

An Investigation into the Issuance of Encroachment Permits between December 2012 and March 2013



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List of Abbreviations

AG	Auditor General
DG	Director General
GPD	Government Property Department
KMS	Kunsill Malti għall-Isport
LPG	liquid petroleum gas
MEIB	Ministry for the Economy, Investment and Small Business
MEPA	Malta Environment and Planning Authority
MFCC	Ministry for Fair Competition, Small Business and Consumers
MRRA	Ministry for Resources and Rural Affairs
MTA	Malta Tourism Authority
NAO	National Audit Office
N/A	Not Available
NGO	non-governmental organisation
PAC	Public Accounts Committee

Executive Summary

Executive Summary

1. In a letter dated 30 November 2013, two Government Members on the parliamentary Public Accounts Committee (PAC) requested the Committee to investigate the manner in which encroachment permits were issued between December 2012 and March 2013. According to media coverage cited in the letter, 100 encroachment permits were issued during the last two months of the previous administration, when Government usually issued 150 permits on an annual basis. This request was subsequently referred to the Auditor General on 25 August 2014, wherein the National Audit Office (NAO) was requested to investigate the encroachment permits issued during the period immediately preceding the 2013 general election.
2. In light of these concerns, the NAO established the following terms of reference:
 - a. Analyse the frequency of encroachment permits issued during the period 1 December 2012 to 8 March 2013 by comparison with other periods, namely:
 - i. 1 December 2010 – 8 March 2011;
 - ii. 1 December 2011 – 8 March 2012; and
 - iii. 1 December 2013 – 8 March 2014.
 - b. Carry out an in-depth analysis of the encroachment permits issued between 1 December 2012 and 8 March 2013.
3. The term ‘encroachment’ essentially refers to a permit granted for the occupancy of public land for a specific period and for a particular purpose or use. An encroachment permit authorises the grantee to construct approved facilities, conduct specific activities or make use of government-owned land or property for a period not exceeding 12 months. On the expiry of this period, an encroachment permit may be renewed for a similar interval; in fact, such permits must be renewed annually. The encroachment permit neither is, nor does it confer, a property right and is not transferable. Encroachments are invariably granted ‘at the pleasure of Government’ and are therefore of a precarious nature where the entitlement of the grantee is tenuous.
4. In addressing the first objective of this audit, the NAO limited its review to new encroachment permits issued during the period under review. This was motivated by the fact that encroachment permits up for renewal were automatically issued by the Department, subject to the payment of dues, requiring no other intervention

whatsoever. This scoping reflected the request made to the NAO, wherein this Office was tasked with the verification of permits issued during the aforementioned period, implying an element of intervention by the Minister, the GPD, or any other public sector entity involved. Such intervention is only required in the case of new permits, hence the Office's decision to scope the audit in this manner.

5. The NAO established that the number of encroachment permits issued between 1 December 2012 and 8 March 2013 was 25. No encroachment permits were issued in December 2012. The GPD issued eight permits in January 2013 and ten permits in February 2013. Furthermore, up to the aforementioned cut-off date, another seven permits were issued in March 2013. The approval of encroachments was contingent on the nature of the permit requested and in this context, the NAO noted that, out of the 25 permits issued, 13 were authorised by the Minister MFCC, while the remaining 12 were sanctioned by the GPD and other public sector entities, where necessary.
6. Although marginal, an increase was registered in the number of encroachment permits issued during the last two weeks of the period under consideration, that is, between 23 February and 8 March 2013. During this period, eleven encroachment permits were issued, with seven permits issued between 4 March and 8 March 2013. Out of these eleven permits, eight were authorised by the Minister.
7. Comparing the 25 permits issued between 1 December 2012 and 8 March 2013 with the corresponding periods in other years indicated that the highest number of permits was issued during the audit period. Between December 2010 and March 2011, nine encroachment permits were issued. For the corresponding 2011/2012 months, twenty permits were issued, while in 2013/2014, six permits were issued. When compared with the periods 2010/11 and 2013/14, the number of permits issued during the audit period is notably higher. A marginal difference was observed when comparing 2011/12 to the audit period, with 20 and 25 permits issued, respectively.
8. In determining the frequency of encroachment permits granted, other factors merit consideration. Although not necessarily bearing direct relevance to all cases reviewed with respect to the audit period, the NAO is of the opinion that the acknowledgement of such factors provides a more comprehensive perspective of the incidence of permits granted. First, the submission of a request for the grant of a permit is extraneous to the GPD's control as this is solely subject to action taken by the prospective applicant. Second, the input of other stakeholders may form an essential part of the process, determined by the nature of the encroachment permit requested. Delays in this sense may influence the timing of issuance.
9. One final aspect relating to the frequency of permits issued related to the duration between the date of application and permit issuance. In this regard, the NAO focused on permits that were issued either in a relatively short or long period in comparison with other permits. Requests that were processed in under one month were deemed regular by the NAO, justified in this sense by the fact that these were straightforward requests and that all the required supporting documentation was made available to the GPD thereby facilitating approval. On the other hand, cases that had lengthy approval processes, at times exceeding two years, were conditioned by elements extraneous to the GPD's direct control.
10. The second objective of this audit entailed the determination of the regularity, or otherwise, of permits issued during the period 1 December 2012 to 8 March 2013. This analysis involved the in-depth review of the 25 encroachment permits issued during this period.

11. The NAO noted that an element of discretion was exercised in establishing encroachment fees. From the cases reviewed, it emerged that the GPD, at times, applied rates that were below the minimum threshold set for permits relating to particular categories. In the case of the stores at Ta' Qali, although some element of justification for the granting of the permit was provided, the Department failed to substantiate why the rate charged, that is, €1,000 per annum, diverged from the applicable minimum standard rate of €3,241 per annum. Another notable divergence between the applied rate and the standard rate was that of the kiosk situated in a playground in Mellieħa. Here, the fee established by the GPD was €6,950; yet, this should have been at least €14,000 per annum had the standard rates been applied. Although the Department cited various factors that bore impact on the fee established, the NAO maintains an element of reservation regarding the rate charged.
12. Of particular note was the discretion exercised by the Minister MFCC in the allocation of a garage in Santa Luċija. Despite the fact that the Minister indicated that this allocation was to be on a temporary basis and was not to prejudice the public call for tenders, the NAO deems the intervention as unwarranted. This assumes particular relevance when one considers that three other persons had preceded the grantee in expressing an interest in acquiring the premises. This Office is of the opinion that intervention at this level should be avoided.
13. In its review, the NAO noted that fees charged, once established, remain unaltered despite successive renewals of the permit. This Office urges the GPD to implement a system whereby encroachment permit fees are subject to regular update, at least accounting for inflation adjustments. The Department's failure to address this matter inevitably results in the unfair application of rates, with establishments bearing similar characteristics and requesting similar permits being charged significantly different rates, merely due to the date when the permit was first issued. Moreover, the inexistence of a mechanism that automatically adjusts permit rates results in fees that are clearly not in line with current market considerations, rendered amply evident in the case of the Mellieħa kiosk that was charged a fee of €2.33 per annum that remained unchanged for nearly fifty years.
14. Of concern to the NAO were the cases where fees remained outstanding for considerable periods, notwithstanding the decisive action that could have been taken by the Department through the withdrawal of such permits. Although in the majority of cases reviewed, the encroachment fees were promptly settled, the NAO noted that other balances remained pending. Of note was the case of a storage area in Marsa, where the balance of €55,290, equivalent to three years' dues, was outstanding. Also of significance was the case of a kiosk in Sliema, where a balance of €3,320, equivalent to two years' dues, was unpaid. Despite the possible revocation of permits in cases of infringements, the GPD expressed its reluctance to take such decisive action, indicating its preference to pursue payments through other enforcement measures.
15. In the case of encroachment permits issued for the placing of tables and chairs, the NAO has strong reservations about the standard rate applied, as it fails to take into consideration various factors that determine the profitability, or otherwise, of the site. The GPD charged a flat rate of €23.29 per metre squared per annum for such permits, irrespective of whether the site was located on a prime site or otherwise. In this context, the NAO is of the opinion that location, seasonality and layout should be reflected in the rate charged. The Department may consider the establishment of minimum and maximum rates, or alternatively opt to augment the standard rate with a premium charge that would take into account the above factors.

16. The NAO noted that the endorsement of other public sector authorities was not always obtained prior to the issuance of encroachment permits by the GPD. Although applicants were required to submit MEPA clearance with respect to particular encroachment permits, the GPD issued the relevant permits even in cases when such approval was not provided. Perhaps the most significant shortcoming in this regard was that of a restaurant at the Xlendi waterfront. Here, the Office's concern was heightened by that stated by the Director Land, wherein it was claimed that most establishments in Gozo were not covered by MEPA permits. The NAO insists that multiple irregularities should not serve as justification for further breaches and instead, should serve to instigate widespread decisive action by the GPD to rectify the situation.
17. On a positive note, the NAO recognised the collaboration registered with various local councils in the cases where the councils' views were requested prior to the issuance of encroachment permits. The GPD consistently implemented proposed amendments to encroachments, which were reflected in the permits granted.
18. Other shortcomings noted by the NAO related to the issuance of encroachment permits on a temporary basis with the intention of following up such permits with a call for tenders. This Office noted that action in this sense was not pursued in these cases. In addition, the NAO considered enforcement action taken by the GPD as lacking, particularly evident in cases where grantees occupied more space than that permitted or occupied public land despite not having the required encroachment permits. This shortcoming was mainly noted with regard to the placing of tables and chairs.

Chapter 1

Introduction

Chapter 1 – Introduction

1.1 Request by the Public Accounts Committee

1.1.1 In a letter dated 30 November 2013, two Government Members on the parliamentary Public Accounts Committee (PAC) requested the Committee to investigate the manner in which encroachment permits were issued during the period December 2012 to March 2013. According to media coverage cited in the letter, 100 encroachment permits were issued during the last two months of the previous administration, when Government usually issued 150 permits on an annual basis. In view of this, the PAC was requested to review how these permits were issued, highlighting the proximity of issuance to the 2013 general election as an indication of the possible abuse of public funds.

1.1.2 Until August 2014, no action was taken by the PAC and another letter dated 25 August 2014, addressed to the Auditor General (AG) and signed by four Government Members on the PAC, was subsequently received by this Office. Here, the AG was requested to investigate the encroachment permits issued during the period immediately preceding the 2013 general election. This was in view of the fact that the subject referred to in the correspondence had not been discussed by the PAC and therefore, a direct request for investigation of the matter at hand was directed to the National Audit Office (NAO).

1.2 Terms of Reference

1.2.1 In addressing the request made to this Office, the NAO referred to the concerns outlined in the correspondence dated 25 August 2014 as well as to matters brought to the PAC's attention in the initial letter dated 30 November 2013. In essence, the NAO identified two main areas of concern. The first aspect related to the frequency of issue of encroachment permits in the period preceding the 2013 general election, while the second entailed the determination of the regularity, or otherwise, of permits issued.

1.2.2 The audit period was established as 1 December 2012 to 8 March 2013. This period was based on that stated in the correspondence dated 30 November 2013. In determining whether the number of permits issued prior to the 2013 general election exceeded the norm, the NAO compared the frequency of permits issued from 1 December 2012 to 8 March 2013 with the corresponding periods in other years. While address of the first audit concern necessitated comparison with other periods, the second audit concern entailed an in-depth review of the encroachment permits issued during the audit period.

1.2.3 In light of these concerns, the NAO established the following terms of reference:

- a. The analysis of the frequency of encroachment permits issued during the period 1 December 2012 to 8 March 2013 by comparison with other periods, namely:
 - i. 1 December 2010 – 8 March 2011;
 - ii. 1 December 2011 – 8 March 2012; and
 - iii. 1 December 2013 – 8 March 2014.
- b. An in-depth analysis of the encroachment permits issued between 1 December 2012 and 8 March 2013.

1.3 An Overview of Encroachment Permits

1.3.1 The term ‘encroachment’ essentially refers to a permit granted for the occupancy of public land for a specific period and for a particular purpose or use. An encroachment permit authorises the grantee to construct approved facilities, conduct specific activities or make use of government-owned land or property for a period not exceeding 12 months. On the expiry of this period, an encroachment permit may be renewed for a similar interval; in fact, such permits must be renewed annually. The encroachment permit neither is, nor does it confer, a property right and is not transferable. Encroachments are invariably granted ‘at the pleasure of Government’ and are therefore of a precarious nature where the entitlement of the grantee is tenuous.

1.3.2 Encroachment permits are regulated by virtue of Chapter 268 of the Laws of Malta, that is, the Disposal of Government Land Act. Specifically relevant in this sense is the Schedule (Article 3), with clauses 7 and 8 asserting that:

7. *Servitudes and other similar rights may be created on government land whenever such rights are required for the proper use of any other land by any other person, and it would not be the case that such right is given on encroachment terms. In any other case such rights may and shall be given on encroachment terms.*
8. *Encroachment terms are also allowed as regards:*
 - a. *stretches of shore land as ‘beach concessions’;*
 - b. *land adjacent to coffee-shops and similar establishments for the placing of tables and chairs; and*
 - c. *other similar concessions.*

1.3.3 Responsible for the administration of encroachment-related matters is the Government Property Department (GPD). During the period under review, the GPD formed part of the portfolio of the Ministry for Fair Competition, Small Business and Consumers (MFCC). The GPD classifies encroachment permits under 25 categories, the most common of which are delineated hereunder:

- a. tables and chairs, display stands, and planters;
- b. canopies;
- c. platforms;
- d. kiosks;
- e. beach concessions;
- f. requests from non-government organisations; and
- g. storage areas.

- 1.3.4 Permits for encroachments are ordinarily granted for a period of one year, with the start date being the first working day of the calendar year. Encroachment permits are automatically renewed by the GPD at the start of each calendar year, subject to the payment of the fee by the grantee. The authorisation required for the granting of encroachment permits depends on the nature of the permit requested. By means of example, the encroachment of public spaces for the placing of tables and chairs requires the prior authorisation of the Malta Tourism Authority (MTA), the Malta Environment and Planning Authority (MEPA) and the respective local council. At times, requests relating to the granting of encroachment permits require the endorsement of the Minister responsible for the GPD. Ministerial endorsement is ordinarily required in cases where such authorisation does not fall within the remit of the aforementioned authorities.
- 1.3.5 Departures from this standard are occasionally applied, depending on the particular circumstances of the encroachment requested. Permits for less than a year are granted on a case-by-case basis, as established by the GPD or at the applicant's request. Such requests may be made in, for example, cases where seasonal factors bear relevance on the nature of the encroachment. Adjustments to the encroachment period are also effected in instances where the GPD intends to shortly issue a call for tenders for the public land or property given on encroachment terms. Nonetheless, revisions to the standard one-year permit are only made for a shorter duration and, therefore, permits cannot extend beyond the typical one calendar year. When a permit is applied for during the last quarter of a given year, a pro-rata fee is levied taking into account the date of issuance of the permit. Such short-term permits are automatically renewed for subsequent one-year periods subject to the payment of dues.
- 1.3.6 Notwithstanding the processes outlined above, which were in place during this investigation, the NAO was informed that between 2010 and March 2013, the GPD processed new encroachment permits in a somewhat different manner. During this period, the effective date of the permit was the same date as that of its issuance. For example, a new encroachment permit issued on 1 June 2012 would have this as the date of effect. On the other hand, a permit issued on 1 June 2013 would have 2 January 2013 as its date of effect. This consideration had a bearing on the NAO's determination of the number of encroachment permits issued, with the Office focusing on the date of issue rather than the date of effect.
- 1.3.7 According to the GPD's annual departmental reports, the number of encroachment permits issued from 2010 to 2014 amounted to 422, 277, 136, 155 and 110, respectively. The revenue collected from encroachment permits, based on the reply to parliamentary question 6812, was as follows: €592,571 for 2010, €644,564 for 2011, €634,474 for 2012 and €629,427 for 2013. (Table 1 refers).¹ Of concern to the NAO was the fact that the GPD was unable to provide information relating to the annual revenue generated by the Department in 2014 from the issuance of encroachment permits.

Table 1: Annual encroachment permits and revenue, 2010-2014

	2010	2011	2012	2013	2014
Encroachment permits	422	277	136	155	110
Annual revenue (€)	592,571	644,564	634,474	629,427	n/a

¹ The NAO noted that the GPD accounted for encroachments granted in terms of sites rather than permits. In the case of one encroachment permit issued for multiple sites, the GPD would consider each site as an individual occurrence, whereas the NAO considered this as one permit covering multiple sites. This inevitably resulted in a difference in the number of encroachment permits issued, with GPD consistently recording more permits than the NAO.

1.3.8 The NAO noted that the number of permits issued in 2013, as reported in parliamentary question 6432, was 137, whereas the annual departmental report indicated 155 permits. The GPD explained this discrepancy as possibly resulting from the fact that certain permits were issued at no charge. Moreover, parliamentary question 6432 was dated 10 December 2013, and although the issuance of permits in the last three weeks of the year is unlikely, the NAO acknowledged that this may have bore an impact on the number of permits reported in 2013.

1.4 Methodology

1.4.1 This investigation was carried out in terms of the provisions of Article 9(a) of the First Schedule of the Auditor General and National Audit Office Act, 1997. The audit focused on encroachment permits granted during the period 1 December 2012 to 8 March 2013, addressing concerns relating to the frequency, as well as the regularity, of the permits issued.

1.4.2 In addressing these objectives, the NAO examined the relevant documentation retained by the GPD in relation to the issuance of encroachment permits during the periods 1 December 2010 to 8 March 2011, 1 December 2011 to 8 March 2012, 1 December 2012 to 8 March 2013, and 1 December 2013 to 8 March 2014. Particular attention was directed towards the encroachment permits issued between 1 December 2012 and 8 March 2013. These permits were the primary focus of this investigation and here, the NAO delved into detail, reviewing all the relevant documentation retained by the GPD in this respect. It is imperative to state that the NAO relied on information submitted by the GPD and could not verify the completeness of data submitted.

1.4.3 In addition, the NAO held a number of meetings with the GPD officials tasked with managing the process of issuing encroachment permits. These meetings focused on two key aspects in this regard, namely, the procedures relating to the granting of permits and the fee structure applicable to the different types of encroachments. Aside from the GPD officials, the former Minister for Fair Competition, Small Business and Consumers, responsible for the GPD, was also interviewed by the NAO. Public officers cited in the report are referred to by their designation at the time reported on.

1.4.4 The report is structured in four chapters, with this chapter providing an account of the PAC's request for the NAO to investigate and a general overview of the processes and procedures regulating the issuance of encroachment permits. Aside from delving into detail with regard to the GPD's role in determining the grant, or otherwise, of encroachment permits, Chapter 2 addresses the audit's first objective. In this sense, this chapter provides an account of the NAO's analysis of the frequency of encroachment permits issued during the period under review, that is, 1 December 2012 to 8 March 2013, by comparison with other periods. The audit's second objective is addressed in Chapter 3, where the encroachment permits issued during the audit period are analysed in depth. This analysis includes verifications regarding whether the encroachment permits granted were in accordance with the regulations and procedures outlined by the GPD. The NAO's conclusions and views relating to all the elements put forward in this audit's terms of reference are outlined in Chapter 4.

Chapter 2

Background Considerations

Chapter 2 – Background Considerations

2.1 Encroachment Permits: An Overview of Procedures

Applying for an Encroachment Permit

- 2.1.1 Requests for the issuance of encroachment permits are to be addressed to the GPD's Director General (DG); however, it is the Estate Management Directorate that is tasked with the responsibility of processing such requests. Requests for encroachment permits should contain details of the proposed area and its intended use, as well as a site plan with a scale of 1:1,000 issued by MEPA. These are included in the eventual encroachment permit if the application is acceded to. The Directorate recommends the granting or otherwise of the request, with such recommendation subsequently forwarded for the approval of the DG GPD and/or the Minister responsible for land, as the case may be. Subject to sanctioning, the Department informs the applicant of the positive outcome of the request made through a notice to call, where the applicant is requested to collect the permit against payment of the relative encroachment fee.
- 2.1.2 Encroachment permits are granted for the specific use outlined in the corresponding application, thereby constraining the utilisation of land encroached on to this purpose. If the grantee intends to extend the area covered by the encroachment permit, then one is to apply afresh indicating the enlarged area requested. Furthermore, encroachment permits are neither transferable nor inheritable. If the grantee intends to transfer an area covered by an encroachment permit to a third party, then the latter is required to submit a new application. In the case where the grantee is deceased, the respective heirs need to apply afresh to obtain an encroachment permit in their name.
- 2.1.3 Applications for encroachment permits are therefore submitted under the following circumstances:
- a. first time applications;
 - b. any alterations to the existing encroached area;
 - c. the transfer of a business; and
 - d. inheritance.
- 2.1.4 All encroachment permits are due for renewal at the beginning of each year, with an invoice generated and forwarded to the grantee for payment. The permit is issued

once payment is effected. If an encroachment permit is withdrawn midway through a given year, a pro-rata refund may be effected, since Government is not legally bound to do so and any such refunds are issued at its discretion.

2.1.5 According to the GPD, encroachment permit rates are, to some extent, subjective. Although the GPD has standard rates for the different encroachment categories indicating the applicable minimum and maximum rates, it is not always possible to apply the standard rates due to a myriad of factors that have to be taken into consideration. The GPD stated that, although the rates were being reviewed by the Department, no definite outcome had been determined at the time of writing.

2.1.6 Despite the fact that standard processes for the application and issuance of encroachment permits have been established by the GPD, the NAO noted the absence of formally documented policies and procedures, except for that of the placing of tables and chairs.

Types of Encroachments

2.1.7 The GPD classifies encroachments under 25 categories, which vary considerably in nature and range from the placing of tables and chairs to the allocation of parking spaces. The most common encroachment permits granted relate to the placing of tables and chairs. Hereunder is a list of the 25 categories of encroachment permits (Table 2 refers).

Table 2: List of encroachment categories

Encroachment Category			
1	Tables and chairs	14	Parking spaces
2	Platforms	15	Lotto offices
3	Canopies	16	Washrooms or balconies
4	Kiosks	17	Mobile phone base stations
5	Beach concessions	18	Tower cranes
6	Storage areas	19	Telescopes
7	Non-governmental organisations (NGOs)	20	Newspaper dispensers
8	Cesspits	21	Enemalta substations
9	Liquid petroleum gas (LPG) tanks	22	Structures (recreational)
10	Underground shelters	23	Garden sites
11	Small adverts	24	Trenches or pipes
12	Billboards	25	Local councils
13	Caravan sites		

2.1.8 The only standard application form utilised by the GPD in processing requests for the issuance of encroachment permits relates to that for tables and chairs. A pro-forma application form, available on the Department's website is submitted by the applicant requiring a permit for the placing of tables and chairs in a predefined area. The application form is to be submitted for the endorsement of the MTA. Such submissions are to include the required photographs and site plans, a copy of the last operating license for the business, as well as the MEPA development permit, where applicable. The applicant's architect must certify all documentation submitted in this regard. If approved by the MTA, the application is forwarded to the GPD Estate Management Directorate for further processing.

- 2.1.9 In considering such applications and prior to the issuance of the approval, the Estate Management Directorate consults with the respective local council on the matter. Applications approved by the Directorate are referred to the Land Directorate within GPD for the issuance of the relevant permit against the settlement of the payment due. The GPD forwards a copy of the encroachment permit to the MTA for the issue of an operating licence and to MEPA for possible action with regard to the submission of a development application by the grantee.
- 2.1.10 The possible action required by MEPA is regulated by the Development Notification Order of 2001, which is a legal notice intended to exempt minor developments from full development permit procedures, including that for the placing of tables and chairs in public spaces. The Development Notification Order permits the placing of tables and chairs (with umbrellas) in public open spaces, subject to a number of conditions. Among others, these conditions stipulate that:
- a. MEPA is notified;
 - b. MEPA does not, within 30 days of such notification, inform the applicant that a Development Permission is required;
 - c. the tables and chairs do not impair visibility at a road junction or otherwise pose a threat to the safety of pedestrians or vehicular traffic; and
 - d. the tables and chairs do not obstruct access to any adjoining property.
- 2.1.11 Encroachment permits issued with respect to the placing of tables and chairs are charged a flat rate of €23.29 per metre squared per annum. The Department indicated that a review of permit fees had been carried out in 2011 in order to revise the rates charged, correcting for inflation and market factors. Proposed revisions to the standard rate suggested a minimum rate of €30 per metre squared, whereas prime sites were to be charged at €50 per metre squared. The NAO noted that the proposed revisions to the rates charged for tables and chairs were not implemented by the GPD and the rate of €23.29, which dates back to at least 2000, continues to be applied.
- 2.1.12 The GPD referred to the considerable exceptions to the established standard rate. For instance, the Department indicated that a number of encroachment permit fees were revised upwards to reflect the upgrading of the area encroached on. Here, specific reference was made to the embellishment of Merchants Street in Valletta, which included the provision of uniform tables and chairs modules for use in the area. Other deviations from standard rates related to permits that had been in place for a significant number of years, which fees had originally been charged at significantly lower rates and were never adjusted by the Department. Lower encroachment permit rates are also charged in cases where establishments are located in areas that are subject to planned major roadworks.
- 2.1.13 The rates applicable with respect to tables and chairs are revised in cases where platforms are required to address uneven paving. Under such circumstances, an additional fee of €1 per metre squared per annum is charged, in addition to a fixed fee of €50 per annum. This also applies to requests for the placing of fixed canopies, which are charged at €250 per annum. Similar to that stated for tables and chairs, a revision to this rate had been proposed in 2011, whereby the rate was to be €75 per metre squared. Notwithstanding the GPD's review, the NAO noted that the rate remains unchanged at the time of writing.
- 2.1.14 In the case of kiosks, applicants are required to obtain a MEPA permit prior to seeking authorisation from the GPD. A change of ownership would not necessarily entail the requirement to source a new MEPA permit. Such a permit would only be necessary if

there is a change in the footprint or location, or in the case of further developments carried out with respect to the kiosk.

- 2.1.15** Encroachment permit rates for kiosks applied by the Department vary, largely due to when the permit was first issued and the area encroached on. In the case of encroachment permits that were originally issued a number of years back, a fixed rate of €2,027 is charged. The only consideration applied in this case is that the site must not exceed an area of 20 metres squared. In the case of more recent applications, the GPD takes into account other factors, such as the location, whether use is subject to seasonal fluctuations and the dimensions of the site. To this end, permits for kiosks are subject to a minimum charge of €100 per metre squared and to a maximum charge of €475 per metre squared. For instance, the chargeable rate for an encroachment permit for a kiosk in Sliema would be €475 per metre squared per annum. On the other hand, 80 per cent of the maximum rate per metre squared is charged for kiosks in Bugibba, that is, €380. Similarly, encroachment permits for kiosks located in Gozo are charged at 75 per cent of the maximum rate, that is, €356 per metre squared.
- 2.1.16** As in the case of kiosks, rates charged by the GPD for encroachment permits for beach concessions vary from case to case, largely determined by when the concession was originally granted. In the case of concessions that date back a considerable number of years, the typical rate charged stood at €400 per annum. On the other hand, more recent encroachment permits are charged at a rate of €6 per metre squared of the beach area occupied. This per metre charge is applied where a pre-defined area is established by the GPD for the permit holder, such as the case of Għadira Bay. In cases of other beach concessions where the area occupied by the rental point for umbrellas and deckchairs is sanctioned (as opposed to the actual beach area), the rate charged by the Department is fixed at €4,000. A case in point is that of Pretty Bay, Birżebbuġa. Beach concessions require the approval of the Minister responsible for land. This ministerial authorisation is required in view of the fact that such sanctioning does not fall within the remit of the pertinent public sector authorities. Unless otherwise specified, all categories of encroachments that ensue are similarly sanctioned.
- 2.1.17** Encroachment permits are issued for various purposes, including for general storage, cesspits and the placement of LPG tanks. Storage space is charged at a minimum of €7 per metre squared up to a maximum of €14 per metre squared per annum. While cesspits are charged at a fixed rate of €50 per annum, permits for LPG tanks are issued against a fee of €30 per metre squared, or an annual minimum charge of €100.
- 2.1.18** Advertising-related permits are also issued by the GPD, and are classified as small adverts and billboards. With regard to small adverts, specifically those on folding seats located at bus stops, a fee of €25 per metre squared is levied by the GPD. On the other hand, permits for billboards are subject to the approval of MEPA and are charged an annual fixed rate of €4,200 per billboard.
- 2.1.19** The GPD distinguishes between two types of encroachment permits for caravan sites. In the case of a single caravan site, a fixed rate of €1,200 per annum applies. On the other hand, large caravan sites, such as those in Baħar iċ-Ċagħaq, are charged €50,000, and the duration of such permits is limited to a number of months, typically four.
- 2.1.20** In the case of encroachments relating to parking spaces, the Department adopts a similar dichotomous approach. Large parking areas are charged between the minimum and maximum rates of €5 and €7 per metre squared, whereas rates for parking spaces, such as those located outside banks, are charged at €52 per metre squared.

- 2.1.21 Other encroachments permits address a variety of uses of public land, such as lotto booths, underground shelters, newspaper dispensers and electricity sub-stations. In the case of lotto booths, the standard fee for such booths is €125 per metre squared; however, again, the GPD indicated that this might vary depending on the location. Underground shelters are charged a fixed rate of €250 per annum, whereas newspaper dispensers are charged at a rate of €5 per annum for each stand. In view of the change in the legal status of the Enemalta Corporation, the GPD now levies a charge of €22 per metre squared for sub-stations built on public land.
- 2.1.22 Less usual, yet even so requiring GPD endorsement are permits for telescopes, tower cranes, mobile phone base stations and trenches. Encroachment permits for telescopes are subject to a fee of €350 per site, while tower cranes encroaching on public land are charged €4,660 on an annual basis. Charges for mobile phone base stations range from €1,631 to €2,329 per annum, depending on location. Trenches requiring sanctioning by the GPD are charged at €25 per annum.
- 2.1.23 Other structures built on Government-owned property that require the prior approval of GPD are washrooms and balconies, for which a fixed rate of €25 per annum is charged. According to the GPD, the nominal fee charged is due to the fact that the applicant would already have the right to use the area as a tenant of the apartment block.
- 2.1.24 At times, encroachment permits are issued for agricultural or recreational purposes. In the case of the former, the GPD distinguishes between agricultural land (dry and irrigated), beekeeping and animal husbandry. This is reflected in the different rates levied, with encroachment permits for dry and irrigated land charged at €162 and €405 annually, respectively. On the other hand, land utilised for beekeeping and animal husbandry is charged at €108 and €2,088 annually, respectively. These rates are based on an area of 1,124 metres squared. Encroachment permits for rooms built on such sites are charged a minimum of €25 and a maximum of €50 per metre squared. Other structures, intended for recreational purposes, are charged a minimum rate of €25 per metre squared and a maximum rate of €55 per metre squared, depending on the locality.
- 2.1.25 Finally, encroachment permits are also issued in favour of NGOs and local councils. Encroachment permits issued to NGOs are charged at a nominal rate of €2.20 per metre squared. These permits are usually issued following a political decision in support of the organisations' causes. Applications by local councils are processed on a case-by-case basis and the fees charged reflect the nature of the encroachment requested.

Enforcement

- 2.1.26 Inspections to ensure regularity with the conditions stipulated in encroachment permits are few and far apart. According to the GPD, such action is normally taken when complaints or reports are lodged with the Department. The GPD attributed this situation to the lack of resources at the Department's disposal, compounded by the extensive number of Government-owned properties and public land that the Department administers. These factors also impact on subsequent enforcement action taken by the Department for infringements detected during inspections. The Department maintained that in view of its limited resources and the relatively immaterial revenue generated by encroachment permits, action by the GPD is often reactive rather than proactive.

Conversion to a Lease Agreement

2.1.27 Certain categories of encroachments may be converted into a lease. This is possible through a call for tenders by the GPD, in terms of Article 3, Sub-article 1(a) of Chapter 268, the Disposal of Government Land Act, following a request by the grantee, who would have to renounce the permit before the call for tenders is issued. If the grantee was in possession of an encroachment permit for over five years, then this would entitle same to the right of first refusal. This right emanates from the 'Policy on the Disposal of Non-residential Government Property thro' Letting, Re-letting and Emphyteutical Concessions', in force as from August 2001. Paragraph 8 of the Policy states that:

Tenants of a running lease/encroachees who renounce to their tenancy right/encroachment permit, so that tenders can be called for the disposal of the same property under any other title will be granted the right of first refusal. This right is to be reflected in the eventual call for tenders. In the case of encroachment, this provision shall only apply where the property in question has been held on encroachment terms for at least five years.

2.1.28 Alternatively, an encroachment permit may be converted into a lease by virtue of a Parliamentary Resolution. According to Article 3, Sub-article 1(d) of the Disposal of Government Land Act:

1. *No land which belongs to or is administered by the Government shall be disposed of unless such disposal is made in accordance with one of the following provisions, that is to say - ...*
 - d. *In accordance with a special resolution of the House of Representatives which is in force at the time of the disposal; ...*

2.1.29 Once a Parliamentary Resolution to this effect is proposed, it has to be first discussed at the National Audit Office Accounts Committee as per Article 3(7) of the above-referred Act. If the Committee unanimously agrees on the motion brought to its attention, then the House proceeds to vote on the motion without debate. In cases where the Committee fails to reach unanimous agreement, the motion is subject to debate by the House and a vote for the passing of the Resolution must be taken.

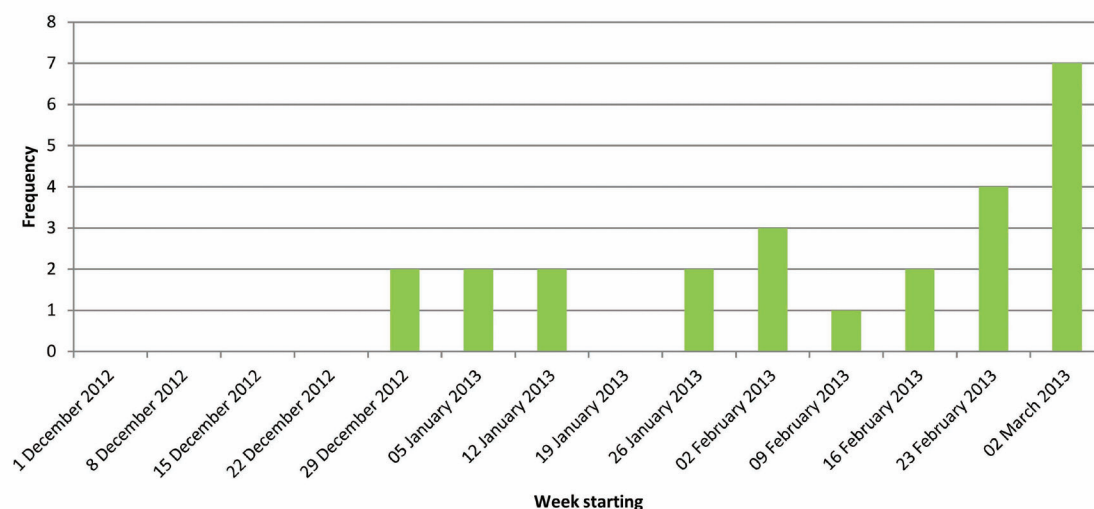
2.2 An Analysis of Encroachment Permits Issued

2.2.1 While the preceding part of this chapter provided background information on the different types of encroachment permits issued by the GPD, this section reports on the NAO's first audit objective, which entailed the analysis of the frequency of permits issued during the period 1 December 2012 to 8 March 2013. As stated in paragraph 1.3.4, encroachment permits up for renewal are automatically issued by the Department, subject to the payment of dues, requiring no additional intervention whatsoever. In this context, the NAO limited its review to new encroachment permits issued during the period under review. This scoping reflected the request made to the NAO, wherein this Office was tasked with the verification of permits issued during the aforementioned period, implying an element of intervention by the Minister, the GPD, or any other public sector entity involved. Such intervention is only required in the case of new permits, hence the Office's decision to scope the audit in this manner.

2.2.2 The NAO established that the number of new encroachment permits issued between 1 December 2012 and 8 March 2013 was 25. In certain instances, an encroachment permit corresponded to multiple sites; however, for the purposes of this audit, these were considered as single cases as one permit was issued by the GPD covering

the multiple sites. As shown in Figure 1, no encroachment permits were issued in December 2012. The GPD issued eight permits in January and ten permits in February 2013. Furthermore, up to the aforementioned cut-off date, another seven permits were issued in March 2013.

Figure 1: Encroachment permits issued on a weekly basis, December 2012 - March 2013



2.2.3 Of interest to the NAO was whether the applications represented in Figure 1 were processed in a timely manner. Barring a small number of cases, encroachment permits were granted within a year, which period was considered reasonable by the NAO. As rendered evident in Table 3, the majority of permits were issued within six months of application.

Table 3: Duration from date of application to issuance of permit

Duration from date of application to issuance of permit	Encroachment permits granted
0 to 3 months	8
4 to 6 months	8
7 to 9 months	3
10 to 12 months	1
over 12 months	5

2.2.4 Table 4 categorises the encroachment permits issued between 1 December 2012 and 8 March 2013. The most common type of encroachment was that relating to the placing of tables and chairs, followed by permits to NGOs, grants for the use of public land for storage purposes, and mobile kiosks. Other permits issued by the GPD related to land for agricultural use, beekeeping, a marine fuel station, the placing of newspaper dispensers, equipment for the monitoring of ambient air and an area allocated as a security measure. All of these cases were reviewed in detail by the NAO, in line with the second objective of this audit, whereby the regularity of authorisation or otherwise was determined. The corresponding analysis is presented in Chapter 3.

Table 4: Types of encroachment permits for the period 1 December 2012 - 8 March 2013

Encroachment Permit Type	December 2012	January 2013	February 2013	March 2013	Total
Tables and chairs	0	3	3	1	7
NGOs	0	1	2	1	4
Storage areas	0	1	1	2	4
Mobile kiosks	0	0	2	1	3
Agricultural purposes	0	0	1	1	2
Area as a security measure	0	1	0	0	1
Beekeeping	0	1	0	0	1
Marine fuel station	0	0	0	1	1
Monitoring of ambient air	0	0	1	0	1
Newspaper dispensers	0	1	0	0	1
Total	0	8	10	7	25

2.2.5 As made reference to earlier, the approval of encroachments is contingent on the nature of the permit requested. With regard to the period under review, out of the 25 permits issued, 13 were authorised by the Minister MFCC, while the remaining 12 were sanctioned by the GPD and other public sector entities where necessary.

2.2.6 As indicated in Figure 1, although marginal, an increase was registered in the number of encroachment permits issued during the last two weeks of the period under consideration. During this period, eleven encroachment permits were issued, with seven permits issued between 4 March and 8 March 2013. Out of these eleven permits, eight were authorised by the Minister. Table 5 presents details of encroachment permits issued during the weeks starting 23 February 2013 and 4 March 2013, listing the type of encroachment, the date of permit, the site encroached on and the date of request.

Table 5: Encroachment permits issued on or after 23 February 2013

Type of Encroachment Permit	Issuance Date	Location	Date of Request
Tables and chairs	25 February 2013	Tower Road, Sliema	17 January 2013
Premises	27 February 2013	Triq il-Miġja tal-Papa, Isla	25 October 2010
Basement	28 February 2013	Housing Estate, Pieta	11 July 2012
Open storage area	28 February 2013	Prince Albert Street, Marsa	9 February 2012
Mobile kiosk	4 March 2013	Triq l-Erwieħ, Mellieħa	15 October 2003
Tables and chairs	5 March 2013	Xatt ix-Xlendi, Xlendi	8 June 2012
Marine fuel station	6 March 2013	Mġarr Port, Gozo	15 November 2012
Storage area (hut)	7 March 2013	Pitkali Road, Attard	8 October 2012
Storage area (garage)	7 March 2013	M de Domenici Street, Santa Luċija	13 November 2012
Agriculture	7 March 2013	Triq Għajn Żejtuna, Mellieħa	15 January 2013
NGO	8 March 2013	Old Bakery Street, Valletta	11 February 2013

- 2.2.7 One notes that the majority of requests for encroachment permits that were issued within this two-week period were processed in a few months, barring some exceptions (Table 5 refers). These cases included a request for a permit for a kiosk that dated back to 2003, which remained pending due to an ongoing court case, as well as that for premises in Senglea where a request dated 2010 remained outstanding due to the numerous changes in plans for this tenement. Further details relating to these cases and other permits issued during the period under review are provided in Chapter 3.
- 2.2.8 To address the first objective of this audit, the NAO compared the frequency of the encroachment permits issued during the period 1 December 2012 to 8 March 2013 with similar periods in other years. Specifically, this Office reviewed permits issued between 1 December 2010 to 8 March 2011, 1 December 2011 to 8 March 2012, and 1 December 2013 to 8 March 2014. The NAO limited its review to these audit periods as requests for data were made to the GPD at the end of 2014, therefore eliminating the possibility of including the period December 2014 to March 2015. Instead, this Office selected the three other periods indicated earlier for comparative purposes.
- 2.2.9 Data provided to the NAO by the GPD indicated the encroachment permits issued for the periods reviewed (Table 6 refers). In the period December 2010 to March 2011, nine encroachment permits were issued. For the corresponding 2011/2012 months, twenty permits were issued, while in 2013/2014, six permits were issued.

Table 6: Encroachment permits issued (December-March | 2010-2014)

Period	Encroachment Permits
1 December 2010 – 8 March 2011	9
1 December 2011 – 8 March 2012	20
1 December 2012 – 8 March 2013	25
1 December 2013 – 8 March 2014	6
Total	60

- 2.2.10 The data presented in Table 6 is reproduced in Figure 2, illustrating the issue of permits for each of the comparative periods, as well as a month-by-month breakdown of each of these periods. It is evident that, when compared to the three similar periods represented in Figure 2, the highest number of encroachment permits was granted during the period under review, that is, December 2012 to March 2013; however, one must acknowledge that the number of permits, in absolute terms, is rather low.
- 2.2.11 The comparative data was further analysed according to the category of encroachment permit. In this sense, permits relating to the placing of tables and chairs were the most frequently granted, with 21 being registered across the periods in question. Other relatively common permit categories included those granted to NGOs, for mobile kiosks and storage areas. Less common were permits for land intended for agricultural purposes, washrooms and parking spaces. Permits were also granted for a myriad of reasons ranging from the monitoring of ambient air to the placing of telescopes, among others (Figure 3 refers).

Figure 2: Encroachment permits issued on a monthly basis (December-March | 2010-2014)

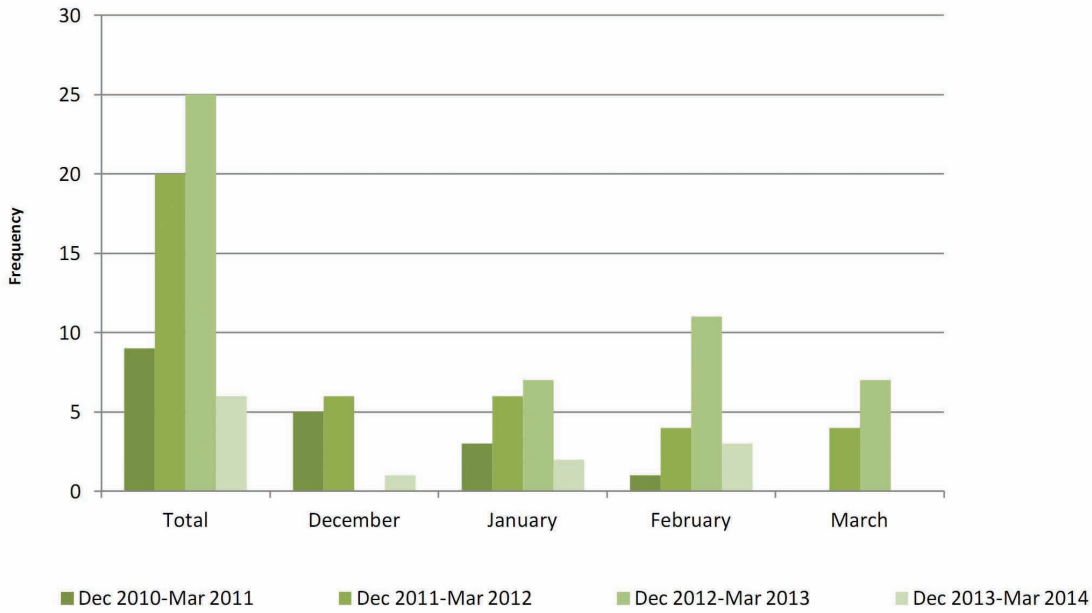
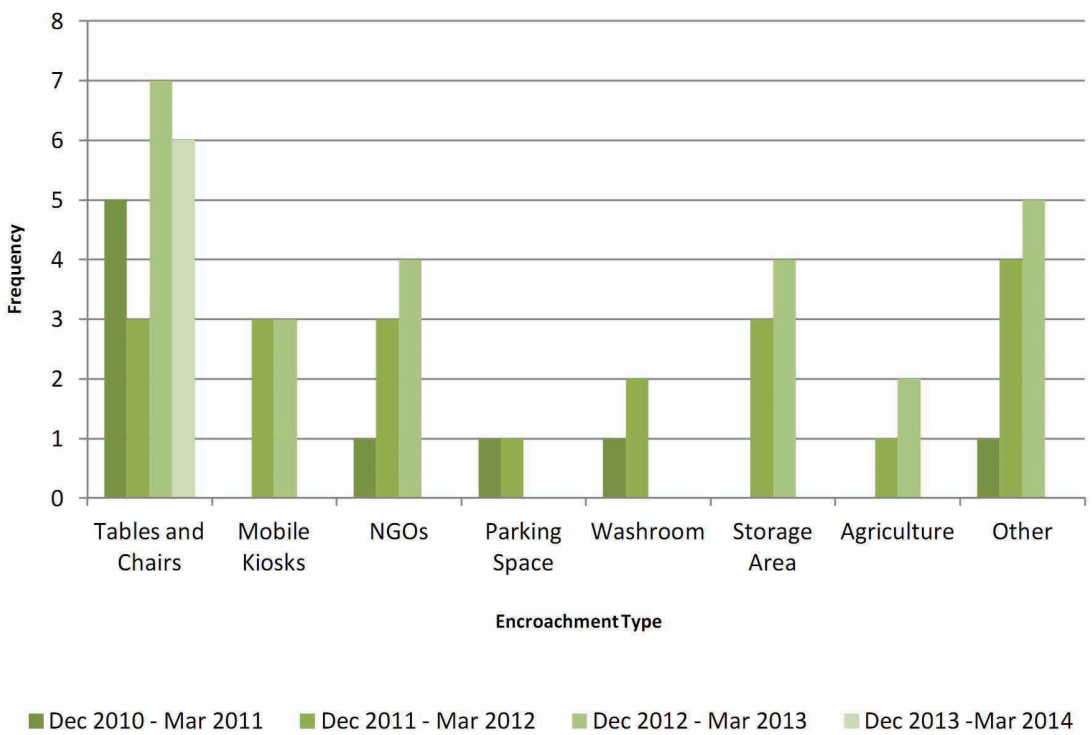


Figure 3: Encroachment permits issued by type (December-March | 2010-2014)



Chapter 3

Cases Reviewed

Chapter 3 – Cases Reviewed

3.0.1 The second objective of this audit entailed the determination of the regularity, or otherwise, of permits issued during the period 1 December 2012 to 8 March 2013. This analysis involved the in-depth review of the 25 encroachment permits issued during this period. The NAO's analysis is presented according to the categories of encroachment permits as determined by the GPD, sorted by frequency.

3.1 Newspaper Dispensers

3.1.1 A request for details regarding the process for the granting of encroachment permits for the placing of freestanding newspaper dispensers was submitted to the GPD on 23 January 2012. In its reply, on the same day, the GPD stated that the application for encroachment was to include a map or plan of Malta and/or Gozo, clearly marking all the sites earmarked for the placing of newspaper dispensers. Also required were a list of all the locations and an MTA permit or approval in cases when dispensers were to be placed in zones managed by this Authority, such as promenades. The applicant informed the GPD that a MEPA permit would not be required if the newspaper dispensers were placed outside urban conservation areas. The base required for each dispenser was 0.25 metre squared.

3.1.2 Further to this correspondence, on 3 February 2012, the applicant provided the GPD with maps, issued by MEPA, of the proposed sites together with photographs of the sites applied for. On 22 February 2012, the applicant forwarded excerpts of an email that, according to the applicant, he had received from the Heritage Planning Unit within MEPA. In this email, it was stated that the Authority found no objection to the placing of the dispensers in most of the areas indicated. However, the placing of certain dispensers in particular locations required ad hoc permission since the sites were within urban conservation areas.

3.1.3 The first lot of encroachment permits was issued on 23 April 2012 and corresponded to 41 sites across Malta. Two other lots of encroachment permits were issued to the applicant on 3 September 2012 and 9 January 2013. The lot issued on 9 January 2013 fell within the audit period and it is this permit that is of interest to the NAO.

3.1.4 The issuance of this permit can be traced to 13 November 2012, when a request for an encroachment permit with respect to 60 sites was made to the GPD. This request was supported by maps issued by MEPA indicating the sites where the dispensers were to

be located. The sites corresponding to this encroachment permit were located in the following towns across Malta and Gozo:

- a. three sites in St Andrews;
- b. five sites in Mellieħa;
- c. one site in Balzan;
- d. sixteen sites in Birkirkara;
- e. two sites in Xemxija;
- f. one site in Tarxien;
- g. six sites in Mosta;
- h. three sites in Għajnsielem;
- i. four sites in Marsalforn;
- j. four sites in Qala;
- k. nine sites in Victoria;
- l. two sites in Xlendi; and
- m. four sites in Nadur.

3.1.5 The encroachment permit was prepared by the GPD on 9 January 2013 and approved by the Minister MFCC on 15 January 2013. The encroachment permit was intentionally issued for eight months in order for its annual renewal to coincide with that of previous permits granted with respect to other lots. The standard rate applied by the GPD for encroachment permits of the sort was €5 per newspaper dispenser per annum. The annual fee for the 60 sites amounted to €300; however, given that the permit was issued for eight months, the GPD applied a pro rata charge of €200. Payment for this permit was effected on 29 January 2013. In line with that intended by the GPD, this encroachment permit was reissued on 29 August 2013, with the effective date being 2 September 2013 at the full annual rate of €300. The encroachment fee payable with respect to the period September 2013 to September 2014 was settled in July 2014. That relating to the period 2014 to 2015 was paid in May 2015. The September 2015 to September 2016 balance was pending at the time of writing.

3.1.6 It is unclear whether any of the sites encroached on were within zones managed by the MTA and therefore required the Authority's approval; however, the NAO noted that no record of such approval was on file.

3.2 Tables and Chairs

A Restaurant at Xlendi Waterfront

3.2.1 This case refers to a bar and restaurant located at the Xlendi waterfront. On 8 June 2012, the grantee's architect submitted a request to the GPD for the issuance of an encroachment permit for the placing of tables and chairs. The grantee's architect indicated that the permit was required on a temporary basis in view of the anticipated upgrading works intended for the area and planned by the Ministry for Gozo. This request, for a further nine metres squared, effectively represented an extension to the existing permits, which covered 48 metres squared.

3.2.2 After receiving this request, a GPD Architect indicated, in a minute dated 13 July 2012, that the request for a temporary extension to the encroachment permit could not be acceded to and that the applicant was to proceed as per usual procedure. This entailed the submission of the standard application form to the MTA, the relative endorsement by MEPA and sanctioning by the local council. Contrary to this advice, on 3 August 2012, the Commissioner of Land informed the applicant that approval was granted for the placing of tables and chairs, with the additional area being charged at

a fee of €200 for the period 1 August to 30 October 2012. This fee was in line with the standard rate applied by the GPD with respect to permits granted for the placing of tables and chairs.

- 3.2.3 On 23 October 2012, a week prior to the lapse of the temporary permit, the GPD informed the grantee that in order to be granted the extension to the existing permit, he was to submit the standard application form required. This was to include the relevant MEPA permit (including copies of the approved drawings), photos of the site applied for as per the specifications indicated in the application form, and a copy of the business' last operating license. To this end, the restaurateur submitted all the requested documentation, except for the MEPA permit.
- 3.2.4 On 9 November 2012, the GPD received an email from the MFCC stating that, if a temporary permit were not granted for the extended area, the restaurant would have no choice but to close down. A GPD Architect replied to this email on 12 November 2012, stating that the permits for the two main sites utilised for the placing of tables and chairs were still valid and that the restaurant would not have to close down if a temporary permit for the extension was not granted. The GPD Architect elaborated further stating that, according to MEPA permits, tables and chairs should have been placed on one of the sites and that the Authority had approved only 8.5 metres squared of land for such use. Hence, the restaurateur was already placing tables and chairs on approximately 40 metres squared of public land that was not endorsed by MEPA. In light of this, the GPD Architect noted that if the applicant did not provide the necessary MEPA permits, the Department would not be able to approve any further encroachment permits for tables and chairs, unless otherwise instructed.
- 3.2.5 Further to the above correspondence, a letter of no objection by the MTA was received at the GPD's end on 5 December 2012. However, no MEPA permits were submitted in this regard. The Ministry of Gozo intervened on 6 December 2012, requesting the GPD to issue a temporary permit for the extended area. However, the Director Estate Management, in a minute to the GPD Architect, expressed disagreement with the issuance of a temporary permit for the placing of tables and chairs that were not covered by a MEPA permit, noting that the applicant had had ample time to regularise this situation. To this end, the GPD Architect replied to the Ministry of Gozo on 11 December 2012, stating that the Department was unable to issue a temporary permit in view of the fact that the applicant had failed to acquire the necessary MEPA permit.
- 3.2.6 On 30 January 2013, the applicant's architect submitted a request for the granting of an encroachment permit, with the area of public land requested amounting to 70 metres squared. This exceeded the previous request that envisaged an encroachment area of 57 metres squared. Following this request, the GPD noted that MEPA had initiated enforcement action with regard to the unsanctioned use of a canopy and the utilisation of a larger area than that approved for the placing of tables and chairs.
- 3.2.7 On 6 February 2013, the GPD Architect, in internal correspondence addressed to the Director Land, indicated that although the applicant had been informed of the procedure to be followed, this had not been adhered to. In this regard, the GPD Architect requested guidance on the matter. In response to this request, on 13 February 2013, the Director Land stated:

"It appears that most establishments in Gozo are not covered by MEPA permits, not least this establishment. It is suggested that the encroachment permit be issued, bearing in mind that [it] is already in existence and the site is being availed of, subject that a MEPA permit is applied for within two weeks and in hand within six months."

- 3.2.8 Queries were addressed to the GPD as to why the Department changed its stance regarding this case, particularly in view of the fact that the MEPA permit was not issued and nothing had effectively changed. To this end, the NAO was informed that the GPD could not trace any documentation supporting the rationale employed in arriving at the decision to grant the permit.
- 3.2.9 Further to these instructions and to an email of no objection from the Munxar Local Council, an extension to the encroachment permit for the placing of tables and chairs was issued on 5 March 2013. The extension corresponded to an additional area of nine metres squared that had originally been requested on 23 May 2012. This extension related to a third site, which complemented another two sites already covered by encroachment permits. The permit for the third site was granted against an annual fee of €210, equivalent to the standard rate charged for such areas by the GPD, that is €23.29 per metre squared per annum. This amount was settled on 8 March 2013.
- 3.2.10 In determining whether the MEPA permit was submitted to the GPD in line with conditions set by Director Land, the NAO noted a number of shortcomings. Although not fully sanctioned by MEPA permits, the encroachment on public land extended from the 8.5 metres squared authorised by the Authority, to 93 metres squared. Furthermore, this area now corresponded to five sites as opposed to the original three. Despite the evident lack of endorsement by MEPA, encroachment permits covering 93 metres squared of public land were issued by the GPD on 14 February 2014. Permits for three of the sites were temporary 28-day permits, due to end on 13 March 2014, while the other two permits extended to year-end. No documentation indicating the renewal of the temporary permits was noted in the GPD file. This shortcoming drew the NAO's attention, particularly in view of its incongruence with seasonal considerations. These permits were granted against a total payment of €2,185.
- 3.2.11 Not entirely in line with the timeframes stipulated in the Director Land's minute, the GPD was provided with the required MEPA permit on 23 March 2015. This permit, dated 1 August 2014, sanctioned the placing of tables and chairs on 70 metres squared of public land. Encroachment permits eventually issued by the GPD on 5 May 2015, corresponding to 78 metres squared, were charged at an annual fee of €1,820. The variation in area was authorised by the GPD following inconsistencies detected in the plans approved by MEPA and the MTA.

A Restaurant at Birgu Waterfront

- 3.2.12 On 24 March 2006, a Birgu waterfront restaurant owner requested the GPD to issue an encroachment permit for the placing of tables and chairs that was to cover an area of 170 metres squared. Enclosed with this letter was a MEPA permit, an application form for the placing of tables and chairs, as well as site plans. However, the GPD did not accept these documents since, in the case of permits for the placing of tables and chairs, as per standard procedure, application forms were to first reach the MTA. On 18 April 2006, the GPD informed the applicant that his request was to be forwarded to the MTA.
- 3.2.13 On 19 December 2011, the owner of the restaurant informed the GPD that he intended to submit an application for the placing of tables and chairs on public land to MEPA. In reply to this notice, on 28 December 2011, the GPD requested the applicant to furnish the Department with a scale plan indicating the site in question. A reminder to this effect was sent on 14 March 2012. This request was acceded to by the applicant on 22 March 2012.

- 3.2.14 The GPD received all the documentation relating to this request for an encroachment permit on 4 June 2012. Here the MTA indicated its endorsement of this request and submitted the application made for the placing of tables and chairs together with a copy of the operating licence for 2011. Also referred were the required MEPA permit, site plans and photos. The NAO noted that the photos provided of the site in question already indicated the placing of tables and chairs. Hence, the applicant was effectively regularising his position. This Office was unable to determine when the use of public land in this manner had commenced, hence impeding the NAO from establishing the extent of irregularity.
- 3.2.15 Further to the receipt of the application form and additional documentation, the GPD contacted the Birgu Local Council. To this end, an email was sent on 12 August 2012 asking the Local Council for any comments in connection with the application for the placing of tables and chairs as indicated on the plans provided. In its reply dated 28 August 2012, the Birgu Local Council stated that it objected to the tables and chairs as shown in the plans. It stated that it was not clear whether the tables and chairs would leave sufficient space for pedestrians to walk on the same kerb in both directions. A meeting was subsequently held with the Birgu Local Council Mayor, where it was agreed that a 1.7-metre footway was to be left unencumbered. This understanding was confirmed by the Council on 30 January 2013.
- 3.2.16 In the interim, the GPD again requested the MTA's clearance on 4 December 2012. This endorsement was provided by the Authority that same day, this time including an MTA operating licence for 2012.
- 3.2.17 Further to the receipt of all required documentation, a GPD Architect estimated the encroachment permit fee at €4,280 per annum. The permit sanctioned the use of 131 metres squared of public land for the placing of tables and chairs, which permit was duly issued on 31 January 2013. In this case, the GPD Architect augmented the standard rate applicable for the placing of tables and chairs with an additional charge of €9.38 per metre squared, resulting in a per metre charge of €32.67. This revision was based on instructions issued by the Ministry for Urban Development and Roads on 28 November 2006 to the DG GPD wherein the Department was instructed to add to the established encroachment fee a standard rate of Lm4 (€9.32) per metre squared over all encroached areas at the Cottonera Waterfront. This fee was intended to fund the maintenance costs incurred by the Ministry for the upkeep of the Cottonera Waterfront. The encroachment fee of €4,280 in respect of 2013 was settled on 7 February 2013, while that for 2014 was paid in May 2015. Moreover, the NAO noted that the fee for 2015 remained pending at the time of writing.

A Kiosk in Tower Road, Sliema

- 3.2.18 This case related to the placing of tables and chairs on two sites adjacent to a kiosk in Sliema. Similar to the case of newspaper dispensers, the GPD used a single encroachment permit reference for both sites, which corresponded to two separate property numbers. Hence, the NAO considered this case as a single encroachment permit.
- 3.2.19 On 23 November 2012, the applicant requested an encroachment permit for the placing of tables and chairs on two sites adjacent to the aforementioned kiosk. The area requested, in aggregate, amounted to 71 metres squared. Included in the submission was a copy of a MEPA permit issued on 28 March 2012 for the relocation of the site and the inclusion of exterior tables and chairs, as well as plans for underground storage. The corresponding site plans were also provided to the GPD; however, the

area indicated considerably exceeded the area already covered by an encroachment permit, which was originally 20 metres squared.

- 3.2.20 In light of these considerations, on 20 December 2012, the GPD informed the applicant that in view of the substantial increase in the public land to be encroached on, a new application was to be submitted. As per standard procedure, the application was to be made through the MTA and had to include a copy of the relevant MEPA permit, photos of the site applied for, and a copy of the last operating licence.
- 3.2.21 The GPD received the documentation submitted by the applicant through the MTA on 17 January 2013. Included in this correspondence was the standard application form for the placing of tables and chairs, photographs of the location, the relevant MEPA permit, and site plans indicating the area being referred to. Subsequently, the GPD contacted the Sliema Local Council for its comments on the prospective encroachment permit. On 21 February 2013, the Local Council noted that it found no objection to the placing of tables and chairs in the indicated area. The NAO established that the required MTA operating licence was not included as part of the documentation submitted to the GPD with the application.
- 3.2.22 Notwithstanding this shortcoming, the GPD issued an encroachment permit on 25 February 2013 at an annual rate of €1,660. This Office noted that a rate of approximately €23 per metre squared was applied as per standard GPD rates. While the fee corresponding to this permit was settled on 1 March 2013, those for 2014 and 2015 remained pending, resulting in an outstanding balance of €3,320. Despite the grantee's failure to settle dues relating to 2014 and 2015, there was no record of any action taken by the GPD to recoup this balance.

Another Kiosk in Tower Road, Sliema

- 3.2.23 On 24 September 2010, the owner of another kiosk in Sliema submitted a MEPA Notice to the Commissioner of Land. According to the Notice, the applicant indicated her intention to apply for development permission for the relocation of the kiosk to its current location, an extension of the area for the placing of tables and chairs, flowerpots and umbrellas.
- 3.2.24 Subsequent to this, the GPD received correspondence from the applicant's architect on 23 November 2012, wherein it was indicated that the requested MEPA permit had been issued. The architect requested the GPD to commence the required procedures usually undertaken by the Department in order to officially grant the relevant encroachment permit. The architect drew the Department's attention to the fact that the relevant trading licences and permits still referred to the previous location of the kiosk, implying that the permits were no longer valid, hence impeding business. The relocation of the kiosk was necessitated by the upgrading of the Sliema promenade.
- 3.2.25 On 21 December 2012, the GPD received correspondence from the MTA, which included an application form for the placing of tables and chairs, as well as the required documentation. The documentation submitted in this respect included site plans, drawings of the layout, the relevant MEPA permit dated 3 December 2012, and photographs of the location. According to the site plans submitted, the request for encroachment on public land for the placing of tables and chairs was for an area of 52 metres squared.
- 3.2.26 In view of the pending encroachment permit, the GPD, on 6 February 2013, sent an email to the Sliema Local Council in order to elicit any comments in this regard. The Local Council replied that it did not find any objection to the proposed plans.

- 3.2.27 In this context, the GPD issued an encroachment permit for the placing of tables and chairs on 13 February 2013, at an annual rate of €1,210. The NAO is of the understanding that the rate determined in this respect is in line with the standard GPD rate established for such encroachments, that is, approximately €23 for every metre squared of public land occupied. The fee was settled on the date of permit issuance, while invoices issued with regard to the 2014 and 2015 encroachments were paid in August 2015.
- 3.2.28 Although not strictly within the NAO's terms of reference, this Office noted that on 7 May 2013, the GPD established that the grantee was in fact occupying more land than approved. The area being occupied was 94 metres squared, while that sanctioned was 52 metres squared. Following Subsequent to this, on 4 June 2013, the grantee initiated the process to regularise her encroachment on the area occupied without title through the submission of an application for development permission to MEPA. The NAO noted that there was no record on file as to whether the additional public land encroached on was regularised; however, the fee charged remained unchanged, indicating that the GPD failed to take any action on this irregularity.

A Restaurant in a Mellieħa Square

- 3.2.29 With reference to the above-captioned property, a letter requesting an encroachment permit for the placing of tables and chairs was received by the GPD on 9 July 1990. However, this request could not be entertained owing to the fact that the pavement outside the establishment was not wide enough to accommodate tables and chairs. Furthermore, it was not permissible for such items to be placed in the street due to the inconvenience it would cause.
- 3.2.30 Notwithstanding the decision taken by the GPD, the applicant persisted in this respect, making several attempts at obtaining the required encroachment permit. On 19 February 2009, the MTA submitted correspondence to the GPD, which included an application form for the placing of tables and chairs, a photograph of the site in question and the Authority-issued operating licence. Also submitted was MEPA correspondence stating that no development permission was required.
- 3.2.31 On 3 March 2009, the GPD informed the applicant that although the correspondence issued by MEPA, dated 1 July 2004, stated that no development permission was required for the placing of tables and chairs, the Department maintained that, since the width of the footway was narrow, the Authority's sanctioning was still required. Furthermore, in subsequent correspondence dated 4 May 2009, the GPD informed the applicant that the plan attached with the application indicated the site as it was expected to be following the conclusion of the planned embellishment works and not as it existed then. In order for the GPD to take further action, MEPA-endorsed plans of the area in its actual state were required.
- 3.2.32 The NAO noted that the GPD received a number of complaints regarding the placing of tables and chairs on the site in question, despite no authorisation for encroachment being granted by the Department. Enforcement action taken by the GPD on 9 July 2010 established that tables and chairs had been placed as alleged in the complaints received by the Department and that these constituted a traffic and pedestrian hazard. This irregularity was brought to the attention of the Director Land on 15 July 2010, who instructed the GPD Enforcement Section to withhold any action as, in his opinion, the placing of tables and chairs was not causing any annoyance.
- 3.2.33 No further action or developments were registered until 29 August 2012, when the GPD sent an email to the Mellieħa Local Council. In this email, the Department stated

that it had a pending request for the allocation of a site for the placing of tables and chairs in front of the establishment in question. Due to the completion of the embellishment works and the pedestrianisation of the area, the Department was now in a position to consider the request for the granting of an encroachment permit. The GPD requested site plans of the square as embellished, together with any suggestions regarding the area to be allocated for such encroachment.

3.2.34 Further comments were sourced from the Mellieħa Local Council on 8 December 2012, wherein the Council noted that it did not object to the placing of tables and chairs in the area indicated, provided that the following conditions were adhered to:

- a. the area allocated was not to overlap with the neighbouring garage and staircase;
- b. access to a nearby avenue was not to be hindered;
- c. no items were to be placed in front of the neighbouring staircase;
- d. a 1.5 metre passageway was to be allocated;
- e. all furniture, including umbrellas, were not to bear any adverts and were to conform with the environs of the square; and
- f. umbrellas were to be closed after sunset.

3.2.35 On 4 January 2013, the GPD issued the requested encroachment permit against a payment of €820. The area that was to be encroached on measured 35 metres squared and the fee charged was in line with the standard GPD rate indicated to this Office. While certain concerns raised by the Local Council were addressed through the standard conditions stipulated for the placing of tables and chairs, conditions (e) and (f) were specifically included in the permit. Notwithstanding the requirements dictating that MEPA permits were to be provided prior to the issuance of encroachment permits, the NAO noted that the Authority's permit was only provided to the GPD on 23 September 2013.

3.2.36 The NAO noted that payment relating to the 2013 permit was settled on 9 January 2013. Encroachment fees for 2014 and 2015 were also promptly paid.

A Restaurant in Rabat, Gozo

3.2.37 This case refers to a catering establishment in Rabat, Gozo. Following a change in ownership, on 30 January 2013, the previous and current owners submitted an MTA application for a change of licensee of a tourism operation. Further to this change in licensee and again on 30 January 2013, the new owner requested the authorisation of the Commissioner of Land for the transfer of the existing encroachment permit for the placing of tables and chairs to his name.

3.2.38 The encroachment permit in the name of the previous owner was terminated on 5 February 2013. On the same date, a letter to the new owner was sent by the GPD, noting the pertinent procedures to be followed when applying for a new encroachment permit. These procedures included the provision of the relevant MEPA permit and all approved plans, photos of the site applied for, and a copy of the last operating license. To this end, the MTA forwarded the relevant application form to the GPD on 13 February 2013. In its covering letter, the MTA stated that since the Authority had acknowledged the encroachment permit in question since 2006, no objection was raised from its end regarding its re-issuance to the new licensee of the establishment. Included with the application form were a MEPA permit for the placing of tables and chairs, a site plan, photos of the establishment referred to, and a copy of the last operating licence issued by the MTA.

3.2.39 In view of the information and documentation provided, the GPD proceeded to issue an encroachment permit on 19 February 2013 for 20 metres squared of land at an annual rate of €470. The rate charged was in line with the standard GPD rates forwarded to this Office. Payments for 2013, 2014 and 2015 were promptly settled; however, the NAO noted that the invoice for 2014 was delayed, issued in September instead of January 2014.

A Restaurant in Rabat, Malta

3.2.40 On 15 September 2012, the GPD received a letter from the MTA enclosing encroachment-related documents. These documents comprised an MTA application form, a MEPA permit for the placing of tables and chairs in front of the applicant's bar, site plans, MTA licenses, and pictures of the proposed site. The GPD subsequently sent an email to the Rabat Local Council on 23 November 2012 requesting its comments on the prospective encroachment permit. After no reply was received from the Local Council, an encroachment permit, valued at €35, was issued to the applicant on 11 January 2013. The area under consideration was 1.5 metres squared; hence, the rate charged was in line with the Department's applicable standard rates. The fees charged for 2013, 2014 and 2015 were consistently and promptly settled.

3.3 Non-governmental Organisations

A Basement in Pietà

3.3.1 This encroachment permit related to a basement in Pietà with an area of 277 metre squared. Given the extent of the area, the GPD was, during February 2013, considering splitting the basement into two tenements. This division was also approved by the DG GPD after consulting with the Estate Management Directorate. However, on 28 February 2013, a minute referring to a letter submitted by a band club to the GPD was noted on file. This letter was dated 11 July 2012 and had originally been placed in another related GPD file. In this correspondence, the President and Secretary General of the band club requested the use of the entire tenement for the storage of village feast decorations. According to the letter, the band club was interested in acquiring this property either through encroachment or by lease. In this regard, the Minister's approval was sought and obtained on 28 February 2013.

3.3.2 The fee established for the encroachment permit was nominal, amounting to €280. Although this Office acknowledges the rationale employed in charging subsidised rates for organisations with a commendable civic purpose, the NAO noted that the encroachment fee charged was exceptionally low when considering the area of the tenement. The club was charged €280, when the GPD standard nominal fee for such encroachments was €2 per metre squared per annum, which should have resulted in an annual charge of €554. The NAO established that the fees charged with respect to 2013, 2014 and 2015 were consistently settled by the grantee.

Premises in Senglea

3.3.3 The premises in question, located in Senglea, was used as a police station until vacated in June 1992, when the police station was relocated to another site. The keys to the premises were handed over to the GPD on 28 January 1994. According to an internal minute in the relative GPD file, the Department already had two applications from government departments that were interested in acquiring the premises. On 20 August 1992, the Sports Section within the Ministry for Youth and the Arts had requested the then vacant premises in order to be allocated to the local football

club. Another request for use of the premises in question had been forwarded by the Ministry for Social Security on 28 October 1993. On 2 March 1994, the GPD decided to split the property into two tenements with separate entrances. After the necessary structural alterations, the ground floor area was to be allocated to the Ministry for Youth and the Arts for use by the football club, whereas the first floor, including the roof, was to be leased for residential purposes.

3.3.4 Further to the above, sometime in early 2009, the Kunsill Malti għall-Isport (KMS) expressed its interest in acquiring the legal title to the premises. However, the GPD noted that both premises had been leased to the Sports Section within the Ministry of Education since 9 June 1994. Moreover, if the KMS wished to acquire the premises, an official request for the transfer of the tenements was to be made to the GPD. On 25 October 2010, the KMS made a formal submission to this effect. However, on inspection, one of the premises seemed to have been squatted. In the circumstances, the GPD contacted the Permanent Secretary of the Ministry of Education to ascertain whether the squatter was occupying the premises with the Education Department's permission or otherwise and for views on the allocation of the premises to the KMS. The Department stated that it did not object to the transfer proposed. From an investigation carried out by the GPD's Estate Management Directorate on 4 November 2011, it was established that the first floor was being squatted by a committee member of the football club for his personal use, even though it was allocated to the Sports Section within the Education Department. Under the circumstances, the squatter was advised to remove his belongings and hand in the keys to the GPD. After the keys were handed in, the lock to the premises was changed on 19 June 2012.

3.3.5 In order to proceed with the transfer of the premises to the KMS, a Senior Technical Officer within the Estate Management Directorate set up an appointment with a representative of the football club. The purpose of this meeting was to inspect the premises in order to update the corresponding site plan prior to the transfer to the KMS. During the meeting, held on 30 January 2013, it was noted that structural works were in progress, without the authorisation of the GPD. The GPD officer was also informed that structural works were also being carried out on the first floor and that the football club planned to interconnect the two floors. The club's representative stated that he was in possession of the keys to the tenement on the first floor.

3.3.6 In view of the above, the plans to the tenements were accordingly updated and, on 18 February 2013, the matter was referred to the DG GPD for his authorisation for the transfer of both tenements to the KMS. This was approved on 27 February 2013; however, on the Ministry's instructions, an encroachment permit was to be issued for a maximum period of six months or until the formal transfer to the KMS was effected. A nominal fee of €230 was to be charged. The encroachment permit was prepared on 27 February 2013, under the conditions specified by the Ministry, and approved by the Minister MFCC on 28 February 2013. This fee was settled on 4 April 2013.

3.3.7 Legal notices for the transfer of these premises from the GPD to the KMS were prepared in April 2013; however, some time after this date, instructions for the withholding of publication of the legal notices were given to the GPD. No other details as to why this process was put on hold were indicated in the Department's file. The next recorded development in this regard was a letter submitted by the Housing Authority on 2 February 2015, where it was indicated that the Authority intended to include these premises in the subsequent lot of migration of property from the GPD to the Authority. From information provided by the GPD, it remained unclear whether the property was in fact transferred to the Authority or the KMS.

Premises in Old Bakery Street, Valletta

- 3.3.8 This site consisted of two rooms, a kitchen and a basement, located in Old Bakery Street, Valletta. Up to 18 February 1993, the property was owned by the Curia, when ownership was transferred to the Joint Office.² On 20 January 1994, the keys to the premises were forwarded to the Joint Office due to the demise of the tenant to whom the premises was leased. The Joint Office received various requests for the purchase or letting of the property in question; however, the site remained officially vacant from 1994 until 8 March 2013.
- 3.3.9 The first request was made by the Public Lotto Department on 19 July 1994, wherein it was indicated that the ceiling of a lotto office in the same street had caved in sometime earlier. The Public Lotto Department considered the premises as an ideal alternative for the defunct lotto office; however, the Joint Office replied on 26 August 1994, stating that the premises had been earmarked for sale and it was awaiting the Minister of Finance's endorsement to proceed with the transfer. No further communication was received from the Public Lotto Department.
- 3.3.10 On 28 April 2005, the Department of Public Health expressed concern with respect to hazards posed by the premises in question to adjacent buildings, citing the need for urgent repairs. This issue was also brought to light by the Housing, Construction and Maintenance Department through correspondence submitted to the Joint Office dated 13 May 2005, where access was requested in order to inspect the premises. The Joint Office subsequently replied to the Housing, Construction and Maintenance Department, stating that it was not in possession of the keys and that action was being taken to replace the lock. In this regard, on 22 June 2005, the GPD notified the person illegally occupying the premises to vacate and remove any personal belongings. No other details relating to this attempt at addressing the illegal occupation of the premises were recorded in the GPD file.
- 3.3.11 Other complaints relating to the premises were received by the Joint Office. In fact, on 9 May 2007, the Department of Public Health wrote to the Joint Office stating that refuse was being dumped through an opening of a broken iron grating. An eviction order was issued on 6 July 2007, and by 2 August 2007, the Joint Office was in possession of the keys to the premises thereby allowing the Department of Public Health to inspect the property.
- 3.3.12 Another request was sent to the GPD by a part-time fisherman on 23 June 2010, with a reminder sent on 30 July 2010. The request was for the premises to be used as storage for fishing equipment. On 3 September 2010, the GPD replied confirming that the site in question was vacant. However, the Department was in the process of updating its property register and a decision regarding this property would be taken in due course.
- 3.3.13 In correspondence dated 11 April 2011 submitted to the GPD, a person expressed interest in acquiring the property. Reminders were sent on 8 October 2011, 9 November 2011 and 6 December 2011, wherein interest was also expressed in the possibility of renting the property. The GPD replied to these letters on 1 March 2012, stating that it had been informed that the Church required the property for storage purposes and that its disposal was being withheld, pending the official request for

² The Agreement entered into between the Holy See and the Republic of Malta, regulating the transfer to the State of immovable property not required by the Catholic Church for pastoral purposes, was ratified on 18 February 1993. Key in administering this Agreement was the establishment of the Joint Office, which aside from attending to all functions set by the Agreement, was to oversee corrections and additions to the lists of properties.

the return of this property. The justification cited by the GPD was deemed somewhat ambiguous by the NAO, as there is no record retained on file of the Church requesting this property.

3.3.14 Another request in relation to this property was made by a person whose brother rented a government-owned room in St Nicholas Street, Valletta. On his demise, the family was asked to vacate the property at St Nicholas Street, Valletta. In view of this, the applicant requested the GPD to allocate the property in Old Bakery Street, Valletta as a form of compensation.

3.3.15 On 11 February 2013, an association responsible for the organisation of one of the feasts held in Valletta requested an encroachment permit for the premises. The premises was intended for use as storage for items and decorations related to the feast. The letter also stated that an initial request for the premises to be granted on encroachment terms was put forward on 11 March 2011. Internal correspondence exchanged by the GPD, dated 28 February 2013, indicated that an encroachment permit was to be issued, subject to ministerial approval. On 5 March 2013, the value of the encroachment was established at a fee of €250 per annum. The tenement occupied an area of 41 metres squared and therefore, the charge levied exceeded the standard rate applied to NGOs. On 6 March 2013, the Minister MFCC approved the encroachment and the permit was subsequently issued on 8 March 2013. Payment was effected on 14 March 2013.

3.3.16 On 3 May 2013, the GPD received a letter from the grantee stating that the association was no longer interested in this property. The reasons cited were twofold. First, that the rooms were not adequate for the intended purpose and second, that the building was reportedly in a very poor state of repair. Hence, the association requested the allocation of alternative premises in West Street, Valletta, also by means of encroachment. In view of this and further correspondence exchanged between this association and the GPD, instructions were issued by the Department on 23 April 2014 for the inspection of the premises at Old Bakery Street and the retrieval of the keys. No further developments on this case were recorded in the GPD file. Notwithstanding, account records provided to the NAO indicate that the GPD issued invoices for 2014 and 2015, which remained pending.

A Site at Xrobb l-Għajin

3.3.17 The GPD received a letter on 12 September 2012 from the Ministry for Resources and Rural Affairs (MRRRA). The letter stated that the MRRRA had developed a recreational and research park in Marsaxlokk and identified an environmental NGO that was to manage the park. The environmental NGO had entered into a European Economic Area Agreement, from which it was acquiring funds for the upkeep of the park. In view of this, the NGO was to continue to operate the park in order to honour the agreement entered into. To this end, the MRRRA wanted to transfer the land indicated in a site plan of the area in question to the Commissioner of Land, till then held by the Ministry on lease. The Commissioner of Land would then be in a position to issue an encroachment permit to the NGO. In this correspondence, it was also stipulated that the MRRRA reserved the right to keep the land in question if it were not granted to the NGO.

3.3.18 Further to a review of the site plan and confirmation that the land was in fact leased to the MRRRA the GPD acceded to the request put forward by the Ministry and issued an encroachment permit on 16 January 2013. The Minister's approval was granted on 21 January 2013, against an annual fee of €3,800 for an area of 149,280 metres squared. In June 2013, the NGO requested a reduction in the encroachment fee,

citing the burdens imposed on it to maintain the site, the risks associated with failing to manage the site, and the cost to Government were it to take up such role. Also cited was the fact that the site was utilised for public enjoyment that translated to a social value rather than a private one to the NGO. The request was acceded to as the rate charged was reduced to €500. A revised invoice reflecting the adjusted fee was issued on 26 September 2013, which was subsequently settled on 1 November 2013. Fees for 2014 and 2015 were duly settled by the grantee.

3.4 Storage Areas

A Garage in Santa Luċija

3.4.1 This garage, which formed part of a block of government apartments, was allocated to the Works Department on 30 December 1994. As from January 2012, letters from interested parties who wanted to rent the garage were received by the GPD. These letters were sent in view of the fact that the garage was not being utilised by the Works Department. In total, four persons expressed interest in this garage. The letters were received by the GPD on 10 January 2012, 10 February 2012, 20 April 2012, and 13 November 2012. The reasons cited for the intended use of the garage were as follows:

- a. to garage a classic car and to use it as a storage room;
- b. to garage a flea market van;
- c. to park the car close to the applicant's residence because of ill health; and
- d. to use as a garage and for storage purposes.

3.4.2 Further to the requests received by the Department, on 16 November 2012, the GPD decided to issue a call for tenders for the garage in question. To this end, on 11 February 2013, a GPD Architect drew up a tender proposal, the rental value of which was estimated at €550 per annum. In the tender proposal, it was noted that four persons had the right of first refusal, with precedence assigned according to the sequence of requests made. Of note is the fact that the first three persons who expressed interest in the garage were residents of the block of apartments housing the garage. On the other hand, a person who did not reside within this block sent the fourth request.

3.4.3 On 5 March 2013, by which time no call for tenders was issued, the Minister MFCC requested the issuance of an encroachment permit in favour of the person who was last to express interest in the garage in question. In his instructions, the Minister MFCC also stated that it should be ensured that the process for the public call for tenders was to be continued and concluded.

3.4.4 The Director Land gave instructions for the issue of the relative encroachment permit on 5 March 2013; however, emphasis was made on the fact that the file was to be referred to the Department's Tender Section following the issue of the permit so that the tender could be initiated as soon as possible. The encroachment permit was issued on 7 March 2013 at a fee of €150 per quarter. The site, measuring 35 metres squared, was to be used exclusively as a garage and the NAO noted that the fee charged was largely in line with the standard rates applied for such encroachments, that is, a maximum of €14 per metre squared per annum. This charge was settled on 12 March 2013 and the permit was subsequently renewed for successive three-month periods. Payments corresponding to 2014 and 2015 were regularly effected.

3.4.5 In the interim, on 21 March 2013, a GPD Architect submitted the tender proposal, adjusted to reflect the fact that the site was held on encroachment and referred same

to the Department's Tender Committee. The file remained idle until 28 November 2013, when the file was referred to the Director Estate Management. This matter was again brought to the attention of the GPD Tender Committee in November 2014, despite the initial urgency imparted by the Director Land in March 2013. The DG GPD instructed the Commissioner of Land to terminate the encroachment permit on 13 March 2015. According to GPD records, the encroachment was eventually terminated on 29 September 2015.

Stores in Ta' Qali

3.4.6 This case relates to a request for an encroachment permit made on 8 October 2012 by a fresh produce importer and potato exporter. The request related to two vacant and abandoned stores in Ta' Qali. In his letter, the applicant stated that the company was prepared to finance the upgrade of the stores and the surrounding area. The applicant required the encroachment permit until the Wholesale Imported Fruit and Vegetable Market redevelopment project materialised. Further to this correspondence, a site plan was prepared by the GPD on 5 March 2013. The request for the Minister's authorisation for the grant of this encroachment permit was forwarded on the same day, wherein reference was also made to the fact that the applicant's company was in advanced discussions with Government on the proposed project.

3.4.7 The Minister MFCC approved the permit on 5 March 2013, which permit was subsequently issued on 7 March 2013 at an annual fee of €1,000. The grantee paid the fee due on 22 March 2013. Subsequent encroachment dues for 2014 and 2015 were promptly settled.

3.4.8 The NAO noted that the encroached area consisted of 463 metres squared. According to the applicable standard GPD rates for a storage area, the minimum per metre charge was €7. If the minimum rate were to be applied to this encroachment area, the annual fee would amount to €3,241. This Office's attention was also drawn to how the fee charged was determined, with no clear record of how the Department arrived at such a figure.

A Basement for Storage in St Dominic Street, Valletta

3.4.9 This basement storage of 43 metres squared was a former church property transferred to Government in 1993 and administered by the GPD. It was part of a larger building that was awarded by tender on 23 March 2005. However, the basement to this property was not included in the tender proposal and the subsequent contract signed with the GPD.

3.4.10 Yet, developments relating to this case date back to 5 April 2004, when the GPD received a letter from the Curia stating that their architect called at the property in question to inspect it and draw up a valuation for capitalisation purposes. However, the Curia's architect noted that the padlocks had been changed and it did not have the right to request a forced break-in and eviction of unlawful occupiers. To this end, the matter was being referred to the GPD for appropriate action.

3.4.11 Although instructions for the locks to be changed were issued on 25 May 2004, no record of any action taken in this regard was noted in the Department's file, until an eviction order was issued on 28 March 2008. Following the issuance of the eviction notice, the person illegally occupying the property approached the GPD and requested the postponement of the eviction, indicating that he intended to discuss the matter with the Director Joint Office. Although the Director Joint Office stated that the occupier had no title to the property and maintained that the eviction was to be proceeded with, the eviction was not carried out.

- 3.4.12 Further developments were registered in January 2012, when the occupier was requested to call at the GPD to discuss the allocation of the premises. At the GPD offices, the occupier claimed that he was under the impression that he had purchased the basement when he had acquired the overlying property by means of a tender in March 2005. The GPD verified the claims made by the occupier and established that these were unfounded, as the deed of contract did not include the basement.
- 3.4.13 On 27 August 2012, the Director Land issued instructions for the issuance of an encroachment permit until a tender for the premises was issued. The fee proposed by the Director Land was €50. The GPD registered the premises under a separate tenement number, and prepared site plans and photographs of the property. The encroachment permit was prepared by the GPD on 15 January 2013 and forwarded for the approval of the Minister MFCC on 17 January 2013. This approval was granted on 21 January 2013 and the permit duly issued against an annual charge of €80. Payments corresponding to permits issued with respect to 2013, 2014 and 2015 were promptly settled.
- 3.4.14 With reference to the encroachment fee charged, the NAO noted that, according to the standard rates applied by the GPD, a minimum of €301 was to be charged to the grantee. No explanation justifying the nominal fee charged was recorded on file, and this Office deems this action incongruent with the fact that the premises was irregularly occupied by the grantee for a number of years. Furthermore, the original intention of following the grant of this permit by a tender was not pursued, as records in the GPD file indicate no developments in this respect. Queries addressed to the GPD in this respect were not addressed, with the Department justifying its inability to provide a more detailed reply citing lack of documentation retained on file.

An Outdoor Storage Area in Marsa

- 3.4.15 On 9 February 2012, the Managing Director of a cleaning company requested the GPD's authorisation for the allocation of a specific portion of land in Marsa intended for open storage purposes. Reminders to this effect were sent on 18 April 2012 and 22 October 2012, wherein it was stated that the company required the land in order to expand its business.
- 3.4.16 Following the reminder sent on 22 October 2012, the applicant's architect submitted an estimate relating to the proposed construction of a warehouse and a boundary wall on the indicated site. The estimate, amounting to €46,409, included MEPA development fees, professional fees and a contingency of 15 per cent. On receipt of this estimate, the GPD filed a copy of a site plan relating to this area.
- 3.4.17 On 18 February 2013, a GPD Architect was requested to provide an estimate for the granting of this site, which was to be used for open-space storage purposes, on encroachment terms. The Architect was instructed to apply the same rate as that used for a nearby site. The latter site referred to an open area granted on encroachment terms for similar purposes at an annual rate of €7 per metre squared. On 21 February 2013, the Architect calculated the annual fee for the requested site, which consisted of an area of 2,633 metres squared, at €18,430. The encroachment permit was subsequently issued on 28 February 2013. On the same date, approval was sought from and granted by the Minister MFCC.
- 3.4.18 The NAO noted that the fees payable with respect to this encroachment permit for years 2013, 2014 and 2015 remained pending, with an outstanding balance of €55,290 due, covering use of public land up to February 2016. Based on records retained in the GPD file, an issue surfaced with respect to the use of the site, wherein the grantee

claimed that squatters had occupied this land. In a meeting with the GPD in January 2015, the grantee maintained that he only came in possession of the site in August 2014 and was prepared to settle arrears accruing from this date. Notwithstanding the claims made by the grantee, the GPD insisted that arrears arising from the date of commencement of the encroachment were due.

3.5 Mobile Kiosks

A Kiosk at a Playground in Mellieħa

- 3.5.1 The kiosk being referred to in this case is situated within a children’s playground in Mellieħa. In 1965, an encroachment permit was issued to the owner of the kiosk at a fee of Lm1 (€2.33) per annum. The owner passed away in October 2002 and in his will specified that his son was to inherit the kiosk in question. According to the will, the encroachment permit was to be transferred to his son. In view of this, the new owner wrote to the GPD on 15 October 2003, through his lawyer, asking for recognition as the holder of the encroachment permit. In response, on 30 October 2003, the GPD informed the new owner that encroachment permits were not transferable and that the kiosk was to be leased through a tender procedure. In this context, the heir was to request the right of first refusal. The GPD’s intention was to recognise the heir as the lessor of the government-owned land.
- 3.5.2 The heir was not willing to accept the terms set by the GPD and filed a judicial protest against the Director Land on 2 December 2003. This judicial protest stated that the termination of the encroachment was unfounded since the permit had been inherited. It also stated that such action was *ultra vires* as it constituted an abuse of discretion laid down in Article 469A, sub-article 1 of the Code of Organisation and Civil Procedure. The judicial protest also stated that such administrative action was illegal and constituted an abuse of public authority since it was motivated by inappropriate intentions and based on irrelevant considerations.
- 3.5.3 In a counter protest dated 30 December 2003, the Director Land stated that the termination of the encroachment was not unfounded as permits were not inheritable. Moreover, clause 8 of the encroachment permit issued in 1965 stated that the permit was not transferable. Hence, the Director Land argued that the Department’s action was not *ultra vires* and constituted no abuse of discretion in terms of the article cited in the judicial protest. The Director Land appealed to the heir to cede the case in order to avoid incurring further costs and avert putting oneself in *dolo, mora u culpa*.
- 3.5.4 On 16 March 2004, in his reply to the counter protest, the heir referred to witnesses who were willing to testify that he was managing the kiosk. The heir objected to the termination of the encroachment permit *a causa mortis*. Furthermore, the heir sought to establish the GPD’s policy on encroachments. In response, on 12 May 2004, the Director Land filed written submissions maintaining that the claims made by the heir were unfounded as the transfer of the encroachment permit was not permissible, as in fact stipulated in clause 8 of the said permit.
- 3.5.5 The court case continued for a number of years, with little being achieved in the interim. In view of this, the Director Land and a GPD Lawyer met the heir and his legal representative in order to establish a way forward. During this meeting, which was held on 1 October 2012, it was agreed that the court case was to be ceded. In addition, the heir was to be granted an encroachment permit and was to apply for a 25-year emphyteusis, provided that he obtained a MEPA permit to upgrade the kiosk, as regulated by Article 4(c) of the Schedule of Chapter 268, Disposal of Government Land Act.

3.5.6 In this context, the relevant site plans were prepared, where it was established that part of the land where the kiosk was located was unregistered government land, eventually duly registered. Notwithstanding this, an encroachment permit was issued on 4 March 2013 at an annual rate of €6,950. The area utilised by the kiosk amounted to 140 metres squared and, according to the standard rates applied by the GPD, kiosks were to be charged at minimum and maximum rates of €100 and €475 per metre squared per year, respectively. Hence, the GPD was to charge the kiosk a minimum of €14,000 per annum for the area occupied. In establishing the encroachment fee of €6,950, the Department considered the following factors:

- a. the dimensions and layout of the site and the various uses as indicated;
- b. the location and locality;
- c. similar recent allocations; and
- d. the fact that any investment in the area was likely to be short term due to envisaged adjacent developments.

3.5.7 On 13 March 2013, the grantee, through his legal representative, requested further clarifications with regard to the computation of the permit fee. Further queries regarding this matter were submitted on multiple occasions, the latest record of which is dated 10 January 2014. The matter remained unresolved with a GPD minute dated 15 July 2014 indicating the Department's intention to persist with the court case. At the time of writing, the grantee had an outstanding balance of €20,850 corresponding to permits for 2013, 2014 and 2015. The GPD indicated that the grantee persisted in his refusal to accept the revised fee and was depositing €2.33 per annum in Court.

A Mobile Kiosk at the Sliema Ferries

3.5.8 A request for the use of a portion of land through encroachment at the Sliema Ferries for the placing of a mobile kiosk was made to the GPD on 23 October 2012. The mobile kiosk was previously located in a reserved parking space; however, following embellishment works carried out in the area, the owner was guided by Transport Malta to request an encroachment permit. Following clarifications obtained by the GPD, since the area intended for the kiosk was in a public space, the applicant again requested the Department's authorisation on 21 November 2012.

3.5.9 On 24 January 2013, the GPD requested the direction of the Minister MFCC on the matter. The Minister sanctioned this encroachment on 25 January 2013 citing Transport Malta's no objection to the granting of this permit. The GPD subsequently issued the encroachment permit for a mobile kiosk on 20 February 2013. However, the NAO noted that the approval of MEPA was not sought prior to the issuance of this encroachment permit. Queries directed to the GPD indicated no particular reason as to why a MEPA permit was not sought beforehand, seeking to justify this by citing the Minister's and Transport Malta's approval of the permit. However, the NAO maintains that it is the responsibility of the GPD, not the Minister or Transport Malta, to ensure that the required MEPA permits are obtained prior to the issuance of an encroachment permit.

3.5.10 The area granted on encroachment terms measured 17.5 metres squared and the fee was determined by a GPD Architect at €8,300 per annum. This was based on, among others, the following three factors:

- a. the dimensions of the site;
- b. the popularity of the location; and
- c. similar recent allocations.

3.5.11 The NAO deemed the fee charged as in line with the standard rates applied by the GPD for similar encroachments. The amount due for 2013 was settled through two payments, with €2,075 paid in March 2013 and the balance of €6,225 in February 2014. Payments were also effected in a staggered manner in 2014, with two payments of €2,075 paid in March and April 2014, and the remaining €4,150 settled in December 2014. At the time of writing, the encroachment fee for 2015, that is, €8,330, remained outstanding.

A Kiosk at Mġarr Harbour, Gozo

3.5.12 On 29 July 2012, the GPD received a request from an encroachment grantee in whose name a mobile kiosk located at Mġarr Harbour, Gozo was registered. According to the request, the grantee intended to sell the business to a third party, and hence required the transfer or the issue of a new encroachment permit to the buyer. The request was signed by both parties. Following this request, a site plan was prepared by the GPD and the Director Land sought the approval of the DG GPD for the transfer or issuance of a new encroachment permit to the new owner on 8 January 2013. The DG GPD indicated his agreement to the issuance of a new encroachment permit on 9 January 2013; however, a new rent assessment was to be carried out.

3.5.13 Further to the above, a rent assessment of the site in question was carried out by a GPD Architect on 23 January 2013, estimating the rental value of the 22.75 metres squared area at €4,100 per annum. Factors that were considered relevant in the calculation of this fee included:

- a. the dimensions of the site; and
- b. similar allocations.

3.5.14 The NAO noted that the fee charged was in accordance with the standard rates applied by the GPD for mobile kiosks. The encroachment permit was issued to the new owner on 5 February 2013. Payment for this permit was effected in December 2013, while encroachment fees due with respect to the subsequent years were promptly settled.

3.5.15 This Office also noted that in October 2010 the previous owner had entered into a repayment agreement with the GPD for the settlement of outstanding dues. Until the transfer of the business, the previous owner still owed the Department €9,000 in unsettled encroachment fees. This balance was settled in three payments, effected in December 2013, September 2014 and April 2015. In this Office's opinion, it would have been advisable had the GPD ensured the settlement of all outstanding amounts prior to the issuance of an encroachment permit to the new owner. The NAO deems the recovery of such arrears more difficult once the new encroachment permit was granted.

3.6 Other Cases

Agricultural Land in Santa Maria Estate, Mellieħa

3.6.1 The encroachment in this case related to agricultural land in Santa Maria Estate, Mellieħa. The land in question measured 7,142 metres squared; however, only part of this land was requested on encroachment terms from the GPD. A request for the granting of an encroachment permit for 1,461 metres squared of this land was made to the GDP on 15 January 2013. The applicant stated that he intended to use the site for agricultural purposes and substantiated his case by stating that his residence was adjacent to the land. The approval of the Minister MFCC was sought on 6 March 2013

and obtained on the same date. Issued on 7 March 2013, the encroachment permit was for an area of 970 metres squared and was subject to a total charge of €100 per annum.

- 3.6.2 Citing reasons of ill health, on 1 July 2015, the grantee requested that a portion of the land allocated be deducted from his permit. The NAO noted that the grantee settled dues with respect to the years 2013 to 2015, amounting to €300, on 25 March 2015. Notwithstanding the fact that there is no material difference between the fee charged and the standard rate applied by the GPD for such land, the NAO is of the opinion that other factors should have been considered when determining the encroachment fee. The proximity of the land to the grantee's residence, the locality and the potential use for recreational purposes should have been capitalised on by the Department through the charge of a premium rate.

Agricultural Land in Birżebbuġa

- 3.6.3 The land being referred to in this encroachment, measuring 5,547 metres squared, was identified by the GPD as land that was expropriated by virtue of Legal Notice 202 of 1969 and was still in the course of acquisition. An application for encroachment on this land was submitted to the GPD on 10 November 2012. This request was made in light of the applicant's eviction from Fort Bengħajsa, where he used to rear animals and grow various crops. The applicant stated that he was seeking a suitable alternative and identified the land in question.
- 3.6.4 On 12 November 2012, a GPD official stated that although the land was declared to have been required for a public purpose by virtue of the aforementioned Legal Notice, it was never utilised. It was also noted that records in the expropriation file indicated that the owner was unknown. Furthermore, since the land was adjacent to the Hal Far industrial zone, had adequate access to road infrastructure and could not be disposed of other than by a parliamentary resolution, the GPD official stated that it might be appropriate to enquire with Malta Industrial Parks Ltd if this land was required for future expansion. This expansion would have been in line with the originally intended public purpose.
- 3.6.5 On 15 November 2012, the GPD informed the Minister MFCC of the status of the land in question in response to queries made in this regard. Here, the Director Land informed the Minister that according to GPD records, the owner of the land was unknown; therefore, allocation to a third party could have exposed the Department to potential claims if the owner was a private party. The NAO deemed the advice provided by the Director Land as somewhat ambiguous given that the land had been expropriated by Government in 1969 and therefore, could not have been privately owned.
- 3.6.6 In response, on 19 November 2012, the Minister MFCC gave instructions for the land to be granted on encroachment terms to the applicant since he had been evicted from Bengħajsa and made several requests to be provided with an alternative site. The Minister also stated that the encroachment would not prejudice any possible private owner. To this end, a property drawing was prepared by the GPD on 6 February 2013 and the fee for encroachment was established by a GPD Architect at €550 per annum. The factors considered when estimating this fee included the location, size, proximity to an industrial estate, and the fact that the land in question was wasteland. The NAO noted that, according to the GPD standard rates, an encroachment fee for dry land would have amounted to an annual charge of €800. Hence, this Office deemed the rate charged as acceptable, particularly in view of the factors that were taken into consideration in determining the fee. The encroachment permit was issued on 6 February 2013 and payment was effected on 1 March 2013.

- 3.6.7 Following the issuance of this encroachment permit, a third party filed a claim of ownership with the GPD on 14 March 2013, indicating that these private fields were irregularly allocated by the GPD to the grantee. To this end, the owner substantiated claims made by providing the Department with the contract of sale, dated 19 September 1980 and a site plan corresponding to the land encroached on. The grantee also filed a report at the GPD, stating that he was approached by third parties who had informed him that they were the rightful owners of the land. In addition, the owners informed the grantee that their right of ownership was augmented by the fact that they had paid tax on inheritance on this land.
- 3.6.8 Further to these reports, on 29 April 2013, the DG GPD approved the termination of the encroachment permit and recommended that an alternative site be assigned to the grantee. To this end, on 29 May 2013, the GPD informed the grantee that it was not the intention of Government to renew the encroachment permit and that he would be refunded the amount paid. On 7 May 2014, the GPD brought the matter to the attention of the Permanent Secretary Ministry for the Economy, Investment and Small Business (MEIB), wherein the Department enquired whether the land could be released from expropriation. The request was directed to Malta Industrial Parks Ltd, in view of the public purpose originally intended for this land. Malta Industrial Parks Ltd confirmed that the land was not required, subsequent to which, the Minister MEIB authorised the release of this land.
- 3.6.9 Another request was subsequently filed by the grantee on 13 June 2013, whereby a parcel of land in Siġġiewi was sought. On 5 July 2013, the GPD instructed the applicant to provide a site plan indicating the land being requested. A site plan of the parcel of land identified by the applicant was provided to the GPD on 4 November 2013 and a lease agreement was signed on 11 April 2014.

Land for Beekeeping in ix-Xagħra l-Ħamra, Mellieħa

- 3.6.10 A request for a site of 8,070 metres squared in Mellieħa, to be used for beekeeping purposes, was received by the GPD on 16 December 2009. This request included an application form relating to a Government scheme for the lease of agricultural land, site plans and a declaration under oath that the applicant was cultivating the land in question. Also provided was a confirmation from the National Agricultural Research and Development Centre at Għammieri that the applicant was a registered beekeeper and that he kept bee colonies on the land in question. In the same letter, the applicant referred to a similar request submitted on his behalf by an architect on 27 March 2009. In this letter, the architect stated that the applicant already kept a bee colony on the land being applied for. No reply to this correspondence was received, yet in an internal minute, the GPD claimed that this request had never reached the Department.
- 3.6.11 Further to the receipt of the December 2009 request, the GPD inspected the area on 23 November 2010 and it resulted that no beekeeping activities were noted on site. In view of this, the GPD scheduled another inspection, this time in the presence of the applicant. From this inspection, which was carried out on 10 December 2010, it resulted that beekeeping activities were being carried out on site. In view of the new information obtained, on 3 February 2011, the GPD requested that a site plan be drawn up prior to the issuance of a call for tenders for agricultural lease. A site plan was provided to the GPD on 4 February 2011, indicating an area of 8,529 metres squared.

- 3.6.12 Aside from the review of this site plan later in February 2011, no further action was taken by the GPD until 20 December 2012. Here, a GPD Architect recommended that an encroachment permit be issued for the site in question rather than a lease through a call for tenders. This recommendation was made in view of the fact that bids may not necessarily reflect the intended use of the site, that is, beekeeping or other agricultural activities. The Minister's approval was sought on 15 January 2013 and obtained on 21 January 2013. The encroachment permit was subsequently issued on 31 January 2013 at an annual recognition fee of €350. Payment was effected on 13 February 2013, with subsequent renewals for 2014 and 2015 immediately settled.
- 3.6.13 According to the standard rates established by the GPD, an area of one tumolo (1,124 metres squared) was to be charged at €108 per annum. In view of the fact that the area consisted of 8,259 metres squared, the encroachment fee charged was to be €794 per annum. Although the discrepancy was marginal, the NAO noted that the GPD did not enforce the standard rate applicable to this category.

A Marine Fuel Station in Mġarr, Gozo

- 3.6.14 A marine fuel station was built in Mġarr, Gozo by Enemalta Corporation in 1994 and subsequently leased to a third party (the operator) in June 1994. The fuel station consisted of two fuel pumps and a room measuring 8.5 metres squared. On 16 January 2003, the Corporation sent a letter to the GPD, in an attempt to clarify under what title the plot of land in question was allocated to Enemalta. This information was requested in view of the fact that the Corporation intended to transfer the marine fuel station to the operator, then occupying the premises under title of lease. In a letter dated 15 May 2003, the operator informed the GPD that in August 2001, Enemalta had offered to sell the petrol station to them. However, on 25 March 2003, the Corporation informed them that the transfer could not be effected, as the legal title to the land had not been established. It was in this context that the operator was requesting the Commissioner of Land to authorise the transfer of the land to Enemalta Corporation, or to the operator in order to regularise their position.
- 3.6.15 In an effort to establish the legal title of the marine fuel station, on 13 October 2003, the operator informed the GPD that, according to a senior Enemalta official, the site in question was allocated to the Corporation through a Cabinet Memorandum. On 13 February 2004, the operator requested permission to install another underground tank in order to meet consumer demand. In view of these two letters, on 1 March 2004, the GPD requested Enemalta to provide a copy of the Memorandum. Other correspondence sent by the GPD to the operator on this day indicated that the GPD was prepared to consider the allocation of the site in question and for the purpose required, through the issue of a call for tenders, or otherwise, if the necessary consent was granted by MEPA. In this context, the operator was advised to seek MEPA's approval.
- 3.6.16 In its reply to the GPD request for the Cabinet Memorandum, on 5 March 2004, Enemalta Corporation informed the Department that it was not aware of the Memorandum cited. In view of this development, the GPD, through a letter dated 16 March 2004, requested the operator to consult with the Malta Maritime Authority to establish whether the Authority was responsible for administering the site. In this regard, the operator reiterated the request for the authorisation to install another tank and pump to Enemalta on 26 April 2004 and copied the Malta Maritime Authority in this correspondence. Furthermore, a MEPA application for the construction of an underground fuel reservoir was filed on 20 May 2004.

- 3.6.17 Circumstances remained unchanged from May 2004, until the extensive works of the Gozo harbour necessitated the relocation of the marine fuel station. In light of these developments, on 28 July 2010, the GPD received correspondence from the operator stating that, since Enemalta was unable to transfer the operating licence, owing to the fact that the legal title for the land had not been established, the operator was running the petrol station without the required licences. Compounding matters was the fact that the Malta Resources Authority informed the operator that the Authority could not issue the relative licence unless the operator was in possession of some form of legal title issued by the GPD. To this end, the operator reiterated the request to be allocated the site in question.
- 3.6.18 On 15 November 2012, the operator submitted a MEPA permit, issued for the relocation of the marine fuel station and the installation of a demountable fuel reservoir on site, to the GPD. In view of the permits obtained, the operator requested the allocation of the site occupied. The NAO noted that another MEPA permit, relating to the placing of fuel reservoirs and an oil-water separator, remained pending.
- 3.6.19 In view of the above, and following a further request by the operator made on 24 January 2013, according to a GPD minute dated 7 February 2013, a tender proposal for the lease of the site was to be furnished to the GPD Tender Committee on condition that the Department's Estate Management Directorate had no objections. Notwithstanding this, on 4 March 2013, following internal discussions, a GPD Architect recommended that the site in question be granted on encroachment terms as per similar cases. It was stated that this would provide the Department with sufficient time to review the case, consult if necessary, and in the mean time avoid a situation where the operator occupied a site without title through no fault of theirs. The Minister MFCC approved the encroachment permit on 6 March 2013. The permit covered an area of 37.5 metres squared and the fee charged by the GPD for this encroachment was €400. The grantee paid the established fee on 22 April 2013, while amounts charged for the 2014 and 2015 renewals were promptly settled.
- 3.6.20 In view of the commercial nature of the functions carried out by the grantee, and the envisaged long-term nature of the business, the NAO enquired why an encroachment permit was issued rather than a more permanent contractual arrangement. This assumes particular relevance when one considers that the encroachment permit was granted on the premise that this was to be a temporary measure. The GPD reiterated the justification cited above, whereby the Department was to review the case and consult. However, the NAO noted that after the lapse of more than two years, no progress had been registered with respect to this case.
- 3.6.21 Queries relating to the annual fee charged were also addressed to the GPD, as the NAO was of the opinion that the €400 per annum was not consonant with the activity carried out on the public land in question. In reply, the GPD referred to similar encroachment permits granted at a lesser annual fee and maintained that the €400 charged was reasonable in this respect. Notwithstanding the justification cited, the NAO maintains that rates charged should reflect the nature and level of activity of the commercial operation being carried out on encroached land.

WasteServ's Monitoring of Air Parameters

- 3.6.22 This case refers to the implementation of an environmental monitoring programme for the Għallis non-hazardous waste landfill, situated in the limits of Naxxar. A requirement of this project was that of monitoring ambient air parameters from an offsite location. In this regard, an Enemalta substation close to the area that would

prove useful for monitoring purposes was identified by the entity managing the project, that is, WasteServ. To this end, on 26 November 2012, WasteServ requested the GPD's authorisation to make use of the roof of the substation for monitoring purposes for the duration of three months. The equipment that was to be used was specified in this correspondence. Site plans and photos of the location were also provided to the GPD.

3.6.23 A GPD Architect was subsequently requested to estimate a fee to be charged to WasteServ for the use of the property on encroachment terms. The fee was established on 15 January 2013 at €250 per annum. Further to WasteServ's indicated agreement with the set fee, an encroachment permit was issued on 8 February 2013. The permit was for a one-year period, payable in six-monthly instalments in advance, that is, €125. Prior to the expiration of the six months, WasteServ was provided with the option to terminate the encroachment.

3.6.24 It transpired that the grantee did not make use of the public land allocated by means of this permit and therefore requested the cancellation of dues. On 5 March 2014, the GPD cancelled the part of the payment due as the Department had been duly notified of WasteServ's intention not to renew the permit in April 2013. However, the first payment was settled on 9 April 2014.

Ricasoli Tank Cleaning

3.6.25 A process for the privatisation of the Ricasoli Tank Cleaning site was under way during 2012. Further to the call for tenders on 4 May 2012, correspondence between the Director Estate Management and Government's legal representative for the privatisation, dated 25 September 2012, raised a security-related issue that required attention. It was noted that two areas, which were not included in the call for tenders, were in close proximity to the facility. Hence, it was agreed by the two parties that, in order to avoid issuing a new call for tenders, the two areas in question would be granted to the winning bidder on encroachment terms.

3.6.26 This issue was also noted in a letter from the Chair of the Privatisation Unit to the GPD, dated 3 October 2012, wherein it was stated that the preferred bidder was of the opinion that the boundary of the concession was too close to the tanks located within the facility, raising security and safety concerns. This meant that the buffer zone between the tanks and public land was insufficient in this respect. The Chair of the Privatisation Unit also stated that, further to a site visit with the preferred bidder and a technical consultant, it was established that the presence of two tunnels posed another security risk. The security risk noted in this case related to the possible unauthorised third party access to the facility. In view of the noted risks, the Chair of the Privatisation Unit proposed two alternative courses of action:

- a. the issuance of an encroachment permit with respect to the land in close proximity to the tanks and the assurance that Government does not allow unauthorised entry to the facility through the tunnels; or
- b. the issuance of an encroachment permit with respect to the land in close proximity to the tanks as well as that around the tunnels.

3.6.27 On 3 October 2012, the Minister MFCC approved the encroachment permit in view of the *'very serious issues at play'*. Furthermore, an email from the Minister on 15 October 2012 stated that the encroachment fee to be charged in this respect was €5,000. However, in another email, dated 31 October 2012, the Minister in question reduced the encroachment fee to €100. The encroachment permit, for an area of 2,874 metres squared, was subsequently issued on 4 January 2013, which was the

date of the concession/privatisation of the facility. According to the permit, the site encroached on was to be used exclusively as a buffer zone to address safety and security concerns to the adjacent concession; however, the NAO was unable to determine which of the options proposed by Chair Privatisation Unit was resorted to. reduced the encroachment fee to €100. The encroachment permit, for an area of 2,874 metres squared, was subsequently issued on 4 January 2013, which was the date of the concession/privatisation of the facility. According to the permit, the site encroached on was to be used exclusively as a buffer zone to address safety and security concerns to the adjacent concession; however, the NAO was unable to determine which of the options proposed by Chair Privatisation Unit was resorted to.

3.6.28 The NAO noted that the invoice relating to the 2013 permit was issued on 17 September 2013 and settled on 7 October 2013, while those for 2014 and 2015 were promptly issued and duly paid.

Chapter 4

Conclusions and Recommendations

Chapter 4 – Conclusions and Recommendations

4.0.1 In addressing the concerns raised by the PAC, the NAO sought to determine the frequency and regularity of encroachment permits granted during the period 1 December 2012 to 8 March 2013. In establishing whether the allegation regarding the increased number of permits issued during this period was valid, the NAO drew comparisons to corresponding periods in other years, namely, 2010/11, 2011/12 and 2013/14. On the other hand, determining the regularity, or otherwise, of permits issued by the GPD throughout the period under review entailed a thorough analysis of the encroachments granted from 1 December 2012 to 8 March 2013.

4.1 Frequency of Encroachment Permits

4.1.1 In addressing the first objective of this audit, the NAO limited its review to new encroachment permits issued during the period under review. This was motivated by the fact that encroachment permits up for renewal were automatically issued by the Department, subject to the payment of dues, requiring no other intervention whatsoever. This scoping reflected the request made to the NAO, wherein this Office was tasked with the verification of permits issued during the aforementioned period, implying an element of intervention by the Minister, the GPD, or any other public sector entity involved. Such intervention is only required in the case of new permits, hence the Office's decision to scope the audit in this manner.

4.1.2 The NAO established that the number of encroachment permits issued between 1 December 2012 and 8 March 2013 was 25. No encroachment permits were issued in December 2012. The GPD issued eight permits in January 2013 and ten permits in February 2013. Furthermore, up to the aforementioned cut-off date, another seven permits were issued in March 2013. The approval of encroachments was contingent on the nature of the permit requested and in this context, the NAO noted that, out of the 25 permits issued, 13 were authorised by the Minister MFCC, while the remaining 12 were sanctioned by the GPD and other public sector entities, where necessary.

4.1.3 Although marginal, an increase was registered in the number of encroachment permits issued during the last two weeks of the period under consideration, that is, between 23 February and 8 March 2013. During this period, eleven encroachment permits were issued, with seven permits issued between 4 March and 8 March 2013. Out of these eleven permits, eight were authorised by the Minister.

- 4.1.4 The comparison of the 25 permits issued between 1 December 2012 and 8 March 2013 with the corresponding periods in other years indicated that the highest number of permits was issued during the audit period. Between December 2010 and March 2011, nine encroachment permits were issued. For the corresponding 2011/2012 months, twenty permits were issued, while in 2013/2014, six permits were issued. When compared with the periods 2010/11 and 2013/14, the number of permits issued during the audit period is notably higher. A marginal difference was observed when comparing 2011/12 to the audit period, with 20 and 25 permits issued, respectively.
- 4.1.5 In determining the frequency of the encroachment permits granted, other factors merit consideration. Although not necessarily bearing direct relevance to all the cases reviewed with respect to the audit period, the NAO is of the opinion that the acknowledgement of such factors provides a more comprehensive perspective of the incidence of permits granted. First, the submission of a request for the grant of a permit is extraneous to the GPD's control as this is solely subject to action taken by the prospective applicant. Second, the input of other stakeholders may form an essential part of the process, determined by the nature of the encroachment permit requested. Delays in this sense may influence the timing of issuance of the permit. This particular consideration was rendered evident in a number of the 25 cases reviewed; however, this matter is delved into in more detail in the ensuing section.
- 4.1.6 One final aspect relating to the frequency of permits issued related to the duration between the date of application and permit issuance. In this regard, the NAO focused on permits that were issued either in a relatively short or long period in comparison with other permits. Requests that were processed in under one month were deemed regular by the NAO, justified in this sense by the fact that these were straightforward requests and that all the required supporting documentation was made available to the GPD thereby facilitating approval. On the other hand, cases that had lengthy approval processes, at times exceeding two years, were conditioned by elements extraneous to the GPD's direct control.

4.2 Regularity of Encroachment Permits

- 4.2.1 The second objective of this audit entailed the determination of the regularity, or otherwise, of permits issued during the period 1 December 2012 to 8 March 2013. This analysis involved the in-depth review of the 25 encroachment permits issued during this period.
- 4.2.2 The NAO noted that an element of discretion was exercised in establishing encroachment fees. From the cases reviewed, it emerged that the GPD, at times, applied rates that were below the minimum threshold set for permits relating to particular categories. In the case of the stores at Ta' Qali, although some element of justification for the granting of the permit was provided, the Department failed to substantiate why the rate charged, that is, €1,000 per annum, diverged from the applicable minimum standard rate of €3,241 per annum. Another notable divergence between the applied rate and the standard rate was that of the kiosk situated in a playground in Mellieħa. Here, the fee established by the GPD was €6,950; yet, this should have been at least €14,000 per annum had the standard rates been applied. Although the Department cited various factors that bore impact on the fee established, the NAO maintains an element of reservation regarding the rate charged.
- 4.2.3 Of particular note was the discretion exercised by the Minister MFCC in the allocation of a garage in Santa Luċija. Despite the fact that the Minister indicated that this allocation was to be on a temporary basis and was not to prejudice the public call for

tenders, the NAO deems the intervention as unwarranted. This assumes particular relevance when one considers that three other persons had preceded the grantee in expressing an interest in acquiring the premises. This Office is of the opinion that intervention at this level should be avoided.

- 4.2.4 In its review, the NAO noted that fees charged, once established, remain unaltered despite successive renewals of the permit. This Office urges the GPD to implement a system whereby encroachment permit fees are subject to regular update, at least accounting for inflation adjustments. The Department's failure to address this matter inevitably results in the unfair application of rates, with establishments bearing similar characteristics and requesting similar permits being charged significantly different rates, merely due to the date when the permit was first issued. Moreover, the inexistence of a mechanism that automatically adjusts permit rates results in fees that are clearly not in line with current market considerations, rendered amply evident in the case of the Mellieħa kiosk that was charged a fee of €2.33 per annum that remained unchanged for nearly fifty years.
- 4.2.5 Of concern to the NAO were the cases where fees remained outstanding for considerable periods, notwithstanding the decisive action that could have been taken by the Department through the withdrawal of such permits. Although in the majority of cases reviewed, the encroachment fees were promptly settled, the NAO noted that other balances remained pending. Of note was the case of a storage area in Marsa, where the balance of €55,290, equivalent to three years' dues, was outstanding. Also of significance was the case of a kiosk in Sliema, where a balance of €3,320, equivalent to two years' dues, was unpaid. Despite the possible revocation of permits in cases of infringements, the GPD expressed its reluctance to take such decisive action, indicating its preference to pursue payments through other enforcement measures.
- 4.2.6 In the case of encroachment permits issued for the placing of tables and chairs, the NAO has strong reservations about the standard rate applied, which fails to take into consideration various factors that determine the profitability, or otherwise, of the site. The GPD charged a flat rate of €23.29 per metre squared per annum for such permits, irrespective of whether the site was located on a prime site or otherwise. In this context, the NAO is of the opinion that location, seasonality and layout should be reflected in the rate charged. The Department may consider the establishment of minimum and maximum rates, or alternatively opt to augment the standard rate with a premium charge that would take into account the above factors.
- 4.2.7 The NAO noted that the endorsement of other public sector authorities was not always obtained prior to the issuance of encroachment permits by the GPD. Although applicants were required to submit MEPA clearance with respect to particular encroachment permits, the GPD issued the relevant permits even in cases when such approval was not provided. Perhaps the most significant shortcoming in this regard was that of a restaurant at the Xlendi waterfront. Here, the Office's concern was heightened by that stated by the GPD Director Land, wherein it was claimed that most establishments in Gozo were not covered by MEPA permits. The NAO insists that multiple irregularities should not serve as justification for further breaches and instead, should serve to instigate widespread decisive action by the GPD to rectify the situation.
- 4.2.8 On a positive note, the NAO recognised the collaboration registered with various local councils in the cases where the councils' views were requested prior to the issuance of encroachment permits. The GPD consistently implemented proposed amendments to encroachments, which were reflected in the permits granted.

- 4.2.9 In certain cases, the GPD issued encroachment permits on a temporary basis with the intention of following up such permits with a call for tenders. The NAO noted that action in this sense with respect to the cases reviewed was not pursued. Specific reference is hereby made to the encroachment permits issued for a basement in Valletta, a garage in Santa Luċija and a marine fuel station in Mġarr, Gozo.
- 4.2.10 During the course of this audit, the NAO noted that, at times, enforcement action taken by the GPD was lacking, particularly evident in the case of the placing of tables and chairs. In such cases, grantees occupied more space than that permitted, with a kiosk in Sliema encroaching on double the area originally allocated. Also in default were two restaurants that occupied public land despite not having the required encroachment permits. In this sense, specific reference is made to a restaurant at the Birgu waterfront and another located in a Mellieħa square. While the former was regularised following the submission of an application, the latter remained in breach owing to instructions issued by the Director Land in July 2010 to withhold any enforcement action. This was eventually regularised in January 2013.

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