

Report on Case No EN 0053

Complaint lodged by Ms Simone Mizzi on behalf of Din l-Art Helwa (complainant) on lack of proper application of policies with regards to the determination of planning applications.

Case history

This case covers an investigation opened by the MEPA Audit Officer at complainant's request¹ on an application² for development permission. The application was for the redevelopment of the former Mistra Village tourist complex at Xemxija Heights.

This application, which was an Outline application, was approved on 5 June 2008 with the decision being posted on 5 May 2009.³

The Audit Officer had not issued a report by the time his term of office had expired. The investigation was therefore taken over by this Office when the Audit Officer's caseload was transferred to the Office of the Commissioner for Environment and Planning within the Parliamentary Ombudsman's Office after 1 August 2013.

By means of a letter dated 24 October 2013 complainant reiterated its request for the investigation to be carried out, now not only on PA

¹ Audit Office file E0061 refers.

² PA 5538/04.

³ MEPA case detail sheet.

5538/04 but also on the subsequent full application⁴ which had been submitted following the issuing of the Outline Permit.

This second application was approved by the MEPA Board on 31 October 2013.

As per standard procedure, the MEPA was requested to submit its response to the complaint.⁵ The MEPA replied with a letter⁶ requesting to be given the details of the complaint. These were transmitted to the MEPA Chairman by means of an e-mail dated 7 November 2013.

The MEPA's response was received on 29 November 2013.

Observations

The complaints raised on the processing and determination of PA 5538/04 are set out in the table below accompanied by the relative response by the MEPA:

⁴ PA 6236/08.

⁵ E-mail to MEPA Chairman dated 28 October 2013.

⁶ MEPA letter dated 30 October 2013 received on 4 November 2013.

	<i>Complaint</i>	<i>MEPA response</i>
1	Building height exceeds maximum set out in policy including FAR height limitation (8 floors).	The building heights were based on the FAR policy. Indeed, the height in the number of floors is within the height in metres for eight (8) floors plus penthouse for the majority of the project. Slight departures, allowed by policy, are found at the pinnacles of the four blocks.
2	FAR policy precludes such development on ridges, and specifically in Xemxija.	The Local Plan does not earmark the site in question as a ridge. The Local Plan allows the use of the FAR policy on the site (Policy NWSP 25) and identifies the site as a potential location for medium rise buildings (Map B2).
3	FAR requires detailed design before the Board can take a decision.	The processing of the outline permit was subject to the assessment of a progression of preliminary design submitted to outline the use of the FAR principles. These were presented to the Board. Detailed plans and elevations are required as part of the full development applications.
4	Site lies within an area close to views of protected areas (Clause 7.9). This point was not mentioned in the DPAR.	Please refer to comments at point 5 on the next page.

5	<p>Insufficient information was presented with regards to the Major Visual Impact (lack of photomontages from strategic public viewing spots, no strategic sections through the ridges, EIA photomontages not presented to Board).</p>	<p>The Environment Protection Directorate (EPD) Report on the EIA presented a detailed analysis of the EIA findings. The findings of the landscape and visual amenity assessment, including the baseline conditions, the impacts, impact significance and mitigation measures as identified in the Environmental Project Statement (EPS) were included in the said EPD Report. In addition, the same report also presented the EPD views on the proposal. Under this section, the EPD reported that the visual impacts of the proposal as seen from Mistra Bay and Mellieha Ridge respectively, were of major significance. The EPD also remarked that given the location and the nature of the proposal, the impact on visual amenity, the natural and cultural landscape of the area is likely to have a major adverse impact. Subsequently, an EPS Update was prepared at a later stage following a revision in the design of the proposal. The effects of the proposal on the visual amenity and landscape were also presented in the revised EIA Report on the EPS Update dated June 2008.</p> <p>Photomontages of the proposal, including the impact significance, were presented to the MEPA Board in the EIA presentation during the Board's meeting held in public.</p> <p>In addition, photos in the EIA were taken from public viewpoints as follows:</p> <ol style="list-style-type: none"> a) Viewpoint 1: It-Torri l-Ahmar; b) Viewpoint 2: Mellieha Ridge; c) Viewpoint 3: Mistra Bay; d) Viewpoint 4: Pwales Valley; e) Viewpoint 5: Il-Veċċa; f) Viewpoint 6: St. Paul's Bay Bypass; g) Viewpoint 7: Fra Ben; h) Viewpoint 8: Coast Road, Salina Bay; and i) Viewpoint 9: Bingemma Bypass. <p>Photomontages which formed part of the EIA were presented to the MEPA Board in the EIA presentation and impacts were also outlined in Section 5.11 of the DPAR.</p>
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6	DPAR states that visual impact is 'Minor' when the EIA states that it is major.	Please see comments at point 5 in previous page.
7	No scrutiny of the application against Policy RCO 3.	Section 5 of the DPAR does outline that the site is an Area of Archaeological Importance (AAI) and an Area of High Landscape Sensitivity (AHLS) (Sections 5.6, 5.11 and 5.12 in the DPAR). Residual impacts listed under Section 5.11 in the DPAR were subsequently updated in the Notes to Committee (No. 3) where the 'major adverse' and 'uncertain' impacts together with EPD's comments on each residual impact were included (see Notes to Committee No. 3).
8	HAC recommendation to refuse was not included in the DPAR neither was it mentioned during the presentation. No HAC updated response following post-EIA design modifications.	The submission from HAC (both Cultural and Natural Heritage Panels) (refer to Notes to Committee Nos. 4 and 5) includes and covers all environmental concerns. Comments from HAC were submitted in April 2007 and April 2008. It is in the April 2008 correspondence that the HAC recommended that 'application PA 5538/04 as presented in the original EPS and its Addendum should be refused' (Notes to Committee No. 5).
9	SCH comments omitted from DPAR.	The comments by the Superintendent for Cultural Heritage (SCH) are included at the DPAR NTC 3(7) and 4(1). These were submitted on 6 April 2004 during the EIA scoping stage on issues they wished to see included in the EIA Terms of Reference.
10	NHP observation that the project has a major significant impact was omitted from the DPAR.	Please see comments at point 8 above.
11	Impact of traffic generated by excavation was not mentioned during the Board hearing.	The impact of traffic generated by excavation is included in the DPAR, particularly section 5.12.5. Had the Board in some way felt it needed more information, it could have asked for it.

12	EIA conclusions listing residual impacts was not included in the DPAR but was substituted by a list which does not reflect the EIA results.	Following the EPS Update, the subsequent update to the EPD report on the EIA includes a revised list of residual impacts resulting from the proposed development (Note to Committee Nos. 2 and 3). The list includes residual impacts identified as being of adverse major significance and/or uncertain together with EPD reaction. This section superseded the section on Residual Impacts presented in Section 5.1 of the DPAR.
13	DPAR conclusions failed to summarise concerns from nearly all consultees.	The purpose of the NTC is to update the DPAR following any developments and further processing of the case. Therefore the contents of the DPAR have to be viewed in their totality.
14	Request by objectors for the Board to view the photomontages was refused. A decision was taken without viewing any photomontages.	This refers to the MEPA Board hearing. Had the Board in some way felt it needed more information, it could have asked for it.

15	Objectors' concerns not highlighted by the EIA Coordinator.	<p>The EPD report on the EIA and the EIA Presentation delivered to the MEPA Board actually included:</p> <ul style="list-style-type: none"> a) the major environmental impacts identified in the EIA, including the visual impact of the proposal; b) EPD's views on the major environmental impacts, including waste and energy, geo-environment (in turn including issues relating to site excavation), cultural heritage, noise and vibration, air quality, landscape and visual amenity; c) a summary of HAC comments submitted within the stipulated timeframes during the EIA consultation process; d) the findings of the EIA Update (a consultation phase was undertaken with the public, Local Council, NGOs and entities of Government on the said update) submitted following the revisions in the design of the proposal. Accordingly, the EPD report on the EIA was updated to reflect the changes/updates of the proposal on various environmental parameters; and e) the impacts of the proposal on air quality, including traffic generation. <p>All comments received during the EIA process within the timeframes stipulated in the EIA Regulations, 2007 were forwarded to the EIA Coordinator for a reply (refer to Addendums to the EPS dated October 2007; March 2008 and Notes to Committee Nos. 4 and 5).</p>
16	Objectors were given 8 minutes to present their case when the Major Projects Team was given 2.5 hours.	This refers to the MEPA Board public hearing and if the objectors were not satisfied how the proceedings were being conducted they should have raised their objection there and then or followed the matter immediately thereafter through other venues available to them.

PA 5538/04

Application of FAR policy

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1. The North-West Local Plan contains a policy⁷ dealing specifically with the re-development of the Mistra site. The policy establishes a maximum height of four floors but then goes on to state that through the application of the FAR the maximum height should not exceed eight floors, with the proviso that any slight departures from this height would only be considered once the MEPA was satisfied that the scheme had a “... *noteworthy urban and architectural design of the highest calibre.*”

2. However the draft FAR policy available in 2008 when the application was approved specifically excludes such development along Xemxija.⁸ It also states⁹ that “*An outline application...shall not be accepted for tall building proposals.*” It also emphasises the inappropriateness of siting tall buildings within or close to views of protected areas as this would be prejudicial to the public enjoyment of the open countryside.

3. The FAR policy document was not (and is still not yet) an officially approved document. However the DPAR clearly states that “*The Draft Planning Policy on the Use and Application of the Floor Area Ratio is relevant since it provides guidance for tall buildings.*”¹⁰ In addition it is clearly stated that “*The FAR policy, together with Policy NWSP 25, provide the basis for the calculation of the Maximum allowable Developable Floorspace for the scheme.*”¹¹ The DPAR also

⁷ Policy NWSP 25.

⁸ Clause 7.4.

⁹ Clause 6.7.

¹⁰ DPAR CASE OFFICER REPORT para. 5.10 LEGISLATION AND POLICY FRAMEWORKS.

¹¹ DPAR CASE OFFICER REPORT para. 6.3 Development Density.

clearly states that the “*the Planning Directorate is recommending the approval of the comprehensive project based on the FAR policy...*”¹²

4. Therefore it is clear that although the FAR policy was not an officially-approved document, it was used in the formulation of the design proposal for the tall buildings, and provided the basis for the recommendation to approve the proposal. As such, therefore, it should have been adopted ‘*in toto*’.

5. However the assessment conveniently omitted to state that such a proposal was expressly disallowed at Outline stage. The proposal should not have even been considered and only a full application should have been submitted in order for the FAR policy to be implemented in the proposal’s assessment. This key clause was not mentioned in the DPAR. This condition could have had a material bearing on the determination of the application. Its omission therefore produced a skewed recommendation in favour of an approval.

6. It is clear that even if, for the sake of the argument, the use of the FAR policy was justifiable, such use could only have been made on the basis of a highly restrictive interpretation, given the constraints and contradictions prevailing. The addition of a further three floors – an increase of almost 38% - to the FAR limit established by the North-West Local Plan flies in the face of such an interpretation. Justifying this increase by referring to the heights of the buildings in metres is misleading. The benchmark set out was clearly in the number of floors, not in their height in metres.

¹² DPAR page 28 para. 2.

7. The application of the FAR draft policy in this project is seriously flawed, as it was applied in a selective manner, leaving out key conditions which could have had a material bearing on the eventual determination.

Assessment of visual impact

1. The updated EPS following the changes in design, states that “... *the impact of the proposal on the landscape of the area would be marginally reduced but insufficient to change the significance.*”¹³ It advises that, of the two most significant viewpoints which were affected by the changes, the impact on visual amenity of one was found to be minor while in the second case it would remain of major significance.¹⁴

2. In the section entitled ‘Report on EIA Findings’¹⁵, the DPAR explains in detail the adverse impacts the proposed development will have on the surrounding landscape and visual amenity of the area. It also states that the “*proposal ... lies within an Area of High Landscape ... Value*”.

3. The proposal’s adverse visual impact on the surrounding areas is therefore clearly confirmed. It is ironic that the explanatory text to Policy NWSP 25 of the North-West Local Plan highlights the inappropriate siting of the relatively miniscule Dura block in the

¹³ Para 3.3 page 4 ‘Effects on Visual Amenity and Landscape’.

¹⁴ Ibid. Section 5.12.6 Landscape and Visual amenity.

¹⁵ Section 5.12.6 page 45.

original Mistra Village development on the face of the small cliff overlooking Mistra Road.

Consultation process

1. Complainant is alleging that various inputs by consultees and stakeholders were either not included in the DPAR or were not mentioned during the Board hearing.
2. More specifically, the complaints list inputs by the Heritage Advisory Committee (HAC), the Superintendence of Cultural Heritage (SCH), and the Natural Heritage Panel (NHP).
3. In addition, it is alleged that the Traffic impact due to the excavation process was not mentioned during the hearing; the EIA conclusions listing residual impacts were not included in the DPAR but were substituted by a list which did not reflect such conclusions, and the DPAR failed to summarise concerns from nearly all consultees.
4. The DPAR mentions a consultation process with the above-mentioned consultees at EPS stage, including the updating process following changes to the designs as the evaluation of the proposal progressed. These inputs were taken note of, and in fact the outcome was that the updated EPS remained unchanged in its identification of short term and major residual impacts. As an example, the NHP opinion was included as an addendum to the EPS.

5. It appears that the DPAR, even if not providing an exhaustive report on the objections received, did report on the principal points of objection. These objections were also mirrored in part by the findings and inputs of consultees during the drafting of the EIA and EPS, such that points of concern raised by objectors were reported as part of the EIA/EPS findings.

6. A particular concern raised was in relation to the traffic impact, with regards to the heavy volume of traffic generated both during the excavation and construction processes as well as the post-development phase. This issue was flagged as a major adverse impact. The concluding recommendation by the Transport Planning Unit was that all traffic management improvements were to be retained as reserved matters to be finally determined by the Board deciding on the full development application.

7. With regards to the EPC Board hearing where the application was determined on 5 June 2008, complainants allege that while the Major Projects Team were allocated two and a half hours to make their presentation, objectors were allocated a mere eight minutes.

8. It is logical to presume that the presentation of the report on the project's processing, including the lengthy consultation period, would occupy a substantial part of the time allocated by the Board for hearing and determining the case. Whether the eight minutes allocated to the objectors were sufficient to allow a proper exposition of their arguments is a moot point. What is also relevant however, is whether the objectors managed to put forward all their arguments and whether these

arguments were accurately and comprehensively recorded. The complaint submitted for investigation does not allege any incorrectness in the accuracy and faithfulness of the minutes taken at the meeting therefore it can only be assumed that these represent a faithful record of the proceedings.

9. However, there is a detail in the minutes which merits consideration. In the section titled '*Height*' under '*Comments by the public*', the points mentioning the FAR policy are qualified by bracketed comments like "*which is not yet approved by the Minister*" and "*again referring to an unofficial policy document*". It seems that the Board Secretary, either through his/her initiative or as instructed, considered it appropriate to highlight the "*unofficial*" status of the FAR policy as if to indicate that arguments referring to this document could not be given due weight.

10. Similar comments however were not inserted in the record of the presentation by Perit Sylvio Farrugia¹⁶ where he specifically stated that the Local Plan allowed height of eight floors plus penthouse based on the FAR policy.

11. It is obvious that while the selective use of the FAR policy to establish the maximum height allowable (ignoring other provisions specifically prohibiting such development on ridges and even singling out Xemxija as a case in point) was not considered to undermine the Major Project Unit's submissions in supporting the proposal. Such use

¹⁶ Minutes sheet point 1851 final two paragraphs.

of the same policy by the objectors in their submissions was deemed to be inappropriate and almost irrelevant.

The whole process is seriously flawed in that it selectively utilizes the FAR policy document which is not yet officially approved. If it was deemed acceptable to use it, then it should have been used in its entirety, which means that the project could not have been determined at Outline stage. The MEPA response¹⁷ explains that there was a "... progression of preliminary designs..." submitted at Outline stage. What should have been done then was to convert the application to a full development one.

The FAR policy should never have been applied to a sensitive site as this one. The site occupies a prominent position where any form of development is bound to have a high visual impact. It also forms the boundary between the Xemxija urban development zone and pristine countryside just beyond. Any form of development proposal should have respected this context and provided an attractive and sensitive transition between the two zones. This proposal clearly does not do so, as is highlighted by the major adverse residual impacts on the surrounding environment, landscape and amenities of the area flagged by the EIA and updated EPS.

Notwithstanding these major flaws, the Major Projects Unit actively supported this proposal, regardless of the detrimental effects it was bound to have on its environs. In addition, the Board complacently overlooked such major drawbacks in the proposal and did not give due

¹⁷ Response to complaint point 3.

consideration to the justified concerns raised by the objectors of the deleterious effect it would cause.

PA 6236/08

As illustrated in the previous case, the objections raised together with the MEPA response to them, are being reproduced in tabular form.

	Complaint	MEPA response
1	The final design fails to achieve a high level of design.	The final design reflects the assessment of a progression of proposals which were submitted to detail the use of the FAR principles. The final design is considered of sufficient standard, involving a design treatment which includes various elements of architectural interest.
2	Clarification sought on the provision of sufficient storage systems in terms of the EAPPS. Such data was not found in the document.	All drawings and documents submitted for these applications were made available at the MEPA front desk.
3	Detailed Landscaping plan fails to indicate the width the depth of excavation mature trees will not be able to grow. Destruction of 100 existing mature trees.	Reference is being made to section 4.7.5 of the DPAR which includes the discussion relating to landscaping. In consonance with the recommendations of the Environment Protection Directorate, condition 4(b) requires the submission of a detailed Landscaping Plan as a reserved matter to include the retention of as many trees and shrubs as possible; the method of uprooting in accordance with good arboricultural practices and relevant legislation; the transplanting of all trees on site to another site; proposals for additional landscaping and; an implementation and maintenance scheme.
4	No data seen in EAPPS on Detailed Waste Management Plan.	Please refer to comments at point 2.
5	No justification by Transport Malta to 'no	The DPAR refers to the letters submitted by TM in response to the consultation requests sent throughout all

	objection' in view of previous concerns raised by TM.	the stages of the project. Transport issues were discussed in detail throughout the processing of the outline permit and the TM concluded with a 'no objection' to the latest proposal as it relates to a down-scaled proposal (refer to section 4.6.2.1).
6	The project description was changed since six blocks, not four, were being proposed. This should have necessitated a re-publication.	Republishing is not necessary when a proposed development has been downscaled within the site boundary.
7	Insufficient detail on objectors' concerns in "Representations" Section, omitting the request for the photomontages to be viewed. The photomontages appear to be missing from the EAPPS list of documents for approval.	The letters submitted by Representees are included and referenced in the DPAR according to the date of their submission. The DPAR specifically quotes "Din L-Art Helwa urges the Board to request photomontages of the project from important locations" in the Notes to Committee Nos. 4. While photomontages were submitted as part of the EIA process which is available online on the MEPA website, all drawings and documents submitted for these applications were made available at the MEPA front desk. Photomontages were presented during the Board sitting.
8	Although the DPAR states that the project was downscaled from the Outline permit, the latest proposal shows 12 storeys as against 11 approved at Outline stage.	The issue of building height is discussed in section 4.7.3 of the DPAR with reference to the building height approved by the outline permit. A detailed illustration comparing the building heights at full development stage to the approved building heights was also presented during the Board sitting.
9	Application not scrutinised against Policy RCO 3.	Although policy RCO3 was not specifically mentioned in the DPAR it does not mean that it was not taken into consideration throughout the assessment of the proposal. Policy RCO 3 refers that Local Plans should be drawn up to detail the measures of protection and enhancement to cover all the areas designated by the Structure Plan as Rural Conservation Areas. The environmental characteristics of the site and its environs are listed in section 4.3 of the DPAR while the Local Plan policies applicable to the site are listed in section 4.5.2 of the DPAR.
10	There is no quantitative	Section 4.1 of the DPAR specifically describes the

	listing of data to justify statement that there has been significant overall reduction in massing, layout, overall height and excavation volumes.	overall significant reduction and includes the quantitative listing of data in Table 1. The comparisons of the project details at full development stage to those approved through the outline permit have also been referenced throughout the DPAR.
11	HAC was not consulted.	Consultations with the HAC have been carried out at outline development stage.
12	No documentation that addresses the concerns by both the MRA and WSC on water or extraction of stone issues.	Sections 4.6.4.1 and 4.6.4.2 of the DPAR specifically relate to the consultations carried out with the MRA and the WSC respectively. Condition 7 requires the architect/applicant to contact the WSC and MRA throughout all the construction phases of the development to ensure that the development is carried out in conformity with the conditions imposed by them. Condition 8 imposes the submission of a clearance verifying that the development fully satisfies any conditions imposed by the WSC and the MRA prior to the issuing of the Final Compliance Certificate.

Level of design

1. North-West Local Plan Policy NWSP 25 states that slight departures from the eight-floor height limit would be considered under the condition that the proposal “*has a noteworthy urban and architectural design*”. This point was already tackled in the assessment of the previous permit. However since the design was changed substantially, and revised comments inserted into the DPAR, a look at the fresh proposal is necessary.

2. The proposal has been downscaled in size and the original four boomerang-shaped blocks split into six blocks of varying size and shape. The resulting design, in terms of its relation to the surrounding

environment, is however still disproportionate. The impacts flagged by the EIA/EPs exercises are still unsolved. The detrimental effects on the natural environment, the insensitive urban design treatment of the transition point between the development zone and the open countryside is still evident. The discussions are all centred on the designs of the proposal itself, but do not provide an in-depth analysis of how this project relates to its urban/ODZ surroundings.

3. It is also noted that while environmental concerns relating to the construction phase and the post-construction operating activities of the proposal have been examined minutely, there is a dearth of information as to how successful the project will be in providing energy-efficiency within the building envelopes, and what proposals are being made, if any, in implementing sustainable methods of construction and design in the post-construction phase.

4. It is also pertinent to point out that during processing of the Outline Permit application, the Malta Resources Authority had recommended compliance with Legal Notice 238/06 "*Minimum Requirements on The Energy Performance of Buildings Regulations*".¹⁸ The DPAR for PA 6236/08 does not confirm that the buildings are compliant. How energy-efficient are the proposed buildings? It already appears that there is no provision for solar water heaters and photovoltaic panels since an amendment was requested to standard condition 9(u) prohibiting the location of services on the roofs of the

¹⁸ PA 5538/04 DPAR page 27.

buildings. This was not accepted.¹⁹ Therefore there does not appear to have been a provision for the installation of such equipment.

Lack of availability of data

It does not appear that the data forming part of the assessment and consultation process were omitted or not available. It is appreciated that the project is a large and complex one which underwent an amendment process.

Reply by Transport Malta

The reply by Transport Malta is superficial as it does not give supporting reasons as to how the downscaling of the project now makes it acceptable. The concerns raised in point 4.6.2.1 of the DPAR relating to the TIS findings have not been solved. Recent comments in the press that the report on the proposed TEN-T Xemxija Bypass is being re-visited support this conclusion.

Amendments and downscaling of the project

It has already been acknowledged that the final design represents an improvement on the one approved at Outline Permit stage. However

¹⁹ PA 6236/08 DPAR Notes to Committee section 3.3 (e).

the concerns on the insensitivity of its siting and the negative residual impact still prevalent remain unaddressed.

Consultations

The consultation process does not appear to have been superficial, since the project went through a thorough consultation exercise particularly in the Outline application stage.

In addition to the above observations, certain matters emerging from the minutes of the Board meeting of 31 October 2013 when the application was approved, merit further analysis.

Request for revocation

1. The Chairman stated that the Board had met and decided that there was no valid basis to revoke the permit in terms of Article 77 of the Environment and Development Planning Act 2010.²⁰
2. This is procedurally incorrect. The First Schedule (Article 6) of the Act specifically states that "*The meetings of the Authority shall be open to the public...*"²¹ The Schedule provides for the Board's deliberations to be held in private on a request of "*... any member of the Authority ...*"²² however the vote has to be conducted in public.

²⁰ Board minutes point 5289.

²¹ Section 9.

²² Section 10.

3. The '*fait accompli*' presented to the public on the matter of the request for revocation is therefore null and void. Even minor requests, such as for a deferral, are discussed and voted on at open sessions, let alone such a critical matter. The procedure adopted strongly suggests that the Authority was under immense pressure due to the commitments made through the Outline Permit.

Commitment

1. There is no doubt that the approval of Outline application imposed a commitment on the Authority to accept the full development application, at least in principle.

2. Exchanges between members of the board and objectors as recorded in the minutes clearly show that the members felt that their hands were tied due to the Outline Permit commitments and that their deliberations were conditioned by this fact. Notwithstanding this, some members felt that the application should not be approved and voted against the proposal.

3. While the Authority is duty bound to respect such commitments, this does not signify that the Board's hands are tied. The conditions of the Outline Permit are not cast in stone. As a matter of fact the proposal was extensively re-modeled, the number of blocks increased, the overall heights altered with the final design showing a marked departure from the approved one.

4. In addition the Outline Permit was issued, leaving issues that have major adverse impacts unresolved, for a decision to be taken on them at Full Development Permit stage. These major adverse impacts were and are still unresolved. This alone should have resulted in a refusal. Applications having an insignificant impact on their surrounding environment are justifiably refused by the Authority if the proposal fails to address issues raised. Yet this application was approved.

5. There is no commitment which binds the Authority to accept and approve applications for development which leave major adverse impacts unresolved. The Authority has every right to revoke a permit if it is found that it was issued in breach or in disregard to policy. The case regarding PA 5880/05 (coincidentally also in Mistra) is an example.

Conclusions and recommendations

In the light of the above considerations I conclude that:

The complaint that the processing and determination of applications PA 5538/04 and PA 6236/08 is partially sustained in that the Major Projects Unit within the Directorate failed to give a comprehensive and objective assessment of the cases, failed to provide a full account of the relevant planning policies and regulations justifying its recommendation, and failed to provide strong supporting justifications as to how the proposal

had a noteworthy urban and architectural design, when the design clearly left an adverse impact on its surroundings.

The complaint is also partially sustained in that the Boards failed to question these shortcomings in both cases, when it normally does so. In addition the Board took a decision in private when this is expressly ruled out by The First Schedule (Article 6) of the Environment and Development Planning Act (2010).

These failures by the Directorate's Major Projects Unit and the Boards are sufficient to justify the revocation of the permits in terms of Article 77 of the Environment and Development Planning Act (2010).

Perit David Pace
Commissioner for Environment and Planning

29 November 2013