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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*

## **Comments by the Kamra tal-Periti on the Malta Building and Construction Authority White Paper**

The *Kamra tal-Periti* reiterates its support for this initiative, because it strongly believes that there is currently inadequate, or in many cases, no regulation of the building and construction processes, which is so vital to our industry; the little regulation that exists is outdated, fragmented and uncoordinated. This is to the detriment of the same industry, property owners, and *periti*. The *Kamra tal-Periti* therefore agrees with the list of challenges identified by the White Paper on page 5, and that these need to be addressed in a comprehensive manner in line with the contemporary requirements of the industry.

The *Kamra tal-Periti* acknowledges that it was neither feasible, nor desirable, to include too much detail in the published White Paper regarding the proposed Authority. Nevertheless, the *Kamra* considers itself as the entity which is best placed to advise and assist the Government in the formulation of the detail of the governance of the Authority, as well as of the technical frameworks of the regulatory processes to be introduced. It offers its full availability to assist government in this regard.

It is important that the regulatory processes envisaged adopt systems which reflect current best practice in Europe, without making the system too dependent on “formal” approvals, and on the filing of extensive documentation, but rather it should promote a system that is based on self-regulation, and, ultimately, on the desired quality and performance of the resulting product. Standards should be performance-based and not prescriptive, where possible.

In the list of current legislation which the Authority proposes to look at, we suggest the addition of the Construction Products (Implementation) Regulations, which derives from the Construction Products Directive. This will require a review of the relationship with MCCA.

The *Kamra* envisages that the proposed Act will be more of an enabling legislation to allow flexibility and avoid in-built obsolescence. We therefore understand that the White Paper requires a lot of detail for the structure of the eventual Authority to gel. We note, in this regard, that in some instances (vide p.13), the White Paper gives unnecessary, prescriptive, detail, (such as geological surveys, but not of other studies), which may be premature. The suggestion for applicants to submit structural drawings after completion is not an idea we are against, however, expressing it in this detail in the White Paper highlights the fact that other important issues, relevant to the performance of the building, such as fire, materials used, services installed, energy efficiency, and decommissioning information, are not yet on the radar. Therefore, until the concept of the

building manual is fully fleshed out and discussed, we suggest that there should not be such specific detail in the Act.

The integration of the four entities referred to on p.8 should be accompanied by a thorough review of their current roles, and a projection into the future of the requirements of the industry. For example, the concept of the Masons Board as licensing only one particular actor in the construction process is outdated and limiting. It would be important for the Authority to ensure that for every significant area of the skills required by the industry there are appropriate licensing procedures, and hence, relevant training for such skills, without, on the other hand, excessive fragmentation. This is particularly important in view of the EU Directives which encourage and empower EU citizens to offer services across member state borders, subject, however, to whatever licensing controls exist for nationals of the host country.

Although the list of objectives given on p.12 are all important, they are not all equally important. It is vital for the Authority to avoid setting out to try to be everything for everybody. It would otherwise grow into a monolith that is, yet again, cumbersome and bureaucratic, and, eventually, detrimental. In this context it is envisaged that the Authority will have a role in sanctioning training programmes and training providers, rather than providing the training itself. Rather than use the words “conduct training to enhance ....”, the objective should be to “promote and validate training programmes and providers to ...”. In other words, the Authority should not be a service provider, but a regulator. Equally, it should not seek to “conduct research in the industry ....”, but should “promote and seek to fund research .... innovation”. Similar comments may apply to other objectives. If the Authority tries to encompass everything, it will fail.

As far as its governance structure is concerned, the role of the Board of the Authority should be carefully framed. In addition to the normal administrative and finance functions, the Board is likely to be the actor that approves proposed Building Regulations and Standards, or that directs studies to be made into specific topics. It should have a Consultative Committee, representing the industry, academia, and the consumers, for example, in order to be able to receive opinions on proposed standards and regulations, or other input as regards particular industry problems.

There is no doubt, in our minds, that the Building Regulation function is likely to be the most important agency within the Authority. We envisage that this agency would have at least three distinct roles:

- i. that of proposing and drafting Building Regulations, via respective technical committees and commissioned research, for recommendation to, and eventual adoption by, the Authority Board;
- ii. that of regulating day-to-day activities of the building and construction processes, by interacting with the respective professionals, publishing best practice, or “deemed-to-satisfy” guidelines and other documentation; and by approving technical project submissions when this is required or requested;
- iii. that of enforcing field activities, to ensure respect of regulations, responding also to reports by the general public and the consumers, during and after the construction or building

process. With respect to (ii), it is important that the issues of joint liability, between professional and Authority structures, be carefully defined.

We agree with the proposal, on p.17, for the Authority to take over some of the activities currently carried out by the CPD, CRPD, DEH, and OHSa. The latter should certainly retain the role of defining the relative requirements in their fields, as directed by the legislation under which each of them operate. While the idea that the Authority becomes the integrated consultee, on their behalf, as far as the Planning Authority is concerned can be considered as a improvement on the current situation, this cannot be construed as an objective.

The Planning Authority should be divested from the role that was thrust upon it to regulate buildings, so it can be allowed to fulfil its primary role of development planning, which it has never adequately fulfilled since its inception in 1992.

Planning and development issues include building typology, building volume and use, orientation, and health and safety issues that impinge directly on building layout and use. All other matters should not be addressed on the basis of PA consultation, but by separate quality regulatory processes that engage after the development green light is given by the PA. A degree of self-certification, based on the deemed-to-satisfy guidelines, should also be encouraged.

A final comment is made on the last part of the White Paper, regarding funding. The issues of funding should be carefully discussed, so that the Authority is not driven towards specific activities, and decisions, simply because of the potential for fund-raising. Current planning fees are not trivial, and the Planning Authority seems to be thriving on such income; however, those funds were originally intended to cover activities which are now to become the responsibility of the Authority. An equitable formula for the sharing and distribution of those fees will therefore need to be sought.

A handwritten signature in blue ink, appearing to read 'ATorpiano', is written over a light blue rectangular background.

Prof.Alex Torpiano  
President  
Kamra tal-Periti  
13<sup>th</sup> October 2018