

## ARRANGEMENT OF ACT

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I assent.

(L.S.)

**MARIE LOUISE  
COLEIRO PRECA  
President**

19th January, 2016

**ACT No. V of 2016**

*AN ACT to establish a tribunal for the purpose of reviewing decisions of the Planning Authority and of the Environment and Resources Authority, to provide for the manner in which proceedings of the tribunal are to be conducted, and to provide for appeals from decisions of the tribunal.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

**PART I  
Preliminary Provisions**

**1.** (1) The short title of this Act is the Environment and Planning Review Tribunal Act, 2016. Short title and commencement.

(2) This Act shall come into force on such date as the Prime Minister may by notice in the Gazette establish, and different dates may be so established for different provisions or different purposes of this Act.

**2.** (1) In this Act, unless the context otherwise requires, Interpretation. the following expressions have the meaning hereby assigned to them:

"Chairperson" means any Chairperson of the Environment and Planning Review Tribunal appointed in terms of this Act;

"development permission" has the same meaning as assigned to it in the Development Planning Act, 2016;

"Environment and Resources Authority" has the same meaning

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as assigned to it in the Environment Protection Act, 2016;

Cap. 492.

"Environmental NGOs" means non-governmental organizations promoting environmental protection and which are registered under the Voluntary Organisations Act;

L.N. 514 of 2010.

"external consultee" has the same meaning as assigned to it in regulation 2 of the Development Planning (Procedure for Applications and their Determination) Regulations, 2010 or any other regulations which may from time to time succeed the said regulations;

"Government" means the Government of Malta;

"person" includes an association or body of persons, whether registered as a legal person or not;

"Planning Authority" has the same meaning assigned to the term "Authority" in article 2 of the Development Planning Act, 2016;

"recommendation" means the reply lodged by an external consultee which may either indicate a no objection to an application, or an approval of the application subject to conditions indicated by the external consultee or that the application is objectionable for reasons indicated by the external consultee;

"Secretary" means the Secretary to the Environment and Planning Review Tribunal;

"Tribunal" means the Environment and Planning Review Tribunal.

Cap. 445.

(2) The provisions of this Act shall be without prejudice to the provisions of the Cultural Heritage Act and in particular they shall not affect the powers of the Superintendent of Cultural Heritage under that Act and the exercise of the Special Powers of the State under Part VII of the said Act.

## PART II

### Establishment and Scope of the Tribunal

The  
Environment  
and Planning  
Review  
Tribunal.

3. There shall be set up in accordance with the provisions of this Act, an independent and impartial tribunal, to be known as the Environment and Planning Review Tribunal, for the purpose of reviewing the decisions of the Planning Authority and the decisions of the Environment and Resources Authority, referred to it in accordance with this Act or any other law, and for the purpose of exercising any other jurisdiction and function conferred on the Tribunal by or under this or any other law, whether before or after the

coming into force of this Act.

4. (1) The Prime Minister may by order establish panels of the Tribunal, and may designate the categories of cases to be assigned to each panel and may by subsequent order amend, revoke or substitute such order. Composition of the Tribunal.

(2) Each panel shall consist of three members, with two of its members being well versed in development planning and environmental matters and the other member an advocate who shall have practised the profession of advocate for at least four years.

(3) Each panel shall have a Chairperson, who shall preside over the panel, and a deputy Chairperson. In the absence of the Chairperson for a valid reason, the deputy Chairperson shall perform the functions of Chairperson.

(4) All members sitting on each panel, including the Chairperson and the deputy Chairperson, shall be appointed by the President acting on the advice of the Prime Minister.

(5) The Secretary to the Tribunal shall establish the case list of each panel, having regard to the pending case load assigned before each panel.

(6) A member of the Tribunal shall be disqualified from hearing an appeal in terms of article 734 of the Code of Organization and Civil Procedure and in any such case, such member shall be substituted by another person appointed by the Secretary for the purpose from amongst the members of the other panel or panels or if no such member can be chosen, by another person duly qualified to sit on the Tribunal, appointed for the purpose by the Prime Minister. Cap. 12.

(7) The members of the Tribunal shall hold office for a term of five years. They shall not be eligible for reappointment for a subsequent term.

(8) In the exercise of their functions under this Act, the Chairperson and the members of the Tribunal shall not be subject to the control or direction of any other person or authority, and may only be removed from office by the President acting on the advice of the Prime Minister, for the reasons of proved inability to perform functions of their office (whether arising from infirmity of body or mind or any other cause), proved misbehaviour, gross negligence or for a just cause.

5. (1) The Tribunal shall have an administrative secretariat independent from any authority, consisting of a Secretary and such Secretariat of the Tribunal.

other officers or employees as may be necessary for a prompt and efficient management of administrative matters within the Tribunal's functions.

(2) The Secretary and the administrative secretariat shall be appointed by the Prime Minister.

(3) The expenses incurred in connection with the administration of the Tribunal, including the payment of the honorarium to the Chairperson and members of the Tribunal and the salary of the Tribunal's Secretary and the Tribunal's staff, shall be paid out of the Consolidated Fund without the necessity of any further appropriation.

(4) The Secretary shall perform any duty which may be incumbent upon him under this Act or any rules made thereunder.

Sittings of the Tribunal.

**6.** (1) The Tribunal shall hold sittings in Malta and, or Gozo, at such regular intervals as may be necessary to expedite its business.

(2) The Tribunal shall hold its sittings at any place indicated by the Prime Minister.

(3) The sittings of the Tribunal shall be open to the public, subject to the power of the Tribunal to exclude any member of the public, if it deems it necessary so to do for the maintenance of order.

Registry of the Tribunal.

**7.** (1) There shall be a registry of the Tribunal.

(2) The Prime Minister shall by regulations establish the functions of the Registry of the Tribunal and by the same regulations may also appoint such officers as may be necessary for the operation of the said Registry. All the records of the Tribunal shall be filed in the Registry referred to in this sub-article.

(3) The registry shall be situated at any place indicated by the Prime Minister.

(4) The Secretary to the Tribunal shall be responsible for the running of the Registry.

Oath of Office of members of the Tribunal.

**8.** (1) A member of the Tribunal shall upon appointment take the following oath before the Attorney General:

"I ..... (add name and surname) having been appointed to be a Member for the purposes of the Environment and Planning Review Tribunal Act, do swear that I

will faithfully, fully, impartially and to the best of my ability discharge the trust and perform the duties devolving upon me by virtue of the said appointment. So help me God".

(2) The said oath shall be signed by the member of the Tribunal and the Attorney General. It shall be deposited with the Tribunal's Secretary.

9. (1) In its relations with the public, the Tribunal shall adhere to and apply the principles of good administrative behaviour. Principles of good administrative behaviour.

(2) The principles of good administrative behaviour include the following:

(a) the Tribunal shall respect the parties' right to a fair hearing, including the principles of natural justice, namely:

(i) *nemo judex in causa sua*, and

(ii) *audi et alteram partem*;

(b) the time within which the Tribunal shall take its decisions shall be reasonable depending on the circumstances of each case. The decision shall be delivered as soon as possible and for this purpose the tribunal shall deliver a single decision about all matters involved in an appeal before it whether they are of a preliminary, substantive or procedural nature;

(c) the Tribunal shall ensure that there shall be procedural equality between the parties to the proceedings. Each party shall be given an opportunity to present its case, whether in writing, or orally, or both, without being placed at a disadvantage;

(d) the Tribunal shall ensure that the Planning Authority makes available to the parties to the proceedings, the documents and information relevant to the appeal;

(e) proceedings before the Tribunal shall be adversarial in nature. All evidence admitted to the tribunal shall, in principle, be made available to the parties with a view to adversarial argument;

(f) the Tribunal shall be in a position to examine all of the factual and legal issues relevant to the appeal presented by the parties in terms of the applicable law;

(g) save as otherwise provided by law, the proceedings

before the Tribunal shall be open to the public;

(h) the Tribunal shall indicate, with sufficient clarity, the grounds on which it bases its decisions. It shall not be necessary for the Tribunal to deal with every plea raised, provided that where a plea would, if accepted, be decisive for the outcome of the appeal, such a plea shall require a specific and express consideration.

Power of the  
Prime Minister  
to make  
regulations.

**10.** The Prime Minister may make regulations to implement and to give better effect to the provisions of this Act and may, without prejudice to the generality of the foregoing:

(a) establish the date of entry into force of any provision of this Act;

(b) set out the procedure before the Tribunal;

(c) set out the procedure in appeals from the decisions of the Tribunal;

(d) establish the forms that are to be used in proceedings before the Tribunal;

(e) establish the forms that are to be used in proceedings in appeals from the decisions of the Tribunal;

(f) establish rates and tariffs relating to proceedings before the Tribunal;

(g) establish the fees that may be due to the Registry of the Tribunal;

(h) set out the duties of the Secretary to the Tribunal;

Cap. 12.

(i) establish which provisions of the Code of Organization and Civil Procedure, if any, not mentioned in this Act, are to apply to the procedure before the Tribunal;

(j) prescribe anything that may or is to be prescribed in accordance with this Act;

(k) make such amendments, alterations, deletions, repeals, corrections, changes and modifications to any laws or subsidiary legislation for the purpose of bringing such primary law or subsidiary law in conformity with the provisions of this Act.

**PART III**  
**Proceedings before the Tribunal related to Decisions**  
**taken by the Planning Authority**

**11.** (1) Subject to the provisions of the Development Planning Act, 2016, the Tribunal shall have jurisdiction to:

(a) hear and determine all appeals made by the applicant from a decision taken following an application:

(i) for a development permission;

(ii) for a permission under a development notification order;

(iii) for a permission under a regularisation process;

(iv) for a change in alignment under a planning control application;

(v) for a permission for a project of common interest (PCI);

(vi) for registration by the Registration Board;

(b) hear and determine all appeals made by the applicant from a decision taken following a request for screening of a proposed development, whereby in same decision:

(i) additional submissions, studies, assessments and documentation are requested; and, or

(ii) fees and, or contributions are required to be paid to the Planning Authority before the submission, on the submission or during the processing of the application and the applicant does not agree with the amount of the fees and, or contributions;

(c) hear and determine all appeals made by any person:

(i) aggrieved by a notice issued under the provisions of Part IX of the Development Planning Act, 2016;

(ii) aggrieved by a decision in relation to scheduling and conservation orders;

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(iii) aggrieved by a decision on a request for modification or revocation of permission;

(d) hear and determine all appeals made by any person or institution or any department or agency of Government, having a direct interest and aggrieved by any decision, ruling or direction in relation to Building Regulations and Building Control Regulations, even where such a decision, ruling or direction does not emanate from a development application process;

(e) hear and determine all appeals made by an interested third party who had submitted written representations as established by the Planning Authority in terms of article 71(6) of the Development Planning Act, 2016:

(i) from a decision on an application for development permission;

(ii) from a decision on a planning control application relating to a change in alignment;

(iii) from a decision on scheduling and conservation orders:

Provided that -

(i) the Attorney General on behalf of the Government; and

(ii) any department, agency, authority or other body corporate wholly owned by the Government, not being an external consultee which had been consulted and had not objected;

shall always be deemed for all intents and purposes of law to be an interested third party notwithstanding that it shall not have submitted representations in writing:

Provided that all persons having sufficient interest shall have access to a review procedure before the Tribunal to challenge the substantive or procedural legality of any decision, act or omission relating to a development or an installation which is subject to an environmental impact assessment (EIA) or an integrated pollution prevention and control (IPPC) permit:

Provided further that the Planning Authority shall

not be construed as an interested third party for the purposes of this paragraph;

(f) hear and determine all appeals made by external consultees from a decision taken following an application:

(i) for a development permission;

(ii) for a change in alignment following a planning control application;

(iii) for a permission for projects of common interest (PCI):

Provided that such an appeal may only be lodged by an external consultee which had lodged its recommendation to the Planning Authority and in its recommendation it had either indicated that the application may be approved subject to those conditions indicated by the external consultee, or that the application is objectionable for reasons indicated by the external consultee:

Provided further that an external consultee shall always have the right to lodge an appeal when it has not been consulted or when the procedure does not require its consultation;

(g) hear and determine requests for suspension in terms of article 33;

(h) exercise such functions as are assigned to it under the provisions of this Act.

(2) The Prime Minister may order that any other decision of the Planning Authority shall be subject to the jurisdiction of the Tribunal.

(3) An appeal to the Tribunal may be filed on any ground including:

(a) that a material error as to the facts has been made;

(b) that there was a material procedural error;

(c) that an error of law has been made.

**12.** The provisions of articles 21, 22 and 23 of the Code of Proceedings.  
Cap. 12.

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Organization and Civil Procedure shall apply to all proceedings before the Tribunal.

Time-frames for lodging of appeals.

**13.** (1) Unless otherwise provided under any provision of this Act, an appeal shall be lodged before the Tribunal within thirty days from date of publication of the decision on the Department of Information website by the Planning Authority:

Provided that appeals from decisions which do not need to be published shall be lodged before the Tribunal within thirty days from date of notification of the decision.

L.N. 514 of 2010.

(2) If an appeal has been lodged with the Tribunal by any party other than the applicant in accordance with the provisions of article 77(3) of the Development Planning Act, 2016, and the applicant submits a request for reconsideration in accordance with the provisions of the Development Planning (Procedure for Applications and their Determination) Regulations, 2010 or any other regulations which may from time to time succeed the said regulations, the proceedings before the Tribunal shall be suspended until the request for the reconsideration has been determined and a copy of the decision has been submitted to the Tribunal by the Planning Authority, and any time periods established under the provisions of this Act in relation to the proceedings before the Tribunal shall commence from the date of receipt by the Tribunal of the decision on the request for reconsideration:

Provided that any party other than the applicant who had lodged his appeal as above-stated, shall within a period of thirty days from notification of the decision on the request for reconsideration, amend his appeal or make further submissions to the Tribunal, if he deems it necessary.

(3) Any person who feels aggrieved by a notice served on him may lodge an appeal against it before the Tribunal within fifteen days from the service of the notice or within fifteen days from the publication of the said notice on the Department of Information website, should the Planning Authority deem fit to make such a publication.

Proceedings to be conducted in a timely manner.

**14.** All appeal proceedings before the Tribunal shall be conducted in a timely manner, without undue delay, and shall not be prohibitively expensive.

Contents of application for appeal.

**15.** An appeal from a decision of the Planning Authority shall be in the form of an application, and shall:

(a) make reference to the Planning Authority's decision

appealed from;

(b) distinctly state the heads of the decision complained of under different headings, together with reasons under each heading for which the appeal is entered;

(c) state specifically the manner in which it is desired that the decision be varied under each heading; and

(d) also include all documentation which is relevant for the grounds of appeal.

**16.** An appeal from an enforcement notice or other notice shall also include a copy of the enforcement notice or other notice being appealed from.

Appeal from an enforcement notice or other notice.

**17.** (1) All parties to an appeal shall, if they require witnesses, together with the appeal or any reply to an appeal, indicate the names and addresses of the witnesses they intend to produce in evidence, and state in respect of each one of them the facts they intend to establish through their evidence.

Indication of witnesses in the application for appeal.

(2) The Tribunal shall be empowered to summon witnesses and administer the oath to any person appearing before it.

**18.** The parties to the appeal may be represented by an agent before the Tribunal.

Representation.

**19.** Subject to the provisions of article 33 of the Development Planning Act, 2016, all parties to an appeal may submit a request to the Tribunal to view the Planning Authority files at any time before the sitting of the Tribunal.

Request to view Authority files.

**20.** A copy of the appeal application and the ancillary documentation shall forthwith be communicated to the Planning Authority within five working days from when the Secretary has allocated the case to be heard by a specific panel. The Planning Authority shall file its reply within twenty days of service upon it. The reply shall, in all cases, be limited to the reasons for refusal or the conditions imposed by the Planning Authority and any other issues raised by the appellant. The Planning Authority shall produce any documentation it deems necessary unless contained in the relative Planning Authority file or files. The Planning Authority's reply and all documentation shall forthwith be communicated to the appellant.

Notification of application for appeal to the Authority.

**21.** A registered third party in terms of article 71(6) of the Development Planning Act, 2016, shall be informed by the Tribunal that an appeal has been filed and he may request the Secretary of the Tribunal to register him as an interested third party in such an appeal,

Notification of application for appeal to registered third parties.

within five working days from such notification. Such an interested third party shall have a right to address the Tribunal and may be requested by the parties to the appeal to give evidence in the appeal proceedings. Unless the Tribunal decides otherwise, such an interested third party may be present during all sittings of the Tribunal. However he may not attend site inspections where the Tribunal enters upon the property of the appellant, if the appellant objects to the presence of such an interested third party entering upon his property. Such an interested third party shall have a right to be given a copy of the Tribunal's decision with regard to those appeal proceedings for which he has been registered with the Secretary of the Tribunal:

L.N. 514 of  
2010.

Provided that the above procedure is also applicable to those external consultees who made their recommendations in terms of regulation 8 of the Development Planning (Procedure for Applications and their Determination) Regulations, 2010 or any other regulations which may from time to time succeed the said regulations, which external consultees will however have the right to attend site inspections.

Appeals by  
registered  
interested third  
parties.

**22.** (1) When an appeal has been lodged by an interested third party in terms of this Act, such a person need not prove that he has an interest in that appeal in terms of the doctrine of juridical interest, which doctrine shall not apply to such proceedings, but such a person shall submit reasoned grounds based on environmental and, or planning considerations to justify his appeal.

(2) The provisions of article 21 shall *mutatis mutandis* apply in favour of the applicant:

Provided that when such an appeal is lodged, the applicant shall be informed by the Tribunal that an appeal has been filed and he may participate in such proceedings.

First hearing of  
the appeal.

**23.** (1) The Tribunal shall, within two months from the lodging of the appeal application, except in the instances where the appeal is accompanied by a request for suspension of the execution of a permission, appoint the day and hour and hold the first hearing for the parties to appear before it, in order to show cause why the claims, pleas and witnesses contained in their respective application and reply should be allowed. The Tribunal shall, on the same day and at the hour appointed for the first hearing of the appeal, decide which witnesses, listed in the application for appeal and reply to the appeal, it deems relevant for the purpose of giving evidence:

Provided that where there is no request for a suspension of the execution of the development as provided in the articles hereunder, advance notice of not less than fourteen days, in such manner as the Tribunal may deem appropriate, shall be given of the first hearing of the Tribunal to the parties, and the interested third parties who registered their interest during the processing of the application before the Planning Authority, and the external consultees who made their recommendations in terms of the Development Planning (Procedure for Applications and their Determination) Regulations, 2010 or any other regulations which may from time to time succeed the said regulations:

L.N. 514 of  
2010.

Provided further that in cases of urgency the said time limit of fourteen days may be abridged by order of the Tribunal, if the Tribunal is satisfied that the party requesting urgency has given a valid reason in writing thereof.

(2) Where the appeal is accompanied by a request for suspension of the execution of a permission, the Tribunal shall notify the parties, hold its first hearing and decide the request within the time-frame stipulated in article 33(2).

**24.** On the date and time established after the first hearing, the appellant and the Planning Authority shall appear before the Tribunal and produce such evidence as the Tribunal may have directed.

Mode of  
procedure  
before the  
Tribunal.

**25.** When from the same decision more than one appeal is lodged by different persons and entities entitled to lodge an appeal in terms of this Act, the Tribunal shall endeavour to ensure that all appeals are heard concurrently and moreover shall endeavour to deliver all its decisions concurrently.

Multiple appeals  
from same  
decision.

**26.** All parties may require the production of witnesses not indicated in the application to appeal or reply to the appeal whose evidence might be required in view of evidence given or produced by other witnesses. Such witnesses shall be authorised to give evidence, provided that prior approval of the Tribunal is obtained, which approval lies within the sole discretion of the Tribunal.

Undeclared  
witnesses.

**27.** After the production of evidence is concluded, the Tribunal shall give the appellant and the Planning Authority an opportunity to make their final submissions:

Final  
submissions.

Provided that when the applicant is not the appellant, the applicant shall also have a right to make final submissions.

**28.** The Tribunal may adjourn to another date any hearing of the appeal if it is satisfied that any of the parties was prevented from

Postponement  
of hearing.

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appearing before it owing to proven illness or absence from Malta or other similar reasonable cause:

Provided that there shall be no adjournment of the hearing of the appeal in cases where the hearing can proceed with regard to the other parties without causing prejudice to the rights of the party who was prevented from appearing before the Tribunal for the reasons indicated in this article.

Failure of witness to appear.

**29.** Should a witness duly notified by a summons signed by the Chairperson of the Tribunal fail without just cause to appear before the Tribunal, such person shall be fined by the Tribunal a fine (*multa*) of not less than two hundred euro (€200) and not more than five thousand euro (€5,000).

Experts.

**30.** (1) The Tribunal may require any department or agency of the Government to provide the Tribunal with such information as the Tribunal may deem necessary for the proper execution of its functions.

(2) The appointment of experts shall be regulated by the following provisions:

(a) the Tribunal may appoint an expert or more than one expert to draw up a report on any matter which the Tribunal deems relevant to the appeal;

(b) where the parties to an appeal agree on the submission of a name of an expert, the Tribunal shall appoint the expert agreed upon by the parties;

(c) where the parties fail to agree upon the appointment of an expert, the Tribunal shall appoint an expert of its own choice.

(3) In the Tribunal's decree appointing an expert, the Tribunal shall:

(a) state the object of the appointment;

(b) fix the day and time when the expert is to conduct an inspection *in faciem loci* where necessary;

(c) give directions for the guidance of the expert in the execution of his task, where necessary;

(d) establish a date by which the expert should draw up a report;

(e) state which party is to bear the expenses of such an expert.

(4) The Tribunal may, at any time, order the expert to return the records of the appeal that are in his possession. In case of non-compliance with the Tribunal's order, the expert shall, without prejudice to any other proceedings which may be instituted against him, be guilty of contempt of the Tribunal's order.

(5) The Tribunal may order the expert to attend the hearings of the appeal and to place to the witnesses any questions he may deem necessary or relevant to enable him to draw up his report.

(6) The expert shall be served with a copy of all the documentation contained in the appeal file.

(7) An expert may be challenged by any of the parties to an appeal on good cause being shown to the Tribunal, as stated in the Code of Organization and Civil Procedure.

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(8) The report of the expert shall indicate the enquiries carried out by the expert and his findings together with the grounds for such findings.

(9) The rules applicable to referees in the Code of Organization and Civil Procedure shall *mutatis mutandis* apply to experts appointed by the Tribunal.

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**31.** The Tribunal shall have the power to confirm, revoke or alter the decision appealed from and give such directions as it may deem appropriate:

Power to confirm, revoke or alter decisions.

Provided that the Tribunal may, according to circumstances, and before confirming, revoking or altering the decision, request the applicant to submit fresh documents and plans, in which case the Tribunal shall give reasons for such a request, provided that the substance of the matter as presented before the Planning Authority shall not change. The Tribunal, where it deems that the substance of the matter as presented before the Planning Authority shall change, may give such directions as it may deem appropriate in the circumstances with respect to the respective claims by redirecting the documents and plans to be decided upon again by the Planning Authority.

**32.** In the absence of any rules on any matter, the Tribunal may regulate its own procedure.

Tribunal may regulate its own procedure.

**PART IV**  
**Decisions of the Tribunal related to decisions taken**  
**by the Planning Authority**

Suspension of  
development.

**33.** (1) The Tribunal may, at the request of the appellant, which request may only be made by an application lodged concurrently with the application for the appeal, suspend through a partial decision, in whole or in part, the execution of any permit, pending a decision being delivered by the said Tribunal, under those terms, conditions and other measures as it may deem fit:

Provided that the Tribunal may not grant a suspension of the execution of a permit in relation to an application, for a development which, in the opinion of the Minister responsible for the Planning Authority, is of strategic significance or of national interest, related to any obligation ensuing from a European Union Act, affects national security or affects the interests of the Government and, or other governments. This proviso is not applicable to applications relating to development or installations which are subjected to an environmental impact assessment (EIA) and, or integrated pollution prevention and control (IPPC) matters.

(2) The Tribunal shall hold its first hearing and shall deliver a decision with respect to the suspension or otherwise of the permit, within thirty days from the receipt of the application.

(3) The Tribunal shall not suspend the execution of such a permit unless it is satisfied, after hearing all the parties, that unless the execution of the permit is suspended the prejudice that would be caused would be disproportionate when compared with the prejudice caused by the staying of the actual execution of the permit. It shall also not suspend the execution of such a permit if it is satisfied, after hearing all the parties, that the development may be easily removed or reversed or that the request is frivolous or vexatious.

(4) The Tribunal shall give reasons justifying its decision to suspend the execution of the permit or otherwise.

(5) The Tribunal shall not suspend the execution of such a permit for more than:

(a) three months from the date of the first hearing of the appeal before the Tribunal in the case of an application not being one described in paragraph (b);

(b) one month from the date of the first hearing of the appeal before the Tribunal, in the case of an application subjected to an environmental impact assessment (EIA) and, or

to an integrated pollution prevention and control (IPPC) permit, which in the opinion of the Minister responsible for the Planning Authority is of strategic significance or of national interest, related to any obligation ensuing from a European Union Act, affects national security or affects the interests of the Government and, or of other governments.

(6) The suspension order shall be deemed to have elapsed *ipso jure* after the lapse of the periods indicated in sub-article (5).

**34.** The Tribunal shall, whenever the execution of a permit has been suspended, grant its final decision on the merits of the appeal:

Decision on the merits when the execution of a permit has been suspended.

(a) within three months from the date of the first hearing of the appeal;

(b) within one month from the date of the first hearing of the appeal in the case of an application subjected to an environmental impact assessment (EIA) and, or to an integrated pollution prevention and control (IPPC) permit which in the opinion of the Minister is of strategic significance or of national interest, related to any obligation ensuing from a European Union Act, affects national security or affects the interests of the Government and, or of other governments.

**35.** The Tribunal shall:

Decision on the merits when no request for suspension has been made or upheld.

(a) whenever a request for suspension of the execution of a permit has not been made, grant its final decision on the merits of the appeal within one year from the first hearing of the appeal which period may be extended only once by a further period of six months in exceptional cases, in the interests of justice;

(b) whenever a request for suspension of the execution of a permit has not been upheld, grant its final decision on the merits of the appeal within one year from the partial decision, which period may be extended once by a further period of six months in exceptional cases in the interests of justice;

(c) in relation to appeals from special summary proceedings applications, grant its final decision on the merits of the appeal within three months from the first hearing of the appeal:

Provided that in the event that the original period is extended as above stated, no evidence or submissions shall be lodged during the extension period:

Provided further that in the event that a final decision is not granted within the time-frames above indicated, the appeal shall be assigned by the Secretary to another panel.

Appeals from enforcement notices.

**36.** (1) On any appeal by any person who feels aggrieved by any stop or enforcement notice served on him in terms of articles 97, 98 and 99 of the Development Planning Act, 2016, the Tribunal:

(a) if satisfied that a permission was granted under the Development Planning Act, 2016, or under any other law which preceded the Development Planning Act, 2016, regulating the activity in question or building permits, for the activity or the development to which the notice relates, or that no such permission was required in respect thereof, as the case may be, and that the conditions subject to which such permission was granted have been complied with, shall quash the notice to which the appeal relates or such part thereof in respect of which the Tribunal is satisfied as aforesaid;

(b) in any other case, shall dismiss the appeal:

Provided that the Tribunal shall order the Planning Authority to modify the notice accordingly if it considers that not all the listed illegalities in the detailed description contained in the notice are illegal or that some illegalities have been removed.

(2) If before an appeal is lodged or during the pendency of an appeal, the appellant or any other person submits to the Planning Authority an application for a development permission regarding the activity and, or development mentioned in the notice, the Tribunal shall dismiss the appeal if it is satisfied that the said application is intended to regularise the activity and, or development mentioned in the notice.

(3) Where an appeal is dismissed as provided in sub-article (2), the provisions of article 97(8) of the Development Planning Act, 2016, shall apply.

(4) The Tribunal may correct any defect or error in the enforcement notice, which might otherwise even render it invalid, provided that the appellant shall be given sufficient time to prepare and put forward his case.

(5) The Tribunal shall, in relation to appeals from enforcement notices grant its final decision on the merits of the appeal within one year from the first hearing, which period may be extended only once by a further period of six months in exceptional cases, in the interests of justice:

Provided that in the event that the original period is extended as above stated, no evidence or submissions shall be lodged during the extension period:

Provided further that in the event that a final decision is not granted within the time-frames above indicated, the appeal shall be assigned by the Secretary to another panel.

**37.** On any appeal by any person who feels aggrieved by any decision of the Executive Council whereby a scheduling order and, or a conservation order has been issued in terms of article 57(11) of the Development Planning Act, 2016, the Tribunal shall either revoke, modify or confirm the order.

Appeals from scheduling and conservation orders.

**38.** (1) The decisions of the Tribunal shall be binding on the Planning Authority, external consultees, registered interested third parties and any other person and, or entity affected by the decision, if they are supported by the opinion of two of its members, and the dissenting member, if any, may express his opinion separately.

Provisions applicable to all decisions.

(2) All decisions of the Tribunal shall be delivered in public and shall be published as soon as practicable after the sitting at which they are given.

**39.** The decisions of the Tribunal shall be final and no appeal shall lie therefrom, except on a point of law decided by the Tribunal or on any matter relating to an alleged breach of the right of a fair hearing before the Tribunal.

Appeals from decisions of the Tribunal.

**40.** The Tribunal shall indicate, with sufficient clarity, the grounds on which it bases its decisions.

Tribunal to indicate the grounds of its decision.

**41.** Although it shall not be necessary for the Tribunal in its decision to deal with every point raised in argument, a submission that would, if accepted, be decisive for the outcome of the case, shall require a specific and express consideration.

Specific and express considerations.

**42.** The Tribunal may deem an appeal as abandoned if the appellant shows no interest in the appeal submitted by him. Failure of the appellant to appear before the Tribunal on two consecutive sittings without good cause shall be deemed to signify that the appellant has no interest in the appeal.

Appeals deemed to be abandoned.

**43.** The Tribunal may impose a fine of two thousand and five hundred euro (€2,500) on the appellant in such cases where it declares an appeal to be frivolous or vexatious and in such cases the Tribunal's decision shall be final without any redress before the Court of Appeal (Inferior Jurisdiction).

Frivolous or vexatious appeals.

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Fees for site inspections.

**44.** The Tribunal may impose such fees as it deems proper on the party making a request for the carrying out of site inspections. Should the Tribunal decide to hold such inspection on its own motion, such inspection shall be at the charge of the appellant.

Penalties, fees and contributions.

**45.** (1) If the Tribunal decides to grant a permit, or to modify a decision taken by the Authority, it may impose a penalty, the payment of fees and contributions and, or other conditions, which the Tribunal shall deem appropriate. The funds accrued from such penalties, fees and contributions shall be collected and administered by the Planning Authority.

(2) The Planning Authority shall issue the permission or comply with the decision of the Tribunal within one month from the Tribunal's decision, or, if in the Tribunal's decision a condition has been imposed or a penalty, payment of a fee or contribution is imposed, within one month from compliance by the appellant with such condition or payment of such penalty, fee or contribution imposed by the Tribunal in its decision.

Power of Tribunal to order or permit amendment of written pleadings.

**46.** (1) The Tribunal may, at any stage of the proceedings, at the request of any of the parties, until the decision is delivered, after hearing the parties where necessary, order the substitution of any act or permit any written pleading to be amended, either by adding or striking out the name of any party and substituting another name therefor, or by correcting any mistake in the name or in the character of the parties, or by correcting any other mistake or by causing other submission of fact or of law to be added even by separate note, provided that no such substitution or amendment shall affect the substance either of the action or of the defence on the merits of the case.

(2) Any administrative omission or mistake in an act may, until the Tribunal shall have delivered its decision, be remedied by the Tribunal of its own motion.

(3) The Tribunal may, upon the application of any of the parties to be served on the other appellate parties, amend at any time, by a decree, any error of calculation incurred in the decision.

(4) The Tribunal shall not be debarred from correcting any error in the wording of the decision, or from altering any expression which is equivocal, or which may be construed differently from that evidently intended by the Tribunal, provided that an application is made to that effect within twenty days from the date when the decision is published, and in such case, the time allowed by this Act for entering an appeal before the Court of Appeal (Inferior Jurisdiction) from any decision so amended, shall commence to run

from the date of the notification of the decree given on the demand for the amendment.

**PART V**  
**Proceedings before the Tribunal related to decisions taken**  
**by the Environment and Resources Authority**

47. (1) Any aggrieved party may appeal to the Tribunal in accordance with the provisions of the Environment Protection Act, 2016, and any regulations made thereunder, and any person may appeal any decision of the Environment and Resources Authority only in relation to environment assessments, access to environmental information and the prevention and remedying of environmental damage.

Appeal to the Tribunal in accordance with the provisions of the Environment Protection Act.

(2) An appeal to the Tribunal may be filed on any ground including:

- (a) that a material error as to the facts has been made;
- (b) that there was a material procedural error;
- (c) that an error of law has been made;

(d) that there was some material illegality, unreasonableness, ineffective or insufficient consideration of adverse effects, or lack of proportionality.

(3) The effect of a decision to which an appeal relates shall not, except where the Tribunal or the Court of Appeal, as the case may be, so orders, be suspended in consequence of the bringing of the appeal:

Provided that in the case of an appeal from the approval or partial approval of a potentially irreversible action or an action that may potentially be of significant damage to the environment, the approval may be suspended by the Tribunal pending a final decision by the Tribunal if the said Tribunal deems that this would be in the interest of avoiding any likely significant or irreversible effects or implications on the environment or for similarly justified reasons.

(4) The right of appeal to the Tribunal shall be competent to any party aggrieved by the decision without the need to prove its interest in the matter.

(5) The provisions relating to the publication and communication of applications, submissions and decisions by the Authority shall apply *mutatis mutandis* to the decision of the

Tribunal, over and above the procedures set out in this article.

(6) In order to further the effectiveness of the provisions of this article, the Authority shall ensure that practical information is made available to the public on access to the relevant procedures.

(7) All parties involved in the appeal may file a request before the Tribunal to see the acts of the Authority at any time before the sitting of the Tribunal.

(8) If an appeal has been lodged with the Tribunal by any party other than the applicant, and the applicant submits a request for reconsideration, the proceedings before the Tribunal shall be suspended until the request for the reconsideration has been determined and a copy of the decision has been submitted to the Tribunal by the Authority, and any time periods established under the provisions of this Act in relation to the proceedings before the Tribunal shall commence from the date of receipt by the Tribunal of the decision on the request for reconsideration and the appellant shall, within a period of thirty days, from notification of the decision on the request for reconsideration, amend his appeal or make further submissions to the Tribunal, if he deems it necessary.

(9) When an appeal has been lodged with the Tribunal by any party other than the applicant in terms of this Act, such a person need not prove that he has an interest in that appeal in terms of the doctrine of juridical interest, which doctrine shall not apply to such proceedings, but such a person shall submit reasoned grounds based on environmental considerations to justify his appeal.

(10) The Tribunal shall, within two months from the lodging of the appeal application, except in the instances where the appeal is accompanied by a request for suspension of the execution, appoint the day and hour and hold the first hearing for the parties to appear before it, in order to show cause why the claims, pleas and witnesses contained in their respective application and reply should be allowed. The Tribunal shall, on the same day and at the hour appointed for the first hearing of the appeal, decide which witnesses, listed in the application for appeal and reply to the appeal, it deems relevant for the purpose of giving evidence:

Provided that where there is no request for a suspension of the execution as provided in the articles hereunder, advance notice of not less than fourteen days, in such manner as the Tribunal may deem appropriate, shall be given of the first hearing of the Tribunal to the parties, and the interested parties, and the external consultees who made their recommendations:

Provided further that in cases of urgency the said time limit of fourteen days may be abridged by order of the Tribunal, if the Tribunal is satisfied that the party requesting urgency has given a valid reason in writing thereof.

(11) The provisions of articles 12, 13(1) and (3), 14, 15, 16, 17, 18, 20, 23(2), 24, 25, 26, 27, 28, 29, 30, 31, 32, 39, 40, 41, 42, 43, 44, 45 and 46 shall apply *mutatis mutandis* to the appeals filed under this Part of this Act, and all references to the Planning Authority in such articles shall be construed as a reference to the Environment and Resources Authority.

**48.** (1) When appeals are filed by any person who feels aggrieved by an order served on him in accordance with article 76 of the Environment Protection Act, 2016, the Tribunal:

Appeals from stop orders and compliance orders.

(a) if satisfied that a permit was granted under the Environment Protection Act, 2016, or under any other law which was in force before the Environment Protection Act, 2016, and which regulated the activity in question, for the activity to which the order relates, or that no authorisation was required in respect thereof, as the case may be, and that the conditions subject to which such authorisation was granted have been complied with, shall quash the order to which the appeal relates or such part thereof in respect of which the Tribunal is satisfied as aforesaid;

(b) in any other case, shall dismiss the appeal:

Provided that the Tribunal shall direct the Environment and Resources Authority to modify the order if it considers that not all of the illegalities listed in the detailed description in the order are illegal or if some of the illegalities have been removed.

(2) If before an appeal is lodged or during the pendency of such appeal, the appellant or any other person submits to the Environment and Resources Authority an application for an authorisation regarding the activity mentioned in the order, the Tribunal shall dismiss the appeal if it is satisfied that the said application is intended to regularise the activity mentioned in the order.

(3) Where an appeal is dismissed in accordance with sub-article (2), the provisions of article 76(12) of the Environment Protection Act, 2016, shall apply.

(4) The Tribunal may correct any defect or error in the stop order even if had it not been for the correction such would render it

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invalid, provided that the appellant shall be given sufficient time to prepare and put forward his case.

(5) The Tribunal, in respect of appeals from stop orders, shall give its final decision on the merits of the appeal within one year from the date of the first hearing which period may be extended only once for a period of six months in exceptional cases in the interest of justice:

Provided that if the original period is extended as declared above, no evidence or submissions shall be put forth within the period of extension:

Provided further that if a final decision is not delivered within the deadlines indicated above, the appeal shall be assigned by the Secretary to another panel.

Appeals from decisions regarding protection and conservation orders.

**49.** (1) When an appeal is filed by any person who feels aggrieved by a decision of the Authority, in accordance with the provisions of article 69 of the Environment Protection Act, 2016, the Tribunal shall revoke or modify the order, or dismiss the appeal.

(2) Where the Tribunal decides to remove the designation of protection from a protected area or reduce the level of protection afforded to an area that has been designated as protected, the Tribunal shall request the approval of the Minister responsible for the Environment and Resources Authority and the period for the lodging of an appeal from the decision of the Tribunal to the Court of Appeal shall continue to run from the date in which the Tribunal informed the appellant with the approval of the Minister.

## PART VI

### Appeals from decisions of the Tribunal

Appeals from decisions of the Tribunal.

Cap. 12.

**50.** (1) Saving the provisions of article 39, an appeal from decisions of the Tribunal shall lie to the Court of Appeal constituted in terms of article 41(6) of the Code of Organization and Civil Procedure, on points of law.

(2) The appellant in front of the Tribunal and all other persons who participated in the appeal may appeal from decisions of the Tribunal.

Appeals from partial decisions of the Tribunal.

**51.** An appeal from a partial decision of the Tribunal in terms of article 33 may only be filed together with an appeal from the final decision of the Tribunal.

**52.** An appeal to the Court of Appeal (Inferior Jurisdiction) shall be submitted within twenty days from when the decision of the Tribunal is delivered in public and such an appeal shall be regulated by the rules of court made under article 29 of the Code of Organization and Civil Procedure.

Time-frame for appeals from decisions of the Tribunal.

Cap. 12.

**53.** Appeal proceedings before the Court of Appeal (Inferior Jurisdiction) pursuant to article 49 shall be concluded in a timely manner. Legal and judicial costs and fees in the said proceedings shall be taxed in accordance with paragraph (7) of item 3 of Tariff A and with paragraph (b) of item 15 Tariff E in Schedule A to the Code of Organization and Civil Procedure.

Legal and judicial costs and fees.

Cap. 12.

**54.** The legal and judicial representation of the Tribunal shall vest in the Secretary of the Tribunal or in such other person as the Prime Minister may determine for any specific case or class of cases.

Legal and judicial representation.

**55.** The Tribunal established under the provisions of this Act shall perform and succeed all the functions, assets, rights, liabilities and obligations of the Environment and Planning Review Tribunal respectively established under the provisions of the Environment and Development Planning Act.

Saving.

Cap. 504.

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Passed by the House of Representatives at Sitting No. 338 of the 9th December, 2015.

ANĠLU FARRUGIA  
*Speaker*

RAYMOND SCICLUNA  
*Clerk of the House of Representatives*

