

2.4.iv. Policy

EXECUTIVE COMMITTEE LEGISLATIVE ROLE

Trust Council: June 11, 1994

Amended: June 13, 2008

A: PURPOSE:

1. To summarize the Executive Committee's legislative role in relationship to local trust committees and island municipalities.

B: REFERENCES:

1. *Islands Trust Act*
2. Islands Trust Policy Statement
3. Policy Manual:
 - 3.1. Policy Statement Implementation (1.3.i.)
 - 3.2. Bylaw Checklist (5.7.i.)
 - 3.3. Letters Patent of Bowen Island Municipality

C: BACKGROUND:

RELEVANT LEGISLATION

The Executive Committee's general role within the organization of the Islands Trust as provided in the *Islands Trust Act* includes:

- "4 (3) The executive committee is intended to carry out the daily business of the trust, to review the activities of the local trust committees and to act as a local trust committee for the part of the trust area that is not within a local trust area or municipality".
- "21. (1) For the purpose of carrying out the object of the trust, the executive committee must:
- (a) consider bylaws submitted to it for approval under sections 27 (1) and 38 (1),
 - (b) act as a local trust committee under section 23 (5) for that part of the trust area that is not in a local trust area or a municipality, and
 - (c) carry out other duties that the trust council directs."

- "22. (1) If a bylaw is submitted under section 27(1) or 38(1) for approval by the executive committee, the executive committee must
- (a) consider the bylaw,
 - (b) either
 - (i) approve the bylaw,
 - (ii) return the bylaw to the local trust committee or municipal council, as the case may be, giving reasons for the return and directions as to changes to the bylaw that would be required for approval, or
 - (iii) refuse the bylaw, giving reasons for the refusal,
 - (c) notify the local trust committee or municipal council, as the case may be, of its decision within one month from the date on which the secretary received the bylaw submitted under section 27(1) or 38 (1), and
 - (d) as soon as practicable after giving notice of its decision, deliver its decision in writing to the local trust committee or municipal council, including reasons and directions referred to in paragraph (b)(ii) and (iii).
- (2) If the executive committee does not give notice of its decision respecting approval of a bylaw within the time limit established by subsection (1)(c), it is deemed to have approved the bylaw."
- "27. (1) A local trust committee must, before adoption, submit its bylaws to the secretary for approval by the executive committee.
- (2) A bylaw of a local trust committee has no effect
- (a) in all cases, until it is approved by the executive committee or, if a request is made under subsection (3), by the trust council, and
 - (b) in the case of a bylaw adopting or amending a community plan, until it is approved by the minister.
- (3) If the executive committee returns or refuses to approve a bylaw submitted to it under subsection (1), the local trust committee may, by request delivered to the secretary, refer the bylaw to the trust council for approval."
- "38. (1) The council of a municipality, all or part of which is in the trust area, must, before adoption, submit to the secretary for approval by the executive committee
- (a) all bylaws adopting official community plans that apply to land in the trust area, and
 - (b) all bylaws under Part 26 of the *Local Government Act* that apply to land in the trust area to which no official community plan applies.
- (2) A bylaw referred to in subsection (1) has no effect until it is approved
- (a) by the executive committee,
 - (b) on request under subsection (3), by the trust council, or
 - (c) on request under subsection (4), by the minister.

(3) If the executive committee does not approve a bylaw submitted to it under subsection (1), the municipality may, by request delivered to the secretary, refer the bylaw to the trust council for approval.

(4) If the trust council returns or refuses to approve a bylaw referred to it under subsection (3), the municipality may submit the bylaw to the minister for approval and, if this is done, section 16(1)(a) and (b) applies to approval by the minister.”

The Letters Patent incorporating the Bowen Island Municipality contain the following provision:

“14.4 Where, after third reading of a proposed official community plan bylaw and after the Islands Trust executive committee has refused to approve the bylaw submitted under section 38(1) of the *Islands Trust Act*, the municipality requests that the bylaw be referred to the Islands Trust Council for approval as provided in section 38(3) of the *Islands Trust Act*:

- (a) the Council must notify the Minister of Municipal Affairs of the request; and
- (b) the minister may provide advice or direction to assist with the review of the bylaw by the Islands Trust Council, and to determine if the bylaw may be approved by the Islands Trust Council.

14.6 In relation to the consideration of an official community plan bylaw by the Islands Trust, the Islands Trust may only refuse to approve a bylaw on the basis that it believes that the provisions of the proposed bylaw are contrary to or at variance with the trust policy statement, and the municipality may only submit a proposed bylaw to the minister where it believes that the Islands Trust has not reviewed the proposed bylaw correctly with reference to the trust policy statement.”

D: POLICY:

INTERPRETATION OF RELEVANT LEGISLATION

1. Local Trust Committee Activities

- 1.1. Neither the Executive Committee, nor Trust Council, have legislative authority to supervise or direct the activities of local trust committees, except for direction regarding procedural matters as authorized by s. 11 of the *Islands Trust Act*. The Executive Committee discharges its review role under Section 4(3) of the *Islands Trust Act* by observing local trust committee activities, providing recommendations for local trust committee consideration, and providing assistance to local trust committees upon request.

The Executive Committee members perform the above role by:

- i. serving as Chairs of local trust committees to chair meetings and to offer advice.

- ii. recommending legislative initiatives through Trust Council that would apply to local trust committees.
- iii. providing guidelines through Trust Council for consideration by local trust committees.

2. Local Trust Committee and Island Municipality Bylaws

- 2.1. Section 15(4) of the *Islands Trust Act* provides that a bylaw submitted to the Executive Committee must not be approved if it is contrary to or at variance with the trust policy statement.
- 2.2. Section 27(2) of the *Islands Trust Act* provides that a bylaw of a local trust committee has no effect, in all cases, until it is approved by the Executive Committee or the Trust Council itself. Section 38(2) makes equivalent provisions in relation to island municipality bylaws adopting official community plans.
- 2.3. Section 27(3) provides that where the Executive Committee returns or refuses to approve a bylaw submitted by a local trust committee, the local trust committee may refer the bylaw to the Trust Council for approval. Section 38(3) makes equivalent provision for island municipality bylaws adopting official community plans.
- 2.4. The Executive Committee may refuse a Local Trust Committee bylaw (or return the bylaw giving directions as to changes that would be required for approval) under section 22(1)(b) of the *Islands Trust Act*. The *Islands Trust Act* does not address grounds for refusal or return of the bylaw with directions, apart from requiring the Executive Committee to refuse a bylaw that is contrary to or at variance with the trust policy statement. The Trust Council considers, without limiting the jurisdiction of the Executive Committee, that the Executive Committee may also take into consideration whether the adoption of the bylaw would be contrary to the object of the trust; would expose the Islands Trust to unreasonable expense in the administration or enforcement of the bylaw, or would, on the basis of advice from legal counsel, be enacted without legal authority including inconsistency with the relevant Official Community Plan.
- 2.5. The Executive Committee may refuse an island municipality bylaw (or return the bylaw giving directions as to changes that would be required for approval) under section 22(1)(b) of the *Islands Trust Act*. The Executive Committee may, according to the Letters Patent of Bowen Island Municipality, refuse or return an island municipality bylaw only on the basis that the bylaw is contrary to or at variance with a provision of the Trust Policy Statement.
- 2.6. The Executive Committee must give reasons for a refusal or return of a bylaw. The Trust Council is governed by the same precepts in the event it is to consider a bylaw approval under section 27(3).
- 2.7. Under section 8(2)(h) of the *Islands Trust Act*, the Trust Council may assign duties to the Executive Committee. Under section 21(1)(c), the Executive Committee must carry out other duties that the Trust Council directs.