Consultation Reply

Draft Standard

Standardisation of Apertures for Residential Buildings in Malta

28/11/2022

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Reference is made to the consultation process currently under way in relation to the draft standard for dimensions of internal and external doors and windows in residential properties.

The introduction on the public consultation webpage states that the Maltese government has entered into commitments with the European Council "to implement a measure (MT-C[C1]-R[R2]) that caters for the Adoption of Standards for the construction industry."

The consultation webpage further states that "[t]he Building and Construction Authority is proposing the following standards for the construction industry: Dimensions of internal and external apertures of residential dwellings aimed at encouraging the re-use of fittings as well as reduce diversification bringing about economies of scale."

It further concludes that "[t]hese standards shall be incorporated within the regulatory framework".

The consultation webpage includes a link to a "technical document" and a Q&A document.

The Kamra tal-Periti is hereby providing its position on the draft published for public consultation.

Due to the limited time for consultation, the Kamra reserves the right to submit further comments on this draft standard.

Background

The Kamra tal-Periti had first been made aware of the draft policy to promote standardisation of aperture sizes when reviewing the draft Construction and Demolition Waste Strategy for Malta public consultation document published by the Environment and Resources Authority (ERA) in November 2019.

The document, which was open to public consultation for two months, made a very short reference to the policy stating:

> **"Dimensions of internal and external apertures of residential dwellings aimed at encouraging the re-use of fittings as well as reduce diversification bringing about economies of scale."** (ERA, 2019, p. 28)

In its consultation reply, the Kamra had stated the following regarding this specific proposal:

> **"While acknowledging that no detail is provided at this stage, it is to be noted that the sizing of external apertures is a design aspect which is also dependent of various factors such as context, orientation, and site constraints. The imposition of standard sizes would be detrimental to the quality of the built environment, and would potentially result in failure to comply with the requirements of Technical Guidance F – Conservation of Fuel, Energy and Natural Resources (Minimum requirements on the energy performance of buildings regulations, 2006)."** (KTP, 2020a, p. 6)

In ERA's consultation response document, published 21 months after the consultation period closed, it stated the following regarding the Kamra's position:

> **"Comment noted. The draft Strategy will be reviewed accordingly."** (ERA, 2021a, p. 29)

In the end, the final policy document did not make any such reviews. Indeed, the *Construction and Demolition Waste Strategy for Malta 2021 – 2030* (ERA, 2021b, p. 28) retains identical wording as that found in the public consultation document, begging the question whether the public consultation exercise served any purpose.

It is pertinent to point out that other public consultation replies were ignored, most notably that of the Planning Authority, which stated:

> **"The PA believes that this is a measure that falls squarely within the BRO functions."** (ERA, 2019, p. 19)

Despite the PA's feedback, CDW strategy ties adherence to the proposed standard to the Executable Development Permit. For the benefit of those reading this consultation reply and are unaware of the implications of this, it is worth elaborating on the current planning process. After works executed on the basis of an executable development permit are completed, permit-holders are required to submit compliance certificate requests. These certificates are mandatory to apply for utility services. Moreover, the PA has increasingly imposed permit conditions wherein certain developments cannot start being utilised until a final compliance certificate is issued by the PA. A compliance certificate is issued on the basis of a declaration of compliance filed by a perit to the PA. Thus, the enforcement of this regime is being thrust on a regulator which has no remit on building regulations.

A specific question put by the Malta Chamber of Commerce, Enterprise, and Industry to the ERA in relation to the public consultation document was particularly relevant:

> **"With reference to the mention of regulatory framework, and the revision of existing legislation on construction. I assume that this task should be carried out by the Building and Construction Authority, which shall be consolidated of the roles of the BRO, BRB and BICC."** (ERA, 2021a, p. 37)

ERA's response was:

> **"ERA is the competent authority for those aspects which are directly related to the environment, including overall waste management. Other aspects are consulted with the relevant entities."** (ERA, 2021a, p. 37)

Three years had gone by since the draft document was issued for public consultation during which time the Kamra had never heard again about the proposal, until in October 2022 it was placed on the agenda of the Advisory Board of the Building Industry Consultative Council (BICC).

No accompanying documents were attached to the agenda, so the detail about the proposal would only first be divulged during the meeting held on 21st October 2022.

During the meeting, stakeholders were given a visual presentation of draft regulations (not standards) on the standardisation of apertures by a Building and Construction Authority (BCA) official with no hard or soft copies being made available. Participants were expected to provide off-the-cuff feedback without having had sufficient time to adequately study the details and the implications, nor to consult with their councils and membership. Nevertheless, the Kamra's representative asked the three following questions:

1. Why is this being prioritised over more critical and urgent matters such as the licensing of contractors and building and construction regulations?
2. What evidence is there to support the claim that standardisation of aperture sizes will result in waste reduction?
3. How does the BCA intend to enforce such regulations if they come into force?

The reply to the first question was that the European Commission is imposing this on Malta, and that "we" have no choice but to implement it. It turns out, however, that this is a false statement. This false narrative is being employed in the BCA's PR campaign about the public consultation. On 21st November 2022, the BCA Chairperson stated to the state-controlled national television that "[t]he Building and Construction Authority (BCA) launched the public consultation so that Malta will be in conformity with European standards" (TVM, 2022). The standardisation of apertures is something the Maltese Government voluntarily proposed to the European Commission as a measure to secure Recovery and Resilience Plan (RRP) funding. Please refer to the end of this section for more commentary on the RRP.

The reply to the second question was that it forms part of the Construction and Demolition Waste Strategy. Yet, the strategy document itself is devoid of any research underpinning it. ERA representatives were not present for the meeting to clarify.

There was no reply to the third question, however the Kamra representative warned that if this is going to be tied to the compliance process adopted by the Planning Authority (PA), the Kamra would be vehemently opposed to this initiative. The PA representative present during the BICC meeting denied any knowledge of this regulation being enforced through its statutory processes.

There are multiple reasons for the Kamra's opposition to the use of the PA's compliance certification regime, including:

- The compliance certificate is only issued by the PA upon a declaration signed by a perit that all permit conditions have been complied with. This places the liability for compliance with permits on the perit, rather than on the developer.
- In 2016, the PA started imposing additional permit conditions related to building regulations and attaching consultation replies of other regulatory entities, such as SCH, ERA, TM, and commercial monopolies, such as Enemalta and WSC, to the permit elevating such replies to statutory obligations. Many periti are still unaware that when signing a declaration of compliance, they are not only confirming that the development complies with the permit drawings, but also with the building regulations and other approved documents, which they may not have been engaged to specify or oversee by their clients.
- Periti are very rarely engaged by clients to oversee the implementation of the entire project and ensure the adherence by contractors and suppliers with development permit conditions. Thus, the declaration of compliance, whose implications are widely underestimated by members of the profession, is a deceitful system for enforcing building regulations.
- Any false declaration may be construed as fraud, with criminal and professional implications. The latter fall under the remit of the Kamra, which would be placed in the awkward position of disciplining periti on the basis of a statutory process it disagrees with, or having to "nullify" the law, something no judicial or quasi-judicial body should do.
- The creation of aperture openings is dependent on multiple trades, including builders, plasterers and tile layers. With the exception of builders, no tradesmen in the construction industry have any certified skills and none possess a contractor's license, since there is currently no system for such licensing and certification. Due to this regulatory lacuna, the onus of workmanship certification is placed on periti. While this shifting of responsibility onto periti, which is unique to Malta, has thus far been tolerated by the Kamra, it shall no longer accept the consolidation or expansion of this system as this draft proposal is suggesting. Contractors must be statutorily compelled to certify that they have complied with specifications issued by periti and building regulations, including the Construction Products Directive.
- The draft CDW strategy document was issued two years before the BCA was setup, and thus refers to a regulatory setup which is now outdated. Various discussions held with BCA and PA officials, as well as during BICC meetings, concluded that all building regulations would fall under the remit of the BCA, and that the PA's compliance process would be discontinued. This proposal undoes all the progress that had been made since the 2019 industry crisis, when a spate of building collapses had

raised public awareness about the deep regulatory problems, and the publication of the Kamra's *A Modern Building & Construction Regulation Framework for Malta* (KTP, 2020b)

At the conclusion of the BICC October meeting, it was agreed that the regulations would be redrafted to reflect the points raised. Within three weeks, however, the BCA proceeded with the current public consultation process, disregarding altogether the points raised by the Kamra, and focused solely on tweaking the detail, namely reducing the number of allowable aperture modules.

It is finally worth also addressing the RRP itself. The Council Implementing Decision states:

> **"On 13 July 2021, Malta submitted its national RRP to the Commission, in accordance with Article 18(1) of Regulation (EU) 2021/241. That submission followed a consultation process, conducted in accordance with the national legal framework, involving local and regional authorities, social partners, civil society organisations, youth organisations and other relevant stakeholders. National ownership of the RRPs underpins their successful implementation and lasting impact at national level and credibility at European level. Pursuant to Article 19 of Regulation (EU) 2021/241, the Commission has assessed the relevance, effectiveness, efficiency and coherence of the RRP, in accordance with the assessment guidelines set out in Annex V to that Regulation"** (European Commission, 2021, p. 2)

The above statement, however, is untrue. The Kamra was not consulted on any aspect of the RRP measures proposed by the Maltese Government. Indeed, there are several over which it has serious reservations.

The above statement also exposes another aspect of the consultation process. While the review of consultation replies on the CDW strategy was carried out in September 2021, the Maltese Government submitted the proposals contained within the draft CDW strategy in July 2021 without considering any of the feedback it had received.

Technical Document

Introduction

The introduction to the draft technical document outlines the following benefits for the standardisation of aperture sizes (BCA, 2022, p. 1):

- **Interchangeability**
- **Repairs or replacements would be easier**
- **Re-use of fittings**
- **Producers would stick to standard openings to curb costs**
- **Designer would work to these standard sizes from initial design**
- **Raw materials sizes would be produced in modules that would lessen waste"**

In the Kamra's considered view, these perceived benefits are unfounded for the following reasons:

1. Apertures are replaced for one of four reasons. They are either:
    a. Damaged beyond repair; and/or
    b. Weathered or old; and/or
    c. Not compliant with energy efficiency regulations; and/or
    d. Are not aesthetically compatible with a planned restyling for a property.

    The notion that apertures would be re-used somewhere else is conceptually flawed. If there were any such practical benefits, re-use would not require any regulatory mandate. For example, the production of tap mixers follows an international specification standard. However, mixers are replaced regularly due to breakages, calcium buildup, or general bathroom restyling. The re-use of mixers would not be a common practical consideration, except in exceptional circumstances. Likewise, the reuse of apertures is not expected to actually occur except in very particular, statistically negligible circumstances.

2. Although data was not made available in the consultation document, a large proportion of apertures, both internal and external, are imported. The expectation that the BCA could consider regulating international producers of raw materials and apertures is at best overly ambitious, and at worst deluded.

   Moreover, local producers, whose main market edge is their ability to produce bespoke solutions, will be significantly undermined.

3. Periti already design apertures with modular sizes whenever practical because it simplifies the production of drawings and the procurement of apertures. This is thus an unfounded benefit. Nevertheless, the imposition of fixed sizes will grossly undermine design quality, innovation and responsiveness to site specific requirements. Nevertheless, the actual quality of execution of drawings by contractors is largely poor, rendering it necessary to allow for flexibility in addressing execution errors. The hope is that licensing of contractors will begin to address the prevalent poor quality of execution of works. A few examples of poor execution of aperture works can be perused in the self-explanatory images below.

Figure 1 - Door aperture in Gzira. Formwork of concrete beam not laid to falls, resulting in a skewed opening.

Figure 2 - Door aperture in Qawra. Masonry work and plaster not plumb.

Applicability

In the section entitled “applicability”, it is stated that:

> **“The Technical Document shall apply when a new aperture is to be constructed, either when a new building is being designed or when an existing building is being altered and apertures are to be added or be rebuilt.”** (BCA, 2022, p. 1)

What happens in multiple-dwelling units? Will this standard oblige clients to install mismatching external doors and windows on any of its external elevations?

What happens if a client wants to add an internal door opening? Will s/he be required to install a door that does not match with the others already fitted in the property? Will this standard not incentivise property owners to carry out such alterations without a development permit, as is already occurring with the over-burdensome LN 136 of 2019?

It is also pertinent to point out that internal alterations do not require a development permit. Indeed, they are classified as permitted development with notification as per S.L. 552.08 regulation 3. This means that no Executable Permits would be issued for such works. Thus, the entire enforcement process through compliance for this standard is unworkable and ill-conceived.

Rather ominously, the Technical Document goes on to state that:

> **“This document does not in anyway (sic) waive or preclude a designer from any obligations, legal or not, so care must be taken to ensure the designs cater for said obligations.**
>
> **“The designer needs to ensure that any other obligations are adhered to whilst also following the guidelines in this technical Document and that the dimensions chosen observe minimum “Clear Opening Width” as required by other legislation. The Designer shall also ensure that the standard dimensions chosen are adequate for the window and door width of the fittings he/she intends to utilize. (sic)”** (p. 2)

Does this mean that the BCA already knew, before publishing this document for consultation, that this standard conflicts with several other regulations?

Periti have no obligations, contractual or legal, other than those they agreed to with their clients. The onus is on the regulator to ensure that there are no regulatory conflicts and that any such potential conflicts are resolved before bringing any regulations or standards into force.

Furthermore, it is not the perit's role to negotiate between various regulatory bodies to design a building. Any further exacerbation of the current situation is deemed unacceptable by the Kamra.

Exceptions

A series of exceptions are identified in the document, however there is no mention of how such exceptions will be processed. Will there be a specific application or process to handle requests for exceptions? Will they be handled by the BCA, ERA or PA?

These are our comments on some of the exceptions being proposed:

> **"In exceptional circumstances, these standards may not be applied on scheduled buildings, in UCAs and on buildings where the overall architectural design approach provides iconic or landmark quality."** (p. 2)
>
> Will the entity entrusted with enforcing this standard, be it BCA, ERA or PA, consult directly with the Superintendence of Cultural Heritage (SCH), as the regulator of heritage buildings, on the imposition of such alterations within heritage buildings? Will the BCA, ERA or PA consult with the Kamra tal-Periti, as the regulator of periti, to establish whether it would be ethical for a perit to follow this standard in those circumstances not deemed exceptional?
>
> Who will determine whether a design is "iconic" or of "landmark quality"? Will it be the Kamra as the regulator? Or will this be left to people who are not qualified in architectural design and open to subjectivity and/or foul play?

“Where an aperture constitutes more than 25% of the façade or building structure housing it, it can be considered as part of the building fabric and the aperture can be exempt from these standards.” (p. 2)

Why 25%? Why not 17% or 53%?

“When renovating or altering a building, if there is an existing aperture that will not be structurally effected by the works, it shall keep its existing dimensions.” (p. 2)

Does this mean that anyone who wants to create a new door opening will be obliged to have a mismatched door? What benefit is there in this? Will it not encourage property owners to undertake alterations without a permit to avoid having to deal with this unnecessary imposition?

“Apertures into small services shafts (not internal courtyards) with a footprint of less than 2 m² or Apertures (sic) in non-habitable rooms shall be exempt from following the guidelines in this Technical Document. For the purposes of this Document (sic), Bathrooms (sic), Gyms (sic) and Domestic (sic) stores will not be exempt from these guidelines.” (p. 2)

What motivated this unnecessary complication?

Apertures that existed or are in existence and that are subject to any court case, shall be exempt from these standards. (p. 2)

What about apertures that will be rendered subject to a court case due to these regulations?

Standard Sizes

“The minimum allowable width and height for a Door aperture are 0.75 m from the finished surfaces and 2.1 m from the finished floor level (including the Sill) respectively.” (sic) (p. 4)

What if there is no space for a 0.75m door, and only a 0.55m or 0.60m door can be fitted? Will building occupants be compelled not to fit a door? Can they put a curtain over the opening at least?

The areas of the door openings specified by the Technical Document are listed below:

Construction opening width (in m)	Construction opening height (in m)
0.75	2.10
0.75	2.15
0.75	2.20
0.80	2.25
0.90	2.10

Is the BCA aware that the maximum door width in the above table falls short of the minimum door width in the *Access for All Guidelines* published by the CRPD (2011) and the minimum door width for fire doors as per fire standards (Building Construction Industry Department, 2004)? Shall these design standards prevail over the proposed design standard? What will the process for determining this be?

The areas of the window openings specified by the draft Technical Document are listed below:

Construction opening width (in m)	**Construction opening height (in m)**	**Area m²**
0.40	1.05	**0.42**
0.40	1.10	**0.44**
0.45	1.15	**0.52**
0.55	1.20	**0.66**
1.00	1.72	**1.72**
2.00	2.76	**5.52**

Is the BCA aware that the first four window types listed above fall significantly short of the minimum 1sqm opening area for windows in habitable rooms as per Health and Sanitary Regulations, S.L. 552.22?

Is the BCA also aware that Document F (BRO, 2015a; BRO, 2015b), providing guidance for compliance with the Energy Performance in Buildings Regulations, also regulates external window and door sizes and that these dimensions may not be compatible? Which regulations should prevail in such a situation?

Why is there a sudden leap from 1.20m to 1.72m? What is so significant about 1.72m?

Why is the tallest option for a window in a habitable room being indicated as 2.76m, when the current minimum clear internal height for habitable rooms is 2.60m?

The height of 2.76m appears to be a factor of 0.23m (12 x 0.23m = 2.76m). Presumably this was intended to reflect a 12-course height. However, a course height varies between 0.26m to 0.273m depending on whether hollow concrete bricks, Maltese limestone blocks, or Gozitan limestone blocks are used. 0.23m is one of the modular widths, not the heights, of such blocks.

Will double-doors be banned through this standard?

Will pocket-doors be banned through this measure?

Will garage door openings be banned?

Which will prevail between DC15 G43 and G44 (MEPA, 2015, pp. 178 - 181), and this proposed standard?

Conclusions

It is pertinent to point out that the CDW strategy document identifies the Kamra as an “enabler” (ERA, 2021b, p. 14) of this measure. In its concluding remarks, ERA states that “[w]ithout the participation of all enablers, this exercise will prove unsuccessful.” (ERA, 2021b, p. 32). And yet, Government seems intent on proceeding with this conceptually flawed measure, ignoring the Kamra’s technical objections to it, while still expecting the Kamra to “commit to its implementation”.

The Government can, if it chooses to, amend the “recovery and resilience plan including its relevant milestones and targets is no longer achievable, either partially or totally” as per Article 21 of Regulation (EU) 2021/241 which establishes the Recovery and Resilience Facility (RRF). The Kamra would be glad to assist with the identification of alternative opportunities for the use of the available funding.

Finally, it would be remiss of the Kamra tal-Periti to ignore the impact this measure will have on the quality of architectural design. Below are a series of images representing buildings that would not satisfy the requirements of this standard.

Figure 3 - San Pawl tat-Targa Villa by CVC architecture - Winner of the Premju E.L. Galizia President's Award and Quality Architecture Award 2018

Figure 4 - San Pawl tat-Targa Villa by CVC architecture - Winner of the Premju E.L. Galizia President's Award and Quality Architecture Award 2018

Figure 5 - San Pawl tat-Targa Villa by CVC architecture - Winner of the Premju E.L. Galizia President's Award and Quality Architecture Award 2018

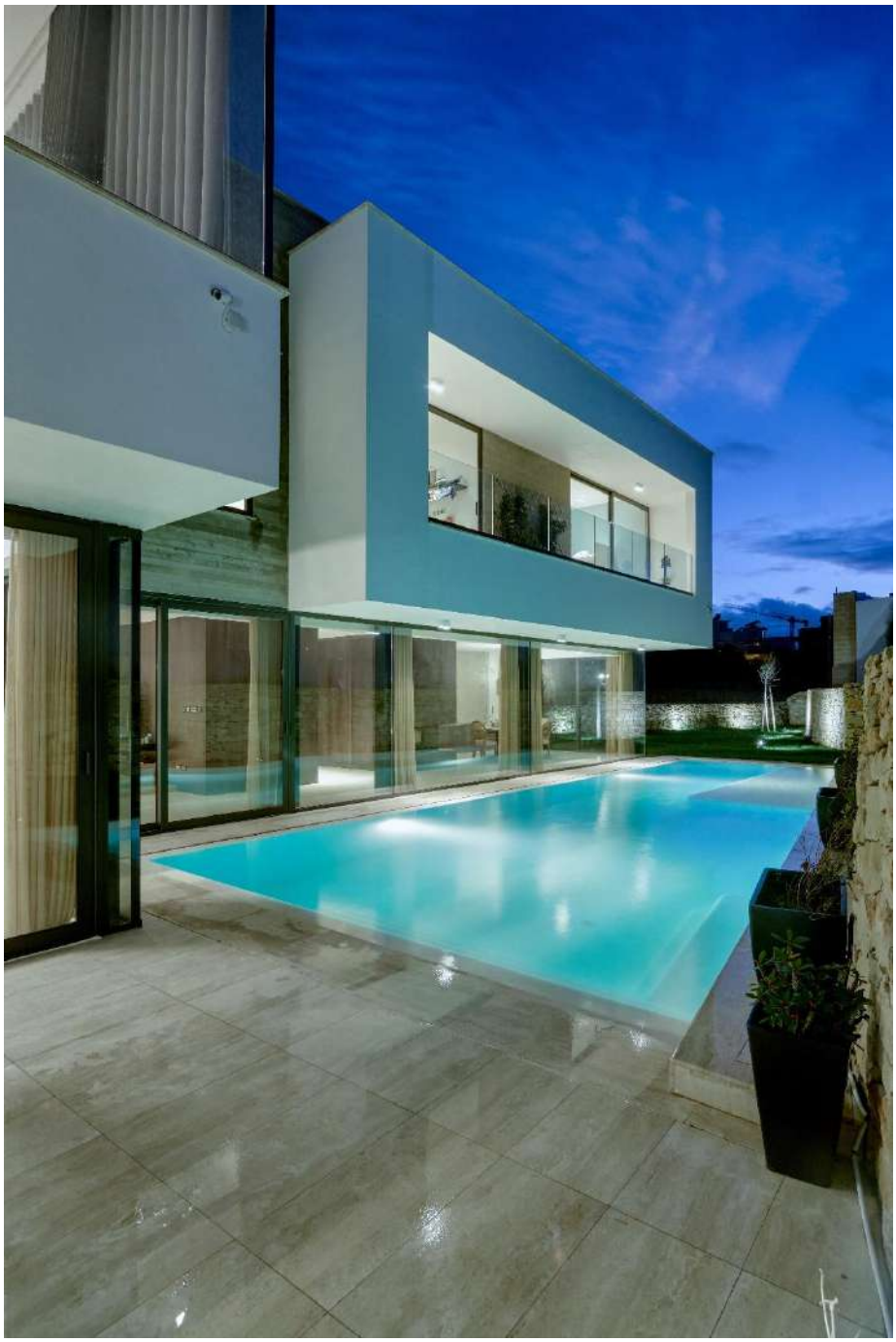

Figure 6 - At the Borderline – Archi+ - Premju E.L. Galizia Quality Architecture Special Commendation 2018

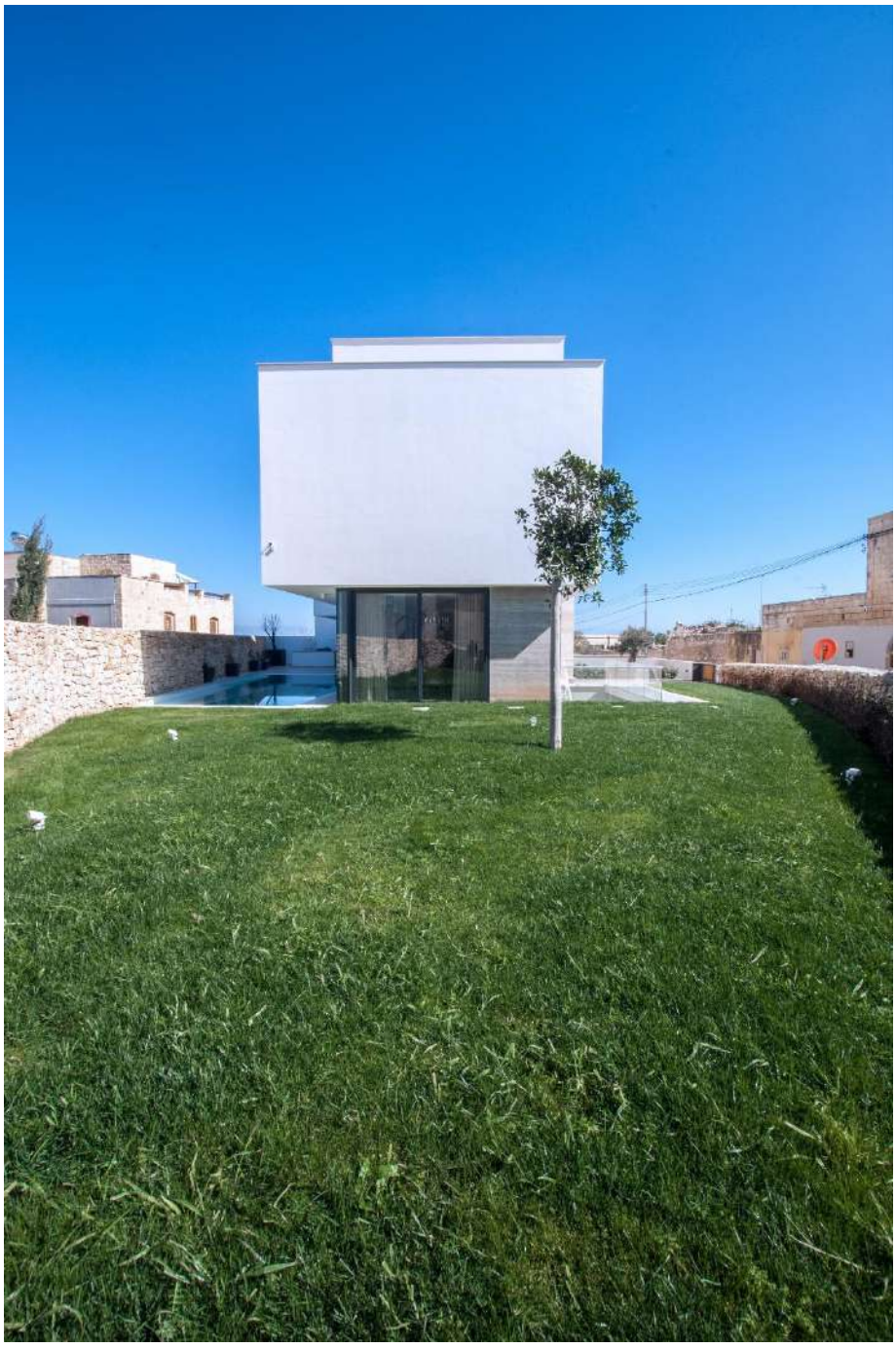

Figure 7 - At the Borderline – Archi+ - Premju E.L. Galizia Quality Architecture Special Commendation 2018

Figure 8 - The Long House – Perit Rebecca Zammit - Premju E.L. Galizia Interior Spaces Special Commendation 2018

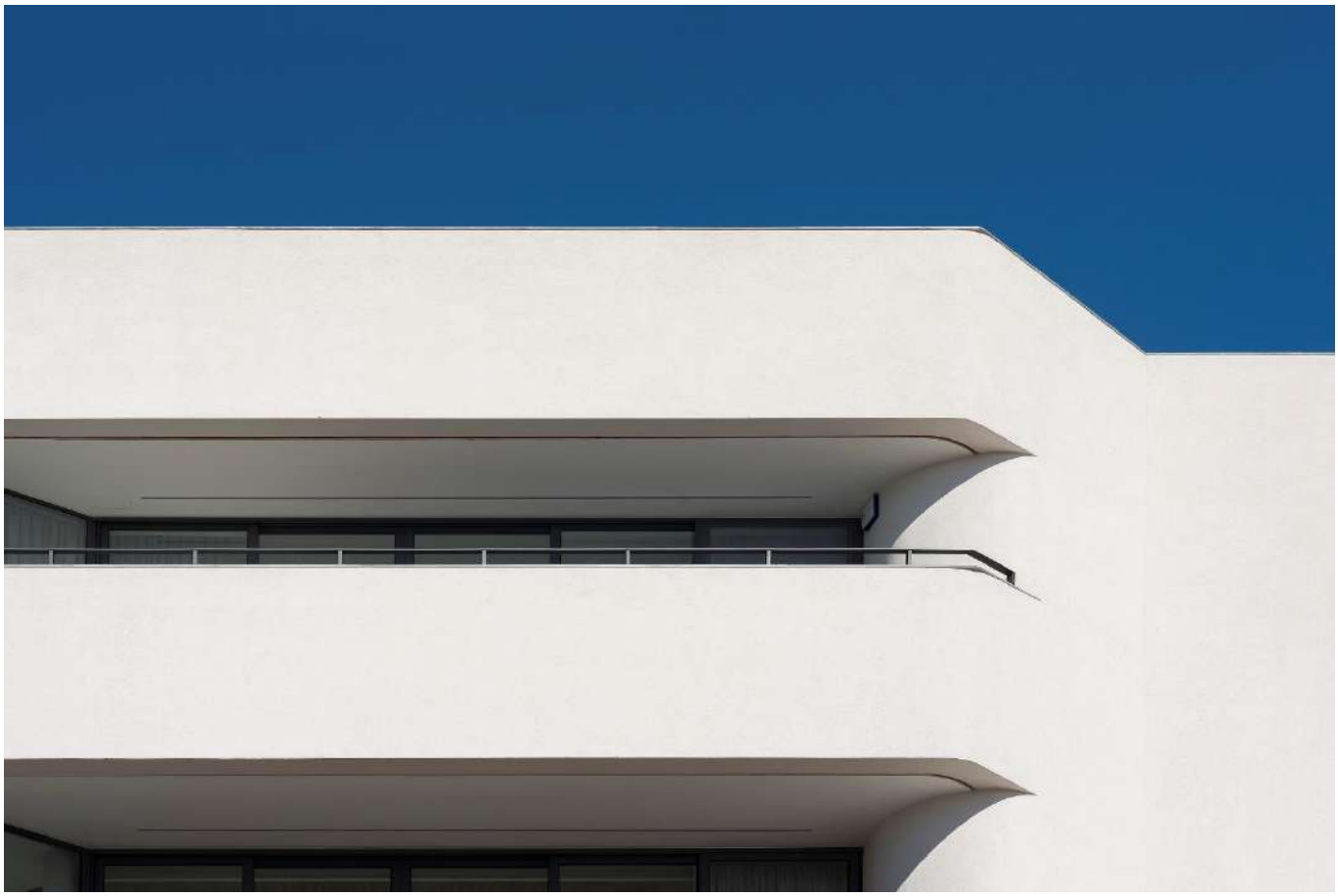

Figure 9 - threeplusone – Valentino Architects - Premju E.L. Galizia President's Special Commendation and Housing Project Award 2019

Figure 10 - threeplusone – Valentino Architects - Premju E.L. Galizia President's Special Commendation and Housing Project Award 2019

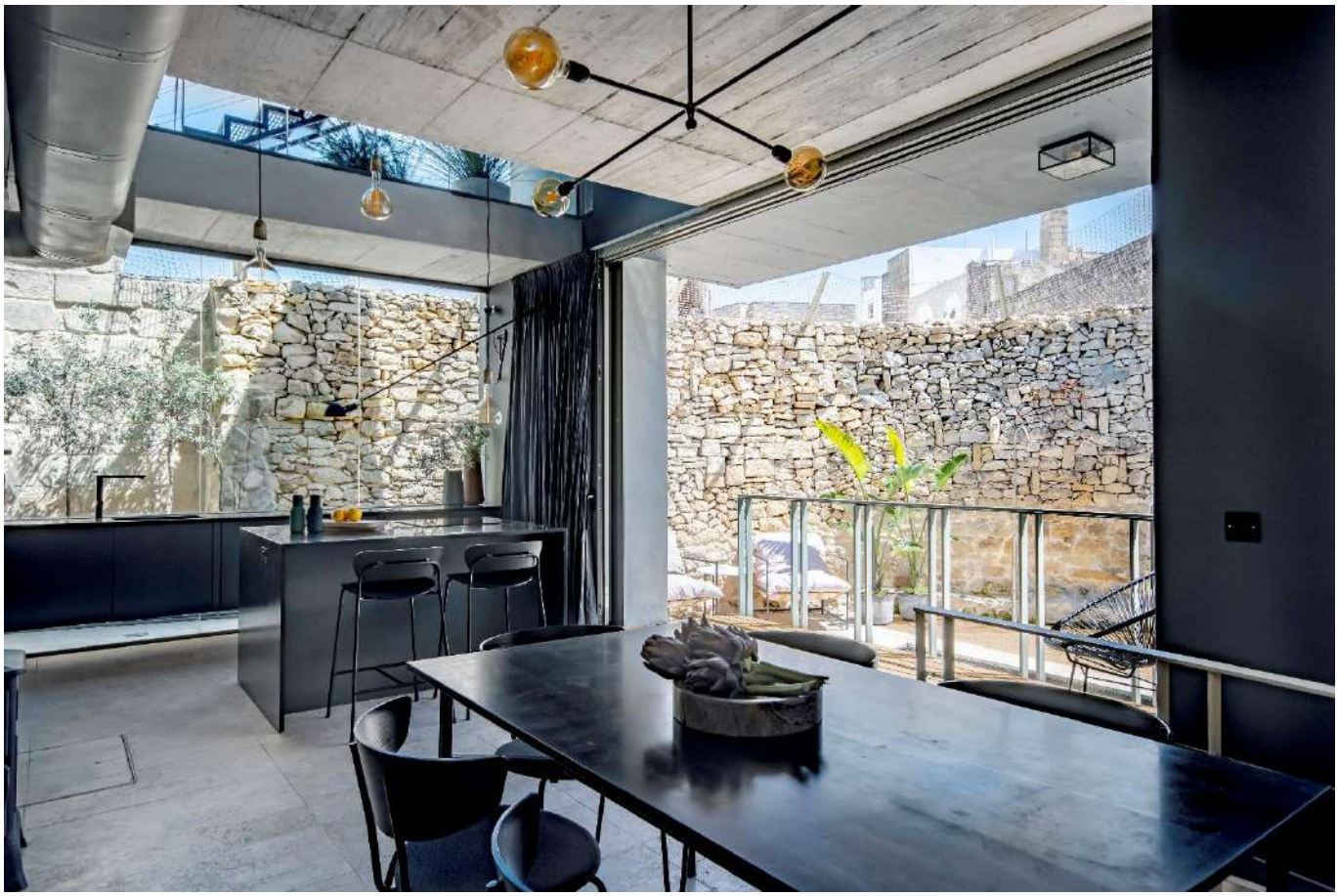

Figure 11 - Qormi Industrial Home – MMK Studio - Premju E.L. Galizia Interior Spaces Award 2019

Figure 12- Qormi Industrial Home – MMK Studio - Premju E.L. Galizia Interior Spaces Award 2019

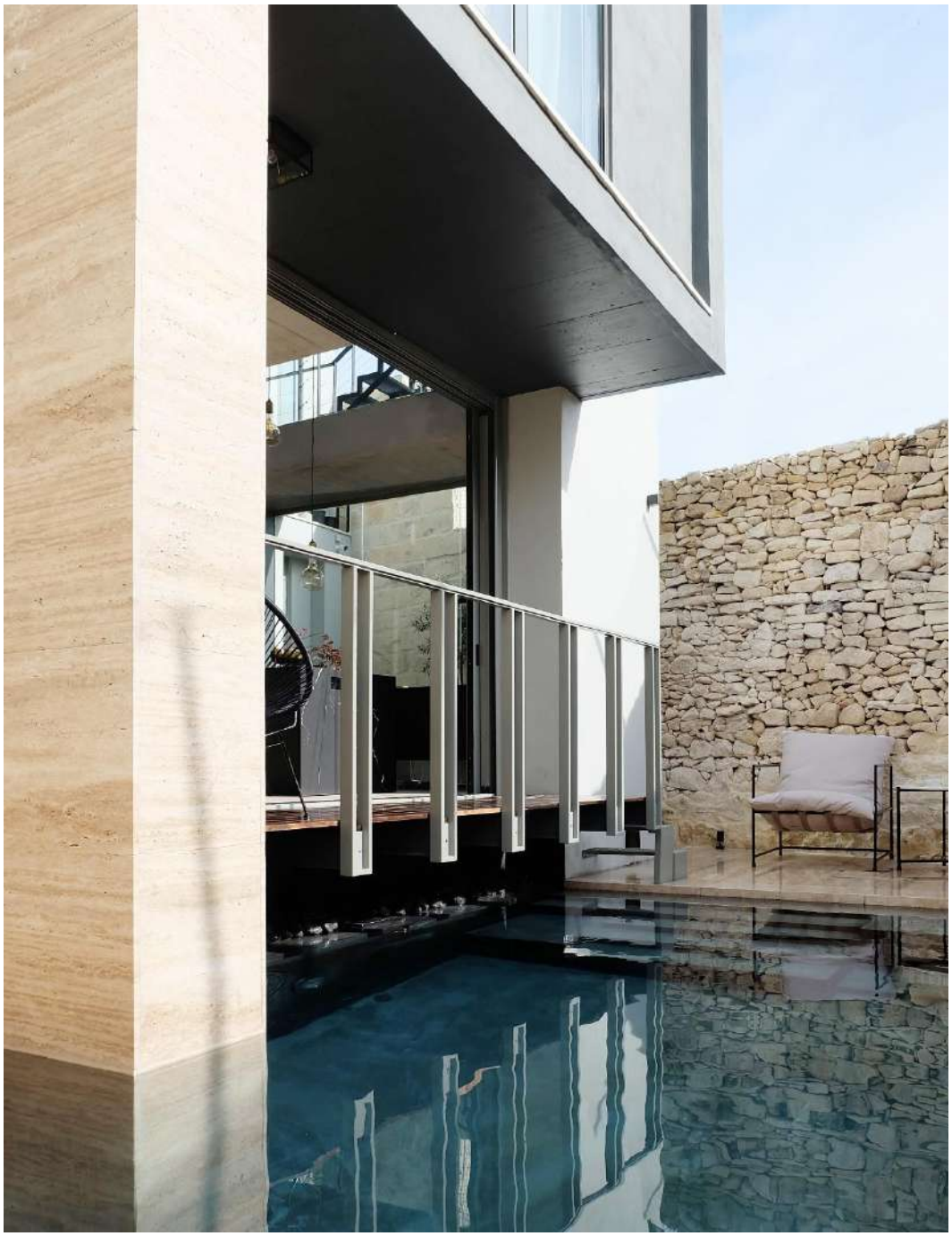

Figure 13- Qormi Industrial Home – MMK Studio - Premju E.L. Galizia Interior Spaces Award 2019

References

BCA, 2022. *Technical Document: Standardisation of Apertures for Residential Buildings in Malta.* [Online]
Available at: https://meae.gov.mt/en/Public_Consultations/MECP/Documents/Technical%20Document%20-%20Standardisation%20of%20Apertures%20for%20Buildings%20in%20Malta.pdf
[Accessed 26 November 2022].

BRO, 2015a. *Technical Document F Part 1: Minimum Energy Performance Requirements.* [Online]
Available at: https://bca.org.mt/files/technical-document-F-part-1.pdf
[Accessed 26 November 2022].

BRO, 2015b. *Technical Document F Part 2: Minimum Energy Performance Requirements for Building Services in Malta.* [Online]
Available at: https://bca.org.mt/files/technical-document-F-part-2.pdf
[Accessed 26 November 2022].

Building Construction Industry Department, 2004. *Design guidelines on fire safety for buildings in Malta.* Marsa: Building Construction Industry Department.

CRPD, 2011. *Access for All: Design Guidelines.* [Online]
Available at: https://www.crpd.org.mt/wp-content/uploads/2020/11/Access-for-all-2011.pdf
[Accessed 26 November 2022].

ERA, 2019. *Construction and Demolition Waste Strategy for Malta: Public Consultation Document.* [Online]
Available at: https://era.org.mt/wp-content/uploads/2020/02/ERA-Construction-and-Demolition-Waste-Strategy-for-Malta-VIS-4.pdf
[Accessed 26 November 2022].

ERA, 2021a. *Public Consultation Submissions & Responses: Construction and Demolition Waste Strategy for Malta, 2021-2030.* [Online]
Available at: https://era.org.mt/wp-content/uploads/2021/11/CD-Strategy-Public-Cons-

Review_ERA-feedback.pdf
[Accessed 26 November 2022].

ERA, 2021b. *Construction and Demolition Waste Strategy for Malta 2021-2030.* [Online]
Available at: https://era.org.mt/wp-content/uploads/2021/10/Construction-and-Demolition-Waste-Strategy-for-Malta-2021-2030-Managing-Construction-Demolition.pdf
[Accessed 26 November 2022].

European Commission, 2021. *Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Malta.* [Online]
Available at:
https://eufunds.gov.mt/en/Operational%20Programmes/Documents/Proposal%20for%20a%20Council%20Implementing%20Decision%20on%20the%20approval%20of%20the%20assessment%20of%20the%20recovery%20and%20resilience%20plan%20for%20Malta.pdf
[Accessed 26 November 2022].

KTP, 2020a. *Construction and Demolition Waste Strategy for Malta 2020 - 2025: Comments by Kamra tal-Periti.* [Online]
Available at: https://kamratalperiti.org/wp-content/uploads/KTP-comments-Construction-and-Demolition-Waste-Strategy-for-Malta-2020-2025.pdf
[Accessed 26 November 2022].

KTP, 2020b. *A Modern Building & Construction Regulation Framework for Malta.* [Online]
Available at: https://kamratalperiti.org/a-modern-building-construction-regulation-framework-for-malta/
[Accessed 26 November 2022].

MEPA, 2015. *Development Control Design Policy, Guidance and Standards 2015.* Marsa: MEPA.

TVM, 2022. *New regulations on windows and doors to be introduced by end of the year.* [Online]
Available at: https://tvmnews.mt/en/news/new-regulations-on-windows-and-doors-to-be-introduced-by-end-of-the-year/
[Accessed 27 November 2022].

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