



ST. HELENA

(Chapter No. not allocated yet)

LAND PLANNING AND DEVELOPMENT CONTROL ORDINANCE

Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown [Telephone (+290) 2270; Fax (+290) 2454; email pa.lawofficers@legalandlands.gov.sh]¹

Visit our [LAWS page](#) to understand the St. Helena legal system and the legal status of this version of the Ordinance.

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¹ These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

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**LAND PLANNING AND
DEVELOPMENT CONTROL ORDINANCE**

(Ordinance 2 of 2008 and Legal Notice 5 of 2008)

AN ORDINANCE TO MAKE NEW PROVISION FOR THE PLANNING AND REGULATION OF THE DEVELOPMENT AND USE OF LAND, AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Commencement
[1 December 2008]

PART I
PRELIMINARY

Citation and commencement

1. (1) This Ordinance may be cited as the Land Planning and Development Control Ordinance, 2008.

(2) This Ordinance shall come into force on such date or dates as the Governor shall appoint by notice in the *Gazette*.

(3) A notice under subsection (2) may appoint different dates for different provisions or for different purposes of the same provision.

Interpretation

2. In this Ordinance, unless the context otherwise requires—
- “advertisement”** means any word, letter, model, sign, placard, notice, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of advertisement, announcement or direction, and (without prejudice to the preceding provisions of this definition) includes any hoarding or similar structure used, or adapted for use, for the display of advertisements, and references to the display of advertisements shall be construed accordingly;
- “amenity order”** means an order made under section 60;
- “Appeals Tribunal”** means the Planning and Development Appeals Tribunal referred to in section 12;
- “Board”** means the Land Planning and Development Control Board established under section 3;
- “building”** includes any erection or structure and any part of a building as so defined (but does not include plant or machinery comprised in a building) and any erection or structure permanently attached to the sea bed, or temporarily so attached, for the purpose only of the exploitation of minerals in on or under the sea bed;
- “Building Inspector”** means a person appointed to be a Building Inspector under the provisions of section 63, and includes an Assistant or Deputy Building Inspector;
- “building regulations”** means regulations made under section 62; and a reference to building regulations, in a particular case in relation to which a requirement of building regulations is for the time being dispensed with, waived, relaxed or modified, is a reference to building regulations as they apply in that case unless the context otherwise requires;
- “building operations”** includes rebuilding operations, structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on, as a contractor or otherwise, business of erecting, constructing, altering, improving, maintaining or repairing buildings, or works incidental to any of the foregoing;
- “building preservation order”** means an order made under section 57 or an interim building preservation order made under section 58;
- “buildings or works”** includes waste materials, refuse and other matters deposited on land, and references to the construction of buildings or works shall be construed accordingly;
- “clearing”**, in relation to land, means the removal of buildings or materials from land, the levelling or grading of the surface of the land, the removal of vegetation and the carrying out of such other operations in relation thereto as may be prescribed;
- “clerk”** means the clerk of the Appeals Tribunal appointed under section 12;
- “commercial development”** means any development which is not for private residential or agricultural purposes, and includes the use of land by a developer for the building on one parcel of more than one residence for sale or lease to individuals for private residential purposes;
- “conservation area”** means an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance;
- “Crown”** means the Crown in right of the Government of St Helena;
- “Crown land”** means land of which the Crown is the owner or is registered as the lessee under the Registered Land Ordinance, Cap 65, or which is otherwise vested in the Crown;
- “development”** means (subject to the exclusions referred to in the Schedule I)—
- (a) the carrying out of building, engineering, mining or other operations in, on, over or under any land; or
 - (b) the change in purpose for which or the manner or circumstances in which land

or a building is used which constitutes a “material change of use” (as defined by regulations made under section 87) of the building;

- (c) storing or otherwise depositing waste materials or other refuse on land; or
- (d) displaying any advertisement or other notice on land which is intended to be read by the public in general;

“**development permission**” means approval for development given under the provisions of Part VII;

“**development plan**” means any development plan prepared under Part VI and includes any modification or amendment thereof;

“**enforcement notice**” means a notice issued under section 50;

“**engineering operations**” include the laying out, building and maintenance of roads, runways and bridges, the preparation of land for construction of any development, the clearing of land, the excavation of watercourses or channels and the filling in of any cavity or excavation;

“**Environmental Coordinator**” means the public officer appointed to that office by the Governor;

“**environmental impact assessment report**” in relation to any development, means the report referred to in Division C of Part VII which is required to be submitted in respect of that development for purposes of obtaining development permission;

“**industrial development**” means the development of land for the manufacture or partial manufacture of goods, articles or substances of any kind, the repair of goods or articles, or the assembly of manufactured goods or the turning into manufactured goods of articles which are partially manufactured or of substances in their natural condition;

“**land**” has the meaning given to that expression in the Registered Land Ordinance, Cap 65;

“**material change of use**” in relation to a building or land means a “material change of use” as defined in the regulations issued under section 87;

“**mineral**” means any substance in liquid, solid or gaseous form occurring naturally in or on the earth or on, in or under the sea bed and formed by or subject to a geological process, but does not include water;

“**mining operation**” means—

- (a) to carry out in relation to any mineral, any activity with a view to working, carrying away, treating or converting that mineral;
- (b) to search or explore for any mineral with a view to carrying out any activity mentioned in paragraph (a) and to carry out any work necessary for such search or exploration;
- (c) the deposit of waste or refuse materials in consequence of or incidental to any activity mentioned in paragraph (a) or (b);

“**parcel**” means an area of land which is separately delineated and given a number on the Registry Map maintained under section 14 of the Registered Land Ordinance, Cap 65;

“**Planning Officer**” means the Planning Officer appointed under section 9 and includes any Deputy or Assistant Planning Officer;

“**regulations**” means regulations made under any provision of this Ordinance, other than building regulations;

“**Secretary**” means the person appointed as Secretary to the Board, under section 6;

“**unauthorised development**” means any development for which development permission has not been obtained; and

“**waste material**” includes garbage, refuse, ordure and spoil and any other thing of whatsoever kind which has the appearance of being abandoned by the owner or former owner thereof, or the only value of which appears to be as scrap, for the utilization of parts or the extraction of the residue of any substance forming part thereof.

PART II
LAND PLANNING AND DEVELOPMENT CONTROL BOARD

Establishment of Board

3. (1) The Land Planning and Development Control Board is hereby established.
- (2) The Governor shall, by notice in the *Gazette*, appoint not less than seven persons, including a Chairman and a Vice Chairman, as members of the Board, who shall hold office for such term, not exceeding three years, as may be specified in the appointment.
- (3) If at any time there are less than seven members of the Board, the Governor shall, as soon as possible, appoint such additional members as may be necessary to bring the number up to seven:
- Provided that the validity of anything done by the Board shall not be affected by any vacancy in the membership of the Board, unless the number of members is less than five.
- (4) Any member of the Board may be reappointed as a member upon the expiration of the term of his appointment.
- (5) The Governor may revoke the appointment of any member of the Board upon giving written notice to that member.
- (6) A member of the Board may resign his office upon giving written notice to the Governor.
- (7) The Chairman and other members of the Board shall be paid such remuneration or other allowances as the Governor may from time to time determine.

Duties of Board

4. (1) It shall be the duty of the Board—
- (a) to secure consistency and continuity in the framing and execution of a comprehensive policy with respect to the use and development of all land in St. Helena in accordance with a development plan prepared in terms of Part VI or otherwise in operation by reason thereof; and
- (b) to perform such other functions as may be required under this Ordinance.
- (2) Acts of the Board may be signified under the hand of the Planning Officer or such other officer as the Board may authorise.

Meetings of Board

5. (1) A meeting of the Board shall be convened by the Chairman or, in his absence from St. Helena or his inability for any reason to act, by the Vice-Chairman:
- Provided that—
- (a) the Chairman or Vice-Chairman, as the case may be, shall convene a meeting at any time upon being requested in writing so to do by not less than four members; or
- (b) if so directed by the Governor, the Secretary shall convene a meeting within 14 days of such direction.
- (2) At any meeting of the Board five members shall form a quorum and any matter which requires determination by a vote of the members may be resolved by a majority of the votes of those members present:
- Provided that in any instance where the votes cast are equally divided, the Chairman or other member presiding shall have a casting vote.

(3) If both the Chairman and the Vice-Chairman are absent from a meeting for any reason, the members present shall elect one of their number to preside at the meeting.

(4) The Planning Officer shall be entitled to attend any meeting and to advise the members on the performance of any of their functions under this Ordinance, but shall not be entitled to vote.

(5) Subject to the provisions of this Ordinance, and any Regulations made under section 87, the Board shall regulate its own procedures.

Secretary to Board

6. (1) The Governor shall appoint a person to be the Secretary to the Board.

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

(a) shall attend all meetings of the Board, but may not vote on any matter or question before the Board; and

(b) shall be responsible for preparing and maintaining all records and minutes of the proceedings of the Board and of applications made to the Board.

(3) The Secretary shall perform such duties as are or may be conferred upon him by this Ordinance and such other duties as may be required to be performed by him by the Planning Officer.

Members not to participate in certain discussions

7. (1) Any member of the Board who has a personal interest, as contemplated in section 8, in any matter which comes before the Board for discussion at a meeting during any time when he is present at that meeting, shall forthwith declare that interest and shall withdraw from the meeting and remain absent whilst that matter is under discussion.

(2) The Secretary shall maintain a register, in such form as is approved by the Governor, in which he shall record particulars of any declaration of interest made pursuant to subsection (1) and that register shall be open to inspection by the public.

Meaning of “personal interest”

8. (1) For the purposes of sections 7 and 15, a member has a personal interest in a matter if he or any connected person in relation to him has, to his knowledge, a relevant interest in land, as contemplated in subsection (3), which—

(a) is the subject of any application or discussion to which the matter relates; or

(b) adjoins any part of the land which is the subject of such application or discussion.

(2) In this section, a connected person in relation to a member means—

(a) any relative of the member, being his spouse or life partner, brother, sister, father, mother or child and, for the avoidance of doubt, the relationship of parent and child exists between—

(i) an illegitimate and each of its biological parents;

(ii) step-parent and stepchild;

(iii) adoptive parent and adopted child;

(b) any company of which at least ten per cent of the shares carrying voting rights at general meetings are directly or indirectly held or controlled by—

(i) the member;

(ii) a relative of that member or his relatives in combination; or

(ii) the member and any of his relatives in combination;

- (c) a person for whom the member acts as a nominee, trustee or attorney.
- (3) For the purposes of subsection (1), a person has a relevant interest in land if—
 - (a) he 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) he or any partner of his or any company of which he is an employee has within the past twelve months furnished any advice for or in expectation of gain in connection with the use, enjoyment or development of such land; or
 - (c) he or any partner of his or any company of which he is an employee has within the past twelve months been the nominee or trustee of the owner of such land.
- (4) Notwithstanding subsection (2)(c) and (3), a person shall be deemed not to have a relevant interest in land if he would have that interest only by reason of—
 - (a) his being a trustee or nominee of a church or charity; or
 - (b) furnishing advice in the performance of his duties as a public officer.

PART III PLANNING OFFICER

Planning Officer

9. (1) The Governor shall appoint a person to be the Planning Officer, and may appoint such Deputy or Assistant Planning Officers as are from time to time necessary for the proper carrying into effect of this Ordinance.

(2) Subject to the provisions of this Ordinance, the Planning Officer shall be responsible for the administration and operation of the system of planning for which this Ordinance provides.

(3) The Planning Officer shall sign and issue all enforcement or other notices authorised by the Board to be issued under the provisions of this Ordinance.

(4) The Planning Officer shall have such powers as are conferred upon him by this Ordinance and such duties as he is required by this Ordinance to perform.

(5) The Board may delegate to the Planning Officer the power to consider and decide on applications for minor development, as may be determined in the delegation, and any reference to the Board in any provision of this Ordinance relating to the consideration of, and decision on, an application for development permission, shall be deemed to include a reference to the Planning Officer.

(6) The Planning Officer shall report to the Board on any development permission granted (with or without conditions) or refused under this subsection (5).

Advice of Planning Officer

10. (1) The Planning Officer is the principal adviser to the Governor in Council and the Board 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 Board shall obtain and consider the advice of the Planning Officer.

(3) No court shall inquire whether in relation to any particular matter the Board has sought and obtained the advice of the Planning Officer.

Assistance by Planning Officer

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

(2) Nothing the Planning Officer may say in any discussion or negotiations which may have taken place between any proposed developer and the Planning Officer (or any person acting on his behalf) as to any proposed or contemplated development, or any diagram, schematic drawing or other material he may provide or consider as a result of, or during any such discussion or negotiations shall bind the Governor, the Board or the Planning Officer as to the manner in which any power under this Ordinance may be exercised or to exercise any such power, as the case may be, or require him to perform any duty which he would not otherwise be obliged to perform.

PART IV PLANNING AND DEVELOPMENT APPEALS TRIBUNAL

Establishment of Appeals Tribunal

12. (1) There shall be a Planning and Development Appeals Tribunal, which shall consist of a Chairman and not less than two nor more than four additional members (none of whom shall be public officers) appointed by the Governor by notice in the *Gazette*.

(2) Subject to the provisions of this section, a member of the Appeals Tribunal appointed under subsection (1) shall hold office for a term of three years and shall be eligible for re-appointment for a further such term or terms.

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

(4) The Governor may at any time by notice in the *Gazette*, revoke the appointment of any member, and a member shall in any event cease to hold office if—

- (a) he is absent from three consecutive meetings of the Appeals Tribunal without the prior consent of the Chairman; or
- (b) he is adjudged bankrupt or enters into an arrangement or composition with his creditors.

(5) The Chairman and other members of the Appeals Tribunal shall be paid such remuneration or other allowances as the Governor may from time to time determine.

(6) There shall be a clerk of the Appeals Tribunal, appointed by the Governor, who shall perform the duties as prescribed by or under this Ordinance.

Powers and duties of Appeals Tribunal

13. (1) The Appeals Tribunal shall consider and determine all appeals made to it from decisions of the Board under the provisions of this Ordinance.

(2) The Chairman of the Tribunal may extend any period within which any action must be taken under Part XIV on such grounds as he deems appropriate.

Meetings of Appeals Tribunal

14. (1) The Appeals Tribunal shall meet whenever required to do so by the Chairman for the purpose of determining an appeal or appeals made to it.

(2) At all meetings of the Appeals Tribunal the Chairman shall preside or, in the absence of the Chairman, such other member of the Appeals Tribunal as the members present may select from among themselves.

(3) At any meeting three members shall form a quorum and any matter which requires determination by a vote of the members may be resolved by a majority of the votes of those members present:

Provided that in any instance where the votes cast are equally divided, the Chairman or other member presiding shall have a casting vote.

(4) The clerk shall take and compile minutes of all meetings of the Appeals Tribunal which shall be read at the next meeting of the Tribunal and, if approved by the members as a true and correct record, be signed by the Chairman or other member then presiding.

Disclosure of interests of Appeals Tribunal members

15. (1) Any member of the Appeals Tribunal who has any personal interest, as contemplated in section 8, in a matter which comes before the Appeals Tribunal for consideration during any time when he is present at the meeting, shall forthwith declare that interest and shall withdraw from the meeting and remain absent whilst that matter is being considered.

(2) The clerk shall maintain a book or register in such form as is approved by the Governor in which he shall record particulars of any declaration of interest made pursuant to subsection (1) and that register shall be open to inspection by the public.

PART V PLANNING POLICY AND EXERCISE OF PLANNING FUNCTIONS

General duty

16. (1) It shall be the duty of the Board, the Planning Officer 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 manner so as—

- (a) to promote development of land which is consistent with the provisions of this Ordinance and any policy determined for the development of land in St. Helena (including any development plan having effect in accordance with the provisions of this Ordinance);
- (b) to support orderly development of St. Helena in such a manner as is beneficial to the people of St. Helena; and
- (c) to take into account relevant environmental, social and economic considerations.

(2) No court shall inquire into whether the Governor, the Board, the Planning Officer or any other officer, in exercising any function under this Ordinance, has taken into account the objectives set out in subsection (1).

Policy directions of Governor in Council

17. (1) The Governor in Council may give written directions to the Board as to the general policy to be pursued in granting development permission.

(2) No court shall inquire as to whether in any particular case the Board has complied with any direction given under subsection (1).

PART VI DEVELOPMENT PLANS

Proposal for development plan

18. (1) The Planning Officer may, and if so required by the Governor in Council

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shall, submit proposals to the Governor in Council for the preparation of a development plan.

- (2) A proposal for the preparation of a development plan shall include—
- (a) a reasoned statement of need for the plan;
 - (b) the main headings for the proposed contents of the plan;
 - (c) a proposed timetable for the preparation of the plan;
 - (d) proposals for obtaining representations by and the views of people likely to be affected by or likely to wish to submit representations and views on the proposed plan during the course of its preparation;
 - (e) such other matters as are considered by the Planning Officer to be necessary for a decision to be made on the proposal.

(3) Where the Governor in Council rejects a proposal submitted under this section, the Planning Officer may be required to submit a fresh or modified proposal for the same plan or a new proposal for a different plan.

Scope of development plan

19. (1) A development plan may be prepared—
- (a) for St. Helena as a whole, and shall be called a National Development Plan; or
 - (b) for the whole of any specified part of St. Helena, and shall be called by the name of the part thereof to which it relates; or
 - (c) in relation to any particular subject matter, and shall be called by the appellation of the matter for which it is made,

and shall be in such detail and be intended to cover such periods of time as appear to the Planning Officer to be appropriate for the purpose for which it is made.

- (2) A development plan shall include—
- (a) a summary of the principal features of the plan;
 - (b) a report on the existing conditions of the area or the subject matter to which the plan would relate;
 - (c) an explanation of the proposals and the reasons for them; and
 - (d) such maps, plans, diagrams and other material as the Planning Officer considers necessary to illustrate and explain the plan.

- (3) A development plan may include—
- (a) a statement of the general principles and policies which it is considered should govern the regulation and control of development in the area concerned;
 - (b) the specification and allocation of sites for different types of development, including any development for public purposes or for use by the general public;
 - (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;
 - (e) such other matter as the Planning Officer considers desirable to explain or support any part of the proposed plan on demographical ecological, economic or social grounds.

Preparation of development plan

20. (1) The Planning Officer shall be responsible for the preparation of any development plan.

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

course of preparation and shall have regard to any comments or representations made by the Governor in Council or the Board on the proposed plan.

Consideration of draft development plan

21. (1) When the Planning Officer has prepared a draft development plan he shall send a copy to the Governor in Council and shall deposit a copy at the office of the Planning Officer and at such other place or places as he considers to be most effective for bringing it to the notice of persons who are likely to be affected by the proposals in the draft development plan.

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

(3) Any person may, within 12 weeks of the publication in the *Gazette* of the notice referred to in subsection (2), make either oral or written representations on the draft development plan to the Planning Officer.

(4) After the expiration of the period prescribed for making representations on a draft development plan, the Planning Officer shall lay the draft development plan, together with all representations and comments made with respect thereto, before the Board.

(5) The Board shall meet and consider the draft development plan and all representations and comments and shall forward the same together with its own recommendations and comments to the Governor in Council.

Approval of development plan

22. (1) The Governor in Council may, after considering a draft development plan which has been submitted to him under section 21 and all comments, representations and recommendations made thereon, approve the draft development plan with or without modifications, or may reject it, or require further work on or revision of or further consultations on, the draft plan in whole or in part.

(2) Where the Governor in Council determines that before a draft plan is approved, further modifications to, further work on or revision of or consultations on, the draft plan are required, he may require the Planning Officer to undertake such further modifications, work, revision or consultation as may be necessary and to give such publicity to the matter as will enable persons likely to be affected or interested to make representations or comments on what is involved.

(3) Unless the Governor in Council otherwise directs, the provisions of section 21(3) and (4) shall apply to any modifications, work or revision undertaken by the Planning Officer under this section and to the re-submission of the draft plan or any modifications thereof.

Deposit of approved plan

23. (1) When a development plan has been approved by the Governor in Council, in whole or in part, a copy of it shall be deposited at the office of the Planning Officer and such other places as the Planning Officer may consider appropriate, and the substance of the plan shall be publicized in such manner as the Governor in Council may direct.

(2) Notice of the deposit of a development plan shall be published in the *Gazette* and

the plan shall come into effect on the date of such publication.

(3) Copies of a plan shall be available, at such fee as may be prescribed, for inspection or purchase during office hours at the office of the Planning Officer.

Modification or revocation of plan

24. (1) The Governor in Council may require the Planning Officer to review or prepare proposals for modification or revocation of any plan, or any part thereof.

(2) Without prejudice to subsection (1), it shall be the duty of the Planning Officer to keep under review the operation of any plan in the light of changing circumstances in the area to which it applies, or for any other reason which in his opinion requires such review, and if he considers it desirable he may prepare proposals for the modification or revocation of any plan and shall submit the same to the Governor in Council.

(3) The provisions of this Ordinance with respect to the preparation, consideration and approval of a development plan shall apply *mutatis mutandis* to the preparation, consideration and approval of the modification or revocation of a plan.

(4) Subject to the provisions of this Ordinance, the Governor in Council may modify or revoke any plan or part thereof.

Application of different plans applicable to same area

25. (1) 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 shall have precedence.

(2) Where two different plans have been approved which apply in whole or in part to the same area, the later plan shall be 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

26. (1) Where a plan has been approved by the Governor in Council—

(a) it shall be the duty of all public officers to have due regard to, and so far as is practicable be guided by, the plan in formulating and preparing any project of public investment and development in St. Helena;

(b) the Board shall, in considering any application for development permission, have regard to, and, as far as it appears to be consistent with the objectives set out in section 16(1), be guided by the plan.

(2) If it appears to the Board that granting an application for development permission would be inconsistent with a plan which has been approved by the Governor in Council, but nevertheless considers that such permission should be granted, the Board shall—

(a) refer the application to the Governor in Council for his consideration; and

(b) defer a decision on the application until the advice of the Governor in Council has been received in relation to that application; and

(c) not grant development permission in relation to the application, unless the Governor in Council has advised it that development permission should be granted thereon.

PART VII
DEVELOPMENT CONTROL

*Division A:
Development permission*

Restriction on development

27. No person shall carry out any development unless, prior to the commencement of such development, appropriate development permission has been obtained under this Ordinance.

Types of development permission

28. A grant of development permission shall be one of the following—
- (a) *outline development permission*, the effect of which is to give to the grantee, or his successor in title, approval in principle to the proposed development which is the subject of an application, but not to permit commencement of development to take place; or
 - (b) *detailed development permission*, the effect of which is to permit the grantee, or his successor in title, to carry out the development, subject to the terms and conditions of the grant of detailed development permission.

*Division B:
Application for development permission*

Application for development permission

29. (1) An application for development permission shall be submitted to the Board through the Planning Officer, in accordance with the requirements of any regulations made with respect to such applications and shall be accompanied by the prescribed fee.

(2) The Planning Officer may, by written notice served on an applicant, require the applicant to give details of his application to such persons or authorities as may be specified in such notice, if the Planning Officer is of the view that the application will or is likely to derogate from the amenities of the public or of adjoining, adjacent or nearby properties.

(3) An application for development permission in respect of development which may have significant effects on the environment shall be accompanied by a report on the environmental effects of the proposed development, as contemplated in Division C.

(4) For purposes of determining whether an application must be accompanied by an environmental impact assessment report and the subject matter of that report, an applicant may, before submitting his application under this section, apply to the Planning Officer for a screening opinion referred to in section 31 and a scoping opinion referred to in section 32.

*Division C:
Developments which may require environmental impact assessment report*

Environmental impact assessment report

30. (1) Developments which require environmental impact assessment reports, shall

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be categorized into the following two types:

- (a) Type A developments, being larger and more complex developments which are likely to have wide ranging significant effects by virtue of their scale, location and physical and operational characteristics; and
 - (b) Type B developments, being developments from which significant effects may result, but where the associated impacts are likely to be few and limited in severity and extent.
- (2) The environmental impact assessment report required for purposes of—
- (a) any Type A development, shall be an environmental statement which includes—
 - (i) all information referred to in Part A of Schedule II; and
 - (ii) such information referred to in Part B of Schedule II as is reasonably required to assess the environmental effects of the development and which the applicant can reasonable be required to compile, having regard in particular to current knowledge and methods of assessment;
 - (b) any Type B development, shall be a basic environmental report which includes such information referred to in Part A of Schedule II as is reasonably required to assess the environmental effects of the development and which the applicant can reasonably be required to compile, having regard in particular to current knowledge and methods of assessment.
- (3) An environmental impact report shall be prepared by the applicant at his own expense.
- (4) The Board shall prepare and publish guidelines on the implementation of the requirements under this Ordinance with respect to applications requiring environmental impact assessments.

Screening opinion by Planning Officer

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

(2) In requesting a screening opinion, the applicant shall provide to the Planning Officer—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
- (c) such other information or representations as the person making the request may wish to provide or make.

(3) The Planning Officer who receives a request under subsection (1) shall, if he considers that he has not been provided with sufficient information to adopt a screening opinion, notify the person making the request of the points on which he requires additional information.

(4) The Planning Officer shall provide the applicant with a screening opinion within three weeks from the date of receipt of the request made under subsection (1), or such longer period as may be agreed in writing with the person making the request.

(5) Where the Planning Officer fails to provide a screening opinion within the period mentioned in subsection (4) the person who requested the opinion may apply to the Appeals Tribunal to give a screening opinion.

(6) Upon receipt of a request under subsection (5), the Appeals Tribunal shall provide a screening opinion within three weeks from the date of receipt, or such longer period as the Appeals Tribunal may reasonably require.

(7) For purposes of any appeal proceedings under section 72, a screening opinion by the Planning Officer to the effect that the development requires an environmental impact assessment report is deemed to be a decision by the Board.

Scoping opinion by Planning Officer

32. (1) If an environmental impact assessment report is required in respect of any proposed development, the applicant who intends applying for development permission in respect of that development may apply to the Planning Officer to adopt an opinion (referred to as a “scoping opinion”) as to the information to be provided in the environmental impact assessment report.

(2) A request under subsection (1) shall include—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
- (c) such other information or representations as the person making the request may wish to provide or make.

(3) The Planning Officer who receives a request under subsection (1) shall, if he considers that he has not been provided with sufficient information to adopt a scoping opinion, notify the person making the request of the points on which he requires additional information.

(4) The Planning Officer shall not adopt a scoping opinion in response to a request under subsection (1) until he has consulted the Environmental Coordinator.

(5) The Planning Officer may consult any other person who appears to him to be likely to provide information relevant to the scoping opinion.

(6) The Planning Officer shall, within five weeks from the date of receipt of the request under subsection (1), or such longer period as may be agreed in writing with the person making the request, provide the applicant with a scoping opinion:

Provided that where a screening opinion and scoping opinion are applied for simultaneously by the applicant, the scoping opinion shall be provided to the applicant within five weeks from the date of providing the screening opinion.

(7) Before adopting a scoping opinion the Planning Officer shall take into account—

- (a) the specific characteristics of the particular development;
- (b) the specific characteristics of development of the type concerned;
- (c) the environmental features likely to be affected by the development;
- (d) the opinion of the Environmental Coordinator; and
- (e) the opinion of any other person who appears to him to be likely to provide information relevant to the scoping opinion.

(8) The Planning Officer who has provided a scoping opinion under this section in respect of any development shall not be precluded from requiring of the person who made the request, any additional information in connection with any environmental impact assessment report submitted by him with the application for development permission for that development.

Review of quality of environmental impact assessment report

33. (1) On receipt of an application referred to in section 29(3), the Planning Officer shall consult the Environmental Coordinator on the adequacy of the environmental impact assessment report.

(2) If the Planning Officer or Environmental Coordinator considers that the environmental impact assessment report is in any way deficient or that sufficient information has not been provided therein to advise the Board or Governor in Council on the significant

environmental effects of the application, he shall by written notice inform the person making the application of the points on which he requires additional information.

Planning Officer to prepare statement on environmental impact assessment report

34. The Planning Officer shall prepare a statement on any application referred to in section 29(3), which shall take into account the environmental impact assessment report and the Planning Officer's statement shall be attached to the application when it is sent to the Board or Governor in Council, as the case may be.

Division D:

Consideration of application for development permission

Planning Officer may require further information

35. If so required by the Planning Officer by written notice, an applicant for development permission shall—

- (a) furnish the Planning Officer, within such reasonable time as may be prescribed in the notice, with such further information relevant to the application as may be specified in the notice;
- (b) at his own expense, cause a social impact or an economic feasibility study to be made of the proposed development by a suitably experienced person approved by the Planning Officer;
- (c) permit the members of the Board, the Planning Officer and any other person authorised by the Planning Officer, to enter upon and inspect the land to which the application relates:

Provided that if the applicant, at the time of the application does not have such interest in the land to which the application relates as would enable him to permit the members of the Board to enter upon the land, he shall use his best endeavours to obtain that permission.

Application where no environmental impact assessment report submitted

36. (1) If an application for development permission is submitted to the Planning Officer without an environmental impact assessment report and no screening opinion was applied for under section 31, the Planning Officer shall determine whether such a report is required and, if so, shall inform the applicant in writing of that decision and of the type of environmental impact assessment report required.

(2) If the Planning Officer considers that he has not been provided with sufficient information to adopt an opinion on the need for an environmental impact assessment report, he shall notify the applicant to provide such information required to enable him to adopt a screening opinion as provided for in section 31.

(3) The provisions of section 31 apply as if the applicant has applied for a screening opinion under that section.

Consultation in relation to applications

37. (1) The Planning Officer shall—

- (a) publish details of an application for development permission for public consultation allowing at least 14 days for public comment or, in the case of an

application for development permission contemplated in section 29(3), allowing at least 28 days for public comment; and

- (b) consult with any public officer or other person who appears to him to be likely to provide information relevant to an application for development permission to enable the Planning Officer to advise the Board, as appropriate, with regard to the application.

(2) Any person who wishes to submit comments on an application for development permission as provided for under subsection (1), must submit his written representations to the Planning Officer within the period specified for comments.

(3) The Board may invite any person with specialised knowledge and skills to attend and speak at any meeting called to consider the relevant application.

Reference of applications for development permission to Governor in Council

38. (1) The Governor in Council may direct the Board to refer to him all applications for development permission in relation to—

- (a) a particular type or class of development;
(b) any locality in St. Helena designated by the Governor in Council;
(c) a particular type or class of development in a locality in St. Helena, designated by the Governor in Council;
(d) any other prescribed development.

(2) The Board shall refer to the Governor in Council for his decision any application for development permission—

- (a) to which a direction made under subsection (1) relates;
(b) which relates to any land which has been constituted as a National Forest, Dedicated Forest or a Protected Private Forest under section 4 of the Forestry Ordinance, Cap. 92, or any land which has been declared as a Controlled area under section 19 of that Ordinance; or
(c) which relates to any land which has been declared a national park, nature reserve, sanctuary or area of historical interest under section 4 of the National Parks Ordinance, 2003.

Matters for consideration by Board or Governor in Council

39. (1) In considering an application for development permission, the Board or Governor in Council, as the case may be, shall take into account such of the following matters as appear to it to be relevant, or as the Planning Officer may advise, in order to make a proper decision on the application, namely—

- (a) the provisions of any development plan applicable to the area where the proposed development would take place;
(b) any information, advice or study report provided by the applicant in response to a notice served on him under section 35;
(c) any environmental impact assessment report provided by the applicant under Division C;
(d) in the case of any development referred to in section 38(2)(c), any direct or indirect harmful effect on the natural ecology of, or living organism (including vegetable or marine life) in, the national park, nature reserve or sanctuary;
(e) any representations made by any person with regard to the application or the probable effect of the proposed development;
(f) the impact of the proposed development on the natural or built environment and on

- the uses of adjacent land;
- (g) whether the area where the proposed development is to take place is subject to any preservation order or conservation order as contemplated in Part IX;
- (h) where the proposed development relates to a building which is the subject of a building preservation order or interim preservation order, the matters as referred to in section 57(10);
- (i) where the proposal is for a commercial or industrial development—
 - (i) the quality and economy of the proposed layout and of its design;
 - (ii) traffic considerations;
 - (iii) the benefits likely to accrue to and the disadvantages that may be imposed on economic, social and welfare facilities, including prospects of employment and the effect on the infrastructure of St. Helena as a result of the proposed development;
- (j) the area of land required for the proposed development;
- (k) whether the building plans submitted with the application comply with the requirements of the building regulations;
- (l) such other matters as the Planning Officer considers to be relevant to the determination of the particular application.

(2) Advice given by the Planning Officer to the Board or the Governor in Council under subsection (1), shall be in the form of a report on each application, summarizing any relevant factors recommended to be taken into account in respect of that application and a recommendation as to the decision to be given on the application.

(3) The Board or Governor in Council may, in addition to the matters set out in subsection (1), take into account any other material considerations notwithstanding that the Planning Officer has not advised the Board or Governor in Council on these matters.

(4) In the case of an application for development permission in respect of any land declared under section 4 of the National Parks Ordinance, 2003, to be—

- (a) a national park, the Governor in Council shall consider such application only to the extent that such development relates to the erection in the area of buildings, the construction or roads and such other development which is considered to be desirable to facilitate the enjoyment by the public of the natural setting of the area and any features of historical interest therein and in considering whether or not any such development shall be authorised, the paramount consideration shall be to limit such development to the minimum consistent with the reasonable access to and enjoyment of the area by members of the public; or
- (b) a nature reserve, the Governor in Council shall consider such application only to the extent that such development is required for any use of the area which is permissible in a nature reserve under section 4(1)(b) of that Ordinance.

(5) The Governor in Council shall, in considering an application for development permission referred to in—

- (a) section 38(2)(b), consult the Forestry Officer appointed under the Forestry Ordinance, Cap 92; or
- (b) section 38(2)(c), consult the Chief Agricultural and Natural Resources Officer².

(6) The Board or Governor in Council may defer a decision 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 section 35.

Development Agreements

² Gazette Notice No. 63 of 1 July 2011: Title changed to Director of Agriculture and Natural Resources

40. (1) The Board may, on the advice of the Planning Officer, and with the consent of the Governor in Council, enter into an agreement with any person as to the nature, scope, timing or any other aspect of any proposed or contemplated development.

(2) Notwithstanding any other provision of this Ordinance, where an agreement to which subsection (1) relates, provides that the Board will grant an application for development permission subject to compliance with the provisions of that agreement, the Board shall, on receipt of an application complying with such provisions for development permission, grant development permission and may not impose conditions other than those (if any) contemplated by that agreement.

Division E:

Decision on application for development permission

Decision of Board or Governor in Council on application

41. (1) The Board or Governor in Council, as the case may be, may grant an application for development permission either unconditionally or subject to such conditions as it may require or may think fit to impose, or may refuse an application.

(2) Without prejudice to the generality of subsection (1), the conditions which the Board or the Governor in Council may impose when granting development permission are such as are likely to be for the advantage of any matter mentioned in section 39(1), and in addition may cover all or any of the following matters, namely—

- (a)* the timing and phasing of a development;
- (b)* arrangements for the disposal of sewage, effluent or trade waste from the development;
- (c)* arrangements for the supply of water and the catchment and storage of rain water on the development;
- (d)* landscaping;
- (e)* the preservation of trees, vegetation and other natural products of the land where the development is to take place and on any other land contiguous to the development which is owned by, or under the control of, or likely to be under the control of, or used by, the developer or his agents or contractors for the purposes of, or in connection with, the development;
- (f)* matters with respect to applications for development permission contemplated in section 29(3), for purposes of avoiding, reducing or remedying negative environmental effects;
- (g)* the reservation of any part of the area on which the development is to take place for roads, open space or other public or communal purpose reasonably incidental to the development;
- (h)* the nature of the materials to be used in any construction or in-filling operations in the development;
- (i)* controlling the processes of development, including the routing of any vehicles or vessels to be used for the purposes of or in connection with the development, and the tidying up of the land, and any adjacent land used for the purpose of or in connection with the development and the removal of materials and waste from such land when the development is completed;
- (j)* the duration of the development and, if appropriate, the removal of any building or other structure and the restoration of the site or any part thereof at the end of the period for which the development is to be allowed;
- (k)* the discontinuance of any existing uses of the land on which the development is

authorised;

- (l) implementing or not implementing any prior grant of development permission in respect of the same land, or adjacent land owned by or under the control of the developer or his agents;
- (m) controlling or prohibiting the use on the land comprising the development of any advertisement including the size, shape, colour or location of any such advertisement;
- (n) arrangements for the accommodation of any persons engaged in the construction of the development or present in St. Helena for the purpose of working on the development when completed;
- (o) entering into a performance bond with the Crown to guarantee the implementation of any of the conditions subject to which the grant of development permission is made;
- (p) monitoring of environmental effects of the development to ensure effectiveness of measures to avoid, reduce or remedy such effects;
- (q) preparing and implementing a plan for the management of the environmental effects.

(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 Board or Governor in Council 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 the Crown, 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; or
- (c) requiring that such modifications, as the Board or Governor in Council may specify, shall be made in the building plans or that further plans shall be deposited to bring the plans into conformity with the building regulations.

(4) The Board or Governor in Council shall not grant development permission pursuant to an application in respect of which section 29(3) applies, unless the Board or Governor in Council has taken into consideration the environmental information provided in the environmental impact assessment report (and any further information provided and representations made by any person relating thereto) and the decision of the Board or Governor in Council shall state the fact that it has been so taken into consideration:

Provided that the Board or Governor in Council shall not grant outline development permission, as contemplated in section 28(a), in respect of any development for which an environmental impact assessment report is required.

Notice of decision

42. (1) The Planning Officer shall notify the applicant in writing of the decision on the application—

- (a) if the application is granted, stating the conditions (if any) subject to which the permission is granted; or
- (b) if the permission is refused, giving a brief statement of the reasons for such refusal.

(2) The Planning Officer shall inform an applicant of the decision taken on his application within 60 days of the receipt by him of the application, or, where no decision has been made within that time, of the progress made on the application and the likely date when a

decision will be made:

Provided that if no decision is made or progress report is given within 60 days of receipt of the application, that application shall be deemed to have been refused for the purposes of section 72(a).

Effect of grant of development permission

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

(2) Where 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, it shall be construed as including permission for the use of the building for the purposes for which it is designed, and for no other purpose.

Development permission for limited period

44. The development permission may provide that the development to which it relates shall only be permitted to continue for a limited period in which case the grantee or his successor in title may, at the expiration of that period, recommence the use of the land for the purpose for which it was used before the grant of permission if that use was a lawful use, having regard to the provisions of this Ordinance and the previous Ordinance prior to its repeal by section 93.

Division F:

Variation, modification or revocation of development permission

Minor variation of development permission

45. (1) The Planning Officer, acting on behalf of the Board, may approve a variation to any development permission which in his opinion is a minor variation, and in such event the Planning Officer shall inform the Board of the action which he has taken in that particular case.

(2) Where the 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, he shall, in writing, inform the applicant that his request must be submitted to the Board for approval of the variation.

Modification or revocation of development permission

46. (1) Subject to the provisions of this section, if it appears to the Board, after consideration of such advice as may be given by the Planning Officer, that it is desirable that any development permission ought to be modified or revoked, the Board may, by written notice to the person entitled to the benefit of the permission, revoke or modify the development permission to such extent as it considers desirable.

(2) The power conferred on the Board by this section may be exercised—

- (a)** where the development permission relates to the carrying out of building or other physical operations, at any time before those operations have been completed;
- (b)** where the development permission relates only to a change of use of any land, at

any time before the change has taken place.

(3) The Board must take into account any environmental impact assessment report submitted in respect of the development permission under section 29(3) before issuing a notice to modify such development permission under subsection (1).

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

(5) A notice for the modification or revocation of development permission under this section shall include—

- (a) a statement of the reasons for the modification or revocation;
- (b) such directions as the Board 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 may arise in consequence of the modification or revocation, and the procedure for making any claim for compensation; and
- (d) such other matters (if any) as may be prescribed.

(6) Upon service of a notice under subsection (1), the development permission concerned shall cease 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 shall be unauthorised development:

Provided that the Board, after considering any representations made in respect of such notice, may at any time cancel or withdraw such notice.

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

Governor in Council may revoke or modify grants of development permission

47. (1) Subject to the provisions of this section, the Governor in Council may, by notice in the *Gazette*, modify or revoke any grant of development permission.

(2) The provisions of section 46(2), (3), (4), (5), (6) and (7) shall apply in the case of the exercise of the power conferred by subsection (1) as if references to the Governor in Council were substituted for references to the Board.

(3) No appeal shall lie from a decision of the Governor in Council given under this section, but subject to the provisions of Part XII, any person whose interest is affected thereby may be entitled to claim compensation.

Division G:

Lapse of development permission

Lapse of development permission

48. (1) Outline development permission shall lapse and cease to have effect if no detailed development permission covering the same land has been applied for within one year of the grant of outline development permission, or such longer period as may be specified in the outline development permission or as may be authorised by the Board or the Governor in Council, as the case may be, in any particular case.

(2) Development permission other than outline development permission shall lapse and cease to have effect if the development to which it relates has not been completed within five years of the grant of detailed development permission, or such longer period as may be

authorised by the Board or the Governor in Council, as the case may be, in any particular case:

Provided that any such extension of the period may be authorised by the Board or Governor in Council retrospectively.

(3) Where detailed development permission provides for different parts of the development to commence at different times, the provisions of this section shall apply to those separate parts of the development as if detailed development permission was granted for each separate part or stage of the development.

(4) The Board may serve written notice on a person who has commenced, but has not completed, within the time (if any) prescribed, the development for which he has obtained permission, requiring that person to complete the development within the time specified in such notice.

PART VIII UNAUTHORISED DEVELOPMENT OR CONTRAVENTION OF DEVELOPMENT PERMISSION

Division A: Notice to apply for permission

Notice to apply for development permission

49. (1) The Planning Officer may, in any case in which he 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 shall be submitted by him for development permission and if such application for development permission is submitted within one month of the service of such notice or such extended period as may be agreed, the Planning Officer shall refrain from issuing an enforcement notice.

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

(3) On the recommendation of the Planning Officer, made in respect of an unauthorised development which the Planning Officer considers is of a minor nature, the Board may grant development permission without first requiring a formal application from the person concerned with the unauthorised development.

Division B: Enforcement notices

Issue of enforcement notice

50. (1) Subject to section 56, if it appears to the 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 Planning Officer—

- (a) may (with the consent of the Board) issue an enforcement notice if he 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 38(1); and

(b) shall serve a copy of that enforcement notice on the owner and occupier of the land.

(2) An enforcement notice under subsection (1) shall not be issued after a period of five years from the relevant unauthorised development or contravention taking place:

Provided that where the development alleged to have taken place is a change of use of land, there shall be no time limit restricting the issue of such a notice.

(3) The consent of the Board 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 shall be stated in that enforcement notice.

(4) An enforcement notice shall 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 two months, within which they must be taken;

(e) the powers of the Board, 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 request a reconsideration of or to appeal against the enforcement notice.

(5) If, within the period mentioned in subsection (4)(d), an application is made to the Board under section 51 for the reconsideration or withdrawal of an enforcement notice or for permission for—

(a) the retention on the land of any buildings or works to which the enforcement notice relates; or

(b) the continuance of any use of the land to which the enforcement notice relates, the operation of the enforcement notice shall be suspended pending the final determination of the application and if the permission applied for is granted on that application, the enforcement notice shall not take effect.

(6) The Planning Officer (with the approval of the Board) may withdraw or modify an enforcement notice and the provisions of this section shall apply to any modification of an enforcement notice made under this section as they apply to the enforcement notice.

(7) The Planning Officer shall inform the Board at the earliest opportunity of any action taken under this section.

Reconsideration of enforcement notice by Board

51. (1) A person upon whom an enforcement notice has been served may, within 28 days of the service of the notice, request that the matter to which the notice relates be referred to the Board for reconsideration giving written reasons for that request, and the Planning Officer shall arrange for the referral accordingly.

(2) The Board shall, within two months of the receipt of a request under subsection (1), reconsider the enforcement notice and may confirm the notice, with or without modification, or may withdraw the notice.

(3) The Planning Officer shall forthwith in writing communicate the decision of the Board to the person who made the request and to any other person on whom the notice was served.

(4) For purposes of the hearing of a request, the Board may permit the person making the request to appear before the Board (either in person or by his legal or other representative

on his behalf) or to make representations in writing.

(5) A modification of the terms of an enforcement notice reconsidered under this section shall not require any person on whom the notice was served to undertake more work or incur more expense than was required by the notice before it was modified.

Considerations with respect to issue or confirmation of enforcement notice

52. (1) In considering whether or not an enforcement notice shall be served or confirmed, the Planning Officer or Board, as the case may be, shall take into account such of the following matters as may be 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 nuisance caused to owners or occupiers of adjacent property or of other proposed development;
- (d) the length of time the unauthorised development has existed;
- (e) the expense likely to be involved in compliance with the notice by the person who may be, or has been, served with the notice and his capacity to meet that expense;
- (f) the benefits (if any) resulting from the unauthorised development;
- (g) any possible alternative measures which could be taken to rectify or regularize the unauthorised development;
- (h) whether it is necessary, desirable and convenient having regard to the public interest to serve or confirm an enforcement notice;
- (i) any other material considerations.

(2) Any members of the Board, authorised by the Board, or the Planning Officer or any person acting on his instructions, may (on such prior notice given to the person upon whom the enforcement notice has been served of the time and date of the proposed inspection considered by the Planning Officer to be reasonable) inspect any development to determine whether that development is unauthorised, and if so to what extent, and the Board may take into account the evidence obtained from such inspection in deciding whether or not to confirm an enforcement notice.

(3) The Planning Officer shall obtain, so far as appears to him to be possible, any technical, professional or scientific advice which he considers to be necessary for a satisfactory decision to be made on any matter relating to an enforcement notice, and shall place a summary of any such advice, together with his own recommendation, before the Board when it is considering a request made under section 51.

Scope and effect of enforcement notice

53. (1) The steps which may be specified for the purposes of section 50(4)(d) may be all or any of the following namely—

- (a) to demolish or remove a building in whole or in part;
- (b) to erect, re-erect or alter a building in whole or in part;
- (c) to 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) to remove any advertisement or to display it in the place permitted by a grant of development permission;
- (e) to discontinue any use of land or buildings;
- (f) to carry out any building or other operations on the land to which the notice relates;

- (g) to comply with any limitation or condition contained in the development permission;
- (h) to 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) Where a person on whom an enforcement notice has been served fails or refuses to take the action required by the enforcement notice to rectify the unauthorised development, the Board may, if the Governor in Council does not acquire the land under the Land Acquisition Ordinance, 2006, authorise the Planning Officer or any department or officer of the Crown or any contractor engaged by any of them, to enter the land and to take all such necessary action in respect of the unauthorised development to enforce the notice as it may see fit.

(3) When the Board 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 72 has failed to make such an appeal, he shall not be entitled in any proceedings to dispute the validity of the action taken by the Board or the Planning Officer upon any ground that could have been entertained on such an appeal.

Continuing operation of enforcement notice

54. (1) Compliance with the requirements of an enforcement notice shall not discharge the enforcement notice.

(2) Without restricting the generality of subsection (1), where 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 shall, notwithstanding that its terms are no longer wholly apt for the purpose, be 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 53(2) and (3) shall apply accordingly.

Protection of prospective purchasers with respect to unauthorised development

55. Where a prospective purchaser of any land serves notice on the Planning Officer that he intends purchasing land described in the notice and he states in that notice that he is unaware of any development having been carried out on that land without the grant of permission, all development thereon at the time of the receipt of such notice by the Planning Officer shall, for the purposes of any enforcement notice thereafter issued, be deemed to have been permitted by the Board, unless the Planning Officer, within two months of the receipt of such notice, notifies such prospective purchaser of any development which has been carried out on the land without permission.

Division C:

Removal or alteration of work without enforcement notice

Power to require removal or alteration of work

56. (1) If any work contravenes any building regulation or is in contravention of any building plans submitted with the application for development permission, the Board may, without being required to issue an enforcement notice, by notice require the owner either to demolish or remove the work or, if he so elects, to effect such alteration therein as may be

necessary to make it comply with building regulations or building plans.

(2) If a person to whom a notice has been given under subsection (1) fails to comply with the notice before the expiration of 60 days, or such longer period as the Board may on his application allow, and the Governor in Council does not acquire the land under the Land Acquisition Ordinance, 2006, the Planning Officer or any department or officer of the Crown or any contractor engaged by any of them, may demolish the work, or effect such alterations therein and the Board may recover from that person the expenses reasonably incurred in so doing.

(3) No notice shall be given under subsection (1) after the expiration of five years from the date of the completion of the work.

PART IX PRESERVATION ORDERS AND CONSERVATION OF NATURAL AND BUILT ENVIRONMENT

Building preservation orders

57. (1) The Planning Officer may, and if so directed by the Governor in Council or the Board shall, cause a survey of the buildings in any area of St. Helena to be made with a view to determining if any such building, or part thereof, or group of buildings or area of architectural interest should be made the subject of a building preservation order as hereinafter provided, having regard to the importance of preserving the landscape, architectural, cultural and historical heritage of St. Helena.

(2) For the purposes of this Part, an area of architectural interest shall be an area within which the various buildings and other structures, in the opinion of the Planning Officer, after consultation with the Governor in Council and the St. Helena National Trust, provide a harmonious unit which contributes towards the landscape, architectural, cultural and historic heritage of St. Helena, the boundaries of which shall be shown on a plan attached to the draft building preservation order seeking to establish such an area.

(3) The Planning Officer shall, either upon receipt of a direction under subsection (1), or of his own initiative in any other case where he considers it desirable that a building preservation order should be made, prepare a report for submission to the Board, together with a draft building preservation order as appears to him to be required in the circumstances.

(4) The Board shall, within 30 days of the receipt of any report and a draft order under subsection (3), consider the matter and determine whether or not the draft building preservation order should be confirmed.

(5) Where the Board determines that the draft building preservation order should be confirmed, a copy of the draft order shall be—

- (a) served on the owner and occupier of the building or group of buildings concerned; and
- (b) published in the *Gazette*.

(6) Any person may make representations in writing to the Board in regard to the proposed building preservation order within one month of the service of a draft building preservation order or the publication of the *Gazette* notice under subsection (5).

(7) The Board shall consider any representations made to it under subsection (6) and may confirm the draft order, with or without modifications, or may reject the draft order:

Provided that where any building to which the draft order relates is the property of the Crown, the Board shall, instead of making a decision on the matter, submit the draft order to the Governor in Council, with the recommendation of the Board, and the Governor in Council may confirm the draft order, with or without modifications, or may reject the draft order.

(8) Pending the decision on a draft building preservation order, the draft thereof shall be deemed to have effect as an interim building preservation order, as if made under section 58, with effect from the date of service of the draft order or the publication of the *Gazette* notice under subsection (5), whichever is the earlier.

(9) No person shall develop, demolish or engage in any building operations, other than essential 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 from the Board.

(10) In considering whether to grant, with or without conditions, or to refuse, an application for development permission in respect of a building which is the subject of a building preservation order, the Board shall, in addition to any other matters which it is required to take into account under the provisions of this Ordinance, have regard to the matters mentioned in subsection (1) as considerations for the making of such an order.

(11) Notice of the making of a building preservation order shall be published in the *Gazette*.

(12) For the purposes of this section and section 58, a group of buildings may be made the subject of a building preservation order if by reason of their proximity and relationship to each other it is considered desirable that the whole group should be preserved.

Interim Building Preservation Orders

58. (1) The Planning Officer may, in any case in which he considers that the urgency of the matter and the significance of the building or buildings warrants such action, after consultation with the St. Helena National Trust, if practicable, make an interim building preservation order in respect of any building or group of buildings.

(2) The Planning Officer shall cause a copy of an interim building preservation order—

- (a) to be served on every owner or occupier of the building or group of buildings in respect of which it has been made; and
- (b) to be published in the *Gazette*.

(3) As soon as possible after the making thereof, the Planning Officer shall lay before the Board a copy of the interim order, together with a report giving the reasons for the action which he has taken.

(4) The Board shall consider the interim order and may confirm the interim order, with or without modification or may reject the interim order:

Provided that if an interim order relates to a building which is the property of the Crown, the Board shall, instead of making a decision, refer the matter to the Governor in Council with the recommendation of the Board and the Governor in Council may confirm the interim order, with or without modification, or may reject the order.

(5) An interim order which is not confirmed by the Board within six weeks of being received shall lapse and cease to have effect.

(6) The provisions of section 57(9) and (10) shall apply to an interim building preservation order as they apply to a building preservation order.

Protection of natural resources

59. (1) In any case in which the Governor in Council, after such enquiries as he considers appropriate in the circumstances, is of the opinion that it is desirable to afford special protection in relation to any development in any particular area of St. Helena, on account of—

- (a) the natural beauty of the area; or
- (b) the flora, fauna, ecological, geological, hydrogeological or physiographical features

- of that area; or
- (c) the desirability of providing, under suitable conditions and control, special opportunities for the study of or research into the terrestrial or marine environment of that area,

he may by order declare that area to be a conservation area which may be expressed to include beaches and adjacent coastal waters.

- (2) An order made under subsection (1) may—
- (a) designate any part of a conservation area as being an area in which, subject to the grant of development permission, only certain developments or classes of development may be permitted;
- (b) authorise the carrying out in the conservation area of such works and the doing on the land of such other things as may be expedient for the protection of the area as a conservation area;
- (c) restrict or prohibit the entry into the area of any person or the movement of, or any activity carried out by, any person in the area;
- (d) prohibit any development within the area or any part thereof.

PART X

AMENITY ORDERS AND SUPPLEMENTARY PROVISIONS FOR CONTROL OF DEVELOPMENT

Amenity orders

60. (1) The Planning Officer may prepare and submit to the Board a draft amenity order in any case in which he considers—

- (a) land to be unsightly and 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; or
- (b) land to be or likely to be offensive to persons residing in the immediate neighbourhood of such land, by reason of any waste material or the dilapidated state of any structure or building thereon; or
- (c) in the case of a building which is of architectural or historical significance to St Helena, that such building is in a dilapidated or neglected state and needs to be maintained or restored.

(2) An amenity order shall specify clearly—

- (a) the land to which it applies, and the owner or occupier thereof;
- (b) if any matter is required to be cleared, that matter and specify the matter which must be destroyed, if appropriate, or the place, being an authorised place for the disposal of rubbish, to which it must be removed;
- (c) if screening is required to be carried out, the requirements to effect the screening;
- (d) 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; and
- (e) in the case where it applies to a building, the manner in which the building is required to be repaired, painted or demolished, in whole or in part.

(3) Where the Planning Officer is aware that the occupier of land to which an amenity order is made is not the owner, the order shall specify what action is required to be taken by the occupier and what action by the owner.

(4) A draft amenity order prepared by the Planning Officer under subsection (1) shall be submitted to the Board, together with a statement by the Planning Officer in support of the proposed action.

(5) The Board may approve or reject the draft order and where the order is approved, copies of the approved order shall be served on the occupier or owner of the land concerned, or if no such person can be found, may be served by affixing a copy of the order in a conspicuous place on the land concerned.

(6) If any person upon whom an amenity order is served fails to comply with the requirements of the order within such time as is specified in that order, or any extension thereof approved by the Planning Officer, and the Governor in Council does not acquire the land under the Land Acquisition Ordinance, 2006, the Planning Officer may arrange for the work to be carried out at the expense of the person who is in default, and may recover the cost of so doing as a civil debt from the person in default.

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

61. (1) If it appears to the Board that, having regard to a development plan and to any other material consideration, it is expedient in the interests of the proper planning of St. Helena (including the interests of amenity), that—

- (a) any use of land shall 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 Board may with the consent of the Governor in Council, by notice require the discontinuance of that use, or impose such conditions as may be specified in the notice on the continuance thereof, or require such steps as may be so specified to be taken for the alteration or removal of the buildings or works, as the case may be.

(2) The provisions of section 50(4), (5), (6) and (7) and sections 51 to 55 shall apply to a notice served under subsection (1) and in like manner to an enforcement notice served under 51, save that—

- (a) references to an enforcement notice in those provisions shall have effect as if they were references to a notice served under subsection (1);
- (b) references to unauthorised development shall have effect as if they were references to the use of land or the buildings or works specified in the notice served under subsection (1);
- (c) where a claim for compensation has been submitted under section 68, the provisions of section 53(3) shall be exercisable only by way of counter-claim, to be offset against the said claim for compensation;
- (d) references to “rectify” and “rectify or regularise” unauthorised development shall have effect as if they were references to the carrying out of the acts and works required under the notice served under subsection (1),

and, notwithstanding the adoption of the said provisions for the purposes of this section, it shall not be imputed that work previously carried out under a valid development permission shall be retrospectively deemed unauthorised.

PART XI

BUILDING REGULATIONS AND APPOINTMENT OF BUILDING INSPECTOR

Building regulations to be made

62. (1) The Governor in Council may, for the purposes referred to in subsection (2), make regulations (in this Ordinance referred to as “building regulations”)—

- (a) with respect to matters relating to, and specific requirements with respect to, new buildings;

- (b) with respect to matters relating to structural alterations or extensions to existing buildings, and buildings so far as affected by alterations or extensions;
 - (c) prescribing the requirements with respect to any material change of use of an existing building; and
 - (d) with respect to matters generally, for carrying the purposes under subsection (2) into effect.
- (2) The purposes of the regulations referred to in subsection (1) are—
- (a) to secure the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings;
 - (b) furthering the conservation of fuel and power;
 - (c) preventing waste, undue consumption, misuse or contamination of water;
 - (d) furthering the protection or enhancement of the environment;
 - (e) facilitating sustainable development; or
 - (f) furthering the prevention or detection of crime.
- (3) Building regulations may—
- (a) exempt any building, part of a building or class of building from any of the requirements of the regulations;
 - (b) provide for different regulations to apply to different buildings, parts of buildings or classes of buildings;
 - (c) provide for the imposition of, or impose conditions on, any permit to construct a building.
- (4) Except in so far as the building regulations provide otherwise, the requirements of the building regulations shall apply in relation to work carried out or proposed to be carried out by or on behalf of the Crown.
- (5) Regulations made under this section may include provisions as to—
- (a) the depositing of plans, sections, specifications and written particulars;
 - (b) the giving of notices and certificates, the inspection of work, (including the power to require the uncovering of work which has been covered prior to inspection), the testing of drains and sewers, and the taking by the Board or a Building Inspector of samples of materials to be used in the construction of buildings or in the execution of other works; and
 - (c) the prescribing and payment of fees.

Appointment of Building Inspector

63. It shall be a function of the Planning Officer to enforce building regulations and the Governor shall appoint such persons as he shall deem appropriate as Building Inspector and Deputy or Assistant Building Inspectors to assist the Planning Officer in the performance of such function.

PART XII COMPENSATION

No right to compensation in certain circumstances

64. (1) Subject to section 65, no claim to compensation under this Ordinance shall lie against the Crown, the Governor, the Board, the Appeals Tribunal or any public officer in connection with or arising out of—

- (a) the refusal by the Board to grant development permission; or

This e-version of the text is not authoritative for use in court.

(b) the grant by the Board of development permission subject to conditions.

(2) No claim to compensation under this Ordinance shall lie against any person in respect of, or arising out of, or in connection with, any refusal of permission for development in relation to which section 11 applies, nor shall any such claim lie in respect of, or arising out of or in connection with, the grant of any such permission subject to such conditions as the Board considers proper.

(3) No claim to compensation by any person shall lie under this Ordinance against the Crown, the Governor, the Board, the Appeals Tribunal, or any public officer in connection with or arising out of development permission in respect of the development by any other person of land in any manner.

Right to claim compensation from Crown

65. (1) There shall be a right to the payment of compensation, assessed in accordance with the provisions of this Ordinance, in the following cases, namely—

(a) where development permission has been revoked or modified and—

- (i) the holder of that permission, or his 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 such 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 such revocation or modification;

(b) where a building has been destroyed by fire or other natural disaster and the Board 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) where the Board is empowered, under any law for the time being in force, or obtains the consent of the owner thereof to such action, 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 any provision of this Ordinance).

(2) Compensation payable shall 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 the provisions of section 48.

(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 thereto, shall be taken to be included in the expenditure incurred in carrying out that work.

(4) Subject to subsection (3), no compensation shall be 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 where land is subject to mortgage

66. Where 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 shall be assessed as if the interest was not subject to the mortgage;
- (b) no compensation to which this section applies shall be 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 shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

Right to compensation with respect to land in conservation areas

67. In any case in which private land is included in an area which has been declared to be a conservation area under Part IX, and in which the Governor in Council does not acquire the land under the Land Acquisition Ordinance, 2006, any person holding any interest in such land shall be entitled to receive compensation from the Crown for the diminution, if any, of the value of his interest consequential upon any restriction imposed on his use or interest in the land by reason of such declaration.

Claims for compensation

68. (1) A claim for compensation alleged to be payable under this Part shall be made in writing to the Planning Officer within three months of the date upon 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 Planning Officer may by written notice served on the claimant require the claimant to provide such further information in support of the claim as may be specified in the notice, and a decision on the claim may be deferred until such further information has been supplied by the claimant.

(3) Where a claim for compensation has been made, the Planning Officer shall, after making such enquiries as appear to him to be necessary, submit the claim and his 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 thereof, shall be referred by the Attorney General for decision by the Supreme Court.

No civil proceedings against Crown or officials

69. (1) No civil proceedings whatsoever may be brought by any person against the Crown, the Governor, the Board, the Appeals Tribunal or any other public officer on the ground or partly on the ground that development permission has been granted for the development of any land in any manner or granted subject to any conditions or where development permission has been refused.

(2) No civil proceedings in any court shall lie against the Governor, any member of the Board or Appeals Tribunal, the Planning Officer or any other public officer in their respective

private capacities for or in respect of any act or matter done or omitted to be done, in good faith, in the exercise or purported exercise of any function under or power conferred by this Ordinance.

(3) Subsections (1) and (2) do not apply in respect of any judicial review of any decision under section 81.

PART XIII POWERS OF PLANNING OFFICER

Powers of entry

70. (1) Subject to subsection (2), the Planning Officer, or any person authorised by him 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 the provisions of Part VI;
- (b) to determine whether any order or interim order should be made under Part IX or Part X 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 thereon;
- (e) for the purpose of ascertaining whether there is, or has been, a contravention of Part VIII or X or the building regulations on or in connection with the premises or whether or not circumstances exist that would authorise or require the Board to take any action, or execute any work under those Parts or the building regulations;
- (f) for the purpose of taking any action, or executing any work, authorised or required by Part VIII or X or the building regulations;
- (g) for the purposes of determining whether or not any compensation is payable under Part XII, or as to the amount thereof; or
- (h) generally for the purpose of the performance by the Board of its functions under the building regulations or those Parts.

(2) No person shall, except with the consent of the owner or occupier of the land or building, enter on such land or building under the provisions of this section without giving such owner or occupier at least 24 hours written notice of his intention so to do and the intended purpose of such entry; and if the person entering requires to search and bore for the purpose of examining the nature of the sub-soil, that fact shall be stated in such notice.

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

(4) The powers conferred by this section shall be deemed to extend to permit the Planning Officer or other person concerned to make such examination and inquiries as are necessary to achieve the purposes for which the entry was authorised.

(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, the Planning Officer shall, as soon as may be after such entry, pay compensation to the person injured thereby and if the amount of such compensation cannot be agreed, the amount payable shall be determined in the same manner as compensation payable under section 65, and the Planning Officer shall refer the matter accordingly.

(6) Nothing in subsections (2) or (5) applies in respect of any work or operation which the Crown, the Board, or any public officer is authorised to do or carry out in relation to any building or land under Division B of Part VIII or Part X or the building regulations.

Power to require information

71. For the purpose of enabling the Planning Officer or the Board to make an order or serve a notice or other document under the provisions of this Ordinance, the Planning Officer may require the owner or the occupier of any premises, and any person who either directly or indirectly, receives rent in respect of any land or premises, to state in writing the nature of his interest therein, and the name and address of any other person known to him to have an interest therein, whether as a freeholder, mortgagee, lessee or otherwise.

PART XIV APPEAL PROVISIONS

Right of appeal

72. Subject to the provisions of this Ordinance, an appeal shall lie to the Appeals Tribunal against any decision by the Board under this Ordinance—

- (a) to refuse an application for development permission;
- (b) to require an environmental impact assessment report for the purposes of development permission or to require a specific type of report;
- (c) that any building plans submitted are defective or the refusal by the Board to relax any building regulations which ought to be relaxed;
- (d) to modify or revoke development permission or to refuse to withdraw a notice as provided for under section 46;
- (e) to impose conditions on a grant of development permission;
- (f) to require the completion of a development within a time limit;
- (g) to confirm an enforcement notice or as to the terms thereof;
- (h) to impose a building preservation order:
Provided that no appeal shall lie against an interim building preservation order;
- (i) to issue a notice requiring discontinuance of use or alteration or removal of buildings or works under section 61;
- (j) to make an amenity order under section 60.

Notice of appeal

73. (1) Subject to any provision to the contrary in this Ordinance, any person desiring to appeal under section 72 shall, within 14 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 shall on receipt thereof send a copy of such notice to the Planning Officer and the Board.

(2) A notice given under subsection (1) shall set out—

- (a) concisely the decision appealed against;
 - (b) a description of the land affected thereby;
 - (c) the name of the appellant;
 - (d) the interest of the appellant in the land affected by the decision; and
 - (e) concisely the grounds on which the appellant wishes to appeal against the decision.
- (3) The Planning Officer shall, within 14 days from receipt of the notice under

subsection (1), submit to the clerk—

- (a) copies of all papers and documents (if any) submitted by the appellant or any person acting on his behalf to the Board with respect to the decision that is being appealed against;
- (b) a copy of the decision appealed against; and
- (c) a plan sufficiently identifying the location and boundaries of the land affected by the decision.

Rejection of notice of appeal in certain circumstances

74. On receipt of a copy of the notice of appeal under section 73, the Appeals Tribunal shall reject the notice of appeal—

- (a) without prejudice to any further such notice being given, if it appears not to comply with section 73; or
- (b) if the appellant appears not to have any sufficient interest in the land to justify him appealing against the decision.

Effect of service of notice of appeal in certain instances

75. (1) In the case of an appeal noted against the issue of a notice by the Board under section 46(1) to modify or revoke development permission, or against the refusal of the Board to cancel or withdraw such notice under the proviso to section 46(5), such notice shall be deemed to be suspended in its operation pending the determination of any such appeal, save that any further development or work carried out shall be unauthorised development.

(2) If notice of an appeal is given by a person on whom an enforcement notice was served under section 50, the operation of the enforcement notice shall be suspended pending the determination or withdrawal of the appeal.

Appeals to be dealt with by written representations

76. (1) Unless the Appeals Tribunal otherwise directs under section 77, an appeal shall be dealt with by way of written representations under this section.

(2) The Board and the appellant shall, within six weeks from the date of notice of appeal, send to the Appeals Tribunal and to the other of them such written representations as they wish to make in relation to the appeal.

(3) Within 28 days of the receipt of the written representations of the other, or within the six week period specified in subsection (1), whichever is the later, the appellant and the Board shall send to the Appeals Tribunal and to the other of them in writing such further representations as they may wish to make arising out of the written representations of the other.

- (4)** The Appeals Tribunal in deciding an appeal by written representations, shall not—
- (a) receive any oral evidence; or
 - (b) consider any representations in writing other than those provided for by subsections (1) and (2), unless the Appeals Tribunal has given the appellant or the Board (as the circumstances require) a full and sufficient opportunity of answering them in writing.

Appeals to be dealt with by public inquiry

77. (1) The Appeals Tribunal may, in its discretion, decide that an appeal shall be dealt with by public inquiry and shall make an order accordingly.

(2) The Appeals Tribunal shall take the following matters into consideration before deciding whether the appeal shall be dealt with by public inquiry—

- (a) whether the public interest requires that all persons (including the appellant), who may have a view to express in relation to the matter to which the appeal relates, should have an opportunity to have their views taken into account, to submit evidence and to examine witnesses called by others;
- (b) whether it would be reasonably practicable to deal with the appeal by way of written representations; and
- (c) the importance of the matter to which the appeal relates.

(3) Where the Appeals Tribunal orders that a public inquiry shall be held, it shall send a copy of such order to the appellant and the Board within 28 days of receipt of the notice of appeal, and shall publish a copy thereof in the *Gazette*.

(4) The Appeals Tribunal shall, in an order under subsection (1), appoint the time and place at which the public inquiry shall commence.

Procedure at public inquiries

78. (1) Subject to the provisions of this Ordinance and to any regulations made thereunder, the Appeals Tribunal shall determine the procedure to be followed at any public inquiry ordered under section 77.

(2) Without prejudice to the generality of subsection (1)—

- (a) there may be given and received in evidence at a public inquiry any material which the Appeals Tribunal may consider relevant to the subject matter of the inquiry whether or not it would be admissible in a court of law;
- (b) evidence at a public inquiry may be given on oath or affirmation or as unsworn evidence or partly as sworn evidence and partly as unsworn evidence, as the Appeals Tribunal may think fit;
- (c) any person may be represented by another person acting with his authority.

(3) It shall be the prime function of a public inquiry to enable the Appeals Tribunal to decide upon the appeal and, subject as provided in this section, the Appeals Tribunal may in its absolute discretion adopt such procedure as appears to it most convenient to enable that function to be fulfilled without being bound to adopt such procedure as might be appropriate in a court of law.

Summary of inquiry

79. (1) As soon as reasonably possible after the conclusion of any public inquiry under section 77, the Appeals Tribunal shall prepare a summary of the inquiry, which shall contain—

- (a) a list of the names and addresses of all persons heard at the public inquiry and, if any such person was represented by another, the name and address of that representative;
- (b) a list of the names and addresses of all persons giving evidence at the public inquiry;
- (c) a summary of the evidence given by each person who gave evidence at the inquiry;
- (d) a list of all exhibits (including models, maps, plans, drawings, sketches, diagrams, photographs, petitions, and written statements) received in evidence at the inquiry;
- (e) the Appeals Tribunal's findings of fact in relation to any relevant matter;
- (f) any advice or comment that the Appeals Tribunal wishes to make; and
- (g) the decision of the Appeals Tribunal.

(2) The Appeals Tribunal shall not, in deciding the appeal, consider any evidence not given in the public inquiry, unless—

- (a) that evidence is in writing; and
- (b) it has given to the appellant or the Board (as the circumstances require) a full and sufficient opportunity of commenting in writing upon it and making representations to the Appeals Tribunal in writing in relation to it.

Decision and notification thereof

80. (1) The Appeals Tribunal, acting in its discretion, shall decide whether to allow or dismiss the appeal and may—

- (a) confirm the Board's decision; or
- (b) substitute the Board's decision with a decision which the Appeals Tribunal sees fit, which must be a decision which the Board could lawfully have made under this Ordinance.

(2) The Appeals Tribunal shall send to the Planning Officer, written notification of its decision on the appeal and the Planning Officer shall on receipt thereof, forward a copy of the decision to the appellant and the Board.

Application to court for judicial review

81. (1) Save as expressly provided in this Ordinance, no appeal shall lie to any court against a decision or order of the Board, the Appeals Tribunal or the Governor in Council.

(2) The applicant may apply to the Supreme Court for judicial review of a decision of the Appeals Tribunal or the Governor by which he is aggrieved on a point of law only and not in any manner upon the merits of the policies applied by the Appeals Tribunal or the Governor in reaching the relevant decision.

(3) An application for judicial review to which subsection (2) relates shall be filed in the Supreme Court within 28 days of the notification of the decision of the Appeals Tribunal or the Governor.

PART XV REGISTER OF INFORMATION AND REPORTING

Register of planning and associated decisions

82. (1) The Planning Officer shall 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 thereto;
- (d) enforcement notices;
- (e) any orders made under Parts IX and X;
- (f) notice for removal or alteration of building works;
- (g) decisions on appeals against any decisions made or action taken under this Ordinance;
- (h) applications for the Governor in Council's certificate of approval and the decisions thereon.

(2) The Planning Officer shall 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 by subsection (1) to be maintained may be kept in an

electronic data storage and retrieval system whether by use of a computer or otherwise.

Notification of decisions to Registrar of Lands

83. The Planning Officer shall notify the Registrar of Lands, giving full details of the parcels of land affected, of every—

- (a) grant of development permission;
- (b) modification or revocation of development permission;
- (c) enforcement notice;
- (d) building preservation order or interim building preservation order; and
- (e) amenity order;

and the Registrar of Lands shall enter particulars thereof in the relevant register in respect of the land concerned in such manner as the Registrar may from time to time direct.

Reporting by Board

84. (1) The Board shall furnish the Governor with such returns and other information with respect to the exercise by them of their functions as he may from time to time require.

(2) The Board shall, not later than the 31st day of March in each year, submit to the Governor a report in writing relating to the year expired on the preceding 31st day of December, containing the following information, and such other information as the Governor may direct—

- (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 and the venue of meetings of the Board held during the year;
- (f) any difficulties the Board has encountered in meeting the objectives set out in section 16(a), (b) and (c); and
- (g) any recommendations the Board wishes to make as to the amendment of this Ordinance or the regulations then in force or the making of new legislation to assist in the fulfilling of those objectives.

(3) The Governor, shall as soon as practical after receipt of the report under subsection (2), cause a copy thereof to be laid on the Table of the Legislative Council.

PART XVI MISCELLANEOUS PROVISIONS

Service of notices

85. 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 his usual or last known place of abode or, where an address for service has been given by that person, at that address; or
- (d) in the case of a body corporate, 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

86. 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 shall, upon the death of that person before the determination of the matter at issue, be construed as if such reference were a reference to that person's personal representatives.

Regulations

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

(2) Without prejudice to the generality of 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.

Application to Crown

88. This Ordinance binds the Crown.

PART XVII OFFENCES

General offences

- 89. (1)** Any person who, without reasonable excuse—
- (a)* carries out, or commences to carry out, any development contrary to section 27 (other than any development in respect of which subsection (2) applies); or
 - (b)* fails to comply with any condition to which a grant of development permission is subject; or
 - (c)* fails to comply with a notice issued under section 48(4);
 - (d)* fails to comply with the requirements of a notice issued under section 49; or
 - (e)* fails to comply with the requirements of an enforcement notice issued under section 50; or
 - (f)* fails to comply with the requirement of—
 - (i)* a building preservation order made under section 57 or an interim building preservation order made under section 58;
 - (ii)* an amenity order made under section 60; or
 - (g)* fails to comply with any requirement of the building regulations or section 56; or
 - (h)* wilfully gives false information, relating to any matter in respect of which he is required to give information under this Ordinance; or
 - (i)* obstructs any person in the exercise of any powers or the performance of any duties under this Ordinance; or
 - (j)* fails to comply with any regulations made with respect to the control of any activities in, or the management of, any conservation area,

is guilty of an offence and liable—

- (i)* on summary conviction to a fine not exceeding £1,000 or imprisonment for a period not exceeding 6 months; or

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- (ii) on conviction on indictment, to a fine not exceeding £10,000 or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(2) Any person who, without reasonable excuse carries out, or commences to carry out, any development contrary to section 27 with respect to any land contemplated in section 38(2)(b) or (c) is guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding £2,000 or imprisonment for a period not exceeding 6 months; or
(b) on conviction on indictment, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(3) If, in the case of a continuing offence, the contravention under subsection (1) or (2) is continued after conviction of the person, he is guilty of a further offence and liable to a fine not exceeding £50 for each day on which the contravention continues.

(4) Any person who, having been required in pursuance of section 71 to give any such information, without reasonable cause fails to give that information within 28 days of being so required, or such longer period as the Planning Officer may allow in any particular case, is guilty of an offence and liable on summary conviction to a fine not exceeding £250.

(5) Any person to whom information has been given under section 71, or otherwise under this Ordinance, or who has obtained any information in the course of his duties under this Ordinance, who makes any unauthorised disclosure of that information to any person who is not required to receive that information, is guilty of an offence and liable on summary conviction to a fine not exceeding £500 or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Offences relating to members of Board and Appeals Tribunal

90. Any member of the Board or the Appeals Tribunal who—

- (a) knowingly fails to declare any interest he is obliged to declare by section 7 or 15, as the case may be; or
(b) having declared such an interest in accordance with section 7 or 15 fails to withdraw from the meeting; or
(c) having withdrawn from the meeting in accordance with section 7 or 15, returns to that meeting during a time he is required by that section to absent himself therefrom,

is guilty of an offence and is liable on summary conviction to a fine not exceeding £5,000 or to imprisonment for a term not exceeding two years.

Offences relating to public officers

91. (1) A public officer is guilty of an offence if, in expectation of any fee or reward payable to him or any connected person of his, he assists, or applies on behalf of, any person applying for development permission or any other consent, by drawing or assisting in the drawing of plans or preparing any document or particulars which he knows or has reason to suspect will or may be used in connection with an application to the Board, or to the Planning Officer, unless he does so in the course of his duties as a public officer and otherwise than in expectation of any fee or reward from the applicant or with the approval of the Planning Officer.

(2) A person convicted of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £5,000 or to imprisonment for two years or to both such fine and imprisonment.

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

(4) In this section “connected person” has the same meaning as it has under section 8(2).

Offences by body corporate

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

PART XVIII REPEAL AND TRANSITIONAL PROVISIONS

Repeal of legislation

93. (1) The Land Planning and Development Control Ordinance, Cap 66, is repealed.
(2) The Caravan Sites Ordinance, Cap. 72, is repealed.

Amendment of legislation

94. The legislation listed in the table below is amended to the extent indicated in the second column:

Legislation	Extent amended
St Helena National Trust Ordinance, Cap 77	Section 8 is amended by repealing subsections (4) and (5).
Fire Service Ordinance, Cap 134	Section 2 is amended by deleting paragraph (a) of the definition of “fire hazard” and substituting therefor the following: “(a) any alteration to any building in contravention of the Land Planning and Development Control Ordinance, 2008, such as might render escape in the event of a fire or other calamity materially more difficult;”
National Parks Ordinance, 2003	Section 4 is amended— (a) by repealing paragraphs (a) and (b) of subsection (1) and substituting therefor the following: “(a) an area which is designated as a national park shall be open to members of the public for recreational use, including camping, fishing and sailing;

	<p>(b) an area which is designated as a nature reserve may be used for agricultural, arboricultural, piscicultural, sporting and recreational purposes, subject to</p> <p>such restrictions as may be prescribed and which may be considered desirable to ensure a proper balance in the natural ecology of the area.”;</p> <p>(b) by repealing the words “; and no person shall carry out any development in that area except under a grant of development permission made by the Governor in Council” in subsection (3); and</p> <p>(c) by repealing subsection (4).</p> <p>Section 6 is amended by repealing the words “any development or” in the words in subsection (1) following paragraph (b).</p> <p>Section 7 is amended by repealing paragraph (a) of subsection (1).</p>
Land Acquisition Ordinance, 2006	<p>Section 2 is amended by renumbering the existing provisions as subsection (1) and adding the following subsection:</p> <p>“(2) For the avoidance of doubt, the acquisition of any land shall be deemed to be necessary and expedient in the interests of public safety, public health, and the development or utilisation of land, if there has with respect to that land been any failure to comply with an enforcement notice under section 53 of the Land Planning and Development Control Ordinance, 2008, or of any notice requiring the removal or alteration of work under section 53 of that Ordinance or an amenity order under section 60 thereof;”.</p>
Airport Development Ordinance, 2006	<p>Section 8, other than the heading, is repealed and substituted by the following:</p> <p>“8.(1) Nothing done in an Airport Development Area with the consent of the Governor in Council shall be held to be in contravention of the Land Planning and Development Control Ordinance, Cap. 66, (or any statutory amendment or re-enactment thereof):</p> <p>Provided that the Governor in Council shall consult the Land Planning and Development Control Board (in this section, called ‘the Board’) before</p>

	<p>consenting to any matter which, apart from this subsection, would normally require the approval of the Board.</p> <p>(2) At any time after the expiry of 28 days from the date on which the Board was consulted under the proviso to subsection (1), the Governor in Council may proceed with the granting of permission notwithstanding that the comments of the Board have not been received.”.</p>
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Transitional provisions

95. Notwithstanding the repeal of the Land Planning and Development Control Ordinance, Cap 66,—

- (a) any application or appeal made under that Ordinance which has not been fully determined prior to such repeal, may proceed and shall be determined under the provisions of this Ordinance;
- (b) the building regulations and any other regulations issued or notices published under that Ordinance which were in force immediately before such repeal, remain in force, except in so far as they are inconsistent with this Ordinance, until revoked and replaced by regulations or notices issued under this Ordinance;
- (c) the Land Development Control Plan approved by the Governor in Council under section 18 of that Ordinance remains in force and has effect as a Development Plan approved under this Ordinance.

SCHEDULE I OPERATIONS EXCLUDED FROM ‘DEVELOPMENT’ (Section 2)

The following operations shall be deemed not to constitute development—

- (a) work for the maintenance or other alteration of any building (other than buildings referred to in section 57 or 58), if the work affects only the interior thereof and does not materially affect the external façade or structure of the building;
- (b) work carried out by or with approval of the Crown for the maintenance or improvement of a road;
- (c) work carried out by or with the approval of the Crown, or authorised under the Electricity Ordinance, Cap. 107, or Water Ordinance, Cap. 55, for the purpose of inspecting, repairing or renewing any sewers, water mains, electric mains, cables or other apparatus, including the excavation of any road or other land for that purpose;
- (d) the use of any building or other land within the curtilage of a dwelling-house for purposes incidental to the enjoyment of that dwelling house as such;
- (e) the use of land for any agricultural or arboricultural activity, but not including any building or engineering activity thereon or the operation of a saw mill;
- (f)³ displaying an advertisement or other notice which is excluded by any regulation issued under section 87(2);
- (g) the erection of gates, fences, walls or other means of enclosure, not being in a conservation area or adjacent to a highway or the sea, not exceeding 1.2 metres in

³ Paragraph (f) amended by L.N. 5 of 2008

- height and not constructed of asbestos, plastic, fibre glass or sheet metal;
- (h) the enlargement, improvement or other alteration of a dwelling house:
- Provided that—
- (i) the floor area of the enlargement does not exceed five square metres;
 - (ii) the dwelling house is a single storey house and the enlargement does not involve the addition of another storey;
 - (iii) the enlargement is an integral part of the existing house;
 - (iv) the enlargement complies with the requirements of any planning and building regulations for the time being in force; and
 - (v) written notice of intention to carry out such work is given to the Board through the Planning Officer.

SCHEDULE II
INFORMATION TO BE INCLUDED IN ENVIRONMENTAL IMPACT ASSESSMENT
REPORT
(Section 30)

Part A

1. A description of the development comprising information on the site, design and size of the development.
2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
3. The data required to identify and assess the main effects which the development is likely to have on the environment, including where relevant any cumulative effects.
4. An outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects.
5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

Part B

1. Description of the development, including in particular—
 - (a) a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases;
 - (b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used;
 - (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, etc.) resulting from the operation of the proposed development.
2. An outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects.
3. A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
4. A description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from—
 - (a) the existence of the development;
 - (b) the use of natural resources;
 - (c) the emission of pollutants, the creation of nuisances and the elimination of waste,

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and the description by the applicant of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.
