

## OPEN AGENDA

Copy No:

No: 40/2019

### Memorandum for Executive Council

SUBJECT

Development Application - Proposed New HM Prison and Custody Building, Bottom Woods

Memorandum by the Acting Chief Secretary

ADVICE SOUGHT

1. **Executive Council is asked to consider and advise whether OUTLINE Development Permission should be granted, with Conditions, to build a new prison and custody building on the land in Bottom Woods as recommended by the Land Development Control Authority (LDCA).**

BACKGROUND & CONSIDERATIONS

2. At the Land Development Control Authority meeting held on 4<sup>th</sup> September 2019, it was recommended that Outline Development Permission be granted for a New Prison and Custody Building at Bottom Woods, subject to conditions as set out in paragraph 10.3 below and in the report in Annex A and the Decision Letter in Annex B.

3. In accordance with the directions issued by the Governor in Council to the Chief Planning Officer on 14<sup>th</sup> April 2014 under Section 23(1) of the Land Planning and Development Control (LPDC) Ordinance, 2013, the Chief Planning Officer is required to refer to the Governor-in-Council all applications for Development Permission which proposes (Point 7) the development of buildings or sites, which are (or are proposed to be) used for (b) **the custody of persons sentenced or ordered by the court to be imprisoned or otherwise detained, whether for a fixed period of indefinitely or otherwise for purposes connected with the administration of justice or emergency services.** A copy of the directions is attached at Annex C for easy reference.

4. **Section 17 (a)** reads: Outline Development Permission, the effect of which is to give **Approval in Principle** to the proposed development which is the subject of an application, but not to permit (except to the extent, if any, allowed by conditions attached to the permission) commencement of development to take place.

5. The following are the relevant Primary Policy clauses from the Land Development Control Plan (LDCP):

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- a. CZ1: Primary Policy: There will be a presumption in favour of retaining the natural appearance and ecology of the Coastal Zone and the grant of development permission will therefore be regulated by the following implementation policies with the presumption that all development shall include provision for rainwater collection, storage and re-use, commercial development shall include provision for grey water treatment and re-use, and all development shall include for sustainable treatment of sewage without risk of pollution.
- b. SI1: Primary Policy: Development permission will be granted for all development reasonably needed for the social development of the Island and such development shall be designed to be sustainable in all services including collection, storage and re-use of rainwater and storage, treatment and re-use of grey water;
- c. ES1: Primary Policy: Development permission will be granted for infrastructure necessary for the effective provision of emergency services appropriate to the island's development needs, including ambulance, fire and rescue; and for **effective policing**, vehicle testing, customs **and immigration control**.
- d. **NH.3:** Where proposed development is likely to have an adverse effect (either individually or in combination with other developments) on St Helena's native species and habitats including the Wirebird, permission will be granted only when the benefits of the development outweigh the impacts that it is likely to have on the national and international importance of that species or habitat. The proposals must include measures to ensure that any adverse effect is mitigated or compensated and this will be subject to monitoring to ensure that the measures are carried out effectively.

## 6. RATIONALE BEHIND THE PROPOSAL

6.1 The existing Prison and Police Custody Suite located in Jamestown St Helena has been identified as not fit for purpose, including for the future, following visits and advice from the FCO Prison Adviser. The current conditions and facilities at the Prison are substandard.

6.2 St Helena Government has noted the concerns raised in the FCO Adviser's 2010 report that conditions within the prison may not withstand a challenge under Article 3 of the Human Rights Act 1998 and also recognises that a new purpose-built

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building would provide better facilities for prisoners.

6.3 The Prison population is rising and is likely to continue to rise. The current building and environment does not lend itself to further development without considerable financial implication. Therefore a project to lead a full relocation of the Prison has been initiated.

6.4 The proposed development is to provide a new prison centred around 26-single occupancy cells, in a single-storey block configured in a cross shape, together with associated rooms to provide: education, rehabilitation, training, medical room, sports, healthcare, worship, kitchen, recycling, storage, visiting, administration works, horticulture and security.

6.5 The application site is approximately 10.85 acres and is part of a larger greenfield site that is approximately 94.0 acres and is currently used for agricultural grazing. The actual enclosed area of the development, considered to be the built development, is approximately 5.20 acres and this is 5.5% of the total greenfield site.

6.6 This larger site had been identified for wirebird conservation mitigation to offset the environmental impact for the development associated with the airport. There was a requirement to prepare a conservation management plan for the future conservation and management of this site. Unfortunately, this has not been prepared, however the site has continued to be self-managed and used for agricultural grazing.

6.7 Although the application is seeking outline permission, there is considerable detail related to the layout and design including the access road and car-parking provided with the application. The main prison development is within an area with enclosed security wall and fence and with earth mounding around the external perimeter on three sides. There is car-parking outside the secured area for visitors and secured internal parking for the prison use.

## 7. BACKGROUND OF THE DEVELOPMENT APPLICATION AND REPORTS

7.1 The development application was originally submitted without an Environmental Impact Assessment (EIA) as it was considered that there was likely to be little or no environmental impact arising from the proposed development, although the development site is within an area considered to be important for wirebirds. The applicant requested a Screening and Scoping Opinion in respect of the proposed development and the Planning Service concluded that any impact on the surrounding

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area as a consequence of this development, was considered to be negligible and that it would not warrant a full EIA. For the purpose of the development application, the applicant set in their statement the view of the Planning Service, stating the conclusion reached by the planning officers.

7.2 The development application report was considered by the LDCA at their meeting in September 2018 and it was recommended to the Governor in Council to grant development permission subject to number of conditions. This was reported to the Executive Council for their meeting on 11<sup>th</sup> October 2018, but no decision was made due to issues regarding the need for an EIA in respect of the proposed development.

7.3 The concern raised by the representation received, questioned the conclusion made by the planning officers that an EIA for the proposed development was not required and the consultation period for making representation being only 14 days and not 28 days for a major application.

7.4 In view of the concerns raised and legal opinion on the interpretation of the LDCA Policy NH.4, that determined an EIA report was required, the applicant was advised to submit an EIA in support of this development application. An EIA was submitted in February 2019 and this was advertised and subject to consultation. No representation was received in respect of the EIA. Following the close of consultation the application was reported to LDCA meeting in March 2019. The LDCA deferred their decision on the development application in order to review the content of the EIA. It was then considered that the EIA did not fully address the impact of the proposed development and that a revised EIA was required. A revised EIA was commissioned by the applicant and was submitted in support of the development application on 9<sup>th</sup> July 2019. In accordance with procedures, the 28 day consultation was advertised and closed on 16<sup>th</sup> August 2019. A single representation was received and the issues raised were analysed in the report to LDCA for their meeting on 4<sup>th</sup> September.

7.5 For clarification, the application reported to LDCA for consideration is valid. The applicant had written to the Planning Service with a view to withdrawing the development application and in due course to submit a new development application with a revised EIA. The applicant was advised by the Chief Planning Officer that it was not necessary to withdraw the application whilst the revised EIA was being prepared as the only issue was the EIA that should fully address the impact of the proposed development. The applicant requested that the application be held as pending until the revised EIA was been submitted in

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support of the proposed development.

### **8. THE ENVIRONMENTAL IMPACT ASSESSMENT OF THE PROPOSED DEVELOPMENT**

8.1 The revised EIA submitted to accompany this development application has been prepared in accordance with guidance and in line with the Land Planning and Development Control (Environmental Impact Assessment) Regulations, 2013. It considers the impact of the proposed development during the construction stage of the project and the operation of the use as a Prison. The Assessment considered the potential impact of the proposed development on a number of receptors that includes: ecology, noise, air quality, water and hydrology, light pollution, landscape, invasive non-native species and cultural heritage. Cumulative impacts with other developments were also considered. The author of the report highlights that baseline data and modelling were not available for most of the impact categories resulting in low confidence in many of the predictions of impact severity. However this was accepted as there has been no active conservation activity and/or monitoring taking place on the site that would provide the level of information required in order to fully assess the cumulative impact. In light of this, best assessment has been made in considering the impact on a number of receptors in preparing the EIA.

8.2 The conclusion of the EIA is that the most significant potential impact of the development would be the permanent loss of wirebird habitat for the development site within a National Conservation Area. It also concludes that the site is currently unsuitable for wirebirds due to low grazing pressure and the consequent growth of tall vegetation and the construction of the prison on a small part of the site, would make the area of development permanently unsuitable. However, the impact of this development could be compensated for by the implementation of a management plan across the remainder of the Bottom Woods Important Wirebird Area that requires appropriate habitat management resulting in overall benefit to the wirebird population. This will require expert input as well as a long-term commitment and funding mechanism to be established.

8.3 The mitigation set out in the EIA would also be required to prevent significant noise, hydrology, light and landscape impacts. Full list of recommended mitigation actions is provided in the EIA document and these should be included as conditions on the development consent to ensure they are carried out effectively. The EIA concludes that if all the proposed mitigations are implemented then the residual impacts predicted

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are to be negligible or minor in scale.

### 9. Analysis and outcome of the Receptors assessed for EIA

Receptors	Assessment Construction Phase (Temporary)			Assessment Operation Phase (Long-Term)		
	Type of Impact	Level of Impact		Type of Impact	Level of Impact	
		Before Mitigation	Post Mitigation		Before Mitigation	Post Mitigation
<b>Ecology (wirebirds)</b>	Disturbance traffic collisions	Moderate	Minor	Loss of habitat Disturbance and traffic collisions	Minor	Minor (Positive if WA is managed effectively)
<b>Noise and vibration</b>	Plant machinery, rock breaking increased traffic	Moderate - Major	Moderate	Increased traffic, generator and air conditioning	Negligible - Minor	Minor
<b>Air Quality</b>	Dust and traffic emissions	Minor	Negligible	Traffic and generator emissions	Negligible	Negligible
<b>Water Quality and Hydrology</b>	Contamination of water flows and changing water flows	Moderate	Minor	Spillages fuel and effluent water, increased flows	Moderate	Minor
<b>Light Pollution</b>	Floodlights for night working, traffic lights	Minor - Moderate	Minor	Floodlight at the perimeter and traffic headlights	Moderate	Minor
<b>Landscape and Visual Impact</b>	Large construction site	Moderate - Minor	Moderate	Substantial building	Minor	Minor
<b>Invasive Non-Native Species</b>	Import of non-natives and spread of non-natives	Minor	Minor	Import of non-natives for farm	Negligible	Negligible
<b>Cultural Heritage</b>	None identified	None	None	None identified	None	None

9.1 The EIA also advises that even with the appropriate mitigations in place, if development permission is granted for the prison it should not set a precedent for development on poorly managed parts of other NCAs. It also recommends that Management Plans for all NCAs should be prepared as a matter of urgency to provide a comprehensive vision and action plan for the sites and to move away from the existing piecemeal protection through individual EIAs and isolated initiatives.

9.2 In line with Regulation 3. (1) (a) in the Land Planning and Development Control (Environmental Impact Assessment) Regulations, 2013, the Chief Environmental Officer (CEO) has considered the revised EIA and has concluded that the EIA report is adequate to allow the environmental impact of the proposed Prison development to be assessed. For all environmental issues assessed

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the impact classification after mitigation is mostly negligible or minor, whilst the noise and vibration and landscape impacts during the construction phase are classified as moderate after mitigation, however, this will only be temporary for the duration of the construction works. The CEO advises that the mitigation measures identified are considered appropriate and these should be translated into planning conditions in line with Regulation 3(3) in the Land Planning and Development Control (Environmental Impact Assessment) Regulations, 2013.

9.3 The CEO further adds that whilst the EIA report as submitted is for the Outline Planning stage; unless the site conditions or the design of the development changes significantly at the Full Planning stage, a further EIA Report should not be required however the applicant should formulate an Environmental Management Plan that will detail how the mitigation measures will be implemented.

9.4 **Representation:** There were number of representations received to the development application advertised in August 2018, the consultation on EIA in February 2019 and to the Revised EIA consultation in July/August 2019. For the purpose of this report only the main representation is summarised below with the Officer assessment;

9.5 The respondent has questioned the authority of the author and the EIA and the validity of the development application process as well as the consultation on the EIA. The respondent has no valid planning argument or on the content of EIA and analysis outcome in the correspondence, other than to challenge professionalism of the author of the EIA and the planning officers and the previous discussion and reports.

9.6 **Officer Response:** The representation has raised no specific procedural and content issues on the EIA in terms of the various receptors that have been assessed, the impact of these receptors and the mitigation identified to overcome the impact of the proposed development or any valid planning and/or environmental argument on the impact of the proposed development that need to be addressed.

9.7 The main issue raised appears to be whether the development application is a valid application as the respondent considers the development application was withdrawn by the applicant and therefore a new development application should have been made. This issue has been discussed in full detail earlier in the report. See para 7.5 above.

9.8 Whilst the previous discussions and reports are of relevance to

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a point, in the administration of this development application all of the previous concerns raised have been addressed with a revised EIA requested from the applicant and subsequently submitted to support the application. In conclusion, whilst there is some impact caused by the proposed development on the Important Wirebird Area with the loss of a small part of the larger site to the development, the impact is minimal. The revised EIA has been able to assess the impact and consider mitigation measures that would benefit future conservation of the remaining site.

### 10. CONCLUSION

10.1 This development application has previously been reported and discussed at the LDCA and Executive Council meetings and there has been much discussion on the proposal and the content of the supporting document. In view of the revised EIA submitted in support of the development application, it has now been possible to fully assess the environmental impact of the proposal on the immediate area and to consider the mitigation measures identified to overcome any adverse impact, arising from the development during the construction stage and in the future operation of the use. The development provides an opportunity to put in place a number of measures to promote and manage the future nature conservation of the area that could encourage the wirebird to return and nest in the area.

10.2 The grant of development permission, subject to planning conditions that require the applicant to prepare a Conservation Management Plan for this adjoining area, for promoting and encouraging the conservation of wirebird wellbeing, will overcome the negative impact in recent years and will be beneficial to wirebird conservation on the Island. The management plan should also include funding proposals to manage and deliver the plan. Whilst the conservation work in the area should commence immediately following the grant of development permission, it will be necessary to manage conservation for at least five years post completion of the construction.

10.3 In view of the process that has been followed to ensure the development proposal is considered in light of all the available information, the LDCA recommends to the Governor-in-Council to Grant Outline Development Permission with a number of conditions, as set out in the following paragraphs. It should be noted that this development falls within the Heritage Coastal Zone and can be supported in terms of siting, scale, layout, proportion, details and external materials and therefore can be allowed.

1) **Permission:** This **Outline Permission** will lapse and cease to have effect on the day, 1 year from the date of this Decision

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Notice unless an Application for Full Development Permission has been submitted by that date – extension may be requested with written approval from the CPO on behalf of the Authority.

**Reason:** required by Section 31(1) of the Land Planning and Development Control Ordinance 2013.

2) The Application for **Full Development Permission** referred to in Condition (1) above shall include:

- a) Details with regards to Site Preparation and Excavation, including Access from the Main Road, services and drainage systems;
- b) Final Building Designs, Service Installations, Exterior Finishing (Materials and Colour Schemes) as well as Landscaping Details and security fencing and lighting;
- c) Complete Infrastructure Service Supply Drawings (Water, Sewage Handling, Storm-water Management (roofs and hard surfaces) as well as Electricity Supply);
- d) Details regarding Management of existing on-site Electricity Infrastructure and possible realignment thereof to ensure continued short-term (i.e. during potential realignment) as well as long-term service provision to the area as a whole.
- e) Conservation Management Plan for the Important Wirebird Area with an appropriate level of funding for a period of at least five years post construction of the development.

**Reason:** to ensure Appropriate, Sustainable and Sensitive Implementation of the site in accordance with LDCP Policies relating to the Coastal Zone and the Important Wirebird Area management to overcome the impact of the disturbance caused by the development.

**Note:** Conditions relating to aspects such as Construction Management Plan and Mitigation Works will be set as part of the Final Development Permission if and where considered necessary.

**Right of Appeal:** If aggrieved by this decision the applicant may, within 28 days of the date of this Notice, appeal to the Land Development Appeals Tribunal, with payment of a fee of £150, addressed to the Clerk of the Tribunal, using the prescribed form which is available from the Planning Office.

### FINANCIAL IMPLICATIONS

11. Executive Council acts as the Planning Authority in this case.

### ECONOMIC

12. The existing prison is cited in the centre of Jamestown on

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### IMPLICATIONS

valuable real estate which has the potential to be developed for an alternative use as tourism related infrastructure or otherwise. It would be expected for this building to be leased after the prisoners have been relocated.

13. During the construction of the prison it will create jobs locally and an opportunity for development of skills in the construction sector. Furthermore the new facility will be an opportunity to better support the inmates with training and skills during the custodial period that will equip them for employment on their release.

### CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES

14. Not Applicable

### PUBLIC / SOCIAL IMPACT

15. The current prison and police custody facilities are considered to be substandard, inadequate and dated and not fit for purpose. The FCO Adviser's 2010 report raised concerns that the conditions within the prison may not withstand a challenge under Article 3 of the Human Rights Act 1998 and also recognises that a new purpose-built building would provide better facilities for prisoners

16. The refurbishment of the existing building would not be able to adequately improve the facilities to meet with the current day minimum standards required of such a building to operate effectively and efficiently. In this regard, no adverse public/social impact is envisaged.

### ENVIRONMENTAL IMPACT

17. An exercise was undertaken to identify a site that would be suitable for a new prison and police custodial suite. A number of sites were considered and this site was considered to be the best for the purpose. There are environmental issues related to this site as it is part of a larger site that is identified as an Important Wirebird Area. There are, however no plans in place for the conservation management of this wider area and as a result its potential for wirebird conservation has been undermined. With conservation management there is an opportunity that the area could be restored for wirebird conservation. Should development permission be granted then it would be subject to a condition that requires the conservation of the site to be managed effectively with an appropriate level of funding for a period of at least five years post construction and the conservation of the site to be commenced as soon as possible following grant of development consent.

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18. The EIA evaluating the impact of the proposed development on the environment concludes that whilst there is moderate to minor impact on a number of receptors assessed, with the implementation of appropriate mitigation these will largely be negligible.

### PREVIOUS CONSULTATION / COMMITTEE INPUT

19. Whilst there was no consultation in the identification of the site and in preparing the development proposals outside of the main stakeholders, there has been wider consultation through the development application process.

20. The issues raised by respondents to the consultation have been addressed with the submission of an EIA in respect of the proposed development.

21. The Application was published in accordance with the requirements of the Land Planning and Development Control Ordinance, 2013 and Relevant Stakeholders were consulted.

22. Key Stakeholders have responded and their views have been considered by LDCA.

### PUBLIC REACTION

23. There has been one objection received from the general public to the most recent consultation on the revised EIA. The issue raised by the representation has no relevant planning and/or environmental issues and this has been responded to by the CPO in this report and more fully in the report to LDCA

24. No objections from Stakeholders were received to the revised EIA.

25. This could possibly generate public and media interest but it is unlikely to raise any issues of concern.

### PUBLICITY

26. The decision will be mentioned in the Executive Council Report and associated radio broadcast.

### SUPPORT TO STRATEGIC OBJECTIVES

27. This paper supports Strategic Objective 1.1 – ‘Ensure effective investment in physical infrastructure’. The development of the new prison and police custody suite will provide much needed modern facilities to replace the current outdated facilities.

28. It also supports Strategic Objective 4.1 ‘Develop a safe environment’. for inmates and more importantly also the officers and other operatives in the custodial service

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**LINK TO  
SUSTAINABLE  
ECONOMIC  
DEVELOPMENT  
PLAN GOALS**

29. Goal 7 of the SEDP is to improve public infrastructure, to provide an environment that promotes investment, attracts visitors and tourists, and encourages the return of St Helenians living abroad. A well-functioning prison that meets appropriate and internationally-recognised standards will support this goal.

*GAF*

**OPEN /CLOSED  
AGENDA ITEM**  
Corporate Support  
Corporate Services

Recommended for the Open Agenda.

*5<sup>th</sup> September 2019*

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