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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*

**Our Ref: 3/21**

11<sup>th</sup> March 2019

Dear Perit Saliba,

**RE: Category B Concessions**

In August 2012, a [new set of regulations](#) was published under the Environment and Development Planning Act, 2010, (Cap. 504), Article 91 Eighth Schedule Category B, and referred to as CTB in short. Such regulations were brought into effect by Legal Notice 229 of 2012.

Property owners who submitted a CTB application to the Malta Environment and Planning Authority to cover illegal development that fell within specific parameters, would be granted the two following concessions, as outlined in PA Circular 4/12:

- **applications requesting permission for alterations and additions to the same dwelling unit could be accepted (without prejudice to any other requirements); and**
- **a Certificate for the provision of new water / electrical services to the dwelling could be issued as per Article 92 of the Act.**

PA Circular 4/12 also points out that CTBs do **"not have an expiry date"**.

The CTB regulations had the effect of restoring the affected properties' market value to levels comparable to legal properties of a similar description. As a result, these properties became sellable again, and banks were reassured that the effects of the concession were permanent.

It is important to point out, however, that CTBs were not permits and that the infringements were still considered illegal. Indeed, Circular 4/12 clarifies 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 (sic) 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."**

Nevertheless, the practical benefits of these regulations were self-evident. The scope of infringements that could be granted a concession was subsequently extended twice in 2013 to include minor illegalities that also fell within the planning regulations, including penthouse setbacks, building alignments, and side curtilages.

With the coming into force of the Development Planning Act, 2016, (Cap. 552), the CTB regulations were repealed and no further concession applications could be submitted. The [revised design policy guidance document, DC15](#), had meanwhile made some types of irregularities in the CTB schedule sanctionable, and therefore completely legal.

The new [Health & Sanitary Regulations](#), published in June 2016, which reduced the minimum sizes of backyards, internal yards, and the clear internal height of buildings also made several other types of infringements sanctionable through a normal planning application.

In August 2016, a new set of regulations (Legal Notice 285 of 2016) was published that allowed for the regularisation of all the other types of infringements, while also widely extending the scope of illegalities that would be covered. While the CTB regulations were limited to minor types of infringements, the [Regularisation regulations](#), as the scheme is known, allowed almost any form of illegality in urban areas to be regularised as long as it did not cause "an injury to amenity".

The *Kamra tal Periti* had, at the time, [expressed its concerns about the vagueness and wide scope of these regulations, with potentially negative consequences on the built environment](#). Nevertheless, the regulations as published provided a legal substitute for the CTB, which is arguably superior for the property owner as regularisations have the legal standing of a normal development permit. The regularisation fees, however, are considerably higher than the €250 fee for the CTB, frequently running into several thousand Euro per property.

One of the *Kamra's* main concerns was how owners of properties covered by CTBs would be affected. Firstly, the *Kamra's* view was that those who had been granted a CTB concession should have their concession automatically converted into a regularisation permit, especially in those instances where sanctioning is still not possible despite regulatory and policy changes. Secondly, it was seeking clarification whether the legal and planning value of the CTB concession was being watered down with the coming into force of the regularisation scheme.

The *Kamra's* concerns on these, and other issues, were dismissed and the regulations published without any material changes.

Towards the end of 2016, members of the *Kamra* were increasingly reporting instances to the Council that planning applications for properties covered by CTBs were no longer being accepted unless the properties were first regularised. The consequence of this is that unless properties were regularised they would lose their market value with adverse consequences to property owners and the financial sector. The Council requested an urgent meeting with Mr Johann Buttigieg, the Executive Chairman of the Planning Authority to clarify the issue.

A meeting was held in January 2017, during which the *Kamra* outlined its concern, pointing out the fact that CTBs have no expiry date. Thus, there are no legal grounds for the Planning Authority to oblige property owners to regularise a property covered by a CTB prior to submitting a planning application. The *Kamra* was advised that this policy decision was based on political direction, and that the Planning Authority was unable to process applications differently unless the political direction was changed.

Consequently, the Council immediately requested a meeting with former Parliamentary Secretary for Planning, Dr Deborah Schembri, but despite several reminders over a number of months, no acknowledgement to the *Kamra's* request was forthcoming.

Following the June 2017 general elections, the Council had met with newly appointed Minister Ian Borg and Parliamentary Secretary Chris Agius. A second meeting was held on 23rd August 2017 with Hon Chris Agius to discuss some of the issues raised in greater detail, followed by a letter sent on 13th November, 2017 outlining the *Kamra's* position on this and other matters.

On the 6<sup>th</sup> March 2018, the *Kamra* published a position paper on its website titled "*Property Owners with a CTB Concession at Risk*"<sup>i</sup>, wherein it outlined all of the above.

The Planning Authority reacted to this statement via a notice on its website<sup>ii</sup>. In its statement, the Planning Authority confirms that CTBs do not regularise or sanction properties. It also implies that the new regulations are in some way giving people an opportunity by stating that gave the "*possibility to holders of CTB concessions to regularize the unauthorized interventions covered by such concessions.*" However, it does not comment about various instances where applicants were made to regularise their property, despite being covered by a CTB, and does not comment on the legality or fairness of its unilateral decision not to recognise the concessions granted by CTBs thereby prejudicing owners of such properties, not to mention the banks that have hypothecated such properties as a mortgage security.

The Planning Authority concludes by saying that it "*has received 5897 applications for the Regularisation of Development Inside Development Zone from August 2016 until recently. These applications have generated €13,901,159.06 of funds which are distributed as follows: 70% for the Irrestawra Darek scheme, 20% for the Development Planning Fund and 10% for the authority's administrative expenses in relation to these schemes.*"

This would appear to confirm a more cynical explanation as to why the Authority has decided to disregard the legality of CTBs – that its main interest is that of generating funds for the Authority's schemes rather than seeking equity and fairness.

Meanwhile, the *Kamra tal-Periti* continued to receive complaints from periti and also from members of the public about the unfair state of affairs they have ended up in. The *Kamra* continued to insist with the Planning Authority and Government to address this situation.

On the 28<sup>th</sup> January 2019, the Planning Authority published a new Circular 1/19 titled "Category B Concession (CTB) Explained". The Circular concludes that "*It follows that, any development covered by an approved CTB (and is thus considered illegal) needs to either be sanctioned or removed, prior to any processing of the application. If the illegal development cannot be sanctioned, a regularisation application would need to have been submitted and approved prior to the planning application being confirmed as complete (and published on the DOI website).*"

The Council of the *Kamra tal-Periti* would like to request that you investigate this matter in order to provide your opinion on the interpretation provided in Circular 1/19 issued by the Planning Authority.

The Council of the *Kamra tal-Periti* also requests your opinion on the implications of this Circular on:

- (1) The rights of property owners who acquired their property as covered with a CTB concession, but are now being required to submit applications for regularisation;
- (2) The rights of property owners who sold their property with a valid CTB concession, and who are now open to potential litigation by the buyers;
- (3) The position of commercial Banks which have hypothecated properties covered by CTB concessions on the assumption that no further action would be required in order to prevent the property from being subjected to enforcement action; and
- (4) The potential implications of the above on *periti* who advised their clients to apply for the CTB concession and are now having to face their clients, or third parties who bought property from their clients, who are being told to regularise their property by the Planning Authority.

Your earliest response is greatly appreciated. Should you require any further information please do not hesitate to contact the undersigned.

Yours sincerely,



**Perit Simone Vella Lenicker**  
**President, Kamra tal-Periti**

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<sup>i</sup> <https://kamratalperiti.org/property-owners-with-a-ctb-concession-at-risk-2/>

<sup>ii</sup> <https://www.pa.org.mt/en/news-details/planning-authority-reacts-to-ctb-article-by-kamra-talperiti>