

Joint Objection by NGOs to the DNO (Amendment) Public Greening Projects

Our Position

Although the title of this notification order is that of “Class 24 Greening projects”, there is nearly no “greening” element included. Instead, there is the inclusion of allowing the building of structures, facilities, installations, flooring systems, and hard landscaping the dimensions, volume and height of which are unlimited. Many of the interventions listed in the draft Legal Notice have nothing to do with environmental protection and restoration. They point to intensive human intervention that goes often counter to natural processes and reflect a very wrong approach to what should be done to improve our environment and biodiversity.

This is giving Project Green and other entities an open cheque to build what it wants in ODZ and in the development zone by means of the unpublicised DNO procedure, bypassing the possibility of third-party objections and appeals. This is strongly objectionable in the highest degree.

Moreover, there is absolutely no need for this amendment as there already exists the “*Class 24 – Urban greening projects by Government agencies, Local Councils*” which allows for the possibility of greening projects by government entities, which can be used.

The very significant and shameful addition proposed is the final proviso which states:

“Provided further that for development under this Class, the relevant provisions of the Rural Policy and Design Guidance and all other relevant approved plans and policies under the Act, exceptions, conditions, restrictions, rules, limitations and exclusions currently in force, shall not be applicable. ”

Thus, with the simple expedient of a DNO Class Order the Planning Authority (PA) is proposing to do away with all the limiting factors found in the Rural Policy and Design Guidance 2014 and other plans and policies as to the size, extent, position and use of structures (which can easily include buildings), facilities (anything can be a facility – cafeteria, enormous toilets, pools), and installations (can be of any size and/or kept in situ for any duration), both in ODZ and in the development zone. Basically, with a swipe of a pen, the PA is proposing lawlessness without public oversight.

This proviso goes against Chapter 552 of the Laws of Malta, Article 52, which states that DNOs are possible “*being development and activities within the scope of, and not in conflict with, the*

proposals contained in any plan or policy approved under this Act." This is an attempt to bypass all planning scrutiny and discarding any public scrutiny.

It is being highlighted that the tragedy of Jean Paul Sofia's death was partially attributed to the fact that development on sites administered by INDIS could be carried out with a mere DNO. This led to an unscrutinised fast-track approval with the tragic results which followed. The PA has learnt nothing from this national tragedy and now is proposing a similar fast-track procedure to compound the construction-frenzy.

The Board of Inquiry in the Jean Paul Sofia Inquiry had noted how DNOs escape public scrutiny¹ and recommended the elimination of the DNO procedure for the INDIS Class². The same considerations should apply in the present case, where structures of unspecified height and volume are going to be considered as permitted developments a priori.

Comments on the Provisions of the Draft Legal Notice

"(i) The formation of greening projects within the development zones on land designated for public recreational use in the respective Local Plans, including on schemed roads and public open spaces;

(ii) The formation of greening projects within the development zone on land designated for any other use in the respective Local Plans;

(iii) The formation of greening projects located outside development zone on land designated for public recreational use in the respective Local Plans;"

Comment: It has to be specified whether the reference is to sites designated as being Public Open Space in the relative Local Plans and whether this is an attempt to circumvent Local Plan

¹ *"Se jingħad biss li fejn tidħol art tal-Gvern amministrata kemm mill-Awtorità tal-Artijiet kemm mill-INDIS, m`għandux ikun hemm il-proċedura tad-DNO u għandu jkun hemm il-ħtieġa ta` Full Development Permit kif kienet is-sitwazzjoni qabel l2013. Anke t-termini ta` żmien jeħtieġ li jkunu ripensati. Ir-responsabilità tal-iżviluppatur fejn tidħol art tal-Gvern għandha tkun skrutinata b`aktar reqqa għar-rigward ta` pjanti. Ma jagħmel ebda sens li fejn si tratta ta` art tal-Gvern il-permess ikun irid joħroġ fi żmien 30 jum għax ikun intalab DNO mingħajr validation period. Wieħed m`għandux jinsa li ma jeżisti l-ebda method statement fil-każ ta` DNO. Se jingħad biss li fejn tidħol art tal-Gvern jinsa li ma jeżisti l-ebda method statement fil-każ ta` DNO. Dawn huma mankanzi serjissimi li għandhom effett determinanti fuq il-każ ta` Jean Paul Sofia :*

- *Is-sit ma kienx taħt ir-radar ta` ebda awtorità.*
- *Ma kienx hemm full development application fuq il-pretest li saret il-proċedura tad-DNO.*
- *Billi si trattava ta` DNO ma kienx hemm method statement.*
- *La nqas il-pubbliku ma jkun jaf b`DNO għax ma ssir ebda pubblikazzjoni".*

² *"xxxviii. Development Notification Orders - Il-Bord huwa tal-fehma li l-Avviz Legali 211 tal-2016 jeħtieġ li jkun emendat sabiex mill-proċedura tad-DNO jitneħħew żoni ta` żvilupp fil-Class 16. B`hekk Development in Malta Industrial Parks and Malta Enterprise Zones ikunu jeħtieġu full development applications. Inoltre anke f`każi ta` żvilupp f`dawk iżżoni jkun irid jiġi preżentat method statement lill-BCA."*

Policies such as NHRL01³ which prohibits the loss of urban public open space unless certain conditions are specified. The possibility of “structures/facilities” being passed off as a greening project and passed by means of a DNO would result in the breach of the Local Plan (the applicability of which is being excluded by the proviso to this proposed amendment).

“Provided that the greening projects shall only include the following works:

(a) Installation of playing, fitness, and sports equipment, along with art installations”

Comment: More details are required as to the permissible size of such “installations” especially if they are to be erected in ODZ, where they will be totally out of place.

Light pollution is another important issue. The installation of such equipment and structures can significantly contribute to light pollution, particularly due to increased artificial lighting and poor design that lacks proper screening and regulation. Light pollution disrupts ecosystems, disturbs nocturnal wildlife, and negatively impacts biodiversity. Even in heavily urbanized areas, significant biodiversity exists, which can still be harmed by unregulated lighting.

“(b) Demountable installations, which may include CCTV and lighting equipment”

Comment: There is no maximum size or extent of these demountable installations indicated, nor of their duration – which effectively means that demountable structures may remain permanently in place – being unsightly and permanent.

“(c) Vertical structures and shading devices, which may be accessible”

Comment: There is no maximum limit indicated as to the size and extent of these “vertical structures and shading devices”. This is essentially giving carte blanche and an “anything goes” permission to Project Green or to the persons/entities engaged by it to build what they want in ODZ and even in urban areas. Could this apply to seaside lidos such as the one in Gzira where umbrellas are obscuring views of the harbour and fortifications – could they now be replaced with permanent shading devices with no indication or limit as to the materials used

³ NHRL01 Loss of Urban Open Space and Playing/Sports Spaces Planning permission will not be granted for development resulting in the loss of urban public open spaces, sports areas or areas previously designated as green areas in the TPS (1988) unless: i. Public open space or sports areas as applicable of equivalent or greater area are provided in the same locality within the development zone; or, ii. Its use is complementary to the function of the public open space or sports area where the development occurs and occupies only a part of the open space; or, iii. The space has been re-zoned for community or other uses through other policies within this Local Plan.

and the visual impact? Could it apply to any beach lidos – effectively allowing for the permanent establishment of shanty towns on the beaches?

“(d) Excavation of underground reservoirs intended for the irrigation of the proposed vegetation and other related uses to the greening project”

Comment: What are these “related uses”?

“(e) Taking up of existing surface and resurfacing with materials such as permeable paving blocks”

Comment: Why is there no specification of the type of material which can be used?

“(f) Installation of flooring systems and hard landscaping”

Comment: The introduction of hard landscaping in green areas involves soil-sealing which is prohibited by the SPED and the RPDG14.

“(g) Installation of vertical greening structures, including against public buildings or government owned residential blocks, but excluding buildings which are designated or located within scheduled areas”

Comment: What is the maximum height of these vertical greening structures?

“(h) Installation of features and structures for the purpose of the greening project (seating areas, security/control rooms, sanitary facilities, etc.).”

Comment: There is no maximum limit indicated as to the size and extent of these “features and structures”. This is essentially giving carte blanche and an “anything goes” permission to Project Green or to the persons/entities engaged by it to build what they want in ODZ and even in urban areas.

“(i) Installation of demarcation walls and gates”

Comment: This should not be allowed in cases where it may lead to land fragmentation, in breach of the relative RPDG 14 provisions.

“(j) Interventions and planting of trees, including the related irrigation systems”

Comment: Tree planting does not require a DNO

*“(k) Removal of existing paved or hard-surface areas and, or existing artificial structures, or their replacement with soil or soft landscaping, and
(l) Removal of redundant infrastructure (including poles, brackets, cables, pipework, etc.), and/or the replacement of such infrastructure with facilities laid underground within the foot print of existing streets or pavements”*

Comment: The removal of pipework does not require a permission. Again – what kind of “facilities” are envisaged?

“Provided further that:

(a) Prior approval is obtained from the Superintendent of Cultural Heritage for sites within Urban Conservation Area, Scheduled sites and sites within Scheduled Building Settings;”

Comment: Article 49 of Chapter 445 of the Laws of Malta states that: *“No person shall make any intervention or alteration, damage, demolish or undertake conservation or restoration of a cultural property as defined in this Act, or classes thereof, except with the permission in writing of the Superintendent and subject to such conditions as may be imposed, and as may be defined in regulations issued under this Act.”* *“cultural property” means movable or immovable property to whomsoever they may belong forming part of the cultural heritage “cultural heritage” means movable or immovable objects of artistic, architectural, historical, archaeological, ethnographic, palaeontological and geological importance and includes information or data relative to cultural heritage pertaining to Malta or to any other country. This includes archaeological, palaeontological or geological sites and deposits, human remains, landscapes, underwater and seascapes, groups of buildings, as well as scientific collections, collections of natural specimens and art objects, manuscripts, books, published material, archives, audio-visual material and reproductions of any of the preceding, or collections of historical value, as well as intangible cultural assets comprising arts, traditions, customs and skills employed in the performing arts, in applied arts and in crafts and other intangible assets which have a historical, artistic or ethnographic value; ”*

In view of this, the Superintendent’s consent should also be required in cases where Areas of High Landscape Value are concerned.

“(b) Prior approval is obtained from Transport Malta for sites falling within schemed roads;

(c) Prior approval is obtained by the Environment and Resources Authority for the uprooting, transplanting, and planting of trees, as necessary and where development is located in areas designated as protected under the Environment Protection Act."

Comment: The said approval should also be required where the trees themselves are protected – in urban areas where they are more than 50 years old and in ODZ.

In addition, prior approval must be obtained by the Environment and Resources Authority where any proposed activity or development is located directly within, or within areas of influence to areas of ecological and scientific importance, bird sanctuaries, Natura 2000 sites and other forms of designated protection under the Environment Protection Act.

"(d) For all cases, prior approval must be obtained from Project Green."

Comment: Why is Project Green being added to the list of regulators?

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Comment: This proviso goes against Chapter 552 of the Laws of Malta, Article 52, which states that DNOs are possible *"being development and activities within the scope of, and not in conflict with, the proposals contained in any plan or policy approved under this Act."* This is an attempt to bypass all planning scrutiny and discarding any public scrutiny.

"Development under this class shall be subject to the notification procedure established in sub-articles (1) and (3) of article 5, except for where the greening project is by Project Green."

Comment: Does this mean that Project Green doesn't even have to submit a DNO? Is that saying that Project Green can build, for instance, a 12 storey "structure" in ODZ as an entertainment "facility" without even submitting a DNO?

Organisations

1. Azzjoni: Tuna Artna Lura
2. BirdLife Malta

3. Din l-Art Helewa
4. Flimkien għal Ambjent Aħjar
5. Għawdex
6. Moviment Graffiti
7. Nature Trust Malta
8. The Archaeological Society Malta
9. The Ramblers' Association of Malta
10. Wirt Għawdex