



## Kummissjoni Interdjoċesana Ambjent

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The following are the submissions by the Kummissjoni Interdjoċesana Ambjent (KA) on the draft Rural Policy and Design Guidance 2020. These are categorised as follows:

**A. Detailed submissions on the draft policy**

**B. Monitoring of the current policy and PA's reaction to submissions related to the objectives of the policy review.**

**C. The Rural Policy and Design Guidance 2020 on its own will not save the Maltese countryside landscape.**

**A. Detailed submissions on the draft policy**

**1. Pg. 7 Interpretation section: definition of "farmer".** The policy makes frequent references to "farmer". There is no distinction between full-time farmer and part-time farmer. It would be interesting to know how many of those registered as part-time farmers, actually carry out such an activity. If Government policy aims to sustain primarily farmers who take up farming as a full-time job then **the policy, with the concessions that it grants, should focus on such full-time farmers.** Such farmers bear the whole risk that such industry offers. Owning many tumoli of land and being registered as a part-time farmer does not necessarily make one a farmer. This can lead to the policy being abused by de facto non-farmers. **The KA suggests that in order to properly monitor the effects of this policy, all references to farmer in the policy should refer to "full-time" farmer at least for those types of application where the possibility of abuse is likely.** Only after proper monitoring of the policy should the definition of farmer be widened to include part-time farmers.

**2. Pg. 9 Aims of the Document paras 3.2 and 4:** Para 3.2 states that "allowance in this Document is being made for development which is justified to be located in rural areas, in approved government policies, plans and programmes". This does not augur well. The terms "policies, plans and programmes" are not defined and may refer to policies, plans and programmes that would have been approved by Government prior to any proper consideration of environmental impacts on the natural environment. Para 4 also allows for departure from the policies and principles established in the draft policy in the case of projects of national interest. Projects of national interest can be interpreted widely to fit any project that is the darling of any minister.

**3. Pg. 13 Policy 8.1.B "General Design Principles" paragraph 2.** The words "shall not be considered favourably" should be substituted with the words "shall not be permitted". This would leave no doubt as to the Authority's intentions and would not give rise to loopholes.

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**4. Pg. 13 Policy 8.1.B “General Design Principles” paragraph 8.** In the case of Dark Sky Heritage sites, no light should be allowed. In such sites whatever lighting scheme is allowed will most probably compromise the status of such sites given the ineffectiveness of enforcement.

**5. Pg. 13 Policy 8.1.B “General Design Principles” paragraph 10.** The KA is concerned that planning policies refer to “disturbed land” to accommodate certain development. The inclusion of this concept encourages prospective developers to disturb certain areas of land in a piecemeal fashion so that such areas would eventually be amenable to being developed. So-called disturbed land should be restored. The term “Disturbed Land” should not, in itself, be a reason for development. This applies not only to the Rural Policy and Design Guidance but to all planning policies.

**6. Pg. 17 Policy 8.1G “Country Pathways”.** The KA recommends the following addition: ‘3. Where unauthorised works have damaged, destroyed, closed, removed, obstructed or in any way hindered access to historical public country pathways, the Authority shall take all the necessary measures to reverse such damage, and reinstate the historical public pathways.’

**7. Pg. 21 Policy 9.1.C “New or Relocated Livestock Farms” paragraph 1.** The minimum herd size should be specified in this part of the policy. What constitutes a minimum herd, two or three cows? Would an enclosure housing half a dozen chickens qualify as a livestock farm? It is possible that the Agricultural Advisory Committee may come up with a strange definition to accommodate other interests which may not be specifically related to livestock in the long-term. Good governance requires that clear parameters are established.

**8. Policy 9.1.E: “Agricultural stores for Arable Farming” para 1(ii).** Agricultural stores can be, and have been, converted illegally into other uses. The policy should be clear that if the use of the development is not in accordance with what it was originally intended, then it would be demolished.

**9. Policy 9.1.E: “Agricultural stores for Arable Farming” para 3** There are not enough safeguards against fragmentation of land. The term farm in this paragraph should be qualified to mean the “whole farm”. The same suggestion applies to other policies which refer to the transfer of the land to third parties.

**10. Policy 9.1.H: “Conversion of land for agricultural use” para 1** The possibility to convert land to agricultural use should also include so-called disturbed land and not just derelict agricultural land.

**11. Policy 9.1.I: “Land Demarcation, Walls and Gates” para 1(ii)** Although legally established rubble walls may be higher than 1.2m, the erection of a long boundary (say 20m long) with a height of 3 metres on the basis of an adjacent wall which is only 3 metres long would lead to the blocking of views or choking up of country lanes if such walls are erected on both sides of a lane. The PA is invited to consider refining this

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paragraph in order not to lead to choking up of alleys or the blocking of scenic areas by the erection of high walls.

**12. Policy 9.1.I: “Land Demarcation, Walls and Gates” para 4.** Some gates are unsightly. The PA is invited to issue design examples of gates and consider introducing a timeframe for the substitution of current unsightly gates with new ones possibly with assistance from EU funds targeted for agriculture.

**13. Policy 9.1.J: “Access to arable farm holdings”.** The PA is invited to check whether the aims of this policy will be abused by the wide-ranging concessions that Infrastructure Malta currently enjoys under the Development Notification Order.

**14. Policy 10.3: “Policies regulating specific agricultural activities” para 3.** The words “shall be avoided” should be substituted by the words “will not be permitted”. In this way the PA’s position would be clear and leave no room for interpretation.

**15. Policy 11.1.B: “Conversions to Visitor Attractions”.** The KA is seriously concerned about this policy which allows “the change of use or conversion of a building within an operational farming enterprise, to a visitor attraction, which may include a farm shop, exhibition/educational space (which could include small scale tasting of produce)”. Exhibition areas can become full-blown restaurant facilities and any percentage limiting any use can be thrown out of the window by decision-makers who can come up with stretched arguments in order to accommodate particular interests. Therefore, enforcement of the policies and the scrupulous adherence to them by the decision-makers will be crucial.

**16. Policy 11.1.D: “Tourism Accommodation on farm holdings” para 11.1.3.** The inclusion of the clause that “the main activities of the visitor should involve hands-on experience in the basis day-to-day operation of the farm”, although welcome, is manifestly unenforceable.

**17. Policy 12.1.A: “Animal Sanctuaries and Shelters”** No change of use should be allowed in the case of development granted for animal sanctuaries and shelters.

**18. Policy 12.1.B: “Animal Enclosures” para 5:** The words “will be resisted” should be substituted by the words “will not be permitted”. In this way the message to development applicants is clear.

**19. Policy 12.1.C: “Stables and Horse-Riding Establishments” para 1(vi).** No change of use should be allowed in the case of development granted for stables and horse-riding establishments.

**20. Policy 12.1.C: “Stables and Horse-Riding Establishments” para 3.** The KA appreciates that owners, must take all necessary precautions so that horses do not to cause environmental degradation due to trampling and creating new paths, particularly in sensitive rural areas. However, the KA is more concerned about the horsepower of

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motorbikes that are causing serious damage to clay slopes. No action seems to have been yet taken to curb this environmental damage.

**21. Policy 13.1.A: “Restoration and change of use of existing buildings of architectural, historical (not scheduled), vernacular or of other significance” para 3.** The words “if the trees and shrubs in the approved landscaping scheme perish within five years from when permission is granted, they are to be replaced” should be substituted with the words “if the trees and shrubs in the approved landscaping scheme perish, they are to be replaced”. There should not be any time constraints on the eventuality of trees or shrubs perishing by design or accident.

**22. Policy 13.1.C: “Redevelopment and Change of Use of Existing Buildings in Rural Areas not falling under 13.1.A or 13.1.B”** The KA objects to this policy since it allows for a change of use of buildings which are granted a development permission under earlier policies with the aim of sustaining agricultural and farming activities. What has been positively established under the policies mentioned so far is set to be undone by this policy. It allows the abusive practice of obtaining a development permission under earlier policies and then have the use changed in order to provide, for example, touristic accommodation in the countryside. The PA needs to adopt clear and more convincing wording to avoid such abusive practices.

**B. Monitoring of the current policy and PA’s reaction to submissions related to the objectives of the policy review.**

In its submissions to the PA as part of the 2019 public consultation on the objectives of the review of the policy, the KA had invited the PA to publish the following:

1. Any report relating to the monitoring of the policy as required by the current policy itself under the Section Scope para 0.21: “The Authority will monitor the operation and implementation of the policies in this document and will periodically review them to ensure that they remain up to date and effective”.
  2. The number of development permissions that have been issued under the policy classified according to their use (e.g. “farming”, “residential”, “swimming pool”)
  3. The number of pending applications that are to be determined by the application of the policy classified according to the use.
  4. Maps of sufficient scale which show the site location where such permissions were issued, coded in colour to show the classification mentioned in (2) above.
  5. The number of development permissions that were issued on the basis of the existence of “ruins”.
  6. The number of development permissions that were issued by the Planning Board/Commission against the recommendation of the case officer.
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The KA is disappointed that, apart from no sign of any comment by the PA in its response to this suggestion, **the draft policy does not present any of these facts or make reference to the monitoring report as required by the same policy. The KA requested the publication of such policy assessment in the revision of the fuel stations policy and its suggestion was not heeded.**

In proper monitoring of policies, policy makers need to compile the facts about where the policy was successful and where it failed. What were the negative impacts? What were the unintended consequences? Was the policy abused by applicants and decision makers? If so, in what way? How is the new policy addressing such shortcomings? Different administrations come and go, and each time some powerful interests seem to take hold of, the administration of the day be it for a short or longer period.

The KA therefore requests that a clause be inserted in the new policy whereby this policy, on approval, is monitored for a year and a report published within three months addressing, among others, the questions listed above.

### **C. The Rural Policy and Design Guidance 2020 on its own will not save the Maltese countryside landscape or the farming community**

The protection of the countryside and the farming community can be compromised by other, or lack of, other policies and the way in which the planning system, including its decision-making process, is set up. **The proposed Rural Policy and Design Guidance 2020 has as its main positive point the elimination of the abuse that came from the permission of development of dwellings on the basis of pre-existing ruins. Having long campaigned against this abuse in various press releases that it issued in the last years, the KA commends its rectification hoping that it will have the desired results.** It is small consolation to see this ill-advised clause in the policy finally removed after years of a wilful decision by the authorities not to listen to appeals to rectify the situation. However, it has to be emphasised that the Rural Policy and Design Guidance on its own is not enough to protect the countryside from undesirable development or safeguarding a thriving farming community. Steps should be taken to ensure that other policies and legislative instruments are revised or introduced. These would include the following:

- 1. Carrying out the necessary reforms in the wholesale market for fruit and vegetables (*pitkalija*)** so that farmers' activities become more economically viable and **exploring the introduction of an insurance cover for farmers** so that they are not left wholly unprotected in case of adverse weather conditions. A genuine farming community that has a role in safeguarding the countryside heritage, and which is remunerated justly for its primary activities is a fundamental condition to encourage a younger generation to take up or continue carrying out farming activities.
  - 2. Revising the SPED** to limit to the barest minimum what can be developed in the countryside.
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**3. Delineating areas in the countryside where absolutely no development of any sort can take place.** This is the only policy measure that can save some of the remaining national landscape assets of the country.

**4. Revising the Development Notification Order in order to ensure that permitted development in rural areas under this Order is further restricted and not give rise to piecemeal developments.** The PA is invited to carry out an exercise to find out how many types of development can take place in a rural area on just one building through a DNO notification (this means carrying out development without even applying for a full development permission irrespective of the revised Rural Policy and Design Guidance). The restriction of permitted development under this Order should be extended to works carried out by Infrastructure Malta. The extension of the DNO to areas under the control of certain Government entities (eg the Ministry for Home Affairs) have shown that at the end, the aim was not for some national interest purpose, but short-term interests that had nothing to do with national security. A recent suggested addition to land which “enjoys” such exemption from applying for development permission is that under the control of the Civil Protection Department.

**5. The Environment and Resources Authority and the Superintendence of Cultural Heritage should be given a veto on development applications** that affect areas and properties that fall under the competence of these entities. The KA had made this proposal to the authorities five years ago in its submission to the proposed changes to the Development Planning Act<sup>1</sup>.

**6. The number of members on the Development Control Commissions should increase from three to five.** Scandalous development permissions have been decided by such boards. Had the membership constitution of such boards been larger and made up of people who give greater weight to the Commons than the narrow interests of strong lobbyists, then some decisions might not have been made. This was another proposal made five years ago to the authorities as part of the submission to the proposed changes to the Development Planning Act<sup>2</sup>. The KA had then stated that the composition of a decision-making body of three *“is a very small number for a commission that will be deciding development applications. It has to be pointed out that such members do not enjoy the independence of judges in the exercise of their duties. So, it is important that the number of members be increased to five. In such a case, the decisions of the Commission shall only be binding if they are supported by at least three members as opposed to the proposed two (Art 65(6)). In this way, pressures are made to bear less on individual members. When powers are delegated to a very small number of people, the chances of overdue pressures from interested persons and even the chance of corrupt practices will increase”*.

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<sup>1</sup> *Opinion Paper by the Kummissjoni Interdjocesana Ambjent on the three Bills relating to Development Planning, Environment Protection and the Environment and Planning Review Tribunal, KA 7<sup>th</sup> Aug 2015*

<sup>2</sup> *Ibid.*

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**7. Decision makers should stop using the concept of “precedent” when deciding on development applications.** This is anathema to the Maltese legal system and does not make sense in planning terms. This misguided but convenient concept that has made its way into the planning system decision-making process over the years leads to very stretched comparisons of development applications with development permissions already granted. The context and particular characteristics of the surrounding areas of a site can be totally different from those of another site with which a comparison is made. Moreover, if a wrong decision was taken in the past, then instead of curbing the repeat of such wrong decisions, the concept of “precedent” perpetuates such wrong approach to planning decisions and the precedents become informal policies that make a mockery of approved policies.

**8. Revise the Development Control and Design Guidance where it relates to ridges.** In the 1980s and 1990s extensive damage was done to ridges in Gozo (Żebbuġ, Xagħra and Nadur). After recognizing well belatedly the damage done to ridges, the policy was changed and the surviving ridges were spared further onslaught by rapacious developers. In 2015 however, this policy was changed again and the ridges of Xagħra Gozo are yet again being destroyed by insensitive developments with the blessing of policy makers and decision makers who should know better. It beggars belief that the mistakes from misguided and ill-advised policies of the past are not learnt. It is shameful that under each administration there are a group of people who run roughshod over the natural heritage of the Maltese Islands. The major political parties need some soul-searching to do, (even a shallow one would do), to find out why some people involved in development practices seem to be untouchable.

**9. Government should not engage consultants, (whether paid or pro bono), who have manifest conflicts of interest, when drafting or deciding on planning policies.** A register of consultants should be held by the Minister, whether such consultants are paid for their service or providing it pro bono.

10. All planning and environmental protection legislation and policies need to be monitored and reviewed frequently, and a report of such review published, so that any loopholes that would have been inserted at the drafting stage (whether consciously or otherwise) which favour the narrow interests of developers to the detriment of the Commons are rectified.

Monday 24<sup>th</sup> August 2020

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