

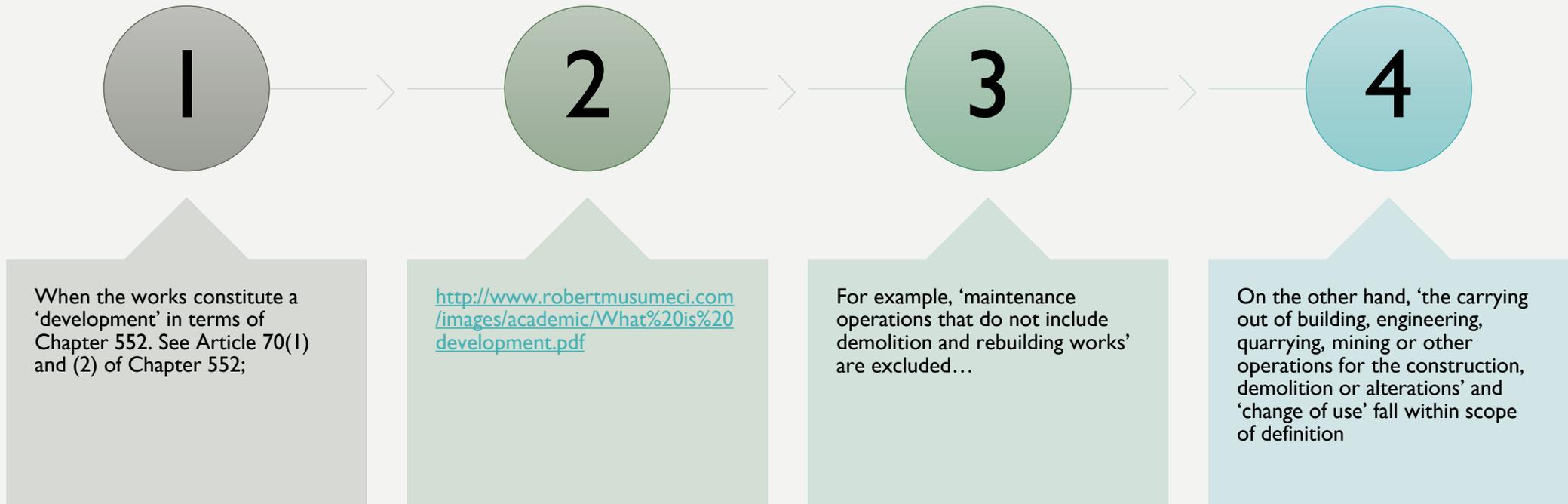
# **DEVELOPMENT PLANNING LAW**

**ERLI001 DEVELOPMENT PLANNING LEGISLATION**

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# WHEN IS APPLICANT OBLIGED TO SUBMIT A DEVELOPMENT APPLICATION?



# WHO TAKES CARE OF THE APPLICATION?

A perit acting on behalf of the owner

Applicant/Perit are required to decide whether to opt for a summary application/ outline development application/ regularisation application/ full development application

Types of Planning Permission Article accessible at :  
<http://www.robertmusumeci.com/images/academic/Types%20of%20Permissions.pdf>

**LN 162/16 DEVELOPMENT PLANNING PROCEDURE FOR APPLICATIONS AND THEIR DETERMINATION) REGULATIONS** determines the way forward for summary application/ outline development application/ full development application;

**LN285/16 Regularisation of Existing Development Regulations, 2016** determines the way forward for summary application/outline development application/full development application;

# WHAT IF APPLICANT IS NOT SITE OWNER?

- Article 71(4) provides that in such cases, applicant is to inform the site owner with his intention to apply and obtain his consent;
- What if consent is not forthcoming? Is procedure nullified?
- What if there is a dispute on ownership? Should the PA determine ownership issues or simply issue permission subject to third party civil rights?
- What if consent is withdrawn?
- [Owners' Consent in Planning Applications Article accessible at :](http://www.robertmusumeci.com/images/academic/Owners%20consent.pdf)  
<http://www.robertmusumeci.com/images/academic/Owners%20consent.pdf>

# CONSULTATIONS

- Once application is validated, it is open to external (ex: ERA, SCH) and internal consultations (SEO);
- In parallel, application is open to representations from the public;
- There is no need for third parties to show a juridical interest, in other words, a personal interest (a necessary condition for making a civil action)

# CASE OFFICER

- Case officer prepares a recommendation but ultimately, it is up to the Planning Board or the Planning Commission to decide the application;
- The PA Board or PC may overrule the recommendation.

# CRITERIA TO DETERMINE PLANNING APPLICATIONS

## ARTICLE 72(2) OF CHAP. 552:

*'The Board 'shall have regard to...' Plans/ Policies/  
Regulations made under the Act/ Material Considerations  
which the PA deems relevant/ Representations (External/  
Internal/ Objectors) ...'*

**Q1: WHAT IS THE MEANING OF  
'MATERIAL CONSIDERATION WHICH  
THE PA DEEMS RELEVANT'?**

## THE MEANING OF HAVING 'REGARD TO'

- What is the meaning of having '*regard to*'?
- *Enfield L.B.C. v Sec State for Environment*. “the requirement '*to have regard to*' the development plan does not make adherence to the plan mandatory”;
- *Grandsen (E.C.) & Co. v Sec. of State* .“...as long as a policy is properly considered, the decision does not have to adhere rigidly to it, but clear-cut reasons must be given for not doing so”

## THE MEANING OF 'HAVING REGARD TO'

### BUT ACCORDING TO RECENT MALTESE CASE LAW:

*'...l-artikolu 72(2) tal-Kap. 552 jipprovdi li l-Bord ghandu jqis l-ewwel u qabel kollox pjanijiet u policies imressqa quddiemu u ghandu jqis ukoll kull haga ohra ta' sustanza inkluz commitments. Il-kliem tal-artikolu hu car fil-fehma tal-Qorti u ma biddel xejn mill-gurisprudenza l-aktar ricenti fil-materja. **L-enfasi tal-legislatur hi fuq aderenza ghal ligijiet, pjanijiet u policies u fatturi ohra jittiehdu in konsiderazzjoni basta ma jxejnux il-ligijiet, pjanijiet u policies applikabbli ghal kaz...**'*

(DEBRINCAT v PA – Q.A. (Inf) 24/10/18)

## REMEDIES AFTER PA DECISION FOUND IN CHAPTER 551

- *11.(1) Subject to the provisions of the Development Jurisdiction, Planning Act, 2016, the Tribunal shall have jurisdiction to: (a) hear and determine all appeals made by the applicant from a decision taken following an application: (i) for a development permission.....*
- *11.(3) An appeal to the Tribunal may be filed on **any ground** including: (a) that a material error as to the facts has been made; (b) that there was a material procedural error; (c) that an error of law has been made.*
- ***38.** (1) The decisions of the Tribunal shall be binding on the Planning Authority, external consultees, registered interested third parties and any other person and, or entity affected by the decision, if they are supported by the opinion of two of its members, and the dissenting member, if any, may express his opinion separately.*
- ***39.** The decisions of the Tribunal shall be final and no appeal shall lie therefrom, except on **a point of law decided by the Tribunal** or on any matter relating to an alleged breach of the right of a fair hearing before the Tribunal*

**Q2: WHAT IS THE DIFFERENCE  
BETWEEN POINT OF LAW AND POINT  
OF FACT?**

**THANK YOU VERY MUCH!**