

Minutes of the Governor in Council Meeting held on Friday 18 November 2022 at 1:00pm in the Council Chamber

Present: His Excellency the Governor (Mr N J Phillips CBE)  
The Hon Chief Minister/Employment Skills & Education (Mrs J D Thomas)  
The Hon Attorney General (Mr D F Ballantyne)  
The Hon Minister Treasury Infrastructure & Sustainable Development (Mr M A Brooks)  
The Hon Minister Health & Social Care (Mr M D Henry)  
The Hon Minister Environment, Natural Resources & Planning (Ms C L Scipio)

In attendance: Secretary to Executive Council (Mrs N M Bargo)  
The Chief Secretary (Mrs S O'Bey)  
The Acting Financial Secretary (Mr N A Yon)  
Head of Communications (Mr A Bain)  
Head of Governor's Office (Mr G C R Gibson)

Overseas: The Hon Minister Safety, Security & Home Affairs (Mr J R Ellick)

**OPEN SESSION**

6.1 Welcome

His Excellency the Governor welcomed all present at the meeting of Governor in Council, including the five members of the public seated in the Public Gallery.

The Chief Planning Officer, Mr Robert Thornhill and the Planning Officer, Mr Shane Williams, were in attendance at this meeting.

6.2 Declarations of Conflict of Interest

There were no declarations of conflict of interest.

6.3 Development Application for Extension of Merrimens Fun Park, St Paul's (GiC Memo 08/2022)

The Minister for Environment Natural Resources and Planning introduced this Memorandum and explained the reason for the referral of this application to Governor in Council.

The Planning Officer then gave an overview of the application as outlined in the Planning Officer's Report to the Land Development and Control Authority (LDCA).

It was noted that development permission for the Park was granted in May 2019 however, the developers had taken a phased approach due to the COVID-19 Pandemic. It was noted that the proposed extension was within the original footprint of the Fun Park. Whilst it was recognised that the proposed development was in the Green Heartland Zone, there were other

material considerations and mitigation measures to support the proposal e.g. the design of the proposed fixtures would be consistent with the existing development and would complement the natural ecology of the area. Also, the leisure facility would provide a service to tourists and the local community alike.

**Following discussion, Council advised and the Governor agreed that Full Development Permission for the extension of Merrimens Fun Park should be granted with the Conditions as outlined in the Planning Officer's Report subject to:**

- **The addition of a new condition requiring a Parking Scheme which should be submitted to and approved in writing by the Chief Planning Officer and**
- **Condition 12 being amended to include the insertion of "near Model Cottage" as follows:**

**"The access road to the new development from the existing roadway, near Model Cottage to be appropriately formed (in accordance with the Island's Roads Policy) and surfaced sufficient for use by normal passenger cars and emergency vehicles (subject to Agriculture and Natural Resources Department agreement)."**

**Reason: to ensure that the development has adequate access in accordance with LDCP RT1.**

**(Action: Secretary to Executive Council)**

#### 6.4 Development Application for the Demolition of Existing Toilets and Temporary Siting of Containerised Toilet Block, Lower Wharf, Jamestown (GiC Memo 09/2022)

The Minister for Environment Natural Resources and Planning introduced this Memorandum and explained the reason for the referral of this application to Governor in Council.

The Planning Officer then gave an overview of the application as outlined in the Planning Officer's Report to the LDCA.

It was noted that the LDCA received one objection to the demolition of the existing toilet block as such was situated in an historic conservation area.

The existing toilet block had been condemned and was not an historic building (constructed of concrete blocks, slab and rendered). The existing perimeter wall is to be retained and the containerised toilet block would be sited in the same location as the existing building with a comparable footprint and height. This was a temporary arrangement which would allow a long-term solution to be agreed that would enhance the conservation area further. In addition the containerised unit would be disabled access friendly.

The proposed temporary arrangement was in compliance with the policy for the temporary siting and use of containers for up to 3 years but would be used as a public convenience facility, rather than for storage. It was noted that the stipulated timeframe of 3 years was reflected at condition 3 attached to the development permission should it be granted.

**Following discussion, Council advised and the Governor agreed that Full Development Permission for the proposed demolition of the existing toilets and temporary siting of a**

containerised toilet block at the Lower Wharf, Jamestown should be granted with the Conditions as outlined in the Planning Officer's Report, subject to:

- Condition 7 being amended to include the insertion of "or emptied on a regular basis" as follows:

**"Roof Water Practices: No Roof Water or other Surface Water shall be connected to or directed to any foul drain. Roof water shall be piped to storage tanks of minimum capacity 450 litres with overflow piped to an appropriate area or emptied on a regular basis."**

**Reason: To ensure appropriate provision for storm water in accordance with LDCP Policy SD1.**

**This was temporary arrangement in the interim to a long-term solution to be developed, and bearing in mind that the planning requirement regarding temporary siting of the containerised toilet facility was permitted for a period of 3 years.**

**(Action: Secretary to Executive Council)**

#### 6.5 Development Permission for Proposed Construction of 3 Bedroom Dwelling, Head O'Wain, Blue Hill (GiC Memo 10/2022)

The Minister for Environment Natural Resources and Planning (ENRP) introduced this Memorandum and explained the reason for the referral of this application to Governor in Council.

The Chief Planning Officer then gave an overview of the application and the associated circumstances outlined in the Planning Officer's report to the LDCA.

It was noted that the applicants had purchased the land prior to 2012 which at that time was in the intermediate zone. In 2012, this plot in particular was designated in the Green Heartland zone after the Land Development Control Plan (LDCP) was adopted in 2012, which has become the circumstances for a number of land owners. In 2012, a LDCP Review Working Group had resolved that the landowners, who had purchased land prior to 2012 that was in the intermediate zone but had now been re-defined to the Green Heartland zone, should be exempt from the Green Heartland Policies to enable developers to build their residential property. The application was considered by the Land Development Control Authority in February 2022, where the approach recommended by the Working Group was considered to be a material consideration that outweighed the conflict of the Land Development Control Policies. Therefore, the LDCA recommended that development permission should be granted despite the current Green Heartland policy stating that permission should not be granted to new dwellings.

It emphasised that there were a number of other land owners who had been affected by the boundary re-alignment to the Green Heartland; and further that the Working Group had no statutory decision making powers to grant an exemption to the existing policies and were no longer in existence.

There was one objection to the proposed development given that such would take place in the Green Heartland. Note was also taken that one development had taken place already in close proximity to the proposed construction of the 3 bedroom dwelling, which was also designated within the Green Heartland.

The advice of the Attorney General was that the statutory requirement of section 23(2) (b) (i) of the Land Planning and Development Control Ordinance was not met, and the referral of the application to the Governor in Council appeared to be improper, as it relied on an anticipated possible future exemption. The Attorney General was of the opinion that any decision on this application by Council would be 'unsafe'.

**Given the advice of the Attorney General, the Governor advised that he was unable to accept any advice from Council on this application. The application for development permission for the construction of a three bedroom dwelling was therefore deferred. Ministers concurred with this approach.**

Whilst Minister Ellick was unable to join the meeting virtually, the Minister for ENRP had on his behalf advised the Chief Minister that his view on all development applications deferred to Council remained the same to that expressed at the Cabinet meeting held on 15 November 2022.

Council acknowledged that a review of the LDCP was scheduled to take place during 2023 as advised by the Chief Planning Officer, and therefore requested that this be undertaken expediently to determine the parameters of the Green Heartland and other zoning parameters. This would determine whether the said property would remain in the Green Heartland. Upon completion of the review, if applicable, the applicant could then re-apply for full development permission. **Council requested data on the number of landowners which had been affected by the re-defined boundaries for the Green Heartland following the review of the LDCP.**

Council expressed their empathy for the applicants and recognised their unfortunate position in respect of this application but was unable to fully consider the application for reasons outlined above.

**(Action: Secretary to Executive Council / Minister ENRP)**

#### 6.6 Publicity/Briefing to the Press

**The assistance of the Chief Planning Officer was requested with the radio briefings on these applications with the Chief Minister in the absence of Minister ENRP, due to her travelling overseas the following day. It was important to inform the public of the reason why the one application was deferred.**

Two members of the public left.

**The Attorney General was happy to review the context for the briefings as to why the one application was deferred. The briefings should be arranged with both radio stations for Monday 21 November 2022.**

**(Action: Chief Minister / Head of Communications)**

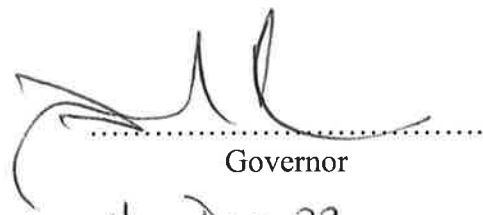
At this point the Open Session to the public ended and the remaining members of the public left.


**Council recognised that it was disappointing for the applicants to hear the actual reasons why the application was deferred and whilst the application should not have been deferred to Governor in Council, it allowed for an open discussion which demonstrated transparency of Government.**


**The Attorney General clarified that should the application revert to Governor in Council, the evidence regarding other landowners affected by re-alignment of boundaries should be taken into consideration to support an informed decision, demonstrating fair consideration for all, and to avoid setting a precedence for the application considered that day.**

The Chief Planning Officer and Planning Officer were thanked and they left the meeting.

The Open Session of Governor in Council ended and a meeting of Executive Council followed.

  
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Governor

  
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Secretary to Executive Council

  
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Date

