

Tony Law

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To: Hornby Island Local Trust Committee

24 July 2025

**re: Administrative Fairness and Natural Justice**

I am not a proponent, nor an opponent of the recently-considered Temporary Use Permit application (PL-TUP-2025-0114). I would neither benefit from, nor be impacted by, what would have been permitted.

But I am a proponent of administrative fairness and natural justice. The Islands Trust's *Governance Principles* includes the following: "*To strive for a high standard of administrative fairness and to recognize the principles of natural justice in decision-making processes.*" It seems to me that the way this application was considered and decided did not meet this standard.

**Administrative fairness**

The Islands Trust's *Administrative Fairness Principles* includes the following:

*3.3 Parties whose interests may be affected by a decision or action should be given a reasonable opportunity to review the nature of the resulting action or decision and to examine the information of other sources being considered.*

*3.4 Parties whose interests may be affected by a decision or action should be given a reasonable opportunity to provide written or verbal information in support of their position.*

*3.6 Decisions should be based on a review of relevant information, excluding all irrelevant considerations.*

The Islands Trust's *Procedural Fairness in Rezoning*s is also relevant in that a Temporary Use Permit is essentially a zoning change with respect to permitted uses on a property for a specified period. This document sets "*a high standard of procedural fairness*" and notes that: "*The level of procedural fairness implied by procedures specified in the Local Government Act has been augmented over the years by administrative case law that has introduced higher standards. Court decisions have indicated that local governments should strive to meet a high standard of procedural fairness in their decision-making.*"

It states: "*Before an LTC makes a decision about a zoning change, those whose interests may be affected by the decision must be given an opportunity to hear and respond to those who present information against their position.*"

In addition, the BC Ombudsperson, in *A Guide to Administrative Fairness in the Public Sector*, states:

*“The opportunity to be heard requires that decision makers provide the person affected by a decision with an opportunity to tell their story, present their case and share any information or evidence they have that is relevant to the decision-making process. They must have a fair opportunity to present their case, to challenge or correct the facts that the decision maker is relying on, and to provide alternative or contrary information in support of their position. A person affected by a decision should have an opportunity to be heard in a meaningful way before a final decision is made.” [my emphasis]*

With respect to this particular application:

1. The trustees had several questions and uncertainties about the proposed uses, but failed to take steps to obtain the information they needed by actually asking the applicant, who was present at the meeting, or by requesting the APC to review the application and in the process obtain the required information. In other words, the trustees failed to take advantage of available opportunities to obtain relevant information required to enable a considered decision.
2. The trustees in both their discussion of the application, and in their reasons for the LTC’s decision, based their position on irrelevant considerations, despite professional planning staff (in the written report and in verbal comments) indicating that these were, in fact, not relevant to the proposed permit.
3. Despite the applicant having their hand up, the trustees failed to provide the applicant with an opportunity to correct misinformation, to provide additional information, to respond to negative comments, or to make suggestions of additional conditions on the permit that might address trustees’ stated concerns.  
In other words, the process failed to address the Ombudsperson’s requirement that: “the “person affected by a decision should have an opportunity to be heard in a meaningful way before a final decision is made”.

### **Evidence-based decision-making and good communication**

*The Islands Trust’s Procedural Fairness in Rezoning* states: “Evidenced-based decision making and good communication with the parties affected by a decision are also important practices that can help to ensure that processes are fair and seen to be fair.”

1. One trustee asserted that the decision was based on “big concerns of the community” but provided no evidence of this, while the majority of public submissions were supportive and did not raise concerns. The trustee cited a lack of letters of support from nearby neighbours, but this is not evidence of concerns by the small number of close neighbours, let alone “big concerns in the community”.
2. There was an absence of good communication with the party affected by the decision, who was present at the meeting and had their hand up requesting to speak. Staff had communicated the following to the applicant: “typically at the time it is being considered by the LTC. trustees often ask questions during this part of the meeting, and applicants are given the chance to respond and provide clarification.” This opportunity for good communication did not happen, even though trustees stated they wanted more information.

Despite staff suggesting how information could be obtained to assist consideration of this application, trustees instead spoke to the applicant submitting a subsequent application in order to provide more information, but also stating: “It is not up to us to suggest what more information we need.” Is this good communication?

## **Open meeting requirements**

The Islands Trust’s *Local Trust Committee Guidelines* state: “Any gathering of a quorum of LTC members at which the business of the LTC is advanced in a material way constitutes a meeting for the purposes of the “open meeting” rule in the Community Charter. The purpose of the open meeting rule is to ensure that the LTC’s business is conducted in an open forum.”

The Islands Trust’s *Meeting Procedure Guidelines* includes this policy: “All meetings of Trust Council, a Local Trust Committee, the Islands Trust Conservancy Board and any committees must be open to the public.”

The BC Ombudsperson states: “When any of the bodies listed in section 93 of the Community Charter decide to close a meeting to the public, they can only do so in accordance with section 92. Section 92 requires local governments to pass a resolution containing two things: 1. 2. The resolution must state that a meeting or part of a meeting is to be closed; and The resolution must state the reason for closing the meeting.”

Part way through the LTC’s consideration of this application, the Chair declared a break. Before the meeting was reconvened, a microphone was inadvertently switched on, and what was heard indicated that the meeting was continuing, and that trustees were discussing the application outside of the open meeting, despite it not having been officially closed to the public by an appropriate resolution.

## **Perception of bias**

The BC Ombudsperson has stated: “it is not necessary to demonstrate actual bias in order to bring the fairness of a decision into question. The fairness of a decision-making process can be undercut by the mere perception of bias, where that perception is deemed to be reasonable.”

The members of the LTC gave limited consideration to this application, moving quickly to a decision to deny the application, despite the suggestions of the Chair and staff to first consider the alternatives of referring to the APC (identified by one trustee, but not discussed), requesting more information (not discussed), or adding additional conditions to the permit (not discussed). Neither did the LTC discuss the information presented in the staff report.

Trustee’s stated concerns were that the number of events (up to 10) and capacity (up to 150 people) would not be sustainable on this small aquifer-challenged island and that they perceived non-compliance with ALR regulations, such as with respect to the rugby posts and building. These concerns seemed to curtail any consideration of the application.

This lack of consideration would not lead to a perception of bias if the trustees were being equally vigorous about applying these concerns to other properties, given that Islands Trust

*Bylaw Enforcement and Compliance Policy* enables investigations to be commenced “by direction of a local trust committee” and “when there is advertising for unlawful uses”.

There are three ALR properties on Hornby Island that are currently advertising public events without Temporary Use Permits:

- one is advertising 11 events in July and August (in 2023, a video installation on this property was watched by 1,300 people);
- a second is advertising 6 events in July and August involving amplified music on a main stage and food vendors, with attendees likely numbering in the hundreds;
- a third is hosting a public event (with no permit) which would have been hosted on the applicant’s property in accordance with the conditions on the proposed permit that was denied.

There are ALR properties on Hornby that contain the following:

- 100 large steel sculptures, some embedded in the ground, that would be more difficult to remove than four wooden rugby posts;
- a large art gallery, also used as a performance venue;
- a large bakery / commercial kitchen that has also been used as a pizzeria and retail store.

(In addition, there are other ALR properties that have buildings not constructed for farm purposes but rather as studios or guest accommodation.)

Despite these uses and structures likely not being “lawful”, they are clearly considered acceptable by the local trust committee and the community, given the lack of bylaw investigation and enforcement initiated by the trustees or other community members. Neither has there been enforcement on the part of the ALC.

Given this context, there could well be a perception of bias in that the LTC did not discuss the staff recommendation to approve the permit, did not discuss the alternatives suggested for consideration by planning staff and the Chair, but moved quickly to outright denial.

## **Course correction**

As a former trustee, I can absolutely empathize with the stress of having to make difficult decisions in public, halfway through a 100+ page agenda. In such circumstances, I have found the guidance of professional planning staff and the chair helpful in arriving at well-considered decisions.

But there are times when I have afterwards realized we should have done better. And there are times when we have revisited decisions in order to do better, particularly where poor processes have impacted an applicant who has paid a substantial fee and has prepared a detailed application (while other property owners have gone ahead with uses without seeking permission).

I have read the Islands Trust's *Handling of Administrative Complaints Policy*. I note that there is a formal complaints process. I hesitate to initiate big bureaucratic wheels turning when this matter can be readily addressed locally at the next LTC meeting

## **Rescinding and Replacement Resolutions**

Bill Buhozer of *Young Anderson*, addressing "the inherent right to reconsider, quotes *Bourinot's Rules of Order*:

*"[P]rocedures are sometimes provided for not only rescinding a motion decided in the affirmative, but also reconsidering a negative decision. A reconsideration rule usually provides that a person must give notice in writing that he will move at the next meeting that a question be reconsidered. The provision is a useful one, in that conclusions occasionally may be reached hastily or on the basis of inadequate information and a later review may well be in the public interest."*

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and *Robert's Rules of Order*:

*"Reconsider – a motion of American origin – enables a majority in an assembly, within a limited time and without notice, to bring back for further consideration a motion which has already been voted on. The purpose of reconsidering a vote is to permit correction of hasty, ill-advised, or erroneous action, or to take into account added information or a changed situation that has developed since the taking of the vote."*

The Islands Trust provides a procedure of rescinding and replacing a decision in the *Local Trust Committee Guidelines for Authorizing Decisions* through this policy on *Replacement Decisions*:

*"A replacement resolution must identify by substance and by date and must rescind the previous resolution as part of the replacement resolution."*

An example is provided: *Resolution Number \_\_\_\_\_, giving first reading to Bylaw No. 2 passed on June 2, 1994 is rescinded and replaced with the following: .....*

(A motion to rescind would be inappropriate in circumstances where the original motion had authorized new activity, such as construction, that might have started to take place. In this case, the original motion denied new activity.)

## **Next steps**

- 1) A local trustee could notify the Chair and Staff of intent to introduce a replacement resolution\* at the 5 September 2025, LTC meeting; staff could then notify the applicant.
- 2) At the 5 September meeting, the Chair could invite the applicant to speak in response to the reasons stated in the decision to deny, and to the comments made by trustees at the 4 July meeting
- 3) The Chair could facilitate consideration of the alternatives identified by staff.
- 4) A replacement resolution\* could then be moved and discussed.

Possible replacement resolutions:

*That Resolution Number \_\_\_\_\_, denying application PL-TUP-2025-0114 passed on July 4, 2025, is rescinded and replaced with the following: That the Hornby Island Local Trust Committee approve issuance of Temporary Use Permit PL-TUP-2025-0114.*

or

*That Resolution Number \_\_\_\_\_, denying application PL-TUP-2025-0114 passed on July 4, 2025, is rescinded and replaced with the following: That the Hornby Island Local Trust Committee refer the application PL-TUP-2025-0114 to the Advisory Planning Commission for review and comment.*

or

*That Resolution Number \_\_\_\_\_, denying application PL-TUP-2025-0114 passed on July 4, 2025, is rescinded and replaced with the following: That the Hornby Island Local Trust Committee request [...insert information...] to consider application PL-TUP-2025-0114.*

or

*That Resolution Number \_\_\_\_\_, denying application PL-TUP-2025-0114 passed on July 4, 2025, is rescinded and replaced with the following: That the Hornby Island Local Trust Committee amend Temporary Use Permit PL-TUP-2025-0114 to include a condition limiting the number of temporary events on the property to no more than [...insert number...] events per calendar year.*

\* Staff could maybe advise the LTC on the possibility of dividing the resolution into two motions: one to rescind and the other to replace

### **Last words**

Because assumptions can be so readily made, I want to emphasize that I have no stake in the outcome of this particular application, nor am I writing on anyone's behalf except my own.

I am motivated by wanting to support you in making sure our local governance is perceived as acting with integrity and that all applicants treated fairly.

Thank you so much for considering this,

*Tony Law*