

**THE SIGNIFICANCE  
OF  
STRUCTURE PLAN POLICIES  
ON  
THE NATURAL ENVIRONMENT IN  
MALTA**

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Thesis presented for the Degree of Doctor of Philosophy

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## **DECLARATION**

This work has not previously been accepted in substance for any degree and is not being concurrently submitted in candidature for any degree.

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## **Abstract**

In Malta, the introduction of the Structure Plan followed a period of haphazard development which was perceived as ruining the characteristics of the island; the aim of the thesis is to determine whether the Structure Plan policies, in effect since 1992, have protected the natural environment in Malta.

In 1988, the island was divided into two zones, one in which development was permissible under Temporary Provision Schemes and the remaining much larger area, commonly known as “Outside Development Zone”. The study focused mostly on the latter area, and analysed through the use of development control data, the pressures which were exerted on the natural environment. This it did through the use of different methodologies, adapted from the work of several authors, who worked on the British planning system. Application, decision and enforcement data together with cartographic analyses and direct observations of decision boards were used in the study.

The study demonstrated that Outside Development Zone was subjected to significant development pressure. The major cause of the development was policy breaches at decision level, which were not found to be restricted to any particular decision board. Most policy breaches occurred when granting permission to develop; refusals mainly being in line with policy. The agricultural and the dwellings group of developments were those which benefited most from such policy breaches.

The results showed that Structure Plan policies had a positive effect on the decision-making process Outside Development Zone, only when the decision boards applied these policies correctly. However, over time, the performance of decision boards has improved.

It is recommended that changes in the legislation occur to introduce a requirement whereby a decision (grant / refusal) should be accompanied by detailed reasons based on policy, thus limiting abuses. In addition, there is scope for additional studies focusing on the application of the only Local Plan in effect in Malta and on the effects on the environment of the less common development types.

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*Dedicated to all the decision-makers whose decisions were reviewed in this study. You will be remembered by the present and future generations for the decisions you made which have negatively affected the natural environment of the Maltese Archipelago.*

*The Maltese people are grateful for your work!*

*“When it comes to the future, there are three kinds of people:*

*those who let it happen,*

*those who make it happen,*

*and those who wonder what happened.”*

**Carol Christensen**

## TABLE OF CONTENTS

1	INTRODUCTION.....	1
1.1	OBJECTIVES .....	1
1.1.1	<i>Justification</i> .....	3
1.2	OUTLINE OF THIS STUDY.....	5
1.3	THE MALTESE ISLANDS .....	5
1.3.1	<i>Geology</i> .....	6
1.3.2	<i>The Soil</i> .....	6
1.3.3	<i>Geomorphology</i> .....	8
1.3.4	<i>The Climate</i> .....	10
1.3.5	<i>Flora and Fauna</i> .....	10
1.3.6	<i>Population Dynamics</i> .....	12
1.3.7	<i>Settlement Patterns</i> .....	14
1.3.8	<i>Architectural and Archaeological Heritage</i> .....	15
1.3.9	<i>Economic Trends</i> .....	19
1.4	THE HISTORICAL EVOLUTION OF PLANNING IN MALTA .....	28
1.4.1	<i>The Planning Area Permits Board</i> .....	33
1.4.2	<i>Building Development Areas Act, 1983</i> .....	37
1.4.2.1	<i>The Effects of the BDA Act</i> .....	39
1.4.3	<i>Building Permits (Temporary Provisions) Act, 1988</i> .....	40
1.4.4	<i>Development Planning Act, 1992</i> .....	48
1.4.5	<i>Repealed Legislation</i> .....	50
1.5	ENVIRONMENT PROTECTION LEGISLATION.....	51
1.6	THE CONTEXT IN THE FORMULATION OF THE STRUCTURE PLAN .....	52
1.7	PRESSURES ON THE NATURAL ENVIRONMENT .....	56
1.7.1	<i>Home Ownership Schemes</i> .....	57
1.7.2	<i>Natural Resources</i> .....	58
1.7.3	<i>Inert Waste</i> .....	58
1.7.4	<i>Housing Scenario</i> .....	59
1.7.5	<i>Land Consumption</i> .....	61
1.7.6	<i>Pressures on the Countryside</i> .....	63
1.7.6.1	<i>Offroading</i> .....	63
1.7.6.2	<i>Hunting and Trapping</i> .....	64
1.7.7	<i>Agriculture</i> .....	67
1.8	CONCLUSION.....	67
2	THE DEVELOPMENT PLANNING ACT 1992 (AS AMENDED 1997).....	70
2.1	PARTICIPANTS IN THE PLANNING PROCESS .....	71
2.1.1	<i>Incumbent government</i> .....	72
2.1.2	<i>Developers</i> .....	73
2.1.3	<i>Planners and Architects</i> .....	75
2.1.4	<i>Non-governmental Organisations</i> .....	76
2.1.5	<i>Public</i> .....	77
2.1.6	<i>Decision-makers</i> .....	78



2.2	BOARDS, COMMITTEES AND COMMISSIONS OF THE PLANNING AUTHORITY.....	78
2.2.1	<i>Board of the Planning Authority</i> .....	79
2.2.2	<i>Development Control Commission</i> .....	80
2.2.3	<i>Planning Appeals Board</i> .....	83
2.2.4	<i>The Planning Consultative Committee</i> .....	84
2.2.5	<i>Users' Committee</i> .....	84
2.2.6	<i>The Assessment Panel</i> .....	85
2.2.7	<i>Inter-Departmental Planning Committee</i> .....	85
2.2.8	<i>Minerals Board</i> .....	86
2.2.9	<i>Heritage Advisory Committee</i> .....	88
2.3	DEVELOPMENT PLANNING.....	89
2.4	SUBSIDIARY PLANS.....	90
2.4.1	<i>Subject Plans</i> .....	90
2.4.2	<i>Local Plans</i> .....	91
2.4.3	<i>Action Plans</i> .....	91
2.5	DEVELOPMENT CONTROL.....	91
2.5.1	<i>Definition of Development</i> .....	92
2.5.2	<i>Development Orders</i> .....	93
2.5.3	<i>Development Applications</i> .....	93
2.5.4	<i>Determining an Application</i> .....	94
2.5.5	<i>Sanctioning Illegal Development</i> .....	96
2.5.6	<i>Access to Development Material</i> .....	96
2.5.7	<i>Timeframe for Decision-Making</i> .....	98
2.5.8	<i>Follow-up to Decision-Making</i> .....	99
2.5.9	<i>Development by Government Bodies</i> .....	102
2.5.10	<i>Mineral Development</i> .....	103
2.5.11	<i>Modifying Development Permission</i> .....	104
2.6	BUILDING CHARGES.....	104
2.7	OTHER POWERS OF DEVELOPMENT CONTROL.....	105
2.8	ENFORCEMENT.....	106
2.8.1	<i>Stop Notices</i> .....	109
2.8.2	<i>Enforcement Notices</i> .....	110
2.8.3	<i>Appeals against Stop and Enforcement Notices</i> .....	112
2.8.4	<i>Other Enforcement Provisions</i> .....	113
2.9	LEGAL SAFEGUARDS.....	113
2.10	DEVELOPMENT OFFENCES AND PENALTIES.....	114
2.11	SUPPLEMENTARY PROVISIONS.....	116
2.12	CONCLUSION.....	117
3.	STRUCTURE PLANNING.....	120
3.1	INTRODUCTION.....	120
3.2	ORIGIN OF STRUCTURE PLANS.....	121
3.3	USE AND SIGNIFICANCE OF STRUCTURE PLANS.....	124
3.4	CRITICISM TO STRUCTURE PLANNING.....	124
3.5	PROBLEMS OF IMPLEMENTATION.....	126
3.6	STRUCTURE PLAN FOR THE MALTESE ISLANDS.....	132
3.6.1	<i>Settlement Pattern</i> .....	134
3.6.2	<i>Built Environment</i> .....	136

3.6.3	<i>Housing</i> .....	139
3.6.4	<i>Agriculture, Horticulture and Fisheries</i> .....	140
3.6.5	<i>Minerals</i> .....	147
3.6.6	<i>Tourism and Recreation</i> .....	155
3.6.7	<i>Conservation</i> .....	164
3.6.7.1	Urban Conservation Areas .....	165
3.6.7.2	Rural Conservation Areas.....	165
3.7	CONCLUSION.....	192
4.	METHODOLOGY.....	196
4.1	INTRODUCTION .....	196
4.2	LITERATURE REVIEW.....	197
4.2.1	<i>Context of Policy Analysis</i> .....	197
4.2.2	<i>Development Control Data</i> .....	202
4.2.2.1	Problems with the use of Development Control Data .....	210
4.2.3	<i>Case Studies</i> .....	219
4.2.4	<i>Policy Analysis</i> .....	225
4.2.5	<i>Use of Appeals Data</i> .....	231
4.2.6	<i>Enforcement Activity Data</i> .....	233
4.2.7	<i>Sampling</i> .....	233
4.2.8	<i>Statistical Analysis</i> .....	234
4.3	METHODOLOGY .....	235
4.3.1	<i>Preliminary Analysis</i> .....	239
4.4	CONCLUSION.....	256
5.	RESULTS .....	259
5.1	INTRODUCTION .....	259
5.2	ANALYSES .....	260
5.2.1	<i>Application Data</i> .....	260
5.2.2	<i>Pre-PA era</i> .....	263
5.2.3	<i>Post-PA era</i> .....	264
5.2.4	<i>Analyses with Filtered Data</i> .....	274
5.2.5	<i>Analyses on Decision Data</i> .....	283
	HYPOTHESIS TESTING FOR GTD DATA .....	311
	HYPOTHESIS TESTING FOR REF DATA .....	312
5.2.6	<i>Case Study Analysis of Development Planning Files</i> .....	313
5.2.7	<i>Analyses of Enforcement Data</i> .....	345
5.2.8	<i>Cartographic Analyses</i> .....	356
5.2.9	<i>Case Studies from Decisions of the Planning Appeals Board (PAB) and the Court of Appeal</i> .....	363
5.2.10	<i>Direct Observation</i> .....	409
5.3	CONCLUSION.....	423
6.	DISCUSSION .....	427
6.1	STRUCTURE PLAN AND ITS POLICIES .....	429
6.1.1	<i>Policy-Permitted Development ODZ</i> .....	435
6.2	LEGISLATION PERMITTING DEVELOPMENT ODZ.....	444
6.3	THE PLANNING SYSTEM .....	445

6.3.1	<i>Pressure created by Development through the Application System</i> .....	445
6.3.2	<i>Pressure created by Development through the Decision-Making Process</i> .....	448
6.3.2.1	Analyses of sampled decision files.....	462
6.3.3	<i>Pressure created from Illegal Development</i> .....	470
6.3.4	<i>Development Pressure from Appeals</i> .....	475
6.4	DIRECT OBSERVATION OF DECISION BOARDS .....	489
6.5	CONCLUSION.....	494
7.	CONCLUSION .....	499
7.1	LIMITATIONS OF THIS STUDY .....	500
7.1.1	<i>Literature</i> .....	500
7.1.2	<i>Applications and Decision Data</i> .....	501
7.1.3	<i>Enforcement Data</i> .....	502
7.1.4	<i>Cartographic Analyses</i> .....	503
7.1.5	<i>Appeals Data</i> .....	503
7.1.6	<i>Direct Observation</i> .....	504
7.1.7	<i>GIS</i> .....	505
7.2	RECOMMENDATIONS AND FUTURE STUDIES .....	505
7.2.1	<i>Databases</i> .....	505
7.2.2	<i>Ambiguous Codes</i> .....	506
7.2.3	<i>Double Counts</i> .....	506
7.2.4	<i>Habitats</i> .....	506
7.2.5	<i>Baseline Study</i> .....	507
7.2.6	<i>Effect of Local Plan</i> .....	508
7.2.7	<i>Direct Observations</i> .....	508
7.2.8	<i>Decision Boards</i> .....	509
7.3	APPRAISAL OF THE METHODOLOGY USED IN THE STUDY .....	509
7.4	GENERAL CONCLUSIONS OF STUDY .....	515
7.4.1	<i>Structure Plan Policies</i> .....	515
7.4.2	<i>Subsidiary Legislation</i> .....	516
7.4.3	<i>Applications for Development ODZ</i> .....	517
7.4.4	<i>Refusal : Appeals Ratio</i> .....	518
7.4.5	<i>Decisions in Breach of Policies</i> .....	518
7.4.6	<i>Illegal Development</i> .....	519
7.4.7	<i>Use and Interpretation of Policies in Decision-Making</i> .....	520
7.4.8	<i>Participants in the planning process</i> .....	522
7.5	RECENT CHANGES .....	526
7.6	WERE THE OBJECTIVES OF THE STUDY ACHIEVED? .....	532
	BIBLIOGRAPHY .....	534
	PERSONS CONTACTED.....	550
	APPENDIX I .....	551
	APPENDIX II.....	553
	APPENDIX III .....	556
	APPENDIX IV .....	565
	APPENDIX V .....	573

## LIST OF FIGURES

### Figure

<b>1.1:</b> Geological map of the Maltese Islands showing the various exposed layers .....	7
<b>1.2:</b> Soil map of the Maltese Islands .....	9
<b>1.3:</b> Wind rose showing percentage frequencies of wind speeds and directions for the whole year. This is based on data obtained from the <i>Luqa</i> Meteorological Office for the period 1958-1987 .....	11
<b>1.4:</b> Development and population dynamics .....	16
<b>1.5:</b> Plan showing Prehistoric Sites and Temples in the Maltese Islands .....	17
<b>1.6:</b> Tourist arrivals in Malta (by air and sea) between the years 1973 to 1998 .....	20
<b>1.7:</b> Levels of unemployment in Malta for the period 1973-1998 .....	21
<b>1.8:</b> Changes in Gross National Product per head for the period 1973 to 1998 .....	21
<b>1.9:</b> Variation of Gross Domestic Product at constant market prices for the period 1973 - 1998 .....	22
<b>1.10:</b> Annual inflation rates (Base 1946=0) (1946-1998) .....	22
<b>1.11:</b> Growth in GDP at Constant Market Prices for the Years 1980-1998 .....	23
<b>1.12:</b> Sectoral contribution to Gross Domestic Product for the period 1970-1998 .....	25
<b>1.13:</b> Bank loans in Malta for the period 1980-1998 .....	26
<b>1.14:</b> Variations in property prices for the period 1970-1995 .....	26
<b>1.15:</b> Average asking price for three bedroom terraced houses (1950-1998) and GDP per gainfully occupied person (1950-1997) .....	28
<b>1.16:</b> Processing time for building permits for the years (1984-1989) .....	36
<b>1.17:</b> A plan showing the Planning Schemes as drawn in 1989 .....	45
<b>1.18:</b> Rental dwellings distribution in the Maltese Islands by annual rental value in 1995.....	60
<b>1.19:</b> Change in Land distribution of Island (1957-1983) .....	62
<b>1.20:</b> Road construction in Malta for the period between 1951 to 1990 .....	63
<b>1.21:</b> Number of road vehicles in Malta between 1951 and 1997 .....	64
<b>1.22:</b> Large trapping site (144 m <sup>2</sup> ) used by trappers .....	65
<b>1.23:</b> Upper graph shows the relationship between the number of shooting licences and the population for the period 1900-1990. The table (Table 1) below compares the size of the population to that of the shooting and trapping fraternity ..	66
<b>2.1:</b> The operation of the Planning System in Malta .....	81
<b>2.2:</b> The Development Permission Application Process for Government departments and Agencies. ....	87
<b>2.3:</b> The Development Permission application Process in Malta. ....	97
<b>2.4:</b> Enforcement Control Provisions found under Act I of 1992.....	108
<b>3.1:</b> Plan of the Maltese Islands showing the seven Local Plan Areas .....	136

## Figure

<b>5.1:</b> Bar graph showing variations in the number of applications both within Temporary Schemes and ODZ for the period 1989-1998.....	262
<b>5.2:</b> Number of applications within Temporary Schemes and ODZ together with respective totals for development before the set-up of the PA and the new development legislation. ....	264
<b>5.3:</b> Percentage of applications ODZ for the period 1989-1992.....	265
<b>5.4:</b> Number of applications within Temporary Schemes and ODZ together with respective totals for development after the set-up of the PA and the new development legislation. Regression analysis was used to obtain values for the years 1999 and 2000.....	266
<b>5.5:</b> Graph showing the percentage of applications ODZ, with a projected trend line for the years 1999 and 2000.....	268
<b>5.6:</b> Variation of the area (sq. Km) for applications ODZ with time for the period 1989-1998 .....	271
<b>5.7:</b> Variation of average area (ODZ) (sq. Km) per application with time for the period 1989-1998 .....	272
<b>5.8:</b> Annual percentage distribution for different development codes for ODZ applications for the period 1994-1998 .....	273
<b>5.9:</b> Variations in the number of filtered applications for development within Temporary Schemes and ODZ for the period 1994-98.....	276
<b>5.10:</b> Graph showing the percentage presumed non-duplicate ODZ applications, with projected trend line for the years 1999 and 2000.....	277
<b>5.11:</b> Annual percentage distribution for different development codes for ODZ applications using filtered data, for the period 1994-1998 .....	280
<b>5.12:</b> Differences in percentage values obtained for filtered (figure 5.11) and unfiltered data (figure 5.8). ....	281
<b>5.13:</b> Bar graph showing variations in the number of applications decided both within Temporary Schemes and ODZ for the period 1994-98 .....	284
<b>5.14:</b> Annual percentage distribution of the different decision codes for the period 1994-1998 concerning decisions for applications ODZ .....	287
<b>5.15:</b> Graph showing annual variations of applications ODZ which were coded as withdrawn .....	289
<b>5.16:</b> Graph showing percentage variations for different development types during various years for decision taken for ODZ applications which were appealed against refusal but had not yet been determined by July 1999 .....	293
<b>5.17:</b> Graph showing percentage variations for different development types during various years for decision taken for ODZ applications which were appealed against refusal but had not yet been determined by July 1999 .....	294
<b>5.18:</b> Graph showing percentage variations for different development types during various years for developments for ODZ applications which were withdrawn at a particular stage of the decision level .....	296
<b>5.19:</b> Graph showing percentage variations for different development types during various years for developments for ODZ applications which were withdrawn at a particular stage of the decision level .....	297

## Figure

<b>5.20:</b> Graph showing percentage variations for different development types during various years for developments for ODZ applications which were decided (Dismissed or Upheld) either at Reconsideration or Appeals' Board level .....	300
<b>5.21:</b> Graph showing percentage variations for different development types during various years, for developments for ODZ applications which were decided (Dismissed or Upheld) either at Reconsideration or Appeals' Board level .....	301
<b>5.22:</b> Graph showing percentage variations for different development types, during various years, for ODZ developments which were decided (Granted or Refused) by the Development Control Commission or Planning Authority Board .....	304
<b>5.23:</b> Graph showing percentage variations for different development types, during various years, for ODZ developments which were decided (Granted or Refused) by the Development Control Commission or Planning Authority Board .....	305
<b>5.24:</b> Graph showing percentage variations for different development types, during various years, for ODZ developments which were decided (Granted or Refused) by the Development Control Commission or Planning Authority Board .....	306
<b>5.25:</b> Graph showing percentage variations for different development types, during various years, for ODZ developments which were decided (Granted or Refused) by the Development Control Commission or Planning Authority Board .....	307
<b>5.26:</b> Variations shown over a five-year period in the use of Structure Plan policies in DPA reports drawn by Case Officers for a selected sample of ODZ files. ....	315
<b>5.27:</b> Variations shown over a five-year period illustrating whether the recommendations made by the Case Officers were in accordance with the planning policies from a selected sample of ODZ files. ....	316
<b>5.28:</b> Variations shown over a five-year period of the recommendations made by the Case Officers to the decision-making boards (DCC / PA) at first decision tier level .....	317
<b>5.29:</b> Graphs showing whether the decision-making boards (DCC / PA) at first decision tier level made any reference to policies in their decision .....	318
<b>5.30:</b> Graph showing whether the decisions taken by the respective boards (DCC / PA) at first decision tier level, were in accordance with the planning policies at the time (source: sample of ODZ files). ....	319
<b>5.31:</b> Graph showing the percentage distribution of permitted and refused development during the five-year study period .....	320
<b>5.32:</b> Percentage relationships between Case Officer recommendations that were endorsed by the Decision-making Boards (DCC / PA) at first decision tier level and those which were overturned .....	323
<b>5.33:</b> Annual contribution to the different types of code concerning Case Officers' recommendations which were overturned by the Decision-making Boards (DCC / PA) at first decision tier level .....	324
<b>5.34:</b> Annual contribution to the different types of code concerning Case Officers' recommendations which were endorsed by the Decision-making Boards (DCC / PA) at first decision tier level .....	327
<b>5.35:</b> Annual percentage contributions at first decision tier level, shown by different development types whereby the Board (DCC / PA) issued a favourable decision against planning policies and against recommendation by the Case Officer .....	331

## Figure

<b>5.36:</b> Annual percentage contributions shown by different development types whereby the Board (DCC / PA) at first decision tier level issued a favourable decision against planning policies, following similar recommendation by the Case Officer .....	332
<b>5.37:</b> Graph showing percentage of total annual applications, which were decided at Reconsideration and / or Appeal stages .....	336
<b>5.38:</b> Percentage annual (1 <sup>st</sup> decision year) contribution of different development types which were considered either at Reconsideration and / or Appeal stage. All these developments were originally granted a refusal in accordance with planning policies .....	339
<b>5.39:</b> Percentage annual (1 <sup>st</sup> decision year) contribution of different development types which were granted permission at the Reconsideration stage .....	340
<b>5.40:</b> Total number of annual enforcement cases recorded both within Temporary Schemes and ODZ, for the period 1993-2000 .....	347
<b>5.41:</b> Annual percentage values of enforcement cases within Temporary Schemes and ODZ .....	348
<b>5.42:</b> Annual values of enforcement cases recorded both within Temporary Schemes and ODZ .....	349
<b>5.43:</b> Annual percentage values for different type of enforcement action taken by the PA between 1993-2000 both within Temporary Schemes and ODZ .....	350
<b>5.44:</b> Annual percentage contributions of enforcement actions taken by the Planning Authority in relation to different development types ODZ .....	352
<b>5.45:</b> Annual percentages for different Enforcement Codes used by the PA ODZ .....	353
<b>5.46:</b> Percentages of upheld and dismissed Appeals from sampled files ODZ (Table 5.18) in relation to the year when they were submitted .....	368
<b>5.47:</b> Annual percentage dismissed and upheld decisions related to the PAB for annual sample of Appeals taken between 1994-98 for Appeals ODZ. ....	369
<b>5.48:</b> Percentage coded reasons given by the Planning Directorate, the applicant and the Planning Appeals Board for refusals regarding agricultural related developments ODZ .....	376
<b>5.49:</b> Percentage coded reasons given by the Planning Directorate, the applicant and the Planning Appeals Board for refusals regarding commercial related developments ODZ .....	379
<b>5.50:</b> Percentage coded reasons given by the Planning Directorate, the applicant and the Planning Appeals Board for refusals regarding dwelling developments in ODZ .....	381
<b>5.51:</b> Percentage coded reasons given by the Planning Directorate, the applicant and the Planning Appeals Board for refusals regarding Industrial related developments .....	383
<b>5.52:</b> Percentage coded reasons given by the Planning Directorate, the applicant and the Planning Appeals Board for refusals regarding developments ODZ grouped under the term "other" .....	385

**Figure**

**5.53:** Percentages of Structure Plan policies and planning circulars used by the Planning Appeals Board concerning decisions for ODZ developments in the Agricultural sector ..... 389

**5.54:** Percentages of Structure Plan policies and Planning Circulars used by the PAB concerning decisions for ODZ developments in the Commercial sector ..... 391

**5.55:** Percentages of Structure Plan policies and planning circulars used by the Planning Appeals Board concerning Dwelling developments in ODZ ..... 392

**5.56:** Percentages of Structure Plan policies and planning circulars used by the Planning Appeals Board concerning Industrial developments ODZ ..... 393

**5.57:** Percentages of Structure Plan policies and planning circulars used by the Planning Appeals Board concerning ODZ developments included under the term "other" ..... 395

**6.1:** Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages ..... 454

**6.2:** Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages..... 455

**6.3:** Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages..... 456

**6.4:** Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages ..... 457

**6.5:** Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages ..... 458

**6.6:** Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages ..... 459

**6.7:** Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages ..... 460

**6.8:** Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages ..... 461



**Figure**

**6.9:** Comparative analyses on annual basis of permissions given for development ODZ both for cases in line and in breach of policy .....468

**6.10:** Comparative analyses on annual basis of refusals given for development ODZ both for cases in line and in breach of policy .....468

## LIST OF TABLES

### Table

<b>1.1:</b> Summary of climatic conditions in Malta .....	10
<b>1.2:</b> Total estimated populated data summary .....	14
<b>1.3:</b> Chronology of Town Planning-related activity in Malta between 1530-1998.....	30
<b>1.4:</b> General development control exercised by different authorities .....	34
<b>1.5:</b> Additional controls which were undertaken by different authorities for certain types of development .....	35
<b>1.6:</b> Statistical data for the Maltese Islands .....	61
<b>3.1:</b> Percentage decisions overturned during the Reconsideration and Appeals Process .....	131
<b>3.2:</b> Agricultural approvals by development type (1993-1997) .....	142
<b>4.1</b> Summary of data sources and analytical methodologies used by Gilg and Kelly (1996 p. 211). .....	228
<b>5.1:</b> Application data which were received by the agency responsible for planning, for the period 1989 to 1998. ....	261
<b>5.2:</b> Filtered application data for the period 1994-1998 .....	275
<b>5.3:</b> Data obtained following a manual examination for duplicate applications within Temporary Schemes and ODZ, for the year 1994 .....	279
<b>5.4:</b> Number of annual ODZ decisions and their equivalent percentages together with the corresponding decision codes .....	286
<b>5.5:</b> Number of applications granted permission or refusal for the period 1994-98. ....	290
<b>5.6:</b> Results obtained from the Chi-Square Test. ....	290
<b>5.7:</b> Table of grant: refusal percentage ratio of a selected number of development types ODZ. ....	303
<b>5.8:</b> Table of grant: refusal percentage ratio of a selected number of development types ODZ. ....	308
<b>5.9:</b> Table of grant: refusal percentage ratio of a selected number of development types ODZ. ....	309
<b>5.10:</b> Number of applications granted permission or refusal for the periods 1989-1992 (sampled data) and 1994-1998 .....	311
<b>5.11:</b> Results (%) obtained from case study analyses up to first decision tier level .....	314
<b>5.12:</b> Code format of case study analysis concerning relationship between Case Officers' recommendation and outcome by Decision-making Board (DCC/PA) at first decision tier level .....	322
<b>5.13:</b> Case Study applications that were taken to Reconsideration and Appeal Stages showing the respective decision year, development code and decision codes .....	335
<b>5.14:</b> Comparison between the percentage number of applications which were refused and the percentage number which were reconsidered and appealed ...	336

**Table**

**5.15:** Number of enforcement cases recorded annually ODZ by the Enforcement Section of the Planning Authority together with the respective development headings used ..... 351

**5.16:** Annual values of enforcement cases ODZ and their respective status as in May 2001 ..... 353

**5.17:** The total number of refusals and Appeals submitted annual for development ODZ together with the respective ratio ..... 365

**5.18:** A representative sample (based on application year) of decisions ODZ taken by the Planning Appeals Board, for Appeals from refusal ..... 366

**5.19:** Annual number of sampled ODZ Appeals from refusal based on decision year and decided by the Planning Appeals Board. .... 368

**5.20:** Total values for dismissed and upheld decisions taken by two panels of the Planning Appeals Board during the period 1994-2000. .... 371

**5.21:** Results from Chi-Square Test conducted on PAB decisions. .... 371

**5.22:** Decision ratios for the Planning Appeals Boards A and B2 between the years 1994-2000. .... 372

**5.23:** Types of development which were grouped for analytical purposes. .... 374

**5.24:** Breakdown of the DCC Agenda and Decision lists as published on the PA website together with data collated during the direct observation exercise... 422

**6.1:** Synthesis of the outcome from Appeal cases for different development types ..... 480

## LIST OF PHOTOS

### Photo

**3.1:** Concrete tanks of land-based fish farm next to nature reserve..... 147

## LIST OF MAPS

### Map

<b>5.1:</b> Site plan of the Maltese Islands showing the Development Zone boundary, the scheduled areas during 1994-2001 and the development planning applications submitted during the same period.....	358
<b>5.2:</b> Site plan of the Maltese Islands showing the Development Zone boundary, the scheduled areas during 1994-2001 and the approved and refused (1 <sup>st</sup> refusal) development planning applications during the same period submitted during the same period.....	359
<b>5.3:</b> Site plan of the Maltese Islands showing the Development Zone boundary, the scheduled areas during 1994-2001 and the enforcement cases recorded during the same period.....	360
<b>6.1:</b> Site plan of the Maltese Archipelago showing the development pressure created through approved and refused (1 <sup>st</sup> refusal) development applications together with the enforcement cases recorded during 1994-2001.....	477

## **1 Introduction**

This chapter will outline the main objectives of this study based on the Island of Malta and which concerns the effect of the Structure Plan policies during the period 1992-1998, on areas which are considered to be outside development zones.

The peculiar strategic position of the Maltese Islands in the centre of the Mediterranean Sea together with the legacies left by the various colonisers which have inhabited the Islands over the years have left their particular marks and are of historical importance to the Islands. The characteristics found today in the social, political, architectural, legal and environmental spheres in Malta could all be attributed to the past influences. This chapter will highlight these characteristics in order to place the reader in the Maltese context where the study will take place. The historical development of planning which has led to the present system of Structure Planning will be reviewed. The three main planning-related pieces of legislation, which have influenced the morphology of the Islands during the last three decades, will be dealt with at length.

The chapter will end by highlighting the various aspects of Maltese life which have characterised the pre- and post Structure Plan periods.

### **1.1 Objectives**

The aim of the thesis is to study whether the Maltese Structure Plan policies, which have been in effect since 1992, have protected the natural environment of the Maltese Archipelago.

The diminutive size of the Islands and the pressures arising from continuous development raised a lot of concern prior to implementing Structure Plan policies and a new planning framework. It was only such a consideration, aided by a change in government, which gave rise to a reorientation in planning. In spite of all the good will and the effort put into the preliminary technical studies, the Structure Plan policies and the setting up of the Planning Authority, initial results left much to be desired. In the first five years from 1992, between 3 and 4.5 % of dwellings were granted permission in areas Outside Development Zones<sup>1</sup> (ODZ) (Planning Authority, 1997a p.95; 1999a p.94).

The objectives of the study are to:

- analyse the effects that the Structure Plan policies had on the decision-making process Outside Development Zones;
- investigate the development pressures which have affected the natural environment;
- study the interpretation of the Structure Plan policies given by the various decision-making boards to analyse whether a consistent interpretation was given by them.

Studies into local planning issues are very rare, mainly due to the fact that these concepts are new to the Islands. Local research is mainly based either on that carried out by the Planning Authority or that done by a handful of authors.

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<sup>1</sup> This phrase or its acronym are not found in the legislation which gave rise to the Temporary Provisions Schemes (Act No. X of 1988) but it is the commonly used term which, in this legislation refers to “*areas or buildings outside development areas*” (Section 5(5)). The term ODZ will be used throughout the text to avoid any confusion with Maltese literature.

### 1.1.1 Justification

Structure Plan policies categorically prohibit development ODZ but there are a few types of developments, such as those of an agricultural nature, which are allowed. The results published by the Planning Authority raise concern because they show that either the policies are not restrictive enough or that there are policy breaches, as has been admitted by the same Authority (Planning Authority, 1997a p.95; 1999a p.94).

In 1988, as part of the process that led to the new planning system, Temporary Provisions Schemes<sup>2</sup> were drawn up. This involved dividing the Island into different sectors, each of which was drawn on a plan. For each plan, the limits of development were drawn and the different zoning of the area was mapped. Any area outside the limit of development was considered as Outside Development Zone (ODZ). All the plans were collated into a book entitled *Pjan Regolatur* or Key Plans and approved by Parliament and published in 1989.

Zammit (1998 p. XV) claims that these Schemes were the

*“old pre-1983’ planning schemes severely pruned and partly reinstated by a Select Committee of the House after the consideration of some 4000 ‘representations’”.*

He further claims that they

*“were presented to Parliament as ‘only temporary, to serve for a short time’ a skeleton to be beefed up in due course.”*

The legislation that gave rise to these Schemes was known as the Building Permits (Temporary Provisions) Act, 1988. As the name implies, this process was of a temporary nature, until new Local Plans were formulated. Zammit (1997 p.VIII)

---

<sup>2</sup> *Temporary Schemes, Schemes, Planning Schemes and Temporary Planning Schemes* are amongst other terms used in the Maltese literature which also mean *Temporary Provisions Schemes*.



shows documented evidence that the Local Plan Programme was supposed to be completed by early 1997. To date (February 2002), there is only one Local Plan which has been put into effect and Planning Schemes are still being used. The idea of the Schemes was to limit building sprawl and try to protect areas of ecological, archaeological and agricultural importance as well as sites of a high visual amenity value.

In a review covering the period 1990-1995, the Planning Authority estimated that there was sufficient land available for development within existing zones for the following thirty years (Planning Authority, 1997a p.22 Section 2.2.27). Such an assertion could lead one to understand that there shouldn't be such a pressure on areas not earmarked for development.

One must also take into account the local trends, which have arisen, in the last three decades. Primarily, home ownership at the cost of getting a substantial loan from a local bank is a common practice for the Maltese people. Secondly, since the price of local property has risen rapidly over a short period of time, people have found out that it is more profitable to invest in property than leave money at the bank. Finally, people have more free time, more money and are looking for areas where they can relax and enjoy themselves.

All this shows that there are great pressures on areas designated to remain unspoilt and the indications are that the present planning system is not addressing all the issues that these pressures are bringing to bear.

## 1.2 Outline of this study

To meet the objectives of the study:

- Chapter one will outline a brief historical, geographical and planning background to the Islands. This is intended to set the context of the unique local situation to which the Structure Plan policies apply.
- Chapter two will deal with the legislative set-up of the local planning system. It will be supplemented by cases that had an effect on the interpretation of policies and legislative jargon found in the respective laws.
- Chapter three concerns the Structure Plan policies, which are directly related to the area of study and the interpretation that should be given when applying such policies.
- Chapter four deals with the research methodology that is adopted in this study.
- Chapter five reports the results obtained from the research carried out.
- The analyses and interpretation of the results will be dealt with in chapter six.
- The final chapter will be the conclusion, whereby, apart from a critical appraisal of the methodology which was used and the general conclusions from the study, its limitations will be presented and suggestions for future studies will also be made.

## 1.3 The Maltese Islands

The Maltese archipelago is found at the centre of the Mediterranean Sea, about 96 Km south of Sicily and 209 Km off the Libyan coast. It is made up of three inhabited islands, namely Malta<sup>3</sup> (245.7 Km<sup>2</sup>), Gozo (67.1 Km<sup>2</sup>) and Comino (2.8 Km<sup>2</sup>) and a

---

<sup>3</sup> All references to localities mentioned in this thesis can be viewed on a map found in Appendix I.

number of smaller islets: *Kemmunett* (9.9 ha), *Filfla* (2.0 ha), St. Paul's Islands (10.1 ha) and Fungus Rock (0.7 ha), together with some large rocks, among them *Il-ebbla tal-}alfa* and *Ja[ret il-Fessej* (Sultana and Schembri, 1996 p.16).

### **1.3.1 Geology**

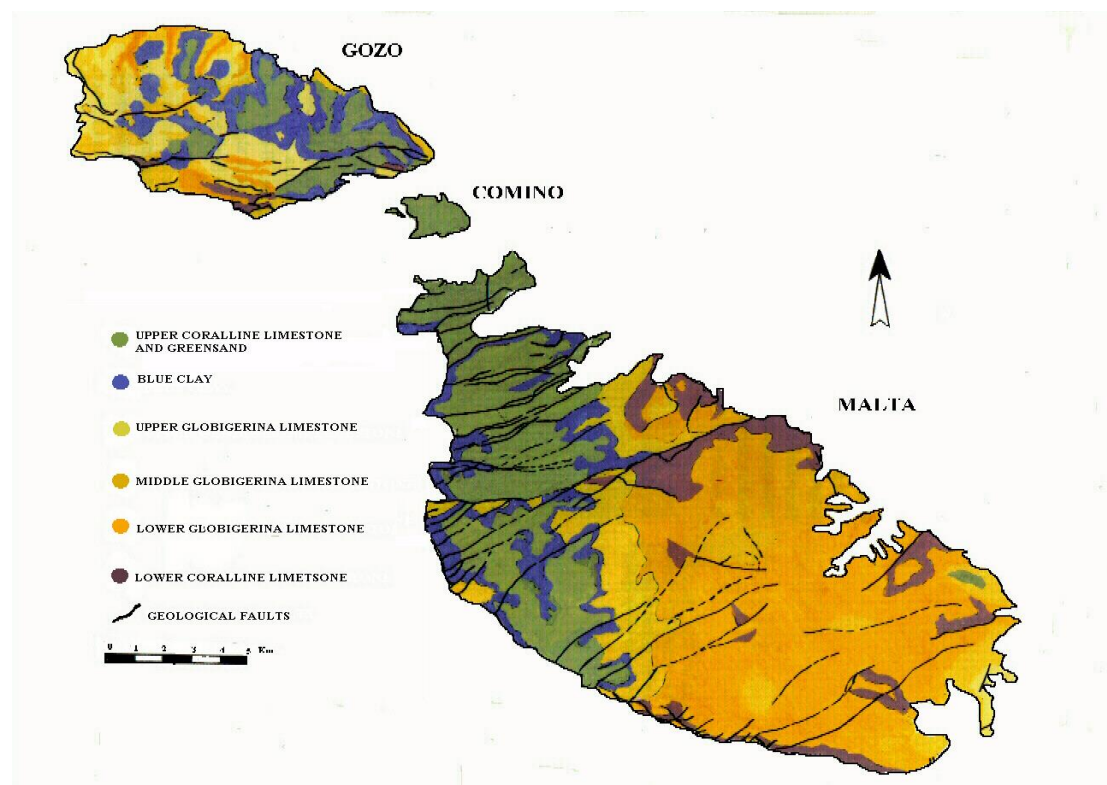
The islands are mainly composed of sedimentary rocks, primarily limestone, laid down during the Oligo-Miocene period, approximately 25 million years ago. As a result that the islands were formed under water, a large number of plant and animal fossils are found in the Maltese rock. The rock layers which are exposed at the surface are: Upper Coralline Limestone, Greensand, Blue Clay, Globigerina Limestone (Upper, Middle and Lower) and lower Coralline Limestone (see: Figure 1.1).

### **1.3.2 The Soil**

Maltese soils are characterised by their close similarity to the parent material, their relatively young age, the ineffectiveness of the climate in producing soil horizon development and the great importance of human activities in modifying them (Chetcuti *et al.*, 1992 p.7).

Three main types of soil are encountered in Malta, namely the Terra soils, Xerorendzina soils and Carbonate Raw soils. There are still some areas where one can encounter the original soils formed from the underlying rock, but thanks to movement of soil by humans, it is now possible to find a mixture of all types of soil in the same locality (Sultana and Schembri, 1996 p.21).

Terra soils are the oldest type of soils formed during the Pleistocene period and are found in their natural state in the northern and south-eastern parts of the Island of Malta, in the coastal areas of Gozo and on Comino. They are mainly derived from both upper and lower Coralline Limestone. Xerorendzinas soils are mainly confined to the central parts of the Islands, especially in the valleys, and are mainly formed from Globigerina Limestone. Carbonate Raw soil, is rather whitish in colour due to its high calcium carbonate content and is mainly formed from Blue Clay (see: Figure 1.2) (Sultana and Schembri, 1996 p.21).



**Figure 1.1: Geological map of the Maltese Islands showing the various exposed layers (adapted from: Schembri and Baldacchino, 1992 p.19).**

### 1.3.3 Geomorphology

The local climatic conditions, erosive processes and geotectonic movements over the years have shaped the topography of the Islands. Chetcuti *et al.* (1992 pp.8-9) reviewed previous literature and gave details about the various tectonic movements that have shaped the islands.

The *rdum* (cliff) and the *widien* (valleys) are characteristic topographic features, which one encounters in Malta. *Rdum* are near vertical faces of rock formed by tectonic movement and erosive processes. They are mainly situated on the south and western parts of the Island. The *widien* are the drainage channels either formed by stream erosion during the Pleistocene period, which was much wetter than other periods, or by tectonism, or, by a combination of both processes (Chetcuti *et al.*, 1992 p.9). Most of these *widien* are now dry valleys and water only flows during the wet winter months. However, a few of them remain wet throughout the year due to the presence of perennial springs draining into them.

The islands have an inclination from the south-west towards the north-east, where the land slopes gently into the sea. The highest point is at *Ta' |uta*, near Dingli Cliffs which is 253 m above sea level (Chetcuti *et al.*, 1992 p.8).

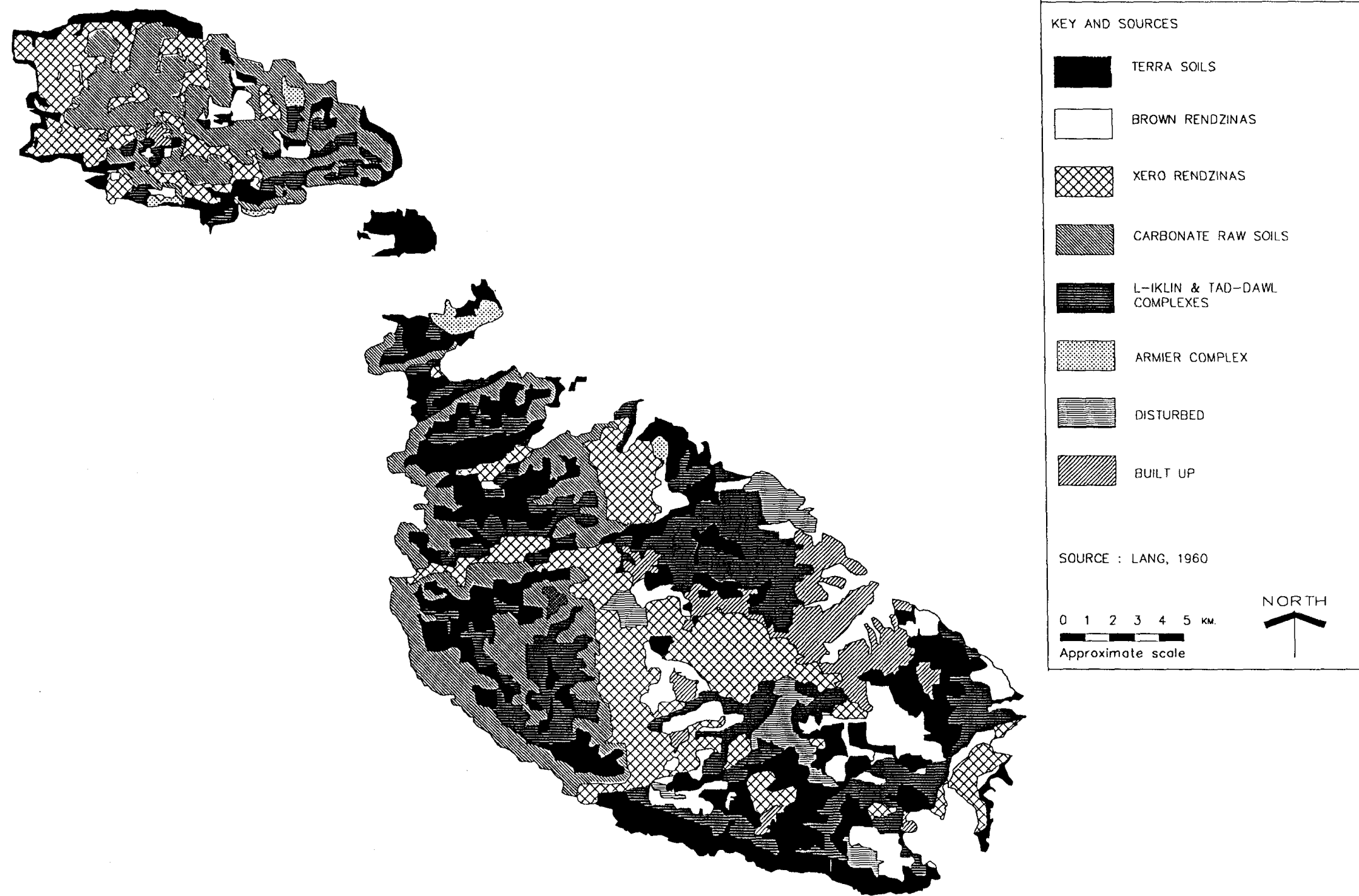


Figure 1.2: Soil map of the Maltese Islands (adapted from: Schembri, 1991 p.7).

### 1.3.4 The Climate

The Maltese climate is typically Mediterranean with mild, wet winters and hot, dry summers. A summary of the climatic conditions is found in Table 1.1 and Figure 1.3.

**Table 1.1: Summary of climatic conditions in Malta (Chetcuti *et al.*, 1992 pp. 17-19; 28-29; 68-69).**

Average annual rainfall <sup>4</sup>	529.57 mm
Wettest month	December
Driest month	July
Mean annual temperature	18.6 <sup>0</sup> C
Annual mean hours of sunshine	8.3 hrs/day

### 1.3.5 Flora and Fauna

The size of the island could give one the false impression of a poor biodiversity. This is not the case. If the terrestrial and freshwater organisms are considered, there are about 1000 species of flowering plants and about 1000 species of lower plants such as mosses, liverworts, lichens, fungi and algae, some 60 molluscs, about 500 species of arachnid, more than 100 species of crustacean, more than 3000 insect species, one amphibian, nine reptile, some 180 bird and some 20 mammal species. In addition, a number of flying insects, birds and possibly some bats are thought to migrate regularly to the islands (Schembri P.J. and. Sultana J., 1989 p.1). About 85 of these species are endemic to the Maltese Islands (Sultana and Schembri, 1996 p.23). Their uniqueness makes them particularly vulnerable and so of great importance to mankind; their disappearance would mean a loss to the world.

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<sup>4</sup> Based on a 133-year set of values from 1854 to 1984.

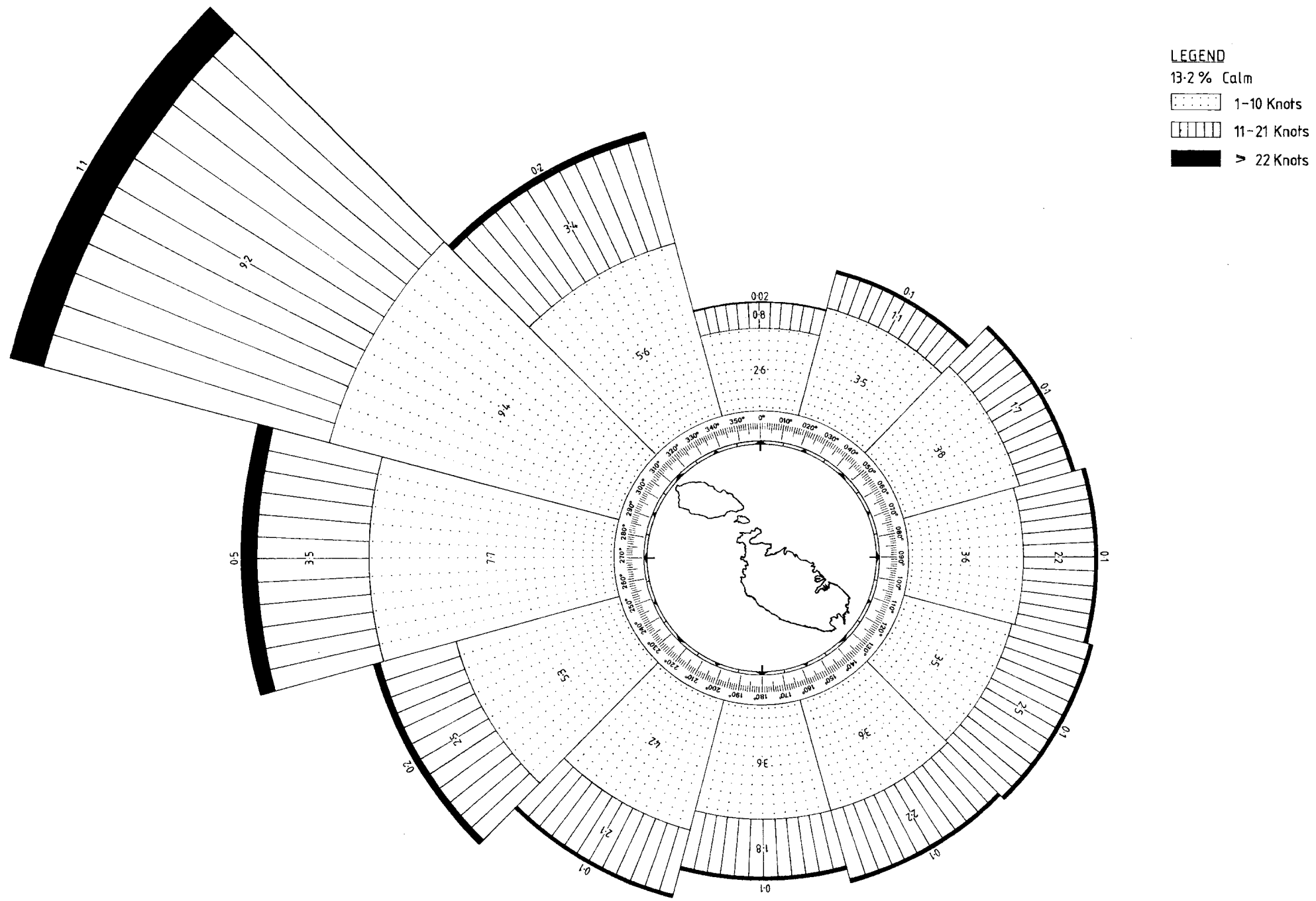


Figure 1.3: Wind rose showing percentage frequencies of wind speeds (length of radiating arm) and directions for the whole year. This is based on data obtained from the *Luqa* Meteorological Office for the period 1958-1987 (adapted from: Department of Civil Aviation, *Luqa*, Malta, Drawing No. G270/88).



Schembri (1991 pp.22-43) carried out a detailed study of the local ecosystems in preparation for the Structure Plan. An updated version of the same study was included in the *State of the Environment Report for Malta 1998* that was published in 1999, in the form of a CD-ROM, by the Environment Protection Department. The latter report included some modifications over the first report together with updated standards being used in the ecological studies.

### **1.3.6 Population Dynamics**

Blouet (1984) gave a concise account of Maltese history. The main chronological sequence of the colonisers who have occupied the Islands is summarised below:

5000 - 4000 BC	Neolithic Age - islands first colonized by man (Agriculturalists);
c 3750 - 2000 BC	Copper Age - first invasion (c 2000 BC) by bronze using people (Warrior farmers);
c 2000 - 800 BC	Second invasion (c 1400 BC) by bronze using people (Warrior farmers);
c 800 - 550 BC	Islands colonized by Phoenicians;
c 550 - 218 BC	Islands colonized by Carthaginians;
218 BC	Islands incorporated in Roman Empire;
c 533 - 870 AD	Byzantine domination;
870 - 1091	The Saracenic Period - invasion by Aglabite Arabs (870);
1091 - 1194	Normans invade the Islands in 1091;

1194 - 1268	The Sicilian Period;
1268 - 1283	The Angevin (French) Period - Muslim influence eliminated;
1283 - 1530	The Spanish Period - Consolidation of Christianity;
1530 - 1798	The Knights of St. John occupy Malta;
1798 - 1800	French occupation of Malta;
1800 - 1964	The British rule which included two World Wars;
1964 -	The Independence era (Schembri 1991, p.17, p.22; Colin Buchanan and Partners <i>et al.</i> , 1990a p.3 M).

The population in Malta was estimated at 383,000 persons in 1997 (Planning Authority, 1999a p. i) which is approximately 1213 persons per square Kilometre. The population growth was running ahead of the Malta Structure Plan Report of Survey forecasts presented in 1990<sup>5</sup>. The Report anticipated an increase in the total population living in private households of 11% from 355,000 in 1990 to 394,000 in 2010. This was inclusive of migrants and foreign residents. Table 1.2 gives an estimated population change for the period 1990-2010 for the Plan period.

The surplus increase in population over that initially projected could be attributed to two main factors, the first being a net in-migration of nearly 930 persons annually for the period 1990-1994 and secondly an increase in number of new citizens<sup>6</sup> (Planning Authority 1999a p.16).

---

<sup>5</sup> See: Colin Buchanan and Partners *et al.*, 1991a pp. 3-6.

<sup>6</sup> Foreign persons acquiring Maltese citizenship are designated as naturalised and registered.

**Table 1.2: Total estimated populated data summary (source: Planning Authority, 1999a p.22).**

Year	Population (year end)	Annual Natural Increase (for specified year)	Annual Migration Balance (for specified year)	Annual Total Change (for specified year)	Annual % Change (for specified year)
1990	355,910	2,623	857	3,480	0.99%
1995	372,135	2,174	839	3,013	0.82%
2000	383,418	1,884	0	1,884	0.49%
2005	391,859	1,552	0	1,552	0.40%
2010	398,502	1,174	0	1,174	0.30%

### 1.3.7 Settlement Patterns

Colin Buchanan and Partners *et al.* (1991b), in preparation for the Structure Plan for the Maltese Islands reviewed the settlement patterns and built environment situation. The findings were that in the previous three decades, housing development grew rapidly, spilling beyond the traditional village core boundaries. By 1985, the settlement pattern of Malta was organised around the Inner and Outer Harbour Regions. These areas contained 62.7% of the population of mainland Malta and almost 60% of the total population. There was an increase in population in the Outer Harbour Region paralleled by an equivalent decrease in the Inner Harbour Region (see: Figure 1.4) (Colin Buchanan and Partners *et al.*, 1990b p. 3E Section 1.1).

During the period 1955 to 1985 the built up area in mainland Malta increased from 11.1 to 39.3 square kilometres (a 328% increase) and a corresponding 226% increase in Gozo (Colin Buchanan and Partners *et al.*, 1990b p. 3E Section 1.2). Growth was mainly based on housing, industrial and commercial activities.

In coastal areas this was mainly attributed to pressure from tourism (Colin Buchanan and Partners *et al.*, 1990b p.3E Section 1.3). The period between 1965 and 1985

showed an extraordinary expansion of built up areas in the Northern Region (400%) (Colin Buchanan and Partners *et al.*, 1990b p.3E Section 1.5). This was mainly due to the availability of developable land aided by the right economic conditions.

During the period 1967 and 1985 the population increased in all areas outside the Inner Harbour Region. There was a decrease in population in the Inner Harbour Region, mainly due to a change in use and redevelopment of existing sites (Colin Buchanan and Partners *et al.*, 1990b p.3E Section 1.6). Dwellings in the Sliema area were mainly changed for tourist accommodation while those in the Grand Harbour area were changed into offices.

A summary of the population and development changes that occurred during the years 1955-1985 in Malta is shown in Figure 1.4.

### **1.3.8 Architectural and Archaeological Heritage**

The Maltese Islands were under the influence of cultures that have inhabited the land during different periods since Neolithic times (see: Section 1.3.6). The architectural and archaeological inheritance left from these colonizers is found in the forms of tombs, buildings, temples and other artefacts, which mainly denote the prevailing way of life at the time.

Malta's archaeological heritage is one of the most important in the Mediterranean region. The *gantija* Temples and the *jal Saflieni* Hypogeum are listed by UNESCO as World Heritage Sites (see: Figure 1.5).

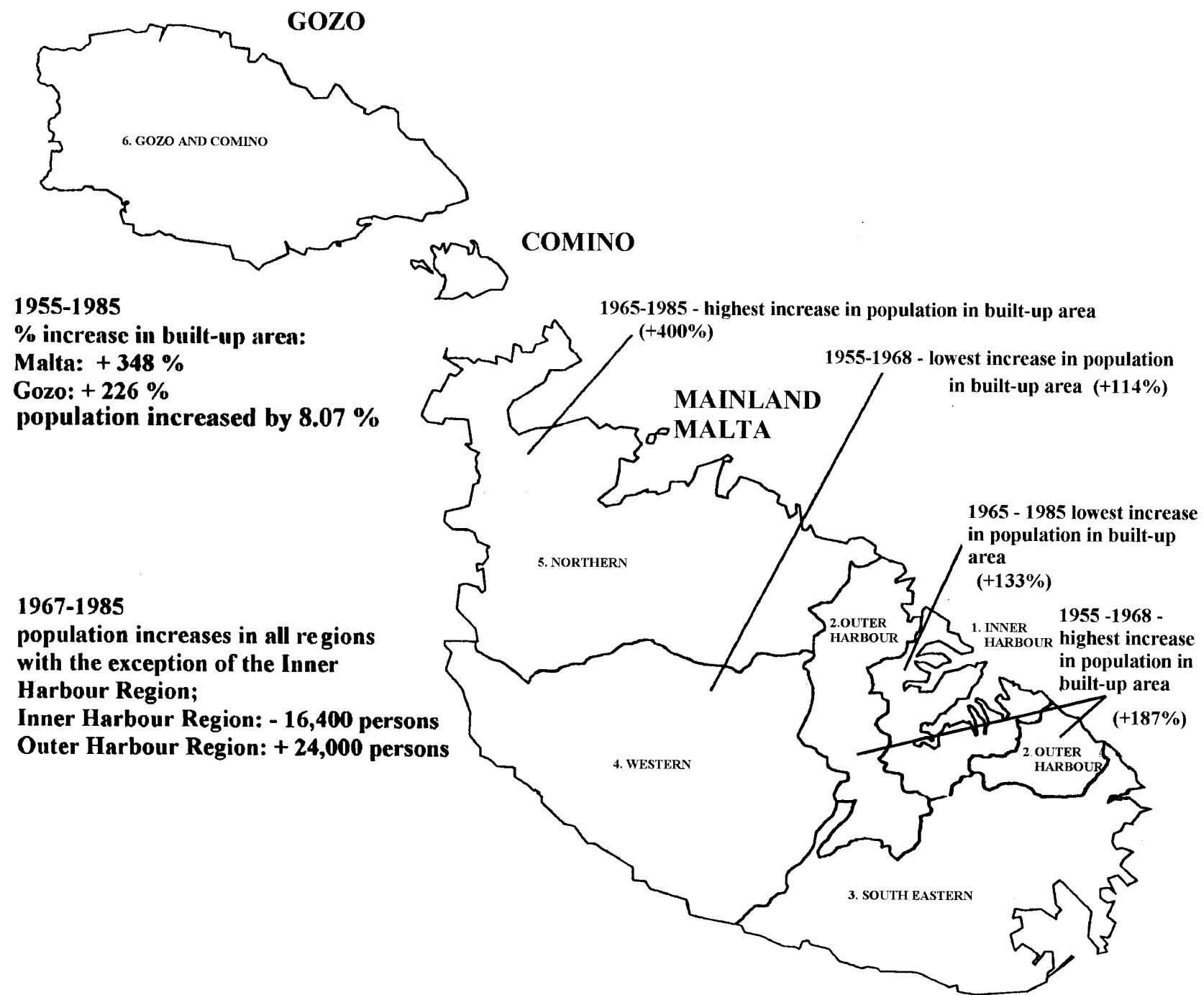


Figure 1.4: Development and population dynamics (source: Colin Buchanan and Partners *et al.*, (1990b) pp. 3E-8E).

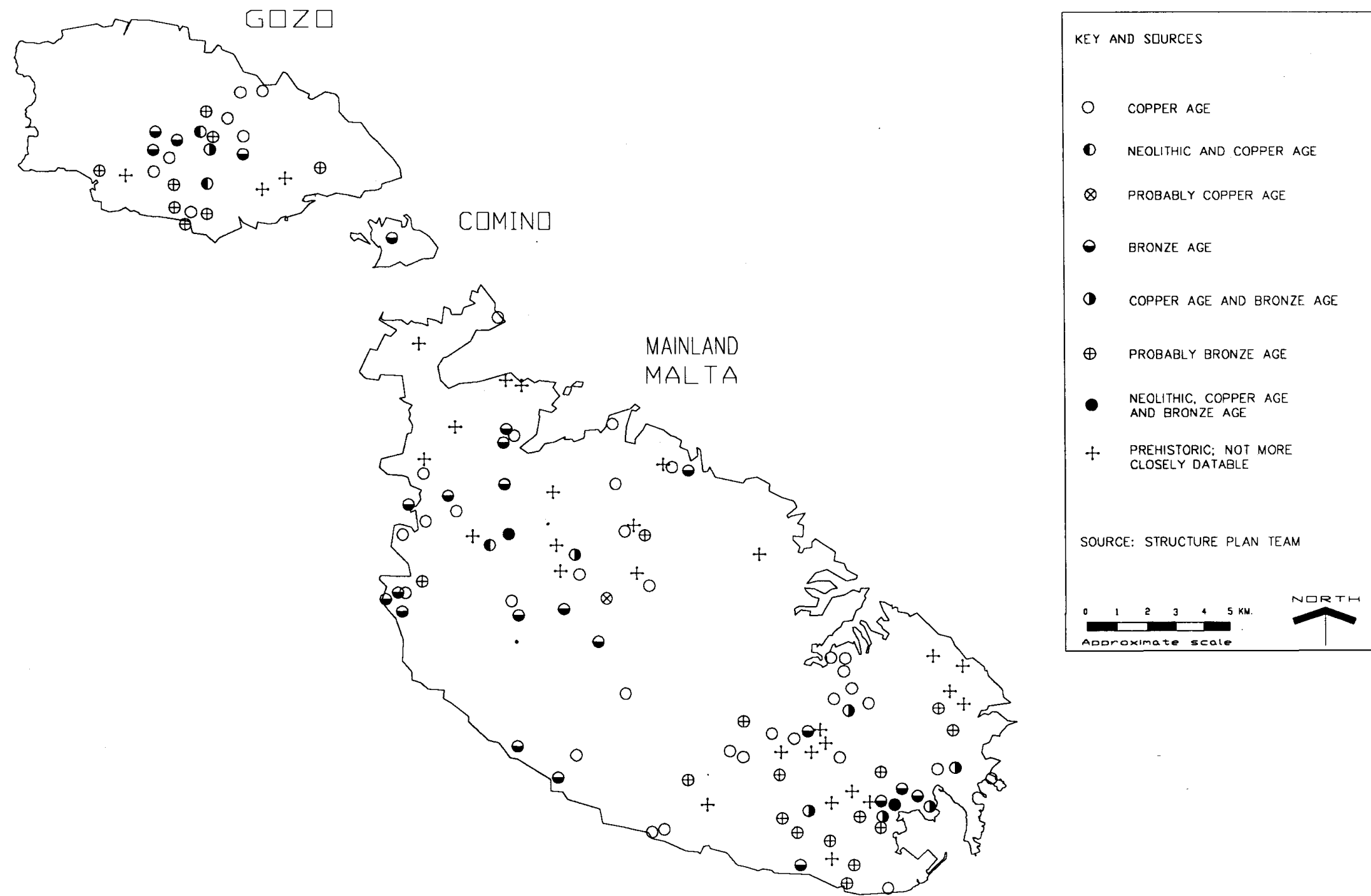


Figure 1.5: Plan showing Prehistoric Sites and Temples in the Maltese Islands (source: Colin Buchanan and Partners *et al.*, (1990a) p. 5M).

The Roman period is represented by a number of residences intended for the ruling class (Colin Buchanan and Partners *et al.*, 1990a p. 6M Section 1.9). These also include a number of underground burial chambers. Of peculiar importance is the fact that *Mdina* (or *Medina* as it was known) which was the ancient capital of Malta was probably built at the time when the Romans inhabited the Islands. *Medina* was certainly the capital of the Island in AD 60 when St. Paul was shipwrecked on the Island as described in the Acts of the Apostles. The size of the city was originally much larger than it is today. The present fortified structure was built for defensive reasons when in AD 870 the Arabs overran Malta (Colin Buchanan and Partners *et al.*, 1990a p. 8M Sections 1.20-1.23).

The Saracenic occupation is only represented by a number of stone-carved inscriptions but no other forms of architecture (Colin Buchanan and Partners *et al.*, 1990a p. 6M Section 1.10).

The Knights of the Order of St. John left rich architectural heritage with the major hallmark being the building of the fortified city of Valletta on Mount *Sciberras*. The architectural styles introduced by the Knights were the result of the tastes of people originating from eight different countries. The close links to Italy resulted in Mannerism being introduced to Malta. This later gave way to Baroque style of architecture (Colin Buchanan and Partners *et al.*, 1990a p. 6M Section 1.12).

The British period introduced the English Style of Renaissance to Malta. Its legacy is seen mainly in military buildings, principally barracks, but also St. Paul's Cathedral in Valletta with its imposing steeple overlooking *Marsamxetto* Harbour. The formal

naval hospital building at *Kalkara* overlooking the Grand Harbour is another example of the British legacy in Malta (Colin Buchanan and Partners *et al.*, 1990a p. 7M Section 1.18).

### **1.3.9 Economic Trends**

The Maltese economy has changed beyond recognition since Malta became independent in 1964. Maltese living standards rose substantially when compared to those in the 1950s, with a GDP per capita increasing from Stg<sup>7</sup> 111 in 1957 to Stg 2317 in 1983. This represents an average growth rate of about 5-6% per annum (Charton and Beeley, 1987 p. 96).

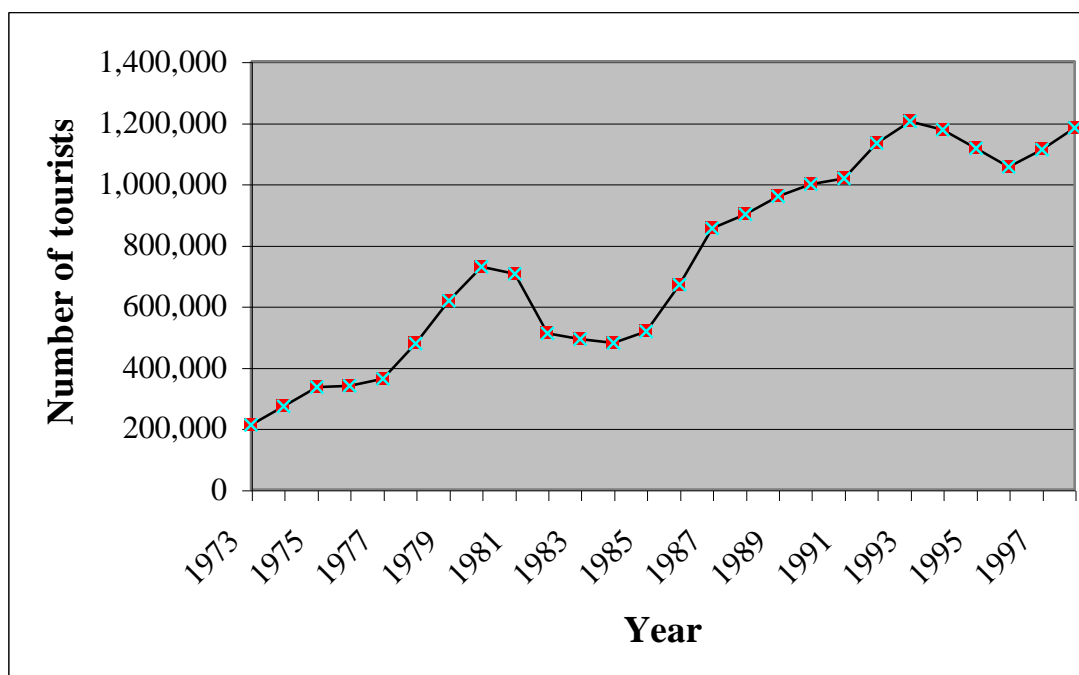
During the period between 1983 and 1985 the Maltese economy experienced a serious recession due to a decline in tourism (see: Figure 1.6), recession in maritime transport and shipbuilding industries and market difficulties for clothing and footwear industries (Colin Buchanan and Partners *et al.*, 1990b p. 2F). A drastic increase in unemployment was also registered (see: Figure 1.7) while the GNP per head showed a slight decrease during the same time, before recuperating during the period 1987-88 (see: Figure 1.8) just after a new government was posted in office. A similar pattern was also shown with the Gross Domestic Product at constant prices (see: Figure 1.9). The highest inflation rate since 1946 was also registered during this period (see: Figure 1.10). Another factor, which could have had a share in the recession, was the prevailing political situation at the time, which could have created a lot of uncertainty in the country.

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<sup>7</sup> Stg is the acronym used to define the English currency denomination which is the Pound Sterling.

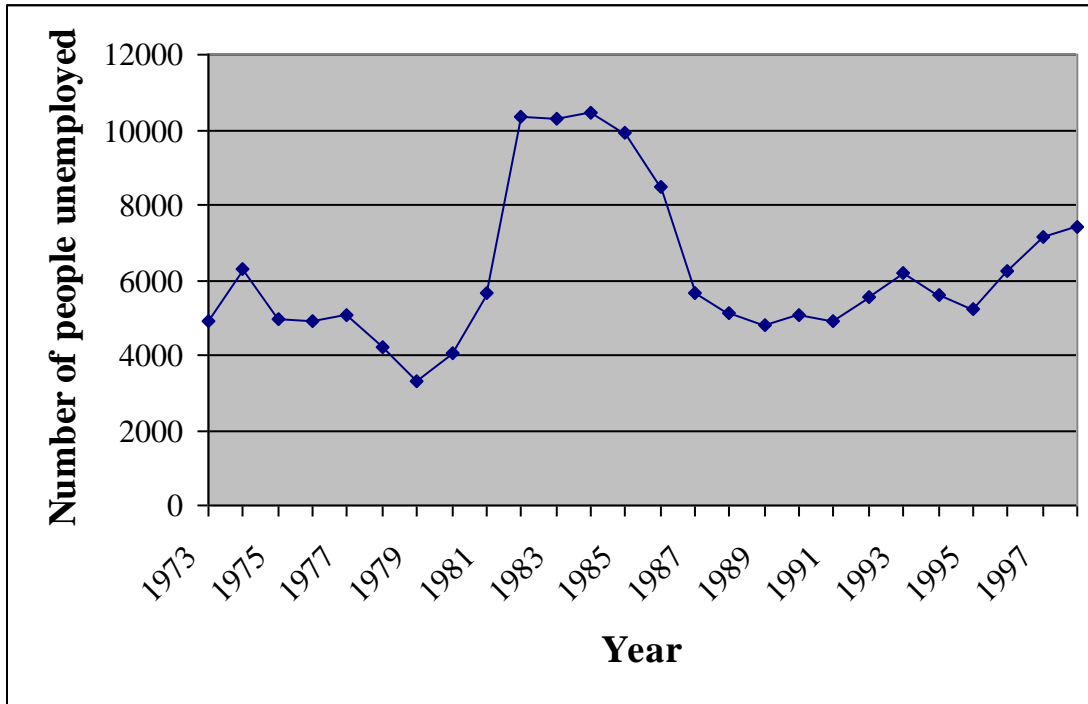


The early 1990s were characterised by a strong and consistent economic growth, despite widespread recession throughout Europe (Planning Authority, 1997a p.8). Annual real growth in Malta's GDP ranged from 4.5% to 6.3% between 1990 and 1995, following rates of 8.4% and 8.25% respectively in 1988 and 1989. This ensued a change of the elected party in Government in 1987. Following the recession period experienced in European countries in 1992-93, where the growth rates at the time were around 3% per annum, the 1996-98 period showed a slower growth rate compared to the previous years (see: Figure 1.11).

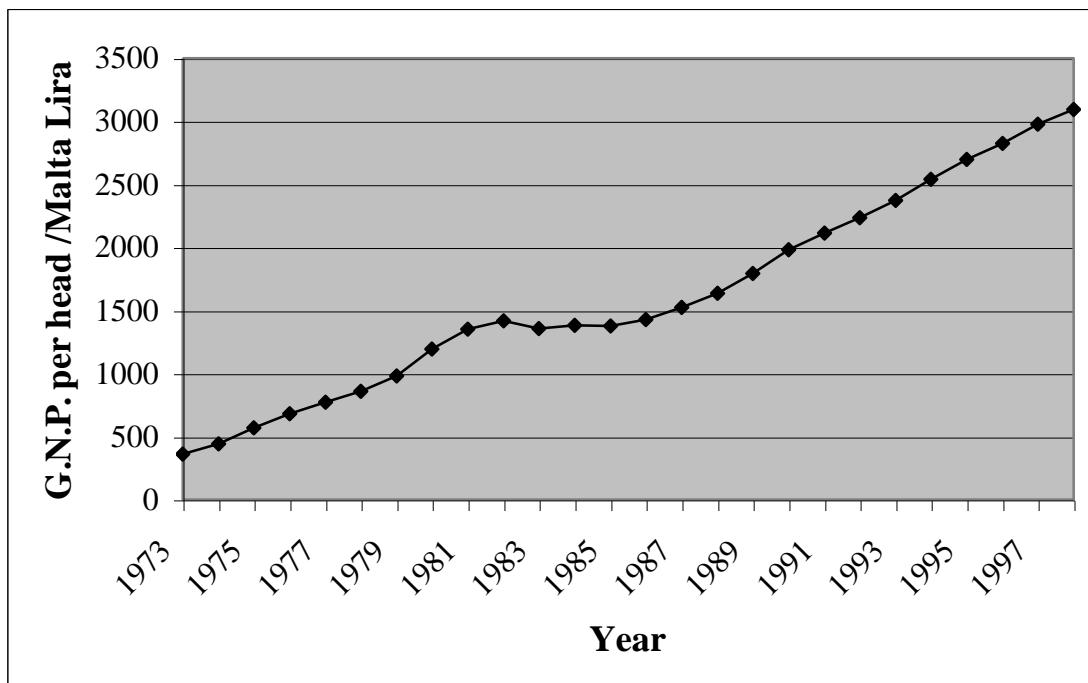


**Figure 1.6: Tourist arrivals in Malta (by air and sea) between the years 1973 to 1998 (source: Central Office of Statistics 1973 p.203; 1977 p.181; 1980b p.181; 1983 p.219; 1986 p.185; 1989(?<sup>8</sup>) p.171; 1993 p.187;1999 p.191; 2000a p. 183).**

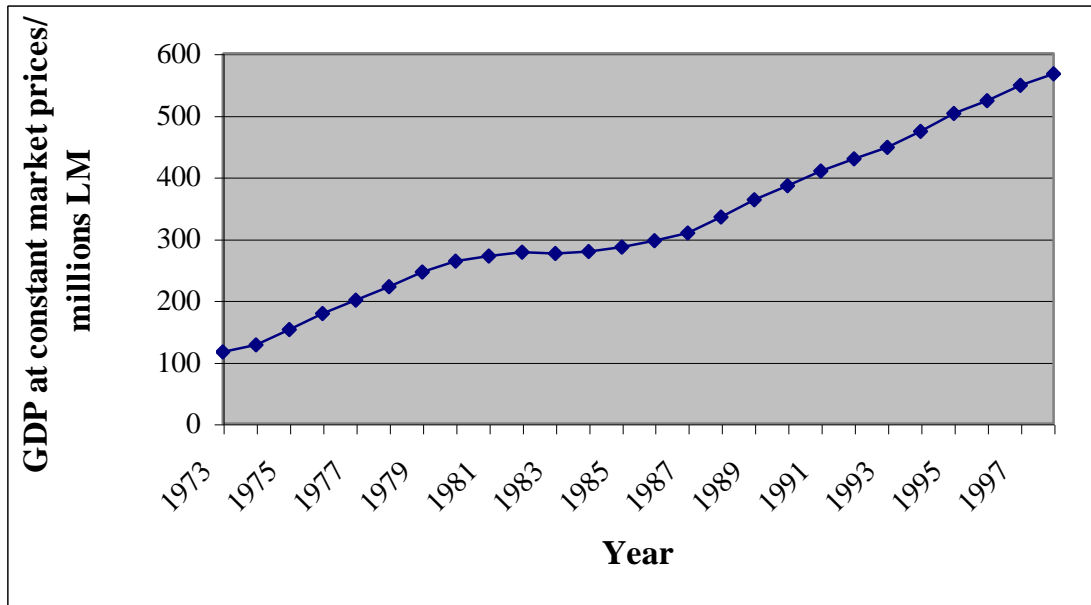
<sup>8</sup> Publication date not printed.



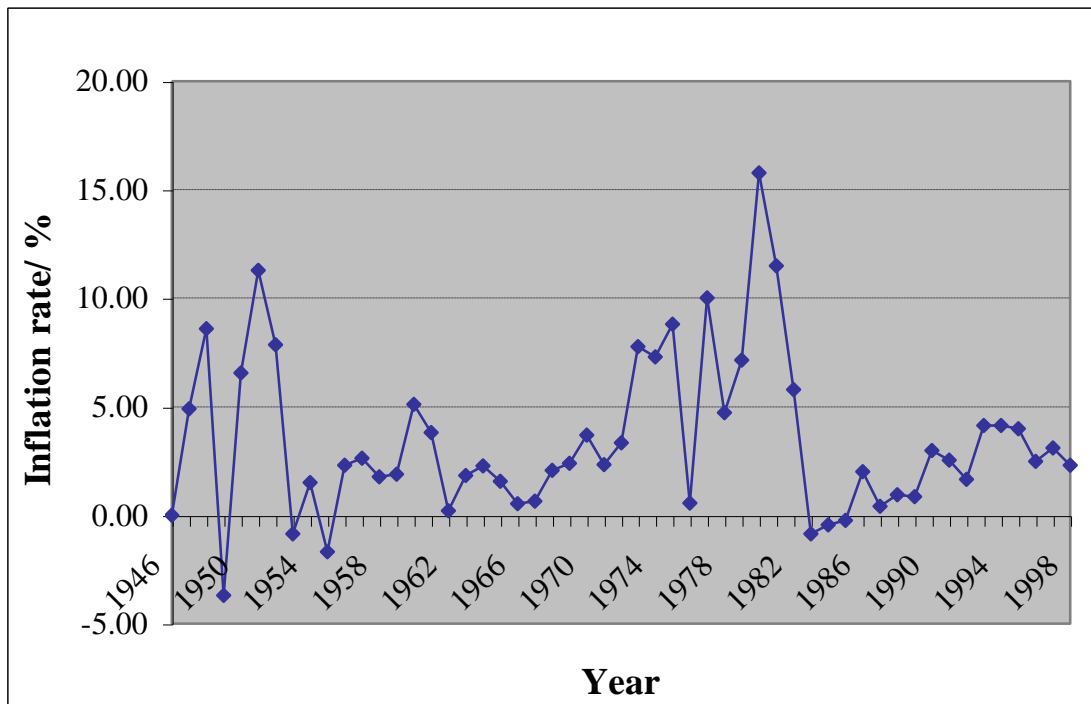
**Figure 1.7: Levels of unemployment in Malta for the period 1973-1998 (source: Central Office of Statistics 1977 p. 104; 1983 p. 121; 1989(?<sup>8</sup>) p. 97; 1999 p.112; 2000a p.107).**



**Figure 1.8: Changes in Gross National Product per head for the period 1973 to 1998 (source: Central Office of Statistics 1977 p. 104; 1983 p. 121; 1989(?<sup>8</sup>) p. 97; 1999 p.112; 2000a p.107).**

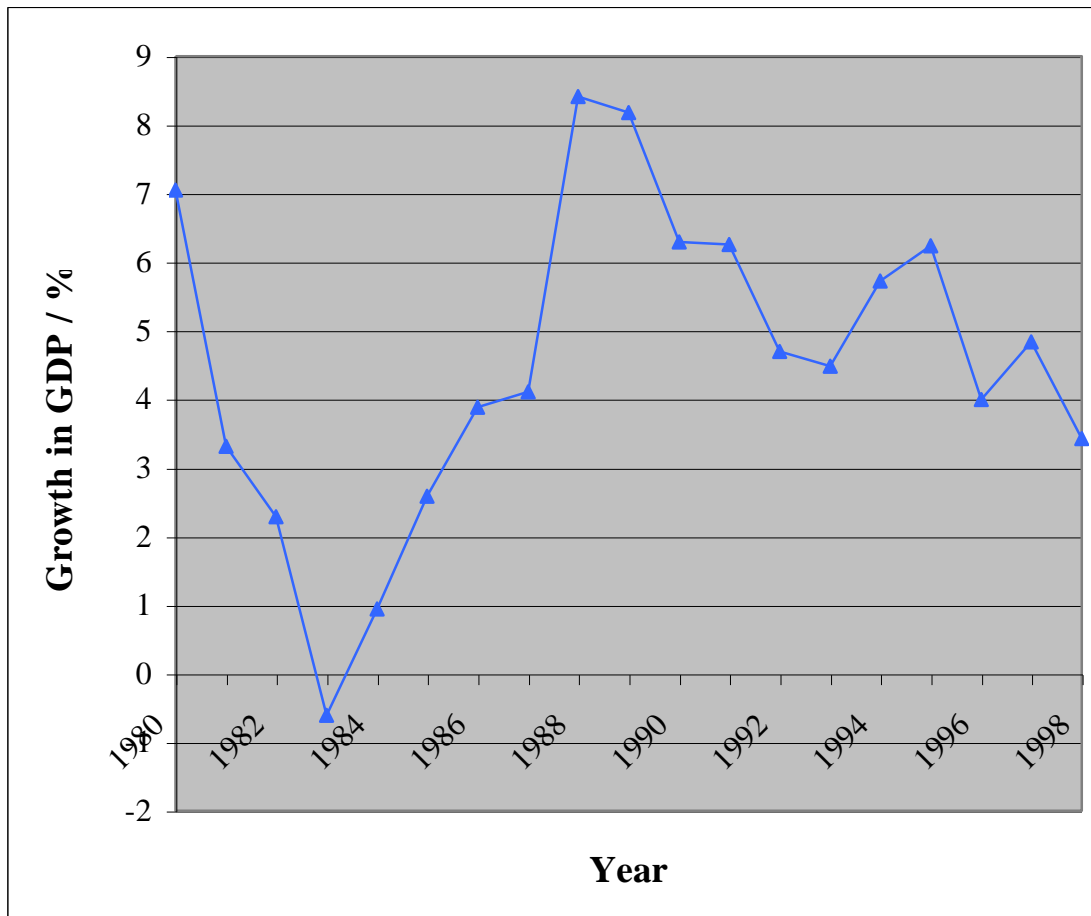


**Figure 1.9: Variation of Gross Domestic Product at constant market prices for the period 1973 - 1998 (source: Central Office of Statistics 1980a p.iii; 1990b p.vii; 2000b p. xiv)<sup>9</sup>.**



**Figure 1.10: Annual inflation rates (Base 1946=0) (1946 - 1998) (source: Central Bank of Malta Quarterly Review, 1999 32(2) p. 141).**

<sup>9</sup> LM is the acronym used to define the Maltese currency denomination that is known as Malta Lira. The average exchange rates for the Malta Lira with the Pound Sterling was between 1.7701 (1990) and 1.7961 (1995) (Central Bank of Malta (2000b) p.113 Table 4.2).



**Figure 1.11: Growth in GDP at constant market prices for the years 1980 - 1998.** (The growth was calculated as a percentage change over the previous year's GDP). (source: Central Office of Statistics 1980a p.iii; 1990b p.vii; 2000b p.xiv).

The major contributors to the country's GDP for the period 1970-1998 were the income from employment, followed by that from trading profits. The income from property and that from trading surplus of government enterprises increased over the same period, while that from farming, fishing and private service showing a slight decrease (see: Figure 1.12).

The consistent economic growth over the last decades encouraged investment by the private sector. Total local lending increased from LM 556m to LM 1,082m between 1990 and 1995 (current prices), supporting real increases in the availability of credit to all sectors. The development industry, and house-building in particular, benefited from this continuing expansion of available capital (Planning Authority, 1997a p. 13). Outstanding bank loans for house purchase have increased from LM 9,116,000 in 1980 to LM 195,054,000 in 1998, an increase of 2039.7% over a period of eighteen years (see: Figure 1.13).

In spite of the fact that the loan rates from banks were relatively high (6-9% region<sup>10</sup>), the increase in the prices of the buildings over the years has made investment in property a lucrative proposal. Figure 1.14 shows that terraced houses and flats experienced the most significant increase in prices over a twenty-five year span.

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<sup>10</sup> Central Bank of Malta (2000b) pp. 99-100.

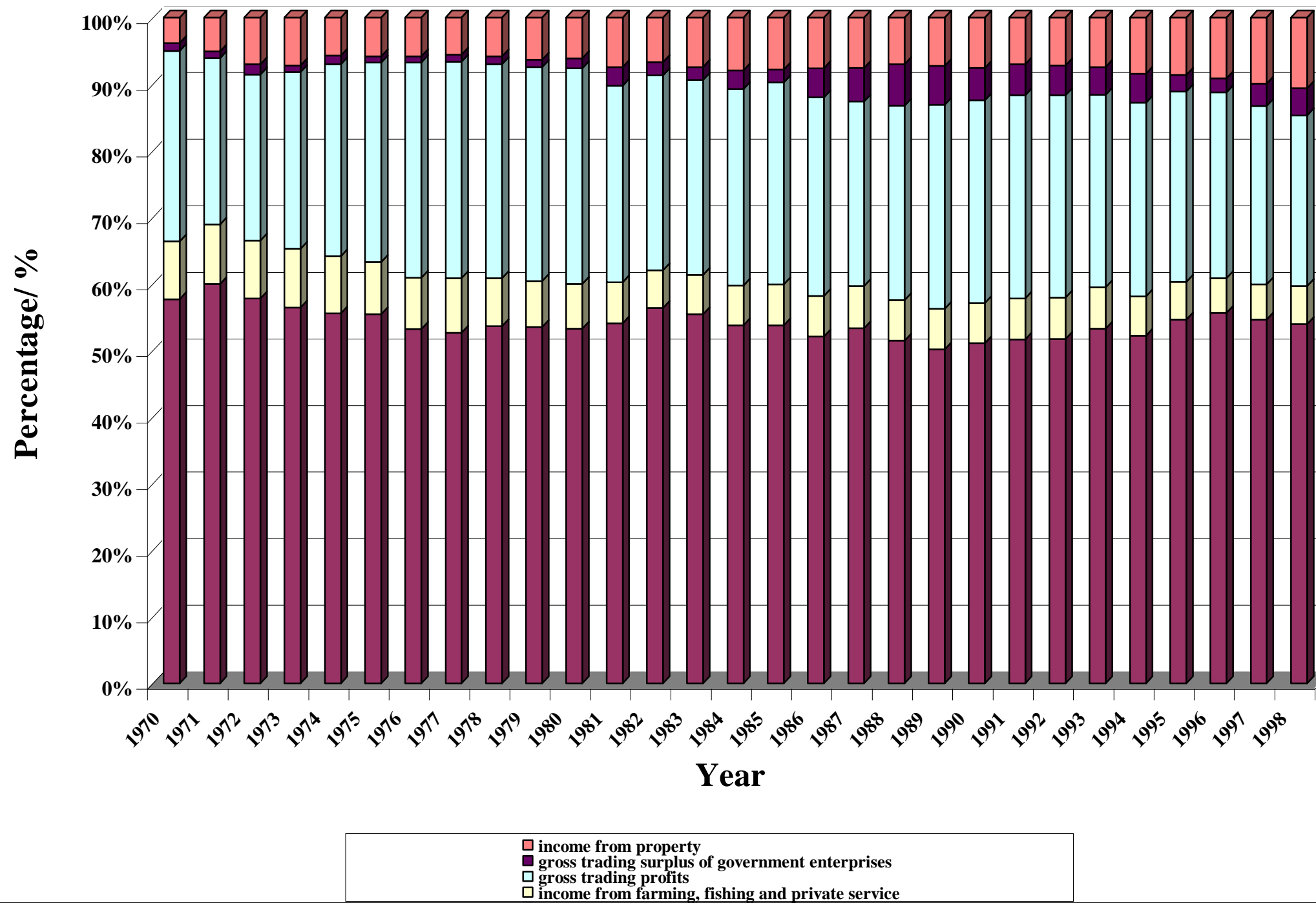


Figure 1.12: Sectoral contribution to Gross Domestic Product for the period 1970-1998 (source: Central Office of Statistics (1980a p.2; 1990b p.2; 2000b p.2)).

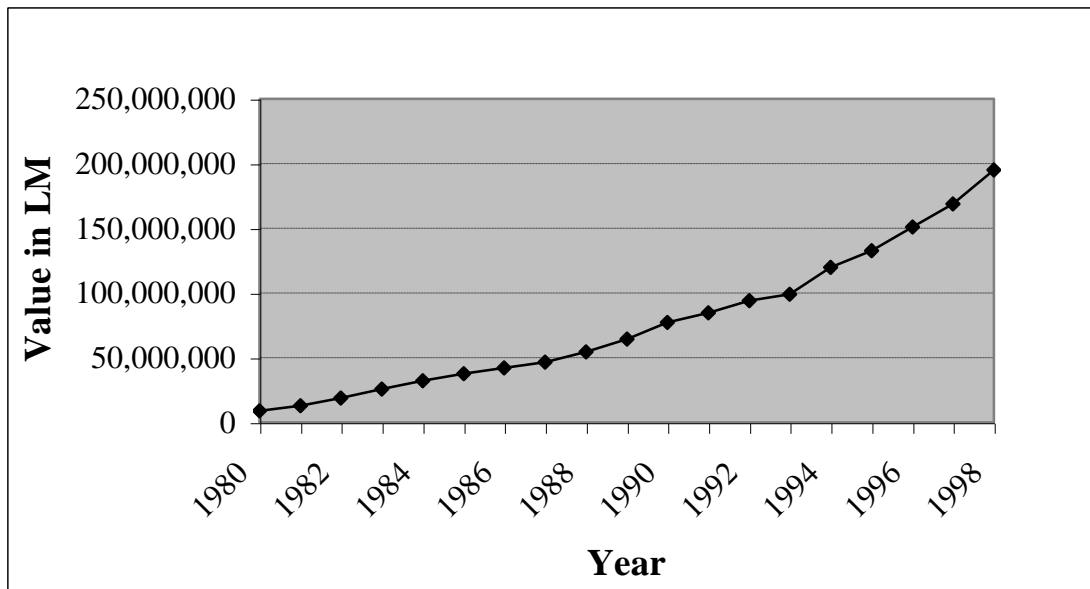


Figure 1.13: Bank loans in Malta for the period 1980-1998 (source: Central Bank of Malta 1995, p.85; 2000b, p.95)

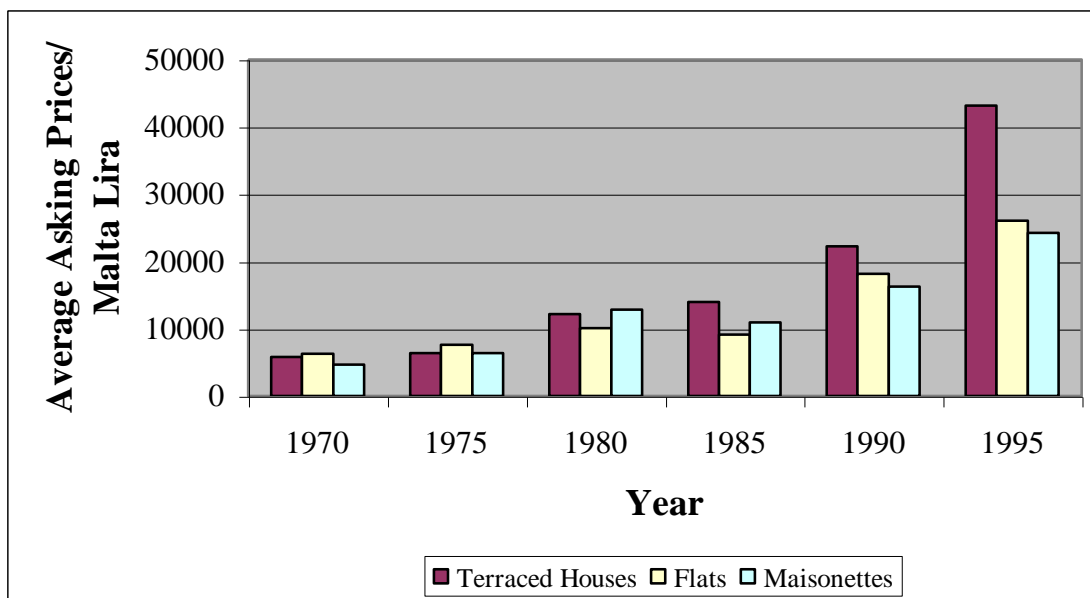
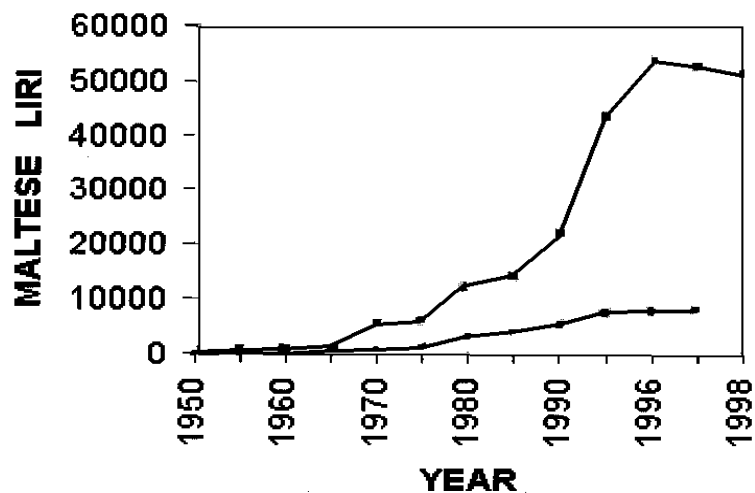


Figure 1.14: Variations in property prices for the period 1970-1995 (source: adapted from Mifsud P.V., 1997 p. 225).

Mifsud (2000 pp 88-90) attributed a link between the current housing stock and planning policies at the time, with the prices being asked for three bedroom terraced houses. He claims that the Home Ownership Schemes (HOS) adopted by the Government in the sixties created massive development that prevented a rise in the housing prices. Once restrictions in development were introduced through the Temporary Provisions Schemes, referred to later on in this chapter, the asking prices embarked on a steep ascent. Asking prices for housing rose steadily until 1995 and then decreased slightly until 1998 (see: Figure 1.15).

Mifsud (2000 pp. 88-90) compared the GDP per gainfully occupied persons with the asking prices and noted that in spite of steady increase in the GDP per gainfully occupied persons since 1965, there was no comparison with the housing prices. He raised doubts whether the increase was due to stringent planning policies or public fear that development land would no longer remain available as a result of new planning policies. However, he failed to draw any connection between the asking prices and the ongoing political situation at the time. This could have influenced the type and possibility of investments that the public would choose to adopt. This was also shown above (see: Figure 1.11) whereby a high growth rate in GDP was registered following a change in government in 1987. It is therefore very difficult to decipher whether it was the Temporary Provisions Schemes or the change in government that could have affected the increase in asking prices.





— Average asking price — GDP per gainfully occupied person.

Source: *The Sunday Times, The Times, Frank Salt Limited, Dhalia Limited, C.O.S.: Abstract of Statistics, C.O.S.: National Accounts of the Maltese Islands*

**Figure 1.15: Average asking price for three bedroom terraced houses (1950-1998) and GDP per gainfully occupied person (1950-1997) (source: Mifsud, 2000 p. 89).**

#### 1.4 The Historical Evolution of Planning in Malta

The first form of planning law in Malta dates back to the days of the Knights of the Order of St. John (Town Planning Division, 1988 p. 72). De Giorgio (1985) carried out an extensive historical review of the period when the Knights decided to build a fortification on *Mount Sciberras* – today known as Valletta. He also cites the reports prepared by Captain Francesco Laparelli (28<sup>th</sup> December 1565-28<sup>th</sup> March 1566) in the planning of the new city (de Giorgio, 1985 pp. 60-79). Following the completion of the defensive works on *Mount Sciberras*, the next step was to enact regulations which would govern the construction of all the buildings, so as to enable the private individuals who acquired plots to proceed with the construction of houses as distinct public buildings. A commission, known as the Valletta Commission, was appointed on the 3<sup>rd</sup> February 1568

*“...to agree on the allocation of different plots and to do so by public deeds after taking into consideration the qualities and nature of each such building plot, and which were to be allocated as free and unencumbered for the erection thereon of new buildings” (de Giorgio, 1985 p.115).*

On the 12<sup>th</sup> May 1569, the Commission issued the new Building Regulations which are considered to be one of the most important landmarks in the local history of building legislation by de Giorgio (1985 p. 117). These were made known to the public through public cries on the 24<sup>th</sup> May 1569 (de Giorgio, 1985 pp. 117-118). Town planning control was followed by sanitary and aesthetic control. Other regulations to control the use and disposal of water and refuse were also enacted. The external appearance of houses was also given an artistic touch by the addition of special features at the corners (de Giorgio, 1985 p.117). He further states that these new regulations followed a number of others which the Order found necessary since 1531, to enact, in order to control a consistent development amongst others, of the fortifications and the city. The oldest regulation was the *Ordinationes Domorum* in 1531.

There was no significant new planning legislation until the 19<sup>th</sup> Century, when measures parallel to the development in Britain were enacted. The main tool of town planning, the Code of Police Laws, dates back to 1854. A Chronology of all the planning-related activities (mainly legislations and reports) until 1998, is shown in Table 1.3, while a detailed review is found in the *Structure Plan Brief* (Town Planning Division, 1988 pp. 71-81).

**Table 1.3: Chronology of Town Planning-related activity in Malta between 1530-1998 (adapted from: Town Planning Division, 1988 pp. 71-81; Aquilina, 1999 pp. 1-8).**

<b>YEAR</b>	<b>TYPE OF ACTIVITY</b>
1530-1798	Knights of St. John publish regulatory framework for Valletta together with other building-related legislation.
1854	Code of Police Laws.
1925	Antiquities (Protection) Act.
1935	Aesthetics Building Ordinance.
1935	Fertile Soil Ordinance.
1935	Land Acquisition Ordinance.
1945	Harrison and Hubbard outline plan for the reconstruction of <i>Valletta</i> and the three cities of <i>Vittoriosa</i> , <i>Senglea</i> and <i>Cospicua</i> .
1947	White paper entitled <i>Draft Building (Control) Bill and Building regulations</i> published.
1956	Special Development Areas Act.
1959	Report by Windyer Morris on <i>Building Regulations and Land Use Planning</i> .
1960	Report by J.F.Q. Switzer entitled <i>Control of Land Use in Malta - Preliminary Review of Legal Powers</i> .
1963	Board appointed to draft new Town and Country Planning Law.
1964	An Italian firm, Italconsult, was entrusted to prepare a preliminary report for a National Physical Plan.
1965	New draft building legislation prepared.
1965	A United Nations expert, W.P. Paterson was detailed to review Italconsult's work for a National Physical Plan.
1967	Post graduate planning students, under direction of F. Masser from the University of Liverpool draw draft Master Plan for Gozo.
1968	Town and Country Planning Act drafted by Sir Desmond Heap.
1969	Development Plan for Malta prepared by Mr. T.E. Siczkowski.
1969	Betterment Levy and Gains Tax bill presented in Parliament.
1982	Consolidation of development planning procedure undertaken.
1983	Building Development Areas Act, 1983 enacted.
1988	Building Permits (Temporary Provisions) Act, 1988 enacted.
December 1990	Structure Plan for the Maltese Islands, Key Diagram and Explanatory Memorandum first published.
1991	Environment Protection Act, 1991 enacted.
July 1992	Structure Plan for the Maltese Islands, Key Diagram and Explanatory Memorandum approved by Parliament.
January 1992	Development Planning Act, 1992 enacted.
October 1992	Planning Authority established
October 1992	Development Planning (Amendment) Act 1992 (Act XXI of 1992) enacted.
1997	Development Planning (Amendment) Act 1992 (Act XXXIII of 1997) enacted.
1997	Auditor General and National Audit Office Act, 1997.

Malta was under Colonial rule from 1800 to 1964. As a result the British administrative and legislative framework affected planning in Malta. The post war planning system was along the lines of the British 1947 Town and Country Planning Act. The need to establish a Planning Authority or a similar regulatory body was expressed in a number of reports drawn up after the Second World War up until the late sixties. Several proposals were made for the consolidation of planning legislation (Aquilina, 1999 p.1); three were of particular relevance to the existing planning system. Cassar (1998 p.54) states that the first idea of structure planning was put forward by Harrison & Hubbard in 1945, where they suggested the setting up of a Town Planning Commission and the drafting of a comprehensive Town Planning Ordinance. Windyer Morris, a consultant to the Government, in 1959, while reporting on “Building Regulations and Land Use Planning” suggested:

- the establishment of a Planning Authority to identify areas for urban development sufficient for ten years’ growth;
- a comprehensive Town and Country Planning law;
- the preparation of an Outline Plan for the Maltese Islands;
- the setting up of a Lands Department and a Land Registration system.

The Lands Department was actually set up in 1962, but little was done about the other recommendations (Cassar, 1998 p.54).

In 1964, Italconsult prepared a report relating to the preparation of a National Physical Plan. The report was based on a thorough land-use survey proposed four schematic outline alternatives for development, besides an overhaul of land-use policy and

relative control. The establishment of a central Physical Planning Authority was also suggested. The same company also drew up a separate Tourism Master Plan covering the period 1964 to 1970 (Town Planning Division, 1988 p.77).

In 1969, a Town and Country Planning Act was adopted, following nearly two years of discussion in Parliament. Once again the Act was based on the British system and followed the advice of the late British Lawyer, Sir Desmond Heap. It was intended to consolidate all previous planning-related legislation into a single enactment (Town Planning Division, 1988 pp. 78-79). Unfortunately, the relevant legal notice to become operative was never issued and later it was struck off the statute book (Doublet, 1998 p.9).

A United Nations Physical planning expert, Mr. T.E. Sieczkowski, between 1967 and 1970, prepared an outline physical development plan. Although the plan was not adopted, the basis for the current Temporary Provisions Schemes was taken on board (Cassar, 1998 p.54). These Schemes were drawn up in an attempt to keep the identity of towns and villages distinct and to differentiate between urban and rural areas.

A change in Government led to an impasse during the period 1969 to 1988. This duration was earmarked by haphazard development, which was characterised by the lack in planning control (Aquilina, 1999 p.1). The only guidelines utilised were those in Temporary Provisions Schemes made in accordance with the Code of Police Laws (Cassar, 1998 p.54). The dismantling of the Town Planning Section of the Department of Public Works in the seventies was a grave setback to planning in Malta and the negative consequences of such a decision are still felt today (Aquilina, 1999 p.2).

There were two main events that could have influenced the radical changes which came about in the planning system in the early nineties. These were the operation of the Planning Area Permits Board and the Building Development Areas Act, 1983. The former was the decision-making body before the setting up of the Planning Authority. The latter was the Act that gave exclusive powers to the Minister in charge of Works.

#### **1.4.1 The Planning Area Permits Board**

The Governor of Malta established the Planning Area Permits Board (PAPB) in terms of Legal Notice 10 of 1962, under powers conferred upon it by Section 19 of the Code of Police Laws. The Board was established as the delegate of the Principle Secretary, whose duties were later conferred on the Minister responsible for Public Works. This implies that the PAPB fell under the portfolio of the Minister of Works (Aquilina, 1999 pp.111-112). In *Mary Grech v. Minister for Works et al.*<sup>11</sup>, the Court analysed the evidence concerning the Board's operations. It noted that the Board did not keep minutes of its deliberations and decisions, and that only a short minute was entered in the relevant file. This, the court considered, was a grave omission, for the Board was deciding on the patrimonial rights of the citizens and nobody could control the Board in order to see why it had refused his or her application. The Board's operations reflected an authoritarian and arbitrary mentality (Aquilina, 1999 p.301). The

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<sup>11</sup> *Mary Grech v. Minister for Works, Director of Works in the name and on behalf of the Department of Works and the Secretary and Chairman of the Planning Area Permits Board on behalf of the said Board* and by decree dated 3<sup>rd</sup> May 1988 the words "Minister for Works" were substituted by the words Minister for the Development of Infrastructure, 29 January 1993 (writ of summons No. 342/88).

decision-making system at the time was open to abuse, was the subject of public suspicion and possible corrupt practices.

Most development at the time was subject to control from different authorities, the regulations of some of which were outdated and inappropriate. Amos (1990, p.13) stated that most development was subject to four controls exercised by different authorities as shown in Table 1.4.

**Table 1.4: General development control exercised by different authorities (adapted from: Amos, 1990 p.14).**

<b>Control</b>	<b>Authority</b>
Building Alignment	Director of Works
Sanitary Regulations	Building Inspectors
Aesthetic Control	Aesthetics Board
Building Permit	Planning Area Permits Board

In addition, in certain cases, other controls also applied as shown in Table 1.5. This led to an approval system which was complex, confusing, difficult and not wholly relevant (Amos, 1990 p.14). Delays were not uncommon as can be seen from an analysis carried by Amos (1990 p.15) (see: Figure 1.16). He attributed part of the delays to the architects who failed to supply requested information. The most serious delays were blamed on the inappropriate statutory procedures. The effect of these delays meant that some developers did not take the trouble to seek permission or, in some cases, when an application was made, they would not wait for the permission to be issued prior to commencement of works (Amos, 1990 p.16). There were also huge problems in the enforcement section with about 1,178 active enforcement cases at the end of February 1990. This was connected mainly to the fact that the existing legislation allowed for endless falsification (Amos, 1990 p.17).

A total of 586 of the enforcement cases mentioned above were due to works carried out without the submission of applications while 227 were due to works carried out not in accordance with approved permission (Amos, 1990 p.18).

**Table 1.5: Additional controls which were undertaken by different authorities for certain types of development (adapted from: Amos, 1990 p.14).**

<b>Control</b>	<b>Authority</b>
Fertile Soil Preservation	Director of Agriculture
Trading Licence	Commissioner of Police
Clearance Rights for Civil Aviation	Department of Civil Aviation and Commissioner of Land
Government property	Commissioner of Lands
Tourist Accommodation	Hotels and Catering Establishment Board and Health Department
Restaurants/ bars	Health Department
Farm Buildings	Department of Agriculture, Water Works Department
Historical Sites	Antiquities Committee
Valletta	Valletta Rehabilitation Committee

A Civil Court ruling<sup>12</sup> held that the Planning Authority was not the legal successor in title to the Planning Area Permits Board. It was the Minister responsible for public works and not the Planning Authority who had to answer for any wrongdoing of the Planning Area Permits Board, if this proved to be the case (Aquilina, 1999 pp. 111-112).

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<sup>12</sup> *Annunzio Mifsud v. Director of the Roads Department, Director General Works Division, architect Joseph Borg Grech, District Engineer and the Planning Authority of any interest it might have in this cause*; Writ of summons No. 834/96. The Hon. Mr. Justice Giannino Caruana Demajo LL.D. sitting in the Civil Court, First Hall, on 14th November 1997 delivered this preliminary judgement.



**PROCESSING TIME FOR BUILDING PERMITS**

P1 refers to alterations

P2 refers to new works (sample of 263 applications out of 29,700)

		Completed within weeks *	6	10	14	18	over 18 weeks
Planning Area Permits Board Decisions	P1						
	1984	71%	81%	90%	91%	19-65	
	1985	22%	43%	65%	78%	19-54	
	1986	40%	68%	72%	80%	19-37	
	1987	33%	71%	85%	90%	19-36	
	1988	73%	84%	100%	-		
	1989	30%	76%	100%	-		
	P2						
	1984	54%	80%	85%	94%	19-20	
	1985	50%	51%	64%	70%	19-48	
	1986	8%	38%	75%	79%	19-79	
	1987	26%	52%	58%	76%	19-52	
1988	18%	50%	68%	75%	19-75		
1989	54%	74%	83%	96%	19-26		
Planning Area Permits Board Decision plus Contribution Notification	P1						
	1984	36%	54%	72%	77%	19-76	
	1985	21%	43%	52%	60%	19-83	
	1986	12%	24%	48%	60%	19-70	
	1987	19%	42%	57%	76%	19-62	
	1988	10%	31%	52%	73%	19-50	
	1989	-	46%	76%	93%	19	
	P2						
	1984	27%	61%	72%	80%	19-71	
	1985	12%	28%	56%	59%	19-83	
	1986	4%	16%	40%	60%	19-100	
	1987	20%	44%	58%	62%	19-56	
1988	3%	25%	46%	65%	19-76		
1989	-	35%	58%	90%	19-29		

\* Note Does not include final administrative procedure of actually mailing permit once contribution payment has been effected.

**Figure 1.16: Processing time for building permits for the years (1984-1989)**  
(source: Amos, 1990 p.15)<sup>13</sup>.

<sup>13</sup> The table in this figure shows an accumulative percentage of completed applications up to 18 weeks. The 100% completion of the applications submitted in the corresponding year took between 19 and the final figure given in the last column, to complete. For example, if the stated figure for 1984 was 19-65, it implies that the rest of the files were decided within 65 weeks.

#### **1.4.2 Building Development Areas Act, 1983**

In 1983, the Building Development Areas (BDA) Act came into effect in order to replace the Planning Schemes. The BDA were intended to provide cheap plots under Government control away from built-up areas (Colin Buchanan and Partners *et al.*, 1991b p.19). This Act was severely criticised by environmental groups because it gave strong powers to the Minister and also because it allowed development on open land. The results of this Act are still felt to the present day as urban sprawl and misuse of land were rampant. As a consequence, the Island was rapidly losing its character (Doublet, 1998 pp. 12-13). The BDA Act made provision for the establishment of Building Development Areas, for the acquisition and disposal of land contained therein and for further regulation of building development.

Significant power was given to the Minister responsible for works in terms of Section 3(1) of the Act:

*“The Minister may from time to time declare any land in Malta to be a Building Development Area and shall define such land in such a manner, as he may deem fit”.*

However, prior to such a declaration the Minister had to prepare a project, including plans showing all the land which had to be included in the BDA Act<sup>14</sup>. Such plans were open to public inspection. The projects always consisted of a number of dwellings which were intended to be sold or distributed to the public. Following the declaration of a BDA and the preparation of the project the Minister had to cause the declaration to be placed before the House of Representatives for its consideration<sup>15</sup>. Thanks to the fact that the party in Government had a majority of seats in Parliament,

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<sup>14</sup> Act No. I of 1983, Section 3(2).

<sup>15</sup> *Ibid.*, Section 3(5).

such declarations usually passed without any problems for the Minister. Once approved, they would be published in the Government Gazette and at the premises of the Department of Works<sup>16</sup>.

All land within a BDA was deemed, for intents and purposes of the law, to be land acquired for a public purpose by absolute purchase in full ownership, free and unencumbered from any charge, hypothec or privilege under the provisions of the Land Acquisition (Public Purposes) Ordinance<sup>17</sup>. Persons having a right over or an interest in the land in question were entitled to have access to the Land Arbitration Board and to the Civil Court, First Hall, for the purposes of determining his or her right or interest in such land, the amount of any compensation to which he or she was entitled and for the purpose of obtaining payment of that compensation<sup>18</sup>. The value of land for the purpose of determining compensation was payable as rural land or as waste land, according to the circumstances of the case<sup>19</sup>.

Following the legal procedures described above, the Minister could then dispose of the land either in favour of the Housing Authority, as was provided by the Housing Authority Act or by sale, as was provided for in the Disposal of the Government Land Act. Previous landowners had preferential treatment for the acquisition of a plot of land on which to build a dwelling house to be occupied by such owners<sup>20</sup>. The price for which a plot of land in a BDA could be sold had to be fixed by the Minister. The price took into consideration compensation payments and the costs for the acquisition

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<sup>16</sup> *Ibid.*, Section 3(7).

<sup>17</sup> *Ibid.*, Section 5(1).

<sup>18</sup> *Ibid.*, Section 5(3).

<sup>19</sup> *Ibid.*, Section 6.

<sup>20</sup> *Ibid.*, Section 12(1).

of land<sup>21</sup>. The Act established that no person could erect a new building on any land that was not declared to be a Building Development Area<sup>22</sup>. However, the Minister was given power to authorise buildings on such land in accordance with a policy approved by resolution of the House of Parliament<sup>23</sup>.

All planning schemes made in accordance with the Code of Police laws before the coming into force of the Building Development Act were revoked<sup>24</sup>.

#### **1.4.2.1 The Effects of the BDA Act**

Cacopardo (1985) claimed that during the first two years of the BDA Act, good agricultural land was taken and sites of high visual amenity were spoiled. Secondly, the Building Development Areas were producing just dwellings without any consideration of any other amenities required in habitable areas.

Schembri (1985) referred to Government Notice 967 of 1984 which listed 21 different sites in Malta and Gozo that were being proposed as Building Development Areas under the BDA Act of 1983. He gave examples of a number of sites that were important habitats. These included cliff edges (*Ix-Xag]ra l-Kbira*, *Tal-Vecca* at Dingli), cliffs (*Xemxija*), valleys edges (*Tal-}andaq*), watercourses (Pembroke) and garigue (*Tal-Bra[*, at *Selmun* and *Ix-Xag]ari*, *Nadur*, Gozo).

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<sup>21</sup> *Ibid.*, Section 12(3).

<sup>22</sup> *Ibid.*, Section 13.

<sup>23</sup> *Ibid.*, Section 14.

<sup>24</sup> *Ibid.*, Section 19.

Mifsud (2000 p.88) stated that the BDA Act of 1983 carved out and acquired from Government eight relatively large pockets of land that were distant from built-up areas and which the law designated as wasteland. All eight pockets were parcelled into densely packed building plots and sold freehold at nominal prices. A total of 1,321 BDA plots were issued. However, control over applicants was insufficient, so that in several instances BDAs became a mechanism for land speculation. The plots being sold at low prices by the Government after expropriation were subsequently put up for sale by the new owners at a much higher price (Colin Buchanan and Partners *et al.*, 1991b p.19).

According to confidential Government files which the author was allowed access to, during the end of 1985 and the beginning of 1986, discussions were held between Members of the two sides of the House of Representatives and also with the Chamber of Architects to amend the BDA Act. A Bill entitled *An Act to amend the Building Development Areas Act, 1983*, together with a policy which was going to be annexed to the Bill, were drafted. Whereas there was mutual agreement between the two sides of the House, the Chamber agreed with parts of the bill but suggested that a Structure Plan for the Islands should form part of the amendment, as it had already done in previous reports. The Bill was never passed through Parliament.

#### **1.4.3 Building Permits (Temporary Provisions) Act, 1988**

The period between 1987 and 1992 was a transitory one in Maltese planning history. A change of government in 1987, led to the creation of the Planning Services Division, within the Ministry for Development of the Infrastructure, in 1988. This new division took up from where the Planning Section of the Department of Works had left off in the late sixties (Aquilina, 1999 p.2). This Division was instrumental in

all the phases which led to the formulation of the Structure Plan in the following years.

The Building Permits (Temporary Provisions) Act of 1988 was the legislation which acted as a stopgap measure between the Building Development Areas Act of 1983 and the Development Planning Act of 1992. Amongst other things this Act:

- limited the excessive powers the Minister had under the BDA Act;
- established that a Structure Plan and Local Plans should be drawn up and specified the procedures which should be followed in their formulation;
- empowered the Minister to make Planning Schemes which were of a temporary nature until Local Plans were produced;
- introduced the concept of public consultation in the formulation of the Structure Plan;
- empowered the Minister to declare preservation and conservation areas.

The objectives of all regulations concerning optimal use and development of land were to respect the environment and at the same time ensure the basic social needs of the community<sup>25</sup>. The criteria, which had to be satisfied in every Structure or Development Plan, were listed in Section 3(2) of the Act.

The Minister responsible for Works had two years time in which to prepare the Structure Plan. An extension could only be allowed by resolution of the House. The Structure Plan had to be laid down on the Table of the House of Representatives,

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<sup>25</sup> Building Permits (Temporary Provisions) Act, 1988 Section 3(1).

which by resolution could adopt it, reject it or adopt it subject to modifications. The Plan could be revoked or amended only by resolution of the House<sup>26</sup>.

The legislation also established that a survey had to be carried out prior to the production of the Structure Plan. Section 4(2) listed the sectors which had to be considered in this survey and stipulated that it had to examine matters likely to affect development or planning of development in Malta.

The Structure Plan had to be a written statement which was not site specific but it had to formulate the national planning policy and general proposals in respect of the development and other land uses<sup>27</sup>. Diagrams, illustrations and descriptive matter included or accompanying the Structure Plan were to be treated as forming part of the whole plan<sup>28</sup>.

The Minister was obliged to give adequate publicity both to the report of survey and the Structure Plan stage of the process. Feedback was also expected from the public and the representations made had to be taken into consideration prior to presenting the final draft of the Structure Plan<sup>29</sup>.

The legislation went to the extent of proposing the procedures and details that had to be included in the preparation of Local Plans which were to follow the Structure Plan<sup>30</sup>.

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<sup>26</sup> *Ibid.* Section 4 (1).

<sup>27</sup> *Ibid.* Section 4(3a).

<sup>28</sup> *Ibid.* Section 4(5).

<sup>29</sup> *Ibid.* Section 4(6) and 4(7).

<sup>30</sup> *Ibid.* Section 4(9).

Section 5 of the Building Permits (Temporary Provisions) Act 1988 empowered the Minister to make Planning Schemes. These were made up of a number of plans of the Islands and included zoning conditions and other descriptive matter to enable their interpretation. As a result they established the development areas and the zones known as Outside Development Areas. The common terminology used by Maltese authors for the latter areas is Outside Development Zones (ODZ). The Schemes were approved by Parliament in 1989, after a public consultation period (see: Section 1.1.1).

Mintoff (1995 p.43) stated that

*“the 1988 schemes were planned by the Planning Directorate to meet a land demand for a period of not less than 20 years and they were subsequently extended by the Select Committee of Parliament.”*

Mintoff might have misquoted the fact that the Planning Directorate was involved since there was no Planning Authority at the time. However, a number of people who had formed part of the Planning Services Division at that time were later employed with the Planning Directorate. Colin Buchanan and Partners *et al.* (1990b p. 8D Section 2.10) claim that as a result of the public consultation process, the total area approved by Government far exceeded the area recommended by the Planning Services Division. This was mainly due to pressures by landowners to have their land included for development and partly aimed at minimising land price increases by ensuring an adequate supply of developable land for housing. A plan of the Temporary Provisions Schemes drawn between 1988 and 1989 is shown in Figure 1.17. In spite of the fact that the schemes were intended to limit building sprawl, there was still the possibility for urban expansion. This could happen if the government acquired land for Home Ownership Schemes ODZ areas, where the land is cheaper to



buy due to lower compensation values (Colin Buchanan and Partners *et al.*, 1990b p. 8D Section 2.13).

The Temporary Provisions Schemes were a transitory measure until the Local Plans for the areas were prepared. However, since the enactment of the Structure Plan, in 1992, there is only one Local Plan, which has been finalised (December 2001). The legality of the Temporary Schemes have been contested both in the Court of Appeal and also in Appeal cases in front of the Board of Appeal<sup>31</sup>. Aquilina (1999 pp. 91-92) states that:

*“The Board (of Appeal) further pointed out that although the 1988 Act had been repealed in terms of Section 63(1)(c) of the Development Planning Act, 1992 the said Section 63 saved all those acts which had been done under the 1988 Act in so far as they were not inconsistent with the 1992 Act. This meant, the Board held that the schemes were still in force until they were replaced by Local Plans. Furthermore, the Board held that even the Structure Plan, in paragraph 6.6 thereof, made a similar provision:*

*Accordingly the Structure Plan confirms the location of the Temporary Provisions Schemes.*

*The Board and the Court of Appeal<sup>32</sup> have both ruled that the Temporary Provisions Schemes are of a binding nature (in so far as they form part of the subsidiary legislation) and thus it was not possible for the Planning Authority and the Planning Appeals Board to depart from the provisions of these Schemes.”*

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<sup>31</sup> Other terms found in the Maltese literature, are: *Planning Appeals Board* and *Appeals Board*.

<sup>32</sup> *Victor Chetcuti v. Planning Authority*, decided on 31<sup>st</sup> May, 1996 (Appeal no. 205/95) and *Alfred Chetcuti v. Planning Authority*, decided on 15<sup>th</sup> December, 1997 (Appeal no. 74/97).

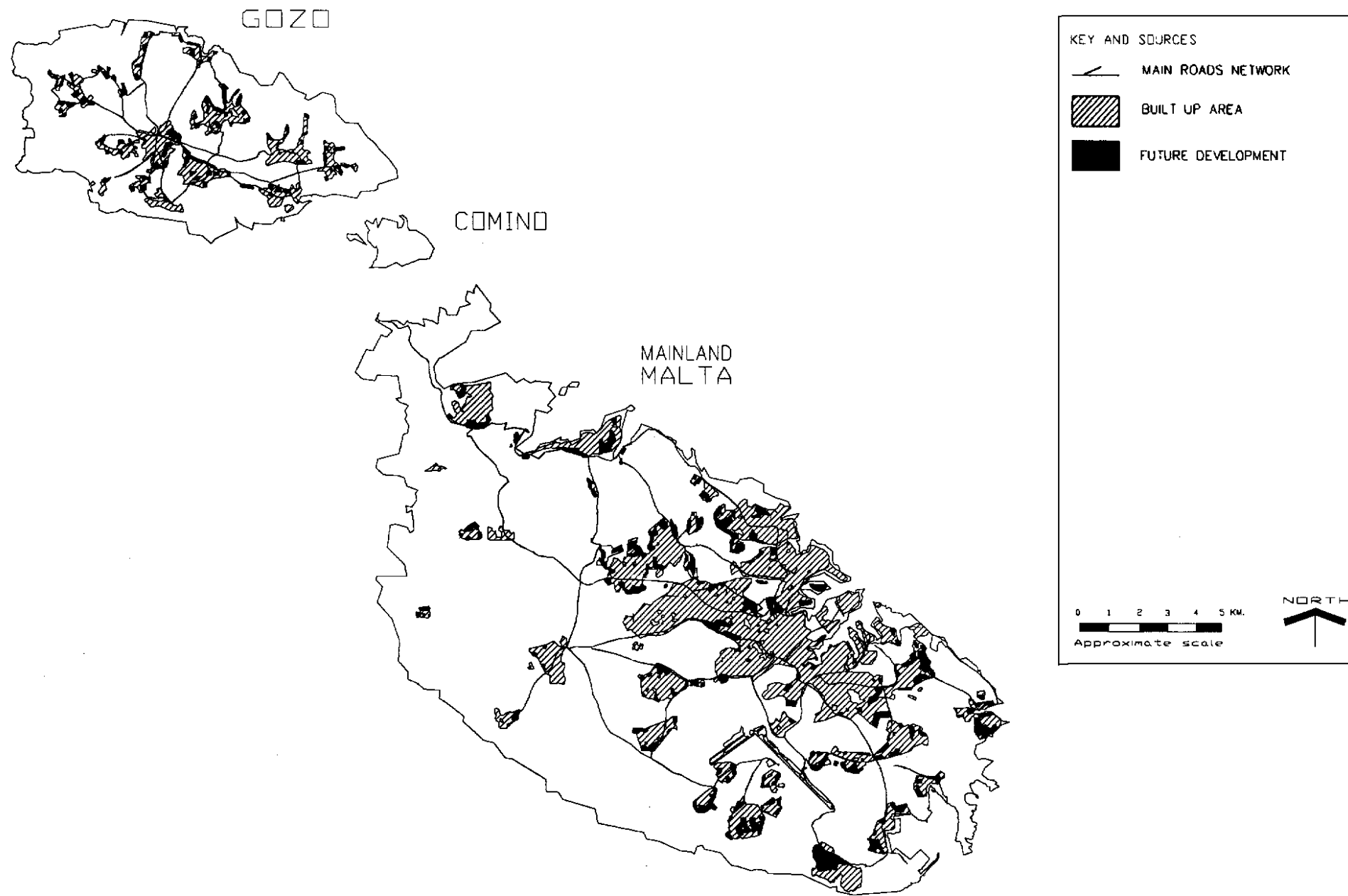


Figure 1.17: A plan showing the Planning Schemes as drawn in 1989 (Colin Buchanan and Partners *et al.*, 1990b p. 9D).

Aquilina (1999 pp. 575-579) supplies a whole list of Appeal cases<sup>33</sup> where the Temporary Provisions Schemes were applied.

The Minister could only grant permits for buildings outside development areas:

- if they were in accordance with a policy made for the purpose by the Minister and approved by the Committee of the House<sup>34</sup> and published in the Government Gazette; or
- where permission was authorised by special resolution of the House.

The Minister could, following consultation with the Committee of the House, also authorise erection of buildings<sup>35</sup>.

- on plots of land acquired by the Housing Authority;
- for specific construction of which, land had been transferred to any person by the Government<sup>36</sup>.

The legislation also included a provision for acquisition of areas of land, at low cost, for the promotion of home ownership<sup>37</sup> and usually sited outside development areas.

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<sup>33</sup> See: Aquilina K. (1999) *Development Planning Legislation, The Maltese Experience* Appendix I for detailed list of Planning Appeals' Board case law in which Temporary Provisions Schemes have been applied.

<sup>34</sup> This was a select committee of the House of Representatives consisting of five members, one of whom was the Minister of Works, who was also chairman. The other four members were two nominated from the government and two from the opposition benches. There was also a substitute from each party.

<sup>35</sup> Building Permits (Temporary Provisions) Act, 1988 Section 5(5).

<sup>36</sup> *Ibid.*, Section 5(6).

<sup>37</sup> *Ibid.*, Section 6.

The concept of introducing some safety standards such as that of enclosing the construction areas by means of hoarding was introduced through this Act<sup>38</sup>. It also empowered the Minister to declare preservation and conservation areas after following procedures listed in the law<sup>39</sup>. Section 9 dealt with enforcement of conditions in development permits. The Act suspended the ministerial powers to make Schemes under Section 3 of the Code of Police Laws. The only way Schemes could be made were those established in this Act. Secondly, the power of the Minister to review decisions made by the Planning Area Permits Boards, under the regulations made in virtue of Section 19 of the Code of Police Laws, was abolished. This power was transferred to the Committee of the House<sup>40</sup>.

This legislation paved the way to commence work on the Structure Plan. Funded by the European Community and with the help of British and Italian consultants<sup>41</sup>, a series of reports, consultation meetings and studies were carried out. This led to the Structure Plan for the Maltese Islands, which was published in December 1990 by the Ministry for Development of Infrastructure, which incorporated the Planning Services Division. The House of Representatives approved the Structure Plan for the Maltese Islands, including the Explanatory Memorandum and Key Diagram on the 29<sup>th</sup> July 1992. Aquilina (1999 pp. 89-91) cites a number of Appeal cases<sup>42</sup> whereby it was clearly established that these three documents are legally binding instruments on the

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<sup>38</sup> *Ibid.*, Section 7.

<sup>39</sup> *Ibid.*, Section 8.

<sup>40</sup> *Ibid.*, Section 14.

<sup>41</sup> The Italian consultants withdrew after the studies were completed because they could not see eye to eye with the British consultants (Zammit, 1998 p. XVII).

<sup>42</sup> *Emanuel Grech v. Development Control Commission*, decided on 28<sup>th</sup> January, 1994 (Appeal no. 98/93 KA); *Frank Caruana v. Development Control Commission*, decided on 11<sup>th</sup> February, 1994 (Appeal no. 60/93KA); *Joseph Schembri v. Development Control Commission*, decided on 11<sup>th</sup> February, 1994 (Appeal no. 100/93 KA); *Emanuel Cachia v. Development Control Commission*, decided on 3<sup>rd</sup> December, 1993 (Appeal no. 48/93 KA); *Joe Cassar v. Development Control Commission*, decided on 26<sup>th</sup> May, 1995 (Appeal no. 322/94 KA).

Planning Authority. Thus, to reach a decision or formulate a plan, the Authority is bound to follow all the policies found in the Structure Plan and the explanations found in the Explanatory Memorandum and Key Diagram.

#### **1.4.4 Development Planning Act, 1992<sup>43</sup>**

The Development Planning Act, 1992 established the Planning Authority and its functioning arm, the Planning Directorate, with the responsibility to implement the planning system and the 320 planning policies outlined in the Structure Plan.

This Act was amended three times between 1992-1998<sup>44</sup>, the first time, in October 1992 and the second time was in August 1997. The first amendment<sup>45</sup> affected only Section 3(5)(b) and involved the addition of a proviso to the effect that the academic staff of the University of Malta are not deemed as members of an agency of the Government. This facilitated the selection of members of staff to be appointed board members of the Planning Authority. The second amendment<sup>46</sup> limited certain powers, which the Planning Authority previously had and also fine-tuned certain processes, which were considered as bottleneck areas in the previous legislation. Aquilina (1999 pp. 61-71) gives a detailed review of the areas affected by this amendment. The third amendment<sup>47</sup> was of a technical nature. In fact, in terms of Section 8 of the Auditor General and National Audit Office Act, 1997 (Act No. XVI of 1997), any reference in any law to the Director of Audit (as found in Section 8(2) of the

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<sup>43</sup> Development Planning Act, 1992 - Act No. I of 1992.

<sup>44</sup> The Act was amended again in 2000 and twice in 2001 but these amendments do not have any bearing on the data used in this study and so will not be considered at this stage.

<sup>45</sup> Development Planning (Amendment) Act 1992– Act No. XXI of 1992.

<sup>46</sup> Development Planning (Amendment) Act, 1997 – Act No. XXIII of 1997.

<sup>47</sup> Auditor General and National Audit Office Act, 1997 – Act No. XVI of 1997.

Development Planning Act, 1992) is deemed to be a reference to the Auditor General (Aquilina, 1999 p.62).

The Development Planning Act, 1992, was passed by the House of Representatives on the 15<sup>th</sup> January 1992. Section 1 of the same Act empowered the Minister responsible for the environment to decide when the Act or part of it would come into force. Legal Notice 102/92 established the 28<sup>th</sup> of October 1992 as the date on which the said Act other than Sections 30 and 63 came into force. The 1<sup>st</sup> December 1992 was the date on which Sections 30 and 63 of the said Act came into force. As a result of this Act, the Planning Authority was established in October 1992.

One of the main parts which was changed thanks to the 1997 amendments made to the Development Planning Act, 1992 was the procedure followed to adopt policies and plans. Section 5(1) of the 1992 Act provided that the function of the Planning Authority is to promote proper land development, both public and private, and to control such development in accordance with approved policies and plans. The 1997 amendments substituted the words “*approved policies and plans*” to read:

*“with approved policies, plans and conditions approved by the Government and with procedures as approved by the Minister.”*

Apart from including ministerial blessing, the new concept of “*conditions*” was introduced. The term “*conditions*” is defined in Section 2 of the Development Planning Act 1992 as:

*“general conditions applied by the Authority in respect of applications and in respect of their condition but not include particular conditions tied to the issue of a particular permit.”*

The new amendment restrained the eventual possibility of the Planning Authority embarking on some policies and plans, which are not in line with the political policies

of the incumbent Government. This would have created a faction within the administrative set-up of the country. Aquilina (1999 pp. 87-88) claims that planning policy guidelines do not require Government approval since these documents are not considered as “*policy or plan*” by definition.

#### **1.4.5 Repealed Legislation**

Development planning was, prior to the enactment of the Development Planning Act, 1992, regulated under Parts I and V of the Code of Police Laws, the Aesthetics Buildings Ordinance and the Building Permits (Temporary Provisions) Act, 1988. Aquilina (1999 p.506) claims that only Part I of the Code of Police Laws has so far been repealed due to the fact that the regulations mentioned under Section 63(2)(a), which had to replace these provisions, have not yet been made. This has been confirmed by case law in *Pater Holding Co. Ltd v. Development Control Commission et al.*<sup>48</sup>.

Section 63 of the Development Planning Act, 1992 states:

- (1) “*Subject to the provisions of this section, the laws, or provisions thereof hereinafter specified shall be repealed or have affect (effect) as provided in this section.*”
- (2) *The following enactments, or provisions thereof, that is to say:*
  - (a) *Part I and to the extent that its provisions are replaced, and are expressly said to be replaced, by regulations made under section 60 of this Act, Part V of the Code of Police Laws;*
  - (b) *The Aesthetic Building Ordinance;*
  - (c) *The Building Permits (Temporary Provisions) Act, 1988; and*
  - (d) *So much of the Building Development Areas Act, 1983 as may still be operative immediately before the coming into force of this Act, are hereby repealed.”*

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<sup>48</sup> Appeal no. 282/97 KA decided on 11<sup>th</sup> September 1998 by the Board of Appeals of the Planning Authority.

## 1.5 Environment Protection Legislation

Aquilina (1998 p.4) states that the sources of Maltese Environmental Law are mainly statutory. Environmental Law has developed as a branch of its own during the last thirty years only, so case law and publications are scarce. He reviewed all the relevant legislation dealing with the environment, as defined in the Environmental Protection Act, 1991<sup>49</sup>.

Two pieces of legislation important to this study are the Fertile Soil (Preservation) Act, 1973<sup>50</sup> and the Environment Protection Act, 1991<sup>51</sup>. The Fertile Soil (Preservation) Act, amongst other things, obliges the owner of a plot of land to remove any fertile soil prior to building and dispose of it as directed by the Director of Agriculture.

The Environment Protection Act<sup>52</sup> was intended to consolidate previous legislation on environmental protection in one single decree. It was enacted while the relevant studies and preparations were taking place for the setting up of the Planning Authority and the Structure Plan for the Maltese Islands. It was an umbrella Act with far reaching consequences. The duties of the government to safeguard the environment both for the present and future generations are established in Section 2. The Act (Sections 3-8) establishes the responsibilities of various Ministers spelling out the

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<sup>49</sup> See: Aquilina K (1998), *Where to find Maltese Environmental Law*, unpublished lecture notes in Environmental Law used by the Law course students at the Faculty of Law, University of Malta, 44 pp..

<sup>50</sup> Chapter 236 of the Laws of Malta.

<sup>51</sup> Act No. V of 1991.

<sup>52</sup> This Act is being repealed by a new one (Act XX of 2001) but it will not be considered since it came into effect after the period under study.



type of action they have to take to achieve the aims in Section 2. Aquilina (1998 p.6)

states that:

*“the policy guidelines contained in this law, are not enforceable in a Court of Law but the Government and its Ministers are being invited by Parliament to keep these fundamental principles in mind when taking decisions which effect the environment.”*

## **1.6 The context in the formulation of the Structure Plan**

It is very important to understand the prevailing circumstances under which the option to follow the English model of Structure Planning was made.

In 1987, Malta was the only European country having a sort of planning legislation not related to any legalised development plans (Town Planning Division, 1988 p.12). The Government's town planning functions were being reactivated after a 13-year period. The choice of building development areas under the provisions of the BDA Act gave rise to serious public concern and formal protests by constituted bodies. The location of these vast areas released for development at a nominal price for house construction was not carried out within a rational framework of an overall development policy or guidelines (Town Planning Division, 1988 p.12). These years were characterised by a sprawl of buildings in various parts of the Island which stimulated the public response that something must be done to safeguard the environment. A number of non-governmental organisations had for several years called upon the Government to change course. The party in opposition acknowledged those calls and gauged the prevailing public attitude at the time and once in government, it had to act swiftly, as it had promised to do in its electoral manifesto<sup>53</sup>.

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<sup>53</sup> See: *Partit Nazzjonalista* (1987).

This shows that apart from the public stimulus there was also the Government's will to change course.

The Chamber of Architects obtained a grant from the Commonwealth Foundation to fund the drafting of a Structure Plan Brief which was later revised by the Planning Services Division (Zammit, 1998 p. XV). This information was denied by Galea<sup>54</sup> when asked for a copy of this brief. In fact, Galea (personal communication) said that the Chamber just suggested the idea to the Government and that it was Mr. G. Cassar (the incumbent Director of Planning) who wrote the Structure Plan Brief when he was employed with the Town Planning Division. Gauci (personal communication) claims that it was the Chamber of Architects who first mooted the idea of a Structure Plan for the Maltese Islands based on the British system. The Chamber of Architects said that when the Building Development Areas Bill was being discussed in Parliament, it presented the Minister of Works its comments. Amongst these was that a Structure Plan for the whole of Malta and Gozo should be prepared prior to proceeding with the selection of areas for which development under the new Act was going to take place. This would have established a policy framework within which development could take place. In 1985, the Chamber published a full text to explain what Structure Planning means and how it could work (Chamber of Architects and Civil Engineers, 1985 pp. 19-20). In 1986, a few months before the elections of 1987, the Chamber presented a Memorandum to political parties based on the need to change course and produce a Structure Plan for the Maltese Islands (Chamber of Architects and Civil Engineers, 1986 pp. 23-29).

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<sup>54</sup> Galea Catherine was President of the Chamber of Architects and Civil Engineers during the year 2000.

In June 1988, the Government enacted the legislation which required the Minister for Development of Infrastructure to draft a Structure Plan within two years. A Structure Plan brief was duly published in late 1988 and funding from the European Community (EC) was also agreed upon.

The declaration of intent by the Maltese Government to seek EC membership was a major reason for aligning Malta's planning systems and procedures with other European Countries in accordance with European Planning (Town Planning Division, 1988 p.15).

The Structure Plan contract was awarded to Colin Buchanan and Partners in association with Generali Progetti SpA following an international call for applications. The EC and the Maltese Government made the assessment of six proposals prior to awarding the contract. In fact, Gauci (personal communication) states that following the tender process, a German company was going to be chosen as a consultant to carry out the studies and prepare the plan, but the Maltese authorities insisted that the company should be a British one. Hence the choice was Colin Buchanan and Partners together with Generali Progetti Spa.

The stated functions given in the Structure Plan Brief to the consultants were (Town Planning Division, 1988 p.18):

- a) *“To state and justify the national planning policies, and general proposals in respect of the development and other use of land, including measures for the improvement of the physical environment and the management of traffic.*

- b) *To interpret the relationship of national policies in terms of physical and environmental planning in so far as these policies concern the integration of economic, social and environmental policies.*
- c) *To provide the framework for local plans, which then in turn will provide more definitive guidance for development and development control.”*

The Structure Plan Goal was:

*“To achieve the optimum physical use and development of land, which respects the environment, and at the same time ensures that the basic social needs of the community are, as far as is practical, satisfied.”*

The stated Structure Plan major objectives were:

- i. *“The conservation of agricultural land, of the valleys, the coastline and other places of natural beauty, the trees, the fauna and the physical environment generally.*
- ii. *The conservation of the water table, of other sources of water, and other natural resources.*
- iii. *The conservation of land and buildings of an historical value.*
- iv. *The reclamation of land to replace agricultural land allowed to be developed for other purposes.*
- v. *Improved access to the coast and other areas of natural and historical interest.*
- vi. *The promotion of home ownership, and for this end a reasonable provision at a low cost of building areas or sites to persons that cannot afford a high value of property caused by restriction on development by the size of the islands and by the need to protect the natural environment.”*

The seventh objective introduces in some length the integration of policies for each of the 22 sectors as detailed in the Brief<sup>55</sup>. Amongst the sectors included were housing, agriculture and fisheries, coast, environment, waste disposal and national resources.

The term Structure Plan originated in Britain in the early 1960s, since which time it has been subject to a variety of interpretations and has been applied within several different structures (Amos, 1990 p.1). Amos, (1990 p.58) reviewed in detail how the

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<sup>55</sup> See: Ministry for Development of Infrastructure Malta (1988) *Structure Plan Brief*, Town Planning Division, Ministry for Development of Infrastructure, *Beltissebħ*, Malta, pp. 31-69.

proposed development planning system had to work within the Maltese administrative context. Of particular importance is the fact that at the time the Structure Plan was being formulated, the administrative set-up was monolithic, that is, there were no Local Councils; these were introduced through the Local Councils Act, in 1993<sup>56</sup>. However, their functions were limited and planning permits were not within their remit. Therefore, in spite of using the British model, this had to be adapted to the local situation both due to the size of the Island and its administrative set-up.

Zammit (1998 p. XV) stated that Malta, Britain and Ireland are the three countries who have opted for Structure Planning. He claimed that the choice was not political but a natural result of the fact that English is our second language and that Maltese students take post-graduate courses in England.

### **1.7 Pressures on the Natural Environment**

The pressures on the local natural environment could be viewed as the agglomeration of a number of factors arising from the size of the population and that of the Island compounded with the general attitudes of the local population. This has to be perceived within a legislative framework that imposes certain restrictions together with an enforcement system which most of the time fails to deliver. This raises doubts with the whole population and undermines the administrative structure which is in charge of the whole system.

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<sup>56</sup> Act No. XV of 1993.

### **1.7.1 Home Ownership Schemes**

The government and the Church have always influenced the local population and have introduced development schemes which have had a impact on the local environment. This, together with a prosperous economic activity further compounded the problem. The crux of the problem is home ownership, which has along the years consumed massive areas of land.

Mifsud (2000 p.87-88) states that Home Ownership Schemes (HOS) were initiated in the late sixties by the government. These mainly consisted of parcelling plots of land and allocating them free of charge for home-ownership development. A means-test and non-homeownership were the qualifying denominators. About 14,000 plots were allocated under this scheme. The Church, who owned large parcels of land issued about 2,000 plots. In the early eighties, about 1,321 BDA plots were allocated on eight pockets of land which were considered waste land. Mifsud (2000, pp. 88-89) claims that thanks to the massive development created by these schemes, the house prices were prevented from rising beyond the normal inflation index. He shows that following the publication of the Temporary Provisions Schemes which replaced the BDA Act, thus indicating that housing will be restricted to zoned areas, house prices embarked on a steep ascent. HOS were abolished in 1993 and the 1995 census subsequently showed that 22,756 dwellings, representing 15% of the total stock was permanently vacant and 12,967 or 8.4% of the total stock were used as summer residences.

### **1.7.2 Natural Resources**

The excessive amounts of residences consume natural resources such as softstone<sup>57</sup> used to build walls and hardstone used for concrete and bricks. Hardstone<sup>58</sup> quarries are usually found in karstic landscapes and most are situated in areas of high visual amenity. Such areas are also sites of great ecological importance to local flora and fauna. Secondly, prior to 1992, quarries were only regulated by a Police permit which was basically a licence to operate in an area defined on a site plan. There was little or no monitoring carried out and abuses were common. When the Planning Authority was set up, it undertook to issue guidelines and try to establish standard working practices. New permits are being issued to a number of illegal quarries following an Environmental Impact Assessment<sup>59</sup> undertaken by the respective applicant (Planning Authority, 1997a pp. 127-128).

### **1.7.3 Inert Waste**

The quarry industry generated at least 2.4 million tonnes of waste in 1992, which is equivalent to about 90% (by weight) of all the waste generated locally. It is claimed that in 1992 Malta generated 13 times per capita (6.5 tonnes per capita) construction waste more than the European Union average (0.5 tonnes per capita) (Gauci and Estorell, 1995 pp. "1-2"). Estimates carried out in the drafting of the Waste Management Plan showed that the estimated total amount of construction and demolition waste in 1997 taken from weighbridge records at the public landfill was 1,000,000 tonnes (Enviros Aspinwall, 2000 Section 4.10). This difference could be

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<sup>57</sup> Globigerina Limestone.

<sup>58</sup> Coralline Limestone.

<sup>59</sup> There are two different kinds of reports that could be produced as a result of an Environmental Impact Assessment. These are the Environmental Impact Statement and an Environmental Planning Statement, which is similar to the former but covers fewer topics.

due to the fact that in recent years some of the construction wastes were being recycled and that there were some quarry owners who were accepting inert waste to refill their disused quarries and also as a source of income.

#### **1.7.4 Housing Scenario**

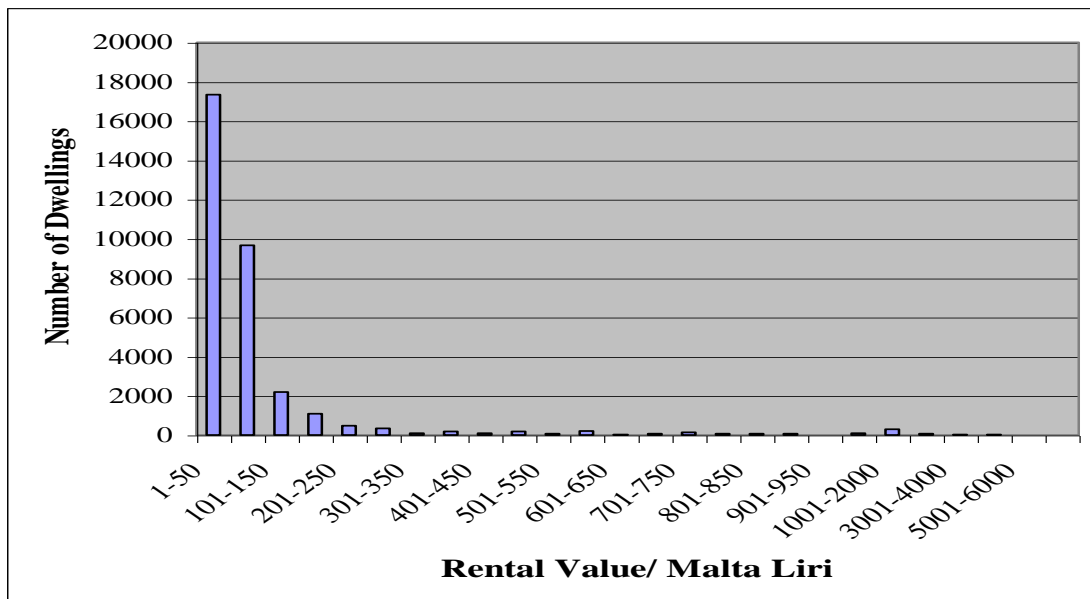
The antiquated rent laws push people into buying their own house. Rents have been frozen on the 1939 fair rent level for over half a century. In spite of the fact that rents were low, landlords were reluctant to rent to Maltese people because it was very difficult to raise their rent and also to get them out of the premises. New rents were liberalised as from June 1, 1995 (Mifsud, 2000 pp. 85). The 1995 Census showed that 53% of the rented accommodation was for a price of less than LM 50<sup>60</sup> per year, 29% were rented for between LM 51 and LM 100 per year and 7% were rented for between LM 101 and LM 105 per year (Mifsud, 2000 p.85) (see: Figure 1.18). Studies carried out by Mifsud (2000 pp. 85-87) show that couples who decide to rent accommodation now have to allocate a sizeable part of their monthly earnings for rent. A three-bedroom apartment in the North Harbour Area could cost them 57% of their earnings, whereas the same type of apartment could cost them 16% of their earnings if it were in *Marsaxlokk* Bay. A three bedroom North Harbour terraced house could cost about 80% of the average earnings for a working couple. When one considers such a scenario, it is not surprising that people opt to buy a house or an apartment by getting a loan from the bank and paying it over a number of years. At the end, the actual value of the property is much higher than its original cost price. This makes investment in property a lucrative proposal especially when compared to rent. This is shown by Camilleri (2000a pp. 10-13), whereby, he estimated that the average market

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<sup>60</sup> In 1995 the average exchange rate was: LM1 was equivalent to Stg 1.7961 (Central Bank of Malta, 2000b p.113).



value of an apartment in Malta rose by 215% for the period 1982-1997. He also estimated that there would be a 108% increase in value for an apartment in the year 2007 based on its price in 1997. Secondly, people normally opt for new homes rather than rehabilitating old ones that are usually situated in village cores, although rehabilitation of houses of character and farmhouses has become trendy during the last few years and their prices have escalated, putting them beyond the reach of the lower wage earners.



**Figure 1.18: Rental dwellings distribution in the Maltese Islands by annual rental value in 1995 (source: *Central Office of Statistics (1998) pp. 464-471*).**

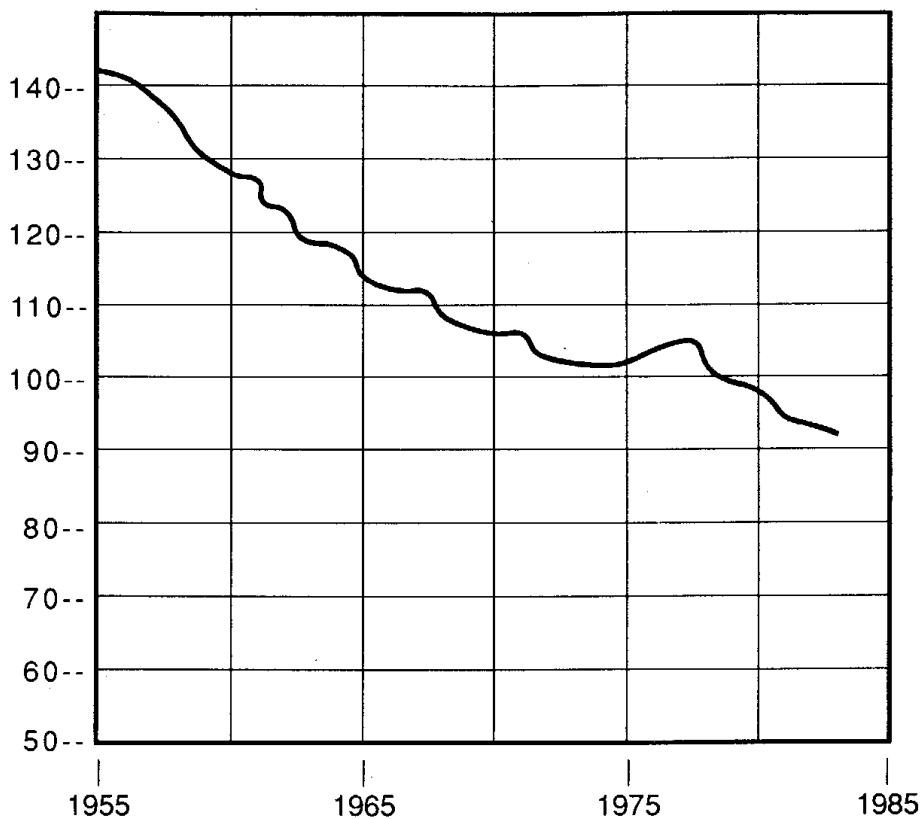
The price of land in 1995 contributed to about 50% of the house price which is considered high when compared to that in the UK where it was less than 19.8% (Camilleri, 2000b). It is therefore more feasible for farmers or landholders who own poor quality land to sell their property instead of continuing to work it since the net profit over a short period of time would be considerable when compared to their annual profits.

### 1.7.5 Land Consumption

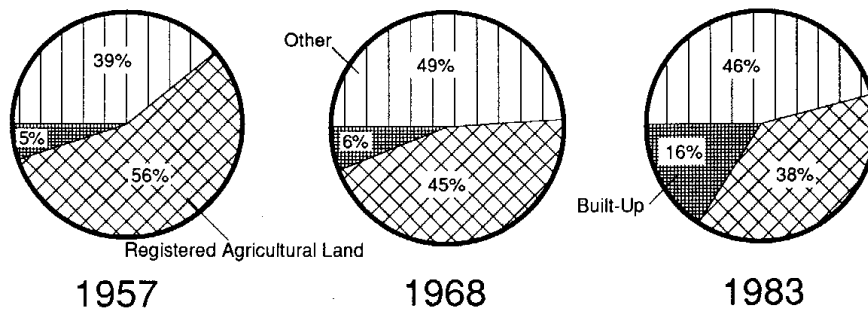
Land area occupied by buildings increased from 11.1 Km<sup>2</sup> in 1957 to 39.3 Km<sup>2</sup> in 1985, an increase of 254%. Concurrently the land under cultivation has gone down from 138.6 Km<sup>2</sup> in 1957, to 92 Km<sup>2</sup> in 1983 (Town Planning Division, 1988 p.10 Section 1.8) (see: Table 1.6 and Figure 1.19). The scale of development occurring in such a short span of time transformed the land surface beyond recognition. The repercussions generated affected the ecological balance, the landscape and the morphology of the villages. Since the development was not carried out in a planned manner, this had an effect also on the infrastructure of the country (Town Planning Division, 1988 p.10 Section 1.9). The intense development led to an increase in road construction, whereby in 1957 there were 893 Km of roads, the figure in 1987 was 1,482, a 66% increase (see: Figure 1.20) (Schembri, 1991 p. 59). The construction of access roads to previously remote areas encouraged new settlements away from traditional ones.

**Table 1.6: Statistical data for the Maltese Islands (source: Town Planning Division 1988 p.96).**

	<b>1957</b>	<b>1967</b>	<b>1985</b>
Population	292,019	288,238	319,736
Households	68,007	70,114	96,725
Dwellings	66,322	78,806	113,785
Average Household size	4.15	3.97	3.25
Built-up Areas (Km <sup>2</sup> ) (Residential & Industrial)	11.1	14.6	39.3
Number of Households/Km <sup>2</sup> , in Built-up Area	6130	4800	2460
% Built-up	4.5	5.9	16.0
Irrigated Agricultural Area/ Km <sup>2</sup>	7	6	4
Dry Agricultural Area/ Km <sup>2</sup>	131	106	88
Total Agricultural Area/ Km <sup>2</sup>	138	112	92
Persons/Km <sup>2</sup>	1188	1173	1301

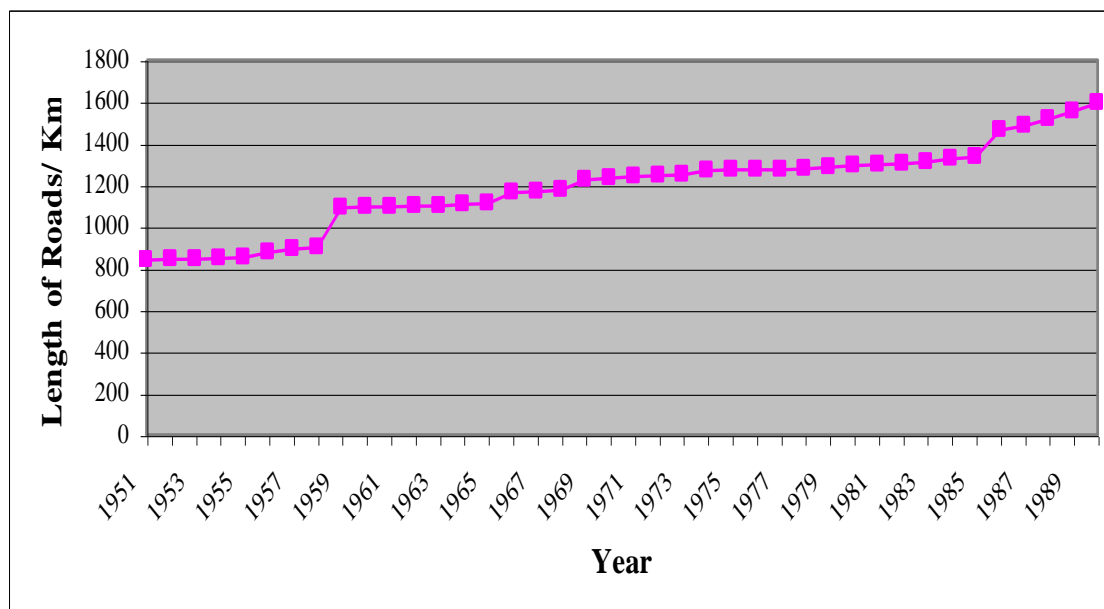


**Registered Agricultural Land for Island of Malta (1955-1983)**



**Change in Land Distribution of Island of Malta (1957-1983)**

**Figure 1.19: Change in Land distribution of Island (1957-1983) (source: Town Planning Division, 1988 p. 97).**



**Figure 1.20: Road construction in Malta for the period between 1951 to 1990 (source: Central Office of Statistics 1961 p. 24; 1972 p. 268; 1973 p. 208; 1975 p. 195; 1977 p. 186; 1982 p. 179; 1985 p. 192; 1989(?<sup>8</sup>) p.181; 1991(?<sup>8</sup>) p. 183)<sup>61</sup>.**

### 1.7.6 Pressures on the Countryside

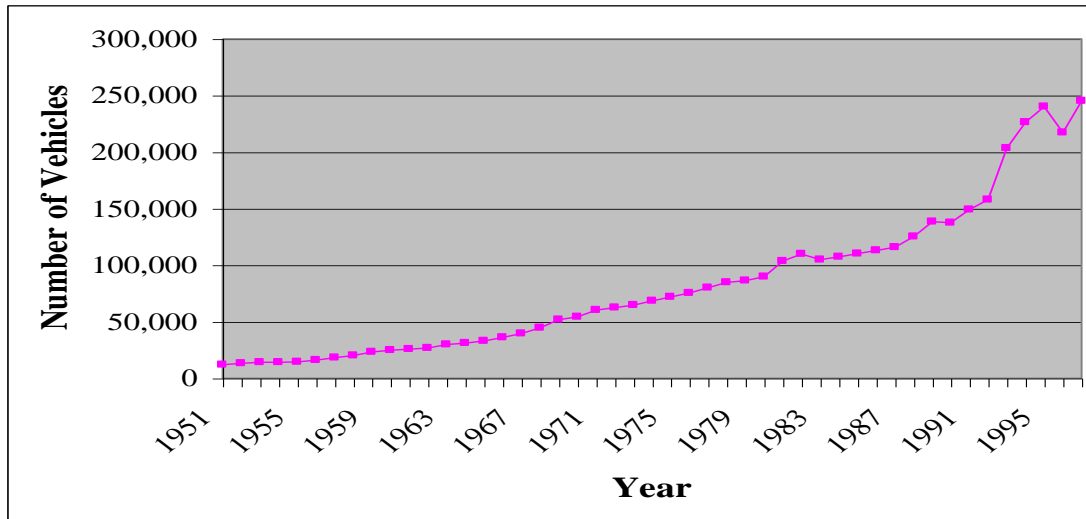
Illegal dumping, which invariably accompanies road construction, modified the countryside to the detriment of habitats and biota. The problem is further compounded by the ever increasing number of vehicles on the roads, rising from 12,007 in 1951 to 245,044 in 1997 (see: Figure 1.21). There was a 111.5% increase in the number of vehicles in 1997 over the 1987 figure.

#### 1.7.6.1 Offroading

These pressures created by the easy accessibility to the countryside, especially during the weekends and in remote and ecologically important areas complicate the impacts

<sup>61</sup> No official statistics were published regarding road construction after 1990.

on the natural environment. Activities, such as hunting, trapping and offroading cause considerable damage to the countryside. Off-road vehicles open new pathways in fields, and destroy vegetation that binds the soil. This leaves the soil bare accelerating erosion both due to wind and also after a heavy rainfall.

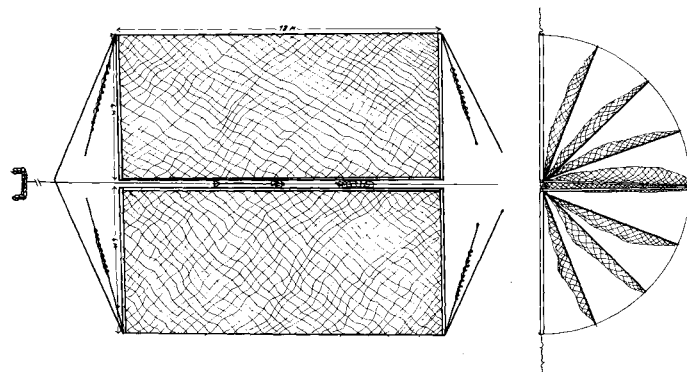


**Figure 1.21: Number of road vehicles in Malta between 1951 and 1997 (source: Central Office of Statistics 1961 p.25; 1970 p.209; 1972 p. 267; 1975 p. 197; 1977 p. 187; 1982 p. 180; 1985 p.193; 1989(?<sup>8</sup>) P.182; 1991(?<sup>8</sup>) P.184; 1993 p.200; 1995(?<sup>8</sup>) P.216; 1999 p.200).**

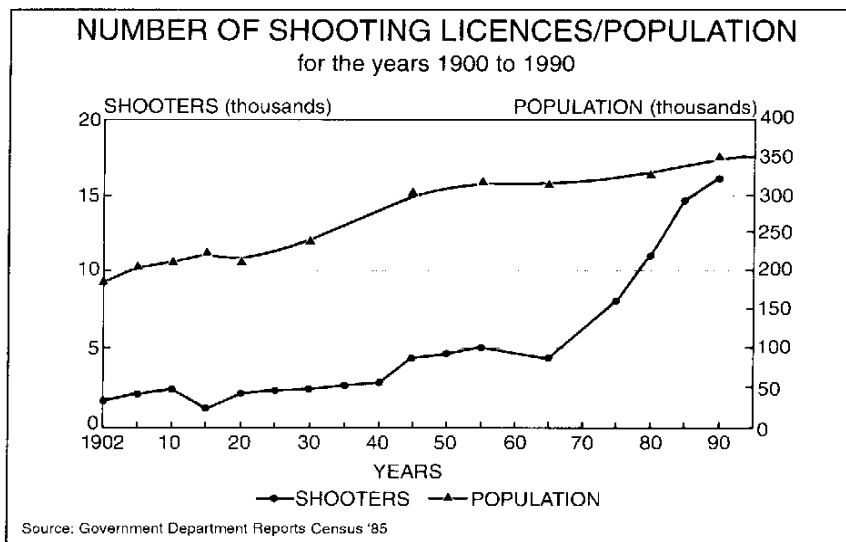
### 1.7.6.2 Hunting and Trapping

In 1990, there were 16,760 people with a licence to hunt and another 1,528 had a licence to trap birds (Fenech, 1992 p.33). In 1989, the figure of licensed trappers stood at *just over a 1000 people* while the number of trapping sites counted from an aerial survey stood at 5,309 (Fenech, 1992 p.107). Hunting is usually carried out from shooting butts at a distance at least 200m from an inhabited place and 50m from a road. Trapping takes place over a specially prepared area whereby a large net is placed on the ground and decoy birds are located in the surrounding area (see: Figure 1.22). The ground where the net is placed is cleared of all the vegetation. Sometimes the ground is burned or herbicides are used to kill off any remaining vegetation.

Schembri (1991) claims that these practices are already endangering some wild species such as the Sicilian Iris (*Iris sicula*) and the Maltese Star Thistle (*Centaurea melitensis*). In Malta, the population of the Sicilian Iris (*Iris sicula*), which is listed as a very rare species in the *Red Data Book for the Maltese Islands*, was almost eradicated by a bird-trapper (Lanfranco, 1989 p.41). Old style trapping nets occupy an area of 80 m<sup>2</sup> while modern ones could easily occupy an area of 144 m<sup>2</sup> (Fenech, 1992 pp. 108-109). When these figures are taken into consideration and using the number of trapping sites quoted by Fenech above, trapping sites could account from anything between 42.47 to 76.45 hectares of land occupied by trappers' nets. The type of habitat utilised by trappers is usually garigue but occasionally even fields are employed. Trapping mostly takes place for migratory songbirds such as finches (Fenech, 1992 p.110). The number of hunters increased over the years which could possibly be the result of a better quality of life and more free time together with a better means of transport. This, coupled with the ever-decreasing size of the countryside is resulting in a higher shooting-population density ratio (see: Figure 1.23).



**Figure 1.22: Large trapping site (144 m<sup>2</sup>) used by trappers (source: Fenech, 1992 p. 109).**



Note the increase in the number of shooting licences from 1,709 in 1902 to 4,716 in 1950. The increase in the number of licences started in the 1970s when the standard of living started improving.

TABLE 1

Proportion of shooters and trappers to the size and population of the Islands					
Year	1957	1967	1985	1987	1990
Population	292019	302218	340907	343334	352430
Number of shooters			14629	14972	16760
Number of trappers			1440	1313	1528
% of population who own a licence to shoot			4.29	4.36	4.75
% of population who own a licence to trap			0.422	0.38	0.43
Area of Maltese Islands (km <sup>2</sup> )	315.5	315.5	315.5	315.5	315.5
Density of shooters/km <sup>2</sup>		13.53	46.38	47.46	53.12
Built-up areas (km <sup>2</sup> )*	11.1	14.6	39.3	40.5 <sup>x</sup>	42.3 <sup>x</sup>
Unbuilt area (km <sup>2</sup> )	304.4	300.9	276.2		273.2
Density of licensed shooters/km <sup>2</sup> of unbuilt land		14.19	52.97	54.44	61.35

\* This figure includes only urban development and does not include roads and other developments which lie outside the building schemes.

<sup>x</sup> ca 3000 building permits for new houses, each measuring about 200 m<sup>3</sup>, are issued each year. This means that about 0.6 km<sup>2</sup> are built each year. Hence about 1.2 km<sup>2</sup> were built up between 1985-87 and 3 km<sup>2</sup> between 1985-90.

Sources: Structure Plan Brief – Town Planning Division, Parliamentary Questions 12242 sitting 194, 28508 sitting 544, 29328 sitting 553. Times of Malta 28.11.89.

**Figure 1.23: Upper graph shows the relationship between the number of shooting licences and the population for the period 1900-1990. The table (Table 1) below compares the size of the population to that of the shooting and trapping fraternity (source: Fenech, 1992 p. 33)<sup>62</sup>.**

<sup>62</sup> The population figures quoted in Table 1 for the years 1967 and 1985 are not equivalent to those published by the Central Office of Statistics; the correct values for these years are those found in Table 1.6.

### **1.7.7 Agriculture**

The agricultural community has been under pressure resulting from development. In 1986, agriculture and fisheries contributed 4.4% of the GDP, 2.6% of the gainfully occupied population were farmers. Agricultural employment has decreased steadily since 1975, reaching a total population of 14,792 in 1986, 2,518 (17.0%) of which were full time farmers. However, the number of landholdings increased from 11,264 to 12,133 between 1975 to 1983, indicating the increasing trend for land fragmentation. Most farms are small with an average land holding of 0.95 hectares in 1983 (Town Planning Division, 1988 p.45 Section 3.110 – 3.111). The continuous decrease in farmers was shown again in a census carried out in the year 2000. Agricultural land was managed by 11,400 land tenants of whom 974 were full timers and 10,426 part timers. There were 21,733 parcels of agricultural land which were recorded. These results show that the tendency for fragmentation of land has continued to increase and also that working in this sector is becoming more of a part-time activity. In fact, one may also point out that the farming population is an ageing one, with 42.6% of the land tenants being in the 60+ age bracket and 46.7% between 40 and 60 years of age. 71% of the tenants had 1 hectare or less of land (National Statistics Office, 2001).

### **1.8 Conclusion**

The aim of this chapter was to outline the objectives of this study and then introduce the reader to the Maltese context. The Islands are highly populated and this is having an effect on the Maltese natural environment. The thriving economic situation is also aiding in the trends the population is embarking upon. Amongst these are the rising



number of cars and the investment in buildings, in spite of the fact that there are a high percentage of vacant dwellings.

This chapter also dealt with the legislative part of planning, from its roots at the times when the Knights of St. John were building Valletta, to the present day when the English model of Structure Planning is being utilised. Great emphasis was placed on the three pieces of legislation that have influenced development during the last two decades. These were:

- The Building Development Areas Act, 1983 which was the Act attributed to have caused most harm to the natural environment of the Islands.
- The Building Permits Act, 1988, which was the Act which spearheaded the changeover to Structure Planning and re-introduced development zones and areas where no development could take place.
- The Development Planning Act, 1992, which was the Act which established the Planning Authority to manage development in Malta through the utilisation of the Structure Plan for the Maltese Islands.

The socio-political environment at the time when the concept of the Structure Plan was introduced was also discussed to explain the reader in the circumstances under which the planning system developed.

The pressures on the natural environment both before and after the Structure Plan came into force were also dealt with. This was intended to demonstrate the problems that existed when the Plan was being produced and contrast them with the present

trends and circumstances, once the policies adopted by the Plan were in effect. One must also point out that in spite of the Structure Plan policies, the Planning Authority admitted that policy breaches are still occurring when development permits are being issued in areas outside development zones. The study aims to understand and investigate the nature, circumstances and effect this is having on the natural environment.

## **2 The Development Planning Act 1992<sup>63</sup> (as amended 1997<sup>64</sup>)**

The Development Planning Act<sup>65</sup> is the legislation which set up the Planning Authority as the agency responsible for planning in Malta. The entire Act which is made up of seven parts will be reviewed, but special emphasis will be given to sections, which are relevant to decision-making, and the application process, highlighting those areas related to outside development zones (ODZ). This reflects the fact that the study mainly focuses on area.

Part I is the Preliminary which established the title of the Act and the powers given to the Minister for its commencement. There is also a definition of terms used in the Act.

Part II established the Planning Authority as a body corporate with a distinct legal personality<sup>66</sup>. The administrative set-up and individual functions are also described<sup>67</sup>. The appointed committees making up the Planning Authority and their respective remits are also included in the legislation<sup>68</sup>. The boards, committees and commission mentioned in the Act are the Planning Authority Board, Planning Consultative Committee, the Development Control Commission, the Planning Appeals Boards, the Assessment Panel, the Inter-Departmental Planning Committee and the Users' Committee.

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<sup>63</sup> A lot of importance is being given to this Act, since it is the Act in this thesis which deals with most if not all the proceedings concerned with planning in Malta. Most of the references concern a single author, who is Dr. K. Aquilina (see: bibliographic note at end of chapter), the reason being that there is a shortage of literature concerning environmental and planning matters in Malta.

<sup>64</sup> The Act was amended again in 2001 however, these new amendments are not being considered since the data used in the thesis does not cover the period after the last amendments.

<sup>65</sup> Also known as: Act No. I of 1992.

<sup>66</sup> *Ibid.*, Section 3 and 4.

<sup>67</sup> *Ibid.*, Section 5.

<sup>68</sup> *Ibid.*, Sections 12-17.

In order to put the reader into the context of the planning legislation a brief outline of the key participants in the planning and development process will be given.

## **2.1 Participants in the Planning Process**

The Structure Plan together with the establishment of the Planning Authority have been responsible for a considerable change in the planning process. As a result, the participants in the whole process have seen their original roles changing with time and have had to adapt to the new situation. One must emphasize that the change-over process including the formulation of the Structure Plan, was well publicised during the preceding years.

Aquilina (1999, pp. 9-60) reviews in detail the competent authorities involved in the planning process. The following appraisal will only be limited to the key participants, especially those concerning the application of Structure Plan policies. The participants being identified are the:

- incumbent government;
- developers;
- Architects and Planners;
- non-governmental organisations;
- public;
- decision-making boards.

### **2.1.1 Incumbent government**

The role of the government has shifted over the years. Previously (before 1992) the Minister responsible for works was directly responsible for making schemes and issuing permits which were decided by a decision-making board within the establishment of the same ministry. The power in connection with building permits was however delegated to the Planning Area Permits Board but the Minister reserved the right to decide on applications where the persons felt aggrieved by the decision issued by the Board. The planning process was assigned to the Planning Authority, after it was established in 1992. The different roles, as found in the Development Planning Act 1992, of the government and Authority will be explained below. The Act introduced a very important change in the planning process with regards to applications by government agencies and departments in that previously these did not require any planning permission, but following the new legislation these were subject to similar procedures and same planning policies as those for the general public, with one exception, that files from government agencies and departments, have “PRIORITY” printed on their spine, whereas such markings are absent from the other files.

The government has not withdrawn completely from direct involvement in the planning process; it has however, changed the original set-up and introduced its representatives in the decision-making boards. Some of its departments and agencies have to be consulted prior to deciding an application.

### **2.1.2 Developers**

The role of the developers in the planning process is the key to the very existence of such a process. The developers could be divided into three groups, the government and its agencies (already dealt with above), the speculators whose main interests are the profits gained from each and every approved development which is constructed and the public whose application is usually that for his/her own dwelling although this might also be considered as a long-term investment. The common denominator in the three groups is that they require a planning permission quickly and delays caused either by the administrative set-up or through a refusal are obviously not desired. Although the denominator is common, the reasons are different; the government wants to go ahead with its plans and projects to appease the electorate, the developers want quick returns from their investments while the public wants to complete their own project as soon as possible to be able to make good use of it. In the latter case, although initially the intentions might not be of a speculative nature, this possibility cannot be completely eliminated.

The change brought about by the new legislation might not have been well perceived by the developers due to the fact that these were not used to rigid plans and policies found in the Structure Plan; the previous system was more based on zoning and a limited number of policies. So their perception might have been that if one person got a permit in a particular area, others will get the same treatment. Although this might be possible under the existing system, the reasoning should be different, since decisions should be based on plans and policies. Another thing which has changed is

that the process is now more open to public scrutiny, that is, the decisions are taken in the public, apart from the fact that there is a written report presented by the Planning Directorate on each and every application and in the case of a refusal, the developer could reply before a decision is taken. The developer has also been required to carry out an Environmental Impact Assessment (EIA) in case of certain developments. This, apart from evaluating the impacts of the proposed development, could also be used to modify original plans and introduce mitigatory measures in order to alleviate or remove the potential impacts of the project. Some developers consider EIAs as either an added cost or a delaying measure for their proposal, but their other alternatives are either constructing an illegal development, which is likely to be followed by enforcement procedures, or having their development application refused.

A salient fact is that previously it was the Minister who decided on applications whereby the applicant felt aggrieved by the decision, whereas under the new planning system such decisions are taken by an independent board appointed by the President of the Republic. This should give a better credibility to the decisions taken.

It might be that the developers initially understood the need to review the previous planning procedures, however, the changes that took place are now subject to great criticism, the main issues being delays and bureaucracy and claims of unfair decisions. The Planning Authority has been subject to criticism from parliamentary members both on government and opposition benches.

### **2.1.3 Planners and Architects**

The existing administrative and legislative set up of the country doesn't recognize the profession of Planners and there is no established statutory board which can award the respective warrants. The only related profession which is legally recognised in that of Architects and Civil Engineers. However, there are about five people who are recognised as Planners by the UK Royal Town Planning Institute since they have undergone a post graduate degree related to planning in the UK. There are also about three others who did a similar degree in Canada but this is not recognised by the UK Institute. Most of these are Architects by profession. There were several attempts to attract more people to the planning field. During the years 1988-1990 students who attended the Architecture course (B.E.&A) at the University of Malta and who chose the Urban Design stream had the opportunity to attend several lecture units which concerned planning, however this trend was discontinued after 1990. In 1994, a diploma course in Environmental Management was introduced which later developed into a Masters degree in Environment Management and Planning. Three groups have so far graduated from this degree scheme and it was only in the last group that there were three Architects who have completed the course.

The Planning Authority together with the Faculty of Architecture and Civil Engineering at the University of Malta have organised two part-time courses related to planning; these were the Higher Certificate in Land Administration (Planning) and the Diploma in Planning Studies (Planning Authority, 1996 p.75). These courses although aimed at its own staff members were also open to the general public.



All the above shows that the existing situation during the study period for this thesis was rather unique, with the local administration thinking that Architects and Civil Engineers could do the work of Planners, at the same time there were initiatives to correct the situation, albeit the profession of a Planner remained unrecognised.

#### **2.1.4 Non-governmental Organisations**

The role of non-governmental organisations (NGOs) has changed considerably over the years. Prior to 1992 environmental groups put pressure on the government to address planning issues at the time when there was lack of planning and the Island was losing its characteristics. These concerns were positively addressed following a change in Government (see: pages 32-50). In fact, NGOs were given a much higher status thanks to the changes which were introduced and as a result they had representatives in different committees of the Planning Authority. Some of their members were even employed within the Authority or were appointed on the Board of the Planning Authority in their personal capacity or as a result of their employment with the Government. Thus, over time, the government intentionally or incidentally reduced the voices of dissent in the country, thanks to the new *fora* which had been opened to members of NGOs. In terms of expertise available within NGOs, it is significant that they are mainly run by volunteers during their spare time and it is only a few of them which have been able to employ administrative staff. This limits their work especially in areas concerning the planning process, and might lead one to question whether these organisations have sufficient expertise in the planning field amongst their membership.

### **2.1.5 Public**

The public is the user of the services offered by the Planning Authority, however, it is the one that submits most complaints about the same Authority to the Ombudsman and to the Authority itself. Most of these concern claims of discriminatory treatment in the use of planning policies in deciding applications and also to third parties claiming damages suffered due to ineffective enforcement action (Office of the Ombudsman, 1997-2002). This might be considered as a paradox because it was the same public which previously complained about possible corrupt practices and the lack of transparency in the previous system. It seems that it is only the people who are directly affected by decisions of the Planning Authority who complain while the rest remain unaware of the planning process. In fact, no matter how much publicity is given to the different types of work carried out by the Authority, the general perception is that the Authority just issues development permits.

The public is also represented in different ways within the Planning Authority, Local Councils being represented in both the Users' and Planning Consultative Committees. All decisions and deliberations, with the exception of those of the Appeals Board are taken in public. Members of the public can also submit comments and take part in meetings during various stages of the planning process. In addition, all applications are published in the press and a site notice is affixed on the proposed site of development. Both applications and decisions are now also posted on the Internet. Previously, the input from the public was limited to affected persons following the publication of planning schemes, whereas, the public was not informed neither of applications submitted nor of decisions taken.

### **2.1.6 Decision-makers**

There were drastic changes at this level thanks to the new legislation. This mainly concerned less intrusion from the Government and a wider spectrum of representatives at the decision stage (see: section 2.2 below). This contrasts with the previous decision-making board which consisted of number of people appointed by the Minister and where decisions were taken behind closed doors and where no detailed records were kept of the deliberations and decisions. As already stated appealed decisions were taken by the Minister and in the absence of the public. This gave rise to suspicion and the possibility of corrupt practices, apart from the fact that decisions were being taken by people who lacked the appropriate skills.

The new legislation gave way to a decision process which is under continuous public scrutiny and involves a wider involvement from various sectors of the society. The effectiveness of such changes depends on various factors, mainly the input given by the various participants in the planning process, their *raison d'être* for being represented and their knowledge of such a process.

## **2.2 Boards, Committees and Commissions of the Planning Authority**

The Planning Authority is the corporate body responsible for planning in Malta. It is very important that the reader understands the whole set-up of the organisation as shown in Figure 2.1. This is due to the fact that it is not uncommon that people or authors confuse the terminology, especially when referring to the Board of the Planning Authority and the Planning Authority as a corporate organisation. The terminology in the legislation could also be confusing to the reader who is not familiar with the system. While every effort will be made to be clear in references to the

various boards and committees, the reader is advised to refer to Figure 2.1 while reading the following text.

### **2.2.1 Board of the Planning Authority**

The Board of the Planning Authority<sup>69</sup> is appointed by the Prime Minister and is composed of:

- Five members chosen from amongst public officers performing duties in the ministries responsible for the environment, the infrastructure, social policy, economic affairs and agriculture.
- Eight independent members who are not public officers chosen from amongst persons of known integrity and with knowledge of and experience in matters relating to development including commercial or industrial activities, or social and community affairs and environment.
- One Member of Parliament appointed by the Prime Minister.
- One Member of Parliament appointed by the Leader of the Opposition.

Both the chairman and deputy chairman of the Authority have to be chosen from amongst the independent members of the Authority.

The term of office for the independent members is three years, after which they may be re-appointed, whereas, that for the other members is subject to their replacement by the authority appointing them.

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<sup>69</sup> *Ibid.*, Section 3.

### **2.2.2 Development Control Commission**

This Commission<sup>70</sup> is composed of:

- a Chairman, appointed by the Prime Minister from amongst the members of the Board of the Planning Authority;
- three persons, appointed by the Board of the Planning Authority; and
- three other members appointed by the Prime Minister, of whom at least one is a member of the Planning Consultative Committee.

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<sup>70</sup> *Ibid.*, Section 13.

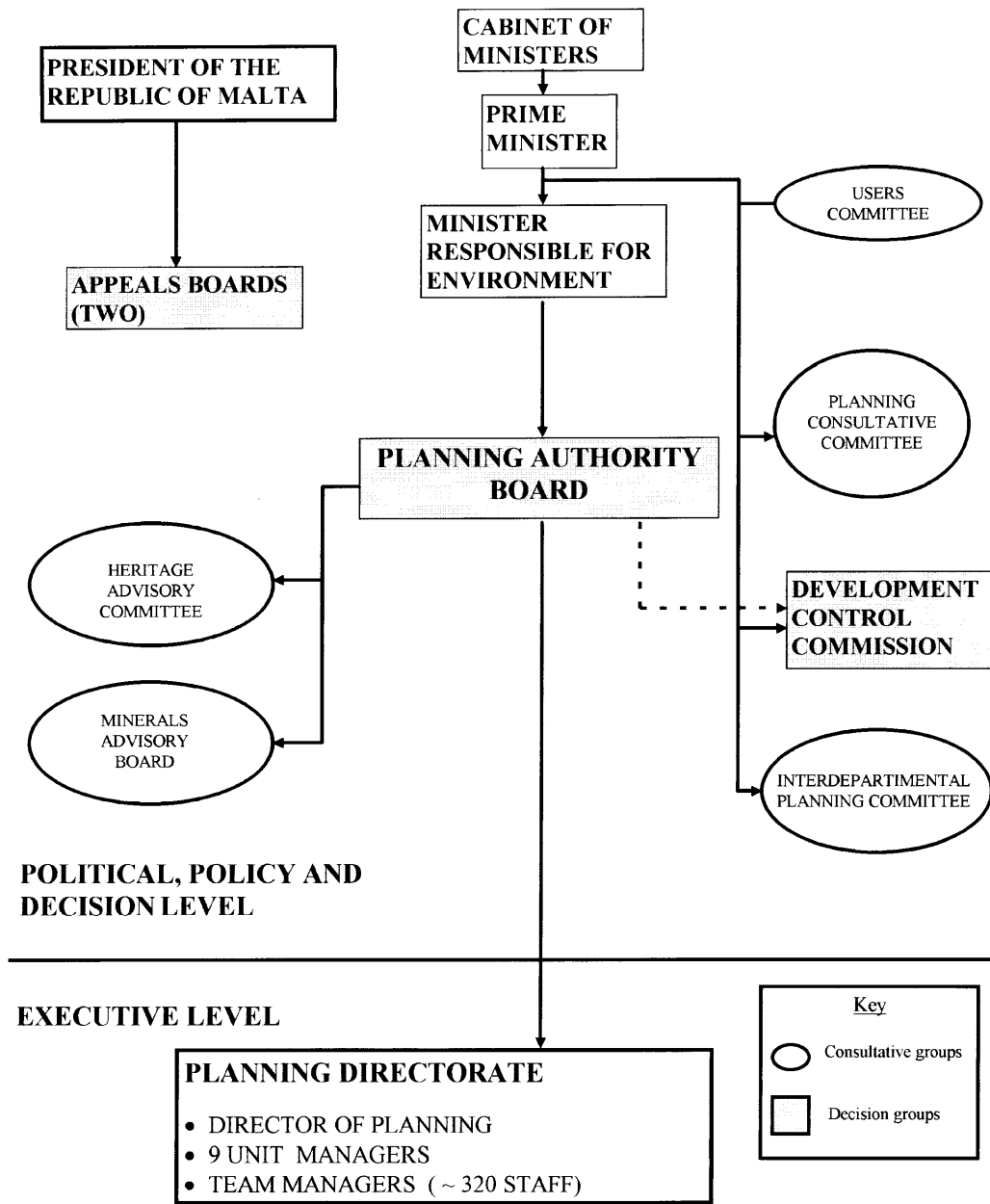


Figure 2.1 The operation of the Planning System in Malta

The Development Control Commission (DCC) was the body which was delegated the power by the Board of the Planning Authority, by means of the *Instruments of Delegation by the Planning Authority 1993*<sup>71</sup> and *1997*<sup>72</sup>, to decide most of the planning applications submitted to the Planning Authority. The legislation includes a list of applications (not including those in areas outside development zones) which could be decided by designated officers of the Planning Directorate. All applications decided by designated officers have to be endorsed by the Director of Planning and shall be submitted to the DCC for confirmation. The Board of the Authority has retained the right to call in applications:

- in respect of development of national or strategic significance or affecting matters of security or other national interests;
- in respect of development which could affect the interests of other Governments;
- in respect of development which is subject to an environmental assessment;
- in respect of which the Development Control Commission has referred to the Board of the Planning Authority for decision;
- whereby a request for Reconsideration has been made with respect to a discussion already taken by the Board of the Planning Authority.

Finally, the Development Control Commission has to inform the Board of the Planning Authority prior to deciding an application when the site of the proposed

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<sup>71</sup> Issued by the Planning Authority and published in *The Malta Government Gazette* on 16<sup>th</sup> February 1993.

<sup>72</sup> Issued by the Planning Authority and published in *The Malta Government Gazette* on 12<sup>th</sup> July 1997 (Government Notice Number 529 of 1997). This *Instrument of Delegation* repealed the one issued in 1993.

development doesn't fall within the development boundary as defined in an approved Local Plan.

All meetings and votes (even secret votes) are to be held in public. Public participation is possible following arrangements with the Commission and at its discretion.

### **2.2.3 Planning Appeals Board**

The President of the Republic appoints the three members forming the Planning Appeals Board<sup>73</sup>. The chairman is a person versed in Law whereas one of the other two people should be versed in planning. Currently there are two panels of the Planning Appeals Board. This Board is entirely independent of the Planning Authority and its organs. Section 15(1) of the Development Planning Act, 1992 establishes its functions:

*“The Appeals Board shall have jurisdiction:*

*(a) To hear and determine all appeals made by a person aggrieved by any decision of the Planning Authority on any matter of development control, including the enforcement of such control:*

*Provided that such an appeal may only be made by the applicant or by third party who had submitted comments when the application to carry out the development had been published and no appeal shall lie by third party from development control decisions concerning a development which is specifically authorised in an approved development plan.*

*(b) To determine matters referred to it under section 27 of this Act;*

*(c) To make recommendations and give advice to the Cabinet on any development proposal by any department or agency of Government where the department or agency has challenged the decision of the Authority in respect of such proposal.”*

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<sup>73</sup> Act I of 1992 Section 14.



The procedure of the Board of Appeal is regulated by the Development Planning Act, 1992 and by guidelines dated 16<sup>th</sup> September 1993 which have been adopted by the Board and circulated amongst Architects. Since these were formulated during the early days of the Board, they do not cater for the 1997 amendments and for certain contingencies which were not contemplated at the time (Aquilina, 1999 p.33).

#### **2.2.4 The Planning Consultative Committee**

This Committee<sup>74</sup> is an advisory body to the Planning Authority appointed by the Prime Minister. Its remit is found in Section 12(2) of the Act and represents the interests of different organisations (presently twenty) from various sectors of life in Malta (Planning Authority, 2000 p.15).

#### **2.2.5 Users' Committee**

The 1997 amendments introduced a new body, the Users' Committee. Aquilina, (1999 pp. 29-30) claims that this is not a new organ to the Planning Authority for it had already existed in the past. He states that the composition and Terms of Reference have been revised. The old Users' Committee was a joint committee of the Chamber of Architects and the Planning Directorate. The new committee is autonomous from the Planning Authority and is basically the advisory board to the Minister responsible for planning. It consists of between seven and eleven members from the interested and constituted bodies recognised by the Minister, who is also responsible for their appointment. Its function is stated in Section 17a(2) of the Act.

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<sup>74</sup> *Ibid.*, Section 12.

### **2.2.6 The Assessment Panel**

Section 20(1) of the Act established the formation of an Assessment Panel which is made up of an independent chairman, a member of the Board of the Planning Authority and a member of the Planning Appeals Board, all appointed by the Prime Minister. The Terms of Reference of this Panel are to make recommendations to the Minister responsible for planning on whether a development plan<sup>75</sup> should be approved. The Panel has so far never been constituted.

### **2.2.7 Inter-Departmental Planning Committee**

Section 38(3) of the Development Planning Act, 1992 established this Committee. It consists of a number of representatives from different government departments and corporate bodies related to planning, as determined from time to time by the Prime Minister (see: Figure 2.2).

This committee deals with applications by government departments and agencies when the Board of the Planning Authority or the Development Control Commission:

- a) either refuse to grant development permission; or
- b) refuse its approval<sup>76</sup>; or
- c) impose conditions which the applicant considers unreasonable.

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<sup>75</sup> The term 'development plan' includes the Structure Plan or any subsidiary plan (Subject Plan, Local Plan and Action Plan) and any review thereof.

<sup>76</sup> Aquilina (1999 p.24 footnote No. 49) states that this seems to be a deemed refusal procedure contemplated under Section 36 of the Development Planning Act, 1992 before the 1997 amendments came into force and did away with this remedy. However, this remedy can still be applied to Government departments and agencies if regulations to this effect are made under Sections 38(1) and 60 of the Act. These regulations have so far not been made (Aquilina, 1999 p.27).

The development is then discussed with the Directorate of the Planning Authority and if an agreement is reached, then the Board of the Planning Authority issues its permission, in accordance with the agreement reached. If an agreement is not reached, then the Committee has to make a report, which together with a report from the Directorate of the Planning Authority is considered by the Planning Appeals Board. The report of the Committee, the views of the Directorate and the recommendation of the Appeals Board shall be submitted to the Cabinet whose decision shall be final and the Authority shall act accordingly. The Cabinet decision cannot be appealed by third parties.

### **2.2.8 Minerals Board**

This Board is not established by the Development Planning Act, 1992. In spite of this fact, the Structure Plan provides in Policy MIN 3 that:

*“the Planning Authority will establish a Minerals Board that will compile information on and periodically review:*

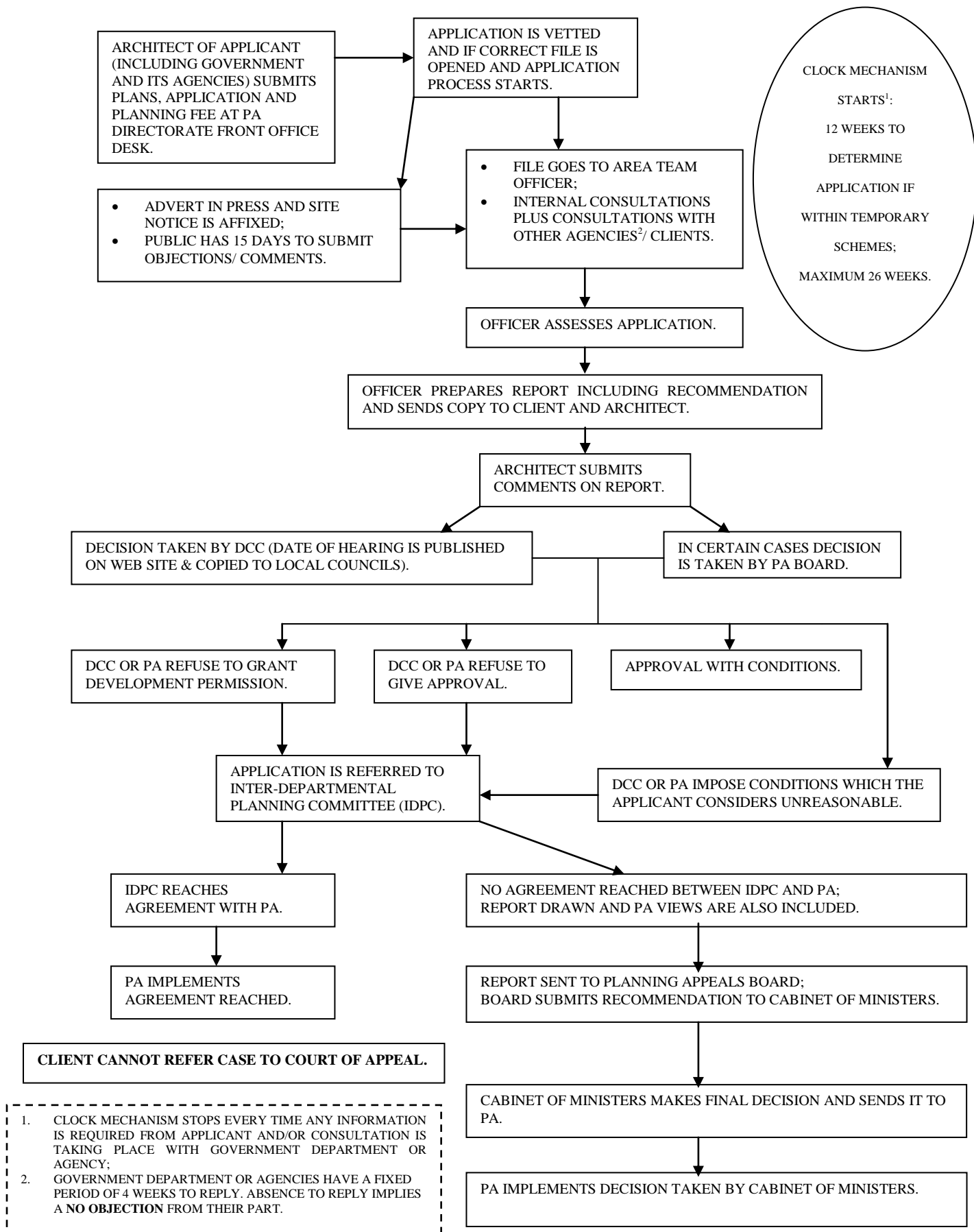
- 1. The potential demand for mineral resources, particularly building materials, having regard to regional and national utilisation and possible exports.*
- 2. The quantity, distribution and quality of exploitable mineral deposits.*
- 3. The ability of existing quarries to provide stone, aggregates and marble in the required quantity and quality.*

*The Minerals Board will also make recommendations to the Planning Authority on appropriate environmental standards for the industry to adopt.”*

Paragraph 12.7 of the Structure Plan establishes the composition of the Minerals

Board:

*“It is envisaged that the Minerals Board will include representatives of the Planning Authority, Director of Works (Quarries and Explosives), Director of Trade, Water Works Department, Department of the Environment, Department of Agriculture, and the quarry owners/operators. The Planning Authority and Minerals Board will additionally be required to consult with other agencies, departments, and industries on matters relevant to their interests.”*



**Figure 2.2: The Development Permission Application Process for Government Departments and Agencies.**

The Instruments of Delegation by the Planning Authority of 1993 provided that some mineral-related applications be referred to the Minerals Board for decision. In spite of this delegation, the practice, which evolved, was that the Board would submit its comments to the Development Control Commission or the Board of the Planning Authority, as the case may be, and the latter would decide. Aquilina (1999 p.34) claims that this was the reason why the Instruments of Delegation 1997 assigned the powers to decide such applications to the Development Control Commission.

### **2.2.9 Heritage Advisory Committee**

The Planning Authority has instituted this advisory committee. Its Terms of Reference are found in the Instruments of Delegation 1993 (paragraph 7.1) and 1997 (paragraph 6.1) and concern advice sought by the Planning Authority on applications in urban conservation areas and those affecting scheduled property.

The Committee also advises the Planning Authority on emergency conservation orders and on scheduling of property and trees. Aquilina (1999 p.35) claims that the functions of this committee would have become redundant had the Heritage Bill<sup>77</sup> become law. This didn't take place because there was an unexpected change in Government after the Bill was presented in Parliament.

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<sup>77</sup> Bill number 171 published in the Government Gazette of the 3<sup>rd</sup> September, 1996 was intended to make provision in place of the Antiquities (Protection) Act for the management, conservation and investigation of heritage in Malta. The bill would have also established a Heritage Committee which would have rendered naught the functions of the Heritage Advisory Committee of the Planning Authority (Aquilina, 1999 p. 35 footnote No. 76).

### 2.3 Development Planning

Part III of the Development Planning Act, 1992 deals with Development Planning. Sections 18 to 22 deal with the Structure Plan and its administration by the Planning Authority. These sections establish the procedure adopted in preparing and reviewing the Plan. The Plan may be reviewed in parts or *in toto* and there must also be a period of at least six weeks for public consultation. The Authority must publish the Plan together with the representations that it receives and the responses it makes to those representations<sup>78</sup>.

The formation and functions of the Assessment Panel as established in Section 20 of the Act were dealt with above (see: page 85). When a plan is about to be approved or reviewed the Panel makes its recommendations to the Minister responsible for Development Planning. He is bound to publish them and then present the Structure Plan and the recommendations of the Assessment Panel together with all the representations to the Cabinet of Ministers<sup>79</sup>. All the documentation then has to be laid on the Table of the House of Representatives together with a motion for a resolution that the Structure Plan be approved by the House, with such amendments, if any, as may be specified in the resolution<sup>80</sup>. Aquilina (1999 p.390) states that the Cabinet cannot change the Structure Plan or its review but if it disagrees with any policies in it or in its review, it has to include its comments in the motion for a resolution to be approved by the House of Representatives. The Structure Plan or any review would then have to be read in the light of the parliamentary resolution. The

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<sup>78</sup> Act I of 1992 Section 19.

<sup>79</sup> *Ibid.*, Section 22(1).

<sup>80</sup> *Ibid.*, Section 29(2).

plan or its review then shall become effective as from such date as may be specified for that purpose by the Minister by order in the Government Gazette<sup>81</sup>.

## **2.4 Subsidiary Plans**

Sections 23 to 29 of the Development Planning Act, 1992 deal with subsidiary plans. These types of plans are defined in Section 23 as being Local Plans, Subject Plans or Action Plans. These are drawn up whenever the Planning Authority considers that for the proper and effective management of development of land more detailed proposals should be prepared.

The wording used in the Development Planning Act, 1992 is not exactly similar to that used in Building Permits (Temporary Provisions) Act, 1988 (Act X of 1988) which was the Act which started the procedure for Structure Planning in Malta. Section 5(1) of the latter Act states that

*“until such time as a Local Plan has been approved for a particular area being part of a development area, the Minister may make planning schemes...”*

This indicates that the planning schemes were an interim measure to be replaced by Local Plans. The Planning Authority has adopted the approach stated in Act X, 1988 and is preparing Local Plans for all parts of Malta and Gozo.

### **2.4.1 Subject Plans**

Section 24 of the Act states that a Subject Plan is a plan which deals with a policy or matter which is contained in the Structure Plan but which requires for its

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<sup>81</sup> *Ibid.*, Section 22(3).

implementation a more detailed specification than is contained in the Structure Plan. To date the only Subject Plan approved is the Yachting Study Subject Plan (Aquilina, 1999 p.391).

#### **2.4.2 Local Plans**

A Local Plan is made by the Authority for any area where it considers that the rate of development or re-development cannot be satisfactorily managed, or where special factors cannot be taken into account solely on the basis of the Structure Plan<sup>82</sup>. It consists of a written statement accompanied by maps and diagrams as necessary. So far (February 2002) only one Local Plan has been finalised.

#### **2.4.3 Action Plans**

An Action Plan is made by the Authority for an area where a Government agency alone, or in agreement with a private developer, intends to carry out, substantial development on its own land or on land it intends to acquire by agreement or by compulsory purchase<sup>83</sup>. Such a plan may also form part of a Local Plan. The only Action Plan approved so far is the Pembroke Action Plan (Aquilina, 1999 p.392).

### **2.5 Development Control**

Part IV of the Development Planning Act, 1992 deals with Development Control. This section of the legislation is one of the most important because it regulates all the

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<sup>82</sup> *Ibid.*, Section 25(1).

<sup>83</sup> *Ibid.*, Section 26(1).



procedures involved in an application process, whether by the general public or the Government.

### 2.5.1 Definition of Development

The term development is defined in Section 30(2) of the Development Planning Act, 1992 as follows:

“ ...*the carrying out of building, engineering, quarrying, mining or other operations for the construction, demolition or alterations in, on, over, or under any land or the sea or the making of any material change in use of land or building ....*”

The legislation lists a number of exceptions, such as maintenance operations and internal alterations amongst others. The term development also comprises certain change of use as specified under regulations issued by the Planning Authority. Development at sea comprises land reclamation, aquaculture and beach development and related uses.

Aquilina (1999 pp. 408-410) cites a number of case studies<sup>84</sup> from decisions issued both by the Planning Appeals Board and the Court of Appeal related to the definition of development.

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<sup>84</sup> Amongst others: *Albert Gauci v. Planning Authority*, decided on 31<sup>st</sup> January 1994, (Appeal no. 79/93 RR); *Michael Sciberras and Felic Sciberras v. Planning Authority*, decided on 28<sup>th</sup> January 1994, (Appeal no. 112/93E KA); *Raymond Vella v. Planning Authority*, decided on 11<sup>th</sup> November, 1994 (Appeal no. 160/94E KA); *John Mary Scicluna v. Development Control Commission*, decided on 31<sup>st</sup> October, 1994 (Appeal no. 69/93 RR) *Charles Zammit v. Planning Authority*, decided on 15<sup>th</sup> November, 1996 (Appeal no. 350/95E KA); *Vince Cassar, Director General, Works Division v. Planning Authority*, decided on 13<sup>th</sup> October, 1993 (Appeal no. 1/93 RR).

### **2.5.2 Development Orders**

Section 31 enables the Planning Authority, after consultation and in agreement with the Chamber of Architects, to issue Development Orders. The legislation does not define such Development Orders but Section 31(4) describes what such Orders could include. They are basically permitted development, which does not require a development permission application. A list of such development is published in *The Malta Government Gazette* and is reviewed periodically by the Planning Authority in consultation with the Chamber of Architects. In the majority of cases, the procedure to be followed is that the applicant has to inform the Planning Authority of his or her intentions to carry out such development prior to commencement of works. If the applicant fails to notify the Authority prior to commencement of works then, the normal development application procedure has to be followed, in spite of the fact that such development would be listed in the General Development Order (GDO)<sup>85</sup>. Three GDOs<sup>86</sup> were published by the Planning Authority during the period under study.

### **2.5.3 Development Applications**

Section 32 stipulates that a person who wants to carry out a development (except those where permission is given in the General Development Orders) is required to apply for permission to the Authority and follow the procedures adopted by the Authority at the time of application.

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<sup>85</sup> L.N. 137/97 (General Development Order) Section 6.

<sup>86</sup> L.N. 178/93; L.N. 103/97 and L.N. 137/97, the latter one superseding the previous one almost immediately due to the various mistakes and inconsistencies between the Maltese and English versions (Aquilina 1999 p.412).

#### 2.5.4 Determining an Application

Figure 2.3 should be referred to while reading the following section dealing with the development application process.

Section 33(1) states that when the Authority is determining an application it shall have regard to:

- a) *“policies emanating from the existing structure plan and from any subsidiary plans, if any;*
- b) *development plans;*
- c) *representations made in response to the publication of the proposal;*
- d) *any other material consideration including aesthetic, sanitary and other considerations which the Authority may deem relevant.”*

Aquilina (1999 p.418) points out that paragraphs (a) and (b) are repetitive because development plans are defined as Structure Plans and subsidiary plans. He claims that when the 1997 amendment was introduced, the legislator was not aware that a development plan included the Structure Plan and all subsidiary plans.

Section 33(2) empowers the Authority to grant or refuse permission for development and is also entitled to impose such conditions as deemed appropriate. However, the 1997 amendments provide that upon refusal or imposition of a condition, the Authority or the Development Control Commission is obliged to give detailed reasons based on policies for such refusal or for any particular conditions that may be imposed. Aquilina (1999 pp. 419-421) cites various examples<sup>87</sup> from the Planning

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<sup>87</sup> *Joe Cortis v. Planning Authority*, decided on 23<sup>rd</sup> December, 1994 (Appeal no. 206/94 KA); *Carmel Xerri v. Development Control Commission*, decided on 3<sup>rd</sup> December, 1993, (Appeal no. 96/93 KA); *C. Mercieca v. Development Control Commission*, decided on 30<sup>th</sup> January, 1995 (Appeal no. 163/94 RR); *Jack Scerri v. Development Control Commission*, decided on 24<sup>th</sup> January, 1997 (Appeal no. 614/95 KA); *Carmelo Zammit v. Development Control Commission*, decided on 2<sup>nd</sup> December, 1994 (Appeal no. 178/94); *Victoria Bonello v. Development Control Commission*, decided on 25<sup>th</sup> August, 1995 (Appeal nos. 66/95 and 142/95E KA).

Appeals Board decisions whereby vague and sketchy reasons and wrong policies were given to refuse an application. He further reiterates that following the 1997 amendments, two important obligations were established on the Planning Authority, namely that:

- detailed reasons based on existing policies have to be submitted both in case of a refusal and of an imposed condition;
- the detailed reasons have to form part of the refusal or condition, that is they cannot be communicated verbally but need to be in written form.

Finally, Aquilina (1999, p.421) further claims that in spite of the 1997 amendments stereotyped reasons are still being submitted in most cases, thus failing to give the specific reasons for the respective case.

Section 33(3) was amended in 1997, whereby in the previous legislation the time limit for the development was left at the discretion of the Authority. This amendment also removed the possibility of issuing permission in perpetuity. The amendment established a time period for the development permission to three years, but which could be extended by a further 12 months or further periods as may be considered reasonable. This extension is valid, provided that development has started within the first three years but if work has not started on the development, a new development application has to be submitted.

A development permit is issued in favour of a particular piece of land and not in favour of an individual. Change of ownership is dealt with simply by writing a letter to the Planning Authority stating the new owners.

### **2.5.5 Sanctioning Illegal Development**

Aquilina (1999 p.424) states that Section 34 concerning sanctioning illegal development should be read in conjunction with Sections 51(2), 52(5) and 58 of the Development Planning Act, 1992. Prior to sanctioning illegal development two conditions must be met:

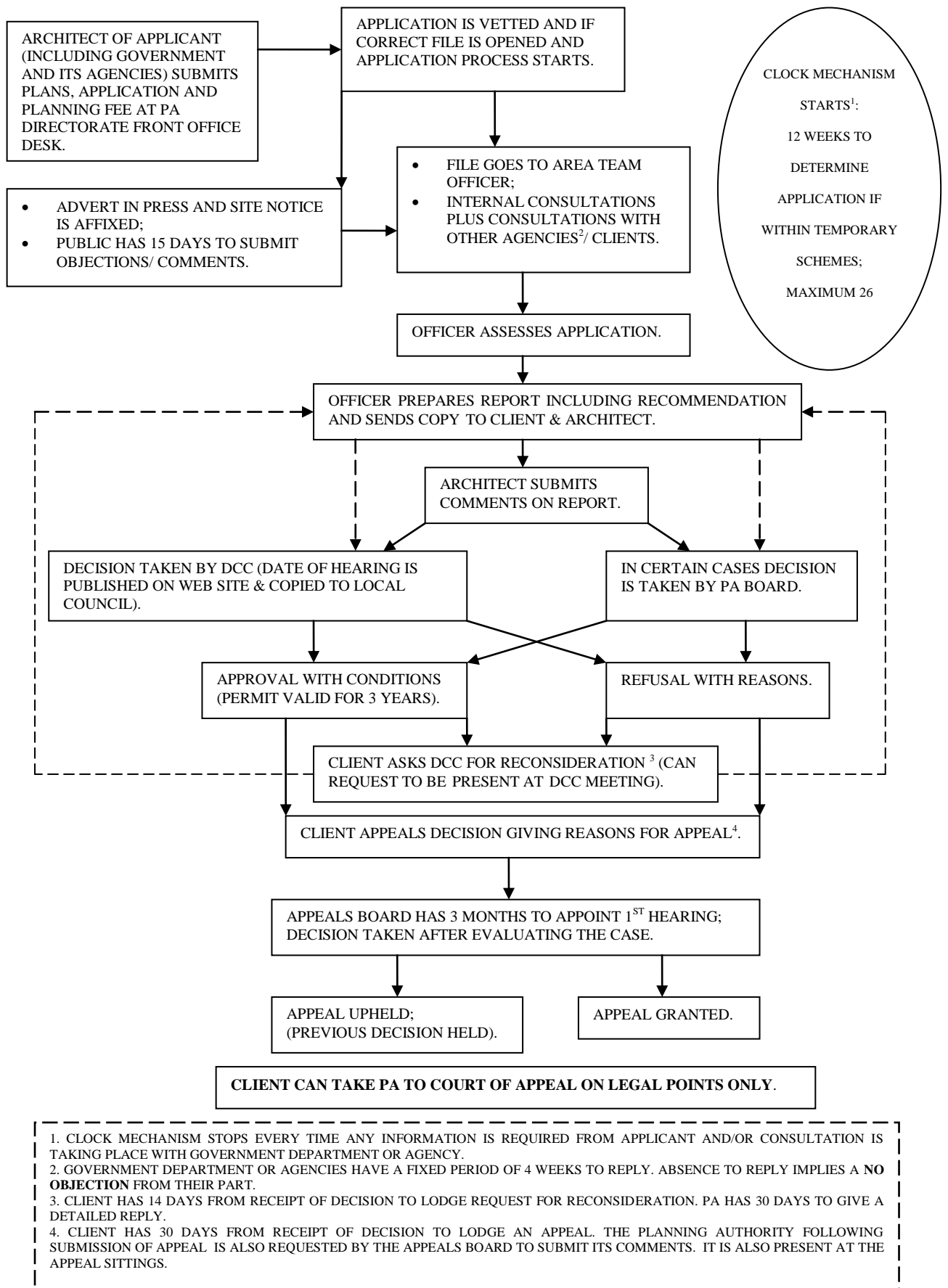
- the works must have ceased for if such works continue the Planning Authority would have to dismiss the development permission;
- the applicant must first pay the fine specified in Section 58.

### **2.5.6 Access to Development Material**

A detailed registry of applications, plans and decisions of developments is held at the Authority and is accessible to architects and civil engineers. These could be viewed after a written application is made to the Authority. Prior to the 1997 amendments to this section<sup>88</sup>, it was possible for any person to view such documents by calling at the Authority. Aquilina (1999 p.426) claims that this amendment was done for the purpose of the applicant's privacy and security.

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<sup>88</sup> Act I of 1992 Section 35.



**Figure 2.3: The Development Permission Application Process in Malta.**

### **2.5.7 Timeframe for Decision-Making**

Section 36 deals with the time taken for a decision to be taken. The previous legislation established this time period for a maximum of 8 weeks from when the application was received by the Authority. If the applicant was informed that an Environmental Impact Assessment was required then the eight-week period started from the date the Authority received the assessment. If there was no written agreement between the Authority and the applicant to extend the eight-week period, then the application was deemed refused.

The new legislation established that a decision has to be taken within 12 weeks from validation of the application where the site is within boundaries of the Temporary Schemes or development boundaries as indicated in approved plans. In default, permission is deemed to have been granted provided that the applicant conforms with approved policies. This procedure is not applicable for sites which are outside development zone, whereby, such an application has to be determined within 26 weeks (Aquilina, 1999 pp. 426-427). The Planning Authority may extend the period in both cases by 12 and 26 weeks respectively, by posting a registered letter to the applicant giving reasons based on planning issues for such an extension. Such reasons cannot be based on administrative deficiencies such as lack of communication with consultees or lack of human resources within the Planning Directorate to process such an application (Aquilina, 1999 p.427).

The new legislation also adopted a chess clock mechanism. This implies that the 12 or 26 week period is interrupted every time the applicant is requested to submit:

- fresh plans; or

- supplementary information; or
- an Environmental Impact Statement or a Transport Impact Statement is requested.

The clock may also be stopped “*because of any other considerations*,” a term which is subject to a wide interpretation and so one has to wait to see how the Planning Appeals Board and the Court of Appeal will interpret it (Aquilina, 1999 p. 428).

An important provision in the new legislation was that when Government departments and agencies are consulted, they have a fixed period of 4 weeks in which to give a reply to the Planning Authority. In the absence of a reply, the presumption is that the agency or department is NOT objecting to the proposed development<sup>89</sup>.

### **2.5.8 Follow-up to Decision-Making**

Section 37 of the Act stipulates that once a decision is taken by the Development Control Commission or the Planning Authority:

In case of an approval, the applicant may:

- accept decision together with conditions imposed;
- request Reconsideration or lodge Appeal because he doesn't agree with imposed conditions.

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<sup>89</sup> *Ibid.*, Section 36(4).



In case of refusal, the applicant may:

- accept refusal;
- ask for a Reconsideration of decision;
- lodge an Appeal with the Planning Appeals Board.

The applicant has 14 days from receipt of decision to lodge a request for Reconsideration, then the Planning Authority must determine the Reconsideration and notify applicant, by registered mail, of decision within 30 days.

The applicant has 30 days to lodge an Appeal and the Planning Appeals Board shall arrange a first hearing within 3 months from the date of filing of the Appeal. The applicant may still lodge an Appeal after the Reconsideration has been decided.

Aquilina (1999 p.429) states that:

*“by reconsideration the body which has already taken a decision (Planning Authority or Development Control Commission) is requested to re-assess its original decision.”*

This can take place irrespective of whether new evidence is presented or not. Secondly, the law specifies that it is only the applicant who may request a Reconsideration of a decision<sup>90</sup>; there is no third party Reconsideration. Aquilina (1999 pp. 430-431) claims that during the Reconsideration stage, the applicant may present fresh plans whereas such a practice is not possible at the Appeals' stage. He reiterates that Section 37 establishes two principles with regards to appeals from a

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<sup>90</sup> *Ibid.*, Section 37(2).

condition imposed in a development permission (and from a refusal of a development permission):

- that the person who may appeal from a condition imposed in a development permission has to be the applicant;
- the condition must be “unreasonable”.

Aquilina (1999 p.431) cites a number of Appeal cases<sup>91</sup> and claims that what makes a condition unreasonable has to be studied from the point of view of planning policies. The Planning Appeals Board cannot review the planning policies or determine whether they are reasonable or not, although it may make recommendations about difficulties encountered in applying certain policies. In *H. Fenech Azzopardi v Development Control Commission*<sup>92</sup> it was stated that the Planning Appeals Board had to decide whether the condition imposed in a particular development permission is reasonable from the planning point of view. In the example cited the appellant won the case because the Planning Appeals Board decided that the Planning Directorate did not back its arguments by means of stated policies.

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<sup>91</sup> *Joe Vella v. Development Control Commission*, decided on 31<sup>st</sup> October 1994, (Appeal no. 38/93 RR); *Anthony Lautier v. Development Control Commission*, decided on 30<sup>th</sup> January, 1995 (Appeal no. 113/94 RR); *Jacqueline Tanti Dougall v. Development Control Commission*, decided on 30<sup>th</sup> June, 1995 (Appeal no. 42/95 KA); *Alfred Pace v. Development Control Commission*, decided on 13<sup>th</sup> November, 1996 (Appeal no. 105/95 RR); *Raymond Grima v. Development Control Commission*, decided on 24<sup>th</sup> January, 1997 (Appeal no. 282/95 KA); *Jack Scerri v. Development Control Commission*, decided on 24<sup>th</sup> January, 1997 (Appeal no. 614/95 KA); *Francis Pace v. Development Control Commission*, decided on 25<sup>th</sup> February, 1997 (Appeal no. 504/95 KA).

<sup>92</sup> Decided on 28<sup>th</sup> October 1994 (Appeal no. 26/94 RR).

Aquilina (1999 p. 432) cites several examples<sup>93</sup> whereby the Planning Appeals Board claimed that it didn't have jurisdiction to hear appeals from applications for development permission which have been granted by the Board of the Planning Authority or the Development Control Commission, and from which no appeal was being lodged from any condition stipulated in the development permission. This was irrespective of whether such an appeal was lodged by a third party or by the applicant.

This stance was changed following the Court of Appeals' judgement<sup>94</sup> which admitted appeals made by third parties under Section 15(1) of the Development Planning Act, 1992. The 1997 amendments gave partial effect to this judgement limiting third party appeals to persons:

*“...who had submitted comments when the application to carry out the development had been published and no appeal shall lie by a third party from development decisions concerning a development which is specifically authorised in an approved development plan.”<sup>95</sup>*

### **2.5.9 Development by Government Bodies**

Section 38 deals with development applications by Government agencies and departments. Contrary to previous practice (pre-1992), the Development Planning Act, 1992 established that such bodies had to follow the same procedure as other applications. In cases where Authority refuses to grant permission or to give its approval or imposes conditions which are considered unreasonable, the matter is first

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<sup>93</sup> *Hon. Michael Frendo and others v. Development Control Commission*, decided on 25th February, 1994 (Appeal no. 168/93 KA); *Victor Bonavia v. Development Control Commission*, decided on 18th March, 1994 (Appeal no. 44/93 KA); *Louise Anne Sultana v. Development Control Commission*, decided on 17th March, 1994 (Appeal no. 316/94 KA); *Saviour Buttigieg v. Development Control Commission*, decided on 17th September, 1996 (Appeal no. 482/95 KA).

<sup>94</sup> *Perit Austin Attard Montaldo nomine v. Planning Authority*, decided by the Court of Appeal on 20th August, 1996 (Appeal no. 433/94).

<sup>95</sup> Act I of 1992 Section 15(1a).

referred to the Interdepartmental Planning Committee. The procedures followed by this committee are shown in Figure 2.2 (above) and are established in Sections 38(3) and (4) of the Act.

Section 38(2) binds:

*“...Government Departments and body corporate not to dispose of land or promise the disposal of land, for a specified use unless such use has been approved by the Authority or is allowed under a development plan or subsidiary plan.”*

Case law<sup>96</sup> from research carried out on Appeals Board decisions shows a consistent approach, whereby it was clearly established that all entities whether Government owned or where the Government has a share are being considered as body corporate of the Government. Secondly, even Local Councils are being considered as forming part of the Government and so in both cases the Appeals Board has refused appeals from these entities.

### **2.5.10 Mineral Development**

Mineral development is dealt with in Section 39 of the Development Planning Act, 1992. The legislation demands that certain planning and environmental standards are met during and after works are completed both at the working site and surrounding areas.

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<sup>96</sup> See: *Chairman Malta Drydocks v. Planning Authority* 31<sup>st</sup> October, 1997 (appeals no. 300/96 KA); *Victor Camilleri o.b.o. Mgarr Local Council v. Development Control Commission*, decided 30<sup>th</sup> January, 1998 (Appeal no. 465/97 KA); *Desmond F. Underwood, as General Manager Zammit Clapp Hospital v. Planning Authority*, decided on 23 May, 1994 (Appeal no. 11/94 RR); *TeleMalta Corporation v. Development Control Commission* decided on 17<sup>th</sup> September, 1996 (Appeal no. 219/96 KA); *Victor Camilleri o.b.o. Mgarr Local Council v. Development Control Commission*, decided on 7<sup>th</sup> October, 1998 (Appeal no. 677/96 SMS).

Aquilina (1999 p.433) claims that the Planning Appeals Board views this section in conjunction with the Minerals policies cited in the Structure Plan. Two cases<sup>97</sup> are cited whereby the decision taken by the Planning Authority was annulled on grounds that an Environmental Impact Assessment was not requested. Such a request is in accordance with Structure Plan policy MIN 8.

### **2.5.11 Modifying Development Permission**

Section 40 gave the right to the Planning Authority to revoke or modify a planning permission after it was granted. This is no longer possible following the amendments of 1997. Aquilina (1999 pp. 545-546) cites five cases<sup>98</sup> where this section was used prior to its deletion.

## **2.6 Building Charges**

Sections 41 to 44 deal with charges and contributions collected by the Authority as building levies and as infrastructure services contributions. The latter is passed on to the Government to be utilised for infrastructure works in the development area. The schedule of charges is reviewed from time to time and published in *The Malta Government Gazette*.

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<sup>97</sup> *Salvu Schembri v. Development Control Commission* (Appeal no. 42/94 KA) and *Carmel Vella v. Development Control Commission* (Appeal no. 146/94 KA).

<sup>98</sup> *Mario Spiteri v. Development Control Commission*, decided on 15<sup>th</sup> April, 1994 (Appeal no. 136/93E KA); *Saviour Ellul and Joseph Hili in their capacity of Directors of MCP Company Limited v. Planning Authority*, decided on 29<sup>th</sup> March, 1996 (Appeal nos. 239/95E RR, 252/95E RR and 319/95 RR); *Emmanuel Vassallo v. Planning Authority*, decided on 15<sup>th</sup> November, 1996 (Appeal no. 348/95 KA); *Joseph Mangion v. Development Control Commission*, decided on 18<sup>th</sup> February, 1998 (Appeal no. 91/94 SMS); *Mary Grech v. Development Control Commission*, decided on 11<sup>th</sup> June, 1996 (Appeal no. 542/95E KA).

## 2.7 Other Powers of Development Control

There are other powers of development control which are dealt with in the legislation.

These include:

- Discontinuance and Removal Orders<sup>99</sup>.
- Scheduled Property and Conservation Orders<sup>100</sup>.
- Emergency Conservation Orders<sup>101</sup>.
- Protected trees and Tree Preservation Orders<sup>102</sup>.
- Advertisements<sup>103</sup>.

Aquilina (1999 pp. 463-464) claims that Discontinuance and Removal Orders should be considered as an Enforcement Notice. He reiterates his claims by referring to:

*“section 56 (1)(c) of the Act which mentions a discontinuous and a removal order together with an enforcement order and other notices which are of a like nature.”*

Scheduled Property and Conservation Orders include both physical structures as well as areas of natural beauty, ecological and scientific value. The Planning Authority is required to issue emergency conservation orders in order to prevent demolition, damage or destruction of both physical structures as well as areas of ecological and scientific value. Such an order is valid for six months from the date of issue. The Heritage Advisory Committee is consulted whenever conservation orders are going to be issued. This does not necessary apply when Emergency Conservation Orders are

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<sup>99</sup> Act I of 1992, Section 45.

<sup>100</sup> *Ibid.*, Section 46.

<sup>101</sup> *Ibid.*, Section 47.

<sup>102</sup> *Ibid.*, Section 48.

<sup>103</sup> *Ibid.*, Section 49.

issued, mainly due to the limited time frame involved in such orders. Secondly, case law cited by Aquilina (1999 p.447) shows that the Planning Appeals Board had jurisdiction to hear an Appeal from the scheduling of property approved by the Authority. This it did under the provisions of Section 15(1)(a), in terms of which, any aggrieved person may appeal against a decision of the Planning Authority concerning development control or enforcement of such control. He cites other cases referring to scheduling of property, whereby, amongst other things, it was established that scheduling could take place even when a development application was in process. It was also established that scheduling has the upper hand when development permission is issued on a site which is also scheduled.

Aquilina (1999 p.445) points out important differences between provisions to regulate Scheduled Property and Conservation Orders of trees (scheduled trees and tree protection orders). The owner of a scheduled tree or a tree protection order has no right for Reconsideration, but has a right to appeal. Apart from this, there is no requirement for a person who cuts down a scheduled tree to pay compensation to the Planning Authority.

Finally, the Planning Authority may issue regulations restricting or regulating advertisements in public. Billboards and Signs policy and design guidance were issued in 1994 and are found in *The Planning Factbook*.

## **2.8 Enforcement**

Part V of the Development Planning Act, 1992 deals with development control enforcement procedures. Enforcement procedures also occur in other parts of the Act;

examples are Section 45, concerning discontinuous and removal orders by the Planning Authority and Section 50, concerning injury to amenity values.

The reader is advised to follow the flowchart found in Figure 2.4 while reading the following text dealing with development control enforcement procedures in Malta.

Aquilina (1999 p.452) states that offences related to development control have been depenalised thanks to the Development Planning Act, 1992. This is due to the fact that prior to this Act, infringements of planning regulations were considered under the Code of Police Laws Chapter 10 of the Laws of Malta. This gave rise to criminal sanction, whereas under the Act, the sanction is of an administrative nature. The criminal aspect has been reduced to only the offences expressly created under Section 56 of the Act (Aquilina, 1999 p.479).

Of particular importance in this section is the procedure adopted in issuing Stop and Enforcement Notices.



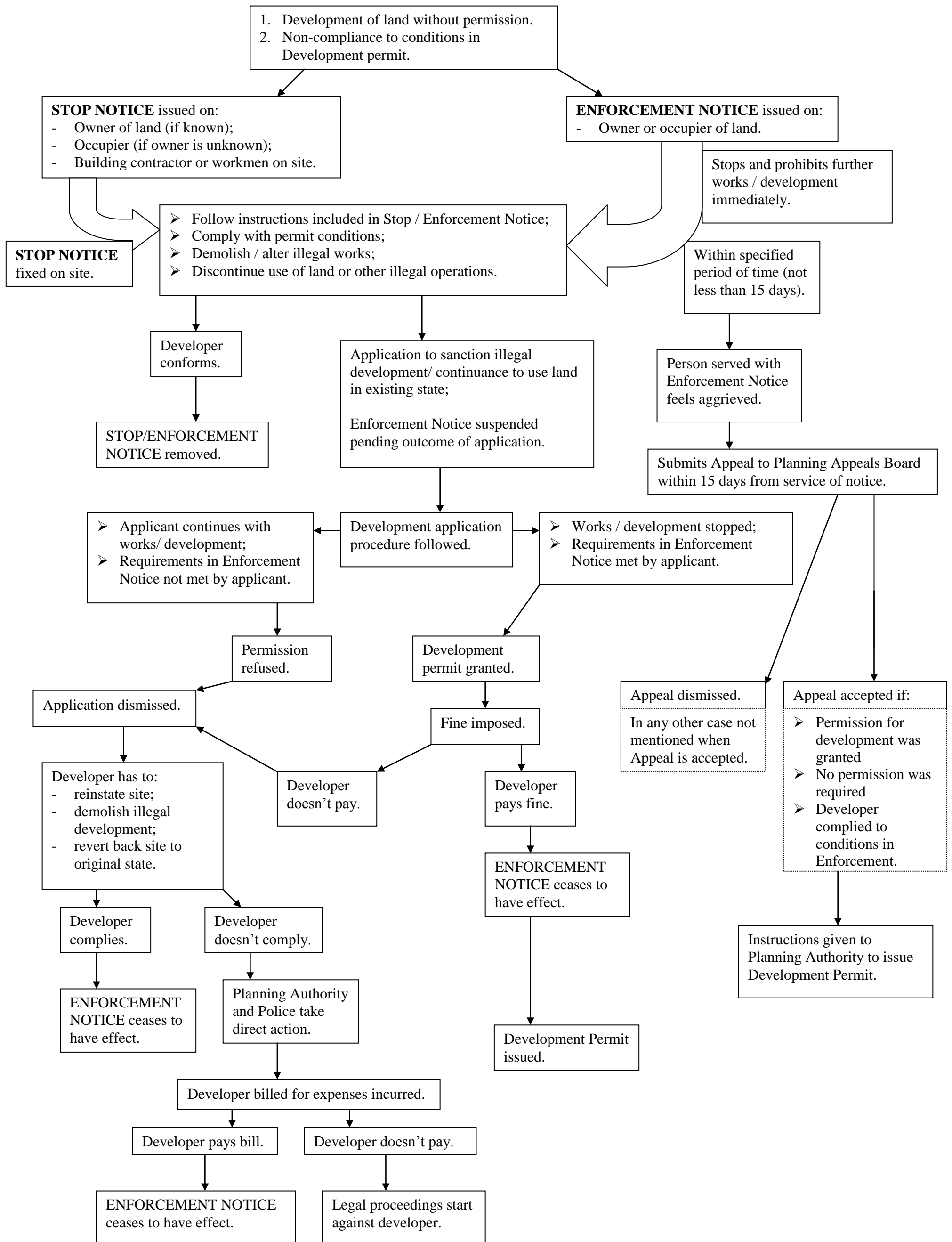


Figure 2.4: Enforcement Control Provisions found under Act I of 1992.

### 2.8.1 Stop Notices

Section 52(1) of the Development Planning Act, 1992 empowers the Planning Authority to issue Stop Notices if it appears that:

- any development of land is being carried out without development permission;
- any conditions subject to which permission was granted in respect of any development are not complied with.

The first condition is of peculiar importance because, there is still no provision in Section 52 which empowers the Authority to issue a Stop Notice concerning development at sea. This, in spite of the 1997 amendment, for the Planning Authority to have power to control development at sea (see: Section 30(2)).

Stop Notices are to be served:

- on the owner of the land (if known); or
- on the occupier (if owner is unknown); and
- on any building contractor or workmen on site;

and a copy has to be fixed in a prominent position at a point of entry onto the site.

Case Law<sup>104</sup> has shown that where there is an usufructuary the Stop and Enforcement Notices have to be issued both on the usufructuary and the legal owners.

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<sup>104</sup> *Josephine Caruana v. Planning Authority*, decided on the 14<sup>th</sup> April, 1997 (Court of Appeal no. 283/96).

## 2.8.2 Enforcement Notices

The Planning Authority may issue an Enforcement Notice based on the same reasons as for issuing a Stop Notice<sup>105</sup>. As in the previous case the Authority is not empowered to issue an Enforcement Notice at sea.

After taking into consideration any provisions in the development plans and other material considerations the Enforcement Notice issued by the Planning Authority on the owner or occupier of the land, requires the recipients to:

- take such steps as may be specified in the notice to be taken within such time as may also be so specified for restoring the land to its condition before the development took place; or
- comply with the conditions in the development permission.

The Planning Authority may also require:

- the demolition or alteration of any buildings or works; or
- the discontinuance of any use of land or the carrying out of works on land of any building or other operations.

Section 52(4) of the Act states that an Enforcement Notice includes also a Stop Notice. In the case of a Stop Notice, such notice takes place immediately upon service of the notice<sup>106</sup> whereas the Enforcement Notice, takes effect at the expiration of specified period, being not less than 15 days after the service of the notice<sup>107</sup>.

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<sup>105</sup> Act I of 1992 Section 52(3).

<sup>106</sup> *Ibid.*, Section 52(4)(a).

<sup>107</sup> *Ibid.*, Section 52(4)(b).

The law allows the developer to sanction this development activity following an enforcement order. However, the development application has to be submitted within the time limit established by the Enforcement Notice. Two types of development can be covered by such an application:

- the retention on the land of any buildings or works to which the enforcement relates<sup>108</sup>;
- the continuance of any use of the land to which the enforcement relates<sup>109</sup>.

The Enforcement Notice is suspended if the application is submitted within the period indicated in the notice. The notice ceases to have effect if permission is granted.

The application to sanction illegality could be dismissed:

- when the requirement in the notice, stopping or prohibiting further work or development is not complied with;
- if any fine or other payment to which a person has become liable under the Development Planning Act, 1992 in respect of the relevant land has not been paid.

Case law<sup>110</sup> has shown that the Development Control Commission cannot dismiss an application if it is filed with the Planning Authority prior to an Enforcement Notice. Section 52(5) of the Act states that an application could be dismissed only if any one of the conditions imposed in Section 52(4) is not respected. Secondly, this can only

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<sup>108</sup> *Ibid.*, Section 52(5)(a).

<sup>109</sup> *Ibid.*, Section 52(5)(b).

<sup>110</sup> *Carm Lino Pisani v. Planning Authority* Appeal nos. 248/94E KA, 250/94E KA, 30/95 KA, 112/95 KA; Court of Appeal no 38A/96.

take place if the application that has been submitted during the fifteen-day period mentioned in Sections 52(4) and (5).

### **2.8.3 Appeals against Stop and Enforcement Notices**

Section 52(6) states that a person may lodge an Appeal with the Planning Appeals Board if he or she feels aggrieved by a Stop or Enforcement Notice. Such an appeal may only be lodged within 15 days from date of service of the notice. The Board may quash the Stop or Enforcement Notice if it is satisfied that:

- development permission was granted for the development to which the Stop or Enforcement Notice relates; or
- no permission was required; or
- the conditions subject to which such permission was granted have been complied with.

The Appeal is dismissed and a Stop or Enforcement Notice is confirmed if none of the above conditions are met. In this case, Section 52(7) stipulates that the Enforcement Notice is to come on such date after fifteen days following the determination of the Appeal. There is no such provision to a Stop Notice. Examples of Case Law<sup>111</sup> shown by Aquilina (1999 p.462) demonstrate that when an application is lodged to sanction the development and at the same time an Appeal is lodged against the Stop or Enforcement Notice, the Appeal is dismissed but the Enforcement Notice comes into force 15 days after the determination of the application. This is provided that the

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<sup>111</sup> See: Aquilina K. (1999) *Development Planning Legislation, The Maltese Experience*. Appendix II for detailed list of the Planning Appeals Board case law on Section 52(7).

permission is refused; if permission is granted, the Stop or Enforcement Notice is quashed.

#### **2.8.4 Other Enforcement Provisions**

Section 53 deals with enforcement provisions relating to:

- Scheduling property and Conservation Orders;
- Protected trees and Tree Preservation Orders;
- Advertisements.

An Enforcement Notice may also be issued if it appears that the appearance or condition of any land, being a garden, vacant site or other open land injures the amenity of any area<sup>112</sup>.

The Authority is empowered by law to enter any land in order to take the necessary measures which are mentioned in an Enforcement Notice and which steps or other action have not been carried out within the time limit specified by the Enforcement Notice. The Police Force may be asked to assist in such circumstances<sup>113</sup>.

#### **2.9 Legal Safeguards**

The Planning Authority is protected against any warrant of prohibitory injunction (or any other warrant or order which a court of law may issue) restraining it from complying with enforcement provisions of the Act<sup>114</sup>.

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<sup>112</sup> Act I of 1992 Section 50.

<sup>113</sup> *Ibid.*, Section 55(1).

<sup>114</sup> *Ibid.*, Section 55(2).

Any person may challenge the validity of an Enforcement Notice on the strength of which the Authority has acted or on the grounds that the action by the Planning Authority has been taken not in conformity with the enforcement provisions found in the Development Planning Act, 1992.

The expenses incurred by the Planning Authority to carry out an Enforcement Notice are recoverable from the owner of the land, subject to such rights of recovery such person may have against another person<sup>115</sup>.

## **2.10 Development Offences and Penalties**

Part VI of the Development Planning Act, 1992 concerns development offences and penalties.

Section 56 deals with the provision establishing Criminal Offences. Section 57 deals with procedural matters while Section 58 establishes the procedures of an administrative character, whereby under certain circumstances, an offender may sanction an alleged development by paying a fine. There are five offences which call for a criminal action. These are:

- If the owner of the land is carrying out or allowing to carry out any development without development permission or in breach of any condition or limitation imposed in a development permission.

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<sup>115</sup> *Ibid.*, Section 55(3).

- Acting in breach of any of the Sections 46, 48 or 49 of the Development Planning Act, 1992.
- Failing to comply with an enforcement order under Sections 45, 50, 52 and 53 of the Act.
- Hindering, obstructing, molesting or interfering with any officer of the Planning Authority or any police officer, in the execution of their duties. Also, failing to furnish information or supplying false information or failing to comply with instructions issued by the above-mentioned officers.
- Supplying a false, misleading or incorrect declaration for any purpose of the Act.

One must point out that Section 56(a) states that the development must take place on land and be carried out by the owner and not the occupier or any other person. This contrasts with Section 52(3), whereby, an Enforcement Notice is served on both the owner and the occupier. Secondly, this part of the legislation considers only land development and not sea-related development.

Section 58 empowers the Planning Authority to inflict an administrative fine not exceeding one thousand Malta Liri from an offence against the Act, (except an offence vis-à-vis Section 56(d)). In such cases, the Planning Authority writes to the offender describing the offence and the fine to be paid, and the steps to be taken to remedy the offence. The offender has 21 days to accept responsibility for the offence and within such period or further, as the Authority may allow, undertake to pay the fine indicated and remedy the offence. Under such circumstances:

- the offender would be admitting his / her guilt in respect of the offence;



- no further proceedings may be taken against him / her provided the fine is paid and offence is remedied;
- if fine is not paid within the stipulated period established by the Authority, it would be treated as if it were a court fine and proceedings would be taken accordingly. Under such circumstances, the competent court is the Criminal Court and the fine would have to be converted into a prison sentence.

If a person doesn't accept responsibility or fails to remedy the offence, ordinary court proceedings may be taken in accordance with the provision of the criminal code, of the Development Planning Act, 1992 and of any other law applicable to the offence.

## **2.11 Supplementary Provisions**

Part VII, which is the final part of the Act, relates to a number of supplementary provisions. This part deals with:

- i. the power to make regulations under the Interpretation Act<sup>116</sup>;
- ii. under the Development Planning Act, 1992:
  - a. power to make regulations;
  - b. certification of development according to permission;
  - c. service of notices and other instruments or documents;
  - d. the repeal and saving provisions.

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<sup>116</sup> Section 6 of the Interpretation Act, Chapter 248 of the Laws of Malta, provides as follows:

In any Act, whether passed before or after the commencement of this Act-

- (a) where such Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires;
- (b) where such Act confers a power or imposes a duty on the holder of an office, as such, then unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of that office.

There are three schedules at the end of the Act. These concern:

- provisions with respect to the functioning of the Board of the Planning Authority related to Section 3 of the Act;
- provisions with respect to the Public Officers detailed for duty with the Planning Authority related to Section 6 of the Act;
- proceedings before the Planning Appeals Board and appeals therefrom related to Section 15 of the Act.

## **2.12 Conclusion**

The aim of this chapter was to give the reader a review of the administrative and legislative set up of Planning in Malta. The details are found in the Development Planning Act, 1992, a piece of legislation which was amended three times in the first eight years after it was enacted. The structure adopted in the chapter was similar to that found in the legislation, in order to make it easier for the reader to make any cross-references.

A brief review of the key participants in the planning process served as an introduction to the following sections of the chapter.

The functions of the different boards and committees related to the planning system were described in the early part of the chapter, thus explaining the responsibilities levied by each one of them in the whole planning process. A review of the different Plans, which form part of the development planning process, was then undertaken. This demonstrated the tools available to make the whole planning system function

efficiently. A section dealing with development control, whereby various examples of case studies arising both from the Planning Appeals Board and the Court of Appeal were utilised to show the interpretation being given to the development control legislation. The different case studies demonstrated the loopholes left by the legislator when writing down the law. It also showed the views, at times conflicting, between the decision-making bodies concerned in the process. These included the views of the Development Control Commission and the Board of the Planning Authority contrasting with that of the Planning Appeals Board or that of the Planning Appeals Board with the Court of Appeal. This illustrated the dynamic nature visualised in the evolution of the planning process. Some of the conflicts of interpretation and the loopholes left by the legislation in the 1992 Act were addressed by the amendments introduced at a later stage. However, references made to the only book about Development Control Legislation in Malta have shown that there are still some areas in the legislation, which need to be addressed. The distinction between the development planning process followed for the general public and Government Departments was also aided through the use of flow diagrams. This visual aid was also used in several parts of the chapter, the reason being to give a synthesis of the process being referred to in the text. It was also intended to simplify the whole process to the reader who is not accustomed to the legislative jargon found in the Act.

The chapter concluded by reviewing the enforcement procedures and related penalties utilised in the development planning process.

**Bibliographical note<sup>117</sup> about Aquilina K.**

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<sup>117</sup> Aquilina (1999 p. vi).

### **3. Structure Planning**

#### **3.1 Introduction**

The concept of structure planning was brought over to Malta from the UK in line with historical connections discussed in Chapter 1. Zammit (1998 p.XV) states that, Britain, Ireland and Malta are the three countries in Europe adopting this notion. Contrary to the other Islands mentioned above, Malta had a monolithic administrative system when this philosophy was introduced in 1992. In Britain, the Structure Plans are found at the County tier level (Healey, 1988 p.408), whereas in Malta they are the basis of the Islands' planning system. There is only one Structure Plan containing 320 policies that is applicable for the entire archipelago.

This chapter will seek to analyse the origins of Structure Planning in Britain and the circumstances of its adoption in Malta. A brief review of the concept undertaken by a number of authors is aimed to demonstrate the spectrum of beliefs both positive and negative encountered in the planning sphere. The implementation of the imported philosophy of Structure Planning to the Maltese society was not a smooth running experience for a number of reasons, which will be reviewed and analysed at length.

The above approach is intended to give the reader:

- a brief background of the Structure Plan concept;
- the pros and cons of this notion;
- the socio-political circumstances under which this philosophy was adopted.

A thorough review of the Structure Plan of the Maltese Islands will then follow with special emphasis being given to policies relating to areas outside development zones, this being the main area of concern in this study.

### 3.2 Origin of Structure Plans

The term “Structure Plan” originated in Britain in the early 1960s following *The Future of Development Plans*, which was a report presented by the Planning Advisory Group, which was set up in 1964. The report arose from the concern at the extent to which urban and rural development was running ahead of the rather inflexible development plans of the 1947 Act. The group, under strong influence from the Royal Town Planning Institute, recommended a two-tier system of development plans, namely Structure Plans and more detailed Local Plans. This was put into effect through the 1968 Town and Country Planning Act (Rydin, 1993 pp.35-36). Similarly to the Maltese context, Structure Plans consisted of a written statement and a key diagram supported by an explanatory memorandum and a statement of public consultations. They were also subject to continuous review.

Colin Buchanan and Partners *et al.* (1990c p.2) in one of the technical reports prepared prior to the formulation of the Maltese Structure Plan listed four points to describe their nature, namely:

- The right to develop is vested in the state. This, unlike Britain has always been the case in Malta.
- Structure Plans form only part of the development plan system. They are intended to make a long-term strategy, policies and principles. They should show certainty in respect of strategic purposes, but should allow a wide range of modes of implementation. The strategy may be put into effect utilising subject plans, local plans or other similar documentation.
- The scope of Structure Plans has ranged from being a socio-economic strategy to being strictly land use strategy.

- The form and content of urban and rural Structure Plans is markedly different because of the pronounced difference in the nature and content of land use between urban and rural areas.

There is widespread agreement that Structure Plans are strategic in nature but differing opinions are expressed about their scope and content. Cloke and Shaw (1983 p.351) consider that Structure Plans are first and foremost statements of land use policy and the implementation powers of planning authorities are centred on development control in this context.

Regan (1978 p.12) states that Structure Plans are essentially written statements of land development policy, which pay particular attention to improving the environment and to traffic management; Local Plans are more detailed and cartographic and must conform to their Structure Plan's guidelines. Bracken and Hume (1981 p.375) claim that the principle purpose of Structure Planning is the production of coherent strategic policy statements to control land use and development.

Lees (1976 pp.25-28) considers that the Structure Plan is one of the planning process tools in the UK which has enabled the contributions of political decision-makers and technical planners to blend. Furthermore, she states that Structure Planning has developed as a tool to explore the impact of social, economic and physical change on an area and to evolve an integrated strategy for the future. However, she claims that it is not an appropriate tool for European-scale planning but considers it as an important link in a chain of plans which cover Local, Structure and Regional levels.

Shaw and Williams (1982 p.83) state that Structure Plans are supposed to consider key issues against the background of a broad social and economic analysis of trends in the county, but in many cases these trends operate at regional or sub-regional level.

Gilg and Kelly (1997a p.140) state that in post-modernist terms, the Structure Plan presents an “imageless” discourse, which reflects the ideas and interests of a particular professional group. The written statement accordingly acts as a “distancing mechanism” which discounts, or at least discourages, the possibility of multiple interpretations, both for consumers and producers of the Plan. This is the ideal situation especially if both the Structure Plans and Local Plans are also being utilised. Users of the Plans would have little room for any interpretations and therefore the time taken for deliberations would be radically reduced. Thus, the efficiency of the whole planning application process should be improved. In Malta, the situation is slightly different because, in spite of all the goodwill and forecasts, Structure Plan policies alone have been in use for development control since 1992. The reason being that the original intention of having the Local Plans completed within a few years never materialised. To date (February 2002) there is only one Local Plan. It is beyond the remit of this study to establish the reasons for this to be allowed to happen. So, as one would envisage, problems do arise when utilizing a strategic document for the whole country when the original intention was that this would only be used for a short period of time in such a manner. Zammit (1998 p. XV) claims that the Local Plans constitute the core of the Structure Plan. In fact, they are mentioned in no fewer than 40 of its policies, which as a result cannot be utilised.



### **3.3 Use and Significance of Structure Plans**

The importance of Structure Plans has been given due weight by a number of authors. Healey (1988 p.415) noted that research carried out on the operation of the planning system at the time showed that Structure and Local Plans are at their most significant where planning authorities expect challenge from applicants who have been refused planning permission. This is due to the fact that expectation of challenge fosters clear reasoning of policies. Strong Structure Plan policies can be used more effectively to refuse planning permission, impose planning conditions, or as a basis for negotiating planning obligations (Curry, 1993 p.14). The importance of having strong policies cannot be overemphasized, especially in the Maltese context, whereby to date (with only one exception) only Structure Plan policies could be used to control development applications. The acid test for the policies is when they are challenged in the Court of Appeal.

### **3.4 Criticism to Structure Planning**

In the UK, the Structure Plan was subject to criticism by leading planners when it replaced comprehensive planning. Keeble (1983 p.87) criticized the fact that in comprehensive planning, statements were based on maps that showed a definite spatial relationship, whereas in Structure Plans, the relationship could become indefinite if the wording is done in a certain manner as this could leave a lot of room for interpretation. Curry (1992 p.84) cites various authors<sup>118</sup> who claim that wording

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<sup>118</sup> See: Tyldesley, D. (1986) *Gaining Momentum: An Analysis of the Role and Performance of Local Authorities in Nature Conservation* (Oxford, Pisces); Kayes, R.J. (1986) *The Role of Structure Plans in Nature Conservation*, a report by the Political Ecology Research Group for the Nature Conservancy Council (Peterborough); Bain, C., Dodd, A. and Pritchard, D. (1990) *RSPB Planscan: a Study of Development Plans in England and Wales*, Conservation Topic Paper No. 28, October (London, RSPB).

such as ‘pay due regard’ to nature conservation in policies as being too vague and possibly even weakening the intended protective effect. Phrases such as ‘seek to safeguard’, ‘will take measures for the protection of’ and ‘should not endanger’ in the context of transport policies offer little help in determining planning applications. He also claims that nature conservation policies in Structure Plans are weakened by their lack of geographic detail. This would make such site-specific nature conservation policies weaker to implement and the interpretation of Structure Plans in Local Plans and development control, weaker as a result. In several cases, nature conservation proposals in one section are nullified by proposals elsewhere in the plans (Curry, 1993 p.12).

Zammit (1998 pp.XV-XVII) is critical of the choice for the British model and the way it is administered in Malta. He claims that a compromise with the European model would have been better. This would promise more certainty and predictability compared to the flexibility and discretion found in the present system. He also states that the local Structure Plan goes beyond the British model in its bureaucracy and through the regulations adopted by the Planning Directorate. He considers these as being paternalistic, intrusive or of a punitive stance and would not be admissible in British practice.

The Structure Plan and the Planning Authority have also been subjected to criticism by the political parties. This could be interpreted as a vote-catching exercise to appease their constituents who continuously complain about the operation of the Authority. Buhagiar (1995 p.46), who at the time was the Opposition spokesman (Labour Party) for planning-related matters, stated that the Structure Plan doesn’t

reflect the realities of the Maltese society. He claimed that this was due to the fact that foreigners, who failed to understand the Maltese situation and aspirations of the locals, prepared it. Zammit (1998 p.XVII) said that due to the close-knit nature of the Maltese society with omnipresent bonds of friendship and a long tradition of clientelism, transparency required much firmer guidelines rather than a litany of abstract policies. He further claimed that the Structure Plan does not reflect so much the Report of Survey, especially with regards to planning issues like hierarchy of settlements, employment centres and urban renewal. He ended up by stating that a number of policies are also in conflict with each other and that there is no sign of pecking order between them.

### **3.5 Problems of Implementation**

The competence of the Structure Plan policies and their interpretation falls within the exclusive rights of the Planning Authority and the Planning Appeals Board<sup>119</sup>. This decision was taken following an Appeal over a development permit sought to construct a dwelling ODZ, the application for which was submitted under the previous development legislation. It was first decided by the Planning Area Permits Board (PAPB) and was refused on the grounds that the development was outside the Temporary Provisions Schemes, but the decision was not communicated to the developer. A second decision taken a year later, under the new 1992 Development Planning Act legislation and set-up, was refused, on grounds that it was situated ODZ. The appeal in front of the Planning Appeals Board was also dismissed, on grounds that the decision was taken in a correct manner under the existing legislation at the

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<sup>119</sup> Court of Appeal decision taken on 31<sup>st</sup> May 1996 (Appeal no. 93/94).

time, in spite of the fact that the application was submitted under the previous one. The Court of Appeal dismissed the reasons for appeal made by the applicant.

The decision mentioned above established an important precedent that could be debated at length. The agency responsible for development is the Planning Authority, which has basically two levels, the political, policy and decision level and the executive level (see: Figure 2.1). In practice, it is the Planning Directorate which interprets and applies the Structure Plan policies in recommending a decision for a development. It has got the technical know-how to do so. The decision is taken at another level, the Board of the Planning Authority, which has delegated most of its remit of decision-making to the Development Control Commission (DCC) and delegated officers. Both the Board of the Planning Authority and DCC are made up of appointed members none of whom must legally be planners or competent in planning. This is contrary to the Planning Appeals Board where the legislation states that one of the three members must be versed in planning. However, a review of all the members of the Board of the Planning Authority since inception, to date (October 2001), shows that with the exception of one year (1996) there was always one member who was both an architect who was also versed in planning. This was not always the case in the DCC, whereby it was only since 1995 that there was a person versed in planning on the Commission. A closer look at the boards shows that the existing DCC board (established on 1/11/98-30/10/01) has six out of its seven members who are architects. In previous years, this was limited to between two to four members. This trend was also shown in the present Board (October 2001) of the Planning Authority, where five out of its fifteen members are architects. The Planning Appeals Boards always had a majority of architects, being four out of six of the members. It is not known why the

number of architects has increased on the DCC and the PA Board, but one could speculate that the Parliamentary Secretary responsible for planning matters, who is also an architect, could have influenced the choice.

All the Planning Directorate staff who work in the Development Control Unit and who compile the Development Planning Application report, on which basis a decision is taken, are either architects or have a first degree in science. Some are members of the Royal Town Planning Institute, while others have a Diploma or a Masters in Environmental Management and Planning<sup>120</sup>, thus one cannot deny their academic qualifications for the job. The Planning Authority, in view of the need to improve on the level of assessment of applications, organized a Continuing Technical Development Programme (CTDP) which ran for five months during 1996. The aim was to provide comprehensive and integrated training, structured around the policies and other considerations related to a range of different development types (Planning Authority, 1996 pp. 48-49).

This shows that legally, the decision-making bodies, with the exception of the Planning Appeals Board, are liable to an academic handicap, that is, having the people with the academic qualifications in planning. This is due to the fact that legally, there is no need for the decision-making boards to have members competent in planning. However, as a stopgap measure the government, who nominates the members, has in most cases included a planner or a member versed in planning on these boards. One could however, raise doubts about the inclusion of more architects on these boards. Also, the lack of experience or technical knowledge of the Board members could also

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<sup>120</sup> Source: Planning Authority (1997e).

lead to making planning decisions in breach of Structure Plan policies. One must also consider the fact that Structure Planning has been recently introduced to the Islands. Courses in planning were not available locally until a few years ago<sup>121</sup>.

As part of the Structure Plan review, the Planning Authority issued its first Monitoring Report for the period 1990-95. In this review, the Authority initiated a *Development Control File Audit* procedure in March 1995 to review the quality and consistency of development control decisions in the light of Structure Plan policy. The results showed:

*“that an estimated 40% of files were regarded as satisfactory in all important respects. Many of the defects identified in the remaining 60% of cases were minor. However, almost 25% of files revealed a serious lack of consideration of appropriate material considerations or policies, or used inappropriate reasons for refusal”* (Planning Authority, 1997a p.169).

It is not clear how the Planning Authority can consider the identified defects as minor and serious at the same time. From the clients' point of view this could concurrently be a very serious and expensive matter, because apart from stalling his investment prospects, he would need to go to the trouble of following a Planning Appeals Board procedure and maybe even a Court of Appeal case.

In the same monitoring review (1990-1995) the Authority admits inconsistencies in the application of the Structure Plan policies within the Planning Directorate but also claims differences in the interpretation of policies between the Directorate and the DCC. It states that the level of disagreement was found to be high: DCC rejected 25% of the 1,460 recommendations for refusal in 1995 but accepted 99% of the

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<sup>121</sup> The first planning course was introduced in 1988 as part of the BE&A (Hons) course. In 1994, a postgraduate diploma course in Environment Management was introduced. Later this developed into a Masters in Environmental Management and Planning (P.Gauci personal communication).

recommendations for approval (Planning Authority, 1997a p. 170 Section 5.1.16). The report claims that amongst policies which are sometimes disregarded by the DCC are those dealing with development ODZ. Notably policy SET 11 which prohibits urban development outside committed built-up areas. Also, there is mounting concern that agricultural projects such as greenhouses are being approved with limited regard to their visual and environmental impact in breach of policies RCO 4 and AHF 5. The Audit investigated four cases where the Commission overturned a recommendation for refusal by the Planning Directorate. It was claimed that in three of the cases, there was a clear failure to take into account relevant Structure Plan policies or other planning issues (Planning Authority, 1997a pp.169-171). This could imply lack of technical competence by the DCC members.

A range of initiatives to improve the quality of the development control process were implemented. These included:

- vetting of development control reports by senior development control managers;
- re-working of files by case officers in case of major weaknesses;
- establishing an *in-house continuing technical development programme* to provide staff with on-going training;
- consolidation of major Projects Group, to ensure greater consistency when handling large projects;
- preparation of a number of assessment sheets as guidance for case officers;

The *Development Control File Audit* exercise was not repeated in the following year (Planning Authority, 1999a p.166 Section 5.1.22). However, the Authority used the

number of decisions overturned through the Reconsideration or Appeals process, as an indicator to measure the consistency of decisions. The following table was produced:

**Table 3.1: Percentage decisions overturned during the Reconsideration and Appeals Process (source: Planning Authority, 1999a p.166).**

<b>% Decisions Overturned</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>
<b>Reconsideration</b>	67	48	48	38	40
<b>Appeal</b>	-	51	39	30	22

The Planning Authority claims that since there is a decrease in the percentage of decisions overturned through the Reconsideration or Appeals process, this indicates a more consistent approach to decision-making and a better quality of decisions at the initial stage. However, this could be a false conclusion, because it could also signify:

- that the DCC board got lax and was readily approving most of the Directorate’s recommended approvals; or
- that the Directorate’s recommended refusals were overturned by the decision-making Board at outset, thus preventing clients from going through the above mentioned process.

The latter hypothesis cannot be proved since the Authority failed to carry out *the Development Control File Audit*. The Appeal process could be expensive and lengthy, since it involves the engagement of a lawyer and the file could be decided years later. This could serve as a deterrent to applicants to embark on such a process unless the financial considerations in the development could attenuate the costs and delays involved. Some people might also risk an infringement by going on with their development, especially if a small development is involved. It is beyond the remit of this study to delve deeper in this matter.



### 3.6 Structure Plan for the Maltese Islands

The Structure Plan is a strategic long term plan for the Maltese Islands which, for most purposes, covers the period to the year 2010 (Colin Buchanan and Partners *et. al*, 1990d p.2). The Planning Authority was entrusted with the responsibility for reviewing and coordinating the implementation of the Plan. Once approved by Parliament the Plan became Government policy and was binding on all parts of the Government and others involved in development. This is very important due to the fact that since the Authority was given the mandate to issue all development permits, even those concerned with Government projects, then all departments had to toe the same line of the Authority or rather abide to the Structure Plan policies. This was relatively new to the Government organisation, because the practice was that each department or ministry had its own policy. Prior to the Development Planning Act legislation, Government departments didn't require any development permits, so they were rather free from any restrictions.

The Structure Plan had three main goals (Colin Buchanan and Partners *et. al*, 1990d p.7):

1. *“To encourage the further social and economic development of the Maltese Islands and to ensure as far as possible that sufficient land and support infrastructure are available to accommodate it.*
2. *To use land and buildings efficiently, and consequently to channel development activity into existing and committed urban areas, particularly through a rehabilitation and upgrading of the existing fabric and infrastructure, thus constraining further inroads into undeveloped land and generally resulting in higher density development than at present.*
3. *To radically improve the quality of all aspects of the environment of both urban and rural areas.”*

The Plan is divided into twenty-two policy areas which are grouped under eleven titles:

1. Settlement pattern (SET)
2. Built environment (BEN)
3. Housing (HOU)
4. Social and community facilities (SOC)
5. Commerce and industry (COM, IND)
6. Agriculture, horticulture and fisheries (AHF)
7. Minerals (MIN)
8. Tourism and recreation (TOU, REC)
9. Transport (TRA, RDS, TEM, PTR, LEM, IIT, AVN)
10. Conservation (UCO, RCO, MCO, CZM)
11. Public Utilities (PUT)

The main areas of concern within this study are settlement patterns, built environment, housing, tourism and recreation, agriculture, and minerals and conservation. This is due to the fact that it is the policy within these sectors which mainly concern development Outside Development Zone. These constitute more than half the 320 Structure Plan policies, with rural conservation having the highest number of policies, forty-two in all. A review of the key policies concerned with this study will be undertaken.

### 3.6.1 Settlement Pattern

The main thrust behind these policies is to encourage rehabilitation of existing buildings, and channel development in built-up areas and within Temporary Provisions Schemes. It transpired that the Schemes were

*“judged to be deficient because insufficient provisions were made in the layouts prepared for these areas for social and community facilities, schools, clinics, service industry, shops etc.”* (Colin Buchanan and Partners *et al.*, 1990d p.21).

The boundaries of the Schemes could be changed following a Structure Plan review, taking place after the approval of the Local Plan<sup>122</sup>. When the Structure Plan was prepared, it was assumed that the Temporary Provision areas were not extensive enough to accommodate all the new housing and other facilities up to the year 2010, thereby indicating that additional land would be required in the period. So *“eight primary development areas”* were designated to accommodate such development<sup>123</sup>. Recent evaluations showed that there is over-allocation of land in the current Structure Plan which is adequate to cater for the needs of at least, the next 30 years (Planning Authority, 1997a, p.22, Section 2.2.27).

*“No form of urban development will be permitted outside existing and committed built-up areas, and primary development areas as designated in the Structure Plan even where roads and public utilities are available. Permitted forms of non-urban development outside such areas are restricted to the categories referred to in paragraph 7.6”*<sup>124</sup>.

These are farmhouses and genuine agricultural buildings, reservoirs, picnic area toilets and car park control buildings and walls or fences at archaeological and ecological sites<sup>125</sup>. The term farmhouse is not defined in the Structure Plan. A relatively new trend introduced in recent years was that old and disused country buildings were being bought, converted and sold as farmhouses, thereby introducing

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<sup>122</sup> Colin Buchanan & Partners *et al.*, (1990d) SET 8.

<sup>123</sup> *Ibid.*, SET 10.

<sup>124</sup> *Ibid.*, SET 11.

<sup>125</sup> *Ibid.*, Section 7.6.

urban development in the countryside on a false pretext. Urbanization outside development zones is also permitted if the applicant could produce valid reasons why the development could not be located elsewhere. The applicant will have to produce an Environmental Impact Assessment for this sort of development. This does not mean that, as a result, a development permit will be granted, especially if the development could be located in an area intended in the Structure Plan or any approved Planning Authority document<sup>126</sup>.

In both monitoring reports issued so far (up to February 2002), the Planning Authority acknowledged that there were clear breaches of policies SET 11 and SET 12. This, in spite of the fact that these policies are considered by the Authority as being the best understood and most widely accepted policies within the Structure Plan (Planning Authority, 1997a, p.95, Section 3.1.19). In 1995, the Authority even issued a Development Control Guidance note, commonly known as PLP 20<sup>127</sup>, which emphasized that existing and built-up areas do not include:

- land outside the limits of development which contains sporadic development;
- sites where a previous development has fallen into disuse;
- sites outside the limits of development with an expired development permit.

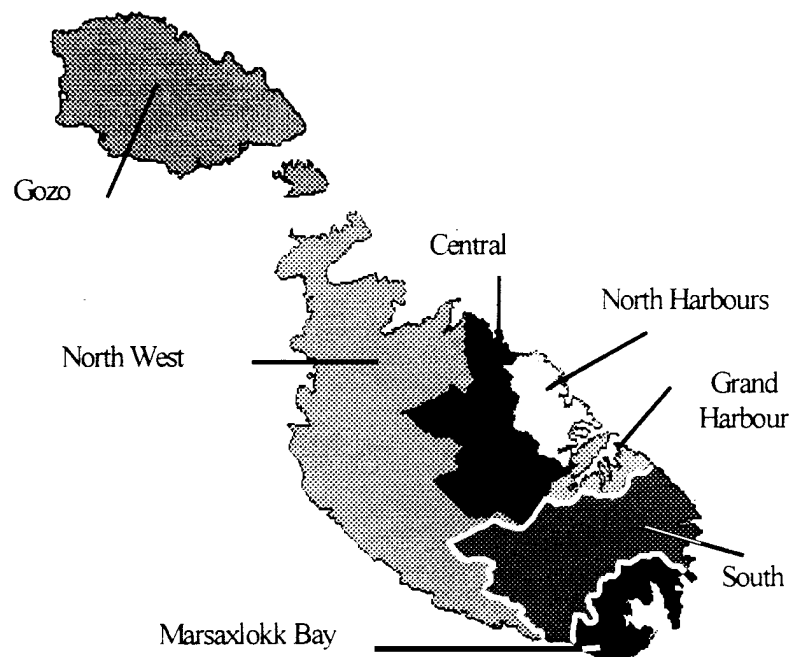
Data from the 1990-95 Monitoring Report showed that in 1994 about 4.5% (185 in number) of the approved dwellings were ODZ. Following the publication of PLP 20, this percentage fell to 3.3% (155) in 1995, but a collective figure of 4% (276) of all dwelling applications being approved ODZ was presented for the years 1996-97

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<sup>126</sup> *Ibid.*, SET 12.

<sup>127</sup> *Policy and design Guidance Development Outside Built-up Areas.*

(Planning Authority, 1997a pp. 95-96; 1999a pp. 93-94). In the 1999 Monitoring Report, the Authority maintained that the numbers exceeded those that can be justified under the strict criteria defining necessary dwellings for full-time farmers. The Local Plan areas, (see: Figure 3.1) which have been earmarked as having the highest percentage of approved dwellings outside the development zone, are Gozo, the Northwest and the South.



**Figure 3.1: Plan of the Maltese Islands showing the seven Local Plan Areas (Source: Planning Authority, 1999a p.92).**

### **3.6.2 Built Environment**

The twenty-one policies found under this section range from those dealing with development control application details to bad neighbour development. A much used and highly contested policy is BEN 1 which deals mainly with bad neighbour

development. Development will not normally be permitted if a proposal is likely to have a deleterious impact on existing or planned adjacent uses because of a number of factors. These include visual intrusion, noise, vibration, atmospheric pollution, unusually high traffic generation, unusual operating times, or any other characteristic that in the opinion of the Planning Authority would constitute a bad neighbour development<sup>128</sup>. Development permission is refused if it is incompatible with the good urban design, natural heritage, and environmental characteristics of existing or planned adjacent uses, and is unlikely to maintain the good visual integrity of the location. There will be a presumption against development, which does not generally observe the design guidelines issued by the Planning Authority for built-up areas<sup>129</sup>. BEN 3 concerns the provision to install underground communication and electricity supplies instead of the present overhead cable system. During the interim period between the commencement date of the Structure Plan and the adoption of any particular Local Plan, permission for development in Temporary Provisions areas will be subject to Policies BEN 1, 2, and 3. Permission will be refused if the Authority is not satisfied that development could compromise the objectives of the review forming part of Local Plan preparation. The Authority will also have regard to the location of the proposed development, with more favourable consideration being given to development close to urban areas and already provided with roads and services, and less favourable consideration to development relatively remote from existing buildings and infrastructure<sup>130</sup>. These policies have been used both in applications within Temporary Schemes and also ODZ.

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<sup>128</sup> Colin Buchanan & Partners *et al.*, (1990d) BEN 1.

<sup>129</sup> *Ibid.*, BEN 2.

<sup>130</sup> *Ibid.*, BEN 4.

The Planning Authority is concerned about the difficulty in protecting valleys due to the conflict arising between the Temporary Provisions Schemes and the Structure Plan policies (Planning Authority, 1997a, p.142). The Authority claims that the prevailing opinion is that any proposal on appropriately zoned land within Scheme is guaranteed a development permit. However, the Structure Plan makes it clear that the development within Schemes must be compatible with good urban design, natural heritage and environmental characteristics of the existing and adjacent uses. It should also integrate visually with the area (SET 9, BEN 1, BEN 2, BEN 3, BEN 4, SET 7).

Development applications in non-urban areas will be judged against the policies and design guidelines of the Local Plans for Rural Conservation Areas, as well as Structure Plan policies<sup>131</sup>. Policy BEN 6 concerns advertisements and related conditions for their display. A Policy and Design Guidance note issued in 1994 backed up this policy<sup>132</sup>. Policies BEN 7 to BEN 15 concern application procedures, conditions for development and maintenance of neighbouring sites to the development. Policy BEN 11 together with Section 7.9 are intended to upgrade environmentally degraded sites, which characterize the Islands. The Planning Authority, in conjunction with other agencies was meant to take the initiative. There is no reference to the utilisation of this policy in either Monitoring Reports published by the Authority. Policies 16 to 21 concern certification of Building contractors (BEN 16), landscaping (BEN 17-19), building regulations (BEN 20) and noise nuisance (BEN 21).

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<sup>131</sup> *Ibid.*, BEN 5, Section 7.6

<sup>132</sup> *Policy and Design Guidance, Billboards and Signs.*

### 3.6.3 Housing

The drastic increase experienced in the use of land for housing and the large additional amounts of land committed under the Temporary Provisions Schemes has led to a number of problems, namely:

1. vacant and underused dwellings in old areas;
2. longer distances travelled to work;
3. lack of facilities in new housing areas;
4. inefficient use of scarce land resource through low density development;
5. loss of good agricultural land;
6. coalescence of settlement and loss of character (Colin Buchanan and Partners *et al.*, 1990e p.42 Sections 8.3-8.4).

The Structure Plan policies and strategy aimed to overcome these problems (Colin Buchanan and Partners *et al.*, 1990e p.42 Sections 8.3-8.4).

At the time the Plan was produced, it was estimated that 60,000 dwellings would be required during the projected 20 years period. 50,000 of these were intended to be provided within the Temporary Schemes, 8,000 within existing urban areas and 2,000 through Primary Development Areas. Later estimates showed that the dwelling supply for the period 1990-2010 would be in the region of 62,220 dwellings but the demand will not exceed 34,700 dwellings. This shows that the current land allocations are likely to suffice for the next thirty years (see: Section 3.6.1) (Planning Authority, 1997a p.22 Section 2.2.27).



The thrust behind the housing policies is mainly towards redevelopment of existing built-up areas<sup>133</sup> and containment of the housing stock within schemes<sup>134</sup>. The phased establishment of an equitable rental market was proposed in order to stimulate the private market for renting housing<sup>135</sup>. In spite of the legislation introduced in 1995 that liberalised all rents entered into from that date, this measure still failed to produce the desired effects.

### **3.6.4 Agriculture, Horticulture and Fisheries**

During the last half century there was a major decline in registered agricultural land. This was caused mainly by abandonment of agricultural land holdings and the loss of land to building development. In 35 years, between 1956 and 1991, 8,530 ha of agricultural land were lost. This represented slightly less than half the islands' agricultural land. Concomitant with the decline in registered land, the number of full-time farmers decreased by 80% over the same period<sup>136</sup> (Planning Authority, 1997a p.46 Section 2.5.6). In spite of this major decline in farming, agriculture is still the largest land user in Malta (Colin Buchanan and Partners *et al.*, 1990e p.49 Section 11.1).

The Structure Plan tries to encourage improvements in agriculture, horticulture and fisheries in order, amongst other things, to safeguard the countryside from becoming derelict and for the benefit of future generations<sup>137</sup>. Plan policies propose national

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<sup>133</sup> Colin Buchanan & Partners *et al.*, (1990d) HOU 1.

<sup>134</sup> *Ibid.*, HOU 4.

<sup>135</sup> *Ibid.*, HOU 7.

<sup>136</sup> See: Section 1.7.7 for updated figures.

<sup>137</sup> Colin Buchanan & Partners *et al.*, (1990d) AHF 1.

irrigation systems<sup>138</sup>, a survey of the agricultural quality of land<sup>139</sup> and mandatory soil conservation measures<sup>140</sup>.

Despite policies, such as SET 11, that restrict development outside built-up areas, demand for residential development in the countryside is strong. The Authority acknowledged that some of this might be genuine, but also states that some is speculative and stems from applicants seeking to exploit the physical and financial advantages of a new house in the countryside (Planning Authority, 1997b p.3/18). As a result, in 1994, it issued policy and design guidance<sup>141</sup> to tackle this issue. In the genuine cases, such as those essential to the needs of agriculture, policy AHF 5 established that such buildings should blend with the rural landscape and be situated on low agricultural quality land. The same policy includes a number of other conditions to protect the rural environment, amongst which:

- locations must be acceptable in terms of noise, smell and effluent;
- greenhouses will be hidden from longer distance views; and
- sensitive conversion of disused buildings for rural recreational use will be permitted.

The Authority considers policies AHF 1 and AHF 5 as being of vital importance in this sector (Planning Authority, 1997a p.49). Table 3.2 shows the number of approvals given in the agricultural sectors between 1993-1997.

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<sup>138</sup> *Ibid.*, AHF 2.

<sup>139</sup> *Ibid.*, AHF 3.

<sup>140</sup> *Ibid.*, AHF 4.

<sup>141</sup> *Policy and Design Guidance Farmhouses and Agricultural Buildings.*

**Table 3.2: Agricultural approvals by development type (1993-1997) (source: Planning Authority, 1999a p. 51).**

Development Type		Decision year					TOT
Code	Description	93	94	95	96	97	
ACC	Access Roads	1	0	0	1	2	4
BEE	Apiary	0	0	0	1	0	1
AHA	Aquaculture - Hatcheries	0	0	1	0	1	2
ALF	Aquaculture - Land Based Farms	1	0	1	0	2	4
BIR	Bird Room	0	1	0	0	1	2
BH	Boat House	0	1	0	2	2	5
DEM	Demolition of rubble walls	0	0	1	0	0	1
FB	Farm Building	6	6	10	14	9	44
FH	Farm House	5	6	11	25	21	68
FS	Farm Store	16	42	56	78	60	252
FIS	Fisheries	0	1	0	1	0	2
GRH	Greenhouses	2	10	10	18	16	56
HUCT	Husbandry - cattle	3	1	2	2	0	8
HUC	Husbandry - chickens	4	3	14	5	6	32
HUPI	Husbandry - pigs	2	3	6	10	3	24
HUR	Husbandry - rabbits	2	0	4	3	1	10
HUS	Husbandry - sheep	0	0	1	1	1	3
STA	Husbandry - stables	3	2	8	2	2	17
HUTK	Husbandry - turkey	0	0	1	1	0	2
LAR	Land reclamation	1	0	0	1	2	4
MSH	Mushroom farm	0	0	0	1	1	2
PUMP	Pump room	0	3	2	1	4	10
RES	Reservoir	2	15	18	21	16	72
RUB	Rubble wall	0	0	4	1	4	9
Total		48	94	150	189	153	634

Source: DCIS, PA

Following a sharp increase in approvals in the first four years, the decrease during the fifth year was attributed to better enforcement of rural conservation policies and possible increases in the number of applications refused by the Authority (Planning Authority, 1999a pp. 50-51). Table 3.2 shows an increasing trend in the number of applications for farmhouses, farm buildings, agricultural stores and greenhouses over

the years. This increase was followed by a slight decrease in these four development types for 1997.

Greenhouses and livestock units can have a substantial impact on the landscape. The Authority claimed that it was finding it difficult to resolve the conflicts created by such structures. A set of guidelines on greenhouse development was being prepared in 1995 (Planning Authority, 1997a p.50 Sections 2.5.25 and 2.5.28), but nothing has been published so far (up to February 2002). The effect could be much larger than initially thought when one looks at the number of approvals. This is due to the fact that applications are usually for more than one unit, for example, the 34 greenhouse applications approved in 1996 and 1997 are thought to be equivalent to about 100 units in all (Planning Authority, 1999a p.52 Section 2.5.25).

A serious concern facing the agricultural industry is land fragmentation. The principle issue is inheritance laws (part of the Agricultural Leases Act, 1967) with regards to tenancy which allows farmers to subdivide all their property equally between each of their offspring. The Department of Agriculture was conducting a survey to implement a land consolidation project aiming to make land holdings more viable (Planning Authority, 1999a p.49 Section 2.5.12). Policy AHF 6 discourages subdivision of landholdings, unless suitable vehicular access to all subdivisions is provided and right of way boundary walls built in random rubble. The utilization and maintenance of random rubble walls and the removal of visual intrusions throughout the countryside is emphasized in policies AHF 7 and 8. The promotion of rubble walls is being implemented through permit conditions, whereby all external walls outside the

development zone have to either be constructed as rubble walls or be suitably faced (Planning Authority, 1997a p.140 Section 4.6.10).

The sprawl of development that took place during the last three decades led to situations whereby urban development was built close to livestock units. Policy AHF 9 encourages relocation of such units in the countryside on condition this takes place prior to the redevelopment of the old unit.

Structure Plan policies promote the upgrading of the agricultural sector through the development of grading stations<sup>142</sup>, import and export stations<sup>143</sup> and quarantine stations<sup>144</sup>. Work on the principle packing and grading station at *Ta' Qali* started in 1994. Part of the station is also used as an import / export station whereby vegetables, mainly potatoes, are packed and where imported fruits and vegetables are unpacked (Planning Authority, 1997a pp. 49-50 Section 2.5.18). The Agriculture and Fisheries Department no longer considers import and export stations at the harbours and airport as a priority. However, the airport quarantine station is still in need of further development (Planning Authority, 1999a p.50 Section 2.5.18).

Government will promote efficiency in agriculture and fisheries through land availability measures<sup>145</sup>. Such measures include:

- establishing rights of way for agricultural vehicles and improving rural roads, in order to enhance the appearance of the countryside;
- making land available on long leases to secure capital investment in the sector;

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<sup>142</sup> Colin Buchanan & Partners *et al.*, (1990d) AHF 10.

<sup>143</sup> *Ibid.*, AHF 11.

<sup>144</sup> *Ibid.*, AHF 12.

<sup>145</sup> *Ibid.*, AHF 13.

- introducing measures to secure larger and more viable farm units;
- identifying sites for boat storage and maintenance facilities.

Fish berthing facilities and a small fisheries centre is earmarked for the north of the Island while a deep-sea fisheries centre is also indicated for the south port of *Marsaxlokk*<sup>146</sup>. The Department of Agriculture and Fisheries claims that although none of the fisheries centres have been implemented, it still considers the policies as relevant (Planning Authority, 1999a p.50 Section 2.5.19). In the 1990-95 monitoring report, it was stated that some sites had already been identified for the centres but their implementation was hampered by lack of funds. Doubts were raised whether a deep-sea port to service the trawling industry in Malta was required. In fact no provision was made for it in the *Marsaxlokk* Bay Local Plan (Planning Authority, 1997a p.40 Section 2.5.22). Over the years local fish catches have been decreasing, mainly due to depletion of natural fish stocks. Following several attempts to culture fish and shellfish in Maltese waters (Ferlin *et al.*, 1986 p.1-3), a National Aquaculture Centre was set up in 1988. The main aims of the centre were to:

- introduce fattening and hatchery technology for sea bream and sea bass;
- become an extension and advisory service to the industry;
- offer an environmental monitoring services to the industry;
- carry out research and development programmes to improve the technological aspect of this field.

There are presently nine sites being utilized to fatten fish, two of these being land-based farms, the rest are all in open sea. Until the year 2000, Sea Bass and Sea Bream

were the fish which were fattened and mostly exported to Italy. However, since then, one fish farm started fattening Atlantic Bluefin Tuna, which is caught in the wild and another two farms have been given permission to change over part of their production to Tuna. All the fattened Tuna is exported to Japan, where it fetches very good prices, since it is considered as a delicacy.

The Structure Plan acknowledged that there are severe potential problems with the aquaculture industry, and illustrates this by mentioning the fact that several rural environments in Scotland have been spoilt<sup>147</sup>. However, it also states that it has transformed the rural economies of both Scotland and Norway<sup>148</sup>. Policy AHF 15 encourages that production based units will be located away from the coast to avoid any visual impact. It envisages that planning criteria and permit conditions will be developed.

In May 1994, the Authority published Policy and Design Guidance for fish farming to be used as a basis for consideration of all development proposals related to fish farming (Planning Authority, 1997d, pp. 3/67-3/71). This document also addressed the issue of land-based structures required to support the sea-based units. Such developments were not considered in the Structure Plan policies. Policy AHF 16 earmarks possible large land-based units to be sited in industrial estates, former quarries and multi storey structures. Small land-based units are also permitted on farms in conformity with policy AHF 5. Underground ducting and the recycling of water or the use of seawater are also mandatory.

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<sup>146</sup> *Ibid.*, AHF 14.

<sup>147</sup> *Ibid.*, Section 11.4.

<sup>148</sup> *Ibid.*, Section 11.3.

During the period 1996-1997, there were four applications for land-based farms, one of which was refused. The other three were a fattening farm sited on an agricultural field in a prime agricultural zone, a fattening farm sited in salt pans and the other was a fish hatchery which was sited inside a disused water desalination plant (Planning Authority, 1999a p.51 and p.134). In the first case, soil was removed from the field and concrete tanks were constructed instead. These tanks are probably in breach of conditions found in policy AHF 5 which states that structures must:

*“either blend with the rural landscape through the use of random rubble, or be hidden from view. This includes irrigation works and other utility structures”*  
(See: Photo 3.1).



**Photo 3.1: Concrete tanks of land-based Fish farm next to nature reserve.**

### **3.6.5 Minerals**

Mineral extraction in the Maltese Islands concerns mainly the production of limestone rock for the construction industry. Enforcement and implementation of minerals Structure Plan policies are one of the most difficult areas for the Planning Authority. The reasons being that prior to the establishment of the Authority, all that owners



required was a Police license to operate a quarry. The license was tied to the owner and not to the site. There was little if any enforcement of any license conditions and so owners enjoyed a liberal and strong position. Due to the lack of effective control, this allowed owners to mine land which was not specifically covered under their license (Planning Authority, 1997a p.53 Section 2.6.7).

The Structure Plan provides the framework for continued working of important mineral deposits and exploitation of future deposits in an environmentally acceptable manner<sup>149</sup>. It is acknowledged that the minerals industry will continue to be essential as a supplier to the construction industry and as a possible exporter. Mineral policies seek to balance the environmental disadvantages of mineral working, processing and transport with the social and economic need for minerals<sup>150</sup>.

When the Structure Plan was formulated there was little information about the occurrence, distribution and quality of economically viable mineral reserves. This makes planning for the future difficult, both for the minerals industry and for the Planning Authority. In the absence of such information, the safeguarding of workable mineral resources as requested in policy MIN 1 would be unattainable. Non-mineral development on suspected mineral reserves would not be permitted. The Planning Authority was committed to undertake a strategic evaluation of stone, aggregate and marble resources in the Islands, including the existing licensed reserves and operating quarries<sup>151</sup>. In January 1994, a Mineral Resources Assessment was commissioned from Wardell Armstrong, an international mineral and environmental consultancy. The survey which was delivered two years later, identified 26 search areas from a

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<sup>149</sup> *Ibid.*, Section 12.2.

<sup>150</sup> *Ibid.*, Section 12.3.

<sup>151</sup> *Ibid.*, MIN 2.

sample of 33 boreholes, for future extraction. Environmental considerations were not incorporated into the assessment, in spite of the fact that some of the search areas were known to be environmentally sensitive. The assessment revealed that at current production rates, there is an estimated reserve of 260 years for softstone and 123 years for hardstone in the 26 search areas (Planning Authority, 1997a pp.55-56 Sections 2.6.15, 2.6.17-2.6.18).

Policy MIN 3 recommended the establishment of a Minerals Board by the Planning Authority to provide information on:

- i. the potential demand for mineral resources;
- ii. the quantity, quality and distribution of exploitable mineral deposits;
- iii. the future potential outputs of existing quarries;
- iv. the quarry industry and recommend standards to the Planning Authority.

The Board established a Code of Practice for the minerals sector which was distributed with permits being issued by the Authority. The 1996-97 monitoring report stated that no progress had been made with regards to section (i) and (iii) mentioned above (Planning Authority, 1997a p.53 Section 2.6.5; p.127 Section 4.3.66).

The Planning Authority will seek to provide for the release of land for mineral extraction in order to maintain a level of economic reserves, which is sufficient for about 20 years<sup>152</sup>. Work to identify new sites for mineral extraction to maintain a 20-year reserve was stalled during 1996-97. No reason was given for this delay in the respective Monitoring Report. It anticipated that the Authority will be in a position to

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<sup>152</sup> *Ibid.*, MIN 4.

ascertain the number of years to exhaustion once the quantity of existing licensed reserves was determined (Planning Authority, 1999a p.55 Section 2.6.15).

There is a presumption against surface mineral workings in or near areas of ecological, archaeological and high quality agricultural land. Extraction of Blue Clay in significant amounts is forbidden<sup>153</sup>. This could be due to two main reasons:

- The small quantity of available Blue Clay on the Maltese Islands could be exhausted in a short period of time if industrial extraction is allowed.
- Tampering with the Blue Clay layer could result in earth subsidence, due to the fact that a small layer of Greensand and a much larger layer of Upper Coralline Limestone is found above the Blue Clay Layer.

The Authority claims that it has achieved some success in discouraging further development of quarries next to archaeological sites but other conservation objectives are proving more elusive. This is mainly due to the difficulty one encounters in finding sites that are neither ecologically sensitive nor good agricultural land. Agricultural land is being given less priority due to the fact that it can be restored (Planning Authority, 1997a p.128 Section 4.3.75). In 1996 and 1997, certain areas in Malta and Gozo were scheduled to re-enforce environmental protection. (Planning Authority, 1999a p.123 Section 4.3.65).

Extension or merging of adjacent quarries will be given favourable treatment to new mineral workings. However, this is limited to evidence that the site has been worked

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<sup>153</sup> *Ibid.*, MIN 5.

to its maximum practicable depth<sup>154</sup>. Such a policy aims to contain the impacts generated by quarries.

The Planning Authority is obliged by policy MIN 7 to prepare and periodically review a Mineral Subject Plan which incorporates the mineral resource survey referred to in policy MIN 2. The Plan has been commissioned to a firm of mineral consultants who have submitted the Draft version in the year 2001 for public consultation.

A number of policies were introduced by the Structure Plan to contain and control the impacts created by the mineral sector. Amongst these policies was MIN 8 which required an Environmental Impact Assessment (EIA) prior to determining an application for mineral extraction<sup>155</sup>. Usually, an Environmental Planning Statement was requested, but depending on the ecological or archaeological value of the site, a full Environmental Impact Statement could be necessary (Planning Authority, 1997a p.127 Section 4.3.70). If the need to work the resource is not sufficient to justify the environmental impact that is likely to arise, then the application is refused<sup>156</sup>. The Planning Authority admits that currently the need cannot be accurately assessed but it is intended that the Mineral Subject Plan will produce national demand figures which could be used to evaluate the sector (Planning Authority, 1997a p.128 Section 4.3.72). Development permits will be for a period of between ten and twenty years, subject to a review of conditions every five years<sup>157</sup>. Permission will be granted for proposals

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<sup>154</sup> *Ibid.*, MIN 6.

<sup>155</sup> Two types of EIA are found in Malta, one is called an Environmental Impact Statement (EIS) and the other an Environmental Planning Statement (EPS). An EIS is an extensive report which is mainly requested for large projects having substantial potential impacts. A public hearing will normally form part of the EIA process in this case. An EPS is similar to an EIS but will normally cover fewer topics and will not require a public hearing to discuss its findings.

<sup>156</sup> Colin Buchanan & Partners *et al.*, (1990d) MIN 9.

<sup>157</sup> *Ibid.*, MIN 10.

for the exploration and assessment of mineral deposits. This will be subject to environmental safeguards and will not imply an acceptance of any subsequent exploitation of minerals<sup>158</sup>.

Quarries leave large scars on land, which have a considerable visual impact on the area. A new concept, which was introduced through Structure Plan policies, was that of mandatory reclamation and afteruse of quarries. There were several instances, prior to this period, whereby quarry owners reclaimed a used quarry and converted it into a field or a storage compound. However, this was only on a sporadic basis and out of the self-initiative of those concerned. The Plan introduced such a concept both for current and also for future owners. The Government was obliged to make the necessary arrangements and offer incentives to assist owners of disused quarries to reclaim and reuse their land<sup>159</sup>. The requirement for a declaration of a method of working, landscaping and reclamation schemes became mandatory through policy MIN 12. A bank bond to ensure that conditions attached to a permit were fulfilled was also included in the same policy. The bond issue has proved to be a bone of contention between the Planning Authority and the quarry industry. Negotiations have been underway since 1991 and have been tied to government reforms in the industry. It was agreed that short-term permits would be issued pending a study on the implementation of the bonds, and that this study had to be finalised by the end of 1996 (Planning Authority, 1997a p.58 Section 2.6.27). Draft terms of reference were issued in June 1996 for this study (Planning Authority, 1999a p.56 Section 2.6.20). The Structure Plan gives favourable consideration to the siting of obnoxious industries,

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<sup>158</sup> *Ibid.*, MIN 11.

<sup>159</sup> *Ibid.*, Section 12.13.

storage, aquaculture and recreational facilities in spent quarries<sup>160</sup>. Such industries could cause significant visual and undesirable impacts if located elsewhere. However, such a provision is subject to satisfactory environmental safeguards including the protection of groundwater resources<sup>161</sup>.

The Authority is also duty bound to prepare a comprehensive inventory of disused mineral extraction sites and also compile data on potential sources of infill, which could be used in their reclamation<sup>162</sup>. It should also prepare a programme for reclamation of disused quarries. It will also initiate and promote the acquisition, reclamation and afteruse of worked out quarries by Government<sup>163</sup>. A pilot exercise was carried out in 1997 to identify disused quarries in Gozo and 12 sites were identified. These had a potential to dump 1.2 million m<sup>3</sup> of inert waste. A similar exercise in Malta was planned for 1999. No information was published by the Planning Authority whether this was done. Once complete this will facilitate the acquisition, reclamation and afteruse of existing worked out quarries (Planning Authority, 1999a p.57 Section 2.6.24). There were 23 applications for development or change of use within quarries over the period 1993-95, seven of which were granted permission. The majority of re-use has been for warehousing (Planning Authority, 1997a pp. 58-59 Sections 2.6.30). The Authority endorsed 19 applications for recycling and dumping of inert waste in 1996-97 (Planning Authority, 1999a p.56 Section 2.6.23). A number of applications for the reuse of quarries were received during the same period, eight of which were granted permission and three were refused (Planning Authority, 1999a p.56 Section 2.6.21).

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<sup>160</sup> *Ibid.*, Section 12.16.

<sup>161</sup> *Ibid.*, MIN 13.

<sup>162</sup> *Ibid.*, MIN 14.

<sup>163</sup> *Ibid.*, MIN 15.

The Structure Plan considered the transition period between the previous Police licensing system and the new planning approval procedure through two interim policies. It was established that the licensing system would stop once the Development Planning Act came into force and that existing quarries had to submit an application in accordance with the Act and with policies MIN 8-11. To expedite the process, it was envisaged that the Planning Authority would undertake its own review of the operations and environmental impacts, giving priority to quarries operating in environmentally sensitive sites<sup>164</sup>. It was also proposed that applications from existing licensed quarries would be allowed to continue with their work on condition that satisfactory environmental safeguards and reclamation proposals are taken<sup>165</sup>. The Plan highlights the fact that there were a number of softstone quarries operating:

- without a license;
- where the license of the conforming operators did not specify the extent or boundary to the license area;
- where the application for a license was submitted but was not processed pending the Structure Plan.

The Planning Authority who had to deal with the new situation took a slightly different approach. Those who had a Police license were sanctioned through the license renewal system, which was subject to the provision of a site boundary plan and a number of other conditions. These include precautionary measures for fuels storage, boundary wall and restoration proposals (Planning Authority, 1997a p.127

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<sup>164</sup> *Ibid.*, Section 12.18 and MIN 16.

<sup>165</sup> *Ibid.*, MIN 17.

Section 4.3.67). Regulation of existing quarries was still in process during 1997 (Planning Authority, 1999a p.123 Section 4.3.63).

The Plan considered a spectrum of options to utilize underground space, especially in view of the local land limitations<sup>166</sup>. In fact it suggested that studies should be undertaken to develop a strategy in this regard<sup>167</sup>. The use of underground space in urban areas for vehicular parking would also be encouraged<sup>168</sup>. No progress was made in this area until 1995 (Planning Authority, 1997a p.145 Section 4.6.36).

### **3.6.6 Tourism and Recreation**

Tourism is a major factor in the economic well-being of the country. The mild climate, friendly people and the sun are the major ingredients sought by tourists from countries in northern Europe, who visit the islands for their holidays. There are also a significant number of Maltese who spend their holidays by going either to a seaside accommodation or seek refuge in Gozo. Both international and national tourism has contributed to the environmental degradation of the Islands. This reached a point where the tourist infrastructure is destroying the very features that attract international tourists in the first place<sup>169</sup>. The strategy adopted in the Structure Plan is to constrain tourism growth within committed areas<sup>170</sup>, except in those areas where it defines that further development is necessary and could take place without unacceptable harm to the environment<sup>171</sup>. In order to overcome interdepartmental problems, the Authority will establish a joint Tourism Development Committee with the Secretariat for

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<sup>166</sup> *Ibid.*, Sections 12.20, 12.21.

<sup>167</sup> *Ibid.*, MIN 18.

<sup>168</sup> *Ibid.*, MIN 19.

<sup>169</sup> *Ibid.*, Section 13.1.

<sup>170</sup> *Ibid.*, TOU 4.



Tourism and other relevant bodies. This will be responsible for integrating tourism policies and programmes with the Plan as a basis for Local Plan formulation<sup>172</sup>. The onus for data processing required for the Authority's planning needs was placed on the Secretariat for Tourism. This will be used to update and extend the Tourism Development Plan to cover a 20-year period within the context of the Structure Plan<sup>173</sup>. A joint committee between the Planning Authority and the Secretariat for Tourism was established in March 1996, after four years of informal talks (Planning Authority, 1997a p.179 Section 5.3.32). The Structure Plan had three tourism objectives:

- market diversification;
- seasonality reduction;
- product and tourist upgrading<sup>171</sup>.

Policy TOU 3 stated that favourable consideration will be given to those proposals contributing to the above mentioned objectives. 4,000 additional tourist beds were being earmarked to be required within the Structure Plan period<sup>174</sup>. This target was already exceeded in 1995 and supplemented with an additional 680 beds during 1996-97. The Ministry of Tourism claiming that there is no over-provision because about 15,000 were not of the required standard (Planning Authority, 1999a p.60 Section 2.7.12). The Plan established an interventionist role in respect of areas which have a tourism potential but were not traditionally associated with the sector before. Development Briefs are to be prepared by the Authority for a number of locations.

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<sup>171</sup> *Ibid.*, Section 13.2.

<sup>172</sup> *Ibid.*, TOU 1.

<sup>173</sup> *Ibid.*, TOU 2.

<sup>174</sup> *Ibid.*, Section 13.5.

Some of these are outside the development zone<sup>175</sup>. Manoel Island is one of these earmarked places with a great potential for yachting purposes, shops, restaurants and small offices<sup>176</sup>.

Seven out of the thirty-two tourist-related projects were approved outside the development scheme between 1993-1995. These were mainly extension or refurbishment projects to existing developments together with a renewal of an existing permit and a new hotel (Planning Authority, 1997a p.62 Section 2.7.16). Eleven projects were refused during 1996-97, being either in excess of height limitations for the area or being outside the development zone or in areas of ecological importance. All projects, which were approved during 1996-97, were within the Temporary Planning Schemes with the exception of one extension that was partially ODZ (Planning Authority, 1999a pp.60-61 Section 2.7.12; 2.7.16). Policy TOU 10 concerns an extensive site in Gozo known as *Ta' ~en`*, which was earmarked for some time for development and was subject to a harsh environmental campaign in the early nineties. The principle aim is to develop Malta's first National Park (World Conservation Union definition) and a multi-ownership tourism hotel development next to an existing hotel. Details of how the concept should work are also stated. None of the monitoring reports published so far stated whether there was any progress on these concepts. However, in the late nineties, villas, which were built a couple of decades ago at the far end of the area, were sold and later on, the rest of the site changed ownership.

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<sup>175</sup> *Ibid.*, TOU 6.

<sup>176</sup> *Ibid.*, TOU 7.

The Plan acknowledges the fact that Malta is rich in areas and buildings of archaeological and historical interest<sup>177</sup> and intends to seek cooperation both in the private and public sectors to make such areas and buildings more accessible to tourists<sup>178</sup>. A number of Local Councils together with the Planning Authority are working on designating Heritage Trails in their localities (Planning Authority, 1997a p.64, Sections 2.7.27-2.7.31; p.119 Sections 4.3.22-4.3.28; 1999a Sections 2.7.28-2.7.29).

There is a substantial international demand for golf courses as components to attract tourists and businesses to the Islands<sup>179</sup>. A golf course needs to be accompanied by a profit-making urban development, so ideally it should be located on the periphery of an existing built-up area<sup>180</sup>. A Subject Plan will be prepared for golf courses, which should identify potential sites that would suffer the least environmental impact and loss of good quality agricultural land. An Environmental Impact Assessment would be required for any application to be processed<sup>181</sup>. The Planning Authority approved a policy paper entitled *Golf Course Development in Malta*, in July 1999.

Other Subject Plans related to the tourist sector, which are requested by Plan policies are those about Yachting<sup>182</sup> and Diving<sup>183</sup>, two popular sports on the Islands. The Planning Authority together with the Maritime Authority commissioned a yachting Subject Plan, and this was approved and completed in 1997, following public consultation (Planning Authority, 1999a p.63 Section 2.7.25). A Diving Subject Plan

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<sup>177</sup> *Ibid.*, Section 13.10.

<sup>178</sup> *Ibid.*, TOU 11.

<sup>179</sup> *Ibid.*, Section 13.11.

<sup>180</sup> *Ibid.*, Section 13.12.

<sup>181</sup> *Ibid.*, TOU 12.

<sup>182</sup> *Ibid.*, TOU 13.

<sup>183</sup> *Ibid.*, TOU 14.

was not produced, but it is envisaged that it will be covered in conjunction with other subject studies, such as the Tourism and Recreational and the Coastal Zone Management Plan studies (Planning Authority, 1999a p.64 Section 2.7.27). The coast forms an important resource both for the tourist industry and local recreational activities. TOU 15 establishes the need to address this part of the islands through a comprehensive policy.

Most of the recreational activities are usually sited in non-urban areas and so any facilities relating to such activities are bound to have an impact on the surrounding environment. The Structure Plan addressed these activities through a number of policies with the objective to try to reconcile the recreational provision with competing interests and integrate the various public and private agencies involved in such activities<sup>184</sup>. At the time when the Structure Plan was formulated, there were no specific public sector policies for the provision of recreational facilities. Such facilities were offered by various non-governmental organisations, with some financial aid from the Government or on a commercial basis by the private sector<sup>185</sup>. The Planning Authority will define sites in Local Plans for recreational facilities<sup>186</sup>. It will also assist in site design, will co-ordinate publicly provided facilities with commercial and voluntary aided facilities<sup>187</sup>. Government will encourage private initiatives and if appropriate enter into joint schemes for recreation provision. It will also prepare and implement management schemes for publicly-owned open spaces and water areas, while the Authority will encourage other landowners and agencies to

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<sup>184</sup> *Ibid.*, Section 13.17.

<sup>185</sup> *Ibid.*, Section 13.18.

<sup>186</sup> *Ibid.*, REC 1.

<sup>187</sup> *Ibid.*, REC 4.

implement a similar process<sup>188</sup>. Management schemes for two nature reserves run by the Malta Ornithological Society (now Birdlife Malta) and another by the Gaia Foundation were prepared and are implemented. (Planning Authority, 1997a pp. 64-66 Sections 2.7.32-2.7.33; 1999a pp. 64-67 Sections 2.7.30-2.7.33).

Provision for sports poses a problem because there is a potential conflict with the Structure Plan's fundamental policy of restricting further development of non-urbanized land. There is a demand for large land-using recreational activities outside urbanized areas. Such sites require a number of facilities such a clubhouse, stores, offices, car parking etc, all of which impinge further on the site. Further development of sport facilities will be limited to areas where the environmental impact can be contained and is acceptable<sup>189</sup>. The Plan earmarked a number of sites to accommodate sports facilities<sup>190</sup>. The hosting of the Small Nations Games was a good reason to improve on the existing sports facilities at the time. A new sports complex and a heated swimming pool were amongst the facilities that were constructed during the first monitoring period. Their siting conformed to Plan policies (Planning Authority, 1997a pp. 66-67 Sections 2.7.41). One of the sites, *Ta' Qali* which was an old airfield and now is utilized by a number of small enterprises, is aimed at becoming a National Recreational Centre. It will include the siting of further recreational and sport facilities while the small industries will be relocated<sup>191</sup>. The *Ta' Qali* Action Plan, approved in the year 2000, addresses the provision of new, and maintenance of existing, sports and recreational facilities. An army site used for shooting practice will

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<sup>188</sup> *Ibid.*, REC 3.

<sup>189</sup> *Ibid.*, Section 13.19.

<sup>190</sup> *Ibid.*, REC 5.

<sup>191</sup> *Ibid.*, REC 7.

be relocated and a new area has already been earmarked, pending further studies<sup>192</sup>. The army is still regularly using the existing site and there was no report of any progress regarding this policy.

Major environmental impact sports, such as off-road vehicle racing and scrambling are increasing in popularity but cause severe damage to coastal sand dunes, clay slopes and valley watercourses. They are the cause of wildlife destruction, leave land scars and cause soil erosion apart from being a cause of pollution<sup>193</sup>. The Authority will address this issue by designating sites which would suffer the least environmental impact and which could be managed professionally. An environmental impact assessment will be required prior to approving such locations. It will also address the issue of sports and recreational facilities in Local Plans<sup>194</sup>. The draft North West Local Plan addresses this issue, due to the fact that the area is mainly rural and so is pressurized with such activities. The draft North West Local Plan designated the location of such sports. The Tourism and Recreation Subject Study will also examine the issue (Planning Authority, 1997a p.67 Section 2.7.46). An interim measure was taken to address off-road vehicle racing and other motorized sport through Legal Notice 196 of 1997 issued under the 1991 Environmental Protection Act. The new legislation allows the sport to take place only on sites designated for the purpose, otherwise an off-road vehicle racing permit is required. Penalties could lead to a maximum of two years imprisonment, loss of driving license and fines (Planning Authority, 1999a p.124 Section 4.3.69).

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<sup>192</sup> *Ibid.*, REC 6.

<sup>193</sup> *Ibid.*, Section 13.24.

<sup>194</sup> *Ibid.*, REC 8.

The coastal areas around Malta have suffered from the development of shantytowns in various localities. They are makeshift structures, which could range from metal containers to old vans placed on a concrete platform, on public land by the sea. Over the years there were various attempts to remove these illegal structures, but it seems that somehow the owners often managed to avoid eviction. The Planning Authority will attempt to remove such structures and restore the site to its original state at the occupier's expense<sup>195</sup>. Policy REC 9 addresses the issue by stating that temporary structures such as tents and shading devices must be removed by midnight. It also states that illegal structures will be served with an eviction notice requiring the removal of the structure within three months and restoration of the land back to its original state. These will be removed at the occupier's expense if he fails to do so himself. A similar policy, REC 12, applies to illegal constructions on Government Land. Low cost holiday-home villages will not be permitted but holiday villages will be permitted if they conform to Plan policies<sup>196</sup>. The Plan proposes White Rocks and *Marfa*, as two sites that could be used for overnight caravans and tents under the guidance of a management and maintenance team<sup>197</sup>. The White Rocks site has been used for years whilst policies for the *Marfa* area are being addressed in the North West Local Plan. Additional sites were also earmarked in the same Plan (Planning Authority, 1997a p.67 Section 2.7.48). The Planning Authority has formulated a policy paper with regards to the development of camping. This was done in view of the increasing demand for camping facilities (5% of the respondents in the Tourism and Recreation Community survey indicated that they own a tent and 13% implied

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<sup>195</sup> *Ibid.*, Section 13.28.

<sup>196</sup> *Ibid.*, REC 10.

<sup>197</sup> *Ibid.*, REC 11.

that they make use of a tent, boathouse or caravan during their holiday) (Planning Authority, 1999a p.68 Section 2.7.39).

Boathouses are a particular problem since they are used as unsanitary and illegal holiday homes. A substantial number will be cleared under policies REC 9 and 12 while REC 10 could provide some boathouses and boat storage facilities (Colin Buchanan and Partners *et al.*, 1990d p.70 Section 13.29). The Planning Authority demolished 55 boathouses at *Cirkewwa* during the monitoring period 1990-95, while 24 enforcement actions have been taken during the 1996-97 period. The Authority claims that new illegal boathouses are still being built (Planning Authority, 1997a p.137 Section 4.5.20; 1999a p.135 Section 4.5.27).

The Planning Authority was entrusted with establishing new forms of development such as Country Parkways. These could be used both by tourists and locals and would involve the establishment of public rights of way and surroundings that would cater for recreational activities<sup>198</sup>. Policy REC 13 states that these should be done in conjunction with the Secretariat for the Environment and the Ministry of Agriculture and Fisheries. It was also stated that if possible these would be circular and have links to natural and man made attractions and facilities. Rural Conservation policies will apply in such cases. Nine different routes in Malta and Gozo were also listed. Designated routes would have to be formulated and management schemes would need to be introduced<sup>199</sup>. The idea is to channel people to picnic sites in these areas by providing certain facilities and at the same time relieving pressure from more

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<sup>198</sup> *Ibid.*, Section 13.30.

<sup>199</sup> *Ibid.*, Section 13.31.



vulnerable conservation sites<sup>200</sup>. Significant progress has been made on these policies through a number of initiatives. Local Councils have been actively involved in designing pathways and establishing facilities that could be utilized as part of these Parkways. New sites, apart from those mentioned in the Plan have also been identified in a number of draft Local Plans (Planning Authority, 1997a pp.143-145 Sections 4.6.21-4.6.35; 1997a p.119 Section 4.3.22-4.3.28). The Ministry for Local Councils has been funding embellishment projects towards country park facilities. There is still a legal problem regarding the public rights of way legislation, which is still not in place (Planning Authority, 1999a p.115 Section 4.3.16).

### **3.6.7 Conservation**

This is one of the most important sections of the Structure Plan to the extent that rural and urban improvements are listed as one of the goals of the Plan. A tridentate strategy was formulated to cover the urban, rural and marine conservation areas. It was stated that control in conservation areas will be stricter and more specific and that more public funds would be available for refurbishment purposes<sup>201</sup>.

Malta has an exceptionally rich built heritage, a legacy left from the various settlers who have occupied the country over the years. Such examples range from several Neolithic temples through the remains of the Phoenician and Roman civilizations to the 19th century examples of British military and civil architecture<sup>202</sup>.

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<sup>200</sup> *Ibid.*, REC 14 and Section 13.32.

<sup>201</sup> *Ibid.*, Sections 15.1-15.3.

<sup>202</sup> *Ibid.*, Section 15.4.

### 3.6.7.1 Urban Conservation Areas

A number of these monuments are found in urban areas, *Valletta* and *Mdina* being two cities, which have a significant number of examples. Others such as the Neolithic Temples are found in more remote areas and sites in the Outside Development Zone. The Structure Plan designated a number of sites as Urban Conservation Areas, UCA<sup>203</sup>. Policies related to UCA are not being reviewed due to the fact that most are not directly related to areas under study.

### 3.6.7.2 Rural Conservation Areas

The countryside and the coast are two of the Island's most valuable resources. The delicate balance operating within and maintaining these resources requires careful management<sup>204</sup>. The Structure Plan highlights the various natural and physical features found here and places great emphasis on their conservation and vulnerability<sup>205</sup>.

Rural Conservation Areas (RCAs) are meant to protect and enhance the countryside. The Structure Plan prohibits urban development in the RCAs. Only appropriate rehabilitation and conservation projects or agricultural development are allowed<sup>206</sup>. The key diagram of the Plan illustrates the RCAs. The World Conservation Union definitions and criteria will be utilised to create special sub-areas within RCAs. The following sub-areas will be used:

1. *“Areas of Agricultural Value: areas comprised of high grade agricultural land including irrigated and partially irrigated land.*

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<sup>203</sup> *Ibid.*, UCO 1.

<sup>204</sup> *Ibid.*, Section 15.21.

<sup>205</sup> *Ibid.*, Sections 15.22-15.27.

<sup>206</sup> *Ibid.*, RCO 2.

2. *Areas of Ecological Importance: relatively large areas designated to protect typical and rare habitats.*
3. *Sites of Scientific Importance: sites containing individual species, groups of species, and geological features.*
4. *Areas of Archaeological Importance: concentrations of valuable archaeological sites.*
5. *Sites of Archaeological Importance: individual and / or isolated archaeological sites.*
6. *National Parks: relatively large areas of national significance not materially altered by human use, with managed visitor access and amenities.*
7. *Areas of High Landscape Value”<sup>207</sup>.*

The original intention was for the Planning Authority to draw up Local Plans for RCAs with the specific purpose of:

- establishing the precise boundaries of the above mentioned sites (RCO 1, numbers 1-7);
- defining the protection and enhancement measures to be taken;
- considering the results from the mineral deposits assessment (MIN 2) and finally resolve conflicts between the various uses and activities<sup>208</sup>.

Rural Conservation Areas cover almost all the countryside of Malta and Gozo. They are drawn so widely that they cannot meet their initial objective of *positively channelling effort and investment (Section 15.28)* (Planning Authority, 1997a p.116 Section 4.3.7).

Two hundred and sixty five sites were scheduled between 1994 and 1997. These included mostly sites of archaeological, ecological and historical importance (Planning Authority, 1997a p.117 Section 4.3.8; 1999a p.114 Section 4.3.10). Work

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<sup>207</sup> *Ibid.*, RCO 1.

<sup>208</sup> *Ibid.*, RCO 3.

on the establishment of National Parks took place with various entities but no site has yet been granted such a status (Planning Authority, 1999a pp.115-117).

The Planning Authority is concerned at the pressure for various types of development in rural areas. It claims that policy RCO 2 was very important for development control and in some cases withstood the acid test of Appeal. It is also concerned about both the illegal constructions, which take place, and the subtle abuses that were identified. In some cases new farm buildings, for animal breeding, are covered by plans resembling villas, wedding halls and other non-agricultural uses (Planning Authority, 1997a p.123 Sections 4.3.47-4.3.48). The 1996-97 monitoring report stated that residential developments have continued to increase in RCAs (Planning Authority, 1999a p.118 Section 4.3.38). The Authority announced that a document entitled *Policies for Rural Settlements* was being drawn up to provide guidance on groups of dwellings in the countryside and it will form part of the North West Local Plan (Planning Authority, 1998 p.25).

### **Scenic Value**

The Plan tries to ensure that any new development permitted within RCAs will protect and enhance areas of scenic value. Enhancement of scenic areas will take place in conjunction with the Ministry of Agriculture and Secretariat of the Environment. Afforestation, landscaping, rehabilitation and conversion of rural building schemes are listed as examples to enhance RCAs<sup>209</sup>.

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<sup>209</sup> *Ibid.*, RCO 4, 5 and 6.

## **Agriculture**

The designation of Areas of Agricultural Importance, AAIs, is intended both as a statement of importance and an instrument of protection to such areas. It is also aimed at resolving conflicts with scenic, archaeological, ecological and mineral interests in the Local Plans<sup>210</sup>. In RCAs, applicants are required to demonstrate that the planned agricultural development will not have a negative effect on ecology, archaeology or the scenic value of the area<sup>211</sup>. They are also required to make proposals for the cultivation of abandoned or derelict plots of land and for the re-establishment of ecological, archaeological or scenically-valuable environments which have been degraded by agricultural malpractice or neglect<sup>212</sup>. The Agriculture Department has embarked on some initiatives to protect the rural environment such as to try to convince farmers to reduce usage of conventional pesticides. The excessive use of fertilizer (estimated at 2.2 million tonnes annually) is also of general environmental concern (Planning Authority, 1997a p.125 Section 4.3.56). The Department has initiated a number of projects with an environmental dimension, namely, a watershed management project, pesticide residue monitoring and integrated pest management (Planning Authority, 1999a p.121 Section 4.3.53). Work on agricultural issues progressed further by the establishment of an agricultural database and agricultural land classification exercise which started in 1998 (Planning Authority, 1998 p.29). In 1999, the Agricultural Land Classification System was relaunched, this time in collaboration with the Agriculture Department and the Environment Protection Department and it was planned to be finalised by the beginning of the year 2000. The

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<sup>210</sup> *Ibid.*, Section 15.30, RCO 7.

<sup>211</sup> *Ibid.*, RCO 8.

<sup>212</sup> *Ibid.*, RCO 9.

digitisation and interpretation of agricultural land for the north-west coast of Malta was completed by the end of 1999 (Planning Authority, 1999b p.25).

## **Ecology**

The Islands sustain a number of important ecological habitats in need of protection. Policy RCO 10 states that in identifying and designating Areas of Ecological Importance, AEI, in Local Plans one or more of a number of habitats must be present. These include sand dunes, permanent springs, saline marshland, forest remnants, natural freshwater pools and transitional coastal wetlands, deep natural caves, coastal cliffs and representatives of typical Maltese habitats such as garigue. Most scheduling occurs during the preparation of Local Plans due to the fact that specific surveys of the area would be undertaken during its formulation. Most of the scheduling occurred while formulating the North West Local Plan, due to the fact that it is the largest Local Plan and it includes the major part of Malta's countryside (Planning Authority, 1999a p.113 Section 4.3.9).

The identification of Sites of Scientific Importance, SSIs in Local Plans is established if one or more of the following features are present:

- the only known locality in the Maltese Islands where certain endemic and / or non-endemic species are found;
- a locality where certain endemic and / or non-endemic species with a restricted distribution<sup>213</sup> in the Maltese Islands occur;
- the type locality of an endemic species;

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<sup>213</sup> *restricted distribution* is taken to mean occurrence in five localities or less.

- an important bird nesting site or of some other major ornithological interest;
- a locality of special palaeontological interest;
- a lithostratigraphical type section;
- a locality of particular geomorphological interest;
- some other specific feature of scientific importance not listed above<sup>214</sup>.

A protection rating is also given both for AEI and SSI. The ratings are as follows:

- **LEVEL 1** zones will include important habitat types present only in small areas and / or sites with unique species or features;
- **LEVEL 2** zones will include important habitat types present in relatively large areas and / or sites with rare species or features;
- **LEVEL 3** zones will include areas where control is necessary to preserve habitats / species / features in adjacent sites;
- **LEVEL 4** zones will include habitats and / or features of general interest<sup>215</sup>.

The Explanatory Memorandum for the Structure Plan states that in designating AEI and SSI, the following general protection will apply:

- a general presumption against:
  - development, including roads and public utility services and particularly on crests of ridges and the edges of coastal and inland cliffs;
  - activities likely to be a fire risk to a significant wooded area;
  - development where noxious emissions are likely to create problems in nearby AEI and SSI;

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<sup>214</sup> Colin Buchanan & Partners *et al.*, (1990d) RCO 11.

<sup>215</sup> *Ibid.*, RCO 12.

- the removal of intrusive elements;
- the inclusion of buffer zones to further their protection (Colin Buchanan and Partners *et al.*, 1990e p.101 Section 15.34).

For the four zone levels identified in RCO12 the following is applicable:

#### **LEVEL 1**

- human intervention to be kept to the barest minimum;
- no physical development will take place;
- all efforts made to protect the identified features of scientific interest;
- management by the competent Government agency in an appropriate manner (Colin Buchanan and Partners *et al.*, 1990e, Section 15.35).

#### **LEVEL 2**

- human intervention will be strictly controlled;
- physical development will be limited to the maintenance of already existing structures and construction of minor amenities designated to enhance the educational and recreational use of the area. The least possible damage to the environment will be made when carrying out such developments;
- traditional activities (e.g. agriculture) could continue, unless in conflict with other policies, but no new land will be diverted to these uses except for the suitable re-establishment of abandoned fields for agriculture (Colin Buchanan and Partners *et al.*, 1990e p.102 Section 15.38).

#### **LEVEL 3**

- no residential, industrial, commercial or tourist development;
- no infrastructure or public utility works;



- small-scale physical development could be permitted providing the adjacent AEIs, SSIs are protected, and this is demonstrated by a suitable environmental impact assessment and is consistent with other policies (Colin Buchanan and Partners *et al.*, 1990e, p 102, Section 15.39).

#### **LEVEL 4**

- small to medium scale physical development can be considered, provided no suitable alternatives exist and features of ecological and scientific interest are protected;
- a suitable environmental impact assessment is undertaken (Colin Buchanan and Partners *et al.*, 1990e pp. 101-102 Section 15.40).

There were 737 scheduled sites, areas and buildings by the end of 1996, which included:

- Buildings: 674;
- Sites of Archaeological Importance: 22 sites and 5 areas;
- Sites of Ecological Importance: 34;
- Sites of Landscape Value: 2 (Planning Authority, 1996 p.41).

The 1990-95 Monitoring Report gives a breakdown of the scheduling which took place during 1994-95. These included:

- Level 1 sites: 25;
- Level 2 sites: 8;
- Level 3 sites: 16;
- Level 4 sites: 1 (Planning Authority, 1997a p.117 Section 4.3.8).

Policy RCO 13 overlaps with the Environment Protection Act, 1991. Here the onus is on the Planning Authority, which together with other agencies will develop policies for the protection and conservation of all local wildlife, particularly threatened species. Furthermore, the Authority will promote legislation regulating killing, capture, collection and maintaining in captivity of certain flora and fauna, particularly those protected by European Community and other international regulations and agreements. This policy could have easily been deleted, especially since the Structure Plan was approved in Parliament on the 29<sup>th</sup> July 1992 (Aquilina, 1999a p.89 Section 50.1) while the Environment Protection Act, which is an umbrella legislation, was approved during the previous year. Species protection is already covered by the latter Act.

The Planning Authority will promote the establishment of National Parks, which will be protected areas with interpretative facilities. Two areas, *Ta' Cenc* (TOU 10) and *Qawra / Dwejra* area, both in Gozo (RCO 35-38) are earmarked to be awarded to such a status. The World Conservation Union guidelines and terminology will be used for their management<sup>216</sup>. During 1996, a full management plan was submitted for a National Park at *Ta' Cenc*. The proposal included wardening, interpretation of natural areas and maintenance and interpretation of archaeological remains. The site, which is privately-owned changed owners and discussions are now being held with new owners. A number of studies were carried out for the *Qawra / Dwejra* area and an application for funding of the management plan, under the LIFE EU-third countries programme was also submitted (Planning Authority, 1999a p.117 Section 4.3.27).

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<sup>216</sup> *Ibid.*, RCO 14.

The Structure Plan considers the possibility of features of scientific importance and national heritage in urban areas. There is a presumption against development under such circumstances<sup>217</sup>. This policy is reported to be in conflict with the 1988 Temporary Provision Schemes because urban areas are usually within development zones (Planning Authority, 1997a p.142 Section 4.6.20).

### **Sandy Beaches and Dune Areas**

Sandy beaches, hot summers and clear sea are a perfect match to relish a relaxing holiday. However, the human element is the most threatening to the natural environment of sandy areas. The ever-increasing tourist population and the new customs of the Maltese society had a significant impact on sandy beaches. The estimated total area of sandy beaches is approximately 15 ha (Planning Authority, 1997a p.136 Section 4.5.51). They are almost deserted in winter when the rough seas replenish the areas and dwindling species start to recover. During the hot summer months, they are overpopulated with the tourists and local inhabitants. These bring in added pressure from entrepreneurs who seek to provide various services such as paddleboats, umbrellas, jet skis, ice creams and food etc. All these features have a multiplier effect and impact on the area. Structure Plan policies seek to contain the impact, prevent it and enhance existing beaches. Permanent constructions are prohibited and those in existence will be removed where practicable. Removal of sand is also prohibited. Finally an environmental impact assessment must be carried out where beach replenishment projects are proposed<sup>218</sup>. Vehicular access and camping on

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<sup>217</sup> *Ibid.*, RCO 15.

<sup>218</sup> *Ibid.*, RCO 16.

sand dunes and beaches is also prohibited<sup>219</sup> as is the removal of sand-binding vegetation is also forbidden<sup>220</sup>.

332 beach structures and 103 boathouses were recorded on 27 beaches in 1995 (Planning Authority, 1997a p.136 Section 4.5.16). In spite of the above-mentioned policies no structures were removed from sandy beaches, but 55 boathouse units were removed during the monitoring period 1990-95 (Planning Authority, 1997a p.137 Section 4.5.20). The Planning Authority had to resolve conflicts with other departments involving development on beaches. In May 1994, it issued planning guidance entitled *Development Control Guidance: kiosks*, reiterating that kiosks are not allowed on sandy beaches. The guidance seeks to introduce a system whereby acceptability on planning grounds is evaluated before other licenses are obtained. The problem of existing structures was not addressed. This limited the possibility of enforcement actions (Planning Authority, 1997a p.137 Section 4.5.17). The Authority also admitted its own mistakes; permission was granted for the demolition and reconstruction of an existing illegal building on a beach at *GJajn Tuffieja*, in May 1995 (Planning Authority, 1997a p.137 Section 4.5.18). There are also problems with vehicular access to beaches. This is due to two main factors, the first being that minor roads do not require permits; the second that government departments authorize the construction of access roads, such as ramps used by beach cleaners' trucks (Planning Authority, 1997a p.137 Section 4.5.21). The Environment Protection Department seeks to prohibit camping at two bays where there are major dune sites (Planning Authority, 1997a p.137 Section 4.5.22).

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<sup>219</sup> *Ibid.*, RCO 17.

<sup>220</sup> *Ibid.*, RCO 18.

A significant improvement was registered during the second monitoring period. The Planning Authority hopes that the issue of permanent structures will be resolved when beach management is introduced. A joint committee with the Tourism Ministry is exploring the possibility of relinquishing the task of beach management to the new Tourism Authority. A policy on beach replenishment was being formulated jointly with the Ministry of Tourism during 1997 (Planning Authority, 1999a p.136 Sections 4.5.32- 4.5.33).

### **Rehabilitation of Degraded Habitats and Landscapes**

A number of habitats, including some which are considered of great scientific interest, have degraded but could still be rehabilitated<sup>221</sup>. The Structure Plan takes a pro-active role and supports initiatives both from Government and non-governmental organisations to rehabilitate degraded habitats and landscapes, provided that such initiatives do not conflict with other policies and / or regulations concerning these areas. Such projects will be subject to scrutiny by experts<sup>222</sup>. The Authority will also carry out surveys to identify sites where habitat and landscape has degraded and review them every two years<sup>223</sup>. The Planning Authority is already carrying out surveys during the Local Plan preparation process. It is also collecting information through surveys commissioned for individual applications (Planning Authority, 1999a pp. 112-112 Section 4.3.3-4.3.6).

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<sup>221</sup> *Ibid.*, Section 15.34.

<sup>222</sup> *Ibid.*, RCO 20.

<sup>223</sup> *Ibid.*, RCO 19.

Dumping of rubble and waste in the countryside together with agricultural reclamation of ecological sites cause land degradation. The 1997 amendments to the Development Planning Act included land reclamation as a type of development to enable better control of this problem, although it seems that illegal reclamation is still taking place. Local Councils have also taken a pro-active role in cleaning up degraded valleys within their confines. However, it is claimed that in some cases further discussions with the Planning Authority and the Environment Protection Department would have reduced the impact of the works carried out (Planning Authority, 1999a pp. 117-118 Sections 4.3.31-4.3.33).

### **Control of Erosion**

The inappropriate siting of a development could result in changes in the physical features of the land, leading to erosion setting in. The Structure Plan takes both a pro active and a restrictive role in the policies to control erosion.

Primarily, there is a general presumption against development in areas prone to erosion<sup>224</sup>. However, regulations concerning the transport of sand and soil will remain in force<sup>225</sup> while there is a strict prohibition to excavate significant quantities of clay<sup>226</sup>. Removal of vegetation cover from derelict fields will not be permitted<sup>227</sup>. Positive action will be taken to prevent further loss of sandy beaches, sand dunes, clay slopes, soil and cliff edges<sup>228</sup>. Coastal defensive works and enlargement of beaches will be subject to a short-term and long-term environmental, social and economic

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<sup>224</sup> *Ibid.*, RCO 21.

<sup>225</sup> *Ibid.*, RCO 24.

<sup>226</sup> *Ibid.*, RCO 27.

<sup>227</sup> *Ibid.*, RCO 26.

<sup>228</sup> *Ibid.*, RCO 22.

impact study<sup>229</sup>. It is not clear whether this is equivalent to an Environmental Impact Assessment. Further soil erosion would be prevented through promotion of maintenance works of breached retaining walls on valley sides.

The Planning Authority has scheduled a number of sites that are prone to erosion and management schemes were being drawn up for these. At the same time, the Authority gave planning permission for the construction of a temporary road along clay slopes in one of these sites, in conflict with RCO 21, which prohibits any development in areas prone to erosion and RCO 22, which encourages positive action to reduce loss of clay slopes. The Authority refused some applications in valleys prone to erosion, on the basis of RCO 29, which prohibits new development on valley sides. A number of Local Councils have taken the initiative to embark on projects for the protection of soil. Such projects include afforestation, quarry reclamation, rebuilding of rubble walls and clearing of rubble dumped over coastal fields (Planning Authority, 1997a p.140 Section 4.6.5).

The Planning Authority is concerned about illegal land reclamation especially on sites of ecological value, such as garigue areas. Most of the time the reclaimed land is not even surrounded by rubble walls, thus soil is washed away with heavy rains. It is also rare that applicants undertake any study before planning a land reclamation project. Finally, soil is becoming short in supply and there is a high demand for compost material from the waste recycling plant (Planning Authority, 1997a p.140 Section 4.6.6-4.6.9; 1999a p.138 Sections 4.6.4-4.6.6).

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<sup>229</sup> *Ibid.*, RCO 23.

## Valleys

Valleys offer a peculiar environment to various species. They are also important water catchment systems, which will be protected<sup>230</sup>. During the hot summer months, most of the valley systems dry up but still hold a lush green cover of reeds and other associated floral and faunal species. During the winter months and following spring, the sound of rushing water oozing between the reeds and stones fill the air. The heavy rains in autumn usually carry a lot of debris and soil from the fields and surrounding areas. This could block parts of the valley system and could also prove to be dangerous. Therefore periodic dredging which could be disruptive to the natural communities is required. Only constructions, which prevent soil erosion and the conservation of water resources, are allowed in valleys, preference being given to the maintenance of existing dams rather than the construction of new ones. The Planning Authority will also seek to minimize impacts created by dredging works in valleys. It will also collaborate with other agencies in the preventive action against dumping in valleys. A pro-active role is also emphasized, by establishing walkways for the benefit of the public<sup>231</sup>.

The Planning Authority scheduled more than 45 valleys up to 1997, mostly due to their ecological and water catchment importance (Planning Authority, 1997a p.141 Section 4.6.14; 1999a p.139 Section 4.6.13). It has also helped Local Councils and other non-governmental organisations in formulating management plans for these areas (Planning Authority, 1997a pp. 141-142 Section 4.6.15). The main difficulty encountered by the Authority is in delineating the boundaries of the valleys. In spite of such difficulties, application of valley policies encountered mixed results. There

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<sup>230</sup> *Ibid.*, RCO 28.

<sup>231</sup> *Ibid.*, RCO 29.



were cases where a hotel in *Xlendi*, Gozo, was refused and there were cases such as Busietta Gardens at *Wied id-Dies* where a large complex was approved, both of which were developments on the sloping side of valleys. There are also some problems whereby sloping valleys are within temporary schemes such as the case of *Wied Gjomor*, St. Julians where in spite of the above-mentioned policies, permission is being given for development to take place (Planning Authority, 1997a p.142 Section 4.6.16-4.6.19).

### **Trees and Afforestation**

There are no forests on the Islands but one finds a small woodland area at Buskett, a relatively larger afforested area at *Mizieb*, a number of small afforested sites sparsely spread around the Islands and remnants of native forests at a few localities. Otherwise, one encounters small pockets of trees in sporadic places in the countryside. The estimated tree cover is about 137 ha or 0.4% of the islands total area (Planning Authority, 1997a p.121 Section 4.3.34). Still, their limited numbers offer an important and vulnerable landscape feature. The Structure Plan policies try to establish a balance between encouraging afforestation using appropriate species of trees (indigenous and archaeophytic) and of sacrificing established indigenous vegetation communities. Afforestation projects will be limited to abandoned agricultural and derelict land while the use of exotic species of trees will be limited to urban areas<sup>232</sup>. The local landscape could be enhanced by planting appropriate species of trees to screen unattractive areas and along footpaths<sup>233</sup>. The existence of trees or groups of trees that are of aesthetic, historical, cultural, arboricultural, and / or scientific interest shall be

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<sup>232</sup> *Ibid.*, RCO 30-31.

protected by means of a Tree Preservation Order. This will prohibit the uprooting, destruction or damage to trees growing in the wild and in public or private land and also regulate any other activity that could be harmful to such trees<sup>234</sup>.

There were no Tree Preservation Orders up to 1997 but in 1996 two afforested sites were scheduled (Planning Authority, 1999a p.114 Section 4.3.11). The Planning Authority promotes the use of native species when afforestation work is proposed. Local Councils have taken up the concept, as a result of which, a shortage of the available indigenous species from Government nurseries was caused. The draft North West Local Plan recommends the upgrading of seven existing afforested sites and the designation of six new ones (Planning Authority, 1997a p.121 Section 4.3.36).

### **Minor Islands**

Many minor islands of the Maltese archipelago support wildlife species, which are unique to them, besides being of special scientific interest. Some of the species on these islands (e.g. *Filfla*) are endemic so any disturbance could disrupt the whole ecosystem or could wipe out the species<sup>235</sup>. As a result, there is a general presumption against any form of new physical development on a listed number of minor islands found in the Maltese archipelago<sup>236</sup>. There is only one minor island, Comino, that is not included in the list. An application for an extension of the hotel on this island was withdrawn by the developers (Planning Authority, 1999a p.114 Section 4.3.12). The Secretariat for the Environment has strengthened the stance taken in the Structure

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<sup>233</sup> *Ibid.*, RCO 32.

<sup>234</sup> *Ibid.*, RCO 33.

<sup>235</sup> *Ibid.*, Section 15.38.

<sup>236</sup> *Ibid.*, RCO 34.

Plan by declaring three of the minor islands as unmanaged nature reserves (Planning Authority, 1997a p.118 Section 4.3.21).

### **The *Qawra / Dwejra* area in Gozo**

The blend of a complex mixture of geological, geomorphological, ecological, archaeological, historical and aesthetical features in the *Qawra / Dwejra* area in Gozo are vital elements that make this site of potential international scientific importance<sup>237</sup>. The area will be declared as a National Park<sup>238</sup> (World Conservation Union definition) and also a Natural World Heritage Site in terms of the Convention Concerning the Protection of the World Cultural and Natural Heritage (Paris, 1972)<sup>239</sup>. A management authority will be set up to formulate detailed management plans for the area and its relationship with the human element<sup>240</sup>. A peculiar feature of the area is an inland sea and pebble bay which is unique to the islands. The Structure Plan considers the inclusion of the site as a Marine Conservation Area in addition to the other designations already mentioned<sup>241</sup>. At the end of 1997, an application for funds, under the LIFE EU-Third Countries programme was submitted, aimed at the formulation of a management plan for the area (Planning Authority, 1999a p.117 Section 4.3.27).

### **Education and Research**

The relevant environmental protection legislation and environmental planning procedures are useless if the public fails to understand the concepts behind them. A positive public attitude could be achieved through education campaigns. There are a number of environmental non-governmental organisations who through various

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<sup>237</sup> *Ibid.*, Section 15.39.

<sup>238</sup> *Ibid.*, RCO 35.

<sup>239</sup> *Ibid.*, RCO 36.

<sup>240</sup> *Ibid.*, RCO 37.

initiatives have contributed to this end. However, most of these efforts are uncoordinated and sporadic in nature and usually concern the narrow interests of the particular organisation. The Planning Authority will promote educational programmes aimed at creating positive patterns of behaviour<sup>242</sup>. It will also, in conjunction with the Education Department and the Government's environmental agency, establish a resource centre and interpretation centres for environmental education aimed at promoting good quality information to reach the public<sup>243</sup>. The Planning Authority will also establish and maintain a national Geographical Information System (GIS) including the land area, shallow seabed and all other waters within Malta's jurisdiction<sup>244</sup>. A substantial number of initiatives have been taken in this sector by various bodies, namely the University of Malta, the Education Department, non-governmental organisations and the Planning Authority. Environmental Studies at secondary level and Environmental Science at post-secondary level have become examinable. The University in collaboration with the Planning Authority set up a Master's degree in Environmental Management and Planning. The Authority finances two courses: the Higher Certificate in Land Administration (Planning) and the Diploma in Planning Studies. It has sponsored members of staff to undergo studies abroad (Planning Authority, 1999a p.155 Section 4.10.7). However, no resource centre for environmental education has been set up. Interpretation centres and applications for field study centres and visitor centres were approved by the Authority during the monitoring period 1990-1997 (Planning Authority, 1997a p.161 Sections 4.10.9-4.10.10; 1999a p.155 Section 4.10.9). The Authority has also produced a report entitled *Sustainability Indicators for Malta*. It is envisaged that sustainability

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<sup>241</sup> *Ibid.*, RCO 38.

<sup>242</sup> *Ibid.*, RCO 39.

<sup>243</sup> *Ibid.*, RCO 40 and 41.

<sup>244</sup> *Ibid.*, RCO 42.

indicators will be used in the Strategic Environmental Assessment of the Structure Plan Review (Planning Authority, 1997a pp. 163-164 Section 4.11; 1999a p.155 Section 4.10.10). A heavy investment was undertaken by the Planning Authority in GIS technology. The land-based GIS contained a substantial amount of data, which is extensively used in monitoring reports and is also updated through the information collated during the Local Plan survey process. A GIS for beaches has been acquired under license from the Management Systems Unit as a tool for coastal zone management. Work started on the setting up of a maritime GIS with the digitisation of surveys of the North Harbours and *Dwejra* marine areas (Planning Authority, 1997a p.133 Section 4.5.6; 1999a p.132 Section 4.5.5).

### **Archaeology**

The Structure Plan strategy is to identify Areas of Archaeological Importance (AAI) and Sites of Archaeological Importance (SAI) and grade them in terms of the level of protection required (Colin Buchanan and Partners *et al.*, 1990d p.102 Section 15.42). The Planning Authority will identify and designate AAI and SAI in Local Plans of Rural Conservation Areas and Urban Conservation Areas<sup>245</sup>. Four classes of protection rating will be established ranging from Class A, which is considered as a site of top priority conservation. Here, no development that could adversely affect the natural setting of the site, is allowed. A minimum buffer zone of 100 m is established around the site. Class D is the minimum level, whereby several examples of the site or monument are found. In such cases, the site is recorded and catalogued before

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<sup>245</sup> *Ibid.*, ARC 1.

covering or destroying<sup>246</sup>. There is a presumed refusal for development affecting ancient monuments and important archaeological areas and sites. When there is no overriding case for preservation of such sites, development will not normally be permitted until the site is adequately recorded or excavated<sup>247</sup>.

The Neolithic Temples of *Ja[ar Qim / Mnajdra* and *{gantija* will be declared AAI and the Planning Authority will collaborate with other agencies to develop them as National Parks<sup>248</sup>. The Planning Authority will initiate investigations into four other named sites for possible consideration as areas or sites of archaeological importance<sup>249</sup>. During the interim period, sites recorded on the National Protective Inventory will be protected in accordance with powers from the Development Planning Act and by reference to the rating given in policy ARC 2<sup>250</sup>. The Planning Authority is also obliged to carry out a programme of further investigation in order to adopt, maintain and extend the National Protective Inventory<sup>251</sup>.

The responsibility for the archaeological heritage lies within two organisations, the Museums Department and the Planning Authority, which is responsible for damage caused by development and for compiling and maintaining an inventory of archaeological sites and features (Planning Authority, 1997a pp.129-130 Section 4.4.1). The Museums Department is responsible for the preservation and presentation of the country's archaeological, historical and artistic features (Planning Authority, 1997a pp.129-130 Section 4.4.2; 1999a p.125 Section 4.4.3). During the monitoring period 1990-97, the Museums Department went through an Operations

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<sup>246</sup> *Ibid.*, ARC 2.

<sup>247</sup> *Ibid.*, ARC 3.

<sup>248</sup> *Ibid.*, ARC 4.

<sup>249</sup> *Ibid.*, ARC 6.

<sup>250</sup> *Ibid.*, ARC 6.

Review and also undertook fieldwork in different parts of the Island (Planning Authority, 1997a p.130 Section 4.4.2; 1999a p.125 Sections 4.4.3 and 4.4.5). Protection of archaeological sites continued through the scheduling process. All six sites mentioned in ARC 4 were scheduled by the end of 1998 (Planning Authority, 1999a p.128 Section 4.4.20). There is great concern about Class D classification. It is feared that if this designation is widely used, a series of minor subsequent development decisions may lead to a long-term obliteration of sites, such as Punic tombs in Malta and Gozo (Planning Authority, 1999a p.127 Section 4.4.14). Other criticisms levelled at the scheduling approach are that the piecemeal approach being adopted may force development on to the non-scheduled monuments or remains (Planning Authority, 1997a p.131 Section 4.4.8). Also, there is not much in-depth study prior to scheduling, mainly due to the fact that the Authority must respond rapidly, prior to obliteration of the site. So the approach is rather more reactive than pro-active (Planning Authority, 1997a p.131 Section 4.4.9). The Authority has introduced another level of classification, Class E, which is not required by the Structure Plan (Planning Authority, 1999a p.127 Section 4.4.15). The number of Class D sites stood at 4 by the end of 1997 (Planning Authority, 1999a p.127 Table 67). Class E is being used in the National Protective Inventory for sites that are known to have existed but are currently untraced (Planning Authority, 1999a p.130 Section 4.4.29). Large-scale buildings during the second half of the 20<sup>th</sup> century have covered many of the sites (Planning Authority, 1999a p.127 Section 4.4.15). There were 166 sites in this class by the end of 1997 (Planning Authority, 1999a p.127 Table 67). The National Protective Inventory continued to be updated from various sources:

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<sup>251</sup> *Ibid.*, ARC 7.

- local plan surveys;
- obtaining more comprehensive data for the 200 sites mentioned in the Structure Plan;
- from site visits;
- applications for development;
- Museums Department information;
- ancient and historical text and NGOs.

Most of the sites in the National Protective Inventory have been entered into the GIS in the form of constraint map (Planning Authority, 1999a pp.126-127 Sections 4.4.11-4.4.12). Policy ARC 3 has been subjected to some criticism because it is weak and reactive in nature. There is a high probability that any unearthed remains during construction remain unrecorded due to the set backs to work schedules that would be created if the find were to be reported (Planning Authority, 1997a p.132 Section 4.4.13; 1999a p.129 Section 4.4.28).

### **Marine Conservation Areas**

Marine habitats and coastal zones are areas of resource conflict. In Malta, these could be even more pronounced mainly due to the high population density. Also, large pressure is created on accessible parts of the coast due to the fact that 50% of the Maltese coastline is inaccessible at sea level. This is mainly due to physical features such as cliffs (75%), industrial development (19.5%), hotels (3.5%) and military areas (2%) (Anderson & Schembri, 1989 pp.21-22). Malta was also instrumental in the promulgation of the Law of the Sea Treaty that aims at providing a rational and objective basis for allocating and managing marine reserves. The United Nations



Convention on the Law of the Sea was opened for signature in Montego Bay, Jamaica on the 10<sup>th</sup> December 1982 following 14 years of preparatory work involving the participation of over 150 countries from all over the world. These countries convened for the purpose of establishing a comprehensive political system

*“dealing with all matters relating to the law of the sea,....bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole.”* (Zuleta, 1985 p.17)

Article 192 of the Treaty obliged the Government to protect and preserve the marine environment. It also provides a legal framework for preserving coastal and marine ecosystems<sup>252</sup>. There is limited information about the marine resources around the islands and as a result there are no protected marine areas<sup>253</sup>. Structure Plan policy MCO 1 designates four candidate sites for the status of a Marine Conservation Area (MCA). It is intended that marine archaeological sites will also be included within the boundaries of MCA<sup>254</sup>. A Maritime GIS will be established to integrate data related to Coastal Zone Management and Maltese territorial waters<sup>255</sup>. The Plan lists six different objectives that should be considered when designating marine protected areas<sup>256</sup>. The Planning Authority, in conjunction with the Secretariat for the Environment should conduct underwater surveys along the infralittoral zones of the Islands<sup>257</sup>. The Authority will, after consultation with interested parties, establish in the shortest time possible, Marine Conservation Areas<sup>258</sup>. The adopted policy will as much as possible be, that MCA will be contiguous with land based Conservation

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<sup>252</sup> *Ibid.*, Section 15.43.

<sup>253</sup> *Ibid.*, Section 15.45.

<sup>254</sup> *Ibid.*, MCO 2.

<sup>255</sup> *Ibid.*, MCO 3.

<sup>256</sup> *Ibid.*, Section 15.46.

<sup>257</sup> *Ibid.*, MCO 4.

<sup>258</sup> *Ibid.*, MCO 5.

Areas. This will help in the protection and lessen the threats between the two areas<sup>259</sup>. It is intended that all existing coastal and marine ecosystems outlined in the infralittoral habitat survey are to be represented in MCA<sup>260</sup> and sites which exhibit a wide variety of ecosystems and habitats over a relatively small area will be given preference during the selection process for MCA<sup>261</sup>. The Planning Authority will establish a priority list of all the MCA and rank sites by importance<sup>262</sup>. Such sites will conform to international categories<sup>263</sup>.

The conflicts that fishermen might have with the establishment of MCA will be addressed. The first option for suitable jobs and services related to site protection will be given to fishermen, if their job is threatened by the establishment of MCA<sup>264</sup>. Marine Conservation Areas that benefit other nations will be designated<sup>265</sup>. A management authority will be established to prepare and execute detailed management plans for MCA<sup>266</sup>.

There were no Marine Conservation areas designated by the end of 1997 (Planning Authority, 1999a p.131 Section 4.5.3). However, a number of marine surveys have been undertaken. Most of these were connected to development applications, whilst two were carried out in connection with the Local Plan process (Planning Authority, 1997a p.133 Section 4.5.5). Work has also started on the marine GIS with the digitisation of surveys for the North Harbours and *Dwejra* marine areas (Planning

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<sup>259</sup> *Ibid.*, MCO 6.

<sup>260</sup> *Ibid.*, MCO 7.

<sup>261</sup> *Ibid.*, MCO 8.

<sup>262</sup> *Ibid.*, MCO 10.

<sup>263</sup> *Ibid.*, MCO 9.

<sup>264</sup> *Ibid.*, MCO 11.

<sup>265</sup> *Ibid.*, MCO 12.

<sup>266</sup> *Ibid.*, MCO 13.

Authority, 1999a p.132 Section 4.5.5). The Authority has also funded student projects at the University of Malta for the classification of marine ecosystems, which will be fed into the MCA designation process (Planning Authority, 1999a p.132 Section 4.5.6). The Authority intends to prepare an administrative and legislative framework in order to enable proper evaluation of sites and help resolve conflicts between conservation goals and the various marine uses. Such work had not yet started by the end of 1997 (Planning Authority, 1999a p.131 Section 4.5.4).

### **Coastal Zone Management**

The coastal zone is an area of potential planning conflicts mainly due to the size of coast which is available, and its conflicting usage by different interest groups (Planning Authority, 1996 p.42). The Structure Plan demonstrates the need to develop an integrated Coastal Zone Management policy<sup>267</sup> to include the conservation of this resource and improve public facilities<sup>268</sup>. It is intended that all coastline will be brought under public ownership and there would be public access all around the coast<sup>269</sup>. A Coastal Zone Management Unit will be established as a matter of high priority<sup>270</sup>.

An *Integrated Coastal Management* section within the Countryside and Coastal Planning Team of the Environmental Management Unit was set up in 1996. A Coastal Zone Management Subject Plan was planned for 1998. It was intended that the policy dealing with coastal zone uses in TOU 15 would be consolidated under one section

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<sup>267</sup> *Ibid.*, Section 15.47.

<sup>268</sup> *Ibid.*, CZM 2.

<sup>269</sup> *Ibid.*, CZM 3.

<sup>270</sup> *Ibid.*, CZM 1.

and would be addressed in the Subject Plan. Funds have been obtained from the United Nations Environment Programme for:

- technical assistance with the Subject Plan;
- the formulation of a national strategy on beach replenishment;
- broad brush surveys of candidate marine conservation areas;
- assistance in developing a management framework and a MCA pilot project (Planning Authority, 1999a p.131 Sections 4.5.1-4.5.2).

As part of the CZM Subject Plan, an ornithological survey of the coastal areas was commissioned by the Authority to identify important bird habitats, species, and their current status. Another similar study concerns coastal engineering works. This study is aimed at producing a set of policy guidelines for engineering works along the coast and within the marine environment (Planning Authority, 1999b p.23).

There was limited success in the policy area dealing with public access to the coastline. The Authority has provided a 5m wide public access path when granting new permits for hotels along the coast. There was only one case whereby gates blocking public access to the beach were opened following a decision by the Court. There were no acquisitions by the Planning Authority, of illegal developments on the coast or of encroachments, during its first six years in operation. One of the main difficulties encountered, is revoking existing permission on a site, which is covered by either a building permit or by other operating licenses. During 1997, the Authority drafted a set of guidelines on coastal access in order to elaborate and clarify policy CZM 3 (Planning Authority, 1997a p.134 Sections 4.5.9-4.5.10; 1999a p.132 Section 4.5.7).

### 3.7 Conclusion

This chapter was divided in four parts, namely:

- the roots of Structure Planning in Malta;
- the views of both local and foreign critics of the Structure Plan concept;
- the problems encountered in Malta, in implementing the Structure Plan;
- a review of the Structure Plan policies affecting areas outside development zone.

The historical political link of the Maltese Islands with the United Kingdom led to the natural inheritance of the British Structure Plan system. It was shown that this change was a drastic one, especially in view of the previous development control system which was ruining the characteristics of the Maltese Islands. The change was swift, because it had the political momentum of a new Government, which had just taken office.

The Structure Plan concept was shown to be a controversial one, with some authors acknowledging its importance whereas others severely criticising it. However, the concept is definitely that of a strategic nature and when it was applied locally, the intention was that it would be backed up by a number of Local Plans which would address planning issues in more detail, within a localised context. Unfortunately, it was shown that in due course, there was a twist in the way things developed and when the Structure Plan came into effect in 1992, there were no Local Plans which were ready. The situation was further complicated by the fact that ten years after, there was only one Local Plan which was ready.

The change, which occurred in the planning system in Malta, took place in an academic vacuum. The Maltese education institutions were not preparing people who could work in the new planning system and so the Planning Authority had to address the situation by organising special courses and also by sponsoring courses for its own staff. It was shown that there were various conflicts of opinion between the recommendations put forward by the Planning Directorate and the decision-making boards of the Planning Authority. The Planning Authority addressed these problems by training its own staff, but the problem was not looked into at the decision tier level.

The Structure Plan policies concerning areas outside development zone were reviewed. The two Structure Plan Monitoring Reports and Annual Reports published by the Planning Authority between the period 1992 to 2000 were used to monitor the problems of implementation and the results being obtained by utilising these particular policies. The reports showed that various difficulties were encountered in various sectors, especially in the quarrying industry. They also showed that work on implementing certain policies, such as those dealing with coastal management and coastal zone surveys still lag behind. It was also shown that implementation of certain policies, such as policy SET 11, which prohibits urban development outside building areas have been infringed. There were also cases, such as, in the agricultural sector, where the building of greenhouses, was found to be in conflict with other policies, such as those dealing with visual amenity. Some policies, such as those dealing with illegal caravan sites along the coast, in areas outside building zones, have only been implemented with partial success. The Planning Authority has scheduled whole areas

to try and protect special sites that are of ecological, archaeological or of visual importance.

It seems that the choice to opt for the Structure Plan concept was not evaluated against any other forms of planning found elsewhere in Europe. This could have been due to the urgent need to change course and due to the fact that the Chamber of Architects had at the time suggested that a Structure Plan should be adopted in Malta. The Chamber of Architects was then the only professional body representing people associated with development and planning. Finally, there were very few people knowledgeable in the planning field who could oppose such a change or offer other alternative concepts of planning. There was a political expediency following the choice for Structure Planning. Probably, the number of different reports associated with planning, prepared over the period 1988-1992 would never be repeated again in Maltese history. The Herculean task to prepare these reports can only be understood when one considers that most of the information found in them was new, due to the fact that such studies never took place in Malta. Although there was widespread public consultation, the knowledge of what the Structure Plan entailed was not understood by many at the time.

The new planning system became operational in 1992. The initial enthusiasm and momentum experienced in the late eighties and early nineties in the introduction of the Structure Plan has subsided considerably, to the extent that most of the much awaited Local Plans, have not been implemented yet. This has led to the Structure Plan, a strategic document with a broad based policy framework, to be used throughout the country as if it was the Local Plan. The need for Local Plans need not

be overemphasized. These could address problems which have been encountered during the implementation of the Structure Plan.



## **4. Methodology**

### **4.1 Introduction**

The principal aims of this chapter are to review existing literature related to policy analysis research and to select a suitable methodology for Malta, in view of the objectives of this thesis. As there is a paucity of Maltese literature concerning planning policy analysis one has to review foreign literature, mainly British. The British Structure Planning system, on which the Maltese system was mainly modelled, has been in operation for a longer period of time and over a much larger area than the Maltese system. It is therefore expected that the research base is much richer than is the case in Malta, where the existing planning system has been in effect only since 1992.

This chapter will be divided into two distinct parts:

- The first is a literature review of both qualitative and quantitative methodologies:
  - to measure development pressure;
  - to measure development policy;
  - for the utilisation of development control data; and
  - for the use of statistical analysis in the planning field.
- The second part deals with an integrated methodology that will be adopted to analyse the objectives outlined in Chapter 1.

The reader is introduced to the different types of methodologies used under different circumstances and conditions. These are analysed and an integrated method is

developed by the author, who is not influenced by any interested party. The methodology adopted should be considered in the context of the limitations created by the fact that this research:

- is not sponsored by any agency or other government body and so is constrained by the financial limitations of the author; and
- depends on the availability of data supplied by and / or bought from the Planning Authority, much of which is confidential.

## **4.2 Literature Review**

### **4.2.1 Context of Policy Analysis**

*“Although only a few may originate a policy, we are all able to judge it”*

This quote is attributed to Pericles, more than four hundred years before the birth of Christ (Masser, 1980 p.44). The main question is always *how* to judge a policy and whether the methodology used is finite and will give the same results if replicated. One of the main limitations of this study is that the effects of policies are being examined over a relatively short period of time, that is five years. Therefore the conclusions drawn will need to be treated with caution. One must also consider the radical change that occurred in the Maltese planning system, whereby the old liberal system was replaced by a more bureaucratic one. In spite of the great publicity that preceded this change, there is always the possibility that the public failed to understand it. Therefore a settling-in period must be considered when analysing development control data. As a general rule, policies that work within the accepted societal norm will be more successful than those that work against the tide, unless people have a common resolve to change their prevailing attitude. Often such changes

have a long gestation period and cannot be evoked by some planner's magic (Wissink, 1980 p.413).

Houghton (1997 pp. 3-4) claims that measuring policy effectiveness is a difficult process which requires prior specification of policy objectives and a sound understanding of the ways in which the policy under review may produce its intended effects. In order to discover these effects, a detailed monitoring exercise will be required, the results of which could then be compared with the intended effects, thus producing a value which represents policy effectiveness. In this case the methodology must also separate the effects of planning from the effects generated by land, housing and other markets. Finally, Houghton (1997 p.4) states that measuring policy effectiveness is not possible on a regular short-term basis because of the time taken for effects to come through and also because of the effort involved in replicating monitoring.

Gilg and Kelly (1996 p.204) cite Pearce (1992 p.14-15) and Cloke (1987) who, basing their premise on Town and Country planning in England, claimed that the link between policy development and its implementation is very blurred. Gilg and Kelly (1996 p.204) list the following difficulties to emphasise their point:

- policies are subject to change, leading to time-lags and overlapping of often contradictory policies;
- policies can be derived from other sources (e.g. policies relating to infrastructure provision) apart from planning documents such as the Structure Plan or local plan;

- policies are only guidelines that could be interpreted by decision-makers in many different ways;
- developers are deflected from some areas and attracted to others not only by policies in operation but also by informal guidance offered by planners, thus the real effectiveness of development control is judged by what does not happen. Thus *the true impact of planning is impossible to measure because the world is different from what it would have been*;
- some groups exercise a stronger influence than others on the evolution of policies and on the decision-making process of development applications;
- unforeseen consequences crop up both due to real world changes and also due to the *perverse response of the free market to react in the opposite direction to a policy intention*;
- policy makers can only expect to achieve a certain success rate.

Gilg and Kelly (1996 pp.204-205) list four methods to overcome these difficulties by using development control decision data in a number of ways:

- i. *“By simple statistical and cartographic analysis.*
- ii. *By examining the data derived from the decision-making process as a source of information for use in other areas, or a way of testing hypotheses about the effectiveness of planning policies (logical positivism).*
- iii. *By examining the decision-making process as a power struggle (political economy).*
- iv. *By examining the process as a random but related sequence of events (post-modernism).”*

Gilg and Kelly (1996 p.205) claim these methodologies are not mutually exclusive but there are many links between them: points **i.** and **ii.** concentrate on decision outputs by using “aggregate data” whereas point **iii.** differs from them by:

- using case studies;
- concentrating on the process leading to a decision; and
- often assuming a Marxist, structuralist, elitist or managerialist viewpoint.

Point **iv.** can assume any of the methodologies and theoretical viewpoints outlined above.

Simple statistical and cartographic analyses are commonly used by various researchers. Nevertheless such methods can fail to pick up detailed trends and may make over-simplistic assumptions about the link between policy and implementation (Gilg and Kelly, 1996 p.205). Preece (1990 pp. 65-66) argues that much work in this field often uses the method of *confirmation* (e.g. refusal rates are found to be higher in National Parks hence it is concluded that National Park policy of restricting development is working), rather than the method of *falsification* put forward by Karl Popper (1972) or the related method of *differentiation* (under which the absence of any difference between two areas is more important than the presence of any difference). However, Gilg and Kelly (1996 p.205) still maintain that the first step in the evaluation of development control data should be simple statistical analysis.

The *Logical Positivism* approach is basically similar to the statistical and cartographic one, but seeks to examine certain aspects of the process in more detail or to employ more sophisticated analysis (Gilg and Kelly, 1996 p.207). The authors cite the works of various researchers who take this approach, including Pountney and Kingsbury (1983a), Brotherton (1982; 1984; 1992a; 1992b), McNamara and Healey (1984) and Larkham (1990b). Gilg and Kelly (1996, p.207) maintain that critics of these statistically-centred approaches point out that although they show broad trends they

ignore the struggle between different groups for supremacy in decision-making. Hence the third approach based on power relations was developed. The authors claim that the pioneering work on such an approach was carried out by Rydin (1985) who was followed by Buller and Hoggart (1986) and Pacione (1991). Gilg and Kelly (1996 p.207) review the evolution of this methodology which eventually led to the post-modern approach in the 1990s. The above-mentioned works all concern the British planning systems, whereby the decision-makers are all elected from amongst the local population. Hence, they represent the popular interests, which could also mean vested interests. In Malta, the decision-makers are all appointed by the Government and represent different sectors of society. The power struggles at work during the decision-making process are probably of a different kind in the two different countries.

According to Gilg and Kelly (1996 p.208) the post-modern view of the world is highly appropriate to land-use planning, since it mirrors the increasingly chaotic and unstructured world in which we find ourselves. Most work using post-modern or behaviourist approaches, was conducted in North America, mainly on the terminology used in plan-making. Gilg and Kelly cite the work of Tewdwr-Jones (1995) who attempted to unravel the complexities surrounding the implementation of planning policies by both local government officers and councillors in Britain, and also the work of Buller and Hoggart (1986) on the hidden agenda of non-decision-making in Sussex. They claim that the approach in Britain has traditionally been carried out under the humanistic, behavioural, qualitative and case studies umbrellas. According to Larkham (1990a), such studies cannot stand alone, although many benefits could be derived from a fusion of different approaches. An early example of such an approach

is provided by Healey (1991) who reviewed her own research in the 1980s, where although not explicitly using a postmodern approach, she utilised different sets of agendas depending on whom the research was for. Healey (1991 p. 457) concludes that researching planning practice is a much messier business than any other type of research, due to the fact that the researcher and the researched are involved in complex political, institutional and professional relationships in which ethical issues are important. However, she claims that collaborative research is essential.

#### **4.2.2 Development Control Data**

Development control data have been a popular choice of information for a variety of planning research projects, each with its own peculiar methodology (Sellgren, 1989a p.43; 1989b pp.73-89 for a review). The pros and cons of using such data will be reviewed through the work of various researchers.

Development control data is taken to include the number of applications for development submitted and the numbers of permissions granted or refused by the agency designated by law to do so. When utilising such data one must be careful to distinguish between planning applications and permits and the actual development activity (the rate at which new buildings are erected and existing stock improved) which are clearly not the same thing (Brotherton, 1982 p.440).

Larkham (1990b p.173) states that the use of development control data in studies of planning process and policies clarified a number of problematic issues. Nevertheless a major problem still remains because such data do not reflect the level of implementation of any given policy. He cites McNamara (1985) who states that in

order to reflect the level of implementation of a given policy the four following assumptions must be made:

- i. "All development pressures, however slight, must enter the formal planning process as planning applications;*
- ii. All pressures for development occur irrespective of the content of the policy (i.e. policy and planning application are mutually independent);*
- iii. All decisions made are based solely upon policies stated;*
- iv. All policies have single, simple and clearly identifiable and expressed aims."*

This statement must be considered in the context of the British planning system under which it was made. In fact, one can easily state that points **i.**, **ii.** and **iii.** are addressed by the Maltese planning system. The only exception being that of undocumented development pressure arising from illegal development. Part of this type of pressure could become documented only following enforcement action, when the presence of the development has been exposed. Point **iv.** is subjective and one cannot categorically confirm whether all the Structure Plan policies have a clearly specified aim unless a study with such an objective is undertaken.

Larkham (1990b pp. 173-175) reviewed the work of a number of researchers who highlighted problems created through the use of development control data, but in spite of this, he still considers the use of such data as being the most useful to study urban development and policy.

McNamara and Healey (1984 pp. 95-96) provide a useful critique of the uses and limitations of development control data. They claim that the major conceptual problem for researchers involved in policy implementation studies is that records kept by local planning authorities only document the formal aspect of the statutory relationship between developers and planners. It is only those applications that enter the formal planning process that are documented in the development control records.



Citing a study carried out by McNamara (1982 pp.20-38) it was found that the informal contact between developers and local planning authorities before an application is submitted is of considerable importance in bringing applications into conformity with policy. This could be the most important part of the process for a particular kind of application. The need for pre-application negotiations is greater for larger developments. They further state that the reason behind higher approval rates for larger developments in restraint areas could be attributed to pre-application negotiations. This could be due to the fact that a major proportion of larger developers would have been deterred either by the restraint policies or have been “warned off” informally. The remaining large applications are those favoured by the planning authority over which extensive prior negotiations would have taken place. This view is also shared by Larkham (1990b p.173) who claims that such pre-submission consultations are likely to take place where experienced developers or agents are involved. However, he quotes a study by Pountney and Kingsbury (1983b) who found that out of a sample of 67 experienced agents only 58% thought that such discussions were important. McNamara and Healey (1984 p.96) conclude that development control records are not simple units that can be added or subtracted, but are

*“‘end-state’ statements of negotiative process which are often complex. They cannot be used on their own to evaluate policies or analyse development pressure because such methods cannot place conclusions about development pressures in their true perspective.”*

Anderson (1981 p.6) utilised development control data in a study to analyse whether the designation of Areas of Outstanding Natural Beauty (AONB) had any effect on planning applications received or decisions reached. She claims that the analysis of such data is the only practicable means of ascertaining the extent to which Structure Plan policies are implemented in development control decisions. She identifies four

types of problems when utilising such data, which are omissions, double counting, measurement and comparisons. These are discussed in detail below.

Brotherton (1982) used planning applications for a fifteen-year period to study development pressures and control in National Parks. His study was criticised by McNamara and Healey (1984) for the *unacceptable way* he made use of development control data. Brotherton (1984) launched a spirited defence to his approach in utilising development control data. Brotherton (1992a and 1992b) in two separate studies again utilised development control data:

- To develop mathematical formulae to measure application quantity and quality and to study whether there were any registered changes over time, with special emphasis being placed on applications inside and outside national parks (1992a).
- To identify the control of development exercised by the local and central planning authorities (1992b).

A study of the use of planning applications combined with a series of interviews, was undertaken by Pountney and Kingsbury (1983a) to examine the integration between development plans and development control in the context of a selected number of local authority planning departments. They first sampled a number of planning applications spanning a three-year period from seven plan areas. However, the sampling proportion for each area varied from 10% to 100% in some areas. This was done without any reasonable justification being given, thus introducing a factor of inconsistency in the sampling method. Also, a series of interviews with senior planning officers was conducted in order to discover the use they made of

development control information in plan preparation and review. In another set of interviews with development control officers, the impact of plan production on the work of development control staff was discussed. The possibility of developing a comprehensive and detailed classification for the contents of the plans in relation to development control was examined but was discarded following a number of weaknesses which were identified (see: Pountney and Kingsbury, 1983a p.141 for further details). A different methodology to the classificatory approach was adopted. Each application was examined for the following five main points:

- type of development (physical development or change of use);
- existing and proposed use of site;
- decision taken (approval / refusal and any conditions);
- whether decision taken by committee or delegated; and
- the relationship of the decision to plan.

A three-fold classification was used to define the relationships of individual decisions to the relevant plan by posing the following questions:

- Did the plan contain statements which could be specifically applied to the given application?
- If in the affirmative, was decision in accordance to plan policies?
- If in the negative, was permission of a temporary or a permanent nature?

Pountney and Kingsbury, (1983a, p.145 and p.148) claimed that the interviews together with the analysis of the applications revealed a number of salient points, which would have remained hidden if such a combination of methods was not used.

Buller and Hoggart (1986) utilised development planning applications for “major” residential development in West Sussex to study the evidence of any relationship between socio-economic standing and application and approval rates. The authors justified their approach to choose major development applications to overcome the problem of double counting. In their study they have deliberately avoided investigating the decision processes taking place, but they thought that it was both difficult to do so and also outside the remit of their objectives. Hence they avoided the use of case studies.

Home (1987) utilised planning decision statistics, mainly refusals, to analyse the performance of the development control system in England. Larkham (1990a p.6) considered that Home (1987) could have used case studies rather than aggregate data to better address some of his research topics. Larkham (1990a p.2) states that the biggest problem with aggregate data is that of selectivity. Such data is considered as *end-statements of a complex process of negotiation, differing in type, duration and complexity in the case of each application*. Aggregate data could only tell an average story, whereas case studies would permit examination of the details of the system of processing applications (Larkham, 1990a p.6). Such a process produces a richer source of data but is more time-consuming to analyse.

In a study by McNamara *et al.* (1989, p.27 and p.33) to establish in detail how district planning authorities in England were utilising development control data, the following tasks were identified:

- answering specific enquiries;
- site histories;

- use at planning Appeals;
- internal efficiency audits;
- external efficiency audits;
- identification of delayed applications;
- policy formulation;
- policy monitoring; and
- monitoring of development pressure.

McNamara *et al.* (1989, pp. 27-28) claim that the use of development control data to monitor policy performance yielded a mixed picture, some authorities carrying out regular analysis while others doing so occasionally. It was also established that a number of authorities were utilising the ratio of approved to refused applications to examine whether a policy is being implemented or not. A number of authorities in restraint areas used this ratio to establish whether development controllers were being *too liberal* and needed *to tighten up* on certain types of development.

Sellgren (1989a pp. 43-44) reviewed the work of various researchers utilising development control data. He claims that irrespective of whether the data are sampled from jurisdictional or policy based areas, measurements are normally comparative over time or space rather than being of an absolute nature. The choice of time-frame is closely linked to sample size, particularly when the studies concern rural areas. In such cases a larger time-frame is required since the number of applications is expected to be lower than that in urban areas. However, information from development control data should be treated with care, in spite of the fact that it is an unparalleled empirical source both as regards market and land use planning (Sellgren, 1989a p.45). Rydin

(1985 pp.65-67) also shares this view but emphasises that such data must be checked carefully prior to being used to avoid any errors. In fact, she considers development control data to contain a wealth of detail that could be readily utilised, especially if it is in computer-readable format. Such an asset could be supplemented by reference to publicly available planning registers or planning files and cross-referenced with other information held by the local authorities. Amongst the weaknesses encountered when utilising development control data, Rydin (1985 p.65) mentions the problems of double counting and the fact that statistics based on such data rarely weigh applications in such a way as to take account of the size of the development being proposed. As a result it is recommended that researchers should address such issues prior to utilising this data. Rydin (1985 pp.14-15) applied development control data permits to study the relationship between development control and housing land supply in two districts in Essex; Epping Forrest (inside the Metropolitan Green Belt) and Colchester (outside the green belt).

Larkham (1990b pp.175-179) reviews the limitations posed when utilising development control data to analyse development pressure. He acknowledges the fact that the data contain just the formal applications excluding all other prospective developments which didn't make it to that stage. He also points out that when long-term data sets are used, it is usually implied that all other conditions remain equal and so would be attributing any recorded variations to development pressure. Examples of conditions which are not usually considered are the dynamic economic situation of the locality or country, the prevailing demographic trends and changes in local and national policies. He concludes that there is great difficulty in producing an accurate index of development pressure due to the fact that it should theoretically take into

consideration a wide variety of variables in addition to the simple number of applications. The analysis of such a number of variables would require complex statistical techniques. This would be impractical to use in the everyday planning context and so Larkham (1990b p.180) resorts to accepting the current methods being used to measure development pressure. However, he adds that *these could be supported by a variety of other evidence, the sum of which should point in certain directions.*

#### **4.2.2.1 Problems with the use of Development Control Data**

##### Omissions

The use of development control data might give a false picture unless the researcher is aware of the information that might be missing. Anderson (1981 p.6) claimed that certain categories of development covered by General Development Orders (GDO), do not usually appear in development files, although such development could still have significant effects on the landscape. Brotherton (1982 p.440) cites the erection of most farm buildings in most parks as being exempted from development control. This is not the case in Malta, since a development file is opened for every type of application, including most categories of the GDO. Also, the total permissions on paper will exceed the amount of development on the ground (Anderson, 1981 p.6; Buller and Hoggart, 1986 p.170). This is due to the fact that not all granted applications are followed by development. Finally, Anderson (1981 p.6) points out that in areas where restrictive policies apply, the potential pressure of development

may be much greater than the planning application data indicates due to the fact that such policies act as a deterrent.

Other omissions that are not recorded in development control data are illegal forms of development. An indication of the potential impact by such sources could be obtained from the records of those developments which have been reported to the planning authority, but those which remain unreported cannot be recorded unless a physical examination of all the area is undertaken. An alternative to recording such infringements is to compare aerial photographs taken from periodical aerial surveys undertaken by the respective planning authority.

Pre-submission negotiations, which take place between the planning authority and potential developers are not recorded in the development control data. Such negotiations filter out those development proposals that would certainly not gain planning consent (Buller and Hoggart, 1986 p.169). There is little chance of a researcher overcoming this problem unless the planning authority holds such data in an easily retrievable format.

### Double Counting

Double counting in development control data is caused by a number of applications being recorded for the same site. These are mainly due to the fact that:

- the applicant submits an outline application which is followed by a full application; or



- the applicant or different applicants submit a number of applications for the same site.

McNamara *et al.* (1989 p.28) list other sources of an administrative nature which could lead to double counting.

One must look at the objectives of the study and decide whether these applications should be considered as different applications or are counted as a single application. If the study concerns the pressure to develop then all the applications must be considered, but if the objective is to analyse whether the sites are developed or not, then only one record must be taken into consideration.

Several authors (see: Buller and Hoggart, 1986 pp.169-170; Rydin, 1985 p.65; Larkham, 1990b p.172) have highlighted this problem in their research. Most suggest that the unwanted data need to be weeded out to remove the duplicate applications prior to being used for analytical purposes. However, this depends mainly on the objectives of the study for which they are being used.

#### Units of Measurement when using development control data

The units of measurement utilised when using development control data depends mainly:

- on the objectives of the study;
- on the information forming part of the development control data;

- on the availability of the data to the researcher; and
- on the perspectives of the researcher.

Anderson (1981 p.6) claims that the simplest method of measurement is to count the numbers of applications, but admits that this may result in misinterpretation. She cites Mandelker (1962) and Gregory (1970) to justify her reasoning. Mandelker (1962) obtained different results when comparing numbers of permitted and refused applications in Green Belts with results obtained when splitting the applications into their component parts (e.g. number of dwellings). Gregory (1970) analysed applications in Green Belts by area of sites involved. Again this method is misleading because a large plot does not imply that the developed area would also be large.

The units of measurement have been the source of heated debate between different researchers (see: Brotherton, 1982, 1984; McNamara and Healey, 1984). Brotherton (1982 pp. 440-441) first utilised development control data to measure development pressure and control in national parks. He measured development pressure by using the data to produce a planning ratio of the total number of applications per year as a proportion of the annual average for a fifteen-year period. This was done both for England and Wales and was simultaneously compared with that of National Parks. He then used records for the year 1975-76 where the application rates in National Parks were not particularly high and compared the application rates in terms of *number of planning applications per 1000 population* and refusal rates as a *percentage* for London Boroughs, Metropolitan Districts, England and Wales, Shire Districts and the National Parks. The results showed that application rates increased with rurality. He then compared the populations of each park as in 1971, its area and the average

annual number of planning applications and average annual refusal rates (%) for three five-year periods. His results showed that Northumberland, a relatively large park but with the smallest population suffered the least development pressure! Furthermore he ranked the parks according to development pressure (as applications per 1000 population) for each of the three five-year periods and compared them for the whole fifteen years. It was the concept of development pressure as defined by Brotherton and the utilisation of development control data to support his arguments which drew much of the criticism of McNamara and Healey (1984 pp. 92-93). They claimed that the aggregate data used by Brotherton contains applications for housing estates, garage additions, industrial developments, shop fascia changes and other types of development which are being treated on an equal basis by the author. The second error attributed to Brotherton is that he made a development pressure index related to the number of people living in an area and then used this index to compare different areas using the same set of aggregated applications. To do so one has to compare the same categories of applications. McNamara and Healey also claimed that the results obtained by Brotherton for urban areas were low due to the fact that the population levels are high and most of the development in such areas is in the form of large residential and industrial estates. Also, development in such areas is mainly focused on the urban fringe and is often outside their administrative boundaries. McNamara and Healey (1984 pp. 93-94) maintain that if one were to talk about development pressure then one must look at both the demands for development and the barriers placed in the way of the satisfaction of that demand. They claim that Brotherton's use of the number of applications is an imperfect measure of the absolute demand for development, since it does not reflect pressures for development. They state that to measure pressure, one needs:

- a) “a clear definition of subject matter (e.g. residential development);
- b) a precise measure of the expressed demand for development (e.g. dwellings applied for); and
- c) a measure of the barriers placed to the satisfaction of that demand (e.g. refusal rate of dwellings).” (McNamara and Healey, 1984 p. 95).

The authors further suggest an index of pressure for residential development using the following equation:

$$P = \frac{\text{Number of Dwellings refused}}{\text{Number of Dwellings approved}} \times \text{Total Expressed Demand for Dwellings}$$

They claim that such an equation should be treated with caution mainly due to the fact that in areas where tough restraint policies exist, there would be a “hidden demand” for development that would not have reached the formal application stage. This equation was criticised by Brotherton (1984 p.98) in response to McNamara and Healey’s comments, claiming it to be an odd index. In fact, one must point out that Brotherton misquoted the above-mentioned equation as being:

$$P = \frac{\text{Refusal rate}}{\text{Approval rate}} \times \text{number of applications}$$

The utilisation of this index would result in no pressure for development, if all applications are approved, and an infinite pressure for development, if all applications are refused. Brotherton finally conceded that the term development pressure may be inappropriate in describing a variable that measures applications per unit population. However, neither Brotherton nor McNamara and Healey suggested any alternative.

Buller and Hoggart (1986 p.170) state that another problem with development control data occurs when using *number of applications* as a unit of measurement. This is due to the fact that one application could be for ten houses on half a hectare while another could be for one thousand houses on fifty hectares. This will lead to a limited interpretation if the number of applications, without any disaggregation, is used alone

as an indicator of land-use change. To overcome the double counting problem, the authors utilised data for detailed applications only and then categorised applications by a number of components (e.g. size of site, number and type of units) to give a better interpretation to results obtained in their research.

In an attempt to measure trends in town planning control through decision statistics Home (1987) first utilised regional figures for application and refusal rates for all types of development for the years 1967, 1973 and 1983. However, his units of measurement were *percentage application granted* and *applications/1000 population* neither of which constitute a unit of rate. Such a unit should include a factor of time. He then disaggregated the data and obtained figures for the highest number of refusals by category (e.g. change of use, householder) and then found the percentage composition for each to identify the categories which draw the highest refusals. However, one must point out that contrary to the first analysis, this was not done on a regional basis showing a certain inconsistency in his approach.

Sellgren (1989a p.46) states that for comparative spatial and temporal studies of development planning in different areas, researchers seek to standardise development control data by turning absolute measures into rates. The following formula is used as an index of the levels of applications (consents or refusals) standardised to a base year he uses:

$$\frac{\text{Number of applications in year X}}{\text{Number of applications in base year}}$$

Anderson (1981 pp.8-9) in her study on planning policies and development control in the Sussex Downs AONB, utilised the unit *applications/km<sup>2</sup>* as a measure to compare

development pressure in different district councils. This was done both for urban or rural areas and also in spite of the fact that both their respective populations and areas varied considerably. She further analysed her data, which was based on all major applications for a period of one year, by utilising a variety of measurements depending mainly on whether a general picture of the situation was required or a more detailed analysis. In the latter case, the data were broken down by location and class of development and analysed by number of applications, site areas and proposed residential gains. Development control decisions were divided between permissions and associated conditions and refusal plus reasons. Both sets were scrutinised for their adherence to county policy by denoting frequency of use for each reason or condition and then determining its percentage use. Furthermore, in order to measure the level of significance of any differences encountered, Chi-Square Tests were carried out. Anderson (1981 pp.21-24), also used the permission : refusal ratio of decided applications to compare her results with that of a previous similar study by Blacksell and Gilg (1977), which took place in East Devon but over a longer period of time.

Home (1987 pp. 55-59) considers that the tendency to appeal planning decisions probably reflects the development pressure in an area rather than the failure of planning policies. He used the refusal : appeal ratio as a unit of measure but suggests that the results obtained should be treated with caution. A high refusal : appeals ratio could indicate that strong policies are in operation or that there is a tendency for submission to the authority's decisions. A low ratio could imply that the applicants are determined to get the decisions overturned. Home (1987 p.60) showed that there are both regional and political variations in planning control.

Pacione (1991) shares similar views to Home (1987) with regards to the use of Appeals to measure development pressure. However, he took an empirical approach in his study when he used the total number of Appeals against refusal of planning permission for new residential development in Central Scotland as a unit to measure development pressure. This was done by district and a development pressure map was produced.

McNamara *et al.* (1989 p.27) in a series of interviews conducted with district authorities in England found that most districts felt happy using the number of planning applications as a measure of development pressure.

Larkham (1990b p.172) states that the concept of “development pressure” is used both explicitly and implicitly in a variety of studies of the planning system and its effectiveness. The genesis of his argument is the physical definition of pressure, which is that of an exertion of a force on a unit area, and from it he advances the definition of development pressure and its measurement index. He states that this may vary according to whether the force (such as the number and / or type of planning applications) is applied to a policy-neutral feature (e.g. area) or a policy field (e.g. green belts). He claims that the term development pressure appears to be rarely defined by any objective criteria but is used in a manner suggesting that it may be measured, using as an index, the gross number of planning applications submitted in a given period or for a given area, or by use of the Department of Environment (also cited by Pountney and Kingsbury, 1983a p.140) formula of *number of applications per 1000 population*. He further cites and comments on the work of Brotherton (1982) and McNamara and Healey (1984), mentioned above. The debate illustrates the

problems with the concept of development pressure and the problem of equating pressure with demand or with resistance to demand.

Anderson (1981 pp. 6-7) states that the objectives of the study should determine the choice of measurement and that the best possible choice would be that of a combination of measurements.

### Comparisons

Anderson (1981 p.7) claims that when utilising planning applications to compare both before and after events inside and outside an area under consideration, this must be done with caution because the rate and location of applications could be influenced by other events such as fiscal measures which are not evident in such applications.

### **4.2.3 Case Studies**

The use of case studies is a well known research technique in the social sciences and is appropriate to use to penetrate beneath the hard facts obtained from aggregate data (Larkham, 1990a p.4). The main problems identified with this method are:

- the bias which could arise in the selection of particular files;
- the risks of developing a generally applicable argument from particular cases;
- the problem of confidentiality and availability of planning files, especially in the case of independent researchers in places such as Malta where the planning files are not public domain. In such cases one has to seek permission from the Planning Authority to view such files;



- the exercise is very time-consuming since the data are not usually available in computer format.

Punter (1989 pp. 55-56) also states that case studies often produce massive amounts of unreadable documents which are usually descriptive in nature. In spite of the criticism levelled at the case study approach, its continuous use in research suggests that there are significant advantages to its application and the essential weaknesses can be overcome by careful research design.

The advantages in utilising case studies are:

- the ability to retain a holistic and meaningful view of real-life events, such as the development control process, which could be lost when using aggregated data;
- the chance of analysing a multiplicity of variables and a range of causal links which are not recorded in the development data;
- the opportunity of getting a whole picture of the input by the person/s or agents who contributed to the formulation of the Officers' Report on the basis of which a decision is taken.

Individual case studies of development cannot stand-alone but require support from a wider area (Larkham, 1990a p.5). This is normally obtained through the use of development control data. A combination of both techniques is useful in areas of particular concern (e.g. areas of outstanding natural beauty) where particular policies operate. The restricted areal extent of such areas would permit the selection of cases

that would be typical of the operation of the development process on such a local scale (Larkham, 1990a p.6).

The source of case studies is usually the Planning File or the Development Planning Application file (as it is known in Malta). In England, access to such a file is only achieved with a planning officer's permission (Rydin, 1985 p.66). In Malta, the information of the contents of such file was viewable to the public between 1992 and 1997, then a change in the legislation restricted this to people holding a warrant of Architect and Civil Engineer, following a written application. Rydin (1985 p.66) states that much of the information contained in such files is anecdotal in nature, consisting of notes or letters and is also time consuming to assimilate. However, the contents of the files provide a fairly full picture of the processing of a planning application and also provides an insight into the planners' working practice. One must also mention some problems encountered with the use of such files. These include the lack of information from telephone conversations and also that pre-application discussions and material is usually absent from such files. Punter (1989 pp. 61-63) reviewed in detail the importance of the information contained in such files.

Rydin (1985 p.66) claims that there are two main ways of using planning file data:

- To reconstruct the story of an individual application or group of applications which could be supplemented by broader evidence of local political action. She states that such an analysis is susceptible to arguments that the data have been interpreted subjectively, citing the work of Blowers (1983) as an example.

- Analysis could be limited to a consideration of procedures undertaken by the planner in dealing with planning cases. Basing her arguments on the assumption that a larger number of files will be used, she claims that this will still lead to subjective interpretation but within a more explicit analytic framework.

Rydin (1985) used the second approach in her study and claims that she has relied on case studies as the basis of analysis and generalisations, something which is not usually accepted when case studies are used. Rydin (1985 p.67) quotes Clyde Mitchell (1983), who states that the methodological importance of case studies is derived from their framework within which they are set. In the context of a well argued set of propositions on social processes, case studies can act as a testing bed for those propositions.

Rydin (1985 p.67) states that social science is concerned with the exploration of social processes rather than the discovery of facts. In trying to establish facts the number of case studies must be related to the population. In order to establish the operation of certain processes a few case studies would suffice.

Punter (1989 p.65) claims that the documentary evidence in case studies allows the researcher to construct a chronology and evolution of events and to establish the key factors influencing decision-making. However, to gain a fuller interpretation, this needs to be supplemented with interviews, observation and secondary data analysis. Interviews allow the researcher to explore the extent to which the case study is typical. Participant observation is a useful technique during planning committee

meetings, so that the researcher could understand the role of the decision-makers and the proceedings that take place, most of which go unrecorded. In Malta, all Development Control Commission and Planning Authority Board meetings where planning applications are decided are open to the general public.

Eyles (1988), in a review of works regarding qualitative approaches in geographical research, states that different methods could be adopted by researchers to interact and talk to people. These could include formal surveys such as multiple-choice checklists, closed questions and participant observation. Eyles (1988 p.7) states that the interview approach lies between the survey method and the participant observation method. Moser and Kalton (1971 pp. 270-301) distinguish between two different forms of interviews, namely formal and informal types. Both types of interviews might not yield the expected results because the interviewer might still be seen as an intruder by the interviewee. The participant observation approach could be used to overcome such difficulties (Eyles, 1988 p.7). Evans (1988 p.197) claims that despite the fact that such a method is commonly used in the study of local communities, the techniques of this method remain ill defined. This situation has resulted in the participant observation approach being labelled by some researchers as being idiosyncratic and not sufficiently objective and scientific.

Evans (1988 p.198) claims the existence of two actively competing tensions found in sociological research. These tensions result from two diametrically opposed approaches to social research, namely positivism and naturalism. He claims that the logic of positivism relies upon quantitative manipulation. This usually takes the form of questionnaires and attitude surveys, which test the incidence of certain responses to

attitudes or questions against independent variables such as social class. The author claims that the shortcomings of this approach lie in the preoccupation with social phenomena which are directly observable, tending to omit consideration of the non-observable ones. The naturalist stance proposes that the social realm should be approached in its natural state and its first requirement is that the integrity of phenomena should remain unimpaired. Evans (1988 p.199) states that participant observation is one of the approaches using a naturalist stance. He reviews in detail this approach underlying the basic considerations involved, the problems encountered in its application and the various approaches which could be used (Evans, 1988 pp.198-216).

Yin (1994) supplies useful guidance for all stages in research design and execution, and provides a comprehensive treatment of the problems of data collection and analysis in case study methods. Yin (1994 pp.47-48) maintains that the application of a sampling logic to case studies is misplaced citing the following reasons:

- Case studies should not generally be used to assess the incidence of phenomena. This is due to the fact that he maintains that sampling logic is applicable wherever an investigator is interested in determining the prevalence or frequency of a particular phenomenon and when it is too expensive or impractical to survey the entire population.
- A case study would have to cover both the phenomenon of interest and its context, yielding a large number of potentially relevant variables.
- Many important topics could not be empirically investigated if a sampling logic had to be applied to all types of research.

One must point out that Yin is considering the sampling logic in case studies on its own. However, this could be used to study a representative number of applications taken at random from a pool and use the information contained to better understand the situation under review in a wider context. Such is the case of sampling a statistically significant number of Development Planning Application files and analysing the data together with development control data. This would give an insight into the proceedings of the development control system and a comprehensive view which runs deeper than if utilising only one of the above-mentioned components.

#### **4.2.4 Policy Analysis**

The effectiveness of planning policies was subject to a number of different studies at different levels both from a technical and pragmatic approach and also, from a more theoretical angle.

Peccol *et al.* (1996) used Geographic Information Systems (GIS) to assess the influence of countryside designations and planning policies on landscape change in the county of Bedfordshire, over a twenty-three year period. The study included the interpretation of aerial photographs taken in 1968, 1981 and 1991 and transferring the information into the GIS. Digital maps were produced for a specific set of features and the spatial analysis tool provided in the GIS were used to describe the landscape character of each of the designated areas found in the county. Then the net changes that occurred in the designated areas over the study period were measured and the effectiveness of the planning policies backing such areas could be judged.

Counsell (1998) reviewed a number of county Structure Plans to investigate the application of the concept of sustainable development. He used the technique of content analysis [used by: Robson (1993)] to assess plans against a set of pre-defined criteria. The categories for analysis were key themes and principles, policy areas and procedures. A score was then given according to the level of inclusion of each criterion in the plan. An analysis of the aggregate scores was then carried out. The technique is highly subjective and is prone to give biased results especially if carried out on one Structure Plan, as in the case of Malta and also if done by one person.

Cloke and Little (1986) examined the attitudes of planning officers in county authorities towards the implementation of rural policies through the use of a postal questionnaire based on the implementation theme. The questionnaire covered four components of implementation namely:

- what is implementation?;
- implementation problems;
- overcoming implementation problems; and
- successful treatment of implementation problems.

Postal questionnaires present a number of problems, namely:

- the authors who write down the answers remain unknown; the possibility of being answered by a different person than that addressed to still remains;
- the answers obtained are only from those who had the interest / chance to respond, omitting the opinions of the ones who failed to respond, thus creating an element of bias in the results;

- in-depth answers are highly unlikely to be produced, since normally respondents tend to answer in short sentences and in a quick manner, thus giving a cursory opinion;
- if the topic is of a subjective nature such as the above-mentioned case, the thoughts of the person answering it might differ from that of the authority s/he works for.

In spite of such methodological weakness, questionnaires are a popular form of survey in various studies, but it is always wise to utilise them in conjunction with other analytical techniques so as to limit the possibility of biased interpretation of the results.

Pearce (1992 p.14-15), in a study to find the effectiveness of the British land use planning system, claimed that in order to assess the marginal impact that planning had, it is important to measure what would have happened without the intervention of land use planning. This would require the derivation of a policy-on model of the land use pattern and compare it to a policy-off situation, something which he claimed is difficult to achieve and so rarely done in practice.

The fertilisation of resources from academia and the planning field (Gilg and Kelly, 1996; 1997a) resulted in an extensive research exercise very similar to the aims of this thesis. The authors used the four different methodologies mentioned in the introduction of this chapter (see: page 199) to study the possibility of abuse in the application of rural planning policies regarding agricultural dwellings, basing their



research in south-west England. They indicated both the appropriate data sources and the corresponding methodologies which could be used and analyse it (see: Table 4.1).

**Table 4.1 Summary of data sources and analytical methodologies used by Gilg and Kelly (1996 p. 211).**

		Simple analysis	Logical positivism	Power struggle	Post-modern
a)	Agricultural dwelling applications 1948-1991	X	X		
b)	Agricultural dwelling appeals 1974-91	X	X		
c)	Non-agricultural dwelling appeals 1974-91	X	X		
d)	Participative review of planning committee 1990-93		X	X	X
e)	Parish council questionnaire survey			X	
f)	Local authority questionnaire survey		X	X	
g)	Case studies			X	X

#### Simple cartographic and statistical analysis

The data analysis undertaken by Gilg and Kelly (1996 pp. 212-215) showed that notwithstanding evidence of decreasing agricultural returns and labour input in agriculture, the North Devon District Council records provided an indication of continuing pressure for new farm dwellings. These were supported by agricultural appraisals, which sought to demonstrate an agricultural need for these dwellings. It indicated that the statistical and cartographic analysis:

- were a necessary first step in assembling and classifying for the first time a considerable body of data that had accumulated over several decades;
- assisted in the accurate portrayal of policy outcomes;
- highlighted a number of unexpected relationships from what might otherwise have been expected;

- pointed to possible causal mechanisms for further analysis by alternative methodologies.

### Logical positivism

Gilg and Kelly (1996 pp.215-217) sought to examine the different roles of employed officers and elected members in the “body corporate” of a local authority. They differentiated between officer’s recommendations and member’s decisions in order to test the idea of “contrary” and “consistent” approvals and refusals (see: Gilg and Kelly, 1997a pp. 102-105). This concept is akin to Brotherton’s (1992b) idea of “strong” and “weak” decisions. In this case, the perception of a “problem” in policy implementation was identified as the extent to which applications for agricultural dwellings were granted planning permission contrary to officer interpretation of policy. The results obtained from their analysis show a statistically significant element of “bias” in the decision-making step leading to a marked weakness in the policy implementation process. This implies that the policy as interpreted by the case officer was not being put into practice in a substantial number of cases.

### Power struggle

Gilg and Kelly (1996 p.217) claimed that the positivist “policy-centred” methodology was unable to convincingly account for the empirical findings revealed by application and Appeal data. They examined the context within which policy intentions were transmuted into outcomes and the role of interest groups as part of the decision-making environment. This was done in a concealed manner by one of the authors, who was also an area planning officer. As a result of his position, he could indulge in an “observer participation” exercise without drawing attention to the fact that he was

jotting down notes for research purposes and thus affecting the behaviour of the decision-makers and other participants present.

These data were further supplemented by a detailed examination of a number of case studies and also by two questionnaire surveys, one addressed to 211 rural planning authorities and another to 63 parish councils within the North Devon District (Gilg and Kelly, 1996 p. 218).

The power struggle analysis attempted to recognise, as an integral part of the research, the political processes involved in decision-making and the determining power relations between particular “interests-in-land”. The latter are safeguarded at the policy formulation stage and protected at the local decision-making level by the actions of decision-makers with similar interests as the applicant. The results obtained by Gilg and Kelly (1996 p.220) showed that “biases” in favour of particular interests represented by farmers and landowners were found. This is in contrast to the wider public interest that the planning system theoretically serves and from which it derives much of its legitimacy (see: Gilg and Kelly, 1997b).

#### Post modern analysis

The context for this analysis was provided by the information that was obtained from case studies together with the observer participation exercise. Post-modernism offered an alternative analytical perspective which challenged the logical positivist and the power-struggle perspectives, both of which contain a number of fundamental assumptions which are not neutral, value-free or capable of yielding a single objective observation (Gilg and Kelly, 1996 p.221). The post-modern element did not attempt to

analyse or interpret empirical findings arising from the research but advanced a number of assertions and ended up only with open and tentative conclusions. The approach was able to demonstrate how pro-agricultural dwelling councillors shifted their use of words and appealed to different audiences, as an application went through the decision-making process. This behaviour was particularly evident when things were going against them (Gilg and Kelly, 1996 p.221).

Gilg and Kelly (1996 pp. 222-224) concluded that the four methodological approaches utilised in their research are not as mutually exclusive as some proponents have claimed. The authors utilised the four different approaches to develop a *toolbox* of “weapons” from which researchers could choose to suit their needs.

#### **4.2.5 Use of Appeals Data**

Appeal proofs allow the researcher to reconstruct the public enquiry in more detail. They are a useful source of information since they record both the application and decision-making processes, with both applicant’s and the controller’s actions and perspectives. Both parties express their version of events compiling a complete history of the development (Punter, 1989 p.60). In Malta, the Appeal records are published and updated annually on a CD-ROM by a private company and so they are readily available for research purposes. This contrasts greatly with the situation in England where such information may prove to be difficult to obtain (Punter, 1989 p.60).

Brotherton (1993) developed a number of mathematical formulae in order to study the extent to which Appeals against planning refusals vary between types of development,

between regions and over time. The author argues that the Appeal rate varies with the support that central government ministers and their inspectors give to the Local Planning Authority (LPA), with Appeal costs and with applicant, and LPA willingness to renegotiate over refused applications. The Appeal success rate was found to be independent of the Appeal rate and varied with applicants' potential awareness of the central planning authority policy and their rationality.

Tewdwr-Jones (1994 p.146) considers the use of Appeals data as an important means of assessing how development plan policies are operating. The study based on data for a one-year period between April 1989 and March 1990, provided a method of assessment of the planning functions of the South Ham District Council, a local planning authority in South Devon, England. The study based on 117 Appeal files analysed the reasons for refusal on the decision notices and coded each into different planning considerations as determined by the local planning authority (LPA). The statements of the case for each Appeal as presented by the LPA, were analysed in order to examine what national advice the LPA was advancing. This was done to analyse the national advice being considered, at the time the application decision was made by the LPA. The decision letters of the planning inspectors provided an assessment of each policy at Appeal and identified the significance of the policy in the final decisions of the inspectors. The empirical research was supplemented through interviews with the development control and forward planning officers of the South Ham District Council and the Planning Inspectorate in Bristol (Tewdwr-Jones, 1994 pp. 147-148).

#### **4.2.6 Enforcement Activity Data**

Enforcement activity is a shadowy area of planning control where little research has been done (Jowell and Millichap (1983) cited by Home, 1987 p.57). The interpretation of such an activity is remarkably subjective, a high level of which could indicate:

- i. "A sign of an alert authority;*
- ii. The result of unruly restrictive policies;*
- iii. Evidence of a widespread disregard for the planning system; or*
- iv. The result of a particular historical pattern of non-conforming land uses"*  
(Home, 1987 p. 57).

In the absence of statistics concerned with the number of enforcement notices issued, Home (1987 pp. 57-58) reviews statistics for enforcement Appeals, claiming the existence of a certain amount of tolerance level exercised by the Secretary of State towards various types of development activities. In Malta, all enforcement statistics, including number of stop and enforcement notices, are published on a monthly basis. However, their interpretation is still highly subjective and apart from the four points mentioned above by Home, one could also add that such infringements could also be interpreted as a form of development pressure, especially if these infringements take place outside development zone.

#### **4.2.7 Sampling**

When a researcher is using large numbers of data sets which make it humanly impossible to analyse on an individual basis, it is important that the analyses are carried out with a representative sample from the whole population. The data from such a sample which is actually surveyed are assumed to reflect the entire population, with inferential statistics used to establish the confidence intervals for which this

representation is actually accurate. The sample number is therefore of fundamental importance to the ensuing results which will be obtained from that sample.

Gove *et al.* (1982) used Monte Carlo techniques to examine the suitability of ratio and linear regression estimators for three different populations. One of the populations had a linear relationship between the y and x-axis whereas the other two had a curvilinear relationship. The results obtained showed that in the former population, a sample size of 16 units is sufficient at a 94% confidence interval. For the curvilinear populations the sample size required is that of 30 or more units, especially if the curvilinear relationship is a sharp one (Gove *et al.*, 1982 pp. 236-237).

Rydin (1985 pp.15-16), as part of a study on residential development and the planning system, sampled a total of 60 planning files from two districts from three time periods. While failing to justify the chosen number of sampled files, she maintained that such a small sample cannot give any valid statistical information on the distribution of the population of the planning applications (Rydin, 1985 p.19). The file analyses were used to provide detailed evidence of the operation of the planning system in the processing of development application data (Rydin, 1985 p.24). The information from the planning files, together with the development control data, gave an insight into the way the planning system interacted with different groups (Rydin, 1985 p.33).

#### **4.2.8 Statistical Analysis**

Complex statistical techniques have been used in a number of studies related to the planning field. *Multivariate Analysis* was used by Calvo *et al.* (1992) in an integrated

study of the ecological characteristics of the Mula River watershed (south-east Spain) as environmental background for use and management. Poudevigne and Alard (1997) used the same technique to analyse landscape changes for a catchment area in Normandy, France over a period of 25 years.

*Multiple Regression Analysis* was used by Dearden (1980) and also by Buller and Hoggart (1986) to evaluate the visual quality of landscape and to test the impact of non-decision-making in development control processes respectively.

### **4.3 Methodology**

The methodology that will be utilised to analyse the significance of the Structure Plan policies on the natural environment will be based on an integrated approach. The following method will be used to achieve the objectives of this study:

- empirical and statistical analyses of development control data;
- a sample of case studies from development planning files;
- analyses of enforcement data;
- cartographic analysis of data;
- case studies from the Planning Appeals Board decisions and Court of Appeal decisions;
- direct observation of decision-making boards.

This methodology is inspired mainly from the works of Gilg and Kelly (1996, 1997a), Pountney and Kingsbury (1983a), Larkham (1990a), Rydin (1985), Punter (1989), Eyles (1988), Evans (1988), Yin (1994), Tewdwr-Jones (1994) and Home (1987). The approach is being adapted to the local circumstances and there is no particular model



used by any of the above-mentioned authors or other authors mentioned in the literature review in the chapter which is being adopted *in toto*. The reasons for using such a methodology are that:

- the Maltese planning context is slightly different from the British system, in spite of the fact that it is based on that model;
- it is important to develop on the approaches of other models, especially in this case, when the research is based in a different country from that of the referenced work;
- it is intended that the study will be able to introduce new methodologies for evaluating the effectiveness of planning policies in Malta;
- various authors cited above have expressed their opinion that an integrated approach should give better results than simple empirical analysis, similar to those presently undertaken by the Planning Authority in its monitoring reports;
- this could be used not only to obtain the end-effect results, but also to analyse and understand the causes and the reasons why such results are obtained, with the eventual possibility of suggesting useful remedies.

#### **a) Empirical and Statistical Analysis of Development Control Data**

The Planning Authority holds the two principle sources of development control data that will be used in this analysis. These are:

- the Geographical Information System (GIS) database will be used for data for the five-year period between 1989-1993;

- the ACOLAID<sup>271</sup> system data will be used for data from 1994-1998.

The status of the contents of both data sources are as found in August 1999, when both databases were supplied by the Planning Authority. Since then, some changes could have taken place due to that fact that:

- some of the applications might have been at an Appeal or Reconsideration stage and were still pending when the data were issued, a decision being reached since then;
- some applicants might have withdrawn their pending applications;
- final decisions were reached for most of the applications, especially those for the years 1997-98;
- some applications were referred to Appeal or to the Reconsideration stage and a decision is still pending.

The reasons for using two different systems are:

- the Planning Authority, as well as the Structure Plan, started functioning in 1992, but not all the data were being inputted into the DCIS system in the first year or so of the operation. However, the data inputting system was fully functional by 1994;
- the DCIS system was not operational before the setting up of the Planning Authority in 1992;

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<sup>271</sup> This system started operating 1997, but a different database was used previously. This was the Development Control Information System, better known as DCIS. All the DCIS data was transferred into the ACOLAID, once this started operating (Cilia G., personal communication).

- the Planning Authority started plotting on the GIS in 1994. However, the information held on scanned plotted sheets for the period 1988-1994 was inputted at a later stage. The plotting accuracy of these data are not of the level achieved at later dates, mainly due to the size of the plans which were acceptable during those years by the respective agency responsible for planning (Cilia G., personal communication).

One must consider that the development control data used in this thesis for the period 1994-1998 are from a different source than that used in the Structure Plan Monitoring Reports (Planning Authority, 1997a; 1999a). The databases used in the Monitoring Reports are the Dwellings Database for applications with one or two dwellings and the Structure Plan Monitoring Database (SPMD) for all other types of applications. A copy of this database for areas Outside Development Zone (ODZ) was requested from the Planning Authority but when compared to the figures quoted in the Monitoring Reports, different results were obtained. No plausible explanation for these differences could be produced by Planning Authority officials, with the exception of the fact that the person who drew up the reports concerning areas ODZ was a different person from the one occupying the post today. After several attempts to try and trace the reasons for the different results, a different database was used. The latter database is known as the Development Control Information System (DCIS). This was later upgraded to a different software known as ACOLAID. In theory the information contained in the DCIS / ACOLAID and the SPMD should be the same and so the results obtained when using either database should also be the same, but this was not the case in practice.

The data that will be used includes the following information:

- Number of applications both within and outside development zone (ODZ) received annually for the period 1989-1998 (source: GIS and ACOLAID).
  - For the period 1994-1998, each application included:
    - case number;
    - case year when application was submitted;
    - date when application was submitted;
    - address where proposal is being submitted;
    - application type code;
    - site area (not included in all applications found in this database);
    - decision date;
    - a case summary code;
    - plan proposal;
    - application type code.
  
- Total area of applications ODZ for the period 1989-1998 (source: GIS);

#### **4.3.1 Preliminary Analysis**

This section will be divided into two main parts: the analyses of applications and the analyses of decisions. A critical review of the approach will follow.

The original aim of the analyses was to use data that were free of double counts, that is, multiple applications which have been made on the same site. This would have given better results and more faithful interpretations. However, the methodology had

to be modified due to the fact that the method being used to remove double counts would have created some uncertainty. Furthermore, the Planning Authority asked for a substantial sum of money to write a software programme to try to eliminate double counts by making use of its GIS. However, there was no guarantee that all would be removed by utilising such software. This was due to the fact that, unless the plotting coordinates on the same site were originally inputted using the same exact figures, there would be no way one would recognise it as being on the same site, unless such an exercise is done manually, which is an impossible task. So, rather than obtaining the exact figures of the problem, one will attempt to obtain its upper and lower parameters and try to get better results at a later stage by using other data.

#### Modified methodology

Two parallel analyses will take place, as discussed below in the “Analyses of Applications Data”. In one case, the raw data will be used and this will produce the upper values for the analyses, since it contains some multiple applications on the same site. A second set of data will be filtered, using the site address as a method to remove double counts and will then be used to obtain the lower value for the analyses. The problems with filtering data using this method are that:

- there are applications where the site address was entered as the name of the locality, thus one is unable to identify whether it is the same place or not;
- one assumes that the address was always entered correctly in the database and that there were no changes in the street or dwelling names between one application and the next;
- the site address was not available for all the applications;

- for some applications where the site address was missing from the original database the files for them were not able to be located in the archives, thus undermining the filtering parameters being used;
- there were cases where there is no street door numbering and so two or more sites in the same street were not identifiable.

In order to minimise as much as possible the margin of error vis-à-vis the above-mentioned problems, the filtering will be done on an annual basis. The chances of an applicant submitting two or more applications on the same site in the same year are probably small. The errors introduced by this approach might probably compensate for other applications submitted in later years, thus attenuating the margins of error found in the methodology. If the filtering were to be done on all the data over the years under analysis, the chances of encountering multiple applications would be larger while the errors would probably register a significant increase. This has to be borne clearly in mind, especially when analysing the data at a later stage.

In order to justify the use of the above method, the results obtained from the filtered data will be compared with those obtained using the unfiltered data.

#### Analyses of Applications Data

The first analysis carried out on the data will be a comparison of the number of applications received annually between 1989-1998 both ODZ and in urban areas. This will give an indication of whether the trends in both areas move parallel to each other or on independent binaries and should show the magnitude of the problem under scrutiny. It should also show any differences between the time when the Structure

Plan policies became effective and the previous years when a different planning system was in use. This would be analogous to studying the policy on / off model suggested by Pearce (1992 p.14-15) to study the effectiveness of planning. A regression analysis for both plots will indicate the ongoing and future trends and would also give a statistically significant confidence level for the results obtained.

The second approach will analyse the area occupied by applications ODZ for the years 1989-1998. A regression analysis for the plot will give a statistically significant projection of the future trends. These approaches will help one analyse whether the projects for which applications are being submitted are growing in size and / or number over the years.

In the third approach, the applications ODZ for the period 1994-1998 will be divided according to development type, that is, whether they are classified as dwellings, agricultural, recreational etc. A statistical analysis of each type will be done to allow the identification of particular types of development which might be causing development pressure ODZ.

#### Analyses of application outcomes

The first approach will be a statistical analysis of all decided applications taken by the Planning Authority (Development Control Commission or Planning Authority Board) for the period 1994-1998 both ODZ and within Temporary Schemes. The results obtained will give a quantitative indication of the nature of the problem especially vis-à-vis development ODZ.

The second type of analysis will consist of the division of the data according to the decision code (approvals, refusals, withdrawals etc.) for decisions Outside Development Zone. A statistical analysis of this data will enable the examination of any annual variations at decision level and possibly correlate them with any changes (e.g. changes in the composition of the decision-boards or changes in the government) which have taken place over the years.

The third approach, will divide the decision data by type of development and decision taken and statistically analyse any trends found. This will help to identify the areas of concern, which are or might be responsible for development pressure Outside Development Zone. Further, more detailed analyses, possibly utilising different methodologies, will be required to reach such definite conclusions.

The fourth approach, will consist of hypothesis testing to determine whether there is a significant difference between the decisions taken before the application of the Structure Plan policies (1989-1992) and the following period, when these were being utilised (1994-1998). It is envisaged that this will give a statistically significant result whether the Structure Plan policies had any effect on the decision-making process, especially Outside Development Zone.

#### Justification

The analyses carried out using the above methodology are mainly aimed at providing a preliminary analysis of the prevailing situation in the Maltese planning field. The analyses are aimed at providing indicators of problem areas and possibly identifying the relative magnitude and significance of the actual problem. This will be very



important at a later stage of analysis where a greater understanding of the problems could be obtained.

The statistical projections for the years following the last year of analysis (1998) can also be used to analyse the strength of the prediction approach itself. Comparing the actual projection data obtained from the statistical analyses to the true data obtained for the years 1999 and 2000 will achieve this objective.

The importance of utilising development control data was highlighted above, mainly through the work of Rydin (1985) and Larkham (1990b). The use of statistical analyses with development control data presents a number of problems. A number of authors (Sellgren, 1989a; Rydin, 1985; McNamara and Healey, 1984; Larkham, 1990a, 1990b; Gregory, 1970; Buller and Hogart, 1986) have also noted various types of limitations when utilising such a data source:

- the data are examined as if in a vacuum, as if they were free from any external factors (e.g. economic, political or sociological), which in reality is not the case;
- it is assumed that during the analyses period there are or will be no policy changes that might affect the annual number of applications registered;
- the contribution of the individual components from different types of applications are taken to have remained unchanged during the analysis period, which in reality is not the case;
- it is assumed that decision-makers were consistent in their decisions throughout the analysis period;

- development proposals which have only reached the pre-submission stage are not being considered in this analysis;
- not all the approved applications will ever reach the development stage for a variety of reasons unconnected to the development control system;
- illegal developments do not form part of the data until an application to sanction is submitted;
- all applications are considered as equal units irrespective of their size, area or number of dwelling units they contain.

In spite of the identified shortcomings, this first step in the analysis gives an outline of the present situation and the projected trends in quantitative but not definite terms. The results obtained will serve as a sound basis for further analyses, utilising different methodologies.

#### **b) Case Studies from Development Planning Files**

The objectives of this approach are:

- to obtain a clear and real-life picture of a representative number of application files;
- to analyse the policies which have been used in each case and note any omissions;
- to analyse the Officers' justification for recommendation or refusal of the applications;
- to denote the decision-makers stand in relation to that of the Case Officers' recommendations;

- to note any other causal links which might become evident during the review of the different case studies.

Thirty-five files were chosen at random from each year between 1994 and 1998 for applications submitted Outside Development Zone. The selection was made using Random Sampling found in Data Analysis tools of the Microsoft Excel 97 program. The number 35 was chosen following the results of the studies by Gove *et al.* (1982 pp. 236-237) who stated that for curvilinear populations the sample size required should be 30 or more whereas a sample size of 16 was sufficient for linear populations at a 94% confidence interval. The type of population under consideration was not known and so a slightly higher figure was used. The objections cited above by Yin (1994 pp. 47-48) against the use of the sampling logic in case studies analysis should not interfere with the methodology of this study, since case studies are not being used on their own or to analyse particular phenomena. They are being used as part of a larger and wider analysis to gain a deeper understanding of the real-life situation of the development application process. The information gathered from the case study analysis will be more of an indicative rather than of a finite value. Also, the sampling logic was chosen because it is humanly impossible to review all the concerned files for the period 1994-1998. So under these circumstances the choice of the sampling logic should be an acceptable methodology for this study.

Permission was granted by the Planning Authority to view application files at their offices. A standard information sheet was developed to be used for each file which was viewed (see: copy in Appendix II). Three main sources of information are used to compile the sheet:

- information which was found on application forms;
- information from the Development Planning Application (DPA) report drawn up by the Case Officer;
- the decision taken by the decision-making board.

Each file contained a substantial amount of correspondence between different agencies and also a number of draft reports prior to the final one. Apart from these, in a number of cases where Reconsiderations and Appeals were submitted the paperwork was much larger. A note of all the supplementary information, apart from that in the original format, was also kept. Collectively, this gives an overview of the procedures and workings of the Case Officer involved and also the influences generated through correspondence with other agencies. This opinion and recommendation on each case is registered in the reports generated by the Case Officer. This report is the basis on which a decision is taken by the decision-making board, so its importance is clear. If the case was referred to a higher level, that is, the Planning Appeals Board or to the Court of Appeal, then one could also study the interpretation of the facts, given by these two bodies which carry a much heavier weight in their decisions.

The methodology which will be adopted to analyse the planning application files will be based on the work of Pountney and Kingbury (1983a). Each application will be examined on the following points:

- type of development (dwellings, agricultural building etc);
- existing and proposed use of site;
- first decision taken (approval or refusal);
- final decision taken (approval or refusal);

- at what level was final decision taken (DCC, PA Board, Planning Appeals Board);
- Case Officer's recommendation;
- justification for final decision.

The information collated will be used to answer the following questions:

- Were the Structure Plan policies adequately used to recommend a decision?
- Were the Structure Plan policies used correctly at the decision-making level?
- Did the decision-making boards and the case officers adopt a consistent approach over the years?
- Are there any relationships between the recommendations made and / or the decisions taken and the type of development applications?

Development Planning Applications files used in this case study could be grouped under the headings of "Documentation" and "Archival Records," as classified by Yin (1994 p.80). He attributes the following strengths to such sources of evidence:

- *"Stable- can be reviewed repeatedly;*
- *Unobtrusive- not created as a result of case study;*
- *Exact- contains exact names, references and details of an event;*
- *Broad coverage- long span of time, many events, and many settings;*
- *Precise and quantitative"* (Yin, 1994 p.80).

The following weakness were also ascribed:

- *"Retrievability- can be low;*
- *Biased selectivity, if collection is incomplete;*
- *Reporting bias- reflects unknown bias of author;*
- *Access- may be deliberately blocked;*
- *Accessibility due to privacy reasons"* (Yin, 1994 p.80).

The weaknesses described above by Yin were all addressed in this study. The Planning Authority made available all the archives containing the Development Planning Files. A random selection of file numbers was made and produced in a list. When the file was not found due to various possible reasons, the next file in the list was selected, thus limiting as much as possible biased selectivity of files. Where possible all the necessary information was copied *verbatim* and any translations from Maltese to English were made in the most faithful manner in order to avoid reporting bias (see also: Larkham, 1990a, p.4 and Punter 1989, pp. 55-56, 4.2.3 above).

It is very important to note that one cannot generalise and draw final conclusions from the information found in case studies. However, contrary to the case where development control data were being utilised, in the case study approach, one can see the reasons and study the process of how a decision was reached. This was not possible in the first approach.

One could criticise the fact that the random sample was made on the application number and year rather than the decision date, which could have taken place in a different year. This could lead to the fact that in a sample, there would be a higher proportion of the 35 files decided in one particular year rather than another. However, this possible bias should not have a bearing on the final results unless the case studies are used as a source of information to generalise conclusions for particular periods of time.

### **c) Analyses of Enforcement Data**

The importance of analysing this data source lies in the fact that part of it should account for omissions in the Development Control Data analysed above. It could also account for some double counting, especially if the offender tries to regularise his position by submitting an application which was logged in the Development Control Data source. There is a slim chance of eliminating such a source of double counting since there is no reference cell in the Development Control Data computer file indicating that this was an illegal development.

A statistical analysis of the enforcement data for the period 1989-1998 will be undertaken. The data will then be divided according to the type of development activity for which an enforcement notice was issued and a second statistical analysis will be carried out in order to establish any particular areas of concern.

The aim of these analyses is to quantify the level of “illegal development activity” with the assumption that that it is only part of such an activity taking place. This implies that when considering any of the results obtained from the analyses of these data, one has to bear in mind that the result is only a partial result and so is only of an indicative nature. There are various interpretations which could be given to such data analyses (see: Home, 1987 p.57). Irrespective of the interpretation given, which is of a highly subjective nature, the fact still remains that the level of infringements which are recorded by such data, are a factor of a number of other variables. Such variables include:

- the efficiency of the enforcement unit and its personnel to detect, record and process enforcement notices;

- the interest shown by the local population to report infringements; area specific variations could be present;
- the locality of these infringements, with particular emphasis to those in remote areas which might easily escape detection;
- the nature of the infringement; minor infringements, such as small rooms and landscaping for bird traps might go unreported;
- the levels of reporting might vary with time and depends on other variables, such as public relations given to action taken against illegal activity;
- political pressure on the Authority not to take action.

The limitations of this type of data should not deter researchers from using it. It must be viewed as a component of the several indicators to measure the level of development pressure. Failure to use these data would result in a biased view of development pressure. As a result of these limitations, it is of utmost importance that such data are never used on their own, but in conjunction with other sources of data, which would attenuate the above-mentioned limitations.

#### **d) Cartographic Analysis of Data**

The cartographic analysis is aimed at providing a snapshot of the numerical data onto a map of the Maltese Islands. The aim is to use the GIS database in order to obtain various development pressure maps of the following:

- concentration of development applications both inside and outside development zones in relation to scheduled areas;
- approved and refused development applications within Temporary Schemes and Outside Development Zone in relation to scheduled areas;



- enforcement cases within Temporary Schemes and the Outside Development Zone in relation to scheduled areas.

This approach is aimed at giving the reader a visual dimension to the level of development pressure being analysed through other methods. It will also help the reader relate the spatial distribution of the problem to other factors, such as scheduled sites, which are not analysed elsewhere. This will raise the level of significance of the study from the numerical level of analysis to a visual perspective of the problem, incorporating also the added benefit to tangible factors such as scheduled sites. Due to the absence of secure data concerning agricultural land classification and natural habitats, there is a limited possibility of including a relationship with agricultural land and natural habitats.

#### **e) Case studies from decisions of the Planning Appeals Board and the Court of Appeal**

One of the main problems with case studies of the Planning Appeals Board and the Court of Appeal is that of sampling. The main reasons are that there is always a time span of years between the date when an application is submitted at the Planning Authority offices and when the applicant submits an application for an Appeal either to the Planning Appeals Board or to the Court of Appeal. It could take even longer for each of the entities to make their own decisions. This implies that the sampling approach adopted above cannot be repeated in this case and a different approach must be considered.

The following method will be applied through the use of the data found on the CD-ROM entitled *Deciżjonijiet Dwar l-Ippjanar* {English: *Planning Decisions*} (updated to January 2001), which contains all the cases decided both by the Planning Appeals Board and the Court of Appeal from October 1993 to January 2001. There are two possible options to filter out the required data from the CD-ROM, the first being that of using a search engine and filter out the cases containing the term *ODZ* or *Outside Development Zone* and then limiting the use to those applications which were submitted between 1994 and 1998. The drawback with this approach is that one is assuming that ALL cases have got the requested term written somewhere in the text, which in reality might not be the case. The second problem is that the terminology used with the search engine could be written both in Maltese and / or in English and there is no acronym in Maltese. This could result in introducing errors in the analysis. A second approach is to use the development control data used above (**in section (a)**) and filter out those cases which are coded where an Appeal has been submitted. Then check each case on the CD-ROM, through the use of the DPA file number and save each case or make a print out of each decision. This method is more secure because one is using the same raw source of data as a basis to find a secondary source, thus limiting the introduction of any errors. However, this method, although secure, is time consuming to carry out. If the number of Appeal decisions is large, then a statistically significant sample from each year will be used instead. However, due to the limitations of the DCIS / ACOLAID data bases, Appeals submitted after August 1999 will not be considered by this methodology.

The importance of analysing these case studies is that they have a bearing on the decisions taken by the decision-making boards following the outcome of each case,

both if the decisions arise from the Planning Appeals Board and also from the Court of Appeal.

Two forms of analysis, each with different objectives, will be undertaken with this data source. Primarily, the methodology used by Home (1987) to measure development pressure through the use of the refusal : appeal ratio as a unit of measure, will be used. The second method is based on the work of Tewdwr-Jones (1994) who used appeals data to assess how development plan policies were operating. The methodology used by Brotherton (1993) is being discarded on the basis that the mathematical formulae he developed and assumptions made are based on the English system. It is also unlikely that one can transpose such a method to the Maltese system without reviewing all the methodology on which such a study is based.

The use of the above two approaches is aimed at linking Appeal decisions to measuring development pressure and utilisation of development policies at such a decision-making level. This is of fundamental importance due to the fact that the strength of the individual policies being utilised by the DCC and PA Board are being tested at this decision level.

#### **f) Participant / Direct Observation**

The importance of participant observation has been described by Punter (1989 p.65). Yin (1994 p. 86) distinguishes between two types of observation methodologies, namely *Direct Observation* and *Participant Observation*. He classifies Direct Observation as the researchers assuming an observer status in the field (meetings, factory work, classrooms etc.). This is the same type of observation as described by

Punter (1989). However, Yin (1994 pp. 87-89) considers Participant Observation as a special type of observation where the researcher is not merely a passive observer. The researcher assumes an active role in the activity being observed, thus getting an inside and more accurate view of events. However, this could lead to a biased and less objective view of the events being observed.

The methodology adopted in this study will be the Direct Observation approach. The aim is to gain a first hand experience of the approach adopted by the different decision-making boards (and Court) in their deliberations. The entities under review are the:

- Development Control Commission;
- Planning Authority Board;
- Planning Appeals Board;
- Court of Appeal.

The outcome of the research will serve to gain a better understanding of the decision-making process and also to put the researcher in a better position to understand the types and circumstances under which the decisions are taken.

The aim is to carry out this exercise when applications for files concerning applications ODZ are being assessed. This would give a better insight of the proceedings taking place. However, this might create some difficulties, especially when cases of the Court of Appeal are being decided. The reason being that applications ODZ reaching a Court of Appeal stage could prove to be a rare

occurrence. Court proceedings could also take years to be decided and the research should be carried out in a limited time frame.

Yin (1994 p.80) lists four major weaknesses of this methodology:

- it is a time consuming exercise;
- it assumes a broad and useless coverage;
- the events being recorded might be proceeding in a different manner due to the presence of the researcher;
- there is a substantial financial cost involved due to the number of hours required to carry out the study.

All the above points, with the exception of final point, can be considered to be drawbacks in this particular research. There is little one can do to avoid such problems. The researcher could only put on record if there is the suspicion that the proceedings taking place in his presence were possibly different from the normal proceedings. Under such circumstances, one must then be aware of the conclusions to be drawn from this approach.

#### **4.4 Conclusion**

This chapter was divided into two parts, the first part dealing with a literature review concerning different methodologies to analyse policies and development control data, while the second part dealt mainly with the methodology which will be adopted to achieve the objectives outlined in Chapter 1.

The literature review concentrated on the works of foreign authors, mainly British, who during the last three decades have published work, dealing with the effects of planning and methods to analyse such effects. Various methodologies were reviewed, at times exposing the contrasting views of different authors, thus showing the dynamic nature of the study area. The various strengths and weakness of the methods adopted were highlighted. Works utilising both qualitative and quantitative methodologies were reviewed. This was important, because it showed that the integration of different methodologies was an accepted approach to analyse development control data and planning policies. Various authors sought different sources on which to base their studies. Much depended on the objectives of their approach, but the most popular and perhaps, most easily obtained data was the Development Control Data. This was mainly used to measure development pressure, a bone of contention for many authors, who used different techniques to measure the same factor. Indeed, other authors used planning Appeals data to measure development pressure, while others went for a more academic approach by utilising case studies, thus obtaining a more in-depth view.

Direct observation techniques were utilised to supplement results obtained from other methodologies. The use of questionnaires, GIS and Cartographic surveys were used by a few authors in policy analysis studies.

The literature review demonstrated the spectrum of ideas and approaches which have been adopted by various researchers and the pros and cons of each approach.

The second part of the chapter was devoted to the integrated methodology which will be followed in the study. It was felt that this method, which was adopted from works of different authors previously reviewed, would be the best approach to follow since it includes different levels of analysis, starting off with a superficial but quantitative statistical analysis utilising development control data and enforcement data. This will be followed by an in-depth analysis of case studies both of development control files and also of planning Appeal cases. A cartographic analysis will be used to give a visual impression of the quantitative analysis previously done. Such a comprehensive approach should limit as much as possible any loopholes in the analyses and the collective results should be sufficient to give a definite answer to the objectives of this study.

## 5. Results

### 5.1 Introduction

This chapter will be separated into a number of sections, the first of which will deal with empirical analyses of the development application data. This will set the context for more detailed quantitative and qualitative analyses which will follow later on in the chapter. The detailed analyses will encompass data collected from various sources and will be cross-checked with the empirical analyses to test the robustness of the results.

This chapter is necessarily extensive to accommodate the considerable amount of data. As such, the text will be limited to comments highlighting those parts of the results most relevant to the objectives. To facilitate understanding, a tabulated summary (Appendix III) of the different parts of the analyses has been constructed. The relationship between the types of analyses and the objectives of the thesis is also indicated in this summary.

Section 5.2 will detail the different types of analyses which will be undertaken to achieve the three main objectives<sup>272</sup> of the thesis.

Sections 5.2.1 to 5.2.5 will mainly address the first objective of the thesis through the use of application data and decision data. Part of the analysis will be repeated using

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<sup>272</sup> **1:** analyse the effects that the Structure Plan policies have had on the decision-making process Outside Development Zone;

**2:** investigate the development pressures which have affected the natural environment;

**3:** study the interpretation of the Structure Plan policies being given by the various decision-making boards to analyse whether a consistent interpretation is being given by them.



filtered data and the feasibility of using such data will also be tested. The second objective of the thesis will also be addressed in a limited manner in sections 5.2.3 to 5.2.5. Enforcement data (section 5.2.7) will be used to address both the first and second objectives and identify the hidden development which was not addressed in sections 5.2.1 - 5.2.5. Data from samples of case studies (section 5.2.6) and Appeal cases (sections 5.2.9 and 5.2.10) will be utilised to address the second and third objectives of the thesis. A cartographic analysis will show the location of the recorded developments (applications, approvals and refusals) and enforcement cases in relation to Temporary Schemes, Outside Development Zones and Scheduled areas, thus joining most of the information in sections 5.2.1 - 5.2.9. A Direct Observation exercise (section 5.2.10) during board meetings will be used to understand the procedures adopted by the various decision-making bodies and will contribute to achieving the second objective of the thesis.

## **5.2 Analyses**

### **5.2.1 Application Data**

The first source of analysis will be the raw data found in Table 5.1, without any filtering. These data were compiled from two different databases; the data between 1989 and 1993 were from the GIS, whereas the rest were from DCIS / ACOLAID. It should be noted that despite the Planning Authority (PA) starting its operations in late 1992, inputting of data on the DCIS software (which predated the ACOLAID) was done on a regular basis only after 1994. Also, the information plotted onto the GIS for the period 1989-1993 was done by scanning plotted sheets which may have

introduced a margin of error in the results, especially in those cases where the development was close to the building schemes.

The data being used in this analyses will cover the period 1989-1998, as the data were collected during summer 1999 and the PA did not make further data available. Projections for the years 1999 and 2000 will only be compared to actual values in order to test the methodology being used in the analyses.

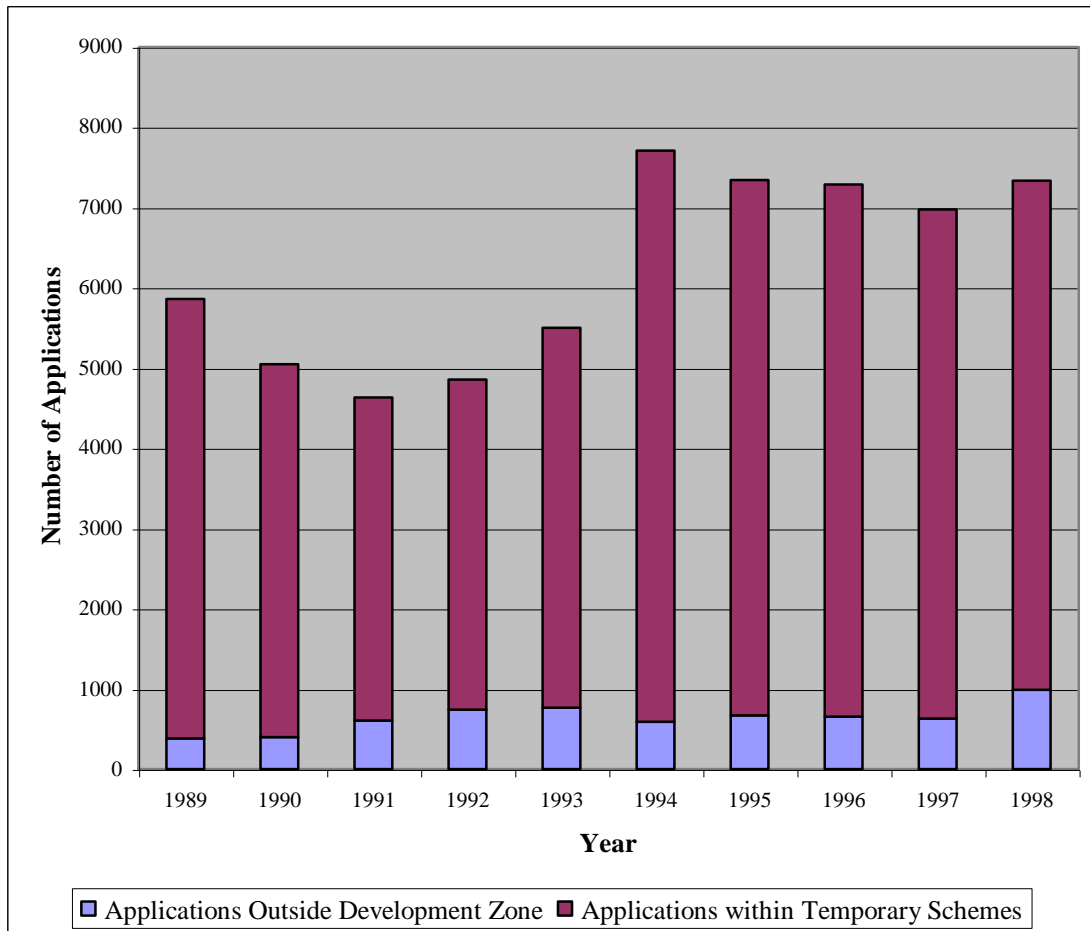
**Table 5.1: Application data which were received by the agency responsible for planning, for the period 1989 to 1998. (source: 1989-1993: GIS; 1994-1998: DCIS / ACOLAID; Planning Authority, 1999).**

<b>Year</b>	<b>Total number of Applications received</b>	<b>Applications Outside Development Zone</b>	<b>Applications within Temporary Schemes</b>	<b>Percentage Applications ODZ/ %</b>
1989	5857	379	5478	6.47
1990	5043	395	4648	7.83
1991	4628	609	4019	13.16
1992	4857	745	4112	15.34
1993	5499	769	4730	13.98
1994	7710	592	7118	7.68
1995	7340	673	6667	9.17
1996	7285	655	6630	8.99
1997	6979	633	6346	9.07
1998	7331	991	6340	13.52

Figure 5.1 shows how the number of applications Outside Development Zone (ODZ) varied over the period under analysis compared with those within the Temporary Schemes. This illustrates that there was:

- a slight decrease in the number of applications within scheme before the PA started operating in late 1992;
- an increase in the number of applications ODZ was also registered during the same period (pre-PA);

- an overall increase in the number of applications within Temporary Schemes following the set up of the PA and the new legislative system;
- a slight increase for ODZ applications over the period 1993-1998 when compared to that between 1989-1992.



**Figure 5.1: Bar graph showing variations in the number of applications both within Temporary Schemes and ODZ for the period 1989-1998.**

For the purpose of this analysis the data-set will be divided in two, the pre-PA era, and the post-PA era, where the development control legislation was different from that before the end of 1992. However, since the data available for 1993 is that from

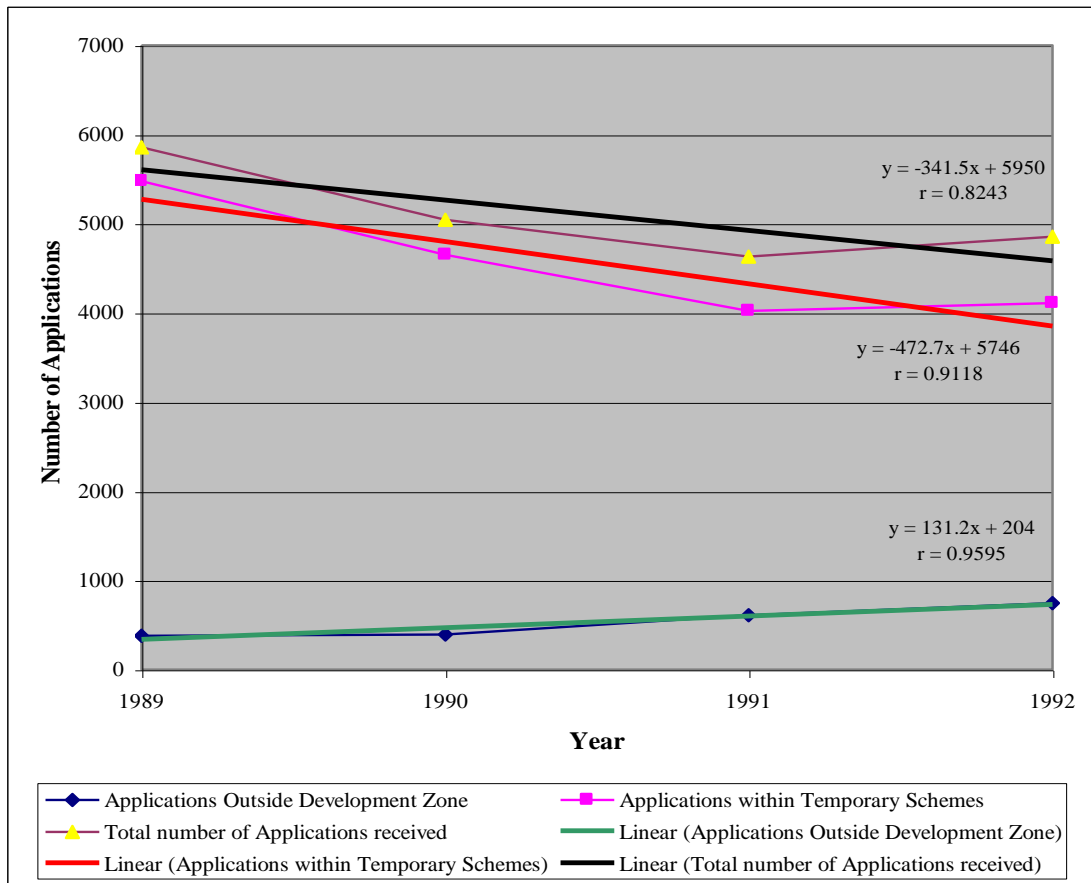
the GIS, which was plotted from scanned survey sheets and therefore is less accurate than that found on the DCIS or ACOLAID software used after 1994, it has been left out of the analysis. This is due to the fact that there is a high risk that it would introduce unwanted errors and affect any predictions at a later stage of analyses.

### **5.2.2 Pre-PA era**

The first part of the analysis concerned the number of applications between 1989 and 1992 for both ODZ and within Temporary Schemes (Figure 5.2).

The results obtained in Figure 5.2 show that there was a negative trend for applications within Temporary Schemes and a positive trend for those ODZ. These results indicate the trends before the Structure Plan policies were put into effect and will be compared to those when these became effective.

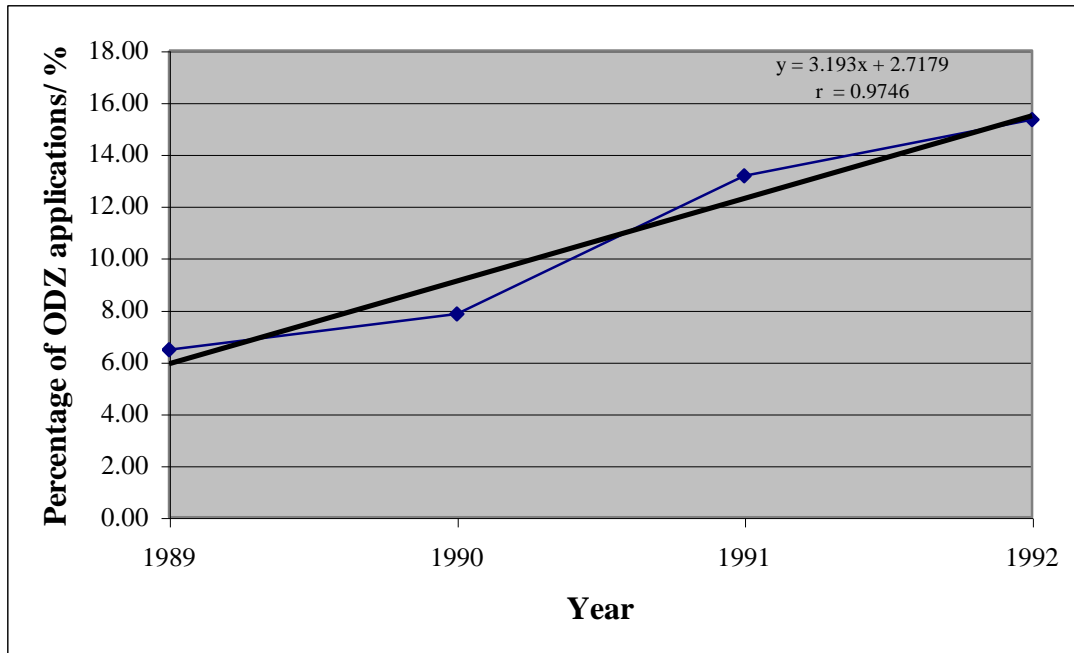
The results obtained from the graph in Figure 5.2 indicate that there was a rise in the proportion of applications which were ODZ for the period 1989-1992. Figure 5.3 shows that there was a strong increase in the percentage applications over these years and also that there is a very good correlation ( $r$ ) for the results obtained.



**Figure 5.2: Number of applications within Temporary Schemes and ODZ together with respective totals for development before the set-up of the PA and the new development legislation.**

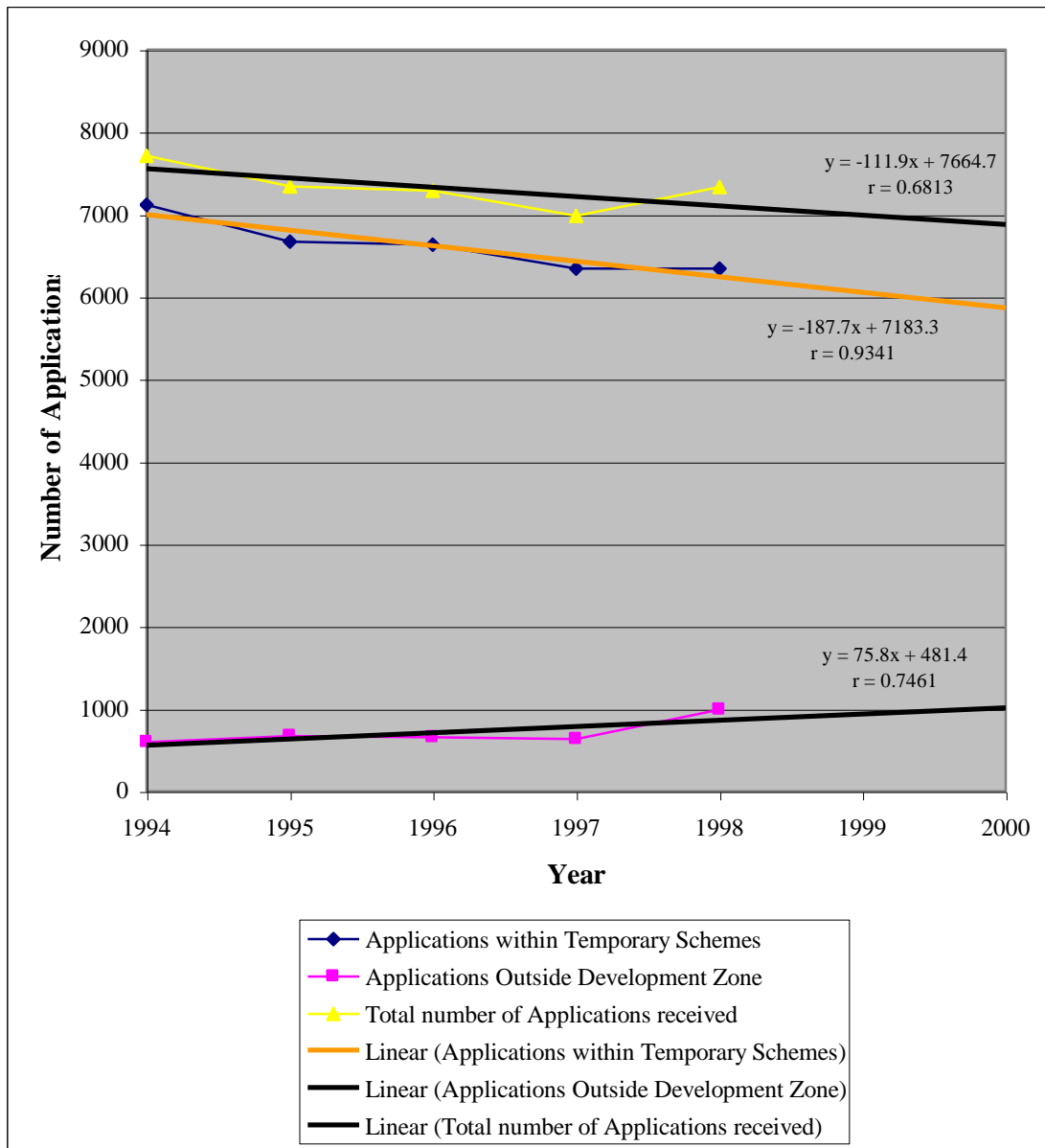
### 5.2.3 Post-PA era

The analysis of application data for the post-PA era concern applications which were subject to Structure Plan policies. The analysis carried out for the pre-PA era will be repeated here. Figure 5.4 presents a comparison of the number of applications within Temporary Schemes and ODZ.



**Figure 5.3: Percentage of applications ODZ for the period 1989-1992.**

The initial number of applications within Temporary Schemes in 1994 was much larger than those in 1992, but these decreased slightly over the years. A better correlation was registered between the observed values and the fitted values for the graph showing applications within Temporary Schemes than for that ODZ. The equation for the regression line was used to obtain a predicted value for the number of applications within Temporary Schemes for the years 1999 and 2000. These were then cross-checked with the actual values, thus testing the strength of the analytical procedure being used.



**Figure 5.4: Number of applications within Temporary Schemes and ODZ together with respective totals for development after the set-up of the PA and the new development legislation. Regression analysis was used to obtain values for the years 1999 and 2000.**

The values for the total number of applications during:

	Predicted	Actual <sup>273</sup>
1999	6993	6713
2000	6881	6865

It is evident that the differences between the predicted and the actual values are minor, showing the strength of the methodology being used.

The values for applications within Temporary Schemes for:

	Predicted	Actual <sup>273</sup>
1999	6057	5743
2000	5869	5716

The same analysis was carried out for applications ODZ:

	Predicted	Actual <sup>273</sup>
1999	936 (13.16%)	970 (14.45%)
2000	1012 (14.32%)	1149 (16.74%)

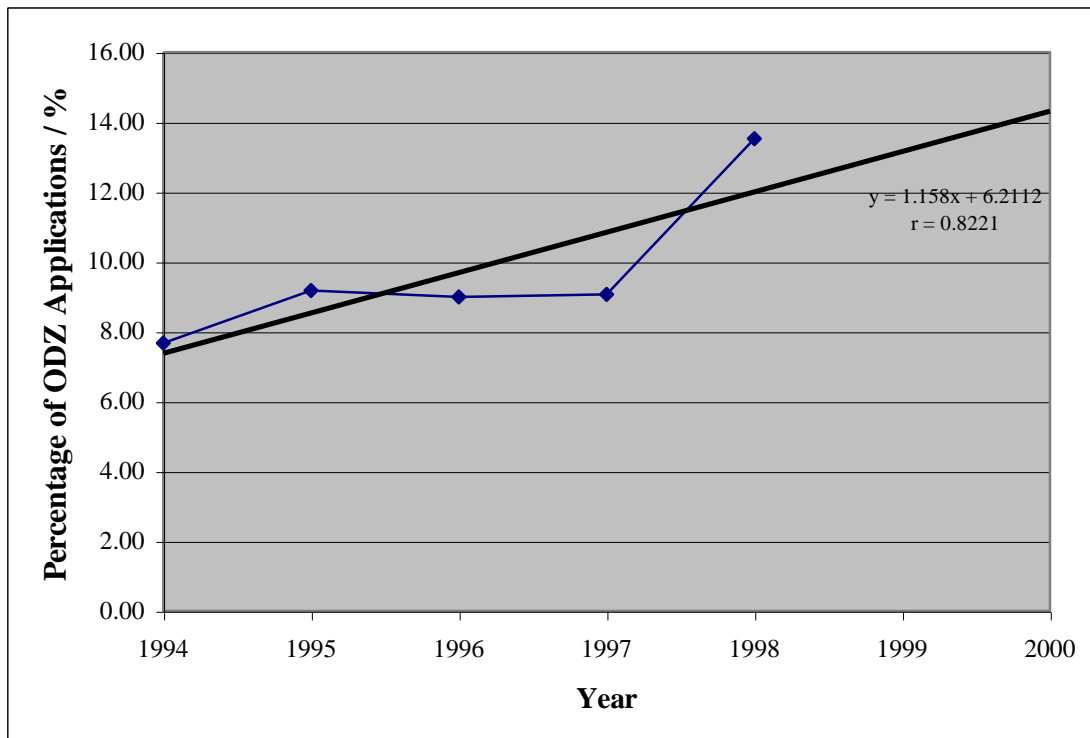
Again as in the pre-1992 case (Figure 5.3) one would expect that the percentage applications for ODZ would increase considerably, since there is a downward trend in the application within Temporary Schemes. This is shown in Figure 5.5 whereby a good correlation coefficient was also obtained for the data.

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<sup>273</sup> Values supplied on request by the PA from DCIS / ACOLAID.



One may comment that the predicted values and the actual values were relatively quite close to each other thus showing that the methodology used was successful and could be applied in real life situations.



**Figure 5.5: Graph showing the percentage of applications ODZ, with a projected trend line for the years 1999 and 2000.**

On comparing the results obtained from the graphs in Figure 5.2 with those in Figure 5.4, apart from the difference in the numerical values for the different graphs, the following observations are worth noting:

- For development within Temporary Schemes:
  - in both cases, there was a decrease in the number of applications with time;
  - the rate of decrease over the period 1989-1992 was much more evident (gradient = - 472.7) than for the period 1994-1998 (gradient = -187.7);

- both graphs showed a very good correlation coefficient,  $r$ , implying a linear relationship between the observed and the fitted values.
- For development ODZ:
  - in both cases, there was an increase in the number of applications over the years;
  - the rate of increase was larger (gradient = 131.2) for the 1989-1992 period than for the 1994-1998 period (gradient = 75.8);
  - a very good correlation coefficient,  $r$ , for the 1989-1992 period was obtained, but a lower value was achieved for the results during the period 1994-1998.

The results obtained so far show that, although numerically the values are different, similar patterns have occurred when comparing the results for the period before and after the setting up of the PA and the Structure Plan. A myriad of reasons could be suggested to explain such an effect, including the fact that certain developments that now require planning permission did not require it before 1992. Also, the analyses used raw data, implying that an application for a small pump room, for example, was being treated on the same basis as a large development covering several hectares of land. The next stage is to analyse any variations that occurred in the total annual area occupied by applications ODZ (Figure 5.6).

For the same reasons stated in section 5.2 the value for 1993 will not be used, in spite of the fact that the source of data was the same throughout (GIS). The graph obtained (Figure 5.6) shows that over the period under investigation, continuous increase in the

area for ODZ applications was registered. The equation for the regression line was used to predict values for the years 1999-2000:

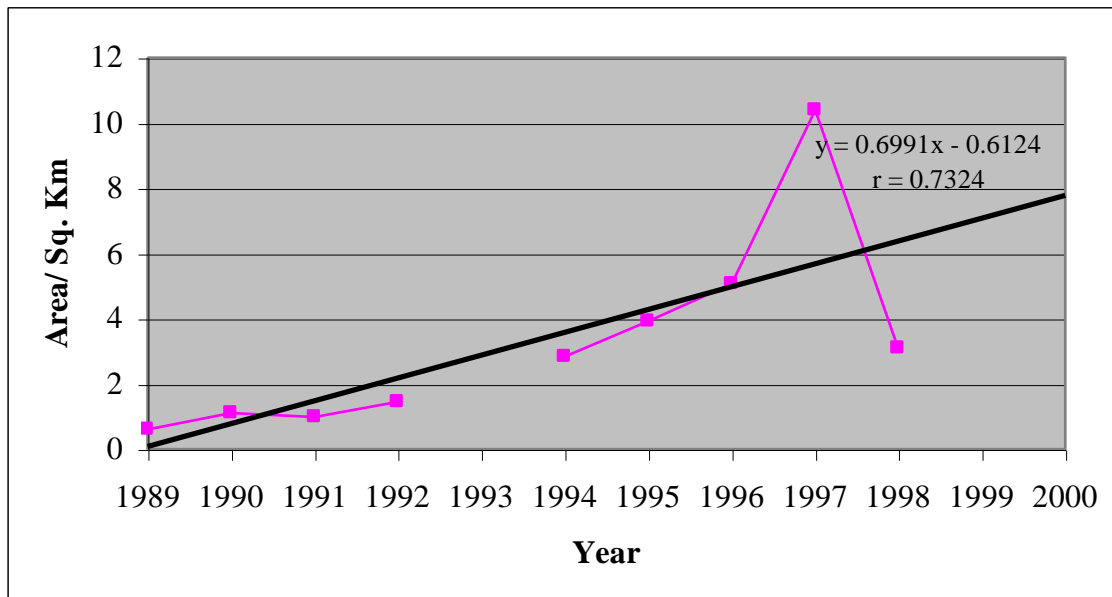
1999 8.3043 Km<sup>2</sup>

2000 9.0016 Km<sup>2</sup>

The results for ODZ applications obtained in Figure 5.2, Figure 5.4 and Figure 5.6 all showed an increase in their respective values. A graph (Figure 5.7) of the average area per application with time was produced in order to obtain a realistic value to identify whether the increase in area is due to the increase in the number of applications or due to the fact that the unit size of the applications is larger.

Graphs in Figure 5.6 and Figure 5.7 show a particular similarity in shape with each other. This is very important because it shows that the variations shown in Figure 5.6 are independent of the number of applications noted in Figure 5.2 and Figure 5.4. It also demonstrates that there was a net increase in the average area per application ODZ over the period 1989-1998.

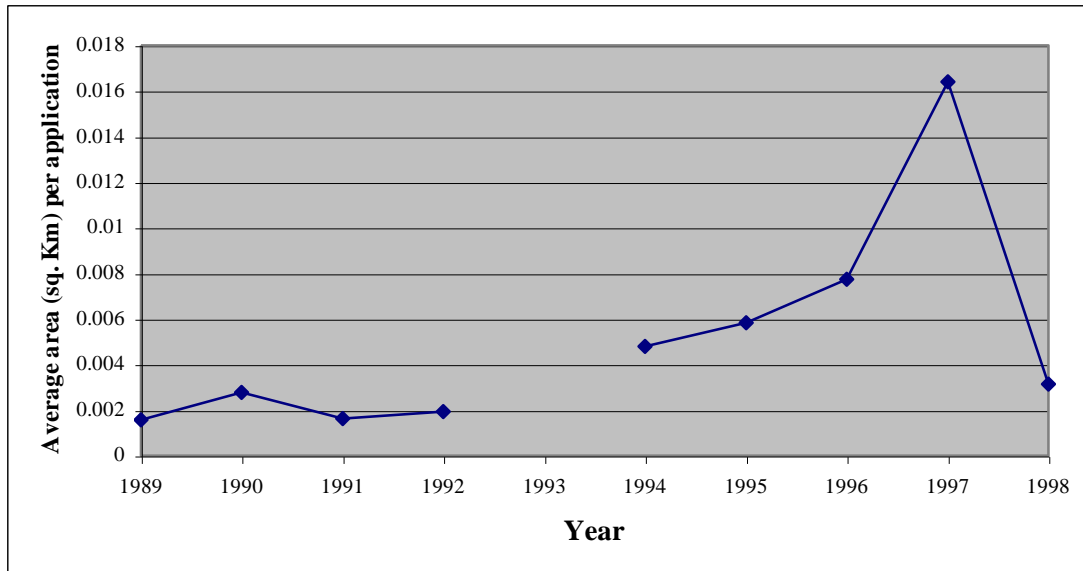
The results obtained so far have given a general picture of the situation, that is, the number and area of ODZ applications was increasing over the period under investigation. The next step is to understand the type of development which is contributing to such results. Due to the fact that the pre-1994 records are not reliable, as explained in section 5.2, the analyses will be limited to the period 1994-1998. This is the period when the Structure Plan policies were in effect and the PA was the only agency responsible for planning.



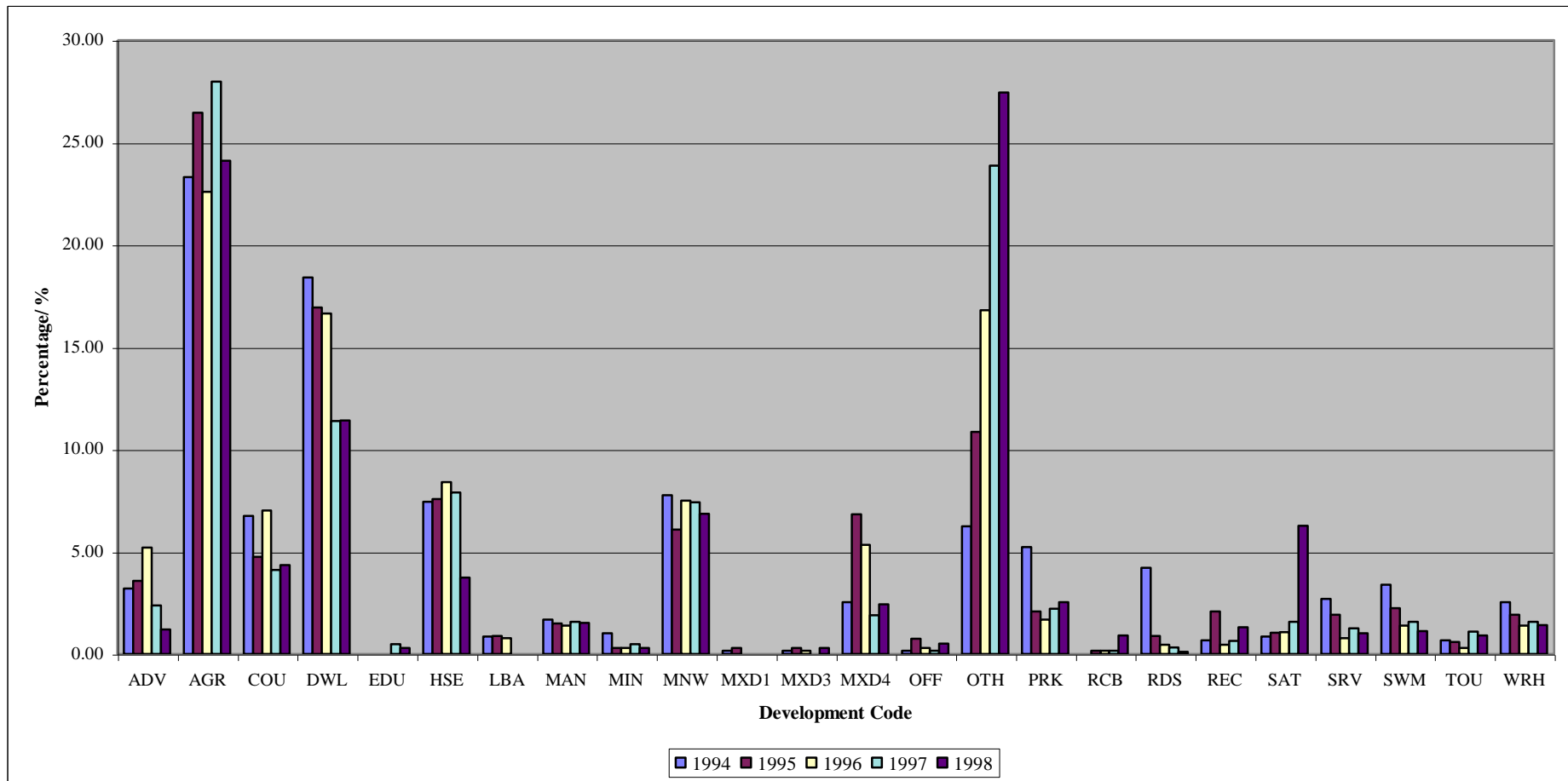
**Figure 5.6: Variation of the area (sq. Km) for applications ODZ with time for the period 1989-1998 (Source: GIS, Planning Authority, 1999).**

To obtain significant comparative results, the percentage for each development code used by the PA in the DCIS / ACOLAID software was calculated for each year. A percentage / development code graph was then plotted. The descriptions of the development codes used are found in Appendix IV.

The results from the graph (Figure 5.8) show that the major contributors to development applications ODZ are agricultural (AGR) ones, followed by development classified as “other” (OTH) and new dwellings (DWL). In some years, agricultural development contributed to more than a quarter of the applications. This is as expected, since most of the land ODZ is agricultural.



**Figure 5.7: Variation of average area (ODZ) (sq. Km) per application with time for the period 1989-1998 (sources: GIS and DCIS / ACOLAID, Planning Authority, 1999).**



**Figure 5.8: Annual percentage distribution for different development codes for ODZ applications for the period 1994-1998 (Source DCIS / ACOLAID, Planning Authority, 1999).**

#### 5.2.4 Analyses with Filtered Data

The analyses in this part will only be carried out on data between 1994 and 1998. This is because, during the period 1989-1992, the same application number was used for different applications which took place on the same site, a practice which stopped at the end of 1992. As a result there shouldn't be any duplicate applications. The 1993 figures are not being used for the same reasons stated in section 5.2. Since there is a level of inaccuracy in the filtering mechanism being used, the term "presumed" is being used when referring to filtered data.

The first analysis will concern the variations in the number of applications, both within Temporary Schemes and ODZ, for the period 1994-98 (Table 5.2 and Figure 5.9). Regression analyses will be used to obtain predicted values for the years 1999-00.

The results obtained in Figure 5.9 need to be compared with those in Figure 5.4. The trend lines obtained for ODZ applications in both graphs are similar to each other, with the exception that a lower gradient was obtained in Figure 5.9. The correlation coefficients,  $r$ , for the graphs in Figure 5.9 are lower in value, when compared to those in Figure 5.4. The predicted values in both analyses were:

For applications within Temporary Schemes:

	Unfiltered data	Filtered data
1999	6057	5780
2000	5869	5662

For applications ODZ:

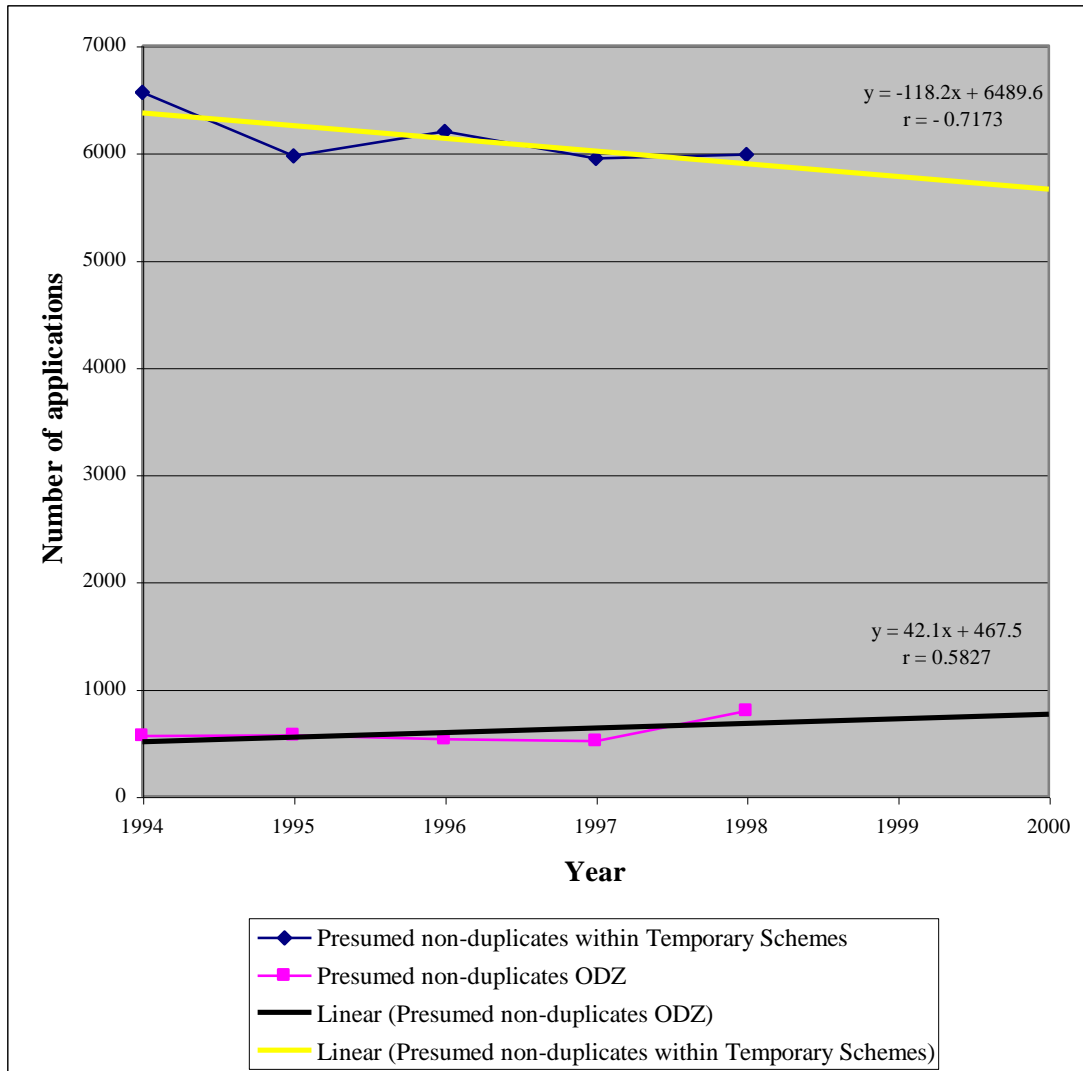
	Unfiltered data	Filtered data
1999	936	720
2000	1012	762

**Table 5.2: Filtered application data for the period 1994-1998 (original source: DCIS / ACOLAID; Planning Authority 1999).**

Year	1994	1995	1996	1997	1998
<b>Total number of Applications received</b>	7710	7340	7280	6979	7331
<b>Presumed non-duplicate applications received</b>	7125	6539	6733	6466	6781
<b>Presumed duplicates</b>	585	801	547	513	550
<b>% Presumed duplicates</b>	7.59	10.9	7.51	7.35	7.5
<b>Applications Outside Development Zone</b>	592	673	655	633	991
<b>Presumed duplicates ODZ</b>	32	108	122	117	196
<b>Presumed non-duplicates ODZ</b>	560	565	533	516	795
<b>% Presumed duplicates ODZ</b>	5.4	16.1	18.6	18.5	19.8
<b>% Presumed non-duplicate ODZ applications</b>	7.86	8.64	7.92	7.98	11.72
<b>Presumed non-duplicates within Temporary Schemes</b>	6565	5974	6200	5950	5986

It was not possible to check whether the predicted values in this case were in agreement with the true values, since the raw data for 1999 and 2000 were not available.





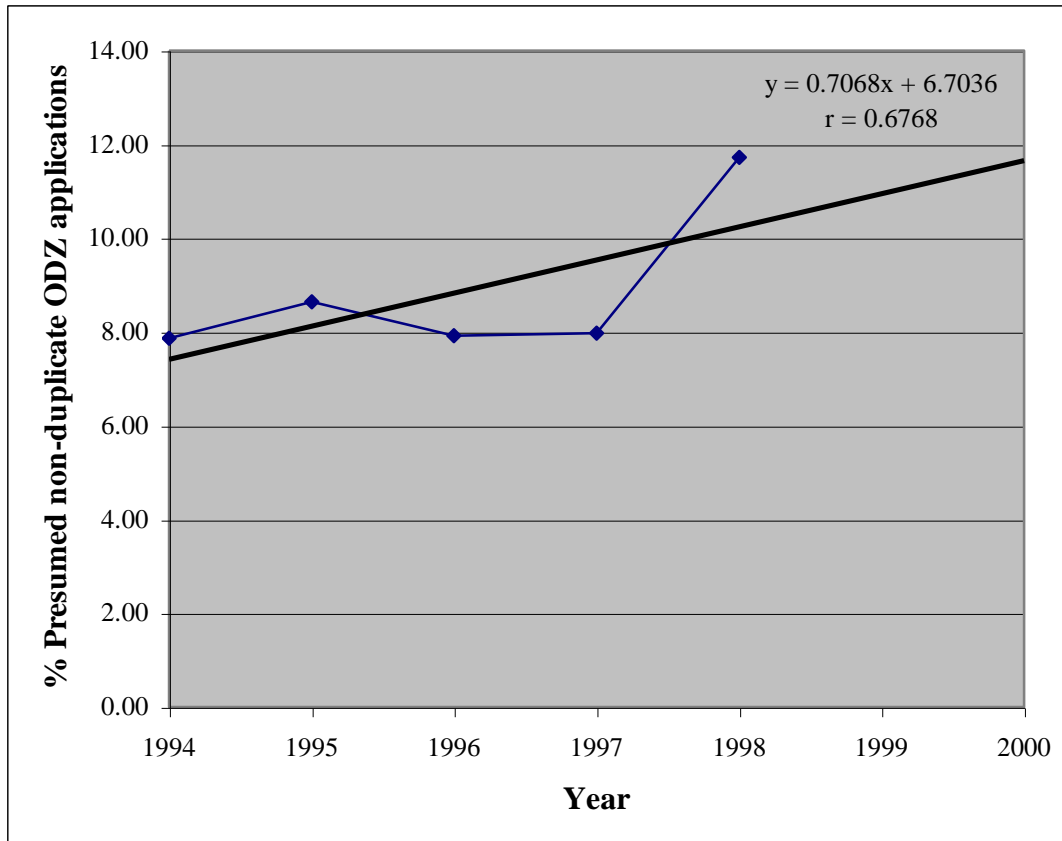
**Figure 5.9: Variations in the number of filtered applications for development within Temporary Schemes and ODZ for the period 1994-98.**

The second analysis concerns the percentage presumed non-duplicate ODZ applications which were received between 1994-98 (Figure 5.10). A regression analysis will be undertaken to obtain predicted values for the years 1999-00 and these will be compared to the values obtained from Figure 5.5.

A good correlation coefficient was obtained for both graphs (Figure 5.5 and Figure 5.10). The predicted values were, as expected, slightly lower when compared to the

values obtained with the unfiltered data, the differences between them being almost equal for both values. The following values were obtained for:

	Unfiltered data	Filtered data
1999	13.16%	10.94%
2000	14.32%	11.65%



**Figure 5.10: Graph showing the percentage presumed non-duplicate ODZ applications, with projected trend line for the years 1999 and 2000.**

In order to obtain a more detailed picture of the situation, the annual percentage distribution for different development codes for ODZ applications was calculated using filtered data (Figure 5.11). It is not easy to identify any particular differences in the results illustrated in Figure 5.8 and Figure 5.11, so another analysis was performed by calculating the differences in percentage for each value for each development code

and another graph produced (Figure 5.12). This gives a much better picture of the differences between the unfiltered and filtered data (Figure 5.9 and Figure 5.11).

For all but nine development codes the annual differences registered are less than  $\pm 0.5\%$ , whereas the maximum annual differences for the remaining nine development codes is less than  $\pm 1.62\%$ . This shows that the differences found between filtered and unfiltered data were very small, especially when the data were analysed by development type. One must also bear in mind that this study focuses on ODZ applications and so the main concerns when analysing data are:

- errors introduced during data analyses;
- the significance of such errors in the wider context of the study; and
- whether such errors could be completely eliminated without introducing more errors.

The results obtained from Figure 5.12 raise doubts over the feasibility of using filtered data, especially in view of the fact that the methodology used to filter these data is bound to introduce a certain amount of error. An exercise was therefore undertaken to view each “presumed duplicate application” for one particular year and, from other data available on the database, decide whether it was a genuine double count, whether doubtful or a genuine new application. This was a laborious task, especially when one considers that there were approximately 7,000 applications each year. 1994 was chosen as a sample year mainly due to the fact that the highest numbers of applications for the period 1994-98 were registered during that year. The exercise was carried out using the following methodology with Microsoft EXCEL software. The data for 1994 were first sorted by development type in order to get similar

development close to each other when carrying out on-screen analyses. Then, the **Advanced Filter** function was used to select unique records only.

Once these were obtained, the colour of the letters was changed. This was followed by selecting the **Show All** button so that both the filtered and unfiltered data would be visible. The distinguishing feature between both sets of data was their colour. Then the filtered data were cross-checked with other similar data in proximity and a decision taken accordingly. The criteria chosen in order to arrive at a decision were:

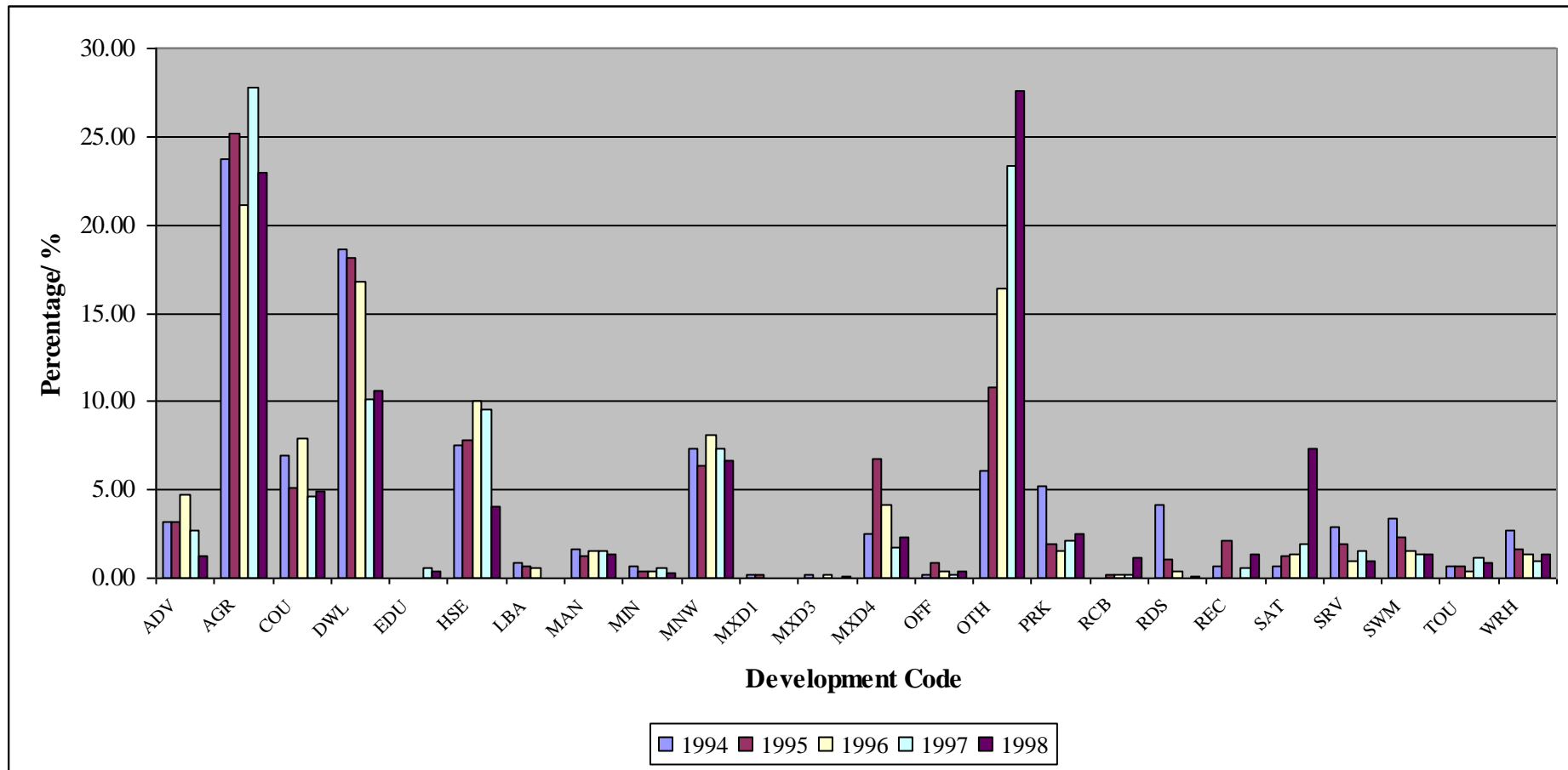
- location address (if available or complete) and / or
- GIS coordinates (when available) and / or
- development code.

It was impossible to repeat the exercise for all the years because of time constraints imposed by such a task.

The results shown in Table 5.3 demonstrate that the range of possible duplicate applications for the year 1994 is between 1.70-2.02%, the higher value being obtained if one were to consider all doubtful applications as being duplicate ones.

**Table 5.3: Data obtained following a manual examination for duplicate applications within Temporary Schemes and ODZ, for the year 1994 (Source: DCIS / ACOLAID, Planning Authority, 1999).**

Total number of applications (year 1994)	7,710	Percentages/ %
Presumed duplicates	585	7.59
Non-duplicates	429	5.56
Doubtful duplicates	25	0.32
Duplicate applications	131	1.70



**Figure 5.11: Annual percentage distribution for different development codes for ODZ applications using filtered data, for the period 1994-1998 (Source: DCIS / ACOLAID, Planning Authority, 1999).**

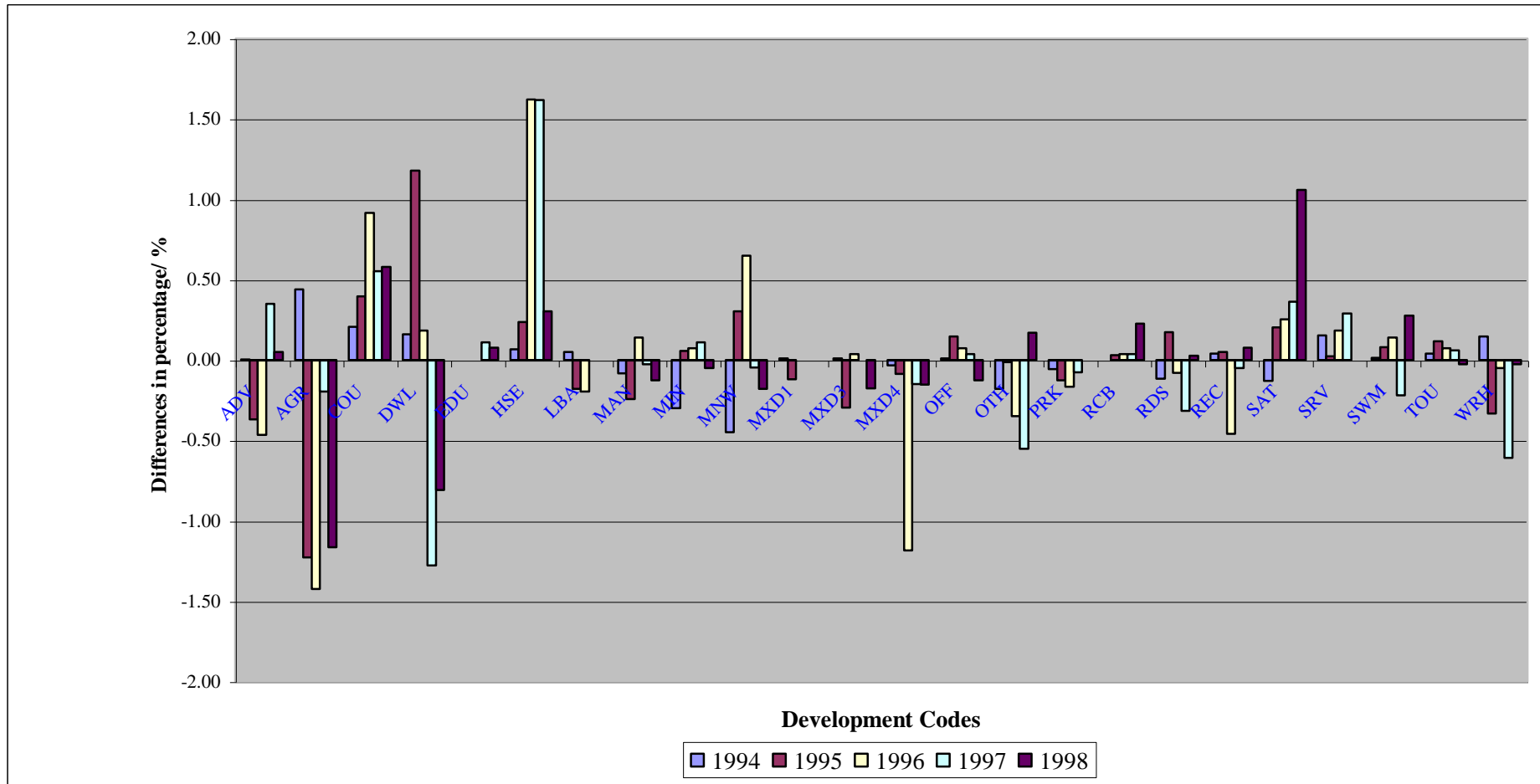


Figure 5.12: Differences in percentage values obtained for filtered (Figure 5.11) and unfiltered data (Figure 5.8).

The results obtained for year 1994 show that:

- the methodology used for filtering data introduced significant errors in the results;
- the amount of annual duplicate applications lies in the range between 1.7-2.1 %; this must be considered in the context that the analysis was carried out on the year having the highest number of applications.

This exercise only sought to register duplicate applications in the same year and a difference of over 5 % was registered when compared to the filtered data.

Ideally, in order to get the best results, filtering should be carried out collectively on all the data for the period 1994-98. This would remove any possibility of having an application on the same site in later years. An attempt to obtain a value of the presumed double counts for the whole period under investigation was made using the location address as a filtering parameter. 19.33 % of the applications were found to be presumed duplicates. This must be compared to the figures obtained in Table 5.2 for annual presumed duplicates. This result is likely to contain a larger margin of error, when compared to the margin of error obtained for an annual analysis.

The general conclusions concerning the use of filtered or unfiltered data are:

- the data as inputted in the DCIS / ACOLAID software for the period under investigation does not lend itself to easily remove double counts without the risk of introducing a significant margin of error;
- the use of the GIS to remove double counts, apart from being an expensive exercise, could deliver exact figures;

- an approximate value for the number of double counts was obtained;
- the value of double counts for grouped data ODZ is less than 1.6 %, especially when one considers that this value was obtained using a method which introduced a significant margin of error;

As a result of these conclusions, there are no further reasons why double counts should be removed when using development data in future analyses for this thesis. However, the results obtained with unfiltered data have a margin of error which has been established as contributing between 1.7-2.1 % to the annual data.

### **5.2.5 Analyses on Decision Data**

This section will consider four approaches which have been described in section 4.3.1. The first three approaches will concern applications which were decided by the decision-making boards (DCC and PA Board) during the period 1994-1998. The data used were from the DCIS / ACOLAID software from the PA. One must note that there is no relationship between the application year and the decision year. In fact, a cursory analysis of the decision data showed that the oldest files that were decided in 1997 had been submitted during 1985, under a different planning regime. Files decided in 1996 dated back to 1986, whereas, for the other years under analysis, files dated back to 1993.

The final approach will also examine decisions taken from a statistically significant number of sample files taken for the period 1989-1992. These data will be used to test whether there were any differences in the decisions taken with and without Structure

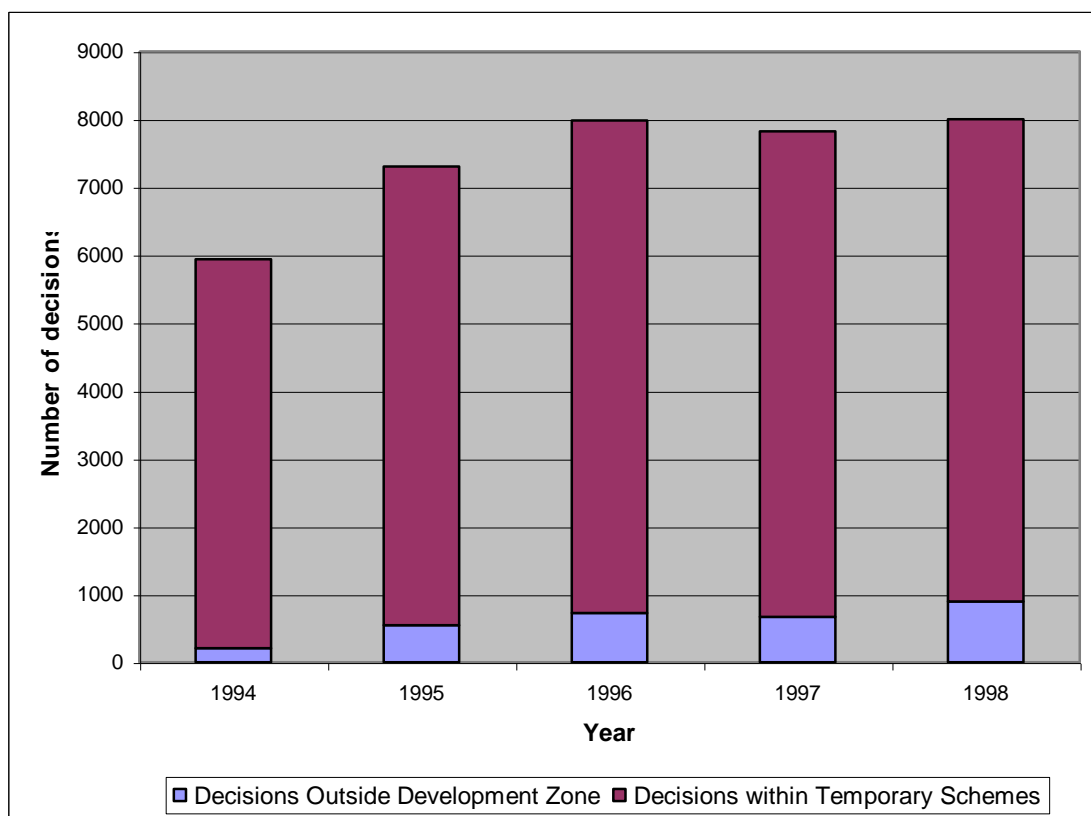


Plan policies, thus showing their effect on the decision-making process for applications ODZ.

As justified in section 5.2.4, the data used here will not be filtered for double counts.

The first analysis will compare the number of decisions taken within Temporary Schemes compared to those taken Outside Development Zone for the period 1994-98

(Figure 5.13).



**Figure 5.13: Bar graph showing variations in the number of applications decided both within Temporary Schemes and ODZ for the period 1994-98 (source: DCIS / ACOLAID, Planning Authority, 1999).**

The graph shows that after following an increase in performance level by the decision-making boards during 1994-95, the following three years resulted in a

constant output of about 8000 decisions annually<sup>274</sup>. When assessing these figures, it is assumed that the number of files being processed by the Case Officers is not acting as a limiting factor on the decision-making boards, although there is no way of checking if this is the case.

The next level of analysis will concern only decisions taken on applications ODZ. Decisions were sorted, on an annual basis, by their Decision Code and then the percentages for each code were calculated (Table 5.4), allowing graphical comparison (Figure 5.14). The descriptions of the codes used are found in Appendix IV. There are a number of decision codes which do not clearly define the appropriate decision level where they were taken because the data given by the PA did not clarify a potential anomaly. The decision codes concerned were:

- WDN, which could imply that an application was withdrawn by the applicant either at the first decision stage or at the Planning Appeals Board;
- DIS, which could mean that the application was dismissed either at the Reconsideration stage or Planning Appeals Board level;
- UPH, which could mean that the application was upheld either at the Reconsideration stage or Planning Appeals Board level.

The results in Figure 5.14 show that during the five years reviewed, the percentage number of applications granted a permit (GTD) was always larger than refused (REF). This result should be considered in the context of a steady decline in the percentage of ODZ applications granted permits after 1995 accompanied by an increase in the

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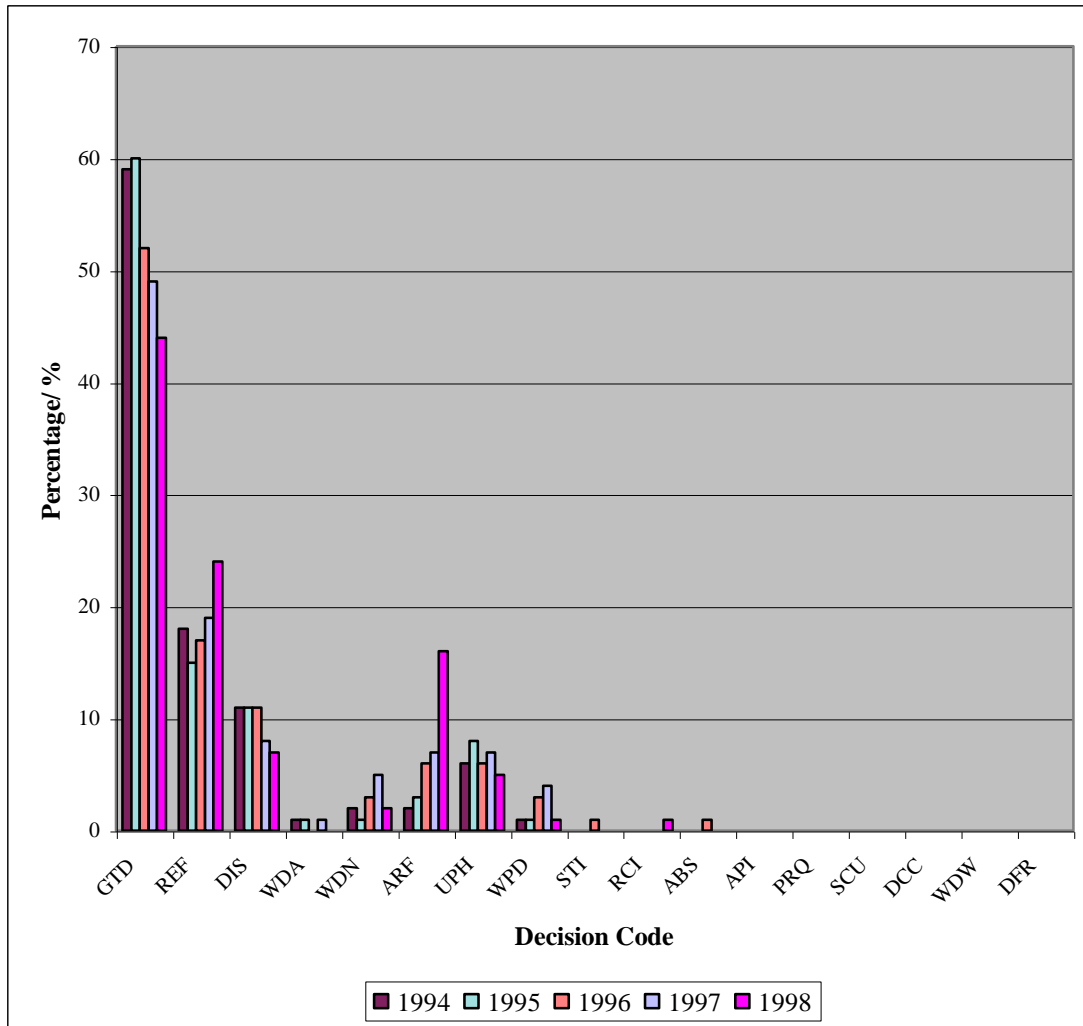
<sup>274</sup> The data include delegated decisions taken by Case Officers and endorsed by the DCC according to *Instruments of Delegation, 1993* and *Instruments of Delegation, 1997*. It is also important to note that Case Officers are not allowed to take any decision concerning developments ODZ.

percentage refused. These results reflected the first decision stage. Applicants have the opportunity to ask for Reconsideration from the first decision or from an imposed condition attached to the permit. They can also Appeal from the first decision or from a condition attached to a permit.

**Table 5.4: Number of annual ODZ decisions and their equivalent percentages together with the corresponding decision codes (original source: DCIS / ACOLAID, Planning Authority; Status: July 1999)<sup>275</sup>.**

Decision Code	1994		1995		1996		1997		1998	
	Number of Decisions	%	Number of Decisions	%	Number of Decisions	%	Number of Decisions	%	Number of Decisions	%
GTD	122	59	327	60	371	52	328	49	389	44
REF	38	18	79	15	122	17	124	19	211	24
DIS	22	11	57	11	78	11	53	8	61	7
WDA	3	1	4	1	1	0	6	1	4	0
WDN	4	2	8	1	25	3	30	5	18	2
ARF	5	2	16	3	42	6	47	7	144	16
UPH	13	6	43	8	44	6	45	7	45	5
WPD	2	1	3	1	24	3	24	4	12	1
STI	0	0	1	0	4	1	2	0	1	0
RCI	0	0	0	0	3	0	3	0	9	1
ABS	0	0	2	0	4	1	0	0	0	0
API	0	0	1	0	1	0	0	0	0	0
PRQ	0	0	0	0	1	0	0	0	0	0
SCU	0	0	0	0	1	0	0	0	0	0
DCC	0	0	0	0	1	0	3	0	0	0
WDW	0	0	0	0	0	0	1	0	0	0
DFR	0	0	0	0	0	0	0	0	1	0

<sup>275</sup> The percentage columns do not total up to 100 due to rounding errors.



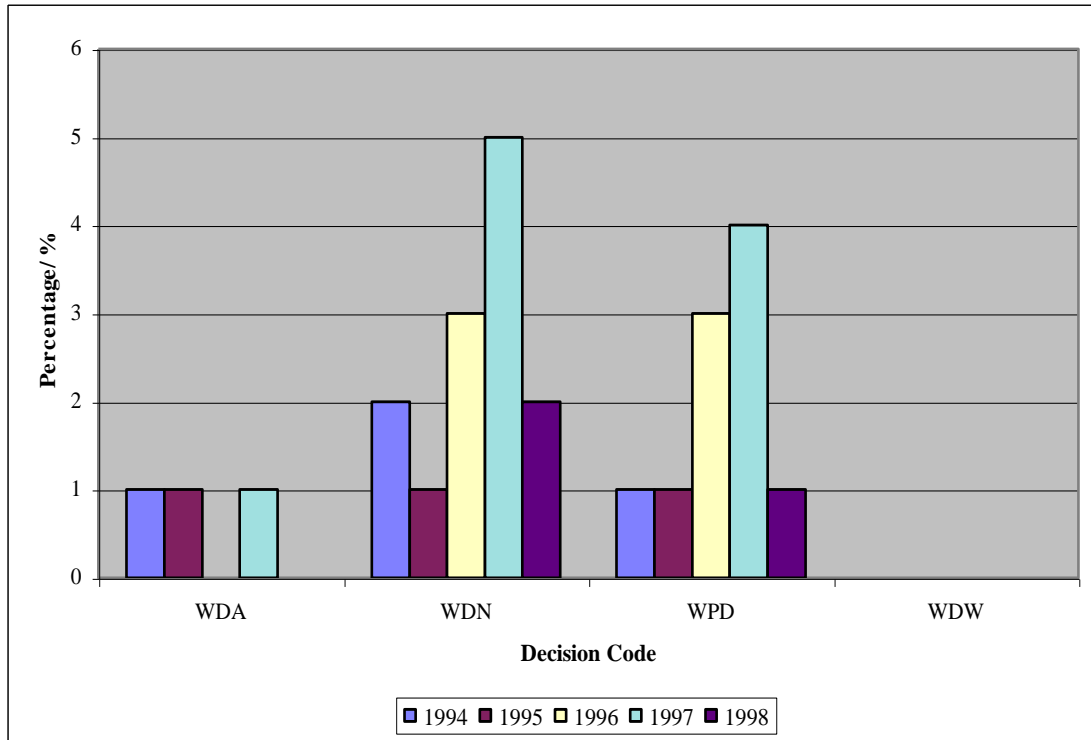
**Figure 5.14: Annual percentage distribution of the different decision codes for the period 1994-1998 concerning decisions for applications ODZ (Source: DCIS / ACOLAID, Planning Authority, 1999).**

The number of dismissed applications (DIS) from the Reconsideration or Appeal stage was always higher than those upheld (UPH). This implies that in most cases the original decision was retained, rather than overturned when this was re-evaluated at Reconsideration or Appeal stage. In addition, there was a steady increase in the number of Appeals submitted which were not yet determined (ARF) by July 1999. When the variations in the percentages for the codes DIS, ARF and UPH together are considered, the following scenarios are possible:

- applicants could be reverting more to Appealing a decision rather than asking for a Reconsideration, hence the increase shown in the percentage for the code ARF;
- the number of decided Reconsiderations was decreasing, therefore a backlog in the number of pending Reconsiderations, which is not evident in these data, was increasing;
- the rate of Appeals being decided was much slower than those submitted, hence the increase in the percentage for the code ARF.

The only other decision code, which could affect the values of granted or refused development, was SCU. However, in the five years under study, there was just one case where such a code was used and so its contribution to the overall values was deemed insignificant.

A number of applications reported in Figure 5.14 never reached a final decision or in some cases, the final decision remains obscure. These could be categorised under two headings, namely applications which were withdrawn and applications which for some reason or another were taken out of the system. The withdrawn cases are coded: WDA, WPD, WDN and WDW, whereas the others are coded: STI, RCI, ABS, API, PRQ and DCC. The only code not considered so far is DFR, of which there was only one case in 1998. The withdrawn cases coded WDN could have been withdrawn either at the first decision stage, where no decision would have been taken or at the Appeals' stage where either one or two decisions (1<sup>st</sup> decision and / or Reconsideration) would have already been taken. Figure 5.15 shows the collective contribution the withdrawn cases had during the study period.



**Figure 5.15: Graph showing annual variations of applications ODZ which were coded as withdrawn (Source: DCIS / ACOLAID, Planning Authority; status: July 1999).**

The results in Figure 5.15 show that the total contribution of withdrawn applications ODZ accounted to an annual value of between 3-10% of the total number of applications. Most of these were either withdrawn by the applicant (WDN) or by the Planning Directorate (WPD)<sup>276</sup>.

The overall contribution by the remaining decision codes was relatively insignificant (code STI and ABS totalling 2% in 1996 and code RCI contributing 1% in 1998).

<sup>276</sup> There is no legal support from the planning legislation for the Planning Directorate to withdraw applications. However, the practice is that whenever there is no answer from the applicant to queries from the Planning Authority, indicating that there is no more interest in the case, then a final letter is sent to the applicant indicating that unless within a period of time no reply is received from his / her end, the application will be considered withdrawn (Cilia G., personal communication).

The results in Figure 5.14 showed that there was an increase in the percentage number of refusals accompanied by a decrease in approvals, during the years 1994-98. In order to understand whether this was happening by chance or due to the behaviour of the decision-making board, a Chi-Square Test using SPSS software was carried out. The following hypothesis was tested:

*H<sub>0</sub>: The decision is independent of the year it was taken. (There is no association between decision and year).*

*H<sub>1</sub>: There is an association between decision and year.*

**Table 5.5: Number of applications granted permission or refusal for the period 1994-98.**

Decision	Year					Total
	1994	1995	1996	1997	1998	
<b>GTD</b>	122	327	371	328	389	1537
<b>REF</b>	38	79	122	124	211	574
<b>Total</b>	160	406	493	452	600	2111

**Table 5.6: Results obtained from the Chi-Square Test.**

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	34.000 <sup>a</sup>	4	.000
Likelihood Ratio	33.939	4	.000
Linear-by-Linear association	28.021	1	.000
N of valid cases	2111		

a. 0 cells (0.0%) have an expected count rate less than 5. The minimum expected count rate is 43.51.

Since the p-value is approximately 0 and is less than the level of significance (0.05), we reject H<sub>0</sub> and accept H<sub>1</sub>. The ratio of refused application to approved applications increased during the period 1994-98 and this didn't occur by chance but due to the proceedings adopted by the decision board.

The first part of this section dealt with an overall view of the various decision codes used, thus obtaining a general picture of the different decisions used and their annual variations throughout the study period. The following part will use the same decision codes, but will divide them according to the type of development code and decision year. As a result it should be possible to compare variations according to both decision codes and also development type and decision year. As in the initial analyses in this section, the data were converted into a percentage value in order to obtain an equitable comparative value over the study period. Also, the DCIS / ACOLAID data will be used and will not be filtered as explained in section 5.2.4. The type of analysis carried out increased the matrix of results considerably and it would have been an inefficient exercise to analyse all the results separately due to the fact that there were some codes whose contribution could be considered insignificant (less than 1%). The analyses will concentrate on those decision codes where an annual contribution greater than 1% was registered for the development type. In order to manage these results in a comprehensible manner, four groups of decision codes were collated together and will be analysed accordingly. These were:

- Appeal against refusal submitted but not yet determined, ARF;
- the withdrawn group (WDA, WDN, WDW, WPD);
- the dismissed / upheld group (DIS, UPH);
- the granted / refusal group (GTD, REF).

Since the quantity of data was considerable in all groups, more than one graph had to be drawn for each group. Zero values obtained in the analysis were omitted from the graphs.

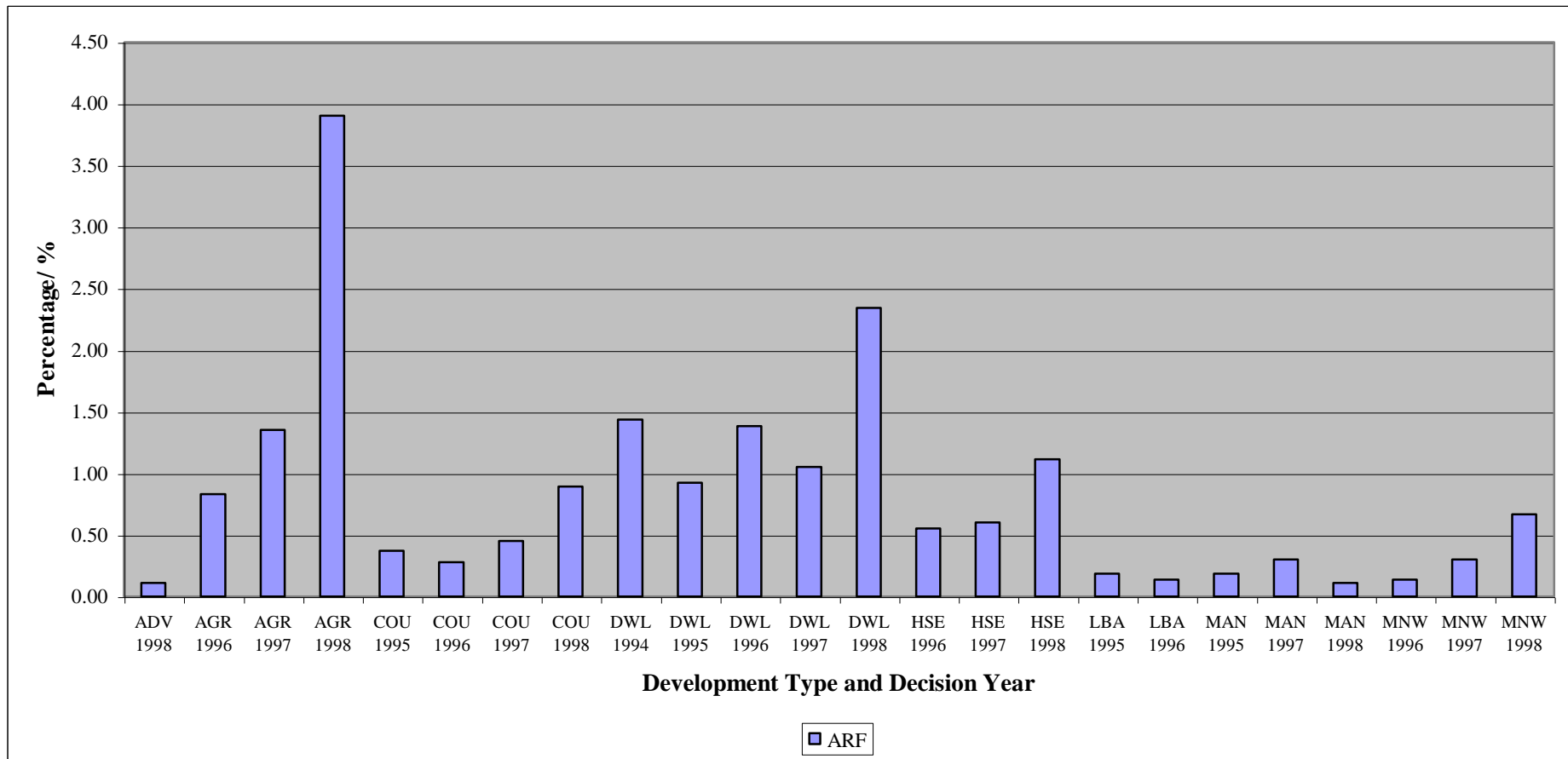


Figure 5.16 and Figure 5.17 illustrate percentages of different development types and decision years for the decision code ARF.

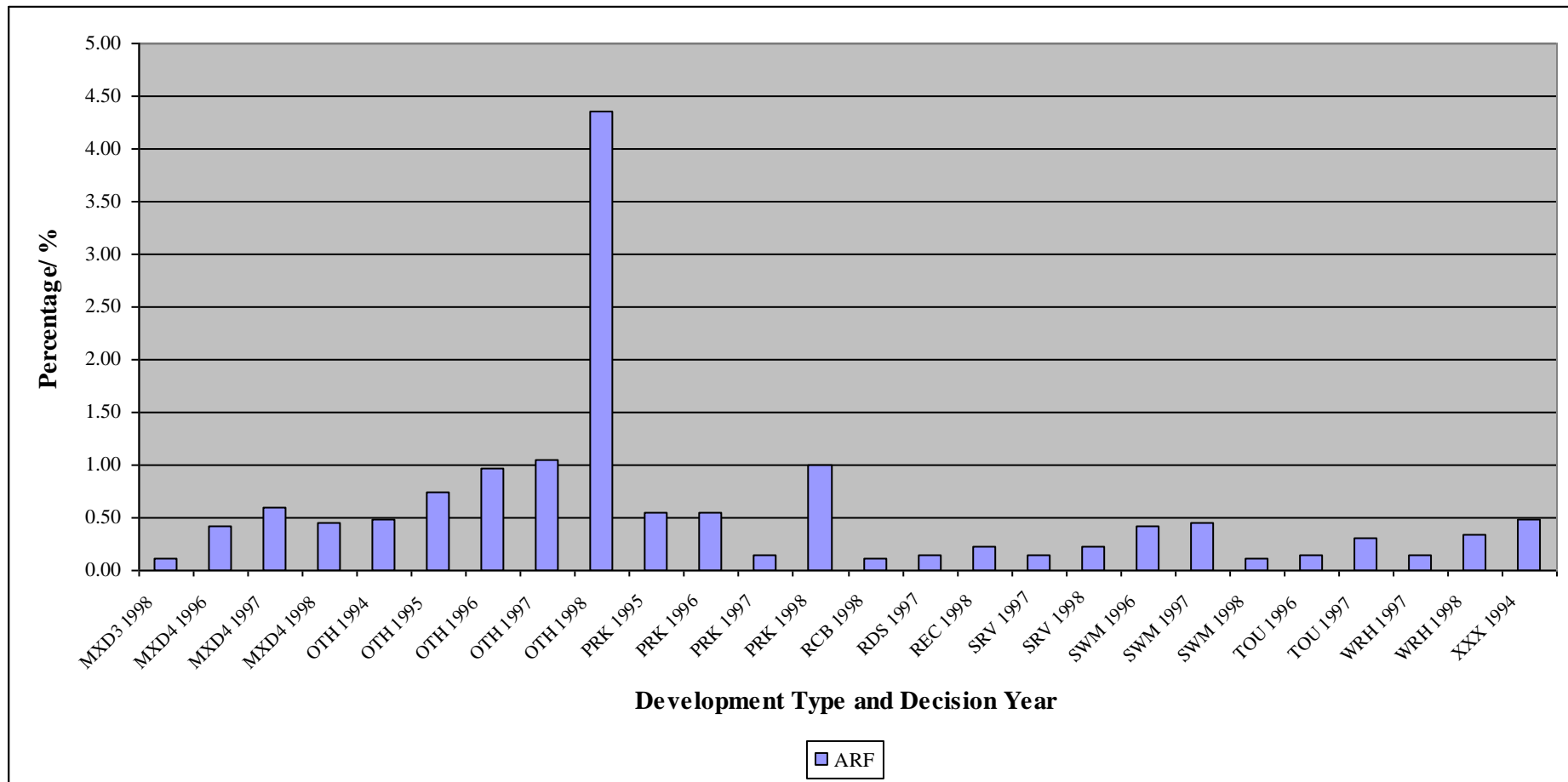
The analysis of these data gives an indication of the development types which are either most contested or which get the highest number of refusals ODZ. Annual variations also give an indication that it could take a considerable amount of time to make a decision at the Appeals' stage, hence the values during 1997-98 are higher. Comparative analyses with the use of these data could give misleading results due to their dynamic nature, that is, once a decision is taken it is removed from this decision code and transferred to the upheld or dismissed section, thus affecting another group of data. In spite of this problem, an indication of the development types which are of concern can still be gained. In fact, a 1% threshold was used to define the significant development codes from the insignificant ones.

The main development types which had a significant contribution to the ARF group were:

- agricultural (ARG)
- new dwellings (DWL)
- householder (HSE)
- car parking and vehicle garaging (PRK)
- “other” (OTH).



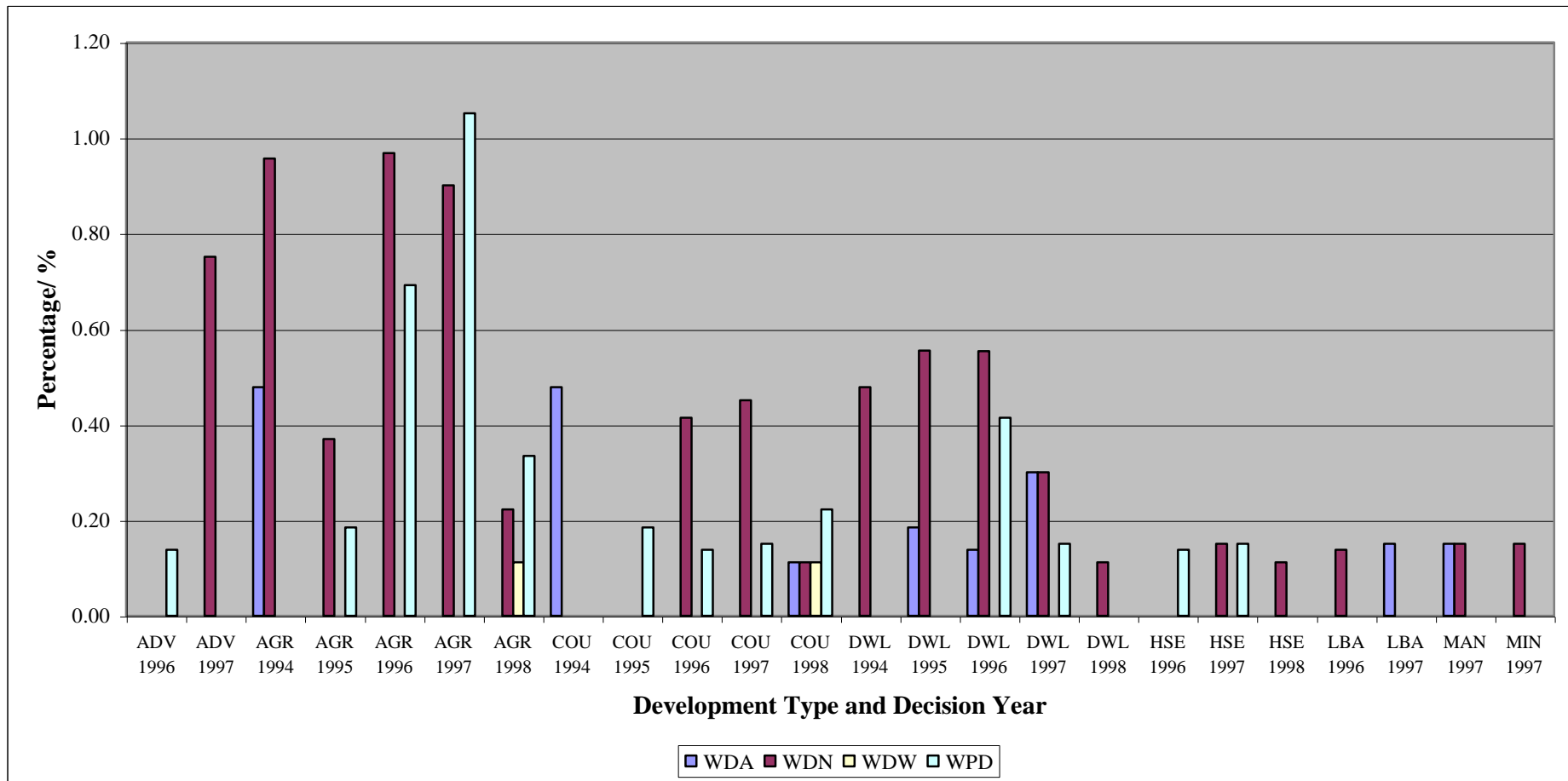
**Figure 5.16: Graph showing percentage variations for different development types during various years for decision taken for ODZ applications which were appealed against refusal but had not yet been determined by July 1999 (source: DCIS / ACOLAID, Planning Authority, 1999).**



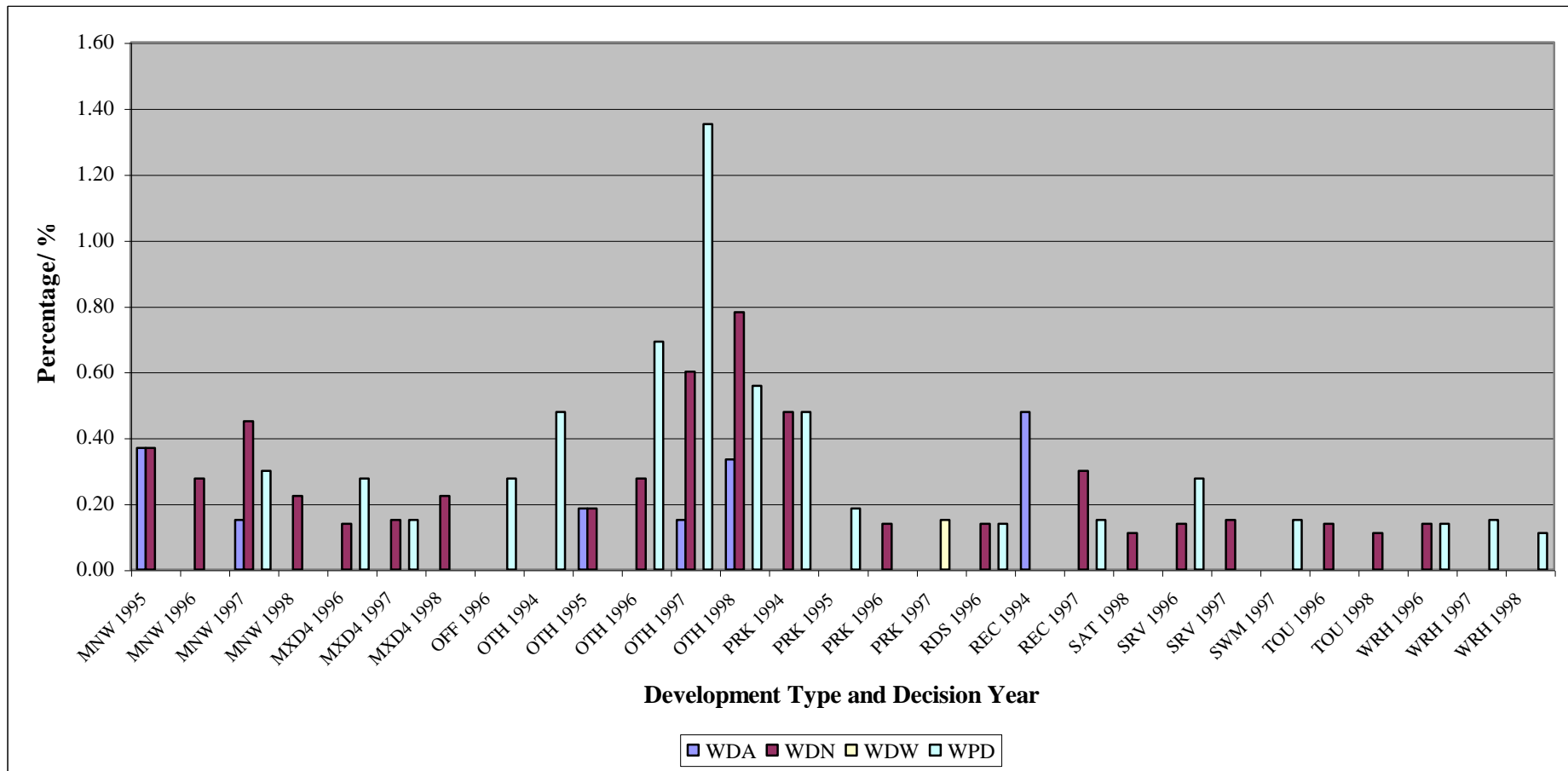
**Figure 5.17: Graph showing percentage variations for different development types during various years for decision taken for ODZ applications which were appealed against refusal but had not yet been determined by July 1999 (source: DCIS / ACOLAID, Planning Authority, 1999).**

The two main groups that showed a consistent contribution throughout the five-year study period were those classified as “other” (OTH) and new dwellings (DWL), whereas, agricultural developments (AGR) showed a rapid increase during the last three years. However, this does not imply that there weren’t any agricultural developments falling under this category before 1996; these could already have been decided when the data were collected. A similar situation, but probably on a smaller scale, was registered for householder developments, which usually consist of minor works on dwellings. If the householder developments (HSE) are added to the dwellings development (DWL), then dwellings ODZ would appear to be a contentious issue, whereby the indications are that several refusals are issued. The development type COU (change of use) is the only development type out of all the rest which has not yet been considered, but which could have an effect on dwelling developments. This is due to the fact that a change of use could be from some type of development into a residential one. Such an example would be a farm building changed into a residential farmhouse.

The next type of analysis concerns applications which were withdrawn at a particular stage of the decision level. The results obtained (Figure 5.18 and Figure 5.19) show that, with the exception of two cases concerning withdrawn applications by the Planning Directorate (WPD), all development types had a contribution of less than 1%. There are four different codes concerning withdrawn applications and the different trends will be analysed accordingly.



**Figure 5.18: Graph showing percentage variations for different development types during various years for developments for ODZ applications which were withdrawn at a particular stage of the decision level (source: DCIS / ACOLAID, Planning Authority, 1999).**



**Figure 5.19: Graph showing percentage variations for different development types during various years for developments for ODZ applications which were withdrawn at a particular stage of the decision level (source: DCIS / ACOLAID, Planning Authority, 1999).**

The highest percentage contribution where the applicants withdrew their Appeal (WDA) was 0.48%. This was registered in 1994 in the agricultural, change of use and recreational development types.

The code WDN<sup>277</sup> was the most commonly used in this group. There is a dual contribution to this code, one whereby the application is withdrawn at the first decision level and secondly, where an application is withdrawn at the Appeals' level. There is no way one can distinguish between these two. This could imply that a significant number of applications from various development types are withdrawn at either of these levels. The main development types where this happened during the five-year study period, although at a level below 1%, were agricultural (AGR) and new dwellings (DWL); the development type "minor new works" (MNW) and "other" (OTH) contributed to values lower than 0.8% over a four year span, with the rest of the development types having a smaller contribution over shorter periods.

There were three development types for which a request for Reconsideration was withdrawn (WDW). Two of these took place in 1998 (AGR and COU) and one in 1997 (PRK) and in all cases the contribution was less than 0.15% and so insignificant.

There were a number of applications from various development types which were withdrawn by the Planning Directorate (WPD) before the first decision was taken. There were three types (AGR, COU, OTH) whereby this occurred for four years, with agricultural and "other" having a significant annual percentage (>1%). All the other

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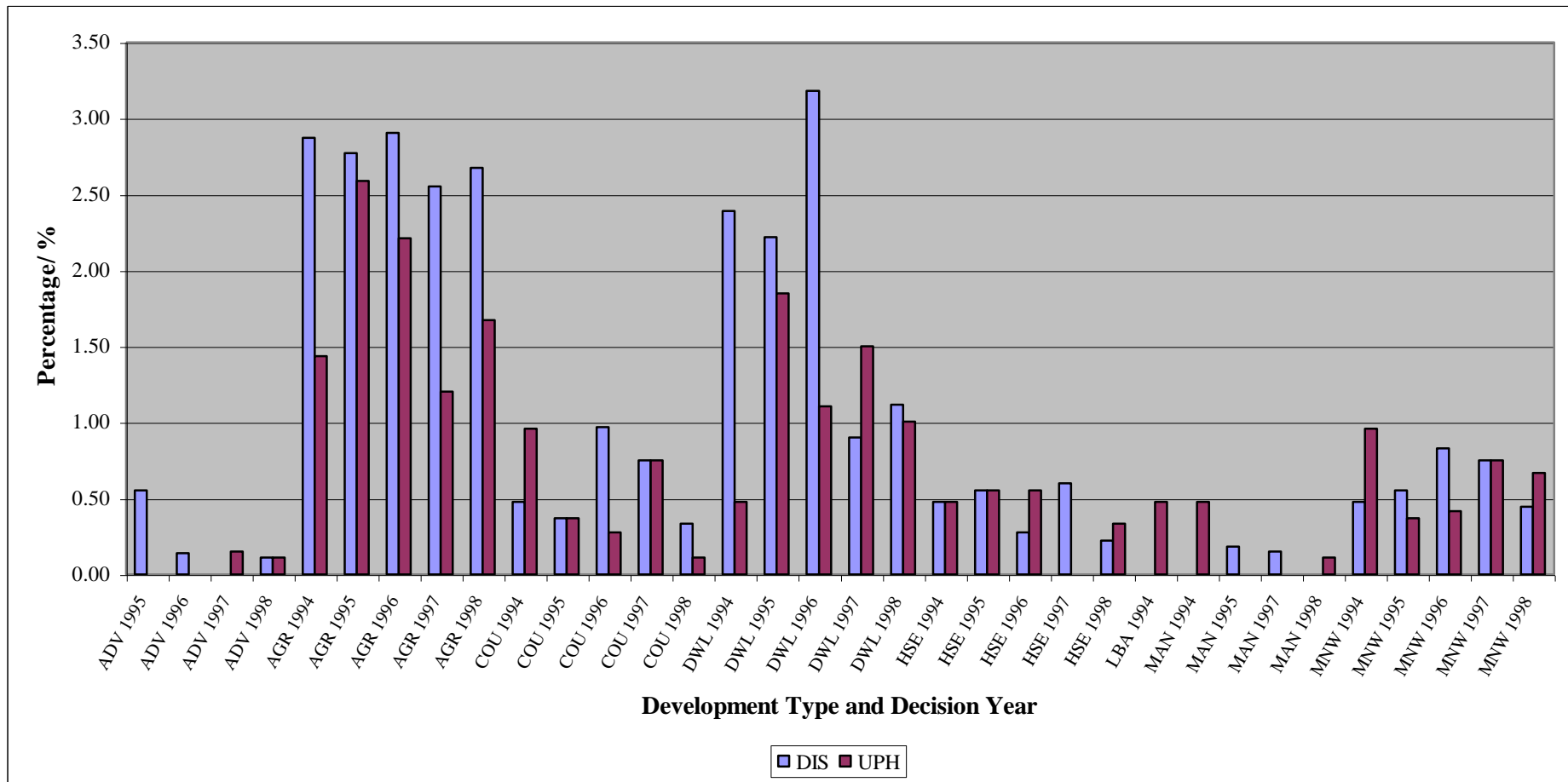
<sup>277</sup> It seems that the WDN code was initially used in all cases, that is, either when the application was withdrawn by the applicant or by the PA or when an Appeal was withdrawn by applicant. Later the code WDA was introduced to distinguish those Appeals withdrawn by applicant and other types of withdrawn cases (Saliba M. personal communication, August 2001).

development types exhibited values which were lower than 0.5% and so could be considered insignificant.

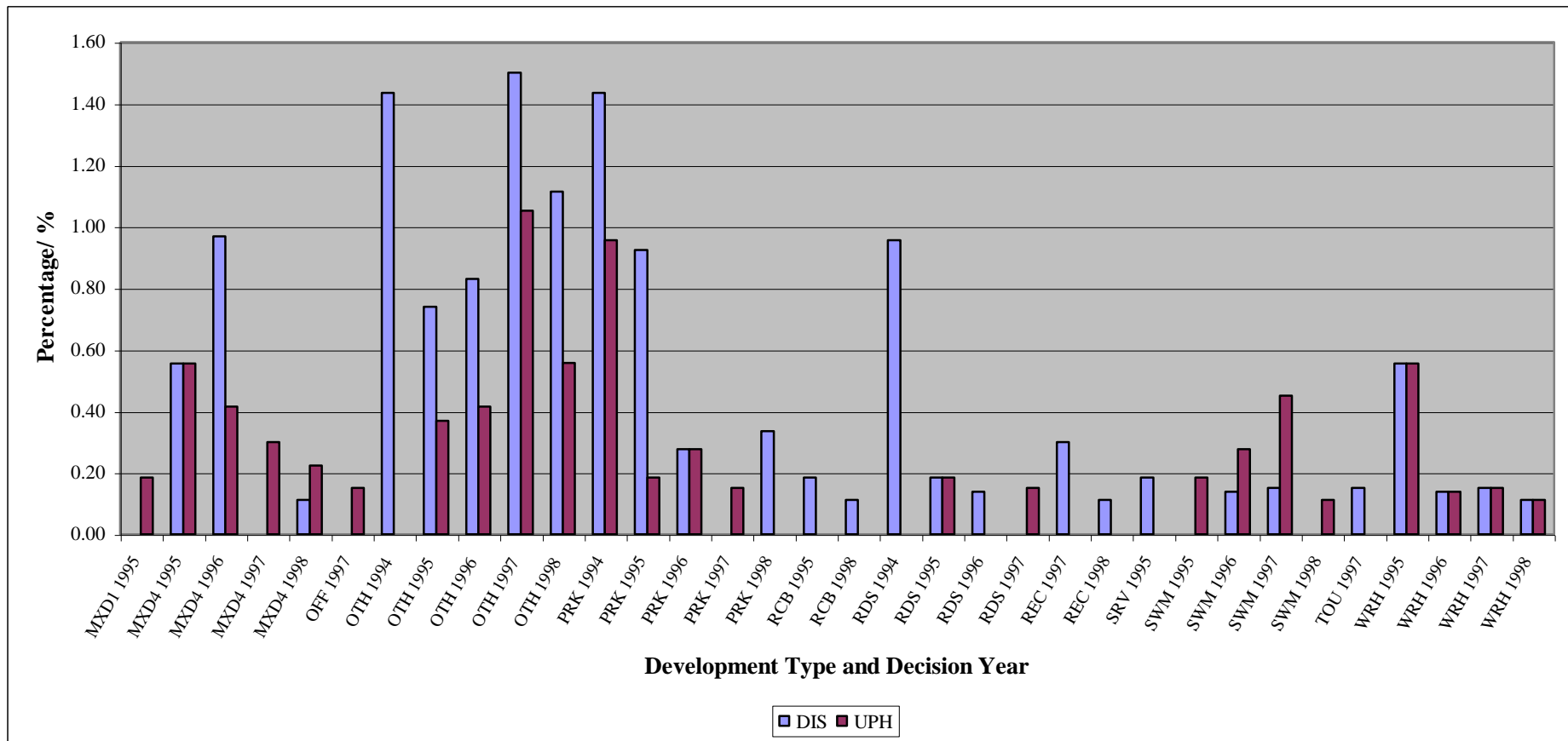
The next group of data which will be analysed is that concerning dismissed (DIS) and upheld (UPH) decisions (Figure 5.20 and Figure 5.21). This is a very difficult group to attribute to a particular decision tier level, the reason being that these codes are used both at Reconsideration and Appeals' levels. However, this group is one of the two being analysed (the other being the granted / refused group), which are particularly important, since in these cases a decision is being taken whether a development is granted permission or not. The analysis will be slightly different from that above; it will mainly concentrate on development types which were common over the five-year period of analysis, limiting comments on the rest.

There were seven types of development (AGR, COU, DWL, HSE, MNW, OTH, PRK) which were present through the five-year study period. The development types which contributed considerably were the agricultural (AGR), followed by dwelling (DWL) and by the "other" (OTH) group. The dismissed applications in these three groups were always greater than those upheld, however, there were also a considerable proportion of upheld applications throughout the study period.





**Figure 5.20: Graph showing percentage variations for different development types during various years for developments for ODZ applications which were decided (Dismissed or Upheld) either at Reconsideration or Appeals' Board level (source: DCIS / ACOLAID, Planning Authority, 1999).**



**Figure 5.21: Graph showing percentage variations for different development types during various years, for developments for ODZ applications which were decided (Dismissed or Upheld) either at Reconsideration or Appeals' Board level (source: DCIS / ACOLAID, Planning Authority, 1999).**

The final part of the analysis concerns those involving a grant or refusal of development permission at first decision level. This is the major part of the analysis in this group due to the fact that the cumulative totals of granted and refused applications at this level were between 68-77% of all decisions taken during the five-year study period. The results of these analyses are shown in Figure 5.22 - Figure 5.25.

Since double counts were not removed from these data, then records which appear at the next analytical level (GTD / REF) could have already been analysed above. This does not imply that both situations would have occurred during the same year, the likelihood is that this doesn't happen. This is due to the fact that following a grant or refusal at first decision tier level, the applicant has a right for Reconsideration or an Appeal both in case of a refusal to an application or a condition from permit.

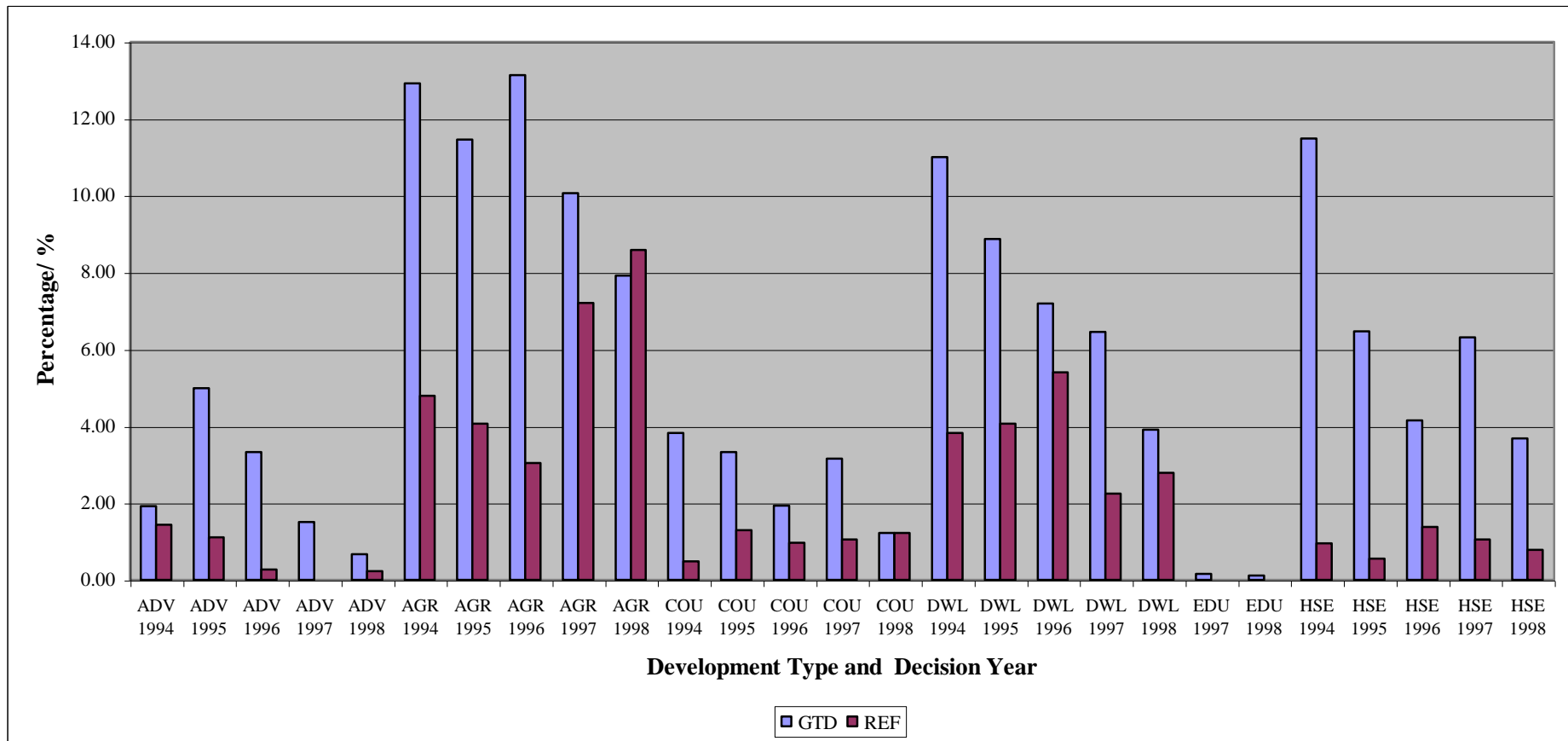
This analysis contains 24 different development types, half of which exceed the 1% annual threshold level used in the previous analyses. There were five groups which surpassed the 2% mark for five consecutive years, indicating that their contribution was a substantial one when compared to the rest. This group consists of agricultural (AGR), new dwellings (DWL), householder (HSE), minor new works (MNW) and the development type termed "other" (OTH). In all these cases, (with one exception: AGR, 1998) the percentage of granted applications was always higher than those refused.

In order to obtain a better comparative evaluation of this group of development types especially in view of the fact that the scale of the y-axis in Figure 5.22 - Figure 5.25 was not always the same, a table of granted : refusal percentage ratio was constructed (Table 5.7).

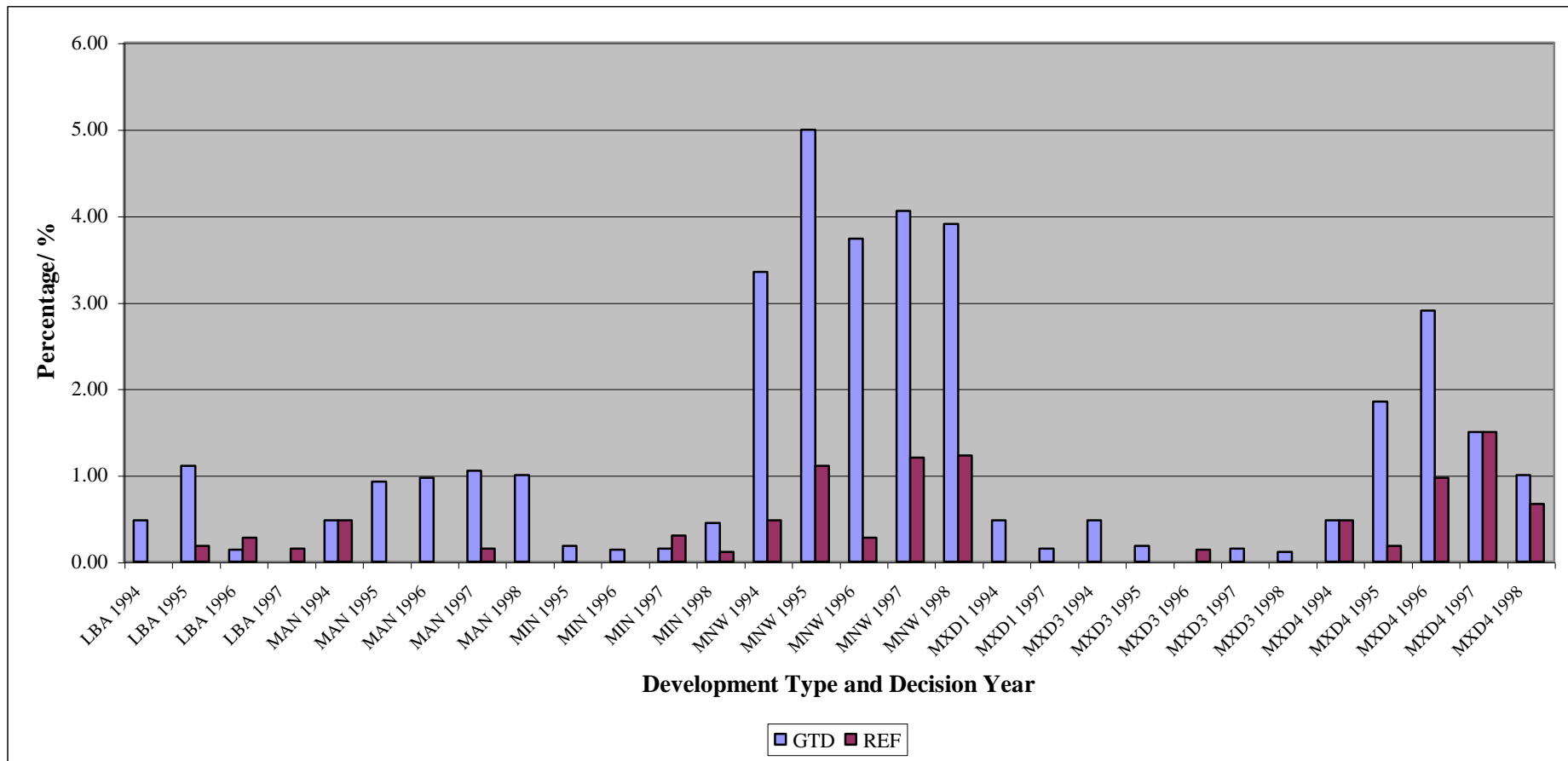
In all the groups, analysed in Table 5.7, with the exception of AGR in 1998, the percentage GTD was always greater than REF, with groups such as HSE and MNW being comparatively greater when compared to the others in the table.

**Table 5.7: Table of grant : refusal percentage ratio of a selected number of development types ODZ.**

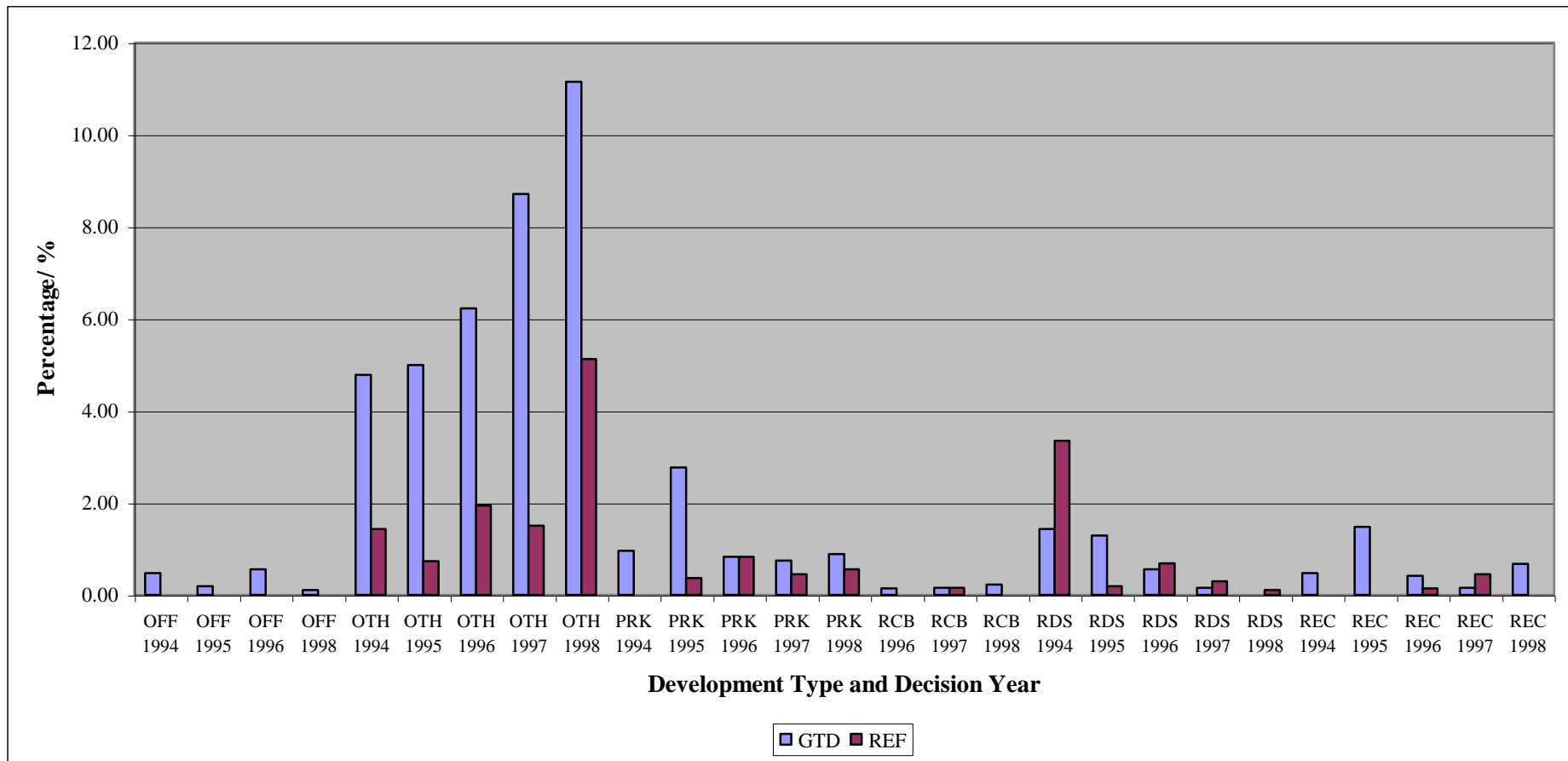
GTD/REF	AGR	AGR	AGR	AGR	AGR	DWL	DWL	DWL	DWL	DWL	HSE	HSE	HSE
	1994	1995	1996	1997	1998	1994	1995	1996	1997	1998	1994	1995	1996
% ratio	2.7:1	2.8:1	4.3:1	1.4:1	0.9:1	2.9:1	2.2:1	1.3:1	2.9:1	1.4:1	12.0:1	11.7:1	3.0:1
GTD/REF	HSE	HSE	MNW	MNW	MNW	MNW	MNW	OTH	OTH	OTH	OTH	OTH	
	1997	1998	1994	1995	1996	1997	1998	1994	1995	1996	1997	1998	
% ratio	6.0:1	4.7:1	7.1:1	4.5:1	13.5:1	3.4:1	3.2:1	3.3:1	6.8:1	3.2:1	5.8:1	2.2:1	



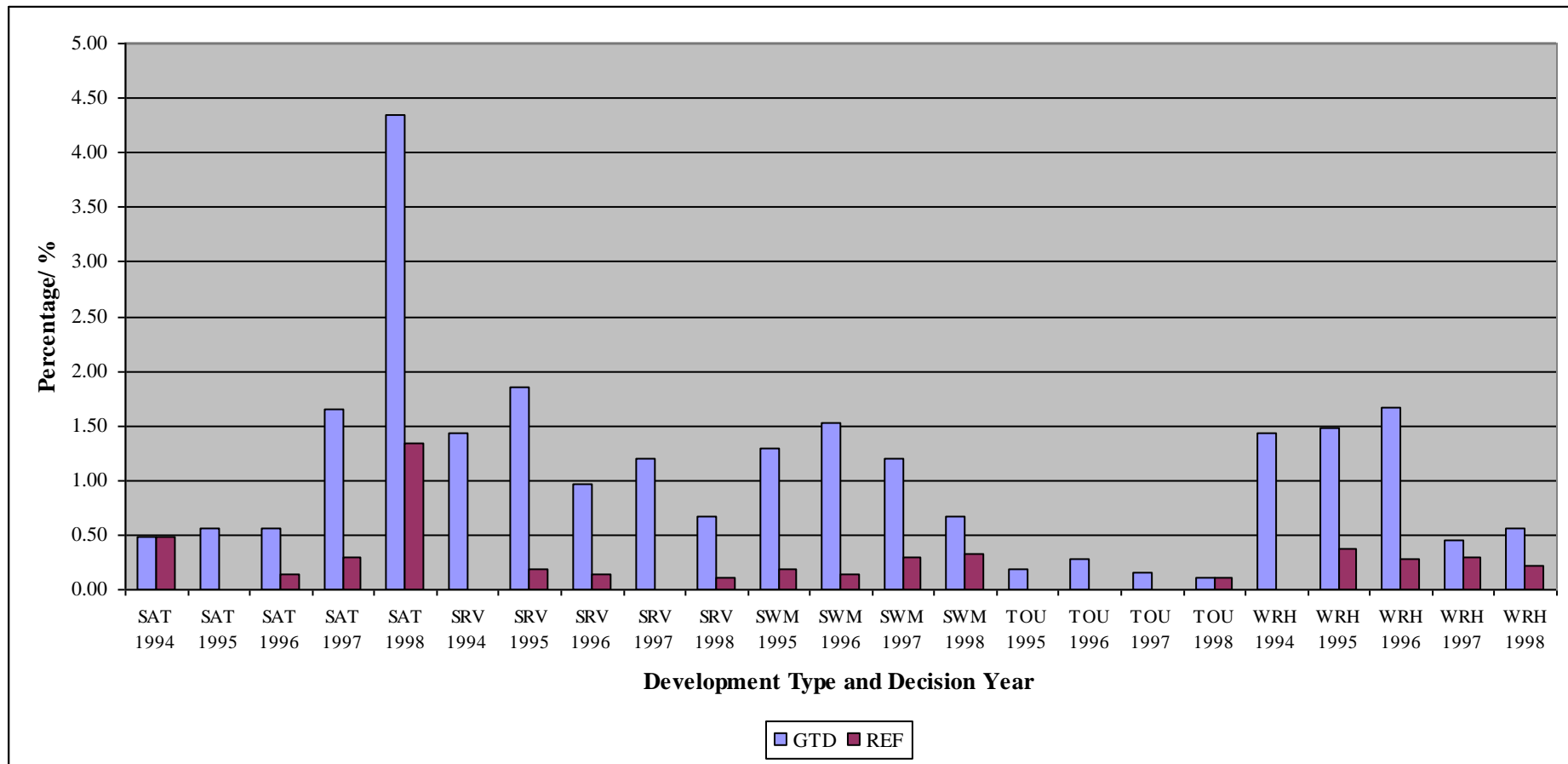
**Figure 5.22: Graph showing percentage variations for different development types, during various years, for ODZ developments which were decided (Granted or Refused) by the Development Control Commission or Planning Authority Board (source: DCIS / ACOLAID, Planning Authority, 1999).**



**Figure 5.23: Graph showing percentage variations for different development types, during various years, for ODZ developments which were decided (Granted or Refused) by the Development Control Commission or Planning Authority Board (source: DCIS / ACOLAID, Planning Authority, 1999).**



**Figure 5.24: Graph showing percentage variations for different development types, during various years, for ODZ developments which were decided (Granted or Refused) by the Development Control Commission or Planning Authority Board (source: DCIS / ACOLAID, Planning Authority, 1999).**



**Figure 5.25: Graph showing percentage variations for different development types, during various years, for ODZ developments which were decided (Granted or Refused) by the Development Control Commission or Planning Authority Board (source: DCIS / ACOLAID, Planning Authority, 1999).**



The next analysis will include the ADV, COU, MAN, MXD4, SRV, SWM and WRH groups. With the exception of the SWM group, all the rest had records over the five-year period. A grant : refusal percentage ratio is calculated Table 5.8.

**Table 5.8: Table of grant : refusal percentage ratio of a selected number of development types<sup>278</sup> ODZ.**

GTD/REF	ADV	ADV	ADV	ADV	ADV	COU	COU	COU	COU	COU	MAN	MAN
	1994	1995	1996	1997	1998	1994	1995	1996	1997	1998	1994	1995
% ratio	1.3:1	4.5:1	12:1	1.5:1	3:1	8:1	2.6:1	2:1	3:1	1:1	1:1	0.92
GTD/REF	MAN	MAN	MAN	MXD4	MXD4	MXD4	MXD4	MXD4	SRV	SRV	SRV	SRV
	1996	1997	1998	1994	1995	1996	1997	1998	1994	1995	1996	1997
% ratio	0.97	7:1	1:1	1	10:1	3:1	1:1	1.5:1	1.4	10:1	7:1	1.2
GTD/REF	SRV	SWM	SWM	SWM	SWM	WRH	WRH	WRH	WRH	WRH		
	1998	1995	1996	1997	1998	1994	1995	1996	1997	1998		
% ratio	6:1	7:1	11:1	4:1	1.4:1	4	4:1	1.5:1	2.5:1	2.5:1		

As in the previous group of data which was analysed, again, in this group one notes that in all cases the percentage of granted applications was always greater than those refused.

The final part of the analysis considers those development types whose contribution throughout the years was relatively low (mainly below 1%). As in the previous cases, a GTD / REF % ratio table was constructed in order to ease analysis (Table 5.9).

<sup>278</sup> Please note that where a number is being used in the section marked GTD / REF % ratio, this implies that during that year all the applications were granted permission and the value indicated is the original percentage value of the total number of decisions taken during that year.

One may note that in this analysis there were only three cases (LBA, 1997; MXD3 1996; RDS 1998, which are marked with an asterisk in Table 5.9) where for a particular year and type of development, all the applications were refused while there were 25 cases where the reverse was true.

**Table 5.9: Table of grant : refusal percentage ratio of a selected number of development types<sup>278</sup> ODZ.**

GTD/REF	EDU	EDU	LBA	LBA	LBA	LBA	MIN	MIN	MIN	MIN	MXD1	MXD1
	1997	1998	1994	1995	1996	1997	1995	1996	1997	1998	1994	1997
% ratio	0.15	0.11	0.48	6.17:1	0.5:1	*	0.18	0.14	0.5:1	4.09:1	0.48	0.15
<hr/>												
GTD/REF	MXD3	MXD3	MXD3	MXD3	MXD3	OFF	OFF	OFF	OFF	PRK	PRK	PRK
	1994	1995	1996	1997	1998	1994	1995	1996	1998	1994	1995	1996
% ratio	0.48	0.18	*	0.15	0.11	0.48	0.18	0.55	0.11	0.96	7.49:1	1:1
<hr/>												
GTD/REF	PRK	PRK	RCB	RCB	RCB	RDS	RDS	RDS	RDS	RDS	REC	REC
	1997	1998	1996	1997	1998	1994	1995	1996	1997	1998	1994	1995
% ratio	1.67:1	1.59:1	0.14	1:1	0.22	0.43:1	7.17:1	0.8:1	0.5:1	*	0.48	1.48
<hr/>												
GTD/REF	REC	REC	REC	SAT	SAT	SAT	SAT	SAT	TOU	TOU	TOU	TOU
	1996	1997	1998	1994	1995	1996	1997	1998	1995	1996	1997	1998
% ratio	2.93:1	0.33:1	0.67	1:1	0.55	3.93:1	5.5:1	3.24:1	0.18	0.28	0.15	1:1

The final part of this analysis consists of a statistical test to determine whether there was any statistically significant difference between the decisions taken by the PAPB before the set-up of the PA and the decisions taken after it became operational, thus analysing a plan-off / plan-on model, the plan being the Structure Plan. Two different sources of data were utilised for this test, GIS data for the pre-1993 period and DCIS / ACOLAID data for after this date. The data for the year 1993 was not used for the same reasons mentioned in section 5.2.4. All the data for granted and refused

applications ODZ for the years 1994-1998 were used in the analysis, since the data were accessible on a database and have already been used in the previous sections. However, the pre-1993 decision data was not in the same format, although the file numbers were available from the GIS. So, in this case a different approach had to be adopted. A random statistically significant sample of up to 40 files (see: page 246 for justification) for each application year between 1989 and 1993 was taken and each file found and the respective outcome together with decision date were recorded. The decision date was important because most files were decided at a later date than the application year; there were others where no decision was ever taken. Then the files were sorted by decision date and by decision (Grant or Refusal); the ones where no decision was taken were eliminated (Table 5.10). One must point out that:

- the decisions taken on applications submitted during the years 1992 and 1993 were all decided after approval of the Structure Plan in Parliament (29/7/92) and so were not included in the analysis;
- the PAPB were supposed to be using the policies in the Structure Plan after approval in Parliament (Cilia G., personal communication);
- the only decisions that were considered for this analysis as being pre-Structure Plan were those before the 29<sup>th</sup> July 1992.

The hypothesis test will first focus on the granted permits and then another test will be carried out on the refusals.

**Table 5.10: Number of applications granted permission or refusal for the periods 1989-1992 (sampled data) and 1994-1998 (sources: GIS and DCIS / ACOLAID, Planning Authority, 1999).**

Decision Year	1989	1990	1991	1992	1994	1995	1996	1997	1998
GTD	5	18	24	9	122	327	371	328	389
REF	5	7	14	4	38	79	122	124	211

Hypothesis testing:

*H<sub>0</sub>: there is no statistically significant difference between the number of applications granted permission before using the Structure Plan policies in the decision-making process and after;*

$$\bar{P}_1 - \bar{P}_2 = 0.$$

*H<sub>1</sub>: there is a statistically significant difference between the number of applications granted permission taken before using Structure Plan policies and after;  $\bar{P}_1 - \bar{P}_2 \neq 0$ .*

#### **Hypothesis testing for GTD data**

$$\bar{P}_1 = (56/102) = 0.549$$

$$\bar{P}_2 = (1537/3544) = 0.434$$

$$Z = \frac{(\bar{P}_1 - \bar{P}_2) - \mu_{\bar{P}_1 - \bar{P}_2}}{\sigma_{\bar{P}_1 - \bar{P}_2}}$$

$$\bar{P}_1 - \bar{P}_2 = 0.549 - 0.434 = 0.115$$

$$\mu_{\bar{P}_1 - \bar{P}_2} = P_1 - P_2 = 0$$

$$\sigma_{\bar{P}_1 - \bar{P}_2} = \sqrt{\frac{\bar{P}_1(1 - \bar{P}_1)}{n_1} + \frac{\bar{P}_2(1 - \bar{P}_2)}{n_2}}$$

$$= \sqrt{\frac{0.549(1-0.549)}{102} + \frac{0.434(1-0.434)}{3544}}$$

$$= 0.050$$

$$Z = \frac{(0.549 - 0.434) - 0}{0.050}$$

= 2.300 therefore reject  $H_0$  at 95% confidence interval

\*\*\*\*\*

### Hypothesis testing for REF data

$$\bar{P}_1 = (30/102) = 0.294$$

$$\bar{P}_2 = (574/3544) = 0.162$$

$$Z = \frac{(\bar{P}_1 - \bar{P}_2) - \mu_{\bar{P}_1 - \bar{P}_2}}{\sigma_{\bar{P}_1 - \bar{P}_2}}$$

$$\bar{P}_1 - \bar{P}_2 = 0.294 - 0.162 = 0.132$$

$$\mu_{\bar{P}_1 - \bar{P}_2} = P_1 - P_2 = 0$$

$$\sigma_{\bar{P}_1 - \bar{P}_2} = \sqrt{\frac{\bar{P}_1(1-\bar{P}_1)}{n_1} + \frac{\bar{P}_2(1-\bar{P}_2)}{n_2}}$$

$$= \sqrt{\frac{0.294(1-0.294)}{102} + \frac{0.162(1-0.162)}{3544}}$$

$$= 0.046$$

$$Z = \frac{(0.294 - 0.162) - 0}{0.046}$$

= 2.870 therefore reject  $H_0$  at 95% confidence interval

\*\*\*\*\*

Both tests have shown that there was a statistically significant difference (at 95% confidence interval) between the decisions taken between the two populations, that is the decisions taken utilising Structure Plan policies and those in their absence. This implies that the Structure Plan policies had an effect on the decision-making process but it does not show whether the effect was positive or negative; this could only be obtained from further analysis.

### **5.2.6 Case Study Analysis of Development Planning Files**

This section will deal with the analysis of data collated from a random sample of development application files. Since the amount of data collected from the five-year study period was large, it will be split up into smaller sections. The first group to be analysed will concern decisions taken at first tier level (DCC / PA). This will be followed by decisions taken at later tier levels where the numbers are much smaller. A closer look at some of the case studies will be undertaken, especially where peculiar decisions were taken. The section will end by performing a statistical test in order to understand whether there were any correlations of a significant statistical nature.

The first part of this section will detail the analysis of data up to first decision tier level. Thirty-five ODZ files from each year were individually read and annotations recorded. However, some of the cases had to be eliminated from this analysis, for a number of reasons, the main one being that the file was either withdrawn or no decision was ever reached. So, as in the previous analyses, percentage values will be used in this analysis and the first part will consider:

- whether the Case Officer quoted the relevant policies in his / her report;
- the recommendation given by the Case Officer;

- whether the Case Officer recommendations conform to the SP and PA policies at the time;
- whether the Decision Board quoted the relevant policies in its decision;
- whether the decision taken by the Board conforms to the SP and PA policies at the time;
- the decision taken by the Board.

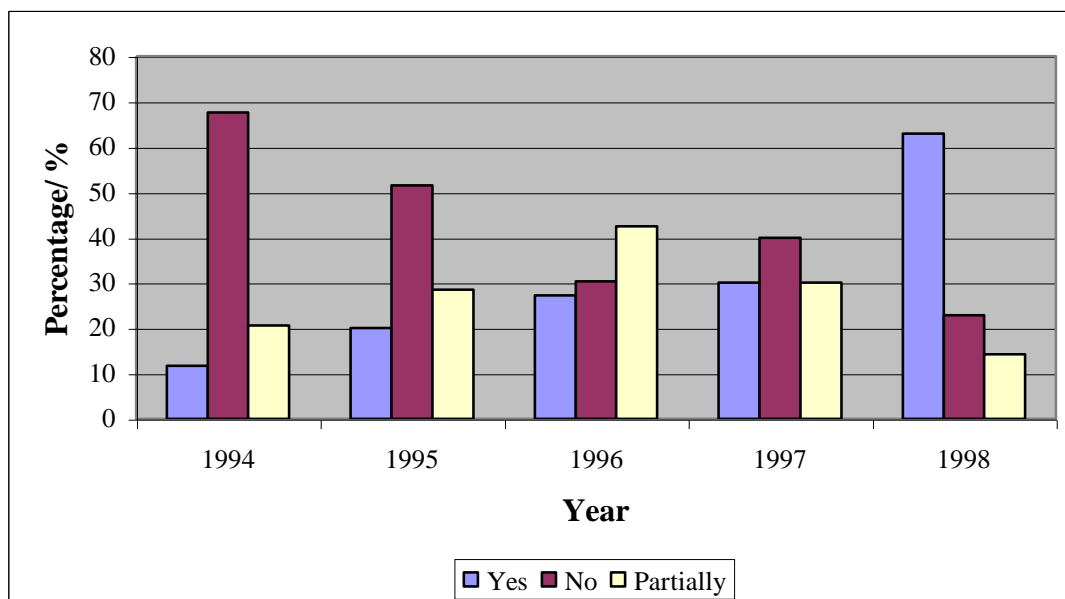
The results obtained in the analyses concerning records up to the first decision, that is, the Case Officers' report and the Board decisions are found in Table 5.11. A graphical representation of each set of data found in the table will permit better comparative analyses of the outcome at each stage. This will be divided into two parts, namely that dealing with the Case Officer and the other with the Decision Board.

**Table 5.11: Results (%) obtained from case study analyses up to first decision tier level (source: sample of ODZ files).**

		<b>Case Officer</b>						
<b>1<sup>st</sup> Decision Year</b>	<b>Were all relevant policies quoted?</b>			<b>Does recommendation conform to SP &amp; PA policies?</b>			<b>Recommendation</b>	
	<b>Yes</b>	<b>No</b>	<b>Partially</b>	<b>Yes</b>	<b>No</b>	<b>Partially</b>	<b>Grant</b>	<b>Refuse</b>
<b>1994</b>	11.76	67.65	20.59	47.06	41.17	11.77	61.76	38.24
<b>1995</b>	20.00	51.43	28.57	68.57	28.57	2.86	51.43	48.57
<b>1996</b>	27.27	30.30	42.43	63.63	36.37	0	57.58	42.42
<b>1997</b>	30.00	40.00	30.00	70.00	30.00	0	46.67	53.33
<b>1998</b>	62.86	22.86	14.28	80.00	20.00	0	37.14	62.86
		<b>Decision Board (DCC / PA)</b>						
<b>1<sup>st</sup> Decision Year</b>	<b>Were all relevant policies quoted in Board decision?</b>			<b>Does Board decision conform to SP &amp; PA policies?</b>			<b>Decision taken</b>	
	<b>Yes</b>	<b>No</b>	<b>Partially</b>	<b>Yes</b>	<b>No</b>	<b>Partially</b>	<b>Grant</b>	<b>Refuse</b>
<b>1994</b>	5.88	76.47	17.65	44.12	47.06	8.82	64.70	35.30
<b>1995</b>	17.14	62.86	20.00	60.00	37.14	2.86	60.00	40.00
<b>1996</b>	24.24	33.33	42.43	60.60	39.40	0	60.60	39.40
<b>1997</b>	26.67	53.33	20.00	56.67	43.33	0	60.00	40.00
<b>1998</b>	60.00	25.71	14.29	77.14	22.86	0	40.00	60.00

The results obtained in Figure 5.26 show that there was an overall improvement in the performance of the Case Officers throughout the study period. This is evident from the fact that there was a net increase in the percentage positive reply to the question: “*Were all relevant policies quoted?*” and a steady decrease in the negative reply to the same question. If one were to add or favourably consider those cases where only part of the policies were quoted, then the net positive effect over the years would become more significant. The only anomaly of note is during 1997, where these trends were interrupted.

In spite of the fact that on several occasions the Case Officers might have failed to quote the relevant Structure Plan Policies or any other policies applied by the PA at the time, still their recommendations could have been within the framework of such policies. So a second analysis was done to answer the question: “*Does the recommendation by the Case Officer conform with the SP and PA policies?*”

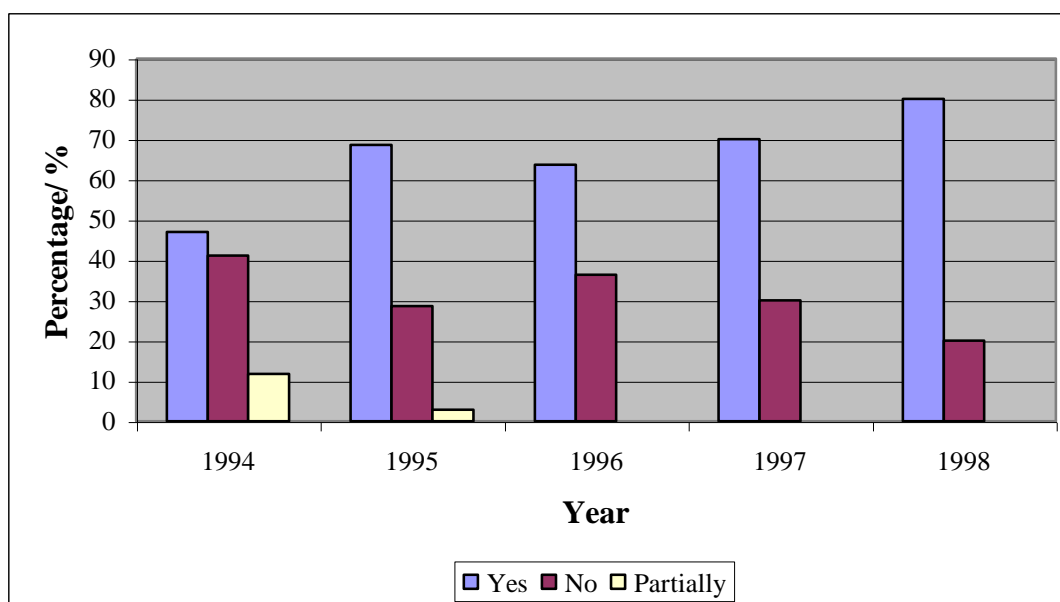


**Figure 5.26: Variations shown over a five-year period in the use of Structure Plan policies in DPA reports drawn by Case Officers for a selected sample of ODZ files.**

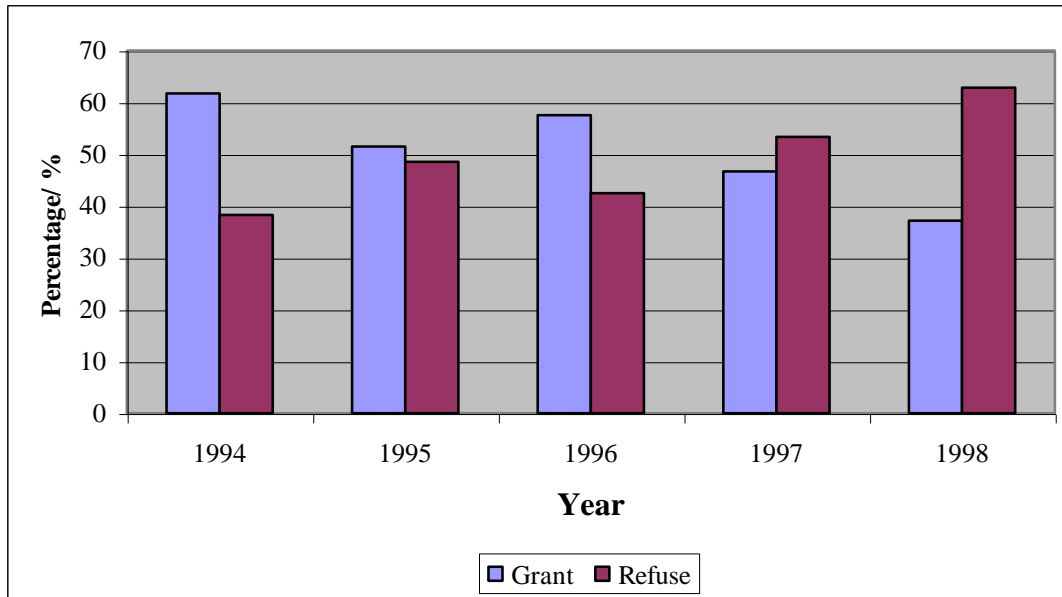


The results obtained in Figure 5.27 show that, in spite of the fact that the policies were not frequently quoted in the Case Officers' report, there was still a much higher percentage of cases where the recommendations were in accordance with the policies (compare Figure 5.26 and Figure 5.27). This does not imply that the "Yes", "No" and "Partially" values obtained in Figure 5.26 should be recorded in the same manner in Figure 5.27. There is always the possibility that policies were quoted incorrectly.

Following the compilation of the Development Planning Application (DPA) report, the Case Officer recommends a decision to the Board (DCC / PA), basing his / her recommendation on the findings of the report. The results of the Case Officer recommendations are shown in Figure 5.28.



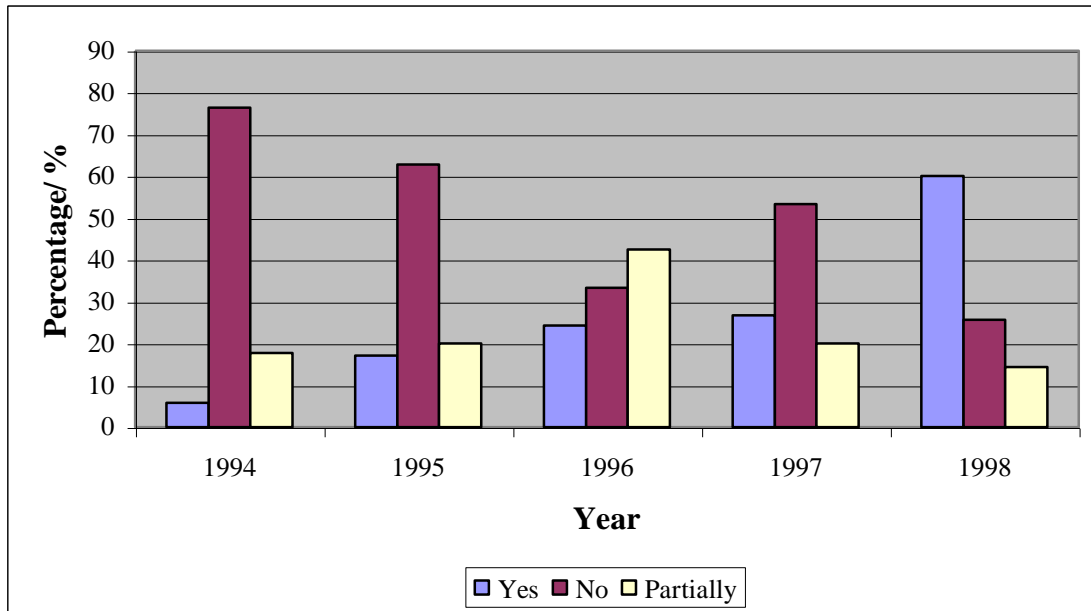
**Figure 5.27: Variations shown over a five-year period illustrating whether the recommendations made by the Case Officers were in accordance with the planning policies from a selected sample of ODZ files.**



**Figure 5.28: Variations shown over a five-year period of the recommendations made by the Case Officers to the decision-making boards (DCC / PA) at first decision tier level (sample of ODZ files).**

The overall trends observed in Figure 5.28 show that there was an increase in the recommended refusals accompanied by a decrease in the recommended approvals. One must be careful not to make any comparisons with the previous graphs, especially Figure 5.27, as the Case Officer could have quoted policies or made recommendations in accordance with policies, and then the recommendation is a refusal and not an approval.

The second part of this analysis concerns the decision-making boards. Figure 5.29 illustrates whether the decision-making boards (DCC / PA) quoted policies in their decisions.

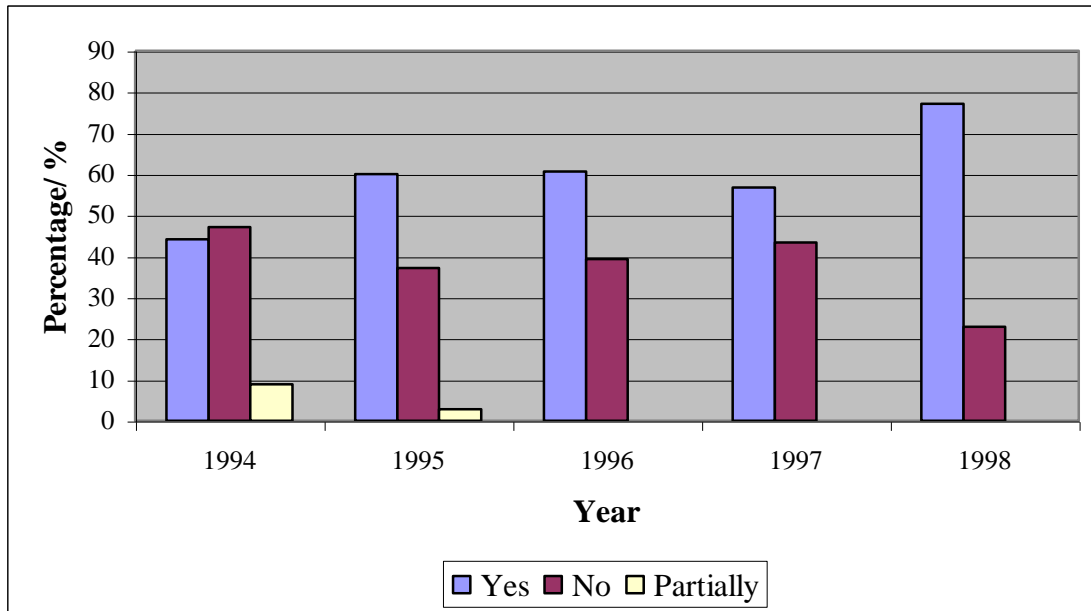


**Figure 5.29: Graphs showing whether the decision-making boards (DCC / PA) at first decision tier level made any reference to policies in their decision (source: sample of ODZ files).**

The results obtained show that there was an increase in the reference to policies over the five-year period, accompanied by a corresponding decrease in the cases where no policies were quoted by the decision-making boards.

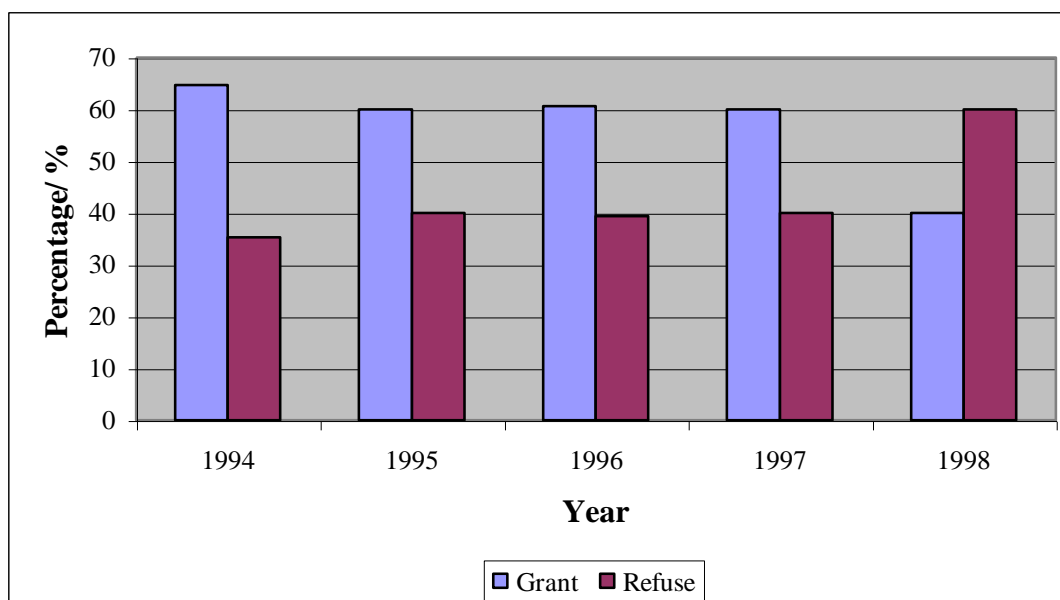
The next analysis concerns whether the decision taken by the Board (DCC / PA) was in accordance with the planning policies in effect at the time (see: Figure 5.30).

The results show that over the study period there was a progressive improvement by the decision boards. The figures between 1995-97 show that the percentage of decisions conforming with ongoing policies were relatively constant. However, during the same period there was an increase in decisions not conforming with the policies. An overall look over the five-year span shows a decrease in non-conformity, with a corresponding increase in decisions conforming to the policies.



**Figure 5.30: Graph showing whether the decisions taken by the respective boards (DCC / PA) at first decision tier level, were in accordance with the planning policies at the time (source: sample of ODZ files).**

The final part of this analysis concerns the final decision granted by the boards (DCC / PA). Figure 5.31 shows that there was a uniform trend during the three-year period between 1995-97, whereas there was a reversal in the trends in 1998. During the period 1994-97, the percentage applications which were granted permission were always greater than those refused, the reverse being true in 1998.



**Figure 5.31: Graph showing the percentage distribution of permitted and refused development during the five-year study period (source: sample of ODZ files).**

The analyses so far in this section have been broad in nature and have concentrated on different sectors covered by the Case Officer and the Decision-making Boards at the first-decision tier level. Next, a more detailed analysis of the interacting relationships between the Case Officers' work and the outcome by the Decision-making Board will be undertaken using case studies. The results achieved so far in this section have demonstrated that the Decision Board has not always followed the recommendation of the Case Officer, however, the type of analyses performed could only indicate that this is a possibility. In order to obtain a greater insight into the relationship between the Case Officers' works and the Decision-making Board, each individual case was coded, the code originating from the abbreviations<sup>279</sup> of the answers to the questions found in Table 5.11 (see: Appendix V for example). Percentage values for each annual total were calculated as for previous analyses. These codes were then grouped in the following manner:

<sup>279</sup> Yes: Y; No: N; Partially: P.

- those whereby the Decision-making Board overturned the recommendation by the Case Officer;
- the rest being those where the Decision-making Board endorsed the recommendations by the Case Officer.

Each group was further sub-grouped according to the recommendation of the Case Officer and whether the recommendation tallied with planning policies. The results are shown in Table 5.12.

This method should make it easier both for the reader and the writer to effectively explain any trends over the years.

The first analysis is a comparison between the recommendations of the Case Officer which were endorsed by the Decision-making Board and those whereby the recommendations were overturned (Figure 5.32). The results obtained could be split into two, those concerning the years 1994-95 and those between 1996-98. In both groups, there was an increase in the percentage of overturned recommendations, with the lowest values obtained in 1996 and the highest values in 1998. One notes that an overturned recommendation doesn't always imply a breach of policy and, alternatively, policy breaches could take place both when recommendations are endorsed or overturned. In order to better understand the results in Figure 5.32, an analysis of the individual sub-groups was made. This helps in the understanding of the situations under which the decisions were issued, that is, whether the policies were quoted or misused, or whether the decisions or recommendations were in line with the planning policies or not.

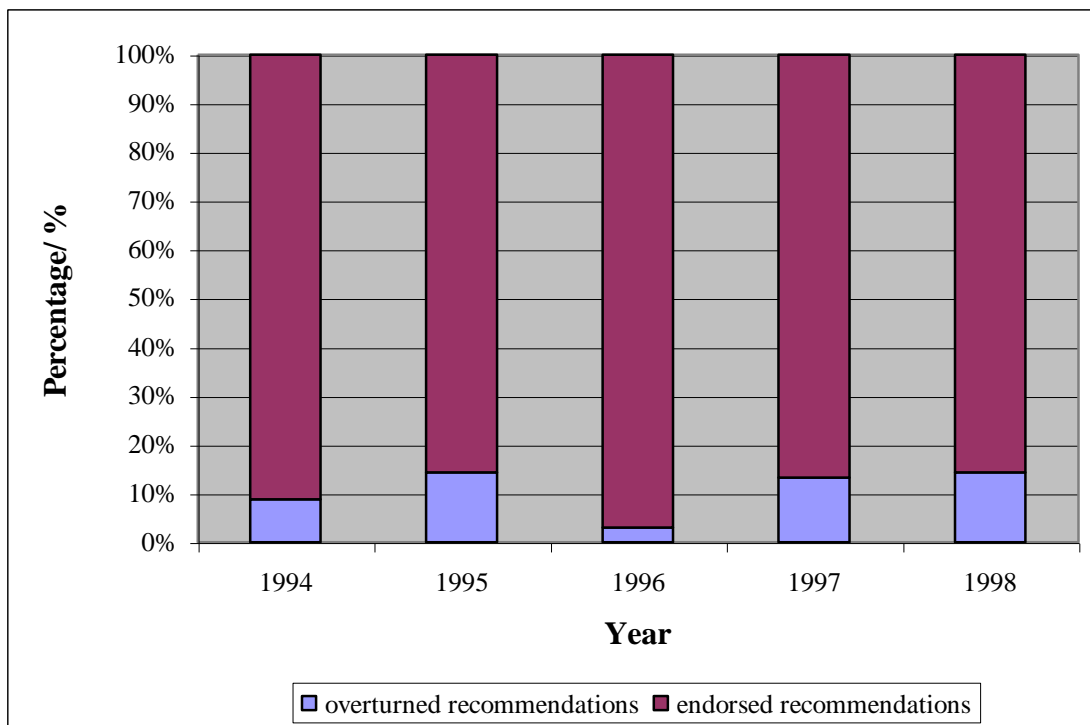
**Table 5.12: Code format of case study analysis concerning relationship between Case Officers' recommendation and outcome by Decision-making Board (DCC / PA) at first decision tier level (source: sample of ODZ files).**

Recommendations overturned	Code	1994	1995	1996	1997	1998
	NNGNYR	0.00	2.86	0.00	0.00	2.86
NNGPYR	2.94	0.00	0.00	0.00	2.86	
NYRNNG	0.00	0.00	0.00	0.00	2.86	
YYRNNG	2.94	5.71	3.03	3.33	5.71	
PYRNNG	2.94	5.71	0.00	10.00	0.00	
<b>sub-total</b>	<b>8.82</b>	<b>14.29</b>	<b>3.03</b>	<b>13.33</b>	<b>14.29</b>	
Recommendations endorsed	NYRNYR	8.82	2.86	0.00	0.00	0.00
	PYRNYR	2.94	0.00	0.00	0.00	0.00
	PYRPYR	11.76	14.29	15.15	13.33	8.57
	YYRNYR	2.94	0.00	0.00	0.00	0.00
	YYRPYR	0.00	2.86	0.00	0.00	0.00
	YYRYR	5.88	17.14	24.24	20.00	45.71
	NPGNPG	11.76	0.00	0.00	0.00	0.00
	PPGPPG	0.00	2.86	0.00	0.00	0.00
	PNGPNG	0.00	0.00	12.12	3.33	2.86
	NNGNNG	38.24	25.71	24.24	20.00	11.43
	PYGPYG	2.94	0.00	15.15	3.33	2.86
	NYGNYG	5.88	20.00	6.06	16.67	2.86
	YYGYYG	0.00	0.00	0.00	3.33	11.43
	YNRYNR	0.00	0.00	0.00	3.33	0.00
	NNRNNR	0.00	0.00	0.00	3.33	0.00
	<b>sub-total</b>	<b>91.18</b>	<b>85.71</b>	<b>96.97</b>	<b>86.67</b>	<b>85.71</b>

The following analysis will address the Case Officers' recommendations which were overturned by the Decision-making Boards (see: Figure 5.33). The results may be split into two groups, those where the Case Officer recommended an approval against planning policies (NNGNYR, NNGPYR) and the rest (NYRNNG, YYRNNG, PYRNNG), whereby, the approval given by the Board went against planning policies,

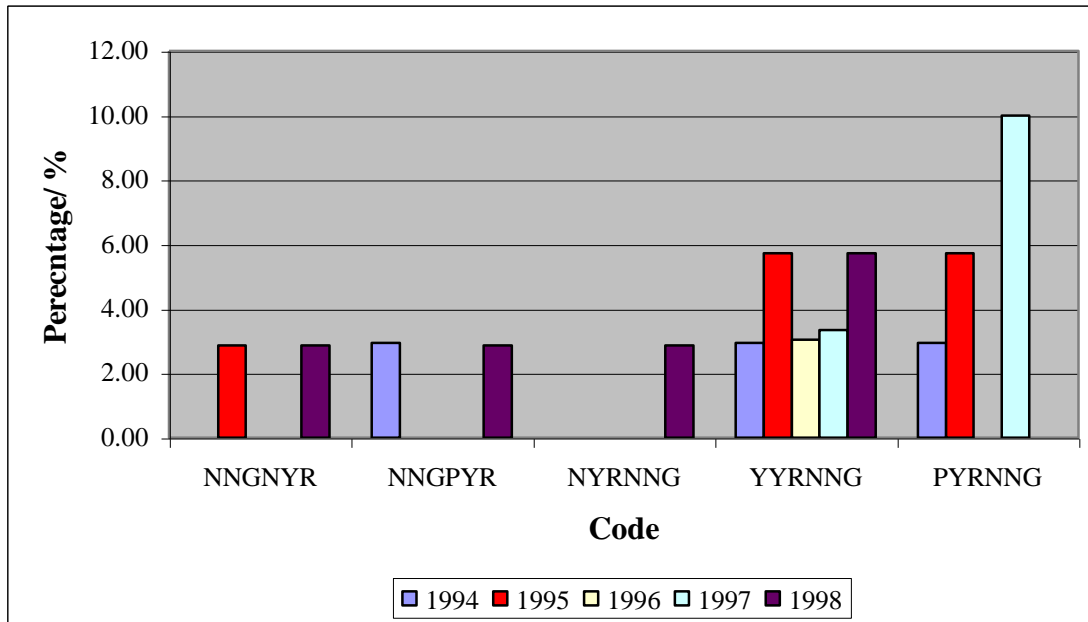
in spite of the fact that the Case Officer recommended a refusal in line with planning policies.

The codes NNGNYR and NNGPYR refer to the cases whereby the Case Officers didn't quote planning policies and made a recommendation against such policies, but the decision-making Board overturned such a recommendation in line with these policies. In one case (NNGNYR), no policies were quoted, while not all the policies were quoted by the Board in the other case (NNGPYR). There were only a few instances where these cases were encountered, but if the two groups are added together, the number of cases during 1998 are double the number for any other year.



**Figure 5.32: Percentage relationships between Case Officer recommendations that were endorsed by the Decision-making Boards (DCC / PA) at first decision tier level and those which were overturned (source: sample of ODZ files).**





**Figure 5.33: Annual contribution to the different types of code concerning Case Officers' recommendations which were overturned by the Decision-making Boards (DCC / PA) at first decision tier level (source: sample of ODZ files).**

The second group of results in Figure 5.33 concern those where the Case Officer recommended a refusal but the Decision-making Board overturned the recommendation, in breach of policies and without quoting any. There are three different codes which incorporated this condition namely:

- NYRNNG, where the Case Officers didn't quote any policy but his / her recommendation was in line with planning policies;
- YYRNNG, where the Case Officers quoted the relevant planning policies to the full and recommended a refusal;
- PYRNNG, where the Case Officers partially quoted the planning policies, but the recommendation for refusal was in line with planning policies.

The common denominator in these results is that, irrespective of whether the Case Officers quoted the relevant policies, their recommendation was always in line with the planning policies. However, in order to overturn such a recommendation, the Decision-making Board always acted in breach of policies and failed to quote any of them and, in all these cases, it granted an approval. When this situation is compared to that illustrated in Figure 5.32, it is apparent that the incidence of the Decision-making Board overturning decisions in breach of policy is higher than for overturning decisions in line with policy. If annual values from the three codes are added together, values range from 3.33% to 13.33% of the cases viewed annually where permits were issued in breach of planning policies and against the recommendations of the Case Officers.

The next analysis will concern those cases indicated in Table 5.12 where the Decision-making Board endorsed the recommendations of the Case Officers. The codes were divided into two collective groups, those where permission was granted and those where it was refused. In order to offer a better explanation, each of these groups was further divided into a number of sub-groups (two for the refusals and three for the approved groups).

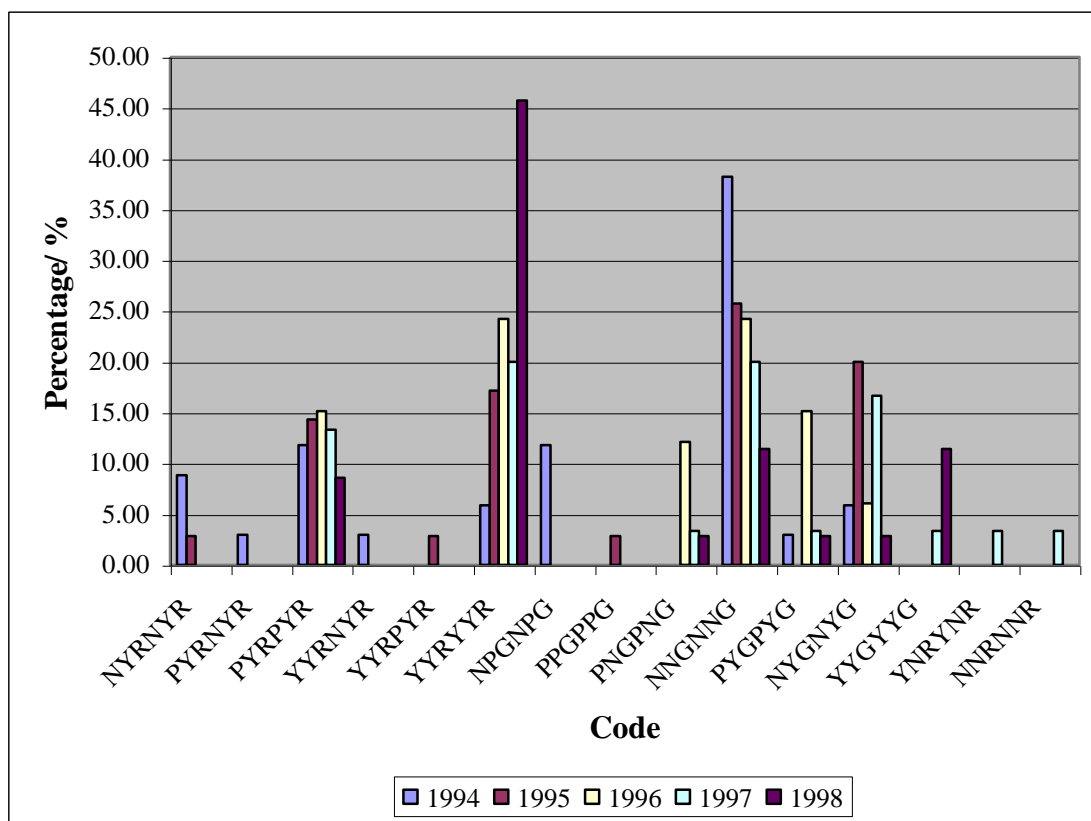
The first part of the analysis will concern codes where the decision was a refusal whilst the second part will concentrate on the codes related to approved permits. The results of the analysis are shown in Figure 5.34.

The first group of codes which will be analysed, are those concerning a recommended refusal according to the planning policies. There were six different codes in this group, namely:

- NYRNYR, showing that the Case Officers didn't quote the policies but the recommendation was in line with them; the Board endorsed the recommendation in their decision without quoting policies;
- PYRNYR, indicating that in this case the Case Officers partially quoted the policies and the recommendation was in line with them; the Board did not quote the policies but endorsed the recommendation in their decision without quoting policies;
- PYRPYR, whereby both the Case Officers and the Board partially quoted the policies, while both the recommendation and the decision were in line with planning policies;
- YRNYR, where the Case Officers correctly quoted all relevant policies and made the right recommendation to the Board, who endorsed the recommendation in their decision without quoting the policies;
- YRPPYR, which is similar to YRNYR, but in this case the Board only partially quoted the policies;
- YRYYR, indicates that both the Case Officers and the Board quoted the policies correctly and acted in line with them.

A closer look at this group of codes shows that the Board tended to follow the Case Officers' report and recommendation almost to the letter. This is evident from the fact that those codes (PYRNYR, YRNYR, YRPPYR) which indicate a slight change from what the Case Officer said were little used. However, more use was made of

those codes (NYRNYR, PYRPPYR, YYRYYYR) which indicated that the Board acted in the same manner as the Case Officer. When comparing these three codes, one may note an improvement in the performance of the Case Officers over the years. This is evident from the fact that the scores for the code YYRYYYR showed a remarkable increase, especially when comparing the first four years to 1998; this was accompanied by decreases in the codes NYRNYR and PYRPPYR.



**Figure 5.34: Annual contribution to the different types of code concerning Case Officers’ recommendations which were endorsed by the Decision-making Boards (DCC / PA) at first decision tier level (source: sample of ODZ files).**

The second analysis is for cases where both the recommended and endorsed refusals were in breach of planning policies. The only cases recorded were one of each during 1997. In one case (YNRYNR), the Case Officer quoted the policies incorrectly and

recommended a refusal which was endorsed by the Board, whereas in the second case (NNRNNR), the recommended refusal was endorsed by the Board without even quoting any policies and in breach of the same policies.

The second part of this analysis concerns those applications which were approved.

These were sub-grouped as follows:

- codes NPGNPG and PPGPPG, where the Case Officers' recommendation only partially agreed with the planning policies;
- codes PNGPNG and NNGNNG, where the recommendation was in breach of policies;
- the third sub-group (PYGPYG, NYGNYG and YYGYYG) concern those where the recommendation agreed with planning policies.

There were two instances where both recommendations and decisions were only partially in line with planning policies, the first instance being in 1994 for code NPGNPG where no policies were quoted and the second instance occurring in 1995, for code PPGPPG, where the policies were only partially quoted.

The next analysis concerns those applications which were granted permission in breach of planning policies. There were two codes in this group, the first being those cases where both the Case Officer and the Board only partially quoted the policies (PNGPNG), whereas the second group, with a higher frequency of occurrence, concerned those cases where no policies were quoted (NNGNNG). Of notable importance is the fact that there was a decrease in the scores registered over the years

in both codes. This could imply that there was an increase in the number of justified decisions which were being recommended and issued.

The last group of codes is those concerning a recommended approval which is in line with planning policies. There were three codes in this group, where:

- the Case Officer failed to mention any policies (NYGNYG);
- these were only partially mentioned (PYGPYG);
- the relevant policies were correctly quoted (YYGYYG).

No particular trends could be attributed to any of these codes. However, a higher frequency is found during 1998, for applications where both recommendation and decision were in line with quoted policies (YYGYYG). This was accompanied by lower frequencies for the other two codes. In fact, there were no records for the YYGYYG code during the first three years, whereas during the same period there were higher frequencies for the other two codes, where the policies were either partially quoted or not quoted at all.

It is possible to conclude from the results shown in Figure 5.34 that the Board has frequently followed the recommendations of the Case Officer irrespective of whether this was for a refusal or an approval of permit or whether there was a breach of policies. Of most concern, from an environmental point of view, were those applications gaining approval for development, in breach of planning policies and without any policy justification. This was more evident in the early years of the analysis and, whilst the practice subsided in time, the values remained significant. On a much lower frequency of occurrence, but equally important, were those cases

whereby the Board overturned the Case Officers' recommendation without justifying the basis for its decision and in breach of planning policies.

The next part of the analysis will use the data detailed in Table 5.12 to divide the annual contribution of each decision code by type of development. This will connect the type of decision code to the type of development which was approved or refused. As in the previous analyses percentage values will be used for each and every development type. The development type codes used here are found in Appendix IV and were taken from the decision files described in section 5.2.5. In order to concentrate on the problem decision areas, the following analysis will only consider those codes where:

- the recommendation was overturned against planning policies;
- permission was granted either against or partially against planning policies;
- permission was refused against planning policies.

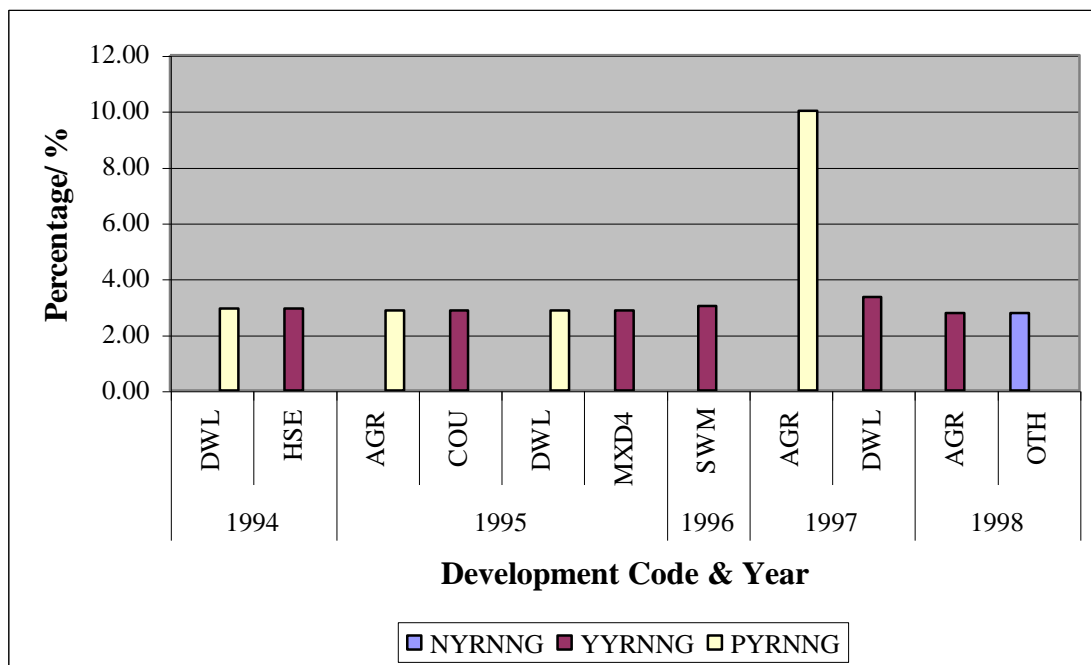
In the other cases, the decisions taken were mainly in line with planning policies, whether a refusal or an approval was given.

The first analysis will concern those cases whereby the Case Officers' recommended refusal was in line with planning policies but the Board overturned the decision (see: Figure 5.35). There were two development types (DWL and AGR) which were found on three different occasions in this group. Of notable importance is the contribution from the agricultural sector in 1997 which had the highest frequency. In all cases, with the exception of the development type OTH in 1998, the Case Officer either quoted all the relevant policies or partially quoted them, whereas the Board always

failed to mention any policies. This shows that on several occasions, the Board made decisions at odds with planning policies.

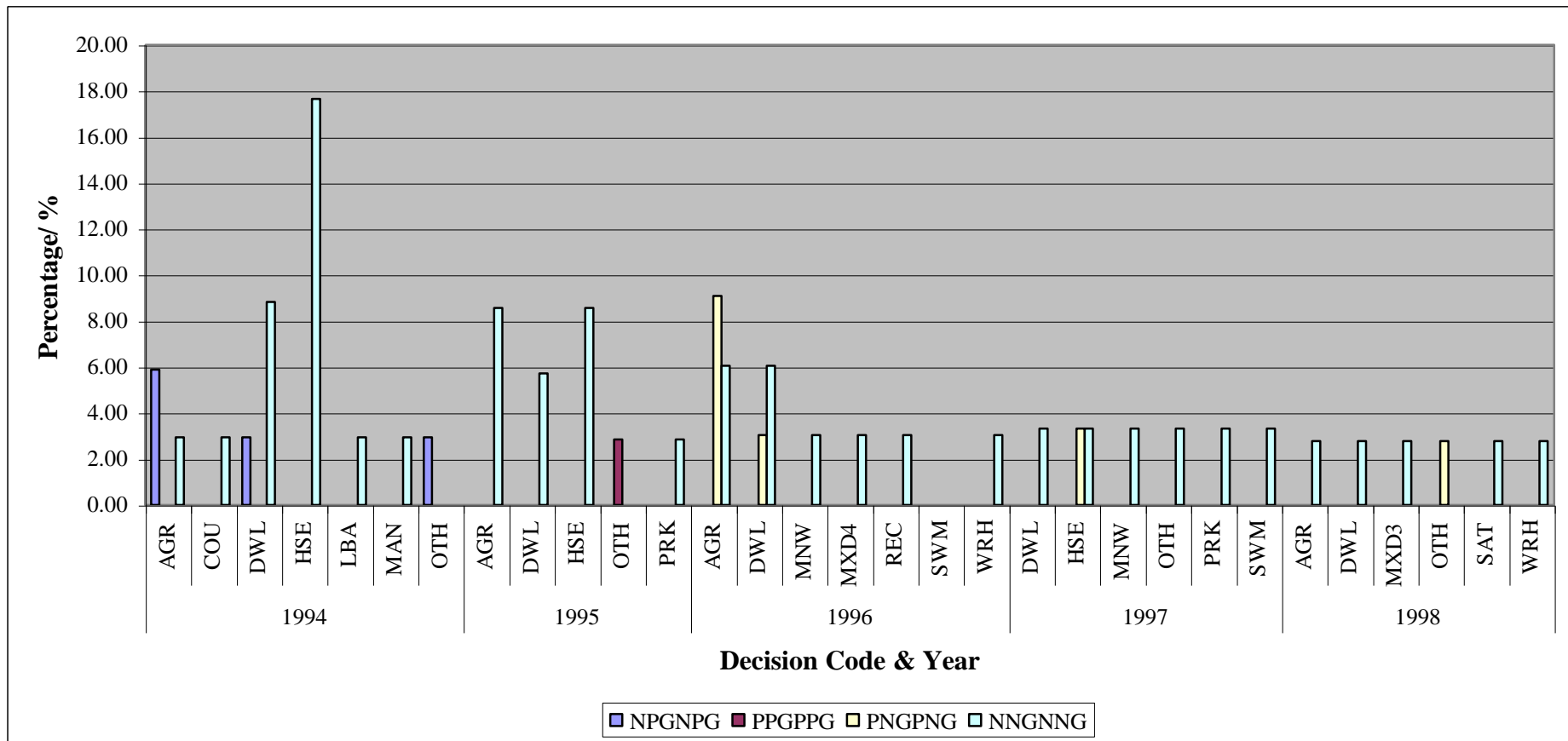
The second group of analyses concerns those cases whereby a favourable decision was issued by the Board which was either partially or fully in breach of planning policies (see: Figure 5.36). This analysis could be split up into two sub-groups namely:

- NPGNPG and PPGPPG, whereby the favourable recommendation and decision partly agrees with the planning policies;
- PNGPNG and NNGNNG, whereby both recommendation and decision are in breach of planning policies.



**Figure 5.35: Annual percentage contributions at first decision tier level, shown by different development types whereby the Board (DCC / PA) issued a favourable decision against planning policies and against recommendation by the Case Officer (source: sample of ODZ files).**





**Figure 5.36: Annual percentage contributions shown by different development types whereby the Board (DCC / PA) at first decision tier level issued a favourable decision against planning policies, following similar recommendation by the Case Officer (source: sample of ODZ files).**

There were only three development types which concern the former sub-group (NPGNPG, PPGPPG), these being AGR, DWL and OTH and all were recorded during 1994-95. The frequency of use of code NNGNNG is a matter of concern mainly due to the fact that:

- permission was recommended and granted in breach of planning policies;
- a widespread cross-section of development types were recorded with this code.

The last part of the analyses concerns those cases where the Board endorsed a recommendation for a refusal which was in breach of planning policies (YNNRNR, NNRNNR). There were two such cases, one concerning the AGR sector, whereby the Case Officer quoted the policies, but the recommendation was in breach of such policies; the second one concerned the type OTH, whereby no policies were quoted.

This part of the analyses has shown that from the sample of annual case studies, it is evident that during the years 1994-98 there were a number of policy breaches. These arose mainly from the lack of use of planning policies both by the Case Officer and by the Board, who in turn endorsed the recommendation suggested by the former. The main development types benefiting from such situations were those concerning agricultural (AGR), dwellings (DWL) and householder (HSE) sectors. Apart from these sectors, there were other development types which benefited from such a situation, but the analyses have shown that these were minor, although collectively their effect would increase significantly.

The following part of the analysis will use the same data arising from the case studies but will consider those applications which were taken to the Reconsideration and the

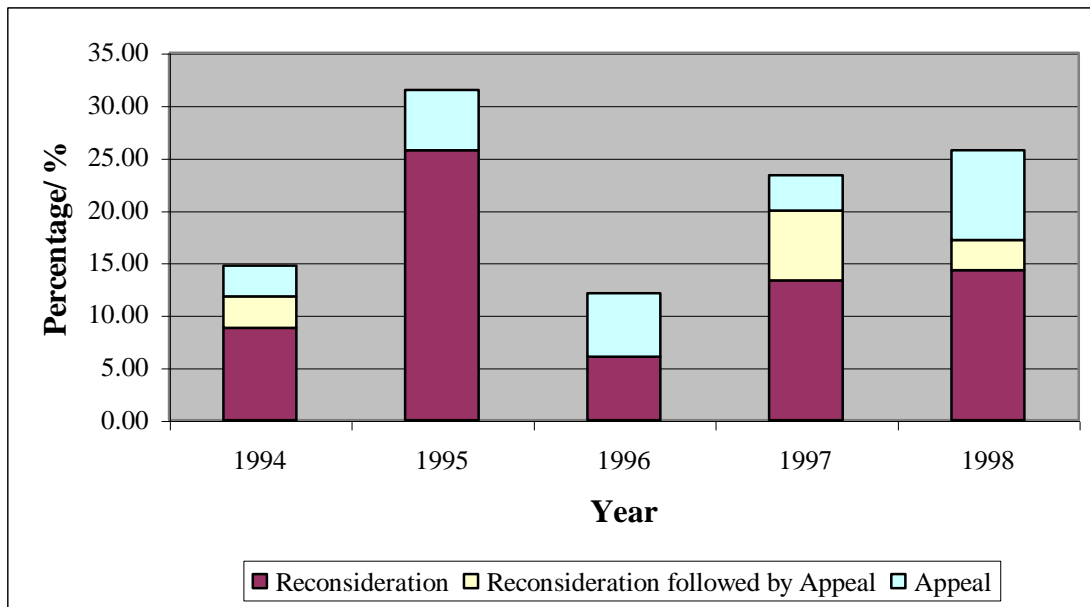
Appeals stage. A complete set of results of the different applications, which were reconsidered or taken to Appeal stage, together with the respective development code, and decision year is found in Table 5.13. The same code sequence previously used in the analyses for the first decision tier level is also being used in both the Reconsideration and Appeal stages. A look at Table 5.13 will reveal that the applications which were reconsidered or appealed can be divided into three groups, namely those which:

- ended with a decision being taken at Reconsideration stage;
- after having been decided at Reconsideration stage, were taken to the Appeal stage;
- were decided at Appeal level without having gone through a Reconsideration stage.

The percentage number of applications that were taken to both the Reconsideration and Appeal stage was calculated and a graph constructed (see: Figure 5.37). The results obtained show that a substantial number of applicants decided to proceed either to Reconsideration or Appeal stage or both. From the results in Table 5.13, it is evident that with the exception of just one application, all the rest had been granted a refusal before going to the following stages. So, these percentages in Figure 5.37 need to be seen in the light of the annual percentage refusals listed in Table 5.11 (page 314); Table 5.14 was constructed to facilitate comparisons.

**Table 5.13: Case Study applications that were taken to Reconsideration and Appeal Stages showing the respective decision year, development code and decision codes (source: sample of ODZ files).**

1 <sup>st</sup> Decision Year	Development Code	First Decision						Reconsideration						Appeal					
		N	P	G	N	P	G			G	N	N	G						
1994	OTH	N	P	G	N	P	G			G	N	N	G						R
1994	COU	N	Y	R	N	Y	R				N	N	G						
1995	DWL	N	N	G	N	Y	R	P	Y	R	N	Y	R						
1997	OTH	N	N	R	N	N	R	N	Y	G	N	Y	G						
1998	MNW	N	N	G	P	Y	R	P	Y	R	P	Y	R	N	Y	R	P	Y	R
1994	PRK	P	Y	R	P	Y	R	P	Y	R	N	N	G						
1994	OTH	P	Y	R	P	Y	R				N	Y	R						
1994	MAN	P	Y	R	N	Y	R							P			Y	N	G
1995	AGR	P	Y	R	P	Y	R	N	N	G	N	N	G						
1995	DWL	P	Y	R	P	Y	R	N	N	G	N	N	G						
1995	DWL	P	Y	R	P	Y	R	Y	Y	R	N	N	G						
1995	DWL	P	Y	R	P	Y	R	N	N	G	N	N	G						
1995	AGR	P	Y	R	P	Y	R							P	Y	R	P	Y	R
1995	MXD4	P	Y	R	P	Y	R							P	Y	R	P	Y	R
1996	COU	P	Y	R	P	Y	R	N	Y	R	N	N	G						
1996	DWL	P	Y	R	P	Y	R							Y	Y	R	Y	Y	R
1997	DWL	P	Y	R	P	Y	R	N	N	G	N	N	G						
1997	DWL	P	Y	R	P	Y	R	P	Y	R	P	Y	R	P	Y	R	P	Y	R
1998	MAN	P	Y	R	P	Y	R	P	Y	R	N	N	G						
1994	LBA	Y	Y	R	Y	Y	R				Y	R	Y	Y		Y	P	G	
1995	COU	Y	Y	R	Y	Y	R	Y	Y	R	N	N	G						
1995	ADV	Y	Y	R	Y	Y	R	Y	Y	R	Y	Y	R						
1995	ADV	Y	Y	R	Y	Y	R	Y	Y	R	Y	Y	R						
1995	DWL	Y	Y	R	Y	Y	R	Y	Y	R	Y	Y	R						
1996	PRK	Y	Y	R	Y	Y	R	N	Y	R	N	N	G						
1996	DWL	Y	Y	R	Y	Y	R							Y	Y	R	Y	Y	R
1997	DWL	Y	Y	R	Y	Y	R	Y	Y	R	N	N	G						
1997	OTH	Y	Y	R	Y	Y	R	Y	Y	R	N	N	G						
1997	COU	Y	Y	R	Y	Y	R	Y	Y	R	Y	Y	R	Y	Y	R	Y	Y	G
1997	MAN	Y	Y	R	Y	Y	R							Y	Y	R	Y	Y	R
1998	AGR	Y	Y	R	Y	Y	R	Y	Y	R	N	N	G						
1998	AGR	Y	Y	R	Y	Y	R	Y	Y	R	N	N	G						
1998	AGR	Y	Y	R	Y	Y	R	Y	Y	R	Y	Y	R						
1998	OTH	Y	Y	R	Y	Y	R	Y	Y	R	Y	Y	R						
1998	DWL	Y	Y	R	Y	Y	R							Y	Y	R	Y	Y	R
1998	OTH	Y	Y	R	Y	Y	R							Y	Y	R	Y	Y	R
1998	OTH	Y	Y	R	Y	Y	R							Y	Y	R	P	N	G



**Figure 5.37: Graph showing percentage of total annual applications, which were decided at Reconsideration and / or Appeal stages (source: sample of ODZ files).**

The results in Figure 5.37 show that the percentage number of applications which were taken to Appeal stage increased over the years, both whether the applicant decided to proceed directly to this stage or following a Reconsideration decision. The percentage number of Reconsiderations showed a considerable amount of variations during the study period.

**Table 5.14: Comparison between the percentage number of applications which were refused and the percentage number which were reconsidered and appealed (source: sample of ODZ files).**

Year	Reconsideration & Appeal decisions following refusals at 1 <sup>st</sup> decision tier level/ %	Decisions refused/ % (from: Table 5.11)
1994	14.71*	32.36*
1995	31.43	40.00
1996	12.12	39.40
1997	23.33	40.00
1998	25.71	60.00

\* Shows the corrected percentage value for refusals only due to the fact that in 1994 there was a case where reconsideration and an appeal were lodged following permission for development.

The contents of Table 5.13 were sorted by First Decision code and then by 1<sup>st</sup> Decision Year in order to facilitate analyses. With the exception of the first five rows, the rest of the table could be divided into two main decision codes, PYRPYR and YYRYR.

The applicant for decision code NPGNPG who was granted approval decided to ask for Reconsideration and even went to Appeal stage. The reason for this was that the application was for the installation of a large satellite dish on a factory but while the applicant asked to site the dish on a part of the building, the decision board granted permission to locate it on a different part. The applicant asked for a Reconsideration and the first decision was confirmed, without quoting any policies but the applicant decided to locate the dish where he originally applied. The PA issued an Enforcement Notice to which the applicant appealed; the Appeal was lost.

The other four applications were all issued with a refusal, however the decision was overturned for two of them at the Reconsideration state. In one case (NNRNNR) justice was done with the applicant, since the original decision was against planning policies. At Reconsideration stage, the planning policies were partially quoted but the decision conformed with them.

The other case concerned a residential building which the applicant wanted to convert into a restaurant. The original decision was in line with planning policies, in spite of the fact that none were quoted by Case Officer and Board (NYRNYR) while at

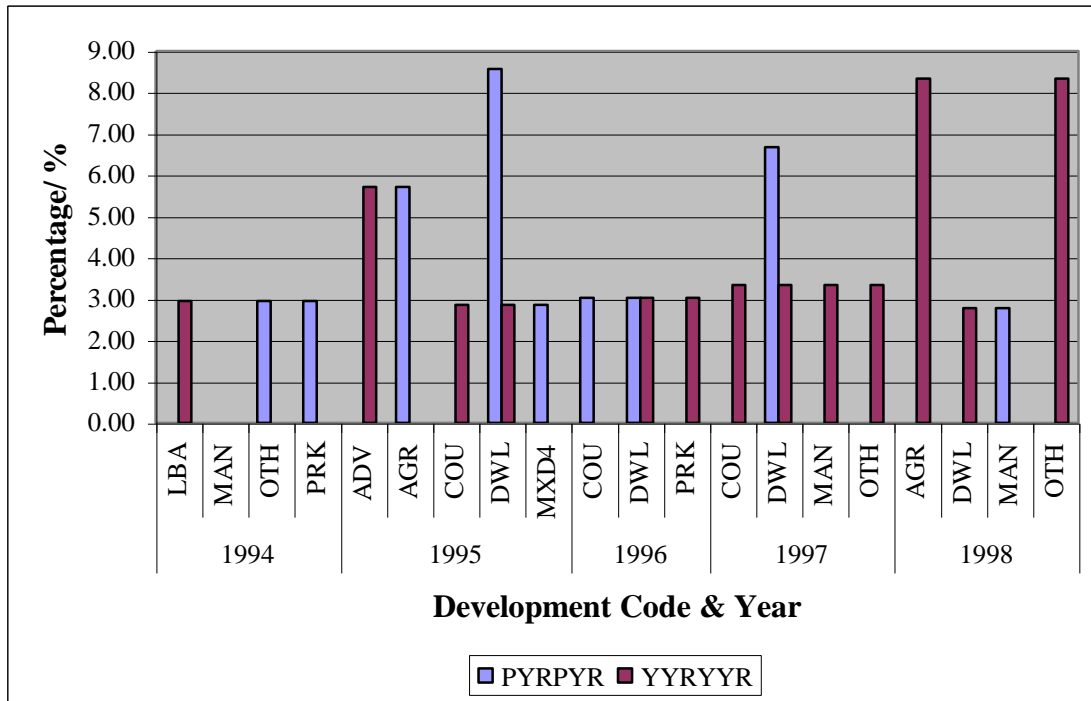
Reconsideration stage, there was no Case Officers' report and the Board granted permission in breach of policies and without quoting them.

The refusals in the other two cases were confirmed in one case, at Reconsideration stage, while in the other case at both Reconsideration and Appeal stages.

The rest of the refusals found in Table 5.13 concerned decisions taken by the Board that were either always in line with quoted planning policies (YYRYR) or in some cases these were only partially quoted (PYRPYR). In order to obtain a better idea of the types of development involved, the 1<sup>st</sup> decision year and the percentage annual contribution for each type, a percentage-development code and year graph was constructed (see: Figure 5.38). The results obtained show that the dwelling sector is a highly contested one. Two sectors which had an increase in percentage values over the years were OTH and AGR. The other development types which were recorded had relatively low percentage values.

The data in Table 5.13 were sorted according to the decision given at Reconsideration stage, the aim being to analyse whether there were any particular trends present.

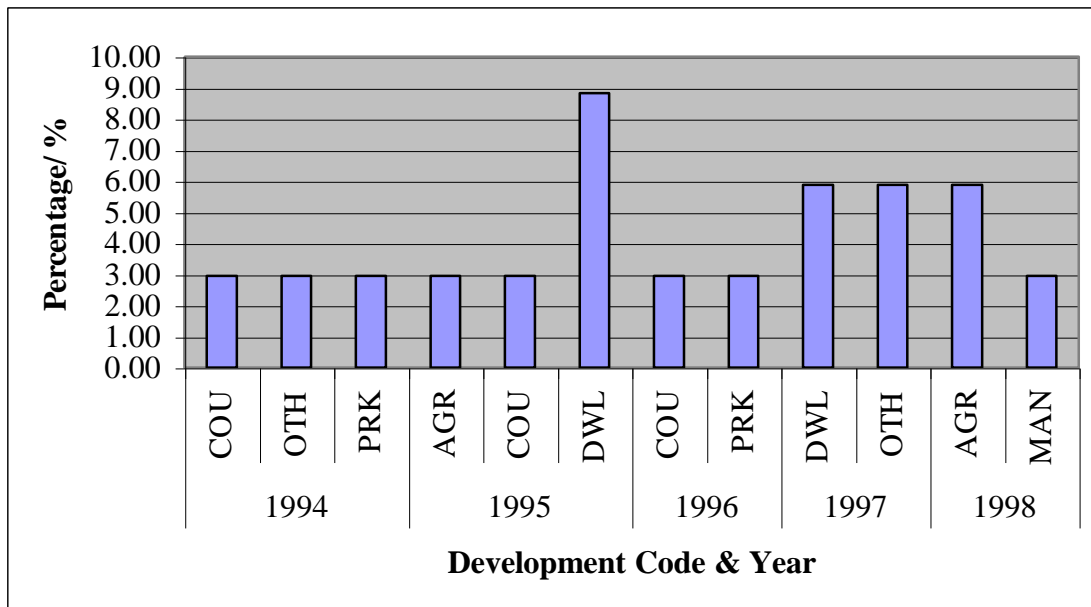
The results obtained show that in all cases where permission was granted at Reconsideration stage, the Board, with the exception of one case, never quoted any planning policies and always acted in breach of such policies. The last three letters in the Reconsideration decision code being NNG show this. In all cases where a refusal was confirmed, this was always done in accordance with planning policies, but the Board did not always quote these.



**Figure 5.38: Percentage annual (1<sup>st</sup> decision year) contribution of different development types which were considered either at Reconsideration and / or Appeal stage. All these developments were originally granted a refusal in accordance with planning policies (source: sample of ODZ files).**

Figure 5.39 shows the percentage annual contribution of the different development types which were granted a permission at the Reconsideration stage. There was only one case where the permission granted was in line with planning policies, the rest of the permissions all being in breach of policies and without the Decision-board even quoting any of them.





**Figure 5.39: Percentage annual (1<sup>st</sup> decision year) contribution of different development types which were granted permission at the Reconsideration stage (source: sample ODZ files).**

There were 14 cases which were appealed, five of these were from the Reconsideration stage (one of these which was mentioned earlier was an Appeal from enforcement). Out of the remaining thirteen, three were granted approval and one (MAN) in 1994, was granted an approval subject to a change in the height of the respective buildings. These applications were:

- First decision year: 1994; development code: LBA;
- First decision year: 1997; development code: COU;
- First decision year: 1998; development code: OTH;

Since these three applications were given a permit following one or more refusals at first and / or second decision tier levels, further information is provided to explain the circumstances and conditions under which these permits were issued.

The first case (1994; LBA) concerned a “farmhouse” in Gozo, which was given development permission in 1992 to make some small additions and reinstate it from its dilapidated state. The developer did not follow the original plans and built a large extension to the original few rooms, rendering the building incompatible with the surrounding fields. After having completed the works, he applied for development permission which was refused at the first decision stage with both Case Officer and Board fully quoting all relevant policies. The PA issued an Enforcement Order on the site and the applicant appealed against such an Order; the Appeal was eventually lost. The application was again refused at the Reconsideration stage with no comments coming from the Planning Directorate but the Board retained its original decision. The applicant submitted an Appeal against the Reconsideration. The applicant claimed amongst other things that the additions made were compatible with the characteristics of the surrounding environment and were in accordance to the Policy and Design Guidance regarding Farmhouses and Agricultural Buildings. He also claimed that the building which was one storey high doesn't impinge on the surroundings and that he will be surrounding his area with a rubble wall and trees.

The Planning Directorate claimed that the size and design of the building do not conform to the rural environment and that the architectural features do not justify the extent of the buildings. Conversion of farmhouses into residential buildings should conform to policy RCO 2 and this development also infringed policy RCO 4. The Directorate considered the proposed extension as being unnecessary.

The Planning Appeals Board (PAB) examined policies BEN 2, SET 11, 12 and RCO 4 and made a site visit. The Board claimed that the development had certain incorporated architectural features which were highly technical and showed the professional manner in which the work was carried out. However, the size of the development was extensive and could have been of a lower scale. The development could be described as a villa which could have two separate independent units. The Board was of the opinion that the site couldn't tolerate such extensive developments. The Board further cited a judgment from the Court of Appeal on a similar case, whereby the Court had suggested to the PA that a compromise should be sought with the applicant entailing the least expense, whilst retaining the spirit of the legislation. The Board agreed that it should decide this case within the guidelines issued by the Court of Appeal. It further cited other cases where developers were granted permission to rehabilitate dilapidated buildings. The Board decided to accede to this Appeal subject to the following conditions:

- a LM 1000 fine as an administrative charge for infringements according to Article 58 of Act I 1992;
- that part of the development which was specifically marked would be demolished; this would reduce the massive size of the development to an acceptable level;
- the site would be surrounded by a 1.5m high rubble wall and a number of trees would be planted;
- an application for the landscaping plan of the area should be submitted to the PA for approval.

The Appeal was decided on the 29<sup>th</sup> May 1996. A minute in the respective file showed that the applicant did not submit any application until 15<sup>th</sup> December 1997 and that the Case was being referred for Direct Action since that part which, following the Appeal case, was being considered as an illegal construction had not yet been demolished. In spite of all these pending infringements, on the 31<sup>st</sup> August 1998 the client was refunded with overpaid monies made when he submitted his application!

The second case where an applicant was granted permission at the Appeal stage took place in 1997 and concerned another application in Gozo. This partly concerned the sanctioning of a section of a building and partly concerned the change of use of a building into stables to keep horses for horse riding.

Both decisions taken at the first decision tier level and Reconsideration stage were in accordance with planning policies as interpreted by the Directorate and the Decision Board (code used YYRYR). In this case the interpretation given by these two entities was that horse stables were not being considered as an agricultural development which could be sited outside development zone. They were being considered as recreational in nature and so could not be permitted in line with policy SET 11 and paragraph 7.6, which lists a number of developments which could be permitted outside development zones. The Planning Appeals Board gave a different interpretation to the same facts, by stating that such a development is of an agricultural nature and is a “normal and legitimate inclusion in the non-urban scene” and so should benefit from the exemptions mentioned in paragraph 7.6 of the Structure Plan. As a result, the Appeal was accepted and the applicant fined LM 300 for having carried out the development without permission.

The third case concerns the “reconstruction” of a rubble wall in a field in Malta. The Board at the first decision tier level refused the original application for the following reasons:

- the site was in a rural conservation area and didn't comply with policy RCO 2;
- the site was in an Area of Ecological Importance;
- the proposal was incompatible with the environmental characteristics of the area and would not maintain the visual integrity of the area and so was incompatible with BEN 2.

Although not mentioned in the above reasons for refusal, the contents in the respective file show that the PA always claimed that according to survey sheets dated 1959 and 1974 and aerial photos taken in 1967 and 1994, the boundary wall in question was never recorded or evident on the photos. The applicant, however, always maintained that there was a rubble wall that was demolished by someone who had interest in the land and she wanted to reconstruct this rubble wall to protect her land from intruders. Furthermore, the applicant never presented any documented proof of her claims. To gain leverage for her claims, the applicant referred to other adjacent developments which had taken place recently, whereby in one case a large wall was also constructed. The applicant submitted an Appeal following the first refusal. At Appeal stage, apart from the previous considerations mentioned above, the Planning Directorate also claimed that access to the cliffs would be denied if the wall is built. This would breach policy CZM 3 which requires that public access to the coastal cliffs should be secured. It is also relevant that the applicant had already built the

boundary wall out of ashlar stone and this in itself breaches a number of planning policies.

The Planning Appeals Board after having made a site visit and referred to policies RCO 1, RCO 2, RCO 4, BEN 2 and CZM 3 decided to accept that a rubble wall 7 courses high would be built. One may note that the original application was for a 7 courses high ashlar wall, while the Board decided in favour of a rubble wall because it said that this fits more within the surrounding rural character. It also pointed to the presence of an adjacent high wall which is larger in size to that of the applicant. However, the Board accepted the Appeal subject to the fact that any farmers who had right of way to their field would continue enjoying such rights.

Of note in this case, is that the Board accepted the version of the applicant that there was an original wall, even if no proof was presented and, also, the Board did not give any consideration to policy CZM 3 regarding public access to the coastal cliffs.

### **5.2.7 Analyses of Enforcement Data**

This section will analyse data collated by the enforcement section of the PA. Two sets of data were used, namely that kept on the DCIS / ACOLAID and that kept on the GIS. The latter source was used to distinguish between the enforcement ODZ and within Temporary Provisions Schemes. Both sets of data had to be cross-checked with each other in order to trace and correct a considerable number of errors which were identified during the analyses. It is being assumed that following such an exercise, the data which are being used are free from any errors. The DCIS / ACOLAID data being used covers the period from 1993-2000, whereas, the GIS data only covers the period

from 1996-2000, as enforcement data has only been plotted on the GIS since 1996. Both sets of data contain information updated until the present day (May 2001).

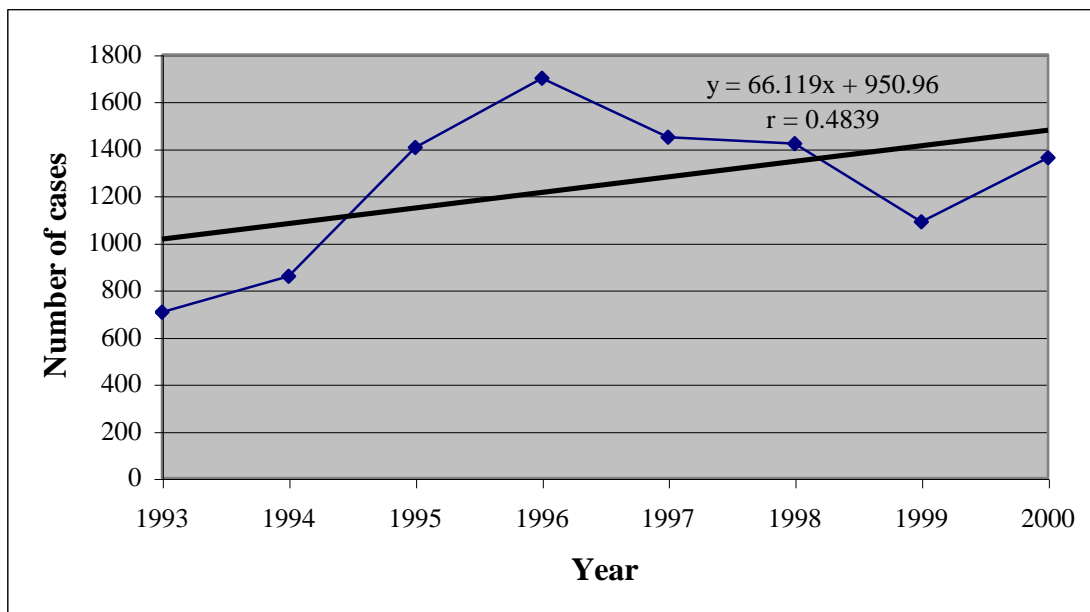
The aim of this analysis is to quantify the level of “illegal development activity” which took place during the years 1993-2000, although it cannot be assumed that all illegal development activity has been recorded. However, the results recorded here must be considered together with the legal development, where proper development procedures were followed. Unfortunately, the only period of time when such comparisons could be made is between 1996-1998 because the original DCIS / ACOLAID applications and decision data which were supplied only covered the period until 1998. New information could not be supplied because the person responsible at the PA has been on a Union directive not to carry out certain types of work for the last few months.

The first analysis carried out will be to establish any ongoing trend in the rate of enforcement action which was recorded during the period 1993-2000 (see: Figure 5.40). The results obtained from the graph show that there were strong variations in the number of recorded cases over the years, with a peak value reached in 1996 and the lowest values being recorded in 1993. The trend line produced suggests that the number of cases is on the increase. Various interpretations for this finding are possible as the number of cases depends on numerous factors, previously mentioned (section 4.3.1 (c)).

The next analysis will establish the levels of enforcement taking place both within Temporary Schemes and ODZ. The annual percentages contributing to each sector

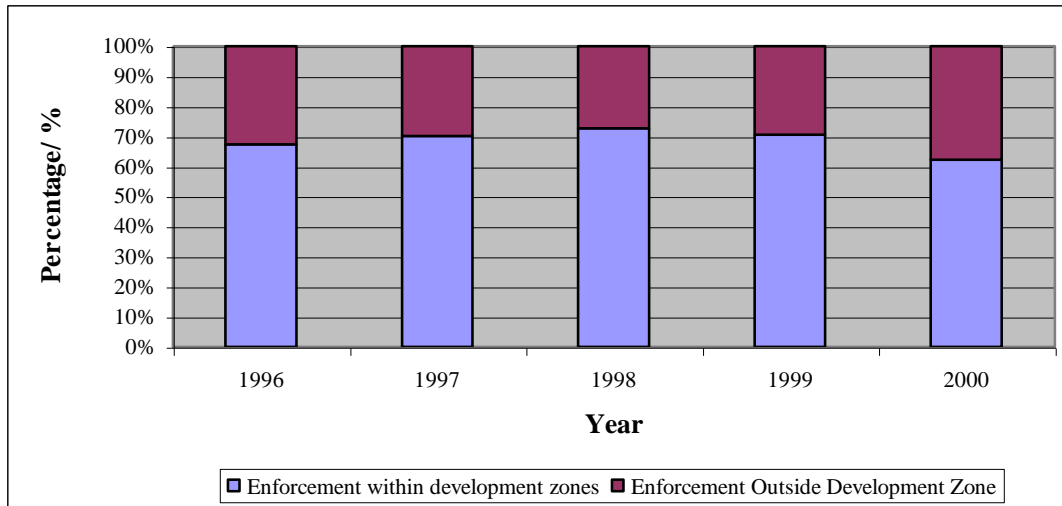
were calculated and a graph plotted (see: Figure 5.41). The results obtained show that the enforcement ODZ had an annual contribution of between 27-40% to the total values. These results could imply any or a combination of the following:

- more infringements were being committed ODZ;
- more reports were being made for such areas;
- the enforcement people at the PA were trying to curb illegal activity in these areas when compared to those within Temporary Provision Schemes.



**Figure 5.40: Total number of annual enforcement cases recorded both within Temporary Schemes and ODZ, for the period 1993-2000 (source: DCIS / ACOLAID, Planning Authority, 2001).**





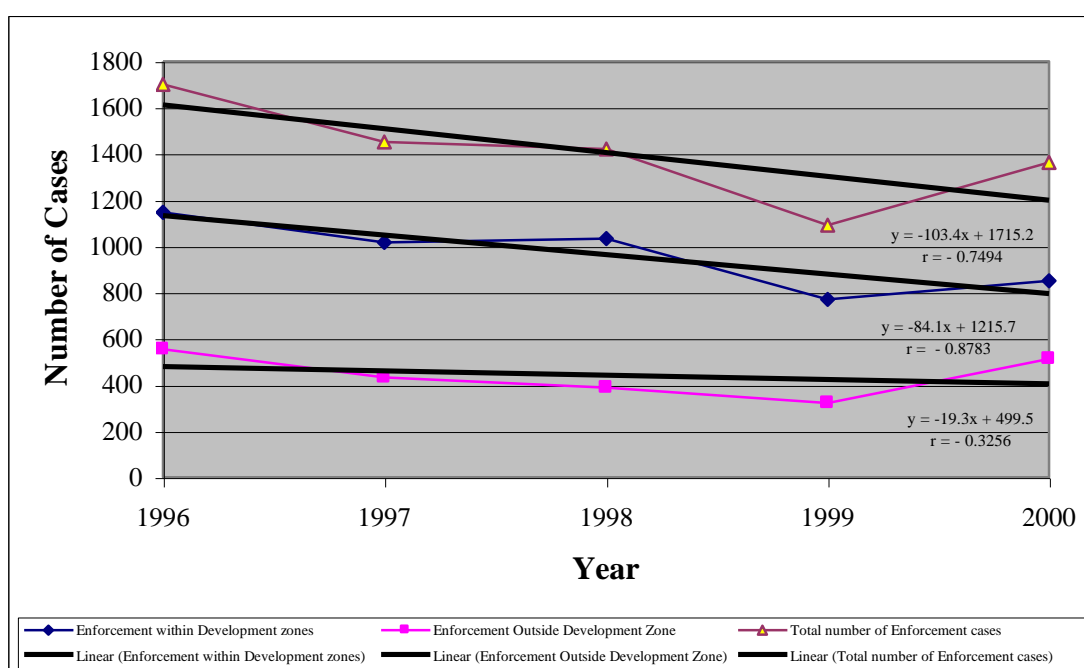
**Figure 5.41: Annual percentage values of enforcement cases within Temporary Schemes and ODZ (source: GIS, Planning Authority, 2001).**

In order to determine whether more cases were being reported in either ODZ or Temporary Provision Schemes, a second graph was produced, whereby the raw data were utilised instead of using the percentage values. Only the period from 1996-2000 will be analysed since the data that could be used for this analysis was from the GIS. The graph included total figures for both data sets and trend lines were also produced (Figure 5.42). The results obtained show a decrease in trends, which could either imply a decrease in the number of infringements, that is, the people are becoming more law abiding, or a decrease in the efficiency of the staff at the PA.

Four different codes were used by the enforcement section to denote the type of action which was taken. These were:

- Stop and Enforcement notice (ENF);
- Stop Notice (STP);
- Article 50 (AR50); and
- Investigated case but no action taken (INV).

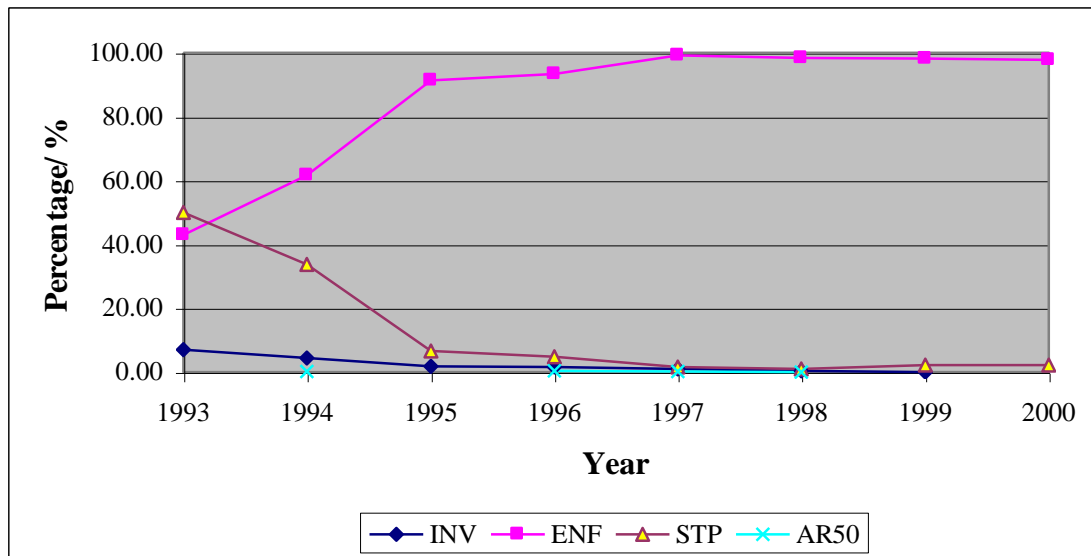
Article 50 stopped being used following the new legislation in 1997, while investigated cases were no longer recorded after 1999. Figure 5.43 shows the annual percentage distribution of the different types of enforcement actions which were used during the period 1993-2000. The results show that after the initial years, it was evident that the most common type of action was the Stop and Enforcement notice.



**Figure 5.42: Annual values of enforcement cases recorded both within Temporary Schemes and ODZ (source: GIS, Planning Authority, 2001).**

The next part of the analysis will deal with the type of developments ODZ found in the enforcement records. The raw values obtained in Table 5.15 show that there are three main groups which contributed to the number of enforcement cases. These were: agriculture, household and the group termed “other”. Of note are the large number of cases involving illegal boathouses recorded during the year 2000, due to a sudden

clampdown on such structures which had been in existence for a considerable number of years.



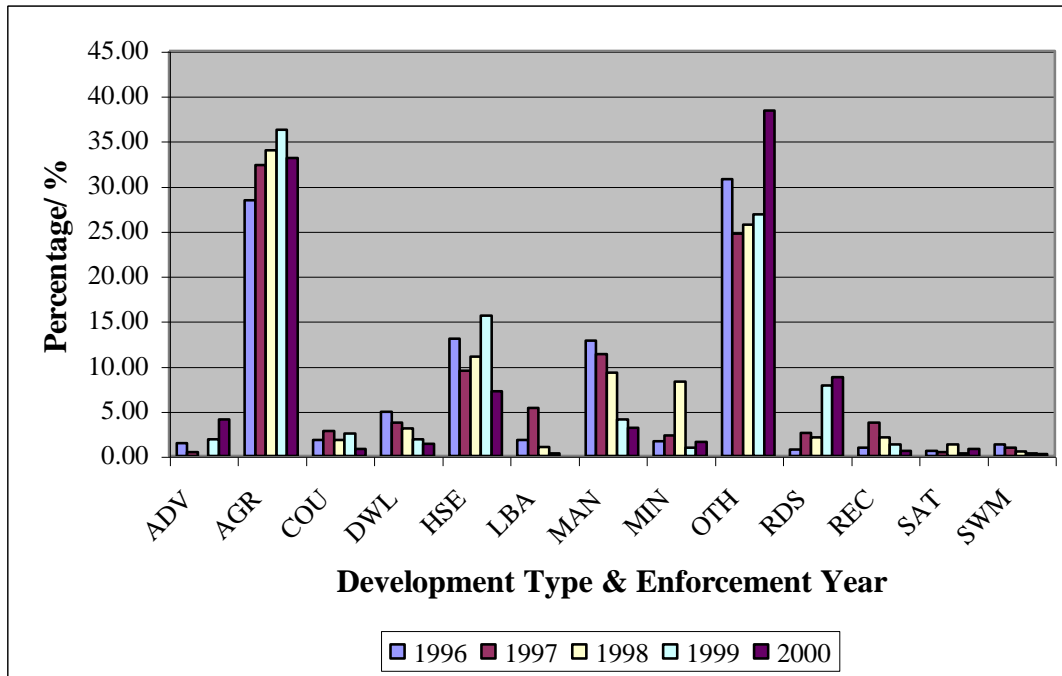
**Figure 5.43: Annual percentage values for different type of enforcement action taken by the Planning Authority between 1993-2000 both within Temporary Schemes and ODZ (source: DCIS / ACOLAID, Planning Authority, 2001).**

The codes used by the Enforcement section are not the same as those used by the Development Control section. One of the original aims for this analysis was to identify the “hidden development” and also the type of development involved. In order to facilitate comparisons with previous results development codes were attributed to the different types of development used in the enforcement data. Apart from this, groups which had the same type of development code used were added together. In order to reduce the level of errors, where doubts arose with regards to the type of development code which is to be used, similar cases from the development data were found and the same code used. Annual percentage values for each development code were then calculated and the graph in Figure 5.44 was produced.

**Table 5.15: Number of enforcement cases recorded annually ODZ by the Enforcement Section of the Planning Authority together with the respective development headings used (source: DCIS / ACOLAID and GIS Planning Authority, 2001).**

	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
<b>Accommodation</b>	23	15	9	1	5
<b>Adverts</b>	8	2	0	6	21
<b>Agriculture</b>	157	140	132	116	170
<b>Batching plants</b>	7	6	4	2	1
<b>Boathouses</b>	29	19	25	16	102
<b>Boundary walls</b>	13	23	20	20	20
<b>Change of use</b>	10	12	7	8	4
<b>Commercial premises</b>	3	9	5	20	37
<b>Dumping</b>	12	8	10	13	32
<b>Extra floor</b>	4	1	3	5	2
<b>Household</b>	72	41	43	50	37
<b>Industrial &amp; manufacture</b>	36	34	26	8	12
<b>Kiosks</b>	1	2	3	5	8
<b>Leisure</b>	5	16	8	4	3
<b>Minor case</b>	1	2	3	5	7
<b>Others</b>	115	55	42	32	36
<b>Quarries</b>	9	10	32	3	8
<b>Satellite dishes</b>	3	2	5	1	4
<b>Scrap yards</b>	28	9	6	3	3
<b>Swimming pools</b>	7	4	2	1	1
<b>Listed buildings</b>	10	23	4	1	0

The four major areas of concern were agricultural (AGR), householder (HSE) manufacturing / industrial (MAN), and the group termed “other” (OTH). Increase in the percentage trends were registered over the study period for both the AGR and the OTH groups, whereas, there was a decrease in the MAN group and continuous variations in the HSE group.



**Figure 5.44: Annual percentage contributions of enforcement actions taken by the Planning Authority in relation to different development types ODZ (source DCIS / ACOLAID and GIS Planning Authority, 2001).**

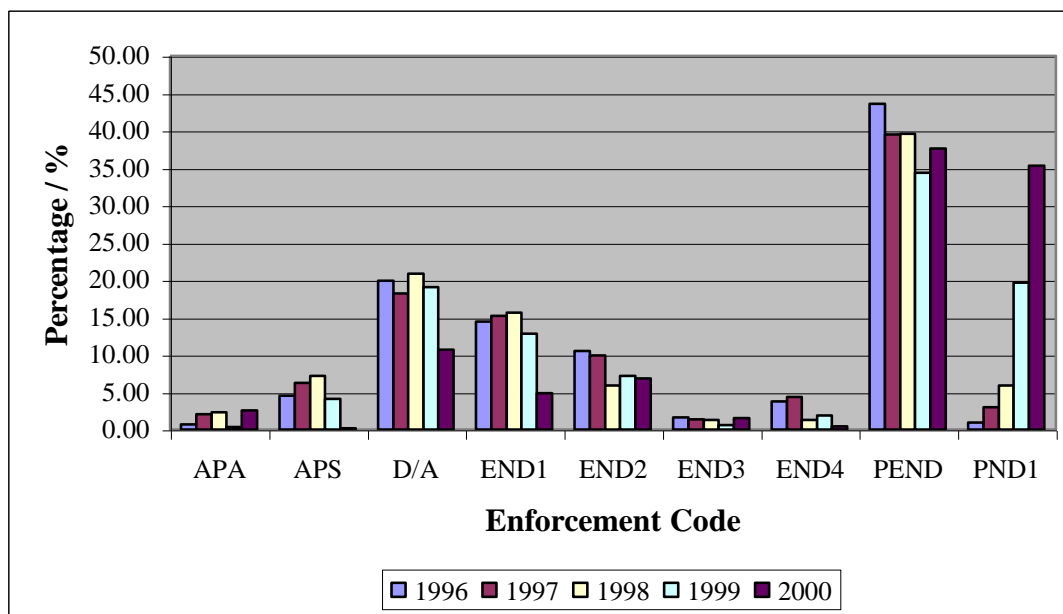
The next part of the analysis will establish the status of the enforcement cases, that is, whether amongst other things it was sanctioned by a PA permit or direct action has been taken to remove it or whether its is still pending. A list of the codes used by the Enforcement Section of the PA is given in Appendix IV.

The values in Table 5.16 show that the highest number of enforcement cases are those pending further investigation (PEND), which date back even to 1996. There are also several cases which are listed for direct action but are still pending (D/A), while only a few cases where direct action was taken (END3). This contrasts with the number of cases whereby the owners removed the infringements themselves (END2).

**Table 5.16: Annual values of enforcement cases ODZ and their respective status as in May 2001 (source: DCIS / ACOLAID and GIS, Planning Authority, 2001).**

Code	1996	1997	1998	1999	2000
APA	4	9	9	1	13
APS	25	27	28	13	1
D/A	110	79	81	61	55
END1	80	66	61	41	25
END2	58	43	23	23	35
END3	9	6	5	2	8
END4	21	19	5	6	2
PEND	241	171	154	110	193
PND1	5	13	23	63	181

For comparative purposes the annual percentages for each value in Table 5.16 was calculated and a graph shown in Figure 5.45 was produced.



**Figure 5.45: Annual percentages for different Enforcement Codes used by the PA ODZ (source: DCIS / ACOLAID and GIS, Planning Authority, 2001).**

When the PA serves an enforcement action, the developer can adopt the following actions:

- ignore it;
- appeal against such action;
- submit an application to sanction the infringement;
- remove infringement.

The percentage number of cases which were withdrawn by the PA (END4) decreased over the number of years. Such cases arise because after the PA would have served an enforcement notice, the owner or developer would present evidence for such action to be taken.

There is a high percentage of cases which are pending further investigations (PEND). The interpretation of the code could mislead people, however, as this code is used in all applications where no action has yet been taken. The enforcement notice is served when the PA knows that an infringement has occurred and has such proof. Following such action, the Authority labels the case PEND, awaiting for the respondent to take some form of action. There was an overall decrease over the years for cases labelled with such code. However, one may note that corresponding to this decrease, a sharp increase in the code PND1 over the same period of time was evident, showing that a large number of people are resorting to lodging an application to sanction the enforcement. This could be both a delaying tactic or a way of attempting to obtain a permit after being caught committing an infringement. Following a decision at first tier level, some applicants persist in appealing or asking for a Reconsideration for their case (APA). The years 1996-1998 showed an increasing trend for applicants to

appeal after being served with an enforcement action, the reverse being true for the following years. About 15% of the enforcement cases were sanctioned by a permit (END1) between 1996-98. The figure in the years 1999-00 could be low due to the fact that the applications would not yet have been decided. About 10% of the owners served with an enforcement notice used to remove the infringements themselves (END2) to avoid further action. However, the percentage values decreased in the following three years. If the owner / applicant fails in obtaining a permit for the infringement committed, the PA may then list the site for Direct Action, meaning that it will remove the infringement itself at the expense of the owner. As a result there is a high percentage (approximately 20% annually) which are listed for Direct Action (D/A). It is evident that only a small percentage are removed (END3), the percentage annual figures never exceeding 2%.

This part of the analysis has highlighted the fact that ODZ there were four main development groups where the number of infringements were consistently high throughout the five years. It has also shown that the person who infringes the law has found a *modus vivendi* in order to enjoy his / her infringement to the most, knowing that it takes a long time before the PA takes action or can effectively take any action. The latter is mainly due to the fact that the person who commits the infringement decides to enter the bureaucratic application or appeal processes in order to try to sanction the infringement, thus gaining time and enjoying the illegal development, pending some form of action from the Authority.



### 5.2.8 Cartographic Analyses

This section will help the reader add a visual dimension to the development pressure being measured through other methods in this chapter. This analysis has also included scheduled areas, which have not been dealt with elsewhere in this study but also assumes that the data found on the maps are correct<sup>280</sup>.

The Mapping Unit of the PA produced three different maps of Malta on request. The data being used in this analysis does not cover the same period covered in the analysis used in other sections. This is because full data inputting on the GIS started in 1994. Another problem with the use of the GIS was the availability of data concerning natural habitats. As a result the relationship between natural habitats, development applications, permissions and enforcement could not be analysed. There was no other way to compile such data regarding habitats except through a field visit around Malta, and by physically marking all the development and different habitats on a map—clearly this is impossible for a single person in the available time.

The analysis concentrated on three interrelationships for the period 1994-2001:

- Map 5.1. Development applications within Temporary Schemes (Development Zones) and Outside Development Zones (ODZ) in relation to scheduled areas;

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<sup>280</sup> It was found out after the analyses were bought from the PA that the enforcement data did not tally with the same data submitted from a different section of the same Authority. The reason for this difference is that the Mapping Unit did not know that some data for the years 1994-1995 had not been inputted in the GIS.

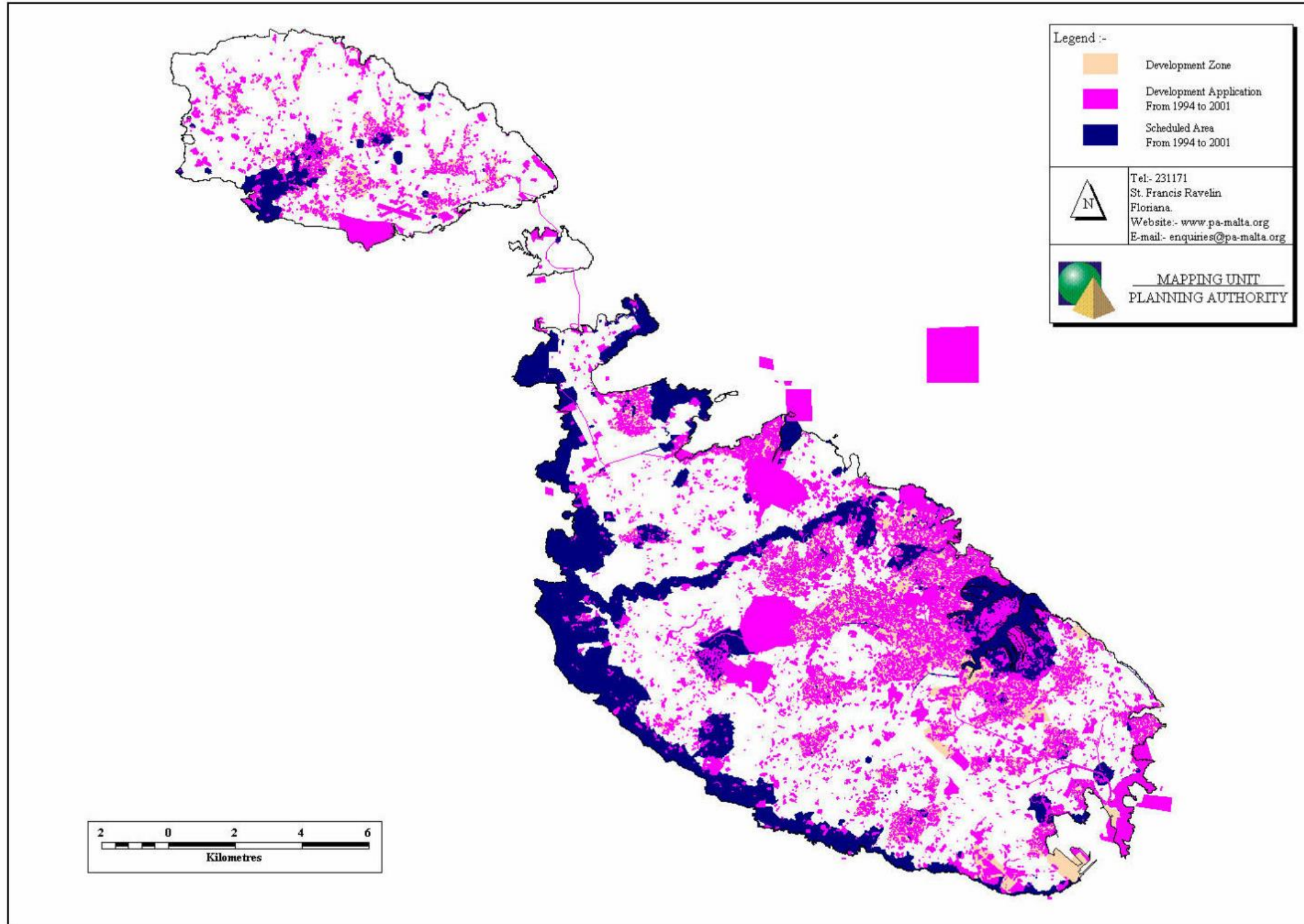
- Map 5.2. Approved and refused development applications within Temporary Schemes (Development Zones) and Outside Development Zones (ODZ) in relation to scheduled areas;
- Map 5.3. Enforcement cases within Temporary Schemes (Development Zones) and Outside Development Zones (ODZ) in relation to scheduled areas.

A discussion of the information in each of these maps will be presented in turn below.

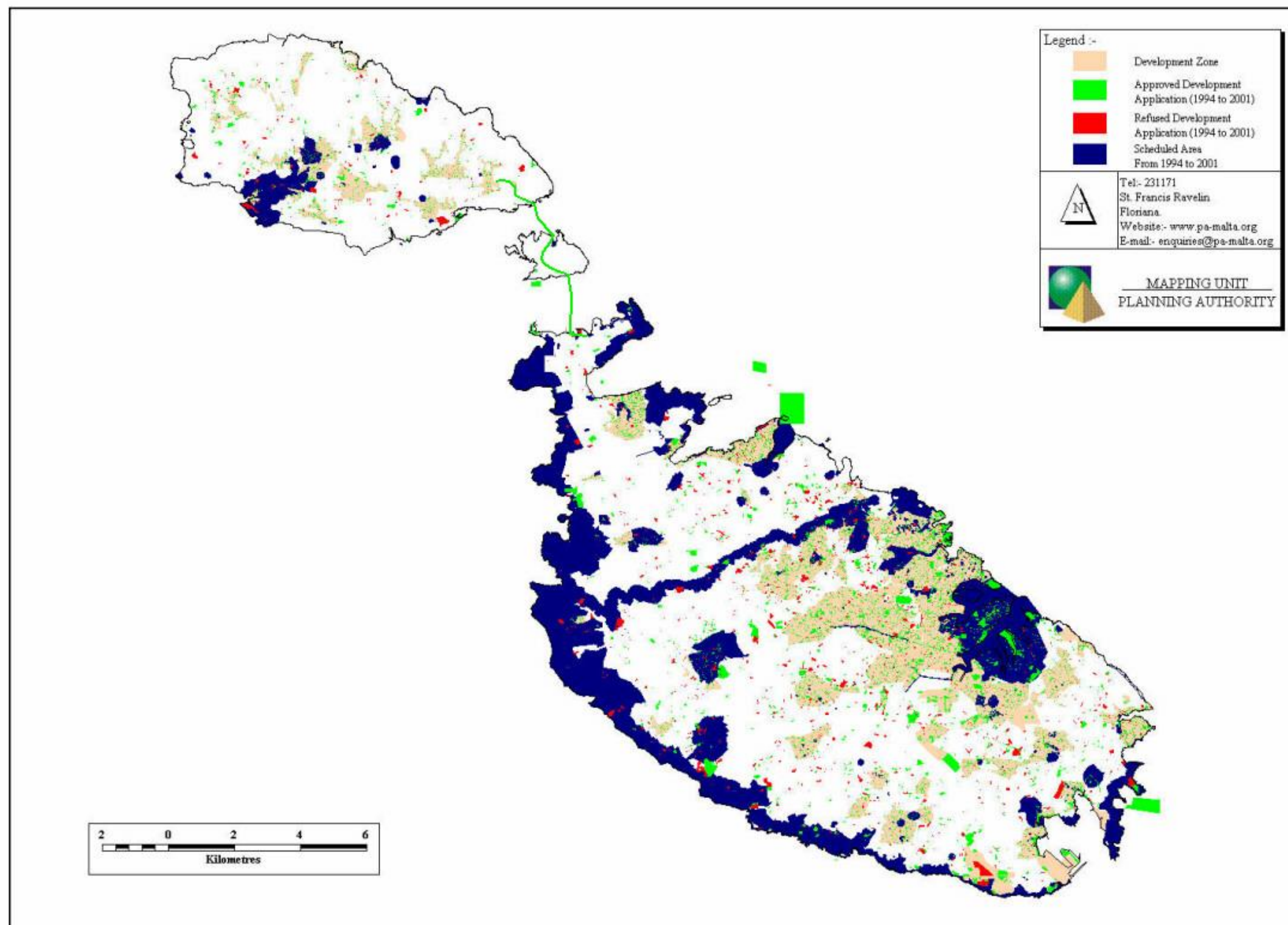
#### Map 5.1:

This Map shows that there was a high concentration of development applications both within Temporary Schemes and also ODZ. The area covered by Temporary Schemes is relatively small compared with the whole area of Malta, Gozo and Comino and the information in the map shows that this is not acting as a constraint for developers to request development permission. In fact, a number of applications covering a large area are situated ODZ. The areas covered by the various schemes and zones are not clearly evident in Map 5.1 but reference to Map 5.2 and Map 5.3 makes the delineation of the Temporary Schemes clear. Developments of such proportions could be requested in such areas because:

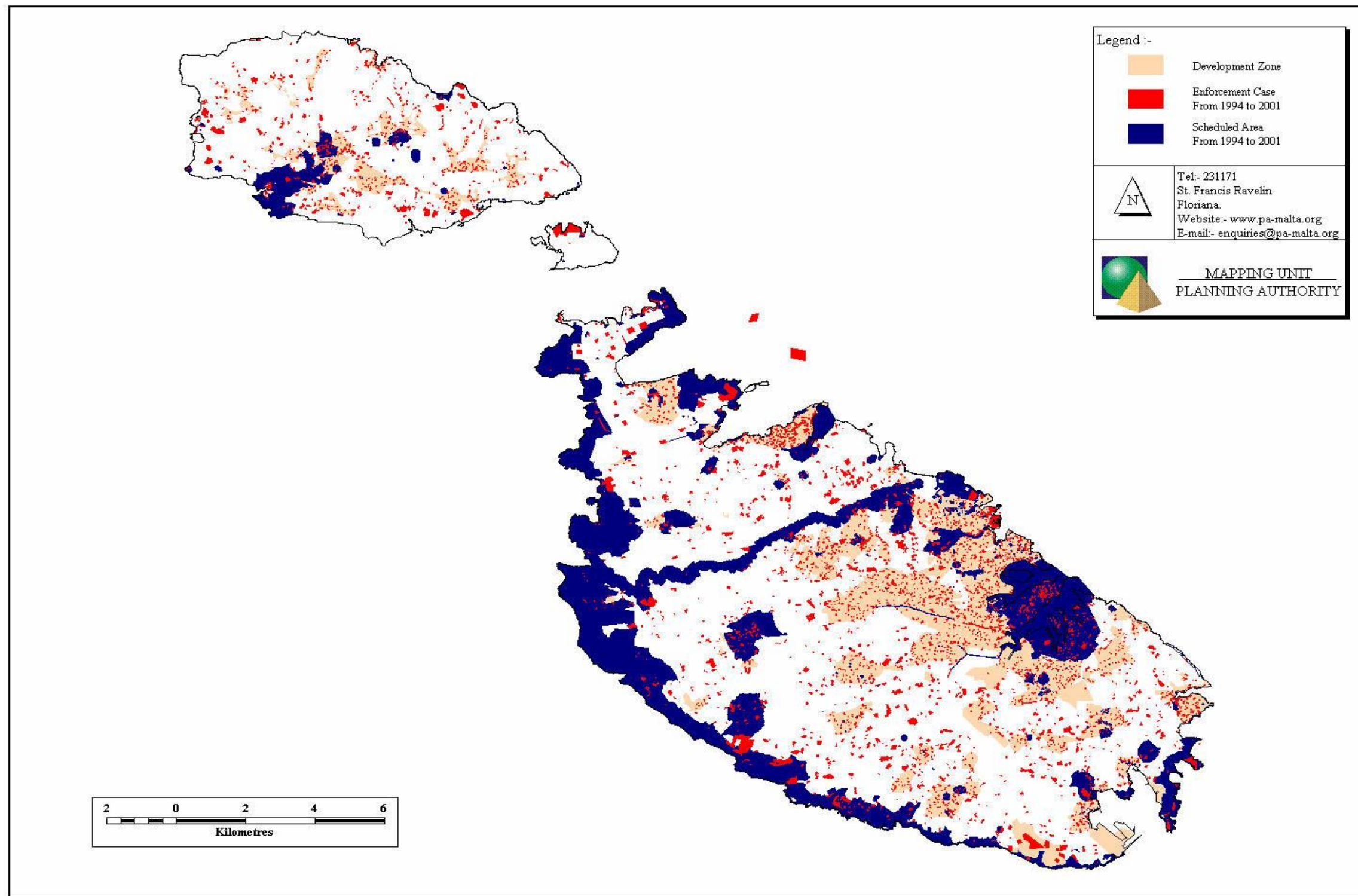
- the unit cost of land would be cheaper than within scheme;
- there is also the possibility of having more leeway with the design;
- the value of the development once finished could have multiplied considerably, in view of restrictions in such areas and the uniqueness acquired for the development. Thus the profit made from such development could be considerable.



**Map 5.1: Site plan of the Maltese Islands showing the development zone boundary, the scheduled areas during 1994-2001 and the development planning applications submitted during the same period (source: GIS, Planning Authority, 2001).**



Map 5.2: Site plan of the Maltese Islands showing the development zone boundary, the scheduled areas during 1994-2001 and the approved and refused (1<sup>st</sup> refusal) development planning applications during the same period (source: GIS, Planning Authority, 2001).



Map 5.3: Site plan of the Maltese Islands showing the development zone boundary, the scheduled areas during 1994-2001 and the enforcement cases recorded during the same period (source: GIS, Planning Authority, 2001).

The number of development applications which have been requested ODZ both in Malta and in Gozo during the period under analysis shows that there was a considerable amount of development pressure. The information in the map however, doesn't distinguish between the different types of development.

Several areas and sites in Malta and Gozo have been declared scheduled property (areas), as defined in Section 46(1) of the DPA 1992. These include areas both within Temporary Schemes and ODZ. For example, the cliffs along the south-west area of Malta are all considered as scheduled property and are ODZ. However, in spite of the scheduling, which in Map 5.1 is marked in blue, it is clearly evident that there were several cases where applications were submitted in scheduled sites.

Map 5.2:

The second analysis concerns the approved and refused applications in relation with scheduled areas, Temporary Schemes and ODZ. This analysis identifies the outcome of most of the data shown in Map 5.1, but the data does not show those applications which have not yet been decided. Most of the approved development is found within Temporary Schemes, although there are a number of approved applications which were located ODZ. Likewise, one may also note a similar number of applications which were refused both ODZ and within Schemes, although the number in the latter areas is probably much lower. Of notable importance is that there are several cases of approved development ODZ which are of a considerable size. This is also noticeable in scheduled areas and in applications approved at sea. The latter are mostly fish farms and there were some applications for the scuttling of vessels as diving attractions. There are also a number of applications of a significant unit area both

ODZ and in scheduled areas, which were refused. However, clear and precise comparisons cannot be made from the information shown on the map; this could only be done if the individual area of each polygon found on the map is measured, but this was not the main objective of this analysis.

#### Map 5.3:

The third analysis concerns enforcement cases in relations to scheduled areas and Temporary Schemes and ODZ. This analysis is important because it shows the hidden development which has been discovered without having any form of permission. Some of these cases could also appear on the other maps due to the fact that an application would have been submitted and decided (approval or refusal). The analysis from the map shows that enforcement cases are widespread across the country, but it is also evident that the unit size of the developments found ODZ and in scheduled areas are relatively large when compared to those within Scheme. One must also keep in mind that the likelihood of such illegal development becoming evident are subject to a variety of factors which have been mentioned in section 4.3.1(c). If one were to compare the number of enforcement cases per unit size of the Island between Malta and Gozo, then the evidence shows that there are much more abuses per unit area taking place in Gozo than in Malta, especially with regards to illegal development ODZ. The size of the enforcement at Comino is also relatively large compared to its size. Abuse is also evident in a particular stretch of cliffs in the south side of Malta where there are at least five large developments served with an enforcement notice in a scheduled area.

This analysis has added a further dimension to the numerical analyses carried out in this chapter, thus giving the reader the opportunity to visualise the nature and extent of the problems created by development in Malta.

### **5.2.9 Case Studies from Decisions of the Planning Appeals Board (PAB) and the Court of Appeal**

This section will be divided into two parts; the first part will measure development pressure, through the use of a method developed by Home (1987). The second part will assess how development plan policies are operating and will use different case studies from the decisions issued by the Appeals' Board and the Court of Appeal.

The exact number of Appeal cases registered with the PA during the period 1994-98 together with the total number of refusals issued by the decision-making boards (DCC and PA) could not be obtained from the Authority due to the operations of a Union directive. The only available PAB statistics were those published by Aquilina (1999 pp. 167-168), but these include all the annual Appeal cases for the period 1993-1998 (until 30/09/98), and do not distinguish between those found ODZ and within Temporary Schemes. As a result these cannot be used.

The second method described in the previous chapter (section 4.3.1 (e)) was used to obtain a list of all the Appeals found ODZ. Each case which was not coded ARF (implies Appeal from refusal still pending) was checked to see whether the Appeal was from refusal or not, and a total count made. This amount was added to the total number of cases with an ARF code. However, since there were still a number of pending Appeals, it is not certain whether the Appeal is from refusal or not. The only



ones which could be checked were those which were already decided. This will obviously introduce a source of error, the level of which should be minimal due to the fact that out of 311 Appeal cases seen, there were only 13 (3.9%) which were not Appeals from refusal. In order to obtain a figure for the number of refusals, the decision data were filtered for the code REF, which is the one used to indicate a refusal. However, in order to establish a figure for refusal from Reconsideration, all Appeal case studies which were found with a decision code DIS were counted. Their total was then subtracted from the annual total of decision data with the same code. This implies that the answer obtained would be the number of Reconsiderations which were dismissed (a refusal) during that year. This value was then added to the number of refusals coded REF and the total number of refusals at first decision level was then obtained. It is important to note that the decision date was used throughout both data processing of Appeal cases and refusal cases, thus eliminating any possibility of double counts. The results obtained are subject to errors inherited from the source, as explained in section 4.3.1 (e).

The results obtained in Table 5.17 show that the number of Appeals submitted against refusal has shown an upward trend starting from a ratio of 5 refusals : 2 Appeals in 1994 and reaching a peak value of 3 refusals : 2 Appeals during 1998. These results could signify various things, amongst which, that there is a high development pressure ODZ. It could also mean that the applicants tend to be less submissive to the Authority and try to obtain a permit at all costs, even if they know that they have to wait a long period of time for the decision to be issued. It could also imply that applicants were following some form of advice from their architects who had noted a better chance of obtaining a development permit at Appeal stage. In order to establish

whether this was true, a sample of files from each year was taken and the respective decision noted (see: Table 5.18). An annual sample of about 35 files was examined, the number, as explained earlier (see: page 246) was considered to be a statistically significant sample. The only case where such a sample couldn't be taken was in 1994 where there were just 20 Appeals ODZ.

There were two cases in 1994 which were left *sine die*, which means left there until they are decided. One of these concerned the building of a cemetery where the Board decided that there was no guiding policy it could follow and so it failed to take any decisions pending such policy. The other case concerned a long case that ended up in the Court of Appeal over a technicality and following such decision the Board deferred the case indefinitely.

**Table 5.17: The total number of refusals and Appeals submitted annual for development ODZ together with the respective ratio (sources: DCIS / ACOLAID, Planning Authority, 1999; CD-ROM *Deciżjonijiet Dwar l-Ippjanar*, 2000).**

<b>Year</b>	<b>Total number of refusals</b>	<b>Total number of Appeals submitted</b>	<b>Ratio refusals to one Appeal</b>
<b>1994</b>	52	20	2.60
<b>1995</b>	106	55	1.93
<b>1996</b>	176	79	2.23
<b>1997</b>	158	90	1.76
<b>1998</b>	255	162	1.57

**Table 5.18: A representative sample (based on application year) of decisions ODZ taken by the Planning Appeals Board, for Appeals from refusal (source: CD-ROM *Deciżjonijiet Dwar l-Ippjanar*, 2000).**

Year when Appeal was submitted (sample)	Refusal tier level <sup>281</sup>	Number of cases	Decision					
			Dismissed	Upheld	Abstained	Appeal null	Reprocessing of file	<i>Sine Die</i>
<b>1994</b>	R1	10	6	2				2
20	R2	5	4	1				
<b>1995</b>	R1	27	20	5	1	1		
38	R2	8	6	1	1			
<b>1996</b>	R1	31	22	6	2	1		
37	R2	3	2		1			
<b>1997</b>	R1	26	14	12				
36	R2	9	4	3	1		1	
<b>1998</b>	R1	28	19	7		2		
38	R2	6	4	2				

There was also a case, submitted in 1997, of an application to build a hotel where the Board considered that the file was not appropriately processed by the Planning Directorate and so sent it back to be reprocessed.

There were four cases where the Appeal was considered null. These cases involved:

- no reasons for Appeal being submitted by applicant;
- the proper legal procedures were not followed in submitting the Appeal;
- incorrect certificate of ownership produced by applicant;
- only part of payment being made by applicant for Appeal.

<sup>281</sup> **R1** refers to refusal taken at first decision tier level while **R2** refers to a refusal from Reconsideration.

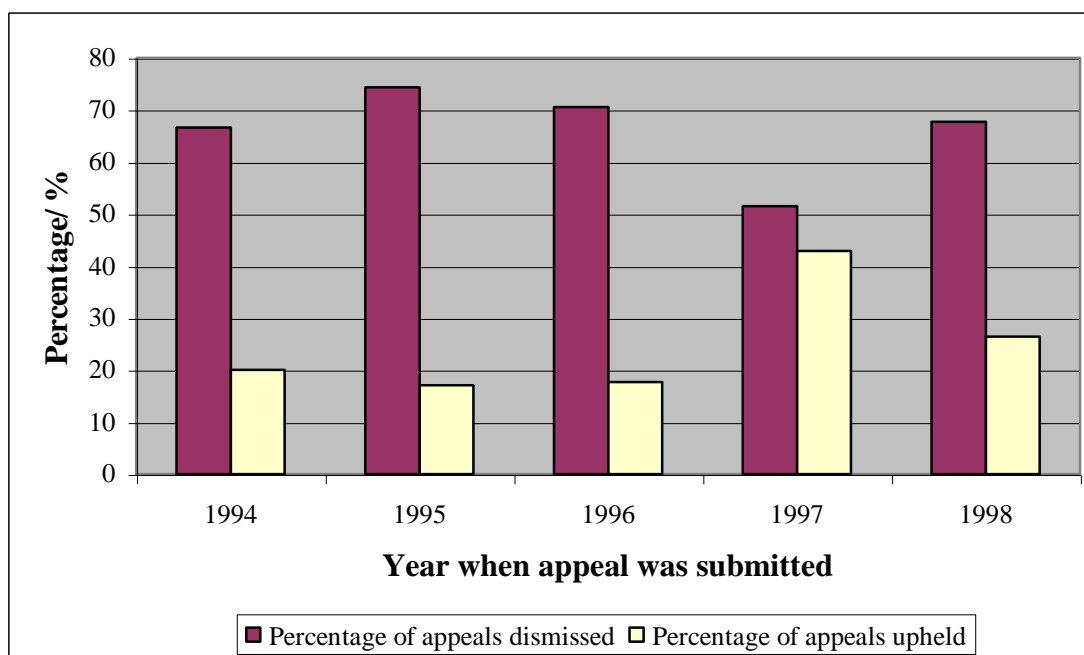
There were six cases where the Board abstained from hearing the Appeal case, the reasons being that the PAB cannot consider Appeals:

- from refusal from Government entities (Section 38(3) DPA, 1992);
- when there are irregularities on site which have not been sanctioned (section 34 DPA, 1992).

The numbers of Appeal cases which were dismissed or upheld showed slight variations over the years. In order to obtain comparative values, percentages were calculated and a graph plotted (see: Figure 5.46).

The results in Figure 5.46 show that for Appeals submitted during 1997-98, there was an increase in percentage in the Appeals from refusal which were upheld. This could be due to either changes in the legislation or in the composition of one of the Planning Appeals Board in 1997. In order to note whether the composition of the Board had any effect on the type of decisions made, a second analysis used the decision date rather than the year when the application was submitted.

The analysis of Appeals by decision date proved to be a rather difficult operation, mainly because the original sample was based on Appeal submission date and a sample of about 35 was taken for each year. Since Appeals could take from a few months to a number of years to be decided, this does not imply that the same number of cases would remain throughout the years. In fact, Table 5.19 shows how the number of Appeals shifted when they were sorted out by decision year.



**Figure 5.46: Percentages of upheld and dismissed Appeals from sampled files ODZ (Table 5.18) in relation to the year when they were submitted (source: sample of ODZ Appeals taken from CD-ROM *Deciżjonijiet Dwar l-Ippjanar*, 2000).**

**Table 5.19: Annual number of sampled ODZ Appeals from refusal based on decision year and decided by the Planning Appeals Board.**

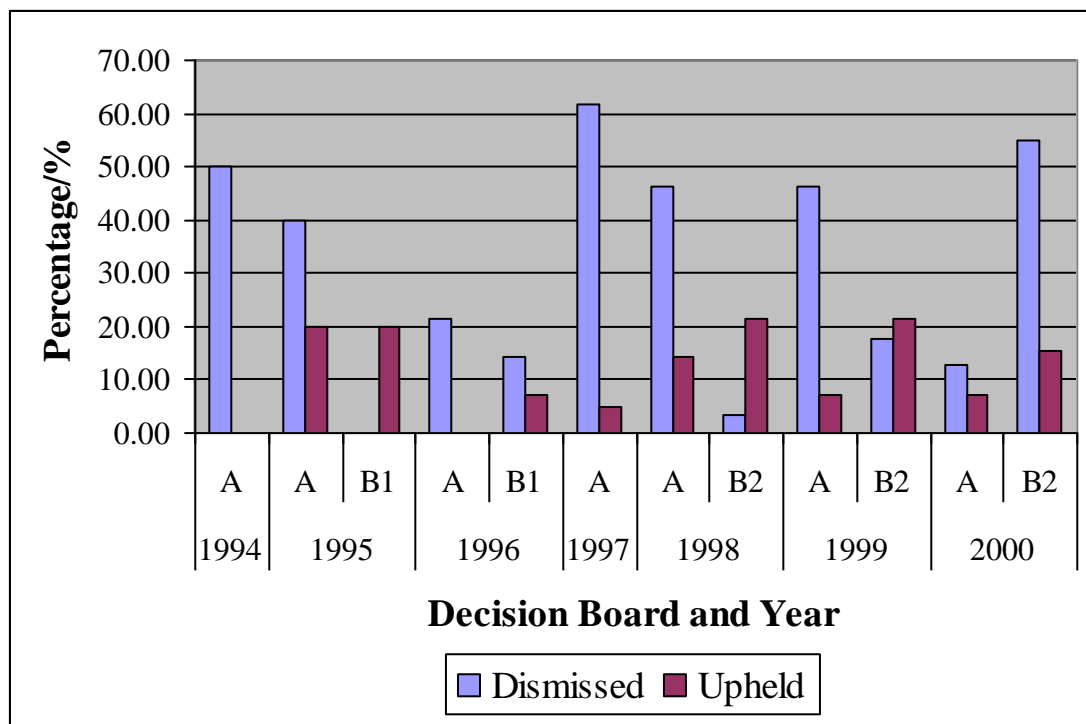
Year	Number of Appeals sampled
1994	2
1995	5
1996	14
1997	21
1998	28
1999	28
2000	71

The number of sampled cases for the period between 1994-1996 was relatively low.

The data were sorted by PAB panel and decision year and the respective percentages

of decisions which were upheld and dismissed were calculated and produced in graphical form Figure 5.47.

The fact that the sample values were low for the years 1994-96 shown in Table 5.19 makes it difficult to compare the percentage values of these years with those between 1997-2000, so comments will mainly be restricted to the last four years. There were always two panels of the Planning Appeals Board which will be referred to as Boards A and B; Board A has had one Chairman since 1993. Board B had one Chairman of between 1993-1997 (referred to as Board B1), and then a different chairman between 1997-2000 (referred to as Board B2).



**Figure 5.47: Annual percentage dismissed and upheld decisions related to the PAB for annual sample of Appeals taken between 1994-98 for Appeals ODZ<sup>282</sup>.**

<sup>282</sup> The codes A, B1 and B2 refer to the three different Boards of Appeal during the years under study.

The first observations from the results in Figure 5.47 are that the total annual percentage of dismissed Appeals were always greater than for those upheld. Secondly, the percentage of dismissed Appeals issued by Board A was always greater than those upheld. In the case of the Board B2, the percentage of upheld Appeals was greater than the dismissed ones for the years 1998 and 1999. The effect shown in Figure 5.46, whereby there was a rise in the percentage number of upheld decisions for applications submitted in 1997 is not evident in Figure 5.47. In the latter figure, the highest percentage of dismissed Appeals were registered in 1997. In order to test any statistical variations in the annual decisions which could be attributed to the different boards, the following Chi-Square statistical test was carried out using SPSS software. However, the test does not support small values and, as a result, the cases considered by the Board B1 were left out of the test. The total values of the Dismissed and Upheld cases for the cases decided by Board A and by Board B2 were used (Table 5.20). The following hypothesis were tested:

*H<sub>0</sub>: There is no significant difference in the proportion of dismissed and upheld decisions for the two panels (Boards A and B2) of the Planning Appeals Board.*

*H<sub>1</sub>: One of the panels of the Planning Appeals Board is giving a higher proportion of Dismissed decisions.*

**Table 5.20: Total values for dismissed and upheld decisions taken by two panels of the Planning Appeals Board during the period 1994-2000.**

BOARD	Decisions		Total
	Dismissed	Upheld	
A	54	14	68
B2	45	23	68
Total	99	37	136

**Table 5.21: Results from Chi-Square Test conducted on PAB decisions.**

	Value	df	Asymp.Sig. (2-sided)
Pearson Chi-square	3.007	1	0.083
Likelihood Ratio	3.030	1	0.082
Linear-by-Linear Association	2.985	1	0.084
N of Valid Cases	136		

Conclusion:

Since the p-value (0.083) is greater than the level of significance (0.05), we accept  $H_0$ .

So the difference can be attributed to chance.

Further to this test, one may note that the dismissed : upheld ratios for the PAB (see: Table 5.22) show that the Board B2 was more liberal in its decisions. However, the Statistical test rejects hypothesis  $H_1$ , implying that this could have occurred by chance.



**Table 5.22: Decision ratios for the Planning Appeals Boards A and B2 between the years 1994-2000.**

BOARD	Decision ratio	
	Dismissed	Upheld
A	3.86	1
B2	1.96	1

The next part of the analysis was aimed at utilising the method of Tewdwr-Jones (1994) who used Appeals to analyse how planning policies were operating. However, his methodology had to be altered slightly due to the fact that the source of data<sup>283</sup> did not always contain all the information required. Some files had the original application decision missing while others did not have any documented evidence that the Planning Directorate made any written submissions, most probably because their representatives would have made a verbal presentation. Unfortunately, no record of any verbal presentations was found in the source of data which is being used, in spite of the fact that it was clearly stated that the Board heard a number of witnesses.

The analysis will concentrate on the Appeals from refusals and the same annual sample used in this section above will be the source of data.

A coded database was created from the samples of Appeals which were originally selected. The database contained the following information:

- PA files number;
- Appeal year;
- application year;

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<sup>283</sup> Legal (Publishing) Enterprises *Deciżjonijiet Dwar l-Ippjanar*, Malta (CD-ROM) (updated to March 2000).

- development type;
- the type of Appeal (whether from refusal, reconsideration, enforcement action or condition);
- whether a site visit was carried out;
- the original reasons for refusal;
- the reasons on which the Appeal is based and by whom it was submitted (architect or lawyer);
- the response of the Planning Directorate to the Appeal;
- whether there were further interchanges between the Directorate and the applicant;
- the decision of the Planning Appeals Board;
- the reasons on which the decision was based;
- which board panel decided the Appeal;
- whether it would be a suitable a case study;
- whether the case was taken to Court of Appeal and the outcome if it had already been decided;

The original codes used in the database to describe the type of development were rather extensive and would have made the analysis rather complicated. So first, the data were filtered for those Appeals which were either from refusal at 1<sup>st</sup> decision tier level or from refusal from a Reconsideration. The types of developments present within these parameters were then grouped as shown in Table 5.23.

**Table 5.23: Types of development which were grouped for analytical purposes.**

<b>Group</b>	<b>Types of developments included</b>
Agriculture	Agricultural buildings; agricultural stores; farm houses; greenhouses; reservoirs; boundary walls; agricultural fields.
Dwellings	Dwellings, including dwellings with garage; garages; swimming pools;
Industrial	Industry; quarries.
Commercial	Commercial; hotels.
Others	Change of plans to existing permit; recreational; cemetery; car parks; discos; boathouses.

The data were then separated into the above groups and, for each group, the coded reasons for the following parameters were individually counted:

- original reasons for refusal (whenever found in the data);
- reasons submitted by applicant for Appeal;
- reply by the Planning Directorate to Appeal submitted by appellant;
- reasons by Planning Appeals Board for decision taken.

The percentage for each code used in the respective group was then calculated and tabulated separately and a graph produced from these results. The codes used are detailed in Appendix IV.

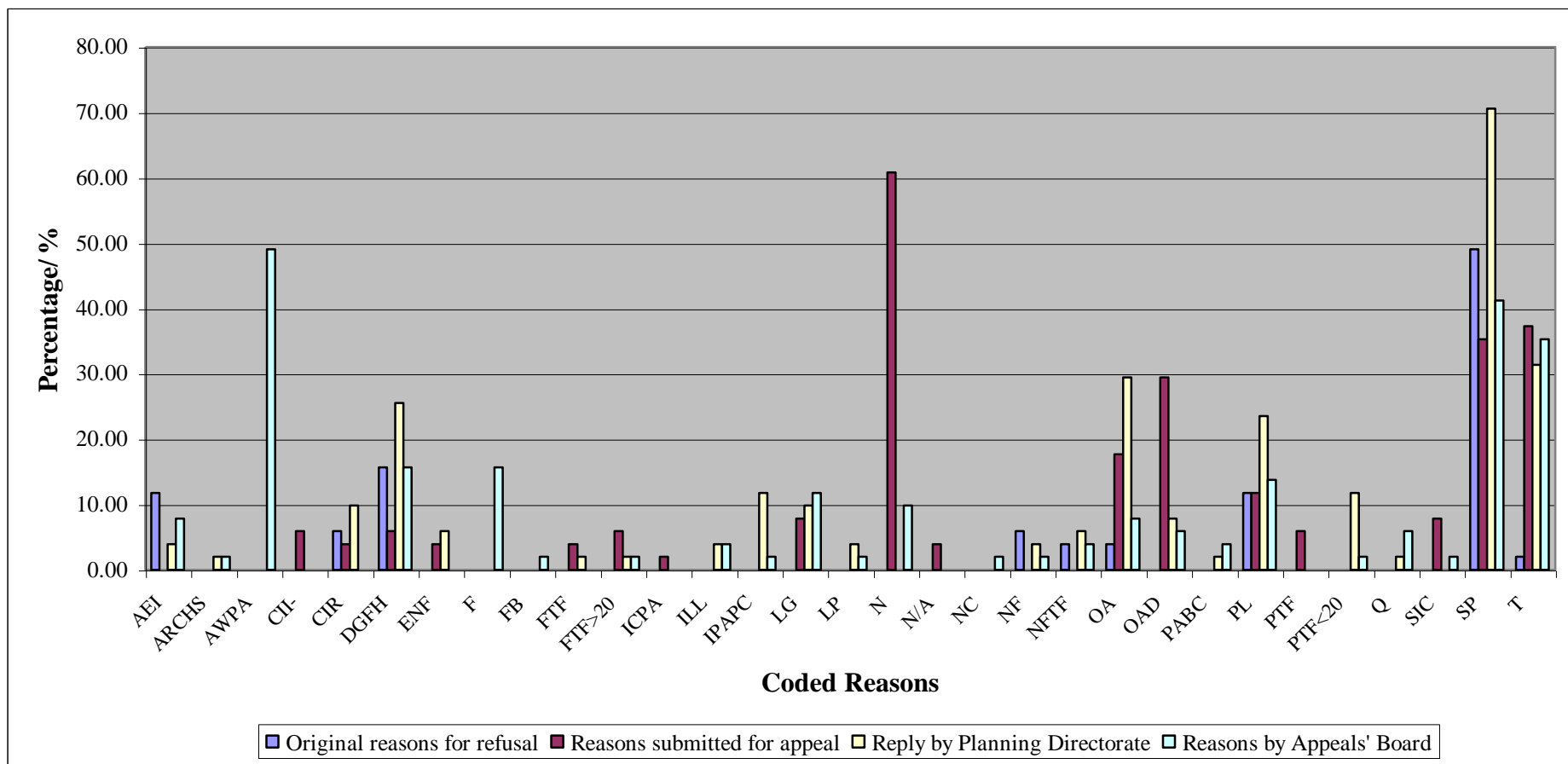
Figure 5.48 illustrates the results obtained for the agricultural groups of developments. The results show that there is a tendency for the Planning Directorate to more fully elucidate its reasons from first decision stage to Appeal stage. It is possible to suggest reasons why the number of cases of AEI (Area of Ecological Importance) and NF (Not Farmer) are higher at the first decision stage than the rest. This could be due to the fact that the terminology used at the two different levels might have been different. For example, in the case of AEI, the Case Officer who wrote the report might have mentioned the term on its own when writing the DPA report, whilst at the

Appeal stage, the policy concerned with AEI would have been quoted and so in the latter case it would have been recorded under code SP (Structure Plan policies). Similarly, the term "not farmer" (NF) could have changed to "not full time farmer tilling more than 20 tumuli of land", which is coded NFTF, when this is quoted at the Appeals stage.

The second thing worth noting is that the basis of a considerable number of Appeals centres mainly on the following points:

- the need (N) for the development by the applicant;
- justification based on other adjacent development (OAD), whether in the vicinity or not;
- comments (objection / approval) by government agencies (OA);
- interpretation of Structure Plan policies (SP);
- technical justification (T) based usually on justification of size and type of development;
- interpretation of PLP 20 (PL), which is a policy guidance paper for development Outside Development Zone.

The fact that applicants place a considerable emphasis on "need" and "other adjacent development" while showing a much lower justification based on policies could imply that either the policies concerning agricultural development Outside Development Zone are quite restrictive in nature or that the architect or lawyer who submits the Appeal is not so conversant with the policies. Also, one might state that the significance of the policies might not mean much to the laymen (the applicant), but the need for the development and the fact that others have been granted permission have a much higher value for such people; hence the results.



**Figure 5.48: Percentage coded reasons given by the Planning Directorate, the applicant and the Planning Appeals Board for refusals regarding agricultural related developments ODZ (source: sample of ODZ appeals taken from CD-ROM *Deciżjonijiet Dwar l-Ippjanar*, 2000).**

The Planning Directorate, at the Appeal stage, based its reasons for refusal mostly on:

- Structure Plan policies (SP);
- guidelines found in PLP20 (PL);
- guidelines found in the Policy and Design Guidance Farmhouses and Agricultural Buildings (DGFH);
- on the fact that there were infringements of conditions found in previous permit (IPAPC);
- on comments from other government agencies (OA);
- on whether the applicant is a full time or part time farmer and the amount of land tilled (PTF <20; FTF >20; PTF; FTF; NF; NFTF);
- on technical comments (T).

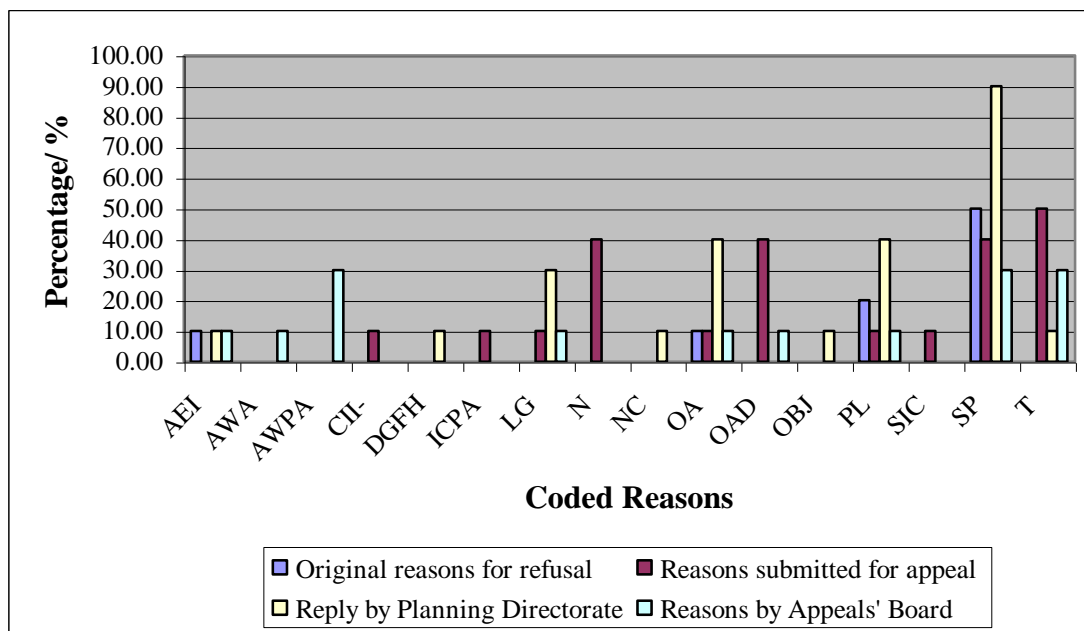
This shows that the Planning Directorate mostly utilises sources which are part of the legislation in order to justify its refusal. The fact that it used the Structure Plan policies together with policy and design guidance to such an extent, implies that these can withstand Appeal and so can be considered as strong policies. This is further justified when it is noted that the use of Structure Plan policies by the Board showed a considerable decline when compared to its use by the Planning Directorate, however the Board had a tendency to use the terminology "agrees with the PA" (AWPA) in order to avoid rewriting all that was previously said. The most frequently used terms in the justifications associated with the Board's decisions apart from those already mentioned were:

- the use of Policy and Design Guidance Farmhouse and Agricultural Buildings (DGFH);
- legal points (LG) which are mostly related to citing previous case studies;
- PLP 20 (PL);
- technical comments (T);
- fines (F) for illegal development which was being sanctioned by the decision of the Board.

The limited use of Local Plan considerations in all the above-mentioned stages is noteworthy and can be explained by the fact that during the period under study there was only one Local Plan in force.

The second group which will be analysed is development linked to the commercial sector. The results in Figure 5.49 show similar trends to those evident in the agricultural sectors. The basis for the original refusal of the application were mainly on Structure Plan policies, PLP 20, comments by other agencies, and on the fact that the area concerned was considered an AEI. As in the agricultural sector, the reasons for Appeal were mainly based on need, on "other adjacent development" and on "technical comments". However, in this case, the use of Structure Plan policies at this stage was also frequent. As in the previous example, there was an increase, when compared to the original decision, in the use of Structure Plan policies and PLP 20 when the Planning Directorate responded to the Appeal.

Contrary to the evidence shown in the agricultural group, in this case, there were instances where the Board agreed with the appellant (AWA). However, as in the previous group the Board made use of the term "agrees with the PA" in equal proportions as when it made use of Structure Plan policies and "technical comments". The use of PLP 20 guidance by the Board was very much restricted when compared to its use by the Directorate.



**Figure 5.49: Percentage coded reasons given by the Planning Directorate, the applicant and the Planning Appeals Board for refusals regarding commercial related developments ODZ (source: sample of ODZ Appeals taken from CD-ROM *Deciżjonijiet Dwar l-Ippjanar*, 2000).**

The three most quoted reasons for refusal in the Dwellings group (see: Figure 5.50) were:

- Policy and Design Guidance Farmhouse and Agricultural Buildings;
- PLP 20;
- Structure Plan policies.

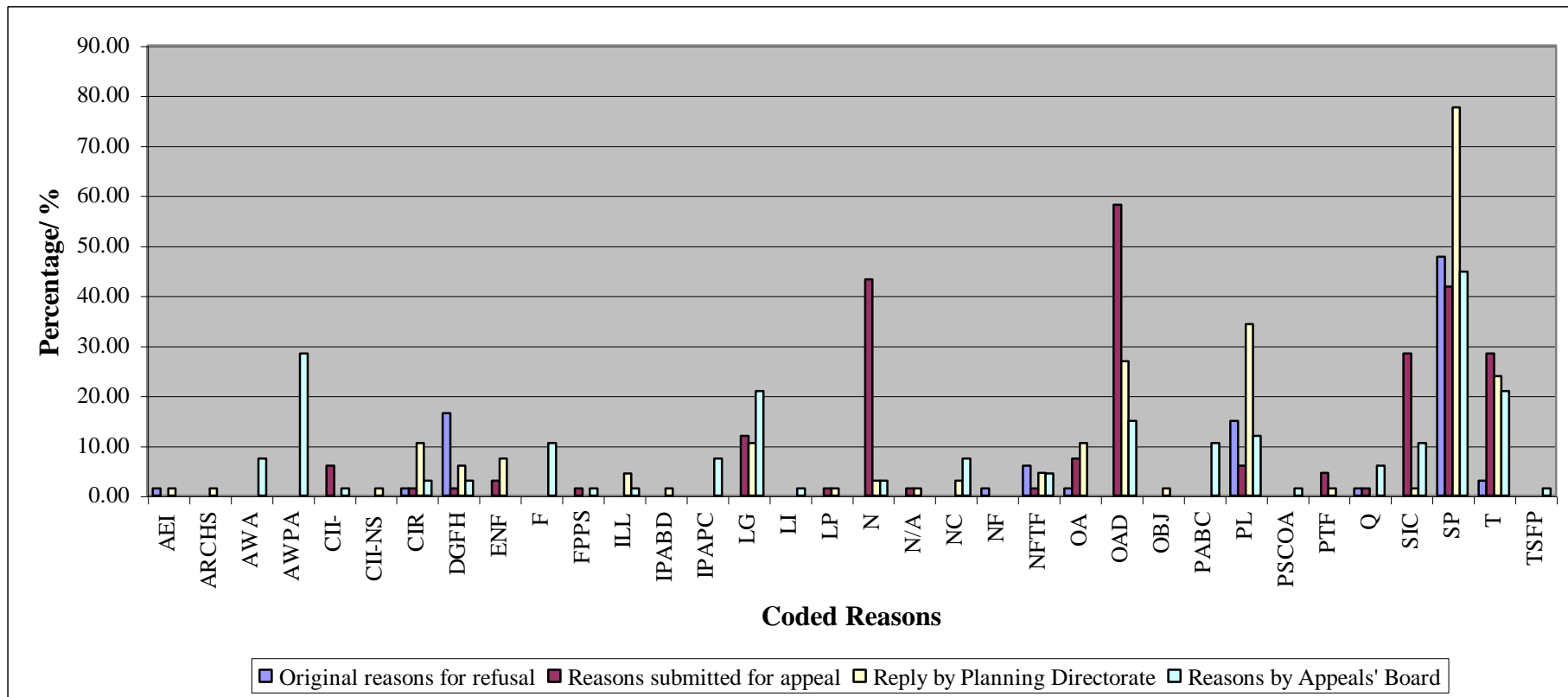


There were a few cases where it was stated that the applicant was not a farmer (NF; NFTF). This is mainly because one of the requirements to entitle persons for a dwelling ODZ is that they are farmers tilling over 20 tumoli of land. This could have been stated when citing parts of the *Policy and Design Guidance Farmhouse and Agricultural Buildings* as part of the reasons for refusals.

One must note that contrary to the other groups already analysed, in this case the justification brought about by the appellants for their Appeal was based mostly on other adjacent development (OAD) rather than on need (N). Apart from these, the applicants tried to make their point by claiming that the site is committed (SIC) and on technical and legal points (T and LG).

The Planning Directorate acted in a slightly different manner with this group of development. Whereas for the agricultural and commercial developments groups "other adjacent development" was considered to be important, the percentage score in this case in the dwelling group was significantly higher. As in the previous cases, the justification for refusal was mostly based on Structure Plan policies, PLP 20, Technical and Legal points. One may also note that the use of the *Policy and Design Guidance Farmhouse and Agricultural Buildings* at this stage showed a strong decrease when compared to its use at original decision level. This contrasted well with the increase in use of planning circulars (CIR) at Appeal stage when compared to original decision level.

The attitude of the Board vis-à-vis this group is very similar to that shown in the agricultural one, the principle justifications being used were mainly the same.

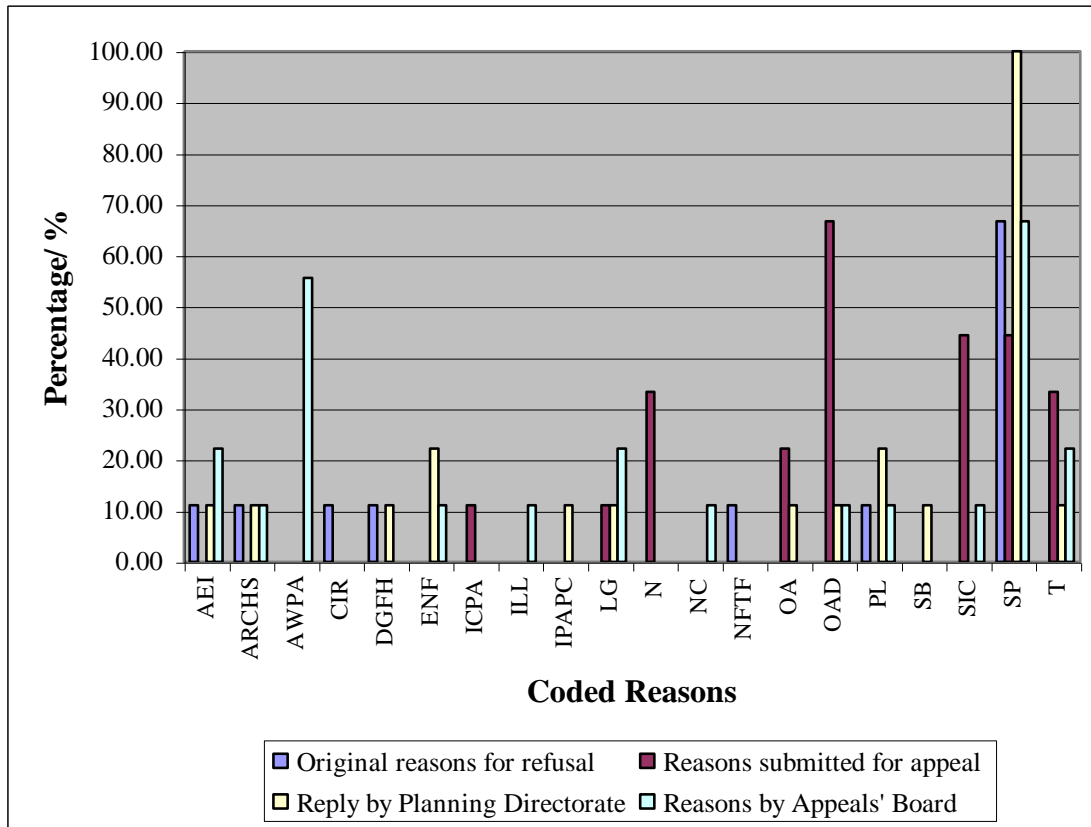


**Figure 5.50: Percentage coded reasons given by the Planning Directorate, the applicant and the Planning Appeals Board for refusals regarding dwelling developments in ODZ (source: sample of ODZ appeals taken from CD-ROM *Deciżjonijiet Dwar l-Ippjanar*, 2000).**

The next group to be analysed is that concerning Appeals from the industrial sector (Figure 5.51). Structure Plan policies were used mostly to refuse applications at the first and second decision tier levels. There was an equal distribution to justify such refusals through the use of the fact that the site was either an Area of Ecological Importance or an archeologically sensitive site. Apart from these, the same percentages were obtained for the use of planning circulars, Policy and Design Guidance Farmhouse and Agricultural Buildings and the use of PLP 20, apart from the fact that the applicant was not a farmer.

Contrary to the previous cases mentioned above, applicants in the industrial sector made a stronger emphasis to justify their Appeal by citing other adjacent developments (OAD), while there were several cases where the applicant claimed that the site is already committed (SIC), and they also made use of Structure Plan policies. The justification of need (N) for the development also had high percentages in this group.

As in all the previous groups, the reply of the Planning Directorate at the Appeal stage was mainly based on the use of Structure Plan policies, PLP 20 and that an enforcement action (ENF) was issued on the site of the development due to some form of illegal development. Also, as in previous examples the use of Structure Plan policies at this stage was more extensive than at first decision tier level or Reconsideration stage. This was the only case whereby the Directorate used Structure Plan policies throughout all the case studies seen. Some of these developments were in Areas of Ecological Importance (AEI) or in archeologically sensitive sites (ARCHS).



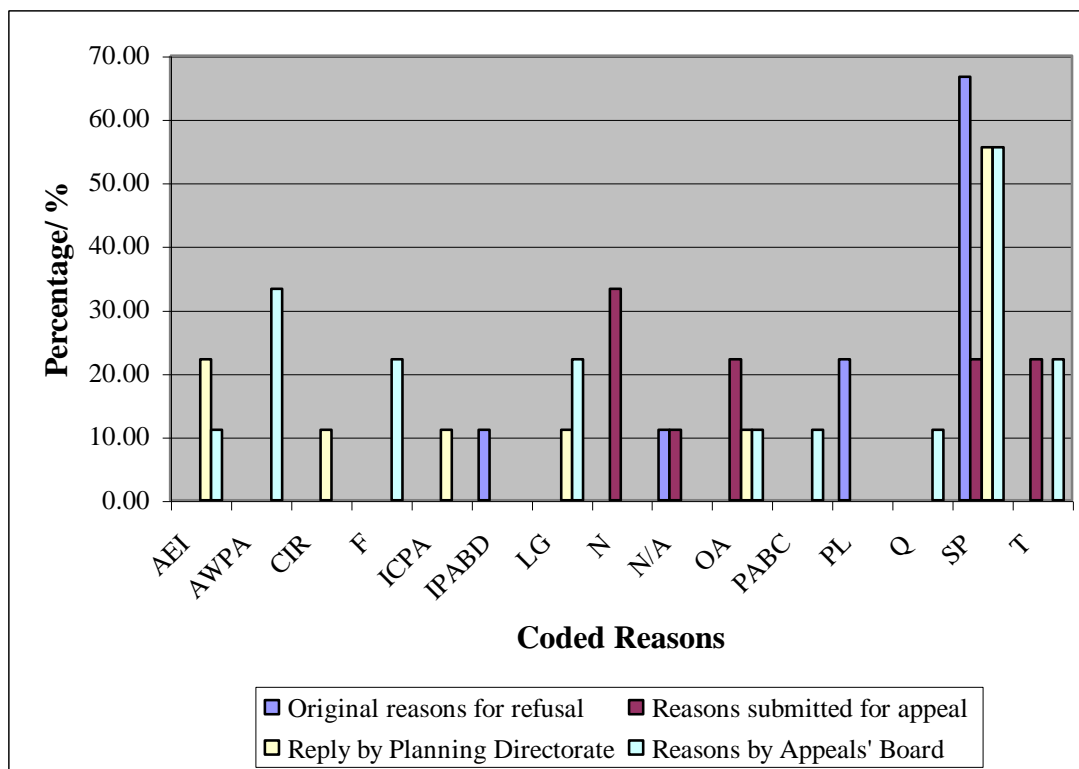
**Figure 5.51: Percentage coded reasons given by the Planning Directorate, the applicant and the Planning Appeals Board for refusals regarding Industrial related developments (source: sample of ODZ Appeals taken from CD-ROM *Deciżjonijiet Dwar l-Ippjanar*, 2000).**

There is a great similarity between the justifications used here by the Appeals' Board and those used in the case for Agricultural developments. These were mainly based on agreement with the PA (AWPA), the use of Structure Plan policies, legal and technical comments. The only exception in this case was the great emphasis given by the Board to Areas of Ecological Importance (AEI); the percentage for this term was higher than that made by the Planning Directorate. There was a high percentage for the claims by developers that the site was committed (SIC); the PAB only commented in a few such cases, as it also did when the site was not committed (NC). However, the Planning Directorate never made any comments in either cases (SIC or NC).

The final group to be analysed is that under the collective term "other" (Figure 5.52). Most of the justifications presented for the refusal of applications prior to Appeal were based on the use of Structure Plan policies and PLP 20. However, in one case the Directorate claimed that the development infringes a decision by the PAB on the same site (IPABD), while in another case there was no information on which basis the original decision was taken (N/A). The main arguments brought about by the developers to justify their Appeal were mainly that of need (N) for the development. The other terminologies used in equal proportions were technical comments (TC), Structure Plan policies and comments by other agencies (OA). Contrary to all the other previous groups already analysed, in this case one will note a lesser use of Structure Plan policies made by the Directorate than when the application was originally refused, but there is a possibility that in this case the Directorate was more specific by quoting planning circulars (CIR) and making legal comments (LG). There were also some cases where the site was in an Area of Ecological Importance (AEI) and also where the PA claimed that there were irregularities on site (ICPA). Similar to previous groups<sup>284</sup>, the major justifications used by the Planning Appeals Board were mainly the use of Structure Plan policies (SP), legal and technical comments (LG, T) and the generic term that it agrees with the PA (AWPA). In this group, the Board also issued a specific set of conditions attached with permits (PABC), apart from fines (F) for sanctioning illegal developments. There was also a case where the Board issued a questionable condition (Q) for a development. This concerned the permission to use an illegal concrete platform near a beach concession, pending rehabilitation of the area.

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<sup>284</sup> Agricultural, Dwellings, Industrial and Commercial.



**Figure 5.52: Percentage coded reasons given by the Planning Directorate, the applicant and the Planning Appeals Board for refusals regarding developments ODZ grouped under the term "other" (source: sample of ODZ Appeals taken from CD-ROM *Deciżjonijiet Dwar l-Ippjanar*, 2000).**

The next analysis is again based on the work of Tewdwr-Jones (1994) and concerns the use of individual Structure Plan policies and planning circulars by the Appeals' Board. The analysis had to be modified slightly from the original work by Tewdwr-Jones because of the different planning set-up in Malta compared to that in England. The analysis was carried out on the same sample and groups used previously. In this analysis:

- where the code NP is being used, it implies that the Appeals' Board did not refer to or mention any policy in its final decision, but does not imply that it did not consider any other material considerations in arriving at said decision;

- the use of Policy and Design Guidance which were specific to certain types of developments such as Farmhouses and Agricultural buildings were not taken into consideration mainly due to their specific nature;
- circulars PA 2/96<sup>285</sup> and 3/93<sup>286</sup> were also considered, mainly due to the fact that these were usually mentioned with other policies and the former mainly concerns, amongst other things, the procedures to be followed in sanctioning illegal development; the DCC will not consider applications if there is an illegal development on site unless the application is to sanction such development;
- paragraphs (PARA) from the Structure Plan and the Explanatory Memorandum accompanying the Plan were also considered in the analysis due to the fact that they form part of the same Plan.

The first group which will be analysed is that concerning the Agricultural sector (Figure 5.53). Agricultural related development is allowed Outside Development Zone, but this could take place within certain parameters which are mainly spelt out in PLP 20, and in RCO policies and policies SET 11, 12, AHF 5, BEN 5 and paragraph 7.6 of the Structure Plan. A comprehensive review of these policies was given in Chapter 3 of this thesis, however, for the benefit of the reader in order to better understand the analysis, these policies are paraphrased below:

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<sup>285</sup> Concerns procedures in sanctioning illegal development.

<sup>286</sup> Concerns traffic generation, access and parking.

PLP 20: This is a development guidance note, aimed at development ODZ, issued by the Planning Directorate in January 1995 and includes a comprehensive guide incorporating various Structure Plan policies related to ODZ development.

RCO policies: Policies governing development in Rural Conservation Areas which are found mainly ODZ. One of the most restrictive policies is RCO 2, which integrates policies SET 11, BEN 5 and RCO 4.

SET 11: This policy bans all forms of urbanisations outside built-up areas, apart from a list of developments found in paragraph 7.6 of the Structure Plan.

SET 12: This policy places the onus on the applicant to justify why the PA should grant permission for development which infringes policy SET 11. An Environmental Impact Assessment is one of the requirements for such a justification.

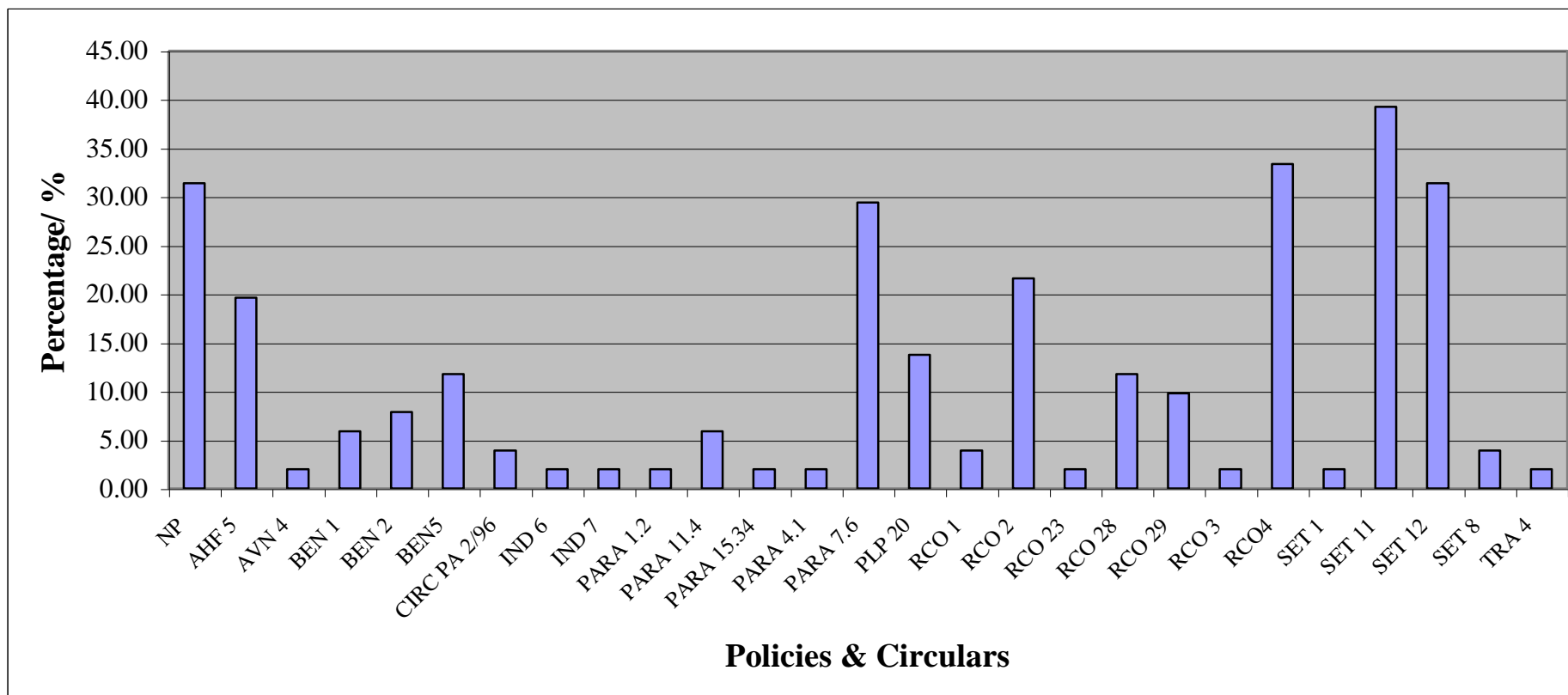
Paragraph 7.6: This paragraph includes a list of developments which are considered as normal and legitimate inclusions ODZ.

AHF 5: This policy states which agricultural structures would be permitted in the countryside and the conditions under which they could be authorised.

BEN 5: This policy states that applications for permission ODZ should be judged against policies and guidelines found in the Local Plans or in their absence in the Structure Plan and guidelines found in the Explanatory Memorandum.



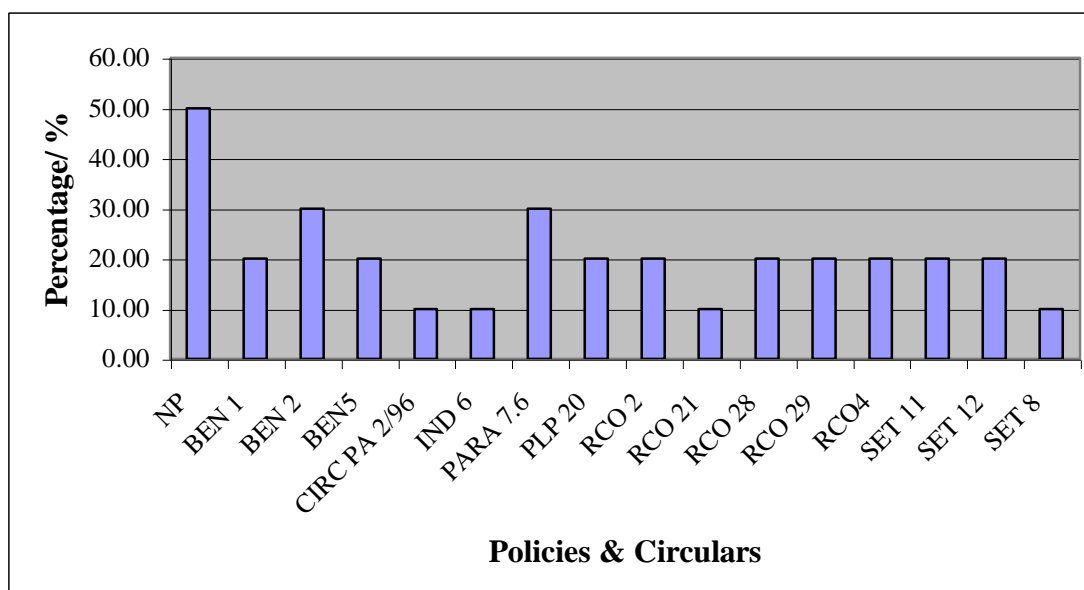
There were 51 cases that were found in this group and the results illustrated in Figure 5.53 show that no policy was mentioned by the Planning Appeals Board in over 30% of the cases. This does not include a case whereby the Planning Appeals Board referred to the refusal at first decision level, but since the details were missing from the dataset, it wasn't clear whether any policies had been mentioned; the Appeal was eventually dismissed. In the cases when the Board cited no policies, there were 2 (3.9%) abstentions, 9 (17.7%) dismissed Appeals and 5 (9.8%) upheld Appeals. As expected the most frequently used policies were the restrictive group of policies mentioned above. PLP 20 was less frequently used than the Structure Plan policies. In some cases not all the group of policies were mentioned together, the Board limiting itself to policies SET 11 and 12 and paragraph 7.6, while omitting BEN 5, AHF 5 and RCO 2. In the 10 decisions which were upheld by the Board, 5 were cases where no policy was mentioned, while another 4 were cases where both SET 11 and 12 were referred to by the Board in their deliberations. In the remaining application, the only policy mentioned was RCO 4, which is a policy about scenic value.



**Figure 5.53: Percentages of Structure Plan policies and Planning Circulars used by the Planning Appeals Board concerning decisions for ODZ developments in the Agricultural sector (source: sample of ODZ appeals taken from CD-ROM *Deciżjonijiet Dwar l-Ippjanar*, 2000).**

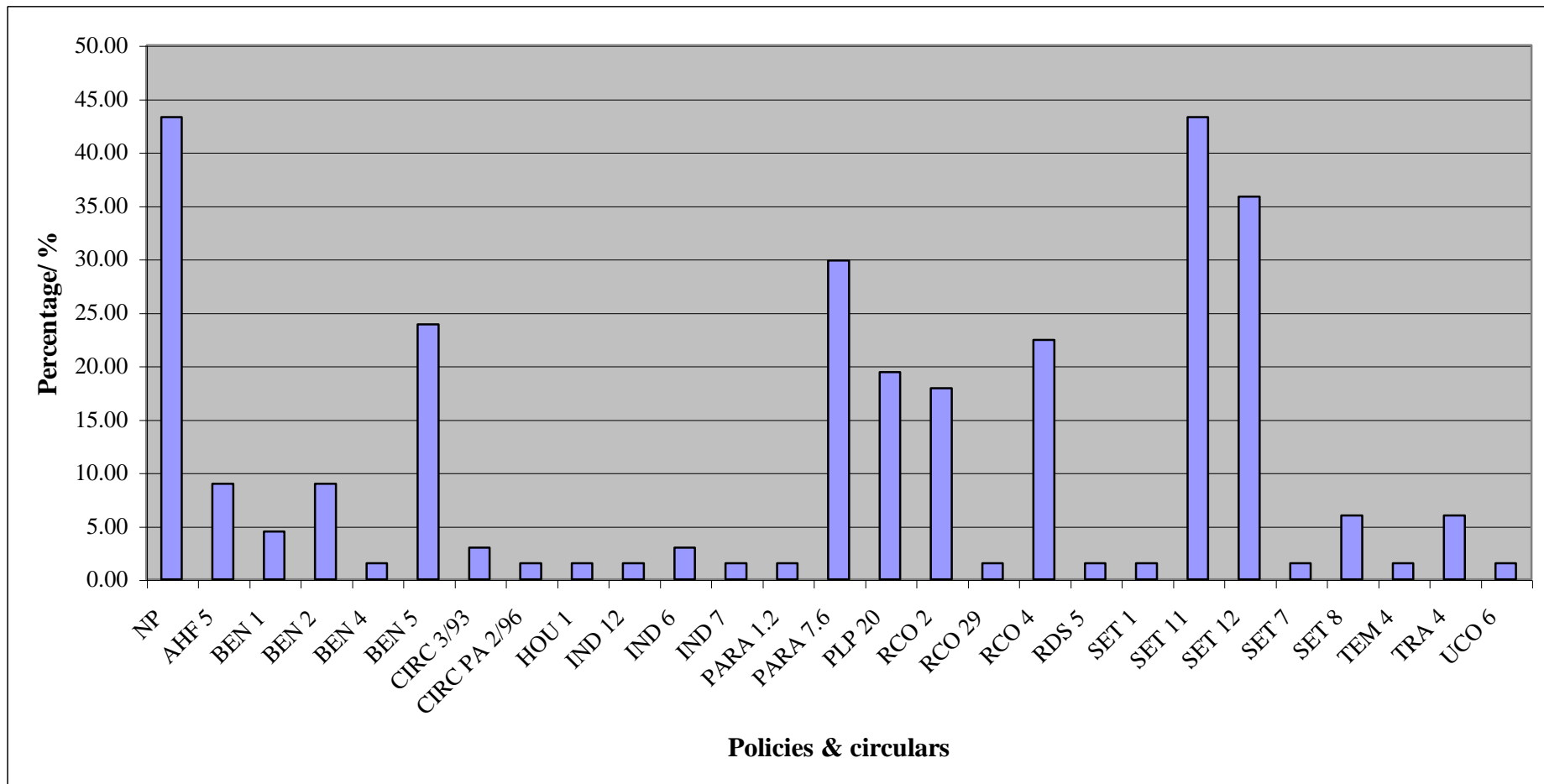
There were only 10 cases which could be included in the commercial group (see: Figure 5.54). There were 5 cases where no policy was mentioned by the Board; in one case, the Appeal was considered null while in another case which was that of a large hotel, the file was referred back to the Planning Directorate to be worked out again. There was also a case where the Appeal was upheld and two which were dismissed. In this group, there was another case where the Board referred to a refusal at first decision stage which was not available with the data. The results shown in this graph denote that contrary to the analysis in the agricultural sector, in this case the restrictive policies SET 11, 12, paragraph 7.6 and BEN 5 were not as extensively used. Secondly, there was a much higher percentage where no Structure Plan policies (NP) were quoted. BEN 2 and paragraph 7.6 were the most quoted policies, BEN 2 being a policy concerning incompatibility with good urban design. In this group, there was only one case (already mentioned) where the Board upheld the Appeal.

The most numerous group in this analysis was the dwellings, where 67 cases were viewed (Figure 5.55). As in the commercial group, which has just been analysed, again there is a high rate where the Board in deciding Appeals used no policies. In fact, out of the 29 such cases, 2 (2.9%) were abstained, 1 (1.5%) was annulled, 11 (16.4%) were dismissed and 15 (22.4%) were upheld. There were also 3 cases (4.5%) which were all dismissed where there was no information regarding the original refusal decision taken by the DCC and to which the Board was making reference. The use of the restraint policies mentioned above in the case of the agricultural sector is more pronounced in this group. The use of other policies in this group is more restricted; however, when the restraint policy SET 11 was used, the Board upheld 5 (7.46%) and dismissed 24 (35.8%) Appeals.

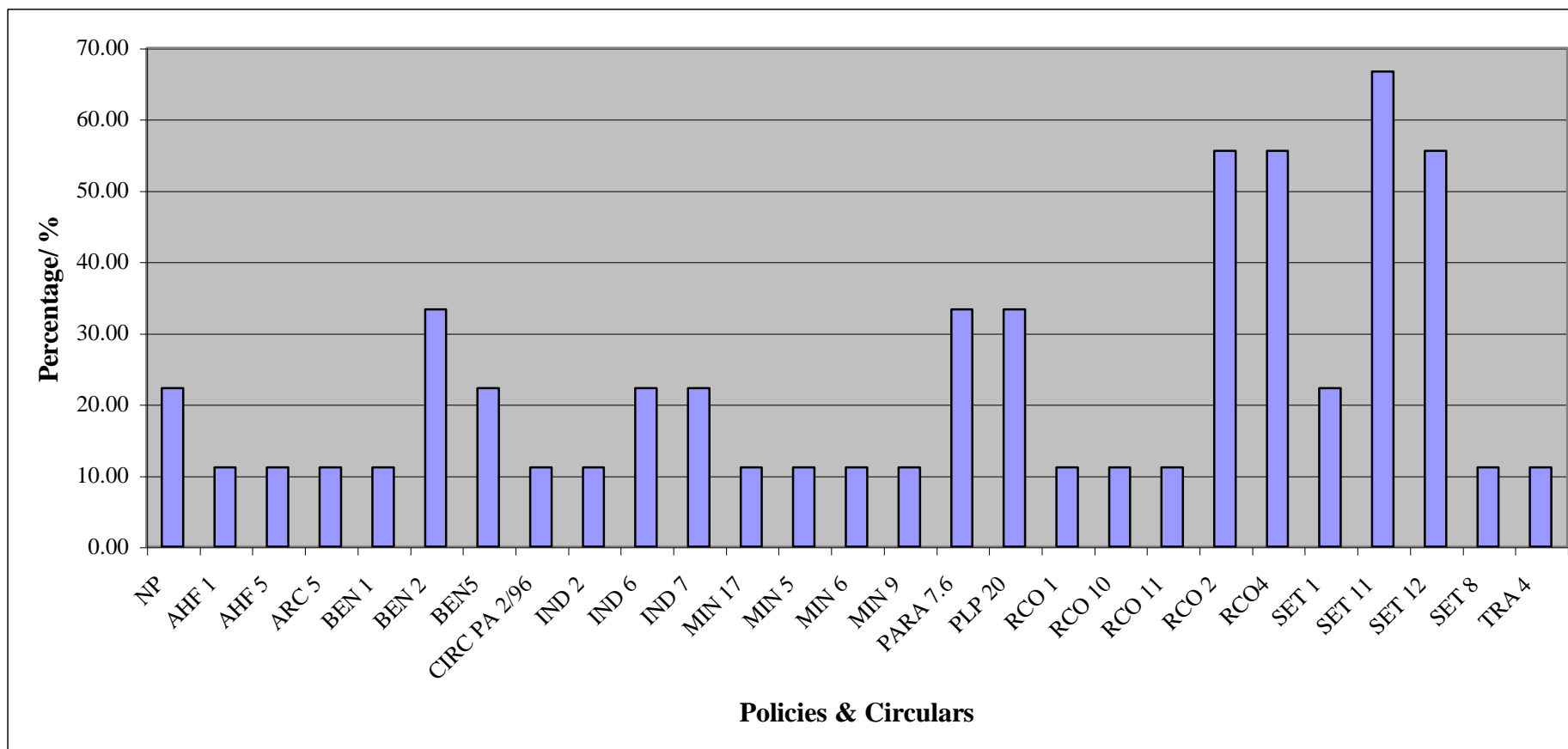


**Figure 5.54: Percentages of Structure Plan policies and Planning Circulars used by the Planning Appeals Board concerning decisions for ODZ developments in the Commercial sector (source: sample of ODZ Appeals taken from CD-ROM *Deciżjonijiet Dwar l-Ippjanar*, 2000).**

There were only 9 cases which were analysed and grouped within the industrial sector (Figure 5.56). Out of all these, there were 2 (22.2%) where no policies were used and these were the only cases in this group where the Appeal was upheld. SET 11 was the policy which was mostly used in this group. In fact, there were 6 cases where this was used and, in all cases, the Appeal was dismissed. There was just one case when this policy was not used and this concerned a quarry where excavation had started without permission and the area was both archeologically and ecologically sensitive and in this case RCO, MIN and BEN policies were used and the case was dismissed.

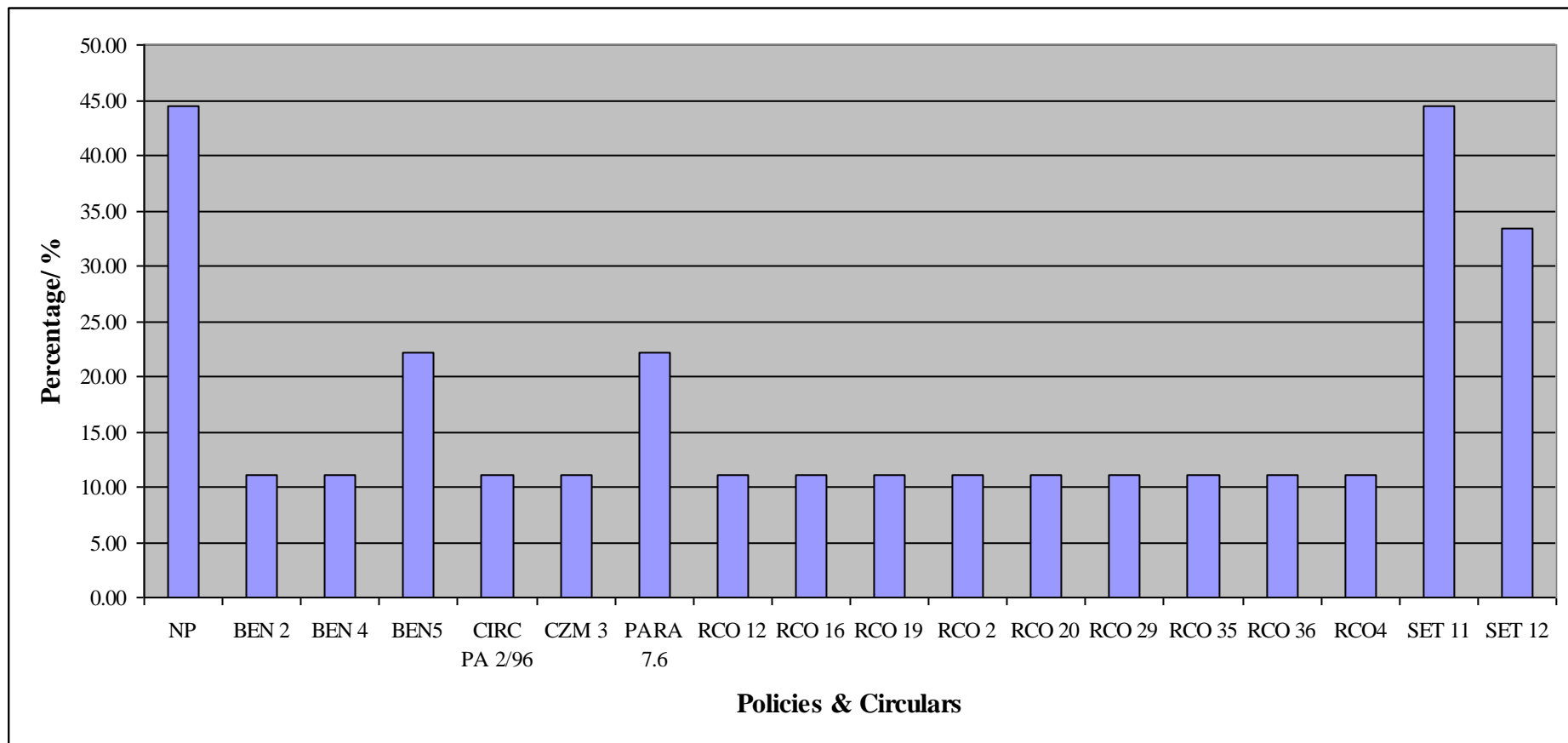


**Figure 5.55: Percentages of Structure Plan policies and Planning Circulars used by the Planning Appeals Board concerning Dwelling developments in ODZ (source: sample of ODZ appeals taken from CD-ROM *Deciżjonijiet Dwar l-Ippjanar*, 2000).**



**Figure 5.56: Percentages of Structure Plan policies and Planning Circulars used by the Planning Appeals Board concerning Industrial developments ODZ (source: sample of ODZ appeals taken from CD-ROM *Deciżjonijiet Dwar l-Ippjanar, 2000*).**

The final group to be analysed is that under the collective term "other" where again there were only 9 cases (Figure 5.57). There were 4 (44.4%) cases where no policies were used to decide the case and out of these, one was upheld, one was dismissed and two were left *sine die*. Policy SET 11 was the most used policy and it was used in 4 out of the 5 remaining cases. In three of these cases the Appeal was dismissed while in one it was upheld. This was the case which was already mentioned about the illegal concrete platform next to the sea. The remaining case where policy SET 11 was not used concerned an application for a change of use of a boathouse into a snack bar. This site was considered one of the few World Heritage Sites in Malta and BEN and RCO policies were used to dismiss the Appeal.



**Figure 5.57: Percentages of Structure Plan policies and Planning Circulars used by the Planning Appeals Board concerning ODZ developments included under the term “other” (source: sample of ODZ appeals taken from CD-ROM *Deciżjonijiet Dwar l-Ippjanar, 2000*).**



## **Selected case studies**

The results obtained from the analyses have shown to a limited extent that from the sample of case studies which were statistically analysed, it is possible that certain decisions which were taken went beyond the remit of the PAB. It was thus felt that in order to better understand the reasoning of the Board in such cases, one had to primarily select them and consider them separately. It has already been mentioned at the beginning of this section that during the tabulation of a summary sheet for the Appeals a column was left to denote whether the individual case merited a case study analysis. Since the number of cases which were originally selected was rather extensive and also due to space restrictions a second review of these cases was carried out and a smaller number selected from each of the groups. Since not all the groups were equally represented, the groups which had a fewer number of cases were not selected. The agricultural and the dwellings groups were those where the highest number were chosen. The analysis will focus mainly on the reasoning of the Board in arriving at its decision and will be as brief as possible.

### **(a) Agricultural Group**

There were a number of cases in this group where the Planning Directorate did not consider the activity or development to be agricultural in nature and so was applying restrictive policies and requesting a refusal. Two such cases were the construction of horse stables and another case for a room to be used in connection with beekeeping.

#### **(a) (i) Horse stables**

The first case (PA 3264/95) concerns the application to construct six stables on a site situated in a valley. The application was decided by Board A in January 1998 which

confirmed the refusal given at the Reconsideration stage, on the grounds that the site was considered a water catchment area by the Water Services Corporation (WSC) who had originally objected to the development. The site was also of scenic and ecological value. In his reasons for the Appeal, the applicant had also suggested a number of alternatives to reduce the visual impact which was claimed in the refusal by the DCC and also stated that an impermeable floor would be constructed. He also questioned the reasons for refusal by the WSC, citing the fact that the amount of manure produced by six horses is minimal especially when compared to the large amounts of manure and artificial fertilizer added to the surrounding fields annually.

Application PA 6995/97 was *"to sanction works as built and erect store for animal fodder."* In spite of the fact that there was no reference to the original decision by the DCC in the Appeals' report, it transpires from the submissions of the appellant that the DCC had amongst other things accepted the decision issued by the PAB in the case *"Patrick Filletti v. DCC (Appeal No.: 68/93 KA decided: 11/2/94)*. In the latter case, it was stated that *"horse stables can be considered as normal and legitimate inclusion in the rural scene"* but the DCC tried to attenuate this decision by stating that *"horse stables are not a genuine agricultural building."* In its reply the Directorate accepted the comments made by the appellant in this regard, but still maintained that its priority was to protect good agricultural land and activities and enhance the rural environment. It further claimed that the stables and small stores had already been constructed and a larger fodder store would create a built-up environment where previously an open field existed. Board C published its decision on the 5th July 2000 and it agreed both with the claim made by the appellant regarding the siting of stables and also with the Planning Directorate as regards to protection of good agricultural land. However,

without any evidence that the Board made any site visit, it claimed that since the site is already committed and there is similar development nearby, the Appeal should be upheld, but the applicant had to pay a LM 100 fine for infringements. Secondly, the Board claimed that good agricultural land was found further down the valley.

The third case concerns an application "*to erect (sanction) an addition of two lateral rooms*" (PA 1042/96) whereby Board A issued its decision on 3/11/00. In its original refusal, the DCC cited policies SET 11 and 12, RCO 4, AHF 5, PLP 20 and paragraph 11.2(a) and (b) of the Explanatory Memorandum. The underlying statement from these policies is that the applicant is not entitled for permission to erect stables ODZ since he is not a full-time registered farmer tilling 20 tumoli of land and also, that stables are not included in the list of permitted development in such areas and are not essential to the needs of agriculture. The case was further complicated by the fact that there was an enforcement notice on the site for illegal construction of the stables, together with other complications as to what had originally been permitted on the same site thanks to previous development permissions. The Board held a site inspection and concluded that the said rooms did not constitute a visual impact (claims originally made by the Planning Directorate), in spite of the fact that the size of the rooms exceeded the limited 150 m<sup>2</sup> by about 7 m<sup>2</sup>. In view of the fact that the site had already been committed by previous permission, the small excess in area was considered to be negligible and not worthwhile from the planning point of view to ask the applicant to reduce it. However, the applicant was fined LM 300 for committing the offence and asked to submit a landscaping scheme within a month, for the approval by the PA.

(a) (ii) Beekeeping

This case (PA 6451/96) concerned an application "*to erect a store to store equipment for beekeeping*" which was refused both at the first decision and at the Reconsideration stages. The main reason for the refusals were that there was already another structure on site and that the proposal ran counter to a number of policies mainly AHF 5, SET 11, BEN 5, SET 12, RCO 2 and 4 and also that the site is an Area of Ecological Importance. In his Appeal, the applicant said that contrary to the claims made by the Directorate, the structure is essential to the needs of agriculture and was going to present a number of witnesses to sustain his claims. In its reply, the Directorate basically reiterated its original claims, but also listed down the comments made by a number of other agencies, two of which were of particular importance; the Agriculture Department claimed that the applicant had been keeping bees for the last twenty years and that there was no objection from an agricultural point of view, while the Environment Department claimed that the area was of ecological importance, but claimed that beekeeping should be encouraged due to the beneficial presence of bees. It also suggested that the room should be built in rubble stones and no new pathways are formed. An Agriculture Technician who was brought to the witness stand claimed that the applicant needed two separate rooms, one to be used as a store and another to be used as a harvesting room and the latter room should be in a clean state and so cannot form part of the store room. Board A, before making a decision, made a site visit and noted the claims made by the witness. It upheld the Appeal, but considered the fact that the room had already been built, so a fine of LM 100 was imposed on the applicant which had to be paid before a permit could be issued.

(a) (iii) Others

There were three other cases in the agricultural group which merit some mention in this analysis.

The first case concerns the size of agricultural rooms which are permitted ODZ and which are governed by *Policy and Design Guidance Farmhouses and Agriculture Buildings*. In an Appeal (PA 740/94) concerning the rebuilding of two rooms which were demolished by a storm, the applicant queried the fact that the PA allows a 50 m<sup>2</sup> garage for a 140 m<sup>2</sup> flat but only a 15 m<sup>2</sup> store for a farmer tilling 37,000 m<sup>2</sup> of fields. Board A refused the Appeal on the basis that the size was greater than that allowed in the policy guidance. Most of the arguments brought about by applicants who want to construct a store in a field to store large machinery, such as harvesters claim that the allowable size of the agricultural rooms is small. However, larger rooms would cause a significant visual impact.

A similar case (PA 3294/96) to the above was an application for an "*extension to an existing agricultural tools room and to increase the height of existing west boundary wall.*" In fact, there was already permission for the room but on a smaller scale, therefore the application was seeking to sanction existing development. From the information available it seems that applicant was a part-time farmer with about 34 tumoli of land and so according to the policy and design guidance, he was not eligible for a room since he was not a full-time farmer. Finally, the Planning Directorate in its report claimed that the DCC was permitting stores for part-time farmers, citing DCC Board no. 76 dated 9/7/96 in PA 6041/96 - minute 16, as an example to sustain its claims. However, the Directorate said that it couldn't consider the extension as

essential for the needs of agriculture in that the already 'approved' room was considered adequate and in excess of what is normally considered allowable for part-time farmers. The Appeal was refused by Board C on the 5th July 2000, claiming that the existing tool room is larger than that permitted in the policy and design guidance, and the applicant produced no justification for a larger room. It was not clear whether the Board was sanctioning the size of the room as originally built, that is, as was being requested in this application, or whether the applicant had to rebuild it according to the plans of the previous permit.

Application PA 6809/96 was also for a "*store to be used for agricultural implements.*" In this application, the applicant based his Appeal on the fact that the adjacent sites were already committed and so this Appeal should be accepted. The Directorate claimed that the Appeal should be judged on the fact that applicant is a full-time farmer but tilling less than 1 tumolo of land in the vicinity of the site and so the application was contrary to policies AHF 5, SET 11 and paragraph 11.4 (Explanatory Memorandum). The Board claimed that, it was only following a site visit it made, that the PA issued two Enforcement Notices on the adjacent site, since they were not according to permits issued in 1991 and 1996. The Board claimed that this confirms that the site was an infill development and as a result the Appeal should be upheld and the PA should issue a permit. Board C published its decision on the 10<sup>th</sup> May 2000. The decision was clearly in breach of the existing policies.

(b) Dwelling group

The next set of Appeals to be analysed is the Dwellings group. One must point out that the Structure Plan policies, especially SET 11 and 12 and paragraph 7.6 are explicit about the type of development allowable ODZ. This was confirmed in an Appeal to application PA 4769/93 which was decided on the 11th November 1994 by Board A. The case was for a dwelling, whereby the application was made under the previous legislation and the applicant had not paid the full contribution following approval, but the permit was never issued. So he applied to the PA who used Structure Plan policies to determine it again, refusing it in the process. The Planning Appeals Board refused the Appeal by citing about 14 other similar Appeal cases and also the above-mentioned policies.

In another case (PA 222/95) for the extension of a dwelling ODZ which was decided by Board A, the Appeal was refused even though the applicant cited some examples where permission was given by the PAB for similar applications. In its deliberations the Board cited a Court of Appeal decision (205A/95, decided 31/5/97) between *Victor Chetcuti v. DCC* whereby, the Court established that neither the PA, nor the DCC or the PAB could depart from what is established in the Temporary Provision Schemes. This was a very important principle which should have served as guidelines for the decision-making boards.

A number of cases were found from the sample of Appeal cases which were analysed whereby, the Board departed from the Temporary Provisions Schemes and granted permits for development ODZ and, as will be seen, some of these could be viewed as being in breach of Structure Plan policies. In order to simplify analysis of the

individual case studies and also due to the fact that an individual analysis would be extensive, the cases were divided into two groups, one for new dwellings on virgin land; one for structures which were demolished and built anew. All the cases that were examined were decided after the 31<sup>st</sup> May 1997.

(b) (i) New dwellings on virgin land

Application PA 2050/96 was for the construction of a maisonette and garage in a Rural Conservation Area. The Directorate cited a number of policies and recommended a refusal. The appellant claimed that the applicant's father was a retired full-time farmer and that his daughter had taken over the farm, while her fiancé was a manager with a pig breeder and so they could be considered as being full-time farmers and they needed the dwelling as their matrimonial home. She further claimed that the site is next to her father's farm and is an infill site. As a result, the policies cited by the Directorate are not applicable. In its deliberations, Board C tended to agree with the applicant, claiming that the site is an infill site and that the applicant qualifies as a full-time farmer, but it stated that the size of the development is extensive (310 m<sup>2</sup>), while the existing guidelines established a size of 105 m<sup>2</sup>, so the Appeal was being refused in order for the appellant to re-apply within such parameters. One must note that in this case the applicant was not a registered full-time farmer and, also, the concept of permissions granted as infill development was used in the previous legislation and is not applicable under the present one.

The appellant for application PA 6823/94 claimed that the area could only be considered as being a built-up area and her plot was one of the few which were left empty. The Directorate cited case *L. Sammut v. DCC* (Appeal no. 188/94), where it



was decided that it was only through the Local Plan process whereby such land could be released. It also cited other Structure Plan policies to sustain its case. However, Board C, following a site visit, decided that this was a case which should be decided on its own merits and considered that the application could be considered as situated in an infill site, since there are several buildings in the same street and as a result the Appeal was upheld.

In an Appeal for an outline application (PA 721/95) for a dwelling and two garages, Board A claimed that since the site is close to a Government housing scheme and also a substantial amount of development was taking place in the area, the area could be considered as a development zone. Granting an outline permit in such a situation was not considered to prejudice any future commitments which might be taken when the Local Plan for the area is completed. On the other hand it was considered unfair on the applicant to sustain further delays due to the fact that the Local Plan for the area was not yet ready. The Appeal was upheld.

In another case, Board A, decided to uphold an Appeal on application (PA 3971/96) to construct a garage and a house on a site which was considered by the Board to be an infill site. However, the Board also considered that the size of the building was excessive and asked for a reduction of 30 m in length.

The Appeal on application PA 5739/97 was upheld by Board C, whereby, the applicant wanted to construct a maisonette and a garage on a site which formed part of the 1983 BDA schemes, but was withdrawn when the new Temporary Schemes were in force. The Directorate claimed that there were several applications in the area but

no permits were approved and the site couldn't be considered as a committed built-up area. The Directorate in this case did not cite any planning policies. The applicant claimed that the site should be considered as a committed built-up area since it is surrounded by several developments. Following a site visit, the Board agreed with the applicant and granted permission for development, claiming that the buildings formed part of a schemed road and that there is a massive commitment in the area.

In an application (PA 7598/96) to erect 4 garages, 4 bungalows and a swimming pool, Board C decided to accept the reasons submitted by appellant that the site is a committed built-up area and cannot be considered to be a Rural Conservation Area and so relevant policies are not applicable and as a result upheld the Appeal. Amongst the various policies mentioned in this case by the Planning Directorate, it cited circular PA 20/94 which states that:

*"Existing built-up areas refers to land within the limits of development of the Temporary Provisions Schemes. 'Committed' built-up areas refers to un-built land within the Temporary Provisions Schemes and land within the primary development areas designated in the Structure Plan". The Circular further confirms that "references to existing and committed built-up areas in the Structure Plan does not refer to land outside the limits of development which contains sporadic development or to sites where a previous development permit has fallen into disuse. Therefore the area is not considered to be 'committed' to the further development of undesirable activity. Piecemeal decisions on individual applications which infringe the existing policy framework are unacceptable, particularly if they are 'justified' by surrounding development."*

(b) (ii) Extensions or developments on existing buildings

The Appeal on an application (PA 5884/96) to carry out alterations and an extension to a farmhouse was upheld by Board C on the pretext that the extension took place on a small scale, on a site which was already in use. The Board agreed with the

submissions of the appellant and claimed that the regulations cannot be viewed in a vacuum but in relation to the surroundings and so this was not just a question of an ODZ development, but that of a farmhouse which already existed on a smaller footprint. A fine was imposed due to the fact that the development had already taken place.

Board C upheld an Appeal on an application (PA 882/96) to demolish part of an existing farmhouse, carry out minor alterations and add underlying garages below ground. The Directorate claimed that the development was ODZ and the main aim was to make an uninhabitable building become a habitable one and this goes against the spirit of PLP 20. Also the same policy prohibits the construction of garages (250 m<sup>2</sup> built-up area), since they are considered as an extension to the building and the building already exceeded the minimum 150 m<sup>2</sup> permitted by the same policy. This policy is aimed at curtailing uncontrolled extensions and additions to existing buildings in the countryside in order to retain the character of rural areas. The Board in its deliberations claimed that the reasons presented by the Directorate would make one imagine that the site is still virgin land; this was not the case. In spite of the justifications made by the Directorate, the Board decided otherwise. The main concern of the Board was the siting of the garages and it issued a set of conditions to be attached to the permit to ensure that the claims made by the appellant would be maintained. The conditions were that the garages would not be used for commercial purposes and also that once the development is finished, the Board would reserve the right to view it and suggest any modifications if necessary.

The Appeal on an application (PA 1909/96) to demolish a two-storey building and replace it with basement garages, 3 flats and a penthouse was upheld by Board C. However, in this case the Directorate quoted policies (RCO 2, 4, SET 11, 12, paragraph 7.6, BEN 2 and BEN 5) which were more in line with an application dealing with a new building on virgin ground. In fact, in its comments the Board remarked on this fact. The only bone of contention was the height limitation, which was also mentioned by the Directorate and in fact the Board requested that applicant should submit new plans without the penthouse and a 4.25 m setback on the final floor and such plans should be approved by the DCC prior to approval of permit.

Application PA 3098/98 was for additions and alterations to a room situated in a Rural Conservation Area. The Directorate maintained that according to PLP 20 the need for the new development must be clearly explained and justified to the satisfaction of the PA, and in particular why the proposal cannot be accommodated on a site within the limits of development. However, the appellant also cited another part of PLP 20 which states that buildings must be in a sound structural condition and be capable of conversion without substantial rebuilding. He claimed that the building was in such a condition and the overall size of the development was within the established limits of 150 m<sup>2</sup>. Board C upheld the Appeal and claimed that it would be a pity if such a dwelling would be left to fall into ruin and also stated that the proposed additions would further enhance the building. However, it also added a number of permit conditions.

### **Cases referred to Court of Appeal**

There were 25 cases from the sampled files considered in section 5.2.9 which had been refused development permission and presented an Appeal in front of the Court of Appeal. The Planning Appeals Board had already decided all cases and all were dismissed, with the exception of two; one was upheld and one was left *sine die*. Up to the 1st January 2001, an applicant had surrendered one of these Appeals (Court of Appeal) and a decision was taken on four while the rest remained pending.

In application PA 4226/95, the Court of Appeal decided that it couldn't decide on the request of alleged discriminatory treatment put forward by the applicant, since the Planning Appeals Board (PAB) did not consider this matter in its deliberations. As a result, the Court dismissed this Appeal.

In the Appeal to application PA 222/95, the Court of Appeal decided that the applicant had lodged his Appeal one day later than the maximum time allowed by the law to lodge an Appeal and so the Appeal was considered null and void.

In an Appeal to application PA 4957/93, the Court of Appeal again declared the Appeal as being null and void, since it was an Appeal against a decision taken by another Board and was not based on a point of law. The only cases where the Court of Appeal can make a decision is on points of law.

The last Appeal was presented in view of two decisions taken by the PAB. The first Appeal, upheld by the PAB was about an application which the DCC had considered as being null and void. The second part concerned an exception raised by the

Authority concerning the validity of an Appeal submitted by the applicant; the Planning Appeals Board refused this Appeal. The Appeal was deferred *sine die*. The PA appealed this decision in front of the Court of Appeal. The Appeal was dismissed and the Court ordered the PAB to continue hearing the Appeal.

This part of the analysis has shown that the tendency to Appeal a decision following a refusal is on the increase. The number of Appeals which are being upheld is also on the increase. It was shown that there are certain development groups such as agricultural and dwellings, where the number of Appeals is greater. The decisions taken by the Planning Appeals Board do not always follow Structure Plan policies and in some cases were taken in breach of such policies. It was also noted that the Boards issued decisions which were in breach of case law established by the Court of Appeal.

#### **5.2.10 Direct Observation**

This section will deal with the direct observation exercise which was carried out during the months of June and July of the year 2001. The observations were held during the following board meetings:

- Planning Authority Board (PA);
- Development Control Commission (DCC); and
- Planning Appeals Board (PAB).

No observations were held at the Court of Appeal because of:

- time constraints;
- lack of public information when sittings involving cases arising from planning applications are held;

- delaying tactics operating in Court; and
- the few cases relating to ODZ applications.

The main limitations during the direct observation exercise were the following:

- decisions on planning applications taken by the PA board were not a regular occurrence, so the data were limited;
- DCC meetings were held two to three times a week but they were lengthy and time consuming, thus taxing on the observer. As a result, the choice was limited to at least a weekly meeting;
- DCC meetings coincided with PAB meetings and so one had to decide which meeting to attend;
- the observers' presence was noted during both DCC and PAB meetings, mainly because these were held in small rooms or there were few people present; as a result the behaviour of the decision board members could have been influenced;
- the board members of both the PA and the DCC were different from those during the period of analysis (1994-1998) so their *modus operandi* could have been different from that which was observed;
- one of the panels of the PAB was not observed at work due to the fact that during the period under consideration this board only scheduled a few meetings, some of which were cancelled. This Board was different from the one considered in the results in section 5.2.9 and was the one which replaced Board C. So there was no point in trying to observe its operations, since data were already available from the other panel;

- a longer period of data collection was not possible mainly due to time constraints typical of a Ph.D. research and also due to the fact that other data which were previously analysed were being collected at the same time.

The cases which were viewed during meetings were both for applications within Temporary Schemes and also ODZ, apart from the fact that enforcement cases were also dealt with in the PAB.

This analysis will be divided into three parts covering the operations and the observations which were noted during each of the meetings of the three different boards.

### **Planning Authority Board**

This Board doesn't decide applications regularly because as described in section 2.2.2 it has delegated most of the decisions to the DCC. During the period when the analysis took place, there were four public decision sessions of this Board, whereby 18 applications in all, were on the agenda. The analysis will take the form of general observations of the proceedings from these sessions.

Observations:

- The public meetings were advertised in the newspapers a few days before they took place; an agenda including the time and place and details of each application was also included and was available for viewing on the PA website.



- The press and a number of PA officials were present during the meeting. The Director of Planning or his deputy sits at the table with the Board members on a consultative basis. The meeting is chaired by the Chairman of the PA or in his absence by the Deputy Chairman. The Secretary of the PA also sits at the table and all deliberations are recorded on tape. The Secretary and the Director of the PA have no voting power.
- There are 15 appointed members on the Board but on no occasion during the period of observation were all the members present.
- The Chairman introduced each application and a Planning Directorate official made a presentation in Maltese (usually aided by PowerPoint slides in English). This included references to policies and the case history of the site and also the recommendation of the Planning Directorate on the application.
- Following the presentation by the Directorate, the Chairman asked for a list of speakers which normally included the developer and / or their representatives and objectors to the proposal. No time limitation for the verbal submissions was ever made, although occasionally some speakers were asked to be brief or to wind up. The Board members ask questions during the verbal presentations. The only possibility for a member of the public to ask questions is if s/he would have already expressed his / her interest to make a verbal presentation.
- The verbal presentations were normally followed by deliberations between Board members and occasionally clarifications by the developer and / or their representatives following which a vote was taken by show of hands<sup>287</sup>.

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<sup>287</sup> The 1992 Development Planning Act and the ensuing amendments of 1997 do not refer to whether a secret vote could be taken or not. An amendment (first schedule, Section 3(4)) in 1997 introduced the fact that each member should vote either in favour or against the development in question, implying that one could not abstain from the decision. However, there is always the possibility of a member leaving the room during the voting process or before deliberations about the application would have commenced.

Sometimes, votes were taken on particular issues of the development, prior to a final vote on whether to allow the development to take place or not.

- There were only a few Board members who took part in the deliberations, the most vociferous being the Chairman, the representatives of the political party in government and that of the opposition. There was a tendency for the member of the party in government to try and push all applications and try to please applicants or objectors, depending on the circumstances. This happened to the extent that at times, he even tried suggesting that a decision would be taken even when it was clear that there were shortcomings in the application.
- The Chairman exercised a leadership role by asking various questions to clarify a number of things. This was mainly due to the fact that most members remained silent throughout the meeting. It was not known whether their silence was a sign of consent, fear of taking sides or fear of losing face in front of the public. The role adopted by the Chairman often led to a situation where he lost partial control of the meeting and the situation degenerated into a lot of cross-talk. Such a situation was not evident when the deputy Chairman chaired the meeting. The latter was more to the point, brief in his interventions and chaired the meeting in a much more organised manner.
- It was also noted that the representative of the party in opposition was always absent when applications dealing with the new government hospital were discussed; he either left the room or was absent throughout the meeting.
- Whenever the member of the opposition party made an intervention, especially when he objected either to a procedure being adopted or a case whereby a decision should be postponed due to some technicality, there was no support

from any other Board member. The incumbent Government appointed all the Board members.

- There was at least one case when one Board member didn't know whether the application being discussed was an ODZ application and also asked whether one could build ODZ, thus showing ignorance of the planning policies. The member had been sitting on the Planning Authority Board for almost three years and so one cannot say that he was new to planning policies and procedures!

### **Planning Appeals Board**

There are two panels of the PAB, however for reasons stated earlier in this section, only one of the panels was observed at work. The same procedure adopted in case of the Board of the PA will be used here.

Observations:

- Meetings took place twice a week (one for each panel), usually on Wednesdays and Fridays. These meetings were held in small Boardrooms at the PA.
- The three PAB members, a PAB secretary together with the PA Lawyer and a PA official were present at the Board table. The architect and / or lawyer and / or applicant normally join these when their respective application was called. PA officials and staff from the enforcement unit were also present during the meeting; their presence was usually related to particular cases.
- The PAB agenda was published a few days before the meeting on the PA website, but applicants were also individually informed. The agenda included

details of the PA number, the Appeal number, name of applicant, location and time when the application will be called.

- Occasionally, there was a second agenda with the same above-mentioned details but for those cases where a decision was reached and going to be published. These were usually held at the end of the meeting. The applicants would usually come to collect their decision and were normally called on an individual basis. The chairman would hand them a copy of the decision and explain to them the nature of the decision. This process was usually swift and took a few minutes. There were cases when the Board met just to issue decisions.
- When a case was called there are three possibilities, either:
  - that the representatives of the applicant are present and so submissions are made; or
  - that there are no representatives, in which case the application was either appointed to another date or in the case where the PA needed to make submissions, these were made, inserted in the file and then sent to the applicant and his representatives or the case was then appointed for future submissions or decision at a later date; or
  - the applicant or his / her representative would request that the case be deferred to a later date. In this case, the PA was allowed to make any submissions, thus allowing the process to proceed unhindered. In case of repeated requests for deferral, then a decision date was appointed with the available material at hand.

- If the case was called and it was found that the submission process from both parties (PA and applicant) had been completed, then the case was appointed for a decision at a later date.
- Both written as well as verbal submissions were made during the meeting. However, if an important verbal submission was made, a written note was kept in the file. Sometimes people were also called to the witness stand.
- The Board occasionally felt the need to fix an appointment for a site visit in order to better understand the case under examination.
- The proceedings took place in both the English and Maltese language, but the written statements were usually in Maltese.
- Deliberations took place on a different date and behind closed doors.

### **Development Control Commission**

This part of the section will be analysed in a similar manner to the previous two, but since in this case more applications were viewed, a more detailed analysis of the decision-making process will be possible.

#### Observations:

- The meetings took place three times a week and the agenda was published on the PA web site, but all applicants and their architects are also individually informed. Meetings took place in a sizable boardroom, whereby the public was invited to attend but was unable to speak unless being an objector and at the discretion of the Chairman.

- Each agenda was usually divided into two sections, one part including those applications due for a first decision and the second part included those for Reconsideration. The agenda included details of:
  - an ID number which was a hyperlink to further information about the application;
  - the case number;
  - location of development site;
  - description of works;
  - the recommendation by the Planning Directorate.
- The Board was made up of seven members and voting took place by show of hands. When four Board members were present for the meeting and a 3:1 voting was obtained, the voting was considered as inconclusive and so the voting had to be taken again at another meeting. Minutes of the meetings were held in the respective files and were usually written down by the person acting as chairman for the meeting. There was also a Secretary who looked after the administrative matters during the meeting.
- All Board members had a copy of the DPA report of each individual application which was due for discussion. One particular Board member was rather meticulous and was seen referring continuously to these reports and also followed closely each and every application.
- The procedure adopted by the Board under observation was that first the Reconsideration files were dealt with; these were followed by the applications due for a first decision. However, one must point out that there was no particular sequence in which the files were seen. The *modus operandi* of the Board was that of deciding those applications where architects and / or

applicants were present in the room. These were followed by those applications where there were no representatives or applicants.

- The meeting proceeded by the Chairman or his deputy calling out the application number of the next case being discussed and if the architect was present, s/he was allowed to sit at the Board table together with the applicant, if present. If the applicant only was present, s/he was only allowed to sit in the front row of seats, but not at the table. The architect was allowed to make verbal submissions during the meeting and clarify certain points about the application under consideration. Applicants weren't allowed to make any interventions unless the Board members wanted to ask any questions where they could provide an insight into their application.
- Once the deliberations were considered by the Chairman to have been exhausted, a vote was taken. In cases where the Board felt that the applicant could provide further information which would help in the determination of the application, the decision was suspended to a future date. The Chairman minuted each file to record the outcome, following the deliberations. There were cases where the Board chose not to take any decision pending further information either from the Directorate or the applicant or from other sources. The Chairman always read out any changes made by the Board to conditions recommended by the Directorate.
- A list of all the applications which were decided (grant or refusals) and withdrawn applications was published on the PA website.
- The Board made occasional site visits as part of the decision-making process. This was done in cases where such visits would have clarified certain problems which arose during the deliberations.

- Thanks to the fact that there was no public address system in the room, sometimes the deliberations taking place at the table could not be heard by the public. However, it is unlikely that this was being done on purpose, but was mainly due to the fact that the Board table was rather small and the people were close to each other and so there was no need for them to project their voice to communicate.
- Observations were limited to the time during which members of the public, applicants or their representatives were present in the room. The observer left the room once he was the only person remaining in the area reserved for the general public, in case his more obvious presence would have influenced the behaviour of the Board members. In fact, board members asked the observer why he was attending the meetings and taking down notes; this happened both during the DCC and the PAB meetings.
- During the meetings one of the board members checked all or most of the files earmarked as delegated decisions but still participated in the voting. Sometimes another member would also give a helping hand. If these were not ready by the time the public would have left the room, then all Board members would continue vetting such files.
- It was apparent that the proceedings of the meeting changed once there was no member of the public present in the room. In fact, once all the members of the public left, the policeman who was present during the meeting, was also allowed to leave. Evidence for a change in behaviour came from the numbers of decisions taken in a period of time. On the 25<sup>th</sup> June, 14 decisions were taken in three and a quarter hours whilst members of the public were present, but from the decisions published at a later date for the same meeting it resulted



that 45 decisions were taken in all. If the original rate were followed this would have taken at least eleven and a half hours to complete. This is not including the times taken to view the delegated applications.

### **Analysis of DCC Agenda and decision data**

Table 5.24 shows a summary of the results obtained from an analysis of the DCC Agenda and DCC decision data published on the PA website, combined with the data recorded during the direct observation exercise. The decision data occasionally included a few applications which were not on the original DCC Agenda but were decided during the respective meeting. The origin of such cases is unknown, but these cases were never decided in the presence of the public. In fact, they have not been included in Table 5.24 for the simple reason that the original Directorate's recommendation was not available.

The results in Table 5.24 show that the number of applications seen and decided during the part of the meeting which was attended by the public was small when compared with the caseload on the agenda. Such a small number of applications usually took a considerable amount of time for the Board to decide an outcome. The ratios of endorsed : overturned recommendations varied between 1:0 to 0:3, while the ratio of endorsed : pending varied between 1:5 and 0:8.

These ratios varied considerably when the applications were decided in the absence of the public, most applications having either the Directorate's recommendation endorsed or the application being left pending. The endorsed : overturned ratios varied between 0:1 to 12:1 while the endorsed : pending ratio varied between 1:1 and 5:2. It

is rumoured that once all the public leaves the Boardroom, each Board member looks at a different files and at the recommendation made by the Planning Directorate and if in agreement, the recommendation is endorsed. In case of disagreement, the view of the other Board members is sought and a decision is taken accordingly. This increases the efficiency with which decisions are made during the meeting. It is not known whether the previous Boards adopted this practice or anything similar.

From the data recorded during this exercise, there were cases where the Board approved the development in principle but asked for some other technical details from the applicant, thus the decision was not found in the Decision list published on the PA website. Such cases were included with the pending list of applications. Applications which were withdrawn, were not included in the original Agenda of the Board meeting but appeared in the Decision list. These were not included in the data presented in Table 5.24.

**Table 5.24: Breakdown of the DCC Agenda and Decision lists as published on the Planning Authority website together with data collated during the direct observation exercise.**

Date	Number of applications on Agenda <sup>288</sup>	Total number of decisions taken in presence of the public	Applications seen in the presence of the public	Outcome of applications viewed in the presence of the public <sup>289</sup>			Time taken/minutes	Outcome of applications viewed in the absence of the public		
				overturned	endorsed	pending		overturned	endorsed	pending
13/6/01	R) 10 N) 0	6	10	2	4	4	n/a			
25/6/01	R) 7 N) 80	4 1	6 8	2 1	2	2 7	195	3	36	33
27/6/01	R) 9 N) 63	0 1	8 1		1	8 4	135	1 4	36	19
2/7/01	R) 8 N) 81	3 2	8 2	2 2	1	5	n/a	4	45	30
18/7/01	R) 7 N) 65	3	5	2	1	4	45	5	42	18
23/7/01	R) 9 N) 70	3 2	8 7		3 2	5 5	120	7	35	22

288 R: application for reconsideration; N: new application.

289 The values of the pending applications were obtained by subtracting the number of applications found on the Decision list from that on the DCC Agenda, thus assuming that all applications on the Agenda being viewed.

### 5.3 Conclusion

This chapter was extensive in nature due to the large amount of data collated and also due to the detailed analyses undertaken for the various stages of the planning application process. Different statistical tools, methods and data sources, depending on the objectives of the analysis, were therefore utilised.

The chapter was divided into six parts, each tackling a specific part of the development application process. The first part of the chapter concerned the feasibility of utilising application data which was filtered to remove any double counts. Unfortunately it was concluded that if the data were to be filtered to remove double counts, this would actually increase the level of errors. As a result, the idea of utilising filtered data was abandoned.

The other five parts of the analysis concerned:

- applications both within Temporary Schemes and ODZ;
- decisions mainly ODZ, but at different tier levels;
- enforcement cases, both within Temporary Schemes and ODZ;
- cartographic data, related to areas within Temporary Schemes, ODZ and Scheduled areas;
- direct observations of decision-board meetings.

The analyses of the application, decision and enforcement data showed the amount of pressure of development the Islands are experiencing both within Temporary Schemes and ODZ. The types of developments which are causing major pressure and also the nature of decisions being issued by the various decision-making boards were

identified. The circumstances under which certain developments were given permission for development and also the consistent lack of use of policies when permissions are given were also shown; in most cases the permissions given were in breach of policy. This was done both at first decision tier level and also at PAB level.

A comparative analysis of the decisions taken before the set-up of the PA with the results obtained after, showed that the trend for applications ODZ was on the increase during both periods. It also showed that there was a statistically significant difference between the decisions taken during both periods signifying that the Structure Plan policies or the decision-making process made the difference between the two eras.

The analysis of the Appeals data indicated certain possibilities that one panel of the PAB could have been more liberal in its decisions. However, the difference in decisions was not statistically significant and this could only be attributed to chance.

The analysis of the enforcement data was meant to show the extent and nature of the “hidden development” which was not shown elsewhere. The analysis showed that several perpetrators of illegal developments found a way to work through the system and, due to the inefficiency of the PA staff in enforcement against illegal development, they have found a way to enjoy this to the full and for a considerable length of time. This was demonstrated by the data indicating the quantity of illegal development removed by the PA, that pulled down by the developers themselves and that which is still pending some form of action. All this suggests a lack of commitment by the planning agency to curb illegal development.

The cartographic analysis intended to link the analyses for the application, decision and enforcement data with Temporary Schemes, ODZ and Scheduled areas thus giving a visual means of the nature and extent of development pressure which has occurred over a number of years. Unfortunately, due to the lack of GIS data concerning habitats, it was not possible to identify the types of habitats where this pressure occurred.

The direct observation exercise was intended to analyse the proceedings of the decision-making boards and note the circumstances under which decisions are being taken. Unfortunately, there were a number of limitations in this exercise, the main one being that most of the results being analysed in other sections of this chapter were taken by a different decision board and this did not imply that the previous board adopted the same procedures.

Finally, a number of difficulties were encountered during various stages of the analyses. These were mainly attributed to the lack of availability of data due to an ongoing industrial action and also due to the dynamic nature of the development application process entailing time lags on files during various phases of the process.

The various analyses in this chapter showed amongst other things that:

- the pressures for development ODZ were increasing, both in terms of size per unit development and also in the number of applications;
- the annual percentage granted applications ODZ was always greater than those refused during the period 1994-98;

- several policy breaches by both decision-making boards and Case Officers were leading to applicants being granted permission;
- the decisions taken were not always consistent, thus the system was favouring some applicants at the expense of others;
- illegal development was not curbed and perpetrators found a way to “work the system”.

## 6. Discussion

This chapter will consider the results outlined in Chapter 5 with respect to the Structure Plan policies and the objectives of the thesis.

The results obtained in Chapter 5 have to be seen in the light of:

- the economic development of the country;
- the price paid by the natural environment for such development;
- the political will to encourage or control such development;
- the legislative set-up to operate a planning system which can:
  - change a liberal system into a more conservative one over a short period of time;
  - address inherited problems of a legal, sociological and cultural nature and bring about the desired change in attitude in the general public;
  - deliver the stated objectives of the same system in a transparent and just manner;
  - review and consolidate the same system in an effective manner in order to correct any shortcomings missed at the outset;
  - identify and address sources of information required as tools to operate such a system in the 21<sup>st</sup> century.

The reasons for all this are that:

- the period covered by the research should log the changeover from a liberal system to the present planning system;



- this changeover occurred in an academic vacuum and therefore there was a learning curve both in the administration and the decision-making areas of the new system;
- it adapted the British planning system in the Maltese context, so simple comparisons cannot be made; some people even question the choice of such a system (see: Zammit, 1998);
- it occurred over a few years and with a large political momentum, so it created great expectations.

This thesis mainly concerns development and pressures of development Outside Development Zone (ODZ), however, the levels of development within Temporary Schemes will also be used as a means of comparison for the development occurring in Malta during the study period.

This chapter will be divided into a number of sections:

- the Structure Plan and its policies;
- legislation permitting development ODZ;
- the Planning System;
  - pressure created by development through:
    - the application system;
    - the decisions taken;
    - illegal / enforcement system;
    - Appeals;
- direct observation of decision boards.

## 6.1 Structure Plan and its Policies

The importance of making use of the Structure Plan policies and any subsidiary plans in determining development applications is spelt out in Section 33 of the Development Planning Act (DPA)<sup>290</sup>, 1992. In the absence of Local Plans (only one has been produced since 1992), Structure Plan policies have been used in the determination of development applications. Section 33(1) of the DPA, 1992, also states that development plans (Structure Plans and subsidiary plans), representations made by the public and any other material consideration have to be taken into consideration during the decision-making process. However, since the thesis is focused on the effect of the Structure Plan policies on the natural environment, the discussion will focus on these policies.

The Structure Plan is a strategic document which was written on the understanding that the Local Plans would follow in a very short time. This was evident both in the Building Permits (Temporary Provisions) Act<sup>291</sup> of 1988 (Section 4(9)) and the DPA, 1992 (Sections 23-29 dealing with subsidiary plans, including Local Plans). In fact, in the Building Permits Act, Section 5(1), it was clearly stated that the planning schemes (which are still in use today) were an interim measure until they are replaced by the Local Plans. Apart from this, the Structure Plan<sup>292</sup> document included details of a draft list of Local Plans and terms of reference for such plans. All this shows that the initial aim was that Local Plans would be produced in a very short time, even before the set-up of the Planning Authority. This did not happen and the results were that

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<sup>290</sup> Act I of 1992.

<sup>291</sup> Act X of 1988.

<sup>292</sup> Colin Buchanan and Partners *et al.*, (1999d) pp. 14-17.

strategic policies were and are still being used in a local context. Obviously, all this had a number of consequences, some of which are being addressed in this study.

These consequences include:

- the fact that there is a distinction between the Temporary Schemes, where development is permissible and the areas known as Outside Development Zone (ODZ);
- that policies with conflicting objectives could be used and abused accordingly;
- the concept of having an ODZ free from development could not be achieved in reality.

The introduction of Local Plans will still maintain the existing development boundaries since these cannot change except as a result of a comprehensive Structure Plan review<sup>293</sup>. Aquilina (1999, pp 394-400) lists a number of Appeal cases mostly decided in 1994, and cites the decision in *John Mary Cauchi v. Planning Authority* (Appeal no. 160/93E KA) whereby, it was stated that the Planning Appeals Board was of the opinion that neither the Director of Planning, nor the Planning Authority or the Minister for the Environment could alter the zoning of a Temporary Provision Scheme or the alignment of buildings. Amongst the points mentioned by the Board was that:

- once the Local Plans corresponded to the areas contemplated in the Temporary Provision Schemes, the said Schemes would no longer have any effect;

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<sup>293</sup> *Ibid.*, SET 8.

- the zoning within the Schemes could be changed through the Local Plan process, but their geographical configuration could only be changed through the Structure Plan review.

This decision was followed by Legal Notice 76 of 1997 which was published on the 3<sup>rd</sup> June 1997 but entered into force on the 24<sup>th</sup> June 1996! L.N. 76 / 97 was known as the Scheme Amendment and Changes in Alignment Order and it modified the decision of the Board, since it empowered the Planning Authority to make changes to the Temporary Provisions Schemes, to subsidiary plans and road alignments. Such changes could take place if, in the opinion of the Authority, these amendments would not affect the boundaries and zoning of these Schemes or Plans and did not run counter to the substance of the plans and policies in the Structure Plan. Government Notice 597 of 1997 delegated the functions of the Planning Authority outlined in L.N. 76/97 to the Director of Planning. Aquilina (1999, p.399) claims that such changes were in previous legislation only made possible either through the Minister responsible for planning or the House of Representatives.

The extent of scheme alignments and changes that have occurred during the period under study for this thesis is unknown. This is mainly because it was only the applicants who asked for changes who were informed whether these were approved or not and such changes were not published. However, if these changes, according to the L.N. 76/97, were possible from June 1996, then this would have affected only part of the results in this thesis. Secondly, provided the legal parameters were observed, the changes should be minor in nature and should affect only a few applications, thereby having an insignificant bearing on the overall results.

The Structure Plan acknowledged the fact that the Temporary Provisions did not allow for sufficient provisions in the layout of ancillary facilities (schools, clinics, etc.) for urban areas. The intention was that a review of these layouts would take place once the Local Plans were formulated to accommodate such facilities<sup>294</sup>. Eight primary development areas (all ODZ) were also earmarked for certain uses including urban and industrial uses<sup>295</sup>. The main aim of the Structure Plan was to allow development in existing areas, within Temporary Schemes and in Primary Development Areas while prohibiting urbanisation outside such areas<sup>296</sup>. However, the Plan envisages that there is a possibility that certain types of development listed in paragraph 7.6 would be allowed but also states in policy SET 12 that applications which infringe SET 11 could be considered, but the onus rests on the applicant to provide evidence as to why such a policy has to be infringed. One of the requirements is that an Environmental Impact Assessment has to be prepared. It could be questioned whether this is in line with Section 3.13 of the Structure Plan Strategy which states that:

*“Outside existing and planned urban areas, built development policies prohibiting the further urban use of unbuilt land will ensure that the spread of built development into the countryside is halted... The Plan designates a series of Rural Conservation Areas within which agricultural, ecological, archaeological, and landscape interests are protected and enhanced. These particular interests within the Rural Conservation Areas are however occasionally in conflict with each other in competing for land or in terms of management techniques, and the Structure Plan also contains guidelines aimed at resolving such conflicts and at establishing and maintaining an overall high standard of environment... Particular consideration is given to the natural environment which is a non renewable resource.”*

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<sup>294</sup> *Ibid.*, Section 6.7.

<sup>295</sup> *Ibid.*, Section 6.8 and SET 10.

<sup>296</sup> *Ibid.*, Section 6.9 and SET 11.

All this shows that in spite of the noble objectives found in the strategy, it was still envisaged that there would be a certain amount of development which would be permitted outside the schemes and this could also be in breach of certain policies. Any development outside the Temporary Schemes will have an impact on the site in question, the level of the impact depending on various factors, mainly the habitat and nature of development. It is outside the remit of this thesis to query whether the development is a legitimate inclusion or not, or whether it is permitted by policy or in breach of it. Any development ODZ will have an effect on the natural environment. In addition, there are a few areas which are situated ODZ which could be termed as small hamlets but, since they are ODZ, relevant policies have to be applied. The probability is that any development in such hamlets could consist of extensions or replacement of buildings and so no natural habitat would be affected.

A complete review of a selected number of Structure Plan policies was carried out in Chapter 3 (Section 3.6) and will not be repeated here. The Structure Plan policies can be divided into two groups, those related to the planning application process and those which are more strategic in nature. In the former group are included<sup>297</sup>:

- policies meant to be used in accepting and refusing various types of development applications ODZ<sup>298</sup>;
- policies meant to channel certain type of development ODZ<sup>299</sup>;

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<sup>297</sup> Policies not mentioned in footnotes 298-303 either do not concern the objectives of this thesis or are not related to ODZ.

<sup>298</sup> The following policies are being considered under this category: SET 11, 12, BEN 5,6, 8-17,20; AHF 5,6,7; MIN 1,4,5,6,9,10,12,13,19; REC 10; RCO 2,4,5,16,17,21-27,29; ARC 3; CZM 3.

<sup>299</sup> The following policies are being considered under this category: AHF 9,13,15,16; REC 5,6,7,8,11,13,14; RCO 6,22,31.

- policies earmarked to be used during the interim period between the Structure Plan and the production of Local Plans<sup>300</sup>;
- policies used in rehabilitation and correctional measures of the natural environment<sup>301</sup>.

Further to these policies, the Planning Authority provided policy and design guidance notes regarding certain areas of concern. This was mainly done in order to consolidate the use of Structure Plan policies concerning particular types of developments.

The second group of policies are those of a strategic nature which include policies:

- concerning the scheduling of land and buildings<sup>302</sup>;
- which stipulate the line of action that should be taken in order to reach particular set objectives<sup>303</sup>.

Most of the policies, which were mentioned in footnotes 298-301, mainly concern permitted development, although in most cases this is conditional in nature. Some policies might not be specific to ODZ but the kind of development involved is usually found in such areas and as a result these will also be referred to. The following part of the discussion will therefore concern the types of developments which are being allowed by policy. This approach is being taken because the review in Section 3.6 has already shown that the Plan contains several policies which safeguard the

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<sup>300</sup> The following policies are being considered under this category: BEN 5; MIN 16,17; ARC 6.

<sup>301</sup> The following policies are being considered under this category: MIN 15, 13; REC 9; RCO 6, 9, 19, 20, 22.

<sup>302</sup> The following policies are being considered under this category: AHF 1, 4, 8; MIN 5, 8, 12, 13; TOU 11; RCO 1, 3, 6, 8, 9, 10, 11, 12, 18, 30, 33; ARC 1,2, 4, 6, 7; MCO 1,2; CZM 3.

<sup>303</sup> The following policies are being considered under this category: BEN 18, 19, 21; AHF 2, 3, 10, 11, 12, 14; MIN 2, 3, 7, 8, 11, 12, 14, 18; TOU 1, 2, 5, 6, 7, 8, 10-15; REC 1-14; RCO 10-14; 28, 32-42; ARC 4, 5; MCO 1-9, 13; CZM 1,2.

environment through various initiatives, including scheduling of land and sites and there is no need to repeat that. This discussion will include a consideration of the data analysed in Chapter 5.

### **6.1.1 Policy-Permitted Development ODZ**

The main thrust in the Structure Plan to prevent further urbanisation ODZ is found in policy SET 11. The only exceptions to this policy are those mentioned in paragraph 7.6, including genuine agricultural buildings, reservoirs, picnic area toilets, car parks, control buildings, walls and fences at archaeological and ecological sites. The main emphasis for permitted development ODZ is that concerning activities dealing with the countryside or those which are impossible to allocate within the urban fringe. The list mentioned in paragraph 7.6 is however not exhaustive. This is evident because other forms of allowed developments are mentioned elsewhere in the Plan. AHF 5 allows for buildings and structures essential to the agricultural needs, but the policy mentions that these are allowed in the countryside rather than outside development zone. However, most of the countryside is ODZ. Structures mentioned in this policy are greenhouses, “farm gate” retail outlets and “...*sensitive conversion of existing farmhouses and other farm buildings in the countryside for rural recreational use...*” The latter part of this policy leaves a lot of room for abuse; the main reasons being that there are no particular definitions of what constitute a farmhouse, a farm building and what is meant by recreational use. A number of restrictions, which are explained in the Explanatory Memorandum<sup>304</sup>, exist for agricultural related developments. Unfortunately, the contents of this document were often overlooked and it was

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<sup>304</sup> Colin Buchanan and Partners *et al.*, (1990e).



necessary to issue clear guidance of the types of policies and criteria which were to be used in determining agricultural related developments ODZ. In fact, the Planning Authority issued a policy and design guidance note in February 1994<sup>305</sup>.

Some types of recreational uses could bring in more people to the area thus multiplying the impact on the surroundings. RCO 2 continues to widen the types of permitted development in Rural Conservation Areas (RCA), which are basically all ODZ. It states that:

*“Within Rural Conservation Areas and in accordance with Policy SET 11 no form of urban development will be allowed. However, in accordance with Policy BEN 5, applications for permission to develop structures or facilities essential to agricultural, ecological, or scenic interests will be favourably considered as long as the proposed development does not infringe the principles set out in Policy RCO 4 as subsequently detailed in the relevant Local Plan (Policy RCO 3). See also Policies RCO 7 and 8. With regard to existing buildings and other structures in Rural Conservation Areas, and other rural areas, the overall aim is to improve the rural environment. To this end the rehabilitation and suitable change of use of some buildings will be permitted, in conjunction with the removal of other buildings and structures which adversely affect the rural environment.”*

In this case, the types of acceptable developments have also included structures and facilities relating to ecological and scenic interests. Contrary to policy AHF 5, favourable consideration is being given to rehabilitation and suitable “change of use of some buildings” in rural areas. However, the policy does not specify the type of change which is acceptable and the future use of the rehabilitated building, although it should be borne in mind that SET 11 prohibits urbanisation, the term being specifically defined in paragraph 7.6 and so not subject to interpretation. Also, the Planning Authority claimed that RCO 2 was very important to control development in

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<sup>305</sup> *Policy and Design Guidance Farmhouse and Agricultural Buildings.*

rural areas and also withstood the acid test of Appeal. However, it also stated that a number of subtle abuses were identified. There were also problems with the interpretation of the term urban development, especially with facilities (such as stables) which are not compatible with residential uses (Planning Authority, 1997a, p.123, section 4.3.47-4.3.48).

So, the Structure Plan is not always clear regarding the siting of developments, although it is pretty obvious that some take place ODZ. A case in point are the policies (MIN) concerning mineral extractions, which in Malta are limited to the production of hard stone and soft stone from quarries which are all situated outside urban areas. This could be due to the fact that when the Temporary Schemes were drawn up, it was clear that such a development would be better excluded from the urban zone, in view of both the existing and future uses of the site. The types of quarries in Malta are open cast and are relatively large in the local context and so have a considerable visual impact. In addition, hard stone quarries are, in most cases, found in ecologically sensitive areas, whereas soft stone ones are found in agricultural areas. When the Mineral Resource Assessment was carried out to identify potential sites for extraction and establish a time frame for the existing resource, no environmental considerations were taken into consideration. As a result this will, therefore, either further reduce the projected period to exhaust all the reserves or else put further pressure on the natural environment in the future, when the reserves would become scarcer. This could lead to a situation where important ecological sites would be sacrificed in favour of the extraction of resource. The Authority has already acknowledged the fact that it is becoming difficult to find new sites which are neither ecologically sensitive nor good agricultural land. In fact, agricultural land is being

given a lower priority since it can be restored (Planning Authority, 1997a, p.128, section 4.3.75). It must also be noted that the Plan doesn't encourage quarry operators to seek other economically feasible alternative ways of extraction which might be less damaging to the environment. Obviously, the owners continue to use the cheapest alternative, which is that of open cast quarrying.

BEN 6 allows for advertisements in the form of large poster hoardings which are "outside conservation areas." It is not clear whether the reference is made to Urban and Rural Conservation Areas. Aquilina (1999a, p.437) cites the Appeal *Joseph Chetcuti v. Development Control Commission* whereby the Planning Appeals Board noted that this policy was superseded by the *Advertisement Design Guidelines* which were approved on the 1<sup>st</sup> April 1993. However, the *Planning Fact Book* (vol. 1 & 2) issued by the Planning Authority failed to include this policy document. The only related policy guidelines found in this documentation was that entitled *Policy and Design Guidance Billboard and Signs* issued in May 1994. The Planning Authority claimed that the policy referred to above as *Advertisement Design Guidelines* is the same one entitled *Policy and Design Guidance Billboards and Signs* and the date (May 1994) found in the *Factbook* is incorrect (Saliba M., personal communication).

Soil in the countryside is retained in position thanks to random rubble walls. The Plan allows for the reinstatement and replacement of retaining rubble walls (AHF 7) and the repairs of breached retaining walls on valley sides (RCO 25). Development in valleys will not normally be permitted, but repairs to existing dams, selective dredging and establishment of car parks at valley edges will be permitted (RCO 29). It is not quite clear whether embellishment of car parks will also imply their extension at

valley edges. It is unknown whether such a measure will have the desired positive effect, since it may encourage more people to the valley, leading to more trampling and more damage to the environment. Their absence would limit the number of people, but haphazard parking and the creation of pathways through the use of motorbikes could also result in environmental damage. Policy RCO 22 allows for positive action to prevent further loss of sandy beaches, sand dunes, coastal clay slopes, soil and cliff edges. However, policy RCO 23 concerns the development of coastal defences, beach replenishment projects and the creation of new beaches following a scientific study.

Finally, under the title “Coastal Zone Management”, Section 15.48 states:

*“Facilities for enjoyment by the public shall include suitably sited swimming and shore diving, diving rafts, car parks, toilets, first aid posts, restaurants, shops, temporary boat moorings, water sports, sunbathing areas, showers, picnic areas, refuse disposal, promenades, nature trails, inland boat storage, boat launching and retrieval, shore fishing, removal of unsightly features, footpaths, bridleways, signage and other information, and safety measures.”*

Most of the beaches and seaside resorts are situated ODZ and so it can be assumed that the Section 15.48 is also applicable to such areas.

So far the discussion has been limited to development ODZ allowed through Structure Plan policies, but policy SET 12 allows for the possibility of a permit for other types of development not yet mentioned:

*“Notwithstanding the policy against any form of urbanisation outside areas designated for urban uses in the Structure Plan, the Planning Authority will consider applications for permission to develop which ostensibly infringe Policy SET 11. In any such case the onus will be on the applicant to present evidence as to why the policy should be infringed, giving reasons why from a planning point of view such proposed use cannot be located in areas designated for development. The Planning Authority will additionally require the applicant to submit at his own expense a full Environmental Impact*

*Assessment of a form and content satisfactory to the Authority. This policy is not a means of evading policy SET 11 or any other policy. An Environmental Impact Assessment which adequately demonstrates acceptable impacts will not be a reason for the granting of a development permit if the proposed use can be located in an area intended for its development under the Structure Plan or any subsequent approved Planning Authority document”.*

Such a policy allows for the possibility of any type of development ODZ, if sufficient proof is provided.

A number of Structure Plan policies channel certain types of development ODZ. AHF 9 encourages the relocation of livestock units from urban and committed areas to suitable locations in the countryside. AHF 13 allows for: the establishment of access rights of way; agricultural vehicles and improving tracks in the countryside; availability of land for farming; formation of larger farms; identifying sites to establish boat storage facilities. Both marine and land-based aquaculture facilities are encouraged, however, land-based facilities are earmarked for industrial areas and spent quarries, both of which are ODZ (AHF 15 and 16). Marine-based farms usually have a land-based facility close to the sea shore, to store food, use as offices and as ancillary facilities to the farm. In May 1994, the Planning Authority issued *Policy and Design Guidance Fishfarming*, in view of the increasing interest in developing a fish farming industry in Malta and also the fact that it poses threats to the marine and coastal environment (Planning Authority, 1997c, p. 3/67, section 1).

Recreation policies REC 5-7, allow for the provision of sports facilities and the relocation of a firing range used by the army in specific parts of the Island, most of which are ODZ. REC 8 concerns the establishment of a limited number of tracks and training facilities in connection with major impact sports such as vehicle racing; the

locations will be chosen following the production of an EIA. REC 11 identifies two sites to house overnight accommodation for caravans and tents. The practicality of adopting such a policy is in doubt since one of the sites mentioned is already being used as a caravan site, with the difference that the caravans remain there throughout the summer months and not for an overnight stay! Makeshift huts and shantytowns that were illegally built along the coast were planned to be removed at the owner's expense, following an eviction notice and the sites would be restored to their original state<sup>306</sup>. The Plan allows for the establishment of country pathways in various parts of the Island (REC 13). Such routes were meant to be used as footpaths, cycle routes and horse riding trails. The intentions behind such a system might be noble, but although such routes cannot be considered as development in the true sense of the word, the introduction of people into various parts of the countryside could have negative consequences, the main reason being that people tend to spill out from the designated paths and establish other routes which were not originally planned. This becomes more relevant with reference to REC 14 which establishes that a series of picnic areas together with support facilities will be established along designated pathways.

The Plan allowed for rehabilitation and correctional measures to safeguard the environment. Favourable consideration is given to the reuse (MIN 13) and the reclamation (MIN 15) of disused quarries. Hard stone quarries are usually located in garigue areas, which are quite important ecologically since several important floral and faunal species, some of which endemic, are found here. Secondly, soft stone quarries are usually found in agricultural areas. Since quarrying could be considered

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<sup>306</sup> See: Colin Buchanan and Partner *et al.*, (1990d) REC 9 & 12.

as a temporary development, then once the site is exhausted, land reclamation could return it back to its original use. This is a valid argument for those quarries where originally the land was agricultural but doesn't apply if the land was garigue. If the ecological value of garigue land were compared with agricultural land, then garigue has a much higher value and there is no way of returning it to its original state once it has been lost. One must bear in mind that the garigue areas harbour various endemic floral species. The Planning Authority issued two policy and design guidance papers in relation to quarry works, the first one was issued in March 1993<sup>307</sup> and the second one in June 1997<sup>308</sup>. Section 12.16 of the Plan considers that spent quarries could be used to site obnoxious industries storage areas, aquaculture, recreational facilities and also amphitheatres.

Local Plans for Rural Conservation Areas were due to be produced and an enhancement and rehabilitation programme was projected (RCO 6). This included afforestation and landscaping schemes, rehabilitation of abandoned quarries, reactivation of abandoned agricultural land, reuse and conversion of rural buildings, rehabilitation of degraded habitats and relocation of activities incompatible with the rural environment. The Planning Authority was meant to carry out surveys to identify degraded landscapes and habitats (RCO 19) and also it would support rehabilitation schemes for such areas (RCO 20).

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<sup>307</sup> *Policy and Design Guidance Code of Practice for Quarry Working and Restoration.*

<sup>308</sup> *Policy and Design Guidance Inert Waste Disposal in Quarries.*

In January 1995, the Authority issued a comprehensive policy and design guidance paper concerning development ODZ<sup>309</sup>. This incorporated the various policies and criteria used in determining different types of developments ODZ. However, the Planning Authority stated that in spite of the strict criteria established in the guidelines, there were still a number of policy breaches and these were on the increase (Planning Authority, 1999a, Section 3.1.17 p.94).

There was little new information and no change in policies in all these guidance notes, but the important things about them were that:

- All the related policies and sections from the Explanatory Memorandum were incorporated in one part, thus avoiding a lot of research for the people concerned.
- Any misconceptions, which might have been inherited from previous legislation or misinterpretation of policies, were cleared up. A case in point is that found in PLP 20, whereby it was clearly stated (Section 3.2) that infill development ODZ is no longer acceptable, in spite of the fact that this was allowed under the Building Permits (Temporary Provisions) Act, 1988.
- Clear directions were issued under which, particular developments were acceptable within the policy framework.

Based on the above facts and in spite of restrictive policies for development ODZ, there is a multitude of possibilities where planning policies could be used to obtain

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<sup>309</sup> *Policy and Design Guidance Development Outside Built-up Areas*; (also known as PLP 20).



permission for a development. A case in point is SET 12, although it cannot be assumed that the production of an EIA will lead to permission.

## **6.2 Legislation Permitting Development ODZ**

There were two subsidiary pieces of legislation which could have affected development ODZ without being recorded in the data which has been analysed. These were the General Development Order, 1993 (L.N. 178/93) and the General Development (No. 2) Order, 1997 (L.N. 137/97). The only type of development allowed ODZ through L.N. 178/93 was that listed as *Class 11, development related to agriculture*. This included construction of reservoirs less than a stipulated size, the construction of pump houses and the levelling, widening and maintenance of farm roads. All this could have taken place without the Planning Authority being notified and so could be termed as an unrecorded form of development. There was no need to notify the Authority when a person wanted to carry out any of the permitted works listed in this legislation. This situation was partly remedied with L.N. 137/97 whereby the developer, in most cases<sup>310</sup>, was obliged to notify the Planning Authority of the detailed works which were going to take place. Apart from the *Class 11* permitted developments mentioned above, the new legislation also allowed for the construction of rubble walls not exceeding 1.2m to be constructed ODZ<sup>311</sup>. The effect of the GDO of 1993 and that of 1997 cannot be seen in the data being analysed, although it would

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<sup>310</sup> Most of the agricultural developments listed in the GDO of 1993 as not requiring any notification, are still found in that of 1997 with the same status.

<sup>311</sup> L.N. 137/97, Class 2, Minor Operations, Section 1 (iv)(a).

be difficult and speculative to attribute the decrease in the number of applications in the agricultural sector for the year 1998<sup>312</sup> to this legislation.

### **6.3 The Planning System**

The discussion will now concentrate on the results which were obtained in Chapter 5. It will be divided into three parts, namely, the pressure created by development through the application system; the decisions taken; the illegal / enforcement system, from Appeals and from Direct Observations of decision board meetings.

#### **6.3.1 Pressure created by Development through the Application System**

The application data which were analysed could have been influenced by a number of factors:

- i. two different sources of data were used (GIS for 1989-1993 and DCIS / ACOLAID for 1994-1998); The input methodology used was different in both cases;
- ii. the different legislative system under which the applications were submitted;
- iii. the new restrictions found in the Development Planning Act, 1992;
- iv. the prevailing economic situation in the country at the time of application;
- v. the socio-political situation at the time of application;
- vi. the lack of effective enforcement on illegal development before the set-up of the Planning Authority.

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<sup>312</sup> See: Figure 5.11.

There is no direct proof from the results obtained to account for all these factors, however, there was an increase in the number of ODZ applications before the establishment of the Planning Authority (1992)<sup>313</sup>. This could be attributed to people trying to get a permit under the old legislation which was more liberal. The overall increase in the number of applications following 1992<sup>314</sup> could be attributed to the fact that the new legislation introduced various types of development which did not previously require any permission. In addition, a number of people re-applied for a development permit under the new legislation, thus boosting the numbers in the initial years following 1992. Of notable concern is the fact that the trends for applications ODZ shown throughout the period 1989-1998 and the projections for the following two years showed an increase in the number of applications<sup>315</sup>. Both before and after the establishment of the Planning Authority, the trends within Temporary Schemes were on the decrease, whereas those ODZ were on the increase showing that the pressure for development in such areas was increasing. The statistical analysis used to obtain the projected values showed that the figures obtained for 1999 and 2000 were close to the actual values, indicating the validity of the methodology. Apart from the number or percentage developments ODZ, of notable concern, is that both the total area of developments ODZ<sup>316</sup> and the unit area per application<sup>317</sup> showed a continuous increase over the period under observation. The major contributor to development applications ODZ was the agricultural sector<sup>318</sup>.

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<sup>313</sup> See: Table 5.1, Figure 5.1, 5.2 and 5.3.

<sup>314</sup> See: Table 5.1, Figure 5.1.

<sup>315</sup> See: Figure 5.2-5.5.

<sup>316</sup> See: Figure 5.6.

<sup>317</sup> See: Figure 5.7.

<sup>318</sup> See: Figure 5.8.

During the period under analysis the country had minor fluctuations in the inflation rate<sup>319</sup>, unemployment was lower than previous years<sup>320</sup>, the GDP was increasing<sup>321</sup> and the sectoral income from property<sup>322</sup> was also increasing. The latter factor could have served as a stimulus for people to invest in construction<sup>323</sup> although the number of applications and trends both before and after 1992 within Schemes showed downward trends. The source of income from property could have been from sale of property which was built in previous years, but sold at high prices. Such property need not have been new but could also be old dwellings for demolition. Also, this property need not be sited within Schemes.

The concentration of applications which were made both within Temporary Schemes and ODZ during the period 1994-2000<sup>324</sup> makes it clear that the Schemes were not serving as a deterrent for developers to submit their proposals. Also, there was a considerable amount of pressure for development throughout the Islands. In fact, there were a number of applications having a considerable area which were ODZ and, scheduling of land did not serve as a deterrent for submission of applications. The fact that people submitted applications for development on land where certain constraints applied could be due to the fact that they felt that they stood a good chance of getting a permit, apart from the fact that the unit cost of land ODZ is cheaper than within Temporary Schemes (Colin Buchanan and Partners *et al.*, 1990b p.8D section 2.13).

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<sup>319</sup> See: Figure 1.10.

<sup>320</sup> See: Figure 1.7.

<sup>321</sup> See: Figure 1.9.

<sup>322</sup> See: Figure 1.12.

<sup>323</sup> See: Figure 1.14, 1.15.

<sup>324</sup> See: Map 5.1.

### **6.3.2 Pressure created by Development through the Decision-Making Process**

The number of applications serve as an indicator to the Authority of the demand for development but the decisions taken on each and every application serves as an indicator to the developer of what is acceptable to the Authority. This serves as a sign for developers to increase or ease their pressure for development. As a result, the discussion on the decision-making process is very important because:

- i. it is the part of the application process where the policies are being applied;
- ii. the importance and significance of the planning policies is being given an interpretation both by the Planning Directorate and also by the decision boards;
- iii. the strength of the policies is being tested at various stages where a decision is taken.

These points have stimulated an extensive study on the various parts of the decision-making process, which involved a considerable amount of data processing.

Due to a time lag between the submission and the decision stage of an application, it is not possible to compare the decision data with the application data for the same period of time. In fact, for analytical purposes, the applications were sorted by the application year, whereas, the decisions were sorted by decision year. In the latter case, this was to facilitate the opportunity to correlate:

- decisions with decision-making boards occupying the post during a particular period;
- any observed changes with amendments in legislation or policies.

### **First decision tier level**

The number of decisions taken reached a maximum of about 8,000 annually after 1996, but the number of ODZ applications decided showed an increase during the five years between 1994-98<sup>325</sup>. The trend reveals a continuous increase in the number of ODZ applications to be decided, which is also linked to the fact that more applications had been submitted. It isn't known whether the limit has been reached due to the fact that the Case Officers cannot process more files or whether the Boards cannot decide more applications in their allotted time. Annual performance indicators, which could have given an answer to the above query, were requested from the Planning Authority, but were not available.

The remainder of the analyses and discussion will concern applications ODZ. The pressure created on the environment by development during the years of analyses was considerable, especially when one notes that between 40-60% of the development applied for ODZ<sup>326</sup> was granted permission at first decision level. To this one must add the values of upheld (UPH) decisions taken at Reconsideration and Appeal stages. In the latter cases, there was a tendency for the Boards to uphold the original decision in most cases, since the numbers of dismissed cases was always greater than the upheld ones. Following the introduction of policy PLP 20 in January 1995, the percentage values of granted decisions (GTD) decreased slightly while the refused decisions (REF) increased, but this occurred only from 1996 onwards. The Chi-

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<sup>325</sup> See: Figure 5.13.

<sup>326</sup> See: Figure 5.14.

Square Test also confirmed that these changes were not occurring by chance<sup>327</sup>. So these could have been influenced either by the composition of the decision-making board<sup>328</sup> which would have changed during the study period, or the legislation / policy or a combination of both factors. One would have expected to observe something similar taking place for the values of dismissed (DIS) and upheld (UPH), but no related changes could be identified.

The percentages of decisions taken at Reconsideration and Appeal stage are mostly influenced by refusals which had taken place at the first decision tier level. However, one must also consider that applicants could ask for Reconsideration or go to Appeal over a condition in their permit, but these are usually rare.

### **Decisions at second and third tier levels**

Certain Structure Plan policies allow for particular types of development ODZ, which makes it surprising that the agricultural-related group was one of the most contested ones at Appeal against refusal (ARF) during the study period<sup>329</sup>. Dwellings (DWL) development types were also contested during the same period but this might sound logical, due to the fact that the policies limit urbanisation outside Schemes. The development sectors which had a high percentage contribution in the application stage<sup>330</sup> were also the ones which were most contested<sup>331</sup>. The fact that certain developments types are contested more than others could also indicate that:

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<sup>327</sup> See: Table 5.6.

<sup>328</sup> Two of the seven members of the DCC were replaced in November 1995 whereas another 3 were replaced in November 1997; The Chairman was the same throughout most of the study period.

<sup>329</sup> See: Figure 5.16.

<sup>330</sup> See: Figure 5.8.

<sup>331</sup> See: Figures 5.16-5.17.

- developers are putting pressure on the Authority to attenuate policies;
- there is a demand to locate such developments outside Schemes; This could be due to economic reasons or due to the fact that the Plan doesn't allow such developments within Schemes;
- permission could have been given for similar developments before and so similar treatment may be expected.

Finally, the values obtained for Appeal against refusal (ARF) are continuously changing due to the fact that once an Appeal is decided, the case is transferred to the upheld and dismissed categories. So the percentages obtained in Figures 5.16-5.17 are dynamic in nature.

The next part of the discussion is one of the most important because it concerns the approvals / refusals and the upheld / dismissed Appeals or Reconsideration cases for applications ODZ. The outcome from these cases had an effect on the natural environment because in cases where permission was obtained, part of the natural environment was lost. In cases where a refusal was given, it indicated that there was a certain amount of pressure on the environment, but possibly through the effective use of planning policies, the application was refused.

Since the same codes were used for dismissed / upheld applications from Reconsideration and / or Appeals, the original Board which took the final decision couldn't be identified. Also, some applications which were decided at Reconsideration could have been appealed and possibly been decided and so ended up



as another figure in the UPH/DIS codes, or else were still pending and categorised with the ARF code.

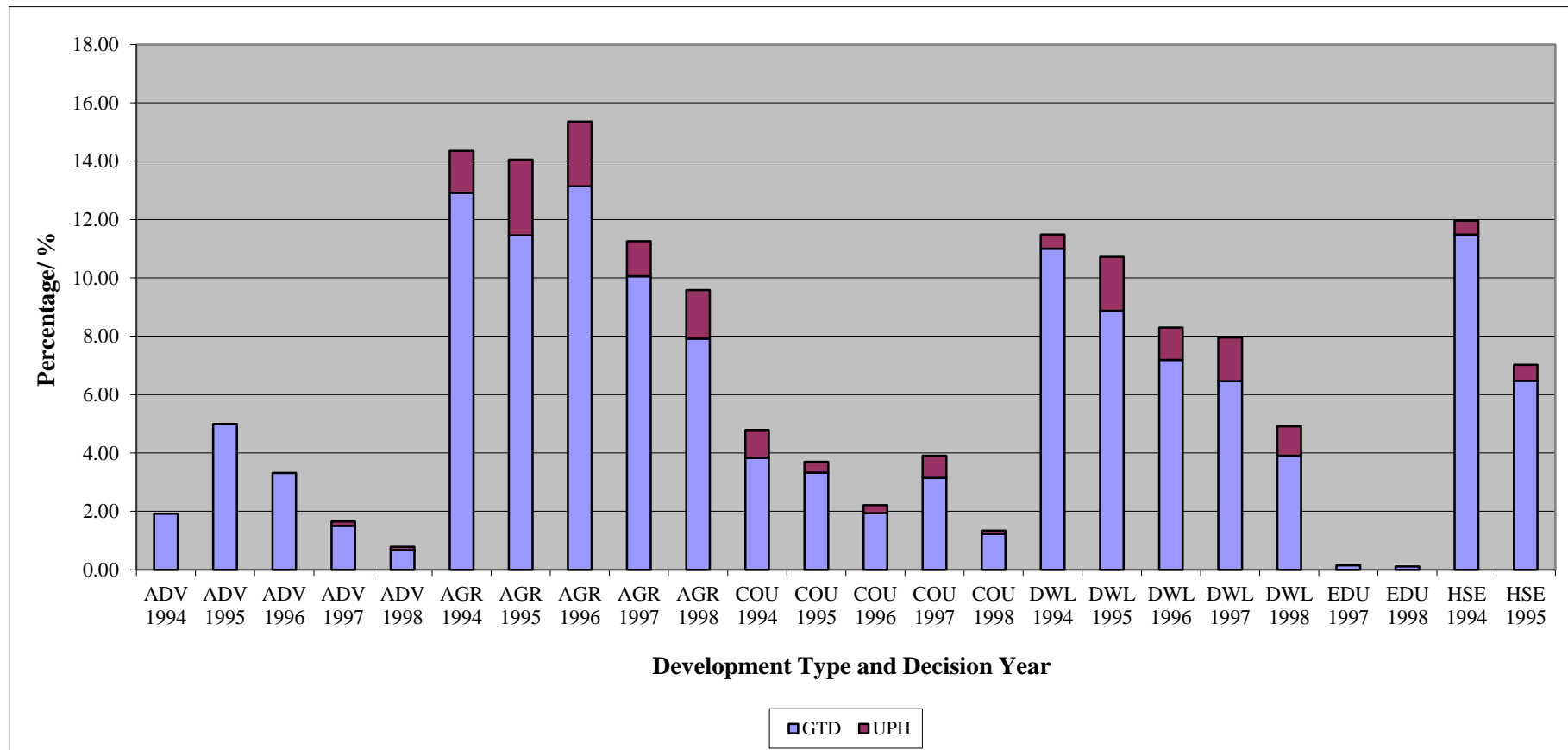
The three development types recorded mostly in the UPH/DIS were agriculture (AGR), dwellings (DWL) and “other” (OTH).<sup>332</sup> In all these cases the dismissed rate was always greater than that for upheld, showing that the tendency was to retain the original decision. There was no evidence of any radical changes following the publication of policy PLP 20. Although in most of the cases recorded, the original decision was upheld, there were a few cases whereby the original decision was overturned. So in order to obtain a better picture of the situation the values obtained from Figures 5.20-5.21 need to be compared with those obtained for the approvals / refusals in Figures 5.22-5.25, bearing in mind that there was a shift in the decision year between the first decision and the Reconsideration and / or Appeal, due to the time taken between the different stages. A set of graphs (Figures 6.1-6.8) showing the total annual percentages of the GTD/UPH and the REF/DIS indicates an increase in development pressure created by the combined effect from the outcome of the three different decision tier levels. Caution must be exercised in the interpretation of these graphs, since the Reconsideration and / or Appeals are mostly from a refusal but could also be from a condition. Therefore, the figures of the REF/DIS graphs are in most cases not showing the true figures, because the application is recorded at least twice, although probably in different years. The effect is not so pronounced in the GTD/UPH graphs, since there would be only a few cases where the Reconsiderations and / or Appeal is from a condition. Of notable importance to this study is, that in spite of the

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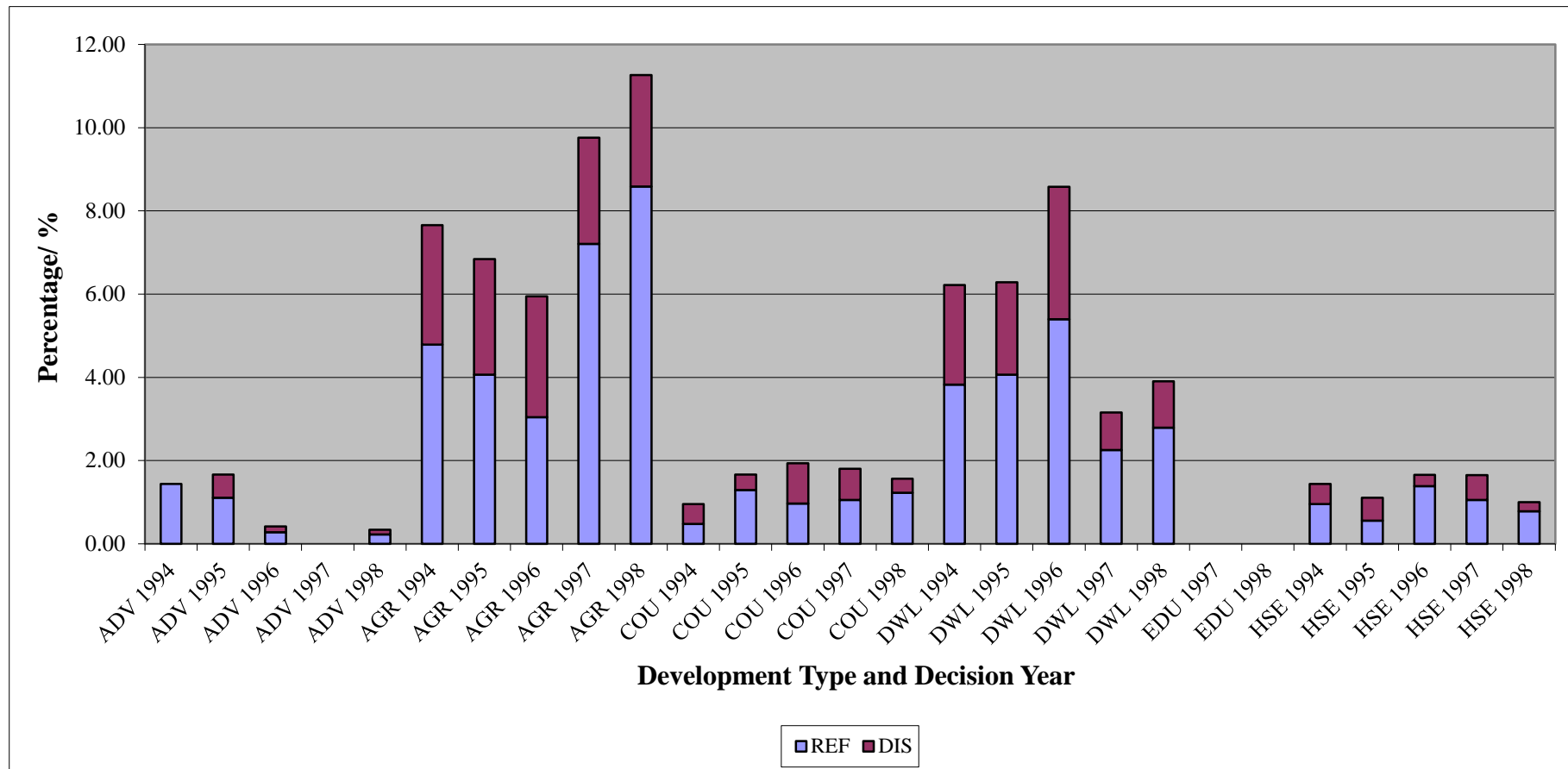
<sup>332</sup> See: Figures 5.20-5.21.

fact that in most cases, the dismissed rate was higher than the upheld rate, there was still an increase in the percentage number of developments which were granted permission for development over time. This was evident mostly for those developments that already had a high success rate at the first decision level, which could be interpreted as an indication that it was worth trying to get permission by going through the Reconsideration and / or Appeal process. There is a possibility that when developers decide to ask for a Reconsideration or go to appeal, the costs involved in the process and the time waiting for a decision are minimal compared to the financial gain and / or need for the development. This is evident from the fact that an analysis of all the development types shows that the only type of development that was not contested at Reconsideration or Appeal stage was that concerning the installation of a satellite dish, most of which would have been for home use. Also, not all refusals are taken to the Reconsideration and / or Appeal stage.

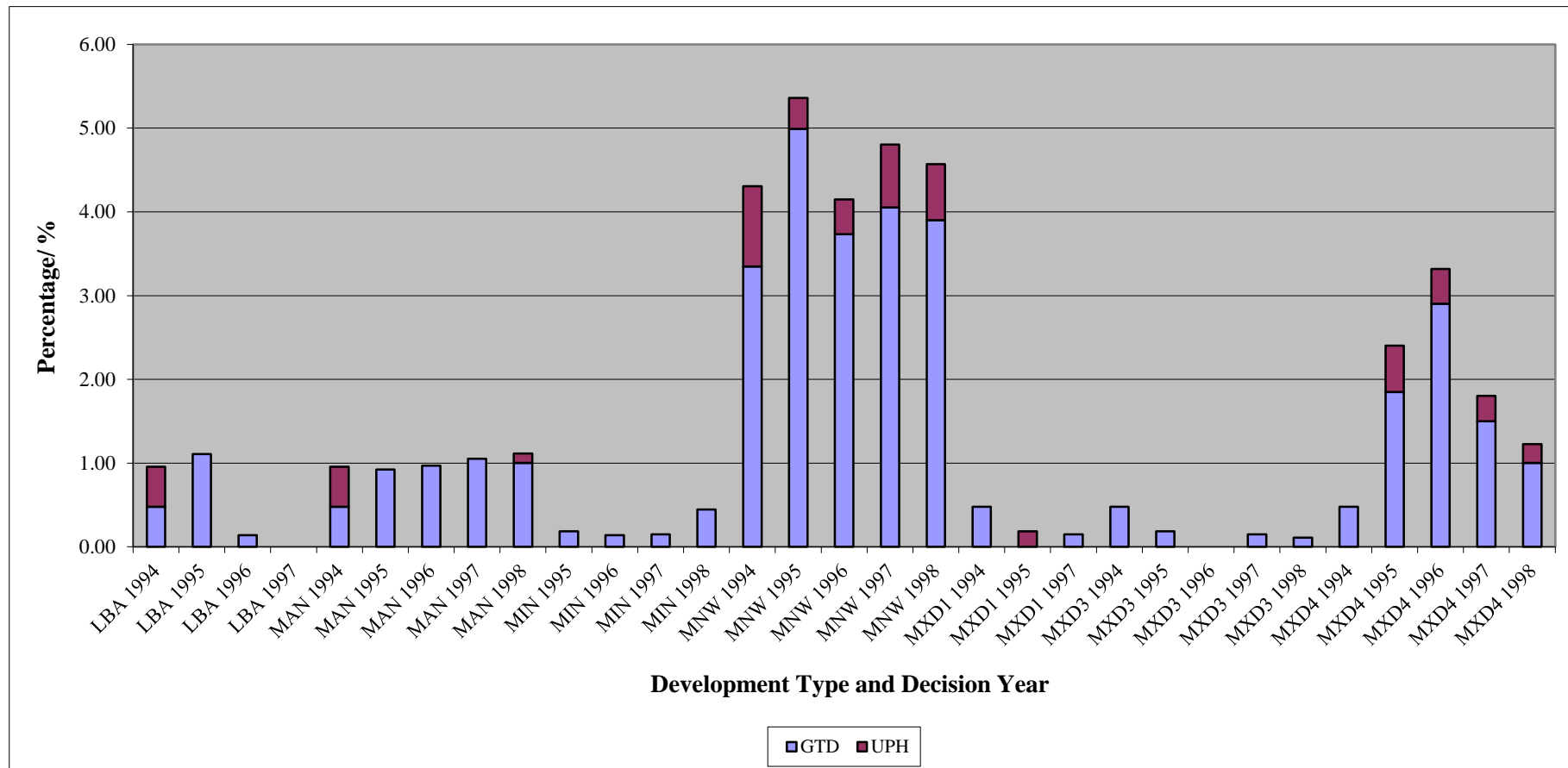
The results obtained from the graphs in Figures 6.1-6.8 also show that there were a substantial percentage of upheld decisions, which implies that the original decision was overturned. There could be a variety of reasons why this might happen and it would be speculation to attribute a cause; it is not clear whether the decisions were from Reconsideration or an Appeal. The important thing in relation to this study is that as a result of these decisions there was more pressure on the natural environment.



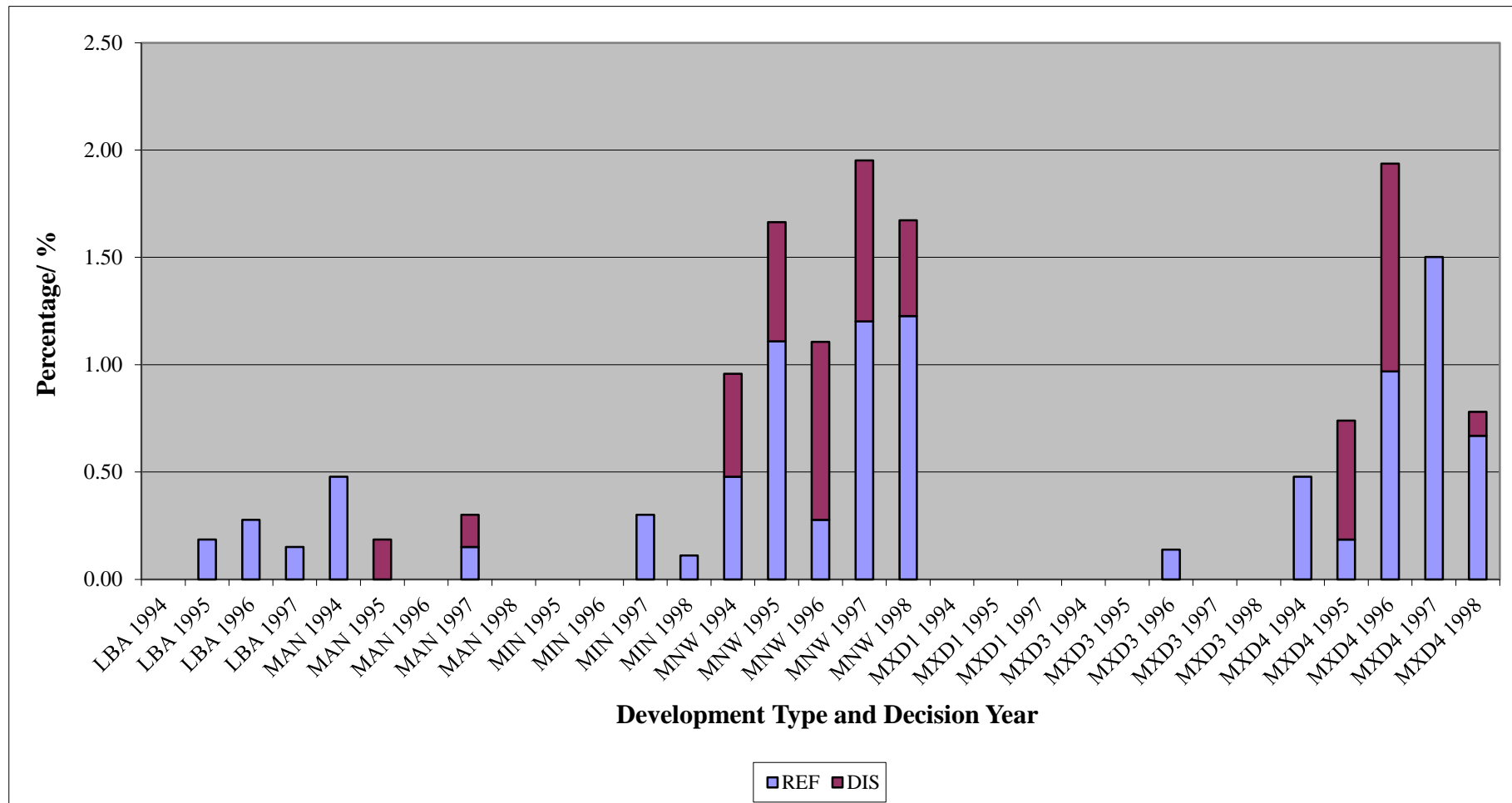
**Figure 6.1: Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages (source: DCIS / ACOLAID, Planning Authority, 1999).**



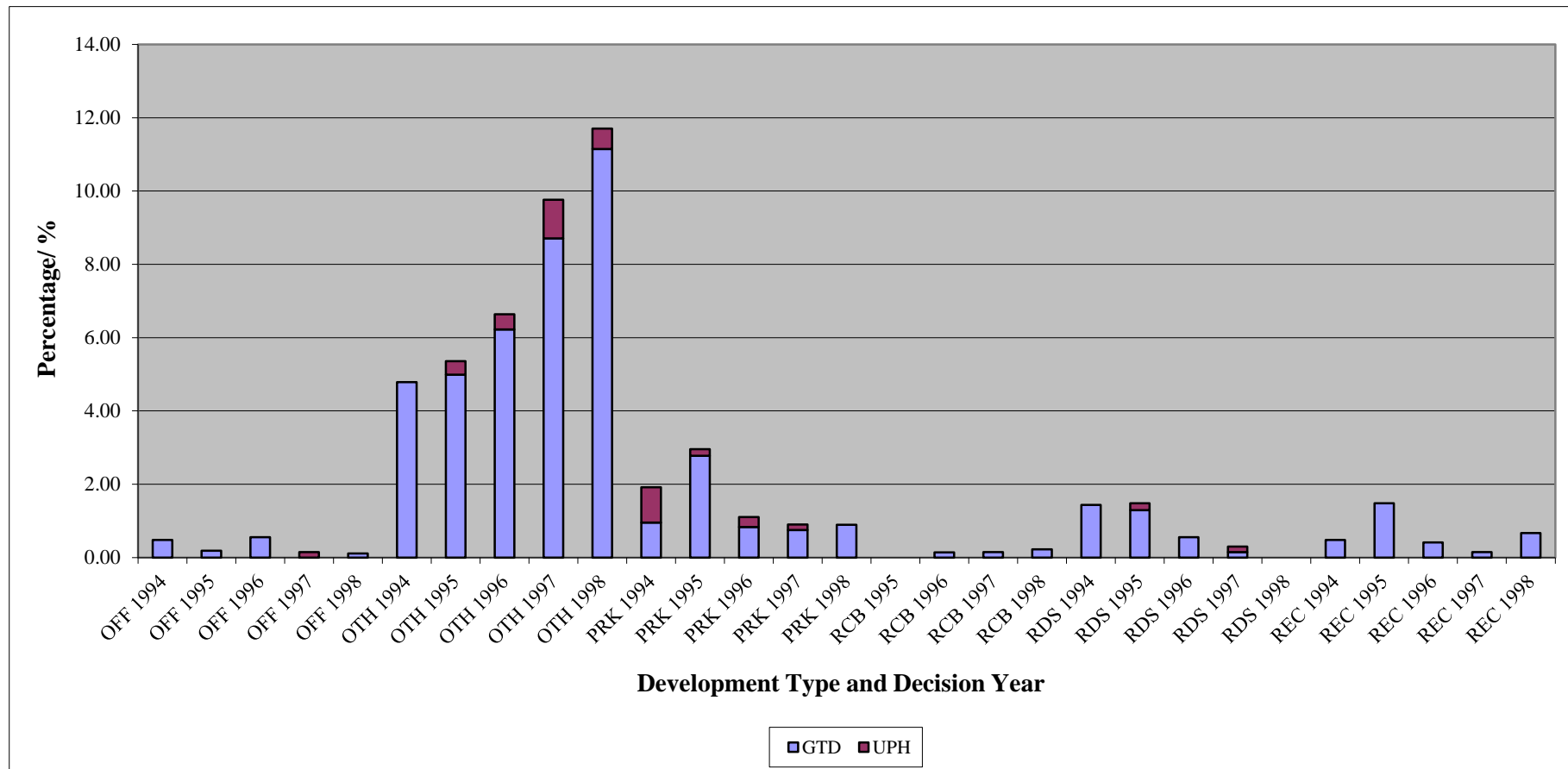
**Figure 6.2: Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages (source: DCIS / ACOLAID, Planning Authority, 1999).**



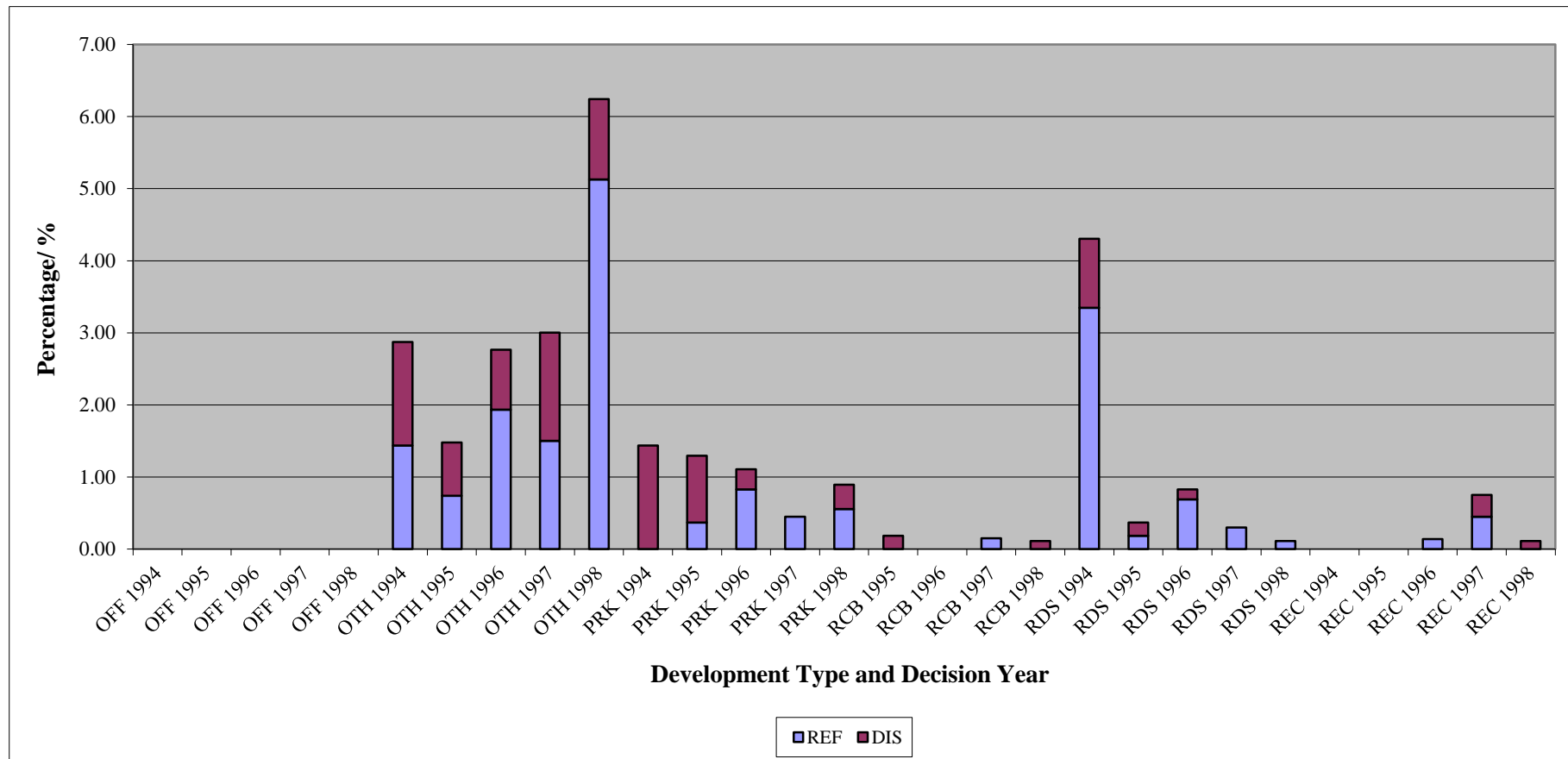
**Figure 6.3: Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages (source: DCIS / ACOLAID, Planning Authority, 1999).**



**Figure 6.4: Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages (source: DCIS / ACOLAID, Planning Authority, 1999).**

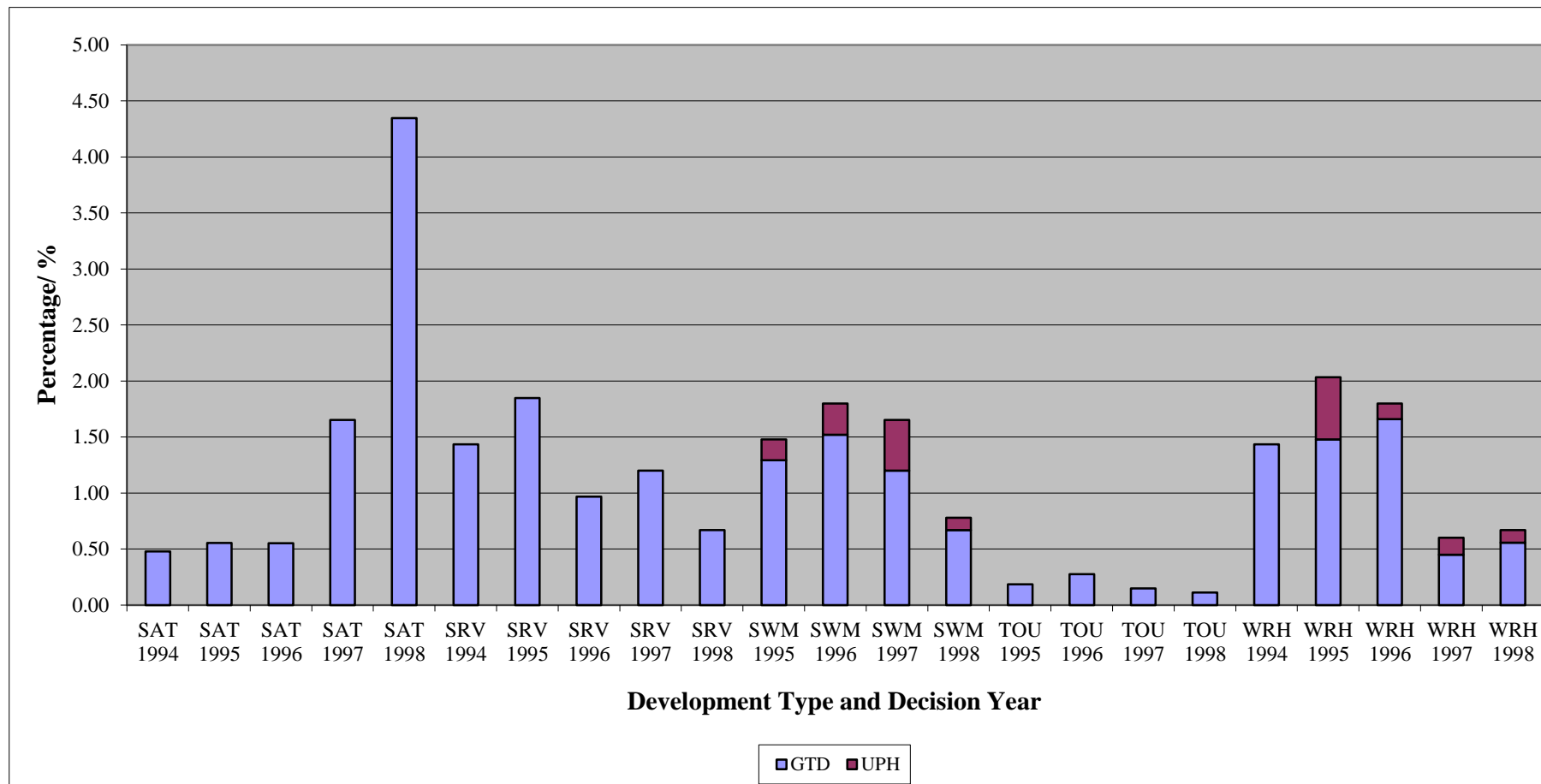


**Figure 6.5: Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages (source: DCIS / ACOLAID, Planning Authority, 1999).**

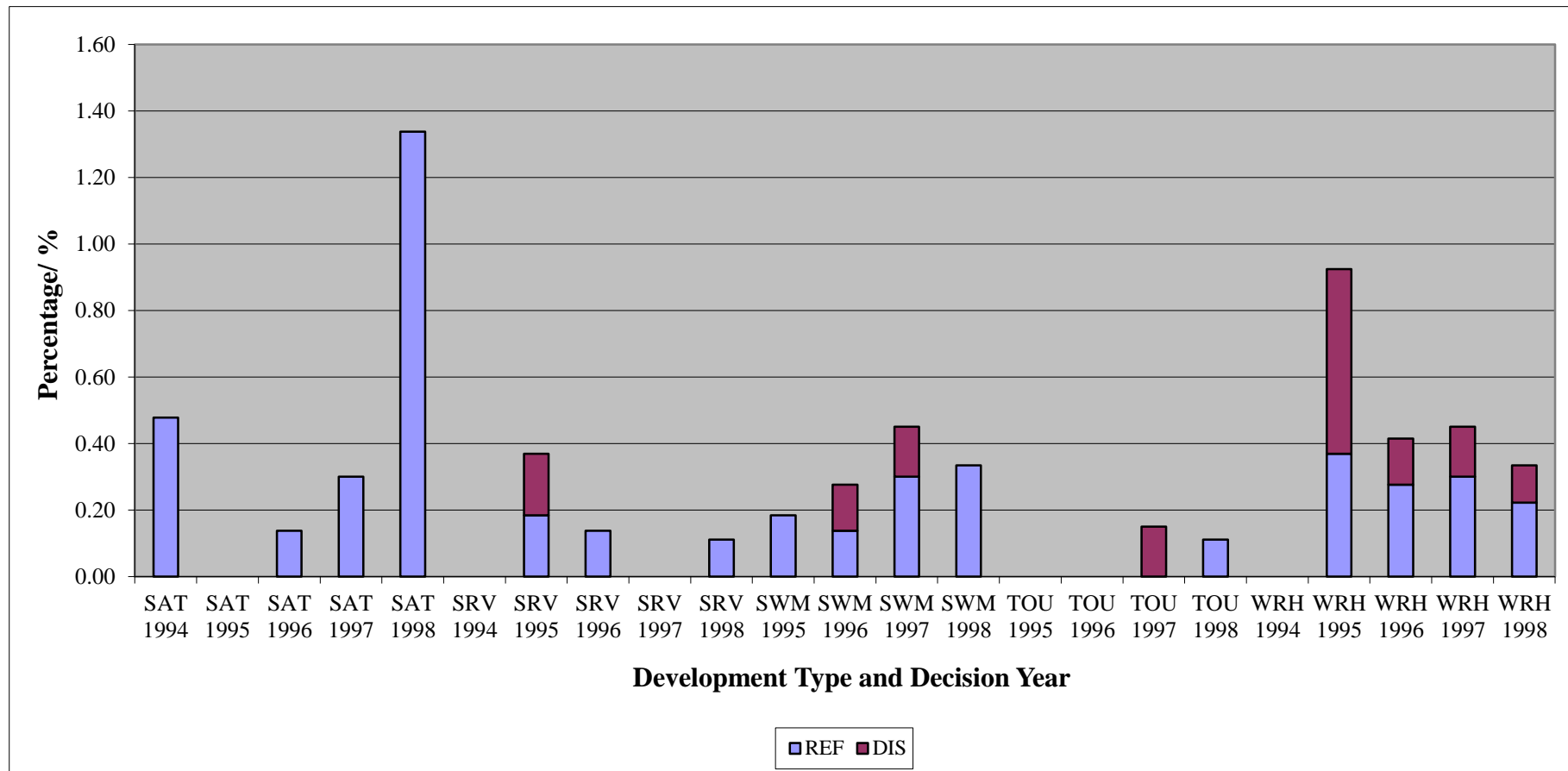


**Figure 6.6: Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages (source: DCIS / ACOLAID, Planning Authority, 1999).**





**Figure 6.7: Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages (source: DCIS / ACOLAID, Planning Authority, 1999).**



**Figure 6.8: Graph showing the annual accumulated percentage variations for different development types during various years for developments for ODZ applications which were decided at first decision-tier level and at reconsideration and appeal stages (source: DCIS / ACOLAID, Planning Authority, 1999).**

The effectiveness of the policy and design guidance, such as PLP 20, and that dealing with farmhouses and agricultural buildings, on the decision-making process could be questioned. The effect of these policies is not evident in any of the development types which had an annual major share of the decisions and so cannot be expected to be seen from the development types with a negligible or minor annual share, due to smaller numbers involved.

### **Comparative analyses with pre-1992 data**

The discussion so far has centred on development ODZ after the introduction of the Structure Plan policies. In order to ascertain whether these policies had any effect on the decision-making process a statistical test was carried out to compare decisions taken ODZ before and after 1992<sup>333</sup>. The results obtained showed that there was a statistically significant difference in the decisions taken before and after 1992. However, the test does not indicate whether this was a positive or a negative effect. One could only assume it was positive because the present system was less liberal than the previous one. The results obtained and discussed so far show that in spite of the restrictive nature of some policies which are found in the Structure Plan, a considerable amount of pressure was still exerted on the natural environment through permissions for development outside Temporary Schemes.

#### **6.3.2.1 Analyses of sampled decision files**

In order to better understand the results obtained a statistically significant annual sample from decision files was studied in detail. The next part of the discussion will

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<sup>333</sup> See: Table 5.10.

analyse the different stages of the decision process from the recommendation of the Case Officer to the final decision taken, whether this was at DCC / PA level, Appeal or Court of Appeal stage. This discussion, however has to be taken in the context of an important change in the legislation (DPA, 1992) during the period under analysis. The amended legislation introduced two important concepts: firstly, the fact that the decision had to be based on existing Structure Plan policies<sup>334</sup> (prior to the amendment, this was included under the term Development Plans that also included the Structure Plan<sup>335</sup>) and, secondly, in the 1997 amendments it was clearly specified that the reasons for refusal had to be detailed and based on existing policies<sup>336</sup> whereas, previously this was limited to *reasons for refusal*.

The decisions made by the Boards should consider the recommendations made by the Case Officers for each relevant application. This does not mean that the Board has to agree with what the Officer says in the report, but s/he has an important role in the decision process. S/he has to convince the Board with his / her arguments in order for the Board to endorse his / her recommendation. It is therefore important that:

- both the Case Officer and the Board quote the relevant Structure Plan policies;
- the Case Officer recommends a decision in accordance with such policies;
- and
- the decision taken by the Board is in accordance with such policies.

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<sup>334</sup> Act I of 1992, Section 33(1).

<sup>335</sup> *Ibid.*, Section 2.

<sup>336</sup> *Ibid.*, Section 33(2).

The results obtained for the analyses of sampled files concerning the first decision level showed that:

- Initially (1994) the Case Officers barely quoted any policies<sup>337</sup> but there was a net improvement over the five-year study period, the greatest improvement being registered in 1998, following the 1997 amendments.
- There was an overall improvement over the years whereby the recommendations being made by the Case Officers were in accordance with Structure Plan policies<sup>338</sup>.
- In spite of the fact that the Case Officers did not always quote the relevant policies (11.76% in 1994 - 62.86% in 1998), there was a high percentage ((47.06% in 1994 – 80.00% in 1998) whereby the recommendations were in accordance with the policies<sup>339</sup>.
- The largest percentage of recommended refusals was during 1998<sup>340</sup>; this was also accompanied by the highest percentage of recommendations in accordance with policies.
- The decision board always quoted policies less often than the Case Officer<sup>341</sup>; the 1997 amendments had a significant effect on the decision-making process in that prior to 1998, the Board quoted policies in less than 30% of the cases, whereas the value increased to 60% in 1998<sup>342</sup>.

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<sup>337</sup> See: Figure 5.26 and Table 5.11.

<sup>338</sup> See: Figure 5.27 and Table 5.11.

<sup>339</sup> Compare: Figures 5.26 and 5.27.

<sup>340</sup> See: Figure 5.28 and Table 5.11.

<sup>341</sup> Compare: Figures 5.26 and 5.29 and Table 5.11.

<sup>342</sup> See: Figure 5.29.

- There was an overall improvement whereby the decisions taken by the Board conformed with policies, but the level of conformity and improvement was always less than that registered by the Case Officers<sup>343</sup>.
- The number of decisions taken in breach of policy during the period 1994-1997 was between 30-50%<sup>344</sup>. A significant decrease was registered following the 1997 amendments.
- During the period 1994-97 the percentage of applications granted permission was always greater than those refused<sup>345</sup> and this was accompanied by a higher number of policy breaches; In 1998, the percentage number of refusals was greater than approvals and the policy breaches were much lower suggesting that several of the applications being granted in previous years were in fact in breach of policy<sup>346</sup>.

### **Policy breaches at first decision tier level**

In the Monitoring Report issued by the Planning Authority in 1999 and which covered the period 1996-97, it was stated that in spite of the strict criteria established in the policy and design guidance, there were still a number of policy breaches and that these were on the increase (Planning Authority, 1999a, Section 3.1.17 p.94). This was also confirmed in this analysis which was based on a sample of files. Bearing in mind that the sample which was analysed was statistically representative of the population, the results show that breach of policy at the decision-making stage was relatively

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<sup>343</sup> Compare: Figures 5.30 and 5.27 and Table 5.11.

<sup>344</sup> See: Figure 5.30 and Table 5.11.

<sup>345</sup> See: Figure 5.31 and Table 5.11.

<sup>346</sup> Compare: Figures 5.31 and 5.30 and Table 5.11.

higher during the period 1994-97 when compared to the 1998 value which stood at 20%<sup>347</sup>.

It is important that the origin and outcome of policy breaches are understood. Three different situations were encountered in the samples which were analysed:

- recommendation was overturned by decision board and a permit issued without mentioning any policies;
- recommendation endorsed by decision board and a permit was issued.
- recommendation endorsed by decision board and a refusal was issued;

In order to understand the levels of policy breaches compared to decisions in line with policy, the total percentages of approvals and refusals in line and in breach of policies were calculated and displayed in Figures 6.9 and 6.10. The results clearly show that the majority of policy breaches occurred when the Board granted permission for development. This demonstrates that the pressure created by development on the natural environment is twofold: firstly, due to development granted within the Structure Plan policy framework and, secondly, due to policy breaches by the decision-making body. Figure 6.9 shows that it was only in 1997 that more than 20% of the sampled files analysed were granted permission, in accordance with Structure Plan policies. Although the responsibility for the decision always falls on the decision-making board, in over 80% of the cases recorded annually the Board endorsed the recommendation of the Case Officer, whether this was in breach of policy or not<sup>348</sup>. This could imply the possibility that the Board:

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<sup>347</sup> See: Figure: 5.30.

<sup>348</sup> See: Table 5.12, Figure 5.32 and 5.34.

- was either ignorant of the planning policies it should have used as a basis for its decision; and / or
- rushed through the files and endorsed the recommendations without taking much notice whether such development was permissible or not.

This could be implied by the fact that the annual percentages were always less than 15% when the Board overturned recommendations and that the majority of these were overturned to grant permission, a much lower value being for a refusal<sup>349</sup>.

In the *Development Control File Audit* of 1995, the Planning Authority claimed that the DCC rejected 25% of the 1,460 recommended refusals in 1995 but accepted 99% of the recommended approvals (Planning Authority, 1997a p.70 section 5.1.16). This could possibly indicate that the trends shown for ODZ development are not restricted to such areas but are also found within the Temporary Schemes. The Planning Authority claimed that the DCC sometimes disregarded policies dealing with development ODZ (Planning Authority, 1997a pp.169-171).

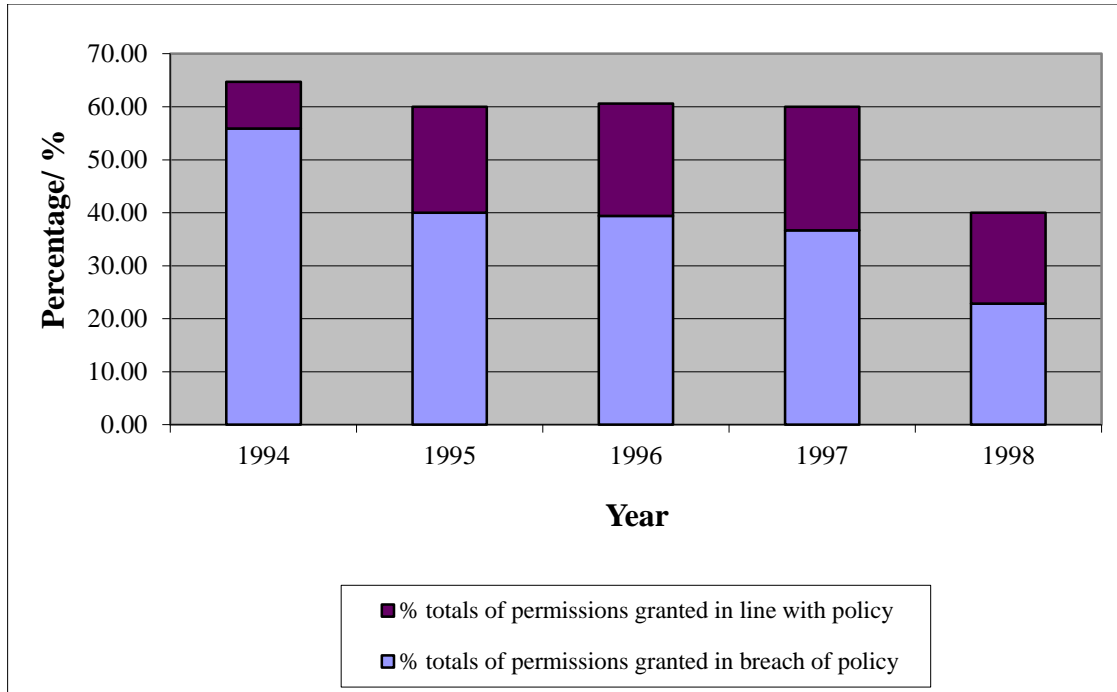
For other analyses discussed previously, the dwellings (DWL), agriculture (AGR) and householder (HSE) sectors were the ones which gained most from policy breaches<sup>350</sup>.

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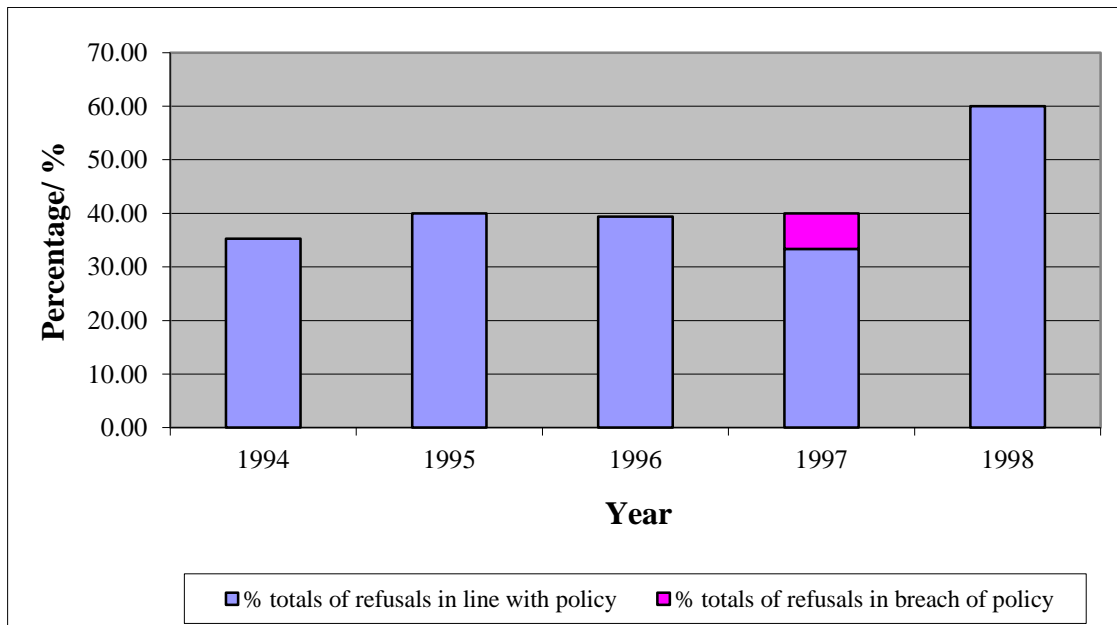
<sup>349</sup> See: Figures 5.32-5.33.

<sup>350</sup> See: Figures 5.35 and 5.36.





**Figure 6.9: Comparative analyses on annual basis of permissions given for development ODZ both for cases in line and in breach of policy (source: sample of ODZ files).**



**Figure 6.10: Comparative analyses on annual basis of refusals given for development ODZ both for cases in line and in breach of policy (source: sample of ODZ files).**

### **Policy breaches at Reconsideration stage**

In all except one of the cases examined, the Reconsideration was made from a refusal, confirming the previous assumption that most Reconsiderations are from refusals. Such cases are decided by the DCC / PA Board which was the same Board which made the first decision, so one would expect similar trends to those noted at the first decision level. In fact, a review of all the Reconsiderations shows that 94 % of all the permissions granted at Reconsideration stage were in breach of policy and without the Board quoting any policies apart from the fact that the Case Officers had originally recommended a refusal in all these cases<sup>351</sup>. The development types which had a major share from such decisions were dwellings (DWL), agriculture (AGR) and “other” (OTH)<sup>352</sup>, showing again that these developments, apart from already forming a large sector of the applications, are also being aided through permissions granted in breach of policy. In contrast, all the refusals issued at Reconsideration stage were in line with policy, which were quoted in most of the cases<sup>351</sup>.

### **Appeal cases from sampled decision files**

Although Appeal cases will be dealt with in detail at a later stage, it is worth noting that from all the case studies which were viewed, there were 14 cases which were appealed, five of which were from Reconsideration (one from enforcement). There were four applications which were granted a permit, one of which was subject to a change in height of the respective building, whereas in the other three, a detailed review was held in Chapter 5. The only case which will be discussed is that concerning horse stables. In this case the Board of Appeal claimed that horse stables

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<sup>351</sup> See: Table 5.13.

<sup>352</sup> See: Figure 5.39.

should be considered as agricultural in nature and a *normal and legitimate inclusion in the non urban scene*, whereas the Planning Directorate considered them as recreational in nature and so could not be permitted ODZ, in line with policy SET 11 and paragraph 7.6. It could be questioned whether the Planning Directorate would permit the construction of horse stables within an urban area, especially in view that these might be considered to infringe BEN 1 (bad neighbourliness due to atmospheric pollution arising from smells and noise emanating from the stables)? The Authority acknowledged such problems with horse stables in its monitoring report<sup>353</sup> and it appears as though there is no suitable place for horse stables within the parameters established by the Structure Plan. However, if this decision issued by the Board of Appeal were repeated in future cases, then this would add to the list of permitted development ODZ.

### **6.3.3 Pressure created from Illegal Development**

The discussion so far has centred on the legal side of the development process where applicants submitted an application, and a decision was taken in accordance with the procedures established by the law. The evidence shows that there was a substantial amount of pressure on the environment throughout the study years from this part of the development process. However, there is also a part of the process to consider where developers proceed with a development without applying for permission to do so. This type of “hidden development” and the pressure it creates is very difficult to account for, due to the fact that it is only recorded if someone brings it to the attention of the Planning Authority and if this doesn’t happen, the pressure created by such

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<sup>353</sup> See: Planning Authority (1997a) Section 4.3.47, p.123.

development remains unrecorded. This is the major limiting factor in any analyses concerning the use of enforcement data. However, in the case of this study, there were two other factors which became evident when these data were bought from the Planning Authority: firstly, a considerable number of mistakes were found when cross-checking the data from the different sources (DCIS / ACOLAID and GIS) and secondly, the GIS data was only recorded since 1996<sup>354</sup>, and so enforcement cases ODZ prior to this period couldn't be established. This will limit the use of those data and so the period of analysis was extended from 1998, used in the rest of the study, to 2000 in an attempt to determine the trends of such development over the years.

The recorded number of enforcement cases showed an overall increase between 1993-2000<sup>355</sup>. Amos (1990 p.17) considered that there were huge problems in the enforcement section under the old planning regime, whereby at the end of February 1990 there were 1,178 active enforcement cases<sup>356</sup>. This figure was exceeded annually between 1995-2000<sup>355</sup>.

Bearing in mind the values ODZ for the pre-1996 period could not be separated from the rest, the figures for the period after 1996 demonstrate that there was a downward trend in both cases found within Temporary Schemes and ODZ<sup>357</sup>. It is very difficult to give an interpretation for the annual variations for the figures and trends obtained in enforcement cases, since there are so many factors at play<sup>358</sup>.

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<sup>354</sup> The inputting of enforcement data in the GIS was incomplete for the years 1993-1995 (Mifsud E. personal communication).

<sup>355</sup> See: Figure 5.40.

<sup>356</sup> See: Section 1.4.1.

<sup>357</sup> See: Figure 5.41 and 5.42.

<sup>358</sup> See: Section 4.5.1C.

The Enforcement Section of the Planning Authority primarily uses one legal instrument to curb illegal development<sup>359</sup>. The number of investigated cases (INV) showed a continuous drop over the years and weren't recorded after 1999<sup>360</sup>. The use of Section 52(1) (DPA, 1992) concerning Stop Notices showed a continuous drop over the years under analysis. This was accompanied by a rise in the use of Section 52(3) concerning Enforcement Notices. A Stop Notice and an Enforcement Notice are very similar to each other, the main difference is that a Stop Notice takes immediate effect<sup>361</sup> when issued, whereas an Enforcement Notice takes effect after at least 15 days have passed after being served<sup>362</sup>. It seems that since an Enforcement Notice incorporates a Stop Notice, then it would have been much easier and useful to use the Enforcement Notice rather than the Stop Notice. This, in view of the fact that, the Planning Authority would require the owner or occupier to take such steps in order to reinstate the land back to its original condition or to take specific steps in order to comply with the conditions issued in the permit. This might explain the reasons for the trends shown in the ENF and STP lines in Figure 5.43. In spite of the fact that Section 50 (DPA 1992) was not amended in 1997, no further use was made of this part of the legislation after this date.

The developments which were common in the enforcement cases were those related to agriculture (AGR), household (HSE), manufacture (MAN) and those grouped under the term "other" (OTH)<sup>363</sup>. It does appear that the enforcement system being

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<sup>359</sup> See: Figure 5.43.

<sup>360</sup> This was an adopted procedure by the Enforcement Unit, whereby, investigated cases were no longer recorded on computer unless an enforcement or stop notice was necessary (Mifsud E., personal communication).

<sup>361</sup> See: Act I of 1992, Section 52(1).

<sup>362</sup> See: Section 52(4)(b).

<sup>363</sup> See: Figure 5.44.

employed is being used to the benefit of the developer who infringed the law. This is because the statistics show that the annual cases listed for Direct Action (D/A) was limited to between 10-20 % but the ones which were effectively removed (END3) never exceeded 2% of the cases recorded annually<sup>364</sup>. The percentage of people who decided to remove the illegal development (END2) decreased over the years. Delaying tactics and attempts to obtain a permit seems to have clogged the enforcement system to the extent that while the development is still retained in its state by the developer, the ongoing procedures which could take years, are taking place. This was shown by the increase in the number of pending:

- applications to sanction enforcement (PND1);
- Appeals / Reconsiderations (APA);
- Appeals from enforcement (APS) (lower values for 1999-00 could be explained by the fact that the application wouldn't have been decided yet).

An average of about 15% of the enforcement cases are sanctioned annually<sup>365</sup>. All this shows that:

- illegal development is occurring ODZ;
- there is a good chance of retaining the illegal development for a number of years, because Direct Action is minimal (less than 2% of the total number of enforcement cases recorded annually);
- there was an annual pending case load which was slightly less than 45%, whereby no action has yet been taken by the PA. It is important to note that

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<sup>364</sup> See: Table 5.16 and Figure 5.45.

<sup>365</sup> See: Values of END1 in Figure 5.45.

the data were supplied during the summer of 2001 and significantly high percentages falling within such a category date back as far as 1996;

- the existing system is not delivering and, as a result of the cumulative numbers of illegal developments which have occurred over the period under analysis, the pressure of illegal development ODZ is continuously increasing. This could possibly lead to a situation in the coming years whereby an amnesty would be issued to those who have an illegal development. Such a situation could arise especially if the number of illegal developments could reach such proportions, whereby it would be practically impossible to remove them or that such action would have political repercussions to the incumbent government. If this were to happen, the status of such development would change overnight.

Map 5.3 shows the quantity of enforcement cases ODZ during the period 1994-2001<sup>366</sup>. When the operating levels of the enforcement system at the Planning Authority are taken into consideration, it could be assumed that a good percentage of what is shown in this map will remain in place for a substantial period of time. This must be added to the pressure already created by the development which was granted permission through the proper channels. Map 5.2 illustrates the development pressure for the period 1994-2001, while a quantitative value for the period 1994-98 was

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<sup>366</sup> In spite of the fact that personnel from the Enforcement Unit claimed that the inputting of enforcement data for the years 1993-1995 was incomplete (see: footnote 354), the cartographic analyses done by the Mapping Unit incorporated values for 1994-95. The error was noted after the data was bought, but in spite of the shortcomings for the years 1994-95, one could still appreciate the scale of illegalities which have taken place over the years.

obtained from previous analyses<sup>367</sup>. A combination of both maps shows the development pressure being created both from the legal development being allowed ODZ and the hidden development which came to light due to enforcement action (see: Map 6.1). The only development which was not recorded is that which remains unaccounted for due to a number of reasons. Such development could include trapping sites, small rooms in the countryside which go un-noticed and other development that remains unaccounted for that are probably of a small size and / or away from public view.

#### **6.3.4 Development Pressure from Appeals**

Home (1987, p.55) claimed that refusal : appeal ratios could be used as a measure of pressure exerted on the DC system. A high refusal : appeal ratio indicates that applicants are submissive to the Local Authority while a low value indicates a determination to get a decision overturned. The results obtained in Table 5.17 indicate that the refusal : appeal ratio got progressively lower from 1994 to 1998 indicating an increase in pressure on the DC system. This further reiterates similar indications resulting from the above analyses that the developers have a strong determination to obtain a permit for their development. It also indicates that they are getting signals from the Development Control system that it is possible to obtain such permits. This could be the result of advice from their architects and / or lawyers and / or due to their perseverance. There are no official statistics published from which this ratio can be calculated and so there is no way that the high success rate for Appeals can be proven. However, the analyses carried out in this study on a statistically significant sample of

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<sup>367</sup> See: Table 5.4 and Figure 5.14.



Appeals has shown that the success rate varied, depending on whether the comparison was made with the year when the Appeal was submitted<sup>368</sup> or when the Appeal was decided<sup>369</sup>. The annual total number of dismissed Appeals was always greater than those upheld, but this was not always the case when the data were divided by decision panel. In fact, the success rate depended mainly on the presiding Board and decision year. The analysis for Board B are not being considered due to the fact that only a few cases from this panel were found in the sample being used. The rest of the decisions suggested that one of the Board panels was more liberal in its decisions than the other, this becoming evident from the higher proportion of upheld decisions being issued<sup>370</sup>. However, the Chi-Square Test didn't show a statistically significant difference between the decisions made by the two panels<sup>371</sup>.

The same sample of Appeal files was used to make a more detailed analysis mainly based on the work of Tewdyr-Jones (1994). The first part of the analysis concerned the reasons given by the applicant for Appeal from refusal and the justifications provided by the Planning Directorate in their response and the Planning Appeals Board in its decision. The files were grouped under five development headings<sup>372</sup> for ease of analysis. The discussion will be limited to the most commonly used codes by the:

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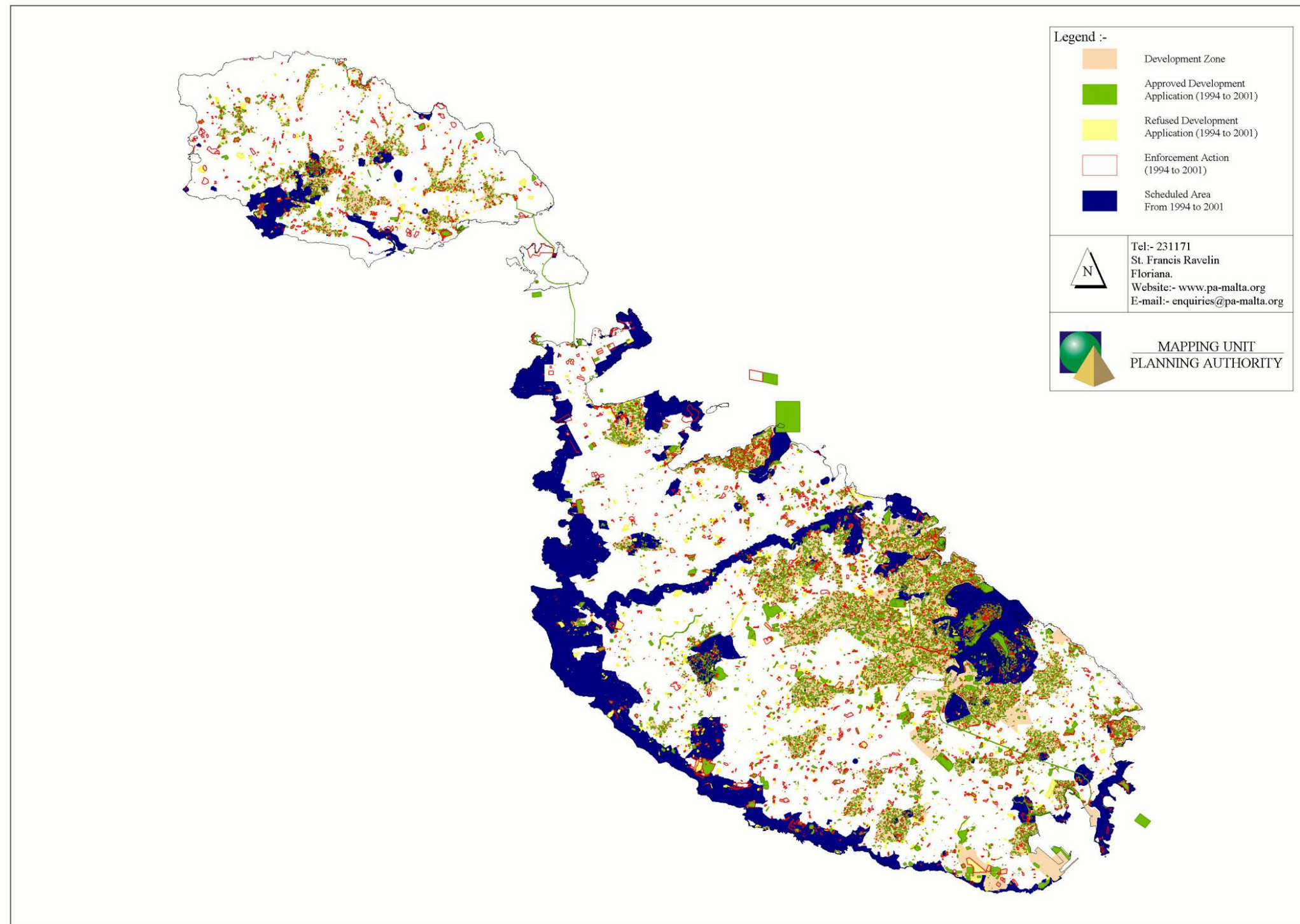
<sup>368</sup> See: Figure 5.46.

<sup>369</sup> See: Figure 5.47.

<sup>370</sup> See: Table 5.22.

<sup>371</sup> See: Table 5.21.

<sup>372</sup> See: Table 5.23.



**Map 6.1: Site plan of the Maltese Islands showing the development pressure created through approved and refused (1<sup>st</sup> refusal) development applications together with the enforcement cases recorded during 1994-2001 (source: GIS, Planning Authority, 2001).**

- developers in justifying their Appeal;
- Planning Directorate in its response;
- Planning Appeals Board in its justification.

The need (N) for the development and other adjacent similar development (OAD) were the two most common justifications provided by applicants in the five development groups being analysed<sup>373</sup>. The use of Structure Plan policies (SP) scored second place in three of the groups<sup>374</sup>, whereas technical justification (T) was the main justification for the commercial section. The priorities for the Industrial group were that there was other adjacent development (OAD) and the fact that the site was committed (SIC)<sup>375</sup>. This shows that Structure Plan policies were not a priority for any of the groups, but the emphasis was more on a justification of need or on what others have obtained and so they are entitled to a similar gain themselves, thanks to a precedent created by another permit. This justification is being made either after a first refusal or after Reconsideration and so, in most cases, the reasons for refusal would already be known, but still the applicants persevere with their application without giving priority to policies. This might imply that the policies to refuse development permission are strong and so applicants resort to other means to justify the development. Further studies would be required to investigate this suggestion.

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<sup>373</sup> See: Figures 5.48-5.52.

<sup>374</sup> See: Figures 5.49, 5.51 and 5.52.

<sup>375</sup> See: Figure: 5.51.

The Planning Directorate, in most cases based its response to the applicants' claims by citing Structure Plan policies and also policy and design guidance<sup>376</sup>. This being mainly in line with the parameters on which a decision should be taken, as explained in Section 33 of DPA, 1992. The only case where a high percentage was obtained for the code "other adjacent development" (OAD) was in the dwellings group<sup>377</sup>. This could be due to the fact that the Planning Directorate would have responded to some of the claims made by the applicants in this regard. In fact, this code had the highest percentage score for this group in the reasons for Appeal, submitted by applicants.

The justifications provided by the Planning Directorate had a direct influence on the Planning Appeals Board. This is shown by the fact that in all the development groups<sup>373</sup>, the most frequently used codes were "agree with PA / DCC" (AWPA) and use of "Structure Plan" policies (SP). Since it has been established that the Planning Directorate gave the highest priority to policies in its justifications, then, since the Planning Appeals Board agreed with the reasons provided by the Directorate, it can be concluded that extensive use is being made of these policies by this Board to justify its decisions. Table 6.1 illustrates trends related to the use of policies and the final outcome. There are a number of important aspects arising from this table, the first being the great variations in the number of cases for different development groups, dwellings and agriculture contributing the greatest share. Secondly, there were a considerable number of cases whereby the Board didn't make use of any policy, whether the Appeal was upheld or refused. These results differ slightly from those obtained for the Appeal stage in Table 5.13, whereby, in that case the sampled cases

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<sup>376</sup> See: Figures 5.48-5.52.

<sup>377</sup> See: Figure 5.50.

of Appeal were much lower and so differences arising between the two cases would be expected.

**Table 6.1: Synthesis of the outcome from Appeal cases for different development types (source: sample of ODZ Appeals taken from CD-ROM *Deciżjonijiet Dwar l-Ippjanar*, 2000).**

Outcome of Appeal	Commercial / %	Agriculture / %	Dwellings / %	Industry / %	Other / %
Upheld with policies		9.8	11.94		11.11
Upheld w / o policies	10	9.8	22.39	22.22	11.11
Dismissed w / o policy	20	17.64	16.42		11.11
Dismissed w / o policy (lacks data)	10	1.96	4.48		
Dismissed with policy	40	56.86	38.81	77.77	44.44
Abstained w / o policies		3.92	2.99		
Abstained with policy			1.49		
Annulled w / o policies	10		1.49		
Referred back to Directorate	10				
<i>Sine die</i> w / o policy					22.22
<b>Total number of cases</b>	10	51	67	9	9

Note: w / o means "without"

Policies were used in all the cases which were dismissed in the Commercial sector, the most commonly used being BEN 2 and paragraph 7.6. Figure 5.54 might give a mistaken view of the results since it shows that in 50% of the cases no policies were used, this being true to a limited extent. In fact, Table 6.1 shows that there was only one case where a decision was upheld without utilising policies, the other cases were either dismissed, annulled or referred back to the Directorate. Both cases which were dismissed without the use of policies, took place after the 1997 amendments, where Section 33(2) clearly stated that refusals had to be based on existing policies. Although the reference made in Section 33 is to decisions made by the Authority, Aquilina (1999, pp 158-159) cites the case *Angelo Farrugia v. Planning Authority*,

whereby the Court of Appeal held *that the Planning Appeals Board, in determining an appeal has to apply all existing plans and policies at the date of when the decision is taken*. It is therefore clear that the Board is bound by Section 33 in reaching its decision, although this is not clearly stated anywhere in the Act.

In the agricultural sector, there were fewer cases which were upheld rather than dismissed but half of these were without mentioning any policy, whereas in the other cases which were mentioned, reference was made to a number of restrictive policies, such as SET 11, 12 and paragraph 7.6. All the Appeals, which were dismissed without mentioning any policies, were decided after 1997. In those cases where policies were used to dismiss an Appeal, the most commonly used policies were SET 11 (31.37%<sup>378</sup>), SET 12 (23.53%), AHF 5 (17.65%), paragraph 7.6 (23.53%), PLP 20 (11.77%), RCO 2 (19.61%) and RCO 4 (25.49%). When these values are compared to those in Figure 5.53, the strength of the policies as a tool to withstand the Appeal test becomes clear. This is best seen in this group and in the dwellings group as the number of cases involved is large and so the trends are more evident.

The dwellings group was the largest one examined and a high percentage of the cases upheld in this group were issued without the Board quoting or referring to any policy. This despite the fact that there are a number of policies concerning urban development ODZ and that policy guidance (PLP 20) was issued to clarify many issues. A similar figure to that obtained in the agricultural group was also obtained here for dismissed cases without reference to any policy. However, the number of dismissed cases where

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<sup>378</sup> Percentage values quoted are out of total number of cases found in the development group.

policies were mentioned was lower than that in the agriculture group. The most frequently used policies were SET 11 (35.82 %<sup>378</sup>), SET 12 (28.36 %), RCO 4 (16.42 %), RCO 2 (14.93 %), PLP 20 (11.95 %), paragraph 7.6 (26.87 %) and BEN 5 (20.90 %). With the exceptions of BEN 5 and AHF 5, these policies were common to both the agricultural and the dwelling groups and in most cases in similar percentages. AHF 5 was quoted mostly in the agricultural group being a policy related to this sector, although it was cited a few times in the dwellings group.

The only cases in the industry group which were upheld had no policies quoted, whereas policies were quoted in the dismissed cases. The most common policies used were SET 11 (66.6 %<sup>378</sup>), SET 12 (55.5 %), RCO 4 (55.5 %), RCO 2 (55.5 %), PLP 20 (33.3 %), paragraph 7.6 (33.3 %), BEN 2 (33.3 %).

In the final group under the heading of “other”, only one of the two cases which were upheld was decided without quoting policies, whereas one of the five dismissed cases was also decided in a similar manner. The most commonly used policies to dismiss Appeals were SET 11 (33.3%<sup>378</sup>), SET 12 (22.2%) and BEN 5 (22.2%), however, these percentage values cannot be compared with the other groups since the size of the group is too small.

As a conclusion to this part of the discussion, policies SET 11 and 12 were the most cited policies in all groups, whereas policies RCO 2 and 4 and paragraph 7.6 were cited less frequently. This could possibly be indicative that policies SET 11 and 12 are considered to be stronger than the other restrictive policies to withstand Appeal. One may also note the limited use made of PLP 20 which was meant as a guidance note to

control development ODZ. There could be a variety of reasons for this to happen but one possibility is that since most of the policies mentioned in PLP 20 are the same as those found in the Structure Plan, then one might either quote PLP 20 or mention the individual policies.

The next part of the discussion will focus on a selected number of case studies arising from Appeal decisions as any permission received at this stage further increases development pressure ODZ. These were mainly chosen due to the peculiar nature of the decision which was taken for the individual case. The studies were limited to the agricultural and dwelling groups as they offered the best opportunity to highlight certain decisions which were taken.

Beekeeping and horse stables were not considered to be activities related to agriculture in the Structure Plan policies or to constitute *genuine agricultural buildings* as per paragraph 7.6 of the Structure Plan. Three cases (PA 3264/95, PA 6995/97 and PA 1042/96) concerning horse stables were referred to in Chapter 5. In two of the applications, the applicant did not refer to the phrase horse stable; in one case (PA 6995/97) the applicant wrote, “ *to sanction works as built...*” while in the other case (PA 1042/96) “*to erect (sanction) an addition of two lateral rooms*”. This could imply the knowledge of the applicant or their architects that horse stables are not allowed ODZ and so they try to encrypt their application in an attempt to get a permit. In an Appeal decided on 11/2/94 (*Patrick Filletti v. DCC*), the Planning Appeals Board had established that horse stables can be considered as a normal and legitimate inclusion in the rural scene, but still the DCC maintained its position that



they are not, citing relevant policies<sup>379</sup>. The logic used in the three separate cases varied considerably. In PA 3264/95, the Appeal was dismissed on the grounds that the WSC declared that the site was a water catchment area and so any manure from the stables could have a negative effect on the water table. However, the number of stables was small and the likelihood of any contamination from the stables was minimal, especially when it is considered that the site was an agricultural zone, where a considerable amount of manure and artificial fertilizer was added to the fields on an annual basis. It was noted, from the review of application files, that whenever the WSC made any objections to developments, no scientific proof was ever shown to sustain its objections. The relationship was always a direct one, that is, the likelihood of contamination.

In PA 6995/97, decided by the Board C, the logic used was that there was similar development nearby and that the good agricultural land was elsewhere and not on site. This was maintained, in spite of the fact that, there was no evidence of any site visit carried out by the Board. Finally, a minimal fine of LM 100 was imposed. In PA 1042/96, Board A made a site visit and upheld the Appeal on the basis that mitigation measures through landscaping had to take place, but the fine imposed in this case was LM 300. This shows the stark contrast between two different panels of the Board in issuing decisions. The fine imposed in PA 6995/97 can be compared with that in PA 6451/96 (decided by Board A) for a much smaller room used for beekeeping, whereby the fines imposed in both cases were the same. This shows the

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<sup>379</sup> See: PA 6995/97.

leniency of the Board in the former case, especially when compared to the other two cases.

Agricultural rooms to be used for storage space in existing fields are a contentious issue. In fact the Planning Authority issued policy and design guidance<sup>380</sup> in order to control the situation. The Structure Plan and policy guidance both maintain that it is only full-time farmers tilling 20 tumoli of land who are entitled for such structures. However, it is a well known fact that the number of full-time farmers is continuously decreasing<sup>381</sup> while the part-timers are increasing, primarily because agricultural practice has changed considerably through the use of automated units and of heavy machinery to till the land. In addition, the area of agricultural land is continuously decreasing whilst the age of farmers is increasing, this being an occupation which is proving to be unattractive to many. So, when the present circumstances are considered, the relevance of existing policies to today's needs is questionable. As a counter argument, the small size of the fields in Malta has to be taken into account, whereby, if one were to allow storage rooms to whoever owns a field, then rooms in the countryside would proliferate. However, the existing situation is that the decision boards are allowing the construction of rooms in spite of the existing policies, as illustrated in cases PA 3294/96 and PA 6809/96. In the first case the Directorate claimed that the DCC was permitting stores for part-time farmers whereas in the second case the Planning Appeals Board upheld an Appeals for a similar development; in both cases there was a breach of policies.

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<sup>380</sup> *Policy and Design Guidance Farmhouse and Agricultural Buildings*

<sup>381</sup> See: Section 1.7.7.

On the 31<sup>st</sup> May 1997, the Court of Appeal (*Victor Chetcuti v. DCC*) issued a very important decision concerning developments ODZ. The Court established that neither the Planning Authority, nor the DCC or the Planning Appeals Board could depart from what is established in the Temporary Provisions Schemes. There were several cases which were cited following this decision where the decision boards departed from the schemes and granted permission for development ODZ. This decision also constrained the limits being exercised by all the decision boards, that is, that their working parameters were clearly established by the Structure Plan policies and guidelines as per the Development Planning Act, 1992. The fact that the decision boards continued issuing decisions irrespective of what the Court of Appeal had established shows a total disregard of the Court, which is one of the highest legal institutions in the country. It also shows disregard of case law or rather that case law is only applied whenever suitable and in certain circumstances. A further example of such a decision was that in PA 2050/96 whereby, the Board claimed that since the applicant's father was a retired full-time farmer and her fiancé was a manager with a pig breeder, then the applicant qualified as a full-time farmer and relevant policies applied! The Board even went to the extent of applying policies predating the DPA concerning infill sites and further suggesting that the applicant should reapply, reducing the size of the building in order to be given a permit. The same Board upheld another Appeal based on outdated infill considerations<sup>382</sup>. When this decision was taken the Planning Authority had already issued PLP 20, which specifically stated that infill considerations did not form part of the new legislation, thus it seems that the Planning Appeals Board did not always follow the guidelines issued by the Planning

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<sup>382</sup> See: PA 6823/ 94.

Directorate. In Circular PA 20/94, the PA stated that committed built-up areas refer only to areas within Temporary Provisions Schemes and not to land outside schemes, that is, ODZ; however, the Planning Appeals Board upheld Appeals based on the fact that ODZ areas were committed<sup>383</sup>. The Boards might not always be blamed for policy breaches, an example being PA 5739/97 where the Directorate claimed that there were several applications in the area but none were approved and further to this, it did not cite any policies. In this case, the Board agreed with the applicant who claimed that the site is committed since it was surrounded by several developments. The Appeal was upheld, the Board claiming that the buildings formed part of a schemed road and that there was a massive commitment in the area. This shows a diagonally opposite view of the Board with the Directorate. Furthermore, it was not stated whether the Board held a site visit and, in addition, the Board disregarded planning policies, case law and policy guidance completely.

The Planning Appeals Board also showed that it could issue decisions based on Structure Plan policies irrespective of whether a different decision had been taken under the previous legislation. In PA 4769/93, the applicant had already made an application under the previous legislation, but the permit was never issued due to the fact that he failed to pay the full contribution. On re-application with the Planning Authority and under new legislation, the Appeal was refused, the Board sustained its decision by referring to another 14 similar cases.

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<sup>383</sup> See: PA 721/95, PA 5739/97, PA 7598/96, PA 6995/97.

All the Appeal cases discussed above concerned development on virgin land or the sanctioning of applications, but some problems might arise from applications for extensions on existing developments. PLP 20 and policy guidance issued by the Planning Authority take into consideration such cases and so there was ample guidance. In most of the cases<sup>384</sup> cited in Chapter 5, the applicants wanted to convert a small dwelling into a larger habitable building, normally termed a “farmhouse”. Such structures and conversions have become fashionable and lucrative in recent years and in fact, there were three applications which fell into this category, all being given planning permission following the Appeal, in spite of the fact that it was clear that the extensions and additions went beyond what the policies allowed. It seems that the Board felt that in each individual case the rules could be bent.

It seems that the Directorate finds it difficult to control development ODZ where a building is demolished and replaced with a similar structure over the same footprint<sup>385</sup>. The Structure Plan policies are very limited in this respect and the Board of Appeal was correct when it stated that the Directorate was considering that the development was on virgin land because the policies it quoted were those normally used in such cases. On the other hand, the area under consideration consists of a stretch of houses at the edge of a village but which are ODZ. However, in this case the natural environment was not going to be affected.

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<sup>384</sup> See: PA 5884/ 6, PA 882/96 and PA 3098/98.

<sup>385</sup> See: PA 1909/96.

#### **6.4 Direct Observation of Decision Boards**

The final part of the discussion concerns the direct observation of decision board meetings. The main handicap for this part of the study was that, with the exception of the Planning Appeals Board A, all the other boards were different from those which took the decisions previously analysed. In spite of this drawback, note could still be taken of several facts which took place during the meetings that could explain the type of decisions discussed earlier on in this chapter.

The boards which were observed were the Planning Authority (PA), the Development Control Commission (DCC) and the Planning Appeals Board A. In both the PA and DCC, the deliberations took place in public, whereas, in the Board of Appeal, the evidence was collected in public, but the deliberations were held *in camera*. This created a problem, because the deliberations of the three boards could not be compared, the only evidence from the Planning Appeals Board was that from the annual publication of a CD-ROM with all the decisions. In the case of DCC, these were published on the PA website, while those of the PA Board were not officially published anywhere.

##### **PA Board**

In spite of the fact that the DCC and PA hold their deliberations in public, it doesn't imply that the Boards wouldn't have met *in camera* before the meeting and either had a presentation from PA staff or would have already formulated an opinion prior to the meeting. This could explain the silence of some of the PA Board members during the public meetings. It is also possible that some of the Board members who represent

Government Departments would have instructions from their superiors on their voting behaviour during the meeting. When the opposition party came to government, some of the Board members were changed, the assumption being that the new ones would toe the party (government) line and so would create less problems to government projects or projects which the government would support. This would show that in spite of the fact that the majority of Board members on the PA Board are supposed to be sitting as independent members, there might still be political biases both to their appointments and voting behaviour. The Board members are not elected by the public, as in the UK but are appointed by the Prime Minister. Most, if not all, would have no or little knowledge of planning or planning issues unless they are architects or have some other academic qualification related to planning. It is important to note that during a meeting open to the public, a Board member who had been on the Board for almost three years wasn't aware of the planning practices and procedures concerning development ODZ. Such lack of relevant knowledge on behalf of Board members raises further questions as to the quality of decisions issued by the Boards. From the observations which were carried out, it was noted that the PA Board meetings were mainly influenced by the following factors:

- Arguments brought by the Planning Directorate and the manner in which these were presented.
- Arguments brought by the developer and / or his architect and / or representatives.
- Arguments by objectors.
- The role of the Chairman was very important, but unfortunately he had a very difficult task to elicit information, control the meeting and also the behaviour

of the vociferous members. The combination of these tasks running concurrently during the meeting often led to a situation where he was unable to synthesise the pro and con arguments to the Board members prior to deciding an application.

- It wasn't clear whether all the members of the Board knew on what basis a decision had to be taken and so whether they knew anything about Section 33 of the DPA, 1992. The underlying feeling one obtained during Board meetings was that, possibly, the decision had to be taken on the basis of all the facts as presented during the meeting, irrespective of whether they were valid or not.

### **Planning Appeals Board**

There is little to comment on the observations of the Planning Appeals Board, since the public meetings were only limited to the collection of evidence. However, the procedure adopted by this Board was very similar to Court proceedings which are lengthy in nature and could be further lengthened by the respective parties. The observations during the meetings showed that the proceedings took so long due to:

- the time taken to appoint the next sitting to continue hearing the evidence; this could be mainly due to the large backlog which has accumulated over the years;
- delays caused by all parties involved; this might favour persons who are making use of illegal developments;
- absenteeism of the parties and / or their representatives during proceedings;
- requested deferrals by the participating parties.



Dr. K. Aquilina (personal communication) claimed that it was the Planning Directorate's initiative to be represented by a lawyer during Planning Appeals Board meetings. As a result, clients were constrained to do the same, and once there was the participation of the legal entities, procedures took longer, especially when compared to the time taken to decide a case in their absence; such a case was only limited to the first few months of operation of the Board.

### **Development Control Commission**

The observations showed that the proceedings of the DCC varied between what happened in the presence of the public and the *modus operandi* in the absence of the public. The evidence of different proceedings was primarily shown from the time taken to process the quantity of files in the presence and absence of public.

Although the meetings took place in public, it wasn't clear whether Board members were referring to and taking note of the Case Officers' report and its contents. This query arises from the fact that contrary to the procedures followed in the Planning Authority Board, where the Case Officer makes a presentation, in this case the report is sent to the Board members prior to the meeting. However, it is humanly impossible for any one of the Board members to read all the reports prior to each meeting in view of the large number of cases for each sitting and the fact that each report is usually several pages long and also that Board meetings take place 3 times a week. In addition, all of the Board members also have a full time job.

So, it is likely that most of the reports are not read and that the deliberations take place after looking at the files and listening to the evidence presented at the meetings.

There is a possibility that the priority of the Board is reaching decisions rather than taking the time to deliberate good decisions.

This difference in procedures in the absence and presence of public was also shown in the analysis presented in Table 5.24. A number of important facts are shown in this Table, primarily, that the Board was more willing to leave a decision pending prior to issue a final decision when the applicant and / or his representative presented their case during the meeting. Secondly, the Board also overturned Case Officers' recommendations more frequently in the presence of the public and endorsed the recommendation of the Case Officer in the absence of the public. Finally, fewer applications were left pending when the decision was taken in the absence of the public, showing that a definite decision was taken on the basis of the available material in the file. Applicants who had their application recommended for refusal would have had the chance to reply to the Case Officers' report, whereas those for an approval wouldn't have had the same opportunity, so there could be cases whereby the applicant wouldn't have attended the decision meeting because s/he thought that their application would be approved and then the Board overturned the recommendation into a refusal.

The ratios of endorsed : overturned decisions can be compared with those obtained in Table 5.12 and Figures 5.32 and 5.34 whereby, from a statistically representative sample of decision files, it was found that over 80% of the recommendations made by the Case Officer were endorsed by the DCC. The low number of overturned recommendations could also be explained from the above results. However, the Board

under observation was different from that which took the decisions referred to in Table 5.12 and Figures 5.32 and 5.34.

## **6.5 Conclusion**

This chapter was divided into a number of sections beginning with a discussion of the legislative basis for development ODZ. These included Structure Plan policies and subsidiary legislation and was followed by a discussion of the salient points from the results obtained in Chapter 5.

It was shown that there are several types of development which are permitted to take place Outside Development Zone through the use of Structure Plan policies. The use of SET 12 in particular was often mentioned in several of the cases which were reviewed. This policy places the onus on the applicant to present evidence as to why policy SET 11 should be infringed, one of the requirements being the presentation of an EIA. There was only one case which was encountered throughout the study where the applicant provided an EIA on his own initiative but his application was refused. However, the Planning Appeals Board sent back the file to be reprocessed by the Directorate<sup>386</sup>.

A limited amount of development ODZ was also permitted through the use of subsidiary legislation.

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<sup>386</sup> This case was not discussed or mentioned in the results since it formed part of the Commercial group and these were not analysed in detailed in either Chapters 5 or 6.

The discussion of the numerical data centred on the various methods which were used in order to measure the pressure being created on the natural environment ODZ. It was shown that the definition of the Temporary Provisions Schemes were not acting as a strong deterrent for applicants to submit their applications for development ODZ.

The application data showed the demand for the development, whereas, the decision data and the actual outcome showed what was permitted ODZ and also the pressure being created by the new constructions being permitted. There were three tier decision levels, these being the DCC / PA, where the first decision is taken, the Reconsideration stage taken by the same respective Board and the Appeal stage, being the third level.

There were between 40-60% permissions of the applications ODZ which were granted annually at the first decision tier level. These were further augmented through permissions for development granted at subsequent decision levels. The development types which mostly benefited from such decisions were agriculture (AGR), dwellings (DWL) and “other” (OTH)<sup>387</sup>.

A more detailed analysis on a statistically significant number of files showed that the 1997 amendments to the DPA, 1992 affected the *modus operandi* of the Case Officers and the decision boards<sup>388</sup>. This was not so clear in the decision data analysed in Table 5.4 and Figure 5.14.

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<sup>387</sup> See: Figure 6.1-6.8.

<sup>388</sup> See: Figures: 5.26 and 5.29 and Table 5.11.

Decisions in breach of policy took place at all three decision tier levels<sup>389</sup>. Applicants stood to gain from most of the policy breaches which occurred. In fact, from the sampled files analysed, it was found that most of the permissions issued at first decision tier level were in breach of policy<sup>390</sup>. It was also noted that in over 80% of the cases analysed, the decision board endorsed the recommendation of the Case Officer<sup>391</sup>. When the recommendation was overturned, on most occasions this was to grant a permission which was in breach of policy<sup>392</sup>. The development types, which benefited most from policy breaches, were dwellings (DWL), agriculture (AGR) and householder (HSE)<sup>393</sup>.

Pressures created by legal developments were noted to be amplified by illegal ones. The results showed that curbing illegal development was proving to be difficult and enforcement was not particularly effective.

Another set of analyses concerned that from a sample of Appeal files. The analysis carried out using the methodology adopted by Home (1987, p.55) showed that most refusals are appealed and that this was increasing over the years<sup>394</sup>. This showed the determination of applicants to get permission at all costs. This took place, in spite of the fact that there are no official data which are published showing the success rate at the Appeal stage. However, it was found that between 15-40% of the annual Appeals ODZ were being upheld<sup>395</sup>. This gave rise to the possibility that one of the Panels of

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<sup>389</sup> See: Figures: 5.30, 5.35, 5.36; Tables 5.11, 5.13.

<sup>390</sup> See: Figure: 6.9.

<sup>391</sup> See: Figure: 5.32.

<sup>392</sup> See: Figure: 5.33.

<sup>393</sup> See: Figure: 5.35-5.36.

<sup>394</sup> See: Table 5.17.

<sup>395</sup> See: Figure 5.46.

the Planning Appeals Board was being more liberal in its decisions. A statistical test did not support this possibility and the situation could have been due to chance<sup>396</sup>.

A number of Appeal cases were also analysed to get a better understanding of the decisions which were issued. The following observations were made from these cases:

- questionable decisions and fines were issued by the Planning Appeals Board<sup>397</sup>;
- the Planning Appeals Board allowed the constructions of agricultural store rooms in breach of policy<sup>398</sup>;
- the Planning Appeals Board / DCC / PA disregarded a Court of Appeals Decision (*V. Chectcuti v. DCC*) regarding the fact that the decision boards cannot depart from what is established in the Temporary Provision Schemes.

The final part of the analysis concerned Direct Observation of the decision boards. This was done in order to be in a better position to understand the situations under which the decisions were taken. It was noted that the credentials of some of the members could be linked to their political affiliations rather than their understanding of the planning process and ability to make appropriate decisions. It was also noted that the *modus operandi* of the DCC changed according to whether the public was

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<sup>396</sup> See: Tables 5.20-5.22.

<sup>397</sup> See: PA 6995/7; PA 6451/96; PA 1042/96; PA 2050/96; PA 721/95; PA 5739/97; PA 7598/96; PA 6995/97.

<sup>398</sup> See: PA 740/94; PA 3294/96; PA 6809/96.

absent or present. This could explain the great number of endorsed recommendations noted in Figure 5.32 by the same Board.

## 7. Conclusion

This study has focused on the effect of Structure Plan policies on the natural environment and has contained a substantial amount of data and data analysis. This was necessary as the research can be considered to be a unique study utilising a cross-section of data and analytical techniques. The original concepts at the outset did require some modifications when problems were encountered during the analyses. This chapter will consider the problems and limitations which were encountered during the study, and will present recommendations for future studies, in view of the results obtained. A critical appraisal of the methodology which was adopted will be followed by the general conclusions for the study.

The data collection, analyses for this study together with the writing of the thesis took place over the limited three-year period normally allowed for a Ph.D. and so, on various occasions, time was one of the limiting factors. Hence the results obtained in this study must be viewed in the context that:

- the research took place over a relatively short period of time and all the work was done by the author;
- the area Outside Development Zone (ODZ) already had a certain amount of constructions within it and the quantity of development which was recorded further deteriorated the situation;
- Structure Plan policies were being used in the local context thanks to the absence of Local Plans which have failed to materialise (only one came into force during the study period);
- the type of habitats ODZ, including the size being lost to development, remain unknown;



- development ODZ is only one of the factors affecting the natural environment;
- it is questionable whether it is possible to protect the natural environment through the use of Structure Plan policies;
- the incremental effect due to the development, which was permitted ODZ during recent years, needs to be viewed in the context that during the review of the Structure Plan the areas earmarked as Temporary Provision Schemes might be enlarged to accommodate further development, thus putting further pressure ODZ.

## **7.1 Limitations of this Study**

The large quantities of data collected and extensive data analyses which were carried out led to a situation whereby:

- statistically significant samples had to be used to analyse certain data groups;
- discussions on results had to be limited to the main groups and outcomes, thus losing any cumulative effects arising from smaller values, although collectively these might have had a significant effect.

### **7.1.1 Literature**

Planning related literature is rather limited in Malta, and mainly comprises occasional reports commissioned by the Government at irregular intervals and the series of reports which predated the Structure Plan. The latter reports were important as they provided the source of a lot of information which was presented in a structured manner. Following the establishment of the Planning Authority (PA), only a few

reports were issued and these were by the PA itself. Therefore, there was little to refer to on a local basis, thus highlighting the importance of this study and the impetus this could give for further planning-related studies carried out by research students.

### **7.1.2 Applications and Decision Data<sup>399</sup>**

Studies carried out by the Planning Authority in the formulation of the only two issues of the Monitoring Reports, were of an empirical nature but still showed an indication that there were policy breaches during the decision-making and the recommendation stages. They also showed that as a result of such breaches, the level of development being approved ODZ was unacceptable. Due to reasons already explained in section 4.3(a) the DCIS/ACOLAID database had to be used during this study. Such a database is different from that used by the PA in the monitoring reports.

The effect which the Structure Plan policies had on the environment, would have been better studied if application and decision data was recorded in a similar manner on computers throughout the period 1989-1998 (all the years under study). The lack of such a complete data set limited pre- and post-PA comparative analyses.

Another problem related to the decision and application data acquired from the Planning Authority was that the original data were collected during summer 1999, but later data could not be retrieved due to a Union dispute which remained unresolved till the end of the year 2001.

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<sup>399</sup>Throughout the whole study, confidentiality was maintained with regards to unpublished data concerning individual applications, the only exception being in the Appeal cases, where the relevant details of the individual files have already been published in the form of a CD-ROM.

The original plan when using both application and decision data was to avoid using applications made on the same site. Attempts to remove duplicate applications from the databases used showed that a large error would be introduced in the analyses.

Another problem encountered when using application and decision data, was the fact that decisions were taken in a different year from the application, hence no direct annual comparisons could be made.

Performance indicators could not be obtained due to a Union directive for a PA employee. Such indicators would have shown the source of the limiting factors in the processing of applications.

Three codes (WDN, DIS and UPH) used in the DCIS / ACOLAID were not indicative of the exact decision level from where the code originated. Clarification of the true meaning of these codes was not possible as it would be a time consuming exercise involving viewing thousands of files.

### **7.1.3 Enforcement Data**

The enforcement data which were used did not cover the same period of analysis used for the application / decision data, although the same data sources (DCIS / ACOLAID and GIS) were being used. This limited any direct correlations with application and decision data. In spite of this shortcoming, the cartographic analysis included the 1993-95 period, as its main purpose was to offer a visual perspective of the situation all over the Island, thereby enhancing the quantitative analyses carried out elsewhere

in the study. As a result, any minor errors would be insignificant and not so visible, especially when concerning the detail on the images produced.

An unknown quantity of illegal development which remained unrecorded and which had an impact on the natural environment, led to an unquantified error in this study.

#### **7.1.4 Cartographic Analyses**

The data used to compile the cartographic analysis maps were not available and so there is no proof that the data used was free from any errors or that the data used, especially that for the period 1994-98, was exactly the same as that used in the previous analyses. With the exception of enforcement data, it has been assumed that no errors were present and that the data were the same as for the previous analyses.

#### **7.1.5 Appeals Data**

The exact number of Appeal cases for the period 1994-98 could not be obtained due to a Union directive affecting a member of staff at the PA. The method described in section 4.3(e) could have given rise to a possible minor source of error during the search on the CD-ROM which was used. The methodology used also led to another problem, being that of defining particular development groups. It is assumed that the methodology which was used has not had any significant effect on the results obtained.

Another problem with Appeal data relates to the fact that an annual sample based on submission date had to be taken. However, since appeals took months or even years to

be decided by the respective Board, the cases were then analysed by decision date. This action limited the possibility of making a comprehensive analyses of decisions taken by the different boards during the period of study.

Some records found on the CD-ROM containing all the Appeal cases had some missing data, such as the first decision, evidence submitted by the Planning Directorate and, also, all verbal presentations which were made during the proceedings. As a result the method adopted by Tewdyr-Jones (1994) to analyse how planning policies were operating had to be modified.

The long period of time taken for cases to reach the Court of Appeal stage, and the fact that an annual sample was taken from the Appeal cases, resulted in having a very small number of Court of Appeal cases which had been decided, leading to a situation whereby limited analysis was possible with the available data.

#### **7.1.6 Direct Observation**

The results obtained from the Direct Observation method which was employed in order to monitor the activities of the DCC and PA Boards must be considered very carefully because:

- the respective decision boards were different from those for the decisions being analysed, the only exception being one of the Planning Appeals Boards;
- only a small number of observations were made due to the limited time available for the study and the author's full time job; and
- there was a possibility that the behaviour of the DCC and Planning Appeals Board members changed due to the author's presence during the meetings.

### **7.1.7 GIS**

The Planning Authority has the most comprehensive GIS available on the Island. However, the information is still being built from various sources, including the Local Plan process. It was originally planned to use GIS data in order to analyse the types of habitats which were being affected by development ODZ. This was not possible because by the end of the year 2001, part of this data was not available on the GIS. It was not possible to make any useful comparisons with a partial data-set, hence the idea was abandoned.

## **7.2 Recommendations and Future Studies**

### **7.2.1 Databases**

The Planning Authority has a considerable resource of information in its databases. In spite of the shortcomings described above, the information found on the DCIS / ACOLAID and the GIS proved to be extremely useful for this thesis. However, a number of recommendations to address some of the shortcomings which were identified can be made. Inputting of information on computer databases should be done both for ease of accessibility but also for possible research purposes. Therefore, one must ensure that there should be a constant quality control monitoring of the data being inputted, in order to minimise errors and data gaps. This arises from the fact that during the study there were several cases where errors and data gaps were encountered and had to be addressed accordingly.

### **7.2.2 Ambiguous Codes**

It is also important to address the problem created by the three codes (WDN, UPH and DIS) which do not distinguish the relevant decision level. Anyone wanting to carry out any studies related to the respective decision levels and codes is unable to do so, without having the time and resources to look up each and every individual file.

### **7.2.3 Double Counts**

Another important aspect of this research was the fact that it was not possible to address the double (multiple) count problem, possible due to multiple applications being submitted on the same site. In the context of this study it is important to know the amount of land consumed by development annually, but the exact figure cannot be ascertained unless multiple applications on the same site are being accounted for; such an omission will introduce errors in the results and projections which might be made.

### **7.2.4 Habitats**

The use of the GIS in the future when important data, such as that concerning habitats, is available will make it possible to integrate the results obtained in this study and relate it directly to the types of habitats which are being affected. This would only concern development-related effects, but further studies would also be able to identify other anthropogenic effects arising from activities such as hunting, trapping, off-road driving, fires, unorthodox landscaping etc. The information available on the GIS housed by the Planning Authority is the only one on the Island having such an extensive amount of information which is available. Part of this information is now also available on the Web and so is in the public domain.

### **7.2.5 Baseline Study**

This study was rather unique in the sense that when reference was made to UK-based studies of a similar nature, the situation was slightly different from the Maltese one with respect to the fact that:

- a similar but not exact legislative set-up is found on both Islands;
- the decision boards in the UK are elected, whereas in Malta they are appointed;
- Local Plans were in place in the UK, whereas in Malta, they are still being drawn up and so, locally, strategic policies were being applied in the local context.

This study should serve as a baseline to identify areas of concern and make a more detailed analysis spread over a longer period of time. The two major development types that need to be addressed are the dwelling (DWL) and agriculture (AGR) groups, whereby it was shown that, in spite of the restrictive policies and guidance issued, they are causing a considerable amount of pressure ODZ. A further analysis spread over a larger number of years, but using all the respective files (applications / decisions / enforcements / Court of Appeal) could confirm or identify trends which were either found or missed in this study due to the fact that most analyses were based on sampling techniques. Similar studies could be carried out for the groups, which in this study have shown a minor contribution. Groups such as warehouses, factories and hotels might have been shown to contribute minimally in most of the analyses, but the land per unit consumed by these will normally be much larger than, for example, a house or an agricultural store, thus their environmental



impact could be of a larger significance than that shown. The cumulative effect from such minor groups was not fully addressed in this study, mainly due to space restrictions.

### **7.2.6 Effect of Local Plan**

A study similar to this one could be made in order to understand the effect of Local Plan policies on the environment, by concentrating on the area addressed by the Marsaxlokk Local Plan, which is the only Local Plan which has been in effect since January 1995. This could be used as a case study to understand whether the effects noted in this thesis have been addressed through the Local Plan and so would be less noticeable in such a study. If similar results were obtained, then it might be possible to infer that Local Plan policies were not addressing such issues. Such a study could take place immediately, because the data available are spread over six years rather than five used in this study; results would then be comparable.

### **7.2.7 Direct Observations**

This study has shown that certain decisions, which took place at different decision levels, left much to be desired. The Direct Observation exercise was rather limited in its effect, apart from the fact that two of the decision boards being viewed were different from those which made the decisions which were being analysed. As a result direct correlations between both analyses could not be made. This problem could be addressed if a similar study is carried out over the same period at the same time when Direct Observations are taking place and it could also take place at different decision levels. However, it must be borne in mind that the behaviour of the Board members

might be affected by the presence of the researcher, so observations should take place at random in order to be able to correlate with results obtained in his / her absence.

### **7.2.8 Decision Boards**

Finally, one must not fail to make a comment and a recommendation about the board members. Several policy breaches were recorded, which in most cases resulted in further development ODZ. It was clear that in such circumstances, it was the board members who were to blame. This problem is of concern and of national importance, because the natural heritage is deteriorating and being attenuated in an incremental manner. Board members should be made aware of their responsibilities which they should shoulder in their work. Changes in the legislation might be considered to limit such policy breaches. The existing legislation only states that detailed reasons for refusal based on policy should be given, but none is requested for approvals. In most of the cases whereby policy breaches were noted, this was done without quoting any policy. Therefore, if the legislation is modified in order that a requirement is introduced whereby the decision (approval / refusal) should be accompanied by detailed reasons based on policy, then this may limit such occurrences. It would also limit the suspicion of possible abuse by the decision-makers.

### **7.3 Appraisal of the Methodology used in the Study**

The methodology used to achieve the objectives of this thesis was extensive and mainly originated from the work of various authors who carried out similar studies. Three different sources of development pressures on the natural environment were identified, namely:

- applications;
- decisions taken at the three decision tier levels;
- illegal development.

In each case the methodology used tried to identify the particular types of developments which were exerting the major pressures on the environment. This in itself resulted in a complex analytical process which at times could have been difficult to follow. In order to try to overcome such a difficulty a tabulated summary of the methodologies being used and the respective relationship with the objectives of the thesis, was constructed. None of the literature which was reviewed went into such depth of analysis or has made use of such a wide spectrum of databases as has been done in this study. The argument against the methodology which was used could be that one need not look into all the sources of data which have eventually given similar results. The level of pressure being exerted on the natural environment would not have been demonstrated if a more simplified methodology were used instead. In spite of the fact that the study went into such depth, it was not possible to obtain an exact figure of the pressures of development exerted on the natural environment; incomplete databases and limited information being the major reasons.

One must point out that the methodology used in this study assumed that once a permit was issued by the Planning Authority:

- the development took place immediately;
- the affected area of development was restricted to the permitted area;
- the pressure created on the environment was solely due to that particular development and so there were no other secondary sources of pressure or cumulative effects.

In reality, the developer could have either already constructed the development and is seeking to sanction it, or, once a permit is issued will take some time before construction commences. When construction works begin, there is always some “spillage” of construction works on the adjacent area of the permitted development thus affecting the surrounding areas. Construction works use resources (stone, fuel, cement, concrete etc.) which could be sited far away from the development site; the impacts to produce and / or extract these resources, on the natural environment were not taken into consideration. Other sources of data and analytical techniques would have been required to analyse such impacts.

The methodology used did not address the issue of pressures created by potential development projects which did not make it to the application stage and so were never recorded, thus the level of such pressure remains unknown. Unless a record is kept of such pre-application meetings, the analysis of this potential source of data remains unavailable.

The methodology used treated each application and / or case as a single unit irrespective of its area or volume. Other analyses and data would have been required to study such effects.

The pressures created by unrecorded development which took place during the study period was not addressed in the methodology used in the thesis. There were two main sources for these data, the first being that development which did not require any permission, found under *Class 11, development related to agriculture*, in Legal

Notices 178/93 and 137/97<sup>400</sup>. The second source, is that of illegal development which took place Outside Development Zone but was never recorded. The only method of analysing and recording these data is through the use of comparative aerial photographs taken over different years; such an analysis was not carried out.

The analyses used assumed that the data being examined were free from any external factors (e.g. economic, political or sociological etc.). In reality, there is always some form of external influence, but the methodology used was not meant to record such factors; other techniques are necessary.

The study has shown the importance of using a variety of statistical techniques and also of subdividing the data for further analyses. It has also shown the importance of interpreting results with caution; different results were also obtained when using different analytical techniques with the same data. The use of regression analyses to find out the projected levels of development was found to be a valid technique, in spite of the fact that the projections were based on a few years of data.

It is important to note that throughout all the analyses carried out in the study, the interpretation given (in case studies, policies, legislation, data, files etc.) was that of the author, who has no work experience with the Planning Authority or on its decision boards. The advantage of such a method was that the interpretation was free from vested interests or possible influences, which could have resulted if the author had any experiences with the Planning Authority or if help was sought from people who had

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<sup>400</sup> See: Section 6.2.

such an experience. The disadvantage is that the author could have given a biased or mistaken interpretation, irrespective of the effort taken to avoid such a case.

It was originally intended to use filtered data in all the analyses, however, for reasons which have already been mentioned in Chapter 5, this was not possible. In most of the literature that was reviewed the importance of using filtered data was emphasised.

The ideal situation when analysing data is to view all the cases, thus obtaining a complete view of all the results. However, it is common practice to take a statistically significant sample when the quantity of data becomes impossible to manage. The results obtained by this method would, however, need to be treated with caution, since they are representative in nature and so one cannot draw the same conclusions as if all the data were analysed. When sampling techniques were used, a statistically significant sample of 35 was randomly chosen from amongst the files for each year, however, this technique caused some problems, especially when the decision took place on a different year from the application date, thus causing a shift in the actual number of files being analysed when the analysis was carried out by decision year. A larger sample might have attenuated this effect, but would have also increased the amount of data to be analysed. Another problem when making use of such a sample size was apparent when analysing case studies as, although the number of files used was considered to be statistically significant, this did not imply that the sample was representative of the different types of files found in the whole population of files. For example, the author did not come across any large development (classified by the Planning Authority as major development) when analysing these files, so such a sector was not represented in the samples taken. This could have happened with other

types of development which were not so common in the population, so their effect was not recorded in some of the analyses. A different sampling methodology would be required to include a better representation, but this would have rendered the analyses even more complicated and cumbersome to manage.

When case studies were reviewed the analyses were limited to the written contents found in the individual files or the CD-ROM, in the case of Appeals. Any record of telephone conversations, meetings or verbal presentations (in Appeals) for which no written record was kept in the respective file or proceedings, could not be accounted for in the analyses.

All the data which were used were considered to be free from any errors. However, as has already been reported, a considerable number of errors were corrected after the data were obtained from the Planning Authority and every effort was made to ensure that the data being used for the analyses were error-free. The only case where this was not possible was for the data used in the cartographic analyses, where the source data from which the maps were produced, were not available. Therefore limited use could be made from these data.

The Direct Observation technique could have been utilised better if the exercise was carried out during the same period for which the data were analysed. This would have taken place over a longer period of time but would have meant that the observations were directly related to the results obtained from the analyses of the other data sources. It would have also allowed for the possibility to view Court of Appeal cases. The Direct Observation technique had limited use with the Planning Appeals Board

due to the fact that the deliberations took place *in camera*. A similar situation could have occurred if the same exercise were undertaken with cases which ended up in the Court of Appeal.

#### **7.4 General Conclusions of Study**

The study has shown that the planning-related pressures on the natural environment originated from:

- the correct use of Structure Plan policies;
- subsidiary legislation;
- the number of applications for development ODZ;
- the refusal : appeals ratio;
- decisions taken in breach of Structure Plan policies;
- illegal development.

##### **7.4.1 Structure Plan Policies**

Structure Plan policies have been used instead of Local Plan policies in determining the majority of development applications during the study period. This was mainly due to the fact that most of the Local Plans which were originally due after the enactment of the Structure Plan never materialised.

The main thrust of the Structure Plan as stated in SET 11 was to prevent further urbanisation ODZ, however, it was also noted that several policies were in fact channelling development ODZ. Apart from this, other policies allowed certain development which could even increase the level of pressure from the presence of the



public, thus creating further impacts on the natural environment. One must also appreciate that other policies allow for the protection and scheduling of areas which are considered of particular importance. The Temporary Provisions Schemes of 1988 established areas earmarked for development (Temporary Schemes) leaving the remaining area, commonly known as “Outside Development Zone” (ODZ), the latter term being a misnomer, because some Structure Plan policies allow for development to take place in such areas. Also, the Structure Plan contains policies with opposite objectives, thus defying the impression that the Structure Plan offers protection to the countryside when, in fact, this might not always be the case.

#### **7.4.2 Subsidiary Legislation**

Legal Notice 76/97 allowed the Planning Authority to make amendments and changes to Temporary Provisions Schemes and subsidiary plans and also to make changes to road alignments. These could take place if they did not affect the boundaries and zoning of the Schemes or Plans and did not run counter to the substance of the plans and policies of the Structure Plan. Since these changes came into effect in 1996, it was assumed that they had a negligible effect on the study because they affected a minor section of the results. It was, however, not possible to obtain records of any changes brought about by this legislation.

General Development Orders (L.N. 178/93 and 137/97) allowed for certain types of development related to agriculture (*Class 11*) to take place ODZ. L.N. 178/93 allowed such development to take place without notification being given to the Planning Authority, thus no records of such development were kept and their cumulative impact on the natural environment could not be established. This situation was only

partly remedied by the L.N. 137/97 whereby, there is still no need to notify the Planning Authority with regards to most developments falling under *Class 11*, but notification is required for other development falling under other sections of this legislation.

### **7.4.3 Applications for Development ODZ**

The study has shown that there is an increasing demand for development ODZ. This was registered both before the establishment of Structure Plan policies and also after. It was shown that the application trends within Schemes were contrary to those ODZ, which were on the increase. The unit area per application for development ODZ was also on the increase. The major contribution to such a demand was that from the agricultural sector. The demand for development ODZ showed no geographical preference and also included demand for development in scheduled areas. All this showed that neither scheduling nor zoning were acting as a deterrent for developers to submit their applications, thus creating pressure on the Planning Authority to allow development ODZ.

The results showed that the between 40-60% of the development applied for ODZ was granted permission at first decision tier level. These values were boosted by a further 8-9% by the quantity of development which was granted permission at Reconsideration and Appeal stages. This shows that most of the development applied for ODZ was granted permission. This could have implied that the Structure Plan policies were not effective in protecting the natural environment. The Planning Authority in a *Development Control File Audit* carried out in March 1995 revealed that 25% of the files which were audited *showed a serious lack of consideration of*

*material considerations or policies.* However, the sampled files included both those within Temporary Provisions Schemes and Outside Development Zone.

#### **7.4.4 Refusal : Appeals Ratio**

Home (1987, p.55) claimed that the refusal : appeal ratios could be used as a measure of pressure exerted on the development control system. The results obtained have confirmed the results obtained through other analyses, that is, that the pressure for development ODZ is continuously increasing. It was also shown that the decisions taken by the different panels of the Planning Appeals Board suggested that one panel was more liberal than the other.

#### **7.4.5 Decisions in Breach of Policies**

The analyses showed that:

- there was a statistically important difference between the decisions taken in the absence of the Structure Plan and those taken after 1992, with the Structure Plan policies;
- 30-60%<sup>401</sup> of the permissions granted at first decision tier level between 1994-1997 were in breach of policies;
- 94%<sup>401</sup> of all the permissions granted at Reconsideration stage were in breach of policies and without the decision board quoting any policies;
- 17-43%<sup>402</sup> of the appeals submitted annually were upheld.

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<sup>401</sup> Analysis based on an annual statistically significant sample of application files.

<sup>402</sup> Analysis based on statistically significant sample of Appeal files.

The development sectors, which benefited most from policy breaches, were the agricultural (AGR) and the dwelling (DWL) groups. The same groups were also the ones which were mostly represented at the application stage and also the most contested following refusal at first decision tier level.

Most policy breaches occurred when granting permission to develop, refusals being mainly in line with policy. In most cases the decision board at first decision tier level endorsed the Case Officers' recommendation, whether this was in breach of policy or not. However, the decision board overturned the recommendation of the Case Officer in less than 15% of the annual sampled cases, the majority of these overturned recommendations being to grant a permission to develop.

#### **7.4.6 Illegal Development**

The data available for enforcement cases ODZ was only for the period 1996-2000. The analysis showed that there was an annual pending case load which was slightly less than 45% of the total number of cases and the annual percentage where action was taken to remove the illegal structures stood at less than 2%, while an average of 15% of the enforcement cases were sanctioned annually. There was also the possibility of other illegal development structures which went un-noticed and so were not recorded in the analyses. Most of the illegal structures which were reported were from the agriculture (AGR) and householder (HSE) sectors.

#### **7.4.7 Use and Interpretation of Policies in Decision-Making**

The interpretation of policies was analysed through the use of a statistically significant sample of:

- application files for decisions taken at first decision tier level and at the Reconsideration stage;
- Appeal files for decisions taken by the Planning Appeals Board.

Two main problems were encountered in the analyses with respect to Structure Plan and Planning Authority policies at decision level; the first, was whether the Case Officer and the decision board quoted the relevant policies and, secondly, whether the recommendation and decision conformed with the Structure Plan and Planning Authority policies. There was a progressive improvement by the Case Officers in quoting policies<sup>403</sup> and making recommendations<sup>403</sup> in line with policies, during the period under study for decisions at first decision tier level. A similar improvement but with lower percentages was registered by the decision board<sup>403</sup>. The amendments to the legislation in 1997 had a marked positive effect on the performance of both the Case Officers and decision board<sup>403</sup>. In the majority of cases, the decision board endorsed the recommendations of the Case Officer, irrespective of whether the policies were quoted and / or the recommendation was in accordance to the same policies. The decision board chose not to quote any policies and act in breach of policy in the majority of cases when it overturned the recommendation of the Case

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<sup>403</sup> See Table 5.11.

Officer<sup>404</sup>. Similar results were obtained for decisions taken at Reconsideration stage<sup>405</sup>.

The results obtained from sampling of the Appeal cases have also shown that there were a number of policy breaches and also that there were a number of applications which were granted permission without quoting any policies<sup>406</sup>. A decision by the Court of Appeal, which specifically stated that *in determining an Appeal* the Board had *to apply all existing plans and policies*, was shown to have been ignored by the decision boards. The justification brought about by applicants in their appeals were mainly based on need and / or other adjacent development, whereas the arguments of the Planning Directorate and also of the Planning Appeals Board were mainly based on Structure Plan policies and policy and design guidance.

All this shows that the decision boards made use of Structure Plan policies and in a number of cases these withstood the acid test of Appeal. However, on several occasions, it was noted that contrary to the provisions of the law, no use was made of such policies and in such cases development permission was granted. Such a line of action by the decision boards could possibly imply that the policies, if used correctly, could resist development Outside Development Zone, but in most cases their absence was necessary to grant permission.

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<sup>404</sup> See Table 5.12.

<sup>405</sup> See Table 5.13.

<sup>406</sup> See Table 6.1.

#### **7.4.8 Participants in the planning process**

It was stated in the study that the Structure Plan process took place in an academic vacuum. In spite of the fact that ten years have passed since the establishment of the Planning Authority, and a number of initiatives have been undertaken by the Planning Authority together with the University to try to remedy this situation, there is still a need for trained personnel in the planning field. One could consider the steps which have been taken to date as a stopgap measure, since the government has so far not recognised the planning profession. The Malta Chamber for Environmental Planning has submitted proposals to the respective Minister in office so that the necessary legislation could be enacted in order to recognise such a profession (Gauci P., personal communication). Once this takes place, then one could distinguish between the profession of Architects and Civil Engineers, whose job is more concentrated on design and the Planners whose job is focused on planning. The need for qualified planners is felt throughout the various strata of society, be it that of the developer, the non-governmental organisation, the Planning Authority, any other Government Department, public or private entity. It is important that the participants in the planning process would have a good background in planning, otherwise there is little likelihood that the trends shown in this study will ever change. Legislative measures alone will not be sufficient to implement change. If the existing situation is bound to remain, then it would be beneficial if the Planning Authority (now known as Malta Environment and Planning Authority) were to organise a series of short training courses aimed at different participants in the planning process, whereby their role is clearly explained. Such courses would definitely help the participants identify their respective role in the process thus a better feedback would be forthcoming when this is sought by the planning agency. As a result, the various participants could also

become more proactive in their role, thus gaining a higher profile in the planning process.

Another initiative which could potentially be undertaken, especially for developers, is to print educational leaflets indicating to them their role in the planning process and how the whole system works. This could also help to avoid the dissemination of incorrect or misleading information from other sources. Such an initiative would give a higher profile to both the new developer and the planning agency because it would demonstrate willingness on behalf of the agency to help every applicant and to be more pro-active in the planning process. Such educational material could be delivered along with mailings already sent to each applicant following a new application.

Other initiatives could also take the form of radio phone-in or customer care desks that would be able to answer various questions about the respective planning process.

It was outside the remit of this study to carry out an in-depth analysis of the key participants in the planning process. From such a study one would have obtained a detailed analysis of their views and the limitations regarding their participation in the current planning process operating in the country. The personal experience of the author in relation to NGOs<sup>407</sup> shows that the interest in planning matters has diminished especially in their attendance for committee meetings and participation in planning related matters. There could be a variety of reasons for such behaviour such as:

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<sup>407</sup> The author has been a member of the Planning Consultative Committee and the Users' Committee since inception and has been involved with environmental NGOs for more than twenty years.



- The lack of dedicated members interested in the subject;
- That most NGOs are focused on their area of concern and they fail to see the integration of their peculiar area of interest with planning;
- The fact that committees on which they are represented have no clear objectives and have lost any potential momentum which they might have had thus there is a serious lack of interest;
- They feel that they could be more effective when being reactive and heard in public than when being proactive working within a committee;
- That it is very difficult to work and be effective within the corridors of power of the Planning Authority because they feel that the Authority has on several occasions tried to circumscribe any positive action which they might have tried to take.

It is a pity that the situation has reached such a point since NGOs could play a vital role in planning, however, it is equally important that the authorities realise that such a role is not only limited to representative figures on consultative committees whose feedback is rarely taken into consideration.

The role of Local Councils and the general public in the planning process is also very important. Unfortunately, it is not clear whether they have understood their roles since the media often reports their reactive stance which is mostly that of Not In My Backyard (NIMBY) Syndrome. A further study would be needed in order to understand whether Local Councils are playing a more subtle and cooperative role in the planning process away from the eyes of the media. The general public is more concerned with individual interests rather than a collective one, although in the latter

case this usually takes place when there is an objection to some form of development or plan and is usually headed by an organisation or a group of people. Since the inception of Local Councils, there is a tendency that the public expects the Local Council to speak on its behalf although it may support it by its presence. Occasionally, some Local Councils employ the services of a professional person, such as, an Architect or Lawyer, to speak on their behalf, mistakenly thinking that such professional people are experts in the field of planning.

The study has shown that most of the policy breaches took place at decision level, showing that the decision-makers were either unaware of their remit according to planning legislation or that they just failed to understand their role. It is in the interest of the country that there is a pool of competent people who could serve on such decision boards. It is important that when decision-makers are handed their appointment, the Minister who issues it makes them clearly aware of their responsibilities and the consequences of their actions. There is no information whether any Minister has ever emphasized such points to the decision-makers when being appointed. Unfortunately, the evidence suggests that Ministers are more concerned about the quantities of pending applications rather than the quality of decisions taken, thus implying the possibility that their respective political agenda is of primary importance. There are few lobby groups to counteract such trends. Such groups could possibly emerge from NGOs once these identify their roles and potential in the planning process. However, the various NGOs prioritise their respective interests rather than the impacts which a defective planning process could bring about. A higher profile in the process could only be obtained once such organisations understand their potential to affect the process.

It is important that the participants in the planning process find their appropriate role, and that the Authority recognises their importance, especially that of NGOs, without sidelining them to such an extent that they feel useless. If necessary, discussions should be made with individual groups to try to rectify the situation.

As a final point one must acknowledge the fact that the Planning Authority has published various educational leaflets and organised various campaigns associated with various aspects of planning in Malta but one cannot say that the effort was an ongoing process and so much of the input was lost after the first few days thus undermining the original objectives. An opportunity exists to set up a Unit within the Authority to organise such campaigns and maintain their momentum and continuously assess and identify new niches where new efforts could be directed in order to disseminate the information through all sectors of society and also to all the key participants of the planning process.

## **7.5 Recent Changes**

The study covered the period until 1998 and no reference was made to any legislative or policy changes following that date. There were three major changes which relate to this study after that date, these being:

- The new Environment Protection Act 2001 (Act XX of 2001) which became effective on the 18<sup>th</sup> September 2001 (Government Notice No.786);
- The new Development Planning (Amendment) Act (Act XXI of 2001);

- The amalgamation of the Environment Protection Department and the Planning Authority under the name of the Malta Environment and Planning Authority, MEPA.

Sustainable Development was the major objective of the amended Development Planning Act and the new Environment Protection Act (Cassar, 2002). It is not yet clear how MEPA should work to achieve its goals since little information has been divulged about the merger which officially took place on 1<sup>st</sup> March 2002. The new Director only took office on the 1<sup>st</sup> August 2002 and it is his responsibility to lay down the strategy of the new Directorate and ensuing staff movements from the ex-Planning Authority to the new Directorate. It is premature and presumptuous to comment at this stage about the potential results of such a merger. However, one could postulate that this will bring about a better management of resources since prior to this merger, there was a certain duplication of work and bias in resources between the different entities (Environment Protection Department and Planning Authority).

The new Environment Protection Act established a new Authority (which eventually became known as MEPA) which will be the means by which the Government will formulate and implement its policies relating to the promotion of sustainable development, protection and management of the environment and the sustainable management of natural resources<sup>408</sup>. A National Commission for Sustainable Development was also established with the principle aim of advocating sustainable development across all sectors of Malta<sup>409</sup>. Environment protection regulations could

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<sup>408</sup> Act XX of 2001 Section 7(1)(a).

<sup>409</sup> *Ibid.*, Section 8(7)(a).

be made in accordance with provisions found in articles 9 and 10 of this Act. A new concept introduced with this Act is that of an Environment Fund with the purpose of financing studies and works to safeguard the environment and also activities organised by NGOs<sup>410</sup>.

The Development Planning Act, 1992 has been amended six times in ten years. Act XXIII of 2000 was a minor change which had to be made due to amendments in the Public Transport Authority Act and similarly Act VI of 2001 was a consequential result of *an act to amend various laws in relation to the composition of various boards and in relation to the jurisdiction of various courts and tribunals and appeals from decisions, and making provisions incidental or consequential thereto*. The major changes concerning planning came about with the amendments enacted by Act XXI of 2001. These amendments were introduced through a number of Commencement Notices over a period of six months. Most of these amendments have now (August 2002) become effective. The major changes to the Act will only be highlighted since a complete review is outside the remit of this study and would further prolong this thesis. A “consolidated” version of the Development Planning Act 1992 showing all new text is available on the Authority’s web site [www.mepa.org.mt](http://www.mepa.org.mt) (under Official Manual-Legislation).

The functions of the Authority have been increased to include amongst other things the promotion of sustainable development<sup>411</sup>. The possibility of having more than one Development Control Commission board has been established<sup>412</sup>. As a result of this

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<sup>410</sup> *Ibid.*, Section 19(3).

<sup>411</sup> Act I of 1992 (amended by Act XXI of 2001) Section 5(1)(a).

<sup>412</sup> *Ibid.*, Section 13(1).

amendment, three Boards have been set-up, each of which shall deal with different application types. As a result of this amendment, there is only one Board which will deal with applications Outside Development Zones. The suggestion to have more than one Board was originally made by the Users' Committee in order to speed up the decision-making process.

A call-in provision has been added, whereby the Minister responsible for planning may call-in for a decision by the Cabinet of Ministers an application subject to an appeal to the Planning Appeals Board where the development, in the Minister's view:

- is of strategic nature;
  - affects matters of national security or national interest;
  - is likely to affect interests of other Governments;
  - is subject to an environmental impact assessment and is of national interest;
- and
- is an application where the applicant is a Government Department or a body corporate<sup>413</sup>.

A Standing Committee on Development Planning (composed of five parliamentary members) has been established with the main functions being that of reviewing any development plan, including the Structure Plan, which is referred to the House of Parliament<sup>414</sup>. This work was previously assigned to the Assessment Panel which has now been struck off the amended legislation; such a Panel was never constituted.

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<sup>413</sup> *Ibid.*, Section 15A.

<sup>414</sup> *Ibid.*, Section 17B.

Another new role is that of the Audit Officer whose main task will be that of investigating and reviewing functions and workings of the Authority<sup>415</sup>.

There was also a major change in the role of the Interdepartmental Planning Committee from one making recommendations on appeals by Government Departments to that of monitoring and coordinating the workings of Government Departments, particularly in implementing development plans or planning policies and to offer advice and assistance<sup>416</sup>.

The role of Planning Mediators was introduced through the new amendments. The Mediator may be called in by an applicant following receipt of the final development permission application report, his / her function being that of mediation between the Directorate and the applicant. The opinion expressed by the mediator shall be considered by the decision-making Board but shall not be binding<sup>417</sup>.

Important changes brought about by the new amendments to curtail abuses at the decision-making stage were those:

- at Development Control Commission level, whereby now the Board has to specify the planning reasons why it overturned the recommendation made by the Directorate<sup>418</sup>;
- concerning all decision-making Boards (PA, DCC and PAB), whereby in determining an application, it is now clearly stated that the Board *shall apply* development plans and planning policies while it *shall have regard* to any

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<sup>415</sup> *Ibid.*, Section 17C.

<sup>416</sup> *Ibid.*, Section 17D.

<sup>417</sup> *Ibid.*, Section 32A.

<sup>418</sup> *Ibid.*, Section 13(5).

other material considerations and representations made by the public<sup>419</sup>. Previously, the phrase “shall have regard to” was used instead of “shall apply”, thus the Board could easily have misinterpreted the original intentions of the legislator.

The 1997 amendments restricted the availability to view detailed plans and applications to Architects and Civil Engineers. This has now been revoked and such documents are again available for public inspection, the only exceptions being those where applications are considered to be of a sensitive nature (e.g. banks, prisons etc.)<sup>420</sup>.

The new legislation introduced new powers and penalties to try to improve enforcement. Amongst the actions which can now be taken are those including disabling or removal of equipment, machinery, tools, belongings, vehicles and other objects found on site, together with fees for removal of clamped machinery<sup>421</sup>.

The effectiveness of the recent legislative and administrative changes mentioned above would only be evident after a number of years and possibly a similar study or studies like the one which was undertaken in this thesis. The recent changes in the Development Planning Act should prove to be a good basis for a better decision-making process and hopefully quality decisions, rather than decisions based on output. Illegal development will hopefully decrease provided that the new amendments are

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<sup>419</sup> *Ibid.*, Section 33(1).

<sup>420</sup> *Ibid.*, Section 35.

<sup>421</sup> *Ibid.*, Section 55A.



rigidly enforced. However, in both cases, much depends on the motivation of both the decision-making bodies and those of the enforcement body.

## **7.6 Were the Objectives of the Study Achieved?**

The results have shown that the Structure Plan policies had a positive effect on the decision-making process Outside Development Zone only when these policies were correctly applied and in the absence of policy breaches.

It was also shown that the natural environment is under a continuous pressure from:

- persistent requests for development;
- permissions granted for developments as a result of:
  - correct use of Structure Plan policies;
  - use of subsidiary legislation;
  - sanctioning of illegal development;
  - policy breaches at decision level;
- illegal development which:
  - has been recorded;
  - has remained unrecorded;
  - remained in place due to inefficient practices which operated at the Planning Authority.

The interpretation of the Structure Plan policies given by the decision boards was not consistent. This was mainly shown by the fact that:

- some applications which were refused at first decision level were either given an approval at Reconsideration stage or at Appeal stage. In the latter case,

there was also the possibility that a refusal had also been given at Reconsideration stage.

- similar applications were not all decided in the same manner;

There were also several cases where the Planning Directorate gave a different interpretation to Structure Plan policies from that given by the decision boards. This was mostly evident in cases where the recommendations were overturned by the decision board.

The amended Development Planning Act introduced the possibility of having more than one Development Control Commission Board<sup>412</sup>. The creation of more than one DCC Board could lead to a situation where different interpretations would be given to the same policies in the same areas. However, such a situation is unlikely to arise due to the fact that each of the Boards which were created will deal with different applications from other Boards; in fact, there is only one board which will deal with ODZ applications.

An important change which could possibly address some of the shortcomings identified in this thesis is that introduced through section 13(5) of the amended Development Planning Act, whereby, the DCC Board now has to specify the planning reasons when overturning the recommendations of the Planning Directorate. It must also be emphasized that it has now been specified that the DCC Board *shall apply* development plans and policies when determining an application<sup>419</sup>. One hopes that these two changes will reduce considerably abuses which were identified in this study.

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## **APPENDIX I**



Map of the Maltese archipelago showing all the places which were mentioned in this thesis

## **APPENDIX II**

<b>File No.:</b>	<b>Year of Application:</b>	<b>Sheet Reference:</b>	
<b>Existing Use:</b>		<b>Proposed use / Type of Development:</b>	
<b>First Decision:</b> APPROVAL / REFUSAL	<b>Decision Board:</b> DCC / PA	<b>Date:</b>	
<b>Reconsideration:</b> APPROVAL/ REFUSAL/ NOT APPLICABLE		<b>Date:</b>	
<b>Appeals Board Decision:</b> REFUSED/ UPHELD/ NOT APPLICABLE		<b>Date:</b>	<b>Board:</b> KA/RR/SMS
<b>Decision level:</b> First/ Reconsider. / Appeals Brd.	<b>Case Officer Recommendation,</b> including justification:	<b>Board Decision,</b> including justification:	

<b>Continuation sheet</b>		<b>Sheet Reference:</b>
<b>Decision level:</b> First/ Reconsider. / Appeals Brd.	<b>Case Officer Recommendation,</b> including justification:	<b>Board Decision,</b> including justification:



## **APPENDIX III**

**Summary of different types of analysis together with the relevant sections and the respective justification for all the results found in this chapter.**

<b>Section</b>	<b>Type of Analysis</b>	<b>Relationship between type of analysis and objectives of thesis</b>	<b>Thesis objective as per chapter 5</b>
5.2.1	Comparison of unfiltered application data within Temporary Schemes and in Outside Development Zones, for the period 1989-1998 (Table 5.1, Figure 5.1).	Shows annual changes in application numbers, both within Temporary Schemes and ODZ and also any variations before and after the set-up of the Planning Authority, thus any affect of the new Structure Plan policies on development applications.	1
5.2.2	Regression analysis of the pre-Planning Authority data both within Temporary Schemes and ODZ.	Shows ongoing trends in development prior to the set-up of the Planning Authority (PA).	1
	Graphical representation of the percentage of ODZ applications which were taking place prior to the set-up of the PA.	Shows pressure ODZ prior to the introduction of new development policies.	1
5.2.3	Regression analysis of the post-Planning Authority data both within Temporary Schemes and ODZ. This analysis includes a prediction for the following two years, in order to compare the predicted values with the true values, thus testing the methodology being used.	Shows ongoing trends in development after the set-up of the Planning Authority (PA) and introduction of new planning policies.	1

<b>Section</b>	<b>Type of Analysis</b>	<b>Relationship between type of analysis and objectives of thesis</b>	<b>Thesis objective as per chapter 5</b>
	Graphical representation of the percentage ODZ applications after the set-up of the PA. This analysis includes a prediction for the following two years, in order to compare the predicted values with the true values, thus testing the methodology being used.	Shows pressure ODZ after the introduction of new development policies.	1
	Graphical analysis of the area occupied by development applications ODZ for the period 1989-1998. A prediction for the following two years will also be included for comparison with the true data.	Gives a better indication of the nature of the problem ODZ and also shows the ongoing trends over a period of time.	1
	Graphical analysis of the average area per application ODZ for the period 1989-1998.	Shows whether the size of the developments requested ODZ is varying with time, thus demonstrating whether the problem is increasing or not.	1
	Graphical representation showing annual percentage distribution for different types of development codes used by the PA, for development applications ODZ during the period 1994-1998.	Shows the variations of the different sources of development which contributed to pressure ODZ.	1 & 2

<b>Section</b>	<b>Type of Analysis</b>	<b>Relationship between type of analysis and objectives of thesis</b>	<b>Thesis objective as per chapter 5</b>
5.2.4	Application data will be filtered and regression analysis carried out on applications ODZ and those in Temporary Schemes for the period 1994-1998. Predictions for the following two years will also be carried out in order to compare with the true data.	This is an attempt to fine-tune the methodology described above, in order to get a better picture of the pressure created by development applications during the post-PA period. One must note that this problem arose because during this period there was the possibility to make more than one application on the same site and different application numbers were given.	1
	Graphical representation of the percentage of presumed non-duplicate ODZ applications after the set-up of the PA. This analysis includes a prediction for the following two years, in order to compare the predicted values with the true values, thus testing the methodology being used.	The aim of the analysis is to obtain a better value of the pressure ODZ after the introduction of new development policies.	1
	Graphical representation showing annual percentage distribution for different type of development codes used by the PA, for development applications (using filtered data) ODZ during the period 1994-1998.	The aim of the analysis is to obtain a better value for the variations of the different sources of development which contributed to pressure ODZ.	1 & 2

<b>Section</b>	<b>Type of Analysis</b>	<b>Relationship between type of analysis and objectives of thesis</b>	<b>Thesis objective as per chapter 5</b>
	Differences in the annual percentage values obtained between filtered and unfiltered data.	There was no direct relationship with the objectives of the thesis for this analysis but its aim was to differentiate between two graphs, thus outlining the feasibility of the filtration method being used. The analysis will show the feasibility of utilising filtered data.	
5.2.5	Graphical comparison between the annual numbers of decided applications within Temporary Schemes and ODZ for the period 1994-1998.	Shows the annual output of the decision-making boards in view of further analysis concerning objectives of thesis.	1
	Annual analysis based on codes for decisions taken ODZ for the period 1994-98.	The analysis shifted mainly on development ODZ and the results show the relative proportions of decisions taken annually by the decision-making boards.	1
	Statistical test (Chi-Square Test) to analyse whether the variations of approvals and refusals occurring between 1994-98 were happening by chance or due to the behaviour of the decision-making board.	To analyse whether variations observed in the granting of permission or refusals could be attributed to the decision-making board or were happening by chance.	1
	Graphical analysis of the decision codes in relation to the type of development ODZ for the period 1994-98.	The shows the types of developments that were causing most pressure ODZ and also the outcome of the decisions being taken by the decision boards and any annual variations which occurred.	1 & 2

<b>Section</b>	<b>Type of Analysis</b>	<b>Relationship between type of analysis and objectives of thesis</b>	<b>Thesis objective as per chapter 5</b>
	Statistical comparison from a representative sample of decisions taken between 1989 and 1992 (pre-PA) compared to the decisions taken during the period 1994-1998 (post-PA).	This shows whether there was any statistically significant difference between the decisions taken with and without the Structure Plan policies thus showing whether they had any effect on development ODZ.	1
5.2.6	A statistically significant number of case studies ODZ were chosen at random for the period 1994-1998 and each individual file was analysed.	The aim is to shift the analysis from the numerical values and outcomes of each application to the process which led to such a result.	3
	Annual percentage variations of the correct use of the Structure Plan and planning policies by Case Officers in their recommendations to the decision-making boards (Planning Authority, PA or Development Control Commission, DCC), together with the respective recommendations.	The analysis is aimed to note whether correct use of Structure Plan policies is being made by the Case Officers; whether they are consistent in their work and whether there is any relationship between the use or misuse of policies and the recommendations being made.	2 & 3
	Annual percentage variations of the correct use of the Structure Plan and planning policies by decision board (PA or DCC) in their decisions, together with the respective outcome.	The analysis is aimed to note whether correct use of Structure Plan policies is being made by the decision-making boards; whether they are consistent in their approach and whether there is any relationship between the use or misuse of policies and the decision taken.	2 & 3

<b>Section</b>	<b>Type of Analysis</b>	<b>Relationship between type of analysis and objectives of thesis</b>	<b>Thesis objective as per chapter 5</b>
	Comparative annual analyses of endorsed and overturned recommendations by the decision-making boards. An analyses of the type of developments which were affected by such decisions will also be undertaken.	Shows circumstances related to development policies where recommendations were endorsed and overturned, thus highlighting the use and abuse of the decision-making system (up to DCC and PA level) and whether this is related to any particular development types.	2 & 3
	Comparative analyses of the recommendations and decisions for applications which were taken to Reconsideration and Appeal stages.	Shows circumstances related to development policies where recommendations were endorsed and overturned, thus highlighting the use and abuse of the decision-making system (DCC, PA and Planning Appeals Board level) and whether this was related to any particular development types.	2 & 3
5.2.7	Analyses of enforcement data, including both empirical quantitative analyses and regression analyses of development, both within Temporary Schemes and ODZ.	Shows the extent of hidden development which has taken place and which has now been accounted and also the trends which have occurred over a period of time.	1 & 2
	Analyses of the different types of enforcement action taken ODZ during the period 1993-2000.	Shows any favourable use of parts of the legislation in enforcement cases.	1 & 2
	Annual analyses of enforcement cases by type of development.	Shows the type of development whereby illegal activity was most common.	1 & 2

<b>Section</b>	<b>Type of Analysis</b>	<b>Relationship between type of analysis and objectives of thesis</b>	<b>Thesis objective as per chapter 5</b>
	Annual analyses of the status of the enforcement cases.	Shows the different outcomes after a development has been subject to enforcement action thus the effectiveness of such action over a period of time.	1 & 2
5.2.8	Cartographic analyses in order to obtain a visual dimension of the nature and extent of applications, decisions and enforcement cases in relations to Temporary Schemes, ODZ and scheduled areas.	This analyses gives a visual dimension to the nature and pressure of development occurring in Malta and helps the reader to obtain a better perspective when viewed with the results obtained in the other sections of the analyses.	2
5.2.9	Measure of development pressure ODZ using data from the Planning Appeals Board together with ongoing trends.	Shows the amount of ongoing development pressure taking place ODZ through the use of applications which are taken to appeal stage.	2 & 3
	Annual analyses on a statistically significant sample of decisions taken by the Planning Appeals Board for applications ODZ.	Shows the relationship between upheld and dismissed cases decided by the Board and so further pressure created by such decisions.	2 & 3
	Annual analyses on a statistically significant sample of decisions taken by different panels of the Appeals Board for applications ODZ.	Shows whether the panels of the Planning Appeals Board were consistent in their decisions.	2 & 3



<b>Section</b>	<b>Type of Analysis</b>	<b>Relationship between type of analysis and objectives of thesis</b>	<b>Thesis objective as per chapter 5</b>
	Analyses using Chi-Square Test to check whether the differences in the type of decisions taken by the different panels of the Board of Appeal could be attributed to chance or to the behaviour of the different panels.	Test tries to identify the nature of the trends shown in the decisions taken by the different panels of the Board of Appeal.	3
	Analysis on a statistically significant sample of appeal cases ODZ, in order to study the justifications produced by the Planning Directorate, the applicant and the Board of Appeal.	Shows the prevailing trends operating at different tier levels by the various players involved in the decision-making process at the appeal stage. This also shows the use or absence of planning policies by the same parties involved in the process.	2 & 3
	Analysis of selected case studies whereby the decision of the Planning Appeals Board was felt to have gone beyond its remit.	Shows on an individual basis, how the Board arrived at its decision and therefore highlights whether the decision-making process was in accordance with the legal requirements.	2 & 3
	Analysis of cases which were referred to the Court of Appeal.	Analysis shows whether any decision has been taken by the Court and whether the nature of such decision has any bearing on future planning decisions.	2 & 3
5.2.10	Direct observation exercise during the decision-making board meetings.	Shows the operating mechanisms in arriving at a decision during the board meetings, thus studying latent effects which might be present but not recorded in any of the previous analyses.	2

## **APPENDIX IV**

## **Development Type Codes used by Development Control Unit at the Planning Authority**

<b><u>Code</u></b>	<b><u>Description</u></b>
COU	Change of use (no substantial works)
DWL	New Dwellings (including conversions)
HSE	Householder (minor works on dwellings)
MIN	Mineral Working
MAN	Manufacturing / Industrial
OFF	Offices
RDS	Shops and retail services
RCB	Restaurant / café / bar
SAT	Satellite Dish
OTH	Other
SWM	Private Swimming Pool (only)
ADV	Advertisement
LBA	Listed Building Alterations
MNW	Minor new works – not householder
PRK	Car parking and vehicle garaging
SRV	Community and Health Services
AGR	Agricultural (including fish farms & agricultural rooms)
WRH	Warehousing
REC	Recreational
MXD4	Mixed other
MXD3	Mixed office and retail
MXD1	Mixed residential and retail
TOU	Hotel/ tourist accommodation
EDU	Educational
XXX	Unknown

## Decision Codes

### First Decision

<u>Code</u>	<u>Description</u>
DFR	Deferred Application
GTD	Granted permission all types
PRQ	Permission required
REF	Refused Planning Permission
STI	Application Dismissed
WDN	Withdrawn by Applicant
WPD	Withdrawn by Planning Directorate

### Reconsideration

<u>Code</u>	<u>Description</u>
WDW	Request for reconsideration withdrawn
DIS	Dismissed (Original decision stands)
RCI	Request for reconsideration invalid
UPH	Upheld (Original decision stands)
STI	Application Dismissed after non-payment
DFR	Deferred

### Appeals

<u>Code</u>	<u>Description</u>
WDN	Withdrawn
DIS	Dismissed (Original Decision Stands)
UPH	Upheld (Original decision overturned)
DCC	File referred back to DCC
API	Appeal invalid
WDA	Appeal withdrawn by applicant
ABS	Appeal abstained
SCU	Structural changes upheld change of use dismissed
ARF	Appeal against refusal submitted, not yet determined

## **Enforcement Code**

<b><u>Code</u></b>	<b><u>Description</u></b>
END 1	Enforcement sanctioned by a PA permit
END 2	Illegal development removed by owner himself
END 3	Illegal development removed by Direct Action
END 4	Withdrawn Case
D/A	Case listed for Direct Action
PEND	Pending for further investigations
PND1	Pending application to sanction enforcement
APA	Appeal / Reconsideration pending
APS	Appeal from enforcement pending

## Codes used in the Analyses of Appeal files

<b>Code</b>	<b>Description</b>
AEI	Area of Ecological importance
APCUP	agreed with permit conditions under protest
ARCHS	Archaeological sensitive site
AWA	Agree with appellant
AWPA	Agree with PA / DCC
CII	Claims incorrect information in Planning directorates' report
CII-NS	Claim of incorrect information - not sustained
CIR	circulars
DGFH	Policy and Design Guidance Farmhouses and Agricultural buildings
DGK	Design guidance kiosks
ENF	enforcement on site
FB	fact book
FPPS	Formed part of previous schemes
FTF	full time farmer
FTF>20	Full time farmer with more than 20 tumuli of land
IPABD	Infringes Planning Appeals Board decision
ICO	Ignored Court Order
ICPA	Irregularity claims by Planning Authority
IISA	incorrect information submitted by Architect
ILL	Illegal construction on site
IPAPC	Infringes PA / PAPB permit conditions
IS	Ignored stop notice
ISE	Ignored stop and enforcement notices
LG	legal (legal points; citing other court/ appeal cases; citing DPA Act; pending PAB decision; claims to have permit for development)
LI	Lost interest
LP	Local Plan considerations
N	need
N/A	not available
NC	Site is not committed
NF	not farmer
NFTF	not full time farmer
OA	comments by other agencies
OAD	Other adjacent development
OBJ	Objections received for development
PABC	Planning Appeals Board conditions
PL	PLP 20
PSCOA	Permit subject to clearance from Water Service Corporation.

PTF part time farmer  
PTF<20 Part time farmer with less than 20 tumuli of land  
Q Questionable  
SAP Applicant self--admitting requirement for permit  
SB Scheduled building  
SIC Site is committed  
SP Structure Plan policies & explanatory memorandum  
T Technical comments (site is for development; development doesn't respect surrounding environment; applicant submitted application to sanction; size of building / footprint; development requires permit; justification for development)  
TSFP to submit further plans  
WPOS There was permit on site

## Acronyms used

AAI	Area of Agricultural Importance
ACOLAID	
AD	<i>Anno Dominae</i>
AEI	Area of Ecological Importance
AONB	Area of Outstanding Natural Beauty
BC	Before Christ
BDA	Building Development Areas
CBM	Central Bank of Malta
CTDP	Continuing Technical Development Programme
DC	Development Control
DCC	Development Control Commission
DCIS	Development Control Information System
DPA	Development Planning Application
EC	European Community
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EPS	Environmental Planning Statement
<i>et al.</i>	and others
EU	European Union
GDO	General Development Order
GDP	Gross Domestic Product
GIS	Geographical Information System
ha	Hectares
HOS	Home Ownership Scheme
Km <sup>2</sup>	Kilometres square
L.N.	Legal Notice
LM	Malta Lira (pl. Liri)
LPA	Local Planning Authority
m	million
MCA	Marine Conservation Area
No./Nos.	number/s
o.b.o.	on behalf of
ODZ	Outside Development Zone
p.	page
PA	Planning Authority
PAB	Planning Appeals Board
PAPB	Planning Area Permits Board
pp.	pages
RCA	Rural Conservation Area
SAI	Site of Archaeological Importance



SPMD	Structure Plan Monitoring Database
SPSS	Statistical Package for Social Sciences
SSI	Site of Scientific Importance
Stg	Pound Sterling
UNESCO	United Nations Educational, Scientific and Cultural Organization
v.	versus
WSC	Water Services Corporation

## **APPENDIX V**

The following is a sample of the origin of the codes used in the case studies.

**Table 1**

	<b>Case Officer</b>							
<b>Year</b>	<b>Were all relevant policies quoted?</b>			<b>Does recommendation conform to SP &amp; PA policies?</b>			<b>Recommendation</b>	
	<b>Yes</b>	<b>No</b>	<b>Partially</b>	<b>Yes</b>	<b>No</b>	<b>Partially</b>	<b>Grant</b>	<b>Refuse</b>
Abbreviations	<b>Y</b>	<b>N</b>	<b>P</b>	<b>Y</b>	<b>N</b>	<b>P</b>	<b>G</b>	<b>R</b>

**Table 2**

	<b>Decision Board (DCC/PA)</b>							
<b>Year</b>	<b>Were all relevant policies quoted?</b>			<b>Does recommendation conform to SP &amp; PA policies?</b>			<b>Recommendation</b>	
	<b>Yes</b>	<b>No</b>	<b>Partially</b>	<b>Yes</b>	<b>No</b>	<b>Partially</b>	<b>Grant</b>	<b>Refuse</b>
Abbreviations	<b>Y</b>	<b>N</b>	<b>P</b>	<b>Y</b>	<b>N</b>	<b>P</b>	<b>G</b>	<b>R</b>

Tables 1 and 2 show the summary codes used in Table 5.9 in the text. The sequence of abbreviations used forms the code.

Example:

If the Case officer has:

- quoted all the relevant planning policies (Y) and
- his/her recommendation conforms with such policies (Y) and
- the recommendation is for a refusal (R),

then the first three letters of the code are Y Y R.

Similarly, if the Decision-making Board overturns (grant, G) such a recommendation by failing to quote any policies (N) and in breach of Structure Plan and planning policies (N), then the last three letters of the code are N N G and the six-letter code in full would be Y Y R N N G.