



**ST HELENA**

**REVISED EDITION OF THE LAWS, 2017**

**LAND OWNERSHIP & USE**

**LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE, 2013<sup>1</sup>**

*Ordinance 9 of 2013*

*In force 1 June 2013 (L.N. 31/2013) and 1 February 2014 (L.N. 1/2014)*

*Amended by Ordinance 6 of 2016, 14 of 2017*

*Subsidiary legislation:*

**LAND PLANNING AND DEVELOPMENT CONTROL (GENERAL) REGULATIONS, 2013**

*Legal Notice 47 of 2013*

*Amended by L.N. 10/2016*

**LAND PLANNING AND DEVELOPMENT CONTROL (AUTHORITY PROCEDURES) REGULATIONS, 2013**

*Legal Notice 48 of 2013*

**LAND PLANNING AND DEVELOPMENT CONTROL (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS, 2013**

*Legal Notice 49 of 2013*

**LAND PLANNING AND DEVELOPMENT CONTROL (APPEAL) REGULATIONS, 2013**

*Legal Notice 50 of 2013*

**LAND PLANNING AND DEVELOPMENT CONTROL (FORMS AND FEES) REGULATIONS, 2013**

*Legal Notice 51 of 2013*

*Amended by L.N. 10/2016*

**LAND PLANNING AND DEVELOPMENT CONTROL (GENERAL DEVELOPMENT) ORDER, 2013**

*Legal Notice 52 of 2013*

*Amended by L.N. 10/2016*

**LAND PLANNING AND DEVELOPMENT CONTROL**

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<sup>1</sup> Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

**(DEVELOPMENT PLANS) REGULATIONS, 2013***Legal Notice 53 of 2013**Not included:***INTERIM TREE PRESERVATION ORDER, 2015***G.N. 17 of 25 February 2015*Notes:

1. The **'Building Regulations'** (Part II of the Land Planning & Development Control Regulations, 2000) were made under the Land Planning & Development Control Ordinance (Cap. 66) and preserved by section 95(b) of the Land Planning & Development Control Ordinance, 2008 which repealed Cap. 66. The 2008 Ordinance was itself repealed by this Ordinance, without a saving for the Building Regulations, but they are saved by the Commencement Notice for the Building Control Ordinance, 2013 which is noted under that Ordinance. The text of the 'Building Regulations' is published with the Building Control Ordinance, 2013.

2. The Diana's Peak National Park Proclamation, 1996 and the Land Development Plan made under the Land Planning & Development Control Ordinance (Cap. 66) were saved by section 95(b) of the Ordinance of 2008, but were not further saved by the Commencement Notice for the Building Control Ordinance, 2013. They have therefore lapsed and are of no effect.

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**LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE, 2013**

## ARRANGEMENT OF SECTIONS

PART I  
PRELIMINARY

1. Short title
2. Interpretation

PART II  
DEVELOPMENT CONTROL AUTHORITY

3. Establishment of Authority
4. Secretary to Authority
5. Duties of Authority
6. Meetings of Authority
7. Members not to participate in certain discussions

PART III  
PLANNING OFFICERS

8. Planning Officers
9. Advice by Planning Officers
10. Assistance by Planning Officers to prospective developers

PART IV

PLANNING POLICY AND EXERCISE OF PLANNING FUNCTIONS

11. General duty
12. Policy directions of Governor in Council

PART V  
DEVELOPMENT PLANS

13. Proposal for Development Plan
14. Application of different plans applicable to same area
15. Legal status of Development Plan

PART VI  
DEVELOPMENT CONTROL

*Division A: Development permission*

16. Restriction on development
17. Types of development permission

*Division B: Application for development permission*

18. Application for development permission
19. Development and environmental effects
20. Screening and scoping opinions

*Division C: Consideration of application for development permission*

21. Planning Officer may require further information
22. Consultation in relation to applications
23. Referral of applications for development permission to Governor in Council
24. Matters to be considered
25. Development Agreements

*Division D: Decision on application for development permission*

26. Decision on application
27. Notice of decision
28. Effect of grant of development permission

*Division E: Variation, modification or revocation of development permission*

29. Minor variation of development permission
30. Modification or revocation of development permission

*Division F: Lapse of development permission*

31. Lapse of development permission

PART VII

UNAUTHORISED DEVELOPMENT OR CONTRAVENTION OF DEVELOPMENT  
PERMISSION

*Division A: Notice to apply for permission*

32. Notice to apply for development permission

*Division B: Enforcement notices*

33. Issue of enforcement notice  
34. Considerations with respect to issue of enforcement notice  
35. Scope and effect of enforcement notice  
36. Continuing operation of enforcement notice  
37. Protection of prospective purchasers with respect to unauthorised development

*Division C: Removal or alteration of work without enforcement notice*

38. Power to require conformity

PART VIII  
CONSERVATION OF NATURAL AND BUILT HERITAGE

39. Historic environment record, listed buildings and historic conservation areas  
40. Building Preservation Orders  
41. Urgent Building Preservation Orders  
42. Tree preservation orders  
43. Urgent Tree Preservation Orders

PART IX  
AMENITY ORDERS AND SUPPLEMENTARY PROVISIONS FOR CONTROL OF  
DEVELOPMENT

44. Amenity orders  
45. Notice requiring discontinuance of use or alteration or removal of buildings or works

PART X  
COMPENSATION

46. No right to compensation except as expressly provided  
47. Right to claim compensation from Crown  
48. Position if land is subject to mortgage  
49. Claims for compensation

PART XI  
POWERS OF PLANNING OFFICERS

50. Powers of entry  
51. Power to require information

PART XII

## APPEAL PROVISIONS

- 52. Establishment of Appeals Tribunal
- 53. Right of appeal
- 54. Powers and duties of Tribunal
- 55. Meetings of Tribunal
- 56. Notice of appeal
- 57. Rejection of notice of appeal in certain circumstances
- 58. Effect of service of notice of appeal in certain instances
- 59. Procedure in relation to appeals
- 60. Notification of decision
- 61. Application to court for judicial review

## PART XIII REGISTER OF INFORMATION AND REPORTING

- 62. Registration of planning and associated decisions
- 63. Reporting by Authority

## PART XIV OFFENCES

- 64. General offences
- 65. Offences by members of Authority and Tribunal
- 66. Offences by public officers
- 67. Offences by corporate body

## PART XV MISCELLANEOUS PROVISIONS

- 68. Service of notices
- 69. Death of person having claim or right
- 70. Regulations
- 71. Application to Crown

## PART XVI REPEAL AND CONSEQUENTIAL AMENDMENTS

- 72. Repeal and amendment of legislation

AN ORDINANCE to make new provision for the planning and regulation of the development and use of land, and for connected or incidental matters.

## PART I PRELIMINARY

### Short title

- 1. (1) This Ordinance may be cited as the Land Planning and Development Control Ordinance, 2013.

(2) *Omitted as spent*

(3) *Omitted as spent*

## Interpretation

2. (1) In this Ordinance, unless the context otherwise requires—
- “**advertisement**” includes any representation, sign, device or artefact employed wholly or partly for the purposes of advertisement, announcement or direction and includes any supporting structure thereto;
- “**Airport Operator**” means the person designated by the Governor to be the operator of the airport in St Helena and (until the airport becomes operational and a person has been so designated) means the Airport Director;
- “**amenity order**” means an order made under section 44;
- “**Authority**” means the Land Development Control Authority established under section 3;
- “**building**” includes any structure and any part of a building as so defined but does not include plant or machinery contained in a building;
- “**building operations**” includes demolition of buildings, rebuilding, structural alterations or additions to buildings and other operations normally undertaken by a person carrying on business as a builder;
- “**buildings or works**” includes waste materials, refuse and other matters deposited on land, and references to the construction of buildings or works are to be construed accordingly;
- “**Chair**” means the person appointed by the Governor under section 3(2) to be the Chair of the Authority, and includes (where the context so admits) a person lawfully presiding at a meeting of the Authority;
- “**Chief Planning Officer**” means the Chief Planning Officer appointed under section 8;
- “**Clerk**” means the Clerk of the Tribunal appointed under section 52;
- “**Crown**” means the Crown in right of the Government of St Helena;
- “**development**” has the meaning given that term by subsection (2);
- “**Development Plan**” means a Development Plan prepared under Part V and includes any adopted modification or amendment of it;
- “**development permission**” means approval for development given under Part VI;
- “**enforcement notice**” means a notice issued under section 33;
- “**environmental impact assessment report**” or “**EIA**” in relation to any development, means the report referred to in section 19;
- “**land**” includes land covered with water and buildings and other things permanently affixed to land;
- “**listed building**” has the meaning given in section 39(2);
- “**material planning considerations**” are considerations relating to the use and development of land in the public interest, including any environmental, social and economic considerations that appear to be relevant in the circumstances, but excluding matters which are managed or regulated under other legislation;
- “**mineral**” includes all substances of a kind ordinarily worked for removal by quarrying and mining operations;
- “**Planning Officer**” means a Planning Officer appointed under section 8 and includes the Chief Planning Officer;
- “**President**” means the President of the Tribunal;
- “**relevant interest**” has such meaning as is from time to time prescribed by regulations made

- under section 70;
- “**Secretary**” means the person appointed as Secretary to the Authority, under section 4;
- “**Tribunal**” means the Land Development Appeals Tribunal established under section 52;
- “**unauthorised development**” means any development for which development permission has neither been granted nor deemed to have been granted under a General Development Order under section 16(2);
- “**use**” in relation to land, does not include use for the purposes of carrying out building operations or engineering operations on it; and
- “**waste material**” includes refuse, spoil and any other material or artefact which has the appearance of being abandoned including vehicles, machinery or equipment, irrespective of any intention of any person to extract parts or residue from the material or artefact.

- (2) For purposes of this Ordinance, “**development**” means—
- (a) the carrying out in, on, over or under land of—
- (i) building operations;
- (ii) engineering operations, including, without limiting that term—
- (aa) the formation of means of access to a road;
- (bb) operations normally undertaken by a person carrying on business as a civil engineering or groundworks or marine engineering contractor; and
- (cc) the erection of radio transmitting or receiving equipment and structures for wind water and solar power;
- (iii) quarrying and mining operations which, without limiting that term, include extraction or working of any mineral, exploratory works, and the deposit of waste products incidental to such operations;
- (b) the making of any material change in the use, as defined in regulations made under section 70, of any building or land;
- (c) storing or depositing waste materials on land; or
- (d) the displaying of any advertisement on any building or land.

## PART II DEVELOPMENT CONTROL AUTHORITY

### Establishment of Authority

3. (1) There is hereby constituted a Land Development Control Authority having the functions and powers that are conferred upon it by this Ordinance or any other law.

(2) The Governor must appoint a Chair, and not less than 4 nor more than 6 other persons, to be members of the Authority, each of whom holds office for the term, not exceeding 3 years, specified in the appointment.

(3) The Governor may designate a member to be the Deputy Chair of the Authority.

(4) A member of the Authority may resign office by giving written notice to the Governor.

(5) The members of the Authority are to be paid, out of sums duly appropriated from the Consolidated Fund, remuneration or other allowances that the Governor, acting in his or her discretion, determines.

### **Secretary to Authority**

4. (1) The Governor must appoint a public officer to be the Secretary to the Authority.

(2) The Secretary, or in his or her absence any public officer authorised for that purpose by the Chief Planning Officer—

- (a) must attend all meetings of the Authority, but may not vote on any matter or question before the Authority; and
- (b) is responsible for preparing and maintaining all records and minutes of the proceedings of the Authority.

(3) The Secretary must perform any other duties conferred on the Secretary by this Ordinance, and any other appropriate duties that the Chief Planning officer may require the Secretary to perform.

### **Duties of Authority**

5. (1) The duties of the Authority are to—

- (a) determine applications for development permission in accordance with—
  - (i) this Ordinance and any other rule of law; and
  - (ii) (except as is expressly otherwise provided) any relevant Development Plan, any relevant policy directions given under section 12 and any policies or guidance published under paragraph (c);
- (b) keep under review the policies contained in any Development Plan, and make recommendations to the Governor in Council as to possible amendments to them;
- (c) formulate and publish (and monitor, review and revise as occasion may require), any planning policies and planning guidance (consistent with this Ordinance and any relevant Development Plan) that the Authority considers necessary or desirable to aid consistency of practice and transparency of process; and
- (d) perform any other functions required or authorised by or under this Ordinance or any other law.

(2) Acts of the Authority may be authenticated by the signature of the Secretary or a Planning Officer.

### **Meetings of Authority**

6. (1) Meetings of the Authority must be convened by the Chair as often as is necessary for the timely despatch of the Authority's business, and a quorum is formed by not less than 3 of those members entitled to be present.

(2) Meetings of the Authority must be held in public; but regulations may prescribe circumstances in which the Chair may exclude the public from all or part of a meeting.



(3) Every Planning Officer is entitled to attend any meeting of the Authority, and to advise the Authority on the performance of any of its functions under this Ordinance, but is not entitled to vote.

(4) The Chair may invite any person to attend, and to speak at, any meeting of the Authority when, in his or her opinion that person has specialist knowledge or expertise relevant to any matter before the Authority.

(5) The Chair must, as far as is practicable, preside at every meeting of the Authority, and in the Chair's absence, there must preside:

- (a) the Deputy Chair, if one has been designated in accordance with section 3(3); failing whom,
- (b) a member of the authority designated to do so by the Chair; failing whom,
- (c) a member of the authority chosen by a majority of the members present at the meeting.

(6) Subject to this Ordinance, and any regulations made under section 70, the Authority may regulate its own procedures.

(7) Regulations may provide for meetings to be held in circumstances in which the members participating in the meeting are not all present in the same place but whereby all the members participating can hear, and be heard by, all of the other members so participating.

### **Members not to participate in certain discussions**

7. (1) Any member of the Authority who has a relevant interest in any matter which comes before the Authority for discussion at a meeting must immediately declare that interest and withdraw from the table and take no part in either the discussion or the decision.

(1A) A member who withdraws from the table under subsection (1) may remain in the meeting room in the area made available for seating members of the public.

(1B) This section does not prevent a member of the Authority who has submitted an application for development permission from making representations to the Authority on the same basis as any other applicant.

(2) The Secretary must record in the minutes of the meeting particulars of any declaration of interest made pursuant to subsection (1).

## **PART III PLANNING OFFICERS**

### **Planning Officers**

8. (1) The Governor must appoint a Chief Planning Officer, and may appoint any other Planning Officers that are necessary or desirable for the administration of this Ordinance.

(2) Subject to this Ordinance, the Chief Planning Officer is responsible for the

administration and operation of the system of planning and development control for which this Ordinance provides.

(3) The Chief Planning Officer has the powers conferred on him or her, and such duties as he or she is required to perform, by this Ordinance or any other law.

(4) The Chief Planning Officer may delegate any of his or her powers and duties under this Ordinance to any other Planning Officer.

(5) The Authority may delegate to the Chief Planning Officer the power to grant development permission in relation to types of development, and subject to conditions or limitations as prescribed in the delegation.

(5A) A person to whom development permission is granted under subsection (5), if dissatisfied with the terms and conditions subject to which it was granted, may require the Chief Planning Officer to refer the application to the Authority for its decision and thereupon the permission granted by the Chief Planning Officer ceases to have effect.

(6) The Chief Planning Officer must report to the Authority any development permission granted (with or without conditions) under subsection (5).

#### **Advice by Planning Officers**

9. (1) The Chief Planning Officer is the principal adviser to the Governor in Council and the Authority on matters relating to the physical planning and development of land.

(2) Before exercising any function conferred by this Ordinance in relation to any matter, the Governor in Council or the Authority (as the case may be) must obtain and consider the advice of the Chief Planning Officer or of another Planning Officer designated by him or her to give advice in relation to the relevant subject.

#### **Assistance by Planning Officers to prospective developers**

10. (1) A Planning Officer may enter into discussions with any person interested in developing any land or any proposed development of any land.

(2) Nothing a Planning Officer says in any discussion which might take place between any prospective developer and the Planning Officer (or any person acting on his or her behalf) as to any proposed development, or any diagram, schematic drawing or other material a Planning Officer may provide or consider as a result of, or during any such discussion binds the Governor, the Authority or the Planning Officer—

(a) to exercise any power under this Ordinance; or

(b) as to the manner in which any such power may be exercised,

nor requires the Planning Officer to perform any duty which he or she would not otherwise be obliged to perform.

### **PART IV PLANNING POLICY AND EXERCISE OF PLANNING FUNCTIONS**

## General duty

**11. (1)** It is the duty of the Authority, the Planning Officers and all other officers charged by or under this Ordinance with the exercise of any power or the performance of any duty, to exercise that power or to perform that duty in such a manner as to promote orderly development of land, in so far as such development is consistent with this Ordinance and any other law, and with any policy (including any Development Plan) lawfully determined for the development of land in St Helena.

**(2)** In performing the duty provided for in subsection (1), the Authority, the Planning Officers and all other officers mentioned in that subsection -

- (a)* may take into account any material planning considerations which are not provided for in any relevant policy; but
- (b)* must not take into account any matter which is not a material planning consideration.

## Policy directions of Governor in Council

**12. (1)** The Governor in Council may give written directions to the Authority as to the general policy to be pursued in the performance of its functions; and the Authority must perform its functions in accordance with any directions so given.

**(2)** Directions given under subsection (1) must not be inconsistent with the provisions contained in any Development Plan, or with this Ordinance or any other law.

## PART V DEVELOPMENT PLANS

### Proposal for Development Plan

**13. (1)** The Chief Planning Officer may, and if so required by the Governor in Council must, submit proposals to the Governor in Council for the preparation of a Development Plan setting out policies as to the regulation of the development and use of land—

- (a)* for St Helena as a whole (such a plan being referred to as “**The Land Development Control Plan**”);
- (b)* for a specified part (or parts) of St Helena (such a plan being given a name which contains the words ‘Development Plan’ and indicates the geographical area or areas to which it applies); or
- (c)* in relation to any particular subject matter (such a plan being given a name which contains the words ‘Development Plan’ and indicates the subject matter to which it applies).

**(2)** A proposal for the preparation of a Development Plan must include—

- (a)* a reasoned statement of need for the plan;
- (b)* the main headings for the proposed contents of the plan;
- (c)* any other matters considered by the Chief Planning Officer to be necessary for a decision to be made on the proposal.

**(3)** A Development Plan may, under subsection (1)(*b*), designate areas, to be

known as “**National Conservation Areas**”, and contain policies relating to the conservation of natural, built, or cultural heritage in those areas.

(4) A Development Plan may, under subsection (1)(c), have as its subject matter the preservation of historic buildings, archaeology and artefacts.

(5) Regulations made under section 70 must make provision for procedures relating to Development Plans, including—

- (a) the preparation of proposals for Development Plans;
- (b) publication of, and public consultation upon, proposals for Development Plans;
- (c) procedures for reviewing such proposals, and the outputs of public consultation on them;
- (d) adoption, rejection or modification of Development Plans; and
- (e) amendment of adopted Development Plans.

### **Application of different plans applicable to same area**

14. (1) Subject to subsection (2), if there is any conflict or discrepancy with regard to the application or interpretation of two or more plans drawn to different scales, the plan drawn to the larger scale has precedence.

(2) If two different plans have been approved which apply in whole or in part to the same area or the same subject matter, the later plan is deemed, so far as there is any conflict between the two, to have modified the earlier plan unless there is express provision to the contrary.

### **Legal status of Development Plan**

15. When a Development Plan has been adopted by decision of the Governor in Council it is the duty of—

- (a) all public officers to formulate any project of public development in St Helena in accordance with the relevant objectives and policies of the Development Plan, unless there are material planning considerations which the officers believe justify a departure from the Plan; and
- (b) the Authority and the Planning Officers to determine applications for development permission, and to exercise their other powers and functions, in accordance with the Development Plan.

## **PART VI DEVELOPMENT CONTROL**

### *Division A: Development permission*

#### **Restriction on development**

16. (1) No person may carry out any development unless, prior to the commencement of such development, appropriate development permission has been granted under this Ordinance.

(2) The Governor in Council may, by Order (to be known as a “**General**

**Development Order**”) specify types of development in respect of which appropriate development permission is deemed, for purposes of subsection (1), to have been granted, and may in such Order prescribe procedures for determining whether prior approval will be required in respect of any such development.

### **Types of development permission**

- 17.** A grant of development permission may be of either of the following types—
- (a) *outline development permission*, the effect of which is to give approval in principle to the proposed development which is the subject of an application, but not to permit (except to the extent, if any, allowed by conditions attached to the permission) commencement of development to take place; or
  - (b) *full development permission*, the effect of which is to permit the development, subject to the terms and conditions of the grant, of full development permission.

#### *Division B: Application for development permission*

### **Application for development permission**

**18.** An application for development permission must be submitted to the Authority through a Planning Officer, in accordance with the requirements of any regulations made with respect to such applications, and must be accompanied by the prescribed fee.

### **Development and environmental effects**

**19. (1)** An application for development permission under section 18, in respect of development which may have significant effects on the environment, must be accompanied by a report (hereinafter referred to as an **“EIA report”**) assessing the environmental impacts of the proposed development.

**(2)** The EIA report must be obtained at the developer’s expense and be in a prescribed form and contain prescribed content.

**(3)** For the purpose of determining whether an application must be accompanied by an EIA report under subsection (1), the applicant may, before submitting an application, make an application to a Planning Officer for a screening opinion or a scoping opinion under section 20.

**(4)** The Governor in Council may prepare and publish guidelines on the implementation of the requirements under this Ordinance with respect to applications requiring environmental impact assessments.

### **Screening and scoping opinions**

**20. (1)** A person who intends to apply for development permission may request a Planning Officer to adopt an opinion (referred to as a **“screening opinion”**) as to whether an EIA report is required and the type of report required.

**(2)** If an EIA report is required in respect of any proposed development, a person who intends to apply for development permission in respect of that development may apply

to a Planning Officer to adopt an opinion (referred to as a “**scoping opinion**”) as to the information to be provided in the EIA report.

(3) The Governor in Council may, by regulations, prescribe the information to be submitted to the Planning Officer for purposes of obtaining an opinion under this section, and the regulations may prescribe the period within which such an opinion must be adopted and provide for remedies if such an opinion is not adopted within the prescribed period.

*Division C: Consideration of application for development permission*

**Planning Officer may require further information**

21. (1) If a Planning Officer considers that further information is required to enable a proper decision to be made upon an application for development permission, the officer may, by written notice, require the applicant—

- (a) to provide the Planning Officer, within a reasonable time as specified in the notice, with any further information relevant to the application specified in the notice; or
- (b) to permit the members of the Authority, the Planning Officer and any other person authorised by the Planning Officer, to enter upon and inspect the land to which the application relates,

or both.

(2) A request under subsection (1)(a) may require the applicant to obtain, at the applicant’s own expense, and to submit to the Planning Officer, reports from suitably qualified persons concerning the environmental, economic or social impacts of the proposed development or the impact of it on the safety of the operation of the airport.

(3) In the case of a requirement under subsection (1)(b), if the applicant, at the time of the application does not have such an interest in the land to which the application relates as would enable the applicant to permit the members of the Authority to enter upon the land, the applicant must use his, her or its best endeavours to obtain that permission.

(4) The Authority may, regardless of any time limit prescribed under section 27, defer a decision under section 26 on an application for development permission until it is satisfied on the matters in respect of which further information is or has been required under this section.

**Consultation in relation to applications**

22. (1) The Chief Planning Officer must—

- (a) publicise all applications for permission in the prescribed manner;
- (b) consult with any public officer or other person who appears to the Chief Planning Officer to be likely to be able to provide information relevant to an application for development permission or to matters which the Authority is required to consider when determining the application;
- (c) if in the opinion of the Chief Planning Officer the proposed development is likely to have damaging effects on amenities of nearby properties, notify occupiers of such properties by written notice in the prescribed form; and
- (d) comply with subsection (3).

(2) Any person who wishes to submit representations in relation to an application for development permission, as provided for by subsection (1), must submit written representations to the Chief Planning Officer within the prescribed period.

(3) Subject to subsection (4), the Chief Planning Officer must send a copy of every application for Development Permission to the Airport Operator, inviting comments as to whether or not the proposed development would be likely to affect (directly or indirectly) the safety of the operation of the airport.

- (4) Subsection (3) does not apply to applications which are of a kind that—
- (a) the Airport Operator has notified the Chief Planning Officer (in writing) need not be sent to him or her; or
  - (b) have been declared to be exempt from that subsection by regulations made under section 70.

(5) A notification under subsection (4)(a) may be varied or revoked (in writing) at any time.

### **Referral of applications for development permission to Governor in Council**

23. (1) The Governor in Council may direct the Chief Planning Officer to refer to the Governor in Council for decision all applications for development permission in relation to—

- (a) a particular type or class of development;
- (b) any locality in St Helena.

(2) The Chief Planning Officer must refer to the Governor in Council all applications for development permission in respect of which—

- (a) the Airport Operator has informed the Chief Planning Officer that the proposed development would be likely to affect the safety of the operation of the airport; or
- (b) it appears to the Authority that—
  - (i) granting the application would be inconsistent with a Development Plan but that there are material planning considerations which suggest that permission should nevertheless be granted; or
  - (ii) the proposed development might be suitable to be the subject of a Development Agreement under section 25; or
- (c) a direction under subsection (1) applies.

(3) Every referral under subsection (2) must be made within 14 days of the end of any period of public consultation under section 22, and be accompanied by a Planning Officer's report under section 24(2).

(4) Upon making a referral in accordance with subsection (2), the Chief Planning Officer must -

- (a) cause a copy of it to be placed before the Authority; and
- (b) as soon as is practicable after the Authority has considered the matter, forward to the Governor in Council any recommendations or comments which the Authority wishes to make in relation to the application.

(5) The Governor in Council must not make a decision on an application which has been referred to the Governor in Council under this section until—

- (a) the comments or representations of the Authority have been received; or
- (b) 28 days have elapsed since the date of referral,

whichever is the first to occur.

### **Matters to be considered**

24. (1) In considering an application for development permission, the Authority must take into account any of the following matters that appear to it to be relevant in order to make a proper decision on the application, namely—

- (a) the provisions of any relevant Development Plan;
- (b) any information, advice or study report provided by the applicant in response to a notice served on the applicant under section 21, or otherwise submitted by the applicant (including any EIA report provided by the applicant under Division A) ;
- (c) representations made in response to publicity and consultations referred to in section 22, but only if such representation raise issues which are legally relevant to the subject matter of this Ordinance and of any instrument made under it or are otherwise material planning considerations;
- (d) in respect of any application for development permission—
  - (i) for a new building which is intended to include access by the public; or
  - (ii) as far as practicable, for the conversion or change of use of any existing building if such conversion or change of use is intended to include access by the public,
    - whether the design for the building incorporates adequate provision to facilitate access and usage by persons with disabilities; and
- (e) any other matters prescribed.

(2) Advice given by a Planning Officer to the Authority on any application must be in the form of a report on the application, which must include -

- (a) the Planning Officer's comments and recommendations on the environmental impact assessment report, if any;
- (b) a summary of any other relevant factors recommended to be taken into account in respect of that application; and
- (c) a recommendation as to the decision to be made on the application.

(3) In this section, unless the context requires otherwise, references to “**the Authority**” include reference to the Governor in Council.

### **Development Agreements**

25. (1) The Attorney General (acting on behalf of Her Majesty in right of Her Government of St Helena) may, if authorised to do so by the Governor in Council, enter into an agreement with any person as to the nature, scope, timing or any other aspect of any proposed development, and such an agreement may contain provisions to secure contributions (financial or otherwise) towards the cost of infrastructure or other development in the public interest.

(2) Notwithstanding any other provision of this Ordinance, if an agreement to which subsection (1) relates provides that the Governor in Council will grant an application



for development permission subject to compliance with the provisions of that agreement -

- (a) the Chief Planning Officer must, on receipt of an application complying with those provisions, forthwith refer the application to the Governor in Council; and
- (b) the Governor in Council must grant development permission (and must not impose any condition on such permission which is more onerous than, or inconsistent with, any condition contained in such agreement).

(3) The Governor in Council must not authorise the Attorney General to enter into an agreement under this section unless the Authority has had an opportunity to comment on the matter and the Governor in Council has considered any comments made by the Authority.

*Division D: Decision on application for development permission*

**Decision on application**

26. (1) The Authority may grant an application for development permission either unconditionally or subject to any conditions considered necessary, or may refuse an application; but if permission is granted conditionally or is refused, the reasons for the condition or refusal must be stated.

(2) The conditions which the Authority may impose when granting development permission are such as are likely to be for the advantage of any matter mentioned in section 24(1), and any other matters prescribed.

(3) A condition may be imposed under this section—

- (a) as to the use of any land which is contiguous to the land to which a grant of development permission relates, which is in the possession of or under the control of the developer, if it appears to the Authority that it is expedient to impose such a condition for the purposes of or in connection with the development to which the grant of development permission relates;
- (b) requiring the developer to carry out any works or other development on land (including highways) in the ownership or under the control of any other person, even if the effect of the imposition of such a condition would be to require the developer to carry out works or development at his own cost for the public benefit:

(4) A condition of the kind described in subsection (3) must not be imposed without consent of the other person.

**Notice of decision**

27. The Planning Officer must within a period prescribed in regulations notify the applicant in writing of the Authority's decision on the application, including the reasons for any conditions or for refusal. If no such notification has been given within that period, or any longer period agreed in writing between the Chief Planning officer and the applicant, the application must be considered to have been refused.

**Effect of grant of development permission**

**28. (1)** Without affecting the provisions of this Ordinance as to the lapse, modification or revocation of any development permission, the grant of development permission, except in so far as the grant otherwise provides, enures for the benefit of the land concerned and of all persons for the time being entitled to an interest in the land.

**(2)** If development permission is granted for the erection of a building, the development permission may specify the purposes for which the building may be used, and if no purpose is so specified, is to be construed as including permission for the use of the building for the purposes for which it is designed, and for no other purpose.

*Division E: Variation, modification or revocation of development permission*

**Minor variation of development permission**

**29. (1)** The Chief Planning Officer, acting on behalf of the Authority, may approve a variation to any development permission which in his or her opinion is a minor variation, and in such event the Chief Planning Officer must inform the Authority of the action which he or she has taken.

**(2)** If the Chief Planning Officer is requested by an applicant to approve a variation under subsection (1) but is of the opinion that the variation proposed is not a minor one, the Chief Planning Officer must, in writing, inform the applicant that a new development application is required.

**Modification or revocation of development permission**

**30. (1)** Subject to this section, if it appears to the Authority, after consideration of any advice given by the Chief Planning Officer, that it is (due to circumstances which have changed or of which the Authority was unaware when the permission was granted) desirable that any development permission ought to be modified or revoked, the Authority may, by written notice to the person entitled to the benefit of the permission, revoke or modify the development permission to the extent it considers desirable.

- (2)** The power conferred on the Authority by this section may be exercised—
- (a)* if the development permission relates to the carrying out of building or other physical operations - at any time before those operations have begun, as referred to in section 31(3);
  - (b)* if the development permission relates only to a change in the use of any land - at any time before the change has taken place.

**(3)** The modification or revocation of development permission for the carrying out of building or other physical operations does not affect so much of the operations as has been previously carried out.

**(4)** A notice for the modification or revocation of development permission under this section must include—

- (a)* a statement of the reasons for the modification or revocation;
- (b)* any directions the Authority considers necessary for the bringing to an end of any development to which the notice relates;
- (c)* information as to any right to compensation that might arise in consequence of the

- modification or revocation, and the procedure for making any claim for compensation; and
- (d) any other matters prescribed.

(5) Upon service of a notice under subsection (1), the development permission concerned ceases to be valid or to have effect to the extent to which the modification or revocation so requires, and any further development or work carried out contrary to such notice is unauthorised development.

(5A) The Authority, after considering any representations made in respect of a notice under subsection (1), may at any time withdraw the notice.

(6) For purposes of this section, the modification of development permission includes the imposition or modification or deletion of conditions, or additional conditions, and any other alteration of development permission.

*Division F: Lapse of development permission*

**Lapse of development permission**

31. (1) Outline development permission lapses and ceases to have effect if no full development permission covering the same land has been applied for within one year of the grant of outline development permission, or any longer period specified in the outline development permission.

(2) Development permission other than outline development permission lapses and ceases to have effect if the development to which it relates has not been begun within 5 years of the grant of full development permission, or any longer period authorised by the Authority in any particular case.

(2A) An extension of the period as contemplated by subsection (2) may be authorised by the Authority retrospectively.

(3) For the purpose of this section and section 30, the development is deemed to have begun when any work of construction, demolition or excavation forming part of the development has commenced and not been abandoned, or, in the case of development permission for change of use, the use authorised by the development permission has commenced.

(4) If full development permission provides for different parts of the development to commence at different times, this section applies to those separate parts of the development as if separate full development permission was granted for each part or stage of the development.

(5) If it appears to the Authority that development which has been commenced but not completed is materially prejudicing the development or amenity of other land, the Authority may serve notice on the developer requiring that the development be completed or removed within the time specified in the notice, in default of which the Authority may serve an enforcement notice as provided for in section 33.

**PART VII**  
**UNAUTHORISED DEVELOPMENT OR CONTRAVENTION OF DEVELOPMENT**  
**PERMISSION**

*Division A: Notice to apply for permission*

**Notice to apply for development permission**

**32.** (1) The Authority may, in any case in which it considers that unauthorised development has taken place, by written notice served on the owner or the occupier of the property concerned, require that an application be submitted by the owner or occupier for development permission. If such an application for development permission is submitted within one month of the service of such notice (or any extended period that is agreed), the Authority must refrain from issuing an enforcement notice.

(1A) Subsection (1) does not apply to unauthorised development if an application for development permission was submitted and development permission for such development was refused.

(2) If the Authority grants development permission in respect of an application made in accordance with a notice served under subsection (1), the Authority may grant permission with retrospective effect to the date when the development commenced, or any other date the Authority considers appropriate in the particular case.

*Division B: Enforcement notices*

**Issue of enforcement notice**

**33.** (1) Subject to section 38, if it appears to the Chief Planning Officer that any development of land has been carried out without development permission or in contravention of any notice of modification or revocation served in respect of that development, or that any conditions subject to which development permission was granted have not been complied with, the Chief Planning Officer—

- (a) may (with the consent of the Authority) issue an enforcement notice if he or she considers it expedient to do so, having regard to any Development Plan applicable to the area where the unauthorised development has taken place and the factors set out in section 23(1); and
- (b) must serve a copy of that enforcement notice on the owner and the occupier of the land.

(2) An enforcement notice under subsection (1) must not be issued after a period of 5 years from the relevant unauthorised development or contravention taking place; but if the development alleged to have taken place is a change in the use of land, there is no time limit restricting the issue of such a notice.

(3) The consent of the Authority referred to in subsection (1) may be given either in respect of a class or classes of enforcement notices or of a particular enforcement notice and such consent must be stated in that enforcement notice.

- (4) An enforcement notice must state clearly—

- (a) the unauthorised development to which it relates;
- (b) the person or persons to whom it is addressed;
- (c) the time at which it comes into effect;
- (d) the steps which must be taken to rectify the alleged unauthorised development and the time, being not less than 2 months, within which they must be taken;
- (e) the powers of the Authority, in case of default in compliance with the notice, to enter upon the land and undertake the steps specified in paragraph (d);
- (f) the penalties which may be incurred if the steps specified in paragraph (d) are not undertaken;
- (g) the right of the owner and occupier of the land or building which is the subject of the enforcement notice to appeal against the notice.

(5) The Chief Planning Officer (with the approval of the Authority) may withdraw or modify an enforcement notice and this section applies to any modification of an enforcement notice made under it as it applies to the enforcement notice.

(6) The Chief Planning Officer must inform the Authority at the earliest opportunity of any action taken under this section.

### **Considerations with respect to issue of enforcement notice**

**34.** (1) In considering whether or not an enforcement notice is to be served, the Chief Planning Officer or Authority, as the case may be, must take into account any of the following matters that are relevant in the circumstances of the particular case, namely—

- (a) any Development Plan applicable to the area concerned where the unauthorised development is alleged to have taken place;
- (b) the nature and extent of the unauthorised development;
- (c) the harm to the natural or built environment and the degree of harm to the amenity of adjacent property or of other proposed development;
- (d) the benefits (if any) resulting from the unauthorised development;
- (e) any possible alternative measures which could be taken to rectify or regularise the unauthorised development;
- (f) whether it is necessary or desirable having regard to the public interest to serve an enforcement notice;
- (g) any other material considerations.

(2) The Chief Planning Officer must -

- (a) obtain, so far as appears to him or her appropriate to do so, any technical advice which he or she considers to be necessary for a satisfactory decision to be made on any matter relating to an enforcement notice; and
- (b) place a summary of any such advice, together with his or her own recommendation, before the Authority when it is considering the issue of an enforcement notice under section 33.

### **Scope and effect of enforcement notice**

**35.** (1) The steps which may be specified for the purposes of section 33(4)(d) may be all or any of the following namely to—

- (a) demolish or remove a building in whole or in part;
- (b) erect, re-erect or alter a building in whole or in part;

- (c) restore land as near as may be to the appearance and state that it had before the unauthorised development took place, including planting or replanting of trees and other vegetation;
- (d) remove any advertisement or to display it in the place permitted by a grant of development permission;
- (e) discontinue any use of land or buildings;
- (f) carry out any building or other operations on the land to which the notice relates;
- (g) comply with any limitation or condition contained in the development permission;
- (h) do or refrain from doing or to take or refrain from taking any actions similar to those listed in paragraphs (a) to (g) which would assist in ending the unauthorised development.

(2) If a person on whom an enforcement notice has been served fails to take the action required by the enforcement notice to rectify the unauthorised development, the Authority may, if the Governor in Council does not acquire the land under the Land Acquisition Ordinance, 2006, authorise the Chief Planning Officer or any department or officer of the Crown or any contractor engaged by any of them, to enter the land and take all necessary action in respect of the unauthorised development to enforce the notice that **the** Authority sees fit.

(3) When the Authority has exercised any power under subsection (2), it may recover as a civil debt, from any person upon whom the notice has been served, those expenses reasonably incurred by it in the exercise of such power, and if that person, having been entitled to appeal under section 53 has failed to make such an appeal, the person may not in any proceedings dispute the validity of the action taken by the Authority or the Chief Planning Officer upon any ground that could have been entertained on such an appeal.

### **Continuing operation of enforcement notice**

36. (1) Compliance with the requirements of an enforcement notice does not discharge the enforcement notice.

(2) Without limiting subsection (1), if any development is carried out by way of reinstating or restoring buildings or works that have been demolished or altered in compliance with an enforcement notice, the enforcement notice is, notwithstanding that its terms are no longer wholly apt for the purpose, deemed to apply in relation to any buildings or works so reinstated or restored as it applied in relation to such buildings or works before they were demolished or altered, and section 35(2) and (3) applies accordingly.

### **Protection of prospective purchasers with respect to unauthorised development**

37. (1) Any person may make application to the Chief Planning Officer, for a certificate confirming the lawfulness of any existing development or use of land; and the Chief Planning Officer may, if authorised to do so by the Authority, grant such a certificate.

(2) Upon the grant of such certificate, all development on the land at the time of the grant of such certificate is, for the purposes of any enforcement notice thereafter issued, deemed to have been authorised by the grant of development permission.

*Division C: Removal or alteration of work without enforcement notice*

**Power to require conformity**

**38. (1)** If it appears to the Planning Officer that development has been carried out other than in conformity with any condition subject to which development permission has been granted, the Planning Officer may, with the approval of the Authority and in compliance with regulations, serve notice on the developer, land owner and/or occupier, as appropriate, requiring that person to bring the development to conformity with such condition within the specified time, being not less than 28 days.

**(2)** Nothing in subsection (1) precludes the issue of an enforcement notice under section 33 instead of or in addition to the notice referred to in subsection (1).

**(3)** No notice may be given under subsection (1) after the expiration of 5 years from the date on which the work was substantially completed.

**PART VIII  
CONSERVATION OF NATURAL AND BUILT HERITAGE**

**Historic environment record, listed buildings and historic conservation areas**

**39. (1)** Without limiting section 13, the Chief Planning Officer may (and, if so directed by the Governor in Council must) submit to the Governor in Council proposals for the preparation of a Development Plan (to be known as “**the Historic Environment Record**”) identifying buildings, parts of buildings, or groups of buildings, and their settings, which ought to be protected due to their importance in relation to the architectural, cultural, or historical heritage of St Helena.

**(2)** The Historic Environment Record must record, in addition to the matters mentioned in subsection (1), sites containing archaeological remains and associated artefacts which (for like reasons) ought to be preserved and protected.

**(3)** Buildings and their settings, and the archaeological sites, identified in the Historic Environment Record must be listed and graded as to their architectural, cultural, or historical significance, together with a description of each such building, setting, or site; and each such building or site is to be known, for the purposes of this Ordinance, as a Listed Building or a Listed Site, as the case may be.

**(4)** The Historic Environment Record may designate areas (to be known as “**Historic Conservation Areas**”) within which the various buildings, archaeological remains and other artefacts provide a harmonious unit which contributes to the architectural, cultural or historic heritage of St Helena.

**(5)** No person may develop, demolish or engage in any building operations, other than essential repairs, or attempt to do so, in respect of any Listed Building or Listed Site, or within any Historic Conservation Area without first obtaining development permission; and nothing in a General Development Order has the effect of authorising any such development.

**(6)** In determining any development application which relates to or affects a

Listed Building or its setting, a Listed Site, or a Historic Conservation Area, the Authority must have special regard to the importance of the building, site, or area in relation to—

- (a) the landscape; or
- (b) the architectural, cultural, or historical heritage,

of St Helena and to any relevant policies contained in the Historic Environment Record.

### **Building Preservation Orders**

**40.** (1) In this section—

“**building**” means a building (or, subject to subsection (11), a group of buildings) which is not a Listed Building; and

“**Building Preservation Order**” means an Order (including, where the context so admits, an interim order) made under this section, in the prescribed form.

(2) The Chief Planning Officer must if he or she considers it desirable that a building ought to be protected due to its importance in relation to the architectural, cultural, or historical heritage, of St Helena must-

- (a) prepare a report for consideration by the Authority; and
- (b) append to the report a draft Building Preservation Order containing any requirements as appear to the Chief Planning Officer to be required in the circumstances for preventing the development or demolition of (or any building operations, except essential repairs, in relation to) the building unless such development, demolition or work has been first authorised by a development permission granted under this Ordinance.

(3) The Authority must, within 30 days of the receipt of a report and draft order under subsection (2), consider the matter and decide whether to—

- (a) take no action in relation thereto; or
- (b) proceed in accordance with the following provisions of this section.

(4) If the Authority decides to proceed under subsection (3)(b), an Interim Building Preservation Order (in the form of the draft, or in any other form the Authority directs) must be—

- (a) served on the owner and occupier of the building concerned; and
- (b) published in the *Gazette* and in any other manner prescribed.

(5) Any person may, within one month of the service of an Interim Building Preservation Order, or the publication of the notice under subsection (4) (whichever is sooner), make representations in writing to the Authority in regard to the Interim Building Preservation Order.

(6) The Authority must consider any representations made to it under subsection (5) and may thereupon confirm the order, with or without modifications, or may revoke it; if the Order is confirmed it forthwith has effect as a Building Preservation Order and remain in force until lawfully revoked or otherwise terminated.

(7) An Interim Building Preservation Order ceases to have effect on whichever is the earlier of the following dates:

- (a) the date on which the Authority revokes the Order; and
- (b) the date one month after the latest date for the submission of representations



under subsection (5).

- (8) Notice of the Authority's decision under subsection (6) must be—
- (a) served on the owner and occupier of the building concerned; and
  - (b) published in the *Gazette* and in any other manner prescribed.

(9) No person may develop, demolish, or engage in any building operations (other than urgent repairs) or attempt to do so, in respect of any building which is the subject of a Building Preservation Order without first obtaining development permission; and nothing in a General Development Order has the effect of authorising any such development.

(9A) Unless it is impracticable to do so, a person intending to carry out urgent repairs as provided for by subsection (9) must consult the Chief Planning Officer before doing so.

(10) Section 39(6) applies to a building which is the subject of a Building Preservation Order, as it applies to a Listed Building.

(11) For the purposes of this section and section 41, a group of buildings may be made the subject of a Building Preservation Order if because of their proximity and relationship to each other it is considered desirable that the whole group should be preserved.

### **Urgent Building Preservation Orders**

41. If the Chief Planning Officer considers it desirable that a building ought to be protected due to its importance in relation to—

- (a) the landscape; or
- (b) the architectural, cultural, or historical heritage,

of St Helena, and that the urgency of the matter and the significance of the building warrant such action, the Chief Planning Officer may report the circumstances to the Chair of the Authority and the Chair may authorise the Chief Planning Officer to proceed immediately as if he or she had submitted a report to the Authority under section 40(2) and the Authority had made a decision to proceed under section 40(3)(b).

### **Tree preservation orders**

42.<sup>2</sup> (1) In this section—  
 “tree” includes, subject to subsection (10), a group of trees;  
 “Tree Preservation Order” means an order (including, where the context so admits, an interim order) made under this section, in the prescribed form.

(2) The Chief Planning Officer must if he or she considers it desirable that a tree ought to be protected and preserved due to its importance in relation to—

- (a) the landscape; or
- (b) the cultural or historical heritage,

of St Helena, prepare a report for consideration by the Authority and must append to the report a draft Tree Preservation Order containing any requirements that appear to the Chief Planning Officer to be required in the circumstances for preventing the lopping, topping,

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<sup>2</sup> *Interim Tree Preservation Order published as Gazette Notice No. 17 of 25 February 2015*

felling, uprooting, or wilfull damaging of the tree.

**(2A)** The Authority must, within 30 days of the receipt of a report and draft order under subsection (1), consider the matter and decide whether—

- (a) to take no action in relation to it; or
- (b) to proceed in accordance with the following provisions of this section.

**(3)** If the Authority decides to proceed under subsection (2)(b), an Interim Tree Preservation Order (in the form of the draft, or in any form the Authority directs) must be—

- (a) served on the owner and occupier of the land on which the tree stands; and
- (b) published in the *Gazette* and in any other manner prescribed.

**(4)** Any person may, within one month of the service of an Interim Tree Preservation Order, or the publication of the notice under subsection (3) (whichever is sooner), make representations in writing to the Authority in regard to the Interim Tree Preservation Order.

**(5)** The Authority must consider any representations made to it under subsection (4) and may thereupon confirm the order, with or without modifications, or may revoke it; if the Order is confirmed it forthwith has effect as a Tree Preservation Order and remains in force until lawfully revoked or otherwise terminated.

**(6)** An Interim Tree Preservation Order ceases to have effect on whichever is the earlier of the following dates:

- (a) the date on which the Authority revokes the order; or
- (b) the date one month after the latest date for the submission of representations under subsection (4).

**(7)** Notice of the Authority's decision under subsection (5) must be—

- (a) served on the owner and occupier of the land on which the tree stands; and
- (b) published in the *Gazette* and in any other manner prescribed.

**(8)** No person may lop, top or fell, or attempt to lop top or fell, any tree which is the subject of a Tree Preservation Order (including an Interim Tree Preservation Order) without first obtaining permission from the Authority; and nothing in a General Development Order has the effect of authorising any development which may affect any tree or the setting of a tree which is the subject of an order under this section.

**(9)** In determining any development application which affects or may affect any tree, or the setting of any tree, which is subject to an order under this section, the Authority must have special regard to the importance of the tree or setting of the tree in relation to—

- (a) the landscape; or
  - (b) historical heritage,
- of St Helena.

**(10)** For the purposes of this section and section 43, a group of trees may be made the subject of a Tree Preservation Order if, because of their proximity and relationship to each other, it is considered desirable that the whole group should be preserved.

**(11)** Nothing in subsection (8) prevents the carrying out of urgent lopping, topping,

or felling of a tree which is so damaged or diseased as to be a danger to life or property; but, unless it is impracticable to do so, a person intending to carry out such urgent lopping, topping or felling must consult the Chief Planning Officer before doing so.

### **Urgent Tree Preservation Orders**

**43. (1)** If the Chief Planning Officer considers it desirable that a tree ought to be protected and preserved due to its importance in relation to—

- (a) the landscape; or
- (b) the historical heritage,

of St Helena, and that the urgency of the matter and the significance of the tree warrant such action, the Chief Planning Officer may report the circumstances to the Chair of the Authority and the Chair may authorise the Chief Planning Officer to proceed immediately as if he or she had submitted a report to the Authority under section 42(1) and the Authority had made a decision to proceed under section 42(2)(b).

**(2)** In this section, “**tree**” has the same meaning as in section 42.

## **PART IX AMENITY ORDERS AND SUPPLEMENTARY PROVISIONS FOR CONTROL OF DEVELOPMENT**

### **Amenity orders**

**44. (1)** In this section, “**Amenity Order**” means an order made under this section.

**(2)** If the Chief Planning Officer considers that—

- (a) any land is unsightly or is otherwise injurious to the amenities of the area, and visible to persons using a public highway or any other area to which the public have a right of access;
- (b) any land is, or is likely to be, offensive to persons residing in the immediate neighbourhood of such land, because of any waste material or the dilapidated state of any structure or building thereon; or
- (c) any building which the Chief Planning Officer believes is of importance in relation to the architectural, cultural, or historical heritage of St Helena, is in a dilapidated or neglected state and needs to be maintained or restored,

he or she may (with the consent of the Authority) issue an Amenity Order requiring the owner or occupier of the land or building to do anything which is, in the opinion of the Chief Planning Officer, necessary or desirable to rectify, mitigate, or abate the unsightliness, injury, offence, dilapidation or neglect and must serve a copy of that notice on the owner and the occupier of the land.

**(3)** An Amenity Order must be in the prescribed form and specify—

- (a) the land to which it applies, and the owner or occupier of it;
- (b) the actions which the owner or occupier is required to take; and;
- (c) the time, not being less than 28 days from the date of service of the order upon the owner or occupier, for compliance with the order.

**(4)** The things which an Amenity Order may require the owner or occupier to do

include—

- (a) the demolition of any building, the removal of resulting rubble and other waste material, and landscaping or other measures required to ensure that the site is no longer unsightly, injurious or offensive;
- (b) the restoration or repair of any building or other structure.

(5) If a person on whom an Amenity Order has been served fails to take the action required by the order, the Authority may, if the Governor in Council does not acquire the land under the Land Acquisition Ordinance, 2006, authorise the Chief Planning Officer or any department or officer of the Crown or any contractor engaged by any of them, to enter the land and take all necessary action for the purposes mentioned in subsection (2) to enforce the Order as the Authority sees fit.

(6) If the Authority has exercised any power under subsection (5), it may recover as a civil debt, from any person upon whom the Amenity Order has been served, the expenses reasonably incurred by it in the exercise of the power, and if that person, having been entitled to appeal under section 53 has failed to make such an appeal, the person may not in any proceedings dispute the validity of the action taken by the Authority or the Chief Planning Officer upon any ground that could have been entertained on such an appeal.

#### **Notice requiring discontinuance of use or alteration or removal of buildings or works**

45. (1) If the Chief Planning Officer, having regard to a Development Plan and to any other material consideration, considers it is expedient in the interests of the proper planning of St Helena (including the interests of amenity) that—

- (a) any use of land is to be discontinued, or that any conditions should be imposed on the continuance of a use of land; or
- (b) any buildings or works should be altered or removed,

the Chief Planning Officer may (with the consent of the Authority) issue a notice requiring the owner or occupier of the land or building to discontinue that use, or impose conditions specified in the notice on the continuance of the use, or require any steps so specified to be taken for the alteration or removal of the buildings or works, as the case may be.

- (2) A notice under subsection (1) must specify—
  - (a) the land to which it applies, and the owner or occupier of it;
  - (b) the actions which the owner or occupier is required to take; and
  - (c) the time, not being less than 28 days from the date of service of the notice upon the owner or occupier, for compliance with the order.

(3) If a person on whom a notice has been served under subsection (1) fails to take the action required by the notice, the Authority may, if the Governor in Council does not acquire the land under the Land Acquisition Ordinance, 2006, authorise the Chief Planning Officer or any department or officer of the Crown or any contractor engaged by any of them, to enter the land and take all necessary action for the purposes mentioned in subsection (1) to enforce the notice as the Authority sees fit.

(4) When the Authority has exercised any power under subsection (3), it may recover as a civil debt, from any person upon whom the notice has been served, the expenses reasonably incurred by it in the exercise of the power, and if that person, having been entitled to appeal under section 53 has failed to make such an appeal, the person may not in any

proceedings dispute the validity of the action taken by the Authority or the Chief Planning Officer upon any ground that could have been entertained on such an appeal.

## **PART X COMPENSATION**

### **No right to compensation except as expressly provided**

**46.** Subject to section 47, no claim to compensation lies against the Crown, the Governor, the Authority, the Tribunal or any public officer in connection with or arising out of anything done by any of them in good faith (proof of the absence of which lies upon the claimant) in exercise, or purported exercise, of the powers and functions provided for in this Ordinance.

### **Right to claim compensation from Crown**

**47.** (1) There is a right to the payment of compensation, assessed in accordance with this Ordinance, in the following cases—

- (a) if development permission has been revoked or modified and—
  - (i) the holder of that permission, or the holder's successor in title, has incurred expenses necessarily arising out of commencing to develop or developing in accordance with that permission or has otherwise suffered loss or damage directly attributable to the revocation or modification; or
  - (ii) any person with an interest in the land or who has lent money on the security of the land, has suffered loss or damage directly attributable to the revocation or modification;
- (b) if a building has been destroyed by fire or other natural disaster and the Authority refuses to allow a building of similar cubic content to be erected in the same position, as near as can be, to the destroyed building;
- (c) if the Authority is empowered under any law to require any building to be demolished, altered, removed or relocated, or the cessation of use of any land for a particular purpose (other than such action required under a notice issued under section 38).

(2) Compensation payable must be assessed in respect of loss or damage consisting of the depreciation in value of any interest in land directly attributable to the revocation or modification of development permission if—

- (a) the development permitted by the development permission revoked or modified has not been carried out; or
- (b) the person claiming compensation acquired an interest in the land or building to which the development permission relates for valuable consideration after the grant of that development permission and such development permission, at the material time, had not lapsed under section 31.

(3) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon similar matter preparatory to the work, is to be taken to be included in the expenditure incurred in carrying out that work.

(4) Subject to subsection (3), no compensation is payable under this section in respect of any work carried out before the grant of development permission which is revoked

or modified, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in the land) arising out of anything done or omitted to be done before the grant of that permission.

### **Position if land is subject to mortgage**

**48.** If any compensation is payable under this Part in respect of the depreciation of the value of an interest in land which is subject to a mortgage—

- (a) the amount of the compensation payable must be assessed as if the interest was not subject to the mortgage;
- (b) no compensation to which this section applies is payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
- (c) any compensation to which this section applies which is payable in respect of the interest which is subject to the mortgage must be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and must in either case be applied by the mortgagee as if it were proceeds of sale.

### **Claims for compensation**

**49.** (1) A claim for compensation alleged to be payable under this Part must be made in writing to the Chief Planning Officer within one month of the date on which notice of the decision which gives rise to the claim was served upon the person who makes the claim.

(2) When a claim is made under subsection (1), the Chief Planning Officer may by written notice served on the claimant require the claimant to provide any further information in support of the claim specified in the notice, and a decision on the claim may be deferred until such further information has been supplied by the claimant.

(3) If a claim for compensation has been made, the Chief Planning Officer must, after making any enquiries that appear to him or her to be necessary, submit the claim and his or her own recommendation on the matter to the Attorney General for a decision as to the action to be taken on the claim.

(4) If any claim for compensation cannot be settled through negotiation between the claimant and the Crown, the question as to whether any compensation is payable to the claimant, or as to the amount of it, must be referred by the Attorney General for decision by the Supreme Court.

## **PART XI POWERS OF PLANNING OFFICERS**

### **Powers of entry**

**50.** (1) Subject to subsection (2), a Planning Officer, or any person authorised by a Planning Officer in writing, may at any reasonable time enter on any land or in any building—

- (a) to inspect or survey the land, or any building for the purpose of the preparation of any Development Plan, or to decide whether or not any Development Plan should

- be prepared under Part V;
- (b) to determine whether any order or interim order should be made under Part VIII or Part IX or for the exercise of any powers conferred by any such order;
- (c) to obtain information relevant to the determination of any application for development permission;
- (d) to determine whether any unauthorised development is being or has been undertaken on the land or in any building on it;
- (e) for the purpose of taking any action, or executing any work, authorised or required by Part VII or IX;
- (f) to determine whether or not any compensation is payable under Part X, or as to the amount of it; ~~or~~
- (g) generally for the purpose of the performance by the Authority of its functions under or those Parts.

(2) No person may, except with the consent of the owner or occupier of the land or building, enter on land or a building under this section without giving such owner or occupier at least 24 hours written notice of the intention so to do and the intended purpose of such entry.

(3) Before exercising any powers under this section, the Chief Planning Officer or any other person exercising those powers must, so far as is practicable to do so, identify himself or herself to the occupier or other person who is or appears to be in control of the land or building concerned.

(4) The powers of entry conferred by this section extend to permit the Chief Planning Officer or other person concerned to make such examination and inquiries as are necessary to achieve the intended purpose of such entry.

(5) If any damage is caused by reason of the exercise of any right of entry conferred by this section, or in the making of any survey for the purpose for which such right of entry was conferred, or by the wrongful or negligent use of powers conferred, or alleged to have been conferred, by this section -

- (a) the Chief Planning Officer must, as soon as may be after such entry, pay compensation to the person injured by it; and
- (b) if the amount of such compensation cannot be agreed, the amount payable must be determined in the same manner as compensation payable under section 47, and the Chief Planning Officer must refer the matter accordingly.

(6) ~~Nothing in~~ Subsections (2) or (5) do not apply in respect of any work or operation which the Crown, the Authority, or any public officer is authorised to do or carry out in relation to any building or land under Division B of Part VII or under Part IX.

### **Power to require information**

51. (1) For the purpose of enabling the Chief Planning Officer, the Authority or the Governor in Council to make an order or serve a notice or other document under this Ordinance, the Chief Planning Officer, Authority or Governor in Council, as the case may be, may require any person who is the owner or the occupier of any land or premises, and any other person who either directly or indirectly receives rent in respect of any land or premises, to state in writing the nature of that person's interest in the land, and the name and address of

any other person known to that person to have an interest in the land or premises, whether as a freeholder, mortgagee, lessee or otherwise.

(2) A person who, without reasonable excuse, fails to comply with a request under subsection (1) is to be treated for the purposes of section 64(1)(g) as obstructing the Chief Planning Officer, Authority or Governor in Council, as the case may be.

## **PART XII APPEAL PROVISIONS**

### **Establishment of Appeals Tribunal**

52. (1) There is hereby constituted a Land Development Appeals Tribunal, consisting of a President and not less than 2 nor more than 4 additional members (none of whom may be public officers, members of the Authority, or members of the Legislative Council) appointed by the Governor.

(2) The Chief Magistrate is the President of the Tribunal; but if the office of Chief Magistrate is vacant, or the holder of it is absent or otherwise unable to act, the Governor (acting in his or her discretion, but after consulting the President of the Judicial Service Commission) may appoint a Justice of the Peace to act as President of the Tribunal.

(3) A member of the Tribunal may resign office at any time by giving notice in writing to the Governor.

(4) The President and other members of the Tribunal must be paid, out of sums duly appropriated from the Consolidated Fund, remuneration or other allowances that the Governor, acting in his or her discretion, from time to time approves.

(5) There is to be a Clerk of the Tribunal, appointed by the Governor, who must perform the duties prescribed by or under this Ordinance.

(6) At any time when there is no subsisting appointment of a Clerk of the Tribunal, the duties of the Clerk may be performed by the Registrar of the Supreme Court.

### **Right of appeal**

53. (1) Subject to this Ordinance, an appeal lies to the Tribunal against any decision made by the Authority under this Ordinance to—

- (a) refuse an application for development permission or impose any condition on granting development permission;
- (b) require an environmental impact assessment report for the purposes of development permission or require a specific type of report;
- (c) modify or revoke development permission or refuse to withdraw a notice as provided for in section 30;
- (d) require the completion of a development within a time limit;
- (e) serve an enforcement notice or as to the terms of it;
- (f) impose a building preservation order or tree preservation order under Part VIII, subject to subsection (2);
- (g) make an amenity order under section 44;



- (h) issue a notice requiring discontinuance of use or alteration or removal of buildings or works under section 45.

(2) No appeal lies against an interim building preservation order or interim tree preservation order;

### **Powers and duties of Tribunal**

**54. (1)** The Tribunal must consider and determine all appeals against decisions of the Authority under this Ordinance and may, in respect of each appeal, either—

- (a) confirm the decision of the Authority; or
- (b) substitute for that decision any other decision which the Authority could lawfully have made.

(2) The President of the Tribunal may extend any period within which any action must be taken in relation to any appeal, if he or she considers it to be in the interests of justice to do so.

(3) The Tribunal may exercise any other functions conferred upon it by or under any other law.

### **Meetings of Tribunal**

**55. (1)** The Tribunal must meet whenever required to do so by the President for the purpose of either—

- (a) determining an appeal or appeals made to it; or
- (b) discussing issues regarding the management of business or the general administration of the work of the Tribunal.

(2) At all meetings of the Tribunal the President must preside or, in the absence of the President (or a Justice of the Peace lawfully acting as the President pursuant to section 52(2)), any other member of the Tribunal the members present select from among themselves.

(3) A member of the Tribunal must not participate in the determination of any appeal in relation to the subject matter in which the member has a relevant interest.

(4) The Tribunal is validly constituted for the purposes of determining any appeal if at least 3 of its members are present.

(4A) Decisions of the Tribunal are by a majority decision of the members participating in the decision, and if the votes cast are equally divided, the President or other member presiding has a casting vote.

(5) The Tribunal -

- (a) must be open to the public when sitting for the purpose of determining an appeal; but
- (b) may meet *in camera* for purposes of discussing administrative and procedural matters concerning its work and in any other circumstances prescribed.

### **Notice of appeal**

**56.** (1) Subject to any provision to the contrary in this Ordinance, any person desiring to appeal under section 53 must, within 28 days of receiving notification of the decision desired to be appealed against, send to the Clerk a notice of appeal in the prescribed form and the Clerk must -

- (a) refer the matter to the President; and
- (b) thereafter (unless the President rejects the notice in accordance with section 57) send a copy of the notice to the Chief Planning Officer.

(2) The Chief Planning Officer must, within a prescribed period of time, submit to the Clerk—

- (a) copies of any papers and documents submitted by the appellant or by any person acting on the appellant's behalf to the Authority with respect to the decision that is being appealed against;
- (b) a copy of the decision appealed against.

### **Rejection of notice of appeal in certain circumstances**

**57.** On receipt of a notice of appeal under section 56, the President must reject the notice of appeal if—

- (a) it appears not to comply with section 56 (without prejudice to any further such notice being given); or
- (b) the appellant appears not to have any sufficient interest in the land to justify the appellant appealing against the decision.

### **Effect of service of notice of appeal in certain instances**

**58.** (1) If an appeal is notified against the issue of a notice by the Authority under section 30(1) to modify or revoke development permission, or against the refusal of the Authority to cancel or withdraw such notice under section 30(5A), the notice is deemed to be suspended in its operation pending the determination of any such appeal, except that any further development or work carried out is unauthorised development.

(2) If notice of an appeal is given by a person on whom an enforcement notice was served under section 33, the operation of the enforcement notice is suspended pending the determination or withdrawal of the appeal.

### **Procedure in relation to appeals**

**59.** (1) Subject to this Part, the procedure for appeals is as prescribed by regulations made under section 70.

(2) In any matter or circumstance for which no procedural provision is made either in this Part or in regulations, the procedure is at the discretion of the President.

### **Notification of decision**

**60.** The Tribunal must send to the Chief Planning Officer written notification of its decision, together with a statement of its reasons for the decision, and the Chief Planning

Officer must on receipt of the notification forward a copy of the decision to the appellant and the Authority.

### **Application to court for judicial review**

**61. (1)** Except as expressly provided in this Ordinance, no appeal lies to any court against a decision or order of the Authority, the Tribunal or the Governor in Council under this Ordinance.

**(2)** Subsection (1) does not prevent an application to the Supreme Court for judicial review of a decision of the Authority, the Tribunal or the Governor in Council.

## **PART XIII REGISTER OF INFORMATION AND REPORTING**

### **Registration of planning and associated decisions**

**62. (1)** The Chief Planning Officer must maintain a Register of all—

- (a)* applications for a grant of development permission;
- (b)* decisions on such applications;
- (c)* development permissions granted, and any conditions attached to them;
- (d)* enforcement notices;
- (e)* any Building Preservation Orders or Tree Preservation Orders made under Part VIII;
- (e)* any orders made under Parts IX and X;
- (f)* notice for removal or alteration of building works; and
- (g)* decisions on appeals against any decisions made or action taken under this Ordinance.

**(2)** The Chief Planning Officer must provide to any person who so requests a copy of any entry in the Register upon payment of the prescribed fee.

**(3)** The Register required to be maintained under subsection (1) may be kept in an electronic data storage and retrieval system whether by use of a computer or otherwise.

**(4)** Regulations made under section 70 may provide that, in prescribed circumstances and in a prescribed manner, decisions and orders made under this Ordinance must be registered under the Registered Land Ordinance, 1980.

### **Reporting by Authority**

**63. (1)** The Authority must provide the Governor with any returns and other information with respect to the exercise by them of their functions that the Governor from time to time requires.

**(2)** The Authority must, not later than the 31st of March in each year, submit to the Governor a report in writing relating to the year expired on the preceding 31st of December, containing any information prescribed.

**(3)** The Governor must, as soon as practical after receipt of the report under

subsection (2), cause a copy of it to be laid on the table of the Legislative Council.

## **PART XIV OFFENCES**

### **General offences**

- 64. (1)** It is an offence for a person, without reasonable excuse, to—
- (a) carry out, or commence to carry out, any development contrary to section 16;
  - (b) fail to comply with any condition to which a grant of development permission is subject;
  - (c) fail to comply with the requirements of an enforcement notice issued under section 33;
  - (d) fail to comply with any requirement of section 38;
  - (e) fail to comply with the requirement of—
    - (i) a Building Preservation Order or interim Building Preservation Order made under section 40;
    - (ii) a Tree Preservation Order or interim Tree Preservation Order made under section 42;
    - (iii) an Amenity Order made under section 44;
  - (f) wilfully give false information, relating to any matter in respect of which the person is required to give information under this Ordinance; or
  - (g) obstruct any person in the exercise of any powers or the performance of any duties under this Ordinance.

Penalty: A fine, or imprisonment for 5 years, or both.

**(2)** If, in the case of a continuing offence, the contravention under subsection (1) is continued after conviction of the person, the person commits a further offence.

Penalty: A fine, or imprisonment for 10 years, or both.

- (3)** A person -
- (a) to whom information has been given under section 51 or otherwise under this Ordinance; or
  - (b) who has obtained any information in the course of his or her duties under this Ordinance,

and who makes any unauthorised disclosure of that information to any person who is not required to receive that information, commits an offence.

Penalty: A fine of £500 or imprisonment for 6 six months, or both.

### **Offences by members of Authority and Tribunal**

- 65.** It is an offence for a member of the Authority or the Tribunal to—
- (a) knowingly fail to declare any interest the member is obliged to declare by section 7 or section 55; or
  - (b) having declared such an interest in accordance with section 7 or section 55 take, or attempt to take, any part in the decision of the Authority or the Tribunal.

Penalty: A fine of £25,000 or imprisonment for a term of 5 years, or both.

### **Offences by public officers**

**66. (1)** It is an offence for a public officer who is by virtue of his or her office involved in the planning process, or in the determination of a planning application, for fee or reward, or in the expectation of any fee or reward, payable to himself or herself or any person associated with him or her, except in the course of duties as such a public officer, to –

- (a) assist any person who is applying for development permission or any other consent, by drawing or aiding in the drawing of plans or preparing any document or particulars which the officer knows or has reason to suspect will or may be used with the application; or
- (b) apply on behalf of a person who is so applying.

Penalty: a fine of £5,000 or imprisonment for 2 years, or both.

**(2)** *Omitted*

**(3)** For the purposes of subsection (1), if it is proved that a public officer assisted an applicant by the drawing of plans or preparing any document or particulars, subject to the exceptions therein, it is to be presumed that he or she did so in expectation of a fee or reward payable to the officer or a associated person in relation to the officer, unless the officer proves to the contrary.

**(4)** In this section, “**associated person**” has the meaning prescribed by regulations made under section 70.

### **Offences by corporate body**

**67.** If an offence under this Ordinance is committed by a corporate body and is proved to have been committed with the consent or connivance of a person who was a director, manager, secretary or other similar officer of the body, or who was purporting to act in such capacity, that person as well as the corporate body commits that offence and liable to be proceeded against and punished accordingly.

## **PART XV MISCELLANEOUS PROVISIONS**

### **Service of notices**

**68.** Any notice or other document required or authorised to be given or served under this Ordinance may be served on or given to the person concerned—

- (a) by delivering it to that person;
- (b) by leaving it at the usual or last known place of abode of that person;
- (c) by sending it in a prepaid registered letter addressed to that person at the person’s usual or last known place of abode or, if an address for service has been given by that person, at that address; or
- (d) in the case of a corporate body, or other body, by delivering it to the secretary or other officer of that body at its registered or principal office in St Helena, or by sending it in a prepaid registered letter addressed to the secretary or other officer of that body at that office.

### **Death of person having claim or right**

**69.** Any reference in this Ordinance to a person having a claim for or a right to the

payment of compensation, or to appeal against any decision given under this Ordinance is, upon the death of that person before the determination of the matter at issue, to be construed as if the reference were a reference to that person's personal representatives.

### **Regulations**

**70.** (1) The Governor in Council may make regulations generally for carrying into effect the provisions of this Ordinance.

(2) Without limiting subsection (1), regulations may provide for forms to be used, fees to be paid, and procedures to be adopted for or in connection with the operation of this Ordinance and for anything which is to be, or may be, prescribed under it.

### **Application to Crown**

**71.** This Ordinance binds the Crown.

## **PART XVI REPEAL AND CONSEQUENTIAL AMENDMENTS**

### **Repeal and amendment of legislation**

**72.** (1) The Land Planning and Development Control Ordinance, 2008, is repealed.

(2) *Omitted*

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## **LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE, 2013**

### **LAND PLANNING AND DEVELOPMENT CONTROL (GENERAL) REGULATIONS, 2013 (Section 70)**

#### **TABLE OF CONTENTS**

#### **PART 1 PRELIMINARY**

1. Citation, commencement and interpretation

#### **PART 2 PROVISIONS RELATING TO DEVELOPMENT PERMISSION**

2. Applications for development permission
3. Public consultation on development applications
4. Conditions imposed on development permissions
5. Notice of decision on development applications

#### **PART 3**

## MATERIAL CHANGE OF USE

6. Classes of use and material change of use requiring development permission

### PART 4 ADVERTISEMENTS

7. Control of advertisements

### PART 5 GENERAL

8. Meaning of “associated person”

Schedule 1: Use classes

Schedule 2: Conditions for advertisements

## PART 1 PRELIMINARY

### **Citation, commencement and interpretation**

1. (1) These Regulations may be cited as the Land Planning and Development Control General Regulations, 2013.

(2) These Regulations come into force on 1st February 2014 and apply in respect of any application for development permission submitted, change of use, or advertisement displayed on or after that date.

(3) In these Regulations, “**prescribed**” means prescribed under the Ordinance, 2013.

## PART 2 PROVISIONS RELATING TO DEVELOPMENT PERMISSION

### **Applications for development permission**

2. (1) An application for development permission under section 18 must be submitted to the Authority in the prescribed form.

(2) In addition to all documents required by the Ordinance to be submitted, all applications for development permission must be accompanied by -

- (a) all documents required by the application form to be submitted with the form;
- (b) building plans, in triplicate, showing the full extent of the development intended to be carried out; and
- (c) the prescribed fee.

(3) The application must be registered by the Planning Officer in accordance with section 62(1)(a) only when he or she is satisfied that all the documents and the fee required under sub-regulation (2) have been submitted.

### **Public consultation on development applications**

3. For the purposes of section 22, the Planning Officer must publicise all development applications in one or more newspapers circulating on St Helena and by a notice on or near the site and within view of and legible to members of the public, allowing 14 days, or any longer period the Planning Officer allows, for public comment, or, in the case of an application for development permission contemplated by section 19, allowing 28 days or any longer period as the Planning Officer decides.

### **Conditions imposed on development permissions**

4. For the purposes of section 26, the Authority or the Governor in Council, as the case may be, when granting development permission, may impose conditions relating to—

- (a) the timing and phasing of development, including to prohibit commencement or first use of all or part of the development unless other development, or provision of roads or services, has first been completed;
- (b) arrangements for the disposal of sewage, rainwater, surface water, effluent and solid waste from the development;
- (c) arrangements for the supply of water and catchment, storage and usage of rainwater;
- (d) landscaping including the preservation of trees and other natural features, both of the development site and of adjacent land under the control of the developer;
- (e) with respect to applications for development permission contemplated by section 19, provision to avoid, minimise and mitigate negative environmental impacts and maximise positive impacts as identified in the environmental impact assessment report including, as appropriate, preparing and implementing a plan for management of the environmental effects and monitoring the mitigations to ensure their effectiveness;
- (f) the materials to be used in the development including their colour;
- (g) measures to achieve saving of energy and water and for the recycling of materials from the development
- (h) reservation of any part of the development site for roads, open space or other communal purposes incidental to the development and including measures for its future maintenance;
- (i) controlling the processes, timing and duration of building or engineering operations, including the routing of vehicles or vessels to be used in connection with the development and including, as appropriate, preparing and implementing a plan for management of the construction work;
- (j) the discontinuance or modification of existing uses on the development site and on adjacent land under the control of the developer;
- (k) implementing or not implementing any prior grant of development permission on the development site and adjacent land under the control of the developer;
- (l) entering into a performance bond with the Crown to guarantee implementation of any of the conditions subject to which the grant of development permission is made.

### **Notice of decision on development applications**



5. For the purposes of section 27, the Planning Officer must inform the applicant of the decision taken on the application within 60 days of registration of the application under Regulation 2(3) or any longer period agreed in writing by the applicant.

### PART 3 MATERIAL CHANGE OF USE

#### Classes of use and material change of use requiring development permission

6. (1) Classes of use of land and buildings are set out in Schedule 1. Uses of land and buildings not stated in any class are deemed to be uses *sui generis*.

(2) Change of use of land or buildings to a use which falls within the same class as the existing use is deemed not to be a material change of use requiring development permission.

(3) Subject to sub-regulation (4), change of use of land or buildings from a use which falls in any class, or is a use *sui generis*, to any other use is deemed to be a material change in the use requiring development permission.

(4) Sub-regulation (3) does not apply—

(a) to any use which is included in and ordinarily incidental to any use in the class for which the land or building is primarily used merely because such incidental use lies in a separate use class, provided that the scale of that use is incidental to the primary use;

(b) to change of use—

- (i) from class A2 (Financial and professional services), where the premises have a display window to the ground floor, to class A1 (Shops);
- (ii) from class A3 (Restaurants and cafes) to class A1 (Shops) or A2 (Financial and professional services);
- (iii) from class A4 (Drinking establishments) to class A1 (Shops) or A2 (Financial and professional services) or A3 (Restaurants and cafes);
- (iv) from class A5 (Hot food takeaways) to class A1 (Shops) or A2 (Financial and professional services) or A3 (Restaurants and cafes);
- (v) from class B1 (Business, storage and distribution) to class B2 (general industrial);
- (vi) from class C2 (Residential institutions not including secure institutions) to class C1 (Hotels).

(5) The changes of use in sub-regulation (4)(b) do not apply in reverse and require development permission.

(6) The division of a single dwelling house or its curtilage to form 2 or more separate dwelling houses, constitutes a material change of use and requires development permission.

(7) The use of part of a dwelling house, or part of its curtilage, for an ancillary business activity is deemed not to be a material change of use requiring development permission, provided—

- (a) the activity falls only within use class A1 (Shops) or class B1 (Business, storage or distribution); and
- (b) the activity is carried on in such a manner as to be not detrimental to the amenity of the area.

## PART 4 ADVERTISEMENTS

### Control of advertisements

7. (1) Subject to sub-regulation (2), no advertisement may be displayed unless development permission for its display has been granted.

(2) No development permission is required in respect of the display of an advertisement of a description set out in Part B of Schedule 2 if the display complies with the conditions and limitations specified in that Part.

(3) The Authority or Governor in Council, as the case may be, must in considering an application for development permission to display an advertisement have regard to the interests of amenity and public safety, taking into account—

- (a) the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest;
- (b) the safety of persons using any surrounding area;
- (c) whether the display of the advertisement in question is likely to obscure, or hinder the ready interpretation of, any traffic sign;
- (d) whether the display of the advertisement in question is likely to hinder the operation of any device used for measuring the speed of any vehicle.

(4) In determining an application for consent for the display of advertisements, the Authority or Governor in Council, as the case may be, may have regard to any material change in circumstances likely to occur within the period for which the consent is requested.

(5) All advertisements displayed by virtue of sub-regulation (2), (3) or (4) must comply with the standard conditions set out in Part A of Schedule 2.

## PART 5 GENERAL

### Meaning of “associated person”

8. For purposes of section 66, an “associated person” in relation to a public officer means—

- (a) his or her grandparents, parents, siblings, spouse or life partner, children, and grandchildren;
- (b) the spouses or life partners of his or her siblings, children and grandchildren;
- (c) any corporate body the activities of which he or she (either alone or in association or combination with any of the persons mentioned in paragraphs (a) and (b)) is able to direct; or
- (d) a person for whom the officer acts as a nominee, trustee or attorney.

**SCHEDULE 1**  
(Regulation 6(1))

**USE CLASSES**

**Class A1: Shops**

Shops, hairdressers, travel and ticket agencies, post offices, pet shops, sandwich bars, internet cafes, showrooms, domestic hire shops, dry cleaners (but not launderettes), funeral directors and internet cafes.

**Class A2: Financial and professional services**

Banks, building societies, estate agents, insurance agents, employment agents and other professional services excluding health and medical services.

**Class A3: Restaurants and cafes**

Restaurants, cafes, and snack bars where the principal purpose is consumption of food and drink on the premises

**Class A4: Drinking establishments**

Public houses, taverns and wine bars (but not night clubs) where the principal purpose is the consumption on the premises of alcoholic drinks

**Class A5: Hot food takeaways**

Sale of hot food for consumption off the premises.

**Class B1: Business, storage and distribution**

Offices (other than those in Class A2), research and development of products and processes, light industry of a nature which can be carried on without detriment to the amenity of a residential area, and use for storage or as a distribution centre including open air storage.

**Class B2: General industrial**

Use for an industrial process (other than those in Class B1), not including incineration or chemical treatment or landfill or hazardous waste.

**Class C1: Hotels**

Hotels, boarding and guest houses where no significant element of medical care is provided.

**Class C2: Residential institutions not including secure residential institutions**

Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.

**Class C3: Dwelling houses**

Use as a dwelling house by a single person or by people living together as a family and including domestic staff, or by not more than six residents living together as a single household (including residents receiving care).

**Class D1: Non-residential institutions**

Clinics, health centres, crèches, child nurseries, day centres, schools, art galleries, museums, libraries, public and church halls, places of worship, law courts, and non-residential education and training centres.

**Class D2: Assembly and leisure**

Cinemas, music and concert halls, bingo and dance halls (but not night clubs), gymnasiums and sports halls.

**SCHEDULE 2**  
(Regulation 7)

**CONDITIONS FOR ADVERTISEMENTS**

**PART A**

**Standard conditions for all advertisements**

1. No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.

2. No advertisement, including any means of illumination, is to be sited or displayed so as to—

(a) endanger persons using any highway, harbour or aerodrome;

(b) obscure, or hinder the ready interpretation of, any traffic sign or aid to navigation by water or air; or

(c) hinder any operation of any kind.

3. Any advertisement displayed, and any site used for the display of advertisements, must be maintained in a condition that does not impair the visual amenity of the site.

4. Any structure or hoarding erected or used principally for the purpose of displaying advertisements must be maintained in a condition that does not endanger any person, property, animal or thing.

5. If an advertisement is required under these Regulations to be removed, the site must be left in a condition that does not endanger the public or impair visual amenity.

6. Development permission for any advertisement lapses after a period of 3 years from the date on which permission has been granted and the advertisement must then be removed if so required by the Authority.

**PART B**

**Development permission will not be required for the following types of non-illuminated advertisements and both illuminated and non-illuminated advertisements under subsection 11:**

1. An advertisement displayed on enclosed land or inside a building and not readily visible from outside the enclosed land or building or from any place to which the public have a right of access.
2. An advertisement displayed on or in a vehicle normally used as a moving vehicle provided that the vehicle is not used principally for the display of advertisements.
3. An advertisement not larger than 1.5 sq metres in area displayed by a government department, or an agency on their behalf, for announcement or direction.
4. An advertisement required to be displayed by any law or any condition imposed by any law on the exercise of any function and removed as soon as the law permits.
5. A temporary advertisement relating specifically to an election and removed not later than 14 days after that election.

6. An advertisement not larger than 0.09 sq metre in area attached to the building to which it relates or displayed within its curtilage for the purpose of identification or direction.
7. A single temporary advertisement not larger than 0.5 sq metre in area and displayed not more than 4.5 metres above ground level relating to the sale or letting of the land or premises on which it is displayed and removed within 14 days after the completion of the transaction to which it relates.
8. A single temporary advertisement not larger than 1.5 sq metres in area and displayed not more than 4.5 metres above ground level relating to the carrying out of building or engineering works on the land on which it is displayed whilst those works are being carried out.
9. A single temporary advertisement not larger than 0.6 sq metre in area and displayed not more than 4.5 metres above ground level relating to a non-commercial local event or activity, displayed not more than 14 days before nor more than 14 days after the event or activity to which it relates.
10. *Omitted*
11. The display of temporary advertisements relating to public festivities, for a period not more than 6 weeks before and 2 weeks after the event to which they relate.

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## **LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE, 2013**

### **LAND PLANNING AND DEVELOPMENT CONTROL (AUTHORITY PROCEDURES) REGULATIONS, 2013**

(Sections 6, 63 and 70)

#### TABLE OF CONTENTS

1. Citation and commencement
2. Meetings of Authority
3. Meaning of “relevant interest”
4. Reporting by Authority

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#### **Citation and commencement**

**1.** These Regulations may be cited as the Land Planning and Development Control (Authority Procedures) Regulations, 2013, and come into force on 1 February 2014.

#### **Meetings of Authority**

**2. (1)** The Authority must give notice of any meeting convened under section 6 of the Ordinance by publication in one or more newspapers circulating on St Helena, where practicable at least 7 days before the meeting, and such notice must, subject to sub-regulation (2), inform members of the public that any person may attend the meeting.

**(2)** The Chair may exclude members of the public from any meeting or part of a meeting where the matter under discussion is of a financial, commercial or personal nature which, in the opinion of the Chair, should properly be considered in private.

(3) Meetings of the Authority may be held by way of electronic media where the members participating in the meeting are not all present in the same place but where all the members participating can hear, and be heard by, all of the other members so participating and by members of the public in attendance.

(4) The minutes of all meetings must, once approved by the Authority, be open to public inspection.

### Meaning of “relevant interest”

3. (1) For the purposes of section 7 of the Ordinance, a member of the Authority has a relevant interest in a matter if the member or any associated person has, to the member’s knowledge, an interest in land which is—

- (a) the subject of any application or discussion to which the matter relates; or
- (b) within 50 metres of any part of the land which is the subject of such application or discussion.

(2) In this Regulation, an “associated person” in relation to a member means—

- (a) his or her grandparents, parents, siblings, spouse or life partner, children, and grandchildren;
- (b) the spouses or life partners of his or her siblings, children and grandchildren;
- (c) any corporate body the activities of which he or she (either alone or in association or combination with any of the persons mentioned in paragraph (a) and (b)) is able to direct; or
- (d) a person for whom he or she, or a person mentioned in paragraphs (a), (b) and (c), has within the past 12 months, acted as a nominee, trustee or attorney.

(3) For the purposes of subsection (1), a person has an interest in land if—

- (a) the person owns the freehold or any lease or any charge by way of security, or any option to acquire any of the foregoing interests over or in respect of such land; or
- (b) the person or any partner of the person or any company of which the person is an employee has in connection with the development of such land—
  - (i) furnished any advice for or in expectation of gain; or
  - (ii) otherwise contributed to the design process.

(4) Notwithstanding sub-regulations (2)(d) and (3), a person is deemed not to have a relevant interest in a matter if the person would have that interest only by reason of—

- (a) being a trustee or nominee of a church or charity;
- (b) furnishing advice in the performance of duties as a public officer; or
- (c) being a member of the Legislative Council and the relevant land being Crown land.

### Reporting by Authority

4. A report by the Authority under section 63 of the Ordinance must contain the following information:

- (a) the number and type of applications for development permission received;
- (b) the number and type of applications for development permission granted;
- (c) the number and type of applications for development permission refused;

- (d) the number and type of applications for development permission granted on appeal under this Ordinance;
- (e) the number of meetings of the Authority held during the year;
- (f) any difficulties the Authority has encountered in performing the duties set out in section 5(a), (b) and (c); and
- (g) any recommendations the Authority wishes to make as to the amendment of the Ordinance or the Regulations then in force or the making of new legislation to assist in the fulfilling of those objectives.

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## **LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE, 2013**

### **LAND PLANNING AND DEVELOPMENT CONTROL (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS, 2013**

(Sections 19, 20 and 70)

#### TABLE OF CONTENTS

- 1. Citation and commencement
- 2. Environmental impact assessment report
- 3. Review of quality of environmental impact assessment report
- 4. Screening opinions
- 5. Scoping opinions

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#### **Citation and commencement**

**1. (1)** These Regulations may be cited as the Land Planning and Development Control (Environmental Impact Assessment) Regulations, 2013.

**(2)** These Regulations come into force on 1st February 2014 and apply in respect of any application for development permission, screening opinion or scoping opinion which is submitted on or after that date.

#### **Environmental impact assessment report**

**2. (1)** An EIA report required under section 19 of the Ordinance must include the following:

- (a) A description of the physical characteristics of the development including land-use requirements.
- (b) A description of construction and operational processes including the nature and quantity of materials to be used.
- (c) For each of the environmental issues included in any Scoping Opinion:
  - (i) A quantified assessment of expected positive and negative impacts on the environment, resulting from both the constructional phase, operational phase and where appropriate the decommissioning phase of the development.
  - (ii) A statement of the data used, including baseline survey information, to identify and assess the impacts which the development is likely to have, including cumulative impacts where relevant.

- (iii) A description of the measures to be implemented to avoid, minimise and mitigate negative impacts and maximise positive impacts; and the expected residual impacts after such measures have been implemented.
- (v) Procedures to be adopted to ensure effective monitoring and reporting to the Planning Officer on implementation of the measures referred to in item (iii).
- (d) An outline of any alternatives studied by the applicant and the reasons for choice of the proposed development including the environmental effects.
- (e) A non-technical summary of the information provided under paragraphs (a) to (d).
- (f) An indication of assumptions made and constraints (including technical deficiencies or lack of knowledge) encountered by the applicant when compiling the EIA report.

(2) The quality and level of detail of the EIA report must be such as to allow the environmental impact of the development to be adequately assessed by the Authority and the Governor in Council as appropriate.

(3) An EIA report required under section 19 of the Ordinance must be prepared at the applicant's expense.

### **Review of quality of environmental impact assessment report**

3. (1) On receipt of a development application referred to in section 19 of the Ordinance, the Planning Officer must—

- (a) consult the Chief Environmental Officer as to the adequacy of the EIA report;
- (b) publish details of the EIA report in one or more newspapers circulating on St Helena together with details of the application allowing at least 28 days for public comment;
- (c) consult such other persons or bodies as appear to the Planning Officer or the Chief Environmental Officer as are likely to be able to provide specialist advice relevant to the review of the EIA report.

(2) If the Chief Environmental Officer or Planning Officer, having regard to representations and responses received under sub-regulation (1), consider that the EIA report is insufficient for the Planning Officer adequately to advise the Authority or Governor in Council on the environmental effects of the proposed development, the Planning Officer must, by written notice, not later than 5 weeks after the receipt of the EIA report, or any longer period agreed in writing with the applicant, advise the applicant of the additional information required.

(3) If the Chief Environmental Officer considers that the EIA report is sufficient, any measures described in Regulation 2(1)(c)(iii), together with any additional measures the Planning Officer in consultation with the Chief Environmental Officer considers appropriate, must be included in the Planning Officer's report and recommendation under section 24(2) of the Ordinance to the Authority and the Governor in Council, as appropriate, as planning conditions under section 26 of the Ordinance on the grant of development permission.

(4) If any planning condition as envisaged in sub-regulation (3) requires the submission of an environmental management plan for approval prior to commencement of the development, the Planning Officer must consult the Chief Environmental Officer as to the



adequacy of such plan before approving it and authorising commencement.

### **Screening opinions**

**4. (1)** In requesting a screening opinion under section 20(1) of the Ordinance, the applicant must provide the Planning Officer with—

- (a) a plan sufficient to identify accurately the whole of the land to be developed;
- (b) a description of the nature and purpose of the development and of its possible effects on the environment; and
- (c) any other relevant information as the applicant wishes to provide.

**(2)** Upon receipt of a request under section 20(1) of the Ordinance, the Planning Officer must, if he or she considers that he or she has not been provided with sufficient information to adopt a screening opinion, notify in writing the applicant as to the additional information required.

**(3)** The Planning Officer must consult the Chief Environmental Officer prior to adopting a screening opinion or requesting additional information under sub-regulation (2).

**(4)** Unless the Planning Officer has requested additional information under sub-regulation (2) he or she must, within 2 weeks from the date of receipt of the request for the screening opinion, or any longer period agreed in writing with the applicant, provide the applicant with a screening opinion adopted by the Planning Officer.

**(5)** If the Planning Officer fails to adopt and provide a screening opinion within the period mentioned in sub-regulation (4), the applicant may apply to the Appeals Tribunal to give a screening opinion.

**(6)** Upon receipt of a request under sub-regulation (5), the Appeals Tribunal must give a screening opinion within 3 weeks from the date of receipt, or any longer period the Appeals Tribunal reasonably requires.

**(7)** For purposes of any appeal proceedings under section 53 of the Ordinance, a screening opinion adopted by the Planning Officer is deemed to be a decision by the Authority.

### **Scoping opinions**

**5. (1)** In requesting a scoping opinion under section 20(2) of the Ordinance, the applicant must provide the Planning Officer with—

- (a) a plan sufficient to identify accurately the whole of the land to be developed;
- (b) a description of the nature and purpose of the development and of its possible effects on the environment; and
- (c) any other relevant information the person making the request wishes to provide.

**(2)** Upon receipt of a request under section 20(2) of the Ordinance, the Planning Officer must, if he or she considers that he or she has not been provided with sufficient information to adopt a scoping opinion, notify in writing the applicant as to the additional information required.

(3) The Planning Officer must consult the Chief Environmental Officer and any other person who appears to the Planning Officer to be able to provide information relevant to the scoping opinion prior to providing a scoping opinion to the applicant or requesting additional information under sub-regulation (2).

(4) Unless the Planning Officer has requested additional information under sub-regulation (2), he or she must, within 4 weeks from the date of receipt of the request for the scoping opinion, or any longer period agreed in writing with the applicant, provide the applicant with a scoping opinion adopted by the Planning Officer. If a screening opinion and scoping opinion are applied for simultaneously by the applicant, the scoping opinion must be given to the applicant within 4 weeks from the date of providing the screening opinion.

(5) If the Planning Officer fails to adopt and provide a scoping opinion within the period mentioned in sub-regulation (4), the applicant may apply to the Appeals Tribunal to give a scoping opinion.

(6) Upon receipt of a request under sub-regulation (5), the Appeals Tribunal must provide a scoping opinion within 4 weeks from the date of receipt, or any longer period the Appeals Tribunal reasonably requires.

(7) Before adopting a scoping opinion the Planning Officer or the Appeals Tribunal, as the case may be, must take into account—

- (a) the specific characteristics of the particular development;
- (b) the characteristics of development of the type concerned;
- (c) the environmental features likely to be affected by the development;
- (d) the opinion of the Chief Environmental Officer; and
- (e) the opinion of any other person who appears to the Planning Officer or the Appeals Tribunal, as the case may be, to be able to provide information relevant to the scoping opinion.

(8) For purposes of any appeal proceedings under section 53 of the Ordinance, a scoping opinion adopted by the Planning Officer is deemed to be a decision by the Authority.

(9) A scoping opinion given under sub-regulation (4) or (5) does not preclude the Planning Officer from requiring from the applicant additional information in any EIA report submitted with the relevant application for development permission, if it appears to the Planning Officer that the development applied for is likely to have environmental effects beyond those reasonably able to be deduced from the information provided in sub-regulation (1).

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## **LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE, 2013**

### **LAND PLANNING AND DEVELOPMENT CONTROL (APPEAL) REGULATIONS, 2013**

(Sections 55, 56, 59 and 70)

#### **TABLE OF CONTENTS**

#### **PART 1**

## PRELIMINARY AND INTERPRETATION

1. Citation and commencement
2. Interpretation

### PART 2 APPEALS TRIBUNAL

3. Meaning of “relevant interest”

### PART 3 APPEAL PROCEDURES

4. Application of Regulations
  5. Notice of Appeal
  6. Receipt of case statements, etc.
  7. Date and notification of hearing
  8. Appearances at hearing
  9. Procedure at hearing
  10. Site inspections
  11. Procedure after hearing
  12. Additional copies
  13. Sending of notices, etc.
  14. Withdrawal of consent to use of electronic communications
  15. Discretion of President
- Schedule 1: Forms  
Schedule 2: Fees

## PART 1 PRELIMINARY AND INTERPRETATION

### Citation and commencement

**1. (1)** These Regulations may be cited as the Land Planning and Development Control (Appeal) Regulations, 2013.

**(2)** These Regulations come into force on 1st February 2014 and apply in respect of any appeal noted on or after that date.

### Interpretation

**2. (1)** In these Regulations, unless the contrary intention appears—  
“**appeal papers**” means copies of—

- (a) all papers and documents submitted by any party to the Authority with respect to the decision that is appealed against; and
- (b) the decision appealed against;

“**appeal site**” means the land which is the subject of the appeal;

“**appellant**” means any party who submits the notice of appeal;

“**case statement**” means a written statement which contains full particulars of the case which a party proposes to put forward in the appeal and copies of any relative papers and

documents which the party intends to refer to or put in evidence, but need not include appeal papers;

“**communication**” includes a communication comprising sounds or images or both and a communication effecting a payment;

“**electronic communication**” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa)—

(a) by means of an electronic communications network ; or

(b) by other means but while in an electronic form;

“**document**” includes a photograph, map or plan;

“**hearing**” includes any preliminary hearing held by the President and meetings of the Tribunal, in relation to which these Regulations apply;

“**interested party**” means any person who made representations to the Authority with respect to the decision that is appealed against other than the appellant and Chief or other Planning Officer;

“**notice of appeal**” means a notice of appeal in the form prescribed in the Schedule made to the Tribunal by any person under section 56(1) of the Ordinance;

“**party**” means the appellant, Chief Planning Officer or other Planning Officer and any other interested party that the President has directed is to be sent a copy of the notice of appeal, and “**parties**” is to be construed accordingly;

(2) In these Regulations, in relation to the use of electronic communications for any purpose of these Regulations which are capable of being effected electronically—

(a) the expression “**address**” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a postal address in St Helena to any other person, the obligation is not fulfilled unless the person on whom it is imposed does so;

(b) references to case statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(3) Sub-regulations (4) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any statement, notice or other document to any other person (“**the recipient**”).

(4) The requirement is to be taken to be fulfilled, unless the President directs otherwise, if the document transmitted by means of the electronic communication is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(5) In sub-regulation (4), “**legible in all material respects**” means that the information contained in the statement, notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) If the electronic communication is sent to the recipient on any day which is not a working day, or after 4.00 p.m. on any working day, it must be taken to have been received on the next working day; and for this purpose “**working day**” means a day which is not a Saturday, Sunday, or public holiday.

(7) A requirement in these Regulations that any document is to be in writing is fulfilled if that document meets the criteria in sub-regulation (4), and “**written**” and cognate expressions are to be construed accordingly.

(8) A requirement in these Regulations to send more than one copy of a statement or other document may be complied with, unless the President directs otherwise, by sending one copy only of the statement or other document in question.

## PART 2 APPEALS TRIBUNAL

### Meaning of “relevant interest”

3. (1) For the purposes of section 55(3) of the Ordinance, a member of the Tribunal has a relevant interest in a matter if the member or any associated person has, to the member’s knowledge, an interest in land which—

- (a) is the appeal site; or
- (b) is within 50 metres of any part of the appeal site.

(2) In this Regulation, an “**associated person**” in relation to a member means—

- (a) his or her grandparents, parents, siblings, spouse or life partner, children, and grandchildren;
- (b) the spouses or life partners of his or her siblings, children and grandchildren;
- (c) any corporate body the activities of which he or she (either alone or in association or combination with any of the persons mentioned in paragraph (a) and (b)) is able to direct; or
- (d) a person for whom the he or she or a person mentioned in paragraphs (a), (b) and (c), has within the past 12 months, acted as a nominee, trustee or attorney.

(3) For the purposes of sub-regulation (1), a person has an interest in land if—

- (a) the person owns the freehold or any lease or any charge by way of security, or any option to acquire any of the foregoing interests over or in respect of such land; or
- (b) the person or any partner of the person or any company of which the person is an employee has in connection with the development of such land—
  - (i) furnished any advice for or in expectation of gain; or
  - (ii) otherwise contributed to the design process.

(4) Notwithstanding sub-regulations (2)(d) and (3), a person is deemed not to have a relevant interest in a matter if the person would have that interest only by reason of—

- (a) being a trustee or nominee of a church or charity;
- (b) furnishing advice in the performance of duties as a public officer; or
- (c) being a member of the Legislative Council and the relevant land being Crown Land.

## PART 3 APPEAL PROCEDURES

### Application of Regulations

4. These Regulations apply in relation to any hearing held for the purposes of determining an appeal under section 53 of the Ordinance.

### **Notice of Appeal**

5. (1) Unless the President otherwise directs, a notice of appeal must be in the form specified in the Schedule.

(2) The appellant must make payment of the fees prescribed by regulation at the time of filing a notice of appeal.

(3) The President may, after considering all relevant factors (including the appellant's explanation for any delay in submitting the appeal), refuse to accept an appeal if it appears not to have been submitted to the Tribunal within 28 days of receiving notification of the decision that is appealed against.

(4) The Clerk must, unless the President directs otherwise, on receipt of a notice of appeal, send a copy of the notice to the Chief Planning Officer.

(5) Within 14 days of such notice being sent by the Clerk, the Chief Planning Officer must submit to the Clerk copies of the appeal papers and publish notice of the making of the appeal at the appeal site and in one or more newspapers circulating in St Helena.

(6) On receipt of the notice of appeal and appeal papers from the Clerk, the President must -

- (a) consider whether the appeal should be rejected in whole or in part as provided by section 57 of the Ordinance; and
- (b) in relation to an appeal or any part of an appeal that is not so rejected, and after any preliminary procedure the President considers necessary, convene a meeting of the Tribunal.

(7) If any facts become apparent to the President in the course of appeal proceedings such that in his or her judgement there are no stateable grounds of appeal, or in his or her opinion ~~that~~ actions under these Regulations would have been otherwise had such facts been known at a previous time, the President may dismiss all or part of the appeal as provided for in sub-regulation (6).

(8) The Clerk must provide all parties with a copy of the President's decision in terms of section 57 of the Ordinance or otherwise in terms of these Regulations indicating whether (and to what extent) the appeal will be considered by the Tribunal.

(9) The Clerk on receipt of the appeal papers must, unless the President directs otherwise,—

- (a) send a copy of the appeal notice to any interested party;
- (b) require every party, within 14 days of such intimation, to send to the Clerk any case statement the party desires to be considered by the Tribunal.

### **Receipt of case statements, etc.**

**6. (1)** The Clerk must send to every party a copy of any case statement or further information filed by any other party.

**(2)** The Clerk, on the direction of the President, may in writing require a party to provide any further information about the matters contained in their case statement the Clerk specifies and such information must be provided in writing within a period the President reasonably requires.

**(3)** The President and Tribunal may in exercising their duties under the Ordinance and these Regulations disregard any information which is received or proffered after the relevant period specified for receipt.

### **Date and notification of hearing**

**7. (1)** The date fixed by the President for the holding of a hearing must be the earliest date which he or she considers to be practicable.

**(2)** The President may hold a hearing, without convening a meeting of the Tribunal, in order to discharge his or her duties under the Ordinance or these Regulations or to identify the issues to be determined by the Tribunal at a meeting of the same.

**(3)** The President may vary the date, time or place fixed for the holding of a hearing and must give notice of any variation that appears to him or her to be reasonable.

**(4)** The President may in writing require the Chief Planning Officer to take one or both of the following steps to publish a notice of a hearing in one or more newspapers circulating on St Helena or any other notice that appears to the President to be reasonable.

**(5)** Every notice of hearing published or sent pursuant to sub-regulation (4) must contain—

- (a)* a clear statement of the date, time and place of the hearing;
- (b)* a written description of the appeal site to identify approximately its location;
- (c)* a brief description of the subject matter of the appeal.

### **Appearances at hearing**

**8. (1)** All parties are entitled to appear at a hearing.

**(2)** Sub-regulation (1) does not prevent the President from permitting any other person to appear at a hearing.

**(3)** Any person entitled or permitted to appear may do so on the person's own behalf or be represented by any other person.

### **Procedure at hearing**

**9. (1)** Except as otherwise provided in these Regulations, the President must determine the procedure at a hearing.

**(2)** The President may at any time, either on his or her own initiative or on the application of any party, make any orders necessary or reasonable in all matters relating to—

- (a) the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) the joinder or separation of appeals and/or appellants;
- (c) adding or removing parties to the appeal;
- (d) the amendment of a case statement;
- (e) issuing summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (f) proving any fact by affidavit;
- (g) costs to be awarded against any party to the hearing;
- (h) any other procedural orders that may be competently made by the Magistrates' Court.

**(3)** Subject to sub-regulation (2), evidence given by a witness at any hearing must be on oath or affirmation of that witness, unless the President otherwise directs.

**(4)** (a) Without affecting the right of the President to determine that it is appropriate to proceed otherwise, a hearing in which evidence is required to be heard must generally take the form of the Appellant, then Chief Planning Officer, then any interested party leading evidence, and after such evidence is led, cross-examination by all other parties present.

(b) The party leading evidence will then be given an opportunity to re-examine any witness.

(c) The President, and through him or her the members of the Tribunal, may question parties and witnesses at any stage.

(d) The parties will then have an opportunity to make closing submissions.

**(5)** The Tribunal may make findings on any matter—

- (a) not in dispute and intimated as such by parties either in writing or otherwise at a hearing; or
- (b) deduced from any document filed with the Tribunal, without requiring to hear oral evidence of the same.

**(6)** A party is entitled to call evidence but, subject to the foregoing and sub-regulations (7) and (8), the calling of evidence is at the President's discretion.

**(7)** The President may, without affecting sub-regulation (6), refuse to permit—

- (a) the giving or production of evidence; or
  - (b) the presentation of any other matter,
- which he or she considers to be irrelevant or repetitious.

**(8)** The President may require any person appearing or present at a hearing who, in his or her opinion is behaving in a disruptive manner, to leave and may—

- (a) refuse to permit that person to return; or
- (b) permit the person to return only on conditions the President specifies.



(9) The President may proceed with a hearing in the absence of any person entitled to appear at it, if he or she considers it just and reasonable to do so.

(10) The President may from time to time adjourn a hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice is required.

### **Site inspections**

10. (1) If it appears to the President that one or more matters would be more satisfactorily resolved by adjourning any hearing to the appeal site, the President may adjourn the hearing to that site and may conclude the hearing there.

(2) The President or Tribunal may inspect the appeal site during the hearing or after the close of the hearing.

(3) If the President or Tribunal intend to make an inspection under sub-regulation (2), they must ask the parties whether they wish to be present.

(4) If a party has indicated that they wish to be present the President must decide the date and time at which the inspection will take place and the President or Tribunal must make the inspection in the company of any party who attends.

### **Procedure after hearing**

11. After the close of a hearing, the Clerk must send to the Chief Planning Officer and all other parties written notification of any decision, together with a statement of reasons for the decision.

### **Additional copies**

12. The President may at any time request from any party additional copies of any document or information sent to the Tribunal, and may specify the time within which such copies must be received by the President and any person so requested must ensure that the copies are received within the period specified.

### **Sending of notices, etc.**

13. Notices or documents required or authorised to be sent or supplied under these Regulations may be sent or supplied—

(a) by post; or

(b) by using electronic communications to send or supply the notice or document (as the case may be) to a party at any address for the time being specified by the party for that purpose.

### **Withdrawal of consent to use of electronic communications**

14. If a party is no longer willing to accept the use of electronic communications for any purpose under these Regulations which is capable of being effected electronically,—

- (a) the party must give notice in writing withdrawing any address notified to the Tribunal for that purpose which notice takes effect on a date specified by the party in the notice but not less than 7 days after the date on which the notice is given; and
- (b) simultaneously send to the Clerk a postal address in St Helena.

### **Discretion of President**

**15. (1)** The President may consider it appropriate (in the interests of fairness or properly to determine an appeal) to amend or adapt the time limits set out in these Regulations in a particular appeal.

**(2)** Any party seeking an extension of a time limit must explain in writing to the President why it believes it is appropriate and the President will decide if an extension is appropriate and inform all parties accordingly.

**(3)** Subject to sub-regulation (4), the President may direct that there be a departure from these Regulations in any material respect in a particular case for reasons of fairness or in order to properly determine the appeal.

**(4)** The President must canvass any such departure with the parties present at any hearing or meeting of the Tribunal or otherwise write to the parties who are not so present setting out the nature and extent of such departure, his or her reasons for ~~doing so~~ proposing it and seeking the relevant parties' response.

## **SCHEDULE** (Regulation 5(1))

### **LAND DEVELOPMENT APPEALS TRIBUNAL**

#### **FORM OF NOTICE OF APPEAL**

1. Appellant
  - 1.1 Title
  - 1.2 First Name(s)
  - 1.3 Surname
  - 1.4 Address
  - 1.5 Telephone
  - 1.6 Fax
  - 1.7 Email
  
2. Appellant's Representative (if any)
  - 2.1 Title
  - 2.2 First Name(s)
  - 2.3 Surname
  - 2.4 Address
  - 2.5 Telephone
  - 2.6 Fax
  - 2.7 Email

3. Appeal Site
  - 3.1 Authority reference no.:
  - 3.2 Description of Appeal Site:
  - 3.3 Date of application/notice/order:
  - 3.4 Date of decision notice

4. Grounds of Appeal

This appeal is against the decision of the Authority to (circle as applicable):

- (1) refuse an application for development permission or to impose any condition on granting development permission;
- (2) require an environmental impact assessment report for the purposes of development permission or to require a specific type of report;
- (3) modify or revoke development permission or to refuse to withdraw a notice modifying or revoking development permission;
- (4) require the completion of a development within a time limit;
- (5) serve an enforcement notice or as to the terms thereof;
- (6) impose a building preservation order or tree preservation order;
- (7) make an amenity order;
- (8) issue a notice requiring discontinuance of use or alteration or removal of buildings or works.

5. Signature

Date

Return to: The Clerk, Land Development Appeals Tribunal  
 The Castle, Jamestown, St Helena STHL 1ZZ  
 Telephone Tel: +290 22340 Fax: +290 22598  
 E-mail: [judicial.manager@sainthelena.gov.sh](mailto:judicial.manager@sainthelena.gov.sh)

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**LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE, 2013**

**LAND PLANNING AND DEVELOPMENT CONTROL (FORMS AND FEES)  
 REGULATIONS, 2013  
 (Section 70)**

**Citation and commencement**

**1.** These Regulations may be cited as the Land Planning and Development Control (Forms and Fees) Regulations, 2013, and come into force on 1st February 2014.

**Forms of applications and notices**

**2.** The following applications and notices under the Ordinance must be in the form set out in Schedule 1:

- (a) Application for development permission (*Form A*);
- (b) Application for screening and/or scoping opinion (*Form B*);
- (c) Application for minor variation of development permission (*Form C*);

- (d) Notice by prospective purchaser unaware of unauthorised development on land (*Form D*);
- (e) Claim for compensation (*Form E*);

**Fees**

3. The fees set out in Schedule 2 are payable in respect of the matters set out in that Schedule.

**SCHEDULE 1**  
(Regulation 2)

**ST HELENA**

**LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE 2013**

**FORM A**

**APPLICATION FOR DEVELOPMENT PERMISSION**

*Please complete using block capitals and black ink. **Two** copies are required together with **three** copies of all plans and drawings.*

*Please read the accompanying guidance notes to avoid incorrect completion of the form which will delay your application.*

1.

APPLICANT

Name

Address

Telephone

Email Address

AGENT

Name

Address

Telephone

Email Address

2. Address of the site to which the application relates: Please state:

Land Registration Details

Section:

Block No:



If yes, please attach the details.

d) Is the soakaway area on land within your control? YES/NO

If no, please attach a statement of agreement from the owner.

9. What are the proposed arrangements for dealing with rainwater and surface water from the proposed development?

10. Is there an existing drinking water supply? YES/NO

If no, state the proposed arrangement.

11. Have you consulted your neighbours or the local community about the proposal?  
YES/NO

12. Have you consulted any SHG Department or other relevant organisations about the proposal? YES/NO

13. If this application is for a new building or extension please state the materials and finish to be used:

a) External Walls

b) Roof Coverings

14. Please confirm the plans submitted with this application. As a minimum they must include three copies of the following with the scale and north-point marked on them:

Please tick

-Location plan or satellite image at scale 1:5000 or larger. Showing accurately all surrounding development and roads with the application site edged in red.

-List and description (if any) of electronic transmission equipment to be installed and operated as part of the development, including output power and operating frequencies.

-Development plans to provide description of all site and external lighting (this should be downward facing only).

And unless this application is for outline development permission only:

-Site plan at scale 1:250 or larger with the site boundaries, drainage layout (including any septic tank and soakaways, or the point of connection to the communal system, inspection chambers and vent pipes), vehicle access, parking and turning area, retaining walls and boundary treatments, with the application site edged in red.

-If the proposed development will involve excavating or building up ground levels, site section drawings at scale 1:250 or larger showing existing and proposed slopes and measures to retain them and for their drainage.

And if the proposed developments includes building works:

-Building plans at scale 1:100 or larger showing floor plans of each storey, all elevations and sections, providing finalised ground and roof levels, clearly showing maximum height above site ground level.

15. a) I hereby apply for Development Permission as described in this application and accompanying plans and drawings in both hardcopy and electronic formats.

b) I enclose (Development Application fee):

*SHG Receipt Number*  
*In the sum of £*

*Cheque Number*

Signed            Applicant

Agent

On behalf of  
(Insert applicant's name if signed by an agent)

Date of Application

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**FORM B**

**LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE, 2013**

**APPLICATION FOR SCREENING AND/OR SCOPING OPINION**  
(Section 20)

1.    SCREENING OPINION/  
      SCOPING OPINION  
      (tick appropriate box)

2.	APPLICANT(S)	AGENT
	Name	Name
	Address	Address
	Telephone	Telephone

3. DESCRIPTION OF LAND TO BE DEVELOPED (And provide a plan sufficient to identify accurately the whole pf the land to be developed.)

4. State Applicant's interest in the site: (tick appropriate box)  
Owner                      Lessee                      Prospective Purchaser

5. DESCRIPTION OF NATURE AND PURPOSE OF THE PROPOSED DEVELOPMENT AND OF ITS POSSIBLE EFFECTS ON THE ENVIRONMENT (Continue on separate sheets as necessary)

Signed \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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**FORM C**

**LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE, 2013**

**APPLICATION FOR MINOR VARIATION OF DEVELOPMENT PERMISSION**  
(Section 29)

1.	APPLICANT(S)	AGENT
	Name	Name
	Address	Address
	Telephone	Telephone

2. APPLICATION NO. FOR DEVELOPMENT PERMISSION:

3. DESCRIPTION OF LAND:

4. State Applicant's interest in the site:  
Owner/Lessee

5. DESCRIPTION OF PROPOSED VARIATION OF PERMISSION:

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**FORM D**

**LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE, 2013**

**NOTICE BY PROSPECTIVE PURCHASER UNAWARE OF UNAUTHORISED DEVELOPMENT**  
(Section 37)



- 1. PROSPECTIVE PURCHASER(S):
- 2. CONTACT DETAILS:  
Address:  
  
Telephone:
- 3. DETAILS OF LAND TO BE PURCHASED:

TO THE PLANNING OFFICER:

TAKE NOTICE THAT I/we intend to purchase the land described above and that I am unaware of any development that has been carried out on such land without development permission.

Should you not notify my/us within two months of any development which has been carried out on the land without permission, all development thereon at the time of receipt by you of this notice is under the Ordinance, for purposes of any enforcement notice issued thereafter, deemed to have been permitted by the Board.

Signed \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_

**FORM E**

**LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE, 2013**

**CLAIM FOR COMPENSATION**

(Section 49)

APPLICANT:  
CONTACT DETAILS:  
Address:

Telephone:

DETAILS OF CLAIM FOR COMPENSATION:

Signed \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_

**SCHEDULE 2**

(Regulation 3)

## FEES

1. Subject to paragraphs 2, 3, 4 and 5, the fees payable under these Regulations are as follow:

1 Outline development application

Site area to which application relates:

Up to 0.1 ha (¼ acre)	£45.00
exceeding 0.1 up to 0.5 ha (1¼ acres)	£90.00
exceeding 0.5 up to 2.5 ha (6¼ acres)	£150.00
exceeding 2.5 up to 10.0 ha (24½ acres)	£350.00
exceeding 10 ha (24½ acres)	£1,000.00

2. Full development application

(excluding fees for building regulations)

(a) New dwellings:

Floor area created:

up to 90m <sup>2</sup>	£45.00
exceeding 90m <sup>2</sup> up to 120m <sup>2</sup>	£45.00
exceeding 120m <sup>2</sup> up to 200m <sup>2</sup>	£45.00
exceeding 200m <sup>2</sup>	£90.00

(b) Domestic extensions, domestic alterations and ancillary domestic buildings:

New floor space created:

up to 12m <sup>2</sup>	£35.00
exceeding 12m <sup>2</sup> up to 30m <sup>2</sup>	£35.00
exceeding 30m <sup>2</sup> up to 90m <sup>2</sup>	£45.00
exceeding 90m <sup>2</sup>	£45.00

(c) Non-domestic development:

New floor space created:

up to 90m <sup>2</sup>	£45.00
exceeding 90m <sup>2</sup> up to 120m <sup>2</sup>	£90.00
exceeding 120m <sup>2</sup> up to 250m <sup>2</sup>	£125.00

exceeding 250m <sup>2</sup> up to 500m <sup>2</sup>	£125.00
exceeding 500m <sup>2</sup>	£250.00

3. Building regulations application (whether submitted as part of a full development application or for building regulations approval alone):

(a) New dwellings:

New floor area created:

up to 90m <sup>2</sup>	£105.00
exceeding 90m <sup>2</sup> up to 120m <sup>2</sup>	£155.00
exceeding 120m <sup>2</sup> up to 200m <sup>2</sup>	£250.00
exceeding 200m <sup>2</sup>	£205.00 plus £45.00 for every 45m <sup>2</sup> over 200m <sup>2</sup>

(b) Domestic extensions, domestic alterations and ancillary domestic buildings:

New floor space created:

up to 12m <sup>2</sup>	£65.00
exceeding 12m <sup>2</sup> up to 30m <sup>2</sup>	£100.00
exceeding 30m <sup>2</sup> up to 90m <sup>2</sup>	£135.00
exceeding 90m <sup>2</sup>	£180.00

(c) Non-domestic development:

New floor space created:

up to 90m <sup>2</sup>	£105.00
exceeding 90m <sup>2</sup> up to 120m <sup>2</sup>	£155.00
exceeding 120m <sup>2</sup> up to 250m <sup>2</sup>	£250.00
exceeding 250m <sup>2</sup> up to 500m <sup>2</sup>	£500.00
exceeding 500m <sup>2</sup>	£500.00 plus £50.00 for every 100m <sup>2</sup> over 500m <sup>2</sup>

4. Change of Use

Development application and building regulations

Same as fees in Items 2 and 3 (all categories) based on proposed use and resultant floor area

5. Environmental Impact Assessment

Application for Screening Opinion	£0
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Application for Scoping Opinion	£150.00
6. Appeals	
Lodging of Notice of Appeal:	
Development up to 120m <sup>2</sup> floor area (full applications) or 0.1 ha (¼ acre) (outline development applications)	£150 (refundable if Appeals Tribunal allows the appeal)
Development over 120m <sup>2</sup> floor area (full applications) or 0.1 ha (¼ acre) (outline development applications)	Twice the fee payable under item 1 or 2 but limited to £1,000 (non-refundable)
2. If the development application includes more than one dwelling of identical design, the building regulations fee payable under item 3 of the table in paragraph 1 in respect of the second identical dwelling is reduced by one-third and on the third and subsequent identical dwellings by one half.	
3. If an application is submitted for approval of details after outline development permission has been granted and such application is in accordance with the requirements of such outline development permission, the applicable development permission fees payable under item 2 of the table in paragraph 1 are reduced by one-third.	
4. The fees in the table in paragraph 1 are reduced by 50 per cent in the case of an application for development by—	
(a) a charitable organisation registered under the Charities Ordinance, 2005, for any charitable purpose carried on by such organisation as referred to in such Ordinance; or	
(b) a community association registered under the Community Centres Ordinance, 1988 for purposes of providing any community facilities.	
5. No fees are payable in respect of development undertaken solely to facilitate easier access by disabled persons to any buildings or land, or to the use of such buildings or land.	
6. Any fee paid by a person under Item 6 in respect of the lodging of a Notice of Appeal, must be refunded to the person if the appeal is upheld or the original decision against which the appeal was noted is varied on appeal.	

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**LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE, 2013**

**LAND PLANNING AND DEVELOPMENT CONTROL (GENERAL  
DEVELOPMENT) ORDER, 2013**

(Section 16(2))

TABLE OF CONTENTS

1. Citation and commencement
  2. Interpretation
  3. General development permission
    - 3.1 Alteration of buildings
    - 3.2 Extension of buildings
    - 3.3 Use incidental to a residential dwelling
    - 3.4 Construction for a purpose incidental to a residential dwelling
    - 3.5 Radio or television antenna or satellite dish
    - 3.6 Solar hot water or photovoltaic panels
    - 3.7 Shipping containers
    - 3.8 Demolition
    - 3.9 Development by the Crown for road maintenance or improvement
    - 3.10 Underground sewers, water mains and cables
    - 3.11 Overhead cables
    - 3.12 Use of land for agricultural or forestry purposes
    - 3.13 Display of advertisements
    - 3.14 Gates, fences, walls and enclosures
    - 3.15 Public emergency
  4. Prior approval procedures
- 

### **Citation and commencement**

1. This Order may be cited as the Land Planning and Development Control (General Development) Order, 2013, and comes into force on 1st February 2014.

### **Interpretation**

2. In this Order—
- "adopted policy"** means a policy adopted by the Authority or by the Government after public consultation and which has not been superseded;
- "as originally built"** means the building as first constructed, without subsequent extension;
- "curtilage"**, in relation to a dwelling house, means land defined and occupied with it for purposes ancillary to the domestic use as a dwelling house;
- "listed building"** means a listed building as defined in the Ordinance and includes any building which is subject to a Building Preservation Order under section 40 of the Ordinance; and until such time as the Historic Environment Record supersedes the report "Listing and Preservation of Buildings of Architectural and Historic Interest" of 1974 (the "Crallan Report") it includes buildings and groups of buildings listed in that report;
- "low voltage "** in relation to an electrical conductor means a voltage below 450V a.c. and **"high voltage"** means a voltage higher than 450V a.c.;
- "tree preservation order"** means a Tree Preservation Order under section 42 of the Ordinance and includes an interim order under that section;
- "the paved surface"** of a road includes an adjoining area normally treated as part of the carriageway and in use as such.

### **General development permission**

3. Subject to the prior approval procedures in paragraph 4, development permission is deemed to have been granted for purposes of section 16(1) of the Ordinance in respect of any of the following types of development:

**3.1 Alteration of buildings**

The alteration, without any form of extension, of any building (not being a listed building):

Provided that this paragraph does not apply if—

- (a) the building is in a Historic Conservation Area and the alteration would affect the external appearance of the building;
- (b) the alteration would affect the form or colour of the roof of the building; or
- (c) the alteration would increase the area of clear glazing in any elevation of the building that faces a dwelling house which is within 15 metres of the building intended to be altered.

**3.2 Extension of buildings**

The extension of any building (not being a listed building or a building in a Historic Conservation Area), by up to 30% of the ground floor area (measured from the inside of the external walls) of the building as originally built, and where—

- (a) the extension is single storey;
- (b) the extension (including its roof) matches the form, external materials and colour of the existing building; and
- (c) the extension is to be used for the same purpose as the existing building:

Provided that this paragraph does not apply if—

- (i) the extension would be used for domestic occupancy as a separate dwelling;
- (ii) the extension would increase the eaves height or ridge height of the existing building; or
- (iii) the eaves height or ridge height of the extension would exceed those of the existing building; or
- (iv) any part of the extension would stand forward of the existing building in the direction of a public road that would be within 25 metres of the building as extended; or
- (v) any part of the extension would be within—
  - (aa) 5 metres of any boundary of the property where there is another dwelling house within 15 metres of that boundary; or
  - (bb) 2 metres of a boundary, in any other case; or
- (vi) any excavation associated with the extension would be within 3 metres of a low-voltage electricity conductor pole or a pole stay-anchor, or five metres in the case of a high-voltage electricity conductor pole or stay-anchor, or any part of the extension would be under any overhead electricity line or over a sewer, storm drain or electricity cable; or
- (vii) any external lighting relating to the extension would emit light above horizontal or its light source would be visible beyond the boundary of the property; or

- (viii) rainwater drainage from the extension would be directed to any foul drainage system or to a public road.

### **3.3 Use incidental to a residential dwelling**

The use of any building or land within the curtilage of a dwelling house for a purpose incidental to the residential use of the dwelling house:

Provided that this paragraph does not apply if—

- (a) the land or building would be used for domestic occupancy as a separate dwelling; or
- (b) in a case where there is another dwelling within 25 metres of the land, the land or building would be used for the keeping or breeding of livestock.

### **3.4 Construction for a purpose incidental to a residential dwelling**

The construction within the curtilage of a dwelling house (not being a listed building or a building situated in a Historic Conservation Area) of buildings for a purpose incidental to the residential use of the dwelling house:

Provided that this paragraph does not apply if—

- (a) the building would be used for domestic occupancy as a separate dwelling;
- (b) the building would not match the form, external materials and colour of the dwelling-house;
- (c) the building would exceed, in the case of a building with an apex roof 3.6 metres in height measured to the ridge, or 2.4 metres in height in any other case;
- (d) the building would stand forward of the dwelling house in the direction of a public road that would be within 25 metres of the building;
- (e) the building would be within—
  - (i) five metres of a boundary of the property where there is another dwelling-house within 15 metres of that boundary; or
  - (ii) two metres of a boundary, in any other case;
- (f) any excavation associated with the building would be within three metres of a low-voltage electricity conductor pole or a pole stay-anchor, or five metres in the case of a high-voltage electricity conductor pole or stay-anchor, or any part of the building would be under any overhead electricity line or over a sewer, storm drain or electricity cable;
- (g) the building would, together with all buildings in the curtilage of the dwelling-house, cumulatively occupy more than 30 per cent of the curtilage of the dwelling-house;
- (h) in a case where there is another dwelling within 25 metres of the land, the building would be used for the keeping or breeding of livestock;
- (i) any external lighting relating to the building would emit light above horizontal or its light source would be visible beyond the boundary of the property; or
- (j) rainwater drainage from the building would be directed to any foul drainage system or to a public road.

### **3.5 Radio or television antenna or satellite dish**

The erection within the curtilage of a dwelling house (not being a listed building or a building situated in a Historic Conservation Area) of a radio or television antenna or satellite dish made of transparent material or finished coloured black, for domestic use:

Provided that this paragraph does not apply if—

- (a) any part of the antenna or dish would exceed the height of the eaves of the dwelling house or 2.4 metres, whichever is greater;
- (b) any part of the antenna or dish would stand forward of the dwelling house in the direction of a public road that would be within 25 metres of the antenna;
- (c) any part of the antenna or dish would be within—
  - (i) 5 metres of a boundary of the property where there is another dwelling-house within 15 metres of that boundary; or
  - (ii) 2 metres of a boundary, in any other case; or
- (d) any part of the antenna or dish would be within five metres of any overhead electricity line.

### **3.6 Solar hot water or photovoltaic panels**

The installation of solar hot water or photovoltaic panels on the roof of any building (not being a listed building):

Provided that this paragraph does not apply if—

- (a) the part of the roof on which the panel would be installed forms part of a street elevation of a building in a Historic Conservation Area; or
- (b) the panel would be installed on a plane other than the plane of the part of the roof on which it would be installed.

### **3.7 Shipping containers**

The siting and use for storage of a shipping container wholly in accordance with an adopted policy in respect of the siting and use of shipping containers:

Provided that this paragraph does not apply if—

- (a) the container would affect the setting of a listed building;
- (b) the container would be situated within a National Conservation Area; or
- (c) any part of the container would be within nine metres of an electricity line.

### **3.8 Demolition**

The demolition of any building or other structure (not being a listed building):

Provided that this paragraph does not apply if—

- (a) the building or other structure is situated in a Historic Conservation Area; or
- (b) the building or other structure retains or gives structural support to any land or any other structure.

### **3.9 Development by the Crown for road maintenance or improvement**

Development carried out by or on behalf of, or with the approval of, the Crown for the maintenance or improvement of a road:

Provided that this paragraph does not apply if—

- (a) it affects the setting of a listed building; or



- (b) it includes work outside the existing road boundaries as defined by the paved surface of that road.

### **3.10 Underground sewers, water mains and cables**

The laying or renewing of underground sewers, water mains and underground cables, associated inspection and access chambers:

Provided that this paragraph does not apply if—

- (a) the development would affect a listed building or its setting or land in a National Conservation Area;
- (b) the development would affect any tree to which a tree preservation order applies;
- (c) the development consists of or includes a borehole for water abstraction;
- (d) any part of the development would be above the level of the surrounding ground; or
- (e) the development would interfere with existing underground apparatus or structures.

### **3.11 Overhead cables**

The installation of overhead cables and associated poles and fittings:

Provided that this paragraph does not apply if—

- (a) the installation would be within the registration districts of Prosperous Bay, The Barn, Deadwood, Sandy Bay East, Diana's Peak Ring Road, Silver Hill, White Hill, Longwood South or Longwood North;
- (b) the installation would include more than six new poles;
- (c) the development would affect a listed building or its setting;
- (d) the development would affect any tree to which a tree preservation order applies;
- (e) in the case of development in a National Conservation Area, the development includes any pole-mounted or other high level transformer or fails to comply with any adopted management plan for the area;
- (f) in the case of development in a Comprehensive Development Area or Coastal Village Area identified in an adopted Development Plan, or any area to which a development brief or design guide has been adopted by the Land Development Control Authority, the development fails to comply with that development brief or design guide; or
- (g) the installation would not provide a safe distance between the installation and road traffic using a public road as authorised by the Highway Authority under the Road Traffic Ordinance.

### **3.12 Use of land for agricultural or forestry purposes**

The use of land for agricultural or forestry purposes:

Provided that this paragraph does not apply if it—

- (a) includes engineering or building operations; or
- (b) includes the erection of polytunnels, shade houses or greenhouses and fails to comply with an adopted policy in relation to them; or
- (c) affects any tree to which a tree preservation order applies; or
- (d) affects land in a National Conservation Area and fails to comply with any adopted development management plan for the area.

**3.13 Display of advertisements**

The display of an advertisement in accordance with an adopted policy or regulation in respect of such display.

**3.14 Gates, fences, walls and enclosures**

The erection of gates, fences, walls and other means of enclosure not exceeding a height of 1.8 metres:

Provided that this paragraph does not apply if—

- (a) the development would affect a listed building or its setting or it is situated in a National Conservation Area;
- (b) the development would abut a public road or interfere with visibility on a public road; or
- (c) the materials to be used are other than timber, natural stone, compacted earth, black-finished metalwork or rendered blockwork.

**3.15 Public emergency**

The carrying out of development by or on behalf of St Helena Government, or a utility company authorised by St Helena Government, for the purpose of alleviating an imminent or existing public emergency:

Provided that such works must be authorised only for the duration of such public emergency and must be removed and the land (and any building affected by the development) reinstated to its previous condition at the end of the public emergency, unless development permission has been applied for and granted under section 16(1) of the Ordinance for its further retention.

**Prior approval procedures**

**4. (1)** A developer must, prior to the commencement of any development listed in paragraph 3 (other than paragraph 3.15), apply to the Chief Planning Officer for a determination as to whether prior approval of the Authority will be required as to the siting, design, height and external appearance of the development.

**(2)** The application under subparagraph (1) must be accompanied by a written description of the proposed development, the materials to be used and a plan indicating the site, together with any prescribed fee.

**(3)** In determining whether prior approval is required, the Chief Planning Officer must consider the possible effects of the development upon public amenity, public safety, existing public infrastructure and aerodrome safeguarding.

**(4)** The developer must not commence ~~with~~ the development before the occurrence of one of the following:

- (a) Receipt of written notice by Chief Planning Officer that prior approval is not required;
- (b) the Chief Planning Officer notifies the developer within 14 days from the date of receiving the application under sub-paragraph (2) that prior approval is required and the Authority gives such approval; or

(c) the expiry of 14 days following the date on which the application was received by the Chief Planning Officer without him or her making, or notifying the developer of, any determination whether or not such approval is required.

(5) The development must, except to the extent that the Authority otherwise agrees in writing, be carried out—

- (a) where prior approval was required - in accordance with the details approved by the Authority;
- (b) where prior approval was not required - in accordance with the details submitted with the application;
- (c) in any case referred to in subparagraph (4)(c)- within a period of 5 years from the date on which the application was submitted under subparagraph (2).

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## **LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE, 2013**

### **LAND PLANNING AND DEVELOPMENT CONTROL (DEVELOPMENT PLANS) REGULATIONS, 2013** (Sections 13 and 70)

#### TABLE OF CONTENTS

1. Citation and commencement
2. Preparation of Development Plan
3. Publication of draft Development Plan
4. Approval of Development Plan
5. Deposit of approved Development Plan
6. National Conservation Area Development Management Plans
7. Modification or revocation of plan
8. Transitional provision

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#### **Citation and commencement**

**1.** These Regulations may be cited as the Land Planning and Development Control (Development Plans) Regulations, 2013, and come into force on 1st February 2014.

#### **Preparation of Development Plan**

**2.** (1) Except as provided in Regulation 6, the Chief Planning Officer is responsible for the preparation of any Development Plan.

(2) The Chief Planning Officer must keep the Governor in Council informed of the progress with the preparation and the likely general content of a plan which is in the course of preparation.

(3) A Development Plan prepared under section 13 of the Ordinance may, in addition to any matter referred to in section 13(2), include—

- (a) a statement of the general principles and policies which it is considered should govern the regulation, control or management of development in the area

- concerned;
- (b) the allocation of sites for different types of development;
- (c) the designation of any area as being an area which, for environmental, ecological, aircraft safety or other similar reasons should not be developed;
- (d) proposals for the preservation of buildings for architectural, cultural or historical reasons.

### **Publication of draft Development Plan**

**3. (1)** When the Chief Planning Officer has prepared a draft Development Plan he or she must send a copy to the Governor in Council and deposit a copy at the office of the Chief Planning Officer and at any other place or places he or she considers to be most effective for bringing it to the notice of persons who are likely to be affected by the proposals in it.

**(2)** The Chief Planning Officer must give notice in the *Gazette* and in a newspaper circulating on St Helena of the depositing of a draft Development Plan, and of the places where it may be examined, and must give such other publicity to and explanation of the draft Development Plan as, in his or her opinion, is best calculated to inform all persons affected or likely to be affected by the proposals in it and of a person's right to make representations with regard to the proposals in it.

**(3)** Except as provided in regulation 6, any person may, within 8 weeks of the publication in the *Gazette* of the notice referred to in sub-regulation (2), make written representations on the draft Development Plan to the Chief Planning Officer.

**(4)** After the expiration of the period for making representations on a draft Development Plan under sub-regulation (3), the Chief Planning Officer must lay the draft Development Plan, together with all representations made with respect to it, before the Authority.

**(5)** The Authority must, within 4 weeks from the date on which the draft Development Plan was so laid before the Authority, or any longer period the Governor in Council approves, forward to the Governor in Council any recommendations which the Authority wishes to make in relation to such Development Plan.

### **Approval of Development Plan**

**4. (1)** The Governor in Council may, after considering a draft Development Plan which has been submitted under regulation 3 and all representations and recommendations made on it, approve the draft Development Plan with or without modifications, or may reject it, or require revision of, or further consultations on, the draft Development Plan in whole or in part.

**(2)** The Governor in Council must not make a decision under sub-regulation (1) until—

- (a) the recommendations submitted by the Authority under regulation 3(5) have been received; or
- (b) the period of 4 weeks or approved longer period referred to in regulation 3(4) has elapsed,

whichever is the first to occur.

(3) If the Governor in Council decides that before a draft Development Plan is approved, modifications to, or revision of or further consultations are required, the Governor in Council may require the Chief Planning Officer to undertake revision or further consultation as necessary and to give such publicity to the matter as will enable persons likely to be affected or interested to make representations on what is involved.

(4) Unless the Governor in Council otherwise directs, regulations 3 applies to any revision undertaken by the Chief Planning Officer under this regulation and to the re-submission of the draft Development Plan or any modification of it.

### **Deposit of Approved Development Plan**

5. (1) When a Development Plan has been approved by the Governor in Council, in whole or in part, a copy of it must be deposited at the office of the Chief Planning Officer and any other places the Chief Planning Officer considers appropriate, and the substance of the Development Plan must be publicised in any manner the Governor in Council directs.

(2) Notice of the deposit of a Development Plan must be published in the *Gazette* and the Development Plan comes into effect on the date of such publication.

(3) Copies of a Development Plan must be available for inspection or purchase during office hours at the office of the Chief Planning Officer at fee prescribed in regulations under the Ordinance.

### **National Conservation Area Development Management Plans**

6. These Regulations apply in the like manner to the preparation, publication and approval of Development Management Plans for National Conservation Areas designated under the Land Development Control Plan, except that—

- (a) responsibility for preparation of a Development Management Plan under regulation 2(1) may be transferred to the Chief Environmental Officer acting on behalf of the Chief Planning Officer and all other responsibilities and duties of the Chief Planning Officer under these Regulations are then similarly transferred; and
- (b) the period of 8 weeks referred to in regulation 3(3) is reduced to 4 weeks or any longer period the Chief Environmental Officer decides.

### **Modification or revocation of plan**

7. (1) The Governor in Council may require the Chief Planning Officer to review or prepare proposals for modification or revocation of any Development Plan, or any part of it.

(2) Without affecting sub-regulation (1), the Chief Planning Officer must keep under review the operation of any Development Plan in the light of changing circumstances in the area to which it applies, or for any other reason which in his or her opinion requires such review, and if the Chief Planning Officer considers it desirable he or she may prepare

proposals for the modification or revocation of any Development Plan and submit them to the Governor in Council.

(3) The provisions with respect to the preparation, consideration and approval of a Development Plan apply with necessary modifications to the preparation, consideration and approval of the modification or revocation of a Development Plan.

**Transitional provision**

8. The period of 8 weeks referred to in regulation 3(3) applies to any draft Development Plan for which a longer consultation period has commenced but has not been completed at the date on which these Regulations come into force.

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