

Kamra tal-Periti Extraordinary General Meeting 2021

Held virtually 15th December 2021

Agenda

Welcome Address

Introduction by the President

Presentation and Approval of Motions

Closing remarks

Welcome Address by the Honorary Secretary

The meeting was opened by Perit Dr Amber Wismayer (AW), Hon. Secretary and Vice-President. She gave an overview of the agenda and introduced the President, Perit Andre Pizzuto (AP).

Introduction by the President

AP introduced the context leading up to this Extraordinary General Meeting and presented a background of the *Kamra*'s position on Legal Notice 136 of 2019. His review included extracts from the Quintano report, as well as the court judgment of the case following the collapse of a building in Hamrun which led to the death of Mrs. Mirian Pace.

AP reminded the General Meeting that the Council had always been opposed to L.N.136/19 because it creates unclarity regarding the roles and responsibilities of the actors on site, gives rise to situations of conflict of interest for periti and shifts liability away from contractors. This position has been strongly supported by the profession, as demonstrated through various Annual and Extraordinary General Meetings.

In March 2021, Government published the Community Wellbeing Scheme for public consultation. The Council had objected to the Scheme as it did not address the deficiencies of L.N.136/19, whilst proposing amendments to it: the proposed amendments perpetuate regulations which fall far short of international best practice, and do not implement the recommendations of the Quintano Report. AP noted that, in addition to consultation replies - the full text of the *Kamra*'s submission to the public consultation process can be found on the *Kamra*'s website - the KTP presented a re-draft of L.N.136/19 comprising a re-structuring of the contents in line with the recommendations of the Quintano report.

The redraft was presented to Government, however, Council was informed that L.N.136/19 would not be amended and would be eventually replaced by other legislation. Notwithstanding this, L.N.136/19 has indeed been recently amended twice: first to change the hours of excavation and then to require compensation by the developer of periti engaged by third parties. In the opinion of the Council these changes are superficial, and priority should have been given to the aspects of L.N.136/19 which lead to situations of risk.

In this context, the Council proposes a draft Directive to periti entitled 'Practicing ethically and professionally within the constraints of L.N.136/19'. AP outlined the principles upon which the draft Directive is based and gave a detailed presentation of the directive.

The draft Directive clearly defines the duties, roles and responsibilities of each actor on site, during the different stages of a project: the design stage (pre-planning application and pre-commencement) and the construction stage. Roles are assigned to either the Design Team or the Contractor team with clear boundaries between the two teams to avoid conflicts of interest. The source of remuneration for each of the roles is also specified.

Presentation and Approval of Motions

- Motion 1: Principles of the Draft Directive

AP proposed a motion, seconded by AW, whereby the EGM is asked to approve the general principles of the draft directive, empower the Council to finalise the draft Directive along the lines discussed at the EGM and authorise the Council to issue the directive. The motion was read out by AW. The full text of the motion is available at Annex A.

The floor was opened for discussion.

Perit John Papagiorcopulo noted that the various roles mentioned are most easily applicable to larger projects, whereas greater issues lie with smaller projects. The number of persons involved may be a financial burden on the client. He stressed that periti are not generally engaged to see projects through to the finishes stage, and yet they are responsible for the project in its entirety. He also emphasised that the method statement has developed into a stronger document but it is not always followed through in implementation. Finally, whilst praising the fact that third parties have been empowered, he highlighted a concern that periti may be instructed by other periti engaged by third parties. He insisted that the BCA is the regulator and should act as such rather than passing on the responsibility to third party periti.

Perit Pierre Farrugia began by praising Council for the drafting of this directive, which he deemed to be a step in the right direction. He agreed that the method statement should be drafted by the contractor's perit but noted the importance of communication with the Design Team perit/i. He proposed that the latter should review the method statement to identify any problems. He agreed that services should form part of the Design Team's process, adding that electrical layouts should be obligatory to avoid impacts on structural integrity through the intervention of electricians. Lastly, he requested clarification on Condition Reports and for guidelines on tariffs and fees for periti to be issued, this given the numerous tasks added and the different roles.

Perit Antoine Zammit thanked AP and the Council for their contribution through this proposed directive. He asked whether it would still be possible for Design Team perit to subcontract a structural perit. He agreed that services should be included in the design stage and asked about the liability associated with detailing services.

Perit Andre Pizzuto addressed the comments raised, adding that any concerns would be addressed in the final version of the directive.

- The draft Directive does not add to the existing requirements. The different roles in the design team could be taken on by the same person in smaller projects. On the other hand, the draft

Directive does not preclude subcontracting to a structural engineer provided that the role being subcontracted is clear in the agreement between parties.

- In situations where the method statement is challenged by a neighbour, it is important for the perit to remember that he is in charge and the responsibility remains his. It is also important for the third party perit to understand the liability being accepted when insisting on changes to the Method Statement – this remains unclear. For this reason, the Council’s position is that the BCA should take a decision on the method statement before authorising works. There should not be cases where authorisation is withdrawn simply because of a third-party objection.
- A strong communication channel between the design and contractor teams is of utmost importance.
- Deficiencies in Method Statements being submitted are flagged by the BCA, but these are generally in reference to a checklist. The assessment of Method Statements is not qualitative.
- The perit is liable for the services which he agrees to provide.
- Guidelines on fees will be on the agenda of a forthcoming AGM.

Perit Gaetano Zammit asked who had the final say in disputes between the perit and the contractor or STO. AP replied that the perit-in-charge remains responsible and may stop works if deemed necessary in situations of conflict.

Perit Edward Scerri, while understanding the reason for the separation of roles between perit and contractor, requested further information about the proposal that the method statement be prepared by the contractor’s perit. He noted that this is not currently the normal practice, and it will be difficult to change. Moreover, given that the perit in charge still retains ultimate responsibility, he questioned whether it is permissible in principle. AP noted that L.N.136/19 is very clear regarding the liability for the contents of the Method Statement, which liability lies with the person who drafted the document. He reiterated that the directives allows for the opportunity of shared liability between the Design Team perit and the Contractor Team perit. He agreed that the fact that the perit-in-charge uploads the method statement implies that he/she is in agreement with its contents.

Perit Anthony Fenech Vella emphasised the importance of clarifying the roles and responsibilities of everyone involved and dealing with one another in a collegial and professional manner. Perit Simone Vella Lenicker (SVL) added that there should be mutual respect between the perit-in-charge and the perit engaged by third parties: the project perit should be open to the concerns and feedback of the third parties’ perit.

Perit Pierre Farrugia suggested that where the draft Directive refer to the preparation of specifications, the phrase ‘technical specifications’ is used instead: this to clarify that it is not simply an indication of materials but also of their performance. AP agreed and committed to taken on this feedback.

Perit Joe Galea stated that it is excellent practice to separate the responsibilities of design/specification from those related to the execution of works, emphasising that this distinction is very clear internationally. He cautioned against collaborating with the Contractor Team in the drafting of the Method Statement.

Perit Ramon Fenech requested clarification as to Council's instruction for periti not to use the templates provided for the Method Statement. AP replied that the constraint of templates led to inadequate method statements, even as a consequence of their rigid format. This recommendation is based on the Quintano report, as well as professional conduct cases. SVL clarified that the Council has no objection to the use of templates provided that reference is made to a full report annexed to the template.

Following the discussion, a vote was taken and the motion was passed with 51 votes in favour and 3 abstentions.

- Motion 2: Date of the KTP 2021 Annual General Meeting

AP presented a motion authorising the Council to postpone the 2021 AGM to a date not later than the 15th February 2022, and extending the term of those council members whose term expires at the end of 2021 until then. The full text of the motion is available at Annex A.

AP summarised the Council's reasons for presenting this motion. He explained that under the circumstances, having just organised the Periti Act conference, as well as this EGM, and given the limited dates available due to the Christmas festivities, it would be difficult to organise the AGM in December.

The motion, which was proposed by AP and seconded by AW, was read out by AW.

AP opened the floor for discussion but no comments were received.

A vote was taken and the motion was passed with 48 votes in favour and 1 abstention.

Closing Remarks

AP thanked the members present for attending the meeting at such short notice. He wished them all the best for the festive season and encouraged them to participate in the upcoming AGM, and Council Elections. AW closed the General Meeting.