



Regional Planning Committee Minutes of a Special Meeting

Date: January 20, 2025
Location: Electronic Meeting

Members Present: Laura Patrick, Salt Spring Island Local Trustee, Chair
Sam Borthwick, Denman Island Local Trustee, Vice Chair
Mairead Boland, Saturna Island Local Trustee
Aaron Campbell, North Pender Island Local Trustee
Tobi Elliott, Executive Committee Representative
David Graham, Denman Island Local Trustee
Peter Luckham, Thetis Island Local Trustee (Ex Officio)

Member Regrets: Mikaila Lironi, Lasqueti Island Local Trustee

Staff Present: Stefan Cermak, Director, Planning Services
Robert Kojima, Regional Planning Manager
Warren Dingman, Bylaw Compliance and Enforcement Manager
Rob Kroeker, Planning Services Administrative Assistant / Recorder

Others Present: None.

1. CALL TO ORDER

Chair Patrick called the meeting to order at 10:01 a.m. and acknowledged that participants of the meeting were attending all across the territories of the Coast Salish peoples.

2. AGENDA

2.1 Review of the Agenda

The following new item was presented for consideration:

- Discussion of Minutes of the September 4, 2024 Regional Planning Committee meeting

2.2 Approval of the Agenda

By general consent the Regional Planning Committee approved the agenda as amended.

3. PUBLIC COMMENT PERIOD

No members of the public were present.

4. BUSINESS – WORK PROGRAM ITEMS

4.1 Bylaw Compliance and Enforcement Policy Review Draft Manual and Policy 5.5.1 – Request For Decision

Regional Planning Manager Kojima introduced the request for decision, noting that the Regional Planning Committee is reviewing the latest version of the Bylaw Compliance and Enforcement Best Practices Manual, and the additions to Trust Council Policy 5.5.1 that were guided by the Ombudsperson's report. Committee discussion included:

- add the Bylaw Enforcement Pathway flowchart to the Best Practices Manual table of contents under Steps to Compliance
- Trust Council Policy 5.5.1 Bylaw Compliance and Enforcement is the core policy, and should be worked through first
- review from the perspective of an island resident navigating the bylaw process
- the plain language Best Practices Manual should be carefully aligned to Trust Council Policy 5.5.1
- changes to the policy will be tracked and adopted by resolution at the conclusion of the meeting's editing process
- the Ombudsperson's report suggests that policy should be clear and easy to follow
- does Trust Council Policy 5.5.1 set out legal authority for entering property per the Ombudsperson's report?

Director Cermak explained that in policy documents, sources of legal authority are generally not quoted. He noted that section D of the policy contains references and links to the sources of authority for the policy. Committee discussion continued:

- the opportunity for the respondent to be heard and participate throughout the investigative process is a key element of administrative fairness
- under conditions when the bylaws themselves are problematic or are unclear, how will enforcement be approached?
- some Regional Districts exercise discretion and state in policy documents that not all bylaw infractions will be investigated
- enforcement or non-enforcement of certain bylaws is a regular constituent question
- it is not reasonable to expect investigation for every concern
- Local Trust Committees can raise a complaint, close a file, and use discretion to handle contraventions of a minor nature or minimal impact or not in the public interest to enforce

Director Cermak noted that Bylaw Enforcement produces reports twice a year at minimum about the number and type of bylaw contraventions, and Trustees can monitor the proportion of certain bylaw contraventions through this reporting. He said that prioritization for bylaw amendments are up to Local Trust Committees and the work program they decide on. Committee discussion continued:

ADOPTED

- roles and responsibilities are presented differently in Trust Council Policy 5.5.1 than in the plain language Best Practices Manual
- describing Trustees as a liaison is not appropriate for their limited involvement with regard to bylaw enforcement processes
- the plain language Best Practices Manual states that Trustees are liaisons, but elsewhere on p. 17 that they will not be involved in bylaw enforcement process
- under Trustee role, the liaison language can be replaced with: providing oversight through the Local Trust Committee and giving direction to Bylaw Enforcement to be more responsive to community concerns
- under Local Trust Committee role, clarify that they enact bylaws and ensure that the bylaws reflect community values
- ensure that it is clear what Trustees can and cannot do for the public
- the determination letter does not appear in the Definitions section of Trust Council Policy 5.5.1

Manager Dingman explained that the determination letter is where the investigating Bylaw Compliance and Enforcement Officer lays out their findings regarding contraventions. He noted that discussion with the respondent about the contravention has already occurred by the time this letter is issued. Committee discussion continued:

- is the objective of Trust Council Policy 5.5.1 to provide guidance or achieve compliance?
- the objective of the policy is to establish clear procedures, expectations and standards for the bylaw enforcement and compliance program
- frivolous, repeat, or vexatious complaints should be defined where receiving and validating a complaint is addressed in section 2
- new language regarding file opening is more definite and removes the word “may”
- section 2.5 regarding initiating investigations without a complaint must be very clear, addressing discretion and priority
- add that investigations without a complaint are initiated by a Bylaw Compliance and Enforcement Officer to protect staff
- section 3 Investigation and Progressive Enforcement is very long
- section 3.6 on unique circumstances does not fit in the preceding step-by-step description
- the Ombudsperson’s report suggests that equitable enforcement takes unique circumstances into account
- standardize capitalization of respondent and complainant throughout the documents
- what is the role of planning staff in investigating bylaw contraventions?

Manager Dingman said that planning staff provide interpretations of bylaws for some files. Manager Kojima noted that it does not occur on every file, but relies on Bylaw Compliance and Enforcement Officers to bring forward issues encountered during investigation. Committee discussion continued:

- the policy is not explicit on the process of involvement of planning staff in files

ADOPTED

- the insight and perspective of Planners is valuable and different from Bylaw Compliance and Enforcement Officers
- this warrants a collaborative approach to draw from Planners' different familiarity with the islands
- planners support community needs, and bylaw enforcement is concerned with legal opinions and defensibility
- there is benefit to moving standing resolutions into a well-crafted Local Trust Committee Bylaw Enforcement Policy
- Local Trust Committees could request for potentially contentious issues resulting from investigations to be flagged earlier by managers
- a definition of the notice letter should be added to the Trust Council Policy 5.5.1's definitions

Director Cermak pointed out that in section 4.1, a change has been made to clarify that investigations will focus exclusively on the specific alleged bylaw contraventions outlined in the complaint unless other observations pose an immediate risk to public health, safety, or the environment. Committee discussion continued:

- reference to section 4.2 on entry without notice should be added to clarify section 4.1
- legal review of these documents is desirable to ensure the legal validity of policy wording changes
- the *Local Government Act* and case law provides legal authority for site inspections

The meeting recessed for lunch at 12:00 p.m. Trustee Campbell left the meeting at 12:00 p.m.

The meeting resumed at 12:30 p.m.

Regional Planning Committee proceeded to discuss section 5 of Trust Council Policy 5.5.1, Closing Investigations. Committee discussion continued:

- what is an example of section 5.1.4, closing a file when the contravention is minor or not in the public interest to enforce?

Manager Dingman cited the example of small sheds in setbacks, where resources do not exist to pursue the contravention in court. He referenced farm stands, which often have community support, and can be not in the public interest to pursue unless they present a hazard such as by their siting. Committee discussion continued:

- the role of the screening officer is a check and balance in the Bylaw Enforcement Notice system
- the staff member who serves as a screening officer is established in Local Trust Committees' Bylaw Enforcement Notice Bylaws
- the importance of the screening officer role is such that it is surprising that it is not robustly addressed in Trust Council Policy 5.5.1
- transparency and clarity are sought for members of the public reading the policy

ADOPTED

- the screening officer role should be added to Trust Council Policy 5.5.1 section 10
- the documents should see consistent use of the full title of bylaw officers, which is Bylaw Compliance and Enforcement Officer
- is section 6 Discretion and Priority of Investigation sufficient to describe how discretion will be utilized?
- contraventions of Land Use Bylaws and other bylaws are listed as a final priority for investigation
- could this catch-all priority be removed for clarity?

Director Cermak suggested that removing this priority implies that there is no priority to investigate contraventions of the bylaws. He said that the priorities for investigation as written is the order in which resources are assigned. Committee discussion continued:

- some jurisdictions state that there are not resources to address all contraventions, therefore a priority list shows how choices to enforce are made
- discretion is defined in the Ombudsperson's report as the power to choose between courses of action using professional judgment
- a new section on fair investigative approaches and conduct could treat discretion more fully
- the Ombudsperson's guidance is to consider the specific circumstances of the case
- move section 3.6 into a new section titled Investigative Approach and Conduct of Bylaw Compliance and Enforcement Officers
- add principles of accountability, impartiality, integrity, protection, respectfulness and service to complement the required skills of Bylaw Compliance and Enforcement Officers
- the table of policy amendments captured today provides guidance to staff who are empowered to refine precise wording
- the policy is still in draft form and amendments do not need to be moved to be adopted

RPC 2025-001

It was MOVED and SECONDED,

that Regional Planning Committee request staff to make the following changes to the Bylaw Compliance and Enforcement draft Trust Council Policy 5.5.1 as documented in the notes of the January 20, 2025 Regional Planning Committee meeting.

CARRIED

The Regional Planning Committee did not discuss the proposed addition to the agenda regarding Minutes of the September 4, 2024 Regional Planning Committee meeting.

5. NEXT MEETING

The next scheduled meeting of the Regional Planning Committee is February 7, 2025.

ADOPTED

6. ADJOURNMENT

By general consent the meeting adjourned at 1:20 p.m.

Laura Patrick, Chair

Certified Correct:

Rob Kroeker, Planning Services Administrative Assistant / Recorder