

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

EXECUTIVE SUMMARY

Introduction

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

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.

The Economy and the Environment (6 -12)*

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 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 important grey areas of responsibility, especially as they affect EU matters, the new allocation of ministerial portfolios for the environment appear sensible and workable. They place responsibility for the environment 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 stake-holders – 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 seems 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.

**Numbers in brackets cross-refer to the relevant paragraphs of the Main Report.*

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 most significant bulwark against land abuse is to be strengthened, 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 changes in the 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 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 to that of the Planning Directorate on development planning issues both by institutionalising this administratively in MEPA's regulations, as well as by making the necessary legislative changes.

However, there is one other important structural issue which needs also to be addressed. The 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 to reflect the new structural arrangements.

Composition and Selection of Boards and Commissions (41 – 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.

The 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 remain 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 will only appoint them after consultation and agreement 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 of the report.

The Prime Minister should have the power to vet and, if necessary, to reject any nominees from these bodies.

The Prime Minister will submit the names of the remaining members of the Board to the already established Parliamentary Standing Committee on Development Planning for scrutiny and approval.

Article 3 of the Development Planning Act, 1992 dealing with the composition of the Authority should be amended accordingly.

The membership of the three Development Control Commissions and the Planning Appeals Board panels should be drawn from the same pool of nominating bodies as the MEPA Board and follow the same selection process as for the 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 dealing with the Standing Committee on Development Planning 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 regular 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.

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 of the report. MEPA's regulations and, in some cases, the legislation in the Development Planning Act will need to be amended accordingly.

The extremely sensitive issue of the abuse of loop-holes in Outside Development Zone (ODZ) rules should be closed as proposed in paragraphs 91 to 95 of the report. MEPA's regulations and, in some cases, the legislation in the Development Planning Act will need to be amended 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 a MEPA 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.

Steps to safeguard Malta's endangered biodiversity and nature should be enhanced. Practical management of Natura 2000 sites must be introduced.

Closer collaboration between MEPA and the Lands Department must be achieved to ensure public land is properly safeguarded from illegal development.

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 have 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 – taking due account of the social impact - 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 (ADT) (137 – 139)

Although responsibility for monitoring air pollution rests with MEPA, ADT still retains the key responsibility 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 vigorously implemented.

Local Government (140 – 157)

Given Local Councils' virtually exclusive involvement in environmental matters, their transfer as 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 for ensuring the cleanliness of all areas, 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, 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 devising 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 a greater 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 of the report should be implemented. As a minimum, the specific measures in paragraph 182 should be put in hand as soon as possible.

Climate Change and Sustainable Development (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 in one holistic plan of action.

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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