Analysis Report

Bill 143

An Act to Amend the Development Planning Act, Cap. 552

28/07/2025

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Kamra tal-Periti

Reference is made to Bill 143 tabled in Parliament on 18th July 2025 and which was brought to our attention through media reporting on 25th July, 2025.

At the onset, it is pertinent to point that that although the KTP has regular ongoing meetings with the PA on various matters, including procedural and policy updates, the text of this Bill was never presented nor discussed with Council representatives.

The Kamra tal-Periti is hereby providing its position on the proposed amendments in the Bill.

Specific Feedback

	Description	Proposed Amendment	Comments
1	Article 6: Power of the Executive Council	The Executive Council is formally being given the power to issue circulars. While this has already been a longstanding practice since the 90s and is not problematic in itself, it is important to consider this article within the broader context of all the other proposed amendments, which appear to weaken the authority of formal planning policy documents.	A proviso is to be added stating that circulars cannot be used to change the meaning or the spirit of the laws and policies and that the meaning attributed to them in common parlance should be retained. When in doubt the original text, not the circular, should prevail.
2	Article 7: Hierarchy of Documents	This provision seeks to reclassify the hierarchy of planning documents, which currently places SPED at the top, followed by the local plans, then the development briefs, and then policy documents. This hierarchy is used to establish the prevailing text in the case of conflicts. While retaining the hierarchy in theory, the provisos states that the	It is recommended that this article be deleted from the Bill.

		interpretation that holds is the one in the most recently published document. This is an illogical clause because all planning documents are, or should be, based on an older overriding document. In the normal way of things, the more strategic, national spatial plan forms the basis for the lower texts to follow. It makes no logical sense to override a hierarchically superior planning document with a lower ranked one simply because it is more recent.	
3	Article 8: Minor Modifications	This proposed amendment gives power to the Authority to make minor changes to development plans, such as alignments and zoning within scheme. This proposed amendment is including the possibility of rezoning in ODZ and rationalisation areas, and changing building heights. These are not minor modifications. Moreover, this is not sound planning and goes against the principles of sustainability KTP have been advocating for many years. It will perpetuate the	<u>It is recommended that this article be deleted from the Bill.</u> KTP also proposes to initiate a formal process for deep planning reform, and it is willing to put itself forward, as it has already done with the building and construction regulations reform, to also work on a comprehensive planning reform that departs from the speculative planning system Malta has had in place since its Independence and which has progressively ruined our country and wreaked havoc on our natural and built environment. The piecemeal changing of planning documents is not a sustainable way forward. Creating legal mechanisms to make this possible, thus, runs counter to over-arching objective of attaining sustainable development.

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<tr><td></td><td></td><td>current planning system making the problems more deeply ingrained. It will also remove the need to publish new local plans and subject them to SEAs.

This is not ok in the long term and needs to be removed.</td><td></td></tr>
<tr><td>4</td><td>Article 10
Scheduling Orders</td><td>Scheduling order lists are being made available at the Authority. This is positive.

However, provisions on descheduling and reconsideration of scheduling decisions do not include public notification about the initiation of such procedures. This undermines transparency and accountability of the process.</td><td>It is recommended that provisions about publication of requests for reconsideration and descheduling be published in the register list and made publicly known.</td></tr>
<tr><td>5</td><td>Article 12
Definition of Development</td><td>The definition of development is being amended and significantly lengthened. The simplicity of the original definition, derived from the UK’s Town and Country Planning Act, should be reinstated

The article is also introducing exceptions to the definition of development, and which consequently do not require permission, namely:</td><td>The definition of development should read:
“means the carrying out of building or engineering operations; and the making of any material change in the use of land or buildings”

While the terms within the above definition, defined in article 2 of the main Act to better define their scope as per the table below:

<table><tr><td>Building operation</td><td>construction, demolition or alterations of buildings in, on, over, or under any land or the sea</td></tr><tr><td>Engineering operation</td><td>• infrastructural works
• quarrying, mining in, on, over, or under any land or the sea</td></tr></table></td></tr>
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<td>1. the placement of any object or structure which may be dismantled without substantial demolition or breakage, and is not visible from any road;
2. the deposit of inert materials on land, including in exhausted or disused quarries, where the land is being returned to its original condition, levels, and contours.

The first item above is very ambiguous. Many structures can placed on land which are not visible from the road, especially in villa areas and ODZ. The second constitutes an engineering operation and should not be excluded from the definition.</td>
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<tr><td></td><td>• the deposit of materials on land
• the clearing of valleys from accumulated sediment
• land reclamation (including beach extensions)
• aquaculture</td></tr>
<tr><td>the making of any material change in the use of land or buildings</td><td>• the use of a building in a manner that results in an increase in the number of dwelling units over and above its previous use
• any related uses and the placing or display of advertisements</td></tr>
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<u>Paragraph (ii) of subarticle 12(a) of the Bill should be deleted.</u>
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<td>Article 13
Representations</td>
<td>The amendments are requiring that all representations “clearly state the reasons for concern, with specific reference to applicable planning policies and relevant environmental or planning issues”.

The grounds for concern “may change or [be] extend[ed]” until the deadline for replies to DPAR (case officer report), and cannot be changed after the DPAR deadline passes, except if there are</td>
<td>KTP has no issue with the amendment as drafted in the Bill. The requirement for representations to be based on planning grounds has always existed. All arguments made to the Planning Directorate or the Commissions/Board must be based on the grounds set in Article 72(2) of the Development Planning Act for them to be considered and be effective.

The likelihood of representees being successful in objecting to a planning application grows significantly if they are assisted by a professional, whether a perit or a lawyer or both, in their submissions. It is in their interest to engage professional assistance as early as possible to be guided about their rights and the appropriate procedures.</td>
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		changes in plans requested by the Commission/Board. In the case of change of plans, the new grounds can only be related directly to the changes. The requirement to specify technical grounds is not limited to the representation period but extends all the way until the deadline for replies to DPAR.	Nevertheless, the amendment allows representees to appoint professionals towards the very end of the process, indeed after the case officers publish their reports.
7	Article 14 Determinations	The amendment reinforces discretion of the Board/Commission to overrule depart from plans, policies and regulations provided the decision "explicitly references site-specific evidence and clearly articulates planning reasoning".	Firstly, there should be a distinction made for regulations, which should not be overruled by anybody unless specifically allowed within the regulations themselves. It is thus recommended that this be amended in the Bill accordingly. Secondly, when it comes to plans and policies there is nothing wrong with departing from them provided there are sound planning justifications. There is extensive case law in the UK about what constitutes a "material consideration", and several decisions were overturned by UK courts if it could be shown that material considerations were not duly considered. It is pertinent to point out that material considerations can apply both in favour and against the approval of development; i.e., a development that is in line with policy can, based on this provision, be refused based on "spatial, architectural, or contextual considerations".

			The real problem here, more than the text of the law, seems to be the absence of trust in the independence, good faith, and the integrity of the decision-making process. All laws depend on the integrity and good faith of the people appointed to implement and enforce them. Even the best written laws can unravel if operated by poorly chosen individuals. These are essentially political, and to some extent cultural, considerations that are difficult to overcome through legislation.
8	Article 14 Validity of Permits	The final amendment proposed under this article introduces the possibility for the Planning Minister to regulate the duration of permits by LN. There is nothing particularly concerning about this. However, a new power is given to the minister to reinstate the validity of a permit after it has expired.	It is recommended that provisions be added to make it explicitly clear that these powers can only be applied in general terms, and not for specific permits. The regulations should also be subject to public consultation to allay concerns of abuse raise by NGOs. Moreover, permits which expired because their renewal permit was refused should not be given any extensions or reinstatements.
9	Article 16 & 17 Correciont / Revocation / Modification of Permit	The current Article 80 (modification and revocation) is being split into two: • Correction • Revocation or modification	KTP has raised the issue of correction of permits with the PA in various meetings over the past months due to the absence of any formal procedure for this purpose particularly in certain types of permits, such as regularisation permits. In various instances periti were forced to the cumbersome modification of permit procedure which was only intended for instances of fraud or decision errors.

		The amendment formalises a process where “errors or omissions” to a permit can be made, at the request of the applicant or by initiative of the authority provided “such correction does not alter the substance of the decision originally taken”. The modification/revocation of permit is now being decided unilaterally by the Executive Chairperson, rather than the Planning Board. The Executive Chairperson also has the power to revert the application to pre-determination stage (effectively taking it back to validation stage). Only in the case of reversion is the Planning Board involved. The rights of appeal on decisions under this proposed amendment remain unaltered. This process seems to simplify the procedure and reduces the workload on the Planning Board.	Examples of corrections include renumbering of apartments for ARMS meter applications, or drafting errors in regularisation permits which cannot be subjected to minor amendments. There does not seem to be anything wrong with this provision at face value. However, there appears to be distrust about the intent behind this provision based on the fear that it may be a way to introduce substantive changes to a permit without the right of appeal. It is thus being proposed that the following provisos be added to allay the concerns while still maintaining the benefits of the pragmatic solution to a recurring problem many periti and their clients face: 1. Any corrections that are found to actually alter the substance of the decision should be considered null and void; 2. Any registered representees should be given the opportunity to participate in the process, and to appeal provided the corrections raise valid planning concerns.

10	Article 18 Making of regulations	This provision is deleting the requirement of the minister to conduct public consultation (of a mere two weeks in the current law) altogether. Consultations on regulations are only made with the organs within the Authority.	The elimination of public consultation in regulations is not considered conducive to good governance principles and the building of a good-faith relationship between stakeholders, and should be reversed. The problem has always been that the statutory public consultation period of two weeks was far too short, making it very difficult for organisations that depend on volunteers to participate expeditiously and articulately. This amendment should be modified such that public consultation is extended to a minimum of six weeks.
11	Article 20 Powers of enforcement	This amendment extends the surveillance powers of the Authority but there are no privacy and data retention safeguards stipulated in the Bill.	Amendments to the Bill should be introduced to include safeguards for undue retention of surveillance data that invades privacy, particularly where no illegalities are detected. It is not acceptable that surveillance data is retained indefinitely by the Authority.
12	Article 21 Cut-off date	It is being proposed to change the cut-off date for development to be considered legal from 1967 to 1978.	This proposal seems to stem from the absence of 1967 aerial photographs covering Gozo and large swathes of ODZ land, creating a disparity with urban areas. While the spirit of the amendment is understood, the Council believes that the impact of this change should be properly assessed and discussed before bringing such a provision into force.
13	Article 22 Notices	The index of enforcement and stop notices is being deleted through this amendment for some reason.	It is proposed that amendments be introduced to ensure that a public register of all enforcement, stop, and breach notices is set up and made publicly accessible, as is being proposed for scheduled properties.

General Comments

The proposed amendments in this Bill contain some positive elements, particularly those related to the streamlining of procedures and clarification of legal definitions.

However, the Kamra wishes to register its concern regarding certain provisions being proposed – particularly those related to the hierarchy of planning documents and the modification of plans. These provisions appear to introduce changes to planning policy without following due process and may potentially breach European directives on environmental impact assessments.

While it is acknowledged that planning documents – particularly the Local Plans and the SPED – have long exceeded their intended period of use, the Council is of the considered view that the approach outlined in this Bill for their revision is inappropriate and will only exacerbate an already critical situation.

Indeed, the future of our country should be shaped through collective decision-making, with broad participation and open discussion. The wellbeing of our nation is closely tied to the quality of our planning framework and the decisions that stem from it.

Reform of the planning system has long been on the Kamra tal-Periti's agenda. Alongside building regulations and the licensing of contractors, the overhaul of Malta's planning regime has been a core priority for the Kamra for over two decades.

The Kamra submits that it is time for the country to embark on a thorough reform of the planning system, starting from first principles. The Kamra is ready to support the Government in this endeavour and is prepared to take the lead in drafting a comprehensive reform proposal, just as it has previously been entrusted to do in relation to building and construction regulations.

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