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From: Lisa Jennians, OTD
Date: 7 October 2019
Cc: Janice Moore, OTD
Adam Pile, OTD
Philip Rushbrook, Governor, St
Helena
Paul Scullion, Legal Advisers

Ben Merrick

SUBJECT: ST HELENA: 1895 BURIAL GROUNDS ORDINANCE

SUMMARY

1. The Attorney General in St Helena would like to make an amendment to section 9(2) of the [1895 Burial Grounds Ordinance](#) so that the Governor in Council (Executive Council) can give approval for a disused burial ground not in a church, chapel or other place of worship, to be utilised for a public purpose. Recommend you grant approval.

DETAIL

2. The Ordinance covers general burial issues in St Helena: where burials are lawful; need for prompt burials (within 7 days); closing burial grounds and procedures concerning disused burial grounds. The Ordinance generally gives permission for the Governor in Council (Executive Council) or the relevant Council Committee (for example, the Social and Community Development Committee or the Environment, Natural Resources and Planning Committee) to take decisions on issues. There is, however, one part – section 9(2) on the Use of Disused Burial Grounds - which requires the Secretary of State to give approval for a disused burial ground that was not a churchyard to be used for a public purpose:

9(2) “ Where a disused burial ground has not been a churchyard, or an extension thereof, the Council Committee may at any time give directions for it to be laid out, altered or embellished, or for the erection thereon of any church, chapel or other place of worship, to be used by the religious body formerly in control of the burial ground, or of any school or dwelling house, or for it to be used for any other purpose which the Council Committee shall, with the approval of a Secretary of State, from time to time declare to be a public purpose:

Provided that before there is erected on a disused burial ground any building, other than a church, chapel or other place of worship, to be used by the religious body formerly in charge of the disused burial ground, the Council Committee shall cause public notice of the intention to do so to be given for a period of not less than twenty-one days, and in the event of any objection being received from the religious body formerly in control of the disused burial ground, or from any other person claiming to have an interest in the disused burial ground, the matter shall be enquired into by a commission to be appointed by the Governor under the provisions of the Commissions of Enquiry Ordinance, consisting of three members one of whom shall be nominated by the religious body formerly in control of the disused burial ground.”

3. Section 9(2) is probably the most controversial part of the Ordinance and is likely why Secretary of State approval is required as it potentially allows the construction of

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buildings on land where the deceased are buried. Section 9(1) which covers use of a disused burial ground **in a churchyard** only permits a church, chapel or other place of worship to be erected.

4. There are currently an unknown number of disused cemeteries not in a churchyard on St Helena. In addition, there are likely hundreds of graves not located in a formal burial area. Between 1840 and 1849 around 15,000 liberated African slaves were landed at Rupert's Bay of whom approximately 5,000 were dead on arrival or died soon afterwards. The deceased were buried on St Helena, many not on church burial sites or in marked graves with the result that many of their resting places are unknown or not documented. Recently, using DFID funds the St Helena Government started an excavation of a number of known sites; work on this will continue, funds permitting. The topic of the liberated African slaves while not of major interest locally does attract interest from visitors and expatriates. In January this year William Gelling, Deputy Director, Overseas Territories Directorate on a visit to St Helena committed £20k in FCO funding to support St Helena start the process of moving stored remains to a permanent resting place and the construction of a memorial.
5. I have explored with the Governor's Office in St Helena whether the requirement for Secretary of State approval for Section 9(2) could have been due to foreign policy considerations (eg implications for Napoleon's tomb or any other French nationals buried on the island). The Governor's Office in St Helena has advised that there is a [separate Ordinance](#) governing his tomb and French-owned land on the island. The reason for the proposed change is that the Attorney General's Chambers wishes to tidy up the legislation; there is no known plan to build on a disused burial ground that is not a churchyard at present; this is simply an administrative exercise to improve St Helena's legislation.
6. There are safeguards within the Ordinance to ensure the public can raise objections if there is opposition to plans for a disused graveyard to be utilised for a public purpose. The St Helena Government's Chief Planning Officer would need to give sufficient public notice as per normal planning regulations and avenues of appeal are open to the relevant Council Committee and subsequently to the Governor in Council (Executive Council). Locally, planning and development applications are a popular topic (as in the UK) and the Governor's Office is satisfied the processes in place are robust and protect the public interest.

Lisa Jennians
Overseas Territories Directorate