



**St Helena
Government**

Hon Lawson Henry
Sea View
Alarm Forest

Date: 11 January 2017

Dear Councillor Henry

During the Adjournment Debate in the Formal Legislative Council Meeting held on 13 December 2016, you raised a number of issues in respect of the constitution and the Airport Board, addressing those concerns to myself and the Attorney General. Please consider this letter a response to all the issues raised in the Debate. I apologise for the delay in replying.

You have also asked for a copy of the Terms of Reference for the Airport Board, which I enclose.

You will be aware that on the advice of Governor in Council, the then Governor of the Territory signed the Design Build Operate (DBO) contract with Basil Read Pty. DFID provided the entirety of the funding for the project and with the endorsement of the Government of St Helena established a project board which was and remains led by and operated from the UK.

As you know, it is good project management practice to establish such a Board and in this instance the Board has followed PRINCE2 methodology. The Terms of Reference for the Board sets out the key roles and responsibilities. The Board is chaired by a senior official from DFID. In 2013 newly elected Councillors were briefed on the Air Access Office. The governance of the airport project was covered in that briefing. You will see that there has never been a political Member of the Board, either from HM Government in the UK or from St Helena. Your statement indicates that the focus of your concern is the work of the Board over the past 8 months. Further, you appear to suggest that decisions are being made by the Board without reference to St Helena's elected members. The decisions made by the Board are of an operational nature, not political, hence the reason why the endorsement of the elected members is neither necessary nor appropriate.

You stated in the debate, "*Executive Council have never been consulted about such a board.*" The Attorney General has confirmed that there would be no need to consult ExCo in respect of the constitution of this Board. The fact that no request was made to ExCo to establish a Project Board does not render the Board or its Terms of Reference void. The airport project Board is not a statutory board, and is not established in the Territory as you have alleged, and is therefore not covered by the constitution of St Helena.

You have further stated that: "*Given the fact that we have an airport that is currently not fit for purpose to which it was built, and we have a Board chaired by DFID in our territory that is taking decisions about our island it is nothing short of a political disgrace that senior officials in DFID and*

here would wish to have such a set up without representation by an elected ExCo member. I submit senior officials on island are condoning this unconstitutional act and I call for the immediate disbandment of the board.” It is unclear what you hope to achieve by calling for the disbandment of a Board that has overseen the successful construction of the airport over many years.

The DBO contract sets out the terms for the contract and the Board is established to oversee the successful delivery of the objectives of the contract. Any significant divergence from the contract is brought back to Governor in Council for discussion and approval. That has happened on a number of occasions in recent years.

You have further suggested that the e-mail of 7 October which set out the parameters where information could or should be shared was unconstitutional on the grounds that the Governor was required to consult with Executive Council. You have not explained in any detail why you reach such a conclusion but it seems that your argument may be flawed on this matter. The Attorney General advises that Section 34(2) of the Constitution is engaged, this section states:

...the executive authority of St Helena shall be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him or her.

Section 43 of the Constitution requires the Governor to exercise her functions on advice of ExCo but this is not without its reservations, which are laid out in the same section. The Governor’s special responsibilities are set out at Section 44 of the Constitution. These include, inter alia, external affairs (Section 44 (1) (d)).

The issue of contact with the press on matters which are of direct relevance to the reputation of St Helena are clearly included in the phrase external affairs and accordingly the Governor acted within the powers conferred on her by this section. In addition, the direction of the Governor in respect of the embargoed information is within the powers of the Governor. The Attorney General reminds us that section 54 of the Constitution deals with the duty of confidentiality on Councillors. Upon being sworn in as a Councillor, you made an oath of confidentiality, the form of the oath is in the Schedule to the Constitution: “I do swear that...I will not, directly or indirectly, except with the authority of the Governor [emphasis added], reveal the business or proceedings of the Government of St Helena or the nature or contents of any document communicated to me, or any matter coming to my knowledge, in my capacity as a Councillor.”

I notice that at no time have you or any other Members of Executive Council sought to engage Section 43(8) of the Constitution.

Yours sincerely

A handwritten signature in black ink that reads "Roy Burke". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Roy Burke
Chief Secretary