



QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

(TRIBUNAL TA' REVIZJONI TAL-AMBJENT U L-IPPJANAR)

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum l-Erbgha, 19 ta' Ottubru, 2016

Numru 10

Appell Nru. 10/2016

**Dott. Karol Aquilina u Nicholas Baldacchino
fil-kwalita' taghhom ta' Sindku u Segretarju Ezekuttiv
ghan-nom tal-Kunsill Lokali Siggiewi,**

vs

**L-Awtorita' ta' Malta ghall-Ambjent u l-Ippjanar u
l-kjamat in kawza Joseph Caruana, Segretarju Permanenti
tal-Ministeru ghall-Izvilupp Sostenibbli, Ambjent u
Tibdil fil-Klima**

Il-Qorti,

Rat ir-rikors tal-appell tal-Kunsill Lokali tas-Siggiewi tad-19 ta' April 2016 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Marzu 2016 li cahdet l-appell tal-istess u kkonfermat il-permess outline PA 7823/06 'construction of 12 farms and a centralised dairy waste digester and waste conversion facility f'sit is-Siggiewi';

Rat ir-risposti tal-Ministeru ghall-Izvilupp Sostenibbli, Ambjent u Tibdil fil-Klima u l-Awtorita u li ssottomettew li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

Rat l-atti kollha u semghet lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

Ra r-ragunijiet ta' l-appell hekk kif gej:

“Il-Kunsill Lokali tas-Siggiewi qiegħed jitlob lit-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar biex id-decizjoni li jinhareg il-permess ta' zvilupp PA 7823/06 (outline development permission), tkun imhassra u dan għar-ragunijiet segwenti:

1) Siti alternattivi

Is-sit magħzul biex fih isir l-izvilupp ma jiehux in konsiderazzjoni siti alternattivi b'mod adegwat. Mhux magħruf xi studji saru dwar siti alternattivi għax kull ma kien soġġett għall-iskrutinju pubbliku hi tabella fl-EIA u cjoe it-tabella numru 2.19, The Comparative Assessment Table, f'pagna 104 tal-EIA (Volume 1) li tirreferi għal studju li sar mill-Ministeru tar-Rizorsi u Affarijiet Rurali liema studju qatt ma kien ippubblikat u allura l-kontenut tiegħu mhux magħruf.

It-tabella 2.19 li qed issir referenza għaliha hawn fuq tqabbel names siti, inkluz dak eventwalment magħzul. Mhux magħruf għaliex intagħzlu dawk 1-4 siti alternattivi addizzjonali, in partikolari meta bl-ismijiet tagħhom biss hu ovvju mingħajr il-htiega li jsir kwalunke studju, li l-ebda wahda minn minnhom qatt ma setgħet tkun sit alternattiv.

L-ghazla ta' sit alternattiv għandha issehh b'mod li dak is-sit hekk magħzul ikun jista' joffri l-potenzjal, anke dak il-hin li jkun magħzul, li verament ikun sit alternattiv u cjoe sit li joffri l-potenzjal ta' zvilupp għall-iskop intenzjonat fl-applikazzjoni tant konsiderazzjoni. Kull wiehed mis-siti magħzulin bhala siti alternattivi mill-ewwel jidher li ma joffri l-ebda potenzjal għall-iskop li ntagħzel.

Dan kollu, flimkien mal-fatt li l-istudju li għamel jew ikkummissjona l-Ministeru tar-Rizorsi u l-Affarijiet Rurali qatt ma kien ippubblikat għall-iskrutinju pubbliku, jwassal għall-konkluzjoni inevitabli li l-ezercizzju li għamel il-Ministeru kien wiehed finta.

Dan imur kontra dak li jipprovdi l-paragrafu (c) tas-sub-regolament numru (1) tar-Regolament numru 14 tar-Regolamenti tal-2007 dwar l-

Impatt Ambjentali (Avviz Legali 114 tal-2007) li jipprovdi li fl-istudju dwar l-Impatt Ambjentali sottomess mill-konsulenti "Ghandha ukoll tigi kkunsidrata deskrizzjoni ta' siti alternattivi".

It-tabella 2.19 li hemm riprodotta fl-istudju dwar l-impatt ambjentali bl-ebda mod ma tista' tkun meqjusa bhala "l-deskrizzjoni" ta' siti alternattivi mehtiega. In-nuqqas ta' din l-informazzjoni mill-istudju dwar l-impatt ambjentali (EIA) ifisser li l-konsultazzjoni pubblika li saret skond ir - regolament 21 tar-Regolamenti tal-2007 dwar l-Istudju dwar l-Impatt Ambjentali ma kienitx adegwata u dan ghax fl-ebda hin ma kien hemm skrutinju pubbliku tas-siti alternattivi infushom li gew maghzula, l-kriterji li intuzaw biex saret din l-ghazla ta' siti alternattivi kif ukoll ir- ragunijiet dettaljati il-ghala kull wiehed mis-siti maghzula bhala sit alternattiv ma kienx addattat ghall-izvilupp propost. Huwa ovvju ukoll li thallew barra minn dan l-istudju dwar siti alternattivi, siti ohra li diga huma kommessi ghal uzu ta' agrikoltura intensiva u tali studju kieku sar b'mod adegwat kellu jikkunsidra dawn ukoll bhala siti alternattivi. Huwa biss kieku sar l-istudju kif mehtieg li dan seta' jidentifika sit alternattiv biex ikun ikkunsidrat ghall-izvilupp propost.

Ma' dan wiehed irid izid li l-pjani dwar x'hemm il-hsieb li jsir ghadhom m'humieix cari sal-lum. Ghadhom qed isiru dikjarazzjonijiet fil-pubbliku li m'hemm l-ebda hsieb li jinbnew 12-il razzett imma li ser jinbnew 7. Jekk dan hu l-kaz, dan il-punt rifless fil-kriterji ghar-ricerka ta' sit alternattiv seta' facilment ikun ta' ghajnuna biex jinstab sit izghar il-boghod minn dak li fit-fatt intagazel.

Ghaldaqstant il-fatt li l-istudju dwar l-impatt ambjentali ihalli barra din l-informazzjoni essenzjali dwar il-mod kif gew identifikati u ezaminati dawk li setghu kienu siti alternattivi liema informazzjoni kienet mehtiega, dan jaghmel il-process konsultattiv inkomplet u per konsegwenza wiehed li ma jissodisfax l-obbligi stabbiliti mir-Regolamenti tal-2007 dwar l-Istudju dwar l-Impatt Ambjentali (Avviz Legali 114 tal-2007) fil-paragrafu (c) tas-sub-regolament 14(1).

2) L-impatti fuq ir-residenti tad-Dar tal-Providenza

L-impatti tal-izvilupp propost mill-applikazzjoni PA 7823/06 fuq ir-residenti tad-Dar tal- Providenza m'humieix ikkunsidrati.

Is-sub-regolament numru (1) tar-regolament numru 16 tar-Regolamenti tal-2007 dwar l-Istudju dwar l-Impatt Ambjentali (Avviz Legali 114 ta' 1-2007) jistabbilixxi obbligu pretiz li jrid ikun onorat mill-istudju sottomess mill-konsulenti (EIA). Testwalment jinghad li: "L-effetti probabbli, kemm meta l-izvilupp ikun komplut kemm waqt il-fazi ta' kostruzzjoni, ghandhom jigu mbassra." B'mod iktar pretiz fis-sub-regolament numru 2 tal-istess regolament hemm elenkat b'mod dettaljat l-"effetti principali" li ghandhom ikunu "ikkunsidrati u stmati". Fil-paragrafu (g) tal-imsemmi s-sub-regolament 2 hu specificat l-obbligu li jkun stmat l-effett fuq il-bnedmin.

Minn dan johrog l-obbligu mhux daqstant li jkunu analizzati l-impatti possibli fuq id-Dar tal- Providenza daqskemm fuq ir-residenti taghha. L-analizi ta' dawn l-impatti ma jinstab imkien fid- dokumentazzjoni sottomessa.

L-EIA jikkonsidra li hu importanti li jinfurmana illi fl-1995 fil-konfini tad-Dar tal-Providenza sar xoghol ta' kostruzzjoni ta' hajt bla permess, liema kostruzzjoni eventwalment dwarha ittiehdu passi biex dan ikun sanzjonat. Imma l-EIA imkien ma jsib spazju biex jezamina l-impatti fuq ir- residenti tad-Dar tal-Providenza tal-izvilupp propost. L-anqas imkien ma hemm xi referenza dwar jekk l-irziezet li diga hemm fil-vicinanze ghandhom xi impatt rari jew ripetut fuq is-sahha u l-hajja tar-residenti tad-Dar tal-Providenza.

Dan l-istudju huwa essenzjali ghax l-accettazzjoni da parti tal-komunita' Maltija tad-Dar tal- Providenza huwa wkoll committment li jgib mieghu obbligi tal-istituzzjonijiet tal-ippjanar tal-uzu tal-art. Da parti taghhom dawn l-istituzzjonijiet, ewlenija fosthom il-MEPA, iridu issa jassiguraw illi ma jsir l-ebda zvilupp li jista' jkollu impatt negattiv fuq il-kwalita' tal-hajja tar-residenti tad -Dar tal-Providenza.

L-istudju li hemm l-obbligu li jsir skond il-paragrafu (g) tas-sub-regolament numru 16(2) tar- Regolamenti tal-2007 dwar l-Istudju dwar l-Impatt Ambjentali (Avviz Legali 114 tal-2007) huwa essenzjali biex jidentifika dawn l-impatti, jikkwantifikhom u jekk possibli jidentifika wkoll il- mitigazzjoni taghhom. Li tonqos li tindirizza dan l-issue ma jfissirx li dan ma jezistix jew li sparixxa imma li qieghed tahrab minnu.

Il-filosofija bazika tal-istudju tal-EIA hija bbazata fuq il-policy li l-MEPA approvat f'Dicembru 2007 u intitolata Policy and Design Guidance: Agriculture, Farm Diversification and Stables. Din il-policy tistabilixxi li zvilupp konness mal-agrikoltura jista' jsir kemm-il darba dan ikun sitwat 183 metru miz-zona tal-izvilupp. Anke jekk dan hu korrett li jinghad, hu sottomess li dan mhux bizzejjed gnax dan huwa dejjem soggett ghal dak li jipprovdi l-Pjan ta' Struttura fil-policy BEN 1 li essenzjalment jobbliga li l-ebda zvilupp li jista' jsir ma ghandu jservi bhala sors ta' fastidju ambjentali (environmental nuisance).

Ghaldaqstant il-fatt li l-istudju dwar l-impatt ambjentali jhalli barra informazzjoni essenzjali li kienet mehtiega dwar l-impatt tal-progett propost fuq ir-residenti tad-Dar tal-Providenza ma jissodisfax l-obbligi stabbiliti mir-Regolamenti tal-2007 dwar l-Istudju dwar l-Impatt Ambjentali (Avviz Legali 114 tal-2007) fil-paragrafu (g) tas-sub-regolament 16(2).

3) Skedar tal-mitjar ex-militari tal-Qrendi

B'mod pozittiv hi u tigi ipprocessata l-applikazzjoni PA 7823/06 gie skedat parti mill-mitjar maghruf bhala l-mitjar ex-militari tal-Qrendi. L-art li fuqha huwa propost li jsir l-izvilupp skond l- applikazzjoni PA 7823/06 tiffirma parti minn dan il-mitjar.

Dan l-iskedar sar permezz tal-Avviz 22 ippubblikat fil-Gazzetta tal-Gvern tal-10 ta' Jannar 2012 skont is-setgha stabbilita fl-Artikoli 81, 86, 87, 88 u 90 tal-

Att tal-2010 dwar l-Ambjent u l-Ippjanar tal-Izvilupp. Hu deskritt bhala l-mitjar ex-militari tal-Qrendi fil-limiti ta' San Niklaw Siggiewi u gie skedata bhala ta' Grad 2 skont il-Policy UCO 7 tal-Pjan ta' Struttura u jidher fil -pjanta 8/22 tal-insemmija edizzjoni tal-Gazzetta tal-Gvern.

Minn ezami tal-pjanta ta' x'gie skedat mill-mitjar ex-militari tal-Qrendi jirrizulta li l-izvilupp propost imiss ezatt mal-linja ta' dak li qieghed jigi protett. Dan imur kontra l-ispirtu tal-Pjan Lokali tan-Nofsinhar li kull fejn jitkellem dwar propjeta' protetta johloq zona transitorja (buffer zone) madwar iz-zona protetta b'tali mod li jkun assigurat li l-protezzjoni moghtija tkun wahda effettiva.

Billi l-protezzjoni permezz ta' skedar ta' parti mill-ex-mitjar military tal-Qrendi saret ricentement u barra mill-process li wassal ghal Pjan Lokali hu inutli li nfittxu referenza ghal din iz-zona transitorja li hi tant mehtiega u dan minhabba li la l-Pjan Lokali u l-anqas il-Pjan ta' Struttura ma fihom provvedimenti generali ta' din ix-xorta. Din iz-zona transitorja kellha tirrizulta mill- konsiderazzjonijiet tal-MEPA jew mill-EIA imma sfortunatament dan ma sarx.

Ghaldaqstant hu sottomess li l-izvilupp propost huwa vicin wisq ta' l-ex-mitjar militari tal-Qrendi li gie skedat fl-2012 kif imfisser hawn fuq u bla pregudizzju ghall-punti l-ohra spjegati iktar il-fuq ghandu jitbieghed miz-zona protetta.

Filwaqt li l-Kunsill Lokali tas-Siggiewi jifhem u japprezza li l-iskop tal-izvilupp propost tal- kumpless tat-12 –il razzett hu biex tkun immodernizzata l-industrija tal-produzzjoni tal-halib, kif ukoll biex ikun immaniggjar ahjar l-impatt ambjentali li din l-industrija tiggenera, hu sottomess li l-materji elenkati f'dawn is-sottomissjonijiet gew injorati jew ma inghatawx l-attenzjoni li jimmeritaw.

L-ghazla tas-sit li ghandu jkun zviluppat u per konsegwenza l-ezercizzju tal-analizi tas-siti alternattivi kellu jkun wiehed trasparenti u soggett ghall-iskrutinju pubbliku skont ir-regolament 14 tar-Regolamenti tal-2007 dwar l-Istudju dwar l-Impatt Ambjentali (Awiz Legali 114 tal-2007). Il-fatt li dan ma sarx jitfa' dell tqil fuq parti essenzjali tal-EIA.

Anke n-nuqqas tal-analizi tal-impatti fuq il-bnedmin residenti l-iktar vicin tal-progett propost, fid-Dar tal-Providenza, hu krucjali. Kien essenzjali li jsir skont ir-regolament 16 tar-Regolamenti tal-2007 dwar l-Istudju dwar l-Impatt Ambjentali (Awiz Legali 114 tal-2007). Il-fatt li din l-analizi ma sarix ifisser li min ha d-decizjoni dwar l-applikazzjoni tant konsiderazzjoni ma kellux informazzjoni mehtiega biex ikun jista' jiehu decizjoni tajba.

Fl-ahharnett fil-waqt li sar pass il-quddiem bl-iskedar tal-mitjar ex-militari tal-Qrendi l-fatt li l-izvilupp propost ser isir ezatt mal-linja li tiddefinixxi z-zona protetta jfisser li hemm nuqqas ta' zona ta' transizzjoni, mehtiega biex il-protezzjoni moghtija tkun wanda effettiva.

In vista ta' dan kollu Dott. Karol Aquilina u Nicholas Baldacchino fil-kwalita taghhom rispettivament ta' Sindku u Segretarju Ezekuttiv u ghan-nom tal-Kunsill Lokali tas-Siggiewi jitolbu li dan it-Tribunal ghandu jhassar il-permess ta' zvilupp PA 7823/06.”;

Ra r-risposta tal-Avukat Dottor Louise Spiteri ghall-applikanti li taqra hekk kif gej:

“Further to the third party appeal PAB 155/14, filed by the Siggiewi Local Council vis-a-vis application in caption, I have been instructed by my client the Ministry for Sustainable Development, the Environment and Climate Change who applied for application number PA 7823/06 to forward my client's initial stance concerning the claims raised that the application in caption should be rescinded.

My clients believe that the decision taken by the MEPA board was correct and the claims raised by the Siggiewi LC are unfounded. We therefore humbly ask the EPRT to refuse the third party appeal and confirm permit number PA 7823/06 - this for the following reasons:

0 Preamble

00.01 PA 7823/06 is an outline application for the construction of 12 dairy farms and a centralised dairy waste digester and waste conversion facility (WD & WCF). The main aim of the proposal is to relocate existing farms which are located in unsuitable areas, including urban areas and sites of cultural/historical importance.

00.02 Originally the following farms were expected to be relocated to the area delineated by PA 7823/06:

00.03 In view that the site forms part of the historic Royal Air Force military airfield, and contains a number of unique features, the proposal was amended in consultation with the Superintendence of Cultural Heritage, Superintendence of Fortifications, and the Heritage Planning Unit. Following a revision of the site boundaries, the proposal for the relocation of 17 farms had to be re-dimensioned to incorporate 12 farm units.

00.04 The layout of the farm complex covers a site with an area of approx. 70,000sqm and which is physically divided by an existing public road. A row of 10 farm units is being proposed to the west of the road, with two other farms and the WD & WCF being proposed to the east (drwg. 151C).

00.05 Three different farm modules are being proposed. Two of the units will have a capacity of 80 milking cows (4,800 sqm each), three units will have a capacity of 59 milking cows (3,500 sqm each) and the remaining seven farm units will have a capacity of 47 milking cows (3,100 sqm each) - refer to drwgs. 98C/98D/98E/151C. Each of the farm modules includes the main cow shed, a fodder storage area, a manure storage (capacity for approx. 15 days), and a resting quarter not exceeding 150sqm floorspace. The cow sheds and fodder storage areas are proposed in pre fabricated slanted roof steel structures, and the apex height of the cow sheds is approx. 9.5 metres.

00.06 The proposed WD & WCF is aimed to serve as an ancillary waste treatment facility for the 12 farms being proposed on site, and another 5 farms that also require eventual relocation. It is pertinent to point out that cattle generated manure cannot be disposed of into the public sewer since this will cause digestion and treatment problems at the various purification stations spread out through the island. The digested facility is therefore necessary for the treatment of the sewerage generated by the cow farms. Sizing is also important since the WD & WCF is designed to operate at a minimum amount of waste. Without this minimum amount of waste the WD & WCF facility will not work.

00.07 The WD & WCF covers an area of approx. 15,500 sqm, and the latest proposal includes 2 digester tanks, 3 storage tanks, enclosed storage for solid manure, power generation block, an administration block and a large underground water reservoir drwg. 1518. The height of the digester tanks is 14.5 mtrs, and the height of the storage tanks is 9.5 mtrs.

00.08 The third party appeal raised by the Siggiewi local Council is based on three main queries:

- a) The Council Questions the Alternative Site Assessment
- b) The Council claims that there is a lack of Assessment on the Impacts effecting the residents of the Dar tal-Providenza complex

01.03 The assessment outlined above is based on a detailed study where technical and operational consideration, land use planning and policy considerations, environmental factors, and environmental risks and impacts were taken into consideration.

01.04 This analysis was assessed by the EPD and MEPA who deemed it acceptable. Nevertheless, a number of consultation meetings were held with the Siggiewi Local Council. During these meetings, the Council presented its qualms and these were answered to in writing. Several amendments to the original concept of the project were made in order to accommodate the Local Council's concerns.

01.05 As part of the public hearing process, id-Dar tal-Providenza put forward more than 70 technical questions concerning the EIA document. In particular, questions 26 and 50 refers. Here, queries vis-a-vis alternative sites were raised. The answer was clear. The Alternative Site Assessment was available at MEPA for consultation. Obviously the assessment made was detailed and contained plans of the alternative locations under study. This second addendum to the EIS document was specifically sent to Dar tal-Providenza for their perusal; whilst the Local Council had full access to the PDS, EIS, and all addenda presented as part of the detailed EIA process.

01.06 Claims by the Siggiewi Local Council that the EIA failed to adequately assess the alternative sites, are therefore unfounded. Not only was a specific document drawn up to assess the various sites, but this document was made available to the general public and the Local Council in Particular. It is

to be noted that all named sites had accompanying plans delineating the particular site and a site specific assessment made in comparison to standards criteria as outlined above.

01.07 All the sites forming part of the Alternative Site Assessment study shared similar criteria, they had to be large enough to accommodate the project, be in Government Ownership, have adequate road network access, etc.

01.08 I beg to differ with the thesis presented by the Siggiewi Local Council that the EIS failed to address alternative sites. Clause 14 of LN 114/2007 reads:

14. (1) The consultants shall describe the proposed development including

- (a) a justification for the proposal
- (b) a description of the physical characteristics and features of the project including production processes (if relevant) and amounts of emissions, wastes and residues expected during both construction and operation
- (c) a description of the financial feasibility of the project. A description of alternative sites considered, and alternative technologies that could be employed during construction and when in operation, shall also be included. In doing so, they may also refer to the project description statement mentioned in regulation 5 of these regulations.

Even the clause itself specifies that the document may also refer to other documents; in order to satisfy the requirement of this clause. The application under study considered a separate Alternative Site Analysis study which was detailed and available to the public. In fact to the queries raised, it was put in writing that the relevant documentation was available for public scrutiny at MEPA.

01.09 Clause 21 of the said LN 114/2007, which outlines that a consultation stage shall take place; was therefore totally respected. It is due to lack of interest on the Siggiewi Local Council's part that queries regarding the Alternative Site Assessment persisted prior to the decision taking process and EIS process were finalised.

01.10 Furthermore, the Siggiewi Local Council is outlining that there might be changes to the number of farms proposed to be relocated to the area outlined in caption. These rumours are unfounded and unrealistic. The WD & WCF have been sized to cater for a specific amount of cattle waste which has to be generated by a specific amount of cows - consequently the need for the 12 farms. Otherwise the WD & WCF will not function properly

02.01 It is being claimed by the Siggiewi Local Council that the impacts on the residents of this complex were not considered when carrying out this study. The Siggiewi Local Council is stating that this contravenes section 16 of LN 114/2007 which reads:

- (1) The probable effects, both of the finished development and during construction, shall be predicted.
- (2) All significant impacts of the proposed development shall be considered and assessed including the main effects on
 - (a) buildings and other man-made features (including infrastructure)
 - (b) flora, fauna, ecology and geology including geomorphology and palaeontology
 - (c) land
 - (d) water
 - (e) air and climate
 - (f) other indirect and secondary effects associated with the development
 - (g) human beings (including health and safety measures).
- (3) Hazard and risk assessment of the development shall also be undertaken.

02.02 Prior to embarking on the individual studies, the Area of Influence of each pollutant, adverse effect, etc. resulting from the proposed project was identified and set. This varied according to the source, resulting from the particular activity and the site context. The Areas of Influence were determined and discussed with MEPA as part of the scoping exercise which was carried out prior to finalising the method statement governing the individual studies. These Areas of Influence were determined on scientific basis and varied according to the particular study area/concern.

02.03 The Siggiewi local Council claims that id-Dar tal-Providenza was not considered in the study carried out. The concerns raised by the same Dar tal-Providenza resulted in a document of more than 70 written queries which were answered in writing on a one-by-one basis. These answer were included as part of the final EIA which was considered by the MEPA board when deciding this case. Claiming that the Dar tal-Providenza was not considered in the study is absurd to say the least. It seems that the Siggiewi local Council has been very selective in reading the EIA document and following the EIA process (sic.).

02.04 The Siggiewi Local Council is claiming that "lanqas imkien ma hemm xi referenza dwar jekk l-irziezet li diga hemm fil-vicinanze ghandhom xi impatt rari jew ripetut fuq is-sahha u l-hajja tar-residenti tad-Dar tal-Providenza." It is pertinent to point out that cumulative effects were assessed in the EIA. The particular farms being mentioned were themselves subject to environmental studies prior to any recent upgrading. It is pertinent to point out that the EIA in question focused on the proposal raised by the application in caption.

02.05 In conclusion the Siggiewi local Council fails to read the significant studies carried out as part of this EIA, since they claim that the "il-filosofija bazika tal-istudju tal-EIA hija bbazata fuq il-policy li MEPA approvat f'Dicembru 2007 u intitolata Policy and Design Guidance: Agriculture, Farm Diversification and Stables. Din il-policy tistabilixxi li zvilupp konness mal-agrikultura jista' jsir kemm-il darba dan ikun sitwat 183 metru miz-zona tal-

izvilupp". This is absurd to say the least. Note also that the mentioned policy is more than respected nonetheless (sic).

03.01 The Siggiewi local Council reminds all that the project in caption is located in the ex Qrendi Military Airfield. Consequently since the site was scheduled, the proposed development should not be even considered.

03.02 The said Siggiewi local Council is forgetting to mention that the scheduling of the site actually took place because of this project and more so because the necessary scheduling studies were actually commissioned by the client as part of this application. Reference is here made to minute 68 copy of which attached (vide Annex 1), showing that the Cultural Heritage Assessment carried out as part of this study was the basis for the scheduling of the area. The study carried out was detailed and through it was determined the actual footprint of the project in caption.

03.03 Claiming that since scheduling did take place then the entire area should be considered as a buffer zone does not hold water. Buffer zones are considered to protect particular features of relevance. In this case such detailed studies were carried out and adhered to - this in full satisfaction of both Structure Plan and Local Plan.

04 Conclusion

04.01 For the reasons portrayed above we believe that the third party appeal raised by the Siggiewi Local Council fails to have a solid basis. In fact we entuse the EPRT to confirm the permit in caption – this particularly because:

- The Alternative Site Assessment was detailed and did consider various options, arriving at a preferred option - this following a focusing exercise. It forms an integral part of the EIA process
- The Dar tal-Providenza resident were considered when carrying out the EIA and impacts on the residence were assessed. All queries raised by the same Dar tal Providenza were answered in writing.
- The site does not effect the scheduled ex-military area.”;

Ra r-risposta tal-Awtorita' ghal dan l-appell li taqra hekk kif gej:

“5.1.1 Introduction

In comments submitted, the appellant is alleging that the chosen site for proposed development does not considered alternative sites in an adequate way, that the impact of proposed development in this application on the Dar tal-Providenza is not being considered and that the proposed development is very near the ex-military airfield of Qrendi that was scheduled in 2012.

In light of these speculations, the Authority wishes to comment on the alleged relevance of discussing the proposal since the development proposal is requesting the Construction of 12 farms and a centralized dairy waste digester and waste conversion facility (WD & WCF. The Authority is addressing arguments raised by the appellant specifically in this report; and will clarify to the Tribunal why the decision taken by the EPC Board in 31 July 2014 was correct.

5.1.2 Merits of Approval

MEPA consider that the proposal is acceptable, as the proposed development is aimed at relocating a number of existing farms currently located within the residential scheme or within historical sites. In principle, the proposal is considered to be in line with the relevant Structure Plan policies, including policy AHF 9 which specifically promotes the relocation of farms from unsuitable areas.

Also, as indicated by the Environment Protection Directorate (EPD), the relocation of 12 farms into a single consolidated cluster is the preferred alternative for the relocation of these farms, as it limits the impacts on the environment and should also help to reduce pressure for similar developments on other more sensitive areas.

The potential impacts of the development on the surrounding environment, and the impacts of the development on the historical significance of the area (the site forms part of the historic Royal Air Force military airfield) were assessed through the submission of an Environmental Impact Statement (EIS) and through various consultations. With regard to the historical issues, a Cultural Heritage assessment was carried out (doc. 89) and the proposal was revised to eliminate development of the part of site containing the main military airfield features, necessitating only the relocation of two nissen huts and a water reservoir. As for environmental issues, the holding capacity of the waste processing facility is still of concern.

5.1.3 Re- Alternative Sites

The appellant begins the arguments raised in Second Statement by making reference to the Comparative Assessment that refer to the study of Minister of Resources and Rural Affairs. He added that this was never published and leads to an inevitable conclusion and stated that the criteria used was not suitable for the proposed development as essential information was left out.

The Tribunal is notified that application was submitted by Ministry for Rural Affairs and Environment and in such a scenario, the appellant's claimed rights could be sought through a different forum.

The revised proposal involves the construction of 12 farm units for eventual relocation of 12 of the 17 farms currently located within scheme or within historical sites. As Outlined by the Department of Agriculture and Veterinary Regulation Division (VRD) the development is of a high importance since these farms cannot upgrade their operations within the current site and if no alternative is found there would have to close down. In the Terms of Reference by MEPA regarding the issue of alternative site assessment applicant responded that Ministry for Rural Affairs and the Environment agreed with MEPA that this development requires an EIA as per regulations 2007. The EPD concluded that that the submitted EIS (163A) includes assessment of the likely impacts of the proposal and identifies a number of mitigation measures. Thus the EPD recommended conditions and also noted

that the proposed environment conditions seek assurance for the vacation and rehabilitation of other more sensitive sites.

In addition all of the consulted entities found no objection to the proposal subject to their specific requirements and in this regard proposal satisfies the eligibility criteria set in policy 2.3C.

In extract from MEPA meeting held on 10th July 2014 (doc. 177) during the determination of Development Control Application a member of the Board asked for details regarding site selection exercises that were carried out and another member responded that this exercise was carried out by the MRRA. In same meeting an EPD officer stated that the EPD had expressed concerns on the selection exercise, however considering Malta's size for such a development and dispersal be worst, the EPD considered the site to be suitable.

5.1.4 Re- Impact on Dar tal-Providenza residents

Appellant is also quoting LN 114 of 2007 sub regulations that issue the obligation to analyse the possible impact on the residents of the Dar tal-Providenza. He added that the EIA is based on PDG for Agriculture 2007 that establish the 183m from the site and stated that even if it is correct this is subject to policy BEN 1 related to environmental nuisance. In this issue the Authority noted in terms of location, criterion (4b) of policy 2.3C requires that the site is located at least 183 metres away from the nearest development zone. In this case, the nearest residential scheme is that of Qrendi, which lies over 1.3 km away. The site also lies in close proximity of Id-Dar il-Providenza, however the nearest farm unit would still be located at a distance of 600m and therefore policy 2.3C does not apply and would be in line with Structure Plan Policies.

Following extract from MEPA meeting held on 10th July 2014 (doc.177) during the determination of Development Control Application, in paragraph 12173 Fr. Martin Micallef for id-Dar tal-Providenza noted that the adverse impacts from the existing farms will be increased by this development. Thus he added that the Board should consider setting up a committee for the monitoring of the operations and a representative of the id-Dar tal-Providenza should be in it. A member of the Board stated that he understood the concerns raised by id-Dar tal-Providenza, and however considering its location in ODZ, it is to be expected to have such developments in the vicinity (Paragraph 12178). The Chairman put to the vote the motion to include a condition for monitoring by a monitoring committee comprised of representatives of MSDEC, EPD, Siggiewi Local Council and id-Dar tal-Providenza: (para.12202). The vote was in favour of the motion (12-0) to include a condition for monitoring by a monitoring committee comprised of representatives of MSDEC, EPD, Siggiewi Local Council and id-Dar tal-Providenza and thus was approved (12203)

5.1.5 Re- Scheduled ex-Qrendi Military Airfield

The appellant is claiming that an ex-military airfield at Qrendi was scheduled as per Notice 22 published in the Govt. Paper dated 10 January 2012 and

this is located on the exact line of the proposal. He added that this is against the Local Plan and a buffer zone should be included. The Tribunal is notified that this concern was raised by the SCH due to the WWII military airfield features, and a Cultural Heritage Assessment report (doc. 89) was submitted in line with specific ToR (doc. 81).

Following the submission of a Cultural Heritage Assessment Report mentioned report (doc. 89), and submission of a re-dimensioned proposal to limit the developable site boundaries (drwgs. 98-98H), the SCH confirmed there is no objection provided that the proposal is in keeping with recommendations from the DCA and that works are eventually monitored to protect the cultural heritage (doc. 113). The Superintendence of Fortifications also noted that the latest proposal covers a stretch of ground within the airfield perimeter that contains no defensive or fortification features and that from a fortifications point of view, this proposal poses no threat to the destruction of such features and is much more acceptable (doc. 110G). The HPU confirmed that the amended proposal is in line with HPU's recommendations, and noted that since the proposal requires the relocation of 2 nissen huts and a water reservoir, a method statement is required (minute 124). The method statement was submitted as per doc. 139 and reviewed by the restoration architect as per doc. 150.

Moreover as per min. 162 a bank guarantee is being recommended to ensure the relocation of these structures is monitored (a full development application, either separate or as part of the farm unit construction, would be required). Regarding this matter the Directorate also remarked that although the site forms part of the historic Royal Air Force military airfield, no official scheduling or other protections apply to the site, and the site is not affected by any environmental designations, therefore criterion (4a) policy 2.3C does not apply.

Extract from MEPA meeting held on 10th July 2014 (doc 177) during the determination of Development Control Application in paragraph 12170, the Board stated that the development was amended to avoid the destruction of the remaining military airfield features of significant historical importance, with only two Nissan huts and a water reservoir requiring relocation. The submitted EIS includes an assessment of the likely impacts of the proposal and identifies a number of mitigation measures. The capacity of the WD & WCF for a wider waste catchment area would however require re-assessment. Given the need for relocation of farms from urban areas, and in line with the EIS findings, the proposal is being favourably recommended subject to conditions as outlined in the circulated DPA report.

5.1.5 Justification for Permitting Development

The same appellant of the permit issued was also a registered objector (164A) during the processing stages of this application. The Authority reiterates that the impacts of the development in terms of the above cited issues which include the military airfield features, visual impact, odour nuisance on the surroundings, and impacts on the air quality were assessed in the EIS and include a number of proposed mitigation measures. MEPA

therefore reiterates that it acknowledges and confirms permit issued on 31 July 2014 is justified and is valid on sound planning considerations in which the Authority took into considerations all the relevant facts, planning policies, legislation and submissions and thus, respectfully requests the Environment and Planning Review Tribunal to confirm the decision taken by the Authority and to confirm the decision taken by the Authority and to refuse this appeal.

6.0 REQUEST

6.1 For the above-mentioned reasons, the Malta Environment & Planning Authority respectfully requests the Environmental and Planning Review Tribunal to confirm the decision of the EPC and to refuse this appeal for development permission.”;

Ra l-verbal tal-access mizmum fuq is-sit minn dan it-Tribunal fit-28 ta' Mejju 2015;

Ra l-affidavit ta' Dr. George Grech datat 14 t'Awissu 2015, u l-kontra ezami mehud fis-seduta tal-24 ta' Settembru 2015;

Ra d-dokumenti tal-Istudju dwar l-Impatt Ambjentali;

Ra l-PA file numru 7823/06;

Ra l-atti kollha ta' dan l-appell;

Ikkunsidra ulterjorment:

Illi l-aggravji migjuba mill-appellanti fir-rikors tal-appell huma s-segwenti:

1. L-ezercizzju tal-analizi tas-siti alternattivi kellu jkun wiehed trasparenti usoggett ghall-iskrutinju pubbliku skont ir-regolament 14 tar-Regolamenti tal-2007 dwar l-Istudju dwar l-Impatt Ambjentali (AL 114 tal-2007);
2. L-analizi tal-impatt fuq il-bnedmin, b'mod partikolari dawk residenti fid-Dar tal-Providenza bhala l-eqreb komunita ghas-sit inkwsitjoni huwa nieqes ukoll fl-Istudju dwar l-Impatt Ambjentali bi ksur tar-regolament 16 tal-Reglamenti tal-2007
3. L-izvilupp propost ser isir ezatt mal-linja li tiddefenixxi z-zona protetta bl-iskedar tal-mitjar ex-militari tal-Qrendi u ghaldqsqstant hemm nuqqas ta' zona ta' transizzjoni mehtiega biex il-protezzjoni moghtija bl-iskedar tkun wada effettiva.

L-ewwel aggravju:

Illi l-appellanti qed isostnu illi l-process tal-Istudju dwar l-Impatt Ambjentali, hawn f'din id-decizjoni ser ikun referut bhala l-EIA, ma kienx jinkludi ebda studju serju u adegwat dwar konsiderazzjoni ta' siti alternattivi. Illi l-lista ta' siti alternattivi li giet pubblikata fit-tabella 2.19 fl-EIA maghmula mill-Ministeru tar-Rizorsi u l-Affarjatiet Rurali qatt ma kien ippubblikat ghall-iskrutinju pubbliku, u ghaldaqstant dan imur kontra d-dispost tal-paragrafu 'c' tas-sub-regolament numru (1) tar-Regolamenti numru 14 tar-Regolamenti tal-2007 dwar l-EIA.

Illi kemm l-Awtorita' kif ukoll l-applikanti qed isostnu illi l-process dwar l-istudju ta' siti alternattivi kien sar b'mod separat mill-Ministeru għall-Affarjiet Rurali u Ambjent u dan qabel ma beda l-process tal-EIA għall-izvilupp propost fuq is-sit inezami.

Minn ezami tal-process u l-inkartament tal-EIA, dan it-Tribunal seta' jinnota li din il-kwistjoni dwar siti alternattivi giet għad-diskussjoni fl-ewwel laqgħa, scoping meeting, bejn id-diversi Stake Holders, tad-19 ta' Settembru 2007, inkluz il-Kunsill Lokali tas-Siggiewi, fejn dan tal-ahhar staqsa dwar jekk kienx sar 'site selection analysis prior to considering the site known as tal-Kabocci, as the best site for this development.'

Skont il-minuti tal-istess laqgħa, ir-rapprezentanti tal-Ministeru dwar l-Affarjiet Rurali u Ambjent wiegħbu hekk: "such analysis was carried out by the Ministry. NA confirmed this by saying that there is also a report prepared by Godfrey Camilleri about such site analysis. In such report, two sites were identified for farm relocation; one close to Ta' l-Għallis, and the current site. NA stated that the site at Ta' l-Għallis is not appropriate for this proposed development since it is small, considering the scale of the project."

L-ewwel Project Description Statement (PDS) tat-23 ta' Lulju 2007, li kien gie ppreparat għall-izvilupp originali li kien jinkludi 17-il razzett fuq erja akbar mis-sit li finalment gie approvat, jispjega dan li gej:

"The proposed development will be located in the area identified by the Government of Malta Property Division as tenement number 51700 within the Intensive Agricultural Zone known as tal-Kabocci, l/o Siggiewi.

An alternative location would be to locate the development at a site adjoining the "old" airstrip road. However, the fields adjacent to the "old" airstrip road are all arable land. Refer to Diagram 8.

The site known as tal-Kabocci l/o Siggiewi was chosen on the basis of the following reasons:

- + The site is situated within an Intensive Agricultural Zone;
- + The site is screened by vegetation from the major arterial road;
- + The site is easily accessible;
- + The site is almost developed and is currently used for the parking of redundant containers and trucks."

Illi fid-dokumnet tal-EIA, gie riprodott l-analizi kkummissjonat mill-Ministeru għall-Affarjiet Rurali u Ambjent skont paragrafu 2.5 tad-dokument finali, filwaqt li fil-Addendum 2, datat Lulju 2012, gie inkluz il-kummenti tal-pubbliku u r-risposti tal-ko-ordinatur tal-EIA, fejn gie spjegat illi: "The Alternative Site Assessment was prepared by the developer and approved by MEPA. It failed to form part of the EIA/EIS per se. Consequently information available to the EIA/EIS consultant was presented in the document."

Fil-kummenti li ressq d-Direttorat għall-Protezzjoni tal-Ambjent skont document datat Frar 2013, gie indikat illi "all the other alternative sites considered other than the San Niklaw area were clear non-starter options

located in sensitive sites (in terms of landscape, natural environment, and cultural heritage) and that the inclusion of such nominal alternatives does not add value to the assessment process.”

Madankollu, dan it-Tribunal seta' jinnota illi d-dokument tal-EIA gie certifikat u flimkien mal-Adendum 1 mid-Direttur tal-Ambjent u dawn gew pubblikati ghal-kummenti tal-pubbliku fl-14 ta' Marzu 2012, liema process ta' konsultazzjoni ghalq f'Mejju 2012. Il-kummenti u risposti gew prezentati f'Adendum 2 mad-dokument tal-EIA li finalment gie prezentat lil MEPA flimkien mal-applikazzjoni tal-PA 7823/06.

Illi principalment l-iskop tal-istudju ambjentali huwa dirett lejn l-izvilupp propost, fejn ghaldaqstant ghandu jikkunsidra l-impatt fuq l-ambjent tal-madwar u jipproponi dawk il-mitigazzjonijiet u alternattivi sabiex jilqa jew jelimina dawk l-impatti li jkunu gew identifikati fl-istudju.

Regolament 13 tal-AL 114 tal-2007, jindika dawk il-proceduri li l-EIA ghandu jinvovli u li huma dawn is-segwenti:

- “(a) li jiddeskrivi l-izvilupp inkluz il-faċilitajiet ancillari kollha;
- (b) li jiddeskrivi l-kobor ta' l-ambjent ezistenti li x'aktarx ikun se jintlaqat mill-izvilupp propost;
- (c) li jidentifika u jistma l-effetti tal-izvilupp propost fuq l-ambjent ezistenti;
- (d) li jhejji mizuri mitigatorji;
- (e) li jiformula htigijiet ta' sorveljanza u ta' awditjar; u
- (f) li jithejja sunt li ma jkunx tekniku tad-dikjarazzjoni dwar l-impatt ambjentali.”

Dawn il-proceduri huwa spjegati aktar fid-dettal fir-regolamenti 14 sa 18 sussegwenti, fejn fir-rigward tad-deskrizzjoni tal-izvilupp, f'regolament 14, hemm inkluz ukoll il-bzonn li tigi 'kkunsidrata deskrizzjoni ta' siti alternattivi'.

Fir-regalment 14, il-konsiderazzjoni ta' siti alternattivi hija parti mid-deskrizzjoni tal-progett, u titlob biss deskrizzjoni ta' siti alternattivi, li f'dan il-kaz dan il-process kien gja sar mill-Ministeru ghal-Affarjiet Rurali u Ambjent, u l-konsiderazzjonijiet ewlenin li wasslu ghal-ghazla tas-sit inkwistjoni kienu gew deskritti kemm fl-ewwel PDS, kif ukoll fil-PDS amendat.

Illi dan it-Tribunal mhux tal-fehma illi l-ghazla tas-sit kellha tohrog mill-istess studju tal-EIA, ghalkemm tali ezercizzju ghandu jkun parti mid-deskrizzjoni tal-izvilupp li fuqu qed isir l-istudju. F'dan il-kaz, in-nuqqas ta' dettal jew inadegwatezza fir-rigward tas-siti alternattivi li seta' kien hemm fl-EIA, ma jirrendiex l-istudju ambjentali li johrog mill-EIA inadegwat jew insofficienti, meta l-process kollu dwar l-impatt ambjentali huwa marbut essenzjalment mal-izvilupp innifsu u dwar is-sit fejn hu propost li jsir.

Illi kif gja inghad iktar 'il fuq, id-dokument finali tal-EIA gie certifikat mid-Direttur tal-Ambjent ghalhekk l-ilmenti relatati dwar il-process tal-EIA kellhom jigu indirizzati fil-process tal-EIA, li fil-fatt jidher illi dan kien il-kaz.

Minn naha l-ohra, l-Awtorita' ghandha tqies id-dokument tal-EIA bhala materja ta' konsiderazzjoni ta' importanza, imma b'ebda mod ma hija marbuta bil-konkluzzjonijiet li jkun hemm fid-dikjarazzjoni dwar l-EIA. Fl-istadju ta' decizjoni dwar l-izvilupp, l-Awtorita' ghandha tqies applikazzjoni ta' zvilupp fuq is-sit indikat fl-applikazzjoni, l-impatt u l-effetti tal-izvilupp u l-mitigazzjonijiet necessarji li gew proposti kemm mill-istudju tal-EIA kif ukoll minn konsiderazzjonijiet ulterjuri li l-Awtorita' tista tqies fid-decizjoni.

Illi f'dan il-kaz, l-appellanti naqsu li jiggustikaw jew isostnu kif in-nuqqas ta' ezercizzju sodisfacenti dwar siti alternattivi setghu wasslu ghal decizjoni tal-Awtorita' favur il-hrug tal-permess tal-izvilupp li qed tikser il-principji ta' ipplanar kif ukoll ambjentali li qed jirreglaw l-izvilupp fuq is-sit inkwistjoni.

It-Tieni Aggravju:

Illi l-konsiderazzjoni maghmula minn dan it-Tribunal fil-kaz tal-ewwel aggravju japplikaw ukoll ghal dan l-aggravju. F'dan tal-ahhar, l-appellant qed isostnu illi l-EIA ma ndirizzax l-impatt fuq il-bniedem skont id-dispost tar-regolament 16 (2)(g), b'referenza diretta lejn l-impatt fuq id-Dar tal-Providenza.

Illi nsosten ta' dan l-aggravju, l-appellanti pprezentaw affidavit tat-Tabib George Grech fejn dan sostna illi "Matul l-ahhar snin, minhabba l-bini u l-operat ta' numru ta' rziezet fosthom tal-baqar u annimali ofhra f'siti vicin id-Dar tal-Providenza, l-istess Dar tal-Providenza qeghdaa tispicca mimlija rwejjah hzienu li wiehed ma jkunx jista' jissaporti. Dan jigri l-aktar meta jkun hemm certi kundizzjonijiet tat-temp b'mod specjali fis-sajf meta r-rih jonfoh mix-xlokk."

Illi kemm l-Awtorita' kif ukoll l-applikanti sostnew illi l-EIA indirizza l-kwistjoni tal-emmissjonijiet u rwejjah bhala wiehed mill-impatt identifikat, fejn gie konkluz illi bl-installazzjoni ta' waste digester u waste conversion facility mal-izvilupp tal-irziezet "is considered as an invaluable mitigation in itself since it will reduce the amount of methane emissions. The facility will also contribute to the reduction of ammonia and sulphur emissions."

Gie indikat ukoll illi l-process ta' kif jingabar l-iskart mill-irziezet minn cesspits ser inaqqas ukoll mill-emmissjonijiet mis-sors tal-operat ossia mill-irziezet infushom, filwaqt li gie konkluz illi "the gases normally released by dairy farms will be a minimum u since the degradation which normally leads to these emissions will take place in the digester which is a closed system", u dan meta mqabbel ma sistemi ta' open manure clamps li joperaw l-irziezet ezistenti.

Iktar minn hekk seta' jigi osservat illi l-kummenti tad-Dar tal-Providenza li kienu sostanzjali gew analizzati u konsidrati fl-Adendum 2, filwaqt li l-Awtorita' kkonsidrat ukoll kondizzjoni fil-permess kif proposta mid-Dar tal-Providenza sabiex jigi mwaqqaf monitoring committee li jinkludi fih l-istess Dar tal-Providenza.

Illi dan it-Tribunal mhux qed jaqbel mal-appellanti illi l-izvilupp approvat qed jikser il-principju ta' Policy BEN 1 tal-Pjan ta' Struttura li tesigi illi l-izvilupp m'ghandux iservi bhala sors ta' fastidju ambjentali. Illi skont il-mappa 2 tan-North West Local Plan (illi huwa l-Pjan applikabbli ghaz-zona u mhux is-South Malta Local Plan), is-sit jinsab biswit zona agrikola u ghaldaqstant l-izvilupp ta' rziezet huwa certament zvilupp kompatibbli maz-zona agrikola tal-madwar, anke tenut kont tal-fatt illi parti mis-sit huwa gja uzat ghal dan l-iskop.

Illi certament il-kwisjtoni ewlenija kienet tirrigwardja z-zieda fl-inkonvenjent minn emissjonijiet u rwejjah bhala konseggenza ta' zieda fl-irziezet fiz-zona vicin id-Dar tal-Providenza, illi l-EIA ikkonkluda li mhux ser ikun hemm zieda ta' tali mpatt tenut kont tal-process tat-trattamnet tal-iskart tal-annimali li huwa propost bl-izvilupp ta' waste digester u waste conversion facility bhala parti mill-kumpless ta' dawn l-irziezet.

It-Tielet Aggravju:

Dan l-aggravju jitratta dwar il-fatt illi s-sit jinsab biswit iz-zona tal-ex-mitjar military tal-Qrendi skedat fi Grad 2 skont il-Policy UCO 7 tal-Pjan ta' Struttura, fejn l-ilment huwa dwar in-nuqqas ta' zona ta' transizzjoni bejn l-izvilupp tal-irziezet u l-erja skedata. Skont l-appellanti tali zona hija necessarja sabiex il-protezzjoni moghtija mill-iskedar tkun wahda effettiva.

Illi f'dan il-kaz, l-ezercizzju li sar mill-process tal-EIA gie identifikat l-importanza storika militari li wassal ghall-iskedar ta' parti mis-sit li kien originarjament parti mill-proposta ghall-izvilupp ta' numru ta' rziezet. Dwar dan kien mehtieg Cultural Heritage Assessment li gie analizzat mill-Superintendent tal-Wirt Storiku, li dan tal-ahhar approva il-proposta kif amendata u finalment approvata mill-Awtorita' skont l-ittra tat-3 t'Awissu 2009.

Illi f'dan il-kaz, dan it-Tribunal huwa sodisfatt illi l-permess kif mahrug, inkluz il-kondizzjonijiet kif indikati mis-Superintendent tal-Wirt Storiku huma bizzejjed sabiex jiprotegu z-zona tal-ex-mitjar tal-Qrendi skedat fi Grad 2.

Decide

Ghal dawn il-mottivi, u wara li ha konjizzjoni tal-fattispeci kollha tal-kaz, dan it-Tribunal qed jichad l-appell, u jikkonfema l-permess tal-izvilupp PA 7823/06.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwent:

1. It-Tribunal naqas li jiehu in konsiderazzjoni il-principji ta' gustizzja naturali u mgieba amministrattiva tajba meta naqas li jaghmel disponibbli dokumenti jew

informazzjoni rilevanti ghal kaz u naqas li jara li l-partijiet l-oħra jkollhom access ghal dawn id-dokumenti;

2. It-Tribunal zbalja meta naqas li jikkonsidra illi z-zona li fiha kien ser isir l-izvilupp kien ġia committed għall-uzu iehor u senjatament biex jintuza b'mod li jissalvagwardja s-sahha u l-hajja tar-residenti tad-Dar tal-Providenza;

3. Anki jekk it-Tribunal ikkonsidra l-policies rilevanti, applikahom b'mod skorrett billi strah biss fuq l-Environment Impact Assessment bla ebda konsiderazzjoni għall-imenti li saru a rigward mill-appellanti, senjatament il-kompatibilita mal-principji tal-policy BEN1 u l-Structure Plan for Environment and Development 2015 in kwantu naqas li jjeħu in konsiderazzjoni “the challenges of modernisation of arable land and livestock farming” jikkreja “an appreciative understanding of the special context within which they occur”. L-EIA jonqos milli jqis l-impatt ambjentali ai termini tar-regolament 16 tal-Avviz Legali 114/07 u r-riskji għas-sahha tal-bniedem;

4. It-Tribunal naqas li jqis illi l-konfini tal-izvilupp propost jonqos milli jagħmel tajjeb għal buffer zone meħtieġ f'kaz ta' bini skedat cioe l-mitjar ex militari tal-Qrendi meqjus grade 2 fil-policy UCO7 tal-pjan ta' struttura. Ma jirrizultax buffer zone fil-pjan lokali għaliex il-mitjar ġie skedat wara li sar il-pjan. Bla buffer zone ser jintilef l-iskop tal-iskedar.

L-ewwel aggravju

Dan l-aggravju jistrieħ fuq principju baziku tal-gustizzja, cioe li parti interressata f'vertenza jkollha access għal fatti kollha in disputa speċjalment meta daww il-fatti huma rekwizit tal-istess ligi. Tali necessita toħrog mill-principji tal-parita tal- armi u biex kull parti tkun f'pozizzjoni li tiddefendi ruhha kif imiss u tagħmel is-sottomissjonijet rilevanti skond il-fatti accertati u pruvati.

Konfermati dawn il-principji bazici jrid jittiehed kont tal-aggravju fil-kuntest tiegħu. Tali aggravju johrog direttament mill-Avviz Legali 114/2007 klawwola 14 li tghid hekk:

- (1) Il-konsulenti għandhom jiddeskrivu l-izvilupp propost, u għandhom jagħtu wkoll:
 - (a) gustifikazzjoni dwar il-proposta;
 - (b) deskrizzjoni tal-karatteristici fizici tal-progett u tal-karatteristici tal-progett inkluz il-proċessi ta' produzzjoni (jekk rilevanti) u l-ammonti ta' emissjonijiet,

skart u residwi li huma mistennija li jigu generati kemm waqt il-fazi ta' kostruzzjoni u kemm waqt il-fazi operattiva;
(c) deskrizzjoni tal-possibilitajiet finanzjarji li jitwettaq il-progett. Ghandha wkoll tigi kkunsidrata deskrizzjoni ta' siti alternattivi, u teknologiji alternattivi li jkunu jistghu jintuzaw waqt il-fazi ta' kostruzzjoni u waqt il-fazi operattiva. Meta dan kollu jkun qed isir, huma jistghu jirreferu ghall-istqarrija dwar id-deskrizzjoni ta' progett imsemmija fir-regolament 5 ta' dawn irregolamenti.

Hi klawnsola (c) li hi l-qofol tal-kwistjoni. L-appellanti qed jargumentaw illi l-applikant naqas li josserva din il-kondizzjoni billi ma pprovda ebda informazzjoni fuq siti alternattivi u ghalhekk il-Kunsill Lokali qatt ma seta' jkun f'pozizzjoni li jikkontesta l-idoneita tas-sit propost ma' ohrajn li setghu u kellhom jigu identifikati mill-applikant u skartati favur is-sit propost fl-applikazzjoni.

Il-Qorti tqis li ma jistax jinghad li t-Tribunal naqas milli jqis l-aggravju pero taqbel mal-appellanti li t-Tribunal ma qies l-aggravju mill-ottika tal-mod kif kien maghmul. Kondizzjoni cara imposta f'sottomissjoni ta' zvilupp simili kien jehtieg 'deskrizzjoni ta' siti alternattivi' u konsegwentement l-ghazla tas-sit propost bhala dak idoneju ghall-izvilupp. Pero qari tad-decizjoni tat-Tribunal turi biss illi l-istess Tribunal qies bhala gustifikazzjoni ghan-nuqqas li l-kondizzjoni tigi otterperata kif imiss, il-fatt illi l-konsiderazzjonijiet ghall-ghazla tas-sit in kwistjoni gew deskritti u n-nuqqasijiet fl-EIA ma jirrendux l-istudju ambjentali invalidu meta l-process kollu dwar l-impatti ambjentali kien marbut essenzjalment mal-izvilupp innifsu. Bir-rispett kollu lejn it-Tribunal, il-kwistjoni dwar deskrizzjoni ta' siti alternattivi imposta bhala kondizzjoni fi proposti simili ta' zvilupp mhix kondizzjoni bla sinifikat Prattiku izda tmur biex tipprovdi trasparenza mill-applikant, f'dan il-kaz, awtorita pubblika cioe Ministeru, dwar ghazla tas-sit ghal zvilupp propost b'eskluzzjoni ta' siti ohra kunsidrati, kif l-istess regolament 14 fl-Avviz Legali 114/2007 jesigi. F'dan il-kaz it-Tribunal naqas li jqis l-ilment tal-appellanti li la darba l-Ministeru li ppropona l-izvilupp propost skarta diversi siti alternattivi, kull persuna interessata inkluz l-istess Kunsill kellha tkun ben informata bid-deskrizzjoni ta' dawn is-siti fl-istadju opportun, haga li l-appellanti jsostnu qatt ma saret u nonostante dan, il-process tal-applikazzjoni baqa' ghaddej.

L-appellati josostnu illi l-Kunsill u l-istakeholders l-ohra inkluz id-Dar tal-Provvdenza kienu jafu bis-siti l-ohra alternattivi tant li t-tabella 2.19 fl-EIA li hu dokument pubbliku tinkorpora dawn is-siti u nuqqas ta' adattabilita taghom liema siti kienu gia maghrufa

lill-appellanti meta kienu ghadhom qed isiru t-terms of reference tal-EIA. Hu minnu kif jghidu l-appellati illi l-ghazla tas-sit fl-ewwel fazziet cioe l-project description statement u screening process qabel ma jsir l-EIA, hu fdat f'idejn l-izviluppatur kif approvat mill-Awtorita ghalkemm l-artikolu 5(3)(c) jispecifica li anki f'dak l-istadju l-izviluppatur irid jaghti indikazzjoni qasira izda ragonevolment komprensiva ta' siti alternattivi. Darba tghaddi din il-fazi jiskatta l-process pubbliku. L-appellati jikkontendu li f'din il-fazi kull dokument necessarju kien disponibbli ghal partijiet interessati u jekk xi parti naqset li tiehu konjizzjoni dettaljata ta' dak li gie sottomess b'mod pubbliku fuq il-website tal-Awtorita u halliet din il-fazi tghaddi bla oggezzjoni allura ma tistax wara li jsir l-EIA tilmenta li ma kellhiex l-informazzjoni necessarja. L-appellati dan sostnuh quddiem it-Tribunal mentri l-appellant sostna bil-kontra. Din kienet il-pern tal-kwistjoni quddiem it-Tribunal li naqas jindirizza fid-decizjoni tieghu u ghalhekk dan l-aggravju qed jigi milqugh mhux ghax qed jigi deciz minn din il-Qorti illi l-Kunsill Lokali ghandu ragun fil-mertu tal-kwistjoni izda ghax it-Tribunal naqas li jindirizza sew l-aggravju tal-Kunsill Lokali kif fil-fatt fehmu u indirizzawh il-partijiet fl-appell quddiem din il-Qorti. Fil-fatt l-appellanti fis-sottomissjonijiet taghhom jirreferu ghall-artikolu 20(10) tal-Avviz Legali 114/2007 li jindika li fl-abbozz tal-EIA ghandu jkun hemm 'a reasoned choice among alternatives' u l-artikolu 21(5) li jitkellem dwar konsultazzjoni pubblika jghid li l-kummenti dwar EIA ghandhom ikunu specifici u diretti dwar il-mertu ta' siti alternattivi u jsostnu li dan ma jistax isehh jekk il-pubbliku ma ghandux diskrezzjoni. Il-Qorti ma tqis li ghandha tiddeciedi l-ilment hi peress illi tkun qed ixxejjen id-dritt tad-doppio esame u ghaliex ukoll it-Tribunal ghandu l-obbligu li jqis b'mod dettaljat il-kwistjoni legali u teknika li tohrog minn tali lment.

Ghalhekk dan l-aggravju qed jigi milqugh.

It-tieni u t-tielet aggravji

Dawn l-aggravji ma humiex ta' siwi. It-Tribunal qies illi l-izvilupp kien qed isir f'zona addattata ghal tali zvilupp pero qabel ghamel dawn il-konsiderazzjonijiet qies x'effetti kien ser jikkreja l-izvilupp fuq l-ambjent u wkoll fuq id-Dar tal-Provvidenza u kif ghandu d-diskrezzjoni jaghmel, qies il-kwistjonijiet ta' natura ta' ppjanar li kienu konnessi ma' dan l-izvilupp, u wasal ghal konkluzzjoni, fi qbil mal-Awtorita illi l-

izvilupp ma hux ser izid l-impatt ambjentali f'sens negattiv meqjus ukoll illi t-trattamenti u istallazzjonijiet uzati fl-izvilupp kienu ferm aktar avvanzati minn dawk uzati f'irziezet gia ezistenti.

Il-Qorti tqis illi hu validu l-argument tal-appellanti illi d-Dar tal-Provvidenza tgawdi commitment fiz-zona ghal fatt li ilha operanti ghal ghexieren ta' snin bhala dar ghal persuni bi bzjonnijiet specjali pero ma tqis illi t-Tribunal injora dan il-punt izda qies li meqjus mal-commitment irid jittiehed kont ukoll tal-kompatibilita tal-izvilupp maz-zona u wasal ghal konkluzzjoni teknika u ta' ippjanar li ebda zieda negattiva fl-ambjent ma kienet ser issehh ghall-okkupanti tad-Dar tal-Provvidenza. Tali konsiderazzjonijiet kienu ta' natura purament teknika li din il-Qorti ma ghandhiex awtorita tpoggi f'dubju. It-Tribunal zied li f'dawn il-parametri u tenut kont li l-istess Dar tal-Provvidenza kienet ser tkun parti minn monitoring committee fuq l-izvilupp, ma kienx meritevoli l-argument tal-appellanti illi l-izvilupp kien qed jikser il-principju ta' policy BEN1 fis-sens li tali zvilupp kien ser iservi ta' sors ta' fastidju ambjentali.

Ir-raba' aggravju

Dan l-aggravju mhux wiehed legali izda hu wiehed ta' ppjanar. It-Tribunal qies l-aggravju u wasal ghal konkluzzjoni li s-supretendent tal-wirt storiku li analizza il-Cultural Heritage Assessment qies li l-izvilupp kif emendat kien qed jipprotegi b'mod adegwat is-sit skedat. Tali konsiderazzjonijiet mhumiex legali izda ta' natura ta' ppjanar li din il-Qorti ma ghandhiex tindahal dwarhom. Lanqas ma jista' jinghad li 'buffer zone' hu sine qua non kondizzjoni meta jsir skedar ta' sit.

Decide

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tilqa' l-ewwel aggravju tal-appellanti ghar-ragunijiet hemm imsemmija u kwindi tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Marzu 2016, u tirrorvija l-atti lura lit-

Tribunal biex jerga' jiddeciedi mill-gdid l-appell tenut kont ta' dak deciz minn din il-Qorti, bl-ispejjez kontra l-Awtorita.

Onor. Mark Chetcuti LL.D.

Imhalled

Anne Xuereb

Deputat Registratur