

MEPA REFORM

A POSITION PAPER PREPARED BY
THE *KAMRA TAL-PERITI*

March 2008

The *Kamra tal-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 misconduct 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) and the Union of Mediterranean Architects (UMAR). 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* currently has observer status with the European Council of Civil Engineers (ECCE).

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 the practice of architecture and civil engineering in the interest of the community

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EXECUTIVE SUMMARY

The *Kamra tal-Periti (KTP)* notes with satisfaction the intention of Government as expressed by the Prime Minister to undertake reform at the Malta Environment and Planning Authority, and it applauds Government's decision to give this reform process sufficient importance so as to place it under the direct stewardship of the Prime Minister in the light of his responsibility for the National Policy for Sustainable Development.

This document presents the *Kamra tal-Periti's* position related to the issues which it believes will be significant for the success of this reform. The *KTP* envisages that the process will require a long-term strategy built upon shorter term goals and achievements.

A DEVELOPING A CLEAR VISION

The *KTP* believes it is essential for reform within MEPA to be based on a clear vision, for the environmental development (urban and rural) of the Maltese Islands, which vision cannot be separated from the country's economic and socio-cultural aspirations.

Without a clear vision based on critical core values, any reform risks being a costly and laborious exercise which will not result in a better environment. This is all the more so given the adversarial and legalistic system within which MEPA operates and the often conflicting concerns of the various parties it serves.

The *KTP* believes that these core values should be structured around the central tenet that development should aim to achieve qualitative public benefit and that this requirement needs to be balanced against individual demands.

These core values should include: heritage (built and environmental) protection, environmental sustainability, the avoidance of undue speculation, quality living conditions in urban centres, and development which is of the highest quality, yet specific to its context. Investment in culture will further assist in the enlightenment of society.

B ACHIEVING QUALITY

While MEPA has achieved improvements in the overall process of urban development, it is clear that the end result, i.e. the quality of the rural, and particularly the urban environment which we inhabit, still leaves much to be desired.

Quality is not a result alone of planning tools and policy, yet an assessment of the planning tools at MEPA's disposal is necessary to ascertain their suitability for the achievement of a quality environment.

The *KTP* notes that:

- Design quality is not a factor currently taken into consideration in the planning process;
- Because they have not been considered from a holistic urban design viewpoint, design guidance and policy (e.g. Local Plans, vague interpretations of the Structure plan Policies) are also having a negative effect on quality of design and on quality of life;
- Highly prescriptive guidance documents like Policy and Design Guidance 2007 shackle rather than promote creativity, innovation, and quality;
- There is a need for mechanisms which encourage creativity and quality;
- There is a need to establish an Independent Design Review Commission to assess the quality of all projects of significant scale or importance from the point of view of their contribution to society and the built environment.

C MEPA PROCEDURES AND RESOURCES

Reform in procedures and resources is necessary to ensure that these are sufficient to develop a quality approach to development and to ensure that development applications are handled in a timely and cost-effective manner.

The *KTP* notes that:

- Procedures are often inefficient and too bureaucratic on minor projects, yet insufficient to ensure quality on major projects;
- Consultation procedures need to happen in parallel rather than sequentially to avoid tortuous alteration procedures
- Further procedures need to be put into place to reduce laborious review processes for minor applications so as to direct the resources to developments that require greater input;
- The DCC boards should not adopt ad hoc policy, but they should give their feedback to the Directorate where they feel that policy does not sufficiently provide for suitable development;
- The measurement of MEPA's success or failure should not be calculated on its pending caseload but on the quality of ensuing development;
- The assessment of work output within the Directorate needs to shift away from a quantitative assessment of number of files processed to a quality-based system where quality and diligence are given due merit.

With respect to **resources**, the *KTP* notes that:

- Adequately skilled resources are highly lacking in all levels of the organization;

- There is a need for skilled and experienced planning officers who can judge applications on their merits (and not against a list of tick boxes);
- There is a lack of adequate forward planning;
- There is a need for policy impact assessment from an Urban Design point of view;
- There is a lack of supervision by inspectors during construction and insufficient enforcement;
- There is a lack of adequate resources for heritage protection and listing of heritage buildings;
- The Structure Plan Review is way overdue and outdated; much of the research that has gone into its preparation is now several years old;
- There is a need to rely less on political appointees and to have better representation on MEPA bodies from the various sectors of society
- Continuous training should be central to the MEPA's staff development policy;

D GOOD GOVERNANCE

There is a need for the strict implementation of good governance throughout the organisation, firstly in national planning and procurement processes, and later, in all sections of the body.

- Strengthening and empowering public participation and public consultation should be encouraged and supported and should be included at every stage of the process:
- Board decisions should be published in such a way that similar circumstances would benefit from such a decision;
- The non-functioning Planning Consultative Committee (PCC) should be reconvened and reconstituted, while the Users' Committee should be strengthened
- Discussions and consultations with the *KTP* on policy making and policy formulation should be restarted, and a closer relationship sought between the two bodies.
- Inconsistency and favouritism in the treatment of applications, political lobbying and the lack of real autonomy from political influence need to be eliminated.
- There needs to be a clamp down on unethical conduct by MEPA professional staff and management; any abuses by employees, executives and appointees to the boards should be investigated with urgency.
- Local representation within DCC boards requires broadening;
- posts should be assigned on the basis of competence and merit and sufficiently remunerated to ensure the complete dedication of the personnel to their employer;
- redundant or underutilised staff must be relocated away from MEPA;
- incompetence is never tolerated and measures are implemented to eliminate it as far as reasonably possible;
- Management and the administrative roles should be separated from the professional planning function of the organization, and the posts filled with those capable of managing.
- Management should be instilled with the vision and drive to provide the best level of service possible to its customers in order for the organization to ensure it achieves its mission.

This report was prepared by the
Standing Committee for the Built Environment
for and on behalf of the Council of the *Kamra tal-Periti*

March 2008

MEPA REFORM

INTRODUCTION

Our aim is to pass on to our children a better country than we inherited. It is for this very reason that we compare our environment to a treasure, something we place our energies in, to protect, care for and improve. This environment encompasses all – nature, cultural and architectural heritage, towns and villages, the countryside, the seas and air. We believe that together we should carefully plan so that our heritage, this gem which we treasure, will not fade away.

Vision Mission and Values, Mission Statement of the Malta Environment and Planning Authority

MEPA's mission is certainly to be lauded. Yet we need to ask ourselves whether MEPA has been able to achieve its goals, whether our environment has improved, whether we as a nation have been truly successful in *protecting* and *improving* our environmental and architectural heritage for the benefit of future generations and whether we have had the foresight to take advantage of the opportunities the country's social and economic development has offered us for the benefit of citizens and their quality of life.

Despite some notable successes, the answer would appear evident to anybody since the tangible manifestations of the development planning process over the past two decades bear witness to the process. The products of our planning system have been the cause of some major concern.

Many would claim that MEPA has now lost its vision, focusing on the trivial while ignoring the more complex, more significant whole. While great emphasis is placed on the quantifiable detail, the overall strategy has often been sidestepped or neglected as MEPA drifts from day to day, from private application to government proposal, from policy to superficial study.

How does one go about restoring the public's confidence in the institution set up to protect its interests? Undoubtedly, the starting point is to regain - to reconfirm - the vision. Or to refresh and renew the objectives that are to be achieved and determinedly pursued.

The *Kamra tal-Periti (KTP)* notes with satisfaction the intention of Government (as expressed by the Prime Minister) to undertake reform at the Malta Environment and Planning Authority (MEPA), and it applauds Government's recognition of the importance of the intended reforms from a national perspective, such that this administration has judged to place them under the direct stewardship of the Prime Minister, in the light of his responsibility for the National Policy for Sustainable Development.

The *KTP* assures the Government of its commitment to assist now and in the future a planning supervisory and regulatory body such as MEPA founded to regulate planning and land use issues for the benefit of our society.

Everybody appreciates that MEPA has evident and serious limitations, both due to the restricted budgets voted to it as well as a result of inadequate staffing levels. Most also recognise that MEPA has an awkward task in that it will rarely be in a position to satisfy all parties with whatever decision is taken.

The issues to look at therefore are whether there are potential means for MEPA to improve its effectiveness, bearing in mind that budgets are limited. As a first step a study ought to be undertaken to attempt to distinguish between the important and secondary issues, so as to allow the organisation to focus on areas critical from a national planning point of view, and for it to provide a better service to the country.

This document presents the *KTP's* position on the matter and summarizes what the *KTP* believes to be the main issues, the resolution of which will be significant for the success of MEPA's reform. And while the *KTP* appreciates that the full implementation of these goals may only be achieved over the medium to long term, it fully believes that many of the proposals may be implemented without unnecessary delay and with little additional expense, as part of the overall and ongoing process to keep MEPA adjourned with the shifting requirements of society.

A DEVELOPING A CLEAR VISION

MEPA's reform has to be founded primarily on a clear vision for the urban and environmental development of the nation's territory (land and sea based). This vision is necessarily linked to the country's economic, political and socio-cultural aspirations.

Amongst these one would need to include;

- Malta's role in the European Union, giving particular regard to its geographical position and economic and political standing amongst the group of nations
- Malta's aspirations as a strategic hub at the heart of the Mediterranean, situated as it is between the economic power house that is Europe, the developing nations of Africa and the resource rich regions of the Middle East
- the objectives of the *Partit Nazzjonalista* for the economic development of the country as set out in Vision 2015 and the National Strategic Reference Framework 2007-2013
- the obligations imposed on the country to achieve the goals of the Lisbon Agenda which seeks to make the European Union a centre of excellence in Information Technology, Research and Innovation
- the goals of the Kyoto Protocol, requiring all nations to promote the sustainable use of natural resources and to contribute their share to counter the effects of global warming, reducing their dependence on non-renewable resources for the production of energy,
- Malta's subsequent commitments to achieve specific objectives within pre determined time frames, made at the World Summit on Sustainable Development in Johannesburg in 2002.

Taking note of the challenges ahead to achieve these goals, the *Kamra tal-Periti's* position paper on the Built Environment, ***THE URBAN CHALLENGE: Our Quality of Life and the Built Environment***, published in November 2007, states;

Membership of the EU and the imminent adoption of the Euro are intended to make the islands more attractive for foreign investment, which should lead to further economic growth. How are we, as a nation to maximize on the opportunities these developments offer our citizens? Better education, more skills, greater investment in research and innovation and less bureaucracy are all factors requiring attention and action. Yet it cannot be denied that the quality of our environment has an economic role too. In our globalised world, our country's ability to attract investment while retaining those of our citizens whose abilities and ambitions may well take them elsewhere is dependent on the state of our social, economic, but also environmental fabric. Our towns and our remaining tracts of rural environment are the resources available to us, upon which we aspire to develop meaningful and healthy places to live, work, play and prosper.

The objective of any reform must ultimately be to obtain a better end result. MEPA's *raison d'être* is the creation of a better environment, built and unbuilt, to serve the citizens of this generation and those to come. Yet, what will this "better environment" be like? If we do not develop a vision for that environment; if we do not allow ourselves the opportunity to imagine what that environment could (and should) be like, we risk undertaking a perhaps costly and certainly laborious process of reform, without a clear direction and without achieving a better quality, and more sustainable, environment. This is all the more so given the particularly contentious milieu within which MEPA operates and the often conflicting concerns of the various social categories with their diverse demands to which it needs to respond.

The *KTP* believes that this vision should be structured around a number of core values, central to which is the tenet that all development should aim to achieve a harmonious balance between public benefit and the interests and demands of individuals and specific sectors of society.

It is not the purpose of this document to go further into these core values which are amply documented in *The Urban Challenge*. They can however be broadly summarized as follows:

- **the protection of heritage (built and environmental),**
- **the promotion of environmental sustainability,**
- **the removal of all or any planning practices which lead to undue, unsustainable and undesirable land speculation,**
- **the creation of quality living conditions and spaces in our urban centres, the stage upon which we act out our lives,**
- **the production of development of the highest quality possible (nothing but the best should do), that responds to the environmental, social and cultural specificities of our local context,**
- **the heavy investment in culture and cultural institutions as an essential tool for the cultural and social enrichment and education of our people**

B ACHIEVING QUALITY

An understanding of what constitutes quality is key to a commitment towards achieving it. The Roman architectural historian Vitruvius defined quality with the maxim: Firmness, Commodity and Delight; Firmness – of sound construction, adequate for use; Commodity – responsiveness to society's needs; Delight – appealing, to the visual and other senses.

While MEPA has achieved certain improvements in the overall process of urban development, it is clear that the end result, i.e. the quality of the rural and particularly the urban environment we inhabit, still leaves much to be desired.

It is illogical to assume that quality in the built environment will be achieved only as a result of improved planning tools and policy, yet an assessment of MEPA's existing planning tools, resources and processes is necessary in order to ascertain their suitability for the achievement of a quality environment.

The *KTP* believes that reform should seek to redress shortcomings in the following areas which have an effect on quality:

1 QUALITY CRITERIA

The absence of any attention to design quality built into the planning process as a criterion for the assessment of development permission applications:

- guidance documents like Policy and Design Guidance 2007 make general statements about design quality and urban design issues, yet in effect design quality is not taken into account in the planning application process which tends to assess each application in isolation, so much so that Development Planning Application Reports (DPAR) rarely, if ever, make mention of the qualitative aspect of a proposal from the point of view of their contribution to society, or for that matter, the quality of an existing property to which a development application refers.
- current disregard for quality in design and construction as a criterion for the assessment of applications results in complacency from those responsible for the submission of applications (*periti* and their clients) with regards to the quality of their design proposals, to the detriment of both the surrounding neighbourhoods and of the state of our environment.
- planning decisions should be judged on the basis of their added value. They should;
 - be justified with respect to the public interest as well (especially major projects and infrastructural works) and not simply in connection with the concerns or interests (however genuine) of individuals or organizations
 - reinforce the recognition of the legitimate needs of the neighbourhood around new developments, so as to safeguard through the introduction of adequate controls, the quality of life of the existing residents

- be weighed carefully and balanced in a manner that permits the greater good of the community (or the country) to take precedence over complete and absolute compliance with policies or other requirements.
- DPA Reports should give due praise where a proposal can give an added benefit to the built environment even if the proposal is not fully in line with written guidelines; however, it should also indicate real negative effects of a development proposal even if policies are not infringed. Case officers within the Development Control section of MEPA appear reluctant to tackle applications in this fashion since they are discouraged – if not prohibited – from using their discretion.

2 POLICY IMPACTS

The negative effect on quality of design and on quality of life of design guidance and policy (e.g. Local Plans) because they have not been considered from a holistic urban design viewpoint:

- Our built environment is a testimony to an inability to incorporate an urban design vision at local planning level. Building height designations have clearly not achieved a sensitive transition between historic urban cores and their surroundings or between built up areas on the periphery of towns and the surrounding countryside. This has caused an unfortunate deterioration in the quality of the urban and rural environment. Design guidance and the designation of building height needs to reflect urban context, not only onto street frontages but also onto back garden areas which are integral, for example, to the character of urban cores.
- The need for urban design considerations and indeed for Policy Impact Assessment has also been clearly brought out by the review of building heights which have had a profound affect on many urban areas. The review of heights across the board transformed land values in many areas, leading to a high degree of speculation and more importantly to increased pressures on the environment through higher densities, more intense traffic and loss of private green spaces, as well as a fundamental shift in land ownership patterns; all without any form of equivalent improvement in the quality of those same areas.

3 POLICY LIMITATIONS

Highly prescriptive guidance documents like Policy and Design Guidance 2007 shackle rather than promote creativity, innovation, and quality:

- the prescriptive nature of many “guidelines” and in particular DC2007 and its predecessors severely shackles rather than promotes creativity, innovation, and quality. The guidelines encourage instead the promulgation of mediocrity under the pretence of achieving continuity and uniformity, doing nothing in the process to help improve the state of our built environment or the quality of our urban design.
- the restrictive nature of DC2007 policies without categorization and the inflexibility of policy interpretation simply encourage the creation of the banal, and nothing other than the completely ordinary. The policies are based on standard building types (the terraced house, the ‘maisonette’, the ‘semi-detached’) which may no longer be ideal for today’s needs, nor are they consistent with declared sustainability policies. Focus is primarily on quantitative issues, whilst qualitative matters are often relegated to a minor role or not given any merit at all. DC2007 makes no allowances for, or references to, the non-typical and the innovative.

- The obligation for case officers to stick to policies irrespective of the nature of the case and particular circumstances often leads to much delay and several complaints over unfair treatment. This does not help the image of MEPA with its clients.

4 ENCOURAGING CREATIVITY AND INNOVATION IN DESIGN

Clearly there is an urgent need for mechanisms which encourage creativity and promote a drive for quality in design and construction:

- Innovative projects need to be assessed in a creative way.
- A mechanism needs to be created within the assessment process which truly promotes quality and innovation in architecture (and which may therefore also cater for the non-typical development).
- Policies should ideally be split into categories so that quality considerations and contribution to the built environment take precedence over other issues which have little overall impact;
 - primary (qualitative, intent) policies which need to be complied with in all cases
 - secondary (quantitative) guidelines which are to be applied according to particular circumstance and where and if applicable
 - guidelines for 'borderline' cases where proposals are for the greater part compliant with policies but lack of complete compliance does not currently permit a favourable recommendation in the interest of the greater overall benefit.

5 DESIGN REVIEW COMMISSION

The need to establish an Independent Design Review Commission to assess the quality of all development and infrastructure projects of significant scale or importance:

- Planning processes which assess developments from a legislative and policy point of view should never be confused with a process which assesses the quality of design, one process is comparatively rigid and requires a consistent application of 'rules' whilst the other is far more liberal and has to be based on informed and objective assessment by well appointed individuals.
- There is a need to establish a 'Design Review Commission' (within or outside the structures of MEPA) to assess projects from the viewpoint of quality of their design, buildability and of their contribution to the built environment, the community and the nation.
 - The commission could be established in parallel with DCC boards and would represent a major step in putting quality on the agenda.
 - This commission will have the automatic right to assess all major projects and infrastructure projects, but smaller applications could be forwarded to it at the request of the DCC or of the applicant.
 - The design review Commission is not an aesthetics board and is not there to discuss style, but only the project's contribution to the built environment and to society
 - Over time the role of the commission could extend to other operations which deal directly with quality, including the dissemination of best practice advice, an advisory role for those who commission buildings, and other similar practices similar to those undertaken by the UK's Commission for Architecture and the Built Environment (CABE).

C MEPA PROCEDURES AND PROCESSES

An assessment of MEPA's procedures and the way that these affect the level of service given by the Authority and the quality of any resultant development is an important aspect of this reform process so that:

- a. the Authority may understand the efficiency of the deployment of its own resources to see that these are used in a way that is most amenable to achieve quality development;
- b. the procedures may facilitate the operations of MEPA's clients such that their bureaucratic burden is reduced and they can dedicate more time to design quality.

In this respect the *KTP* notes that:

1 THE NEED FOR RATIONALISATION

MEPA's procedures are often inefficient and too bureaucratic on minor projects, yet insufficient to ensure quality on major projects:

- Existing laborious review procedures for minor applications should be rationalized so as to direct resources to developments and operations that require greater input.
- Positive recommendations by the Directorate, especially for minor works, should be fast-tracked with a delegated approval procedure.
- The use of Urban Design coding – a qualitative development from the present Local Plan zonal markers – to create site or location specific urban design guidelines for development in many urban areas would create a framework in which many cases could be more easily addressed with satisfactory results.

2 CONSULTATIONS

MEPA's consultation procedures with other departments and agencies should be rethought so as to avoid lengthening the application process unnecessarily:

- The process of consultation with other departments and entities is currently too cumbersome and leads to an inefficient use of resources and severe delays in concluding applications and other processes.
- The procedure for consultations should be revised and the consultation process with external consultants should be streamlined, and in particular:
 - The 'approval in principle' should be applied to all other regulatory and licensing bodies.
 - The procedure adopted by the MTA, for instance, is not efficient, confusing, and not conducive to good planning practice; it needs to be rationalised and made more user friendly prior to its adoption by other authorities.
 - Communication between government departments should be considerably improved. It should be inconceivable that various Government departments do not communicate directly with each other but only through their clients, the public. It should not be acceptable for a client of MEPA's (or any other authority) to have to shuffle between

various agencies several times when requiring a license or otherwise, often encountering inefficient and uncooperative structures incapable of delivering a timely service or response, or perhaps more alarmingly encountering conflicting instructions issued by various departments.

- The setting up of a one-stop shop should be seriously considered.
- The present one-step-at-a-time piecemeal system ought to be replaced by a single simultaneous request from MEPA for submissions from the various entities concerned, and all comments received could be communicated in a comprehensive manner to the applicant on one occasion.
- Similarly MEPA should not request amendments to applications time and time again. Second or third, or even fourth '*Requests for Further Information*' should be avoided wherever possible. Case officers should theoretically be in a position to submit one request to the applicant which would cover all required amendments for the project to comply with their interpretation of Policies and Guidelines. A round table discussion or review of the project between case officers, consulting bodies and the applicant could often help to cut down on many of the bureaucratic procedures and would avoid the frequent need for prolonged negotiation, requests for further information or re-design to the applicant and his *perit* at DCC level. This would help cut down on the amount of time MEPA waits on its consultants and the applicant for replies and would make the process of DCC decisions far more straightforward and rapid.

3 THE DPA REPORT

Even Government's own studies show that there is much improvement that can be expected from the preparation of the Development Planning Assessment Reports (DPAR). Their inadequacy often leads to applications presented to the boards for decisions being sent back for further clarification.

- The DPAR process, tied to the lack of flexibility in the interpretation of policies on a case by case basis – admittedly imposed on MEPA against its will – needs to be reviewed.
 - The current system leads to general dissatisfaction, since the process is completely incapable of dealing with the inherent inconsistencies in the whole planning system, the policies and the guidelines. Even if the DC were to accept the need for it, there is no satisfactory procedure for amending/correcting a DPA report once finalised and issued, or to delete any errors it may contain. As per current procedures, the incorrect DPA report is unavoidably presented to the boards with all errors intact (despite the ineffectual 'notes' occasionally inserted **and generally ignored**), with the evident consequences.
 - It is not the role of case officers to only concentrate on seeking as many reasons as possible to refuse an application. Their role would be better served if they coordinate more with applicants such that a design is amended / improved, where required, to conform with good practice, should this be acceptable to the applicant. This may require more meetings with the applicant prior to DPA report publication.

4 INTERNAL FEEDBACK

A process of feedback between the Development Control Commission (DCC) boards and the Directorate is essential, now more than ever, to ensure consistency in policy interpretation and decision taking:

- DCC and MEPA board rulings need to be made public and published for general consumption since they will allow the public to appreciate the current interpretation of policy by a system which lacks rationale as much as it lacks consistency
 - In order to provide useful general information to the public, the *KTP* recommends the publication of DCC and MEPA Board rulings. These should highlight interpretations beyond the published guidelines.
 - Comprehensive and coherent cross referenced documentation should be made available to the public on CD and/or published form, and should be readily traceable on the organisation's web-site.
 - Given the wealth of planning data processed daily, it should be comparatively easy to maintain a continuous review of decisions, and to learn from precedent. It must be stressed however, that each application is still to be assessed on its own merits.
 - The power of reversal of recommendations of the Directorate by the DCC should be retained but the process should be made much more accountable; a clearly explained logical explanation ought to be returned to the Directorate for refining future recommendations. Recently highlighted DCC decisions should not entail the loss of independence of the DCC from the Directorate.
 - The formal recognition of a correct hierarchy of the decision taking boards has become important; decisions taken by the Planning Appeals Board should become a reference to all other MEPA sections, while the DCC boards and the Directorate should furthermore be guided by Planning Authority Board rulings.

5 FOCUS

Certain departments need to be better resourced to allow them to better carry out their work:

- One particular area which needs proper attention is the preparation of development briefs.
 - Some areas identified as requiring a development study have not even been looked at since there are insufficient resources to allow MEPA to tackle them. While on occasions, applications concerning these areas are still processed, irrespective of whether they are suited to the locality or not, in other cases, applications are held pending the finalization of a detailed study. (The rationale behind the selected alternative is never clear.) Opportunities for the areas and their improvement are therefore almost invariably irretrievably lost.
 - Development Briefs prepared by MEPA should be comprehensive in their scope and once a particular project is identified, the MEPA process leading to the publication of a Development Brief should be complete with all necessary consultations, studies (such as EIA's and TIS reports) so as to enable the project to proceed within properly established and well defined parameters rather than being subjected to an impenetrable wall of delays through requests for various studies and further consultations once the project has been commissioned.

- A second area is the system for a more frequent review of policies. A system should be set up for the continuous study of policies and for their revision as necessary, whether it is a single policy or an individual topic.
 - More frequent reviews of Policies with regular (even if minor) updates and revisions will allow the Development Control and Design Guidance document to retain its relevance and to remain in line with changing circumstances.
 - Loopholes can be more effectively closed off, while opportunities which arise could be taken advantage of.
- Enforcement is evidently an area requiring assistance. It is an area where MEPA itself recognizes the need for improvement, and where it would wish to strengthen, as the MEPA Chairman and the Minister responsible for MEPA have themselves often pointed out.

6 SCHEDULING

The scheduling and the listing section of the Development Planning Department at MEPA is considerably under-resourced and should be strengthened to allow it to become more pro-active and less re-active.

- The *KTP* has been pushing for the recognition of the need to schedule some of Malta's post 1800 architectural works, those that are symbols of the aspirations of society at their date of construction, those that are worthy of preservation for future generations. Not acknowledged as such they are at great risk of being defaced or permanently destroyed.
- In particular, the seemingly prevailing (misguided) attitude that more recent buildings are worthless and can not be considered as national heritage, must be urgently addressed before any more of these buildings are destroyed. It would do well to bear in mind that today's buildings are tomorrow's heritage. Should the prevailing attitude remain unchecked, future generations will be bereft of any relevant examples of buildings which reflect our twentieth and twenty-first century culture and lifestyle.

7 STAFF EVALUATION

The assessment of work output within the Directorate needs to shift away from a quantitative assessment of the number of files processed to a quality-based system where quality and diligence are given due merit:

- The current scenario with regards to work output at the Planning Directorate is inappropriate in that there is far too much emphasis on quantity and throughput rather than quality and diligence in work.
 - The prevailing emphasis on reducing the back-log of applications to be processed is misplaced and efforts in reducing this backlog are totally misdirected and badly implemented, invariably resulting in poor quality of work.
 - The current system of 'performance reviews' is quantitative and based on the number of files that are processed (i.e. referred to the next stage in the planning process after the case-officer's assessment) regardless of whether these are properly processed and without regard for the quality of work performed. In essence this system is rewarding inefficiency and mediocrity.

- A case officer who carries out his work diligently, with the appropriate research and site visits, to put together a report of an appropriate standard requires more time and can process a far smaller amount of applications than another officer who carries out his work frivolously and with no regard to quality. Hence some officers are being penalised for maintaining good standards of work whilst others are rewarded for poor work through the performance bonus. The mediocre standard of a large number of DPAR reports received by the DCC Boards is a testament to this.
- In effect the system is also highly inefficient in reaching the desired goals of improving back-logs and decreasing processing times for applications since poorly assessed applications invariably cause a backlog at the DCC Boards when they are repeatedly referred back to the directorate, deferred for further information or subjected to lengthy negotiations and requests for re-design or further information with the applicant and architect at board level.
- A mechanism needs to be implemented which, whilst rewarding efforts of individuals or units within the directorate, is based on quality of work, diligence and dedication. More responsibility needs to be placed on Unit team managers with regard to ensuring quality and standards of work and possibly a feedback mechanism with the DCC Boards could be instrumental in achieving this.

8 EDUCATION AND TRAINING

The *KTP* has long been calling for the introduction of appropriate continuous Education and Training of all MEPA personnel.

- The lack of adequate continuous guidance for case officers and Unit Team Managers in planning policy and procedures results in their inability to identify quality in design and positive contribution to the built environment. Therefore, MEPA should provide continuous training and guidance for case officers and Unit Team Managers so that they are better equipped to identify good design and quality in architecture.
- Learning from experience through a continuous review of precedent and their relevance to future cases will assist them in identifying issues as and when they arise, and in proposing appropriate solutions
- Training should, ideally, eventually lead to the generation of more trust in MEPA and its staff and could be the route to the DC being granted an appreciable degree of discretion in the decision taking process.
- Customer care courses should lead to a better attitude of the MEPA staff in tackling the diverse issues they all face on a daily basis. Similarly, management training courses will help the senior members carry out their administrative duties.
- Upon appointment, the proper preparation and induction of board members will allow them to carry out their role successfully and could lead to greater efficiencies in the DCC decision-making process.

9 COMPLIANCE CERTIFICATION

Protection of citizens from the excesses of over-zealous developers is another sector which deserves further consideration:

- Few buildings, for example, are being issued with a final compliance certificate despite there being a condition in each permit expressly demanding the issue of this certificate prior to the property being put into use. MEPA is aware of the problem, has been aware for a considerable while, yet no solution has ever been proposed.
- Moreover, there seems to be no adequate mechanism to address the issue of the veracity and accuracy of the same Compliance Certificates.

10 NOTIFICATION OF OBJECTORS IN CASE OF APPEALS

- Legally there is no specific requirement for objectors to an application to be informed in cases where an appeal against a decision has been lodged. The *KTP* recommends that existing legislation is amended so that objectors are informed. MEPA has taken the practice to inform objectors anyway. The amendment to this procedure would however need to be introduced through new legislation.

11 GOZO CONCERNS

- MEPA's set-up and processes should seek to better accommodate the needs of the Gozitan public and the *perit* working from Gozo. They find themselves at a considerable disadvantage with respect to representation at MEPA meetings and public hearings.

D GOOD CORPORATE GOVERNANCE

Good governance is critical to the successful operation of any organization, particularly one such as MEPA, whose role gives it an enormous public responsibility. KTP would like MEPA to be recognized Nationwide as a champion for good governance, strictly following established procedures, legislation and national policies.

In particular KTP notes the importance of good corporate governance in:

1 THE ROLE OF GOVERNMENT

- The KTP supports the position of the MACP which is not against the principle that Central Government should participate actively in Development Plan and Planning Policy formulation and ultimately assume ownership of plans and policies. However, this should be done in the manner which is clearly prescribed in the law, and be as transparent as is clearly required under the Aarhus Convention to which Malta and the European Union are party and the requirements of which are inbuilt in Legal Notice 116 of 2005 (entitled Freedom of Access to Information on the Environment Regulations, 2005) and Directive 2003/4/EC of the European Parliament and of the EU Council on public access to environmental information. Being the competent regulatory authority as well as Government's advisor on matters concerning spatial development planning and policy, MEPA should be provided with the space and the resources to formulate its advice independently and without any form of political pressure – it would then be up to the Government to endorse MEPA's advice or otherwise as long as it justifies its position in public through the Planning Position Statement instrument prescribed in the Development Planning Act, 1992.
- The role of Government in planning must become more transparent and must also be guided by a National Strategy for Sustainable Development.
- Government should also ensure that reform within MEPA is matched by reform in other authorities, institutions and user groups whose correct functioning has a direct influence on the efficiency of the planning system as a whole.

2 POLICIES

- There is a complete lack or failure to address the issue of the interpretation of policy. *KTP* has always insisted that any new Policy or its interpretation should go through a pre-defined process of adoption after approval by the Board. Except for few exceptions, all the relevant information relating to new policies and procedures should be disseminated to all stakeholders and made available to the public well before the implementation of any new policy is used in the assessment of applications. This is also in line with creating a narrower margin for variance in interpretation in its applications.
- In particular, this issue should be diligently applied at Directorate level since, on occasion inappropriately liberal interpretation of the same policies by Directorate officials has given rise to a totally opposite meaning being applied in separate similar applications.
- In some cases, existing policies lead to difficulties in reaching a decision at Board level for a number of reasons. In other cases no policy exists at all. Whilst decisions taken in the absence of relevant policies are clearly inappropriate and should not be permitted, the deficiencies in existing policies as well as the absence of policies which are required should be acted upon with urgency. More attention in this regard should be given to feedback received from DCC Boards.

3 PUBLIC PARTICIPATION

In some instances, mere 'lip-service' is paid to the concept of consultation with no proper regard for the outcome of the actual process itself or of the benefits and advantages of its proper use. The KTP, in this regard;

- favours the strengthening of public participation/consultation during the policy drafting process.
- encourages MEPA to study means to draw-in local representation during the DCC determination of major projects.
- is critical of the inadequate present practices for the publication and dissemination of policies and calls for the timely publication and nation-wide distribution of planning policies, planning proposals, codes of practice and procedures, including ad hoc policies adopted by DCC Boards and MEPA Board in response to various applications;
- calls for more collaboration between MEPA and the KTP for the benefit of the industry, and;
 - suggests reviving the currently non-functioning Planning Consultative Committee (PCC), and empowering of the Users' Committee which has often been shunned by the Ministry.
 - notes with regret MEPA's unilateral suspension of discussions with KTP on policy making and policy formulation. This runs contrary to an agreement reached some years ago between the two parties and to MEPA's obligations in terms of the Law.
 - seeks more collaboration from MEPA on providing necessary information related to cases the KTP is investigating, which cases concern professional conduct.

4 DCC PROCEDURES AND CONDUCT

Procedures and practices of the DCC are inadequate, have been inadequate, and need to be improved to meet peoples' expectations,

- Lack of time-management by DCC Boards (where applicants and their *periti* are frequently kept waiting for inordinate periods due to prolonged discussion/negotiation with applicant/architect on some other case-file) is a certain customer-relations disaster.
- Procedures in cases of planning applications submitted by *periti* who are members of MEPA Boards need to be updated and improved to eliminate any misconceptions.
- It is unacceptable that applications filed by *periti* members of a Board on behalf of a client are reviewed by that same Board. At the same time, considering the part-time nature of the Boards and the meagre allowance paid by MEPA, it is not realistic (nor would it be fair) to expect *periti* Board members to give up their private practice.
- In order for the DCC to function better, the KTP has in the past suggested and continues to propose the preparation of a code of conduct for all members of the boards at MEPA, and the preparation of the board members, on their appointment, to allow them to carry out their role successfully.

5 MEPA'S AUDITOR

MEPA's Auditor has an essential role to play and his input has over the past few years proved invaluable. Civil society now looks to the Auditor for the protection of its interests. Government, and MEPA itself, are learning to appreciate the usefulness of the role in revealing neglected and inappropriate processes and practices requiring urgent review;

- The *KTP* recognises the importance of the office of the Auditor and encourages its strengthening in order to provide for an equitable service to society and in order to safeguard the urban environment.

6 INTERFERENCE

Interference in the workings of the planning process at all levels of MEPA has been growing over recent years. Not only does this lead to wrong decisions being taken, against the better judgment of MEPA's own employees, but it also damages the country perception of the institution which should be seen to be totally independent, and completely and solely concerned with safeguarding the environment.

- In particular the *KTP* appeals for the strict implementation of good governance, firstly in national planning and procurement processes, and later, in every subsequent process;
- the *KTP* insists that more transparency in the planning process should be implemented with urgency, with all forms of restriction on viewing of case-files by members of the public being removed.
- concerted efforts are required by all, starting from the highest echelons of authority, to dismantle favouritism, regrettably our national pervasive *modus operandi*, from the spatial planning process;
- The *KTP* calls on Government to stick to the procedures set up in legislation established by itself. Impulsive decision taking by those outside the Authority and the publication of development proposals of a strategic nature (as in the case of the recent announcement for proposals for the Grand Harbour), without proper controls, or in depth studies and research simply undermines MEPA's authority, leads to uncertainty of the effectiveness of the process and simply demoralizes those engaged to do this very sort of strategic thinking.

7 MEPA'S HUMAN RESOURCES

MEPA's prime assets are its human resources. Its staff's skills and their assumed ability to provide the level of unstinting and fearless dedicated service expected of an institution entrusted with safeguarding the country's environment need to be continually supported and improved. In order to build the country's confidence in the entity, measures are required to ensure that;

- there is a broad representation of civil society within the DCC and MEPA's decision-making bodies, thereby strengthening the organisational structures of MEPA;
- posts are assigned on the basis of competence and merit and remunerated accordingly to ensure the complete dedication of the personnel to their employer;
- redundant or underutilized staff must be relocated away from MEPA, or assigned to other posts where they may prove more useful to MEPA's clients;
- incompetence is never tolerated and measures are implemented to eliminate it as far as reasonably possible;
- corruption at any level of the organization should be promptly investigated and eliminated;
- The management and the administrative roles should be separated, so that the professionals dealing with the planning process are adequately supported by an administrative and management team entrusted to provide the support services required of a corporate entity responsible for delivering a quality service to a demanding and increasingly more vociferous public.

Further views by the Kamra tal-Periti on MEPA Reform

13th August 2008

Further views by the Kamra tal-Periti on MEPA reform

The following views of the Kamra tal-Periti are being made following the meeting held with the Prime Minister on 31st July 2008, and are the result of a reflection by the Kamra on the discussion held then, and as a first response to the suggestions and views as presented by the Prime Minister in that meeting. Other comments and recommendations can and will be made as and when appropriate.

These views are intended to complement and detail the views put forth earlier by the Kamra in the document entitled: "MEPA REFORM" (A position paper prepared by the Kamra tal-Periti - March 2008).

The KTP firmly believes that significant improvements need to be made in the way MEPA delivers its services, and addresses these issues below:

- 1 Applications not in compliance with policies**
- 2 Floor Area Ratio**
- 3 Outline development applications**
- 4 Outside development scheme applications**
- 5 Structure plan review & Local Plan review**
- 6 MEPA Boards & Directorate integrity**
- 7 Rewarding of quality performance by MEPA officers**
- 8 Policy dissemination & information**
- 9 Sustainable development & quality development**
- 10 Review Forum – Built Environment Centre**
- 11 Delivery of projects**

1. Applications not in compliance with policies

The situation arising that Periti and clients try to bend the rules arises to a great degree from bad policy drafting, and inadequate assessment of applications at the Directorate. This is of concern to the Kamra, as we support a high integrity of professional practice, and request that the regulatory aspect as set out by Law in the Periti Act be taken seriously by Government. We reject however the generalisation that Periti seek to avoid policy compliance. Nevertheless certain applications of a “challenging” nature are in fact necessary to achieve changes in policies by forcing a re-think of certain policies. We have seen an approach to planning by MEPA which has become over-reliant on a textual, legalistic, interpretation of a generalised building code. This has resulted in an approach which is insufficiently sensitive to local situations and developments. We believe the Structure Plan policies have been taken far too much out of context by the Directorate and have now been awaiting review for over 15 years. A closer relationship in time and context between Structure Plan policies and the present objectives of the strategic development for Malta would reduce conflicts and make more sensible rules.

2. Floor Area Ratio

We agree that that FAR is non-sensical, abused and should be scrapped in its present form. We go further and recommend a freeze on developments not yet committed pending a strategic review of tall buildings in the context of a Structure Plan review. This need not be procrastinated any longer, if the political will is present. We note that much groundwork was carried out and published several years ago.. We see tall buildings as a significant element of urban landscape which can, within a strategic approach, provide certain urban benefits. An urban plan to accommodate sensible groupings of such buildings is however necessary.

3. Outline development applications

The ODA is a method of establishing what applications would be acceptable for development and has been particularly useful in areas where the Local Plan was silent and where the Structure Plan was not clear. It would be unwise to remove this facility due to the inability of MEPA in certain cases to determine the critical parameters of the development that the applicant seeks to have set in his ODA. However, the reserved matters that MEPA needs to determine at full development application stage only when the total project parameters are known, can be extended at MEPA’s discretion.

4. Outside development scheme applications

ODZ applications need to be strictly regulated to limit urban sprawl. However a number of developments need to be placed outside the development zones which are normally considered for housing. Some of these developments can be peripheral to existing conurbations, but the Kamra believes that a review of the Local Plans and the Structure Plans can rationalise much of these developments within existing boundaries to limit sprawl and retain the countryside.

It should also be noted that the protection of ODZ areas, and other sensitive areas such as UCAs, is not limited to the constraints placed upon development that takes place within the ODZs or UCAs themselves but also to the harmonious control of adjacent development. For example situations where the edge of development adjacent to a UCA or an ODZ is characterised by three floor development (often with penthouses and semi-basements) is physically and visually intrusive and does not reflect the character of the adjacent areas, or the requirements of good urban design. Sensitive sustainable planning solutions will not be achieved by blanket restrictions but by holistic thinking at a planning and urban design level.

5. Structure Plan review & Local Plan review

The Kamra was and remains a firm believer in the whole process that lead up to the foundation of the PA in 1992 in the formulation of the Structure Plan, together with the enacting of the Development Planning Act. The piecemeal reforms of the legislation, with the numerous unsynchronised subject papers over the years have not led to a harmonious continuation of that process. It is essential that the whole process be revisited and revamped in order for any “reform” to be sustainable. The Structure Plan is now 15 years out of date, and the Local Plans (issued after a long delay) are up for review this year. The process of consultation, feedback, and implementation has to be kept on going in a timely cycle as otherwise ad hoc planning will remain the order of the day. There should be an obligation for MEPA to publish their feedback in a short and defined timeframe on how and why certain comments are/are not considered. Moreover it is essential that the final product does not spring surprises that were never the subject of consultation. This of itself would require re-consultation.

As the Authority on planning MEPA is duty bound to be the informed centre of excellence of the subject of its planning, irrespective of the media response, or lack of. It should not excuse its own bad decisions on the lack of negative feedback from the public or other entities. It is unacceptable that MEPA responds solely to negative comments, or take silence as consent.

6. Integrity of members of the MEPA Boards & the Directorate

The Kamra recognises that potential for conflicts of interests exists for its members who serve in MEPA Boards, DCCs, or Commissions. An integral part of our newly proposed Code of Professional Conduct deals precisely with such situations. However we believe that we should recommend to our members not to take on commissions which may be brought before Boards on which they sit. We believe as we have stated in the past that the conflicts may lie not only with Periti, but with other professionals, Government representatives, and “independents” on these Boards or Commissions. The continued reliance of these Boards on the guidance given by these Periti only reflects the lack of preparedness of the other members, and supports our argument on the the lack of clarity in the briefs prepared by the Directorate such as DPARs. (see (1)). It seems these are often prepared based on a bias for or against a proposal rather than a proper assessment and statement of the issues.

We strongly believe in the representation of civil society on these Boards and the democratisation of the Planning process in that one should not necessarily need high

expertise to determine planning issues as long as there is sufficient input from and time for the boards to review technical expertise (presented in layman's terms if necessary) where this is required. The participation of independents on such Boards is to be facilitated by clear and honest guidance from the Directorate. The Directorate spends far more time on applications than Boards do, however over the years the high percentage of overturning of recommendations does give rise to concerns that the Directorate is not in general preparing its recommendations in earnest, or even after discussing with the applicant/Perit. A recent reversal of this trend may be due to fear of repeating well publicised mistakes - this does not mean that the Directorate's recommendations have improved – but it may be convenient for some to present it this way. DCCs are more likely to use discretion where they believe a development is right, whereas the Directorate staff is often capable of little more than ticking the checklist they have derived from the obsolete Structure Plan and the disjointed Policies. The reinforcement of a rigorous code of ethics to ensure a professional approach to the considerations with which DPARs are completed at Directorate level is essential to ensure the integrity of the planning process.

7. Rewarding of quality performance by MEPA Officers

Since there appears to be a (perhaps exaggerated) preoccupation with volume throughput of processed applications at MEPA, the current regime of Performance Bonuses paid to MEPA officers is based on quantitative assessment of the number of files 'processed'. Whilst recognising that diligent and dedicated work must be rewarded, particularly when this goes beyond the normal call of duty, it has to be realised that this system is actually militating against quality of work by the Directorate employees. This system rewards officers that 'process' the most application files with no regard to the quality of that processing and actually penalises officers that pursue such processing more diligently and carefully (and hence process a smaller number). This results in a large proportion of DPA reports presented to the DCC Boards which are, at best mediocre in quality and reflective of an indifferent attitude by the processing officer. Frequently such DPA reports are merely a 'cut and paste' exercise from previous ones by the same officer and often contain totally unrelated or inadequate information, incomplete consultations and similar shortcomings which at best, are confusing and distracting and at worst, put the board in a position where any sort of properly informed decision is impossible. A serious revision of the manner in which performance assessments are carried out and the criteria for assessment is therefore strongly solicited.

8. Policy dissemination & information

An over dependence on the written statements intended to cover all possible areas of development has resulted in a large quantity of circulars, "guidelines", policy documents, legal notices and other instruments which all attempt to inform and consolidate the planning experience. However this process is vitiated if policies are not disseminated throughout the professions immediately and openly on adoption. This is to apply to policies in the making (e.g. not yet endorsed), ad hoc policies and those adopted formally. Withholding such information in such an institution as MEPA should be anathema, as MEPA has actually done much good in opening up, including by use of IT, much of a process which used to be shrouded in secrecy. The trend set by MEPA in

recent past to openly justify manifestly bad decisions (by adverts or articles in the media or on its website) is also not to be practised; good planning will stand on its own without justification, and may not gain all round applause either in the short term.

9. Sustainable development & quality development

The core of all our future development must be founded in sustainable development. The Government's Sustainable Development Strategy as approved has to be at the core of the Structure Plan and its review, and also implemented in the Local Plan reviews. The Kamra's document the Urban Challenge addresses several areas where achieving quality of the environment needs to be the focus; notably and topically, in transport and mobility. We believe that the MEPA reform would be short lived and illogical if it was not accompanied by an integrated approach to the future planning of Malta and Gozo guided by these principles.

10. Review Forum – Built Environment Centre

We believe that the role of an informed and independent Review Forum to examine broad brush issues such as Local Plans and large scale Developments would give valuable feedback to the Government and MEPA on such issues before they become the matter for the letter and blog pages of the media. Such a Forum we believe is vital in this country, and it should not be the province solely of Periti, but more importantly, of citizens from every background with the built and unbuilt environment at heart. Ownership of the environment is of all citizens, and it is important that space is made available to ensure a high quality, free and inclusive debate on such issues. The Kamra sees this Forum as an integral part of the functions of what we project as The Built Environment Centre, or Architecture Centre, as set out in *The Urban Challenge* (November 2007).

11. Project Delivery

The negative public perception of the MEPA is not limited to issues related to the approval or otherwise of planning applications and on whether the process undergone has been a fair and transparent one. The building process, particularly during the execution stage of any project, big or small, now involves interactivity with a number of entities, including but not limited to MEPA. The quality of these projects and their consideration by the public is often not limited to issues of design or appearance or use, but also of inconvenience, timeliness or generally, good neighbourliness. Many of these entities appear to be under resourced, or in certain cases, even unwilling to provide the services as required by law. This causes much frustration to developers and neighbours alike, and causes excessive increases in the duration of the same construction process. Certainly there is little or no co-ordination between these entities or even between the services required to be provided, which include:

- Health and Safety
- Site regulations
- Energy efficiency

- Building Regulations
- Access for disabled.

The Kamra thus recommends the establishment of a 'Construction Platform', a clear reference point for developers, building professionals and the general public, a one-stop service shop for providing an improved and seamless service intended to facilitate the timely delivery of projects and the expedient reaction to the concerns of neighbours to projects.

Conclusion

We submit the above brief exposition of our views in response to the consultation carried out with us so far. We look forward to further exchanges to clarification or examining proposals for changes in detail.

Kamra tal-Periti