

THE ENVIRONMENTAL DEFICIT: THE REFORM OF MEPA AND OTHER REGULATORY AUTHORITIES



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April 2008

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INTRODUCTION

General

1. In the last few years, the government has commendably tackled the country's economic deficit. However, the environmental deficit has remained stubbornly out of control, and is growing. In many major respects the environment has become worse.

Aim

2. The aim of this report is to make recommendations to reduce the environmental deficit by improving the way Malta's environment is managed and regulated.

Definitions

3. To 'regulate' is to control something by rules or laws in order to moderate it or to bring it to a desired level. 'Regulations' are prescribed rules or authoritative directives. But for regulations to work successfully there have to be the instruments and procedures to carry them out and a willingness on the part of those being regulated to conform with the regulations. This is achieved either through coercion and enforcement, or through encouragement, education and incentives, or by a combination of all these things.
4. To be able to regulate the environment effectively and efficiently all these fundamental factors must be in place. Such is the range of interests and the diversity of authorities involved that they must be well coordinated and well organised. Moreover, there must be a bond of trust and confidence between those being regulated and the regulator. The regulator must not only be above reproach, but also be seen to be above reproach.
5. The 'environment' consists of our physical surroundings. We experience this through the air we breathe, the water we drink, the land space we inhabit, (including the natural landscape and the built cultural heritage), the noise to which we are subjected, the sea around us, and the species, nature and biodiversity that co-exist with us. The state of the environment makes a significant contribution to the quality of life of every person on the planet. In Malta – the second most densely populated country in the world – the impact is even more immediate and more marked.

The Economic Importance of the Environment

6. Sustainable economic development is dependent on a proper balance being struck between economic resources and the environment. Economic growth on its own, without environmental sustainability and social development, is not progress. For there to be real progress economic output must enable individuals in society to improve the quality of their lives without eroding the things that people value, such as Malta's unique natural landscapes, historic sites, buildings and monuments, and the marine and coastal areas.
7. The protection of the environment and the use of our limited natural resources are no less critical to the competitiveness and sustainability of the Maltese economy and social development than that of any other country. Indeed, the consequences of environmental neglect are economically short-sighted since they affect the productive capacity of an economy so highly dependent on tourism.
8. Moreover, in a country of such small size and heavy population density, the environment is of crucial importance in its impact on a whole range of economic activities – tourism, agriculture, fisheries, the construction industry, as well as manufacturing, transport and our water and electrical utilities. Health, recreation and educational activities are directly affected by the environmental quality of life of the nation and, hence, the well-being and economic productivity of the work-force. A better balance needs to be struck between these social, economic and environmental aspects which takes account of the pressures that arise from our small size and high population density.
9. At about Euro 33 million, the environment will be the largest single beneficiary of a significant proportion of the allocation to Malta of EU Structural and Cohesion funds for the next five years leading up to 2013. This is intended to cover investments in renewable energy sources, energy efficiency and environmental monitoring

and protection of the natural environment. These subventions will constitute a substantial injection into the economy and, wisely spent, should have a widespread long-term effect on both the economy and the environmental quality of life of Malta. It is, therefore, essential that the way the environment is managed is efficient and cost-effective if maximum benefit is to be derived from these funds. It is a once-only opportunity to reduce the environmental deficit.

The State of the Environment

10. The environmental state of the Maltese Islands is well-documented. The strengths and deficiencies are well known. MEPA's triennial State of the Environment reports and related annual indicator publications, the different topic papers within MEPA's Structure Plan Review, the latest report by the European Environment Agency and the report by the National Commission for Sustainable Development on 'A Sustainable Development Strategy for the Maltese Islands', and others, provide accurate and objective assessments of the state of the environment, as well as policy prescriptions of what needs to be done. The bibliography at the end of this report gives a comprehensive list of references which have informed this report and have formed the basis of the recommendations made.

The Challenges and Pressures

11. Malta's environmental deficit has grown significantly. The deficit is expanding and needs urgently to be properly regulated and controlled. Over-development and land abuse, the progressive deterioration of urban conservation areas and village cores and the creeping urbanisation of Gozo intrude for the worse into every aspect of the Maltese quality of life. These exacerbate the deficit.
12. The shabby state of our islands, scarred by too many dumps and too much litter, our poor air quality, noise pollution, the threat to our fresh water quality, inland coastal waters and marine environment, the pressures on our remaining biological diversity and the impact of excessive transport use, solid and liquid waste add up to a picture of a country running a large environmental deficit.
13. Even though a start has been made to control many of these areas, and there are well-intentioned plans for improvement, the ground that has still to be made up in the regulatory and implementation fields is formidable and growing.
14. Malta's small size and heavy population density render us more vulnerable. But these factors are all the more reason for us to care better for our environment. Air quality suffers as a result of excessive use of private road transport, an antiquated public transport fleet and energy generation using fossil fuel. Greenhouse gases add to global warming and particulate air pollution from quarrying and building construction poison the air we breathe. Water quality in our aquifers is at risk from over-extraction and from fertilizers and other intense agricultural practices.
15. Our inshore sea waters are suffering from marine contamination hazards, including sewage, oil spills and land-based discharges and a range of pollutants. Despite major improvements to the sewerage system, effluents are still discharged untreated into the sea, resulting in pollution, the degradation of our marine flora and fauna and health threats to bathers and divers. The island's rare natural habitats are under threat and many areas have been obliterated by concrete. A number of endemic species have become extinct. In many of these areas Malta lags behind the benchmarks set by the EU.
16. One of the principal causes of Malta's environmental deficit has been the intensity of construction development under way. In the seven years between 2000 and 2006, MEPA approved planning permits for the building of about 46,000 dwellings. Even if construction were to stop completely it is estimated that there are enough housing units available to cope with normal demand for at least the next ten years. The 2005 Census of Population and Housing revealed that there were over 53,000 vacant properties. More than a quarter of Malta's housing stock lies empty.
17. Although we refer in this report to the environmental deficit as a means of drawing a parallel with the economic deficit, the truth is that, unlike the economic deficit, the environmental deficit can never be wholly reduced because in many major instances – over-development, the degradation of natural landscape and marine coastline – once these are lost, they are lost forever.
18. These are the deficiencies facing Malta's environment. They are the result of institutional, structural, regulatory and administrative omissions and commissions over a long period. For effective improvements to be made, they should be tackled holistically, comprehensively and in a coordinated manner.

Layout of the Report

19. This report examines the issues raised in five Parts:

- **PART I** : Structural Improvements at the Government Level
- **PART II** : The Reform of MEPA and the other Environmental Regulatory Authorities
- **PART III** : Enforcement, Education and the Encouragement of Good Practice
- **PART IV** : Climate Change and Sustainable Development
- **PART V** : Conclusions and Recommendations

PART I – STRUCTURAL IMPROVEMENTS AT THE GOVERNMENT LEVEL

Avoiding Confused lines of Responsibility and Accountability

20. The essential first step in solving a problem is the acknowledgement that one exists. The recognition by the Prime Minister that the environmental deficit has become a challenge which needs to be tackled at the highest level is the key to finding the right solutions. This step is welcomed. But to develop the right strategy for doing so – and to implement it – requires both leadership and the right structures and organisation to effect it. The Prime Minister is committed to providing leadership on the environment. Hence, his decision to place it directly under his control. He has done the right thing. There is now the opportunity for him to use his environmental leverage to energise inter-ministerial coordination on environmental matters and climate change.
21. The focus must now be to ensure that the best organisation is put in place for implementation to succeed. Previous administrations have been handicapped by confused lines of responsibility and accountability in the environmental field and a lack of commitment to the environmental cause as a high priority in the country's development. Unless all the entities with a stake in looking after the environment work as one in tackling the multifarious problems of regulating it, the previous difficulties will persist - to its detriment.

The New Division of Responsibilities

22. The new Cabinet portfolios announced on 12th March 2008 allocate broad responsibilities within the administration as they affect the built and natural environment as follows:
 - ▣ **The Office of the Prime Minister** is responsible for the environment. It is responsible for MEPA (that is, all planning development and environmental protection). It is effectively the new 'ministry of the environment'. It is also responsible for sustainable development, and tourism and local government, including all Local Council matters. Tourism and the Local Councils are directly affected by the state of the environment.
 - ▣ **The Ministry for Resources and Rural Affairs** is responsible for the Malta Resources Authority (MRA), including water and mineral resources and quarrying; the Building Industry Consultative Council(BICC); all climate change policy; development of renewable and alternative energy sources; national parks; afforestation and the countryside; implementation of the waste management strategy; construction and maintenance; rural development; agriculture; horticulture; fisheries; and aquaculture.
 - ▣ **The Ministry for Communications and National Projects.** Although not at first blush obviously an environmental ministry, the new Ministry for Communications and National Projects is responsible for the Malta Maritime Authority (MMA); the Malta Transport Authority (ADT); the Land Registry; the coordination of urban development projects, including 'Smart City'; and the Grand Harbour and Marsamxett regeneration projects; the coordination of road-building; maintenance, landscaping and cleansing; and water and electricity utilities. All of these aspects have a massive impact on the state of the environment.
 - ▣ **The Ministry for Gozo** is responsible for, or more accurately involves itself in, all the above as they affect Gozo and Comino
23. Apart from their change of ministerial nomenclature, the above division entails three major modifications at the governmental level. The first is the absorption into the Office of the Prime Minister of overall responsibility for the environment. It is inferred from this that policy on the environment – to be implemented by all ministries – will be set by the Prime Minister. The second is the welcome transfer of responsibility for Local Government to the Office of the Prime Minister. This is sensible since the major burden of responsibility of the Local Councils is for the state of the environment in their areas. The third area is the assimilation of the former Ministry for Roads, Transport and Urban Renewal into the Ministry for Communications and National Projects. The roads, transport and urban renewal elements comprise an intrinsic part of the country's infrastructural and public works programme of investment, as well as having a massive impact on the environment in terms of pollution, land-use and the built cultural heritage. Great care will need to be taken to ensure that the desire to steam-roller through major projects – especially those in the historic Grand Harbour and Marsamxett areas – do not undermine the conservation and cultural heritage of the historic fabric of these areas.
24. The new division of responsibilities leaves a number of elements having a very important bearing on the environment – and the implementation of environmental policy - under the aegis of other ministries. These include heritage sites and monuments which come within the ambit of Heritage Malta and therefore fall to the Ministry for Education and Culture. Some aspects of marine and noise pollution fall to the Ministry of Social Policy, together with social housing, cemeteries and hospitals. Industrial estates and government lands now fall under the Ministry of Finance, Economy and Investments.

25. However, it is not yet clear where or how the environmental dossier at the vitally important EU level has been split between the ministries. Will MEPA's Environment Policy Department now service both the Office of the Prime Minister to which it belongs and the Ministry for Resources and Rural Affairs? And does the Prime Minister have the time to devote to the minutiae of environmental matters at the EU level and the current back-log of EU planning documents? There seems on the face of it a strong case for allocating this important aspect to one of the Parliamentary Secretaries in the Office of the Prime Minister, perhaps by linking it to tourism. If, on the other hand, it is covered by the Minister for Resources and Rural Affairs there is a danger that the Prime Minister's control of environmental policy becoming blurred since the EU is the moving force behind policy in this field.
26. Nor is it clear where responsibility for a number of sensitive issues, such as hunting and trapping, Natura 2000 sites and biodiversity will reside. Is it the Office of the Prime Minister or the Minister for Resources and Rural Affairs? Will responsibility for all major fortifications lie with the Minister for Resources and Rural Affairs, alongside his responsibility for public works, and what then is the inter-face between 'fortifications' and some of the major projects in the Grand Harbour? The issue of EU environmental responsibilities and these other lacunae need to be clarified if the new structures are to operate effectively. Fudging them will only lead to difficulties later.
27. Moreover, a number of very important regulatory aspects appear to be shared. For example, while the prevention of air pollution by vehicles is the responsibility of ADT, monitoring falls under MEPA. Responsibility for controlling littering and dumping falls under a multitude of authorities. Noise pollution falls in some shape or form to the department of health in the Ministry of Social Policy, MEPA, the Local Councils, the local district police force and ALE. This underlines the need not only for greater clarity in the allocation of responsibilities and accountability, but also for closer coordination between the major ministries and departments concerned.
28. Subject to resolution of the grey areas highlighted above, the new ministerial responsibilities for the environment appear to be both sensible and workable. They place overall responsibility for environmental policy in a 'Supremo' – the Prime Minister – while leaving major elements of resources and rural affairs, which directly affect the state of the environment, in two key, very large ministries: the Ministry for Resources and Rural Affairs and the Ministry for Communications and National Projects. It is vital that the latter does not overlook the over-ridingly environmental nature of its responsibilities, as opposed to its developmental purposes.
29. On the whole, despite the grey areas alluded to, there is a homogeneity and logic about the allocation of main areas of responsibility within each new ministry which should make coordination better and accountability more clear-cut. However, it is essential that the Office of the Prime Minister has the necessary staff and structures in place to fulfil its over-arching task of drawing up a coordinated plan across all ministries with the authority to knock heads together and to set priorities and deploy resources in the best way possible.
30. There will be a need for firm inter-Ministerial coordination through a strongly-led Cabinet Committee under the Prime Minister to bring in both the new large ministries directly concerned, as well as all the ministerial stake-holders – tourism, health, Gozo, culture and so on – at the policy-making level. The major impetus for action on the environment will rest essentially with three major ministries - the Office of the Prime Minister (setting policy, monitoring progress, regulating the planning and environmental development of the country), the Ministry for Resources and Rural Affairs and the Ministry for Communications and National Projects. On balance, this should make control easier to exercise than before. But 'joined-up' government and careful planning can only come about from making the environment a truly cross-cutting issue in each of these ministries and across the government as a whole. In this respect the coordination of climate change issues will be all-important. Organisationally, the Prime Minister's decision to take ownership and leadership of this area is to be commended, especially in the areas of sustainability and MEPA.

PART II – THE REFORM OF MEPA AND THE OTHER ENVIRONMENTAL REGULATORY AUTHORITIES

The Planning Process

31. By virtue of its wide responsibilities for almost every aspect of the environment, MEPA probably exercises the greatest influence on the quality of the environment in Malta. If MEPA does not function efficiently its baleful effects are felt by everybody. MEPA has suffered a number of set-backs arising mainly from a number of perverse, high profile decisions at the Board and Commissions level. Morale among its embattled staff is low. Its public standing has been dented and its credibility undermined. Its leadership needs bolstering and the organisation has to win back public respect for the way it operates through a fundamental process of reform.
32. In the last sixteen years MEPA has been manned in the main by dedicated professional staff though it has suffered from high turn-over and the standard of Case Officers has been very variable. Those who have been appointed to the difficult task of running the Boards and Commissions have been mostly conscientious, public-spirited and, with one or two notable exceptions, largely effective and beyond reproach.
33. When the Planning Authority was set up in 1992 one of its key purposes was to create a clear separation between the issuing of development permits on a Ministerial whim and the national imperative for a well-ordered planning process which had at its core equity and transparency of treatment and the implementation of objective standards within a clearly laid down Structure Plan that aimed at sustainable development. Nepotism and corruption were to move out of the planning process.
34. MEPA's own Mission Statement echoes this sentiment: "Our Mission is to pass into our children a better country than we inherited. It is for this very reason that we compare our environment to a treasure We believe that together we should carefully plan so that our heritage, this gem which we treasure, will not fade away. MEPA is committed to ensure that land use and the protection of the environment meet the needs of today's society and future communities In so doing, we are seeking to implement sustainable development that safeguards the environment".
35. However, these fine words have not always matched the reality on the ground as successive MEPA Audit Officer's reports have shown. The extension of the building development zones and a number of other high profile incidents have led to a perception of political interference in the planning process which has, among other issues, undermined MEPA's credibility.
36. If MEPA's crucial position as Malta's most important bulwark against land abuse is to be strengthened, not weakened, there is now an urgent need to ensure a clear fire-wall is built between the government of the day and the Authority. Perception is all-important. While the government must be in a position to lay down the broad environmental and development strategy to be followed, it must adopt a hands-off approach where specific development decisions are concerned – except in clearly defined areas, such as national security - and, in-so-far as possible, it should not hold the monopoly on the final selection of members of the key planning Boards and Commissions.
37. This has now become a pressing issue if confidence in the planning process is to be restored. Credibility in the system can only be rebuilt through a root and branch examination of the whole process. This should aim to keep what is good (of which there is much), but to discard or change what is wanting. The reform of MEPA should focus on three main areas: first, MEPA's structure; second, the composition and selection of its Boards and Commissions; and thirdly, the adoption of systems and procedures designed to ensure transparency, effectiveness and accountability. Reform must take account of changes needed in these three inter-locking areas together with any concomitant changes in the legislation to under-pin it.

MEPA's Structure

38. The decision to concentrate the roles of development planning and environmental protection into one structure has been questioned. A number of people have advocated that the two should be 'de-merged', leaving a separate, free-standing planning authority and an environmental protection agency.
39. The arguments have been carefully considered. But, on balance, it has been concluded that the current organisation carries significant advantages. While there is inevitably a creative tension between development planning, on the one hand, and environmental protection, on the other, to separate the two functions into two free-standing entities would undermine the need for close communication and coordination between the two halves of the same problem on matters of common concern.

40. Areas of disagreement will always exist, but it is surely better that such disagreements should be resolved in one place under the aegis of one leadership structure, rather than with two entities working towards different targets or agendas as might occur if they were formally established as two separate bodies. The natural environment and the built environment are inextricably linked. What happens on development planning affects the natural environment, and vice-versa.
41. Competence on biodiversity and nature protection, pollution control and coastal management are as much an intrinsic part of land-use as construction development zones and adherence to planning regulations. Land-use planning and environmental care constitute two sides of the same coin. The two need to be able to coordinate their planning together with the environmental directorate acting as a check on the planning directorate. This is best done under the one roof (ideally collocated in the same building, which is not currently the case) led and overseen by the same hierarchy, where planning and environmental protection meet and integrate.
42. The integration of land-use planning and environmental care may have had its teething problems in organisational terms – and this may be the cause of the current call for de-merger, although with the belated filling of the post of Director of Environmental Protection this is now improving – but it makes better structural sense for the two to be a part of the same organisation than to be split up.
43. The difficulty arises because the Environment Directorate is currently governed by the Environment Protection Act, not the Development Planning Act. Thus the Planning Directorate takes the final decision on planning applications while the Environment Directorate may only give advice. This may not always be adequately taken into account. The Environment Directorate must be given a comparable and equivalent decision-making voice to that of the Planning Directorate on development planning issues if the system is to work properly. Apart from institutionalising this administratively in MEPA's procedures, legislative changes should be enacted to ensure it is legally observed.
44. The basic objective of the Structure Plan is that of 'optimising the physical use and development of land which respects the environment while, at the same time, ensuring that the basic social needs of the community are, as far as practical, satisfied'. Given that the most important environmental issues are connected to land-use, the decision to place environmental protection and spatial planning together under one integrated management is sensible. The essential challenge now lies in making the integrated organisation work better, not in its de-merger. This means ensuring that the Environment Directorate is given the human and financial resources to do its job properly. This must not simply be to concentrate on EU matters – which are substantial – but also on local planning issues which are central to reducing Malta's environmental deficit. The Environment Directorate must be given the backing to ensure its voice is properly heard in MEPA's deliberations especially at the key decision-making Board and Commissions levels. Collocation, collaboration and one common objective should be the watch-words.

Leadership of MEPA

45. There is one further important structural issue which should be addressed. This is to question whether there is a need for two distinct roles of 'Director General' and 'Chairman' heading the organisation. The current management arrangement has a Director General, who is the professional, permanent civil servant responsible *inter alia* for providing the day-to-day professional, technical, managerial and administrative support of the Authority and the implementation of its decisions. The Chairman, who operates on a part-time basis, chairs the meetings of the Board of the Planning Authority which is responsible for all aspects of planning and sustainable development and takes all major decisions.
46. There is a strong case on leadership, accountability and organisational grounds for saying that it would make better sense to have an Executive Chairman, who is full-time and combines both these areas of responsibility, with clear accountability and no conflicts of interest. Effective management and good leadership of an organisation as high profile and complex as MEPA require no less. It is therefore proposed that the post of full-time (well paid) Executive Chairman should be created. The matter should be the subject of an 'Operational Review' of MEPA to ensure an organisational management structure is created in line with the new mandate arising from the reform of MEPA recommended in this report. Concomitant changes to the Development Planning Act will also be necessary.

Avoiding Conflicts of Interest

47. While, on the whole, over the span of the last sixteen years the majority of decisions adjudicated by MEPA have been unexceptionable, there have been a number of high-profile cases where doubt has been cast on both the judgment of those tasked to take them and their overall impact on the environment MEPA is meant to protect. Moreover, a number of the procedures adopted by MEPA give the impression – rightly or wrongly – of the application of two weights and two measures, "strong with the weak and weak with the strong".

48. It is inevitable in a small country like Malta, where everybody knows, or is acquainted with, everybody else, that the pressure from politicians, developers or other clients on those making planning or environmental judgments is intense. In some cases, individual members of Boards or Commissions are able to withstand such pressure, in others they are not. We see a clear need for improvement in this field to remove - or at least reduce - the possibility of – or potential for – conflicts of interest.
49. A conflict of interest occurs when there is a clash between the public and private interests of somebody in an official position. The key reason for averting conflicts of interest in MEPA is to avoid the use of public office for private gain. To ensure that corruption - whether though blatant financial bribery or of the more insidious kind stemming from the exercise of undue influence - does not contaminate the planning process. One distinguished leading member of Malta's judiciary – speaking in a private capacity – has spoken of a 'web of intrigue' involving a confraternity of inter-connected architects, each looking after his own interests. 'An architect who is a board member on DCC 'A' will find himself processing the application of another architect who is a member of DCC 'B'. It's a case of "you scratch my back and I scratch yours : I pass your application on condition you pass mine when the time comes".
50. One does not have to subscribe entirely to the senior judge's description of MEPA's Boards or Commissions as 'a Kangaroo court' to conclude that the current decision-making processes are undermined, and potentially flawed, as a result of the seemingly unbalanced, sometimes incestuous composition of the MEPA Boards and Commissions. In a situation where private architects are appointed in the majority to positions of decision affecting the built and natural environment, in which massive financial investments are at stake, (sometimes affecting their own or their firm's income), while at the same time being free to pursue their private practices, this is a recipe for contamination – and possible corruption – of the process.
51. It is not sufficient in such cases for the architect concerned to declare an interest and to abstain formally from the decision-making adjudication, while at the same time acting as the advocate in his client's case. The potential for mutual back-scratching and the looming presence of a professional colleague (even if he or she has withdrawn from the room) are bound to affect the outcome. Human nature alone will see to this, let alone the financial prizes at stake. Even if they do not, there will still be the lingering suspicion by those who are not a part of it that the system favours those with an inside track to the levers of power.
52. Although we have referred throughout to architects since in this context they are the more obvious examples of potential conflicts of interest, the presence of other so-called 'independent members' of the Board should also be questioned. While it could be argued that their presence on the Board helps to ensure the implementation of government policy, we consider that the statutory nomination of five Public Officers and two Members of Parliament cannot be healthy given that many major planning decisions are driven by the government's own political imperatives, sometimes regardless of the wider environmental or development consequences. Moreover, under the Development Planning Act, 1992, Parliament should already be playing a scrutiny role in the development process without the need for individual members of the legislature to be involved in largely routine planning decisions.
53. The presence of a predominant number of architects and public servants on the Board – no matter how honourable they may be as individuals – inevitably leads to the exercise of – or charges of - undue influence, possibly also sometimes to duress. Are the rights of ordinary citizens thus prejudiced? Is confidence in the process undermined or damaged? These are the concerns that need to be allayed.

Composition of Boards and Commissions

54. This is the unsatisfactory state of affairs which has prevailed. While the balance within Boards and Commissions has recently been slightly altered to reduce the number of architects sitting on them the proportion of architects is still high. Public Officers and Members of Parliament still account for almost half the Board. The position of architects is one to which the MEPA Auditor has himself drawn attention. Private practice, whether as an architect or the author of environmental impact assessments, and the adjudication of issues of public concern cannot equitably go together. Being both the judge and jury are mutually incompatible in a court of law. Although the analogy is not exact, Planning Boards or Commissions should be guided by the same principles. The credibility of the whole planning process depends on it.
55. We must find ways of reducing conflicts of interests to the greatest extent possible, while ensuring that technical expertise informs the decisions made without removing the objectivity, autonomy and ethical basis on which decisions of such wide impact and importance are made. It is not simply about the personal integrity of those making decisions, most of whom are – and have been – above reproach. It is also over-ridingly about the potential for conflicts of interest as well as the public perception about what might or might not be happening, and public confidence in the system. This confidence now needs to be restored if credibility in the equity and objectivity of the planning process is to be achieved.

56. A process of independent scrutiny and selection of individuals to serve on MEPA's Boards and Commissions should be introduced which ensures that those making these decisions are seen openly and transparently to be beyond reproach. Most importantly, the composition of those selected to serve on MEPA's Boards and Commissions should reflect more fully the different components of civil society whose concerns they are meant to represent. Until a proper selection process is in place we shall continue to have decisions handed down by MEPA which many will continue to believe, rightly or wrongly, are influenced by the vested interests of those nominated to the Boards or Commissions.
57. This is emphatically not to infer that the current system is flawed because of the assumption that wherever there is the opportunity for wrong-doing, then wrong-doing occurs. No system can be perfect, but it should be possible to remove the area for error, misjudgement or deliberate mischief to a much greater degree than now. Ways of reducing systemic conflicts of interest without negating the need for technical competence to apply, while making decisions which are completely objective and above board, have therefore been considered. The aim should be that, under the law, those responsible for reaching decisions are able to do so as objectively and impartially as possible and are guided to the right conclusion not only by good professional advice, but also by a legal framework which allows for as little room for interpretation as possible.
58. Clearly, the quality and integrity of those tasked with making such decisions must be of the highest calibre, probity and judgment. The need for the introduction of a Code of Ethics has been put forward by the Auditor. Its introduction is now over-due. Such an initiative should be supported. Those selected to serve on the Board or Commissions must also be as representative of civil society as a whole as possible so that the general public can be assured that special interest groups – whether politicians or the construction industry and architectural profession, or any others – do not predominate in the decision making process.
59. This does not mean that the civil society representatives have to be 'experts' in the fields of architecture, design, planning, ecology, mineralogy or any of the many other technical fields that impinge on the environment and planning. What is needed are men or women of diverse backgrounds who are capable of weighing up the merits of a case – advised and guided on the technicalities by professionals – and can reach a considered judgment on its overall impact on the environment and the quality of life of ordinary people within the limitations set by the planning and environmental law.
60. They must be capable of taking the long view - a view which has at its core the long-term sustainability of Malta's environment for generations still to come. Expert, technical advice is available from the permanent officials of MEPA, as well as some eight or nine advisory committees. What is needed above all is that common sense and good judgment should prevail. These should be the criteria on which the selection process for sitting on the Boards and Commissions is based.
61. The size of the Boards and Commissions have also been considered. While the latter, at 7 members each, are about right, there seems no need for the current Board to be as large as 13/15 members. We have examined other such comparable Boards and have concluded that a Board of 9, consisting of a Chairman, Deputy Chairman and 7 members, would constitute the right size for the efficient and cost-effective conduct of business.
62. The men and women who are nominated to serve on the key planning Boards and Commissions – the MEPA Board, the three Development Control Commissions and the Planning Appeals Board panels, a total of some 40 or 50 people - should be selected on the basis of the following personal qualities:
- They should be men and women of acumen and good judgment;
 - They should be of wide, generalist experience and 'living in the real world';
 - They should be independent-minded and non-political (that is, they should not be prominent members or officials of any political party or movement);
 - They should be broadly representative of civil society and reflect different key components within it.
 - Those prepared to serve must do so full-bloodedly and with commitment.
63. As to their professional background, the present composition of the Boards and Commissions is overwhelmingly weighted in favour of architects, planners and public officials or Members of Parliament. While recognising that the functions of the Board and the Commissions are different – the latter's work is much more technical in nature – and without in any way impugning the integrity or personal qualities of those hitherto involved, their background and experience cannot be said to meet the over-riding need for decisions in this sensitive field to be seen to be taken by those who are more widely representative of civil society as a whole. Nor, as we said earlier, are they in many cases free of real or perceived vested interests.

64. To this end, it is proposed that the Executive Chairman of the MEPA Board and the Chairmen of the Commissions should be appointed by the Prime Minister after consultation with the Leader of the Opposition. There is already a precedent for this method of selection. According to the Constitution, the Chairman of the Public Broadcasting Authority, the Public Service Commission, the Ombudsman and the Chief Electoral Commissioner are appointed in this way. When there is no agreement to a candidate being proposed the public should be given the reasons for objections to an appointment. The President of Malta will then be invited to resolve the issue.
65. The remaining members of the Board should be nominated from among the following bodies for consideration by the Prime Minister: Cultural Heritage NGOs; Environmental NGOs; Malta Chamber of Commerce and Enterprise; the Trade Unions (GWU, GRTU, MUT and UHM in rotation) ; the Building Industry Consultative Council; the Malta Federation of Industry; the Federation of Employers; the Chamber of Architects; the Malta Chamber of Planners; the Women's Council; Local Councils' Association; Chamber of Advocates; the Malta Hotels and Restaurants Association; academic staff of the University of Malta; the Malta Chamber of Small and Medium Enterprises; and the Malta Employers' Association. The nominees, who will be representative of civil society, will come with backgrounds in physical planning, economic development, social and community affairs and the protection and promotion of the environment and cultural heritage. A Public Officer to represent the government will always be appointed to a tied post on the Board by the Prime Minister.
66. Some might argue that these nominees will in themselves represent 'vested interests' and, to an extent, this is true and inescapable under any system. But to argue thus is to overlook the crucial difference between this and the current system of nominations by the government. First, a very wide spread of civil society is encompassed by this method and, second, the parliamentary scrutiny process to which the individuals will be subjected will impose its own sifting of the wheat from the chaff. Taken together with the improvements in transparency through public scrutiny of Board and Commissions decisions set out below, these changes should make a telling improvement on the current arrangements in avoiding so far as possible the conflicts of interest that occur today while, at the same time, ensuring that membership is more widely representative of civil society as a whole.
67. It is therefore proposed that Article 3 of the Development Planning Act 1992 should be amended along the following lines to reflect these changes:
- " 3. (1) There is hereby established an authority, to be known as the Planning Authority which shall consist of nine members, of whom one shall be the Chairman of the Authority.*
- (2) Save as hereinafter provided, the following members of the Authority shall be appointed by the Prime Minister following a nomination, selection and scrutiny process as set out in Article 17B:*
- (a) one public officer representing the Government being a person who has experience or qualifications in matters concerning any of the following: planning, the environment, the infrastructure, social policy in so far as it relates to land use, economic affairs, agriculture, tourism and transport;*
- (b) eight members (hereinafter called the 'independent members') shall be chosen from amongst persons of known integrity and selected equally from nominees from four groups of organizations representative of:*
- Professions or occupations that relate to physical planning, engineering and architecture.*
 - Organisations concerned with economic development, including commercial or industrial activities and tourism, the provision of infrastructure or the development of land or otherwise connected with the construction industry.*
 - Organisations representative of local government, social and community affairs, agriculture and trade unions.*
 - Organisations representative of persons concerned with the protection and preservation of the environment, the protection and the preservation of cultural heritage and the promotion of the arts and culture.*
- (3) The chairman and a deputy chairman of the Authority shall be chosen by the Prime Minister from amongst the independent members of the Authority.*
- (4) Save as provided in subarticle (2) of this article, no person shall be qualified to be appointed as, or remain, a member of the Authority if he is:*
- (c) a public officer*
- (d) a member, officer or servant of any agency of the Government provided that for the purposes of this paragraph a member of the academic staff of the University shall not be deemed to be a member, officer or servant of an agency of the Government,*

- (e) a member of the House of Representatives, or
- (f) a member of a local council
- (5) The independent members shall hold office for a period of three years, which may be renewed for one further period of three years. The independent members may resign by letter addressed to the Prime Minister but may not be removed from office except by a resolution of the House of Representatives on the ground of misconduct or inability to perform the duties of their office.
- (6) The other member of the Authority shall hold office until he is replaced by the Authority appointing him, and as long as he remains a public officer.
- (7) A person who has ceased to be a member of the Authority shall if he is otherwise qualified, be eligible for re-appointment; but no person shall in the aggregate be a member of the Authority for more than six consecutive years.
- (8) The provisions of the First Schedule in this Act shall apply to the Authority and regulate its proceedings."

The Selection Process

- 68. The Prime Minister shall naturally have the power to vet and, if necessary, reject any nominee from the bodies in paragraph 65 above. The Prime Minister will then submit the names of those nominated from among this wide range of bodies, representing a broad cross-section of civil society, to Parliament for scrutiny and approval. Thus, the final selection of the Board and Commissions' members should be subject to parliamentary scrutiny by the already existing Parliamentary Standing Committee on Development Planning whose current terms of reference should be broadened to include the selection, scrutiny and composition of the Members of the MEPA Board and Commissions, as well as "to ensuring the safeguarding of Malta's environment through the implementation of good planning procedures and sustainable development".
- 69. The selection and scrutiny process should address three key questions. First, can the individual put the public interest above his private interest? Secondly, can he or she put the national interest above his purely sectoral interest? Thirdly, given the criteria in paragraph 62 above, is the individual of the right calibre?
- 70. As to the three Development Control Commissions and the Planning Appeals Board panels, the Chairman and six members of each should be drawn from nominees in the same pool as the MEPA Boards, subject only to the proviso that two seats on each Commission should be specifically allocated respectively to one nominee from the Chamber of Architects and one from cultural heritage or environmental NGOs. The nominations to the Planning Appeals Board panels should additionally specifically include one nominee by the Chamber of Advocates, though it would be inadvisable for a lawyer to be the chairman given that planning appeals should be decided on more than a legalistic interpretation. Environmental justice is not always best served by a legalistic approach. Nominations to these panels should also be subject to the same vetting process by the Parliamentary Standing Committee on Development Planning as the Board and Commissions.
- 71. Since the majority of members of the Board and Commissions will inevitably be made up of lay persons, not architects or planners, it will be important to ensure that technical expertise is made available through the professional officers in MEPA whose role it is to do so, bolstered if judged necessary by the Board, by the allocation of qualified planning professionals employed as advisers on a full-time contract with the Authority. But if so, these planning specialists would have to undertake not to engage in private practice during their period of full-time employment by the Boards or Commissions. On appointment, it is important that Board and Commission members should be thoroughly briefed on their roles and the basic procedures which they will have to follow as members of Boards or Commissions.
- 72. The already existing (though hitherto largely dormant) Parliamentary Standing Committee on Development Planning should also in future receive regular reports from MEPA on major development or environmental issues and should formally receive the MEPA Auditor's reports. The Standing Committee should exercise its prerogative by regularly taking evidence from the Executive Chairman of the Board on major planning or environmental issues. In this way Parliamentary scrutiny of the development planning process will be improved and public confidence in the roles and operation of MEPA will be greatly enhanced.
- 73. We propose that Article 17B of the Development Planning Act should therefore be amended accordingly as shown below:

"17B. (1) There shall be a Standing Committee on Development Planning which shall consist of five members, one

of whom shall be the Minister, who shall also be the Committee's Chairman, and four other members appointed by the House, of whom two shall be members supporting the Government and the other two shall be members from the Opposition.

(2) The Standing Committee shall review any development plan referred to it, shall examine the selection of nominees made by the Minister to the Boards and Commissions of the Authority and shall consider policies to ensure the safe-guarding of Malta's environment through the implementation of good planning procedures in line with the needs of sustainable development.

- (3) Any development plan referred to the House of Representatives in terms of this Act shall be first referred to the Standing Committee. The Standing Committee shall review any such plan referred to it as aforesaid and shall recommend to the House whether the plan should be approved, with or without amendments, or rejected. The Standing Committee may also discuss any report referred to it by the Minister relating to the structure plan or any review thereof, or any major development planning or environmental issue.
- (4) When notice of a motion as is referred to in sub article (2) of article 22 of this Act, is given by the Minister that motion shall be referred to the Standing Committee of the House, and the Standing Committee shall discuss the said motion and report thereon to the House.
- (5) Not later than one month after a notice as is referred to in sub article (3) of this article has been referred to the Standing Committee of the House, the said Standing Committee shall discuss the structure plan or any review thereof, and shall, not later than one month after the said plan or review thereof has been referred to it, report thereon to the House:

Provided that where the said Standing Committee fails to report to the House within the said period of one month, the House may pass on to discuss the motion.

- (6) Where the report of the Standing Committee on a motion is unanimous, the House shall proceed to vote on such motion and on any amendments that are proposed in the said report without debate.
- (7) The Standing Committee shall examine the selection of nominees made by the Minister to the Boards and Commissions of the Authority as is referred to in sub-article (2) to ensure that they conform with the requirements of Article 3 and are in all respects worthy to be members of such Boards and Commissions.
- (8) The Standing Committee shall discuss the MEPA Annual Report and Accounts within a period of two months after its issuance and take evidence accordingly from the Chairman of the Authority and the Audit Officer."

Improving MEPA's Regulatory Authority

74. MEPA has made major strides in its dissemination and availability of information data and in ensuring access and public participation in its processes. Transparency, openness and accountability in the preparation of plans and in decision-making have been adopted as one of the key objectives of the organisation. Planning itself has taken on a more comprehensive and integrated approach. Public participation in the MEPA process has been encouraged. MEPA's use of information technology has been excellent.
75. All its operations and reports are to be found on the internet, with a state-of-the-art geographic information system that reports on planning applications, illegal activities and protected areas. 'E-application' allows architects to submit applications on-line and gives all interested parties easy access to selected information. Unfortunately, however, proposed plans are not currently available on-line to the general public, who have to go to MEPA personally to view them. Access on-line should be extended to everybody, not just architects, during the public consultation process.
76. While the steps taken so far to improve access are greatly to be commended, there is also a need for the procedures and systems to be followed by the MEPA Board, the three Development Control Commissions and the Planning Appeals Board panels to be stringently tightened up in several areas to close loop-holes in the Act which have led to abuse, to counter the common criticism that they favour the big developer at the expense of the ordinary man in the street and to obviate the current practice of allowing wide 'interpretation' of the rules. Further improvements should therefore be made in a number of areas: the Board's and Commission's procedures; the processing of planning applications; the appeals procedures; public consultation; and protection of the environment against developments Outside the Development Zones (ODZ). These issues are discussed more fully below.

Environmental Impact Assessments (EIA)

77. The EIA process is a planning tool that is now regarded as an integral component of sound decision-making in planning development. An EIA provides an assessment of the effects a project is likely to have on the environment. It is the process of identifying, predicting, evaluating and mitigating the social, environmental and other relevant influences of development proposals before major decisions are made. Its prime purpose is to ensure that decision makers consider the environmental impacts of all major developments before

deciding whether to proceed. For all these reasons, it is important that the way MEPA deploys the EIA tool is reasonable and effective.

78. MEPA has made a not entirely convincing start with EIAs. The procedures laid down by the European Commission have been only haltingly adopted. There seems no good reason why they should not be adopted in full. The existing regulations are being improved, but more needs to be done to ensure that the perceived bias in favour of the (major) developer is removed.
79. The present arrangement where the developer selects the EIA consultant concerned should be changed so that the choice is made by MEPA but paid for by the developer. There must be a much fuller dialogue and public consultation on EIAs with the various stake-holders affected. EIAs should not be waived until public consultation has been thoroughly considered. The thresholds calling for EIAs to be conducted on all major projects laid down by the EU Directive should be strictly adhered to. If in doubt, MEPA should err on the side of the stake-holder, not the developer, in calling for an EIA. The 'Social Impact Assessment' of EIAs must not be down-played. On the contrary, in a country as densely populated as this, and with land in such short supply, it should become an intrinsic component of the process.
80. As set out in the relevant Legal Notice, there is an urgent need to draw up a Register of EIA Consultants made up of reputable individuals who can be held accountable for what they write. The possible introduction of an EIA Review Fund payable to those *bona fide* organizations, such as NGOs, carrying out EIA review work should be considered. To avoid real or perceived conflicts of interest, members of the MEPA Board should not carry out EIA studies on behalf of developers when those are also to be assessed by the Board.

Conduct of Board Hearings

81. All meetings of the MEPA Board, Appeals Boards, Commissions and Committees should respect the spirit as well as the letter of due process. Meetings should start on time, not as often happens an hour or more late. Members should receive their papers for consideration before a meeting in good time. They must participate in proceedings without distraction, such as mobile phone calls. Meetings should be properly minuted and the Minutes, including any votes taken by the Board, made available to the public. Members of the various boards should be asked to speak audibly at public hearings so that the public can follow the proceedings and hear for themselves the bases and arguments on which decisions are made. There is no logical reason – other than bureaucratic self-protection – why objectors should not be allowed to voice their views during all public meetings of the Board and Commissions.
82. Every vote taken must be attributable, properly recorded in the Minutes. In the interests of public confidence, scrutiny and transparency, there seems no good reason why the Minutes of Board and Commissions' meetings and the meetings of Advisory Committees in-so-far as they apply to planning and permit applications and decisions should not be published.
83. Most importantly, in all decisions where the Board, Commissions and Appeals Board approve an application against the professional recommendation of the Planning or Environment Directorate, or one of the expert Committees, detailed reasons for this decision must be recorded in writing and made publicly available. Meetings with developers or objectors should not be held informally outside Board meetings. Informal briefings of the Board should also not be held behind closed doors. The ability of individual Board members to seek more detailed briefing from MEPA's professional staff before a meeting must be openly facilitated, not obstructed, to ensure members have the information they need on which to make an informed judgement.

Appeals

84. As to the appeals procedures, the Development Planning Act should be amended to ensure that in protected areas – such as ODZ, Urban Conservation Areas (UCAs), scheduled buildings and others – no development should be permitted to start until any appeals submitted by objectors have been heard and concluded. The current system encourages a developer to press the planning process to the limits by presenting what is effectively a *fait accompli* in the face of an appeal which becomes more difficult to reverse the longer it proceeds. This said, there is also a concomitant responsibility to ensure that all Appeals are dealt with in a timely manner.

Project Description Statements (PDS)

85. Whether or not Project Description Statements (PDS) are made available during the public consultation period, it should be permissible to register an interest in any planning application without submitting detailed comments at that stage. All those with a registered interest will be permitted to submit full comments at a later stage following detailed assessment of the relevant plans and they will become registered objectors for

the purpose of subsequent appeals. The right to appeal should also be granted to those parties that object within forty days of publication of the notification of applications or of studies forming part of EIAs.

Public Consultations

86. In line with the need for greater transparency and accountability, the whole process of public consultation needs to be deepened and broadened. Local Plans, 'subject plans' and planning policies should be approved within a period of twelve months following the completion of public consultation. However, if this time period elapses a new round of public consultations should take place. The Ombudsman has already ruled that a fresh public consultation should take place in the case of any significant changes made by MEPA after the consultation period has closed. This now needs to be incorporated into MEPA's regulations, together with a clear list of criteria defining what constitutes 'significant changes'.

Availability of Information

87. It is a vital contribution to the public consultation process that PDSs of all applications should be made publicly available as soon as the final version is submitted to MEPA. EIAs and PDSs should be made available in soft copy, as well as being placed on the MEPA web-site in 'read-only but copyable' format. The full studies should invariably be accompanied by non-technical synopses in Maltese and English. All architectural plans and the relevant-planning documents under the E-Applications (E-Apps) system should be made available on-line to all interested parties during the public consultation period.
88. More needs to be done to ensure that the general public is clearly informed of their rights through posters, leaflets and advertisements. While MEPA has made most commendable efforts in this direction, areas for improvements still remain. For example, the public should be told that they have a right to read Case Officers' reports and that they can examine plans and applications without being accompanied by an architect. Facilities at MEPA itself should be made more user-friendly with staff available to answer queries and provide guidance. Space for reading plans and studies, as well as large computer monitors to view plans on-line, should be made available.
89. All applications for major projects and those falling ODZ and in UCAs should be published separately and more prominently in the media, as well as on the web-site, since these merit greater attention and are more sensitive. Planning application notifications in the media should contain much fuller information than is currently given to enable the public to obtain a better picture of what is being proposed. Photographs on-line should also give an indication of the façade and the site of the building or land in question and these should be made available during the consultation period, not afterwards.
90. Only one re-consideration of a planning decision by the Commission should be permitted. Once a decision on an application has been determined it should not be possible to re-submit the same application before a period of five years has elapsed, unless major planning policy changes have occurred, thus obviating the current practice of developers circumventing restrictions through multiple applications designed to 'wear down' the system into submission.

Outside Development Zone Applications

91. The abuses committed ODZ are an indictment of the weaknesses in the present system and account for probably the most sensitive area for complaint against MEPA's stewardship of the environment. In the three years 2004 to 2007, MEPA approved many hundreds of ODZ applications. Of some 850 which were refused more than half were subsequently approved on re-consideration. In 2007 alone almost 450 enforcement orders against ODZ developments were dealt with and of these almost 330 were 'sanctioned' (that is, they were made legal).
92. In the light of the public's reaction to the rationalisation of the development zones in 2006 and the Government's commitment to ensure that the newly agreed development zones will not be contravened, it is vital that this area of MEPA's business is tightly controlled. Current ODZ policies are scattered throughout various policy documents, such as the Structure Plan and the Agriculture Plan, thus making it difficult for Boards or Commissions to apply them consistently. In order to ensure consistency and adherence to the law, it is essential that a policy document on ODZ applications should be urgently published by MEPA defining clearly those very few developments (such as cattle farms) that may be permitted outside the development zone, under-pinned by the relevant laws and regulations. As a general rule all ODZ applications should be rejected out of hand with the onus of proof for further consideration being placed on the applicant who will have to show that it conforms fully with planning policy. It should be added that architects also have a part to play in advising their clients accordingly in the first instance rather than seeking to bounce the system.

93. The recent, notorious case of the Commission that voted in favour of a development of a supermarket outside the development zone in the face of a clear recommendation to the contrary by the MEPA Planning Director – a decision described by the Auditor as ‘grossly irregular’ – and the Mistrá discotheque *debacle* should not be allowed to happen again. As the Auditor has recommended, the MEPA Board should henceforth lay down that when the Director of Planning believes an application is likely to be approved contrary to policies in the Structure Plan or Local Plans, he will be required to transfer the application to their competence for resolution.
94. There is also a strong case for advocating the creation of a new category of ‘Protected Non-Development Zones’, extending beyond the present Natura 2000 and Special Areas of Conservation (SAC), where no development of any kind whatsoever will be permitted. This could be further reinforced by a rule that any ODZ application can only be sanctioned by approval of the Parliamentary Standing Committee on Development Planning, or alternatively by the Office of the Prime Minister after reference to him. ODZ areas like Ta’ Ċenċ and Hondoq ir-Rummien are test cases which will set the standard on our willingness to protect ODZ areas of the environment. So called ‘degraded’ and ‘disturbed’ land should not be used as an excuse for ODZ development.
95. The identity of members of the public reporting infringements must be handled in strictest confidence. The level of bank guarantees on developments in protected areas, such as UCAs, should be increased substantially to act as a real deterrent to malpractice. Any building constructed illegally ODZ should immediately be demolished. The ‘sanctioning’ (that is, making legal what was illegal) of buildings which violate MEPA regulations should cease. Any buildings so sanctioned in the past should not be taken as a precedent by the Boards or Commissions to authorise similar transgressions. This should apply especially to the Appeals Board panels which tend to work on precedent and thus are prone to perpetuating and institutionalising past errors.

Time-limit on Building Construction

96. Permits for building applications should specify a reasonable time limit for the construction of a building in order to reduce considerably the inconvenience and health and safety hazards to which residents and the general public are subjected. While the new construction regulations imposing conditions on the contractor for site management are a welcome introduction, it is most important that they are fully adhered to. To do this successfully will require close supervision and enforcement.

“Saving Third Party Rights”

97. There is an often-invoked MEPA practice which has had unfair consequences and should be corrected. This is the use of the phrase “saving third party rights” as a condition for the approval of a permit which is used by MEPA to safeguard its legal position at the expense of interested third parties. For example, if an application does not in theory go strictly against the planning rules but clearly infringes the rights of other citizens, such as neighbours of the applicant or those living near the development application, the permit is none-the-less approved.
98. Construction by the developer then takes place – often very quickly – and when the affected party objects he is told by MEPA that he may initiate civil action in court against the developer – by which time it is often too late, or prohibitively expensive, to rectify the earlier action. In equity, it would seem right to ensure that when an applicant clearly infringes the rights of others not party to the proposed development it should not be considered in the first instance by MEPA. The relevant Board or Commission should not shirk its duty of care and responsibility by covering its legal back with the proviso “saving third party rights”.

Standards of Design and Aesthetics

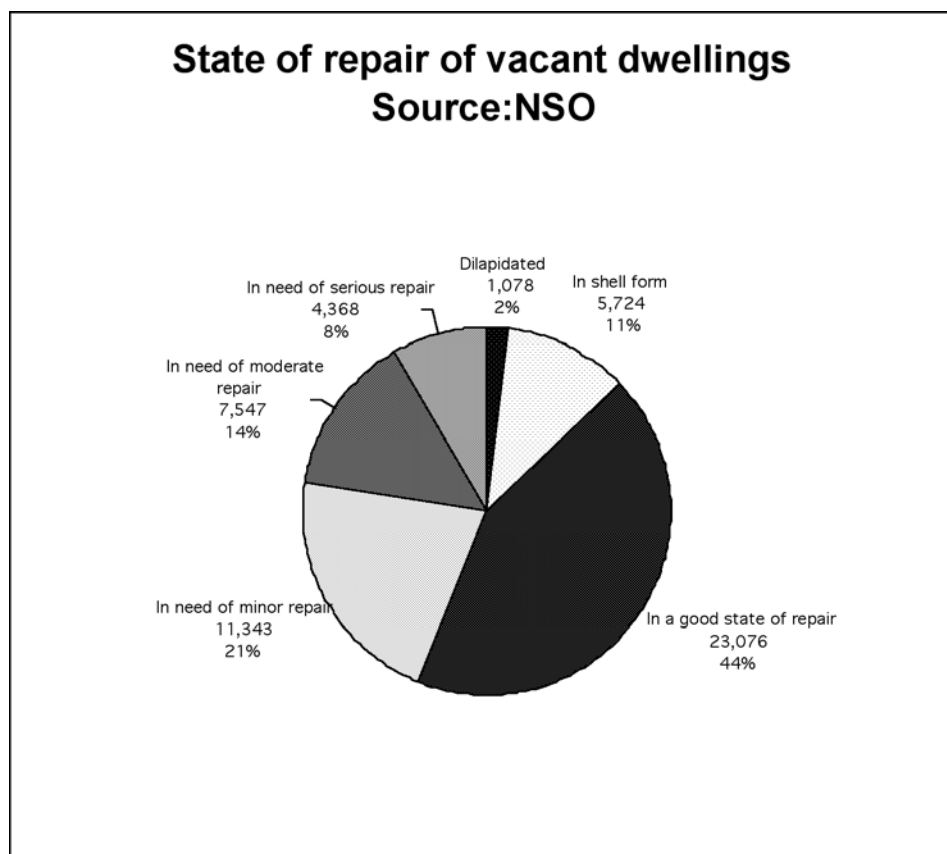
99. Much remains to be done by MEPA in protecting the built cultural heritage and monitoring and encouraging better standards of design. A new policy document should be drawn up to give a basic level of protection to buildings of historic or architectural value outside UCAs which have not yet been scheduled. Active support should be given by MEPA to the conservation of scheduled properties by means of grants or tax rebates. MEPA is bound to monitor the conservation of scheduled properties, which owners are obliged to maintain under the Development Planning Act. However, MEPA has made no attempt to enforce this obligation with the consequent loss of many excellent examples of scheduled buildings to the detriment of Malta’s unique indigenous traditional architecture.
100. In the field of aesthetics, MEPA must take the lead in following up the excellent proposals which have been made by the Chamber of Architects – in their report ‘The Urban Challenge’ - to promote better standards of design and aesthetics. Detailed proposals are made in paragraph 103 below.

Advisory Committees

101. MEPA relies for technical advice on a number of Advisory Committees. These include the Cultural Heritage Advisory Board, the Natural Heritage Advisory Board, the Bio-safety Committee, the Pollution Prevention Committee, the Minerals Advisory Board, the Users' Committee, the Ornis Committee and the Planning Consultative Committee (the latter is virtually dormant and should be resuscitated).
102. While we are reluctant to add to the number of committees – indeed, there may be a good case for reducing the number – we are convinced of the need for the introduction of a powerful Aesthetics Committee to set standards of good design, as well as an Energy Board to over-see the compliance of architects and developers with obligatory energy conservation aspects of construction and design. Although the uglification of design which has sadly occurred all too often in recent years cannot easily be undone, steps should be taken now to introduce a new era of good design for the future.
103. The Aesthetic Committee should be given broader scope to regulate all planning issues to do with good design and architecture. It should work closely with the National Centre for the Built Environment when it has been established, as has already proposed by the Chamber of Architects. The Committee should be composed of individuals who have demonstrated a proven track record of artistic appreciation and good design aimed at achieving quality in architecture and the design of buildings and public spaces.
104. We must also express concern about the effectiveness of some of the Advisory Committees. This is not a reflection of the individuals comprising these committees – who are invariably dedicated and of high calibre – but of the way the system is used or, rather, not used by the Board of MEPA. It is no good MEPA setting them up if they do not take heed of their advice and expertise. Their advice must not only be sought but acted upon. There have been startling instances of the advice of, for example, the Heritage Advisory Board, which includes the Superintendent of Cultural Heritage, being ignored to the detriment of the built cultural heritage. It should be an automatic component of the consideration of any planning application for the pronouncements or reports by the relevant technical committee to be considered before a decision is made. If necessary the technical committee's chairman should be present at the Board's or Commissions' meeting to expand on the advice as needed.

Excess Housing

105. There are encouraging signs that there is now a stronger public understanding of Malta's environment and what needs to be done to safeguard it. A longer term view of our environment is beginning to be taken and there is a greater public involvement in making decisions about society's needs.
106. Reflecting this shift in society's attitudes, we believe that we need to keep Malta's future land use development to levels which do not permanently damage our historic, cultural and natural environment, our landscapes and natural habitats. A better balance should be struck between construction development and the needs of our environment and quality of life. This is nowhere more marked than on the issue of construction development and excess housing.
107. The statistics from the last National Census of Population and Housing of 2005 revealed that there were 53,000 vacant properties (see Table 1 below). Even allowing for about 15,000 of these properties being second homes or in need of serious repair, this still leaves several thousand properties lying idle. Since 1995 around 20,000 more permits for new properties have been issued by MEPA.



108. According to the 2002 Structure Plan, Malta requires only 1800 dwelling units a year to meet demand. The present surplus accommodation reflects an imbalance between supply and demand, with properties held for investment purposes probably accounting for a large number of unoccupied houses. Many owners of such properties are holding on to their properties for the long-term and would be unlikely to sell at below their expected value.
109. The excess of current housing supply raises economic and social questions. MEPA understandably does not feel it can intervene directly to ration development. But its policies can very largely influence how that development occurs. For example, government policies on the rehabilitation of old urban cores, such as Valletta and the Three Cities – which over time have been largely de-populated – could influence the construction industry's output towards restoration and rehabilitation, rather than the erection of new buildings. Plans for the major redevelopment of the Grand Harbour – which should be supported – would encourage this process.
110. There should be a re-think of the recent policies on raising building heights all over Malta which have not only ruined the face of Malta's towns and villages, but also exacerbated the housing surplus, with a view to reverting to the previous policy. The proliferation of high-rise buildings similarly needs to be damped down by restricting severely the areas where they can be built. The 'Floor Area Ratio' policy needs urgently to be revised. Designated Urban Conservation Areas must be actively protected against development, including the need to avoid building tall apartment blocks immediately adjacent to them as these dominate and encroach upon their character. The scheduling process needs to be strengthened and speeded up. The retention of open spaces within urban areas must be vigorously protected.
111. We propose that as part of the policy of reducing the rate of construction development – and thus improving our environment and quality of life - the whole ethos and culture of MEPA should be reversed. Instead of land development proliferation, it must be land and building conservation and environmental protection that should be its future watch-words. There should be a concerted drive to make more efficient use of the land already earmarked for development and of the existing housing stock in order to cope with necessary demand. The long-awaited revision of the Rent Act should be accelerated in order to encourage the release of housing stock for rental purposes by assuming a proper return on landlords' investment. As a means of discouraging speculation buildings left uncompleted should attract a daily fine if they are left in shell form for longer than twelve months after the start of construction. There is a need for a deeper economic analysis of the relationship between the rental market, empty homes, house prices and sales.

Other Spatial Issues

112. It is imperative that our coast-line is kept free of any further development. Our rich coastal heritage needs to be preserved, enhanced and restored. Conflicting activities on the coast should be better managed. Private encroachments and concessions should revert to public use in line with the Structure Plan policy that 'All coast-line will be brought into public ownership within a specified time'. Malta has committed itself to no longer allowing construction within 100 metres of the coast by signing the Protocol on Integrated Coastal Zone Management in the Mediterranean as part of the Barcelona Convention.
113. This is a positive step forward which, if adhered to, should ensure the sustainable use and management of our coastal zones in order to preserve coastal natural habitats, landscapes and eco-systems. Although, ominously, the Protocol's provisions can be adapted in projects of 'public interest' or 'in areas where individual housing, urbanisation or development are provided by national legal instruments,' we strongly urge that MEPA's planning regulations should severely limit any such development. It should be obligatory for any proposals in coastal zones to be subject to an EIA. The Legal Notice on EIAs should be amended accordingly.
114. Access by the public to those parts of the countryside which have been taken over illegally by hunters and trappers or farmers should be re-opened. There is a legal presumption that all property over which no one has a valid legal title belongs to the Government. The onus of proof of ownership is therefore on whosoever claims rights of ownership of property. The sections of the Civil Code dealing with servitudes created by law, in particular those regulating the right of entry and passage over private property should be amended to establish public rights of way. Such an amendment would cater specifically for the rights of *bona fide* ramblers and encourage the development of eco-tourism.

Safeguarding Public Land

115. Lack of communication and coordination between MEPA and the Lands Department has seriously affected public property adversely. There have been many cases where a private developer has encroached on government land and built on it without possessing title to it. If MEPA does not draw the attention of the Lands Department when a project is to be built on public land the construction goes ahead and the public land is then usurped. This loss of public property can be easily avoided by closer collaboration between MEPA and the Lands Department.
116. Moreover, there have been several cases – the building of 'boat-house' are the most notorious – of public land literally being stolen without either confiscation or retribution. This is intolerable. When this occurs government action must be immediate. The illegal building should be demolished, the land should be taken back and the offender punished.

Biodiversity and Nature Protection

117. Malta's protection of Natura 2000 sites is incomplete and inadequate. Management Plans must be drawn up for all Natura 2000 sites without delay. There is a need for a comprehensive inventory of nature sites to be implemented to establish the level of protection that such ecologically important sites deserve. Practical management of such sites needs to be introduced. Current bird sanctuaries should be enlarged and contiguous protected zones should be created.
118. The number of marine conservation areas should be increased. To date only two sites have been given protected status – at Il-Majjiesa and Dwejra. The impact of tuna farming on the marine ecology should be properly monitored to ensure such farms are not degrading the marine environment.

The MEPA Auditor

119. The position and independence of the MEPA Auditor is central to MEPA's proper regulation, transparency and accountability. It is through the Auditor that the ordinary citizen can be assured that his complaint will be fairly examined and resolved. It is essential to ensure that the office of the Auditor is given due support. Its reports should always be publicly available and MEPA should be seen to follow its advice. The Auditor has a vital role in ensuring that set procedures are scrupulously followed.
120. It is vital to the successful working of both MEPA and the Auditor that mutual respect and objectivity should under-pin the way their relations are conducted. The Auditor's new position within the Ombudsman's office may have led to a workable compromise being reached following the unfortunate way the authority handled the re-appointment of the Auditor's chosen Investigating Officer, but the situation should be kept under review to ensure he is able to fulfil his role efficiently and effectively. Ideally, the Auditor should be located in MEPA, reporting directly to the Board.
121. Alternatively, there may be a case for adopting the procedure with regard to internal auditors in public

companies where these report to an independent Audit Committee made up of nominees from civil society that do not include executive management or Board members. Such a body would provide an added measure of independent public scrutiny and add weight to the views of the Auditor on what MEPA's Board needs to do to correct or improve matters. A change of Chairman at MEPA may provide the right opportunity to take stock.

Improving the MRA's Regulatory Authority

122. The MRA, as part of the new Ministry of Resources and Rural Affairs, is responsible for two specific areas of regulation of Malta's natural resources: water extraction and quarrying.

Water Extraction

123. The importance of water as an essential resource of all life and a vital requirement for good health, sanitation and as a critical contributor to almost all industrial production is self-evident. It is a resource of vital strategic, social and economic importance. Malta is among the nine worst countries in the world for per capita water availability, lying 172nd out of 180 nations. Almost 60% of our water is being produced by reverse osmosis plants at great cost – costs which are forecast to increase markedly as the availability of fossil fuel reduces and carbon pricing begins to bite.

124. Yet the depletion of the water table by illegal extraction, a water table which global warming will deplete even further, is a continuing and urgent problem. We are currently extracting about 33 million cubic metres a year when, in order not to cause salt water intrusion, we should only be using about 15 million cubic metres a year. It is assessed that illegal extraction amounts to about 18 million cubic metres a year.

125. The mean sea level water aquifer is at severe risk of being wiped out according to the regulatory authority. Within a decade our water could become undrinkable. The mean sea level water aquifer is already in deficit, as we are extracting more than the annual rainfall replenishment. Increasing sea-water intrusion and deterioration of the water table is already happening.

126. While there are ambitious plans for tackling some of the physical aspects of water collection by building a vast network of tunnels spanning the Island to capture storm water, a more determined effort at better regulation of this whole area is clearly needed. It is an intrinsic component of any plan to safeguard this vital resource.

127. It is argued that until this network of tunnels has been constructed it would be impossible to impose tighter controls over illegal extraction since most of this is carried out by farmers who would not be able to grow their crops without access to this source of cheap water. There is clearly an urgency about this matter and the fact that the proposals for the adoption of a comprehensive National Water Policy have languished in the former Minister of Infrastructure and Resources' pending tray for so long does not auger well. Even when a decision to start this work is taken it will be some time before the storm water collection can be completed and illegal extraction for agricultural purposes controlled.

128. But this should not imply that there is nothing that can be done now by the MRA to reduce demand and to encourage greater conservation of water and the more efficient use of this precious resource. For a start, the price of water to the consumer should be increased considerably over time while naturally taking due account of the social hardship that might arise. It is currently heavily subsidized by government. If the incentive to conserve water is to be effective consumers must be asked to pay a more realistic price for it. This may mean a gradual reduction in the subsidy for water and the trebling or quadrupling of the price over time. But higher tariffs devised on a sliding scale to penalise the high consumer and reward low consumption are an essential tool in managing water demand more sensibly. No responsible government can avoid confronting this issue and the reasons for it will need to be carefully explained, as was done with the energy surcharge, to ensure public compliance.

129. Secondly, the MRA should register all bore-holes – including those hitherto unreported - and introduce a tariff for their use. This should go hand in hand with the licensing of water bowser owners and the imposition of more realistic charges to consumers of water from bowsers – often large tourism complexes which find it cheaper to replenish their water requirements through unlicensed bowser owners than the mains water supply.

130. Thirdly, MEPA should make it a condition that a cistern to harvest rain-water from the roof should be obligatory for all new building applications. Malta's former capacity to capture all rain-water in our wells needs to be revived.

Quarrying

131. About ninety quarries, covering almost two and a half million square metres of land, scar our countryside. Many of them are operating illegally. The limestone dug out is a non-renewable resource. The current rates of extraction in existing quarries cannot be sustained indefinitely. Our present soft-stone and hard-stone quarries will only last a few more decades at current usage rates.
132. The rapid extraction of limestone for buildings is exacerbated by the waste of still usable old stone through the demolition of old buildings. In the majority of cases this is simply thrown away. The detrimental effects on the environment are significant. Quarries are not only ugly to look at, but they affect our ecology and the water table. Quarries generate noise and cause severe air particulate pollution.
133. The quarrying industry needs to be reduced and controlled. But this can only be done by creating the conditions for a determined reduction in our rate of construction as already proposed.
134. There is a need to draw up strict quarrying regulations which would bring the entire quarrying industry under one regulatory body in order to control it, thus both exercising a brake on the construction industry and the rate of building development, as well as introducing an up to date regime for its monitoring and operation to reduce its negative impact on our landscape and the environment. The annual extraction of limestone from our quarries should be reduced and capped in order to conserve what we have and to control the rate of construction. By capping it at source we also encourage the re-cycled use of old stone and slow down the rate of urban development. This is what sustainable development is all about.
135. Wastage from soft-stone quarries should be reduced by creating a price structure which takes account of the true economic impact and the real value of stone: its impact on the environment, the need to be sparing in its use, the need to discourage waste. The importance of substitutes for our hard stone should be investigated. Land reclamation properly done could be a boon not only in reducing the amount of waste disposed of on land, but also in the judicious extension of Malta's land-mass.
136. The current low cost of stone leads to inefficient use and also encourages building speculation. A minimum price should be set. Minimum thresholds for the use of recycled stone in new developments should be set in order to discourage the dumping and waste of old stone from houses which have been demolished. Stone depots to store old stone for re-use should be established, perhaps by using disused quarries.

Improving the ADT's Regulatory Authority

137. The control of vehicle emissions – the key cause of air pollution in our towns and villages - currently rests with ADT. Although the responsibility for monitoring air pollution rests with MEPA in line with its environmental supervisory role and as part of its overall responsibility for controlling air pollution more generally, ADT retains the key responsibility for controlling and drastically reducing the effects of vehicle emissions pollution at source, together with all its other responsibilities for transport matters in the Ministry of Communications and National Projects.
138. There are a number of steps which ADT as the regulatory authority should take. While many are already in hand, there is now an urgent need for concerted action to be implemented. Many of the necessary measures will be unpopular and some will require considerable investment. All will require changes to our life-style. But they are essential if the current high levels of emissions from cars are to be reduced. There are too many cars on our roads and too much car use. Driving a car is the most polluting activity by the average citizen in Malta and it is no longer environmentally sustainable.
139. A national change of attitude can only be achieved through a firm package of incentives and disincentives. The following measures are therefore proposed:
 - The principle that the polluter pays should be vigorously applied. This means introducing a system that discourages overall vehicle use in general through a stringent tax-based regime which leans heavily on older vehicles, those with the highest CO₂ emissions and those of the largest size engine, and favours most those vehicles using alternative fuels or hybrid engines, or smaller, cleaner engines. Both the vehicle registration tax for new vehicles and the annual tax license should be used as the tools to achieve these aims through a system of incrementally graduated taxes to make the polluter pay. The importation of second-hand vehicles for re-sale should be banned or severely penalized. Fuel taxes for vehicles should be raised.
 - There should be a drive against older vehicles – trucks, mini-vans, buses and private cars – with a view to removing them from the roads. Strict annual (not, as presently biennial) emission tests should be applied through the VRT. In addition, random road-side testing should be applied more rigorously and more

frequently. Vehicles that fail the test should be subject in the first instance to an immediate heavy fine. If they fail a subsequent test they should automatically be taken off the road. The current *laissez faire* approach is much abused and ineffective. Since many of the vehicles which will be directly affected by this approach are part of the public transport fleet a subsidized system should be introduced whereby, for a strictly limited period of, say, five years, replacement vehicles are imported by the owner on a tax-free basis. Thereafter, once the scheme period has expired all such vehicles should automatically be taken off the road.

- It is imperative, however, that the above measures should be matched by a concerted drive to achieve a higher quality public transport system. Steps in this direction have begun. But very much more still remains to be done. The public transport fleet needs to be modern. The use of electric buses should be introduced. They must be flexible, frequent and quick and provide easy access to all parts of Malta. A combination of large and smaller buses must be used. Maritime public transport should also be utilized along the popular coastal areas and in the North Harbour area to make public transport both more attractive and more accessible. The viability of fast, reliable underground transport should be examined and possible public-private enterprise schemes encouraged in this regard.
- In parallel, promoting walking and the use of the bicycle and motor-cycle or motor-scooter should be more seriously encouraged. Incentives for car-sharing should be enhanced and the costs of the Controlled Vehicle Access scheme to Valletta steeply increased for those driving alone.

Improving Local Councils' Regulatory Authority

140. As said in Part I of this report, given Local Councils' virtually exclusive involvement in environmental matters, we welcome their transfer for responsibility to the Office of the Prime Minister. Waste collection, cleanliness, litter and dumping, vehicle emissions, planning abuses, waste management, land use, the local cultural heritage and historic monuments are all environment aspects which directly affect Local Councils and in which they are – or should be – involved.

141. As the next step in the successful evolution of local governance it would make sense for regulatory authority in many of these areas to be devolved directly to Local Councils. This would reduce central bureaucratic control, lead to more local involvement by those whose lives are directly affected and greater responsibility and accountability by local councillors to the people who elect them. The concept of sustainable communities should be encouraged, by devolving responsibility and authority to those best placed to exercise it. Although regulatory authority in waste management, including waste collection and keeping areas clean has already been passed to Councils they have failed fully to match their responsibilities to the necessary actions.

142. It is pointless to devolve regulatory authority in these fields unless it is backed up by the necessary human and financial resources and direct access to the means of implementation. This affects especially such areas as cleaning, litter and dumping and waste management, as well as enforcement which is the subject of separate consideration in Part III of this report

Cleanliness of Local Council Areas

143. The cleanliness of our islands is a particular weakness. The shameful dumping of rubbish and litter all over our islands is a national disease. Successive governments have failed to find an antidote. Despite the considerable efforts of the former Ministry for Resources and Infrastructure to clear up rubbish, illegal dumping continues to scar all areas of these islands. We find dumps and litter in open countryside, in our much abused valleys, some of our prime heritage sites, on the peripheries of our villages and towns, in our industrial estates and wherever a building is under construction.

144. We have an excellent free service for the collection of bulky waste items from households. Yet the apparent preference to dump unwanted items – preferably into somebody else's backyard – remains uncontrolled. Although the responsibility for keeping most of these rural areas clean rests with the Local Councils, last year some sixteen thousand tonnes of dumped material, ranging from complete bathroom and bedroom suites to the carcasses of animals, construction waste and every other form of detritus, was collected from the roadside, valleys, countryside and industrial areas by the Cleansing Services Department. The admirable efforts being made by the Environment Landscape Consortium through contractors to keep road verges and traffic islands tidy and to add a splash of colour are negated by the litter which is gratuitously chucked out of passing cars.

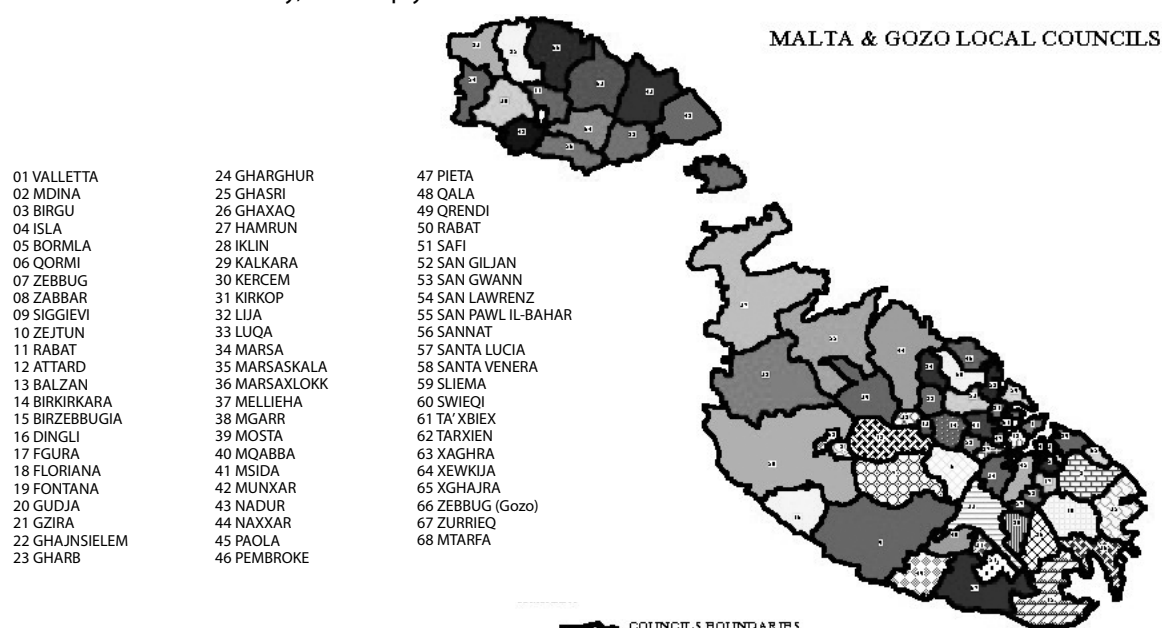
145. A new Litter Act laying down stiff fines against those caught transgressing has had little tangible effect. The recruitment of 'under-cover' plain clothes wardens to apprehend litter louts appears stalled. The introduction of security cameras at dump sites which are habitually used by litter louts has not been implemented.

146. Yet we are convinced that the only antidote to this national disease which will work is the strict and effective application of the rule of the law. We shall not overcome this cultural malady unless the government matches its determination to deal with the problem by willing the necessary law and order resources to counter it.
147. The introduction of stiffer fines may look good on the statute book, but will do little to stem the dumping of rubbish unless there are the manpower resources necessary to back it. This means the introduction of 'Green Wardens' in Local Councils – both under-cover and uniformed – the strengthening of the grossly under-resourced and overstretched ALE unit of the Police Force, coupled with strict instructions to them to bring the full force of the law to bear on those caught breaking it.
148. The handing down of a spate of exemplary fines or even imprisonment to those caught flouting the law will convey the message that dumping is anti-social, selfish, uncivilised and no longer to be tolerated. A strong police and enforcement officer presence will act as an effective deterrent. Above all, there must be the political will to make a change in our national character through the outward imposition of discipline to deal with this disease, if we are not to undermine further our tourism product and our own quality of life.
149. We make proposals for the provision of the enforcement resources in Part III of this report. But in parallel to the enforcement structures, Local Councils must also be given adequate means – and full responsibilities – for ensuring the cleanliness of their areas. At present, Local Councils are given budgets which are simply not sufficient to cover adequately all areas – a short-sighted economy which leads to the current shabby state of so many areas. It would make eminent sense not only to review the level of funding allocated to Councils for cleaning, but also to administer this at a Regional level. To achieve better economies of scale it would be sensible for management of such funds to be handled at the Regional level which would lead to the better establishment of priorities and a more equitable and even allocation of funds across all areas. This organisation would also fit more comprehensively with the structure or enforcement which is proposed in Part III of this report.
150. Although the countryside, or non-urban areas, falls under the responsibility of Local Councils for their upkeep and cleansing, other areas, covering large swathes of the Island, are excluded. To give just a few examples, they include *inter alia*, all the industrial areas, the crafts villages, the Freeport and power stations, the airport, all industrial installations, social and health centres and hospitals, Marsa Sports Complex and other Sports stadiums, the shooting ranges at Pembroke, all cemeteries, all parks and heritage sites, including all the fortifications and major forts, the bus terminus and City Gate, all archaeological sites, all public gardens and historic monuments and all arterial and distributor roads. Ownership and responsibility of all these sites and areas is scattered. For example, it is obvious that Heritage Malta is responsible for a number of historic sites and the Ministry of Health is responsible for hospitals. But it is unclear where responsibility for cleanliness begins and ends. Is it just at the site itself or is the surrounding area also included?
151. The current arrangements are a recipe for inaction. Too many areas of the country fall between a number of stools with nobody being held responsible for them or, if responsible on paper, not given sufficient resources to cope. Although it has not been possible to investigate how much money has been allocated to the former Ministry of Investments for the cleanliness of the industrial areas, for example, it is clearly inadequate – else why would our industrial areas be the target for so much litter and dumping which is left untouched? The same goes for the other areas – for example, the area around the Marsa Sports Complex or the Crafts Village.
152. It is considered that the answer is to devolve responsibility to where it is best exercised and to provide the necessary resources for high standards of cleanliness to be set. This is at the Local Council level, whose geographic boundaries include all the non-urban areas. If Local Councils were given the resources – including the ability and backing to invoke 'the polluter pays' principle with those who are causing the damage - and held accountable, these areas could be transformed.
153. We have taken as our model the public-private partnership arrangement that has been successfully implemented by the Environment Landscapes Consortium (ELC) for looking after the care and maintenance of central reservations and roundabouts and a number of public gardens. In 2002 ELC took over about 300 employees of government who had formerly been responsible for this area of government work. They have transformed the work-force from one of very low productivity to one of high output. ELC now hold contracts with the government for the floral maintenance of all central reservations and roundabouts and with about 34 Local Councils for similar work. The areas for which ELC are responsible have been well maintained – albeit it must be added with the important support of the Cleansing Services Department which clears the litter from these 'soft' areas on a regular basis.

154. Although the work ELC has been undertaking is not directly comparable, there are parallels to be drawn with the cleaning situation. The government, through the Cleansing Services Department, currently employs about 75 personnel which it contracts out to Local Councils on a commercial basis on urban roads cleansing work. The Cleansing Services Department also deploys about 100 personnel to clean about 500kms of arterial and distributor roads on behalf of ADT. It also undertakes work on behalf of government in, for example, clearing dump-sites in non-urban areas – a responsibility which formally rests with Local Councils but which they fail to carry out effectively, presumably through lack of resources, or lack of over-sight.

155. What is the best long-term solution? There seems no reason, either in principle or in practice, why a consortium arrangement, based on similar contractual terms to ELC cannot be drawn up using at its core the 175 or so government employees currently in service together with other private sector employers. A number of private cleaning contractors already operate on behalf of Local Councils cleaning the urban areas. It will be a matter of extending the scheme to embrace a large enough consortium (ELC consists of four companies) already in the public cleansing field, acting in partnership with government. However, the monitoring controls and the drawing up of tenders for such services will need to be very tightly drawn to ensure that clear benchmark standards are laid down and, most importantly, adhered to. Monitoring, regulating and enforcing good practice and quality service delivery by the private sector will be essential to the success of the new public-private sector way of operating in this field.

156. As to the structural arrangements for such a consortium, the Local Councils are already organised into nine regions (see map below) for the purposes of law enforcement services in connection with traffic and parking offences in Local Councils. They have their own Joint Committees and Tribunals and Commissions for Justice. A new 'Clean Environment Consortium' should operate through the Local Councils on a regional basis. The consortium would be subject to bench-marks set and monitored on a monthly basis by a Monitoring Board in either the Ministry of Communications and National Projects as happens now with ELC or with the Office of the Prime Minister. Such a scheme would fit well with the government's desire to have more public-private initiatives of this kind, would – with the addition of the extra resources needed – make all Local Councils responsible for every part of their geographic area and, most importantly, improve the standard of cleanliness and tidiness of our country, not simply the so-called core areas.



157. The organisation of the nine Regions is as follows:

- 1. Regional Area Zejtun: Councils 26, 20, 36, 57, 62 and 10.
- 2. Regional Area North: Councils 24, 37, 38, 39, 44 and 55.
- 3. Regional Area Gozo and Comino: All Councils in Gozo.
- 4. Regional Area Valletta: Councils 18, 34 and 1.
- 5. Regional Area East: Councils 21, 46, 52, 53, 59, 61 and 62.
- 6. Regional Area Fgura: Councils 3, 5, 17, 4, 29, 35, 65 and 8.
- 7. Regional Area Central: Councils 27, 41, 47, 6, 9 and 7.
- 8. Regional Area Birkirkara: Councils 12, 13, 14, 16, 28, 32, 2, 68, 50 and 58.
- 9. Regional Area Zurrieq: Councils 15, 31, 33, 40, 49, 51 and 67.

PART III - ENFORCEMENT, EDUCATION AND ENCOURAGEMENT OF GOOD PRACTICE

The Need for Enforcement , Education and the Encouragement of Good Practice

158. In the environmental field, flouting the law is endemic. It is the Achilles' heel of Malta's environment. Illegal boat-house owners abound. Illegal structures continue to be constructed. Structures built illegally outside the development zone continue to be 'sanctioned' by MEPA; that is, they are made legal. Illegal hunters' and trappers' hides continue. Illegal hunting and trapping continue. Vehicles – chief among them public and government transport – continue to emit poisonous gases. Illegal water extraction continues to deplete our precious and irreplaceable mean sea-level water aquifer.
159. The state of building construction sites continue to defy government site management regulations. Illegal littering continues unabated. Illegal dumping in the midst of our remaining cultural landscape continues. Our coast-line continues to be defaced by extraneous and illegal structures. Illegal quarries continue in operation. Construction development is permitted to intrude on our cultural and heritage sites. The ecology and cultural habitats continue to be threatened by illegal construction. Public footpaths in the countryside continue to be illegally closed. Illegal noise pollution is endemic, especially during the fireworks season.
160. As this report has made clear, improvements in the way the regulatory authorities operate and are organised are a vital pre-requisite to a better environment. But enforcement of the law and public education about the need to protect the environment, backed up by the encouragement of more environmentally friendly behaviour are also key to a better environment. Unless respect for regulation and the rule of law are backed up by their enforcement, we shall always lag behind the standards set in other EU countries. Unless people are made aware of the necessity to protect the environment through public education campaigns they will never learn to respect and protect it. Enforcement, education and encouragement of good habits go together.

Enforcement

161. For enforcement to work effectively three key ingredients must be present. First, there must be the political will to implement it. Too often in discussion with officials while preparing this report, and reading the MEPA Audit officer's annual reports, the clear impression is given either that officials are held back by political involvement from taking the necessary enforcement action, or the need to fill vacant posts in the enforcement sections of regulatory authorities or the police force are not backed or given sufficient priority by Ministers. Secondly, there must be a sufficient number of enforcement officers deployed and available to cope with the task.
162. Thirdly, once enforcement has been implemented, the law-courts must ensure that the administration of justice reflects the seriousness of the offence and recognises the need to introduce a culture change of respect for the environment. Too often there have been instances of environmental law-breaking – one recalls immediately hunting transgressions or the flouting of building regulations – apparently being treated less severely than the public might expect or wish for. This undermines the regulatory authority as well as conveying the misplaced message that the environment is of minor or lesser importance.
163. A number of enforcement agencies are involved in 'policing' the environment. They consist of the following:
- **The Administrative Law Enforcement (ALE) branch of the Malta Police Force.** There are 21 field officers in the Malta Police Force who are allocated to the specific role under ALE of dealing with a range of environmentally related offences – for example, illegal hunting and trapping including anti-hunting at sea; traffic offences, including vehicle emissions; removal of derelict vehicles; noise pollution, littering and dumping; support for MEPA on the removal of illegal structures; the inspection with Customs and Excise of the importation of protected species of birds and animals. But ALE is also used for a variety of other duties, such as dealing with Band marches and festas, patrols at sea, policing in tourist areas etc. ALE is clearly seriously under-resourced and tends to have its roles defined by seasonal priorities. Through no fault of its own, it is as a consequence a Jack of all trades and master of none.
 - **District Officers of the Malta Police Force Deployed throughout Malta and Gozo.** The remainder of the Malta Police Force, which is deployed in its majority in District headquarters, is nominally also responsible for dealing with the same offences as ALE. In practice, their priorities are different and only cursory attention appears to be paid to environment related offences since they are viewed as either the responsibility of ALE or of others (such as the Local Council, MEPA etc.). The impression given is that offences against the environment are not regarded by District Police officers as their business – an attitude which, if true, the Commissioner should be urged to rectify. District Police do appear, however, to get involved with noise pollution (excessive music etc.) when complaints are made.

- **MEPA Enforcement Officers.** There are currently between 3 and 8 Enforcement Officers in MEPA. There should be 24, but approval to recruit more has not been granted on financial grounds. The MEPA Audit Officer has consistently drawn attention to the lack of enforcement resources within MEPA and the haphazard nature of its application. This gives the impression of MEPA being weak with major contractors and strong with the ordinary applicant. MEPA is in any case also short of Environment Protection Officers (not to be confused with Enforcement Officers) who are the expert inspectors in various technical areas. There are currently about 4 or 5 when there should be about 10.
- **ADT Enforcement Officers.** There are about 20 ADT Enforcement Officers. They are involved in the enforcement of all forms of public transport infringements (such as conformity with service contracts, bus time schedules, driver behaviour) for route buses, mini-buses, horse-driven cabs, taxis and chauffer-driven vehicles. They also carry out emissions checks and other road-side checks, such as vehicle weights, general maintenance of vehicles and tacograph checks. The paucity of road-side checks on vehicle emissions appears to bear out the inadequacy of resources available to perform all these tasks.
- **MRA Enforcement Officers.** There are none. It would appear, therefore, that no resources currently exist for enforcing illegal extraction of water or illegal quarrying. However, the Mineral Directorate of MEPA issues development permits for quarries and presumably therefore, has the responsibility for enforcing transgressions. While the MRA issues quarry licenses to extract the stone monitoring and control is done by MEPA. Any enforcement in this area therefore falls on the over-stretched handful of MEPA Enforcement Officers identified above.
- **Local Councils.** Local Councils employ private wardens on contract. Their focus is almost entirely on traffic offences (mostly illegal parking), simply because it has been found almost impossible to collect the fines imposed by the courts on those who committed such offences as littering or dumping. This issue is discussed more fully in paragraph 171 below.
- **Ministry of Social Policy.** A number of Public Health inspectors are, *inter alia*, allocated to the control of excessive noise, but enforcement rests either with ALE or MEPA.

164. Table 2 shows the range of enforcement responsibilities and the resources available in consolidated form.

Table 2
CONSOLIDATED TABLE OF ENFORCEMENT RESPONSIBILITIES AND RESOURCES

Enforcement Agency	Hunting & Trapping	Litter & Dumping	Vehicle Emissions	CO 2 Emissions	Illegal water Extraction	Illegal Structures	Planning Abuses	Noise Pollution	Light	Illegal Hunting at Sea	Illegal Quarrying	Manpower Available
ALE	√	√	√	√		√		√		√		21
Local ¹ Wardens		√	√									NIL ¹
Green Wardens ²		√	√		√			√				NIL
MEPA				√		√	√	√	√ ⁵		√	3 to 8
ADT			√									26 ³
MRA					√						√	NIL
Health Inspectors ⁴								√				
Dist Police	[√]	[√]	[√]	[√]		[√]		√				N/A

Footnotes

- 1 Local wardens are employed by Local Councils. The focus is currently on traffic/parking offences*
 - 2 Green Wardens would supplement Local Wardens, concentrating on environmental offences*
 - 3 These 26 ADT officers perform a range of other traffic related duties. Attention to vehicle emissions is thus extremely limited and estimated at perhaps 20% of the manpower available*
 - 4 While District Police officers get involved in local noise complaints, health inspectors in the Ministry of Health are ultimately responsible for dealing with these enforcement issues, but in practice leave it to ALE*
- ⁵*Light pollution is not currently enforced or controlled.*

165. Two clear deductions may be drawn from the above assessment. First, the range of enforcement roles is extremely wide and technically diverse. Second, all the agencies are severely under-strength and are deployed in penny-packets in various roles with a consequent dilution in the ability to enforce the law effectively. There is a patent need for more resources to be allocated to the recruitment and training of Enforcement Officers.
166. Enforcement of the law is crucially important to the protection of the environment. But to do so effectively will require a conscious re-direction of resources to this area of government business, as well as the organisation and political back-bone to make it happen. Unless enforcement and the application of the rule of law are made central to the safeguarding of the environment, the environmental deficit will continue to grow.
167. The current organisation and arrangements for enforcement in the environmental field are inefficient as well as ineffective. There is a need for a single 'Environmental Enforcement Agency' to be set up which will be answerable to the 'minister for the environment'. This is now the Prime Minister, though there may be an organisational case for linking the Agency with the cleansing responsibilities in the Ministry for Communications and National Projects. This will entail the concentration of all the Enforcement Officers in MEPA, ADT, MRA (when these are allocated to them), as well as 'Green' Wardens, into one Agency. They will be answerable to one Agency head who will deploy the resources available to him as he thinks fit within priorities laid down by government.
168. While the MEPA, ADT and MRA enforcement officers are currently public officers, there would be merit in contracting out this role to the private sector in exactly the same way as the local wardens dealing with traffic and parking offences have largely taken over this area of enforcement from the Police. Annual budgetary provision will have to be made based on the number of man-hours which it is estimated will be needed by Local Councils, MEPA, MRA and ADT to deal with the range of offences listed in Table 2 above. The budgetary allocation will be calculated broadly on the needs anticipated for the regulatory authorities of MEPA, ADT and MRA, as well as the Local Councils.
169. ALE and District Police Officers would as now remain responsible for the enforcement of a range of environmental offences and ALE would have to form a core part of the Enforcement Agency. However, the size of ALE needs to be considerably increased from 21 to, say, 36 if it is to be even marginally more effective. It will also be important to ensure that the line of responsibility to the Head of the Environmental Enforcement Agency of the Assistant Chief Commissioner responsible for ALE is clearly laid down without, of course, weakening in any way his employment line management responsibility and accountability to the Commissioner of Police.
170. One of the short-comings of the current arrangements is that collection of fines for environmental offences – especially those for littering and dumping – has proved difficult to apply. While traffic offences and parking fines are under-pinned by the fail-safe arrangement of the annual vehicle registration license to ensure compliance (ADT will not issue the car license until all outstanding fines have been cleared), no such arrangement currently exists for littering or dumping offences. This is a lacuna in the law which must be corrected. This can be done by adopting one of two options: either that the provisions of any government service – whether the issuing of a passport, medical or hospital treatment or a car license – will be conditional upon payment of all outstanding fines including those for littering, or tied in to the annual tax return (which would include a section for outstanding fines of any kind to be subject to the same regime as any tax outstanding (including interest on the amount outstanding or undeclared.))
171. The establishment of an 'Environmental Enforcement Agency' on the lines outlined will be more cost-effective (in exactly the same way as has happened with the payment for traffic wardens, the income from fines should more than compensate for the costs of sub-contracting the role of Green Wardens to the private sector) as well as being better targeted, organised and controlled. The current blurred responsibilities and lines of accountability will be removed and all enforcement - for whichever authority - will be carried out by the one Enforcement Agency.
172. There would also be considerable merit in introducing the need for the Enforcement Agency to render an annual report of its activities to Parliament. The Parliamentary Standing Committee on Planning would then have the opportunity to scrutinise the activities of the Enforcement Agency as well as to give it the high profile needed to show that environmental protection and enforcement are two sides of the same coin.

Education

173. Hand in hand with enforcement must come a sustained campaign of public education, through all the media available, aimed at inculcating an awareness of the environment and the need to safeguard it. There appears to be a feeling among some sections of society that the environment is only the government's concern, not

theirs. Until it is acknowledged that the environment belongs to all of us, and that safeguarding it is in the interests of everybody, we shall not overcome the littering, dumping, shabbiness and pollution that scar so many parts of the island.

174. This message can most effectively be transmitted through education at schools to ensure the next generation adopts it as an intrinsic part of its culture, upbringing and ethic. But it has also to be backed up by a constant process of public information to induce people to change their life-styles and to adapt to a greener environment. Safeguarding the environment must become second nature to everybody. The good habits that result from informed environmental education, backed up by a structure of disciplined enforcement, are vitally important to the long-term reduction of the environmental deficit. The anti-smoking campaign should serve as a good example of what can be achieved.

Encouragement of Good Practice

175. The third leg of the regulatory process of inculcating environmental awareness and cooperation is to encourage good habits and good practice through the use of the carrot and the stick. This means encouraging people to adopt good practice because it is not only more beneficial to civil society as a whole, but also more advantageous financially or economically to do so. Excellent examples of this are the proposals for investment in sources of clean renewable energy or the need to adopt sustainable energy-saving habits.

176. What is required, however, is a concerted plan, bringing in all the regulatory authorities and other government departments, as well as private industry, commerce, business and civil society, which encourages a change of approach and life-style in the environmental field. Public environmental education to raise awareness as discussed above, economic approaches, as well as voluntary schemes targeted at influencing consumer behaviour at all levels need to be brought together in a holistic manner and implemented. Public and business attitudes on matters which involve fundamental changes of habit are slow to happen unless there are the right incentives and the motivation to do so.

177. On the economic front, while the polluter pays principle has already been introduced in some areas it must now be extended more widely. Environmental taxes to encourage a change of behaviour by penalising high emitters of pollution or waste must apply to every aspect of what we do. We have already made proposals in Part II for dealing with fossil fuel emissions. Other areas now need to be brought into the fold and the government's green public procurement policies must be more widely extended.

178. Industry recognises that if Malta is to meet the ambitious targets to reduce emissions and other environmental hazards it has to adapt. Government must provide industry with the fiscal, administrative and legislative framework to reduce waste and to encourage good practice. Standards for vehicle emissions, fossil fuel use, the choice of appliances and machinery and the planning regulations on new buildings and factories must be applied with this objective in mind. The construction industry – a huge generator of waste and pollution – must be brought into line. A reporting system should be introduced which establishes a carbon foot-print of each company. A similar bench-marking system already exists with a company's audited accounts. The principle should now be extended to a company's environmental accountability and standards.

179. High energy products should be penalised fiscally. Just as health and safety standards have been set for new building (for instance, fire doors), energy efficiency standards should also be established to encourage low energy use. Economic mechanisms, such as Tradable Renewable Energy Certificates and regulations designed to promote renewable energy should be encouraged.

180. While the imposition of standards both on producers and on consumers must form the main thrust needed to change our approach – encouraged by pricing, targeted subsidies, tax incentives and public awareness-raising campaigns – there is also room for voluntary arrangements between government and industry as a means of promoting better environmental practices. Such standards as ISO 14000, EMAS and eco-labelling need to be encouraged. Voluntary agreements of this nature are attractive to consumers who, armed with this information, can make purchasing choices which will act as a driver for change.

181. Voluntary agreements of this nature between industry and government thus not only improve the quality of environmental management and products, but also save resources, reduce costs and promote greener markets. Companies which lead in carbon reduction and invest in a cleaner environment should be recognised both by government and by the consumer and should gain credibility – and therefore economic benefit – accordingly.

182. It is therefore proposed that a minimal package of measures to encourage the adoption of good environmental practice should include the following:

- ❑ The introduction of incentives through grants or tax breaks to those house-holds or businesses which invest in clean energy – solar panels, photovoltaic panels, hybrid or electric cars – and large rebates for the purchase of appliances that use less energy.
- ❑ The replacement of the current car registration tax system by one related to vehicle emissions.
- ❑ The extension of green public procurement by government to every aspect of its expenditure.
- ❑ The introduction of domestic waste separation at source and the encouragement of own waste collection of batteries, packing waste and cars.
- ❑ The improvement of waste management through re-cycling and more advanced technologies.
- ❑ The introduction of facilities to deal with solid waste and ship waste.
- ❑ The implementation of plans for the management of burnt oil.
- ❑ The exemption from payment of eco-tax to those producers who join the new waste management scheme.
- ❑ The introduction of a dual-tariff scheme for industry for electricity consumption.
- ❑ Other household energy conservation measures, such as the use of lower energy bulbs, to be encouraged.
- ❑ The introduction of waste management audits across all government ministries and entities to establish a base-line for the amount of resources being consumed. This would form the start-point for setting targets for future reductions across government.
- ❑ Water conservation measures as set out in Part II of this report.

PART IV – CLIMATE CHANGE AND MALTA'S SUSTAINABLE DEVELOPMENT

Global Warming and Climate Change

183. In the next 20 years or so Malta is not only going to have to cope with adjusting to the needs of accession to the European Union, sustainable development and the competitive demands of globalization, we are also going to have to adjust to the threats of climate change and global warming.
184. While no-one can predict the outcome of climate change or its effects with complete certainty – and there are legitimate debates over particular details and effects of the world climate system – scientists now know enough to understand the risks. We therefore need to continue to lend our support to stronger international action to limit the rise of global emissions of greenhouse gases and to take steps now to mitigate the effects. These must be viewed as an investment. The cost incurred now and in the coming few decades to avoid the risk of severe consequences in the future.
185. Global warming will affect Malta in many ways. But most particularly in two crucial and fundamental respects: our supply of fresh water and our energy security. The impact of climate change on Malta will lead to more extreme and haphazard weather patterns with prolonged Saharan heat-waves, shorter, more intense rainy periods and longer, dryer spells. Malta's attraction as a tourist destination will be undermined with all the economic consequences that follow. The escalating rise in temperature will be accompanied by severe water shortages as rainfall over the central Mediterranean is drastically reduced.
186. The biggest impact of this will be to exacerbate our problems with our water table, already not being replenished quickly enough. Soil erosion will be accelerated. Lack of water in the soil and rising sea levels will lead to increased salinity. Crop yields will be diminished. The process of 'desertification' will become unstoppable.
187. Energy to drive our power, to drive our industry, to drive our transport, to run our desalination plants – which provide over 50 per cent of our water – and every aspect and comfort of modern life will not only become extremely expensive as big price increases are made to hold energy demand and carbon emissions in check. We will also be under increasing pressure to replace completely the carbon fossil, CO₂-producing energy supply sources in place today. We are already under intense pressure to make cuts in our carbon emissions. This will increase.
188. We have to shift to a low carbon economy. But we have to do this by achieving energy security through greater energy efficiency, conservation and the diversification of energy sources and supplies – off shore wind energy (whether land-based, shallow off-shore or deep off-shore), solar energy (thermal and photovoltaic technology), possibly also nuclear (why not?) hydrogen and bio-energy are all possibilities. We have to examine all the options with an open mind.
189. Future energy supply and the provision of adequate water pose major challenges. This is why climate change and the consequent need to secure our water and energy supplies are seen as the number one challenge facing Malta in the next few years. Whether or not climate change is averted, the threats to our continuing water and energy supply are significant. They are urgent in view of the long lead times and the major investment cost required. And they demand the most careful planning for they impact on society, our way of life and our environment and economy in the most fundamental ways.

A National Strategy for Sustainable Development

190. For Malta's sustainable development to succeed, three interlocking objectives must be met. First, the maintenance of high and stable levels of economic growth and employment. To prosper we must be competitive and entrepreneurial, able to weather the storms that beset a micro-state like ours. We need a workforce equipped with the education and skills for the 21st century and businesses ready to invest and an infrastructure to support them. Secondly, social progress that recognises the needs of everyone in an affordable manner. Thirdly, we need effective protection of the environment and the built culture heritage. We need to be prudent in the use of our limited natural resources.

191. The picture that has just been described of the effects of global warming and climate change poses difficult questions about the economic, social and environmental way ahead. The need for a sustainability plan is now all the more vital if Malta is to come through the next few testing years with its economy and the welfare state intact, and its environment and quality of life safeguarded from further erosion.
192. There is a need for the National Commission for Sustainable Development which has been constituted and working for over six years to finalise its plan for Malta. The Strategic Plan for Sustainable Development for the ten year period 2007 to 2016 is a comprehensive document. It covers the multitude of concerns about the environment to which this report has alluded, from sensible land use to renewable energy. But, more broadly, it highlights also the social and economic development issues which need to be tackled simultaneously if true sustainable development is to be achieved. The affordability and equity of our social security systems. The carrying capacity of Malta for sustainable tourism. The need to raise greatly our labour productivity and competitiveness by having lower unit production costs. The pivotal role of education in our economic as well as our social development. The need to promote innovation in science and technology. Gender equality and greater female participation in the work-force. Respect for the rule of law and the fair, speedy and efficient administration of justice. The plight of illegal immigrants and many others.
193. The principles of sustainable development – now under the leadership of the Prime Minister - need to be placed at the centre of government – into all decisions and policies and in the way government operates. A workable National Sustainability Plan is one of the greatest tests facing Malta's machinery of government since accession to the European Union. The existing plan now needs to be up-dated and considerably sharpened up.
194. For such a plan to succeed, there is an urgent need to appoint a full-time team, led by a 'Commissioner for Malta's Sustainable Development', to drive the plan forward – to revise the plan drawn up two years ago, to implement it and to monitor and evaluate its effects. Given the scope of such a plan – affecting as it will every aspect of Malta's economic, social and environmental development – and the breadth and range of interests of those affected – stretching from every component of civil society, industry, commerce and the social partners to every government department and public authority – it will be vital for the Commissioner and his team to answer directly to the Prime Minister and to form an integral part of the Office of the Prime Minister. The formation of the Cabinet Committee on the Environment which this report has highlighted earlier will be a crucial forum for drawing the threads together on climate change at the ministerial level under the leadership of the Prime Minister.
195. The challenges of sustainable development in the face of the formidable problems stemming from climate change and global warming are such as to require the leadership and commitment from every facet and strata of society. Clear targets for key sectors must be established and a system of national reporting, monitoring and the regular assessment of targets must be established. Civil society must be encouraged to participate fully in the process and to take ownership of the whole plan. It is the most workable way in which the environmental deficit – whose magnitude will be exacerbated by global warming and climate change – can be successfully addressed.

PART V – CONCLUSIONS AND RECOMMENDATIONS

196. It is concluded that:

- ❑ While the government has commendably tackled the country's economic deficit, the environmental deficit has remained stubbornly out of control, and is growing.

The Economy and the Environment (6 – 18)^{1*}

- ❑ Sustainable economic development is dependent on a proper balance being struck between economic resources and the environment. Economic growth on its own, without environmental sustainability and social development, is not progress.
- ❑ The environment will be the largest single beneficiary of a significant proportion of the entire allocation to Malta of EU Structural and Cohesion Funds for the years up to 2013. This is a once-only opportunity to reduce the environmental deficit. It is therefore essential that we manage, regulate and control the environment efficiently and cost-effectively.
- ❑ The deficiencies in the environmental state of the Maltese Islands are well documented. They stem from over-development and land abuse, poor air and water quality and inland coastal waters and marine environment, and our neglected bio-diversity. The deficiencies are institutional, structural, regulatory and administrative. For effective improvements to be made, they should be tackled holistically and in a coordinated manner.

The New Ministerial Environmental Responsibilities (20 – 30)

- ❑ Subject to the clarification of some grey areas of responsibility, the new allocation of ministerial portfolios for the environment appear sensible and workable. They place responsibility for environmental policy in a 'Supremo' – the Prime Minister – while leaving other major elements of resources, major national projects and rural affairs directly affecting the state of the environment in two key ministries: the Ministry for Resources and Rural Affairs and the Ministry for Communications and National Projects.
- ❑ There will be a need for firm inter-ministerial coordination through a strongly-led Cabinet Committee under the Prime Minister to bring in both the new Ministries directly concerned as well as all other ministerial stakeholders – tourism, culture, Gozo, health, finance – at the policy-making level.
- ❑ It is essential that the Office of the Prime Minister has the necessary staff and structures in place to fulfil its task of drawing up a coordinated plan across all ministries and with the authority to knock heads together and to set priorities and deploy resources in the best way possible.
- ❑ Given the demands and minutiae of environmental matters at the EU level there is a strong case for allocating this important aspect of work to one of the Parliamentary Secretaries in the Office of the Prime Minister, possibly by linking it with tourism.

The Reform of MEPA (31 – 121)

- ❑ The predominant regulator in the environmental field is MEPA.
- ❑ By virtue of its wide responsibilities for, and involvement in, almost every aspect of the environment, MEPA probably exercises the greatest influence on the quality of the environment in Malta. If MEPA does not function efficiently its baleful effects are felt by everybody.
- ❑ If MEPA's crucial position as Malta's only bulwark against land abuse is to be strengthened, there is now a pressing need to ensure a clear fire-wall is built between the government of the day and the Authority. The reform of MEPA should be focussed on three main areas: MEPA's structure; the composition and selection of its Boards and Commissions; and its systems and procedures designed to ensure transparency, effectiveness and accountability. Its reform must take account of changes needed in these three inter-locking areas, together with any concomitant legislation to under-pin them.

MEPA's Structure (38 – 46)

- ❑ The decision to concentrate the roles of development planning and environmental protection into one structure has been questioned. A number of people have advocated that it should be de-merged, leaving a separate, free-standing planning authority and an environmental protection agency.
- ❑ It has been concluded that, on balance, the current organisation carries significant advantages. To separate

1 ^{*} Numbers in brackets cross-refer to the relevant paragraphs in the Report.

the two functions would undermine the need for close communications and coordination between the two halves of the same problem on matters of common concern. The two need to be able to coordinate their planning together. This is best done under the one roof (ideally collocated in the same building) led and overseen by the same management hierarchy.

- ❑ The essential challenge now lies in making the integrated organisation work better by giving the Environment Directorate the human and financial resources to do its job properly and to ensure its voice is properly heard in MEPA's deliberations. It must be given a comparable and equivalent decision-making voice on development planning issues to that of the Planning Directorate both by institutionalising this administratively in MEPA's regulations, as well as by making any necessary legislative changes to the Act.
- ❑ However, there is one other important structural issue which needs also to be addressed. This report questions the need for having both a part-time Chairman and a permanent Director General. **It is recommended** on grounds of accountability, leadership and for better organisation of MEPA that there should in future be one full-time Executive Chairman appointed. Changes to the Development Planning Act will need to be made accordingly.

Composition and Selection of Boards and Commissions (47 – 73)

- ❑ There is a need for improvement to the method of selection of members of MEPA's Boards and Commissions to ensure that in-so-far as possible any possible conflicts of interest are removed and Boards and Commissions are composed of members who are more representative of civil society as a whole.
- ❑ This report has sought ways of reducing systemic conflicts of interest without negating the need for technical competence, while ensuring that decisions made are completely above board. The aim has been to ensure that those responsible for reaching decisions are able to do so as objectively and impartially as possible, guided to the right conclusion by good professional advice and by a legal framework which allows for as little room for interpretation as possible
- ❑ **It is therefore recommended that:**
 - The 5 public officers and 2 Members of Parliament should no longer form a part of the Board. However, one public officer to represent government should be retained on it.
 - The size of the MEPA Board should be reduced to 9 members, instead of the current 'thirteen to fifteen'.
 - The Prime Minister will select the names of the proposed Executive Chairman and the Chairmen of the Commissions. The Prime Minister should only appoint them after consultation with the Leader of the Opposition. If there is no agreement on the candidates being proposed the public should be given the reasons for the objections. The President of Malta will then be invited to resolve the issue.
 - The remaining members of the Board, including the Deputy Chairman, should be nominated from among the range of civil society bodies covering physical planning, economic development, social and community affairs and the protection and promotion of the environment and cultural heritage listed in paragraph 65 of the report. They should be persons of known integrity and good judgment in line with the criteria in paragraph 62.
 - The Prime Minister should have the power to vet and, if necessary, to reject any nominees from these bodies.
 - The Prime Minister should submit the names of the remaining members of the Board to the Parliamentary Standing Committee on Development Planning for scrutiny and approval.
 - Article 3 of the Development Planning Act, 1992 should be amended accordingly.
 - The membership of the Development Control Commissions and the Planning Appeals Board panels should be drawn from the same pool of nominating bodies as the MEPA Board, subject only to the proviso that two seats on each Commission should be specifically allocated to one nominee each respectively from the Chamber of Architects and one from cultural heritage or environment NGOs. The nominations to the Planning Appeals Boards should also specifically include one nominee by the Chamber of Advocates.
 - Nominations should be subject to the same vetting and scrutiny process by the Parliamentary Standing Committee on Development Planning as for the MEPA Board.
 - Article 17B of the Development Planning Act 1992 should be amended to reflect the above changes accordingly.
 - To ensure that the members of the Boards and Commissions receive objective technical advice, **it is recommended that**, if it is judged necessary to do so by the Board, the advice of professional officers in MEPA should be bolstered by the allocation of qualified planning professionals engaged on a full-time contract basis specifically to provide technical advice to the specific Boards and Commissions. They would be barred from undertaking private practice during their period of full-time employment by the Boards and Commissions

- **It is further recommended that** Parliamentary scrutiny of MEPA's operational effectiveness and efficiency should be introduced and that the Parliamentary Standing Committee on Development Planning's role should be amended accordingly. The Standing Committee should formally be the recipient of the MEPA Auditor's reports. Article 17B should be amended accordingly.

MEPA's Systems and Procedures (74 – 121)

- ▣ There is also a need for the procedures and systems to be followed by the MEPA Board, the three Development Control Commissions and the Planning Appeals Board panels to be tightened up in several areas to close loop-holes which have led to abuse and to counter the common criticism that MEPA favours the big developer at the expense of the ordinary man in the street.
- ▣ **It is therefore recommended that** improvements should be made in a number of areas:
 - The EIA process needs to be established on a proper foundation.
 - The choice of EIA consultant should be made by MEPA, but paid for by the developer.
 - EIAs should not be waived until public consultation has been thoroughly considered.
 - The thresholds calling for EIAs to be conducted on all major projects laid down by the EU Directive should be strictly adhered to. If in doubt MEPA should err on the side of the stake-holder, not the developer, in calling for an EIA.
 - The 'social impact assessment' of EIAs must become an intrinsic component of the process.
 - The conduct of Board hearings, appeals procedures, access to information and public consultations should be made transparent and above board through observance of the proposals set out in paragraphs 81 to 90. MEPA's regulations and, in some cases, the Development Planning Act will need to be amended accordingly.
 - The abuse of loop-holes in Outside Development Zone (ODZ) rules should be closed as proposed in paragraphs 91 to 95. MEPA's regulations and, in some cases, the legislation will need to be changed accordingly.
 - MEPA should draw up a new policy document to give a basic level of protection to buildings of historic or architectural value outside UCAs which have not yet been scheduled.
 - The often-invoked MEPA practice of issuing planning permits with the legal proviso of 'Saving Third Party Rights' should be reviewed.
 - In the field of aesthetics, MEPA should take the lead in following up the proposals made by the Chamber of Architects in their report 'The Urban Challenge' to promote better standards of design and aesthetics.
 - An Aesthetics Committee should be formed and given broad scope to regulate all planning issues to do with good design and architecture. MEPA's regulations should be amended accordingly.
 - The effectiveness of the Advisory Committees to the Planning Authority must be enhanced. Their advice should not only be sought but also acted upon.
- ▣ MEPA's policies on planning development should be used to influence and target the current excess of housing supply with a view to reducing it. There should be a review of the recent policies to raise building heights all over Malta with a view to reversing them. The policy on high-rise buildings should be revisited. Designated UCAs must be actively protected to avoid building tall apartment blocks immediately adjacent which dominate and encroach upon their character. The retention of urban spaces in protected areas should be actively protected.
- ▣ The whole ethos and culture of MEPA should be re-balanced so that the central focus is directed at building and land conservation and environmental protection;
- ▣ Though not MEPA's responsibility, the long-awaited revision of the Rent Act by government should be accelerated.
- ▣ The coast-line should be kept free of any further developments. Malta's commitment to Integrated Coastal Zone Management as part of the Barcelona Convention should be rigorously observed.
- ▣ Access by the general public to the countryside should be made truly accessible.
- ▣ There must be closer collaboration between MEPA and the Lands Department to ensure public land is properly safeguarded.
- ▣ Steps to safeguard Malta's endangered biodiversity and nature should be enhanced. Practical management of Natura 2000 sites must be introduced.
- ▣ The position and independence of the MEPA Auditor is central to MEPA's proper regulation and vital to its transparency and public accountability. The Auditor's new position within the Ombudsman's office may be a workable compromise, but the situation should be kept under review to ensure the Auditor is able to fulfil his role efficiently and effectively.

The Malta Resources Authority (122 – 136)

- ❑ The MRA is responsible for two crucial areas of regulation of Malta's natural resources: water and quarrying
- ❑ Water is a resource of vital strategic, social and economic importance. Yet the depletion of the water table by illegal extraction – a water table which global warming will deplete even further – is putting the mean sea level water aquifer at severe risk of being wiped out.
- ❑ **It is therefore recommended that** there should be firmer regulation and control of this vital resource:
 - A National Water Policy should be urgently established.
 - The proposal to build a network of underground tunnels spanning Malta to capture all storm water should be expedited. Until this is done it will be difficult to impose tighter controls over illegal extraction since, in the main, this is carried out by farmers who are not be able to grow their crops unless they had access to their bore-holes.
 - A judicious policy of reducing demand for water and encouraging its conservation should be introduced.
 - The price of water, which is currently heavily subsidized by government, should be increased gradually to manage water demand more sensibly.
 - All bore-holes should be registered and a tariff for their use should be properly licensed. More realistic charges to consumers of water from bowsers should be imposed.
 - MEPA should make it a condition of new planning permits that a cistern to harvest rain-water from the roof should be obligatory for all new buildings.
- ❑ The quarrying industry should be reduced in size and be better regulated.
- ❑ **It is therefore recommended that:**
 - The whole quarrying industry should be placed under one regulatory authority, which should be the MRA, to cover both its monitoring and its operation.
 - The annual extraction of limestone from our quarries should be capped to conserve what we have and to control the rate of construction.
 - The price structure of limestone should take account of the true economic cost and the real value of stone.
 - The use of re-cycled old stone should be encouraged
 - The importation of substitutes for our hard stone should be investigated.

The Motor Transport Authority (137 – 139)

- ❑ Although responsibility for monitoring air pollution rests with MEPA, ADT still retains key responsibilities for controlling and drastically reducing the effects of vehicle emissions pollution at source. There is now an urgent need for concerted action to be taken on a number of measures.
- ❑ **It is therefore recommended that** the package of measures set out in paragraph 139 should be urgently implemented.

Local Government (140 – 157)

- ❑ Given Local Councils' virtually exclusive involvement in environmental matters, their transfer as a part of the Office of the Prime Minister is to be welcomed.
- ❑ It is pointless to devolve regulatory authority in such matters as cleanliness, litter and dumping, vehicle emissions and other related environmental matters to Local Councils unless it is backed up by the necessary human and financial resources and access to the means of implementation.
- ❑ **It is therefore recommended that:**
 - Local Councils should be given adequate resources – and full responsibilities – for ensuring the cleanliness of all areas within their geographic boundaries, including large swathes of the Island which generally appear to fall between different stools when it comes to their cleanliness.
 - The public-private partnership arrangement that has so successfully been the model for creation of the Environmental Landscapes Consortium should act as the basis for a national 'Clean Environment Consortium' to be formed tasked with responsibility for the provision of cleansing services on contract to Local Councils.
 - The already existing 9-Regional structure of Local Councils should be the organisational model for overseeing the operation of the 'Clean Environment Consortium'.

Enforcement, Education and Encouragement of Good Habits (158 – 182)

- ❑ In the environmental field, flouting the law is endemic. It is the Achilles' heel of Malta's environment.
- ❑ For enforcement to work effectively three key ingredients must be present. First, there should be the political will to implement it. Secondly, there should be a sufficient number of enforcement officers deployed and

available to cope with the task. Thirdly, the law courts should ensure that the administration of justice reflects the seriousness with which society regards offences against the environment.

- ❑ Unless enforcement and the application of the rule of law are made central to the safeguarding of the environment, the environmental deficit will continue to grow.
- ❑ **It is therefore recommended that:**
 - A single 'Environmental Enforcement Agency' should be formed, answerable to the Minister for the Environment, the Prime Minister, which brings together the many disparate enforcement agencies currently scattered around in penny packets under one head.
 - The role of enforcement should be contracted to 'Green Wardens' in the private sector in exactly the same way as the local wardens who deal with traffic offences and parking infringements.
 - ALE should also, as now, remain responsible for dealing with a range of environmental offences and form a core part of the Enforcement Agency. However, the size of ALE should be considerably increased from the present 21 to 36 police officers if it is to become more effective.
 - The head of the Environmental Enforcement Agency will deploy the resources as he considers fit within the priorities laid down by government.
 - The line of responsibility for ALE to the Head of the Environmental Enforcement Agency should be clearly laid down without in any way weakening his accountability to the Commissioner of Police.
 - The current major lacuna preventing the efficient collection of fines for littering or dumping offences should be rectified. This will entail a system of tying in the payment of such fines to the provision of government services, as already occurs with traffic fines.
 - The Head of the Environment Enforcement Agency should be required to render an annual report to the Parliamentary Standing Committee on Planning Development in order for Parliament to be able to scrutinise the effectiveness of the system.
- ❑ In parallel with a stricter enforcement regime, a sustained campaign of public education in schools and through public information should be introduced through all the media available aimed at inculcating an awareness of the environment and the need to safeguard it.
- ❑ The third leg of the regulating process for inculcating environmental awareness and cooperation is by encouraging good habits and good practice through the use of the fiscal carrot and the stick.
- ❑ There should be a concerted plan bringing together all the regulatory authorities, as well as other government departments, private industry, commerce, business and civil society – the consumer - which encourages a change in environmental life-style through economic incentives as well as voluntary schemes targeted at influencing consumer behaviour.
- ❑ **It is recommended that** the range of possibilities set out in paragraphs 177 to 182 should be implemented. As a minimum, the specific measures in paragraph 182 should be put in hand as soon as possible.

Climate Change and Global Warming (183 – 195)

- ❑ In the next 20 years Malta will have to adjust to the threats of climate change and global warming.
- ❑ Global warming will affect Malta in many ways, but most particularly in two crucial and fundamental respects: the supply of our fresh water and energy security.
- ❑ We must shift to a low carbon economy. We have to do this through greater energy efficiency, conservation and the diversification of energy source and supplies. We should examine all the options for replacing our fossil-fuel burning power plants with an open mind with a view to finding the most reliable long-term solution.
- ❑ As indicated earlier, we have to take steps to conserve water and save our mean sea-level water aquifer from destruction. This problem will be exacerbated by global warming.

A National Strategy for Sustainable Development (190 – 195)

- ❑ To tackle these major issues in a comprehensive and holistic manner, it is vital that we adopt a National Strategy for Sustainable Development which brings together the economic, social and environmental factors.
- ❑ Such a plan already exists. It now needs to be up-dated and properly implemented.
- ❑ **It is recommended that** the principles of sustainable development should be placed at the centre of government – into all decisions and policies and in the way the government operates.
- ❑ **It is further recommended that** there is an urgent need for a full-time team, led by a 'Commissioner for Malta's Sustainable Development', to be formed, located in the Office of the Prime Minister and answerable directly to him, to revise the plan, to implement it, and to monitor and evaluate its effects.
- ❑ The challenges of sustainable development in the face of the formidable problems stemming from climate change and global warming are such as to require strong political leadership and the commitment of all facets and strata of civil society.

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INTERVIEWS

- Mr Natalino Attard, Director for Local Government, Ministry of Justice and Home Affairs (now in the Office of the Prime Minister)
- Mr Josie Brincat, Assistant Chief Commissioner of Police, Administrative Law Enforcement (ALE)
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- Dr Godwin Cassar, Director General, MEPA
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- Professor Charles Sammut, University of Malta, Department of Physics
- Mr Joseph Sammut, Head of the Cleansing Department, Ministry of Infrastructure and Resources
- Mr Louis Vella, Assistant Director for Pollution Prevention and Control Unit, MEPA

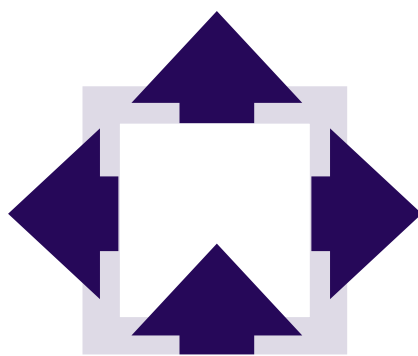
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