

Building Industry Consultative Council

Comments and Proposals re *A Blueprint for MEPA's Reform*

October 2009

Report drafted by Perit John Ebejer BICC Chairman with amendments made following BICC meeting of 18th September 2009.

The BICC has taken note of the Governments proposal's for MEPA reform as outlined in the document *A Blueprint for MEPA's Reform* (9th July 2009). (henceforth referred to as the "Blueprint document"). Several BICC board members also attended the National Conference held at the end of July.

The following are further comments on MEPA reform. This document is subdivided into five parts as follows;

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Part I Fundamental proposals

In BICC's view, the issues which these two proposals seek to address have been considered in the Blueprint document but have not been adequately recognised and addressed.

BICC PROPOSAL A **Proper Use of Policy**

Applications are often processed in an inadequate manner as follows;

- An excessively restrictive interpretation of policy
- A checklist approach whereby the case officer checks compliance with a list of policies. If any one of those policies is breached then the application is recommended for refusal.
- The application of quantitative criteria of policies and whereas qualitative criteria in the same policies are ignored.
- The case officer evades discussion and negotiations with the applicant, thus putting the onus on the DCC board to negotiate applications.

The net effect of these deficiencies is that the technical arm of MEPA abdicates from its responsibility of interpreting policy and transfers it to the DCC.

Applicants are put at a major disadvantage. The likelihood for a refusal is much greater including for development proposals which on a common sense basis should be approved. This causes endless frustration to the applicant and his architect. The process becomes an uphill struggle requiring endless patience and perseverance. For the small applicant with limited resources, this uphill struggle becomes an impossible task.

This approach reduces the role of the MEPA planner from that of a professional, as it should be, to that of a technician whose sole ability would be to apply narrow rules.

It is proposed that the Planning Directorate's role vis-à-vis policy interpretation is enshrined in legislation.

One possible approach could be the following addition to section 33:¹

“in its determination of an application, the Authority shall require the Planning Directorate to prepare a report with a recommendation of whether the application is to be approved or refused and such report shall be based on the Directorate's interpretation of the relevant policies in the development plans.”

The application of such an amendment would necessitate: negotiations by the case officer with the applicant so effective solutions are found if and where there is non-compliance to policy. It also requires the DCC to refer back the file to the Directorate where there is no attempt to interpret policy or where the interpretation of policy is manifestly incorrect or excessively restrictive.²

BICC PROPOSAL B

The Need for Planning Skills

There is an insufficient number of planners within MEPA with adequate training and experience to evaluate applications on the basis of interpretation of policy. In the early nineties, when the Planning Authority was set up, there was a conscious effort to train new graduates, particularly architects, as planners. Most of the architect-planners have now moved on. There was also investment in technical people to obtain a diploma or a first degree. This was certainly useful but, in most cases, the skills acquired were not sufficient for these graduates to handle the more complex development applications.

Assessing a development application involves determining the pros and cons of a proposed development on the basis of planning policy. On balance, will the proposed development be beneficial or detrimental to society? Each step of the way involves discretion; interpreting policy, establishing the pros and cons, what weight to give to each and ultimately deciding which way “the balance should tilt”.

The system will fail if the responsibility for the use of discretion is put on persons who lack those skills. One overriding objective of the reform must be to ensure that there will be

¹ Section 33 states: *“in its determination upon an application the Authority shall apply development plans and planning policy and have regard to any other material considerations and representations*”

² *A change on the lines as proposed above was introduced in 2006 (refer to MEPA Circular 1/06) but its implementation was resisted by case officers. Moreover, there were insufficient human resources to implement these changes effectively.*

enough case officers with the appropriate skills to use discretion properly in the processing of applications.³

For a planning officer to process an application in a correct manner he/she is required to;

- read and interpret planning policy correctly,
- negotiate with applicant, architect and objector,
- communicate both verbally and in writing,
- read architect's drawings,
- have an understanding of design including context
- have some understanding of the development process,
- have a positive attitude to development whilst understanding the need for sustainability
- have a basic understanding of the legislation.

This is a tall order and it is through training and experience that planning officers can acquire these skills. In the past these skills were taken too much for granted and in hindsight, there was not enough investment in postgraduate planning training.

There are several planning officers within MEPA who have the required skills but not enough to handle the volume of applications received.

It is proposed that OPM embarks on an intensive programme of training including postgraduate training (locally and overseas), planning diploma and degree courses locally and in-house retraining for MEPA staff. The focus of the training should be to enhance the various skills that are required for proper assessment of development applications. DCC board members should also be required to attend some training at least to understand the basics of how a planning system should operate.

This is of fundamental importance and should be the corner stone of the entire change process. Unless the case officers start preparing proper reports with recommendations based on an appropriate interpretation of policy, most of the changes being proposed in this MEPA reform will bring little or no tangible improvement.

A suggested target is (i) to have three Maltese doing post graduate studies in planning each year for a period of three years (ii) to have 20 students per year for three consecutive years in the degree course for planning at UoM. Courses should be open to people from outside MEPA, for whom short work placements with MEPA should be arranged.

The training needs to be on a holistic view on issues related to the built environment and on issues related to planning law and procedures (and not on some specialization related to the environment). In drawing up the course content, care should be taken to ensure that the skills required for the Maltese planning system are developed.

³ In 2006/7, a call for new call officers was issued by MEPA. MRAE argued that MEPA should seek to engage architects because architects are more likely to have the range of skills referred to above. Few people applied, mostly persons with a first degree in geography. Unless a comprehensive programme of training is embarked upon, MEPA will continue to have difficulties engaging persons with the right skills.

Part II Detailed comments on the Blueprint document

("Blueprint" proposals reproduced in blue text)

A1.4 The Policy Unit within OPM will undertake a systematic review of ME PA'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.

The review of policies is an ongoing process irrespective of any proposed reform. It is the BICC's view that most of the policies are generally acceptable other than some fine tuning and updating.

This notwithstanding, BICC agrees with a systematic review of MEPA's policies and that these are *"submitted to the Parliamentary Committee for public scrutiny and approval."*

What is more important is how the policies are used. The improvement of policies will be to no avail unless there is an adequate number of properly qualified planners as case officers and that it made clear that it is their remit to interpret policy (in line with BICC Proposals A & B above).

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.

All the official policies are readily available on the website and hence the need to publish a compendium is doubtful. Besides, substantial amounts of paper will be used to print the compendium - government should discourage the use of paper especially where there is a reasonable alternative.

When a policy document is amended or newly issued (in accordance to the process set out in the legislation), there should be greater publicity for such changes. Moreover, it should be made clear to case officers and to boards that only policies which have been duly endorsed according to legislation are applicable. These would in part address any concerns relating to unauthorised use of informal internal unapproved policies.

The interpretation of policy is dependent on the context and specific circumstances of the application. "clear direction on the interpretation of policies" means that we will have yet more documents, policy guidance, references, etc. to refer to when what is required is someone competent who is able to correctly interpret policy in the first place given the specifics of the application being considered. (again in line with BICC Proposals A & B above).

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.

In the past, there were various persons from NGOs who were nominated as board members. BICC has no problem if the number of persons coming from civil society nominated on boards is increased. There is however two important provisos; (i) the board membership will be in their personal capacity and not as representatives of the NGO from which they come from. (ii) Each board member must vote on a project in accordance to his/her conscience and according to policy on the basis of the information that is presented before him/her, irrespective of what any NGO may think about the project.

Note that civil society includes not just ENGOs but also NGOs from the economic sector and from other sectors.

Government should also consider nominating someone from the local councils association (again with the proviso that this will be in his/her personal capacity).

There should be a basic training course on planning (including legislation and the use of policies) to which all new MEPA and DCC board members should be required to attend. This is particularly relevant for people from civil society to ensure that they understand what their role on the board will be .

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 BICC is not convinced that having only full-timer on the boards will be better than the current board set-up with part-time members. With a board members on a full time basis, it will be easier for the case officers to shift the responsibility of policy interpretation and negotiation with the applicant onto the Board. This will not improve the situation.

Our planning system is based on a clear distinction between the technical arm (the Planning Directorate within MEPA) and the deciding body (the DCC boards). The case officer prepares the recommendation based on the interpretation of policy. An evaluation of the application together with a recommendation is referred to the board. It is the board which decides on the basis of the information and assessment referred to it. With full-time board members, there is the risk that this distinction between the technical arm which makes the recommendation and the deciding body will be lost.

In any case, three members on the DCC is not sufficient to ensure quality in the decision. If full time boards are set up, these should have five members.

Proposed Key stages (Figure 6) and Timeframes (Figure 7)

Unless there are competent planning professionals who deal with applications (in line with Proposal A above), changing the process will not bring about substantial improvement.

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

You cannot have it both ways. You cannot allow all parties to make representations at DCC and, at the same time, eliminate negotiations between the applicant and the DCC during the hearing.

During the meeting, the DCC board members refer to the DPA report and also to the contents of the file.

Only clarifications of information should be allowed and this strictly at the discretion of the Chairman. This is being recommended because:

- All the information relevant to the application is in the file and is summed up in the DPA report. Hence, there is no need for the applicant to make representations during the board other than in exceptional circumstances to clarify information.
- The negotiations between the applicant and the DCC during the hearing is one source of inconsistency because an application for which verbal representations are made is likely to be treated in a different manner from that application where no verbal representations are made during the sitting.
- Verbal representations to the DCC are wasteful of time. There are instances where objectors simply use the opportunity to vent their anger and frustration without providing any information or view which leads to a better decision. Many people are unable to make a concise argument without rambling on.
- All negotiations and discussions should be carried out beforehand between the applicant/architect and the case officer. (This is a further reason why Proposals A and B are of fundamental importance.)

Moreover, the reasons why no verbal submission are allowed should be explained to the applicants and objectors. Objectors' expectation to make verbal representation before the DCC causes unnecessary antagonism against MEPA – hence the need for better communication to objectors.

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.

Agree with having a Planning and Review Tribunal chaired by a person versed in planning. This will bring to an end the current excessively legalistic assessment of applications by the Appeals Board which is in fact one source of inconsistency. As for DCC, BICC has doubts on having full time boards. Timeframes should be set for Planning and Review Tribunal

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

Agreed especially to the offering of technical advice. They need to explain the reasons for decisions taken. They also need to explain planning policy. Note that this requires technically competent people, a further reason why more training is required (in line with Proposal B above).

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

This is agreed to but it is not enough. Certain practices and attitudes by some individuals will be difficult to change. Refer to Proposal B above.

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.

Unless there are enough competent people to run the system, these changes will not bring about substantial improvements.

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

Agreed that there should be a single opportunity for redress (instead of two). As is being proposed in A.10, the criteria for decision in review process should be technical (i.e. planning policy) and not legal.

B1.15 Replace the outline development application mechanism with the provision of a Planning and Environmental Brief which would be formulated by ME PA 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 ME PA 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.

Agreed. Note again that this requires persons with the right skills to produce these Briefs and hence the need for intensive training as suggested in Proposal B. For example, the MEPA officer drafting this Brief needs to have good communication and negotiation skills if this is to be prepared in consultation with the applicant.

This proposal is a further justification for Proposal A above i.e. making it a legal requirement for the Planning Directorate to interpret policy. Useful Briefs can only be produced if whoever prepares them is allowed to interpret policy and apply it to the site and the proposed development.

There should be a time limit on the MEPA to prepare this Brief and a proviso allowing the applicant to submit an application if the time limit is exceeded.

Every effort should be made to conclude applications which are currently pending before the new system is introduced.

The following proposals are agreed with (without the need for comment)

- A1.9 re improving public consultation procedures
- B1.11 re Enforcing the 30 day deadline for external consultations
- B1.14 re summary DPAR for applications which are clearly non-compliant to policy
- B1.16 re promotion of use of DNOs
- C1.1 re transfer of Audit Office to Ombudsman office
- C1.2 re internal audit function
- C1.3 re adoption of cell structure
- C1.4 re code of ethics
- C1.5 re consent of owner for submission of application
- C1.6 re notification of neighbours
- C1.7 re notification mechanism for ODZ developments
- D1.1 re setting up of Enforcement Directorate
- D1.2 re Enforcement Directorate working with local councils
- D1.3 re transfer of EMCS and littering responsibilities from MEPA

Part III Additional suggestions re development control

Suggestion 3.1 Precedent as a Material Consideration

For planning purposes, no two development proposals are the same. There will be differences in what is being proposed and/or the context of the site where the proposal is being made. Probably, there will also be differences in the policies that are applicable and/or the weighting to be given to each policy. This notwithstanding some applicants refer to precedents even in instances where there are manifest differences between the applicant's proposals and the alleged precedent.

To clarify the situation in relation to precedent it is suggested that an amendment is made to the law. The use of precedent as a material consideration in the assessment of development application is to be limited to instances where the circumstances of the application are precisely similar to the development proposal for which a permit was issued.

It is suggested that the following is added to section 33; *“Provided that precedent shall be a material consideration only if the context of the development application being considered, are all very similar to the development permit issued to which the application of precedent is being considered.”*

Context is to be defined as *“current size and nature of development on site, nature, floor area and number of floors of the proposed development, the nature and extent of development within the same street and the height limitation, other provisions as per zoning in the local plan and (for applications involving parking), the levels of traffic flow within the street.”*

Suggestion 3.2: Design Review Panel

The BICC agrees with the suggestion made by KTP for the setting up of a Design Review panel.

It is suggested that the DRP provides design advice and feedback in relation to development applications upon being requested by the Planning Directorate and by the DCC.

An advisory rather than a deciding board is being recommended. A situation where an application is decided by two different boards gives rise to numerous problems and potential delays. With the mechanism proposed, the DRP provides advice and it is up to the DCC to consider this advice in the wider context and circumstances of the proposed development and then decide accordingly.

It should also provide feedback if requested to by the project architect even prior to the submission of the application. For architects working as a sole practice, this would be very useful not only because of the feedback but also because they could obtain an independent informed opinion supporting their design.

Suggestion 3.3 Design considerations

It is proposed that there is a legal amendment so that design becomes a consideration in the assessment of development applications

It is suggested that Section 33 of the Act is amended so that the Authority is required to apply design considerations (in addition to development plans and planning policy).

A definition for “design considerations” would need to be included the Act. One possibility of definition could be

“Design considerations includes but is not limited to

- Compatibility with streetscape and positive impact on urban space
- Aesthetic considerations
- Efficient layout
- Appropriate massing of building in relation to surroundings
- Sensitivity to heritage features “

This amendment will make it incumbent upon the case officer (in his/her recommendation) and the Board (in its decision) to take on board design considerations.

To be implemented there need to be more case officers with an understanding of design, preferably architect-planners (and hence again the importance of proposal B in part I). There would also need to be an advisory Design Review Panel (as proposed in suggestion 3.2).

MEPA should also consider having plans based on a volumetric approach, whereby the overall massing on each individual site will be established in the local plan. The resultant massing of building would thus be more sensitive to the topography and to the context (be it close to a UCA or close to the development boundary). This would be a radically different approach to current local plans with long term benefits. It would necessitate more resources on local plans.

Suggestion 3.4 Better definition of AO’s role – Removing the fear factor

The excessively judgmental approach adopted by the Audit officer has created a situation where case officers are afraid to make recommendations which are not strictly according to policy, irrespective of the practicalities and the specific circumstances of the application and its context. Many case officers do not interpret policy. Case officers are reduced to wheels in an administrative machine rather than using their professional judgment in the processing of applications. The DCC are also effected to some extent by the negative attitude adopted by the AO.

Suffice to mention that in the recent report on a Bahrija application, the AO alleged “collusion” without having any evidence to support his allegation.

Revised legislation should include a proper definition of the roles and responsibilities of the Audit Officer. Such roles should specifically prohibit the AO from entering into the merits of how policies are applied in the assessment of an application. The AO officer should also be bound by a code of ethics which should be made public.

Suggestion 3.5 Withdrawal of permits

The recent withdrawal of at least three permits is a source of concern. A development permit should only be withdrawn in very exceptional cases and the legislation (section 39(a)) is worded with this in mind.

The fact that permits were withdrawn following controversy hyped up by NGOs makes the matter even more alarming. We can end up with a situation where an application is determined not by the considered assessment of the case officer and the board but on the basis of behind the scenes negotiations between the applicant and self-appointed “representatives of the people”.

Suggestion 3.6 Review Procedures related to Accessibility

The need to have buildings accessible to all is fully appreciated not only because of persons with mobility difficulties but also for the convenience of the public at large. There are situations where, because of structural interventions required, the cost of making an existing building accessible would be excessive. Alternatively, there could be situations where the intervention required to provide accessibility would take far too much space, cause an obstruction to pavements, have a significant visual impact or compromise the historic value of a building.

Many applications are referred to KNPD for their evaluation. It appears that KNPD architects are not allowed to consider alternative solutions or reasonable compromises and are bound to apply KNPD rules rigorously. An applicant may make a request to an ad hoc Test Of Reasonableness Board appointed by KNPD. It is not considered appropriate to have a board taking subjective yet vital decisions on development projects when the constitution, procedures, criteria of the board are not set in legislation. It is inappropriate to have such a board being accountable to no one other than to the KNPD which appointed it.

It is recommended that the KNPD architects are allowed to apply reasonableness when assessing applications for accessibility. Architects should be allowed to apply their professional judgment to maximize accessibility to buildings while taking into account practicalities, including heritage value of building, circulation and layout, visual impact and costs.

Part IV

Suggestions re Bureaucratic Procedures

The following are suggestions relating to bureaucratic procedures (i.e. procedures which are not directly linked to development control decision or planning policy).

Bureaucratic procedures need to be improved with the objective of

- Making it easier for the applicant, without unduly loading MEPA with extra work. This includes reducing time and effort taken up by applicant and architect
- Reducing use of paper

Suggestion 4.1: Procedures for payment of DPF.

It is suggested that a much simpler method of payment is established.

Currently, much time is lost because the applicant has to go to the bank twice, first to pay the Lm15 and then to pay the full amount. Before going to the bank he has to go to the architect who will fill up the relevant forms. This means four outings for the applicant. This is a useless hassle especially for a first-time applicant. In addition, the eventual permit may be different from what was applied for necessitating a refund or further payment (hence more paperwork, bureaucracy and time loss).

It is suggested that payment is affected in instalments. The first part-payment will be with submission of the application. This part-payment has to be easy to determine without involving detailed computations so that the processing of application can proceed without loss of time in establishing or checking the fee due. The remaining part-payments are to be affected by the applicant at a later stage during the process. MEPA computes the amount due and an invoice is sent to applicant.

Payment by cheque should be allowed so that applicant will not need to go to bank. For the "small" applicant, this will save time and hassle.

Suggestion 4.2: Compliance certificates for blocks of flats

In blocks of flats each owner goes to the architect separately and asks for a compliance certificate for his unit. This results in numerous copies of plans, paper work and lost time for the owner and the architect in preparing the documentation.

It is suggested that once a building is completed, the project architect should issue one single compliance certificate for all the building. This is to be used by each of the different owners to obtain the water and electricity meter. If there is a time lapse of say six months from the date of the compliance certificate issued by the architect (for the whole block), the owner of an apartment would be requested to make a signed declaration that he had made any alterations to his property (other than finishes and fixtures) from the date of the compliance certificate. (if alterations were made, then the owner would require a separate compliance certificate from an architect for that apartment).

Suggestion 4.3: Accelerating the scanning process

The scanning of submitted applications needs to be accelerated. Some have claimed that they lose two weeks because of scanning. If this is not possible to accelerate, then this should be transferred to MEPA offices in Florida.

Part V

Comments on the EIA process and related matters

(Proposals B1.17, B1.18 B1.19, B1.20, B1.21, B1.22 A1.1 of the Blueprint document)

The BICC generally agree in principle with these proposals. There is concern, however, that if these proposed changes are carried out with a mistaken perception as to what EIAs are or should be, we will end up with EIA regulations which are even more restrictive and which would there be a source of delays and additional costs.

Creating a level Playing field with other member States

Any regulation, including those relating to the environment, effect the competitiveness of a country – investors are less likely to invest in a country where regulations are more demanding and bureaucratic. The EU directive on Environmental Impact Assessments provides a benchmark to which EU member states can refer, thereby providing for consistency and a more level playing field. Achieving a level playing field should be one of the objectives of any changes in the EIA regulations.

The current EIA regulations in Malta are more demanding than what is set out in the EU directive. On the one hand, this is understandable because of the small size of our country. On the other hand, however, there is a need to reduce discrepancies between requirements specified in the Directive and requirements set out in our EIA regulations.

As far as is practicable, EIAs are to be prepared where they are absolutely necessary and where they will provide for added-value in the eventual assessment of the development project. We also need to ensure that the environmental information collated in an EIA is of direct relevance to the proposed project and eventually to its assessment.

Even if a project does not qualify for the preparation of an EIA, it does not preclude MEPA from requesting any information that it considers necessary (provided that this is done outside the excessive formalities of an EIA process).

Adopting the right approach to EIAs

The EIA Directive requires that: *“Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue inter alia, of their nature, size or location are made subject to an assessment with regard to their effects.”*

Much depends on a member state’s interpretation of *“significant effects on the environment”*. When one views the projects listed in Annex I of the Directive, it is evident that Council’s intentions relate to projects with potentially serious environmental impacts (projects related to energy, major transport infrastructure, major industry etc.). In Malta, the thinking is different. The perception of the public, and to a limited extent of some EPD officers, is that any project which could remotely have an impact should be subject to an EIA.

This flaw in thinking is also reflected in the MEPA reform document where, with reference to the EIA process, it states *“it is MEPA’s responsibility to ensure that applications granted lead to a development which is sustainable and do not have adverse effects on the environment.”* Whereas the Directive speaks of *“significant effects on the environment”*, the MEPA reform document seems to suggest that the objective of an EIA is so that developments *“do not*

have adverse effects on the environment” irrespective of whether the potential impact is significant or not.

Hence, for example, a residential development of say 300 units within an urbanised area (and within the development boundaries) requires an EIA in Malta. In none of the other EU states would such a development require an EIA.

The attitude of certain sections of the environmental lobby is to use the EIA process as an additional hurdle in an effort to obstruct development. Note also that pressures for more demanding EIA regulations are, in part, due to sections of private sector which wish to create more consultancy work for themselves (to the detriment of clients and investors).

It is very likely that Malta has the highest number of EIAs per capita of population. This is absurd, especially when one considers the lack of human resources not only in MEPA itself (which causes delays) but also in the private sector (which causes delays and increases the cost). Where resources are scarce, it is more crucial to focus these resources on projects which really have a potentially serious impact on the environment.

Recommendation B1.17 proposes that the EIA Regulations will be amended to reflect more closely the Council Directive. This proposal is agreed to. More than that, the Regulations should be revised so that the Maltese regulations will be in line or similar to regulations of other EU countries such as Ireland or the UK.

Decisions taken re EIAs

In accordance to legislation, decision re EIA are taken by the Director of Planning. Decisions taken (for example what studies to include) could have a far reaching effect on the proposed development. Because of the Director's workload, the recommendations made by officers are endorsed by the Director without detailed assessment of the validity and consequences of such decision. Hence we have a situation where the fate of a project involving the investment of millions of euros and/or which could potentially create new jobs depends on the recommendations (and decision) of a new graduate from university.

It is recommended that the law is changed so that certain decisions relating to EIAs (for example terms of reference) are taken by a board of three persons rather than by one individual.

Harmonisation of DPA Act and EPA Act

Proposal A1.1 proposes the harmonisation of these two Acts into a single Act. This is fully agreed to but needs to go further. EPD officers need to have a better understanding of the Development Control process and when submitting comments on an application take on a more constructive attitude to developments which in principle are considered acceptable. Experience has shown that EPD officers often take non-compromising positions on projects which are environmentally beneficial, making the situation exceedingly difficult for the applicant (ex. Pembroke Garigue Heritage Park).