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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*

Hon Chris Agius  
Parliamentary Secretary for  
Planning and the Property Market  
Block B, Francesco Buonamici Street,  
Floriana FRN 1700

Our Ref: 8/13

13<sup>th</sup> November 2017

Dear Hon Agius,

Reference is made to our meeting of the 23<sup>rd</sup> August 2017 with your good self and with Mr Johann Buttigieg, Executive Chairman of the Planning Authority.

We are writing to record the discussion held during such meeting, to provide updates where necessary, and to request your feedback on a number of matters that have remained outstanding.

#### **1. Consultation on amendments to DNO**

As you are aware, the Council of the *Kamra tal-Periti* had issued a press release regarding the amendments to the Development Notification Order (DNO) which now allows works carried out by the Director of the Corradino Correctional Facility and by the Malta Police Force to be undertaken through the DNO process, and that this may even be foregone, should the Minister responsible determine that such works are required urgently for national security reasons. The press release is attached for your perusal.

During our meeting, it transpired that the Planning Authority had approved the proposed amendments to the Order before reviewing the submissions made by the *Kamra tal-Periti*, which were made on the last day, the 17 July 2017, of the public consultation process (for which no closing time was specified).

As you are aware, the Council wrote to the Ministry for Justice, Culture and Local Government, which co-ordinated the public consultation process through its website, on the 2nd August 2017, asking for a copy of the Outcome Report on the public consultation submissions, and was informed that "*at the moment the Authority concerned is analysing the feedback received thus the report is not yet available.*" - this despite the fact that the Legal Notice had already been approved.

The Council reiterates its position that this mode of consultation is completely unacceptable, especially in view of the legal obligations that the Planning Authority has to respect, in consultation with the *Kamra tal-Periti* regarding matters specifically relating to the Development Notification Order. We had expected a proper explanation, and perhaps an apology, for the failure to even take note of the consultation comments that the Planning Authority itself requested. To argue that our comments came in after 5:00pm of the last day – when no closing time was specified in the call for consultations – is not credible, particularly when it was revealed that the Board deciding on the matter was actually meeting that same evening at 6.00pm. Consultation processes which are effectively fake are an insult to the public. We have a responsibility to tell the members of our profession what the outcome of our observations, on their behalf, are. We do not seem to have much choice other than to tell our members that the PA's consultation processes are not real, and that the outcome is already decided and will not change.

The *Kamra* requests your response to this matter.

## **2. Conditions of permit**

As was pointed out, permits issued by the Planning Authority now carry a number of obligations arising out of legislation and regulations which govern other entities and organisations, and which have no real bearing on the planning process itself. The *Kamra tal-Periti* has expressed its understanding that there may be the desire to provide the applicant with a comprehensive list of regulations by which the approved development has to abide. However, the approach being taken is causing the permit conditions to be unnecessarily burdensome. In addition, we insist that the Planning Authority has no remit to ensure that such requirements are abided by. Furthermore, the inclusion of these requirements as a condition of permit is creating a situation whereby, for example, a Perit cannot certify a building as being compliant with permit if, for example, the applicant did not notify the Health and Safety Authority of the works.

The *Kamra* recommends that if the Planning Authority intends to persist in issuing this series of requirements, that go over and above its remit and the planning process, then these should be included as an appendix to the permit and as an *aide memoire* to the applicant, rather than as a set of prescriptive conditions that the Authority can neither monitor nor enforce.

## **3. CTB concessions**

A number of Periti have approached the *Kamra tal-Periti* regarding a matter which is of grave concern, and which is causing a lot of uncertainty among the general public. As you are aware, in 2012, the then Malta Environment and Planning Authority had initiated an application process whereby certain minor irregularities in properties could be granted a Category B Concession (CTB), as long as these irregularities fell within certain parameters.

Circular 4/12 issued at the time stated that “*The Article 91B Notice will not have an expiry date, but will only cover the infringements specified, and as shown on the drawings ... It is to be clarified that Article 91 of the Act does not sanction the infringements in question, but it grants the concessions described above. Therefore, if amendments to premises are eventually applied for, and the premises contains infringements that would have already been covered by an Article 91B Notice, these must be clearly identified as such on the drawings by the architect, since any eventual permit would not be sanctioning the said infringements unless this is specifically requested and accepted.*”

Periti who had applied for and obtained such concessions on behalf of their clients are now being faced with situations wherein they are submitting applications for alterations to the property covered by such Concession, and are being informed by the Authority that the Concession has no validity and that the property needs to be regularised through the Regularisation Application process.

We believe that, although the current application procedures require that infringements, previously covered by an Article 91B Notice, need to be clearly identified on drawings, the current legislation does NOT require that these have to be regularised – which creates a completely different financial burden on *bona fide* owners. We believe that this attitude by the PA is unacceptable. It places owners of these properties in an uncertain position, especially those who purchased these properties on the assumption that it was in order following the approval of the concession application. Commercial Banks are also having issues with these properties, in view of the fact that loans were issued once the concession was granted, and that these concessions are now not being recognised by the Authority. As pointed out in our meeting, we believe that the situation is causing hardship to *bona fide* owners.

Your urgent response on this matter is exhorted.

#### **4. Superintendence of Cultural Heritage**

One of the main causes of delays in the planning process is that caused by the Superintendence of Cultural Heritage in assessing the applications referred to it. Practically all applications are now referred to the Superintendence, which has not been given sufficient resources to deal with the immense workload it is faced with on a daily basis. Periti have reported delays of several months in the application process, sometimes simply waiting for the Superintendence to give a date for a site inspection.

While acknowledging that this matter does not fall directly within your remit, and while confirming that the *Kamra* will be writing separately to the Minister responsible, it would be appreciated if you could confirm whether there are any plans to address this situation without further delay, primarily by providing significantly more resources to the Superintendence.

## **5. Circular 2/17**

Reference is made to Part 4 of Circular 2/17, regarding the submission of Change of Perit / Applicant on Part of Site. The Council of the *Kamra tal-Periti* understands that this procedure is intended for cases such as the development of a complex of villas, where there are conditions binding on the common parts of the complex. However, the Circular is creating an unfair playing field for situations where, for example, Applicant and Perit A obtain a permit for the development of a group of units, however the individual plots are then sold to third parties, who each engage their own Perit to take responsibility for the works. The *Kamra* has always stated its opinion that issues of professional responsibility and planning processes should be clearly separated and distinct. This is one such situation, and the *Kamra* looks forward to receiving clarification on the matter and the Authority's suggested way forward in resolving this situation.

## **6. Concession on the duty/final tax treatment of the acquisition/transfer of UCA Property**

Reference is made to the concession on the duty/final tax treatment of the acquisition/transfer of UCA property regulated by the Inland Revenue Department. There are in fact two types of concessions, namely:

- (i) The reduction applicable to the seller if the property is in UCA and has been restored prior to sale;
- (ii) The reduction applicable to the buyer if the property is in UCA.

In both cases, the IRD requires a declaration to be issued by the Planning Authority. The *Kamra tal-Periti* is informed that there have been instances when buyers have applied for the required declaration from the Authority that the property is in UCA, however such declaration was not forthcoming since no restoration works were carried out, which requirement was not applicable to the seller, but to the buyer.

Given that the Scheme is being renewed, we urge that the rules be clarified, since a number of buyers were, we are informed, misguided by the Authority's seemingly arbitrary decisions on which transfers are eligible or not.

## **7. Users Committee**

The Council of the *Kamra tal-Periti* is concerned about the fact that it is not being informed of meetings of the Users Committee. The few times the *Kamra's* representative was invited to attend, few of the Committee members were actually present. This situation needs to be rectified without delay.

## **8. Design Advisory Committee**

The Council of the *Kamra tal-Periti* reiterates its concern about the functioning and composition of the Design Advisory Committee. It is clearly not achieving the goals for which it was established, giving further weight to the *Kamra's* concerns, declared at the outset, that this would just be an added bureaucratic procedure, which will not provide any added quality to the planning process or to the built environment. This matter is of grave concern and requires further discussion.

The above outlines the main points discussed in our meeting. We look forward to receiving your feedback at your earliest convenience and remain available to discuss with you the way forward on the matters highlighted above.

Meanwhile, I would like to take this opportunity to request a meeting with you to discuss the situation regarding Building Regulations.

With sincere regards,

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

### **Attachments:**

- Press release regarding amendments to the DNO Classes