

ASCENSION ISLAND GOVERNMENT

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Formal meeting of the Ascension Island Council

0830 on Wednesday 13 May 2020 at the Court House

MINUTES

Present: HE Dr Philip Rushbrook, Governor
HH Sean Burns, Administrator
Gareth Morris, Director of Resources
Allen Cansick, Attorney General

Councillor Katharyn Chadwick
Councillor Andrew Ellick
Councillor Kitty George
Councillor Andrew Hobson
Councillor Alan Nicholls

In attendance: Xander Halliwell, Head of Administrator's Office
Diane Baum, Director of Conservation & Fisheries

Rob Cheeseman, Crown Counsel
Jane Disley, Clerk of Council

1. Welcome and approval of minutes

The Administrator welcomed all parties and explained who was present for those attending by phone.

2. Biosecurity Ordinance

The Administrator advised that after the previous formal meeting staff had worked hard to address the comments made about the draft legislation and a new draft had been circulated which addressed the points raised. Councillors had had the opportunity to submit feedback on that document, as a result of which an amended version had been recirculated to Council members ahead of the meeting. The Administrator then opened the floor for comments.

Cllr Hobson stated that he had collected feedback from some of his fellow councillors and made the following observations:

- the legislation was unnecessarily complex;
- councillors were worried about the overarching powers of the Biosecurity Officer;
- councillors were concerned about the impact on any individual who wanted to import anything;
- councillors still believed the legislation was poorly drafted:
 - it was confusing and elements were unclear
 - terms were undefined and open to interpretation
 - it was confusing as to whether it applied to persons or to the 'body corporate';
- it just didn't make a lot of sense.

Cllr Hobson noted that he himself had not read the amended legislation as he hadn't had time, so this was based on what he had seen last time. He advised that as councillors had spent more time on it they had become more aware of the difficulties of the legislation. Cllr Chadwick asked which councillors he was referring to while Cllr George confirmed that she had read it thoroughly but with a focus on content, not checking line by line. Cllr Chadwick said she had read it line by line and that she understood it. She said councillors had had this for some time and it was not good enough that the legislation had not been read through and that these sorts of concerns should have been brought up weeks ago.

The Administrator reaffirmed that AIG staff had gone through the legislation to iron out any perceived issues and, although some typographical errors had been found, no matters of principle were raised. He confirmed that councillors had had plenty of opportunity to discuss the policy and bring such concerns forward. Crown Counsel confirmed that it had first been presented to Council in late February before being discussed at a

meeting on 5 March. It had again been discussed in Council on 16 Apr and in the formal meeting on 30 Apr at which point concerns had been raised about typos but not about the policy which was deemed acceptable.

Cllr George highlighted that although it was not councillors' job to proof-read the documents, in the past opportunities had been created – as with employment legislation – to go through legislation in more detail to ensure nothing was missed that might be interpreted in a different way later. Crown Counsel confirmed that there would be further proof-reading by the legal drafters before it could be signed off by the Governor. He also asked if she was proposing the need for separate working groups or for time to go through things within meetings; Cllr George suggested the former. Cllr Nicholls said he was disappointed with how it had been dealt with. He said that in the past the process involved going through the draft legislation clause by clause with the drafter explaining. He pointed out that there was an assumption that this legislation affected companies and importers but would in fact affect everybody. There was then a discussion about the import of tyres by individuals and whether or not these would require permission under the proposed Biosecurity Ordinance. Crown Counsel confirmed that there was a small number of high risk items that would need permissions before importation and a number of items that must meet a minimum standard for import; tyres fell into the latter.

The Administrator again confirmed that this proposed legislation had been discussed several times at informal and formal meetings and that no fundamental problems had been raised, only typos. These had been addressed but now we seemed to be delving into the detail, so he asked why this had not been done before. Cllr Nicholls accepted that he had not gone through it in detail earlier and that maybe councillors ought to have done so. Cllr Chadwick affirmed that this should have been done at the beginning. Crown Counsel explained that the policy had been agreed and that the legislation was merely the machinery to deliver the policy. Cllr Nicholls confirmed that there was nothing wrong with the policy. The Administrator suggested that informal meetings were the opportunity to discuss such topics in more detail, but Cllr George felt that this was not the case as there were usually several other items on the agenda as well. The Administrator said that break-out sessions could have been requested whereas nothing had been done to move it forward. Cllr Hobson reminded him that he had raised 31 comments [not errors] from the first 9 pages, including 3 “fatal flaws” that changed the meaning of the sentence. He pointed out that the Governor had asked for this extra meeting, not the councillors, although the Administrator confirmed that no objections had been raised when that proposal had been made as a way to move toward making a recommendation about the legislation.

There was further discussion about the role of councillors with regard to preparing, reviewing and proof-reading legislation before the Governor shared his view. He said he was shocked at the way the conversation had gone and asked whether or not the Council was likely to be in a position today to give a majority view on the legislation. If not, he would advise on the way forward.

The Administrator asked if it was possible to reach a consensus and so Cllr Chadwick suggested the matter was put to a vote. Crown Counsel offered some points for consideration before doing that:

- In response to Cllr Hobson's earlier point, he explained that most legislation was complex, but work had been done to make it as simple as possible.
- With regard to the powers of the Biosecurity Officer, he said that the powers were limited by the purposes of those powers, exercise of which would be subject to the oversight of the court.
- With regard to the impact on individuals, he explained that it might affect individuals as it was a necessary part of such a regime. However, he confirmed that most of the world, including the Falkland Islands, already subscribed to the standards within this legislation so it was unlikely to result in a significant change for individuals importing goods.
- He did not accept that the legislation was poorly drafted. He accepted that some terms may be unclear but suggested that achieving a balance between simplicity and clarity on the one hand and sufficient complexity on the other had to be proportionate to available resources. If any ambiguity remained, it was the role of the court to interpret.

In view of the impact on householders, Cllr Nicholls raised a question about prior public consultation and about how the AIG would convey to the public the substance of the legislation. Crown Counsel advised that there was no requirement to consult the public in advance and noted that councillors were representatives of the public. The Director of Conservation & Fisheries (Dir C&F) was invited to comment. She explained that in

fact there had public consultation both with individuals and via focus groups and, although people generally did not want to put their name to specific comments, the overwhelming response was that people did not feel they would be heavily affected. She explained the difference between controlled articles which would have to meet minimum standards e.g. to arrive clean, and those very few items which would need licences since they carried a high risk e.g. live plants. She also explained that the emphasis of enforcement was on education so if items did not meet the standard rather than confiscate the item the situation would be dealt with so that people could learn what needed to be done next time. Crown Counsel also advised that Ascension was behind much of the rest of the world in this area so, for example, goods being suitably prepared for export was already a normal procedure elsewhere and, hence, there would be little added burden. Cllr Nicholls applauded the approach but asked how it might change with a future incumbent in the Biosecurity Officer position. Dir C&F explained that the principles were enshrined within the policy such that any successor would have to adhere to these proportionate principles, while the tiered approach would allow repeat offenders to be dealt with. Crown Counsel confirmed that stern safeguards had been included in the legislation to control the powers of the Biosecurity Officer such that they could be exercised only if necessary and proportionate. Although these safeguards added complexity to the document they were deemed necessary. Dir C&F also confirmed that her team had prepared a PR campaign that was ready to go and, alongside this, information would be provided at the air head, within visas and within contracts.

The Administrator asked if Council were ready to take a vote on recommending this legislation to the Governor. The results were as follows:

Proposal					
Recommend approval of the Biosecurity legislation to the Governor					
Cllr Chadwick	Cllr Ellick	Cllr George	Cllr Hobson	Cllr Nicholls	Governor
YES	YES	YES	NO	YES	ACCEPT
		Subject to final proof-reading			

The Administrator announced that with four in favour and only one against the majority decision was to recommend to the Governor that the Biosecurity legislation be accepted. The Governor accepted the recommendation. The process of finalising and enacting the legislation could now begin.

There was no further business and the meeting ended at 0920.

J Disley

Jane Disley

Clerk of Council