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

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

Parliamentary Secretariat for Planning  
and Simplification of Administrative Processes  
Auberge de Castille,  
Triq San Pawl,  
Valletta.

28 December 2016

### **Re: The New Commencement Notice Procedure**

Earlier this year, the Parliamentary Secretary and the Executive Chairperson of the Planning Authority invited the Council of the *Kamra tal-Periti* to meetings regarding the proposed changes to the Commencement Notice procedure. During these meetings, the Council made its position amply clear, and furthermore wrote to the Executive Chairperson of the Planning Authority as per correspondence dated 24 June 2016. Therein, it expressed its opinion that *“the only information that the Planning Authority requires is notification of the date of commencement of works and/or utilisation of permission”*. It was further stated that *“should the Planning Authority insist on requiring this information, it is free to request this from the applicant, and the Kamra tal-Periti sees no reason to justify why the Perit should be responsible for collating, verifying and submitting such information to the Authority.”*

An amended Commencement Notice has now been issued for public consultation, with the declared intention that the Commencement Notice will become a *“unified platform whereby the respective responsibilities of all stakeholders are more clearly defined”*. The Council of the *Kamra tal-Periti* has tried very hard to, first of all, convince Government to desist from this amended Commencement Notice, and, then, given that Government seemed determined to proceed, to remove the parts which clearly put an unnecessary onus on the Perit in line with its position as outlined above. A number of the Council’s requests have, in fact, been taken on board. However, the Council still believes that the concept behind the amended Commencement Notice is based on the wrong premise, and **that it should be withdrawn.**

The Consultation Exercise asks: *“Do you agree that the Commencement Notice, as proposed to be amended, provides a unified platform whereby the respective responsibilities of all stakeholders involved in the utilization of a planning permit are more clearly defined?”* In our view, **the answer to this question is a clear “No, we do not agree”**.

Why are we taking this position? In the first instance, the responsibilities referred to are not shared by many stakeholders, but by one single person – the “*applicant*”. The applicant is responsible for engaging a *perit* in order to obtain the necessary planning permission and to take responsibility for any civil works that need to be undertaken.. The applicant is responsible for engaging a licensed mason, the site manager, and the health and safety supervisors. There is therefore no need for any Commencement Notice to advise various “stakeholders of their responsibilities”. All that is required, in our view, is a notice issued to the applicant together with the permit (but not as a development permit condition), outlining the applicant’s responsibilities at law for the construction phase.

In the second instance, the proposed Commencement Notice is full of inconsistencies. The following are some examples:

- (i) How can there be a “Commencement” Notice for works already executed?
- (ii) The Commencement Notice is being touted as a one-stop shop. However, as the Council had suspected, the Commencement Notice does not waive the legal obligations, arising from other legislation, to advise the relative public entities (meaning BRO, OHS, etc.). So there are no administrative advantages.
- (iii) It is also expected that if any of the details in the notice change, for example, a change of the mason, the Commencement Notice has to be amended, even if the work has already started - so what “Commencement” Notice is this?
- (iv) The applicant is required to sign to “*I further undertake the responsibility to obtain clearance from a warranted perit to the effect that any works which are already constructed and covered by this permission are structurally sound as visually ascertained by the said perit*”. This statement is pure rubbish and completely unacceptable. If there are works to be undertaken, it is up to the *perit* who is taking civil responsibility for the works to ascertain whether any works already undertaken have sufficient structural integrity to carry the proposed works. And it is fallacious to promote the idea that structural soundness can be ascertained by visual inspection. Furthermore, it is incomprehensible why this is required in a Commencement Notice.
- (v) Box 4 is required to be filled in by the Mason/Licensed Builder. Both the Act VII of 2016 and Legal Notice 162 of 2015 refer to the licensed builder - even if the term used in the Code of Police Laws refers to mason. No system of licensing builders currently exists in Malta. In addition, the Civil Code places the liability on the contractor not the licensed builder. These anomalies need to be addressed.
- (vi) In Box 5, a *perit* is required to take responsibility for the contents of the permission. We have already put forward our view that the *perit* is never responsible for the contents of a permit, but that this responsibility lies solely with the applicant. The permission is issued to the applicant, and it is up to the applicant to follow the conditions imposed. The *perit* will assist

the applicant in fulfilling these conditions, but it is unacceptable that the *perit* assume responsibility for the “*contents of the permission*”.

- (vii) Box 6 is completely unnecessary in the Commencement Notice. Any delegation of responsibilities has to be regulated by agreements between the professionals involved, and the owner of the works; no other notification to the Planning Authority ought to be required.
- (viii) The reference to the Health and Safety Supervisor is not even correct in terms of the relevant legislation, which requires the Owner to engage both a Health and Safety Supervisor for the Design Stage and also for the Execution Stage.
- (ix) In Box 10, how can any Demolition Contractor declare himself to be lawfully authorised to exercise this function? By which relevant legislation?
- (x) Similarly in Box 11, by which legislation is an Excavations Contractor authorised?
- (xi) Similarly in Box 12, by which legislation is a Construction Contractor authorised?

Thirdly, although the Council has been assured that by simply uploading the Commencement Notice on behalf of the applicant a *perit* is not taking any responsibility for the contents and the respective declarations, we believe that there is a risk that the Courts will take a different view, and will ascribe to *periti* the responsibility of verifying the relative authorisations, (as it has already decided in the case of the licence of a mason). It is therefore our opinion that, should Government persist in promulgating this form in its current proposed format, such form should be submitted **directly by the applicant**.

Fourthly, we believe that all of the boxes in the Form, except the first one, refer to the process of construction, and not of obtaining planning permission and fulfilling the relative conditions. The information is consequently only relevant during construction, and therefore ought to fall solely under the remit of the Building Regulations Office. If, therefore, it is necessary to simplify the process by which an applicant advises the relative authorities, there could be a very simple on-line system set up by which the owner of the works, which are covered by a planning permit, himself notifies the BRO.

Finally, the Council of the Kamra tal-Periti regrets to note that a number of its concerns, already raised with the Parliamentary Secretary and the Executive Chairperson of the Planning Authority, have not been addressed. These include:

**(i) Legal Inconsistencies:**

The *Kamra* is concerned about the legal inconsistencies in the definition of the Commencement Notice and its purpose. In particular:

- Act VII of 2016, definition of “*commencement notice*” as follows: “*commencement notice*” means a notice **submitted by the perit on behalf of the applicant to the Authority** within the period of five days in advance to the date of commencement of works or utilization of permission, to notify the Authority with the date of commencement of

*works or utilization of permission, including the name of the licensed builder, the perit and the site manager as defined in the site management regulations, indicating their contact details where they can be reached at any time;*

- Act VII of 2016, Art 72 (4) proviso: *Provided further that **if the applicant fails to submit the commencement notice** relative to the permission, such development permission shall be considered as never having been utilised.*

Both these extracts place the onus of submission on the applicant, through the perit. Legal Notice 162 of 2015, Regulation 20, however states: *Prior to the commencement of any works relative to a valid permit, **the perit must submit the relative commencement notice on behalf of the applicant** to the Executive Chairperson within the period of five days in advance to the date of commencement of works or utilization of permission. **The perit shall notify** the Executive Chairperson with the date of commencement of works or utilization of permission. Unless specifically exempted by the Planning Board, **the perit shall include the contact details of the licensed builder and the site manager** as defined in the site management regulations, including details where they can be reached at any time, and any other documents which may be specifically required in the permit: **Provided that if the perit deems that any of the information required in the commencement notice is not applicable by reason of the specific circumstances or any provision at law, he shall give detailed reasons for not including such information:***

The latter text in the Legal Notice places the onus of submission on the applicant, through the *perit*, however it throws the responsibility of the correctness and content of the notice on the *perit*, rather than on the applicant. This inconsistency requires to be addressed with immediate effect, and the *Kamra* reiterates its position that the submission of the Commencement Notice and the correctness and completeness of its content should rest solely with the applicant.

## **(ii) The Principle**

As already stated in our meetings, the *Kamra tal-Periti* strongly believes that the Commencement Notice should be just that, i.e. a notification to the Planning Authority of the date of commencement of works or utilisation of permit. No more, no less. It should contain only that information that is strictly stipulated in the Act and/or the LN above mentioned, and any additional information or declarations are superfluous and unnecessary for the purposes of the planning process.

Although, during our meeting, we discussed the alternative of splitting the notice in various compulsory and non-compulsory sections, following internal discussion, the Council of the *Kamra tal-Periti* wishes to reiterate its original position as stated above. There is no reason for the PA to require any declarations by the builder/contractor or by the *perit*, and no reason why it should require information on the various tradespersons and professionals to be engaged on the project. Furthermore, none of these arise out of the Act, and therefore the PA is acting beyond its remit in asking for this information. This is not acceptable.

The *Kamra* would like to remind that since there is currently no formal licensing of excavation or demolition contractors - or indeed, any form of licensing of building or civil works contractor - reference to "*duly authorised, as prescribed by the relevant legislation, to exercise this function*" will simply create confusion, since there is no such legislation. Furthermore, it suggests that the Construction Site Regulations and the Avoidance of Damage to Third Parties Regulations be merged, or somehow co-ordinated, so that it is not necessary to have two separate Site Managers. The issue of lawful authorisation to exercise the function of Site Manager also arises; which qualifications are required for a lawfully authorised Site Manager?

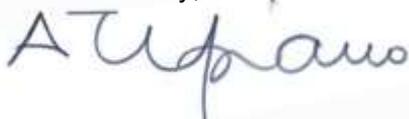
The *Kamra tal-Periti* is therefore strongly of the opinion that there should be one Commencement Notice which includes strictly that information required by the Act / LN, and, if anything, there could be totally separate and unrelated forms which are submitted to the BRO / OHSa etc as required. In all cases, onus of submission and correctness is to lie with the applicant. The *Kamra* believes that the whole process would be much simpler if, with the issuance of the Planning Authority permit to the applicant, either a simple notice, or even the appropriately formulated forms for notifying the various interested entities were attached to the permit. In this way, the applicant would be advised of his obligations, and the other entities would not need to go through the current travails to get the information about commencement etc. that they require.

### **(iii) Time period for submission**

As already highlighted in our meetings, there are different time frames, arising out of various legislative instruments, within which the various Authorities are to be notified of commencement of works. In addition to the concerns raised above, this logistical detail makes it even more cumbersome and illogical to use one form to satisfy the various requirements which arise out of the various legislative requirements.

Furthermore it is noted that the text of the Act is very confusing – it states that the notice is to be submitted to the PA "*within the period of five days in advance to the date of commencement of works or utilization of permission*". The Maltese text states "*fiż-żmien ta' hamest ijiem qabel id-data tal-bidu ta' xogħlijiet jew utiżżazzjoni ta' permess*". This, in our opinion, means that the notice may be submitted on any of the five days that precede the date of commencement, and not, as it was before, "*at least five days prior*" to the date of commencement. This needs clarification.

Yours sincerely,



**Prof Alex Torpiano**  
**President, Kamra tal-Periti**

cc. Hon Joe Mizzi, Minister for Transport and Infrastructure