

Performance Audit

Enforcement Action by MEPA within the Outside Development Zone

Report by the Auditor General

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Performance Audit

Enforcement Action by MEPA within
the Outside Development Zone

Table of Contents

List of Abbreviations	4
Executive summary	5
Chapter 1 – Terms of Reference	13
1.1 Introduction	14
1.2 The ODZ is subject to significant environmental and conservation risks	14
1.3 MEPA's 2010 Reform objectives sought to enforce ODZ through a zero tolerance approach	16
1.4 Audit objectives	17
1.5 Audit methodology	18
1.6 Report structure	18
Chapter 2 - Current state of affairs	19
2.1 Introduction	20
2.2 Illegal development and activities within the ODZ threaten the quality of life of the Maltese citizens	20
2.3 International conventions, EU directives and National legislation oblige Malta to safeguard its biodiversity	21
2.4 The recently set-up Enforcement Directorate aims to safeguard the ODZ in line with MEPA's Reform objectives	22
2.5 Enforcement effectiveness is diluted due to the high volume and prolonged outstanding cases	24
2.6 Conclusions	27
Chapter 3 - Detecting irregularities within the Outside Development Zone	29
3.1 Introduction	30
3.2 Validation of PAs influences enforcement work prioritization and raises potential conflict of interests	30
3.3 Processing weaknesses relating to Complaints received may hinder early detection and addressing of irregularities	32
3.4 There are no specific plans for MEPA routine surveillance of ODZ	38
3.5 Internal control mechanisms relating to self-regulation were recently introduced	39
3.6 The Enforcement Directorate did not have procedures in place to ascertain standard case reporting by enforcement officers	40
3.7 Conclusions	41
Chapter 4 – Processing Enforcement Notices	43
4.1 Introduction	44
4.2 The number of active ODZ ENs registered an increasing trend throughout past years	44
4.3 Delays in the processing of ENs prohibited timely corrective action to restore sites to their original state	47
4.4 Processing delays prevailed after MEPA 2010 Reform	49
4.5 Conclusions	52

Chapter 5 - Implementation of enforcement decisions	55
5.1 Introduction	56
5.2 Only a small proportion of cases were subject to the implementation of enforcement decisions	56
5.3 The status of cases classified as Executable may have changed over time	57
5.4 The Enforcement Directorate lacks a clear documented prioritisation policy to take further action regarding Executable cases	58
5.5 Administrative shortcomings weaken the application of the polluter pays principle	58
5.6 The introduction of Daily Fines aims to encourage more compliance with Planning and Environmental legislation	60
5.7 Conclusions	62
Appendices	
Appendix I: Regions within Malta and Gozo, in accordance with MEPA Local Plans	66
Appendix II: Definition of the irregularities identified by MEPA, as classified by the NAO for the purpose of this Report	67
Appendix III: Daily Fines schedule	69
Appendix IV: Selected bibliography	70
Tables	
Table 1: Number of Inspections on ODZ PAs decided cases (2007 to 2012)	31
Table 2: Total number of Complaints received (2007 to June 2012)	32
Table 3: Feedback to complainants with respect to ODZ Complaints (January to June 2012)	34
Table 4: Source of ODZ Complaints received between January and June 2012	36
Table 5: Number of Active ODZ ENs (2007 to March 2013)	45
Table 6: ODZ Executable ENs categorised by type of illegality and locality (1993 to 2011)	47
Table 7: Elapsed period at key EN processing stages (1993 to 2012)	48
Table 8: Enforcement action relating to ODZ Executable ENs (2006 to 2012)	57
Table 9: DA costs charged to contraveners (2006 to 2012)	59
Table 10: Outstanding DA charges (2006 to 2012)	60
Figures	
Figure 1: The Maltese Islands according to MEPA's Local Plans (December 2012)	15
Figure 2: MEPA's organisational structure	16
Figure 3: Enforcement Process	24
Figure 4: Total Active ENs (2007 to March 2013)	25
Figure 5: Outstanding Executable ENs as at end 2011	26
Figure 6: Complaints received by type of illegality (January to June 2012)	33
Figure 7: Confirmed irregularities from Complaints received (2007 to 2012)	39
Figure 8: 3,553 ODZ active enforcement cases (March 2013)	45
Figure 9: Outstanding cumulative frequency of ODZ Executable ENs (December 2011)	46
Figure 10: Status of 110 ODZ ENs issued between January and June 2012 (as at end December 2012)	50
Figure 11: Contraveners self-regulating their own position (2007 to 2012)	52

List of Abbreviations

DA	Direct Action
DANL	Direct Action Notification Letter
DPA	Development and Planning Act
EDPA	Environment and Development Planning Act
EN	Enforcement Notice
EU	European Union
IT	Information Technology
MEPA	Malta Environment and Planning Authority
NAO	National Audit Office
NBSAP	National Biodiversity and Action Plan
NGO	Non-Governmental Organisation
ODZ	Outside Development Zone
PA	Planning Application

Executive summary

Audit focus

1. This performance audit sought to determine the extent to which the Malta Environment and Planning Authority's (MEPA) enforcement of planning and environmental legislation was appropriately contributing to the protection and conservation of the Outside Development Zone (ODZ). Towards this end, the audit primarily assessed the efficiency and effectiveness of issuing and processing Enforcement Notices (ENs).
2. The ODZ is the land outside the boundary for development in a planning scheme or local plan. The limited availability of land renders the protection and conservation of ODZ as critical to sustainable development. The importance of this zone was also emphasised through MEPA 2010 Reform exercise, which sought to adopt a zero tolerance approach regarding irregularities within this area. In this respect, a key pillar of this Reform focused on the setting up of a new and stronger Enforcement Directorate. The role of this Directorate entails securing respect to the sustainability and polluter pays principles.
3. The National Audit Office (NAO) embarked on this audit due to the socio-economic and environmental importance of the ODZ. The proper management and conservation of such locations and the biodiversity within, is crucial for the sustainability of the ecosystems around us.
4. Against this backdrop, the study sought to determine whether the enforcement role within MEPA is appropriately implemented. Within this context, the term appropriate relates to the extent to which the Authority is capable of detecting irregularities as well as taking rapid and decisive enforcement action to safeguard this zone. The objectives of this audit entailed determining the degree to which MEPA's Enforcement Directorate:
 - i. is equipped with the appropriate resources to enable effective enforcement;
 - ii. has developed policies and Standard Operating Procedures to ascertain efficient, consistent and effective execution of the enforcement function;
 - iii. detects irregularities and, issues and processes ENs expediently as well as effectively; and
 - iv. appropriately implements enforcement decisions, in terms of the relevant Direct Action (DA) when necessary, the restoration of the site in question and the recovery of the relative enforcement costs from the contravener.

5. The undertaking of this study entailed interviewing key personnel at MEPA, namely the Enforcement Directorate's senior management and officials responsible for enforcement related duties, especially the processing of ENs. The NAO also reviewed data and other information maintained in manual and electronic Enforcement Case Files. In order to obtain a better understanding of the enforcement processes involved, the NAO also accompanied MEPA officials during their on-site monitoring of some enforcement cases. Unless otherwise stated, findings and conclusions presented in this Report reflect the information available as at end June 2012. It was not always possible to adhere consistently to this audit period due to various limitations associated with management information maintained by the Authority.
6. The Enforcement Directorate utilises various approaches to detect non-conformities with planning and environmental legislation. This audit found that the detection of irregularities is mainly dependent on the monitoring of Planning Applications (PAs), the receipt of Complaints indicating various alleged environmental and planning irregularities, and to a significantly lesser extent on the surveillance undertaken by MEPA's enforcement officers.
7. The Directorate does not undertake any formal planning of routine surveillance of the ODZ. Monitoring for potential irregularities within ODZ, which is carried out by enforcement officers, tends to focus on the areas indicated through the Complaints received and in localities where PAs are being assessed and monitored. Since the latter tasks are frequently given priority, the Enforcement Directorate consequently becomes constrained to allocate only the remaining available resources for surveillance related work.
8. The targeting of on-site inspections is in many instances based on an informal risk-based approach. This enables the Directorate to deal with the more serious cases as soon as practically possible. Risk-analysis approaches adopted, however, have not yet developed into a comprehensive policy, which allocates the appropriate weighting to enforcement officers' experience, case and contravener's history, the sensitivity of the area, the extent of the irregularity as well as other planning and environmental variables.
9. Moreover, the Directorate's management is not in a position to fully determine and monitor the output levels of its enforcement officers. Furthermore, the non-standardised reporting approaches, adopted by enforcement officers, places additional limitations on determining the extent of coverage of the respective ODZ areas within Malta and Gozo. Robust internal control mechanisms were not in place to counter the broad discretion of its enforcement officers when dealing with contraveners.
10. The concerns highlighted above were mainly attributable to the absence of the appropriate management structure to direct, control and monitor the enforcement function for long periods. The lack of management guidance resulted in individual officers focusing more on field-work to the detriment of the related administrative tasks, such as maintaining minutes of meetings with contraveners and reporting.
11. During the course of this audit, the Enforcement Directorate sought to implement various initiatives to strengthen its operations. These mainly related to the drafting of an Enforcement Charter, the adoption of an Enforcement Protocol as well as the improvement of case reporting.

12. Upon the confirmation of irregularities, MEPA issues ENs whereby contraveners are obliged to address the issues outlined therein within a specified period. Since 2009, the Enforcement Directorate has been aiming to increasingly encourage contraveners to self-regulate their position. Nevertheless, as at March 2013, there were 3,553 active ENs, where over 61 per cent have been classified as Executable and are awaiting DA by the Authority to remove the irregularities at the contraveners' expense.
13. The number of active ENs in relation to irregularities identified within the ODZ has been registering an increasing trend during past years. Various policies and operating procedures adopted by the Authority may have contributed to the high number of outstanding Executable cases. Planning and environment legislation stipulate that the Authority can take enforcement action against all unpermitted development. An administrative decision in the 1980s sought to place parameters on this broad mandate and considered 1967 as an appropriate cut-off date. If this cut-off date is to be considered as MEPA policy, then this implies that the Authority has to deal with contraventions, which took place over the past 45 years.
14. The processing of ENs was characterised by the severe prolonging of procedures, which ultimately impinged on MEPA's enforcement effectiveness. A randomly selected sample of 200 cases revealed that Executable cases have been outstanding for over nine years. Lengthy processing periods also materialised between the receipt of the EN by the contravener and the point when the case is referred for DA, including the removal of the illegal development. The duration of this phase amounted to an average of nearly three years. In around a third of the sampled ENs reviewed, cases may have been prolonged due to the Appeals and Applications to Sanction processes. The following factors have contributed to processing delays:
 - i. The Enforcement Directorate is still in the early phases of implementing EN processing time benchmarks. This implies that, since the establishment of the Authority, the management of the enforcement function could not effectively ascertain that ENs were being processed within reasonable periods.
 - ii. The processing of ENs is characterised by weak audit trails. Such instances diminish control throughout the enforcement procedures since the Directorate's Management would not have comprehensive information to monitor the quantity and quality of work of its employees. Weak audit trails also expose enforcement officers and the Authority to avoidable risks since documentation relating to communications with contraveners and other case-related information is not always maintained.
 - iii. A lack of clear case ownership, particularly with respect to older ENs resulted in prolonging the processing of ENs. The common practice adopted until a few years ago was that enforcement officers immediately referred ENs for DA. This situation led to a substantial number of stalled cases at the final stages of the enforcement processes.
 - iv. Since the establishment of the Enforcement Directorate, the number of enforcement officers deployed to ODZ has declined even though the workload increased. Apart from being stretched by the geographical locations and accessibility of the various areas within the ODZ, enforcement officers have also to focus on the administrative element of enforcement cases.
 - v. The Enforcement Directorate contends that it was not allocated the financial resources to increase the number of DA initiatives. Consequently, cases stalled for considerable periods at the final stage of the enforcement process.

15. The implementation of enforcement decisions is considered as critical since it aims to put into practice the polluter pays principle, the restoration of sites to their original status, and to serve as a deterrent to potential contraveners. Despite the various enforcement mechanisms available to MEPA, such as the execution of DAs, Criminal Prosecutions and, recently, through the imposition of Daily Fines and Concessions, the implementation of enforcement decisions only materialised in a small proportion of cases classified as Executable. Towards this end, the Authority took around 464 enforcement actions during the period 2006 to 2012, of which, 176 related to DA initiatives.
16. The Authority incurred a minimum expenditure of €643,339 regarding the DA initiatives referred to in the preceding paragraph. Contraveners were invoiced for only €521,253 out of the total DA-related expenditure incurred. The remaining €122,086 were not charged to contraveners for various reasons, including unknown ownership and unavailable documentation.
17. Moreover, the Authority is still to recoup €438,329 (84 per cent) out of the invoiced amount. It is to be noted that 16 contraveners were litigating nearly one third of this amount. The proportion of outstanding monies to be collected from contraveners suggests that the polluter pays principle is only partly being implemented. Similarly, whilst the zero tolerance approach as advocated by the MEPA Reform of 2010 is being translated in various enforcement initiatives, it would not be fully implemented unless the relative expenditure incurred by MEPA to remove irregular structures or activities is recouped from contraveners.
18. Recent efforts to strengthen the enforcement function demonstrate that this important role is still in the process of evolution. Over time, there have been various attempts to improve the effectiveness of this function, which, given the limited availability of land and the increasing demands for a better environment, render such initiatives critical. The MEPA Reform of 2010 can be seen as the most recent effort to address enforcement-related issues. Towards this end, the Enforcement Directorate was established in 2011, changes to some work practices have been made and legislative provisions have been introduced to deter and facilitate enforcement.
19. However, this newly established Directorate inherited an enforcement function, which was characterised by a substantial number of outstanding cases and prolonged processes. As pointed out in this Report, these circumstances did not enable MEPA to realize its 2010 Reform objectives to fully implement the polluter pays principle or to adopt a zero tolerance approach regarding environmental and planning infringements within this area.
20. To varying degrees, many factors contributed to this situation. The enforcement function was not fully supported by the appropriate strategic and operational policies. This has led to the enforcement function being mainly constrained to react to prevailing circumstances rather than proactively targeting its work at the highest planning and environmental risks. These circumstances impinged on case processing consistency and efficiency.
21. The enforcement function lacked the adequate level of resources and administrative capacity. Resource deployment priority was generally allocated to MEPA's other functions, such as its Planning arm. The main justification was that the latter function is obliged to fulfill PAs' processing duration targets. Moreover, only a proportion of

the required funds was made available for DA initiatives. Consequently, in many cases, MEPA could not embark on the necessary action to remove irregularities.

22. The Directorate still lacks the support of a comprehensive Information Technology (IT) infrastructure. Such a situation hinders operational throughput, prohibits the formal application of risk analysis in enforcement work, and does not enable the maintenance of robust audit trails. IT-related concerns have also weakened management control over the enforcement function.

23. MEPA's enforcement function stretches to all planning and environmental irregularities, irrespective of the time of contraventions. In its current set-up, the Enforcement Directorate is not appropriately resourced to cater for such a broad mandate. Consequently, a number of planning and environmental irregularities prevail in various ODZ areas and the processing of a significant number of ENs has been outstanding for a substantial period.

24. The recent initiatives to encourage contraveners to self-regulate their own position and the introduction of daily fines in cases of planning and environmental contraventions constitute a paradigm shift from historical practices. The long-term success of these initiatives is, however, dependant on MEPA having the appropriate organisational structures and a robust internal control framework in place.

25. In view of the findings and conclusions emanating from this performance audit, the NAO is proposing a number of recommendations. These proposals address the main strategic and operational concerns deemed to be impinging on the effectiveness of MEPA's enforcement function within the ODZ, namely:

- i. MEPA's enforcement function is to be supported through the appropriate level of resources. This is a prerequisite to increasing enforcement coverage within ODZ, dealing more effectively with the backlog of pending or stalled ENs, and implementing the recent legislative amendments, such as those related to Daily Fines in a more objective, consistent and efficient manner. Towards this end a needs analysis study is to be conducted to identify current and medium-term human resource requirements.
- ii. Policy decisions are to be taken regarding the approach to be adopted by the Enforcement Directorate when dealing with outstanding Executable ENs. Such policies should provide clear time frames for the Directorate to re-visit these cases and, if applicable, to embark on the appropriate enforcement action.
- iii. MEPA's Management is to formally approve recently drafted guidelines, namely the Enforcement Charter, relating to the critical stages of the enforcement process. Moreover, as a matter of priority, the Authority is to establish the relative mechanisms and ensure their full implementation. Adherence to the provisions of these guidelines will increase the efficacy, transparency as well as facilitate management control over the enforcement function.
- iv. The current practice whereby enforcement officers validate PAs submitted is to be reviewed. Curtailing the involvement of enforcement officers in direct work associated with PAs removes any potential conflict of interests and consequently, further strengthens the independence and objectivity of the enforcement function.

Recommendations

- v. The Directorate is to implement the Daily Fines mechanism and ensure that all measures related to the polluter pays principle are enforced. Such measures would discourage contraveners from embarking on illegal development. Furthermore, the collection of money due to the Authority would provide the latter with the required resources to tackle the outstanding Executable ENs.
- vi. Enforcement work is to be prioritised in accordance with formal and documented risk-based approaches. Towards this end, the Authority is to carry out comprehensive studies to identify and classify major threats to ODZs.
- vii. Consideration is to be given to allocate increasing importance to surveillance work carried out by enforcement officers. Effective surveillance work necessitates that coverage is relative to the designated level of risk. Surveillance work should focus more on Special Areas of Conservation and Natura 2000 sites. Scheduled surveillance of these zones will enable the earlier identification of illegalities in these environmentally important zones.
- viii. Moreover, all surveillance work is to be supported with the appropriate level of planning, management control and monitoring. Towards this end, reporting by enforcement officers should not be based solely on exception reporting but details of the areas inspected and any contacts with third parties are to be fully documented.
- ix. Efforts are to be increased to ascertain that customer care targets related to the acknowledgement of complaints and the provision of interim case feedback to complainants are consistently adhered to. These steps should continue to nurture the Authority's relationship with the public and organisations who furnish MEPA with information on potential irregularities, which in turn constitute an important enforcement triggering mechanism.
- x. Time frames are to be established within which enforcement officers inspect sites to validate the irregularities noted in Complaints. The expedient undertaking of on-site inspections minimises the relative potential environmental degradation.
- xi. Internal control mechanisms are to be strengthened to fully exploit the potential benefits of encouraging contraveners to self-regulate their position within an agreed period rather than issuing an EN at the outset. Towards this end, internal controls should include comprehensive reporting by enforcement officers outlining any agreement with contraveners. Internal controls should also encompass the flagging of cases, which have remained outstanding for longer than pre-determined case processing benchmarks. Robust internal controls related to the encouragement of contraveners to self-regulate their position assume added importance in the light that Daily Fines for contraventions are computed from the day that an EN is officially notified.
- xii. Procedures are established to ascertain standard case reporting by enforcement officers. Standardised reporting constitutes a useful indicator to monitor the output of enforcement officers. Moreover, standardised reporting facilitates the reliable documentation of case history and also takes into consideration issues relating to MEPA's business continuity.
- xiii. Consideration is to be given in investing further funds and efforts to complete the changeover from the existing computerised system (Acolaid) to the new IT system (Artemis). The new system would eliminate the present fragmentation

of information between the two computerised systems and the manual files. Moreover, this would improve processing efficiency by eliminating the resultant duplication of work involved through inputting and maintaining information in various systems.

- xiv. The new IT system (Artemis) is to be upgraded to enhance its report generating facilities. This can be achieved by providing users with the facility to generate customised reports. Such an application would further improve management control over the enforcement function.
- xv. Further improvements to the IT infrastructure shall consider the possibility that enforcement officers are able to access site information and report on their enforcement work in real time. This would entail the use of portable IT equipment by enforcement officers. The benefits of using such facilities would enhance efficiency and audit trails.

Chapter 1 – Terms of reference

1.1 Introduction

1.1.1 The National Audit Office (NAO) has conducted the performance audit: *Enforcement Action by MEPA within the Outside Development Zone (ODZ)*. The main aim of this audit was to determine the extent to which the Malta Environment and Planning Authority's (MEPA) enforcement of planning and environmental legislation was appropriately contributing to the protection and conservation of this zone. Towards this end, the audit primarily assessed the efficiency and effectiveness of issuing and processing Enforcement Notices (ENs). In addition, this audit examined the implementation of the Authority's ODZ enforcement procedures and policies.

1.1.2 Unless otherwise stated, findings and conclusions presented in this Report reflect the information available as at end June 2012. It was not always possible to consistently adhere to this audit period due to various limitations associated with management information maintained by the Authority. Furthermore, most of the information requested in May 2012 was referred to the NAO several months later. Due to these circumstances, the Report will identify the relative time-line to which findings and conclusions pertain. These management information limitations, however, did not affect the issues highlighted since many of the concerns observed were consistent over a number of years. The Report also features important updates based on the information available as at the time of drafting.

1.1.3 This Chapter defines what constitutes an ODZ and outlines the major issues, which potentially threaten its conservation. Additionally, it outlines MEPA's enforcement function and organisational structure with respect to this zone. Finally, this initial Chapter concludes by presenting the overall audit objectives and scope, while highlighting methodological considerations.

1.2 The ODZ is subject to significant environmental and conservation risks

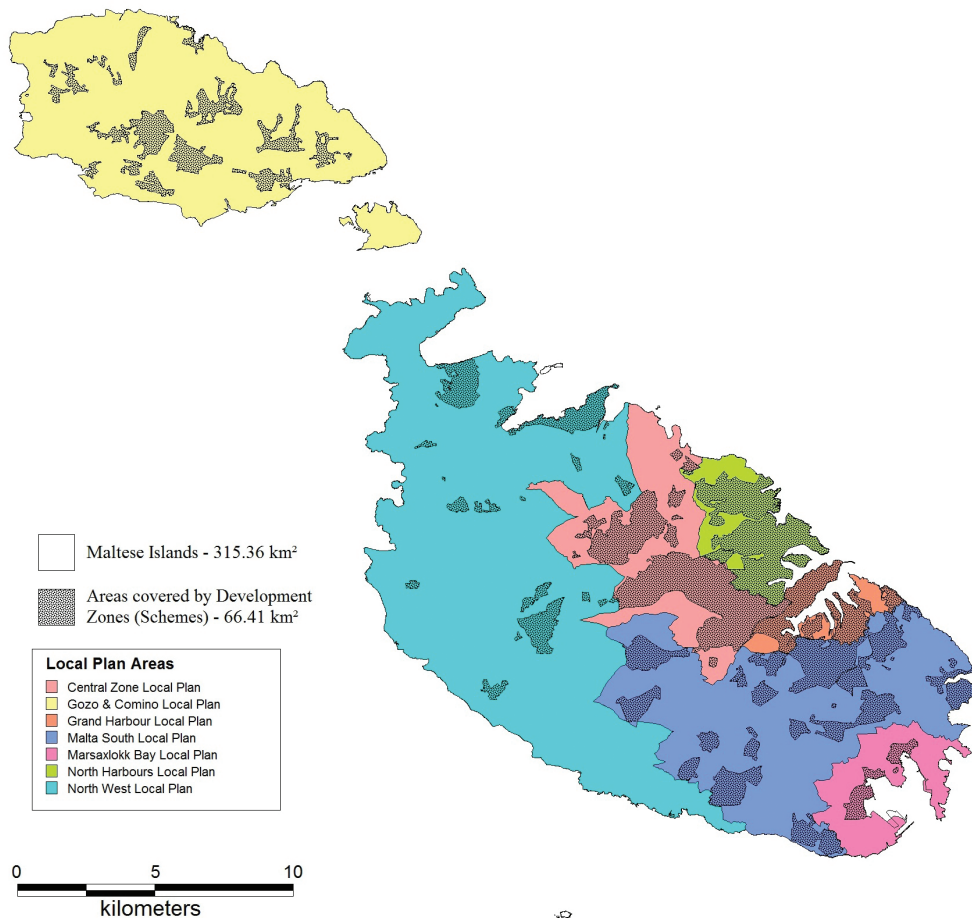
1.2.1 The ODZ is defined as the land outside the boundary for development in a planning scheme or local plan.¹ Biodiversity, which is highly concentrated in ODZ relates to the rich variety of life that exists, and, concerns all species of plants, animals and people, and is central to economic prosperity and good health.² Consequently, the proper management and conservation of such locations, and the biodiversity within, is crucial for the sustainability of the ecosystems around us.

¹ Legal Notice 200 of 2011, Environment and Development Planning Act, CAP. 504.

² <http://www.mepa.org.mt/newslet15-article6> as at July 2013.

Figure 1 depicts the Maltese Islands, segregating the major areas in line with MEPA's Local Plans (refer to Appendix I), and highlighting the Development Zones within, the remaining areas being ODZ.

Figure 1: The Maltese Islands according to MEPA's Local Plans (December 2012)



Source: MEPA

- 1.2.2** According to MEPA, owing to the geographical isolation and small size of the Maltese Islands, coupled with drivers of biodiversity change, a number of wild species have become threatened while others have become extinct. The loss of species is irreversible and leads to the deterioration of our national heritage.³
- 1.2.3** The direct and indirect drivers of biodiversity change, to varying degrees, threaten the ODZ. Direct drivers of biodiversity loss include pollution, over exploitation, land degradation and soil erosion. Indirect drivers, which negatively influence biodiversity, relate to socio-cultural factors, resulting in the inefficient use of natural resources, as may be brought about by life style and consumer changes.
- 1.2.4** The 2005 and 2008 Environment Reports issued by MEPA, together with various stakeholder meetings held between the NAO and a number of environmental Non-Governmental Organisations, indicated that the conservation of the ODZ area is severely under threat through illegal and/or irregular activities. Additionally, increased public awareness led to several Complaints being lodged with MEPA regarding potential irregular developments and/or activities within the ODZ. The importance of this zone was also emphasised through MEPA's reform exercise in

³ <http://www.mepa.org.mt/biodiversity-driversofchange> as at July 2013.

1.3
MEPA's
2010 Reform
objectives sought
to enforce
ODZ through a
zero tolerance
approach

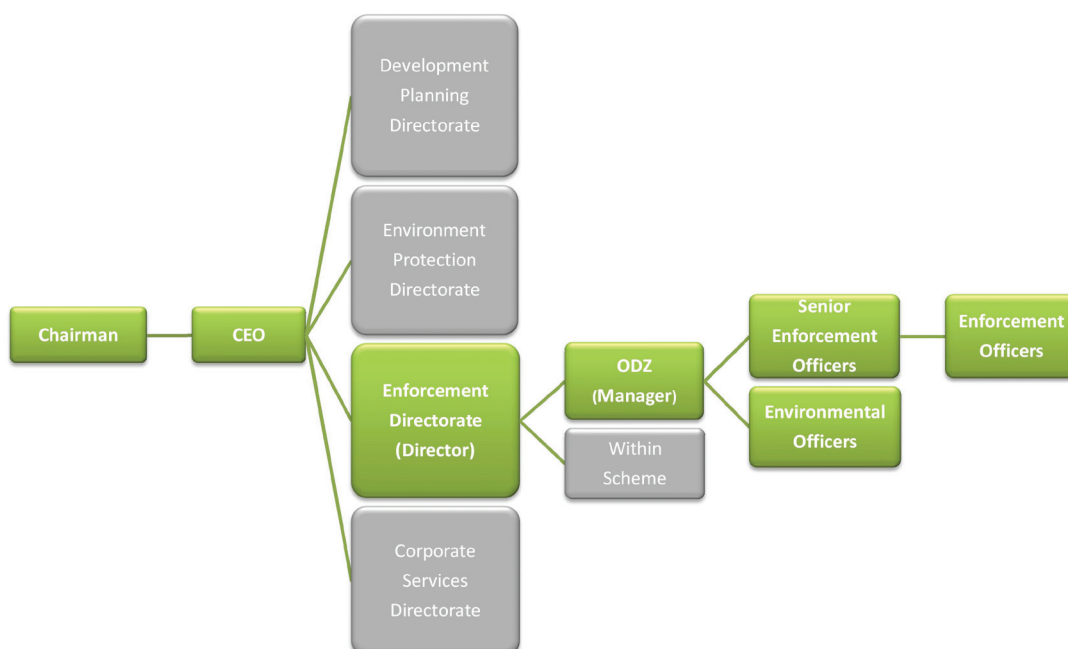
2010, which sought to adopt a zero tolerance approach regarding irregularities within this area. Furthermore, the Authority's mission statement includes the commitment to ensure sustainable development that safeguards the environment, through the values of commitment, professionalism, caring and justice "...which are manifested in wise and timely decisions appropriately enforced."⁴

1.3.1 The 2010 MEPA's Reform objectives concerning the ODZ emphasised the critical importance allocated to the Authority's enforcement function. ODZ enforcement entails the monitoring and detection of unauthorised developments and/or activities, followed by the appropriate action as stipulated by law to ensure compliance with the Environment and Development Planning Act (CAP. 504), as well as other regulations and legislation aimed at ensuring sustainable development.

1.3.2 In line with the Reform objectives, the Enforcement Directorate constitutes one of MEPA's four main pillars for sustainable development.⁵ This function entails 'the ability to ensure that the organisation's decision-making process is being faithfully translated into practice, as well as the ability to take remedial action against defaulters in an effective and exemplary manner.'⁶ Consequently, 'the effectiveness of MEPA's regulation is dependent upon the establishment of a robust enforcement regime in order to secure respect to the sustainability principle.'⁷

1.3.3 Together with the Enforcement Directorate, the Authority's organisational structure comprises the Development Planning Directorate, the Environment Protection Directorate and the Corporate Services Directorate. Figure 2 refers.

Figure 2: MEPA's organisational structure



⁴ Mission Statement available from <http://www.mepa.org.mt/mission-statement> as at July 2013.

⁵ https://opm.gov.mt/mepa_pillars?l=1 as at November 2012.

⁶ A Blueprint for MEPA's Reform (9 July 2009) available from <https://opm.gov.mt/mepa> as at November 2012.

⁷ Ibid.

- 1.3.4 As at April 2013, the Enforcement Directorate was composed of 54 employees, 23 of whom were enforcement officers, the equivalent of nine being assigned to the ODZ. The remaining 31 employees were divided between management, administrative, operations and support staff. The Directorate is mainly divided into two major units. One unit is responsible for enforcement relating to development Within Scheme.
- 1.3.5 The other unit is responsible for enforcement of any development and/or activity within the ODZ. The current organization structure of the ODZ Unit comprises a unit manager, who is assisted by a senior enforcement officer. The Unit manager, who was appointed in 2012, reports to the Director of Enforcement. The ODZ Unit employs the equivalent of nine enforcement officers, who are generally assigned to specific localities in Malta and Gozo.
- 1.3.6 In accordance with practices adopted in 2010, whenever possible, on-site ODZ fieldwork is carried out in groups of two enforcement officers. The main aim of this practice is to improve the effectiveness and internal controls associated with enforcement work.
- 1.3.7 The ODZ Unit allocates a significant proportion of its available resources to ascertain the integrity of Planning Applications as well as to verify and act on Complaints related to alleged irregularities lodged through various sources. Enforcement officers are also expected to investigate any other irregularities noted during enforcement work undertaken within ODZ. Surveillance of districts constitutes a critical element of enforcement work since it has the potential to address irregularities at the earliest possible stage, thus minimising the ensuing environmental impact.
- 1.3.8 In addition to the enforcement work outlined in the preceding paragraph, this Unit is also responsible to other enforcement related initiatives. These include activities related to quarries, producer responsibilities with respect to packaging waste, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and major projects. Furthermore, the Unit also participates in other enforcement initiatives in collaboration with Governmental Departments. These include the collection of scrap material and abandoned vehicles throughout the Maltese Islands, as was the case in 2008 and 2009.
- 1.3.9 Notwithstanding the efforts to broaden its enforcement function, in line with the zero tolerance approach adopted through MEPA's 2010 Reform, answers to Parliamentary Questions and a number of media reports highlight that a significant number of ENs have remained outstanding for a number of years. Moreover, on an annual basis, the number of new ENs issued outnumbered concluded enforcement cases. Furthermore, various articles and media reports continue to highlight irregularities within ODZ. Such circumstances imply that significant threats to the protection and conservation of this zone prevail.
- 1.4.1 Against this backdrop, this study sought to determine whether the enforcement role within MEPA is appropriately implemented. Within this context, the term appropriate relates to the extent to which the Authority is capable of detecting irregularities as well as taking rapid and decisive enforcement action to safeguard the ODZ.

1.4 Audit objectives

1.4.2 In view of the foregoing, the objectives of this performance audit include determining the degree to which MEPA's Enforcement Directorate:

- i. is equipped with the appropriate resources to enable effective enforcement;
- ii. has developed policies and Standard Operating Procedures to ascertain efficient, consistent and effective execution of the enforcement function;
- iii. detects irregularities and, issues and processes ENs expediently as well as effectively; and
- iv. appropriately implements enforcement decisions, in terms of the relevant Direct Action (DA) when necessary, the restoration of the site in question and the recovery of the relative enforcement costs from the contravener.

1.5

Audit methodology

1.5.1 The undertaking of this study entailed interviewing key personnel at MEPA, namely the Enforcement Directorate's senior management and officials responsible for enforcement related duties, especially the processing of ENs. The NAO also reviewed data and other information maintained in manual and electronic Enforcement Case Files. In order to obtain a better understanding of the enforcement processes involved, the NAO also accompanied MEPA officials during their on-site monitoring of some enforcement cases.

1.6

Report structure

1.6.1 Following this introductory Chapter, the Report is structured around these key areas:

- **Chapter 2** provides an overview of the current state of affairs within the ODZ. This overview discusses the initiatives undertaken by the Enforcement Directorate within a context on national, European Union and international environmental targets and obligations.
- **Chapter 3** discusses the mechanisms employed by the Authority to detect illegal development and activities within the ODZ. Such mechanisms include the Authority's inspection targeting and policies.
- **Chapter 4** focuses on the processing of ENs. Towards this end the discussion relates to the categorisation of irregularities and processing efficiency issues.
- **Chapter 5** evaluates the extent to which the Authority is able to implement its own enforcement decisions. The discussion considers the issues which impinge on the timely implementation of enforcement. These factors include the lack of financial and human resources to enable DA to be carried out, the Appeals process as well as the recently introduced initiatives such as the imposition of Daily Fines.

1.6.2 The overall conclusions and recommendations emanating from this study are included in the Report's Executive Summary on page 6 to 12.

Chapter 2 - Current state of affairs

2.1 Introduction

2.1.1 Land is a scarce resource and, as a result, it is subject to significant pressures in terms of demand and use. The small size of the Maltese Islands allocates a greater economic and intrinsic value to land. Subsequently, unless appropriately regulated, land scarcity places unsustainable strains on natural resources and processes in Malta.⁸ Various environmental indicators suggest that there are potential risks relating to the protection and conservation of land falling within the Outside Development Zone (ODZ).

2.1.2 This Chapter provides an overview of the current state of affairs within the ODZ. Following a discussion on what constitutes the ODZ, the Chapter also outlines the current social and environmental threats to this area, such as the direct and indirect losses with regards to the respective local flora and fauna. The discussion then proceeds to introduce the initiatives undertaken by the Enforcement Directorate: within the national, European Union (EU) and international level context; with respect to environmental targets; and obligations, in line with Malta Environment and Planning Authority's (MEPA) Reform of 2010.

2.2 Illegal development and activities within the ODZ threaten the quality of life of the Maltese citizens

2.2.1 The ODZ is of significant social and ecological importance. By definition, development in this zone is to be limited only to exceptional circumstances. In fact, as defined in Legal Notice 276 of 2012, all illegal developments identified within the ODZ are subject to substantially higher fines than would be the case for a similar infringement within the Development Zone (vide Appendix III). These provisions are intended to channel future development in existing development zones in order to mitigate the over exploitation of land.

2.2.2 As at end 2012, MEPA estimated that around 21 per cent of the Maltese Islands consisted of built-up development. The total ODZ area constitutes 248.95 square kilometers out of the total area of 315.36 square kilometers of the Maltese Islands. Moreover, within the ODZ, the Authority has increased the number of sites designated as Special Areas of Conservation and Natura 2000, whereby specific policies guide the type of development that can take place in these areas.

⁸ MEPA (2008). The Environment Report, p.7.

- 2.2.3 A critical objective of the ODZ relates to the conservation of the countryside and the associated rural resources including the natural environment, the built heritage and the rural landscape. In this context, the ODZ is an important factor, which contributes to the quality of life of the Maltese citizens.
- 2.2.4 The ODZ also aims to conserve a variety of habitat types, fauna and flora in the Maltese Islands. Some elements have a wider regional importance or are of evolutionary and bio-geographical interest. A number of the island's habitats such as woodlands, saline marshlands, coastal wetlands, sand dunes, permanent springs and caves, are rare and threatened. Similarly, a number of species are threatened with extinction, whilst a number of species have already become extinct. Human activity is the primary factor affecting habitats and wildlife in Malta. The main impacts are associated with the destruction of habitats and uncontrolled exploitation.⁹
- 2.2.5 As a scarce resource, a significant threat to land arises through the changing demography of the Maltese Islands. Towards this end, demography influences the demand for housing, transport, minerals, energy and water production. The nature and national importance of some of these projects necessitate that planning permission is granted within the ODZ. Such circumstances materialise, since the activities associated with the provision of these public goods either occupy a considerable amount of space and/or the nature of the works undertaken result in negative externalities, such as noise or harmful emissions. Consequently, such activities must be located as far as possible from built-up areas.
- 2.2.6 The ODZ is also subject to other threats, mainly from individuals who identify potential profitable business opportunities within these rural areas. Various Non-Governmental Organisations (NGOs) and other stakeholders highlighted the fact that the degradation of land through the haphazard dumping of inert material on virgin garigue is nowadays a major concern. Such land degradation would certainly increase the chances for approval of any development planning application submitted to the MEPA.
- 2.2.7 In addition, other individuals make use of agricultural related developments, for example water reservoirs and pump rooms, as an antecedent for additional structures, such as residential units. The latter would not have been otherwise approved by the Authority within this protected zone.
- 2.2.8 The illegal dumping of inert material for land degradation and the use of agricultural related developments as a precursor for further illegal developments, were also noticeable through the Enforcement Case Files randomly sampled and reviewed by the National Audit Office during this study and discussed in this Report.
- 2.3.1 In Malta, ODZ plays a critical role in safeguarding the local environment. Towards this end, the 2010 MEPA Reform aimed to adopt a zero tolerance approach in cases of illegal developments and/or activities. Malta also has EU obligations to protect and conserve biodiversity, which is more predominant within the ODZ.
- 2.3.2 EU Member States, including Malta, have agreed on a 2050 EU vision and also a 2020 EU headline target, that is "to halt the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restore them in so far as feasible, while

⁹ National Commission for Sustainable Development (2006). A Sustainable Development Strategy for the Maltese Islands 2007-2016, p. 20.

2.3
International
conventions,
EU directives
and National
legislation
oblige Malta to
safeguard its
biodiversity

stepping up the EU contribution to averting global biodiversity loss".¹⁰ According to economists, it is estimated that each year, on average, EU Member States lose around three per cent of their respective Gross Domestic Product due to the loss of biodiversity.

2.3.3 In order to assist the attainment of local biodiversity related EU obligations, the National Biodiversity Strategy and Action Plan (NBSAP) for Malta was drawn up. This document was published jointly by the Ministry for Tourism, Culture and the Environment, and the MEPA during February 2012.¹¹ The draft action plan was developed to serve as a national policy driver to further integrate biodiversity issues into the policies and programmes of all those sectors that may affect Malta's biological and natural resources.¹² The plan outlines the initiatives scheduled for 2012 to 2020, which are intended to enable Malta to meet its biodiversity and other environmental objectives and International commitments by 2020.

2.3.4 Such a plan is required to align with the Convention on Biological Diversity's Biodiversity Strategic Plan 2011 to 2020, as well as conform to the EU Biodiversity Strategy to 2020 and their respective targets. These include the drastic minimisation of the rate of loss of natural habitats, the establishment of further terrestrial, coastal and marine conservation areas and the restoration of degraded sites.

2.3.5 To achieve these targets, it is important to frequently measure those indicators, which gauge the state of the environment, such as the quality of the air and water, the use of resources, the generation of waste, climate change and biodiversity.

2.4 The recently set-up Enforcement Directorate aims to safeguard the ODZ in line with MEPA's Reform objectives

2.4.1 A key pillar of MEPA's 2010 Reform focused on the setting up of an Enforcement Directorate, in lieu of the previous arrangement whereby the enforcement function pertained to the Planning Directorate. The role of the Enforcement Directorate entails securing respect to the sustainability and polluter pays principles. The attainment of such objectives, in part, entails safeguarding the ODZ.

2.4.2 Consequently, the key functions of MEPA's Enforcement Directorate are to ensure that all development takes place with prior authorisation by the Authority. Development is to follow the plans and conditions stipulated in the approved permit.

2.4.3 In cases of planning and/or environmental irregularities, the Enforcement Directorate is authorised by law, to issue a Stop Order and Enforcement Notice (EN).¹³ This notice must contain a detailed description of the alleged infringements detected within the ODZ and include, where applicable, a site plan indicating the land in question.

2.4.4 The Reform and its corresponding legislative changes aimed to introduce or to strengthen various mechanisms to protect and safeguard land use, including areas within the ODZ through the following:¹⁴

- Certain illegal development typologies in more sensitive areas will not be sanctionable, hence signifying that such illegal development must first be removed by the contravener.

¹⁰ MEPA (2010). Annual Report, p. 50.

¹¹ Until March 2013, MEPA was within the responsibility of the Ministry for Tourism, Culture and the Environment.

¹² MEPA (2012). NBSAP Malta, Working Hand-in-Hand With Nature, Malta's National Biodiversity Strategy and Action Plan 2012-2020, p. 3.

¹³ Throughout this Report, Stop and Enforcement Notices are referred to as Enforcement Notices (ENs).

¹⁴ MEPA (2010). Annual Report p.68.

- Enforcement of these cases would immediately come into effect, therefore Appeals against ENs would no longer be guaranteed.
- A significant increase in penalties imposed by MEPA, in cases where illegal development was sanctioned.
- The imposition of Daily Fines through Legal Notice 276 of 2012, to motivate more expedient remedial action by contraveners in order to self-regulate their own position.
- Direct Action (DA) by the Authority, which includes the removal of illegal development and/or activities in cases where the above measures prove insufficient to restore sites to, as much as possible, their original state.
- The prevention of illegal development by the Enforcement Directorate's monitoring of approved and refused development planning applications.
- Whenever possible the Enforcement Directorate will strive to encourage contraveners to address irregularities themselves, as this will prove beneficial to all parties.

2.4.5 The objectives and scope of MEPA's enforcement, as outlined in the preceding section, is to varying degrees reflected in the operational practices of the Enforcement Directorate. Enforcement action is partly triggered through monitoring initiatives of development Planning Applications (PAs). This monitoring, which is undertaken through various on-site inspections by enforcement officers, aims to ascertain compliance with planning and environmental regulations. Towards this end, the Enforcement Directorate seeks to inspect sites during the processing of the application submitted as well as throughout the various phases of development.

2.4.6 Additionally, enforcement action may be initiated through Complaints submitted by the public or other stakeholders, such as NGOs. In most cases, dealing with Complaints also necessitates a number of on-site inspections. This Report, defines Complaints as reports of alleged planning and environmental irregularities, which are referred to the Authority from various sources.

2.4.7 The fieldwork undertaken provides the Enforcement Directorate the opportunity to detect other illegalities. This is of particular relevance to ODZ enforcement since such areas are less accessible and visited by the public and consequently, irregularities may remain undetected for longer periods or not identified at all. For a list of the different types of illegalities identified by MEPA refer to Appendix II.

2.4.8 Figure 3 illustrates the major phases of the enforcement process.

MEPA's enforcement process is based on the monitoring of Planning Applications and Complaints received

Figure 3: Enforcement Process



2.5
Enforcement effectiveness is diluted due to the high volume and prolonged outstanding cases

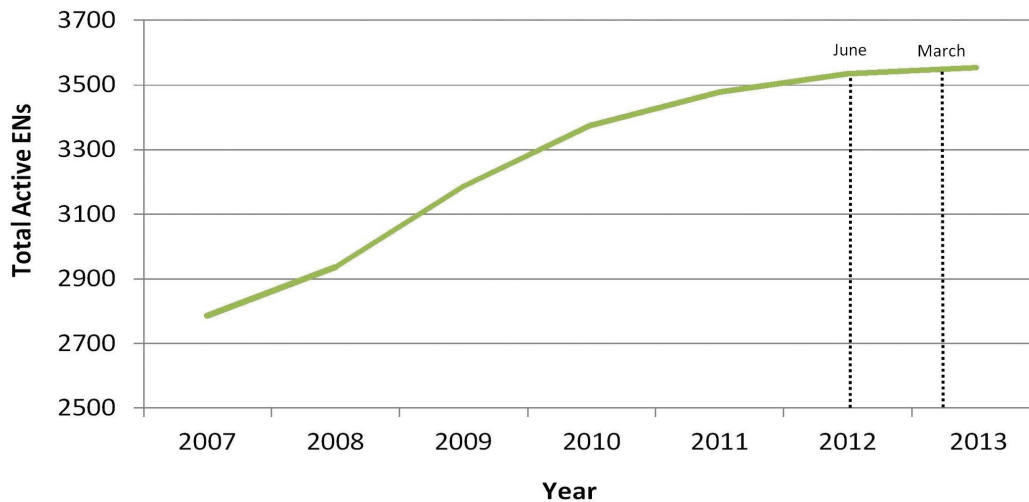
The number of active Enforcement Notices has consistently increased

2.5.1 Effective enforcement necessitates not only the identification of irregularities but more importantly to address them expediently, and as far as possible restore the site to its original condition. Perhaps the most cost-effective and efficient manner for effectual enforcement entails that MEPA encourages contraveners to self-regulate their own position. Moreover, effective enforcement entails that unless irregularities are appropriately rectified, the contravener is obliged to assume responsibility for the illegal actions. Towards this end, accountability is invoked through the imposition of fines or the implementation of the Board of Appeals or Court decisions.

2.5.2 The effectiveness of MEPA's enforcement is to varying degrees weakened since the Authority has not been able to process ENs in a timely manner. The Enforcement Directorate is still to address cases that were initiated prior to MEPA's Reform in 2010. Moreover, the Directorate is still not managing to cope with an increasing number of enforcement cases. This is illustrated by the substantial number of active cases, estimated at over 3,500 by June 2012, and which increased marginally by end March 2013. Figure 4 refers.

2.5.3 These active ENs are at the various stages within the enforcement process. The key stages, namely relate to ENs that are:

Figure 4: Total Active ENs (2007 to March 2013)



Source: MEPA

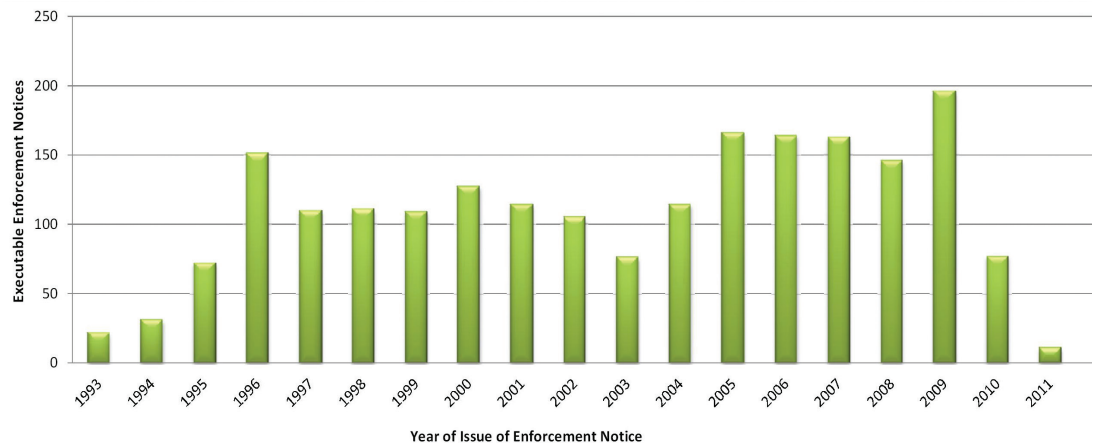
- being processed and reviewed by enforcement officers after the issue of the respective EN;
- awaiting the outcome of an Application to Sanction, whereby the contravener seeks MEPA's approval through a PA to endorse structures erected without the necessary permits;
- pending at Appeals or Law Courts;
- declared as Executable, which implies that enforcement cases have been reviewed by the Enforcement Directorate, and all other mechanisms such as the Appeals system have been exhausted.

2.5.4 The Directorate may then consider the removal of the illegal developments and/or curtailment of the activities in question through a DA. In cases where a DA is imminently planned, the Enforcement Directorate contacts contraveners, either through a Direct Action Notification Letter (DANL) and/or through a telephone call, as a means of final notification. The DANL states that MEPA may enter the relative site at any time in order to remove the illegal developments notified through the ENs, and that all the expenses involved shall be incurred by the contraveners themselves. The Authority then aims to recoup these expenses from the contraveners.

2.5.5 A substantial number of active ENs are within the final stage of the enforcement process, that is designated as Executable. Some of these cases relate to ENs issued in 1993. MEPA's electronic system used to log ENs is not capable of generating backdated reports. Consequently, this audit was constrained to analyse mainly the outstanding 2,065 Executable ENs as at year-end 2011. Figure 5 provides a breakdown of these outstanding ENs in accordance to the year of issue.

2.5.6 The number of outstanding Executable ENs implies that MEPA's organisational infrastructure did not cope with the number of irregularities under investigation by the Authority. MEPA management contended that due to historical concerns relating to its administrative capacity, it was unable to deal with these outstanding ENs in a timely manner.

Figure 5: Outstanding Executable ENs as at end 2011



Source: MEPA

2.5.7 In this context, MEPA Management highlighted that the organisational structure at the time lacked managerial positions to enable improved supervision of the relative enforcement processes. MEPA contends that the Enforcement Section was generally not awarded high priority in terms of resource allocation. An example in this regard relates to enforcement officials with a tertiary level of education being deployed to other functions within the Authority. It was only in late 2011 that the first professional enforcement job description was created within the Authority, thus enabling the Directorate to employ professional staff.

2.5.8 In view of the administrative capacity limitations, it was deemed more appropriate to address the increasing caseload by dealing with the more recent cases. While this approach addressed the more recent cases, MEPA was not in a position to allocate priority to the processing of these 2,065 outstanding Executable ENs. The issues dealing with such circumstances will be discussed in detail in Chapter 4.

2.5.9 Unless MEPA manages to motivate contraveners to comply with the provisions stipulated in the EN, then the Authority will initiate action to stop the illegal activity through various mechanisms or, where appropriate, to remove the illegal development, as per Article 90(1) of the Environment and Development Planning Act (CAP. 504). Moreover, since 24 November 2012, contraveners have been subject to a Daily Fine until their position is regularised.

2.5.10 The outstanding 2,065 Executable cases relate to ENs issued between 1993 and 2011. These cases have been pending for an average period of 9.2 years. Various issues contribute to this number of outstanding Executable enforcement cases and the lengthy processing time. The following refers:

- The demand for MEPA enforcement has been increasing steadily over the years as environmental awareness increased. Such awareness has resulted in the Authority’s receiving a significant number of Complaints relating to irregular developments and/or activities. The Authority utilises Complaints received as one of the major enforcement triggering mechanisms. However, due to a lack of resources at the Enforcement Directorate, the opportunity cost of allocating priority to Complaints received is the prolonged processing of enforcement cases.

The 2,065 Executable ODZ ENs have remained pending for an average period of 9.2 years

- Since its establishment, the Authority has increasingly focused in identifying irregularities, which led to the immediate issue of ENs, thus shortening the negotiation period between the Authority and the respective contravener. Such a scenario resulted into a situation whereby the Authority was not able to process the significant number of ENs issued, and as a consequence a backlog of cases accumulated.
- The number of outstanding cases also showed an increasing trend since some contraveners prolonged enforcement action through various means, such as frivolously invoking the Appeals process or by submitting an Application to Sanction.

2.5.11 A detailed analysis focusing on the issues impinging on the processing of ENs is discussed in Chapter 4.

2.6.1 The limited availability of land renders the protection and conservation of ODZ as critical to sustainable development. This Chapter, however, has noted that the lack of timely action weakens the Authority's enforcement function. These circumstances raise the risk that irregular development and/or activities within ODZ threaten the local environment and quality of life of Maltese citizens.

2.6.2 The MEPA 2010 Reform strategy and subsequent legislative developments recognised that the Authority's enforcement function needed strengthening. Towards this end an Enforcement Directorate was created in 2011. However, in view of the volume of cases and administrative capacity constraints, the Enforcement Directorate is still not in a position to fully attain the objectives outlined in the Reform strategy.

2.6.3 There are various reasons leading to the state of affairs discussed in the preceding paragraph. These mainly relate to MEPA's organisational capacity to detect, process and implement enforcement action in the manner envisaged by the Reform strategy. These issues will be discussed in detail in subsequent Chapters.

2.6.4 The next Chapter discusses the first stage of the enforcement function, namely the detection of irregularities within ODZ.

Chapter 3 - Detecting irregularities within the Outside Development Zone

3.1 Introduction

3.1.1 The Malta Environment and Planning Authority (MEPA) utilises various approaches to detect non-conformities with planning and environmental legislation. This audit found that the detection of irregularities is dependent on the Complaints received by the Authority, the monitoring of Planning Applications (PAs) as well as surveillance undertaken by MEPA's enforcement officers. The audit concluded that MEPA could further enhance its function of detecting irregularities through increasingly adopting a risk-based approach. This will enable the Authority to optimise the resources available, as well as, better prioritise its caseload and surveillance practices.

3.1.2 This Chapter aims to discuss the extent to which the methods employed by MEPA to detect irregularities within the Outside Development Zone (ODZ) are efficient and effective. The discussion focuses on the various initiatives adopted by the Authority to issue Enforcement Notices (ENs) in cases of non-compliance. The ensuing sections in this Chapter address the following issues:

- PA related work carried out by the Enforcement Directorate;
- MEPA's ability to confirm or otherwise alleged irregularities;
- ODZ routine surveillance by MEPA;
- the Authority's interface with contraveners; and
- the reports generated by enforcement officers.

3.2.1 The Enforcement Directorate may be requested to validate the integrity of PAs submitted by developers. Moreover, this Directorate aims to ascertain that actual development proceeds in accordance to the permits issued. The objective of such monitoring is mainly to enable the Authority to issue a compliance certificate, certifying that the development complies with all conditions noted in the approved permit.¹⁵

¹⁵ Compliance certificates are required for the issue of electricity and water supply services.

3.2
Validation
of PAs influences
enforcement work
prioritization and
raises potential
conflict of interests

3.2.2 The validation work related to PAs entails that enforcement officers perform on-site inspections as deemed necessary. Inspections are generally carried out before the commencement of works, during the actual development and especially at completion stage. The Enforcement Directorate also aims to ensure that no development takes place on sites where the relative PA was refused by the Authority.

3.2.3 The Directorate does not maintain comprehensive statistics relating to the number of PA inspections carried out by enforcement officers. Whilst the relative assessment is noted in the respective case-file, this does not enable the Directorate to accurately determine the number of PA inspections undertaken in a specified period. The Directorate could only generate information relating to the amount of PA related inspections with respect to decided applications. As a result, the National Audit Office (NAO) was constrained to evaluate PAs on the basis of the limited information available up to December 2012. Table 1 refers.

The Enforcement Directorate allocates priority to PA related work due to the strict deadlines, in line with MEPA's 2010 Reform policy

Table 1: Number of Inspections on ODZ PAs decided cases (2007 to 2012)

Year	Inspections on ODZ Planning Applications decided cases (No.)
2007	1,905
2008	1,364
2009	1,310
2010 ¹⁶	1,391
2011	1,276
2012	688

Source: MEPA

3.2.4 This number of inspections clearly illustrates the heavy caseload dealt with by the Enforcement Directorate. Furthermore, in accordance with post 2010 Reform policies, the Authority has set strict processing deadlines with respect to the issuing of development permits. In order to, as far as possible, respect these deadlines, the Enforcement Directorate allocates priority to PA related inspections.

3.2.5 The enforcement officers' involvement in the validation of PAs mainly materialised to ease caseload pressure from the Development Planning and Environment Protection Directorates. While such circumstances contributed towards considerably reducing the number of outstanding PAs¹⁷, it had the opposite effect on MEPA's enforcement function as is shown by the increasing trend of outstanding cases at the Enforcement Directorate over recent years (Figure 5 on page 26 refers). This matter is discussed in further detail in the next Chapter of this Report. Moreover, PA related work diminished the Directorate's capabilities to extend its enforcement coverage to other ODZ areas and issues, which pose higher environmental risks.

¹⁶ The Enforcement Directorate in its present format assumed responsibility for PA inspections in 2010. Prior this date, this function still related to the Enforcement Unit, which pertained to the Planning Directorate.

¹⁷ According to MEPA's website (<http://www.mepa.org.mt/outlook34-article7> as at July 2013) the number of outstanding PAs decreased by around 70 per cent, from 4,620 to 1,441 during the period 2008 to 2012.

- 3.2.6 The Enforcement Directorate, through various validation and monitoring oriented on-site inspections, is actively involved in the processes leading to the issue of development permits and compliance certificates. As referred to in paragraph 3.2.4, enforcement officers, on the request of the Development Planning Directorate, MEPA Board and/or Environment and Planning Commissions, validate the correctness of PAs submitted by developers.
- 3.2.7 The same area enforcement officers then ascertain that development is proceeding according to the conditions stipulated in the development permit. Moreover, on conclusion of the development in question, the same officials decide whether to issue or otherwise the Compliance Certificate.
- 3.2.8 The potential conflict of interest arises since the appropriate level of segregation of duties, are not in place. Consequently, the adequate levels of internal checks and balances are not present to minimise the processing risks involved in the validation, monitoring and issue of compliance certificates regarding PAs.
- 3.2.9 In order to mitigate the above mentioned conflict of interests, the Authority is considering segregating duties related to the PAs and routine ODZ Surveillance through the setting up of another unit to specifically deal with the former. However, such initiative is highly dependent on the engagement of additional resources within the Enforcement Directorate.
- 3.3.1 Another triggering mechanism employed by MEPA's Enforcement Directorate to identify potential irregularities within the ODZ is the follow-up of Complaints. The majority of the Complaints (86 per cent) received between January and June 2012, were generated by the general public. A further seven per cent of these Complaints were raised through MEPA officials, who are employed within the different sections of the Authority, including the Enforcement Directorate. The remaining Complaints emanated from media reports as well as concerns raised by Non-Governmental Organisations and Local Councils. Table 2 outlines the total number of Complaints received during the period 2007 to June 2012.

Table 2: Total number of Complaints received (2007 to June 2012)

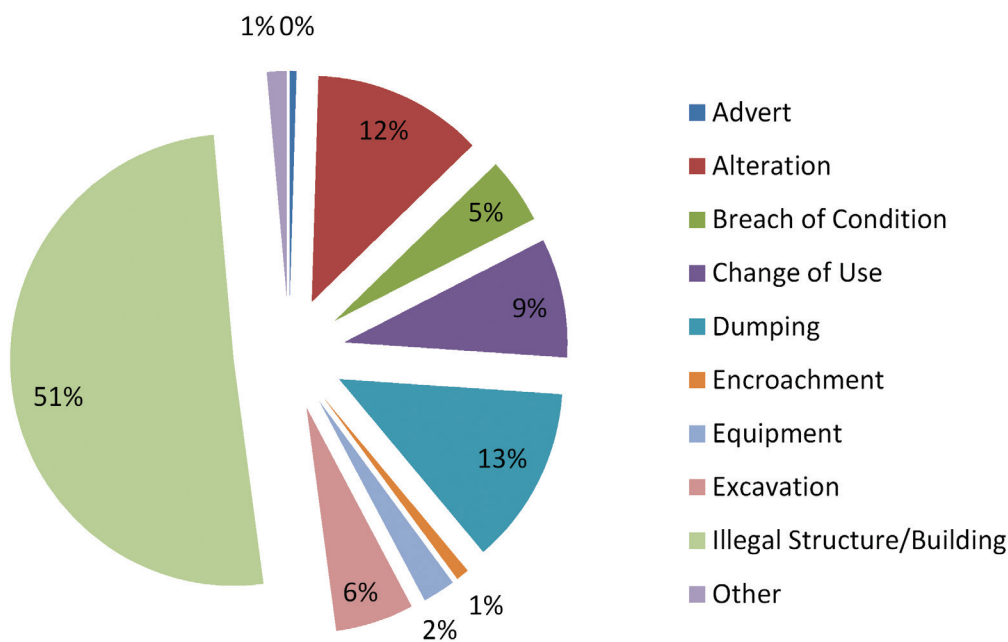
Year	Total Complaints received (No.)
2007	731
2008	444
2009	643
2010	453
2011	510
June 2012	211

Source: MEPA

- 3.3.2 An official within the Directorate of Corporate Services is in charge of managing the receipt, logging and referral to the Enforcement Directorate of all the Complaints received by the Authority. Complainants may forward their concerns through various means, namely through letters and electronic mails, by phone or directly on MEPA's website. Outside office hours, arrangements are in place to enable Complaints to be received by phone.

- 3.3.3 The MEPA website also provides the opportunity for complainants to attach photos related to the alleged irregularity reported. Such information enables the Enforcement Directorate to carry out its preliminary assessment more efficiently.
- 3.3.4 Up to the time of drafting of this Report, the Authority had not carried out in-depth studies relating to the issues raised through Complaints. Consequently, MEPA do not have accurate information based on the categorisation of alleged irregularities indicated in the Complaints received. It is felt that such limitations hinder the Authority from identifying the major areas of concern through a risk-based approach, enabling the improved utilisation of its resources.
- 3.3.5 In order to obtain an indication of the type of alleged irregularities noted in Complaints received, the NAO analysed the 211 Complaints received between January and June 2012. In 11 instances, Complaints related to multiple irregularities. In these cases, the analysis considered only what was deemed the most pressing issue raised. Such an approach was adopted since the number of multiple alleged irregularities was not considered material, all related to the same site, and most were integral to what was considered to be the main issue of concern.
- 3.3.6 The NAO classified the 211 alleged irregularities received through Complaints under broad categorisations. These categorisations were mainly based on definitions outlined in the Environment and Development Planning Act (EDPA). Appendix II classifies potential environmental and planning irregularities under the categorisation headings adopted for the purpose of this audit.
- 3.3.7 This analysis showed that the most common type of illegality reported (around 51 per cent) related to Illegal Structure/Building. These irregularities namely consisted of rooms, boundary walls and other structures, which were built without MEPA's prior authorisation. The second most complained about irregularity related to Dumping. Figure 6 refers.

Figure 6: Complaints received by type of illegality (January to June 2012)



Generally, the Authority did not provide feedback to Complainants in accordance with its own policy

3.3.8 All of the categories of alleged irregularities indicated in Figure 6 may have serious environmental repercussions within the ODZ. Consequently, the Enforcement Directorate aims to prioritise the validation of the alleged irregularities noted in Complaints received. The Directorate’s allocation of case priority generally considers the relative risks and whether the alleged abuse is still ongoing.

3.3.9 In its website, the Authority has committed itself to acknowledge a written Complaint within two working days of its receipt. Upon preliminary evaluation by the Complaints officer, Complaints are forwarded to the Enforcement Directorate for further investigation. The Directorate then updates the Complaints Officer regarding the progress of the investigation in question, who will in turn inform the complainant. This formal feedback is to reach the latter within 15 working days of receipt of the complaint in writing.¹⁸

3.3.10 The NAO analysed the 211 ODZ Complaints received during the period January to June 2012 against the above criteria. In order to allow for sufficient processing time to elapse, the cut-off date for this evaluation was set at December 2012. This approach would ensure that a period of at least six months would have elapsed from the receipt of the Complaint and that such duration provides an appropriate processing benchmark. This analysis excluded the 100 anonymous complaints since, in these cases, feedback to complainants would not be applicable. Consequently, this evaluation is based on the 111 remaining Complaints. This exercise was, however, constrained through the substantial number of instances where the necessary supporting case documentation was neither maintained nor updated by the Authority. Table 3 refers.

Table 3: Feedback to complainants with respect to ODZ Complaints (January to June 2012)

	Information not available (No.)	Average duration where information was available	
		Cases (No.)	Average duration (days)
Complainant communication is acknowledged (within two working days)	87	24	<1
Complainant informed of preliminary action taken by MEPA (within 15 working days)	73	38	50

¹⁸ <http://www.mepa.org.mt/complaints-office#comp04> as at July 2013.

- 3.3.11 As indicated in Table 3, documentation in the relative case-file and supporting Information Technology (IT) systems related to the acknowledgement of Complaints, were only available in a minority of cases. With respect to the 111 cases reviewed, information was only available in 24 (22 per cent) and 38 (34 per cent) cases regarding the acknowledgment of Complaints and updating Complainants with preliminary case information respectively.
- 3.3.12 In the 24 cases where documentation was available, the receipt of the Complaint was acknowledged on the same day of its receipt. The MEPA records available show that in 38 instances it took an average of 50 days to providing Complainants with preliminary case feedback. This figure implies that the 15 working day benchmark was not attained.
- 3.3.13 However, the serious lack of documentation precludes any reliable analysis. Consequently, the NAO is not in a position to confirm or otherwise the extent to which MEPA is adhering to its own policy of acknowledging complaints and providing interim case feedback to complainants. If it is presumed that the lack of documentation implies that feedback to Complainants was not forthcoming, then potentially the Authority risks jeopardising its relationship with complainants. This situation might also result in a decline of Complaints received, which would be detrimental to the Authority since this source constitutes a critical enforcement triggering mechanism.
- 3.3.14 The NAO also sought to determine the processing time taken by the Enforcement Directorate to validate Complaints received. This exercise was based on the 211 Complaints received by the Authority during the period January to June 2012. Such evaluation entailed determining the processing times of two critical phases in validating alleged irregularities noted in Complaints. The first related to the elapsed period between the receipt of Complaints and the first on-site inspection by the Enforcement Directorate. The second aimed to determine the duration from the receipt of the Complaint until it was decided either to close the case or to pursue the case further through the issue of an EN.
- 3.3.15 It transpired that, due to weaknesses in administrative records maintained by enforcement officers, the NAO could not reliably determine the duration between the receipt of Complaints and the date of the first inspection. This situation materialised since enforcement officers either did not record inspection dates or only noted the date of the last on-site inspections in manual and electronic templates.
- 3.3.16 The Enforcement Directorate contended that enforcement officers generally considered it more important to note their final inspection since this related to the outcome of the Complaints Validation process. The absence of such records potentially diminishes management's control over the timeliness of first on-site inspections, which assume critical importance to assess and mitigate the environmental impact of contraventions. Following the conclusion of this performance audit, the Authority instructed enforcement officers to record all on-site inspections performed, together with the relevant details.
- 3.3.17 The second exercise revealed that on average the validation process of alleged irregularities was concluded within an average of 38 days from the receipt of the respective Complaint. This calculation is based on the 140 out of 211 cases where the relevant information was maintained. Such an average is within MEPA's declared benchmark that this process is to be completed within 45 days (30 working days).

Delays to validate Complaints received and record-keeping weaknesses potentially increase environmental risks

Anonymous complaints are less likely to lead to a confirmation of alleged irregularities

3.3.18 However, this 38-day average is considered to provide a distorted view of the actual state of affairs. Such circumstances arise since this exercise excluded 71 cases, which amount to one third of all the Complaints lodged during the period under review, due to the absence of documentation. MEPA contends that, in these cases, the absence of documentation implies that enforcement work is still in progress. Up to the time of the NAO's review, these 71 cases had been outstanding for an average of 270 days from the receipt of the respective Complaint, which greatly inflates the average period within which the validation process is being completed. The Enforcement Directorate contended that this process was also prolonged due to cases remaining dormant for long periods. One factor that frequently complicates matters, and could prolong the issue of ENs, is the determination of site ownership.

3.3.19 This evaluation also showed that 18 of the outstanding 71 cases pertained to Complaints related to Gozo. This number implies that more than half of the total Complaints pertaining to this region were outstanding at the time of this audit. The 18 cases constitute the highest proportion of outstanding cases in the various regions assigned to enforcement officers. The Enforcement Directorate contended that such a situation mainly resulted as the two ODZ enforcement officers in charge of the Gozo region resigned their posts just before the 2010 MEPA Reform. To date, ODZ work in this region has been absorbed by officials assigned to Within Scheme enforcement duties. However, this arrangement is not proving sufficient to process Complaints relating to the ODZ in Gozo in a more expedient manner.

3.3.20 In accordance with MEPA policy, Complaints received from an anonymous source are accepted and processed in accordance to the same procedures as all other concerns received. During the period January to June 2012, a substantial 47 per cent (100 out of 211) of the Complaints received by MEPA originated from anonymous sources.

3.3.21 A review of these Complaints showed that the probability for an alleged irregularity to be confirmed, and would necessitate further action from the Enforcement Directorate, was higher if the complainants identified themselves. Table 4 refers.

Table 4: Source of ODZ Complaints received between January and June 2012

Further action required by Enforcement Directorate	Anonymous complainant		Known complainant		Total	
	(No.)	(%)	(No.)	(%)	(No.)	(%)
Yes	44	44.0	59	53.2	103	48.8
No	56	56.0	52	46.8	108	51.2
Total	100	100	111	100	211	100

3.3.22 Table 4 shows that the likelihood of the alleged irregularities cited in Complaints to be validated is around 10 percent less if the complainant is anonymous. MEPA contends that such a situation is mainly due to the following:

- The Complaints system is abused by some who refer cases of alleged irregularities to the Authority in vain;
- The alleged irregularity is not supported with an adequate level of information to locate the site in question; and

- MEPA's Enforcement officials may also allocate priority to those Complaints originating from a known source, since the need for a proper follow-up and feedback to the complainant would be necessary.

3.3.23 In addition, Table 4 highlights also that around half of the Complaints received between January and June of 2012, did not require any further action by the Enforcement Directorate, due to one or more of the following reasons:

- the Complaint was not within MEPA's remit;
- a development permit had already been issued for the site in case;
- the Complaint was unfounded; and
- an EN was already issued by the responsible enforcement officers.

3.3.24 This audit revealed that documentation with respect to the validation of Complaints was not always comprehensive, and in many cases it can be considered as minimal. This audit also revealed that supporting evidence, such as photographs, were not always available.

3.3.25 Towards this end, the Enforcement Directorate has recognised that further improvements are necessary within the present system of classification and prioritization of Complaints received. In 2012, the Directorate drafted an Enforcement Charter, which outlines an improved system whereby Complaints received are classified according to their urgency.

3.3.26 Such Complaints are to be categorised into four main areas, namely, Emergency, Top, Normal and Low Priority. Enforcement officers responsible for each area are expected to honour the respective time frames by when an on-site inspection is to be carried out.

3.3.27 Additionally, time frames are also established by when the complainant can expect a reply for each category of Complaints received. However, such an Enforcement Charter was still at a drafting stage at the time of publication of this Report.

3.3.28 Although a new IT database system (Artemis) was introduced around three years ago, data related to Complaints are still being logged onto the older system (Acolaid).¹⁹ MEPA contends that such a situation prevails since the Authority lacks the resources to further develop the new system to include the Complaints received. In the circumstances, MEPA has been constrained to operate the two systems in parallel.

3.3.29 The two IT systems provide limited report generating facilities, that is, they do not have in-built functions to generate routine management reports. In both systems, ad hoc programmes have to be developed to enable the extraction of specific data. This situation is conducive to the fragmentation of information between the two computerised systems and the manual files. These circumstances do not encourage case prioritization and internal analysis related to the processing, outputs and outcomes of this function.

¹⁹ MEPA, 2010, p. 87.

Over half of the Complaints did not require further action

MEPA is in the process of developing the appropriate framework for the registering and subsequent follow-up of all Complaints received

Limitations exist in the generation and management of information related to Complaints received

3.4
There are
no specific plans
for MEPA routine
surveillance of
ODZ

3.3.30 The Acolaid system does not have a feature to identify Complaints related to the same irregularity. Consequently, this raises the risk that enforcement work is duplicated. The Enforcement Directorate contends that the data structures available are not even capable of generating backdated queries, for example to determine the total number of Complaints pending at each year's end. Moreover, the Artemis system has, as yet, not been able to accommodate information relating to Complaints.

3.4.1 The Enforcement Directorate does not undertake any formal planning of routine surveillance of the ODZ. Monitoring for potential irregularities within ODZ, which is carried out by enforcement officers, tends to focus on the areas indicated through the Complaints received and in localities where PAs are being assessed and monitored. Since the latter tasks are frequently given priority (paragraph 3.2.4 refers), the Enforcement Directorate consequently becomes constrained to allocate only the remaining available resources for surveillance related work. In this respect, the Directorate is also considering the use of aerial photography to facilitate the detection of potential irregularities.

3.4.2 The lack of formal ODZ surveillance planning also implies that the efficiency and effectiveness of this task is mainly dependant on the acumen and capabilities of individual enforcement officers. The absence of formal plans diminishes the effectiveness of this critical enforcement function since:

- Top-down guidance to enforcement officers regarding ODZ surveillance is not based on a structured planning framework based on risk assessments, which, inter alia, takes into consideration the environmental value and potential threats to specific areas.
- The surveillance coverage of the various zones is rendered incidental since it is dependent on the areas cited through Complaints and PAs work.
- Management control on the efficiency and effectiveness of the function is diminished since an evaluation of outputs and outcomes of the surveillance function cannot be accurately undertaken, as coverage has not been pre-determined through a formal planning process.
- The monitoring for irregularities within various environmentally sensitive areas, including Special Areas of Conservation and Natura 2000 sites, is infrequent and not subjected to a formal inspection regime. Consequently, the marginal monitoring of these sites implies that potential threats and the ensuing irregularities may remain undetected for considerable periods.

3.4.3 Moreover, the lack of Surveillance planning implies that MEPA is forfeiting the opportunity to monitor regularly areas of high environmental value and the more remote areas within ODZ. Following discussions with the NAO, the Authority evaluated the option of having regular proactive monitoring of a number of sites considered of a high environmental value, sites that are prone to illegal development, or a combination of both. Nine general areas were identified during such an exercise and regular on-site inspections started to be performed as from January 2013.

3.4.4 The foregoing illustrates that current practices related to surveillance work may not be fully exploiting the knowledge and experience of enforcement officers to detect potential irregularities at the earliest possible stage. The Enforcement Directorate

acknowledged this state of affairs and in June 2012 developed draft guidelines. The latter aim to optimise the output of the available human resources, through the implementation of more efficient and effective work practices. Moreover, the draft guidelines seek to implement the recently enacted legal provisions, which affect MEPA's enforcement function. However, the Enforcement Directorate has not yet formally adopted these guidelines.

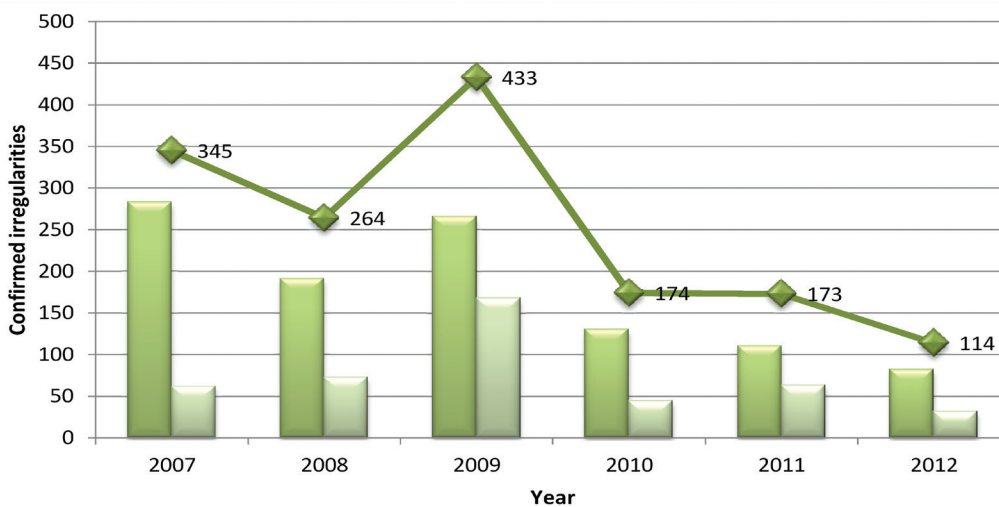
3.4.5 The Directorate also contends that the enforcement process should focus on two distinct approaches – the reactive and the proactive approach. In addition to the reactive approach, where enforcement is triggered by the Complaints generated from third parties, the Authority is also seeking to adopt a more proactive approach whereby illegalities are identified as soon as possible by MEPA itself. The latter may be performed through the establishment of monitoring procedures in relation to ongoing developments.

3.5.1 For the past three years, the Enforcement Directorate's policy was to encourage self-regulation in cases of irregularities rather than issuing an EN at the outset. The benefits of this policy were considered to include raising contraveners' awareness on the relevant planning responsibilities and ensuing environmental consequences in order to bring about expedient corrective action. Such an approach would ultimately result in a more efficient and effective case resolution as well as relieving the Authority of some of its administrative burdens. Encouraging self-regulation by contraveners is considered to embrace the provisions stipulated in the EDPA, which empowers the Authority to regularise any irregular activity or development to the extent the Authority deems adequate in the circumstances.

3.5.2 In accordance with the above, enforcement officers were specifically discouraged from issuing ENs at first instance, but were instead directed to encourage contraveners to self-regulate their own position. As a result of this approach, the number of Complaints that led to the issue of an EN decreased substantially over time. Conversely, the proportion of contraveners who were convinced by the Authority to self-regulate their own position increased from 18 per cent of confirmed irregularities (62 out of 345) received through complaints in 2007 to around 28 per cent (32 out of 114) in 2012. Figure 7 refers.

3.5
Internal control mechanisms relating to self-regulation were recently introduced

Figure 7: Confirmed irregularities from Complaints received (2007 to 2012)



Source: MEPA

3.6
The Enforcement
Directorate
did not have
procedures
in place to
ascertain
standard case
reporting by
enforcement
officers

3.5.3 Despite the potential all-round benefits to be reaped through encouraging contraveners to self-regulate their position, during the period covered by this audit, the internal control mechanisms were considered not to be appropriately robust. Such circumstances arose since enforcement officers were not officially guided by specific criteria relating to the conditions and time frames to be adhered to by enforcement officers during negotiations with contraveners. In order to minimise enforcement officers' discretion and strengthen internal controls relating to self-regulation, the Enforcement Directorate has recently introduced mechanisms through the issue of an Enforcement Protocol in October 2012, which was revised in January 2013. These guidelines stipulate the maximum periods for the issue of ENs.

3.6.1 Procedures leading to standardised reporting and the availability of qualitative information available to management are seen as major elements of enforcement work. Standardised reporting may also be a useful indicator with respect to the output of every enforcement officer. Conversely, non-standardised or lack of reporting weakens the compilation of case history and business continuity. Critically, the reporting issues discussed in this Section of the Report and their ensuing effects are seen to weaken management control over the enforcement function, particularly with regards to ascertaining a consistent approach for enforcement related work.

3.6.2 During the course of this audit, the Enforcement Directorate did not insist on standard reporting procedures regarding on-site inspections and the monitoring of the various ODZ areas carried out by enforcement officers. The comprehensiveness and range of reporting is generally dependant on the enforcement officers' individual discretion. This audit revealed the following issues relating to non-standardised and reporting weaknesses:

- i. Enforcement officers draw up manual reports on Complaints related inspections. A summary of these reports are also uploaded onto MEPA's Complaints database (Acolaid). However, the reports drawn up by enforcement officers lacked standardisation, since:
 - the level of detail relating to on-site inspections was not always comprehensive enough to support the respective findings
 - inaccurate or non-recording of first on-site inspections following the receipt of Complaints;
 - manual report sheets drawn up following on-site inspections were not always signed by both enforcement officers in charge of the specific case; and
 - important evidence related to the case, such as photographs, was not always attached to reports.
- ii. Through interviews held with the Enforcement Directorate's management and officials it emerged that enforcement officers did not always submit formal reports on cases detected during ODZ area surveillance. Such occurrences mainly relate to instances where enforcement officers would have come to an arrangement with contraveners to self-regulate their own position within an agreed time frame.
- iii. Reporting leading to determine the extent of ODZ monitoring by enforcement officers through fieldwork is limited. Consequently, the Enforcement Directorate's management does not have comprehensive and accurate information regarding

the level of coverage within the various ODZs. This mainly results since the recently introduced daily inspection sheet, compiled by enforcement officers, only refers to the towns and villages where inspections have been carried out. This is not considered sufficient to ascertain the extent of monitoring being carried out by enforcement officers. Moreover, it also potentially diminishes the effectiveness of surveillance work since enforcement officers may not be appropriately motivated to adopt a more thorough approach to detect irregularities within their assigned area of responsibility.

- iv. The Directorate's Management contended that the concerns highlighted above are mainly attributable to the absence of the appropriate management structure to direct, control and monitor the enforcement function for long periods. In such circumstances, the enforcement function was primarily driven by the individual initiatives of each enforcement officer. The lack of management guidance resulted in individual officers focusing more on fieldwork to the detriment of the related administrative tasks, such as maintaining minutes of meetings with contraveners and other reporting. In some instances, administrative weaknesses resulted in enforcement records and case files being misplaced or even lost.
- v. It is to be noted that during the course of this audit, the Directorate's Management initiated action to standardise and strengthen the reporting function. Management, however, contended that these actions are to be complemented with the appropriate strategies to instill a mentality change across the enforcement function.

3.7.1 This Chapter discussed the extent to which the methods employed by the Authority to detect irregularities within ODZ are efficient and effective. The discussion focused on the various triggering mechanisms adopted by MEPA to issue ENs in cases of non-compliance.

3.7.2 Despite the efforts of the Enforcement Directorate to detect irregularities within ODZ, this audit found that such detection is mainly dependent on the processing of the Complaints received by the Authority and the monitoring of PAs. The former is also characterised by lengthy processing periods, which may be in excess of the appropriate response time to limit the potential negative environmental impacts of the irregularity under MEPA investigation. This scenario influences negatively on the Enforcement Directorate's ability to detect and react expediently to rectify potential irregularities.

3.7.3 In many instances, the Directorate implements an informal risk-based approach. This enables the Directorate to deal with the more serious cases as soon as practically possible. Risk-analysis approaches adopted, however, have not yet developed into comprehensive policies, which allocates the appropriate weighting to enforcement officers' experience, case and contravener's history, the sensitivity of the area, the extent of the irregularity as well as other planning and environmental variables.

3.7.4 This Chapter has also noted various information gaps, which consequently weaken MEPA's management control over the detection of irregularities function within the Enforcement Directorate. Towards this end, the NAO's analysis has shown that the Directorate's management is not in a position to fully determine and monitor the output levels of its enforcement officers. Furthermore, the non-standardised reporting approaches, adopted by individual enforcement officers, places additional limitations on determining the extent of surveillance of the respective ODZ areas

3.7 Conclusions

within Malta and Gozo. Moreover, robust internal control mechanisms are not in place to counter the broad discretion of its enforcement officers when dealing with contraveners.

- 3.7.5 Towards this end, the Enforcement Directorate is in the process of implementing various initiatives to strengthen its operations. These mainly relate to the drafting and adoption of an Enforcement Charter and the strengthening of reporting. Moreover, the Directorate's work to facilitate a paradigm shift from taking DA to encouraging self-regulation has already shown some positive results.
- 3.7.6 The next Chapter of this Report discusses audit findings and conclusions emanating from an evaluation of the processing of ENs. These Notices are issued when the Enforcement Directorate has confirmed an irregularity within the ODZ and/or its attempts to encourage self-regulation proved futile. The ensuing discussion focused on the various factors, which impinge on the timely and effective enforcement of such Notices.

Chapter 4 – Processing Enforcement Notices

4.1 Introduction

4.1.1 An analysis of the processing of Enforcement Notices (ENs) issued by Malta Environment and Planning Authority (MEPA) revealed that a number of issues are hindering the timely corrective actions by the Authority's Enforcement Directorate with respect to planning and environmental irregularities. In many instances, the processing of ENs was characterised by the severe prolonging of procedures, which ultimately impinged on MEPA's enforcement effectiveness within the Outside Development Zone (ODZ). These processing delays resulted in a high number of enforcement cases awaiting Direct Action (DA). The efficacy of enforcement work was also diminished through deficiencies concerning management control mechanisms, namely related to weak audit trails.

4.1.2 This Chapter discusses the audit findings and conclusions emanating from an evaluation of the processing of ENs and the various factors which impinge on the timely and effective enforcement of such Notices. Towards this end, the National Audit Office (NAO) reviewed the ENs pertaining to ODZ irregularities identified between 1993 and March 2013, in order to identify any change in trends with respect to the different types of irregularities noted and any processing improvements registered. In view of the foregoing, this Chapter proceeds to discuss the following:

- a profile of the ODZ ENs, which were sampled and reviewed by the NAO;
- delays within the processing ENs; and
- post 2010 MEPA Reform processing initiatives.

4.2 The number of active ODZ ENs registered an increasing trend throughout past years

4.2.1 The number of active ENs in relation to irregularities identified within the ODZ has been registering an increasing trend during past years. A factor, which could be contributing to such circumstances, relates to the legislative requirement that enforcement action extends to all unpermitted development, irrespective of the date that they occurred.

4.2.2 An administrative decision in the 1980s sought to place parameters on this broad mandate and considered 1967 as an appropriate cut-off date. Although no documentation relating to this decision was made available to the NAO, the Authority contended that the 1967 cut-off decision was seen as a convenient administrative

measure since the first initiatives to use aerial photography to monitor development commenced during that year. Furthermore, MEPA contends that it is more difficult to trace permits before this date. If the 1967 cut-off date is to be considered as a MEPA policy, then this implies that the Authority has to deal with all contraventions which took place over the past 45 years.

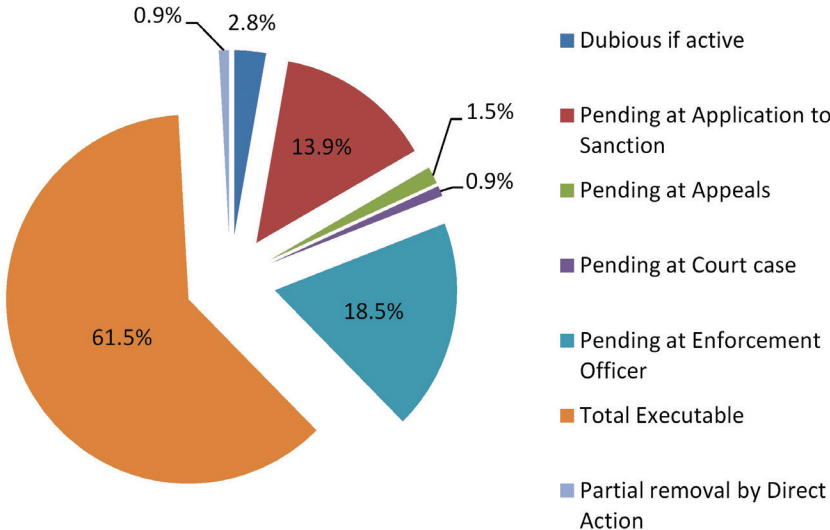
4.2.3 Furthermore, the progressive increase in the number of ENs may be the result of the public’s increasing environmental and planning awareness and not necessarily an indication that irregularities within the ODZ are becoming more frequent. Nevertheless, the rise in the number of active ENs implies that the Enforcement Directorate was not able to resolve cases at the same rate that irregularities were being detected and/or reported. Table 5 shows that the number of ENs issued by the Directorate since 2007 is around twice as much the number of ENs which were resolved during the same period.

Table 5: Number of Active ODZ ENs (2007 to March 2013)

Year	Opening balance of active ENs (No.)	Issued ENs (No.)	Resolved ENs (No.)	Closing balance of active ENs (No.)
2007	2,584	368	165	2,787
2008	2,787	356	205	2,938
2009	2,938	500	251	3,187
2010	3,187	335	147	3,375
2011	3,375	234	131	3,478
2012	3,478	170	114	3,534
Mar 2013	3,534	20	1	3,553

4.2.4 These active ENs, as depicted in Table 5, include cases that are at various stages of the enforcement process. For the purpose of this audit, the NAO sought to determine the status of the 3,553 ODZ active ENs. The cut-off date for this analysis was end of March 2013. Figure 8 provides a classification of the 3,553 ODZ active ENs and their respective processing stage as at March 2013.

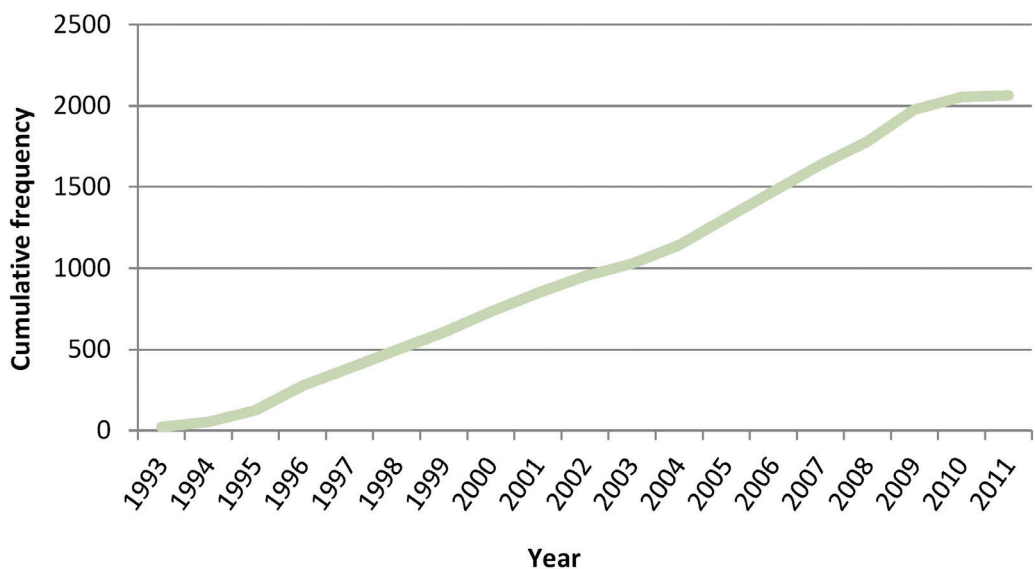
Figure 8: 3,553 ODZ active enforcement cases (March 2013)



Source: MEPA

- 4.2.5 Figure 8 outlines that more than 61 per cent (2,182) of the 3,553 ODZ active ENs were pending at the Executable stage as at end of March 2013. These mainly relate to cases where the irregularity noted in the respective EN has been confirmed, and consequently, are referred for further enforcement action. Towards this end, such action relates to instances where the Enforcement Directorate can take some form of enforcement action against the contravener. The latter includes the removal of the illegal development by MEPA, the imposition of fines and referral to Courts of Law.
- 4.2.6 The remaining active enforcement cases are mainly awaiting further action at either the enforcement officer level or are currently awaiting an Application to Sanction to be confirmed or otherwise. The former amounts to around 19 per cent of the total active files (659 cases). Additionally, another 14 per cent of these cases (495 cases) are at the Application to Sanction stage.
- 4.2.7 As the majority of active ENs related to cases which were classified as Executable by the Enforcement Directorate, the NAO sought to determine the factors leading to the stalling at this phase of the enforcement process. Towards this end, the NAO analysed the 2,065 Executable ENs, which were outstanding as at end 2011. The audit focused on this time period because this information constituted the latest data available to the Authority at the time of the field-work. Figure 9 outlines the increasing trend in pending Executable ENs in relation to the ODZ up to 2011.²⁰
- 4.2.8 Figure 9 shows that around half of the outstanding cases date back to ENs issued prior to 2003. In a few instances, the Enforcement Directorate is still to conclude cases regarding irregularities dating back to 1993. The Executable ENs portrayed in Figure 9, relate to various planning and environmental contraventions. However, MEPA has limited management information on the categorisation of these cases.

Figure 9: Outstanding cumulative frequency of ODZ Executable ENs (December 2011)



²⁰ Information relating to the population of outstanding Executable ENs was derived from Parliamentary Question No. 33396 and notified by MEPA.

4.2.9 In the circumstances, the NAO was constrained to base further analysis on the 2,065 Executable ENs on a randomly selected sample of 200 cases and to develop definitions relating to the categorisation of the different irregularities (see paragraph 3.3.6). These are included in Appendix II. The ENs referred to in this paragraph were analysed by the major type of irregularity related to the case in question, as well as the ODZ area to which they pertain. Table 6 refers.

Table 6: ODZ Executable ENs categorised by type of illegality and locality (1993 to 2011)

Type of Illegality	Gozo	Central	North West	North Harbours	Grand Harbour	South	Total	Per cent
Illegal Structure/ Building	32	9	38	1	2	45	127	63.5
Dumping	3	8	3	1	0	3	18	9.0
Change of Use	1	4	4	0	0	7	16	8.0
Excavation	2	2	1	0	0	5	10	5.0
Breach of Condition	3	1	3	0	0	2	9	4.5
Encroachment	2	0	2	0	0	4	8	4.0
Alteration	2	1	0	0	0	4	7	3.5
Advert	2	1	0	0	0	2	5	2.5
Total	47	26	51	2	2	72	200	100.0
Per cent	23.5	13.0	25.5	1.0	1.0	36.0	100.0	

4.2.10 On the basis of this random sample of 200 cases, it transpired that Illegal Structure/ Building was by far the most frequently occurring infringement, that is, 63.5 per cent of the 200 randomly selected executable cases. These range from rubble walls to rooms used for various purposes. The highest occurrence of this type of irregularity was recorded in the South region, with 45 enforcement cases (around 35 per cent of the total irregularities of this type). Table 6 refers.²¹

4.2.11 Illegal dumping constituted around nine per cent of the executable cases sampled. Table 6 also shows that executable enforcement cases extend to an array of activities. These include development, which did not proceed according to planning permits and irregular excavations.

4.2.12 The situation presented in Table 6 was also generally evident in 2012. An analysis of the ENs issued by the Enforcement Directorate during the first half of 2012 also revealed that the majority of infringements related to Illegal Structure/Building. Moreover, the majority of cases were also noted in the Southern, followed by the North West regions.

4.3.1 The NAO sought to determine the processing duration of each critical stage of the enforcement process through further analysis of the randomly selected sample of 200 out of the 2,065 Executable ENs pertaining to the ODZ, as at end 2011. This review also sought to identify operational bottlenecks, which were prolonging the processing of ENs. However, this review was hampered since, in a number of cases, the relevant case information was documented in neither manual nor electronic files. Table 7 refers.

²¹ In some cases, the results pertaining to specific types of illegalities presented in Table 6 can only be considered as indicative rather than representative of the population.

4.3
Delays in the processing of ENs prohibited timely corrective action to restore sites to their original state

Table 7: Elapsed period at key EN processing stages (1993 to 2012)

Type of Illegality	ENs (No.)	Average duration (days) ²²			
		Between the first recorded on-site inspection and the issue of the EN *	Between the issue of the EN and the receipt of the EN by the contravener **	Between the receipt of the EN by the contravener and the EN forwarded for DA ***	Between the EN forwarded for DA and review by NAO ****
Illegal Structure/Building	127	39	38	1,137	2,425
Dumping	18	19	18	273	2,035
Change of Use	16	31	17	618	2,367
Excavation	10	7	59	1,107	1,826
Breach of Condition	9	9	15	1,949	1,267
Encroachment	8	5	17	1,274	2,477
Alteration	7	20	14	472	2,133
Advert	5	0	8	968	1,717
Total ENs (No.)	200	n/a	n/a	n/a	n/a
Average duration (days)	n/a	30	32	1,040	2,277

4.3.2 Table 7 shows that lengthy processing periods were present throughout the different phases of the issuing and processing of ENs. An average period of 30 days elapsed from the first on-site inspection performed by the enforcement officers in charge, to the issue of the EN. This varied from 39 days in the case of Illegal Structure/Building to five days in the case of Encroachment.

4.3.3 The analysis of the enforcement process also revealed a prolonged period between the issue of an EN and the receipt of such Notice by the contravener. The duration of this operation amounted to an average of 32 days. This lengthy period could be attributed to delays by the contravener to claim the EN through registered mail or lack of timely follow-up by the respective enforcement officer to confirm that the Notice has been fixed on site for seven consecutive days, thus considered as being officially delivered to the unknown contravener.

4.3.4 Lengthy processing periods also materialised between the receipt of the EN by the contravener and the point when the case was referred for DA for the removal of the illegal development. On average, the duration of this phase amounted to an average of 1,040 days (2.85 years). In accordance to the sparse documentation available on file, it appears that in 65 cases, the delays discussed in this paragraph may have been partly attributable to the Appeals and/or Application to Sanction processes.

4.3.5 Up to end 2012, the randomly selected outstanding Executable files had been awaiting action for an average of 6.2 years from the date when the cases were referred for DA. Generally, such a delay materialised since funds were not available to enable the Authority to proceed with DA.

4.3.6 The Enforcement Directorate also attributed the prolonged processing periods to the high caseload and other duties performed by enforcement officers. The Directorate contended that, at the time of drafting this Report, each enforcement officer's caseload amounted to 395 active ENs. This is deemed relatively high when compared

²² Due to the lack of documentation maintained by the Enforcement Directorate, the results presented in Table 7 were based on the following sample sizes: * 200 ENs, ** 184 ENs, *** 183 ENs and **** 199 ENs.

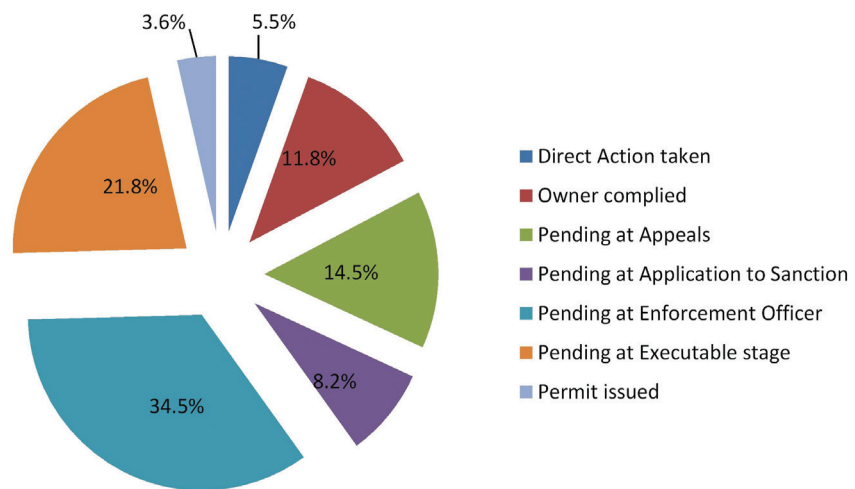
with the benchmark established in the United Kingdom, whereby the ideal caseload is considered as 150 active ENs per enforcement officer.²³

- 4.3.7 The unavailability of resources restricted MEPA from issuing Direct Action Notification Letters (DANL) at the point that a case would have classified as Executable. The rationale not to issue DANLs, in cases where MEPA did not have the resources to proceed with DA, is acknowledged. However, the issue arises whether MEPA forfeited an opportunity to encourage self-regulation by contraveners through the forwarding of such notification letters.
- 4.3.8 The prolonged processing periods discussed within this Section clearly highlights that, over a number of years, on the operational level, MEPA's enforcement function was not reaching its ultimate goals of serving as a deterrent, taking efficient and effective action to address irregularities and restoring the respective sites to their original state.
- 4.3.9 The recent introduction of Daily Fines (discussed in Section 5.6) aims to deal with irregularities committed after 24 November 2012 in a more expedient and effective manner, by stimulating self-regulation and consequently reducing processing times. However, prior to this date, MEPA did not have a robust enforcement mechanism to ensure that effective action was taken in a timely manner to avoid the accumulation of outstanding cases. To date, MEPA has not yet developed policies and strategies to address the high backlog of outstanding Executable cases.
- 4.4.1 The main issues impinging on the ODZ enforcement function, which emanated from the 2010 Reform, entailed the establishing of the Enforcement Directorate and the adoption of a zero tolerance approach by the Authority with regards to infringements within this zone. The Reform, through the appropriate legislation, sought to impose higher penalties for irregularities and to minimise excessive processing periods. The latter target is considered as essential for the timely implementation of the polluter pays principle and the restoration of sites to, as much as possible, their original state. Paragraph 2.4.1 refers.
- 4.4.2 Although the Enforcement Directorate was established, there were minimal changes to the amount of financial and human resources, which could be deployed to the ODZ enforcement function. This Report has already alluded that the major changes relating to ODZ enforcement mainly concerned the adoption of an operating practice whereby on-site inspections are carried out in groups of two enforcement officers. At the time of drafting this Report, the Directorate was still in the process of developing its internal operating policies and guidelines.
- 4.4.3 Against this backdrop, the NAO sought to determine the impact that the MEPA 2010 Reform had on the processing efficiency relating to ENs. For this purpose, the NAO reviewed all of the 110 ENs issued between January and June 2012. The cut-off date for this analysis was end of December 2012.

4.4 Processing delays prevailed after MEPA 2010 Reform

²³ Planning Advisory Service, 2008, p. 7.

Figure 10: Status of 110 ODZ ENs issued between January and June 2012 (as at end December 2012)



Over a third of the ENs issued during the first half of 2012 are still being processed by enforcement officers

4.4.4 The analysis of the 110 ENs issued between January and June 2012 showed that only 23 cases (20.9 per cent) were concluded. These include six cases (5.5 per cent) which were resolved through a DA by the Authority and 13 cases (11.8 per cent) whereby contraveners self-regulated their own position. The remaining 87 out of 110 cases (79.1 per cent) were outstanding at various stages of EN processing. Figure 10 refers.

4.4.5 Additionally, as at year-end 2012, there were 38 of the 110 ENs (34.5 per cent), which remained awaiting action at the respective enforcement officer. This implies that a minimum of six months would have elapsed prior to the Enforcement Directorate considering these cases as Executable, that is, these ENs warrant further enforcement action as discussed in paragraph 2.5.3.

4.4.6 The lack of robust documentation available in manual and electronic files limited the NAO from identifying the various factors which were prolonging the processing of these ENs. Through interviews with the Directorate's staff, it emerged that the relatively high number of ENs pending at the respective officer may be attributed to one or more of the following reasons:

- The prolonging of the negotiations between the enforcement officer and the respective contraveners;
- Enforcement officers are now encouraged to, as far as possible, encourage self-regulation by contraveners either prior to or after, the issue of ENs;
- MEPA management has complemented this initiative by linking it to enforcement officers' performance appraisals; and
- Ineffective hand-over of cases in instances of staff movements may materialize, especially in cases where audit trail weaknesses prevail.

4.4.7 A further 24 cases (21.8 per cent) were also found to be outstanding as they were pending at the Executable stage. The prolonging of processing these cases were mainly attributed to:

- efforts taken by enforcement officer to encourage contraveners to self-regulate their position;
- the high case-load of enforcement cases pending for DA or other enforcement mechanisms; and
- the absence of a clear policy establishing processing priority in cases considered as Executable.

4.4.8 Moreover, delays were also noted due to factors beyond MEPA's control. As at end 2012, there were 60 ENs (14.5 per cent), which were being reviewed by the Appeals Board. This review had been ongoing for at least six months. A further nine cases (8.2 per cent) were awaiting the outcome from an Application to Sanction, and, consequently, no further action could be taken by enforcement officers. The prolonging of cases due to the circumstances discussed in this paragraph seems to reflect the pre- Reform situation discussed in paragraph 4.3.5.

4.4.9 The Enforcement Directorate has increased its efforts to encourage contraveners to self-regulate their position. This entails that contraveners remove or address the irregular development or activities themselves. This approach constitutes a paradigm shift from the previous practices where the Authority sought to take DA to remove the irregular development or activities at the contraveners' expense. While efforts in this direction are beneficial for all parties concerned, reference has already been made in paragraph 3.5.3 to weak audit trails and internal control mechanisms relating to the adoption of the self-regulating practices. Figure 11 outlines that the percentage of contraveners who self-regulated their position out of the total ENs that were resolved during 2007 to 2012.²⁴

4.4.10 Figure 11 shows that the number of self-regulating cases increased from 19 to 77 per cent during the period 2007 to end June 2012. However, it is to be noted that the respective ENs do not pertain to the year within which the case was resolved. On average, the 47 self-regulating cases resolved between January and June 2012 took 4.5 years since the issue of the respective EN. While MEPA's efforts to bring about self-regulation is acknowledged, such a period, however, is considered as excessive and diminishes the cost-effectiveness of the Directorate's efforts to encourage voluntary compliance by contraveners.

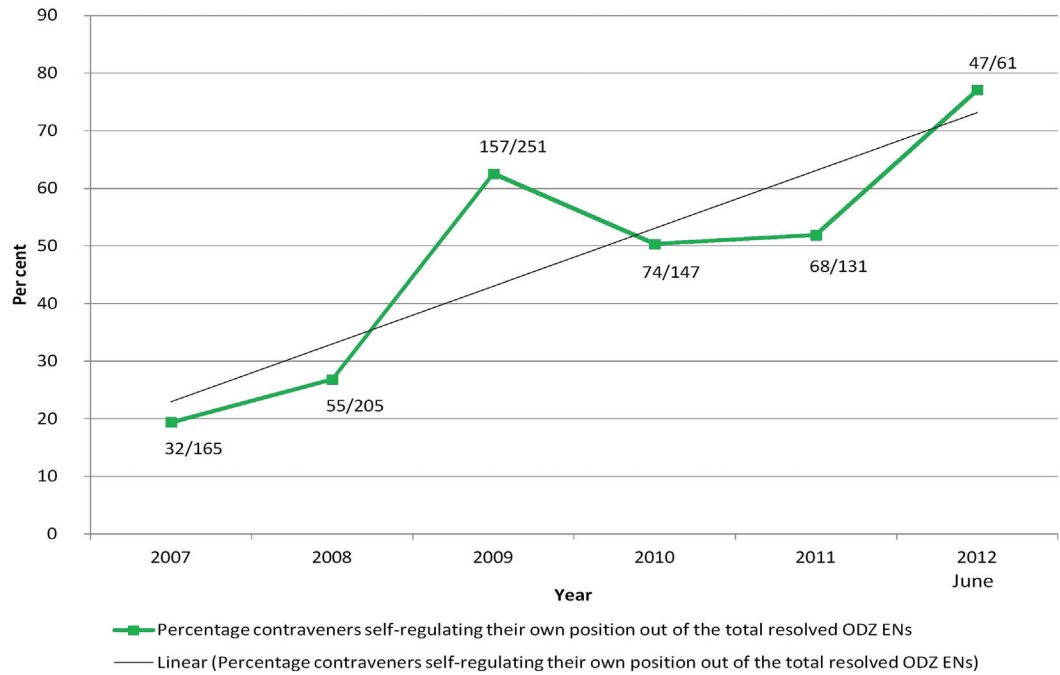
Around 22 per cent of the 110 ODZ ENs are pending at the Executable Stage

The prolonging of cases due to Appeals and Applications to Sanction prevailed in the Post MEPA 2010 Reform

MEPA is increasingly managing to persuade contraveners to self-regulate their own position

²⁴ The difference in the proportion of contraveners who self-regulated their own position quoted in Figures 10 and 11 materialises since the former statistic relates to ENs issued between January and June 2012. On the other hand, the latter discusses ENs that were mainly issued in preceding years but were resolved during the period January and June 2012.

Figure 11: Contraveners self-regulating their own position (2007 to 2012)



Source: MEPA

4.5 Conclusions

- 4.5.1 This Chapter discussed that the processing of ENs was characterised by the severe prolonging of procedures, particularly with regards cases identified before the 2010 MEPA Reform. This state of affairs ultimately impinged on MEPA’s enforcement effectiveness. In this context, processing delays resulted in a very high number of enforcement cases awaiting DA.
- 4.5.2 Predominantly, with respect to cases dating back prior the 2010 Reform, efficiency concerns arose when these remained in an inconclusive state for a number of years. A major contributory factor to the foregoing related to the lack of clear case ownership, where the practice was for enforcement officers to immediately refer ENs issued for DA.
- 4.5.3 The resultant untimely or lack of enforcement action also impinged on the Directorate’s deterrent function. Potential contraveners were more likely to proceed with irregular activities when the Authority’s enforcement arm was perceived as unable to expediently embark on remedial enforcement action. This scenario was particularly evident in cases dating back prior the 2010 MEPA Reform.
- 4.5.4 The prolonged processing times pertaining to these outstanding Executable cases together with the untimely decisions on DA options available to the Authority impinged negatively on the application of the polluter pays principle and the restoration of sites to, as close as possible, their original condition. With the passage of time, these objectives were increasingly rendered more problematic to achieve due to legal, administrative and operational issues.

- 4.5.5 The 2010 MEPA Reform has, to date, mainly focused on laying the foundations for the strengthening the enforcement function, namely through establishing the Enforcement Directorate and a management structure within it. Moreover, the Directorate embraced a strategy to focus on the more recent cases to provide a stronger deterrent against further promulgation of illegal development. This strategy, however, places limitations on the Directorate's ability to deal with the substantial backlog of Executable ENs accumulated over a period of around 20 years.
- 4.5.6 Since its establishment, the Enforcement Directorate has kick-started initiatives to encourage contraveners to self-regulate their position. While the Directorate has managed to encourage more contraveners to comply voluntarily, these actions are usually the result of prolonged negotiations between enforcement officers and contraveners.
- 4.5.7 This approach is seen to save on scant resources, and, in the long-term, stall the increasing number of outstanding Executable cases. Moreover, self-regulating measures convey a message to potential contraveners that planning and environmental irregularities will have to be remedied at the latter's expense. However, while MEPA's efforts to bring about self-regulation are acknowledged, in some instances such initiatives were characterized by excessive time lags, which diminished the cost-effectiveness of the Directorate's efforts to encourage voluntary compliance by contraveners. The latter illustrates that the Directorate has not yet been able to fully achieve this paradigm shift to the intended levels by making contraveners more aware of the potential benefits of self-regulation.
- 4.5.8 The processing of ENs is also prolonged since the Directorate is still in the process of implementing the relative duration benchmarks. Although drafted, the Enforcement Charter has not yet been officially approved by MEPA management. The lack of processing benchmarks implies that, for many years, the management of the enforcement function could not effectively evaluate performance against internally pre-determined processing targets.
- 4.5.9 Weak audit trails within the enforcement process prevail. Such instances diminish control throughout the enforcement procedures since the Directorate's Management will not have comprehensive information to monitor the quantity and quality of work of its employees. Weak audit trails also expose enforcement officers and the Authority to avoidable risks since documentation relating to communications with contraveners and other case related information is not always maintained.
- 4.5.10 The following Chapter of this Report examines the outcome of cases that were declared as Executable by the Enforcement Directorate. It evaluates the efficiency and effectiveness of the Executable actions, such as those related to DA, as well as the recoupment of expenses incurred by the Authority towards restoring sites to their original status from contraveners.

Chapter 5 - Implementation of enforcement decisions

5.1 Introduction

5.1.1 The implementation of enforcement decisions is considered as critical since it aims to put into practice the polluter pays principle, the restoration of sites to their original status and also to serve as a deterrent to potential contraveners. Despite the various enforcement mechanisms available to the Malta Environment and Planning Authority (MEPA), such as the execution of Direct Actions (DAs), Criminal Prosecutions and recently, through the imposition of Daily Fines and Concessions, the implementation of enforcement decisions only materialised in a small proportion of cases classified as Executable. Furthermore, in many cases where MEPA took DA, the Authority has not always managed to recoup expenses incurred from contraveners.

5.1.2 This Chapter aims to discuss the extent to which MEPA implemented effectively its own enforcement decisions through the various mechanisms at its disposal. Towards this end, the discussion focuses on the:

- decisions implemented by the Enforcement Directorate;
- lack of a prioritization policy with respect to Executable Enforcement Notices (ENs);
- Authority's inability to fully recover from contraveners expenses incurred with respect to DA taken; and
- recent changes in legislation, including the introduction of Daily Fines.

5.2 Only a small proportion of cases were subject to the implementation of enforcement decisions

5.2.1 As discussed in the preceding Chapter, as at March 2013, 2,182 ENs have been classified as Executable (vide paragraph 4.2.5) and were consequently, earmarked for potential enforcement action. However, the Authority has only taken enforcement decisions in a small proportion of these cases. Table 8 presents the number of enforcement initiatives related to Outside Development Zone (ODZ), which were executed over a seven year period up to end 2012.

5.2.2 Table 8 illustrates that the Authority took 464 enforcement actions during the period 2006 to 2012. The enforcement initiatives undertaken, even though in different forms, are considered to be relatively low when compared with the outstanding ODZ Executable ENs. Furthermore, not all enforcement actions depicted in Table 8 have been conclusively resolved. These instances mainly relate to cases where Court processing may be still in progress or the Authority was not able to recoup the expenses incurred with respect to DA taken.

Table 8: Enforcement action relating to ODZ Executable ENs (2006 to 2012)

Year	Executive Letters issued	Court cases	Small Claims Tribunal	Direct Action	Daily Fines
2006	38	26	21	8	n/a
2007	7	16	6	17	n/a
2008	0	12	0	7	n/a
2009	8	25	3	53	n/a
2010	1	22	0	41	n/a
2011	0	57	0	35	n/a
2012	15	29	1	15	1
Total	69	187	31	176	1

Source: MEPA

5.3.1 Over time, the status of the outstanding Executable ENs may have changed. There are various reasons why such a situation may have materialised. These may include self-regulation by the respective contravener, legislative changes and concessions as well as the endorsement of Application to Sanction by the Authority.

5.3.2 However, due to the limited resources available for a detailed review of all outstanding Executable ENs, as well as the lack of an appropriate monitoring and control system at the Enforcement Directorate, the Authority is not fully aware of the number of cases which are still eligible for Executable action.

5.3.3 Towards this end, the Enforcement Directorate carried out an exercise whereby ENs pending at the Executable stage were reviewed and updated accordingly. The exercise, however, focused on only 46 ODZ cases, and consequently the results cannot be considered as representative of the population of outstanding Executable ENs. This review revealed that, in many cases, Executable ENs related to irregularities concerning the erection of billboards would no longer be eligible for further action by the Authority. Such circumstances materialise since, over the passage of time, most of these billboards would have been removed by the contraveners.

5.3
The status of cases classified as Executable may have changed over time

5.4
The Enforcement
Directorate
lacks a clear
documented
prioritisation
policy to take
further action
regarding
Executable cases

- 5.4.1 MEPA's top management set internal strategic directions as to which type of action or context to prioritise with regards DA in instances of Executable cases. However, these strategic directions are not documented. Moreover, their circulation is restricted due to operational reasons. While the NAO acknowledges the importance of communication restrictions, such a situation implies that Management's decision relating to DA cannot be fully scrutinized against documented policies.
- 5.4.2 Current practices employed by the Directorate entail that decisions relating to action to be taken in Executable cases consider various factors, which include the environmental and socio-economic impact and outcomes associated with specific cases. On this basis, DA to address irregularities tends to be biased towards the more recent cases. Despite its validity, the opportunity cost of such rationale is that no action is being taken against many cases, which have remained outstanding for a substantial number of years.
- 5.4.3 The absence of documented policies on case prioritization is translating itself in a situation where a considerable number of irregularities, as cited in the substantial number of outstanding Executable ENs, prevail to the advantage of individual contraveners and to the detriment of the rest of society.
- 5.4.4 The foregoing clearly illustrates that the lack of documented prioritization policies also raises governance related issues. These mainly relate to the transparency associated with decision-making processes at the Authority. Moreover, the Directorate's decisions for action with respect to Executable cases are generally not fully supported with reasons justifying the timing and course of action to be taken in specific cases.
- 5.4.5 Conversely, the principles of transparency and accountability for decision making are somewhat diminished since there are no mechanisms in place which drives the Directorate to document its justification why cases classified as Executable were not referred for the necessary further action when a pre-defined time-period would have elapsed.

5.5
Administrative
shortcomings
weaken the
application of
the polluter pays
principle

- 5.5.1 In cases where MEPA removes irregular development or activities through DA initiatives it passes the costs incurred on to the respective contraveners. The Authority's recovery of such costs is in line with the polluter pays principle and the zero-tolerance approach on irregularities within the ODZ advocated by the MEPA 2010 Reform.
- 5.5.2 Over the past years, however, MEPA has not been able to recoup a substantial proportion of DA related expenditure. This situation mainly resulted since MEPA did not have the appropriate mechanisms in place to ascertain that all contraveners were duly invoiced and that they settled the relative outstanding dues.
- 5.5.3 During the period 2006 to 2012, the DA list maintained by the Enforcement Directorate shows that MEPA carried out 176 DAs. However, records maintained by the Authority are fragmented and in, some cases, the relative information was not available.
- 5.5.4 The National Audit Office (NAO) review revealed that the Authority only invoiced 135 contraveners out of the 176 DAs. The remaining 41 cases were not invoiced due to the following reasons:
- i. Seven cases dating back to 2006 and 2007 were not charged to contraveners as the Authority did not maintain full case documentation and, consequently, could

not draw up the respective invoices. The documentation available regarding these cases could only account for €65,484 and excluded administrative and operational fees incurred by the Authority. The Authority did not initiate action to, as a minimum, recoup this amount and these cases are now considered time-barred.

- ii. Five cases relating to DA carried out during 2009 were not billed with the relative costs since MEPA Management is still in the process of deciding whether to issue the relative invoices. This delay materialised following the receipt of various complaints concerning these DA initiatives and the subsequent internal audit report. The expenditure related to these cases was not made available to the NAO.
- iii. In three cases, MEPA did not issue the relevant invoices for the DA carried out during 2010 to 2012 since such action was not actually due. Similarly to the situation in the previous paragraph, the NAO was not furnished with the relevant expenditure incurred.
- iv. In 19 cases, ownership of the sites in question could not be conclusively determined. Expenditure related to these cases amounted to €57,550.
- v. In a further seven cases, MEPA was still in the process of calculating the expenditure incurred for DA carried out in 2012.

5.5.5 The above implies that the Authority billed 135 contraveners with respect to the 176 DAs undertaken during the period 2006 to 2012. Towards this end, MEPA sought to recoup €521,253 out of a minimum DA related expenditure of €643,339. Table 9 refers.

Table 9: DA costs charged to contraveners (2006 to 2012)

	Cases (No.)	Amount (€)
DA cases carried out	176	643,339
DA expenditure not charged to contraveners as outlined in paragraph 5.5.4	41	122,086
DA expenditure charged to contraveners	135	521,253

5.5.6 Table 9 shows that €122,086, which constitutes around 19 per cent of the documented total expenditure incurred by MEPA with respect to the DAs, was not charged to the relative contraveners. Out of the 176 DA cases, 41 contraveners were not served with an invoice for the costs incurred by MEPA with respect to the removal of irregularities.

5.5.7 The foregoing implies that only 135 contraveners were billed for €521,253 with respect to DA taken by MEPA in relation to planning and environmental irregularities on the respective sites. Table 10 shows that, at the time of drafting this Report, MEPA only managed to recoup around 14 per cent of the invoiced amount.

Table 10: Outstanding DA charges (2006 to 2012)

DA expenses	Amount (€)
Total invoiced	521,253
Waived	9,351
Settled	73,573
Outstanding	438,329

5.5.8 The resultant outstanding amount depicted in Table 10 shows that the Authority is encountering considerable problems to recoup DA related expenditure from contraveners. In part, this problem relates to cases where administrative and legal proceedings are ongoing. The latter consists of 16 cases amounting to €135,334. The remaining dues have not yet been recouped since MEPA does not have the appropriate administrative structure and mechanisms in place to ascertain that outstanding monies are collected in an expedient manner.

5.5.9 This section focused only on cases dating back to 2006. However, there is a substantial amount of outstanding DA related bills pertaining to previous years in both the ODZ and Within Scheme areas. In total, all DA related arrears as at end June 2013 amounted to €756,722. Furthermore, the risk exists that outstanding amounts pertaining to years prior 2006 may become statute barred.

5.5.10 The proportion of outstanding monies to be collected from contraveners suggests that the polluter pays principle is only partly being implemented. Similarly, whilst the zero tolerance approach as advocated by the MEPA Reform of 2010 is being translated in various enforcement initiatives, it would not be fully implemented unless the relative expenditure incurred by the Authority to remove irregular structures or activities is recouped from contraveners.

5.6.1 Legislation enacted in connection with the MEPA 2010 Reform sought to facilitate the enforcement function by further promoting the polluter pays principle and a zero tolerance approach towards irregularities committed within the ODZ.

5.6.2 The Environment and Development Planning Act of 2010 (EDPA) has introduced the following major changes:

- As per Article 90(5) of the EDPA, all expenses reasonably incurred by the Authority in the exercise of its DA powers, shall be recoverable as a civil debt from the owner of the land, from any occupier or from any person responsible for the acts mentioned in the Notice. This was different from the Development and Planning Act (DPA) of 1992, whereby Article 55A(4) stated that such expenses could only be recoverable from the owner of the land. Such legislative amendment in particular solved the anomalous situation where MEPA could legally pursue only the Lands Department regarding irregularities committed in public land, even if done by known squatters with no legal title on the land.
- As per Article 70(1)(b) of the EDPA, any Application to Sanction or permission shall not be processed or granted until the applicant has paid fines or made such other payments as may be due on site. In Article 34(1)(b) of the DPA, such payments were necessary only prior to the issue of the permits. This change ensures that DA bills are paid up-front, before any Application to Sanction may be submitted, facilitating the recoupment of expenses especially for enforcement cases whereby the Application to Sanction is not granted.

5.6
The introduction
of Daily
Fines aims to
encourage more
compliance with
Planning and
Environmental
legislation

- Article 90(6-7) of the EDPA now enables the Chairman, Chief Executive Officer or delegate of the Authority to make a declaration to sue the contravener for the recovery of debt due with respect to DAs. Such declaration must be served by means of a judicial act and have the same effect as a final judgment of the competent Court, unless the debtor opposes the claim in court. This provision was not available in the DPA.
- 5.6.3 In addition to the above-mentioned changes in legislation, the Authority also brought into effect legislative provisions relating to the imposition of Daily Fines in cases of development and environmental irregularities. These provisions were included in the DPA of 1992 where a Daily Fine of €11.65 (Lm5) was envisaged. However, these fines could not be imposed prior to the enactment of the relative legal notice. The recently enacted legislation (Appendix III refers) has increased the maximum applicable fine to €50 daily, and became effective on 24 November 2012. Consequently, despite the 1992 provisions, this enforcement mechanism cannot be applied to contraventions committed before 24 November 2012, even though the irregularity has prevailed beyond this date.
 - 5.6.4 The introduction of Daily Fines are considered as a crucial mechanism to discourage contraveners from embarking on illegal developments. Prior to the introduction of this enforcement mechanism, contraveners continued to benefit from irregular practices for considerable periods, that is until the time that MEPA invoked DA to put a stop to the irregularities. In this light, Daily Fines are also seen as motivating contraveners to regularise their position in the shortest possible period.
 - 5.6.5 Daily Fines become due at the time that an EN is issued and the contravener is legally notified. Consequently, the longer contraveners take to self-regulate their own position, then the higher the accumulated penalty in terms of the Daily Fines. The NAO was informed that, in a number of cases, contraveners removed the illegalities within the first 16 days following the notification of the Daily Fine, since this would exempt them from paying such fines.
 - 5.6.6 In the case that the Board of Appeals decides against the contravener, Daily Fines would still be payable from the notification date of the relative EN. Such provisions have the aim of minimizing frivolous appeals from parties and consultants who may have found the lodging of Appeals or an Application to Sanction lucrative.
 - 5.6.7 These fines are an opportunity for enforcement to be much more effective. It also addresses many of the concerns pointed out in this performance audit Report. This would present a stark contrast to the situation currently being presented by the large accumulated case-load of Executable cases where, due to the passage of time, legal, administrative and operational complexities arise, and potentially restrict MEPA's options on viable courses of action.
 - 5.6.8 The introduction of Daily Fines also addresses the widespread cases where it is considered inopportune for MEPA to tackle contraventions by removing the illegalities in question. In such instances, the imposition of Daily Fines are seen to further motivate contraveners to self-regulate their position at the earliest opportunity.
 - 5.6.9 Furthermore, Daily Fines are also seen as minimising the financial implications associated with delays in the removal of the illegal development, since the fine would just continue accruing, up to a maximum of €50,000. The only drawback to this system is that it would eventually entail a greater input from legal resources to recoup the monies, than is currently the case with DA bills. However, the success of the Daily Fines is of paramount importance for Enforcement, and any resources attached

to such a function should pay off. Recently a Legal Procurator was deployed within the Enforcement Directorate, and the recovery of monies due will be one of his main responsibilities.

5.6.10 The Daily Fines mechanism was established only a few months ago and, consequently, its outcome cannot be effectively evaluated against its intended objectives, as discussed in the preceding paragraphs. Nevertheless, MEPA has already invoked this mechanism with respect to a number of new illegal developments noted by the Authority during 2013 and other irregularities relating to further breaches of previously issued ENs.

5.6.11 Despite its potential to encourage greater planning and environmental compliance, to date, MEPA is in the process of supporting the implementation of Daily Fines with the relevant internal control mechanisms to ascertain the consistent application of these legal provisions. Towards this end, the Authority approved the Enforcement Protocol, which established the procedural framework relating to the issue of ENs. Adherence to this Protocol is considered as critical since the imposition of Daily Fines is directly related to the EN notification date.

5.7 Conclusions

5.7.1 The effective adoption of a zero tolerance approach regarding irregularities within the ODZ and ascertaining that polluters are held accountable for their actions is dependent on MEPA's ability to implement enforcement decisions. This Chapter has shown that, for a number of reasons, the Authority has not been able to follow-up its work by making timely enforcement decisions, since only a minority of Executable cases were subjected to DA initiatives. Moreover, in these instances, the Authority only managed to recoup a small proportion of costs incurred from contraveners.

5.7.2 The undertaking of DA is not an inexpensive proposition. In most cases, it involves legal fees, the engaging of contractors to remove illegal structures, and police assistance to protect MEPA officials involved in such action. The Authority's budget in this respect has historically been limited and consequently this affected the number of cases which could be addressed.

5.7.3 In cases of limited resources, case prioritization takes on added importance. Yet, towards this end, the Enforcement Directorate does not have documented internal policies. These circumstances deviate from the principles of transparency and do not offer the Directorate's officials formal guidelines on prioritising cases for DA. This has led to a situation whereby the Directorate mostly focuses on the relatively recent cases. However, the opportunity cost of this approach is that the older Executable cases have remained outstanding for a considerable period.

5.7.4 Delays, or even the non-recoupment of costs incurred in relation to DA, further diminishes the effectiveness of the enforcement function. Moreover, this situation prohibits the consistent application of the polluter pays principle. The prevailing administrative shortcomings in ensuring that DA costs incurred by the Authority are duly recovered also raises the risk that, in some cases, revenue due could end up as either bad debts or time-barred.

- 5.7.5 The issues raised in this Chapter showed that the enforcement function was not fully able to apply a zero tolerance approach and to implement the polluter pays principle. In this light, MEPA may have also weakened its deterrent factor. Potential contraveners may be encouraged to commit irregularities on the premise that delayed enforcement action may render illegalities advantageous to them.
- 5.7.6 The recently introduced Daily Fines has the potential to be an effective enforcement tool, although it addresses only cases pertaining to post November 2012 infringements. It is conducive to implement the objectives associated with the enforcement function since it can serve as an appropriate deterrent by financially penalising contraveners from the time the irregularity is detected up to the time that the position is regularised. Nevertheless, the effectiveness of this mechanism is dependent on the Authority's ability to implement it consistently, transparently and in a timely manner.

Appendix I: Regions within Malta and Gozo, in accordance with MEPA Local Plans

Regions within Malta and Gozo	Localities
Gozo & Comino	L-Għarb, L-Għasri, Iż-Żebbuġ, Marsalforn, Il-Qbajjar, ix-Xagħra, San Lawrenz, Id-Dwejra, Ta' Kerċem, Ir-Rabat, Il-Fontana, Ix-Xlendi, Il-Munxar, Ta' Sannat, Ix-Xewkija, Ta' Ċenċ, Għajnsielem, In-Nadur, Il-Qala, L-Imġarr.
North West	Il-Mellieħa, San Pawl il-Baħar, Ix-Xemxija, Il-Manikata, Burmarrad, L-Imġarr, Iż-Żebbiegħ, Il-Baħrija, L-Imtarfa, L-Imdina, Ir-Rabat, Ғad-Dingli, Is-Salina.
Central	ҒAttard, Ғal Balzan, Birkirkara, Ғal Għargħur, Il-Ғamrun, L-Iklin, Ғal Lija, Il-Mosta, In-Naxxar, Ғal Qormi, Santa Venera.
North Harbour Area	L-Imsida, Il-Gżira, Ta' Xbiex, Tal-Pietà, Pembroke, Paceville, San Ġwann, Tas-Sliema, San Ġiljan, Is-Swieqi.
Grand Harbour Area	Il-Belt Valletta, Floriana, <i>Il-Marsa</i> , Kordin, Bormla, L-Isla, Il-Birgu, Il-Kalkara.
South²⁵	Iż-Żurrieq, Ғal Safi, Ғal Kirkop, Il-Qrendi, L-Imqabba, Ғal Għaxaq, Il-Gudja, Ғal Luqa, Is-Siġġiewi, Ғaż-Żebbuġ, <i>Il-Marsa</i> , Paola, Ғal Tarxien, Santa Luċija, Il-Fgura, Iż-Żejtun, Marsaskala, Ғaż-Żabbar, Ix-Xgħajra, Marsaxlokk, Ғal Far.

Source: MEPA

²⁵ For the purpose of this audit, the Marsaxlokk Local Plan was included with the South region.

Appendix II: Definition of the irregularities identified by MEPA, as classified by the NAO for the purpose of this Report

Type of Illegality	Definition
<p style="text-align: center;">Advert</p>	<p>Advertisement means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction, including any boarding or similar structure used or adapted for use for the display of advertisements; [Source: CAP. 504 Part 1(2)]</p> <p>N.B. The enforcement cases sampled by the NAO for the purpose of this Report, in relation to this <i>Type of Illegality</i>, were mainly related to billboards.</p>
<p style="text-align: center;">Alteration</p>	<p>Building operations includes rebuilding operations, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder; [Source: CAP. 504 Part 1(2)]</p> <p>N.B. The enforcement cases sampled by the NAO for the purpose of this Report, in relation to this <i>Type of Illegality</i>, were mainly related to minor alterations without prior permission from MEPA, with respect to rooms, boundary walls, a ramp and stairway.</p>
<p style="text-align: center;">Breach of Condition</p>	<p>The non-observance of the criteria defined in the approved development permit plans.</p> <p>N.B. The enforcement cases sampled by the NAO for the purpose of this Report, in relation to this <i>Type of Illegality</i>, were related to the non-observance of the criteria defined in the approved development permit plans, such as modifications to rooms (residential or agricultural), garage, roadside wall and pool.</p>
<p style="text-align: center;">Change of Use</p>	<p>Change of use of a permitted structure and/ or correlated activities.</p> <p>N.B. The enforcement cases sampled by the NAO for the purpose of this Report, in relation to this <i>Type of Illegality</i>, were mainly related to agricultural land used for parking or scrap-yard.</p>

<p style="text-align: center;">Dumping</p>	<p>Discharge includes emission, deposit, dumping, disposal, addition or introduction into the environment of a substance or energy, directly or indirectly from any point source or diffuse source, whether stationary or mobile, and whether caused or permitted intentionally or otherwise and whether continuous or intermittent or once only; [Source: CAP. 504 Part 1(2)]</p> <p>N.B. The enforcement cases sampled by the NAO for the purpose of this Report, in relation to this <i>Type of Illegality</i>, were mainly related to inert building material, vehicles and other general waste.</p>
<p style="text-align: center;">Encroachment</p>	<p>The protrusion beyond official alignment indicated by MEPA.</p> <p>N.B. The enforcement cases sampled by the NAO for the purpose of this Report, in relation to this <i>Type of Illegality</i>, were mainly related to soil deposition, passageway, ditch and quarry.</p>
<p style="text-align: center;">Equipment</p>	<p>A set of tools or devices assembled for a specific purpose.</p> <p>N.B. The enforcement cases sampled by the NAO for the purpose of this Report, in relation to this <i>Type of Illegality</i>, were mainly related to antennas, chimneys and water dispensers.</p>
<p style="text-align: center;">Excavation</p>	<p>To make a whole, cavity or tunnel in solid matter by removing inner parts.</p> <p>N.B. The enforcement cases sampled by the NAO for the purpose of this Report, in relation to this <i>Type of Illegality</i>, were mainly related to reservoirs and passageways.</p>
<p style="text-align: center;">Illegal Structure/Building</p>	<p>Building includes any structure or erection and any part of a building, but does not include plant or machinery comprised in a building; [Source: CAP. 504 Part 1(2)]</p> <p>N.B. The enforcement cases sampled by the NAO for the purpose of this Report, in relation to this <i>Type of Illegality</i>, were mainly related to agricultural rooms, bird trapping hides, boathouses, garage, boundary wall, canopy, farm, and other rooms.</p>

Appendix III: Daily Fines schedule

CATEGORY	NOTIFICATION DATE +				
	0 - 16 days	17 - 50 days	51 - 180 days	181 - 365 days	366 days +
A	nil	€ 2 daily	€ 2 daily	€ 2 daily	€ 4 daily
B	nil	€ 4 daily	€ 10 daily	€ 20 daily	€ 25 daily
C	nil	€ 10 daily	€ 20 daily	€ 40 daily	€ 50 daily

In case of multiple illegalities on the same site at time of issue of an Enforcement Notice, the highest rate for the illegal development carried out after the coming into effect of these provisions, will be imposed. Illegalities in breach of existing Enforcement Notices, will be considered individually and additionally.

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