

Governance Committee Special Meeting Agenda

Date: Thursday, August 15, 2024
Time: 9:00 am - 12:00 pm
Location: Electronic Meeting, and a physical location to view the livestream of the meeting:
Islands Trust Victoria Office
#200 - 1627 Fort Street
Victoria, BC V8R 1H8

Pages

1. **CALL TO ORDER**
2. **AGENDA**
 - 2.1 **Approval of Agenda**
3. **CORRESPONDENCE**
 - 3.1 **V. Craig, RDN Chair, RE: Legislative Reform Initiative Update letter dated January 19, 2024** 2 - 10
4. **BUSINESS - WORK PROGRAM ITEMS**
 - 4.1 **Governance Committee Working Group Report Out - Verbal**
 - 4.2 **CAO Comments on the Draft RFD to Trust Council Re: Provincial Review of Islands Trust - BRF** 11 - 15
 - 4.3 **DRAFT RFD to Trust Council Re: Provincial Request for Review of Islands Trust** 16 - 22
5. **NEXT MEETING**

Governance Committee's next regular business meeting is scheduled to be held electronically, Monday, September 9, 2024, beginning at 9:00 AM.

Deadline to receive agenda items for publication for the September 9, 2024, agenda is Tuesday, September 3, 2024.
6. **ADJOURNMENT**

Date: July 25, 2024 **File Number:** 2945-20-06

To: Governance Committee

From: Judith Gedye, Governance Committee Chair, Bowen Island Municipal

Re: UBCM Governance Issues

From: Judith Gedye <jgedye@islandstrust.bc.ca>
Sent: Thursday, July 25, 2024 12:13 AM
To: Governance Committee <GovernanceCommittee@islandstrust.bc.ca>
Subject: Fw: UBCM governance issues

Bowen Council is preparing for the UBCM conference in September - we need to choose workshops and meetings we want to attend - and I am reminded that regional districts have been raising similar issues about increased jurisdiction but not revenues. I thought material received in February would be of interest and attach it here.

Thanks to Laura for reminding me and getting me to look up the response from the Minister to a UBCM committee.
Judi

<https://bowenisland.civicweb.net/document/303706/240119%20Chair%20Vanessa%20Craig,%20Regional%20District%20of%20N.pdf?handle=DC179625FF8443509B1AD004D087A87B>

Judith Gedye | she/her
jgedye@bimbc.ca | jgedye@islandstrust.bc.ca
Nexwéléxwm (Bowen Island) Municipal Trustee | Islands Trust
bowenislandmunicipality.ca | islandstrust.bc.ca | islandstrustconservancy.ca
Territory of Squamish Nation
Preserving and protecting over 450 islands and surrounding waters in the Salish Sea

January 19, 2024

Re: Legislative Reform Initiative Update

Dear Local Government Colleagues:

On September 21, 2023, the Regional District of Nanaimo (RDN), Alberni-Clayoquot Regional District, Fraser Valley Regional District (City of Chilliwack), and Don Lidstone, K.C., hosted an interactive, discussion-based panel session (Legislative Reform Initiative) focused on reform of the *Local Government Act* (LGA) at the UBCM Annual Convention in Vancouver. While the lack of powers for regional districts in the *Act* was a major spark for this initiative, the session was intended for both municipal and regional district officials because many aspects of municipal operations are contained in the *LGA* and municipal issues with the *Act* have been the subject of numerous UBCM resolutions over the years. Similar workshops have been held previously at the Association of Vancouver Island and Coastal Communities' Annual Conventions in 2022 and 2023. Approximately 80-85 people attended the September 2023 UBCM session, indicating a broad interest in this evolving topic.

Concerns about the dated *Local Government Act* have been widespread for some time among local governments. Although the Ministry of Municipal Affairs has made significant incremental changes in the legislation over time, without a comprehensive modernization of the *LGA* regional districts are left without sufficient tools or authority to meet expanding responsibilities or to legislate in key areas in comparison with municipalities. Moreover, the evolving social, political, and economic environments that both municipalities and regional districts operate within, such as climate change, environmental stewardship, and a recognition of the importance of First Nations' participation in regional governance, should be reflected in updated and modernized legislation. A key component of our discussions is that any additional powers or tools granted to local government are opt-in so that local governments can choose to implement tools based on what is best for their area.

The goals of the September 2023 UBCM interactive panel session were:

- to provide context and background about the Legislative Reform Initiative
- to discuss whether to proceed with the Legislative Reform Initiative
- to discuss options for the best path forward to steer the process

Prior to the session, the Ministry of Municipal Affairs provided some background information and several questions to consider during the group's discussion. This material was useful and very much appreciated.

The RDN committed to sending UBCM members a "What We Heard" document summarizing discussion at the session and next steps. We are attaching that document to this letter for your information, as well as the material provided by the Ministry of Municipal Affairs that was considered as part of the September 2023 panel discussion at UBCM. In addition, we are attaching the slide deck presented at the UBCM session.

We encourage other local governments to participate in this important initiative. As indicated in the "What We Heard" document, the RDN is currently following up with UBCM on the possibility of requesting that the UBCM Executive form a working group on this topic. Having letters of support from local governments across the province would be helpful in demonstrating interest. Should you wish to send a letter of support, have any questions, or wish to share examples of legislative challenges stemming from the *Local Government Act*, please contact RDN Chief Administrative Officer Douglas Holmes at dholmes@rdn.bc.ca.

Sincerely,

A handwritten signature in black ink, appearing to read "Vanessa Craig". The signature is fluid and cursive, with the first name "Vanessa" written in a larger, more prominent script than the last name "Craig".

Vanessa Craig
Chair, Regional District of Nanaimo

Encl.

LEGISLATIVE REFORM INITIATIVE: NEXT STEPS
UBCM ANNUAL CONVENTION, September 21, 2023
Summary of Session and What We Heard

SUMMARY OF SESSION

On September 21, 2023, the Regional District of Nanaimo, Fraser Valley Regional District (City of Chilliwack), Alberni-Clayoquot Regional District, and Don Lidstone, K.C., hosted an interactive, discussion-based session on legislative reform. The session was intended for both municipal officials as well as regional district officials because many aspects of municipal operations are contained in the *Local Government Act*.

The goals of the session were:

- to provide context and background about the Legislative Reform Initiative
- to discuss whether to proceed with the Legislative Reform Initiative
- to discuss options for the best path forward to steer the process

The Ministry of Municipal Affairs provided background and several questions to consider during the group's discussion (Attachment 1).

Approximately 80-85 people attended the session, indicating a broad interest in this evolving topic.

Concerns with the dated *Local Government Act* include restrictions on taxation and revenue sources, complexities in establishing services, and the lack of provisions in comparison with Section 8 of the *Community Charter* which gives municipalities powers to regulate, prohibit, and impose requirements by bylaw without provincial approval or establishing bylaws. Regional districts are limited in their legislative authority in comparison with municipalities in several key areas such as business licensing authority (which the province is now addressing as part of its efforts around short-term rental housing), subdivision approval, regulation of fireworks discharge, parking enforcement, tree management, and taxation and funding models. Further, social, political, and economic environments that local governments operate within continue to evolve in areas such as climate change, environmental stewardship, and a recognition of the importance of First Nations' participation in regional governance. These realities should be reflected in a modernized legislative framework.

During the session, Slido polls were used to conduct two "straw polls" of the participants, on these questions: 1) whether or not to proceed with the Legislative Reform Initiative, and 2) whether a UBCM working group or a joint local government project is the best path forward to steer the process.

The majority of participants indicated support for the Legislative Reform Initiative, and indicated their preference would be for a UBCM working group to steer the initiative. These polls were conducted to gain a sense of the sentiments of the session participants only, and are not assumed to represent the views of the UBCM membership as a whole.

WHAT WE HEARD

WHY A COMPREHENSIVE MODERNIZATION EFFORT IS NEEDED

- The Ministry of Municipal Affairs has made important incremental changes in the legislation over time, but a more comprehensive modernization project is needed.
- Extensive downloading of responsibilities from the Province to local governments has exacerbated the problems local governments face; outdated legislation prevents local governments from addressing these issues effectively.
- Over 90% of the province is rural and is not under the *Community Charter*; these areas should not be governed by legislation that was drafted in 1966.
- Regional districts and municipalities have restricted powers where they have delegated authority only, are not constitutionally protected, and have few tools or resources to address local problems.
- Particular challenges with the *Local Government Act* (LGA) raised by participants at this session:
 - responding effectively to emergencies and natural disasters
 - taking measures to mitigate the effects of climate change
 - dealing with old infrastructure and the ability to fund these projects solely through property taxes
 - population growth and migration from cities during the pandemic is rapidly changing the character of rural areas; incoming residents have higher expectations for services
 - incorporation should not be the only other governance option for rural areas; there should be an intermediate step available
 - Electoral Areas lack power and resources
 - business licensing authority¹ and subdivision approval are difficult for regional districts
 - small municipalities and regional districts are unable to fund necessary projects costing millions, such as recycling, dikes, etc., to continue to provide the quality of life that residents cherish in these communities.

CONSIDERATIONS FOR PURSUING LEGISLATIVE REFORM RAISED AT THIS SESSION

- The background and questions provided by the Ministry of Municipal Affairs were very helpful in this discussion.
- Need to identify and list specific, concrete, local community issues and distill them from a 10,000-foot level to provide the Ministry of Municipal Affairs with evidence for the need to modernize the *Local Government Act*.
- Legislative reform should be viewed as supporting the Province, not in conflict with the Province.
- The Ministry of Municipal Affairs should be involved from day one.
- The Ministry should provide funding for this initiative's research and policy work, as they have done for the Northwest Benefits Alliance.

¹ The Province is addressing this as part of its efforts around short term rental housing. Amendments to the *Local Government Act* allow Regional Districts to regulate and licence short-term rentals and other businesses in similar ways to municipalities [see link](#)

- What is working well in the legislation should be left as is.
- If legislative reform is successful in providing new powers and tools for local governments, that does not mean all local governments must use them.
- Islands Trust has an even smaller toolbox than municipalities and regional districts.
- Metro Vancouver has excellent models and best practices, especially in the area of climate change; we can borrow good ideas.
- Local governments need a legislative framework that recognizes the importance of, and facilitates working together with, First Nations in a respectful, effective, and inclusive manner.
- When First Nations participate at the Board level, it changes the conversation and the votes. Local governments often are not well informed regarding Indigenous rights and title.
- The inclusive governance goals in UNDRIP legislation and provincial action plans can be reinforced and worked on concurrently with the Legislative Reform Initiative.
- Need to consider 7 generations into future when modernizing the LGA.
- Planning and land use issues should not be included in this initiative.
- Several participants stressed the need to draft a new charter rather than revise portions of the LGA in a continuation of the “band aid” approach.
- Area associations of UBCM should be included in the conversation.
- A retired CAO or Chair could be a primary resource person for this project, conducting research and policy work and keeping the project on track.

DECIDING WHETHER TO PROCEED WITH THE LEGISLATIVE REFORM INITIATIVE

- **Slido poll #1:** Is there an interest in proceeding with the Legislative Reform Initiative? (96% yes, 4% no)

OPTIONS FOR STEERING AND MANAGING THE LEGISLATIVE REFORM INITIATIVE

Option 1: UBCM Executive could form a working group on legislative reform, comprised of representatives from municipalities, regional districts, First Nations, UBCM, and ministerial staff

Option 2: This could be structured as a joint local government project, with local governments contributing funding to form a working group on legislative reform, comprised of representatives from municipalities, regional districts, First Nations, UBCM, and ministerial staff

Considerations for Option 1:

Pros:

- UBCM has an efficient network, broad reach, consistency, research capacity, and impact with the province.
- UBCM can be representative.
- UBCM has already been doing some work on legislative reform, and has experience.
- UBCM can allocate resources if legislative reform is identified as a priority.
- Reporting back will happen at UBCM.

Cons:

- Last UBCM working group report in 2010 did not meet expectations.
- Some uncertainty on the part of some participants as to how a UBCM working group functions.
- A UBCM working group may be more distant from local governments than is ideal.

Considerations for Option 2:

Pros:

- May insulate the project from getting sidetracked, if the Province does not assist with resources for UBCM.
- With a group of passionate people committed to working together on the project, the Legislative Reform Initiative may not need UBCM.

Cons:

- Challenges with resources and capacity: initiative will require significant buy-in and continued long-term commitment from local governments in terms of funding and staff time.
- Difficult to achieve forward momentum “off the side of the desk”.
- The complex coordination required for the project will be a challenge.

➤ Slido poll #2:

- **Option 1:** UBCM Executive forming a working group (85% in favour)
- **Option 2:** Joint local government project (15% in favour)

NEXT STEPS

- A “What We Heard” document summarizing the session will be distributed to UBCM members.
- It is noted that although there was significant enthusiasm for the initiative, including from areas outside the AVICC region, some representatives indicated they would like additional information on the initiative.

UPDATE: December 2023

Following the UBCM Annual Convention, Douglas Holmes, CAO of the Regional District of Nanaimo had the opportunity to discuss the Legislative Reform Initiative and the September 21, 2023, interactive panel session with Gary MacIsaac, Executive Director, UBCM. Mr. MacIsaac is in the process of seeking direction on this matter from the President’s Committee.

Background and Discussion Questions

The Ministry of Municipal Affairs (MUNI) is committed to listening to local governments about their evolving needs and how the existing legislated framework accommodates new responsibilities and challenges. Much of the legislative agenda sponsored by MUNI in recent years has responded to critical local government needs uncovered as a result of the pandemic and in response to UBCM resolutions. The development of legislative change is a lengthy, complex, and resource intensive process. Therefore, it must be rooted in and supported by a clear gap in existing tools and authorities to fix an identified problem that the current legislation or other tools don't resolve. The mere desire for regional district (RD) legislation alone needs to be tested against a real need, with a clear path on policy development for the province to consider.

Government Priorities

The province has been clear in its priorities and focus on pressing issues of affordability and housing supply – allocating significant resources from both the Ministry of Housing and MUNI to initiatives in this space. That scarce allocation is determined by elected decision makers. The priority on affordability and housing supply also presents an opportunity and recognizes that issues of housing availability and affordability are not just urban issues – and that there is a role for regional approaches to support this work that may require new thinking of how RDs are better able to participate in solutions that will have direct implications for RD regulatory authorities.

In addition, MUNI along with other agencies and ministries, are working on other initiatives that have a direct impact on RD authorities, these include:

- The local government financial review working group, made up of staff from the province and UBCM, where work has been underway to review the local government finance system in B.C., analyzing the recommendations in the 2021 UBCM report, and discussing matters of mutual interest;
- Inclusive regional governance to explore First Nations' interests on RD boards (explore issues such as geographic implications/boundaries of the current RD system and alignment with First Nation territories, election mechanics, and service provision);
- Consideration of business licensing and enforcement authorities for RDs, as previously requested by RDs.

Discussion questions – Are there specific RD challenges and legislative concerns that align with the current provincial priorities? What are the clearly defined problem statements/lack of authority for RDs not already accommodated for?

Other Approaches and Tools

In the past, RD officials have expressed a range of concerns such as lack of regulatory authority – in some cases the authorities in question may exist or it may be facilitated through regulation (recent examples include fireworks and source separation regulations). Other identified concerns relate to some of the fundamental foundations of RD structures and principles – such as the principle that cost-recovery for services being matched with the beneficiaries of the service, or the unique ability of RDs to balance rural and urban interests. Any changes contemplated need to be evidence-based and targeted

and not be change for “a nice to have” versus a particular business or governance need for which a policy rationale exists and no other tools exist.

Discussion questions – given the inherent flexibility in the RD system, are there other tools or approaches that may address challenges that could support RDs in the absence of legislative changes?

Process for further engagement

Given the key and pressing priorities that the province is currently engaged on (e.g., housing and homelessness, climate change and emergency planning, health, and the opioid crisis) there are practical considerations about how the local government system (including municipalities and RDs) will partner and collaborate with the province to address these issues. MUNI remains committed to understanding the broad views and perspectives of local government officials (both regional and municipal) across BC on the issues facing their regions and communities including the need for legislative change. We will take under consideration the results of this session.

Discussion questions – Have inclusive, broad meaningful conversations about RD outcomes and authorities occurred across all RDs? And have those been shared with MUNI? How will RDs organize themselves to ensure that all voices will be heard?

BRIEFING

To:	Governance Committee	For the Meeting of:	August 16, 2024
From:	Interim Chief Administrative Officer	Date Prepared:	August 10, 2024
SUBJECT:	Chief Administrative Officer Comments on the Draft RFD to Trust Council Re: Provincial Review of Islands Trust		

PURPOSE:

To provide the Governance Committee (GC) and Trust Council (TC) with Chief Administrative Officer (CAO) comments on the trustee-prepared draft Request for Decision (RFD) for a provincial review of Islands Trust, in line with Trust Council policy and customary practice. Traditionally, CAO comments are presented directly in the body of an RFD. As staff comments on this particular project are lengthy, comments are provided by way of this separate briefing.

BACKGROUND:

This project was initiated by Trust Council, who has sought recommendation from the Governance Committee on a draft request of the Province. After conversation at its July 2024 meeting, Governance Committee further delegated the initial draft correspondence to a working group. The GC working group consisting of trustees Bernardo, Gauvreau, Harris, and Patrick have met and drafted a RFD for Trust Council along with a proposed letter to the Minister regarding a Provincial Review of Islands Trust. Staff attended one meeting of the working group to share thoughts on strategy and approach for the provincial request, and provided initial edit suggestions to the first draft of a letter that trustees had prepared.

The majority of staff comments provided in this briefing reflect advice already shared with the GC working group, with some supporting detail, shared now with the larger recommending body (Governance Committee) as well as the decision-making body (Trust Council). Staff comments are informed by a high-level review of historical successful requests of the province for action or change, a high-level review of historical responses from the Province to Islands Trust's requests for action to understand the types of questions that are generally asked of us, and by conversations with provincial staff.

There are several factors staff recommend Trust Council consider when determining a strategy to approach the Province for a provincial review:

1. Timing

The draft RFD seeks Trust Council's approval of a draft letter to the Province at its September 2024 meeting and very shortly thereafter, the sending of the approved letter to the Minister. Staff understand this timing represents as a strategy to make a provincial review of the Islands Trust an election issue for candidates running in the upcoming October provincial election. If this is the intent, staff recommended that Governance Committee make this a formal recommendation to Trust Council by way of resolution, and that

Trust Council provide clear direction to staff to redirect advocacy and communications resources to advancing this initiative within this desired timeframe should it accept the GC's recommendation.

Staff recommend Governance Committee and Trust Council consider the proposed timing in light of the provincial interregnum period that takes place from September 21 – November 2, 2024. During this period no decisions can be made by the provincial government. As such, any letter from Islands Trust will remain largely untouched. Given this, Trust Council may wish to make use of the extra available time to more deeply analyse the issues identified in its letter, and its approach in making this request of the Province, to ensure its greatest chance of success. In addition, it is unknown at this juncture which political party's(ies) will form government, and Trust Council may wish to tailor its messaging to align with the stated values and priorities of the new government. A request made post-election also ensures Trust Council can address its letter to the correct Minister, who may change post-election.

Trust Council will need to consider protocol agreements and memorandums of understanding with other bodies that may affect timing of this provincial request, which include the following:

- The [Islands Trust Council/Bowen Island Municipality Protocol Agreement](#) section 5.1 states the following: *"After consultation with the other party, either Party will provide written notice respecting requests for the federal, First Nation and Provincial governments to enact legislation that may affect the activities of the other party relative to the Bowen Island Municipality."* Trust Council needs to consider if its request to the Province represents a 'request' 'to enact legislation'. Staff are not aware that any consultation on this project has taken place with Bowen Island Municipality to date.
- The [Islands Trust Council Bylaw No.86](#) section 4.1 states the following: *"Where the Executive Committee of the Council considers that a legislative proposal that is to be submitted to the Council may have an impact on the responsibility of the Board, the Executive Committee will refer that draft legislative proposal to the Board for comment. The Executive Committee will consider Board comments on the legislative proposal before the legislative proposal is submitted to the Council"*. Trust Council needs to consider if its request to the Province resembles a 'legislative proposal'. Staff are not aware of any assessments that may have been made to determine the impact this request on the responsibility of the Islands Trust Conservancy Board, nor of any comments received from the Board for consideration.

The third resolution proposed in the draft RFD seeks that Trust Council give direction to Executive Committee and staff to develop a communications strategy 'in advance of the elections' related to the provincial request. If Trust Council passes such a resolution at its September 24-26, 2024 meeting, and the election is taking place on October 19, 2024, this leaves just three weeks to develop said strategy, a limiting factor associated with this particular proposed resolution.

2. General Approach

Staff understand that some trustees are hopeful that the draft RFD and draft letter will result in a unanimous vote of Trust Council on the same resolution passed by Trust Council in 2022, without major amendment. Staff understand there is hope this approach will add weight to the request to the Province, clearly demonstrating that this term's Trust Council shares exactly the same concerns as last term's Trust Council. Staff do not share concern that a reworded resolution may take away from the gravity of the message conveyed to the Minister if such a rewording is necessary to provide clarity on the request of Trust Council.

Staff recommend that, even if proposed resolutions remain unchanged from 2022, further clarity on issues raised in the letter are provided to inform the draft letter and/or future conversation with the Province. Analysis on any given topic might include things such as:

- ~ Identifying and providing evidence of specific examples of the Islands Trust Act preventing Trust Council or other Trust bodies from achieving an objective or advancing the Islands Trust Object,
- ~ Identifying and providing evidence of specific examples of how the Islands Trust Act is creating gaps in the Islands Trust's ability to address the current-day issues of greatest importance to the Trust Area,
- ~ Identifying non-legislative options at Trust Council's disposal to address the noted 'challenges of our time' and communicating to the Province why these options are not viable or are ineffective.
- ~ A review of prior legal opinions or provincial correspondence of relevance to the topics noted in the request may provide supporting evidence of insufficient authorities resulting from the Islands Trust Act.

From a review of previous provincial responses to legislative change requests and conversations with provincial staff, staff understand that Islands Trust requests to the Province for legislative change are generally most successful when they include specific requests supported by a well-argued rationale with evidence. Generally, where feasible and appropriate, concrete suggestions for amendments have expedited provincial dialogue and action. Staff note that working group trustees are recommending against providing solutions, preferring instead to have the Province provide these options themselves.

Staff acknowledge the advice to do conduct further research to inform the request of the Province is at opposition with advancing a letter as quickly as possible.

3. Selection of Letter Topics and their Development

Staff have not weighed into the selection of topics that are included in the attached draft letter, respecting trustee desire to retain political control over this arena. Staff supports Trust Council in decision-making on this matter by providing advice on how these politically selected topics might be most strongly presented to the Province, in an effort to support Trust Council achieving success with its request. Staff provide the following comments for consideration:

Alignment with DRIPA:

This section of the draft letter speaks to both collaborative decision-making with Indigenous Governing Bodies, as well as reconciliation activities within the Trust Area.

Regarding reconciliation activities in the Trust Area, the draft letter indicates that "advancing meaningful reconciliation in the Trust Area" is "unattainable to Trust Council under its current funding model". With regard to advancing meaningful reconciliation within the current legislative framework, staff note that Council-approved Reconciliation Action Plan budgets have historically not been fully spent, which may weaken this argument as currently presented. The Province will be aware of this given they approve Islands Trust financial plans and annual reports. Currently, Islands Trust is making some progress advancing relationships and agreements with several First Nations who have opened dialogue with us, and recently secured \$150,000 in provincial funding to support First Nations engagement. Due to factors such as these, it may not be clear to the Province what exactly is at issue in this particular topic as it is presented. As such, Trust Council may wish to consider and state clearly how the requested provincial review might improve or expedite its work in this topic area. Staff believe a funding request to the Province associated with enhancing the Trust's work in the area of reconciliation has a good probability of success if appropriately presented, as this is a topic of shared interest with the Province.

Regarding a desire for collaborative decision-making arrangements with Indigenous Governing Bodies (IGBs), Trust Council may wish to consider whether requesting that the Province, in consultation with Trust Council, consider agreements under section 7 of DRIPA with Indigenous Governing Bodies could achieve its desired outcome related to this topic. Legislative Services staff are best placed to advise Trust Council on this subject if exploring this idea is of interest. Understandably, there are alternative approaches to advancing collaborative decision-making with IGBs, including those that may be achieved through legislative change, that Trust Council may wish for the Province to examine and comment on directly.

Governance Structure:

In 2007, Trust Council requested that the Minister amend the Islands Trust Act to provide for four locally elected trustees in the Salt Spring Island Local Trust Area, with each sitting as a full voting member of Trust Council. The Minister conducted a referendum on increasing the number of locally elected trustees, which was defeated. As such, the Islands Trust Act was not amended to accommodate any part of this request. Reminding the Minister that there have been historical requests to increase elected voices in more densely populated areas may highlight that this has been a long-standing, still unaddressed, consideration of Trust Council. Trust Council may wish to review the response from the previous Minister in relation to this historical request to inform the approach it wishes to take in raising this particular issue.

Funding Model:

Currently, a separate project lives on the Executive Committee projects list to “develop a strategy to request additional funding from the Province, including revisiting the provincial grant funding formula to the Islands Trust”. It is unclear to staff if this project remains a priority of Trust Council given this topic is touched on in the draft letter to the Province. If this project is to remain a priority that will ultimately result in a separate request to the Province, staff suggest acknowledging this in the letter to the Province. Trust Council’s allocation of its own resources towards examining a topic of concern demonstrates the issue is of paramount importance to Islands Trust and will lend weight to the argument that the Province should dedicate resources to assisting us.

Optimum Model & Geographic Scope, particularly related to Marine Areas:

The draft letter is structured in such a way that each bullet in the proposed resolution receives a high-level descriptive paragraph further in the body of the letter, with the exception of the bullets on “an assessment of the optimum governance model” and on “the geographic scope of the organization and in particular authority over marine areas”. Staff recommend including paragraphs describing these topics to align with the structure of the rest of the letter.

4. General Considerations:

Language Alignment with the Islands Trust Act: Staff note that the draft RFD states that the Trust’s mandate is “to develop and administer land use regulations for the express purpose of preserving and protecting the islands of the Salish Sea”. The Islands Trust Act states the Trust’s mandate is to “to preserve and protect the trust area and its unique amenities and environment...”. Staff recommend consistency of language with the Islands Trust Act when referring to the organization’s mandate. This consistency is already present in the draft letter to the Province.

Signatories: As spokesperson for Islands Trust, the Chair of Trust Council signs Trust Council communications. The draft letter instead includes space for the signatures of all trustees who vote in favour of the proposed resolutions which deviates from standard practice and policy, and also poses a problem in that three resolutions are cited in the draft letter. It is possible a trustee will vote in favour of one but not all proposed resolutions.

5. Draft RFD Implications:

Staff comment on the implications of the draft RFD recommendations:

ORGANIZATIONAL: If Trust Council approves the recommendations, and indeed this project becomes an election issue with a thoughtful communications strategy, staff time will need to be redirected to advance this work, deal with media inquiries, prepare speaking notes and materials for publication, etc. Should the Province respond to the Islands Trust seeking more detail or additional information, further time will be required to keep the dialogue moving forward efficiently. Prioritization against other strategic plan projects will need to be determined, as with any other work directed by Trust Council. It is unknown at this time if and how this request of the Province might influence the Minister's review and approval of a revised Policy Statement bylaw and the Islands Trust Conservancy Five-year Plan.

FINANCIAL: There is no costs associated with sending a letter. Financial costs may be incurred to support a communications strategy that would accompany the letter, depending on the scope of the exercise.

POLICY: No implications to current policy as a result of the recommendations. If the Province enacts changes to the Islands Trust Act, Trust Council policies would require review and potential update to ensure compliance with any new legislative regime.

IMPLEMENTATION/COMMUNICATIONS: Implementation of the recommendations in the draft RFD would involve the following steps: sending of a Trust Council approved letter would be coordinated by staff and the Chair of Trust Council; a communications strategy would be developed by Executive Committee with staff; Trust Council spokesperson would be prepped to respond to media inquiries if any are received.

FIRST NATIONS: The implications of this request to Islands Trust's relationship with First Nations is unknown as no engagement with First Nations has been undertaken in regards to this request.

OTHER: Trust Council should consider potential existing commitments to cooperate with other bodies on development of legislative change requests within protocol agreements and memorandums of understanding with other bodies such as those mentioned above related to the Bowen Island Municipality and the Islands Trust Conservancy Board.

ATTACHMENT(S): None.

FOLLOW-UP: Staff may update its advice to Trust Council based on discussion or recommendations that come from the Governance Committee at its meeting on August 15, 2024.

Prepared By: Interim Chief Administrative Officer



REQUEST FOR DECISION

To: Trust Council (proposed) **For the Meeting of:** September 24-26, 2024 (proposed)

From: Governance Committee (proposed) **Date Prepared:** August 8, 2024

SUBJECT: Provincial Review of Islands Trust

RECOMMENDATION:

1. That Trust Council request the Lieutenant Governor in Council for the Province of British Columbia to conduct a review of the Islands Trust's mandate, governance and structure.
2. That Trust Council make the request by submitting the letter attached as Appendix 1 to the Lieutenant Governor under Section 8(2)(e) of the *Islands Trust Act* outlining the potential scope of a review, including, but not limited to:
 - a) An assessment of the optimum governance model to preserve and protect the Trust area pursuant to the Province's vision for the future of the Trust area.
 - b) The object of the Islands Trust Act and clarification of the mandate of the organization.
 - c) The governance structure of the organization.
 - d) The alignment of decision-making processes and structures with the Declaration on the Rights of Indigenous Peoples Act.
 - e) The geographic scope of the organization and in particular authority over marine areas.
 - f) The funding mechanisms provided to the organization in light of a clarified mandate.
3. That the Executive Committee of Trust Council in conjunction with the Staff develop a communications strategy that informs the public of Trust Council's request for a comprehensive review of the *Islands Trust Act* and the reasons for it in advance of the next Provincial election.

CHIEF ADMINISTRATIVE OFFICER COMMENTS:

See item 4.2 "CAO Comments on the Draft RFD to Trust Council Re: Provincial Review of Islands Trust" contained in the August 15, 2024 GC Special Meeting agenda package.

1. BACKGROUND:

The purpose of this Request for Decision is to implement this Trust Council's repeated intention, most recently reiterated at its June 2024 meeting, to seek a Provincial review of the Trust's mandate, governance and structure.

It has been 50 years since the *Islands Trust Act* came into force and 37 years since it was last reviewed by the Province.

The Trust's unique statutory mandate is to develop and administer land use regulations for the express purpose of preserving and protecting the islands of the Salish Sea. Fulfilling that mandate has become increasingly difficult over the past 50 years as the challenges facing the Trust have become ever more complex. Paramount among these challenges is the need for Trust decision-making to take into appropriate account the rights and interests of the Coast Salish Peoples for whom the Trust Area has been home since time immemorial. The current legislative scheme, however, does not equip the Trust to address this, and other, vital aspects of its mandate.

The previous Trust Council recognized the problem and that there is an urgent need for a review of the Act to ensure the Trust is fit for purpose in the 21st century.

- On June 21, 2022, Trust Council passed two resolutions that were essentially the same as Resolutions 1 and 2 above.
- On July 8, 2022, the Chair wrote to the then Minister of Municipal Affairs to convey Trust Council's request that the Province conduct a review of the Islands Trust's mandate, governance and structure. The Chair's letter emphasized that the Trust required Provincial leadership, direction, and resources to address the new realities and challenges facing the Trust.
- On September 23, 2022, the Minister replied with a letter that was not responsive to the Trust Council's request for a systemic review. Instead, the Minister encouraged the Trust Council to address its concerns by utilizing its existing authorities. Moreover, the Minister stated that since elections were imminent, the ministry wished to "understand the perspectives and opinions that the newly elected Trust Council has on the requested review."

This Trust Council has been in office for almost two years. After facing the same structural limitations, it has reached the identical conclusion as last term's Trust Council: without structural change the Trust cannot meet the challenges of our time.

The Governance Committee has prepared the draft letter attached as Appendix 1 with a view towards urging a Provincial review similar in scope to the work undertaken by the select committee that recommended the creation of the Trust in the first instance over 50 years ago. This time, however, it is essential that the many Indigenous Governing Bodies with historical relationships with the lands and waters of the Trust Area be fully involved not only as participants, but also as partners in the development of the review process itself. The Governance Committee anticipates that concerted advocacy for this level of Indigenous engagement will be a major component of the communications strategy proposed by Resolution 3.

The Governance Committee asks that Trustees bear the following two points in mind when deliberating on the merits of this Request for Decision.

1. The governance review submitted by Great Northern Management Consultants in February 2022 was not concerned with the structural issues this Request for Decision is intended to address. That review was strictly limited to examining “the policies and processes by which the work of the organization is directed and managed, not the framework of the legislation which enables the authority and limitations on authority of the organization.” This Request For Decision does not supersede the findings of that internal review. The Governance Committee expects the Trust Council will continue the important work of implementing solutions to the operational impediments identified by the consultants.
2. The Trust is not alone in recognizing that the evolving and expanding nature of its responsibilities requires the modernization of its underlying legislation. The Regional District of Nanaimo has reached much the same conclusion regarding the need to modernize the *Local Government Act* to help regional districts and municipalities meet their new challenges. Attached as Appendix 2 is a letter from the Nanaimo Chair to other local governments that provides context for the Legislative Reform Initiative that is being spearheaded by the Regional District of Nanaimo.

2. IMPLICATIONS OF RECOMMENDATION

ORGANIZATIONAL: None.

FINANCIAL: None

POLICY: None.

IMPLEMENTATION/COMMUNICATIONS: To be coordinated with the Province.

FIRST NATIONS: The Province is the lead for First Nation engagement and consultation.

OTHER:

3. RELEVANT POLICY(S):

4. ATTACHMENT(S):

RESPONSE OPTIONS

Recommendation:

Alternative:

Prepared By: Trustee Bernardo, Trustee Gauvreau, Trustee Harris, Trustee Patrick

Reviewed By/Date:

DRAFT

The Honourable Anne Kang
Ministry of Municipal Affairs
PO Box 9056
STN PROV GOVT
Victoria BC V8W 9E2

Dear Minister Kang,

RE: Request for Provincial Review of Islands Trust

We write further to the previous Minister's letter of September 23, 2022, responding to our request for a provincial review of the Islands Trust mandate, governance and structure.

In his letter, the Minister noted that local government elections were imminent and asked that the incoming Trust Council provide its perspective on the requested review. After nearly two years in office in which we have faced the same structural limitations as the previous Trust Council, we can advise that we have reached the same conclusion: without systemic change the Islands Trust cannot meet the challenges of our time. Accordingly, at its September 24-26, 2024 meeting, Trust Council affirmed its support for the original request made under section 8(2)(e) of the *Islands Trust Act* by [unanimously] resolving:

1. *That Trust Council request the Lieutenant Governor in Council for the Province of British Columbia to conduct a review of the Islands Trust's mandate, governance and structure.*
2. *That Trust Council make the request by submitting the letter attached as Appendix 1 to the Lieutenant Governor under Section 8(2)(e) of the Islands Trust Act outlining the potential scope of a review, including, but not limited to:*
 - a. *An assessment of the optimum governance model to preserve and protect the Trust Area pursuant to the Province's vision for the future of the Trust area.*
 - b. *The object of the Islands Trust Act and clarification of the mandate of the organization.*
 - c. *The governance structure of the organization.*
 - d. *The alignment of decision-making processes and structures with the Declaration on the Rights of Indigenous Peoples Act.*
 - e. *The geographic scope of the organization and in particular authority over marine areas.*
 - f. *The funding mechanisms provided to the organization in light of a clarified mandate.*
3. *That the Executive Committee of the Trust Council, in conjunction with staff, develop a communications strategy that informs the public of Trust Council's request for a comprehensive review of the Islands Trust Act and the reasons for it in advance of the next Provincial election.*

Trust Council asks that as the Minister responsible for the Islands Trust you advance our recommendation to the attention of the Lieutenant Governor in Council for decision.

Trust Council identified challenges

The Islands Trust's unique statutory mandate to "preserve and protect the trust area and its unique amenities and environment" has become increasingly difficult to fulfill as the challenges it faces have become ever more complex. The *Islands Trust Act* is 50 years old and has not been systemically reviewed by the Province in 37 years, creating gaps in the Islands Trust's ability to address the current-day issues of greatest importance to the Trust Area. If the Islands Trust is to deliver effective solutions to these challenges its enabling legislation requires reexamination and, where necessary, amendment.

Alignment with the Declaration on the Rights of Indigenous Peoples Act

It is of paramount importance that Islands Trust decision-making processes appropriately acknowledge the rights and interests of the Coast Salish Peoples for whom the Trust Area has been home since time immemorial.

Advancing meaningful reconciliation in the Trust Area demands that 13 Local Trust Committees, the Islands Trust Conservancy Board, and Trust Council engage with the 27 Indigenous Governing Bodies that have interests in the Trust Area. This is an undertaking of enormous scope that requires significant financial and staff resources that are unattainable under the Island Trust's current funding model. Additionally, while Trust Council has authority to engage in coordination agreements under section 9 of the *Islands Trust Act*, the statute does not provide a framework for Trust Council to develop collaborative decision-making arrangements with Indigenous Governing Bodies.

Governance

The *Islands Trust Act* establishes a governance structure under which Trust Council is given responsibility for allocating resources and approving all Local Trust Committee legislative decisions. This generates an inherent tension between the Island Trust's federal model and the principle of representation by population that is fundamental to democratic accountability. We fully understand that in creating a body with equal representation from all areas, the Province wished to emphasize the importance of having Trust Council focus on the Trust Area as a whole. However, the assignment of equal voting power to each Trustee ignores the extreme discrepancies in voting populations by Local Trust Area, with the result that greater voting power per capita is allocated to the least populated Local Trust Areas than to the more densely populated ones that provide the greatest financial contribution to Islands Trust operations.

In making this observation, Trust Council is not critiquing the Province's 1974 decision that established the Islands Trust's current governance arrangement. We are asking that the Province reassess whether the arrangement remains appropriate in light of the Trust Area's modern day challenges.

The Object of the Trust

Section 3 of the *Islands Trust Act* mandates preservation and protection of the Trust Area and its "unique amenities" and environment. The undefined term "unique amenities" has led to competing interpretations of the meaning and scope of the Islands Trust's jurisdiction and has generated chronic division among trustees and the public. As a consequence, Trust Council deliberations are persistently troubled by inconclusive debates about the relative importance and prioritization of environmental protection versus the facilitation of flourishing of human communities. In order to function effectively, Trust Council needs the Province to provide a clearer definition of the Islands Trust object.

Funding model

The Islands Trust exists to preserve and protect the Trust Area not only for the benefit of its residents, but for all British Columbians. The Islands Trust's funding model, which sees property taxes generated

only from Trust Area property owners as the primary source of revenue for its operations, does not reflect this statutory acknowledgement. Moreover, provincial funding to the Islands Trust under the Regional District Basic Grant program is based heavily on area population, which fails to recognize the true extent of the Islands Trust's beneficiary base.

Islands Trust Governance Review

The previous Minister's September 23, 2022 letter referenced implementation of the recommendations that emerged from the Islands Trust's most recent governance review as a means to address some of the emerging concerns and pressures identified by Trust Council.

That review, however, was limited to assessing "the policies and processes by which the work of the organization is directed and managed, not the framework of the legislation which enables the authority and limitations on authority of the organization". As such, Trust Council does not regard the proposed actions discussed in the governance review as germane to our recommendation that the Province undertake a comprehensive review of Islands Trust's legislative scheme.

To be clear, Trust Council remains committed to weighing and, where appropriate, implementing the recommendations that emerged from the governance review. We have established a Governance Committee as a standing committee responsible for advising Trust Council on governance related matters. Trust Council has also made progress advancing more robust corporate planning practices, and is taking steps to improve meeting procedures and facilitate structured decision-making. A program of extensive internal reform, however, is a necessary complement to, but not a substitute for, the systemic reassessment of the *Islands Trust Act* that only the Province can undertake and the organization urgently needs.

Moving Forward

Although the Ministry has introduced legislative amendments from time to time over the years, the challenges that now confront the island communities of the Trust Area require more than incremental change. The Islands Trust operates in a dynamic context in which continually evolving environmental, social, and economic concerns cannot be separated from each other, and it is an open question whether a federal model remains appropriate for advancing the Islands Trust's preserve and protect mandate. If so, it is far from clear that a governance structure that centralizes authority in an undemocratic Trust Council can be justified given modern expectations of accountability.

Addressing the need to establish meaningful collaboration with Indigenous Governing Bodies in Trust Area governance and other current challenges requires changes to the Islands Trust's enabling legislation. It is beyond the capacity of the Islands Trust to develop amendments of that magnitude. More fundamentally, it falls to the Province, not the Islands Trust, to define the policy direction of any systemic changes. In that regard, only the Province can lead: first by confirming its vision for the Trust Area in consultation with the Islands Trust, Indigenous Governing Bodies, the communities of the Trust Areas and other stakeholders; and, then, by working with Trust Council to develop the amendments to the *Islands Trust Act* that will give the Islands Trust the structure and authorities necessary to fulfill that vision.

It is Trust Council's strong recommendation that the Province conduct a comprehensive legislative review similar in scope to the work of the select committee that led to the creation of the Islands Trust 50 years ago. This time, however, it is essential that the many Indigenous peoples with interests in the lands and waters of the Trust Area be involved through their governing bodies not only as participants in the

review, but also as partners in the development of its terms of reference. We look forward to your response.

Respectfully and on behalf of the Trust Council of the Islands Trust,

[insert signature lines for all Trustees who voted in favour]

cc:

[Lieutenant Governor]

[Premier]

[relevant Indigenous governing bodies]

[relevant Regional Districts]

DRAFT