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## **Kamra tal-Periti comments on Draft Legal Notice regarding Regularisation of Existing Development**

19 May 2016

The following are comments being submitted by the *Kamra tal-Periti* regarding the draft regulations in subject. The *Kamra tal-Periti* is of the opinion that these draft regulations include too many lacunae and vague requirements, and that it would be appropriate for the legislator to enter into specific consultation with the *Kamra*, as required by legislation, prior to the promulgation of these regulations. The *Kamra* fears that, as currently drafted, these regulations will open the door to severe blots in our built landscape, and will serve to promote the laissez faire attitude of certain developers by condoning illegalities of significant size.

The draft regulations contain many vague statements which give the impression that anything can be regularised, and also they make no distinction between minor irregularities (such as those previously covered by a CTB) and major ones.

As outlined below, the fee Schedule raises many queries, and in particular the fact that fees appear to be completely unrelated to the nature of the illegality and in many cases are disproportionate to the particular situation.

<b>Regulation</b>	<b>Comments</b>
<b>2 (1)</b>	The term 'Authority' should be defined, but it should not be defined as the 'Planning Board' in view of conflict with regulation 2 (2); if anything introduce a definition of the 'Planning Board' and amend all references to the 'Authority' accordingly.
	The definition of the term " <i>injury to amenity</i> " is completely unclear and needs to be significantly expanded upon since it is entirely open to subjective interpretation.
	The term 'regularisation' must be defined.
<b>3</b>	The term 'irregular development' needs to be accurately defined, and must describe what types of illegal developments are covered by the regulations and, most importantly, which are not.
<b>3 (1)</b>	Irregularities in scheduled areas / properties and in UCAs should also be excluded, unless the offence is of a minor nature which will need to be defined.
<b>3 (2)</b>	Does this mean that CTBs will have no legal or planning value on the coming into force of these regulations? Is the owner of a development covered by a CTB required to



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	apply for regularisation or is this optional? Why is regularisation in the case of an existing CTB not automatic?
<b>4 (1)</b>	The term 'An existing development requiring regularisation' should be replaced with 'An existing irregular development'.
<b>4 (1) (c)</b>	Include a description of the 'irregular development'?
<b>4 (1) (c) ii</b>	Why is it not required to indicate on the plans (through colour coding, labelling, etc.) the irregular development? How is the Authority or a third party to know which parts of the development are the subject of the application? Will a new colour coding system be introduced?
<b>4 (1) (c) vii</b>	Who establishes the fees due? This question is posed in view of regulation 4(3).
<b>4 (2) (c) ii</b>	It is unfair for the PA to expect such significant payments for illegalities already granted a CTB. This was the only legal tool available for property owners until a few weeks ago. The conversion should be free or, at most, for a nominal charge, say €50, equal to the administration fee since these instances have already gone through the assessment of the Authority and a decision granted.
<b>4 (3)</b>	This is unfair and draconian. Applicants and periti should be given the opportunity to amend submissions as happens in the vetting process of normal applications. A time limit can be set, failing which the application can be withdrawn or rejected by the Authority.
<b>4 (5) (i)</b>	The term 'injury to amenity' is not adequately defined. It can mean anything and is highly subjective. It is important to define this particularly since decisions of the Authority can be appealed, and this will open a myriad of cases which will take years to be decided and determined in sufficient numbers to establish case law.
<b>4 (5) (ii)</b>	The objective of this regulation is not clear. Does this mean that a commercial development which does not comply with current planning regulations cannot be regularised unless it falls under Class 4A or 4B? What about the other uses listed in Schedule 1 such as "agriculture, boathouse, greenhouse, livestock farm building, disposal of construction and demolition waste".  Moreover, if the use of the development is in conformity with current planning policies and regulations, why would one choose to regularise rather than to sanction?
<b>4 (5)</b>	Does this mean that regularisation of applications covered by CTBs cannot be refused?



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<b>4(6)</b>	<p>Benchmarking the footprint which may be regularised to the 2016 aerial photos appears to be an over-drastic allowance, especially since this is very unjust towards those persons who have stayed within the legal framework and followed policies diligently. A more appropriate benchmark would be the year 2007, i.e. prior to the coming into force of the Local Plans and DC2007.</p>
<b>5 (1)</b>	<p>Regulation 4 does not set criteria or parameters upon which the Executive Chairperson can recommend the refusal or rejection of an application.</p> <p>It is curious that the Authority (Planning Board) needs to “provide specific planning reasons” to dismiss the Executive Chairperson’s recommendation, even if the latter is not obliged to provide any such justifications in support of his recommendation. This clause needs to be reviewed to eliminate such ambiguities.</p> <p>This also ties in with the issue of the definition of ‘injury to amenity’ – this regulation appears to limit the Authority (Planning Board) to overturn the Executive Chairperson’s recommendation only on the basis of planning grounds, but does not seem to allow it to challenge the Chairperson’s interpretation of ‘injury to amenity’.</p>
<b>5(2)</b>	<p>Replace “failing which the application shall be dismissed” to “failing which the permit shall be revoked”. Also consider the imposition of a fine or bank guarantee in the eventuality that the Authority’s decision is not executed.</p>
<b>5 (4)</b>	<p>On what grounds can an appeal be submitted? Regulation 4 is very vague. Why does an interested third party not have the right of appeal?</p>
<b>5 (gen)</b>	<p>Article 5 fails to specify the following matters: (1) notification of the public; (2) procedures for registering as an interested party; (3) consultation with statutory consultees; (4) time frame for decision; (5) public hearing procedures.</p>
<b>7</b>	<p>What happens in the case of properties covered by a CTB and where the owner does not regularise within two years?</p>
<b>Schedule 1</b>	<p>‘Roofed area’ needs to be defined (eg. does it include basements? does it include canopies / pergolas / etc). It is also not clear what “up to and including” means.</p> <p>It is not clear whether these fees are to be applied to the whole roofed area of the property or only to the roofed area of the part which is illegal. The table seems to imply various scenarios which appear to be extreme. On the assumption that the fee is to be applied to the whole roofed area of a property this would mean that, for example, a 10,000 sqm office block which has an illegal roof structure of 50sqm will incur an extremely excessive fee of €480,000. On the other hand, on the assumption that the fee is to be applied to the area of the illegal portion only, then this would</p>



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mean that these regulations are contemplating the possibility of the regularisation of illegalities with a footprint which is larger than 10,000sqm. Both extremes are incomprehensible and clarity on this matter is paramount since the wide scenarios contemplated by this Schedule imply that these regulations verge on being an amnesty across the board.

It is also not clear why the schedule includes rather strange scenarios... eg, residential properties in excess of 2,000sqm and beyond 10,000sqm; why are commercial developments less than 75sqm excluded? Why are flats smaller than 75sqm excluded? Where are all these boathouses with footprints up to 10,00sqm and over that require regularisation? Or are there specific developments which are purposely being accommodated?

It is also not clear whether these fees are to be applied on individual units, or can be applied to multiple units (eg. in the case of a block of apartments, can the fee be based on the total area, or on the areas of the individual apartments)

Why is the fee for receded dwellings four times that of an apartment? Take the example that the whole back yard of a block is smaller than necessary – why should the penthouse owner be obliged to pay four times more than the owners of the underlying floors when the illegality is the same throughout?

If the development must be located entirely in the development zone, why are uses such as *“agriculture, boathouse, greenhouse, livestock farm building, disposal of construction and demolition waste”* included in Schedule 1? Surely, such uses are not found within development zones, or if they are it is in rare and particular cases which would merit a separate approach.

It may also be suggested to base the fees on a per sq m rate, rather than banding them into ranges... this results in a situation where if, for eg, a penthouse has an area of 250sqm the fee is €11,000, but if it is 1 sqm larger the fee goes up to €13,000.

END