<table>
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<tr>
<th><strong>2</strong></th>
<th><strong>Interpretation.</strong></th>
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<tr>
<td>“the Authority” means the Malta Environment Authority established under article 6 and includes any body or other person acting on its behalf under powers delegated by the Authority under this Act, and the Minister may, by order in the Gazette, designate different bodies or persons as a competent authority for different provisions and different purposes of this Act or any regulations made thereunder; During the public consultation of 2014, it was said that the new authority will be Environment and Resource Authority. Has this changed?</td>
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<tr>
<td><strong>2</strong></td>
<td><strong>Interpretation.</strong></td>
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<td>Although the word ‘conservation’ is defined in the old MEPA Act, there is no such interpretation in the new Environment Act, despite the fact that it is used in the text. The interpretation given in the old MEPA Act is as follows: “conservation” in relation to environment protection means a series of measures required to maintain or restore the natural habitats and the population of species of wild fauna and flora at a favourable status;</td>
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<tr>
<td><strong>2</strong></td>
<td><strong>Interpretation.</strong></td>
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<td>Although the word ‘derivatives’ is defined in the old MEPA Act, there is no such interpretation in the new Environment Act, despite the fact that it is used in the text. The interpretation given in the old MEPA Act is as follows: “derivatives” means parts of any specimen, whether processed by man or not;</td>
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<td><strong>2</strong></td>
<td><strong>Interpretation.</strong></td>
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<tr>
<td>In the old MEPA Act, under the interpretation of environment, there is included: (d) all ecosystems; This is not included in the interpretation of the word ‘environment’ in the new Environment Act. Why?</td>
<td></td>
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<tr>
<td><strong>2</strong></td>
<td><strong>Interpretation.</strong></td>
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| “genetically modified organism” is defined in the old MEPA Act, but is not included in the new Environment Act, which also includes an important article on genetically modified organisms. It is important that the definition should also be included in the new Environment Bill, as follows:  
(a) an organism derived from the formation of a combination of genetic material by any means other than natural means;  
(b) an organism inheriting such combination of genetic material;  
(c) an organism that results from the replication of an organism as derived in paragraph (a); or  
(d) such other organism as may be prescribed by the Minister under this Act; | 
| **2** | **Interpretation.** | 
| The word ‘minerals’ defined in the old MEPA Act has also not been transposed to the new Environment Act. This is also referred to in the text, and should be |
included in the new Act especially if there are still plans to include Resources in the new Authority. The definition given in the old MEPA Act is:

“minerals” includes all minerals and substances (including oil and natural gas) in or under land of a kind ordinarily worked for removal by underground or surface working;

| Interpretation | Natural resources’ has also been omitted in the interpretation list of the new Environment Act, despite being mentioned in 8 (4)(e), though it is listed in the old MEPA Act defined as follows:

“natural resources” means any component of nature and includes air, water, land, soils, minerals, energy, living organisms and genetic resources;

| Interpretation | Another word not transposed to article 2 of the new Environment Bill is ‘specimen’; Again this is included in the text of the new Act. The definition of this word in the old MEPA Act is:

‘specimen” means any species, whether alive or dead, any part or derivative thereof, and includes any goods which from an accompanying document, the packaging, mark or label or from other circumstances appear to be parts or derivatives of animals or plants.

| Interpretation | There is no interpretation at all of what the Standing Committee is.

"Standing Committee" means the Standing Committee for the Planning and the Environment established in terms of article 31; But there is no such terms in article 31.

| Interpretation | Sustainable use needs to be define

“sustainable use” means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

| Interpretation | The interpretation of the word ‘Tribunal’ is only: "Tribunal" means the Environment and Planning Review Tribunal referred to in article 3 of the Environment and Planning Review Tribunal Act.

Shouldn’t there be a reference to the Bill Nr 105 when this becomes an Act.

| Interpretation | Despite that the word ‘waste’ is referred to in the text of the new Environment Act, its interpretation has also not been transposed from the old MEPA Act, defining it as follows:

“waste” means any thing, substance or object which the holder discards or intends to discard, or is required to keep in order to discard, and includes such other thing, substance or object as the Minister may prescribe.
<table>
<thead>
<tr>
<th>Interpretation</th>
<th>Valutazzjoni Ambjentali Strateġika l-ebda tifsira ta’ dan (Strategic Environment Assessment)</th>
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<tr>
<td>8 (9)</td>
<td>In the pursuance of its functions under this Act, the Authority shall, as far as possible, make reference to European best practices and emulate them. Why as far as possible, when environmental protection is part of the EU obligations?</td>
</tr>
<tr>
<td>33 (8)</td>
<td><em>Vinkolanti</em> (bil-Malti) tfisser <em>binding</em>. Allura ma tistax tuntuža l-kelma Maltija ‘torbot’ jew “b’rabta”</td>
</tr>
<tr>
<td>44</td>
<td>Strategic Environment Assessment needs either an interpretation or a reference, especially in the Maltese version (Valutazzjoni Ambjentali Strateġika)</td>
</tr>
<tr>
<td>45 (3)</td>
<td>The word sustainable in this article does not have an interpretation in article 2. Suggested interpretation is: “sustainable use” means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.</td>
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<tr>
<td>45 (4)(a-f)</td>
<td>In preparing or reviewing the National Strategy for the Environment, the Minister shall have regard to: It is important that such a national strategy also takes in consideration the EU Environment Aquis, and other international environmental conventions obligatons to which Malta is a party.</td>
</tr>
<tr>
<td>54 (2)(o)(ii)</td>
<td>There are two sub-articles numbered 54 (2)(o)(ii). The one reading: “provide for the formulation of plans and measures to prevent, deter, reduce, mitigate, offset or remedy any adverse environmental effects and risks;” should be numbered 54 (2)(o)(iii).</td>
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<td>65 (1)</td>
<td>(1) The Authority may – The Authority may what?</td>
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<td>73 (1)</td>
<td>In the old MEPA Act, Article  84. (1) reads: “The Authority shall monitor...” while in the new Environment Bill, it reads: “The Authority may monitor...”. This weakens the power of the new Environment Authority compared to what it was before.</td>
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<tr>
<td>76 (1)</td>
<td>In the provisos of this sub article, there is a reference to “ ...by the end of the third day following the...” and “ ...await the passage of three days prior...”</td>
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| **76 (6)(b)** | In this sub article there is also a reference to a number of days: “...being not less than **fifteen days** and not more than **thirty days** after service thereof)...”  
Again there is no reference whether these days are working days or consecutive days. |
|---|---|
| **76 (12)** | This sub article also makes mention of a number of days: “...a date not earlier than **fifteen days** after...”.  
No reference whether these days are working days or consecutive days. |
| **77 (6)** | “The Authority may issue orders for action to remedy environmental damage without the need to apply for authorisation from the Authority.”  
Cannot understand this! |
| **81 (1)(f)(iv)** | In this sub article there is another reference to a number of day: “...more than **twenty days** or less than **five days** from...”.  
These days are working days or consecutive days? |
| **82** | “Officers of the Authority appointed for such purpose, may impose on-the-spot fines, ...”  
Is it clear to what kind of officers the reference is being made? |
| **87 (2)** | This article reads:  

(2) The Minister may by regulations made under this Act, provide that for the words "Director" and "Director Environment Protection", wherever they may occur in regulations made under the Environment and Development Planning Act, there shall be substituted the word "Authority" and any definition of "Director" and "Director Environment Protection" in regulations made under the same Acts shall be deleted.  

I do not agree with this article, where the Director would be deprived of his technical and scientific responsibility, and this would be handed over to the Board of the Authority, who are all politically appointed. This is taken word for word from the old MEPA Act where the main aim of this article was to deprive the director of the Environment Directorate from his responsibility which was taken over by the MEPA Board. The main aim of such article was to subject the Environment Directorate to the Planning Directorate.  
If this is again accepted in the new Environment Act, the Director would not have any power at all. |
| FIRST SCHEDULE  
Article 8(2) | The first Schedule to the new Environment Act outlines “The functions of the Authority” i.e. the new Environment Protection Authority. The first paragraph of this Schedule I, reads: “(a) to perform and succeed in the functions, assets, rights, liabilities and obligations of the competent authority established under the provisions of article 6 of the Environment and Development Planning Act in so far as such functions, assets, rights, liabilities and obligations refer to the role of the competent authority established under the said Act in relation to the...”

How can the new Environment Act reer to the functions of the Environment Protection Authority as in article 6 of the old MEPA Act (the Environment and Development Planning Act) when this Act will be revoked once the new Environment Protection Act is in force? |
| --- | --- |
| SECOND SCHEDULE  
Article 51(1) | The second Schedule attached to the new Environment Act refers to the Procedure for subsidiary plan and policies as outlined in Article 51 (1). But Article 51 does not have any sub article (1). |
SUBMISSION NO. 2 – RECEIVED FROM: MALTA DEVELOPERS ASSOCIATION

In segwitu ghal dak sottomess mill- Malta Developers Association fil-21 ta’ April 2014 bhala reazjoni ghad-dokument ‘For an Efficient Planning System’, l-istess Assocċjazzjoni taghmel is-segwenti osservazzjonijiet fuq it-Tlett Abbozzi ta’Ligi intizi li jirregolaw il-Protezzjoni ta’l-Ambjent, l-Ippjanar ta’l-Izvilupp u t-Tribunal ta’ Revizjoni

1. Ghal dak li jirrigwardja l-Abbozz li jirregola l-Ippjanar ta’l-Izvilupp:


c. Filwaqt li wiehed josserva definizzjoni aktar cara ta’ sid, issir referenza ghall-fatt illi se jitneха l-obbligu minn fuq applikant li jkun qieghed japplika fuq properjeta ta’terzi li jiddikjara illi huwa ghandu il-kunsens tas-sid sabiex jaghmel dik lapplikazzjoni. L-Assocjazzjoni ma taqbilx illi din iddikjarazzjoni titneха;


e. Filwaqt li wiehed jifhem illi l-Awtorita ghandu jkollha element ta’ diskrezzjoni fid-decizjonijiet taghha, l-artikolu 72 jehtieg li jigi kjarifikat fis-sens illi l-eبدا circostanza kontenuta filparagrafi (d), (e) u (f) tas-sub-artikolu (2) m’ghandha b’xi mod tigi interpretata illi tnaqqas dak stipulat fil-policies, pjanijiet jew regolamenti.

f. Filwaqt li wiied jifhem illi l-Bordijiet jista jkollhom il-bzonn li jinghataw briefing fuq kazijiet li jkunu ser jogu pprezentati quddiemhom, ghandu jkun ccarat illi matul l-istess briefing il-Bordijiet ghandhom jinghataw kopji u spjega tas-sottomissjonijiet ta’ l-applikant u sottomissjonijiet ohra li jkunu saru.

g. L-artikolu li jirregola r-revoka jew modifika ta’permitessi gie emendat. Ovvjament l-applikazzjoni ta’ tali provvedimenti hija materja ta’ serjeta u importanza kbira, u wiehed irid jara kif l-emendi ghad-definizzjonijiet li saru ser jigu applikati.

h. L-assocjazzjoni ma tabqilx illi l-Awtorita tassorbi fi hdana it-thaddim u l-infurzar tar-Regolamenti dwar il-Bini. L-assocjazzjoni thoss li tali ssuggett jmur oltra il-funzjonijiet bazici li ghalihom qeghda tigi kostitwita l-Awtorita.
2. Ghal dak li jirrigwardja l-Abbozz li jirregola ir-Tribunal ta’ Revizjoni:

a. L-Assocjazzjoni taqbel ma’l-isforz li sar sabiex il-proceduri quddiem it-tribunal jkunu izjed rregolati u spjegati, dan izjed u izjed meta l-incidenza ta’appelli tista tizdied.

b. L-Assocjazzjoni tinnota illi issa jista jsir appell minn *PC Application*. L-assocjazzjoni thoss illi pero, terza persuna m’ghandux jkollha dritt ta’appell jekk tali *PC Application* tkun limitata ghall-proprjeta privata u li ma tkux ser taffetwa proprjeta pubblika jew proprjeta ta’terzi;


d. Skont dak sottomess izjed il-fuq anke NGO li tkun tippromwovi l-izvilupp sostenibbli ghandu jkollha id-dritt li tressaq appell;

e. M’huwiex car x’se jigri mill-poteri li entitajiet u awtoritajiet pubblici, li jistghu jressqu appell, ghandhom fil-Ligijiet Specjali li jirregolaw tali entitajiet jew atoritajiet pubblici.

3. Ghal dak li jirrigwardja l-Abbozz li jirregola l-Protezzjoni ta’l-Ambjent:

a. Wiehed jifhem illi s-suggett tal-protezzjoni ta’l-Ambjent huwa hafna izjed regolat fiddettal f’Avvizi Legali.

b. L-Assocjazzjoni temmen illi anke f’dan il-kaz, il-Bord ta’l-Awtorita ghandu jkun izjed rappresentattiv, u ghal dan il-ghan ghandu jkun hem rappresentanza ta’NGO’s li jippromwovu l-izvilupp sostenibbli.
I am worried about the apparent reduction of what was supposed to be a comprehensive Strategic Plan for the Environment and Development, into a set of mere 'objectives' which are not binding for any length of time, and subject to change whenever the government sees fit. (art. 44, 45 of Development and Planning Act)

Also, a strong and independent environmental and planning authority needs more members who are experts in sustainable development and greening the economy, and far less direct influence - or better still, none at all - from the construction industry and government.
Twenty reasons against MEPA’s demerger

Today MEPA is nothing more than a glorified government department when compared to the independent status it originally enjoyed in 1992.

On 3 July 2015, government decided to turn the clock backward and propose the separation of the planning and environment protection functions within MEPA, to create two new separate and distinct authorities – the Planning Authority and the Malta Environment Authority.

Back in 2002, the Cultural Heritage Act was enacted to fuse the then government Department for the Protection of the Environment with the Planning Authority, in the creation of MEPA.

When the Planning Authority was established in 1992, the law created the Planning Appeals Board to review MEPA’s decisions. The Environment and Development Planning Act 2010 re-designated the Board as the Environment and Planning Review Tribunal.

Apart from the creation of the PA and the creation of the Malta Environment Authority, a third bill will re-establish the current Environment and Planning Review Tribunal. All these three bills are intended to replace one single law – the Environment and Development Planning Act, 2010.

If this measure was for the better, I would have had no valid reason to complain; but if this measure is for the worst, as I view it to be, than I remain with no other alternative but to voice my reservations at the enactment of these three Bills hoping that they will be duly addressed.

First, the new laws do away completely with codification. It makes life easier for everybody to find the law in one single enactment and makes it possible for better interaction between the institutions. What is the added benefit of having three distinct laws when they could have easily been integrated into one? The reasoning escapes my comprehension.

Second: it is unclear why the Prime Minister is being given further powers than he already enjoys. Is it not enough that the 1997, 2001 and 2010 laws on environment and planning have erased completely MEPA’s autonomy to make it totally subservient to the government of the day? In 1992, the PN established an independent Planning Authority. Yet, as time went by, it began to suffer from a deliberate and ongoing erosion of autonomy in favour of government.
Today MEPA is nothing more than a glorified government department when compared to the independent status it originally enjoyed in 1992. The amendments of 1997 under Labour and those of 2001 and 2010 under a Nationalist administration all contributed to curtail MEPA’s independence. The worst thing to have in planning is politicians putting their finger in the pie, to dictate who is to be granted a development permission or not – irrespective of the law, plans and policies. What needs to be avoided is rule by political partisan diktat instead of rule under the law.

Third, in 1992 the Planning Appeals Board was presided by a lawyer and composed of a person versed in planning, and another person. Up to 2010 the practice had always been to appoint two architects as they were versed in planning. Then the Planning Appeals Board was restyled as the Environment and Planning Review Tribunal and its composition was changed: it was now presided by a planner with a lawyer and a person versed in the environment as its members. The new Bill on the Environment and Planning Review Tribunal does not clearly and unequivocally set out the composition of the Tribunal. One has to arrive at its composition through a process of deduction. It appears that it will be composed of a lawyer as chairman, an expert in environmental law and an expert in planning law.

The Tribunal will have three lawyers with no planners, nor environmentalists as members. However, the Tribunal will in the future be assisted by experts. This is a wrong move as it will contribute only to increase expenses to parties who appear before it and delay the decision making process.

The new Tribunal should instead be constituted with two chambers: a Development Planning Chamber and an Environment Protection Chamber. The Development Planning Chamber should be presided by three full-timers: an advocate versed in development planning as chairperson and two persons versed in planning as members. No expert would need to be appointed as the planners are themselves experts in planning.

In so far as the Environment Protection Chamber is concerned, it should be presided by a full-time environmental lawyer and two full-time environmentalists. The appointment should be for a single period of seven years, non-renewable.

The panels of the Tribunal should be distributed as follows: a panel of advocates versed in development planning law; a panel of advocates versed in environmental law; a panel of planners; and a panel of environmentalists. Otherwise, if the current set-up is retained, the members of the Tribunal will have to rely on expert evidence and, at the end of the day, it will be the experts – not the Tribunal – who will decide the matter bearing in mind that much of the business transacted by the Tribunal is mainly technical not legal.

Fourth, the decision of the EPRT should continue to be final on a point of fact but subject to an appeal to the Court of Appeal on a point of law. The law however fails to delineate the
exact difference between a point of law and a point of fact. As time passed by, this distinction was blurred by court pronouncements: at first the Court of Appeal, Superior Competence, gave a correct and restrictive interpretation to the term ‘point of law’ but the Court of Appeal, Inferior Competence abandoned previous case law in favour of a wider approach as to what constitutes a point of law.

A point of law should be defined narrowly in the Development Planning Act as the interpretation of a legal provision and should not include the application of the law to the facts at issue or the interpretation of a plan or policy.

Fifth, the Court of Appeal should be presided by three judges. With development projects that can run into the millions of euros, such a responsibility should not be shouldered by one judge. Moreover, it should be made clear that the judge should at no point threaten, let alone, order that a development permission be issued, because appeals’ court proceedings should be of judicial review.

Sixth, under the proposed law, the members of the Planning Appeals Board and the EPRT will be appointed by the Prime Minister rather than by the President of Malta, even if acting in accordance with the advice of the minister responsible for planning. How can the Prime Minister, who is responsible for the proper execution of all government development projects, not entertain a huge conflict of interest when selecting the chairperson and members of the Tribunal (or when advising the President of Malta as to their removal from office)?

Seventh, the proposed law entrusts the Prime Minister with designating the categories of cases to be assigned to each panel. Once again, such function should not devolve upon a party to proceedings before the Tribunal (the Prime Minister) who lacks impartiality, neutrality and independence but to the President of Malta acting on her own deliberate judgment.

Eighth, the proposed law allows the staff of the Tribunal’s Secretariat to be appointed by the Prime Minister rather than the tribunal secretary. What was the reason for changing this provision which has served the test of time during the last 23 years? Why should the Prime Minister establish the functions of the Tribunal’s registry when, during the last 23 years, such function has been ably performed by the Tribunal’s Secretary under the direction of the Tribunal?

The Bill does not seem to distinguish between a government department and a quasi-judicial tribunal. These measures are undoubtedly regressive and take the clock back to the time when the government was absolute: it was in 1972 that the learned Judge Maurice Caruana Curran put the doctrine of the dual personality of the state to rest in peace. Yet the Tribunal’s Bill will resuscitate this doctrine. In a modern and progressive democracy,
decentralisation should be the rule of the day and not concentration of powers in the hands of the Prime Minister.

Ninth, in article 9(2) of the Tribunal’s Bill, the law lists the principles of good administrative behaviour contained in article 3(1) of the Administrative Justice Act. One asks: is there a need to list these principles in the Tribunal’s law when these are already listed elsewhere? This convoluted style of legislative drafting leaves much to be desired.

Tenth, whilst under the current law it is Parliament which determines the legal and judicial representation of the Tribunal, now it is the Prime Minister – a prime developer par excellence – who will do so. Has not the drafter of the Bill heard of the term ‘conflict of interest’? This provision is incomprehensible – yet it’s there!

Eleventh, clause 45 of the Tribunal’s Bill states that the funds accrued from penalties to the tribunal should be assigned to the Planning Authority, a constant party before the Tribunal. Why should this be so when the Tribunal’s operation is, correctly, financed by the Consolidated Fund and not by the Planning Authority? Should the Tribunal subsidise a party appearing before it? Would there not be a conflict of interest? Would it not affect the Tribunal’s objectivity, impartiality, neutrality and independence from the Planning Authority? Such funds should undoubtedly accrue into the Consolidated Fund.

Twelfth, the chairperson and members of the Tribunal may be removed by the President acting on the advice of the Prime Minister. No judicial or impartial inquiry follows the alleged misbehaviour of a Tribunal member. No due process of law exists for Tribunal members. If the Prime Minister is not satisfied by a decision delivered by the Tribunal, he will simply remove Tribunal members on the ground of misbehaviour. After all, the Prime Minister may argue, as King Louis XIV did, that l’état c’est moi!

Thirteenth, the call-in procedure introduced in 2001 and retained in the Development Planning Bill lacks transparency. In terms of this procedure, Cabinet may overrule the recommendation of the EPRT even if the said Tribunal has correctly applied the law, plans and policies. Cabinet should not have the power to act outside the law.

The rule of law requires that even Cabinet abides by the law. If a decision has to be taken in the national interest which contravenes plans and policies such a decision should be adopted by resolution of the House of Representatives during a public sitting and not by Cabinet. In this way, everything is done above board and whatever decision is reached it will be taken in public and the reasons therefor are also known by everybody.

Fourteenth, the lack of transparency is evident in clause 36(2)(d) of the Development Planning Bill where the two members appointed by the Malta Environment Authority on the Planning Authority’s Executive Council are not permanent members and do not participate
in all the meetings of the Executive Council. They are indeed second class members! That
the new Planning Authority will sit in the Minister’s lap and its Executive Council members
act as the Minister’s servile stooges is well evidenced by a number of provisions in the
Development Planning Bill. Clause 38(2), for instance, requires them to exercise any of their
functions after consulting with the Minister. As though this provision was not enough to
have a subservient lackey Planning Authority, to rub it in that the Executive Council
members are the Minister’s puppets, clause 41 then provides that ‘The Executive Council
shall, out of its own motion, but after consultation with the Minister, or if so requested by
the Minister, make a plan or a policy on any matter relating to development planning. (2)
The Executive Council may also, either out of its own motion, but after consultation with the
Minister, or if so requested by the Minister, review a plan or a policy which is already in
force.’ The Executive Council enjoys no autonomy at all.

Fifteenth, certain core functions of MEPA which cater both for planning and the
environment will be replicated, with substantial additional costs to government coffers,
simply because of an ill-conceived demerger. Each authority will have its own CEO,
administrative, professional and technical staff, enforcement section… I consider this
unwarranted expense to constitute an extravagant dissipation of financial resources. Has the
Government, seriously, costed the expenses by way of recurrent expenditure that this far-
fetching electoral pledge will cost to government coffers?

Sixteenth, the office of Planning Mediator introduced in 2001 but never implemented by the
Nationalist government, has been completely removed. With three lawyers in the EPRT and no
technical experts, it makes more sense in the new regime to retain the office of Planning
Mediator, which would cut down on appeals, reduce costs and expedite proceedings.

Seventeenth, why does clause 4(3) of the Tribunal’s law state that in the absence of the
chairperson, the deputy chairperson shall perform the functions of the chairperson? Does this
mean that the Tribunal may invariably hold its sittings or decide appeals in the complete
absence of the chairperson? This is quite an astonishing provision for a quasi-judicial tribunal.

Eighteenth, it is of paramount importance that the members of the Planning Authority are
appointed by a two-thirds resolution of the House of Representative. It should be made a
criminal offence for any member of the executive and MP, to attempt to interfere in or
influence the outcome of the development permission decision making process. Nineteenth.
Environmental NGOs should be given an automatic right to appeal before the Tribunal from all
decisions of the Planning Authority and the Malta Environment Authority without having to
show juridical interest. They should not be requested to pay any appeal fee or to submit
objections to a development project in order to appeal. If Environment NGOs are not
empowered to keep in check the Planning Authority and the Malta Environment Authority who
will? Moreover, environmental NGOs should be copied with all decisions taken by the said
Authorities and any time period to appeal such decision should run in their regard from the day
when the NGOs would have received the Authorities’ decision. The environmental NGOs should
designate one person as the recipient of the said decisions. The minutes of both Authorities should be uploaded on their respective websites and all meetings of both Authorities should be held in public except when they are transacting confidential business as defined by law.

Twentieth. Why does the Environment Authority have ‘Malta’ in its title whilst the Planning Authority does not? Will the EA serve Malta’s interests but the PA will not? Would not Environment Protection Authority serve as a better designation? Or is the word ‘protection’ purposely being left out of the nomenclature?

In a new law to regulate development planning and the environment, I would have expected more emphasis on environment protection, more autonomy and independence from government, more transparency and accountability in the operation of that law, by far very much less government interference in the decision making process, more rights given to environmental NGOs who have the interest of the environment at their heart, and, overall, a more robust supervisory function to Parliament.

The three Bills in question do not meet this test and that is why I consider the current law, notwithstanding its manifold deficiencies, to be by far better than the proposed three Bills.
Land use is one of the main environmental pressures in Malta. Planning and the environment should be tackled holistically. Environmental expertise is central to planning decisions.

The new Planning Authority seems to be divesting itself of all environmental responsibility, however decisions on land use are also environmental decisions. Safeguarding the environment must remain one of the duties of the new Planning Authority.

A full study should have been carried out to assess the regulatory and environmental impact of the proposed demerger, prior to taking a decision on whether to separate the environment function from the planning function.

The proposed legislation does not offer any environmental benefits. The involvement of environmental expertise during the processing of planning applications will decrease and no additional environmental safeguards in the planning system are being proposed to replace this. It will be easier to build in environmentally sensitive areas and it will be easier to sanction illegal development in these sensitive areas. Only speculators should be happy with the proposed legislation as over time everyone else - including even bona fide property developers - will lose out as Malta’s countryside and urban environment is ruined.

The proposed system is manifestly less transparent than the existing set up, with far too much power vested in a smaller, politically appointed executive body and executive chairman. Much of the autonomy and transparency of the present MEPA board is being removed. Furthermore, the system as proposed will result in too much emphasis being placed on the Appeals stage, which should only be a measure of last resort.

The role and function of the proposed executive chairperson should therefore be reviewed, and the executive council should include independent members. The functions of the chief executive officer should remain distinct from those of the chairman. The supervisory role of the Parliamentary Committee for the Environment and Development should be increased.

In line with expectations, the new laws should have introduced greater environmental protection, greater transparency and greater autonomy and accountability. Instead, the opposite has happened with many of the gains in these areas in recent years being reversed in these proposed Bills.
1. Din l-Art Helwa has serious concerns about the excessive powers of the new Executive Chairperson. Essentially the new Chairperson will assume all the functions of the current Chief Executive Officer together with all the duties of the current MEPA Board (other than the granting of certain planning permits), and some duties of the Director of Planning, but with significantly reduced accountability given the absence of an independent Board in the proposed legislation. In line with international good practice, the role and functions of the Chairperson of the Executive Council should be distinct from the functions of a Chief Executive Officer, as they are already are at MEPA. The distinction between the two roles ensures a higher level of accountability and better supervision of management.

2. Article 37 and Article 39(2) – These articles should refer to a Chief Executive Officer, as distinct from the Chairperson. The Chief Executive Officer should be responsible for the implementation of the objectives set by the Executive Council, and he or she should answer to the Executive Council and not chair it.

3. Article 36 – As the Executive Council will be the Planning Authority’s main board, the membership of the Executive Council should be increased to include at least five independent members, including at least one member representing environmental NGOs, to increase the level of scrutiny and transparency. All voting rights, including those of supplementary members, should be clearly specified.

4. Article 36(2)(d) – The two members of the Executive Council appointed by the new Environment Authority should be full members with full voting rights. They should be entitled to attend ALL meetings of the Council, and not be excluded from attending certain meetings by the decision of the Executive Chairperson as is being proposed. The quorum of three persons is far too low for the decision-making of the Executive Council.

5. Article 36(2)(a), 36(2)(c) and Article 37(3) - The appointment and/or dismissal of the Executive Chairperson and the members of the Executive Council should be approved by the Parliamentary Committee for the Environment and Development, and not decided by the Minister alone. This should also apply to any independent members and eNGO representatives on the Executive Council as recommended in point 3 above.

6. Articles 38 (1)(c), 38(1)(f), Article 41; Article 42, Article 53 - Unless the membership of the Executive Council is expanded to include independent members as described in point 1-3 above, the functions of the Executive Council described in Articles 38 (c) and (f), Article 41, Article 42, and Article 53 should be the function of the Planning Board, which includes independent members, and not the Executive Council. A lack of independent members on the Executive Council reduces scrutiny and transparency of the functioning of the Authority.
7. Article 54 and Article 55 – Decisions on Planning Control Applications and Development Orders should be the function of the Planning Board and not the Executive Council, to ensure a higher level of independence and scrutiny.

8. Article 65 (1) – The Minister should consult with the Executive Council, and not solely with the Executive Chairperson, when prescribing the duties of the Planning Commission.

9. Article 39 (1) and 39 (2) – the number and function of the Directorates should be listed, as is the case in the Third Schedule of the current legislation Cap 504.

10. The role of the Executive Chairperson in the processing of planning applications should be clarified and kept distinct from the role of Director of Planning. For example, Art 71(7) states that during the processing of an application the Executive Chairperson shall consider representations made by registered interested parties; and Art 80 (1)(d) in the case of a request for the revocation of a permit, the Executive Chairperson must make a recommendation to the Planning Board. The First Schedule (f) and the Second Schedule (10) and (11) also refer to recommendations on planning decisions to be made by the Executive Chairperson to the Executive Council and the Planning Board. These duties should be carried out by the Director of Planning, and not by the Executive Chairperson (or the Chief Executive Officer). This will ensure a higher level of accountability and checks and balances.

11. Article 57 (1)(a), 57 (10), 58 (1) – Listed areas of heritage value, including of landscape importance, should be prepared and scheduled, or downgraded/descheduled, by the Superintendence for Cultural Heritage and not by the Executive Council of the Planning Authority.

12. Article 57 (1)(b), 57 (10), 58 (1) – The scheduling or downgrading/descheduling of areas of natural beauty, of ecological or scientific value should not be carried out by the Executive Council of the Planning Authority but by the Environment Authority. This is in fact established in the proposed Environment Protection Act Article 69.

13. Articles 57 (6) and 57 (7) – Permission to carry out works on scheduled property should only be granted by the Planning Board with the approval of the Superintendence for Cultural Heritage or the Environment Authority, depending on the nature of the scheduling.

14. First Schedule 3(d) – The power of the Executive Council to endorse documents or plans should not be delegated to the Executive Chairperson or to an individual Council member, as this reduces scrutiny.

15. Outside development zone permits – Since all ODZ permits, de facto, involve a development boundary violation or a change, which in principle should only be approved by Parliament, all prospective ODZ permits whether approved by the Planning Authority or the Tribunal should be sent to Parliament through the parliamentary committee for final endorsement. This adds a level of scrutiny to ODZ development.
16. Urban Conservation Areas development permits - As heritage in general is partly owned by every individual in the country, all permits in UCAs or which affect scheduled monuments whether approved by the Planning Authority or the Tribunal should be reported to Parliament through the parliamentary committee. This adds a level of scrutiny to UCA development.

17. Article 11(3) and 11(4) – In the proposed legislation, the Executive Council is to appoint an internal auditor, who reports exclusively to the Executive Council. The appointment of the internal auditor should be approved by and report to the Parliamentary Committee for the Environment and Development, to ensure a higher level of scrutiny and transparency. The term of office of the Auditor should be specified.

PUBLIC PARTICIPATION & TRANSPARENCY

18. The law must specify that applications must ALWAYS be processed in such a way that a public consultation phase is included. The public consultation document of 2014 (p.10) mentioned the possibility of ‘fast-track’ procedures, therefore the Planning Act must state that ALL applications must include a public consultation phase. This is also in line with the principles of the Aarhus Convention, in particular the right to public participation in environmental decision-making.

19. eNGOs – In the new legislation the role of eNGOs as watchdogs at the Planning Authority will be lessened as the remit of the Planning Board will be greatly reduced from the current MEPA Board. Environmental NGOs should therefore also be represented on the Executive Council, as recommended in point 3 above.

20. Article 33 (2) (c) second proviso - This clause limits the amount of information in a case file that can be made available to the public. The public should also have access to all relevant reports and all consultation feedback and representations. This is a retrograde step which reduces transparency and does not respect the provisions of the Aarhus Convention, in particular the right of access to environmental information.

21. Articles 45 (1); 45 (3); 53 (2)(b)(i) - The new planning law will allow anonymous representations. This is a retrograde step which reduces transparency and public scrutiny in terms of identifying vested interests, including those of speculators. No representations should be anonymous at any stage.

22. Article 84 (1) - The consultation period for the drafting of new Regulations has been reduced from 4 weeks (Cap 504 62 (1)) to 2 weeks in the new Act (84 (1)). The consultation period of 4 weeks should remain unchanged.

23. Article 84 - Cap 504 62 (3) and (4) have been omitted in the new Bill. This clause currently states that “Any person may, in the circumstances referred to in sub article (1) in respect of draft regulations, not later than six weeks after the promulgation of any regulations made in accordance with subarticle (2), make submissions to the Minister and, or to the Authority, stating why and how the regulations should be revoked or amended.” Why
has this been removed? It is not enough to include it in the proposed Environment Protection Act Article 55, and it should also be inserted in the proposed Planning Act.

24. Article 49 - On Action Plans, the current Cap 504 56 (3) includes the clause: “In addition to the information required to be contained in a Local Plan, an Action Plan made in terms of sub-article 1 (b) shall also show the land which is in public ownership and the land which is intended to be brought into public ownership.” This has been omitted in the new Act. This clause should be re-inserted as its removal further reduces transparency, and is only likely to benefit speculators.

25. In the information session of July 2015, it appeared that the system of determining development applications is placing far too much emphasis on the final Appeals stage, and far less emphasis on improving the system, particularly by involving statutory consultees and environmental/heritage expertise, at the early processing stage. This would be an extremely unhealthy development which would seriously undermine the ‘watchdog’ role that NGOs have been able to develop – in the interests of Malta's natural and built environment – over the past years.

ENFORCEMENT & SANCTIONING

26. Article 73 - Article 70 of the present MEPA law Cap 504 prohibits MEPA from regularising any illegal developments built in ODZ or scheduled areas, as defined in the Sixth Schedule which has been removed. Its proposed removal is a retrograde step, and while the Sixth Schedule may have required amending it should not have been removed completely. At least there should have been a full debate on this point. The new Article 73 which replaces Article 70 simply states that the Planning Board may ‘grant permission for the retention on land of any buildings carried out without permission.

27. Article 101 - The current legislation allows for sanctioning but there is a fine to be paid for having done the works illegally: “91 (2) An enforcement notice falling within the provisions of subarticle (1), the development in question shall not be considered as having been regularised in terms of this Act unless and until a development permission has been granted to cover the development in question and a penalty fixed by the Authority within the limits established in article 93 has been paid”.

It is unclear how the new legislation will be adopting the imposition of penalties for illegal works, particularly when a request for the sanctioning of an illegality is submitted. Fines for illegal works should ALWAYS be applicable, whether the works are later sanctioned or not. The present proposal appears to be proposing some form of amnesty for illegal development which is unacceptable. It also penalises citizens who abide by the law.

PLANS & POLICIES

28. Article 44 – This refers to a “Spatial Strategy for Environment and Development”, but does not mention the Strategic Plan for the Environment and Development. The difference between the two, or the reason for the different nomenclature, needs to be clarified.
29. The monitoring and implementation of the Strategic Plan should not be the responsibility of the Planning Authority. The Plan is strategic in nature and involves both planning and the environment, and should therefore be the responsibility of both the Planning Ministry and the Environment Ministry jointly.

30. Article 44 (1)(d) – Article 51(1)(iii) of the present MEPA law Cap 504 also stipulates that the Strategic Plan should “be accompanied by an explanatory memorandum giving a reasoned justification for each of the policies and proposals contained in the plan”. This requirement should be retained.

31. Article 44 (2) – The monitoring and review of the Strategic Plan should be made in accordance with goals and objectives set out jointly by the Environment Authority and the Planning Authority, and approved by Cabinet as is the case in Cap 504 Article 52(2). The goals and objectives should not be set out by Cabinet.

32. Article 44 – The present MEPA law Cap 504 Articles 52 (3)(4) state that the Minister can refer back the Strategic Plan or review thereof, with a position statement, and that the same procedure must then be followed with respect to any further draft. Why has this been excluded?

33. Article 44 – In Cap. 504 Article 51(3) it is stated that the Strategic Plan “can be reviewed in parts as the need arises by means of a Resolution of the House of Representatives”. This should be retained in the new Act.

34. Article 72 (2) - In the current legislation Article 69, the Authority is required to “apply” plans and policies and have regard to other material considerations and representations made. In the new legislation Article 72, the Planning Board is only required to “have regard to” plans, policies, regulations and other material considerations including representations made. The wording ‘to have regard to’ is too vague and subjective, for example, for the Environment and Planning Tribunal to take decisions on whether applications have been decided correctly or not, and the word “apply” should therefore be introduced in the new legislation.

35. Article 72 - In the current MEPA legislation Article 69 includes provisions to ensure that height limitations as set out in policies are adhered to (Articles 69 (1) (a (i) and 69 (2) (a)). These provisions have been removed in the corresponding Article 72 of the DPA 2015. This creates a loophole with which developments which are higher than the height limitation will be permitted. Article 69 of the current MEPA legislation should be inserted in the new legislation.

36. Article 52 – This sets out the order of precedence “where multiple plans and policies apply to the same matter or area and there is a material conflict between any of them”. It establishes that higher order plans take precedence over lower order i.e. “the Spatial Strategy over the subject plan; the subject plan over the local plan, the local plan over the action plan or management plan, the action plan or the management plans over the development brief.....” This approach is not advisable. The relative weighting of the respective policies and plans should be left at the discretion of the board when deciding on
a development application. The danger of having ‘order of precedence’ is that ‘lower order’ plans such as development briefs could become redundant, through amending ‘higher order’ plans. For example, development briefs should be given weight in planning decisions as they are based on more detailed study of the site.

37. Article 53 (2) - The following clause should to be inserted to clarify that the Minister does not have the power to change height limitations or building zones: After 53 2 (j) add: “For the purpose of subarticle 53 2 (j), the following shall not be approved by the Minister but shall be taken for approval to the House of Representatives:

i. Changes in height limitation, and

ii. Changes in zoning of a site which lies in an Outside Development Zone or which is within the Development Zone but not designated for the purpose of development.

As a matter of principle decisions on issues relating to changes in the status of a particular land area (and therefore including the drawing of development boundaries) whether privately or publicly owned should not be left in the hands of the government of the day but must be made by Parliament.

38. Processing of development applications. The processing of applications cannot take place holistically in the absence of technical staff who are well versed in environmental matters. This means that the planning authority must either liaise more closely with the proposed Environment Authority than is envisaged in the proposed act, or that it will have to create its own ‘Environment Unit’ for processing applications, similar to the current ‘Heritage Protection Unit’. The latter option would partly defeat the claimed rationale for demerging the two authorities in the first place. Including board members with environment expertise cannot replace the role of environmental technical experts at the processing stage. The requirement for environmental expertise at an early stage of the processing of each application, including both major and minor applications, must be enshrined in the legislation.

39. The two Heritage Advisory Committees should not be abolished. Advisory committees assist the Authority to take well-informed decisions on applications. Involving advisory expertise helps the Board to reach the best possible decision and removing such committees is another retrograde step. The removal of the Heritage Advisory Committee reduces transparency in the processing of development applications.

40. The list of supplementary members of the Executive Council should refer to the Heritage regulator, that is, the Superintendency for Cultural Heritage and not the heritage agency (Heritage Malta).

41. Article 60 – The Parliamentary Committee for the Environment and Development should have the right to request any report from the Planning Authority.

**B. ENVIRONMENT AND PLANNING REVIEW TRIBUNAL ACT, 2015 – BILL**
As an overall comment, Din l-Art Helwa is concerned that in the proposed planning legislation, more emphasis has been placed on including stakeholders at the appeals stage, rather than ensuring that the expertise of other Authorities is taken on board at the early processing stage of development applications. A system that depends too heavily on appeals for its proper functioning will be dysfunctional. It is also obvious to all that Environmental NGOs, for example, do not have the resources for extensive involvement at the Tribunal, which requires legal counsel and expenses; this proposal therefore seems designed to undermine the influence of Environmental NGOs.

42. The members of the Tribunal should not be appointed by the Prime Minister alone. The appointment of the members of the Tribunal should be approved by Parliament.

43. Article 4(8) allows for members of the tribunal to be removed from office ‘for a just cause’ and this includes if they do ‘not achieve the targets and objectives set in relation to his duties.’ This removes security of tenure and makes the Tribunal members susceptible to political pressures.

44. Article 11 (1) (f) first proviso – Will appeals by external consultees, who have lodged recommendations to the Planning Authority, overrule the powers of these Authorities as listed in their own specific legislation? If the external consultee has indicated that the application is objectionable, their expert opinion should not be overruled by the Planning Authority or the Tribunal.

45. It should not be up to the Prime Minister to decide which cases can be heard by the Tribunal. Overall, the role of the Prime Minister in the workings of the Tribunal is too extensive.

46. Decisions at the Tribunal must be objective and based on the merits of the case, in the public interest, and based on a technical interpretation of the issues. The Tribunal should not be composed of legal experts only, but should have members who are experts in planning and in environmental matters.

47. The Tribunal should not decide issues of alignment. Any alterations to the status of land areas or development boundaries should be subject to the approval of Parliament.

48. Environmental NGOs will find it very difficult to lodge appeals unless the costs are reasonable, particularly for major developments. This needs to be addressed since all the gains made by Environmental NGOs in strengthening their ‘watchdog’ role will be undermined by this shift.

C. ENVIRONMENT PROTECTION ACT 2015 – BILL

49. The original proposal published in 2014 mentioned the ‘Environment & Resources Authority’ however ‘resources’ is now missing from the title. Is the Malta Resources Authority Act Cap 423 also being revised to reflect these changes? Article 4(1)(a)(b) of Cap 423 states that the function of the MRA is to regulate energy, water and mineral resources.
The elements of the current Malta Resources Authority which will be regulated by the new Environment Authority need to be clarified.

50. Article 6(2) and 6(3) – The appointment of the chairperson and other independent members of the Authority should be approved by Parliament.

51. Article 8 (5) and 8(7) – These articles imply that the Minister for the Environment is to be consulted on everything, and will monitor implementation of policies; this will obviously diminish the independence of the Environment Authority and is not acceptable. Additionally, a clause similar to Article 6 in the Malta Resources Authority Act Cap 423 should be inserted in the Environment Protection Act, which establishes that the Minister should not be involved in the day-to-day running of the Authority.

52. Articles 43 (2) and 43 (3) also imply excessive involvement of the Minister.

53. First Schedule – this lists the functions of the new Environment Authority, however the proposed Article 54 (2)(q) states that the Minister may make regulations “to amend, substitute, add to or otherwise alter anything contained in the Schedules. Why are the functions of the Authority part of a Schedule and not included in the main text, as is currently the case in Cap 504 Article 8(2), Cap 423 Article 4, and also in the proposed Planning Authority Bill Article 6(7)?

54. Article 31(1) – The Parliamentary Committee for the Environment and Development should have the right to request any report from the Environment Authority.

55. Second Schedule – In the new Environment Protection Act, the procedure to be adopted in the preparation or review of a subsidiary plan or policy is listed in a Schedule (which can be changed by the Minister), while in the proposed Planning Act, and the existing Cap 504, the procedure is part of the main Act. What is the reason for the different approach in the Environment Protection Act? The procedure should be established in the main text, and not subject to amendments by the Minister.

56. Second Schedule – (e) The period of representation should be not less than six weeks (not only 4 weeks) as is the case in Article 12 (b)(2) of the proposed Planning Act which stipulates 6 weeks for consultation.

57. The Act makes no reference to implementation, besides the establishment of the main Board of the Environment Authority. The Act should also make reference to the duties of a Chief Executive Officer for implementation, or the establishment of Directorates, as is currently the case in Cap 504 and Cap 423, and in the proposed Planning Act.

58. Environmental NGOs should be listed as statutory external consultees of the Authority in relation to all policies and applications for environmental permits.
Government recently published three Bills for public consultation regarding the proposed demerger of MEPA into two separate Authorities and the establishment of a new Environment and Planning Review Tribunal. This submission is being made in response to such public consultation process and is divided into four sections as follows:

A. General Comments on the proposed demerger of MEPA
B. Detailed Comments on Bill 107 - Development Planning Bill
C. Detailed Comments on Bill 108 - Environment Protection Bill
D. Detailed Comments on Bill 109 - Environment and Planning Review Tribunal Bill

The comments submitted are based on the English versions of the Bills.

Since Government appears to be intent in carrying out this demerger, a proposal which the undersigned is not in agreement with, this submission has taken the demerger as a fact since it appears to be useless to contest this decision at this stage. Nevertheless, some comments in this regard have been included in Part A.

The undersigned participated in the public consultation process of 2014, and it is here noted with satisfaction that some of the points raised at that time have been taken on board and addressed.

Unfortunately, the time frame allowed for the current formal public consultation process was very limited, given the complexity and potentially significant impacts of the proposals being put forward; this submission, therefore, is intended to give initial feedback, and I trust that further opportunities will be provided to discuss the proposals in further detail. In this regard, I would like request to be able to participate in the Parliamentary Committee sessions where these Bills will be discussed in detail.

While trusting that the enclosed comments are taken on board, please do not hesitate to contact the undersigned should you wish to discuss further, or require any clarification.
A. General Comments on the proposed demerger of MEPA

1. The proposed demerger – is this the best way forward?

The development planning function of MEPA is proposed to be taken over by a new Planning Authority whilst the environmental permitting and policy making function is to be subsumed within a new authority which was originally intended to amalgamate the Malta Resources Authority and the Environmental Directorate, under the new name of the Environment and Resources Authority. The latter Authority, however, is now being presented as the Malta Environment Authority, and it is not clear what has happened to the Resources Management function which this new Authority was intended to subsume.

As stated by the author in the public consultation process on the demerger carried out in 2014, the main driving force behind the Strategic Plan for the Environment and Development (SPED) recently approved by Parliament is the promotion and achievement of sustainable development. In fact, the public consultation notice stated that “The SPED is intended to replace the Structure Plan for the Maltese Islands of 1990 and provide a strategic spatial policy framework for both the environment and development up to 2020, complimenting (sic) Government’s social, economic and environmental objectives direction for the same period. The new plan shall be based on an integrated planning system which: (i) ensures the sustainable management of land and sea resources together with the protection of the environment; and (ii) guides the development and use of land and sea space.”

In this context, it would seem that splitting the MEPA into two distinct Authorities is not the most ideal way in which to achieve the integrated approach towards sustainable development promoted by the SPED, particularly in view of the fact that these Authorities will fall under the portfolios of separate Ministries / Parliamentary Secretariats. Rather, it would seem to be more suitable to incorporate the environmental and development permitting and policy making functions within the Ministry for the Environment, Sustainable Development and Climate Change, thus achieving an integrated approach towards policy making and permitting matters.

Unfortunately, however, Government has repeatedly stated that the act of completely divorcing the environmental and the development planning and permitting functions is not up for discussion, insisting that it has an electoral mandate to go down this route. It is not the intention of this submission to enter further into the merits of this decision; however it is noted that very little justification, if at all, has been given to support this direction and no studies have been presented to justify this decision. Only time will tell whether this will be a sustainable decision or otherwise; sadly, if we get this wrong, it is our built and unbuilt environment that will suffer, and our quality of life as a result; and since one
cannot turn back the clock once development has taken place, the scars that may emerge will continue to haunt us for decades to come.

Integration of the permitting and policy making functions for our built and unbuilt environment has taken place over a number of years. Whilst admittedly being a system which is not free from defects, it has, to a certain extent, worked well. Splitting these two remits, both from a legal and a logistical point of view, may prove to be unnecessarily laborious and resource intensive, with very dubious advantages to be achieved as a result. The very fact that the legislative process leading to the proposed demerger has taken over two years is testament to this, and the resources, both financial and human, are still be assessed and quantified.

2. SPED and governance

Mere weeks before the publication of Bills 107, 108 and 109, the Standing Committee for the Environment and Development, Parliament and civil society were immersed in an intense discussion on the SPED, which was eventually approved by Parliament notwithstanding significant dissent from civil society. Now, however, none of the Bills presented for consultation make any reference to the SPED, and it seems that this document has evaporated into thin air. Bill 107 talks about a Spatial Strategy for Environment and Development, while Bill 108 talks about a National Strategy for the Environment. What has become of SPED and its ideals for integrated management of our land and sea resources? Was the tortuous process for the approval of the SPED just a mere exercise in lip service?

At this stage, it is also important to note the various discussions on the issue of governance of the SPED, wherein government indicated that the technical co-ordination of SPED will eventually lie within the hands of the proposed new Planning Authority and its Executive Council, while the Political co-ordination will lie within the Office of the Deputy Prime Minister. None of this, however, is reflected in any of the Bills presented for public consultation.

This matter is indeed one which raises a number of concerns as to the real intentions behind the demerger of MEPA into two separate and distinct authorities.

3. Application process

During the public information meeting held on the 29 July 2015, the Government’s advisor presented an overview of the planning application process. This process is not described anywhere in the draft Bills, and it would be premature to comment on it in the absence of a draft thereof. However, it is noted that the way the draft Bills
will be reflected in the application process itself is crucial to the discussion, and it is recommended that such draft regulation is also published prior to the third reading of the Bills in Parliament, in order that a more holistic public consultation process can take place.

The Government’s advisor also stated, at such meeting, that the current system of CTBs is to be abolished. This raises a number of concerns, particularly in view of permits which have been granted following CTB clearance, as well as in relation to utilities installed after such CTB was issued. No detail on this proposal is provided in the Bills, and therefore further clarity is required.

4. Public consultation

While the Bills stipulate a number of instances where statutory public consultation is to be carried out, it must be said that it is also desirable for a certain amount of consultation to be carried out with specific stakeholders prior to the formulation of objectives and policies or plans or regulations, and prior to the formal public consultation process. This is a concept which needs to be entrenched across the board in government policy making functions and will go a long way towards achieving a more cohesive and streamlined process.

5. Human resources

It goes without saying that any reform, particularly one of this entity, will only be as successful as the quality and qualification of officers who will be responsible for its implementation. No amount of legislative measures will suffice if the system lacks, at its core, a strong and suitably qualified pool of professionals in their respective fields.
B. Detailed Comments on Bill 107 - Development Planning Bill

GENERAL COMMENTS

1. Conflicts of interest
While the intention to have the Environment Authority considered as a statutory consultee as well as having a member on the Planning Board is not a bad proposal in itself, the question arises as to the potential conflicts of interest that may arise. It has been a long standing ethical consideration that members of a decision making body who may have been engaged, in any capacity, in the application processing stage, would refrain from participating in discussions at board level on such an application. Under the current proposals, we have an Environment Authority which will be part of the consultation process as a statutory consultee, will have a say in the recommendation made by the Executive Council to the Planning Board / Commission in view of its seats on such Council, will then be part of the decision on the application through its seat on the Planning Board (and by inference on the Commission which is delegated with authority to take decisions by the Planning Board), and will finally have the right to appeal against a decision of the Planning Board of which it has formed part.

Similarly, the same can be said for the Local Councils which will also be statutory consultees in the process, have a vote on the decision of an application on which they were consultees, and finally may appeal against the decision of the Planning Board. It is also noted that, unfortunately, our Local Councils set up is highly politicised – therefore the presence of yet another politically driven member on the Planning Board may not be desirable.

The same argument applies to all statutory consultees in the process who may appeal against the Planning Board’s decision.

The creation of these situations of conflict of interest, or even the mere perception of such, is considered to vitiate the planning permitting process. This point was raised by the author during the public information meeting held on the 29 July 2015, and the panel members concurred with this interpretation. This is certainly not a desirable situation and needs to be reviewed.

2. Executive Council / Planning Board / Authority
In various instances in the Bill, certain duties and responsibilities are given specifically to the Executive Council or the Planning Board, however each of
these often are used interchangeably in the Bill with the term “Authority”. For example, development permissions should not be issued by the Planning Board, but by the Authority following a decision of the Planning Board; the Executive Council should not issue enforcement notices itself but it should be the Authority that does this through the office of the Executive Council, if anything; among various other instances. It is important to retain the Authority as the main permitting and monitoring body, and not the individual sections within the Authority.

This is also important in terms of Article 5 which establishes the Authority as being composed of the Executive Council and the Planning Board, and both are equally vested with the legal and judicial representation of the Authority. Appeals will lie from the Authority’s decisions, and not specifically against the Planning Board or the Executive Council.

3. Owner’s consent
The direction being taken by the Bill to not require the owner’s consent when submitting an application is not a desirable proposal. The current system whereby the applicant must declare that he has obtained the owner’s consent to submit an application for development permission has cut out a significant amount of abuse. This should be retained.

4. Heritage Advisory Committee
The Heritage Advisory Committee currently established under Cap 504 is being abolished. This is a questionable change, and should be reconsidered if Government truly values our cultural and natural heritage. It would be useful for Government to explain the reasons behind such change.

5. Removal of sixth schedule
The removal of the Sixth Schedule implies that the “no tolerance” policy previously adopted no longer applies. This is certainly not a commendable approach. Rather, it would be preferable to leave the Sixth Schedule in place (albeit with amendments) and alter the provisions of the Act which refer to it.

The deletion of the Sixth Schedule seems to imply that irregular development in the instances contemplated by the Schedule may continue to take place, since one will be given the opportunity to regularise notwithstanding the nature of the illegality. It also raises the question of what happens with irregular development carried out between the introduction of the EDPA in
October 2010 and the date of removal of the Schedule, should this proposal go ahead. This is not addressed in the Bill.

6. Building Regulations

The draft Bill includes the proposal to merge the current functions of the Building Regulation Board and the Building Regulation Office within the new Planning Authority. There have been mixed reactions to this proposal, particularly because the building regulatory function is, and should, remain distinct from the planning process itself. The integration of this function within the Authority appears to be merely one of the setting up of an advisory board within the authority, while the Minister will have the power to make regulations in this regard, however no detail is given as to how this function will be part of the application process, who will be responsible for ensuring adherence to the applicable regulations, and who will be responsible for the various processes which kick in when a project goes to site. The Bill is extremely lacking in this regard.

DETAILED COMMENTS

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<th>Article Ref</th>
<th>Comments / Proposed Amendments</th>
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<td>Definition of “alteration”:</td>
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<td>(i) Why are plastering and apertures only mentioned? This definition should be broader and not limited solely to these two instances.</td>
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<td>(ii) It is not clear whether the words “that materially alters... etc” apply to both (a) and (b) or to (b) only.</td>
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<td>Definition of “building levy”:</td>
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<td>(i) Suggest changing the term “building levy” to “Development Levy” since planning applications may cover other developments that are not strictly “buildings”</td>
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<td>(ii) What happened to the Environment Fee currently charged on all applications?</td>
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<td>(iii) Is the Infrastructure Service Contribution (ISC) inclusive of Sewer and Street Contribution? This should be specified.</td>
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<td>2</td>
<td>Definition of “building or work”:</td>
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<td>(i) This is in conflict with the definition of “building” earlier; there should only be one definition of “building”</td>
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<td>(ii) This definition is not clear and the term “works” needs to be better defined – eg. see definition of “commencement notice”</td>
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<td>(iii) The definition of “illegal works” does not really tally with this definition of “works”</td>
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<td>(iv) There seems to be a conflict between the definition of “building”,</td>
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<tr>
<td></td>
<td>“work” and “development”.</td>
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<td></td>
<td>(v) Refer also to the definition of “works” in the Building Regulation Act and consider adopting in this new Act.</td>
</tr>
<tr>
<td>2</td>
<td><strong>Definition of “commencement notice”:</strong></td>
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<td></td>
<td>(i) It should not be the perit’s responsibility to submit this notice, but the applicant’s</td>
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<td></td>
<td>(ii) If the “Environmental Site Manager” is the “Site Manager” as defined in LN 295 of 2007, this should be clearly stated and referenced. Or is this the “Site Manager” as defined in the Building Regulation Act. This needs to be clarified.</td>
</tr>
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<td></td>
<td>(iii) Proposed rewording – <em><em>means a notice, in a format to be established by the Authority, submitted by the applicant to the Authority not later than five days prior to the commencement of works or utilisation of permission, to notify the Authority of the date of commencement of works or utilisation of permission, including the name of the licenced builder, the perit and the Site Manager</em> and contact details where they may be reached at any time.</em>*</td>
</tr>
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<td></td>
<td>(iv) It is recommended that this commencement notice should also be notified to all registered interested parties and to all statutory consultees, in order that they are alerted of the commencement of works and can therefore check whether any outstanding matters have been addressed prior to commencement.</td>
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<td>* see note (ii)</td>
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<td>2</td>
<td><strong>Definition of “compliance certificate”:</strong></td>
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<td></td>
<td>(i) The definition refers to “a certificate issued in terms of article 102”, however such article does not completely establish how such a certificate is to be issued, and does not make reference to a “compliance certificate” but to a “certificate”</td>
</tr>
<tr>
<td>2</td>
<td><strong>Definition of “development”:</strong></td>
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<td>(i) Review this in conjunction with the definitions of building and works.</td>
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<td>2</td>
<td><strong>Definition of “development permission”:</strong></td>
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<td>(i) Does the Planning Board or Planning Commission issue permissions for development under Development Orders? Article 55 is not clear as to who issues such permits. It should be the Planning Board as the permitting arm, but there does not seem to be any provision for this in the Bill.</td>
</tr>
<tr>
<td>2</td>
<td><strong>Definition of “illegal works”:</strong></td>
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<td>(i) The Rural Policy and Design Guidance 2014 recognises buildings which are visible on the 1978 aerial photos as “existing buildings”. Could this definition of “illegal works” which refers to 1967 be in conflict with the definition in the Policy?</td>
</tr>
<tr>
<td>2</td>
<td><strong>Definition of “land”:</strong></td>
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<tr>
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<td>(i) Possibly make reference to the SPED definition of territory?</td>
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<td>2</td>
<td><strong>Definition of “land reclamation”:</strong></td>
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<td></td>
<td>(i) Why is this definition including land which has been degraded by human activities? Would this include, for example, quarries?</td>
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<td></td>
<td>(ii) The definition of “land use planning” refers only to “land to be reclaimed from sea” – what about other land reclamation as defined under this definition?</td>
</tr>
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<td>2</td>
<td>Definition of “maintenance works”:</td>
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<td>(i) The definition states what the term does not include, but not what it includes. Clarity is required.</td>
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<td>2</td>
<td>Definition of “major project”:</td>
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<tr>
<td></td>
<td>(i) States that this is “as defined by regulations under this Act”. Clarity is required at this stage as to what is to be considered as a major project, otherwise any feedback on the articles which refer to major projects would be superfluous.</td>
</tr>
<tr>
<td>2</td>
<td>Definition of “Minister”:</td>
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<td>(i) Is it normal to refer to a Parliamentary Secretary in such a definition?</td>
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<td>(ii) Most Acts refer to the Minister responsible for a particular activity (eg. sustainable development), not as stated in this definition, as the person “under whose portfolio the Authority is included”. Suggest to reconsider this definition in line with the definition of the Minister responsible for the Malta Environment Authority, defined in the Bill as “the Minister responsible for the environment”.</td>
</tr>
<tr>
<td>2</td>
<td>Definition of “owner”:</td>
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<td></td>
<td>(i) Suggest initial statement as follows: “owner”, in relation to land on which development takes place, means ... etc</td>
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<td>(ii) Part (d) refers to “any one of the co-owners of the land” – is this intended to mean that not all the co-owners need to grant their consent to the proposed development? Clarity is required.</td>
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<td></td>
<td>(iii) Part (d), if retained, remove the words “on which development takes place”</td>
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<td>(iv) Part (e) refers to “any one of the spouses” – this is identical to the definition in the current Cap 504. Does this mean that any of the spouses can apply for a permit without the consent of the other? How does the Civil Unions Act change this definition?</td>
</tr>
<tr>
<td></td>
<td>(v) Part (e), remove the words “to which the development relates”</td>
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<td>(vi) Part (f) is superfluous as it is covered by part (a) and the definition of “person”. Also, why refer specifically to the director or directors? Could the authorised person not be the CEO or CFO, etc? If this definition is retained, the term “company” needs to be defined.</td>
</tr>
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<td>(vii) Refer to additional comments at the beginning of this Part.</td>
</tr>
<tr>
<td>2</td>
<td>Definition of “permission”:</td>
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<tr>
<td></td>
<td>(i) Do we need a definition of “permission” and of “development permission”? Is this not repetitive?</td>
</tr>
<tr>
<td>2</td>
<td>Definition of “person”:</td>
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<td></td>
<td>(i) What is meant by “an association of persons whether granted legal personality or not”?</td>
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<td></td>
<td>(ii) Check the context of the use of this term</td>
</tr>
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<td>2</td>
<td>Definition of “scheduled buildings”:</td>
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<td></td>
<td>(i) Should this definition be wider and not restricted to buildings only? For eg “scheduled property” as actually referred to in Article 57 to which this definition makes reference.</td>
</tr>
<tr>
<td>2</td>
<td>Definition of “Spatial Strategy”:</td>
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<td></td>
<td>(i) Why are we going from a Strategic Plan to a Spatial Strategy? Refer to additional comments in Section A and below re Article 44.</td>
</tr>
<tr>
<td>2</td>
<td>Additional comments:</td>
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<td></td>
<td>(i) There is no definition of “application report”, nor of who prepares it (the current Cap 504 contains a definition of this, though it could be ameliorated)</td>
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<td>(ii) The definition of “environment” has been omitted, however the word “environment” is used a number of times in the Bill (eg. Art 59, 63, etc)</td>
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<td>(iii) The definition of “waste” has been omitted, and the definition of “building or work” does not do justice to the definition of waste in the current Act 504.</td>
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<td></td>
<td>(iv) There should be a definition of “Directorates” in Article 2, and their remit and responsibilities should be included in a Schedule as per the current Cap 504.</td>
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<td>(v) The Planning Board and the Executive Council should be defined in Article 2 (as is the “Commission”).</td>
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<tr>
<td>3 and 4</td>
<td>Duty of Government:</td>
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<td></td>
<td>(i) “Duty to promote” should be rephrased to “Duty to ensure” – “promoting” is easy; “ensuring” is somewhat more difficult!</td>
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<td></td>
<td>(ii) Retain the “duty of every person” as per the current Act 504.</td>
</tr>
<tr>
<td>6 (2)</td>
<td>Legal and judicial representation of the Authority:</td>
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<td></td>
<td>(i) The legal and judicial representation is being vested solely in the Executive Chairperson, whereas currently this is vested in the CEO and the Chairperson. Since the Authority is being defined in Article 5 as being composed of the Executive Council AND the Planning Board, then the judicial and legal representation thereof should lie jointly with the Chairperson of the Executive Council AND the Chairperson of the Planning Board.</td>
</tr>
<tr>
<td>7(2)</td>
<td>Functions of the Authority:</td>
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<td></td>
<td>(i) Regarding subarticle (a), since MEPA is being split, how will the functions, etc, inherited by the Planning Authority be different from those of the Environment Authority?</td>
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<td>(ii) Subarticle (e) re BRB and BRO should follow subarticle (a)</td>
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<td>(iii) Subarticle (c) should be the last of the series of sub-articles</td>
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|             | (iv) It is not clear what is being proposed in sub-article (d). Clarity is
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<td>(v) Subarticle (e) states that the provisions of the Building Regulation Act are contained in this Act, however this does not seem to be the case. Various parts of the Building Regulation Act have been omitted (eg, the Schedule, various definitions, etc). A thorough review should be undertaken.</td>
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<td>(vi) Subarticles 8(2)(c) and (d) of the current Cap 504 is being omitted (“the promotion of proper planning and sustainable development of land and at sea, both public and private” and “the control of such development in accordance with plans and policies approved in terms of this Act”) – these are important functions and should not be omitted, although subarticle 3 seems to be trying to replace 8(2)(d) of the current Act but does not make reference to this being in accordance with plans and policies. Also refer to use of the word “ensuring” as opposed to “promotion” as outlined above.</td>
</tr>
<tr>
<td>7(8) Audit trail:</td>
<td>(i) This is an important provision however one needs to be very careful about the destruction of paper work after 20 years. There have been many cases where the whole contents of a file were important to ensure proper procedures in subsequent permits on the same site. In the opinion of the undersigned, the Authority should be obliged to retain and maintain records, even since this will also serve as a depository for future research.</td>
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<td>(ii) Suggest that this proviso, if adopted, is only applicable to applications submitted post November 2010, when the use of eApplications became obligatory.</td>
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<td>(iii) It is also suggested that, wherever possible, prior to disposing of a physical file, that the applicant or current owner of the development is contacted and given the option to take possession of such file.</td>
</tr>
<tr>
<td>8 Delegation of power:</td>
<td>(i) This article has been simplified from that in the current Act, however the phrase “subject to retaining overall control and supervision, and otherwise observing the provisions of this Act” has been removed. While it is expected that any regulations made under this article will retain this principle, such obligation should not be removed from the enabling act.</td>
</tr>
<tr>
<td>10 Conduct of the affairs of the Authority:</td>
<td>(i) There should be a definition of “Directorates” in Article 2 and their responsibilities and remit outlined in a Schedule, otherwise this article makes no sense and provides no information on the organogram of the Authority.</td>
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<td>(ii) Subarticle (3) states that “for the purposes aforesaid any reference in this Act to the Authority includes a reference to the appropriate Directorate”. However the Directorates are not</td>
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<td>defined in the Act, nor are their functions and responsibilities. How are these functions to be interpreted as being assigned to which Directorate? (iii) Article 12 of the current Cap 504 which establishes the Directorates has been completely omitted. This should be reviewed and the appropriate text included.</td>
<td></td>
</tr>
<tr>
<td>11(1) Right of Executive Chairperson to be present and meetings: (i) This right is currently extended also to the Directors. This should be retained.</td>
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</tr>
<tr>
<td>11(2) Appointment of secretary: (i) It is not clear whether this is one secretary to assist both the Executive Council and the Planning Board, or two secretaries. Clarity is required. (ii) Current EDPA stipulates that such person is to be “one of its officers”. The proposed article seems to imply that such person may be external to the Authority. Clarity is required. (iii) Should the term of office of the secretary be specified?</td>
<td></td>
</tr>
<tr>
<td>11(3) Appointment of Internal Auditor: (i) Current EDPA stipulates that such person is to be “one of its officers”. The proposed article seems to imply that such person may be external to the Authority. Clarity is required. (ii) Should the term of office of the Internal Auditor be specified?</td>
<td></td>
</tr>
<tr>
<td>13(1) Disclosure of interest: (i) This subarticle lacks any sense of expediency in disclosing such interest. It should be stipulated that such interest is to be disclosed immediately, and prior to any processing, consideration, or decision on the matter, or to any meeting at which such matter will be considered, discussed or decided upon. (refer to current Cap 504 Art 16(1)) (ii) This subarticle makes reference to consultants and advisors appointed by the Authority, however the enabling article permitting the Authority to appoint such persons (currently Article 21 in Cap 504) seems to have been omitted. This should be retained.</td>
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</tr>
<tr>
<td>13(4) Failure to disclose an interest: (i) This sub-article makes little sense. It seems to apply to everyone except to the members of the Executive Council and the Planning Board. In the case of members of these two, the sub-article refers to the provisions of articles 37(3) and 63(6) which do not apply to this situation. Clarity is required. (ii) The decision on action to be taken against a person found to have failed to disclose an interest is subject to concurrence by the Minister. Is this desirable? Should not the Authority have the power to exercise the appropriate action without the need for the Minister’s approval?</td>
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<td>31 Consultations:</td>
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<tr>
<td>(i)</td>
<td>This article is identical to the current article 45 of the EDPA, except for the requirement that such consultations should be recorded. This requirement should be maintained.</td>
</tr>
<tr>
<td>33</td>
<td><strong>Access to information:</strong></td>
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<tr>
<td>(i)</td>
<td>This article seeks to limit the amount of information which is available to the general public, to <em>periti</em> and other professionals assisting their clients with respect to third party applications through the introduction of the provisos to subarticle (2).</td>
</tr>
<tr>
<td>(ii)</td>
<td>It appears to restrict access to important information such as reports which, often, are crucial to the determination of an application (eg. noise reports, restoration method statements, etc);</td>
</tr>
<tr>
<td>(iii)</td>
<td>It appears to restrict access to important documents such as consultations with statutory entities;</td>
</tr>
<tr>
<td>(iv)</td>
<td>It appears to restrict access to representations received by the Authority;</td>
</tr>
<tr>
<td>(v)</td>
<td>This article, at face value, appears to go against the provisions of the Aarhus convention and is a regression from the open process that MEPA has adopted over the last four years.</td>
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<td>35</td>
<td><strong>Savings:</strong></td>
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<tr>
<td>(i)</td>
<td>Subarticle (1) gives the Minister responsible for the Planning Authority the power to repeal Cap 504, however the same power is given to the Minister for the Environment under Bill 108. This needs to clarified.</td>
</tr>
<tr>
<td>(ii)</td>
<td>Subarticle (1) permits the Minister to “<em>amend the Code of Police Laws</em>”. Presumably this refers strictly to that part of the Code which relates to sanitary regulations, and not the whole Code. This should be clarified.</td>
</tr>
<tr>
<td>(iii)</td>
<td>Subarticle (2) makes reference to “<em>the authority</em>” – presumably this is a verb and does not refer to an “Authority”. Clarity is required. The phrase “<em>the authority</em>” could actually be omitted.</td>
</tr>
<tr>
<td>(iv)</td>
<td>Subarticles (2) and (3) make reference to “<em>the relevant provisions of the Code of Police Laws</em>” – these should be identified and stipulated.</td>
</tr>
<tr>
<td>36</td>
<td><strong>Establishment of the Executive Council:</strong></td>
</tr>
<tr>
<td>(i)</td>
<td>Two of the permanent members shall be “<em>well versed in matters related to building construction etc</em>”. There is surely a significant difference between being “<em>well versed</em>” and being “<em>appropriately qualified</em>”. This should be clearly defined, and minimum qualification standards established as a prerequisite.</td>
</tr>
<tr>
<td>(ii)</td>
<td>The two members appointed by the Malta Environment Authority will only be invited to attend meetings of the Executive Council when specific topics are being discussed as outlined in the Bill, and this at the whim of the Executive Chairperson. It is not clear why, for example, scheduling and conservation orders are matters to be discussed at Executive Council level – should</td>
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<td>these matters not be decided by the Planning Board? And why are these members not permanently represented on the Executive Council? Should these members have a specific term of appointment or can they be indefinitely appointed? Can they change from meeting to meeting at the whim of the Malta Environment Authority? What are their voting rights if they are not present at all meetings of the Executive Council? (iii) The supplementary members from the entities indicated in the Fourth Schedule “may be called in … at the discretion of the Executive Chairperson”. It would be more appropriate that such decision is taken by the permanent members of the Executive Council, by majority agreement. (iv) The list of supplementary members includes the Malta Environment Authority. Why is this required? There seems to be some confusion here as to whether the MEA representatives are permanent, supplementary or called in at the whim of the Executive Chairperson. (v) On what basis will the Executive Chairman “call in” supplementary members? How many? Will these be employees of the respective agencies? In which instances will these members be called in? Is this a consultative role or a decision making role? Which of the Council Members will have voting rights? How will transparency and equitability be ensured? (vi) Even with the best of intentions, it may be very easy to fail to call in members who are affected by a decision or a policy, even if at face value such members are not directly concerned. The issue of transparency and fairness is paramount, and one must avoid at all costs situations which are, or give the perception that they are, not equitable. More clarity on this proposal is required.</td>
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37 | Appointment of the Executive Chairperson: (i) Subarticle 2(c) requires the Executive Chairperson to “develop the necessary strategies for the ongoing implementation of the objectives of the Authority” – surely this should be done with the Executive Council and the Planning Board since the Authority is made up of both these two as established under Article 5. (ii) Subarticle 2(d) requires the Executive Chairperson to “give his advice”… but does not specify to who. The current Cap 504, when using this text in relation to the CEO, establishes this relationship between the CEO and the Authority. This subarticle makes no qualifications in this regard. (iii) Subarticle (4) permits the Executive Chairperson to, in his absence, appoint “any one of the other members of the Executive Council” – suggest rewording to “any one of the permanent members of the Executive Council.” |

38 | Functions of the Executive Council: (i) Subarticle 1(h) requires the EC to “establish long and short term...
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<td>objectives and strategies for the proper administration of the Authority” - surely this should be done with the Planning Board since the Authority is made up of both these two as established under Article 5.</td>
</tr>
</tbody>
</table>
| 39          | **Establishment of Directorates:**  
|             | (i) Which Directorates? Why are these not specified in the Act as is currently the case in Cap 504 under the Third Schedule thereof? Refer to comment above in this regard. |
| 43          | **Strategic Environment Assessment and other assessments:**  
|             | (i) The differences between this article and article (50) of Cap 504 are notable by the omission of certain phrases. In particular, the omission of the text “or any department, agency, corporation or authority established by law”.  
|             | (ii) Better streamlining between this Article and Article 44 in the Environment Protection Act is required. It does not make sense that both Ministers should have the same powers in this regard.  
|             | (iii) The phrase “Strategic Environment Assessment” should be defined. |
| 44          | **Spatial Strategy for Environment and Development:**  
|             | (i) It is not clear why Government is proposing a Spatial Strategy as opposed to a Strategic Plan (SPED)?  
|             | (ii) What validity will the SPED recently approved by Parliament have? Is it being abolished? Why is no reference made to it in this Bill?  
|             | (iii) Sub article 1(d) is practically identical to sub article 51(1)(iii) of Cap 504 with the “convenient” omission of the requirement of the Strategic Plan to “be accompanied by an explanatory memorandum giving a reasoned justification for each of the policies and proposals contained in the plan”. The recent justified criticism of the SPED which does not include such memorandum appears to have been circumvented through the omission of this requirement. The requirement should be retained.  
|             | (iv) Sub article 2 states that it is the Executive Council that will be responsible to “monitor” the Strategy. During recent Parliamentary debates and meetings of the Environment and Development Planning Standing Committee, government MPs repeatedly stated that the new Planning Authority will be responsible for the technical implementation of SPED (or this Spatial Strategy?) while central government will be responsible for the strategic implementation. This distinction does not emerge from Article 44.  
<p>|             | (v) As stated in previous submissions by the undersigned, the responsibility for the formulation and monitoring of the SPED or this proposed Spatial Strategy should lie firmly within the Office of the Prime Minister, or within the Ministry for Sustainable Development, and certainly not with the Planning Authority. |</p>
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<td>(vi)</td>
<td>Sub article 6 states that a period of not less than three weeks will be allowed for submission of representations “prior to the preparation of the draft of the Spatial Strategy”. Surely, the draft should first by published, and public consultation carried out subsequently? Or possibly what is meant here is that a statement of objectives is to be published first, following which the public will be given a three week period to submit comments and suggestions? Clarity is required.</td>
</tr>
<tr>
<td>(vii)</td>
<td>There does not appear to be a minimum period for the review of the Spatial Strategy as in the current Cap 504 in relation to the SPED. This is not necessarily desirable. The Strategy is intended to be a long term vision for the country and cannot, and should not, be susceptible to frequent review depending on the whim of the politician, which may be the case through the omission of this proviso.</td>
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<td>45</td>
<td><strong>Publication of the draft Spatial Strategy or its reviews:</strong></td>
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<tr>
<td>(i)</td>
<td>If SPED is to be adopted (has it been adopted? Is it a legal document?) then possibly this article can take its existence as a fact, and omit the parts which deal with the first version of SPED.</td>
</tr>
<tr>
<td>(ii)</td>
<td>Subarticle (2) requires the Executive Council to consult with the Standing Committee, however such Committee is to submit its position statement within the same 6 week consultation period allowed for the general public. Surely, the Standing Committee should, prior to formulating its position, have access to the results of the public consultation, time to review, and then time to present its position. How can the Standing Committee, which is composed of MPs purportedly representing the electorate, formulate a cohesive position without having taken into account public opinion on the matter at hand?</td>
</tr>
<tr>
<td>(iii)</td>
<td>Subarticle (3) should be more simply worded.</td>
</tr>
<tr>
<td>(iv)</td>
<td>The omission of subarticles 52(4) and (5) from the current Cap 504 in this Bill does not appear to be an oversight. Why have these procedures been omitted?</td>
</tr>
<tr>
<td>(v)</td>
<td>In addition to the above point, it is noted that Article 46(1) makes reference to “the Minister’s position statement” which is not mentioned in the preceding articles but which was provided for in subarticles 52(4) and (5) of the current Cap 504 but which have been omitted.</td>
</tr>
<tr>
<td>(vi)</td>
<td>It is also not clear why the review of the Spatial Strategy should be referred to the Minister and not to the Prime Minister, when the government has repeatedly stated that the responsibility for the strategic implementation of the SPED will lie with Central Government. It should therefore by the OPM which should oversee any reviews of the SPED/Spatial Strategy, and not the Minister as defined in the Bill.</td>
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<tr>
<td>51</td>
<td><strong>Development Brief:</strong></td>
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<td>Article Ref</td>
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<tr>
<td>(i)</td>
<td>Who establishes a Development Brief? Is it considered as a Subsidiary Plan and therefore to follow the procedure set out in Article 53?</td>
</tr>
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<td>(ii)</td>
<td>Is the current process whereby an applicant can propose a Development Brief being abolished?</td>
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<tr>
<td>(iii)</td>
<td>The current Environment and Development Brief process allows an applicant to, of his or her own initiative, propose a development profile for a project. It seems, from the proposed Bill, that the onus of preparing a Brief will lie with the Authority – this is a step backwards, since owners of properties that require the preparation of a Brief will have to wait for the Authority to make available the necessary resources to prepare a brief, rather than investing, on their steam, in the preparation of such a Brief through the current system.</td>
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<tr>
<td>52</td>
<td>Order of precedence:</td>
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<tr>
<td>(i)</td>
<td>It is good that the Act proposes an order of precedence in cases of discord between various policies, especially since this may afford more clarity at appeals stage, however the decision maker should still be able to exercise discretion and should be required to state the reasons for deviating from the provisions of the higher order plans.</td>
</tr>
<tr>
<td>(ii)</td>
<td>Where is SPED in this order of precedence? Or is SPED now to be known as the Spatial Strategy?</td>
</tr>
<tr>
<td>(iii)</td>
<td>Should a development brief not take precedence over the Local Plan if such Development Brief was approved by MEPA and the proposal being assessed is being made in response to such Development Brief?</td>
</tr>
<tr>
<td>53</td>
<td>Procedure for subsidiary plans and policies:</td>
</tr>
<tr>
<td>(i)</td>
<td>Subarticle 2(a) requires the Executive Council to allow three weeks of public consultation prior to the preparation of a draft. However, in order for the public to be able to participate, there should at least be the requirement for the Executive Council to publish a statement of objectives. The current wording of subarticle 58(2)(a) of Cap 504, namely that (the Authority) “shall make known to the public the matters it intends to take into consideration”, should be retained.</td>
</tr>
<tr>
<td>(ii)</td>
<td>The comments made in relation to Article 45 are reiterated, namely that the Standing Committee should, prior to formulating its position, have access to the results of the public consultation, time to review, and then time to present its position. How can the Standing Committee, which is composed of MPs purportedly representing the electorate, formulate a cohesive position without having taken into account public opinion on the matter at hand?</td>
</tr>
<tr>
<td>(iii)</td>
<td>Although this article obliges the Executive Council to consult with</td>
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<td>various persons, it does not oblige it to take such consultation responses into consideration, as does the current Cap 504 in subarticle 58(2)(f). This obligation should not be omitted.</td>
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<td></td>
<td>(iv) The omission of subarticles 58(2)(m) and (n) of Cap 504 is worrying. These subarticles provide for cases where subsidiary plans may extend the scope of the SPED or be in conflict with it, and stipulate that in such cases the procedures applicable to the review of the SPED are to apply. The omission of these provisos effectively means that subsidiary plans may amend the SPED, without the need for Parliamentary approval. Although article 52 should become effective, and thus the SPED would still have precedence, it is suggested that these two subarticles are retained.</td>
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<td></td>
<td>(v) The same comments (i), (ii) and (iii) above apply also to subarticle (3).</td>
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<td>(vi) Subarticle (4) has effectively removed the minimum time constraint of 2 years to elapse before a subsidiary plan is reviewed – why is this being considered necessary? This provision should clearly prevent the all-too-tempting attitude of getting plans wrong and then reviewing them to correct shortcomings, or simply to promote expedience. There should be a clear difference between slightly amending a policy if it presents certain shortcomings (thus a partial review, which may not be time barred) and carrying out a complete overhaul of a policy (thus a comprehensive review, in which case time barring is essential).</td>
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<td>54 Minor modifications:</td>
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<td>(i) It should be clarified that these are minor modifications to subsidiary plans.</td>
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<td></td>
<td>(ii) Are the procedures that regulate such applications to be part of the Act? Subsidiary Legislation? Is there a draft?</td>
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<td>(iii) What is the proviso to subarticle (1) intended to mean? Can the Authority not propose minor modifications to the subsidiary plans?</td>
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<td>(iv) Subarticle (3) states that the procedure to be adopted in processing an application will be in accordance with regulations which “may be prescribed by the Minister.” As it is worded this could be misinterpreted to mean that the Minister may not prescribe such regulations. Suggest rewording to “in accordance with regulations prescribed by the Minister.”</td>
</tr>
<tr>
<td></td>
<td>(v) The provision of subarticle (4) for an appeal to be lodged from a planning control decision is welcome addition, however it would seem incongruous to do this in the absence of a public consultation process at application stage which seems to have been omitted through the omission of subarticle 59(6)(b) of Cap 504. Presumably the requirement for public consultation will be stipulated in the regulations made by the Minister, however it is...</td>
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<td>considered better to include this requirement in the Act.</td>
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<tr>
<td>(vi)</td>
<td>Subarticle (5) does not seem to make any sense, unless reworded, possibly to “In the case of fraud, the submission of incorrect information, declaration or plan, or error on the face of the record as defined in article 80, the Executive Council may, .......” (similar to subarticle 80(1)).</td>
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<tr>
<td>55</td>
<td>Development Orders:</td>
</tr>
<tr>
<td>(i)</td>
<td>Subarticle (2) described development orders as including “works and activities deemed compatible with the area in which they are being carried out.” This differs from the current Article 63(4) in Cap 504 which determines that such works are to be “relatively minor or temporary in nature”, and goes on to give examples thereof. The impression is being given, even in public discussions, that such Orders will now be used to approve much larger developments than are currently permitted through the DNO process. Clarity is required.</td>
</tr>
<tr>
<td>(ii)</td>
<td>Subarticle (3) requires the Executive Council to notify the Kamra tal-Periti and the Chamber of Planners. This is a step backwards from the current requirement for orders to be “made and reviewed by the Authority after consultation with the Chamber of Architects and the Chamber of Planners.” Now, the bill requires these entities to be merely notified. One also asks why these two entities are mentioned only in this instance? Should they not be consulted on other matters related to planning and building regulations – in the case of the Kamra tal-Periti this obligation arises out of the Periti Act and should be reflected in this new Act? Also, what about other entities? Should they not also be formally notified? (eg. the entities in the Fourth Schedule, NGOs, etc). Also, the period being allowed of two weeks is far too short for adequate public consultation.</td>
</tr>
<tr>
<td>(iii)</td>
<td>No public consultation will be carried out if the Minister deems the Order to be urgent. This is not acceptable.</td>
</tr>
<tr>
<td>(iv)</td>
<td>Sub article 5 envisions that certain works and activities may be carried out “under the supervision of such other persons who are competent for the purpose”, as opposed to “a person holding a warrant of perit”. Clarity is required on what is meant by such other persons.</td>
</tr>
<tr>
<td>(v)</td>
<td>Subarticle (7) is unclear. It seems to imply that no development “in terms of a development order” may be carried out if there is an illegality on the site, unless the development is prescribed by the Executive Council or covered by a development order as mentioned in subarticle (6). The latter subarticle, however, makes no mention of the Executive Council and what works it may prescribe. This subarticle requires clarification, although in essence it is similar to Article 63(10) of Cap 504.</td>
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<tr>
<td>57</td>
<td>Scheduling:</td>
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<td>Article Ref</td>
<td>Comments / Proposed Amendments</td>
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<tr>
<td>(i)</td>
<td>It is unclear why the Malta Environment Authority is to propose areas of natural beauty, scientific and ecological importance for scheduling, yet requires the endorsement of the Executive Council. Such scheduling should be the sole prerogative of the MEA if it is to constitute an Authority in its own right, and should not depend on the Executive Council in this regard. In fact the Environment Protection Act appears to give the Environment Authority the power to establish its own list.</td>
</tr>
<tr>
<td>(ii)</td>
<td>There seems to be an interchange of the terms “scheduling order” and “conservation order”, yet the difference between the two is not specified. For example, subarticle (10) seems to apply only to scheduling orders, but not to conservation orders. Clarity is required.</td>
</tr>
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<td>(iii)</td>
<td>While it may be accepted that the Executive Council should assess which sites should be scheduled or conserved, surely it should be the Authority which issues the relative orders, and not the Executive Council itself.</td>
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<td>(iv)</td>
<td>Sub article (9) stipulates the basis on which penalties are to be calculated. It is not clear who shall be carrying out the calculations in order to arrive at such amounts.</td>
</tr>
<tr>
<td>(v)</td>
<td>The descheduling or downgrading of scheduling by the Executive Council only appears to require Ministerial approval when such is a result of a request made by the owner of the property in question as outlined in subarticle (10). It appears, however, that the Executive Council may deschedule or downgrade the scheduling of a property of its own accord without Ministerial approval. This comment is made in the light of the omission of subarticle (12) of Article 81 of Cap 504.</td>
</tr>
<tr>
<td>58</td>
<td>Emergency Conservation Orders:</td>
</tr>
<tr>
<td>(i)</td>
<td>Should not the provisions of Article 57 (2),(10),(11) and (12) also apply to Emergency Conservation Orders?</td>
</tr>
<tr>
<td>(ii)</td>
<td>What happens after the expiry of twelve months? Why twelve months?</td>
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<td>60</td>
<td>Standing Committee on the Environment and Development Planning:</td>
</tr>
<tr>
<td>(i)</td>
<td>At face value, the remit of the Standing Committee appears to be severely depleted by the current draft particularly through the removal of the current provisions of subarticles 34(3) and (5) of Cap 504.</td>
</tr>
<tr>
<td>(ii)</td>
<td>The current Cap 504 clearly establishes the relationship between the Committee and Parliament, and requires the Committee to report to Parliament and to make recommendations to the House. The current draft seems to imply that the Committee will report to the Minister and the Executive Council.</td>
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<tr>
<td>(iii)</td>
<td>Reference to the Third Schedule should be made in this article.</td>
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<tr>
<td>61</td>
<td>Users’ Committee:</td>
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<td>Article Ref</td>
<td>Comments / Proposed Amendments</td>
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<tr>
<td>(i)</td>
<td>Who are the “interested national constituted bodies recognised by the Minister”? Can a list be published in a Schedule to the Act?</td>
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<td>(ii)</td>
<td>Are the members appointed by the Minister, or proposed by the constituted bodies?</td>
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<td>(iii)</td>
<td>A minimum number of meetings per year should be established.</td>
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<tr>
<td>(iv)</td>
<td>Is there a Chairperson /Vice Chair of this Committee? Who will select such persons for such roles?</td>
</tr>
<tr>
<td>(v)</td>
<td>The Users Committee should have an administrative secretary detailed to assist it in its functions.</td>
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<td>(vi)</td>
<td>If it is autonomous from the Authority, why should it report to the Executive Council? It should report to the Minister directly, with a copy to the Executive Council, if anything.</td>
</tr>
<tr>
<td>(vii)</td>
<td>Also it should propose matters to the Minister who shall, without delay, refer to the Executive Council, rather than proposing directly to the Executive Council. The Council should then be obliged to report back to the Minister and to explain whether it will be taking on board the recommendations made by the Users’ Committee, and if not, why.</td>
</tr>
<tr>
<td>(viii)</td>
<td>Is this a remunerated role? Is it a permanent appointment?</td>
</tr>
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62 Building Regulation Committee:

(i) Is this a permanent / full time committee?
(ii) What is the term of appointment of the members?
(iii) Is this a remunerated role?
(iv) Is there to be a Chairperson? Vice Chairperson? A requirement for a quorum?
(v) The Committee should have an administrative secretary detailed to assist it in its functions.
(vi) The current BRB includes a statutory representative of the Kamra tal-Periti and of the Chamber of Engineers. This should be retained.
(vii) The functions of this Committee need to be further defined. Which of the current functions of the BRB / BRO will it retain? Who will retain all other functions?
(viii) Sub article 2(b) refers to a “licence” – what licence?
(ix) Subarticle (2) stipulates the role of the Committee to advise the Minister and the Executive Council, however the Act does not oblige the Minister or the Executive Council to consult with this Committee on matters relating to building regulations. This should be addressed and included.
(x) Additionally, given that the Committee is to be independent from the Authority and appointed directly by the Minister, it should advise the Minister, who shall in turn be obliged to forward such recommendations to the Executive Council, and the latter should be obliged to report back to the Minister on whether such recommendations have been taken on board and, if not, why.

63 Planning Board:
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<tr>
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<tbody>
<tr>
<td>(i)</td>
<td>The Chairperson is to be chosen from among the five independent members. Is such person to be chosen by the Minister, or by the five members among themselves?</td>
</tr>
<tr>
<td>(ii)</td>
<td>The five independent members are to be appointed from persons with experience in the fields specified in subarticle 2(b). Notable omissions are: sustainable development; urban planning; architecture; infrastructure.</td>
</tr>
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<td>(iii)</td>
<td>Should not all the Chairpersons of the Planning Commissions be members of the Planning Board? This is important since such Commissions have delegated powers from the Planning Board and should therefore be conversant with the directions being taken by such Board.</td>
</tr>
<tr>
<td>(iv)</td>
<td>What is a “major project” referred to in sub article 63(2)(h)?</td>
</tr>
<tr>
<td>(v)</td>
<td>The proviso to subarticle 4(a) states that the Executive Chairperson is not to be considered as a public officer for the purposes of the article. Why is it necessary to mention the Executive Chairperson? What role does the Executive Chairperson have on the Planning Board? Does this proviso envision the possibility of the Executive Chairperson being appointed to the Planning Board?</td>
</tr>
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65 Planning Commission:
(i) The role of the Commission/s should be established by the Minister after consultation with the Planning Board, not the Executive Chairperson. Or at least the consultation should be carried out with the Planning Board and the Executive Council. Why does the draft refer only to the Executive Chairperson?
(ii) Decisions of the Commission should be communicated also to the Planning Board, not just to the Executive Chairperson (or ideally to the Executive Council and the Planning Board).
(iii) Reducing the number of members to 3 from the current 5 may result in more instances where the Commission will not be able to function.

66 Agricultural Advisory Committee:
(i) Is there no maximum number of members to constitute this Committee?

67 Design Advisory Committee:
(i) It is understood, based on statements made by Government’s advisor on this Bill, that this Committee is being proposed in response to proposals made in the past by the Kamra tal-Periti for the setting up of a Design Review Commission. The Committee as proposed goes completely against the recommendations made by the Kamra in that it is not independent from the Authority, nor is it independent from the permitting process, nor is it voluntary as envisaged by the Kamra.
(ii) It is suggested that Government holds an in depth consultation with the Kamra on this matter prior to proceeding further with
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<tr>
<td>70</td>
<td><strong>Development to require permission:</strong></td>
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<td>(i) Subarticle (2)(c) may be in conflict with the Use Classes Order since some changes of use within the same class are still considered as development for the purposes of the Order.</td>
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<td>(ii) Subarticle (2)(e) should be revised to read: <em>a use which subsisted continuously from a period when such use was not considered illegal or did not require a development permit.</em></td>
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<td>(iii) Subarticle (2)(f) should exclude plant and machinery to be placed at roof level or within scheduled property.</td>
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<td>71</td>
<td><strong>Application for permission:</strong></td>
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<td>(i) Should applications be submitted to the Planning Board or to the Authority? The role to receive development applications is vested in the Executive Council in Article 38. There seems to be some confusion here. This query also applies to the provisions of subarticle (4), (5), (6) and (8) with respect to submissions to be made to the Planning Board.</td>
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<td>(ii) Subarticle (1) states that the form of application is to be prescribed by the Planning Board, however the power to make regulations in this regard is vested in the Minister in consultation with the Executive Council. There appears to be some confusion here.</td>
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<td>(iii) Why are Outline Permits being reintroduced? The pitfalls of such Permits are well known, particularly with respect to the matter of vested rights. Furthermore, during the Public Information meeting held on the 29.07.2015, the Government’s advisor indicated that such applications will require the same detail of a full application. The following is suggested: Rather than re-introducing Outlines, consider redefining the screening process. An applicant would thus submit the same information but then be able to select a Full Screening Process which will be equivalent to the current system, or an Outline Screening Process which will require a decision by the Planning Board. The screening letter in the latter case will have a validity of five years and applicants may have the right to appeal. It is also important that in these cases, public consultation is also to be carried out.</td>
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<td>(iv) Is a Full Development Permit indefinite? Does it not expire?</td>
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<td>(v) The requirement for consent of the owner of the site is being removed. Why? This is an unwelcome throwback to the past. Also why is the notification to the owner to be submitted to the Planning Board, not the Executive Council?</td>
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<td>(vi) In subarticle (7), why is it the Executive Chairperson who shall consider representations? Should it not be the Executive Council and the Planning Board?</td>
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|            | (vii) Subarticle (8) requires the Planning Board to inform registered
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| 72 | Permissions:  
(i) Subarticle (2) establishes those matters which the Planning Board shall have regard to when taking its decisions. SPED is not included – this is a grave omission. Neither are the Spatial Strategy introduced in Bill 107 nor the National Environment Strategy introduced in Bill 108 listed here. This should be reviewed.  
(ii) Subarticle (2)(d) states that when taking a decision on a planning application the Board should have regard to “surrounding commitments”. This should be replaced with “surrounding legal commitments”.  
(iii) Various discussions were held in the past regarding applications for Renewal with Amendments. Why are these not being considered in subarticle (4)?  
(iv) Subarticle (5) stipulates that a permission is automatically transferred to the new owners in the case of a change of ownership. It should be noted that it is generally accepted that a permit is issued on a site, and not to the owner thereof. Furthermore the applicant is not necessarily the owner. This provision should be reconsidered. |
| 74 | Decisions to be taken without delay:  
(i) In subarticle (2), the current provision of Cap 504 Article 71(2) for the Minister to consult with the Authority when making regulations in this respect should be retained. |
| 80 | Revocation and modification:  
(i) Subarticle (2) refers to submissions made to the Planning Board. This should be reworded to “submission to the Authority” since submissions during the process will also be made to the Executive Council.  
(ii) The concept of information being submitted in a “misleading” manner has been omitted (it is currently provided for in Cap 504 Article 77. This should be retained as misleading information also amounts to fraud. This is in fact retained in Article 103(1)(e).  
(iii) “error on the face of the record” is being described as an error made by the Planning Board. However this should also include errors made by the Executive Council, its Directorates, consultees in the application process and any other error which may have occurred during the processing of the application whether by the Planning Board or others. The current definition of “an error on the face of a record which offends against the law” should be retained, at least in principle. |
| 84 | Procedure for making of regulations:  
(i) Subarticle (1) requires that all regulations under this Act “shall be
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<td><em>made by the Minister after consultation with the Authority</em>, where the Authority is defined as consisting of the Executive Council and the Planning Board. However in several instances in the draft, the Minister is only obliged to consult with the Executive Council only, thus being in direct conflict with the provisions of this subarticle.</td>
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<tr>
<td>(ii)</td>
<td>The minimum period of two weeks for public consultation is far too short. The provisions that allow the Minister to dispense with public consultation if the matter is considered to be urgent should not be included.</td>
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<td>88</td>
<td><strong>Power to make building regulations:</strong></td>
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<td>(i) There should be an obligation for the Minister to consult with the Building Regulation Committee on all the matters outlined in this article.</td>
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<td>89</td>
<td><strong>Power to issue guidelines related to contracts of works and services:</strong></td>
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<td>(i) It may be acceptable for the Minister to issue guidelines on the content of the contracts for works and services, although there are established international standards which are already widely used in the industry and thus this provision may be superfluous. On the other hand, it is completely unacceptable that the Minister should in any way be involved or need to issue regulations regarding specifications of materials or works, which should fall strictly within the remit of the perit in charge of the works.</td>
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<tr>
<td>90</td>
<td><strong>Power to prohibit materials:</strong></td>
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<td>(i) The Minister should be obliged to consult with the Building Regulation Committee on these matters.</td>
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<td>95</td>
<td><strong>Monitoring of activities and development:</strong></td>
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<td>(i) Propose rewording of subarticle (1) to the following (or similar): <em>The Executive Council shall monitor all activities falling within the scope of this Act, including all development operations to ensure that all such activities and development are carried out only in accordance with the requirements of this Act and in compliance with the decisions lawfully taken under this Act, or any other Act being replaced by this Act, and in accordance with all rules, regulations, plans or policies in force at the time the activity or development takes place, and may for this purpose request and obtain the assistance of the Police Force, any local council, any department of Government or any agency of Government.</em></td>
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<td>(ii) Subarticle (2) appears to imply that the Executive Council must review all activities and development carried out since 1967, which is nearly impossible. It also seems to imply that works carried out before the coming into force of this new Act will be treated differently from works carried out before, through the difference in wording of subarticles (1) and (2).</td>
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<td>(iii) Subarticle (2) also gives the Executive Council the power to</td>
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|            | regularise works carried out before the coming into force of the Act. This is unacceptable. Regularisation of such works should lie squarely with the Planning Board / Planning Commission as the decision taking arm of the Planning Authority. The Executive Council should not have any decision making power in terms of the regularisation if illegal works, activities or development. The provisions of this subarticle are also in conflict with the provisions of subarticle 100(1).
|            | (iv) Although it is important to include the date 1967 in the law in order to address the lack of legal clarity on what has up till today been mere praxis, it is noted that the Rural Policy and Design Guidance 2014 acknowledges development carried out in ODZ areas prior to 1978 as being legal. It defines the term “Legally-established” as “any intervention, including land-use change and land reclamation covered by development permission or that which is visible on the 1978 aerial photographs.” This should also be regulated in the Act. |
| 97         | **Enforcement procedure:**
|            | (i) The comments made above regarding the date of 1967 are applicable also the proviso to subarticle (1).
|            | (ii) Subarticle (11) should be reworded to: “… in which case the effects of the notice, except for the request stopping or prohibiting any further activity…” |
| 98         | **Enforcement in relation to Scheduled Property:**
|            | (i) The comments made above regarding the date of 1967 and of 1978 for ODZ apply to the proviso to subarticle (2). |
| 99         | **Injury to amenity and removal of danger:**
|            | (i) The comments made above regarding the date of 1967 and of 1978 for ODZ apply to subarticle (3).
|            | (ii) It is suggested that an appeal from decisions taken under this article should be permitted. |
| 100        | **Supplementary provisions:**
|            | (i) The reference to subarticle (5) in subarticle (7) should be changed to refer to subarticle (6).
|            | (ii) The reference to subarticle (6) in subarticle (8) should be changed to refer to subarticle (7). |
| First Schedule | **Provisions with respect to the Executive Council:**
|            | (i) The quorum should include only the permanent members of the Executive Council. |
| Second Schedule | **Provisions with respect to the Planning Board and the Planning Commissions:**
|            | (i) It is good that the restriction for the Board/Commission to meet not more than twice on an application is being removed, however there is the risk that procedures at this stage will revert to the pre-2010 situation and go on for ever. The Board/Commission should have the power to restrict the number |
of hearings on a case. It is suggested that the current provisions of the First Schedule of Cap 504 in this respect are retained, with the provision that the Board/Commission in agreement with the applicant may agree to extend the timeframes according to the requirements of the application at hand.

(ii) Regulation 11 seems to refer to the current practice of holding informal meetings of the MEPA Board. This is a very unjust and one-sided practice since the presentations are made only by the Directorate today, and by the Executive Chairperson in the future, without the applicant or his perit being given the opportunity to put forward their comments. It is a system which results in the pre-conditioning of the opinions of the Board members without having heard all arguments related to the application. It is suggested that the following procedure is to be adopted, particularly with respect to applications to be determined by the Planning Board:

(a) The first sitting shall consist solely of an information meeting to appraise the Board of the nature of the application. At this meeting both the Executive Chairperson and the applicant will be able to make their presentations regarding the project, and the former may also present the reasons supporting the recommendation to approve or refuse the proposal. The Board will only be able to request clarifications on the project, and no vote shall be taken. During or after the meeting, the Board may request both the applicant and the Executive Chairperson to clarify in writing or by the submission of additional documents any matters which are of concern to the Planning Board. This meeting may not be public.

(b) The second sitting shall be a public meeting, as per current practice. Subsequent meetings can be held in public depending on the nature of the application and as suggested above.

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<tr>
<th>Article Ref</th>
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<tr>
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<td>of hearings on a case. It is suggested that the current provisions of the First Schedule of Cap 504 in this respect are retained, with the provision that the Board/Commission in agreement with the applicant may agree to extend the timeframes according to the requirements of the application at hand.</td>
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<tr>
<td></td>
<td>(ii) Regulation 11 seems to refer to the current practice of holding informal meetings of the MEPA Board. This is a very unjust and one-sided practice since the presentations are made only by the Directorate today, and by the Executive Chairperson in the future, without the applicant or his perit being given the opportunity to put forward their comments. It is a system which results in the pre-conditioning of the opinions of the Board members without having heard all arguments related to the application. It is suggested that the following procedure is to be adopted, particularly with respect to applications to be determined by the Planning Board:</td>
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<tr>
<th>Third Schedule</th>
<th>Standing Committee on the Environment and Development Planning:</th>
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<td>(i) Why should plans and policies relating to land which is ODZ only be referred to the Committee? What about plans and policies for land within the Development Zone?</td>
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<tr>
<th>Fourth Schedule</th>
<th>List of supplementary members of the Executive Council:</th>
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<td></td>
<td>(i) The omission of the Superintendent of Cultural Heritage is notable by its absence from the list.</td>
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<td></td>
<td>(ii) Are the members in this list also the statutory consultees with which the Authority will consult during the application process?</td>
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</table>
1. Subarticles 8(3) and 8(4) of the current Cap 504 seem to have been omitted. Surely some of the principles established herein could have been retained.
2. What about existing building regulations? Does the bill make adequate provision for their retention under the new Act?
3. Article 39 of the Environment Protection Bill should be replicated in the Development Planning Bill.
4. The definition of "building contractors and building tradespersons" from Cap 513 should be transposed into the new Act.
5. The definition of “building regulations” from Cap 513 should be transposed into the new Act, appropriately amended.
6. The definition of “construction” from Cap 513 should be transposed into the new Act, appropriately amended.
7. The definition of “design” from Cap 513 should be transposed into the new Act, appropriately amended.
8. The definition of “engineer” from Cap 513 should be transposed into the new Act.
9. The definition of “fire consultant” from Cap 513 should be transposed into the new Act, appropriately amended.
10. The definition of “mason” from Cap 513 should be transposed into the new Act, appropriately amended.
11. The definition of “perit” from Cap 513 should be transposed into the new Act.
12. The definition of “site manager” from Cap 513 should be transposed into the new Act, appropriately amended (refer also to comments re the definition of “commencement notice” above)
13. The definition of “technical guidance document” from Cap 513 should be transposed into the new Act.
14. The definition of “warranted” from Cap 513 should be transposed into the new Act.

C. Detailed Comments on Bill 108 - Environment Protection Bill

DETAILED COMMENTS

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<tr>
<th>Article Ref</th>
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<tbody>
<tr>
<td>2</td>
<td><strong>Definition of “Authority”:</strong></td>
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<td></td>
<td>(i) During the public consultation process carried out in 2014, the Government proposed the establishment of an Environment and Resources Authority. The remit regarding Resources Management seems to have been omitted from this bill. Clarification is required. (same applies to Article 6).</td>
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<tr>
<td>Article Ref</td>
<td>Comments / Proposed Amendments</td>
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<td>2</td>
<td><strong>Definition of “land”:</strong>&lt;br&gt;(i) Possibly make reference to the SPED definition of territory?</td>
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<td>2</td>
<td><strong>Definition of “Standing Committee”:</strong>&lt;br&gt;(i) The definition states that such Committee is established under Article 31, however this is not the case and the Committee is established under the Development Planning Act.</td>
</tr>
<tr>
<td>2</td>
<td><strong>Additional comments:</strong>&lt;br&gt;(i) The definition of “conservation in relation to environment protection” in Cap 504 has not been included in this Bill, even though it is used in the Bill.&lt;br&gt;(ii) The definition of “energy” in Cap 504 has not been included in this Bill, even though it is used in the Bill.&lt;br&gt;(iii) The definition of “genetically modified organisms” in Cap 504 has not been included in this Bill, even though it is used in the Bill.&lt;br&gt;(iv) The definition of “natural resources” in Cap 504 has not been included in this Bill, even though it is used in the Bill.&lt;br&gt;(v) The definition of “specimen” in Cap 504 has not been included in this Bill, even though it is used in the Bill.&lt;br&gt;(vi) The definition of “waste” in Cap 504 has not been included in this Bill, even though it is used in the Bill. Refer also to comments made in Section D above on this matter.</td>
</tr>
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<td>7</td>
<td><strong>Authority to be body corporate:</strong>&lt;br&gt;(i) Subarticle (3) refers to the deputy chairpersons, however these are not defined in the Bill.</td>
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<td>8</td>
<td><strong>Functions of the Authority:</strong>&lt;br&gt;(i) Subarticle (3)(g) changes the requirement for the publication of a report on the state of the environment from an interval not exceeding three years as per Cap 504 to an interval of not less than four years, without specifying a maximum interval, thus allowing the Authority to practically never publish such report. This is unacceptable.</td>
</tr>
<tr>
<td>19</td>
<td><strong>Expenditure and Revenue:</strong>&lt;br&gt;(i) Subarticle (1) makes reference to the “Executive Council” – this seems to be an error and should be replaced by “Authority”.</td>
</tr>
<tr>
<td>31</td>
<td><strong>Standing Committee:</strong>&lt;br&gt;(i) There is a mismatch here in nomenclature. The Standing Committee is set up in the Development Planning Act as the “Standing Committee on the Environment and Development Planning”, however in this Article it is referred to as the “Standing Committee for the Planning and the Environment”. Congruence should be sought.&lt;br&gt;(ii) Subarticle (1)(b) makes reference to the Environment Strategy. Is this the National Strategy for the Environment defined in Article 45? The same nomenclature should be used throughout.</td>
</tr>
<tr>
<td>38</td>
<td><strong>Transfer of officers and assets:</strong>&lt;br&gt;(i) There needs to be more synergy between this article and article 7</td>
</tr>
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**Article Ref** | **Comments / Proposed Amendments**
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 | of the Development Planning Bill.
(ii) The Malta Environment and Planning Authority needs to be defined (refer to possible text as per Article 7 of the Development Planning Bill).  
--- | **Construction of laws:**
(i) This article should be replicated in the Development Planning Act.  
--- | **Transitory provisions:**
(i) The Malta Environment and Planning Authority mentioned in sub articles (1) and (2) needs to be defined (refer to possible text as per Article 7 of the Development Planning Bill).  
--- | **Strategic Environment Assessment and other assessments:**
(i) Better streamlining between this Article and Article 43 in the Development Planning Act is required. It does not make sense that both Ministers should have the same powers in this regard.
(ii) The phrase “Strategic Environment Assessment” should be defined.  
--- | **National Strategy for the Environment:**
(i) It is not clear why Government is proposing a National Strategy for the Environment as distinct from the Strategic Plan for the Environment and Development (SPED)?
(ii) What validity will the SPED recently approved by Parliament have? Is it being abolished? Why is no reference made to it in this Bill?
(iii) Subarticle (2) requires this National Strategy to be drawn up within 24 months from coming into force of this Act. This seems to be proof enough that the SPED will have no relevance within the Environment Protection Act.  
--- | **Publication and approval of the National Strategy for the Environment:**
(i) The procedures outlined in this article are insufficient.
(ii) It is not clear whether there should first be a publication of objectives, and then a full draft.
(iii) It is not clear at what stage of the process the Standing Committee is to be consulted.
(iv) Who prepares this Strategy? The Minister or the Authority? And who should carry out the consultation procedures?
(v) Should the procedure to be followed not similarly follow that established in the Second Schedule?  
--- | **Conservation Orders:**
(i) The draft Development Planning Act at Article 69 requires that the Malta Environment Authority is to propose areas of natural beauty, scientific and ecological importance for scheduling, yet requires the endorsement of the Executive Council of the Planning Authority. Such scheduling should be the sole
Article Ref | Comments / Proposed Amendments
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| | prerogative of the MEA if it is to constitute an Authority in its own right, and should not depend on the Executive Council of the Planning Authority in this regard. (ii) This provision of the Planning Act is in direct conflict with Article 69 of the Environment Protection Act which gives the Environment Authority the power to establish its own list of protected areas.

71 | Right of entry: (i) Subarticle (1) makes reference to the “Board of the Authority” however this is not defined in the Bill.

87 | Saving: (i) Subarticle (1) gives the Minister for the Environment the power to repeal Cap 504, however the same power is given to the Minister responsible for construction under Bill 107. This needs to clarified.

Second Schedule | Procedure for subsidiary plans: (i) This Schedule should also apply to the formulation of the National Strategy for the Environment (without prejudice to the comments made earlier in this regard by the author). (ii) This Schedule should identify at what stage of the process the Standing Committee is to be consulted.

ADDITIONAL COMMENTS

1. There are several references in this Bill to the Environment and Development Planning Act which do not also indicate that this Act will be repealed. Suggest that a definition is included in Article 2 to clarify this matter.

D. Detailed Comments on Bill 109 - Environment and Planning Review Tribunal Bill

GENERAL COMMENTS

The proposal to have a Tribunal which is established through a different Act than that regulating the development permitting authority is welcome and commendable.

With the current proposal, however, it is noted that this will result in a rather onerous task being placed on the Tribunal members who will not only require to be conversant with planning and environmental regulations, but also with various other regulations that guide the operation of separate authorities (consultees) and regulating bodies. Even though the Tribunal will be able to appoint experts, which is an acceptable proposal only if the law includes a requirement for a register of experts to be established, the ultimate decision
will rest with the Tribunal who must perforce undertake a certain amount of interpretation of laws and regulations which, to date, pertain to authorities and bodies which are distinct from the planning process.

Another issue to be addressed is that the implementation of this proposal will necessitate amendments to the legislative measures under which these various consultees are regulated. For example, will the KNPD Board of Reasonableness become defunct? Will its functions be integrated within those of the Tribunal? Similarly with all other consultees and their various structures. Has consultation been carried out with these entities? The Bills under review have not been accompanied by other proposed legislative measures to define the roles of the currently established appeals bodies existing within other Authorities, and thus there is a lack of clarity in this respect which needs to be addressed.

The major concerns here, however, do not arise directly out of the Bill, but out of the application process as explained during the public information meeting carried out on the 29 July 2014 and which, as stated earlier, has not been published for public consultation and scrutiny. The proposed process, as described, seems to imply that in cases where a statutory consultee may express concerns about a proposed project, rather than reaching an agreement with such consultee prior to a decision by the Board as happens today, the applicant will have the option to proceed with the application without changes, following which the Planning Board may overrule the consultee’s concerns. This immediately raises the first concern, namely what remit the Planning Board has at law to overrule on matters which fall within the competencies of other Authority. Government has defended this proposal by saying that the consultee will now be given the possibility to appeal against the Board’s decision. This will:

(i) Lengthen the process unnecessarily, with applicants not being able to have any certainty as to whether their permit will actually be given the green light or not;
(ii) Place additional burdens on consultees which will need to establish new processes within their setup in order to be able to address these new appeals procedures;
(iii) Increase the costs incurred by the statutory consultees in view of the legal and professional fees they will need to incur in order to deal with these additional procedures.

In essence, all the proposal seems to achieve is a planning process which the Planning Authority can claim as being more efficient than the current one, with the unresolved matters being shifted out of the planning process to the appeals stage. The reality is, however, that the statutory consultees are being
effectively shunted to the side unless Government, concurrently, equips them with the ability, both financially and in terms of human resources, to be able to deal with this new approach.

Additionally it must be said that, rather than promoting a system where all players and stakeholders come together around one table to co-operate and achieve development which is truly sustainable, the proposal is instead fostering a confrontational approach, with the planning application process becoming more of a legal battle between the various stakeholders.

Finally, it is not clear whether all of this is even possible to implement. For example, the Equal Opportunities Act requires all public buildings and spaces to be accessible. Therefore, what remit does the Planning Board or the Tribunal have to override this obligation which arises out of an Act which is established independently of the proposed Planning Authority and the Environment and Planning Review Tribunal?

It is suggested that the planning application process and the subsequent appeals process are fully defined and published for consultation prior to any decision being taken on the approval or otherwise of this Bill.

**DETAILED COMMENTS**

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<td>2</td>
<td><strong>Definition of “Authority”:</strong></td>
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<td></td>
<td>(i) Ideally change to: “... means the Planning Authority established under the Development Planning Act”</td>
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<td></td>
<td>(ii) Without prejudice to the above, why does the term “Authority” refer only to the Planning Authority? The Tribunal will be deciding on appeals made also from decisions of the Malta Environment Authority. Suggest to remove this definition completely and instead define the Planning Authority (as in fact the bill does later on).</td>
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<td>2</td>
<td><strong>Definition of “development permission”:</strong></td>
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<td></td>
<td>(i) This definition should be the same as in the Development Planning Act.</td>
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<td>2</td>
<td><strong>Definition of “external consultee”:</strong></td>
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<td>(i) This definition refers to LN514 of 2010 and to the definition therein. However, this LN defines the word “consultee”, not “external consultee”. Although the intent is the same, it is recommended that the terms adopted are streamlined.</td>
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<td>2 (2)</td>
<td><strong>Other definitions:</strong></td>
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<td>(i) This subarticle should be reworded to: “Other words and expressions contained in this Act shall have the same meaning”</td>
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<td>assigned to them in the Development Planning Act, 2015, or in the Environment Protection Act, 2015, as the case may necessitate.” (or similar)</td>
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<td>Composition of the Tribunal:</td>
<td>(i) Subarticle (2) requires that two of the members of the panels are to be well versed in legislation, and one to be an advocate. Naturally, those persons who are well versed in legislation are, by definition, members of the legal profession, and although the Tribunal is a quasi-judicial entity it is important that the door is not closed on members of other professions who may be equally valid to sit on the Tribunal panels. Suggest rewording to: “Each panel shall consist of three members, with two of its members being well versed in development planning matters and environment matters and the other member an advocate.” (or similar)</td>
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<td>(ii) Subarticle (7) states that all members of the Tribunal shall not hold office for more than 5 years. There is the risk, since presumably these panels will all be appointed at the same time once the new Act is enabled, that there will be no continuity between one set of panels and the next. An element of rotation and continuity should be introduced. This is especially important since cases will perforce have a duration which will extend beyond the term of office of the panels.</td>
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<td>Principles of good administrative behaviour:</td>
<td>(i) Subarticle 2(d) should apply also to the Malta Environment Authority.</td>
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<td>(ii) In subarticle 2(h), the word “basis” should be changed to “bases”.</td>
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<td>Jurisdiction:</td>
<td>(i) In the third proviso to subarticle 1(e), replace “Authority” with “Planning Authority”.</td>
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<td>Timeframes:</td>
<td>(i) In subarticle (1), replace “Authority” with “Planning Authority”.</td>
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<tr>
<td>Contents of application for appeal:</td>
<td>(i) Replace “Authority” with “Planning Authority”.</td>
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<tr>
<td>Request to view Authority files:</td>
<td>(i) The information in the Authority files should be available at all times. If they are only made available once an appeal has been lodged this will mean that appellants are submitting their appeals in the dark, without having full access to the information contained in such files. This is to be read in conjunction with the comments above on Article 33 of the Development Planning Act.</td>
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<td>Notification of application for appeal to the Authority:</td>
<td>(i) Replace “Authority” with “Planning Authority”.</td>
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<td>Experts:</td>
<td>(i) The idea of having experts to assist the Tribunal is a good one. However it is suggested that a register of experts is established and that appropriate procedures are established for registration of</td>
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<td>such experts. Otherwise it may appear that the choice of such experts at the sole discretion of the Tribunal could be vitiated by the Tribunal sticking only to persons they “know”.</td>
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<tr>
<td>(ii)</td>
<td>How are such experts to be remunerated?</td>
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<tr>
<td>31</td>
<td><strong>Power to confirm, revoke or alter decisions:</strong></td>
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<td>(i) This article could shift to Part IV.</td>
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<tr>
<td>38</td>
<td><strong>Provisions applicable to all decisions:</strong></td>
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<tr>
<td></td>
<td>(i) Replace “Authority” with “Planning Authority”.</td>
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<tr>
<td>45</td>
<td><strong>Penalties, fees and contributions:</strong></td>
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<tr>
<td></td>
<td>(i) Replace “Authority” with “Planning Authority”.</td>
</tr>
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<td></td>
<td>(ii) It is not clear from subarticle (1) who should be paying such fees and why it is the Authority that shall be the recipient of such monies. Clarity is required.</td>
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<td>47</td>
<td><strong>Appeal to the Tribunal in accordance with the provisions of the Environment Protection Act:</strong></td>
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<td></td>
<td>(i) Replace “Authority” with “Malta Environment Authority” in all instances.</td>
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<td>(ii) Subarticle (8) outlines those provisions of various articles which shall apply to appeals from decisions of the Malta Environment Authority. It may better for the easier understanding and application of this legislation to group these articles into a separate part, given also the quantity of articles which apply.</td>
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<td>55</td>
<td><strong>Saving:</strong></td>
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<td>(i) This article states that the new Tribunal will succeed all the functions of the EPRT established today. One understands that this will also include the current case load, however it is not clear how the new procedural provisions outlined in the new Act will be, or not, applicable to the current case load.</td>
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</table>
The Tas-Sliema Local Council:

- recognises that the current Government holds an electoral mandate to reform MEPA through a splitting of the planning and environmental sections;
- maintains that environmental policy is a cross-cutting horizontal policy area which needs to underpin decisions related to planning and many other areas of Government policy;
- warns that having members of the Planning Authority isolated from the environmental field may result in such employees becoming desensitised from environmental matters;
- proposes the promotion of a collaborative working environment so that workers in the proposed Planning Authority are socialised into environmental policy, possibly by functioning within the same building as the Environmental Authority;

puts forward the following representations on the Articles of the Development Planning Act, 2015:

1.1) Article 15 states that the Prime Minister may direct any public officer to be detailed for duty with the Authority. While recognising that this article is present in the current CHAPTER 504 ENVIRONMENT AND DEVELOPMENT PLANNING ACT, the Council maintains that such a possibility runs contrary to the current administration’s electoral promise of ensuring administrative independence for a reformed MEPA. It is not the role of the Prime Minister to assign members of the civil service to the Planning Authority. If the Authority needs further staff it can issue a call for interest among the public service employees. Allowing the possibility for the Prime Minister to handpick public officials is asking for abuse and there is a real risk that the Authority, or sections of it, such as the customer care, ends up being taken over by political appointees. Article 17 allows for such political appointments to become permanent subject to the ‘approval of the Prime Minister’ – a guaranteed job for life is therefore dependent on being on the good books of the Prime Minister which is the antithesis of good governance.

Sliema Council proposes the removal of Article 15 and any other article emanating from it.

1.2) Article 52 creates a hierarchy among the different plans and shamefully relegates the development brief to the bottom of such a hierarchy.
This runs contrary to notions of subsidiarity. There is no logic in creating precedence among policies, as all policies ought to be in line with each other. A spatial strategy should not run contrary to a local plan in the first place. If, exceptionally there is a ‘material conflict’ then the local plan and the development brief should take precedence as they are specific to the conservation and protection required of a particular area. This Article seems to be placed intentionally to undermine all the good work done under previous administrations in creating local plans and development briefs which ensure sustainable development in specific locations. The Sliema Council is particularly concerned on the implications of this new hierarchy on the application of a hotel to be developed on the Fort Cambridge site.

_Sliema Council proposes the removal of Article 52 and any other article emanating from it._

1.3) There are a number of clauses related to the minimum period for a public call for representations. There is no streamlining for the period allowed for representations which range from two weeks to three weeks to six weeks. The Spatial Strategy (Art. 44) and the Subsidiary Plans and Policies (Art.53) initial draft have a minimum of 3 weeks. When the draft is amended by the Executive Council the consultation period is increased to a minimum of 6 weeks. To add to the confusion the Development Orders (Art. 55) and the Procedure for Making Regulations (Art.84) have a public consultation minimum period of 2 weeks, which is ridiculous. Councils need to be in a position to review the draft proposals, not always an easy task in view of the technical nature of the documents. They also need to have enough time to have an exchange of views and final approval at the monthly council meeting. A consultation period of less than six weeks is not practicable for councils to put forward studied representations.

_Sliema Council proposes that all references to a consultation period in the Law need to be for a minimum of 6 weeks._

1.4) The Sliema Local Council praises the initiative to include a member chosen by the Local Council on the Planning Board only when the Board is deciding a major project application. The Interpretation section of the Act, under the term ‘major project’, states that it ‘is a project as defined by regulations under this Act’. This is not a clear definition and will result in subjective interpretations of what constitutes a major project.
There needs to be a more clear definition of what constitutes a ‘major project’ as intended in the law. The determination of such a definition needs to take place in consultation with representatives of local councils.

1.5) The Sliema Local Council praises the initiative to introduce the Agricultural Advisory Committee.

Sliema Council alerts Government to ensure that the Agricultural Advisory Committee is manned by representatives who have Malta’s agricultural needs at heart in view of Malta’s need to promote biodiversity and to be self-sufficient in case of an emergency.

1.6) The Sliema Local Council praises the initiative to introduce a Design Advisory Committee. Article 67 does not mention the criteria for selection of the expert advice to be appointed on the Design Advisory Committee.

There needs to be a more clear definition of the criteria for selection of the expert advice to be appointed on the Design Advisory Committee. The determination of such a definition needs to take place in consultation with representatives of the architecture profession and ENGOs.

1.7) Article 78 states that the Minister can refer an appeal by a registered interested third party, or by any external consultee from any decision of the Planning Board or the Commission, to the Cabinet of Ministers thus bypassing the procedure for an appeal within the Tribunal. While recognising that this article is present in the current CHAPTER 504 ENVIRONMENT AND DEVELOPMENT PLANNING ACT, the Council maintains that such a possibility runs contrary to the current administration’s electoral promise of ensuring administrative independence for a reformed MEPA. The tribunal may determine for itself whether an appeal ought to be dismissed on the grounds of being of strategic significance or in the national interest.

Sliema Council proposes the removal of Article 78 and any other article emanating from it.

1.8) Article 99(2) states that the Minister may provide that a property which is in a state of disrepair and, or constitutes a danger, shall be demolished by its owner or by the Authority, at the owner’s expense. This law encourages
owners of old properties to leave them in a state of disrepair to be then in a position to demolish the property and redevelop the land, with a new block of apartments, which is likely to be of no aesthetic value. The Sliema Local Council stresses the need to regulate abandoned properties prior to the stage when their deterioration has reached a point that the property constitutes a danger. This is a crucial issue on the upkeep of streetscapes which affects practically every locality in Malta with some localities such as Valletta having more acute cases. The problem is present in Sliema in some parts of Tower Road and particularly in Manoel Dimech Street. While recognising that the issue is a complex one, in view of multiple ownership and property rights of the owners, the Council contends that the current MEPA reform is a golden opportunity to address the duties of the owners of all abandoned properties and particularly their obligations with respect to the maintenance of their outer appearance. Every EU member state has such rules.

_Sliema Council proposes that Article 99(2) is amended to include provisions related to addressing the acute problem of abandoned properties and their state of neglect having a negative impact on the aesthetic qualities of the streetscape._

- _Sliema Council puts forward the following representations on the following Articles of the Environment Protection Act, 2015:_

2.1 Article 15 states that the Prime Minister may direct any public officer to be detailed for duty with the Authority. While recognising that this article is present in the current CHAPTER 504 ENVIRONMENT AND DEVELOPMENT PLANNING ACT, the Council maintains that such a possibility runs contrary to the current administration’s electoral promise of ensuring administrative independence for a reformed MEPA. It is not the role of the Prime Minister to assign members of the civil service to the Planning Authority. If the Authority needs further staff it can issue a call for interest among the public service employees. Allowing the possibility for the Prime Minister to handpick public officials is asking for abuse and there is a real risk that the Authority, or sections of it, such as the customer care, ends up being taken over by political appointees. Article 17 allows for such political appointments to become permanent subject to the ‘approval of the Prime Minister’ – a guaranteed job for life is therefore dependent on being on the good books of the Prime Minister which is the antithesis of good governance.

_Sliema Council proposes the removal of Article 15 and any other article emanating from it._

2.2 There are a number of clauses related to the minimum period for a public call for representations. There is no streamlining for the period allowed for
representations. It is of grave concern that Article 51 dealing with the drafting of a subsidiary plan or policy does not even mention a minimum period for a public call for representations. Councils need to be in a position to review the draft proposals, not always an easy task in view of the technical nature of the documents. They also need to have enough time to have an exchange of views and final approval at the monthly council meeting. A consultation period of less than six weeks is not practicable for councils to put forward studied representations.

*Sliema Council proposes that all references to a consultation period in the Law need to be for a minimum of 6 weeks.*

2.3 Article 62 deals with the right of the property owner to request the reconsideration of any protection of their land. An owner has only 30 days from the notification to submit such request. This is not an adequate time window.

*Sliema Council proposes that the time window in Art. 62 for a property owner to request a reconsideration is increased to 6 weeks*

2.4 Part VII deals with the powers of the Authority for the monitoring, compliance action and enforcement of control. There is no description of the inspectorate which shall undertake such controls. The impression given at the Public Information Session held on 29th July is that the Building Regulations Office will be assimilated into the new Environment Authority. It is not clear whether the BRO inspectorate will be amalgamated with the Environment Inspectorate. Councils and the general public need to know who they are to call for the different infringements in these acts, but also in relation to other laws such as the Environmental Management Construction Site Regulations.

*Sliema Council proposes that Part VII describes the role of the inspectorate responsible for the monitoring, compliance action and enforcement of control. This section of the law needs to also refer to the monitoring of other laws such as the Environmental Management Construction Site Regulations.*

- *Sliema Council puts forward the following representations on the following Articles of the Environment and Planning Review Tribunal Act, 2015:*

3.1 The proposed law introduces an overhaul of the current procedure for the appointment of the Environment and Planning Review Tribunal which is rather suspicious. Under the current law the members of the Tribunal are appointed by the President on the advice of the Minister. The new law vests the Prime Minister with the authority to establish the members sitting on the panels of the tribunal. The new law
is manifestly being used to increase the political interference in the application process.

*Sliema Council proposes that in line with the current administration’s electoral promise of ensuring administrative independence for a reformed MEPA the members sitting on the panels of the tribunal are appointed by the President on the advice of the Minister.*

3.2 While the current law states that the Environment and Planning Review Tribunal shall consist of three members, one being a person versed in environment or development planning who shall preside and a lawyer and an architect, the proposed law describes the Tribunal as consisting of three members, with two of its members being well versed in development planning legislation and environmental legislation and the other member an advocate. Effectively this means that the Tribunal will be manned by three lawyers. While recognising that this Tribunal is a quasi-judicial body, simply having legal experts will water-down the effectiveness of such a Tribunal to view appeals in the context of proper urban planning and environmental consciousness. There might be a legal point on which there is not a clear interpretation and the appeal will then need to be determined on the basis of technical expertise in environment and urban planning issues.

*Sliema Council proposes the removal of the word ‘legislation’ from the following phrase in the law: ‘Tribunal as consisting of three members, with two of its members being well versed in development planning legislation and environmental [add: ‘policies’] legislation and the other member an advocate’.*

3.3 The current Eighth Schedule of Chp. 504, specifically Article 91 (V) Encroachments beyond property which provides that ‘development identified in this sub-category shall be removed at the request of any public authority, including the Local Council’, has not been included in the new law. Article 91 (V) is an important tool to protect against abuse. Removing this whole section of the current law is a means to water down the powers to monitor abuse of encroachments.

*Sliema Council demands that the Eighth Schedule of Chp.504 is reproduced in the new law as its omission will jeopardise the role of local councils in monitoring abuse of encroachments.*
MEPA Demerger weakens environmental governance: Front Harsien ODZ

In a press conference held in front of the Office of the Prime Minister, Front Harsien ODZ presented its feedback regarding Government’s demerger of the Malta Environment and Planning Authority.

Front Harsien ODZ is opposing the proposed MEPA demerger as this will weaken environmental governance. The proposed legislation makes it easier to develop on ODZ land, weakens enforcement, weakens transparency and weakens civil society participation in decision-making processes.

Government’s demerger of MEPA will also give too much power to the respective Minister, who can override Planning Authority decisions. This will further decrease the Authority’s autonomy and further increase political interference in decision-making which is supposed to be bound by clear regulations.

Front Harsien ODZ also expressed its endorsement of Din l-Art Helwa's and Friends of the Earth’s statements regarding the MEPA demerger.

Front’s feedback, in more detail, follows:

1. The law as proposed makes it possible for MEPA to regularise illegal development in protected zones and ODZ land, something forbidden by a specific article in present law (Article 70 and the Sixth Schedule). Currently MEPA cannot approve the legalisation of ODZ development carried out after 2008 and of any development carried out on scheduled zones irrespective of when it was carried out.

2. The law gives too many powers to the Minister and states that “any person who is served with an enforcement notice” in respect of development which may be regularised “by virtue of regulations made by the Minister”, shall have the right to request the new Planning Authority (PA) to regularise the development. This can pave the way to a planning amnesty through a legal notice. This is because the new law will give the minister responsible for the PA blanket powers to define both the illegalities which can be sanctioned, and the fines which would be applicable. This will be done through a legal notice issued by the Minister.

3. The law weakens enforcement. This is because the proposed law states that whenever an application for regularising past abuse is turned down, enforcement provisions will only apply from the date such from when such a request is turned down. Fines should apply from the moment an enforcement order is issued as is the case today.

4. The law weakens transparency by allowing people to make submissions anonymously. This means that developers will be able to propose changes to local plans etc.. without showing their names.

5. The proposed law does not include any mechanism through which the Environment
Authority’s experts can screen all planning applications submitted to the Planning Authority. Without this screening and daily communication between experts of the two authorities, the future of the environment is endangered.

6. The law represents a loss of autonomy. All members of the Executive Committee of the Planning Authority are government appointees. Opposition representative and NGO representatives will be represented in Planning Board but not in Executive Committee but not in Executive Committee where policies are discussed. This risks creating a parallel structure in MEPA around the CEO figure. This means that nobody from the outside will supervise operations. Ideally all meetings of the Planning Authority’s Executive Committee should be held in public and minutes published online.

7. The outline permit should not be re-introduced. Past experience (ex Mistra) has shown that commitments taken at this stage are difficult to revoke at a later stage. It does not make sense to first approve something in principle without providing the full details.

8. All members of the Environment and Planning Review Tribunal should be appointed by the President on the advice of Prime Minister (as is case now) and not by Prime Minister as proposed as this weakens the judicial status enjoyed by current tribunal.

9. All appointees on MEPA boards should be grilled in parliament’s standing committee on the environment and planning. The CEO should report to parliament on a regular basis.

10. The new law further weakens the SPED, which was already incomplete when it passed in parliament, as it contains only objectives and not specific policies. The national strategy for planning and environment should be a binding set of policies, which Government and Authority should commit to for a specified period of time, and any changes to it should be carried out through a formal process which is transparent and open to public consultation.
SUBMISSION NO. 9 – RECEIVED FROM: FRIENDS OF THE EARTH MALTA

Comments and recommendation with regards to the Bills entitled ‘AN ACT to make provision for the protection of the environment and for the establishment of an authority with powers to that effect and for matters connected therewith or ancillary thereto.’ (Environment Protection Act, 2015) and ‘AN ACT to make provision for sustainable planning and management of development and for the establishment of an authority with powers to that effect and for matters connected therewith or ancillary thereto’ (Development Planning Act, 2015).

Notwithstanding the limited consultation period allowed for this rather important piece of legislation, Friends of the Earth Malta (FoE Malta) has compiled a list of recommendations, amendments and comments in relation to the Environment Protection Act (2015) and Development Planning Act (2015).

FoE Malta has in the past been rather critical of MEPA and many of its decisions. The power struggle between planning and environment has been evident since its inception and this has in fact been one of the major concern of environmental NGOs throughout the years. We believe that the demerger process could serve as a golden opportunity in order to provide the right balance between the two institutions. Unfortunately, the process that led to this draft proposal and the current development onslaught has left FoE Malta feel disenchanted when it comes to the real intentions of such an important process.

We believe that policies and decisions should be left in the hands of technical experts, with the backing of professional and impartial studies, which have been missing from all recent policies. The only reform that will make a difference to Malta’s open spaces, to improving the well-being of residents, support of tourism and the economy is a reform in politicians’ commitment to the environment.

Environment Protection Act (2015)

General Comments:

1. Law strengthens the power of the Minister rather than that of the Malta Environment Authority (Minister’s intervention is mentioned 98 times in the whole document).

2. Law gives additional powers to Prime Minister.

3. All members of the Malta Environment Authority’s Executive committee will be government appointees.

4. Position of executive chairman is entirely dependent on Minister.
5. E-NGOs are not guaranteed a representative on the Malta Environment Authority board.

6. Law does not grant the Malta Environment Authority a permanent seat on the Planning Authority’s executive council. The Malta Environment Authority may be called in to attend meetings of the Executive Council at the discretion of the Executive Chairperson.

Specific comments and suggested amendments:

Article 8: The Malta Environment Authority can request any holder of environmental information to provide it to authority, or otherwise he/she is liable to a fine. This is dictatorial and open ended – some environmental data have commercial value, so there needs to be either a non-disclosure agreement or at least compensation involved in this data transfer.

Article 18 and 43: The authority can engage consultants’ and advisers, but it does not explain how and on what grounds. This process should be open and meritocratic.

Article 54 (1): The frequent occurrence of references to the Minister leaves MEPA and the Act itself at the discretion of the Minister and the Government at power. The autonomy of MEPA, detaching itself from the Ministry can only be beneficial and will solve problems that are being felt strongly today.

This Article allows for the Minister to change all aspects of regulation in MEPA including application, evaluation and awarding methods - 29 subheadings fall under this Article to further explain the ministry’s responsibilities. In subheadings related to the structure and functioning of MEPA, the following amendment is suggested:

*Proposed amendment: An independent board of experts comprising of representatives of environmentalists, developers, lawyers and planners will act as an evaluation committee and propose amendments to the existing legislation when necessary. These amendments should be achieved through public consultations, feedback mechanisms and discussions with stakeholders, apart from independent research. The proposed amendments are then passed on to the relevant Ministry for approval.*

Article 54, (Q,ii): Again the discretion of the Minister to identify persons to undertake research and monitoring does not encourage a transparent and independent running of MEPA.

*Proposed amendment: The black-on-white requirement for a public call with published results for any tender, position or vacancy available for research and monitoring processes is necessary to ensure the merit of the persons appointed.*

Article 54 (u): An additional provision should be made for companies to be liable in cases deemed as Ecocide, where a company causing extensive damage to Maltese ecosystems can be taken to court and fined higher than €250,000, with additional
obligations of amending said damage to the ecosystem. To officially state that Ecocide is a crime punishable by law would make corporations more careful when operating locally in sensitive ecological areas.

Article 54 (z): Details lacking on what out of court settlement arrangements are and in what scenario are these used

Article 55 (1): Adding to the previous comment for Article 54, ideally the regulations should be created by an independent board then passed on to the Ministry to promote innovation and autonomy, while also reducing the bureaucratic burden for the Ministry.

Article 55 (2): Amendment: Replace “...which the Minister declares to be urgent. or when a form of public consultation was carried out before the date of coming into force of this Act.” with “...when a National crisis that requires temporary or permanent legislature changes to be mitigated, and when mitigation of this crisis can in no way be postponed by four weeks without further detriment to the environment. Only then can an occurrence be deemed of national importance that supersedes the need for public consultation.”

Article 55 (3): This is a welcome and necessary addition to the document

Article 56 (1): This Article is open-ended and is an open door to abuse. There is no requirement for the publication on government gazette and local newspapers of the justification of these Orders.

Article 60 (5): This is a very welcome inclusion in the document – Ideally inspections would be mandatory for all permit applications to reduce potential bias, however this might be jeopardized by lack of human resources.

Article 69: The conservation of sites via a protected area is a very welcome inclusion to the document however there are no details as to how the decision towards declaring an area a protected site are included. There are no Articles listing the criteria that would qualify and area as a protected site, but rather it is left up to the authority and ministry to decide this issue. More detail is needed to at least present the basis of this decision-making process.

Second Schedule, Article 51(1): Amendment ‘...shall provide no less than 4 weeks of consultation period to allow opportunities for individuals and organizations to make representations to the Authority’

Third Schedule, Article 58 (2): A comprehensive list of actions and activities are listed in the third schedule which are satisfactory to the purpose of conservation of natural areas.

Additional suggestions:
Meetings of the Malta Environment Authority Executive Committee should be held in public and streamed online, and minutes of its meetings should be published.

There should be more detailed consideration given to the marine environment since the Environment Protection Act also encompasses the sea. This Act should also clarify who will be in charge of regulating the marine environment, and when plans, policies and regulations for marine environmental management will be prepared. FoE Malta believes that this should be the Malta Environment Authority’ responsibility.

Clarification requested:

The following two Articles that are not very clear and require further clarifications:

Article 8 (5): In the execution of its functions under this Part and Part V, the Authority shall consult with the Minister, and it shall have and may exercise all or any one or more of the powers vested in it or entrusted to it by this Act... why does the authority need to consult with the minister?

Article 8 (8): The Authority shall execute its duties, functions and responsibilities in accordance with Government’s strategic directions relating to the environment as well as such policies relating to the environment as are applicable to Malta. We believe that Government should do so according to its policies, and not to the Government’s strategic directions.

Development Planning Act (2015)

General Comments:

On the whole the Development Planning Act is a very bureaucratic act setting up countless committees, standing committee, planning committee, users committee, agriculture committee, design committee etc. At the same time, the powers of the Minister are very wide – changes to administrative practices in relation to planning matters can be carried out by the Committees themselves.

Specific comments and suggested amendments:

Article 3(f): Rephrase “to consider public values, costs, benefits, risks and uncertainties involved when taking any decisions.” to “to consider public values, environmental impact, costs, benefits, risks and uncertainties involved when taking any decisions.”

Article 7 (2)(a): Extent prescribed by Minister via regulations under this act weakens the transparency and independent work by the body in question.

Article 9: No details as to the role, composition and appointment process of said advisory boards and committees. Discretion of Minister to sanction such process can
impinge on the transparency and lead to subservient position of the Executive Council.

**Article 10 (1):** Autonomy of the Executive Chairperson is clearly undermined vis-à-vis Minister’s role to delegate ‘other powers’ to Executive Chairperson.

**Article 11 (2):** It is unclear to what reason the Minister shall take on himself / herself to appoint administrative staff of the entity.

**Article 12 (1):** Another case of weakening the entity’s autonomy through Minister’s involvement and necessary approval of the appointees.

**Article 15 (1):** Another case of weakening the entity’s autonomy through the involvement of the Prime Minister and/or Minister.

**Articles 18 (4), 18 (5), 19 and 20:** The Minister’s influence extends over the financial matters and controlling mechanism impinges furthermore against the entity’s autonomy.

**Article 36:** Propose that the Executive Council should increase its membership to include independent members, including at least one member from environmental NGOs. These members should have equal rights as the rest of the council members.

**Article 36 (2)(d):** “spatial strategy for environment and development, subsidiary plans and policies, development orders, scheduling and conservation orders, and emergency conservation orders as regulated under this Part of this Act” calls for independent body of experts in relation to building, environmental and legal matters. Two members appointed by Environmental Authority and without clear parameters of their expertise can hardly be appropriate.

**Article 37 (3):** As with numerous cases stated above, and not wanting to repeat ourselves for each point marked, we will reiterate the words of Kevin Aquilina (MaltaToday 29th July 2015):

“The lack of transparency is evident in clause 36(2)(d) of the Development Planning Bill where the two members appointed by the Malta Environment Authority on the Planning Authority’s Executive Council are not permanent members and do not participate in all the meetings of the Executive Council. They are indeed second class members! That the new Planning Authority will sit in the Minister’s lap and its Executive Council members act as the Minister’s servile stooges is well evidenced by a number of provisions in the Development Planning Bill. Clause 38(2), for instance, requires them to exercise any of their functions after consulting with the Minister. As though this provision was not enough to have a subservient lackey Planning Authority, to rub it in that the Executive Council members are the Minister’s puppets, clause 41 then provides that ‘The Executive Council shall, out of its own motion, but after consultation with the Minister, or if so requested by the Minister, make a plan or a policy on any matter relating to development planning. (2) The Executive Council may also, either out of its own motion, but after consultation with the Minister, or if so requested by the Minister, review a plan or a policy which is already in force.’ The Executive Council enjoys no autonomy at all.”
Article 44 (4), 53(2)(h)(i)(j) and 53(3)(d) : same as above.

Article 72: Allows room for abuse. Article 69 of the current MEPA legislation should be inserted in the new legislation.

Article 101 - The current legislation allows for sanctioning but there is a fine to be paid for having done the works illegally. It is unclear how the new legislation will be adopting the imposition of penalties for illegal works, particularly when a request for the sanctioning of an illegality is submitted. Fines for illegal works should ALWAYS be applicable, whether the works are later sanctioned or not. The present proposal appears to be proposing some form of amnesty for illegal development which is unacceptable. It also penalises citizens who abide by the law.

Additional suggestions:

Friends of the Earth Malta reiterates its strong position on building in Outside Development Zones. It is high time that no further development occurs in ODZs. We believe that this land should be protected and serve as heritage to the Maltese people, past and future. We understand that this generation is responsible for taking the obligation to protect these sites, respecting our past, acknowledging the present needs and protect this heritage for future generations.

Clarification requested:

The following three clauses that are not very clear and require further clarifications:

Article 3(c): Ambiguous. Need for precise specification to the type and frequency of such plans where possible.

Article 35 (1): and 36 (1) (2): Unclear as to what would well versed mean and interpretation in the selection process.

Article 44 – Reference is made to the “Spatial Strategy for Environment and Development”, but no mention is made to the “Strategic Plan for the Environment and Development”. Clarification requested.

Article 60: The law itself is not outlining what the law is but simply setting up the bureaucratic cover wherein decisions will be taken but how is the law regulating how the decisions will be taken? Is it being left to the interpretation of the Minister completely? Is this a law or just a procedural guideline?

Article 61 and 62: More details are required when it comes to the function and power of the users’ committee. Does this process ultimately give the Minister direct powers to create ad-hoc changes to the administrative processes and practices?
SUBMISSION NO. 10 – RECEIVED FROM: DR. JOHN EBEJER

Comments on proposed new planning and environmental legislation

A. Basic planning principles under threat

The current set-up of Malta’s planning system was legislated in the early 1990’s, mostly as a reaction to the uncontrolled development and perceived abuses in development permits in the seventies and early eighties. The relevant legislation has since been amended several times and the planning system has evolved while trying to maintain a balance between many diverse requirements. The 1992 legislation was designed on the basis of a set of ‘planning principles’ even if these were not stated explicitly. Through the evolutionary process these principles have been retained, albeit adjusted to meet specific requirements. Each change of legislation was based on the experience of previous years.

The legislation that is being enacted now breaks away from that evolutionary process. It detracts or even discards the planning principles that were first introduced in the 1992 legislation. The following is a discussion of the ‘planning principles’ introduced in the 1992 legislation and which are being discarded by the new legislation.

Autonomy of the Planning Authority

In the current planning legislation, decisions on development applications are taken by boards composed of people who have security of tenure i.e. they cannot be removed by the minister. This allows board members to resist and reject any political pressure to which they may be subject. The appeal board are also autonomous and this is provided for by security of tenure of members.

For plans and policies, it is slightly different in that these are prepared by planners/technical people and then approved by the minister. (Note that ministerial approval is required because you cannot have land use policy from one authority saying one thing and policies of other sectors saying something different).

CHANGES due to new legislation: The new legislation will make it more possible for a politician to intervene in the planning process and the planning authority’s autonomy in decisions is being reduced virtually to nil because:

(i) The security of tenure is being removed for members of the Executive Council. The Executive Council controls the process of the assessment of an application through the work of the case officer. The lack of security of tenure makes it possible for the politician (or persons close to politicians) to pressurise the Executive Council on the development application report and recommendation.

(ii) More crucially, the Executive Council decides on plans and policies. A lot will depend on the integrity of the members of the Executive Council but we now risk having plans and policies tailor made to the whims of politicians (or of persons close to politicians).

(iii) The security of tenure of members of the appeals tribunal is also being removed. This exposes members to political pressures when deciding on appeals on development applications.
Recommendation: All provisions in the new legislation which reduce the autonomy of the planning authority and of the appeal tribunals should be removed or amended to ensure that the levels of autonomy currently available under the current legislation are retained or improved.

Transparency in decision taking

In the current planning legislation, there is a high degree of transparency with all meetings relating to decisions on development applications being open to the public. The same applies for decisions on plans and policies. Moreover, information on development applications is easily accessible to third parties. Apart from going to see the applications at MEPA offices, information may also be accessed online. The principle of transparency in decision-taking is considered essential to increase scrutiny and thus reduce the possibility of abuse in the planning process.

Greater transparency is also achieved by having more people and boards involved in decision process. In this manner, any shortcomings in the decision will be more easily detectable and corrected where necessary.

CHANGES due to new legislation: The new legislation reduces transparency as follows:

(i) Decisions of the Executive Council on subsidiary plans shall not be open to the public (First Schedule Article 3(e)). This is totally unacceptable. It reduces the scrutiny of the decision process on plans and policies. All decisions on plans and policies should be made in a public meeting to increase the scrutiny of the process.

(ii) The second proviso under Clause 33 (2) (c) restricts the information of a development application that is made available to third parties. This is a significant step backwards as it reduces transparency. It also infringes on the public consultation process on development applications as it makes it more difficult for interested parties to make reasoned submissions. The public should also have access to all relevant reports and all consultation feedback and representations.

(iii) Concentration of decisions to a smaller group of people. (see relevant comments under ‘Better informed decisions below).

Recommendation: All provisions in the new legislation which reduce transparency should be removed or amended to ensure that the levels of transparency currently available under the current legislation are retained or improved.

Better informed decisions

In the current planning legislation, decisions are taken by committees (not individuals). Within reason, many people are involved in the decision on a development application, either as part of the deciding body, as a member of an advisory body or as a technical person within MEPA. In this way, the eventual decision is better informed and thus more likely to be correct.

In the current set-up, Heritage Advisory Committee includes two Panels, one for built heritage and another for the natural environment. Decisions on development
applications should be based on good information and good advice and the HAC has a central role to play in this respect. The two panels include experts in cultural heritage and natural heritage respectively and their insight on the implications of proposed developments is essential for the deciding board to come to the best decision.

Changes due to new legislation: The new legislation moves away from the principle of 'better information' in a number of ways:

(i) Both Panels of the Heritage Advisory Committees are being removed. This is a seriously retrograde step because the technical input in decisions on development applications is being reduced. With the removal of the HAC, there will be no independent input in the process.

(ii) The Executive Council may delegate to the Executive Chairperson or any of its members, the power to endorse policies and plans. (First Schedule Article 3(d) ). A discussion between different board members provides a more holistic analysis of the issues and ensures that all relevant information is taken into account. The new legislation will make it possible for this healthy discussion in the board to be bypassed and removed. Worse than that, when decisions are taken by individuals rather than a group of people in a board, the possibility of abuse is greatly increased, including the inclusion of policies or provisions which would not otherwise be agreed with.

(iii) The Commission will be composed of three and the quorum will be of just two. Each decision on a development application is important and it is therefore felt that two members for a decision is too few.

Recommendations:

(i) Both panels of the Heritage Advisory Committee should be retained.

(ii) All decisions relating to the approval of documents or plans should be taken collectively as a committee of people (and NOT as an individual).

(iii) The provision of the current legislation should be reinstated namely the requirement for at least three members to be present (E&DP 2010 Article 35 (5) ) from a commission of five members (E&DP 2010 Article 35 (2) ).

B. Other comments on proposed planning legislation

(E&DPA 2010 refers to current legislation i.e. Environment and Development Planning Act of 2010 ; DPA 2015 refers to the Bill which will be decided upon by Parliament i.e. the Development Planning Act 2015)

Delegation of powers

Article 9 of the current E&DPA 2010 Act provides for delegation of powers for MEPA responsibilities on enforcement (i.e. those covered in Part VI) of the Act. In the new legislation reference to Part VI (i.e enforcement) has been removed and DPA 2015 Article 8 now reads as follows: “The Authority may, in accordance with the provisions of this Act and with the approval of the Minister, delegate any one or more of its functions under this Act under such conditions as it may deem appropriate. Notice of any such delegation shall be published in the Gazette.”
Does this mean that the Planning Authority (with the approval of the Minister) can delegate for example, the decision on a development application to a local council or, say, to a government department? These powers of delegation should be restricted to enforcement (as is in the current E&DPA 2010 Act) as delegation could be a means to bypass legal procedures as set out in the legislation.

**Development orders**

In the current legislation (E&DPA 2010), a development order may be issued by the Authority. The intention of the legislator was to remove an eyesore or to remove something which inconveniences or is unsafe to people. The legislation required the development order to be on works of a minor nature (Article 63 (4)) and related to removal of illegal works (Article 63 (5)).

The new DPA2015 extends the scope of development orders and this could give rise to abuse. It is no longer limited to works of a minor nature nor related to illegal works. (Articles 63(4) and (5) (of E&DPA2010) have been removed in the new DPA2015.)

E&DPA2010 requires the development order to be issued in the Government Gazette (Article 63 (2)). On the other hand, DPA 2015 Article 55 (3) is very unclear. It states “(3) Development orders under this Act shall not be published unless a draft of the said orders has been issued for public consultation.....” and then goes on to set out the consultation process. I interpret this to mean that there is no need to publish the order except when it is decided to have public consultation. The publication of development orders is essential and the requirement to publish in the government gazette should be retained. The changes related to development order will facilitate abuse as planning procedures provided for in the legislation could be bypassed by means of a development order.

It therefore suggested that the draft legislation is amended so that:

1. Development orders are limited to minor works.
2. Development orders should be limited to the reversal of illegal works (or activities not compliant with the legislation).
3. Development orders should take force when published in the government gazette.

**Definition of development**

In the definition of development, some activities have been excluded in the E&DPA2010 (Article 67 (2)). In the new DPA 2015, Article 70, the list of exclusions has been increased by three activities/uses as follows:

70 (2) “...... for all other purposes in this Act, "development" means .............. other than:

“(d) emergency works in relation to public safety carried out by Government;

(e) a use which subsisted continuously from a period when such use was not considered illegal and did not require a permit;

(f) the placing of plant and machinery required for the operation of a use already covered by development permission on land within the perimeter of the site covered by the same permission of the use being operated.”
In each case this is a matter of concern as follows:

70 (2) (d): Government utility agencies will use this provision to carry out developments without permit. If and when a development is questioned, the utility agency will declare it to be for public safety. For example, most minor works related to roads could be described as to improve public safety. The same can be said for minor works on jetties and other marine works.

70 (2) (e): The wording of this provision is vague and could be used to argue uses which would not otherwise be permitted. It should be removed or it should be made clear as to what is being referred to. For example, if enforcement action is taken against an illegal boathouse, the occupier could contest the enforcement action in a court of law on the grounds that he never received any official notification that the boathouse is illegal and that therefore it was never considered illegal by the authorities at any time since its construction four or five decades ago. It could be a way to regularise developments which no planning authority in its right senses would otherwise regularise.

70 (2) (f) Again this is a loophole. The placing of plant and machinery should be an integral part of the development permission, because its potential impact needs to be assessed as an integral part of the impact of the use.

It is recommended that sub-articles 70 (2) (d), (e) and (f) are removed.

‘Projects of common interest’

According to Article 2 of the new DPA 2015, “"projects of common interest" mean …… and which is part of the Union list of projects of common interest referred to in article 3 of Regulation EC no. 347/2013 ….” DPA 2015 gives one of the functions of the Authority as 7 (2) “(d) to facilitate and coordinate the permit granting process for projects of common interest;”

Why are ‘projects of common interest’ being given priority in this manner? What does ‘facilitate’ mean? The PA’s role is to process applications for development and not to ‘facilitate’ any ‘permit granting’.

Note: A concern that is common to a number of the comments above relates to the possibility of abuse. When drafting legislation, the legislator should consider that the legislation will be applicable for many years and during that time there will be different ministers, politicians, authority officials, board members and other stakeholders. Concern about abuse does not refer to any current official or politician, but refers to any, official or politician, now or in the future, who will be involved in the running of the planning system as set out in the legislation.

C. Comments on building regulations

The new legislation includes provision relating to the building regulations, apparently to replace the current Building Regulations Act of 2011. Building Regulations Act was developed following extensive consultations with all stakeholders and with it came a programme of action for subsidiary legislation and developing the mechanisms to implement these. With the integration of building regulations into planning, all that
work will be lost. Worse than that, there has been no consultation on the changes being proposed to the legal provisions.

Building Regulations Act provided for new structures to regulate building regulations. The Building Regulations Board has been retained but its role greatly weakened. It is referred to as Building Regulations Committee in the new planning act and has solely an advisory role.

Responsibilities relating to building regulations have been transferred to the new Planning Authority.

Integrating building regulations with planning creates confusion in that the distinction between the two becomes blurred. Inevitably, this will result in less importance being given to building regulations and this will be detrimental to the quality of construction.

The way building regulations and planning have been integrated suggests a poor understanding of what building regulations is about. Building regulations refers to the way buildings are built including building technologies and materials. Planning is about how buildings fit into and impact the surrounding context. It may be that the reason for integrating the two is sanitary regulations but this is only one small element of building regulations. There are many other aspects of building regulations and the likelihood is that these will be totally ignored because of the integration of building regulations into the planning system.

It is recommended that all provisions relating to building regulations are removed from the new DPA, and that the Building Regulations Act is retained as is. If government is intent on making changes to the Building Regulations Act of 2011, then there should be a proper consultation process with all stakeholders.

Further comments on the new set-up for building regulations: Decisions relating to building regulations (DPA article 64 (1) (b) ) and licences/registration of contractors (DPA article 64 (1) (d) ) are under the responsibility of the Planning Board but then there are no members of the Board (DPA article 63 (2) ) who are ‘well versed in matters related to building construction or health and safety or building services’ (as are required for the BR Board as per Building Regulations Act article 3 (1) ). On the other hand, the Executive Council has two permanent members who are knowledgeable in building construction in spite not being required to take decision relating to building regulations.

With new Building Regulations Committee (DPA article 62(1) ), the two representatives of civil society on the BRB have been removed: namely that of the Kamra tal-Periti and of the Chamber of Engineers (Building Regulations Act, article 3).
SUBMISSION NO. 11 – RECEIVED FROM: NATURE TRUST MALTA

Nature Trust Malta (NTM) fully endorses the document prepared by Din l-Art Helwa and shown on the link hereunder.


Furthermore Nature Trust insists that:

1. Environmental NGO’s which are consulted, must be registered with the Commissioner for Voluntary organizations;

2. Should any Authority require an expert/representative from an eNGO, such experts/representatives must be chosen by the NGOs themselves with consensus amongst them, and not hand-picked by a Minister or Authority official.
MEPA Demerger – GRTU Position Paper

Following an internal consultation exercise carried out with its members, GRTU is pleased to present its official feedback with regards to the three acts related to the MEPA demerger.

In general GRTU sees the proposed changes as positive since no additional costs are envisaged and the proposal aims at minimising bureaucracy. Another positive proposal being put forward is that the time window for objections will be limited to 30 days, this we believe should accelerate the process.

GRTU has however also a number of reservations and feels that a number of elements require clarification.

• BOARD

GRTU believes that the interests represented on the Planning Authority Board should be balanced. As such it is important that apart from eNGOs, there would also be members representing the interest of enterprises represented on the board. GRTU believes that an organisation such as GRTU should sit on the board because it represents a wide range of interests and users of the Authority’s service. These range from interests in normal commercial development, specific groups for which there are specific policies as well as horizontal issues such as renewable energy and energy conservation.

• PLANS AND POLICIES

It appears that the acts propose for the plans and policies to no longer be binding and the element of discretion is to become prevalent. GRTU feels this will drastically weaken the applicant position even when the case is taken to court.

It is important that businesses have a certain amount of assurance in the policies they are applying under and the human element is limited as much as possible in decision taking to avoid discrimination and injustice.

• MERGER OF THE MALTA RESOURCES AUTHORITY (MRA) AND ENVIRONMENT AUTHORITY (EA)

The MRA/EA merger requires more clarity. From information gathered during the public consultation meeting it appears that this new merged authority will be an Environment and Resources Authority (ERA). This however is not explained clearly in the acts.

GRTU feels that so far unfortunately, having the functions of a regulator and promoter of renewable energy within the same authority has not reached the desired results. Year after year Malta classifies in the last positions with regards to renewable energy levels as a percentage of total energy and compared with fossil fuel derived energy, in
all forms and shapes. To make matters worse, not only has Malta been regressive enough to negotiate and lower its E.U. 2020 targets, but this year Eurostat has even reported an increase in emissions in Malta by 2.5%, 1 of only 6 E.U. countries to report a rise.

With supply and uptake of schemes repeatedly over-subscribed, it is clear the weak link is promotion of relatively new technologies such as Combined Heat and Power technology, heat pumps and Geo-thermal. Promotion of the renewable energy sector has to be done in cooperation and partnership with the private sector (through a PPP for example) as the sector that constantly seeks to introduce innovative technologies and comes up with innovative ideas. When it comes to promotion we need to be proactive and stop hiding behind the bureaucratic structure. GRTU alone has been actively and successfully promoting the renewable energy sector for the last five years.

• OUTLINE PERMITS

GRTU notes that the possibility to obtain an Outline Permit is being re-introduced. Whilst GRTU views this as a positive move, it has reservations regarding the weight being given to such permits. GRTU believes that once an outline permit is issued, this should become binding. The difference between the outline permit as proposed and a full development permit is just the fees paid to the PA. Therefore once an outline permit is issued, a permit upon which entrepreneurs might base important and costly decisions such as the acquisition of property, it should become irrevocable and the applicant should only be asked to pay the PA fees.

• REGULARISATION

Regularisation is a very delicate issue and this should be implemented very carefully, through the most transparent and fairest methods. GRTU believes that this should also be done in full respect to our cultural heritage.

• CONFLICTING AUTHORITIES

It is being proposed that the PA may ignore negative recommendations made by other authorities such as the MTA, the Cultural Heritage Superintendent, the Environmental Health Dept. and other entities. GRTU would like a clarification on what happens when one of these authorities objects to a permit which the PA approves of. Will these authorities be obliged to issue their respective licenses for a business to operate? Would the Cultural Heritage Superintendent, who has the power to stop a development even if this has the necessary permit by the PA be able to use this power?

• NATIONAL INTEREST

In article 72 (3) of the planning and development act, it is proposed that the minister may override the PA if a project is deemed of ‘national interest’. GRTU is not in agreement that a Minister should have such powers.
Opinion paper by the Interdiocesan Commission for the Environment (KA) on the three Bills relating to Development Planning, Environment Protection and the Environment and Planning Review Tribunal

Having proposed the idea of the demerger of MEPA in 2009 (before it was ever proposed as an electoral promise), the KA has issued this opinion paper to further clarify its position on the issue and thus clear up any misinterpretation of its original stance. The KA has reviewed the three Bills which aim to split MEPA into two Authorities. The comments in this opinion paper are restricted to those Articles in the Bills regarding which the KA has reservations, some of them very serious. The KA looks forward to a healthy discussion on comments that have been made and that will be made in the coming weeks prior to the debate at Committee Stage in Parliament. The KA gives its support to any efforts that will strive to amend the proposed Bills in a spirit of good sense for the common good and well-being of the population of the Maltese Islands through better governance in the management of the environment.

The KA would like to remind all members of Parliament that serving their country is not equivalent to serving an interest group which seeks only to reap fast profits by exploiting the natural environment or intensifying construction in urban environments which undermines rather than improves the quality of life of citizens.

In a statement addressed to political parties prior to the 2013 general elections, the KA had already expressed itself in favour of splitting the environment from the planning function so that the environment can be given greater protection since, in the its view, MEPA was not being effective enough in protecting the natural environment. There would not have been a need for the demerger had MEPA functioned as it was supposed to function, i.e. actively and effectively protect our limited land resources. However, the KA sadly notes that beyond the rhetoric and the marketing efforts currently being made to portray positively the splitting of the environment and the planning functions and creating two new authorities, the proposed Bills will make the environment a big loser due to weakening of the development planning function that was introduced after years of environmental pillaging due to direct Ministerial involvement in regulating development in the country. The KA is disappointed that the Bills, as they currently stand, are a step backwards in proper development planning and the protection of the environment cultural heritage.

We appeal to all members of Parliament not to shirk their responsibility and keep their conscience at rest by resorting to the reasoning that separating the planning from the environment functions was an electoral pledge. The KA sees the current proposals simply as the collapse of governance in the Planning Authority coupled with direct legally-sanctioned ministerial involvement.
The KA would have expected that after a planning system that has been in place for many years, the reasons for including new articles or removing others in the Bills when compared to the Acts that they are replacing would have been clearly spelt out together with the publication of the Bills. The weaknesses of the Bills are aggravated by the fact that the replacement of the Structure Plan, that is the Strategic Plan for the Environment and Development which has recently been approved by Parliament is itself a very weak document which does not even deserve the adjective “Strategic”. Moreover, the changes to policies that have been carried out render development in Outside Development Zones much easier.

The KA is seriously worried that the Executive Council of the Planning Authority will have an Executive Chairman who apart from the powers granted specifically to the holder of this post (instead of granting such powers to the Authority) will also be the Minister’s puppet. This is emphasized by the proposal that such Executive Chairman, who is to be appointed by the minister, “may be dismissed by the Minister at any time for a just cause and it shall be a just cause if the Minister determines that he has not achieved the targets and objectives set for him by the Minister”. The proposal that the Minister has the choice of approving or rejecting the appointments of Directors of the Planning Authority will demote the Planning Authority from an Authority to a private secretariat of the Minister where appointments of key, and less key, people are concerned. In fact minor appointments such as secretaries of advisory bodies to the Planning Board are also to be appointed by the Minister. The KA will continue to oppose such interferences as it has done in the past.

The KA is disappointed that the proposed Bill on setting up the Environment Protection Authority is one which provides no teeth, or even a jaw, for such an Authority that was supposed to provide greater protection to the land and sea environment than we have witnessed so far. The land environment is held in trust by Government for the needs of the current generations without compromising those of future generations. Government has to act as a steward of such a national treasure and not introduce lax procedures that undermine the protection of the land and sea environment.

In order for the Environment Authority to effectively serve the common good through environmental protection, the splitting of the planning and environment functions in two authorities should result in more effective, less cosmetic, co-sharing and co-responsibility in the decision-making process in the formulation of plans, policies and development orders and the granting of development permits. If such co-sharing and co-responsibility is not implemented then the environment will be given a great disservice.

With the proposed competencies of members on the Environment and Planning Review Tribunal, the planning system in Malta is moving further towards a legalistic approach to planning which risks dispensing with a holistic approach to sustainable development. The product will be a planning system which gives less consideration to the effects of projects on the ground and more consideration on legalistic issues which compound matters on the ground. This situation encourages those who want to ‘play the system’ to discover ways of circumventing the law and continue unabated with their unsustainable plans.
The KA’s detailed opinion of the three Bills, article by article, is elaborated below. The comments are listed in the order of the articles and are not listed in accordance with the seriousness of the issue discussed.

**Development Planning Bill**

**Art 7(2) (d):** The Bill proposes that one of the functions of the Authority shall be to “facilitate and coordinate the permit granting process for projects of common interest”. Projects of common interest are defined as “projects necessary to implement the energy infrastructure priority corridors and areas set out in Annex I to Regulation EC no 347/2013 and which is part of the Union list of projectsof common interest referred to in article 3 of Regulation EC no 347/2013 or other regulations applicable from time to time”.

**Comment:** The KA cannot understand the role of the Authority “to facilitate and coordinate the permit granting process”. If the Authority through its Planning Board is to grant permits, the fact that it would facilitate and coordinate the permit granting process for such projects, creates a conflict of interest for the Authority. The latter either sets policy (through its Executive Council) or grants permits (through its Planning Board). But facilitating and granting permits at the same time points to a confusion of roles and functions...and confusion has always led to abuse.

**Recommendation:** Art 7(2)(d) needs to be explained otherwise it should be deleted.

- **Art 7(4):** The Executive Council is to be fully informed of Government’s “strategic directions” relative to development planning and “to monitor the proper execution of such policies”.

**Comment:** A strategic direction is one thing while the execution and monitoring of such policies is a totally different matter. A strategic direction has to be translated into detailed policies which should be backed up by reasoned justifications for adopting one policy option instead of another in order to achieve the strategy. This sub article is superfluous since the strategic direction will have been already stated in the SPED (even though the process for the adoption of the SPED has been flawed especially due to the lack of proper reasoned justification for its clauses). Strategic directions, in themselves, should last for a number of
years and are not changed very often.

**Recommendation:** A Spatial Plan for the Environment and Development (SPED) that is formulated through the process that is currently available in the law (that is the current Development Planning Act with all the requirements of justifications for the policies) should be enough to have the strategic direction of Government known to all and sundry. The strategic direction cannot become equivalent to specific *ad hoc* projects.

- **Art 10 (1) and Art 37:** It is proposed that there would be an Executive Chairperson appointed by the Minister.

  **Comment:** For improved governance, there should not be an executive chairman. The Executive Council should delegate administrative and organizational duties to a CEO and the board should be headed by a chairman. The proposal that the executive chairperson, and not the Executive Council, shall be granted powers directly by the Minister will create a system of too much familiarity between the Minister and just one person in the Council. This is a system which introduces very weak governance that will not leave space for checks and balances. It will also create the environment for corrupt practices. A strong board headed by a chairman and to which board the CEO is answerable will create a better governance structure than the proposed setup.

  Ministerial involvement is aggravated by the proposal that the secretary of both the Executive Council and the Planning Board are to be appointed by the Minister. Moreover, the fact that the Executive Chairperson will be appointed by the Minister and that one of the functions of the Chairperson is to “carry out such other functions and duties as the Minister may assign to him from time to time” is a guarantee that there will be no checks and balances.

  According to the KA, it is dangerous that if the Executive Chairperson does not play game to the Minister’s instructions then the Minister may dismiss him and this “shall be a just cause”. Government may well decide to forget about splitting MEPA into two authorities and instead create two Government departments where the Minister can do as he pleases.

  Why call an entity an authority when it cannot appoint its own top staff, and where the Executive Chairman has to be on the Minister’s leash all the time? The situation of total control by the Minister of the top officers of the Authority is confirmed by the proposal in Art 39 (2) that the directors of the different directorates shall be appointed only if the Minister approves of such
appointments. This procedure puts the Authority in a worse situation than a Government Department where Directors are appointed by the Public Service Commission, a body set up by the Constitution which is independent of the Minister or Government.

The KA is duty bound to make it clear and emphasize that creating a situation where the Minister exercises total control over the Executive Chairperson who has wide powers in the formulation of plans and policies and, more importantly, in the recommendations that are made to the Planning Board that will be taking decisions on development applications is paving the way for corrupt practices.. Since the setting of the Planning Authority in 1992, following years of abuse in the issue of development permits because of direct ministerial involvement in the development planning process, the proposed Development Planning Bill is again opening up such possibility for abuse.

**Recommendation:** The Executive Council should be headed by a Chairman appointed by the Minister. There should not be an Executive Chairperson but a CEO who will be appointed by a normal call for applications and the successful candidate appointed on the basis of competence and integrity and not because he is a Minister’s puppet. The Minister should not have any say whatsoever in such an appointment so that the successful candidate serves the country and not a particular minister.

- **Art 32(1):** Declaration of assets.

  **Comment:** The declaration of assets should not be restricted to members of appointed bodies.

  **Recommendation:** The declaration of assets should be submitted by all persons appointed to positions under the Act as well as to high-ranking officers of the Authority. Moreover, the declaration of assets should be updated annually and apply also to the spouses of such persons and officers.

- **Art 33 (2):** Information to be accessible to the public.

  **Comment:** Apart from environmental impact statements, environmental planning statements and traffic impact assessments, documents that would be accessible to the public should also include feasibility studies that would have been submitted to justify a development outside development zone. In this way, the methodology and figures used to contest why a project cannot
be feasible within development zones can be examined and contested. The reason that will probably be quoted for not making this information available would be that such information is commercially sensitive. If commercial information is sensitive, then the safeguarding of the Maltese countryside is equally sensitive at a national level.

The KA wants to make it clear that it does not agree with the approach that was adopted in SPED paving the way for undefined developments outside development zones if they are just not feasible within development zones.

**Recommendation:** At the end of the second proviso of Art 33(2), there should be added “iv. feasibility studies carried out to justify a development outside instead of within a development zone”.

- **Art 36:** The composition of the Executive Council is proposed to be made up of the Executive Chairperson, two permanent members who are the Chairman and Deputy Chairman of the Planning Board, two permanent members who are well versed in “building construction or health and safety or building services”, and two temporary members from the Malta Environment Authority and any other temporary member/s from a list of organizations according to what is being discussed by the Executive Council. The Executive Council will be responsible for all directorates at the Planning Authority.

**Comment:** The composition of the Executive Council is weak. A body such as the Executive Council which is responsible for plan and policy formulation and all Directorates of the Authority should have a wider representation on its Board in a similar way that the current Authority has and which the proposed Planning Board would have.

It is at the formulation stage of plans and policies that the different interests have to be resolved and to ensure that undue development pressures are not made to bear on the members voting for a plan or policy.

**Recommendation:** The Executive Council should be composed along the same lines of the Planning Board. Members of the Malta Environment Authority should be permanent members of the Executive Council as well as members of the Superintendence of Cultural Heritage. It is unacceptable that such members are invited “at the discretion of the Executive Chairperson”. Cultural heritage is a hugely important asset for the country both in terms of its intrinsic value and in terms of its economic benefits to the country. No mistakes are to be allowed which would undermine the cultural heritage.

A preferred alternative would be to scrap altogether the Executive Council and
have the Planning Board act as the Authority as is presently the case, headed by a Chairman which would then appoint the CEO. With the environment protection function shifting to the Environment Authority, the Planning Authority Board should be able to carry out the functions of policy formulation, development control and management of the Planning Authority as a whole.

- **Art 37**: The Executive Council is proposed to be chaired by an Executive Chairperson whose duties include to “carry out such other functions and duties as the Minister may assign to him from time to time”. He may also “be dismissed by the Minister at any time for a just cause and it shall be a just cause if the Minister determines that he has not achieved the targets and objectives set for him by the Minister”.

  **Comment**: This article relegates the proposed Executive chairperson to a puppet of the Minister. This article flushes down the drain all sense of organizational governance in the Authority.

According to the KA, this article proposes that if the Executive Chairperson in his/her conscience cannot accede to a request by the Minister then he/she “may be dismissed by the Minister at any time for a just cause and it shall be a just cause if the Minister determines that he has not achieved the targets and objectives set for him by the Minister”. Experience has shown that the “targets” and “objectives” can also mean orders that the Minister gives to the Executive Chairperson to change recommendations on development applications prepared by case officers and/or to exert pressure on Directors and case officers to amend recommendations for refusing or approving applications for development permits.

  **Recommendation**: Delete all references in the Act relating to the Minister’s powers to influence anybody in the Authority in carrying out their functions. The Minister should not be involved at all in appointments of employees of the Authority. There should be an independent Chairman appointed by the Minister but the role as currently envisaged for the Executive Chairman should be taken up by a CEO who will be appointed by the Council following a call for applications.

- **Art 36, 38, 40-44**: The Executive Council and the formulation of plans and policies.

  **Comment**: The KA is, in principle, in favour of the split between the Planning function and the Environment Protection function because it wants the environment to be better protected in order to achieve sustainable
development. However, having two *ad hoc* (and not permanent) members of the Environment Authority on the Executive Council, is not enough for the Environment Authority to be able to safeguard the interests of sustainable development in the formulation of plans and policies.

**Recommendation:** The KA proposes that the spatial strategy for environment and development, subsidiary plans and policies have also to be approved by the Malta Environment Authority and the Minister responsible for it before they can have effect.

The KA further suggests that plans and policies have also to be approved by the Superintendence of Cultural Heritage and the Minister responsible for it in so far as they have a direct or indirect impact on cultural heritage. In this way, ministerial powers are checked both through the institutions and through inter-ministerial checks and balances. The country cannot afford further unintentional mistakes or worse, intended damage, to its natural and cultural heritage.

- **Art 38 (1)(l)(ii):** publication of official manual

  **Comment:** publication only of amendments to plans, policies and regulations may not give the whole picture of their impact on existing policy and plans.

  **Recommendation:** the KA suggests that any main or subsidiary legislation, plan or policy which is amended should also be published in a consolidated version.

- **Art 43:** Strategic Environment Assessment (SEA) and other assessments

  **Comment:** The direction by the Minister to carry out an SEA or other assessments should not affect the powers of the Environment Authority to instruct the Planning Authority to carry out an SEA as proposed in the Environment Protection Bill. This would serve as a check on the governance of the Planning Authority.

  **Recommendation:** This article should state that such direction by the Minister does not prejudice any order by the Environment Authority to carry out an SEA that is issued under the Environment Protection Act.

- **Art 44:** Spatial Strategy for Environment and Development.

  **Comment:** As soon as the Development Planning Bill becomes law, the SPED
will be short of the requirements as laid down by the law. The SPED does not provide any evidence that it has been prepared or contains the input for its formulation as required by the Bill. Art 44 (4) has also to stipulate that the surveys mentioned have also to be published. Moreover, the policies or elements of the Strategy need to be justified.

**Recommendation:** The SPED needs to be revisited in order to live up to its name of being a strategy. Art 44 needs to be amended so that the SPED’s policies and elements of the strategy need to be justified through surveys and studies that would have been carried out prior to its drafting and which are referred to in subarticle 4. Moreover the SPED should be accompanied by a document showing the key options that are available to implement the strategy and why the preferred strategic options are chosen out of the available ones.

The process of drawing up the SPED should include a public consultation on the strategic directions that Cabinet would have prepared in consultation with the Authority. Different options which lead to the attainment of the strategic directions will be studied by the Authority. The options should then be open for public consultation and then decisions taken on the way forward with Cabinet approval. The final draft for public consultation and the approved SPED should be accompanied with an explanation of why a strategic direction was chosen instead of other available options. It should also be accompanied by surveys and studies which justify the chosen strategic options.

- **Art. 45(3):** Responses to representations made to the drafting of the SPED.
  
  **Comment:** Providing “responses” to the representations made is not enough.

  **Recommendation:** The “responses” that the Executive Council has to provide have to be detailed reasons for accepting or rejecting any representations made.

- **Art. 46:** Documents to be published
  
  **Comment:** The Bill does not allow for the publication of all documents used in drawing up the SPED.

  **Recommendation:** All documents referred to in Art 45(3) are to be published, including the representations received within the consultation
period and the responses to the representations made, including the
detailed reasons for accepting or rejecting them.

• Art 52: Order of precedence of plans and policies in case of conflict

**Comment:** The order of precedence of plans and policies in the case of a conflict makes it absolutely important that the SPED is drawn up in a very careful way, unlike the exercise carried out for the one approved recently by Parliament. If the Spatial Strategy is flawed, as the KA has already expressed itself on the matter, then irreversible mistakes in the environment and land-use planning will ensue.

Where a conflict between plans and policies arises, the principle should be introduced to give precedence to the policy or plan that provides better protection to the environment. For example, where a management plan of a Natura 2000 sites provides for some actions that grant a higher protection to the Natura 2000 site than any other policy or plan, then the local plan, subject plan or Spatial Strategy should not override such a “lower hierarchy” plan or policy.

The same applies to current plans and policies and emerging plans and policies. In case there is a conflict between a current plan or policy and an emerging plan or policy, precedence should be given to the plan or policy that provides better environmental protection. The negative impact of such a development permit application may not be evident until such time that it is being reviewed in the context of the current policies. If such plans or policies are deficient in some way or another, then for the sake of the common good, development permit applications have also to take into consideration emerging plans and policies.

The approach to planning should be one that effectively safeguards sustainable development and not allow consultants to find loopholes in, and conflicts between, policies and plans, thus “rewarding” such consultants for finding such deficiencies. Government has to decide what is going to have precedence: protection of the environment and sustainable development or facilitation of projects that make use of loopholes in the law, plans and policies in order to promote restricted interests.

**Recommendation:** Where there is conflict between plans and policies, precedence should be given to those plans and policies that provide a higher environmental protection and higher level of sustainable development including emerging plans and policies which are already approved by the
Authority but not yet so by the Minister.

- **Art 54(4):** The right to an appeal in case of minor modifications

**Comment:** The KA cannot understand why in the case of an application which seeks to change the zoning from, for example, residential to commercial, an appeal cannot be lodged by the residents who are aggrieved by such a decision.

Prior to an appeal, that is at application stage, minor modifications to plans which seek a change in zoning (example from residential to commercial or industrial), the approval of the Malta Environment Authority should be required prior to a permit being granted since such changes may have an impact on the wellbeing of residents such as, but not limited to, air quality and noise levels in a neighbourhood.

**Recommendation:** The right of appeal should be provided to third parties not only in the case of changes in the alignment of roads and buildings in a local plan, that is Art 54(4)(2)(a), but also in the case of changes in zoning, that is Art 54(4)(2)(b).

In the case of applications for minor modifications to plans which seek the change in zoning, the approval of the Malta Environment Authority should be required.

- **Art 55: Development Orders

**Comment:** Development orders that permit developments without the need for a full development permit application have increased in scope in the last years. Although in many cases the orders make sense, there should be a revision of these orders especially in the case of outside development zones in order to ensure that such orders are not allowing developments which would otherwise have not been acceptable if the planning system provided for better scrutiny of such developments.

**Recommendation:** Development Orders should be reviewed in order to ensure that the application of multiple development orders will not result in a cumulative development which would otherwise have required a full development permit in order to safeguard the interest of non-applicants.
A development order should allow for the possibility of residents of properties abutting the site where the development order is to take place to submit their comments on a development order proposal.

The KA invites the Commissioner for Environment and Planning at the Office of the Ombudsman, an Office that is totally independent from MEPA, to carry out an assessment of Development Orders and their impact on outside Development Zones as well as Urban Areas where the individual or cumulative impact of such DNOs may have a deleterious impact on residents who would not be able to air their concerns through the planning system given that they would not be aware of the development to be carried out.

**Art 57:** Scheduling of areas

*Comment:* Scheduling of areas of landscape value should be prepared by the Malta Environment Authority and not the Planning Authority. The KA cannot understand why the scheduling, apart from the preparation, of areas falling under the remit of the Environment Authority, is to be carried out by the Executive Council of the Planning Authority. This approach needs clarification. Moreover, the descheduling of such areas cannot be decided upon only by the Planning Authority. The legislator should be careful about the different processes that are proposed to be adopted in the two authorities in the case of conservation orders.

*Recommendation:* Art 57 (1)(b) which deals with scheduling to be carried out by the Environment Authority should include also areas of landscape value. The Environment Authority should prepare and effectively schedule such areas together with “areas of natural beauty, of ecological or scientific value”. Otherwise, the KA cannot understand what autonomy the new Environment Authority will have with respect to the important conservation step of scheduling properties.

Moreover, the KA believes that the Superintendence of Cultural Heritage should also be granted powers to schedule, or order the Planning Authority to schedule, property which falls under its competence, namely “areas, buildings, structures and remains of... cultural, archaeological, architectural, historical, antiquarian(or) artistic...importance”.

Any descheduling of property which had been prepared and scheduled by the Environment Authority or the Superintendence of Cultural Heritage cannot be effective unless agreed to by the Environment Authority or the Superintendence of Cultural Heritage and the Ministers responsible for the Environment Authority or Cultural Heritage, as the case may be.
• **Art 57 (6):** Works to be carried out on scheduled property. This article states that “No works of any description should be carried out in or on any scheduled property and no scheduled property shall be demolished, altered or extended except with the permission of the Planning Board”.

**Comment:** Given that the Environment Authority is being created, then any such works or demolition should also require the permission of the Environment Authority where the scheduled property relates to areas (that is not buildings) or trees. If this consent is not forthcoming then the permit cannot be granted by the Planning Board. The same applies to applications which will affect properties that fall under the remit of the Superintendence of Cultural Heritage. Such applications should not be granted a development permit if the Superintendence of Cultural Heritage does not consent to it. The KA believes that such an amendment to the draft bill is crucial if the MEPA demerger is to be of benefit to the environment or cultural heritage. Otherwise, the split would result in further devaluation of the natural and cultural heritage.

**Recommendation:** No works of any description should be carried out in or on any scheduled property and no scheduled property shall be demolished, altered or extended except with the permission of the Planning Board and the Environment Authority (where the scheduled property relates to areas, that is not buildings, or trees) or the Superintendence of Cultural Heritage in the case of property which falls under the remit of this entity.

• **Art 57(10):** Reconsiderations of scheduling of property

**Comment:** In the case of reconsiderations of scheduling of property, permission should be required also from the Environment Authority where such scheduling relates to areas (that is not buildings) or trees. An authorization from the Superintendence of Cultural Heritage would be required in the case of properties which fall under the remit of this entity.

**Recommendation:** In the case of reconsiderations of scheduling of property, permission should also be required from Environment Authority in the case of areas (that is not buildings) or trees. An authorization from the Superintendence of Cultural Heritage would be required in the case of properties which fall under the remit of this entity.

• **Art 59:** Development Fund

**Comment:** It should be clear what projects the funds are to finance.
**Recommendation:** The KA suggests that the aims of the Development Fund should be restricted to fund conservation projects and others relating to education for sustainable development.

- **Art 60:** The Standing Committee on the Environment and Development

**Comment:** The KA believes that this Committee should have a wider role than that which is currently suggested. The fact that a Parliamentary Committee is even listed in the Bill together with other policy advisory committees does not give this Committee the importance that it should deserve.

**Recommendation:** The Standing Committee on the Environment and Development should have more powers such as: giving its views (which are not binding on the Planning Board) on any application for a project proposed in an Outside Development Zone; giving its views (which are not binding on the Planning Board) on any development application that proposes to have a height which is substantially higher that that allowed in the local plan area irrespective of whether such height is allowed by the Floor-Area-Ratio policy; vetting and asking questions to the members that are to be appointed by the Minister on all boards of the Planning Authority in order to determine whether such nominees are fit for purpose.

- **Art 63:** Voting on the Planning Board

**Comment:** The Executive Chairperson (which the KA recommends that should be replaced by a CEO who is separate from the Chairman of the Authority) should not be allowed to have a vote on the Planning Board. He is responsible for policy making and also responsible for the Directorates that draw up recommendations to the Planning Board for a decision. This proposal goes against good governance since it is concentrating too much power in the hands of one individual who is in turn directly influenced and given instructions directly by the Minister.

**Recommendation:** The Executive Chairperson, given that he is involved directly in the recommendations made to the Planning Board, should not have a vote in the Planning Board.

- **Art 64(1)(a) Function of the Planning Board to “to balance out any competing interests on the best use of the land and sea”**.
Comment: The phrase “to balance out any competing interests on the best use of the land and sea” is inappropriate. Some interests do not compete. They just run roughshod over others so there is no way how certain competing interests can be balanced out. This phrase should be deleted since it would create some legal arguments around it which will not favour sustainable development.

Recommendation: Delete the phrase “to balance out any competing interests on the best use of the land and sea”.

• **Art 64(1)(b):** Building regulations

Comment: The KA views with caution the proposal for the Planning Board to deal also with building regulations. There is the possibility that the Planning Board instead of focusing on wider issues relating to a particular application and how it impacts on other developments, the environment and well-being of people may get bogged down in certain details which should be the competence of another board.

Recommendation: The advantages and disadvantages of having the Planning Board deal also with Building Regulations need to be clearly spelt out.

• **Art 65:** The Planning Commissions and types of applications to be decided by them

Comment: The direct link between Minister and Executive Chairperson crops up again in this section. The Bill states that the Minister is to consult with the Executive Chairman when deciding which types of applications are to be dealt with by the different Planning Commissions. Good governance demands a better way of managing such an important organization.

Recommendation: The Minister should consult with the Executive Council and not with his “buddy” on the Executive Council when deciding which types of applications are to be dealt with by the different Planning Commissions.

• **Art 65:** The Planning Commissions to be composed only of three members.
**Comment:** Three is a very small number for a commission that will be deciding development applications. It has to be pointed out that such members do not enjoy the independence of judges in the exercise of their duties. So it is important that the number of members be increased to five. In such a case, the decisions of the Commission shall only be binding if they are supported by at least three members as opposed to the proposed two (Art 65(6)). In this way, pressures are made to bear less on individual members. When powers are delegated to a very small number of people, the chances of overdue pressures from interested persons and even the chance of corrupt practices will increase.

**Recommendation:** The number of members should be increased to five. In such a case, the decisions of the Commission shall only be binding if they are supported by at least three members as opposed to the proposed two. Two members of the Planning Commission should be appointed by the Environment Authority. Such membership does not mean that approval by MEA is dispensed with in those cases where such authorization from MEA is required as proposed by KA.

- **Art 65(7):** Communication of decisions

**Comment:** At law, communications should be done between Offices and not individuals.

**Recommendation:** Decisions are to be communicated to the Executive Council and not to the Executive Chairperson.

- **Art 66(3) and Art 67(3):** Agricultural Advisory Committee and the Design Advisory Committee.

**Comment:** The proposal that the Minister appoints even the secretary of advisory councils such as the Agricultural Advisory Committee and the Design Advisory Committee shows that the Bill is designed to grant too much power to the Minister even with respect to appointments relating to secretaries of such advisory committees.

The KA is surprised that there is no mention of advisory committees relating to the natural and cultural heritage. This omission makes it all the more important to adopt the KA’s suggestion to have the Malta Environment Authority and the Superintendence of Cultural Heritage exercise a veto on
projects that affect areas and properties that fall under the competence of these entities.

**Recommendation:** The KA believes that such appointments should be left to the Authority to decide if the Authority is worth its name.

With respect to the Agricultural Advisory Committee, members should be appointed by the Minister responsible for Agriculture and the Minister responsible for the Environment and not by the Minister responsible for the Authority. This committee should also have independent members who are not Government employees.

The same applies to the Design Advisory Committee. This Committee which should have at least five members and its members appointed by the Kamra tal-Periti and the Minister responsible for Cultural Heritage so that the message is conveyed that new architecture has to come up with new ways on how to improve the built environment in Malta with new designs that also are sensitive to Malta’s cultural heritage.

- **Art 71(2)(a): Outline permits**

  **Comment:** Special attention has to be made with respect to outline permits. In the past, outline permits have been granted which then compromised the full development permission. An outline permit in itself cannot go into details. However, in many cases the number of apartments or floors for the development is decided at outline permit stage. When details are then worked out and a full application is presented, the succeeding planning commissions express dismay that their hands are bound because of a previous decision relating to an outline permit. This issue has to be studied further so that mistakes from the past are not repeated.

  **Recommendation:** The granting of outline permits needs to be rethought. The KA invites the Commissioner for Environment and Planning at the Office of the Ombudsman to carry out an exercise on the experience of outline permits and whether this practice has served the interests of a proper planning system which does not compromise good-sense decision-making in the interests of sustainable development.

- **Art 72(2) Plans and policies to be considered when deciding on an application**

  **Comment:** In case there is a conflict between an approved plan or policy and an emerging plan or policy, precedence should be given to the plan or policy
that provides better environmental protection. The negative impact of a development permit application may not be evident until such time that such application is being reviewed in the context of the current policies. If such plans or policies are deficient in some way or another, then for the sake of the common good, decisions relating to development permit applications have also to take into consideration emerging plans and policies. The approach to planning should be one that effectively safeguards sustainable development and not allow consultants to find loopholes in, and conflicts between, policies and plans thus “rewarding” such consultants for finding such deficiencies. Government has to decide what is going to have precedence: protection of the environment and sustainable development or facilitation of projects that make use of loopholes in the law, plans and policies in order to promote restricted interests.

**Recommendation:** Where there is conflict between plans and policies, precedence should be given to those plans and policies that provide a higher environmental protection and higher level of sustainable development including emerging plans and policies which are already approved by the Authority but not yet so by the Minister.

- **Art 72(2)(d) Surrounding commitments**

  **Comment:** The meaning “surrounding commitments” need to be defined when the Planning Commission grants a permit based on such a reasoning. Such term can be stretched too much to justify a development which would otherwise be undesirable.

  **Recommendation:** What qualifies as “surrounding” and “commitment” needs to be defined. In any case this definition should not apply to applications which are outside development zone.

- **Art 72(8) and (9): Mining of minerals**

  **Comment:** The KA believes that in the case of mining of minerals, given their environmental impact, an application for such development has also to require the authorization of the Environment Authority and if it affects an area or property under the competence of the Superintendence of Cultural Heritage, the authorization of such entity as well.

  **Recommendation:** An application for the mining of minerals is to require also the authorization of the Environment Authority and, if it affects an area or property under the competence of the Superintendence of Cultural Heritage, the authorization of such entity as well.
• **Art 73(5):** The Planning Commission’s right to demand a bond

**Comment:** The emphasis in the proviso to this subarticle is that the bond should be commensurate with the nature of the project. However it does not make reference to the environmental risks that the project may pose.

**Recommendation:** The proviso to Art 73(5) should be qualified to the effect that the Planning Board has to take into consideration the risk to the environment of such project or activity. The bond has to be commensurate also with the risk that the project poses to the environment.

• **Art 78(3):** Call-in procedure by the Minister

**Comment:** The procedure omits the publication of the Minister’s recommendation.

**Recommendation:** The Minister’s recommendation with respect to a project that is referred for decision by Cabinet should be published and not merely made “available to the public”.

• **Art 84(1):** Public consultation period for regulations.

**Comment:** The proposed time frame of two weeks for public consultation is deemed to be too short. Considering what the public has to say is not an option, but an essential component of sustainable development and planning. Moreover, reasons for “urgency” are expected to be those related to factors that are exclusively outside the control of Government.

**Recommendation:** the period for public consultation for regulations should be four weeks instead of two. Moreover, in the case of Art 84(2), where this timeframe is dispensed with for reasons of urgency, the Minister has to provide detailed reasons why such regulations are urgent.

• **Art 87:** Building Regulations

**Comments:** The KA expresses reservation about the inclusion of Building Regulations in the functions of the Authority. If this suggestion creates an improved built environment to be enjoyed by applicants and neighbors, then it is a commendable move. However, if this added function will create excessive focus on the building itself without giving due attention to its external impacts on the environment and on adjacent properties then the
proposal to introduce this function should be rethought.

The Planning Board is not being obliged to provide detailed reasons for the dispensation or relaxation of building regulations for certain projects. Moreover, there is no right of appeal to third parties against dispensation or relaxation of building regulations.

**Recommendation:** The inclusion of Building Regulations as one of the functions of the Authority has to be explained and justified.

The Planning Board has to provide detailed reasons for the dispensation or relaxation of building regulations for certain projects.

An appeal against dispensation or relaxation of building regulations should be provided to third parties.

- **Art 88(2)(a) & (b):** Design, construction, material alterations or extensions of buildings

  **Comment:** Clarification is required with respect to these two paragraphs. Where is the demarcation line between a planning issue and a building regulation issue?

  **Recommendation:** Paragraphs (a) and (b) need to be clarified so as to make it clear that issues relating to planning policies (including the design, building, alterations and extensions of buildings) do not become the remit of building regulations instead of planning policies.

- **Art 97(9):** Dismissal of application or appeal in case of non-observance of stop notice.

  **Comment:** The options of creating legal loopholes in enforcement procedures should be restricted further. In order to send the right signal to those who disregard completely any stop and/or enforcement notices, this sub-article needs to be amended to ensure that applications to regularize an activity or a development or an appeal to the Tribunal from a refusal “shall be dismissed” and not merely “may be dismissed” if the stop and/or enforcement notice have not been complied with.

  **Recommendation:** Applications to regularize an activity or a development or an appeal to the Tribunal from a refusal “shall be dismissed” and not merely “may be dismissed” if the stop and/or
enforcement notice have not been complied with.

- **First Schedule**: Provisions with respect to the Executive Council

  **Comment**: The KA believes that this should be amended along the lines suggested in this opinion paper including rethinking whether there should be an executive council at all. If the Executive Council is to be retained, then it should be composed along the same lines of the Planning Board. Members of the Malta Environment Authority should be permanent members of the Executive Council as well as members of the Superintendence of Cultural Heritage.

  Another much preferred alternative would be to scrap altogether the idea of an Executive Council and have the Planning Board act as the Authority as is presently the case, headed by a Chairman which would then appoint the CEO. With the environment protection function shifting to the Environment Authority, the Planning Authority Board should be able to carry out the functions of policy formulation, development control and management of the Planning Authority as a whole.

  **Recommendation**: Scrap the idea of an Executive Council headed by an Executive Chairman and have the Planning Board act as the Authority as is presently the case, headed by a Chairman which would then appoint the CEO.

- **Second Schedule para 10**: Provisions relating to the Planning Board and the Planning Commissions

  **Comments**: Recommendations should be prepared by the Directorates. The Executive Chairperson, who according to the Bill, will be very close to the Minister and fired at will by the Minister, cannot be relied on to exercise independent professional judgement. Indeed, no self-respecting professional should accept to be in such a position. In the proposed position, the Executive Chairperson can amend any recommendation that is prepared by any of the Directorates on the instruction of the Minister.

  **Recommendations**: Recommendations for approving or refusing a development application should be prepared by the Directorates and not amended by the Executive Chairperson.

- **Third Schedule**: The Standing Committee on Environment and
Development Planning.

Comment: The role of this Committee is restricted in the current Bill.

Recommendation: The Standing Committee on the Environment and Development should have more powers such as: giving its views (which are not binding on the Planning Board) on any application for a project proposed in an Outside Development Zone; giving its views (which are not binding on the Planning Board) on any development application that proposes to have a height which is substantially higher that that allowed in the local plan area irrespective of whether such height is allowed by the Floor-Area-Ratio policy; vetting and asking questions to the members that are to be appointed by the Minister on all boards of the Planning Authority in order to determine whether such nominees are fit for purpose.

Environment Protection Bill

- **Art 5:** This states that two articles relating to the duty to protect the environment by any person including Government “shall not be directly enforceable in any court”.

  Comment: The KA believes that ideals that are not enforceable in a court have no place in legislation. Too many statements have been made purportedly in favour of the environment. But the resolve to turn words into concrete actions has often been lacking. The KA expected that following the promise of setting up a new Authority to protect the environment, these high ideals from the current law would have been resulted in concrete procedures, functions and powers for the new Authority with respect to the environment on land and sea. Marketing efforts and nice words about protecting the environment are now beyond their “sell-by” date.

- **Art 6(2)(b)(ii) Members of the Authority**

  Comment: It is interesting that “good governance” is being mentioned as a reason for appointing independent members on the Authority when good governance is being seriously eroded in the proposed Development Planning Bill as our comments for the latter Bill explain.

- **Art 8(7):** Government to inform Authority of its strategic directions
Comments: The Bill states that the Authority is to be fully informed of Government’s “strategic directions relative to the environment” and “to monitor the proper execution of such policies”. A strategic direction is one thing while the execution and monitoring of such policies is a totally different matter. A strategic direction has to be translated into detailed policies which are backed up by reasoned justifications for adopting one policy instead of another in order to achieve the strategy. This subarticle is superfluous since the strategic direction will be stated in the Strategy already. Strategic directions, in themselves, should last for a number of years and are not changed very often.

Recommendation: The National Strategy for the Environment should be enough to have the strategic direction of Government known to all and sundry. The strategic direction cannot become equivalent to specific ad hoc projects or activities.

- **Art 19 (1):** Authority’s expenditure

  Comment: This subarticle is an error of cut-and-paste from the Development Planning Bill since no “Executive Council” is envisaged for the Environment Authority.

  Recommendation: Substitute “Executive Council” with “Authority”

- **Art 31:** The Standing Committee on the Environment and Development

  Comment: This Committee should have a wider role than that which is currently suggested. The Committee should vet and ask questions to the members that are to be appointed by the Minister on all boards of the Authority in order to determine whether such nominees are fit for purpose.

- **Art 32(3):** The Environment Fund

  Comment: It should be clear what projects the Environmental Fund is to finance.

  Recommendation: The KA suggests that the aims of the Environment Fund should be restricted to fund conservation and environmental restoration projects and other projects relating to education for sustainable development.
• **Art 37(1): Declaration of assets**

**Comment:** The declaration of assets should not be restricted to members of appointed bodies.

**Recommendation:** The declaration of assets should be submitted by all persons appointed to positions under the Act as well as to high-ranking officers of the Authority. Moreover, the declaration of assets should be updated annually and apply also to the spouses of such persons and officers.

• **Art 41-43: Plans and Policies**

**Comment:** Rightly so, the “protection and effective management of the environment shall be regulated by plans, policies and regulations” (Art 41). The KA totally agrees that the definition of “environment” also means “land” and “sea” (Art 2). As explained in our comments under the Development Planning Bill, the KA proposes that the Spatial Strategy for Environment and Development, subsidiary plans and policies, development orders, scheduling and conservation orders, and emergency conservation orders (hereinafter referred to as the “plans, policies and orders”) have also to be approved by the Malta Environment Authority before they can have effect.

The KA has always been in favour of the split between the Planning function and the Environment Protection function because it wanted the environment to be better protected. In the KA’s view, such a role for the Malta Environment Authority is crucial if it is to be relevant in the “protection and effective management of the environment”.

If the Authority does not agree with a plan or policy, then it should send its position statement to the Minister as is laid down in Art 43(4)(5). The process should be designed in a way that it would be the two Authorities (that is the Planning Authority and the Environment Authority) that strive to resolve the conflict between them. If this is not resolved, then the issue should be resolved between the Ministers responsible for the two Authorities and if need be, at Cabinet level.

**Recommendation:** the KA proposes that the Spatial Strategy for Environment and Development, subsidiary plans and policies, development orders, scheduling and conservation orders, and emergency conservation orders (hereinafter referred to as the “plans, policies and orders”) have also to be approved by the Environment Authority before they can have effect. If a
conflict between the Planning Authority and the Environment Authority is not resolved between them, then the issue should be resolved between the Ministers responsible for the two Authorities and if need be, at Cabinet level.

- **Art 45:** National Strategy for the Environment. The Bill states that the “Minister shall prepare a policy document outlining the National Strategy for the Environment”.

  **Comment:** The National Strategy for the Environment should not just be an “outline”. The KA does not agree with the proposed process of formulating the strategy. Given that the environment affects and is affected by various economic and social considerations while taking into consideration the needs of future generations, the KA believes that it should be Cabinet, and not the Minister, that should draw up high-level strategic directions for the formulation of the Strategy.

  These strategic directions should be open for public consultation and then it would be the Authority that would draw up the National Strategy itself. There will be different options which lead to the attainment of the strategic directions. The options that would come out of the drawing up of the strategy should then be open for public consultation and then decisions taken on the way forward. Following approval by the Authority, Cabinet would then decide on the optimal options to be adopted. This process is much different from that which is being proposed. The Strategy should be accompanied with an explanation of why a strategic direction is being chosen instead of other available options. It should also be accompanied by surveys and studies which justify the chosen strategic options.

- **Art 46(1):** Publication of the National Strategy

  **Comment:** The publication of the National Strategy should also include the responses to the representations made explaining why such representations were accepted or rejected.

  **Recommendation:** Publish the responses to the representations made explaining why such representations were accepted or rejected

- **Art 69:** Scheduling of areas

  **Comment:** The KA has no problems with the possibility that both the Environment Authority and the Planning Authority be granted powers of scheduling. However, any descheduling of property which falls under the
competence of the Environment Authority cannot take place unless the Environment Authority consents to it and such descheduling is also endorsed by the Minister responsible for the Environment. Moreover, specific reference should be made to the protection of species and trees.

**Recommendation:** Conservation orders and Emergency Conservation Orders issued under the Environment Protection should have the same enforceability and effectiveness under the Development Planning as if they were issued under the latter Act. A specific reference to conservation orders for species and trees should be made in Art 69(1).

- **Art 76(7):** Dismissal of applications

**Comment:** In order to send the right signal to those who disregard completely any stop and/or enforcement notices, this sub-article needs to be amended to ensure that applications to regularize an activity “shall be dismissed” and not merely “may be dismissed” if the stop and/or enforcement notice have not been complied with.

**Recommendation:** Amend Art 76(7) to ensure that applications to regularize an activity “shall be dismissed” and not merely “may be dismissed” if the stop and/or enforcement notice have not been complied with.

- **Second Schedule para (e) Preparation of subsidiary plan or policy**

**Comment:** the period of a one-month public consultation may not be enough for complex plans and policies

**Recommendation:** Considering what the public has to say is not an option, but an essential component of sustainable development and planning. Therefore the period of consultation for the preparation or review of a subsidiary plan or policy should be for a period of not less than 6 weeks.

- **Second Schedule para (l) :** Publication of responses

**Comment:** the publication of amendments to plans may be difficult to compare with the current versions if a consolidated version is not available. Moreover, responses need to be detailed.
**Recommendation:** Any main or subsidiary legislation, plan or policy which are amended should also be published in a consolidated version. Moreover, when these are published the “responses” to the representations made have to provide detailed reasons for accepting or rejecting any representations made.

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**Environment and Planning Review Tribunal Bill**

- **Art 4(1),(4) & (6):** Establishment of panels of the Tribunal and appointment of members

**Comment:** Given that the Tribunal has a quasi-judicial status, it should be the President acting on the advice of the Prime Minister that establishes the panels and designates the categories of cases to be assigned to each panel. On the same lines, it should be the President that appoints the members on the advice of the Prime Minister.

**Recommendation:** The President, acting on the advice of the Prime Minister shall establish the panels and designates the categories of cases to be assigned to each panel. Moreover, the President, acting on the advice of the Prime Minister, shall also appoint the members of the panels.

- **Art 4(2):** Composition of panels. The Bill suggests that each panel “shall consist of three members, with two of its members being well versed in development planning legislation and environmental legislation and the other member an advocate”.

**Comment:** With the proposed composition of members on the Environment and Planning Review Tribunal, the planning system in Malta is moving further towards a legalistic approach to planning which risks dispensing with a holistic approach to sustainable development. The product will be a planning system which gives less consideration to the effects of projects on the ground and more consideration on legalistic issues which compound matters on the ground. This situation encourages those who want to ‘play the system’ to discover ways of circumventing the law and continue unabated with their unsustainable plans. The members, apart from the advocate, should be well versed in development planning and environmental management or planning and not well versed in the legislation. The tribunal will not be deciding only points of law, especially procedural matters, but more importantly it will
be deciding on matters of substance which affect the environment (including the land and sea) which a person versed only in legislation would not be able to decide upon.

**Recommendation:** The Chairman of the Tribunal should be an advocate while the other two members should be persons well versed in development planning and environmental planning or management. Moreover, it makes more sense to have at least one panel to decide appeals lodged under the Development Planning Act and another panel to decide appeals lodged under the Environment Protection Act.

- **Art 5:** Secretariat of the Tribunal. The Bill proposes that the Secretary and the administrative secretariat shall be appointed by the Prime Minister.

  **Comment:** It is not clear that there will be a normal recruitment procedure for the Secretary and the persons to work in the administrative secretariat so that their appointment is a permanent one.

  **Recommendation:** There should be a normal recruitment procedure for the Secretary and the administrative secretariat so that the staff chosen is competent for the required tasks.

- **Art 6:** Place of sittings of the Tribunal

  **Comment:** It is not clear why the Prime Minister has also to be involved in the issue of where the Tribunal should hold its sittings.

  **Recommendation:** Clarification is required as to why the Prime Minister should be involved in where the Tribunal should hold its sittings. The Tribunal should decide itself the place where to hold its sittings.

- **Art 7:** Registry of the Tribunal.

  **Comment:** Given that the Tribunal has a quasi-judicial status, it should be the President acting on the advice of the Prime Minister that establishes the functions of the Registry of the tribunal. The officers of the Registry should not be appointed by the Prime Minister but follow a normal recruitment procedure as is being proposed by the KA for the Secretary and the persons to work in the administrative secretariat of the Tribunal. In this way the staff would be permanent. The Bill does not spell out whether such appointments will follow a recruitment procedure.

  **Recommendation:** The President, acting on the advice of the Prime Minister should establish the functions of the Registry. The officers of the Registry
should not be appointed by the Prime Minister but follow a normal recruitment procedure so that staff would be competent and permanent.

- **Art 9(2)(d):** Documents and information relevant to an appeal

  **Comment:** The Tribunal should ensure that even the Environment Authority will make available to the parties to the proceedings, the documents and information relevant to the appeal.

  **Recommendation:** Insert “and Environment Authority” after “Planning Authority”

- **Art 9(2)(d):** Documents and information relevant to an appeal

  **Comment:** Given that the Tribunal has a quasi-judicial status, it should be the President acting on the advice of the Prime Minister that makes regulations to implement and to give better effect to the provisions of this Act.

  **Recommendation:** The President, acting on the advice of the Prime Minister, should make regulations to implement and give better effect to provisions of this Act.

- **Art 11(1)(a) & (b):** Hearing and determination of appeals.

  **Comment:** The Bill does not define key phrases which are included in the list of appeals namely “regularization process” and “screening of a proposed development”. Moreover, the KA cannot understand the specific mentioning of “project of common interest (PCI)”. A project falling under the latter definition would be a project that would need a development permit application which if granted may cause a third party to lodge an appeal. The specific mentioning of such a project needs clarification.

  The KA cannot understand why in the case of a permit which grants a change in zoning from, such as for example, residential to commercial, an appeal cannot be lodged by the residents who are aggrieved by such a decision (Art 11(1)(e)).
Recommendation: Define “regularization process” and “screening of a proposed development”. Clarify why “project of common interest (PCI)” is specifically mentioned. An appeal should be provided to third parties in the case of permits that grant changes in zoning.

• Art 11(1)(e): Appeals by the Environment Authority

Comment: The proviso to Art 11(1)(e) seems to exclude the possibility that the Environment Authority can appeal against decisions of the Planning Authority since in the proviso the term “authority” has the meaning assigned to it in Art (i) which is the “Planning Authority” and therefore cannot refer to the Environment Authority.

Recommendation: Clarify the proviso to ensure that the Environment Authority has the right to appeal any development permissions granted by the Planning Authority.

• Art 11(1)(e): Appeals by an Environment NGO

Comment: The granting of a right of appeal to NGOs (even though a written representation was not made in the application process) is restricted to permits that require an Environmental Impact Assessment or an IPPC. Sometimes some permits that are granted and which cause a public uproar due their lack of sensitivity to the environment are permits which would not have required an Environmental Impact Assessment or an IPPC. Moreover, some permits that require a Traffic Impact Assessment may not require an Environmental Impact Assessment but their negative impact on residents would be high.

Recommendation: NGOs should be granted the right of appeal (even though a written representation was not made in the application process) in the case where an application required an Environmental Impact Assessment or IPPC permit or Traffic Impact Assessments or is in an outside development zone or affects any scheduled property.

• Art 11(2): Prime Minister to order any other decision of the Planning Authority to be subject to the jurisdiction of the Tribunal

Comment: The KA does not understand the purpose of this Article and its specific reference to the Planning Authority without referring to the Environment Authority. Is it meant to deal with administrative issues at the Planning Authority? If yes, the Tribunal should not involve itself in such issues.
**Recommendation:** This role of the Prime Minister in this subarticle needs to be clarified.

- **Art 33(1):** The Tribunal “may not grant a suspension of the execution of a permit in relation to an application for a development which, in the opinion of the Minister responsible for the Planning Authority, is of strategic significance or of national interest, related to any obligation ensuing from a European Union Act, affects national security or affects the interests of the Government and, or other governments”. Such cases do not apply in the case of an application which requires an IPPC or Environmental Impact Assessment.

  **Comment:** Although the KA understands the need for this subarticle in the case of very special and very limited circumstances, abuse can be made of it. The “interests of Government, and or other governments” can have a very wide meaning. Moreover, an application relating to an obligation ensuing from a European Union Act can also have its meaning stretched.

  **Recommendation:** The “interests of Government and, or other governments” and also “obligation ensuing from a European Union Act” should be better defined in order to restrict them.

Moreover, the cases to which this subarticle should not apply should include applications that will have an impact on scheduled property.

- **Art 35(c):** Decisions relating to fast-track applications

  **Comment:** “Fast-track applications” are not defined in the Act.

  **Recommendation:** Define “fast-track” applications

- **Art 37(2):** Appeals from scheduling and conservation orders. The Bill proposes that the Tribunal shall seek the endorsement of the Minister responsible for the Planning Authority when descheduling a property.

  **Comment:** The Minister in this case is acting as a final arbiter in descheduling a property. However, the law does not stipulate whether the Minister is obliged to approve or otherwise such scheduling. Moreover, descheduling of property that falls under the remit of the Superintendency of Cultural Heritage would need to be endorsed by the Minister responsible for Cultural Heritage.

  **Recommendation:** It should be specified that the decision to deschedule a property
cannot be effective unless the Minister approves such descheduling within a period of 3 months. Descheduling of property that falls under the remit of the Superintendence of Cultural Heritage should be endorsed by the Minister responsible for Cultural Heritage and not by the Minister responsible for the Planning Authority. If the Minister does not approve of such descheduling within 3 months, then the Tribunal’s decision is effectively annulled.

- **Art 40**: Grounds on which the Tribunal bases its decisions. The Bill states that the Tribunal “shall indicate, with sufficient clarity, the grounds on which it bases its decisions”.

  **Comment**: Apart from deciding on points of law, the Tribunal cannot base its reasons other than those that the Development Planning Act and the Environment Protection Act provide for the Planning Authority and the Environment Authority to base their decisions on when determining an application.

  **Recommendation**: It should be specified that the Tribunal can only base its decisions on points of law and reasons which the Development Planning Act and the Environment Protection Act provide for the Planning Authority and the Environment Authority to base their decisions on when determining an application.

- **Art 49**: Minister responsible for the Environment Authority is required to approve a Tribunal decision to deschedule a property.

  **Comment**: The Minister in this case is acting as a final arbiter in descheduling a property. However, the law does not stipulate whether the Minister is obliged to approve or otherwise such scheduling.

  **Recommendation**: It should be specified that the decision to deschedule a property cannot be effective unless the Minister approves such descheduling within a period of 3 months. If the Minister does not approve of such descheduling then the Tribunal’s decision is annulled.