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St. Helena

Immigration Ordinance, 2011

**Policy Guidance issued by the Governor in Council
concerning
Immigrant Landholding Controls.**

This policy guidance is given by the Governor in Council to the Immigration Control Board in accordance with sections 41 and 34(4) of the Immigration Ordinance, 2011. Separate guidance has been given about issues concerning entry to St. Helena, residence, and employment. This document deals specifically with the question of landholding by immigrants.

The purpose of the controls on immigrant landholding are steeped in history; the controls used to be very rigorous. But reforms in 2008 saw modest relaxation, and the 2011 Ordinance made major changes designed to make St. Helena a more welcoming place for immigrants.

Various landholdings by immigrants are now exempt from control, and they are not repeated here; save that it is particularly noteworthy that an immigrant may, without a licence, own:

- A lease of land (with no limitation of area) for up to 99 years, as long as the lease does not contain an option for renewal nor an option to purchase the freehold;
- Freehold (or leasehold) land not exceeding (in aggregate) two acres in area.

This guidance is concerned with those landholdings which are not exempt, and in relation to which the Immigration Control Board ('the Board') will receive application for a licence.

It should be kept ever in mind that the Ordinance provides (section 34(3)) that the Board SHALL grant a licence unless it is satisfied that it would be against the public interest to do so.

The public interest is an amorphous concept; the primary guardians of it are the democratically elected representatives of the people (though the courts have a role to play in some circumstances). From that, it follows, that decision-makers will usually regard as contrary

to the public interest anything which is inconsistent with published policies approved by the Governor in Council.

Relevant policies in the present context would be likely to include (but not be limited to) the Sustainable Development Plan, the Sustainable Economic Development Plan, the Social Policy Plan, the Environmental Management Plan and the Land Development Control Plan.

The Board must not, however, trespass on the statutory responsibilities of another authority. Specifically, the Board must not arrogate to itself the decision whether or not a proposed development of land would be contrary to the Land Development Control Plan; that is the prerogative of the Land Development Control Board. But, if the Board has concerns, it might do one of at least two things:

1. Postpone a decision until any necessary development application has been determined;
or
2. Grant a licence but with a condition that the land may not be acquired unless/until development permission has been granted for the intended use.

To assist the Board in considering whether a proposed acquisition is or is not consistent with SHG policies, the Board should invite the comments of the Director of Strategic Policy and Planning before making a decision on any application which seems likely to offend extant policies.

In addition to broad public policy issues implied by the concept of public interest, the Board should consider the following specific issues before determining an application:

1. The general state of the land market and the implications thereof for the available of land for development in the foreseeable future;
2. The location, area, and physical state of the land and the economic and social implications of allowing that land to pass to an immigrant; and
3. The use to which the applicant intends to put the land, and the social and economic implications of the proposal for St. Helena.
4. The impact of the proposed purchase of land and associated land use on neighbouring land and any impediment to economic use of that neighbouring land.

The Board may, and should, solicit advice from relevant public officers, and/or private sector sources, to enable informed judgments to be made about these matters.

Gina M Benjamin
Clerk of Councils