

Minutes of the Meeting of Executive Council held on Tuesday, 02nd June 2020 at 9.30am in the Council Chamber

Present: His Excellency the Governor (Dr Philip Rushbrook)
The Hon Chief Secretary (Mrs S O'Bey)
The Hon Financial Secretary (Mr D L Richards)
The Hon Attorney General (Mr A T Cansick)
The Hon C R Beard
The Hon A A Green
The Hon L A Henry
The Hon D F Thomas
The Hon R K Yon

In attendance: Clerk of Councils (Mrs C C Johnson)
Head of Corporate Support (Mrs C A George)

Apologies: Head of News (Mrs K Yon)
Head of Governor's Office (Mr Greg Gibson)

OPEN SESSION

78.1 Welcome

The Governor welcomed all to the meeting.

78.2 Development Applications – Retention of Advertisement Sign on Premises in Lower Wharf, Change of Use for Old Customs House in Lower Wharf and Erection of Zula Remembrance Monument at Jacobs Ladder Viewing Platform (ExCo Memo 36/2020)

The Chief Planning Officer, Mr Ismail Mohammad, was in attendance for this item of business.

The three Development Applications were dealt with separately.

a) Retention of Advertisement Sign on Premises in Lower Wharf

The Chief Secretary introduced the Memorandum asking Council to consider and advise whether Full Development Permission should be granted, with Conditions, retrospectively, for the Retention of one Advertisement Sign on Premises in Lower Wharf (JT010026).

The Chief Planning Officer described all the background to Members and advised that this was a retrospective application from September 2018 for a sign for a diving business on a Grade III listed building. He explained that, the sign was of similar dimensions to another sign for a neighbouring business already in place except that the application premises appeared to be slightly shorter in its height. Representations had been received from the Heritage Society and the St Helena National Trust.

Members were content to give their support to the application which they felt respected the heritage of the building but they questioned whether these types of minor applications should be brought to Executive Council or instead, dealt with by simple administrative guidelines in an applicable policy.

Following discussion, Council advised and the Governor agreed, that Full Development Permission should be granted, with Conditions, retrospectively for the Retention of Advertisement Sign on Premises in Lower Wharf (JT010026) as recommended by the Land Development Control Authority (LDCA) until September 2021, noting that both parties would be encouraged to engage sooner in the planning process.

(Action: Clerk of Councils)

b) Change of Use for Old Customs House in Lower Wharf

The Chief Secretary introduced the Memorandum asking Council to consider and advise whether Full Development Permission should be granted, with Conditions, for Change of Use from Use Class B1 (Storage/Warehouse) to Use Class A1 (Fishmonger) of the Old Customs House, Lower Wharf.

The Chief Planning Officer informed Members of the background and advised that this was a Grade II listed building and an objection had been received from the Heritage Society.

Members were content to give their support to the application and the initiative of using another unoccupied building but raised concern about the waste water tank and hoped that the applicant would remain true to his word and ensure it was emptied on a daily basis.

Following discussion, Council advised and the Governor agreed, that Full Development Permission should be granted, with Conditions, for Change of Use from Use Class B1 (Storage/Warehouse) to Use Class A1 (Fishmonger) of the Old Customs House, Lower Wharf as recommended by the Land Development Control Authority (LDCA).

(Action: Clerk of Councils)

c) Erection of Zula Remembrance Monument at Jacobs Ladder Viewing Platform

The Chief Secretary introduced the Memorandum asking Council to consider and advise whether Full Development Permission should be granted, with Conditions, for the Erection of a Zula Remembrance Monument at Jacobs Ladder Viewing Platform.

The Chief Planning Officer described the background to Members and advised that the proposed development was for a stone moment with a plaque on a small concrete base and would have a visual impact on the area.

Members voiced no objections to the planning application but when questioned, the Chief Planning Officer was unsure about the colour of the base and the inscription of the plaque.

It was noted that the inscription was still to be decided by the Minister of Arts and Crafts in South Africa.

Following discussion, Council advised and the Governor agreed, that Full Development Permission should be granted, with Conditions, for the Erection of a Zula Remembrance Monument at Jacobs Ladder Viewing Platform as recommended by the Land Development Control Authority (LDCA) subject to suitable and applicable materials being used in the construction of the Monument.

(Action: Clerk of Councils)

78.3 Development Applications – Development Application - Construction of a Two Bedroom Dwelling, Nr Former Head O’Wain Clinic, Blue Hill (ExCo Memo 37/2020)

The Chief Secretary introduced the Memorandum asking Council to consider and advise whether Full Development Permission should be granted, with Conditions for the development application for Construction of a Two Bedroom Dwelling, Nr Former Head O’Wain Clinic, Blue Hill.

The Chief Secretary explained that in accordance with Section 23(2) (b) (ii) 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 for which granting the application would be inconsistent with a Development Plan.

The Chief Planning Officer described the background to Members and advised that this particular plot was situated in the green heartland zone. The land had been purchased prior to the adoption of the Land Development Control Plan in 2012 when development would have been permissible.

Members recalled dealing with a similar situation in 2019 whereby the land was excised from one zone to the next and felt that it was important to be consistent and follow the same procedure.

Following discussion, Council advised and the Governor agreed, that based on similar applications in the past for development within the Green Heartland zone, this particular parcel of land should firstly be excised from the zone in accordance with due process and if there are no objections then Full Development Permission should be granted, with conditions 1 – 16 as recommended by the Land Development Control Authority (LDCA) and if any difficulties are encountered, then the matter should be brought back to Executive Council.

(Action: Clerk of Councils)

The Governor thanked the Chief Planning Officer for his assistance and at this point he left the meeting.

78.4 Control of Tobacco and Related Products Bill 2020 (ExCo Memo 38/2020)

The Director of Health, Mr Edward Rayment and Health Promotion Lead, Ms Kate Heneghan, were in attendance for this item of business.

The Chairman of the Public Health Committee introduced the Memorandum asking Council to consider and advise whether following the completion of public consultation, the Control of Tobacco and Related Products Bill, 2020, should be printed, published and presented as Government Business at the next formal meeting of the Legislative Council.

The Chairman of the Public Health Committee advised that consultation on the Bill had been undertaken in all the districts but the meetings were not that well attended. The main contentious matter raised during consultation had been that it was generally felt that the sale of single sticks should continue; the Health Directorate had, however, followed the advice of the Public Health England and concluded that if this were to be allowed then it would defeat the purpose.

The Chairman of the Public Health Committee highlighted that at caucus that morning Members asked for a steer from the Attorney General on section 11 which referred to the specific provisions relating to electronic cigarettes because they felt this needed to be strengthened because it did not ban electronic cigarettes. The Attorney General clarified that section 11 reflected the policy. The Attorney General explained that the policy was not to ban electronic cigarettes but to restrict as reflected in section 11. It was explained that if Members wanted to develop a policy banning electronic cigarettes they could do so and then request the legislation be changed. The Chairman stated that as section 11 reflected the policy it should be left as it is.

The Health Promotion Lead added that banning the sale of flavours could discourage youngsters from taking up smoking and also regulating the sales of e-cigs however the evidence was not comprehensive but they would continue to work with Public Health England on this. The Nicotine Replacement Therapy (NRT) was available to assist people with smoking cessation but it needed more promotion.

Members were content to give their support but felt that it was important not to encourage the sale of single sticks because this was harmful and went against the aims of the Health strategy. They were of the view that messaging and support should be easily and readily available to those who wish to stop smoking, with the health risks and cost to the tax payer of medical treatment for smoking related diseases being publicised.

The Governor asked the Attorney General to make it clearer in the Bill that the sale and commercial import of chewing and snuffing tobacco is prohibited to reflect the policy.

(Action: Hon Attorney General)

The Governor thanked the Director of Health and Health Promotion Lead for their input.

Following discussion, Council advised and the Governor agreed, that the Control of Tobacco and Related Products Bill, 2020, should be printed, published and presented as Government Business at the next formal meeting of the Legislative Council on the 26 June 2020, with any changes by the Attorney General required regarding clarification on the prohibitions on sale and commercial import of chewing and snuffing tobacco.

(Action: Attorney General/Clerk of Councils)

78.5 Public Health (Amendment) Bill 2020 (ExCo Memo 39/2020)

The Director of Health, Mr Edward Rayment and Health Promotion Lead, Ms Kate Heneghan, were in attendance for this item of business.

The Chairman of the Public Health Committee introduced the Memorandum asking Council to consider and advise whether the Public Health (Amendment) Bill, 2020, should be printed, published and presented as Government Business at the next formal meeting of the Legislative Council.

The Chairman of the Public Health Committee explained that this was a minor amendment to the legislation and it set a maximum fine of £5,000 or imprisonment for a period up to 18 months for any offences created under Regulations.

It was highlighted that Coronavirus Regulations had already been enacted that went above the current permissible maximum of up to 6 months imprisonment. They included offences with maximum imprisonment of 12 and 18 months. This Amendment would allow the maximum sentences in those regulations to have effect.

The Governor highlighted that these were very stringent measures, probably the highest in any of the Overseas Territories.

Following discussion, Council advised and the Governor agreed, that the Public Health (Amendment) Bill, 2020, should be printed, published and presented as Government Business at the next formal meeting of the Legislative Council.

(Action: Clerk of Councils)

The Governor thanked the Director of Health and Health Promotion Lead for their input and at this point they left the meeting.

78.6 Road Traffic (Amendment) Bill 2020 (ExCo Memo 40/2020)

The Chairman of the Environment and Natural Resources Committee introduced the Memorandum asking Council to consider and advise whether the Road Traffic (Amendment) Bill, 2020 should be printed, published and presented as Government Business at the next formal meeting of the Legislative Council.

The Chairman of the Environment and Natural Resources Committee explained that the amendment had arisen following concerns that if there was an outbreak of a virus on-Island, some or all of the following services may be unavailable:-

- (i) Medical tests required for those over 70 to renew their driving licences
- (ii) MOT inspections needed for renewal of vehicle licences
- (iii) Post Office services to administratively renew driving and vehicle licences.

It was detailed that in order to address this the amendment allowed Governor in Council to extend by Order the following licences for up to three months at a time:

- (i) Vehicle Licences
- (ii) Full Driving Licences
- (iii) Provisional Driving Licences

Members queried whether under such an extension if insurance would remain valid. The Chief Secretary advised that she would check this with personnel from Solomon & Co Plc under the business continuity arrangements.

(Action: Hon Chief Secretary)

Following discussion, Council advised and the Governor agreed, that the Road Traffic (Amendment) Bill, 2020 should be printed, published and presented as Government Business at the next formal meeting of the Legislative Council.

(Action: Clerk of Councils)

78.7 Magistrates' Court (Amendment) Bill 2020 (ExCo Memo 41/2020)

The Chairman of the Social and Community Development Committee introduced the Memorandum asking Council to consider and advise whether the Magistrates' Court (Amendment) Bill, 2020, should be printed, published and presented as Government Business at the next formal meeting of the Legislative Council.

The Attorney General explained that the Amendment would enable the Chief Justice to sit in the Magistrates' Court with the same authority and powers (including those of sentencing) as the Chief Magistrate, would allow for remote attendance of Justices when outside of St Helena and allow for the selection of a Chair between Lay Justices in different locations. The Attorney General elaborated on the details in the Memo on these areas.

Following discussion, Council advised and the Governor agreed, that the Magistrates' Court (Amendment) Bill, 2020, should be printed, published and presented as Government Business at the next formal meeting of the Legislative Council.

(Action: Clerk of Councils)

78.8 Council Committees Orders and Direction (ExCo Memo 42/2020)

The Attorney General introduced the Memorandum asking Council to consider and advise whether:-

1. The Council Committees (Rules of Procedure) (Amendment) Order, 2020, should be approved and come into effect on publication.
2. The Council Committees (Constitution) (No. 2) (Revocation) Order, 2020, should be approved and come into effect on publication.
3. The Direction - Appointment of Council Committees and Direction to Council Committees Regarding Responsibility should be approved and made.

The Attorney General explained that these changes had been discussed with the wider Legislative Members. He elaborated on the memo and emphasised areas of changes were:

- (i) Creation of Employment and Education Committee
- (ii) Addition of Air Access to EDC
- (iii) Creation of the Finance Committee
- (iv) Change to rules for minutes
- (v) New mechanism to address delays in committee decisions.
- (vi) Governor to be consulted on international shipping or air access.
- (vii) Change in when Chair may act on Committee's behalf between meetings.

The Attorney General pointed out that following preparation of the draft Orders and Direction Members of Legislative Council met informally on 29 May to discuss them and approved them, except that all Members present were of the following views:

- i. That under rule 8(1) there should be 7 days for the preparation of draft minutes.
- ii. That the subject area "employment rights" should be changed to just "employment" in the Committee Responsibilities section of the Direction. This is to reflect the full scope of the subject.

In discussions about the Finance Committee, as detailed in the Memo, it was emphasised that it would work on the agreed basis that it would be the five elected ExCo Members and the Financial Secretary on the Committee. For this to work all Elected Members would need to follow a convention of only appointing a Member of ExCo as Chair. The Attorney General detailed that at the meeting with all Elected Member on 29th May two Members had been of the view that the Committee should also include Elected Members outside of ExCo. All other Members were content that the Committee be made up of just the five elected ExCo Members and the Financial Secretary.

Members welcomed the proposed changes and felt that re-instatement of a Finance Committee would demonstrate more openness and transparency by St Helena Government. Terms of Reference were in the process of being finalised.

The Chief Secretary added that the media briefing about this decision would need to be clear so that the public did not think this was part of the ongoing work relating to the proposed new system of governance.

Following discussion, Council advised and the Governor agreed, that the Council Committees (Rules of Procedure) (Amendment) Order, 2020 and the Council Committees (Constitution) (No. 2) (Revocation) Order, 2020, should be approved and come into effect on publication and the Appointment of Council Committees and Direction to Council Committees Regarding Responsibility should be approved and made including the seven days for the preparation of draft minutes and the subject area "employment rights" should be changed to just "employment" in the Committee Responsibilities section of the Direction.

(Action: Hon Attorney General/Clerk of Councils)

78.9 Covid-19 Related Orders and Directions

The Attorney General confirmed that the following four Orders and Directions had been approved:-

1. On 14th April 2020 following agreement from ExCo Members electronically, an Exemption Order with conditions was made pursuant to Regulation 4(6) of the Public Health (Prevention of Formidable Diseases) (Coronavirus) Regulations, 2020. This was for returning residents on MV Helena.
2. On 17th April 2020 following agreement from ExCo Members electronically, an Exemption Order with conditions was made pursuant to Regulation 4(6) of the Public Health (Prevention of Formidable Diseases) (Coronavirus) Regulations, 2020. This was for the same returning residents on the 14th April Order.
3. On 20th April 2020 following agreement from ExCo Members electronically:
 - (i) Two Directions were made for entry pursuant to Regulation 4(2) of the Immigration (Prohibited and Controlled Entry) Regulation 2020. One direction was in regard to individuals on Yachts the other was for the crew of the charter flight from the UK.
 - (ii) One exemption Order with conditions was made pursuant to Regulation 4(6) of the Public Health (Prevention of Formidable Diseases) (Coronavirus) Regulations, 2020. This was for the crew of Charter Flight from the UK.
4. On 27th April 2020 a Direction were made for entry pursuant to Regulation 4(2) of the Immigration (Prohibited and Controlled Entry) Regulation 2020. The direction was agreed by ExCo Members at their informal meeting that same day. This was for the crew of MV Helena.

78.10 Appointments to Prerogative of Mercy Committee

The Attorney General advised that the appointments of Mr Rodney Buckley and Mrs Christine Scipio had been revoked and Mrs Coral Yon MBE and Mrs Sandra Sim had been appointed.

78.11 Any Other Business

78.11.1 Date for next Legislative Council Meeting


The Financial Secretary advised that the Speaker had confirmed that the next Legislative Council Meeting would be held on the 26 June 2020.

There was no other business to discuss in Open Session.


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Clerk of Councils
28.07.20


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Governor


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Date