylaw Compliance and Enforcement case files closed?

Case files can be closed in one or more of the following circumstances:

- if no contravention exists ~~as determined by according to the judgement of the investigating assigned~~ BCEO;
- if compliance has been achieved ~~as determined by the investigating according to the judgement of the assigned~~ BCEO;
- on direction of a Local Trust Committee;
- ~~as directed by Trust Council or Local Trust Committee policies;~~
- if the Director ~~of~~ Planning Services (DPS) concurs with the Manager that the contravention is of a minor character and does not suit the public interest to enforce.

A.-General Bylaw Compliance & Enforcement Practices

1. **All written complaints** directed to the Bylaw Compliance & Enforcement office **are acknowledged and recorded**, whether they result in an investigation file being opened or not. Note that the date of the complaint is the date that Islands Trust receives the complaint. It is not the date on the letter or other paper submitted. It is also not the date that staff review the material. For example, if a complaint is sent on a weekday evening or a weekend when the office is not open, it is not the date that staff return to the office the following day or Monday but rather the date of the submission.

A Tapis file and an e-file on the EDM will be created for all written complaints received with an identified complainant except those that are seen to be malicious. No physical file will be created for complaints to be referred to another agency. A physical file will be created for all other complaints.

2. **A preliminary review of the complaint is undertaken** to identify if the complaint is within the jurisdiction of the land use bylaws for the respective Local Trust Area (LTA).
 - 2.1 If no apparent or potential contravention exists, the Complainant is asked to supply further pertinent information or is advised that no apparent or potential contravention exists and a record of the enquiry filed. The Complainant is referred to the appropriate agency where possible.
 - 2.2 If an apparent or possible violation exists, the Manager of Compliance and Enforcement (Manager) will direct the Bylaw Compliance & Enforcement Administrative Assistant (BCEAA) to open a Bylaw Compliance & Enforcement file and will assign it to a BCEO.

3. On receipt of a file, **the BCEO will conduct a file analysis** to determine the extent of the apparent or potential violation and what may be required to achieve compliance with the bylaw. They may consult with the Manager, Islands Trust planners, and the DLPS or seek legal advice when necessary. If case file analysis cannot begin within 3 working days due to workload, the officer will consult with the Manager.

3.4. [BCEO will review all relevant compliance and enforcement policies that have been adopted by Local Trust Committees or Trust Council.](#)

4.5. Typically, **the assigned BCEO will conduct a site inspection** of the property, the purpose of which is to:

4.4.5.1 establish a relationship with the Respondent.

4.2.5.2 gain an awareness and visual understanding of the property and surrounding neighbourhood.

4.3.5.3 acquire photographs of the property and the possible contravention.

4.4.5.4 gather information such as what has been built on the property, if anything, and/or what is occurring on the property that would draw a complaint. This means asking questions and investigating. BCEOs have the legal authority to conduct an inspection, sometimes with notice, but for most of the land use bylaws, no notice is required. Stating this authority to inspect is the only firm message that a Respondent needs to receive.

5.6. **What BCEOs do not do:**

5.4.6.1 be confrontational, over-bearing or disrespectful.

What is a case file analysis?

Research conducted to answer the following:

- What are the issues relevant to the Islands Trust?
- What does the applicable bylaw state regarding the issue(s)?
- What are the specific circumstances (setback, height requirement, permitted uses, issues of non-conformity, etc.)?
- What questions need to be asked and answered?

~~5.3.6.2~~ issue orders. BCEOs have no authority to issue stop work orders or order a property owner what they can do with their property. Ultimately, only the Local Trust Committee can do this through the passing of bylaws. However, BCEOs can request that all work stop until they have had time to fully review the regulations and investigate the work done, or until the Respondent applies for a permit. Respondents will comply with a request the majority of the time.

~~5.4.6.3~~ give on-site determinations or decisions about contraventions. Making decisions on site can lead to Respondents believing that BCEOs are not reviewing all of the evidence; or are biased; or are pre-disposed to accuse them of a contravention or wrong-doing. As well, BCEOs are not qualified like a biologist, or some other qualified environment professional, to determine if such works are doing environmental damage in a sensitive ecosystem.

~~5.5.6.4~~ issue Bylaw Violation Notices or Bylaw Violation Warning Notices. This may be seen as showing pre-judgement of the facts, can lead to confrontation, and reduces the likelihood of open communication.

~~6.7.~~ When visiting properties, **BCEOs should refrain from making determinations or decisions on the spot.** Respondents should be informed that BCEOs are there to gather information only, and that they will receive a written response regarding their case.

~~7.8.~~ **Compliance and Enforcement for Islands Trust has developed into a multi-stage process** which means there are multiple contacts with Respondents before they receive a determination that they are contravening a land use bylaw. This process reduces conflict with Respondents and encourages voluntary compliance. Progressive discipline or enforcement measures should be followed with a verbal warning, a written warning, and then assess penalties only if necessary or pursue legal action.

~~8.9.~~ Based on evidence collected and a review of the pertinent LUB or OCP, the **BCEO will determine if there is, or has been, a contravention.**

~~8.19.1~~ If no contravention of local trust committee bylaws exists, the Respondent and the Complainant is so advised and the case file is closed.

~~8.29.2~~ If a contravention exists, the Respondent will be asked to cease the activity, land use or construction immediately.

~~9.10.~~ The **BCEO will attempt to achieve voluntary compliance** with the bylaw by negotiation within 90 days if possible. –The BCEO may issue a bylaw violation warning notice (**BWN**) or a bylaw violation notice (**BVN**) in local trust areas where a Bylaw Enforcement Notification (**BEN**) bylaw has been adopted by the local trust committee. See the Bylaw Compliance & Enforcement Notice and Dispute Adjudication section for more detailed information.

~~9.4.10.1~~ If an administrative application such as a land use variance application has been submitted by the Respondent and there is a reasonable likelihood of success, the BCEO will refrain from enforcement during the application process.

~~10.11.~~ **Where activity has not ceased or where compliance is not achieved:**

~~10.4.11.1~~ The BCEO will escalate to appropriate next steps which may include issuing a BVN, sending a ~~Notice of Unpaid BVN~~[Notice of Unpaid BVN](#), sending a demand letter via lawyers, or recommending legal action to the Local Trust Committee.

~~10.211.2~~ If legal action is contemplated, the Director of Planning Services will need to approve a ~~Legal Services Request~~[Legal Services Request](#).

~~10.311.3~~ If injunctive action is recommended by the lawyers, the Manager will present a staff report to the Local Trust Committee and Executive Committee recommending whether or not injunctive proceedings should proceed. The report will include the lawyer's file analysis, the estimated costs for litigation, and the likelihood of success.

~~10.411.4~~ Upon Executive Committee approval, the DLPS, through legal counsel, will initiate legal proceedings.

B. Case File Management Practices

Complete record of activities, communications, evidence, events and reports

BCEOs will include in the Bylaw Compliance & Enforcement case file a record of all pertinent activity including photos from site visits, correspondence (letters and emails) and conversation notes. A Bylaw Compliance & Enforcement case file consists of all material within a physical file folder, electronic documents on the area network (EDM) and [relevant databases](#).

For the management of photographic records, all site visit or site inspection photographs should be placed in a folder documenting the date taken and the identity of the bylaw officer who took the photographs.

Any photographs received from either the complainant or the respondent should be placed in a folder that documents who submitted the material.

Documents – electronic & physical files

Any physical document, received or created, relating to a bylaw investigation will be included in the physical Bylaw Compliance & Enforcement case file folder. Any electronic document, received or created, relating to a Bylaw Compliance and Enforcement case file will be included on the EDM.

Bylaw Compliance & Enforcement case files will be retained as per the Islands Trust Records Management policy. That policy states that the case files are selectively retained after 10 years of being closed. The criteria for retaining case files are whether they set precedents or are significant. Those case files that do not set precedents or are not significant can be deleted (e-files) or destroyed (physical files). At the time of closing a file, the BCEO and the Manager of Compliance and Enforcement will indicate on the physical file their recommendation of retention or destruction. After 10 years of storage, the Manager decides whether to retain or destroy the record.

Public access to records

As Bylaw Compliance & Enforcement files contain confidential information and pertain to law enforcement, a member of the public is required to submit a Freedom of Information and Protection of Privacy [request](#) in order to obtain any information from a file.

Note that Section 19 of the *Local Government Bylaw Notice Enforcement Act* indicates that “Hearings must be open to the public”.

C. Case File Communications Practices

Communications with Complainants

1. When a Complainant completes an [online complaint form](#), they receive an automatic response which thanks them for their complaint and advises them that they will be contacted shortly with an update.
2. Once the complaint has been received and reviewed by the Manager, Complainants are advised whether a Bylaw Compliance & Enforcement case file has been opened (and therefore an investigation will occur); or if their information is added to a currently open file; or if a file is not opened. The BCEAA sends this message (letter or email) using the signature block of the assigned BCEO. If the Complainant has provided an email address, they will be notified by email; if they have only provided a mailing address, they will be notified by mail.

See the Response to Complainant template used when a case file is opened. It is adapted for communication with a Complainant when a file is reopened or there is a currently open file or is not opened.

Note, however, that a complaint received by another agency (typically regional districts) and referred to Islands Trust does not result in a response to the original complainant, as they may not have provided explicit permission to share their personal information (name/ mailing address/email address). As well, there is no need to provide a formal response to the other agency that provided the referral. The BCEO will communicate with that referral agency if appropriate.

3. Complainants will be updated by the BCEO at the time of significant activities such as:
 - a. a file is put on hold (and the reason for the abeyance is provided);
 - b. an LTC decision;
 - c. a file has moved to litigation (and the significance that the identity of the complainant may become public information);
 - d. a file is closed;
 - e. upon request.

Communications with Respondents

1. When a file is opened, the BCEAA will send an email (using the signature block of the assigned BCEO) to the property owner/respondent except when a file is opened which will result in a referral to another agency in which case no communication with the property owner is necessary.
2. Once a BCEO has confirmed by inspection or other means that a contravention of a bylaw has occurred or is occurring, the BCEO will send a letter to the Respondent. This letter includes the following:
 - a. The **reason** the letter is being sent (“Pursuant to my inspection/telephone call of [date]”);

- b. What the **problem** is using a statement of what has been observed;
- c. An **explanation** how the pertinent bylaw is being or has been contravened by quoting the bylaw—including the sections that are being violated and the definitions of words from the bylaw;
- d. Outline of the **solutions** available to comply with the bylaw;
- e. Explanation of the possible **consequences** for not complying;
- f. A **deadline** for taking next step or fully complying—this deadline may have already been negotiated with the Respondent but in any case should be reasonable and not excessive;
- g. Written in an **easily readable** manner including a clear and logical flow.

Communications with Trustees

1. A Local Trust Committee or any individual local trustee is not to be involved in any aspect of the investigation of a complaint or the preparation of any Bylaw Compliance & Enforcement report. However, a local trustee may file a bylaw violation complaint just as any member of the public can.
2. Upon opening a case file, the BCEAA will send an email to the relevant local trustees advising of the general nature of the complaint, the name of the street/road (not the complete address), and the case file number unless the complaint is to be referred to another agency in which case no communication with the local trustees will be made. A print and a PDF of the email will be placed in the file.

Sample Email:

XX Island Local Trustees,

Bylaw Compliance & Enforcement file XX-BE-20XX.X regarding XX [Violation Type] on XX [Road/Street Name], XX Island, was opened today [or on X DATE].

3. The Local Trust Committee will be kept informed about the status of an investigation only at the Committee’s request.

Biannual Reporting to Trust Council

The DLPS submits two reports to Trust Council biannually. These reports will contain information that the local trust committees may place on their LTC agenda if desired. Trust Council reports are reviewed at the Executive Committee meeting prior to the Trust Council meeting.

The two reports presented to every second Trust Council meeting are the Bylaw Compliance & Enforcement Statistical Report and the confidential Bylaw Compliance & Enforcement Litigation Report. These two reports are presented at the March meeting for the reporting period August to December of the previous year and at the September meeting for the reporting period January to July of the same year.

Report	Purpose
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Bylaw Compliance & Enforcement Statistical Report	Provides a summary of ongoing Bylaw Compliance & Enforcement projects as well as statistics for the number of open, new and closed files; the violation types of the open files; and the length of time the open files have been opened.
Bylaw Compliance & Enforcement Litigation Report (In Camera)	Provides the status and other details of current Bylaw Compliance & Enforcement litigation activities (but not legal opinions). This staff report includes the report from the Litigation database in the Local Planning Services section of the Islands Trust applications. Costs are not captured as any financial information needs to be obtained from Finance.

Local Trust Committee Reports

Local Trust Committees may request, by resolution, Bylaw Compliance & Enforcement staff to report on specific issues. Upon such a request, the DLPS will coordinate with the Manager, the relevant BCEO and the RPM on how and when to report.

Communications with Planning Staff

1. The BCEAA will send an email at the time the file is opened to the relevant Regional Planning Manager (RPM), the relevant Planner and the assigned BCEO advising of the general nature of the complaint or alleged contravention, the name of the street/road, and the case file number. A print and PDF of the email will be placed in the file. This email message can be combined with the email to the local trustees.
2. The RPM will be notified of joint investigations conducted with other agencies (including bylaw investigations originating with another agency).
3. The RPM will be advised of any Executive Committee directions to approve litigation.
4. The BCEAA will email the biannual statistical report for Trust Council to the RPMs.

Communications with Potential Property Buyers / Real Estate Agents

Potential property buyers or Real Estate Agents or the general public occasionally contact the Islands Trust Bylaw Compliance & Enforcement office to ask if there are any Bylaw Compliance & Enforcement issues associated with a specific property. The following standard replies from the BCEAA should be used to answer these questions:

If there are No Current Violations:

Thank you for contacting the Islands Trust. I can confirm that there are no current Bylaw Compliance & Enforcement proceedings at XXX Street/Road, XXX Island.

If there are Current Violations:

Thank you for contacting the Islands Trust.

There is a bylaw investigation underway at XXX Street/Road, XXX Island. You may wish to contact the current owner for details.

Please note that once an investigation has been initiated, the disclosure of information by Islands Trust is subject to the *Freedom of Information and Protection of Privacy Act*. If you wish to submit a request under that *Act*, please see this webpage for information: <http://www.islandstrust.bc.ca/how-do-i/make-an-foi-freedom-of-information-request/>.

Note that we do not provide information about previous complaints or investigations. That information would require a Freedom of Information/Protection of Privacy request.

DRAFT

D. Bylaw Enforcement Notices and Dispute Adjudication System

Overview

Local Government Bylaw Notice Enforcement Act

In October 2003, British Columbia enacted legislation providing an alternative approach for processing and resolving minor bylaw contraventions: the [Local Government Bylaw Notice Enforcement Act](#). As well, the [Bylaw Notice Enforcement Regulation](#) provides direction.

Prior to the *Local Government Bylaw Notice Enforcement Act* there were four main strategies used by local governments to deal with a contravention of a bylaw:

1. seek voluntary compliance;
2. issue an “offence notice” for infractions which seeks voluntary payment of a prescribed penalty;
3. issue a municipal ticket information (MTI) and initiate formal court proceedings by swearing an information and issuing a summons;
4. initiate litigation through the Supreme Court.

The legislation is designed to enable the creation of a simple, cost-effective administrative system for enforcing bylaw contraventions. The two main features of this system are a simple “front-end” notification (ticket) process for initiating enforcement, and a locally managed “back-end” venue for a quasi-judicial adjudicator to hear ticket disputes.

Under the *Act*, local governments may establish a local government Bylaw Enforcement Notice and Dispute Adjudication system which replaces the provincial court as the venue for resolving disputes of bylaw contraventions. The *Act*, and the authority it provides to establish an adjudication system, applies to municipalities, regional districts and Local Trust Councils by regulation.

Implementation Bylaw

Section 3 of the *Act* allows a local government to use a notice to impose administrative penalties for designated bylaw contraventions. In order to do so, the local government must pass a bylaw that implements a Bylaw Enforcement Notice and Dispute Adjudication (BEN) system. For an example, see the Galiano Island Local Trust Committee [Bylaw Enforcement Notification Bylaw No. 228, 2011](#).

This bylaw must:

- designate the **bylaw contraventions** that may be dealt with by a bylaw notice;
- establish the amount of the administrative **penalty** for each contravention;
- set the **period** within which a recipient may **pay** the administrative penalty **or dispute a bylaw notice/request a review**;
- establish a bylaw notice **dispute adjudication system** to resolve bylaw notice disputes.

Local government may also include the following in the implementation bylaw:

- establish a position of **Screening Officer** (SO);

- designate classes of persons that may be appointed as SOs and specify their **powers, duties and functions**;
- provide the SO the **authority to enter into compliance agreements** for specified bylaw contraventions and any terms to be included in the compliance agreement;
- establish the **grounds** on which the SO **may reduce the amount** of the administrative penalty;
- establish a means of calculating the **amount of the reduction** of the administrative penalty;
- establish **a fee payable to file a request for adjudication**;
- provide for an **early payment discount** of administrative penalties;
- set out **any additional grounds** on which an SO or adjudicator is authorized **to cancel a penalty notice**;
- set the **period** within which a **recipient must respond** to a SO's decision.

Islands Trust Areas that have adopted a BEN Bylaw:

Ballenas-Winchelsea – Bylaw 34 (adopted 2019)
 Denman – Bylaw 232 (adopted 2019)
 Gabriola – Bylaw 263 (adopted 2012)
 Galiano – Bylaw 228 (adopted 2012)
 Gambier – Bylaw 116 (adopted 2013)
 Hornby – Bylaw 159 (adopted 2020)
 Mayne – Bylaw 156 (adopted 2016)
 North Pender – Bylaw 188 (adopted 2011)
 Salt Spring – Bylaw 446 (adopted 2012)
 South Pender (adopted 2019)
 Thetis – Bylaw 90 (adopted 2011)

Islands Trust Areas that have not adopted a BEN Bylaw:

Lasqueti
 Saturna (pending)

Ownership of Records

All records produced pursuant to the implementation and administration of the BEN system are owned by Islands Trust, which is responsible for preserving these records in accordance with existing obligations imposed by provincial legislation. These records include, but are not limited to:

- copies and records of issued Bylaw Violation Notices (BVNs) and Bylaw Warning Notices (BWNs);
- records of paid administrative penalties;
- copies of adjudicator decisions;
- copies of documents relating to the collection of any unpaid penalty, such as Certificates of Amounts Owed.

Procedures

Management of the Bylaw Enforcement Notice process within TAPIS

The BCEAA and the BCEOs maintain information within the TAPIS database of all Bylaw Violation Notices issued. TAPIS includes a record of:

- BVNs (ticket numbers/issuing officer/date issued/BE file number/respondent name/respondent address/ deadline dates)
- penalty amounts and due dates (including early and late payment amounts and dates);
- compliance agreement dates (request received/signed/final term);
- adjudication dates (requests received/hearing);
- SO decisions and dates;
- Notice of Unpaid BVN dates (sent/received by respondent/ corresponding payment due date);
- Certificate of Amounts Owing dates (issued/suspension deadline/suspension request received/court appearance);
- debt collection dates (sent to and returned from collection agency);
- payment amounts and date received.

The BCEOs are responsible for monitoring of all Bylaw Violation Notices issued and identifying BVNs that are eligible to be moved to the next step in the process. There currently is no ability within TAPIS to search for a BVN or to generate reports of the status of BVNs.

Enforcement of Bylaws with Bylaw Violation Notices

Bylaw Violation Warning Notices (BWN)

A warning notice is an informal tool which may be used instead of a letter.

Warning notices should be issued with a compliance deadline of no less than 45 days prior to a Bylaw Violation Notice being issued. Ideally, a warning letter in the form of a determination letter or demand letter, should be sent first with a compliance deadline of no less than 90 days.

On rare occasions there may be a serious bylaw contravention (such as garbage dumping), and therefore the issuing of a BVN before a warning, but those will have to be dealt with on a case by case basis, and with the consultation and approval of the Manager.

However, for Salt Spring, the enforcement of the Soil Removal and Deposit Bylaw may require that no warnings be issued, especially if dumping and removal occurs when a permit is required and not just registering of the work, and the contravention involves work done within required setbacks from watercourses and waterbodies.

Bylaw Violation Notices (BVN)

A violation notice is a formal enforcement tool. Booklets of BVN tickets are administered by the BCEAA.

When to Issue a BVN

In local trust areas which have adopted a BEN bylaw, a BVN may be issued after any of the following:

- a verbal warning;
- a demand letter;
- a warning notice;
- exceptional circumstances as outlined by the Manager.

Note that BVNs must be written within six months of the occurrence of a contravention.

Commencing the Process

Formal Bylaw Compliance & Enforcement action begins with the completion of a BVN by a BCEO.

The penalty notice informs the recipient of:

- the bylaw contravention;
- the penalty for the contravention; and
- how to pay the penalty or dispute the notice.

A BVN must contain the following information:

- the name of the person;
- the specific bylaw contravention alleged to have occurred;
- the amount of the penalty that the recipient is liable to pay;
- the amount of a discount for early payment;
- the amount of a surcharge for late payment;
- the consequences of failing to respond to the BVN;

- methods of paying the penalty;
- how to dispute the notice.

Although the *Local Government Bylaw Notice Enforcement Act* requires that the above information be included on a penalty notice, local government may organize or supplement this information as they see fit. The penalty notice may also be electronically generated or hand written on a pre-printed form. A BVN is not invalid if it is not signed by the BCEO.

Criteria to consider when deciding to issue a BVN are:

- Might the BVN prompt the recipient to comply with the bylaw? Sometimes subjecting a recipient to any formal procedure, however simple, will encourage compliance. If in the judgement of the BCEO issuing a BVN may result in compliance then it may be appropriate to issue one. In making this decision the BCEO should consider the size of the penalty relative to the potential revenue the violator may collect by continuing the violation or the costs that may be incurred by complying. If either the revenue or the costs are significant some other Bylaw Compliance & Enforcement procedure may be warranted.
- If the likely defence is something that a BCEO cannot easily dispute or there is some complicated argument on a point of law, the BCEO should consider deferring ticket issuance with support from the Manager.
- The notice may not be issued more than six months after the contravention is alleged to have occurred.
- The BCEO should be able to explain the reasons that a BVN was considered an effective enforcement tool in any particular situation where it is utilized.

Delivering the BVN

The penalty notice may be delivered by personal delivery or by mailing it to the person responsible for the contravention.

If mailed, the local government may presume that it was received by the person on the 7th day after mailing. In the event that the intended recipient claims not to have received the BVN, the BCEO must verify the address and reissue a copy of the BVN.

On receipt of BVN

Once the BVN is received or is presumed to have been received, it becomes legally effective. There are four possible scenarios:

- a. The recipient does not respond.
- b. The recipient claims that the BVN was not received.
- c. The recipient pays the BVN.
- d. The recipient disputes the BVN.

a. If a recipient does not respond:

If a recipient does not respond within 28 days they are levied a surcharge for being late in payment. As well, the penalty amount, including the surcharge, is immediately due and payable and can be recovered. In this case a Notice of Unpaid BVN must be delivered to the recipient that indicates the amount owing under the bylaw notice and how and where payment may be made.

Collection procedures may not be started until 28 days after this Notice of Unpaid BVN is received or presumed to have been received.

b. If a recipient claims that the BVN was not received:

If a recipient of a Notice of Unpaid BVN indicates within 21 days after the date the notice is received or presumed received that the BVN was not received, then a copy of the original BVN is reissued and delivered.

c. If the recipient pays the BVN:

- For penalties paid within 14 days of receiving notice, the penalty is reduced by 25%.
- Penalties paid after 14 days are for the full penalty amount.
- For penalties paid more than 28 days after receiving notice, a late payment surcharge of 50% is added.
- Finance clerk needs the BVN information to complete the payment; including the file number and copy of the BVN.
- Bylaw staff need to contact the Finance Clerk before completing any E-Transfers for payment as the security question and password details are required and backup paperwork is required for audit purposes.
- Where a member of the public wants to pay a BVN ticket by E-transfer please do the following:
 - Send them an email and cc accountsreceivable@islandstrust.bc.ca with the information below (blue information adjusted to provide the correct information) and attach a copy of the BVN ticket to the email:
 - As requested, here is the information you need for your e-transfer:
 - Payee: John Doe
 - Amount: \$225.00
 - Security Question: What is the file number?
 - Security Password: GBBE2020 (all caps, no punctuation or spaces)
 - Click on the URL link below when you are ready to proceed. The instructions are provided once the link is open.
 - <http://www.islandstrust.bc.ca/how-do-i/make-a-payment/>
 - Upon our receipt of your e-transfer, you will receive notification that funds have been received by Islands Trust. That notification is your receipt.

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d. If the recipient disputes the BVN:

The person named on the notice has 14 days to request to dispute the penalty notice (BVN). They cannot dispute the BVN after 14 days unless the Manager allows an exception. The

process starts with the recipient of a BVN (typically the property owner) requesting to dispute the BVN. Upon receiving such a request, the BCEAA or BCEO notifies the Manager and indicates whether the request arrived within the two-week “window” after the disputant has received, or is deemed to have received, a BVN.

The *Interpretation Act* has an impact on determining the dates when a notice is deemed received and when a period for responding or paying has come to an end. Note that “at least” 14 days is, in effect, 1 day longer than “within” 14 days. As well, if the resulting due date should fall on a weekend or public holiday when the office is not normally open to the public, then the effective due date is the Monday after the weekend or the next day that the office would normally be open to the public.

DRAFT

Dispute Adjudication of Bylaw Violation Notices

Overview

The BVN Dispute Adjudication system provides for the determination of disputes in respect of whether:

- the contravention alleged in a BVN occurred as alleged; or
- the terms and conditions of a compliance agreement were observed or performed.

A challenge to the validity of the local government bylaw or a claim that enforcement of the bylaw infringed on the Charter Rights of the disputant must be initiated as a separate matter in the Supreme Court of BC.

Also refer to the [Local Government Toolkit for Bylaw Dispute Adjudication](#) presentation which provides detailed information for a local government to implement a dispute adjudication system. The [Local Government Bylaw Notice Enforcement Act](#) and the [Bylaw Notice Enforcement Regulation](#) provide direction as well.

Parties Involved

The process of disputing a notice involves five parties:

1. The Disputant (the individual disputing the notice)
2. The Bylaw Compliance & Enforcement Officer (the Islands Trust employee authorized to issue the notice)
3. The Screening Officer (the Islands Trust employee designated as a Screening Officer under the relevant Local Trust Council's BEN bylaw)
4. The Bylaw Compliance & Enforcement Administrative Assistant (the Islands Trust employee who arranges the dispute adjudication hearing)
5. The Adjudicator (the independent adjudicator with authority to determine if the notice is dismissed or upheld)

General Dispute Procedure

Step One

A recipient of a BVN notifies Islands Trust in writing of their request to dispute the BVN.

They can do this in a number of ways:

1. They can complete and submit the Adjudication Request Form that is on the bottom of the BVN. Forms can be delivered, mailed or faxed to any of the Islands Trust offices on Salt Spring Island, Gabriola Island or in Victoria.
2. The request can also be completed online at [disputing a bylaw violation notice](#).
3. The recipient can send correspondence (letter or email) indicating that they wish to dispute the BVN.

Step Two

An individual will be designated as the SO for the dispute. Normally this would be the Manager except for BVNs issued by the Manager in which case the respective RPM would be the SO. Currently, disputes in the Ballenas-Winchelsea, Denman, Gabriola, Galiano, Gambier, Mayne, North Pender, South Pender and Thetis LTAs are the LTAs that have a BEN

bylaw and the Manager is the officer that is normally assigned to any file opened for that LTA.

The SO will review the BVN, including possible discussions with the relevant BCEO. The SO may request a formal Issuing Officer Report from the BCEO. The SO will review the dispute request and will cancel or confirm the BVN.

Step Three

If the SO confirms the BVN:

- The SO will discuss their decision with the disputant by phone, in person or in writing.
- The SO may offer a Compliance Agreement with the recipient and subsequently reduce or cancel the penalty when the terms of the agreement are fulfilled.

Step Four

If the disputant continues to want a formal dispute adjudication, then the SO:

- requests an Issuing Officer Report (if not already created);
- creates a Screening Officer Report (if not already created);
- provides the two reports to the BCEAA and requests the BCEAA to arrange a formal dispute adjudication hearing.

At the formal adjudication hearing, evidence is presented and the adjudicator decides if an offence did or did not occur.

The Role of the Screening Officer

Screening Officers provide a first opportunity to respond to a BVN dispute in an informal setting. An SO may conduct the review based on discussion or correspondence with the disputant, and will typically explain the process and potential consequences of formal dispute adjudication.

Each Local Trust Committee (LTC) that has adopted a BEN bylaw has also developed an SO policy in order to provide guidelines for SOs during the BVN screening process. SOs are required to provide recipients with a fair opportunity to be heard. They may choose to take notes of their conversation with the recipient. The SO Checklist template provides information in regards to the essential aspects of such a conversation.

The following are some guidelines for SOs that are included in the checklist:

- identify yourself as a Screening Officer;
- clarify that your authority to make a determination is based upon authority granted by the local government;
- listen carefully to the recipient's information and make notes that summarize the information that is provided;
- make a decision to cancel or uphold the notice and explain this to the recipient;
- record your decision in the file.

The Decision of the SO

As stated in Step 2, when a recipient of a BVN requests to dispute it, the SO reviews the BVN and may:

1. **cancel** the notice for various reasons; or
2. **confirm** the notice and either :
 - refer it to an **adjudicator** unless the request for dispute adjudication is withdrawn; or
 - enter into a **compliance agreement** with the person.

The decision of the SO is documented in the Screening Officer Report.

The SO must inform the recipient of the decision. The *Act* does not specify how this is to be done. It could be done orally, if that makes sense in the circumstances. For example, if the penalty notice is to be cancelled, directly informing the recipient of that is probably sufficient. However, if the penalty is being confirmed and the recipient is still expressing dissatisfaction, providing a written notice of the decision would be required.

Cancellation of a BVN

The **SO may cancel a BVN** as prescribed in the LTC cancellation policy if:

- 1) Compliance is achieved
- 2) Is not consistent with established policies
- 3) the contravention did not occur as alleged;
- 4) the penalty notice does not meet the requirements set out in the *Act*;
- 5) the BVN was issued to the wrong person;
- 6) an exception specified in the bylaw or related enactment exists;
- 7) a permit exists which authorises the alleged violation;
- 8) the grounds for cancellation authorized by a local trust committee are satisfied;
- 9) there is poor likelihood of success at adjudication for the Local Trust Committee. For example:
 - a) the evidence is inadequate to show a contravention;
 - b) the BCEO relied on incorrect information in issuing the BVN;
 - c) the BVN was not completed properly.
- 10) it is not in the public interest to proceed to adjudication for one of the following reasons:
 - a) the Bylaw has changed since the BVN was issued, and now authorizes the contravention;
 - b) the offence occurred as a result of a circumstance that made it impossible for the person to reasonably comply with the bylaw.

Compliance Agreement (CA)

The local government may also authorize by bylaw an SO to enter into a Compliance Agreement with a person who has received a BVN.

A Compliance Agreement will include:

- acknowledgement of the contravention of the bylaw and acceptance of the liability for the contravention;

- remedies or conditions on future actions to be performed within a designated period of time;
- a mechanism for confirming that the terms of the agreement have been complied with;
- a reduction or waiving of the penalty at the conclusion of that period if the terms of the agreement are fulfilled; and
- the duration of the compliance agreement.

If a recipient of a BVN enters into a compliance agreement and observes or performs all the terms of the agreement, including payment of the reduced amount, then the amount of the penalty is deemed to have been paid in full.

If the SO believes that the terms have not been complied with, he or she may rescind the compliance agreement. The SO must notify the recipient of that fact by regular mail. Within 14 days of receiving, or presumed to have received, that notice of rescission from the SO, the recipient may pay the penalty or request that an adjudicator determine whether the recipient has complied with the terms of the Compliance Agreement. If the recipient does neither within that period of time, the full penalty plus the surcharge for late payment is immediately due and payable by the recipient to the local government.

Formal Dispute Adjudication

Islands Trust operates its own Dispute Adjudication Registry by contracting directly with the current agency designated by the Province, that being the Ministry of Attorney General (MAG), to provide adjudicators. MAG has created a sub-roster of adjudicators who are comfortable with local government land use bylaws.

Once a disputant confirms that they wish to have a formal Dispute Adjudication Hearing, the Manager or the BCEO will notify the BCEAA who will arrange the dispute adjudication hearing. The Islands Trust adjudication 'package' typically includes the BVN, the request to dispute the BVN, the Issuing Officer Report and the Screening Officer Report. The package is to be sent to the Disputant at least one week prior to the adjudication hearing date. The package is also to be sent to the Adjudicator at least one week prior to the adjudication hearing. Refer to the BCEAA Office Procedures Manual for details.

Adjudicators

The Adjudicator has no discretion to reduce or waive the penalty amount. The Adjudicator also has no jurisdiction to deal with challenges to the bylaw or claims of infringements of rights under the Charter of Rights and Freedoms. The Adjudicator must proceed on the basis that the bylaw is legally valid.

An Adjudicator may not be an employee or an elected official of a municipality and may not hear a matter if he or she is reasonably apprehended to have a bias or an interest in relation to the outcome of that matter.

Adjudication Procedures

Section 18 of the *Local Government Bylaw Notice Enforcement Act* provides some direction in regards to Adjudication Procedures.

For example, the adjudicator must provide the parties to the dispute with an opportunity to be heard:

- in person or by an agent,
- in writing (including by fax or email), or
- by video conference, audio conference, telephone or other electronic means. If the disputant chooses this method, they must pay the LTC the amount by which the LTC's adjudication cost is increased because of this manner of hearing.

Section 19 of the *Local Government Bylaw Notice Enforcement Act* states that "Hearings must be open to the public". The Ministry of Attorney General has confirmed that local governments have total discretion on how to interpret and apply Section 19. They have suggested that this may take the form of online publication or other means of public access depending on the capacity of the local government and the volume of decisions.

Evidence

The technical and legal rules of evidence do not apply and an adjudicator may accept any evidence the adjudicator considers to be credible, trustworthy and relevant to the dispute, including the evidence of any person. The adjudicator may accept evidence in any manner, such as orally, in writing or electronically.

The standard of proof for resolving a dispute is proof on a balance of probabilities.

Determination

The adjudicator can determine one of four possibilities:

1. If the contravention identified in the BVN occurred as alleged (BVN confirmed), the penalty set out in the BVN is immediately due and payable.
2. If the contravention identified in the BVN did not occur as alleged, the BVN is dismissed (cancelled).
3. If the disputant did not observe or perform the terms of the compliance agreement, the penalty set out in the BVN is immediately due and payable.
4. If the disputant did observe or perform the terms of the compliance agreement, the penalty set out in the BVN is deemed to have been paid.

If the disputant fails to appear, the adjudicator must order that the BVN is upheld and that the penalty is immediately due and payable to the LTC. Note that the amount is the full amount of the penalty, not the reduced amount they would have paid if they had paid within the same 14 day window of opportunity. In other words, once the disputant requests formal adjudication and the adjudication hearing is set, the early discount is lost.

Notice of Adjudication Outcomes

An adjudicator who hears a dispute in respect of a bylaw notice or the rescission of a compliance agreement **must provide their written decision to the local government** that issued the bylaw notice,

- (a) for a hearing in person or a hearing by telephone, **within one business day** after deciding the dispute, and

(b) for a hearing in writing, **within 5 business days** after the date the adjudicator receives the written materials for the dispute.

The adjudicator's decision **must be in writing and should include:**

- the name of the disputant;
- the facts relating to the penalty notice;
- a summary of the screening officer's decision;
- the issues raised by the parties;
- a summary of the evidence provided by each party in support of each issue;
- the adjudicator's assessment of each issue; and
- the adjudicator's final decision.

There are no provincial standards for the adjudicator's written decisions and there is no provincial or Islands Trust form to use at this point. Islands Trust can create a form if desired.

The BCEAA will then provide to the Disputant a **Notice of Decision** of the adjudication outcome that:

- identifies the BVN;
- provides the Adjudicator's decision;
- states that the fine that is due and payable;
- states that the administrative fee is also due and payable;
- provides methods of payment; and
- states that if the property remains non-compliant that further BVNs may be issued.

As previously stated, the *Local Government Bylaw Notice Enforcement Act* states that "Hearings must be open to the public" but the *Act* doesn't specifically indicate that the adjudication hearing decisions must be made public. Islands Trust has not developed a best practices in this regards at this point.

Cost

The Islands Trust Registry is responsible for the administrative work and costs of the dispute adjudication system including the remuneration and expenses of adjudicators and the securing of venues. The Islands Trust Registry charges an administrative fee of \$25 payable by a disputant who is unsuccessful in a dispute adjudication. The fee is added to the debt only when and if the disputant is unsuccessful. If the disputant is successful, no fee is charged.

Judicial Review

The determination of an adjudicator is final and conclusive and is not open to review in a court except on a question of law or lack of jurisdiction. If a failed disputant or the Islands Trust believes that the adjudicator exceeded his or her authority, or made an error at law, the person or local government may seek relief in the Supreme Court of British Columbia under the *Judicial Review Procedure Act*. An application for judicial review must be made within 30 days of the adjudication decision.

E. Collection of BVN Penalties

The local government may collect a penalty that has become due and payable, which occurs in the following circumstances:

- the recipient did not pay the penalty within the fixed period of time (28 days) as determined in the applicable bylaw and 28 days have passed since a Notice of Unpaid BVN is received (hand delivery) or presumed to have been received (7 days after mailing);
- the SO confirmed the penalty and the recipient did not seek adjudication;
- the adjudicator ordered that the penalty is immediately due and payable to the local government.

Certificate of Amounts Owning

An amount due and payable to a local government may be recovered by filing a Certificate of Amounts Owning (CAO) in the prescribed form in the Provincial Court. The local government may not obtain a certificate if the amount became due and payable more than two years prior.

The certificate must be signed by the corporate officer or delegate of the corporate officer and must include all of the following information:

1. the details of the bylaw notice, including the date and place of the contravention;
2. the total amount owing and, separately, the amount of the penalty, any surcharges that apply (late payment) and the \$25 fee for adjudication if applicable;
3. the name of the person;
4. the date that the penalty became due and payable;
5. whether the amount outstanding is payable because of:
 - a. a determination of an adjudicator
 - b. a default such as:
 - i. the person not responding to a BVN;
 - ii. the person to whom a copy of a BVN is reissued and delivered does not respond within the required period;
 - iii. the person not requesting adjudication upon receiving notice that the compliance agreement is rescinded;
 - iv. the person who requests or requires a dispute adjudication fails to appear at the adjudication or fails to respond to the adjudication notice.

A Notice letter is mailed to the Respondent (property owner) conveying the CAO. The named person has 30 days from the filing date of this certificate to make an application to the court to suspend it.

Section 26(4) states that a Certificate of Amounts Owning is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Provincial Court for the recovery of a debt.

Registration of Judgments Arising from a Bylaw Notice

Registering a Certificate of Judgment against land owned by a Debtor prevents the Debtor from selling or mortgaging the land unless the debt owed to the Creditor is paid off. A Certificate of Judgment is effective for two years, after which a new Certificate of Judgment must be obtained and filed.

A Certificate of Judgment is obtained from the court registry for a fee of \$30.00. That Certificate of Judgment is registered against the debtor's property for a fee of \$25.00 at the Land Title and Survey Authority. To register a Provincial Court Judgment on title to land, the court registrar signs the bottom half of the "Application Registration" form. The top half of the form is filed in the land title office.

The procedural details (including fees) need to be discussed with the local Provincial Court registry. They may not be familiar with section 26 of the Local Government Bylaw Notice Enforcement Act.

The Legislative Clerks are Commissioners for taking Affidavits and have electronic accounts to file documents (such as covenants and permits) with Land Titles.

To release the registration of the Certificate of Judgment, a Trustee is the authorized signatory for Form C of the Land Title Act, Section 233 – Release, General Instrument.

Bylaw Enforcement Review - Charter v2

Regional Planning Committee (RPC)

RPC Endorsement Date: 02-16-2024

Purpose: To resolve bylaw enforcement matters efficiently and with minimal conflict by reviewing and amending Islands Trust Bylaw Enforcement policies and procedures to be administratively fair, reasonable and transparent with the aim of restoring public confidence.

Background: Islands Trust Council requested that the Office of the Ombudsperson undertake a review of enforcement policies and practices and provide recommendations at the March 2023 Trust Council meeting. In August 2023 the Office of the Ombudsperson's Consultation and Training Team submitted the 'Voluntary Consultation on Bylaw Enforcement Policies and Practices within the Islands Trust' report. At the September 2023 Trust Council meeting directed that the recommendations of the report be implemented, that staff develop a work and project charter and was referred to the Regional Planning Committee.

Deliverables

- Revisions to Bylaw Compliance and Enforcement Policy 5.5.1
- Revisions to the Handling of Administrative Fairness Complaints Policy 7.1.2
- Revisions to Bylaw and Enforcement Best Practices and Procedures Manual ('the Manual')
- A public Bylaw Complaints and Enforcement document
- Updates and revisions to Bylaw Enforcement forms, templates and documents
- Training and information for Bylaw Enforcement Officers and other relevant staff
- Communications team work with planning staff to post regular Bylaw Compliance Review project updates to Islands Trust website.
- Development and review of an LTC Bylaw Enforcement Policy

In Scope

- Review the Report, compile recommendations
- Review current Trust Council policies
- Review the Manual
- Compile and review all LTC bylaw enforcement standing resolutions and policies
- Review selected policies of other relevant local governments
- Report to RPC with proposed revisions for direction
- Provide regular updates and recommended revisions to Trust Council
- Implement changes to policies and practices
- A legal review of draft documents

Out of Scope

- Amendments to bylaws
- Public consultation
- Referrals to LTCs
- External consultants

IAP2 Public Engagement Level:

- Inform
- Consult
- Involve
- Collaborate

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Workplan Overview

Deliverable/Milestone	Target Date
Draft Project Charter to RPC for review and endorsement	Feb 2024
RFD to Trust Council	Mar 2024

<i>RPC review of preliminary policy revisions</i>	May 2024
<i>Briefing to Trust Council</i>	June 2024
<i>Draft policies and manual to RPC for review and changes</i>	Sept 2024
<i>Referral of draft revisions to Ombudsperson's office for comment</i>	Sept 2024
<i>Briefing to Trust Council</i>	Sept 2024
<i>Final RPC review and referral to Trust Council</i>	Nov 2024
<i>Endorsement by Trust Council</i>	Dec 2024
<i>Implementation</i>	Jan – Mar 2025

Project Team	
<i>Stefan Cermak, DPS</i>	Project Champion
<i>Robert Kojima, RPM</i>	Project Manager
<i>Warren Dingman, Manager C & E</i>	Project Manager
<i>Anthony Fotino</i>	RPC Planner
<i>David Marlor, DLS</i>	Advisor
Director Approval: <i>Stefan Cermak</i> Date: 02-16-2024	RPC Endorsement: Resolution #: 2024-001 Date: 02-16-2024

Budget		
Budget Sources: N/A – no budget has been assigned		
*legal review included in scope by RPC 02-16-2024		
Fiscal	Item	Est. Staff hours*
2023-24	Project initiation	20
2024-25	- Preliminary analysis and review	40
	- Drafting of policy revisions	50
	- Final policy	20
	- Updates to manuals and templates	40
	- Implementation	40
	- Contingency	40
	Total	250

*excludes any admin support, attendance at RPC/TC meetings, staff receiving training