

# THE DISPOSAL OF THE SITE FORMERLY OCCUPIED BY THE INSTITUTE OF TOURISM STUDIES (ABRIDGED)

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A REPORT BY THE  
AUDITOR GENERAL



MARCH 2020





The disposal of the site formerly occupied by  
the Institute of Tourism Studies (Abridged)

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## List of Abbreviations

BoG	Board of Governors
dbSG	db San Gorg Properties Ltd
GPD	Government Property Department
ITS	Institute for Tourism Studies
MEH	Ministry for Energy and Health
MOT	Ministry for Tourism
OPM	Office of the Prime Minister
PA	Planning Authority
PS	Permanent Secretary
RfP	Request for Proposals

## 1. Request by the Public Accounts Committee

- 1.1 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 the db San Gorg Property Ltd (dbSG). This correspondence was copied to the Chair Public Accounts Committee for a formal request for an audit to be made by the Committee in accordance with established procedures. During the Public Accounts Committee sitting held on 13 March 2017, the Committee agreed to the audit.
- 1.2 On 14 February 2019, the Auditor General informed the Chair Public Accounts Committee of the terms of reference that would be adopted as the basis of the audit to be undertaken by the National Audit Office. In this regard, this Office was to audit whether:
- a. the process leading to the transfer of the site, in terms of the issue and adjudication of the Request for Proposals (RfP), as well as in terms of the contracts entered into, was based on and safeguarded the principles of good governance;
  - b. the process leading to the transfer of the site, in terms of the issue 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<sup>1</sup> 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.

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<sup>1</sup> 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.

- 1.3 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 this Office. Findings presented in this report are based on the documentation submitted to us. Requests for documentation were mainly made to the Ministry for Tourism (MOT), which was the ministry responsible for the ITS, Projects Malta Ltd, that was 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 from the Cabinet Office, the Office of the Prime Minister (OPM), the Planning Authority (PA), the Lands Authority and Deloitte Services Ltd. The latter were engaged by Projects Malta Ltd to assist Government in establishing a value for the site that was to be disposed of. We also engaged a consultant architect to assist us in the valuation of the site.
- 1.4 Gaps in information were addressed and clarifications were obtained through interviews held with the various stakeholders, including representatives of the Seabank Consortium. Of grave concern to this Office was that the Hon. Dr Konrad Mizzi, the Minister for Tourism at the time of the audit, failed to attend a meeting despite numerous attempts made.
- 1.5 Hereunder are the salient facts relating to the process leading to the disposal of the site formerly occupied by the ITS, as well as relevant conclusions that we arrived at. Although this report provides an overview of matters relating to this transfer, a comprehensive account of all aspects relating to our review is presented in a separate report titled 'The disposal of the site formerly occupied by the Institute of Tourism Studies'.

## 2. Timeline of key developments

2.1 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. The site was to include a five-star hotel operated under a world recognised brand operating worldwide, as well as leisure and entertainment facilities, residential units, food and beverage and retail outlets.
18 November 2015	Publication of the contract notice in the Official Journal of the European Union by Projects Malta Ltd on behalf of the Ministry for Energy and Health (MEH). The MEH was, at the time, responsible for Projects Malta Ltd.
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 value of €17,000,000. The Seabank Consortium was formed by SD Holdings Ltd, Seabank Hotel and Catering Ltd, and Seaport Franchising Ltd. According to the bid, the City Centre project was to include a five-star hotel with over 300 rooms, a casino, two residential towers, office space, car park facilities and a retail mall development.
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	The members of the Seabank Consortium formed the dbSG.



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, through which a value of €56,114,000 was established for the ITS site. This value was based on the project as proposed by the Seabank Consortium.
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 Commissioner of Land, 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.
10 February 2017	A concession award notice was published in the Official Journal of the European Union in terms of Directive 2014/23/EU on the award of concession contracts.
9 March 2017	The Leader of the Opposition requested the Auditor General 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 Public Accounts Committee agreed to the audit by the Auditor General.

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. The development as applied for by the dbSG differed considerably from that originally proposed in response to the RfP, with the two residential towers reduced to one and a reduction in the extent of the hotel accounting for the main changes.
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	This Office submitted the terms of reference set for this audit to the Public Accounts Committee.
28 February 2019	The Tribunal gave its decision on the various issues brought to its attention, rejecting the appellants' pleas and recommending minor modifications to the development.
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 excavation works on site. The original application submitted in April 2017 remained active.

### **3. The decision to relocate the Institute of Tourism Studies**

- 3.1 We 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, we noted several issues that call into question the motivation that led to the decision to relocate the Institute.
- 3.2 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, we 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, we were 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 Board of Governors (BoG), entrusted with providing the Institute with strategic direction, did not discuss the need for relocation in the years leading to this decision.
- 3.3 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. We considered 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 we established that the ITS BoG was not involved in the decision-making process that led to its relocation, we ascertained that the Chair ITS BoG and the Chief Executive Officer ITS were informed of developments in this respect prior to the public announcement of the Institute's relocation. However, the involvement of the Chair ITS BoG and the Chief Executive Officer ITS ensued when the decision to relocate the Institute had already been taken.

- 3.4 As part of our analysis regarding the ITS' need to relocate, we considered two key indicators that would attest to this need, that is, student population and curriculum. Data sourced from the ITS and the National Statistics Office 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.
- 3.5 We maintain 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.

#### **4. The decision to dispose of the site occupied by the Institute of Tourism Studies**

- 4.1 In our 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, we sought to understand the considerations undertaken by Government in arriving at the decision to dispose of this public land.
- 4.2 Immediately apparent to us was that this was an unorthodox disposal in that the Government Property Department (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, we considered the lack of involvement of the GPD as detracting from the process of disposal.
- 4.3 Having established that the GPD was not involved in the decision to dispose of the site, we sought to establish from where the decision originated. Notwithstanding the numerous enquiries made, we were unable to obtain any information in this regard. In our opinion, 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.

- 4.4 Unable to establish who took the decision to dispose of the site occupied by the ITS, we sought to ascertain whether any evaluations were carried out to determine the options available regarding the development possible on site. Our 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 we acknowledge 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 we were provided with numerous explanations and justifications regarding the anticipated benefits of the project, no documentation or studies that supported Government's decision to dispose of the site were made available.
- 4.5 Our attention was also drawn to the limited interest generated in the site. While we are aware that the requirements in terms of the submission period of bids and publication were adhered to, in our 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, we contend that the site should have attracted more than one bid.
- 4.6 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. We maintain 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.

## 5. Considerations relating to the Request for Proposals

- 5.1 In our review of the RfP, we 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 Principal Permanent Secretary OPM and the Permanent Secretary (PS) MEH constrained us from determining the involvement, and the extent thereof, of the parties involved in the drafting of the RfP.
- 5.2 We 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 Official Journal of the European Union, 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 that we traced was 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, food and beverage and retail outlets, and residential units. We are 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 our 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.

5.3 Although concerns regarding the period allowed for the submission of proposals were expressed by an interested party, we 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 European Commission. The Commission 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, we are 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 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.

5.4 Another element of concern in the RfP related to the evaluation criteria that were to guide the Evaluation Committee in its adjudication of proposals. We are 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 our view, 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.

## **6. Evaluation of the bid by the Seabank Consortium**

- 6.1 Conflicting accounts of who was involved in the appointment of members to the Evaluation Committee were provided to us. 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, we are 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.
- 6.2 While certain aspects of evaluation provided critical analysis of the strengths and weaknesses of that proposed, we 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.

## **7. Referral to the disposal as a ‘concession’**

- 7.1 We are of the understanding that the transfer of public land is to be considered in terms of the Disposal of Government Land Act (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 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.

- 7.3 We 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 that 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/EU 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.”
- 7.4 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 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.
- 7.5 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 certain 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.



- 7.6 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, we 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.
- 7.7 In turn, the Advisor OPM, who was a member of the Negotiation Committee and a lawyer by profession, 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 as 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. We 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 Official Journal of the European Union, as well as the inclusion of a process of review.
- 7.8 Reference to the tender as a concession in the RfP and its reference as a works concession in the advert published in the Official Journal of the European Union 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 Department of Contracts who argued that works concessions were, at the time of the issue of the RfP, regulated by the Public Procurement Regulations. Nonetheless, although we agree 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. The same could be said of the Concessions Directive.

- 7.9 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.
- 7.10 Having considered the explanations provided, we are 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 Department of Contracts.
- 7.11 Aside from concerns relating to the classification of this disposal as a concession, our 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. We deemed the information provided by the PS MOT as misleading.

## **8. Projects Malta Ltd – Mandate to tender**

- 8.1 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, we are 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 disposal, 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 Commissioner of Land 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 Commissioner of Land.

- 8.2 In replies to our queries 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 it 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 Commissioner of Land, 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.
- 8.3 In addition, in correspondence submitted to us, 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 the 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.
- 8.4 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.
- 8.5 We 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 Official Journal of the European Union, and therefore regulated by the Public Procurement Regulations. The Department of Contracts 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 Department of Contracts. In this case, the set threshold was exceeded; however, Projects Malta Ltd did not involve the Department of Contracts in any way. We deemed this a serious shortcoming that casts doubt as to the regularity of the RfP.

## 9. Negotiations

- 9.1 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, we sought to establish whether it was permissible for the parties to enter into such negotiations. We 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, we are 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.
- 9.2 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. We acknowledge that stated by the Advisor OPM and the former Chair Negotiation Committee and, in view of the lack of legislative provisions, deem the matter of whether negotiations could be undertaken in the case of disposal of public land a moot point.
- 9.3 Irrespective of whether negotiations were permissible or otherwise, we have 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 we deemed deficient.
- 9.4 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. We contend 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. Our concern is exacerbated by the fact that this lack of input was condoned by the Chair Negotiation Committee.
- 9.5 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 provided to us by 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.

- 9.6 Another shortcoming that drew our attention 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, we were 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 us from establishing a comprehensive understanding of the process of negotiation, limiting our efforts at verifying facts. Compounding matters were the conflicting accounts provided by the parties involved, which further obscured this process.
- 9.7 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, we are 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 we consider 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.
- 9.8 In the absence of records retained by Projects Malta Ltd and, in particular, the Negotiation Committee, we were constrained to rely on records retained by Government's advisors, in this case Deloitte. We are of the opinion that the obligation to lead and manage the process of negotiation rested squarely with the Negotiation Committee, and was to be overseen by Projects Malta Ltd. In our 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.
- 9.9 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. We maintain 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.

**9.10** 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. We maintain 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.

**9.11** We deemed the involvement of Cabinet in the disposal of the ITS site as somewhat anomalous, as Cabinet is not ordinarily involved in the authorisation of the disposal of public land following a call for tenders. Nonetheless, the innovative method for valuation adopted, which method is to be utilised for future similar transfers, partly explains Cabinet's involvement. We are 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.

## **10. The value of the site and planning considerations**

**10.1** 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.

**10.2** In our analysis, we 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. We 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 one of the sites, with another site 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.

10.3 Our 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, we 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 this Office 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. The substantial reduction in the scope of the development resulted in revisions to the payable consideration. 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.

10.4 We acknowledge 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, we 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 our 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.

- 10.5 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. We 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.
- 10.6 We are 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 we acknowledge 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, we maintain 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.
- 10.7 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.



## **11. Relocation of the Institute of Tourism Studies to alternative premises**

- 11.1** 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.
- 11.2** Based on documentation reviewed, we are 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 our 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. We considered the 2019 target a more realistic objective given the complexity of the project, despite the fact that this objective was not achieved.
- 11.3** We 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. We were 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 this Office 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.
- 11.4** 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.

11.5 Overall, having considered the manner in which the decision to relocate the ITS unfolded, we maintain 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.

## 12. Overall conclusions

12.1 Having considered the process relating to the disposal of the site formerly occupied by the ITS, our attention now shifts to the address of the terms of reference that were set for this audit.

12.2 The first element that we considered 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, we were 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.

12.3 In our 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 us 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.

12.4 The second element that we reviewed 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.

- 12.5 We 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 our attention, most notably in terms of the subjectivity of the evaluation criteria and the limited technical assessment undertaken.
- 12.6 Another element that we verified 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 we maintain 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 Contracts. In this case, the involvement of the Department of Contracts was not sought, casting doubt on the regularity of the RfP.
- 12.7 An aspect we also considered were the negotiations held between Government and the Seabank Consortium after the submission of the final offer. We 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.

- 12.8 Nevertheless, major concerns emerge with respect to the role played by the Negotiation Committee. Our 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 of Deloitte in services provided to Government.
- 12.9 Similarly significant was the fact that no records of negotiations undertaken were made available, which constrained us 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.
- 12.10 The fifth element that we 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 cited 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, we established that the total commercial consideration payable to Government in 2018 was €45,000,000.
- 12.11 Our 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 our 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 our method of valuation differently to that established in the deed. In this context, we 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.

- 12.12 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.
- 12.13 The penultimate element that we reviewed was whether this project exposed Government to material losses in view of the relocation of the ITS. We are 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. We maintain 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, we were 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.
- 12.14 One final element that we considered 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 we 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.

## 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

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