

EXECUTIVE COUNCIL

RESTRICTED

Title of Report: Delegated power to the Lands Committee to determine applications under the Land (Non-residents) Ordinance

Paper No: 213/09

Date: 17 September 2009

Report of: Senior Crown Counsel

1.0 Purpose

To consider a proposal from the Chairman of the Lands Committee that, in the interests of efficiency, the existing delegated authority from Executive Council to the Lands Committee to determine certain applications under the Land (Non-residents) Ordinance be extended to encompass all applications for licences (or approvals in principle for the grant of licences) for houses, residential building plots, small business premises and other non-strategic properties in Stanley and Camp, provided such applications are determined in accordance with established policy approved by Executive Council.

2.0 Recommendation

The Lands Committee recommends that, in the interests of efficiency, Honourable Members agree that the existing delegated authority from Executive Council to the Lands Committee to determine certain applications under the Land (Non-residents) Ordinance be extended to encompass all applications for licences (or approvals in principle for the grant of licences) for houses, residential building plots, small business premises and other non-strategic properties in Stanley and Camp, provided such applications are determined in accordance with established policy approved by Executive Council.

3.0 Summary of Financial Implications

None

4.0 Background : Lands Committee TORs

4.1 The Terms of Reference for the Lands Committee as set out in paper 183/06 are:-

- 4.1.1 To advise Executive Council on all matters relating to the management, development, sale, lease or licensing of all Government land throughout the Falkland Islands, except where such land falls within the remit of another Government committee.
 - 4.1.2 To advise Executive Council on the sale or lease of Government buildings throughout the Falkland Islands.
 - 4.1.3 To make recommendations to Executive Council on future accommodation requirements and housing policy.
 - 4.1.4 To exercise delegated authority within the attached guidelines in relation to the allocation and management of Government-provided commercial development sites, residential building plots, mobile home sites and grazing plots.
 - 4.1.5 To determine all applications to purchase, lease or use Government land where the Committee is satisfied that the site in question has no strategic value and has a calculated value no greater than £10,000.
- 4.2 These Terms of Reference have been extended as set out below, so that the Lands Committee now has authority for determining applications for licences under the Land (Non-residents) Ordinance where they are submitted by the partners of residents to enable a property to be purchased in joint name, or by Falkland Islanders resident overseas.
- 4.2.1 Paper 166:06: to determine applications for Licences to Hold Land from individuals resident in the Falkland Islands to enable them to purchase a property in joint names with a partner who has Falkland Islands Status or a Permanent Residence Permit.
 - 4.2.2 Paper 04/07: to determine applications for Licences to Hold land from persons with Falkland Islands Status resident overseas in accordance with established policy approved by Executive Council.

5.0 The Lands Committee's Proposal

- 5.1 Since January 2008 the Lands Committee has considered 25 applications for licences under the Land (Non-residents) Ordinance. The Lands Committee has determined 12 applications (5 for purchases in joint names with residents, under delegation 166/06 above, and 7 from Falkland Islanders resident overseas under delegation 04/07 above). The remaining 13 applications have been remitted by the Lands Committee to Executive Council for determination.
- 5.2 Of the 13 applications remitted to Executive Council:-
 - 5.2.1 4 have been residential in nature, where Executive Council has followed the Lands Committee's recommendation, which in turn has been in accordance with established policy;

- 5.2.2 2 have involved minor business premises, where the grant of the licence followed on from the separate decision to grant the applicant a lease of Government land;
 - 5.2.3 2 have involved small offshore islands;
 - 5.2.4 4 have involved farms;
 - 5.2.5 the last was an application which split the Lands Committee and involved a departure from agreed policy (Michael Bound: Hambledon House).
- 5.3 If the Lands Committee's proposal is implemented, in future applications for licences for dwelling houses, residential building plots, minor business premises, and other non-strategic properties such as small offshore islands would be dealt with by the Lands Committee, unless the Committee proposed departing from established policy approved by Executive Council, in which case they would be remitted to Executive Council for decision.
- 5.4 Paper 199/09 (request from Mr Martin Elstow and Ms Guest for approval in principle for a licence to purchase a dwelling house or residential building plot) is an example of the type of application which in future would be dealt with by the Lands Committee, if the recommendation of this paper is approved.
- 5.5 In due course, if Executive Council, after considering the final report from the Task & Finish Group on the foreign purchase of farms, lays down guidelines on the disposal of future applications for licences for the purchase of farms, the Lands Committee's delegated powers could be further widened to include determining such applications.

6.0 Financial Implications

There are no direct financial implications arising from this paper, although if agreed the proposed delegation will streamline Government business and improve the efficiency of Executive Council meetings.

7.0 Legal Implications

- 7.1 It is the Governor (in Executive Council) which has the power to determine applications for licences under the Land (Non-residents) Ordinance. The Lands Committee is a non-statutory committee, and it is therefore for Executive Council to determine the extent to which the Lands Committee should exercise delegated authority on behalf of the Governor in Executive Council.
- 7.2 It has been suggested by a member of the Lands Committee that delegating to the Committee power to determine more applications for licences under the Land (Non-residents) Ordinance would enable aggrieved applicants, whose

request is refused, to appeal to Executive Council. There is no provision in the legislation for an appeals process, but in practice if a disappointed applicant wanted to pursue the matter it is likely that it would be referred to Executive Council.

8.0 Human Resources Implications

There are no Human Resources implications arising from this paper.

POLICY ON LICENSING OF ACQUISITION OF LAND BY NON-RESIDENTS

Introductory

In 1999 the Falkland Islands Government enacted the Land (Non-residents) Ordinance, which replaced the provisions of Part II of the Aliens Ordinance and the Land (Sub-division for Non-residents) Ordinance. (Under the Aliens Ordinance, broadly speaking, any individual who is not a citizen of a British Commonwealth country and any company which is not controlled by British Commonwealth citizens required a licence to acquire land in the Falkland Islands. Under the Land (Sub-division for Non-residents) Ordinance, a licence was required by a person who is not resident in the Falkland Islands to buy any piece of land less than 500 acres in area in Camp.)

Enactment of the Land (Non-residents) Ordinance has had the effect that unless a person is ordinarily resident in the Falkland Islands and has the right to reside in the Falkland Islands (for simplicity referred to below as “resident”) he now requires a licence to be able to acquire land in the Falkland Islands.

In respect of companies, a licence is now required to acquire land in the Falkland Islands unless 75% of its voting shares are beneficially owned by individuals who are resident in the Falkland Islands or the company is for tax purposes regarded as being resident in the Falkland Islands by reason of its central control and management being in the Falkland Islands. Special provisions apply in respect of the Falkland Islands Company Limited, Standard Chartered Bank, Cable & Wireless Plc and Falklands Conservation.

The logic of the legislation

The Falkland Islands Government believes that control of the ownership of land by reference to nationality, however justified it might have been in the past, is no longer justified or adequate to further the interests of the Falkland Islands and that it is more appropriate to require all non-residents to obtain a licence if they wish to acquire land in the Falkland Islands.

The enactment of the Ordinance did not, however, signal an intention on the part of the Falkland Islands Government to operate a general policy of preventing the ownership of the land in the Falkland Islands by non-residents, as it hopes will be clear from the following paragraphs.

Agricultural land

It has been the policy of the Falkland Islands Government, consistently pursued since 1979, that the majority of agricultural land in the Falkland Islands shall be owned by local people. It proposes to continue that policy but this will not exclude favourable consideration being given to appropriate applications for licences to acquire agricultural land by non-residents. In general terms an application for such a licence is more likely to be favoured if it demonstrates a commitment to work the land so as to forward the Government’s agricultural diversification policies in relation to it, that the applicant

possesses appropriate skills, and that the applicant has adequate financial resources. The Government is unlikely to favour any application for a licence to acquire agricultural land by any person who does not intend to operate it on a commercial basis.

Mortgages of agricultural land

A licence is required for a non-resident to take security over land in the Falkland Islands. The purpose of this requirement is to prevent avoidance, by use of the rights of a lender (e.g. the right to take possession of land subject to a mortgage where the mortgagor is in default of payment of principal or interest under the mortgage), of the need to obtain a licence to acquire land. It is likely that conditions would be attached to any licence granted to a non-resident lender requiring the lender, where the lender enforces his security, to sell, and not to retain unless otherwise agreed by the Government, the land concerned.

Inward investment

It is the policy of the Government to encourage appropriate inward investment in the Falkland Islands by non-residents. The Government will favourably consider any applications for acquisitions of land in the Falkland Islands related to appropriate inward investment. It is not sensible to attempt to provide at this stage an exhaustive definition of what may be considered “appropriate”. However factors which might be examined would include the impact that the proposed investment might have in relation to the natural and human environment of the Falkland Islands, any strain it might place upon local infrastructure and, of course, its effect on the size of the population, including any need it might generate to import labour.

It is the Government’s policy to encourage local businesses, and any application for a licence to acquire land in relation to a business activity which might imperil an existing business might not be favoured, although it is not intended to prevent competition which would be in the public interest. An application for a licence to acquire land which is associated with a proposal for the formation of a joint venture with a business owned by residents will, subject to the considerations already mentioned, be likely to be favoured.

Land ownership and immigration

Where a non-resident is seeking permission to buy land in the Falkland Islands in connection with a desire to immigrate into or have a second home in the Falkland Islands, the application should ordinarily be coupled with an application for a permit of some kind under the Immigration Ordinance. Naturally, the Government is not likely to grant a permit to acquire land if he is a person who, in application of the immigration policy for time being in force, would not be permitted to settle in the Falkland Islands.

In relation to an application by a company for a licence to acquire land, the ownership of the company will be carefully scrutinised. The conditions imposed on the grant of the licence will require permission to be obtained if there is a substantial change in the ownership of the company.

The Government will also actively seek to discourage, both by conditions imposed on licences and otherwise, acquisition of land for speculative purposes or as a “land bank”. An example of the sort of conditions which might be imposed would be conditions requiring that agreed development should take place within a specific time-frame.

Purchase of houses and residential building plots by non-residents

An application by a non-resident for a licence to acquire an existing house in Stanley will normally be refused unless there are special circumstances or Government is confident at the time of the application that there is not a scarcity of affordable housing available for residents. An application by a non-resident for a licence to acquire an existing house in Camp where the non-resident does not intend to immigrate into the Falkland Islands and live in the house will be considered, but again the Government will be anxious to ensure that granting such applications does not result in a scarcity of affordable housing available for residents. Where the non-resident proposes to let the house on the local market during periods when he or she does not require it for his or her own occupation, the application for the licence is likely to be more favourably considered.

An application by a non-resident for a licence to acquire a residential building plot in Stanley or Camp will be considered, but may be subject to conditions requiring that agreed development should take place within a specific time-frame. Where the non-resident proposes to sell or let to local residents any houses erected on the land, the application for the licence is likely to be more favourably considered.

Non-resident Falkland Islanders

There is no change in the policy of Government to favour and assist wherever possible the return to reside in the Falkland Islands of Falkland Islanders who at present are resident overseas. An application by any non-resident Falkland Islander who wishes to return to live in the Falkland Islands, and for that purpose to buy a house (excluding a house in Stanley during times of housing shortage), a business or a farm, will almost certainly be granted.

Inheritance of land in the Falkland Islands

The Ordinance provides that where a non-resident inherits land in the Falkland Islands under a will or intestacy, and does not become a resident in the Falkland Islands, he must, if he does not dispose of the land within three years of inheriting it, apply for a licence to keep it. The purpose of these provisions is to enable the Government to carry out the same policies in relation to land which a person acquires by virtue of inheritance as have been set out above in respect of land which a non-resident wishes to acquire by purchase or lease. The Ordinance contains provision which has the effect that where a licence is not granted the land will be sold for the best possible price which will be paid to the person who inherited it.

May 2008

For guidance on how to apply for a Licence to Hold Land, contact the Attorney General's Chambers, Falkland Islands Government, Stanley (ainglis@sec.gov.fk)