



REQUEST FOR DECISION

To: Trust Council **For the Meeting of:** September 27, 2023
From: Director, Planning Services **Date Prepared:** September 7, 2023
SUBJECT: Bylaw Compliance and Enforcement – Office of the Ombudsperson Report

RECOMMENDATION: That Trust Council direct that the recommendations from the Office of Ombudsperson Report titled: “Voluntary Consultation on Bylaw Enforcement Policies and Practices within the Islands Trust”, dated August 2023, be implemented, and that staff develop and initiate an associated work plan and project charter.

CHIEF ADMINISTRATIVE OFFICER COMMENTS: The report submitted by the Office of the Ombudsperson provides an opportunity to ensure administrative fairness best practices are reflected in Bylaw Compliance and Enforcement policies and procedures including handling of complaints against staff. If Trust Council agrees to the recommended changes this may address a number of issues that were previously identified as concerns by trustees. Nevertheless, the Ombudsperson report is not a performance review, it is a policy and procedures exercise. Following implementation of the changes and monitoring of bylaw complaints over an established period, Trust Council may consider whether any further action is required.

1 PURPOSE:

To consider implementing recommendations from the Office of the Ombudsperson to ensure fairness within the policies and procedures for bylaw enforcement by the Islands Trust.

2 BACKGROUND:

The Islands Trust Council (Trust Council) received a report from staff in March 2023, describing the bylaw enforcement process and authorities, the current authorities of local trust committees, trustees and Trust Council, the number and nature of open files; the issues and number and nature of complaints by citizens on how the service is being delivered, including charges of bias, diversity, bullying and proportionality. Following the report was a presentation from staff of the Office of the Ombudsperson and the Attorney General’s office who spoke to current best practices and any issues with the Islands Trust.

Following receipt of the report and discussion with presenters, Trust Council passed the following motion:

“THAT the Director of Planning Services request the Office of the Ombudsperson to undertake a comprehensive review of the enforcement related policies and practices of the Islands Trust, and recommend such improvements and changes to them as may be required to bring the policies and practices into conformity with best practices for local government by law enforcement.”

The review (Ombudspersons Report) has been completed and is attached to this Request for Decision (see Attachment 1: “Voluntary Consultation on Bylaw Enforcement Policies and Practices within the Islands Trust”, dated August 2023).

The Ombudspersons Report was informed by Islands Trust documents:

- Bylaw Compliance and Enforcement Policy 5.5.1
- Bylaw Compliance and Enforcement Best Practices and Procedures
- Handling of Administrative Fairness Complaints Policy 7.1.2
- Bylaw Compliance and Enforcement FAQ pamphlet; and
- Various internal documents (ex: flow charts, templates, and forms)

The Ombudspersons Report drew on numerous resources to evaluate how administrative fairness may be enhanced including providing examples of other jurisdictions. The report outlines the best practice to have a bylaw complaints policy that provides direction to staff and information for the public. Most substantively, the report provides detailed recommendations how to improve policy and procedure content including how to improve a general complaints policy (ex: complaints from the public against staff performance). A brief description of recommendations and staff’s preliminary comments are below.

Best Practice: To have a bylaw complaints policy that provides direction to staff and information for the public	
Recommendation	Comment
Make policies, best practices and procedures publically available	Currently only the policy is publically available; procedures may also be made available
Update policy to reflect best practices and procedures document	Current overlap between policy and procedure, recommend updating both documents
Include a policy to assist staff in exercising discretion	Recommend including in comprehensive policy amendment
What to include within a publicly available policy on bylaw complaints	
Various content recommendations (purpose, guiding principles, definitions, roles and responsibilities, confidentiality, procedures for handling complaints about bylaw violations)	Numerous specific recommendations may be incorporated when updating policies and procedures. New additions would include “definitions”, “confidentiality”, sub procedures for handling complaints, “equitable enforcement”, and “complaints closed following an investigation”
Update communications (forms, letters, and other communications) to follow principles of administrative fairness and to ensure that the reader is in mind	Communications should be updated to ensure that Individuals are provided with adequate notice of decisions, information about their opportunity to be heard within the bylaw enforcement process, fulsome, clear and understandable reasons for decisions, and information on review or appeal options available to them.

Additional complaints related to bylaw enforcement (staff)	
Amend “Handling of Administrative Fairness Complaints” Policy to reflect its function as a general complaints policy.	This would help provide clarity to the public, staff and elected officials. These revisions can be made with suggested edits from resources provided.

Following receipt of this work, Trust Council may provide direction on how it wishes to proceed, either to continue with current practice or direct changes in either policy, practice or both.

3 IMPLICATIONS OF RECOMMENDATION

ORGANIZATIONAL:

Updating Bylaw Compliance and Enforcement Policies and Procedures will be added to the Executive Committee work program. Staff resourcing may be challenging and compete with current other policy amendments currently being worked on. Prioritization of policy amendments may be reconsidered.

FINANCIAL:

Staff may be able to draft amendments as described although Trust Council or Executive Committee may prefer to have an external contractor perform this function. A work plan would need to be created to assess cost and estimated resources.

POLICY:

- Bylaw Compliance and Enforcement Policy 5.5.1
- Bylaw Compliance and Enforcement Best Practices and Procedures
- Handling of Administrative Fairness Complaints Policy 7.1.2

IMPLEMENTATION/COMMUNICATIONS:

The current “draft” Bylaw Compliance and Enforcement Best Practices and Procedures could be posted online with removal of draft label. Communications will be included in Trust Council decision highlights. Further communications may be considered when revised policies and procedures are presented to Trust Council. New policies and procedures will require staff orientation and training. A change management plan may accompany draft revisions.

FIRST NATIONS:

First Nations have not been specifically addressed in this report.

OTHER:

4 RELEVANT POLICY(S):

- Bylaw Compliance and Enforcement Policy 5.5.1
- Bylaw Compliance and Enforcement Best Practices and Procedures
- Handling of Administrative Fairness Complaints Policy 7.1.2

5 ATTACHMENT(S):

1. Voluntary Consultation on Bylaw Enforcement Policies and Practices within the Islands Trust, Office of the Ombudsperson, dated August 2023

RESPONSE OPTIONS**Recommendation:**

That Trust Council request the Executive Committee to manage implementation of the recommendations in the Office of Ombudsperson Report titled: “Voluntary Consultation on Bylaw Enforcement Policies and Practices within the Islands Trust”, dated August 2023.

Alternative:

That Trust Council not proceed with amending Bylaw Compliance and Enforcement Policies and Procedures or the Handling of Administrative Fairness Complaints policy.

That Trust Council request staff for more information [list requested information].

Prepared By: **Stefan Cermak, Director, Planning Services**

Reviewed By/Date: **Russ Hotsenpiller, September 8, 2023**