

THE MEPA REFORM

Reaction of the
KAMRA TAL-PERITI
to the document
A BLUEPRINT for MEPA's REFORM

July 2009

The ***Kamra ta-Periti*** is the only recognised professional body representing the architectural and civil engineering profession in Malta. It is established according to the provisions of the *Periti Act* (Chapter 390 of the Laws of Malta). Its mission is to support members of the profession in achieving excellence in their practice of architecture and engineering in the interest of the community. It is also delegated with the duty of enquiring into any charge of professional conduct or abuse made against any *perit* in connection with the exercise of their profession or with professional matters.

The administration of the ***Kamra*** is entrusted to its Council which consists of *periti* elected from amongst its members. The Council is supported by a Secretariat and several Standing Committees including those for the Built Environment, Professional Conduct, International Affairs, Education, Professional Practice, Events, Communications and Finance. A separate workgroup is looking into the setting up of a Centre for the Built Environment.

The ***Kamra tal-Periti*** is an active member of the Architects' Council of Europe (ACE), the Union of Mediterranean Architects (UMAR) and the European Council of Civil Engineers (ECCE). It is affiliated with the International Union of Architects (UIA), the European Forum for Architectural Policies (EFAP) and the Commonwealth Architects Association (CAA).

The ***Kamra*** has representatives on several bodies in Malta including the *Bord tal-Warrant tal-Periti*, the Building Industry Consultative Committee (BICC), DOCOMOMO (Malta), the General Services Board (GSB) and the Users' Committee (MEPA).



K A M R A T A L - P E R I T I

To support members of the profession in achieving excellence in their practice of architecture and engineering in the interest of the community

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The *Kamra tal-Periti* submitted its position on the MEPA Reform in March 2008 with additional comments in August 2008 after the Council of the *Kamra* had a meeting with the Prime Minister. The *Kamra* had also organized a Breakfast Meeting in November 2008 where the key speaker was the Prime Minister. The Council also met with Dr Mario de Marco on Monday 20th July 2009 to discuss initial reactions to the proposed Blueprint for reform and held a consultation meeting for its members on the 22nd July 2009.

The Kamra notes that the proposed document contains a number of positive proposals. It seems clear that the main drive of the document is to create a framework which seeks to make all concerned in the development application process more directly accountable for their actions. The Kamra feels that this can be positive but will not contribute, alone to a real reform which brings about a tangible positive change in the development application process itself or in our urban and rural environment.

In this respect the Kamra notes that:

1 - QUALITY IN THE BUILT ENVIRONMENT

Above all the Kamra feels there is one fundamental aspect which is completely absent in the reform proposals. This is a commitment to QUALITY and the understanding that the real measure of MEPA's performance can only be the quality of the living environment that its policies and decisions result in. In its reform proposals the Kamra had placed Vision and Quality at the heart of its proposals and it continues to insist that better living environments must be at the heart of MEPA's outlook at all levels

Whereas 'consistency, efficiency, accountability and enforcements' are *sine qua non* practice conditions for a just and effective administration of any public agency and for the effective administration of policy, quality is the only foundation on which the proposed four pillars can stand if they seek to achieve real benefit.

2 - QUALITY IN PLANNING

Quality in the Built Environment is essential as an objective underpinning any revision of the Structure Plan, Local Plans and the MEPA policies which are all up for review and consolidation.

The Kamra reiterates the need for quality to be underpinned by a better-harmonised, more vision-driven, three-dimensional (as against the current two-dimensional approach) urban design approach to policy-making and implementation. The Kamra would welcome the creation or the strengthening of a central policy unit that would address itself to policy-making across all government sectors, particularly those which in some way affect the built environment.

The remit of the Policy Unit within the Office of the Prime Minister and referred to in the Blueprint has not as yet been clearly stated publicly. The Kamra feels that it is

essential that amongst other safeguards MEPA must continue to have a strong input in policy-making as far as land use planning is concerned.

It must, however, be stressed that it is the quality of planning and policy-making which should at the end of the day be the key guiding factor.

3 - A FOCUS FOR QUALITY – DESIGN REVIEW

Quality is also naturally to be an objective in individual projects. In this respect the Kamra reiterates its position, as already expressed in its 2007 position paper “The Urban Challenge: Our Quality of Life and the Built Environment” and in its March 2008 paper on MEPA Reform, on the need for a forum where the quality of development can be properly assessed and promoted through a system which offers the opportunity for Design Review. The Kamra notes the success of Design Review panels in promoting better quality design elsewhere in Europe, and their increasing popularity with the private sector. The work of the CABE in the UK is one notable example and indeed the practice of design review is well disseminated in many European countries.

4 - IMPLEMENTATION OF THE REFORM

If the measures suggested are not also supplemented by other interventions, there is no means of ensuring that certain safeguards will remain in play and that abuses will continue to be checked and balanced as best possible. The Kamra is deeply concerned that the proposed reform measures will:

- a) be extremely liable to abuse by parties on many fronts if the process of implementation does not ensure that these safeguards are brought into play; and
- b) undermine the four pillars of the reform itself if the phasing in of certain measures is not matched by the introduction of adequate skills and resources at key points in the planning process.

The importance of a clear timeframe for the implementation of the proposed reform is also missing in the Blueprint and the *Kamra* is of the opinion that this is essential to guarantee delivery and reduce uncertainty.

Furthermore, the *Kamra* wishes to remark that many of the current proposals being put forward today have been put forward by the Kamra itself and agreed to between the Kamra and MEPA in the past. However, the *Kamra* regrets that despite this agreement the relevant changes have not been brought into effect. It is now hoped, that this time round, there is a long-lasting commitment to the reform process if this is to provide improved procedures.

5 – PAPER AND PRACTICE – THE ROLE OF THE CASE OFFICER

The Kamra regrets to express deep concern about the emphasis of the proposed reform on the role of the case officer in the application process. This will demand case officers of the highest capability and integrity, who are empowered, politically and intellectually to discern a decision in the light of policy and on the basis of the public benefit of a proposal rather than a blindfolded tick-boxing against the full spectrum of policy, regardless of the importance of certain aspects in a particular case. Until a suitable complement of case officers with these qualities are brought into the process, it may be better to postpone certain proposals.

Furthermore, the Kamra reiterates the need for the assessment of a case officer's performance to be based on the quality of his/her decisions and not only by the number of applications he/she manages to process.

6 – THE NEED FOR ONGOING CONSULTATION

There is need for proper consultation beyond the proposed National Conference of the 31st July 2009. The failure to provide an opportunity for further discernment of the proposals after this date, would be a case of steamrolling.

Many of the proposals in the reform document have vast implications which need to be carefully assessed. A number of the proposals are too vague to elicit real feedback. With such proposals the devil is always in the detail. The Kamra demands that consultation continues well after the proposed start date for the implementation of the reform and continues to take place to allow for post-implementation to be fed back into the system.

7 - THE POSITION OF THE PERIT

It is not clear why the Blueprint document is expansive with respect to the feedback received from certain consultations and organizations yet makes little reference to that of the KTP amongst others.

The KTP is also concerned that its inputs have not wrought sufficient results over the years despite the fact that the KTP itself was one of the original proponents of the Structure Plan, played a key role in its inception and is perhaps, through its members, MEPA's principal client.

The KTP is also particularly concerned that if it is not carefully managed and communicated the proposed validation process (as well as the proposed attitude to DNO applications) will create a situation which places periti under severe pressure with their clients for matters which will often be outside their control.

The Kamra welcomes the commitment to introduce and maintain a compendium of approved policies and procedures. It emphasizes the importance of the avoidance of ad-hoc procedures and policies and insists that the introduction of new policies and procedures should be well-publicised with sufficient lead-in time ahead of

formal adoption. This is critical because the failure to be strict with such matters in the past has often undermined the role of periti with their clients.

8 – SELF FINANCING AND EFFICIENCY

The document makes reference to the need for MEPA to recoup its costs, without any reference whatsoever to a proper strategy for assessing real efficiency within its workings.

9 – THE NEED FOR GOOD GOVERNANCE

Good governance in all matters relating to the built environment must continue to underpin the role that Government adopts with MEPA reform. In this respect Government must lead by example and ensure that (i) its own interventions in areas like policy-making truly respect the processes and procedures embodied in the spirit of the law; and (ii) that it sets quality environments for public benefit as the real objective of the reform.

The following pages give specific comments on each of the reform bullet points listed in the Blueprint.

REFORM PROPOSALS

CONSISTENCY

A1.1 Harmonise the Development Planning Act and Environment Protection Act into a single Act that re-establishes MEPA and defines its core functions, role and responsibilities in promoting sustainable development.

The KTP looks forward to being consulted on the eventual draft Act.

A1.2 Government will assume the leadership of planning and environmental policy, consolidating MEPA as the regulator and an instrument for policy implementation in these two sectors.

OPM will be strengthening its policy role and capability in order to lead the formulation of planning and environmental policy. On the other hand, the Forward Planning Unit within MEPA will be recast to serve the internal policy-related requirements within MEPA.

It is certainly the case that policy formulation at the heart of Government needs to be strengthened. Indeed this necessity applies to all fields of policy-making, of which planning is but one. Given that the built environment is an area which crosses many sectors the KTP feels that the establishment of a central policy unit at the heart of government which formulates and harmonises policy across government would also be beneficial if it can provide for a more harmonized approach to policy-making which affects the built environment.

The KTP has also called for Government's role in policy-making to become clearer and for MEPA and Government policy directions to be better harmonised; it has also consistently called for the need for policy to be driven by a strong vision for improved quality in the built and rural environment.

The KTP believes that the crucial issue with respect to policy formulation is not the 'where' of how policy is made, but rather the 'how' – i.e. the type of policy framework and the manner in which this facilitates the delivery of quality development. It is the quality of policy-making and the effect that this has on the quality of the built environment which is critical to the provision of lasting benefit.

The KTP notes that the process of policy formulation should:

- (i) be based on long term strategic direction; the long overdue review of the Structure Plan should take effect and form a basic guideline for future policy frameworks;
- (ii) be based on better harmonisation of policy relating to the built environment across various Government entities;

(iii) provide necessary checks and balances: public consultation and participation by civil society must remain a part of the process; the approach to consultation needs to be vastly improved; thorough policy impact assessment needs to be introduced;

(iv) not be formulated in *ad hoc* manner to satisfy short-term objectives (e.g. *ad hoc* review of local plans) but should stem from the formulation of a long-term vision and committed direction for Malta's towns and villages that truly provides for quality of life;

(v) embody a strong three-dimensional approach to urban design in: (a) the process of establishing 'master-visions' for our towns and villages which form the basis for directions for change and hence policy frameworks; (b) assessing the impact of policy and guidelines;

(vi) continue to be supported by and checked against relevant expertise, technical data and research;

(vii) be supported by the right human and other resources to achieve the objectives above.

If these pre-requisites are absent any moves to alter the current policy framework will very likely yield little result; indeed outside of the scenario identified in points (i) to (vii) above the migration of all policy formulation to Government could prove to be a regressive move in the long term which runs counter to democratic principles and is open to abuse.

A1.3 An Environment and Planning Policy Unit (EPPU) will be set up, reporting directly to the Chief Executive Officer. This Unit is to be responsible for technical policy input and the technical development of Government's stated policy direction in respect of both planning and environment and ensure that it is integrated within MEPA.

The Kamra notes that the precise functions of this Unit and their relationship with or overlap with the strategic policy unit at OPM are as yet unclear and a detailed breakdown of responsibilities needs to be presented for the Kamra to be able to comment in further detail. The Kamra looks forward to further consultation on this matter.

A1.4 The Policy Unit within OPM will undertake a systematic review of MEPA's policies with a view to ensure that these are in line with the objectives of this reform. Guidelines related to applications for development in ODZ areas or those which go against published plans will be the first initiative to be undertaken in an effort to move towards a zero tolerance policy for ODZ areas. This will be followed by a process whereby revised policies will be submitted to the Parliamentary Committee for public scrutiny and approval.

This is a positive exercise particularly if it also ensures that policies are in line with the objective of ensuring a better quality environment. It will be essential, however, to define what is meant by 'policy' and hence what government's remit is in this field so as to provide clear terms of reference to all. Furthermore a clear priority list for the review of policies which truly reflects the real problems taking place in the built and rural environment needs to be devised.

The objectives of this statement involve a massive task which requires a clear timeframe because until it is complete it will result in a state of administrative limbo and uncertainty in the market.

One must also ask where the resources for this to happen are to come from when one considers that the long overdue review of the Structure Plan has yet to come into effect.

With respect to ODZ matters, the Kamra reiterates the statement it made in its August 2008 submissions regarding the need to address the built and rural environment in a holistic manner which is also driven by clear objectives as regards the kind of environments that we are expecting policy to deliver.

ODZs cannot be addressed in isolation because, for example, the development fringe has a direct bearing on the appearance of the countryside. Similarly while agricultural uses must of necessity be located in ODZ areas, and while it is positive to encourage restructuring in this sector, the insertion of large-scale agricultural buildings in the countryside has a critical visual impact which is not being suitably addressed.

A pro-active approach to the rehabilitation of the countryside may also be needed to prevent some rural areas from continuing to decline into neglect.

A1.5 MEPA will develop and publish a compendium of its official policies and formalized procedures that guide its internal processes. This manual should provide clear direction on the interpretation of policies thus ensuring the consistent interpretation of policy by all its officials.

This is something the KTP has long argued for. It is essential that such a document is also updated on a regular basis, and, that proposed changes to policy are advised to all well in advance of their implementation date. It would be useful to set a target delivery date for this document.

It is also important that key decisions from DCCs, Court of Appeal and Appeals Board (or its proposed replacement) are re-worked back into the system for reference.

The KTP would also like to recall that there is a MEPA Board decision which requires pre-consultation with KTP on the formulation of new policies.

A1.6 MEPA's board composition should include a person coming from civil society organisations or ENGOs in order to further strengthen the Board's environmental dimension, and a person with knowledge and experience in cultural heritage in order to further contribute towards the sensitization of development towards our common heritage.

KTP supports the appointment of members of civil society and of experts in cultural heritage to the Board.

A1.7 Set up two DCCs operating on a full-time basis, each composed of 3 members.

Two different Chairpersons are to be appointed to chair the two DCCs. The Chairpersons would also automatically hold the position of Deputy Chairperson on the MEPA Board.

The proposal of full-time boards is a positive one if it serves to allow for applications to be reviewed more thoroughly and more closely. On the other hand the distinction between the DCC and the Directorate must remain clear – the DCC is not part of the Directorate and is not a rubber-stamp for the Directorate. DCC members should not be employed with MEPA. Furthermore the Kamra notes that while it is necessary to ensure that the DCC boards are clearly seen to be independent of MEPA, applicants and third parties, the appointment of full-time DCCs is not really critical to MEPA's operation.

The Kamra is concerned that the proposed number of members is too few (i) to cover the range of expertise required particularly in the case of the proposed ODZ/UCA/listed buildings DCC and (ii) to provide for a suitable number of members to take a decision in cases of conflict of interest (which may still occur) or in cases of absence due to illness/travel requirements.

It also suggests that criteria need to be put in place for the selection of Board members. Private sector work experience would be an important criterion to ensure that the Boards' outlook reflects working realities.

In the interest of transparency it is recommended that DCC's record their decisions formally in writing, perhaps by preparing a final edited copy of the DPAR. While this will increase Boards' workloads it will ensure that overturning decisions are better recorded and that the reasoning behind Board decisions can be clearly communicated to the Directorate staff as well as the public at large. The provision of a feedback loop from the DCC back to the Directorate is critical in ensuring consistency in decision making as well as closer liaison on the shortcomings of particular policies.

The Kamra notes that the appointment of the DCC chairs as assistant chairpersons to the MEPA Board should provide for more consistency in decision making. It also recommends a mechanism which allows for a new DCC Chairperson to sit in on Board meetings as an observer for a number of months prior to taking over the role.

Application process – no bullet number.

This section contains a number of critical proposals which, in the interest of transparency, should have been more clearly bulleted as with other key proposals within the document.

In particular one notes:

Re tracking numbers instead of application numbers:

There should be a clear list of requirements for standard applications.

The proposals under this section are not sufficiently clear and require investigation and clarification; for example:

- What happens when, after a first round of consultation, amended plans are requested?
- If drawings need to go out to consultees again, how will the 30-day period be employed in such situations?
- At what point will an application be validated?
- Will an application be validated even if the applicant refuses to change his proposal to suit the direction given by the case officer?
- Once it is validated is the 12-week period the timeframe allotted to the case officer to draw up his report?
- What happens if after the 12-week timeframe no decision is communicated? Will an application be deemed approved? What is the real power of a deemed approval and can one really adopt this stance without prejudicing other applications?

The KTP notes that it is not at all clear how this proposal will make the application process more efficient and indeed, it may well contribute to make the process much longer.

It also recommends that in the interest of expediting the application process and ensuring more co-ordinated feedback from consultees, representatives of the key consultees should be employed with MEPA on a full-time basis in a similar situation to that of the SEO; this will ensure that consultees review a proposal together rather than individually and therefore that their concerns can be harmonized into one set of clear feedback. It is more likely that this system will be easier to realise, less costly and provide greater benefit than the proposal to engage full-time DCCs.

Re fostering dialogue:

In principal the KTP has always agreed with dialogue.

The minuting of meetings is a positive step and ensures greater transparency and accountability.

The proposed system places a very high onus of responsibility on case officers and will demand case officers of the highest capability and integrity, who are

empowered, 'politically' and intellectually to discern a decision in the light of policy and on the basis of the public benefit of a proposal rather than a blindfolded tick-boxing against the full spectrum of policy, regardless of the importance of certain aspects in a particular case.

Capable case officers are key to the proper functioning of the Authority today and will be critical to it under the proposed reform. Unfortunately, as KTP has stated elsewhere in its reform proposals skilled resources in this area are sorely lacking – because, in the proposals, so much hinges on discussion with case officers, a highly undesirable situation will ensue if this reality is not understood and capably remedied.

In the light of the above training and qualifications criteria for case officers will become essential.

Furthermore given the increased onus of responsibility (and power) that will now come to fall on case officers, a structure for the reporting of administrative abuse is necessary and a system of disciplinary steps and procedures should be introduced.

Re charges for extended discussion meetings:

Surely with such an onus on discussions with case officers, Development Planning Fees should cover all but the most lengthy discussions and the number of free hours provided should be such that this mechanism should only need to be brought into play in the most exceptional cases.

A1.8 MEPA will ensure that during DCC sessions all parties involved or affected by the development application will be represented. To this effect, all parties will be allowed to make their representations to the DCC.

MEPA shall also take measures to eliminate negotiations between the applicant and the DCC during the hearing.

In the current scenario, in cases where case officers are overzealous with the letter rather than the spirit of policy, the DCC provides the only platform through which more reasoned discussion on application proposals can be made and in many cases, presents an important opportunity to encourage improvement in applications.

As noted above, the new proposals create an onus of great responsibility on negotiations with case officers and hence on the quality of policy and on the ability of case officers to properly discern the spirit of policy. The Kamra is deeply concerned that the right conditions, from both a policy and a human resources point of view, are not in place for the elimination of negotiation with DCCs.

The elimination of reconsiderations also means that in cases where an applicant has been guided down a particular path by a case officer, and the DCC is not in agreement with the direction given, an applicant has no opportunity to revise his application and ends up with a refusal despite having complied with the Directorate's requirements and directions.

The elimination of negotiation with boards and of reconsiderations will result in a sharp increase rather than a decrease in the number of appeals unless steps are taken to ensure the availability of case officers of suitable qualifications and training as discussed above.

A1.9 Government will introduce measures aimed at:

- a. facilitating submissions by registered interested parties; and
- b. improving the public consultation procedure in respect of subsidiary plans.

The proposed measures are positive and welcome.

In particular the proposed double-consultancy period for subsidiary plans should serve to ensure that new proposals which do not feature in published drafts do not find their way into final documents.

The section makes reference to MEPA being obliged to consult in the case of subsidiary plans yet it was noted earlier that policy will be the responsibility of Government. It is not clear whether this comment implies that not all policy will be prepared by Government or whether MEPA will remain responsible for consultation.

The proposal to disallow third party submissions if a DPAR has been concluded should be removed. If a submission is received within the twenty day time period it should always be considered if it is *bona fide* and justified on planning grounds.

A1.10 Establish a full time Planning and Review Tribunal composed of three members.

The fee charged to applicants who lodge an appeal will be increased, reimbursing part of it if the applicant's appeal is successful.

The proposed changes to the current Appeals Board are welcome.

The proposed hierarchy of decision-making however needs to be clarified; currently appeals on points of law from decisions by the Appeals Board can be made in the Court of Appeal. It is not clear whether this mechanism will remain in place in the new proposal and hence whether the decisional hierarchy has remained unchanged.

The chairing of the current Appeals Board by lawyers is important in terms of clarity of procedure. It is important that the decision to change the chairpersonship to a technical person does not render procedure less effective.

EFFICIENCY

B1.1 The following MEPA functions are not regarded as core to its mandate and will therefore be migrated to other entities within Government:

1. the policy formulation function in respect of both planning and environment;
2. transport planning;
3. minerals;
4. climate change; and
5. the enforcement of construction site management regulations and littering regulations.

By its very nature the urban and rural environment is a cross-sectoral field and is affected by decisions and policy across many sectors of government. Greater harmonisation of policy and decision-taking is thus beneficial because it strengthens the possibility of decisions which affect the built environment being taken in a consistent manner. The relationship between transport and planning and urban design, for example, is very clear and critical.

In this respect the fragmentation of policy-making across various departments and agencies can prove to be negative rather than positive unless mechanisms for increased co-ordination are brought into play.

B1.2 MEPA is to have an Executive Chairperson on a full-time basis. In addition, MEPA is to recruit a Chief Operations Officer (COO) to manage the day-to-day running of MEPA's operations and assist the Chairperson in the implementation of the reform. Following the completion of the reform, the Chairperson's executive powers are to be migrated to the Chief Executive Officer (CEO) position.

All Directorates will report to the CEO who will have the full span of control of MEPA's operations.

No comment.

B1.3 Two full-time DCCs will be set up and be responsible for the following designated categories:

DCC 1 Inside Scheme development applications

DCC 2 U CA, ODZ and Major Projects not requiring an EIA

The appointment of DCC chairpersons as assistant Chairs to the MEPA Board should provide for greater consistency in decision making.

B1.4 Government will invest in MEPA's environmental arm. The EPD will focus on the implementation of policies aimed at enhancing environmental protection and on the efficient management of the environmental permitting process.

No clear proposals given here. This needs amplification as otherwise Environmental protection will remain an underdeveloped sector in the MEPA remit.

B1.5 MEPA's front desk will be strengthened in order to provide both technical support and handling of information requests.

No comment.

B1.6 MEPA's current practice – 'silent Fridays' – will be abolished.

This change is positive and welcome. In the interest of customer service, more extensive hours should be seriously considered for services which operate at restricted times, e.g. the Sanitary Engineering Officer, the Planning Shop, and the Plotting Department.

B1.7 An automated call system will be installed to provide better services, including technical advice, information requests, monitoring of applications, etc.

No comment.

B1.8 MEPA will formulate a Continuous Professional Development (CPD) programme for its staff

This is positive and welcome.

Another important issue of employee morale is the regard given to work ethic. The KTP had recommended, for example, that case officers are no longer rewarded on the basis of the number of files completed within a given timeframe but that more value is given to the quality of decisions taken.

B1.9 MEPA will embark on more effective communications.

This is positive and welcome. In particular the system of issuing circulars to Periti should be reinforced and continued.

B1.10 Removal of the chess clock system and the establishment of a new policy by which MEPA would communicate a deadline to applicants for the processing of their application once this has been deemed validated.

MEPA will design an initial screening process which will classify applications

submitted. The Unit Manager will screen the application upon submission and classify it as either straightforward or complex. Depending on the application, the legal timeframes proposed in Figure 7 will apply.

The initial screening process will be a formal, yet optional, procedure whereby a tracking number will be assigned to each application. The discussions carried out during this stage will be minuted, agreed to by both parties and included as supplementary documentation in the Notes to Committee accompanying the DPAR.

It is not easy to judge how this system will work and how it will actually differ from the current 'chess-clock' system. For example, will an application continue to 'exist' under a tracking number until plans have been finalized further to approval by all consultees and a green light from the Directorate? It is not clear how, if at all, the proposed system makes for speedier decisions.

The switch from tracking to application number will become an important milestone, which may give more certainty to developers once reached, but which may also be easily abused. A time frame on the validation period should be introduced, and a clear one-time set of requirements for submission should be presented by the person/team responsible for an application within a given time period from the date of the submission of the application.

B1.11 Enforcing the 30 day deadline for external consultations in the DPA.

In principle it is positive to insist on timeliness of submissions from consultees. On the other hand one notes that to ensure that this system does not create room for abuse, some method of auditing is introduced to ascertain that failure to present submissions on the part of a consultant body does not become a device through which a particular application may be favoured.

B1.12 Government will encourage MEPA to enter into data sharing agreements with other State entities.

This is positive and welcome. Base plans should come into public ownership. Increased synergy between MEPA's mapbase plans and those available through the Lands Registry department should also be promoted.

B1.13 Elimination of the reconsideration process, but retaining the option of allowing a single reconsideration related to the conditions of permit only.

Presently the Reconsideration stage presents the only opportunity for applicants / *periti* to discuss the merits of their proposal with anyone other than the case officer. Given that at present case officers are obliged to refuse an application even if they believe it to be positive, because it transgresses even the most insignificant of policies, the reconsideration stage effectively presents the only opportunity for a

real 'fair hearing'. The proposed system therefore places very significant onus on the process of discussions with case officers, and hence on the same officers' skills, integrity, work ethic and customer approach. The need for more skillful case officers has been noted elsewhere in this document as well as in the KTP's submissions on MEPA Reform.

While it is recognised that a system of two hearings in front of the same board is unusual in 'judicial practice', unless the opportunity to discuss a case is properly introduced at the first DCC session, the proposed system may result in a situation wherein the applicant does not get even one fair hearing. The proposed system will almost certainly result in a significant increase in the number of appeals.

It is also noted that the Appeals Board, at least in its present format, will only uphold an appeal when an application is clearly fully in line with policy, or where there have been clear failures in procedure. In this respect the Appeals Board does not present an opportunity for redress because it does not necessarily judge an application on the exact same merits as the DCCs.

In the light of these considerations the KTP is deeply concerned that the proposed system does not provide sufficient checks and balances to ensure that applicants are given suitable means of redress.

B1.14 In cases manifesting evident gross non-compliance with MEPA policies, the case officers are to draw up a summary DPAR consisting of the following elements:

- a. description of proposed development; and
- b. a list of those policies which the application is in breach of.

The summary DPAR would then be forwarded to the responsible DCC.

Given the type of policy framework that is currently in use, it is possible to employ this principle to almost any application. In the interest of fair hearing, the architect should be given the opportunity to present submissions to contest this summary DPAR.

B1.15 Replace the outline development application mechanism with the provision of a Planning and Environmental Brief which would be formulated by MEPA top management officials in consultation with the applicant. This Brief would include parameters such as siting, scale and layout, as well as, the potential need for environmental impact studies that test the Brief's impact on the environment. The Brief would also stipulate a validity date by which the applicant would need to submit a full development application. This Brief will be binding on MEPA for a given period of time.

A transitory provision will govern the conversion of the existing outline development applications and permits to the new system.

It is not clear why this system was considered necessary. While it is often the case that an ODP has little or no value, this may well be because the ODP is not being

used in a sensible manner rather than because it is intrinsically wrong in principle. It is also not possible to tell why the proposed system will provide greater guarantees to any of the parties concerned.

This system also presents the risk of a critical loophole whereby a Brief is used to introduce possibilities which could not be contemplated by existing policy on the same site. In this respect the sentence: 'MEPA needs to have the flexibility and discretion to grant planning permits according to the circumstances prevailing at a particular moment in time' could be particularly open to abuse. The KTP has consistently argued that while MEPA should be flexible on detail it should be clear and consistent on matters of planning principle and direction.

Furthermore, it is noted that ODPs are not only used for large scale projects but may also be used for smaller projects, for example, to clarify development possibilities ahead of the purchase of property, or for valuation purposes. It is not clear how the use of a Brief applies in these situations.

One notes that if the concern with the use of Outline Permits is the validity period of the same outline permit, then an alternative solution may be a simple reduction in the validity period of outline permits to say three years from five and a prohibition of automatic renewals for ODPs.

Clarification is also necessary on this item. For example:

- Payment considerations with respect to Development Briefs need to be clearly defined. Will one pay for a brief up front? What is the basis for the calculation of the relevant fee?
- What is the means of redress if an applicant does not agree with all or part of the content of a brief?
- What obligations does a Brief place on the Authority when an FDA is submitted on the basis of the same Brief?
- How is MEPA resourced to prepare these Briefs?

The KTP considers that it may be wiser to continue to make better use of the current ODP system, while changing terminology and time frames rather than to alter the system substantially. Further discussion on this issue is solicited.

Furthermore it is again noted, that in principle, the development permit fee should cover the cost of submissions and the payment of charges for additional hours beyond a 'free' minimum is a system which opens up unnecessary room for abuse.

B1.16 The following measures are to be taken to promote the use of DNOs:

a. the concept of a DNO is to be further promoted by MEPA so as to ensure potential applicants are aware of this process. In publicizing this concept, MEPA must clearly outline the criteria determining the eligibility for a DNO ;

b. case officers are to ask applicants who submit a full development application which is eligible for a DNO to re-submit their application through a DNO ; and

c. case officers are to send back the application if a DNO is submitted in lieu of a

full development application, stating the reason for re-submission request.

It is noted that while the DNO system does pose certain advantages for both applicants and MEPA, it does not carry the same rights as a Full Development Permit, e.g. there is no right of appeal from a DNO application. In this respect it may often be the case that while a DNO submission is possible, the architect/applicant may prefer a full application so as not to lose time if a DNO is refused.

The proposal to outline more clearly the criteria determining the eligibility for a DNO is particularly welcome.

It is also noted that statements like '*a zero tolerance policy will be adopted in respect of applicants who submit a full development permit which could have been satisfied by a DNO*' suggest that the issue of communications and customer care have yet to make an impact on this reform.

B1.17 The EIA Regulations (SL 356.09) will be amended in order to reflect more closely the Council Directive 85/337/EE C.

No comment.

B1.18 The EIA process will see the introduction of a scoping stage whereby applicants may request MEPA's input in the elaboration of the Terms of Reference provided in the Regulations and which shall be subject to a public consultation period.

No comment.

B1.19 MEPA's Board proceedings will require the EIA consultant(s) to present the EIA and to respond to queries raised by Board Members, MEPA officials and the public. The EIA Unit within MEPA will in turn present its critique. This will ensure a clear demarcation of roles and accountabilities.

In principle this is positive and creates greater accountability.

B1.20 EIA monitoring requirements will be further developed through a requirement for:

- a. EIA consultants to develop indicators on the basis of which predicted impacts can be compared to actual outcomes;
- b. MEPA to commission the monitoring and measurement of these indicators to an independent party to the EIA consultant(s) and which will be charged to the applicant; and
- c. MEPA to provide the results of the monitoring exercise as well as an opinion on the accuracy of predicted versus actual outcomes to the Registration and Review

Board for the purpose of renewing annual registration

The use of indicators is a positive mechanism for assessing the impacts of an application. The choice of suitable indicators is of course critical to the process.

Notwithstanding this proposed system may prove very volatile and will require careful management if it is to prove at all effective.

It is also noted that in a small country like Malta, certain predicted impacts may be easily be affected by other events, outside a particular development, thus rendering this monitoring dubious if externalities are not acknowledged.

B1.21 Government will ensure that the EIA process commences at the earliest possible stage of the development process to ensure that terms of reference, guidance or development briefs do not compromise the mitigation measures that could emanate from the EIA process.

This is positive and welcome. The use of EIA processes should indeed also be extended to the formulation of policy.

B1.22 A Committee, composed of MEPA top management officials and a representative of the Policy Unit within OPM, will be tasked to ensure that applicants are not burdened with the undertaking of unnecessary studies. Applicants will have the possibility to challenge the DPD's request for additional studies by seeking advice from the Executive Committee which will be empowered to provide a final ruling on the matter.

This may be positive. However clarification of the powers of the Executive Committee is recommended to minimise scope for abuse.

ACCOUNTABILITY

C1.1 The function of the Audit Office within should be migrated to the Ombudsman's Office established as a Planning Ombudsman. The mandate of the Planning Ombudsman would originate the Ombudsman Act and no longer emanate from new legislative instrument governing MEPA.

This is positive and welcome.

C1.2 An Internal Audit function is to be set up reporting directly to the MEPA Board with the aim to ensure that processes, services and all operations are in line with the quality standards defined by the Authority.

No comment.

C1.3 The Development Planning Directorate will move towards the adoption of an operational structure based on the cell production methodology.

This system may provide better support and greater accountability in the light of the other proposals in the document.

C1.4 MEPA will adopt a Code of Ethics for its employees.

As noted elsewhere this is positive and should be accompanied by a system of sanctions. It is recommended that, in order to provide true accountability, the proposed Code of Ethics be accompanied by a system of sanctions which are brought into effect in cases of unethical behaviour including unsatisfactory work, discrimination, etc.

C1.5 The application form will be amended as follows:

- a. a clause will be added in the application whereby applicants have to provide a declaration stating that they have the consent of the owner upon whose immovable asset the development is being proposed. A false declaration by the applicant would nullify any permit granted. This declaration would not be necessary in the case of dangerous structures or projects deemed to be of national interest; and
- b. the Data Protection clause included as part of the application form shall be waived.

This proposal is not considered necessary because a permit does not in itself entitle a person to build on a site unless he/she has the necessary title. The process of issuing permits saving third party rights is adequate and provides the suitable redress mechanisms in the courts.

On the other hand the proposed system will mitigate against those like farmers with

small landholdings who need to await consent forms from landowners who may not be immediately available. It may also prove to be unnecessarily lengthy (say in cases where ownership is disputed (because an application can only take place after the outcome of a court case) or where ownership is divided amongst many owners or where it is difficult to trace or obtain responses from a particular owner.

Effectively land ownership should not per se be a MEPA issue, and never has been.

C1.6 Applicants shall be bound by law to send a registered letter to all the residents of immediate adjoining properties and residents of properties in the immediate vicinity of the proposed development.

Through this letter the applicant shall provide these residents with:

- a. the application number;
- b. a copy of the site plan; and
- c. the deadline for persons to register as an interested party.

Moreover, the onus of fixing the site notice and of ensuring that it is maintained for the statutory period will become the responsibility of the applicant.

It is positive to encourage situations whereby neighbours feel that they are aware of what is going on in their immediate vicinity. However this proposal presents a number of complications in practice which will invariably lead to disputes. For example:

- What happens if for some reason a neighbour cannot be found?
- What happens if one of a group of neighbours is inadvertently omitted from the list of those notified?
- Where does one draw a cut-off line regarding the extent of notification?

This proposal has wide-ranging implications that need to be properly assessed and clarified where applicable.

With respect to the fixing of the site notice the KTP recommends that this is still fixed by the MEPA contractor but that the owner should verify the fixing by signing a form to this effect.

C1.7 MEPA will take measures to improve the notification mechanism used for major projects undertaken in ODZs through the setting up of an A0 billboard on site which is clearly visible from the nearest arterial or distributor road.

No comment.

ENFORCEMENT

D1.1 Set up the enforcement function as a dedicated structure with its own set of resources and independent of other functions within MEPA. The Enforcement Directorate would be responsible for monitoring and enforcement action in respect of both planning and the environment and would report to the CEO.

It is not clear whether the text underlying this proposal is recommending the subcontracting of enforcement to third parties. Further consultation on this item is solicited.

D1.2 The Enforcement Directorate needs to work closely with Local Councils in order to detect more irregularities

The KTP has long believed that Local Councils could play an important part in the improvement of the built environment and their role in enforcement can be a positive one.

D1.3 Enforcement responsibilities related to the Environmental Management Construction Site Regulations and Littering Regulations will be removed from MEPA's portfolio of responsibilities.

Does this also apply to dumping? What systems of redress will be brought into place for dumping situations?