ST. CHRISTOPHER AND NEVIS

CHAPTER 6.09 (N)

NEVIS PHYSICAL PLANNING AND DEVELOPMENT CONTROL ORDINANCE

Revised Edition
showing the law as at 31 December 2022

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CHAPTER 6.09 (N)

NEVIS PHYSICAL PLANNING AND DEVELOPMENT CONTROL ORDINANCE

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CHAPTER 6.09 (N)

NEVIS PHYSICAL PLANNING AND DEVELOPMENT CONTROL ORDINANCE

AN ORDINANCE TO MAKE PROVISION FOR THE PREPARATION OF PHYSICAL PLANS FOR NEVIS, FOR THE CONTROL OF THE DEVELOPMENT OF LAND, INCLUDING BUILDING OPERATIONS AND THE SUBDIVISION OF LAND, FOR THE ASSESSMENT OF THE ENVIRONMENTAL IMPACTS OF DEVELOPMENT, FOR THE PRESERVATION OF THE NATURAL AND CULTURAL HERITAGE, AND FOR RELATED MATTERS.

PART I

PRELIMINARY MATTERS

Short title.

1. This Ordinance may be cited as the Nevis Physical Planning and Development Control Ordinance.

Interpretation.

2. In this Ordinance, unless the context requires otherwise—

"advertisement" includes any word, letter, model, sign, placard, banner, board, notice, awning, blind, balloon, device or representation, whether illuminated or not, in the nature of or employed wholly or in part for the purposes of advertisement, announcement or direction, or calling attention to any person, matter, object or event (excluding any such thing employed wholly as a memorial) and also any hoarding, billboard, wall, fence, or similar structure or apparatus used or adapted for use for the display of advertisements;

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock for meat, wool, skins or fur, or for the purpose of their use in the farming of land, the use of land as grazing land, market gardens and nursery grounds, but does not include the use of land (including the seabed below the low water mark) for fish farming;

"Appeal Tribunal" means an Appeal Tribunal established pursuant to section 9;

"area of special concern" means a place or site needing special protection and which is to be maintained and managed in the public interest in its stablised and productive natural state in order to protect its ecological and geographical features and functions;

"beach" means that area of the coastal zone from the seaward limit of the foreshore running inland to the vegetation line or other natural barrier represented by a marked change in material or natural physiographic form whichever is closer to the landward limit of the foreshore, or when there is no such marked change in the material or natural physiographic form, the beach shall be deemed to extend to a distance of twenty metres landward from the mean high water mark or such lesser distance as may be determined by the Minister in consultation with the Director of Physical Planning and a beach may consist of sand, stones, gravel, shingle, coral fragments or boulders;

(Inserted by Ordinance 1 of 2019)

"building" includes any erection or structure of whatever material and in whatever manner constructed or any part of a building, and where the context so permits, includes the land on, in or under which the building is situated;

"building operations" includes the demolition works, rebuilding operations, structural alterations or other additions to a building, and any road or drainage works preliminary or incidental to the erection of buildings;

"built heritage" includes the archaeological and historic sites and monuments of Nevis;

"Cabinet" means the Nevis Island Administration appointed in accordance with section 102 of the Constitution;

"Committee" means the Development Advisory Committee established pursuant to section 6;

"development" in relation to any land means the carrying out of building, engineering, mining or other operations in, on, over or under land, the making of any material change in the use of any land or building, or the subdivision of land;

"Director of Physical Planning" means the person for the time being carrying out the functions of the head of the department of the Nevis Island Administration charged with responsibility for physical planning and development control;

"Director of Public Works" means the person for the time being carrying out the functions of the head of the department of the Nevis Island Administration charged with responsibility for public works;

"engineering operations" include the laying out, construction and maintenance of roads, drains, culverts, bridges and retention structures, the preparation of land for carrying out any development, the clearing and grubbing of land, earthworks, dredging, land-filling and land reclamation;

"Environmental Impact Assessment" means an examination, analysis and assessment of planned activities with a view to ensuring environmentally sound and sustainable development;

"environmental protection area" means an area declared pursuant to section 38;

"hand over" means to transfer the title to give up possession of land;

"land" means incorporeal as well as corporeal hereditaments of every tenure or description, and any interest therein, and also an undivided share in land, includes land covered with water and the seabed within the jurisdiction of the Nevis Island Administration and or the Nevis Air and Sea Ports Authority;

"listed" in relation to a building, monument or site means included for the time being on a list compiled or adopted under section 37;

"mining operations" means the carrying out in relation to any mineral or substance, including oil and geothermal energy, in or under land of any activity with a view to searching for, removing by underground or surface working, carrying away, treating or converting that mineral, and includes the removal of beach sand or stones, quarrying, drilling and boring operations, except geotechnical investigations carried out in relation to building or engineering operations;

"Minister" means the member of the Nevis Island Administration for the time being charged with responsibility for physical planning and development control and "Ministry" has a corresponding meaning;

"Nevis Air and Sea Ports Authority" means the authority established by the Nevis Air and Sea Ports Authority Act, Cap. 8.05;

"occupier" in relation to any building or land includes any caretaker, contractor or other person authorised to undertake or engaged in undertaking any works in relation to the said building or land;

"official website" means 'nia.gov.kn';

(Inserted by Ordinance 1 of 2019)

"open space" means land which is used or intended to be used as a recreation ground, playground, park, garden, green or savannah, sidewalk, walkaway, road verge, or to remain otherwise in an undeveloped state;

"owner" in relation to any building or land means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the right of ownership of the building or land, whether in possession or reversion, and includes also a person holding or entitled to the rents and profits of the building or land under lease or agreement the unexpired term whereof exceeds ten years;

(Amended by Ordinance 1 of 2019)

"person" includes any body corporate or unincorporated association;

(Amended by Ordinance 1 of 2019)

"physical plan" means a plan showing the manner in which land may be used, whether by the carrying out of development or otherwise, and the stages by which such development may be carried out;

"road" means the entire highway, street, footpath, alley, passage or other way, whether public or private and whether a thoroughfare or not, and includes, carriageway, curbs, sidewalks, verges, other reservations and any road signs thereon;

"site" in relation to a building includes the area of any Courtyard, outbuilding, yard or garden, whether enclosed or not, occupied or intended to be occupied with the building;

"statutory undertaker" means any authority, company or person empowered by any written law (whether enacted by the Crown or the Nevis Island Assembly) to execute or construct authorised works or to carry into effect the purposes of that law;

"subdivision" in relation to land means the division of any piece, parcel or lot of land into two or more pieces, parcels or lots, by way of vesting order, partition order, conveyance, transfer or any other legal instrument, for the purpose of succession, sale, gift, lease, mortgage or any other purpose, whether or not the division involves building, engineering, mining or other operations on, over or under or a material change in the use of any of the pieces, parcels or lots of land and whether or not any engineering or other operations are necessary or expedient for the purpose of laying the land out in the manner in which it is being divided;

"watercourse" means any natural course, channel or depression over land through which water from natural or permanent sources normally flows or settles and includes ghauts, ravines, rivers, creeks, streams, gullies and wetlands.

Objects of the Ordinance.

3. The objects of this Ordinance are to—

(a) ensure that appropriate and sustainable use is made of all publicly-owned and privately-owned land in Nevis in the public interest;

(b) maintain and improve the quality of the physical environment in Nevis, including its amenities;

(c) provide for the orderly subdivision of land and the provision of infrastructure and services in relation thereto;

(d) maintain and improve the standard of building construction so as to enhance human health and safety;

[*](e) protect and conserve the natural and built heritage of Nevis.

(Amended by Ordinance 1 of 2019)

PART II

ADMINISTRATION

Powers and duties of the Minister.

4. (1) The Minister must ensure consistency and continuity in the administration of this Ordinance in accordance with the objects set out in section 3.

(2) The Minister may from time to time issue statements giving guidance as the policy to be followed in the administration of this Ordinance.

(3) Any policy statement issued by the Minister pursuant to subsection (2) must be published in the *Gazette* and on the official website of the Nevis Island Administration and given such other publicity as the Minister considers appropriate to bring it to the attention of persons whose interests are likely to be affected by its implementation.

(Amended by Ordinance 1 of 2019)

(4) The Minister must ensure that, at least every five years from the date on which a policy statement is issued pursuant to subsection (2), a review of that policy statement is undertaken for the purposes of determining if it should be revised.

Director of Physical Planning.

5. (1) The Director of Physical Planning shall sign and issue all notices granting or refusing permission for the development of land, enforcement notices, stop notices and other documents to be issued with respect to classes of application as defined in the Third Schedule of this Ordinance. For all other classes of applications, the Director of Physical Planning will act in accordance with the decisions of the Development Advisory Committee.

(2) The functions conferred upon the Director of Physical Planning by this Ordinance, other than the powers mentioned in subsection (1), may be exercised by

[*] Section 3(1)(e) and 3(2) repealed by Ordinance 1 of 2019 and section 3(f) renumbered accordingly.

any other public officer who is authorised to perform those functions by the Director of Physical Planning in writing.

Development Advisory Committee.

6. (1) A committee called the Development Advisory Committee is hereby established for the purposes of carrying out the functions that are conferred upon it by this Ordinance.

(2) The Committee consists of the Permanent Secretary of the Ministry, as Chairman, and the following *ex officio* members—

(a) the Director of Physical Planning;

(b) the Director of Public Works;

(c) the Engineer or Manager of the Nevis Water Department;

(d) an Environmental Health Officer;

(e) the Manager of the Nevis Electricity Company or a designated representative; and

(f) the Manager of the Nevis Housing and Land Development Corporation or a designated representative.

(Substituted by Ordinance 6 of 2021)

(3) A Legal Counsel of the Nevis Island Administration is *ex officio* a member of the Committee, but may not vote on matters to be decided by the Committee.

(4) The Chairperson of the Development Advisory Committee shall appoint a public officer to serve as Secretary to the Committee.

(5) The Committee may co-opt any person to help it in dealing with any matter, if it is satisfied that the person's experience or qualifications are likely to help the Committee, and a person co-opted is entitled to take part in its proceedings regarding that matter, but may not vote and cannot take part in any other proceedings of the Committee.

(6) The Committee must meet at least once per month at such times and places and on such days as the Chairman determines are necessary or expedient for the performance of its functions.

(7) A quorum for a meeting of the Committee comprises a simple majority of the voting members, but if a member is disqualified from taking part in the deliberation or decision of the Committee in respect of any matter, pursuant to subsection (10), that member must be disregarded for the purpose of constituting a quorum for deliberating on that matter.

(Amended by Ordinance 1 of 2019)

(8) All matters for decision by the Committee are decided by a majority of votes of the members present and voting, but in the event of an equality of votes the Chairperson has second or casting vote in respect of that matter.

(9) Minutes in proper form for every meeting of the Committee must be kept by the Secretary, confirmed by the members at the next subsequent meeting and signed by the Chairperson and Secretary once confirmed.

(10) A voting member of the Committee must at the commencement of a meeting inform the Chairperson of any matter before the meeting in which he or she has either directly or indirectly, personally or by his or her spouse, domestic partner

or other near relative, any interest, including but not limited to a pecuniary or business interest, and that member must vacate the meeting room upon relevant matter coming up for discussion and the vacation of the meeting room by the member must be noted in the minutes of the meeting.

[*](11) Subsection 6(10) shall not apply to any member of the Development Advisory Committee who by reason of his or her employment is charged with any supervisory or managerial responsibility for a project, the subject of an application being considered by the Committee.

(Inserted by Ordinance 1 of 2019)

(12) A member of the Committee must not, either directly or indirectly, except in the performance of a function or duty under or in connection with this Ordinance or any other written law, or as required by any other legal duty, make a record of or divulge or communicate to any person information concerning the affairs of another person which the member acquires by reason of membership of the Committee.

(13) The validity of any proceedings of the Committee is not affected by any vacancy in its membership.

(14) Subject to the foregoing, the Committee has the power to regulate its own procedure.

(15) The members of the Committee may be paid such remuneration and allowances, if any, as the Minister determines.

Functions of the Development Advisory Committee.

[†]**7.** Subject to sections 5 and 23(3), the functions of the Development Advisory Committee shall be the following—

(a) to review applications for concept consideration and acceptance;

(b) to review applications for detailed development permission;

(c) to carry out site visits if an application with respect to the land or building has been made to the Director of Physical Planning and in particular to verify any information represented in an Environmental Impact Assessment submitted with any application.

(Inserted by Ordinance 4 of 2019)

Powers of the Development Advisory Committee.

[‡]**8.** Subject to sections 5 and 23(3), the powers of the Development Advisory Committee shall be the following—

(a) to approve, approve on condition, defer or disapprove any application for consideration and acceptance submitted for review;

(b) to approve, approve on condition, defer or disapprove any application for detailed development permission submitted for review;

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[*] Inserted by Ordinance 1 of 2019 as section 6(10)A and renumbered as section 6(11) and all subsequent subsections renumbered accordingly.

[†] Inserted by Ordinance 4 of 2019 as section 6A and renumbered as section 7.

[‡] Inserted by Ordinance 4 of 2019 as section 6B and renumbered as section 8 and subsequent section renumbered accordingly.

(c) to enter upon any land for the purpose of inspection or survey, if an application with respect to the land or building has been made to the Director of Physical Planning;

(d) to recommend that a particular application or applications of a particular class be referred to Cabinet for its consideration at the concept consideration and acceptance stage;

(e) to perform such other functions as are necessary for the carrying out of the objects of this Ordinance.

(Inserted by Ordinance 4 of 2019)

Appeal Tribunals.

9. (1) The Minister acting on his own discretion must constitute a panel of not less than six or more than nine persons, not being public officers, who are qualified for appointment to an Appeal Tribunal, by virtue of their training or experience in the fields of law, physical planning, environmental management, architecture, engineering, land surveying, building construction or land development.

(2) A member of the panel constituted pursuant to subsection (1) serves for a term of three years and is eligible for reappointment, but may at any time resign from the panel by letter in writing addressed to the Minister, or may at any time be removed by the Minister on the grounds of disability, misbehaviour or conflict of interests.

(3) The appointment of any person to the panel constituted pursuant to subsection (1) and the termination of any member of the panel, whether by death, resignation, removal, effluxion of time or otherwise, must be published by notice in the *Gazette*.

(4) The Minister must appoint an Appeal Tribunal of three persons, one of whom is designated as Chairperson, drawn from the panel constituted pursuant to subsection (1), from time to time as is necessary for the purpose of hearing any appeal made under section 31 of this Ordinance.

(5) The Chairperson of an Appeal Tribunal must be an Attorney-at-law of not less than five years good standing.

(6) An Appeal Tribunal remains in existence until it has discharged the functions for which it was appointed.

(7) The members of an Appeal Tribunal may be paid such remuneration and allowances, if any, as the Minister determines.

Limitation of personal liability.

10. Neither the Minister nor the Director of Physical Planning, nor any other member of the staff of the Nevis Island Administration, nor any member of the Committee, nor any person co-opted to help the Committee in dealing with any matter, nor any member of an Appeal Tribunal, is personally liable in any Court for or in respect of any act or matter done, or omitted to be done, in good faith in the exercise of any function or power conferred by this Ordinance.

PART III

PHYSICAL PLANNING

Duty to prepare physical plans.

11. (1) As soon as practicable after the commencement of this Ordinance, the Director of Physical Planning must prepare a draft physical plan for the whole of the Island of Nevis.

(2) At any time before or after the draft physical plan for the whole of the Island of Nevis has been prepared, the Director of Physical Planning may prepare a draft physical plan for any specified part of the Island of Nevis.

(3) If an approved physical plan has been prepared for the Island of Nevis as a whole, a draft physical plan prepared for a specified part of the Island of Nevis shall conform to the prescriptions of that plan, as revised from time to time.

Contents of physical plans.

12. (1) A physical plan prepared for approval under this Ordinance must—

(a) set out prescriptions for the use and development of land which represent the results of an integrated planning process; and

(b) include such maps and descriptive matter as may be necessary to illustrate the proposals made in it with such degree of detail as is appropriate to the Island of Nevis as a whole or the specified part of the Island of Nevis to which the plan relates.

(2) A physical plan may, as appropriate—

(a) state the policies, proposals and programmes contained in the development strategy;

(b) allocate land for conservation of the natural or built heritage, or for use for agricultural, residential, industrial, commercial, tourism or other purposes of any class specified in the plan;

(c) make provision for the development of infrastructure, public buildings, open spaces and other public sector investment works;

(d) provide for the layout and design of development schemes; and

(e) prescribe for any of the matters set out in the First Schedule.

Preparation of physical plans.

13. (1) In the course of preparing a draft physical plan the Director of Physical Planning shall take reasonable steps to consult with—

(a) any agency of the government of Saint Christopher and Nevis or the Nevis Island Administration; and

(b) any non-governmental organisation,

which has an interest in any matter for which proposals are made in the plan, including but not limited to the management of water and other natural resources, Crown lands (whether specifically appropriated to the use of the Nevis Island Administration or not), the natural and built heritage, environmental protection,

economic development, agriculture, industry, tourism, commerce, urban development and transportation.

(2) Before finalising the contents of a draft physical plan the Director of Physical Planning must take reasonable steps to ensure that—

(a) adequate publicity is given in the area to which the plan relates to the matters concerning which proposals will be made in the plan; and

(b) persons who may wish to make representations with respect to those matters are invited and given an adequate opportunity to make representations on those matters.

Approval of physical plans.

14. (1) When the Director of Physical Planning has prepared a draft physical plan, copies must be made available for public inspection at the offices of the Ministry and such other places as the Minister considers appropriate for bringing it to the attention of persons who are likely to be affected, directly or indirectly, by the proposals in the plan.

(2) The Minister must give notice in the *Gazette* and at least one newspaper in general circulation in the Island of Nevis and in one online news media of the places where and times when the draft physical plan may be inspected and must give such other publicity to the matter as is appropriate to inform the public in general, and particularly persons whose interests are likely to be affected, directly or indirectly, by the proposals in the plan, of their right to make representations to the Director of Physical Planning with regard to the proposals in the draft physical plan.

(Amended by Ordinance 1 of 2019)

(3) Any person may, within eight weeks after the publication in the *Gazette* of the notice referred to in subsection (2), make oral or written representations on the draft physical plan to the Director of Physical Planning.

(4) After the expiry of the period prescribed by subsection (3) for the making of representations on a draft physical plan, the Director of Physical Planning must consider any representations made by the public and forward a report on them, together with his or her own comments, to the Minister.

(5) After considering the draft physical plan and the Director of Physical Planning's report on the representations from the public and the Director of Physical Planning's comments on them, the Minister may accept the plan, with or without modifications, or may reject the plan and where he rejects the plan he must give reasons for any rejection.

(6) When a draft physical plan has been submitted to and accepted by the Minister, with or without modifications, the Minister must submit it for the approval of the Nevis Island Assembly.

(7) When a physical plan is approved by affirmative resolution of the Nevis Island Assembly, the Minister must publish notice of the approval in the *Gazette* and the plan has full force and effect from the date prescribed of publication or such later date as may be prescribed in the notice.

(8) The Nevis Island Administration must make copies of an approved plan available for inspection at the Ministry and any other place approved by the Minister and for sale to the public at a reasonable price.

Review and Revision of approved plans.

15. (1) At any time which is expedient the Director of Physical Planning may carry out a review of an approved plan and submit to the Minister a report on that review together with proposals for any alterations or additions to the plan which appear to be appropriate.

(2) Without limiting the generality of subsection (1), the Director of Physical Planning must, at least once in every five years after the date on which a physical plan comes into operation, review and report on that plan as aforesaid.

(3) The provisions of this Ordinance with respect to the preparation and approval of a physical plan apply, with any modifications necessary, to any proposal for any alterations or additions to an approved plan made under this section.

Status of physical plan.

16. (1) If a physical plan, or any amendment to a physical plan, has been approved by the Nevis Island Assembly—

(a) the Nevis Island Administration and any statutory undertaker must have regard to and be guided by the plan in preparing and implementing any public sector investment project or development programme; and

(b) the Committee shall be guided by the prescriptions of the plan in deliberating on any application for permission to develop land in the area covered by the plan.

(2) If two or more approved physical plans apply in whole or in part to the same area and any question arises as to the prescriptions for development of that area—

(a) the plan that shows the greater degree of detail prevails over the plan that show the lesser degree of detail; and

(b) if the degree of detail of both plans is equivalent, the later plan has precedence over the earlier plan, unless it expressly provides otherwise.

(3) An approved plan remains in effect until it is rescinded by the Minister by notice in the *Gazette*, published on the official website of the Nevis Island Administration and in one newspaper in general circulation in the Island of Nevis.

(Amended by Ordinance 1 of 2019)

PART IV

DEVELOPMENT CONTROL

Permission required to develop land.

17. (1) Notwithstanding the provisions of any other law to the contrary, but subject to section 19, no person (including the Crown, the Nevis Island Administration and any Statutory Undertakers) may commence or carry out development of any land in the Island of Nevis without the prior written permission of the Director of Physical Planning.

(2) For the purposes of subsection (1), a person is deemed to have commenced the development of land (until the contrary is proved, the burden of which lies on the alleged developer) if that person has commenced the laying out of roads, the laying of water pipes, the clearing of or levelling of land, the filling of ghauts or swamps, the construction of any building or any preparatory work which might indicate an intention to improve the land or increase its value or make it in any way ready for any type of development.

(3) The power of the Director of Physical Planning to grant permission to develop land under this Part includes power to grant permission for the retention on land of any buildings or works constructed or carried out before the date of the application, or for the continuation of any use of land instituted before that date, and references in this Part to permission to develop land and to applications for permission are to be construed accordingly.

Particular operations and uses.

18. (1) For the purposes of this Ordinance, the following operations or uses of land do not involve development of the land—

(a) the carrying out, in accordance with the Building Regulations and any other applicable laws, of works for the maintenance, improvement or other alteration of any building other than a building to which the public has access, if the works affect only the interior of the building and does not involve any structural change thereto or do not materially affect the external appearance of the building;

(b) the carrying out by or on behalf of the Nevis Island Administration of any works required for the maintenance or improvement of a road, if the works are carried out on land within the boundaries of the road;
(Amended by Ordinance 1 of 2019)

(c) the carrying out by or on behalf of the Nevis Island Administration or any statutory undertaker of any works for the purpose of inspecting, repairing or renewing any sewers, water mains, pipes, cables or other apparatus, including the breaking open of any road or other land for that purpose;

(d) the use of any building or land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such;

(e) the use of any land for the purposes of agriculture or forestry and the use for any of those purposes of any building on land so used; and

(f) in the case of buildings or land that are used for a purpose of any class specified in an order (referred to as a "use classes order") made by the Minister under this section, its use for any other purpose of the same class.

(2) For the avoidance of doubt, it is hereby declared that—

(a) the carrying out of building, engineering, mining or other operations in, on, over or under any land used for agriculture or forestry, or the subdivision of any such land, involves development of that land;

(b) the use of any land, other than land within the boundaries of a road for the siting of any movable or temporary building, including but not limited to a chattel building, mobile home, trailer, shipping container,

crusade tent, vendor's stall or food van, whether equipped with wheels or not, involves a material change in the use of that land;

(c) the use of any building previously used as one dwelling unit as two or more separate units used as either dwelling and or commercial involves a material change in the use of that building;

(d) the use of any building previously used as a commercial unit as any non-commercial unit involves a material change in the use of that building;

(e) the use for display of an advertisement on any land or external part of a building which has not been previously used for that purpose involves a material change in the use of that land or of that building;

(Amended by Ordinance 1 of 2019)

(f) the accumulation of derelict vehicles, scrap metal, refuse, spoil, mineral tailings, sludge, effluent or waste or discarded material of any kind on land involves a material change of use of that land, notwithstanding that any such material had previously been deposited on it.

Applications.

19. (1) (a) A person intending to develop land listed in the Second and Fourth Schedules must make the following applications to the Director of Physical Planning—

(i) an application for concept consideration and acceptance; and

(ii) an application for permission to develop land.

(b) A person intending to develop land of a nature listed in the Third Schedule must make an application for permission to develop land.

(c) An applicant seeking to develop land may also be required to prepare a Project Proposal in the manner prescribed by the Director of Physical Planning.

(Inserted by Ordinance 6 of 2021)

(2) An application for concept consideration and acceptance must be made on the form prescribed by the Minister and be accompanied by—

(a) a map sufficient to identify the land to which it relates;

(b) such conceptual plans, drawings and other materials drawn by an engineer, architect or licensed land surveyor as are necessary to describe the development intended to be undertaken;

(c) evidence of ownership of the land, or in the absence thereof, a registered Memorandum of Transfer, registered Deed, registered lease, Grant of Probate or Letters of Administration issued by a Court of competent jurisdiction, a notarised board resolution or a signature of all Directors of the Company granting permission to the applicant to carry out development on the land, or a notarised letter signed by the owner or agent of the owner of the land to which the application relates acknowledging that the owner has knowledge of and does not object to the making of the application; and

(Amended by Ordinance 6 of 2021)

(d) evidence of payment of the prescribed fee.

(3) An application for permission to develop land listed in the Third Schedule shall not be made unless the Director has considered and accepted the concept of the development to which the application relates.

(4) An application for permission to develop land must be made in triplicate in printed form as prescribed by the Minister together with one electronic copy and accompanied by—

(a) a map sufficient to identify the land to which it relates and such plans, drawings and other materials drawn by an engineer, architect or licensed land surveyor as are necessary to describe the development that is the subject of the application;

(b) evidence of ownership of the land, or in the absence thereof, a registered Memorandum of Transfer, registered Deed, registered lease, Grant of Probate or Letters of Administration issued by a Court of competent jurisdiction, a notarised board resolution or a signature of all Directors of the Company granting permission to the applicant to carry out development on the land, or a notarised letter signed by the owner or agent of the owner of the land to which the application relates acknowledging that the owner has knowledge of and does not object to the making of the application;

(Amended by Ordinance 6 of 2021)

(c) any statutory consent which the applicant is required by law to obtain for or in connection with the development prior to applying for the permission of the Director of Physical Planning;

(d) in any case where this is required by the Building Regulations made or saved under this Ordinance, certification by a person who is the holder of a licence issued under the Licences on Businesses and Occupations Act, Cap 18.20 to follow the profession of Architect, Engineer or Land Surveyor, as the case may be; and

(e) evidence of payment of the prescribed fee.

(Substituted by Ordinance 1 of 2019)

Concept consideration and acceptance.

20. (1) Any person who intends to apply for permission to undertake the development of land within a period of a year may make application to the Director of Physical Planning for consideration of the concept of the proposed development before preparing detailed plans.

(Amended by Ordinance 1 of 2019)

[*](2) The Director of Physical Planning may grant acceptance of the concept, with or without conditions, subject to the subsequent approval of any matter reserved until detailed plans have been submitted, or may refuse to grant acceptance of the concept.

(Amended by Ordinance 1 of 2019)

[*] Section 20(2) deleted by Ordinance 1 of 2019 and subsequent subsections renumbered accordingly.

(3) Acceptance of the concept granted under subsection (2) is not permission to commence development and the applicant must comply with the provisions of section 19(1) before such permission can be granted.

(Amended by Ordinance 1 of 2019)

(4) Acceptance of the concept granted under this section may be revoked or modified by the Minister without compensation, if in the opinion of the Minister after consulting the Director of Physical Planning a situation has subsequently arisen which constitutes a danger to national security, the environment, public health, safety or welfare.

(Amended by Ordinance 1 of 2019)

Requirement for further information.

21. (1) In addition to the information required by the application form, the Director of Physical Planning may request in writing that the applicant provide such further information as may be necessary to determine that application.

(2) If further information is requested by the Director of Physical Planning under this section or section 22, the application must be treated for the purposes of section 29 as having been made on the date when the information requested from the applicant is received.

(3) If the applicant does not furnish the further information requested by the Director of Physical Planning within a reasonable time, having regard to the nature of the information requested, the Director of Physical Planning may give the applicant notice that the application cannot be processed and has been cancelled, and return the cancelled application to the applicant.

(4) For the avoidance of doubt it is hereby declared that, when an application is cancelled pursuant to subsection (3), the applicant is not entitled to a refund of the application fee.

Environmental Impact Assessment.

22. (1) Without limiting the generality of section 21, the Director of Physical Planning may require an Environmental Impact Assessment to be carried out in respect of any application for permission to develop land, including an application for concept consideration and acceptance, if in the opinion of the Director of Physical Planning the proposed development could significantly affect the environment.

(Amended by Ordinance 1 of 2019)

(2) Unless the Director of Physical Planning determines otherwise, an Environmental Impact Assessment is required in respect of an application for a development of any kind mentioned in the Second Schedule.

(3) The Director of Physical Planning may not grant permission for the development of land pursuant to an application to which this section applies unless the report on the Environmental Impact Assessment has first been taken into account.

(4) The Minister may make Regulations providing for—

(a) the criteria and procedures for determining whether an activity is likely to significantly affect the environment so that an Environmental Impact Assessment may be required in addition to the information that the applicant is ordinarily required to submit;

(b) the procedures for setting the scope of works of the Environmental Impact Assessment to be carried out by the applicant in respect of any development;

(Amended by Ordinance 1 of 2019)

(c) the minimum contents of the report to be submitted to the Director of Physical Planning in respect of the Environmental Impact Assessment carried out by the applicant;

(d) the qualifications, skills, knowledge or experience which must be possessed by persons conducting Environmental Impact Assessments for the purposes of this Ordinance;

(e) the procedures for public participation in the Environmental Impact Assessment process and public scrutiny of the report submitted to the Director of Physical Planning;

(f) the consideration by the Director of Physical Planning of an application with respect to which an Environmental Impact Assessment has been required, including the criteria and procedures for review of the report.

(5) When the Director of Physical Planning notifies an applicant that an Environmental Impact Assessment is required, the Ministry and any other governmental organisation, including any statutory undertaker, if requested by the applicant, must enter into consultation with the applicant to determine whether that agency has in its possession any information which the applicant considers relevant to the Environmental Impact Assessment and, if it does, the agency must make any such information available to the applicant and allow the applicant to take copies on payment of the cost of making the copies, but is not required to disclose any confidential information to the applicant or to do anything that contravenes the provisions of the Copyright Act, Cap.18.08.

(Amended by Ordinance 1 of 2019)

(6) When a notice requiring an applicant to carry out an Environmental Impact Assessment is issued, the Director of Physical Planning must inform any department or agent of the Nevis Island Administration having responsibility for the issue of any licence, permit, approval, consent or other document of authorisation in connection with any matter affecting the development.

(7) A department or agent of the Nevis Island Administration that has been given notice in accordance with subsection (6), may not grant its licence, permit, approval, consent or other document of authorisation, unless it has been notified by the Director of Physical Planning that the notice has been complied with and permission has been granted for the proposed development.

Determination of applications.

23. (1) When an application for permission to develop land is duly made, the Director of Physical Planning must have regard to the provisions of the physical plan for the area within which the land is situated, if any, and to any other material considerations, and subject to subsection (2), may grant permission either unconditionally or subject to conditions, or refuse permission.

(2) Without restricting the generality of subsection (1), conditions may be imposed on the granting of permission to develop land for requiring the removal of any buildings or works, or the discontinuation of any use of land authorised by the expiration of a specified period, and the reinstatement of the land at the expiration of

that period, and any permission granted subject to such a condition is referred to as "temporary planning permission".

(3) The Director of Physical Planning must not determine an application, other than an application for a class of development mentioned in the Third Schedule, unless the application has first been referred to the Committee for review and the Committee has considered the application and advised the Director of Physical Planning accordingly and he follows that advice.

(4) The Director of Physical Planning must give the applicant notice in writing of the decision on the application and, in the case of an application for permission to develop land where permission is granted subject to conditions or refused, the notice shall state the reasons for the imposition of the conditions or refusal of the application, as the case may be.

(5) If, after examination of the plans submitted with the application form, the Director of Physical Planning considers it necessary, the plans may be returned to the applicant for amendment and, if this is done, the running of time for determination of the application will be suspended for the purposes of section 29 until the amended plans are resubmitted by the applicant.

(6) When permission is granted for any development subject to conditions, the Nevis Island Administration may enter into an arrangement or agreement with the developer in order to give effect to such conditions, if the Director of Physical Planning considers it necessary.

(7) The Nevis Island Administration may require any developer to provide a bond in such sum, or any other instrument of guarantee of performance, as the Nevis Island Administration considers necessary to give effect to any permission to undertake development.

(8) Notwithstanding anything that may be done under subsection (6) and (7), the Director of Physical Planning may at any time revoke permission to develop land or any part of that permission, without compensation, if the developer does not substantially comply with the conditions subject to which it was granted.

Subdivision plans.

24. (1) In addition to the information required by section 19, an applicant for permission to subdivide land must provide the Director of Physical Planning with a draft plan of the proposed subdivision drawn to scale and showing—

(a) the boundaries of the land proposed to be subdivided, certified by a licensed land surveyor;

(b) the locations and widths of the proposed roads within the proposed subdivision and locations, widths and names of existing roads on to which the proposed subdivision abuts;

(c) on a small key plan, all of the land adjacent to the proposed subdivision that is owned by the applicant or in which the applicant has an interest, every subdivision adjacent to the proposed subdivision and the relationship of the boundaries of the land to be subdivided to the boundaries of the parcel of which the land forms the whole or part;

(d) the purpose for which the proposed lots are to be used;

(e) the existing uses of all adjoining lands;

(f) the approximate dimensions and layout of the proposed lots;

(g) natural and artificial features such as buildings or other structures or installations, roads, watercourses, drainage ditches, wetlands and wooded areas within or adjacent to the land proposed to be subdivided;

(h) the availability and nature of domestic water supplies;

(i) the nature and porosity of the soil;

(j) existing contours or elevations as may be required to determine the grade of the highways and the drainage of the land proposed to be subdivided;

(k) the public services available or to be available to the land proposed to be subdivided; and

(l) the nature and extent of any restrictions affecting the land proposed to be subdivided, including rights of way and other easements.

(2) When a draft plan of subdivision is being considered, regard must be had, among other material considerations, to—

(a) whether the plan conforms to adjacent plans of subdivision, if any;

(b) the suitability of the land for the purposes for which it is to be subdivided;

(c) the number, width, location and proposed grades and elevations of roads, and the adequacy of them, and the roads linking the roads in the proposed subdivision with the established road system in the vicinity and the adequacy of them;

(d) the dimensions and shapes of the proposed lots;

(e) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on the adjoining land;

(f) conservation of natural resources, the environment and flood control;

(g) the adequacy of public utilities and services;

(h) the area of land, if any, within the proposed subdivision that, exclusive of roads, is to be dedicated for public purposes; and

(i) whether the proposed subdivision is premature or in the public interest.

(3) The Director of Physical Planning shall impose such conditions with respect to the approval of a plan of subdivision as are reasonable, having regard to the nature of the development proposed for the subdivision, including a requirement—

(a) that land be dedicated for open space purposes in accordance with the provisions of section 26;

(b) that such roads be dedicated to the public as the Director of Public Works considers necessary; and

(c) when the proposed subdivision abuts on an existing road, that sufficient land, other than land occupied by building or structures, be dedicated to provide for the widening of the road to such width as the Director of Public Works considers necessary.

(Amended by Ordinance 1 of 2019)

Provision of amenities in subdivisions.

25. (1) If any engineering or other operations are necessary or expedient for the purpose of laying the land out in the manner in which it is being subdivided, the owner of the land to be subdivided must carry out any operations on the land that the Director of Physical Planning requires for providing infrastructure and utilities to service the lots created by the subdivision of the land.

(2) The operations that the Director of Physical Planning may require the owner of the land to carry out pursuant to subsection (1) include the provision of roads, green verge, access for handicapped persons, drains, a sewerage system, sewage treatment and disposal works, water mains, fire hydrants, electricity supply and street lighting and such other amenities the Director of Physical Planning may require.

(3) Any engineering or other operations required to be carried out under this section (with respect to roads) must be carried out in the manner and to the standards specified by the Director of Physical Planning, after consultation with the Director of Public Works, and, upon completion, where the owner agrees, handed over to the Nevis Island Administration.

(4) If there is any default by the owner in carrying out and completing the operations required to be carried out under this section, in part or in whole, the Nevis Island Administration may cause the operations to be carried out, by its staff or by contractors, and may recover as a civil debt in any Court of competent jurisdiction any expenses reasonably incurred for those purposes from the owner of the land.

(5) In every case in which the Nevis Island Administration carries out work pursuant to subsection (4), the Nevis Island Administration has a lien upon and a right to payment out of the land in the subdivision serviced with infrastructure and services and the Court may make such order for the sale of so much of the land, and the recovery out of the proceeds of the sale of that land of the expenses reasonably incurred by the Nevis Island Administration, as it thinks fit.

(6) A person who sells or lets any building lot within a land subdivision to which this section relates which has not been provided with the required infrastructure and utilities commits an offence and is liable on summary conviction to a fine of up to a maximum of ten thousand dollars per lot sold.

Reservation of open space.

26. (1) The Director of Physical Planning may, as a condition subject to which permission is granted for the subdivision of land to be laid out in building lots, require the developer to reserve part of the land as an open space.

(2) If the Director of Physical Planning requires land to be reserved as open space in accordance with subsection (1), the developer must carry out any operations required to make it fit for the use for which it was reserved, in compliance with any conditions subject to which permission was granted.

(3) When land that has been reserved as an open space in accordance with subsection (1) has been rendered fit for the use for which it was reserved in accordance with subsection (2), the developer must—

(a) make arrangement satisfactory to the Director of Physical Planning for maintaining the open space in perpetuity; or

(b) hand over the open space to—

(i) a body that is representative of the purchasers of building lots in the subdivision;

(ii) or the Nevis Island Administration.

(4) For the avoidance of doubt it is hereby declared that no compensation or purchase price is payable to the person who was at the date of transfer of title the owner of the land with respect to land handed over to the Nevis Island Administration or any other person pursuant to subsection (3)(b).

(5) A completion certificate must not be issued in respect of any development to which this section applies until the developer has complied with the requirements of subsections (2) and (3).

(Amended by Ordinance 1 of 2019)

(6) The Nevis Island Administration may place any open space vested in it pursuant to this section under the management of a statutory undertaker in order to ensure the preservation and use of the land for the purpose for which it was reserved.

Building plans.

27. (1) In addition to the information required by section 19, an applicant for permission to carry out building operations must provide the Director of Physical Planning with the following drawings of the proposed building to an appropriate scale—

(a) a floor plan, showing room sizes, the position of doors and windows, materials used in construction, and the thickness and structure of each wall;

(b) elevations and sections, showing height of the ground floor above the level of the land, the pitch and height of the roof, floor to ceiling dimensions, and the position of doors and windows;

(c) a foundation plan, showing the layout and sizes of members;

(d) structural details, including details of beams, columns, slabs, walls, cisterns, reinforcement, roof design, foundations and piles;

(e) plumbing system, including size of water lines, location of shut-off valves, water storage and catchment details, size and location of pumps, location and details of grease traps, sizes and slopes of sewer pipes, details of septic tanks and soakaways, and location of inspection boxes;

(f) electrical system, including electrical layout plan, amount of wires in conduit and wire gauges, circuit numbers, panel sizes and locations, electrical outlet and switches;

(g) details of fencing, if any, to be built, installed or altered.

(2) The Minister may make Regulations, referred to as "Building Regulations", including the promulgation of a Building Code and Building Guidelines, with respect to the design and construction of buildings and the provision of services, fittings and equipment in or in connection with buildings and particularly with respect to the following matters—

(a) the preparation and foundations of the site;

(b) the method of construction, structural strength and stability;

(c) the suitability and durability of the materials, including materials of short life and their preservation from decay and infestation;

(d) the space about buildings;

(e) the insulation, lighting and ventilation of rooms;

(f) the dimensions of rooms and spaces;

(g) fire precautions and safety;

(h) plumbing and water supply;

(i) drainage;

(j) sanitation;

(k) sewage disposal;

(l) electrical installations and wiring, gas installation and piping, and telecommunications services;

(m) lifts and other mechanical means of conveyance for access;

(n) refuse disposal, storage, treatment and removal of waste, and emission of noxious or offensive substances;

(o) hurricane and earthquake precautions and protection;

(p) means of access to and egress from buildings;

(q) water catchments;

(r) maximum height of buildings as outlined in a physical plan;

(s) maximum height of elevation for construction of buildings for the whole or any part of Nevis;

(t) fencing.

(3) Building Regulations made under subsection (2) may—

(a) exempt any class of building from any of the requirements of the Regulations; or

(b) provide for different Regulations to apply to different classes of buildings.

(4) The Nevis Island Administration must appoint such number of Building Inspectors as may be appropriate to assist the Director of Physical Planning in the enforcement of the building Regulations and, in particular, to—

(a) review and evaluate the plans submitted in application for permission to carry out building operations;

(b) to carry out inspections at such stages in the course of permitted building operations as may be prescribed by the building Regulations; and

(c) issue completion certificates with respect to building operations that have been satisfactorily completed.

Publicity of applications.

28. (1) When an application is made for permission to carry out development of a class mentioned in the Fourth Schedule, the Director of Physical Planning may require the applicant to—

(a) give details of the application to specific persons or authorities;

(b) publish a notice, stating that an application to develop land has been made and giving details of the application, at such times, in such places and in such manner as may be specified; and

(c) affix a copy of the said notice on the land to which the application relates.

(2) A notice required under subsection (1) must invite members of the public to make comments and representations on the application to the Director of Physical Planning, either orally or in writing, by or before a date specified in the notice.

(3) Where the applicant neglects or refuses to incur the cost of publishing a notice under subsection (1) the Director of Physical Planning may publish the notice and the applicant is liable to pay the costs incurred by the Director of Physical Planning for publication of that notice and, in default of payment, the Director of Physical Planning may recover the costs as a civil debt in any Court of competent jurisdiction.

(4) In deliberating on an application to which this section relates, the Committee must take into account any report, representation or comment made to the Director of Physical Planning under this section.

Limitation period.

29. (1) When an application for permission to develop land is duly made, the Director of Physical Planning must issue a decision within a period of ninety days from the date of receipt of the application, or such extended period as may be agreed to in writing by the applicant.

(Amended by Ordinance 1 of 2019)

(2) Unless the Director of Physical Planning issues a decision within the period prescribed by subsection (1), the provisions of section 31 apply in relation to the application as if it had been refused.

Referral of application to Cabinet.

30. (1) The Director of Physical Planning may, in appropriate circumstances, prior to submission of an application to the Development Advisory Committee prepare a preliminary technical report for the Committee's consideration.

(2) The Development Advisory Committee may, at the concept consideration and acceptance stage, recommend that the Director of Physical Planning refer a particular application or all applications of a specific class or in respect of any particular location to Cabinet for its consideration and such referral shall be accompanied by the preliminary technical report prepared by the Director of Physical Planning pursuant to subsection (1).

(3) The recommendation of Cabinet that any particular application or class of applications should receive conceptual approval shall not restrict the Committee's exercise of its function in the final approval process.

(Substituted by Ordinance 4 of 2019)

Right of appeal.

31. (1) If permission for the development of any land is refused by the Director of Physical Planning, or is deemed to be refused under section 29(2) or is modified and revoked under section 35 or is granted by the Director of Physical Planning subject to conditions, the applicant may, within thirty days from the date of the decision, appeal in writing against that decision to the Minister, setting out the grounds upon which the appeal is made.

(Amended by Ordinance 1 of 2019)

(2) As soon as is practicable after an appeal is made to the Minister pursuant to subsection (1), the Minister must refer the matter to an Appeal Tribunal appointed in accordance with the provisions of section 9.

(3) Before determining an appeal referred to it under this section, the Appeal Tribunal must give the applicant and the Director of Physical Planning the opportunity of appearing before it, at a time and place convenient to the parties, and being heard, and in any such hearing each party may be represented by a legal adviser of their own choice.

(4) When it has heard an appeal in accordance with subsection (3), the Appeal Tribunal must give its decision, which may include an award as to payment of the costs of the proceedings, within a period of thirty days from the date of receipt of the appeal or such extended period, not exceeding a further thirty days, as may be approved by the Minister.

(5) Subject to the foregoing, an Appeal Tribunal has the power to regulate its own procedure.

(6) The decision of the Appeal Tribunal on an appeal, including a statement of the reasons for that decision, must be conveyed to the Minister in writing and the Minister must, by notice in writing under the hand of the Permanent Secretary, inform the applicant and the Director of Physical Planning of that decision.

(7) The Appeal Tribunal's decision on any appeal is final.

(8) All costs directed to be paid under subsection (4) must be paid within one month of the date of the notice given under subsection (5) and in default of payment may be recovered as a civil debt in any Court of competent jurisdiction.

Effect of permission.

32. Without prejudice to the provisions of this Part relating to the lapse or modification or revocation of any permission to develop land, such permission, unless the notice of permission provides otherwise, enures for the benefit of the land concerned and of all persons for the time being interested in that land.

Lapse of permission.

33. (1) If permission for the development of land is not taken up and used within a period of twelve months from the date on which it was granted, it lapses.

(Amended by Ordinance 1 of 2019)

[*](2) Where an applicant is granted concept acceptance in accordance with section 20 but fails to submit detailed plans within twenty-four months or within such

[*] Inserted by Ordinance 1 of 2019 as subsection (1A) and renumbered as (2).

time as stipulated by the Director in the letter granting concept acceptance, the concept acceptance lapses.

(Inserted by Ordinance 1 of 2019)

(3) [*](a) Where the concept acceptance lapses in accordance with subsection (2) and the applicant wishes to proceed with the development to which it relates, the applicant must make a fresh application for concept consideration and acceptance to the Director of Physical Planning in accordance with section 19.

(Inserted by Ordinance 1 of 2019)

[†](b) Where the applicant's initial proposal document, as part of the concept consideration stage is accepted and the applicant fails to submit the requested Environmental Impact Assessment (EIA) within twelve months or within such time as stipulated by the Director in the letter granting acceptance of initial proposal, the acceptance lapses.

(Inserted by Ordinance 6 of 2021)

(4) If a development is not completed within thirty-six months after it is commenced, or such other period as may be prescribed in the notice granting permission, the permission lapses, without prejudice to the status of such of the permitted works as are then complete.

(Amended by Ordinance 1 of 2019)

[‡](5) If permission lapses pursuant to subsection (4) and the developer wishes to complete the development, the developer must write to the Director of Physical Planning seeking permission to complete the development and the Director of Physical Planning must indicate to the developer which documents, if any, must be submitted before permission can be granted.

(Inserted by Ordinance 1 of 2019)

Commencement and completion notices.

34. (1) A person who intends to carry out a development for which permission has been granted must give notice to the Director of Physical Planning of the date on which that development will commence.

(2) If, after the date specified in a notice of commencement given pursuant to subsection (1), the Director of Physical Planning is not satisfied that the development has been substantially commenced, the Director of Physical Planning must notify the person from whom the commencement notice was received that the permission will lapse by a specified date if the development is not commenced to the satisfaction of the Director of Physical Planning before that date.

(3) When the Director of Physical Planning has been notified in writing by the developer that permitted building or engineering operations have been completed, the Director of Physical Planning must certify if the works have been constructed in accordance with the permission granted for that development.

(4) If permission has been granted for the subdivision of land and the carrying out of engineering operations in relation to the laying out of that land in lots, no lot of land within the approved subdivision may be granted, sold, let or otherwise transferred to any person for any purpose whatsoever, unless a copy of the

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[*] Inserted by Ordinance 1 of 2019 as subsection (1B) and renumbered as subsection (3) and subsequent subsetion renumbered accordingly.

[†] Inserted by Ordinance 6 of 2021 as subsection 1(c) and renumbered as 3(b).

[‡] Inserted by Ordinance 1 of 2019 as subsection (2A) and renumbered as subsection (5).

completion certificate for the approved engineering operations has been issued under this Ordinance and deposited in the Land Registry.

Modification or revocation of permission.

35. (1) If it appears to the Minister that it is expedient, having regard to a physical plan and any other material considerations, to modify or revoke any permission to develop land granted under this Ordinance, or any permission for land or building development granted under a law repealed and replaced with respect to Nevis by this Ordinance, the Director of Physical Planning must by notice published in the *Gazette* and served on the person entitled to the benefit of the permission the revocation or modification of the permission to develop land to such extent as the Minister directs together with the reasons for the decision.

(2) Subject to subsection (3), the power conferred by subsection (1) to modify or revoke permission to develop land may be exercised—

(a) if the permission relates to carrying out building or other operations, at any time before those operations have been completed;

(b) if the permission relates to a change of use of any land, at any time before the change has taken place; or

(c) if the permission relates to the subdivision of land, at any time before the legal instruments subdividing the land have been registered.

(3) The modification or revocation of permission for the carrying out of building or other operations does not affect any part of the permitted operations that have been carried out before the date of the notice.

(4) Any person who has incurred expenditure in carrying out work that is rendered abortive by the modification or revocation of permission under this section, including any expenditure incurred in the preparation of plans or upon similar matters for the purposes of or preparatory to such work, or has otherwise suffered loss or damage directly attributable to such modification or revocation, is entitled to adequate compensation in respect of that expenditure, loss or damage.

(5) No compensation is payable under subsection (4) in respect of loss or damage consisting of the depreciation in value of any interest in land by virtue of the modification or revocation of permission.

Preservation of sites and buildings of interest.

36. (1) The Director of Physical Planning shall compile lists of buildings, monuments and sites of special archaeological or historic interest, or may adopt, with or without modifications, any such list compiled by any non-governmental organisation, community organisation, or national trust established for Nevis and may amend any such list from time to time.

(Amended by Ordinance 1 of 2019)

(2) Before the Director of Physical Planning compiles a list pursuant to subsection (1), he must take reasonable steps to ensure that—

(a) adequate publicity is given to the proposed sites and building;

(b) persons who may wish to make representations with respect to the proposed sites and buildings are invited and given an adequate opportunity to make representations on the proposal; and

(c) any representations made on the proposal are taken into account in deciding whether the sites and buildings should be listed.

(3) As soon as may be practicable after the inclusion of any building, monument or site on any list compiled or adopted under subsection (1), or any amendments to a list have been made, the Director of Physical Planning must serve notice on every owner and occupier of the building or land stating that the building, monument or site has been included in or removed from the list, as the case may be, and publish any such list or amendment to a list in the *Gazette* in at least one newspaper in general circulation in the Island of Nevis and on the official website of the Nevis Island Administration.

(Amended by Ordinance 1 of 2019)

(4) No person may execute or cause or permit to be executed any works for the demolition or alteration of a building or monument or disturbance of a site included in a list compiled or adopted under subsection (1) that would seriously affect its character, whether or not such works would ordinarily constitute permitted development under this Ordinance, unless notice of the proposed works is given to the Director of Physical Planning at least ninety days before the works are commenced.

(5) If notice of any proposed works has been given pursuant to subsection (3), the Director of Physical Planning must as soon as may be practicable send a copy of the notice to the Nevis Historical and Conservation Society or any National Trust established for Nevis for their consideration and comments.

(Amended by Ordinance 1 of 2019)

(6) A person who carries out any works in contravention of subsection (4), commits an offence and is liable on summary conviction to a fine up to a maximum of ten thousand dollars and in addition to a fine the Magistrate may order the convicted person to restore the affected building, monument or site to its former state, as far as practicable and in default to imprisonment for a maximum period of six months.

(7) Nothing in this section renders unlawful the execution of any works that are urgently required in the interests of health or safety or for the preservation of the building, monument or site or of neighbouring property, provided that notice thereof is given to the Director of Physical Planning no more than seven days after the necessity for the work arises.

(8) The owner or occupier of any building, monument or land which is included in a list of buildings, monuments and sites of special archaeological or historic interest, published by the Director of Physical Planning pursuant to subsection (3), may appeal in writing against that decision to the Minister, setting out the grounds upon which the appeal is made.

(Amended by Ordinance 1 of 2019)

(9) The provisions of section 31 apply with the necessary modifications to the hearing of appeals made under this section.

(10) If on any appeal under this section, the Appeal Tribunal decides that a listed site, building or monument should be removed from a list, the Director of Physical Planning shall amend the list accordingly.

Protection of natural areas.

37. (1) The Director of Physical Planning shall compile lists of places of natural beauty or natural interest, or may adopt, with or without modifications, any such lists

compiled by any non-governmental organisation, community organisation, or national trust established for Nevis, and may amend any such lists from time to time.
(Amended by Ordinance 1 of 2019)

(2) If the Director of Physical Planning is of the view that it is desirable to afford special protection to any area on a list compiled or adopted under subsection (1), the Minister may by order, published in the *Gazette*, at least once in a newspaper of general circulation in the Island of Nevis, and on the official website of the Nevis Island Administration declare that area to be an environmental protection area.
(Amended by Ordinance 1 of 2019)

(3) Before the Minister makes an order pursuant to subsection (2), the Director of Physical Planning must take reasonable steps to ensure that—

(a) adequate publicity is given to the proposed declaration within the proposed environmental protection area;

(b) persons who may wish to make representations with respect to the proposed declaration are invited and given an adequate opportunity to make representations on the proposal; and

(c) any representations made on the proposal are taken into account in deciding whether the order should be made.

(4) An order made under subsection (2) may—

(a) authorise the carrying out within the protected area of such works as may be expedient for the protection or rehabilitation of the environment in the area;

(b) require that an environmental impact assessment be carried out with respect to every application for development within the area;

(c) restrict or prohibit development, or development of any class, within the area;

(d) provide for the control over the use of land within the area for the purposes of agriculture, forestry or fisheries; or

(e) restrict the entry of persons into the area or the movement of persons or the carrying out of activities by persons within the area.

(5) If any land within an area declared an environmental protection area in accordance with the provisions of subsection (2) depreciates in value as a result of any restriction placed on its use or development by the order, adequate compensation must be paid to the owners of that land.

Maintenance of derelict buildings, wasteland and watercourses.

38. (1) If it appears to the Director of Physical Planning that the amenity of any area is seriously injured by reason of the ruinous, unsafe or dilapidated condition of any building, or by the condition of any garden, vacant site or other open land, or the occupation of land or a public road for any unauthorised purpose, including the repair of vehicles, the Director of Physical Planning may serve on the owner or occupier of the land, or the person responsible for the injury, a notice requiring such steps to be taken for abating the injury as may be specified.

(2) If any step specified in a notice served under subsection (1) is not complied with, the Director of Physical Planning may cause the work required to abate the injury to be executed and recover as a civil debt in any Court of competent

jurisdiction from the owner or the occupier any expenses reasonably incurred for the step taken under this subsection.

(Amended by Ordinance 1 of 2019)

(3) All watercourses in Nevis are hereby declared to be "areas of special concern".

(4) The Minister may make Regulations in order to ensure that all watercourses are maintained or re-established stabilised and productive natural drainages.

(5) Any person who constructs or has constructed anytime in the past any structure or causes or has caused anytime in the past the natural flow of water to be obstructed or diverted in any manner or pollutes or litter or undertakes any other activity that may be prohibited from time to time, in any area of special concern, without the written permission of the Director of Physical Planning, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a period not exceeding six months or both and to a further fine of one hundred dollars per day for each day the offence continues after such conviction.

(Amended by Ordinance 1 of 2019)

(6) In any case where a watercourse flows through, adjacent to or under any property and the owner of that property fails to comply with the provisions of this Ordinance or any Regulations made thereunder, it shall be lawful for the Director of Physical Planning after giving to the owner notice of such duration as may be necessary, to authorise the Director of Public Works to take such measures with respect to the watercourse including, entering upon the land and carrying out thereon all such work as may be necessary for the purpose of remedying the obstruction or diversion or other activity that may be prohibited.

(Amended by Ordinance 1 of 2019)

(7) The cost of carrying out any work under subsection (6) shall be payable by the owner and if unpaid may be recoverable from the owner by civil action as a debt due to the Nevis Island Administration.

Advertisement control.

39. (1) The Minister may make Regulations under this Ordinance (referred to as "Advertisement Control Regulations") for restricting or controlling the display of advertisements so far as is expedient in the interests of amenity or public safety and, without restricting the generality of the foregoing, any such Regulations may—

(a) regulate the dimensions, appearance and position of advertisements that may be displayed, the sites on which advertisements may be displayed and the manner in which they are affixed to buildings or land;

(b) prescribe different provisions with respect to different areas or places and in particular make special provisions with respect to areas or places defined in the Regulations as areas of special control, the amenities of which appear to require special protection;

(c) prohibit the display in areas of special control of all advertisements of such classes or descriptions as may be specified in the Regulations;

(d) provide for the removal of any advertisement that is being displayed in contravention of the Regulations or the discontinuation of the use for

the exhibition or display of advertisements of any site that is being used for that purpose in contravention of the Regulations.

(2) Regulations made under this section may be made so as to apply to advertisements which are being exhibited or displayed on the date on which the Regulations come into force or to the use for the exhibition or display of advertisements of any site which was being used for that purpose on that date.

PART V

ENFORCEMENT

Enforcement notices.

40. (1) If it appears to the Director of Physical Planning that—

(a) any development of land has been carried out after this Ordinance comes into force without the granting of permission required under this Ordinance; or

(b) the developer has not complied with any condition subject to which permission was granted with respect to any development under this Ordinance,

the Director of Physical Planning may, if it is expedient to do so having regard to the provisions of the development plan for the area, if any, and to any other material considerations, within four years of the development being carried out or, in the case of non-compliance with a condition, of the date of the alleged failure to comply with it, serve an enforcement notice issued under this subsection on the owner and or the occupier of the land.

(2) An enforcement notice issued under subsection (1)—

(a) must specify the development that is alleged to have been carried out without permission or the matters in respect of which it is alleged that the development does not comply with the conditions subject to which permission was granted, as the case may be; and

(b) may at the expense of the owner and or occupier of the land require the steps specified in the notice to be taken within a specified period for restoring the land to its condition before development took place or for securing compliance with the conditions, as the case may be including but not limited to—

(i) the cessation, demolition or variation of any building, engineering, mining or other operations;

(ii) the discontinuance of any use of land; or

(iii) the carrying out of any building, engineering or other operations.

(3) An enforcement notice must be served no less than three to twenty-eight days as specified in the notice before it takes effect and, except as otherwise provided in this section, takes effect at the expiration of the period specified in the notice.

(4) The fact that the Director of Physical Planning fails to serve an enforcement notice on either of the persons mentioned in subsection (1) does not

invalidate any proceedings under the enforcement notice against the other of those persons.

(5) If, before the enforcement notice takes effect, an application is made to the Director of Physical Planning for permission for—

(a) the retention on 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 is suspended pending the determination of that application and, if the permission applied for is granted by the Director of Physical Planning, the enforcement notice does not take effect.

(6) If, before the enforcement notice takes effect, an appeal is made to the Court under section 41 by a person on whom the enforcement notice was served, the operation of the enforcement notice is suspended pending the final determination or withdrawal of the appeal.

(7) Compliance with an enforcement notice does not discharge the enforcement notice.

(8) The Director of Physical Planning may at any time revoke an enforcement notice without affecting the power to serve another enforcement notice in respect of the same alleged breach of the provisions of this Ordinance.

(9) If an enforcement notice is revoked under subsection (8), the Director of Physical Planning must serve notice of the revocation on every person on whom the enforcement notice was served.

Right to appeal against enforcement notice.

41. (1) If any person on whom an enforcement notice has been served is aggrieved by the enforcement notice, that person may, at any time before the enforcement notice takes effect, appeal against the enforcement notice to the Magistrate's Court by way of Civil Summons.

(2) On an appeal made pursuant to subsection (1), the Court—

(a) if satisfied that permission was granted for the development to which the notice relates, or that no such permission was required in respect of that development, or the conditions subject to which permission was granted have been complied with, as the case may be, must quash the enforcement notice to which the appeal relates; or

(Amended by Ordinance 1 of 2019)

(b) in any other case, must dismiss the appeal.

(3) When an appeal is dismissed by a Magistrate's Court pursuant to subsection (2)(b), the Court may direct that the enforcement notice does not take effect until such date, not being later than twenty-eight days from the date of determination of the appeal, as the Court thinks fit.

(4) Any person aggrieved by a decision of a Magistrate's Court under subsection (2) may appeal against that decision to the Court of Appeal by filing a Notice of Appeal within twenty-eight days.

Stop notices.

42. (1) If in the opinion of the Director of Physical Planning it is expedient to prevent the carrying out of a development in relation to which planning permission has not been granted, he may serve a stop notice in respect of that land prohibiting any person on whom it is served (whether by themselves or through their agents or servants) from carrying on or continuing any specified operations on the land.

(Substituted by Ordinance 1 of 2019)

(2) If a stop notice is to be served in respect of any land in relation to which an enforcement notice has already been served with regard to any specified operations on the land—

(a) alleged to be carried out without permission;

(b) in breach of conditions subject to which permission was granted; or

(c) so closely associated with those operations as to constitute substantially the same operations,

then the stop notice must not be served before the expiry of the period allowed for compliance in the enforcement notice and must contain a reference to, and have annexed to it a copy of the enforcement notice previously served.

(Substituted by Ordinance 1 of 2019)

(3) A stop notice served by the Director of Physical Planning on any person who appears to have an interest in the land to which it relates or to be concerned with the carrying out of any operations thereon and must be posted up or affixed in some conspicuous place on the land to which it relates.

(4) A stop notice takes effect on its date of service and, without prejudice to subsection (6), ceases to have effect when—

(a) permission is granted for the retention of the development to which the enforcement notice relates; or

(b) the enforcement notice to which the stop notice relates is revoked by the Director of Physical Planning or quashed by the Court; or

(c) the Director of Physical Planning enters upon the land under section 44.

(5) A stop notice is not invalid by reason that the enforcement notice to which it relates was not properly served on the owner and occupier of the land as required by section 40, if it is shown that the Director of Physical Planning took all such steps as were reasonably practicable to effect proper service.

(6) The Director of Physical Planning may at any time revoke a stop notice without affecting the power to serve another stop notice in respect of the same alleged breach of the provisions of this Ordinance.

(7) If a stop notice is revoked under subsection (6), the Director of Physical Planning must serve notice of the revocation on every person on whom the stop notice was served.

Right to appeal against stop notice.

[*]**43.** (1) If any person on whom a stop notice has been served is aggrieved by the stop notice, that person may appeal against the stop notice to the Magistrate's Court by way of Civil Summons.

(2) On an appeal made pursuant to subsection (1), the Court—

(a) if satisfied that permission was granted for the development to which the notice relates, or that no such permission was required in respect of that development, or the conditions subject to which permission was granted have been complied with, as the case may be, must quash the stop notice to which the appeal relates; or

(b) in any other case, must dismiss the appeal.

(3) Any person aggrieved by a decision of a Magistrate's Court under subsection (2) may appeal against that decision to the Court of Appeal by filing a Notice of Appeal within twenty-eight days.

(Inserted by Ordinance 1 of 2019)

Power to enter land and execute remedial work.

44. (1) If within the period specified in an enforcement notice, or such extended period as the Director of Physical Planning may allow, any steps required by the enforcement notice to be taken (other than the discontinuation of any use of land) have not been taken, the Director of Physical Planning may, by staff of the Nevis Island Administration or by contractors and accompanied by at least two Police officers, enter upon the land and take those steps and recover as a civil debt in any Court of competent jurisdiction any expenses reasonably incurred for those purposes from the person who is then the owner of the land.

(Amended by Ordinance 1 of 2019)

(2) A person who obstructs or interferes with the exercise of the power vested in the Director of Physical Planning by subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a period not exceeding six months or both.

(Amended by Ordinance 1 of 2019)

(3) A person who carries out any operations to reinstate or restore buildings or other works that have been demolished or altered pursuant to subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a period not exceeding six months or both.

(4) If in any proceedings for the recovery of expenses filed by the Ministry pursuant to subsection (1), the defendant, having been entitled to appeal to the Magistrate's Court under section 41, failed to make such an appeal, he or she is not entitled to dispute the validity of the action taken by the Director of Physical Planning under subsection (1) on any ground that could have been raised in such an appeal.

(Amended by Ordinance 1 of 2019)

(5) All the expenses incurred by the owner or occupier of any land for the purposes of complying with an enforcement notice served under section 40 in respect of any development, and any sums paid by the owner of the land in respect of the

[*] Inserted by Ordinance 1 of 2019 as section 40A and renumbered as section 43 and subsequent sections renumbered accordingly.

expenses incurred pursuant to subsection (1), are deemed to have been incurred or paid for the use and at the request of the person by whom the unauthorised development was carried out.

Non-compliance with enforcement or stop notice.

45. (1) If, by virtue of an enforcement notice, any use of land is or any operations on land are to be discontinued, or any conditions are required to be complied with in respect of the use of land or in respect of the carrying out of any operations on land, any person who, after that notice takes effect, uses the land or causes or permits the land to be used, or carries out or causes or permits to be carried out those operations, in contravention of the enforcement notice, commits an offence and is liable on summary conviction to a fine not exceeding the sum of ten thousand dollars or imprisonment for a period not exceeding six months or both and, in addition the Magistrate may order the convicted person to take whatever action deemed necessary in the circumstances to comply with the enforcement notice including but not limited to demolishing or removing any structure on the land or in case of a continuing offence, to a further fine of one hundred dollars for every day after the first day when the use is so continued.

(2) If an enforcement notice has been served on a person who was, when the enforcement notice was served on that person, the owner of the land to which the enforcement notice relates and, within the period specified by the notice or such extended period as the Director of Physical Planning may allow, to remove, demolish or alter any buildings or other works on that land have not been taken, that person, whether or not he is still the owner of the land, commits an offence and is liable on summary conviction to a fine not exceeding the sum of ten thousand dollars or imprisonment for a period not exceeding six months or both and, in addition the Magistrate may order the convicted person to take whatever action deemed necessary in the circumstances to comply with the enforcement notice including but not limited to demolishing or removing any structure on the land and, in the case of a continuing offence, to a further fine of one hundred dollars for every day after the first day when the requirements of the enforcement notice have not been met.

(3) If a person against whom proceedings are brought under subsection (2) has, at some time before the end of the period specified in the enforcement notice or such extended period as the Director of Physical Planning may allow for compliance with the notice, ceased to be the owner of the land, he is entitled, after giving the prosecution reasonable notice of the change in ownership, to have the person who subsequently became the owner of the land brought before the Court in the proceedings.

(4) If, after it has been proved that any steps required by the enforcement notice have not been taken as required, the original defendant proves that the failure to take the required steps is attributable wholly or in part to the default of the person who subsequently became the owner of the land, the latter may be convicted of the offence and the original owner may be acquitted.

(5) A person on whom a stop notice has been served who carries out, or causes or permits to be carried out any operations prohibited by the notice, commits an offence and is liable on summary conviction to a fine not exceeding the sum of ten thousand dollars or imprisonment for a period not exceeding six months or both and, in addition the Magistrate may order the convicted person to take whatever action deemed necessary in the circumstances to comply with the stop order including but not limited to demolishing or removing any structure on the land and, in the case of a

continuing offence, a further fine not exceeding one hundred dollars a day for every day after the first day on which the offence continues.

Injunctions.

46. In addition to any other remedy provided by this Ordinance, the Director of Physical Planning may in any case institute a civil action for an injunction to prevent any person from violating the provisions of this Ordinance, or to enforce any enforcement notice or stop notice, whether or not the Director of Physical Planning has exercised or proposes to exercise any of the other powers under this Part.

PART VI

COMPENSATION AND ACQUISITION

Claims for compensation.

47. (1) Compensation for which provision is made by this Ordinance is only payable if a claim for it is made in accordance with the provisions of this section.

(2) A claim for compensation alleged to be payable under this Ordinance must be made in writing to the Minister within six months of the date upon which the act or circumstance which gives rise to such claim arose, unless the Minister in any particular case extends the period within which such a claim may be made.

(Amended by Ordinance 1 of 2019)

(3) The Minister may require a claimant to provide such further information in support of a claim for compensation as is necessary for its determination, and a decision on the claim may be deferred until after such further information has been received by the Minister.

(4) If a claim for compensation arises from a decision of the Director of Physical Planning and it appears to the Minister that the decision which gave rise to the claim for compensation might properly be withdrawn or modified, the Minister may refer the matter to an Appeal Tribunal for its determination as if the claim for compensation had included an appeal made pursuant to section 31 against that decision.

(5) Compensation payable under this Ordinance is, in default of determination by agreement, to be determined by a panel of arbitrators comprising—

(a) one person nominated by the Minister;

(b) one person nominated by the claimant; and

(c) one other person chosen by agreement between the arbitrators appointed by the parties, to be Chairperson of the panel.

Exclusion or limitation of compensation in certain cases.

48. Compensation is not payable under this Ordinance in respect of a decision by the Director of Physical Planning whereby permission is refused, modified or revoked for the development of land if, notwithstanding that refusal, modification or revocation, there is available with respect to that land permission for a development of the land consisting of the construction of residential, industrial or commercial buildings, including hotels and ancillary tourism facilities, or any combination of such buildings.

Compulsory acquisition.

49. (1) The Nevis Island Administration may purchase by agreement any land which is required for the purposes of implementing a physical plan or re-establishing a watercourse or improving upon the drainage conditions in an area, and may, where it is unable to acquire such land by agreement, acquire it in accordance with the provisions of the Nevis Land Acquisition Ordinance, Cap. 4.02(N).

(Amended by Ordinance 1 of 2019)

(2) If a claim for compensation has been determined under this Part, the Minister may, within one month of the date of the determination of such compensation and instead of having the same paid, cause an offer in writing to purchase the land to which the compensation relates to be made to the person entitled to that compensation and, if the person entitled to the compensation is unwilling to sell the land, the Nevis Island Administration may acquire it in accordance with the provisions of the Nevis Land Acquisition Ordinance.

(Amended by Ordinance 1 of 2019)

(3) The Nevis Island Administration may, by way of sale or lease, dispose of land acquired compulsorily under this Part to any statutory undertaker or other person for development in Tourism or Industry in accordance with permission granted under Part IV.

(4) A member of the Nevis Island Administration or a public officer who directly or indirectly profits or attempts or conspires to profit personally, or by his or her business or political associate, or spouse, domestic partner or other near relative, from a decision of the Nevis Island Administration to dispose of land acquired compulsorily under this section to a person other than a statutory undertaker pursuant to subsection (3), commits an indictable offence and is liable on conviction to a fine not exceeding twenty thousand dollars or imprisonment for a period not exceeding five years or both.

PART VII

MISCELLANEOUS

Registers to be kept.

50. (1) The Director of Physical Planning must maintain such registers as may be necessary or convenient for recording—

(a) the following particulars of an application for permission to develop land of a class listed in the Fourth Schedule—

(i) the name and address of the applicant;

(ii) the date of the application;

(iii) a brief description of the proposed development forming the subject of the application;

(iv) the date and effect of any decision made in respect of the application;

(v) any appeal in respect of the original decision and the decision made on the appeal;

(vi) any modification or revocation of any permission granted in respect of any such application;

(b) any enforcement notice or stop notice issued in respect of any development of land; and

(c) any commencement notice received and any completion certificate issued.

(Amended by Ordinance 1 of 2019)

*(2) The Director of Physical Planning may maintain any register required to be kept pursuant to subsection (1) in an electronic data storage and retrieval system.

(Amended by Ordinance 1 of 2019)

(3) Every entry in the register must be made within fourteen days of the date on which the decision, notice or event to which it relates was made, filed, issued or done.

(Amended by Ordinance 1 of 2019)

(4) The register must be kept at the office of the department of the Nevis Island Administration charged with responsibility for physical planning and development control, and any person is entitled, during ordinary business hours, to have access to the information recorded therein free of charge and to take copies of such information on payment of the prescribed fee.

Notification to be given to the Registrar.

51. (1) The Director of Physical Planning must provide to the Land Registrar copies of a physical plan, building Regulations and building codes which must be displayed in a conspicuous place in the land registry.

(2) The Director of Physical Planning must notify the Land Registrar and the Inland Revenue Department, giving full details of every parcel of land affected, of every order, notice or certificate given or served (including the approval of development plans) under this Ordinance affecting the title to or transferability of land.

(3) Prior to transferring any land pursuant to a Court Order, the Title by Registration Act or the Conveyancing and Law of Property Act, the Land Registrar shall notify the purchaser or the person entitled to the land by a Court Order of any order, notice or certificate given or served pursuant to subsection (2).

Restriction on granting business licence.

52. (1) Prior to the granting or renewing of a license pursuant to the Licences on Businesses and Occupations Act, Cap. 18.20 which relates to the use of any property

* Section 50(2) deleted and following subsections renumbered accordingly.

the Nevis Island Administration must forthwith send a copy of the application to the Director of Physical Planning.

(Amended by Ordinance 1 of 2019)

(2) Having regard to a physical plan, the building Regulations and building code, the Director of Physical Planning must send a report to the Nevis Island Administration within fourteen days recommending whether to approve or reject the application and the Nevis Island Administration shall make a determination as it sees fit.

Restriction on granting liquor licence.

53. (1) Prior to the granting or renewing of a liquor licence pursuant to the Liquor Licence Act which relates to the use of any property to sell liquor, the Magistrate must send a copy of the application to the Director of Physical Planning.

(2) Having regard to a physical plan, the building Regulations and building code, the Director of Physical Planning must send a report to the Magistrate within fourteen days recommending whether to approve or reject the application and the Magistrate shall make a determination as he sees fit.

Powers of entry, etc.

54. (1) Any member of Cabinet or any member of the Development Advisory Committee may enter upon any land for the purpose of inspection or survey, if an application with respect to the land or building has been made to the Director of Physical Planning.

(2) The Director of Physical Planning may authorise in writing any person to enter upon any land or into any building at any reasonable time, for the purpose of inspection or survey if an application with respect to the land or building has been made to the Director of Physical Planning or if the Director of Physical Planning has reason to believe that an infringement of the provisions of this Ordinance has occurred or is about to occur.

(3) A person authorised pursuant to subsection (2), must, if so required, produce evidence of his or her authority to the occupier before entering any land or building.

(4) Any person who obstructs a person acting in the exercise of his or her power under this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a period not exceeding six months or both.

Service of notices.

55. Any notice or other document required or authorised to be served or given under this Ordinance, or under any Regulation, Order, notice, direction, agreement or other instrument in writing made under this Ordinance, may be served or given either—

(a) by delivering it to the person on whom it is to be served or to whom it is to be given;

(b) by leaving it at the usual or last known place of abode of that person, or in the case where an address for service has been furnished by that person, at that address;

(c) by sending it by prepaid registered letter addressed to that person at that person's usual or last known place of abode, or in the case where an address for service has been furnished by that person, to that address; or

(d) in the case of an incorporated company or body, by delivering it to an officer or manager of the company or body at their registered or principal office, or sending it by prepaid registered letter addressed to the Secretary of the company or body at that office.

Qualification of existing laws.

56. (1) The provisions of this Ordinance and any restrictions imposed or powers conferred by it in relation to the development of land apply and may be exercised in relation to any land, notwithstanding that provision is made by any other law in force at the passing of this Ordinance for authorising or regulating the development of the land.

(2) In any case where an application by an alien for a licence to hold land, or for an exemption from the provisions of the Aliens Land Holding Regulation Act, is made in contemplation of the development of land, Cabinet must consult the Director of Physical Planning before exercising the powers conferred upon it by the Aliens Land Holding Regulation Act, Cap. 10.01.

(Amended by Ordinance 1 of 2019)

Regulations.

57. (1) The Minister may make Regulations, subject to negative resolution of the House of Assembly for giving effect to the provisions of this Ordinance.

(2) Without limiting subsection (1), the Minister may make Regulations with respect to—

(a) prescribing planning and development standards;

(b) the form of any application, notice, order, certificate or other document required to be made, issued or served under this Ordinance;

(c) the payment of fees on the submission, examination and all matters pertaining to any application under this Ordinance;

(d) prescribing prohibitive areas near schools in connection with the selling of alcohol;

(e) prescribing anything required by this Ordinance to be prescribed.

(3) Regulations made under this Ordinance may provide for the imposition of a fine not exceeding ten thousand dollars or imprisonment for a period not exceeding six months or both for the contravention of any provision of the Regulations.

(4) The Minister may by order amend the Schedule to this Ordinance.

(5) Any Regulations made and orders issued under this Ordinance must be published in the *Gazette*.

Ordinance binds the Crown, etc.

58. This Ordinance binds the Crown, the Nevis Island Administration and all statutory undertakers.

Conflicts.

59. (1) Where the provisions of this Ordinance conflict with those of the Nevis Zoning Plan Ordinance, Cap. 6.04(N), the provisions of this Ordinance shall prevail.
(Amended by Ordinance 1 of 2019)

(2) The Watercourses and Waterworks Act, Cap. 11.06 for the Island of Nevis is hereby amended by inserting the following new definition before the definition "distribution area"—

"Director of Physical Planning" means the person for the time being carrying out the functions of the head of the department of the Nevis Island Administration charged with responsibility for physical planning and development control.

(3) The Watercourses and Waterworks Act, Cap. 11.06 for the Island of Nevis is hereby amended by inserting the following new section:

"27. The Board shall not grant an application by any person for water to be supplied to any premises until the Director of Physical Planning has confirmed that the premises has been granted development permission in accordance with the provisions of the Nevis Physical Planning and Development Control Ordinance.".

Savings.

60. (1) The Building Regulations made under section 10 of the Building Act continue in force with respect to the Island of Nevis upon the coming into force of this Ordinance, until revoked or amended by Building Regulations made under section 26(2).

(2) In so far as anything done under an enactment repealed by this Ordinance with respect to Nevis could have been done under a corresponding provision of this Ordinance, it is not invalidated by the repeal but has effect as if done under that provision.

References to repealed enactments.

61. If any document refers expressly or by implication to an enactment repealed by this Ordinance, the reference must be construed as a reference to the corresponding provision of this Ordinance, unless the context requires otherwise.

Transitional.

62. (1) Every application made under an enactment repealed by this Ordinance and wholly or partly heard by the relevant authority when this Ordinance comes into force is to be continued and dealt with in all respects as if this Ordinance had not come into force.

(2) Every application made under a repealed enactment that has not been wholly or partly heard by the relevant authority when this Ordinance comes into force is to be taken as an application made under this Ordinance and this Ordinance applies accordingly.

(3) If a period of time specified in an enactment repealed by this Ordinance is current when this Ordinance comes into force, and there is a corresponding provision in this Ordinance, this Ordinance has effect as if the corresponding provision had been in force when that period began to run.

(4) Every appeal made under an enactment repealed by this Ordinance that has been commenced but not finally determined before this Ordinance comes into force, is to be continued and dealt with as if this Ordinance had not come into force.

(5) If, immediately before this Ordinance comes into force, a claim for compensation under an enactment repealed by this Ordinance has been or could have been made, that claim may be made or continued or enforced in all respects as if this Ordinance had not come into force.

(6) All proceedings with respect to breaches of or offences committed against an enactment repealed by this Ordinance may be commenced as if this Ordinance had not come into force.

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FIRST SCHEDULE

MATTERS FOR WHICH PROVISON MAY BE MADE IN PHYSICAL PLANS

PART I

ROADS

Reservation of land for roads and establishment of public rights of way including public rights of way to and over beaches.

Closing or diversion of existing roads and public and private rights of way.

Construction of new roads and alteration of existing roads.

The line, width, level, construction, access to and egress from and the general dimensions and character of roads, whether new or existing.

Providing for and generally regulating the construction or execution of works incidental to the making or improvement of any road, including the erection of bridges, culverts, gullies, fencing, barriers, shelters, the provision of artificial lighting, and seats and the planting or protecting of grass, trees and shrubs on or adjoining such road.

PART II

BUILDING AND OTHER STRUCTURES

Regulating and controlling, either generally or in particular areas all or any of the following matters:

the size and height of building and fences;

building lines, coverage and the space about buildings;

the objects which may be affixed to buildings;

the purposes for and the manner in which buildings may be used or occupied including in the case of dwelling houses, the letting thereof in separate tenements;

the prohibition of building or other operations on any land, or regulating such operations.

Regulating and controlling the design, colour and materials of buildings and fences.

Allocating any particular land, or all land in any particular area, for buildings of a specified class or classes or prohibiting or restricting either permanently or temporarily, the making of any building or any particular class or classes of buildings on any specified land.

Limiting the number of buildings or the number of buildings of a specified class which may be constructed, erected or made, on, in or under any area.

PART III

COMMUNITY PLANNING

Providing for the control of land by zoning or designating specific uses.

Regulating the layout of housing areas including density, spacing, grouping and orientation of houses in relation to roads, open spaces and other buildings.

Determining the provision and sitting of community facilities including shops, schools, churches, meeting halls, play centres and recreation grounds in relation to the number and sitting of houses.

PART IV

AMENITIES

1. Allocation of lands as open spaces whether public or private.

2. Allocation of land for burial grounds and crematoria.

3. Allocation of lands for—

   (a) communal parks;

   (b) game and bird sanctuaries;

   (c) the protection of marine life;

   (d) national parks and environmental protected areas.

4. Preservation of buildings, caves, sites and objects of artistic, architectural, archaeological, historical, or cultural interest.

5. Preservation or protection of forests, woods, trees, shrubs, plants and flowers.

6. Protection of the coastal zone, designation of marine parks, special resource and special use areas.

7. Prohibiting, restricting or controlling, either generally or in particular places, the exhibition, whether on the ground, or any building or any temporary erection, whether on land or in water, or in the air, of all or any particular forms of advertisement or other public notices.

8. Preventing, remedying or removing injury to amenities arising from the ruinous or neglected condition of any building or fence, or by the objectionable or neglected condition of any land attached to a building or fence or abutting on a road or situate in a residential area.

9. Prohibiting, regulating and controlling the deposit or disposal of waste materials and refuse, the disposal of sewage and the pollution of rivers, lakes, ponds, gullies, beaches and the seashore.

PART V

PUBLIC SERVICES

Facilitating the establishment, extension or improvement of works by statutory or other undertakers in relation to power, lighting, water supply, sewerage, drainage, sewage disposal, refuse disposal or other public services.

PART VI

TRANSPORT AND COMMUNICATIONS

Facilitating the establishment, extension or improvement of systems of transport whether by land, water or air.

Allocating sites for use in relation to transport, and the reservation of land for that purpose.

Providing for the establishment, extension or improvement of telegraphic, telephonic, wireless or radar communication, the allocating of sites for use in relation to such communication, and the reservation of land for that purpose.

PART VII

MISCELLANEOUS

Providing for and regulating the making of agreements for the purpose of a development plan by the Minister with owners and other persons, and by such persons with one another.

Subdivision of land and in particular, but without restricting the generality of the foregoing—

(a) regulating the type of development to be carried out and the size and form of plots;

(b) requiring the allocation of land for any of the public services referred to in Part V or for any other purposes referred to in this Schedule for which land may be allocated;

(c) prescribing the character and type of public services or other works which shall be undertaken and completed by any applicant for permission to subdivide as a condition of the grant of such permission;

(d) co-ordinating the subdivision of contiguous properties in order to give effect to any scheme of development appertaining to such properties.

Making any provisions necessary for—

(a) adjusting and altering the boundaries and areas of any towns;

(b) enabling the establishment of satellite towns and new towns;

(c) effecting such exchanges of land or cancellation of existing subdivision plans as may be necessary or convenient for the purposes aforesaid.

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SECOND SCHEDULE

(Section 23)

MATTERS FOR WHICH ENVIRONMENTAL IMPACT ASSESSMENT IS ORDINARILY REQUIRED

Hotels;

Subdivisions of more than 4 lots;

Residential development of more than 4 units;

Any industrial plant which is likely to cause significant adverse environmental impact;

Quarrying and other mining activities;

Marinas;

Land reclamation, dredging and filling of ponds;

Airports, ports and harbours;

Dams and reservoirs;

Hydro-electric projects and power plants;

Desalination plants;

Water purification plants;

Sanitary land fill operations, solid waste disposal sites, toxic waste disposal sites and other similar sites;

Gas pipeline installations;

Any development projects generating or potentially generating emissions, aqueous effluent, solid waste, noise/vibration or radioactive discharges;

Any development involving the storage and use of hazardous materials;

Coastal zone developments (and in this context the definition of beach at section 2 shall apply);

Development in wetlands, marine parks, national parks, conservation areas, environmental protection areas or other sensitive environmental area;

or any other development that the Director of Physical Planning deems fit.

(Amended by Ordinance 1 of 2019)

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THIRD SCHEDULE

(Section 24)

CLASSES OF APPLICATIONS THAT MAY BE DETERMNED BY THE DIRECTOR OF PHYSICAL PLANNING

Applications for the construction, alteration, extension, renovation or demolition of timber frame buildings/buildings to which the Building Guidelines apply.

Applications for the construction, alteration, extension, renovation or demolition of single family dwelling houses on building lots within approved land development schemes.

Applications for the conversion of single family dwelling houses of less than 300 square metres (3,300 square feet) gross floor area into two or more separate dwelling units.

Applications for the change of use of buildings within the boundaries of Charlestown from residential use to commercial use as offices or shops.

Applications for the display of advertisements.

FOURTH SCHEDULE

(Section 29)

CLASSES OF APPLICATIONS THAT MUST BE PUBLICISED

1. Applications for permission to carry out any development in connection with which an Environmental Impact Assessment is required.

2. Applications for permission to demolish renovate or alter a listed building, in whole or in part.

3. Applications for permission to carry out mining or mineral processing operations.

4. Applications for permission for development of an auto-repair shop, garage or gasoline station.

5. Applications for permission to develop a welding or metal fabrication shop.

6. Applications for permission to construct buildings or for the use of land for the purposes of a casino, gambling hall, recreation club, liquor shop, bingo hall, music hall, dance hall, theatre, cinema or sports hall.

7. Applications for permission to develop a sewage treatment or disposal plant.

8. Applications for permission to deposit, store, or otherwise deal with toxic or hazardous wastes.

9. Applications for permission to develop manufacturing process which will involve either directly or as waste, the production of toxic or other hazardous substances.

10. Applications for permission to construct buildings or for use of land for the purposes of fish farming, animal husbandry, processing of fish, plucking of poultry or as a slaughterhouse.
