DIN L-ART HELWA COMMENTS ON THE CONSULTATION DOCUMENTS:

1. **TOWARDS HIGHER STANDARDS FOR THE ENVIRONMENT**
2. **FOR AN EFFICIENT PLANNING SYSTEM**

22nd April 2014

Both these documents were only made available in the week after the public meetings were held. Din l-Art Helwa was therefore not able to read, discuss and prepare questions on these documents to be addressed at the public meetings. The public consultation period of three weeks was also much too short for an important issue such as this. For these reasons, Din l-Art Helwa does not consider this public consultation to have been adequately carried out.

DOCUMENT ONE - **TOWARDS HIGHER STANDARDS FOR THE ENVIRONMENT**

1. point 3.1 - The composition and functions of the board of the ERA are not clear in this consultation document. Will this board be determining the granting of IPPC and other environmental permits, and will these decisions be taken in public? Will the board's procedure for the processing and granting of environmental permits be defined in the new legislation?

2. point 3.2 – Will any of these advisory boards be included in the new legislation (similar to the Heritage Advisory Committee or the Natural Heritage Advisory Committee in the current set-up at MEPA)? Who will recommend or decide when an *ad hoc* committee should be appointed by the Minister to advise the ERA on its regulatory functions – the ERA or the Minister? Will the ERA board be obliged to consult with any of these new advisory boards appointed by the Minister, and at what stage?

3. point 4.1 - Will the new legislation stipulate the process, including public consultation and access to information, to be adopted for the formulation of new policies by the ERA? This also relates to point 7.2.

4. point 4.1 - What are the objectives of the Environment Fund and under what criteria will funds be collected and distributed?

5. point 5.1 - Apart from their legal status, what are the main differences between the existing National Environment Policy of 2012 and the proposed National Strategy for the Environment?

6. point 5.2 - What procedure, including public consultation and access to information, will be adopted by the ERA board in the formulation of environmental Regulations and Orders and their adoption, and in the preparation of environmental Guidance documents? This also relates to point 7.2.

7. point 6.1 - Are any specific types of decisions by the ERA indicated here – for example, IPPC permits, environmental permits, waste permits, activity permits, nature permits, decisions related to EIAs, etc? The document says "any decision of the ERA is to be subject to appeal", that is, will objectors be able to appeal decisions such as the granting of an ERA permit to uproot trees or an ERA permit to carry out an activity in a protected area? What will be the procedure for this, including public consultation and access to information? Will all decisions that can be appealed be made public in a timely manner, for example through publication on the ERA website?

8. point 7.3 - The environment must be given due importance as one of the three pillars of sustainable development. The ERA must have sufficient executive powers with clear safeguards to ensure that environmental concerns are integrated into the processing of all development permits and all planning policies. The ERA should not be viewed as just one of a list of external consultees by the

Planning Authority, and just one ordinary vote on the Planning Board. Apart from the Planning Board, the ERA should also have a permanent representative on the Executive Council of the Planning Authority, as land use is one of Malta's biggest environmental concerns and land is one of its most important resources, particularly due to the country's small size and population density. The right of the ERA to appeal a decision of the Planning Board should not be restricted to applications on which it has lodged a recommendation during the processing stage as an "external consultee". The right of appeal of the ERA should apply to all decisions of the Planning Board, whether the ERA makes a recommendation during the processing of the application or not.

9. point 8.1 and 8.2 - The enforcement and compliance function of the Environment & Resources Authority must be clearly defined and well-resourced. What enforcement powers will the ERA officers have, and which type of infringements will fall within their remit?

10. The ERA must clearly retain the right to publish all its decisions, recommendations and reports on proposed projects, including on development applications being processed by the Planning Authority. All ERA decisions and reports should be published on the ERA website in a timely manner.

DOCUMENT TWO - **FOR AN EFFICIENT PLANNING SYSTEM**

REVISIONS TO THE ENVIRONMENT AND DEVELOPMENT PLANNING ACT 2010

1. point 1 – The Environment and Resources Authority should not be reduced to the status of one of a list of external "statutory consultees" in planning decisions. There should be clear safeguards to ensure that environmental concerns are integrated into the processing of all development permits and all planning policies.

2. point 6 – The Environment and Resources Authority should have a permanent representative on the Executive Council of the Planning Authority.

3. point 11 – is this the Development Planning Commission or Board? What is the function of this Commission?

4. point 12 – Apart from the new Agricultural Advisory Committee, the existing Cultural Heritage Advisory Committee and the Natural Heritage Advisory Committee should be retained.

5. point 13 – there should be strictly laid out time-frames and constraints on when the Spatial Strategy can be reviewed in order to ensure a level of stability, certainty and continuity. Therefore DLH does not agree with the removal of the 5-year constraint.

6. point 14 – the Spatial Strategy should be endorsed by the House of Representatives, as is the case in the current legislation for the SPED and was the case for the Structure Plan, and not by the Minister. Why is this being changed? This change will weaken the status of the Spatial Strategy and is not acceptable, especially when at the same time the government is proposing that the new National Strategy for the Environment is to be approved by the House of Representatives, arguing that the existing National Policy for the Environment "without a legal framework to support it remains weak as a directional document" (p.9 of the ERA document). The Spatial Strategy should contain policies and diagrams and an explanatory memorandum justifying each of the policies, as is stipulated for the current Strategic Plan for the Environment and Development in the existing legislation.

7. point 18 – what is the rationale behind this proposed hierarchy? Why should a subject plan override the local plans?

8. point 20 – local plans and subject plans should be discussed and endorsed by the House of Representatives, and not by the Minister alone.

9. point 21 – as for point 13 above there should be strictly laid out time-frames and constraints on when subsidiary plans and policies can be reviewed in order to ensure a level of stability, certainty and continuity. Therefore DLH does not agree with the removal of the 2-year constraint.

10. point 22 - The Environment and Resources Authority should have a permanent representative on the Executive Council. Right of appeal should be on all issues including a change in zoning.

11. point 25 - The reclamation of land (eg. garigue) for agriculture should be considered as a development and not be included in the fast-track applications – agricultural land prior to 1992 should not be excluded. Structural strengthening of buildings in Urban Conservation Areas should also be considered as a development and should not be included in fast-track applications.

12. point 25 (a) – not in Urban Conservation Areas; point 25 (b) – not in the case of garigue; point 25 b (ii) all reclamation of land for agriculture should be considered as development and agricultural land prior to 1992 should not be excluded; point 25 (c) this is not acceptable – all buildings are to be considered as development; point 25 (e) not in Urban Conservation Areas.

13. point 25 – after (f) the last part of this paragraph (a) to (4) is unclear. Please clarify what is intended here.

14. point 26 – outline permits should not be introduced in their previous format as this leads to problems at full development stage.

15. point 27 – please provide a definition of the “planning as a balancing act principle” that is to be introduced.

16. Why is sustainable development not emphasised more in this document?

17. point 32 – the Sixth Schedule should not be deleted. Proposals for its amendment might be considered, but it should not be deleted.

18. point 35 - “error on the face of the record” in the revocation of applications should also apply to errors made by the applicant.

19. point 37 – This is not acceptable. Safeguards on scheduled properties should be strengthened not weakened.

20. point 38 – This is not acceptable. Safeguards on scheduled properties should be strengthened not weakened.

21. point 42 – The decision on whether to issue a warning notice or a stop and enforcement notice should always be at the discretion of the Authority in each case. The Authority should not be restricted to issuing warning notices as an initial step.

22. point 44 – This is not acceptable. The enforcement notice should remain valid and not be suspended when an application to sanction has been submitted.

23. point 45 – which Tribunal and at what stage?

24. point 46 – the Sixth Schedule should not be deleted.

25. point 48 – This is not acceptable. The Minister should not regularize development.

26. point 50 – what are the implications of this? Please clarify.

REVISED PROCEDURE FOR APPLICATIONS AND THEIR DETERMINATION

1. point 3 - Revised definition of a material change as : *" a substantial change in the external appearance or design"* is now too wide and subject to abuse. For example, an applicant may decide to tile the ground floor façade of a terraced house - this is a very minor work but may result in a very unappealing aesthetic.

2. point 6 - Listing the consultees in the screening letter allows both perit and applicant to understand the extent of the planning procedure.

3. point 14 - "Any other regulator which the Minister may identify from time to time". Again, far reaching powers being attributed to a non-technical and political person which may be used and abused. The choice of any further regulatory bodies should be made by a technical person from the new Planning Authority or Environment & Resources Authority, with technical reasons given as to why this is required.

4. point 14 - The Environment & Resources Authority should not be treated as just one of a list of "external consultees" by the Planning Authority. There should be more safeguards to ensure that environmental concerns are integrated into the processing of all development permits and all planning policies.

5. point 25 - "*Period for public consultation extended to 30 days from 21 days*". Agree, this is positive.

6. point 26 - " *Report by Planning Directorate (DPAR) to be served also to external consultees and period for response reduced from 21 days to 15 days*." Disagree. This is too short for both applicant and any other objecting body.

7. point 33 - "*Deemed approval procedure amended to require the Board to take a decision rather than issue permission."* Is this referring to what was previously a DNO?

8. Please provide the new definition in its entirety of Minor amendments.

9. point 39 - "*The DNO procedure can be used instead of a Minor Amendment Procedure to amend a valid permission if Proviso for minor amendment cannot be satisfied.* " Please define 'Proviso'.

10. point 40 - "*Proviso requiring interested third parties to be informed of a minor amendment and allowance for them to make further written submissions removed in line with DNO procedure."* We do not agree with this since it limits third party rights.

11. point 47 - " *If accepted, application is validated, permission issued and advertised in the press within 2 weeks from decision by Chairman. Any third party may appeal within 30 days as of such date.*" STONGLY DISAGREE SINCE IT 1) Drastically reduced the rights of third parties to object in the first place and 2) It imposes fees in terms of consultancy services on the third party to simply appeal the decision. More safeguards are required and public consultation and access to information should be ensured for all applications.

ENVIRONMENT AND PLANNING REVIEW TRIBUNAL ACT

1. point 3 – Are all three members to be appointed by the President? At least one of the members of the Tribunal is to represent the Environment. WE STRONGLY DISAGREE WITH POLITICAL APPOINTMENTS ON THIS BOARD.

2. point 7 – The right of the Environment & Resources Authority to appeal a decision of the Planning Board should not be restricted to applications on which it has lodged a recommendation during the processing stage as an "external consultee". The right of appeal of the Environment & Resources Authority should apply to all applications, whether it lodged a recommendation within the stipulated timeframe or not.

3. point 8 - Agree with this change.

4. point 17 - "*Minister may make regulations for the better functioning of the Tribunal*." Again, far too wide powers being given to a minister without a system of checks and balances.

5. point 21 - Is a Suspension an overturning of permission? Please provide a definition. If so, why cannot any objector/appellant ask for a suspension of a permission for a project of national importance or otherwise? The Government should not be above the law.