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November 1, 2023

Islands Trust Council; Trustee Gedye, Chair of Governance Committee and Islands Trust Staff
Sent Via Email: execadmin@islandstrust.bc.ca

Dear Elected Trustees, Chair of Governance Committee and Staff Members:

Re: Closed Meeting Decision Reinterpreting the Trust Object of the Islands Trust Act

The Friends of the Gulf Islands Society has questions and concerns about the procedures related to the Trust Council in-camera meeting held on September 26, 2023 and the Rise and Report document that resulted. It is our understanding that the trustees received a presentation on prior legal advice received by Trust Council. Our concerns and questions relate to what happened after Trust Council came out of the closed meeting and the “decision” made in that closed meeting.

Our questions and concerns:

Procedures Related to the In-camera Meeting:

The in-camera meeting motion on September 26, 2023 referenced section 90 (1) (i) of the Community Charter¹ which lists receipt of legal opinions as the reason for a closed meeting. Legal opinions are generally not released to the public, but they may be released if the client (Islands Trust) consents, usually with advice from the legal counsel on potential legal risks from doing so. During the last term, Trust Council received a legal opinion on section 3 of the Act and had legal counsel subsequently draft a modified version dated October 27, 2020 for public release. Consequently, the public has had access to some of that legal advice, albeit modified to some degree.

However, we don't understand why a decision on a subject matter so integral to the entire operation of the Trust had to be made in a closed meeting. Upon ending the closed meeting, the Trust Council did not issue a Rise and Report.

Trust Council could have issued a “Rise and Report” that set a time and/or date for an open meeting to discuss and try to arrive at an interpretation of the Trust Object. The only restriction at that meeting would be for trustees to not refer to any legal opinion as the source of their views. Can you explain why the discussion and decision making had to be held in-camera rather than in an open meeting subject to the restrictions cited above?

¹Community Charter Act, [SBC 2003] CHAPTER 26; section 90 (1) A part of a council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following: (i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

Making that decision in a closed meeting effectively denies the public the opportunity to hear the views and know the voting record of their elected representatives on an interpretation that fundamentally impacts how purpose of the Act is carried out. It is our view that making such decisions should be done in an open meeting. Deciding behind closed doors runs contrary to the premise of transparency in the exercise of local government powers.

Delay in Issuing the Rise and Report:

After a Trust Council meeting, Executive Committee reviews and approves the release of an Islands Trust Council Highlights press release that provides a high-level recap of major agenda items. The press release is usually released shortly after Executive Committee approval. Executive Committee approved the press release on October 11, 2023 but it has not yet been released. Despite not being released officially, the public (at least those who know to do so) can access it on the Islands Trust website.

One of the sections is entitled “Section 3-Interpretation of the Islands Trust Act”. It states Trust Council “reached consensus” on a Section 3 Interpretation of the *Islands Trust Act*. The section includes a hyperlink to another document entitled “Rise and Report-Statement RE: S.3 Mandate” which the public can access.

Neither the Trust Council Highlights nor the Rise and Report Statement have been officially released. Why has there been a delay in releasing both documents?

Rise and Report Document:

The Rise and Report (Report) is a public statement from Trust Council on a matter(s) discussed in a closed meeting. The text of the Report raises questions. The assumption in the following discussion is that page 1 of the Report is background information prepared by staff to accompany the decision of Trust Council found on page 2.

(a) Background section questions (i.e., page 1)

The section gives background information and references the need for a closed meeting due to receipt of information that is subject to solicitor-client privilege. There is one statement that is somewhat ambiguous:

“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”. (emphasis added)

How will this “intention” be carried out by Trust Council? Will it be done by incorporating a definition and/or new policy into the Trust Policy Statement, whether as a “directive” or a general policy? Or will the interpretation be applied by Executive Committee in reviewing land use bylaws submitted by Local Trust Committees and by Local Trust Committees when developing land use bylaws, before any change is made to the Trust Policy Statement?

(b) Consensus section questions/comments (i.e., page2)

The “Report” does not use the term “decision”. The heading entitled “CONSENSUS²” is followed by three paragraphs which (presumably) is the text of the interpretation agreed to by Trust Council. The paragraphs refer to “Trust Council’s determination” and “Trust Council’s view” but do not use the term “decision”. The questions that arise:

² See Black’s Law Dictionary, 11th Edition, definition of “consensus” and “consent”.

- (1) Is the “Consensus” a decision by trustees through a vote and if so, was it unanimous or not?
- (2) If there was no vote, how was it agreed to?
- (3) Does the text on page 2 of the Report reflect what trustees voted on?
- (4) Was the text of the Consensus drafted by trustees at that meeting or was the text or similar text presented to trustees at the meeting?
- (5) The two-page Rise and Report document is not cited as a “draft” document. Will this be the version released to the public in the near future?
- (6) There is no indication First Nations were consulted which, if true, conflicts with Trust Council’s Reconciliation Declaration. Were First Nations consulted in arriving at the new interpretation of the Act?

The Report states how Trust Council has interpreted section 3 of the Islands Trust Act, but it does not give the reasoning used to arrive at this new interpretation. Had the discussion been in an open meeting the public would know Trust Council’s reasoning.

Specific comments on three paragraphs:

First paragraph:

The first paragraph refers to the 3 elements of the Object: the “Trust area”, “unique amenities” and “unique environment”. It then goes on to say that when one of the elements (e.g., trust area, amenity or environment) becomes the priority, the reasons for doing so must be clear and show how the other elements were considered. On the face of it, this paragraph reflects what occurs presently with respect to decisions when the Object of the Islands Trust Act (i.e. natural environment protection and preservation) is a primary consideration.

The “trust area” is listed as one of three elements which means it differs from “environment” and “amenities”. The phrase “trust area” is defined in the Islands Trust Act as the geographical boundaries to which the Act applies. Consequently, the elements “environment” and “amenities” are components of the “trust area” which begs the question: what within the “trust area” would be balanced against the “environment” or an “amenity”? Was this discussed in the closed meeting?

Second paragraph:

The second paragraph is problematic for several reasons:

- Interpreting “housing” and “infrastructure” as a unique amenity of the trust area means Trust Council is to preserve and protect “housing”. How would land use regulation preserve and protect the development and maintenance of housing? Isn’t that the responsibility of service providers such as Regional Districts and higher levels of government through funding?
- How is “housing” a “unique amenity” when compared to housing in a rural area outside the trust area? The term “unique” must be given meaning. Also, the Trust Object refers to “preserving” and “protecting” not “providing”. The Islands Trust is not a service provider, but it can facilitate the provision of services by Regional Districts or others through land use regulation that is consistent with the Trust Object.
- It also states land use planning must consider the preservation and protection of the “environment” and “community”. In other words, “community” is neither a “unique amenity” nor a component of “environment”. Where does “community” now fall? As mentioned above, the “trust area” establishes the geographical area covered by the Islands Trust Act. If “community” is separate from “environment” and “amenities”, is it a component of the “trust area”? Earlier Islands Trust documents refer to “rural island communities” more as an amenity.
- In defining “housing” and “infrastructure” as “unique amenities”, Trust Council has drifted very far from the original purpose of the Islands Trust Act. Housing and infrastructure are forms of land development, yet the Islands Trust Act was established to preserve and protect the natural environment and attractiveness /draw of the area (i.e., amenities) from

overdevelopment. If housing and infrastructure are now amenities, what limits apply to development?

Third paragraph:

The third paragraph adds little beyond what the first paragraph says. The statement “*there must be a careful and reasoned balancing of the importance of preserving and protecting the trust area, and its unique amenities and environment*” is a restatement of the first paragraph. This statement is simply a recognition of the importance of the three elements but with no regulatory emphasis.

It is our view that the November 1986 Trust Council-endorsed document entitled “Position Paper #1 on the Object of the Islands Trust” provides a comprehensive and more meaningful definition of “unique amenities and the environment”. The 1986 definition of “unique amenities and environment” is consistent with the Act’s original intent. The 1986 definition was relevant then and remains so today. See Appendix 1.

In closing, we are not supportive of the interpretation taken by Trust Council. We look forward to hearing from you regarding our questions and concerns detailed in this letter.

Sincerely,

Jennifer Margison, President, Galiano Island Friends of the Gulf Islands Society

Directors:

Maria del Carmen de Menyhart, Galiano Island

Peter Easthope, North Pender Island

Alix Hodson Deggan, Gabriola Island

Kees Langereis, Gabriola Island

Maxine Leichter, Salt Spring Island

Steve Wright, South Pender Island

APPENDIX 1

Extract from the Ministry of Municipal Affairs 1986 Report entitled “*The Object of the Islands Trust: Renewing the Consensus, Position Paper # 1*”, endorsed by Islands Trust Council on September 5, 1986

“The special amenities and environment of the Trust area “derive from the combination of:

- A mild climate;
- Approximately 500 islands and the extensive coastline and sheltered waters they provide;
- Diverse and unusual natural features, vegetation and wildlife;
- Almost a continuous tree cover and large undeveloped areas;
- Numerous areas of heritage or archaeological significance;
- Abundant and varied recreational opportunities accessible to adjacent major urban centres;
- Solitude, scenic beauty and a clean environment;
- Compact, marine-oriented settlements;
- Tranquil rural areas;
- A range of lifestyles;
- A unique water suppl situation (i.e. small watersheds, shallow soil and heavy reliance on groundwater sources);
- *The self-sufficiency yet interdependence that island living entails.”*

[Download the Entire 1986 Report](#)