

# MINUTES of the EXTRAORDINARY MEETING of CHIEF PLEAS

Held in the Assembly Room, Sark on 29<sup>th</sup> August 2007 at 7.00 pm.

**Present:** J.M.Beaumont OBE, Seigneur; Lt.Col. R.J. Guille MBE, Seneschal; A.W.J. Adams, Prévôt; T.J. Hamon, Greffier; Mrs.W. Kiernan, Treasurer; and the Constables.

Members were present as follows: **24 Tenants and 12 Deputies**

**Apologies:** Mdm. Thorpe; Sieur Duncan Spence; Mdm. Hester and Sieur Harris

## Opening Remarks

- The Seneschal asked that the following two amendments be made to the wording on the Agenda –  
Item 5 - should refer to General Purposes and Advisory Committee and not Finance as worded;  
Item 6 - ammend the title of the Ordinance to read - "The Real Property (Transfer Tax, Charging and Related Provisions)(Sark) Law, 2007 (Commencement) Ordinance, 2007.

## 1. Minutes of the Extraordinary Meeting on 4<sup>th</sup>-5<sup>th</sup> July 2007

- 01 Seneschal Asked for any factual corrections and none were offered.  
Acceptance of the minutes was proposed and seconded and **APPROVED** by the House.
- 02 Seneschal Asked if there were any matters arising from the minutes.
- 03 Mdm. Page 8, Item 8.01 – the possible repayment of removal expenses by the Head Teacher has  
Magell been investigated and Mr. Conyers has been in the post for sufficient time not to require his reimbursing part of his expenses. The Committee has now changed the conditions that will apply to the contract of the replacement Head Teacher requiring full reimbursement if leaving during the first year and 50% if leaving during the second year of the contract.
- 04 Dep. Olsen Page 12, Item 10.22-27 – referred to the letter from the Brecqhou Island Manager attached to the minutes in which it was stated that "... it is our intention to provide freight transport between the island of Sark and Guernsey at competitive prices for the benefit of the residents of Sark". Deputy Olsen was investigating whether Brecqhou needed a licence to operate such a service and whether this should be a matter referred to the upcoming "Review of Shipping Services" being undertaken by Dr. Jonathan Spencer at an independent Inquiry instigated by the Lieutenant Governor. Deputy Olsen would be reporting back at Michaelmas Chief Pleas.
- 05 Sieur Baker Page 13, Item 10.28 – referred to Sieur Donnelly's remarks "...he felt it would be prudent of loSS to make arrangements with other operators" and "loSS similarly needs to compete".  
As President of the Shipping Committee, Sieur Donnelly should be supporting loSS and Sieur Baker reminded the House of the Shipping Committee mandate, Item 8, recently changed and approved by Chief Pleas, that now read – "To exercise the Shareholders interests of Chief Pleas in the Isle of Sark Shipping Company, once empowered to do so".  
Sieur Donnelly, in the name of the Shipping Committee, made no mention of loSS in his submission to the Inquiry and it was left to two other members of the Committee to independently write a joint statement in support of loSS and the Island's interest.  
Sieur Baker called for the President of the Shipping Committee to resign. He went on to say that if Sieur Donnelly did not resign, he would would bring forward a vote of no confidence in the Shipping Committee at Michaelmas Chief Pleas.
- 06 Sieur Page 2, Item 1b.07 and Page 4, Item 3.12-18 – referred to letters that Sieur Raymond would not  
Donnelly release without the consent of the correspondent. Nothing has been forthcoming on this request.
- 07 Dep. Olsen Page 2, Item 1b.03-06 – appreciated that Mlle. Char was no longer a Member of Chief Pleas but a response was still awaited giving details of the signatories to the letter sent to the Lieutenant Governor in an attempt to delay the extraordinary meeting of Chief Pleas on the 31<sup>st</sup> May.

## 2. Questions not related to the business of the day

- 01 Seneschal No questions had been received.

### 3. Sieurs Donnelly & Teers Propositions with supporting papers relating to “The Reform (Sark) Law 2007” and “The Real Property (Transfer Tax, Charging and Related Provisions)(Sark) Law 2007”.

- 01 Seneschal Pointed out that the PTT Law has already been submitted with a Humble Petition following its approval by Chief Pleas on the 5<sup>th</sup> July and therefore the proposition being put forward in this paper will have to be changed.
- 02 Sieur Donnelly Introduced his paper, jointly signed with Sieur Teers, by referring to Item 6 of the agenda which was a Commencement Ordinance making the presumption that “The Real Property (Transfer Tax, Charging and Related Provisions)(Sark) Law 2007, (PTT Law) has been approved and has received Royal Assent.
- 03 Sieur Donnelly Accepted that if this was the case then he would be happy to remove the element of the proposition referring to the PTT Law.  
The Reform Law as drafted appears to be challengeable on a number of fronts. His wish was to delay the submission rather than create trouble by not addressing the issues raised in the “opinion” contained in the draft Petition from Sir David and Sir Frederick Barclay and attached to this paper. There has been no public consultation on the form of the Reform Law now being submitted since the opinion poll was undertaken. He was anxious that Chief Pleas grasp rather than avoid the issues identified.
- 04 Seneschal Invited Sieur Teers to add any comments but he declined.  
Reference to the PTT Law has to be removed from the proposition and the Seneschal provided amended wording that was agreed by both Sieurs Donnelly and Teers.
- 05 Dep. Olsen Called for the proposition to be withdrawn. The issues have already been discussed at great length and he felt that more time should not be given to the views of a Member of Chief Pleas who will not personally attend the meetings of this House.  
If the proposition is not withdrawn, Deputy Olsen called for a named vote.
- 06 Dep S. Williams Supported Deputy Olsen and similarly called for the proposition to be withdrawn. It is time for Chief Pleas to make up its own mind on the way forward.
- 07 Mlle. Perrée Has always been led to believe that the pressures on Chief Pleas were from outside the Island.
- 08 Seneschal The pressure has always come from within Sark.
- 09 Mlle. Perrée Disagreed as it came from outside the Island.
- 10 Sieur Baker Supported Mlle. Perrée in her assertions by saying that the Barclays had been pressurising Sark.
- 11 Seneschal Brecqhou is within the jurisdiction of Sark.
- 12 Sieur Baker Quoted from past papers, indicating how the emphasis of objection has changed and referred to Advocate Dawes’ last missive in which he supported Tenants having a greater involvement in a future Chief Pleas, calling for a 50/50 split of seats.  
Let Chief Pleas now make its own decision without further interference.
- 13 Seneschal Asked Sieurs Donnelly and Teers if they wished to withdraw but they declined to do so.  
As a named vote had been called for he repeated the revised proposition –

#### **Proposition –**

“That Chief Pleas shall postpone submitting for Royal Sanction the Projet de Loi “The Reform (Sark) Law 2007” until it has considered and taken action, including taking independent legal advice and debating the issues, in response to the matters raised in the accompanying draft Petition”.

Following a named vote, the proposition was **LOST** - **Contre 27, Pour 5, No Vote 4**

### 4. Constitution 2007 Committee (C07C) The Reform (Sark) Law 2007 – Report with Propositions and Projet de Loi

- 01 Dep. Armorgie Emphasised the reasons given in the report for this further consideration, apologising for overlooking the non-inclusion of times for polling” in the draft Projet considered in July 2007.  
There being no further comments or questions, the Seneschal took the House to the vote.

#### **Proposition 1 –**

That Chief Pleas amend the dates for the referendum, as defined in Schedule 1 of the revised draft law distributed with this report, and replace as follows –

*“That Chief Pleas shall by Ordinance appoint a date for the holding of a referendum (“the referendum”) in accordance with this Schedule, which said date shall fall within a period which commences not earlier than two years before the expiration of the terms of office of the first-elected Members and ends not later than one year before such expiration”.*

On a show of hands, **Proposition 1** was **CARRIED** with no votes against.

### **Proposition 2 –**

That Chief Pleas agree to specify the hours of polling, as provided for in Schedule 1 of the revised draft law submitted with this report, as follows –

*“The hours of polling shall be between 8am and 8pm on the day of the referendum, or such other time as Chief Pleas may, by Ordinance, specify.”*

On a show of hands, **Proposition 2** was **CARRIED** with no votes against.

- 02 Seneschal The Projet de Loi as now approved, with the removal of the word Draft from the pages, will be forwarded with a Humble Petition for consideration. It is hoped that Royal Assent will be forthcoming at a meeting of the Privy Council on 10<sup>th</sup> October 2007.

## **5. General Purposes and Advisory Committee Report entitled “The North Korea (Restrictive Measures)(Sark) Ordinance 2007”**

- 01 Dep. Melling Informed the House of the fast track procedure adopted by the Committee for this Ordinance following a request by Her Majesty’s Procureur that it was in the public interest for an early enactment of the Ordinance to take place.
- 02 Seneschal Confirmed that there being no comments from the House, the Ordinance remains **IN FORCE**.

## **6. Finance & Commerce Committee Report entitled “Assignment of Treizieme by The Seigneur” and to approve the Ordinance entitled “The Real Property (Transfer Tax, Charging and Related Provisions)(Sark) Law 2007, (Commencement) Ordinance, 2007.**

- 01 Sieur Raymond Referred back to the July meeting when Chief Pleas accepted the assignment of treizième payable to the Seigneur in return for an annual stipend, enabled by Section 13 of the above Law. The Seigneur has now executed the assignment, effective from the 1<sup>st</sup> September 2007 and it is necessary to commence Section 13 from the same date.  
In fact, the arrangement has no effect on anybody else and the only reason for legislation is to give transparency to what is being done. The Ordinance will be reviewed by the Royal Court and should it prove to be ultra vires then it will be annulled.
- 02 Sieur Donnelly Didn’t understand this at all. The Island could be made to look stupid if the Royal Court pronounced against it.
- 03 Sieur Rang Has previously questioned this arrangement and, being consistent, he still felt the stipend should not start until the Law has received Royal Assent.
- 04 Seneschal Although Sieur Rang’s question was a legitimate enquiry, Chief Pleas agreed to the arrangement at the July meeting where it was fully explained and debated. The timing of its implementation was dependent on the income from treizième being paid to Chief Pleas and this arrangement has now been completed.
- 05 Sieur Donnelly The Seigneur could waive his right to the stipend until income from the property transfer taxes is sufficient to cover the outgoing.
- 06 Seneschal The stipend will not be paid on the 1<sup>st</sup> September but at such time as a sufficient fund from Treizième has been accumulated.
- 07 Sieur Donnelly and Rang Both declared themselves satisfied with that proviso.

### **Proposition –**

That Chief Pleas approve the Ordinance entitled “The Real Property (Transfer Tax, Charging and Related Provisions)(Sark) Law 2007, (Commencement) Ordinance, 2007.

On a show of hands, the **Proposition** was **CARRIED**

### **Closing remarks**

- The Seigneur made a statement relating to Congé and this is attached to these minutes.
- **MICHAELMAS MEETING - Wednesday 3<sup>rd</sup> October 2007 at 10.00am**  
**Agenda closes - Friday 7<sup>th</sup> September 2007 at 3.00pm.**

The meeting closed at 7.55pm

## STATEMENT BY THE SEIGNEUR

I have a problem. Indeed we all have a problem in that I have been asked to give congé for the tenements of La Moinerie, La Rondellerie and La Vieux Port and the freehold of Clos de Messervy, all for the sum of £25,000 a piece – and I am led to believe there are more in the pipeline.

You will remember the sentence in Advocate Dawes' letter to Sieur William Raymond, read out at the last meeting that stated – *"It is only fair to say though, that my Client intends in any event to acquire first a long leasehold interest over La Friponnerie which is likely to leave the tenement itself without any great value"*.

If I grant congé for such transfers having assigned the benefit of treizième, I feel that I am not only failing to fulfil my obligations to Her Majesty to uphold the laws and customs of Sark but also letting down the general public of the Island by failing to impose a charge due to the public purse; and believe that the Sénéchal, in whose Court the conveyances would be presented for registration, would thereby be made to feel equally uncomfortable.

On the other hand, if I refuse to give congé without payment of treizième on the true value of the combined transactions, I would be at risk of legal action with the prospect of legal costs which I simply cannot afford.

As the public purse, through Chief Pleas, is to be the beneficiary of any treizième payable pending the commencement of the PTT legislation, it is only right that Chief Pleas should determine whether to litigate over whether: The judgement in *Surcouf v de Carteret* applies to tenements as well as freeholds; and/or in any particular circumstances treizième is properly payable on the true value of the unencumbered tenement (or freehold) because there has been a series of transactions as a device to avoid the payment of treizième.

Now to the crux of the problem. Having assigned my right to treizième, I am in effect the agent of Chief Pleas in this respect, and will accordingly decline congé and lend my name to any ensuing litigation if Chief Pleas so request and acknowledge their responsibility for the costs thereof. Otherwise I have no practical alternative but to grant conge on whatever basis the transaction is presented to me.

I must make clear the difference between Freeholds and Tenements: Whether you like it or not, the law as to the Freeholds has been stated in *Surcouf v de Carteret* – that long leases are valid. The "device" of lease before sale argument may still be a runner on a freehold if Chief Pleas want to pay to run it, but the Letters Patent argument can only run, if at all, for tenements.

Of course, a crucial point is that all this problem disappears once the PTT legislation is in force, and it is in everyone's interest to get Royal Sanction for the Projet and get it implemented as soon as possible.

**Michael Beaumont, Seigneur**

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