



Sites for declassification from Public Domain

Article 10(1) of the Fourth Schedule of the Civil Code (Chapter 16)

Report by the Executive Council

January 2023

1 Introduction

1.1 On the 31st of May 2022 and on the 22nd of November 2022, the Executive Council of the Planning Authority received requests by the Minister responsible for lands related to the declassification of sites in Qawra and Sliema from the public domain. The location of these sites on the coastal perimeter/foreshore made them part of the public domain in terms of the Civil Code (Amendment No.3) Act 2016. In line with the provision of the Civil Code (Amendment No.3) Act 2016, the role of the Planning Authority's Executive Council is to undertake a public consultation process, prepare a report and present said report to the Minister responsible for Lands.

1.2 This report presents the outcome of the public consultation process and provides additional supplementary information related to the current spatial planning policy framework for the proposed sites for declassification and relevant development planning decisions concerning the sites for the consideration of the Minister responsible for Lands. Annex A presents all the submissions received concerning each of the proposed sites. Annex B contains the text of the applicable spatial planning policies. Annex C contains the requests from the Minister responsible for lands.

2 The requests received for sites proposed for declassification

2.1 The Minister responsible for Lands, in terms of Article 10 (1) of the fourth Schedule of the Civil Code, presented two separate requests for sites to be declassified from Public Domain: Sites at Triq Dawret il-Qawra Bugibba l/o San Pawl il-Bahar (Figure 1), and site known as 'Chalet', Triq it-Torri, Sliema (Figure 2).



Figure 1: Sites at Qawra

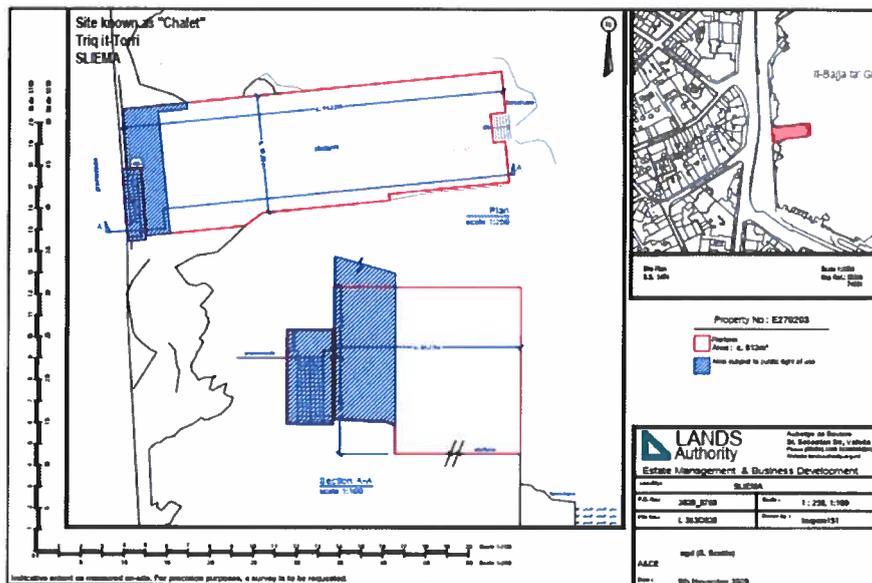


Figure 2: Site known as 'Chalet', Sliema

3 Public Consultation process

3.1 The public consultation process was launched with the publication of the proposed sites, on 2nd December 2022 for 5 weeks, ending on 5th January 2023. The public was invited to submit feedback through a dedicated email address.

3.2 15 separate email submissions were received during the consultation timeframe. The feedback was submitted by NGOs, lawyers, private individuals and one government entity (ERA). One NGO submitted three separate submissions.

3.3 Submissions raised concerns on:

- (a) the interpretation of the public domain legal provisions;
- (b) the approach to the public consultation process;
- (c) the approach taken to prioritise declassification of coastal sites as opposed to action on the classification of the 22 sites proposed by NGOs to be included in the public domain in 2016.

3.4 One submission did not comment on the sites themselves but recommended the undertaking of a Social Impact Assessment for the process of declassification.

3.5 The issues that are relevant to this report are:

- General objection to the privatisation of land on the coast, which runs counter to electoral pledges;
- the removal of public access to the foreshore especially in Chalet, Sliema

3.6 ERA's submission raises concern on the need to safeguard natural coastline and prevent noise pollution from resulting uses in both sites. The issue of pollution from the resulting projects was also raised by two other submissions which referred to possible spillage of construction debris into the sea (Chalet), and the need to address sewage leakage at sea (Qawra).

4 Relevant planning policy framework and special laws affecting the proposed sites

4.1 Another step was to determine any specific designations under any plan, policy or schedule issued under the Development Planning Act of 2016, applicable for each site which may have an impact on the status of the sites as part of the public domain. For the purpose of this exercise, relevant policies which are site specific were extracted from the Strategic Plan for Environment and Development (SPED), the respective Local Plans and Development Briefs.

Strategic Policy

4.2 Both locations are included within the predominantly urban terrestrial coastal zone as defined in the SPED Policy Map 2.A. The SPED policy CO.1.1 designates a predominantly terrestrial urban coast to promote compatible urban coastal uses, safeguard legitimate coastal uses and visual access from promenades and enhance public use of bathing areas. Legitimate coastal uses are those uses that necessitate a coastal location for their operational purpose. SPED policy CO 3.2 safeguards existing coastal recreational resources by guiding formal recreational facilities which necessitate a coastal location towards the terrestrial urban coast; SPED Policy CO 3.3 protects designated beaches and swimming zones and identified diving sites from conflicting uses.

Subsidiary Policy: Local Plans and Development Briefs

4.3 Each site is subject to Local Plan policies with the site at Chalet also subject to a Development Brief. The relevant policies are described below to provide the existing spatial planning context.

(a) Sites at Triq Dawret il-Qawra Bugibba l/o San Pawl il-Bahar

North West Local Plan 2006

4.4 The North West Local Plan of 2006 includes a site specific policy applicable to this stretch of coast, including the land proposed for declassification, as indicated in the Bugibba & Qawra Policy Map 40 (refer to Figure 3). The Local Plan designation for this stretch of coast is Foreshore within Commercial Zone and Foreshore within Tourism Zone, where Local Plan policy NWSP 4 applies.

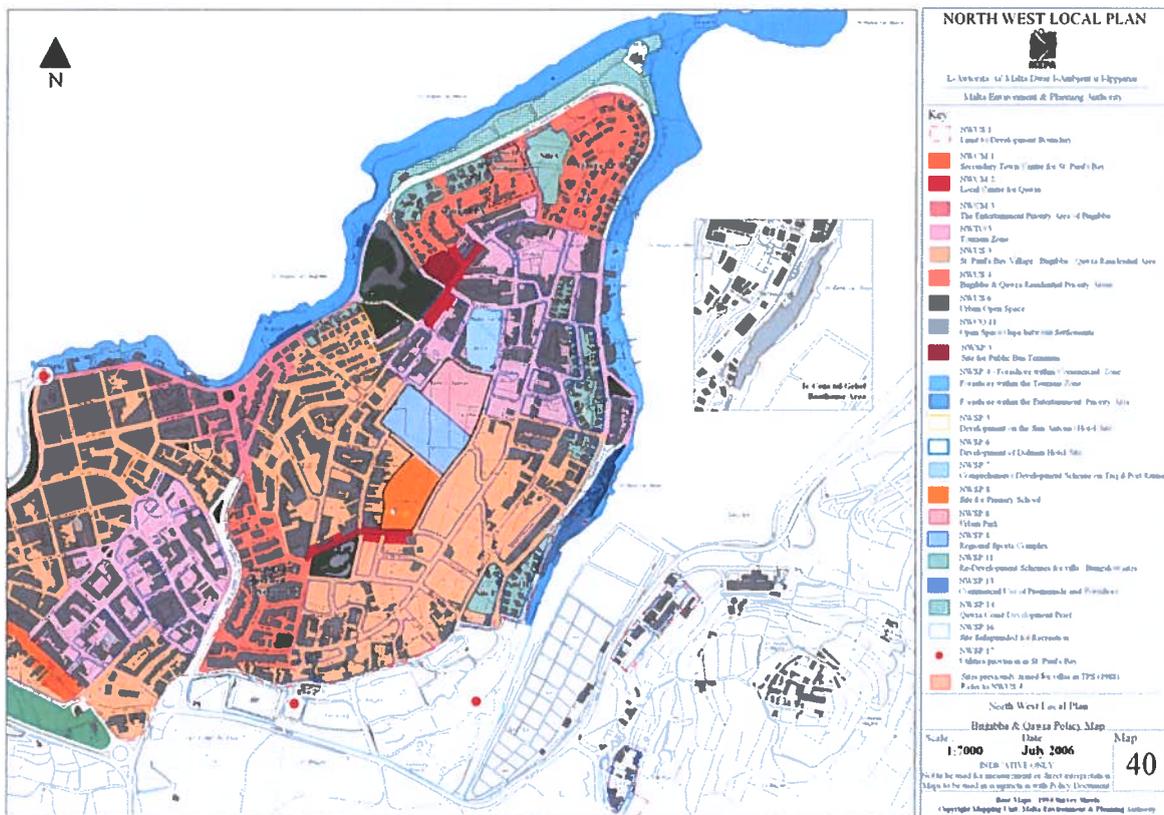


Figure 3: NWLP Map 40 (MEPA, 2006)

(b) Site known as 'Chalet', Triq it-Torri, Sliema

North Harbours Local Plan (2006)

4.5 The NHLP Policy Map SJ1 (refer to Figure 4) endorses the Development Brief which had already been approved in 2002 for a larger area than proposed for declassification.

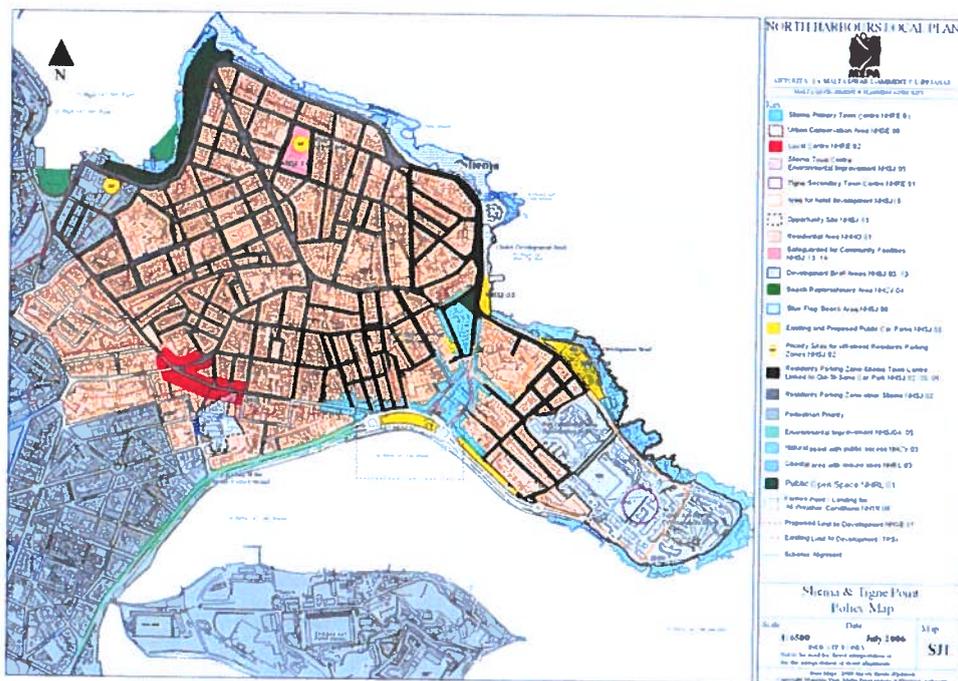


Figure 4: North Harbours Local Plan Sliema & Tigne Point Policy Map SJ 1

Chalet Development Brief

4.6 The Chalet Development Brief prepared in 2000 and approved in 2002 was intended to provide a comprehensive design and planning framework for the redevelopment of the Chalet area along the Sliema promenade (refer to Figure 5). The brief describes the area as comprising three major parts: the existing landscaped promenade, the natural rocky foreshore and the existing Chalet Structure projecting from the foreshore. It also outlines the boundaries of the proposed development area, permissible land-uses, planning policy context, design guidelines, transportation issues, aspects relating to project management and phasing of construction works and the submission requirements. The request for declassification relates only to the existing chalet structure.

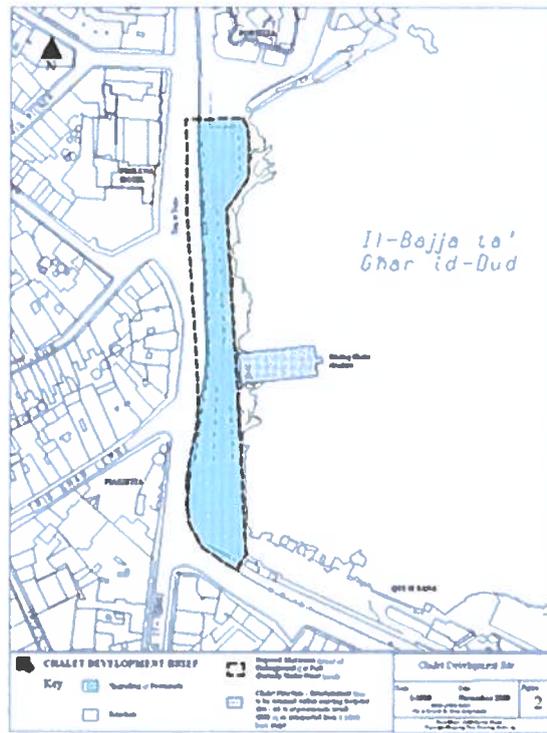


Figure 5: Chalet Development Site (MEPA, 2002)

Relevant Site Histories

(a) Sites at Triq Dawret il-Qawra Bugibba l/o San Pawl il-Bahar

4.7 Site A proposed for declassification forms part of a larger site covered development permission issued in March 2022 under application PA6179/21 for the redevelopment of the seaside lido belonging to the Seashells Resort at Suncrest Hotel, retaining its primary use as ancillary functions to the hotel at lido level, while integrating a parking facility at basement level as well as a number of commercial offers set within pedestrianised urban spaces at street level. To include for the demolition of existing structures and the excavation of the site. The proposed development includes: an underground parking facility (Class 3B) at basement level; Ancillary functions to the hotel at lido level which include indoor and outdoor pools and pool deck (Class 3C), food and beverage outlets (Class 4D), and related ancillary back of house facilities (Class 3B and 3C); pedestrianised accessible urban spaces in the form of a piazza and walkways integrated with commercial outlets (Class 4B), and food and beverage outlets (Class 4D) at street level.

4.8 The two sites proposed for declassification also form part of a larger site covered by outline development permission issued in March 2022 under application PA/05952/21 for the redevelopment of the seaside lidos belonging to the Sunny Coast Hotel, Luzzu, and the Seashells Resort at Suncrest Hotel - retaining their primary use as ancillary functions to the hotels; integrating a parking facility at basement

level; and redistributing street level commercial outlets to be integrated within a large scale network of pedestrianised urban spaces: including the creation of a widened promenade walk, the provision of piazzas and pedestrian routes, and the upgrading of the open space in front of the Sunny Coast Hotel. To include for the demolition of existing structures and the excavation of the site. The redeveloped site includes: an underground delivery area and a parking facility (Class 3B and 3C) at basement level; ancillary functions to the hotels at lido level which include indoor and outdoor pools and pool deck (Class 3C), food and beverage outlets (Class 4D), a conference centre (Class 3C), a spa and leisure centre (Class 3C) and related ancillary back of house facilities (Class 3B and 3C); and pedestrianised, accessible urban spaces in the form of piazzas, gardens and walkways integrated with a conference centre (Class 3C), commercial outlets (Class 4B and 4C), and food and beverage outlets (Class 4D) at street level. Full application PA/07802/22 to carry out the works approved under the outline permit is still being processed by the Planning Authority.

(b) Site known as 'Chalet', Triq it-Torri, Sliema

4.9 In 2002 a planning application was submitted for the demolition of existing structure, excavation of promenade, and construction of carpark and commercial outlets with wave protection measures (PA /00486/02). The application was deferred in 2005 on several grounds relating to the results of ecological and hydrological studies as well as incompatibility of the proposed development with the objectives of the Development Brief.

5 Conclusion

5.1 This report fulfils the obligations of the Executive Council of the Planning Authority to prepare a report following a public consultation on requests by the Minister responsible for lands for declassification of property from the public domain.

5.2 It is recommended that this report is thus presented to the Minister responsible for Lands.


Oliver Magro
Executive Chairman
Planning Authority

ANNEX A

**Declassification of Public Property form the
Public Domain
Sliema and Qawra
Public Submissions
January 2023**

| Chalet Sliema | | | |
|---------------|------------------|----------|--|
| Ref | Respondent | Date | Summary of Comments Received |
| PD_C - 1 | Dr Clare Bonello | 02/12/22 | <p>These representations are being made with regard to the above mentioned intention to Declassify the Public Domain Sites referred to.</p> <p>1. It is being highlighted that since the law regarding public domain came into effect in 2016 not one single area has been classified as public domain despite various the requests of ENGOs and a 5000 strong petition asking for a site to be classified as public domain.</p> <p>https://timesofmalta.com/articles/view/ngo-wants-seven-sites-designated-as-public-domain.617043</p> <p>https://www.independent.com.mt/articles/2020-03-31/local-news/NGOs-protest-government-s-handling-of-Public-Domain-considerations-6736221487</p> <p>This shows that the Government has absolutely no intention of safeguarding and promoting public property in the interests of the general public in the spirit of the law but only wants to commercialise more land purely for private interests.</p> <p>2. With regard to the Chalet Declassification, the plans show that even the stairs giving access to the lower part of the Chalet and the eventual foreshore are being declassified.</p> |

| | |
|--|---|
| | <p>This effectively stops access to the foreshore and is in breach of the Chalet Development Brief 2000 which requires the following: <i>"To retain the existing foreshore in public ownership with unrestricted and free public access and use; and to ensure that it is not encroached upon and that it is preserved in its natural state."</i></p> |
| | |
| | |
| | |

| | | | |
|----------|-------------------|----------|---|
| PD_C - 2 | Mr Sean Sciberras | 09/12/22 | <p>In view of the fact that so much public open space has been encroached over and commercialised for private interests, the Government should declare new areas as public domain so the pendulum does not only swing in favour of private interests.</p> <p>The proposed Chalet site is a big issue since the staircase leading to the sea is also included in the allotment meaning that there will no longer be public access left to the sea. The site lies within the summer swimming zone and is also very rich in fish making it an ideal fishing spot as well.</p> <p>So the proposal effectively means that the Government is robbing the public of a pristine sea zone which will now be only accessible exclusively against payment. The area is situated in a populous area served with public transport so it does not make sense to remove the current benefits enjoyed by the public for free. The Preluna already has a beach concession under Fortizza and the Pitch already offers the paying public all the facilities expected from a beach concession. So one wonders who really stands to benefit from privatizing the Chalet?</p> <p>The planning authority is probably unaware of the rich Posidonia oceanica existing in the area which will make redevelopment practically impossible. The area between Fortizza and Chalet is one big aquarium with numerous fish and aquatic species making snorkeling (which I practice) and diving an extremely rewarding experience. I cannot understand how redevelopment of the Chalet can actually take place without dumping of dust and construction debris into the sea, causing significant permanent damage to the existing sea flora and fauna.</p> <p>The sea is already adequately enjoyed by the public so there is no need to redevelop the Chalet. Besides any development would obstruct existing public sea views which again would not make any sense. On the other hand, the Qui-Sa-Na corner is currently suffering from occasional sewage issues and is more accessible for eventual construction machinery and construction waste management. Historically there was also a sandy beach extending</p> |
|----------|-------------------|----------|---|

| | | | | |
|---|-----------------------|----------|--|---|
| | | | | towards the naval clinic/Star bucks. Facilities could be dug under the promenade, which consists mostly of materials from post-WW2 demolitions and would create a barrier from any future sewage spilling in the sea and still leave plenty of space to be enjoyed by the public. |
| PD_Q -1 Submission applicable to Chalet and Qawra site | riosammut@hotmail.com | 03/12/22 | Sliema and Qawra concessions. I strongly object to any public land being privatized, for any reason whatsoever, particularly with the excuse that the public will still be allowed to utilize it. | |
| PD_Q -3 Submission applicable to Chalet and Qawra site | Mr Anthony Azzopardi | 09/12/22 | "The coast is considered as belonging not only to us but to future generations. Future generations cannot be deprived of the coast by our generation for a quick buck." May I add that what is in effect a move to grant private ownership of such lands will be at the expense of the present and future Maltese. We have few open spaces, let us not reduce them further. | |
| PD_Q -4 Submission applicable to Chalet and Qawra site | Mr Thomas Briffa | 10/12/22 | This Proposal is absolutely ridiculous and will continue to restrict open public spaces for the Maltese in Malta. It will open a Pandora's box. What we expect after this is that the sea shore in front of the Jerma Hotel in Marsascala will become private property, and will be inaccessible to the Maltese public, of course unless under payment. | |

| | | | |
|---|--|-----------------|---|
| <p>PD_Q-7 Submission applicable to Chalet and Qawra site</p> | <p>Mr David Pisani obo Zminijietna Voice of the Left</p> | <p>21/12/22</p> | <p>Mhux bizzejjed fgajna lil Malta bil concrete , anka sqaqien fl għelieqi tajna il concrete , din jonqos issa.</p> |
| <p>Zminijietna comments: Declassification of Public Property from the Public Domain</p> <p>The Left think-tank organisation Zminijietna comments: The Planning Authority should take a progressive approach to list various sites around Malta and Gozo for 'Public Domain Status'.</p> <p>In 2016, Parliament passed the Public Domain Act to have the entire Maltese foreshore re-classified as 'public domain', but stopped short of enforcing such law.</p> <p>We believe that the Planning Authority should take a proactive approach and include for 'Public Domain Status' the recommended list given in 2016 by various ENGOs, that include amongst other the area of Hondoq ir-Rummien, Manoel Island, Kalanka Delimara, and Comino. The Qala Local Council is also pushing for Public Domain Status to Hondoq ir-Rummien".</p> <p>The Government should first give a legal protection status to Hondoq, Comino and other sites listed by the ENGOs, before any other decisions for declassification.</p> | | | |

| | | | |
|---|--|-----------------|---|
| <p>PD_Q -8 Submission applicable to Chalet and Qawra site</p> | <p>Chairperson for the Executive Committee - FAA</p> | <p>13/12/22</p> |  <p>13 December 2022</p> <p>The Executive Chairman Planning Authority St Francis Ravelin Floriana</p> <p>Dear Sir,</p> <p>On behalf of the executive committee of this organisation I strongly deplore the cynical way you are going about the public consultation on the removal of certain sites from the Public Domain.</p> <p>Not only is the period allocated very short it is set entirely during the Christmas holidays when people's attention is drawn to the festivities. During this period there are several public holidays and the season where many people take holidays including overseas given that this is the time that families can travel together given the school holidays. This period also coincides with the hugely important public debate on abortion. On top of that very little promotion if any has been given to make the public aware of the declassification of these three sites from the public domain. It seems that this is all designed to discourage the public from commenting on the matter.</p> <p>In addition, no detailed justification for the proposed the declassification of the three sites which are different from each other is being given. The stated purpose is so generic that it could apply to anywhere and anything. There is no identification of private interests that could be served and why the public interest in the public domain should be foregone.</p> <p>I call upon you to suspend this so-called public consultation and re-issue it at a later date after sufficient publicity is given to it. In addition, a detailed case for the declassification of these public domain is to be given outlining the cost and benefits to the public from the change in the classification of the individual sites.</p> <p>I look forward to your positive response.</p> |
| <p>PD_Q -9 Submission applicable to</p> | <p>Mr Stefano Micelo obo ERA</p> | <p>03/01/23</p> | <p>The Environment and Resources Authority (ERA) welcomes the opportunity to comment on the proposed declassification of specific public properties from the public domain and is putting forward its comments and recommendations below.</p> |

| | | | |
|--|---|----------|---|
| Chalet and Qawra site | | | <p>With respect to the sites in question, there are no objection noting that these are already occupied or have been occupied by legally established developments; however, any remaining adjacent natural rocky shores should remain unaffected. It is recommended that ERA is consulted on any proposals for this site in view of the environmental, geological and geomorphological characteristics of the coast.</p> <p>Furthermore, it is being highlighted that the privatisation of these sites should not result in extensive intensification or otherwise lead to an increase in noise over the existing noise climate or negative impacts on air quality. This applies to both increases in pollution levels as a result of increased traffic, as well as other noise potentially leading to nuisance on nearby receptors. These potential concerns can be assessed in further detail at application stage for any proposed development of the sites in question.</p> <p>ERA looks forward towards additional consultations and remains available to meet for further discussion or any clarification if required, through era.policy@era.org.mt</p> |
| PD_Q -10 Submission applicable to Chalet and Qawra site | Dr Michael Briguglio obo Malta Sociological Association | 04/01/23 | <p>With reference to the consultation in question and which can be accessed through this link, the Malta Sociological Association (registered VO 1323) proposes that the entire policy process employs social impact assessments in an ongoing process.</p> <p>Hence, Social Impact Assessments should be conducted with regard to the following public properties, which are being proposed by Government for declassification from the Public Domain to serve both private and public interests:</p> <ol style="list-style-type: none"> 1. Chalet, Triq it-Torri, Sliema 2. Triq Dawret il-Qawra, Bugibba I/o St.Paul's Bay (Site A) 3. Triq Dawret il-Qawra, Bugibba I/o St.Paul's Bay (Site D) |

| | | | |
|--|--|--|--|
| | | | <p>The International Principles for Social Impact Assessment defines SIA as being “the processes of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions”.</p> <p>An SIA is an interdisciplinary process, and should employ various methods, both quantitative and qualitative. Social impact assessments should not be one-off exercises: To the contrary, they should be ongoing processes which engage with various stakeholders and which report back so as to ensure effective policy processes.</p> <p>In this regard, you may refer to international SIA standards, for example those set by the International Association for Impact Assessment, which is accessible from this link:</p> <p>https://www.socialimpactassessment.com/documents/IAIA%202015%20Social%20Impact%20Assessment%20guidance%20document.pdf</p> |
|--|--|--|--|

| | | | |
|--|---|-----------------|---|
| <p>PD_Q -11 Submission applicable to Chalet and Qawra site</p> | <p>Ms Astrid Vela obo Filmkien ghal Ambient Ahjar</p> | <p>05/01/23</p> | <div data-bbox="316 837 443 1010" data-label="Image"> </div> <hr/> <div data-bbox="475 1196 497 1323" data-label="Text"> <p>4 January 2023</p> </div> <div data-bbox="555 1144 647 1323" data-label="Text"> <p>The Planning Director Planning Authority St Francis Ravelin Floriana FRN 1230</p> </div> <div data-bbox="687 1249 710 1323" data-label="Text"> <p>Dear Sir,</p> </div> <div data-bbox="730 539 783 1323" data-label="Text"> <p>On behalf of Filmkien ghal Ambient Ahjar I am attaching our comments on the public consultation on Declassification of Public Property from the Public Domain.</p> </div> <div data-bbox="799 539 852 1323" data-label="Text"> <p>This submission is being made under protest as apart from the site plans no information has been given to the public to enable it to assess the proposal as required by law.</p> </div> <div data-bbox="868 533 1066 1323" data-label="Text"> <p>Filmkien ghal Ambient Ahjar also protests at the cynical way this public consultation by the Minister responsible for Lands and the Planning Authority as his agent has been carried out. It was launched during the Christmas festivities and the abortion debate without any publicity in the hope that the general public would be too distracted to notice and submit comments to the proposals. This is also contrary to the letter and spirit of article 9 of the Constitution of Malta which obliges the State "to promote, nurture and support the right of action in favour of the environment." The manner of this consultation is to discourage and stifle rather than promote, nurture or support the right of action in favour of the environment.</p> </div> <div data-bbox="1082 779 1104 1323" data-label="Text"> <p>I trust that this will not be the manner of future public consultations.</p> </div> <div data-bbox="1120 1205 1142 1323" data-label="Text"> <p>Yours faithfully</p> </div> <div data-bbox="1158 1160 1264 1346" data-label="Text"> </div> <div data-bbox="1273 1093 1337 1323" data-label="Text"> <p>Jorg Sicut Chairperson For the Executive Committee Filmkien ghal Ambient Ahjar</p> </div> |
|--|---|-----------------|---|

| | | | |
|--|--|--|---|
| | | |  <hr data-bbox="395 629 402 1429"/> <p>FAA OBJECTION TO DECLASSIFICATION OF PUBLIC PROPERTY FROM PUBLIC DOMAIN</p> |
|--|--|--|---|

| | | | |
|--|--|--|---|
| | | | <p>Executive summary</p> <p>Before one considers the declassification of any site considered as Public Domain one has to be aware of the concept of Public Domain and for the need to classify certain sites accordingly. The concept of Public Domain is a very old one and derives from Roman Law where it was called <i>res communes</i>. In Malta this concept while in existence for hundreds of years was only codified in the Civil Code in 2016. The case for this law was made by Government in a White Paper titled The Public Domain Classifying Public Property – Achieving a Qualitative Leap in Protection and Governance and published in 2012.</p> <p>This consultation response by Fimikien għal Ambient Ahjar quotes extensively from this White Paper and associates itself with the case for Public Domain made therein.</p> <p>On the other hand the case for declassification of certain sites has to be made by the party proposing this declassification that is the Minister responsible for Lands and the Planning Authority which is acting on his behalf. However contrary to what is required by the Civil Code Schedule Three, Title VI section 11, the case is not being made. The motivation stated by the Planning Authority which is <i>"The main purpose of this request is to proceed with projects which will serve both private and public interests"</i> is too generic and hence meaningless. This does not allow the public to consider the matter in any specificity and consequently the matter can only be considered in its generality.</p> <p>This response considers that the motivation given for the declassification is so wide that it can apply to anything and any site in the Maltese Islands and would set an ugly precedent for the declassification of all Public Domain sites. Practically any site in Malta can have projects or developments that <i>"serve both private and public interests"</i>. Allowing this would render the concept of Public Domain as meaningless. This would mean that any Public Domain site loses the vital <i>extra commercium</i> status.</p> |
|--|--|--|---|

| | | |
|--|--|--|
| | <p>The case for Public Domain</p> <p>The case for the Public Domain was made by the Government of Malta in 2012 with the publication of a White Paper titled <i>The Public Domain Classifying Public Property – Achieving a Qualitative Leap in Protection and Governance</i>. This submission considers the arguments therein as still valid and will be quoting extensively from that White Paper.</p> <p>1. <i>The Context</i></p> <p>1.0 <i>The Nation's Patrimony: The Government owns and administers all the property in Malta which is not privately owned. Its sovereignty extends to the limits of the territorial waters and it administers national interests over areas of the seas even beyond that line. The perimeter of our islands is called foreshore and the Government administers this as a special class of property for, with the seas which lap its shores, it is considered to be public domain. It is that part of the nation's property which private interests traditionally cannot own, develop or trade and it is considered as extra commercium¹.</i></p> <p><i>The foreshore is that part of the island which everyone knows is public domain and it is there for the enjoyment of each and every one of us. It was created by nature which has the force to keep it exactly as it was created, the waves being the most effective tool! We have free public access, we can enjoy it without any interference. Unfortunately, but thankfully to a limited extent, this area of the public domain is occasionally encroached upon. The Government indeed allows such encroachment when it is in the public interest to do so. This is mostly without controversy, as the man in the street recognizes the legitimacy of such encroachment, as when a breakwater is constructed to protect an inner bay or harbour, or when a sea front promenade is created to allow for better public enjoyment of the coastal areas. The installation of fish-farms and wind-farms in areas within the territorial waters is generally understood and supported as something good and justifiable, albeit in need to be monitored and regulated to protect the seabed and surrounding habitats.</i></p> <p><i>The granting of private rights on the foreshore has always been controversial. The public interest argument comes under focus and not all immediately agree that the public interest is served through concessions and grants over the foreshore. Yet they do happen regularly, principally in relation to beaches, ports and harbours but even in relation to some other areas. There seem to be few rules, aimed at protection of the rights of the general public, about concessions over these areas.</i></p> <p>1.1 <i>Areas apart from the Foreshore and the Sea: Beyond the foreshore, which we all recognise immediately as public domain; there are many other areas, inland, which many see as our common heritage, also as our public domain, but Maltese law does not cater for this in any detail. Some are</i></p> | |
| | | |
| | | |
| | | |

¹ This is the term used in articles 982, 1207, 1370, 1825 and others of the Civil Code (Cap 16, Laws of Malta) which means it cannot form the subject matter of a contract, it cannot be bought or sold or leased and private rights cannot be created over it.

of obvious common utility such as public roads, public squares and all related access streets and alleys, even though they have no particular aesthetic value. Others are of high aesthetic, historical or cultural value such as bastions, fortifications and similar structures. That we need to protect these areas due to their special nature is obvious.

1.2 Special Laws : We have, accordingly, over the past few years started to introduce special laws with specific focus to enable the Government, through its institutions and authorities, to regulate and protect these areas, which are unfortunately not necessarily well defined. Today there are a great many guidelines, rules, orders and notices of an administrative nature which all seek to protect our environment. It is impossible not to acknowledge that MEPA has made tremendous progress on this front but it is evident that more fundamental strategies to create legal clarity are needed to bring all these efforts to fruition. Prior to 1988 there existed some seminal legislation of the same type but it was evidently not adequate to protect areas of high sensitivity. Although the recent enhancement, in quality and quantity, of laws aiming to protect the cultural and historic heritage and the environment, is a step in the right direction, we need to take further steps in that direction.

The following legislative acts are, to select a few, relevant in this regard:

1. Environment Protection Act - Cap 435²
2. Environment and Development Planning Act - Cap. 504³
3. Cultural Heritage Act - Cap. 455

Each of these Acts deals with the general issue or a specific part of it, each provides tools to protect what we intuitively, but not necessarily consistently, consider to be public domain. They do it in different ways, some stronger than others, some more open to being undermined than others. The dissipation of executive power in this regard is evident with different mandates being given under different laws to different bodies, often overlapping, sometimes contradictory and uncoordinated and sometimes even counterproductive. These are principally regulatory laws and achieve good results on the whole, but they do not address the fundamental issue of the legal classification of property in the public domain, although they implicitly point to it. It is only after property has been given the appropriate LEGAL STATUS that one can then speak of developing a consistent and effective legal regime to govern it.

These special laws cater for the powers of the Government and its agencies to intervene and protect the public domain but do not address the simple fact that the Government owns and administers the public domain and regularly deals with this property under the rules which apply in the Civil Code to private ownership, which of its nature is unrestricted. Owning land in the public domain brings with

² Replaced by Environment Protection Act 2016 [Cap 549, Laws of Malta]

³ Replaced by the Planning and Development Act 2016 (Cap 552, Laws of Malta)

| | | | |
|---|--|--|--|
| <p>it a set of important duties – all relating to the protection of the public domain in the public interest and for the benefit of this and future generations – but the law is silent on the matter.</p> <p>The current law assumes, but does not state, that the Government is the fiduciary of present and future generations when owning and administering this property for the benefit of all. Being a fiduciary implies that the Government has, in relation to this kind of property, increased obligations and severely restricted rights.</p> | | | |
| <p>1.3 Private Property: These special laws do not focus specifically on private ownership and rights when they relate to areas within the public domain. They are sometimes seen as unjustly encroaching on private rights of property because they restrict what a private owner can do with his property when it is of this kind. The perceived injustice emerges in a stronger manner due to the subjective nature of the decision as to whether some property or other qualifies as sensitive or especially important because of its historical, cultural or aesthetic value. In recent years, we have seen the emergence of several voluntary organisations with environmental and heritage purposes. These have offered their voluntary services in the management, preservation and protection of sensitive areas but the tools our law provides for the grant of such properties to them is weak and ambiguous as our law focuses on private transactions and not on fiduciary grants intended only to allow for the preservation of sensitive areas. The Authorities therefore treat a grant to voluntary organisations exactly as we would treat a grant to a business venture with speculative intent, missing the fact that the very purpose of the environmental NGO would not allow it to do anything with the property which is inconsistent with its nature or which would in any way threaten its integrity. A grant to an NGO does not make the NGO a private owner in the ordinary meaning of the word as that ownership has a statute-defined purpose. However, when property in the public domain is actually owned privately, we need some guidance on what ownership of this kind of land implies.</p> | | | |
| <p>This is again a problem of definition. It is proposed that while the public domain nature of a private property will not render it extra commercium, as private rights are preserved by this Draft Bill [Act XXV of 2016], its proper classification will have benefits as the law can then refer to its proper status when establishing rules of ownership, management and administration, enjoyment, use, taxation and so on which are sensitive to its nature. That will result in certainty and predictability in the application of law which is always an important goal. Having said this, the focus and priority of this legislative project is property which belongs to the Government and not that which belongs to private individuals. Indeed, the provisions protect private rights validly acquired on property in the public domain belonging to the Government.</p> | | | |
| <p>1.4 The first aim of the proposal of the draft Bill entitled the Civil Code (Amendment) Act, 2012, which is attached to this White Paper, is to have a law relating to all Government property so as to enable the classification of State property as “public property” or as “property in the public domain”. That is the key to being able to establish a clear set of legal rules on the Government’s powers and duties when dealing with each class of the nation’s property. We have a lot of rules on public property but very few on property in the public domain. This Bill [Act XXV of 2016] starts to address the latter subject. It must be kept in mind that there is some overlap between the two types of property.</p> | | | |

| | |
|--|--|
| | <p>Two Classes of Government Property</p> <p>1.5 This legislative project will not only be of great interest to all those who administer government property, whether public property or public domain, but also to all persons who have titles and rights over such property as such titles and rights will, in the future, need to be registered in a public registry ensuring greater certainty and transparency. It also affects persons who own property which is given the status of public domain due to identified obligations which ensure that the status of such property is preserved. Property in the public domain may be subjected to private interests through grants subject to specified conditions and persons acquiring such rights ought to know the limitations which will exist on such grants when land is in the public domain. Non-governmental organisations may be the beneficiaries of such grants and administer such public domain property in the national interest.</p> <p>Proposed Declassification</p> <p>According to the Planning Authority "The main purpose of this request (declassification) is to proceed with projects which will serve both private and public interests." This piece of information is far from what the Civil Code (Cap 16) prescribes for the resolution to declassify sites in the public domain. Section 10 of the Third Schedule, Title VI states the grant of titles or rights in favour of private interests can be made "in accordance with the use to which the thing can lend itself generally without permitting the permanent alteration of its nature. Such designations shall be for a purpose or purposes which are specifically defined and being in the public interest." There is nothing specific in the purpose stated by the Planning Authority quoted above. In addition, section 11 (2) states that</p> <p>"Every Declassification Resolution shall as a minimum:</p> <ul style="list-style-type: none"> (a) identify the property, its fruits and accessories; (b) identify the term, unless indefinite in scope in which case it shall state so, the purpose and the use for which declassification is taking place; (c) declare what the projected existing or future public rights or benefits are to be and what suitable alternatives, if any, will be provided for any loss of use or enjoyment of the thing by the public; (d) identify any known Government powers or third party rights which shall continue to be enjoyed over the thing notwithstanding the declassification, provided that this is without prejudice to the general powers of the Government under any law and to private titles or rights which may be registered within the time period prescribed by law; (e) seek to identify special laws or provisions thereof, if any, which restrict the public access or enjoyment of such property in accordance with this Schedule and which shall continue to apply to such property notwithstanding the declassification; and |
| | |
| | |
| | |

| | | |
|--|--|---|
| | | <p><i>(f) where applicable, be accompanied by a plan or general map, based on the official map of the Land Registry, identifying the property and its accessories which are affected by such declassification.</i></p> <p>Except for the site plan none of the above information is being disclosed to the public to be able to make an informed opinion.</p> <p>Government has not made a case</p> <p>In the light of the Government's own arguments for the Public Domain Act (Act XXV of 2016) as explained in the quoted White Paper, there would appear to be no justification for the declassification of these sites.</p> <p>The purpose stated by the Planning Authority is so generic that it can apply to any site imaginable, including to any stretch of the coast and foreshore. There are many concessions that this declassification can be applied to such as the Corinthia San Gorg, Westin Hotel, The Malta Aquarium, Qawra Palace Hotel, Preluna, Fortina, Dragut Point, all water polo clubs, Manoel Island, the ex-Jerma project can all apply for declassification. Likewise other areas of the coast can be subject to these declassifications.</p> <p>Furthermore, extending this argument it can also be used to turn the Hypogeum into a wine bar and cellar, Ġgantija into Malta's version of Glastonbury and the Grandmaster's Palace into a hotel. All these uses satisfy the stated purpose of "serving private and public interests." If the proposed declassifications go ahead, where will it stop?</p> <p>FAA highlights the fact that the Planning Authority granted new permits at Qawra, without factoring in the Public Domain status of the site, a fact that FAA roundly condemns. What is the reason that the Qawra sites A and D are now being declassified since they have been operating for close to 40 years with the public domain classification? Why change the <i>extra commercium</i> nature of these sites? With regards to the Sliema site what is the need for declassification? The Sliema area is well served with all amenities and the public can enjoy the Chalet site without hindrance. There is no public need that is not being served at the site at present. Moreover, the proposed project includes a catering area on the adjacent promenade, will actually greatly impact the public enjoyment of the promenade, a public amenity that has already been extensively encroached.</p> <p>Public Consultation</p> <p>This public consultation is a sham and the Planning Authority launched it during the Christmas festivities and the abortion debate without any publicity in order to let this pass under that radar. It did not give any publicity to the public consultation.</p> <p>Constitutional safeguards</p> <p>This declassification proposal is also against the letter and spirit of article 9 of the Constitution of Malta which requires the State to</p> |
|--|--|---|

| | | | |
|--|--|--|---|
| | | | <p><i>"9.(1) The State shall safeguard the landscape and the historical and artistic patrimony of the Nation.</i></p> <p><i>(2) The State shall protect and conserve the environment and its resources for the benefit of the present and future generations and shall take measures to address any form of environmental degradation in Malta, including that of air, water and land, and any sort of pollution problem and to promote, nurture and support the right of action in favour of the environment."</i></p> <p>This is the highest law of the country and is being ignored by the Minister responsible for Lands and the Planning Authority. With this proposal the State is not protecting or conserving the environment for the present generation, let alone future generations.</p> <p>Conclusion</p> <p>It is ironic that since the law was enacted the first changes are declassifications and not the promised addition of sites to the Public Domain. Fimkien għal Ambjent Ahjar had in the past proposed 22 sites to be designated as Public Domain, however despite the Government's intended purpose in the White Paper, none have been considered for inclusion in the Public Domain.</p> <p>The case for the declassification has not been made as the public is being kept in the dark as to the purpose of the declassification contrary to the letter and spirit of the law. However, it is manifestly apparent that the proposed declassifications are diametrically opposed to what is in the government's own White Paper.</p> <p>The concept of Public Domain has stood the test of time since antiquity yet it is now being dismantled in the space of a few years for the benefit of private interests. If the proposals go ahead it would render the law on public domain into nothing more than a useless ornament of the laws of Malta.</p> <p>Consequently, Fimkien għal Ambjent Ahjar hereby maintains that the declassifications should on no account be allowed.</p> |
|--|--|--|---|

| | | | |
|--|--|-----------------|---|
| <p>PD_Q_-12 Submission applicable to Chalet and Qawra site</p> | <p>Ms Astrid Vella obo Flimkien ghal Ambjent Ahjar</p> | <p>05/01/23</p> | <div style="text-align: right;">  </div> <p style="text-align: right;">4 January 2023</p> <p>The Planning Director Planning Authority St Francis Rowelin Floriana FRN 1120</p> <p>Dear Sir,</p> <p>On behalf of Flimkien ghal Ambjent Ahjar I am attaching our comment on the public consultation on Declassification of Public Property from the Public Domain. This submission is being made under protest as apart from the site plans no information has been given to the public to enable it to assess the proposal as required by law.</p> <p>Flimkien ghal Ambjent Ahjar also protests at the cynical way this public consultation by the Minister responsible for Lands and the Planning Authority as his agent has been carried out. It was launched during the Christmas festivities and the abortion debate without any publicity in the hope that the general public would be too distracted to notice and submit comments to the proposals. This is also contrary to the letter and spirit of article 9 of the Constitution of Malta which obliges the State "to promote, nurture and support the right of action in favour of the environment." The manner of this consultation is to discourage and stifle rather than promote, nurture or support the right of action in favour of the environment.</p> <p>I trust that this will not be the manner of future public consultations.</p> <p>Yours faithfully</p> <div style="text-align: right;">  Jerg Sicut Chairperson for the Executive Committee Flimkien ghal Ambjent Ahjar </div> |
|--|--|-----------------|---|

| | | |
|--|---|--|
| | <p>Consultation Reply – Fikmilien g'hal Ambient A'jar - Declassification of Public Property from the Public Domain</p> <p>Fikmilien g'hal Ambient A'jar objects to the declassification of the sites</p> <ol style="list-style-type: none"> 1. Chalek, Triq ta' Torri, Sliema 2. Triq Dawsor & Qasra, Bugibba (to St Paul's Bay (Site A)) 3. Triq Dawsor & Qasra, Bugibba (to St Paul's Bay (Site D)) <p>as follows and with reference to</p> <p>CHAPTER 552 DEVELOPMENT PLANNING ACT, 4th April, 2016</p> <p>PART I Preliminary (2) clearly defines the term:</p> <p>"conservation" in relation to natural heritage, means a series of measures required to maintain or restore the natural habitats and the population of species of wild fauna and flora at a favourable status;</p> <p>"conservation" in relation to cultural heritage, means any activity required to maximize the endurance or minimize the deterioration of any cultural property, as far as possible and includes examining, treating, recording, presenting, maintaining, rehabilitating and restoring any such property or any part thereof;</p> <p>"environment" (a) the air, water and land (b) all ecosystems; (c) the landscape;</p> <p>"projects of common interest" means a project necessary to implement the energy infrastructure priority corridors and areas set out in Annex I to Regulation EC No. 347/2013 and which is part of the Union list of projects of common interest referred to in article 3 of Regulation EC No. 347/2013 or other regulations applicable from time to time;</p> <p>"use", in relation to land, does not include the use of the land by the carrying out of any buildings, engineering, mining or other operations thereon;</p> <p>FAA is opposed to the Declassification of any part of the Maltese Public Domain, since the above definitions give clear and unequivocal guidance that the conservation of the environment are to be valued and only projects of common interest to the Maltese and Gozitan population may be considered, when a change of use of any land is to be considered.</p> <p>Furthermore, the Development Planning Act holds clear instructions about the duty of the Government, and by extension the Planning Authority:</p> | |
|--|---|--|

| | | |
|---|--|--|
| <p>FAA maintains that prior to any consideration about Declassification of Public Domain Areas the above points would require transparent analysis before a blanket declassification is even to be considered.</p> <p>The Planning Authorities remit and responsibility is clearly defined in</p> <p>PART III Establishments and Scope of the Authority 7. (7)(c) to facilitate and coordinate the permit granting process for projects of common interest 7. (6) in the pursuance of its functions under this Act, the Authority shall, as far as possible, make reference to European Union best practices and standards.</p> <p>In the above referenced consultation call, not a word is mentioned about what common interests will be served for the historic/Celtic populations in the case of such a declassification. In dealing with the Public Domain Act later, this point becomes crucially obvious and must be addressed prior to any decision making.</p> <p>PART IV Common Provisions, defines the responsibility of the Executive Council as follows: 13. (1) Where any member of the Authority, or a member of the staff of the Authority, or a consultant, adviser or other person engaged by the Authority, has any interest in any matter which falls to be considered by the Authority, he shall upon becoming aware of such interest: (a) disclose to the Executive Council or the Planning Board, as the case may be, the nature of his interest; (b) neither influence nor seek to influence the proceeding and the decision in relation to such matter; (c) take no part in any consideration of such matter; and (d) not attend nor participate in any meeting on such matter.</p> <p>Within this call for Declassification of Public Domain Areas, no mention is made of potential conflicts of interest pertaining to the three sites in question, by the very people taking such major decisions of national importance. The public has a right to full disclosure on such matters, in order to understand the intentions behind the desire of the Government and Planning Authority, to embark on such a declassification drive.</p> <p>PART V Establishments and Scope of the Executive Council 36. (7) -- when the Executive Council is considering scheduling and conservation orders -- the Executive Chairperson shall always call in the Superintendent of Cultural Heritage -- Without a clear opinion from the Superintendent of Cultural Heritage, FAA maintains that a public consultation in this context equates to putting the cart before the horse.</p> <p>Furthermore, the Executive Council is duty bound to 38. (1) (c) -- formulate, implement and update plans and policies relating to the protection of proper land and sea use -- whilst taking into account the protection and management of the environment and the sustainable management of natural resources --</p> | | |
|---|--|--|

| | | | |
|--|--|--|--|
| <p>(4) – undertake research and conduct consultations ... relating to the development of planning methods and models relating to development planning on land and at sea –</p> <p>41. (3) When the Minister requests the Executive Council to make a plan or a policy on any matter relating to development planning or to review such a plan or policy, he shall make such a request in writing, containing the reasons for making such a request together with a statement of goals and objectives to be attained by the plan or policy or by a revision of such plan or policy.</p> <p>In the case for consultation, there remains to date a glaring void regarding any mention of how proper land and sea use is envisaged, any form of research and consultation is missing, and any clear reasons about why such declassification may be required is totally unanswered. FAA feels that this call for consultation stands in clear breach of the law.</p> | | | |
| <p>44. (3) The Spatial Strategy for Environment and Development or "Spatial Strategy":</p> <p>(a) is a strategic document regulating the sustainable management of land and sea resources covering the whole territory and territorial waters of the Maltese Islands;</p> <p>(b) shall be based on an integrated planning system that ensures the sustainable management of land and sea resources together with the protection of the environment;</p> <p>(c) must set out objectives in relation to the sustainable development and use of land and sea –</p> <p>(3) In order to achieve the objectives set out in this article, the Cabinet shall take the necessary measures intended to coordinate and improve the spatial impacts of other sectoral policies and their relation to the Spatial Strategy.</p> <p>(4) For the preparation or review of the Spatial Strategy, the Executive Council shall carry out surveys – to include:</p> <p>(b) auridic and other existing and, or projected economic activities of the country including the employment patterns arising therefrom;</p> <p>(c) leisure and recreation;</p> <p>(g) the conservation and preservation of natural and manmade resources;</p> <p>(5) In preparing or reviewing the Spatial Strategy, the Executive Council shall have regard to:</p> <p>(a) the current economic policies affecting development;</p> <p>(b) the current social policies affecting development;</p> <p>(c) the current environmental policies affecting development;</p> | | | |
| <p>The proposed declassification will dictate a modification of the Spatial Strategy. The prerequisite to such a revision requires transparent access to the above, before any further consultation is possible.</p> <p>Furthermore, access to implications or modifications required in the Subject Plan 47(1), modifications arising in the Local Plans 48(1), the implications on an Action Plan 49(1) matters related to a Development Brief 51(2)(b)(3) go fully unheeded in this consultation call. The procedure for subsidiary plans and policies features nowhere in this consultation process, and that is de facto negating the Planning Authorities laws. FAA therefore maintains once more that a vast array of prerequisites would require solutions, before a consultation call for declassification of Public Domain Areas can be</p> | | | |

| | | | |
|--|--|--|--|
| <p>considered. The general public has yet to understand also, what positions the affected Local Councils maintain in this declassification exercise.</p> | | | |
| <p>The Development Planning Act states in paragraph 55.(7) No new development or activity in terms of a development order may be carried out on a site if on the said site there exists an illegal development of whatever nature --</p> | | | |
| <p>and FAA questions how the Executive Council wishes to address this specifically on the sites in Oweru, where no formal permits have been in force for the years and years of use of the foreshore by the beach. Would this Declassification amount to negating illegality if one wishes, to the detriment of the public enjoyment of Public Domain Areas?</p> | | | |
| <p>instead of embarking on a declassification drive, is not the Executive Council duty bound to draft and implement conservation orders 57(1) or emergency conservation orders 58(1) to retain the Public Domain areas, as the Development Planning Act clearly stipulates?</p> | | | |
| <p>PART VI Policy Advisory Committees Clarify calls for a report 60(1)(2) to be referred to the House and the Minister by the Standing Committee on the Environment, Climate Change and Development Planning. FAA is not able to trace any such research or documentation to date, but a simple statement by the Planning Authority that the declassification is needed to proceed "with projects which will serve both private and public interests". Further consultation cannot be acceptable based on such a poor explanation.</p> | | | |
| <p>PART X Offences Regularize offences of developments 101(1)(a) on said sites, without a valid development permission, and FAA asks how declassification of the sites can even be considered, when current offences have not been dealt with according to the law? We are back to placing the cart before the horse, and in circumstances of such national importance, this modus operandi is totally unacceptable.</p> | | | |
| <p>As a second chapter to our objection, FAA makes reference to the Public Domain Act No. XXV of 2014,</p> | | | |
| <p>which deals with sub-articles:</p> | | | |
| <p>(7) The "coastal perimeter" is that part of the land which lies between the foreshore and the shoreline --</p> | | | |
| <p>(3) Any private titles and rights to the foreshore shall be registered in the relevant registry --</p> | | | |
| <p>(4) -- other similar structures in such areas, shall be regulated by the provisions of special laws governing such things --</p> | | | |
| <p>(5) (a) -- other structures -- shall be considered to be public property, saving private titles and rights thereon.</p> | | | |
| <p>FAA requests clarity about any such private titles or rights on what the Public Domain Act clearly stipulates as Government and therefore National Property. Should any rights of the sort be given, how can a public consultation be undertaken, when such issues at law have not clarified?</p> | | | |

| | | | |
|--|--|--|--|
| <p>The Title I PRELIMINARY DECLARATIONS, PRESERVATION OF PRIVATE RIGHTS' drives into great detail about existing private rights in Public Domain areas, their registration with the relevant authorities, use and enjoyment attributable to the specific public domain nature of the areas in question.</p> <p>However, in the current consultation drive for declassification of these sites, not a word is mentioned about such potential rights. FAA asks in all earnest: how can such a consultation process take place when not all information is available to consultees? Such a consultation process is flawed and irregular from the onset.</p> | | | |
| <p>Title II OF THINGS BELONGING TO GOVERNMENT PUBLIC PROPERTY AND PUBLIC DOMAIN</p> <p>3. (1) Things belonging to the Government shall be presumed to be public property</p> <p>4. (6) – public roads, public squares, all streets, alleys and lanes and access routes, by whatever name called, to other public places, including those leading to the coastal perimeter –</p> <p>(6) – things belonging to the Government which serve direct and immediate public, which should be preserved for future generations because of their public nature – environmental importance or natural importance.</p> <p>Title II underlines the importance of such valuable public property and the protection it should be afforded for the enjoyment of current and future generations. FAA maintains that important decisions regarding declassification deserve a much stronger discussion, with clear answers to all points raised in the Public Domain Act. The consultation process does not hold water until all information is readily available and accessible to the action.</p> | | | |
| <p>Title III OF PUBLIC DOMAIN</p> <p>4. (1) – considered as property in the public domain –</p> <p>(a) the coastal perimeter</p> <p>(2) (a) The Executive Council, as established under the Development Planning Act of 2016 shall prepare a report on an annual basis which will indicate those sites –</p> <p>(3) Every Public Domain Resolution shall, as a minimum:</p> <p>(a) identify the property, its fruits and accessories;</p> <p>(b) identify any Government owners or third party titles or rights which shall continue to be enjoyed over the thing –</p> <p>(4) All Public Domain Resolutions shall be registered –</p> <p>(5) Saving private rights and any concessions which may validly exist, things in the public domain belonging to the Government shall be extra commercium unless they are declassified in accordance with the provisions of Title VI of this Schedule</p> <p>(8) Things in the public domain shall be subject to public domain obligations, even when declassified –</p> <p>(10) The principal obligation – to preserve its substance with regard both to matter and to form.</p> <p>(11) Without prejudice to any private rights thereon, or as otherwise expressly stated in any Declassification Resolution, things in the public domain belonging to the Government are also subject to a burden being the utility demanded by the general public and which is enjoyed by every person on mere sufficiency</p> | | | |

| | | |
|--|---|---|
| <p>It will spell out numerous obligations for the Executive Committee of the Planning Authority, acting on behalf of the Minister, which are not even mentioned in this consultation draft. How is it possible for an Executive Committee to take decisions of such national importance, when even its past obligations on the same subject are not yet fulfilled? Horta and Goto still eagerly await the regulator of Public Domain properties, and yet a drive to declassification is already in full progress. FAA condemns these methods in strongest terms.</p> <p>The consultation process does not touch on administrative permits of the state. It does not clarify what grants by the government to private interests are envisaged, the proportionate nature of the interest or benefit to be gained by the general public, no clarification on the purpose of such a grant, no information about conditions to be imposed on the public domain areas in the event of their declassification and numerous other key information pieces. The consultation drive is flawed, without all research and information available and accessible to the public, a valid consultation process is impossible.</p> | <p>Title VI OF DECLASSIFICATION OF THE PUBLIC DOMAIN declares</p> <p>10.1.1) All things – in the public domain – can be designated to be available for</p> <p>(b) – grant of rights or rights in favour of private interests. – Such designations shall be for a purpose or purposes which are specifically defined and being in the public interest.</p> <p>(7) Following declassification, the declassified things shall still remain their nature as public domain – Declassification, however, may impose restrictions on continuing public enjoyment</p> <p>(6) The modification or conversion of things in the public domain following declassification may be permitted by a Declassification Resolution on condition that such modification or conversion shall seek an outcome where the gain achieved by the general public is clear and unambiguous</p> <p>11.1.7) Every Declassification Resolution shall, as a minimum:</p> <p>(a) identify the property, its limits and accessories;</p> <p>(b) identify the term, unless adequate in scope in which case it shall state so, the purpose and the use for which declassification is being made;</p> <p>(c) declare what the projected existing or future public rights or benefits are to be and what suitable alternatives, if any, will be provided for any loss of use or enjoyment of the thing by the public;</p> <p>(d) identify any known Government powers or third party rights which shall continue to be enjoyed over the thing notwithstanding the declassification</p> | <p>Again FAA considers the declassification drive fully unacceptable, since the clear guidelines in the Public Domain Act have not been addressed as yet. The law is clear in its intentions, its timelines and its desired results. In this consultation process, none of these points are even being considered.</p> <p>In summary, FAA objects to the Declassification of the three areas mentioned above, since the Executive Committee of the Planning Authority does not adhere to the procedures as laid out in the Development Planning Act or the Public Domain Act and there is no clear indication of what the nation stands to gain by forgoing its free enjoyment of Public Domain Areas in favour of private commercial interests.</p> <p>FAA would also like to stress in no uncertain that nowhere in the Development Planning Act has the Planning Authority or its Executive Committee been granted the powers to serve private commercial interests. Quite the contrary: private business interests are to operate within the clear laws and policies set out by government. It is the duty of the Planning Authority to limit those interests to remain within the parameters of the law, and not to create new loopholes to circumvent the law, or to bend existing laws to suit private business interests.</p> |
| | | |
| | | |
| | | |

| | | | |
|--|---|-----------------|--|
| <p>PD_Q -13 Submission applicable to Chalet and Qawra site</p> | <p>Mr Matt Bonanno obo Movement Graffitti</p> | <p>05/01/23</p> | <div data-bbox="263 1220 335 1400">  </div> <div data-bbox="383 772 446 1344"> <p>Input to the Public Consultation: Declassification of Public Property from the Public Domain</p> </div> <div data-bbox="462 728 542 1400"> <p>Movement Graffitti strongly opposes the government's plans to exempt three sites - the Sliema Chalet site, and two lidos in Qawra - from the Public Domain Act, which states that the first 15 metres of foreshore should be public and not used for commercial purposes.</p> </div> <div data-bbox="558 728 622 1400"> <p>Should the plans go ahead, access to the foreshore of Sliema Chalet and AX Holdings' Suncrest Hotel lido and Sunny Coast Lidos would no longer be guaranteed by law.</p> </div> <div data-bbox="638 728 813 1400"> <p>These plans are even more outrageous when taken into the context of the refusal to include sites of significance in the public domain, notwithstanding the fact that this is stipulated in the Public Domain Act that came into force a staggering six years ago, in 2016. The government and its authorities have not accepted one single proposal from NGOs for the inclusion of socially, culturally and ecologically important sites into the public domain, proposals that were put forward in line with the provisions of the Public Domain Act and with the backing of thousands of signatures.</p> </div> <div data-bbox="829 739 893 1400"> <p>Now, Government wants to go one step further in the wrong direction by removing sites that are automatically considered as public domain.</p> </div> <div data-bbox="909 739 1053 1400"> <p>The plan to exempt these sites from the Public Domain Act is angering, as more and more public land is being lost for private commercial interests. Ironically, it had been one of the Labour Party's pledges before last year's general election to seek to purchase private property and convert it into public open spaces. This has not materialised. Clearly, the government prioritizes the well-being of large businesses over the right of free passage and enjoyment of public land.</p> </div> <div data-bbox="1069 728 1157 1400"> <p>The approval of these plans would signal a net loss of public land, at a time when people's right to access public land is constantly being eroded, and more and more countryside paths are being closed off by landowners.</p> </div> |
|--|---|-----------------|--|

| Qawra | | | |
|---|-----------------------|-------------|---|
| Ref | Respondent | Date | Summary of Comments Received |
| PD_Q -1 Submission applicable to Chalet and Qawra site | riosammut@hotmail.com | 03/12/22 | Siema and Qawra concessions. I strongly object to any public land being privatized, for any reason whatsoever, particularly with the excuse that the public will still be allowed to utilize it. |
| PD_Q -2 | Mr Simon Scicluna | 09/12/22 | B'referenza għall-konsultazzjoni pubblika fuq is-suggett imsemmi importanti illi ix-xatt kollu jibqa' accessibbli bla xkiel lill-pubbliku u l-access għalih mit-triq ikun faċli. Tajjeb ukoll li isiru regoli u infurzar fuq ilma maħmuġ inkluż drenagg biex ma jispicċax jiskula fil-baħar. Għandom isiru ukoll regoli marbuta mal-livell tal-ħoss tal-mużika li tkun permessibli biex din tkun addattata skon il-ħin tal-ġurnata. Naprezza jekk din il-korispondenza tiġi rikonoxxuta. |
| PD_Q -3 Submission applicable to Chalet and Qawra site | Mr Anthony Azzopardi | 09/12/22 | "The coast is considered as belonging not only to us but to future generations. Future generations cannot be deprived of the coast by our generation for a quick buck." May I add that what is in effect a move to grant private ownership of such lands will be at the expense of the present and future Maltese. We have few open spaces, let us not reduce them further. |

| | | | |
|---|---|----------|---|
| PD_Q -4 Submission applicable to Chalet and Qawra site | Mr Thomas Briffa | 10/12/22 | <p>This Proposal is absolutely ridiculous and will continue to restrict open public spaces for the Maltese in Malta. It will open a Pandora's box.</p> <p>What we expect after this is that the sea shore in front of the Jerma Hotel in Marsascala will become private property, and will be inaccessible to the Maltese public, of course unless under payment.</p> <p>Mhux bizzejjed fgajna lil Malta bil concrete , anka sqaqien fl ghelleqi tajna il concrete , din jonqos issa.</p> |
| PD_Q -5 | Mr Jeffrey Zammit | 11/12/22 | <p>Are you for real? I, as a Qawra resident, along with many others, do really enjoy loving in those spots during summer. Can you get your priorities right for a change? So what next a marina at Qawra point?</p> <p>If you still have conscience, don't allow this</p> |
| PD_Q -6 | Mr Sandro Bugeja | 16/12/22 | <p>Qawra (Sunny coast / Suncrest Lidos)</p> <p>Where can I find the approved plans to these sites?</p> <p>Is the current height going to be maintained with the new development ?</p> |
| PD_Q -7 Submission applicable to | Mr David Pisani obo Zminijietna Voice of the Left | 21/12/22 | <p>Zminijietna comments: Declassification of Public Property from the Public Domain</p> <p>The Left think-tank organisation Zminijietna comments:</p> |

| | | | |
|------------------------------|--|--|---|
| <p>Chalet and Qawra site</p> | | | <p>The Planning Authority should take a progressive approach to list various sites around Malta and Gozo for 'Public Domain Status'.</p> <p>In 2016, Parliament passed the Public Domain Act to have the entire Maltese foreshore re-classified as 'public domain', but stopped short of enforcing such law.</p> <p>We believe that the Planning Authority should take a proactive approach and include for 'Public Domain Status' the recommended list given in 2016 by various ENGOs, that include amongst other the area of Hondoq ir-Rummien, Manoel Island, Kalanka Delimara, and Comino. The Qala Local Council is also pushing for Public Domain Status to Hondoq ir-Rummien".</p> <p>The Government should first give a legal protection status to Hondoq, Comino and other sites listed by the ENGOs, before any other decisions for declassification.</p> |
|------------------------------|--|--|---|

| | | | |
|---|--|-----------------|--|
| <p>PD_Q -8 Submission applicable to Chalet and Qawra site</p> | <p>Chairperson for the Executive Committee - FAA</p> | <p>13/12/22</p> | <div style="text-align: right;">  </div> <p>13 December 2022</p> <p>The Executive Chairman Planning Authority St Francis Ravellin Floriana</p> <p>Dear Sir,</p> <p>On behalf of the executive committee of this organisation I strongly deplore the cynical way you are going about the public consultation on the removal of certain sites from the Public Domain.</p> <p>Not only is the period allocated very short it is set entirely during the Christmas holidays when people's attention is drawn to the festivities. During this period there are several public holidays and the season where many people take holidays including overseas given that this is the time that families can travel together given the school holidays. This period also coincides with the hugely important public debate on abortion. On top of that very little promotion if any has been given to make the public aware of the declassification of these three sites from the public domain. It seems that this is all designed to discourage the public from commenting on the matter.</p> <p>In addition, no detailed justification for the proposed the declassification of the three sites which are different from each other is being given. The stated purpose is so generic that it could apply to anywhere and anything. There is no identification of private interests that could be served and why the public interest in the public domain should be foregone.</p> <p>I call upon you to suspend this so-called public consultation and re-issue it at a later date after sufficient publicity is given to it. In addition, a detailed case for the declassification of these public domain is to be given outlining the cost and benefits to the public from the change in the classification of the individual sites.</p> <p>I look forward to your positive response.</p> |
| <p>PD_Q -9 Submission applicable to</p> | <p>Mr Stefano Micelo obo ERA</p> | <p>03/01/23</p> | <p>The Environment and Resources Authority (ERA) welcomes the opportunity to comment on the proposed declassification of specific public properties from the public domain and is putting forward its comments and recommendations below.</p> |

| | | | |
|--|---|----------|---|
| Chalet and Qawra site | | | <p>With respect to the sites in question, there are no objection noting that these are already occupied or have been occupied by legally established developments; however, any remaining adjacent natural rocky shores should remain unaffected. It is recommended that ERA is consulted on any proposals for this site in view of the environmental, geological and geomorphological characteristics of the coast.</p> <p>Furthermore, it is being highlighted that the privatisation of these sites should not result in extensive intensification or otherwise lead to an increase in noise over the existing noise climate or negative impacts on air quality. This applies to both increases in pollution levels as a result of increased traffic, as well as other noise potentially leading to nuisance on nearby receptors. These potential concerns can be assessed in further detail at application stage for any proposed development of the sites in question.</p> <p>ERA looks forward towards additional consultations and remains available to meet for further discussion or any clarification if required, through era.policy@era.org.mt</p> |
| PD_Q -10 Submission applicable to Chalet and Qawra site | Dr Michael Briguglio obo Malta Sociological Association | 04/01/23 | <p>With reference to the consultation in question and which can be accessed through this link, the Malta Sociological Association (registered VO 1323) proposes that the entire policy process employs social impact assessments in an ongoing process.</p> <p>Hence, Social Impact Assessments should be conducted with regard to the following public properties, which are being proposed by Government for declassification from the Public Domain to serve both private and public interests:</p> <ol style="list-style-type: none"> 1. Chalet, Triq it-Torri, Sliema 2. Triq Dawret il-Qawra, Bugibba I/o St.Paul's Bay (Site A) 3. Triq Dawret il-Qawra, Bugibba I/o St.Paul's Bay (Site D) |

| | | | |
|--|--|--|--|
| | | | <p>The International Principles for Social Impact Assessment defines SIA as being “the processes of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions”.</p> <p>An SIA is an interdisciplinary process, and should employ various methods, both quantitative and qualitative. Social impact assessments should not be one-off exercises: To the contrary, they should be ongoing processes which engage with various stakeholders and which report back so as to ensure effective policy processes.</p> <p>In this regard, you may refer to international SIA standards, for example those set by the International Association for Impact Assessment, which is accessible from this link:</p> <p>https://www.socialimpactassessment.com/documents/IAIA%202015%20Soc%20Impact%20Assessment%20Guidance%20document.pdf</p> |
|--|--|--|--|

| | | | |
|--|---|-----------------|--|
| <p>PD_Q -11 Submission applicable to Chalet and Qawra site</p> | <p>Ms Astrid Vela obo Filmkien ghal Ambjent Ahjar</p> | <p>05/01/23</p> | <div style="text-align: right;">  </div> <hr/> <p>4 January 2023</p> <p>The Planning Director Planning Authority St Francis Ravelin Floriana FRN 1230</p> <p>Dear Sir,</p> <p>On behalf of Filmkien ghal Ambjent Ahjar I am attaching our comments on the public consultation on Declassification of Public Property from the Public Domain.</p> <p>This submission is being made under protest as apart from the site plans no information has been given to the public to enable it to assess the proposal as required by law.</p> <p>Filmkien ghal Ambjent Ahjar also protests at the cynical way this public consultation by the Minister responsible for Lands and the Planning Authority as his agent has been carried out. It was launched during the Christmas festivities and the abortion debate without any publicity in the hope that the general public would be too distracted to notice and submit comments to the proposals. This is also contrary to the letter and spirit of article 9 of the Constitution of Malta which obliges the State “to promote, nurture and support the right of action in favour of the environment.” The manner of this consultation is to discourage and stifle rather than promote, nurture or support the right of action in favour of the environment.</p> <p>I trust that this will not be the manner of future public consultations.</p> <p>Yours faithfully</p> <div style="text-align: right;">  <p>Jorg Sicut Chairperson For the Executive Committee Filmkien ghal Ambjent Ahjar</p> </div> |
|--|---|-----------------|--|

| | | | |
|--|--|--|---|
| | | |  <hr data-bbox="411 631 418 1429"/> <p>FAA OBJECTION TO DECLASSIFICATION OF PUBLIC PROPERTY FROM PUBLIC DOMAIN</p> |
|--|--|--|---|

| | |
|--|---|
| <p>Executive summary</p> <p>Before one considers the declassification of any site considered as Public Domain one has to be aware of the concept of Public Domain and for the need to classify certain sites accordingly. The concept of Public Domain is a very old one and derives from Roman Law where it was called <i>res communes</i>. In Malta this concept while in existence for hundreds of years was only codified in the Civil Code in 2016. The case for this law was made by Government in a White Paper titled The Public Domain Classifying Public Property – Achieving a Qualitative Leap in Protection and Governance and published in 2012.</p> | <p>This consultation response by Filimkien għal Ambient Aħjar quotes extensively from this White Paper and associates itself with the case for Public Domain made therein.</p> <p>On the other hand the case for declassification of certain sites has to be made by the party proposing this declassification that is the Minister responsible for Lands and the Planning Authority which is acting on his behalf. However contrary to what is required by the Civil Code Schedule Three, Title VI section 11, the case is not being made. The motivation stated by the Planning Authority which is <i>“The main purpose of this request is to proceed with projects which will serve both private and public interests”</i> is too generic and hence meaningless. This does not allow the public to consider the matter in any specificity and consequently the matter can only be considered in its generality.</p> <p>This response considers that the motivation given for the declassification is so wide that it can apply to anything and any site in the Maltese Islands and would set an ugly precedent for the declassification of all Public Domain sites. Practically any site in Malta can have projects or developments that <i>“serve both private and public interests”</i>. Allowing this would render the concept of Public Domain as meaningless. This would mean that any Public Domain site loses the vital <i>extra commercium</i> status.</p> |
|--|---|

The case for Public Domain

The case for the Public Domain was made by the Government of Malta in 2012 with the publication of a White Paper titled *The Public Domain Classifying Public Property – Achieving a Qualitative Leap in Protection and Governance*. This submission considers the arguments therein as still valid and will be quoting extensively from that White Paper.

1. The Context

1.0 The Nation's Patrimony: *The Government owns and administers all the property in Malta which is not privately owned. Its sovereignty extends to the limits of the territorial waters and it administers national interests over areas of the seas even beyond that line. The perimeter of our islands is called foreshore and the Government administers this as a special class of property for, with the seas which lap its shores, it is considered to be public domain. It is that part of the nation's property which private interests traditionally cannot own, develop or trade and it is considered as extra commercium.*

The foreshore is that part of the island which everyone knows is public domain and it is there for the enjoyment of each and every one of us. It was created by nature which has the force to keep it exactly as it was created, the waves being the most effective tool! We have free public access, we can enjoy it without any interference. Unfortunately, but thankfully to a limited extent, this area of the public domain is occasionally encroached upon. The Government indeed allows such encroachment when it is in the public interest to do so. This is mostly without controversy, as the man in the street recognizes the legitimacy of such encroachment, as when a breakwater is constructed to protect an inner bay or harbour, or when a sea front promenade is created to allow for better public enjoyment of the coastal areas. The installation of fish-farms and wind-farms in areas within the territorial waters is generally understood and supported as something good and justifiable, albeit in need to be monitored and regulated to protect the seabed and surrounding habitats.

The granting of private rights on the foreshore has always been controversial. The public interest argument comes under focus and not all immediately agree that the public interest is served through concessions and grants over the foreshore. Yet they do happen regularly, principally in relation to beaches, ports and harbours but even in relation to some other areas. There seem to be few rules, aimed at protection of the rights of the general public, about concessions over these areas.

1.1 *Areas apart from the Foreshore and the Sea: Beyond the foreshore, which we all recognise immediately as public domain, there are many other areas, inland, which many see as our common heritage, also as our public domain, but Maltese law does not cater for this in any detail. Some are*

¹ This is the term used in articles 902, 1207, 1370, 1825 and others of the Civil Code (Cap 16, Laws of Malta) which means it cannot form the subject matter of a contract, it cannot be bought or sold or leased and private rights cannot be created over it;

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

of obvious common utility such as public roads, public squares and all related access streets and alleys, even though they have no particular aesthetic value. Others are of high aesthetic, historical or cultural value such as bastions, fortifications and similar structures. That we need to protect these areas due to their special nature is obvious.

1.2 Special Laws : We have, accordingly, over the past few years started to introduce special laws with specific focus to enable the Government, through its institutions and authorities, to regulate and protect these areas, which are unfortunately not necessarily well defined. Today there are a great many guidelines, rules, orders and notices of an administrative nature which all seek to protect our environment. It is impossible not to acknowledge that MEPA has made tremendous progress on this front but it is evident that more fundamental strategies to create legal clarity are needed to bring all these efforts to fruition. Prior to 1988 there existed some seminal legislation of the same type but it was evidently not adequate to protect areas of high sensitivity. Although the recent enhancement, in quality and quantity, of laws aiming to protect the cultural and historic heritage and the environment, is a step in the right direction, we need to take further steps in that direction.

The following legislative acts are, to select a few, relevant in this regard:

1. Environment Protection Act - Cap 435²
2. Environment and Development Planning Act - Cap. 504³
3. Cultural Heritage Act - Cap. 455

Each of these Acts deals with the general issue or a specific part of it, each provides tools to protect what we intuitively, but not necessarily consistently, consider to be public domain. They do it in different ways, some stronger than others, some more open to being undermined than others. The dissipation of executive power in this regard is evident with different mandates being given under different laws to different bodies, often overlapping, sometimes contradictory and uncoordinated and sometimes even counterproductive. These are principally regulatory laws and achieve good results on the whole, but they do not address the fundamental issue of the legal classification of property in the public domain, although they implicitly point to it. It is only after property has been given the appropriate LEGAL STATUS that one can then speak of developing a consistent and effective legal regime to govern it.

These special laws cater for the powers of the Government and its agencies to intervene and protect the public domain but do not address the simple fact that the Government owns and administers the public domain and regularly deals with this property under the rules which apply in the Civil Code to private ownership, which of its nature is unrestricted. Owning land in the public domain brings with

² Replaced by Environment Protection Act 2016 (Cap549, Laws of Malta)

³ Replaced by the Planning and Development Act 2016 (Cap 552, Laws of Malta)

| | | | |
|--|---|--|--|
| | <p>it a set of important duties – all relating to the protection of the public domain in the public interest and for the benefit of this and future generations – but the law is silent on the matter.</p> <p>The current law assumes, but does not state, that the Government is the fiduciary of present and future generations when owning and administering this property for the benefit of all. Being a fiduciary implies that the Government has, in relation to this kind of property, increased obligations and severely restricted rights.</p> | | |
| | <p>1.3 Private Property. These special laws do not focus specifically on private ownership and rights when they relate to areas within the public domain. They are sometimes seen as unjustly encroaching on private rights of property because they restrict what a private owner can do with his property when it is of this kind. The perceived injustice emerges in a stronger manner due to the subjective nature of the decision as to whether some property or other qualifies as sensitive or especially important because of its historical, cultural or aesthetic value. In recent years, we have seen the emergence of several voluntary organisations with environmental and heritage purposes. These have offered their voluntary services in the management, preservation and protection of sensitive areas but the tools our law provides for the grant of such properties to them is weak and ambiguous as our law focuses on private transactions and not on fiduciary grants intended only to allow for the preservation of sensitive areas. The Authorities therefore treat a grant to voluntary organisations exactly as we would treat a grant to a business venture with speculative intent, missing the fact that the very purpose of the environmental NGO would not allow it to do anything with the property which is inconsistent with its nature or which would in any way threaten its integrity. A grant to an NGO does not make the NGO a private owner in the ordinary meaning of the word as that ownership has a statute-defined purpose. However, when property in the public domain is actually owned privately, we need some guidance on what ownership of this kind of land implies.</p> | | |
| | <p>This is again a problem of definition. It is proposed that while the public domain nature of a private property will not render it extra commercium, as private rights are preserved by this Draft Bill [Act XXV of 2016], its proper classification will have benefits as the law can then refer to its proper status when establishing rules of ownership, management and administration, enjoyment, use, taxation and so on which are sensitive to its nature. That will result in certainty and predictability in the application of law which is always an important goal. Having said this, the focus and priority of this legislative project is property which belongs to the Government and not that which belongs to private individuals. Indeed, the provisions protect private rights validly acquired on property in the public domain belonging to the Government.</p> | | |
| | <p>1.4 The first aim of the proposal of the draft Bill entitled the Civil Code (Amendment) Act, 2012, which is attached to this White Paper, is to have a law relating to all Government property so as to enable the classification of State property as “public property” or as “property in the public domain”. That is the key to being able to establish a clear set of legal rules on the Government’s powers and duties when dealing with each class of the nation’s property. We have a lot of rules on public property but very few on property in the public domain. This Bill [Act XXV of 2016] starts to address the latter subject. It must be kept in mind that there is some overlap between the two types of property.</p> | | |

| | |
|--|--|
| | <p>Two Classes of Government Property</p> <p>1.5 This legislative project will not only be of great interest to all those who administer government property, whether public property or public domain, but also to all persons who have titles and rights over such property as such titles and rights will, in the future, need to be registered in a public registry ensuring greater certainty and transparency. It also affects persons who own property which is given the status of public domain due to identified obligations which ensure that the status of such property is preserved. Property in the public domain may be subjected to private interests through grants subject to specified conditions and persons acquiring such rights ought to know the limitations which will exist on such grants when land is in the public domain. Non-governmental organisations may be the beneficiaries of such grants and administer such public domain property in the national interest.</p> <p>Proposed Declassification</p> <p>According to the Planning Authority "The main purpose of this request [declassification] is to proceed with projects which will serve both private and public interests." This piece of information is far from what the Civil Code (Cap 16) prescribes for the resolution to declassify sites in the public domain. Section 10 of the Third Schedule, Title VI states the grant of titles or rights in favour of private interests can be made "in accordance with the use to which the thing can lend itself generally without permitting the permanent alteration of its nature. Such designations shall be for a purpose or purposes which are specifically defined and being in the public interest." There is nothing specific in the purpose stated by the Planning Authority quoted above. In addition, section 11 (2) states that</p> <p>"Every Declassification Resolution shall as a minimum:</p> <ul style="list-style-type: none"> (a) identify the property, its fruits and accessories; (b) identify the term, unless indefinite in scope in which case it shall state so, the purpose and the use for which declassification is taking place; (c) declare what the projected existing or future public rights or benefits are to be and what suitable alternatives, if any, will be provided for any loss of use or enjoyment of the thing by the public; (d) identify any known Government powers or third party rights which shall continue to be enjoyed over the thing notwithstanding the declassification, provided that this is without prejudice to the general powers of the Government under any law and to private titles or rights which may be registered within the time period prescribed by law; (e) seek to identify special laws or provisions thereof, if any, which restrict the public access or enjoyment of such property in accordance with this Schedule and which shall continue to apply to such property notwithstanding the declassification; and |
|--|--|

| | | | |
|--|--|--|--|
| | | | <p><i>(f) where applicable, be accompanied by a plan or general map, based on the official map of the Land Registry, identifying the property and its accessories which are affected by such declassification.</i></p> <p>Except for the site plan none of the above information is being disclosed to the public to be able to make an informed opinion.</p> <p>Government has not made a case</p> <p>In the light of the Government's own arguments for the Public Domain Act (Act XXV of 2016) as explained in the quoted White Paper, there would appear to be no justification for the declassification of these sites.</p> <p>The purpose stated by the Planning Authority is so generic that it can apply to any site imaginable, including to any stretch of the coast and foreshore. There are many concessions that this declassification can be applied to such as the Corinthia San Gorg, Westin Hotel, The Malta Aquarium, Qawra Palace Hotel, Preluna, Fortina, Dragut Point, all water polo clubs, Manoel Island, the ex-Jerma project can all apply for declassification. Likewise other areas of the coast can be subject to these declassifications.</p> <p>Furthermore, extending this argument it can also be used to turn the Hypogeum into a wine bar and cellar, Ġgantija into Malta's version of Glastonbury and the Grandmaster's Palace into a hotel. All these uses satisfy the stated purpose of "serving private and public interests." If the proposed declassifications go ahead, where will it stop?</p> <p>FAA highlights the fact that the Planning Authority granted new permits at Qawra, without factoring in the Public Domain status of the site, a fact that FAA roundly condemns. What is the reason that the Qawra sites A and D are now being declassified since they have been operating for close to 40 years with the public domain classification? Why change the extra commercium nature of these sites? With regards to the Sliema site what is the need for declassification? The Sliema area is well served with all amenities and the public can enjoy the chalet site without hindrance. There is no public need that is not being served at the site at present. Moreover, the proposed project which includes a catering area on the adjacent promenade, will actually greatly impact the public enjoyment of the promenade, a public amenity that has already been extensively encroached.</p> <p>Public Consultation</p> <p>This public consultation is a sham and the Planning Authority launched it during the Christmas festivities and the abortion debate without any publicity in order to let this pass under that radar. It did not give any publicity to the public consultation.</p> <p>Constitutional safeguards</p> <p>This declassification proposal is also against the letter and spirit of article 9 of the Constitution of Malta which requires the State to</p> |
|--|--|--|--|

| | | | |
|--|--|---|---|
| | | <p><i>"9.(1) The State shall safeguard the landscape and the historical and artistic patrimony of the Nation.</i></p> <p><i>(2) The State shall protect and conserve the environment and its resources for the benefit of the present and future generations and shall take measures to address any form of environmental degradation in Malta, including that of air, water and land, and any sort of pollution problem and to promote, nurture and support the right of action in favour of the environment."</i></p> <p>This is the highest law of the country and is being ignored by the Minister responsible for Lands and the Planning Authority. With this proposal the State is not protecting or conserving the environment for the present generation, let alone future generations.</p> | <p>Conclusion</p> <p>It is ironic that since the law was enacted the first changes are declassifications and not the promised addition of sites to the Public Domain. <i>Filmkien għal Ambjent</i> Ahjar had in the past proposed 22 sites to be designated as Public Domain, however despite the Government's intended purpose in the White Paper, none have been considered for inclusion in the Public Domain.</p> <p>The case for the declassification has not been made as the public is being kept in the dark as to the purpose of the declassification contrary to the letter and spirit of the law. However, it is manifestly apparent that the proposed declassifications are diametrically opposed to what is in the government's own White Paper.</p> <p>The concept of Public Domain has stood the test of time since antiquity yet it is now being dismantled in the space of a few years for the benefit of private interests. If the proposals go ahead it would render the law on public domain into nothing more than a useless ornament of the laws of Malta.</p> <p>Consequently, <i>Filmkien għal Ambjent</i> Ahjar hereby maintains that the declassifications should on no account be allowed.</p> |
|--|--|---|---|

| | | | |
|--|--|-----------------|---|
| <p>PD_Q_-12 Submission applicable to Chalet and Qawra site</p> | <p>Ms Astrid Vella obo Filmkien ghal Ambjent Ahjar</p> | <p>05/01/23</p> | <div style="text-align: center;">  </div> <p style="text-align: right;">4 January 2023</p> <p>The Planning Director Planning Authority St Francis Rowelin Floriana FRN 1730</p> <p>Dear Sir,</p> <p>On behalf of Filmkien ghal Ambjent Ahjar I am attaching our comments on the public consultation on Declassification of Public Property from the Public Domain. This submission is being made under protest as apart from the site plans no information has been given to the public to enable it to assess the proposal as required by law.</p> <p>Filmkien ghal Ambjent Ahjar also protests at the cynical way this public consultation by the Minister responsible for Lands and the Planning Authority as his agent has been carried out. It was launched during the Christmas festivities and the abortion debate without any publicity in the hope that the general public would be too distracted to notice and submit comments to the proposals. This is also contrary to the letter and spirit of article 9 of the Constitution of Malta which obliges the State "to promote, nurture and support the right of action in favour of the environment." The manner of this consultation is to discourage and stifle rather than promote, nurture or support the right of action in favour of the environment.</p> <p>I trust that this will not be the manner of future public consultations.</p> <p>Yours faithfully</p> <div style="text-align: right;">  Jorg Sicut Chairperson for the Executive Committee Filmkien ghal Ambjent Ahjar </div> |
|--|--|-----------------|---|

Consultation Reply – Fimkien g'hal Ambjien Al'jar - Declassification of Public Property from the Public Domain.

Fimkien g'hal Ambjien Al'jar objects to the declassification of the sites

1. Choket, Triq il-Torri, Sliema
2. Triq Dawret il-Qasra, Bugibba (o SLPaul's Bay (Site A)
3. Triq Dawret il-Qasra, Bugibba (o SLPaul's Bay (Site D)

as follows and with reference to

CHAPTER 552 DEVELOPMENT PLANNING ACT, 4th April, 2016
PART I Preliminary (2) Clearly defines the terms:

"conservation" in relation to natural heritage, means a series of measures required to maintain or restore the natural habitats and the population of species of wild fauna and flora at a favourable status;

"conservation" in relation to cultural heritage, means any activity required to maximize the endurance or minimize the deterioration of any cultural property as far as possible and includes examining, treating, recording, preserving, maintaining, rehabilitating and restoring any such property or any part thereof;

"environment" (a) the air, water and land; (b) all ecosystems; (c) the landscape;

infrastructure priority corridors and areas set out in Annex I to Regulation EC No. 347/2013 and which is part of the Union list of projects of common interest referred to in article 3 of Regulation EC No. 347/2013 or other regulations applicable from time to time;

"use", in relation to land, does not include the use of the land by the carrying out of any buildings, engineering, mining or other operations thereon;

FAA is opposed to the Declassification of any part of the Maltese Public Domain, since the above definitions give clear and unequivocal guidance that the conservation of the environment are to be valued and only projects of common interest to the Maltese and Gozitan population may be considered, when a change of use of any land is to be considered.

Furthermore, the Development Planning Act holds clear instructions about the duty of the Government, and by extension the Planning Authority in

PART II Duty to promote a Comprehensive, Sustainable, Land Use Planning System

- 3.— Duty of the Government to
 - (a) — preserve, use and develop land and sea for this and future generations, whilst having due regard to environmental, social and economic needs;
 - (b) to ensure that national planning policies are unambiguous, accessible and clear to the general public;
 - (c) — identify regional planning shortcomings and address any problems;
 - (d) — apply scientific and technical knowledge, resources and innovation for the effective promotion of development planning;
 - (e) — consider public values — when taking any decisions.

| | | | |
|--|--|---|---|
| <p>FAA maintains that prior to any consultation about Declassification of Public Domain Areas the above points would require transparent analysis before a bilateral declassification is even to be considered.</p> <p>The Planning Authorities remit and responsibility is clearly defined in</p> <p>PART III Establishment and Scope of the Authority</p> <p>7.17(4) to facilitate and coordinate the permit granting process for projects of common interest</p> <p>7.18 In the pursuance of its functions under this Act, the Authority shall, as far as possible, make reference to European Union best practices and standards.</p> <p>In the above referenced consultation call, not a word is mentioned about what common interests will be covered for the Metropolitan population, in the event of such a declassification. In dealing with the Public Domain Act later, this point becomes crucially obvious and must be addressed prior to any decision making.</p> | <p>PART IV Common Provisions, defines the responsibility of the Executive Council as follows:</p> <p>11. (1) Where any member of the Authority, or a member of the staff of the Authority, or a consultant, advisor or other person engaged by the Authority, has any interest in any matter which falls to be considered by the Authority, he shall upon becoming aware of such interest:</p> <p>(a) disclose to the Executive Council or the Planning Board, as the case may be, the nature of his interest;</p> <p>(b) neither influence nor seek to influence the processing and the decision in relation to such matter;</p> <p>(c) take no part in any consideration of such matter; and</p> <p>(d) not attend nor participate in any meeting on such matter.</p> | <p>Within this call for Declassification of Public Domain areas, no mention is made of potential conflicts of interest pertaining to the three sites in question, by the very people taking such major decisions of national importance. The public has a right to full disclosure on such matters, in order to understand the intentions behind the desire of the Government and Planning Authority, to embark on such a declassification drive.</p> <p>PART V Establishment and Scope of the Executive Council</p> <p>36. (7) – when the Executive Council is considering scheduling and conservation orders – the Executive Chairperson shall always call in the Superintendent of Cultural Heritage.</p> <p>Without a clear opinion from the Superintendent of Cultural Heritage, FAA maintains that a public consultation in this context equates to putting the cart before the horse.</p> | <p>Furthermore, the Executive Council is duty bound to</p> <p>38. (1) (c) – formulate, implement and update plans and policies relating to the promotion of proper land and sea use – whilst taking into account the protection and management of the environment and the sustainable management of natural resources –</p> |
| | | | |
| | | | |
| | | | |

| | |
|--|--|
| <p>(1) ... undertake research and conduct consultations ... relating to the development of planning methods and models relating to development planning on land and at sea ...</p> <p>43. (3) When the Minister requests the Executive Council to make a plan or a policy on any matter relating to development planning or to review such a plan or policy, he shall make such a request in writing, containing the reasons for making such a request together with a statement of goals and objectives to be attained by the plan or policy or by a revision of such plan or policy</p> <p>In the call for consultation, there remains to date a gaping void regarding any mention of how proper land and sea use is envisaged, any form of research and consultation is missing, and any clear reasons about why such declassification may be required is totally unascertained. FAA feels that this call for consultation stands in clear breach of the law.</p> | <p>44. (1) The Spatial Strategy for Environment and Development or "Spatial Strategy":</p> <p>(a) is a strategic document regulating the sustainable management of land and sea resources covering the entire territory and territorial waters of the Maltese Islands;</p> <p>(b) shall be based on an integrated planning system that ensures the sustainable management of land and sea resources together with the protection of the environment;</p> <p>(c) must set out objectives in relation to the sustainable development and use of land and sea ...</p> <p>(3) In order to achieve the objectives set out in this article, the Cabinet shall take the necessary measures intended to coordinate and improve the spatial impacts of other sectoral policies and their relation to the Spatial Strategy</p> <p>(4) For the preparation or review of the Spatial Strategy, the Executive Council shall carry out surveys ... to include:</p> <ul style="list-style-type: none"> (a) touristic and other existing and, or projected economic activities of the country including the employment patterns arising therefrom; (b) leisure and recreation; (c) the conservation and preservation of natural and manmade resources; <p>(5) In preparing or reviewing the Spatial Strategy, the Executive Council shall have regard to:</p> <ul style="list-style-type: none"> (a) the current economic policies affecting development; (b) the current social policies affecting development; (c) the current environmental policies affecting development; <p>The proposed declassification will dictate a modification of the Spatial Strategy. The prerequisite to such a revision requires transparent assessment to the above, before any further consultation is possible.</p> <p>Furthermore, answers to implications or modifications required in the Subject Plan 47(1), modifications arising in the Local Plan, 48(1), the implications on an Action Plan 49(1), matters related to a Development Order 51, 52, 53(1) go fully unaddressed in this consultation call. The procedure for subsidiary plans and policies features nowhere in this consultation process, and that is de facto negating the Planning Authority's terms. FAA therefore maintains once more that a vast array of prerequisites would require solutions, before a consultation call for declassification of Public Domain Areas can be</p> |
| | |
| | |
| | |

| | | |
|---|--|--|
| <p>considered. The general public has a right to understand also, what positions the affected Local Councils maintain in this declassification exercise.</p> <p>The Development Planning Act states in paragraph 55.(7) No new development or activity in terms of a development order may be carried out on a site if on the said site there exists an illegal development of whatever nature -</p> <p>and FAA questions how the Executive Council wishes to address this specifically on the sites in Qwerz, where no formal permits have been in hand for the years and years of use of the facilities by the hotels. Would this declassification amount to negating illegality in one stroke, to the detriment of the public enjoyment of Public Domain areas?</p> <p>Instead of embarking on a declassification drive, is not the Executive Council duty bound to draft and implement conservation orders 57(2) or emergency conservation orders 58(1) to retain the Public Domain areas, as the Development Planning Act clearly stipulates?</p> <p>PART VI Policy Advisory Committees</p> <p>Clearly calls for a report 60(2)(2) to be referred to the House and the Minister by the Standing Committee on the Environment, Climate Change and Development Planning. FAA is not able to take any such research or documentation to date, but a simple statement by the Planning Authority that the declassification is needed to proceed with projects which will serve both private and public interests. Further consultation cannot be acceptable based on such a poor explanation.</p> <p>PART X Offences</p> <p>Regulates offences of developments 101(2)(a) on said sales, without a valid development permission, and FAA asks how declassification of the sites can even be considered, when current offences have not been dealt with according to the law? We are back to placing the cart before the horse, and in circumstances of such national importance, this modus operandi is totally unacceptable.</p> <p>As a second chapter to our objection, FAA makes reference to the Public Domain Act No. XXV of 2015, which deals with sub-articles:</p> <p>(2) The "coastal perimeter" is that part of the land which has fringed metres from the shoreline -</p> <p>(3) Any private titles and rights to the Inshore shall be registered in the relevant registry -</p> <p>(4) - other similar structures in such areas, shall be regulated by the provisions of special laws governing such things -</p> <p>(5) (a) - other structures - shall be considered to be public property, saving private titles and rights thereon.</p> <p>FAA requests clarity about any such private titles or rights on what the Public Domain Act clearly stipulates as Government and therefore National Property. Should any rights of the sort be given, how can a public consultation be undertaken, when such issues at law have not clarified?</p> | | |
|---|--|--|

| | | |
|--|--|--|
| <p>The Title I PRELIMINARY DETERMINATIONS, PRESERVATION OF PRIVATE RIGHTS, direct into great detail about existing private rights in Public Domain Areas, their relationships with the relevant authorities, use and enjoyment attributable to the specific public domain nature of the sites in question.</p> <p>However, in the current consultation drive for declassification of these sites, not a word is mentioned about such potential rights. FAA asks in all earnest: how can such a consultation process take place when not all information is available to consultees? Such a consultation process is flawed and irregular from the onset.</p> | | |
| <p>Title II OF THINGS BELONGING TO GOVERNMENT PUBLIC PROPERTY AND PUBLIC DOMAIN</p> <p>3. (1) Things belonging to the Government shall be presumed to be public property.</p> <p>4. (4) -- public roads, public squares, all streets, alleys and lanes and access routes, by whatever name called, to other public places, including those leading to the coastal perimeter --</p> <p>(1) -- things belonging to the Government which serve direct and immediate public -- which should be preserved for future generations because of their public nature -- environmental importance or natural importance.</p> <p>Title II underlines the importance of such valuable public property and the protection it should be afforded for the enjoyment of current and future generations. FAA maintains that important decisions regarding declassification deserve a much stronger discussion, with clear answers to all points raised in the Public Domain Act. The consultation process does not hold water until all information is readily available and accessible to the nation.</p> <p>Title III OF PUBLIC DOMAIN</p> <p>4. (1) -- considered as property in the public domain --</p> <p>(2) (a) The coastal perimeter</p> <p>(b) The Executive Council as established under the Development Planning Act of 2016 shall prepare a report on an annual basis which will indicate those sites --</p> <p>(3) Every Public Domain Resolution shall, as a minimum:</p> <p>(a) identify the property, its fruits and accessories;</p> <p>(b) identify any government powers or third party uses of rights which shall continue to be enjoyed over the thing --</p> <p>(4) All Public Domain Resolutions shall be registered --</p> <p>(5) Saving private rights and any concessions which may validly exist, things in the public domain belonging to the Government shall be extra commercium unless they are declassified in accordance with the provisions of Title VI of this Schedule</p> <p>(6) Things in the public domain shall be subject to public domain obligations, even when declassified --</p> <p>(10) The principal obligation -- to preserve its substance with regard both to matter and to form.</p> <p>(11) Without prejudice to any private rights thereon, or, as otherwise expressly stated in any declassification Resolution, things in the public domain belonging to the Government are also subject to a burden being the utility derived by the general public and which is enjoyed by every person on mere sufficiency</p> | | |

| | | |
|--|---|--|
| <p>This Bill seeks out numerous obligations for the Executive Committee of the Planning Authority, acting on behalf of the Minister, which are not even mentioned in this consultation drive. How is it possible for an Executive Committee to take decisions of such national importance, when even its past obligations on the same subject are set yet fulfilled? What and how still eagerly await the Registrar of Public Domain properties, and yet a drive to declassification is already in full progress. FAA condemns these methods in strongest terms.</p> <p>The consultation process does not touch on administrative parents of this state. It does not clarify what grants by the government to private interests are envisaged, the proportionate nature of the interest or benefit to be granted by the general public, no clarification on the purpose of such a grant, no information about conditions to be imposed on the public domain areas in the event of their declassification and numerous other key information pieces. The consultation drive is flawed, without all research and information available and accessible to the public, a valid consultation process is impossible.</p> | <p>Title VIII DECLASSIFICATION OF THE PUBLIC DOMAIN, declares</p> <p>20(2) All things – in the public domain – can be designated to be available for (a) – grant of title or rights in favour of private interests. – Such designations shall be for a purpose or purposes which are specifically defined and being in the public interest.</p> <p>(7) Following declassification, the declassified things shall retain their nature as public domain – Declassification, however, may impose restrictions on continuing public enjoyment</p> <p>(8) The modification or conversion of things in the public domain following declassification may be permitted by a Declassification Resolution on condition that such modification or conversion shall seek an outcome where the gain achieved by the general public is close and unambiguous</p> <p>1.1(2) Every Declassification Resolution shall, as a minimum:</p> <p>(a) identify the property, its title and accessories;</p> <p>(b) identify the term, unless indefinite in scope in which case it shall state its purpose and the use for which declassification is taking place;</p> <p>(c) declare what the projected easing or future public rights or benefits are to be and what suitable alternatives, if any, will be provided for any loss of use or enjoyment of the thing by the public;</p> <p>(d) identify any known Government powers or third party rights which shall continue to be enjoyed over the thing notwithstanding the declassification</p> <p>Again FAA considers the declassification drive fully unacceptable, since the clear guidelines in the Public Domain Act have not been addressed as yet. The law is clear in its intentions, as timelines and its desired results. In this consultation process, none of these points are even being considered.</p> <p>In summary, FAA objects to the declassification of the three spots mentioned above, since the Executive Committee of the Planning Authority does not adhere to the procedures as laid out in the Development Planning Act or the Public Domain Act and there is no clear indication of what the nation stands to gain by forgoing its free enjoyment of Public Domain Areas in favour of private commercial interests.</p> | <p>FAA would also like to stress in no uncertain that nowhere in the Development Planning Act has the Planning Authority or its Executive Committee been granted the powers to serve private commercial interests. Quite the contrary; private business interests are to operate within the clear laws and policies set out by government. It is the duty of the Planning Authority to limit those interests to remain within the parameters of the law, and not to create new loopholes to circumvent the law, or to bend existing laws to suit private business interests.</p> |
|--|---|--|

| | | | |
|--|---|-----------------|---|
| <p>PD_Q -13 Submission applicable to Chalet and Qawra site</p> | <p>Mr Matt Bonanno obo Moviment Graffitti</p> | <p>05/01/23</p> | <div style="text-align: center;">  </div> <p style="text-align: center;">Input to the Public Consultation: Declassification of Public Property from the Public Domain</p> <p>Moviment Graffitti strongly opposes the government's plans to exempt three sites - the Siema Chalet site, and two lidos in Qawra - from the Public Domain Act, which states that the first 15 metres of foreshore should be public and not used for commercial purposes.</p> <p>Should the plans go ahead, access to the foreshore of Siema Chalet and AX Holdings' Suncrest Hotel lido and Sunny Coast Lidos would no longer be guaranteed by law.</p> <p>These plans are even more outrageous when taken into the context of the refusal to include sites of significance in the public domain, notwithstanding the fact that this is stipulated in the Public Domain Act that came into force a staggering six years ago, in 2016. The government and its authorities have not accepted one single proposal from NGOs for the inclusion of socially, culturally and ecologically important sites into the public domain, proposals that were put forward in line with the provisions of the Public Domain Act and with the backing of thousands of signatures.</p> <p>Now, Government wants to go one step further in the wrong direction by removing sites that are automatically considered as public domain.</p> <p>The plan to exempt these sites from the Public Domain Act is angering, as more and more public land is being lost for private commercial interests. Ironically, it had been one of the Labour Party's pledges before last year's general election to seek to purchase private property and convert it into public open spaces. This has not materialised. Clearly, the government prioritises the well-being of large businesses over the right of free passage and enjoyment of public land.</p> <p>The approval of these plans would signal a net loss of public land, at a time when people's right to access public land is constantly being eroded, and more and more countryside paths are being closed off by landowners.</p> |
|--|---|-----------------|---|

ANNEX B

Applicable spatial planning policies

(a) *Sites at Triq Dawret il-Qawra Bugibba l/o San Pawl il-Bahar*

North West Local Plan Policy NSWSP 4

Policy NSWSP 4 addresses the Foreshore within Commercial Zones (Tourism, Entertainment Priority Area) and states the following:

The area indicated on Map 40 is designated as the foreshore within the Tourism Zone and the land-uses identified by Policy NWTO 5 (2), (3) and (4) only can be located within the area provided:

- i. they are located within buildings/structures which are covered by development permission;
- ii. they will involve only very minor extensions and consolidation of existing buildings/structures covered by development permission;
- iii. the finished level of any new minor structure serving as an extension to an existing structure covered by development permission, will not exceed the height of any existing legal structure within the site, and is not to increase the solid structures on street frontage to ensure that views onto the bay across the site are not obstructed;
- iv. public access to the foreshore is not compromised;
- v. MEPA will seek planning gain from any development on this stretch of foreshore it is minded to approve, particularly securing public access to the foreshore.

The area indicated on Maps 39/40 is designated as the foreshore within the Entertainment Priority Area and the land-uses identified by Policy NWCM 3 (i), (ii) and (iv) only can be located within the area provided criteria (i) to (v) above are complied with.

In the case where an existing structure on these stretches of foreshore is not covered by development permission, there will be a presumption against any further development permissions.

The land uses referred to Local Plan policy NSWSP 4 are:

- Class 1 (Use Classes Order, 1994) dwelling units
- Class 3 (Use Classes Order, 1994) hostels and hotels provided that these uses are in accordance with all other relevant Local Plan policies.
- Supermarkets provided that they comply with all the provisions of Policy NWCM 7.

(b) Site known as 'Chalet', Triq it-Torri, Sliema

North Harbours Local Plan (2006)

NHLP Policy NHSJ 03 earmarks Public Car Parks and states the following with regards to the Chalet site:

Strategic Car Parking Sites which support the area's traffic management strategy are identified at:

i. Qui-Si-Sana and Chalet In line with the Qui-Si-Sana Development Brief (2002) and the Chalet Development Brief (2000), new underground car parks will be constructed. The Qui-Si-Sana car park is planned below the level of the Qui-Si-Sana Gardens, as indicated on Map SJ1. In considering this development, MEPA will also consider the development of appropriate tourist related facilities located below ground level as outlined in the approved Qui-Si-Sana Development Brief (2002). No further change of use of the existing High Street Public Car Park will be permitted until the designated Qui-Si-Sana Car Park becomes operational.

ANNEX C



GOVERNMENT OF MALTA
MINISTER FOR THE ECONOMY,
EUROPEAN FUNDS AND LANDS

The Executive Chair
Executive Committee
Planning Authority
St. Francis Ravelin
Floriana

25th November 2022

Dear Mr Saliba,

RE: Declassification of public property from the Public Domain in terms of Article 10(1) of the Fourth Schedule to the Civil Code.

Reference is made to the portion of land marked in red and indicated in the attached drawing PD_2020_0769, forming part of Government tenement in file L363/2020, being land at the site known as "Chalet", Triq it-Torri, Sliema.

As Minister responsible for Lands, and by the provisions of Article 10(1) of the Fourth Schedule to the Civil Code, I am hereby forwarding this formal request to the Executive Council of the Planning Authority to prepare a Report on the declassification of public domain property as indicated in this letter and the attached plan.

The main purpose of this request is in the interest of a project which is to serve both private and public interests.

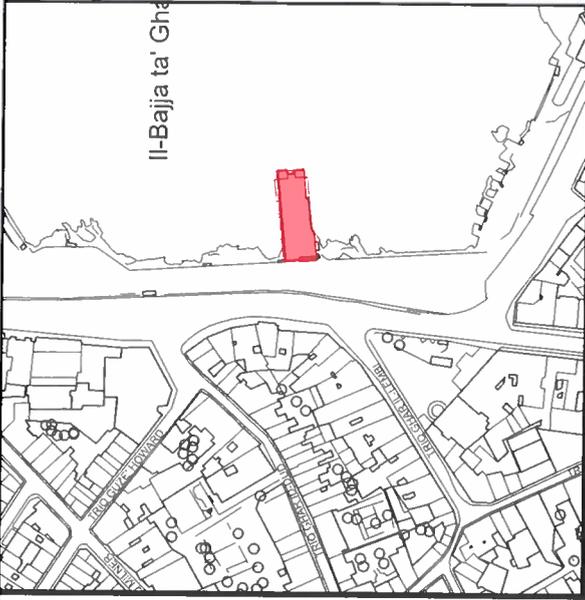
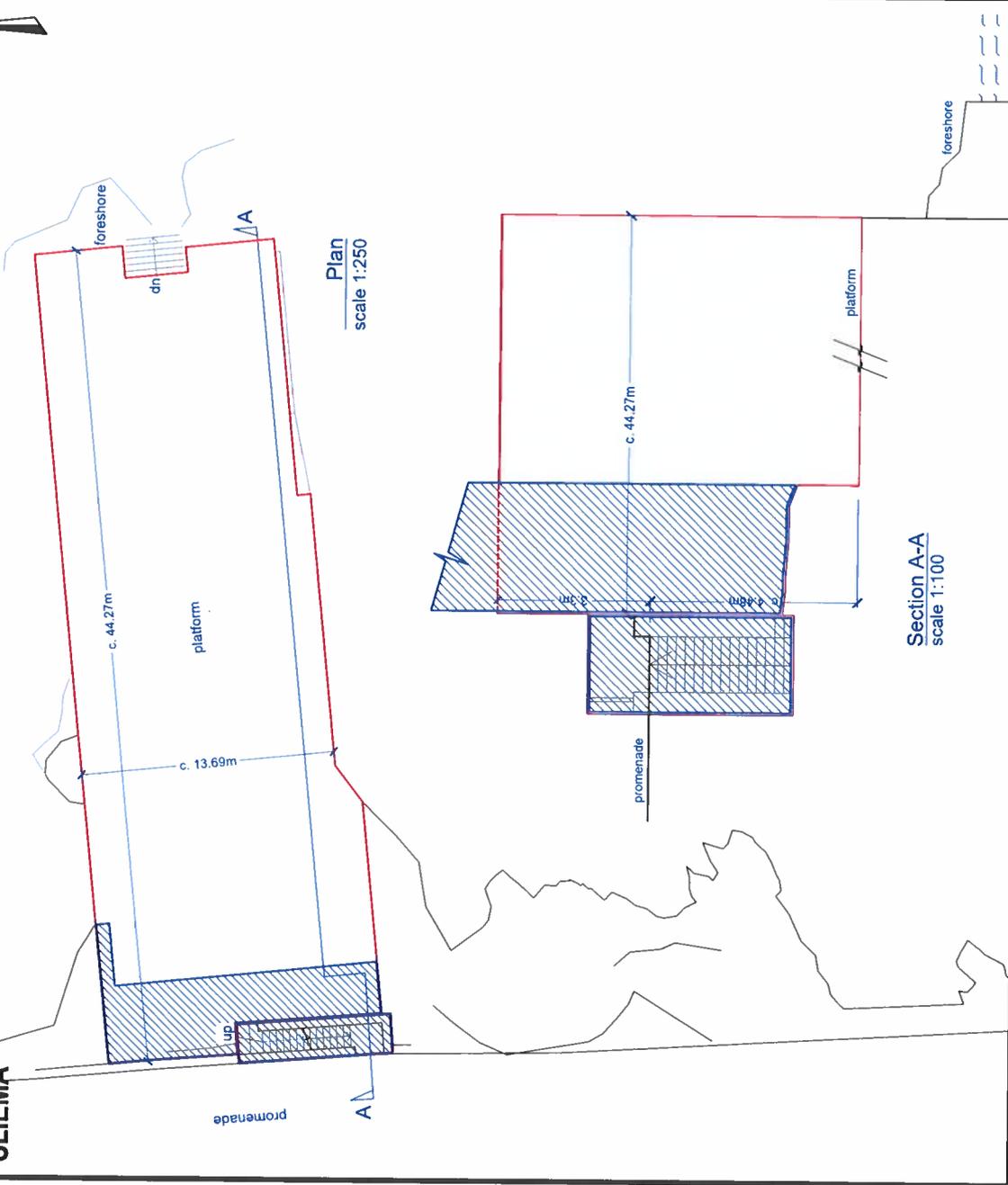
The Report shall follow the procedure established by Article 10(1) of the Fourth Schedule to the Civil Code.

I look forward to being provided with the report that was requested.

Yours truly,

Hon. Silvio Schembri
Minister for the Economy,
European Funds and Lands

Site known as "Chalet"
Triq it-Torri
SLIEMA



Site Plan
S.S. 5474

Scale 1:2500
Map Ref.: 55599
74551

Property No : E270203

- Platform
- Area : c. 612m²
- Area subject to public right of use



Auberge de Baviere
St. Sebastian Str, Valletta
Phone (00356) 2295 3238/39/40/42
Website landsauthority.org.mt

Estate Management & Business Development

Locality: SLIEMA

P.D. No.: 2020_0769 Scale: 1 : 250, 1:100

File No.: L 363/2020 Drawn by: bugem151

sgd (S. Scotto)

A&CE

Date: 9th November 2020

Indicative extent as measured on-site. For precision purposes, a survey is to be requested.

31 May 2022

The Executive Chair
Executive Committee
Planning Authority
St. Francis Ravelin
Floriana

Dear Mr Saliba,

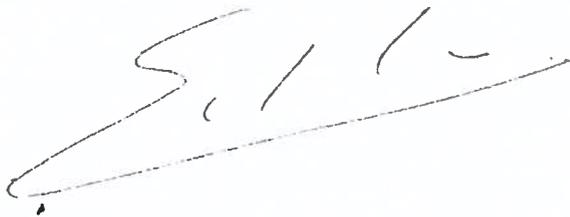
RE: Declassification of public property from the Public Domain in terms of Article 10(1) of the Fourth Schedule to the Civil Code.

Reference is made to the two portions of land marked A and D on the attached drawing PD_2021_0359, forming part of Government tenement E270380, being land at Triq Dawret il-Qawra, San Pawl il-Bahar.

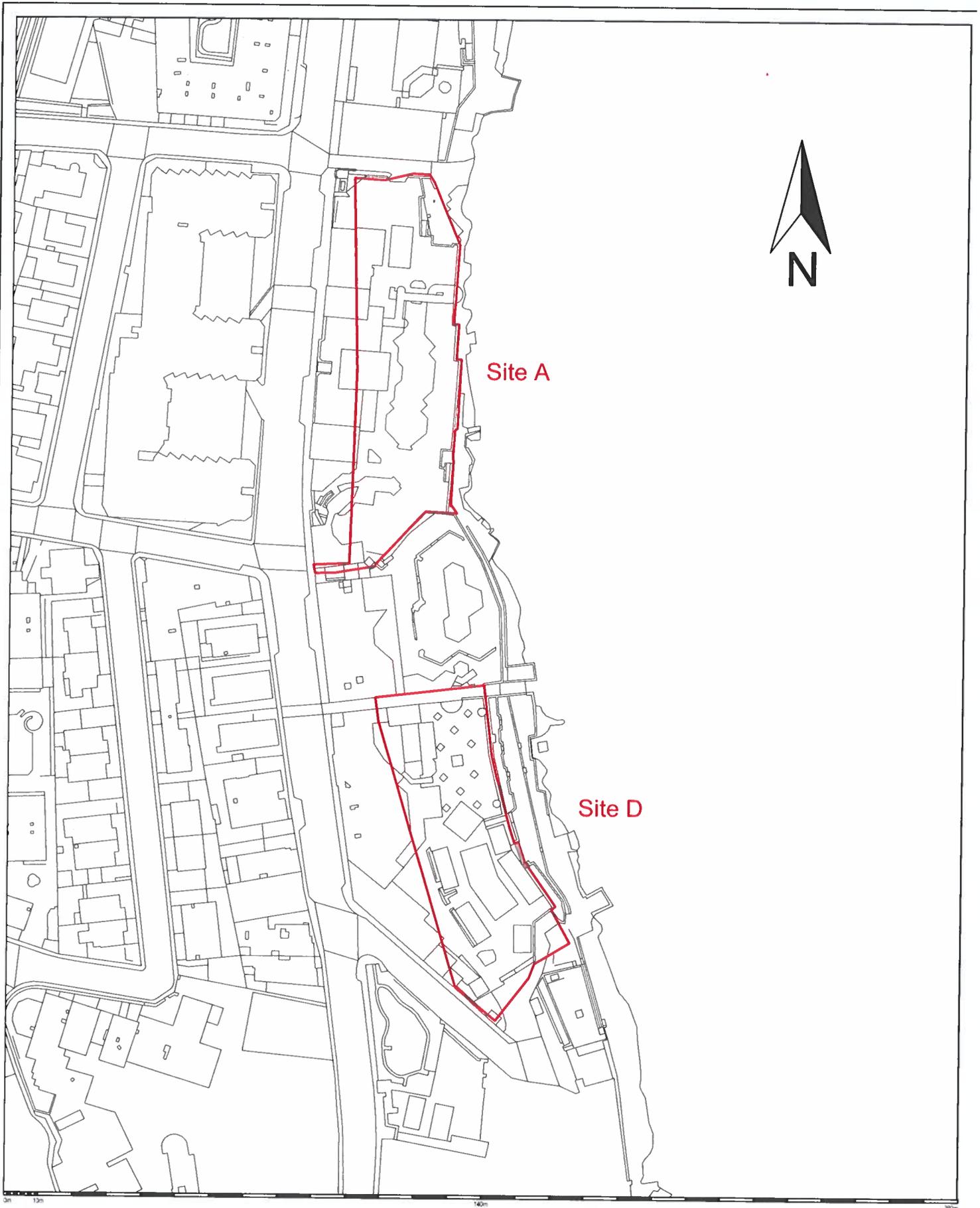
As Minister responsible for Lands, and by the provisions of Article 10(1) of the Fourth Schedule to the Civil Code, I am hereby forwarding this formal request to the Executive Council of the Planning Authority to prepare a Report on the declassification of public domain property as indicated in this letter and the attached plan.

The main purpose of this request is in the interest of the project which is to serve both private and public interests. The Report shall follow the procedure established by Article 10(1) of the Fourth Schedule to the Civil Code.

Best Regards,



Silvio Schembri
Minister for the Economy, European Funds and Lands



**SITES
AT TRIQ DAWRET IL-QAWRA
BUGIBBA
I/o SAN PAWL IL-BAHAR**

Scale 1:1000 on A3

