

## Re: Serious Procedural Error in Rogers tower siting on Salt Spring Island

**Oona McOuat** <oonasong@yahoo.com>

To: David Marlor

Cc: Stefan Cermak, Elizabeth - M.P. May, Elizabeth - M.P. May

Fri, Aug 26, 2022 at 4:36 p.m.

- Thank you, David. I appreciate your time.
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I see that the attached letter of 2015 states that ISED believes the 1996 Letter of Understanding was outdated and suggests a streamlined approach for antenna siting for the Trust region, which the Trust has slowly been adopting, but I do not see that it states that all existing protocols were to be rendered null and void.

Yes - antenna siting falls under federal jurisdiction but as you know ISED *encourages* local governments to create their own protocols which address local land use related concerns, which the 2001 policy did.

Further, with all due respect - the CPC-2-0-03 outlines the procedures proponents *and local governments* must take in regards to antenna siting. A significant part of that is:

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"proponents must always contact the applicable land-use authorities to determine the local consultation requirements and to discuss local preferences regarding antenna system siting and/or design...." and "proponents must follow the land-use consultation process for the siting of antenna systems, established by the land-use authority, where one exists."

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It appears Trust Staff jumped to a significant conclusion in deciding that the 2001 Salt Spring policy was no longer effective (no longer existed). Especially when it was still being referred to by the Galiano LTC in 2016 and by Crest in 2019.

In regards to Provincial legislation not applying in this matter - why was the decision to adopt this siting policy passed by resolution by the SSI LTC in April 2001 and not sent to ISED for approval - if this was not a matter that was under the jurisdiction of our local government? I believe the Community Charter does apply here, David, and that this land-use related procedural policy could only be amended or revoked by resolution, not by Staff and not by ISED.

Have a good weekend,

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Oona

## Oona McOuat

On Friday, August 26, 2022 at 03:15:17 p.m. PDT, David Marlor <dmarlor@islandstrust.bc.ca> wrote:

Hi Oona

I've attached the letter from ISED.

Also please note that this is not a land use policy, it is a procedural policy of the LTC that was adopted under the original agreement to help guide how applicants for cell towers could engage with the community. As this is Federal, the Provincial legislation does not apply. The process is owned by ISED, not the local trust committee, and ISED processes are requirements for the applicants, not the local trust committees.

David

**From:** Oona McOuat <oonasong@yahoo.com>  
**Sent:** Friday, August 26, 2022 2:50 PM  
**To:** David Marlor <dmarlor@islandstrust.bc.ca>  
**Cc:** Stefan Cermak <scermak@islandstrust.bc.ca>; Elizabeth - M.P. May <elizabeth.may.c1@parl.gc.ca>; Elizabeth - M.P. May <elizabeth.may@parl.gc.ca>  
**Subject:** Re: Serious Procedural Error in Rogers tower siting on Salt Spring Island

Hi David,

Thanks so much for your reply.

I understand that then Industry Canada revoked the 1996 letter of Understanding (attached) which they had with the entire Islands Trust. **When did this take place and is there written documentation of this rescindment and of ISED stating that any policy adopted under that agreement would lapse?**

Clearly, the content of the Salt Spring 2001 antenna siting protocol (also attached) was not dependent upon the 1996 Letter of Understanding. The only reference made to the 1996 Letter is in Section 2 under Details which states that comments from the public would be submitted in compliance with the timeline outlined in the Letter. The 2001 SSI policy and the 1996 Letter of Understanding both refer to the need to comply with the CPC-2-0-03, a policy document which is currently still in place. **Upon what legal basis could then Industry Canada or Trust Staff decide that a policy passed by resolution by the LTC was no longer valid?**

I note that the Galiano Trust - which adopted our 2001 protocol by resolution in 2002 - acknowledged the existence of the 2001 Salt Spring protocol in a Staff report of 2016, and used it in a Rogers tower siting in 2015. Also, CREST referred to the 2001 policy and followed its requirements in its 2019 Blain Road, Salt Spring Island tower application.

Clearly, Trust Staff and/or a federal office may suggest a change in policy, but they cannot legally annul a land use related policy that was passed by a local government by resolution. This would be in non-

compliance with the Community Charter on the part of Staff, and a jurisdictional overreach on the part of the federal government.

If the 2001 SSI antenna siting guideline was not rescinded by resolution by the SSI LTC at the time of the Rogers Channel Ridge tower application as you indicate, then it appears it was a policy error to not follow it in this siting.

I am sorry to keep pushing this, but clearly it has huge ramifications on many fronts if jurisdictionally-sound policy passed by resolution by a local government can be pushed aside at the urging of federal government or any party without the democratic process being followed,

All the Best,

Oona

On Friday, August 26, 2022 at 01:00:15 p.m. PDT, David Marlor <[dmarlor@islandstrust.bc.ca](mailto:dmarlor@islandstrust.bc.ca)> wrote:

Hi Oona

The policy you refer to was adopted in April 2001. When ISED notified us that under the terms of the protocol agreement, they were cancelling the agreement, Staff advised the Local Trust Committee that any policy adopted under that agreement would lapse. So there is not a resolution of the LTC to rescind, but an understanding that the policy was no longer effective.

At that time ISED indicated that local governments and LTCs should adopt new policy on public engagement under their Antenna Siting Policy (CPC-2-0-03). Where local governments had not adopted such a policy, then the default engagement in CPC 2-0-03 would apply.

Therefore with the referenced application, the applicant was advised that there was no local policy and therefore the standard ISED engagement would apply.

**David Marlor** (he, him, his)

Director, Local Planning Services

Islands Trust | T 250 405 5169 |

**From:** Oona McOuat <[oonasong@yahoo.com](mailto:oonasong@yahoo.com)>

**Sent:** Thursday, August 25, 2022 10:55 AM

**To:** David Marlor <[dmarlor@islandstrust.bc.ca](mailto:dmarlor@islandstrust.bc.ca)>

**Subject:** Re: Serious Procedural Error in Rogers tower siting on Salt Spring Island

Hi David,

Just following through with our conversation of August 11th below.

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Have you found support material in meeting minutes showing that the SSI LTC passed a resolution stating that the 2001 antenna siting procedure would no longer be official policy before their November 2021 adoption of the new trust-wide protocol?

Thank You,

Oona

On Thursday, August 11, 2022 at 02:18:11 p.m. PDT, David Marlor <[dmarlor@islandstrust.bc.ca](mailto:dmarlor@islandstrust.bc.ca)> wrote:

Good question. I'll look into it. Thanks.

**David Marlor** (he, him, his)

Director, Local Planning Services

Islands Trust | T 250 405 5169 |

**From:** Oona McOuat <[oonasong@yahoo.com](mailto:oonasong@yahoo.com)>

**Sent:** Thursday, August 11, 2022 12:56 PM

**To:** David Marlor <[dmarlor@islandstrust.bc.ca](mailto:dmarlor@islandstrust.bc.ca)>

**Subject:** Re: Serious Procedural Error in Rogers tower siting on Salt Spring Island

Thanks for your quick reply, David.

Yes - the new Antenna siting policy passed by resolution by the SS LTC in November 2021 did not apply to this siting process, but I believe our previous antenna siting guideline, which was established in April 2001 by resolution, did. The April 2001 policy was attached to my initial message.

I have asked the LTC repeatedly if this 2001 guideline was amended or revoked by resolution by the SS LTC previous to the Rogers application having been received and have received no reply. SS Trust staff has stated that the 1996 Letter of Understanding between the Trust and then Industry Canada was revoked by the feds but Industry Canada could not legally revoke a policy put in place by a local government. I believe our 2001 policy, and not ISED's default procedure, should have been used in this Rogers tower siting.

I am hoping you might be able to clarify this for me, as the SS LTC and Trust staff have not replied to my query, which has been sent in several email messages throughout this siting process. (All available in the public record.)

All the Best,

Oona

On Thursday, August 11, 2022 at 12:40:59 p.m. PDT, David Marlor <[dmarlor@islandstrust.bc.ca](mailto:dmarlor@islandstrust.bc.ca)> wrote:

Hi Oona,

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As this is Federal I'm not clear what you would like me to do with this, other than you have provided it for my information.

With respect to the timing of the adoption of the siting policy by the local trust committees, that occurred after the receipt of the application from Rogers. My understanding is that because the LTC had not adopted the siting protocol before receipt of the application it cannot be applied retroactively to this application.

Please let me know if you are asking for any follow-up from islands trust or just providing this for our information.

Thanks.

David Marlor (he, him, his)

Director, Local Planning Services

Islands Trust | T 250 405 5169

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**From:** Oona McOuat <[oonasong@yahoo.com](mailto:oonasong@yahoo.com)>  
**Sent:** Thursday, August 11, 2022 12:33  
**To:** David Marlor  
**Subject:** Serious Procedural Error in Rogers tower siting on Salt Spring Island

Hi David,

I understand you have taken over Carmen Thiel's responsibilities. Please see the message below,

Thank You!

Oona

----- Forwarded Message -----

**From:** Oona McOuat <[oonasong@yahoo.com](mailto:oonasong@yahoo.com)>

**To:** [Ken.Pungente@ised-isde.gc.ca](mailto:Ken.Pungente@ised-isde.gc.ca) <[ken.pungente@ised-isde.gc.ca](mailto:ken.pungente@ised-isde.gc.ca)>

**Cc:** Peter Grove Islands Trust <[pgrove@islandstrust.bc.ca](mailto:pgrove@islandstrust.bc.ca)>; Peter Luckham <[pluckham@islandstrust.bc.ca](mailto:pluckham@islandstrust.bc.ca)>; Laura Patrick <[patrick@islandstrust.bc.ca](mailto:patrick@islandstrust.bc.ca)>; SSIInfo <[ssiinfo@islandstrust.bc.ca](mailto:ssiinfo@islandstrust.bc.ca)>; [gsjuberg@driftwoodgimedia.com](mailto:gsjuberg@driftwoodgimedia.com) <[gsjuberg@driftwoodgimedia.com](mailto:gsjuberg@driftwoodgimedia.com)>; Elizabeth - M.P. May <[elizabeth.may.c1@parl.gc.ca](mailto:elizabeth.may.c1@parl.gc.ca)>; Elizabeth - M.P. May <[elizabeth.may@parl.gc.ca](mailto:elizabeth.may@parl.gc.ca)>; ELizabeth May <[elizabeth.may.c1a@parl.gc.ca](mailto:elizabeth.may.c1a@parl.gc.ca)>; [francois-philippe.champagne@parl.gc.ca](mailto:francois-philippe.champagne@parl.gc.ca) <[francois-philippe.champagne@parl.gc.ca](mailto:francois-philippe.champagne@parl.gc.ca)>; [ministerofisi-ministredeisi@ised-isde.gc.ca](mailto:ministerofisi-ministredeisi@ised-isde.gc.ca) <[ministerofisi-ministredeisi@ised-isde.gc.ca](mailto:ministerofisi-ministredeisi@ised-isde.gc.ca)>; [Simon.Kennedy@ised-isde.gc.ca](mailto:Simon.Kennedy@ised-isde.gc.ca) <[simon.kennedy@ised-isde.gc.ca](mailto:simon.kennedy@ised-isde.gc.ca)>; [cthiel@islandstrust.bc.ca](mailto:cthiel@islandstrust.bc.ca) <[cthiel@islandstrust.bc.ca](mailto:cthiel@islandstrust.bc.ca)>; [sfast@islandstrust.bc.ca](mailto:sfast@islandstrust.bc.ca) <[sfast@islandstrust.bc.ca](mailto:sfast@islandstrust.bc.ca)>; [drogers@islandstrust.bc.ca](mailto:drogers@islandstrust.bc.ca) <[drogers@islandstrust.bc.ca](mailto:drogers@islandstrust.bc.ca)>

**Sent:** Thursday, August 11, 2022 at 12:26:51 p.m. PDT

**Subject:** Serious Procedural Error in Rogers tower siting on Salt Spring Island

Dear Mr. Pugente,

I am writing in regards to the proposed Rogers telecommunications tower in Channel Ridge Estates on Salt Spring Island.

In your letter of May 17, 2022 (attached) written to Peter Luckman, Chair of the Salt Spring Local Trust Committee, you state

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*“Since the issuance of concurrence, by the Salt Spring Island Local Trust Committee (SS LTC), the only change in circumstances is the SS LTC’s November 9, 2021 adoption of a new antenna siting protocol. Given the date of the policy adoption, it is not to be retroactively applied.”*

And, that the *“SS LTC did not provide any other valid rationale to support the rescindment.”*

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I am writing to provide this valid rationale for rescindment and to report a serious procedural error, which, I believe, renders the original siting process null and void.

Section 4 of ISED’s CPC 2-0-03 states: *“Proponents must follow the land-use consultation process for the siting of antenna systems, established by the land-use authority, **where one exists.**”*

Section 122 (4) of BC’s Community Charter states: *“An act or proceeding of a council is not valid unless it is authorized or adopted by bylaw or resolution at a council meeting.”*

### **Timeline**

- o On **April 26, 2001**, the Salt Spring Local Trust Committee (the **“LTC”**) adopted by resolution the attached *Cellular Antenna Procedural Guideline* for the siting of telecommunications towers.
- o On **July 27, 2021**, the LTC issued a concurrence decision related to the proposed siting of the Rogers Channel Ridge tower. To the best of my knowledge, the April 2001 resolution noted above had not been amended or repealed by the LTC by resolution on or before July 27, 2021.
- o On **November 9, 2021**, the LTC adopted the *“Antenna System Siting Protocol”*. On that date, this new protocol replaced the 2001 policy.

Given the requirements established by ISED in the CPC 2-0-03, I strongly believe the attached *Cellular Antennae Proposal Form* and *Procedural Guideline* should have been used in the siting of the Rogers tower on Canvasback Place. Instead, ISED’s default procedure was followed. **Is this not a serious breach of federal antenna siting regulations?**

As time is of the essence, I would appreciate acknowledgement of receipt of this letter from all parties cc’ed above, as well as a response that clearly addresses my concern,

Yours Truly,

Oona McQuat

Salt Spring Island, BC

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# Oona McOuat

[Oona McOuat.com](http://OonaMcOuat.com)

[Oona's Blog: Dream Deep](#)

[Oona in the Garden Blog](#)

[OneWorldOneHeartBeating.com](http://OneWorldOneHeartBeating.com)

Smile, breathe, and go slowly.~ Thich Nhat Hanh

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