

STATES OF ALDERNEY



**BILLET D'ETAT
NO 2**

WEDNESDAY 16TH OCTOBER 2019

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FOR WEDNESDAY 16TH OCTOBER 2019

Members of the States:

I have the honour to inform you that the Meeting of the States will be held at 5:30 pm on Wednesday 16th October 2019.

William Tate
President

Item I **Replacement Harbour Crane**

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

“The harbour crane was purchased in 2012 following a serious failure of the previous crane. At the time of purchase, a maximum life of 10 years was suggested. However, the harsh conditions on the island have reduced that to a more realistic assessment of around 7 years and provision for a replacement has been included in the current capital programme.

The Harbour crane is of strategic importance to the economy and wellbeing of Alderney. The harbour crane is an essential asset for Alderney. Its removal from service through breakdown or major failure would be catastrophic to the island's economy and infrastructure. It is common knowledge that the harbour crane recently suffered a mechanical failure and was therefore out of service for a number of days whilst we awaited replacement parts.

The crane is key as the whole of the island depends on it in some form or another, with its main job to unload the regular deliveries of general cargo; consumer and business goods including food, vehicles through to loose building supplies in bulk deliveries through to the most crucial elements of fuel for the Island. The crane lifts goods from a variety of different visiting vessels.

The crane is also responsible for generating revenue through lifting of pleasure and commercial vessels in and out of the water. This is mainly between the months of April and October, however the crane is also used throughout the year to lift vessels in various instances, these range from emergency recovery of the vessel to lifting vessels that stay out all year round i.e. for maintenance.

In 2012, following an extensive research period a strategic decision was taken to purchase the wheel based Sennebogen HM680 to replace our caterpillar tracked Kobelco crawler crane. The Sennebogen HM680 has proved to be a reliable and efficient machine which fulfills the harbour's operational requirements. The most recent failure has brought to the fore the urgency and importance of a replacement crane.

Independent expert advice has been taken on options for the existing crane and we are advised that it is not economical to ship for resale nor is it viable to refurbish. The proposal is therefore to use the current crane whilst purchasing, ordering and shipping in the new crane until it is fully operational. There is long lead-time for the new order so we will continue to mitigate risk of failure through the existing maintenance programme with the supplier.

As determined by the Committee previously a replacement crane is listed as number 2 on the list of Capital Project's Priorities (as of March 2019).

An updated replacement crane will provide the opportunity to benefit from increased efficiencies, capabilities, capacity, and just as vital, continuity of service. Based on the enhanced technology, specific tailored specification and being a brand-new-build-to-order crane. This new crane will ensure continued commercial and consumer service all year. It will add value to not only revenue income but also to the types and level of service offered to current and prospect customers. The upgraded version of this more modern machine would also improve our economic efficiency and will meet not only current needs but also near future needs.

Options

Options have been considered prior to recommending the preferred option:

1. Do nothing:

There is no real option to do nothing as having no crane would have an extreme and significant impact to the States of Alderney and all its residents and businesses. Our risk assessment indicates that there is an extreme risk of the current crane failing. The frequency of the breakdown of the current crane will increase with time. A deteriorating crane will naturally lead to more breakdowns which may cause withdrawal of services and this would have severe implications. The options are therefore to replace the crane or to continue to incur out-of-service spiked costs to repair the broken parts which is not sustainable. The risks of this could be financial, non-financial, tangible and non-tangible i.e reputation, trust etc.

The recent failure in August is a timely reminder that removing the crane from service for any significant period of time causes critical issues.

2. Crane type:

Before the previous replacement in 2012, a detailed exercise was undertaken to evaluate options and decide on the most appropriate crane type for the Alderney harbour environment. It was agreed at the time that a harbour mobile crane was the best solution for the harbour and these considerations remain relevant.

The other options were crawler cranes which have mobility issues and significant degrading effects on the quay surface, which would result in major ongoing resurfacing work on the Commercial Quay. Jib cranes were also considered but would not be appropriate due to wind speed limits.

The mobile crane has the added benefit of more easily and efficiently moving away from the weather to more sheltered place of the Harbour area, especially with the frequency of bad weather the Harbour area is subjected to. A mobile crane remains the preferred option for the above reason and quotes from appropriate suppliers have been sourced.

3. Leasing v purchase:

The leasing of a new Crane has been considered as an alternative to buying. However, manufacturers have advised that this is not an option that they would be minded to consider due to the well-known issues with machines deteriorating in saline laden conditions such as ours.

The Committee therefore recommends outright purchase as the preferred choice.

During this analysis and selection process a total of three manufacturers were approached to supply quotations. Liebherr quoted between €1.7 to 1.9 million and Gottwald quoted €2.3 million. As the existing model has been found to be fit for purpose, a similar specification is preferred and two of the alternative machines did not meet our operational requirements. The model offered by the existing supplier, the Sennebogen new model E2200 does meet the required specification.

Therefore, following investigation of various crane types and purchase options to meet the Harbour's operational requirements, the preferred option is the Sennebogen E2200. This will also have the advantage of maintaining our ongoing customer and maintenance relationship with the supplier.

The cost of this option is budgeted at £850,000.

The purchase has been approved by the General Services Committee and subsequently the Policy and Finance Committee. Final approval will need to be given by the Policy and Resources Committee, States of Guernsey.

I should be grateful if you would place this matter before the States of Alderney with an appropriate proposition.

James Dent, Chairman

Committee Members Present:-

Mr James Dent, Chairman

Mr D Earl, Deputy

Ms A Burgess

Mr K Gentle

Mr C Harris

Mr G McKinley

Mr S Roberts

Mr A Snowdon

The States of Alderney is asked to authorise the Policy & Finance Committee to recommend to the Policy and Resources Committee of the States of Guernsey that approval be given to purchase a Sennebogen E2200 HMC Mobile-Hydraulic-crane at a budgeted cost of £850,000.

Item II **Code of Conduct for States Members**

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

“At its meeting on 13 November 2018, the Policy & Finance Committee resolved to:

“Propose that draft revisions of the Code of Conduct are prepared, following consultation with the Greffier and the Law Officers, for consideration by the States of Alderney at a future date. And that these should take into account the States of Guernsey rules and the Commonwealth Parliamentary Association best practice.”

I am pleased to place before the States of Alderney a draft Code of Conduct¹ and changes to the Rules of Procedure as requested by the Policy & Finance Committee in November 2018. A robust Code of Conduct is a keystone of good governance and will enhance public trust in the States. The publication *Recommended Benchmarks for Codes of Conduct applying to Members of Parliament* says:

“The public’s trust in its representatives is a fundamental aspect of good governance and an open, transparent society. It is crucial because if Parliamentarians demonstrate high standards of ethics consistent with their important public interest roles, especially when they are scrutinising the executive arm of government, it enhances public trust.”

This revised Code of Conduct builds on and improves the current Code of Conduct by ensuring that the benchmarks for codes of conduct published by the CPA are addressed appropriately. The significant changes include:

- A stronger and more detailed section on disclosure of interests (paragraph 4.2) setting out what interests States Members must declare, what actions should be taken and how interests are registered and open to public inspection.
- A more detailed section around gifts and hospitality.
- Greater clarity around confidentiality
- Clearer requirements around civility, behaviour and attendance.
- A clearly defined process around enforcement of the Code of Conduct including investigation of complaints, hearings and graduated penalties for breaches of the Code and the scope for appeal and review of Members Conduct Review Panel decisions.

The revised Code of Conduct has been the subject of consultation with the Greffier and the Law Officers and has been drafted to take account of the advice received which includes consistency with the States of Guernsey Code of Conduct where appropriate.

Implementation of the draft Code of Conduct would require some changes to the current Rules of Procedure. These changes would consist of deletion of the current Paragraphs 21 and 22 and their replacement with:

“21. Declaration of Members’ Interests

- (1) Members must fully declare and register any interest to ensure that Members act in conformity with the Seven Principles of Public Life (as set out in the Code of Conduct). Members should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. An interest of a spouse is an interest of a Member and should be declared. Interests which must be declared are as follows:
 - (a) Personal interests include those which do not have a direct financial or other material component but should be declared openly to avoid perceptions of improper motive or influence. They include memberships of organisations, societies, campaigning and lobbying groups, hobbies and friendships. A personal interest may not be obvious until a particular issues arises for decision, and therefore a Member must be vigilant and willing to declare that interest at the time where it becomes relevant.
 - (b) Pecuniary interests are those which relate specifically to the pecuniary interest of a particular Member, his or her spouse, or a corporate body over which s/he or his spouse has a controlling interest. Disclosable pecuniary interests are set out in in the Appendix to the Rules of Procedure on Disclosable Pecuniary Interests.
- (2) Where a Member or his spouse has an interest in the subject matter of any proposition submitted to a meeting of the States at which he or she is present, he or she shall act as follows:-

- (a) On issues which apply as a generality to members of the public e.g. setting occupiers' rates, fees and charges etc., a Member is under no obligation to declare an interest and may, according to conscience, participate fully in the debate and vote.
 - (b) On issues which relate to the personal interest of a Member, he or she should declare an interest but may participate or abstain from debate and voting according to his or her conscience.
 - (c) On issues which relate to a pecuniary interest the Member should declare his or her interest, leave the meeting for the duration of the discussion, take no part in the debate, and not vote.
- (3) Committees of the States are required to observe the same rules in respect of the declaration of Members' interests as required of the full States under the Rules of Procedure.
 - (4) The Chairman of a Committee or the Greffier should report to the President occasions where a Member declines to observe the procedure, and the President should take such action as appropriate, including the reporting of the matter to the States and referral to a Members Conduct Hearing Panel.

22. Register of Members' Interests

- (1) The Greffier shall maintain a Register to be known as the Register of Members' Interests in which he shall enter all declarations of interests lodged with him in accordance with paragraphs (3) and (4).
- (2) The Register of Members' Interests shall be available at the Courthouse for public inspection whenever the Courthouse is open for normal business and shall be published on the States website.
- (3) The President and all Members shall, within one month of the commencement of their term of office and by the 31st January in each year thereafter, make and lodge with the Greffier a declaration consisting of all of their personal interests, and all of their pecuniary³ interests including those relating to their spouse⁴.
- (4) The President and all Members shall make and lodge with the Greffier a declaration of any material change to their personal and pecuniary interests within one month of the change.
- (5) The President and all Members may, upon ceasing to have a personal or pecuniary interest about which an entry has been made in the Register of Members' Interests, require the Greffier to record in the register the date that the entry ceased to become a declarable interest. The Greffier shall delete the record relating to the personal or pecuniary interest from the Register on 31st January after twelve months has passed following the entry ceasing to become a declarable interest. After a period of office comes to an end, the Greffier will maintain the records in the Register at that time for a minimum of twelve months and, on the 31st January following the expiration of the twelve month period, will delete the entries relating to that office-holder in the Register of Members' Interests.
- (6) The President and all Members must, when making a declaration in respect of any pecuniary interest, provide sufficient information to clearly describe the specific nature of the interest but are not required to disclose the value of the interest.

- (7) All declarations of pecuniary interests required to be lodged with the Greffier under paragraphs (3) and (4) shall be in the form set out in Schedule 1 to these Rules.”

And the changes would add to add to paragraph 25 of the Rules of Procedure, before the words “and other words and expressions have the same meanings as in the Law”:

““spouse” includes a civil partner and any person with whom the Member is living as if they were husband or wife;”

And the changes would add an Appendix to the Rules of Procedure as follows:

“Appendix to the Rules of Procedure on Disclosable Pecuniary Interests

If any Member has any of the following pecuniary interests, they are his or her disclosable pecuniary interests. A pecuniary interest of a spouse is a pecuniary interest of a Member and should be declared. Any reference to ‘spouse’ includes any person with whom a Member is living as husband or wife.

- Employment. Any employment, office, trade, profession, consultancy or vocation carried on for profit or gain, which is undertaken by the Member or his or her spouse.
- Any directorships, partnerships or offices held by the Member or his or her spouse.
- Trusts. Any involvement with any Trust whether as a beneficiary or a trustee.
- Expenses paid. Any payment or provision of any other financial benefit (other than from the States) made or provided during a Member’s relevant period in respect of any expenses incurred in carrying out his or her duties as a Member, or towards his or her election expenses. The relevant period is the 12 months ending on the day when the Member informs the Greffier about his or her disclosable pecuniary interests following his or her election or re-election.
- Contracts with the States of Alderney. Any contract which is made between a Member or his or her spouse (or a body in which a Member or his or her spouse has a beneficial interest), and the States of Alderney, under which goods or services are to be provided or works are to be executed and which has not been fully discharged.
- Land and property ownership. Any beneficial interest in land and property which a Member or his or her spouse has.
- Licences. Any licence (alone or jointly with others) which a Member, or his or her spouse, holds to occupy land for a month or longer.
- Tenancies. Any tenancy where the landlord is the States of Alderney; and the tenant is a body in which a Member, or his or her spouse, has a beneficial interest.
- Shareholdings. Any interest which a Member, or his or her spouse, has in shares in a company where the total nominal value of the shares exceeds £25,000 or one hundredth of the total issued share capital of that body; or if the share capital of that company is of more than one class, the total nominal value of the shares of any one class in which a Member or his or her spouse has a beneficial interest which exceeds one hundredth of the total issued share capital of that class. For the avoidance of doubt, a declaration should be made when the aggregate of the shareholdings of a Member and his or her spouse exceeds the limits above.”

Finally, members of the States of Alderney enjoy qualified privilege. This is a limited protection against proceedings for defamation; it means no defamation action can be

brought where the person speaking does so without malice. Basically, States members are protected so long as the statements they make in the course of the proceedings of a States meeting are honestly made. Absolute privilege is a complete defence to proceedings for defamation – it confers protection even when untrue and malicious statements are made. A States member would be protected even if they made statements fully aware they are false and with the express intention of defaming another person.

Members of Parliament in the UK enjoy absolute privilege during parliamentary proceedings, this privilege was enshrined in the Bill of Rights 1689. In 2006, the States of Guernsey amended the Reform Law to allow States Members absolute privilege also. This was done because, unlike Alderney, Guernsey had not specifically legislated for the matter and there was uncertainty about the level of protection States Members could enjoy with respect to statements made in the States of Deliberation. In Sark, following the Reform (Sark) Law, 2008, statements made in the course of the proceedings of a meeting of Chief Pleas enjoy absolute privilege, and fair and accurate accounts of the proceedings made with the express authority of Chief Pleas enjoy qualified privilege.

The States of Alderney makes law and it is “usual” in general for words spoken during the proceedings of legislatures to attract absolute privilege. The idea is that the proceedings are sufficiently important to preclude the possibility of defamation proceedings entirely, even when untrue and malicious statements are made. . If the changes to the Rules of Procedure are approved by the States, a revised form (Schedule 1 of the Rules of Procedure) will be drafted and submitted to the States for approval before new declarations of interest are made in January 2020.

It is therefore proposed that the Law Officers are instructed to draft a change to the Government of Alderney Law, 2004 and that this change is reflected in the Code of Conduct when the change to the Law has been made.

I should be grateful if you would place this matter before the States of Alderney with an appropriate proposition.

- 1 Draft Code of Conduct for States Members appended to this report
- 2 'Recommended Benchmarks for Codes of Conduct applying to Members of Parliament' published by The Commonwealth Parliamentary Association.
- 3 See Appendix to the Rules of Procedure on Disclosable Pecuniary Interests
- 4 A pecuniary interest of a spouse is a disclosable interest of the Member and the name of the spouse does not need to appear in the Register

James Dent, Chairman”

Committee Members Present:-

Mr James Dent, Chairman

Mr D Earl, Deputy

Ms A Burgess

Mr K Gentle

Mr C Harris

Mr G McKinley

Mr S Roberts

Mr A Snowdon

The States of Alderney is asked to approve the revised Code of Conduct, the changes to the Rules of Procedure and to instruct the Law Officers to prepare a

change to the Government of Alderney Law, 2004 to confer Absolute Privilege on States Members in States Meetings.

Item III Good Governance

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

“Good Governance has been the subject of discussion and debate for some time, and particularly since the ‘Alderney’s Choices’ Report was produced by University College London in 2016. In the introduction to that report, Andrew McDonald wrote “Alderney has considered reform in the past, only to reject it. A repetition of that pattern would be perilous. Now more than ever, Alderney needs strong political leadership, grounded in popular mandate and supported by an effective Civil Service.”

The call to action in the 2016 report received public support in the subsequent consultation but the ability of the States to coalesce around a way to deliver reform has proved to be difficult and contentious. Whatever the reasons for our inability to progress these reforms, the result has been the continuation of a system which is not ‘fit for purpose’ in meeting the challenges of the 21st Century.

The Policy & Finance Committee has formed a Good Governance Group to try and unlock this difficult challenge and to develop recommendations for the way ahead. That Group has worked on ideas about how the change might happen as well as looking at models of governance elsewhere, particularly small island communities. Advice has been sought from the Centre for Small States at Queen Mary University and other acknowledged experts have offered views and encouragement about governance reform. A workshop for all States Members was held in July this year and this highlighted many aspects of the current governance structure which are not working well.

The views and recommendations of the Good Governance Group have been reported back to and considered by the Policy & Finance Committee. The Good Governance Group is strongly of the view that the States of Alderney needs to resolve one key question before getting into the detail of the specific design of a new governance system. That question is whether the States of Alderney consider that a move should be made to a system of governance where executive and legislative powers are separated?

The current system combines all of the functions of the legislature and executive into a single body – the States of Alderney and its Committees. Unlike the vast majority of governance systems which are modelled on the British Parliamentary system, Alderney’s governmental system does not separate out the functions of the executive from the legislature. The result is that accountability and transparency within government are hampered and scrutiny of executive decisions is not carried out.

There are many questions which need to be resolved about a future governance system which include but are not limited to – the period of election, the number of States Members, the size of an executive, the ways in which decisions are made and scrutinised, and the role of the President. There are many models elsewhere which can help us resolve these questions, and the public need to be engaged in helping to design those changes.

First of all, we need to establish, through open debate and decision within the States of Alderney, whether States Members actively support the principle of a change which will separate the powers of the executive business of government from the powers of the legislature. Without such a commitment, we would be doomed to remain trapped in the perilous pattern which Andrew McDonald identified.

I should be grateful if you would place this matter before the States of Alderney with an appropriate proposition.

James Dent, Chairman

Committee Members Present:-

Mr James Dent, Chairman

Mr D Earl, Deputy

Ms A Burgess

Mr K Gentle

Mr C Harris

Mr G McKinley

Mr S Roberts

Mr A Snowdon

The States of Alderney is therefore asked to resolve:-

1) That the States should move to a system of governance where executive and legislative powers are better separated as soon as possible;

and

2) The Civil Service and Law Officers, guided by the Good Governance Group, are requested to draft appropriate changes to the Structure of Government, Law and Rules of Procedure for public consultation and for consideration and decision by the States.

Issued: 4th October 2019