

**Joint NGO Submission to the Public Consultation –
Planning and Design Framework for Temporary Outdoor Sports Events and Facilities**

The undersigned NGOs recognise the social and health benefits associated with sport, physical activity and access to outdoor recreation. The present objections are therefore not directed against outdoor sporting or recreational activities as such.

The fundamental concern is that the proposed Framework creates a new planning mechanism through which organised, potentially intensive and repeated non-agricultural activities may be introduced onto rural and Outside Development Zone (ODZ) land, including agricultural land, without adequate safeguards against de facto permanence, progressive urbanisation, loss or degradation of agricultural land, impacts upon biodiversity and landscape, and the effective appropriation of sensitive rural, coastal and public spaces.

1. Serious concerns regarding the provenance of the Framework

The documentary planning record demonstrates that discussions concerning the formulation of policy for precisely this type of development were already taking place with persons representing private development interests more than three years ago.

This emerges from the Planning Board proceedings concerning PA/07353/22, an application for the afforestation of a site incorporating a seasonal obstacle-course racetrack, beaten-earth passageways, reservoirs, an information office and ancillary facilities at Ta' Qali.

At the Planning Board meeting of 27 July 2023, Perit Colin Zammit, appearing on behalf of the applicant, requested the suspension of the application. The official minutes record the reason as follows:

"The reason being that currently he is in discussion with other entities on the formulation of policies and guidance regarding outdoor gym proposals."

The response of the Planning Authority is equally significant. The Executive Chairman stated that where there was a revision or formulation of policy, the Authority would be informed by the Minister. He further stated that the Authority had not been officially informed of any revision or formulation of policies regarding outdoor gym proposals.

The Chairman consequently stated that the Board was required to determine the application according to the policies then in force. Following that discussion, the architect requested that PA/07353/22 be withdrawn.

This chronology raises serious questions.

As early as July 2023, the architect representing an applicant seeking permission for an ODZ recreational development was sufficiently aware of discussions concerning the formulation of policy and guidance for outdoor gym proposals that he relied upon those discussions before the Planning Board as a reason for suspending determination of his client's application.

Yet, during the very same meeting, the Planning Authority's Executive Chairman stated that the Authority itself had received no official notification that such a policy process was underway.

Three years later, a Framework is being proposed which would facilitate temporary outdoor sporting and recreational facilities on ODZ and rural land.

That sequence of events requires explanation. It creates, at the very least, a serious appearance that discussions with development interests concerning a change to the applicable planning framework preceded the transparent public policy-making process.

The NGOs consider this particularly troubling where the development proposals concerned could not readily be accommodated under the policies then in force.

Planning policy must not be formulated, or appear to be formulated, to accommodate particular development proposals which encounter obstacles under existing planning policy. Policy must precede development proposals. Development proposals should not generate the policy required to facilitate them.

Before the Framework proceeds any further, the Government and Planning Authority should therefore disclose:

- the identity of the "other entities" referred to during the PA/07353/22 Planning Board meeting;
- when discussions concerning new policies or guidance for outdoor gyms, sporting facilities or comparable recreational uses first commenced;
- who initiated those discussions;
- which developers, applicants, architects, consultants, sporting organisations or other private interests participated in them;
- all meetings, correspondence, submissions and proposals which preceded the formulation of the present Framework; and

- whether, and to what extent, those discussions contributed to the Framework now being presented for public consultation.

Without such disclosure there will remain a legitimate concern that this is not merely a planning framework developed in response to an independently identified strategic need, but a policy process which may have developed in response to pressure for uses which could not be accommodated under the existing planning regime.

Complete transparency concerning the genesis of this Framework is therefore indispensable.

2. “Temporary” permissions may readily result in de facto permanent land uses

The proposed Framework defines a “temporary land use” as one permitted for a non-renewable period of five years, where the development interventions can be removed and the land restored without significant alteration to its natural characteristics.

It further provides that: *“repeated or cumulative temporary works resulting in de facto permanence are not acceptable.”*

The NGO agrees entirely with that principle. The problem is that the Framework does not provide an effective mechanism for preventing precisely that eventuality.

Nothing adequately prevents the same or substantially the same site subsequently becoming the subject of:

- an application by a different applicant, sports organisation or legal entity;
- an application for a slightly different sporting or recreational activity;
- an application involving a marginally different site boundary;
- a proposal involving modified structures or obstacles;
- a new application following a short interruption in the activity; or
- successive “temporary” applications which, viewed individually, may each appear temporary but which collectively result in continuous occupation of the land.

There is therefore a fundamental distinction which the Framework fails adequately to address: a non-renewable permission does not necessarily result in a non-renewable use of the land. The individual permission may expire after five years while the recreational occupation of the site continues, in one form or another, for considerably longer.

The possibility of changing the applicant, legal entity, precise sporting activity or configuration of the site creates an obvious route through which a supposedly temporary use may acquire de facto permanence.

The planning consequences must therefore attach to the land and its planning history, rather than simply to the individual permit or identity of the permit holder.

3. Five years is an extremely long period

There is a further fundamental problem with the Framework's characterisation of a continuous five-year land use as "temporary".

Five years is an extremely long period in environmental, ecological and planning terms. There is an obvious difference between an occasional sporting event lasting a few days and an organised facility operating repeatedly for up to five consecutive years.

Five years is long enough for the character and ecological functioning of a site to change substantially. Five years of organised recreational activity may involve:

- repeated trampling and vegetation loss;
- soil compaction and erosion;
- sustained disturbance to fauna;
- repeated disturbance during nesting and breeding periods;
- displacement from feeding, breeding or foraging grounds;
- increased human presence in previously undisturbed areas;
- noise;
- lighting;
- traffic and parking;
- waste and litter;
- creation of informal pathways and access routes; and
- progressive alteration of the landscape and perception of the site.

Five consecutive breeding seasons are not insignificant to wildlife. Five years of disturbance are not made environmentally temporary because a structure can eventually be dismantled. A species displaced from feeding or breeding habitat does not necessarily return because an obstacle course has been removed. Nor can soil degradation, vegetation loss, erosion or changes to habitat conditions necessarily be reversed merely by removing physical structures.

The Framework therefore confuses physical removability with environmental reversibility. They are not synonymous.

4. A five-year permission risks manufacturing an artificial planning baseline and “commitment”

The five-year period creates another serious planning danger. It is sufficiently long to alter the factual condition, use and perception of a previously undeveloped rural site.

A site which presently consists of undeveloped rural or agricultural land may, following five years of organised recreational use, structures, access arrangements, parking, signage and repeated human activity, acquire the appearance and functional characteristics of an established recreational facility.

This creates a serious danger whereby undeveloped rural land may first become subject to a five-year “temporary” permission, followed by prolonged organised use and physical alteration of the site. That altered factual condition may subsequently be invoked as a changed baseline or as evidence of an alleged planning commitment, which may in turn be relied upon to justify further development or another supposedly temporary permission.

The Framework must expressly prohibit this. No permission issued under the Framework, no development undertaken pursuant to it, and no physical or functional alteration resulting from such a permission should subsequently be capable of being relied upon as:

- a planning commitment;
- an established use;
- an altered planning baseline;
- justification for redevelopment;
- justification for intensification;
- justification for another temporary permission; or
- justification for any other form of development which would not have been acceptable on the site before the temporary permission was granted.

Otherwise, the Framework itself becomes the mechanism through which an undeveloped ODZ site is first altered and subsequently presented as already “committed”. The relevant baseline for any future application must remain the site’s lawful underlying character and planning status before the temporary permission was granted.

A temporary permission must never be permitted to manufacture its own successor.

5. There are insufficient controls over frequency and intensity

This problem is aggravated by the absence of clear limits upon the frequency and intensity of activities. The proposed legal agreement is to specify: *"the site boundary, land uses and the frequency and intensity of the activities"*.

Yet the Framework itself establishes no meaningful quantitative parameters governing such frequency or intensity. There is an obvious difference between an occasional outdoor sporting event and a facility used daily or several times per week by substantial numbers of participants over five consecutive years.

Both may nevertheless fall within the proposed Framework.

A use which operates intensively and repeatedly for five years may therefore become functionally permanent, irrespective of whether its physical structures can ultimately be removed.

6. The proposed Framework risks undermining the sequential approach required by SPED

The Framework itself acknowledges that SPED paragraph 3.1 requires a sequential approach to development in the rural area:

1. reuse of existing developed land and buildings;
2. redevelopment of existing developed land and buildings; and
3. only where no feasible alternatives exist, use of vacant rural land.

The Framework consequently acknowledges that land take-up within the Rural Area is to be regarded as a last resort.

Nevertheless, paragraph 5.3 potentially opens considerable categories of ODZ land to these activities, including sites within 250 metres of the Principal Urban Area, previously developed or committed ODZ sites, disused livestock farms and disused quarries.

The Framework therefore risks converting what SPED regards as a last resort into a positive category of land potentially available for recreational development.

The mere suitability or attractiveness of a rural location for a particular sporting activity cannot itself justify displacement of the sequential approach established by SPED. The applicant must demonstrate that realistic alternatives within developed areas have first been exhausted.

7. Good-quality agricultural land: an apparent prohibition containing its own loophole

The treatment of agricultural land is of particular concern. Paragraph 5.4 provides that temporary outdoor sports events and facilities shall not be favourably considered on: *"Sites of good quality agricultural land unless AAC clearance is obtained."*

This is not an absolute prohibition. The words "unless AAC clearance is obtained" transform what initially appears to be protection of good-quality agricultural land into a discretionary exception. This sits uneasily with the Framework's own acknowledgement that SPED TO 7.7 and RO 1.1 protect good-quality agricultural land.

It is difficult to reconcile strategic protection of such land with a policy mechanism under which that protection may effectively be displaced through an administrative clearance. Moreover, agricultural land does not cease to possess environmental, landscape or rural value merely because it does not meet a particular agricultural-quality classification.

Such land may contribute to habitat connectivity, ecological corridors, feeding and foraging grounds, soil conservation, landscape character, traditional rural features and the wider ecological functioning of the countryside. The ecological and planning value of rural land cannot therefore be reduced to whether it formally qualifies as "good-quality agricultural land".

8. Biodiversity impacts arising from opening rural and agricultural land to organised recreational activity

The Framework appears to proceed from the assumption that temporary and reversible sporting structures constitute a relatively benign countryside use. That assumption requires considerably greater scrutiny.

The potential ecological effects arise not merely from the structures themselves but from the activity which those structures facilitate. Regular organised use can introduce sustained human presence, noise, lighting, traffic, trampling and disturbance into land which may previously have experienced little intensive human activity.

This has particular implications for protected species and habitats. The EU Birds Directive 2009/147/EC does not confine protection entirely to formally designated sites. Article 4(4) addresses habitat deterioration and significant disturbance within protection areas and requires Member States to strive to avoid pollution or deterioration of habitats outside those areas. Article 5 establishes a general protection regime for wild birds, including protection against significant deliberate disturbance, particularly during breeding and rearing.

Consequently, the absence of a Natura 2000 designation does not mean that rural or agricultural land is ecologically insignificant. A five-year organised activity may have significant ecological consequences even where every physical structure associated with that activity is technically removable.

9. ERA “clearance” cannot substitute the applicable nature-protection regime

Paragraph 5.4 provides that development within or directly affecting land of environmental value, including Natura 2000 sites, AEIs, SSIs, AHLVs and various protected habitats, may nevertheless be considered where ERA clearance is obtained.

This formulation is inadequate. An administrative clearance cannot displace any environmental assessment independently required by law.

The Habitats Directive 92/43/EEC, together with the applicable Maltese nature-protection regime, remains applicable wherever its legal thresholds are engaged. Malta's relevant national legislation includes the Flora, Fauna and Natural Habitats Protection Regulations, S.L. 549.44. The same applies to cumulative effects.

Where Article 6(3) of the Habitats Directive applies, the assessment expressly extends to effects arising from a plan or project individually or in combination with other plans or projects. The fact that structures are removable does not dispense with those obligations.

10. Cumulative effects are inadequately addressed

This is particularly important because the Framework itself could lead to a proliferation of such uses. A single obstacle-course facility might appear relatively insignificant when assessed in isolation. Several such facilities, or successive temporary facilities operating within the same rural area, may produce an entirely different environmental result.

The relevant cumulative effects may arise from the combined impact of increased human presence, traffic, parking, noise, lighting, trampling, habitat disturbance and visual intrusion. Similarly, a five-year permission followed by another permission affecting substantially the same land cannot realistically be assessed as though the second permission had no relationship whatsoever with the first.

The environmental assessment of these activities must therefore address both spatial and temporal cumulative effects.

11. AHLVs should be excluded rather than made subject to clearance

The treatment of Areas of High Landscape Value ("AHLVs") is especially objectionable. The Framework itself acknowledges SPED Rural Objective 4 concerning protection of the landscape. Yet paragraph 5.4 does not impose an absolute exclusion in respect of AHLVs. Instead, depending upon the nature of the designation, the possibility of development remains subject to ERA or SCH clearance.

This undermines the very purpose of identifying land as possessing particularly high landscape value.

Landscape impact does not depend exclusively upon permanent construction. It can arise from sporting equipment and obstacles, repeated concentrations of people, signage, lighting, sanitary facilities, traffic, parking, servicing and progressive transformation of the character and perception of the rural landscape.

AHLVs should therefore fall outside the operation of this Framework altogether.

12. Coastal areas should likewise be excluded

The same should apply to coastal areas. Malta's coastline is a finite and particularly sensitive environmental, landscape and public resource.

Introducing organised facilities for periods potentially lasting five years risks creating additional pressures upon coastal habitats, landscape, access, tranquillity, public enjoyment and the cumulative recreational carrying capacity of the coast.

Again, the fact that an obstacle, structure or sanitary facility can eventually be removed does not mean that the five years of intensified use which it facilitated were themselves reversible. Coastal areas should consequently be expressly excluded from the scope of the Framework.

13. Land forming part of the public domain should be excluded

The NGOs also consider that land forming part of the public domain should be expressly excluded. Such land should not become susceptible to prolonged occupation through five-year sporting or recreational permissions which may interfere with its public character, accessibility or enjoyment.

Particular concern arises where an organised activity may, in practice, result in the exclusive or semi-exclusive occupation of an area through equipment, organised events, controlled access or practical displacement of ordinary public use.

The fact that the legal permission is described as temporary does not alter the practical reality that five years represents a substantial period during which public enjoyment may be affected.

14. Sanitary and infrastructural facilities and the prohibition upon utilities reveal a further unresolved issue

The Framework permits: *"Minimal temporary structures for sanitary facilities and for the safe operation of the facility"*.

This raises obvious unanswered questions concerning:

- water supply;
- wastewater and sewage;
- waste storage;
- emptying and servicing arrangements; and
- vehicular access required to service those facilities;
- power supply.

These matters assume particular environmental importance where facilities are deliberately being located in rural and ODZ areas.

15. The Framework itself raises a serious Strategic Environmental Assessment issue

There is additionally a more fundamental issue concerning environmental assessment of the Framework itself. This document is not simply architectural guidance governing the appearance of temporary structures.

It establishes:

- permissible land uses;
- categories of suitable land;
- categories of inappropriate land;
- exceptions applicable to environmentally or agriculturally sensitive land;
- development and design criteria;
- operational conditions; and
- a permitting regime governing future development applications.

It therefore establishes a planning framework capable of influencing future development permissions across substantial areas of rural Malta and Gozo.

The Strategic Environmental Assessment Regulations, S.L. 549.61, transpose Directive 2001/42/EC and are intended to ensure a high level of environmental protection and integration of environmental considerations into qualifying plans and programmes likely to have significant environmental effects.

SEA is particularly relevant to cumulative and synergistic impacts which may be difficult to address adequately through assessment of individual projects. Accordingly, the NGOs consider that there is a serious question as to whether this Framework falls within, or at the very least requires formal screening under, the SEA regime before adoption.

Its characterisation as a policy concerning "temporary" development cannot determine that legal question.

16. This Framework cannot precede fundamental reform of the Planning Authority's enforcement system

The proposed Framework should not be adopted or brought into effect unless and until Malta has an enforcement system capable of guaranteeing that supposedly temporary development will actually be temporary.

This is not a peripheral issue which can be addressed after the Framework has entered into force. It goes to the very premise upon which the Framework is based. One of the Government's own stated objectives is: *"To ensure that no permanent urbanisation results from temporary permits, and that all installations remain fully reversible."*

Yet that objective cannot be secured simply by describing a permission as "temporary", limiting it to five years, requiring structures to be demountable or inserting a condition requiring eventual reinstatement.

A five-year limitation is meaningless if structures remain after five years. A reinstatement requirement is meaningless if reinstatement is not secured. A prohibition against de facto permanence is meaningless if continued occupation is allowed to subsist while enforcement proceedings, sanctioning applications or subsequent applications remain unresolved.

The entire legitimacy of this Framework therefore depends upon the existence of an effective enforcement system. At present, the NGOs do not consider that such a system exists.

This concern is supported by the Planning Authority's own historical enforcement figures. In January 2022 it was reported, on the basis of statistics supplied by the Planning Authority, that 5,382 enforcement notices remained pending, originating between 1993 and 2021. Fourteen of those notices dated back to 1993. During 2021, only six direct enforcement actions involving physical intervention to stop or remove illegal development were carried out.

Against that background, it is impossible to treat enforcement as an afterthought.

Before introducing a new mechanism permitting organised uses and structures on rural and ODZ land for periods of up to five years, the State must first demonstrate that it is capable of bringing those uses to an end when the authorised period expires.

Accordingly, this Framework should not be considered until:

- a substantially more robust enforcement regime is enacted, establishing clear and binding periods within which enforcement action must be commenced and concluded and direct enforcement action taken where the contravener fails to comply;
- persons reporting illegal development are given full and transparent access to the enforcement process, including the ability to ascertain whether a complaint has been accepted, investigated and acted upon and the current status and eventual outcome of enforcement proceedings;
- citizens and affected third parties are provided with effective remedies, review procedures, appeals and redress where the Authority fails or refuses to take enforcement action within the applicable period;
- the Planning Authority has substantially cleared its longstanding backlog of unresolved enforcement cases; and
- the long-awaited amendment of the relevant appeal procedure has been enacted and brought into force.

These are preconditions, not matters to be addressed at some unspecified future stage. A policy whose environmental justification depends upon future removal cannot rationally precede the machinery required to guarantee that removal. Enforcement reform must come first. Furthermore, addressing the enforcement regime alone does not render the Framework acceptable, given the myriad of other problems it poses for our agriculture and countryside.

17. Enforcement delay must never create a planning advantage

Quite apart from the fundamental enforcement objection raised in the preceding point, the Framework itself requires specific safeguards governing what occurs upon expiry of an individual permission.

Where a five-year permission expires, the authorised use must cease and structures must be removed within a clearly specified and short period. Where the permit holder fails to comply, direct enforcement action must follow within a prescribed period.

Most importantly, any period during which development remains unlawfully on site following expiry must be legally incapable of:

- establishing or strengthening a planning commitment;
- changing the planning baseline;
- establishing an existing use;
- supporting a sanctioning application;
- supporting a further temporary permission; or
- otherwise being relied upon to justify retention, redevelopment or further development.

Persons who breach the conditions of temporary permissions must not be permitted to benefit from the Authority's delay in taking or concluding enforcement action, whether through continued occupation, continued operation or subsequent reliance upon the physical situation which has unlawfully been allowed to remain on site.

Otherwise, a predictable sequence may arise whereby a five-year permission expires but the structures are not removed; an enforcement complaint is then filed but remains subject to administrative delay; the use and occupation continue during that period; and the resulting altered condition of the site is subsequently invoked in support of a fresh or sanctioning application.

In those circumstances, enforcement delay itself becomes the mechanism through which supposedly temporary development acquires de facto permanence.

No person should acquire a planning advantage through failure to comply with a temporary permission, still less through administrative delay in enforcing that permission.

18. The enforcement problem was expressly raised during the first consultation and has not been answered

This concern is not being raised retrospectively. During the first consultation, it was expressly submitted that guarantees were required to prevent “temporary” events from turning into permanent structures because of the Planning Authority's lack of enforcement.

The Authority responded: *“Support for temporary and demountable structures is noted and is included in the policy.”*

That does not answer the objection. The objection was never that the policy failed to use the word “temporary”. The objection concerned what happens when a permit holder does not remove the development, and whether the Planning Authority will actually enforce the obligation requiring its removal.

The present Framework still provides no adequate answer. The mere repetition of the concepts of temporariness and reversibility cannot substitute for an enforceable mechanism guaranteeing both.

Conclusion

The NGO accordingly objects to the proposed Framework in its present form. The objection is not directed against sport or outdoor recreation. It concerns the proposed creation of a new planning route for intensive and potentially prolonged organised activity on Malta's finite rural, agricultural and ODZ land before the institutional machinery required to ensure that such development genuinely remains temporary is capable of doing so.

The underlying proposition that temporary and removable development is necessarily environmentally acceptable is fundamentally unsafe. A structure may be physically removable while the land use becomes functionally permanent. A site may theoretically be capable of reinstatement while five years of intensive activity have already resulted in ecological disturbance, soil degradation, displacement of wildlife, biodiversity impacts or alteration of landscape character.

Five years is not a short period. It encompasses five breeding seasons, five years of human disturbance and five years during which the physical appearance, ecological functioning and perceived use of a rural site may be progressively altered. It is also sufficiently long to manufacture an artificial planning baseline which may subsequently be invoked to claim that the site is already developed or “committed”.

Likewise, a single permission may appear temporary while successive permissions involving different applicants, legal entities, marginally altered activities or slightly different site boundaries result in continuous occupation of substantially the same rural land.

The apparent protection afforded to good-quality agricultural land is materially weakened by the qualification “unless AAC clearance is obtained”, transforming an apparent prohibition into an administrative exception.

AHLVs, coastal areas and land forming part of the public domain should be excluded outright from the Framework. Such areas should not become available for prolonged organised occupation merely because the structures involved can ultimately be dismantled.

There are additionally serious questions concerning biodiversity and protected species, the EU Birds and Habitats Directives, cumulative environmental effects and the application of the Strategic Environmental Assessment regime.

Moreover, a policy for temporary ODZ development cannot credibly operate in the absence of an effective enforcement system. The historical enforcement figures demonstrate why this issue cannot be dismissed as hypothetical. In January 2022, Planning Authority figures showed 5,382 pending enforcement notices, some dating back to 1993. In the whole of 2021, only six direct enforcement actions involving physical intervention to stop or remove illegal development were reported.

A system carrying such a backlog cannot responsibly create additional categories of five-year ODZ development first and rely upon promised future removal afterwards. Enforcement reform must come first. The Framework should therefore not be considered until the enforcement backlog has been substantially cleared; clear and binding periods for enforcement and direct action have been established; citizens have transparent access to enforcement proceedings and effective remedies, appeals and redress against enforcement inaction; breaches of temporary permissions are prevented from generating any planning advantage whatsoever; and the long-awaited amendment of the relevant appeal procedure has been completed.

There must additionally be complete transparency concerning the origins of this Framework. The official minutes of PA 07353/22 demonstrate that as early as July 2023 the architect representing an applicant for an obstacle-course development was already informing the Planning Board that he was *“in discussion with other entities on the formulation of policies and guidance regarding outdoor gym proposals”* This incident cannot be ignored – nor can the reports that the current PA CEO Johann Buttigieg was corresponding privately regularly with

developer about planning matters. The public does not trust the Planning Authority and the policies which it is pushing.

The public is entitled to know who was discussing this policy, with whom, when those discussions commenced, who initiated them and what relationship those discussions bear to the Framework now being presented for public consultation.

Planning policy governing Malta's ODZ must emerge from transparent strategic planning conducted in the public interest. Policy should determine whether development is acceptable. Development interests should not determine what policy is required to make their proposals acceptable.

Until those questions are answered, until the applicable environmental assessment requirements are properly addressed and, most importantly, until an enforcement system capable of guaranteeing the temporary nature of these developments is actually in place, the consideration of this Framework would be premature and environmentally unsound.

Organisations

BirdLife Malta

Din l-Art Ħelwa

Flimkien għal Ambjent Aħjar

Friends of the Earth Malta

Għawdex

Moviment Graffiti

Nature Trust Malta

Ramblers Association Malta

Wirt Għawdex