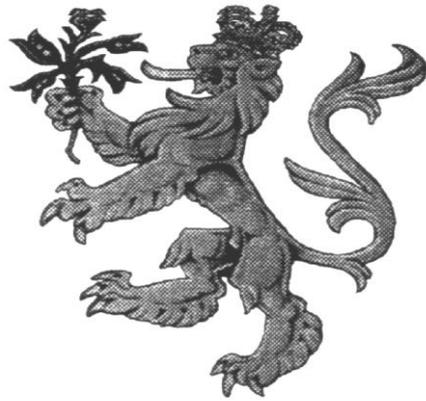


States of Alderney



DELIBERATIONS

WEDNESDAY 24TH MAY 2017

STATES OF ALDERNEY
DELIBERATIONS FOR THE MEETING
ON WEDNESDAY 24TH MAY 2017 AT 17:30

Present: Mr Stuart Trought, President
Mr Ian Tugby
Mr Matt Birmingham
Mr Louis Jean
Mr Steve Roberts
Mrs Norma Paris
Mr Graham McKinley
Mr James Dent
Mr Alex Snowdon
Mr Mike Dean
Mr Tony Barnes

His Excellency Vice Admiral Sir Ian Corder, The Lieutenant-Governor of the Bailiwick of Guernsey was in attendance.

After the opening of the meeting the President welcomed The Lieutenant-Governor to the meeting.

Item I **Capital Funding – Refurbishment of the Nunnery**

Proposed by Mrs Paris and Seconded by Mr Dent

The States of Alderney resolved as follows:-

- 1. To approve the award of the contract for the refurbishment of the Nunnery building to Tickled Pink builders;
Approved by a majority**
FOR: Messrs Tugby, Birmingham, Roberts, Dent, Barnes, Mrs Paris
AGAINST: Messrs Jean, McKinley, Snowdon, Dean

- 2. NOT to approve expenditure of £280,000, to be charged to the Capital Account;**
FOR: Messrs Tugby, Birmingham, Roberts, Dent, Mrs Paris
AGAINST: Messrs Jean, McKinley, Snowdon, Dean, Barnes
The President elected not to exercise his casting vote.

- 3. To approve leasing the building to Alderney Wildlife Trust for an initial period of 5 years.
Approved by a majority**
FOR: Messrs Tugby, Birmingham, Jean, Roberts, McKinley, Paris, Dent, Barnes
AGAINST: Mr Snowdon
ABSTAINED: Mr Dean

Item II **The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2016**

The States of Alderney resolved to approve “The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2016” and to request the President to seek the Sanction of Her Most Excellent Majesty in Council for it to have the force of Law in the Island of Alderney.

*Proposed by Mr Dent and Seconded by Mr Barnes
Approved unanimously*

Item III **Triggering of Article 50 in respect of Protocol 3**

The States of Alderney resolved:-

To note that Her Majesty’s Government has issued a notice under Article 50 of the Treaty on European Union.

To note and recognise the subsequent impact this and the withdrawal of the United Kingdom from the European Union will have on the Bailiwick’s domestic legislation and that the legislative and other measures that will need to be taken in consequence of the issue of the notice and withdrawal.

To agree that the Policy and Finance Committee:

- 1. Maintain a close dialogue with relevant Committees in the other members of the Bailiwick of Guernsey on issues of common interest such as positions on matters of trade in goods and services, freedom of travel, data protection, financial disclosure regulation and other matters that may be undertaken by Guernsey;**
- 2. Seek to ensure Alderney is represented as appropriate so that opportunities, which may be niche to the Island, as a separate jurisdiction, can be considered as well as ensuring clarity on its status as a dependency of the Crown and its entitlement to seek delegated authority from H.M Government to negotiate on certain matters, through the use of letters of entrustment, should the need arise;**
- 3. Engage, as appropriate, with the UK as the exit process unfolds and negotiations begin;**
- 4. Initiate a review, in liaison with the Law Officers, of domestic legislation that is, or is anticipated will become, outdated, as a result of the changed environment; and**
- 5. Report to the States as and when further information is obtained and decisions are needed.**

*Proposed by Mr Dent and Seconded by Mr Barnes
Approved unanimously*

Item IV **Requête regarding Membership of the Policy and Finance Committee**

Proposed by Mr Birmingham, seconded by Mr McKinley

Requête not carried:

FOR: Messrs Birmingham, McKinley, Dent and Barnes,

AGAINST: Messrs Tugby, Jean, Roberts, Snowdon and Dean

ABSTAINED: Mrs Paris

Item V **Questions and Reports**

The following questions were received from Mr Dent for the Chairman of Building and Development Control Committee:-

“Would the Chairman of BDCC agree that the Planning Process for major projects presents a real challenge for administrations such as Alderney? Does he also agree that there could be merit in requiring, as part of the Planning Application process, that sponsors of large projects (such as FAB) present an outline business case that incorporates an analysis of the economic costs and benefits to the island? Would it be sensible that such projects demonstrate positive economic returns to the community before they be approved? I believe that, if this had already been incorporated into our legislation, many of the dilemmas we now face in regard to FAB would never have occurred. Would he agree with this?”

and

“Given the result of the vote on the requete, would the Chairman of BDCC outline his views in regard to the good governance issues that arise from there being members who may still serve on both BDCC and P&F?”

The following questions were received from Mr Dent for the Chairman of General Services Committee:-

“We have just dealt with a motion on the subject of the nunnery. The motion was jointly sponsored by the Chair of GSC and myself. I acknowledge that the development and use of this important site has been controversial, and I am hoping that we may be able to learn some lessons from our efforts. Does the Chair of GSC have any views?”

The following report was received from Mr Birmingham, Chairman of the Building and Development Control Committee:-

“Report to the States – BDCC Membership.

It is with regret that I inform the States of the resignation from the Building and Development Control Committee of Mr Steve Roberts.

I would like to thank Mr. Roberts for his 4 years of service on the Committee, a difficult and at times stressful position that I know he has undertaken at times in trying personal circumstances.

However, his resignation leaves the Committee with a membership of only 3 members the bare minimum of a quorum.

At the start of the year as Chairman I struggled to find States members willing to serve on BDCC.

This was for variety of reasons, but many of the concerns centred on potential conflict of interest in passing judgement on planning applications and general workload of the members.

This is an issue that is a fundamental problem in a small jurisdiction where States members are required to cover multiple roles that are sometimes in conflict with each other.

The States' protocol of the Policy and Finance and General Services Committees effectively seeking planning permission from another States body, place States members who serve on multiple committees in the position of promoting development on one hand whilst having to regulate it on the other.

This fundamental issue can only undermine the integrity the planning system which should be an independent, apolitical quasi-judicial function of government.

After discussion with the President and the remaining members of the BDCC, the committee have decided that the best way forward would be to co-opt non states members onto the BDCC.

Under the Government of Alderney Law, 2004, the States have the power to be able to elect persons who are not members of the States to States Committees, (other than the Policy and Finance Committee), subject to the majority of the committee being States members, (Section 49 subsections 1 and 5).

Co-opting non states members would solve a number of issues.

- 1. It will allow the Committee to expand its membership to deal with possible issues of quorum.*
- 2. It will allow States members to recuse themselves from assessing proposals brought forward by other States committees on which they sit.*
- 3. It will allow the Committee to appoint individuals with knowledge that will assist the Committee in making better decisions.*

This last point is very important. Members may not be aware that Mr John Young is due to retire from his full time employment as senior planner at the end of June. I would like to take this opportunity to thank Mr Young for all his hard work over the last 2 years. Without him it would have been impossible for the fundamental reforms of the planning system recommended by the ARUP report to have been undertaken. However I am glad to say that Mr Young has agreed to make himself available to the States on a continuing advisory basis. He will be working remotely on the law changes until the Land use plan process is completed at the end of the year. In particular he plans to be present in Alderney throughout the Planning Inquiry and available to BDCC and the States for meetings.

However, I think it is clear, for the duration of this States, that co-opting additional expertise in planning would of considerable value to the Committee, due the workload of the Land Use Plan review and the implementation of the remaining legal reforms that need to be undertaken in relation to a new appeal process and the formation of supplementary planning guidance.

However, there is no process defined either within the law or under rules of procedure on how such appointments should be made.

The BDCC have therefore decided to go forward in the following way.

The committee members have drawn up a list attributes that they believe would be of value to the committee which include planning, mediation and legal experience.

It is clear in the minds of the Committee members that just co-opting more lay persons would not be beneficial. The States members constitute the lay persons. Expanding the knowledge base of the committee is what is required to achieve better planning decisions.

Using these criteria, the committee will identify a number of individuals for the Chief Executive to assess in terms of their suitability and then ask him to make approaches on behalf of the States to ask those persons that have been identified if they wish to serve on the BDCC.

If more than 2 individuals can be identified and are willing serve then the committee believe that it may be advantageous to create a panel of associate members that could be called upon to fill the 2 empty seats. However the legal validity of this panel approach will have to be established.

The committee will then bring the names of the proposed co-opted members to the States for ratification which would be for the period up to the end of the present States at which time a new committee would have to be formed.

The committee also believe that these associate members should receive a small honorarium to compensate them for their time.

If this approach proves successful then it may be a solution not just to the short term problem that the committee faces, but could significantly aide the States planning function in the future.”

The following report was received from Mr Dent, Chairman of the Policy and Finance Committee:-

“States of Alderney - Actions Taken this Year in Regard to ARE, ACRE and FAB

Mr President, colleagues, there is much speculation amongst the public in regard to the actions being taken by the States in regard to Alderney Renewable Energy (ARE), ACRE and FAB.

In order to reduce the amount of this speculation and in order that the public are aware of the most important actions that the States have taken and are now taking, I would now like to place some information in the public domain.

Before I start, I would like this chamber to know that the States have been acting only after careful legal, commercial and technical advice and in a manner designed to protect and further Alderney’s interests. We have had to be exceedingly careful.

Our general approach was debated at two Policy and Finance meetings, in January and in February. At these meetings it was resolved that all proceedings and debate would remain confidential and that a two, later increased to three, person group (myself, Mr Graham McKinley and Mr Tony Barnes) would liaise with a team of professional negotiators, who would conduct all the interactions with FAB on our behalf. Given the close nature of our community and the propensity for leaks and misinformation and not least because many of us socialise with persons who have an interest in the project, this was deemed the most appropriate course of action.

The Group’s intention was that only when there was something substantial to report would any public announcements be made and only when there was a clear decision to be made would there be debate within P&F or the States. The intention was to seek a substantially improved offer that could be of economic benefit to the island.

So, first in regards to ARE:

ARE has not met a number of its obligations under its agreement and license with ACRE:

- *ARE is in default of its technical obligations (under the seabed contract) in that it has failed to comply with both the Project Development Schedule and also with provisions that require a continuous and complete development of their seabed blocks and the completion of a development schedule which is to be regularly reviewed and updated*

- *ARE is in default of its financial obligations. The extent of its default is at least £545,000 and potentially exceeds £1m. At a minimum the default is comprised of:*
 - *a failure to pay the block fees of £172,500 for the period July 2016 –December 2016 and the block fees of £172,500 for the period January 2017 – June 2017; and*
 - *failure to pay the upfront fees of £200,000 due on 1st January 2017 to Alderney Electricity Ltd.*
- *ARE is obligated to make further payments under a consolidated loan agreement in respect of earlier block fees.*

ACRE has given ARE notice that it is in breach of the licence and provided it with an opportunity to rectify the breaches:

- *An official letter was sent to ARE by ACRE on 3rd February 2017 bringing to ARE's attention the fact that it is in breach of the contract and allowing it 14 days to remedy the breaches before ACRE would have the right to terminate the agreement.*
- *To date, 108 days have passed and ARE has failed to remedy the breaches.*
- *ARE did respond to the breach notice with an offer to enter into discussions with the States in order to renegotiate the seabed contract on new terms. However, ARE's premise for those discussions would have included ACRE accepting, amongst other things:*
 - *a reduction in the number of seabed blocks that ARE would rent;*
 - *a reduction in the block amounts of money that ACRE would receive; and*
 - *incomplete/lack of remedy for the historic breaches.*
- *Broadsheets have also been published by ARE that provide little clarity in regard to technical proposals for the works and timetables*

Consequently:

- *A formal letter has now been sent to ARE by ACRE giving notice of the termination of the agreement and requiring the payment of all outstanding money within 10 days – if payment is not forthcoming, there are to be further legal moves to recover what ACRE, the States and AEL are due.*
- *This action will remove ARE's access to the Alderney seabed and restore control of the seabed to the States/ACRE*

Next in regard to ACRE:

- *The States is in the process of downsizing the organisation – this is mainly in order to reduce costs.*
- *The law officers are assisting with this process.*
- *The States does, however need to retain a nascent organisation for two purposes:*
 - *to recover any sums from ARE; and*
 - *to administer licenses following any future retendering of the seabed.*

And now, most importantly, in regard to FAB:

- *The States' professional negotiating team has been in regular contact with FAB Link Ltd - in particular Transmission Investment's project director;*
- *The submission of any planning permission for the cable will require an amendment to Section 12 of the Planning Law – this will take some time, though this does not preclude FAB Link Ltd from taking its own action to improve the States' and the public's perception of the project, by:*
 - *making offers to improve the payments to the States under the wayleave; and/or*
 - *improving the benefits that the residents of Alderney will receive from the FAB Link; and/or*
 - *proposing new/less contentious routes for the project.*
- *With ARE no longer holding the licence to exploit the sea bed, questions may arise over the need for a convertor station which, in any event, would require a number of*

consents from the States. Notwithstanding this, the States' legal advisers are of the opinion that we now have in place everything that is required should the States wish to veto the convertor station.

- *Finally, any reasonable forthcoming proposal made by FAB may, subject to the later agreement of the States, be the focus of a public consultation exercise – I, as Chairman of P&F, believe this is the proper course and will be fighting vigorously for this.*

As permitted by Clause 19 (f) of the Rules of Procedure, I request that this report is published in the Deliberations for today.

Thank you, I hope that everyone in this chamber will accept the need for continuing confidentiality in the negotiations.”

Meeting Closed: 2040hrs

Issued: 26th May 2017