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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

AMENDMENT TO LN 136 OF 2019

Community Wellbeing Scheme

Public Consultation Reply

SUBMISSIONS BY KAMRA TAL-PERITI

01 APRIL 2021



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1. General Observations

- 1.1. The *Kamra* notes with satisfaction that Government is acknowledging the need to amend Legal Notice 136 of 2019. It is noted, however, that the proposed amendments do not fully address the deficiencies characterising the regulations which fall significantly short of international best practice and regulations, as well as forcing operators, particularly Periti, into positions of conflict of interest. Reference is also made to the Letter of Commitment dated 2nd August 2019, discussed in further detail in Section 2.3.
- 1.2. Moreover, the observations and recommendations of the Building Industry Technical Committee as outlined in its report of April 2020 have not been concurrently addressed. The *Kamra* is of the opinion that there is no reason why all the necessary amendments cannot be brought into force at once. To this end, additional proposals for amendments to LN 136 of 2019 are annexed to this document.
- 1.3. As part of this preamble, it is pertinent to highlight a quote from the BITC's report stating that "[t]he neighbouring third parties should not have to go through all the trouble of contestation, to protect what is rightfully theirs to enjoy" (p.15). The *Kamra* concurs with this statement and reiterates its position that the works method statements should be reviewed by the BCA prior to the issuance of its clearance to start works, and that the BCA should also be held responsible for its failure to review their contents.

2. Revisions to LN 136 of 2019

- 2.1. The *Kamra tal-Periti* is hereby attaching a redraft of the *Avoidance of Damage to Third Parties Regulations* which it is concurrently publishing for public consultation. Kindly refer to Appendix A.
- 2.2. The proposed regulations are intended to be brought into force in the short-term, until more comprehensive and better structured building and construction regulations, and the equivalent of the UK's Party Wall Act are brought into force.

- 2.3. The redraft addresses the issues raised in the BITC's report, as well as the issues raised by the *Kamra* since 2019 regarding these regulations. The position of the BITC and the *Kamra* are indeed aligned.
- 2.4. It is pertinent to point out that Government had committed to revise LN 136 of 2019 by October 2019, but has, so far, failed to do so. In response to the Government's Letter of Commitment dated 2nd August 2019, the *Kamra* had lifted its directives regarding these regulations. The *Kamra* deems unacceptable any further delay in revising these regulations which are putting the public at risk, and placing *periti* in positions of manifest conflict of interest. In view of the above, the *Kamra* will not accept piecemeal revisions of the Legal Notice, particularly when such proposed revisions are of a relatively secondary nature.

3. Proposed Amendments subject to the Public Consultation

- 3.1. The proposed amendments are considered by the *Kamra* to be conceptually flawed and poorly drafted, and are thus deemed unacceptable. It fails, for example, to address issues of liability and the perverse mechanisms surrounding the method statement which have been comprehensively addressed in an online article carried in the Times of Malta online on 1st September 2020. Kindly see Appendix B.
- 3.2. It also coerces third-parties into coalescing into a majority to avail themselves of the reimbursement mechanism.
- 3.3. The proposal that any reimbursement of *periti*'s services is to be sought from the developer is completely unacceptable as it exacerbates further issues of conflict of interest. The *perit*'s agreement is with the commissioning party, and it should then be up to such party to seek reimbursement from the developer.
- 3.4. Moreover, the BCA's responsibility in reviewing and approving method statements is absent.
- 3.5. Alternative wording is being proposed in the attached redraft, which should be adopted as a whole. Kindly refer to the proviso of regulation 7 (2) as proposed.

END