

Kamra tal-Periti

Minutes of the Extraordinary General Meeting

Held 5th July 2019 at the Corinthia San Gorg

Agenda

1. Welcome Address
2. Opening Motion
3. Introduction by President: What happened since the last EGM?
4. Presentation by Vice-President: Registration and Classification of Contractors
5. Presentation and Approval of Motions
6. Closing Remarks

Welcome Address by the Honorary Secretary

The meeting was opened by Perit Amber Wismayer, KTP Honorary Secretary. She thanked members for their attendance and participation, and invited the President of the Kamra, Perit Simone Vella Lenicker and the Vice-President, Perit Andre Pizzuto to the stage; declared the meeting officially open and presented the agenda.

Opening Motion

Perit Amber Wismayer presented the opening motion (Motion 1), proposed by Perit Simone Vella Lenicker and seconded by Perit Andre Pizzuto. The motion referred to participation in the present meeting by student and graduate periti, as well as non paid-up members, in addition to full members. The full text of the motion, as well as all other motions, as presented and as approved, is included in Annex A.

The motion was approved with three votes against and no abstentions, all other votes being in favour.

Introduction by the President: What happened since the last EGM?

Perit Simone Vella Lenicker also welcomed the participants, and thanked them for attending at what continues to be a critical time for the profession. She thanked:

- the members of the Council, particularly Perit Andre Pizzuto
- all those who had supported the work of the Council in the past days, including those who had made donations;
- periti who had helped in various ways such as through participating in meetings.

Perit Vella Lenicker then gave an account of events since the previous EGM (June 2019). Meetings had been held with the BICC, the MDA, the Malta Chamber, the Chamber of Engineers, and the two political parties. These meetings were attended by Perit Vella Lenicker herself and Perit Andre Pizzuto and occasionally by other members of the Council. Meetings had also been held with various groups of periti and contractors.

The Legal Notice (LN136 of 2019), had been brought into force without discussion with the Kamra, apart from the feedback which the Council submitted to the Public Consultation process based on the outcome of the last EGM.

The first meeting with the Government took place on 27th June, and this was a heated meeting where it was agreed that the Kamra would submit proposed changes to the Legal Notice. These were submitted and further meetings were held on 1st and 2nd July, with the scope of reaching an agreement on these changes. This process is still ongoing. Throughout this time the Council has kept members informed through circulars and directives and also communicated its message to the public through the media.

At every opportunity, the Council had emphasised the need for holistic reform of the Industry through the revision of the Periti Act, the putting into place of a Building and Construction Regulation Framework, the setting up of the Construction Authority (with the strengthening of the BRO as an interim measure) and the implementation of the Construction Products Directive. However, these had been overtaken by more urgent concerns raised by the coming into force of LN136/19. The most important of these is related to roles and responsibilities. The Council is insisting on the traditional model where the developer appoints a perit and a contractor who are jointly liable, in accordance with Civil Law. The introduction of the STO, appointed by the Developer and 'approved' by the perit, has confused the issue and created ambiguity. It is not clear what liability the perit incurs in 'approving' the STO. Many of the other concerns regarding the Legal Notice raised at the previous EGM had been addressed through the wording of the various forms which can be uploaded to the case file via eApps, although adjustments are still needed. Also, Government has agreed to widen the qualifications of persons who can fulfil the role of STO.

Today, (5/7/19), Government has announced the requirement for Contractors to be registered, which was one of the key demands of the Kamra. Registration will begin immediately followed by licensing and classification of contractors which will be completed by the end of the year. Perit Andre Pizzuto has drafted a proposal for the registration procedure in the form of a draft legal notice, and this has been well received by contractors and government.

Presentation by the Vice President: Registration and Classification of Contractors

Perit Andre Pizzuto presented an overview of the Council's proposals which he had drafted in the form of a Legal Notice. This would be an interim measure pending the coming into force of the Building Regulations. Included also is a definition of the role of the STO as part of the contractor's setup and this would address some of the issues created in LN136/19. Three registers are proposed for contractors: Building & Construction; Demolition; and Excavation. Projects would be classified by the perit in terms of Level of Risk and there would be different requirements for being listed in each register. This Legal Notice would bring the distribution of liability in line with the Civil Code and also with international standards.

Presentation and Approval of Motions

Perit Simone Vella Lenicker noted that the motions are intended to address the holistic reform of the industry and the outstanding points of disagreement between the Council and Government on the changes needed to LN136/19. The Council had submitted numerous amendments to the Legal Notice but had subsequently reduced the list to focus on nine important points. She presented these points and reported on the progress of negotiations

with Government. The Council had also requested that Government, through the BRO, issues binding guidance on how the Legal Notice is to be interpreted. This request had been turned down so the Council itself had issued guidance to periti in the form of circulars endorsed by Government.

Perit Amber Wismayer read out the motions with Perit Vella Lenicker giving a brief explanation for each one. All motions were proposed by Perit Simone Vella Lenicker and seconded by Perit Andre Pizzuto. The full text of the motions is included in Annex A.

- Motion 2 authorises the Council to proceed with putting forward the draft proposals on the registration of contractors
- Motion 3 refers to the regulation of the construction industry through a holistic approach including the putting into place of a Building and Construction Regulation Framework, the setting up of the Construction Authority (with the strengthening of the BRO as an interim measure) and the implementation of product certification as required by the Construction Products Directive.
- Motion 4 addresses the Periti Act including the issue of the composition of the Board of Conduct, which is the only remaining point of disagreement with Government.
- Motion 5 relates to the action to be taken by the Kamra following the EGM. The initial wording is open ended and intended to be finalised through discussion.

This was followed by a general discussion and the following are some of the points raised:

Perit Noel Debattista noted that this is a very complicated time for periti. He felt that all nine points are important and that it is important for Periti to stand up for their rights. He confirmed that PI does not cover periti for acting as an STO. With regards to the method statements, he emphasised the importance of maintaining a clear distinction between the specification prepared by the perit and the methodology to be used which is the remit of the contractor. He also noted that he is not prepared to submit as-built drawings to the BRO, and that there are issues of copyright.

Perit Hector Zammit reminded the EGM that the concept of site manager has never worked, and since the idea of the STO is the same, it should be eliminated

Perit Simone Vella Lenicker confirmed that any current Professional Indemnity policies do not cover the perit in the role of STO, and periti should be cautious not to expose themselves to additional risks without informing their insurance provider accordingly. She also confirmed that the Legal Notice does not state that the perit automatically becomes the STO if no STO is appointed, but that this has, however, been implied in several public statements. This situation would, in the opinion of the Council, breach of the Code of Professional Conduct because the perit would be acting both on behalf of the developer and the contractor.

Dr. Joseph Camilleri of Mamo TCV Advocates, who has been advising the Kamra on legal matters, clarified the distinction between Regulation 25 and Regulation 26. He noted that Regulation 26 should only be applied if there is no possibility of third parties being affected.

Perit Patrick Calleja asked if the Kamra would accept that the perit is required to approve the STO with whatever liability this implies. Perit Simone Vella Lenicker replied that, if the contractor has an STO and the perit does not approve him, it implies that the perit does not approve of the contractor. The position of the Council is that there should be an official list of approved STOs. Perit Andre Pizzuto stated that the Council had received indications that the requirement to approve the STO would be removed.

Perit Charles Azzopardi requested clarification on the definition of 'the perit responsible the project' in Schedule 2, and in Point 4 of the sixth schedule, especially when the perit engages another perit for the structure. Perit Simone Vella Lenicker replied that the Legal Notice tries to take into account that different periti can be engaged with different responsibilities on the same project. In general, each perit is responsible for what he does, and these responsibilities are regulated by contracts between perit and structural engineer. Perit Andre Pizzuto noted that it is clear that Government does not understand how the profession works and that this must be clarified.

Perit Alex Bezzina expressed concern that the profession reacts following actions taken by Government. He asked whether there was any indication that Government is willing to take our concerns seriously. Perit Vella Lenicker acknowledged a willingness to by Government to listen and understand, but a reluctance to change particularly in the short term.

Perit John Papagiorcopulo emphasised that periti, as professionals, are willing to take on responsibilities. He fully agreed with the proposals on registration of contractors as prepared by Perit Pizzuto. Perit Simone Vella Lenicker stated that there is a commitment by Government to complete the licensing process by the end of the year, however it is not clear what will happen until then. Perit Pizzuto stated that through the proposals being made on the registration of contractors, the Council is also working towards fulfilling the instructions of the previous EGM on clarification of responsibilities.

Perit Matthew Mercieca noted positively the proposal to issue a list of contractors each with a classification. He also noted that, while periti should not be required to approve the STO, they should retain the right to refuse a contractor or his employee due to incompetence. He also asked for a clarification about Regulation 4 in relation to finishes, and Perit Simone Vella Lenicker replied that Regulation 4 was quite clear in that anything related to finishes is not included.

Perit Lara Brincat requested legal guidance on the liability incurred in invoking Regulation 25 if damages occur, and the liability periti are being exposed to when approving the STO.

Dr. Joseph Camilleri noted that the legal notice does not remove the general principles of law: One is liable for one's actions and omissions. For example, finishes are not regulated by this legal notice but there could still be liability based on general principles of law. However, in Maltese law there is no concept of automatic liability. A link would have to be shown between damages and the actions or omissions of the perit. With regards to Perit Brincat's first question, if the forms are filled in correctly and they are accepted by the BRO, there should be no liability on the perit. With regards to the second question, no liability can arise in not approving an STO. There is no obligation. On the other hand, if the perit approves an STO and there is no indication that he is incompetent, then no liability can arise.

Perit Joe Galea noted that the STO is engaged by the contractor. The KTP may insist that a list of approved STOs is made available. On another point, there is only one perit: the project architect, who is still the one responsible even if some aspect of the project is passed on to another perit, and the arrangement would then be regulated by a contract between them.

Paolo Cucchi spoke of the role of the STO and suggested that an association is created for persons qualified for this work. There is also a need for the Kamra to issue standard contracts

Perit Sandro Valentino questioned whether since Government is legally obliged to consult the Kamra and has introduced this Legal Notice without consultation, could the Kamra not

challenge the Legal Notice in the courts instead of signing all these forms. Perit Simone Vella Lenicker replied that this could be considered.

Perit Ondre Camilleri Gaglione questioned whether when the Legal Notice refers to damage to third party property, is it referring only to buildings or could it be any kind of property? Dr Joseph Camilleri replied that, although the Legal Notice does not exclude other kinds of property, the way the provisions are worded seems to imply that it is referring to buildings.

Perit Karl Borg proposed that authority is given to the Council to issue directives and negotiate on behalf of the Kamra.

Perit Joanna Spiteri Staines noted that, although this legislation makes no sense, the members of this general meeting should be wise in their approach. She felt that the biggest stumbling block is the STO, but that the expanded list of eligible persons will help. She questioned whether there is/’ still the obligation to have an STO for small scale projects? Perit Simone Vella Lenicker replied that the Council had tried to make the point that masons are sufficiently skilled to take on this role for minor works - however the answer had been ‘no’.

Alberto Miceli Farrugia emphasised that this general meeting should act in the interest of stakeholders and public safety.

Perit Ian Critien noted that danger exists even in small projects, and that a person may be killed by a single falling stone slab. He also noted that it is not clear who will be on the extended list of eligible STOs, and questioned that actions would be taken if there is disagreement with the widening.

Perit Katya Abela supported the suggestion made by Perit Sandro Valentino and proposed a vote on it.

Perit Chris Micallef reminded the general meeting that the main issue causing confusion is the STO. He queried whether the Council could insist that masons are included as eligible STOs.

Following the detailed discussion, the motions were voted on, and amended as follows:

Motion 2

No amendments were proposed. The motion was voted upon and unanimously approved with no abstentions and no votes against.

Motion 3

No amendments were proposed. The motion was voted upon and unanimously approved with no abstentions and no votes against.

Motion 4

No amendments were proposed. The motion was voted upon and unanimously approved with no abstentions and no votes against.

Motion 5

This motion relates to the next steps for the Kamra and until now the wording had been left open ended. Perit Simone Vella Lenicker stated that it was clear that the nine points

presented are supported by the members present, and proposed that the motion should insist on them. A discussion ensued.

Perit Mark Arrigo agreed but asked what the Kamra would do if Government did not accept. Perit Vella Lenicker replied that the possible outcomes are so diverse and the situation so delicate that it would be difficult to decide at this stage. What would be best is that the EGM gives the Council a vote of confidence which would allow to act on behalf of the Kamra. Perit Sandro Valentino's suggestion is a possibility however we need to consider the implications and possible consequences.

Perit Alex Bezzina emphasised that, if this general meeting will be challenging Government, then there should be a campaign in the media to inform the public of the KTP's position. The alternative approach would be that suggested by Perit Spiteri Staines: to act strategically and allow for Government to save face, using the new legal notice to correct the problems with the present one. Perit Andre Pizzuto noted that we that we may act swiftly because the Building Regulation Act already empowers the Minister to issue regulations for the registration of contractors.

Perit Charles Azzopardi stated that the concept of the STO should be challenged. He also noted, however, that should be relatively simple since there will not be enough STOs if the role is restricted to periti. He also encouraged challenging the method statements. Perit Simone Vella Lenicker noted that this is included in the nine points.

Perit Paul Cuschieri noted that an immediate solution is needed. He emphasised that periti cannot wait for the training of STOs. Rather, he suggested proposing a list of competent contractors. Perit Simone Vella Lenicker repeated what the Government had announced that morning: registration of contractors would begin immediately with licensing to be completed by the end of the year. As an interim measure the Council had suggested that for registration contractors could be asked to obtain letters of recommendation from three different periti. Government had not accepted this proposal and suggested instead that each contractor would nominate a reference perit to who enquiries about the contractor could be directed. The Council considers this option unsatisfactory and logistically unworkable.

Perit Ondre Camilleri Gaglione highlighted the question of strategy; whether our strategy should be confrontational or one of dialogue. He agreed that the main issue is the STO. He stated that if the Kamra believes that not enough STOs will be found with the current version, then the issue will resolve itself and the Council should fight other battles.

Perit Ondre Camilleri Gaglione proposed an amendment to Motion 5 replacing the words 'shortest possible time' to a specific deadline, say one month. Perit Robert Sant replied that if we specify a deadline we would have to specify what would happen if the deadline was not met, whereupon Perit Camilleri Gaglione withdrew his amendment.

Perit Lara Brincat proposed to replace the word 'negotiate' with the word 'insist'. Perit John Demicoli stated that the EGM should empower the Council to negotiate. Perit Camilleri Gaglione stated that the issue of the STO is not negotiable. Perit Lara Brincat withdrew her amendment.

Perit Jacques Borg Barthet, seconded by Perit Joe Galea, proposed that the last sentence be removed completely. This amendment was voted on and unanimously approved.

The motion as amended was voted upon and was approved with no abstentions and one vote against, all other votes being in favour.

Motion 6

Perit Robert Sant stated that he was uncomfortable with accusations in some quarters that the Council was acting out of political motivation. He proposed a separate motion (Motion 6), seconded by Perit Nikki Mallia, highlighting the support from members for the actions of the Council, which actions are in the interest of public safety and directed towards the good of the profession. The full text of the motion is included in Annex A.

The motion was voted upon and approved with 2 votes against and 3 abstentions, all other votes being in favour.

Vote of Confidence

At the end of the meeting, Perit Charles Azzopardi, seconded by Perit Karys Schembri, proposed a vote of confidence in the Council. This was approved, with no votes against. The members of the Council abstained. All other votes were in favour.

Concluding Remarks

Perit Simone Vella Lenicker announced that the Kamra had received letters of support from the UIA and UMAR, which are currently meeting in Rome, in relation to the current situation. Perit Anthony Fenech Vella and Perit David Pace are representing the Kamra at this meeting. Perit Andre Pizzuto read the two letters.

Perit Vella Lenicker also reminded those present that nominations are still being accepted for this years' edition of the Emanuele Luigi Galizia Awards. The Awards will be held on July 25th, which coincides with the 100th Anniversary of the promulgation of the Architects' Ordinance in July 1919. It would also be an occasion to celebrate Periti acting together in the interest of the profession.

She thanked those present and assured them that the Council would keep them informed of all developments.

The EGM was declared closed by Perit Amber Wismayer.

Annex A_ Motions

MOTION 1: Participation at this EGM

_ as presented and approved

Whereas Regulation 31 of the *Kamra tal-Periti* Regulations stipulates that “A *general meeting shall be notified to all full members ...*”, and therefore by inference only full members may attend and participate in a General Meeting of the *Kamra tal-Periti*; and

Whereas the Council of the *Kamra tal-Periti* unanimously agrees that the matters to be discussed as communicated in the Meeting Agenda are of national importance and of significant relevance to the profession; and

Whereas in view of the above, the Council decided to invite all Warranted Periti to attend this General Meeting, as well as current students and graduates of the Faculty for the Built Environment at the University of Malta;

Now, therefore, this Extraordinary General Meeting of the *Kamra tal-Periti* hereby agrees to authorise the presence of all warrant holders, and graduates and students of the Faculty of the Built Environment, and to extend voting rights to all warrant holders, irrespective of whether they are full members or not.

Students and graduates will not be allowed to vote.

MOTION 2: Registration and Classification of Contractors

_ as presented and approved

Whereas the Council of the *Kamra tal-Periti* presented its proposal for a new Framework for the registration and classification of contractors during this Extraordinary General Meeting; and

Whereas this proposal was already presented to Government this week and is actively considered;

Now, therefore, this Extraordinary General Meeting hereby approves the general concepts presented for the Registration and Classification of Contractors and authorises the Council enter into formal discussions with Government to take them forward for implementation.

MOTION 3: Holistic approach to regulating the sector

_ as presented and approved

Whereas the Extraordinary General Meeting of the *Kamra tal-Periti* held on the 21st June 2019 demanded that Government commits to a number of legislative instruments regulating the industry; and

Whereas the Council presented these requests to Government, but did not have enough time to establish agreed timelines for their implementation with Government;

Now, therefore, this Extraordinary General Meeting of the *Kamra tal-Periti* empowers the Council to seek clear commitments from Government on the following:

1. Immediately enter into discussions with the Council regarding the *Kamra*'s proposed Building and Construction Regulation Framework, to agree on a timeframe for its implementation, and to consider the *Kamra tal-Periti* as a key stakeholder and contributor in the process; and
2. Set up the proposed new Building and Construction Authority, but in the interim to immediately provide the Building Regulation Office with all the necessary financial, human and technical resources it requires to deal with its workload, including putting in place a proper system of Building Regulations and Codes of Practice; and
3. Implement without further delay the obligations of the regulator regarding the certification of building products, both produced locally and imported, as required by the Laws of Malta since 2011.

MOTION 4: Periti Act

_ as presented and approved

Whereas the Council has been holding discussions with consecutive Governments regarding the required amendments to the Periti Act; and

Whereas the Council has informed this General Meeting that significant progress has been made over the last year, including the approval of the latest text with the European Commission;

Now therefore, this Extraordinary General Meeting demands that:

1. Government finalises and enacts the Periti Act, in full consultation with the Council of the *Kamra tal-Periti*, in accordance with the discussions being held by the Council with Government, by the end of October 2019, and this to allow the profession be better organized, as it has been requesting for the last 12 years;
2. In particular, the primary function of the *Kamra tal-Periti* to regulate the conduct of all members of the profession is to remain within the sole jurisdiction of the *Kamra tal-Periti*, through a Board to be established within the Kamra's setup, is to remain and is to be strengthened, and this in the interest of the profession, its clients and society at large.

MOTION 5: Amendments to LN 136 of 2019

_ as presented

Whereas the Council has been holding discussions with Government to implement various changes to Legal Notice 136 of 2019; and

Whereas Government informed the Kamra on the 21st June 2019 that the only change that will be brought into force next week is that regarding the opening up of the list of competences required for persons to hold the position of Site Technical Officer; and

Whereas all the other changes which the Council has been insisting on since the coming into force of the Legal Notice have so far been rejected;

Now therefore, this Extraordinary General Meeting demands that:

In the interest of public health and safety, and in consideration of the extensive concerns of several stakeholders involved in the construction sector, Government stands by its commitment to safeguard public safety on construction sites by implementing in the shortest possible time the changes to LN 136 of 2019 requested by the *Kamra tal-Periti* as endorsed by this EGM and especially those amendments which concern the role,

competences and definition of the site technical officer, and the EGM empowers the Council to negotiate on behalf of its members in the interest of the profession.

_ as approved

Whereas the Council has been holding discussions with Government to implement various changes to Legal Notice 136 of 2019; and

Whereas Government informed the Kamra on the 21st June 2019 that the only change that will be brought into force next week is that regarding the opening up of the list of competences required for persons to hold the position of Site Technical Officer; and

Whereas all the other changes which the Council has been insisting on since the coming into force of the Legal Notice have so far been rejected;

Now therefore, this Extraordinary General Meeting demands that:

In the interest of public health and safety, and in consideration of the extensive concerns of several stakeholders involved in the construction sector, Government stands by its commitment to safeguard public safety on construction sites by implementing in the shortest possible time the changes to LN 136 of 2019 requested by the *Kamra tal-Periti* as endorsed by this EGM and especially those amendments which concern the role, competences and definition of the site technical officer.

MOTION 6: Support of the KTP Council

_ as presented and approved

This Extraordinary General Meeting confirms that whatever the Council's actions, in regard to and following the issuance of Legal Notice 136 of 2019, are not political but are only driven by the interests of the profession and public safety.