



Islands Trust Council

Committee of the Whole Meeting Agenda

Date: Tuesday, May 6, 2025
Time: 5:30 p.m. - 8:30 p.m.
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. TERRITORIAL ACKNOWLEDGEMENT	
3. APPROVAL OF AGENDA	
4. ADOPTION OF MINUTES / RESOLUTIONS WITHOUT MEETING	
4.1 <u>Draft Committee of the Whole Trust Meeting Minutes of February 6, 2025</u>	3 - 8
These minutes were deferred from the February 21, 2025 Committee of the Whole meeting. For review and adoption.	
4.2 <u>Draft Committee of the Whole Trust Meeting Minutes of February 21, 2025</u>	9 - 13
For review and adoption.	
4.3 <u>TC COW RWM 2025-01 Schedule Meeting</u>	14 - 14
Receive for information.	
4.4 <u>TC COW RWM 2025-02 Cancel March 31, 2025 Committee of the Whole Meeting</u>	15 - 15
Receive for information.	
4.5 <u>TC COW RWM 2025-03 Cancel April 15, 2025 Committee of the Whole Meeting</u>	16 - 16
Receive for information.	
5. FOLLOW UP ACTION LIST	
There are currently no items on the Follow Up Action List (FUAL). All previous items on the FUAL related to the draft Policy Statement Amendment Project have been moved to the Trust Programs Committee FUAL.	
6. BUSINESS	

6.1 Islands Trust Mandate - Discussion

6.1.1 Background 17 - 18

6.1.2 How did the September 2023 statement come about?

Trustees Gedye and Bernardo to review how the September 2023 statement was prepared.

6.1.2.1 Islands Trust Council Statement on the Scope and Meaning of Section 3 of the Islands Trust Act (Object Clause) 19 - 20

6.1.2.2 Publicly Released Legal Opinion 21 - 24

6.1.3 How do we understand the mandate?

Roundtable discussion. Each trustee reflects and discuss.

6.1.4 Next steps

Recommendation to Trust Council on next steps (if any)

7. CLOSED MEETING (If needed)

8. RISE AND REPORT

9. NEW BUSINESS

10. NEXT MEETING

The next scheduled Committee of the Whole meeting will take place electronically on May 13, 2025 at 1:00 p.m.

11. ADJOURNMENT



Trust Council Committee of the Whole Minutes of a Regular Meeting

Date: February 6, 2025
Location: Electronic Meeting

Executive Members Present:

1. Tobi Elliott, Acting Chair, Vice-Chair, Gabriola Trustee
2. Peter Luckham, Trust Council Chair, Thetis Trustee
3. Timothy Peterson, Vice-Chair, Lasqueti Trustee
4. David Maude, Vice-Chair, Mayne Trustee

Members Present:

5. Sue Ellen Fast, Bowen Municipal Trustee
6. Judith Gedye, Bowen Municipal Trustee
7. Sam Borthwick, Denman Trustee
8. David Graham, Denman Trustee
9. Lisa Gauvreau, Galiano Trustee
10. Susan Yates, Gabriola Trustee
11. Joe Bernardo, Gambier Trustee
12. Mikaila Lironi, Lasqueti Trustee
13. Jeanine Dodds, Mayne Trustee
14. Jamie Harris, Salt Spring Trustee
15. Laura Patrick, Salt Spring Trustee
16. Mairead Boland, Saturna Trustee
17. Kristina Evans, South Pender Trustee
18. Dag Falck, South Pender Trustee
19. Ken Hunter, Thetis Trustee

Members Regrets:

20. Ben Maberley, Galiano Trustee
21. Kate-Louise Stamford, Gambier Trustee
22. Alex Allen, Hornby Trustee
23. Grant Scott, Hornby Trustee
24. Aaron Campbell, North Pender Trustee
25. Deb Morrison, North Pender Trustee
26. Lee Middleton, Saturna Trustee

Staff Present:

Rueben Bronee, Chief Administrative Officer
Julia Mobbs, Director, Finance and Employee Services
David Marlor, Director, Legislative and Information Services
Clare Frater, Director, Trust Area Services
Stefan Cermak, Director, Planning Services
Joe Elliott, Senior Indigenous Advisor
Jason Youmans, Senior Policy Advisor
Lisa Millard, Meeting Administrator/Recorder

Others Present: There were no members of the public in attendance.

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1. CALL TO ORDER / LAND ACKNOWLEDGEMENT

Acting Chair Elliott called the meeting to order at 5:32 p.m.

2. TERRITORIAL ACKNOWLEDGEMENT

Acting Chair Elliott acknowledged that the meeting was held on the territory of the Coast Salish First Nations.

3. APPROVAL OF AGENDA

By general consent the agenda was approved as presented.

5. FOLLOW UP ACTION LIST

4.1 Committee of the Whole Follow Up Action List

The Follow Up Action List was received for information.

Director of Trust Area Services Frater summarized feedback received from Quw'utsun First Nation representatives regarding the Islands Trust Policy Statement process.

5. TRUST AREA SERVICES

5.1 Hazard Risk Mitigation and Management Policy - Request for Decision

The Senior Policy Advisor summarized draft Policy 3.4.6 and noted the following:

- Committee of the Whole previously requested alternative wording suggestions for directing development away from hazardous areas versus managing development;
- The *Local Government Act* requires that hazard areas are addressed in Official Community Plans;
- The language of directing development away from hazard areas comes from the existing Trust Policy Statement;
- The term “restrict” is used in the *Local Government Act* and is what the Provincial Government says local governments must do in relation to hazard areas.

Trustee Gauvreau arrived to the meeting at 6:20 p.m.

Discussion ensued and the following comments were recorded:

- The term “restrict” does not mean prohibit, is very specific, is often used within the framework of larger regulations, and is often assumed to mean prohibit;
- Wildfire is a natural hazard risk and should be used in place of term “fire”;
- There are different types of fire including wildfire, accidental, prescribed, and cultural, and all can be hazardous;
- The term regulate seems to infer enforcement, and actions that are regulated are thought to be monitored;
- Definition of the term “restrict” is required to ensure it is clear it does not mean prohibit; and
- The term “restrict” does not appear anywhere else within the document.

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Trustee Falck left the meeting at 6:40 p.m.

TC-COW-2025-009

It was MOVED by Trustee Evans, and SECONDED by Trustee Peterson, that Committee of the Whole recommends to Trust Council that the word “fire” in Policy 3.4.6 of the Islands Trust Policy Statement amendment be replaced with the word “wildfire.”

CARRIED

It was MOVED by Trustee Evans, and SECONDED by Trustee Borthwick, that Committee of the Whole recommends to Trust Council that after the word “restrict” in Policy 3.4.6 of the Islands Trust Policy Statement amendment add the words “but not necessarily prohibit”.

TC-COW-2025-010

It was MOVED by Trustee Dodds, and SECONDED by Trustee Peterson, that Committee of the Whole table the motion.

CARRIED

TC-COW-2025-011

It was MOVED by Trustee Patrick, and SECONDED by Trustee Yates, that Committee of the Whole recommends that Trust Council revise proposed Directive Policy 3.4.6 to read:

Hazardous Areas

Identify areas at elevated risk of natural and climate change-related hazards and restrict development within them including, but not limited to, areas subject to flooding, sea-level rise, erosion, slope instability and wild fire.

CARRIED

TC-COW-2025-012

It was MOVED by Trustee Evans, and SECONDED by Trustee Peterson, that Committee of the Whole recommends to Trust Council to request staff to add a definition of the word “restrict” with the meaning to not necessarily prohibit to the glossary.

CARRIED

Trustee Borthwick left the meeting at 6:56 p.m.

Trustee Fast left the meeting at 6:57 p.m. and returned at 6:58 p.m.

Trustee Borthwick returned to the meeting at 7:04 p.m.

5.2 Draft new Policy Statement Redline version - For Discussion

Discussion ensued on the redline version of the Draft Policy Statement and the following comments were noted:

3.4.10 – Short-Term Rentals

- It is important to balance tourism needs with the social and environmental well-being of a community;

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- Location, quantity, and density of short-term rentals should be taken into consideration when assessing impacts; and
- Eliminating short-term rental units does not necessarily increase long-term rental unit availability; however, the short-term rental business impacts long-term rental rates.

Trustee Lironi left the meeting at 7:10 p.m.

3.4.11 – Floor Area and Lot Coverage Limits

- The correlation between lot coverage and greenhouse gas emissions is not clear, nor is the method of how a local trust committee would determine appropriate floor area and lot coverage limits for the purpose of minimizing greenhouse gas emissions;
- Floor area and lot coverage limits are relevant to environmental impacts because a larger floor area necessitates more clearing and tree removal;
- Many properties that have a small dwelling also have several outbuildings resulting in similar impacts to the natural environment;
- The proposed language originated from a previous Trust Council’s discussion about seeking ways to demonstrate action on climate change;
- Maximum floor area coverage can be split over multiple dwellings situated on one property; and
- There is value in specifying land use for agricultural purposes outside of the Agricultural Land Reserve.

The meeting was recessed for a break at 7:22 p.m. and reconvened at 7:28 p.m.

Trustee Falck returned to the meeting at 7:45 p.m.

TC-COW-2025-013

It was MOVED by Trustee Benardo, and SECONDED by Trustee Evans, that Committee of the Whole recommend to Trust Council to amend Policy 3.4.11 of the Islands Trust Policy Statement amendment so it reads “Determine appropriate floor area and lot coverage limits for residential development to minimize negative environmental impacts.”

TC-COW-2025-014

It was MOVED by Trustee Patrick, and SECONDED by Trustee Evans, that Committee of the Whole amend the motion by adding “and negative impacts on agricultural land” to the end of the sentence.

CARRIED

Trustee Harris joined the meeting at 7:55 p.m.

TC-COW-2025-015

It was MOVED by Trustee Peterson, and SECONDED by Trustee Evans, that Committee of the Whole amend the amendment by changing “and negative impacts on agricultural land” to read “including on land used for agricultural purposes.”

CARRIED

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The question on the following motion, as amended, was then called:

that Committee of the Whole recommend to Trust Council to amend Policy 3.4.11 of the Islands Trust Policy Statement amendment so it reads “Determine appropriate floor area and lot coverage limits for residential development to minimize negative environmental impacts, including on land used for agricultural purposes.”

CARRIED

Discussion ensued about the order of debate, and when to propose motions, during future Committee of the Whole meetings and the following points were noted:

- Trust Council policy dictates one cannot speak to a motion until it is seconded;
- All changes and wordsmithing should be done prior to a motion being seconded, or prior to proposed language being put on the table as a motion; and
- Allow discussion first, identify issues and goals, and then propose a motion.

3.4.12 Housing Diversity

- A housing agreement is a tool and if a policy is needed to state how that tool is used said policy could read “ensure that housing agreements used to secure affordable and/or special needs housing are flexible to accommodate changing resident, market and funding conditions”;
- Housing agreements seem to be prescriptive versus flexible; and
- Housing agreements are very prescriptive as per the *Local Government Act* and staff could be asked to report back regarding the ability for them to be flexible.

TC-COW-2025-016

It was MOVED by Trustee Graham, and SECONDED by Trustee Yates, that Committee of the Whole recommend to Executive Committee to request staff bring back options:

- to explain housing diversity;
- some policy options that encourage alternative approaches to rural residential density;
- some policy options that encourage alternative types and forms of buildings to the traditional wood-frame;
- clustering residential development in appropriate locations;
- potential for flexibility in housing agreements; and
- to provide advisory policy options and analysis that supports consideration of downzoning for development that is not in the best interest of community.

CARRIED

- 6. CLOSED MEETING** - None
- 7. RISE AND REPORT** - None
- 8. NEW BUSINESS** - None
- 9. NEXT MEETING**

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Trustees Bernardo, Dodds, and Hunter left the meeting at 8:30 p.m.

Discussion ensued.

TC-COW-2025-017

It was MOVED by Trustee Graham, and SECONDED by Trustee Yates, that Committee of the Whole adopt the following meeting dates and times through June, 2025:

1. Friday, February 21 (1:00 - 4:00 p.m.)
2. Thursday, March 6 (1:00 - 4:00 p.m.)
3. Monday, March 31 (1:00 - 4:00 p.m.)
4. Tuesday, April 15 (1:00 - 4:00 p.m.)
5. Tuesday, May 6 (5:30 - 8:30 p.m.)
6. Tuesday, May 13 (1:00 - 4:00 p.m.)
7. Thursday, May 29 (1:00 - 4:00 p.m.)
8. Friday, June 6 (1:00 - 4:00 p.m.)
9. Monday, June 30 (1:00 - 4:00 p.m.)

and that all meetings be held electronically.

CARRIED

10. ADJOURNMENT

By general consent the meeting was adjourned at 8:40 p.m.

Tobi Elliott, Acting Chair

Certified Correct:

Lisa Millard, Meeting Administrator/Recorder

Minutes are not official until adopted at a subsequent meeting.



Trust Council Committee of the Whole Minutes of a Regular Meeting

Date: February 21, 2025
Location: Electronic Meeting

Executive Members Present:

1. Peter Luckham, Trust Council Chair, Thetis Trustee
2. Tobi Elliott, Vice-Chair, Gabriola Trustee
3. David Maude, Vice-Chair, Mayne Trustee
4. Timothy Peterson, Vice-Chair, Lasqueti Trustee

Members Present:

5. Kristina Evans, Acting-Chair, South Pender Trustee
6. Sue Ellen Fast, Bowen Municipal Trustee
7. Sam Borthwick, Denman Trustee
8. David Graham, Denman Trustee
9. Kate Louise Stamford, Gambier Trustee
10. Mikaila Lironi, Lasqueti Trustee
11. Deb Morrison, North Pender Trustee
12. Jamie Harris, Salt Spring Trustee
13. Laura Patrick, Salt Spring Trustee
14. Mairead Boland, Saturna Trustee

Members Regrets:

15. Judith Gedye, Bowen Municipal Trustee
16. Susan Yates, Gabriola Trustee
17. Lisa Gauvreau, Galiano Trustee
18. Ben Maberley, Galiano Trustee
19. Joe Bernardo, Gambier Trustee
20. Alex Allen, Hornby Trustee
21. Grant Scott, Hornby Trustee
22. Aaron Campbell, North Pender Trustee
23. Jeanine Dodds, Mayne Trustee
24. Lee Middleton, Saturna Trustee
25. Dag Falck, South Pender Trustee
26. Ken Hunter, Thetis Trustee

Staff Present:

Rueben Bronee, Chief Administrative Officer
Clare Frater, Director, Trust Area Services
Stefan Cermak, Director, Planning Services
Joe Elliott, Senior Indigenous Policy Advisor
Jason Youmans, Senior Policy Advisor
Robert Barlow, Legislative Services Clerk
Lisa Millard, Meeting Administrator/Recorder

Others Present: There was one member of the public in attendance.

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1. CALL TO ORDER

Acting Chair Evans called the meeting to order at 1:12 p.m.

2. TERRITORIAL ACKNOWLEDGEMENT

Acting Chair Evans acknowledged that the meeting was held on the territory of the Coast Salish First Nations.

3. APPROVAL OF AGENDA

By general consent the agenda was approved as presented.

4. ADOPTION OF MINUTES

4.1 Draft Committee of the Whole Meeting Minutes of December 12, 2024

By general consent the Committee of the Whole Meeting Minutes of December 12, 2024 were adopted.

4.2 Draft Committee of the Whole Meeting Minutes of January 8, 2025

By general consent the Committee of the Whole Meeting Minutes of January 8, 2025 were adopted.

4.3 Draft Committee of the Whole Meeting Minutes of February 6, 2025

Adoption of the February 6, 2025 meeting minutes was deferred to the next meeting.

Trustee Morrison left the meeting at 1:29 p.m. which resulted in the number of participants being less than quorum.

The Committee of the Whole meeting was suspended at 1:29 p.m.

Committee of the Whole quorum was reestablished and the meeting resumed at 1:55 p.m.

5. FOLLOW UP ACTION LIST

5.1 Committee of the Whole Follow Up Action List

Received for information.

6. TRUST AREA SERVICES

6.1 Hazard Risk Mitigation and Management Policy - Request for Decision

Item 6.1 was addressed at the February 6, 2025 meeting.

6.2 Draft new Policy Statement Redline version - For Discussion

Discussion ensued on the redline version of the Draft Policy Statement and the following comments were noted:

3.4.16 – Road Systems

- Local trust committees and island municipalities often include current and future trail networks, bus routes and roads on maps in their Official Community Plans to facilitate

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zoning decisions and support grant applications, yet local trust committees do not have authority over the construction or establishment of highways;

- Moving roads away from shorelines due to ocean rise and storm damage, which can mitigate sloughing into the ocean, might be contemplated;
- Island road loops encourage people to drive onto and around an island and then drive off and this impacts small rural communities; therefore, consideration of designing road systems for residents while minimizing ease of vehicle tourism could be considered;
- The Policy Statement might reflect a general principle about how roadways are established; and
- The jurisdictional inability of Islands Trust to establish speed limits was noted.

Discussion moved to item 3.4.14 – Public and Active Transportation Networks and the following comments were recorded:

- Policy that solely directs movement to electric vehicles is not necessarily desirable;
- In future, there may be alternative forms of transportation that are not fossil fuel dependent;
- Desire is to encourage alternative, environmentally, friendly vehicles; and
- The main issues are carbon dioxide emissions; and encouragement of low emission or zero emission methods of transportation.

TC-COW-018

It was MOVED by Trustee Fast, and SECONDED by Trustee Elliott, that Committee of the Whole request Trust Council amend draft Trust Policy Statement Item No. 3.4.14 by replacing the term “electric vehicles” with term “zero emission modes of transportation”.

CARRIED

Trustee Luckham and Trustee Elliott left the meeting at 2:14 p.m. which resulted in the number of participants being less than quorum.

The Committee of the Whole meeting was suspended at 2:14 p.m.

Committee of the Whole quorum was reestablished and the meeting resumed at 2:23 p.m.

Trustee Peterson left the meeting at 2:38 p.m.

Discussion continued on item 3.4.16 – Road Systems and it was determined to ask staff to come back with further information for future consideration.

TC-COW-019

It was MOVED by Trustee Elliott, and SECONDED by Trustee Fast, that Committee of the Whole request Executive Committee request staff come back with policy options regarding identification of parts of the local transportation network at risk of damage, degradation, deterioration, and erosion and options for their mitigation or relocation.

CARRIED

Trustee Peterson returned to the meeting at 2:51 p.m.

Directive Policies - Waste

Committee of the Whole identified the following issues:

- Waste has to be removed from the islands;
- There is a need for transfer and recycling stations as well as safe disposal of hazardous and toxic household materials;
- Many associated islands are not served by ferries and some Land Use Bylaws require residents manage their own disposal, which creates gaps in waste removal;
- Large items such as derelict vehicles, boats, and trailers need to be removed from islands without ferry service by barge and some islands do not have suitable barge landings;
- Policy Statement could encourage the maintenance and replacement of aged out septic systems;
- Waste water and storm drain outflow cause ocean pollution;
- Waste, including polystyrene foam and derelict boat debris, accumulates on beaches;
- Jurisdictional confusion exists because household waste is managed by regional districts, hazardous waste is the responsibility of the individual with the hazard, and sewerage is within the purview of health authorities; and
- Siting of septic systems and directing where gray water goes is part of land use planning and consideration of broadening the term septic system to waste management systems could provide policy flexibility.

Trustee Luckham left the meeting at 3:08 p.m.

The goals of the waste policies were discussed and the following points were brought forth:

- The policies should establish facilities that align with provincial health and safety regulations and uphold the Islands Trust mandate; and
- Focus should be on regulations based on best practices through siting.

3.4.17 – Disposal of Waste

Discussion ensued and the following comments were noted:

- A local trust committee is unlikely to zone for waste transfer stations on islands without vehicle ferry service;
- Specificity of vehicle ferry service within the policy language should be removed because barge services can be used to remove waste;
- Waste transfer stations might not be practical on some smaller associated islands; and
- Identifying appropriate potential locations of transfer stations needs to be considered within Official Community Plans.

Trustee Patrick left the meeting at 3:16 p.m. which resulted in the number of participants being less than quorum.

The Committee of the Whole meeting was suspended at 3:16 p.m. and quorum was not reestablished.

- 6. CLOSED MEETING** - None
- 7. RISE AND REPORT** - None
- 8. NEW BUSINESS** - None

9. NEXT MEETING

The next Committee of the Whole meeting is scheduled to be held electronically on March 6, 2025 at 1:00 p.m.

10. ADJOURNMENT

The Committee of the Whole meeting was adjourned at 3:16 p.m.

Kristina Evans, Acting Chair

Certified Correct:

Lisa Millard, Meeting Administrator/Recorder

Minutes are not official until adopted at a subsequent meeting.

ISLANDS TRUST COUNCIL
COMMITTEE OF THE WHOLE
RESOLUTION WITHOUT MEETING

RESOLUTION WITHOUT MEETING NO. TC-COW-RWM-2025-002

Pursuant to Trust Council RWM policy, the following resolution is considered urgent and cannot wait until the next regular business meeting:

- Cancel the March 31, 2025 Committee of the Whole meeting

Trustees were notified via email of the call for a motion on March 20, 2025.

Trustees were notified via email of the call for the vote on March 20, 2025.

It was Moved by Trustee Boland and Seconded by Trustee Allen,
that Trust Council request staff cancel the March 31, 2025 Committee of the Whole meeting.

<u>TRUSTEES CONTACTED</u>	<u>DATE VOTE RECEIVED</u>	<u>VOTE</u>
1. Alex Allen	March 20, 2025	In Favour
2. Joe Bernardo	March 20, 2025	In Favour
3. Sam Borthwick	March 20, 2025	In Favour
4. Jeanine Dodds	March 20, 2025	In Favour
5. Tobi Elliott	March 21, 2025	In Favour
6. Kristina Evans	March 20, 2025	In Favour
7. Sue Ellen Fast	March 20, 2025	In Favour
8. Lisa Gauvreau	March 21, 2025	In Favour
9. Judith Gedye	March 20, 2025	In Favour
10. Ken Hunter	March 22, 2025	In Favour
11. Mikaila Lironi	March 21, 2025	In Favour
12. Peter Luckham	March 20, 2025	In Favour
13. David Maude	March 20, 2025	In Favour
14. Lee Middleton	March 20, 2025	In Favour
15. Laura Patrick	March 20, 2025	In Favour
16. Tim Peterson	March 20, 2025	In Favour
17. Kate-Louise Stamford	March 20, 2025	In Favour
18. Susan Yates	March 20, 2025	In Favour

TRUSTEES VOTE NOT AVAILABLE

1. Mairead Boland
2. Aaron Campbell
3. Dag Falck
4. David Graham
5. Jamie Harris
6. Ben Mabberley
7. Deb Morrison
8. Grant Scott

FINAL VOTE COUNT (18) IN FAVOUR (0) OPPOSED DECISION: **CARRIED**

THE CHAIR DECLARED THE ABOVE RESOLUTION CARRIED PURSUANT TO SECTION 13 OF THE *ISLANDS TRUST ACT* ON MARCH 24th, 2025.

CHAIR'S SIGNATURE

RECORDER'S SIGNATURE

ISLANDS TRUST COUNCIL
COMMITTEE OF THE WHOLE
RESOLUTION WITHOUT MEETING MINUTES

RESOLUTION WITHOUT MEETING NO. TC-COW-RWM-2025-003

Pursuant to Trust Council RWM policy, the following resolution is considered urgent and cannot wait until the next regular business meeting:

- Cancel the April 15, 2025 Committee of the Whole meeting

Trustees were notified, via email, of the call for resolution on April 2, 2025

Trustees were notified, via email, of the call for the vote on April 2, 2025

It was Moved by Trustee Peterson and Seconded by Trustee Boland,

that Trust Council request staff cancel the April 15, 2025 Committee of the Whole meeting.

<u>TRUSTEES CONTACTED</u>	<u>DATE VOTE RECEIVED</u>	<u>VOTE</u>
1. Alex Allen	April 2, 2025	In Favour
2. Joe Bernardo	April 2, 2025	In Favour
3. Mairead Boland	April 2, 2025	In Favour
4. Sam Borthwick	April 3, 2025	In Favour
5. Jeanine Dodds	April 3, 2025	In Favour
6. Tobi Elliott	April 2, 2025	In Favour
7. Kristina Evans	April 2, 2025	In Favour
8. Sue Ellen Fast	April 2, 2025	In Favour
9. Lisa Gauvreau	April 2, 2025	In Favour
10. Judith Gedye	April 2, 2025	In Favour
11. Ken Hunter	April 2, 2025	In Favour
12. Lee Middleton	April 2, 2025	In Favour
13. Laura Patrick	April 2, 2025	In Favour
14. Tim Peterson	April 2, 2025	In Favour
15. Kate-Louise Stamford	April 2, 2025	In Favour
16. Susan Yates	April 2, 2025	In Favour

TRUSTEES VOTE NOT AVAILABLE

1. Aaron Campbell
2. Dag Falck
3. David Graham
4. Jamie Harris
5. Mikaila Lironi
6. Peter Luckham
7. Ben Mabberey
8. David Maude
9. Deb Morrison
10. Grant Scott

FINAL VOTE COUNT (16) IN FAVOUR (0) OPPOSED

DECISION: **CARRIED**

THE CHAIR DECLARED THE ABOVE RESOLUTION CARRIED PURSUANT TO SECTION 13 OF THE *ISLANDS TRUST ACT* ON APRIL 3RD, 2025.

CHAIR'S SIGNATURE

RECORDER'S SIGNATURE

**Islands Trust Interpretation of the Mandate
Committee of the Whole Discussion
May 6, 2025**

HOW DO WE FRAME THE MAY 2025 DISCUSSION?

The Committee of the Whole discussion of the Islands Trust Mandate should be framed within the context of making good decisions at Trust Council or Local Trust Committees.

A collective decision advances the mandate and is informed by considering staff advice, public input and fellow trustee input. Decisions must also be balanced, fair and objective, realistic, and legal and enforceable.

It is important that the interpretation of the mandate evolves through time due to shifting circumstances, values and accumulation of knowledge and experiences.

The principle to interpret legislation is to require that: “The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intentions of Parliament.”

HOW DID WE GET WHERE WE ARE TODAY?

A series of Trust Council Resolutions in 2021:

TC-2021-006

Be it resolved that Trust Council define the words “unique amenities” to be inclusive of the cultural heritage of Indigenous Peoples within the Islands Trust Area and that this aspect is prioritized.

CARRIED

TC-2021-009

That Trust Council affirm its understanding that the object (and thus the mandate) of the Trust contained in s. 3 of the Islands Trust Act includes the concept of and protection of healthy and inclusive communities including (but not limited to) housing and transportation.

CARRIED

TC-2021-010

That Trust Council request the Trust Programs Committee and the Executive Committee continue their work on developing proposals for revising the Trust Policy Statement in accord with the current Project Charter including policy related to Sustainable Communities and affordable housing.

CARRIED

TC-2021-067

That motion TC-2021-066 be amended to read “That Trust Council affirms its understanding that preservation and protection of the natural, terrestrial and marine

environment is central to the mandate of the Islands Trust and that this responsibility must be given special and profound consideration in all our decisions and in all we do.”

CARRIED

Governance Report (2022)

“Despite the Trust’s “Preserve and Protect” Object being essentially unchanged since set out in legislation nearly 50 years ago, there is a remarkable lack of consensus among Trustees as to what that Object means and entails.”

“The first challenge that confronts the Trust is to agree on how to interpret the Preserve and Protect Object. This absence of consensus is described in a variety of ways; one that seems to have resonated with many is to ask if the Trust is an environmental steward with land use regulatory powers, or a land use regulator with a particular concern for environmental stewardship. Not to be dismissed as semantics, the question reflects a long-time inability to reach agreement on most of the important questions facing Council.”

Statement on scope and meaning of the Section 3 of the Islands Trust Act (Object) September 2023

- Attached to the May 6, 2025 agenda

December 2024 Trust Council Resolution:

That Trust Council clarify its interpretation of unique amenities from Trust Council’s discussion of September, 2023, in a Committee of the Whole, in light of the updated legal opinion received.

- Legal opinion released to the public by Trust Council is attached to the agenda



Islands Trust Council Statement on the Scope and Meaning of Section 3 of the Islands Trust Act (Object Clause)

Approved by Islands Trust Council, September 26, 2023

The Islands Trust Act [RSBC 1996] CHAPTER 239, Section 3:

The object of the trust is to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, First Nations, other persons and organizations and the government of British Columbia.

BACKGROUND: The 2022 Governance Review emphasized that there was a deep division amongst both Trustees and constituents on the meaning and implementation of our “preserve and protect” mandate. Such division was described as a fundamental existential challenge. The current Governance Committee, appointed in December, 2022, decided that it was a priority to review the mandate and report back to Trust Council on that review. Today’s presentation summarized and clarified all previous legal opinions with the intention to assist the current Trust Council to find consensus on which to build our strategic direction. Our strategic planning policy initiatives, project priorities, and efficiency of operations and accountability and performance measures, will follow.

Frequently a mandate is created by an organization but since the Islands Trust was created by Provincial legislation, therefore the mandate is an enacted law: it may be interpreted and such interpretation may be challenged, but it can only be changed by the Legislative Assembly.

Over the years, as various issues have arisen, Islands Trust has asked for and received several legal opinions about how our mandate relates to specific situations. Islands Trust staff have collated those opinions, the Governance Committee has studied and discussed them, and today there has been a presentation and discussion by Trust Council. The legal opinions referred to were in response to specific questions and therefore were and are subject to solicitor-client privilege and as such needed to be discussed in closed meetings.

This report is to make public the results of our discussions and share with our constituents how the current Trust Council intends to interpret our mandate, which in turn will help inform our strategic planning.

The process of creating a strategic plan was another recommendation of the 2022 Governance Review and is another priority of the Governance Committee. That effort has been championed by a sub-committee of the Financial Planning Committee which has been endorsed and encouraged by the Governance Committee, and will be subject to separate and future discussions.

CONSENSUS:

The object of the Islands Trust is to preserve and protect three specific elements:

- a) the trust area;*
- b) its unique amenities; and*
- c) [its unique] environment,*

for the benefit of the residents of

- i) the trust area, and*
- ii) of British Columbia generally,*

in cooperation with municipalities, regional districts, improvement districts, First Nations, other persons and organizations and the government of British Columbia.

Trust Council's determination is that every decision must include a reasoned recognition of all the elements specified in the mandate. While one element may gain priority, reasons for that decision must be clear and have considered the other elements.

There has been some debate in the past about the meaning of unique amenities. Trust Council's view is that unique amenities are broad-ranging and may include issues such as, but not limited to, housing, livelihoods, infrastructure and tourism. However, land use planning in the Trust Area must always include a focus on preserving and protecting the environment and communities of both local trust areas and the Trust Area generally and in a manner consistent with Reconciliation.

In any given decision-making situation, there must be recognition of the importance of each of the essential elements and where there is competition between those elements there must be a careful and reasoned balancing of the importance of preserving and protecting the Trust Area, and its unique amenities and environment.

REPLY TO: VANCOUVER OFFICE

PRIVILEGED AND CONFIDENTIAL

VIA EMAIL: jmobbs@islandstrust.bc.ca

November 13, 2024

Julia Mobbs
Interim Chief Administrative Officer
200 – 1627 Fort Street
Victoria, BC V8R 1H8

TC-IC-2024-007

It was **MOVED** by Trustee Bernardo, and **SECONDED** by Trustee Yates, that Trust Council request staff to release the November 13, 2024 Young Anderson legal opinion relating to the interpretation of Section 3 provided to Trust Council to the public.

CARRIED

Dear Ms. Mobbs:

**Re: Islands Trust Object Clause
Our File No. 00002-0020**

You have requested that we review and update opinions that we have previously provided to the Islands Trust on the interpretation of s. 3 of the *Islands Trust Act*, the “object” clause. Those opinions consist of the following:

- A July 12, 2007 opinion addressing a legal opinion that was prepared by another law firm on whether the object clause restricts the policy options of trust bodies to environmental conservation.
- A September 1, 2020 opinion dealing with whether the policy statement may contain policies regarding housing and sustainable communities. (The Trust Council shared the advice contained in this opinion with the general public later in 2020.)
- Another September 1, 2020 opinion addressing whether the object clause permits the Islands Trust policy statement to contain policies regarding reconciliation with Indigenous people.

For reference, s. 3 of the *Islands Trust Act* is as follows:

The object of the trust is to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, First Nations, other persons and organizations and the government of British Columbia.

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To summarize:

- Our 2007 opinion concluded that the policy options of trust bodies aren't restricted to environmental conservation. Rather, the scope of the object clause is broader, and includes consideration of island communities as part of the trust area that is to be preserved and protected.
- Our September 2020 opinion concluded that it would be a reasonable interpretation of the object clause, unlikely to be disturbed on judicial review, to include in the policy statement policies regarding housing and sustainable communities. That opinion included consideration of the Supreme Court of Canada's important 2019 administrative law decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, which determined that judicial review of interpretations of their enabling legislation by delegated decision-makers (such as the Islands Trust Council) must apply a reasonableness standard that affords deference to the judgment of the decision-maker. This would quintessentially include Trust Council interpretations of the object clause.

We consider our conclusion on the topic of housing and sustainable communities to have been recently confirmed by the fact that the local trust committees, like municipalities and regional districts, are required (under the new s. 473.1 of the *Local Government Act*) to provide in their official community plans housing policies respecting each class of housing needs addressed in their housing needs reports. (Other parts of Bill 44 including the requirement to permit small-scale multi-family housing in restricted zones don't apply to the local trust committees, which indicates that the application of s. 473.1 to local trust committees cannot be a legislative oversight.) Since provincial statutes are meant to be interpreted consistently with one another, the implication must be that the policy statement prepared under the *Islands Trust Act* may properly reflect the fact that local trust committees are required to plan for increases in housing supply.

- Our other September 2020 opinion concluded that policies in the policy statement aimed at reconciliation with Indigenous people would be within scope to the extent they were ancillary to substantive policies dealing with preservation and protection of the trust area (as contrasted with free-standing policies dealing with reconciliation for its own sake). We identified a significant risk that stand-alone reconciliation policies were outside the Trust Council's authority.

Having reviewed those opinions in the preparation of this letter, we would advise that we remain comfortable with our previous conclusions. The development of the local case law on the reasonableness test in judicial review since 2019 has confirmed that a court would defer to the judgment of the Trust Council on the interpretation of the object clause as long as its interpretation met the reasonableness test. In regard to the topic of reconciliation, one significant change in the

legislative landscape is the enactment of the *Declaration of the Rights of Indigenous Peoples Act* (DRIPA), which includes the following:

2 The purposes of this Act are as follows:

- (a) to affirm the application of the Declaration to the laws of British Columbia;
- (b) to contribute to the implementation of the Declaration;
- (c) to support the affirmation of, and develop relationships with, Indigenous governing bodies.

While the Declaration contains many Articles that might be considered to be potentially relevant to the work of the Trust Council and the local trust committees, perhaps the most obviously relevant is Article 32(2):

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

It is important to note that DRIPA didn't itself change any of the laws of British Columbia except to the extent that it requires the government to prepare an action plan to achieve the objects of the U.N. Declaration in the province, and authorizes the government to enter into decision-making agreements with Indigenous governing bodies in regard to a broad range of administrative-level decisions. That this is so was confirmed by the B.C. Supreme Court in *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680, which dealt with the on-line staking procedure for mineral claims. At paragraph 470 of its decision, the Court briefly concluded that "In sum, s. 2(a) of DRIPA does not implement UNDRIP into the domestic law of British Columbia." The government would presumably, should it choose to do so, implement the U.N. Declaration in the trust area by (for example) entering into a decision-making agreement with representatives of one or more First Nations that requires the consent of the First Nations before the Minister of Municipal Affairs may approve the Islands Trust Policy Statement or an official community plan of a local trust committee, or their consent to the approval by a provincial approving officer of a subdivision in the trust area. We don't consider that the enactment of DRIPA has had any effect on the interpretation of the object clause in the *Islands Trust Act*. Thus, for example, the Islands Trust policy statement cannot establish a "free and informed consent" entitlement for local First Nations in respect of matters that are within the jurisdiction of a trust body, or be premised on an assumption that such a right exists, merely because DRIPA has been enacted.

The Legislature has also amended the *Interpretation Act* to include the following, which applies to the construal (interpretation) of s. 3 of the *Islands Trust Act* in the event of any ambiguity in the wording of the section:

8.1 (3) Every Act and regulation must be construed as being consistent with the [United Nations Declaration on the Rights of Indigenous Peoples].

We don't consider that the enactment of s. 8.1 changes the opinions we have previously expressed on the interpretation of the object clause in relation to the question of reconciliation, because we haven't identified any particular ambiguity in the clause in relation to that subject. Rules of interpretation like s. 8.1 cannot be used to import new content into statutory language like that used in s. 3 of the *Islands Trust Act*; they can only be used as a tool in interpreting content that is already there. In 2020 we expressed the view that s. 3 probably authorizes inclusion in the policy statement of policies on such matters as engagement with First Nations on the preparation of local trust committee bylaws if Trust Council considers that such engagement would tend to support reconciliation objectives; this is based on such LTC bylaws themselves being squarely within the scope of the object clause.

We trust that this opinion will be helpful to the members of Trust Council and look forward to meeting with them on December 4 and dealing with any outstanding questions.

Yours truly,

YOUNG ANDERSON



Bill Buholzer
buholzer@younganderson.ca

BB/jms