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L.N. 83 of 2019

ENVIRONMENT PROTECTION ACT (CAP. 549)

DEVELOPMENT PLANNING ACT (CAP. 552)

Action on Illegal Deposit of Material on Land and Illegal Reclamation of Land Regulations, 2019

IN EXERCISE of the powers conferred by virtue of the powers conferred by article 85 of the Development Planning Act, and by virtue of the powers conferred by articles 54 and 55 of the Environment Protection Act, the Parliamentary Secretary for Planning and the Property Market, with the concurrence of the Minister for Sustainable Development, the Environment and Climate Change, and in consultation with the Planning Authority and the Environment and Resources Authority, has made the following regulations:-

Title.

1. The title of these regulations is the Action on Illegal Deposit of Material on Land and Illegal Reclamation of Land Regulations, 2019.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires:

"afforestation" means the planting of trees or vegetation on non-forested land;

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"the Act" means the Development Planning Act or the Environment Protection Act as the context may require;

"the Authority" shall have the same meaning as that assigned to it by the Act;

"contravener" means any person who has been notified with an enforcement notice which has been rendered executable, or a stop and compliance order, where such enforcement notice or order relates to the illegalities specified in regulation 3;

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"inert waste" shall have the same meaning as that assigned to it in the Waste Regulations;

S.L.549.44

"invasive alien species" shall have the same meaning as that assigned to it in the Flora, Fauna and Natural Habitats Protection Regulations;

"protected area" means any area protected through the Environment Protection Act, or scheduled for ecological and scientific reasons under the Development Planning Act. Cap. 549. Cap. 552.

(2) In these regulations, words and expressions defined in the Act shall have the same meaning as assigned to them in the Act.

3. These regulations shall apply to any land subject to enforcement action, issued prior or after the entry into force of the Act or prior or after the entry into force of these regulations, which enforcement action relates to any illegality which constitutes, or refers to:- Illegalities subject to these regulations.

(a) land rendered derelict to the extent of constituting an injury to amenity, provided that such illegality appears on the Authority's aerial photographs of the year 2012 but does not appear on the Authority's aerial photographs of the year 1994; or

(b) the illegal deposit, dumping or tipping of any material on any land, provided that such illegality appears on the Authority's aerial photographs of the year 2012 but does not appear on the Authority's aerial photographs of the year 1994; or

(c) the illegal reclamation of any land, provided that such illegality appears on the Authority's aerial photographs of the year 2012 but does not appear on the Authority's aerial photographs of the year 1994. Where the illegal reclamation of land appears on the Authority's aerial photographs of the year 1994 and the Authority's aerial photographs of year 2012 confirm that further illegal reclamation of land took place after the year 1994, the Authority shall have the right to execute the necessary action in terms of these regulations both in relation to the illegal reclamation of land which appears on the aerial photographs of the year 1994 as well as any illegal reclamation of land which took place subsequent to that year and which appears on Authority's aerial photographs of year 2012.

4. Land subject to enforcement action relating to any illegality specified in regulation 3 shall be regenerated either by being restored to its original state or afforested. The Environment and Resources Authority shall identify the most suitable regeneration method for land subject to enforcement action as specified in regulation 3, and where the site is of cultural value it shall consult the Superintendence for Cultural Heritage. Guidelines for restoration and afforestation.

5. (1) The Authority shall order the contravener to prepare a method statement, according to the terms of reference in the Schedule, for the restoration of the land to its original state, or afforestation as Method statement procedure.

relevant, to the satisfaction of the Environment and Resources Authority, and where the site is of cultural value, to the satisfaction of the Superintendence of Cultural Heritage. The Environment and Resources Authority and the Superintendence of Cultural Heritage shall have the right to request the method statement to address other issues over and above those defined in the Schedule.

(2) The Authority shall duly notify the contravener, in terms of the Act, of the requirement to submit a method statement in terms of sub-regulation (1). The Authority's notification shall specify the requirements and the terms of reference for the proposed method statement, which shall also include those as requested by the Environment and Resources Authority and the Superintendence of Cultural Heritage, and the time-frame within which such method statement is to be submitted by the contravener to the Authority.

(3) A method statement submitted in terms of sub-regulation (2) shall be endorsed by the Environment and Resources Authority and where applicable the Superintendence of Cultural Heritage:

Provided that the same method statement fully addresses all the requirements laid down in the terms of reference notified to the contravener in accordance with sub-regulation (2). In its endorsement, and without prejudice to any other legislation, the Authority may impose any additional requirements or conditions it may deem fit to impose.

(4) The contravener shall be duly notified in terms of the Act of the endorsed method statement. The date of notification of the endorsed method statement shall be deemed to constitute the date upon which the works specified in the same method statement are to commence.

Necessary action.

6. (1) In those cases where the contravener:-

(a) fails to submit the method statement within the time-period imposed by the Authority in accordance with regulation 5(2) and consequently the same method statement is prepared by the Authority; or

(b) submits a method statement which is not to the satisfaction of the Environment and Resources Authority and, where applicable, the Superintendence of Cultural Heritage; or

(c) fails to execute the necessary works authorised by the Authority in the endorsed method statement or fails to complete such works within the time-frame imposed in the endorsed method statement; or

(d) executes works in a manner which is not in accordance with the terms and conditions of the endorsed method statement,

the Authority, without prejudice to other legislation, shall have the right to exercise all powers conferred to it by the Act so as to enter the land in question and execute all the works necessary in order to implement the method statement to the satisfaction of the Environment and Resources Authority and the Superintendence of Cultural Heritage.

(2) In cases where the land subject to enforcement action refers to an unknown owner and occupier or land which is Government property and subject to enforcement action which refers to an unknown occupier, the Authority shall be responsible to prepare the appropriate method statement and shall have the same powers conferred to it in terms of sub-regulation (1).

(3) The Authority shall supervise the work and certify compliance in relation to the works carried out.

(4) The Authority may, without prejudice to any other legislation, also impose an administrative fine on the contravener, which fine shall be calculated on the basis of the estimated expenses for the maintenance of the land for the first five (5) years by the Authority in terms of sub-regulation (1).

Costs.

(5) The costs imposed upon the contravener in instances of non-compliance with these regulations shall include all expenses incurred by the Authority:

(a) planning;

(b) procurement;

(c) ground preparation;

(d) uprooting of alien species, if any;

(e) planting;

(f) irrigation;

(g) weeding;

(h) beating up;

(i) staking of trees; and

(j) any other operation necessary for the successful implementation of the method statement.

Further action.

7. (1) Where a site is afforested and the afforestation is not suitably maintained, or else material is deposited illegally on any land after the entry into force of these regulations, the Authority shall notify the Government of any such breach and the Government may proceed either to:

(a) terminate the occupancy agreement to which the land is subject, if the land in question is a Government owned land; or

(b) expropriate the land, if the land in question is a privately owned land; and this in order to ensure that the relative afforested land is suitably maintained and, or the relative land is protected from further illegal deposit of material.

(2) Following action taken under sub-regulation (1) the Minister responsible for the environment may enter into a guardianship deed in line with the Environment Protection Act.

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Schedule

Outline Requirements and Terms of Reference for the Method Statement

1. Outline Requirements

1.1 Use of Trees and other vegetation

(a) Trees and vegetation used for the rehabilitation shall be indigenous species which are native to the area/ site concerned and compatible and appropriate to the adjacent habitats. The method statement shall indicate the species, in Latin, Maltese and English names; the number; and the approximate location of the relative trees and/or vegetation.

(b) The choice of species shall be guided by the policy document "Guidelines on Trees, Shrubs and Plants for Planting and Landscaping in the Maltese Islands" of the year 2002 as amended, and the "Guidelines on managing non-native plant invaders and restoring native plant communities in terrestrial settings in the Maltese Islands (MEPA, 2011)", as amended or any other related approved document. If any alien

invasive species are already growing on site, these must be uprooted and destroyed as part of the rehabilitation procedures. Such works are to be undertaken in a manner to prevent further damage to the environment and reduce the possibility of re-sprouting of invasive alien species.

2. Terms of Reference

The method statement is required to identify how the interventions to re-instate a site should be carried out with the least possible damage on the site and its surroundings. The likely environmental impacts of the interventions and mitigation measures should be included in the method statement. The method statement shall include the following basic information in addition to other specific site re-instatement and ecological requirements as determined by the Environment and Resources Authority on a case-by-case basis:

A. Organization and responsibilities

Proposed project management arrangements during all phases of the development are to be presented in the document, which should include the following:

(a) the description of the timing of the works defining the expected duration of the whole project, including start date and end date, and for each respective phase;

(b) an identification and contact details of the site manager (as approved by the Environment and Resources Authority) that shall be responsible for overseeing the completion of works in accordance with the method statement on behalf of the responsible party;

(c) a description of how the progress of works will be monitored and recorded, e.g.: photographic means (before, during and after). After the completion of works, a copy of the photographs shall be submitted to the Environment and Resources Authority for record-keeping purposes; and

(d) a description of the maintenance of the trees and vegetation planted on site covering a period of five years, including any maintenance agreements entered into by the person/entity carrying out the

afforestation. This shall consider appropriate watering, pruning, de-weeding and any additional interventions that may be required to ensure proliferation of the trees and vegetation planted as part of the afforestation.

B. Description of site and its surroundings

(a) a site plan including a clear outline of the extent of the site boundary and surrounding area(s) which may be affected;

(b) details, including maps and drawings, are to be provided of the site topography, geology and hydrology, as well as natural habitats/ecology and other natural features within (or under) the site and its surrounding area of influence;

(c) details of any other trees, vegetation or natural or other feature to be affected by the proposed works, such as retaining walls, topography and other relevant site characteristics; and

(d) a description of the material currently or historically dumped or deposited on site or spilling over from it, including details of any likely pollution or contamination on, under or around the site, as a direct or indirect result of such dumping, deposition or spillage.

C. Description of works

(a) a site plan indicating the location of the material, interventions and/or illegalities to be removed;

(b) a description of the nature of the material, interventions and/or illegalities to be removed;

(c) a description of the interventions that are required to remedy environmental damage and to re-instate/ rehabilitate the site in particular, but not solely limited to the following, as may be relevant:

(i) plans, elevations and sections detailing the proposed operations/works to be undertaken and any other interventions (if relevant);

(ii) a list of machinery (including vehicles) and/or

tools to be deployed and for each machinery/ tool the intended use;

(iii) a description of how the site is going to be accessed (including travel routes to and form the site, and/or within the site) and how any machinery and/or tools shall be brought on site and subsequently removed - both for demolition and carting away of material;

(iv) a site plan indicating where machinery (including vehicles), equipment and /or tools shall be kept once works are in progress;

(v) a site plan indicating which areas shall be cordoned off before, during or after the required works and for which purpose;

(vi) a description of the type of hoarding to be employed for cordoned off areas;

(vii) a description of how the offending material is to be removed from site and the location of its final disposal and/or other recovery operations. In the case of temporary storage and/or deposition of the offending material prior to its removal, a site plan indicating which area shall be utilised for such purpose is to be provided;

(viii) a list of mitigation measures to ensure that no spillage of material due to agents such as wind, runoff, wave action, subsidence or collapse, anthropogenic factors, or a combination of the foregoing factors occurs during any phase of the project;

(ix) an indication of any species to be planted in connection with the works, also taking into account the habitat previously existing on site prior to the illegal reclamation or degradation as well as the surrounding natural habitats;

(x) any mitigation measures deployed to contain as much as possible any murkying, silting, smothering, scouring and pollution of any features, habitats and water bodies (terrestrial,

underground or marine) located further downslope or downstream;

(xii) a list of mitigation measures to ensure that no deleterious impacts to the natural and physical environment occurs during any phase of the project, in particular to ensure that no trampling, disturbance, mechanical damage and/or spillages or leakages of fuels, oils or other substances occur;

(xiii) any additional measures (e.g. finishing works) that will be undertaken to restore the site as much as possible to a pristine natural condition;

(xiv) clarification of any additional conditions required to ensure recovery of the site environment and/or to prevent deterioration or degradation of the site and its surrounding environment both during and after the works;

(xv) an undertaking by the contravener to notify the Authority at least three weeks in advance of any changes in the work schedule in the approved method statement;

(xvi) an undertaking by the contravener not to carry out any works unless under the supervision of officials from the Authority or other persons acting under the Authority's instructions;

(xvii) identification of which parts of the proposed works or interventions require prior authorisation from the Environment and Resources Authority under the respective environmental regulations;

(xviii) a contingency plan to prevent accidental risks of environmental damage from the proposed works or interventions.

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