



Report of Investigation

Concerning Allegations of Irregularities in the Approval Processes which resulted in the Construction of a Residential Development, located at #11 Charlemont Drive, Kingston 6, contrary to, *inter alia*, the permits issued by the KSAMC and NEPA and the Building Act.

INTEGRITY COMMISSION
September 2023



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Section 55 and 56 of the Integrity Commission Act states:

“(4) Anything said or information supplied or any document or thing produced by any person for the purpose or in the course of any investigation by or proceedings before the Commission under this Act, shall be absolutely privileged in the same manner as if the investigation or proceedings were proceedings in a court of law.

(5) For the purposes of the Defamation Act, any report made by the Commission under this Act and any fair and accurate comment thereon shall be deemed to be privileged.

56.—(1) Subject to section 42(3)(b), every person having an official duty under this Act, or being employed or otherwise concerned in the administration of this Act (hereinafter called a concerned person) shall regard and deal with as secret and confidential, all information, statutory declarations, government contracts, prescribed licences and all other matters relating to any matter before the Commission, except that no disclosure made by the Commission or other concerned person in the proceedings for an offence under this Act or under the Perjury Act, by virtue of section 17(2) of that Act, shall be deemed inconsistent with any duty imposed by this subsection.

(2) The obligation as to secrecy and confidentiality imposed by this section, in relation to any documents, or information obtained under this Act continues to apply to a person despite the person having ceased to have an official duty, be employed or otherwise concerned in the administration of this Act.

(3) Every concerned person who is required under subsection (1) to deal with matters specified therein as secret and confidential who at any time communicates or attempts to communicate any such information, declaration, letter and other document or thing referred to in subsection (1) disclosed to him in the execution of any of the provisions of this Act to any person—

(a) other than a person to whom he is authorized under this Act to communicate it; or

(b) otherwise than for the purpose of this Act,

commits an offence and shall be liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to a term of imprisonment not exceeding one year.

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Chapter 1 – Executive Summary

- 1.1 This Investigation Report concerns allegations of irregularities in the approval and post-permit monitoring processes in relation to the construction of a residential development located at #11 Charlemont Drive, Kingston 6.
- 1.2 The report confirms that the Kingston and St. Andrew Municipal Corporation (KSAMC) and the National Environment and Planning Agency (NEPA) issued building, planning and environmental permits to Mr. Mark Barnett and Mrs. Annette Francis Barnett in relation to a residential development located at #11 Charlemont Drive, Kingston 6, for the development of two (2) three-storey blocks consisting of twelve 1-bedroom units. Notwithstanding the terms of the permits, the erected development consists of 2-bedroom units and 3-bedroom units, in breach of the permits issued.
- 1.3 Recommendations are made herein to the Kingston and St. Andrew Municipal Corporation and the National Environment and Planning Agency in an effort to prevent a recurrence of the referred breaches.



Chapter 2 – Background

2.0 This chapter outlines the background information concerning the investigation.

Jurisdiction

2.1.1 The investigation was conducted pursuant to Section 33 of the Integrity Commission Act (ICA), which empowers the Director of Investigation (DI) to investigate the instant matter. The referenced provision is outlined in greater detail in Appendix 1.

Allegations

2.1.2 Consequent on allegations received, the investigation was commenced on September 5, 2022. The allegations are as follows:

- a) That the complainant was, “...*gravely concerned with the irregularities contained in the application, approval and subsequent construction, which has begun at #11 Charlemont Drive.*”
- b) That, “[*they*], the residents are opposed to the NWC central Sewer System as there is no “opt-out” option and once it is on Charlemont Drive, all the residents will be charged whether they use the system or not, which we find to be grossly unfair. If any resident who has a property on the south side (which is below the level of the road) wishes to connect to the NWC Central Sewer System... [*they*] are told that the



cost is \$1.4M which is prohibitively high. Of particular note, is the fact that developers on Charlemont Avenue put in the sewage system necessary for their developments. However [the complainants] are informed and do believe that the ownership of #11 is connected to the NWC, as the sewage system there is conveniently being put in by the NWC..."

Individuals Pertinent to the Investigation

2.1.3 The following persons were considered pertinent to the investigation:

- (a) Mr. Robert Hill, Chief Executive Officer, Kingston & St. Andrew Municipal Corporation (KSAMC);
- (b) Mr. Xavier Chevannes, Chief Engineering Officer, Kingston & St. Andrew Municipal Corporation (KSAMC);
- (c) Ms. Andrine McLaren, Director of Planning, Kingston & St. Andrew Municipal Corporation (KSAMC);
- (d) Mr. David Clarke, Senior Building Officer, Kingston & St. Andrew Municipal Corporation (KSAMC);
- (e) Ms. Morjorn Wallock, former Director, Legal and Enforcement Division, National Environment and Planning Agency (NEPA), former Corporate Secretary, National Resources Conservation Authority (NRCA) and former Corporate Secretary, Town and Country Planning Authority (TCPA);
- (f) Mr. Peter Knight, Chief Executive Officer, National Environment and Planning Agency (NEPA);

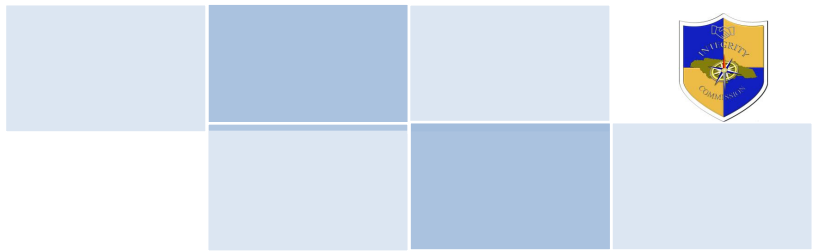


- (g) Ms. Fayona Lewis, Manager, Enforcement Branch, National Environment and Planning Agency (NEPA);
- (h) Ms. Rochelle Afflick, Coordinator, Enforcement Branch, National Environment and Planning Agency (NEPA);
- (i) Ms. Carlene Martin, Coordinator, Enforcement Branch, National Environment and Planning Agency (NEPA);
- (j) Mr. Rhyan Henry, Enforcement Inspector, National Environment and Planning Agency (NEPA);
- (k) Mr. Jac-wain Campbell, Environmental Officer, National Environment and Planning Agency (NEPA);
- (l) Mr. Mark Barnett, President, National Water Commission and Developer, Residential Development located at #11 Charlemont Drive;
- (m) Mrs. Annette Francis Barnett, Developer, Residential Development located at #11 Charlemont Drive; and
- (n) Mr. Ian Bennett, Assistant Vice President, System Planning and Water Resource Development, National Water Commission (NWC).



Chapter 3 – Terms of Reference

- 3.0 This chapter outlines the scope of the investigation and the issues that were explored.
- 3.1 The objectives of the investigation were to determine, *inter alia*, the following:
- a) Whether there exists a development located at #11 Charlemont Drive, Kingston 6 and if so, whether the requisite approvals were obtained in relation to the construction of the said development;
 - b) Whether the terms and conditions of the approvals and/or permits which may have been issued to the Permittee(s) were adhered to;
 - c) Whether there were any breach(es) of the Building Act, the Town and Country Planning Act, the Integrity Commission Act, and any other relevant legislation, in relation to the permits granted for the construction of the development located at #11 Charlemont Drive, Kingston 6;
 - d) Whether there was a conflict of interest on the part of any public official/officer of the National Water Commission (NWC) in relation to the installation of a central sewage system at #11 Charlemont Drive, Kingston 6; and



e) Whether recommendations ought to be made in respect of the subject matter.



Chapter 4 – The Investigation

4.0 This chapter sets out the investigative actions that were undertaken throughout the course of the investigation.

The Investigation

4.1 The following actions were taken during the course of the investigation:

- a) During the period September 5, 2022 to June 6, 2023, twenty (20) Notices were served on individuals, who were deemed pertinent to the investigation for the provision of written statements;
- b) During the period February 7, 2023 to April 4, 2023, four (4) Judicial Hearings were conducted;
- c) A review and cross-referencing of the statements and supporting documentation were conducted;
- d) warrants were executed and inspections conducted at #11 Charlemont Drive; and
- e) The Building Act, the Town and Country Planning (Kingston & St. Andrew and Pedro Cays) Provisional Development Order, Natural Resources Conservation Authority Act, Integrity Commission Act and other relevant legislation and policies were reviewed.



Chapter 5 – Law, Policies, Evidence and Discussion of Findings

5.0 This chapter sets out the law, policy, evidence and findings concerning the investigation.

Legislation Governing the Issuance of Building and Environmental Permits

5.1 Pursuant to the referenced allegations, the DI undertook a review of the legislative framework which governs the permits required for the construction of a multifamily development.

5.1.1 The memorandum of objects and purpose of the Building Act, which came into effect on January 15, 2019, reads, “AN ACT to Repeal the Kingston and St. Andrew Building Act and the Parish Councils Building Act and make new provisions for the regulation of the building industry; to facilitate the adoption and efficient application of national building standards to be called the National Building Code of Jamaica for ensuring safety in the built environment, enhancing amenities and promoting sustainable development; and for connected matters.”¹

5.1.2 Section 17 of the Building Act provides as follows:

“(1) A person shall not carry out building work unless –

(a) a building permit in respect of the building work has been issued to him;

¹ The Building Act (2018)



(b) where applicable, a planning permit has been issued to him under the Town and Country Planning Act; and

(c) The building work is carried out in accordance with the building permit, this Act, the National Building Code or of any other regulations made under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the First Schedule.

(3) In addition to any penalty that is imposed under section (1), the court may, under subsection (2), issue any order that the Local Authority could make for the remedy of the breach giving rise to the conviction, including an order for the taking down or alteration of a building or part of a building, so as to conform with the requirements of the building permit, this Act, the National Building Code and any other regulations made under this Act.”²

5.1.3 In addition, Section 9 of the Natural Resources Conservation Authority Act states that:

“(2)...no person shall undertake in a prescribed area any enterprise, construction or development of a prescribed description or category except under and in accordance with a permit issued by the Authority.

...

² Section 17 of the Building Act



(7) Any person who contravenes any provisions of subsection (2) shall be guilty of an offence and shall be liable on summary conviction... to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment..."³

5.1.4 Section 13(1)(a) of the referenced legislation further states as follows:

"where a person fails to comply with the provisions of section 9(2)...

The Authority may issue an order in writing to such person directing him to cease, by such date as shall be specified in the order, the activity in respect of which the permit, license or environmental impact assessment, as the cause may be, is required."⁴

5.1.5 Section 6 of the Town and Country Planning (Kingston And Saint Andrew and the Pedro Cays) Provisional Development Order, 2017 provides that "An application for planning permission shall— (a) be made in the form issued by the local planning authority for that purpose and obtainable from that authority..."

³ Section 9 of the Natural Resources Conservation Authority Act

⁴ Section 13(1)(a) of the Natural Resources Conservation Authority Act



The Process utilized by the Relevant Authorities in the Grant of Approvals for the Construction of Developments

5.2 Based on the abovementioned legal provisions which govern the construction of developments, the following approvals were required in relation to the development at #11 Charlemont Drive:

- Building and/or Planning Permit(s) from the Kingston and St. Andrew Municipal Corporation; and
- Environmental Permit issued by the NEPA

5.2.1 The DI undertook a review of the processes in relation to the grant of the permits by the Kingston & St. Andrew Municipal Corporation and NEPA respectively.

The Process Regarding the Grant of Building Approval by the Kingston & St. Andrew Municipal Corporation (KSAMC)

5.2.2 By way of a statement dated September 13, 2022, Ms. Andrine McLaren, Director of Planning, KSAMC outlined the process to be followed upon receipt of an application for planning permission. The process is summarized below:

- i. When applying for a planning permit, the following documents are required: (i) Proof of Ownership – Certified Copy of the Registered Title; (ii) Current Surveyor's ID Report; (iii) Current Property Tax Certificate; and (iv) Copy of the Tax Registration Number (TRN) of the Owner. However, in the event that the application is not submitted by the Owners, written consent from the Owners must be provided and it



should be witnessed by a Justice of the Peace. Further, a copy of the TRN for any agents serving on behalf of the owners must be obtained. Additionally, approval from the Jamaica Fire Brigade and National Water Commission may be required;

- ii. Once the requisite documents are obtained, an assessment is conducted by the Registry and the fees are calculated;
- iii. When the applicant pays the fees, the application is accepted;
- iv. The physical file is then generated by the Registry. Two files are created, one goes to Planning Department and the other to the Building Registry;
- v. When the file comes to the Planning Department, the Secretary assigns the file to an Officer;
- vi. The Planning Officer, once in receipt of the file does a site inspection;
- vii. A site inspection report is then generated by the Planning Officer;
- viii. The file then goes back to the Building Registry and they also handle the referrals to the relevant agencies. In the case of ten (10) units or more, an environmental permit from Natural Resources Conservation Authority (NRCA), an entity under NEPA, is required before planning approval can be granted. As it relates to the environmental permit, the applicant applies to NRCA to obtain same. NEPA will consult NWA as part of that process. NEPA and NWA then send to KSAMC their recommendation in relation to the planning/building of the particular development;
- ix. Once the recommendations are obtained, then the file returns to the Planning Department and the Planning Officer reviews to see that the recommendations for approval from the relevant agencies are all



present and that all planning issues have been addressed. If so, the file is then forwarded to the Director of Planning;

- x. The Director of Planning prepares a document entitled "*Recommendation from the Director of Planning*"; and
- xi. The file then returns to the Building Registry and is sent to the Administrator for the decision to be made by the Building and Town Planning Committee⁵.

5.2.3 As it relates to the process utilized by the Kingston & St. Andrew Municipal Corporation (KSAMC) in the approval of a building application permit, Mr. Robert Hill, Chief Executive Officer, Kingston & St. Andrew Municipal Corporation (KSAMC) indicated that, "*...the process is not documented. This forms part of the routine process carried out by building Inspectors and Planning Officers from the commencement of works to post-approval inspections.*"⁶

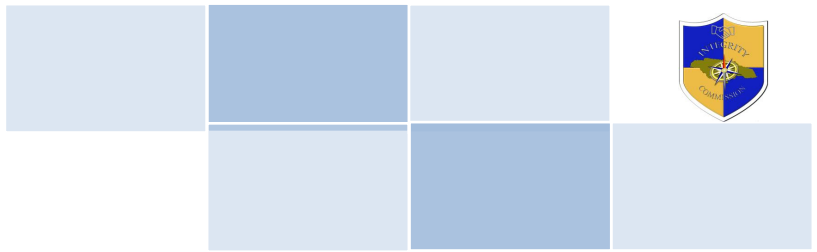
5.2.4 In an effort to ascertain further details regarding the foregoing, a statement dated September 7, 2022, was obtained from Mr. Xavier Chevannes, Chief Engineering Officer, KSAMC in relation to the grant of building permits. Mr. Xavier Chevannes outlined the process as follows:

⁵ Witness Statement of Ms. Andrine McLaren, Director of Planning, , Kingston & St. Andrew Municipal Corporation dated September 13, 2022, p1.

⁶ Witness Statement of Mr. Robert Hill, Chief Executive Officer, Kingston & St. Andrew Municipal Corporation dated November 29, 2022, p1.



- i. When applying for a building permit, the following documents are required: (i) Proof of Ownership such as Title of the Property; (ii) Surveyor's ID Report; (iii) Property Tax Certificate; (iv) Completed Application form; (v) Drawings – An applicant is required to submit at least four sets of drawings; and (vi) Copy of the Tax Registration Number (TRN) of the Owner, however a copy of the Driver' Licence is accepted and the copy of the TRN for any agents serving on behalf of the owners;
- ii. Once the Building Application is completed, a Building Officer assesses the drawings and calculates the fees;
- iii. Upon payment of fees, the application is accepted and a reference number is assigned. Subsequently, the Building Registry sends one set of drawings to the Building Department and one set of drawings to the Planning Department;
- iv. A Field Officer is assigned to the file, assesses the plan to ensure the structure is sound and conducts the site visit;
- v. The file is then reviewed by a Senior Field Officer/Building Inspector;
- vi. For single family developments, the Senior Officer makes recommendation on behalf of the Chief Engineering Officer to the Building and Town Planning Committee for consideration. However, if a drawing has been submitted with issues, the Senior officer will notify the applicant. If the applicant does not rectify the issues, after numerous attempts, then the application is sent to the Building and Town Planning Committee with a recommendation for refusal;
- vii. For multi-family developments, after the Senior Inspector assesses the application, it is sent to the Assistant Building Surveyor or Deputy



Building Surveyor for their recommendation. The Assistant Building Surveyor or Deputy Building Surveyor then makes the recommendation on behalf of the Chief Engineering Officer; and

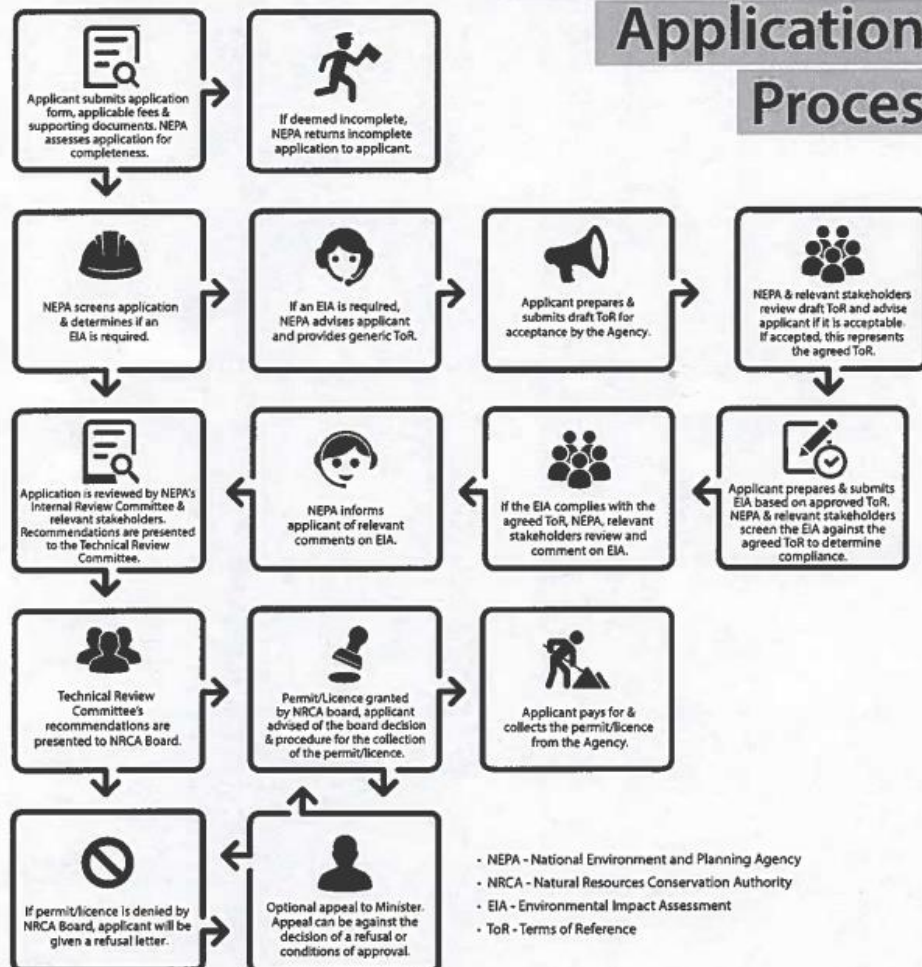
- viii. For three or more multi-family units, subsequent to the review by the Assistant Building Surveyor or Deputy Building Surveyor, the drawings are reviewed by the Chief Engineering Officer and the Planning Department for final comments/recommendation before being sent to the Building and Town Planning Committee for consideration.

The Process Regarding the Grant of Environmental Approval by the National Environment & Planning Agency (NEPA)

5.2.5 Mr. Peter Knight, Chief Executive Officer, NEPA, in his statement dated December 7, 2022, provided a flow chart which depicts the Environmental Permit & Licence Applications Process. The flow chart is displayed below:



Environmental Permit & Licence Applications Process





The Approvals Granted by the Relevant Authorities to the Developer for the Development located at #11 Charlemont Drive, Kingston 6

Approvals Granted by the Kingston & St. Andrew Municipal Corporation

- 5.3 On August 14, 2019, the Kingston & St. Andrew Municipal Corporation granted a permit to the applicants, *Mr. Mark Barnett and Mrs. Annette Francis Barnett*, for the development of two (2) three (3) storey blocks consisting of twelve (12) one-bedroom units, with a total floor area of 856 square metres along with 25 parking spaces on a lot size of 1770 square metres along with 600 square metres of amenity space at #11 Charlemont Drive, Kingston 6.⁷
- 5.3.1 The referenced permit outlined several “*general conditions*” by which the permittee was bound. These conditions included:

“... d) That construction must conform to the approved plans and Building Regulations.

...

*f) That failure to comply with the conditions as listed herein and the approved will be considered a breach and will render this approval **NULL and VOID.**”⁸*

⁷ Approved Planning and Building Permission dated August 14, 2019, issued by the Kingston and St. Andrew Municipal Corporation (KSAMC)

⁸ Ibid.



5.3.2 Subsequent to the abovementioned building permit granted for the development located at #11 Charlemont Drive, the DI observed an approval dated November 18, 2020, which was issued to the referenced applicants by the KSAMC, for an amendment of the layout of the units in block B and expansion of the units in block A by 60 square feet.

Approvals Granted by the National Environment and Planning Agency (NEPA)

5.3.3 The DI observed two environmental permits dated August 13, 2019 and July 30, 2020, which were granted by NEPA and authorized by Mr. Peter Knight and Ms. Morjorn Wallock on behalf of the Natural Resources Conservation Authority (NRCA), for the construction of the development located at #11 Charlemont Drive.⁹

5.3.4 It should be noted that the permit dated July 30, 2020, superseded the environmental permit which was dated August 13, 2019.

5.3.5 The DI highlights here the conditions with which the permittees were required to comply, and which were deemed pertinent for the purpose of this investigation:

- (a) General Condition 2 stipulated that the permittee shall not assign, or transfer or dispense with this Permit or part with any benefit under it except with the prior written consent of the Authority.

⁹ Permit issued to Mark and Annette Barnett by the NRCA for #11 Charlemont Drive, Kingston 6



(b) Specific Condition 1 stipulates in the referenced environmental permit dated July 30, 2020 as follows: *“The Permittee shall comply with the representations made in Permit Application received and date stamped by the Natural Resources Conservation Authority 3 July 2019, project brief titled “Proposed Multifamily Development at #11 Charlemont [Drive], Kingston 6”, drawing titled ‘Proposed Multifamily Development at #11 Charlemont [Drive], Kingston 6 – Site plan’, received and date stamped by the Authority 3 July 2019...”*

The Inspection and Monitoring Activities Executed by the Relevant Authorities during the Construction of the Development located at #11 Charlemont Drive, Kingston 6

Kingston & St. Andrew Municipal Corporation

5.4 With reference to the inspection and monitoring activities executed by the Kingston & St. Andrew Municipal Corporation (KSAMC), Section 33 of the Building Act stipulates that the inspection and monitoring of developments for which permits have been granted are to be executed by the Local Authority (the Municipal Corporation). Section 33 of the referenced Act states as follows:



“The Local Authority shall monitor the progress of building work permitted under this Act, as often as may be necessary to cause the Local Authority to-

- (a) secure the due observance of this Act, the National Building Code or any other regulations made under this Act or any term or condition subject to which the building permit is issued;*
- (b) survey any building or building work placed under its supervision; and*
- (c) issue certificates of stage of construction compliance under section 34 at any stage of the building work.”¹⁰*

5.4.1 Further, Section 34 of the referenced Act, *inter alia*, provides as follows:

“(1) A permit holder or his agent shall not proceed from one stage to the next stage of the building work unless he has been issued with a certificate of stage of construction compliance by the Local Authority under this section for the previous stage of the permitted building work.

...

(4) The Local Authority shall issue a certificate of occupancy in relation to building work if, on an application by the owner, the Local Authority is satisfied that –

¹⁰ Section 33 of the Building Act (2018)



(a) the building work has been completed in accordance with this Act, the National Building Code or any other regulations made under this Act; and

(b) the whole or part of the building, as the case may be, is suitable and ready for occupancy.

...

(6) The whole or part of a building, as the case may be, shall not be occupied until the Local Authority has issued a certificate of occupancy in relation to the whole or part of the building."¹¹

5.4.2 Additionally, it is important to note the functions of the Chief Engineering Officer, which are outlined in Section 10 of the Building Act. The referenced provision, *inter alia*, stipulates the following:

“(1) For the purposes of this Act, a Chief Engineering Officer shall –

(a) have superintendence over all buildings and building work within the area of jurisdiction of the Local Authority in which he holds office;

(b) ensure that building work is undertaken in accordance with this Act, the National Building Code and any other regulations made under this Act;

...

(d) take appropriate action to –

¹¹ Section 34 of the Building Act (2018)



- i. *identify any breach of this Act, the National Building Code and any other regulations made under this Act;*
- ii. *have the breach duly remedied in a timely manner; and*
- iii. *ensure that relevant sanctions for the breach are applied;*

...

(g) Ensure that compliance certificates of stage of construction are issued in a timely manner and in accordance with such guidelines as are established by the Local Authority, from time to time, where the building work has been inspected and found to be in compliance with the relevant building permit;

...

(2) The Chief Engineering Officer may refuse to approve building work or, as the case may require, order that the building work be discontinued on the ground that upon his inspection of the building work or any building material or product, construction method, design, building component or building system connected with the building work, he has determined that it is not in accordance with the building permit, this Act, the National Building Code and any other regulations made under this Act."¹²

5.4.3 Pursuant to the aforementioned provisions of the Building Act, the DI sought to obtain the inspection reports, certificates of compliance for each stage of

¹² Section 10 of the Building Act (2018)



construction and the certificate of occupancy for the development located at #11 Charlemont Drive, Kingston 6, from the Chief Engineering Officer at the Kingston & St. Andrew Municipal Corporation.

5.4.4 In this regard, Mr. Xavier Chevannes, Chief Engineering Officer, Kingston & St. Andrew Municipal Corporation indicated in his statement dated September 7, 2022, that, *“As it relates to the inspections conducted, there will not be any formal reports on the file as we did not institute that process at that time. Since 2022, I have implemented a form, similar to a checklist which the inspectors can utilize on their inspections. However, during inspection, if it is noted that something has been built which is not according to the building plan, a cease work Notice will be issued which gives the applicant the opportunity to submit an amendment or demolish the development or revert to what was approved.”*¹³

5.4.5 Mr. Xavier Chevannes further explained that, *“Upon completion of the construction, there was no certificate of completion issued. However, Regulations for the Building Act (2018), indicates that a certificate of occupancy and stages of completion be issued however, this is not yet law, so was not done at the time. There was an inspection done at the end of the construction.”*¹⁴

¹³ Witness Statement of Mr. Xavier Chevannes, Chief Engineering Officer, Kingston & St. Andrew Municipal Corporation, dated September 7, 2022.

¹⁴ Statement by Mr. Xavier Chevannes, Chief Engineering Officer, Kingston & St. Andrew Municipal Corporation, dated September 7, 2022.



- 5.4.6 The DI reiterates here, that the Building Act came into effect on January 15, 2019. It should be noted that the requirement for Compliance Certificates to be issued at varying stages of completion as well as a Certificate of Occupancy upon completion, is fully encapsulated within Section 10 of the referenced legislation. Mr. Chevannes' representations regarding the absence of Regulations under the Building Act do not negate the statutory obligations imposed upon him, in his capacity as Chief Engineering Officer of the Kingston and St. Andrew Municipal Corporation.
- 5.4.7 The DI then enquired of the KSAMC whether any inspections were conducted in relation to the development located at #11 Charlemont Drive, Kingston 6.
- 5.4.8 Having regard to the foregoing, Mr. David Clarke, Senior Building Officer, Kingston & St. Andrew Municipal Corporation, in his statement dated November 29, 2022, indicated that an inspection for the development located at #11 Charlemont Drive, Kingston 6, was conducted at approximately forty percent (40%) completion of building works and a final inspection was conducted at approximately ninety percent (90%) completion of building works.
- 5.4.9 The DI is in possession of the findings documented by the KSAMC subsequent to the inspections executed. The details of the findings are tabulated below:



Table 1: Inspections Executed by the KSAMC for the development located at #11 Charlemont Drive, Kingston 6

Date of Inspection	Name of Inspector	Conclusion	Recommendation
November 10, 2020	David Clarke	The development was about 40% completed. Block B was about 80% completed in accordance with the approved plans, with minor internal changes. Block A was about 10% completed and the construction was at the foundation level.	No recommendations were outlined in the Report
December 10, 2020	David Clarke	Final Inspections were done, and all the requirements were in order.	No recommendations were outlined in the Report

5.4.10 Mr. Clarke further indicated in his statement that the building structure was compliant with the approved building plans issued by the KSAMC for the property located at #11 Charlemont Drive, Kingston 6 and that the number of rooms observed on the development was congruent with the number of rooms outlined in the approved building permit.

National Environment and Planning Agency

5.4.11 By way of a statement dated January 12, 2023, Mrs. Rochelle Afflick, Coordinator, Enforcement Branch, National Environment and Planning Agency outlined the process utilized by the Enforcement Branch in relation to the post-permit monitoring of licences. Mrs. Afflick outlined the process as follows:



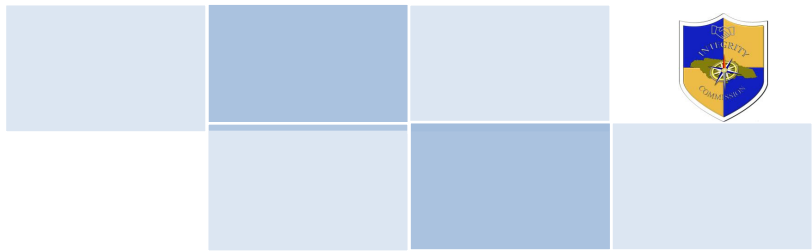
- i. The case is assigned to the officer;
- ii. The officer follows the protocol established for monitoring the assigned site. The protocol includes as follows: (i) the officer conducts an in house check first to determine whether the permit has been collected and whether the other necessary documents were submitted; (ii) the officer visits the site and assesses the conditions present on the site; (iii) the officer then prepares a post permit monitoring report, within 5-7 days of the visit; (iv) and the report is then submitted to the Coordinator;
- iii. Upon receipt of the report, it is then saved on the enforcement drive. The Coordinator randomly reviews reports. Not all reports are reviewed, given the large volume of reports;
- iv. If the Officer observes a breach on site, a Warning Notice, signed by the Officer, is to be served;
- v. If the timeline stated in the Warning Notice has passed and the breach persists, a Warning Letter is generated and submitted to the Coordinator;
- vi. The Coordinator reviews the letter and it is then sent to the Manager for signature;
- vii. If the breach is grievous in nature, then a stronger instrument is recommended. It should be noted that there is no grading system for the types of breaches. However, the stronger instruments include; the Enforcement Notice, the Cessation Order, the Stop Notice, the notice of Intention to Suspend, Suspension Notice, all these instruments have to be reviewed by the Legal Services Branch. The Chief Executive Officer is the person who signs these instruments.



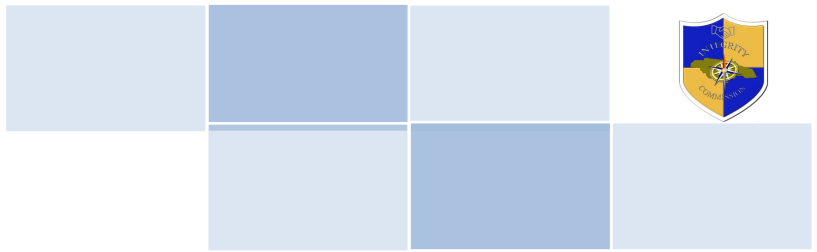
The DI is in possession of the post-permit monitoring reports prepared by NEPA in respect of the development located at #11 Charlemont Drive, Kingston 6. The details of which are tabulated below:

Table 1: Post-Permit Monitoring Reports generated by the Enforcement Branch, NEPA for the development located at #11 Charlemont Drive, Kingston 6

Date of Inspection	Name of Inspector	Stage of Construction	Conclusion	Conditions Breached	Recommendations
October 2, 2019	Rhyan Henry	Construction of the development has not commenced.	Based on an assessment of the 27 conditions outlined, only 3 were applicable at the time of the monitoring. Of the conditions monitored none were fully compliant, 3 non-compliant and 24 conditions could not be assessed. Compliance level was 0% at the time.	<ul style="list-style-type: none"> The Permittee shall ensure that all correspondence, notifications, plans, reports or any other documents being submitted to the Agency and/or the Authority pursuant to any General and/or Specific Condition of the Permit are addressed to "Manager, Enforcement Branch, National Environment and Planning Agency, 10 Caledonia Avenue, Kingston 5". 	A follow-up monitoring be undertaken when the development has commenced.



				<p>Comment:</p> <p>This condition is not compliant as in-house checks revealed that there were no submissions to the Enforcement Manager's mailbox.</p> <ul style="list-style-type: none"> •The Permittee shall submit a copy of the approval letter from the National Water Commission for connection to the central sewer system to the Manager of the Enforcement Branch at NEPA prior to the commencement of the connection of the development to the NWC's Central Sewer System servicing the area. <p>Comment:</p> <p>The Condition is not compliant as in-house checks</p>	
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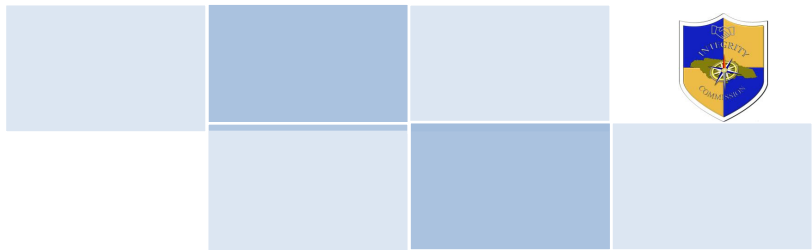
				<p>revealed that there were no submissions to the Enforcement Manager's mailbox.</p> <ul style="list-style-type: none"> •The Permittee shall notify in writing the Manager of the Enforcement Branch, NEPA, the Director of the Environmental Health Unit of the Ministry of Health and Environment and the Local Health Authority when the sewer connection is completed to allow for inspection before sale, lease or occupation of the units. <p>Comment: This condition is not compliant as in-house checks revealed that there were no submissions</p>	
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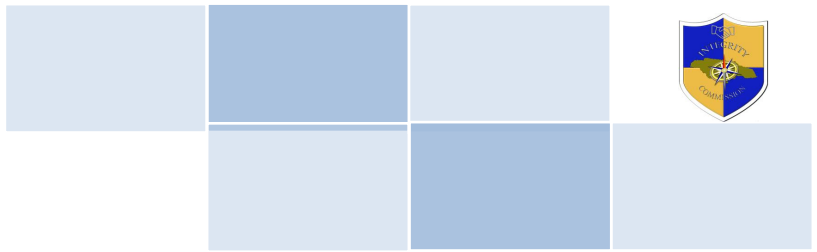
				to the Enforcement Manager's mailbox.	
January 21, 2020	Rhyan Henry	Construction of the development has not commenced.	Based on an assessment of the 27 conditions outlined, only 3 were applicable at the time of the monitoring. Of the conditions monitored, none were fully compliant, 3 non-compliant and 24 conditions could not be assessed. Compliance level was 0% at the time.	Same as Above.	A follow-up monitoring be undertaken when the development has commenced.
March 5, 2020	Rhyan Henry	Construction of the development has not commenced.	Based on an assessment of the 27 conditions outlined, only 3 were applicable at the time of the monitoring. Of the conditions monitored, none were fully compliant, 3 non-compliant and 24 conditions could not be assessed. Compliance level was 0% at the time.	Same as Above.	A follow-up monitoring be undertaken when the development has commenced.
June 3, 2020	Rhyan Henry	Construction of the development has not commenced.	Based on an assessment of the 27 conditions outlined, only 3 were applicable at the time of the monitoring. Of the conditions monitored, none were fully compliant, 3 non-compliant and 24 conditions could not be assessed.	Same as Above.	A follow-up monitoring be undertaken when the development has commenced.



			Compliance level was 0% at the time.		
July 31, 2020	Rhyan Henry	Site being cleared for excavation	Based on an assessment of the 28 conditions outlined, only 12 were applicable at the time of the monitoring. Of the conditions monitored, 8 were fully compliant, 4 non-compliant, 9 were not applicable at the time and 7 conditions could not be assessed. Compliance level was 66% at the time.	<ul style="list-style-type: none"> The Permittee shall ensure that all correspondence, notifications, plans, reports or any other documents being submitted to the Agency and/or Authority pursuant to any General and/or Specific Condition of the Permit are addressed to "Manager, Enforcement Branch, National Environment and Planning Agency, 10 Caledonia Avenue, Kingston 5". <p>Comment: The Condition is not compliant as in-house checks revealed that there were no submissions to the Enforcement Branch or</p>	<ul style="list-style-type: none"> A follow-up monitoring should be undertaken to monitor the progression of the development. A Warning Letter should be issued for the above breaches.



				<p>Enforcement Manager's mailbox.</p> <ul style="list-style-type: none"> •The Permittee shall submit a copy of the approval letter from the National Water Commission for connection to the central sewer system to the Manager of the Enforcement Branch at NEPA prior to the commencement of the connection of the development to the NWC's Central Sewer System servicing the area. <p>Comment: The Condition is not compliant as in-house checks revealed that there were no submissions to the Enforcement Branch or Enforcement Manager's mailbox.</p>	
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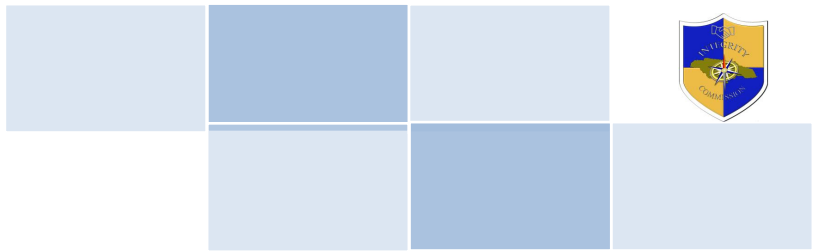
				<ul style="list-style-type: none"> •The Permittee shall notify in writing the Manager of the Enforcement Branch, NEPA, the Director of the Environmental Health Unit of the Ministry of Health and Environment and the Local Health Authority when the sewer connection is completed to allow for inspection before sale, lease or occupation of the units. <p>Comment: The Condition is not compliant as in-house checks revealed that there were no submissions to the Enforcement Branch or Enforcement Manager's mailbox.</p>	
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				<ul style="list-style-type: none"> •The Permittee shall ensure that the storm water drainage plan is implemented based on the design approved by the National Works Agency (NWA). A copy of the approval from the NWA shall be submitted to the Manager of the Enforcement Branch of the NEPA prior to commencement of the development. <p>Comment: The Condition is not compliant as in-house checks revealed that there were no submissions to the Enforcement Branch or Enforcement Manager's mailbox.</p>	
September 4, 2020	Rhyan Henry	Foundation being constructed	Based on an assessment of the 28 conditions outlined, only #11 were applicable at the time of	<ul style="list-style-type: none"> •The Permittee shall ensure that all correspondence, 	<ul style="list-style-type: none"> • A follow-up monitoring should be



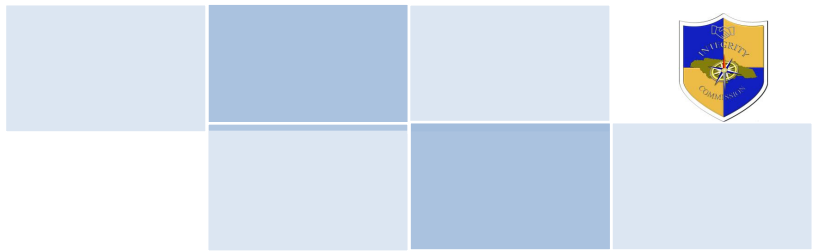
			<p>the monitoring. Of the conditions monitored, 8 were fully compliant, 3 non-compliant, #11 were not applicable at the time and 6 conditions could not be assessed. Compliance level was 73% at the time.</p>	<p>notifications, plans, reports or any other documents being submitted to the Agency and/or Authority pursuant to any General and/or Specific Condition of the Permit are addressed to "Manager, Enforcement Branch, National Environment and Planning Agency, 10 Caledonia Avenue, Kingston 5".</p> <p>Comment: The Condition is not compliant as in-house checks revealed that there were no submissions to the Enforcement Branch or Enforcement Manager's mailbox.</p>	<p>undertaken to monitor the progression of the development.</p> <ul style="list-style-type: none"> • A Warning Letter should be issued for the above breaches.
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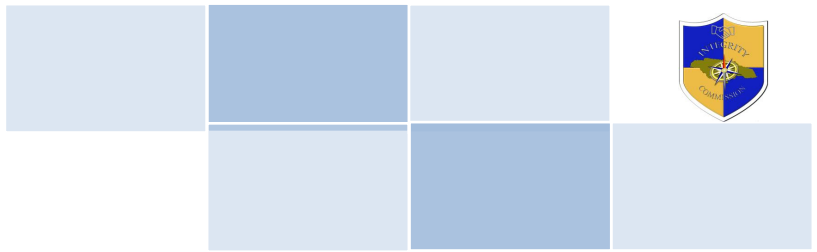
				<ul style="list-style-type: none"> •The Permittee shall submit a copy of the approval letter from the National Water Commission for connection to the central sewer system to the Manager of the Enforcement Branch at NEPA prior to the commencement of the connection of the development to the NWC's Central Sewer System servicing the area. <p>Comment:</p> <p>The Condition is not compliant as in-house checks revealed that there were no submissions to the Enforcement Branch or Enforcement Manager's mailbox.</p> <ul style="list-style-type: none"> •The Permittee shall ensure that the storm 	
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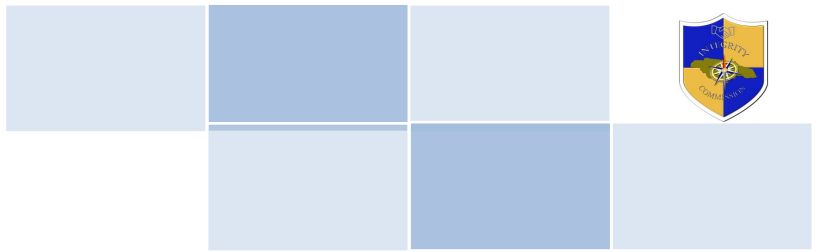
				<p>water drainage plan is implemented based on the design approved by the National Works Agency (NWA). A copy of the approval from the NWA shall be submitted to the Manager of the Enforcement Branch of the NEPA prior to commencement of the development.</p> <p>Comment: The Condition is not compliant as in-house checks revealed that there were no submissions to the Enforcement Branch or Enforcement Manager's mailbox.</p>	
December 17, 2020	Rhyan Henry	Image of Block B depicts a few installed decorative windows.	Based on an assessment of the 28 conditions outlined, only 12 were applicable at the time of the monitoring. Of the conditions monitored, 8 were	<ul style="list-style-type: none"> •The Permittee shall comply with the representations made in Permit Application. 	<ul style="list-style-type: none"> • A follow-up monitoring should be undertaken to monitor the



			<p>fully compliant, 4 non-compliant, 9 were not applicable at the time and 6 conditions could not be assessed. Compliance level was 66% at the time.</p>	<p>Comment: This condition was not compliant as the layout of the development had deviated from the drawings that were approved, received and date stamped by the Authority, 3 July 2019.</p> <ul style="list-style-type: none"> •The Permittee shall ensure that all correspondence, notifications, plans, reports or any other documents being submitted to the Agency and/or Authority pursuant to any General and/or Specific Condition of the Permit are addressed to "Manager, Enforcement Branch, National Environment and Planning Agency, 10 	<p>progression of the development.</p> <ul style="list-style-type: none"> • A warning letter should be issued for the above breaches.
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				<p>Caledonia Avenue, Kingston 5".</p> <p>Comment:</p> <p>This condition was not compliant as in-house checks revealed that there were no submissions to the Enforcement Branch or Enforcement Manager's mailbox.</p> <ul style="list-style-type: none"> •The Permittee shall submit a copy of the approval letter from the National Water Commission for connection to the central sewer system to the Manager of the Enforcement Branch at NEPA prior to the commencement of the connection of the development to the NWC's Central Sewer System servicing the area. 	
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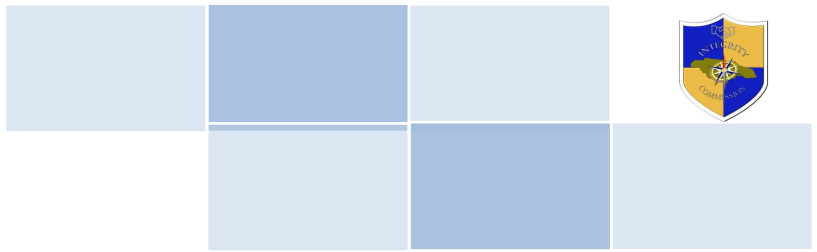
				<p>Comment:</p> <p>This condition was not compliant as in-house checks revealed that there were no submissions to the Enforcement Branch or Enforcement Manager's mailbox.</p> <ul style="list-style-type: none"> •The Permittee shall ensure that the storm water drainage plan is implemented based on the design approved by the National Works Agency (NWA). A copy of the approval from the NWA shall be submitted to the Manager of the Enforcement Branch of the NEPA prior to commencement of the development. 	
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				<p>Comment:</p> <p>This condition was not compliant as in-house checks revealed that there were no submissions to the Enforcement Branch or Enforcement Manager's mailbox.</p>	
January 14, 2021	Rhyan Henry	Photos attached to the Report depict an Image of Block A which indicates that it is approximately 60% completed. An image of Block B depicts that the structure is completed.	Based on an assessment of the 28 conditions outlined, only 12 were applicable at the time of the monitoring. Of the conditions monitored, 8 were fully compliant, 4 non-compliant, 9 were not applicable at the time and 6 conditions could not be assessed. Compliance level was 66% at the time.	Same as Above.	<ul style="list-style-type: none"> • A follow-up monitoring should be undertaken to monitor the progression of the development. • A warning letter should be issued for the above breaches.
October 8, 2021	Jac-wain Campbell	Block B contains 6 x 2 Bedroom units, 3 Bathrooms, laundry kitchen or living space.	Based on an assessment of the 28 conditions outlined, only 9 were applicable at the time of the monitoring. Of the conditions monitored 4 were fully compliant, 3 non-compliant, 2 conditions were	<ul style="list-style-type: none"> •The Permittee shall comply with the representations made in Permit Application. <p>Comments:</p>	Enforcement Action be taken for the breaches observed even though the building has been completed. An



		<p>Block A contains 6 x 3 bedroom units, 4 Bathrooms, laundry, kitchen or living space.</p>	<p>partially compliant and 19 conditions could not be assessed. Compliance level was 56% at the time.</p>	<p>Based on the walk through of the site, there has been a change to the layout of the building and the number of habitable rooms.</p> <ul style="list-style-type: none"> •The Permittee shall ensure that all correspondence, notifications, plans, reports or any other documents being submitted to the Agency and/or Authority pursuant to any General and/or Specific Condition of the Permit are addressed to "Manager, Enforcement Branch, National Environment and Planning Agency, 10 Caledonia Avenue, Kingston 5". <p>Comments:</p>	<p>amendment is required for the changes made to the development.</p>
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				<p>Based on Specific Condition 1, this condition would have been non-compliant.</p> <ul style="list-style-type: none"> The Permittee shall submit a copy of the approval letter from the National Water Commission for connection to the central sewer system to the Manager of the Enforcement Branch at NEPA prior to the commencement of the connection of the development to the NWC's Central Sewer System servicing the area. <p>Comment: No documents have been submitted through the Enforcement Managers mailbox.</p>	
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5.4.12 The information tabulated in Table 2 reveals that between October 2019 and October 2021, nine (9) Post Permit Monitoring Reports were generated by representatives of the NEPA in relation to the development located at #11 Charlemont Drive, Kingston 6.

5.4.13 By way of a report dated July 31, 2020, a recommendation was made for a Warning Letter to be issued to the developers on the basis that several deviations from the conditions of the permit were observed. Between July 2020 and January 2021, three additional reports containing similar recommendations were made regarding the issuance of a Warning Letter. The DI notes that no Warning Letters were issued by NEPA during the referenced period.

5.4.14 The only Warning Letter issued by NEPA in relation to breaches of the permit granted for the development located at #11 Charlemont Drive, Kingston 6, was generated on February 10, 2021, a full six (6) months after the breaches were initially identified.

Inconsistencies Identified in the Monitoring and Inspection Reports Generated by NEPA and KSAMC during Construction of the Development

5.4.15 Upon a review of the post permit monitoring reports generated by NEPA and the inspection reports generated by KSAMC in relation to the development located at #11 Charlemont Drive, Kingston 6, a number of inconsistencies were highlighted.



5.4.16 Mr. David Clarke, Senior Building Inspector, KSAMC indicated in his first inspection report that on November 10, 2020, when he visited the property, *“The development was about 40% completed. Block B was about 80% completed in accordance with the approved plans, with minor internal changes...”*, no recommendations were outlined in the Report and no breaches or deviations from the terms of KSAMC’s building permit were identified.

5.4.17 Mr. David Clarke indicated in his second and final inspection report that on December 10, 2020, when he visited the property, *“Final Inspections were done, and all the requirements were in order...”* again, no recommendations were outlined in the Report and no breaches or deviations from the terms of KSAMC’s building permit were identified.

5.4.18 However, the post permit monitoring reports generated by NEPA in July, September and December 2020 all indicated that several breaches were identified and recommended further action.

5.4.19 The post permit monitoring report generated by NEPA, dated December 17, 2020, (37 days after Mr. Clarke’s first visit and 7 days after his second visit) contained the following note, *“...the layout of the development had deviated from the drawings that were approved, received and date stamped by the Authority, 3 July 2019.”*

5.4.20 The DI notes here that the same drawings were submitted to both NEPA and the KSAMC by the developers during the permit application process.



5.4.21 The reasons for Mr. David Clarke's failure to identify and record the deviations from the terms of the KSAMC building permit, which according to the reports generated by NEPA, would have been evident on both occasions on which he purportedly visited #11 Charlemont Drive are unclear at this time.

5.4.22 However, it is clear that his failure to do so, led to the completion of the residential development in clear breach of the Kingston and St. Andrew Municipal Corporation's building permit and a dereliction of his duties as a Senior Building Inspector.

Enforcement Related Actions taken by the National Environment and Planning Agency subsequent to the Breach of the Environmental Permit

5.5. Subsequent to the Inspection executed by NEPA, on January 14, 2021, a Warning Letter dated February 10, 2021, from Ms. Carlene Martin, Acting Manager, Enforcement Branch, NEPA, was addressed to Mr. Mark Barnett, Permittee, regarding, "***Breach of Environmental Permit for the construction of a housing project of 10 to 25 houses at #11 Charlemont Drive...***"¹⁵, which outlined the breaches as follows:

¹⁵ Warning Letter dated February 10, 2021 from Ms. Carlene Martin, Acting Manager, Enforcement Branch, NEPA, to Mr. Mark Barnett



- The Development on site deviated from the representations made in the Permit Application received and date stamped by the Agency on July 3, 2019. This resulted in a breach of Specific Condition 1, which states that the Permittee shall comply with the representations made in the Permit Application; and
- In-house checks revealed that there were no submissions to the Enforcement Branch of NEPA. This resulted in a breach of Specific Condition 9, which states that the Permittee shall ensure that the storm water drainage plan is implemented based on the design approved by the National Works Agency (NWA). A copy of the approval from NWA shall be submitted to the Manager of the Enforcement Branch prior to commencement of the development.

5.5.1 The referenced letter further stated that, *“Given the foregoing, you [Mr. Mark Barnett] are hereby instructed to comply with the above mentioned conditions within seven (7) calendar days of the effective date of this letter. Failure to comply will result in further enforcement action being taken without reference to you.”*¹⁶

5.5.2 In relation to the referenced warning letter, enquiries were made of NEPA to determine whether Mr. Barnett complied with the stipulations. In this regard, Mr. Rhyan Henry, Environmental Inspector, Enforcement Branch, NEPA indicated in his statement dated January #11, 2023 that, *“As a result of the COVID-19 pandemic, we were advised by the CEO of NEPA, Mr. Peter Knight, to not visit*

¹⁶ Ibid.



sites in order to reduce the risk of the virus. Thus, the follow up monitoring of projects were then hindered."¹⁷

5.5.3 In conjunction with the assertion made by Mr. Henry concerning site visits, Ms. Carlene Martin, Coordinator, Enforcement Branch, indicated in her statement dated May 30, 2023 that, "I do recall that an advisory was sent out to the Enforcement [Branch] by NEPA to cease monitoring exercises as a result of the pandemic, this was issued in February 2021. Those instructions came from the CEO."¹⁸

5.5.4 The DI notes here that Mr. Peter Knight, Chief Executive Officer, NEPA confirmed that he issued instructions to the Enforcement Branch for the cessation of routine inspections and post permit-monitoring activities between March 4 and March 31, 2021 in light of the COVID-19 pandemic.¹⁹

5.5.5 The DI notes that subsequent to the issuance of the warning letter dated February 10, 2021, no further monitoring of the development located at #11 Charlemont Drive was executed by NEPA until October 8, 2021.

5.5.6 The DI sought to determine the circumstances which led to NEPA's October 2021, monitoring exercise. Ms. Morjorn Wallock, Former Director, Legal & Enforcement Division, appeared before the DI on February 1, 2023, by way of

¹⁷ Witness Statement of Mr. Rhyon Henry, Environmental Inspector, Enforcement Branch, NEPA dated January #11, 2023. p2.

¹⁸ Witness Statement of Ms. Carlene Martin, Coordinator, Enforcement Branch, NEPA dated May 30, 2023.

¹⁹ Response dated June 23, 2023 of Mr. Peter Knight, Chief Executive Officer, National Environment and Planning Agency (NEPA)



a Summons. Ms. Wallock indicated that she became aware of the development located at #11 Charlemont Drive as a result of an e-mail which was sent to her by an internal stakeholder in October 2021 in relation to a media query about the referenced development.²⁰

5.5.7 Mr. Jac-wain Campbell, Enforcement Officer, NEPA, indicated in his statement dated January 11, 2023, that he was instructed to conduct a post-permit monitoring exercise at the development located at #11 Charlemont Drive. As a result, Mr. Campbell conducted the inspection on October 8, 2021²¹.

5.5.8 Subsequent to the Inspection conducted by the NEPA on October 8, 2021, a letter dated November 1, 2021 from Ms. Morjorn Wallock, Director, Legal & Enforcement Division, NEPA was addressed to Mr. Mark Barnett and Mrs. Annette Francis Barnett entitled, **“PROJECT CONSTRUCTION OF HOUSING PROJECTS OF 10 TO 25 HOUSES, #11 CHARLEMONT DRIVE, HOPE PASTURES, ST. ANDREW, KINGSTON 6 REF. NO. 2019-02017-EP00174 BREACH OF DESCRIPTION OF PERMITTED ACTIVITY”**

5.5.9 The referenced letter stated as follows:

“As you should be aware, the Natural Resources Conservation Authority/Town and Country Planning Authority/National Environment &

²⁰ Transcript of Judicial Hearing dated February 1, 2023 involving Ms. Morjorn Wallock, Former Director, Legal & Enforcement Division, National Environment and Planning Agency (NEPA), p 76

²¹ Statement dated January 11, 2023, of Mr. Jac-wain Campbell, Enforcement Officer, National Environment and Planning Agency (NEPA)



Planning Agency (NRCA/TCPA/NEPA) approved the environmental permit and planning conditions for the development at caption.

This environmental permit allows the construction of a multifamily residential development comprising two (2) 3 storey blocks containing twelve (12) one-bedroom units...

...

A recent inspection indicated [sic] material breaches, being a fundamental departure from the project brief, drawings submitted on 7 April 2021 and approvals granted by the NRCA/TCPA/NEPA.

Presently, the site features:

- i. Block A, 6 x 3 bedrooms units each with 4 bathrooms, laundry and kitchen/living space.*
- ii. Block B, 6 x 2 bedrooms units each with 3 bathrooms, laundry and kitchen/living space.*

Given the foregoing, you are now directed to, as a matter of urgency; submit the relevant applications to the NRCA/TCPA/NEPA seeking an amendment consequent to the project's departure from what was approved. These amendments should be submitted to the Agency on or before 8 November 2021.

Failing which, the NRCA/TCPA/NEPA will use the law and the courts to secure compliance with the environmental permit. Also, should the Agency



not hear from you, the matter will be reported to key partners to include the Real Estate Board...”²²

5.5.10 By way of a letter dated November 10, 2021, Mrs. Annette Francis Barnett responded to Ms. Morjorn Wallock, indicating the following:

“Your letter dated November 1, 2021, regarding the captioned subject matter was hand delivered at the offices of Mr. Mark Barnett and date stamped November 8, 2021.

We have taken note of the requirement to submit Applications to NRCA/TCPA/NEPA for amendments on or before 8th November 2021 and request that we be granted additional time to November 22, 2021, to review and address the issues raised.”²³

5.5.11 The DI sought to determine the actions taken subsequent to the November 2021, correspondence between Mrs. Francis Barnett and Ms. Wallock in relation to the breach of the building and environmental permits. In this regard, Mrs. Annette Francis Barnett was summoned by the DI, to appear in a Judicial Hearing dated February 7, 2023. The relevant portion of the transcript of the referenced Hearing is highlighted below:

²² Letter dated November 1, 2021 from Ms. Morjorn Wallock, Director, Legal & Enforcement Division, NEPA was addressed to Mr. Mark and Annette Barnett

²³ Letter dated November 10, 2021, from Mrs. Annette Francis Barnett, addressed to Ms. Morjorn Wallock, NEPA



CHAIRMAN: So having received the approvals, what ensued after that in relation to this development that you intended to build?

A Separate and apart from the fact that a development then was constructed?

CHAIRMAN: Yes. Tell us about the process, who built it, that kind of information, what happened after the approvals came back to you in terms of the development going up and all that?

A Okay. So, we entered into a joint venture arrangement with a developer who had the responsibility of implementing the construction.

CHAIRMAN: Okay. Could you indicate who you entered into the joint venture agreement with.

A So, the joint venture agreement is between my husband Mark Barnett, myself and Mr. Phillip Smith.

...

CHAIRMAN: The approval that was granted here is for, could you [sic] read it again?

A: ...two three-storey blocks consisting of twelve one-bedroom units."



CHAIRMAN: *But you have indicated to us that you own a three-bedroom unit on one of the blocks?*

A: *Yes.*

CHAIRMAN: *How is it, having received permission only to build one-bedroom units, how is it that you now own a three-bedroom unit in the development? Could you account for that?*

A: *That was what was constructed.*

...

CHAIRMAN: *...Mrs. Francis Barnett having received the permit from NEPA in the name of yourself and your husband, Mr. Mark Barnett, could you indicate whose responsibility it was to ensure that the development took place in line with the conditions of approval?*

A: *Whose responsibility?*

CHAIRMAN: *Yes.*

A: *Our joint venture agreement assigned the management of the development; the construction matters in relation to the approvals to be handled by Mr. Smith.*

CHAIRMAN: *Did you receive permission from NEPA to allow a third party to benefit from the permit that you received from NEPA?*



A: *I am not aware.*

CHAIRMAN: *Did you do it? Did you obtain approval from NEPA to allow a third party to benefit from the permit that was issued to you and Mr. Mark Barnett?*

A: *I am not aware that there is any, no I don't have any.*"²⁴

5.5.12 Mrs. Annette Francis Barnett provided the DI with a copy of the Joint Venture Agreement dated November 25, 2020, between Mr. Mark Barnett, Mrs. Annette Francis Barnett (Owners) and Mr. Philip Smith (Developer), for the development of twelve residential apartments on land owned by Mr. Mark Barnett and Mrs. Annette Francis Barnett.

5.5.13 The referenced Agreement, specifically, under the section entitled Owner's Covenants, states that, *"The Owners in conjunction with the Developer shall establish a residential development (hereinafter called "the development") of the type more particularly shown and set out in the plans for the development of the said land, approved by the Kingston and Saint Andrew Municipal Corporation on June 20, 2019..."*²⁵

5.5.14 Notwithstanding the foregoing, the section entitled Mutual Covenants, stipulates that, *"The owners shall be entitled to retain ownership of four (4) units*

²⁴ Transcript of Judicial Hearing held with Mrs. Annette Francis Barnett on February 7, 2023. p 14, 22

²⁵ Joint Venture Agreement dated November 25, 2020 executed between Mr. Mark Barnett, Mrs. Annette Francis Barnett and Mr. Philip Smith. p 2



comprised in the development which shall consist of two (2) two (2) bedroom units and two (2) three (3) bedroom units..."²⁶

5.5.15 The DI highlights here that the referenced Joint Venture Agreement contained terms which contravened the conditions of the building permit issued by the Kingston and St. Andrew Muncipiipal Corporation (KSAMC). The referenced permit allowed the permittees to construct two three-story blocks consisting of twelve one-bedroom units. However, the Agreement indicated that the Owners were entitled to retain two 2-bedroom units and two 3-bedroom units.

5.5.16 Based on the foregoing, there was a clear intention on the part of the Owners to contravene the terms of the building permit at the time of the execution of the Joint Venture Agreement.

5.5.17 The DI notes here, that it is trite law that a contract entered into with the object of committing an illegal act is unenforceable. Devlin, J, in the case of *St. John Shipping Corporation v Joseph Rank Ltd.* [1957] 1 QB 267, opined that, *"...a contract which is entered into with the object of committing an illegal act is unenforceable... The second principle is that the court will not enforce a contract which is expressly or impliedly prohibited by statute... if the statute prohibits the contract it is unenforceable whether the parties meant to break the law or not."*²⁷

²⁶ Joint Venture Agreement dated November 25, 2020 executed between Mr. Mark Barnett, Mrs. Annette Francis Barnett and Mr. Philip Smith. p 12

²⁷ *St John Shipping Corporation v Joseph Rank* [1957] 1 QB 267



5.5.18 The referenced case was affirmed by Carolyn Tie, J, in the Jamaican case of Richard Dennis v Raymond Hew [2009] HCV 2049.

5.5.19 In the present circumstances, the terms of the referenced Joint Venture Agreement which stipulated that the Owners would retain ownership of four (4) units, consisting of two (2) two (2) bedroom units and two (2) three (3) bedroom units amounted to a breach of the permits issued by the KSAMC and NEPA, which created the illegality.

5.5.20 Further, the DI sought to determine whether any actions were taken by Mr. and Mrs. Barnett, subsequent to their letter addressed to Ms. Morjorn Wallock dated November 10, 2021. In this regard, Mrs. Francis Barnett made the following representations in a Judicial Hearing held on February 7, 2023:

“ ...

A: *I asked for additional time to consider the issues.*

CHAIRMAN: *And in requesting the additional time to consider the issues did you consider the issues?*

A: *Yes, I did.*

CHAIRMAN: *What were your considerations?*

A: *That the development was complete, that titles had been issued and that at that stage I had to get further information as to what was possible in terms of what could be done when you are raising a notice of breach*



to a completed construction where titles have already been issued.

CHAIRMAN: *And you requested additional time to November 22, 2021?*

A: *Yes.*

CHAIRMAN: *What, if anything did you do when that time elapsed?*

A: *Nothing.*"²⁸

5.5.21 The DI sought to determine what actions, *if any*, were taken by the NEPA after the deadline of November 22, 2021, had passed, by which time an application for amendment should have been made.

5.5.22 Ms. Morjorn Wallock was summoned to provide further details regarding the entity's response, on February 1, 2023, and on February 13, 2023. Ms. Wallock indicated that, subsequent to the issuance of the letter dated November 1, 2021 to Mr. Barnett and Mrs. Francis Barnett, she checked with the entity's Applications Management Division to determine whether an amendment application was submitted by the permittees.

5.5.23 Ms. Wallock indicated that the Applications Management Division confirmed that an application was made and as a result, she assumed that the application was in relation to the specific breaches identified in her letter dated

²⁸ Transcript of Judicial Hearing held with Mrs. Annette Francis Barnett on February 7, 2023. p 29



November 1, 2021. Specifically, the DI highlights hereunder an excerpt from the transcript of the Judicial Hearing held with Ms. Wallock on February 13, 2023:

“A: *...I assumed that the amendment was related to my letter so I thought everything was settled so I did not engage with the permittee, I did not do anything else because I thought the amendment treated with my letter.*

CHAIRMAN: *Okay. I want to ask another question on that, Miss Wallock. Do you think that you reasonably should have checked to see what the amendment was, having regard to the breach identified?*

A *Yes. Now that I am thinking about it, yes. I should have gone, check the amendment from top to bottom to make sure that it is in accordance with the letter that I had written, yes.”²⁹*

The Execution of a Warrant at the Development Located at #11 Charlemont Drive by the DI

5.6 Based on the allegations regarding the layout and composition of the development, the DI executed a warrant on December 6, 2022, at the development located at #11 Charlemont Drive, with the intention of

²⁹ Transcript of Judicial Hearing held with Ms. Morjorn Wallock, former Director, legal and Enforcement Division, National Environment and Planning Agency dated February 13, 2023. p 25



verifying the particulars regarding the number and layout of units at the development.

5.6.1 In the course of executing the warrant, the DI observed that the development located at #11 Charlemont Drive consisted of 2-bedroom units and 3-bedroom units, instead of the 1-bedroom units, only, which were approved on the building and environmental permits issued by KSAMC and NEPA.

Allegations concerning the Owner of the Development located at #11 Charlemont Drive and his Affiliation with the National Water Commission

5.7 By way of a letter of complaint submitted to the Commission, it was indicated that, *“We, the residents are opposed to the NWC central Sewer System as there is no “opt-out” option and once it is on Charlemont Drive, all the residents will be charged whether they use the system or not, which we find to be grossly unfair. If any resident who has a property on the south side (which is below the level of the road) wishes to connect to the NWC Central Sewer System... [they] are told that the cost is \$1.4M which is prohibitively high. Of particular note, is the fact that developers on Charlemont Avenue put in the sewage system necessary for their developments. However [the complainants] are informed and do believe that the ownership of #11 is connected to the NWC, as the sewage system there is conveniently being put in by the NWC...”*

5.7.1 As it relates to the abovementioned allegation, the DI sought to obtain a response from Mr. Ian Bennett, Assistant Vice President, System Planning and Water Resource Development, concerning the instant matter. In this regard, Mr.



Bennett indicated, in his statement dated July 14, 2023, that, "...yes, there is no "opt-out" option for the central sewer system. The reason for this is that the NWC is installing sewer conveyance systems across Kingston & St. Andrew. This is as a result of the pollution of the aquifers. This pollution is due to the buildup of underground sewage from pits. So as an effort to prevent the stress on the environment, we are encouraging all residents to move away from building the underground pits and to connect to the central sewer system." ³⁰

5.7.2 Mr. Bennett further explained that, "As it relates to the Developers on Charlemont Avenue, to my knowledge the more recent Developments are connected to the NWC Central Sewer System and if any of the older Developments are not connected to the sewer pipeline, they are also charged fees as a result of the Development's proximity to the sewer lines..."³¹

5.7.3 Having regard to the allegation, the DI conducted a review of several applications made to the National Water Commission by residents of Charlemont Avenue during the period 2017 to 2023. Subsequent to the review, it was observed that there were several residents along Charlemont Avenue who submitted applications and received approvals by the NWC for the supply of wastewater services.

5.7.4 Having regard to Mr. Mark Barnett's roles as the Owner of the Development located at #11 Charlemont Drive, and his position at the NWC as President, it is

³⁰ Witness statement of Ian Bennett, Assistant Vice President, System Planning and Water Resource Development, NWC, dated July 14, 2023.

³¹ Ibid.



important to define the term, conflict of interest. By way of a definition, the Organization for Economic Cooperation and Development (OECD) Policy Brief 2003 defines a conflict of interest as *“a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.”*³²

5.7.5 The DI sought to determine the veracity of the allegations regarding the connection between Mr. Mark Barnett and an application made to the National Water Commission for the supply of water and waste water services to #11 Charlemont Drive. In this regard, a statement was obtained from Mr. Ian Bennett, Assistant Vice President, System Planning and Water Resource Development, NWC. Mr. Bennett, in his statement dated January 30, 2023, indicated that, *“As it relates to the development at #11 Charlemont Drive, Kingston 6, the developer was Mark and Annette Barnett. They applied for the supply of water and waste water services.”*³³

5.7.6 The DI observed a Certificate of Approval which was issued by the National Water Commission for the subdivision of property located at #11 Charlemont Drive, dated December 18, 2020, and signed by Mr. Michael Shaw, Chairman.

5.7.7 The DI notes that Mr. Mark Barnett, President, NWC, did not sign the abovementioned Certificate of Approval in the area designated for the President's signature.

³² OECD 2003, Guidelines for Managing Conflict of Interest in the Public Service, pg. 15.

³³ Witness statement of Mr. Ian Bennett, Assistant Vice President, System Planning and Water Resource Development, NWC, dated January 30, 2023.



5.7.8 During the course of a Judicial Hearing conducted on February 6, 2023, Mr. Barnett confirmed that he did not sign the Certificate of Approval on the basis that the development located at #11 Charlemont Drive, Kingston 6 involved him and as such *"I indicated that I [sic] recused myself from participating in the signatory of that development."*³⁴

5.7.9 As it relates to Mr. Barnett's recusal from the instant matter, Mr. Michael Shaw, Chairman, NWC, in his statement dated July 7, 2023, indicated that, *"...Mr. Barnett disclosed that his spouse had made an application to the NWC, and, as such, he recused himself from any dealings with the matter."*³⁵

5.7.10 The DI observed a letter dated December 22, 2020 from Mr. Ian Bennett, Manager, Engineering Design, addressed to Mr. Mark Barnett and Mrs. Annette Francis Barnett regarding *"Approval of Sewage Conveyance System for No. #11 Charlemont Drive, Kingston 6, St. Andrew..."*³⁶

5.7.11 The referenced letter indicated that, *"The National Water Commission (NWC) having perused your submission on the captioned matter hereby states its approval of the plans as presented for the connection of twelve (12) residential units to our existing sewerage facilities."*³⁷

³⁴ Transcript from the Judicial Hearing held with Mr. Mark Barnett, President, NWC on February 6, 2023. p 32

³⁶ Letter dated December 22, 2020 from Mr. Ian Bennett, Manager, Engineering Design, addressed to Mr. Mark Barnett and Mrs. Annette Francis-Barnett

³⁷ Ibid.



5.7.12 Having regard to the approval granted to Mr. Mark Barnett for the supply of water and wastewater, the DI sought to determine the process utilized by the NWC in respect of same.

5.7.13 By way of a statement dated January 30, 2023, Mr. Ian Bennett, Assistant Vice President, System Planning and Water Resource Development outlined the procedure which obtains in the processing of applications for the supply of water and wastewater systems by the NWC as follows:

- i. The Department obtains the application;
- ii. The Data Entry Clerk will then create a file for the applicant;
- iii. The department assesses whether all the necessary documentations are in the file such as site map, water layout, sewage layout, engineering report and fire brigade approval;
- iv. The Assistant Vice President then reviews the file once all the necessary documentations are present and then refers the matter to the Development Committee for their recommendation. The Development Committee is made up of several NWC members to include: The Regional Manager (for the concerned matter); Property Manager; Geographical Information System (GIS) Manager; Vice President, Engineering and Capital Projects; Administrator; Engineer from West; Engineer from East; Personnel from Revenue. The Commission works with the applicant as to how best to meet their needs, while satisfying that of the NWC;
- v. The Committee then provides the recommendation to the President and Chairman;



- vi. The Chairman and the President endorse the Certificate of Approval, once in agreement with the recommendation; and
- vii. The certificate of approval is then stamped by the Legal Department.³⁸

5.7.14 As it relates to the process outlined above by Mr. Bennett, the DI obtained a copy of the Engineering Report dated October 26, 2020, submitted to the National Water Commission for the development located at #11 Charlemont Drive, and undertook a review of same. The relevant portion of the report is provided below:

“EXECUTIVE SUMMARY

Two three story apartment buildings are proposed for #11 Charlemont Drive Kingston 6. Each building will house six (6) one (1) bedroom, one and a half (1.5) bathroom apartments with an area of approximately 95 sq.m.

- The maximum occupancy of 36 based on 3 persons per unit*
- Daily water consumption 9 cubic metres*
- Daily Sewerage generation 8 cubic meters*

...

Sewerage Collection

As is standard the building plumbing will include grease traps for the kitchen waste and gully basins from sinks. The sewerage will be collected from the buildings and conveyed to a terminal manhole at the property boundary. The NWC has a collection main in Charlemont Drive.

³⁸ Witness statement of Mr. Ian Bennett, Assistant Vice President, System Planning and Water Resource Development, NWC dated January 30, 2023



...

CONCLUSION

The water required for the development 9 m³ /day and sewage volume is approximately 90% of that amount. A 50mm connection to a bank with thirteen (13) water meters is proposed along with a 100mm sewer connection is proposed. The location is regularly supplied by water however storage for emergency is required and will be provided in individual tanks. The general infrastructure of the area includes fire hydrants for emergency purposes. A sewer collection main exists in Charlemont Drive and the development can be connected.”³⁹

5.7.15 Further to the report, Mr. Bennett indicated that, “...As it relates to the waste water services, we were unable to provide the service based on the location of the property. There was a waste water pipeline on Charlemont but not where the property of #11 Charlemont Drive was located. As such, I advised the developers about this and they submitted a design in order to connect to the NWC’s pipeline in the area. There was nothing unusual about this because several other developments have submitted designs to connect to the NWC’s pipeline.”⁴⁰

5.7.16 Subsequent to the abovementioned process, which was outlined by Mr. Bennett, a further enquiry was made concerning the procedure to be followed

³⁹ Engineering Report dated October 26, 2020.

⁴⁰ Witness statement of Mr. Ian Bennett, Assistant Vice President, System Planning and Water Resource Development, NWC dated January 30, 2023, p 2.



in the processing of applications in respect of the supply of water and wastewater systems for employees of the National Water Commission.

5.7.17 In the foregoing regard, Mr. Bennett indicated that, "*...the process is the same. The only difference is that if one of the members are [sic] a member of the Development Committee, then they will have to be recused from the matter. Likewise, if one of their family members is making an application, then the employee would disclose same and be recused from the Development Committee.*"⁴¹

5.7.18 Mr. Bennett further stated that, "*there has [sic] been a few employees who have applied for the supply of water and waste water systems before but I cannot recall the exact employees. The reason is that the Development Committee is assessing the Development and not the Developer.*"⁴²

5.7.19 During the course of the investigation, the DI sought to determine whether payment was made by Mr. Mark Barnett and Mrs. Annette Francis Barnett, to the NWC for the supply of water and wastewater services.

5.7.20 Having regard to the foregoing, the DI is in possession of correspondence between Mr. Mark Barnett and representatives of the NWC in relation to payment for the referenced services. The relevant portion of the referenced correspondence are outlined below:

⁴¹ Ibid.

⁴² Witness statement of Mr. Ian Bennett, Assistant Vice President, System Planning and Water Resource Development, NWC dated January 30, 2023, p 2.



- Email dated November 11, 2021, from Mr. Ian Bennett, sent to Mr. Mark Barnett and Mrs. Annette Francis Barnett. The email indicated that, *“The National Water Commission (NWC) wishes to advise that the fees for water and sewage contained in the attached files are outstanding for the captioned.”* The attached files indicated that the fee for the supply of wastewater was in the amount of \$211,320.00 while the fee for the supply of water was in the amount of \$676,243.00. It should be noted that a sum of \$4,000.00 was paid by the Developer from the amount of \$676,243.00.
- Letter dated December 3, 2021, from Mr. Mark Barnett addressed to Mr. Garth Jackson, Vice President, Engineering & Capital Projects, stated that, *“Firstly, we were surprised to receive such communication, especially in relation to Developer’s fee for wastewater, considering that although approval was granted that the development can connect to the central sewers, same was not immediately available in the vicinity, hence the collaboration between NWC and the Developers of 11 Charlemont Drive...The construction works were undertaken by the Developers at their cost of some \$18.00m. This asset, NWC has already taken over since sewer [connection] has already [been] made to [a] recent development at [a property on Charlemont Drive]. Consequently, we are proposing that the outstanding fees be treated in the following manner.*
 - i. There should be no Developer's fee of \$211,320.00 charged for wastewater to the development for the reason stated above.*
 - ii. The amount of \$676,243.00 indicated as Developers fee for water supply should be offset against the capital invested as stated*



above. Furthermore, NWC has gained an asset without investing in the full cost of same as well as an increase in its sewerage customer base."

5.7.21 In relation to the abovementioned correspondence, the DI sought to determine whether the requisite fees were paid. In this regard, the DI is in possession of Developer's Fee reports as at July 13, 2023, which indicates that: (i) there is a sum of \$211,320.00 outstanding in relation to the supply of wastewater services; (ii) As it relates to the fee for the supply of water (\$676,243.00), a payment in the amount of \$8,400.00 was made, leaving a balance of \$667,843.00 to be paid to the NWC as it relates to fees for the supply of water. (iii) These outstanding fees equates to a total of \$879,163.00 to be paid to the NWC by Mr. Mark Barnett and Mrs. Anette Francis Barnett.



Chapter 6 – Conclusions

6.0 This chapter outlines the conclusions drawn by the DI.

The Approvals granted for the development of #11 Charlemont Drive, Kingston 6

6.1.1 The DI concludes that building, planning and environmental permits required for the construction of a development, consisting of twelve 1-bedroom units, located at #11 Charlemont Drive, Kingston 6, were issued by the Kingston and St. Andrew Municipal Corporation (KSAMC) and the National Environment and Planning Agency (NEPA) to Mr. Mark Barnett and Mrs. Annette Francis Barnett.

6.1.2 The DI concludes that Mr. Mark Barnett and Mrs. Annette Francis Barnett breached the building, planning and environmental permits which were issued by the KSAMC and NEPA for the development located at #11 Charlemont Drive. The DI's conclusion is premised on the fact that the referenced development consists of six 2-bedroom units and six 3-bedroom units instead of twelve (12) 1-bedroom units, only.

6.1.3 The DI concludes that there was a clear intention on the part of Mr. Mark Barnett and Mrs. Annette Francis Barnett to contravene the terms of the building and planning permit which was issued by KSAMC in June 20, 2019, at the time of the execution of the Joint Venture Agreement between Mr. Mark Barnett and Mrs. Annette Francis Barnett (Owners) and Mr. Philip Smith (Developer) on November 25, 2020.



6.1.4 The DI concludes that the Joint Venture Agreement executed between Mr. Mark Barnett and Mrs. Annette Francis Barnett (Owners) and Mr. Philip Smith (Developer) is indicative of a clear intention, on their part, to build in contravention of the terms and conditions of the permit granted by the KSAMC. The DI's conclusion is premised on the inclusion of a clause in the referenced agreement which required the parties to construct the development in accordance with the approved building plan and permit issued by the KSAMC, for the construction of 12 one-bedroom units, which is then contradicted by another clause, which indicated that the Owners were to retain ownership of two (2) two (2) bedroom units and two (2) three (3) bedroom units. Clearly, it would be a practical impossibility for the developer to have complied with both of the referenced clauses.

Further, and as it relates to the clause which provides that the owners were to retain ownership of two (2) two (2) bedroom units and two (2) three (3) bedroom units, the DI concludes that this clause is illegal and depending on the centrality of same to the overall contract, it may have operated to make the entire contract void ab initio. At the very least, the referenced clause is unenforceable. The DI's finding in this regard, is premised on the fact that a contract containing terms and conditions which breach a law, is illegal as formed and is generally wholly or partially unenforceable.

The DI further concludes that the aforementioned document calls into question the integrity of the parties involved, by virtue of their contracting to construct a development that breached the terms and conditions of the



permit and development approval issued by KSAMC and NEPA, respectively.

6.1.5 As it relates to the foregoing egregious conduct, the DI concludes that there is sufficient basis for the NWC to consider Mr. Mark Barnett's moral authority to lead that entity, and whether by virtue of his actions, the entity has been brought into disrepute. Likewise, the DI finds that the conduct of Mrs. Annette Francis Barnett, who is a member of the legal profession is inconsistent with her duty to "*... at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession...*", **Canon 1b** of the **Legal Profession (Canons of Professional Ethics) Rules.**

6.1.6 The DI concludes that Mr. Mark Barnett and Mrs. Annette Francis Barnett breached Section 17 (1) of the Building Act, 2018 which provides that building work executed pursuant to a permit issued by a local authority is to be conducted in accordance with the building permit and the Building Act. The referenced section is outlined hereunder:

"...(1) A person shall not carry out building work unless—

(a) a building permit in respect of the building work has been issued to him;

(b) where applicable, a planning permit has been issued to him under the Town and Country Planning Act; and



(c) the building work is carried out in accordance with the building permit, this Act, the National Building Code or of any other regulations made under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the First Schedule."

The DI further concludes that Mr. Philip Smith, either conspired with, or aided and abetted Mr. Mark Barnett and Mrs. Annette Francis Barnett, in the commission of the foregoing breach of law and is thereby equally liable for said breach. The DI's conclusion is premised on the fact that by virtue his role as Developer, it is reasonable to infer that Mr. Smith must have been cognizant of the terms and conditions of the permits granted by the relevant authorities.

6.1.7 The DI concludes that, notwithstanding the implementation of the Joint Venture Agreement between Mr. Mark Barnett, Mrs. Annette Francis Barnett and Mr. Philip Smith, the legal obligation to comply with the terms of the permits issued by KSAMC and NEPA remained with the permittees, Mr. Mark Barnett and Mrs. Annette Francis Barnett.

The DI's conclusion challenges the representations made by Mrs. Annette Francis Barnett in a Judicial Hearing conducted on February 7, 2023, in which Mrs. Francis Barnett stated that by virtue of the Joint Venture



Agreement, it was the Developer's responsibility to ensure compliance with the environmental permit.

6.1.8 The DI concludes that Mr. Xavier Chevannes, Chief Engineering Officer, KSAMC, failed to execute his statutory functions as outlined in Section 10 of the Building Act, 2018, in relation to inspection and post permit monitoring activities.

The DI's conclusion is premised on the following bases:

- (a) The Chief Engineering Officer failed to ensure that an inspection was conducted at each stage of construction;
- (b) The Chief Engineering Officer failed to issue the requisite Certificate of Compliance at each stage of construction; and
- (c) The Chief Engineering Officer failed to issue a Certificate of Occupancy upon completion of the project.

Contrary to Mr. Xavier Chevannes' representations in relation to the absence of Regulations under the Building Act, 2018, the aforementioned responsibilities were legal requirements at the material time. The DI further concludes that Mr. Xavier Chevannes' failure to execute his statutory functions was a clear dereliction of duty.

6.1.9 The DI concludes that the failure of Mr. Xavier Chevannes, Chief Engineering Officer, KSAMC to execute the statutory functions imposed upon him under Section 10 of the Building Act, 2018, facilitated the breaches of the building permit by Mr. Mark Barnett and Mrs. Annette



Francis Barnett in relation to the development located at #11 Charlemont Drive, Kingston 6.

6.1.10 The DI concludes that Mr. David Clarke, Senior Building Officer, Kingston & St. Andrew Municipal Corporation (KSAMC) failed to identify and record the breaches of the permit issued by the KSAMC in relation to the development at #11 Charlemont Drive during either of the inspections which he purportedly conducted at the premises in November and December of 2020.

The DI further concludes that Mr. Clarke's failure to identify the breaches and take the necessary action in accordance with his job description and the stipulations of the Building Act amounted to a clear dereliction of duty, for which disciplinary action ought to be contemplated.

6.1.11 The DI concludes that Ms. Morjorn Wallock, former Director, Legal & Enforcement Division, NEPA, failed to execute any further enforcement measures to ensure compliance with the permit issued in relation to the development located at #11 Charlemont Drive, Kingston 6, subsequent to the issuance of the Warning Letter dated February 10, 2021.

The DI further concludes that the foregoing omission on Ms. Morjorn Wallock's part, amounts to gross dereliction of duty and significantly contributed to the creation of the environment/opportunity which facilitated the breaches identified herein.

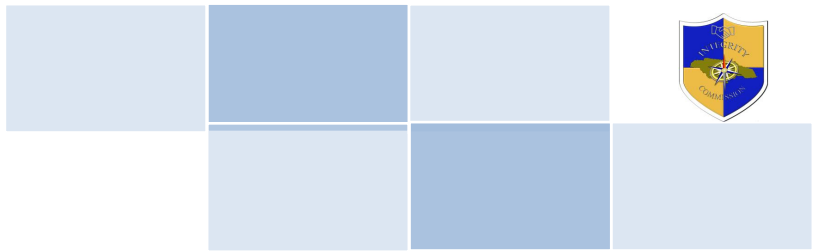


Allegation concerning the Owner of the Development located at #11 Charlemont Drive and his Relationship with the National Water Commission

6.1.12 The DI concludes that a potential conflict of interest existed in relation to the supply of a water and wastewater system by the National Water Commission to Mr. Mark Barnett for the development located at #11 Charlemont Drive, Kingston 6, in light of Mr. Mark Barnett's role as President of the entity. However, the DI further concludes that the handling of the process by the NWC, prevented this potential conflict of interest from materializing.

The DI's conclusion is made on the premise that the role of the President of the NWC in the process for the supply of water and wastewater is to approve or deny recommendations made to him, by the Development Committee. This is evinced by the requirement for the President's signature on the Certificate of Approval. The DI notes that in the instant case, the President of the NWC, Mr. Mark Barnett, did not sign the Certificate of Approval granted in relation to #11 Charlemont Drive, nor did he otherwise participate in the approval process.

6.1.13 The DI concludes that an actual conflict of interest arose out of the correspondence between Mr. Ian Bennett, NWC and Mr. Mark Barnett and Mrs. Annette Francis Barnett, in their capacity as Owners of #11 Charlemont Drive, in respect of outstanding fees owed to the NWC.



The DI's conclusion is premised on the fact that Mr. Barnett has been placed in a situation, whereby, he must choose between his personal interest as owner/developer and the interest of the NCW, as that entity's Accounting Officer. In the former capacity, Mr. Barnett does not wish to pay the outstanding fees and in the latter capacity, NWC requires its fees to be paid over. As the entity's ultimate decision maker, at the executive level, Mr. Barnett is duty bound to collect or to cause to be collected, the referenced fees. The question which therefore arises is, since he is clearly conflicted, whose interest will prevail? The NWC's or his own? As can be seen from the exchanges at paragraph 5.7.20, of this report, he has clearly chosen his private interest over that of the NWC.



Chapter 7 – Recommendations

7.0 This chapter outlines the recommendations of the DI.

Recommendation to the Chief Executive Officer, Kingston & St. Andrew Municipal Corporation (KSAMC) and Director of Public Prosecutions (DPP)

7.1.1 The DI recommends that the KSAMC take action against Mr. Mark Barnett Mrs. Annette Francis Barnett and Mr. Phillip Smith for breaching the building permit which was granted for the development located at #11 Charlemont Drive, Kingston 6. The foregoing, by extension, contravened Section 17(2) of the Building Act which stipulates, that it is an offence to breach section 17 (1) and that any person who contravenes the provision, shall be liable on conviction to the penalty specified in relation to that offence in the First Schedule.

After consultations with the Director of Corruption (DCP) (see appendix 2), the DPP is hereby alerted to the noted breaches of the applicable legislation for appropriate action, in relation to the prosecution of any viable offence as the DPP may determine.

7.1.2 The DI recommends that the KSAMC implement measures to ensure adherence to the provisions outlined in Sections 33 and 34 of the Building Act, in relation to its inspection and post permit-monitoring responsibilities/functions.



The DI's recommendation is made on the basis that neither the requisite Certificates of Compliance at each stage of construction nor a Certificate of Occupancy were issued for the development located at #11 Charlemont Drive, Kingston 6. The Building Act was enacted with the objectives of facilitating the application of national building standards for ensuring safety in the built environment, enhancing amenities and promoting sustainable development. The effective implementation of the Building Act, 2018, by the KSAMC is therefore integral in accomplishing these objectives.

7.1.3 The DI recommends that Mr. Robert Hill, Chief Executive Officer, KSAMC institute disciplinary proceedings against Mr. Xavier Chevannes, Chief Engineering Officer, KSAMC in relation to his failure to execute his statutory functions under Section 10 of the Building Act, 2018. The DI appreciates that though the Chief Engineering Officer does not necessarily, personally execute all the duties associated with his office, it cannot be ignored that he is charged with the overall responsibility of ensuring that the functions are executed according to law.

7.1.4 The DI recommends that Mr. Robert Hill, Chief Executive Officer, KSAMC institute disciplinary proceedings against Mr. David Clarke, Senior Building Officer, Kingston & St. Andrew Municipal Corporation (KSAMC) in relation to his failure to identify and record the breaches of the permit issued by the KSAMC in relation to the development at #11 Charlemont Drive, in accordance with his job description and the stipulations of the Building Act.



The DI's recommendation is premised on the fact that the Municipal Corporation relies on the integrity, thoroughness and accuracy with which Building Inspectors and Senior Building Inspectors conduct inspections and seek to uphold the entity's rules and regulations. Mr. Clarke's failure to do so in this instance, directly led to the completion of the residential development at #11 Charlemont Drive in clear breach of the Kingston and St. Andrew Municipal Corporation's building permit.

Recommendation to the Chief Executive Officer, National Environment & Planning Agency (NEPA)

7.1.5 The DI is advised, and does verily believe, that Ms. Morjorn Wallock is no longer in the employ of NEPA, and therefore a recommendation for disciplinary action in respect of her, would be futile. Notwithstanding, the DI recommends that NEPA's Legal and Enforcement Division, conducts a review of its enforcement policies and procedures with a view to ensuring that, where breaches are detected, as in the present; the necessary enforcement actions are taken. The DI accepts that the instant development was undertaken during the Covid19 pandemic and therefore the entity's enforcement machinery must have been impacted in one way or the other. Notwithstanding, there is no reason why the enforcement instruments could not have been served, which, to all appearances, would have required less direct human interactions than the site visits and inspections through which the referenced breaches were identified.



Recommendation to the Chairman and Board, National Water Commission

7.1.6 As it relates to the egregious conduct of Mr. Mark Barnett, the DI recommends that the NWC apply such sanction as it deems appropriate and necessary to restore public confidence in its leadership and to demonstrate that such conduct cannot and will not be tolerated in public office. The DI's recommendation is premised on the fact that Mr. Barnett is the holder of a public office within a large and longstanding public body and therefore, he is required, at a minimum, to uphold the laws of Jamaica, to discharge his fiduciary duties without reservations or equivocation and to always comport himself in a way which is consistent with the dignity of that office.

Additionally, and equally important, the NWC is a critical component of the development approval process in Jamaica, therefore, the head of that entity, and its officers, should not be seen or found to be in contravention of the laws governing the development process.

Recommendation to the Chairman of the General Legal Council

7.1.7 As it relates to the conduct of Mrs. Annette Francis Barnett and her office as an Attorney-at-Law, the DI recommends that the General Legal Council takes such actions as it may deem necessary and appropriate having regard to **Canon 1b** of the **Legal Profession (Canons of Professional Ethics) Rules**



The Most Honourable Prime Minister and the Honourable Minister of Local Government and Community Development

7.1.8 In light of the breaches found herein, and the need to ensure that development occurs within the built environment in a sustainable manner, the DI recommends the introduction of legislation, which:

- (a) Imposes pecuniary penalties on developers who willfully violate building and development permits for financial gain. More particularly, profits attributable to breaches should be forfeited. Additionally, developers should also face debarment in respect of planning and development approval for an appropriate time period post breach; and
- (b) Require collaboration and coordination between the Registrar of Titles, Local Authorities and other germane entities in a way which ensures that titles are not issued for developments which are constructed in breach of planning, building and development permits.

Kevon A. Stephenson, J.P.
Director of Investigation

September 29, 2023
Date



Appendices

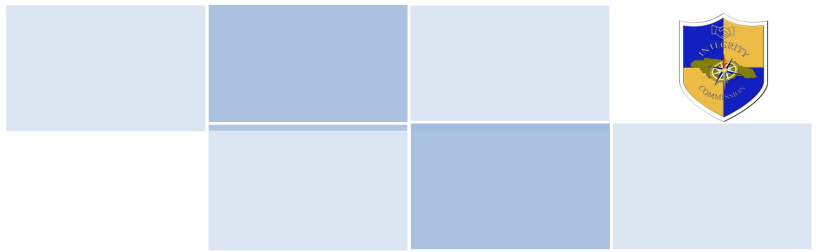
Appendix 1

Section 33(1)(a) and (b) of the ICA states, *inter alia*, that:

“The Director of Investigation shall—

- (a) without prejudice to the provisions of any other enactment, and subject to any general or specific direction of the Commission, investigate, in the manner specified by or under this Act, any allegation that involves or may involve an act of corruption or any allegation relating to non-compliance with the provisions of this Act, on the basis of any complaint, information or notification referred to him by the decision of the Commission or by the Director of Information and complaints;*

- (b) subject to section 52(2), monitor and where necessary, investigate, in the manner specified by or under this Act, the award, implementation or termination of any government contract, and the grant, issue, variation, suspension or revocation of any prescribed licence, with a view to ensuring that—*
 - (i) in the case of a government contract, it is awarded impartially, on merit and in a financially prudent manner*



and in circumstances which do not involve impropriety, breach of any applicable law relating to procurement or other irregularity, and that the implementation or termination of the contract conforms to the terms thereof, without prejudice to the functions of any public body in relation to the contract; and

...”

**LEGAL OPINION RE: INVESTIGATION CONCERNING ALLEGATIONS OF
IRREGULARITIES IN THE APPROVAL PROCESSES WHICH LED TO THE
CONSTRUCTION OF A RESIDENTIAL DEVELOPMENT LOCATED AT
11 CHARLEMONT DRIVE, KINGSTON 6.**

The Director of Investigation, with specific reference to findings detailed below, requested that the Director of Corruption Prosecution provide an opinion on the issue of jurisdiction, with regard to possible offences/breaches identified in the captioned investigation:

6.1.1 The DI concludes that building, planning and environmental permits required for the construction of a development, consisting of twelve 1-bedroom units, located at #11 Charlemont Drive, Kingston 6, were issued by the Kingston and St. Andrew Municipal Corporation (KSAMC) and the National Environment and Planning Agency (NEPA) to Mr. Mark Barnett and Mrs. Annette Francis Barnett.

6.1.2 The DI concludes that Mr. Mark Barnett and Mrs. Annette Francis Barnett breached the building, planning and environmental permits which were issued by the KSAMC and NEPA for the development located at #11 Charlemont Drive. The DI's conclusion is premised on the fact that the referenced development consists of six 2-bedroom units and six 3-bedroom units instead of the twelve (12) one (1) bed rooms approved.

Notably, the Director of Investigation has identified that the referenced breaches arose in the exercise of the Commission's jurisdiction under **sections 33 and 51** of the *Integrity Commission Act (ICA)*.

Allegations:

The investigation concerns irregularities in the application, approval, and construction of Apartment Units at 11, 13, and 15 Charlemont Drive, Kingston 6. The Charlemont Drive Neighbourhood Watch and Citizens Association filed a complaint in February 2020, expressing concerns relating to the expeditious and irregular building permits granted for the noted development. The complaint highlights issues such as the number of habitable rooms exceeding the permitted limit, the removal of a restrictive covenant under unusual circumstances, alleged approval from the National Water Commission for connection to the sewerage system, and the construction of more residential units than allowed on the given land area. A case review was conducted, examining various documents, statements, and interviews as part of the investigation into the validity of the complaint and potential breaches.

Applicable Legislation & Related Authorities

The relevant legislation pertaining to allegations in the matter are as follows:

- *Integrity Commission Act, 2017*
- *The Building Act, 2018 (Act 3 of 2018)*
- *Town and Country Planning Act*
- *The Town and Country Planning (Kingston and St. Andrew and the Pedro Cays) Provisional Development Order, 2017*
- *The Natural Resources Conservation Authority Act*
- *The Natural Resources Conservation Authority Act (Permits and Licences) Regulation 1966*
- *The Natural Resources Conservation Authority Act (Permits and Licences) (Amendment) Regulation 2015*
- Case Law for consideration: *Young, Michael and Young, Jacqueline et al v Kingston and St. Andrew Municipal Corporation and National Environmental and Planning Agency [2020] JMSC Civ 251.*

Analysis

1. The functions of the Director of Investigation are provisioned in **section 33** of the *Integrity Commission Act*, and additionally, **sections 51 and 52** offer greater detail with regard to those functions, in the context of government contracts and prescribed licenses. **Section 52(1)(b)** of the *ICA* specifies that, subject to **subsection (2)** and the specific or general direction of the Commission, the Director of Investigation has the authority to investigate noted matters relevant to prescribed licenses. These include the circumstances surrounding the grant, issue, suspension, or revocation of prescribed licenses, to ensure compliance with applicable procurement laws, and that these do not involve any impropriety or irregularity.
2. The noted statutory provisions provide the foundation for the conduct of investigations into the matter under consideration. Having carefully examined the material provided on file, it can be concluded that the Kingston and St. Andrew Municipal Corporation (KSAMC) demonstrated gross negligence in their duties as building officials, in failing to comply with the provisions of the *Building Act, 2018*, which governs the issuance of building permits. The statements gathered from various individuals across several departments holding various positions, highlight the

inadequate monitoring of building works and lack of enforcement which, based on the applicable legislation, amount to administrative breaches, notwithstanding the supposed gravity of the negligence.

3. **Section 80** of the *Building Act* stipulates that a building official shall not be held personally liable for any actions or omissions of the local authority to which they are employed. This protection applies when such actions or omissions are carried out in good faith, while exercising powers or performing functions as conferred or imposed on the local authority under the Act. **Section 2** of that legislation defines a building official as the Chief Engineering Officer or any other individual employed by the local authority under **section 9(1)**, which details the employment and designation of individuals to carry out the functions of the local authority which, under the Act, is the Municipal Corporation.
4. The statements recorded on file did not reveal any acts of corruption, as defined under **section 2** of the *ICA*, being “*an offence relating to the conduct of any person that constitutes an abuse or a misuse of his office ... for the purpose of conferring a benefit or an advantage to himself or another person, being an offence arising under common law or any enactment*”. Further, there is no evidential support to conclude that the administrative breaches were a direct result of disingenuous acts.
5. The offences disclosed from the material on file relate to **section 17(1)(c)** of the *Building Act, 2018*, which provides that a person shall not carry out building work unless “*the building work is carried out in accordance with the building permit, this Act, the National Building Code or of any other regulations made under this Act*”. **Section 17(2)** states “*a person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalties specified in relation to that offence in the First Schedule*”.
6. Additionally, **section 17(3)** of that statute provides that, in addition to the penalties imposed under **subsection (1)**, the Court may also issue orders under **subsection (2)**, to remedy the breach that led to the conviction. This includes orders to take down or alter a building to ensure compliance with the requirements of the building permit, the act itself, the National Building Code, or any other regulations specified in the Act.

7. It has also been identified that there is a violation of the *Town and Country Planning (Kingston and St. Andrew and the Pedro Cays) Provisional Development Order, 2017*, particularly in relation to **Policy PUD H2** concerning density ranges for single-family unit developments (the purpose for which the permit was granted). A contravention of this regulation, as stipulated in **section 31** of the *Town and Country Planning Act*, may result in a fine.

8. The *Building Act* further provides the Kingston and St. Andrew Municipal Corporation (KSAMC) with several methods to enforce the Act's provisions in the event of a breach. These enforcement avenues are outlined in Part VI of the Act and include Stop Notices, Enforcement Notices, Injunctions, Emergency Orders, among other measures. It is essential to note that these enforcement mechanisms are to be carried out solely by the Local Authority in accordance with the Act and, based on the file presented, notices were served on the responsible person, however, no follow up for failing to comply has been carried out.

Conclusion

Based on the foregoing, the jurisdiction of the Director of Corruption Prosecution under the *ICA* has, therefore, not been triggered in the circumstances outlined, to allow for the initiation of a prosecution for any offence. This is notwithstanding the fact, that an investigation into the matter was conducted by the Director of Investigation, as within his remit under the *Integrity Commission Act*.

Having regard to the enforcement powers vested in the KSAMC, along with the Court-issued orders that will become available on conviction under the relevant section, it is advisable that the matter be referred to the Kingston and St. Andrew Parish Council for the relevant enforcement action to be effected. This is to ensure that the responsible person(s) are made to comply with the granted building permit and rectify any breaches as sanctioned. It proves the most appropriate course to allow the local authority to utilize the enforcement mechanisms available to it, while simultaneously prosecuting the parties for the breaches.



Keisha Prince-Kameka (Mrs.)
Director of Corruption Prosecution

September 19, 2023

Date