

CIRCULAR 1/07

- 1 NEW REGULATIONS ON THE PROCEDURE FOR MINOR MODIFICATIONS TO SUBSIDIARY PLANS**
- 2 DEVELOPMENT CONTROL POLICY AND DESIGN GUIDANCE DC 2007 - THE MAIN CHANGES**
- 3 SUBMISSION REQUIREMENTS**
- 4 SUBMISSION OF PLANS AT DEVELOPMENT CONTROL COMMISSIONS AFTER FINALISATION OF DEVELOPMENT PERMISSION APPLICATION REPORT**

INTRODUCTION

This Circular first explains the changes that have been made to Legal Notice 27 of 2002 - Development Planning (Procedure for Minor Modifications to Subsidiary Plans) Regulations. It then briefly outlines the main changes and new policies in DC 2007.

Attention is drawn to the need to fully comply with the requirements for the submission of applications for development permission and to the situation regarding the submission of fresh plans after the Development Permission Application Report has been completed.

1 L.N. 71 of 2007 DEVELOPMENT PLANNING (PROCEDURE FOR MINOR MODIFICATIONS TO SUBSIDIARY PLANS) REGULATIONS, 2007

- 1.1 L.N. 27 of 2002 has been revised and replaced by L.N. 71 of 2007, which came into effect on 27th March 2007. The full text of the new Legal Notice has been made available on the Authority's Web Site.
- 1.2 The changes from the 2002 Legal Notice are discussed under the following headings:
 - 1 Legal definition of owner
 - 2 Development applications on sites included within the development boundaries
 - 3 Applications subject to the new regulations
 - 4 Requirements for applications

5 Renumbering and changes to cross referencing

Legal Definition of Owner

- 1.3 The 2007 Regulations include a definition of the term “owner” as being (a) a bare owner or the usufructuary or an emphyteuta or (b) any one of the owners where the land to which the application relates is undividedly co-owned.

Development Applications on Sites Included Within the Development Boundaries

- 1.4 The Partial Structure Plan Review approved by Parliament in July 2006 came into effect on 27th February 2007 and included a number of sites within the development boundaries. Regulation 2(3) of the 2007 Regulations prohibits the validation or approval of development applications on any such site before a separate application in accordance with the new regulations has been submitted and approved.
- 1.5 Exceptions to this blanket prohibition are applications for development which does not increase the volume or density of any permitted structures on a site included within the development boundaries and applications on such sites where the zoning, building heights and alignment of roads and buildings have already been approved in a plan or policy by the Authority.

Applications Subject to the New Regulations

- 1.6 Regulation 3(c) of the 2007 Regulation has added applications for the establishment of zoning, building heights and alignment of roads and buildings for the sites included within the development boundary by the Partial Structure Plan Review described in 1.4 above to the list of applications which shall be subject to the new regulations.

Requirements for Applications

- 1.7 The most significant changes have been to regulation 4 which indicates the submission requirements for applications made under regulation 3 of the 2007 Regulations.
- 1.8 The new regulation 4(1)(a) removed the reference to the 1988 survey sheet for the A4 extracts showing the scheme or subsidiary plan and site boundaries and replaced it with the requirement that the extract must be from the latest survey sheet. Regulation 4(1)(b) now requires a larger scale for the proposed changes and sets the scale of 1:1000 as a minimum.

Notification of Other Owners

- 1.9 In cases where the applicant is not the owner or sole owner, the 2007 regulation 4(2) requires further submissions to accompany such applications. Applications for changes to road and building alignments (as per regulation 3(a)) need to include certification that the applicant has notified the owner of each other property in the same street of his intention to apply. Applications for changes to zoning (as per regulation 3(b)) and applications for the establishment of planning parameters for sites included within the development boundary (as per regulation 3(c)) require certification of notification of all the owners of the site affected by the proposal. All three types of applications require certified maps showing the location of each ownership.

Consent from Other Owners and Third Parties

- 1.10 The 2007 regulation 4(3) relates to the requirement of a 'no objection' by other owners, where the applicant is not the owner or sole owner, or by third parties, where the application affects other parties. However, these 'no objections', in the form of written declarations signed by the affected third parties and the applicant's professional agent, can be submitted after validation of the application.
- 1.11 In the case of applications for changes to road and building alignments (as per regulation 3(a)), regulation 4(3)(d) requires also the submission of another written declaration of 'no objection' signed by 75% of the third parties adjacent to the parcel of land on which the change is proposed.
- 1.12 For applications for changes to zoning (as per regulation 3(b)), the new regulation 4(3)(d) requires that the 'no objection' written declaration must be signed by 75% of the third parties adjacent to the parcel of land affected by the proposal.
- 1.13 In the case of applications for the establishment of planning parameters for sites included within the development boundary (as per regulation 3(c)), the new regulation 4(3)(c) requires the 'no objection' to be submitted on a specific form provided by the Authority and to be signed by the owners of at least 75% of the current potential floor area of the whole parcel of land included within the development boundary.

Consent Required for Sites Subject to Comprehensive Planning

- 1.14 New regulation 4(3)(b) relates to another planning situation which emerged from the designation in Local Plans of specific sites to require comprehensive planning. In such cases a written declaration, on a form provided by the Authority, and signed by the owners of at least 75% of the current potential floor area needs to be submitted.

Renumbering and Changes to Cross-Referencing

- 1.15 Due to the insertion of additional sub regulations under regulation 4, the previous sub regulations had to be renumbered. Thus, the 2002 regulation 4(2) is now 4(4) and old regulation 4(4) is now 4(5). Changes to cross-referencing affected regulations 5(4) and 7.
- 1.16 Regulations 5, 6, and 7 have remained unchanged except for the replacement of the term 'Temporary Provisions Scheme' with 'official alignment'. Regulation 8 repeals L.N. 27 of 2002.

2 DEVELOPMENT CONTROL POLICY AND DESIGN GUIDANCE DC 2007 -THE MAIN CHANGES

- 2.1 Development Control Policy and Design Guidance 2007 (DC2007) was approved by the MEPA Board on 22 March 2007 and endorsed by the Minister on 26 March 2007.
- 2.2 It will come into effect on 16 April 2007 and so will apply to development permission applications validated on or after that date. However the new Parts 16 and 17 have different effective dates – Part 16 applies to applications not determined by 16 April 2007 and Part 17 to applications submitted on or before 3 August 2006.
- 2.3 The main changes from DC 2005 (approved April 2005) are briefly described first. Wording changes that have not altered the substantive content of the policies and minor corrections to typographical or other errors are not included. The additional policies in Parts 16 and 17 are then discussed. The purpose here is to give a general overview and reference should be made to the policies themselves for the full text.

The Changes

Part 1 General Principles

- 2.4 The order of the policies has been changed slightly, so that they move from the general to the particular with the policy on Urban Design Concepts previously 1.6 now Policy 1.2.

Policy 1.7 Visual Architectural Gain

- 2.5 The areas where a departure from policy may be permitted to achieve a high quality of design have been clarified to bring them into line with the land use/area designations now used in Local Plans.

Policy 2.1 Building Heights - All Buildings except Detached and Semi Detached Dwellings

- 2.6 A column showing the allowable maximum height (in metres) with a basement has been added to the table. The internal height of a floor is set at 3.46 metres and a course module at 0.29 metres. The maximum height of a ramp leading to a semi-basement has been increased from 2.3 to 2.6 metres to accord with the maximum semi-basement height in Policy 2.3. The paragraph referring to the policy 'Interim Review of Building Heights Pending Local Plan Completion' has been removed.

Policy 2.3 Building Height on Sites with a Sloping Street Frontage – All Buildings except Detached and Semi Detached Dwellings

- 2.7 The height of a semi-basement is now 2.6 metres rather than 2.5 metres and a reference to basements has been included. Corresponding changes have been made to the diagrams, with a new one added showing a semi-basement.

Policy 2.10 Application of the Floor Area Ratio

- 2.8 The Floor Area Ratio will now be applied only to sites with an area of 3,000 square metres or more; the previous provision relating to sites of between 2,000 and 3,000 square metres has been removed.

Policy 3.2 Detached and Semi-Detached Dwellings

- 2.9 Provision for villas at High Ridge, Mellieha has been included in Table 3.2; this was in DC 2000 but omitted from subsequent versions of the Guidance.

Policy 3.7 Minimum Dwelling Size (Other than Dwellings Covered by policies 3.2 and 3.5)

- 2.10 An exemption from the requirement, that in developments of five or more units not more than 20% of dwellings should be one-bedroom units, has been introduced for non profit-making organisations and government entities.

Policy 4.9 Driveways

- 2.11 The policy and the supporting text have been slightly reworded to clarify the intention of the policy.

Policy 4.18 Urban Improvements Fund

- 2.12 This is a new policy that expands upon the requirement in Policy 10.6 for a contribution to the Urban Improvements Fund where car parking cannot be provided on site (because it is physically impossible or undesirable) and the site is not in an area covered by a Commuted Parking Payment Scheme. It applies to all forms of development rather than just to penthouses, as in Policy 10.6.

Policy 6.1 Parking areas, Parking Spaces and Garages

- 2.13 Table 6.1C has been enhanced by adding the correlation between the widths of the door opening and of the aisle for opening widths between 2.4 and 3.0 metres (thus expanding on note 1 in the previous version).

Policies 6.5, 6.9 and 6.13

- 2.14 Minor changes have been made to the wording of the policies to aid understanding (e.g. in Policy 6.9 it has been made clear that the medium parking standard is three car parking spaces).

Policy 7.2 Balconies

- 2.15 The criterion requiring a balcony to be set back at least 0.5 metre from the edge of the kerb has been removed.

Policy 10.1 Washrooms on Multiple Dwellings

- 2.16 A requirement for a setback of 1.5 metres from the back of the building has been added. Where a penthouse is permitted, a covered corridor or passageway is now acceptable. The maximum permissible depth of a projecting cantilever has been reduced from 1.2 metres to 1.0 metre.

Policy 10.4 Residential Rooms on the Roof of Terraced Houses and Maisonette Development

- 2.17 Again a requirement for a setback of 1.5 metres from the back of the building has been added and the permissible depth of a cantilever reduced (as in 10.1 above). The limit on the floorspace of residential rooms of 56 square metres for buildings of three floors has been removed (to eliminate conflict with policy 10.6).

Policy 10.5 Setback Floors in Urban Conservation Areas

- 2.18 This policy now applies to buildings of more than two floors with the removal of the previous limitation. The size of the existing dwelling unit has been increased from 76 to 96 square metres and the 1.5 metres setback from the back of the building has been included here also. Solar water heaters and other services are now permitted on the roof of the set back floor.

Policy 10.6 Penthouses

- 2.19 The supporting text has been amended to make clear that the policy permits penthouses for uses other than as dwellings. The required depth of the setback from the rear of the building has been reduced from 1.8 to 1.5 metres. A new requirement (added to criterion (c)) is that, in internal developments, penthouses should be set back 4.25 metres from the internal façades.

- 2.20 A restriction has been added to criterion (f) that access to the roof should be used only for the purpose of maintenance. Restricted sites in Part C of the policy have been defined as penthouses with a gross floor area of less than 45 square metres.

Policy 10.11 Other Structures on the Roof of Terraced Dwellings

- 2.21 A minor change has been made to aid understanding of the policy by including the floor space limitations from policy 10.4 rather than simply referring to that policy.

Policy 11.3 Open Staircases

- 2.22 Open staircases are no longer permitted in Urban Conservation Areas.

Policy 11.5 Projecting Rooms or Parts of a Building

- 2.23 Diagram 11.5(b) has been slightly amended to show the required minimum height above ground level of 2.5 metres omitted from previous versions.

Policy 12.5 Space Requirements within Residential Buildings

- 2.24 This policy has been renamed (from 'Clothes Drying Areas and other space requirements within Residential Buildings') and a requirement introduced for a garbage room that is easily accessible from street level to be provided in residential development of more than 10 units.

Policy 13.5 Services on Roof Structures

- 2.25 A specific prohibition on the placing of commercial generators, chillers and other similar equipment on the roof has been included; this was previously merely stated in the explanatory text.

- 2.26 Criterion B (b) requires that services should be at least 2 metres from the front and back edge of the roofs of roof structures but, for roofs less than four metres deep, only a setback from the front edge is now necessary. The restriction on services on the roofs of penthouses, washrooms etc of scheduled property is now limited to Grades 1 and 2, rather than applying to all scheduled property.

Policy 15.6 The Use of Front Gardens in Retail Outlets

- 2.27 The areas where the use of the front garden of a retail outlet is permitted are now defined as "Town Centres, Entertainment Priority Areas, Tourism Zones and other areas specifically indicated in the Local Plans for tourism related activities".

Policies 15.7 Canopies in Front of Retail Outlets, 15.8 The Use of the Front Garden Area of Food and Drink Outlets and 15.9 Structures in the Front Garden of Food and Drink Outlets

- 2.28 An identical change in definition to that in Policy 15.6 has been made in Policies 15.7, 15.8 and 15.9.

The New Parts – Part 16

Introduction

- 2.29 Part 16 contains policies which amend DC 2005 and which have been made necessary by the coming into force of five Local Plans in August 2006. They apply to applications not determined by 16 April 2007.

Policy 16.1 Building Height Relaxation

- 2.30 Development exceeding the height limitation for a street may be permitted in specific circumstances; in particular, where the development is located between buildings (with development permission) that exceed the height limitation.

Policy 16.2 Minimum Dwelling Size covered by Local Plan policies

- 2.31 This policy stipulates that the minimum floor area of 120 square metres (required in particular areas by Local Plan policies) should be measured by including all roofed-over enclosed spaces.

Policy 16.3 Dwelling Size of Penthouses covered by Local Plan policies

- 2.32 In areas where Local Plan policies require a minimum dwelling size of 120 squares metres penthouses below this size may be permitted, subject to Policy 10.6 Penthouses.

Policy 16.4 Dwelling Size on Individual Plots with a Narrow Frontage

- 2.33 Again in areas where Local Plan policies require a minimum dwelling size of 120 squares metres, a maximum of four dwelling units and a penthouse with a minimum floor space of 96 square metres may be permitted on small plots with a narrow frontage. A proviso prohibits the interlinking of small plots that would otherwise not meet the policy criteria.

Policy 16.5 Building Height Relaxation to Cover High Blank Party Walls

- 2.34 This policy sets out the circumstances in which the development of an additional floor (and a penthouse, if applicable) that exceeds the height limitation may be permitted in order to cover the blank side walls (which must be two or more floors in height) of immediately adjoining buildings.

The New Parts – Part 17

Introduction

- 2.35 The policies in this Part modify the application of particular policies in the Local Plans. They provide a temporary policy context to be used in the assessment of applications submitted up to and including the date of the coming into force of the new Local Plans – that is, they apply solely to applications submitted on or before 3 August 2006.

Policy 17 (a)

- 2.36 Where Local Plan policies require dwellings of at least 120 square metres a unit of a minimum of 96 square metres will be permitted.

Policy 17 (b)

- 2.37 With the approval of Local Plans that set out maximum building heights, the interim building height relaxation policy has been superseded. Policy 17(b) sets out the circumstances in which this policy will be applied and in which a penthouse over a third floor may be permitted.

Policy 17 (c)

- 2.38 This policy deals with sites that are now within an UCA designated in a Local Plan but were previously outside and were not proposed in a Draft Local Plan to be included. For these sites, policy 3.8 of DC 2005 on internal development will not be applied; the height limitation is that set out in the Temporary Provisions Schemes, having regard also to the interim building height relaxation policy if applicable; and habitable structures above the height limitation will not be permitted.

Policy 17 (d)

- 2.39 Directly related to 17(c), this Policy sets out additional criteria, on design and on impact on the streetscape and the UCA, to which the internal development is subject.

Policy 17 (e)

- 2.40 Where sites designated as Residential Priority Areas (RPAs) in Local Plans were previously zoned for residential development, changes of use to local shops will be considered in accordance with the previous zoning. The effect of this is that local shops may be permitted on these sites, although they would not be if the RPA zoning were applied.

Conclusion

- 2.41 This Circular briefing is designed to provide a summary of aspects of the subject matter covered. It does not purport to be comprehensive or to render legal advice. The full text of the policy document is available on the Authority's website www.mepa.org.mt (under Official Manual – Supplementary Guidance).

3 SUBMISSION REQUIREMENTS

- 3.1 Four years have elapsed since the application of MEPA Circular 8/02 which outlines the submission requirements for development permission applications in the Checklist. The contents of this circular were reiterated in a further circular in 2006 (MEPA Circular 1/06).
- 3.2 Nonetheless, submissions are received that do not fulfil all the requirements in the Checklist and so fall short of the required standard. In a bid to raise the quality of applications, the Checklist in the Circular is being meticulously enforced during the initial assessment of applications to ensure full compliance with the submission requirements

4 SUBMISSION OF PLANS AT DEVELOPMENT CONTROL COMMISSIONS AFTER FINALISATION OF DEVELOPMENT PERMISSION APPLICATION REPORT

- 4.1 Attention is drawn to Circular 1/06, which describes the changes made to the planning process to cut down delays in application processing. Discussions and negotiations are to be conducted with the Directorate rather than with the Development Control Commissions (DCC). Consequently, fresh plans, received after the elapse of the 30-day period for Development Permit Application Report (DPAR) consultation or submitted during the DCC sitting itself, will not be accepted by MEPA. More importantly, this submission will not be part of the technical information available to the DCC for a decision. **From the 4th June 2007, the DCC will not entertain proposed amendments to a proposal, if the case officer had earlier requested the same changes during processing and these were declined by the architect/applicant. Accepting such documents will therefore cease to be possible for various reasons including logistical ones.**
- 4.2 The DCC may request more information or amendments only in exceptional circumstances. Only in these circumstances can a case be deferred until this information is assessed by the Directorate. Should the DCC consider the DPAR inadequate it will send back the file for re-assessment to the Team Manager.

Perit Christopher Borg
Director of Planning
9th May 2007