

THE DISPOSAL OF THE SITE FORMERLY OCCUPIED BY THE INSTITUTE OF TOURISM STUDIES

A REPORT BY THE
AUDITOR GENERAL



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The disposal of the site formerly occupied
by the Institute of Tourism Studies

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List of Abbreviations

AG	Auditor General
BoG	Board of Governors
BOV	Bank of Valletta
CEO	Chief Executive Officer
CMP	Construction Management Plan
CoL	Commissioner of Land
dbSG	db San Gorg Property Ltd
DoC	Department of Contracts
E&P	Energy & Projects
EBITDA	earnings before interest, tax, depreciation and amortisation
EclA	Economic Impact Assessment
EIA	Environment Impact Assessment
ERA	Environment and Resources Authority
EU	European Union
FAR	Planning Policy Guide on the Use and Applicability of the Floor Area Ratio (May 2014)
F&B	food and beverage
FDI	foreign direct investment
FMS	Foundation for Medical Services
FTEs	full-time equivalents
GOPAR	gross operating profit per available room
GPD	Government Property Department
ITS	Institute of Tourism Studies
M&E	mechanical and electrical
MEH	Ministry for Energy and Health
MFIN	Ministry for Finance
MHRA	Malta Hotels and Restaurants Association
MLK	Martin Luther King
MOT	Ministry of Tourism
MQF	Malta Qualifications Framework
N	Number
NAO	National Audit Office
NHLP	North Harbour Local Plan

NHPV	North Harbour Paceville
NI	national insurance
NPV	net present value
OJEU	Official Journal of the European Union
OPM	Office of the Prime Minister
PA	Planning Authority
PAC	Public Accounts Committee
PAR	per available room
PPS	Principal Permanent Secretary
PS	Permanent Secretary
RfP	Request for Tender Proposals
SCH	Superintendence of Cultural Heritage
TIA	Transport Impact Assessment
VAT	value added tax
y/e	year ending

Executive Summary

1. On 9 March 2017, the Leader of the Opposition, the Hon. Dr Simon Busuttil, requested the Auditor General to investigate the disposal of the site formerly occupied by the Institute of Tourism Studies (ITS) and other adjacent land in St. Julian's, which were granted on emphyteutical terms to db San Gorg Property Ltd (dbSG). This request was endorsed by the Public Accounts Committee shortly after.
2. Following preliminary enquiries, the National Audit Office (NAO) commenced its audit in early 2019. The terms of reference set were to ascertain whether:
 - a. the process leading to the transfer of the site, in terms of the issue of and adjudication of the Request for Tender Proposals (RfP), as well as in terms of the contracts entered into, safeguarded and was based on the principles of good governance;
 - b. the process leading to the transfer of the site, in terms of the issue of and adjudication of the RfP, as well as in terms of the contracts entered into, safeguarded the principles of transparency and equity, and assured equal treatment to all potential bidders;
 - c. the process leading to the transfer of the site adhered to the provisions of the Public Procurement Regulations;
 - d. negotiations were held between Government and the Seabank Consortium after the submission of the final offer;
 - e. through this agreement, Government secured the best possible revenue for the site;
 - f. this project exposed Government to material losses in view of the relocation of the ITS; and
 - g. the transfer of the site adhered to the provisions stipulated in the (then applicable) Disposal of Government Land Act.
3. In November 2015, Projects Malta Ltd issued an RfP for the design, build and operation of an upmarket mixed tourism and leisure development in St George's Bay, St Julian's on the site then occupied by the ITS. By the closing date of 15 January 2016, one submission by the Seabank Consortium was made, with an indicative value of €17,000,000. On 12 February 2016, the Seabank Consortium was awarded preferred proponent status by Projects Malta Ltd following the recommendation of the Evaluation Committee. Negotiations commenced shortly thereafter, with Projects Malta Ltd setting up a Negotiation Committee and engaging Deloitte Services Ltd to assist in establishing the value of the site based on the development put forward by the Seabank Consortium. The process of negotiation came to a close in January 2017, with Cabinet endorsing the €56,000,000 value established by Deloitte. On 1 February 2017, the

Commissioner of Land and the dbSG entered into a deed of temporary emphyteusis for 99 years.

4. The dbSG submitted a planning application for the building of a City Centre multi-use development that was to include a hotel, residences, office space, a shopping mall, restaurants and a car park on 3 April 2017. The Planning Authority approved this application in September 2018. On 1 November 2018, several parties lodged an appeal with the Environment and Planning Review Tribunal contesting the development. The Tribunal ruled against the appellants in February 2019. However, the appellants filed an appeal in the Court of Appeal on 15 March 2019. The Court of Appeal upheld the appellants' plea in its decision of 9 June 2019, revoking the Tribunal's decision and deeming the planning permit null and void. Notwithstanding this, on 3 July 2019, the dbSG submitted a fresh application to the Planning Authority for excavation works on site. The NAO established that the original application was still active, with submissions made by the various stakeholders. Hereunder are the main conclusions reached by the NAO in addressing the terms of reference.
5. The first element considered by the NAO was whether the process leading to the transfer of the site was based on the principles of good governance. The origin of the decision to dispose of the site remained unclear, which matter is of grave concern to this Office given the nature of the land that was to be disposed of. While the 2016 Budget document made reference to the disposal of the site, the decision to transfer this land had already been taken at that point. Other than this, no information supporting the decision to dispose of the site was provided. Given this context, the NAO was unable to establish who was involved in this decision, with conflicting accounts provided by the Office of the Prime Minister and the Ministry of Tourism, each assigning responsibility to the other, compounding matters.
6. In the NAO's opinion, the decision to dispose of the site was inappropriately prioritised over the relocation of the ITS, when reason would dictate that the inverse should have happened. The false sense of urgency that drove Government to dispose of the site, despite the fact that no alternative premises had yet been secured for the ITS and that the development masterplan for the area had not yet been set, was of concern. The evidence reviewed by this Office indicates that the relocation of the ITS was a secondary effect of the decision to dispose of its premises, with no reference to the plan to relocate the Institute featuring in any strategic document or policy related thereto. Further shortcomings in terms of governance were that the basis of the decision to relocate was not supported by any analyses, while Government failed to involve the ITS Board of Governors in a key strategic decision such as this.
7. The second element reviewed by the NAO related to whether the principles of transparency and equity, and equal treatment to all potential bidders, were assured in the processes that led to the transfer. An element of concern in terms of transparency arose with respect to the information disclosed in the RfP. Although the residential component of the project was key in securing the viability of this project, this element was given limited exposure. Instead of being given the prominence this component warranted, which would have contributed to

the generation of interest in the project and ultimately been of benefit to Government in maximising revenue, this information was relegated to a detail in information made available by Projects Malta Ltd, which information was to be disclosed once interest in the RfP had been registered.

8. The NAO considered elements of the evaluation process as positive, such as the timeframe allowed for the submission of bids and the collective competence of the Evaluation Committee, which was deemed adequate. However, other aspects of the evaluation process drew this Office's attention, most notably in terms of the subjectivity of the evaluation criteria and the limited technical assessment undertaken.
9. Another element verified by the NAO was whether the provisions of the Public Procurement Regulations were adhered to in the process leading to the transfer of the site. This transfer could have been processed solely in terms of the Disposal of Government Land Act. However, Government intentionally classified this transfer as a concession, citing specific provisions of the Public Procurement Regulations that governed works concessions. Although this Office maintains reservations regarding the classification of this transfer as a concession, once this was classified as such, then this created additional obligations on Government in terms of the Public Procurement Regulations. The key concern that emerges in this respect was that Projects Malta Ltd was not listed in any of the schedules of the Public Procurement Regulations at the time of the issue of the RfP. This fact resulted in the classification by default of Projects Malta Ltd under Schedule 2 of these Regulations. Schedule 2 necessitated that procurement beyond a certain threshold, such as the case of this concession, be effected through the Department of Contract. In this case, the Department's authorisation was not sought, casting doubt on the regularity of the RfP.
10. An aspect also considered by the NAO were the negotiations held between Government and the Seabank Consortium after the submission of the final offer. This Office established that lengthy negotiations were undertaken once the Seabank Consortium was nominated as the preferred bidder, which negotiations resulted in a significantly higher value being determined for the site that was to be disposed of. While we acknowledge that negotiations were not ordinarily undertaken after the award of a tender, this course of action was not specifically precluded in the Disposal of Government Land Act and the recourse to negotiations was specified in the RfP. Furthermore, negotiations are assumed to have been undertaken a priori in transfers of land authorised through parliamentary resolutions.
11. Nevertheless, major concerns emerge with respect to the role played by the Negotiation Committee. The NAO's attention was drawn to the fact that the input of the Chair Negotiation Committee and one of its members was negligible. This shortcoming was partly mitigated by the Advisor Office of the Prime Minister, who was a member of the Negotiation Committee, and who assumed a disproportionately prominent role to compensate, and partly through the exceptional input of Deloitte in services provided to Government.

12. Similarly significant was the fact that no records of negotiations undertaken were made available, which constrained the NAO from establishing a comprehensive understanding of the negotiation process. This shortcoming in the workings of the Negotiation Committee grossly detracted from the expected level of governance that was to regulate such a process. This concern arises not only in respect of the meetings held by the Negotiation Committee, but also extends to others held with various Ministers of Government towards the end of the negotiation process.
13. The fifth element that the NAO assessed was whether Government secured the best possible revenue for the site. A deed of temporary emphyteusis was entered into between Government and the dbSG. The total estimated commercial consideration to be paid to Government, based on the expected development, was in excess of €56,000,000, excluding stamp duty. The planning application submitted by the dbSG in April 2017 had substantial differences to the project that was originally captured in the deed, with the development significantly downsized. This reduction in the scope of the project resulted in a decrease in the value that Government was to realise. Based on the rates and mechanism established in the deed, and adjusting for the revised dimension of the approved development, the NAO established that the total commercial consideration payable to Government was €45,000,000.
14. The NAO's valuation of the site as at 2016, estimated at €67,000,000, differed considerably with that determined by Government, that is, €56,000,000. However, this variance was nullified in 2018, with this Office's valuation of €45,000,000 matching that emerging from the application of the parameters of the deed. This convergence in value was the result of a decrease in market value resulting from the downsizing of the project and a substantial increase in development costs of €22,000,000 despite the reduction in the scope of the project, which affected the NAO's method of valuation differently to that established in the deed.
15. Tangential to the determination of value, yet related in terms of the development of the site, were lacunae in the planning policy framework. The lack of a masterplan for Paceville drew attention to the disjointed and fragmented approach to the development of the area, with only an element of guidance provided through certain applicable policies. The other major developments intended for the area compound matters, since the cumulative effects of all the developments tend to be overlooked in the piecemeal approval of such developments. The fact that there was no particular urgency for the development of this site further confounds Government's decision to proceed with this disposal. Moreover, the significant costs of the infrastructural upgrades that the project and other developments in the area created, exacerbating existing limitations, were not considered in the initial planning that should have been undertaken prior to the decision to dispose of the site.
16. The penultimate element that the NAO reviewed was whether this project exposed Government to material losses in view of the relocation of the ITS. This Office is of the opinion that the relocation was inappropriately planned. The timeframes that were set for the vacation of the St Julian's campus were unrealistic, hence necessitating relocation to alternative temporary

premises. The NAO maintains that the temporary relocation was required to mitigate the failure to appropriately prioritise the relocation of the ITS over the disposal of its premises. The direct cost to Government of this failure to appropriately plan was the cost of the refurbishment of the Luqa campus borne by Government, that is, approximately €2,000,000. While academic year 2018/2019 represented the Institute's first year of operation from its Luqa campus, this Office is informed that no definite date has yet been set for its permanent relocation to Smart City. The cost of the development of the Smart City campus was estimated at €80,000,000.

17. One final element considered by the NAO was whether the transfer of the site adhered to the provisions stipulated in the Disposal of Government Land Act. While the provisions of this Act were adhered to, it is with concern that this Office noted that the Government Property Department was conspicuously absent from the process that led to the disposal of the site. This absence was noteworthy as the Department was, at the time, the government entity mandated to dispose of public land. The only involvement of the Government Property Department was limited to those instances of the process when dictated by the Disposal of Government Land Act, with Projects Malta Ltd assuming control over major parts of the process in its stead.

Chapter 1

Introduction

1.1 Request by the Public Accounts Committee

- 1.1.1 On 9 March 2017, the Leader of the Opposition, the Hon. Dr Simon Busuttil, requested the Auditor General (AG) to investigate the disposal of the site formerly occupied by the Institute of Tourism Studies (ITS) and other adjacent land in St. Julian's, which were granted on emphyteutical terms to db San Gorg Property Ltd (dbSG). This correspondence was copied to the Chair Public Accounts Committee (PAC) for a formal request for an audit to be made by the Committee in accordance with established procedure (Appendix A refers). During the PAC sitting held on 13 March 2017, the Committee agreed to the audit.
- 1.1.2 In the correspondence submitted to the AG dated 9 March 2017, reference was made to the announcement by Government that a contract was entered into with dbSG for the transfer of the site as described in the contract 'Publication of Contract between the Government of Malta, represented by the Government Property Department (GPD), and dbSG', and the plans annexed thereto. According to that stated, this was one of the prime sites held by Government, in a zone so sought for development that the area was known as the "golden mile". It was further asserted that doubts existed as to whether the process that led to the signing of the contract, in its various stages, was based on the principles of good governance.
- 1.1.3 According to the correspondence, concern was expressed by several constituted bodies and associations as to whether the principles of transparency and equity were applied uniformly among all potentially interested parties. Reservations were also expressed as to whether the premium paid by dbSG reflected the value of the site, more so when the intended use of the site was considered. Furthermore, it was alleged that there were doubts regarding the procedure adopted, from the initial issue of the Request for Tender Proposals (RfP) to the signing of the contract.
- 1.1.4 It was further indicated that the process was to adhere to the provisions of the Public Procurement Regulations, whereby Article 39 of Subsidiary Legislation 174.04 stipulated that, "(1) Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner. (2) The tenderer must be selected in a transparent manner and according to a prescribed procedure. (3) The design of the procurement shall not be made with the intention of excluding it from the scope of these regulations or of artificially narrowing competition. Competition shall be considered to be

artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators". Moreover, Article 1 of this legislation stipulated that "irregular tenders' means tenders which do not comply with the procurement documents, which were received late, where there is evidence of collusion or corruption, or which have been found by the contracting authority to be abnormally low".¹

- 1.1.5 According to the Leader of the Opposition, Government should not have entered price negotiations following the submission of the offer by dbSG if the most fundamental principle of good governance was to be safeguarded. If the offer submitted was not acceptable to Government, then a fresh RfP should have been issued as was the usual practice in such cases. Moreover, the protracted negotiations undertaken by Projects Malta Ltd on behalf of Government after the submission of the final offer further attested to the departure from such established practice. The fact that negotiations were underway for twelve months sharply contrasted to other cases of disposal of public land where tenderers were not afforded the possibility to negotiate price and where the premium paid was to be settled within weeks.
- 1.1.6 It was also alleged that if Government wanted to establish a minimum value that would serve as a guide to tenderers, the principles of good governance and transparency dictated that this should have been set prior to the issuance of the RfP and not after issuance and even adjudication. According to established procedures, tenders for the disposal of government land must indicate a minimum value, independently established by Government and included in the RfP document.
- 1.1.7 Indicated in the correspondence submitted to the AG was that the value and the payment terms afforded by Government to dbSG did not reflect the commercial potential of the site. It was asserted that the dbSG was to pay €15,000,000 for the site rather than the €60,000,000 cited by Government. Moreover, dbSG was only to pay an upfront payment of €5,000,000. The Leader of the Opposition maintained that the value agreed between Government and dbSG was not in the public interest as evidenced by the higher amounts paid in respect of other sites transferred by Government to third parties.
- 1.1.8 Reference was also made to the considerable expense that Government was to incur in the relocation of the ITS from this site to Smart City, which raised considerable concern. According to that stated in Parliament, the expense for the relocation was to amount to €74,000,000, which clearly indicated a lack of viability when one considered this amount against the €5,000,000 upfront payment and the €10,000,000 to be paid interest free over a period of seven years by dbSG.
- 1.1.9 In the correspondence by the Leader of the Opposition it was contended that the heading of the RfP could easily mislead potential tenderers in that it read 'Request for Tender Proposals for the Design, Build and Operation of an upmarket mixed tourism and leisure development in St George's Bay, St Julian's'. In the heading, no indication was given of the fact that this

¹ 'Irregular tenders' and other defined terms are cited in Article 2 of the Public Procurement Regulations (Subsidiary Legislation 174.04)

public site could be utilised for residential purposes, which, it was contended, went against the provisions of the subarticle 3 of Article 39 of the Public Procurement Regulations (Subsidiary Legislation 174.04) which stated that, “(3) The design of the procurement shall not be made with the intention of excluding it from the scope of these regulations or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.” The relevance of the title was to be considered in the light that Government had put a charge of €10,000 for the purchase of the RfP document. The charge and the heading of the RfP could have weakened the interest of prospective tenderers which, undoubtedly, was not in the interest of Government.

- 1.1.10 Another assertion made was that the format of the RfP differed from that normally utilised for the transfer of Government land. Usually, such calls for tenders included a detailed project description, the conditions governing the transfer and a minimum value that bidders were expected to tender. Typically, tenderers would only be requested to indicate the tendered value and any additional proposals. This guaranteed transparency, assured that all tenderers were treated with equity and ensured that the evaluation committee could adjudicate comparable offers.
- 1.1.11 Another concern raised was that, prior to the signing of the contract in February 2017, dbSG had already entered into several “booking agreements” with prospective buyers even before acquiring the title to the site. It was further alleged that the project tendered did not adhere to the provisions of the Local Plan and the ‘Planning Policy Guide on the Use and Applicability of the Floor Area Ratio’ (FAR). It was also maintained that Projects Malta did not have the required legal standing to unilaterally publish and evaluate RfPs without the involvement of the Department of Contracts (DoC). This understanding emanated from the fact that Projects Malta fell under Schedule 2 of the Public Procurement Regulations which listed the contracting authorities falling within the competence of the DoC.
- 1.1.12 In conclusion, the Leader of the Opposition contended that the transfer of the site should have been referred for the approval of Parliament. In this case, this was not done.
- 1.1.13 In the light of the foregoing, the AG was requested to investigate whether:
- a. the transfer of the site was based on and safeguarded the principles of good governance;
 - b. the transfer upheld the principles of transparency and fairness and whether the process afforded potential tenderers equal treatment, both in the issuance and adjudication of the RfP and in the contract itself;
 - c. the provisions of Article 39 of the Public Procurement Regulations (Subsidiary Legislation 174.04) were complied with;

- d. the provisions of Article 1 of the Public Procurement Regulations were complied with;²
- e. negotiations were undertaken between Government and dbSG following the submission of the final offer;
- f. the best value for money was obtained from the disposal of this high-value site;
- g. this disposal exposed the taxpayers to material loss since the relocation of the ITS to Smart City would cost Government a minimum of €74,000,000, an amount that was much higher than the €15,000,000 that dbSG was to pay Government;
- h. the process adopted leading to the contract, and the fact that Projects Malta lacked the required standing in terms of Schedule 2 of the Public Procurement Regulations, vitiated the contract; and
- i. the transfer adhered to the provisions of the Disposal of Government Land Act (Chapter 268).

1.1.14 On 14 February 2019, the AG informed the Chair PAC of the terms of reference that would be adopted as the basis of the audit to be undertaken by the National Audit Office (NAO). In this regard, the NAO was to audit whether:

- a. the process leading to the transfer of the site, in terms of the issue of and adjudication of the RfP, as well as in terms of the contracts entered into, safeguarded and was based on the principles of good governance;
- b. the process leading to the transfer of the site, in terms of the issue of and adjudication of the RfP, as well as in terms of the contracts entered into, safeguarded the principles of transparency and equity, and assured equal treatment to all potential bidders;
- c. the process leading to the transfer of the site adhered to the provisions of the Public Procurement Regulations (Subsidiary Legislation 174.04);
- d. negotiations were held between Government and the Seabank Consortium³ after the submission of the final offer;
- e. through this agreement, Government secured the best possible revenue for the site;
- f. this project exposed Government to material losses in view of the relocation of the ITS; and
- g. the transfer of the site adhered to the provisions stipulated in the (then applicable) Disposal of Government Land Act (Chapter 268).

² As indicated, the NAO understood this as reference to Article 2 of the Public Procurement Regulations (Subsidiary Legislation 174.04).

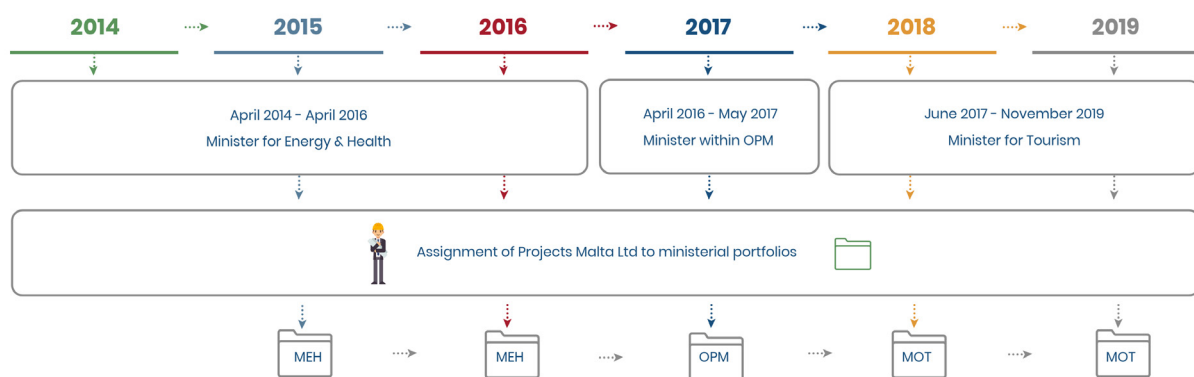
³ The Seabank Consortium was formed by SD Holdings Ltd, Seabank Hotel and Catering Ltd, and Seaport Franchising Ltd and was later constituted into the company db San Gorg Property Ltd on 22 September 2016.

1.2 Methodology

- 1.2.1 This audit was conducted in accordance with Article 9(a) of the First Schedule of the Auditor General and National Audit Office Act (Act XVI, 1997) and in terms of practices adopted by the NAO. Pertinent legislation reviewed included the Disposal of Government Land Act (Cap. 268) and the Public Procurement Regulations (Legal Notice 296 of 2010), which were then applicable. This Office also consulted the European Union (EU) Directive 2014/23/EU on the award of concession contracts.
- 1.2.2 Findings presented in this report are based on the documentation submitted to the NAO. Requests for documentation were mainly made to the Ministry for Tourism (MOT), the ministry responsible for the ITS, Projects Malta Ltd, the entity entrusted with the disposal of the site, and the ITS, which was relocated to alternative premises following the disposal of its campus in St Julian's. Documentation was also sourced by this Office following requests made to the Cabinet Office, the Office of the Prime Minister (OPM), the Planning Authority (PA), the Lands Authority and Deloitte Services Ltd. The latter was engaged by Projects Malta Ltd to provide consultancy services to Government in establishing a value for the site that was to be disposed of. Other stakeholders consulted by the NAO included the Attorney General's Office, the Courts of Justice, the Grand Harbour Regeneration Corporation, Investments plc and the National Statistics Office. This Office also submitted requests for information to the dbSG and the other bidders who had expressed interest in the RfP.
- 1.2.3 In view of the gaps in documentation noted by the NAO during this audit, requests were put to the Malta Information Technology Agency for access to the mailboxes of key officials involved in the various stages of the matter under review. The mailboxes of the Chief Executive Officer (CEO) Projects Malta Ltd, the Chief Operating Officer Projects Malta Ltd and the generic account of Projects Malta Ltd were obtained. Different periods were reviewed in each instance, in all ranging from mid-2015 to mid-2017.
- 1.2.4 Aside from documentation reviewed, in line with established procedures, the NAO held interviews, taken under oath, with persons who were directly involved in the disposal of the site to the dbSG. These included the Permanent Secretary (PS) MOT, the Executive Chair Projects Malta Ltd, and the CEO Projects Malta Ltd, who also served as a member of the RfP Evaluation Committee and Chair of the Negotiation Committee prior to his engagement as CEO with Projects Malta Ltd. The NAO also held an interview with the Chair of the RfP Evaluation Committee, who, for a short period, served as Chair of the Negotiation Committee. Other interviews were with Deloitte, the Chair and CEO of the ITS, the CEO dbSG, an Advisor OPM who served as a member of the RfP Negotiation Committee, the Commissioner of Land (CoL), the CEO Malta Government Investments Ltd, the Chair Malta Government Technology Investments Ltd and the Director General DoC. All the interviews held were transcribed by the NAO and a copy submitted to the interviewee, who was requested to endorse the transcript and submit clarifications, if required. It must be noted that, unless otherwise indicated, officials cited in this report are referred to according to their designation at the time of reporting.

1.2.5 Circumstances that constrained the NAO from reporting in this manner mainly related to instances when either roles of officials cited or reporting structures changed during the period being reported on. A case in point is that of the Hon. Konrad Mizzi, then Minister for Tourism, who for the initial part of the project under review held the office of Minister for Energy and Health and later that of Minister within the OPM, prior to assuming office as Minister for Tourism. During these tenures, Projects Malta Ltd shifted from one ministry to another, mirroring the reassignment of these ministerial portfolios. Likewise was the case of the PS MOT, who initially served as PS Ministry for Energy and Health (MEH) and later PS OPM Energy & Projects (E&P), prior to assuming the role of PS MOT (Figure 1 refers). Another case was that of the CEO Projects Malta Ltd, who when first engaged to assist Projects Malta Ltd as a member of the RfP Evaluation Committee served as CEO Foundation for Medical Services (FMS). Subsequently, he was appointed as Chair of the Negotiation Committee, then CEO Projects Malta Ltd in June 2017 and eventually Executive Chair Projects Malta Ltd.

Figure 1: Assignment of Projects Malta Ltd to ministerial portfolios



1.2.6 For reasons of clarity, it must be noted that reference to the Minister for Tourism is intended as reference to the Hon. Konrad Mizzi. On the other hand, citation to the former Minister for Tourism denotes the Hon. Edward Zammit Lewis.

1.2.7 Of grave concern to the NAO was that the Minister for Tourism failed to attend a meeting with this Office despite numerous attempts made.

1.2.8 The NAO engaged a consultant architect to assist this Office in the valuation of the site. This Office sought to determine the value of the site based on that proposed in the bid by the Seabank Consortium and that applied for with the PA. The resort to two valuations was required in view of the significant changes to the project between that proposed and that applied for by the Seabank Consortium, which had an effect on the revenue that was to be generated by Government. In certain instances, reference to rates and amounts in the analysis of valuations may not tally precisely. These instances of incongruence are due to rounding error and do not have a material effect.

1.2.9 In line with its guiding principles of independence, fairness and objectivity, the NAO sought to ensure that the allegations brought to its attention were duly scrutinised and the resultant findings objectively reported on. The relevant documentation and information required were, in most cases and to the best of the NAO's knowledge, made available to this Office by the various parties. The NAO's findings and conclusions are based solely and exclusively on the evaluation of such documentation and information supplied, and the evidence at its disposal. The NAO sought to identify any possible shortcoming or irregularity and put forward recommendations essentially meant to ensure that the best use of public resources is made.

1.2.10 In undertaking this audit, the NAO adhered to its policy of processing requests submitted to the AG by the PAC in a chronological order, according to the date of request.

Chapter 2

The issue and adjudication of the Request for Tender Proposals

2.1 The decision to relocate the Institute of Tourism Studies and dispose of the site

The announcement of the relocation

- 2.1.1** The first documented reference relating to Government's decision to relocate the ITS was traced to the Budget document for 2016, which was published on 12 October 2015. Classified under the segment 'Reforming and Investing in Priority Sectors', Government announced that an investment of €56,000,000 was to be made for the building of a new campus for the ITS in Smart City. Cited in the 2016 Budget was that the new campus would cater for the needs of Maltese students and workers in the industry, and would aid in attracting foreign students to Malta to study tourism and hospitality. Moreover, the possibility of strategic partnerships with international schools renowned in hospitality management was already being explored. It was further indicated that a call for tenders was to be issued with respect to the premises then occupied by the ITS, which site was envisaged for development into a project that complemented the surrounding area. The tender for disposal of the site was published shortly thereafter, that is, on 13 November 2015.
- 2.1.2** The 2016 Budget also provided for the setting up of the St George's Bay Regeneration Corporation, an entity through which Government intended to oversee the concentration of quality projects that were anticipated in the region of St George's Bay. The new Corporation was to provide a single point of contact with Government authorities and agencies to limit bureaucracy and hasten the works in hand. Also outlined in the 2016 Budget was the need for a comprehensive plan for the area, required to improve infrastructure and to minimise the inconvenience caused to existing businesses and residents. The St George's Bay Regeneration Corporation, in partnership with interested private entities, was to carry out the necessary co-ordination for projects planned for the area. For its initial phase, it was to operate under the Grand Harbour Regeneration Corporation. In this regard, according to official sources,⁴ by the end of 2016, an Operations Coordinator was selected and an operative plan was being prepared.
- 2.1.3** Notwithstanding this, clarifications sourced from the Grand Harbour Regeneration Corporation indicated that the St George's Bay Regeneration Corporation was never formally established, and only initial steps were taken for its set up and the definition of its remit. The Grand Harbour

⁴ It-Twettiq tal-Baġit 2016, 10 ta' Ottubru 2016

Regeneration Corporation attended some of the initial meetings with stakeholders organised by the PA in the preparation of the masterplan for the St George's Bay area. However, since the masterplan did not progress as expected, all efforts intended for the setting up of the St George's Bay Regeneration Corporation were discontinued. According to the Grand Harbour Regeneration Corporation, it was not involved in any discussions or negotiations regarding public or private proposals for the area.

- 2.1.4 Government's aim to establish a new campus for the ITS in Smart City was reiterated in the Budget document for 2017. According to the 2017 Budget, work on the Smart City complex was to start at the beginning of 2017. In addition, the 2017 Budget indicated that, as of September 2017, students would be able to attend tertiary level courses offered by the ITS in collaboration with local and international institutions.

The case for relocation

- 2.1.5 The NAO sought to understand the underlying basis that prompted Government to relocate the ITS and examine the considerations that led to this decision. To this end, queries were raised with the MOT as the ministry responsible for the ITS.
- 2.1.6 According to the PS MEH, it had long been Government's intention to develop a new and state of the art campus for the ITS that could accommodate and attract an increasing number of students, Maltese and foreign, and to enable the introduction of courses leading to a degree in tourism studies. Notwithstanding this, the PS MEH indicated that the consideration to expand the ITS was not to focus solely on student population and that other factors influenced such a decision. The PS MEH maintained that the ITS was hampered in its function by structural and technical constraints, specifying the fact that the Institute was operating from two locations and that its existing facilities did not allow for expansion necessitated by developments in its curriculum. Further reference was made to the 2016 Budget document, wherein Government announced that the ITS campus would be relocating to Smart City at a cost of €56,000,000. Nonetheless, other than the explanations cited above, the PS MEH provided no documentation or reports that supported Government's decision to relocate the ITS.
- 2.1.7 Although the PS MEH maintained that it was Government's intention to develop a new campus for the ITS, the NAO found no reference to this in the National Tourism Policy 2015-2020 that was issued in early 2015, that is, six months prior to the announcement of the Institute's relocation in the 2016 Budget. The only reference made to the ITS in the National Tourism Policy related to the strengthening of the academic role of the Institute. The policy direction entailed that, "The Institute for Tourism Studies and the University of Malta and other hospitality sector educational institutions need to collaborate and synergise their efforts to meet the needs of the industry when it comes to better trained personnel and dedicated professionals."
- 2.1.8 The views of the former Minister for Tourism were also sought by this Office. The NAO specifically enquired whether the former Minister for Tourism was involved in discussions relating to

the relocation of the ITS. The former Minister for Tourism confirmed his involvement in the relocation process given that the ITS fell under the remit of his Ministry. In this context, this Office requested the former Minister for Tourism to elaborate on the nature of his involvement. The former Minister for Tourism indicated that his involvement was through officials or entities under his political responsibility, who had assisted Projects Malta Ltd in the drawing up of plans for the relocation. All this was to be seen in terms of the wider considerations of Government's commitment to provide the ITS with facilities of an international standard.

- 2.1.9 An element of corroboration was provided by the Chair ITS BoG in submissions made to the NAO. The Chair ITS BoG noted that ministerial direction was to expand the studies at the ITS; however, the Institute's St Julian's campus was nearing its maximum capacity.
- 2.1.10 Given the limited information provided to the NAO by the MOT, the Office sought to substantiate the decision for the relocation of the ITS through information obtained from the Institute. The NAO reviewed minutes relating to meetings of the ITS Board of Governors (BoG) held between 2009 and 2017 to trace the origin and developments relating to the need to relocate the Institute to alternative premises. The ITS BoG assumes a pivotal role, in that it provides strategic direction to the Institute. The role of the ITS BoG is defined in the Institute of Tourism Studies Act (Chapter 566), which inter alia sets the functions and powers of the Board as:
- a. "to develop the direction, strategy and image of the Institute and any of its branches, including the adoption of periodic development plans for the Institute and its branches;
 - b. to acquire, administer and control the resources, facilities and property, both movable and immovable, of the Institute, including the procurement and utilisation of resources for the running of the Institute and any of its branches".

It is acknowledged that the Institute of Tourism Studies Act was enacted in 2016, that is, after the decision to relocate the Institute had already been taken. Nevertheless, the NAO's review of ITS BoG minutes for the period 2009 to 2017 indicates that the role of the Board remained essentially unchanged, providing strategic direction to the Institute throughout. Notwithstanding this, in submissions made to the NAO, the Chair ITS BoG indicated that the Board had a non-executive function and that decisions taken were not final and subject to ministerial endorsement.

- 2.1.11 Minutes of meetings of the ITS BoG held in 2009 indicated a focus on the strategic vision for the ITS, with discussions addressing matters related to the structure of the Institute, market trends and possible collaboration with other institutions, among others. It was noted that the possible relocation to alternatives premises was not discussed during 2009. In fact, up to April 2010, minutes of meetings rendered evident the focus of the ITS BoG on undertaking structural works at the St George's Bay campus. The envisaged structural works included the refurbishing and upgrading of the two restaurants on campus, the setting up of a gymnasium and a housekeeping area, as well as the relocation of the food and equipment stores.

- 2.1.12 During another meeting held in May 2010, the Chair ITS BoG referred to the need for the ITS to attract more fee-paying foreign students and to organise part-time courses to increase revenue. The Chair also referred to the possibility of relocating the Institute to a larger building, or putting to better use the existing premises, in a bid to boost revenue.
- 2.1.13 No further information relating to the possible relocation was traced in minutes corresponding to meetings held between 2010 and most of 2015. One point of interest noted by the NAO related to major refurbishment works undertaken at the Martin Luther King (MLK) site in Pembroke, which formed part of the ITS campus. Plans for the refurbishment works that were to be undertaken were noted in a Director's Report dated 6 September 2013, while the minutes of a meeting held by the ITS BoG on 4 October 2013 indicated that these works had, in the main, been completed. Replies to queries made by this Office indicated that the total costs undertaken at the MLK site amounted to approximately €55,000.
- 2.1.14 On 13 October 2015, that is, a day after the 2016 Budget announcement of the Institute's transfer to Smart City, the Chair informed the members of the ITS BoG that, at the request of the Minister for Tourism, he was to update the Board of developments relating to the relocation of the Institute, making reference to the allocation of land at Smart City. The NAO was informed by the Chair ITS BoG that around September 2014, he was approached by the MOT to design a new ITS campus at Smart City. However, the Chair ITS BoG was instructed not to disclose this information. The Chair ITS BoG informed the NAO that this task was undertaken with an architect.
- 2.1.15 The Chair provided the Board with an overview of the plans for the new ITS campus at Smart City. The proposed project consisted of the Institute's campus, an adjacent hotel and parking facilities. The ITS and the hotel were to be segregated at the ground floor, with the latter to be operated by a third party. The planned hotel was to have 135 rooms and classified as five-star. According to the minutes, the hotel was to accept a substantial percentage of the Institute's students for training.
- 2.1.16 The campus was to be 64,320 square metres and cater for a student population of 2,500, with 720 local students and the remaining foreign students. The intended use of each level of the Institute was as follows:
- a. first floor – foyer, offices, cafeteria and cooking theatres with overhanging galleries for visitors;
 - b. second floor – auditorium, offices and classrooms;
 - c. third floor – classrooms;
 - d. fourth and fifth floor – dormitories for ITS foreign students; and
 - e. sixth and seventh floor – office space intended for rental to other Government entities.

- 2.1.17 Noted in the minutes was that the 40 classrooms spread over the second and third floor of the campus could cater for 720 students, while the dormitories had a capacity of sleeping space for 420 students.
- 2.1.18 Parking spaces were to be provided on the first two underground levels allowing for a capacity of 437 spaces for use by the ITS, the hotel and the public. The third underground level was to consist of a loading bay, launderette, an indoor pool and a gymnasium.
- 2.1.19 The Institute's strategic plan was also discussed during the 13 October 2015 ITS BoG meeting. According to the strategic plan, the Institute aimed to introduce courses at Malta Qualifications Framework (MQF) levels 6 and 7 in business administration and hotel management, and hospitality services, respectively. The Chair informed the Board that the ITS was in negotiations with four foreign universities; however, discussions were still at their initial stages.
- 2.1.20 In conclusion, the Chair stated that the Smart City project was planned for completion by 2017; however, the Chief Executive Officer (CEO) ITS noted that this target was difficult to achieve yet acknowledged that this was in line with the Institute's strategic plan. According to the Chair, the Prime Minister had approved the relocation of the ITS in August 2015; however, this was to be announced in the budget for 2016. The CEO ITS informed the NAO that he had been aware of the planned relocation of the ITS to Smart City prior to the ITS BoG meeting in October 2015 wherein the Board was informed of this development by the Chair. According to the CEO ITS, in August 2015, a meeting was convened at the OPM wherein a presentation regarding the proposed ITS Smart City campus was delivered. The CEO ITS indicated that several officials were present and recalled that the Prime Minister and the Minister for Tourism had attended this meeting.
- 2.1.21 Finally, the NAO's attention was drawn to the minutes of the ITS BoG, wherein the members referred to their frustration that the MOT changed the Board's decisions, claimed that they were not trusted and expressed their preference to be involved in the project at an earlier stage. Concerns expressed by the members of the ITS BoG were acknowledged by the Chair ITS BoG and the CEO ITS. In view of the serious concerns raised by the ITS BoG, the NAO sought the views of all the Board's members. Although not all members expressed their views, the main comments elicited were that the minutes did not accurately reflect that expressed during the meeting and that members felt that they should have been involved in decisions of a strategic nature. One particular member emphasised that the concern related to the lack of the ITS BoG's input in overall strategy rather than in details of the Institute's new campus layout.
- 2.1.22 Commenting in this respect, the Chair ITS BoG and the CEO ITS indicated to the NAO that they had been instructed by the Chief of Staff MOT, the Prime Minister and the Minister for Tourism, respectively, not to divulge any information regarding this project. The Chair ITS BoG explained that the plans drafted at this point were still at an initial stage and fluid, and therefore it was futile to involve many others at this early stage. The CEO ITS explained that he was directed by the Prime Minister that budget measures were not to be discussed prior to the Budget speech. Furthermore, the Minister for Tourism indicated that budgetary measures were to be kept

confidential prior to the presentation of the Budget and confirmed that the Chair ITS BoG was instructed not to divulge information prior to the Budget.

2.1.23 Aside from the analysis of the ITS BoG minutes, the NAO reviewed press coverage relating to public announcements brought to its attention. The NAO noted an article reporting on the opening ceremony of the Institute's academic year 2010/2011, during which the Minister for Education, Employment and Family, the Hon. Dolores Cristina, referred to Government's efforts in identifying an alternative location to house a new campus for the ITS. Queries were made to the CEO ITS as to what developments were registered in this respect. The NAO's attention was drawn to a reply to a parliamentary question dated 15 October 2012, wherein the Hon. Dolores Cristina presented a copy of the concept model for a new ITS campus prepared by the Foundation for Tomorrow's Schools. In the reply, the Minister explained that plans were being finalised prior to submission for planning approval. The CEO ITS informed this Office that although the process had been initiated and an area in Pembroke identified, no records in this respect were traced at the ITS.

2.1.24 In addition, the NAO enquired whether the Institute, or others acting on its behalf, drew up any plans, proposals or reports that led to or contributed to Government's decision to relocate the Institute. In reply, the ITS provided this Office with a report drawn up by external advisors in June 2015 titled 'Institute of Tourism Studies Strategic Report 2015-2020'. The Report outlined the strategic direction that was to be pursued by the Institute over the period 2015 to 2020. Attention was given to the contextual challenges faced by the ITS, namely relating to tourism, employment, demographic and educational factors. The Strategic Report identified measures that the ITS was to implement to improve its overall quality of service, which measures reflected the direction set by the National Tourism Policy 2015-2020. Of note to the NAO was that the Report made no reference to limitations faced by the Institute in terms of its premises or plans to relocate the Institute despite that the Report was drawn up a few months prior to the announcement of the Institute's relocation.

2.1.25 Furthermore, the NAO was provided with a copy of an internal quality assurance report, dated March 2015, prepared in anticipation of an external quality audit that was to be carried out by the National Commission for Further and Higher Education. The internal quality assurance report provided an overview of the organisation structure within the Institute, listed its major strengths and weaknesses, and made recommendations for improvement. One of the weaknesses highlighted by the internal quality assurance report was that the premises were limited and inadequate for growth. In addition, the report stated that the ITS brand required stronger marketing capabilities if it were to increase the intake and quality of its students.

2.1.26 The external quality audit, undertaken in May 2015, confirmed the findings cited in the internal quality assurance report. According to the external quality audit report, the overall state of the ITS' infrastructure, particularly the main campus in St Julian's, needed significant upgrading. Noted in the report was that there was a considerable discrepancy in the utilisation of the three ITS campuses. While the main campus in St Julian's was overcrowded and in need of substantial renovation and modernisation, the new campuses in Gozo and the MLK were largely underutilised.

- 2.1.27** The external quality audit concluded that the ITS did not meet the standard associated with learning resources and student support, wherein matters relating to the suitability of the Institute's infrastructure were addressed. In its response to the findings identified in this audit, the ITS agreed that the main campus in Malta needed upgrading; however, the Institute contended that its study programmes could be run with the actual resources. The NAO deemed the latter statement as incongruent with the drive to relocate the Institute to more suitable premises. Nonetheless, in submissions to this Office, the CEO ITS maintained that the St Julian's campus had significant structural problems, aside from safety issues and health hazards.
- 2.1.28** The NAO sought to assess indicators that would have attested to the need to relocate the ITS to better suited premises. A key indicator in this respect was the number of students enrolled at the Institute. Information regarding student populations was sourced from the ITS and the National Statistics Office. The ITS provided data for the academic years 2010/2011 to 2018/2019, although figures cited with respect to the last academic year were provisional. In its submission, the National Statistics Office informed the NAO that consistent and harmonised data was available from academic year 2012/2013, following the introduction of European Union regulations concerning the production and development of statistics on education.
- 2.1.29** Review of the data provided by the ITS indicated an average annual population of approximately 1,000 students when one considered the academic years 2010/2011 to 2018/2019. If one were to exclude academic year 2010/2011 owing to the outlier nature of the part-time student population and academic year 2018/2019 in view of its provisional nature, then the average annual population for the academic years 2011/2012 to 2017/2018 was of 930 students. On the other hand, data furnished by the National Statistics Office with respect to academic years 2012/2013 to 2017/2018 indicated an average annual population of approximately 750 students (Figure 2 refers).
- 2.1.30** Evident is that the data sourced from the ITS and the National Statistics Office differs considerably. The inconsistencies in the populations reported in certain years are more pronounced than others. The likely reason for the discrepancy relates to the point at which student populations are measured. The ITS data correspond to all students enrolled with the Institute at the beginning of the scholastic year, while the National Statistics Office data captures the student population much later in the same scholastic year, hence accounting for dropouts. Irrespective of the variations within the datasets, the NAO is of the opinion that the information sourced from the ITS and the National Statistics Office provides tentative indications of growth in the Institute's student population. This Office acknowledges that the limited number of years for which data is available constrained the analysis. Furthermore, the in-depth review of the student populations and their profiles was not undertaken by the NAO as this would have been outside of the scope of this audit. Therefore, it remains unclear whether the changing student populations were a factor considered by Government or the ITS in determining the Institute's need to relocate.

Figure 2: Students enrolled at the ITS, 2010/11-2018/19

Academic Year	ITS (n)			National Statistics Office (n)			Variance
	Full-Time	Part-Time	Total	Full-Time ²	Part-Time ³	Total	
2010/2011	516	774	1,290	-	-	-	-
2011/2012	655	208	863	-	-	-	-
2012/2013	688	218	906	640	261	901	5
2013/2014	787	245	1,032	675	297	972	60
2014/2015	748	166	914	620	98	718	196
2015/2016	651	194	845	474	118	592	253
2016/2017	720	180	900	408	96	504	396
2017/2018	768	296	1,064	560	225	785	279
2018/2019 ¹	635	622	1,257	685	n/a	685	572

Notes:

1. Enrolment data provided by the ITS and the NSO for academic year 2018/2019 is provisional.
2. Figures include students enrolled in formal education with a minimum duration of one semester of full-time study (or the equivalent in part-time) for courses that are delivered in Malta.
3. Figures exclude short courses (duration of less than the equivalence of one full-time semester), preparatory programmes and courses not delivered in Malta.

2.1.31 Another indicator that would have influenced the decision to relocate the ITS to alternative premises is the broadening of the Institute’s curriculum. This point was cited in the ‘Institute of Tourism Studies Strategic Report 2015-2020’, wherein reference was made to the drive to offer new courses in niche markets, including but not limited to high-end concierge services, integrated relational tourism, green tourism and supply chain management. This report also made reference to the ITS’ plans to provide higher levels of education, specifically targeting degree-level and post-graduate courses in line with the Malta Qualifications Framework. In 2015, at the time of drafting of the ITS strategic report, the Institute offered a total of 25 courses, 19 on a full-time basis and six on a part-time basis. By academic year 2018/2019, the ITS’ curriculum evolved, with the Institute offering nine programmes of study covering different areas such as room hospitality, food preparation and service, event management, food preparation and hotel management on cruise liners and tour guiding. These programmes corresponded to foundation-level courses, certificates, diplomas and degrees as per the Malta Qualifications Framework.

2.1.32 The ITS anticipated that these curricular developments, together with other strategic initiatives (such as collaboration with other international institutions), would result in an exponential increase in student population. According to the Institute’s projections, the number of students would double over a five-year period, increasing from 1,004 students in 2021 to 2,132 in 2025.

The case for disposal

2.1.33 Having reviewed the case made by Government and the ITS for the relocation of the Institute, the NAO’s attention is now directed towards Government’s decision to dispose of the site. Although the decision to relocate the ITS was intricately linked by Government to the disposal

of the site occupied by the Institute, the Office is of the understanding that the decision to relocate did not necessarily entail its immediate disposal. The following is the Office's analysis of the case made by Government substantiating its decision to dispose of the site then occupied by the ITS.

- 2.1.34 The NAO sought to understand the underlying basis that prompted Government to dispose of the site occupied by the ITS. The Office intended to examine the considerations that led to this decision, as well as any site evaluations carried out. In this Office's understanding, such considerations and evaluations were to determine the viability of that intended for the site that was to be disposed of. To this end, enquiries were made with the Lands Authority as the Government entity responsible for the administration of public land. The Lands Authority informed the NAO that it was not involved in any manner in the decision-making process that resulted in the disposal of the site. According to the Lands Authority, Projects Malta Ltd assumed the lead in the process of disposal of the ITS site. This was confirmed by the former Executive Chair Projects Malta Ltd who indicated that the Lands Authority was involved at the latter stages of the procurement process, except for an initial request by Projects Malta Ltd to the Lands Authority for site plans, which request had been made prior to the issue of the RfP.
- 2.1.35 The NAO directed queries to Projects Malta Ltd to understand its role and the extent of its involvement in the decision leading to the disposal of the site. In clarifications provided to this Office, the former Executive Chair Projects Malta Ltd stated that no formal terms of reference had been provided in relation to the disposal of the site occupied by the ITS. Notwithstanding this, the former Executive Chair Projects Malta Ltd indicated that instructions to this end were provided by the Minister MEH and the PS MEH in a meeting held shortly after the presentation of the 2016 Budget. Given the context, the NAO understood that Projects Malta Ltd were not involved in the decision to dispose of the site, for their involvement commenced after the budgetary announcement, at which stage the decision to dispose of the site had already been taken.
- 2.1.36 Elaborating on the matter, the former Executive Chair Projects Malta Ltd noted that the intention to relocate the ITS from its premises at St George's Bay had long been considered. He recalled that a study had been conducted by the ITS that had supported a move to more adequate premises. The subsequent relocation of the Institute had resulted in a vacant prime site which could be redeveloped. The former Executive Chair Projects Malta Ltd indicated that Government had intended that the site was to be allocated for a hotel, with the aim of ameliorating the touristic product. Other facilities, such as a shopping complex, which would boost tourism in the winter months when the weather limited outdoor activities, were also planned, as reflected in the RfP. Nonetheless, the former Executive Chair Projects Malta Ltd maintained that Projects Malta Ltd was not involved in the initial decision to dispose of the site and was solely in charge of the actual disposal.
- 2.1.37 Moreover, according to the Executive Chair Projects Malta Ltd, the OPM had initiated the drafting of the RfP which was then passed on to Projects Malta Ltd to conclude and publish. This was somewhat corroborated by the former Executive Chair Projects Malta Ltd, who stated that the

RfP was drafted by an official of Projects Malta Ltd and an Advisor OPM. The former Executive Chair Projects Malta Ltd also indicated the possible involvement of Nexia BT in relation to the bid bond required in terms of the RfP.

- 2.1.38 Considering the information provided by Projects Malta Ltd, the NAO sought further clarifications from the MEH, the ministry responsible for Projects Malta Ltd in 2015, the point at which decision to dispose of the site was taken. The NAO sought to confirm that stated by the Executive Chair Projects Malta Ltd, that the instructions to dispose of the site were issued by the MEH, through queries address to the PS MEH. The PS MEH maintained that the project initiation phase, including the concept, the legal framework for the disposal of the site, up to tender finalisation stage, understood by the NAO as the drafting of the RfP, were led by the OPM, and that he was aware of the project following the decision to issue the RfP. According to the PS MEH, once the RfP was finalised, the competitive process was then delegated to Projects Malta Ltd in view of its public private partnership element.
- 2.1.39 The NAO subsequently directed queries to the Principal Permanent Secretary (PPS) OPM in view of that stated by the PS MEH. This Office sought any documentation retained by the OPM relating to the project initiation phase, including any instructions or terms of reference issued. The PPS OPM informed the NAO that no files or documents concerning the subject were traced at the OPM. In view of the impasse, this Office enquired whether the OPM was aware of which ministry, department or entity provided the terms of reference that were to guide Projects Malta Ltd in the disposal of the site. The PPS OPM reiterated that the OPM was not involved in the matter and its processes and hence could not provide the NAO with the information requested.
- 2.1.40 Notwithstanding the lack of clarity regarding who decided to dispose of the site, the PS MEH cited several factors that supported this decision. The PS MEH stated that in parallel with the relocation of the ITS, and as part of Government's wider efforts to further boost the tourism sector in a diversified manner and attract more quality tourists, the need had long been felt to attract to Malta a 5-star brand hotel which would be operated under a brand of hotels operating world-wide. According to the PS MEH, the ITS site was deemed as suitable to meet the requirements of such a brand hotel with ample area for the creation of leisure and entertainment facilities, as well as food and beverage (F&B) and retail outlets. It was also felt that such a project would not only raise Malta's tourism product but would also provide added touristic quality to the Paceville area and beyond, attracting tourists who were willing to pay more. Furthermore, the PS MEH stated that the project would create around 1,500 new employment opportunities. Other considerations cited by the PS MEH that possibly led to the decision for the disposal related to the maximisation of the site's potential due to its prime location and the ITS' need to relocate to larger premises.
- 2.1.41 In view of the lack of clarity regarding who decided to dispose of the site, the NAO directed queries to the former Minister for Tourism. This Office acknowledges that the MOT bore no direct responsibility for the disposal of public land and queries made to the former Minister

for Tourism were meant to exhaust all possibilities. The former Minister for Tourism confirmed that he was not involved in any discussions with regard to the disposal of the former ITS site and the eventual issuance of the RFP. Similar enquiries were made by the NAO with the ITS, which Institution bore no responsibility over the disposal of public land. The Chair ITS BoG and the CEO ITS confirmed that the Institute was not involved in any way in the decision to dispose of the site.

- 2.1.42 Finally, the NAO sought information from the Cabinet Office regarding its possible role in the decision to dispose of the site. The NAO acknowledges that there existed no specific legal requirement for disposals of public land to be put to Cabinet; however, in this Office's opinion, the nature of this disposal in terms of the extent of the envisaged development, its economic impact and the substantial value of the land, would warrant such review. In this context, the NAO made enquiries with the Cabinet Office as to whether the matter was brought to the attention of Cabinet prior to the issue of the RfP for disposal of the site. The Cabinet Office informed the NAO that no reference to the relocation of the ITS and the disposal of the site could be traced in Cabinet minutes held prior to the issue of the RfP in November 2015.
- 2.1.43 The extensive enquiries made by the NAO in seeking to establish who decided to dispose of the site proved futile. The Lands Authority, Projects Malta Ltd, the MEH, the MOT, the OPM and Cabinet Office were unable to provide information to this end. While the decision to dispose of the site was captured in the 2016 Budget, the NAO could not trace the inputs that led to this decision.
- 2.1.44 Furthermore, the NAO established that no feasibility studies and site valuations were undertaken by Government prior to the issuance of the relevant call for tenders for the disposal of the site. The PS MEH indicated that the tender document put the onus on the bidders to carry out feasibility studies, as well as the necessary site investigations. Furthermore, the valuation of the site was to be determined by prospective bidders, with the PS MEH referring to various requirements stipulated in the tender document which were to constitute a detailed business plan, namely:
- a. financial projections;
 - b. a marketing plan;
 - c. annual ground rent payable to Government;
 - d. the upfront payment payable to Government;
 - e. the capital investment required; and
 - f. an operational plan.

- 2.1.45 The former Executive Chair Projects Malta Ltd confirmed that no feasibility studies were carried out by Projects Malta Ltd, citing the organisation's limited resources. The onus in this regard was placed on the bidders. According to the Advisor OPM, the main objective that drove the RfP was the upgrade of the tourism infrastructure through a quality project intended to attract high-end tourism, particularly the Asian market. Nonetheless, other than the explanations cited above, no documentation or studies that supported Government's decision to dispose of the site were provided to the NAO.
- 2.1.46 Another matter raised by the NAO related to whether Government considered the issuance of a pre-announcement of its intention to dispose of the site to generate interest from potential bidders. The NAO established that no pre-announcement was issued; however, the former Executive Chair Projects Malta Ltd referred to statements possibly made by the Minister MEH following the announcement of the budgetary measures, and was of the opinion that local and foreign investors were always aware of large-scale projects. The Advisor OPM indicated that Government had met all the legal requirements relating to the publicity of the disposal of the site. Notwithstanding this, the Advisor OPM acknowledged that advertisement in foreign publications may have been beneficial. According to the Advisor OPM, this was mitigated by publication in a EU portal that had considerable reach.

2.2 The issue of the Request for Tender Proposals

Drafting of the Request for Tender Proposals

- 2.2.1 Since the RfP was published by Projects Malta Ltd, the NAO enquired with the former Executive Chair Projects Malta Ltd regarding who drafted the RfP. The former Executive Chair Projects Malta Ltd explained that he had reviewed and approved the issuance of the RfP but did not draft it or delve into any technicalities. He indicated that the Chief Operating Officer Projects Malta Ltd and the Advisor OPM were involved in the drafting of the RfP. The former Executive Chair Projects Malta Ltd also referred to the involvement of Nexia BT; however, he indicated that this was primarily related to the bid bond.
- 2.2.2 The Advisor OPM corroborated that stated by the former Executive Chair Projects Malta Ltd, confirming his involvement together with that of the Chief Operating Officer Projects Malta Ltd. According to the Advisor OPM, his input mainly related to the drafting of specific articles of the RfP, particularly those concerning its characteristics as a concession. In addition, the Advisor OPM made reference to the support provided by other Projects Malta Ltd officials, as well as the role of Nexia BT, in the drafting of the RfP.
- 2.2.3 Based on correspondence reviewed, the NAO confirmed the involvement of Nexia BT in relation to the RfP. Following queries raised by this Office, the Permanent Secretary MOT reiterated that, prior to the competitive process being delegated to Projects Malta Ltd, the initiative was being handled by the OPM. The PS MOT informed the NAO that in his understanding, the OPM had appointed Nexia BT to draft the RfP document. According to the PS MOT, there was

no involvement whatsoever of Nexia BT from the point that Projects Malta Ltd took over the competitive process. In view of that stated by the PS MOT, the NAO directed queries regarding the involvement of Nexia BT to the PPS OPM. The PPS OPM maintained that the OPM was not involved in this matter and no records were traced regarding the engagement of Nexia BT in this respect. In view of the conflicting evidence provided by the PPS OPM and the PS MOT, the NAO was unable to categorically determine the extent of the involvement of all parties involved in the drafting of the RfP.

- 2.2.4 Notwithstanding this, the involvement of various other Government officials in the review of the draft RfP was noted by the NAO through documentation obtained from other sources. Key in coordinating various aspects of the RfP were the Projects Manager at MEH, as well as the Chief Operating Officer and the Projects Implementation Coordinator at Projects Malta Ltd. Another Projects Malta Ltd official, the Communications and Stakeholder Coordinator, managed elements of the project that entailed coordination and communication with external and internal stakeholders.

The Request for Tender Proposals

- 2.2.5 A call for tender proposals for the design, build and operation of an upmarket mixed tourism and leisure development in St George's Bay, St Julian's was issued on 13 November 2015 by Projects Malta Ltd on behalf of Government, as announced in the Budget document for 2016. Projects Malta Ltd charged a non-refundable fee of €10,000, which was to be paid on the collection of the RfP document. The former Executive Chair Projects Malta Ltd informed the NAO that he had determined the fee considering the scale of the project. An advert was published on the same date on three different local newspapers.
- 2.2.6 Information regarding the RfP was also published on 17 November 2015 in the Government Gazette under the charge of the MEH. Cited in the advert was that the Government intended to proceed with the award of a concession for the site that housed the ITS in St George's Bay, St Julian's, and land in proximity thereto. Information and plans could be collected free of charge from Projects Malta Ltd. The €10,000 collection fee for the detailed RfP was reiterated.
- 2.2.7 The information and plans provided by Projects Malta Ltd free of charge were reviewed by the NAO. Stipulated in this information was that the concession was for a period of 99 years, with prospective proponents to submit proposals in terms of the Disposal of Government Land Act (Cap. 268). Specifically cited was that the site was to include a five-star hotel operated under a world recognised brand, operating worldwide. The project was to include leisure and entertainment facilities, residential units, F&B and retail outlets.
- 2.2.8 Moreover, on 18 November 2015, Projects Malta Ltd, on behalf of the MEH, published the details of the RfP as a works contract on the Official Journal of the European Union (OJEU) as Contract Notice 2015/S 223-405612, under the title of Malta – Sliema: Hotel Equipment. The project's classification as a works contract and reference to hotel equipment in its title were deemed anomalous by the NAO.

- 2.2.9 The NAO enquired as to why the title of the RfP did not refer to the residential component of the project and why this element did not feature in any of the adverts published in relation to the RfP. The only publicly accessible reference to this component was in the information made available free of charge by Projects Malta Ltd for prospective bidders. This matter was deemed pertinent by the NAO in view of the pivotal importance that the residential component represented in terms of rendering the project viable. The former Executive Chair Projects Malta Ltd conceded that the title of the RfP might not have been clear and that there might have been more interest had the residential element been given prominence. The Advisor OPM maintained the residential element was captured in the information freely provided by Projects Malta Ltd.
- 2.2.10 The NAO noted that the Disposal of Government Land Act (Cap 268) did not specify who was to issue the call for tenders in respect of disposal of public land. In this context, this Office enquired as to what legal mandate empowered Projects Malta Ltd to act on Government's behalf in disposing of the ITS site. Projects Malta Ltd indicated that it was incorporated by the Government to assist in developing and promoting project concepts that served to fulfil Government's policy objectives. According to Projects Malta Ltd, its role included carrying out all the groundwork required for the implementation of such projects, from inception to completion. In this case, Projects Malta Ltd maintained that it had collaborated with all relevant entities and stakeholders. This understanding was reiterated by the PS MOT.

Objectives

- 2.2.11 The RfP indicated that it was Government's intention to award a concession for the site that housed the ITS and other land which was in proximity. The concession was to be awarded to the successful proponent of an upmarket mixed tourism and leisure project. It was further stated in the RfP that, in terms of the Disposal of Government Land Act (Chapter 268) and in full compliance thereto, Government invited the submission of proposals from prospective proponents who were interested in pursuing their participation in this competitive process with a view to obtaining a concession. The definition of the contract as a concession was also of concern to the NAO; however, this matter is dealt with in further detail at a later stage in the report.
- 2.2.12 According to the RfP, it was Government's intention to continue to improve on the current touristic and leisure facilities on offer in Malta, since the tourism sector contributed 20 per cent⁵ to Malta's gross domestic product, making this industry one of the main driving forces of the Maltese economy. Based on the importance of this sector to the local economy, Government acknowledged that the prime contributor towards meeting and exceeding visitor expectations was that of offering touristic and leisure facilities that were of a superior standard than those offered by competing touristic destinations.

⁵ Malta Tourism Authority Statistical Report, 2014.

2.2.13 The RfP outlined the specific objectives that were to constitute the basis of award and all evaluation criteria. Specifically, the operator was to ensure the following:

- a. the site was to include a hotel that was rated as a 5-star hotel or higher and which was operated under a world-recognised brand of hotels, operating worldwide; the project was also to include leisure and entertainment facilities, F&B and retail outlets;
- b. the facilities were to be operated privately;
- c. the project was to be implemented in a timely manner;
- d. the creation of employment opportunities in all strata of potential employable persons;
- e. the attraction of quality and diversified tourism to Malta;
- f. the proposed project and the ancillary activities added value to the Maltese economy;
- g. that no revenue support would be required by Government;
- h. the site would run profitably while also meeting all legal and operational obligations;
- i. the development of business through the capabilities of key international players;
- j. the financing of the project would be exclusively undertaken through private sector investment;
- k. the attraction of foreign direct investment (FDI);
- l. the inclusion of an international brand providing a distinct and innovative touristic product within the Maltese market;
- m. the creation of a new niche market within the tourism market;
- n. the maximisation of spill-over benefits to the Maltese economy;
- o. the diversity to the tourism product then available in Malta, which the proposal would offer; and
- p. the identification of the brand linked to the proposal in markets not traditionally associated with Malta, to encourage new segments and new markets to visit Malta.

2.2.14 The NAO enquired as to the rationale for the imposition of the requirement constraining the hotel component to the identification of a new brand not traditionally linked with Malta.

The former Executive Chair Projects Malta Ltd explained that product diversity in the market increased Malta’s attractiveness as a tourism destination. This was supported by the Advisor OPM, who maintained that seeking such brands encouraged a wider spectrum of tourists.

Timeframe and stages

2.2.15 The RfP included a timeframe, identifying the dates and deadlines for the key stages in the process that were to lead to the identification of the successful proponent (Figure 3 refers). Requests for clarification regarding the RfP or the project were to be received by 30 November 2015 and replies to clarification requests were to be circulated to all interested parties by 11 December 2015. While the RfP was published on 13 November 2015, the closing date for the submission of proposals was 15 January 2016.

Figure 3: RfP timeframe

Date	Action
13 November 2015	Issue date of the RfP
30 November 2015	Closing date for the submission of requests for clarification
11 December 2015	Closing date for the publication of replies to requests for clarification
15 January 2016	Closing date for the submission of proposals

2.2.16 The RfP also delineated the different stages of the competitive process, which involved the:

- a. setting out of the final terms and expected financial parameters of proposals that were to be submitted by the proponents;
- b. identification of the preferred proposal;
- c. carrying out of further discussions and negotiations with the preferred proponent;
- d. award of the concession to the successful proponent; and
- e. execution of the concession agreement and/or any other agreement or document deemed material or ancillary thereto.

The site

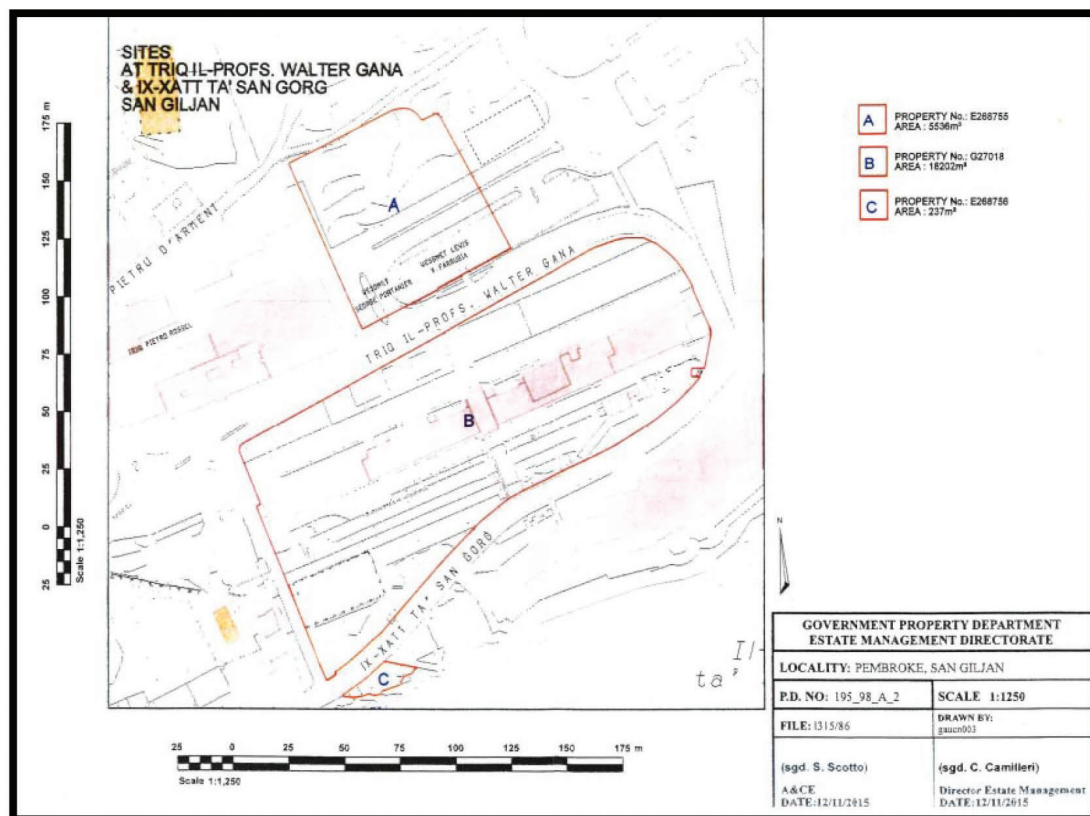
2.2.17 According to the RfP, the land offered by Government under the concession was in St George's Bay, St Julian's, with a total footprint of 24,340 square metres, split into three areas, namely:

- a. Site A, measuring 5,536 square metres;

- b. Site B, at the time occupied by the ITS, measuring 18,567 square metres;⁶ and
- c. Site C, located by the sea and measuring 237 square metres.

A map detailing the exact specifications and location of these sites was also provided with the RfP (Figure 4 refers). Proponents could undertake a site survey and geological study of the terrain that fell within the scope of the concession; however, any costs incurred in this respect were to be borne by the proponent undertaking the study.

Figure 4: Site A, Site B and Site C



The concession

2.2.18 The RfP defined the term ‘concession’ as the granting of a 99-year temporary emphyteutical concession by Government, through a competitive process, for the rights which were to entitle the successful proponent to design, build and operate an upmarket mixed tourism and leisure project, subject to the concession agreement as negotiated by the parties. A concession agreement was to be entered into between Government and the successful proponent, including any other agreement or any additional document deemed material in respect of the concession.

⁶ While the RfP indicates an area of 18,567 square metres for Site B, the relevant site plans and subsequent contract entered into by Government cite an area of 18,202 square metres.

- 2.2.19 The terms and conditions of the concession agreement were to be negotiated and finalised with the preferred proponent. The concession agreement and any other agreement entered by the successful proponent were to be governed, construed and enforced in accordance with the laws of Malta. Specifically, the provisions contained in Part II of the Civil Code (Articles 1494 - 1524) were to apply in their totality unless the parties to the concession agreement, to the extent permissible by law, otherwise agreed. As a minimum, the agreement(s) was to reflect any commitments made by the preferred proponent in the proposal and/or during discussions and/or negotiations with Government.
- 2.2.20 As stipulated in the RfP, the concession was to conclude on its expiration period of 99 years, when the successful proponent was to transfer operations and any constructions, improvements and any other ancillary property to the site to Government, unless any part thereof was assigned in perpetuity under the same title of emphyteusis or otherwise alienated in favour of third parties in accordance with the concession agreement. Nonetheless, Government reserved the right to terminate the concession at any point in time should the proponent's implementation of the project not meet the contracted standards and/or obligations, without prejudice to any further grounds for termination that could be identified in the concession agreement awarded in favour of the successful proponent.
- 2.2.21 For the duration of the concession, the proponent would not be able to transfer or assign the concession to a third party without obtaining the written approval of Government, unless otherwise agreed to in the concession agreement. In addition, if residential units were included in the development, the concession agreement was to allow the transfer by the proponent of any such residential units to third parties for the duration of the concession period. The agreement was to allow and authorise third parties acquiring such residential units within the project to, at their option, convert the temporary emphyteusis attached to the residential units acquired by them to perpetual emphyteusis, at such rate per square metre indicated by the proponent in the proposal, the sum of which was to be paid directly to Government. Thereafter, such third-party purchasers would be entitled to purchase the freehold rights in respect of such residential units at the capitalisation rate of five per cent in terms of the law. The parties were to further agree that the right of this conversion could not extend to and be enforceable directly by the successful proponent.
- 2.2.22 According to the RfP, the concession agreement was to enable the successful proponent to transfer parts of the site to third parties for commercial purposes as long as any such lease agreement would not exceed beyond the concession period. Such transfer was to be limited to lease, operation agreements, management agreements or other similar rights. For the avoidance of doubt, the concession agreement was not to allow for the transfer of any real rights over the site, except for any residential units that could be included in terms of the RfP.
- 2.2.23 The successful proponent awarded the concession would be expected to maintain the site in a good condition, as well as carry out any preventative repair works. On the conclusion of the concession term, the site was to be returned in a good state of repair and operational. Moreover, the successful proponent who was to enter into the concession agreement was to obtain the necessary licences and/or permits.

- 2.2.24 In terms of the RfP, on the award of the concession, the successful proponent was to pay an annual ground rent to Government. The ground rent, payable yearly in advance, had to be adequate and reflect the market value of the site and the nature and extent of the proposed development. Subject to negotiations, the concession agreement was to allow for an administrative abatement of such ground rent for a limited period not exceeding three years from the signing of the concession agreement. The ground rent indicated by the proponent in the bid was to constitute the original ground rent in terms of the concession agreement. Nonetheless, the ground rent was to be revised upwards on the lapse of five years, and every subsequent five-year period, according to the official rate of inflation, reckoned from the date of the concession agreement.
- 2.2.25 On the award of the concession and the issue of the necessary development permits required for the project, the successful proponent was to make a one-time upfront payment to Government. The time limit for effecting this payment was to be negotiated during the evaluation stage.
- 2.2.26 Stated in the RfP was that the successful proponent was to provide a performance guarantee set at five per cent of the capital expenditure committed by the proponent in the proposal. Following the completion of the project and on commencement of operations, the concessionaire had the right to reduce the value of the performance guarantee to a value equivalent to one-year ground rent. Nonetheless, if the successful proponent failed to submit a planning application within three months of the effective date of the concession agreement, 50 per cent of the performance guarantee would be forfeited. The successful proponent was also to forfeit 50 per cent of the performance guarantee if construction did not commence within three months from the issuance of the development permit and due authorisation from the relevant authority for the commencement of works was issued.
- 2.2.27 Apart from the above clauses, the concession agreement was to include other provisions, including terms and conditions regarding insurances to be obtained, other penalties to be imposed for non-compliance of obligations assumed, indemnities, termination and rescission of the concession agreement, as well as the financing of the development.

Submission requirements

- 2.2.28 Participation in the RfP could be undertaken by an incorporated body or a consortium, Maltese or foreign. Every incorporated body, whether forming part of a consortium or not, had to submit the following documentation as part of the proposal. This minimum documentation was to be supplemented with additional information as the proponent considered necessary:
- a. full details of the incorporated body or of each member of the consortium, including the registered office address, telephone number, facsimile number, contact name and e-mail address;

- b. details of incorporation, including a certified copy of the incorporation documents and a certificate of good standing for each company, whether participating in a consortium or not; in case of a consortium, a certified copy of the consortium agreement had to be provided, together with a document designating the lead partner;
- c. previous experience of the proponent or of each of the consortium members, as applicable;
- d. the names and respective positions of the persons authorised to represent the proponent;
- e. details of shareholders and any shareholding agreements for each proponent;
- f. a certified copy of the board resolution approving the contents of the response document;
- g. a certified copy of a detailed group structure of each company;
- h. a certified copy of the last three years audited financial statements; and
- i. details of all external advisors (e.g. financial, legal, other) that were engaged for the RfP.

2.2.29 Every proponent, whether part of a consortium or not, was expected to submit detailed information with respect to experience, a business plan, as well as an operational plan corresponding to the first 10 years of the concession. This information was intended to provide the evaluation committee that was to be appointed by Projects Malta Ltd with a clear understanding of the technical capacity of the proponent to carry out the operation identified in the response. The proponents, whether members of a consortium or sole proponents, were to provide the following information:

- a. Previous experience
 - a comprehensive overview of the relevant experience required in order to carry out the scope of the RfP;
 - substantiate the level of experience with curricula vitae of key personnel that were to form part of the operation;
 - the experience that operators for the hotel and ancillary functions possessed;
 - comprehensive information on the chain of hotels that was proposed for this site; and
 - a copy of a letter of intent between the proponent and the respective chain of hotels to be presented by the proponent at RfP stage.

b. Business Plan

- financial projections covering the first 10 years of the concession, including a profit and loss account, a balance sheet and a cash flow statement;
- a marketing plan covering the first five operative years;
- a detailed breakdown of the annual ground rent payable to Government including, if any, the rate per square metre to be charged in favour of Government for the conversion of residential units from temporary to perpetual emphyteusis;
- the value of and calculation for determining the upfront payment that was to be paid to Government; and
- the timing, level and type of capital investment required for each individual aspect of the project.

c. Operational Plan for the first 10 years of the concession:

- the objectives of each operation;
- a detailed human resources plan; and
- an analysis of key milestones within the operational activity provided in narrative form and in the form of a Gantt chart.

2.2.30 Every proponent had to provide the evaluation committee with a satisfactory level of comfort regarding possession of the necessary financial capacity to undertake the project put forward in the proposal. To ascertain this, the proponent had to provide:

- a.** a letter of comfort issued by a financial institution confirming that the proponent had the necessary capability to raise the debt levels indicated in the business plan submitted; and
- b.** a declaration listing all amounts due to Government such as, but not limited to, any outstanding national insurance (NI) contributions and personal and corporate taxation liabilities.

2.2.31 Each proponent was also to submit a minimum of three design development concepts for the site, as well as a model and computer-generated imagery of at least one design development.

The evaluation process

2.2.32 According to the RfP, Government, through Projects Malta Ltd, aimed to select a proponent who met the overall objectives set out therein. Projects Malta Ltd, through the specifically appointed evaluation committee, was to assess each proposal and identify the preferred proponent on three fair, transparent and objective criteria related to design, technical and financial considerations as outlined in an evaluation criteria scoreboard (Figure 5 refers).

Figure 5: RfP evaluation criteria

Evaluation Criteria		Score (100)
Design	Innovative aspect and design	10
	Overall understanding of the objectives	5
	Articulation and overall cohesion of concept	10
Technical	Fitness and properness of the proponent	5
	Level of experience the proponent has in similar projects	10
	Sustainability of the business plan and operational plan presented	20
	Capacity to raise the required financing and ability to execute and deliver the project	10
Financial	The level of upfront payment	10
	Yearly ground rent payable to Government	10
	Level of capital investment	10

2.2.33 The NAO considered the evaluation criteria somewhat subjective, failing to specify in sufficient detail the basis for the allocation of marks and only providing a high-level overview of the criteria of adjudication. In response to queries raised by this Office, the Chair Evaluation Committee stated that he was not involved in determining the criteria and that the subjectivity inherent in the evaluation process was countered through the consensus reached by all members. On the other hand, the former Executive Chair Projects Malta Ltd indicated that the criteria had been set by the Advisor OPM. However, the former Executive Chair Projects Malta Ltd maintained that he had reviewed the RfP prior to its issuance and had considered the evaluation criteria adequate. Nonetheless, he did not anticipate that the RfP would only attract one bid, which rendered the process of evaluation more challenging as there were no comparators. A conflicting account was provided by the Advisor OPM, who claimed that he was not involved in setting the evaluation criteria, yet contended that such criteria were not a requirement of the Disposal of Government Land Act.

2.2.34 The evaluation committee was to be responsible for the design, technical and financial assessment of the proposals submitted in terms of this competitive process. During its assessment, the evaluation committee could be assisted by any other person, officer, authority, entity, advisor, or consultant which or whom the committee wished to engage for this purpose. The evaluation committee was to submit its recommendations to Projects Malta Ltd indicating whether the nature of the proposals submitted was sufficiently satisfactory to justify the identification of the preferred proponent and, eventually, the successful proponent for the award of the concession. Nonetheless, Projects Malta Ltd had complete discretion in deciding whether to accept the recommendations of the evaluation committee.

- 2.2.35 During the evaluation process, the proponents could be invited or permitted by the evaluation committee to make one or more presentations concerning the proposal submitted, provided that such presentation/s be restricted to clarification and elaboration of the information already provided in the submission. The purpose of any such presentations was for proponents to:
- a. elaborate and expand on the proposal and answer questions related thereto;
 - b. respond to any issue that could arise from the proposal; and
 - c. submit supplementary material, if required.

Negotiations

- 2.2.36 Following the evaluation process and the identification of the preferred proponent, Projects Malta Ltd reserved the right to enter into discussions and/or negotiations with the selected bidder. Such discussions and/or negotiations were to lead to an agreement on commitments that the preferred proponent had made in the proposal, on a draft of the concession agreement and any other legal documents that could be necessary for the execution of the concession. In this process, Projects Malta Ltd could be assisted by a specifically appointed negotiating team. The preferred proponent was to be notified who the members of the negotiating team were.

Other provisions

- 2.2.37 Any dispute or appeal arising from the RfP and the competitive award process was to be resolved in terms of the Concessions Review Board Regulations of 2015 (Legal Notice 214 of 2015).
- 2.2.38 The RfP specified that proponents were to be disqualified and could incur administrative penalties if during any part of the competitive process:
- a. they attempted to obtain confidential information or enter into unlawful agreements with competitors; and/or
 - b. they or any of their directors and other officers, employees, representatives, contractors or agents attempted to exercise undue influence.
- 2.2.39 Furthermore, if it transpired that the award or execution of the concession agreement gave rise to unusual commercial expenses, the proposal concerned was to be rejected or the concession agreement terminated. Unusual commercial expenses included commissions not mentioned in the main concession agreement or not stemming from a properly concluded concession agreement, commissions not paid in return for any actual and legitimate services, commissions paid to a recipient who was not clearly identified, or commissions paid to a company which had every appearance of being a front company. If it were discovered that at any stage of the award

process there were any kind of corrupt practices, Government reserved the right to terminate the concession agreement.

- 2.2.40 In submitting their proposals, proponents acknowledged and accepted that Government could run probity checks about them with the relevant competent authorities or third parties. Proponents also consented to the disclosure of information by any third parties requested by Government and accepted that Government retained the right to disqualify a proposal if it had good and sufficient reason to believe that the proponent or any of its constituent members or affiliated companies were not of good reputation.
- 2.2.41 All proponents were to submit their proposals in reply to the RfP in one original and two hard copies, as well as an electronic version, together with the bid bond and the proof of payment of the non-refundable collection fee of €10,000, by 15 January 2016. Each proponent was to provide Projects Malta Ltd with an irrevocable and unconditional bid bond for €1,500,000, issued by a bank or financial institution, valid for 12 months and effective from the closing date of the RfP. Proponents were to renew the bid bond if negotiations prolonged beyond its expiration.

Clarifications

- 2.2.42 Following the issuance of the RfP, bidders were provided with the possibility of submitting requests for clarification. According to the RfP, all queries and requests for clarification were to be submitted by e-mail by not later than 30 November 2015. The closing date for Projects Malta Ltd to furnish replies was 11 December 2015. Replies to clarification requests were to be circulated by e-mail to all the interested parties.
- 2.2.43 By the set deadline, Projects Malta Ltd received three requests for clarification from two of the prospective proponents, namely International Hotel Investments PLC and Seabank Group of Companies. This Office ascertained that the clarifications were replied to by Projects Malta Ltd within the established timeframes and that the replies were circulated among all bidders as stipulated in the RfP. Based on correspondence reviewed, the NAO established that replies to clarifications were drawn up by the Advisor OPM.
- 2.2.44 One of the requests for clarification related to the business and operational projections required. The prospective proponent questioned whether Projects Malta Ltd required projections for each of the three design development concepts or whether these were required only for the proponents' preferred concept. In its reply, Projects Malta Ltd clarified that projections were only required for the preferred concept. The other two requests for clarification related to the financial capacity requirements stipulated in the RfP. In reply to one of the queries, Projects Malta Ltd confirmed that a letter of comfort from a fully licensed investment services company regulated by the Malta Financial Services Authority, instead of a letter of comfort from a financial institution, satisfied the requirement set out in the RfP. With respect to the other query, the proponent required Projects Malta Ltd to clarify whether the submission of

a declaration with respect to dues to Government from the parent company would meet the requirements of the RfP, and therefore the other group undertakings were not required to provide such information. Projects Malta Ltd affirmed that a declaration by the parent company sufficed.

2.2.45 Aside from enquiries made by parties who had collected the RfP document, Projects Malta Ltd also received queries from other interested parties. These queries were mainly of a general nature. Projects Malta Ltd consistently referred such queries to the RfP-related information publicly available on its website. One enquiry by an interested party that drew the NAO’s attention indicated that, given the size of the project, the timeline for a meaningful submission was unachievable.

2.3 Submission by the Seabank Consortium

2.3.1 Until the deadline for the submission of proposals, that is, 15 January 2016, three prospective proponents had collected, against payment of the €10,000 fee, a copy of the RfP (Figure 6 refers). However, by the closing date, only one proposal by SD Holdings Ltd, Seabank Hotel and Catering Ltd, and Seaport Franchising Ltd, was submitted.

Figure 6: List of prospective proponents who collected the RfP document

Cash Receipt Date	Proponent
13 November 2015	International Hotel Investments plc
13 November 2015	SD Holdings Ltd, Seabank Hotel and Catering Ltd, and Seaport Franchising Ltd
10 December 2015	Fino – Alsadi Joint Venture

2.3.2 The NAO sought to understand whether there were any limitations emanating from the RfP that influenced the decision of the other parties who had collected the RfP document not to submit a proposal. Queries to this effect were made with International Hotel Investments plc and the Fino – Alsadi Joint Venture. While the latter did not submit any feedback, International Hotel Investments plc informed this Office that after due consideration of the site, given its proximity to other major investments held, the board of directors decided against making a bid on account of the Company’s already significant commitment towards developing its own project on its land. No reply to similar enquiries made with the Malta Hotels and Restaurants Association (MHRA), deemed relevant in terms of its specific insight into the industry, was received.

2.3.3 In view of the limited interest generated by the RfP, the NAO queried whether Government considered taking any corrective measures. It must be noted that the RfP was not binding on Government, nor did it give certainty that the RfP would be awarded to any one of the bidders. Furthermore, Government was not precluded from suspending or altering the RfP and timeframes any time before or during the evaluation process. Queries to this effect were addressed to the PS MEH and the former Executive Chair Projects Malta Ltd. The PS MEH

maintained that he was not aware of Government considering such a course of action. In turn, the former Executive Chair Projects Malta Ltd noted that the Evaluation Committee had ascertained that the bid submitted by the Seabank Consortium was administratively compliant and that all the technical requirements were met. The former Executive Chair Projects Malta Ltd argued that once the requisites were satisfied, it would have been unfair to recall the RfP due to the limited response.

- 2.3.4 The tender box was opened in the presence of two Projects Malta Ltd officials and a lawyer. Projects Malta Ltd confirmed that, as required by the RfP, an original and two copies of the bid, a bid bond for €1,500,000 dated 6 January 2016, and a model of the proposed development pertaining to the bid by SD Holdings Ltd, Seabank Hotel and Catering Ltd, and Seaport Franchising Ltd were received. A notice indicating this submission was made publicly available on the website of Projects Malta Ltd on the same day of the opening of proposals received.
- 2.3.5 On 15 January 2016, SD Holdings Ltd, Seabank Hotel and Catering Ltd, and Seaport Franchising Ltd, together the Seabank Consortium, submitted a bid in reply to the RfP. In line with the requirements of the RfP, a consortium agreement was entered between the companies on 7 January 2016, a copy of which was duly submitted with the bid. Inter alia, the agreement provided for the right to subsequently incorporate the Seabank Consortium into a limited liability company if the bid was successful. The lead partner of the consortium was SD Holdings Ltd. The memorandum of understanding and the articles of association of the companies forming the consortium were submitted, together with the relative certificate of incorporation. Certificates of good standing as issued by the Registrar of Companies in respect of the companies were also provided. A certified document listing the group structure, prepared by an audit firm and dated 12 January 2016, was included in the bid. Copies of the audited financial statements for 2013, 2014 and 2015 (covering the period 1 April 2012 to 31 March 2015), as well as details of the shareholders for each of the companies, were also submitted.
- 2.3.6 Details of each member of the Consortium, as well as information regarding their experience, were provided with the bid. These documents, together with those listed in the preceding paragraph, fulfilled the obligations regarding the general requirements of the RfP.
- 2.3.7 In terms of the technical capacity requirements stipulated in the RfP, the Seabank Consortium organised the technical content of the bid in seven key documents. The initial document contained information on the proponents, the key players and the experts who were to be involved in the project. The second document gave details of the concept and design of the planned project. A marketing analysis and a marketing plan were submitted as the third document, while an operational plan was submitted as document four. Document five related to human resources and document six provided the financial projections and a statement of assumptions regarding the proposed development. The final document presented was an economic impact assessment (EclA) of the effects that were to be generated as a result of the project.

- 2.3.8 The bid submitted by the Seabank Consortium was voluminous and detailed, which prompted the NAO to enquire how this was accomplished within the two-month timeframe stipulated by the RfP. A representative of the Consortium confirmed that all the requirements relating to the submission were prepared within the allotted timeframe and emphasised that this was possible through the engagement of a team of professionals.

Proponents, key players and experts

- 2.3.9 The first document served to identify the proponents, the key players and the experts who were to be involved in the project and was a reiteration, in more detail, of information submitted in fulfilment of the general requirements. However, additional information was given with regard to the Hard Rock brand, as the chain of hotels being proposed for the site, and the Big Bon Group, as the lead operator of the retail element of the project. Regarding the key enablers, the submission by the Seabank Consortium provided details of experts engaged to provide project management, engineering consultancy, economic and financial advice, legal consultancy, marketing advice, the interior design, as well as the technical expertise.

Concept and design

- 2.3.10 According to the concept and design document, the project was to comprise a five-star hotel with over 300 rooms, a casino, residential towers and a retail mall development. The design was arrived at following the issue of a brief to five architectural houses identified by the Seabank Consortium and Hard Rock Ltd. Two of the briefs received did not meet the criteria and were not considered further. The remaining three briefs, submitted by Jestico and Whiles, Holder Mathias and MYGG, were scored against a matrix addressing functionality, efficiency in terms of costs and time, overall design aesthetic, congruency with Maltese culture and structural heritage, innovation, cohesion of the project's different operations, unity of project with the surrounding, and economic value added. The design submitted by MYGG was the preferred option as it was found to focus on innovation without compromising functionality, efficiency and economic balance.
- 2.3.11 The selected design by MYGG featured two towers rising above the Hard Rock Hotel and a panoramic Sky Bar, and overlooked the Hard Rock Cafe and beach. The proposed hotel was to have 370 rooms over 13 levels, utilising a total area of 41,995 square metres.⁷ The casino was to be split over three levels, incorporating a casino restaurant and bar, and was to have a total area of 2,085 square metres. A shopping mall, spread over six levels, covered a total area of 23,874 square metres. The two residential towers, with 209 apartments, corresponded to a total area of 50,946 square metres. Tower A was to have 29 levels, while Tower B was made up of 23 levels. Each apartment was to have its own parking space or garage, which were to be serviced by communal lifts that were to link the parking area with the towers.

⁷ It must be noted that conflicting values of the area of the hotel were cited in different sections of the bid, with 47,875 square metres and 41,995 square metres both quoted.

2.3.12 Office space was to be allocated in the first five levels in Tower B, with a total area of 3,875 square metres. The levels were to be connected to the adjacent congress hall, allowing for easier use of the hall. The hall was to have a total area of 5,880 square metres, with a seating capacity of 2,000. The design also provided for 2,364 parking spaces spread over an area of 70,914 square metres. In total, the development was to have an area of approximately 200,000 square metres (Figure 7 refers).

Figure 7: Proposed development

Use	Area (metres squared)	Details
Parking	70,914	2,364 parking spaces
Residential towers	50,946	209 apartments
Hotel	41,995	370 rooms over 13 levels
Shopping mall	23,874	Over 6 levels
Congress hall	5,880	Seating capacity 2,000
Offices	3,875	Over 5 levels
Casino	2,085	Over 3 levels

Marketing plan

2.3.13 The marketing plan provided information on the analysis undertaken in connection with the proposed project. As a whole, the project was termed as the 'City Centre' and was to be marketed as a unique destination, offering world-class facilities targeting clientele who were willing to pay extra for luxury living. The proponents presented a seven-year marketing plan for the different components of the project. The plan covered the first two years when the project would be under construction and the subsequent operative five years following completion of the construction phase.

2.3.14 Several assumptions were made regarding the hotel including that, by 2020, the hotel would have established itself as a top-tier 5-star hotel and that by 2023, the hotel would be operating at 85 per cent occupancy all year round. A 15 per cent repeat business was envisaged to be achieved by 2022. It was also assumed that, by 2019, the restaurants and catering outlets would be considered as the best in Malta and that, by 2020, the hotel would have become a sought-after venue for clubbing and live music, as well as a top venue for weddings. It was also envisaged that, by 2020, the Hard Rock Hotel would be hosting a minimum of eight medium-sized conferences a year.

2.3.15 The hotel was to mainly target the generation of the 1980s and 1990s, resulting in a higher possibility of clients travelling with children. In view of this, the hotel was designed as family-friendly, with the provision of facilities specially targeting children including the Hard Rock's Roxity Children's Club. The Club was to include an interactive play area that provided animation programmes and other numerous activities.

- 2.3.16** The Hard Rock Hotel was to offer its guests certain facilities related to music that were synonymous with the brand. In addition, the hotel was to have a fully-serviced spa and a gym. It was to include a selection of world-renowned restaurants that serve guests and patrons with different cuisines. Different entertainment areas were to be set up, including a rooftop bar. The Sky Bar, which was to be situated on highest point of the hotel, was to be accessible through the payment of a steep entrance fee to ensure exclusivity, and was to attract internationally renowned DJs. The hotel was to house a multi-purpose hall, distinct from the congress hall, which was to seat 1,000 guests and accommodate 2,500 standing guests over an area of 2,126 square metres. The hotel was to include three retail outlets, one of which was to be the Hard Rock's brand 'Rock Shop'.
- 2.3.17** According to the marketing plan submitted by the Seabank Consortium, all the components of the project were cross-dependent in terms of revenue. With this in mind, the marketing plan promoted the 'City Centre' as a holistic development that was to revolve around the Hard Rock brand but which was to develop its own unique marketing and brand platform. The proponent noted that tourism expenditure in Malta was lower than the average spend in Europe; therefore the project aimed to increase tourist expenditure by providing higher-value services and products than those currently on offer. The project also aimed to exploit the spike in tourism that saw tourists favouring Malta over North African countries such as Egypt and Tunisia. Reference was also made to the forecasted growth in tourism by the World Tourism Organisation (UNWTO)⁸ for the period 2010-2030, and the resultant need for Malta to create further capacity to accommodate this increase. Through this project, the Seabank Consortium intended to provide approximately 750 beds to Malta's tourism bed stock.
- 2.3.18** Through an analysis of relevant statistics, the Seabank Consortium identified the general trends in the local tourist market. From this analysis, it transpired that, in 2014, there was an increase in the number of visitors aged 25 to 44. According to that stated in the bid, this age bracket was found to best fit Malta's product offer. In fact, the project was to target affluent foreign customers aged 30 to 55, including accompanying families. Although it was noted that, in 2014, the highest turnover of tourists was from European countries, the project aimed to attract non-European visitors hailing from long-haul destinations, particularly Brazil, Russia, India, China and the Gulf. Attention was also to be given to corporate business clients, concert goers, the foreign wedding markets, facilities to the expatriate community living in Malta connected to the iGaming and the financial sectors, as well as the local community. The tourism infrastructure was also analysed and it was contended that if further visitor attractions were developed, these would attract other tourists to Malta, particularly those related to meetings, incentives, conferences and exhibitions, as well as cultural travel. In conjunction with other casinos operating in the area, it was asserted that the casino could attract professional gambling tourism to Malta.

⁸ UNWTO Tourism Highlights (2015)

- 2.3.19 According to the Malta Tourism Authority,⁹ tourist spend in Malta was below the European average. The Seabank Consortium noted that since the cost of transit had decreased this provided an opportunity for higher-end accommodation. In line with this reasoning, the hotel was to charge a price that was 20 per cent to 25 per cent higher than an average 5-star room rate and was to operate a moving room-rate policy depending on the season and the events taking place at that time. In addition to the determination of the daily room rate, other indicative pricing was also outlined in the bid, such as the price of concerts, gym membership and income generated from other hotel use.
- 2.3.20 A marketing plan for the casino was also provided, highlighting the planned differentiation from other casinos operating in Malta. Branding was to be in line with other Hard Rock casinos and the Hard Rock database of global players was to be made available in order to facilitate targeted advertising. The casino aimed at targeting existing local and foreign players while also attracting new players, high net-worth individuals and high-rollers, especially from North America and Asia.
- 2.3.21 With respect to the retail element, according to the bid, Malta was found lacking in opportunities for luxury shopping. To address this lacuna, the shopping mall was to be segmented into an upmarket supermarket, an area for premium designer outlets and space for high-street brand stores. Among other amenities, the shopping mall was to have ATMs installed and was to provide concierge services and a nursery.¹⁰ Early bird discounts on rents for outlets were to be given in order to entice retailers to set up shop in the mall. The Big Bon Group, entrusted with the running of the mall, was to bring in more brands possibly through their existing agreements with other business partners. According to that stated in the marketing plan, food remained the single highest expenditure of travel. Hence, the proponents considered the presence of more branded restaurants as an investment opportunity.
- 2.3.22 A marketing plan for the residential element was also included in the bid. The Seabank Consortium aimed to develop the two residential towers in two phases, spanning over three years. Phase 1 focused on the construction of the South Tower, which was to be undertaken between April 2017 and June 2018. Phase 2 entailed the construction of the North Tower, which was to be carried out between July 2018 and August 2019. The South Tower was to be located next to the Hard Rock Hotel and was to house 140 luxury apartments over 30 levels. A typical floor was to consist of five apartments, while the top floor was to consist of three penthouses. On the other hand, the North Tower was to house 69 upmarket apartments spread over 23 levels, with the top floor comprising two apartments and a duplex penthouse. The apartments were to have an area of 97 square metres up to 326 square metres.

⁹ Evaluating Tourism Expenditure (2013)

¹⁰ The bid was inconsistent with regard to the number of levels in the shopping mall; in one document it was stated that the mall was to be housed over six levels while in another document it was indicated that it was to be split over three levels with an allocation of 750 parking spaces.

- 2.3.23** The price of the residential units was set to range from €3,000 to €6,000 per square metre. The price of apartments was to follow the trends for properties in the Sliema, St Julian's, Swieqi and Pembroke areas. In 2015, the price in the area was set at €2,748 per square metre which, according to the proponents, made Malta very competitive vis-à-vis other Western European countries. The Seabank Consortium identified various target groups as potential purchasers of residences in the towers, namely, the high-end Maltese market, foreigners who work in Malta or seek residence through the Citizenship by Investment and Residence Visa Programme and rental companies. Marketing efforts were to be concentrated in Europe, the Middle East, North Africa and Asia. Moreover, purchasers wishing to purchase the properties on plan were to benefit from several advantages, which led the Consortium to assume that a significant number of sales would be undertaken prior to the completion of the Towers' construction.
- 2.3.24** The offices were meant to cater for businesses seeking space in a prime location. The identified target markets included foreign companies of international repute interested in registering office in Malta, established companies operating in Malta, real estate investment funds, as well as iGaming companies.
- 2.3.25** As part of their corporate social responsibility, the proponents were willing to enter into discussions with the relevant authorities to restore and rehabilitate the cave system that was located close to the site, with the aim of facilitating controlled public access to this natural site.

Operational plan

- 2.3.26** The Seabank Consortium provided an operational plan of the different phases in the implementation of the project. A Heritage Report was commissioned with respect to the existing structure occupied by the ITS since this was to be integrated into the design of the project. The structure was to be restored in view of its former use as a military barracks dating back to 1860 and its scheduling as a Grade 2 property. Cited in the report were various recommendations intended to protect the structure, which included the restoration of original loggias and the two large stone carvings of the coat of arms situated at the parapet roof level in view of their considerable historical and architectural significance.
- 2.3.27** The operational plan also referred to a Good Neighbourhood Plan, intended to mitigate disturbance to the adjacent hotels and residents. The Plan included details relating to who was to be responsible for its implementation, established mechanisms for coordination, listed measures for disseminating information and outlined a procedure for the submission of complaints. Specifically cited were the measures that were to be implemented to reduce noise and vibration generated by the machinery used, as well as efforts to reduce dust and waste. The Seabank Consortium listed the initial works that were to be undertaken prior to the commencement of construction works. These included the shifting of utilities and the diversion of traffic. Other measures cited included a public consultation and the appointment of an environmental consultant.

- 2.3.28 An initial project management plan corresponding to the construction phase was appended to the bid. The plan provided for the establishment of various project teams to support the project management team, whose roles and responsibilities were outlined. Documentation that was to be prepared by the project management team included baseline cost plans, health and safety plans, a quality plan, as well as a procurement strategy and tender lists. Monthly progress reports were also to be drawn up and were deemed essential in monitoring the attainment of the set milestones. The date of completion was set for October 2019. The NAO noted certain inconsistencies in the report drawn up by the project managers appointed by the Seabank Consortium. In defining the project scope, the project management plan cited a site footprint area of 41,900 square metres, when according to the RfP, the footprint was of 24,340 square metres. Another anomaly noted by the NAO related to the residential development, which only referred to one tower, as opposed to the two towers proposed in other sections of the bid.
- 2.3.29 A high-level construction programme was provided, with the project organised around two major phases of development. The first phase corresponded to the construction of the hotel, the casino, the congress hall, the shopping mall, the basement levels and one of the residential towers. The second phase comprised the rest of the development, which mainly consisted of the construction of the other residential tower, which included the office space. According to the construction programme, based on the award of the contract being effected by 1 March 2016 and relocation of the ITS by June 2016, excavations could commence in early October 2016. The first phase was planned for completion by June 2018, with the hotel and ancillary services, including the casino, the shopping mall, the Hard Rock Cafe and the congress hall all operational. By this date, the first residential tower was also to be completed. The second phase was to commence immediately thereafter and was to be finalised within 68 weeks, that is, August 2019.
- 2.3.30 Other key milestones were cited in the operational plan submitted by the Seabank Consortium. Key brands were to be identified and approached to set up at the shopping mall in April 2017. Between July and August 2017, real estate agents were to be contacted to commence the sale of the residential properties. The initial sales on plan were expected to commence around August 2017 for one of the towers, while sales for the other tower were scheduled for July 2018.
- 2.3.31 The operational plan included other documents. A Preliminary Structural Analysis addressed two of the components of the project, that is, the hotel and the residential development. Detailed costings were drawn up and utilised to estimate the costs that were to be incurred, which were then extrapolated to determine the general costs of the various elements of the project forming part of the master plan. Following this analysis, it was concluded that the general construction and civil works of the development would cost €71,491,618 (excluding value added tax (VAT)). A breakdown of the cost for each component was also provided (Figure 8 refers).

Figure 8: General construction and civil works costings by component

Component	General construction and civil works costings
Residential development	€21,683,556
Commercial development	€7,055,220
Hotel development	€14,862,354
Sky Bar	€657,274
Casino	€603,148
Office development	€1,669,750
Parking area	€11,054,254
Multi-purpose hall	€3,572,758
Others (incl. road formation, pavements, excavation & trenching)	€10,333,304
Total	€71,491,618

- 2.3.32** Another part of the operational plan submitted by the Seabank Consortium comprised a preliminary geological survey of the site. The report concluded that the rock mass exhibited several discontinuities related to structural geology and erosion, as well as large cavernous voids that were unfilled or partly filled, such as the Ħarq Ħammiem Cave. The high permeability along conduits formed by discontinuities resulted in the relatively rapid seaward flow of ground water, which enhanced limestone dissolution and the formation of voids. This fragmentation at and below the water table. Two boreholes found on site were logged and analysed. Noted in the report was that further studies were necessary to better assess the hydrogeology of the site and the project’s environmental impact on geological resources.
- 2.3.33** In support of the preliminary geological survey of the site was the preliminary ground investigation report, which provided the results of various tests undertaken with respect to the geological characteristics of the site. Based on the analysis carried out, several possible undocumented caves were located under the site. This was further confirmed through geophysical investigations, with the presence of voids strongly suspected. Also noted in the report drawn up was that investigations had resulted in indications that fractured rock could be present immediately below the foundations of the proposed development, specifically beneath the main two towers. Testing through other geophysical techniques was recommended.
- 2.3.34** Transport and parking considerations were also addressed through a report compiled by a third party and submitted as part of the bid by the Seabank Consortium. The contribution of the proposed development to peak hour traffic flows were computed through the application of traffic generation rates for specific land uses. It was concluded that the proposed hotel was not expected to contribute to traffic generation since it was assumed that tourists were not keen to drive in Malta, especially during peak hours. Hotel employees were to be provided with transportation, with commutes occurring during off-peak hours due to shift work. On the other hand, the residential component was deemed to generate traffic, as during weekday morning peak hours, around 202 cars were assumed to exit and enter the parking facility. During

weekday evening peak hours, the corresponding figure was estimated at 248. These figures were based on the PA's document titled 'Transport Impact Assessments'. The F&B facilities were not expected to contribute to peak traffic, with patrons accounting for 280 to 320 cars in the evening. The office development was also deemed to have no significant impact on traffic. In contrast was the effect of the retail facilities, which were deemed to have a substantial effect on traffic. During weekday morning peak hours, traffic generation stood at 244 cars, while weekday evening peak hour traffic was estimated at 779 cars. In total, the development was expected to generate 700 cars during weekday morning peak hours, and 1,254 cars in the weekday evening peak hours. Weekend peak traffic was estimated at 1,035 cars. The amount of parking spaces provided as part of the development were deemed sufficient and conformant with the 'Development Control Design Policy Guidance and Standards 2015' document issued by the PA. Measures intended to minimise the impact of traffic generated on the transport network were proposed. These included the adoption of a parking management system, the use of collective transportation for employees and enhanced public transport.

Human resources

- 2.3.35 Also submitted as part of the bid by the Seabank Consortium was an HR plan, intended to ensure the alignment of the Consortium's strategic objectives and its resources. To this end, the plan provided a situation analysis of the tourism industry in Malta and considerations relating to the sourcing of employees. The HR plan outlined the strategy that was to be adopted in the recruitment, training and retention of the required staff complement. In addition, the HR plan provided an estimate of the number of employees that were to be directly employed by the Seabank Consortium. During peak times, the estimated total HR requirement within the project amounted to approximately 1,500 FTEs.

Financial projections

- 2.3.36 Another critically important document submitted as part of the bid by the Seabank Consortium was that relating to the financial projections corresponding to the period 31 December 2016 to 31 December 2028. The Seabank Consortium engaged a third party to compile this aspect of the bid. The scope of this engagement, in line with the requirements set out in the RfP, comprised the compilation of a profit and loss account, a balance sheet and a cash flow statement, as well as a schedule outlining the timing, level and type of capital investment required for each individual element of the project. Furthermore, the financial projections presented an overview of the annual ground rent payable to Government, including the level of upfront payment, as well as a detailed breakdown of the projected levels of financial performance for each project component, including an overview of the principal assumptions underpinning each section of the projections.

Level, type and timing of capital investment

2.3.37 Capital expenditure was presented for each component of the project according to the type of expenditure that was to be incurred and in sum was estimated at €215,096,000 (Figure 9 refers). Additional information was provided with respect to the expected timing of the capital investment pertaining to the project, which was to be spread over the period 2016 to 2019, with the bulk incurred in 2017 (Figure 10 refers).

Figure 9: Capital expenditure by type

Type	Amount (€)
Structural works	75,395,000
Mechanical and electrical (M&E)	39,909,000
Finishing	85,160,000
Capitalised interest	7,852,000
Land	6,780,000
Total	215,096,000

Figure 10: Timing of capital investment, 2016-2019

for y/e 31 December	2016 (€)	2017 (€)	2018 (€)	2019 (€)	Total (€)
Hard Rock Hotel	3,662,000	28,076,000	26,642,000	-	58,381,000
Body Rock & Rock Spa	63,000	565,000	3,046,000	-	3,674,000
Sky Bar	177,000	990,000	949,000	-	2,116,000
Conference centre	949,000	3,554,000	2,063,000	-	6,565,000
Shopping mall	1,899,000	11,004,000	8,687,000	-	21,589,000
Car park	2,932,000	13,208,000	3,646,000	-	19,786,000
Speciality restaurants	273,000	2,237,000	1,775,000	-	4,285,000
Hard Rock Cafe	69,000	566,000	679,000	-	1,314,000
Hard Rock Casino	183,000	2,509,000	5,787,000	-	8,478,000
Residential tower 1	-	29,588,000	18,694,000	-	48,282,000
Residential tower 2	-	-	11,926,000	17,778,000	29,704,000
Offices	-	-	1,825,000	2,319,000	4,143,000
	10,206,000	92,296,000	85,718,000	20,097,000	208,316,000
Land acquisition	-	-	-	-	6,780,000
Total	10,206,000	92,296,000	85,718,000	20,097,000	215,096,000

Upfront payment and annual ground rent

2.3.38 The financial projections envisaged an upfront payment of €6,500,000, payable by the Seabank Consortium in five annual instalments of €1,300,000, to be effected between 2016 and 2020. Annual ground rent, as reflected in the projections, was set at €105,000, increasing every five years in line with the requirements of the RfP. Also factored was an administrative abatement of the ground rent for the first three years, that is, from 2016 to 2018 (Figure 11 refers).

Figure 11: Upfront payment and annual ground rent, 2016-2028

for y/e 31 December	Upfront payment (€)	Annual ground rent (€)
2016	1,300,000	-
2017	1,300,000	-
2018	1,300,000	-
2019	1,300,000	105,000
2020	1,300,000	105,000
2021	-	116,000
2022	-	116,000
2023	-	116,000
2024	-	116,000
2025	-	116,000
2026	-	127,000
2027	-	127,000
2028	-	127,000
Total	6,500,000	1,171,000

Projected consolidated financial statements

2.3.39 Several general assumptions relating to the environment within which the Seabank Consortium operated formed the basis of the prospective financial statements for years ending 31 December 2016 to 2028.

2.3.40 Cited were the factors that the Seabank Consortium could influence, namely that:

- a. the project was based on an upmarket mixed tourism and leisure development in St George's Bay, with the Consortium enjoying the confidence of its customers, suppliers, Hard Rock Ltd and its bankers, and it being able to achieve and maintain the expected level of operation over the term covering the financial projections; and
- b. the Consortium would recruit appropriate personnel at the projected cost levels and would maintain good relations with its employees and their representatives throughout the period under consideration.

2.3.41 Also referenced were factors that were exclusively outside the influence of the Seabank Consortium, namely that:

- a. there would be no material external adverse events in the local tourism and hospitality sector that would have an impact, either directly or indirectly, on the components of the project;
- b. over the course of the project, the rate of inflation would be in line with that experienced in recent years, and any changes in exchange rates would not have a negative impact on operations; and

- c. no material changes were envisaged in the bases and rates of taxation, both direct and indirect, during the period under consideration, as well as in the bases on which the Consortium's bankers were to determine the rate of interest charged on facilities made available, throughout the period covered by the prospective financial statements.

2.3.42 The projected consolidated statement of comprehensive income forecasted a loss in 2016 and 2017, totalling €780,000; however, a profit was to be registered thereafter, which profit was to exceed €130,000,000 over the period under consideration, that is, up to 2028.

Projected financial performance - Hard Rock Hotel

2.3.43 The financial projections for the Hard Rock Hotel comprised the rooms division, hotel restaurant division, hotel bars and grills, Rock Store, the Body Rock gym, the Rock Spa, as well as conferences and weddings (Figure 12 refers). All revenue streams and operating costs, excluding ground rent, were projected to increase at the rate of two per cent per annum, in line with the anticipated rate of inflation. The projected gross operating profit shifted from aggregate losses of €571,000 registered in 2016 and 2017 to profits ranging from €6,357,000 in 2018 to €16,724,000 in 2028. The gross operating profit includes franchise fees payable by the Seabank Consortium.

Figure 12: Projected levels of financial performance - Hard Rock Hotel, 2016-2028

for y/e	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
31 December	(€000)	(€000)	(€000)	(€000)	(€000)	(€000)	(€000)	(€000)	(€000)	(€000)	(€000)	(€000)	(€000)
Revenue	-	-	17,533	27,879	30,988	32,669	33,423	34,092	34,826	35,470	36,180	36,903	37,694
Cost of sales	-	-	(1,084)	(1,764)	(1,993)	(2,124)	(2,170)	(2,214)	(2,262)	(2,303)	(2,349)	(2,396)	(2,447)
Gross profit	-	-	16,449	26,115	28,995	30,546	31,253	31,878	32,565	33,167	33,830	34,507	35,247
Payroll costs	-	(148)	(4,991)	(6,741)	(6,966)	(7,153)	(7,300)	(7,443)	(7,595)	(7,744)	(7,902)	(8,060)	(8,221)
Variable costs	-	-	(2,764)	(4,433)	(4,916)	(5,180)	(5,303)	(5,409)	(5,526)	(5,628)	(5,740)	(5,855)	(5,981)
Fixed costs	-	(11)	(1,886)	(3,136)	(3,308)	(3,422)	(3,499)	(3,569)	(3,644)	(3,714)	(3,788)	(3,864)	(3,944)
	-	(159)	6,808	11,805	13,805	14,790	15,150	15,456	15,799	16,082	16,400	16,728	17,100
Shared overheads	(41)	(370)	(451)	(328)	(332)	(336)	(339)	(345)	(351)	(357)	(364)	(370)	(376)
Gross operating profit	(41)	(530)	6,357	11,477	13,474	14,454	14,811	15,111	15,448	15,724	16,036	16,358	16,724

Projected financial performance - Residential towers

2.3.44 The residential development was expected to cover a gross floor area of 50,946 square metres, with 209 residential units developed over 28 levels in the two towers, Tower A and Tower B. Tower A was to comprise 140 apartments and was to be completed by June 2018, on which date, promise of sale agreements entered into during the construction and development phase would be converted into a deed of sale. The construction and development of Tower B, which

was to comprise 69 apartments, was expected to commence in July 2018 and be completed by August 2019. An overview of the financial projections relating to the sale of residential units in Tower A and Tower B was provided (Figure 13 refers).

Figure 13: Projected levels of financial performance: Residential towers, 2018-2023

for y/e 31 December	2018	2019	2020	2021	2022	2023
	(€000)	(€000)	(€000)	(€000)	(€000)	(€000)
Revenue	28,247	30,146	30,125	25,638	24,785	10,563
Cost of sales	(14,504)	(15,595)	(15,264)	(13,683)	(13,458)	(5,483)
Gross profit	13,743	14,551	14,861	11,955	11,327	5,080
Variable costs	(1,977)	(2,110)	(2,109)	(1,795)	(1,735)	(739)
EBITDA	11,765	12,441	12,753	10,160	9,592	4,341
Tax on sale of property	(2,260)	(2,412)	(2,410)	(2,051)	(1,983)	(845)
Profit	9,506	10,030	10,343	8,109	7,609	3,496

2.3.45 The financial projections set with respect to the residential towers were based on forecasts relating to specific key performance indicators (Figure 14 refers).

Figure 14: Key performance indicators: Residential towers, 2017-2023

Key performance indicators	2017	2018	2019	2020	2021	2022	2023
No. of units subject to promise of sale	16	31	38	40	37	35	12
No. of units sold on final deed	-	43	42	40	37	35	12
Average selling price per unit (€000)	-	657	718	753	693	708	880

2.3.46 Cited in the projections was that the residential development would likely qualify for a Special Designated Area status and therefore was expected to command premium rates. The financial projections were based on a pricing structure determined according to the category of residential units and contingent on other factors such as elevation. In this respect, a selling price of €3,000 per square metre was estimated for lower level properties, with the price increasing to €5,000 per square metre for properties located on the top floors. The value attributed to external terrace space was set at 50 per cent of the internal area. Selling prices for residential units ranged between €265,000 and €1,400,000.

Projected financial performance - Shopping mall

2.3.47 The shopping mall was to have a total lettable area of 17,690 square meters, with tenants paying a rental charge equivalent to nine per cent of the higher of outlet turnover or the base rent. The latter was equivalent to €200 per square meter per annum for the first year of operation, increasing to €250 and €300 per annum for the second and third year, respectively. The projections assumed that the shopping mall tenants would pay the base rent, which was projected to increase at approximately two per cent per annum after the third year of operations (Figure 15 refers).

Figure 15: Projected levels of financial performance: Shopping mall, 2016-2028

for y/e 31 December	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Total revenue (€000)	-	-	1,651	3,501	4,599	5,042	5,042	5,042	5,042	5,336	5,546	5,546	5,546

Projected financial performance - Car park

2.3.48 It was projected that the car park would provide 2,364 car spaces, designated for use by the different components of the development. According to the projections, revenue was to be generated from the lease of car space to shopping mall tenants, the lease of car spaces to offices, valeting services, and the sale of car spaces to residential units. Figure 16 provides a breakdown of the revenue projections corresponding to the lease of car spaces to shopping mall tenants and offices, and revenue generated from valet services. The profit realised from the sale of car spaces to residents was €3,113,000 by 2023.

Figure 16: Projected levels of financial performance - Car park, 2016-2028

Total revenue for y/e	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
31 December (€000)													
From lease of spaces to shopping mall tenants	-	-	413	759	822	840	840	840	840	889	924	924	924
From lease of space to offices	-	-	-	20	62	70	77	80	82	88	88	88	88
From valeting	-	-	21	37	38	38	39	40	41	42	42	43	44

Projected financial performance - Hard Rock Cafe

2.3.49 It was envisaged that the Hard Rock Cafe operating at the Bay Street Shopping Complex would be relocated to the City Centre and commence its operational activities from the new location in June 2018, in conjunction with the opening of the Hard Rock Hotel. Revenue sources considered for the Hard Rock Cafe comprised proceeds arising from F&B, as well as from the sale of merchandise.

2.3.50 Projections were based on the actual revenue levels generated by the Hard Rock Cafe in Bay Street during the latest available reporting period. It was estimated that revenue would increase by two per cent per annum in line with the rate of inflation. Revenue projections for 2018 comprised €939,000 arising from F&B, and €660,000 from the sale of merchandise. These were expected to increase to €1,776,000 and €1,247,000, respectively, by 2028.

Projected financial performance - Offices

2.3.51 Cited in the projections was that Tower B was to include five levels of office space, expected to become operational in September 2019. The five floors comprised 3,875 square metres and a total lettable area of 2,710 square metres, reflecting an adjustment factor of 70 per cent to cater for common area space.

2.3.52 The financial projections also assumed a 70 per cent occupancy level in the first year of operation, increasing gradually to 95 per cent by the fourth year. Revenue that was to be generated through the lease of office space was based on a rate of €200 per square metre per annum for the first year of operation, increasing by 10 per cent every five years thereafter. On this basis, estimated total revenue was €126,000 in 2019, increasing to €566,000 by 2025, remaining stable thereafter throughout the period under review.

Projected financial performance - Sky Bar

2.3.53 The financial projections for the Sky Bar were based on a seating capacity of 220 persons over approximately 44 tables. In view of the Bar's proximity to the main entertainment hub of Malta, it was envisaged that occupancy levels would be significantly higher at weekends. The projected revenue and costs that were to be generated by the Sky Bar were outlined in the projections. Projected gross profit was estimated at €992,000 for 2018, increasing to €1,884,000 by 2028 (Figure 17 refers).

Figure 17: Projected revenue and costs - Sky Bar, 2018-2028

for y/e 31 December (€000)	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Total revenue	1,341	2,114	2,159	2,200	2,252	2,296	2,336	2,380	2,429	2,478	2,546
Gross profit	992	1,564	1,598	1,628	1,667	1,699	1,729	1,761	1,798	1,834	1,884

Economic Impact Assessment

2.3.54 The final document submitted by the Seabank Consortium in fulfilment of the technical capacity requirements stipulated in the RfP was an EclA. The overall objective of this assessment was to examine the potential effects of the proposed project on the local economy. To this end, on 24 November 2015, the Consortium engaged a third party to undertake this analysis. The report included the economic impacts that were to arise during the construction and operational phases of the project, which impacts were analysed in terms of value added and spill-over effects on the Maltese economy.

2.3.55 Cited in the report was that, while no attempts were made to establish the reliability of sources by reference to information independent of SD Holdings Ltd, it was ascertained that information presented was consistent with other information made available during the assessment. It was further specified that opinions and recommendations provided in the report comprised a significant degree of judgement and subjectivity, mainly with respect to the selection of methods and basis. Consequently, while the opinion in the report was deemed to be reasonable by the third party, others could arrive at a different conclusion.

Revenue to Government from financial offer

2.3.56 Stipulated in the EclA was that, on the successful award of the concession, the Seabank Consortium would pay Government an upfront payment and an annual ground rent reflective

of the market value of the site and the nature of the proposed development. In addition, Government would generate revenue through the conversion of the temporary emphyteusis on the residential units into a perpetual emphyteusis. The net present value (NPV) of revenues expected to be earned by Government over the 99-year concession period was estimated to be €18,904,962.

2.3.57 The upfront payment would be payable to Government on the award of the concession and the attainment of the necessary development permits. The amount due, set at €6,500,000, would be payable in equal instalments over the first five years.

2.3.58 Annual ground rent, set at €105,000, was payable yearly in advance. However, noted in the EclA was that the Seabank Consortium reserved the right to negotiate an administrative abatement of the annual ground rent for a period not exceeding three years from the signing of the concession agreement. Also stipulated was that, in line with the RfP, the ground rent would be revised upwards by five per cent every five years from the date of the concession agreement, in line with the official rate of inflation in the year preceding that in which the ground rent was to be increased.

2.3.59 The temporary emphyteuses would be converted to a perpetual emphyteusis against payment of €167 per square metre on the attributable net floor area for each residential unit. A further payment, equivalent to one-fifth of €167 per square metre would be charged for the external and garage areas (Figure 18 refers). Thereafter, third party purchasers would be entitled to purchase the freehold rights on the residential units at the capitalisation rate of five per cent. On the redemption of the perpetual emphyteusis by the third parties, the portion of ground rent attributable to the respective residential unit would be deducted from the ground rent payable by the Seabank Consortium to Government.

Figure 18: Concession, ground rent and conversion charges payable to Government, 2016-2028

Year	Concession (€)	Ground rent (€)	Conversion charges (€)	Total payable to Government (€)
2016	1,300,000	-	-	1,300,000
2017	1,300,000	-	-	1,300,000
2018	1,300,000	-	1,193,777	2,493,777
2019	1,300,000	105,000	1,255,990	2,660,990
2020	1,300,000	105,000	1,229,263	2,634,263
2021	-	115,500	1,103,501	1,219,001
2022	-	115,500	1,077,963	1,193,463
2023	-	115,500	427,028	542,528
2024	-	115,500	-	115,500
2025	-	115,500	-	115,500
2026	-	127,050	-	127,050
2027	-	127,050	-	127,050
2028	-	127,050	-	127,050
Total	6,500,000	1,168,650	6,287,522	13,956,172

Construction phase - Value added effects to the economy

2.3.60 According to the EclA, the implementation of the project was expected to have a positive impact on a wide range of stakeholders, including Government, construction firms and the local labour market. Without taking into consideration its wider economic impacts, the development of the project was expected to generate €215,095,901 in direct production effects arising from the direct spending of the Seabank Consortium on the development, mainly through the procurement of supplies and raw materials, employees' wages and salaries, as well as contractor payments. Direct production effects arising during the construction phase mainly comprised salaries, raw materials, and other general expenses incurred by the construction contractors. These effects were expected to materialise between 2016 and 2019 (Figure 19 refers).

Figure 19: Direct production effects during construction phase, 2016-2019

	2016 (€)	2017 (€)	2018 (€)	2019 (€)
Capital expenditure				
Hotel	3,662,392	28,076,098	26,642,239	-
Casino	182,570	2,508,816	5,786,858	-
Shopping mall	1,898,654	11,003,586	8,686,921	-
Car park	2,931,972	13,207,706	3,646,116	-
Restaurants	272,854	2,237,442	1,774,510	-
Hard Rock Restaurant	68,954	566,174	678,632	-
Sky Bar	177,200	989,701	948,761	-
Conference centre	948,140	3,553,967	2,063,173	-
Gym and spa	63,172	564,537	3,045,929	-
Offices phase 1	-	-	-	-
Offices phase 2	-	-	1,824,596	2,318,547
Land acquisition	6,779,938	-	-	-
Residential units: phase 1	-	29,587,520	18,694,264	-
Residential units: phase 2	-	-	11,925,857	17,778,104
Total	16,985,846	92,295,548	85,717,855	20,096,651

Construction phase - Added economic activity for suppliers

2.3.61 It was estimated that, on average, the construction of the project would require 500-man months between 2017 and 2019. On-site and off-site employees would also be required at an average of 1,000-man months in 2017, expected to decrease to 333-man months in 2018. Several professionals, comprising a design team and a project and construction management team, would also be required for the construction of the project. It was envisaged that these two teams would require approximately 20- and 24-man months, respectively. In addition, if contractors and suppliers were at full utilisation, the project would create a demand for additional labour, hence generating a positive economic effect on the labour market.

2.3.62 The project was expected to generate approximately 200 FTEs in 2016, increasing to 500 in the following two years, and by a further 140 in 2019, totalling 640 FTEs. Labour costs for construction employees were estimated at €1,800 per man month, while a cost of €5,000 per man month was utilised as the basis for the estimation of professional costs.

Construction phase - Government revenue

2.3.63 Stated in the EclA was that the project would increase government revenue from several sources, mainly, income tax from employment, NI contributions, corporate tax, income tax on profits, and VAT. This revenue would positively impact the sustainability of public finances over the short-term, contributing to the achievement of the projected narrower budget deficits. Total government revenue during the construction phase was estimated to be in the region of €67,800,000 (Figure 20 refers).

Figure 20: Aggregate government revenue during the construction phase, 2016-2019

	2016 (€)	2017 (€)	2018 (€)	2019 (€)	Total (€)
Income tax on employment and NI	507,792	11,224,000	6,602,229	4,340,250	22,674,271
Income tax on company profits	2,650,150	14,400,053	13,347,205	3,135,502	33,532,910
VAT	-	4,391,597	4,533,308	2,659,401	11,584,306
Total revenue	3,157,942	30,015,650	24,482,743	10,135,153	67,791,488

Construction phase: Multiplier effects on the local economy

2.3.64 The EclA estimated the three aspects of economic impact, namely, the direct, indirect and induced effects arising out of initial expenditure with respect to the project on Malta's economy. The direct impacts related to the revenues earned by contractors and suppliers during the construction phase. The indirect economic impacts were the upstream effects arising as a result of direct expenditure, consisting of purchases made by suppliers in order to provide the goods and services required for the project. The induced effects related to expenditure incurred at household level by employees in receipt of wages. This effect also captured a second round of spending by employees of intermediate suppliers who received a wage as a direct result of the initial spending.

2.3.65 The multiplier adopted in the EclA was based on 'Estimates of output, income, value added and employment multipliers for the Maltese economy' (Cassar, 2015), which multipliers were computed based on input-output tables for 2008 and were based on the Leontief demand-driven model. The underlying assumption was based on the Keynesian multiplier, where an initial unit of expenditure would generate ripple effects on the economy. The multipliers cited were Type I, which captured the direct and indirect effects, and Type II, which related to the direct, indirect and induced effects. Figure 21 presents the economic multiplier values applied for the construction phase.

Figure 21: Economic multiplier: Construction phase

Project component	Economic multiplier category	Economic multipliers					
		Output		Income		Value added	
		Type I	Type II	Type I	Type II	Type I	Type II
Construction phase	Construction	1.69	2.19	0.30	0.39	0.60	0.82

- 2.3.66 The output multiplier captured the total sum of direct and indirect input requirements from all sectors necessary to supply €1 worth of output to final demand. The income multiplier was the resulting household income generated as a result of €1 worth of new final demand for goods and services in a particular sector, while the value-added multiplier reflected the effect of new value added generated as a result of an additional €1 of final demand for the output of a sector.
- 2.3.67 It was expected that the construction phase would generate approximately €207,000,000 of direct effects between 2016 and 2019. Indirect effects were estimated to be approximately €11,000,000 in 2016, increasing to €60,000,000 and €57,000,000 in 2017 and 2018, respectively, and decreasing to €13,000,000 in 2019. The induced output was expected to reach €44,000,000 at its peak in 2017, with the total induced effect being approximately €103,000,000 (Figure 22 refers).

Figure 22: Output multiplier effects during the construction phase, 2016-2019

Effects	2016 (€)	2017 (€)	2018 (€)	2019 (€)	Total (€)
Construction revenues	16,600,502	87,952,855	82,937,829	19,752,400	207,243,586
Direct and indirect effects	28,054,849	148,640,325	140,164,932	33,381,156	350,241,262
Direct, indirect and induced effects	36,355,100	192,616,752	181,633,846	43,257,756	453,863,454

- 2.3.68 The direct, indirect and induced effects of the construction phase of the project on household income was expected to amount to approximately €81,000,000 between 2016 and 2019 (Figure 23 refers).

Figure 23: Income multiplier effects during the construction phase, 2016-2019

	2016 (€)	2017 (€)	2018 (€)	2019 (€)	Total (€)
Direct and indirect effects	4,980,151	26,385,856	24,881,349	5,925,720	62,173,076
Direct, indirect and induced effects	6,474,196	34,301,613	32,345,753	7,703,436	80,824,998

- 2.3.69 In terms of value-added, the direct, indirect and induced effects of the project's construction phase were expected to generate an aggregate increase in value-added of approximately €170,000,000 between 2016 and 2019 (Figure 24 refers).

Figure 24: Value-added multiplier effects during construction phase

	2016 (€)	2017 (€)	2018 (€)	2019 (€)	Total (€)
Direct and indirect effects	9,960,301	52,771,713	49,762,698	11,851,440	124,346,152
Direct, indirect and induced effects	13,612,412	72,121,341	68,009,020	16,196,968	169,939,741

Operational phase - Direct production effects

2.3.70 Indicated in the EclA was that the operational phase would likely generate significant contribution to the economy, at regional and national level, as well as over the medium- and long-term. This economic contribution would mainly be driven by an increase in demand in response to the supply created through the project, as well as the creation of additional job opportunities.

2.3.71 It was envisaged that direct production effects during the operational phase would arise from two main sources, namely, capital and operational expenditure. Capital expenditure comprised the replacement costs of fixtures and fittings incurred by the Seabank Consortium, as well as the third parties who acquired the residential units. Operational expenditure referred to the ongoing fixed and variable costs that were to be incurred in the day-to-day running of the project, and included labour costs, expenditure on stock, maintenance, utilities and licences (Figure 25 refers).

Figure 25: Direct production effects during operational phase: Capital and operational expenditure, 2016-2028

Expenditure	Total capital expenditure	Total operational expenditure
2016 (€)	-	57,070
2017 (€)	-	722,883
2018 (€)	4,490,783	26,212,160
2019 (€)	5,961,257	39,492,620
2020 (€)	6,458,301	40,623,989
2021 (€)	6,327,544	40,640,970
2022 (€)	6,365,618	41,039,755
2023 (€)	4,712,519	40,125,395
2024 (€)	3,654,598	39,643,008
2025 (€)	3,731,105	40,087,188
2026 (€)	3,809,185	40,601,988
2027 (€)	3,880,537	38,015,723
2028 (€)	3,960,805	38,672,263

2.3.72 Other upstream effects were also noted. These effects consisted of intermediate inputs to the production process required for the project, such as raw materials acquired by contractors for the construction of the hotel complex and residential towers, as well as wages and salaries payable by the suppliers of the Seabank Consortium to their employees.

Operational phase - Creation of new demand

2.3.73 According to the EclA, it was expected that the project would result in the creation of diverted demand as well as fresh demand. Diverted demand would bear no effect on the economy, as this was merely a diversion of demand from one operator to another, with customers opting for the Hard Rock brand over its competition. Regarding fresh demand, this represented the level that exceeded existing demand and which resulted directly from the existence of the project.

Acknowledged in the EclA was that fresh demand was likely to represent a substantial portion of the overall demand; however, noted was the difficulty in determining its extent before the project was in operation. The determination of fresh demand would require the calculation of a diversion ratio based on empirical data of purchase history, demand system estimation or consumer surveys.

- 2.3.74 The project, as conceptualised by the Seabank Consortium, focused on exclusivity and uniqueness, and it was envisaged that the project would have a minimal number of close substitutes in terms of hospitality and entertainment. Given the negative correlation between the level of fresh demand and the degree of substitutability, the lower the degree of substitutability between the project and its closest rivals, the higher was the extent of fresh demand. In this regard, all project components were expected to create an element of new demand, to varying degrees.

Operational phase - Job creation

- 2.3.75 Stipulated in the EclA was that the project was expected to create an annual average of 1,469 new employment opportunities throughout the operational phase, generating a total employment income of €30,822,500. Over and above the 669 FTEs that were to be employed directly by the Seabank Consortium, industry benchmarks indicated that approximately 80 FTEs would be required for every 2,200 square metres. Based on this industry benchmark, it was estimated that around 600 FTEs would be required to operate the retail outlets in the shopping mall. The basic annual salary earned the retail outlets' employees was estimated at €20,400.
- 2.3.76 In addition, approximately 200 employees would be required by the offices in Tower B, which estimated was based on a conservative estimate of 20 square metres per employee. An average annual salary of €28,000 per employee was determined based on information sourced from the National Statistics Office. This average corresponded to employees engaged in employment in the segment of gambling and betting in view of the assumption that the offices would be occupied by high value-added industries. Total employment income was estimated at €5,600,000 per annum.
- 2.3.77 The project was expected to employ a number of unskilled and semi-skilled labour from the unemployment pool, thereby decreasing the unemployment rate and unemployment benefits. On the other hand, consumers' disposable income and purchasing power was expected to increase, which in turn would increase the level of aggregate demand in the economy. Moreover, the Seabank Consortium was of the understanding that, given the project's size, a number of employees would be sourced from abroad to cover the demand for labour, contributing to the improvement of public finances through the payment of income tax and NI contributions.

Operational phase - Foreign direct investment

2.3.78 The EclA identified two sources of FDI expected to materialise because of the project. The first, being the direct investment in the project by Hard Rock Ltd, amounted to €2,000,000. Investment from fashion labels was also expected, albeit to a lesser extent. The second source of FDI was envisaged to materialise in an indirect manner. It was anticipated that the project would attract locals, foreigners, as well as some high net worth individuals. In this context, it was estimated that half of the residential units would be sold to expatriates not residing in Malta. This would give rise to FDI of approximately €74,750,000 (Figure 26 refers).

Figure 26 | Foreign direct investment generated by the project, 2018-2023

	Direct investment by Hard Rock Ltd	Sale of residential units
2018 (€)	2,000,000	14,123,375
2019 (€)	-	15,073,131
2020 (€)	-	15,062,625
2021(€)	-	12,818,875
2022 (€)	-	12,392,375
2023 (€)	-	5,281,375
Total	2,000,000	74,751,756

Operational phase: Government revenue

2.3.79 Total government revenue generated as a result of the project was expected to be approximately €412,560,000 over a thirteen-year period (Figure 27 refers). During the operational phase of the project, government revenue was to be generated from the following sources:

- a. income tax on company profits - This was to be charged at 35 per cent, with an average of €4,360,000 payable to government annually;
- b. VAT - The net VAT payable to government was determined on the following basis:
 - i. Output VAT - Accommodation and gym memberships at 7 per cent, and F&B, retail, conferences and spa services at 18 per cent; and
 - ii. Input VAT - Utilities at 5 per cent and other overheads at 18 per cent;
- c. environmental contribution - This was payable by tourists over the age of 18 at the rate of €0.50 per night, capped at €5.00 for a continuous stay. The environmental contribution was expected to increase annually and settle around €79,000 annually as from 2021;
- d. income tax and NI contributions - The bulk of the projected income tax revenue was estimated to be generated by the shopping mall and the Hard Rock Hotel, with projected revenues of €1,400,000 and €796,000, respectively. Similarly, these two components were expected to generate the highest NI contributions, estimated at €2,400,000 and €1,300,000, respectively;
- e. gaming duties - Gaming duties were chargeable on gross gaming revenues at the rates of 36 and 40 per cent for live games and gaming machines, respectively;

- f. stamp duty - This was chargeable at five per cent on the sale value of residential units and car spaces. It was assumed that all buyers were non-first-time buyers, resulting in duty of €7,800,000 between 2018 and 2023; and
- g. withholding tax - Withholding tax of eight per cent on the value of the properties transferred was receivable by government.

Figure 27 - Aggregation of government revenue generated by the project, 2016-2028

	2016 (€)	2017 (€)	2018 (€)	2019 (€)	2020 (€)	2021 (€)	2022 (€)
Concession amount	1,300,000	1,300,000	1,300,000	1,300,000	1,300,000	-	-
Ground rent	-	-	-	105,000	105,000	115,500	115,500
Conversion charges	-	-	1,193,777	1,255,990	1,229,263	1,103,501	1,077,963
VAT	-	-	7,447,391	13,730,409	16,521,287	17,625,288	17,746,376
Gaming duties	-	-	1,393,968	2,535,113	2,897,303	3,094,367	3,185,250
Income tax							
Employees (incl. NI)	-	-	9,323,148	9,323,148	9,323,148	9,323,148	9,323,148
Company profits	-	-	2,368,140	2,830,676	5,488,398	5,684,335	5,746,013
Env. contribution	-	-	43,502	71,028	76,771	79,108	79,435
Stamp duty	-	-	1,480,088	1,580,913	1,576,263	1,345,888	1,302,238
Withholding tax	-	-	2,368,140	2,529,461	2,522,020	2,153,420	2,083,580
Government revenue generated by project	1,300,000	1,300,000	26,918,154	35,261,738	41,039,453	40,524,555	40,659,503
	2023 (€)	2024 (€)	2025 (€)	2026 (€)	2027 (€)	2028 (€)	Total (€)
Concession amount	-	-	-	-	-	-	6,500,000
Ground rent	115,500	115,500	115,500	127,050	127,050	127,050	1,168,650
Conversion charges	427,028	-	-	-	-	-	6,287,522
VAT	17,682,489	17,671,623	18,471,854	19,080,276	19,200,672	19,339,830	184,517,495
Gaming duties	3,248,955	3,320,732	3,380,213	3,447,817	3,516,774	3,594,467	33,614,959
Income tax							
Employees (incl. NI)	9,323,148	9,323,148	9,323,148	9,323,148	9,323,148	9,323,148	102,554,628
Company profits	4,609,815	3,805,554	3,981,277	6,461,176	7,772,004	7,968,236	56,985,624
Env. contribution	79,435	79,594	79,435	79,435	79,435	79,594	826,772
Stamp duty	552,138	-	-	-	-	-	7,837,528
Withholding tax	883,420	-	-	-	-	-	12,540,041
Government revenue generated by project	36,921,928	34,316,151	35,351,427	38,518,902	40,019,083	40,432,325	412,563,219

Operational phase - Multiplier effects on the local economy

2.3.80 According to the EclA, during the project's operational phase, revenues from its different components would give rise to multiplier effects on the local economy. Estimates of the multiplier effects were calculated on the same basis as cited with respect to the construction phase, that is, direct, indirect and induced effects. Each project component was matched to its corresponding multiplier category and values were applied to projected revenues (Figure 28 refers).

Figure 28: Economic multipliers: Operational phase

Project component	Economic multiplier category	Economic multipliers					
		Output		Income		Value added	
		Type I	Type II	Type I	Type II	Type I	Type II
Hotel and restaurants including Sky Bar	Accommodation and food service activities	1.63	2.25	0.37	0.49	0.65	0.93
Casino	Creative arts, entertainment activities, gambling and betting activities, libraries, archives, museums and other cultural activities	1.34	1.54	0.12	0.16	0.49	0.58
Residential units and offices	Real estate activities	1.28	1.40	0.07	0.09	0.09	0.95
Car park, conference centre	Other service activities	1.45	2.14	0.37	0.49	0.72	1.00
Shopping mall, merchandise and Rock Shop	Retail activities	1.51	2.20	0.41	0.54	0.81	1.11
Gym and spa	Sports activities, amusement and recreation activities	1.45	2.08	0.37	0.12	0.77	1.08

2.3.81 The operational phase of the project was expected to generate approximately €803,000,000 in additional output between 2018 and 2028 (Figure 29 refers). Of this amount, 45 per cent was to be generated through the hotel’s operations, while another 19 per cent were to be generated through the sale of residential units. Between 2018 and 2028, the indirect effects of the operational phase were estimated at €405,000,000, of which 40 and 10 per cent thereof were to be generated through hotel operations and the sale of residential units, respectively. The induced effects were estimated to be in the region of €383,800,000 during the same period.

Figure 29: Output multiplier effects during the operational phase, 2018-2028

	2018 (€)	2019 (€)	2020 (€)	2021 (€)	2022 (€)	2023 (€)
Direct effects	59,000,501	81,243,565	87,487,494	86,211,237	86,921,230	73,029,706
Direct and indirect effects	84,460,346	118,441,259	127,866,159	126,961,633	128,230,676	110,626,654
Direct, indirect and induced effects	105,718,362	151,169,419	163,854,215	164,026,814	165,914,287	146,663,641
	2024 (€)	2025 (€)	2026 (€)	2027 (€)	2028 (€)	Total (€)
Direct effects	63,179,501	64,610,570	66,011,286	67,188,749	68,517,701	803,401,540
Direct and indirect effects	98,268,747	100,474,419	102,649,548	104,490,755	106,572,305	1,209,042,501
Direct, indirect and induced effects	133,348,747	136,370,446	139,344,750	141,827,831	144,636,417	1,592,874,929

2.3.82 Approximately €295,000,000 were expected to be generated between 2018 and 2028 in the form of direct, indirect and induced household income generated as a result of the project (Figure 30 refers).

Figure 30: Income multiplier effects during the operational phase, 2018-2028

	2018 (€)	2019 (€)	2020 (€)	2021 (€)	2022 (€)	2023 (€)
Direct, indirect and induced effects	16,303,234	25,120,236	27,577,192	28,386,008	28,862,285	27,659,640
	2024 (€)	2025 (€)	2026 (€)	2027 (€)	2028 (€)	Total (€)
Direct, indirect and induced effects	26,966,740	27,594,056	28,208,803	28,702,011	29,261,695	294,641,900

2.3.83 The total value-added generated as a result of the project's operations between 2018 and 2028 was estimated at €728,000,000, of which €554,000,000 were direct and indirect effects, with the remaining €174,000,000 arising from induced economic effects (Figure 31 refers).

Figure 31: Value-added multiplier effects during the operational phase, 2018-2028

	2018 (€)	2019 (€)	2020 (€)	2021 (€)	2022 (€)	2023 (€)
Direct and indirect effects	45,374,529	60,062,748	64,028,902	61,980,819	62,170,309	49,519,404
Direct, indirect and induced effects	54,777,710	74,739,459	80,324,283	78,837,776	79,301,578	65,981,964
	2024 (€)	2025 (€)	2026 (€)	2027 (€)	2028 (€)	Total (€)
Direct and indirect effects	40,428,713	41,356,621	42,252,532	43,000,539	43,844,288	554,019,404
Direct, indirect and induced effects	56,508,938	57,837,595	59,114,717	60,142,633	61,304,625	728,871,278

Operational phase - Tourism

2.3.84 Stated in the EclA was that tourism accounted for 31 per cent of the Maltese economy, with the industry generating approximately 189,000 FTEs. Its cross-cutting nature impacts various economic sectors, such as transport, food, accommodation, wholesale and retail. On a global scale, tourism was forecasted to increase by an average of 43,000,000 tourists per annum, reaching 1,800,000,000 by 2030, mainly driven by the sustained increase in disposable income and enhanced freedom of movement. This was deemed congruent with official statistics, which indicated that the tourism industry was on the rise when compared to 2014. Tourist arrivals and expenditure registered a 25 and 35 per cent increase, respectively, between 2010 and 2014. An increase in total nights was also registered, from 11,800,000 in 2012 to 13,500,000 in 2014. However, it was acknowledged that the average length of stay remained constant and expenditure reduced from approximately €919 in 2012 to €905 in 2015 on a per capita basis.

2.3.85 It was in this context that the Seabank Consortium identified the need to augment tourist arrivals in terms of quality and quantity. Therefore, the project aimed to attract tourists to Malta as follows:

- a. the project complemented existing 5-star developments in the St Julian's area, enhancing the portfolio of the area and attracting further visitors. The project comprised quality accommodation, complemented with superior restaurants, an exclusive Sky Bar, a top-quality casino as well as a distinctive shopping mall, expected to attract higher quality tourists in Malta, thereby increasing the number of tourist arrivals;
- b. the introduction of a central entertainment hub in the St Julian's area would enhance Malta's branding and positioning in the international market, in line with Government's

tourism policy. Malta would also be marketed through the project's website and social media site, thereby attracting further visitors at a national level and creating a spill-over effect on the local tourism industry, increasing Government revenue through VAT paid on consumption;

- c. the Consortium intended to host events by internationally renowned artists and celebrities to further enhance the Maltese tourist product;
- d. a high-end entertainment hub was deemed attractive to high net worth individuals, who tended to demand the facilities being created through this project. Expenditure by such individuals would inject a flow of income into the Maltese economy, stimulating further economic growth over the medium- to long-term;
- e. given that the project would be offering various facilities during the off-peak periods, this would soften the seasonal nature of the industry, thereby contributing to its sustainability throughout the year. The project would also enhance Malta's product portfolio through the development of tourism niches, such as meetings, incentives, conferences and events.

Operational phase - Other aspects

- 2.3.86 The EclA report also considered the manner by which the project would contribute to the diversification in the product offering in the St Julian's area, citing exclusivity, the synergy between components and its address of market gaps as key thrusts. Finally, the EclA delved into the economic activity that was to be generated by the project in the area, identifying spill-over effects in the vicinity.

Letters of Intent

- 2.3.87 The Seabank Consortium involved two key drivers in the project. Hard Rock Ltd represented the proposed international brand under which the hotel and casino were to operate, while the Big Bon Group was to be responsible for the running of the shopping mall. To this end, two letters of intent were submitted with the bid, one by Hard Rock Ltd and the other by the Big Bon Group.

Letter of Intent - Hard Rock Ltd

- 2.3.88 The letter of intent by Hard Rock Ltd was submitted to Seaport Franchising Ltd on 1 December 2015 yet came into effect on 22 December 2015. This laid down Hard Rock Ltd's non-binding expression of intent in branding the project and managing the casino component. Stipulated therein was that the purpose of the letter of intent was to facilitate further discussions among the parties and was not meant as an offer by Hard Rock Ltd. One of the conditions laid down was that the Seabank Consortium was to submit an application within 45 days from the date of signature of the term sheet included in the letter of intent. Following submission, the

application was to be scrutinised by Hard Rock Ltd and a due diligence investigation of the investors of the project was to be undertaken. Following the successful completion of the due diligence exercise, the project agreements were to be drafted and targeted for execution by 28 February 2016, subject to the approval of both parties. The letter of intent was to remain in effect until the earliest of the execution of the project agreements or 30 April 2016. The letter of intent was, inter alia, subject to the securing of the requisite gaming licences in Malta.

- 2.3.89 A summary of the terms that the project agreement was to incorporate was included in the letter of intent. The agreement was to cover a 15-year period, with the possibility of two successive five-year renewal options at the parties' mutual agreement. The NAO noted that this period fell short of the emphyteutical term that was to be granted by Government.
- 2.3.90 On the signing of the project agreement, the Seabank Consortium was bound to pay Hard Rock Ltd several fees. On the other hand, Hard Rock Ltd was to contribute €2,000,000 in 'key money' in consideration of the execution and delivery of the hotel licence agreement and the casino management agreement. The key money was to be paid through the deposit of funds into the casino's operating accounts and was to be made on the later of (a) the opening of the hotel for business and (b) the opening of the casino for business. The key money was to be amortised on a monthly straight-line basis over the term, with any unamortised amounts repaid to Hard Rock Ltd should the agreements be terminated prematurely.
- 2.3.91 Several milestones were also agreed by the parties. According to the letter of intent:
- a. the execution of the project agreements was to be undertaken by no later than 28 February 2016;
 - b. actual construction was to commence by no later than 31 December 2016; and
 - c. the hotel and casino were to open to the public for business by no later than 30 June 2019.
- 2.3.92 The NAO noted that this letter of intent was not binding, requiring the Seabank Consortium to formally apply through the Hard Rock standard application. According to the Chair Evaluation Committee, Hard Rock Ltd was not part of the Consortium and the letter of intent was meant to add weight to the bid in the form of concrete interest shown by the Hard Rock franchise. Moreover, it was standard practise for all international firms go through a final approval of the project if the bidder's offer was successful. The Chair Evaluation Committee maintained that the letter of intent was particularly relevant in securing bank financing, where such a letter would be considered an adequate and strong commitment.

Letter of Intent - Big Bon Group

- 2.3.93 The other key driver identified by the Seabank Consortium was the Big Bon Group. To this end, a letter of intent by the Big Bon Group dated 17 December 2015 was submitted as part of the

bid. According to the letter of intent, the Big Bon Group indicated its non-binding intent to enter into detailed discussions with the Seabank Consortium to establish a commercial relationship as operators, managers, concessionaires or fulfil a role under similar title with respect to the retail space within the project, should the Consortium secure the RfP issued by Projects Malta on 13 November 2015.

2.4 The adjudication and identification of the preferred bidder

2.4.1 An evaluation committee to assess the bid submitted in terms of the RfP for the design, build and operation of an upmarket mixed tourism and leisure development was appointed on 14 January 2016. Letters of appointment were issued by the former Executive Chair Projects Malta Ltd. The Evaluation Committee was composed of a Chair and three members. A secretary to the Evaluation Committee was also appointed. In the letter of appointment, the members were informed of the closing date of the RfP, that is, 15 January 2016. The NAO sought to establish the basis of appointment of the members of the Evaluation Committee. In reply to queries raised by this Office, the former Executive Chair Projects Malta Ltd stated he had selected the members of the Evaluation Committee with the PS MEH. Notwithstanding this, the PS MEH provided a different account, indicating that he was aware of discussions held between the Minister MEH and the former Executive Chair Projects Malta Ltd wherein the members of the Evaluation Committee were identified.

2.4.2 In their letters of appointment, the Evaluation Committee members were informed that they were to sign a declaration of impartiality and confidentiality during the first Committee meeting and were also to provide Projects Malta Ltd with a copy of their curriculum vitae. The NAO requested a copy of the curricula vitae to ensure that the expertise of the Committee appropriately matched the task at hand. This Office also requested a copy of the signed declarations of impartiality and confidentiality to ascertain that the members had affirmed their independence from all parties that stood to gain from the outcome of the RfP evaluation process and had agreed not to disclose any of the confidential information made available to them throughout this process.

2.4.3 Copies of the curricula vitae and the declarations of impartiality and confidentiality were sourced by the NAO. This Office ascertained that the Chair of the Evaluation Committee was a managing partner of a local firm that provided accounting and advisory services. The members on the evaluation committee were the Commissioner for Revenue at the Ministry for Finance (MFIN), the CEO FMS who was an engineer by profession, and the Principal Chief Officer at Malta Enterprise. Furthermore, the NAO verified that declarations of impartiality and confidentiality were duly signed by all members of the Committee, including the secretary.

2.4.4 The NAO sought to determine the basis of appointment of the members of the Evaluation Committee. The PS MEH and the former Executive Chair Projects Malta Ltd stated that the members contributed through their different competencies. The Chair Evaluation Committee had considerable knowledge of the financial sector, while the three members were an

experienced investment promoter, the Commissioner for Revenue whose perspective as a government official was an asset, and the CEO FMS who was an engineer by profession. The Chief Operations Officer Projects Malta Ltd, who was the former Director General GPD, was appointed as secretary to the Evaluation Committee due to his experience in land disposal.

2.4.5 Following the opening of the tender proposal, the Evaluation Committee held three meetings. The Committee held its first meeting on 20 January 2016. Present for the meeting were the Chair, two members and the secretary. The other member was excused. According to the minutes, the Chair and secretary verified the signed declarations of impartiality and confidentiality, as well as the curriculum vitae of each Committee member. All members were approved to sit on the Committee. The Chair informed the members of the scope of the RfP and identified Projects Malta Ltd as the entity responsible for the administration of the procurement process. The Committee then verified that one original hard copy and two other copies, as well as a soft copy, were submitted and that every page of the hard copy was initialled by the Seabank Consortium's authorised person as per the terms of the RfP. It was also confirmed that the bid bond met the requirements of the RfP. It was noted that all members of the Consortium submitting the bid were companies registered in Malta, which would make the process of due diligence easier.

2.4.6 The NAO sought to clarify what due diligence process was undertaken by the Evaluation Committee. According to the PS MOT, the due diligence process undertaken by the Committee comprised the verification of documentation submitted by the Seabank Consortium. Based on the documentation reviewed, the Committee concluded that the main member of the Consortium was of good reputation, reasonable assurance on which was obtained through several letters of comfort issued by banks and local financial institutions. The Chair Evaluation Committee confirmed that the due diligence process was undertaken by the Committee, partly relying on the fact that the main member of the Consortium had, at the time, a publicly issued bond that implied compliance in terms of scrutiny by the Malta Financial Services Authority. According to the Chair Evaluation Committee, the main member of the Consortium was a reliable investor and financial statements indicated that the company had a strong financial position.

2.4.7 According to the minutes of the first meeting held, the Evaluation Committee agreed that the assessment of the seven core documents that made up the bid was to be divided among the members according to the area of expertise of each member. The seven core documents focused on the proponents, the drivers and the enablers; the concept and design; market analysis and marketing plans; an operational plan; an HR plan; financial projections and a statement of assumptions; and an EclA.

2.4.8 It was also agreed by the Evaluation Committee that the Chair was to analyse the HR Plan, as well as the financial projections and statement of assumptions. The CEO FMS was to focus on the concept and design, together with the operational plan, while the Principal Chief Officer Malta Enterprise was to review the market analysis and marketing plans, and the EclA. The

Commissioner for Revenue was to be forwarded the proponents, the drivers and the enablers document, and again the financial projections and statement of assumptions. On the suggestion of one of the members it was agreed that an architect was to be engaged to assist in the formulation of a design and technical report. Correspondence reviewed by the NAO indicated that an architect was engaged by the CEO FMS shortly after the first Evaluation Committee meeting.

- 2.4.9 The second meeting was held on 1 February 2016. All members of the Evaluation Committee were present. The Chair and two of the members presented their recommendations following their review of specific aspects of the bid.
- 2.4.10 The CEO FMS presented the report on the design and technical assessment of the proposal. The NAO noted that the report by the CEO FMS was a copy of that drawn up by the architect engaged except for a concluding statement. The architect's report made reference to various elements of the bid, citing the general and specific objectives of the RfP as well as the stipulated design requirements, design submissions put forward by the Seabank Consortium, details relating to the composition of the Consortium, the key drivers and enablers stated in the bid and the project's components. In the concluding statement, the CEO FMS maintained that, in his opinion, the proposal fulfilled all the requisites of the RfP in terms of the design and technical evaluation criteria and that, in a number of instances, the proposal went beyond what was requested. Compounding matters was that the report was, generally, a restatement of that put forward by the Seabank Consortium. In the Office's review of this document, no critical analysis of the bid was noted.
- 2.4.11 The NAO's concerns regarding the competence of the CEO FMS in evaluating the design and technical aspects of the bid were brought to the attention of the Chair Evaluation Committee. According to the Chair Evaluation Committee, the CEO FMS was an engineer by profession and had professional experience in major construction projects. The Office's concerns were also raised with the CEO FMS. While the CEO FMS acknowledged that his report focused on the high-level facts, he indicated that the project designs put forward by the Seabank Consortium were prepared by international architects of considerable repute, were detailed and had a good concept design.
- 2.4.12 The Principal Chief Officer Malta Enterprise presented a report regarding the marketing and the economic impact aspect of the project. The member stated that the Seabank Consortium had presented a good marketing plan based on a City Centre complex, a hotel, a shopping mall, residential towers and a casino, with the underlying strategy being that to penetrate a niche market. According to the member, the economic analysis was sound and based on plausible assumptions. The analysis was divided into two main parts: the construction phase and the operational phase, with the economic impacts based on an input-output Leontief demand-driven model. It was also stressed that the economic analysis would be highly impacted by the ability of the Consortium to successfully implement the marketing strategy.

- 2.4.13 Although generally positive, the report drawn up by the Principal Chief Officer Malta Enterprise highlighted certain reservations regarding the project. One such reservation related to improvements required in terms of long-haul connectivity between the identified target markets and Malta, which could be addressed through strategic partnerships of the national airline. Another concern related to competition posed by southern Spain and the Slavic countries, with the importance of differentiation highlighted as a measure of mitigation. Various risks were highlighted in relation to the retail element of the project. These included the simultaneous existence of premium designer outlets and high-street outlets, and gaps in the information submitted with respect to the lease of retail areas to tenants. The member also drew attention to the inconsistency in promoting the residential component as a peaceful and calm place when considering the hectic nature of its location.
- 2.4.14 The Commissioner for Revenue did not present a report but remarked that he hoped that the proposed auditorium would translate into a commitment to attract several renowned names in the music industry to Malta. He also indicated that certain taxation aspects required further explanation and clarifications should the Seabank Consortium be awarded the preferred bidder status. Following the NAO's request to elaborate on this statement, the Commissioner for Revenue indicated that, at the time, he had noticed that the eight per cent final tax did not take into account the deduction of agency fees, while no information was provided with regard to the selling price of properties; therefore he had raised the issue with the Evaluation Committee. The Commissioner for Revenue stated that it was relevant to know the number of units to be sold and the estimated selling price, as well as the method for arriving at these values.
- 2.4.15 The Chair Evaluation Committee submitted a report focusing on the financial and technical aspect of the proposal, with specific reference to the level of the upfront payment, yearly ground rent, the level of capital investment and the capacity to raise financing, and the ability to execute and deliver the project. It was noted that most figures cited in the bid were substantiated, based on published industry standards. Overall, the Chair remarked that the track record of the Seabank Consortium was very good on all fronts, especially in terms of delivery and timeline.
- 2.4.16 On a less positive note, the Chair Evaluation Committee remarked that the upfront payment due to Government was being made over five years rather than in the first year; moreover, no interest was considered for delays in the settlement of this payment. It was observed that the capital expenditure per hotel suite, estimated at €158,000, was elevated when compared to other developments, although this could be justified when one considered the planned upmarket development. At €223, the average achieved room rate for the first year of operation was also deemed high when considered against subsequent years. Reference was also made to the fact that no indication was made to regulatory restrictions on casino licences and the fact that government had not provided confirmation or otherwise whether an additional casino licence would be issued.

2.4.17 The Evaluation Committee completed a checklist intended to ascertain that the requirements of the RfP were met. The checklist was divided into various sections, including general guidelines, as well as requirements of a general nature and others related to the bid bond, technical capacity, financial capacity and design. In conclusion, the Committee was of the opinion that the proposal met the requirements as outlined in the RfP. The Chair recommended that the Committee was to reconvene to formally assess and allocate a score to the evaluation criteria scoreboard as set out in the RfP.

2.4.18 The third and final meeting was held on 5 February 2016, during which the Evaluation Committee allocated points in terms of the evaluation scoreboard. The allocation of points was based on three criteria, that is, design, technical and financial elements. The scoring was applied by consensus among all Committee members for each category. The Chair Evaluation Committee informed the NAO that each member independently allocated a score to the specific criteria assessed. The Committee then discussed these scores and once agreement was reached, all members assigned identical points on their evaluation scoreboard. The Seabank Consortium was awarded a score of 82 out of 100, with each sub-category obtaining more than 50 per cent of the allocated maximum total (Figure 32 refers).

Figure 32: Scores allocated to the bid by the Seabank Consortium by the Evaluation Committee

	Evaluation criteria	Score allocated	Maximum score
Design	Innovative aspect and design	9	10
	Overall understanding of the objectives	4	5
	Articulation and overall cohesion of concept	8	10
Technical	Fitness and properness of the proponent	5	5
	Level of experience the proponent has in similar projects	8	10
	Sustainability of the business plan and operational plan presented	17	20
	Capacity to raise the required financing and ability to execute and deliver the project	8	10
Financial	The level of upfront payment	9	10
	Yearly ground rent payable to Government	7	10
	Level of capital investment	7	10
	Total	82	100

2.4.19 The Evaluation Committee deemed that the nature of the proposal was sufficiently satisfactory to justify the identification of the preferred proponent and, eventually, the successful proponent for the award of the concession. The Committee agreed to recommend to Projects Malta Ltd that the Seabank Consortium, comprised of SD Holdings Ltd, Seaport Franchising Ltd and Seabank Hotel and Catering Ltd, be awarded preferred proponent status.

- 2.4.20 The NAO's concerns regarding the subjectivity of the evaluation criteria re-emerged following the allocation of marks by the Evaluation Committee. For example, the Seabank Consortium was awarded nine marks for the level of upfront payment and seven marks for the yearly ground rent payable to Government. The Chair Evaluation Committee conceded that the allocation of marks was challenging, particularly in view of the fact that only one bid was submitted. Nonetheless, in response to the example cited, the Chair Evaluation Committee clarified that the level of upfront payment was awarded nine marks since the amount of the capital investment exceeded €200,000,000, which was typically the outlay in projects of this magnitude. With regard to the yearly ground rent payable, assigned seven marks, the Chair Evaluation Committee indicated that it was preferable for ground rent to be paid over the lease period, thereby ensuring that the project was sustainable.
- 2.4.21 On 12 February 2016, the Executive Chair Projects Malta Ltd, on behalf of Government, formally notified SD Holdings Ltd, Seaport Franchising Ltd and Seabank Hotel and Catering Ltd that, on the recommendation of the Evaluation Committee, their bid submission received on 15 January 2016 fulfilled the requirements established by the RfP and, therefore, the Seabank Consortium was the preferred proponent. Discussions and negotiations were to be entered into with a view to reach an agreement. This decision was also published on Project Malta Ltd's noticeboard and in a press release issued on 12 February 2016, indicating the Seabank Consortium as the preferred bidder.
- 2.4.22 The NAO sought to determine whether the recommendation by the Evaluation Committee was referred by Projects Malta Ltd to the MEH, in view of its responsibility for Projects Malta Ltd, or to the MOT, in view of its responsibility for the ITS. According to the PS MEH, the Committee was appointed by Projects Malta Ltd and therefore reported to it, implying that the recommendation was not referred to any of the Ministries. However, in later submissions to this Office, the PS MEH indicated that the MEH was aware of the key developments resulting from the work of the Evaluation Committee.

Chapter 3

The negotiations with db San Gorg Property Ltd

3.1 The setting up of the Negotiation Committee

- 3.1.1 On 20 February 2016, the Executive Chair Projects Malta Ltd informed the Projects Implementation Coordinator Projects Malta Ltd that a team to negotiate the ITS project was being set up. The Negotiation Committee was to comprise a Chair and two members. The Chair was a managing partner of a local firm that provides accounting and advisory services and had served as Chair of the Evaluation Committee. The two members were an architect and the Advisor OPM, with the latter having assisted in the process of drafting the RfP. The respective letters of appointment were issued by Projects Malta Ltd on 22 February 2016. All members of the Negotiation Committee, including the Chair, endorsed a code of conduct and confidentiality form.
- 3.1.2 The NAO enquired about the roles and responsibilities assumed by each member of the Negotiation Committee. According to the Chair, his selection to lead the Negotiation Committee was intended to ensure continuity of the work initially undertaken by the Evaluation Committee. With regard to the Advisor OPM, his role mainly entailed the negotiation of the contractual terms, and the drafting of the contract. As regards the architect, the NAO established that, except for a preliminary meeting, his input and presence throughout the course of the negotiations were largely inexistent. Notwithstanding the fact that the architect did not contribute to the process of negotiation in any manner, he ultimately endorsed the report drawn up by the Negotiation Committee. The former Executive Chair stated that he was not aware of the limited involvement of the architect and indicated that the Negotiation Committee did not report to him on a regular basis, but rather by exception.
- 3.1.3 This Office sought to establish whether the MEH was involved in the selection of the members of the Negotiation Committee. The PS MEH confirmed that the Ministry played a role in the appointment of members, explaining that the Ministry's involvement would have been on ascertaining that the members nominated had the required skills, rather than the identification of members per se.
- 3.1.4 On 25 April 2016, the Chair Negotiation Committee resigned with immediate effect, citing a supervening conflict. Queries regarding the nature of the conflict were raised by the NAO. The Chair Negotiation Committee provided a valid explanation of the context that gave rise to the conflict of interest. In his stead, the CEO FMS was appointed as Chair Negotiation Committee on

18 May 2016. During a hand-over meeting, the outgoing Chair informed the new Chair that the Negotiation Committee was at the point of seeking a professional land valuation. This course of action was eventually recommended by the Negotiation Committee to Projects Malta Ltd.

3.1.5 At around the same time, that is, in a Cabinet meeting held on 17 May 2016, the Prime Minister informed Cabinet of developments relating to the ITS site. The Prime Minister affirmed that the ITS was to be relocated to Smart City and form part of a four-star hotel complex that was to be undertaken by the Emirates with a minimal cost to Government. Misconceptions cited in the press were addressed while additional clarifications were made. The Prime Minister also addressed allegations that the preferred bidder already had plans for the site drawn up prior to the RfP, indicating that such plans had been prepared since 2011. According to Cabinet, the concerns that were being raised with respect to this project were being instigated by third parties whose interest was the reissuance of the tender.

3.1.6 Unrelated to the process of negotiation but related to the award of preferred bidder status to the Seabank Consortium was correspondence traced by the NAO dated 17 May 2016, wherein the Malta Developers Association expressed their intent to undertake an enquiry on the procedure adopted for the award for the development of the ITS site. No further correspondence was traced regarding this matter.

3.1.7 Other concerns were raised by the Pembroke Local Council. The NAO noted several instances of correspondence submitted by the Pembroke Local Council to Projects Malta Ltd wherein several issues were highlighted, including matters relating to the management of construction, traffic management, corporate social responsibility considerations, protection of the natural environment and project timeframes.

3.2 The initial negotiations between Projects Malta Ltd and the Seabank Consortium

3.2.1 The NAO sought to establish an understanding of the initial discussions held between the Negotiation Committee and the Seabank Consortium, as well as the internal workings of the Committee. Despite requests for information addressed to Projects Malta Ltd, this Office was not provided with any documentation relating to the initial interactions of the Negotiation Committee for the period leading to the resignation of the first Committee Chair.

3.2.2 The Chair Negotiation Committee informed the NAO that only one meeting, held with the Seabank Consortium, was organised during his tenure as Chair. This was held on 21 March 2016. During the meeting, the way forward was discussed, and two particular issues were raised. These related to the negotiation of the price and terms, as well as the possible action should the ITS fail to vacate the premises by the envisaged timeframe. The Chair Negotiation Committee confirmed that no minutes were taken.

3.2.3 Based on that stated by the Chair Negotiation Committee and the Advisor OPM during meetings held with the NAO, this Office ascertained that a draft agreement was to serve as the basis for negotiations. Correspondence made available by the Advisor OPM attested to this. It was

also indicated that during this meeting with the Seabank Consortium, Government's intention to seek an independent valuation for the site, that was to reflect its market value, was put forward. The Seabank Consortium did not raise any objections to this; however, insisted that this approach was to be adopted in all future projects involving the disposal of public land. Government indicated that this measure would apply to mixed-use development land concessions in the area.

- 3.2.4 The Advisor OPM recalled another meeting held towards end April 2016 that was attended by the legal representative of the Seabank Consortium, the Hon. Dr Mario de Marco. No documentation relating to this meeting was provided.
- 3.2.5 Following the appointment of a new Chair Negotiation Committee on 18 May 2016, Deloitte Services Ltd (hereinafter referred to as Deloitte) were immediately engaged by Projects Malta Ltd to assist the Committee in the determination of the site's value. Despite queries made, the NAO could not establish who was involved in this decision and on what basis Deloitte were appointed. According to the Chair Negotiation Committee, the decision to engage Deloitte was presumably based on the fact that the firm had no association with the members of the Seabank Consortium or any other company related thereto. This was somewhat corroborated by the former Executive Chair Projects Malta Ltd who indicated that other major audit firms had potential conflicts of interest arising from their professional relationship with the Consortium or any other company related thereto. According to the Executive Chair Projects Malta Ltd, the fact that Deloitte was one of the major audit firms offering such services was also considered. The input and role of Deloitte in establishing value for the site are elaborated on in section 3.3 and 3.4 of this report.
- 3.2.6 The information given during this audit relating to the internal processes of the Negotiation Committee, and its exchanges with the Seabank Consortium or other stakeholders, was very fragmented. The only information provided to the NAO comprised a few emails exchanged between the Advisor OPM and the Consortium between July and August 2016, wherein revisions to the draft deed were proposed. This failure by the Negotiation Committee and Projects Malta Ltd impeded the NAO from establishing an understanding of the process that led to the eventual determination of the site's value, with the Office mostly constrained to rely on that recalled by those involved well after the fact. While the PS MEH claimed that he was aware of the progress registered through informal discussions, no records of developments were retained. The PS MEH maintained that negotiations were not normally recorded in minutes and asserted that the main outcome was captured in the report drawn up by Deloitte.
- 3.2.7 Other information traced by the NAO related to correspondence exchanged in June 2016 between the Chair Negotiation Committee and Enemalta regarding the possible allocation of a parcel of land within the site for the construction of a distribution centre; and an email sent by Deloitte in November 2016 to the Executive Chair Projects Malta Ltd and the Chair Negotiation Committee regarding the need to corroborate information with the PA following meetings held with the Parliamentary Secretary for Planning and Simplification of Administrative Processes,

the Hon. Deborah Schembri (in view of responsibility for the GPD and hereinafter referred to as Parliamentary Secretary OPM) and an Advisor within the OPM.

3.3 The engagement of Deloitte Services Ltd

3.3.1 The Chair Negotiation Committee and the Executive Chair Projects Malta Ltd met with Deloitte on 18 May 2016, during which the engagement of the latter to assist the Committee was discussed. To this end, Deloitte were to submit a letter of engagement for the consideration of Projects Malta Ltd. The cost of the services to be provided was set at €40,000, excluding VAT, later revised to €45,000 following the inclusion of legal services. A request for direct contract approval was submitted to MFIN on 23 May 2016 by Projects Malta Ltd through its procurement committee and the PS OPM E&P. This request was resubmitted to MFIN by the PS OPM E&P on 24 May 2016, wherein it was emphasised that the Office was only facilitating the process. Direct contract approval was granted by MFIN on the same day.

3.3.2 On 24 May 2016, Projects Malta Ltd officially engaged Deloitte to report on the project submitted by the Seabank Consortium in reply to the call for tender for the design, build and operation of an upmarket tourism and leisure development on the site formerly occupied by the ITS. In this regard, Deloitte was to review the various financial aspects of the Consortium's proposal to provide input to support Projects Malta Ltd in assessing an indicative range of fair values that could be attributable to the land in the context of the proposed mixed-use development. Furthermore, Deloitte was to assist Projects Malta Ltd in developing and substantiating counter-expectations and in identifying mechanisms for incorporation into the final terms.

3.3.3 More specifically, Deloitte was to:

- a. analyse the project proposal, including the proposed gross floor areas and capital expenditure, the financial projections and the EclA;
- b. develop an indicative range of values for the land, based on the NPV of future free cash flows as reflected in the financial projections submitted by the Seabank Consortium;
- c. hold meetings with other developers who own land for similar uses in the area and benchmark the indicative value range against other market transactions; and
- d. develop an Illustrative Valuation Methodology Model which could be used consistently for mixed-use development land concessions in the area of Sliema and St. Julian's.

3.3.4 However, certain provisions were specified in the valuation submitted by Deloitte, namely:

- a. the proposed Integrated Development Framework for Paceville had not been published and, therefore, the assessment by Deloitte was based on indicative plans submitted by the Seabank Consortium;

- b. given that the exact specifications of the project were yet to be finalised, the indicative value calculation was based on a rate per square metre according to the designated use and could be adjusted upwards or downwards depending on the outcome of the approved project; and
- c. the proposed development did not necessarily fall within the parameters of the then North Harbour Local Plan (NHLP) 2006, which was at the time being revised; accordingly, the final specifications of the project depended on the outcome of the revisions to the NHLP 2006.

3.3.5 A reiteration of the financial offer submitted by the Seabank Consortium was provided, namely that the proposal had a total indicative approximate value of €17,000,000, made up of:

- a. a premium of €6,500,000, payable over five years;
- b. fixed annual ground rent of €105,000; and
- c. the right for third parties acquiring residential units to convert the temporary emphyteusis to perpetual emphyteusis at a rate of €167 per square metre of residential net floor area and acquire the freehold at a capitalisation rate of five per cent.

3.3.6 The NAO enquired as to who set the terms of reference that were to guide Deloitte in its valuation. According to Projects Malta Ltd, after due consideration, its representatives and Deloitte agreed that the scope of the engagement was to assess the indicative land value within the specific context of the mixed-use project and not based on a potential no-restrictions development.

3.3.7 In addition, this Office sought to understand that intended by the term Illustrative Valuation Methodology Model and the rationale behind the inclusion of the provision that indicated intent to use this model for other concessions in the area. Projects Malta Ltd informed the NAO that at the time of the assessment of the bid by the Seabank Consortium, the proposed project was not yet supported by valid development permits and/or local plans. For this reason, Deloitte were to prepare a valuation methodology that could cater for variations in the eventual approved development permits and which could be consistently applied to other major mixed-use development projects that were being planned in the vicinity. Projects Malta Ltd maintained that, through this approach, Government sought to adopt a consistent and transparent valuation methodology model.

3.3.8 According to correspondence reviewed by the NAO, the key elements of the bid submitted by the Seabank Consortium were discussed during a preliminary meeting attended by representatives of Deloitte, Projects Malta Ltd, Government and the Consortium. The purpose of the meeting was for the Consortium to deliver a presentation of the proposed project, give background information regarding the RfP submission, and provide insight as well as

comparative information relating to the financial bid. On the other hand, Deloitte outlined the information it required to undertake the valuation of the site. Indicated in this correspondence was that this meeting did not involve any form of discussions or negotiations but was intended for information gathering purposes. It must be noted that the correspondence referred to was submitted by Deloitte to Projects Malta Ltd following enquiries made by the NAO regarding records of negotiations held. As indicated in previous paragraphs, the Negotiation Committee and Projects Malta Ltd did not retain any records relating to meetings held, with the Office constrained to rely on that recalled by third parties well after the fact. The only information provided by Projects Malta Ltd about this meeting was that this was held on 19 May 2016 at the OPM and was attended by the Minister within the OPM, the former Executive Chair Projects Malta Ltd, as well as the Chair and a member of the Negotiation Committee. An element of inconsistency was noted with information provided by the Seabank Consortium, who indicated that no meetings were attended wherein any Minister was present.

- 3.3.9 According to the former Executive Chair Projects Malta Ltd, the Seabank Consortium adopted a confrontational stance during this meeting. The main point of contention was the amount bid. He elaborated that, eventually, the Consortium agreed to consider the revisions that were to be proposed by Government, provided that future land disposals were treated in the same manner.

The analysis of the Seabank Consortium proposal

- 3.3.10 The initial part of the report by Deloitte provided a summarised analysis of the proposal by the Seabank Consortium. This included the proposed gross floor areas, the projected capital expenditure, the financial projections and the EclA submitted with the proposal.
- 3.3.11 Regarding floor area, the project comprised a mixed-use development with a total gross floor area of 130,735 square metres above ground, including:
- a. a hotel with 370 rooms, a spa and a conference centre;
 - b. a casino occupying a gross floor area of 2,085 square metres;
 - c. three restaurants and a cafe occupying a gross floor area of 2,489 square metres;
 - d. 17,690 square metres of lettable retail space;
 - e. two towers comprising 209 apartments and five levels of office space; and
 - f. 2,364 underground parking spaces.

3.3.12 Projected capital expenditure by the Seabank Consortium, excluding capitalised interest, amounted to €200,464,000, to be incurred as follows:

- a. €75,394,000 in structural works;
- b. €39,911,000 in mechanical and engineering costs; and
- c. €85,159,000 in finishes.

Divided by the indicated gross floor area of 130,735 square metres, the projected capital expenditure would result in a cost of €1,533 per square metre.

3.3.13 The proposal by the Seabank Consortium included financial projections covering the development period as well as the projected operating activity from 2018 to 2028. Over the 11-year period, the projected pre-tax net free cash flows totalled €173,000,000. The projections were based on several key assumptions, namely:

- a. 209 apartments with an average size of 158 square metres being sold at an average price of €715,000, implying an average rate of €4,525 per square metre;
- b. office space rental starting from €200 per square metre, increasing by 10 per cent every five years;
- c. hotel operation to stabilise by 2021, with an average daily rate of €212, occupancy at 82 per cent, an annual gross operating profit per available room (GOPAR) of €39,000 and a total gross operating profit of €14,400,000;
- d. casino operation to stabilise by 2022 with 150,000 annual regular visitors and a gross operating profit of €3,200,000;
- e. restaurants and entertainment outlets to generate 850 covers daily, translating into a gross operating profit of €3,000,000 by 2021; and
- f. projected income from the shopping mall at €300 per square metre of lettable space, assumed at 66 per cent of the gross floor area.

3.3.14 In the ensuing part of the report, Deloitte calculated an indicative value for the site under consideration, utilising the discounted cash flow method, as stipulated in the letter of engagement of 24 May 2016. This method of valuation calculates the present value of future cash flows by applying specific discount rates, taking into consideration the time value of money

and the risks associated with projected future cash flows, primarily involving the analysis of the reasonableness of assumptions made.¹¹ This method was selected by Deloitte as it was deemed best practice.

3.3.15 Applying this method of valuation, the future free cash flows indicated in the financial projections by the Seabank Consortium were discounted to obtain the NPV.¹² The discount rates applied in the calculation reflected an indicative post-tax weighted average cost of capital for each component of the project; therefore, each component was attributed a discount rate reflecting the market return expected from comparable projects, adjusted to take into account project-specific risks. Inevitably, as stated in the report by Deloitte, the exercise comprised a high-level indicative estimation of implied land value based on the financial projections submitted by the Consortium; hence, the fair value of the land could vary significantly depending on its intended and permitted use. In view of this, Deloitte undertook two separate discounted cash flow calculations. The first was based on the financial projections indicated by the Consortium, while the second included several adjustments to key assumptions underlying the projections.

3.3.16 The first calculation by Deloitte was based on the financial projections indicated by the Seabank Consortium, which were based on the key assumptions noted in paragraph 3.3.13. Each of the project's elements was attributed a specific discount rate and a resultant indicative value. Utilising the projections submitted by the Consortium, the land value of the site was estimated at €44,379,000 (Figure 33 refers).

Figure 33: Calculation of land value by Deloitte based on projections submitted by the Seabank Consortium

Project component	Discount rate	Indicative value (€)	€ per square metre
Towers (residential/offices)	8.1%	29,646,000	826 (net internal)
Hospitality (hotel/entertainment)	13.6%	6,248,000	125 (gross floor area)
Shopping mall (retail)	13.1%	6,714,000	250 (gross floor area)
Discounted cash flows		42,607,000	
Parking spaces	notional ¹	1,773,000	25 (gross floor area)
Resultant land value	12.4%	44,379,000	339 (gross floor area)

Note:

1. The projections by the Seabank Consortium assume no cash inflows from the sale or rental of unallocated parking spaces. Therefore, projected free cash flows from parking spaces, which in this case are negative, were excluded from the discounted cash flow valuation and a notional land value of €25 per square metre was allocated for parking spaces.

¹¹ The discounted cash flow analysis is a common valuation method used to estimate the value of an investment based on its expected future cash flows. This method of valuation calculates the present value of future cash flows by applying specific discount rates, taking into consideration the time value of money and the risks associated with projected future cash flows. The discounted cash flow analysis is based on the principle that the value of a business is intrinsically based on its capability to generate cash flows. Therefore, the method relies more on the fundamental expectations of a business than on public market factors and is contingent on various assumptions. A disadvantage of this method is the substantial subjectivity in the estimation of future cash flows and the determination of an appropriate risk-adjusted discount rate. Any change in either can significantly affect a valuation.

¹² The current worth of a future sum of money given a specified rate of return.

3.3.17 The application of the total indicative value to the sum of the Seabank Consortium’s projected free cash flows for the entire project implied an overall post-tax weighted average cost of capital of 12.36 per cent, which rate was relatively consistent with the average of the weighted average cost of capital applied to the three components.

3.3.18 In the second valuation, Deloitte Services Ltd adjusted the Seabank Consortium’s key underlying assumptions, based on the analysis of the indicated financial projections and the discussions held with Government. The following constituted the basis of the calculation:

- a. the average residential selling price was increased to €6,500 per net internal square metre;
- b. office rent was increased to €300 per net lettable square metre;
- c. development costs of the towers were increased to €2,000 per square metre of gross floor area;
- d. all projected cash flows relating to the casino were ignored given the lack of a licence;
- e. retail rent was increased to €350 per net lettable square metre;
- f. development costs of the retail mall were increased to €1,180 per square metre of gross floor area; and
- g. average development cost of the hotel and entertainment areas was increased to €1,600 per square metre of gross floor area.

3.3.19 Consequently, the financial projections by the Seabank Consortium and the weighted average cost of capital were adjusted based on the revised assumptions and the respective execution risk, and the NPV was recalculated. Utilising the revised assumptions, the land value of the site was estimated by Deloitte at €56,114,000 (Figure 34 refers).

Figure 34: Calculation of land value by Deloitte based on revised projections

Project component	Discount rate	Indicative value (€)	€ per square metre
Towers (residential/offices)	9.8%	44,888,000	1,250 (net internal)
Hospitality (hotel/entertainment)	13.4%	2,499,000	50 (gross floor area)
Shopping mall (retail)	13.4%	8,728,000	325 (gross floor area)
Discounted cash flows¹	12.5%	56,114,000	429 (gross floor area)

Note:

1. The value attributable to the excess parking spaces was incorporated in the overall values of the mixed-use project.

- 3.3.20 The discount rate applied to the projected cash flows emanating from the residential component was increased from 8.1 per cent to 9.8 per cent in view of the increased execution risk attributable to the projected sale of apartments and the rental of office space at higher prices. The rate used for the retail component was also increased from 13.1 per cent to 13.4 per cent to reflect the increased risks following the projected changes in the business model. In contrast, the discount rate applied to cash flows related to the hospitality and entertainment components was reduced from 13.6 per cent to 13.4 per cent in view of the removal of the casino cash flow.
- 3.3.21 The increased execution risk attributable to the higher rates projected for the sale of the apartments and the rental of office space contributed to a higher overall post-tax weighted average cost of capital applied to the adjusted projections, which increased from 12.4 per cent to 12.5 per cent. However, the increase in risk was partly offset by the removal of projected cash flows emanating from the casino. In clarifications provided by Deloitte, the NAO was informed that the removal of these cash flows was instigated by the Prime Minister on the basis that no obligation was to be put on the Government to grant the casino licence.
- 3.3.22 The indicative land value based on the adjusted projections (€56,114,000), was subsequently corroborated by Deloitte utilising the residual value method.¹³ Deloitte explained that this was mainly carried out on the insistence of the Lands Authority, since the method adopted in the valuation of this site was to be consistently applied to other concessions. Consequently, several meetings were held between the Parliamentary Secretary OPM, an Advisor Lands Authority and Deloitte, wherein all assumptions were reviewed.
- 3.3.23 In the residual value method, the value of the land was calculated after taking into consideration:
- the cost of development as indicated in the financial projections by the Seabank Consortium;
 - the gross development value, comprising the projected revenue arising from the sale of the residential units and indicative post-development values of the operating properties based on the projected cash flows; and
 - a provision for funding costs and developer's profit based on market expectations.
- 3.3.24 In applying the residual value method, various assumptions were made, which ultimately led to the corroboration of the land value at €56,114,000 (Figure 35 refers).

¹³ The residual value method of valuation is based on the principle that the price payable for a property suitable for development is equal to the difference between the completed value of the highest and best form of permitted development, and the total cost of carrying out the development. Therefore, all costs incurred in the construction and building works required to carry out the development, together with an appropriate allowance for profit on the development, are deducted from the net capital value (after deducting any costs of sale) based on the assumption that the development comprised the most valuable form.

Figure 35: Corroboration of land value by Deloitte utilising the residual value method

Project component	Assumption	Value (€)
Gross development value		
Hospitality and entertainment	370 rooms at €290,000 per room	107,300,000
Shopping mall	based on market comparison	61,915,000
Office space	2,710 net internal square metres at €5,500 per square metre	14,905,000
Residential	33,200 net internal square metres at €6,500 per square metre	224,100,000
Total development revenue		408,220,000
Selling costs	5% of gross development value	(20,411,000)
Projected development costs		
Hospitality	average €1,600 per square metre of gross floor area	(79,968,000)
Retail	average €1,200 per square metre of gross floor area	(32,224,800)
Residential	average €2,000 per square metre of gross floor area	(100,052,000)
Office space	average €2,000 per square metre of gross floor area	(7,750,000)
Deemed interest during development	5% per annum x 3 years x development costs	(32,999,000)
Developer's profit		75,334,100
% of gross development value		18.5
Gross land value		59,481,000
Purchasing costs	6% of gross land value	(3,367,000)
Net land value		56,114,000

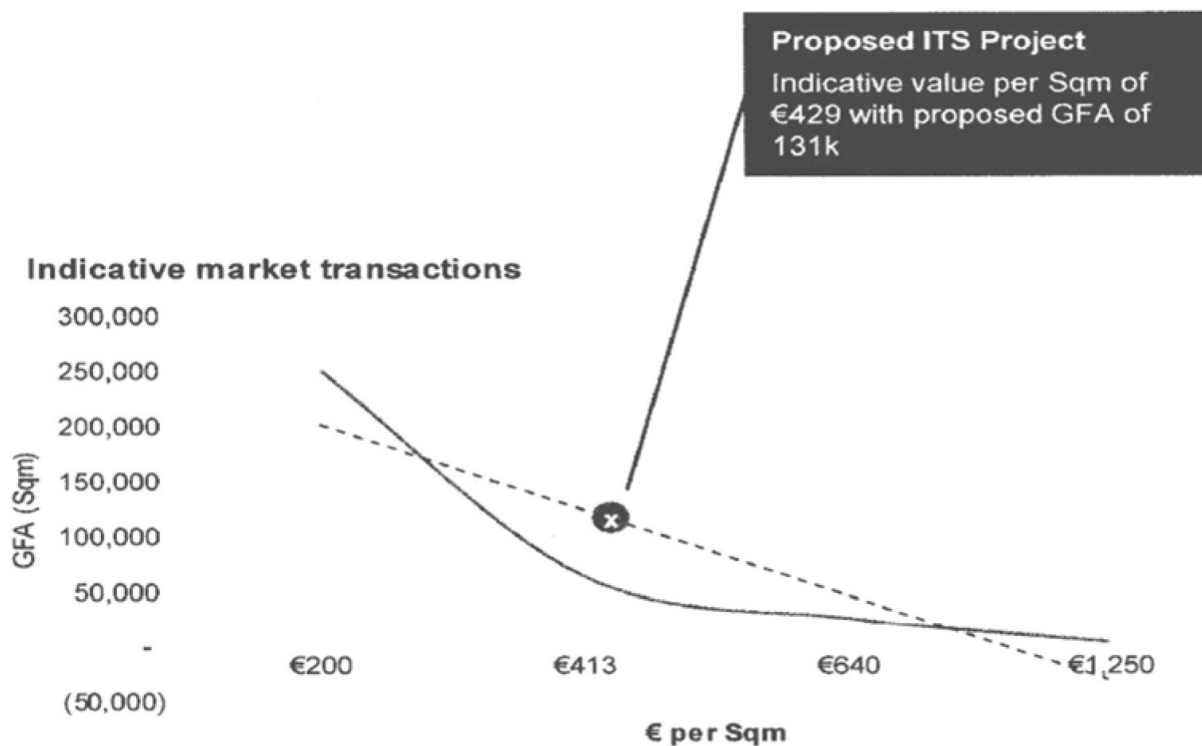
3.3.25 The application of the residual value method by project component provided further analysis in the establishment of land value (Figure 36 refers).

Figure 36: Land value per project component established by Deloitte utilising the residual value method

Project component	Total (€)	Towers (€)	Hospitality (€)	Mall (€)
Gross development value				
Hospitality and entertainment	107,300,000		107,300,000	
Shopping mall	61,915,000			61,915,000
Office space	14,905,000	14,905,000		
Residential	224,100,000	224,100,000		
Total development revenue	408,220,000	239,005,000	107,300,000	61,915,000
Selling costs	(20,411,000)	(11,950,000)	(5,365,000)	(3,096,000)
Projected development costs				
Hospitality	(79,968,000)		(79,968,000)	
Retail	(32,224,800)			(32,224,800)
Residential	(100,052,000)	(100,052,000)		
Office space	(7,750,000)	(7,750,000)		
Deemed interest during development	(32,999,000)	(16,170,000)	(11,995,000)	(4,834,000)
Developer's profit	75,334,100	55,501,700	7,323,000	12,509,500
% of gross development value	18.5	23.2	6.8	20.2
Gross land value	59,481,000	47,581,000	2,649,000	9,251,000
Purchasing costs	(3,367,000)	(2,693,000)	(150,000)	(524,000)
Net land value	56,114,000	44,888,000	2,499,000	8,728,000

3.3.26 The analysis by Deloitte comprised the benchmarking of the indicative values reported in Figure 35 and Figure 36. For this purpose, meetings were held with other developers who owned land that could be put to comparable use in the area, while publicly available market transaction prices for such projects were researched. Deloitte provided the NAO with information relating to the developments against which benchmarking was undertaken, which this Office deemed reasonable. It transpired that the value arrived at with respect to the site was relatively consistent with indicative market values for other mixed-use real estate development projects. However, according to Deloitte, the land value varied significantly with the size of the plot, with the average price per square metre decreasing as the size of the plot increased. Additionally, given that the returns expected from land used for residential and office space by far outweighed those from hospitality use, the value of land in a mixed-use project would depend on the proportion of gross floor area allocated to these components. The indicative value per square metre established by Deloitte for the development on the former ITS site was €429, which was based on an overall value of €56,114,000 and a proposed gross floor area of 131,000 square metres (Figure 37 refers).

Figure 37: Comparative market value per square metre established by Deloitte



3.3.27 The payment structure that was to be followed, as determined by Deloitte and in line with that set by the Seabank Consortium, was outlined (Figure 38 refers).

Figure 38: Payment structure as adjusted by Deloitte

	Net floor area	€ per m ²	Ground rent	Value
Premium Payable				€15,000,000
Conversion from Temporary to Perpetual Emphyteusis				
Residential/offices	35,910 m ²	167		€5,997,000
Car park (residential/offices)	15,120 m ²	33		€499,000
Total conversion charges				€6,496,000
Redemption of ground rent at 5%			€1,170,000	€23,392,000
Ground rent				
Hospitality (ground rent calculated at 3.5% of assumed value)	€87,000	€2,499,000		
Retail (ground rent calculated at 3.5% of assumed value)	€305,000	€8,728,000		
Total ground rent			€393,000	€11,227,000
Total				€56,114,000

3.3.28 As outlined in Figure 38, the deemed value of the land was allocated into:

- a. a €15,000,000 premium for the provision of a temporary emphyteutical grant for a period of ninety-nine years, based on approximately one-third of the deemed value of land earmarked for residential and office development, including the allocated car parking spaces;
- b. a €6,500,000 compensation for the conversion of the temporary emphyteusis into a permanent emphyteusis at the rate of €167 per net internal square metre for residential space and €33 per square metre of parking gross floor area;
- c. a €23,400,000 compensation, arising from the redemption of ground rent with respect to the remaining portion of land earmarked for residential and office development, redeemable at a capitalisation rate of five per cent; and
- d. an annual charge of €393,000, which corresponded to the entire deemed value of land earmarked for non-residential use that would be converted into a temporary ground rent.

3.3.29 Other considerations taken into account were that:

- a. ground rents were to be revisable upwards every five years at the higher of five per cent or the increase in the property index;
- b. the definitive value for the concession was to be computed based on the developable areas included in the final approved permits;

- c. any increases or decreases in the gross developable area would automatically result in an adjustment to the computed premium payable; and
- d. the adjustment to the premium payable would also take place at any time in the future should the developable area be increased beyond the original permits.

Review of the projected cash flows

3.3.30 The report by Deloitte analysed the Seabank Consortium’s projected cash flows from 2018 to 2028 in further detail according to the development’s various components, that is, hospitality including casino operations, the bars and restaurants operations, the residential development, the office development, the retail element, and the car park spaces. The projections were supported by several underlying assumptions, including:

- a. the hospitality and leisure components reflected an upscale development with projected above-average operating performance and relatively high capital investment;
- b. projections related to the residential component assumed relatively fast sales at favourable selling prices, while development costs were in the lower end of market expectations;
- c. retail and office spaces were assumed to be rented in shell form with finishing and furnishing costs borne by the tenants; therefore, in this respect, projections related to these spaces were more conservative from an income and investment perspective; and
- d. the project included 450 extra parking spaces for which no income appeared to have been included in the projections.

Hospitality, including casino operations

3.3.31 Hotel operation was expected to commence in 2018, with gross operating profit projected to stabilise at €21,000,000 in 2022 and increase at a rate of two per cent per annum thereafter, in line with projected inflation and economic growth. The projected gross operating profit for 2022 was based on the following:

- a. a gross operating profit of €14,800,000 generated from hotel operations, which would translate into a gross operating profit of approximately €40,000 per available room (PAR). In 2015, average 5-star GOPAR stood at €21,000, with top performers expected to be generating a GOPAR of approximately €30,000;
- b. a gross operating profit from restaurants and entertainment venues expected to be in the region of €3,100,000, of which €1,500,000 emanated from the speciality restaurants and cafe, €800,000 from the Hard Rock Cafe and a further €800,000 from the Sky Bar; and

- c. a gross operating profit of €3,200,000 from the casino.

On the other hand, total capital expenditure was projected to be €88,000,000, comprising €70,000,000 for the hotel, €9,000,000 for the restaurants and entertainment venues and a further €9,000,000 for the casino.

3.3.32 Deloitte carried out a comparison between the Seabank Consortium’s projected amounts for 2021 and the 5-star averages reported in the 2015 Bank of Valletta MHRA Survey. For this purpose, the projections were restated to 2015 levels based on assumed growth of two per cent per annum. Several variances were noted, mainly relating to the average daily room rate and the direct costs PAR (Figure 39 refers). These, together with the relatively large size of the hotel rooms and an approximate development cost of €180,000 per room, reflected projections for a superior 5-star establishment at a level not yet matched by other local hotels.

Figure 39: Comparison of projections by the Seabank Consortium with other 5-star hotel averages for 2015

2015 Comparison	Implied projection	Benchmark	Variance (%)
Occupancy	81.8%	77.9%	-
Average daily rate	€186.2	€136.8	36
Non-accommodation income per occupied room-night	€71.6	€73.1	(2)
Total revenue per occupied room-night	€257.8	€209.9	23
Revenue PAR-night	€203.2	€163.4	24
F&B cost as % of F&B revenue	27%	25%	-
Payroll PAR	€45.7	€49.6	(8)
Direct expenses and overheads PAR-night	€57.2	€43.8	31
Gross operating profit PAR	€32,286	€21,290	52
Gross operating profit margin	43.5%	35.7%	-

3.3.33 Regarding the casino, the Seabank Consortium’s key assumptions relating to gaming statistics were compared to the 2014 annual statistics issued by the Malta Gaming Authority, being the latest available. The following were established:

- a. the Consortium’s projections assumed that the number of visitors would stabilise by 2021 at 149,000. This approximated to 20 per cent of the market, based on the 2014 statistics, where land-based casinos in Malta registered a total of 723,000 visitors during the year; and
- b. the Consortium’s projections assumed gross gaming revenue of €50 per guest, increasing between one and two per cent per annum in line with inflation. In 2014, the gross gaming revenue per guest stood at €46.

3.3.34 Other key assumptions relating to tax, revenue and costs were compared to benchmarks generated by Deloitte based on the 2014 published financial statements of two local casinos. The following were noted:

- a. projections for F&B costs as a percentage of F&B revenue were relatively consistent with the average ratio reported by the 5-star hotel sector in 2015. On the other hand, projections related to F&B revenue, expected to stabilise at 14 per cent of gross gaming revenue per regular visitor, were significantly higher than the amounts reported in the benchmark, ranging between 2.8 per cent and 3 per cent;
- b. payroll costs and other operating expenses were expected to stabilise at 27 per cent of gross gaming revenue compared to a benchmark range of 21 per cent to 26 per cent for the former and 17 per cent to 32 per cent for the latter; and
- c. projected average gaming tax for the casino was lower than the benchmark of 36 per cent to 38 per cent of gross gaming revenue, resulting from a projected higher concentration of high rollers who attract special reduced gaming taxes of 7.5 per cent on table games and 12.5 per cent on slots.

Bar and restaurant operations

- 3.3.35 The projections by the Seabank Consortium reflected a strong performance in all six restaurant/entertainment outlets throughout the projected period. By 2022, the number of covers per annum was expected to reach 309,223, while the average revenue per cover was estimated at €35. The strong anticipated financial performance reflected the projected high capital expenditure of approximately €3,000 and €3,500 per square metre, excluding and including car park allocation, respectively. Key cost ratios for F&B (26 per cent of revenue), labour costs (at an average of 26 per cent) and other expenses (averaging 18 per cent) were deemed to be in line with industry norms for strong-performing F&B operations.

Residential development

- 3.3.36 Regarding the residential development, the project included 50,026 square metres of residential space (gross floor area) located in two 30-storey towers. The projections by the Seabank Consortium were based on 209 apartments occupying a total saleable area of 42,346 square metres, comprising 33,200 square metres and 9,146 square metres of internal area and terraces, respectively. The average projected selling price was set at €715,330 per apartment based on an average price of €3,918 per square metre of internal space and €1,959 per square metre of external space. This translated to an average selling price of approximately €4,500 per square metre of internal space. Pre-tax free cash flows from the sale of residential units and parking spaces were expected to amount to €66,092,000.
- 3.3.37 According to Deloitte, the projected selling price was deemed to be on the lower end of prevailing market prices for similar premium projects. However, the expected significant increase of top-end apartments in mixed-use development projects would inevitably have an impact on the sustainability of current premium rates. The projections also assumed favourable rates, including discounts for prospective buyers who entered into a promise of sale agreement during the construction and development phase, to boost sales velocity.

- 3.3.38 In addition to the apartments, 469 underground parking spaces were allocated to the residential project. Of these, 105 were allocated to guests of residential property owners, while the remaining 364 were expected to be sold at €20,000 per space, subject to early payment discounts ranging between 5 per cent and 10 per cent.
- 3.3.39 Deloitte deemed the total development costs, projected at €1,593 per square metre, including the car park allocation, to be on the low end of market prices.

Office development

- 3.3.40 According to the planned development, there were to be five floors of office space, with a total lettable area of 2,710 square metres. The projected rental rate, taken at €200 per square metre, was at the lower end of the market range for similar high-rise office space in the area; however, the rental rate was to be revised upwards by 10 per cent every five years. According to Deloitte, the rate reflected the fact that the offices were to be rented out in shell form, with an estimated capital expenditure of €1,069 per square metre before car park allocation. The projected pre-tax return on investment of the office space element was taken as 10 per cent before accounting for the cost of land.

Retail element

- 3.3.41 The project included a shopping mall with 17,690 square metres of net lettable area. The retail space was expected to be rented out in shell form, with a projected capital expenditure of €767 per square metre before car park allocation. Rental income was expected to stabilise at €300 per square metre by 2021, revised by an additional 10 per cent thereafter every five years. The occupancy level was estimated to reach and level out at 95 per cent by the third year of operation. A pre-tax return on investment of 20 per cent was projected for the retail element, before accounting for the cost of land. Annual earnings before interest, tax, depreciation and amortisation (EBITDA) were expected to be between €5,500,000 and €6,000,000 throughout the period, that is up to 2028.

Car park spaces

- 3.3.42 Of the 2,364 underground parking spaces, 450 were not allocated to any part of the project and no income was projected from these spaces other than that derived from a car valeting operation. The unallocated car park investment was deemed to be approximately €3,600,000, and the net annual recurring operating expenditure was estimated at €42,000 at 2021 levels, increasing annually with inflation.

Analysis of the Economic Impact Assessment

- 3.3.43 The report by Deloitte also provided an executive summary of the EclA submitted by the Seabank Consortium, which focused on three main areas, namely, revenue to government

from the financial offer, as well as the economic impacts of the construction phase and the operational phase.

- 3.3.44 The EclA set out the projected cashflows payable to government by the Seabank Consortium for the proposed concession, the proposed ground rent, as well as the assumed conversion charges payable by owners of the residential units. As stated in the EclA, the NPV of government revenue was €18,904,962. Deloitte indicated that this value was based on an implied discount rate of 1.67 per cent. According to Deloitte, this rate reflected the rate of inflation but did not account for other risk factors typically included in the cost of capital.
- 3.3.45 The report by Deloitte provided a summary of the economic impacts included in the EclA, emanating from the construction and operational phases. For the construction phase, the EclA identified the direct production effect, as well as the economic and induced impacts on the economy. The direct production effect at the construction phase was estimated at €215,000,000, which included capitalised interest and land acquisition costs of €7,800,000 and €6,800,000, respectively. The indirect impact was estimated based on the suppliers' direct expenditures related to the production of goods and services utilised in the construction of the project. The induced effect was estimated based on employee spending, including employees of intermediate suppliers.
- 3.3.46 Three levels of impact were calculated by multiplying the estimated project costs (excluding capitalised interest) by the economic multipliers, namely, the output, income and value-added multipliers. The output multiplier calculated the total economic impact on the gross domestic product, estimated at €454,000,000 over a four-year period. The income multiplier captured the household income generated as a result of the project, estimated at €81,000,000 over a four-year period. The value-added multiplier calculated the impact on the gross domestic product, less taxes and subsidies, estimated at €172,000,000 over a four-year period.
- 3.3.47 Value-added impacts identified during the operating phase included direct production effects, the creation of new demand, job creation, FDI and government revenue. Direct production effects comprised the projected recurring maintenance capital expenditure, estimated at €3,500,000 to €4,000,000 per annum, as well as furnishing costs borne by the purchasers of residential units, estimated at €16,600,000. Projected operational expenditure of approximately €40,000,000 per annum was also considered.
- 3.3.48 Further stated in the EclA was that the project was expected to generate substantial new demand and sustain an annual average of 1,472 employment opportunities, generating approximately €31,000,000 in annual employment income. The EclA also considered the anticipated FDI, including the €2,000,000 investment by Hard Rock International in 2018, and the anticipated approximate €75,000,000 investment in residential units by non-current residents (estimated at 50 per cent of the total residential sales). Government income was projected at €413,000,000 over a 13-year period, comprising income tax on operations, tax on the sale of residential units and car spaces, VAT, NI, income tax on employee salaries, the environmental contribution, gaming duties, stamp duty and withholding taxes (based on current tax rates).

- 3.3.49 The EclA also calculated the indirect economic impact based on the output, income and value-added multipliers referred to in paragraph 3.3.46. The output multiplier was estimated to be between €106,000,000 and €165,000,000 per annum throughout the project (including direct, indirect and induced effects). The income and value-added multipliers were estimated to be between €16,000,000 to €29,000,000 and €55,000,000 to €80,000,000 per annum, respectively.

Limitations

- 3.3.50 Deloitte listed several limiting conditions in the preparation of its report. In this regard, no interviews were conducted with the management of the Seabank Consortium in connection with past, present and prospective operating results, and it was assumed that information gathered in meetings was accurate and complete. Moreover, financial statements and related information provided by Projects Malta Ltd was not audited or verified by Deloitte, and was deemed to be complete, reflecting the business conditions and operating results for the stated periods. Moreover, no audit opinion or any other form of assurance was provided in the report on the information included therein, and no assurances were provided on the achievability of forecasted results.
- 3.3.51 The final report by Deloitte, which established a site value of €56,114,000, was dated 26 January 2017 and addressed to Projects Malta Ltd.

3.4 The conclusion of negotiations between Projects Malta and the Seabank Consortium

The latter stages of negotiations

- 3.4.1 In correspondence submitted by Deloitte to Projects Malta Ltd following enquiries made by the NAO, the former explained that their interactions relating to the valuation of the site were mainly with one of the members of the Negotiation Committee, the Advisor OPM, who was coordinating matters for Government. According to Deloitte, several meetings were held with Government wherein the valuation model was presented and feedback obtained. Deloitte indicated that these meetings were held at the OPM and were attended by the Prime Minister, the Deputy Prime Minister, the Minister within the OPM, and the Negotiation Committee among others, wherein the assumptions and the model were reviewed. These meetings focused on key aspects of the valuation workings and conclusions, which were objectively challenged by those involved. The NAO was informed by Deloitte that these meetings resulted in upward revisions of the value established for the site and helped define the payment structure that was to be adopted. The understanding presented by Deloitte, in terms of meetings held and their outcome, was confirmed by the Advisor OPM.
- 3.4.2 According to the correspondence submitted by Deloitte to Projects Malta Ltd, towards the end of their engagement, another meeting was held with the representatives of the Seabank Consortium. The purpose of this meeting was for Deloitte to explain the valuation methodology adopted and the key conclusions. Noted by Deloitte was that the Consortium had expressed

strong reservations regarding the valuation, which was considered significantly higher than that paid for comparative concessions. However, Deloitte affirmed that the purpose of the meeting was not to enter into negotiations but to provide the Consortium with details regarding the valuation process. Based on the correspondence reviewed, despite an initial reluctance, the Consortium accepted the position outlined by Deloitte and desisted from challenging the conclusions reached. At this meeting, the basic mechanics of how the concession transaction could be structured were also discussed.

- 3.4.3 Although Projects Malta Ltd did not provide minutes of this meeting, this Office was informed by Projects Malta Ltd that the meeting was held on 19 January 2017 and was attended by the Minister within the OPM, the former Executive Chair Projects Malta Ltd, as well as the Chair and a member of the Negotiation Committee. An element of inconsistency was noted by the NAO when comparing information provided by Projects Malta Ltd to that stated by the Seabank Consortium. The latter maintained that the Prime Minister had attended this meeting and that the Minister within the OPM was not present. Moreover, the Seabank Consortium indicated that the meeting was brief, with the Consortium agreeing to the value proposed by Government without issue. The Seabank Consortium explained to the NAO that, in the interim, the Consortium had assessed the market and determined that the site had greater potential than originally envisaged. Nonetheless, according to the Consortium, the basis of the valuation arrived at by Deloitte was not provided.
- 3.4.4 The Advisor OPM provided correspondence submitted to the Minister within the OPM, the Parliamentary Secretary OPM, an Advisor to the Lands Authority and Deloitte shortly after this meeting, wherein clarifications regarding the concession were sought. Of note was that the correspondence was addressed to the Minister's personal email account.
- 3.4.5 While no records of these meetings were retained, Projects Malta Ltd confirmed that Government officials present thereat included all Cabinet members, the Government Executive Working Group, the Advisor OPM and an advisor to the Lands Authority. In justifying why records of these meetings were not retained, Projects Malta Ltd indicated that it was not the organiser of these meetings and was not tasked with the keeping of minutes. Notwithstanding this, Projects Malta Ltd stated that Deloitte had incorporated specific changes that emanated from these meetings into their final report. These included an increase in the average assumed selling price of residential property to €6,500 per net internal square metre, an increase in the assumed rental income of offices to €300 per square metre and an increase in the assumed rental income of the retail outlets to €350 per square metre. The final workings also excluded all cashflows from the proposed casino, which Government insisted would have to be subject to a separate application.
- 3.4.6 A somewhat contrasting account was provided by the former Executive Chair Projects Malta Ltd, who informed the NAO that he had no visibility of the negotiation process until he was presented with the final report of the Negotiation Committee. While confirming that he was aware of the engagement of Deloitte, the former Executive Chair Projects Malta Ltd maintained

that the report by Deloitte was submitted to him just prior to the presentation to Cabinet, giving him no opportunity to analyse it. The Chair Negotiation Committee provided the NAO with a conflicting account of events, claiming that he would inform the former Executive Chair Projects Malta Ltd of developments.

- 3.4.7 The role and involvement of the Lands Authority in the latter stages of the negotiation process was further explored by the NAO through enquiries made with the Parliamentary Secretary OPM. The Parliamentary Secretary OPM indicated that the disposal of the ITS site was not undertaken by her Secretariat, which at the time was consumed by efforts to launch the new Lands Authority and enact the Government Lands Act. However, in developments that were not related to the ITS site, the Secretariat had commissioned an architect to draft a set of valuation methodologies to be adopted by the upcoming Lands Authority as the basis of valuations carried out. This process coincided with the commissioning of Deloitte to provide a valuation of the ITS site. It was in this context that the Parliamentary Secretary OPM noted that the Deloitte valuation provided an opportunity to test the methodologies put forward by the architect engaged by the Secretariat to ascertain whether this would yield a comparable result. The Parliamentary Secretary OPM recalled attending a few meetings with Deloitte to discuss the matter and that the methodologies yielded valuations that compared well. That stated by the Parliamentary Secretary OPM was corroborated by the advisor to the Lands Authority.
- 3.4.8 Of interest to the NAO was correspondence submitted by Deloitte to the Minister within the OPM and the Executive Chair Projects Malta Ltd on 15 December 2016. Appended to this correspondence were letters relating to the impact of the Integrated Development Framework for Paceville, referred to as the Master Plan, and the Seabank Consortium's revised proposal. These letters referred to the final draft report by Deloitte dated 7 December 2016.
- 3.4.9 In the first letter, Deloitte's assessment of the impact of the Master Plan, published in October 2016, was captured through an extrapolation of the indicative values set out in the report against the maximum developable gross floor area allowable in terms of the Master Plan. The total indicative land value, assuming the maximum allowable gross floor area and the mixed-use profiles set out in the proposed Master Plan, was revised from €44,379,000 to approximately €50,700,000.
- 3.4.10 Through the second letter, Deloitte compared the Seabank Consortium's initial proposal with the revised plans submitted on 18 November 2016. In sum, the revised plans envisaged an increase in above-ground gross floor area from 130,735 square metres to 159,758 square metres, and in underground parking from 70,914 square metres to 91,257 square metres. Based on the indicative values per square metre of gross floor area set out in the report by Deloitte, the total indicative land value – assuming the mixed-use development as proposed by the Consortium – was revised from €44,379,000 to €51,713,000.
- 3.4.11 In early January 2017, the bid bond submitted by the Seabank Consortium with its bid expired. Following correspondence exchanged with Projects Malta Ltd, the Consortium submitted a

renewed bid bond dated 10 January 2017, extending the validity to 16 July 2017. The bid bond was returned to the Seabank Consortium on the date of the contract.

- 3.4.12 Correspondence dated 16 January 2017 submitted by the Private Secretary to the Minister within the OPM referred to a Cabinet meeting that was scheduled for 19 January 2017, during which a Cabinet memorandum regarding the ITS site was to be discussed. The correspondence was addressed to the Executive Chair Projects Malta Ltd, Deloitte, a member on the Negotiation Committee and the Private Secretary to the Chief of Staff OPM.

The memorandum to and authorisation by Cabinet

- 3.4.13 A memorandum to Cabinet, dated 25 January 2017, was drawn up by the Minister within the OPM. The NAO established that Projects Malta Ltd assisted in the drafting of this memorandum. The scope of this memorandum was to present to Cabinet a proposed way forward for the valuation of the ITS site and land in close proximity thereto, as well as the signing of the relative emphyteutical deed.
- 3.4.14 Cabinet was informed that Projects Malta Ltd, acting on behalf of Government, had issued an RfP for the design, build and operations of an upmarket mixed tourism and leisure development in St Julian's, on the site which housed the ITS and land nearby. The aim of the project was to create a landmark development to further enhance the touristic and business product in Malta to attract new niche markets. More specifically, the site was to include a 5-star hotel that was to be operated under a world-recognised brand of hotels, operating worldwide. The proposed project was to include leisure and entertainment facilities, a number of residential units, as well as F&B and retail outlets.
- 3.4.15 Following the issue of the RfP, Projects Malta Ltd nominated the Seabank Consortium as the preferred bidder. The financial offer by the Consortium had a total indicative value of €17,000,000, which comprised:
- a. a premium of €6,500,000, payable over five years;
 - b. a fixed annual ground rent of €105,000 (commercial €97,308 and residential €7,692) – equivalent to an approximate value of €2,100,000 based on a five per cent capitalisation rate; and
 - c. the right for third parties acquiring residential units to convert the temporary emphyteusis to perpetual emphyteusis at a rate of €167 per square metre of residential net floor area – equivalent to an approximate value of €8,350,000 – and acquire freehold rights at a capitalisation factor of five per cent.

Cabinet's attention was also drawn to the fact that detailed financial projections and an EclA were drawn up by an audit firm on behalf of the Seabank Consortium.

3.4.16 Noted in the memorandum was that Projects Malta Ltd, on the recommendation of the Negotiation Committee, appointed Deloitte to analyse the proposal submitted by the Seabank Consortium and develop an indicative range of values for the land. The value was to be based on the NPV of future free cash flows as reflected in the financial projections submitted in the Consortium's bid. Deloitte was also tasked to hold meetings with other developers who had similar proposed developments on government-owned land in the area and benchmark the indicative value range against other market transactions. In this context, Deloitte was to develop an illustrative valuation methodology model that could be consistently used for mixed-use development of land concessions in the area.

3.4.17 Applying the illustrative valuation methodology model to the proposal put forward by the Seabank Consortium resulted in an indicative mixed-use land value of approximately €56,100,000. The formula on which the model was based was presented to Cabinet by Deloitte and reflected discussions with Projects Malta Ltd, the Parliamentary Secretary for Planning and Simplification of Administrative Processes, the PA and the Consortium. Despite requests for minutes of discussions held, the NAO was not provided with any records by those involved.

3.4.18 The payment structure that was to be followed was appended to the Cabinet memorandum (Figure 40, Figure 41 and Figure 42 refer).

Figure 40: Indicative values +and payment structure presented to Cabinet - Part 1

	Gross floor area (m ²)	Net floor area (m ²)	Rate per m ² (€)	Value (€)
Towers (residential / offices)	-	35,910	1,250	44,887,517
Hospitality (hotel & entertainment)	49,980	-	50	2,499,002
Shopping mall (retail)	26,854	-	325	8,727,558
Total				56,114,076

Figure 41: Indicative values and payment structure presented to Cabinet - Part 2

	Net floor area (m ²)	€ per square metre	Ground rent (€)	Value (€)
Premium payable				15,000,000
Conversion from temporary to perpetual emphyteusis				
Residential & offices	35,910	167		5,996,970
Car park (residential & offices)	15,120	33		498,960
				6,495,930
Redemption of ground rent at 5%			1,169,579	23,391,587
Hospitality (ground rent calculated at 3.5% of assumed value)	87,465	2,499,002		
Retail (ground rent calculated at 3.5% of assumed value)	305,465	8,727,558		
Total ground rent			392,930	11,226,560
Total				56,114,076

Figure 42: Indicative values and payment structure presented to Cabinet - Part 3

	Towers (€)	Hospitality (€)	Retail (€)	Total (€)
Premium payable	15,000,000			15,000,000
Conversion from temporary to perpetual emphyteusis				
Residential & offices	5,996,970			5,996,970
Car park (residential & offices)	498,960			498,960
Redemption of ground rent at 5%	23,391,587			23,391,587
Hospitality (ground rent calculated at 3.5% of assumed value)	2,499,002		2,499,002	
Retail (ground rent calculated at 3.5% of assumed value)		8,727,558	8,727,558	
Total	44,887,517	2,499,002	8,727,558	56,114,076

3.4.19 It was recommended that Cabinet approve the valuation and payment structure as proposed. Moreover, Cabinet was also requested to approve that this valuation method be utilised as the basis for estimating the value of similar government land in the Sliema and St Julian's area. According to the Cabinet memorandum, the proposed methodology for the valuation of government-owned land sought to establish a balance between obtaining a fair and realistic value for government land while allowing the private sector the opportunity to develop upmarket mixed-use development projects that create a multiplier effect on the economy in terms of employment, tourism and fiscal revenue. It was acknowledged that the fixed component of the formula was conformant to the legal obligation arising from an emphyteutical grant, while the variable component enabled Government to obtain its fair share from any changes in development legislation that favoured the developer. Finally, Cabinet was requested to approve the signing of the relevant emphyteutical deed.

3.4.20 The NAO sought to determine who established the mechanics of payment, that is, that the premium was payable over several years and was interest free, and the administrative abatement of ground rent for a defined period. The Seabank Consortium informed the NAO that it had proposed these terms to the Negotiation Committee, specifically citing the Advisor OPM, based on other similar concessions. The Advisor OPM stated that the abatement of the ground rent was a relatively standard measure, incorporated in similar contracts. In this case, this provision was considered from the outset, considering the significant financial constraints that invariably arise at the initial phase of a project. On the other hand, the staggering of the premium payments was agreed to towards the end of the process, after Deloitte had concluded the valuation report and the Consortium was duly informed. The absence of any documentation recording these discussions prohibited the NAO from establishing with a degree of certainty how this decision was taken and by whom.

3.4.21 An excerpt of the Cabinet minutes corresponding to a meeting held on 27 January 2017 was provided to the NAO. According to the minutes, prior to the presentation by Deloitte, the Prime Minister referred to the RfP issued by Government and the solitary bid received. The Prime Minister cited the brief given to Deloitte in its assessment of the property market with the intention of establishing a value for the site formerly occupied by the ITS. Noted was that the valuation corresponded to the development of a hotel, as well as residential and commercial

components, and that the figure arrived at was the highest ever value assigned to government-owned land. The Prime Minister cited that while the value of the bid by the Seabank Consortium was €16,900,000, this was revised to €56,100,000 following the analysis undertaken by Deloitte. Also cited was a provision that allowed for revisions in amounts payable to Government should planning permissions be revised. The relocation of the ITS to Smart City was raised during the meeting. In conclusion, Cabinet approved the valuation and the payment structure proposed by Deloitte, the signing of the deed of emphyteusis, and the adoption of this method as the basis for future transactions of public land.

3.4.22 Of interest to the NAO was an earlier version of the memorandum to Cabinet drawn up by the Minister within the OPM and submitted to this Office by Projects Malta Ltd. This memorandum was dated 18 January 2017 and largely reflected that stated in the memorandum dated 25 January 2017. However, certain salient differences were noted, namely:

- a. while the scope of the memorandum dated 25 January 2017 stated that it was "... to present to Cabinet a proposed way forward for the valuation of the ITS site and land in close proximity thereto, as well as the signing of the relative emphyteutical deed", that dated 18 January 2017 was intended, "to recommend Cabinet approval for the proposed valuation methodology of the site currently housing the ITS and land in close proximity thereto and also to use the proposed valuation model as the basis for the future valuation of other Government-owned property in the St Julian's and Sliema area." Evident was that the scope was revised to omit reference to use of this valuation model for other Government-owned properties in the St Julian's and Sliema area. It must be noted that this reference was included as part of the recommendations in the memorandum dated 25 January 2017;
- b. reference to the fact that only one bidder had submitted an offer for the site, originally included in the memorandum dated 18 January 2017, was omitted from that dated 25 January 2017. The NAO could not establish whether Cabinet was aware of this fact when authorisation was sought; and
- c. relating to the indicative mixed-use land value. While the memorandum dated 25 January 2017 cited a value of €56,100,000, based on the illustrative valuation methodology, that of 18 January 2017 cited this value as €44,000,000 when applying the same methodology. However, the 18 January 2017 memorandum also indicated that, "if the model is to be based on the maximum allowable gross floor area as reflected in the proposed master plan as provided by the Planning Authority [the value] would amount to approximately €51,000,000, which is three times the Seabank Group's initial offer". Despite the fact that no documentation relating to the proceedings of negotiations was made available by Projects Malta Ltd, these changes indicated negotiations were still underway in the weeks leading to the submission of the memoranda.

The Negotiation Committee report

- 3.4.23 A brief report was drawn up by the Negotiation Committee on 27 January 2017 and was submitted to the Executive Chair Projects Malta Ltd. Cited in the report was that, following a meeting with the Seabank Consortium, the Negotiation Committee agreed to establish a mechanism to derive a fair value for the site under consideration through referral to an independent third party.
- 3.4.24 According to the Negotiation Committee report, following a detailed assessment of the value by Deloitte, a memorandum to Cabinet was formulated with the recommendation as proposed by Deloitte as the basis for discussion and consideration by Cabinet. Acknowledged in the report was that, on 27 January 2017, Cabinet approved and agreed on a fair value for the land and recommended that Government enter into a concession agreement with the Seabank Consortium based on the proposal submitted with respect to the RfP. It was in this context that the Negotiation Committee recommended that the Executive Chair Projects Malta Ltd award the concession to the Seabank Consortium.
- 3.4.25 Despite the limited involvement of the Chair Negotiation Committee and the absence of one of its members, the NAO noted that the report submitted by the Committee was signed by all three members. In its review, this Office identified an earlier version of the Negotiation Committee report, signed only by the Chair. Minor differences were noted between the two versions of the report, mainly relating to the number of meetings held with the Seabank Consortium. Of concern to the NAO was that the earlier version of the report was only signed by the Chair Negotiation Committee. In submissions made to this Office, the former Executive Chair Projects Malta Ltd and the Chair Negotiation Committee indicated that it was deemed more appropriate for the report to be endorsed by all members of the Committee.
- 3.4.26 Of interest to the NAO was correspondence submitted by the Chief Operating Officer Projects Malta Ltd regarding preparatory work that was to be undertaken prior to the signing of the contract. Among other points raised, the Chief Operating Officer stated that, "It is of utmost importance that before any contract is entered into the following procedure is observed: (i) A report of the negotiating team to put the proposed deed into perspective. I have drafted a copy for your perusal but please amend as necessary ...". This correspondence was addressed to a member of the Negotiation Committee, yet dated 31 January 2017, which contradicts the date of the report by the Committee referred to in the preceding paragraphs. One must also note that the Chief Operating Officer did not form part of the Negotiation Committee. It is unclear whether this correspondence was submitted to others; however, the reply submitted by the member of the Negotiation Committee was addressed to the Chief Operating Officer and copied to the Executive Chair Projects Malta Ltd, the Legal Coordinator OPM and another Projects Malta Ltd official.

Award of the concession

3.4.27 On 1 February 2017, Projects Malta Ltd informed the Seabank Consortium that, following the successful conclusion of negotiations and on the recommendation of the Negotiation Committee, Government was awarding the concession for the design, build and operation of an upmarket mixed tourism and leisure development in St George's Bay, St Julian's to the Consortium.

3.5 The Deed between the Commissioner of Land and the db San Gorg Property Ltd

3.5.1 A deed of temporary emphyteusis was entered into between the CoL, on behalf of Government, and the dbSG¹⁴ on 1 February 2017. The term of the temporary emphyteutical grant was for a period of 99 years, commencing on the date of publication of the deed.

3.5.2 By virtue of this deed, Government granted by title of temporary emphyteusis, which the dbSG accepted and acquired, the site (also cited as the property), described in the deed as, "the divided portion of land of irregular shape with all amenities constructed thereon and with airspace and subterranean levels ... having a total measurement of circa 23,975 square metres ... which site is divided in three separate portions, one having an area of approximately 5,536 square metres ... one having an area of approximately 18,202 square metres ... and the last one having an area of approximately 237 square metres bounded ... from the south with the foreshore." Save for the directum dominium temporaneum rights and subsequent full ownership, constituted by this concession and the relative Special Privilege arising at law in favour of Government, the site was free and unencumbered from any ground rents or pious burdens and with all its rights and appurtenances.

3.5.3 Aside from certain provisions, the site was granted and accepted with immediate vacant possession and tale quale. The parties acknowledged that the property was at the time partially occupied by the ITS, and Government warranted to have the property vacated by not later than 30 June 2017, and to grant the ITS site to the dbSG with vacant possession by not later than 30 September 2017. Notwithstanding this, a provision allowing for the extension of these timeframes was made in the deed. Moreover, the parties agreed that the site included all immovable things that appertained thereto. If parts of the sites were required by Government for public use, Government was bound to concede to the dbSG the equivalent area of land in compensation.

3.5.4 The parties agreed that the dbSG was to construct, develop and complete the project in compliance with the development permit at its own cost and risk. The dbSG was to immediately apply for the expected development in terms of the deed, and while no guarantee was being given by Government of the extent of the development, Government retained the right to increase or decrease, as the case may be, its calculation of the total value of the property should a change in the developable area result.

¹⁴ Based on information retained by the Registry of Companies, the shareholding of the dbSG was held by SD Holdings Ltd. In turn, the shareholding of SD Holdings Ltd was held by Mr Silvio Debono.

3.5.5 According to the deed, when constructed:

- a. the hotel and commercial area were to provide a hotel, restaurants, coffee shops and other catering outlets, retail outlets, entertainment, leisure and gaming facilities, clubs, lido and water sport facilities, health and fitness centres, parking facilities and other related activities;
- b. the towers were to provide facilities including apartments, offices, business centres, facilities management centres, as well as employee-related, parking-related, and other facilities;
- c. the car park was to provide parking facilities to guests of the hotel, clients of the commercial area and the mall, occupants of the towers, employees working at the City Centre project, service providers and suppliers, and the general public at such charge as may be determined by the dbSG;
- d. the mall was to provide retail, F&B facilities, leisure and gaming facilities, food malls, supermarkets, restaurants, coffee shops and catering outlets, employee facilities, and other related facilities; and
- e. all the public areas were always to be accessible to the general public free of charge, subject to the rules implemented by the dbSG.

3.5.6 The dbSG was to bear any and all costs and expenses in connection with the above; however, it was entitled to retain all revenues generated from the development and operation of the site. For the duration of the term, Government conceded the dbSG the right to link, on a subterranean basis, the areas forming part of the site provided that the dbSG permit the passing of necessary third-party infrastructure, such as drains, cables and water services serving properties outside the site.

3.5.7 In terms of the deed, annual temporary ground rent of €1,562,509 was to be paid by the dbSG to Government. This was to be revised upwards on the lapse of five years from the issuance of the certificate of completion by the dbSG's architect in respect of the project or after the lapse of sixty months from the date of the deed, whichever occurred first, by the official rate of inflation of the preceding year. Thereafter, the annual temporary ground rent was to be revised on the lapse of every subsequent five-year period by the rate of inflation in each year in the immediately preceding five-year period.

3.5.8 From the total temporary ground rent to be imposed, the sum of €1,169,579 was the part of the ground rent that was to be allocated for redemption purposes based on an expected net floor area of 35,910 square metres, representing the area designated as residential and office units, and 15,120 square metres of garage space for resale. If this net floor area was not permitted in the development permit, the ground rent payable in this respect was to increase

or decrease accordingly. Acknowledged in the deed was that the ground rent was so divided as the realisable value for the residential units in terms of the formula determining the calculation of the contribution was diverse in terms of a monetary expected return. Further prospective returns of ground rent were due on the option to convert the title of the residential units from temporary to perpetual.

3.5.9 The indicated ground rent, reckoned from the date of this deed, was to be administratively abated by Government in favour of the dbSG to a nominal amount of €1,000 per annum, applicable until the certificate of completion was issued by the dbSG's architect in respect of the project or the lapse of five years from the date of this deed, whichever occurred first. The abatement was given as a one-time and non-extendable grant, since no actual permit or permit warranty was being given by Government.

3.5.10 According to the deed, the emphyteutical concession was being made in consideration of a total contribution by the dbSG to Government, payable as follows:

- a. the sum of €15,000,000 to be paid over a period of seven years, with the first payment of €5,000,000 being paid on the signing of the deed and the balance of €10,000,000 payable in seven equal annual instalments, interest free, with the first payment due on 31 January 2018 and subsequent payments on each anniversary thereafter;
- b. on the issuance of a development permit determining the full extent of the actual developable area, a consideration was to be due to Government, or by Government to the dbSG which consideration was to be calculated in accordance with a schedule attached to the deed. According to the schedule, the following formula was to be used for the purpose of calculating the consideration due:

$$PC = TV - (CoGR + CoTP + RoPG + PPC)$$

where:

PC means the payable consideration due by the dbSG;

TV means the total value of the development, provided that this was adjusted in accordance with the Immovable Property Price Index published in terms of Subsidiary Legislation 246.08, where the base rate was that for 2016, having an index rate of 155.88. The adjustment was to be made once the developable net floor space area was determined and was to consider any subsequent increases or decreases thereto;

CoGR means the value of the capitalisation of the hotel, mall and car park ground rent payments to Government, which capitalisation had the value of €11,226,560 using a capitalisation rate of 3.5 per cent;

CoTP means the value of the full potential conversion of the title from temporary to perpetual emphyteusis;

RoPG means the full potential value of the redemption of perpetual ground rent; and
PPC means the total value of previous considerations paid by the dbSG.

The payment of any additional consideration was to be effected over a period of seven years, payable in seven equal annual instalments, interest free, with the first payment due one week following the issuance of the development permit; and

- c. an additional consideration was to become due in the event that, throughout the entire term of the deed, a development permit is issued allowing for further development. The payment of such additional consideration was to be effected in its entirety within one week from the issuance of the development permit.

3.5.11 Subject only to the applicable provisions of the Civil Code (Chapter 16) relating to emphyteusis, the dbSG was entitled to freely transfer, by any title, the residential units, office units and garage spaces forming part of the project to any person without the prior consent of Government. In the event of a transfer, the ground rent was to be apportioned, and the part so transferred was to be subject to a divided part of the ground rent as agreed between the parties. The ground rent payable by the dbSG to Government was to be reduced by an equivalent amount, which was to be incurred by the third party.

3.5.12 With regard to transfers and conversion to perpetual emphyteusis, the deed further stipulated that, within one month following the issuance of the development permit for the site, the parties were to enter into a declaratory deed of prospective divisibility of ground rent payment due on each and every property approved in the development permit in order to establish the ground rent encumbering any particular immovable forming part of the site. The parties were to enter into such a deed within one month from the issuance of the development permit.

3.5.13 If the expected development was fully permitted, the parties agreed that in transfers by the dbSG, the ground rent payable by the third-party transferee to Government in respect of the part transferred was to be calculated by multiplying the net floor space area by:

- a. €31.72 per square metre in case of a residential unit;
- b. €31.72 per square metre in case of an office unit; and
- c. €2 per square metre in case of a garage space.

3.5.14 In terms of the deed, the dbSG was to provide Government, within 90 days from the date of the deed of transfer, an authenticated copy thereof. According to the deed, each year by not later than end March, the dbSG was to furnish Government with a list of all transfers of the utile dominium or sub-utile dominium of any part of the project, as well as the ground rent payable by each transferee with respect to the transfer made, during the preceding calendar year.

- 3.5.15 Subject to certain provisions, the transferee of any residential and/or office units and/or garage spaces forming part of the project was to have the right, at any time, to convert his/her title into a title of perpetual emphyteusis, subject to the additional payment to Government of a premium. In respect of residential and office units, the premium was to be equivalent to €167 per square metre of the net floor space area, exclusive of external terraces and other external spaces. For garage spaces, the premium payable was to be of €33 per square metre of the net floor space area.
- 3.5.16 The deed further specified that any person who converted his/her title from a temporary emphyteusis to a perpetual revisable emphyteusis was entitled to immediately redeem the ground rent burdening the property at the capitalisation rate of five per cent of the pro tempore ground rent. Nonetheless, even after the conversion of title to a perpetual emphyteusis and/or the redemption of ground rent, the permitted use of the property was to remain that as agreed in the deed and could not, without the written consent of Government, be used for any other purpose.
- 3.5.17 Stipulated in the deed was the total estimated commercial consideration based on the expected development. This was valued at €59,089,277, calculated as follows:
- a. capitalisation of ground rent payments to Government valued at €11,226,560, applying a capitalisation rate of 3.5 per cent, in the case of the part of the hotel ground rent, the mall ground rent and the non-redeemable portion of the car park ground rent;
 - b. conversion of title from temporary to perpetual emphyteusis, having an estimated total value of €6,495,930;
 - c. redemption of perpetual emphyteusis burdening the property for a total estimated value of €23,391,587; and
 - d. cash consideration, inclusive of stamp duty payable on the transfer of title to land, valued at €17,975,200.
- 3.5.18 With regard to letting and other concessions, the deed stipulated that, except in respect of residential units and/or office units and/or parking spaces as provided for in the deed, the dbSG could not, without the prior written consent of Government, transfer, dispose of, alienate or otherwise assign the whole or any part of the project. Notwithstanding this, the dbSG could enter into joint venture agreements, grant leases, or operation or management agreements over any part of the project for the purposes of the permitted use. However, these could not be granted to a single third party over the whole project.
- 3.5.19 The Government granted the dbSG the right to grant the mall on sub-emphyteusis to a company of which the dbSG was the beneficial owner of at least 40 per cent of the issued share capital. The shareholding structure of the remaining shares was to be held by the companies identified

in the deed, that is, dbSG, Shawncara Ltd, JP&M Ltd and Maui Investments Ltd, in respect of which Government had carried out a positive due diligence. Moreover, the shareholding structure of the sub-emphyteuta was to remain unchanged unless Government granted its prior consent to the transfer, transmission or allotment of shares. Furthermore, the sub-emphyteuta acquiring any part of the mall was not entitled to transfer the sub-emphyteusis other than to the dbSG or to persons or entities approved by Government, and its activity was limited to the ownership and operation of the mall.

- 3.5.20 For the term of the deed, the dbSG was to provide adequate facilities and standards for the efficient operation of the development. With regard to maintenance and repairs, the dbSG was to keep the development in a good state of repair to the satisfaction of the CoL for the duration of the emphyteutical grant at its own risk and expense. On the termination of the emphyteutical grant, by the lapse of time, dissolution of the grant or any other reason, the dbSG was to relinquish and/or return the property and any permanent improvements thereon without compensation and/or right thereof, in a good state of repair and operation.
- 3.5.21 According to the deed, the site was being granted to the dbSG exclusively for the permitted uses provided for in the deed, including the development, restoration and embellishment of the property, as well as the restoration of the ITS premises. Accordingly, the dbSG was to, by not later than 24 months from the date of the deed, apply to the PA for the issue of the development permit in respect of the site, and for the restoration of the property and that of the ITS. If for any reason not attributable to the dbSG, the development permit was not issued within the two-year period from the date of planning application validation, then the time-limits imposed in terms of this deed to complete the development of the project and commence operation were to be accordingly extended. Nonetheless, the dbSG was to commence works within two months from the issuance of the development permit.
- 3.5.22 On obtaining the development permit, the dbSG was to complete the development of the site, including embellishment and restoration works, according to the schedule appended to the deed. Furthermore, operation of the permitted uses was to commence by not later than five years from the issuance of the respective development permit.
- 3.5.23 In accordance with the provisions of the deed, the dbSG was to invest a minimum of €150,000,000 on the development of the site and the restoration and embellishment of the property. The value of this investment was to be confirmed by the CoL, provided that in case of disagreement, an independent architect was appointed by mutual consent, and whose valuation was to be final and binding on the parties.
- 3.5.24 In terms of the deed, further obligations were imposed on the parties. In this regard, the dbSG was to fully operate the project for the permitted uses throughout the duration of the entire term of the emphyteutical grant, while Government was to, at its sole cost, risk, and legal and financial liability, effect the required improvements to the road and utilities infrastructure leading to the site. Moreover, Government was to undertake, in favour of the dbSG, not to give

on encroachment terms or to transfer by any title any part of the foreshore adjacent to the site to any third party other than the dbSG.

3.5.25 Regarding financing, the dbSG could not grant any security interests over the site or part thereof except:

- a. for the purpose of obtaining financing through banking institutions and/or other entities, or individuals including but not limited through the issue of public bonds and other forms of raising public finance. Such finance was to be solely made available for the purpose of developing the site, up to a maximum of €250,000,000;
- b. for the payment of the contribution by the dbSG to Government;
- c. by operation of law;
- d. for the purpose of securing the performance of an obligation to alienate a residential unit, an office unit or a car space entered into in lieu of a promise of sale or concession by the dbSG in favour of third-party acquirers; and
- e. on parts or the whole of the development for such purposes at Government's consent, which consent was to be in writing.

3.5.26 According to the deed, the dbSG was to give immediate notice to the competent authority of the discovery of any trace of objects or monuments of local antiquarian or archaeological importance on the site. Any such finds were to ipso facto become the property of Government. The Government had the right to rescind the emphyteutical grant in its entirety or over such part of the site where the discovery was made by giving notice to the dbSG. Nonetheless, the dbSG retained the right to demand the rescission of the emphyteutical grant if the retention by itself of a part of the site not affected by the finds rendered the development of the site and/or the operation of the permitted uses not viable and/or unfeasible. In any of such events, the dbSG was entitled to compensation only for the permit/s expenses and to the extent of the actual value of works undertaken, including professional fees incurred and paid for, as valued by the CoL jointly with the dbSG's architect. In case of disagreement, an independent architect was to be appointed by mutual agreement and whose valuation was to be deemed as final. If progress of works was delayed by a Government agency or department, a pro rata reduction of the ground rent for the duration of such hindrance was to be applied, and the timeframes extended.

3.5.27 In terms of access rights, the dbSG was to permit Government to have access, at all reasonable times, to the site and to the improvements thereon. When requested to do so, the dbSG was to give all possible facilities and aid to enable Government to verify whether the conditions of the emphyteutical grant were being or had been complied with. If the dbSG defaulted in these obligations, it was to incur a penalty of €200 for each occurrence.

- 3.5.28 The deed stipulated that, within one month from the issuance of a completion certificate, the dbSG was to insure and keep insured during the term of the emphyteutical grant the property to its full current replacement value, together with an amount equivalent to one year's ground rent, for damages commonly insured against with respect to properties/premises of a similar nature. The dbSG was to ensure that Government was named the beneficiary in the insurance policy and that any sums recoverable thereunder were first to make good any losses suffered by Government.
- 3.5.29 Further stipulated in the deed was that any sum due by virtue of this deed was to, if not paid within 30 days of the due date, be payable with interest at the rate of eight per cent per annum, to run from the due date until payment was effected.
- 3.5.30 The dissolution by Government of the deed was also provided for should any of the following events of default, deemed to constitute a default and breach of the emphyteutical grant by the dbSG, occur:
- a. the dbSG failed to pay ground rent for two years or if, although part payments were made in each year, a sum equal to two years' ground rent was owed to Government whether by way of ground rent or interest thereon;
 - b. the dbSG was in breach of any material planning imposition or gains defined in the development permit;
 - c. subject to the provisions of the deed extending the time limit for completion of the development, restoration and embellishment of the property and the ITS, the dbSG failed, for reasons attributable to it, to complete the development of the site as provided for in the deed and commence the operation of the permitted uses in accordance with this deed and within the parameters of and in accordance with the development permit/building permit by not later than 25 years from the date of this deed;
 - d. once commenced, the work in relation to the property was interrupted for an aggregate period of two years;
 - e. the property was used for any purpose other than the permitted uses provided for in the deed;
 - f. the dbSG failed to obtain and keep in full effect the insurance policy required;
 - g. the dbSG became an 'undesirable person' as specified in the deed;
 - h. the dbSG was in breach of any of the material conditions of the deed;
 - i. the dbSG encroached on land outside the property granted on temporary emphyteusis by virtue of the deed;

- j. the dbSG became insolvent;
- k. a winding up order against the dbSG was made by the Court or the appointment of a liquidator or provisional administrator;
- l. the passing of a resolution for the voluntary winding up of the dbSG;
- m. the application for, or sanctioning of the Court of, a compromise or arrangement involving the dbSG in terms of Article 327 of the Companies Act (Chapter 386); or
- n. the dbSG failed to invest a minimum sum on permanent improvements to the property as set out in the appropriate clause of the deed.

Provided that in the event of (a) above, if the amount due was disputed, the dbSG was to effect payment of the undisputed amount and the balance in dispute, together with interest thereon, was to be payable from the date when the balance was originally due up to the date of effective payment, if such dispute was resolved in favour of Government.

3.5.31 With regard to events of default, the deed further stipulated that, prior to requesting the dissolution of the temporary emphyteusis on the basis of any of the above, Government was to notify the dbSG and any creditors, banks and/or financial institutions which had granted credit facilities to the dbSG. In addition, the dbSG was to duly inform Government of its intention to dissolve the temporary emphyteusis by means of a judicial letter. Nonetheless, the dbSG was to be granted a period of six months to remedy and/or rectify any such breach. Government could only proceed to terminate and dissolve the temporary emphyteusis if the dbSG failed to remedy such breach within the time conceded. Government was entitled to recover all losses, damages, injuries, costs, expenses and liabilities of any kind by reason of the default ascribed to the dbSG.

3.5.32 On the other hand, the dbSG reserved the right to dissolve the temporary emphyteusis, by giving Government notice of its intention by a judicial letter, if the development permits in respect of the development were not issued within 10 years from the date of the deed. The dbSG also reserved the right to dissolve the temporary emphyteusis should circumstances of force majeure impede it from discharging its obligations under the deed persist for six months. In such circumstances, the dbSG was to bear no further liability or obligation towards Government.

3.5.33 On the termination of the emphyteutical grant by lapse of term, or on the dissolution or determination or rescission or earlier termination of the emphyteutical grant for any reason whatsoever and by whoever, the dbSG was to surrender to Government the site and all improvements thereon. The dbSG was to have no right to compensation whatever the cause of termination, unless otherwise provided for in the deed. The dissolution or termination of the emphyteutical grant or any part thereof, whether at the instance of Government or the dbSG,

was not to affect any rights in respect of the site or any part thereof already then acquired by any lessee, operator, manager or concessionaire or by any third party acknowledged or entitled to be acknowledged as a company or sub-company. Following such dissolution, any rents or fees falling due after dissolution payable to the dbSG were to be payable to Government.

3.5.34 On the signing of the deed, the dbSG provided a bank guarantee in favour of Government of €250,000. This amount was to be increased to €7,500,000 on the issue of the first development permit and was to be retained until the completion of the project. On the issue of the final certificate of completion, the performance guarantee was to be reduced by €7,000,000 to a total of €500,000, which was to be renewed yearly for the entire term of the emphyteutical grant. The Government was entitled to withdraw the bank guarantee for any of the following reasons and stated amounts:

- a. an amount of €100 per diem as liquidated damages for mere delay if the dbSG had for reasons attributable to it failed to obtain the development permit/building permit within 10 years from the signing of this deed, until such permits were obtained;
- b. an amount of €100 per diem as liquidated damages for mere delay if development had not commenced within a period of four months from the date of issue of the full development permit/building permit until such day the dbSG effectively commenced such development;
- c. an amount of €100 per diem as liquidated damages for mere delay if the development was interrupted for a period exceeding 24 weeks until such day the interruption ceased;
- d. an amount of €500 per diem as liquidated damages for mere delay if the property was not in a complete state within 62 months from the date of issue of the full development permit, or any extension thereof, until such day that the property was in a complete state;¹⁵
- e. an amount of €250 per diem as liquidated damages if the dbSG was in manifest breach of any of its contractual obligations until such day as the manifest breach was effectively remedied; and
- f. an amount of €500,000 as liquidated damages if the dbSG abandoned the emphyteutical grant or the operation of the project for reasons solely imputable to it.

In case of withdrawals by Government from the bank guarantee, the guarantee was to be replenished by the amount withdrawn within fifteen days from notification of withdrawal. The bank guarantee was to be cancelled on the termination, for whatever reason, of the emphyteutical grant.

¹⁵ 'Complete state' was defined as "a building or any unit in a building developed and built in accordance with the applicable development permit/building permit in relation to the same and completed in all respects ...".

- 3.5.35 Other provisions in the deed related to indemnity, the right of compensation, force majeure, and severability. With regard to indemnity, the dbSG was to indemnify and keep Government fully indemnified against all actions, proceedings, claims and demands brought or made against it, and against all losses, damages, costs, expenses and liabilities incurred, suffered or arising directly or indirectly in respect of or otherwise relating to the temporary emphyteutical grant. Moreover, the dbSG was not entitled to any reimbursement of any expenses incurred in the carrying out of any obligations performed by virtue of this deed. According to the deed, any delay or failure as a result of a force majeure was not to constitute a breach of the deed, and the time for the performance of an obligation was to be extended by a period equivalent to that during which performance was prevented by the force majeure. If any part, clause or provision of the deed was held to be invalid or unenforceable for any reason, the remaining provisions continued to be valid and enforceable.
- 3.5.36 The deed also made provisions for the payment of costs. Regarding notarial fees and expenses payable on the publication of the deed, these were to be paid by the dbSG. For the purposes of the Duty on Documents and Transfers Act (Chapter 364), the ad valorem duty due by the dbSG on the deed amounted to €2,975,200. Other fees and expenses relative to the contract were to be at the charge of the dbSG.
- 3.5.37 Annexed to the deed were several documents related thereto. These included an extract of the board minutes of the dbSG authorising the nominated signatory to the deed, site plans, the bid submitted by the Seabank Consortium, the RfP, project plans indicating key timelines, as well as the memorandum and articles of association of dbSG, ShawnCara Ltd, JP & M Ltd and Maui Investments Ltd.
- 3.5.38 The NAO verified that the amounts due, arising from the deed of temporary emphyteusis, were settled on the date of signature of the deed. Payments effected by the dbSG to the CoL were €5,000,000 corresponding to the premium payable on the date of the deed; €291,030 corresponding to notarial fees (€170,320), public registry fees (€93,406) and land registry fees (€27,204); and €1,000 corresponding to the abated annual ground rent payable in advance. In addition, the dbSG effected a payment of €2,975,200 to the Director General Inland Revenue for duty due arising from the transfer of the sites.
- 3.5.39 The relevant Land Registry forms apportioning the overall ground rent that was to be charged to the three sites constituting the transferred land were registered on the date of the deed. The first site, measuring 18,202 square metres, had a pro rata and temporary ground rent of €1,186,269. The second, measuring 5,536 square metres was subject to a charge of €360,795, while €15,446 were to be paid for the third site, which measured 237 square metres. These three sites corresponded to the entire footprint of the transferred land, measuring 23,975 square metres and subject to a total annual and temporary ground rent of €1,562,509 for 99 years and that was to be revised upwards in line with the provisions of the deed.

3.6 Publication of the concession award notice

- 3.6.1 Projects Malta Ltd published a notice of award on 1 February 2017. Through this notice, Projects Malta Ltd, acting on behalf of the Government, informed the public that, following the successful conclusion of negotiations and on the recommendation of the Negotiation Committee, the Government awarded the dbSG the concession for the design, build and operation of an upmarket mixed tourism and leisure development in St George's Bay, St Julian's.
- 3.6.2 A concession award notice was also published in the EU Journal on 10 February 2017 in terms of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts. Of interest to the NAO was that while the type of contract was classified as works, the CPV code that describes the type of supplies, works or services forming the subject of the contract was 55110000, which related to hotel accommodation services. Also of note was that the total value of the procurement cited was €300,000,000. The NAO was unable to obtain clarifications from the Minister within the OPM regarding this value.

3.7 Post-deed developments

- 3.7.1 In its review of documentation retained by the Lands Authority, the NAO noted correspondence submitted by the CEO db Seabank Resort + Spa in reference to the deed between Government and dbSG. In this correspondence, the CEO Lands Authority was notified that part of the project's funding had been secured. In this context, the clearance of the Lands Authority was sought for the insurance policy, required in terms of the deed, to be pledged to the bank providing funding. Also requested was that the bank be recognised as one of the financiers of the project, which funding was to be secured through the property subject of the concession. The relevant sanction letter was appended to the request. According to a board memorandum dated 20 December 2017, the CEO Lands Authority found no objection to provide clearance to the dbSG to proceed accordingly.
- 3.7.2 Further developments relating to these matters were noted in another board memorandum dated 8 January 2018 drawn up by the CEO Lands Authority. Acknowledged in this memorandum was that the deed entered into by Government and the dbSG allowed for bank facilities up to €250,000,000 to be sourced from different financial institutions. The authorisation of the Lands Authority was sought with respect to the first facility of €17,000,000 being availed of from a local bank. It was recommended that this authorisation be provided by the Lands Authority on condition that the dbSG issued an insurance policy for ground rent in favour of Government. It must be noted that this arrangement was proposed by the CEO db Seabank Resort + Spa a few days prior.
- 3.7.3 A report to the Lands Authority BoG was submitted by the Authority's internal audit office on 11 January 2018 regarding the aforementioned matters. The financing arrangements endorsed by the CEO Lands Authority and referred to the BoG were deemed permissible in terms of

the deed of temporary emphyteusis. Moreover, in its review of the sanction letter obtained by the dbSG, the Authority's internal audit office maintained that Government's rights were adequately safeguarded. Regarding the insurance policy required following the issuance of a completion certificate, in line with advice obtained from the Attorney General, it was indicated that this was not to be enforced at this stage given the status of development.

3.7.4 The Land Authority's assessment of the requests put forward by the dbSG ended on 18 January 2018, when the CEO Lands Authority informed the CEO db Seabank Resort + Spa of the decisions taken by the BoG.

3.7.5 Other matters brought to the attention of the Lands Authority by the dbSG related to a planned change in the voting rights of JP&M Ltd, changes to the memorandum and articles of association of ShawnCara Ltd, and a request for access to a site that was intended to serve as a passageway from the main site to the foreshore. On the site were two government-owned garages leased to third parties and utilised for boat storage. Alternative sites were to be identified and proposed to the third parties. The area under consideration was to remain unencumbered.

3.7.6 The NAO verified whether the payments that emanated from the deed of temporary emphyteusis were made by the dbSG. Based on the information provided by the Lands Authority, payments due were largely conformant with the provisions specified in the deed. Of the €15,000,000 premium payable over a period of seven years, an initial payment of €5,000,000 was effected on the signing of the deed. With respect to the remaining balance of €10,000,000, which was to be paid in seven equal annual instalments, two payments were made (Figure 43 refers). The Lands Authority informed the NAO that a charge of €17,847 was levied on the dbSG as interest arising from the late second annual payment. It was unclear whether this payment was effected. Information relating to the ground rent charged was provided by the Lands Authority. Abated ground rent of €1,000 per annum was charged and paid as evident in Figure 43.

Figure 43: Premium and ground rent payable by the dbSG, 2017-2019

Details	Invoice date	Payment date	Amount
Premium due on signing	8 February 2017	8 February 2017	€5,000,000
Ground rent	8 February 2017	8 February 2017	€1,000
First annual payment	15 January 2018	30 January 2018	€1,428,571
Ground rent	1 February 2018	23 March 2018	€1,000
Second annual payment	24 January 2019	29 March 2019	€1,428,571
Ground rent	1 February 2019	6 March 2019	€1,000

3.7.7 As at December 2019, the dbSG was still not in possession of an executable development planning permit. The Lands Authority informed the NAO that once the permit was issued and the permitted units were clear and identifiable to the Authority and the dbSG, the Authority would be in a position to evaluate whether to enter into a declaratory deed in terms of the emphyteutical deed entered into by Government. The declaratory deed would establish whether additional payments were to be made by the dbSG to Government, or vice versa.

Chapter 4

The application for the development of the site

4.1 The planning application by the db San Gorg Property Ltd

4.1.1 On 3 April 2017, the dbSG submitted a planning application to the PA for the building of a City Centre multi-use development on a site measuring 23,975 square metres. The development was to include a 5-star hotel, residences, commercial office space, a shopping mall, restaurants and a basement car park.

Project description

4.1.2 In the Project Description Statement submitted with the planning application, the 455-room hotel was to comprise a main reception area, a casino including back of house areas and technical rooms, several restaurants and shopping outlets, as well as the main entrance to the shopping complex. Also included as part of the hotel development was an office area, conference facilities and boardrooms, a gym and a spa, as well as an extensive external area including several pools.

4.1.3 According to the planning application, the residential tower was to consist of 35 residential floors and was to have 60 one-bedroom, 62 two-bedroom and 30 three-bedroom apartments. The residential block was to include a penthouse, as well as 258 garages/roofed car spaces on several levels. A loading bay area was also planned.

4.1.4 The shopping complex was to consist of several different outlets and shops, as well as a piazza surrounded with restaurants and a food court area. According to the Fire and Ventilation Report submitted with the application, the layout of the shopping mall was to be spread over two storeys.

4.1.5 Major differences were noted by the NAO in the project design as submitted in reply to the RfP and that applied for with the PA. According to the drawings and the project description attached to the planning application, only one residential tower was proposed. The congress hall and the residential tower originally planned on Site A in the bid were removed and replaced with an open-air car park. It should be noted that the project was amended extensively to meet the requirements and recommendations advised by the PA and its consultants. This was confirmed by the CEO dbSG, who stated that following discussions with the PA, changes had to be made to the plans to be in line with the prevalent planning policies. Furthermore, in the

amended Design Statement dated 11 May 2018, it was specifically stated that, according to the Pembroke Local Plan, Site A could only be developed for parking. In addition, the office space was totally eliminated with only a small area now allocated for this purpose inside the hotel premises.

- 4.1.6 In the project description submitted with the application, reference was made to the masterplan for the regeneration of Paceville and Pembroke, published in September 2016. The Masterplan was to provide a framework for all future developments in the area, including the site where the dbSG project was to be undertaken. For this site, the Masterplan envisioned two towers between 16 to 30 storeys high, linked by blocks 11 to 15 storeys high. The total gross floor area above ground proposed in the Masterplan for the ITS site was of 142,000 square metres. Nonetheless, in the project description submitted by the dbSG it was acknowledged that the Masterplan was subsequently withdrawn due to controversies that followed its publication. Regardless, Government and the dbSG proceeded with the negotiations for the disposal of the ITS site as it was considered to be in the interest of the project, that of the local tourism industry and the broader Maltese economy not to wait for the conclusion of the Masterplan. This position was also adopted as Government deemed that there were sufficient policy frameworks on which the project development could be assessed by the PA.
- 4.1.7 The project description also provided an analysis of the project in terms of the different planning policies and plans that were applicable to the site. According to the project description, Site A could not be used as a hotel in order to follow the zoning for this area as established in the Pembroke Local Plan. The zoning for Site A was also referred to in the Pembroke Policy Map, wherein the site was earmarked as an area for parking with 800 to 1,000 car parking spaces, and subject to a development brief. However, the permissible height limitation was not indicated in the Pembroke Building Heights and Urban Design Map. Moreover, in the project description it was indicated that, according to the NHLP, part of Site A was designated for parking, conference facilities and high-quality residential development, with a formal garden on the remaining part of the site.
- 4.1.8 Site B, where, according to the planning application, the hotel and the residential tower were to be situated, was indicated in the NHLP as an 'entertainment priority area'. The Paceville Building Heights and Urban Design Map, which formed part of the NHLP, specified the permissible height as four floors plus semi-basement. According to the Design Guidelines of 2015, such zoning was equivalent to a maximum permissible height of 22 metres but precluded vertical expansion over the original ITS building. The project description outlined that, in addition, the NHLP, in particular NHPV (North Harbour Paceville) 05, established a number of possible land uses that were applicable to the area. These included residential units, hostels and hotels, small shops, supermarkets, food and drink outlets, small-scale educational facilities, marine leisure, an amusement arcade, a cinema and a bakery or confectionary. With regard to Site B, contrary to the original proposal submitted with the RfP, the western wing of the hotel was eliminated and the hotel was re-sited eastwards in order to avoid excessive loading in the area of **Harq Hammiem Cave**, located on the western part of Site B.

- 4.1.9 According to the Paceville Policy Plan, Site C was zoned for boathouses. Outlined in the project description was that the Paceville Building Heights and Urban Design Map allowed buildings up to one-floor height on the site. Further stated in the project description was that Site C was to enhance the natural beach environment through the development of a temporary lido structure for the provision of amenities.
- 4.1.10 The project description also provided information on the public open spaces that were being included in the development and details of the mechanical, electrical and extra low voltage services that the development would require. Also specified in the project description were the updated project timeframes, with mobilisation now set for October 2017. Between October 2017 and February 2018, site excavation works were to be undertaken, with the shopping mall expected to be completed by February 2019. This was to be followed by the completion of the hotel, set for July 2019, and subsequently that of the tower, earmarked for August 2019. With respect to the ITS building, it was indicated that the accretions would be demolished while the building itself would be carefully dismantled, the stones numbered, pelleted and stored in a safe place.
- 4.1.11 Furthermore, the project description incorporated the traffic and parking considerations report that was originally submitted with the bid. Although the considerations outlined in this report remained unchanged, the NAO noted that the proposed land uses, in terms of floor areas and units, and employees/users were amended to reflect the project as proposed in the planning application and its impact on traffic generation (Figure 44 refers).

Figure 44: Inputs in the estimation of traffic generation

Land uses	Floor area		Units				Employees / Users			
	As per bid	As per planning application	As per bid		As per planning application		As per bid		As per planning application	
	(m ²)	(m ²)	(n)	(type)	(n)	(type)	(n)	(type)	(n)	(type)
Hotel			370	rooms	455 (438)	rooms	333	0.9/room	409	0.9/room
F&B hotel guests	800	800						staff		staff
Conference facility	2,252	800	864	seats	400	seats		staff		staff
Casino	1,000	1,933	100	guests	100	guests	90		90	
Apartments			181	3-bed	30 (35)	3-bed				
Apartments			28	1-bed	60 (58)	1-bed				
Apartments					62 (66)	2-bed				
Apartments					2	4-bed				
Apartments					1	penthouse				
F&B non-residents	930	3,000					100		200	
Retail (supermarket)	1,870	2,643					300		258	
Retail (boutiques)	15,015	11,915								
Offices	3,500	2,740					200		156	

- 4.1.12 Differences were also noted in the figures cited regarding traffic. An increase was noted in traffic generation in the planning application for weekdays and weekends when comparisons were drawn with figures originally cited in the bid. A drastic increase was noted in the total traffic expected to be generated by the project in the mornings. According to the bid, this was expected to be 88 trips for hotel guests and 26 for members of staff during each weekday, while in the project description submitted in the planning application this was noted as 109 trips for hotel guests and 32 for members of staff. The NAO noted that, although a considerable increase in traffic was estimated in the project description, the assumptions that were presented in the bid remained and no concerns were raised. On the other hand, the traffic generation during peak hours attributable to the proposed apartments was decreased in the project description, which reflected the fact that the residential tower envisaged on Site A was not being proposed in the planning application. Similarly, a decrease in the traffic generated by the retail area was noted in the project description when comparisons were drawn to that estimated in the bid.
- 4.1.13 There was also a difference between the number of parking spaces listed in the bid and that stated in the project description. In the bid, a total of 1,500 parking spaces were envisaged, while in the project description 1,900 spaces were indicated. According to the project description, the number of parking spaces was increased from what was required in order to compensate for the public spaces that were to be taken up by the development and that were previously enjoyed by the general public.
- 4.1.14 The project description also outlined the potential impact that the project would have on the environment and that this aspect of analysis was to be reported on in an Environment Impact Assessment (EIA) that was to be undertaken. Nonetheless, mitigating measures were identified in the project description, including the shifting of the site away from the existing Pembroke housing estate and the Ħarq Ħammiem Cave. The shifting of the development was one of the main measures already undertaken at design stage, with considerable changes made to the blueprint of the project.

Applicable policy framework

- 4.1.15 The PA confirmed to the NAO that the site indicated for development was located within the boundary of the NHLP for Paceville, as approved in 2006. Hence, the planning policies applicable to the site were NHPV04 – Development of New Hotels in Paceville, and NHPV05 – Entertainment Priority Area, as depicted on Policy Map PV1.
- 4.1.16 The NHPV04 allowed for the development of hotels in the area, provided that several conditions were fulfilled. These included that:
- a. the prior approval of the Malta Tourism Authority was obtained;
 - b. the proposed development was not likely to create significant adverse impacts on the local amenity;

- c. the scale of the proposed development was consistent with the building height limitation and the character of the area;
- d. high quality design in terms of height, volume, layout, elevations, materials, finishes and landscaping was achieved;
- e. the proposal would not compromise existing and future proposals for traffic management in the area as set out by the relevant Area Policy Map;
- f. the proposed development complied with established standards for access, on-site parking provision, coach parking facilities and alighting points; and
- g. the proposal was in conformity with all relevant policies in the Local Plan, apart from conforming to all the conditions listed in the policy.

4.1.17 The NHPV05 designated the entertainment priority areas within Paceville as indicated in the Area Policy Map PV1. According to the policy, the main role of Paceville as a focus for entertainment uses was recognised in the Local Plan. Hence, proposals for hotels, bars, restaurants and a wider range of entertainment uses was encouraged within the area. On the other hand, the provision of retail and office facilities in delineated entertainment priority areas was to be limited to small-scale developments, and only in line with the stance of directing the development of larger-scale commercial facilities to the area. Notwithstanding this, supermarkets, small shops not exceeding a total floor area of 50 square metres, convenience shops not exceeding a total floor area of 75 square metres, as well as offices not exceeding 100 square metres were included in the list of acceptable land uses applicable to entertainment priority areas.

4.1.18 The PA further outlined that the site was also regulated by the Building Heights and Urban Design Map PV2; however, since the site contained a scheduled building where no specific building height limitation was imposed, the Structure Plan Use Classes Order policies were indicated as applicable. It was noted that Paceville was also identified as a strategic location for tall buildings in the FAR, reference to which was also made in the Urban Design Study submitted by the dbSG. The dbSG further maintained that some of the residential units did not meet the criteria outlined in Section 7.11 of the FAR, which provided that the floor space of the residences had to be at least 150 square metres;¹⁶ however, it was argued that the residences still met the other criteria and contended that the Policy allowed for divergences on a case-by-case basis.

4.1.19 However, it is to be noted that the Structure Plan policies referred to in the Building Heights and Urban Design Map PV2 were repealed by the Strategic Plan for Environment and Development in August 2015, except for Use Classes Order 7. With respect to the former ITS building, the PA noted that this was scheduled as a Grade 2 property and hence classified as a building of some architectural or historical interest or which contributed to the visual image of an Urban

¹⁶ The one-bedroom apartments were to have a floor area of 120m².

Conservation Area. Permission to demolish such a building was stated as not normally given. However, alterations to the interior were allowed if proposed to be carried out sensitively and causing the least detriment to the character and architectural homogeneity of the building.

4.2 Processing by the Planning Authority

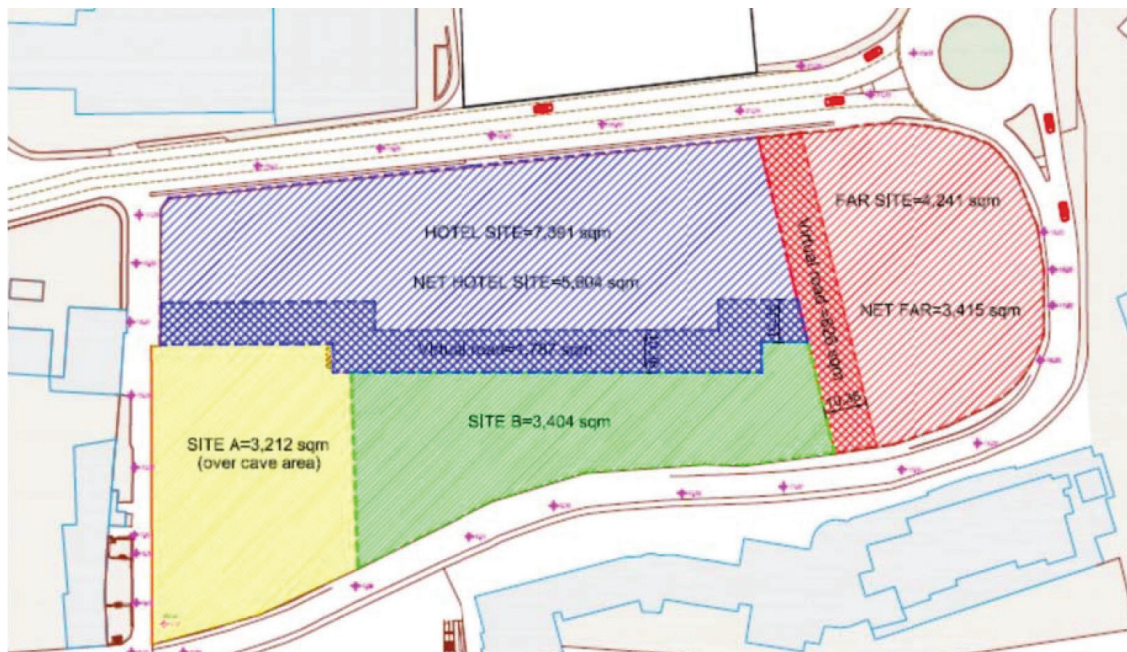
4.2.1 Following the submission of the planning application, a tracking number was allocated and an initial screening letter requesting the submission of several documents was issued by the PA on 10 April 2017. On 17 April 2017, the dbSG architects informed the PA of their intention to change the proposed application to increase the number of rooms of the hotel from 455 to 464, and increase the number of residences from 152 to 158. Other screening letters were then issued by the PA, revising the list of documents required. By 3 May 2017, the initial screening of the application was complete and a planning application number, PA/03807/17, was allocated. The PA envisaged conclusion of the screening process by 28 June 2017.

4.2.2 The planning review process that ensued addressed the various issues that arise in a development of this nature. Although these issues were often considered intermittently by the PA, with developments and revisions to that proposed instigating further discussions and action, for ease of understanding, the NAO has categorised these developments according to themes. The main themes identified by this Office were the project's adherence to the FAR policy, environmental, transport-related, economic and cultural considerations, as well as, tourism, social impact and urban design issues, among others. The PA's consideration of this application was concluded by the recommendation submitted by the case officer, which was then submitted for the attention of the Planning Board.

Floor area ratio policy

4.2.3 On 3 August 2017, the dbSG submitted its justification for the computation of the gross developable area. The dbSG stated that on Site A, which was earmarked as a car park, no development was envisaged to be carried out above road level. Site B (Figure 45 refers) was in turn divided into an FAR site (4,241 square metres, shaded in red) where the residential tower was being proposed, a hotel site (7,391 square metres, shaded in blue), a site for a public plaza since no excavation could be undertaken (3,212 square metres and shaded in yellow) and an area for the shopping mall and other hotel amenities (3,404 square metres, shaded in green). These figures were subsequently reconfirmed in updated documents submitted by the dbSG to the PA. Site C, which was situated close to the beach, was to be used for beach facilities and no permanent construction was being proposed.

Figure 45: Proposed layout of Site B



4.2.4 The dbSG indicated that the Paceville Local Plan established permissible heights on the whole site as four floors plus a semi-basement. According to the Development Control Design Policy Guidance and Standards 2015 - Annex 2, this translated into a maximum allowable height of 22 metres from the highest road level. Therefore, this was equivalent to five floors plus a penthouse on the FAR portion of the site. However, it was argued that, since the FAR site was sloping and there was a difference of 8.13 metres from one side to another, two basement floors were being considered. Similarly, with respect to the hotel, the maximum allowable height was 22 metres. The dbSG maintained that the hotel satisfied the criteria listed in the Height Limitation Adjustment Policy for Hotels and, hence, the inclusion of two additional floors over and above the number of floors permitted in the Local Plan was indicated.

Environment

4.2.5 Following the submission of the planning application to the Environment and Resources Authority (ERA) on 8 May 2017, a decision was issued by the Authority on 9 May 2017. According to this decision, an Environment Planning Statement as per Schedule 1A, Category II, Section 3.3.2.1 of the Environmental Impact Assessment Regulation, 2007 (Subsidiary Legislation 549.46) was required. ERA informed the PA that the terms of reference for the Environment Planning Statement would be formulated to initiate the process. The Environment Planning Statement complementing the EIA was deemed a necessary element of the application, which the dbSG accepted to undertake on 26 April 2017.

- 4.2.6 Since part of the EIA requirements related to the full development application, a Construction Management Plan (CMP) was also submitted by the dbSG. According to the CMP, Site A was to be excavated first as this was to serve as the working platform for the construction phase of the hotel and tower. The different phases of the excavation and the construction works were outlined in the CMP. Various concerns were raised over the potential geohazards of the site due to the presence of discontinuities in the rock mass. In view of this, further investigation in the form of drilled inspection shafts was proposed. The excavation was to be followed by the construction phase, with the erection of the ITS portico being carried out last and attached to the structure's concrete frame by galvanized ties. The rebuilding of the roads and the construction of the car park structure under Site A was to ensue. The fitting of the rooms, together with the works on the external areas, were to subsequently commence. The CMP also quantified the amount of waste that was to be generated and listed the measures that would be implemented to reduce waste, dust, noise and spillages. However, the NAO noted that an amended CMP had certain sections removed, particularly those relating to waste management and air quality.
- 4.2.7 In the report submitted by ERA on the EIA and the Appropriate Assessment dated May 2018, it was stated that the proposed development was to have a highly significant impact on the site given that its use was to change from an educational institute to a residential, commercial and leisure-related development. However, ERA noted that the proposed development would provide further commercial and residential options that in turn would lead to greater competition for such facilities in the wider Paceville and Pembroke area. According to ERA, the fact that a high-rise building would be built adjacent to lower-lying structures would result in a moderate to high residual impact. ERA also noted that the residual impacts were significantly high in relation to the amount of excavated material that the development was to generate. This was estimated to be around 350,000 tonnes, of which only 50,000 tonnes would be re-used or recycled.
- 4.2.8 ERA took note of the fact that the risk of damage or subsidence to the subsurface Ħarq Ħammim Cave was being mitigated through the light use of the overlying site which was to be changed into an open public space, part of which would be occupied by a swimming pool. In addition, ERA noted and concurred with the procedures that were proposed by the dbSG with respect to the excavations that were to be undertaken above the cave. Impacts on the landscape and visual amenity were also analysed and a high adverse impact was noted to be present by the development from all 12 viewpoints analysed.
- 4.2.9 In the ERA report, it was noted that the construction and operation phases could potentially impact the surrounding ecology. However, various mitigating measures were proposed intended to minimise this impact. In addition, ERA considered the proposed relocation of the discharge points and sewage pumping stations, shifted away from St George's Bay and relocated next to the Water Service Corporation's Pembroke reverse osmosis effluent discharge point. Although this was found to be a good mitigating measure on the ecological impact over St George's Bay, uncertainties remained on the effect that this relocation could have on certain species. In this

regard, a monitoring plan was included as part of the EIA to enable the assessment of impacts and the identification of remedial action.

- 4.2.10 ERA concluded that, overall, the project was expected to have a high adverse residual impact on the entire cultural landscape of the St George's Bay area through the addition of tall buildings to the landscape. It was also stated that although air pollution would be generated during construction, this would be mitigated by actions that were to be undertaken by the dbSG. However, the project was expected to increase traffic flows by 7,000 annual average daily traffic, which in turn would cause air pollution. However, ERA concluded that since there was no clear plane-level picture of the development capacity of the surrounding area of influence, its assessment had significant limitations in terms of the proper evaluation of the actual cumulative impact resulting from traffic flows. Similarly, the impact that the excavation of the tunnels would have on air quality, as well as their effect when closed, was still to be assessed.
- 4.2.11 Regarding the impact that the proposed tunnel would have on the environment, ERA concluded that this would have a significant adverse visual impact on the area, given that the tunnel portal in the western boundary would be placed in the Pembroke development zone. Furthermore, the emissions within the tunnel had to be treated in a way that minimised impact on ambient air quality; however, the NAO noted that no details in this regard were provided in the report. According to ERA, there was the possibility of repeated tunnel closures due to exceedances of pollutant thresholds, which would result in an immediate human health hazard in the surroundings. Noise and vibration impacts were also expected as a result of the increased traffic flows through Triq Sant' Andrija, with impacts most pronounced during construction. Moreover, the tunnel was also found to have an impact on the Pembroke terrestrial Special Area of Conservation of National Importance site, due to its vicinity. An Appropriate Assessment was thereby found to be required as per the Flora, Fauna, and Natural Habitats Protection Regulations (Subsidiary Legislation 549.44).
- 4.2.12 On 26 July 2018, an Appropriate Assessment was submitted by the dbSG. The assessment focused on the 1.4-kilometre underground tunnel proposed to alleviate the envisaged cumulative traffic impact on the existing traffic network resulting from the City Centre development and that of another development nearby. It was argued that the route selected for the tunnel would have to avoid the Natura 2000 site present in the area. According to the Assessment, given that the excavation works were entirely underground, the protected and scheduled habitats were not expected to experience any direct habitat loss, damage or alteration. The tunnel entry points were being specifically designed to circumvent such issues. However, the NAO noted that this was subsequently contradicted in another part of the Assessment, where it was stated that a stretch of the tunnel was to be located within the Natura 2000 special area of conservation. This was further confirmed in the architects' declaration regarding the rock mass between the protected Natura 2000 site and the tunnel's ceiling submitted with the Appropriate Assessment. In addition to the Appropriate Assessment, a Marine Appropriate Assessment and a Terrestrial Appropriate Assessment were also submitted by the dbSG.

- 4.2.13 In its report on the EIA, ERA stated that, as a consequence of the changes in air quality, significant effects on the human population were expected. It was stated that since several sensitive receptors were already negatively impacted without the development, the project would further exacerbate the existing situation. Although ERA acknowledged that this negative impact could be partly mitigated by the Green Travel Plan submitted by the dbSG, the NAO was somewhat sceptical of whether that proposed in the Green Travel Plan would have any real mitigatory effect. ERA's reliance on plans proposed by third parties was also criticised by a non-governmental organisation during the Environment Planning Statement scoping stage, wherein it was alleged that ERA lacked control on the matter. Various other concerns were submitted by other entities, non-governmental organisations and the general public. However, ERA deemed that there were no further comments to make in this respect.
- 4.2.14 ERA issued a set of conditions that were to be annexed to the permit. One condition was that operations on the site could not commence until such time that the environmental permit was granted by ERA. The detailed design and location of the effluent discharge infrastructure had to be submitted for ERA's approval prior to the commencement of any related physical development on site. A Works Management Programme had to be approved by ERA and had to include a comprehensive method statement for all the works. A Works Management Programme was submitted by the dbSG on 23 July 2018.
- 4.2.15 ERA also stipulated several other conditions on the dbSG to ensure that all mitigating measures were undertaken to reduce any adverse effects on the environment. A reply to the report by ERA was submitted by the EIA Coordinator on 3 July 2018. The EIA Coordinator noted that several changes were made to the plans that rendered the environmental impacts identified in the Environmental Planning Statement significantly low. This was achieved through the reduction of the hotel footprint by 16 per cent, the lessening of hotel rooms from 464 to 438, the removal of the roof-top wedding hall and the F&B facility, and the lowering of the residential tower by eight metres through the reduction of the floor-to-floor height. These reductions were deemed to have a positive effect on the visual amenity, the marine waste body, the marine ecology, the air quality and noise. A decrease on the existing infrastructure network and traffic loads was also envisaged. It was further noted that the approval of another two high-rise towers in Sliema and St Julian's, rendered the skyline less sensitive to changes brought about by new tall buildings.

Transport

- 4.2.16 A Transport Impact Assessment (TIA), dated January 2018, was submitted to the PA as part of the planning application. This was subsequently updated and resubmitted on 19 July 2018. According to the revised Assessment, the development was to be completed by 2020, with the first year of operations assumed to be 2021. The TIA identified the various traffic bottlenecks and emphasised the need for a Paceville and St Julian's master plan to be formulated in order to avoid having high-quality developments in otherwise haphazard surroundings. Noted in the

Assessment was that Transport Malta had already envisaged the construction of an underpass in order to separate long distance traffic (from North to South to North) from local traffic (to/from Paceville, Pembroke and Swieqi) in the area.

- 4.2.17 As part of the TIA, a traffic survey was carried out in the second half of April and all May 2017 at various junctions around the area. The survey indicated that two critical connections of the major junctions assessed would not perform efficiently during peak hours when loaded with the traffic generated by this project and that of another major development earmarked in the area also expected to be a major traffic generator. According to the TIA, a further 1.5 per cent increase in traffic annually was to be taken into account in order to factor in the new developments in the area. Nonetheless, the fact that the City Centre development was to have more than one access point spread the traffic load. The TIA indicated that the impact of the project on the road network was expected to be on the high side.
- 4.2.18 In the TIA, the changes to the local junctions proposed by Transport Malta in its masterplan for the area covering up to 2025 were analysed. Possible options that could be undertaken to reduce traffic were explored. One such option was to bypass Pembroke by means of a system of road tunnels that would link directly to the parking facilities of major developments in Paceville. In the case of the City Centre project, it was proposed that a tunnel could be built to connect this development with Triq Sant' Andrija. Notwithstanding this, if the road-tunnel option was found to be feasible, this would not be included in the City Centre development since the design and construction of road-tunnel bypasses fell under the responsibility of Transport Malta.
- 4.2.19 During the planning process, the TIA was amended through an Addendum dated 20 March 2018. The Addendum served to provide further information on the proposed tunnel intended to ease traffic from the City Centre development and the St George's Bay area to the Triq Sant'Andrija/Triq Suffolk junction. Various other options that could be adopted to ease traffic instead of a tunnel were explored; however, the majority of these options required the expropriation of property. Hence, it was concluded that the tunnel was the most viable option. It was noted that even though the traffic load from the City Centre development was to only pass through the proposed tunnel, the existing junction would need to be grade-separated for its capacity to be adequate. Moreover, the layout, scale and dimensions of the junction were to be determined after the traffic to be generated by the new land uses in Paceville and Pembroke were estimated.
- 4.2.20 The amended TIA also laid down the requirements put forward by Transport Malta in relation to the tunnel. According to Transport Malta, the tunnel was not to be connected with the parking facilities of buildings located in the northern headland of St George's Bay, such as the proposed City Centre development. Transport Malta proposed that the tunnel provide an underground bypass connecting the western edge of Pembroke with Paceville, and that it was to be made available to the general public rather than limiting its use to the City Centre development.

- 4.2.21 The addendum took into account Transport Malta's deliberations and proposed a high-capacity grade-separated intersection at the Triq Sant' Andrija/Triq Suffolk junction, together with an upgrade of the road network in the western zone of Pembroke, intended to service existing and anticipated land uses in the area with the construction of a tunnel underneath Triq il-Mediterran between the Pembroke Development Brief Area to the west and the Triq il-Mediterran/Triq Pietru Darmania/Triq Burma/Triq l-Imħallef W. Harding junction to the east. Following the adjustment of the tunnel layout as outlined above, the flow of traffic at the junctions was re-assessed, based on the assumption that 60 per cent of the traffic generated by the City Centre and another major development nearby would pass through the tunnel during peak-hours. The re-assessment concluded that all junctions were found to perform efficiently, except for Junction 4 which could still experience some queueing in the unnamed road linking St George's Bay with Triq il-Professur Ganado. Another addendum to the TIA was presented on 4 April 2018. In this revised addendum, different outcomes of the assessments of the likely performance of several junctions were presented. However, the same results were reached.
- 4.2.22 In its assessment of the TIA, the PA noted that there were no timeframes for the implementation of the proposed highway upgrade works. The PA indicated that these works were to be ideally undertaken prior to the commencement of the site's operations.
- 4.2.23 On the other hand, Transport Malta stated that the modelling analysis carried out in the TIA demonstrated that the development-generated traffic could be accommodated on the surrounding road network in the future forecast year if improvements to the road infrastructure, traffic management and a green travel plan were put in place. Moreover, Transport Malta provided its clearance on condition that a letter of commitment by Government was issued in order to implement the required transport infrastructure measures within an appropriate timeframe to ensure that site-generated traffic did not create conditions where the road capacity criteria were exceeded.
- 4.2.24 The dbSG commissioned an audit firm to draw up a green travel plan for the City Centre development in order to outline a long-term strategy with respect to the transport needs of all users by offering a choice of sustainable modes of transportation to and from the site. A total capital expenditure of €865,000 was to be committed by the proponents for the implementation of the plan.
- 4.2.25 On 6 April 2018, the Lands Authority granted approval for the construction of a tunnel underneath the road to the ITS site and granted the dbSG an encroachment to that effect. The tunnel was to be situated underneath the road adjacent to the foreshore at St George's Bay.

A revised Economic Impact Assessment

- 4.2.26 A revised EclA, dated 27 June 2017, was submitted by the dbSG as part of the Environmental Planning Statement. The objective of this amended Assessment was to examine the potential effects of the proposed project on the local economy to reflect the revisions made by the dbSG

in its application to the PA. For this reason, on 24 March 2017, the dbSG¹⁷ engaged an audit firm to carry out this analysis. Similar to the original EclA, the revised Assessment included a demand analysis and a review of the economic impacts that were expected to arise during the construction and operational phase of the project, which impacts were analysed in terms of value added and spill-over effects on the Maltese economy. It also provided an assessment of the local impacts that could arise in the St Julian's area.

4.2.27 The revised EclA specified that any decisions and/or positions taken were solely those of the dbSG. Moreover, while no attempts were made to establish the reliability of sources by reference to information independent of the dbSG, it was ascertained that information presented was consistent with other information made available during the assessment. It was further specified that opinions and recommendations provided in the Assessment comprised a significant degree of judgement and subjectivity, mainly with respect to the selection of methods and basis. Consequently, while the opinion in the revised EclA was deemed to be reasonable and defensible by the audit firm, others could arrive at a different conclusion.

4.2.28 The revised EclA was drawn up based on the following assumptions, that:

- a. permits for the project would be approved and issued by the PA enabling the project to materialise;
- b. the construction of other projects in the area could dampen the effects outlined in this EclA due to negative externalities caused by construction works in the vicinity;
- c. estimates of direct production effects during the construction phase assumed that the construction of the project was fully sub-contracted to Maltese firms – this assumption also applied in the case of the management and operation of the project. Any work carried out by foreign firms could constitute a leakage from the local economy; and
- d. the assessment was based on newly generated demand, that is, newly created demand rather than existing demand that was diverted from prevailing economic activity in the area.

4.2.29 No changes were envisaged regarding the revenue due to Government from the financial offer in terms of the upfront payment of €6,500,000 that the dbSG was to pay over the first five years, as well as the annual ground rent payable amounting to €105,000. In addition, Government would also generate revenue through the conversion of the temporary emphyteusis on the residential units into a perpetual emphyteusis, on the terms set out in the original EclA. The NPV of revenues expected to be earned by Government over the 99-year concession period was estimated to be around €18,904,962.

¹⁷ The audit firm was in fact engaged by Seaport Franchising Ltd; however, for ease and continuity of reference, dbSG is cited throughout this part of the audit report.

Construction phase - Value added effects to the economy

4.2.30 While the implementation of the project was still expected to positively impact a wide range of stakeholders, including the Government, construction firms and the Maltese labour market, the direct production effects resulting from the development of the project were revised downwards from €215,100,000 to €201,900,000. The direct production effects arising during the construction phase mainly comprised salaries, raw materials and other general expenses incurred by the construction contractors; however, in the revised EclA, these included the emphyteutical concession fee and the casino licence fee of €2,000,000 (Figure 46 refers). The inclusion of the casino licence fee drew the NAO’s attention, particularly in view of the fact that as at end August 2019, no application for a licence had been filed by the dbSG with the Malta Gaming Authority.

Figure 46: Revised EclA - Direct production effects during the construction phase

	2017 (€)	2018 (€)	2019 (€)	2020 (€)	2021 (€)	2022 (€)	2023 (€)	2024 (€)	Total (€)
Hotel	6,141,733	65,864,804	25,651,785	-	-	-	-	-	97,658,322
Hard Rock Café	350,765	2,215,196	523,135	-	-	-	-	-	3,089,096
Casino	508,237	6,969,832	3,048,142	-	-	-	-	-	10,526,211
Shopping mall	-	18,209,138	247,789	-	-	-	-	-	18,456,927
Offices	285,648	1,297,809	117,741	-	-	-	-	-	1,701,198
Residential units	44,382	31,125,273	18,378,148	-	-	-	-	-	49,547,803
Emphyteutical concession	5,000,000	1,428,571	1,428,571	1,428,571	1,428,571	1,428,571	1,428,571	1,428,571	14,999,997
Casino licence	-	833,333	1,166,667	-	-	-	-	-	2,000,000
Car spaces	628,377	2,968,449	303,294	-	-	-	-	-	3,900,120
Total capital expenditure	12,959,141	130,912,405	50,865,274	1,428,571	1,428,571	1,428,571	1,428,571	1,428,571	201,879,675

4.2.31 It was estimated that, on average, during the first three years of the project’s implementation, the construction of the project would require approximately 28,225 man-months, revised downwards from 28,500 in the original EclA. This averaged 940 FTEs per month. Another 484 FTEs were expected to be required on-site during the whole execution period, with a further 414 FTEs required on-site and off-site for the construction of the modular components of the project. On-site and off-site employees would also be required at an average of 1,000 man-months in 2017, expected to decrease to 333 man-months in 2018. The forecast in respect of professionals required during the construction phase, that is, 44 man-months, remained unchanged. The number of FTEs that the project was expected to generate until 2019 also remained the same. The estimated labour costs for construction employees of €1,800 per man-month, and the €5,000 per man-month for professional costs, were unaltered.

4.2.32 The project was to contribute to Government revenue from several sources, mainly, income tax from employment, NI contributions and corporate tax, income tax on profits, and VAT. According to the revised EclA, total revenue to Government during the construction phase was now expected to be in the region of €55,000,000, revised downwards from €67,800,000 in the original Assessment. Income tax and NI contributions would now generate approximately €17,500,000 over the four-year period between 2017 and 2020, instead of the estimated €22,600,000 between 2016 and 2019 cited in the original EclA (Figure 47 refers).

Figure 47: Revised EclA - Aggregate Government revenue arising during the construction phase

	2017 (€)	2018 (€)	2019 (€)	2020 (€)	Total
Income tax on employment and NI	3,915,362	8,913,115	4,659,572	-	17,488,049
Income tax on company profits	1,291,285	20,872,153	7,831,291	-	29,994,729
Value Added Tax	-	6,770	4,747,923	2,803,446	7,558,139
Total revenue	5,206,646	29,792,038	17,238,786	2,803,446	55,040,916

4.2.33 Government could also expect revenue from income tax chargeable on suppliers' profits. To this end, the proportion of tax paid to the GDP was calculated for 2016, and consequently applied to the direct proportion effects of the project (Figure 48 refers).

Figure 48: Revised EclA - Proportion of tax on profits

Gross operating surplus and mixed income for 2016	4,588,115,000
Corporate tax charged at 35%	1,605,840,000
GDP	9,897,980,000
Proportion of corporate tax	16%

4.2.34 To estimate tax receivable by Government, the 'Gross operating surplus and mixed income' component was extracted from the 'GDP identity from the income side' for 2016 released by the National Statistics Office.¹⁸ A tax rate of 35 per cent was applied to the gross operating surplus and mixed income component to arrive at an estimate of the tax paid by suppliers in 2016. The proportion of tax paid to the GDP was then calculated and consequently applied to the direct production effects of the project. Income tax on profits arising during the construction phase was estimated to be €1,291,285, €20,872,153 and €7,831,291 in 2017, 2018 and 2019 respectively. These were revised from €2,650,150, €14,400,053, €13,373,794 and €13,135,502 for the years 2016 to 2019.

Construction phase - Spill-over impacts

4.2.35 As undertaken in the original EclA, the revised Assessment also estimated the three aspects of economic impact, namely the potential direct, indirect and induced effects arising out of the project's initial expenditure on Malta's economy. While the same considerations were retained, amendments to the EclA resulted in adjustments to the multiplier effects on the local economy.

4.2.36 The revised output multiplier effects arising during the construction phase are shown in Figure 49. According to the revised EclA, it was expected that the construction phase would generate around €184,900,000 of direct effects (excluding the emphyteutical concession payment and the casino licence payment) between 2017 and 2019. Indirect effects were estimated to be around €5,500,000 in 2017, increasing to €88,800,000 in 2018 and decreasing to €33,000,000 in 2019. Induced output was expected to reach €64,000,000 at its peak in 2018, with the total induced effect being around €92,000,000.

¹⁸ National Statistics Office 2017: 'News Release 041/2017: Gross Domestic Product: 2016'

Figure 49: Revised EclA - Output multiplier effects during construction phase

Direct effects	2017 (€)	2018 (€)	2019 (€)	Total (€)
Construction revenues	7,959,141	128,650,500	48,270,036	184,879,677
Direct and indirect effects	13,450,948	217,419,345	81,576,360	312,446,653
Direct, indirect and induced effects	17,430,519	281,744,595	105,711,378	404,886,492

4.2.37 The revised income multiplier effects arising during the construction phase between 2017 and 2019 are shown in Figure 50. Around €72,000,000 were expected to be generated in additional household income between 2017 and 2019. Originally, this was estimated to be approximately €81,000,000 between 2016 and 2019.

Figure 50: Revised EclA - Income multiplier effects during construction phase

	2017 (€)	2018 (€)	2019 (€)	Total (€)
Direct and indirect effects	2,387,742	38,595,150	14,481,011	55,463,903
Direct, indirect and induced effects	3,104,065	50,173,695	18,825,314	72,103,074

4.2.38 In terms of value-added, the direct, indirect and induced effects of the project's construction phase were expected to generate a total increase of approximately €151,600,000 over the three-year period, 2017 to 2019, as illustrated in Figure 51.

Figure 51: Revised EclA - Value-added multiplier effects during construction phase

	2017 (€)	2018 (€)	2019 (€)	Total (€)
Direct and indirect effects	4,775,485	77,190,300	28,962,021	110,927,806
Direct, indirect and induced effects	6,526,496	105,493,410	39,581,429	151,601,335

Demand analysis - Demand estimates

4.2.39 In order to formulate a hypothesis on the future uptake of the facilities offered by the project, a demand analysis was undertaken. This involved a demand forecast based on a set of management assumptions that were drawn up based on the past performance of various economic sectors and the expected market share that the project was expected to attain.

4.2.40 The revised EclA stipulated that in estimating the projected occupancy levels for the Hard Rock Hotel, the average occupancy levels for the local five-star sector, indicated in the latest available MHRA reports, were taken into consideration.¹⁹ While acknowledging that both the number of 'normal' hotel guests (distinct from 'high rollers') as well as the number of occupants per hotel room could vary, it was assumed that, except for the 48 suites, all the 407 hotel rooms would be occupied by 'normal' guests, with two guests per room. The total number of hotel guests in a year was estimated to be approximately 7,430 (Figure 52 refers).

¹⁹ These reports are compiled every quarter and considered to be a reliable source of information on emerging trends within the local hotel industry.

Figure 52: Revised EclA - Demand for the City Centre development - Monthly expected hotel occupancy

Month	Occupancy rate (%)	Average rooms occupied per month (n)	Hotel guests per month (n)
January	51	208	417
February	63	256	511
March	71	288	575
April	75	305	610
May	83	339	678
June	90	364	729
July	92	374	748
August	93	380	760
September	91	372	744
October	88	358	716
November	67	274	549
December	48	197	393
Total			7,430

4.2.41 As indicated in Figure 53, the number of hotel guests was expected to increase to over 700 guests during the peak period, that is from June to October, and to decrease over the off-peak period and shoulder months. The average length of stay, again based on MHRA data, was taken into consideration in the analysis undertaken in the revised EclA (Figure 53 refers).

Figure 53: Revised EclA - Average length of stay, MHRA

Quarter	Number of Days	Quarter	Number of days
Q1	6.52	Q3	7.67
Q2	6.35	Q4	6.59

4.2.42 Also stated in the revised EclA was that the dbSG estimated that around 1,000 'high-roller' guests would occupy the hotel suites in the first year of operation, increasing to around 1,500, 2,000, and 2,500 guests in the second, third and fourth year of operation, respectively. The number of 'high-roller' guests was expected to remain stable at 2,500 guests per year thereafter. It was further assumed that all 'high-roller' guests would book the suites on a bed and breakfast basis.

4.2.43 Demand for F&B was based on several management assumptions. It was assumed that most hotel guests, estimated to be around 5,572, would be on a bed and breakfast basis, with the remainder, that is approximately 1,857, on a bed only basis. 'Normal' guests opting for room service were estimated to be 371, 74 and 233 for breakfast, lunch and dinner, respectively. Walk-ins were expected to total around 149 and 371 guests for lunch and dinner, respectively (Figure 54 refers).

Figure 54: Revised EclA - Annual F&B take-up by normal guests

Board basis	Room service				Walk-ins			
	Take-up (%)	Guests (n)	Take-up (%)	Guests (n)	Take-up (%)	Guests (n)	Take-up (%)	Guests (n)
Bed only	25	1,857	Breakfast	5	371	Breakfast	0	-
Bed & breakfast	75	5,572	Lunch	1	74	Lunch	2	149
			Dinner	3	223	Dinner	5	371

4.2.44 To forecast the demand for weddings, it was assumed that, in any given week, a maximum of three weddings could be hosted in the same venue, excluding public holidays and back-to-back weddings, resulting in a capacity to host 156 weddings per annum. The projected number of weddings was calculated on a monthly basis, according to the percentage take-up projected by management, resulting in an estimate of 57 weddings per annum (Figure 55 refers).

Figure 55: Revised EclA - Annual weddings

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Take-up (%)	5	15	25	60	60	60	60	40	45	30	10	20	n/a
Weddings (n)	1	2	3	8	8	8	8	5	6	4	1	3	57

4.2.45 Conference facilities were forecasted to be available five days a week, that is, from Monday to Friday, while the congress hall would be available from Monday to Saturday. This implied that, annually, 260 and 312 days would be available for meetings and conferences, respectively. On this basis, the maximum number of events that could be hosted per year was 2,080 meetings and 624 conferences. According to the revised EclA, management expected a gradual occupancy build-up over the first three years, stabilising thereafter.

4.2.46 The Sky Bar was planned to have a total floor area of around 652 square metres, of which 19 per cent were allocated for back-office operations and a dance floor. The Sky Bar’s capacity was expected to be of 114 covers, accommodating 29 tables with four covers per table. The dbSG assumed an average table turnover of 1.6 per evening, thereby increasing the maximum table capacity to 47 tables per evening. It was further assumed that, given the project’s proximity to Malta’s main entertainment hub, the occupancy level over the weekend would be significantly higher than that achieved during the week; therefore, calculations in respect of expected monthly occupancy were compiled for weekdays and weekends. The impact of seasonality on occupancy levels was expected to be more pronounced on weekdays. The dbSG’s assumption with respect to the average daily attendance at the night club was based on the premise that the club would be closed during January but would remain popular during the rest of the off-peak and shoulder months in view of its proximity to Malta’s main entertainment hub. The dbSG also assumed that around twelve summer parties would be held each year, with around 1,500 tickets available for each event.

4.2.47 According to the revised EclA, the demand for the Hard Rock Casino was established on an estimated market share of 22.2 per cent, which was based on a competitor analysis of existing casinos. The demand reflected four types of visitors, namely, guests residing at the Hard Rock Hotel, local walk-ins, tourist walk-ins and high-rollers. In estimating the number of Hard Rock

Hotel guests opting to visit the casino during their stay, an adjustment factor was applied to exclude 'ineligible' guests, such as children below the legal entry age. This adjustment factor varied by season, with the highest factor applied to the peak period due to a higher proportion of family holidays. Casino visitor numbers were based on the dbSG's assumption that 55 per cent of 'eligible' hotel guests would visit the casino three times during their stay at the Hard Rock Hotel. The average number of expected local walk-ins was set on a daily basis, while that for tourist walk-ins was projected based on seasonality (Figure 56 refers).

Figure 56: Revised EclA - Casino visitors

Type of Visitor	Number of visitors
Hotel guests per year	4,636
Walk-ins per day	
Locals	180
Tourists	
Peak	150
Off-peak	70
Shoulder months	110

4.2.48 Further to the above, it was assumed that the casino would attract 2,500 'high-rollers' by the fourth year of operation. This was equivalent to 7,500 bed-nights at the hotel, assuming an average stay of three days, with all costs associated with accommodation, F&B, and travelling borne by the Casino.

4.2.49 The dbSG assumed that, in view of the prime location and the international standard facilities developed by the project, there would be a significant demand for office space. Of the 3,232 square metres allocated for office space, demand was expected to increase gradually from 70 per cent in the first year of operations to 80, 90 and 95 per cent in the second, third and fourth years, respectively, remaining stable thereafter (Figure 57 refers). Notwithstanding that stated, it must be noted the office component in the planning application was removed.

Figure 57: Revised EclA - Office space

Year of operation	Occupancy (%)	Square metres sold
1	70	2,262
2	80	2,586
3	90	2,909
4	95	3,070
5	95	3,070
6	95	3,070
7	95	3,070
8	95	3,070
9	95	3,070
10	95	3,070
11	95	3,070
12	95	3,070
13	95	3,070

4.2.50 The shopping mall, with a gross developable area of approximately 21,555 square metres, was expected to create a unique shopping experience locally. The mall was envisaged to include an area of 3,416 square metres reserved for shopping mall corridors and the entrance, 13,818 square metres allocated to shops, 1,906 square metres reserved for restaurants, and 457 square metres earmarked for terraces. The remaining developable area was intended for other services and loading facilities. The dbSG’s assumption for the take-up of the available shopping mall space during the first thirteen years of operation was provided.

Operational phase - Value added impacts

4.2.51 The revised EclA indicated that the operational phase would likely generate a significant contribution to the economy, at regional and national level over the medium to long-term. This would be driven mainly by the increase in demand in response to the supply created through the project, as well as the creation of additional job opportunities in Malta.

4.2.52 As indicated in the original EclA, and reiterated in the revised EclA, it was envisaged that direct production effects during the operational phase would arise from two main sources, namely capital and operational expenditure. The former covered expenses related to fixtures and fittings incurred by the dbSG, as well as third parties who acquired the residential units. Operational expenditure referred to ongoing fixed and variable costs required for the day-to-day running of the City Centre, including labour costs, stock, maintenance, utilities and licences, among others. The revised forecasted direct production effects arising from the estimated capital expenditure and the operational phase, up to 2028, are shown in Figure 58. Other upstream effects were also foreseen, such as raw materials acquired by the contractors for the construction of the residential towers, as well as wages and salaries payable by the project’s suppliers to their employees.

Figure 58 - Revised EclA - Estimated capital expenditure and total operational expenditure

Year	Total capital expenditure (€)	Total operational expenditure (€)
2016	-	10,500
2017	-	385,044
2018	3,520,000	769,003
2019	2,901,896	21,717,861
2020	4,279,331	37,175,571
2021	4,655,055	37,789,342
2022	4,430,696	39,572,728
2023	2,895,974	40,176,605
2024	2,929,377	40,466,037
2025	2,956,371	40,699,746
2026	2,985,703	40,957,736
2027	3,015,253	40,705,298
2028	3,050,099	39,124,500

- 4.2.53 Regarding the creation of new demand, diverted and new, the revised EclA reiterated that stated in the original Assessment (paragraphs 2.3.73 and 2.3.74 refer).
- 4.2.54 According to the revised EclA, the project was expected to create an average of 1,600 employment opportunities throughout the operational phase. Total employment income that was expected to be generated amounted to €33,900,000. Originally, the number of jobs that were to be created was estimated at 1,469, with total employment income projected at €33,800,000.
- 4.2.55 Industry benchmarks indicated that around 80 FTEs would be required for every 2,200 square metres. Based on this industry benchmark, it was further estimated that around 678 FTEs would be required to operate the retail outlets in the shopping mall. The median of the basic salary earned by the retail outlet employees was indicated as €20,400 per annum.²⁰ The NAO noted that, despite the downsizing of the retail component, the number of FTEs for the shopping mall was expected to increase from the 600 cited in the original EclA.
- 4.2.56 In addition, around 236 employees would be required by the offices in Tower B, based on a conservative estimate of 20 square metres per employee. Average salaries of €28,000 per annum per employee were based on the latest available information from the National Statistics Office, referring to the salaries for ‘gambling and betting activities’, in view of the assumption that the offices would be occupied by ‘high value-added employees’. Notwithstanding that stated in the revised EclA, it must be noted that the offices component was excluded in the amended project blueprint.
- 4.2.57 According to the revised EclA, the project was expected to employ unskilled and semi-skilled labour from the unemployment pool, decreasing the unemployment rate and unemployment benefits. An increase in unskilled labour could result in the stabilisation of salaries, particularly, in the retail and hospitality industry. On the other hand, consumers’ disposable income and purchasing power was expected to increase, also increasing the level of aggregate demand in the economy. Moreover, the dbSG believed that, given the project size, a number of employees would be sourced from abroad to cover the demand for labour, contributing to the improvement of public finances through the payment of income tax and NI contributions. It was also expected that new skilled-employment opportunities would increase the demand for skilled labour, thereby increasing salaries. This could lead to a cost-push inflationary spiral, leading to an increase in the price of other goods and services in other sectors of the economy.
- 4.2.58 As indicated in the original EclA and reiterated in the revised Assessment, two sources of FDI were expected to materialise as a result of the project. The first, was the FDI of €2,000,000 that was to be invested by Hard Rock Ltd in the City Centre. Investment from fashion labels was also expected, albeit to a lesser extent. The second source of FDI was envisaged to materialise in an indirect manner. According to the revised EclA, it was envisaged that the project would attract locals, foreigners, as well as some high net-worth individuals. It was estimated that half of the residential units would be sold to expatriates who were not residing in Malta. This was expected to give rise to FDI of approximately €61,000,000, revised downwards from €74,800,000 in the original EclA. Figure 59 illustrates the FDI that was expected to be generated by the project.

²⁰ Based on MISCO salaries and benefits report 2015-2016.

Figure 59 - Revised EclA - FDI generated by the project

	Direct Investment by Hard Rock Ltd	Sale of residential units
2016 (€)	-	-
2017 (€)	-	-
2018 (€)	2,000,000	41,793,622
2019 (€)	-	14,023,209
2020 (€)	-	5,519,719
2021 (€)	-	-
2022 (€)	-	-
2023 (€)	-	-
Total (€)	2,000,000	61,336,550

4.2.59 According to the revised EclA, during the operational phase of the project, Government revenue was expected to be generated from several sources, namely the:

- a. emphyteutical concession - A temporary emphyteutical grant was granted by Government for a period of 99 years as from February 2017, against an emphyteutical concession of €15,000,000 payable over a period of seven years. The first payment of €5,000,000 was effected on the signing of the deed in February 2017, with the remaining €10,000,000 to be paid in seven equal instalments, interest free.
- b. temporary ground rent - Annual temporary ground rent was set at €1,562,509, revisable upwards every five years in line with the rate of inflation. Of this amount, €1,169,579 were to be allocated for redemption purposes based on net floor space area. Ground rent was abated by Government to €1,000 annually until the certificate of completion was issued by the architect, or the lapse of five years from the signature of the deed in February 2017.
- c. income tax on company profits - This was to be charged at 35 per cent, with an average of €2,500,000 payable to Government annually. It was further stipulated that this tax would only be incurred from 2024 onwards since the dbSG was to avail of investment tax credits. The average annual income tax on company profits paid to Government was estimated at €4,360,000 in the original EclA.
- d. VAT - The net VAT payable to Government between 2018 and 2028 was now estimated to be in the region of €25,400,000, calculated on the following basis:
 - i. output VAT, with accommodation and gym memberships at seven per cent, and F&B, retail, conferences and spa services at 18 per cent;
 - ii. input VAT, with utilities at five per cent; and
 - iii. other overheads at 18 per cent.
- e. environmental contribution - This was payable by tourists over the age of 18 at the rate of €0.50 per night, capped at €5.00 for a continuous stay. Based on the assumption that visitors would stay for ten days or less, it was expected that the environmental contribution payable to Government would increase gradually from €35,000 in 2019 to approximately €96,000 as from 2022 onwards.

- f. income tax and NI contributions - The bulk of the projected income tax revenue was estimated to be generated by the shopping mall and the Hard Rock Hotel, with projected revenues of €1,600,000 and €800,000, respectively. These were previously projected at €1,400,000 and €796,000, respectively. Similarly, these two components were expected to generate the highest NI contributions, estimated at €2,760,000 for the shopping mall, originally projected at €2,400,000, and €1,300,000 for the hotel, which remained unchanged.
- g. gaming duties - Gaming duties were chargeable on gross gaming revenues at the rates of 36 and 40 per cent for live games and gaming machines, respectively. Potential revenue arising from gaming duties between 2019 and 2028 was estimated at €30,000,000.
- h. stamp duty - Stamp duty was chargeable at five per cent on the sale value of residential units and car spaces. It was assumed that all buyers were non first-time buyers, resulting in a duty of approximately €6,000,000 between 2019 and 2022. Originally, stamp duty of approximately €7,800,000 was anticipated between 2018 and 2023.
- i. withholding tax - Withholding tax of eight per cent on the value of the properties transferred would be receivable by Government, amounting to around €9,800,000 between 2019 and 2021.

Operational phase - Spill-over effects

- 4.2.60 According to the revised EclA, revenues from the different components of the project would also give rise to multiplier effects on the local economy. Estimates of the multiplier effects were calculated on the same economic impacts referred to earlier, namely direct, indirect and induced effects. Each project component was matched to its corresponding multiplier category and values were applied to the project's revenues (Figure 60 refers).

Figure 60: Economic multipliers - Operational phase

Project component	Economic multiplier category	Economic multipliers					
		Output		Income		Value added	
		Type I	Type II	Type I	Type II	Type I	Type II
Hotel and restaurants	Accommodation and food service activities	1.63	2.25	0.37	0.49	0.65	0.93
Casino	Entertainment activities, gambling & betting activities	1.34	1.54	0.12	0.16	0.49	0.58
Residential units & offices	Real estate activities	1.28	1.40	0.07	0.09	0.90	-
Shopping mall	Retail activities	1.51	2.20	0.41	0.54	0.81	1.11
Night club	Sports activities, amusement and recreation activities	1.45	2.08	0.37	0.12	0.77	1.08

4.2.61 The operational phase of the City Centre project was expected to generate a total of approximately €681,500,000 in additional output between 2019 and 2028. Most of this was expected to be generated through the sale of residential units and hotel operations, including the café and night club. The indirect effects of the operational phase were expected to be around €347,000,000 between 2019 and 2028, while induced effects were estimated to be in the region of €327,000,000 during the same period (Figure 61 refers). Indirect effects of the operational phase were originally stated as €405,000,000, while the induced effects were indicated as €383,800,000 in the original EclA.

Figure 61: Revised output multiplier effects during the operational phase, 2018-2028

	2018 (€)	2019 (€)	2020 (€)	2021 (€)	2022 (€)	2023 (€)
Direct effects	-	105,644,111	78,687,682	66,645,854	59,050,679	60,257,475
Direct and indirect effects	-	141,429,545	115,169,582	101,034,504	92,158,138	93,949,259
Direct, indirect and induced effects	-	164,371,117	147,285,689	133,654,526	125,130,994	127,446,256
	2024 (€)	2025 (€)	2026 (€)	2027 (€)	2028 (€)	Total (€)
Direct effects	60,977,764	61,579,495	62,224,200	62,874,674	63,629,882	681,571,816
Direct and indirect effects	95,064,398	95,990,373	96,995,978	98,010,451	99,190,058	1,028,992,286
Direct, indirect and induced effects	128,953,913	130,205,369	131,577,178	132,961,145	134,568,588	1,356,154,775

4.2.62 Around €247,400,000 were expected to be generated between 2019 and 2028 in the form of direct, indirect and induced household income generated as a result of the project (Figure 62 refers). This was initially cited as €295,000,000 for the years 2018 to 2028.

Figure 62: Revised income multiplier effects during the operational phase, 2018-2028

	2018 (€)	2019 (€)	2020 (€)	2021 (€)	2022 (€)	2023 (€)
Direct and Indirect effects	-	13,399,389	18,978,675	19,305,276	19,352,460	19,844,006
Direct, indirect and induced effects	-	17,163,370	24,182,505	24,652,017	24,974,298	25,378,294
	2024 (€)	2025 (€)	2026 (€)	2027 (€)	2028 (€)	Total (€)
Direct and indirect effects	20,076,705	20,269,343	20,486,343	20,705,290	20,959,040	193,376,527
Direct, indirect and induced effects	25,677,304	25,923,104	26,201,202	26,481,783	26,808,364	247,442,241

4.2.63 The total additional value-added generated as a result of the project's operations between 2019 and 2028 was estimated to be around €617,500,000, of which €471,300,000 were direct and indirect effects, with the remaining €146,200,000 arising from induced economic effects (Figure 63 refers). Originally, the amounts cited for these multipliers were €728,000,000, €554,000,000 and €174,000,000 for the total additional value, the direct and indirect effects, and the induced economic effects, respectively.

Figure 63: Revised value-added multiplier effects during the operational phase, 2018-2028

	2018 (€)	2019 (€)	2020 (€)	2021 (€)	2022 (€)	2023 (€)
Direct and Indirect effects	-	89,690,098	58,094,402	45,911,150	38,095,174	38,815,760
Direct, indirect and induced effects	-	99,583,728	72,396,895	60,505,782	52,892,059	53,847,844
	2024 (€)	2025 (€)	2026 (€)	2027 (€)	2028 (€)	Total (€)
Direct and indirect effects	39,288,897	39,692,859	40,112,105	40,535,215	41,024,659	471,260,319
Direct, indirect and induced effects	54,496,813	55,046,274	55,629,556	56,218,166	56,899,384	617,516,501

Local impacts

4.2.64 That stated in the EclA regarding forecasted trends in the number of tourists and how the proposed project aimed to attract tourists in Malta was reiterated in the revised Assessment (paragraphs 2.3.84 and 2.3.85 refer). Similarly, in the revised EclA, the observations regarding the socio-economic benefits accruing to the Maltese economy from the project were restated (paragraph 2.3.86 refers). Furthermore, in the revised EclA, it was indicated that the value of real estate in the surrounding localities was expected to be positively impacted in a significant manner over the medium term as a result of the increased economic activity, touristic diversification, and increased tourist traffic.

4.2.65 The revised EclA carried out also took into consideration the possible environmental impacts that could arise as a result of the City Centre project. These included the largely negative visual impact and air pollution resulting during the construction phase, as well as an increase in traffic congestion during the construction and operation of the City Centre, leading to an increase in overall carbon dioxide emissions and noise pollution in the area. The project would also give rise to an increase in the amount of construction and other waste generated during its operation. In addition, the project was also expected to increase the demand for electricity, resulting in further carbon dioxide emissions generated by the power station. Also stated in the revised EclA was that the project, and others planned in the locality, could necessitate additional infrastructural investment that would ultimately contribute to a better quality of life; however, the works would generate pollutants during the development period.

Cultural heritage

4.2.66 On 6 June 2017, the Superintendence of Cultural Heritage (SCH) submitted its review of the application to the PA wherein it was indicated that the proposed development had an impact on recorded cultural heritage assets, including the military barracks scheduled at Grade 2 and the Ħarq Ħammiem Cave, a geological feature scheduled at Level 1. In view of this a few recommendations and additional documentation were requested by the SCH.



4.2.67 The PA noted that the issues raised by the SCH subjected the applicant to the following conditions:

- a. all masonry to be re-erected was to be numbered on the hidden sides;
- b. the two carved coat-of-arms, which were considered of high historical value had to be erected on site;
- c. each coat-of-arms was to be appropriately treated after re-erection to ensure that these were presented properly and faithfully as originally carved; and
- d. a bank guarantee of €46,000 was to be provided and, if works were not carried out in accordance with the approved method statement or instructions given by the PA, then the bank guarantee would be forfeited. The amount of the bank guarantee was always to be kept topped up. Moreover, its forfeiture did not preclude the applicant from adhering to all the conditions cited in the development permission.

Tourism

4.2.68 On 5 May 2017, the dbSG obtained the approval of the Malta Tourism Authority, following a review of the planning application. The Authority found that the proposed 464 hotel rooms exceeded the minimum requirements. The project was therefore considered as an upgrade to the product in the area. The NAO noted that this position was maintained by the Authority following a submission by the dbSG on 23 May 2018, whereby the number of rooms was decreased to 416 as per the revised design statement dated 11 May 2018.

Social impact

4.2.69 A Social Impact Assessment was also prepared and submitted as part of the requirements put forward by the PA in its initial screening letter. According to the Social Impact Assessment, the respondents sampled²¹ could not comment on the development without taking into consideration the other large-scale projects in the area; therefore, the respondents did not comment on the development as a one-off project but as one of a series of developments in the area. In addition, the fact that there was no masterplan for the area led to a higher degree of scepticism. The residents taking part in the study were generally against the City Centre development (59.9 per cent of participants). However, the respondents acknowledged that the development could not be halted and put forward several practical solutions to mitigate the perceived challenges.

²¹ The respondents were residents from the towns of St Julian's including Paceville, Swieqi and Pembroke, with special emphasis on residents who resided closer to the development. A convenience sampling method was adopted whereby people were selected based on their availability and willingness to respond. The research was undertaken in August 2017. Four focus groups were organised in the four different localities and telephone interviews were carried out among 400 individuals from the indicated areas.

4.2.70 The key concerns raised by the residents revolved around the fact that an increase in the population of the area would challenge the present community's endeavours to develop its own local identity and culture. The local infrastructure was also deemed incapable of sustaining further development, with an increase in population and visitors in the area exacerbating matters. The respondents proposed several mitigating measures, including making suitable arrangements for traffic and parking spaces, securing the enjoyment of public goods and spaces and keeping the community abreast on the progress on the project. In addition, a master plan for the area was to be formulated. On the other hand, the business community in the area had a more positive outlook on the project but believed it was imperative to have a masterplan to manage development.

Urban design

4.2.71 The Urban Design Study provided an analysis of the impact of the project vis-a-vis the area where it was to be developed. The Design Advisory Committee, which analysed the Urban Design Study, put forward several comments on the project, which led to the resizing of the hotel block which, consequently, provided better spacing between the residential tower and the hotel. A public open space was also introduced between the tower and the hotel block in order to provide a pedestrian link to the below-street level.

Other considerations

4.2.72 Several other studies and reports were provided by the dbSG as requested by the stakeholders. Such studies included a wind study, a fire safety report and an Accessibility Audit. Following the submission of these reports, the development was endorsed by the relevant stakeholders. The Commission for the Rights of Persons with Disability, the Civil Protection Department, the Occupational Health and Safety Authority and the Ministry for Health all issued their 'no objection' to the project subject to a number of conditions that were to be adhered to. Of interest was that the Ministry for Health granted its approval subject that no adverse public health impact and nuisance was caused to the nearby residential area from any emissions, air pollution, odours, noise and vibration during the operation and construction phase of the project.

4.2.73 The Regulator for Energy and Water Services was also consulted, who in turn sought the submission of a number of technical proposals in relation to certain installations that were proposed on site. The dbSG indicated that all the required reports and requests for approvals would be submitted in due time.

4.2.74 It was noted that an agreement, dated 27 October 2017, was entered into between the dbSG and Enemalta for infrastructural works that had to be undertaken by Enemalta in order to provide the dbSG with 12.785 MVA in electricity. The expense that was to be incurred was to be paid by the dbSG, in two equal instalments. It is to be noted that the value of the works in question was not provided in the published agreement. With respect to sewage, the Water

Services Corporation requested the dbSG to include in the development a new sewerage pumping station. Regarding water supply requirements, the Water Services Corporation confirmed that the new demand could be met by the existing distribution network in the area. However, it was agreed that the development should include a dedicated reverse osmosis plant to reduce the demand on the Water Services Corporation infrastructure. Any re-routing of mains was to be undertaken at the expense of the dbSG.

Recommendation by the Case Officer

- 4.2.75 In the case officer report dated 10 August 2018, it was noted that numerous representations were received from the general public, the residents and local councils of the surrounding localities, members of parliament, non-governmental organisations and third-party hotel operators. The case officer indicated that no reply from the Civil Aviation Department was received, which was construed that the Department had no objections to the development. The case officer drew the attention of the Design Advisory Committee to the fact that prior to the permission being granted, a bank guarantee in relation to the Environmental Management Construction Site Regulations had to be submitted by the developer, together with the submission of a pre-construction condition report of the street.
- 4.2.76 The proposed development was considered by the case officer to be in line with the Strategic Plan for the Environment and Development's overarching strategy to accommodate major employment, social and residential development needs into existing and committed urban areas. It was also found to be within the parameters of the NHLP and that it complied with the main policies applicable for the case, that is, the Planning Policy Guide on the Use and Applicability of the Floor Area Ratio (May 2014) and the Height Limitation Adjustment Policy for Hotels (June 2014). Most of the statutory consultees were found to be positive towards the new development.
- 4.2.77 The case officer noted that during the assessment of the proposal, several revised drawings were submitted. The changes in the revised drawings led to a reduction in the hotel's building envelope by 16 per cent and a decrease in the number of rooms from 464 to 438. In the report by the case officer it was indicated that, during construction, Government was expected to receive revenue amounting to approximately €55,000,000 from income tax collected from the 940 FTEs working on site and in other taxes due on supplies utilised. The case officer noted that no development brief was provided for the development proposed on Site A; however, this was not considered to prejudice the preparation of a development brief given that the site was earmarked as a multiple-levelled car park with overlying surface parking.
- 4.2.78 The case officer recommended that financial contributions by the developer to the environmental and artistic funds, as well as the submission of a bank guarantee and a works method statement, were to be requested. In addition, the executable version of the permit was to be made subject to Government's commitment to implement the necessary transport infrastructure. In addition, the case officer noted that the hotel being approved should only cater for tourist accommodation and was not to serve for permanent residential occupation or

any other use, notwithstanding the provision of the Development Planning (Use Classes) Order, 2014, or any amendment or addition to this Order. To this end, a tripartite agreement between the dbSG, the Malta Tourism Authority and the PA was to be entered into.

4.3 The decision of the Planning Board

4.3.1 The PA's recommendation, as presented in the case officer's report, was then put forward for the decision of the Planning Board in a meeting held on 20 September 2018. During the sitting, a run-through of the development and of the different reports and studies undertaken was provided. The Board was informed of the various representations put forward during the planning process, estimated to be around 4,000. Various concerns were also raised by the public attending the Board sitting while others present commented in favour of the development. One of the main concerns raised related to the tunnel, which was deemed indispensable for the project and for which no planning application had, at the time, been submitted. Nonetheless, the dbSG contended that problems with the road infrastructure were already present and were not being caused by the development. The CEO of the PA noted that Government had issued a letter of undertaking on 11 September 2018, confirming that it would carry out the required infrastructure. The Planning Board approved the development with 10 votes in favour and four against.

4.3.2 On 1 October 2018, the planning permit was issued, subject to the conditions listed in the case officer's report.

4.4 Appeal lodged with the Environment and Planning Review Tribunal

4.4.1 On 1 November 2018, an appeal was lodged with the Environment and Planning Review Tribunal by the Pembroke, St Julian's and Swieqi local councils, as well as several non-governmental organisations and private citizens. The appellants raised several issues as to why the planning permit was to be revoked. They argued that one of the Planning Board members considering this application had a conflict of interest since he was the owner or a shareholder in a real estate agency that had promoted the sale of apartments in the development. It was also stated that another board member, who was also a Member of Parliament, had a conflict of interest in view of the applicant's services rendered during the Member's political campaign. The appellants also alleged that another Board member was not fully informed of the development in question since she was not present for an informal meeting held by the Board on 6 September 2018 and had arrived late for the hearing held on 20 September 2018 even though she was brought to Malta by private jet on instructions of the CEO PA. According to the appellants, this went against the basic principle that all Board members were at liberty to decide whether to attend Board sittings or not to.

4.4.2 The development was also stated to be in breach of the Height Limitation Adjustment Policy for Hotels (2014), which did not permit heights higher than those established in local plans if the sites were Scheduled Sites or were located within Scheduled Areas. Similarly, the development

was also stated to breach the Policy since the developers failed to contribute to the costs that were to be incurred in the implementation of measures meant to address shortcomings in local capacity necessary to accommodate the demands generated by the development. Reference was made to the tunnel intended to counteract traffic congestion in this regard. Although the applicant should have contributed towards its cost in line with the Policy, the appellants noted that only Government's commitment to implement the required infrastructure was sought. Moreover, it was alleged that the FAR calls for residential units with a floor area of at least 150 square metres in mixed-use developments; however, this was not being adhered to. Moreover, the Social Impact Assessment was found to be inadequate as it did not include a Transport Assessment. Non-conformity to a number of other policies was also cited, such as the Venice Charter for the Conservation and Restoration of Monuments, and policies which protected Schedule 2 sites, such as the St George's barracks, from being dismantled.²² Moreover, the private beach club which was being proposed on the foreshore was stated to contravene the Local Plan since the Plan did not allow interventions on the natural coast. These concerns were supported by affidavits prepared by technical experts and were presented with the pleas.

- 4.4.3 A separate petition was made by the appellants wherein the Tribunal was requested to suspend the planning permit since, it was stated, works had already started at the time of the appeals period when this was not permitted by law. In addition, concerns were raised with regard to the historical building, asserting that this could be demolished by the time the appeal was heard. The PA submitted its counter-reply to the request made by the appellants and rejected all the concerns raised on grounds that these were unfounded. This was reiterated by the dbSG in submissions made to the Tribunal, which were supplemented by supporting documentation. In view of the appellants' appeal to suspend the execution of the planning permit, the Tribunal analysed the request for the suspension of the planning permit in its first sitting held on 20 November 2018 and issued a preliminary decision. The Tribunal upheld the appellants' plea and suspended the execution of the planning permit for three months, during which hearings were to take place.
- 4.4.4 Several sittings were subsequently held during which several witnesses provided evidence. One of the witnesses, a real estate agent who was also a member of the Planning Board, gave his testimony. The agent was asked to indicate when a listing for the sale of an apartment in the dbSG tower was made by the agency he was engaged with. He declared that the apartment on the twenty-first floor of the residential tower was listed on the agency's database on 14 March 2018.
- 4.4.5 Also of interest was the testimony provided by the Manager at the Transport Planning Unit within the PA, who was queried about the proposed Pembroke tunnel. He indicated that although the tunnel was referred to in the planning application, no actual application for the tunnel was made. No detailed studies were therefore undertaken by the PA. He explained that the EIA

²² A Heritage Report was compiled by the appellants and presented to the Tribunal, which indicated that parts of the building which were shown by the applicants as accretions, and were suggested to be removed, were in fact part of the original building. In addition, it was stated that the treatment of the barrack blocks would result in a major loss of value and significance and hence the retention of only the façade of the building was found to be unacceptable.

indicated that there would be junction failures as a consequence of the new development. This led to the proposed introduction of the tunnel by the applicant which was to provide the only access to the development's parking. When asked what interim measures were proposed, the Manager PA replied that since this issue was to be tackled by government, the Authority had not delved into the matter.

- 4.4.6 Regarding the proposed tunnel, Government's commitment to build the necessary infrastructure through Infrastructure Malta was also presented. The CEO Transport Malta confirmed that the road junctions close to the development could not take the increase in traffic flow. He explained that plans were already in place to make changes to St Andrews Road as part of the upgrade to the TEN-T network. Nonetheless, the CEO Transport Malta acknowledged that this upgrade was not enough to sustain the new development; a tunnel or other infrastructure was therefore required. He explained that the infrastructure to be built had not yet been identified and that a planning application would need to be submitted once a decision in this regard was taken. It was indicated that Transport Malta's approval of the development was granted on condition that adequate transport infrastructure was identified. Although the dbSG had submitted several options, the CEO Transport Malta noted that any development in road infrastructure would be undertaken after the development was open and following five years of operation. This was done to ascertain the actual flow of traffic. As regards the financing of the cost of the tunnel, the CEO Infrastructure Malta stated that this would be discussed if the planning permit was issued.
- 4.4.7 Moreover, the PA representative confirmed that the tunnel as proposed was to pass through a Natura 2000 site in Pembroke. The Deputy Director ERA noted that with respect to the proposed tunnel, an assessment in relation to the habitats, the flora and fauna was undertaken as per Habitats Directive; however, no due assessment on the effect on the human population was undertaken as the EIA mainly focused on the environment. The Deputy Director ERA explained that the assumptions made in the Appropriate Assessment regarding the noise and vibrations that were to be generated by the tunnel could only be speculative since the tunnel was not yet built. In addition, the Deputy Director ERA added that a further EIA and Appropriate Assessment could be required when the application for the building of the tunnel was lodged.
- 4.4.8 A Senior Environment Protection Officer, in charge of analysing air quality, was also asked to take the stand. The Officer explained that the analysis was based on the air quality study submitted by the dbSG and that no actual independent study was undertaken. In the assessment of air quality, the inclusion of the tunnel was presupposed. From a desk-based analysis undertaken, the Senior Environment Protection Officer noted that moderately adverse effects were present at two of the main junctions. Since the report provided for a moderate adverse situation, a green traffic plan was requested. When asked on the enforcement of the Green Travel Plan measures, it was indicated that no enforcement measures were yet in place.
- 4.4.9 Several issues were raised by the appellants with respect to the Green Travel Plan submitted by the dbSG. The appellants argued that this had been compiled by an audit firm and not by traffic engineers as would be assumed. The CEO Transport Malta confirmed that the plan had been approved by Transport Malta. Moreover, every year a report on the measures implemented and their effect was to be provided for approval by Transport Malta. However, the CEO Transport Malta confirmed that no procedure was in place to sanction non-achievable measures.

- 4.4.10 The above testimony was also corroborated by the planning officer who had reviewed the Green Travel Plan, who explained that there was no methodology or law on how the plan was to be compiled. When asked if there was an enforcement mechanism in case of failure to implement the measures, the planning officer stated that the system was too new, and no such set-up was yet in place. However, the planning officer confirmed that the plan as submitted by the dbSG met the criteria established by the PA.
- 4.4.11 On 28 February 2019, the Tribunal gave its decision and declared that no conflict of interest existed with respect to three members of the Planning Board.
- 4.4.12 The Tribunal then gave its decision on what part of the barracks that were on site should be retained. In this respect, the Tribunal rejected the appellants' plea since it was argued that the PA took a very informed decision when it decided to retain only those parts that were deemed of substantial value. The Tribunal also rejected the appellants' plea that no concessions could have been granted to increase the height of the hotel in view of the scheduled property on site. The Tribunal argued that since the dbSG limited the use of the hotel to 51,417 square metres, this was within the limits of the maximum use permitted by the local plan.
- 4.4.13 With respect to non-compliance to the FAR policy as alleged by the appellants, the Tribunal noted that, contrary to the appellants' plea, the FAR site was surrounded by roads as required by the policy, since even roads as part of the development could be considered. However, the Tribunal noted that the amount of open public space that was required was not met, since the landscaping space and the zone in front of the hotel could not be considered as such. This, together with other reductions made by the Tribunal, required the dbSG to provide 269.5 square metres of additional space. The Tribunal then analysed whether the residential tower would create an intrusive visual obstacle on the Pembroke peninsula. Following an analysis of the heights of the floors, the Tribunal decided that the floor heights could be reduced. The Tribunal also noted that an additional level of parking as well as a technical floor in the tower had not been considered, resulting in an even higher development. In view of this, the Tribunal decided that the tower was to have 10 metres deducted from its height through the removal of the technical and the first levels. Similarly, the first and second levels of the hotel were to be eliminated and the ancillary uses of the hotel were to be either reduced and/or shifted downwards even if this involved a decrease in the commercial area. As for the latter, the Tribunal declared that the commercial premises were not justifiable as there was no link to the hotel and its sustainability. Hence, the Tribunal considered a reduction in the commercial area a positive outcome since this was expected to generate less traffic and less demand for parking.
- 4.4.14 The Tribunal then considered the pleas put forward with respect to the proposed tunnel that was to provide a direct link between the development and Triq Sant' Andrija. It noted that the tunnel was taken into account in the studies undertaken and hence it rejected the appellants' pleas that they were not given fair hearing since the tunnel was not appropriately included in the EIA. However, the Tribunal noted that the tunnel was an important element in the development and could not be considered as merely a mitigating measure. Hence, the

Tribunal mandated that the full compliance certificate would also require Transport Malta's clearance that the road infrastructure required to sustain the new traffic generated by the development was in place. In addition, the Tribunal agreed with the Planning Board's decision not to impose any costs on the dbSG for the ancillary infrastructure required since this fell under the responsibility of Transport Malta and Infrastructure Malta. The Tribunal also rejected the appellants' plea with regard to the planned permanent structures that were to be erected on the foreshore to create a private lido and that would limit public access. This decision was based on the fact that the plans submitted by the dbSG did not show any permanent structures and the PA did not allow for such installations.

4.4.15 The Tribunal's attention was then directed to the alleged breach in the FAR policy since some of the proposed apartments had a floor area that was less than 150 square metres. In its analysis, the Tribunal noted that the floor space on each floor amounted to 896 square metres and hence each apartment could have an average of 179 square metres, which was above the threshold established in the FAR policy. With regard to the appellants' plea that the Social Impact Assessment did not include all considerations and was reflecting predetermined conclusions, the Tribunal noted that the appellants' statements were not sufficiently collaborated with evidence that clearly showed these allegations; therefore, these arguments were not upheld. The Tribunal disagreed with the appellants' plea that the permit should not have been approved on the basis of the considerable number of objections put forward. The Tribunal also abstained from taking a decision as to whether the development should have been considered given that there was no masterplan for the area. In this respect, the Tribunal declared that it fell outside its remit to decide on this lack in policy, as its role was limited to the review of decisions made by the Planning Board. Lastly, the Tribunal rejected the general plea put forward that the planning process lacked the necessary studies and the appropriate scrutiny, since a number of studies were undertaken and no actual evidence was put forward by the appellants in this respect. The Tribunal concluded that although the Board's decision was to be upheld and the permit issued was to remain valid, the dbSG had to submit new plans within 60 days. The revised plans were to show an increase in the open public space of 269.5 square metres, a decrease in height of 10 metres in the residential tower with the removal of level 1 and the technical floor, as well as a reduction of eight metres in the hotel's height with the removal of levels 1 and 2. An updated TIA was also to be presented if the number of parking spaces was reduced as a result of these changes. In addition, after ensuring that the above conditions were integrated in the new plans, the Secretary to the Planning Board was to include a proviso in the reissued permit that certification from Transport Malta was to be sought to ensure that adequate transport infrastructure was in place to cater for the new traffic to be generated.

4.4.16 On 4 March 2019, the dbSG submitted fresh plans and an explanation of the changes that were undertaken. The revised plans addressed the shortfall in public open spaces and decreased the height of the hotel and the residential tower.

4.5 Judicial proceedings

4.5.1 On 8 March 2019, the appellants filed a judicial letter in the First Hall of the Civil Court, informing the PA that their constitutional rights were infringed with the approval of the planning permit for the development of the City Centre project. Moreover, the appellants accused the PA of not following mandatory procedures in its deliberations and in taking decisions. They also accused the Authority of a lack of judgement in terms of the conflicts of interests of its Board members, which was an abuse of power. Hence, the appellants requested the PA to revoke its decision to grant a development permit for the development. This protest was followed by an appeal filed in the Court of Appeal on 15 March 2019, with the first hearing set for 9 May 2019. In the interim, a commencement notice was submitted to the PA by the permit holder indicating the commencement of works on 6 April 2019.

4.5.2 In the bill of indictment, the Court of Appeal was asked to decide if the Tribunal's rejection of the pleas put forward by the appellants was unjustifiable and should be overturned. After hearing the parties, the Court of Appeal issued a decision on 19 June 2019, whereby it upheld the appellants' plea that there was a conflict of interest with respect to one of the Planning Board Members since he was found to have had a clear and direct interest in the development. However, the Court refrained from analysing the other pleas put forward since the application was to be considered afresh. The Court thus revoked the Tribunal's decision of 20 September 2018 and considered the planning permit as null and void.

4.6 Submission of a new planning application by the db San Gorg Property Ltd

4.6.1 On 3 July 2019, the dbSG submitted a fresh application solely for excavations works. These works were covered by a new planning application bearing reference PA/05533/19. In addition, new plans for the structure were submitted under the previous development application PA/03807/17. Following queries by the NAO as to why two applications were submitted in respect of the same development, the CEO PA explained that the Development Planning Act 2016 did not limit the number of applications an applicant could submit for the processing of a particular development. Queried as to why PA/03807/17 was re-opened, the CEO PA explained that the judgement by the Court annulled the decision of the Planning Board on procedural grounds, and not on the merits of the project.

4.6.2 The same case officer who had reviewed the original application was allocated to review the two applications. In both instances, the period for the submission of representations was set till 26 August 2019. Although the target date for the new application (PA/05533/19) was set for 2 November 2019, no amended target date for the revised application (PA/03807/17) was established. Numerous representations were received objecting to the new application. According to these representations, the excavation of the former ITS site was part of the dbSG's permit that was found against by Court; therefore, it was the representatives' perception that the filing of a separate application for excavation was in contempt of Court and a blatant move to circumvent the effects of the ruling. It was therefore considered illogical that a separate

request for a permit for excavation was lodged for a project which was not covered by any permit. According to the representations, such an application was considered to mean either that the approval of the whole project was in effect a foregone conclusion or that there was the risk of excavations taking place without the project being eventually approved, leaving a massive hole and a site ruined beyond repair.

4.6.3 Moreover, in the review of the documentation submitted it was noted that the new excavations proposed under PA/05533/19 went beyond those proposed under planning application PA/03807/17, as these now went deeper than the sea water level. In fact, in some areas, the depth of the excavation was 1.75 metres below sea level. Again, the Water Services Corporation and Transport Malta were contacted in view of the new excavation plans and feedback from the dbSG was requested. Similarly, the views of Enemalta were sought. On 17 July 2019 Enemalta indicated that, with respect to the application for development permission, there was no objection to the issue of the relevant development permission on condition that it was informed before any excavations so that the existing buried infrastructure could be located. A review was also undertaken by the Design Advisory Committee, whereby its previous position on the permit, despite noting that some slight changes were undertaken, was confirmed. Similarly, the OHSA reviewed the new application PA/05533/19 and submitted its non-objection to the excavation works, although the Authority listed a number of conditions that were to be adhered to. The Civil Protection Department was also contacted. With reference to traffic management, the Department maintained that access to its emergency units to the site and other locations was to be granted undisturbed for efficient fire and rescue service interventions. The Civil Protection Department confirmed its non-objection to the planning application PA/03807/17 on 10 September 2019.

4.6.4 A revised CMP was submitted with the new plans submitted by the dbSG. All the salient points raised under the previous planning application (PA/03807/17) were retained. However, noted in this CMP was that the Northern Harbour Local Plan excluded the footprint of the original ITS building from its height zoning, indicating that vertical expansion over the original ITS building was not permissible. It was also noted that, according to the revised CMP, the number of rooms in the hotel had decreased. A detailed layout of the excavations that would be undertaken and the different methodologies that would be used was also provided. According to the CMP, the parts of the ITS building that dated back to 1862 or earlier would be retained in their entirety while any accretions to the building would be removed.

4.6.5 As part of the new application, the developer requested the sanction of the non-scheduled part of the ITS building, that is, the accretions that had already been demolished. The SCH reviewed the new application and the previous application in parallel. According to the Superintendent, between May and August 2019, the SCH carried out a number of inspections and meetings, as part of its restoration and archaeological monitoring functions as the national regulator of cultural heritage, as well as due to the newly reported discoveries of underground features pertaining to the use of the site as a military barracks complex since the 1880s to the 1970s. The Superintendent was positive on the new amended plans under PA/03807/17 that

showed the retention of the two entire scheduled barrack blocks, not just the façade, and their eventual restoration and integration within the project. The SCH also noted that the new plans showed that the barrack blocks would be retained in situ at their original level and would not be dismantled and shifted at a higher level as was originally proposed. On the other hand, the SCH took note that further excavation under the barracks was to be undertaken and noted that a pool was to be built above one of the barrack blocks, necessitating the review of the Works Method Statement to indicate whether the mass of the pool could be sustained by the barrack block. The SCH acknowledged the fact that the project consultants had brought to its attention the three arched reservoirs found on the site. The SCH also indicated that the find of historical military electric substations on the site was brought to its attention in May 2019. Following investigations, the SCH concluded that these were to be retained and that in some instances these were to be left untouched. The SCH also noted that the excavations above Ħarq Ħammim Cave had been reduced to a maximum of three metres which the Superintendence was strongly in favour of. An aerial photo showing the location of the various historic elements discovered after the approval of the permit was also provided (Figure 64 refers).

Figure 64: Aerial photo of SCH-related elements on site



4.6.6 ERA was also consulted and commented on both applications in its feedback. The Authority noted that the statements provided by the EIA Coordinator in the Environmental Planning Statement for PA/03807/17 provided a comparative breakdown of the revisions that were made between the new proposal and the previous application (Figure 65 refers). In its submission, ERA confirmed that the project, as re-proposed, showed some downscaling from the original application with the exception of excavated waste, which increased by 40,000 cubic metres due to deeper excavations.²³ ERA reassessed both applications and it reconfirmed its non-objection to the development. However, the Authority declared that with respect to PA/05533/19, although it had no objection in principle for the initiation of the excavation works, it raised concerns as to whether such works could commence while the building envelop was still being assessed.

Figure 65: Comparison of original and revised application

Land use	Original application	Revised application	Change (%)
Number of units			
Hotel rooms	438	438	0
Residential (apartments)	162	162	0
Car parking spaces	1,819	1,778	-2
Floor areas in m²			
Hotel (except back-of-house and terraces)	53,191	45,844	-14
Residential	33,776	32,429	-4
Office lettable space	3,232	527	-84
Shopping mall: gross floor area	21,264	20,213	-5
Shopping mall: rentable area	17,848	15,306	-14
Lido and night club	1,762	988	-44
Open public space	3,409	4,400	29

4.6.7 As outlined, the new building envelop was being assessed as part of the previous planning application PA/03807/17. It was noted that, as stated by SCH, the Grade 2 scheduled buildings were being retained. The shops and restaurants were repositioned, and the public plaza was extended horizontally and now stretched from one side to the other of the development. The design of the pools was changed, and new pools were introduced.

4.6.8 Since material changes were being proposed in the re-submitted plans under PA/03807/17, the application was re-published and a fresh consultative process with the stakeholders was initiated. Till end October 2019, a number of stakeholders re-confirmed their non-objection, while others made a number of recommendations. The PA noted that the access points to the development had been changed from the plans that were approved in 2018. Therefore, the conclusions of the TIA were found to be no longer valid and a new TIA was to be undertaken to take into consideration the roads that were being proposed by Infrastructure Malta in the meantime. This went contrary to the conclusions of the TIA consultant who was of the opinion that the TIA undertaken in 2018 remained valid since the project was downscaled with the traffic impact of the proposed development having somewhat lower levels of significance.

²³ A total of 363,000 cubic meters of material were to be excavated, with trucks working 11 hours per working day to remove this material over a period of 24 weeks.

4.6.9 As at end October 2019, the planning approval process in relation to the new plans was still ongoing. However, it must be noted that on 12 July 2019, the dbSG filed a judicial protest against the PA, blaming it for delays and damages suffered, following the revocation of the planning permit. The PA rebutted these accusations and filed a judicial protest of its own against the dbSG on 2 August 2019. In the judicial protest, the PA accused the dbSG of compromising the Board's decision when it had listed for sale parts of the residential block with a real estate agency. One of the shareholders of this real estate agency was also a member on the Planning Board tasked with the adjudication of the application submitted by the dbSG. The listing was therefore undertaken prior to the conclusion of the planning process, and money was already being received on the not yet approved development. Due to this, the PA accused the dbSG of tarnishing the Authority's reputation, thereby causing it damage. Apart from the above, the Pembroke Local Council and others also filed a judicial protest against the PA on 26 July 2019, demanding the payment of damages suffered due to the unfair hearing resulting from the lack of observation of rules by the PA. The PA rejected the pleas and blamed the dbSG for causing damages.

Chapter 5

The valuation of the site by the National Audit Office

5.1 Scope of valuation

5.1.1 In addressing the terms of reference set for this audit, in particular the determination of whether value for money was ascertained in the disposal of the site formerly occupied by the ITS, the NAO sought an independent valuation of the site. The land under consideration consisted of three areas, namely, Site A, bearing a footprint of 5,536 square metres and in use as a public car park; Site B, measuring 18,202 square metres, formerly housing the ITS and bounded by four roads; and Site C, a small beach concession comprising an area of 237 square metres with the foreshore held unhindered for public access.

5.1.2 The proposed project underwent major changes from its inception as captured in the submission by the Seabank Consortium to the final approved layouts endorsed by the PA. These changes had a direct bearing on the economy of the project, necessitating corresponding valuations. For ease of comparison between these two stages of development, the project was divided into three main sections, namely the:

- a. residential premises, office facilities and retail outlets that were to be housed in Tower A and Tower B;
- b. hotel premises; and
- c. basement levels, as subdivided into the proposed uses and incorporating all facilities located below ground level.

5.1.3 The valuation was carried out in line with the 'Kamra tal-Periti Valuation Standards' utilised in the appraisal of premises as issued in 2012. The derivation of areas used in the valuation was undertaken through two methods. All data relating to the proposal put forward by the Seabank Consortium was sourced from bills of quantities covering civil works, finishes, and M&E installations, with the latter serving as the baseline bill. This approach was resorted to since very limited and scarce drawings were available. Requests for more detailed drawings raised by the NAO with Projects Malta Ltd were of no avail since the submissions by the Seabank Consortium understandably did not include drawings at this level of detail. Regarding the approved proposal, plans were readily available and sourced from the PA, allowing for the calculation of all areas.

5.2 Planning considerations

- 5.2.1 The development at Site A, covered by Wesgħet George Portanier Development Brief Area policy (NHPE10), was to allow for a car park facility to be constructed below ground level and accommodate around 800 to 1,000 car spaces, with the exact number to be determined by means of a Traffic Impact Statement. The above ground part of the site was to be developed as high-quality residential area, with a formal garden on the remaining part of the site to be landscaped and maintained at the expense of the developer.
- 5.2.2 The location of Site B was identified as an area for hotel development as per policy NHPV04 in accordance with the MEPA Local Plans 2006. The area was also included within the entertainment priority area of Paceville as per policy NHPV05. The building formerly occupied by the ITS was recognised by the Heritage Planning Unit as a Grade 2 listed building with effect from 30 October 2009. Moreover, the southwestern portion of the site lay within the buffer zone for Ħarq Ħammiem Cave, which was recognised as a Level 1 protected site with effect from 6 September 1996. In addition, on Site B was a recently found underground Cold War chamber that had, as yet, no degree of protection but which could potentially be designated as a protected area.
- 5.2.3 The height limitation for Site B was four floors and a semi-basement. Following the implementation of Development Control Design Policy, Guidance and Standards 2015, this equated to 22 metres, allowing for the construction of seven residential floors, inclusive of a recessed floor, capped with a one-metre high parapet wall to hide services. No such height limitation was noted for Site A.
- 5.2.4 The latest approved planning application, PA/03807/17, was for a 'Proposed City Centre multi-use development, including 5-star Hotel (438 rooms), Class 3B, 162 residences, commercial office space (Class 4A), shopping mall (Class 4B) and restaurants (Class 4C and 4D) and basement car park'. This application was approved by the Environment Planning Commission/PA Board on 8 October 2018 but was subsequently amended by the PA's board of appeal through PAB/00419/18 on 28 February 2019. The approved drawings conform with this appeal decision, which was later put on hold by the Court on 19 June 2019.
- 5.2.5 Various PA policies apply in the determination of car parking spaces. The minimum assumptions presented in Figure 66 are of relevance to the comparative analysis of parking facilities provided in the original proposal and that approved.

Figure 66: Minimum assumptions for the calculation of parking spaces

 Residential	Parking spaces per dwelling	1
 Office	Parking space per 50 square metres	1
 Shopping	Parking space per 50 square metres	1
 Hotel	Parking spaces per guest bedroom	0.2
	Coach spaces per 50 guests	1.5
 Restaurants	Parking spaces per 50 square metres	1

policy regulated the development of tall buildings. According to the FAR policy, the allowable floor area may be distributed on a reduced floor plan over an increased number of floors. The allowable floor area as per the 2016 FAR calculation, the point at which the proposal by the Seabank Consortium was submitted, was 116,100 square metres, of which 3,000 square metres were deducted to cover road works within the site. This was calculated based on six floors and a 0.75 penthouse floor.²⁴ The total built-up area above ground floor for this project was 111,054 square metres. The NAO noted that the FAR method adopted did not cater for the two additional floors as provided in the 'Height Limitation Adjustment Policy for Hotels'. Moreover, while the presented project entailed development on Site A and Site B, the FAR area was only calculated on Site B.

- 5.2.7 As regards the 2018 FAR calculation, the allowable floor area was 116,100 square metres, arrived at in the same manner as that of 2016. However, the total built-up area above ground floor for this project, as approved by the PA in 2018, was 104,568 square metres. It must be noted that the presented project built-up area above ground level only included Site B following downsizing.

²⁴ $(6 \text{ floors} + 0.75 \text{ penthouse floor}) \times (19,200\text{m}^2 - 3,000\text{m}^2 = 17,200\text{m}^2) = 116,100\text{m}^2$

5.2.8 Both above-cited FAR calculations ignored land Site A and Site C, since the Local Plan did not allow for project uses on these sites. In addition, given that in both instances the proposed floor areas were less than those outlined in the FAR, no concerns of overdevelopment in terms of applicable policies arose.

5.3 Original Proposal of 2016

Residential Towers

5.3.1 The original proposal comprised two towers, namely Tower A and Tower B, which formed part of the mixed-use development and within themselves contained uses other than residential purposes. Tower A had a footprint of 989 square metres and 38 storeys, comprising 141 residential units split into five types according to area (Figure 67 refers).

Figure 67: Tower A apartment types based on finishes bill of quantities

Type	Internal floor area (m ²)	External area (m ²)	Total area (m ²)	Quantity
A	180	59	239	56
B	220	56	276	27
C	80	17	97	54
D	250	76	326	3
E	220	56	276	1

5.3.2 Tower B had a footprint area of 754 square metres and 32 storeys. It comprised 69 residences categorised into four types based on area (Figure 68 refers).

Figure 68: Tower B apartment types based on finishes bill of quantities

Type	Internal floor area (m ²)	External area (m ²)	Total area (m ²)	Quantity
A	200	55	255	44
B	130	33	163	22
C	200	55	255	2
D	200	66	266	1

5.3.3 It must be noted that the areas cited in Figure 67 and Figure 68 were determined by reference to the bills of quantities submitted by the Seabank Consortium in its proposal as no detailed plans providing this information were available. While the total number of apartments established by the NAO was 210 (141 in Tower A and 69 in Tower B), that cited in the submission by the Seabank Consortium was 209. The discrepancy was traced to a type D apartment in Tower A, identified through the reconciliation of the bill of quantities for finishes.

5.3.4 Prior to establishing rates for the separate trades for the development, the typical floor area of each tower was to be established. This was necessary to establish a baseline for the derivation of the rates of the separate trades, allowing for a comparison with going rates to identify instances of possible over or under pricing. Figure 69 and Figure 70 provide the differences in area for Tower A and Tower B, respectively, categorised by type of apartment. The figures cited

by the NAO were based on the floor tile finish areas put forward in the relative bill of quantities and compared to the areas presented in the bid by the Seabank Consortium. The comparison indicates that the apartment areas are largely consistent with discrepancies of a minor nature bar for the area of apartments Type A in Tower A.

Figure 69: Tower A area differences according to apartment type

Type	Presented area (m ²)	NAO area calculation (m ²)	Difference (m ²)
A	239	252.5	13.5
B	276	276.5	0.5
C	97	103.65	6.65
D	326	331.34	5.34
E	276	276.5	0.5

Figure 70: Tower B area differences according to apartment type

Type	Presented area (m ²)	NAO area calculation (m ²)	Difference (m ²)
A	255	258.07	3.07
B	163	163.49	0.49
C	255	258.07	3.07
D	266	269.07	3.07

5.3.5 While the typical floor areas cited by the Seabank Consortium were 1,008 square metres and 775 square metres for Tower A and Tower B, respectively, the NAO established typical floor areas that diverged slightly with those cited. Based on the bill of quantities for finishes, the NAO determined a typical floor area of Tower A as 1,044 square metres and that of Tower B as 754 square metres (Figure 69 and Figure 70 refer). This discrepancy arises from the slight increases in the areas of apartment types captured in Figure 71 and Figure 72.

Figure 71: Tower A typical floor area calculation by the NAO

Unit type	Area (m ²)	Quantity	Total area (m ²)
A	252.5	2	505.00
B	276.5	1	276.50
C	103.65	2	207.30
Common ¹	55.07	1	55.07
Total			1,043.87

Note:

1. The common area was calculated based on the total common area indicated in the finishes bill of quantities divided by the number of floors (1,542m² / 28 = 55.07m²).

Figure 72: Tower B typical floor area calculation by the NAO

Unit type	Area (m ²)	Quantity	Total area (m ²)
A	258.07	2	516.14
B	163.49	1	163.49
Common ¹	74.13	1	74.13
Total			753.76

Note:

1. The common area was calculated based on the total common area indicated in the finishes bill of quantities divided by the number of floors (1,779m² / 24 = 74.13m²).

5.3.6 The NAO noted that the difference in the typical floor area of Tower B was attributable to an oversight in the Seabank Consortium’s submission wherein the area of the top floor was considered as a typical floor area. The top floor included a duplex apartment that resultantly increased the floor area.

5.3.7 Having established the typical floor area of each of the towers, it was essential for the NAO to exclude the common areas to determine the residential sellable area. The NAO established a typical floor area excluding common parts for Tower A of 989 square metres, while that of Tower B was 679 square metres. These differed slightly with those established by the Seabank Consortium, with 948 square metres for the typical floor area excluding common parts in Tower A and 670 square metres in Tower B.

5.3.8 The total saleable area of the residential units arrived at by the NAO was 39,247 square metres. This differed to the 42,346 square metres cited by the Seabank Consortium. The difference of 3,099 square metres was attributable to the consideration of the terrace areas. While the NAO applied a 0.5 factor to the area of the external terraces, the Seabank Consortium considered the entire extent in its calculation (Figure 73 refers). It must be noted that the total area cited in Figure 73 excludes the common areas.

Figure 73: Total saleable residential area as established by the NAO

Tower	Unit type	Internal area (m ²)	½ External area (m ²)	Quantity	Total area (m ²)
A	A	193.50	29.50	56	12,488.00
	B	220.50	28.00	27	6,709.50
	C	86.65	8.50	54	5,138.10
	D	255.34	38.00	2	586.68
	E	220.50	28.00	1	248.50
B	A	203.07	27.50	44	10,145.00
	B	130.49	16.50	22	3,233.78
	C	203.07	27.50	2	461.14
	D	203.07	33.00	1	236.07
Total				209	39,246.85

5.3.9 In contrast to Tower A, which consisted solely of residential units, Tower B had five levels of offices, which, according to the submission by the Seabank Consortium, corresponded to a total area of 3,875 square metres, including terraces and common areas. However, based on the typical floor area of 679 square metres, the total office area determined by the NAO over the five floors was 3,395 square metres.²⁵

²⁵ Typical floor area of 679m² x 5 floors = 3,395m²

Hotel and Leisure Activities

5.3.10 The second largest component of the project was the Hard Rock Hotel, which was to have a capacity of 370 rooms, several speciality restaurants and a Sky Bar. While no discrepancies were noted by the NAO with respect to the number of rooms, differences emerged in terms of the hotel's gross floor area. The submission by the Seabank Consortium presented a total area of 50,585 square metres, whereas the NAO established a total area of 54,963 square metres (Figure 74 refers) through reference to the M&E bill of quantities submitted for the project in response to the RfP.

Figure 74: Total hotel areas as established by the NAO

Function	Area (m ²)
Kitchens and restaurants	7,448
Hotel lower common areas	5,489
Casino	1,655
Administration	1,138
Hotel rooms ¹	18,200
Hotel apartments	670
Hotel upper common areas	5,667
Upper administration	3,645
Spa, gym and pool	4,880
Sky Bar	880
Congress hall	5,291
Total	54,963

Notes:

1. Terraces are assumed to be included in this area.

Underground and sea-level activities

5.3.11 The third component of the development, as classified by the NAO, comprised the underground functions and the elements of the project located by the sea. The most notable function at these lower levels was the shopping mall. It was not possible for the NAO to reconcile the corresponding areas presented in the submission by the Seabank Consortium as no bills of quantities for M&Es or finishes were provided. Notwithstanding this, the NAO noted the consistency of figures for these areas as cited by the Consortium in the different components of its bid. The total shopping mall area established in the bid was 26,854 square metres, of which 17,690 was deemed as the total lettable area.

5.3.12 Another major underground component related to the parking amenities. The total area arrived at by the NAO through reference to the M&E bill of quantities was 55,768 square metres, of which 30,674 square metres corresponded to Site A and 25,904 square metres to Site B. Additional areas of 2,744 square metres and 11,475 square metres were intended to service Site A and Site B, respectively.

5.3.13 Site C incorporated amenities relating to the hotel and beach activity. Various functions were intended for development on this site, including a music room, a café, a boat house, a beach bar and a pool. Through reference to the M&E bill of quantities, the NAO established that the total area earmarked was of 5,706 square metres. It is to be noted that this extent of use was not accepted by the PA, with a single timber structure ultimately approved to serve as beach bar facilities.

5.4 Project downsizing: 2018 approved design

5.4.1 The approved project presented significant changes to that originally submitted by the Seabank Consortium in reply to the RfP, which served as the basis for the contract entered into with Government. The nature of the changes resulted in the overall area of several functions being reduced. The major differences were the omission of the residential tower on Site A and the reduced size of the hotel, which in turn effected the latter's design, as well as that of the tower on Site B. Figure 75 illustrates the difference in the area between the proposed project and that approved. While the original proposal submitted by the Consortium comprised an area of 187,485 square metres, that approved by the PA was of 172,285 square metres, resulting in a decrease in area of 15,200 square metres.

Figure 75: Differences in area between the proposed and approved project

Function	Original proposal (m ²)	Approved project (m ²)	Difference (m ²)	Percentage difference
Residential Tower A gross internal area	22,200	-	-	-
Residential Tower B gross internal area	12,415	-	-	-
Total residential gross internal area	34,615	24,778	-9,836	-28%
Residential Tower A gross external area	5,942	-	-	-
Residential Tower B gross external area	3,322	-	-	-
Total residential gross external area ¹	9,264	7,798	-1,466	-16%
Offices gross internal area	2,700	0	-2,700	-100%
Residential Tower A common areas	1,542	-	-	-
Residential Tower B common areas	1,779	-	-	-
Total residential common areas	3,321	6,580	3,259	+98%
Shopping mall	26,854	18,069	-8,785	-33%
Hotel gross floor area ²	54,963	51,667	-3,296	-6%
Parking	55,768	63,393	7,625	+14%
Total³	187,485	172,285	-15,200	

Notes:

1. The total residential gross external area excluded roof spaces.
2. The hotel gross floor area included terraces.
3. It must be noted that the ground floor outdoor areas have been excluded.

5.4.2 The method employed by the NAO to determine the areas of the approved project was through scaling of the approved plans. The NAO established that all areas as indicated on the approved plans tallied with the measurements verified by this Office.

Comparison of the residential area

- 5.4.3 The difference registered in the total residential gross internal area was mainly attributed to the removal of Tower B from the project. Tower B originally comprised an area of 12,415 square metres. In contrast, the overall residential gross internal area of Tower A increased by 2,578 square metres. This was due to the approval of an increase in height following the relevant application made to this effect by the dbSG. While Tower A comprised 32 storeys at bid submission stage, when approved, this increased to 36 storeys. Similar changes may be noted with respect to the residential gross external areas.
- 5.4.4 The offices that were to be housed in Tower B were also removed following the omission of this tower. Another major difference concerned the common area, which increased from a total of 130 square metres per floor, divided on both towers, to 180 square metres on each floor of Tower A.
- 5.4.5 These changes also bore impact on the number of apartments and their typology. The original 209 units were reduced by 49, resulting in a total of 160 residential units. Moreover, the layout of the apartments was changed to accommodate the larger common area now envisaged and the inclusion of five residential units per floor (bar floors 3, 9 and 15, which had four units each). In terms of apartment layout, whereas originally the project encompassed a limited number of one-bedroom apartments, with the majority being three-bedroom, the approved project had a variety of units ranging from one-, two- and three-bedroom apartments.

Comparison of the shopping mall area

- 5.4.6 Comparison of the shopping mall area in terms of that initially proposed by the Seabank Consortium and that approved by the PA revealed a reduction of 33 per cent. Given that no detailed layout information was provided as part of the Consortium's submission, the NAO was constrained to compare the shopping mall area based on general information submitted and the approved plans. The original shopping mall area envisaged was 26,854 square metres, while that approved amounted to 18,069 square metres. This decrease was the result of the shifting of some of the hotel amenities to areas previously intended for use as part of the shopping mall.

Comparison of the hotel area

- 5.4.7 Similar reductions were noted with respect to the hotel area, with a gross area decrease of five per cent registered at approval stage. While a typical floor area was of 2,841 square metres in the initial proposal submitted by the Seabank Consortium (based on the M&E bill of quantities), that approved was approximately 2,700 square metres. Consequently, the hotel's gross floor area decreased from a proposed 54,963 square metres to an approved 51,667 square metres. The reduction in the gross floor area was attributable to the omission of one of the hotel's floors and that of the side wing, which changes resulted in the decrease of the overall height

of the hotel. While originally the hotel had a planned capacity of 370 rooms, the final project was for 359 rooms. When comparing the ratio of the area reduced to the number of rooms lost, the NAO noted that reductions were largely undertaken in the hotel’s larger suites (Figure 76 refers).

Figure 76: Comparison of hotel room type between proposed and approved

Room type	Proposed		Approved		Variance Number
	Number	Area (m ²)	Number	Area (m ²)	
Standard Room	260	40	327	40 – 48	67
Silver Suite	40	50	1	66	-39
Gold Suite	40	60 – 85	24	79 – 84	-16
Platinum Suite	17	95 – 110	3	90 – 115	-14
Diamond Suite	0	n/a	1	184	1
Rock Suite	12	140	2	191 – 198	-10
Rock Star Suite	1	160	1	221	0
Total	370		359		-11

Comparison of the parking areas

5.4.8 Contrary to the other components of the project, the area designated for parking increased from that proposed to that approved. The total area intended for parking increased by 7,625 square metres, from an original 55,768 square metres to an approved 63,393 square metres. This was attributable to two factors. First, a change in the configuration of the basement levels, and second, that the site earmarked for Tower B was re-designated as a parking area. While the area increased, the number of parking spaces decreased, from an original 2,364 to an approved 1,422. The revision in the number of parking spaces arose as a result of the area allocated to each parking bay, which was increased from 24 square metres to 43 square metres per parking space. Applying this revision to the original area designated for parking would have resulted in 1,296 parking spaces.²⁶

5.4.9 The 1,422 parking spaces approved were arrived at as follows:

- a. the 160 apartments were allocated 160 parking spaces;
- b. the hotel was allocated 270 parking spaces to cater for 359 guest rooms and 150 staff. The total parking for the hotel was arrived at by allocating a 0.33 factor per guest room and one parking bay per staff member. Ten spaces were allocated to coaches, established at a ratio of two coach spaces per 50 guest rooms. The excess capacity evident in this respect was to provide additional parking for the leisure outlets;

²⁶ 55,768m² / 43m²/bay = 1,296 parking spaces

- c. the retail, restaurants and casino, which corresponded to an area of 24,846 square metres, were allocated 497 parking spaces, worked out at one parking space per 50 square metres; and
- d. 495 parking spaces were extra parking slots.

5.5 Project costing for the 2016 proposal

5.5.1 The determination of costs incurred during development is an integral element in arriving at the value of the site under consideration. This section addresses the various elements of the project's cost, namely, civil works, M&E and finishes. Consistent with the approach adopted in the NAO's valuation, the project is categorised in three components, that is, the residential towers, the hotel and the lower levels.

Rates for civil works, 2016

5.5.2 Having established the extent of the development as proposed by the Seabank Consortium, the NAO sought to establish the cost of construction that was to be incurred up to shell form.

2016 construction rate for the residential apartments

5.5.3 The total area of the two towers, comprising the gross internal and external areas, common areas and roof spaces, as established by the NAO was of 52,392 square metres. This differed from the corresponding area cited by the Seabank Consortium in its submission and that indicated by Deloitte in its report to Government, which amounted to 50,946 square metres and 53,901 square metres, respectively. Notwithstanding this variation, given that the range of difference was within five per cent from both values, the area as derived by the NAO was considered as correct and was to serve as the basis for the calculation of the cost of civil works with respect to the residential apartments.

5.5.4 The total construction cost of Tower A and Tower B as arrived at by the NAO was €23,383,306 (Figure 77 refers). It must be noted that the bills of quantities provided with the submission had missing information, which constrained the NAO to refer to the 'totals' summary in its assessment.

Figure 77: Cost of civil works for residential towers as established by the NAO, 2016

Cost component	Tower A (€)	Tower B (€)
All civil works incl. excavation, foundations and structural frame	10,255,116	6,930,630
Internal walls construction	900,000	515,910
External sub-façade sub-frame	1,697,400	1,414,500
Office civil works	0	1,669,750
Sub-total	12,852,516	10,530,790
Total Tower A and Tower B		23,383,306

5.5.5 To derive the rate of construction, excavation costs incurred with respect to the residential towers were to be deducted and priced separately. Based on the market rate for 2016, the rate for excavation was of €20 per cubic metre. The total volume that was to be excavated was 143,813 cubic metres, resulting in a cost of €2,876,260. Deducting this excavation cost from the total construction cost of €23,383,306 results in a rate for construction costs of €391 per square metre.²⁷ As part of the process of validation of the rate arrived at, the NAO drew comparisons with another project bearing similar characteristics. The project compared to was of a development with a height of 21 storeys and a rate of construction of €290 per square metre. In view of these considerations, the NAO revised the rate for construction to €350 per square metre, rendering it closer to the market rates for 2016/2017.

5.5.6 The rate established by the NAO differed to that compiled by Deloitte, which was of €579 per square metre, bringing the total cost of construction of the residential towers to €31,202,000. It is to be noted that this figure was inclusive of a 7.5 per cent professional fee and VAT, which once omitted resulted in a cost of €24,597,556. The further omission of excavation costs of €2,876,260 (as established by the NAO) resulted in a total construction cost of €21,721,296, which corresponded to a rate of €403 per square metre. This rate tallied with that presented by the Seabank Consortium (Figure 78 refers).

Figure 78: Comparison of residential construction rates as at 2016

	Seabank Consortium	Deloitte	NAO
Total cost excl. professional fees, VAT, excavation & demolition (€)	21,721,296	21,721,296	18,337,367
Area (m ²)	54,821	53,901	52,392
Rate (€/m ²)	396	403	350

Note:

1. The rate established by the NAO was derived from the costs of construction presented by the Seabank Consortium in their submission and the areas cited in the M&E bill of quantities.

2016 construction rate for the hotel premises

5.5.7 The approach adopted in determining the construction rate for the residential apartments was also applied in establishing the corresponding rate for the hotel premises. The cost of the hotel construction works, as estimated by the NAO, amounted to €19,695,534 (Figure 79 refers).

Figure 79: Cost of civil works for hotel premises as established by the NAO, 2016

Cost component	Cost (€)
Main hotel civil works incl. excavation, foundations and structural frame	14,862,354
Sky Bar civil works	657,274
Casino civil works	603,148
Multi-purpose hall civil works	3,572,758
Total	19,695,534

²⁷ €23,383,306 - €2,876,260 / 52,392m² = €391/m²

5.5.8 Similarly, to derive the rate of construction, the cost of excavation underneath the hotel was deducted and priced separately, again based on the prevalent market rate in 2016, that is, €20 per cubic metre. The volume of material that was to be excavated was 176,189 cubic metres, resulting in a total cost of €3,523,780. When deducting this cost from the total cost of civil works, the construction rate for the hotel premises established by the NAO was that of €294 per square metre.²⁸

5.5.9 The rate arrived at by the NAO varied to that determined by the Seabank Consortium and Deloitte, which was set at €461 per square metre, resulting in a total cost of €23,023,000, inclusive of a 7.5 per cent professional fee and VAT. Omitting these elements resulted in a total cost of €18,149,783. The further elimination of the cost of excavation works to be incurred (established by the NAO as €3,523,780) resulted in a total construction cost of €14,626,003. In turn, the rate established for civil works for the hotel premises by the Seabank Consortium and Deloitte amounted to €292 per square metre (Figure 80 refers).

Figure 80: Comparison of hotel construction rates as at 2016

	Seabank Consortium	Deloitte	NAO
Total cost excl. professional fees, VAT and excavation (€)	14,626,003	14,626,003	16,171,754
Area (m ²)	49,980	49,980	54,963
Rate (€/m ²) ¹	292	292	294

Note:

1. The rate established by the NAO was derived from the costs of construction presented by the Seabank Consortium in their submission and the areas cited in the M&E bill of quantities.

5.5.10 In addition to these costs, the NAO considered the obligation emanating from clause 13 of the deed entered into by Government and the dbSG, whereby Government undertook, at its sole cost, risk, legal and financial liability, to effect the required improvements to the road and utilities infrastructure and to ensure adequate water and power supply leading to the site. This obligation was estimated to cost Government approximately €10,000,000.

5.5.11 Although demolition and excavation costs were accounted for in the overall construction rates cited by the Seabank Consortium, these were undertaken separately by the NAO. The NAO estimated the volume to be demolished as 33,000 cubic metres. Applying a rate of €10 per cubic metre for demolition, inclusive of the storage of the existing façade masonry for reuse in 2016, resulted in a cost of €330,000, exclusive of VAT.

2016 construction rate for the lower levels

5.5.12 Construction of the lower levels consisted of the commercial premises and the parking area located beneath the hotel and the residential towers. The total cost of the commercial development established by the NAO amounted to €7,055,220, resulting in a construction rate

²⁸ €19,695,534 - €3,523,780 / 54,963m² = €294/m²

of €263 per square metre.²⁹ On the other hand, the cost of construction of the parking area amounted to €11,054,254, implying a rate of construction of €198 per square metre (Figure 81 refers).³⁰

Figure 81: Cost of civil works for lower levels as established by the NAO, 2016

	Commercial premises (€)	Parking area (€)
All civil works incl. excavation, foundations and structural frame	6,405,220	10,219,030
External and internal walls	650,000	835,224
Total	7,055,220	11,054,254

5.5.13 The cost of construction of the commercial development as established by the Seabank Consortium and Deloitte was €8,247,000, which included professional fees and VAT. When deducted, the total cost was €6,501,380, resulting in a rate of €242 per square metre. Regarding the parking area, the Seabank Consortium and Deloitte determined the cost of construction, excluding professional fees and VAT, as €10,190,000.

Construction costs analysis

5.5.14 The total construction cost for the whole project established by the NAO was €66,746,476. This diverged slightly with the amounts determined by the Seabank Consortium and Deloitte acting on behalf of Government, which amounted to €67,279,564. Of note is the significant difference in the construction rate arrived at by the NAO in comparison with that established by the Seabank Consortium and Deloitte, with this Office's rate lower than that cited in the other valuations. However, this difference is mitigated by the instances when the NAO's rate exceeded that of the other valuations, namely, with respect to the hotel, commercial and parking area (Figure 82 refers).

Figure 82: Construction costs comparison, 2016

Function	Seabank Consortium		Deloitte		NAO	
	Total (€)	Rate (€/m ²)	Total (€)	Rate (€/m ²)	Total (€)	Rate (€/m ²)
Residential	21,721,296	396	21,721,296	434	18,337,200	350
Hotel	14,626,003	292	14,626,003	292	16,171,754	294
Commercial	6,501,380	242	6,501,380	242	7,055,220	263
Parking area	10,190,000	-	10,190,000	-	11,054,254	198
Sub-total	53,038,679		53,038,679		52,618,428	
Professional fees 7.5%	3,977,900		3,977,900		3,946,382	
Total (excl. VAT)	57,016,580		57,016,580		56,564,810	
18% VAT	10,262,984		10,262,984		10,181,666	
Total (incl. VAT)	67,279,564		67,279,564		66,746,476	

²⁹ €7,055,220 / 26,854m² = €263/m² (The area cited is as referred in paragraph 5.3.11.)

³⁰ €11,054,254 / 55,830m² = €198/m² (The area cited is as referred in Figure 91.)

Rates for M&E works, 2016

5.5.15 The NAO established rates for the M&E works that were to be undertaken with respect to the project. These rates were arrived at through reference to the bill of quantities submitted. The overall cost of works for the M&E works was estimated as €34,989,030, which when considering an area of 173,281 square metres, resulted in a rate of €202 per square metre (Figure 83 refers).

Figure 83: Cost of M&E works as established by the NAO, 2016

Function	Cost (€)	Area (m ²)	Rate (€/m ²)
Site A			
Tower B residential	3,951,857	17,516	225.61
Tower B offices	875,893	3,395	257.99
Multi-function areas	1,685,048	5,291	318.47
Parking	2,185,871	31,219	70.02
Sub-total Site A	8,698,669	57,421	151.49
Site B and Site C			
Tower A residential	7,962,392	29,684	268.24
Hotel	11,803,536	43,137	273.63
Casino	876,862	1,655	529.83
Plaza	2,639,437	2,173	1,214.65
Gym	122,850	650	189.00
Spa	242,514	1,992	121.74
Parking	2,642,770	36,569	72.27
Sub-total Site B and Site C	26,290,361	115,860	226.91
Total	34,989,030	173,281	201.92

5.5.16 According to the Seabank Consortium and Deloitte, the cost of the M&E works was of €39,911,000, which included professional fees and VAT. Deducting these cost elements resulted in a cost of €31,463,415 and a rate of €240 per square metre. It is imperative to note that the NAO identified significant differences in the areas utilised for the establishment of this rate, which the Seabank Consortium and Deloitte cited as 130,856 square metres, as compared to the 170,281 square metres determined by the NAO.

5.5.17 Applying the area as determined by the NAO to the rate per square metre established by the Seabank Consortium and Deloitte would have resulted in an increase in the overall cost of M&E works in their submission. Notwithstanding this, the NAO drew comparisons between the M&E rates determined for each of the components of the project (Figure 84 refers). The total cost of M&E works determined by the NAO exceeded that stated by the Seabank Consortium and Deloitte, which was attributable to the significantly higher area considered by the NAO. In this Office's understanding, applying the rate determined by the Consortium and Deloitte to this larger area would result in an M&E cost that exceeds that arrived at by the NAO.

Figure 84: M&E costs comparison, 2016

Component	Seabank Consortium & Deloitte		NAO	
	Cost (€)	Rate (€/m ²)	Cost (€)	Rate (€/m ²)
Residential incl. offices	12,656,681	234.00	12,790,142	244.12
Hotel	11,049,000	220.00	14,730,810	279.40
Commercial ¹	3,664,958	136.00		
Parking areas	4,092,000	-	4,828,641	71.23
Plaza ²	-	-	2,639,437	1,214.69
Sub-total	31,462,639	-	34,989,030	-
Professional fees 7.5%	2,359,689	-	2,624,177	-
Total (excl. VAT)	33,822,337	-	37,613,207	-
18% VAT ³	6,088,021	-	6,770,377	-
Total (incl. VAT)	39,910,358	-	44,383,585	-

Notes:

1. The bill of quantities relating to the M&E works for the commercial development was included with that for the hotel.
2. While the rate per square metre for M&E works to be undertaken at the plaza was of note, this could be attributable to all the necessary light fittings, given that this was the main entrance to the complex.
3. The VAT element for the proposed project was revised to include all components of the M&E works required, as this was originally applied only to the residential component.

Rates for finishes, 2016

5.5.18 The final element of project costing was that for finishes, which was determined for the residential and hotel components, as well as the shopping mall and parking areas. It is to be noted that since details of finishes in bills of quantities differed, several assumptions were taken into consideration. The main assumption related to the area, which in view of the limited information provided, was considered as the gross area.

2016 residential area finishes

5.5.19 The total cost of finishes for the residential towers estimated by the Seabank Consortium and Deloitte was of €15,277,513, which amount was determined through reference to the various unit types within each tower. A rate of €451.74 per square metre was determined with respect to Tower A, based on a finishing cost of €10,028,621 and an internal area of 22,200 square metres. For Tower B, a rate of €422.78 per square metre was established through reference to a total cost of €5,248,893 and an internal area of 12,415 square metres (Figure 85 refers).

5.5.20 The rates for finishes for Tower A and Tower B, €451.74 and €422.78, respectively, were considered high by the NAO when compared to a similar project albeit lower in height. During the period 2016 to 2017, the average rate for finishes for residential units was approximately €275 per square metre. Evident is that the rates cited by the Seabank Consortium and Deloitte were significantly higher, with that of Tower A and Tower B 65 per cent and 53 per cent, respectively, higher than this baseline. The NAO deemed a rate of €301 per square metre to be more in line with market rates, which would result in a total cost for finishes of €10,418,212.

Figure 85: Finishes for apartments Tower A and Tower B, 2016

Apartment Type	Internal area ¹ (m ²)	Quantity	Total area (m ²)	Total cost (€)	Unit cost (€)
Tower A					
Apartment A	193.50	56	10,836	4,840,970	86,446
Apartments B & E	220.50	28	6,174	2,676,756	95,598
Apartment C	86.65	54	4,679	2,287,183	42,355
Apartment D	255.34	2	511	223,712	111,856
Sub-total Tower A (excl. VAT)	-	140	22,200	10,028,621	-
Tower B					
Apartments A & C	203.07	46	9,341	3,790,479	82,402
Apartment B	130.49	22	2,871	1,376,012	62,546
Apartment D	203.07	1	203	82,402	82,402
Sub-total Tower B (excl. VAT)	-	69	12,415	5,248,893	-
Total (excl. VAT)	-	209	34,615	15,277,514	-

Note:

1. The internal areas cited were established by the NAO.

5.5.21 However, to obtain the full cost of finishes for the residential towers, three other cost components were to be considered, that is, office finishes (excluding external works), façade works, as well as external areas and common areas. In the proposal put forward by the Seabank Consortium, only estimates for the façade works were provided, while a total was cited with regard to the other components.

5.5.22 The cost of finishes for the office space in Tower B was estimated at €1,162,500 by the Seabank Consortium and Deloitte, which when considering an internal area of 2,700 square metres, resulted in a rate of €430 per square metre. Again, this rate was considered high by the NAO when compared to a project of a similar nature, which rate stood at €250 per square metre. Nonetheless, the NAO applied a rate of €275 per square metre, as this was deemed closer to prevalent market prices for 2016 to 2017. The application of this rate resulted in a total cost of finishes for offices of €742,500.

5.5.23 The total cost of finishes for the façade of Tower A and Tower B was cited as €6,491,750, which figure was based on an estimated surface area of approximately 26,000 square metres. On the other hand, the cost of finishes for the external and common areas of both towers amounted to €3,124,770. In view of the lack of information made available by the Seabank Consortium in relation to this aspect of their proposal, the NAO considered the costs cited with respect to these components as given.

5.5.24 The NAO noted differences in the total cost of finishes presented in the bill of quantities submitted by the Seabank Consortium and that stated by Deloitte in its report. While in the case of the former, this was cited as €31,578,093, that by Deloitte was of €32,828,000. The deduction of professional fees and VAT in the finishes summary bill of quantities resulted in a charge of €25,879,385, which implied a rate of €480 per square metre.

5.5.25 In sum, the NAO established the total cost for finishes as €20,777,232. This figure was based on costs of residential tower finishes of €10,418,212, office level finishes of €742,500, façade finishes at €6,491,759, as well as external and common area finishes of €3,124,770.

5.5.26 Comparison of the rate established by the NAO with those determined by the Seabank Consortium and Deloitte renders evident the disparity in cost per square metre (Figure 86 refers). The rate for finishes of €396 per square metre arrived at by the NAO significantly contrasts with that of €472 set by the Seabank Consortium and €480 cited by Deloitte. The source of this difference was mainly attributable to the rate of finishes for the residential towers.

Figure 86: Finishes rate comparison, 2016

	Seabank Consortium	Deloitte	NAO
Total cost (excl. professional fee & VAT) (€)	25,879,385	25,879,385	20,777,232
Area (m ²)	54,821	53,901	52,392
Rate (€/m ²)	472	480	396

2016 hotel finishes

5.5.27 The core of the hotel's finishing costs was attributable to the rooms, which varied according to room type. The cost for room finishes outlined in the bill of quantities submitted by the Seabank Consortium was €14,974,945, which cost included the furniture and finishes components. Of interest was the total cost for finishes that was established as €6,756,505. A baseline rate for each room type was determined (Figure 87 refers).

Figure 87: Finishes for hotel rooms, 2016

Room type	Standard	Suites A & B	Suites C, D & E	Platinum	Diamond	Rockstar	Total
Quantity	260	51	31	16	11	1	
Area (m ²)	40	57	75	100	140	160	n/a
Furniture cost per room (€)	18,416	22,347	33,521	44,694	44,694	44,694	n/a
Finishes cost per room (€)	14,846	18,870	28,305	37,740	37,740	37,740	n/a
Completion cost per room (€)	33,262	41,217	61,826	82,434	82,434	82,434	n/a
Total furniture cost (€)	4,788,160	1,139,697	1,039,151	715,104	491,634	44,694	8,218,440
Total finishes cost (€)	3,859,960	962,370	877,455	603,840	415,140	37,740	6,756,505
Total cost (€)	8,648,120	2,102,067	1,916,606	1,318,944	906,774	82,434	14,974,945
Finishes & furnishings rate (€/m ²)	831.55	723.11	824.34	824.34	588.81	515.21	n/a
Finishes rate (€/m ²)	371.15	331.05	377.40	377.40	269.57	235.88	n/a

5.5.28 The total hotel finishes cost as submitted by the Seabank Consortium in the corresponding bill of quantities, comprising all sections of the hotel, amounted to €32,091,548. Based on a total hotel area, including outdoor areas, of 54,963 square metres, a rate for hotel finishes of €583 per square metre was determined (Figure 88 refers).³¹

³¹ €32,091,548 / 54,963m² = €583/m²

Figure 88: Finishes for hotel, 2016

Hotel section	Cost (€)	Rate (€/m ²)
Hotel rooms	6,756,505	327.00
Room terraces	762,385	150.00
Room corridors	548,760	263.00
Public areas	7,540,650	760.00
Pools	1,579,000	166.00
Conference	1,241,100	700.00
Sky Bar	662,750	337.50
Back of house	994,458	71.50
Kitchen	682,740	32.50
Façade ¹	3,714,200	200.00
Casino	6,000,000	3,625.00
Speciality restaurants	1,115,000	1,000.00
Hard Rock Café	494,000	1,000.00
Total	32,091,548	

Note:

1. The rate is based on an estimated surface area of approximately 15,560 square metres.

5.5.29 Of note to the NAO was the significantly high rate utilised with respect to the casino. The bill of quantities submitted by the Seabank Consortium did not provide sufficient detail to explain the reason for the rate of €3,625 per square metre for finishes of the casino, particularly when one considers that it covered an area of 1,655 square metres. Similar concerns arose with respect to the speciality restaurants, with a rate of €1,000 per square metre cited in this instance. On the other hand, the rate for public spaces, set at €760 per square metre, was deemed justifiable on the basis that it incorporated several areas varying in use and type of finishes, as well as lump sum items.

5.5.30 According to the valuations put forward by the Seabank Consortium and Deloitte, the cost of hotel finishing and furniture amounted to €43,870,000. However, this included professional fees and an office fee of €500,000 that were to be deducted. These deductions resulted in a cost of €40,309,843. The total cost for hotel finishes and furniture cited by the NAO was also €40,309,843, as the Office relied on the estimate submitted by the bidder and retained by Deloitte. This figure was arrived at by considering the €8,218,440 in total furniture cost (Figure 87 refers) and the €32,091,548 in finishes (Figure 88 refers). Comparison of the rates illustrates a variance arising from differences in areas cited (Figure 89 refers).

Figure 89: Comparison of hotel finishes and furniture rates, 2016

	Seabank Consortium	Deloitte	NAO
Total cost (excl. professional fees) (€)	40,309,843	40,309,843	40,309,843
Area (m ²)	49,980	49,980	54,963
Rate (€/m ²)	807	807	733

2016 shopping mall and parking areas finishes

5.5.31 The NAO noted that the shopping mall and parking areas bill of quantities for finishes provided by the Seabank Consortium was limited in terms of details. The only information submitted was that the rate for finishes for the shopping mall was stated as €300 per square metre, while that for the parking area was set as €10 per square metre. The NAO revised the latter to €13 per square metre, as this was considered more in line with prevailing rates. The total cost of finishes for the shopping mall was €7,162,200, while that for the parking area, as revised by the NAO, was €921,882.

Summary of cost of works, 2016

5.5.32 While the overall cost of works as submitted by the Seabank Consortium and Deloitte amounted to €158,561,886, that established by the NAO was of €156,778,782. The cost arrived at by the NAO was slightly less than that determined by the Seabank Consortium, with a variance of €1,783,000 noted in this respect (Figure 90 refers).

Figure 90: Comparison of cost of works, 2016

	Seabank Consortium (€)	Deloitte (€)	NAO (€)
Structural works - Residential	21,721,296	21,721,296	18,337,367
Structural works - Hotel	14,626,003	14,626,003	16,171,754
Structural works - Lower levels (commercial)	6,501,380	6,501,380	7,055,220
Structural works - Lower levels (parking)	10,190,000	10,190,000	11,054,254
Structural works - Sub-total	53,038,679	53,038,679	52,618,595
M&E works - Sub-total	31,462,639	31,462,639	34,989,030
Finishes - Residential	25,879,385	25,879,385	20,777,232
Finishes & furnishing - Hotel	40,309,843	40,309,843	40,309,843
Finishes - Commercial	7,162,200	7,162,200	7,162,200
Finishes - Parking	709,140	709,140	921,882
Finishes - Sub-total ¹	74,060,568	74,060,568	69,171,157
Total	158,561,886	158,561,886	156,778,782

Note:

1. The finishes sub-total would read €60,952,862 when excluding hotel furniture costs.

5.5.33 Although the variance noted with respect to structural works was not deemed significant by the NAO, that relating to the M&E works and the finishes was. In the case of M&E works, the cost of works estimated by the NAO exceeded that established by the Seabank Consortium; however, this was attributable to an understatement of area, which if considered, would have reversed

the directionality of the variance. In the case of finishes, the variance was noteworthy, with the amount cited by the Consortium exceeding that determined by the NAO by €5,000,000. This discrepancy was possibly greater as a similar understatement of areas was noted in the submission by the Consortium.

5.6 Works estimates for the 2018 approved design

5.6.1 Aside from determining the cost of the development as at 2016, the point at which the deed was entered into by Government and the dbSG, the NAO also sought to determine the value of the project as at 2018, that is, the instance when the PA approved the relevant application. In establishing this value, the NAO referred to the prevalent market rates and the areas in the approved plans for each component of the project.

Rates for civil works, 2018

5.6.2 The NAO established the cost of construction in 2018 as €65,437,905, representing a marked increase over the €52,618,428 determined for 2016. This difference, in excess of €12,800,000, was attributable to the increase in overall construction rates, particularly that relating to the price of concrete, which is estimated as having increased by approximately 75 per cent between the year of the submission by the Seabank Consortium and that of the approval of the project. In determining 2018 rates, the NAO applied an overall increase of approximately 42.5 per cent to reflect the revised price of materials (Figure 91 refers).

Figure 91: NAO estimate of civil works (construction), 2018

Component	2018			2016			Variance (€)
	Quantity (m ³)	Rate (€/m ³)	Total (€)	Quantity (m ³)	Rate (€/ m ³)	Total (€)	
Parking	58,528	280	16,387,840	55,830	198	11,054,254	5,333,586
Foundations	1,400	550	770,000	-	-	-	770,000
Shopping mall	18,069	325	5,872,425	26,826	263	7,055,220	-1,182,795
Hotel	51,667	420	21,700,140	55,006	294	16,171,754	5,528,386
Tower	41,415	500	20,707,500	52,392	350	18,337,200	2,370,300
Total (excl. professional fees & VAT)			65,437,905			52,618,428	12,819,477

5.6.3 A marked increase was also noted by the NAO with respect to the estimated cost of demolition and excavation works. The estimated cost increased from €5,130,015 in 2016 to €10,546,875 in 2018. While revisions in the applicable rates accounted for an element of this €5,416,860 variance, another factor was the revised quantity for excavation, which increased from 320,001 cubic metres to 402,075 cubic metres (Figure 92 refers).

Figure 92: NAO estimate of civil works (demolition and excavation), 2018

Component	2018			2016			Variance (€)
	Quantity (m ³)	Rate (€/m ³)	Total (€)	Quantity (m ³)	Rate (€/m ³)	Total (€)	
Demolition	33,000	15	495,000	33,000	10	330,000	165,000
Excavation	402,075	25	10,051,875	320,001	15	4,800,015	5,251,860
Total (excl. professional fees & VAT)			10,546,875			5,130,015	5,416,860

Rates for M&E works, 2018

5.6.4 The cost of M&E works for the 2018 revised project was estimated at €40,571,220, against the €34,989,030 estimated for the 2016 development. The variance, amounting to €5,582,190, was attributed to the increase in M&E rates of approximately 15 per cent (Figure 93 refers).

Figure 93: NAO estimate of M&E works, 2018

Component	2018			2016	
	Quantity (m ²)	Rate (€/m ²)	Total (€)	Quantity (m ²)	Rate (€/m ²)
Residential					
Apartments	24,778	280	6,937,840	34,615	244
Common areas	6,580	69	454,020	3,321	60
External areas	7,798	230	1,793,540	9,264	200
Hotel					
Rooms	15,948	238	3,795,624	18,200	207
Administration	6,916	216	1,493,856	4,783	188
Common areas	14,656	69	1,011,264	11,156	60
Back of house	2,649	224	594,038	3,281	195
Restaurants	4,027	222	893,793	7,448	193
Technical rooms ¹	1,283	248	318,697	-	216
Conference hall	1,417	214	303,238	1,773	186
Casino	2,143	204	437,172	1,655	177
External areas ²	10,343	250	2,585,750	-	-
Gym & Sky Bar	1,893	225	426,682	5,760	196
Stores ¹	517	81	41,618	-	70
Pools ²	6,101	236	1,438,311	-	205
Plaza	3,065	1,396	4,279,047	2,143	1,214
Other					
Shopping mall	18,069	300	5,420,700	23,874	-
TA	6,195	150	929,500	-	-
Parking	63,393	72	4,564,296	55,768	60
Lifts & equipment	lump sum	2,852,593	lump sum		
Total (excl. professional fees & VAT)			40,571,220		

Notes:

1. The area for the hotel's technical rooms and stores were included with that of the basement for 2016.
2. The area for the hotel's external facilities and pools were not clearly identified for 2016.

Rates for finishes, 2018

5.6.5 The cost of finishes (excluding furniture) estimated by the NAO based on the 2018 revised project were €59,414,585, which were less than the originally envisaged €60,952,862. The difference of €1,538,277 corresponds to a three per cent reduction in the cost of finishes, which can be attributed to a decrease in area from 226,124 square metres to 219,281 square metres, and a 15 per cent increase in the rates (Figure 94 refers).

Figure 94: NAO estimate of finishes, 2018

Component	2018			2016	
	Quantity (m ²)	Rate (€/m ²)	Total (€)	Quantity (m ²)	Rate (€/m ²)
Residential					
Apartments	24,778	350	8,672,300	34,615	315
Common areas	6,580	345	2,270,100	3,321	300
External areas	7,798	230	1,793,540	9,264	200
Façade	15,300	230	3,519,720	26,000	200
Hotel					
Rooms	15,948	376	5,996,448	18,200	327
Administration	6,916	575	3,976,700	4,783	500
Common areas	14,656	302	4,426,112	11,156	263
Back of house	2,649	60	158,940	3,281	50
Restaurants	4,027	805	3,241,735	7,448	700
Technical rooms ¹	1,283	86	110,338	-	75
Conference hall	1,417	805	1,140,685	1,773	700
Casino	2,143	4,170	8,936,310	1,655	3,625
External areas ²	10,343	230	2,378,890	-	200
Gym & Sky Bar	1,893	288	545,184	5,760	250
Stores ¹	517	58	29,988	-	50
Pools ²	6,101	230	1,403,230	-	200
Plaza	3,065	230	704,950	2,143	200
Façade	15,000	230	3,450,000	18,558	200
Other					
Shopping mall	8,571	345	2,956,995	23,874	300
TA	6,195	86	532,770	-	-
Parking	63,393	50	3,169,650	55,768	20
Total (excl. professional fees & VAT)			59,414,585		

Notes:

1. The area for the hotel's technical rooms and stores were included with that of the basement for 2016.
2. The area for the hotel's external facilities and pools were not clearly identified for 2016.

Project cost comparison, 2016 – 2018

- 5.6.6 The NAO compared the original costs for the 2016 proposal against those for the 2018 approved design. While the cost established in 2016 was €153,690,335, that for 2018 was €175,969,869, accounting for a 14 per cent increase. Although the overall project areas decreased, increases in rates in the interim period resulted in an upward revision in costs (Figure 95 refers).

Figure 95: Comparison of costs, 2016-2018

Component	2018 (€)	2016 (€)	Difference (%)
Demolition & excavation	10,546,879	5,130,015	106
Structural works	65,437,905	52,618,428	24
M&E works	40,571,220	34,989,030	16
Finishes	52,444,143	50,746,903	3
Façade	6,969,720	10,205,959	-32
Total (excl. professional fees & VAT)	175,969,869	153,690,335	14

5.7 NAO valuation methodology

- 5.7.1 The valuation by the NAO was undertaken on the Kamra tal-Periti Valuation Standards (2012) and based on an investment premises analysis approach. This method provided a value of worth, as it looks into what a developer expects to obtain in return for one's original outlay. The return for investment properties relates to the rental income leases that would accrue over the years. Hence, this method relies on capitalising the rental income via a property discount rate acceptable to the investor. When the value of worth of an investor approaches the asking price of a developer, the market value is established. The investment premises analysis approach was adopted for the retail and office elements of the development, while the hotel valuation was determined as a business trading property that considered the simulated probable future profit and loss account as arrived at by the proposed operator's own business plan. After exercising professional judgement in appraising the weight that should be ascribed to the anticipated profits and losses, appropriate risk deductions are applied to arrive at the value.

Valuation of the shopping mall and office space

- 5.7.2 The net floor area allocated for retail in the 2016 proposal was 23,874 square metres, of which 17,860 square metres were lettable at basement level and accessed from the upper external plaza. An area of 2,700 square metres was intended for office use, as located in Tower B. In the approved proposal as at 2018, the shopping mall had a reduced area of 18,069 square metres, of which 14,397 square metres were lettable, while no office space was retained. The reduction in floor area of the shopping mall was the result of revisions made in the project's hospitality element, which now occupied part of the basement level.
- 5.7.3 In 2016, the office prime rental market for a St Julian's seafront location varied from €20 per square metre to €475 per square metre, yielding an average rate of €335 per square metre. A

property discount rate of 8 per cent was established by the NAO for the office element of the project in 2016 through reference to a number of factors, namely:

- a. a risk-free rate of 3.5 per cent, based on the average rate of government bonds traded over the previous five years;
- b. a 2 per cent premium on property in view of the lumpy investment;
- c. a 1 per cent tenant risk; and
- d. a 1.5 per cent depreciation factor.

office property discount rate (2016) = risk-free rate + property premium + tenant risk + depreciation 8% = 3.5% + 2% + 1% + 1.5%

5.7.4 The NAO assumed that the estimated rental values for office space would be subjected to annual increases of 2.75 per cent. Therefore, in 2016, an initial office yield of 5.25 per cent was arrived at.

office capitalisation rate, 2016 | 8% - 2.75% = 5.25%

5.7.5 In 2016, the average rental rate for a retail outlet in St Julian's located on a shopping parade with satisfactory parking facilities was €425 per square metre, increasing to €475 per square metre as at 2018. These retail rental rates compare well with an existing shopping mall in the area, where rates varied from €144 to €941 per square metre in 2016 to €158 to €1,035 per square metre in 2018. The average retail rental rate was €377 per square metre in 2016, increasing to €415 per square metre in 2018. Leased out areas varied considerably, ranging from 6 square metres to 1,000 square metres, with an average retail area of 124 square metres.

5.7.6 It must be noted that the storey height for the 2016 proposal averaged out at 3.5 metres, which was increased to 6 metres in 2018. Given the anticipated pedestrian flows, the originally proposed 3.5 metre height was considered as detracting from the importance of the mall, resulting in a downward revision of the rate to €325 per square metre for 2016. For 2018, the revised 6 metre height satisfied the aesthetic proportions for the mall, hence resulting in the retention of the €475 per square metre rate.

5.7.7 A property discount rate of 7.75 per cent was established by the NAO for the retail element of the project in 2016 through reference to a number of factors, namely:

- a. a risk-free rate of 3.5 per cent, based on the average rate of government bonds traded over the previous five years;

- b. a 2 per cent premium on property in view of the lumpy investment;
- c. a 1 per cent tenant risk; and

- d. a 1.25 per cent depreciation factor.

retail property discount rate (2016) = risk-free rate + property premium + tenant risk + depreciation 7.75% = 3.5% + 2% + 1% + 1.25%

5.7.8 The NAO estimated the retail rental value as subject to annual increases of 2.5 per cent. Therefore, an initial retail yield of 5.25 per cent as at 2016 was arrived at.

retail capitalisation rate, 2016 | 7.75% - 2.5% = 5.25%

5.7.9 The 7.75 per cent property discount rate established by the NAO for the retail element of the project in 2016 was revised to 6.5 per cent in 2018. This revision was the result of a decrease in the average rate of government bonds traded in the previous five years, down from 3.5 per cent in 2016 to 2.25 per cent in 2018.

retail property discount rate (2018) = risk-free rate + property premium + tenant risk + depreciation 6.5% = 2.25% + 2% + 1% + 1.25%

5.7.10 A 1.75 per cent annual increase was estimated by the NAO as applying to the retail rental value, resulting in an initial retail yield of 4.75 per cent in 2018.

office capitalisation rate, 2018 | 6.5% - 1.75% = 4.75%

5.7.11 In this context, the NAO established that a fair annual rental amount with respect to office and retail use, based on internal and not gross areas, was as follows:

- a. office use, 2016: 2,700m² @ €335/m² = €904,000 per annum;
- b. retail use, 2016: 17,860m² @ €325/m² = €5,804,500 per annum; and
- c. retail use, 2018: 14,397m² @ €475/m² = €6,838,575 per annum.

5.7.12 Finally, in determining the capital value of the office and retail leased areas, the NAO applied a net rental amount of 95 per cent to cater for management and maintenance expenses. To arrive at the market value, an additional 10 per cent were factored to account for purchase expenses. Therefore, the market value of the office and retail areas in 2016 were estimated at €14,870,996 and €95,485,281, respectively. The market value of the retail area in 2018 was set at €124,337,727 (Figure 96 refers).

Figure 96: Market value of the office and retail elements, 2016-2018

Use	Management & maintenance expenses (%)	Rental value (€)	Capitalisation (100/x)	Purchase expenses (%)	Market value (€)
Office (2016)	0.95	904,000	19.05	1.1	14,870,996
Retail (2016)	0.95	5,804,500	19.05	1.1	95,485,281
Retail (2018)	0.95	6,838,575	21.05	1.1	124,337,727

Valuation of the hotel premises

5.7.13 The valuation of the hotel premises undertaken by the NAO was carried out according to the Kamra Tal-Periti Valuation Standards (2012), utilising the profits method analysis of trading premises. Hospitality properties are not frequently sold and when sold are difficult to compare largely due to the differences inherent in each. Valuation through the sales comparison approach was not deemed appropriate in this case as such a method is heavily reliant on a large number of recent sales to support a strong predictive value. Moreover, the value assigned to hospitality premises being transferred reflects the sale of the real estate and the business. In this case, the cost and income approaches in valuing hospitality premises were similarly not considered appropriate as such valuations are contingent on the premise that the business is a going concern.

5.7.14 The key element in determining value through the profits method is the adjusted net profit that the existing premises can produce and the consideration of specific elements that are particular to the operator, that is, EBITDA. This is the first method utilised by the NAO in determining the value of the hotel premises. The second method, albeit a less reliable approach, comprised the assessment of the value of the building on a brick and mortar value, which includes the value of the goodwill. The third method, effectively used as a check, is the per-bed multiplier. It is to be noted that a profit and loss account for the hotel does not presently exist, but a feasibility study was undertaken by the Seabank Consortium.

5.7.15 An essential component in determining the value of the hotel premises under consideration is its occupancy levels. The NAO referred to the occupancy rates for 5-star hotels as quoted in reports issued by the MHRA for the period 2011 to 2018 (Figure 97 refers). An occupancy rate of 75 per cent was adopted in the case of the proposed hotel by the Seabank Consortium.

Figure 97: MHRA percentage occupancy level of 5-star hotels, 2011-2018

Year	2011	2012	2013	2014	2015	2016	2017	2018
Occupancy rate (%)	66.7	68.2	70.2	74.4	76.3	76.5	75.7	74.2

5.7.16 Aside from occupancy, room rates are another critical component in determining the value of the hotel. MHRA surveys regarding room rates illustrate a steady increase in the average daily room rate of 5-star hotels (Figure 98 refers).

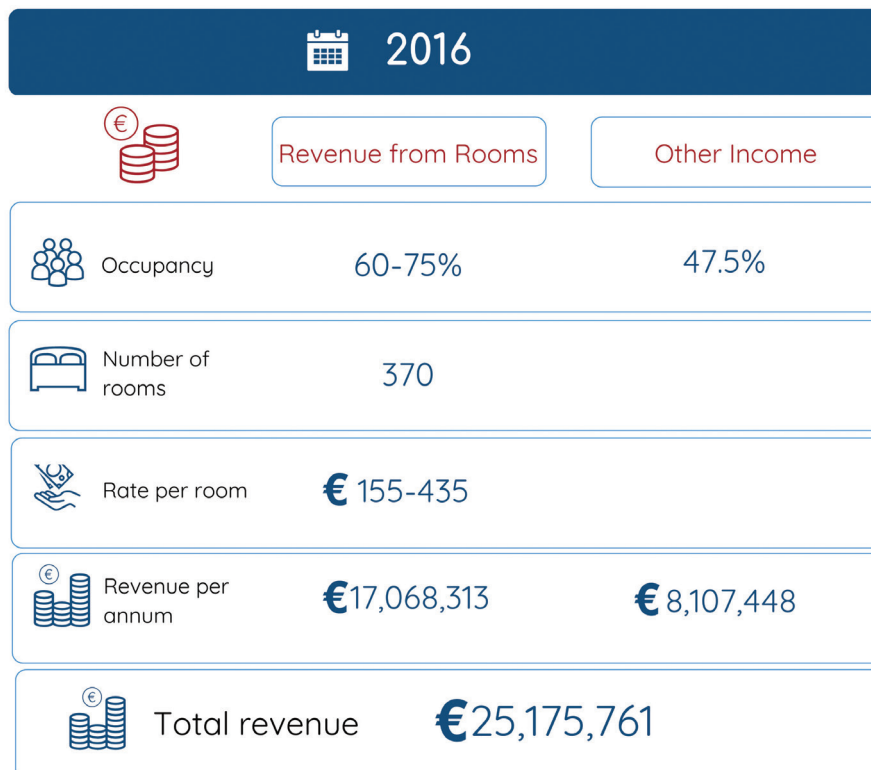
Figure 98: MHRA room rate per night for 5-star hotels, 2015-2018

Year	2015	2016	2017	2018
Rate/night (€)	135.40	143.30	159.20	166.40

5.7.17 The revenue that was to be generated by the Seabank Consortium’s proposed hotel as at 2016 was based on the envisaged 370 rooms operating at a 75 per cent occupancy rate. 2016 was taken as the point of reference given that the contract entered into between Government and the dbSG was dated 1 February 2017. While the occupancy rate for standard rooms was set at 75 per cent, this rate was adjusted downwards as the standard of the room increased, reaching 60 per cent for the most luxurious suites. Additional revenue forecasted related to the organisation of conferences, the casino facility, the various eateries and the hotel’s reception halls. Based on the feasibility study undertaken by the Consortium this additional revenue was estimated at 47.5 per cent of the anticipated room revenue.

5.7.18 Based on these parameters, the NAO established the estimated stabilised revenue per annum as from 2016 as €25,175,761. Of this revenue, €17,068,313 was to be generated through the rooms division, while €8,107,448 was to be sourced as additional income through the hotel’s other amenities (Figure 99 refers). This stabilised income was forecasted to occur in eight years’ time, based on 2016 room rates.

Figure 99: Hotel revenue per annum, 2016

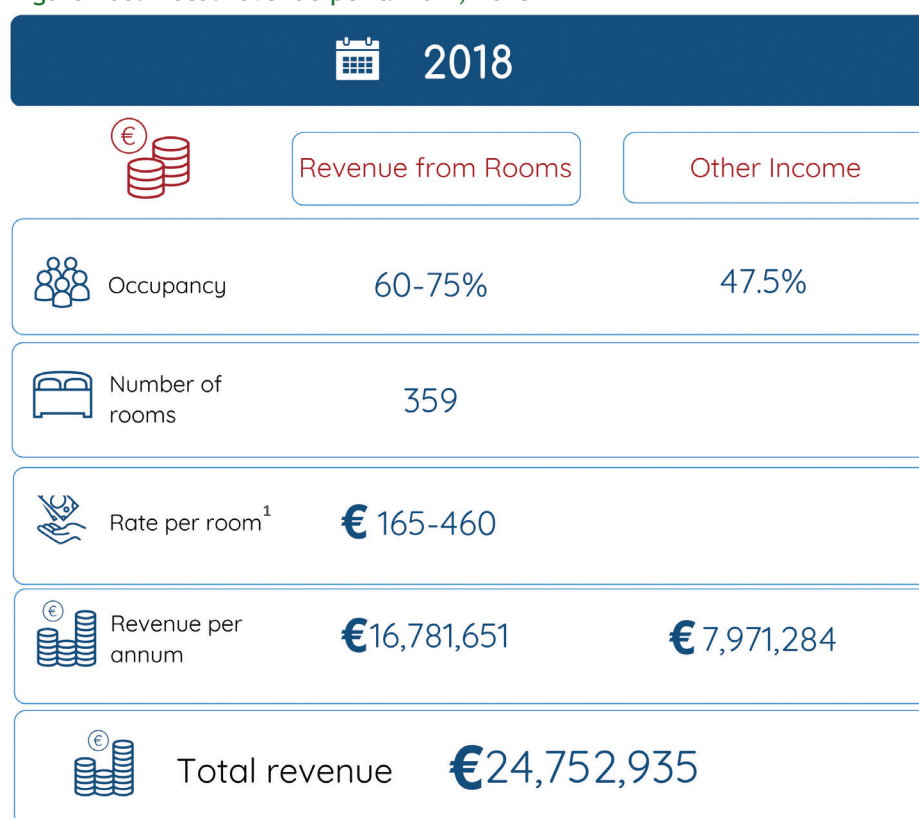


5.7.19 In determining the estimated revenue to be generated by the hotel in 2018, given that the PA approved the application by the dbSG on 1 February 2019, the parameters previously employed were adjusted to reflect that endorsed. While occupancy remained at 75 per cent, scaling down to 60 per cent for the higher-end suites, the number of rooms and the rates

charged were revised. Of the approved 359 rooms, the NAO noted an increase in the number of standard rooms and the Rock Suites, as well as the omission of Suites A and B. The rates applied were based on the MHRA average daily room rates for 2018, adjusted according to the proposed room areas.

5.7.20 Through the application of these parameters, the NAO established that the estimated stabilised revenue per annum as from 2018 was €24,752,935. A total of €16,781,651 was to be generated by the rooms division, while €7,971,284 was income sourced from the hotel’s other revenue streams, based on a factor of 47.5 per cent of the total room annual revenue (Figure 100 refers). This stabilised income was forecasted to occur in eight years’ time, based on 2018 room rates.

Figure 100: Hotel revenue per annum, 2018



Note:

1. The number of rooms was sourced from the finishes bill of quantities submitted by the Seabank Consortium.

5.7.21 The models put forward by the Seabank Consortium and Deloitte were based on room rates as at 2015 with a two per cent annual compound growth forecasted therefrom. In this regard, the Consortium and Deloitte estimated hospitality revenue for 2018 at €25,715,000 and €27,315,000, respectively, increasing to a stabilised income of €50,220,000 and €52,850,000 as at 2021. Hospitality EBITDA was then respectively cited as €8,951,000 and €7,467,000 by the Consortium and Deloitte for 2018, increasing to a stabilised EBITDA as at 2021 of €13,025,000 and €18,946,000.

5.7.22 According to the MHRA, the gross operating profit of 5-star hotels increased from 23.7 per cent in 2011 to 37.7 per cent in 2017. This declined slightly in 2018 to 37.4 per cent (Figure 101

refers).

Figure 101: MHRA percentage gross operating profit for 5-star hotels, 2011-2018

Year	2011	2012	2013	2014	2015	2016	2017	2018
Gross operating profit (%)	23.7	25.1	27.5	30.4	34.7	36.3	37.7	37.4

5.7.23 Therefore, applying a 36.5 per cent gross operating profit rate to the estimated revenue in 2016 of €25,175,761 would result in a sustainable EBITDA of €9,189,153. For 2018, applying a rate of 37 per cent to the €24,752,935 estimated revenue would result in a gross operating profit of €9,158,586. These sustainable estimated EBITDA values were deemed within the range cited by the Seabank Consortium and Deloitte.

gross operating profit, 2016 - 36.5% x €25,175,761 = €9,189,153

gross operating profit, 2018 - 37.0% x €24,752,935 = €9,158,586

Profits method valuation

5.7.24 The open market value for the hotel premises is obtained by applying an earnings' multiplier to the EBITDA. This varies from 4.75x to 8x for a fair market value. On the other hand, the public market has, on average, valued investor-owned hospitality chains at multiples between 8x and 13x of EBITDA. For a luxury hotel, the multiplier varies within the range of 16.67x down to 9x. On the other hand, for an economy hotel, the multiplier varies within the range of 11.5x down to 7x, while that for a budget hotel varies from 7.5x down to 3.67x.

5.7.25 In this case, considering the envisaged proposed branded hotel together with the risks inherent in the operation of existing premises, the NAO applied a multiplier of 13x as at 2016, the point when tourism was peaking in Malta and the Mediterranean. For 2018, this multiplier was reduced to 12.5x, due to tourism having already peaked and the impact of alternative tourism accommodation that was in direct competition with the hotel industry.

5.7.26 These multipliers signify a year's purchase in perpetuity and allow the NAO to determine the capitalisation rate. For 2016, this rate was 7.7 per cent, while in 2018, the rate was of 8 per cent.

capitalisation rate, 2016 | 100/13.00 = 7.70%

capitalisation rate, 2018 | 100/12.50 = 8.00%

5.7.27 These capitalisation rates are to be compared with the initial yield rates required for investment properties, such as offices, retail outlets and industrial premises. The discount rate for investment properties is based on the addition of various factors, namely:

- a. the risk-free rate, which is based on the average rate of government bonds traded over the

- previous five years, was given as 3.5 per cent in 2016 and 2.25 per cent in 2018;
- b. a premium rate of 2 per cent in view of the lumpy investment;
 - c. a tenant risk of 1 per cent; and
 - d. a depreciation rate of 1.75 per cent.

investment property discount rate, 2016 - 3.5% + 2% + 1% + 1.75% = 8.25%

investment property discount rate, 2018 - 2.25% + 2% + 1% + 1.75% = 7.00%

5.7.28 The NAO ascertained that institutional property leases increased annually at 3 per cent in 2016 and 2.5 per cent in 2018. Adjusting the investment property discount rate by deducting the rate for institutional property leases results in an initial yield for institutional property at 5.25 per cent in 2016 and 4.5 per cent in 2018.

initial yield for institutional property, 2016 - 8.25% - 3.0% = 5.25%

initial yield for institutional property, 2018 - 7.00% - 2.5% = 4.50%

5.7.29 The hospitality leisure industry is known to have a higher risk premium than institutional property. This risk premium is computed from the difference between the hotel's capitalisation rate and the institutional property's initial yield. In 2016, the risk premium was 2.45 per cent, which increased to 3.5 per cent in 2018.

hospitality risk premium, 2016 - 7.7% - 5.25% = 2.45%

hospitality risk premium, 2018 - 8% - 4.5% = 3.5%

5.7.30 The hotel's discount rate is then computed by adding 1/x as an additional hotel risk to the investment property discount rate. In 2016, the hotel discount rate established was 10.15 per cent, while in 2018, this was 11.5 per cent.

hotel discount rate, 2016 | 7.7% + 2.45% = 10.15%

hotel discount rate, 2018 | 8% + 3.5% = 11.5%

5.7.31 The hotel discount rate for 2016, 10.15 per cent, was compared with that quoted by Deloitte, initially 13.4 per cent but then adjusted to 12.5 per cent, and the Seabank Consortium's

projections, which implied a rate of 12.36 per cent.

5.7.32 The NAO determined the existing use value through reference to a future sustainable EBITDA amount as estimated in the paragraph 5.7.23 and applying an adequate multiplier factor for a 5-star branded accommodation. These multipliers consider the higher risk associated with the hotel industry as compared to the office/retail rental market and are contextualised within the global hotel industry. In 2016, the value was of €119,500,000, while in 2018, this was revised to €114,500,000.

existing use value, 2016 | €9,189,153 x 13.0 = €119,458,989

existing use value, 2018 | €9,158,586 x 12.5 = €114,482,325

5.7.33 This Office considered that the project would become income-earning within five years of the signing of contract in February 2017. In addition, it was assumed that it would then take three years for the operation of the hotel to register a stabilised income. Therefore, it was anticipated that between the period from soft opening to the achievement of stabilised income, the loss of earnings over this period was estimated at 50 per cent over the first year, reducing to 30 per cent over the second year and 15 per cent over the third year of the EBITDA amount. When factoring these adjustments, the existing use value of the hotel was estimated at €110,770,000 in 2016 and €105,800,000 in 2018.

existing use value of the hotel, 2016 | €119,500,000 – ((50% + 30% + 15%) x €9,189,153) = €110,770,000

existing use value of the hotel, 2018 | €114,500,000 – ((50% + 30% + 15%) x €9,158,586) = €105,800,000

Bricks and mortar valuation

5.7.34 A bricks and mortar valuation method comprises:

- a. an estimate of the value of the bricks and mortar by comparison with similar adjoining properties, including the consideration of alternative use value and taking account of the state of repair;
- b. a value for goodwill determined by applying a multiplier to the adjusted net profit; and
- c. an estimate of the value of the trade fixtures, fittings and furnishings taken at current value.

5.7.35 Based on the NAO's consideration of the property in a good state of repair, the bricks and mortar valuation as at 2016 was based on the following indicative building rates:

- a. shell construction at €294 per square metre;
- b. finishing works that varied by area but averaged at €583 per square metre; and
- c. building services that varied by area but averaged at €222 per square metre.

5.7.36 Applying these rates, adapted for the level of finish and services required for each of the project components, the NAO established a bricks and mortar hotel value as at 2016 of €98,894,097. Of these, €76,276,029 were building costs, €10,108,068 accounted for goodwill, and €8,510,000 for fixtures, fittings and furnishings (Figure 102 refers).

Figure 102: Bricks and mortar hotel valuation, 2016

Component	Unit	Rate (€)	Total (€)
Building costs			
Basement & car spaces	45,000m ²	374	16,830,000
Supporting facilities (gym & Sky Bar)	5,760m ²	840	4,838,400
Conference room	5,291m ²	1,180	6,243,380
Common areas excl. lifts	11,156m ²	617	6,883,252
Bedrooms	18,870m ²	828	15,624,360
Restaurants	7,448m ²	1,187	8,840,776
Administration incl. reception	4,783m ²	982	4,696,906
Casino	1,655m ²	4,171	6,903,005
M&E plant	1	1,701,750	1,701,750
Façade	1	3,714,200	3,714,200
Sub-total building costs			76,276,029
Goodwill ¹	1.1	9,189,153	10,108,068
Fixtures, fittings & furnishings	370	23,000	8,510,000
Total			94,894,097

Note:

1. As this 5-star hospitality premises were yet to trade, a multiplier of 1.1 was applied to the adjusted net profit.

5.7.37 For 2018, the following building rates were considered in determining the bricks and mortar value of the hotel:

- a. shell construction at €420 per square metre;
- b. finishing works that varied by area but averaged at €706 per square metre; and
- c. building services that varied by area but averaged at €250 per square metre.

5.7.38 Adjusted for 2018, the bricks and mortar valuation of the hotel was €117,324,450, of which, €97,754,455 were building costs. In addition, goodwill was revised to €10,074,445 to reflect the anticipated decrease in net profit, while the cost of fixtures, fittings and furnishings was €9,495,550 (Figure 103 refers).

Figure 103: Bricks and mortar hotel valuation, 2018

Component	Unit	Rate (€)	Total (€)
Building costs			
Basement parking	45,000m ²	542	24,390,000
Supporting facilities (gym & Sky Bar)	1,893m ²	933	1,766,169
Conference room	1,417m ²	1,439	2,039,063
Tech rooms	1,283m ²	754	967,382
Common areas excl. lifts	14,656m ²	794	11,636,864
Bedrooms	15,948m ²	1,044	16,649,712
Restaurants	4,027m ²	1,447	5,827,069
Administration incl. reception	6,916m ²	706	4,882,696
Plaza entrance	3,065m ²	2,046	6,270,990
Pools	6,101m ²	886	5,405,486
Casino	2,143m ²	4,794	10,273,542
Stores	517m ²	558	288,486
M&E plant	1	2,042,100	2,042,100
Façade	1	3,450,000	3,450,000
Back of house	2,649m ²	704	1,864,896
Sub-total building costs			97,754,455
Goodwill ¹	1.1	9,158,586	10,074,445
Fixtures, fittings & furnishings	359	26,450	9,495,550
Total			117,324,450

Note:

1. As this 5-star hospitality premises were yet to trade, a multiplier of 1.1 was applied to the adjusted net profit.

Per guest bedroom valuation

5.7.39 The per guest bedroom valuation approach is based on a rule of thumb that estimates the value of a room by multiplying its average daily rate by a factor of 1,000. Based on the estimated hotel revenues for 2016 and 2018 (Figure 99 and Figure 100 refer), the NAO established an average room rate of €175 per night for both years. This implied a per guest bedroom value of €175,000. Refining this method through the application of an automated valuation regression model resulted in an estimated market value for a hotel room of €250,000 in 2016 and €236,000 in 2018.

5.7.40 The NAO sought to strengthen its estimation of value through reference to the two other methods of valuation, that is, the profits method and the bricks and mortar method, establishing a per room rate in each case. In the case of the profits method, the NAO determined a per room rate of €300,000 in 2016 and €295,000 in 2018. In the case of the bricks and mortar method, the NAO arrived at a per room rate of €257,000 in 2016 and €327,000 in 2018.

5.7.41 Integrating these three valuations for 2016 and 2018 results in an average per guest bedroom value of €269,000 for 2016 and €286,000 for 2018 (Figure 104 refers). Applying these per guest bedroom rates to the number of rooms (370 rooms in 2016 and 359 rooms in 2018)

results in an overall market value for the hotel premises estimated at €99,500,000 in 2016 and €102,500,000 in 2018.

Figure 104: Per guest bedroom valuation average, 2016 & 2018

Valuation method	Rate per guest bedroom 2016 (€)	Rate per guest bedroom 2018 (€)
Profits method	300,000	295,000
Bricks and mortar	257,000	327,000
Per guest bedroom	250,000	236,000
Average per guest bedroom	269,000	286,000

Valuation of the car parking spaces

5.7.42 Noting that an annual fee for a car space in Floriana presently stands at €595 per annum, increasing to €1,695 per annum in Sliema, a car parking space in the Pembroke/Paceville area was estimated by the NAO at €1,250 per annum at current rates. Adjusting to 2018 rates by applying a discount factor of 0.95, capitalising at a rate of 4.25 per cent and considering a 1.1 premium, this Office established a car space value at 2018 as €25,400. When adjusted to 2016 rates, through the application of a 5.5 per cent discount rate, the car space value amounted to €22,750.

$$\text{car space value, 2018} - 0.95 \times \text{€1,250} \times 100/4.25/1.1 = \text{€25,400}$$

$$\text{car space value, 2016} - \text{€25,400}/1.0552 = \text{€22,750}$$

5.7.43 The application of these rates to the 1,239 car spaces proposed in 2016 and the 1,422 car spaces proposed in 2018 resulted in a total value of €28,187,250 and €36,118,800, respectively.

$$\text{proposed car spaces, 2016} - 1,239 \text{ car spaces} \times \text{€22,750} = \text{€ 28,187,250}$$

$$\text{proposed car spaces, 2018} - 1,422 \text{ car spaces} \times \text{€25,400} = \text{€ 36,118,800}$$

Valuation of the residential apartments

5.7.44 The original proposal by the Seabank Consortium in 2016 provided for two tower blocks intended for residential use, except for the lower six levels of Tower B, which were designated as offices. Most of the apartments had open sea views; however, some were obstructed by the proposed hotel construction while others had inland views. At the lower levels, an existing hotel further obstructed sea views. The 209 apartments planned in the 2016 proposal had an apartment typology that comprised 54 one-bedroom apartments, 1 two-bedroom apartment and 154 three-bedroom apartments.

5.7.45 In the planning application submitted in 2018, the two tower blocks were replaced by a larger solitary tower block. The block comprised residential units from the first floor upwards, with an underlying commercial development at ground level. Most of the apartments had open sea views; however, some were hindered by the proposed hotel construction while others had inland views. At the lower levels, an existing hotel and government housing hindered these views further. The 160 apartments put forward in the 2018 planning application had an apartment typology of 53 one-bedroom apartments, 69 two-bedroom apartments, 36 three-bedroom apartments and 2 four-bedroom apartments.

5.7.46 Although this development was adjacent to government housing, it was still within what was considered as the golden mile of Malta’s entertainment district. The adjacent residential location could be classified as affordable property, attracting a market rate of €1,336 per square metre in 2016 and €1,856 per square metre in 2018 (Figure 105 refers). One can note that, over the past 36-year period, affordable residential premises in Malta have increased in value on an average annual basis of 6.62 per cent, which rate of increase slowed down to 4.11 per cent per annum over the immediate past 15-year period. This was affected by the global financial crisis that occurred in 2008. Over the immediate past 5-year period, residential property has increased in value at an overall rate of 10.29 per cent, with the local property market having fully recovered from this recession.

Figure 105: Malta’s affordable property rate, 1982-2018

Year	1982	1987	1992	1997	2002	2007	2012	2014	2015	2016	2017	2018
Malta (€)	163	212	349	512	629	1,211	1,134	1,203	1,209	1,336	1,718	1,856

Source: NAO consultant in-house valuations, 2018

5.7.47 In the case of the development under review, the residential apartments were considered upmarket, hence deemed by the NAO as commanding a basic market rate of €5,000 per square metre as at 2016. This rate increased to €5,750 per square metre in 2018. These rates were considered comparable to similar high-rise developments in the area.

5.7.48 The market value of each apartment at the varying storey height levels was established by the NAO. The basic market rates were adjusted to consider the varying levels and the views of the apartments. The floor areas cited also took into consideration the outside terrace areas, which were accordingly factored down. The total value of the residential apartments as established by the NAO for 2016 amounted to €176,699,344, of which €111,276,933 corresponded to Tower A and €65,422,411 related to Tower B (Figure 106 and Figure 107 refer). The value of the residential development was revised by the NAO to €147,214,785 in 2018 following revisions in the extent of the residential element of the project (Figure 108 refers). Further details relating to the 2018 valuation of the residential element are provided in Appendix B.

Figure 106: Tower A residential apartment schedule, 2016

Floor	Units	Type	Area (m ²)	Rate (€)	Estimated value per unit (€)	Estimated value total (€)
1	13	Type A 3-bedroom apartment	223.00	3,936.60	877,862	11,412,203
2	13	Type A 3-bedroom apartment (restricted view)	223.00	3,188.65	711,068	9,243,885
3	12	Type B 3-bedroom apartment	248.50	3,936.60	978,245	11,738,941
4	24	Type C 1-bedroom apartment	95.15	4,133.43	393,296	9,439,101
5	5	Type A 3-bedroom apartment	223.00	4,374.00	975,402	4,877,010
6	5	Type A 3-bedroom apartment (restricted view)	223.00	3,936.60	877,862	4,389,309
7	5	Type B 3-bedroom apartment	248.50	4,374.00	1,086,939	5,434,695
8	10	Type C 1-bedroom apartment	95.15	4,592.70	436,995	4,369,954
9	5	Type A 3-bedroom apartment	223.00	4,860.00	1,083,780	5,418,900
10	5	Type A 3-bedroom apartment (restricted view)	223.00	4,374.00	975,402	4,877,010
11	5	Type B 3-bedroom apartment	248.50	4,860.00	1,207,710	6,038,550
12	10	Type C 1-bedroom apartment	95.15	5,103.00	485,550	4,855,505
13	5	Type A 3-bedroom apartment	223.00	5,400.00	1,204,200	6,021,000
14	5	Type A 3-bedroom apartment (restricted view)	223.00	4,860.00	1,083,780	5,418,900
15	5	Type B 3-bedroom apartment	248.50	5,400.00	1,341,900	6,709,500
16	10	Type C 1-bedroom apartment	95.15	5,670.00	539,501	5,395,005
17	2	Type D 3-bedroom apartment	293.34	6,750.00	1,980,045	3,960,090
18	1	Type E 3-bedroom apartment	248.50	6,750.00	1,677,375	1,677,375
Total	140					111,276,933

Figure 107: Tower B residential apartments schedule, 2016

Floor	Units	Type	Area (m ²)	Rate (€)	Estimated value per unit (€)	Estimated value total (€)
1	6	Type A 3-bedroom apartment	230.57	4,374.00	1,008,513	6,051,079
2	6	Type A 3-bedroom apartment (restricted view)	230.57	3,542.94	816,896	4,901,374
3	7	Type B 3-bedroom apartment	146.99	3,542.94	520,777	3,645,437
4	8	Type A 3-bedroom apartment	230.57	4,860.00	1,120,570	8,964,562
5	8	Type A 3-bedroom apartment (restricted view)	230.57	4,374.00	1,008,513	8,068,105
6	7	Type B 3-bedroom apartment	146.99	4,617.00	678,653	4,750,570
7	8	Type A 3-bedroom apartment	230.57	5,400.00	1,245,078	9,960,624
8	8	Type A 3-bedroom apartment (restricted view)	230.57	4,860.00	1,120,570	8,964,562
9	8	Type B 3-bedroom apartment	146.99	5,130.00	754,059	6,032,470
10	2	Type C 3-bedroom apartment (restricted view)	230.57	5,400.00	1,245,078	2,490,156
11	1	Type D 2-bedroom apartment	236.07	6,750.00	1,593,473	1,593,473
Total	69					65,422,411

Figure 108: Tower apartment schedule, 2018

Floor	Units	Estimated value total (€)	Floor	Units	Estimated value total (€)
1	10	6,997,889	14	10	8,502,075
2	10	7,051,101	15	5	4,405,452
3	8	7,175,228	16	2	3,637,884
4	5	3,404,987	17	5	4,315,841
5	5	3,499,638	18	5	4,372,788
6	5	3,400,157	19	10	9,789,895
7	10	7,768,517	20	10	9,437,082
8	10	7,871,018	21	5	4,765,132
9	5	3,876,147	22	5	4,858,654
10	5	3,825,933	23	5	4,785,367
11	5	3,964,907	24	5	4,723,375
12	4	3,986,238	25	1	12,185,820
13	10	8,613,660	Total	160	147,214,785

Land value estimate

5.7.49 The contracted land value, as per the deed entered into by Government and the dbSG on 1 February 2017, was of €59,089,277. This value was based on the following components:

- a. capitalisation of ground rent payments to Government for the part of the hotel and mall ground rents, as well as the non-redeemable portion of the car park ground rent, calculated as follows:

$$€1,562,509 \text{ per annum} - €1,169,579 \text{ per annum} = €392,930 \text{ per annum}$$

This amount was capitalised at 3.5 per cent and yielded a value of €11,226,571;³²

- b. conversion of the title, from temporary to perpetual emphyteusis, based on the residence/office rate of €167 per square metre of net floor area (35,910 square metres) and at €33 per square metre of parking space (15,120 square metres), resulting in an estimated value of €6,495,930;³³
- c. redemption of the perpetual emphyteusis burdening the property at five per cent, estimated at €23,391,580;³⁴ and
- d. cash consideration payable on the transfer of the title of land, amounting to €17,975,200 and consisting of the payment of the €15,000,000 premium that was to be paid over a period of seven years, together with duty payable according to the Duty on Documents and Transfer Act amounting to €2,975,200.³⁵

³² €392,930 per annum x 100/3.5 = €11,226,571

³³ (35,910m² x €167/m²) + (15,120m² x €33/m²) = €6,495,930

³⁴ €1,169,579 per annum x 100/5 = €23,391,580

³⁵ The summation of 5.7.49 (a) to (d) results in a total of €59,089,281, which difference to €59,089,277 was considered immaterial by the NAO.

The elimination of stamp duty, for purposes of comparison with the NAO's valuation, resulted in a ground rent-based land value of €56,114,077.

5.7.50 The NAO revised the ground rent-based land value to reflect the Office's calculation of the areas corresponding to certain elements of the project. A notable revision was made with respect to the residential and office component, which area was increased from 35,910 square metres to 37,315 square metres. This resulted in an additional ground rent-based land value of €234,635. However, this increase was mitigated by a decrease in the net floor area allocated for parking intended for residential and office use, from 15,120 square metres to 11,309 square metres. This decrease was driven by a revised net floor area for each parking bay and not a decrease in the number of parking bays. The effect of this revision was a decrease of €125,763 in the ground rent-based land value. These two revisions would have resulted in a net increase of €108,872. When one considers the other elements of the ground rent-based land value, the value established by the NAO utilising the rates cited in the contract was €56,219,345.

5.7.51 The ground rent-based land value for 2016 established by the NAO as €56,219,345 was compared to the residual method of valuation. The residual method, as determined by this Office for 2016, resulted in a value of €67,572,519. To arrive at this valuation, the NAO established a market value of the completed project components, set at €414,751,095, from which development costs of €335,160,643 were deducted. This yielded a residual value for land in three and a half years' time of €79,590,452, which when discounted at a rate of 5.5 per cent to account for a selling period of one and a half years generated a vacant land value as at 2016 of €73,448,390. The deduction of relevant stamp duty and contract fees resulted in a total land value of €67,572,519 (Figure 109 refers).

Figure 109: Residual method of valuation, 2016

	Units	Quantity	Rate (€)	Estimated value(€)
Market value				
Hotel development	rooms	370	259,459.46	96,000,000
Residential tower block	number	209	845,451.40	176,699,343
Shopping mall ¹	m ²	17,860	325.00	95,485,281
Office space ¹	m ²	2,700	335.00	14,879,221
Car spaces	number	1,239	22,750.00	28,187,250
Sub-total				414,751,095
Development costs				
Demolition	m ³	33,000	10.00	330,000
Excavation	m ³	320,001	15.00	4,800,015
Construction	m ²	189,979	276.97	52,618,428
Finishes excl. hotel room furniture	m ²	189,979	267.12	50,746,903
Façade – hotel and tower block	m ²	44,558	229.05	10,205,959
M&E works	m ²	189,979	184.17	34,989,030
Sub-total				153,690,335
Professional fees @ 12.5%				19,211,292
Sub-total				172,901,627

Figure 109: Residual method of valuation, 2016 cont...

VAT @ 18%				31,122,293
PA levy ²	m ²	189,979	8.89	1,688,043
Sub-total				205,711,963
Contingency sum – 10%				20,571,196
Sub-total				226,283,159
Interest costs @ 5.5% and half 3.5 years ³				21,779,754
Estate agent fees @ 3.5% of market value				14,516,288
Developers profit @ 17.5% of market value				72,581,442
Total development costs				335,160,643
Residual value for land value in 3.5 years' time				79,590,452
Vacant land value 2016 ⁴				73,448,390
Less stamp duty and contract fees				5,875,871
Total land value				67,572,519

Notes:

1. It is to be noted that the estimated value for the shopping mall and office space components is not arrived at through multiplication of the quantity and rate.
2. The PA levy rate was averaged between the commercial and residential development.
3. Interest costs were calculated by applying a rate of 5.5 per cent to the development costs, including contingency fees, for half the development period taken as three and a half years.
4. Vacant land value as at 2016 was established by applying a 5.5 per cent discount rate to the three and a half years development period and the one a half year selling period.

5.7.52 The NAO revised its valuation to reflect the extent of development as approved by the PA in 2018. To this end, the Office determined the ground rent-based land value through the application of the parameters set out in the deed. The ground rent-based land value as at 2018 was established as €44,631,877. This was arrived at by considering the following elements:

- a. a premium of €15,000,000 payable by the dbSG over a period of seven years;
- b. conversion from temporary to perpetual emphyteusis of the residential component of the project, which area was reduced to 23,928 square metres following a reduction in the scale of the project and revisions relating to service shafts. Applying a rate of €167 per square metre resulted in a value of €3,995,976. Similar reductions were effected with respect to the parking element, reduced to 6,880 square metres and resulting in a value of €237,600;
- c. the downsizing of the project resulted in a revision to the ground rent payable to Government, originally set at €1,170,000. This was reduced to €773,855 per annum.³⁶ Capitalisation of the per annum ground rent charge at five per cent yielded a value of €15,477,114; and
- d. for the hospitality and retail elements of the project, the ground rent was reduced in direct proportion to the percentage downsizing of the area. From the 2016 proposal to the project approved in 2018, the percentage reduction was of 11.5 per cent. This factor was applied to the ground rent payable for the hospitality and retail section, resulting in a per annum charge of €347,241.³⁷ When capitalised at a rate of 3.5 per cent, the value arrived at was €9,921,186.

³⁶ $((23,928\text{m}^2 \times \text{€}31.72/\text{m}^2) + (7,200\text{m}^2 \times \text{€}2/\text{m}^2) / (35,910\text{m}^2 \times \text{€}31.72\text{m}^2) + (15,120\text{m}^2 \times \text{€}2/\text{m}^2)) \times \text{€}1,170,000 \text{ per annum} = \text{€}773,855 \text{ per annum}$

³⁷ $\text{€}392,509 \times 0.885 = \text{€}347,241 \text{ per annum}$

5.7.53 In determining this valuation, it was assumed that all ground rent would be redeemed immediately. Given that this scenario is unlikely, and that the ground rent is revisable upwards every five years, income to Government from ground rent would be expected to increase.

5.7.54 The ground rent-based land value for 2018, established by the NAO as €44,631,877, was compared to the value as arrived at by applying the residual value method. The land value established by this Office through the residual value method was €45,377,928. This figure was arrived at by considering the market value of the development, established as €410,171,306, deducting development costs of €356,722,806, resulting in a residual value for land in three and a half years' time of €53,448,500. When adjusting for a selling period of one and a half years through the application of a discount factor of 5.5 per cent and deducting stamp duty and contract fees, the land value as at 2018 was €45,377,928 (Figure 110 refers).

Figure 110: Residual method of valuation, 2018

	Units	Quantity	Rate (€)	Estimated value (€)
Market value				
Hotel development	rooms	359	285,515.32	102,500,000
Residential tower block	number	160	920,092.37	147,214,779
Shopping mall	m ²	14,397	475.00	124,337,727
Car spaces	number	1,422	25,400.00	36,118,800
Sub-total				410,171,306
Development costs				
Demolition	m ³	33,000	15.00	495,000
Excavation	m ³	402,075	25.00	10,051,879
Construction	m ²	171,079	382.50	65,437,905
Finishes	m ²	171,079	306.39	52,416,336
Façade	m ²	30,300	229.73	6,960,720
M&E works	m ²	171,079	237.62	40,652,057
Sub-total				176,013,897
Professional fees @ 12.5%				22,001,737
Sub-total				198,015,634
VAT @ 18%				35,642,814
PA levy ¹	m ²	171,079	8.28	1,417,259
Sub-total				235,075,708
Contingency sum – 5% ²				11,753,785
Sub-total				246,829,493
Interest costs @ 5.5% and half 3.5 years ³				23,757,339
Estate agent fees @ 3.5% of market value				14,355,996
Developers profit @ 17.5% of market value				71,779,979
Total development costs				356,722,806
Residual value for land value in 3.5 years' time				53,448,500
Vacant land value 2018 ⁴				49,323,835
Less stamp duty and contract fees				3,945,907
Total land value				45,377,928

Notes:

1. The PA levy rate was averaged between the commercial and residential development.
2. The difference in percentage for contingency is due to the fact that 2016 development was based on artistic impressions while that of 2018 was based on actual plans.
3. Interest costs were calculated by applying a rate of 5.5 per cent to the development costs, including contingency fees, for half the development period taken as three and a half years.
4. Vacant land value as at 2018 was established by applying a 5.5 per cent discount rate to the three and a half years development period and the one a half year selling period.

5.7.55 In determining the payable consideration, the deed entered into by Government and the dbSG specified that the total value of the development was to be adjusted by the Immovable Property Price Index. Between 2016, that is, the date of the deed, and 2018, the date of planning approval, the Index increased by 11 per cent, from 159.88 to 177.28. Applying this increase to the rates established in the deed with respect to the development resulted in a total value of €44,274,098 (Figure 111 refers).

Figure 111: Total value as per provisions of the deed, 2018

Component	Area (m ²)	Rate (€)	Total (€)
Residential	24,778	1,387.50	34,379,475
Retail	18,069	360.75	6,518,392
Hotel	60,833	55.50	3,376,232
Total			44,274,098

5.7.56 According to the deed, the payable consideration was to be determined by deducting the capitalisation of ground rent, the conversion from temporary to perpetual emphyteusis, the redemption of perpetual ground rent and the premium payable from the total value. Applying the revised figures arrived at by the NAO through the application of the parameters established in the deed, adjusted to the project's approved extent, resulted in a consideration of €357,778 payable by Government to the dbSG (Figure 112 refers).

Figure 112: Payable consideration as per provisions of the deed, 2018

$$PC = TV - (COGR + COTP + ROPG + PPC)$$

$$PC = \text{€}44,274,098 - (\text{€}9,921,186 + \text{€}4,233,576 + \text{€}15,477,114 + \text{€}15,000,000)$$

$$PC = \text{-€}357,778$$

Valuation of the site with no restrictions on use

5.7.57 An alternative scenario considered by the NAO in its valuation of the site was based on its sale as plots. Site B had a total area of approximately 18,500 square metres with a limit for development of four floors and a semi-basement, which when considering the relevant planning policies equated to six floors and a penthouse per plot. For the purpose of establishing value, this Site was divided into 65 plots of approximately 250 square metres with a common plot street frontage of six metres. Those at shorter depths were allocated a wider frontage not exceeding 10 metres to obtain a plot area of between 200 and 250 square metres. Each plot was reduced by a further three metres, which set-back allowed for a front garden. A backyard in excess of six metres was also factored. To create a practical scenario, part of the site was allocated to circulation space and internal site access, which accounted for approximately 2,800 square metres of the site.













- 5.7.58 In its valuation, the NAO noted the commercial uses of the site which, bounded on four roads, allowed for schools, offices, bars and other uses relating to entertainment. With most plots having sea views, a land rate of €6,250 per square metre, as at 2016, was determined. This resulted in a value of €1,500,000 per plot. Applying this rate to the 65 plots allowed for on Site B provided an overall value of €97,500,000.
- 5.7.59 On the other hand, with a total area of 5,536 square metres, Site A had limited development potential. Considering the restrictions in place, a rate of €1,500 per square metre was estimated for this site. This resulted in a total value of €8,304,000.
- 5.7.60 Combining the values obtained with respect to Site A and Site B resulted in a total land value of €105,804,000. While disposing of the sites in this manner would have realised greater revenue to Government, the NAO acknowledges that the restrictions imposed by Government on the site, to fulfil economic objectives, were justifiable. Furthermore, the disposal of the site as a whole allowed for its holistic development.

5.8 Summary of the valuation

- 5.8.1 In conclusion, the NAO established that the value determined for the site through the 2016 deed entered into between Government and the dbSG, that is, €56,114,077, varied significantly to the €67,572,519 arrived at by the Office. When considering the revisions to the project approved in 2018, the application of the parameters stipulated in the deed resulted in a land value of €44,631,877. The NAO compared this value to that arrived at utilising the residual value method. The land value as at 2018 determined by this Office was €45,377,928. All figures cited are exclusive of stamp duty and duty on documents. The significant downsizing in the extent of the development resulted in revisions to the payable consideration, with the application of the parameters stipulated in the deed resulting in a charge of €357,778 payable by Government to the dbSG.
- 5.8.2 Comparison of the value of the land determined by the NAO as at 2016, the time of the signing of the deed, with that as at 2018, the point of approval by the PA, resulted in a decrease in value of approximately €22,000,000. The factors that contributed to this reduction were primarily a decrease in market value resulting from the downsizing of the project and a substantial increase in development costs of €22,000,000 despite the reduction in the scope of the project (Figure 113 refers).

The disposal of the site formerly occupied by the Institute of Tourism Studies

Figure 113: Comparison of the residual value of the land arrived at by the NAO, 2016 & 2018

	2016 (€)	2018 (€)	Variance (€)	
 Market Value	414,751,095	410,171,306	-4,579,789	
 Development Costs	335,160,643	356,722,806	21,562,163	
 Resident Value for land value in 3.5 years' time	79,590,452	53,448,500	-26,141,952	
 Vacant Land	73,448,390	49,323,835	-24,124,555	
 Less Stamp duty & contract fees	5,875,871	3,945,907	-,1929,964	
 Land Value	67,572,519	45,377,928	-22,194,591	

Chapter 6

The relocation of the Institute of Tourism Studies

6.1 Government's plans for the relocation of the Institute of Tourism Studies

6.1.1 The relocation of the ITS represents a major project, evident in terms of the pivotal role fulfilled by this educational institution in the tourism sector and the substantial disbursement envisaged. Notwithstanding this, difficulties arise when seeking to establish a clear understanding of developments that led to the decision to relocate the Institute. Key limitations in this difficulty relate to the following:

- a. no reference to the relocation of the Institute was recorded in any of the minutes of meetings held by the ITS BoG prior to the announcement in the 2016 Budget. This was further confirmed by the frustration expressed by members of the Board who indicated that they had not been informed of developments;
- b. while the Chair ITS BoG and the CEO ITS indicated an element of involvement in the relocation of the Institute, based on their testimony, the NAO established that their role was limited to aspects of relevance after the decision to relocate had already been taken;
- c. a report, titled 'Institute of Tourism Studies Strategic Report 2015-2020', drawn up by a third party and provided to the NAO by the ITS made no reference to limitations faced by the Institute in terms of its premises or plans to relocate the Institute despite that the Report was drawn up a few months prior to the announcement of the Institute's relocation in the 2016 Budget;
- d. no reference to the need to relocate the ITS was made in the National Tourism Policy 2015-2020, which policy was issued in early 2015, that is, six months prior to the announcement of the Institute's relocation in the 2016 Budget;
- e. while the former Minister for Tourism indicated that he was involved in the relocation of the ITS, the NAO was not provided with any documentation that evidenced the involvement of the MOT or any of the Ministry's entities in this respect;
- f. similarly, although the PS MOT stated that it had long been Government's intention to develop a new campus for the ITS, no documentation or reports that supported Government's decision to relocate the ITS were provided;

- g. the OPM maintained that it had no records relating to the relocation of the ITS or the disposal of the site occupied by the Institute, understood by the NAO as indicating no involvement of the OPM in the decision-making process, contradicting testimony by the Chair ITS BoG and the CEO ITS indicating the involvement of the Prime Minister and the former Minister for Tourism; and
- h. no reference to the relocation of the ITS and the disposal of the site could be traced in Cabinet minutes held prior to the issue of the RfP in November 2015, implying that such matters were not discussed at Cabinet.

6.1.2 These limitations render evident the critical gaps in the decision-making process that should have initiated the process of relocation of the ITS. This failure in governance rendered the identification of what planning was undertaken, when it commenced and by whom, obscure, precluding the Office from establishing a clear understanding of events leading to the relocation. Irrespective of these limitations, the contract for the disposal of the site signed by Government with the dbSG on 1 February 2017 inevitably led to the urgent need for alternative premises to house the ITS. This sense of urgency emanated from the obligation imposed on the ITS to vacate the premises by 30 June 2017, despite provisions in the deed that allowed for the postponement of the Institute's relocation.

6.1.3 The NAO traced the first public reference to the relocation of the ITS to the budget document for 2016, published on 12 October 2015, wherein a 'new' ITS was listed as one of Government's initiatives in education and training. The budget for 2016 provided for the building of a new ITS campus in Smart City, through an investment of €56,000,000. Aside from the debate in the plenary sittings of the House during which the 2016 budget measures were discussed and approved, the NAO did not find evidence that Parliament was otherwise informed of the details regarding this project. The only glimpses into Government's planning considerations with respect to the relocation of the ITS are captured in the following paragraphs.

6.1.4 In a parliamentary question dated 23 December 2015, the former Minister for Tourism was requested to explain the comprehensive plan for the ITS, referral to which was made in the budget speech for 2016. In the House sitting of 20 January 2016, the former Minister explained that, following an evaluation of the situation of the ITS, Government had formulated a plan for the much-needed investment in a new campus. The main elements of the plan were the:

- a. relocation of the Institute from St George's Bay, St Julian's to Smart City in Kalkara;
- b. development of an all-inclusive state-of-the-art campus for tourism and hospitality;
- c. complete revision of the academic programmes, primarily revisions in the content, level and extent of the programmes offered by the ITS;

- d. improvement in the level of educational programmes offered, from the MQF level 5 (Diploma) to the MQF level 7 (Masters); and
 - e. formulation of strategic alliances with internationally renowned schools in hospitality management.
- 6.1.5 An element of corroboration of that stated by the former Minister of Tourism was provided by the Chair ITS BoG, who informed the NAO that he had been approached by the MOT towards September 2014 to assist in the design of a new ITS campus at Smart City. Despite statements made, no documentation was provided to the NAO.
- 6.1.6 On 8 January 2016, through another parliamentary question, the former Minister for Tourism was requested to provide a timeline for the migration of the ITS from St Julian's to Smart City. During question time of the House sitting of 20 January 2016, the former Minister informed Parliament that Government was in an advanced stage of the planning process for this migration and that further details would be provided on completion of the plan.
- 6.1.7 Another parliamentary question was put to the former Minister for Tourism on 28 October 2016, wherein enquiries were made as to when the new campus in Smart City was to open and whether the Ministry for Education or the MOT were considering a temporary location to house the ITS until the Smart City project was completed. In reply, on 1 November 2016, the former Minister stated that until the finalisation of the Smart City project, the Institute was to remain operating from its existing location, and therefore, there was no need for alternative temporary premises for the Institute.
- 6.1.8 A more definite completion date was given during the House sitting of 20 December 2016 in reply to another parliamentary question. According to the former Minister for Tourism, the new ITS campus in Smart City was planned to be completely functional by 2019, that is, when the Institute was to cease operations from its location in St Julian's. The NAO noted that this was inconsistent with the provisions of the contract entered into between the CoL and the dbSG, signed only weeks later on 1 February 2017, wherein it was stipulated that the site occupied by the ITS was to be vacated by 30 June 2017.
- 6.1.9 Also contradictory was the reply by the PS MOT to queries made by the NAO regarding the relocation of the ITS. When queried in this respect, the PS MOT stated that following the announcement by Government in 2015, preparatory work, including academic and structural plans, commenced immediately; however, due to the complexity of the project, it was immediately evident that until the move to Smart City, the ITS required a temporary, albeit suitable, location. Nonetheless, that stated by the PS MOT was not corroborated by documentary evidence. In fact, in its review of the documentation made available, this Office did not note any correspondence informing the ITS of the need to relocate to a temporary location until the completion of the Smart City campus. Given this incongruity, the NAO again sought the views of the PS MOT. He explained that the move to Smart City took longer than

expected, and the delay, compounded by the limited facilities and the expansion of the ITS, exacerbated the need to look for other premises.

- 6.1.10 Although the contract entered into on 1 February 2017 stipulated that the site be vacated by the Institute by 30 June 2017, the minutes of the ITS BoG meeting dated 27 February 2017 indicated that according to Projects Malta Ltd and BEAT Ltd, who were managing the project, the migration date was October 2019. The NAO understood this incongruence in terms of when the site was to be vacated as indicative of poor planning, casting doubt on whether the relocation was driven by the priority to dispose of the site.
- 6.1.11 Concerns regarding the relocation were expressed by the ITS BoG in a meeting dated 24 April 2017. Recorded in the minutes of this meeting was that the Board became aware of the planned works by the dbSG, reportedly scheduled for September 2017, through the press. Also noted in the minutes was that Projects Malta Ltd had confirmed that the Smart City project would not be complete by August 2019. The Board indicated that an alternative location was to be identified by Projects Malta Ltd if the dbSG commenced works. The CEO ITS informed this Office that the Institute had raised concern that progress on the Smart City project was lagging and that new premises were imminently required for the ITS.
- 6.1.12 The next reference to the relocation of the ITS was made in the meeting of the ITS BoG of 10 August 2018, which interestingly was held at the Luqa campus. In the interim, the NAO traced no reference to the drastic changes that had taken place with respect to that originally planned. The original plan was that the ITS would relocate to Smart City. The contract stipulated June 2017 as the date by when the Institute was to vacate. Moreover, the statement to Parliament by the Minister of Tourism in December 2016 supported this relocation to Smart City, which fact was later restated by the ITS BoG after the signing of the contract. However, the NAO's review of the minutes of the ITS BoG meetings provided no information or insight regarding the change in target date for relocation and the emergence of the need for a temporary premises.
- 6.1.13 An element of explanation was provided by the CEO ITS, who informed the NAO that, for a period, the ITS BoG had not been constituted. By means of background, the members of the ITS BoG had, at the time, tendered their resignation following the announcement of the general election in May 2017. Notwithstanding this, the CEO ITS indicated that the Minister for Tourism had instructed him to continue working on the relocation process.
- 6.1.14 Additional context was provided by the PS MOT, in queries submitted by the NAO that sought to determine when the ITS BoG was informed of developments. The PS MOT stated that the original plans were that the ITS would continue to operate from its premises in St Julian's until the planned move to Smart City in 2019. However, the move to Smart City took longer than expected, which delay, compounded by the limited facilities and the need for expansion of the campus, exacerbated the need to identify other premises. The PS MOT maintained that this was not a matter of the ITS being informed but more of a case of matters evolving in parallel with the Smart City project.

6.1.15 An element of that stated by the PS MOT was corroborated by the former Executive Chair Projects Malta Ltd, who maintained that there were many unknowns and significant uncertainty as to whether the Smart City campus would be completed as planned for the ITS' move from St Julian's.

6.2 Temporary Relocation to Luqa

6.2.1 Queried with regard to the temporary relocation of the ITS to Luqa, the PS MOT stated that, at the time, the Institute was rapidly expanding and was embarking on various projects with foreign institutions that were to result in a significant increase in the number of third-country students at the Institute. With this in mind, various options were explored and it was concluded that the offices in Luqa, previously occupied by Air Malta, were the best option as a temporary location to house the ITS. According to the PS MOT, the campus in Luqa covered a floor area that doubled that of the Institute's St Julian's and Pembroke campuses. The PS MOT maintained that, given the issues of limited space that the ITS was facing and the anticipated influx of foreign students, it was decided that the temporary campus in Luqa be adapted to include eight additional classrooms, three extra laboratories, three supplementary kitchens and an increase of 25 per cent in office space. Moreover, the ITS MLK campus in Pembroke was to be transferred to the premises in Luqa. The PS MOT added that this temporary move enabled the Institute to carry out its operations effectively until the relocation to Smart City.

6.2.2 This was confirmed by the CEO ITS in reply to queries made by the NAO. According to the CEO ITS, the Institute had embarked on a plan to build up the human capital and to develop the curriculum both horizontally and vertically. In fact, in 2017, the ITS launched new courses, up to MQF level 6, that had till then not been offered by the Institute. Through agreements signed with international institutions, the ITS aimed to attract foreign students to study in Malta who would hopefully be retained in the local tourism industry which was facing acute shortages in terms of manpower. Notwithstanding these efforts, the ITS campuses in St Julian's and Pembroke were already small for its operations and were restricting the possibility of growth without jeopardising standards in terms of quality. In fact, larger premises were needed for the planned academic developments. According to the CEO ITS, the Institute was already reaching the targets set for 2021, that is, when the ITS was to have started operating from Smart City.

6.2.3 The NAO sought to ascertain whether that stated regarding the enhanced facilities that were to be available at Luqa with those extant at the ITS campuses in St Julian's and Pembroke, was realised. To this end, queries were made with the CEO ITS wherein it was confirmed that aside from an increase in terms of the number of classrooms, laboratories, kitchens, offices and stores, among others, the new facilities at Luqa were more accessible and better equipped. In this regard, the CEO ITS referred to the installation of fire-detection systems, a robust IT infrastructure, and improved amenities including library facilities, outdoor recreational areas, canteen and student facilities, as well as a large assembly hall.

- 6.2.4 This Office also sought to establish who was responsible for the selection of the temporary premises in Luqa and whether other options were considered. In a meeting held with this Office, the CEO ITS explained that an evaluation of alternative temporary locations to house the ITS was undertaken between June and August 2017. During this process, several government-owned premises were visited. The CEO ITS indicated that the sites considered in this respect included the former military hospital in Mtarfa, the former Umberto Colosso trade school at St Venera and the White Rocks complex. However, according to the CEO ITS, none were deemed adequate in terms of the Institute's requirements, as well as other constraints relating to costs, condition and timeframes. The PS MOT stated that, following the consideration of alternative sites by the ITS, the selection of the temporary premises at Luqa was taken by Government through the MOT.
- 6.2.5 In the review of Projects Malta Ltd mailboxes, the NAO noted a draft memorandum to Cabinet dated September 2017 from the Minister for Tourism regarding the temporary relocation of the ITS. It was acknowledged that, due to circumstances beyond the control of Government, the renunciation of the Smart City land was considerably delayed, which bore impact on the permanent relocation of the ITS and resulted in the Institute's failure to vacate the St Julian's site. Reference was made to meetings held at the OPM and the MOT, during which the agreements that the dbSG had already entered into with third parties to commence development of the St Julian's site were brought to Government's attention. It was in this context that Government had directed Projects Malta Ltd to identify vacant government property that could temporarily house the ITS for a period not exceeding two years. Noted in the draft memorandum was a shortlist of the various options considered, namely, the White Rocks complex, the former military hospital at Mtarfa, the former Floriana trade school, the former Umberto Colosso trade school, a football ground annexed to Santa Klara School and a vacant site behind MLK.
- 6.2.6 The criteria of assessment for the identified sites, as cited in the draft memorandum, were the:
- a. general condition of the building;
 - b. suitability for the intended purpose, including current government commitments with respect to the sites;
 - c. location and accessibility; and
 - d. other technical criteria, such as completion by December 2017, size and conversion cost.
- 6.2.7 Following due consideration, the Mtarfa site was identified as the most suitable alternative. Noted in the draft memorandum was that the site offered the required space to allow for the immediate expansion of the ITS and the MLK campus, particularly in view of the Institute's planned strategic collaboration with other institutions. Also noted was that the structural condition of this property was generally good and allowed for fast conversion since no major works were necessary. However, it was acknowledged that the site was subject to an RfP,

which was yet to be published, for the setting up of an international school. All the other sites had elements of incompatibility with the established criteria. The PS MOT confirmed that the draft memorandum was not presented to Cabinet; however, indicated that the Minister for Tourism had possibly verbally updated Cabinet on the matter. Of note to the NAO was that no reference to the premises in Luqa, to which the ITS eventually relocated to, was made in the draft memorandum.

- 6.2.8 The temporary relocation of the ITS gave rise to additional costs that would otherwise not have been incurred had the Institute relocated directly to the planned permanent premises in Smart City. The PS MOT indicated to the NAO that Government had informed the dbSG that, given that the ITS was to vacate the St Julian's campus prior to the completion of the Smart City premises, the dbSG was to bear the cost of the Institute's temporary relocation from this campus. On the other hand, it was agreed that the ITS would cover the costs related to the relocation of the MLK campus. The PS MOT explained that this was the result of negotiations between Government and the dbSG, and affirmed that the relocation of both campuses to Luqa would facilitate the Institute's operations.

Internal Cost Benefit Study by the Institute of Tourism Studies

- 6.2.9 The NAO sought to establish whether any business plans, proposals and reports were drawn up by the ITS, or others on its behalf, that led to or contributed to Government's decision to relocate the Institute. In reply, the CEO ITS indicated that an internal cost benefit study was conducted to assess the possibility of leasing space in the St Julian's area instead of the relocation to the Luqa premises. This study was conducted internally in mid-2017.
- 6.2.10 According to the study, the Institute would require an area of 8,200 square metres during the following three years to be able to cater for the additional demands. This represented a substantial increase of 3,700 square metres over the 4,500 square metres available at the Institute's St Julian's and Pembroke campuses. Although the projected increase in student population partly justified the need for additional space, the NAO was not provided with a detailed analysis of how the Institute's requirements were established. Coincidentally, the dimensions of the Luqa site tallied with that required by the ITS, with these offices measuring a total area of 8,238 square metres.
- 6.2.11 For the purpose of the cost benefit study, the ITS estimated a minimum rental cost in St Julian's of €350 per square metre. Therefore, the Institute reasoned that to cater for the additional demand of 3,700 square metres, the ITS would incur a cost of at least €1,300,000 annually. On the other hand, the ITS estimated the total cost of conversion for the Luqa premises at approximately €5,500,000. Of the total area, approximately 6,070 square metres were to be converted by the dbSG at a cost of €4,000,000, while the remaining 2,168 square metres were to be converted by the ITS at an estimated cost of €1,500,000. These estimates were arrived at by the dbSG and by Projects Malta respectively. In the cost benefit exercise undertaken by the Institute, the Luqa premises were to be leased at a cost payable to Malta Industrial Parks Ltd of €500,000 per annum.

- 6.2.12 The ITS calculated the incremental costs that would be incurred for the two scenarios, that is, moving to Luqa or renting additional space in St Julian's. The estimation of relocation to Luqa comprised consideration of the cost of conversion as well as the annual rent payable to Malta Industrial Parks Ltd for the period 2018 to 2022, which cost amounted to €3,447,000. On the other hand, the Institute's estimation of the incremental cost to be incurred for the rental of additional space in St Julian's for the same period amounted to €5,180,000.
- 6.2.13 Based on the cost benefit study undertaken, the CEO ITS concluded that it was more feasible to temporarily relocate the Institute to Luqa rather than lease other premises in St Julian's due to the increased costs that would have to be incurred in the latter option. Apart from cost considerations, the ITS was aware of the difficulty in identifying appropriately sized premises in St Julian's to cater for the needs of the Institute. In addition, CEO ITS argued that the lease of another location in St. Julian's would have further fragmented the management and operations of the Institute, negatively impacting the already difficult situation faced by the ITS due to having separate campuses in St Julian's and Pembroke. According to the CEO ITS, the option of moving to Luqa afforded the possibility to have all students in one campus while providing the additional space required. Moreover, through the interim move to the Luqa campus, the Institute could commence honouring its contracts with international institutions, namely, the Institute Paul Bocuse, Haaga Helia University of Applied Sciences and the Emirates Academy of Hospitality Management.

Agreements governing the temporary relocation to Luqa

- 6.2.14 The temporary relocation of the ITS was governed by a side letter between Government and the dbSG, and an agreement between the ITS and the dbSG dated 30 November 2017 and 20 December 2017, respectively.

The side letter between Government and the dbSG

- 6.2.15 A side letter between the Minister for Tourism, on behalf of Government, and the dbSG was signed on 30 November 2017. According to the side letter, the dbSG was identified as the preferred bidder in terms of the RfP and was invited to enter into negotiations with Government. Following negotiations, the parties had agreed on the terms that were to regulate their relationship by means of a deed signed on 1 February 2017. In view of this, the parties subsequently entered into discussions on the relocation of the ITS sited at St Julian's to an alternative site in Luqa. Consequently, through the side letter dated 30 November 2017, it was agreed that:
- a. the dbSG was obligated to make good all the costs necessary for the relocation of the ITS St George's Bay campus to the offices in Luqa; and
 - b. the parties were obligated to agree on the designs of the site in Luqa, which were to include all the facilities available at the St George's Bay ITS campus. The responsibility for

the implementation of this clause was put on the CEO ITS who was to label, on site plans, all the obligations that the dbSG was responsible to upgrade and relocate.

- 6.2.16 It was further agreed that the dbSG would only be responsible for costs to relocate the ITS on an 'as is' basis. Any additional requirements relating to the upgrading of the facilities, if authorised, were to be carried out by dbSG; however, these were to be financed by Government. According to the side letter, Government was to be solely responsible for the final certification that the premises in Luqa were adequate for the intended purpose.
- 6.2.17 Through the side letter signed on 30 November 2017 an obligation was created whereby, save for certain provisions, the dbSG was to make good the cost that was to be incurred for the renovation of the Institute's temporary premises in Luqa. This Office sought to understand why the dbSG was required to incur the cost for these works when the delay in the permanent relocation of the ITS to Smart City was not attributable to dbSG. According to the PS MOT, the obligation to pay for the ITS' relocation costs was not attributable to any fault on the part of the dbSG, but was the result of negotiations between the Government and the dbSG. Further elaborating in this respect, the Advisor OPM stated that the dbSG was concerned as to when it would assume vacant possession of the St Julian's site so as to commence works. According to the Advisor OPM, it was more beneficial in commercial terms for the dbSG to undertake part of the relocation of the ITS rather than wait for Government to complete the new campus. This was confirmed by the CEO dbSG, who indicated that the dbSG had offered to cover certain expenses to expedite the ITS' relocation as this was deemed to be of commercial benefit to the dbSG.

Agreement between the Institute for Tourism Studies and the dbSG

- 6.2.18 An agreement was signed on 20 December 2017 between the CEO ITS, on behalf of the Institute, and the dbSG. According to this agreement, following the side letter dated 30 November 2017, the dbSG entered into certain obligations with Government for the relocation of the ITS campus in St Julian's to the premises in Luqa. The side letter provided for the obligations that were to be borne by the dbSG in terms of site plans that were to be agreed with the CEO ITS. This agreement established in more detail the obligations of the parties and delineated the areas which the dbSG and the ITS were to be responsible for.
- 6.2.19 Plans attached to the agreement were colour-coded to reflect the party responsible for the refurbishment of the different areas. Regarding the construction of additional areas, actual construction works were to be carried out by the ITS; however, the dbSG was responsible for the finishing, relocation and the installation of equipment and furniture.
- 6.2.20 The agreement specified that the works to be carried out by the dbSG were to achieve a minimum level of finish, as was present at the ITS premises in St George's Bay; on the other hand, any further improvements to the facilities were to be at the sole expense of the ITS. According to the agreement, the ITS could, at its own discretion, engage the dbSG to carry out

certain works provided that payment for any additional works carried out was effected under the same terms and conditions as agreed with the dbSG's sub-contractors.

- 6.2.21 According to the agreement, the dbSG was to forward an estimate, by not later than 31 December 2017, of the costs involved to complete the works. An official offer was to be submitted once the dbSG negotiated the best prices for the works under consideration. The agreement further stipulated that the ITS was to issue definitive instructions to the dbSG by not later than 10 working days from the receipt of the official offer.
- 6.2.22 The agreement provided a list of items that were specifically excluded from the works to be carried out by the dbSG, unless instructed by the ITS. This included works relating to the emergency stairs, fire compartments and fire-doors, ventilation, ramps and restrooms for persons with a disability, CCTV, fire detection and fire-fighting systems, apertures or aperture modifications, extraction systems of kitchens not present at the ITS campuses in St Julian's and Pembroke, as well as lifts.

Completion of works and costs incurred

- 6.2.23 According to certification provided, the final electrical installation completion certificate indicated that works were completed on 16 October 2018. The conclusion of works tallied with that discussed during the meeting of the ITS BoG held on 10 August 2018, wherein the Board authorised the dbSG to remove the water and electricity meters from the St George's Bay campus, implicitly signifying the end of operations from this site. In addition, the Board agreed that the ITS was to request the installation of new meters at the Luqa campus, conversely signifying the start of operations from this campus.
- 6.2.24 In this context, academic year 2018/2019 represented the first year of operation of the Institute from its campus in Luqa. Of note is the fact that the MLK campus was returned to the Ministry for Education and Employment, with the functions previously undertaken at this campus integrated with the Luqa campus.
- 6.2.25 During a meeting held on 10 August 2018, the ITS Board of Governors was briefed on the migration of the campus to Luqa. During this meeting, the CEO ITS informed the ITS BoG that the cost of the migration to Luqa amounted to approximately €5,000,000,³⁸ of which €1,500,000 were borne by the Institute and the remaining expensed by the dbSG. In addition to the update provided regarding the Luqa campus, the Board was informed that the dbSG had offered to transfer the MLK campus for a cost of €2,000,000; however, the Institute had not accepted this offer. Instead, the ITS assumed responsibility for undertaking this relocation, registering savings of €500,000 that were then invested in two new kitchens and other equipment at the Luqa campus. When queried as to why the cost of the relocation of the MLK campus was not included as part of the negotiations with the dbSG, the PS MOT stated that the dbSG was only involved in matters relating to the relocation of the St Julian's campus, as this corresponded to the site that was to be acquired.

³⁸ The NAO noted that the minutes of the meeting of the ITS BoG were inconsistent when citing the cost of the migration, citing €4,500,000 and €5,500,000. Clarifications sought from the CEO ITS proved inconclusive.

6.2.26 Based on documentation provided by the ITS, the NAO established that the cost incurred by the Institute for the refurbishment of the Luqa campus was approximately €2,000,000. Of the actual costs incurred, approximately €1,100,000 in procurement were effected through competitive processes, while €900,000 worth of works and supplies were sourced through direct contracts. The PS MOT and the Executive Chair Projects Malta Ltd informed the NAO that Projects Malta Ltd assisted the ITS with the Institute's temporary relocation, mainly through the coordination of certain procurement.

6.2.27 Following the completion of the works at the Luqa campus, an agreement was entered into between the ITS and Malta Industrial Parks Ltd on 3 October 2018. In terms of this agreement, the premises were temporarily allocated to the Institute on a month-to-month basis commencing from the date of the contract. Both parties agreed that this occupation was subject to a monthly encroachment fee of €37,799 excluding VAT, thereby amounting to an approximate annual charge of €454,000 excluding VAT.

6.3 The relocation to Smart City

6.3.1 In the Budget speech for 2016, it was indicated that the ITS was to relocate to Smart City from where it was to operate from a new campus. According to the CEO ITS, when the move was announced, work was initiated on two aspects of the project. First, in terms of the design of the campus structure, and second, in terms of capacity through the development of the academic aspect of the Institute. In this regard, the CEO ITS stated that he had sought the input of the ITS staff to ensure that there would be a marked improvement in the facilities of the new campus and avoid any problems that might arise following the eventual relocation.

6.3.2 As indicated in paragraph 2.1.20, a meeting was held at the OPM in August 2015 during which a presentation regarding the proposed campus at Smart City was given. In submissions to this Office, the Chair ITS BoG indicated that, although he was not present for the meeting, he had been heavily involved in the design of the campus, planned in line with the available footprint at Smart City. Although the initial plans for the permanent relocation of the ITS to Smart City contemplated migration by 2019, these plans were later revised to 2021. Nonetheless, documentation reviewed by the NAO indicated that further revisions to the planned relocation were necessary. In fact, in a meeting with this Office, the Chair ITS BoG stated that no fixed date had, as yet, been set for the permanent move. It must be noted that reference to the Chair ITS BoG in fact denotes the former Chair of the Institute, who resigned from post in July 2017.

6.3.3 According to documentation reviewed by the NAO, on 10 November 2015, that is a few days prior to the publication of the RfP, Projects Malta Ltd engaged Beat Ltd to provide project management services for the ITS project at Smart City. According to the CEO ITS, while the ITS had collaborated with Beat Ltd on the project, the Institute's involvement was mainly to supply information related to operational aspects and to ensure that the new plans were in line with the Institute's needs, both present and future, in accordance with the ITS' growth strategy.

6.3.4 In terms of the letter of engagement, the role of Beat Ltd was to provide overall programme and project management support for the ITS project, in line with the requirements of the MOT. The objectives, as stated in the letter of engagement, were to be achieved through the provision of these services, which were to ensure:

- a. that the site on which the new ITS was to be developed was appropriately transferred from Smart City (Malta) Ltd to a special purpose vehicle owned by Government;
- b. that appropriate development permits were issued for the purpose of building the new ITS, the hotel and the supporting infrastructure in line with established design specifications;
- c. that appropriate funding was in place for sustaining the project;
- d. that the development of new infrastructure at Smart City was in line with the requirements of the ITS;
- e. that the vacated site at St Julian's maximised its commercialisation potential subject to the requirements of Government;
- f. the selection of the most appropriate strategic partners and engineering, procurement and construction contractor for the development of the project; and
- g. the smooth transition of the ITS operations from the existing site to the new site in Smart City.

6.3.5 The letter of engagement also provided the specific terms of reference that were to direct Beat Ltd in its engagement, that is to:

- a. provide overall programme leadership for the successful implementation of the programme;
- b. develop and set up an appropriate programme management office that ensured governance;
- c. design and develop an appropriate programme and associated intended business benefits to be achieved;
- d. structure systems and processes for the successful realisation of the intended benefits from the programme;
- e. design and develop the programme blueprint on approval from the Programme Board;
- f. segment the programme into projects with clearly defined time, cost and quality objectives;

- g. develop and lead the process with other project teams to develop project mandates, project briefs and project initiation documents, and work package instructions;
- h. provide support in identifying and selecting appropriate resources to form part of the programme and supporting project teams;
- i. develop and maintain a reporting system to ensure oversight and control over progress achieved;
- j. develop and devise an appropriate system for exception reporting for escalating serious issues during the programme;
- k. report to the Programme Steering Committee on the progress achieved;
- l. develop and maintain an issues log and risk log; and
- m. provide advice and assistance to project managers and work package leaders on issues arising during the programme.

6.3.6 According to the letter of engagement, the project was to be divided in two main phases, comprising a design and mobilisation phase and a construction phase. Government had expressed its desire to complete the design phase in six months and the construction phase in nine months. It was expected that the services of Beat Ltd would be required for the duration of the whole period.

6.3.7 With respect to the resources and fees, Beat Ltd was to assign a Programme Director and a Programme Manager to the project. The Programme Director was to be responsible for the overall management and oversight of the programme, while the Programme Manager was to oversee the day-to-day management activities necessary to achieve the intended objectives. Working days were to be charged at €800 for the Programme Director, while those of the Programme Manager were to be charged at a rate of €600. The project was estimated to require 10 and 14 days of the Programme Director's and Programme Manager's input, respectively, resulting in a monthly fee of €16,400.

6.3.8 In correspondence dated 11 December 2015, the Programme Director Beat Ltd informed officials from the various entities involved in the Smart City relocation project of the appointment of Beat Ltd as overall project managers on behalf of Projects Malta Ltd. These included officials from the MOT, the MEH, Projects Malta Ltd, the Chair ITS BoG, the Advisor OPM, Malita Investments plc³⁹, Nexia BT and the architectural firm engaged in the design of Smart City. According to the correspondence, the project was to be divided into three main parts, that is:

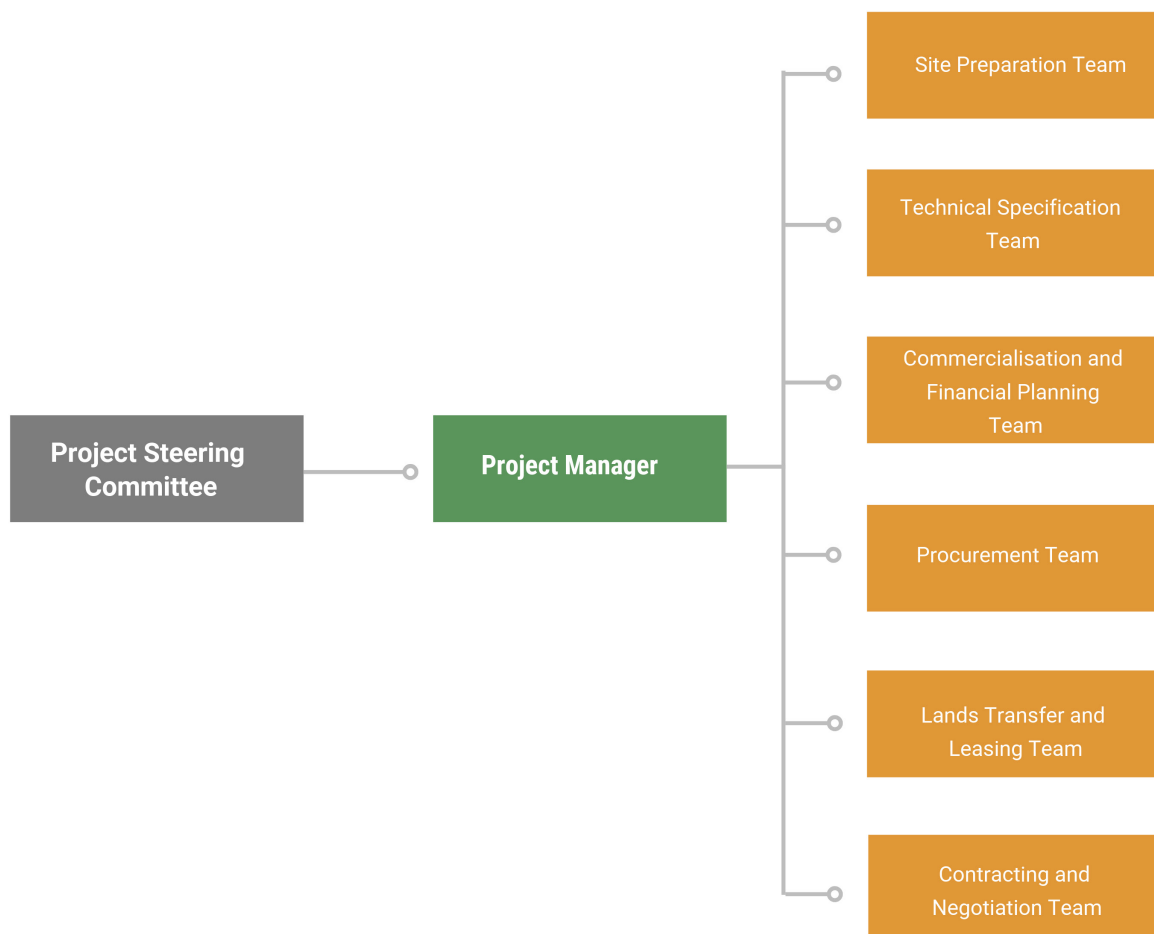
- a. Project 1: the development of a tourism and hospitality campus in Smart City;

³⁹ Malita Investments plc was registered by the Government of Malta to operate on an independent and commercial basis, in an initiative aimed at contributing towards long-term investment development in a partnership between the public and private sectors.

- b. Project 2: the development of a mixed-use hospitality development at the St Julian's site; and
- c. Project 3: the development and certification of the proposed new curriculum programmes and transitioning provisions.

6.3.9 Attached to this correspondence was a project plan and project organisation structure in respect of Project 1, namely, the new campus in Smart City (Figure 114 refers). The Programme Director Beat Ltd requested the addressees to review the plans, following which discussions were to be held regarding the timelines and the tasks involved. He also indicated that he was instructed by the Ministry (understood by the NAO as reference to the MEH) to issue the RfP by the end of January 2016. No further evidence of the work conducted by Beat Ltd was provided to the NAO despite queries submitted to Projects Malta Ltd.

Figure 114: Smart City project organisation structure



6.3.10 The NAO sought to obtain a better understanding of the role that Beat Ltd were to assume in the ITS relocation project. To this end, this Office queried the CEO ITS whether the Institute was aware of Beat Ltd's engagement as overall project managers of the Smart City project, when was the ITS informed of this engagement, and who was the Institute's point of contact with Beat Ltd. According to the CEO ITS, the Institute was aware of the role of BEAT Ltd as overall project managers. Moreover, further to the announcement of the relative measure in the Budget for

2016, the Institute's management was asked for input in relation to the workings for the new campus. The CEO ITS indicated that he was the point of contact between the ITS and Beat Ltd.

6.3.11 Queries were also made to Projects Malta Ltd as to why a third party was engaged to manage the ITS Smart City project in view of the possible overlap between the project management role that Projects Malta Ltd and Beat Ltd had. According to the former Executive Chair Projects Malta Ltd, Projects Malta Ltd did not have the necessary human resources to manage this substantial project; therefore, Beat Ltd were engaged to provide overall programme and project management support for the project.

6.3.12 Given the lack of progress registered to date in terms of infrastructure with regard to the ITS campus in Smart City, the NAO enquired what payments were effected by Projects Malta Ltd to Beat Ltd. According to the Executive Chair Projects Malta Ltd, payments made amounted to €64,900, excluding VAT.

6.3.13 In its review of the Smart City project, the NAO traced other documentation that related to the efforts undertaken by Government to reacquire part of Smart City that was to house the new ITS campus. A memorandum dated 2 February 2017, sent by Malita Investments plc to Malta Government Investments Ltd (MGI), set out the process for this reacquisition. According to the memorandum, the plot of land earmarked for this project, located at Smart City, was to be renounced by Smart City (Malta) Ltd in favour of Government through the Lands Authority. The land was then to be transferred on a freehold basis to the MGI, which in turn was to grant a 45-year temporary emphyteutical grant to Malita Investments plc in return for annual ground rents.

6.3.14 According to the memorandum, the land at Smart City had a footprint of approximately 11,400 square metres and consisted of three adjacent and contiguous plots of land. The proposed project was to have a total built-up area of approximately 44,760 square metres, divided as follows:

- a. academic facilities built over 26,850 square metres, fully equipped with all amenities and with a hospitality and tourism school;
- b. office space of 5,780 square metres to be leased to third parties; and
- c. a 136-room training and teaching hotel of 12,130 square metres that was to be accessible to ITS students for training purposes.

6.3.15 Also indicated in the memorandum was that the project was to be led by Malita Investments plc which, at the time, was seeking financing from the European Investment Bank and the Council of Europe Development Bank. Moreover, Malita Investments plc was to be responsible for the issue of a tender for the various trades required for the project, including civil, architectural, mechanical and electrical works. In the memorandum to the MGI, it was also explained that Malita Investments plc was to enter into a project management agreement with Projects

Plus Ltd (a subsidiary of Projects Malta Ltd), which in turn was to oversee the evaluation and negotiation of the tenders, as well as the relative project delivery.

- 6.3.16 Cited in the memorandum was that the total capital cost of the project was estimated to be approximately €80,000,000, which included preliminary expenses, construction, mechanical and engineering, finishes, furniture, landscaping, equipment and infrastructure, as well as a five per cent contingency. Following the completion of the construction of the campus, Malita Investments plc was to lease the facilities to two public private partnerships, expected to be established between Government and private investors. The private investors were to be selected through an open call for expressions of interest, followed by a request for proposals that was to be published in the OJEU. The leases were to be for a period of 25 years, in return for annual lease payments payable to Malita Investments plc.
- 6.3.17 The two public private partnerships were to be set up for specific purposes. One of the public private partnerships was to be responsible for the leasing and management of the offices, the dormitories, as well as the training and teaching hotel on the campus. This ownership of this partnership was proposed to be 64 per cent in private shareholding and 36 per cent in Government ownership through the MGI. On the other hand, the other public private partnership was to manage and operate the academic facilities of the campus. This partnership was to have 40 per cent in private ownership, while 60 per cent was to be Government-owned through the ITS. No other details regarding the way forward were indicated in the memorandum.
- 6.3.18 The NAO also traced documentation dated 10 May 2017 indicating that the Chair ITS BoG, who by then was no longer a member of the ITS BoG, was engaged by Projects Malta Ltd to provide consultancy services in relation to the design, concept and logical functionality of the new ITS campus at Smart City. This assignment was to be carried out in liaison with a technical team to ensure that the plans and technical requirements met the desired levels. This engagement was for a period of 12 months, at a fee of €26,400. Notwithstanding the duration of the contract, documentation provided by Projects Malta Ltd indicated that the Chair ITS BoG provided consultancy services for a period of approximately three months and was paid an amount of €15,576.
- 6.3.19 This Office was also provided with a copy of the terms of reference, dated July 2017, given to three architects who were engaged by the MGI to determine the market value of the land that was to be transferred by title of temporary emphyteusis by the Malta Government Technology Investments Ltd⁴⁰ to Malita Investments plc. Details were provided to these architects in terms of the size and location of the land in question, its intended use and the maximum footprint and height restrictions, in accordance with the masterplan for the area. The architects were to prepare a valuation report that was to be presented to the MGI within three weeks from the date of appointment, that is, by not later than 31 August 2017. The architects were to be remunerated at an individual fee not exceeding €2,500. The NAO noted that this document was not signed and did not indicate the three architects who were to be engaged.

⁴⁰ Malta Government Technology Investments Ltd was set up on 14 December 2006 and is responsible for raising awareness on Malta as an investment location for the information and communications technology and media sectors.

- 6.3.20 Notwithstanding the lack of a formal letter of engagement, the NAO noted that a valuation report on the land at Smart City that was to be reacquired by Government, was prepared by a panel of three architects. The report was dated 15 November 2017. The architects determined the freehold value of the land, in terms of the uses indicated, as €12,000,000. According to the report, the estimated rental amount was to be fixed at an amount of €50,000 per annum for the initial five years. This was to be increased to €300,000 per annum, subject to eight per cent increases every five years, for the remaining of the 45-year term. The valuation report provided an overview of the process undertaken by the architects to determine the value of the land, including details of the valuation methodology applied, site plans and drawings.
- 6.3.21 Queries were made by the NAO to involved parties as to whether any contracts in respect of the Smart City project were entered into. This Office was informed that the land transfer contracts had been drafted; however, according to the MGI, none had been signed as at August 2019. In fact, the NAO was informed that, following the architects report dated 15 November 2017, no other progress was registered and no further developments had taken place. The Executive Chair Projects Malta Ltd confirmed that discussions were still underway for the conclusion of the agreement between Smart City (Malta) Ltd and Government and it was envisaged that the transfer of land was to be completed by the second quarter of 2020.
- 6.3.22 According to the minutes of the ITS BoG meeting held on 29 October 2018, the resolution for the reacquisition by Government of land at Smart City to house the ITS was still subject to parliamentary scrutiny. Acknowledged in the minutes was that Smart City (Malta) Ltd agreed with the proposed transfer of land and that the permitting process was underway. Nonetheless, the ITS BoG noted that the Luqa campus was adequate to accommodate the Institute's present requirements and offered scope for further development through tapping the international market. Reference was also made to the fact that the Cabinet had approved the allocation of the Luqa premises to the ITS for five years. Migration to the new campus at Smart City was expected to take place in four to five years' time; however, the Institute was provided with assurance that the present campus at Luqa would be retained until the new campus at Smart City was completed.
- 6.3.23 In respect of the planning process, the former Executive Chair Projects Malta Ltd submitted a Full Development Permit application to the PA on 21 January 2016. This application proposed the construction of a hospitality campus to cater for a maximum of 2,500 local and foreign students, a hotel consisting of 135 rooms, government offices and other ancillary facilities including underground parking spaces, a gymnasium, an indoor pool, a spa and a rooftop pool. Relevant plans and proposed elevations were submitted, with updates being submitted as recent as November 2019. In respect of this planning application, Projects Malta Ltd paid fees of €432,598. The PA website noted the status of this application process as being suspended at the request of the applicant's architect. When queried as to the reason behind this suspension, the Executive Chair Projects Malta Ltd informed the NAO that the application was suspended so that the permit obtained was not forfeited until works could commence.
- 6.3.24 The NAO noted that in the Budget speech for 2020, Government announced that work on the construction of the ITS campus in Smart City was expected to commence, understood by this Office that works would start during 2020.

Chapter 7

Analysis and conclusions

7.1 Timeline of key developments

7.1.1 Hereunder is a timeline of the key developments relating to the disposal of the site formerly occupied by the ITS.

Date	Details
13 November 2015	Projects Malta Ltd issued an RfP for the design, build and operation of an upmarket mixed tourism and leisure development in St George's Bay, St Julian's on the site then occupied by the ITS.
18 November 2015	Publication of the contract notice in the OJEU by Projects Malta Ltd on behalf of the MEH.
14 January 2016	Projects Malta Ltd appointed the Evaluation Committee.
15 January 2016	Closing date for the submission of offers, by which date one offer by the Seabank Consortium was received. The offer had a total indicative approximate value of €17,000,000.
5 February 2016	The Evaluation Committee recommended that the Seabank Consortium be awarded preferred proponent status.
12 February 2016	Projects Malta Ltd notified the Seabank Consortium that its bid fulfilled the requirements of the RfP and that the Consortium was the preferred proponent; discussions and negotiations were to be entered into with a view to reach an agreement.
22 February 2016	Projects Malta Ltd appointed the Negotiation Committee.
25 April 2016	Chair Negotiation Committee resigned citing a supervening conflict.
17 May 2016	The Prime Minister informed Cabinet of developments relating to the ITS site.
18 May 2016	Projects Malta Ltd appointed a new Chair Negotiation Committee.
19 May 2016	The key elements of the bid submitted by the Seabank Consortium were discussed during a preliminary meeting attended by representatives of Deloitte, Projects Malta Ltd, Government and the Seabank Consortium.
24 May 2016	Projects Malta Ltd engaged Deloitte to assist the Negotiation Committee in determining the value of the site and to develop an Illustrative Valuation Methodology Model which could be used consistently for mixed-use development land concessions in the area of Sliema and St. Julian's.
22 September 2016	dbSG was registered as a company with the MFSA.

19 January 2017	The Minister within the OPM, the Executive Chair Projects Malta Ltd, the Chair and a member of the Negotiation Committee, and the Seabank Consortium attended a meeting during which Deloitte explained the valuation methodology adopted and the key conclusions arrived at.
25 January 2017	The Minister within the OPM drew up a memorandum to Cabinet wherein the valuation of the ITS site and the signing of the relative emphyteutical deed were proposed. Cabinet approved the valuation and the payment structure proposed by Deloitte, the signing of the deed of emphyteusis, and the adoption of this method of valuation as the basis for future transactions of public land.
26 January 2017	Deloitte submitted its report to Projects Malta Ltd which established a value of €56,114,000 for the ITS site.
27 January 2017	Cabinet approved and agreed on the valuation of the site and recommended that Government enter into a concession agreement with the Seabank Consortium based on the proposal submitted with respect to the RfP.
27 January 2017	The Negotiation Committee submitted its report to the Executive Chair Projects Malta Ltd. Cited in the report was that, following a meeting with the Seabank Consortium, the Negotiation Committee agreed to establish a mechanism to derive a fair value for the site under consideration through referral to an independent third party. Following a detailed assessment of the value by Deloitte, a memorandum to Cabinet was formulated with the recommendation as proposed by Deloitte as the basis for discussion and consideration by Cabinet. It was in this context that the Negotiation Committee recommended that the Executive Chair Projects Malta Ltd award the concession to the Seabank Consortium.
1 February 2017	Projects Malta Ltd informed the Seabank Consortium that, following the successful conclusion of negotiations and on the recommendation of the Negotiation Committee, Government was awarding the concession for the design, build and operation of an upmarket mixed tourism and leisure development in St George's Bay, St Julian's to the Consortium.
1 February 2017	The CoL, on behalf of Government, and the dbSG entered into a deed of temporary emphyteusis. Stipulated in the deed was the total estimated commercial consideration based on the expected development, valued at €59,089,277.
1 February 2017	Projects Malta Ltd published a notice of award informing the public that, following the successful conclusion of negotiations and on the recommendation of the Negotiation Committee, the Government awarded the dbSG the concession for the design, build and operation of an upmarket mixed tourism and leisure development in St George's Bay, St Julian's.
10 February 2017	A concession award notice was also published in the OJEU in terms of Directive 2014/23/EU on the award of concession contracts.
9 March 2017	The Leader of the Opposition requested the AG to investigate the disposal of the site formerly occupied by the ITS and other adjacent land in St Julian's, which were granted on emphyteutical terms to the dbSG.
13 March 2017	The PAC agreed to the audit by the AG.

3 April 2017	The dbSG submitted a planning application to the PA for the building of a City Centre multi-use development on a site measuring 23,975 square metres. The development was to include a 5-star hotel, residences, commercial office space, a shopping mall, restaurants and a basement car park.
3 May 2017	The initial screening of the application was complete and a planning application number, PA/03807/17, was allocated.
10 August 2018	The Planning Board reviewed the report on the planning application by the PA case officer, which included several recommendations.
20 September 2018	The Planning Board approved the development with 10 votes in favour and four against.
1 October 2018	The PA issued the planning permit, subject to the conditions listed in the case officer's report.
1 November 2018	The Pembroke, St Julian's and Swieqi local councils, as well as several non-governmental organisations and private citizens lodged an appeal with the Environment and Planning Review Tribunal.
14 February 2019	The NAO submitted its terms of reference for this audit to the PAC.
28 February 2019	The Tribunal gave its decision on the various issues brought to its attention.
4 March 2019	The dbSG submitted fresh plans and an explanation of the changes that were undertaken.
8 March 2019	The appellants filed a judicial letter in the First Hall of the Civil Court, contending that their constitutional rights were infringed with the approval of the planning permit for the development of the City Centre project.
15 March 2019	An appeal was filed in the Court of Appeal, with the first hearing set for 9 May 2019.
6 April 2019	A commencement notice was submitted to the PA by the dbSG indicating the commencement of works on the site.
9 June 2019	The Court of Appeal issued a decision whereby it upheld the appellants' plea that there was a conflict of interest with respect to one of the members of the Planning Board since he was found to have had a clear and direct interest in the development. The Court revoked the Tribunal's decision of 28 February 2019 and considered the planning permit null and void.
3 July 2019	The dbSG submitted a fresh application to the PA for excavations works on site.
12 July 2019	The dbSG filed a judicial protest against the PA, blaming it for delays and damages suffered following the revocation of the planning permit.
26 July 2019	The Pembroke Local Council and others filed a judicial protest against the PA, demanding the payment of damages suffered due to the unfair hearing resulting from the lack of observation of rules by the PA. The PA rejected the pleas and blamed the dbSG for causing damages.
2 August 2019	The PA rebutted the accusations brought against it by the dbSG and filed a judicial protest of its own against the dbSG.

7.2 Analysis of salient issues

The decision to relocate the Institute of Tourism Studies

- 7.2.1 The NAO traced the first documented reference to Government's decision to relocate the ITS from its site in St Julian's to the Budget document for 2016, wherein it was indicated that a new campus was to be set up in Smart City. Although several factors were subsequently cited as the reasons for this move, this Office noted several issues that call into question the motivation that led to the decision to relocate the Institute.
- 7.2.2 Serious concerns exist that the need to relocate the ITS was not captured in key planning documents relating to the tourism industry and to the Institute. The most notable omission was that no reference to the ITS' relocation was made in the National Tourism Policy 2015-2020, that outlined the key elements for the long-term sustainability of the sector, and which was issued only months prior to the 2016 Budget. Another obvious lacuna was in the ITS Strategic Plan 2015-2020, which mapped the Institute's strategic thrusts for the period and which, again, made no reference to the relocation of the ITS. In view of these gaps, the NAO made requests to the MOT and the MEH for other ad hoc reports or studies carried out that would have justified the need for the relocation. Nonetheless, this Office was not provided with any documentation in this regard. The only element of validation of the Institute's need to relocate was provided in the internal and external quality audit reports prepared prior to the 2016 Budget announcement; however, the stance then adopted by the ITS clearly illustrated that the Institute was not considering the possibility of relocation in the immediate future. Also of concern was that the ITS BoG, entrusted with providing the Institute with strategic direction, did not discuss the need for relocation in the years leading to this decision.
- 7.2.3 The frustration expressed by the ITS BoG members in the meeting held on 13 October 2015, that is one day after the presentation of the Budget for 2016, highlighted deficiencies in the decision-making process that ultimately led to the Institute's relocation. The fact that the decision to relocate was not ITS-driven casts doubt on the underlying objective of the relocation, and attests to the top-down approach adopted in this regard. The NAO understood this as an encroachment on the responsibilities of the ITS BoG, limiting the system of governance that ought to have been actively involved in determining the Institute's strategic direction. Although the NAO established that the ITS BoG was not involved in the decision-making process that led to its relocation, this Office ascertained that the Chair ITS BoG and the CEO ITS were informed of developments in this respect prior to the public announcement of the Institute's relocation. Nonetheless, the involvement of the Chair ITS BoG and the CEO ITS ensued when the decision to relocate the Institute had already been taken.

- 7.2.4 As part of the NAO's analysis regarding the ITS' need to relocate, the Office considered two key indicators that would attest to this need, that is, student population and curriculum. Data sourced from the ITS and the NSO provided tentative indications of growth in both these areas, with modest increases registered in the number of students and courses offered since 2015. Notwithstanding this, it remained unclear whether the relocation of the ITS was driven by the Institute's emerging needs, be it in terms of an increasing student population or a broadening of its curriculum.
- 7.2.5 The NAO maintains that the absence of any reference to the need to relocate the ITS in key strategic documents and at ITS BoG level casts doubt on whether the relocation was driven by the Institute's requirements for more suitable premises. Whether the increase in the Institute's student population and the broadening of its curriculum necessitated relocation remains ambiguous, more so when one considers that these factors were not captured as inputs in the decision-making process. This understanding lends credence to the view that the decision to dispose of the site was prioritised over and above any other consideration.

The decision to dispose of the site occupied by the Institute of Tourism Studies

- 7.2.6 In the NAO's understanding, the decision to find alternative premises for the ITS did not necessarily imply the immediate disposal of the site occupied by the Institute. Consequently, this Office sought to understand the considerations undertaken by Government in arriving at the decision to dispose of this public land.
- 7.2.7 Immediately apparent to the NAO was that this was an unorthodox disposal in that the GPD, the government entity responsible for the administration of public land, was not involved in any significant way in the process of disposal, with the GPD's role limited to the formalities required by law. Although the provisions of the Disposal of Government Land Act were not necessarily breached, this Office considered the lack of involvement of the GPD as detracting from the process of disposal.
- 7.2.8 Having established that the GPD was not involved in the decision to dispose of the site, the NAO sought to establish from where the decision originated. Notwithstanding the numerous enquiries made, this Office was unable to obtain any information in this regard. The NAO maintains that Government's failure to identify who issued instructions to dispose of the site is a gross shortcoming in governance, with the MEH indicating the responsibility of the OPM, which in turn negated any involvement. The magnitude of this failure is exacerbated by the nature of the disposal, in terms of the extent of the envisaged development, its economic impact and the substantial value of the land.
- 7.2.9 Unable to establish who took the decision to dispose of the site occupied by the ITS, the NAO sought to ascertain whether any evaluations were carried out to determine the options available regarding the development possible on site. This Office's attention was drawn to the fact that no feasibility studies and site valuations were carried out by Government prior to the

issuance of the RfP. While this Office acknowledges that the precise determination of value was not possible as this was contingent on the specific details of the proposed project that were yet to be put forward to Government, preliminary work relating to the valuation of the site could have provided Government with an indicative value of the land it was to dispose of. While numerous explanations and justifications were provided to the NAO regarding the anticipated benefits of the project, no documentation or studies that supported Government's decision to dispose of the site were made available.

7.2.10 The NAO's attention was also drawn to the limited interest generated in the site. While this Office is aware that the requirements in terms of the submission period of bids and publication were adhered to, in the NAO's opinion, Government could have done more to generate competitive interest in the site. In this regard, Government had several options it could have pursued that would have ensured a more competitive process. Considering that this was a prime site located in a key touristic area, this Office maintains that the site should have attracted more than one bid.

7.2.11 Another aspect related to the disposal of the site formerly occupied by the ITS is the framework that was to regulate development in St Julian's. Despite the initial efforts by Government to coordinate the development of the area through the setting up of the St George's Bay Regeneration Corporation, this initiative was not seen through and no progress was registered. This void was further confounded by the withdrawal of the Paceville Masterplan, which was shelved by the PA following considerable public criticism. The NAO maintains an element of reserve in that, despite the lack of regulation of development in the area, a major project that was to replace the ITS proceeded regardless.

Considerations relating to the Request for Proposals

7.2.12 In its review of the RfP, the NAO noted inconsistencies in information provided by the OPM and the MEH in terms of who was involved in the drafting of this document. While the MEH indicated the role of the OPM, the latter negated any input in this regard. The conflicting evidence provided by the PPS OPM and the PS MEH constrained this Office from determining the involvement, and the extent thereof, of the parties involved in the drafting of the RfP.

7.2.13 The NAO noted that the adverts issued by Projects Malta Ltd on the publication of the RfP made no reference to the residential component of the project, but solely indicated an 'upmarket mixed tourism and leisure project'. Furthermore, the notice in the Government Gazette cited the actual title of the RfP, that is, 'Request for Tender Proposals Ref. No: PML/06/2015: For the design, build and operation of an upmarket mixed tourism and leisure development in St George's Bay, St Julian's'. Similarly, this notice made no reference to the residential component of the project. Even more ambiguous were the details provided in the OJEU, where the project was classified as a works contract under the title 'Malta – Sliema: Hotel Equipment'. The only publicly accessible reference to the residential element of the project was traced by the NAO in the information provided by Projects Malta Ltd to interested parties free of charge. Here,

it was stated that the project was to include leisure and entertainment facilities, F&B and retail outlets, and residential units. This Office is of the opinion that Government should have given more prominence to the residential component of the development as, even though it was an elective component, it was this element that rendered the project viable. It is this Office's understanding that greater exposure of this aspect of the project could have generated further competitive interest among bidders, ultimately benefitting Government in terms of the maximisation of returns.

- 7.2.14 Although concerns regarding the period allowed for the submission of proposals were expressed by an interested party, the NAO deemed the time allocated as adequate. The period allowed for submissions was of 63 days, which compared favourably with public procurement guidelines issued by the EC. The EC establishes an array of minimum time limits based on the nature and method of procurement which when applied to the type of procurement intended in this case was of at least 35 days. While the minimum time limit required for the submission of bids was observed, the NAO is of the opinion that Government could have considered a lengthier submission period in view of the fact that there was no specific urgency to conclude the process and the complexity of the requirements requested from bidders. Examples of the complexity being referred to by the NAO included the extensive discretion that bidders were provided with in terms of utilisation of the site and the identification of a brand of hotels not operating in Malta.
- 7.2.15 Another element in the RfP noted by the NAO related to the evaluation criteria that were to guide the Evaluation Committee in its adjudication of proposals. This Office is of the opinion that the criteria were insufficiently detailed, only providing a high-level reference to the aspects that were to be assessed, that is, the design, technical and financial elements of the proposal. In the NAO's opinion, this rendered the adjudication substantially subjective and less based on measurable criteria that would have ensured that the evaluation was carried out in a transparent and reliable manner and as objectively as possible.

Evaluation of the bid by the Seabank Consortium

- 7.2.16 Conflicting accounts of who was involved in the appointment of members to the Evaluation Committee were provided to the NAO. While the former Executive Chair Projects Malta Ltd indicated that he had selected the members of the Committee with the PS MEH, the latter referred to the involvement of the Minister MEH. Notwithstanding this, the NAO is of the opinion that collectively, the members appointed to the Evaluation Committee possessed the required competencies to comprehensively contribute to the assessment of the bid.
- 7.2.17 While certain aspects of evaluation provided critical analysis of the strengths and weaknesses of that proposed, the NAO noted other aspects that were inadequately assessed. Specific reference is directed towards the technical assessment of the bid, which was lacking in terms of critical input and was merely a restatement of elements of the bid put forward by the Seabank Consortium.

Referral to the disposal as a 'concession'

- 7.2.18 The NAO is of the understanding that the transfer of public land is to be considered in terms of the Disposal of Government Land Act (Cap. 268 (now repealed)). The basis of this understanding emanates from the definition of 'disposal' in this Act, that is, "disposal means the transfer or grant of any land under any title whatsoever." The method of transfer applied in this case adhered to Article 3(1)(a) of the Act, which stipulates that "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 - (a) after a call for tenders published in the Gazette in respect of the property proposed to be disposed of" In the case of the site formerly occupied by the ITS, the call was published in the Government Gazette on 17 November 2015.
- 7.2.19 The RfP, inviting the submission of proposals in terms of the Disposal of Government Land Act, referred to the disposal as a concession. In fact, under the definition clauses of the RfP, the term 'concession' was defined as, "the granting of a 99-year temporary emphyteutical concession by GoM [Government], through this competitive process, for the rights which will entitle the successful proponent to design, build and operate an upmarket mixed tourism and leisure project." In addition, in the RfP, it was indicated that the successful proponent of this competitive process would enter into a concession agreement with Government, which concession agreement was defined as, "the agreement to be entered into between the Government and the successful proponent, including any other agreement or document material or ancillary thereto, in respect of the concession." This perspective was subsequently reflected in the deed entered into between Government and the dbSG which, in some instances, was defined as an emphyteutical concession.
- 7.2.20 The NAO sought to establish whether referral to the disposal of the site in terms of a concession was appropriate through a review of the legislative framework which regulated concessions. The Public Procurement Regulations, which at the time of the publication of the RfP governed work concessions, defined public works concessions as, "a public works contract, except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the construction, or in this right together with payment." Similarly, Directive 2014/23/EU⁴¹ on the award of concession contracts, which however had not then been transposed in Maltese law, defined 'works concessions' as, "a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the execution of works to one or more economic operators, the consideration for which consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment."
- 7.2.21 The deed of temporary emphyteusis entered into on 1 February 2017 provided that the dbSG was to construct, at its own cost and risk, a hotel and commercial area, towers intended for

⁴¹ At the time, that is November 2015, Directive 2014/23/EU was in force but was not yet applicable to Malta until the Concession Contracts Regulations were enacted in 2016.

residential and office use, a car park and a shopping mall. The dbSG had the right to retain all revenue generated from the development and operation of the site. As payment, Government was to receive a premium of €15,000,000, paid over a period of seven years, and annual ground rent of €1,560,000, administratively reduced to €1,000 for up to five years. Of the €1,560,000 ground rent, €1,170,000 could be redeemed at any point during the emphyteutical term. The grant limited the redemption of ground rent in respect of the residential, office and garage components of the project.

- 7.2.22 When questioned on the reference to the disposal of the site as a concession, the Minister for Tourism, through the PS MOT, stated that, intrinsically, this was always intended to be a land concession governed by the Disposal of Government Land Act as in force at the time of issuance of the RfP. The Minister for Tourism also indicated that the selected economic operator was to be given certain rights, over a period, under a number of Government-imposed obligations. The abidance to the Disposal of Government Land Act was further substantiated by the fact that the Concessions Directive had not, at the time, entered into force nor was it yet transposed into Maltese law. Nevertheless, according to the Minister for Tourism, all principles emanating from this Directive were observed. In fact, the RfP provided for a clear and precise definition of a concession, was supported by the compulsory publication notice in the OJEU, established certain obligations with respect to the selection and award criteria that were to be followed, provided for the use of adequate guarantees aimed at ensuring transparency and equal treatment, and allowed for the application of the Remedies Directive. The Minister for Tourism further explained that, since by the time the concession was awarded the Concession Contracts Regulations were then enacted, reference was made thereto in the award criteria.
- 7.2.23 According to the PS MOT, in the process leading to the publication of the RfP, Projects Malta Ltd had sought legal advice, wherein it was deemed that this would be a concession (disposal) of government land to third parties in terms of the Disposal of Government Land Act. The PS MOT also stated that this was discussed with the Attorney General's Office; however, no documentation evidencing the legal input obtained was provided to this Office. In view of this, the NAO sought to corroborate that stated by the PS MOT through enquiries with the Attorney General's Office. The Attorney General stated that no advice was sought from or given by his Office on whether to classify the disposal as a concession. According to the Attorney General, the only feedback was on the possible legal implications of clauses in the contract of temporary emphyteusis, which was requested and given at a very late stage in the process of disposal.
- 7.2.24 In turn, the Advisor OPM maintained that the term 'concession' as identified in the RfP was given a very specific meaning, which gave rise to an ad hoc interpretation to the term, which was provided in the document itself. The Advisor OPM further stated that the issuance of a works notice in accordance with the Public Procurement Regulations must have been an oversight, since the RfP clearly stated that the concession was to be covered by the Disposal of Government Land Act. The NAO noted that, contrary to the provisions of the Disposal of Government Land Act, the RfP provided review procedures under the Concessions Review Board Regulations. When questioned on this, the Advisor OPM confirmed that the Disposal

of Government Land Act did not provide for appeal procedures as was the case under the Public Procurement Regulations; however, he maintained that the inclusion of the recourse to review was provided to create an element of oversight not provided for in the Disposal of Government Land Act. Hence, according to the Advisor OPM, Government went over and above the requirements of the Disposal of Government Land Act to ensure equality and transparency. It was for those reasons that Projects Malta Ltd imposed on itself the publication of a notice in the OJEU, as well as the inclusion of a process of review.

- 7.2.25** Reference to the tender as a concession in the RfP and its reference as a works concession in the advert published in the OJEU contributed to the classification of this disposal as a works concession. While doubts persist as to whether this tender actually constituted a works concession, the applicability of these Regulations was not disputed by the DoC who argued that works concessions were, at the time of the issue of the RfP, regulated by the Public Procurement Regulations. Nonetheless, although the NAO agrees that works concessions were then invariably regulated by the Public Procurement Regulations, the application of these regulations in this case remains highly questionable. This understanding is further supported by that stated by the Advisor OPM who indicated that Government had no interest in the running of hotels and was purely disposing of land under a number of conditions; hence, this could not be seen as a works concession under the Public Procurement Regulations, which excluded the disposal of land per se.⁴² The same could be said of the Concessions Directive.⁴³
- 7.2.26** Notwithstanding the above, as already outlined, Projects Malta Ltd had adhered to certain requirements of the Public Procurement Regulations in respect to this disposal as it had issued a works notice as per Directive 2004/18/EC when the RfP was published and, following award, a Concessions Award Notice was published as per Directive 2014/23/EU. In addition, the RfP provided for an appeals process before the Concessions Review Board, established by virtue of the Concessions Review Board Regulations of 2015 (Legal Notice 214 of 2015).
- 7.2.27** Having considered the explanations provided, the NAO is of the opinion that the transfer of the site could have been regulated solely through the Disposal of Government Land Act, rendering its definition as a concession an unnecessary complication. This understanding is based on the fact that reference to the disposal as a concession was intentional and voluntarily imposed. Its classification as a concession created additional obligations on the part of Government emanating from the Public Procurement Regulations, particularly the involvement of the DoC.

⁴² Article 17 (1)(b) of the Public Procurement Regulations, 2015, provided that these regulations did not apply to public service contracts for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;

⁴³ Article 10 (8)(a) of the Concessions Directive stated that: This Directive shall not apply to service concessions for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;

7.2.28 Aside from concerns relating to the classification of this disposal as a concession, the NAO's attention was drawn to contradictory statements made by the PS MOT and the Attorney General. While the PS MOT maintained that referral to the transfer as a concession was discussed with the Attorney General's Office, the latter affirmed that no advice was sought or given by his Office in this regard. The NAO deemed the information provided by the PS MOT as misleading.

Projects Malta Ltd – Mandate to tender

7.2.29 The Disposal of Government Land Act does not specify the entities that are authorised to issue a tender for the disposal of public land. The only legislation that relates to tendering, albeit involving the function of public procurement, and that establishes contracting authorities, are the Public Procurement Regulations. Furthermore, the Disposal of Government Land Act provides no guidance regarding how the tender process was to proceed and be managed. Nonetheless, the NAO is of the understanding that processes of disposal of Government-owned land were governed by long-standing internal procedures set by the GPD. However, in this case, the tender process was not undertaken by the GPD, but overseen entirely by Projects Malta Ltd. In this case, Projects Malta Ltd issued the RfP, appointed the members to the evaluation committee, who reported to Projects Malta Ltd, and appointed a negotiation team, who also reported to Projects Malta Ltd. The GPD was not involved at any stage of these processes, as attested by the CoL and confirmed by Projects Malta Ltd, bar for the provision of the site plans at the beginning of the process and a limited input in the drafting of the emphyteutical deed and its eventual signing by the CoL.

7.2.30 In replies to queries raised by the NAO on Projects Malta Ltd's mandate with regard to the issue and adjudication of a tender that involved the disposal of public land, the PS MOT stated that Projects Malta Ltd was incorporated by Government specifically to assist Government develop and promote project concepts that served to fulfil Government's policy objectives. Project Malta Ltd's role included the carrying out of all the groundwork required for the implementation of such projects, from inception to completion. The PS MOT maintained that, in this particular case, Projects Malta Ltd had collaborated with all the pertinent entities and stakeholders, including the Lands Authority (the successor of the GPD) such that the CoL, as the competent person for the purposes of the Disposal of Government Land Act, then appeared on the deed of transfer dated 1 February 2017.

7.2.31 In addition, in correspondence submitted to this Office, the PS MOT stated that it must have been in this spirit, and also in view of the public private partnership element in the project, that the competitive part of the process was delegated by Government to Projects Malta Ltd. Moreover, the PS MOT indicated that Cabinet had also been aware, through a Cabinet memorandum, of the process being undertaken by Projects Malta Ltd. Nonetheless, it must be noted that the memorandum referred to by the PS MOT was dated 25 January 2017, when the process for the disposal of the site was nearly completed.

7.2.32 That claimed by the PS MOT was restated by the Advisor OPM, who maintained that Projects Malta Ltd was set up to provide expertise and to handle larger and more complex projects on behalf of Government. Commenting on Projects Malta Ltd's role, and in particular the memorandum to Cabinet referred to in the previous paragraph, the Advisor OPM stated that the subsequent authorisation by Cabinet tacitly recognised the role and mandate of Projects Malta Ltd.

7.2.33 The NAO sought to determine whether Projects Malta Ltd could undertake tendering on behalf of Government since it was not listed in the schedule of authorised entities cited in the Public Procurement Regulations. Procurement in this context is to be understood as a concession as defined in the RfP and the deed, specifically classified as a works concession in the OJEU, and therefore regulated by the Public Procurement Regulations. The DoC stated that Article 3 of these Regulations provided that contracting authorities not specifically listed in Schedule 1 were to be deemed, for the purposes of the Regulations, to be included in Schedule 2. Entities listed in Schedule 2 were to effect procurement, beyond a certain threshold, through the DoC. In this case, the set threshold was exceeded; however, Projects Malta Ltd did not involve the DoC in any way. The NAO deemed this a serious shortcoming that casts doubt as to the regularity of the RfP.

Negotiations

7.2.34 Following the award of the preferred bidder status to the Seabank Consortium, Government initiated negotiations with the Consortium that resulted in considerable revisions to the value of the site. While it is acknowledged that these negotiations resulted in the determination of a higher value to Government, the NAO sought to establish whether it was permissible for the parties to enter into such negotiations. This Office ascertained that, in instances where a call for tenders for the disposal of public land is issued, the Disposal of Government Land Act does not regulate the process that leads to the establishment of the value, and only provides provisions for the publication of the relevant disposal notice. On the other hand, if the disposal of public land is effected through a parliamentary resolution, it is assumed that prior negotiations would have been undertaken with the acquiring party before referral of the disposal is made to the House. However, in such cases, the Disposal of Government Land Act is again silent on whether negotiations could be undertaken and only refers to the sanction by Parliament. Notwithstanding this, the NAO is aware that the RfP clearly indicated that the terms and conditions of the concession agreement were to be negotiated and finalised with the preferred proponent.

7.2.35 According to the Advisor OPM, the fact that legislation is silent on the matter of negotiation does not exclude or limit it in any way at law; rather, an element of negotiation was deemed to be in the best interest of Government in the case under review. This perspective was shared by the former Chair Negotiation Committee, who maintained that the negotiations undertaken

were to ensure a better return to Government. The NAO acknowledges that stated by the Advisor OPM and the former Chair Negotiation Committee and, in view of the lack of legislative provisions, deems the matter of whether negotiations could be undertaken in the case of disposal of public land a moot point.

7.2.36 Irrespective of whether negotiations were permissible or otherwise, the NAO has serious doubts regarding the role fulfilled by the Negotiation Committee, appointed by Projects Malta Ltd to enter into discussions with the Seabank Consortium on behalf of Government. These doubts emerge when one considers various aspects of the negotiations undertaken that this Office deemed deficient.

7.2.37 A major concern that emerged was the absence of any input by one of the members of the Negotiation Committee, an architect by profession, who was presumably appointed for his technical expertise. The NAO contends that this lack of involvement resulted in a lacuna in the collective skills of the Committee, which was only partly mitigated by the engagement of Deloitte. This Office's concern is exacerbated by the fact that this lack of input was condoned by the Chair Negotiation Committee.

7.2.38 Similarly, the Chair Negotiation Committee was conspicuously absent in the workings of the Negotiation Committee. This was evident in key correspondence reviewed and attested in feedback sourced by the NAO from Deloitte, who indicated that their main point of contact was the Advisor OPM. The balance and oversight that ought to have been provided by a properly functioning Committee was entirely lacking in this process, with the Advisor OPM assuming a disproportionately prominent role in view of the gaps left by the other members of the Committee.

7.2.39 Another shortcoming noted by the NAO was that no minutes of meetings held by the Negotiation Committee, whether internal, with the Seabank Consortium, or with other stakeholders, were retained. In particular, reference here is made to the involvement of the Prime Minister, the Deputy Prime Minister, the Minister within the OPM, the Minister for Finance, the Parliamentary Secretary OPM and others. Despite requests, this Office was not provided with any records of the discussions that ultimately led to the valuation of the site or negotiations related thereto. This failure to retain appropriate records constrained the NAO from establishing a comprehensive understanding of the process of negotiation, limiting efforts at verifying facts. Compounding matters were the conflicting accounts provided by the parties involved, which further obscured this process.

7.2.40 Other doubts regarding the role fulfilled by the Negotiation Committee emerged from the conflicting accounts of the level of interaction between the Negotiation Committee and Projects Malta Ltd. While the Chair Negotiation Committee stated that the former Executive Chair Projects Malta Ltd was informed of developments, the latter maintained that he had no visibility over the negotiation process. Given the absence of any form of documentation recording exchanges between the two or of the work of the Committee, as well as the very limited involvement of the Chair Negotiation Committee, the NAO is inclined to consider the

explanation put forward by the former Executive Chair Projects Malta Ltd as a more probable account of events. It is in this context that this Office considers the failure of the Negotiation Committee to regularly update Projects Malta Ltd of developments as a shortcoming in the governance of the negotiation process. Similarly, Projects Malta Ltd failed to actively monitor the work of the Negotiation Committee, which would have ensured that the required level of oversight over the process of negotiation was in place.

- 7.2.41 In the absence of records retained by Projects Malta Ltd and, in particular, the Negotiation Committee, the NAO was constrained to rely on records retained by Government's advisors, in this case Deloitte. This Office maintains that the obligation to lead and manage the process of negotiation rested squarely with the Negotiation Committee, and overseen by Projects Malta Ltd. In this Office's opinion, reliance on third-party documentation for a process that was to be entirely administered by a government entity is unjustified, and severely curtails any subsequent process of review.
- 7.2.42 The failure in terms of the retention of documentation was also evident in the report drawn up by the Negotiation Committee, which inadequately captured the complexity of the process. Negotiations were lengthy, involved various stakeholders, included numerous meetings and entailed the design of an evaluation model that was to be adopted in future transfers of public land. Yet, despite these considerations, the report by the Negotiation Committee failed to provide any insight that ultimately led to the negotiation of a substantial increase in the value of the site that was being disposed of. The NAO maintains that these shortcomings in the workings of the Negotiation Committee detracted from the expected level of governance that was to regulate negotiations with the preferred proponent, with this Office having to rely on information provided by third parties involved, based on recollections well after the fact, and sporadic glimpses into the process through email correspondence made available.
- 7.2.43 In contrast with the many shortcomings evident in the work of the Negotiation Committee was the input provided by Deloitte in the determination of the value of the site formerly occupied by the ITS. The value-added of Deloitte's input is evident, with a marked increase in the value of the site, from the €17,000,000 originally proposed by the Seabank Consortium to the €56,000,000 established by Deloitte. This Office maintains that the approach adopted in establishing this value was well-reasoned and sound in terms of the methodology adopted, which factors contributed to the safeguarding of Government's interests in securing a fairer return for the site.
- 7.2.44 The involvement of Cabinet in the disposal of the ITS site was deemed somewhat anomalous by the NAO, as Cabinet is not ordinarily involved in the authorisation for the disposal of public land. Nonetheless, the innovative method for valuation adopted, which method is to be utilised for future similar transfers, partly explains Cabinet's involvement. The NAO is of the understanding that this collaborative endorsement was intended to provide an added layer of reassurance for the adoption of this method of valuation in determining the value of public land to be disposed of by Government.

The value of the site and planning considerations

- 7.2.45 A deed of temporary emphyteusis was entered into between Government and the dbSG on 1 February 2017 for a term of 99 years. According to the deed, the total estimated commercial consideration to be paid to Government, based on the expected development, was in excess of €56,000,000, exclusive of stamp duty. This entailed the capitalisation of ground rent payments for the hotel, the mall and the non-redeemable portion of the car park, the conversion from temporary to perpetual emphyteusis of the residential units, the redemption of the perpetual emphyteusis and a cash consideration. Inclusive of stamp duty, these amounted to €11,200,000, €6,500,000, €23,400,000 and €18,000,000, respectively. It must be noted that the value of €56,000,000, was based on the project as proposed by the Seabank Consortium in its bid.
- 7.2.46 In its analysis, the NAO reviewed the planning application process since the development that was to be approved bore a direct link to the value that Government was to realise with respect to the site. This emanated from the deed entered into by Government with the dbSG, which allowed for the adjustment of this value based on the approved extent of development. This Office ascertained that, on 3 April 2017, the dbSG submitted a planning application to the PA in respect of the site. Major differences were noted in the development, with the project as applied for significantly downscaled from that proposed. A substantial change was that the residential component was reduced to the tower on Site B, with Site A now re-designated as a car park. This resulted in the elimination of the office space and the congress hall. Another significant revision related to the re-dimensioning of the hotel, with a decrease in the number of rooms.
- 7.2.47 The NAO's valuation of the site as at 2016 varied significantly with that established by Government, with this Office estimating the value of the site at €67,000,000. In consideration of the revisions to the project approved in 2018, this Office established a land value as at 2018 of €45,000,000. This corresponded to the value that was to be derived from the deed through the application of the parameters stipulated therein, which also resulted in a value of €44,631,877. Comparison of the value of the land determined by the NAO as at 2016, the time of the signing of the deed, with that as at 2018, the point of approval by the PA, resulted in a decrease in value of approximately €22,000,000. This reduction in value was mainly attributable to two factors, that is, a decrease in market value resulting from the downsizing of the project and a substantial increase in development costs of €22,000,000 despite the reduction in the scope of the project. This significant reduction in the development resulted in revisions to the consideration payable. The application of the parameters regulating the payment of this consideration, as stipulated in the deed, resulted in a charge of €357,778 payable by Government to the dbSG.
- 7.2.48 The NAO acknowledges the complexity entailed in the assessment of a project of this magnitude, which was amply evident in the multiple stakeholders consulted and whose technical input was sought. Notwithstanding this, this Office noted certain shortcomings in the review of the planning application submitted by the dbSG. Of note were the lacunae in the planning policy framework that was to regulate the development. Although certain applicable

policies provided an element of guidance as to the use of the site, the lack of a masterplan for Paceville highlighted the disjointed and fragmented approach to the holistic development of the area. In the NAO's opinion, a strategic policy framework would have ensured a more coordinated approach to integrated development and would have aligned with Government's intention to designate the area as a high-quality tourist zone. The drawbacks resulting from the lack of a comprehensive development policy framework are exacerbated by other major developments intended for the area, since the cumulative effects of all the developments tend to be overlooked in the piecemeal approval of such developments. These shortcomings are compounded by the fact that there was no urgency for the development of this site.

7.2.49 The development that was to be undertaken by the dbSG was to result in the transformation of the site from a low-impact educational institution to a high-impact mixed-use complex, which transformation was to inevitably result in the need for substantial infrastructural upgrades at a cost to Government. The NAO noted that these costs were not factored in the economic analysis of the development of the site, which only considered the anticipated direct and indirect benefits that were to be generated. Regarding transport, Government's commitment to improve the infrastructure in the area, as planned in the Traffic Impact Assessment, undoubtedly entailed a significant disbursement of public funds. Although the need for the infrastructural upgrades was not solely driven by or exclusively intended to address the needs of the proposed development, the project, as approved, created additional strain on existing infrastructure necessitating significant public investment.

7.2.50 The NAO is of the opinion that the impact of the envisaged development must also be considered in light of the numerous representations made that highlighted the adverse effect that the project was likely to have on the quality of life of residents and the environment in general. While the NAO acknowledges that the concerns highlighted were considered by the different stakeholders in their assessment of the development and resulted in conditions being imposed on the developer, this Office maintains that the implementation of these conditions must be rigorously overseen by the appropriate authorities. Nevertheless, whether these mitigatory measures addressed the concerns raised in the representations remains debatable.

7.2.51 The PA issued a planning permit on 1 October 2018 subject to several conditions. As a result of the assessment, elements of the project were revised, which included a reduction in the hotel's building envelope and the number of rooms and a decrease in the height of the tower. On 1 November 2018, an appeal was lodged with the Environment and Planning Review Tribunal by several local councils, non-governmental organisations and individuals, who contested that one of the members of the Planning Board had a conflict of interest, among other objections. The Tribunal dismissed all objections raised; however, noted that the development was to be adjusted to include an additional area of public space, as well as a reduction in the height of the residential tower and the hotel. This decision was contested through another appeal filed in the Court of Appeal in March 2019. On 19 June 2019, the Court found in favour of the appellants, deeming the existence of a conflict of interest with respect to one of the Planning Board members and considered the planning permit as null and void. Following the nullification of the permit by the Court of Appeal, further changes were made to the planning application

in resubmissions by the dbSG. The depth of the excavations was revised while further changes were made to the layout of the hotel in view of new cultural heritage findings.

Relocation of the Institute of Tourism Studies to alternative premises

- 7.2.52 The decision to relocate the ITS can be traced to the 2016 Budget announcement, with a defined date of exit set in the contract subsequently entered into between Government and the dbSG in February 2017. The ITS was to vacate the St Julian's premises by June 2017, although certain provisions allowed for the extension of this timeframe.
- 7.2.53 Based on documentation reviewed, the NAO is of the opinion that the relocation of the ITS to Smart City was inappropriately planned. Until December 2016, the former Minister for Tourism was stating in Parliament that the ITS would move directly to Smart City, an assertion that had been reiterated on several occasions. According to the former Minister for Tourism, the campus in Smart City was to be completely functional by 2019, at which point the relocation from St Julian's was to be effected. However, come February 2017, the Government entered into a contract whereby the ITS premises were disposed of, with the timeframe to vacate set for June 2017. In this Office's opinion, moving directly to Smart City by June 2017 was evidently an unrealistic target, so much so that the land on which the ITS' new campus was to be constructed is yet to be acquired by Government. The NAO considered the 2019 target a more realistic objective given the complexity of the project, despite the fact that this objective was not achieved.
- 7.2.54 The NAO ascertained that efforts to identify alternative premises commenced in June 2017, coinciding with the point in time when the ITS was to vacate its St Julian's campus. This Office was informed that it was at this stage that it became evident that the planned relocation to Smart City was to be significantly delayed, with premises in Luqa identified as a temporary arrangement. Notwithstanding the temporary nature of the relocation, in order for the premises to be brought up to standard and to be adapted to fit the needs of a specialised educational institute, significant costs were to be incurred. While an element of these costs was borne by the dbSG, the remaining disbursement, of approximately €2,000,000, was effected through public funds. Of note to the NAO was that the dbSG covered approximately €3,500,000 of the costs incurred in the refurbishment of the Luqa campus, despite that there was no such obligation. This coverage of costs supported the understanding that the early vacation of the St Julian's campus was of critical importance to the dbSG in its efforts at realising its project.
- 7.2.55 To date, limited progress has been registered in relation to the campus that is to be constructed in Smart City, with discussions still underway for the reacquisition of the land. According to plans drawn up by Government, the cost of the development of the ITS campus in Smart City was estimated at €80,000,000. Until the Smart City campus is realised, the ITS was to continue operating from its Luqa premises. Academic year 2018/2019 represented the first year of operation from this site.

7.2.56 Overall, having considered the manner in which the decision to relocate the ITS unfolded, the NAO maintains that Government failed to appropriately plan for this, prioritising the disposal of the site over the interests of the Institute. While delays registered in the development of the Smart City campus may have been beyond Government's direct control, the same cannot be said for the decision to dispose of the site in St Julian's, which decision was firmly within Government's control. It was possible for Government to ensure that the intended campus in Smart City was at a level of completion that allowed for the ITS to function prior to announcing its intention to dispose of the St Julian's site. The decision to dispose of the site was in reality not driven by any particular urgency on the part of Government, which decision should have been subservient to the identification of appropriate premises for the Institute.

7.3 Overall conclusions

7.3.1 Having considered the process relating to the disposal of the site formerly occupied by the ITS, the NAO's attention now shifts to the address of the terms of reference that were set for this audit.

7.3.2 The first element considered by the NAO was whether the process leading to the transfer of the site was based on the principles of good governance. The origin of the decision to dispose of the site remained unclear, which matter is of grave concern to this Office given the nature of the land that was to be disposed of. While the 2016 Budget document made reference to the disposal of the site, the decision to transfer this land had already been taken at that point. Other than this, no information supporting the decision to dispose of the site was provided. Given this context, the NAO was unable to establish who was involved in this decision, with conflicting accounts provided by the OPM and the MOT, each assigning responsibility to the other, compounding matters.

7.3.3 In the NAO's opinion, the decision to dispose of the site was inappropriately prioritised over the relocation of the ITS, when reason would dictate that the inverse should have happened. The false sense of urgency that drove Government to dispose of the site, despite the fact that no alternative premises had yet been secured for the ITS and that the development masterplan for the area had not yet been set, was of concern. The evidence reviewed by this Office indicates that the relocation of the ITS was a secondary effect of the decision to dispose of its premises, with no reference to the plan to relocate the Institute featuring in any strategic document or policy related thereto. Further shortcomings in terms of governance were that the basis of the decision to relocate was not supported by any analyses, while Government failed to involve the ITS BoG in a key strategic decision such as this.

7.3.4 The second element reviewed by the NAO related to whether the principles of transparency and equity, and equal treatment to all potential bidders, were assured in the processes that led to the transfer. An element of concern in terms of transparency arose with respect to the information disclosed in the RfP. Although the residential component of the project was key in securing the viability of this project, this element was given limited exposure. Instead of being given the prominence this component warranted, which would have contributed to

the generation of interest in the project and ultimately been of benefit to Government in maximising revenue, this information was relegated to a detail in information made available by Projects Malta Ltd, which information was to be disclosed once interest in the RfP had been registered.

- 7.3.5 The NAO considered elements of the evaluation process as positive, such as the timeframe allowed for the submission of bids and the collective competence of the Evaluation Committee, which was deemed adequate. However, other aspects of the evaluation process drew this Office's attention, most notably in terms of the subjectivity of the evaluation criteria and the limited technical assessment undertaken.
- 7.3.6 Another element verified by the NAO was whether the provisions of the Public Procurement Regulations were adhered to in the process leading to the transfer of the site. This transfer could have been processed solely in terms of the Disposal of Government Land Act. However, Government intentionally classified this transfer as a concession, citing specific provisions of the Public Procurement Regulations that governed works concessions. Although this Office maintains reservations regarding the classification of this transfer as a concession, once this was classified as such, then this created additional obligations on Government in terms of the Public Procurement Regulations. The key concern that emerges in this respect was that Projects Malta Ltd was not listed in any of the schedules of the Public Procurement Regulations at the time of the issue of the RfP. This fact resulted in the classification by default of Projects Malta Ltd under Schedule 2 of these Regulations. Schedule 2 necessitated that procurement beyond a certain threshold, such as the case of this concession, be effected through the DoC. In this case, the DoC's authorisation was not sought, casting doubt on the regularity of the RfP.
- 7.3.7 An aspect also considered by the NAO were the negotiations held between Government and the Seabank Consortium after the submission of the final offer. This Office established that lengthy negotiations were undertaken once the Seabank Consortium was nominated as the preferred bidder, which negotiations resulted in a significantly higher value being determined for the site that was to be disposed of. While we acknowledge that negotiations were not ordinarily undertaken after the award of a tender, this course of action was not specifically precluded in the Disposal of Government Land Act and the recourse to negotiations was specified in the RfP. Furthermore, negotiations are assumed to have been undertaken a priori in transfers of land authorised through parliamentary resolutions.
- 7.3.8 Nevertheless, major concerns emerge with respect to the role played by the Negotiation Committee, which comprised a Chair and two members. The NAO's attention was drawn to the fact that the input of the Chair Negotiation Committee and one of its members was negligible. This shortcoming was partly mitigated by the Advisor OPM, who was a member of the Negotiation Committee, and who assumed a disproportionately prominent role to compensate, and partly through the exceptional input provided by Deloitte in its assistance to Government.

- 7.3.9 Similarly significant was the fact that no records of negotiations undertaken were made available, which constrained the NAO from establishing a comprehensive understanding of the negotiation process. This shortcoming in the workings of the Negotiation Committee grossly detracted from the expected level of governance that was to regulate such a process. This concern arises not only in respect of the meetings held by the Negotiation Committee, but also extends to others held with various ministers of Government towards the end of the negotiation process.
- 7.3.10 The fifth element that the NAO assessed was whether Government secured the best possible revenue for the site. A deed of temporary emphyteusis was entered into between Government and the dbSG in February 2017 for a term of 99 years. The total commercial consideration to be paid to Government, based on the expected development as defined in the contract, was in excess of €56,000,000, excluding stamp duty. The planning application submitted by the dbSG in April 2017 had substantial differences to the project that was originally captured in the deed, with the development significantly downsized. The deed established a mechanism that allowed for a revision in the contract value to reflect changes in the extent of the development as approved by the PA. This reduction in the scope of the project resulted in a decrease in the value that Government was to realise. Based on the rates and mechanism established in the deed, and adjusting for the revised dimension of the approved development, the NAO established that the total commercial consideration payable to Government was €45,000,000.
- 7.3.11 The NAO's valuation of the site as at 2016, estimated at €67,000,000, differed considerably with that determined by Government, that is, €56,000,000. However, this variance was nullified in 2018, with this Office's valuation of €45,000,000 matching that emerging from the application of the parameters of the deed. This convergence in value was the result of a decrease in market value resulting from the downsizing of the project and a substantial increase in development costs of €22,000,000 despite the reduction in the scope of the project, which affected the NAO's method of valuation differently to that established in the deed. In this context, this Office considered the value determined as at 2018 as fair. This opinion remains subject to the extent of the development and the market which, given the dynamic nature of the mechanism of valuation, may change in the future.
- 7.3.12 Tangential to the determination of value, yet related in terms of the development of the site, were lacunae in the planning policy framework. The lack of a masterplan for Paceville drew attention to the disjointed and fragmented approach to the development of the area, with only an element of guidance provided through certain applicable policies. The other major developments intended for the area compound matters, since the cumulative effects of all the developments tend to be overlooked in the piecemeal approval of such developments. The fact that there was no particular urgency for the development of this site further confounds Government's decision to proceed with this disposal. Moreover, the significant costs of the infrastructural upgrades that the project and other developments in the area created, exacerbating existing limitations, were not considered in the initial planning that should have been undertaken prior to the decision to dispose of the site.

- 7.3.13 The penultimate element that the NAO reviewed was whether this project exposed Government to material losses in view of the relocation of the ITS. This Office is of the opinion that the relocation was inappropriately planned. The timeframes that were set for the vacation of the St Julian's campus were unrealistic, hence necessitating relocation to alternative temporary premises. The NAO maintains that the temporary relocation was required to mitigate the failure to appropriately prioritise the relocation of the ITS over the disposal of its premises. The direct cost to Government of this failure to appropriately plan was the cost of the refurbishment of the Luqa campus borne by Government, that is, approximately €2,000,000. While academic year 2018/2019 represented the Institute's first year of operation from its Luqa campus, no definite date has yet been set for its permanent relocation to Smart City. The cost of the development of the Smart City campus was estimated at €80,000,000.
- 7.3.14 One final element considered by the NAO was whether the transfer of the site adhered to the provisions stipulated in the Disposal of Government Land Act. While the provisions of this Act were adhered to, it is with concern that this Office noted that the GPD was conspicuously absent from the process that led to the disposal of the site. This absence was noteworthy as the GPD was, at the time, the government entity mandated to dispose of public land. The only involvement of the GPD was limited to those instances of the process when dictated by the Disposal of Government Land Act. Projects Malta Ltd assumed control over major parts of the process in its stead.

Appendices

Appendix A - Request by the Public Accounts Committee



Kap tal-Oppożizzjoni

9 ta' Marzu 2017

Leader of the Opposition

L-Awditur Ġenerali
Is-Sur Charles Deguara
Uffiċċju tal-Awditur Ġenerali
Floriana



Sur Deguara,

Peress illi:

1. Fi Frar 2017, il-Gvern habbar illi ffirmja l-kuntratt ma' DB San Ġorġ Property Limited ("DBSG" jew "l-Offerent") fejn għadda b'titolu ta' ċens l-art fejn illum hemm l-Istitut tal-Istudji Turistiċi (ITS) kif ukoll l-art tal-madwar kif deskritta fil-kuntratt "*Publication of Contract between the 'Government of Malta' Represented by 'Government Property Department' and DBSG u l-pjanti anċillari annessi mal-istess imsemmi kuntratt;*
2. Ma jezisti l-ebda dubju li dan is-sit huwa fost l-iprem siti li għandu l-Gvern, fil-qalba tal-aktar parti f'Malta mfittxija għal finijiet ta' żvilupp, tant li ż-zona hija magħrufa bħala l-*Golden Mile* ta' pajjiżna;
3. Jezistu dubji dwar jekk il-proċess li wassal għall-iffirmar ta' dan il-kuntratt, fid-diversi stadji tiegħu, kienx imsejjes fuq il-prinċipju ta' governanza tajba;
4. Jezisti tħassib anki minn diversi korpi kostitwiti u assoċjazzjonijiet dwar jekk il-prinċipju ta' trasparenza u ekwi-tà ġewx applikati b'mod ugwali ma' dawk kollha li setgħu kienu interessati;
5. Jezistu dubji wkoll dwar jekk il-*premium* li qed iħallsu DBSG jirriflettix il-valur tal-art, aktar u aktar meta tqis l-iskop għaliex se tintuża l-art;
6. Jezistu dubji dwar l-andament u l-proċedura addottata mill-ħruġ tal-RFP sal-iffirmar tal-kuntratt.

U peress illi tali proċess kellu jitmexxa skont ir-Regolamenti dwar l-Akkwist Pubbliku, fejn:

7. **Artikolu 39 tal-Legislazzjoni Sussidjarja, LS 174.04** tal-istess Regolamenti jistipola illi:

“(1) Awtoritajiet kontraenti għandhom jittrattaw operaturi ekonomiċi b’mod ugwali u mingħajr diskriminazzjoni u għandhom jaġixxu b’mod trasparenti u proporzjonali.

(2) L-Offferent għandu jiġi magħżul b’mod trasparenti u skont il-proċedura preskritta.

(3) Id-disinn tal-akkwist pubbliku ma għandux isir bl-intenzjoni li jeskludi mill-kamp tiegħu ta’ applikazzjoni dawn ir-regolamenti jew li b’mod artifiċjali jnaqqas il-kompetizzjoni. Il-kompetizzjoni titqies li giet imnaqqa b’mod artifiċjali meta d-disinn tal-akkwist pubbliku jsir bl-intenzjoni li jiffavorixxi b’mod ingustifikat jew ikun ta’ żvantagg għal ċerti operaturi ekonomiċi.”

u

- **Artikolu 1 tal-Legislazzjoni Sussidjarja, LS 174.04** ta’ l-istess Regolamenti fid-Dispożizzjonijiet Generali jistipola illi: “*offerta mhux konformi*” *tfisser offerta li mhumiex evidenza ta’ kollużjoni jew korruzzjoni, jew li jinstabu konformi mad-dokumenti dwar l-akkwist, li jiġu riċevuti tard, offerta fejn ikun hemm li huma baxxi b’mod mhux normali mill-awtorità kontraenti.*”

U peress illi:

8. Jekk il-Gvern ried jissalvagwardja l-aktar principju bażiku ta’ governanza tajba f’-*tenders* pubbliċi ma messu qatt **innegozja l-prezz wara illi l-Offferent kien tefa’ l-prezz tiegħu**. Jekk il-Gvern ma kienx kuntent bil-prezz mitfugħ messu mexa mal-prassi stabbilita u regà ħareġ l-RFP mill-ġdid. Hekk isir fir-rigward ta’ trasferiment ta’ l-art, cioè, li meta l-valur minimu mixtieq u stabbilit mill-Gvern ma jintlaħaqx mill-Offferent, terġa’ tinħareġ sejha oħra għall-offerta;

9. Il-fatt li l-Gvern (permezz ta’ Projects Malta Ltd) għamel perjodu twil hafna jinnegozja mal-Offferent **wara li giet sottomessa l-offerta finali** jkompli jikkonferma n-nuqqas ta’ tharis tal-imsemmija prassi. Fil-fatt jirriżulta illi l-proċess ta’ negozjati (meta dan suppost kien *tender* pubbliku) dam għaddej tnax-il xahar u dan jikkontrasta ferm ma’ x’għara fi proġetti simili ta’ akkwist ta’ art fil-madwar mingħand il-Gvern (e.g. Pender Place, Holiday Inn u art f’San Gwann mibjugħa mill-Mimcol), fejn l-Offferent mhux talli ma ngħatax l-opportunità illi jinnegozja l-prezz mitfuħ originarjament talli kien mitlub iħallas l-*premium* shiħ f’temp ta’ ftit ġimgħat;

10. Jekk il-Gvern verament ried illi jistabbilixxi *minimum value* indipendenti li jservi bħala direzzjoni u gwida għall-offerenti, il-principju ta’ governanza tajba u ta’ trasparenza kien jitlob illi tali eżercizzju kellu jsir qabel inħarget l-RFP u mhux wara illi kienet harġet, għalqet u saħansitra giet agġudikata. Skond il-prassi stabbilita tali sejhiet għall-offerti għal trasferiment tal-art għandhom jinkludu l-*minimum value* stabbilit b’mod indipendenti mill-Gvern u dan għandu jiġi inkluż fid-dokument tal-RFP mnifsu biex b’hekk ikun magħruf b’mod trasparenti u miftuħ il-valur minimu mistenni mill-offerenti. Dan ikompli jindika li l-parametri tal-kuntratt ġew negozjati **wara li giet sottomessa l-offerta finali**;

11. **Huwa evidenti li l-hlas u l-payment terms illi l-Gvern ta lill-Offerent huma ferm 'il bogħod mill-potenzjal kummerċjali ta' dan is-sit.** Dan wara li sar magħruf li b'kollox, DBSG ser iħallsu hmistax-il miljun ewro (€15m) għas-sit u mhux sittin miljun ewro (€60m) kif intqal mill-Gvern. Terga, l-Offerent se ħallas **bħala upfront payment l-ammont ridikolu ta' hames miljun ewro (€5m).**

12. Johroġ ċar ukoll illi **l-prezz miftiehem bejn il-Gvern u l-Offerent ma jissodisfax l-interess pubbliku** anki għaliex, meta wiehed iqabbel il-prezz li se jħallas DBSG għall-art in kwistjoni ma' artijiet oħra fl-inħawi (anke dawk li m'humieq fil-*Golden Mile*) u li ġew mgħoddija lil terzi mill-Gvern wara proċess ta' tender pubbliku, jirriżultaw differenzi kbar. Fil-każ ta' siti oħra, anki li jinsabu f'lokalitajiet ferm anqas prestigġjużi, il-prezz li tħallas għalihom kien ferm għola.

13. L-ispiza enormi li l-Gvern se jidhul għaliha biex inehhi l-ITS minn fuq dan is-sit biex dan jinghata lil DBSG ukoll tqajjem tħassib. Hekk kif kien mistqarr fil-Parlament, ir-rilokazzjoni tal-ITS minn Pembroke għal Smart City se tiġi tiswa lill-Gvern minimu ta' erbgħa u sebghin miljun ewro (€74m) li jridu jithallsu f'temp qasir għaliex f'dan iż-żmien irid jibda x-xogħol fuq il-proġett ta' DBSG. Għaldaqstant dan jespone bl-aktar mod ċar in-nuqqas ta' vijabbiltà ta' dak li ftiehem il-Gvern, fejn: **minghand DBSG se jiġbor €5m upfront payment u €10m fuq medda ta' seba' snin mingħajr imgħax, filwaqt li biex jirriloka l-ITS minn Pembroke għal Smart City se jħallas €74m f'perjodu ħafna iqsar.**

14. It-titolu u s-sustanza tal-RFP illi ħareġ il-Gvern kienet tali illi faċli jiżgwi min kelli jew seta' kelli interess illi jitfa' l-offerta u dan peress illi kien jaqra "*Request for Tender Proposals for the Design, Build and Operation of an upmarket mixed tourism and leisure development in St George's Bay, St Julian's*". **Mit-titolu m'hemm ebda indikazzjoni tal-intenzjoni li l-art pubblika tintuża għal skop ta' żvilupp residenzjali.** Dan jidher li jmur kontra Subartikolu 3 ta' Artikolu 39 tal-Legislazzjoni Sussidjarja, LS 174.04 Regolamenti dwar l-Akkwist Pubbliku illi tghid illi:

(3) Id-disinn tal-akkwist pubbliku ma għandux isir bl-intenzjoni li jeskludi mill-kamp tiegħu ta' applikazzjoni dawn ir-regolamenti jew li b'mod artifiċjali jnaqqas il-kompetizzjoni. Il-kompetizzjoni titqies li giet imnaqqa b'mod artifiċjali meta d-disinn tal-akkwist pubbliku jsir bl-intenzjoni li jiffavorixxi b'mod ingustifikat jew ikun ta' żvantagg għal ċerti operaturi ekonomiċi."

15. L-importanza tat-titolu jrid jitqies ukoll fil-kuntest li l-Gvern għamel prezz ta' għaxart elef ewro (€10,000) biex min hu interessat jixtri d-dokument tal-RFP. Minbarra l-fatt li prezz għoli bħal dan imur kontra l-ispirtu tal-Legislazzjoni Sussidjarja, LS 174.04 Regolamenti dwar l-Akkwist Pubbliku, minnu nnifsu **l-prezz flimkien mat-titolu setghu wasslu biex jiddgħajef l-interess tal-offerenti prospettivi**, xi ħaġa li indubbjament ma kenetx fl-interess tal-Gvern. Fil-fatt dan jidher ċar minn-numru estrament baxx ta' dokumenti li ngabru u offerti li ġew mitfugħa, speċjalment meta tqis il-potenzjal tas-sit. Wiehed allura jistaqsi wkoll għaliex l-offerenti potenzjali ma ngħatawx l-opportunità illi jinghataw draft tal-RFP sabiex ikunu jistgħu

jarawha u jekk sussegwentament ikollhom l-interess illi jissottomettu l-offerta tagħhom iħallsu l-ghaxart elef ewro (€10,000) u dan skont il-prassi stabbilita u użata għal dawn l-aħħar snin. Terġa, in-nuqqas ta' kjarizza u trasparenza johroġ ukoll mill-fatt li l-RFP ma kienx jinkludi abbozz tal-kuntratt bil-kundizzjonijiet tal-emfitwesi sabiex l-offerenti jkunu jafu b'mod ċar x'inhum mistenni minnhom u b'hekk tiġi assigurata t-trasparenza u l-ekwità;

16. Huwa stramb kif **il-format illi intuża f'din l-RFP huwa għal kollox differenti minn dak illi jintuża s-soltu** fejn jidhol it-trasferiment tal-art tal-Gvern. Normalment, talli sejhiet għall-offerti kienu jinkludu *project description* dettaljata, il-kundizzjonijiet kollha marbuta mat-trasferiment tal-art u l-valur minimu mistenni minn l-offerent. Din l-RFP la kien fih *project description* dettaljata, la kien fih il-kundizzjonijiet kollha marbuta mat-trasferiment tal-art u lanqas il-valur minimu mistenni mill-offerent. Barra minn hekk, tradizzjonalment, kull ma kien ikun mitlub mill-offerent kien illi jimla l-prezz fl-ispazju allokat u jelenka proposti addizzjonali li seta' kellu f'pagna separata. Dan il-format kien jassigura trasparenza u ugwaljanza fost l-offerenti kollha, fejn mhux biss l-offerent kien ikun jaf mill-bidu x'qed jistenna mingħandu l-Gvern u x'inhuma l-kundizzjonijiet, imma anke l-kumitat ta' evalwazzjoni kien iqabbel *like with like*.

17. Huwa ta' thassib ukoll kif, qabel ma gie ffirmat il-kuntratt fi Frar 2017, **l-Offferent kien diġa għalaq numru ta' "Booking Agreements" ma' xerrejja prospettivi** u dan qabel lanqas biss kien għad għandu t-titolu tal-art u allura dan jindika illi l-Offferent kien jaf minn qabel illi l-offerta sottomessa minnu kienet se tiġi aċċettata mill-Gvern u dan minkejja illi l-proċess suppost kien għadu għaddej.

18. Jirriżulta ukoll **illi l-proġett hekk kif gie sottomess mill-Offferent jmur kontra l-Local Plan eżistenti kif ukoll lanqas josserva l-kundizzjonijiet tal-FAR Policy** (vide "A Planning Policy Guide on the Use and Applicability Of the Floor Area Ratio (FAR)", May 2014 point 7.2, 7.10 and 7.14);

19. Jirriżulta illi ai termini ta' Leġislazzjoni Sussidjarja, LS 174.04 Regolamenti dwar l-Akkwist Pubbliku, **Projects Malta m'għandiex l-istanding neċessarju fil-liġi** biex toħroġ, tevalwa u tagġudika RFPs unilateralmment wahedha u mingħajr l-involviment tad-Dipartiment tal-Kuntratti, u dan peress illi *Projects Malta* huwa elenkat taħt it-Tieni Skeda li tfisser illi bħala awtorità kontraenti taqa' taħt il-Kompetenza tad-Dipartiment tal-Kuntratti;

20. Għaldaqstant dan il-proċess kien jirrikjeda illi d-deċiżjoni dwar it-trasferiment tal-art tgħaddi għall-approvazzjoni tal-Parlament, haġa illi ma saritx;

Għalhekk qed nitlob lill-Uffiċċju tal-Awditur Ġenerali sabiex jinvestiga s-segwenti:

1. Jekk il-proċess tat-trasferiment ta' l-art in kwistjoni ssalvagwardjax u sarx a bażi tal-prinċipji **ta' governanza tajba**, kemm fil-ħruġ u fl-aġġudikazzjoni tal-*Request for Tender Proposals (RFP)* kif ukoll fil-kuntratt iffirmit innifsu.

2. Jekk il-proċess tat-trasferiment tal-art in kwistjoni ssalvagwardjax il-prinċipji ta' **trasparenza u ekwità** u jekk il-proċess assigurax illi l-offerenti potenzjali kollha ġew trattati b'mod ugwali u bl-istess proporzjon, kemm fil-hruġ u fl-aġġudikazzjoni tal-Request for Tender Proposals (RFP) kif ukoll fil-kuntratt iffirmat innifsu.
3. Jekk artikolu 39 tal-Legislazzjoni Sussidjarja, LS 174.04 Regolamenti dwar l-Akkwist Pubbliku ġiex osservat.
4. Jekk artikolu 1 tal-Legislazzjoni Sussidjarja, LS 174.04 Regolamenti dwar l-Akkwist Pubbliku fid-Dispożizzjonijiet Generali ġiex osservat.
5. Jekk kienx hemm negozjati bejn il-Gvern u DBSG wara li ġiet sottomessa l-offerta finali.
6. Jekk b'dan il-ftehim il-poplu Malti ġabx l-aħjar dħul possibbli minn dan is-sit ta' valur għoli hafna meta wiehed iqis li jiffirma parti mill-*Golden Mile* ta' Malta.
7. Jekk dan il-proġett hux se jesponi lit-*taxpayer* Malti u Għawdx i għal telf materjali in vista tal-fatt illi huwa pubblikament magħruf illi l-rilokazzjoni tal-ITS minn Pembroke għal Smart City se tiswa lill-Gvern minimu ta' €74 miljun, ammont illi huwa ferm oghla mill-€15-il miljun illi l-Offerent se jhallas lill-Gvern.
8. Jekk l-andament u l-proċedura addottati fil-proċess kollhu li wassal għall-kuntratt u l-fatt illi ai termini ta' Skeda 2 tal-Legislazzjoni Sussidjarja, LS 174.04 Regolamenti dwar l-Akkwist Pubbliku, Projects Malta Ltd m'għandiex l-*standing* neċessarju fil-liġi biex toħroġ, tevalwa u taġġudika RFPs unilateralment waħedha u mingħajr l-involvement tad-Dipartiment tal-Kuntratti, jirrendux il-kuntratt iffirmat ivvizzjat.
9. Jekk it-trasferiment osservax il-provedimenti ta' Kapitolu 268 Att dwar it-Trasferiment ta' Artijiet tal-Gvern.

Qieghed nikkopja b'din l-ittra liċ-Chairman tal-PAC, l-Onorevoli Tonio Fenech, sabiex fl-ewwel opportunità xierqa jara li din l-ittra tiġi mgħoddija wkoll lilek formalment mill-PAC skont il-proċedura stabbilita sabiex inti tkun tista' tmexxi bl-investigazzjoni tiegħek.



Simon Busuttil
Kap tal-Oppożizzjoni

cc. Onorevoli Tonio Fenech, Chairman, Public Accounts Committee

Appendix B - Tower apartment schedule (detailed), 2018

Floor	Units	Type	Area (m ²)	Rate (€)	Estimated value per unit (€)	Estimated value total (€)
1	2	2-bedroom apartment	187.22	4,556.25	852,998	1,705,997
1	2	1-bedroom apartment	130.17	4,556.25	593,064	1,186,129
1	2	3-bedroom apartment	219.18	4,556.25	998,639	1,997,278
1	2	1-bedroom apartment	99.88	3,690.56	368,595	737,190
1	2	2-bedroom apartment	150.49	4,556.25	685,647	1,371,295
2	2	2-bedroom apartment	176.44	4,556.25	803,882	1,607,764
2	2	2-bedroom apartment	175.20	4,556.25	798,255	1,596,510
2	2	1-bedroom apartment	104.54	3,690.56	385,793	771,586
2	2	3-bedroom apartment	228.60	4,556.25	1,041,536	2,083,072
2	2	1-bedroom apartment	108.88	4,556.25	496,085	992,169
3	2	3-bedroom apartment	209.43	4,556.25	954,215	1,908,431
3	2	2-bedroom apartment	185.22	4,556.25	843,909	1,687,817
3	2	2-bedroom apartment	174.57	4,556.25	795,385	1,590,769
3	2	3-bedroom apartment	218.19	4,556.25	994,105	1,988,211
4	1	2-bedroom apartment	184.36	4,556.25	839,967	839,967
4	1	2-bedroom apartment	168.44	4,556.25	767,455	767,455
4	1	3-bedroom apartment	221.54	3,690.56	817,607	817,607
4	1	1-bedroom apartment	100.78	4,556.25	459,156	459,156
4	1	2-bedroom apartment	114.31	4,556.25	520,802	520,802
5	1	2-bedroom apartment	179.52	4,556.25	817,915	817,915
5	1	2-bedroom apartment	179.31	4,556.25	816,981	816,981
5	1	1-bedroom apartment	103.21	3,690.56	380,885	380,885
5	1	3-bedroom apartment	231.43	4,556.25	1,054,430	1,054,430
5	1	1-bedroom apartment	94.25	4,556.25	429,427	429,427
6	1	2-bedroom apartment	168.40	4,556.25	767,250	767,250
6	1	2-bedroom apartment	183.53	4,556.25	836,209	836,209
6	1	1-bedroom apartment	114.74	3,690.56	423,455	423,455
6	1	1-bedroom apartment	100.78	3,690.56	371,916	371,916
6	1	3-bedroom apartment	219.77	4,556.25	1,001,327	1,001,327
7	2	2-bedroom apartment	184.36	5,062.50	933,297	1,866,594
7	2	2-bedroom apartment	168.44	5,062.50	852,728	1,705,455
7	2	3-bedroom apartment	221.54	4,556.25	1,009,392	2,018,783
7	2	1-bedroom apartment	100.78	5,062.50	510,173	1,020,347
7	2	2-bedroom apartment	114.31	5,062.50	578,669	1,157,338
8	2	2-bedroom apartment	179.52	5,062.50	908,795	1,817,589
8	2	2-bedroom apartment	179.31	5,062.50	907,757	1,815,514
8	2	1-bedroom apartment	103.21	4,556.25	470,228	940,456
8	2	3-bedroom apartment	231.43	5,062.50	1,171,589	2,343,178
8	2	1-bedroom apartment	94.25	5,062.50	477,141	954,281

9	1	2-bedroom apartment	168.40	5,062.50	852,500	852,500
9	1	2-bedroom apartment	183.53	5,062.50	929,121	929,121
9	1	1-bedroom apartment	114.74	4,556.25	522,784	522,784
9	1	1-bedroom apartment	100.78	4,556.25	459,156	459,156
9	1	3-bedroom apartment	219.77	5,062.50	1,112,586	1,112,586
10	1	2-bedroom apartment	187.22	5,062.50	947,776	947,776
10	1	1-bedroom apartment	130.17	5,062.50	658,960	658,960
10	1	3-bedroom apartment	99.88	5,062.50	505,617	505,617
10	1	1-bedroom apartment	150.49	5,062.50	761,830	761,830
10	1	2-bedroom apartment	188.00	5,062.50	951,750	951,750
11	1	2-bedroom apartment	176.44	5,062.50	893,202	893,202
11	1	2-bedroom apartment	175.20	5,062.50	886,950	886,950
11	1	1-bedroom apartment	104.54	4,556.25	476,288	476,288
11	1	3-bedroom apartment	228.60	5,062.50	1,157,262	1,157,262
11	1	1-bedroom apartment	108.88	5,062.50	551,205	551,205
12	1	3-bedroom apartment	209.43	5,062.50	1,060,239	1,060,239
12	1	2-bedroom apartment	185.22	5,062.50	937,676	937,676
12	1	2-bedroom apartment	174.57	5,062.50	883,761	883,761
12	1	3-bedroom apartment	218.19	5,062.50	1,104,562	1,104,562
13	2	2-bedroom apartment	168.40	5,625.00	947,222	1,894,444
13	2	1-bedroom apartment	183.53	5,625.00	1,032,356	2,064,713
13	2	3-bedroom apartment	114.74	5,062.50	580,871	1,161,743
13	2	1-bedroom apartment	100.78	5,062.50	510,173	1,020,347
13	2	2-bedroom apartment	219.77	5,625.00	1,236,206	2,472,413
14	2	2-bedroom apartment	187.22	5,625.00	1,053,084	2,106,169
14	2	2-bedroom apartment	130.17	5,625.00	732,178	1,464,356
14	2	1-bedroom apartment	99.88	5,625.00	561,797	1,123,594
14	2	3-bedroom apartment	150.49	5,625.00	846,478	1,692,956
14	2	1-bedroom apartment	188.00	5,625.00	1,057,500	2,115,000
15	1	2-bedroom apartment	176.44	5,625.00	992,447	992,447
15	1	2-bedroom apartment	175.20	5,625.00	985,500	985,500
15	1	1-bedroom apartment	104.54	5,062.50	529,208	529,208
15	1	3-bedroom apartment	228.60	5,625.00	1,285,847	1,285,847
15	1	1-bedroom apartment	108.88	5,625.00	612,450	612,450
16	1	4-bedroom apartment	255.96	5,625.00	1,439,775	1,439,775
16	1	4-bedroom apartment	390.78	5,625.00	2,198,109	2,198,109
17	1	2-bedroom apartment	184.36	5,625.00	1,036,997	1,036,997
17	1	2-bedroom apartment	168.44	5,625.00	947,475	947,475
17	1	3-bedroom apartment	221.54	5,062.50	1,121,546	1,121,546
17	1	1-bedroom apartment	100.78	5,625.00	566,857	566,857
17	1	2-bedroom apartment	114.31	5,625.00	642,966	642,966
18	1	2-bedroom apartment	179.52	5,625.00	1,009,772	1,009,772
18	1	2-bedroom apartment	179.31	5,625.00	1,008,619	1,008,619
18	1	1-bedroom apartment	103.21	5,062.50	522,475	522,475

The disposal of the site formerly occupied by the Institute of Tourism Studies

18	1	3-bedroom apartment	231.43	5,625.00	1,301,766	1,301,766
18	1	1-bedroom apartment	94.25	5,625.00	530,156	530,156
19	2	2-bedroom apartment	176.44	6,250.00	1,102,719	2,205,438
19	2	2-bedroom apartment	175.20	6,250.00	1,095,000	2,190,000
19	2	1-bedroom apartment	104.54	5,625.00	588,009	1,176,019
19	2	3-bedroom apartment	228.60	6,250.00	1,428,719	2,857,438
19	2	1-bedroom apartment	108.88	6,250.00	680,500	1,361,000
20	2	1-bedroom apartment	123.73	6,250.00	773,313	1,546,625
20	2	2-bedroom apartment	186.39	6,250.00	1,164,906	2,329,813
20	2	1-bedroom apartment	77.04	5,625.00	433,350	866,700
20	2	2-bedroom apartment	174.70	5,625.00	982,659	1,965,319
20	2	3-bedroom apartment	218.29	6,250.00	1,364,313	2,728,625
21	1	2-bedroom apartment	179.52	6,250.00	1,121,969	1,121,969
21	1	2-bedroom apartment	168.44	6,250.00	1,052,750	1,052,750
21	1	3-bedroom apartment	221.54	5,625.00	1,246,163	1,246,163
21	1	1-bedroom apartment	100.78	6,250.00	629,844	629,844
21	1	2-bedroom apartment	114.31	6,250.00	714,406	714,406
22	1	2-bedroom apartment	179.52	6,250.00	1,121,969	1,121,969
22	1	2-bedroom apartment	179.31	6,250.00	1,120,688	1,120,688
22	1	1-bedroom apartment	103.21	5,625.00	580,528	580,528
22	1	3-bedroom apartment	231.43	6,250.00	1,446,406	1,446,406
22	1	1-bedroom apartment	94.25	6,250.00	589,063	589,063
23	1	2-bedroom apartment	168.40	6,250.00	1,052,469	1,052,469
23	1	2-bedroom apartment	183.53	6,250.00	1,147,063	1,147,063
23	1	1-bedroom apartment	114.74	5,625.00	645,413	645,413
23	1	1-bedroom apartment	100.78	5,625.00	566,859	566,859
23	1	3-bedroom apartment	219.77	6,250.00	1,373,563	1,373,563
24	1	2-bedroom apartment	187.22	6,250.00	1,170,094	1,170,094
24	1	1-bedroom apartment	130.17	6,250.00	813,531	813,531
24	1	3-bedroom apartment	99.88	6,250.00	624,219	624,219
24	1	1-bedroom apartment	150.49	6,250.00	940,531	940,531
24	1	2-bedroom apartment	188.00	6,250.00	1,175,000	1,175,000
25	1	duplex penthouse suite	1,559.79	7,812.50	12,185,820	12,185,820
Total					147,214,780	

2019 - 2020 (to date) Reports issued by NAO

NAO Work and Activities Report

April 2019 Annual Report & Financial Statements 2018 - Works and Activities

NAO Audit Reports

March 2019 Performance Audit: A Review on the Contract for Mount Carmel Hospital's Outsourced Clerical Services

June 2019 Joint Audit: An Evaluation of the Community Work Scheme

July 2019 Cooperative Audit: Are adequate mechanisms in place for the designation and effective management of Marine Protected Areas (MPAs) within the Mediterranean Sea?

October 2019 Information Technology Audit: The Effective use of Tablets in State, Church and Independent Primary Schools

October 2019 Follow-Up Reports by the National Audit Office 2019

November 2019 Report by the Auditor General on the Workings of Local Government 2018

November 2019 Performance Audit: An analysis of issues concerning the Cooperative Movement in Malta

December 2019 Report by the Auditor General on the Public Accounts 2018

December 2019 An investigation of contracts awarded by the Ministry for Home Affairs and National Security to Infinite Fusion Technologies Ltd

January 2020 Performance Audit: Community Care for Older Persons

February 2020 Performance Audit: Assessing the Public Transport Contract and Transport Malta's visibility on the service

March 2020 Information Technology Audit: ICT Across Local Councils