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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)

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## 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 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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