

PART VIII

PLANNING AND DEVELOPMENT

Purpose of Part

190 The purpose of this Part is to

(a) enable the Province to identify and protect its interests in the use and development of land;

(b) enable municipalities to assume the primary authority for planning within their respective jurisdictions, consistent with their urban or rural character, through the adoption of municipal planning strategies and land-use by-laws consistent with interests and regulations of the Province;

(c) establish a consultative process to ensure the right of the public to have access to information and to participate in the formulation of planning strategies and by-laws, including the right to be notified and heard before decisions are made pursuant to this Part; and

(d) provide for the fair, reasonable and efficient administration of this Part.

Interpretation

191 In this Part and Part IX, unless the context otherwise requires

(a) "aggrieved person" includes

(i) an individual who *bona fide* believes the decision of the council will adversely affect the value, or reasonable enjoyment, of the person's property or the reasonable enjoyment of property occupied by the person,

(ii) an incorporated organization, the objects of which include promoting or protecting the quality of life of persons residing in the neighbourhood affected by the council's decision, or features, structures or sites of the community affected by the council's decision, having significant cultural, architectural or recreational value, and

(iii) an incorporated or unincorporated organization in which the majority of members are individuals referred to in subclause (i);

(b) "commission" means a district planning commission continued pursuant to this Act;

(c) "development" includes the erection, construction, alteration, placement, location, replacement or relocation of, or addition to, a structure and a change or alteration in the use made of land or structures;

(d) "development officer" means the person or persons appointed by a council to administer a land-use or subdivision by-law;

(e) "Director" means the Provincial Director of Planning appointed pursuant to this Part, and includes a person acting under the supervision and direction of the Director;

(f) "former *Planning Act*" means Chapter 346 of the Revised Statutes, 1989, the *Planning Act* and any predecessor to that Act;

(g) "incentive or bonus zoning" means requirements that permit the relaxation of certain requirements if an applicant exceeds other requirements or undertakes other action, in the public interest, as specified in the requirements;

(h) "municipal planning strategy" means a municipal planning strategy, intermunicipal planning strategy or secondary planning strategy;

(i) "nonconforming structure" means a structure that does not meet the applicable requirements of a land-use by-law;

(j) "nonconforming use of land" means a use of land that is not permitted in the zone;

(k) "nonconforming use in a structure" means a use in a structure that is not permitted in the zone in which the structure is located;

(l) "participating municipality" means a municipality participating in a commission;

(m) "planning area" means the area to which a municipal or inter-municipal planning strategy applies;

(n) "planning documents" means

(i) a municipal planning strategy and a land-use by-law adopted to carry out the municipal planning strategy,

(ii) an amendment to a municipal planning strategy and a land-use by-law amendment to carry out the municipal planning strategy amendment, and

(iii) a subdivision by-law and an amendment to it;

(o) "regulate" does not include the power to prohibit;

(p) "structure" includes a building;

(q) "subdivision" means the division of an area of land into two or more parcels, and includes a resubdivision or a consolidation of two or more parcels;

(r) "watercourse" means a lake, river, stream, ocean or other body of water.

Provincial Director of Planning

192 (1) The Minister shall appoint from the public service an officer in the Department of ~~Housing and Municipal Affairs~~ *Service Nova Scotia and Municipal Relations* to be known as the Provincial Director of Planning.

(2) The Minister may, from time to time, authorize another person in the Department of ~~Housing and Municipal Affairs~~ *Service Nova*

Scotia and Municipal Relations to act in the Director's stead.

(3) *The Minister may appoint an Assistant Provincial Director of Planning to perform the duties of the Provincial Director subject to the Director's supervision and direction.*

Statement of provincial interest

193 The Governor in Council, on the recommendation of the Minister, may adopt or amend a statement of provincial interest necessary to protect the provincial interest in the use and development of land.

Requirements for statement of provincial interest

194 (1) When preparing or amending a statement of provincial interest, the Minister shall seek the views of councils affected by the proposed statement.

(2) The statements of provincial interest in Schedule B are deemed to be statements of provincial interest pursuant to this Part.

(3) The Minister may, at any time, review a statement of provincial interest.

(4) The Governor in Council may amend or repeal a statement of provincial interest, including a statement of provincial interest included in Schedule B.

(5) A statement of provincial interest is regulations within the meaning of the *Regulations Act*.

Copy and notice of adoption or amendment

195 Upon the adoption or amendment by the Governor in Council of a statement of provincial interest, the Minister shall send a copy of the statement to the clerk of each municipality affected by it and give notice of its adoption in a newspaper circulating in the affected area.

Provincial activities reasonably consistent

196 The activities of the Province shall be reasonably consistent

with a statement of provincial interest.

Requirement to consider planning documents

197 A department of the Province, before carrying out or authorizing any development in a municipality, shall consider the planning documents of the municipality.

Planning documents reasonably consistent

198 (1) Planning documents adopted after the adoption of a statement of provincial interest shall be reasonably consistent with the statement.

(2) The Minister may request that a council, within a prescribed time, adopt or amend its planning documents so that they are reasonably consistent with a statement of provincial interest.

(3) Where

(a) a council does not comply with a request pursuant to subsection (2); or

(b) development that is inconsistent with a statement of provincial interest might occur and the Minister is satisfied that there are necessary and compelling reasons to establish an interim planning area to protect the provincial interest,

the Minister may, by order, establish an interim planning area for a prescribed area.

(4) Within an interim planning area *subdivision*, development, or certain classes of *subdivision or* development, may be regulated *or limited* or prohibited *in whole or in part*, as necessary, to protect the provincial interest.

(5) No permit or approval of any kind may be issued that is contrary to an order establishing an interim planning area or an order regulating or prohibiting development in the interim planning area.

(6) The Minister shall

(a) send a copy of an order establishing an interim planning area and any order regulating or prohibiting development in the interim planning area to the clerk of each municipality affected; and

(b) give notice that an order is in effect in a newspaper circulating in the area affected.

(7) Where a council adopts planning documents in a manner reasonably consistent with a statement of provincial interest and the documents are in effect, the Minister shall revoke an order establishing an interim planning area for the prescribed area.

Repeal of Regional Development Plan

199 The Halifax-Dartmouth Metropolitan Regional Development Plan and Regulations, adopted and amended pursuant to the former *Planning Act*, are repealed.

Planning advisory committee

200 (1) A municipality may, by policy, establish a planning advisory committee and may establish different planning advisory committees for different parts of the municipality.

(2) Two or more municipalities may, by policy, establish a joint planning advisory committee.

(3) A planning advisory committee or joint planning advisory committee shall include members of the public and may include a representative appointed by a village.

(4) The purpose of a planning advisory committee or a joint planning advisory committee is to advise respecting the preparation or amendment of planning documents and respecting planning matters generally.

(5) The duties assigned, pursuant to this Part, to a planning advisory committee or a joint planning advisory committee shall only be carried out by the committee.

(6) The council shall appoint members of a planning advisory committee or a joint planning advisory committee by resolution.

Area advisory committee

201 (1) A municipality may establish, by policy, one or more area planning advisory committees to advise the planning advisory committee or joint planning advisory committee on planning matters affecting a specific area.

(2) An area planning advisory committee shall include members of the public.

(3) An area planning advisory committee, with jurisdiction over an area that includes all or part of a village, shall include at least one member appointed by the village commission.

(4) The council shall appoint members of an area planning advisory committee by resolution.

Policy establishing committee

202 In the policy establishing a planning advisory committee, joint planning advisory committee or area planning advisory committee the council shall

(a) fix the term of appointment and any provisions for reappointment;

(b) fix the remuneration, if any, to be paid to the chair of the committee, if the chair is not a council member;

(c) fix the remuneration, if any, to be paid to those members of the committee who are not council members;

(d) establish the duties and procedures of the committee;
and

(e) provide for the appointment of the chair and other officers of the committee.

Open meetings and exceptions

203 (1) Meetings of a planning advisory committee, joint planning advisory committee or area planning advisory committee or a commission are open to the public, unless the committee or commission, by a majority vote, moves a meeting in private to discuss matters related to

(a) personnel, labour relations, contract negotiations, litigation or potential litigation or legal advice eligible for solicitor-client privilege; or

(b) a potential application for a development permit, land-use by-law amendment, development agreement or amendment to a development agreement before the applicant has applied to the municipality or development officer.

(2) The date, time and location of committee or commission meetings shall be posted in a conspicuous place in the municipal office or another conspicuous place, as determined by the committee or commission.

(3) Any person may view

(a) committee or commission minutes, other than for a meeting in private, after they are adopted; and

(b) committee or commission reports to council, after they are submitted to the council.

(4) A planning advisory committee, joint planning advisory committee or area planning advisory committee may hold meetings for public discussion when, and in the manner, it or the council decides.

Public participation program

204 (1) A council shall adopt, by policy, a public participation program concerning the preparation of planning documents.

(2) A council may adopt different public participation programs for different types of planning documents.

(3) The content of a public participation program is at the discretion of the council, but it shall identify opportunities and establish ways and means of seeking the opinions of the public concerning the proposed planning documents.

Requirements for adoption of planning documents

205 (1) A council shall adopt, by by-law, planning documents. ~~by a majority vote of the maximum number of members that may be elected to council.~~

(2) A by-law adopting planning documents shall be read twice.

(3) Before planning documents are read for a second time the council shall hold a public hearing.

(4) A council shall complete the public participation program before placing the first notice for a public hearing in a newspaper circulating in the municipality.

(5) The notice for the public hearing is sufficient compliance with the requirement to advertise second reading of a by-law.

(6) Second reading shall not occur until the council has considered any submissions made or received at the public hearing.

(7) Only those council members present at the public hearing may vote on second reading of the planning documents.

(8) *A council shall adopt planning documents, at second reading, by majority vote of the maximum number of members that may be elected to council.*

Public hearing

206 (1) Prior to holding a public hearing required pursuant to this Part, the clerk shall give notice of the public hearing in a newspaper, circulating in the municipality, inserted at least once a week, for two successive weeks.

(2) The first notice of the public hearing shall be published at least fourteen days before the date of the public hearing.

(3) The notice of the public hearing shall

(a) state the place where, and the hours during which, the proposed documents may be inspected by the public;

(b) state the date, time and place set for the public hearing;

(c) describe by metes and bounds, a plan, map, sketch or civic address or other description adequate to identify the area affected by the proposed documents;

(d) give a synopsis of the proposed documents, if the public hearing is with respect to an amendment to a municipal planning strategy or land-use by-law or the approval or amendment of a development agreement.

(4) Copies of the proposed documents or portions of the documents shall be provided to a person, on request, upon payment of a reasonable fee set by the council, by policy, sufficient to recover the cost of providing the copies.

(5) Upon the publication of the first notice of the public hearing, the clerk shall send a copy of the notice to the clerk of every municipality that immediately abuts an area affected by the proposed documents.

(6) Upon the publication of the first notice of the public hearing, the clerk shall send a copy of the notice to the clerk of every village in which an affected property is situate.

Joint public hearing

207 (1) The councils of two or more municipalities, two or more community councils or the council of a regional municipality and one or more community councils may agree to hold a joint public hearing regarding the adoption or amendment of an inter-municipal planning strategy.

(2) When a proposed development is subject to a public hearing pursuant to another Act of the Legislature, the council may provide for a single hearing process for the proposed development, if this Act is complied with.

Requirement for review by Director

208 (1) Planning documents are subject to review by the Director.

(2) The clerk shall submit four certified copies of the planning documents to the Director.

(3) Where the Director determines that the planning documents

(a) appear to affect a provincial interest;

(b) may not be reasonably consistent with an applicable statement of provincial interest;

(c) appear to conflict with the law; or

(d) in the case of a subdivision by-law, may conflict with the provincial subdivision regulations,

the planning documents are subject to the Minister's approval.

(4) Within thirty days after receiving the planning documents, the Director shall

(a) return two copies of the planning documents to the clerk, with a written notice affixed stating that they are not subject to the approval of the Minister; or

(b) provide written notice to the clerk that the planning documents are subject to the approval of the Minister and include the reasons why they are so subject.

(5) Compliance with the procedural requirements for the adoption or amendment of planning documents is not subject to the review of the Director or the Minister.

(6) Within sixty days after the date of a written notice that planning documents are subject to the approval of the Minister, the Minister shall

- (a) approve all or part of the documents;
- (b) approve the documents with amendments; or
- (c) refuse to approve the documents,

and return to the clerk two copies of the planning documents as approved, amended or refused with written reasons for the decision.

(7) Where no decision is made in accordance with subsection (6), the planning documents are deemed to be approved on the sixty-first day and the clerk shall place a notice in a newspaper circulating in the municipality advising that the planning documents are in effect as of the date of the notice, stating where the documents may be inspected.

(8) Except where the Minister refuses to approve planning documents, upon receipt of the planning documents from the Director or the Minister, the clerk shall place a written notice in a newspaper circulating in the municipality advising that the planning documents, or planning documents as amended by the Minister, are in effect as of the date of that notice, stating where the documents may be inspected.

(9) A notice that planning documents are in effect is publication of a by-law for the purposes of this Act.

(10) A municipal planning strategy takes effect on the date a notice is published in a newspaper, circulating in the municipality, informing the public that the municipal planning strategy and its implementing land-use by-law are in effect.

Repeal of planning documents

209 Planning documents may be repealed and the procedure for repealing them is the same as the procedure for adopting them.

Amendment of land-use by-law

210 (1) An amendment to a land-use by-law that

(a) is undertaken in accordance with the municipal planning strategy; and

(b) is not required to carry out a concurrent amendment to a municipal planning strategy,

is not subject to the review of the Director or the approval of the Minister.

(2) The procedure for the adoption of an amendment to a land-use by-law referred to in subsection (1) is the same as the procedure for the adoption of planning documents, but a public participation program is at the discretion of the council and the amendment may be adopted by a majority of votes of the council members present at the *public hearing*.

(3) Upon the adoption of an amendment to a land-use by-law referred to in subsection (1), the clerk shall place a notice in a newspaper circulating in the municipality stating that the amendment has been adopted and setting out the right of appeal.

(4) When notice of an amendment to a land-use by-law referred to in subsection (1) is published, the clerk shall file a certified copy of the amending by-law with the Minister.

(5) Within seven days after a decision to refuse to amend a land-use by-law referred to in subsection (1), the clerk shall notify the applicant in writing, giving reasons for the refusal and setting out the right of appeal.

(6) Where the council has not, within one hundred and twenty days after receipt of a completed application to amend a land-use by-law referred to in subsection (1), commenced the procedure required for amending the land-use by-law by publishing the required notice of public hearing, the application is deemed to have been refused.

(7) Within seven days after an application to amend a land-use by-law, referred to in subsection (1), being deemed to be refused, the clerk shall notify the applicant in writing that the application is deemed to have been refused and setting out the right to appeal.

(8) An amendment to a land-use by-law referred to in subsection (1) is effective when

(a) the appeal period has elapsed and no appeal has been commenced; or

(b) all appeals have been abandoned or disposed of or the amendment has been affirmed by the Board.

Certain amendments by policy

211 (1) A council may, by policy, adopt amendments to

(a) the engineering specifications in a subdivision by-law;

(b) the processing fees set out in a land-use by-law or in a subdivision by-law;

(c) a subdivision by-law resulting from an amendment to the provincial subdivision regulations.

(2) An amendment referred to in subsection (1) is not subject to the review of the Director or the approval of the Minister.

Municipal planning strategy

212 A council may adopt a municipal planning strategy for all, or part, of the municipality and there may be separate strategies for different parts of the municipality.

Purpose of municipal planning strategy

213 The purpose of a municipal planning strategy is to provide statements of policy to guide the development and management of the municipality and, to further this purpose, to establish

(a) policies which address problems and opportunities concerning the development of land and the effects of the development;

(b) policies to provide a framework for the environmental, social and economic development within a municipality;

(c) policies that are reasonably consistent with the intent of statements of provincial interest; and

(d) specify programs and actions necessary for implementing the municipal planning strategy.

Statements of policy in planning strategy

214 (1) A municipal planning strategy may include statements of policy with respect to any or all of the following:

(a) the goals and objectives of the municipality for its future;

(b) the physical, economic and social environment of the municipality;

(c) the protection, use and development of lands within the municipality, including the identification, protection, use and development of lands subject to flooding, steep slopes, lands susceptible to subsidence, erosion or other geological hazards, swamps, marshes or other environmentally sensitive areas;

(d) stormwater management and erosion control;

(e) in connection with a development, the excavation or filling in of land, the placement of fill or the removal of soil, unless these matters are subject to another enactment of the Province;

(f) in connection with a development, retention of trees and vegetation for the purposes of landscaping, buffering, sedimentation or erosion control;

(g) studies to be carried out prior to undertaking specified developments or developments in specified areas;

(h) the staging of development;

(i) the provision of municipal services and

facilities;

(j) municipal investment for public and private development and the coordination of public programs relating to the economic, social and physical development of the municipality;

(k) non-conforming uses and structures;

(l) the subdivision of land;

(m) the use and conservation of energy, including the height and siting of developments;

(n) measures for informing, or securing, the views of the public regarding contemplated planning policies and actions or by-laws arising from such policies;

(o) policies governing

(i) land-use by-law matters,

(ii) amendment of the land-use by-law,

(iii) the acceptance and use of cash-in-lieu of required parking,

(iv) the use of development agreements,

(v) the establishment of comprehensive development districts,

(vi) the use of site-plan approval areas, ***including whether notice must be given to owners and tenants of property that is thirty metres or more from the applicant's property,***

(vii) the establishment of transportation reserves,

(viii) the use of infrastructure charges;

(p) the regulation or prohibition of development and the use of land in order to carry out an agreement pursuant to the *Aeronautics Act* (Canada);

(q) any other matter relating to the physical, social or economic environment of the municipality.

(2) A council shall include policies in the municipal planning strategy on how it intends to review the municipal planning strategy and land-use by-law.

Intermunicipal planning strategy

215 (1) Councils of two or more municipalities may agree to adopt a mutually binding intermunicipal planning strategy.

(2) The provisions of this Act that apply to a municipal planning strategy apply to an intermunicipal planning strategy.

Secondary planning strategy

216 (1) A municipal planning strategy may provide for the preparation and adoption of a secondary planning strategy which applies, as part of the municipal planning strategy, to a specific area or areas of the municipality.

(2) The purpose of a secondary planning strategy is to address issues with respect to a particular part of the planning area, which may not, in the opinion of the council, be adequately addressed in the municipal planning strategy alone.

No action inconsistent with planning strategy

217 (1) A municipality shall not act in a manner that is inconsistent with a municipal planning strategy.

(2) The adoption of a municipal planning strategy does not commit the council to undertake any of the projects suggested in it.

Acquisition of land for development

218 (1) A municipality may

(a) acquire and assemble land for the purpose of carrying out a development consistent with the municipal planning strategy, whether the development is to be undertaken by the municipality or not; or

(b) by agreement with the owners of the land, acquire the right to impose easements or other development restrictions on the lands as if it had acquired the title.

(2) The municipality may subdivide, rearrange and deal with lands described in clause (1)(a) as if it were a private owner and may sell the lands subject to any building restrictions or easements that the council requires to ensure the development is consistent with the municipal planning strategy.

Adoption of land-use by-law or amendment

219 (1) Where a council adopts a municipal planning strategy or a municipal planning strategy amendment that contains policies about regulating land use and development, the council shall, at the same time, adopt a land-use by-law or land-use by-law amendment that shall enable the policies to be carried out.

(2) A council may amend a land-use by-law in accordance with policies contained in the municipal planning strategy *on a motion of council or on application*.

(3) A council shall not adopt or amend a land-use by-law except to carry out the intent of a municipal planning strategy.

Content of land-use by-law

220 (1) A land-use by-law shall include maps that divide the planning area into zones.

(2) A land-use by-law shall

(a) list permitted or prohibited uses for each zone;
and

(b) include provisions that are authorized pursuant to this Act and that are needed to implement the municipal planning strategy.

(3) A land-use by-law may regulate or prohibit development, but development may not be totally prohibited, unless prohibition is permitted pursuant to this Part.

(4) A land-use by-law may

(a) regulate the minimum dimensions for frontage and lot area for any class of use and size of structure;

(b) regulate the maximum floor area of each use to be placed upon a lot, where more than one use is permitted upon a lot;

(c) regulate the maximum area of the ground that a structure may cover;

(ca) regulate the location of a structure on a lot;

(d) regulate the height of structures;

(e) regulate the percentage of land that may be built upon;

(f) regulate the size, or other requirements, relating to yards;

(g) regulate the maximum density of dwelling units;

(h) require and regulate the establishment and location of off-street parking and loading facilities;

(i) regulate the location of developments adjacent to pits and quarries;

(j) regulate the period of time for which temporary developments may be permitted;

(k) prescribe the form of an application for a development permit, the content of a development permit, the period of time for which the permit is valid and any provisions for revoking or renewing the permit;

(ka) regulate the floor area ratio of a building;

(l) prescribe the fees for an application to amend a land-use by-law or for entering into a development agreement, site plan or variance.

(5) Where a municipal planning strategy so provides, a land-use by-law may

(a) subject to the *Public Highways Act*, regulate or restrict the location, size and number of accesses from a lot to the abutting streets, provided that a lot has access to at least one street;

(b) regulate or prohibit the type, number, size and location of signs and sign structures;

(c) regulate, require or prohibit fences, walks, outdoor lighting and landscaping;

(d) in connection with a development, regulate, or require the planting or retention of, trees and vegetation for the purposes of landscaping, buffering, sedimentation or erosion control;

(e) regulate or prohibit the outdoor storage of goods, machinery, vehicles, building materials, waste materials, aggregates and other items and require outdoor storage sites to be screened by landscaping or structures;

(f) regulate the location of disposal sites for any waste material;

(g) in relation to a development, regulate or prohibit the altering of land levels, the excavation or filling in of land, the placement of fill or the removal of soil unless

these matters are regulated by another enactment of the Province;

- (h) regulate or prohibit the removal of topsoil;
- (i) regulate the external appearance of structures;
- (j) set out conditions, including performance standards, to be met by a development before a development permit may be issued;
- (k) provide for incentive or bonus zoning;
- (l) prescribe methods for controlling erosion and sedimentation during the construction of a development;
- (m) regulate or prohibit excavation, filling in, placement of fill or reclamation of land on floodplains identified in the land-use by-law;
- (n) prohibit development or certain classes of development where, in the opinion of council, the
 - (i) cost of providing municipal wastewater facilities, stormwater systems or water systems would be prohibitive,
 - (ii) provision of municipal wastewater facilities, stormwater systems or water systems would be premature, or
 - (iii) cost of maintaining municipal streets would be prohibitive;
- (o) ~~prohibit development within a specified distance of a watercourse~~ **regulate or prohibit development within a specified distance of a watercourse or a municipal water-supply wellhead;**
- (p) prohibit development on land that

- (i) is subject to flooding or subsidence,
- (ii) has steep slopes,
- (iii) is low-lying, marshy, or unstable,
- (iv) is otherwise hazardous for development because of its soil conditions, geological conditions, undermining or topography,
- (v) is known to be contaminated within the meaning of the *Environment Act*, or
- (vi) is located in an area where development is prohibited by a statement of provincial interest or by an enactment of the Province;
- (q) regulate or prohibit development and the use of lands in order to carry out an agreement pursuant to the *Aeronautics Act* (Canada);
- (r) permit the development officer to grant variances in parking and loading spaces, ground area and height, floor area occupied by a home-based business and the height and area of a sign.

(6) A municipality may enter into an agreement with the Government of Canada pursuant to the *Aeronautics Act* (Canada).

Notification and costs

221 (1) A land-use by-law may identify the class or classes of by-law amendments, development agreements or amendments to development agreements that require

- (a) notifying affected property owners who are either the assessed owners or are as otherwise defined in the land-use by-law for this purpose; and
- (b) a sign to be posted on the affected property describing the requested by-law amendment, development agreement or amendment to a development agreement.

(2) A council may by resolution provide that any person applying for a land-use by-law amendment, a development agreement or an amendment to a development agreement shall pay the municipality the cost of

- (a) any required advertising;
- (b) notifying affected land owners;
- (c) posting a sign.

Future public use

222 (1) A council may zone privately owned land for future public use other than transportation reserves if the by-law provides for an alternative zone on the land, consistent with the municipal planning strategy.

(2) Where privately owned land is zoned for future public use the municipality shall, within one year of the effective date of the zoning, acquire the land or the alternative zone comes into effect.

Parking cash-in-lieu

223 (1) Where provided for in a municipal planning strategy, council may accept money instead of all or part of any required off-street parking lot or facility.

(2) Council shall use any money received to construct or maintain municipally owned parking or transit facilities to serve the immediate area of the development with respect to which the payment was made, provided the facilities are located in an area identified in the municipal planning strategy.

(3) The method used to determine the contribution for parking or transit facilities shall be set out in the land-use by-law and shall take into account the cost of construction of an individual parking space, including costs of land, grading and paving or any other standard determined by the council.

Transportation reserve

224 (1) Where a municipal planning strategy identifies property required for the purposes of widening, altering or diverting an

existing street or pathway or for the purposes of a new street or pathway, council may, in a land-use by-law identify the transportation reserve and

(a) set out its intention to acquire property for the purposes of widening, altering or diverting an existing street or pathway, or for the purposes of a new street or pathway;

(b) set out the proposed right-of-way intended to be acquired;

(c) set out building setbacks for the widened, altered, diverted or new street or pathway;

(d) prohibit development in the proposed right-of-way or between the proposed right-of-way and the building setbacks.

(2) Any right-of-way and any building setbacks shall be shown on a map or plan that is attached to and forms part of the land-use by-law.

(3) Where the council adopts by-law provisions in accordance with this Section it shall provide for an alternate zone on the property to be acquired.

(4) The alternate zone comes into effect if the municipality does not acquire the property in the right-of-way within five years of the effective date of the provisions.

(5) Where council adopts provisions in accordance with this Section, an affected property owner may make a written request to council to acquire the property or acquire an interest in the property, at the discretion of council.

(6) Where council does not acquire the property or acquire the interest in the property within one year of the written request of an affected property owner, the alternate zone on the property comes into effect.

Development agreements

225 (1) A council may consider development by development

agreement where a municipal planning strategy identifies

- (a) the developments that are subject to a development agreement;
- (b) the area or areas where the developments may be located; and
- (c) the matters that council shall consider prior to the approval of a development agreement.

(2) The land-use by-law shall identify the developments to be considered by development agreement.

Comprehensive development districts

226 (1) A council may regulate the development of a district by development agreement by establishing a comprehensive development district where the municipal planning strategy identifies

- (a) the classes of uses permitted in a district;
- (b) developments or uses in a district, if any, that are permitted without a development agreement;
- (c) the area or areas where a district may be established; and
- (d) the matters that council shall consider prior to the approval of a development agreement for the development of a district.

(2) When a municipal planning strategy provides for a comprehensive development district, the land-use by-law shall include a comprehensive development district zone.

(3) No development may occur in a comprehensive development district unless it is consistent with the development agreement or it is a development permitted without a development agreement.

Content of development agreement

227 (1) A development agreement may contain terms with respect to

- (a) matters that a land-use by-law may contain;
 - (b) hours of operation;
 - (c) maintenance of the development;
 - (d) easements for the construction, maintenance or improvement of watercourses, ditches, land drainage works, stormwater systems, wastewater facilities, water systems and other utilities;
 - (e) grading or alteration in elevation or contour of the land and provision for the disposal of storm and surface water;
 - (f) the construction, in whole or in part, of a stormwater system, wastewater facilities and water system;
 - (g) the subdivision of land;
 - (h) security or performance bonding.
- (2) A development agreement may include plans or maps.
- (3) A development agreement may
- (a) identify matters which are not substantive or, alternatively, identify matters that are substantive;
 - (aa) *identify if the variance provisions are to apply to the development agreement;*
 - (b) provide for the time when and conditions under which the development agreement may be discharged with or without the concurrence of the property owner;
 - (c) provide that upon the completion of the

development or phases of the development, the development agreement, or portions of it, may be discharged by council;

(d) provide that if the development does not commence or is not completed within the time specified in the development agreement, the development agreement or portions of it may be discharged by council without the concurrence of the property owner.

Requirements for effective development agreement

228 (1) A development agreement shall not be entered into until

(a) the appeal period has elapsed and no appeal has been commenced; or

(b) all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Board.

(2) A council may stipulate that a development agreement shall be signed by the property owner within a specified period of time.

(3) A development agreement does not come into effect until

(a) the appeal period has elapsed and no appeal has been commenced or all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Board;

(b) the development agreement is signed by the property owner, within the specified period of time, if any, and the municipality; and

(c) the development agreement is filed by the municipality in the registry.

(4) The clerk shall file every development agreement, amendment to a development agreement and discharge of a development

agreement in the registry.

Discharge of development agreement

229 (1) A development agreement is in effect until discharged by the council.

(2) A council may discharge a development agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property owner.

(3) After a development agreement is discharged, the land is subject to the land-use by-law.

Adoption or amendment of development agreement

230 (1) A council shall adopt or amend a development agreement by policy.

(2) A council shall hold a public hearing before approving a development agreement or an amendment to a development agreement.

(3) Only those members of the council present at the public hearing may vote on the development agreement or the amendment.

(4) Upon approving a development agreement or an amendment to a development agreement, the clerk shall place a notice in a newspaper circulating in the municipality stating that the development agreement is approved and setting out the right of appeal.

(5) The clerk shall file a certified copy of a development agreement or amendment with the Minister when notice of the development agreement or an amendment to it is published.

(6) Within seven days after a decision refusing to approve a development agreement or an amendment to a development agreement, the clerk shall notify the applicant in writing, giving reasons for the refusal and setting out the right of appeal.

(7) Amendments to those items in a development agreement that the parties have identified as not substantive, or that were not

identified as being substantive, *if the substantive items were identified in the agreement*, do not require a public hearing.

Site-plan approval

231 (1) Where a municipal planning strategy so provides, a land-use by-law shall identify

- (a) the use that is subject to site-plan approval;
- (b) the area where site-plan approval applies;
- (c) the matters that are subject to site-plan approval;
- (d) those provisions of the land-use by-law that may be varied by a site-plan approval;
- (e) the criteria the development officer shall consider prior to granting site-plan approval;
- (ea) the notification area;*
- (f) the form and content of an application for site-plan approval.

~~(2) Site-plan approval shall not apply to development of one or two unit dwellings.~~

(3) No development permit shall be issued for a development in a site-plan approval area unless

- (a) the class of use is exempt from site-plan approval as set out in the land-use by-law and the development is otherwise consistent with the requirements of the land-use by-law; or
- (b) the development officer has approved an application for site-plan approval and the development is otherwise consistent with the requirements of the land-use by-law.

- (4) A site-plan approval may deal with
- (a) the location of structures on the lot;
 - (b) the location of off-street loading and parking facilities;
 - (c) the location, number and width of driveway accesses to streets;
 - (d) the type, location and height of walls, fences, hedges, trees, shrubs, ground cover or other landscaping elements necessary to protect and minimize the land-use impact on adjoining lands;
 - (e) the retention of existing vegetation;
 - (f) the location of walkways, including the type of surfacing material, and all other means of pedestrian access;
 - (g) the type and location of outdoor lighting;
 - (h) the location of facilities for the storage of solid waste;
 - (i) the location of easements;
 - (j) the grading or alteration in elevation or contour of the land and provision for the management of storm and surface water;
 - (k) the type, location, number and size of signs or sign structures;
 - (l) provisions for the maintenance of any of the items referred to in this subsection.

Site-plan approval

232 (1) A development officer shall approve an application for site-plan approval, unless the

(a) matters subject to site-plan approval do not meet the criteria set out in the land-use by-law; or

(b) applicant fails to enter into an undertaking to carry out the terms of the site plan.

(2) Where a development officer approves or refuses to approve a site plan, the process and notification procedures and the rights of appeal are the same as those that apply when a development officer grants or refuses to grant a variance.

(2A) Notwithstanding subsection (2), council may require a larger notification distance for site-plan approvals in its land-use by-law where the municipal planning strategy so provides.

(3) The council, in hearing an appeal concerning a site-plan approval, may make any decision that the development officer could have made.

(4) A council may by resolution provide that any person applying for approval of a site plan shall pay the municipality the cost of

(a) notifying affected land owners;

(b) posting a sign.

(5) A development officer may, with the concurrence of the property owner, discharge a site-plan, in whole or in part.

Development permit in site-plan approval area

233 A development officer shall issue a development permit for a development in a site-plan approval area if a site plan is approved and the development otherwise complies with the land-use by-law, and

(a) the appeal period has elapsed and no appeal has been commenced; or

(b) all appeals have been abandoned or disposed of or the site plan has been affirmed by the council.

Conveyance to person not a party

234 Where the owner of property that is subject to a development agreement or a site plan conveys all or part of the property to a person not a party to the development agreement or site plan, the development agreement or the site plan continues to apply to the property until discharged by council, *in the case of a development agreement, it is discharged by council and, in the case of a site-plan, it is discharged by the development officer.*

Variance

235 (1) A development officer may grant a variance in one or more of the following *terms in a development agreement, if provided for in the development agreement, or* land-use by-law requirements:

- (a) percentage of land that may be built upon;
- (b) size or other requirements relating to yards;
- (c) lot frontage or lot area, or both, if
 - (i) the lot existed on the effective date of the by-law, or
 - (ii) a variance was granted for the lot at the time of subdivision approval.

(2) Where a municipal planning strategy and land-use by-law so provide, a development officer may grant a variance in one or more of the following *terms in a development agreement, if provided for in the development agreement, or* land-use by-law requirements:

- (a) number of parking spaces and loading spaces required;
- (b) ground area and height of a structure;
- (c) floor area occupied by a home-based business;
- (d) height and area of a sign.

(3) A variance may not be granted where the

- (a) variance violates the intent of the *development agreement or* land-use by-law;
- (b) difficulty experienced is general to properties in the area; or
- (c) difficulty experienced results from an intentional disregard for the requirements of the *development agreement or* land-use by-law.

Variance procedures

236 (1) Within seven days after granting a variance, the development officer shall give notice in writing of the variance granted to every assessed owner whose property is within thirty metres of the applicant's property.

(2) The notice shall

- (a) describe the variance granted;
- (b) identify the property where the variance is granted; and
- (c) set out the right to appeal the decision of the development officer.

(3) Where a variance is granted, a property owner served a notice may appeal the decision to the council within fourteen days after receiving the notice.

(4) Where a variance is refused, the applicant may appeal the refusal to council within seven days after receiving notice of the refusal, by giving written notice to the clerk who shall notify the development officer.

(5) Where an applicant appeals the refusal to grant a variance, the clerk or development officer shall give seven days written notice of the hearing to every assessed owner whose property is within thirty metres of the applicant's property.

(6) The notice shall

- (a) describe the variance applied for and the reasons for its refusal;
- (b) identify the property where the variance is applied for; and
- (c) state the date, time and place when council will hear the appeal.

Variance appeals and costs

237 (1) Where a council hears an appeal from the granting or refusal of a variance, the council may make any decision that the development officer could have made.

(2) A development officer shall issue a development permit for any development for which a variance has been granted and which otherwise complies with ~~a land-use by-law~~ ***the terms of the development agreement or a land-use by-law, whichever is applicable***, if

- (a) the appeal period has elapsed and no appeal has been commenced; or
- (b) all appeals have been abandoned or disposed of or the variance has been affirmed by the council.

(3) A council may by resolution provide that any person applying for a variance shall pay the municipality the cost of

- (a) notifying affected land owners;
- (b) posting a sign.

Nonconforming structure or use

238 (1) A nonconforming structure, nonconforming use of land or nonconforming use in a structure, may continue if it exists and is lawfully permitted at the date of the first publication of the notice of intention to adopt or amend a land-use by-law.

(2) A nonconforming structure is deemed to exist at the date of the first publication of the notice of intention to adopt or amend a land-use by-law, if the

(a) nonconforming structure was lawfully under construction and was completed within a reasonable time; or

(b) permit for its construction was in force and effect, the construction was commenced within twelve months after the date of the issuance of the permit and the construction was completed in conformity with the permit within a reasonable time.

(3) A nonconforming use in a structure is deemed to exist at the date of the first publication of the notice of intention to adopt or amend a land-use by-law if

(a) the structure containing the nonconforming use was lawfully under construction and was completed within a reasonable time; or

(b) the permit for its construction or use was in force and effect, the construction was commenced within twelve months after the date of the issuance of the permit and the construction was completed in conformity with the permit within a reasonable time; and

(c) the use was permitted when the permit for the structure was granted and the use was commenced upon the completion of construction.

(4) This Act does not preclude the repair or maintenance of a nonconforming structure or a structure containing a nonconforming use.

(5) A change of tenant, occupant or owner of any land or structure does not of itself affect the use of land or a structure.

Nonconforming structure for residential use

239 (1) Where a nonconforming structure is located in a zone that permits the use made of it and the structure is used primarily for

residential purposes, it may be

(a) rebuilt, *replaced* or repaired, if destroyed or damaged by fire or otherwise, if it is substantially the same as it was before the destruction or damage and it is occupied by the same use;

(b) enlarged, reconstructed, repaired or renovated where

(i) the enlargement, reconstruction, repair or renovation does not further reduce the minimum required yards or separation distance that do not conform with the land-use by-law, and

(ii) all other applicable provisions of the land-use by-law except minimum frontage and area are satisfied.

(2) A nonconforming structure, that is not located in a zone permitting residential uses and not used primarily for residential purposes, may not be rebuilt or repaired, if destroyed or damaged by fire or otherwise to the extent of more than seventy-five percent of the market value of the building above its foundation, except in accordance with the land-use by-law, and after the repair or rebuilding it may only be occupied by a use permitted in the zone.

Nonconforming use of land

240 A nonconforming use of land may not be

(a) extended beyond the limits that the use legally occupies;

(b) changed to any other use except a use permitted in the zone; and

(c) recommenced, if discontinued for a continuous period of six months.

Nonconforming use in a structure

241 (1) Where there is a nonconforming use in a structure, the structure may not be

(a) expanded or altered so as to increase the volume of the structure capable of being occupied, except as required by another Act of the Legislature;

(b) repaired or rebuilt, if destroyed or damaged by fire or otherwise to the extent of more than seventy-five percent of the market value of the building above its foundation, except in accordance with the land-use by-law and after the repair or rebuilding it may only be occupied by a use permitted in the zone.

(2) Where there is a nonconforming use in a structure, the nonconforming use

(a) may be extended throughout the structure;

(b) may not be changed to any other use except a use permitted in the zone;

(c) may not be recommenced, if discontinued for a continuous period of six months.

Relaxation of restrictions

242 (1) A municipal planning strategy may provide for a relaxation of the restrictions contained in this Part respecting nonconforming structures, nonconforming uses of land, and nonconforming uses in a structure and, in particular, may provide for

(a) the extension, enlargement, alteration or reconstruction of a nonconforming structure;

(b) the extension of a nonconforming use of land;

(c) the extension, enlargement or alteration of structures containing nonconforming uses, *with or without permitting the expansion of the nonconforming use into an*

addition;

(d) the reconstruction of structures containing nonconforming uses, after destruction;

(e) the recommencement of a nonconforming use of land or a nonconforming use in a structure after it is discontinued for a continuous period in excess of six months;

(f) the change in use of a nonconforming use of land or a nonconforming use in a structure, to another nonconforming use.

(2) The policies adopted in accordance with this Section shall be carried out through the land-use by-law and may require a development agreement.

Development officer

243 (1) A council shall appoint a development officer to administer its land-use by-law and subdivision by-law.

(2) Where the municipality participates in a district planning commission or enters into an agreement with another municipality to provide services, the council may appoint as its development officer an employee of the commission or of the other municipality.

Development permit

244 (1) Before any development is commenced, a development permit shall be obtained if the council has adopted a land-use by-law.

(2) A land-use by-law may specify developments for which a development permit is not required.

Time limits for development permit application

245 (1) Within fourteen days after receiving an application for a development permit the development officer shall

(a) determine if an application is incomplete; and

(b) where the application is incomplete, notify the applicant in writing advising what is required to complete the application.

(2) Within thirty days after receiving a completed application for a development permit, the development officer shall grant the development permit or inform the applicant of the reasons for not granting the permit.

Limitations on granting development permit

246 (1) A development permit shall be issued for a proposed development if the development meets the requirements of the land-use by-law, the terms of a development agreement or an approved site plan.

(2) Where a land-use by-law is amended or a development agreement is approved or amended, a development permit for a development pursuant to the amendment or the agreement may not be issued until

(a) the appeal period has elapsed; or

(b) all appeals have been abandoned or disposed of or the decision of council has been affirmed by the Board.

(3) A development permit that is inconsistent with a proposed land-use by-law or a proposed amendment to a land-use by-law may not be issued for one hundred and fifty days from the publication of the first notice advertising the council's intention to adopt or amend the by-law.

(4) Where the proposed land-use by-law or by-law amendment has not come into effect after the expiry of one hundred and fifty days from the publication of the first notice advertising the council's intention to adopt or amend the by-law, the development officer shall issue the development permit if the proposed development meets the requirements of the land-use by-law.

Appeals to the Board

247 (1) The approval or refusal by a council to amend a land-use by-law may be appealed to the Board by

(a) an aggrieved person;

- (b) the applicant;
- (c) an adjacent municipality;
- (d) a village in which an affected property is situated;
- (e) the Director.

(2) The approval, or refusal to approve, and the amendment, or refusal to amend, a development agreement may be appealed to the Board by

- (a) an aggrieved person;
- (b) the applicant;
- (c) an adjacent municipality;
- (d) a village in which an affected property is situated;
- (e) the Director.

(3) The refusal by a development officer to

- (a) issue a development permit;
- (b) approve a tentative or final plan of subdivision *or a concept plan*,

may be appealed by the applicant to the Board.

No appeal permitted

248 The following are not subject to an appeal:

- (a) an amendment to a land-use by-law to make the by-law consistent with a statement of provincial interest;
- (b) an amendment to a land-use by-law or a development

agreement to implement a decision of the Board;

(c) a development agreement approved, as ordered by the Board;

(d) an amendment to a land-use by-law that is required to carry out a concurrent amendment to a municipal planning strategy.

Service of appeal

249 An appeal shall be served on the Board within fourteen days after the date

(a) of publication of notice of the adoption of the land-use by-law amendment;

(b) of written notice of council's decision refusing to amend the land-use by-law;

(c) of publication of notice of the approval or amendment of a development agreement;

(d) of written notice of council's decision refusing to approve or amend a development agreement;

(e) of written notice of the development officer's decision refusing to issue a development permit or refusing to approve a tentative or final plan of subdivision *or a concept plan*;

(f) a decision is deemed to be refused.

Restrictions on appeals

250 (1) An aggrieved person or an applicant may only appeal

(a) an amendment or refusal to amend a land-use by-law, on the grounds that the decision of the council does not reasonably carry out the intent of the municipal planning strategy;

(b) the approval or refusal of a development

agreement or the approval of an amendment to a development agreement, on the grounds that the decision of the council does not reasonably carry out the intent of the municipal planning strategy;

(c) the refusal of an amendment to a development agreement, on the grounds that the decision of the council does not reasonably carry out the intent of the municipal planning strategy and the intent of the development agreement.

(2) An applicant may only appeal a refusal to issue a development permit on the grounds that the decision of the development officer does not comply with the land-use by-law, a development agreement, an order establishing an interim planning area or an order regulating or prohibiting development in an interim planning area.’

(3) An applicant may only appeal a refusal to approve a concept plan or a tentative or final plan of subdivision on the grounds that the decision of the development officer does not comply with the subdivision by-law.

(4) The Director may only appeal on the grounds that the decision of the council is not reasonably consistent with a statement of provincial interest, an order establishing an interim planning area or an order regulating or prohibiting development in an interim planning area.

Powers of Board on appeal

251 (1) The Board may

(a) confirm the decision appealed from;

(b) allow the appeal by reversing the decision of the council to amend the land-use by-law or to approve or amend a development agreement;

(c) allow the appeal and order the council to amend the land-use by-law in the manner prescribed by the Board ~~and~~ *or* order the council to approve *the development agreement, approve the development agreement with the*

changes required by the Board or amend the development agreement in the manner prescribed by the Board;

(d) allow the appeal and order that the development permit be granted;

(e) allow the appeal by directing the development officer to approve the tentative or final plan of subdivision *or concept plan*.

(2) The Board shall not allow an appeal unless it determines that the decision of council or the development officer, as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law.

Restrictions on powers of Board

252 (1) The Board shall not order the granting of a development permit, the approval of a plan of subdivision, a land-use by-law amendment, a development agreement or an amendment to a development agreement that

(a) is not reasonably consistent with a statement of provincial interest;

(b) conflicts with an order made by the Minister establishing an interim planning area or regulating or prohibiting development in an interim planning area.

(2) The Board shall not make any decision that commits the council to make any expenditures with respect to a development.

District planning commissions

253 (1) A district planning commission established by an order of the Minister pursuant to a former *Planning Act* continues to be a body corporate.

(2) Municipalities that are members of a district planning commission are deemed to have entered into an intermunicipal services

agreement for the provision of the services provided by the commission on the same terms and conditions as contained in the order of the Minister establishing the commission, and such an agreement may be varied or rescinded with the agreement of all participating municipalities and the approval of the Minister to the variation or ~~recession~~ *rescission* is not required.

(3) A participating municipality may withdraw from a commission effective April 1 without the agreement of the remaining participating municipalities but shall, before withdrawing, give the other participating municipalities notice before March 31 of the preceding year.

(4) A participating municipality that withdraws from a commission is

(a) not entitled to receive any assets of the commission without the approval of the remaining participating municipalities; and

(b) responsible for severance costs or other costs imposed by its withdrawal and for its share of any liabilities of the commission existing at the time of its withdrawal.

(5) Where all the participating municipalities have agreed to dissolve the commission, they shall, by agreement, provide for the distribution of the assets and liabilities of the commission among the participating municipalities upon its dissolution.

(6) Where all the participating municipalities cannot agree on the distribution of the assets and liabilities of the commission, one or more of them may make an application to the Supreme Court of Nova Scotia to determine an equitable distribution of them.

District planning commission members

254 (1) A member of a commission who is a council member of a participating municipality ceases to be a member of the commission when the member ceases to be a council member.

(2) Where a member is no longer able to act, the council that appointed the member may appoint another member for the balance of

the term.

Powers of commission

255 (1) A commission may

(a) advise and assist the council of any participating municipality in the preparation or amendment of planning documents and in the provision of any service related to planning or delegated to the commission by one or more of the participating municipalities;

(b) exercise rights and powers and perform duties that may be delegated to it by the council of a participating municipality;

(c) expend its funds for any of the purposes of the commission;

(d) retain the services of those persons necessary for the purposes of the commission and determine their remuneration;

(e) do any other things necessary for the attainment of its purposes.

(2) A commission may acquire and dispose of real property to the extent authorized and approved by all the councils of the participating municipalities.

Auditor and financial report required

256 (1) A commission shall annually appoint a registered municipal auditor to be its auditor.

(2) On or before June 30 in each year, a commission shall provide the councils of the participating municipalities with a financial report for the preceding year signed by the commission's auditor.

Annual report required

257 On or before June 30 in each year, a commission shall make an annual report to the councils of the participating municipalities setting out its activities for the preceding year.

Commission's estimates

258 (1) On or before January 15 in each year, a commission shall submit to the clerk of each of the participating municipalities an estimate of its revenues and expenditures for the next fiscal year after adding any anticipated deficit or deducting any anticipated surplus for the current fiscal year.

(2) The participating municipalities may agree on a method for approving or questioning the estimates of a commission.

(3) The council of each participating municipality shall include in its annual estimate of expenditures its proportion of the commission's estimates.

(4) A commission may at any time prepare supplementary estimates subject to the approval of the councils of the participating municipalities.

(5) The council of each participating municipality shall pay the commission its share of the estimates of the commission in accordance with any terms or payment schedule included in the order establishing the commission.

Use of mediation

259 The Minister, a council or the Board may, if the person or body considers it appropriate, at any time before a decision is made pursuant to this Part, use mediation, conciliation or other dispute resolution methods to attempt to resolve concerns or disputes.

Service of documents

~~**260 (1)** Any notice, decision or other document required to be served pursuant to this Act may be served personally, by mail, by electronic mail or by facsimile.~~

~~(2) A notice, decision or other document is deemed to have been served on the third day after it was sent.~~

260 repealed

No injurious affection

261 Property is deemed not to be injuriously affected by the adoption, amendment or repeal of a statement of provincial interest, interim planning area and development regulations in connection with it, subdivision regulations, subdivision by-law, municipal planning strategy, land-use by-law or the entering into, amending or discharging of a development agreement.

Former Planning Act

262 A municipal development plan and zoning by-law or municipal planning strategy and land-use by-law adopted pursuant to a former *Planning Act* are a municipal planning strategy and land-use by-law within the meaning of this Act, to the extent they are consistent with this Act.

Conflict

263 In the event of a conflict between this Part and this Act or another Act of the Legislature, this Part prevails.

263A *No person shall breach the terms of a development agreement or site plan.*

Breach of development agreement

264 (1) A municipality may, upon the breach of a development agreement, if thirty days notice in writing has been provided to the owner, enter the land and perform any of the terms contained in the development agreement *or take such remedial action as is considered necessary to correct a breach of the development agreement, including the removal or destruction of any thing that contravenes the terms of a development agreement.*

(2) All reasonable expenses, whether arising out of the entry on the land or from the performance of the terms, are a first lien on the

land that is the subject of the development agreement.

(3) No action shall be maintained against a municipality or against any agent, servant or employee of a municipality for anything done pursuant to this Section.

Breach of approved site plan

265 (1) A municipality may, upon the breach of an approved site plan, if thirty days notice in writing has been provided to the owner, enter the land and perform any of the terms contained in the site plan.

(2) All reasonable expenses whether arising out of the entry on the land or from the performance of the terms of the site plan are a first lien on the land that is the subject of the site plan.

(3) No action shall be maintained against a municipality or against any agent, servant or employee of a municipality for anything done pursuant to this Section.

Remedies where offence

266 (1) This Section applies to this Part and Part IX.

(2) In the event of an offence

(a) where authorized by the council or by the chief administrative officer, the clerk or development officer, in the name of the municipality; or

(b) the Director, in the name of the Province, when authorized by the Minister,

may apply to the Supreme Court of Nova Scotia for any or all of the remedies provided pursuant to this Section.

(3) The Supreme Court may hear and determine the matter at any time and, in addition to any other remedy or relief, may make an order

(a) restraining the continuance or repetition of an offence in respect of the same property;

(b) directing the removal or destruction of any structure or part of a structure that contravenes any order, regulation, municipal planning strategy, land-use by-law, development agreement, *site plan* or statement in force in accordance with this Part and authorizing the municipality or the Director, where an order is not complied with, to enter upon the land and premises with necessary workers and equipment and to remove and destroy the structure, or part of it, at the expense of the owner;

(c) as to the recovery of the expense of removal and destruction and for the enforcement of this Part, order, regulation, land-use by-law or development agreement and for costs as is deemed proper,

and an order may be interlocutory, interim or final.

(4) Where, after the action or proceeding is commenced, it appears that

(a) the offence that was the subject of the action or proceeding may have been done or committed by a person other than the defendant;

(b) the title to the property, or part of or any interest in it, that vested at the commencement of the action or proceeding, has since become vested in a person other than the defendant; or

(c) there has been a fresh offence by the same person or by another person with respect to the same property,

it is not necessary to bring another application and the original application may be amended from time to time and at any time before final judgment to include all parties and all offences and the whole matter of the offences shall be heard, dealt with and determined, notwithstanding that the offences may be offences against different Sections of this Part or against different orders, land-use by-laws, development agreements, regulations or statements of provincial interest.

(5) Where the owner of any property where an offence is

taking place or has taken place cannot be found, the municipality or the Director may post a notice of the offence and of the application upon the property.

Right of entry

267 (1) This Section applies to this Part and Part IX.

(2) A person authorized by the Minister or by a council has the right to enter at all reasonable times in or upon any property within the municipality, without a warrant, for the purposes of an inspection necessary to administer an order, land-use by-law, development agreement, regulation or statement of provincial interest.

(3) The authorized person shall not enter any place actually being used as a dwelling without the consent of the occupier unless the entry is made in daylight hours and written notice of the time of the entry has been given to the occupier at least twenty-four hours in advance of the entry.

(4) Where a judge is satisfied, on evidence under oath, that the entry is refused or no person is present to grant access, the judge may by order authorize entry into or on the property during reasonable hours set by the judge.

(5) Any order made by a judge shall continue in force until the purpose for which entry is required is fulfilled.