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The Government's rescission of restrictions on the site of the Fortina Hotel



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The Government's rescission of restrictions on the site of the Fortina Hotel

Report by the Auditor General

This report has been prepared under subparagraph 9(a) of the First Schedule of the Auditor General and National Audit Office Act, 1997 for presentation to the House of Representatives in accordance with subparagraph 9(b) of the First Schedule of the said Act.



Charles Deguara
Auditor General

The Auditor General is head of the National Audit Office, Malta. He and the National Audit Office are totally independent of Government. He examines the accounts of all Government Ministries and Departments and may also examine other public sector bodies. He also has statutory authority to report to the House of Representatives on the economy, efficiency and effectiveness with which Departments and other bodies have used the resources voted annually to them in the Estimates.

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Abbreviations

AG	Auditor General
BoG	Board of Governors
CEO	Chief Executive Officer
DG	Director General
GDC	Gross Development Costs
GDV	Gross Development Value
GPD	Government Property Department
M&E	mechanical and electrical
MBR	Malta Business Registry
MP	Member of Parliament
MTIP	Ministry for Transport, Infrastructure and Capital Projects
NAO	National Audit Office
NAOAC	National Audit Office Accounts Committee
OPM	Office of the Prime Minister
PA	Planning Authority

Executive Summary

1. On 7 May 2021, Professor Arnold Cassola, a noted activist, requested the National Audit Office (NAO) to investigate breaches of the conditions imposed by the Government on public land in Sliema transferred to the owners of the Fortina Hotel.
2. The NAO established that the Government sold several parcels of land through three Deeds of transfer entered into on 12 June 1991, 25 January 1996 and 15 February 2000, against payment of €256,231, €249,243 and €931,749, respectively. The land was sold with the provision that it served as an extension of the Fortina Hotel complex, already owned by Fortel Services Ltd. Besides this limitation in use, other conditions, including height restrictions and public accessibility to certain areas, were imposed on the sites. Subsequently, on 3 April 2017 and 6 December 2018, Fortina sought the waiver of certain conditions stipulated in the Deeds. Valuations were undertaken by the Lands Authority to estimate the compensation due to the Government for the removal of restrictions.
3. On 17 July 2019, Parliament resolved to rescind various conditions related to the sites. These rescissions were formalised through a Deed of amendment executed between the Government and Fortina on 26 July 2019. The Government consented to the rescission of waivers against the payment of €1,000,000 up front and €7,100,000 over a maximum of 10 years from the date of the Deed. The rescission allowed Fortina to develop parts of the site for residential, commercial and office use.
4. Against this backdrop, the NAO set the following terms of reference, namely, to ascertain whether:
 - a. the disposal of public land complied with applicable legislation;
 - b. the valuation for the disposal of public land and rescission of certain contractual conditions was fair;
 - c. the contractual terms were adhered to by the Government and the proprietors of the Fortina Hotel; and
 - d. the principles of good governance were upheld in all aspects of the process involving the disposal of public land and rescission of certain contractual conditions.

Hereunder are the key conclusions arrived at by the NAO.

5. To address the request by Fortina of April 2017, the Lands Authority was to determine the value of the rescissions to be granted by the Government. The NAO ascertained that the Lands Authority complied with the legal requirement to obtain a valuation by three architects, for the value of

the government land to be disposed of exceeded the prescribed threshold of €400,000 set in the Government Lands Act. However, the NAO concluded that the terms of reference provided to the architects engaged by the Lands Authority (hereinafter referred to as the Architects Lands Authority) were grossly inadequate, as these did not consider all requests for waivers made by Fortina. Although the terms of reference set by the Lands Authority were not documented, the Architects Lands Authority asserted that they were instructed by the former Chief Executive Officer (CEO) Lands Authority¹ to value only one part of the site, a fact that was not contested by the Authority. The Lands Authority's failure to establish terms of reference that adequately reflected what was sought by Fortina and what was eventually disposed of by the Government set the process off in an inauspicious manner. This failure in governance on the part of the former CEO Lands Authority is a matter of grave concern to the NAO; however, his failure is partially mitigated by the fact that primarily the Board of Governors (BoG) Lands Authority and later others were made aware of the incomplete valuation yet either did not take or follow through on corrective action.

6. The valuation by the Architects Lands Authority, dated October 2017, established that the Lands Authority was to levy a charge of €12,167,000 for the rescission of certain limitations on part of the Fortina site measuring 565 square metres. This valuation was revised to €8,100,000 by the Architects Lands Authority in April 2018. The NAO established that the valuation by the Architects Lands Authority was revised following changes proposed by the former CEO Lands Authority. One of the changes proposed – the inclusion of demolition costs – was accepted without objection and raised no concern to this Office. However, the proposed deduction of duty on documents and transfers drew the NAO's attention, as it was opposed by the Architects Lands Authority, elicited reservations from the BoG Lands Authority, and was considered anomalous by the Malta Tax and Customs Administration. Despite these reservations, the NAO could not reconcile the Board's unease with its lack of decisive action to address this irregular forgoing of tax. Of greater concern was the initiative taken by the former CEO Lands Authority in identifying elements of the valuation that could be contested in Fortina's favour but not acting with the expected level of diligence in safeguarding the Government's interests.
7. The 565 square metres valued at €8,100,000 by the Architects Lands Authority was one of four sites for which waivers were requested. Of the three sites not valued by the Lands Authority, two had a monetary value, and measured 625 square metres and 23 square metres. For the third, which measured 705 square metres, no charge ought to have been levied by the Government. It is with grave concern that the NAO noted that the former CEO Lands Authority did not request the Architects Lands Authority to establish compensation for all parts of the site over which the Government could levy a charge for the lifting of restrictions. The failure to value height and use limitations imposed on the 625-square-metre area represented a significant omission on the part of the Lands Authority. The compensation that could have been secured by the Government for the lifting of these restrictions, as later attested by the valuation provided by Fortina, was considerable.

¹ During the period under review, the Lands Authority was headed by three CEOs. For purposes of clarity, these are referred to as the former CEO Lands Authority, whose tenure ended in May 2018; the CEO Lands Authority, who was in office between July 2018 and December 2020; and the incumbent CEO Lands Authority, who was appointed in February 2021.

The area of 23 square metres, originally intended for tourism-related use, was now designated as a public open space based on Fortina's request. An argument could be made that, given its small scale, the compensation due to the Government was not material; however, its realisable value was to be seen in terms of the applicability of the Floor Area Ratio Policy, through which Fortina could develop additional floors on the tower situated elsewhere on the site. Another part of the site, measuring 2,380 square metres and still subject to height restrictions, was similarly redesignated as a public open space instead of its previous use for tourism purposes. This change carried considerable implications, for the reclassification of the 2,380 square metres allowed Fortina to capitalise on the site's development potential through the application of the Floor Area Ratio Policy. Having considered the waivers requested by Fortina, the NAO is of the opinion that the valuation established by the Lands Authority grossly misrepresented and understated the value of what was to be relinquished by the Government. This failure was perpetuated by the BoG Lands Authority which, despite being aware of the gaps in the valuation – with Fortina itself drawing attention to them – did not take decisive corrective action.

8. In July 2018, a new CEO Lands Authority was appointed. Under ordinary circumstances, a change in leadership would not be expected to materially influence how the Lands Authority processed a request of the nature submitted by Fortina. However, in this case, this appointment resulted in the BoG Lands Authority assuming a more direct and active role in the processing of the request. This development was precipitated in late September 2018, when, following enquiries by the media, the CEO Lands Authority declared a conflict of interest in the matter, on grounds of having shared business interests with the proprietors of the Fortina Hotel. Nonetheless, the CEO Lands Authority asserted that, from the time of his appointment, he deliberately refrained from participating in any discussions and/or negotiations related to the request by Fortina. Requested by the NAO to clarify whether he had engaged in any interactions with Fortina at any point, the CEO Lands Authority excluded having taken any decisions, undertaken any material actions, or engaged in any conduct that could have influenced the course of decisions or actions. However, the CEO Lands Authority did not exclude the possibility of having been asked to provide updates on progress, understood by the NAO as reference to information provided to Fortina in response to enquiries made. Notwithstanding this, the CEO Lands Authority maintained that he would not have entered into substantive discussions or interactions on the matter and would have referred such enquiries to the BoG Lands Authority.
9. The BoG Lands Authority sought to mitigate the conflict of interest of the CEO Lands Authority and establish a clear understanding of the facts of the case. The need for decisive action became more pronounced in December 2018 when Fortina broadened its request for the revocation of all contractual use restrictions to allow for any development on site approved by the Planning Authority. It was at this point too that the Board became aware that not all waivers were valued following submissions to this effect by the Architects Lands Authority. To this end, after its futile attempt at engaging a professional services firm to value the waivers sought, the BoG Lands Authority resolved to appoint the Senior Manager (Contracts) Lands Authority to establish a comprehensive understanding in the form of a status report. Noted in the status report, drawn up in January 2019, was that the revised valuation pertained solely to one of the four sites for which waivers were originally requested and that it was unclear whether Fortina's additional request for the lifting of all restrictions had been brought to the attention of the Architects Lands

Authority. The NAO established that the status report provided the BoG Lands Authority with a comprehensive overview of the waivers requested by Fortina, those valued by the Architects Lands Authority, and those for which no valuation was obtained. The status report was discussed by the BoG Lands Authority on 8 February 2019, consequently implying that the Board had effectively established a clear understanding of the principal issues concerning the Fortina site, namely, that not all waivers had been valued and that duty on documents had been anomalously deducted.

10. It was with concern that the NAO noted that, prior to the BoG Lands Authority meeting held on 8 February 2019, the valuation prepared by the Architects Lands Authority had somehow been forwarded to Fortina. This was evidenced in the counterproposal submitted by Fortina on 4 February 2019, which made direct reference to the valuation by the Architects Lands Authority. The NAO considered the disclosure to Fortina detrimental to the Lands Authority, as the valuation by the Architects Lands Authority was still under review by the Board. This disclosure was irrational and counterproductive to the Lands Authority, given that what waivers were requested, and which had or had not been valued was still being determined by the Authority. Although Fortina assigned a value of €2,700,000 for all waivers sought, in its valuation Fortina drew attention to the parts of the site not valued by the Lands Authority and assigned a substantial value thereto, thereby heightening the NAO's concerns. No reasonable explanation was put forward by either the Lands Authority or Fortina as to how a sensitive document, meant to be accessible solely to the former, ended up in the possession of the latter, raising serious concerns regarding the transparency of the process and the integrity of those involved. The nature of this interaction remained a matter of grave concern to the NAO, which underscored the implausibility of a scenario in which, following months of sending correspondence without an official reply, Fortina suddenly received the valuation without context or notice.
11. Another aspect of concern regarding Fortina's counterproposal, discussed by the BoG Lands Authority in its meeting of 8 February 2019, was that no Board member questioned how a 'counterproposal' had been submitted in the absence of any proposal made by the Lands Authority. The unsolicited nature of Fortina's submission should have elicited discussion within the Board, yet no such deliberation was evident in the records reviewed by the NAO. Consistent with previous practice, the valuation submitted by Fortina was neither acknowledged nor addressed by the Lands Authority. While this lapse in communication may seem insignificant in isolation, the Lands Authority's consistent failure to respond to or record its response to Fortina's submissions raised further concern about the nature of the exchanges between the parties. This was compounded by the fact that the minutes of the BoG Lands Authority did not reflect any concern over the evident leaks related to its processing of Fortina's request. The fact that the request proceeded regardless, despite these issues, implied ongoing yet undocumented communication, undermining the level of accountability and responsibility expected in a process of such materiality.
12. Aware of the gaps in what was valued by the Lands Authority, the BoG Lands Authority resolved to engage an audit firm to determine a fair value for all waivers requested by Fortina. This was actioned by 1 March 2019, with an audit firm appointed and the relevant terms of reference established. Effectively, the actions of the BoG Lands Authority to assign a professional services firm to value the site, to task the Senior Manager (Contracts) Lands Authority to prepare a status report and to engage an audit firm to assess the value of all waivers sought, was consistent

with the Board assuming the role of Acting CEO in terms of the Lands Authority Act. The NAO maintains that the governance structure of the Lands Authority was compromised when the BoG Lands Authority assumed an executive role in processing Fortina's request, a responsibility that, according to the Lands Authority Act, should have been borne by a delegated official of the Authority given the CEO Lands Authority's declared conflict of interest. This shift in responsibilities blurred the distinction between the Board's oversight function and its assumed executive duties, raising concerns of non-compliance with the Lands Authority Act and creating vulnerabilities that enabled the fraudulent exploitation of deficiencies that arose. The complexity and materiality of the case required focused executive input, a function that the BoG Lands Authority was not positioned to provide given its inherent constraints.

13. Despite its reservations, on 10 June 2019, Fortina agreed to pay the Government €8,100,000 in settlement of the waivers requested. This was discussed by the BoG Lands Authority on 14 June 2019, with the Board resolving to forward the relevant documentation to the Minister, given that the process was to be finalised through a parliamentary resolution. Two concerns emerged in relation to agreement being reached in this manner. The first concern raised by the NAO is that Fortina's correspondence was again unprompted. This Office deemed this situation absurd, for reaching agreement logically requires the disposing party, in this case the Lands Authority, to inform the acquiring party of the assigned value of the asset being transacted. Inexplicably, at no point during the process was the NAO provided with any record indicating that such a disclosure was made by the Lands Authority to Fortina. The second concern pertains to the fact that Fortina had initially valued all sites for which waivers were requested at several multiples less than the value arrived at by the Lands Authority for only one part of the site. Despite this significant disparity and the absence of any documented discussions between the parties, agreement was inexplicably reached. It is within this context that the NAO deemed Fortina's unprompted letter of acceptance as questionable, a situation made surreal, and consequently suspect, by the BoG Lands Authority's failure to question how agreement was reached from a position of complete standstill.
14. The decision of the BoG Lands Authority to notify the Minister was considered illogical by the NAO as the Board had already established, unequivocally, that the waivers requested by Fortina had not been comprehensively valued, a situation adverse to the interest of the Government. Moreover, the BoG Lands Authority had agreed that these gaps in valuation were to be rectified through the engagement of an audit firm, which firm was engaged several weeks prior. Despite acknowledging that the audit firm's valuation report was still pending, on 14 June 2019, the Board illogically resolved to refer the matter to the Minister. This decision by the BoG Lands Authority drew the NAO's attention on two counts: first, whether the Board's action constituted a formal recommendation; and second, that the Board had effectively referred a process that was incomplete.
15. The NAO deemed the neutral stance of mere referral assumed by the BoG Lands Authority to be in breach of the Lands Authority Act, for the Act required a vote either in favour or against a recommendation. While the minutes made no reference to a vote being taken, the minutes indicated that the Board supported the Government's waiver of conditions burdening the Fortina site. This understanding was based on the assertion that "... the Minister was to be notified once

the process was to be concluded through a Parliamentary Resolution.” This Office considered the explanation of mere referral by the BoG Lands Authority untenable, as the Act clearly imposed on the Board a duty to take a definitive position, whether in favour or against. As regards the second issue, the NAO noted with grave concern that the BoG Lands Authority was fully aware it was referring an incomplete valuation to the Minister, a course of action against the interests of the Government. Rather than proceeding with such a referral, the more logical and appropriate response by the BoG Lands Authority to Fortina’s correspondence should have been reference to a valuation process that was still ongoing.

16. Despite the irrationality of the action taken when referring an incomplete process to the Minister, all involved denied being subject to any pressure or undue influence. Nevertheless, the NAO cannot reconcile how the BoG Lands Authority acted independently, as its decision to refer the matter was irrational and effectively reversed the actions taken in the preceding weeks towards establishing a fair value for the site.
17. The decision of the BoG Lands Authority was actioned on 17 June 2019, with the Chair BoG Lands Authority submitting correspondence and relevant documentation to the Minister and the Parliamentary Secretary. Enclosed in this correspondence were Fortina’s letter of acceptance, the valuations prepared by the Architects Lands Authority and Fortina, the list of waiver requests submitted by Fortina, the planning permit, and the status report. The NAO found that while the correspondence submitted by the Chair BoG Lands Authority to the Minister and the Parliamentary Secretary reflected the position of the Board, it fell short of fulfilling the Board’s obligations under the Lands Authority Act. The Act mandated that the BoG Lands Authority was to make a recommendation, either in favour or against a particular course of action, to the Minister. In this instance, the Chair did not indicate what was being recommended by the Board. Instead, the correspondence selectively emphasised certain developments, such as the revision to the valuation by the Architects Lands Authority brought about by a deduction in tax payable. Crucially, other key facts were either vaguely referenced or minimally addressed, such as the additional waivers sought by Fortina and that the valuation by the audit firm remained pending. Graver still was that other issues were omitted altogether, such as the gaps in the valuation process, that several of the waivers requested had not been valued, and that the value of €8,100,000 corresponded to only one part of the site. The submission of supporting documentation did not shift the decision-making responsibility from the BoG Lands Authority to the Minister but rather represented a subtle attempt to facilitate the Board’s abdication of its duty to decide.
18. Despite what was recorded in the minutes of the BoG Lands Authority meeting of 14 June 2019 and what was stated by the Chair in the referral to the Minister and the Parliamentary Secretary on 17 June 2019 – that the audit firm’s valuation report was still pending – the NAO ascertained that the valuation report had been drawn up. This Office obtained a copy of this report directly from the audit firm. The valuation report titled ‘Lands Authority: Evaluation of Fortel Services Limited’s waiver request’, was dated 25 March 2019 and addressed to the BoG Lands Authority. Considering all parameters, the audit firm determined the value of the waivers to be granted by the Government as €18,341,559. In the event that the Lands Authority consented to the deferral of the payment until completion of the development, the amount due by Fortina for the waivers would increase to €23,887,942.

19. Although the audit firm's valuation report was addressed to the BoG Lands Authority, the NAO established that the report was withheld from the Board by the Chair BoG Lands Authority. The NAO's gravest concerns emerge in this respect. Based on the evidence reviewed, the NAO concluded that the Chair's assertion that the report remained pending was false. This misrepresentation served the interests of third parties rather than the public interest. Evidence obtained by this Office indicated that the Chair acted with intent to suppress the report, for he informed the audit firm that the substantially higher value resulting from the comprehensive valuation of the requested waivers would create difficulties. Through his actions, the Chair BoG Lands Authority misled the Board, the Minister, the Parliamentary Secretary, and ultimately Parliament, when he falsely documented that the report was still pending when, in fact, it was already in his possession. Nonetheless, the NAO cannot exclude the involvement of other parties in this matter, as evidence associated with subsequent developments lends credence to this. One questions Fortina's acceptance of the valuation by the Architects Lands Authority some weeks after the audit firm had established a higher valuation in its report to the Chair. The absence of any documented communication during this period and the timing of Fortina's acceptance was deemed suspect by the NAO.
20. Following the conclusion of its engagement, the audit firm issued an invoice to the Lands Authority on 12 April 2019 for the remaining 80 per cent of its fee, as 20 per cent had been settled by the Authority on engagement. This invoice was addressed to the Chair BoG Lands Authority on his instruction. The NAO established that this outstanding amount was not settled by the Lands Authority, with a credit note issued by the audit firm on 12 September 2019. The audit firm informed this Office that the Chair BoG Lands Authority had instructed it to invoice the Office of the Prime Minister (OPM) instead and refer same for the attention of the Chief of Staff OPM. According to the audit firm, shortly thereafter, the Chief of Staff OPM convened a meeting with the firm. The NAO considered the involvement of the Chief of Staff OPM in settling fees owed by the Lands Authority to the audit firm as anomalous and questionable. While the Chief of Staff OPM claimed to have no recollection of key developments relating to his involvement and denied authorising payments, this Office obtained evidence to the contrary. Though the involvement of the Chief of Staff OPM may appear innocuous when viewed in isolation, a more troubling understanding emerges when considered alongside other shortcomings. Firstly, the NAO reasoned that, other than the Chair BoG Lands Authority, the Chief of Staff OPM was another Government official who was aware of the audit firm's valuation. Secondly, there was no functional link between the role of the Chief of Staff OPM and the settlement of fees due by the Lands Authority. The redirection of the invoice by the Chair BoG Lands Authority and the involvement of the Chief of Staff OPM when authorising payment is considered as part of a wider effort to conceal the valuation by the audit firm. Thirdly, the uniqueness of the circumstances surrounding the case would ordinarily facilitate recollection, as demonstrated by the audit firm in its recall of its meeting with the Chief of Staff OPM. His claim of no memory of such a meeting was, in the NAO's view, questionable.
21. One final point of grave concern to the NAO regarding the audit firm's valuation related to the Lands Authority's response to this Office's enquiries about the existence of the report. On 20 March 2023, the NAO requested a copy of the valuation from the Lands Authority. In a reply dated 27 July 2023, the incumbent CEO Lands Authority stated that the only references in the Authority's records relating to the advice sought from the audit firm were the minutes of the

BoG Lands Authority meeting of 1 March 2019, the point at which the Board was informed of the firm's engagement, the minutes of the meeting held on 14 June 2019 wherein it was noted that the valuation report had not yet been submitted, and a reiteration of this claim in the letter of the Chair BoG Lands Authority to the Minister dated 17 June 2019. The NAO's concern in this regard emerged on learning that the Lands Authority was aware of and had access to the audit firm's valuation report by 3 April 2023, that is, several months before informing this Office that no such record existed in its files. The evidence attesting to this was internal correspondence of the Lands Authority. This sequence of events broadens the Lands Authority's culpability in terms of its efforts to conceal the valuation. What was initially a failure rooted in 2019, when the report was first received and withheld, extended into 2023 through a continued and deliberate effort to withhold the report from the NAO.

22. The correspondence by the Chair BoG Lands Authority dated 17 June 2019 marked the point at which the further processing of the case shifted onto the Parliamentary Secretary and the Minister. The latter argued that his role, as defined in the Lands Authority Act, was constrained to issues of policy and that he intentionally avoided intervening in specific cases. According to the Minister, the establishment of the Lands Authority purposely resulted in the loss of ministerial control and general direction over the Authority, now responsible for the disposal of public land. In the case of Fortina, the Minister argued that this power was further delegated to the House of Representatives in terms of the Government Lands Act. Whilst the Lands Authority Act provided for ministerial input in the scrutiny of decisions taken by the BoG Lands Authority, reference is made to the decision by the Commissioner for Standards in Public Life, Chief Justice Emeritus Joseph Azzopardi in Case No. K/047 dated 14 August 2025.
23. In line with what was stated, the Minister clarified that he was not directly involved in the Fortina transaction or its negotiations, emphasising that such matters were ordinarily managed by the Lands Authority, and possibly overseen by the Parliamentary Secretary. In turn, the Parliamentary Secretary stated that he had regular meetings with the Chair BoG Lands Authority and that, during one of these meetings, the Chair conveyed the rationale behind the Board's decision to refer Fortina's case to the Minister. According to the Parliamentary Secretary, the Chair also briefed him on questions that could arise in Cabinet and suggested responses thereto. The Parliamentary Secretary maintained that the Minister was regularly kept informed of developments.
24. On whether the BoG Lands Authority was merely referring the matter to the Minister and the Parliamentary Secretary for consideration or recommending the rescission of conditions on the Fortina site, the Parliamentary Secretary noted that he had evaluated the correspondence with the Chair BoG Lands Authority, and possibly with the Minister, and understood the Chair's proposal to seek Cabinet's authorisation as an outright recommendation rather than a referral. This was corroborated by the Minister, who informed the NAO that he had reprimanded the Chair BoG Lands Authority on receiving the correspondence, as its intent was unclear. The Minister deemed it unacceptable for the Chair to obscure the nature of what was being sought and informed him that if the referral was to be disregarded, then the Chair BoG Lands Authority should withdraw the correspondence and submit a revised recommendation. According to the Minister, the Chair responded that no such action was necessary, asserting that the recommendation was valid and that the Minister could proceed accordingly.

25. Some points of note arise in this regard. First, the correspondence submitted by the Chair BoG Lands Authority to the Minister mirrored the ambiguity recorded in the minutes of the Board meeting held on 14 June 2019, during which the Board opted to merely refer the matter for the Minister's consideration, an interpretation later confirmed by several members of the Board in submissions to the NAO. Second, the fact that the Minister challenged the Chair BoG Lands Authority to clarify whether the Board was making a recommendation or not further confirmed that the correspondence lacked the clarity and decisiveness expected of a recommendation.
26. The Minister was critical of the BoG Lands Authority's reluctance to assume responsibility and to provide a clear recommendation. The Minister referred to later exchanges between the Parliamentary Secretary and the Chair BoG Lands Authority during the drafting of the Cabinet memorandum in support of his argument that the Board was effectively recommending the transaction. According to the Minister, these exchanges confirmed that the Lands Authority acted within its civil and legal remit and recommended that the matter be referred to Parliament for a decision.
27. Although the correspondence submitted by the Chair BoG Lands Authority could have more clearly conveyed the key facts and issues concerning Fortina's request for waivers, this was partly mitigated by the inclusion of all relevant documentation necessary for a thorough understanding.
28. Regarding the valuation by the audit firm, the Parliamentary Secretary stated that he was unaware it had been submitted to the Chair BoG Lands Authority and that the Chair had never brought the report to his attention. He affirmed his belief in the Chair's integrity and argued that there might have been a reason why the audit firm's valuation report was not disclosed. The Parliamentary Secretary voiced discomfort with the situation, noting that it was easy to place blame on someone who, following his passing, was no longer able to refute or contest the claims made against him. In turn, the Minister questioned why, in the correspondence dated 17 June 2019, the Chair BoG Lands Authority informed him that the audit firm's valuation was still pending, when in fact it was not.
29. In further testimony to the NAO on the matter, the Minister stated that he was uncertain as to when he became aware of the audit firm's valuation, whether this awareness arose from discussions with the Chair BoG Lands Authority immediately following receipt of the correspondence or after the debate in Parliament in July 2019. According to the Minister, on learning of the audit firm's valuation, he sought clarification from the Chair BoG Lands Authority. The Minister stated that the Chair informed him that the report had been commissioned to determine whether a further valuation was required, that it was flawed, that it was to be disregarded, that it had not been received, and that the Authority had opted to proceed with the valuation already in its possession. The NAO observed that the claims that the report was defective and that it had not been received were contradictory.
30. Concerned by the referral to Cabinet of what was an incomplete process, the NAO questioned the Minister and the Parliamentary Secretary as to whether any undue influence or pressure was exerted on them or by them to bring the process to a close. Both denied having been subjected to,

or exerting, any form of coercion intended to compel action in a specific direction. Similar enquiries were made with Fortina, which categorically denied attempting to pressure or influence the Minister or the Parliamentary Secretary. Fortina asserted that, beyond the interactions disclosed to the NAO, neither the company nor its representatives exerted any pressure or sought to influence, in any manner, any officials or individuals involved in the process, including the Chair BoG Lands Authority. Although all maintained that no undue influence or pressure was exerted, concerns persist regarding the eventual referral to Cabinet.

31. The NAO established that the matter was discussed by Cabinet on 27 June 2019. Appended to the Cabinet memorandum was the letter and all supporting documentation sent by the Chair BoG Lands Authority on 17 June 2019. Although the NAO did not have visibility over Cabinet's decision, the Minister and the Parliamentary Secretary indicated that Cabinet approved the rescission of conditions encumbering the Fortina site. Despite requests by the NAO, the Cabinet Office informed the NAO that this Office was not entitled to access to the documents sought, a view confirmed by this Office's legal advisors. As a result, the NAO was unable to determine Cabinet's input in the process of authorisation.
32. Cabinet's approval allowed for the matter to be referred to Parliament, specifically, the National Audit Office Accounts Committee (NAOAC). Referral was made through a parliamentary resolution, which included information on Fortina's request for waivers intended to allow mixed-use development on sites acquired from the Government, Fortina's planned investment of €55,000,000, the Lands Authority valuation of €8,100,000, the valuation by Fortina, which stood at €2,700,000, and Fortina's acceptance of the former valuation subject to certain payment terms. Of concern to the NAO was what had not been disclosed to the NAOAC in the parliamentary resolution. A key fact not included in the resolution and deemed crucial by this Office for sound deliberation by the Committee was that the valuation of €8,100,000 corresponded to only one part of the site for which waivers were requested.
33. The NAO also noted a dissonance between the referral by the Chair BoG Lands Authority in his correspondence to the Minister and the Parliamentary Secretary, and the recommendation of the Board as cited in the parliamentary resolution presented to the NAOAC. The Minister reiterated that the Chair BoG Lands Authority did not object to the Minister's framing of the correspondence as a recommendation and maintained that no other Board member contested the portrayal of events as outlined in the parliamentary resolution. The Parliamentary Secretary corroborated several of the Minister's points. Conversely, the Deputy Chair BoG Lands Authority and several other Board members asserted that the wording of the parliamentary resolution misrepresented the Board's decision, which had merely been to compile and refer information to the Executive for it to consider any further parliamentary action.
34. The NAO considered the omission of certain facts in the parliamentary resolution as curtailing the NAOAC's ability to reach an informed decision. This, combined with the irrational conduct of the BoG Lands Authority, gave rise to the NAO's concerns regarding the inadequate safeguarding of the public interest.

35. In anticipation of the meeting of the NAOAC, on 5 July 2019, the members of the NAOAC were provided with a copy of the parliamentary resolution, a draft deed relating to the waivers to be granted by the Government and two site plans. On 8 July 2019, an Opposition MP, who was also a member of the NAOAC, requested a copy of all documentation relating to the valuation exercise undertaken by the Lands Authority in relation to the waivers sought by Fortina, which request was acceded to on 9 July 2019. The parliamentary resolution proposing the rescission of conditions was discussed during the NAOAC meeting held on 10 July 2019. The NAOAC approved the parliamentary resolution against the payment of €8,100,000; however, since unanimous agreement was not reached, the resolution was referred for further discussion in Plenary.
36. The NAO notes the limited time allocated by the NAOAC for the review of the supporting documentation, particularly in light of the extensive documentation provided to the Committee. Nonetheless, during proceedings, attention was drawn to concerns relating to the fact that the valuation did not comprise all sites for which waivers were sought, the payment terms set, and the lapse since the date of valuation, among others.
37. In referring the matter to Plenary an opportunity was missed by the NAOAC to reassess a process characterised by notable shortcomings. Given the Committee's oversight role in matters involving the transfer of public land, this Office considers that further engagement with the Lands Authority was warranted.
38. On 17 July 2019, Plenary debated the resolution concerning the waiver of conditions requested by Fortina, presented by the Parliamentary Secretary on behalf of the Minister. Put to a vote, the resolution passed with 34 Government MPs voting in favour and 27 Opposition MPs voting against.
39. On 26 July 2019, the Deed of modification and termination of contractual conditions was entered into between the Government and Fortina. Through this Deed, the several waivers sought by Fortina with respect to different parts of the site, relating to restrictions imposed on use for tourism purposes and development and height limitations, were granted by the Government against payment of €8,100,000. Of this, Fortina was to pay €1,000,000 on the signing of the Deed and the remaining €7,100,000 within 10 years, interest-free, with part payments effected on the sale of each residential unit. This Office established that the payment terms outlined in the 2019 Deed were those proposed by Fortina.
40. The NAO assessed whether the Government secured fair payment terms. Of concern to this Office was the absence of any interest imposed on Fortina on the outstanding balance. This issue was further compounded by the fact that the Government revenue from the 2019 Deed hinged on when Fortina elected to sell residential units. By failing to levy interest on the unpaid balance, the Government rendered it more viable for Fortina to defer the sale of these units. While the NAO cannot precisely quantify the revenue foregone by the Government arising from the lengthy repayment period and the failure to impose interest, given that this depends on the timing of Fortina's sales, the potential loss could be substantial. As at end 2024, Fortina had paid €2,925,424 of the €8,100,000 due, leaving an outstanding balance of €5,174,576.
41. Of greater concern to the NAO were the substantial gaps identified in the Government's valuation of the waivers granted to Fortina. Given this lacuna, the NAO sought to determine the value of what

was granted by the Government through the removal of conditions encumbering the Fortina site as effected in the 2019 Deed. To this end, in line with its practice, the NAO engaged an independent third party to assist the Office in establishing the relevant value.

42. The Government's consent to waive development limitations on the site resulted in a substantial increase in the site's value to the benefit of Fortina. While the Lands Authority established a residual land value of €8,100,000, the NAO's valuation stood significantly higher at €21,000,000. Two key factors account for this discrepancy. Firstly, the NAO's valuation was based on 2019 rates – reflecting the point at which the Government consented to the removal of the conditions encumbering the site – whereas the Lands Authority relied on 2017 rates, corresponding to when the Architects Lands Authority were initially engaged. Secondly, and more critically, the NAO valued all the waivers sought by Fortina, while the Lands Authority limited its valuation to only one part of the site.
43. The discrepancy between the valuations clearly indicated that a true and fair value for what was conceded to Fortina through the lifting of conditions restricting development was not secured. The difference between the value assigned by the NAO and the value determined by the Government for the waiving of conditions on the portions of the site previously acquired from the Government amounted to €12,900,000, to the detriment of the public interest. While this Office recognises that property valuations involve a degree of subjectivity, the NAO asserts that subjectivity cannot be cited as a reasonable explanation for the extent of the disparity noted. Subjectivity may explain variations in rates; however, it cannot be invoked where the discrepancy stems from the Lands Authority's failure to value the conditions on significant portions of the site.
44. The extent and nature of the discrepancy in valuation drew the NAO's gravest concern, since safeguarding the public interest demanded otherwise. In the NAO's view, primary responsibility for this failure lies with the Lands Authority, for it was its duty to ensure that the Government secured value for money in the transaction. However, the process eventually leading to the agreement with Fortina involved various other stakeholders. Ultimately, the value realised by the Government was significantly less than that established by the audit firm engaged by the BoG Lands Authority and the valuation obtained by the NAO.
45. In sum, seen chronologically, despite Fortina's initial request for several waivers, only one was valued. This valuation was revised on dubious grounds by the Lands Authority, and when Fortina subsequently widened its request for waivers no corresponding revision to what was valued by the Authority was undertaken. Despite attempts to address the significant gaps in the valuation process, no true progress was registered. For even when a valuation to this effect was obtained by the Chair BoG Lands Authority, it was not disclosed to the Board. The parties then reached agreement without any apparent exchange or effort to negotiate being made, further casting doubt on the integrity of the process, more so when one considers that agreement was reached shortly after the audit firm submitted its report. The audit firm's report and the NAO's own independent verification brought to the fore the materiality of what ought to have been realised by the Government through this transaction, as opposed to what was paid by Fortina. In view of this chain of events and the evidence at hand, the NAO recommends that the pertinent authorities whose action is warranted, actively consider the possibility to further investigate this matter to address concerns that extend beyond the remit of this Office.

Chapter 1

Introduction

1.1 A request to audit

1.1.1 On 7 May 2021, Professor Arnold Cassola, a noted activist and hereafter referred to as the requestor, called on the Auditor General (AG) to investigate breaches of the conditions imposed by the Government on public land in Sliema transferred to the owners of the Fortina Hotel. The requestor indicated that additional documents to substantiate that alleged were being submitted under separate cover due to their voluminous nature.

1.1.2 Elaborating on the nature of the allegations being made in the supplementary documentation provided, the requestor asserted that the investigation was to establish whether:

- a. there was full adherence to the contractual terms in contracts pertaining to the disposal of public land by the Government;
- b. there was a transparent and fair process for the evaluation of public land and the rescission of servitudes over public property to private interests;
- c. there was effective monitoring by the Government Property Department (GPD) and its successor, the Lands Authority, to ensure that the terms of the contracts transferring public land to private parties were respected;
- d. the law regarding the disposal of public land was adhered to in all aspects;
- e. the Lands Authority and/or the Planning Authority (PA) acted with the obligatory degree of prudence and exerted sufficient standards of scrutiny to ensure that the terms of the contracts transferring public land were adhered to and not circumvented;
- f. the evaluation process and the decision as to the amount of compensation for the waiver of conditions were carried out in a transparent manner and according to established procedures, recognised professional norms, and clearly identifiable criteria that were the same for all players in the field; and
- g. value for money was obtained and whether factors such as public and social wellbeing were taken into consideration.

1.1.3 The requestor indicated that the land in question was transferred by the Government to the owners of the Fortina Hotel by title of emphyteusis in three separate deeds dated 1991, 1996 and 2000, respectively. He noted that this information was published by the former Minister for

Lands, Transport and Infrastructure Hon. Ian Borg in reply to a parliamentary question filed by the Opposition Member of Parliament (MP) Hon. Karol Aquilina. Excerpts of the deeds, site plans, as well as the parliamentary exchange were included in the documentation submitted to the AG.

1.1.4 Highlighted by the requestor was that:

- a. the first plot of land, consisting of 465 square metres, was sold for €256,000 in 1991 as an extension to the Fortina Hotel complex through a contract dated 12 June 1991;
- b. by virtue of a contract dated 25 January 1996, a second plot of land was sold for the “exclusive use as an extension of the Fortina Hotel”; moreover, one of the conditions specified that any “building permit” on the site was at the discretion of the Commissioner of Land; and
- c. a third plot of land, consisting of 1,421 square metres, was sold for €920,000 in 2000 through a contract dated 15 February 2000; stipulated in the contract was that the emphyteuta was to provide a bowls pitch and attendant facilities free to the public and that if the pitch was not situated within the confines of the site, it was to be relocated elsewhere and again made accessible free for public use.

1.1.5 According to the requestor, there was no evidence that the requirement imposed on the owners of the site to maintain a bowls pitch was complied with; nor was there evidence of a rescission of this servitude or obligation. As corroboration, the requestor cited media coverage where the former Chief Executive Officer (CEO) Lands Authority confirmed that the original deeds for the land on which the Fortina Hotel was built had not been revised. “Any such revision, as in this case, would require a parliamentary resolution” the former CEO Lands Authority is reported to have told the newspaper.

1.1.6 In his correspondence to the AG, the requestor contended that any such rescission would require parliamentary authorisation as it was effectively tantamount to the disposal of public land. Moreover, it would be assumed that the relative payment due to the Government for such a rescission would be commensurate with the market value of the site. The requestor maintained that there was no information or record of a payment being made and of the mechanism used to evaluate the true import of the value of the revocation. In view of the fact that the site in question was a prime location in an area where property prices were very high, the requestor argued that it was to be expected that disposal of public land was effected at an equivalent value.

1.1.7 The requestor asserted that it was imperative that the Government secured a good return when disposing of public land, particularly in this case where open space that served a social and cultural function – that of a bowls pitch – was denied to the public for no apparent reason that justified departure from contractual terms. This was especially crucial in a locality such as Sliema, where residents were being crowded out of recreational areas by commercial establishments and where space was at a premium. It was further contended that the PA had, in April 2018, approved planning application PA/06252/17, which did not provide for the bowls pitch imposed in the 1996 Deed entered into between the Government and the owners of the Fortina Hotel. The “public space” approved by the PA was on two separate levels, was paved over with minimal

green landscaping and was more of an atrium between restaurants, residential buildings and kiosks, that is, a commercial space. Moreover, the bowls pitch was not in evidence anywhere from the 1990s and there was no indication of where it was to be sited in the new approved plans. The requestor argued that a rescission of this condition could only have been effected by means of a parliamentary resolution and there was no evidence of this having taken place.

- 1.1.8 Two other restrictions imposed on the emphyteuta in the 1996 contract were cited by the requestor. First, that there were to be no buildings in the area indicated without the prior consent of the Commissioner of Land except for those specified in the contract. Second, that any buildings constructed should not exceed the height of the road levels specified in the contract. He noted that the height limitations emanated from the contract and not from planning legislation. According to the requestor, there was clear evidence to show that these conditions were not respected. Moreover, the planning application approved by the PA clearly showed that multi-storey buildings would be erected, rising well-above the level allowed by the initial emphyteutical deed. In fact, the development approved was for the "Demolition of existing 4-star hotel and the Spa Wing of the 5-star hotel, and excavation of site. Construction of 3 levels of below ground car parking; construction of ground floor retail complex under a landscaped Public Open Space; and construction of residential complex rising to a maximum of 15 floors above street level. Development also to include complete refurbishment (including internal alterations) of the existing 5-star hotel, the construction of five additional floors on the hotel tower and construction of stepped hotel block rising to 13 floors above the plaza, in place of the Spa Wing." A site plan showing the areas of the alleged infringements of the limitation on building height was enclosed.
- 1.1.9 Shortcomings in the evaluation procedure and the parliamentary process endorsing the rescission of the impositions on the Fortina site were also alleged. Elaborating on the evaluation process, the requestor stated that it would appear that evaluation focused solely on the rescinding of the condition that the Fortina site be used for hotel and touristic purposes and not on the waiver of the other conditions pertaining to the retention/restoration of the bowls pitch and the height limitations imposed. The requestor maintained that the committee tasked with evaluation was not given access to contracts and was misinformed on the onerous conditions stipulated therein. He further noted that three architects were contracted by the Lands Authority to evaluate the property. Attaching an extract from the architects' evaluation report, the requestor affirmed that the architects claimed that they were not provided with the relevant contracts and that they were informed that the property was freehold and that there were no onerous conditions attached to the contract. This, according to the requestor, was clearly incorrect as the conditions cited earlier in his correspondence were certainly onerous and would have an impact on the valuation of the property. He maintained that it was also untoward to have an evaluation without scrutinising the title deeds.
- 1.1.10 Another concern raised by the requestor related to the CEO Lands Authority. He indicated that the CEO Lands Authority was a business partner of the owners of the Fortina site and was now acting as their consultant following his departure from the Authority. Of concern was that the evaluation of the rescissions requested was carried out during his tenure as CEO Lands Authority. The requestor indicated that it was not known whether this had any impact on the evaluation process. He cited several media articles in this regard. In view of the concerns raised, the requestor

urged the AG to investigate the Government’s rescission of the limitations burdening the Fortina site.

- 1.1.11 In line with the procedures of the National Audit Office (NAO), following the review of the documentation submitted, as well as preliminary enquiries made regarding the transfer of the site, the Office decided to undertake an audit of the alleged breaches.

1.2 The terms of reference

- 1.2.1 On 11 August 2021, the NAO informed the Permanent Secretary within the Ministry for the Economy and Industry that the Office would be undertaking an audit regarding the public land assigned to the Fortina Hotel. In the correspondence it was indicated that the Office was of the understanding that contracts between the Government and the proprietors of the Fortina Hotel were entered into in 1991, 1996 and 2000, with parliamentary approval sought and obtained for the amendment of conditions of the contracts in July 2019.

- 1.2.2 The NAO noted that, while its understanding at this stage was constrained by the limited information available, the objectives of the audit were to ascertain whether:

- a. the disposal of public land complied with applicable legislation;
- b. the valuation for the disposal of public land or rescission of certain contractual conditions was fair;
- c. the contractual terms were adhered to by the Government and the proprietors of the Fortina Hotel; and
- d. the principles of good governance were upheld in all aspects of the process involving the disposal of public land or rescission of certain contractual conditions.

- 1.2.3 On the same day, the incumbent CEO Lands Authority was also informed of the planned audit and of the objectives established by the NAO. To this end, the incumbent CEO was requested to provide the Office with access to all files held by the Lands Authority regarding the Fortina site.

1.3 Methodology

- 1.3.1 This audit was conducted in accordance with Article 9(a) of the First Schedule of the Auditor General and National Audit Office Act (Chapter 396) and in terms of practices adopted by the NAO. Other legislation reviewed by the NAO comprised the Lands Authority Act (Chapter 563), through which the Authority was established in April 2017, and which provides for the governance structures, responsibilities and regulatory provisions central to the management and administration of government land; and the Government Lands Act (Chapter 573), which sets out the regulatory framework for the disposal of government-owned land, outlining procedures for determining value and methods for the execution of transfers.

1.3.2 Findings presented in this report are based on open-source intelligence gathered by the NAO and documentation provided by third parties, particularly relevant files retained by the Lands Authority and the PA, thereby establishing the basis of its understanding. Additionally, this Office analysed parliamentary documents, specifically, transcripts of sittings of the NAO Accounts Committee (NAOAC) and Plenary, where the rescissions sought by Fortina were discussed. These efforts were supplemented by queries directed to:

- a. the incumbent CEO Lands Authority, who provided the audit team with replies to its numerous requests for information;
- b. members of the Lands Authority Board of Governors (BoG) and the Board Secretary;
- c. Lands Authority officials, particularly regarding the drafting of contracts and payments made and received by the Authority in connection with the matter under review;
- d. the audit firm engaged by the Lands Authority, for clarification on the valuation of the conditions to be rescinded, as commissioned by the BoG Lands Authority;
- e. the CEO Lands Authority, whose involvement in the matter under review was curtailed due to a declared conflict of interest;
- f. the professional services firm (also an audit firm, yet referred to in this manner to distinguish it from the audit firm engaged by the Lands Authority) engaged by Fortina to determine the value of the conditions to be rescinded by the Government;
- g. Dr Joseph Muscat, the former Prime Minister, regarding interactions with the representatives of Fortina;
- h. the then Permanent Secretary Ministry for Transport, Infrastructure and Capital Projects (MTIP), regarding his role in drafting the relevant parliamentary resolution;
- i. the Office of the Prime Minister (OPM) in connection with payments made to the audit firm engaged by the Lands Authority and records relating to meetings held therewith;
- j. Identità, which provided the NAO with information about properties sold at the site under audit;
- k. the MBR, particularly in relation to the shareholding of Fortina Developments Ltd and Fortel Services Ltd;
- l. the Treasury Department, in connection with payments made to third parties engaged by the Lands Authority;
- m. the NAOAC, to better understand what information was made available to this parliamentary subcommittee and when; and

- n. the Ministry for Finance, through which the NAO sought clarification on matters of policy concerning payment terms in property-related transactions.

1.3.3 Reference is made to Cabinet Office's decision not to provide the NAO with access to records relating to the subject at hand other than documentation already in the public domain. When queried as to the rationale behind this stance, particularly in view of its departure from practices of disclosure registered in several earlier audits undertaken, the Cabinet Office indicated that, in accordance with the Freedom of Information Act (Chapter 496), it was not authorised by law to share exempt documents. Nevertheless, without prejudice to this position, the Cabinet Office informed the NAO that it did not have in its possession any other documents relating to the waiver of conditions granted by the Government to Fortina. The position adopted by the Cabinet Office was guided by the advice of the State Advocate on whether the Cabinet Secretary was empowered to share documents submitted to Cabinet and records of meetings held by it with the NAO.

1.3.4 The NAO sought an independent legal opinion on the matter. This Office was informed that while the need for the AG to have full disclosure of government documents, including those of Cabinet, was acknowledged and required for a full and thorough audit, as it stands, the law does not empower the AG to request such documentation.

1.3.5 In addition to reviewing documentation, the NAO conducted interviews under oath with individuals involved in the Government's rescission of conditions burdening the Fortina site. Interviews held were transcribed by this Office, with copies provided to interviewees for endorsement and clarification, if required. A limitation noted in this respect by most persons interviewed was the significant lapse of time, which at times rendered the recollection of events somewhat challenging. The passing away of the Chair BoG Lands Authority in October 2021 also posed a constraint, as he had a key role in this process. In his absence, the NAO redirected its inquiries to the then Deputy Chair BoG Lands Authority. To develop a comprehensive understanding, interviews were held with:

- a. Hon. Ian Borg, who served as Minister for Transport, Infrastructure and Capital Projects (hereinafter referred to as the Minister) between June 2017 and February 2022, under whose portfolio the Lands Authority fell;
- b. Hon. Chris Agius, who served as Parliamentary Secretary for Planning and the Property Market (hereinafter referred to as the Parliamentary Secretary), and was tasked with responsibility for the Lands Authority between June 2017 and January 2020;
- c. Hon. Alex Muscat, the Government MP nominated by the Prime Minister as a member of the BoG Lands Authority in accordance with Article 10(1)(d) of the Lands Authority Act during the period of interest (hereinafter referred to as the Government MP on the BoG Lands Authority);
- d. Hon. Ryan Callus, the Opposition MP designated by Leader of the Opposition as a member of the BoG Lands Authority in terms of Article 10(1)(c) of the Lands Authority Act during

the period of interest (hereinafter referred to as the Opposition MP on the BoG Lands Authority);

- e. the then Deputy Chair BoG Lands Authority, who served in this role between 2017 and 2021, and succeeded as Chair from 2021 onwards;
- f. the former CEO Lands Authority, whose employment came to an end midway through the process leading to the Government's rescission of conditions burdening the Fortina site;
- g. the Senior Manager (Contracts) Lands Authority, who assisted the BoG Lands Authority in assessing the rescission of conditions requested;
- h. the three architects appointed by the Lands Authority in 2017 (hereinafter referred to as the Architects Lands Authority) to value the waivers sought by Fortina;
- i. representatives of the audit firm engaged by the Lands Authority in 2019 to value the rescission of conditions sought by Fortina;
- j. Mr Adrian Zammit Tabona, Mr Julian Zammit Tabona and Mr Edward Zammit Tabona, representing Fortina, the party requesting the rescission of limitations;
- k. Mr Keith Schembri, then Chief of Staff OPM, in connection with the valuation of the waivers undertaken by the audit firm engaged by the Lands Authority; and
- l. officials of the Malta Tax and Customs Administration, whose advice was sought by the NAO in relation to duty on documents due to the Government.

1.3.6 Following the NAO's meeting with the Minister, the latter submitted an affidavit addressing several points raised during interaction with this Office. The additional information provided was considered as an integral part of the Minister's submission and accordingly reported on.

1.3.7 By way of clarification, when undertaking this audit, the NAO interacted with three CEOs Lands Authority. The first, referred to throughout this report as the former CEO Lands Authority, assumed office when the Authority was set up in April 2017. His tenure came to an end in May 2018. A new CEO was appointed in July 2018, referred to as the CEO Lands Authority in this report. In the interim, the Senior Officer Lands Authority deputised in their stead. The CEO Lands Authority resigned in December 2020. He was replaced in February 2021 by another CEO, who was in office at the time of reporting and is referred as the incumbent CEO Lands Authority throughout this report.

1.3.8 Another source of information resorted to by the NAO was the mailbox of the Chair BoG Lands Authority between 2017 and 2021. This course of action was deemed necessary, as the Office had no other alternative to obtain the views of the Chair or insight into decisions taken following his demise in October 2021. To this end, a request for access to his mailbox was made to the Malta

Information Technology Agency. However, this proved to no avail for the account was deleted following the lapse of the retention period. A similar request was directed to the Lands Authority; however, this too proved unsuccessful.

- 1.3.9 The passing away of the Chair BoG Lands Authority posed a significant limitation to the NAO's ability to fully explore crucial developments and aspects of the matter at hand, curtailing the Office's ability to conclude on certain concerns identified. Although the NAO ascertained that the Chair had a direct influence on the outcome of the case, this Office was unable to determine whether key decisions taken by him were made unilaterally or in consultation with, or under the direction of, others. This Office sought to mitigate this limitation through several measures (the review of documentation, the submission of queries, the sourcing of his mailbox, and the interviews held), to varying degrees of success; however, questions that could only be answered by the Chair remained unresolved. This limitation assumes greater relevance in view of actions and decisions attributed to him that cannot be rebutted, refuted or reframed as part of a wider network of stakeholders.
- 1.3.10 As regards the counterparty to the Government, Fortel Services Ltd, the signatory on the deeds of 1991, 1996 and 2000, registered changes in its shareholding since its incorporation in April 1977. Despite these changes and others in the company structure, the ultimate beneficial ownership of all companies connected to the site formerly occupied by the Fortina Hotel remained with the Zammit Tabona family.
- 1.3.11 Unless otherwise specified, ministers and public officers mentioned throughout the report are referred to by their designation at the time of the events being reported on. Additionally, the counterparty to the Lands Authority in the Deed of modification and termination of contractual conditions is generally referred to as 'Fortina'. This practice was adopted to enhance the report's readability and should not be construed as a lack of precision in the review undertaken. When it was imperative for the NAO to refer to Fortina in a specific sense, that is, in relation to a particular company, this was appropriately cited.
- 1.3.12 By way of external expertise resorted to, in line with established practice, the NAO engaged an independent architectural firm as technical consultants to assist in valuing the conditions burdening the site, which were the subject of Fortina's request to the Government for rescission. This engagement was deemed essential due to the significant materiality of the rescissions sought and concerns about the completeness of the valuation process undertaken by the Lands Authority. The valuation was conducted in July 2023.
- 1.3.13 In line with its guiding principles of independence, fairness and objectivity, the NAO sought to ensure that all information brought to its attention was duly scrutinised and the resulting 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.

Chapter 2

Chronological facts of the case

2.1 Background to the case

2.1.1 The Government sold several parcels of land in Sliema to Fortel Services Ltd through three Deeds entered into on 12 June 1991, 25 January 1996 and 15 February 2000. The land was sold with the provision that it serve as an extension of the Fortina Hotel complex, already owned by Fortel Services Ltd. Besides this limitation in use, other conditions, including height restrictions and public accessibility to certain areas, were imposed on the sites. Subsequently, Fortina sought the waiver of certain conditions stipulated in the Deeds of transfer, with valuations consequently undertaken by the Lands Authority to estimate the compensation due to the Government for the removal of restrictions. On 17 July 2019, Parliament resolved to rescind various conditions related to the sites. These rescissions were formalised through a Deed of amendment executed between the Government and Fortina on 26 July 2019. Hereunder is an account of these processes.

2.2 The sites transferred to Fortel Services Ltd

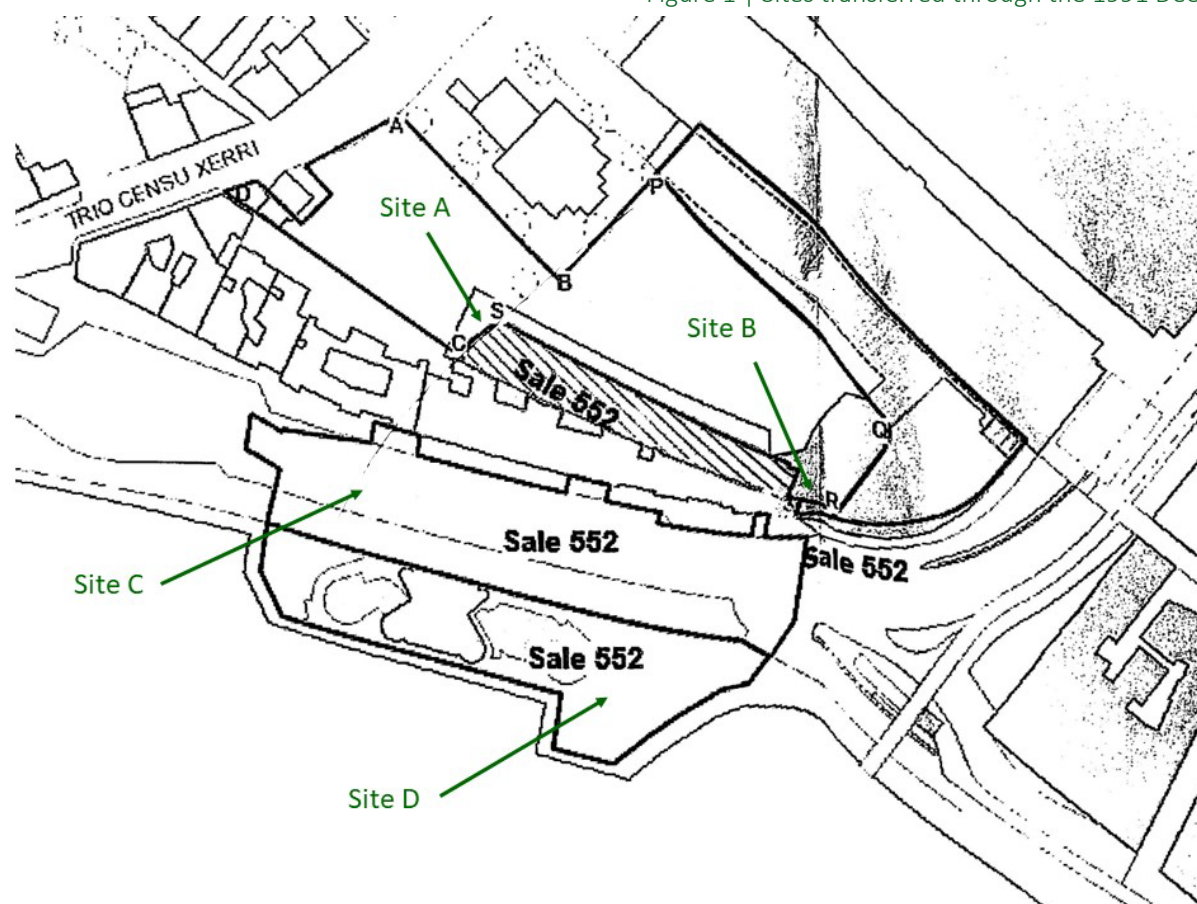
The 1991 contract of sale and transfer

2.2.1 A contract of sale and transfer was entered into on 12 June 1991. The parties to this Deed were the Commissioner of Land, appearing on behalf of the Government, and Mr Michael Zammit Tabona and Mr Adrian Zammit Tabona, appearing for Fortel Services Ltd.

2.2.2 Through this Deed, Fortina acquired several sites. These comprised:

- a. a divided portion of land measuring approximately 465 square metres, sited immediately behind the Fortina Hotel (indicated as Site A in Figure 1);
- b. a room on the ground floor with an approximate measurement of 23 square metres and a height of 11 courses, situated north of the Tigné seafront, to the right of the Fortina Hotel and to the left of other Government land (indicated as Site B in Figure 1);
- c. the airspace of the land up to the height beneath street level measuring approximately 1,964 square metres (indicated as Site C in Figure 1); and
- d. the airspace of the site up to a height of one metre above the existing street level with a measurement of approximately 1,346 square metres (indicated as Site D in Figure 1).

Figure 1 | Sites transferred through the 1991 Deed



2.2.3 The sale was made against the payment of Lm110,000 (€256,231), of which Fortina settled Lm30,000 (€69,881) on entry into the Deed. The balance of Lm80,000 (€186,350) was to be paid within three years, with Lm30,000 (€69,881) of this outstanding amount due in one year, another Lm30,000 (€69,881) payable in two years, and the remaining Lm20,000 (€46,587) to be settled within three years. An annual compound interest of six per cent was to be levied.

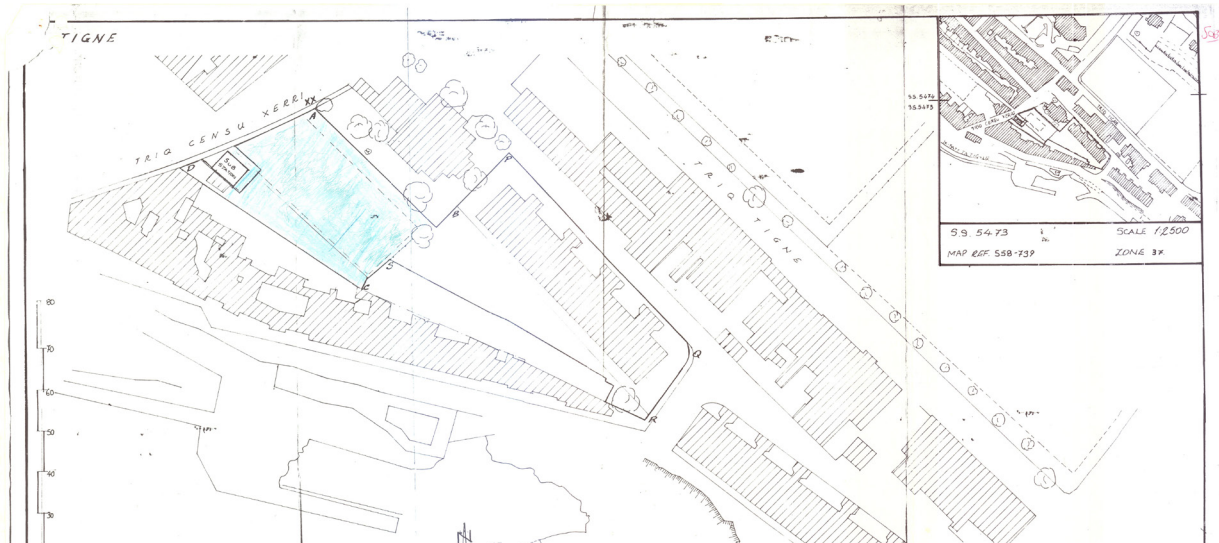
2.2.4 The sites acquired by Fortina through this Deed were to serve as an extension of the facilities of the Fortina Hotel. Duty on documents amounting to Lm3,865 (€9,003) and notarial fees were payable by Fortina.

The 1996 contract of sale and transfer

2.2.5 Another contract of sale was entered into by the parties on 25 January 1996. The Commissioner of Land appeared on behalf of the Government, while Mr Julian Zammit Tabona and Mr Adrian Zammit Tabona represented Fortel Services Ltd.

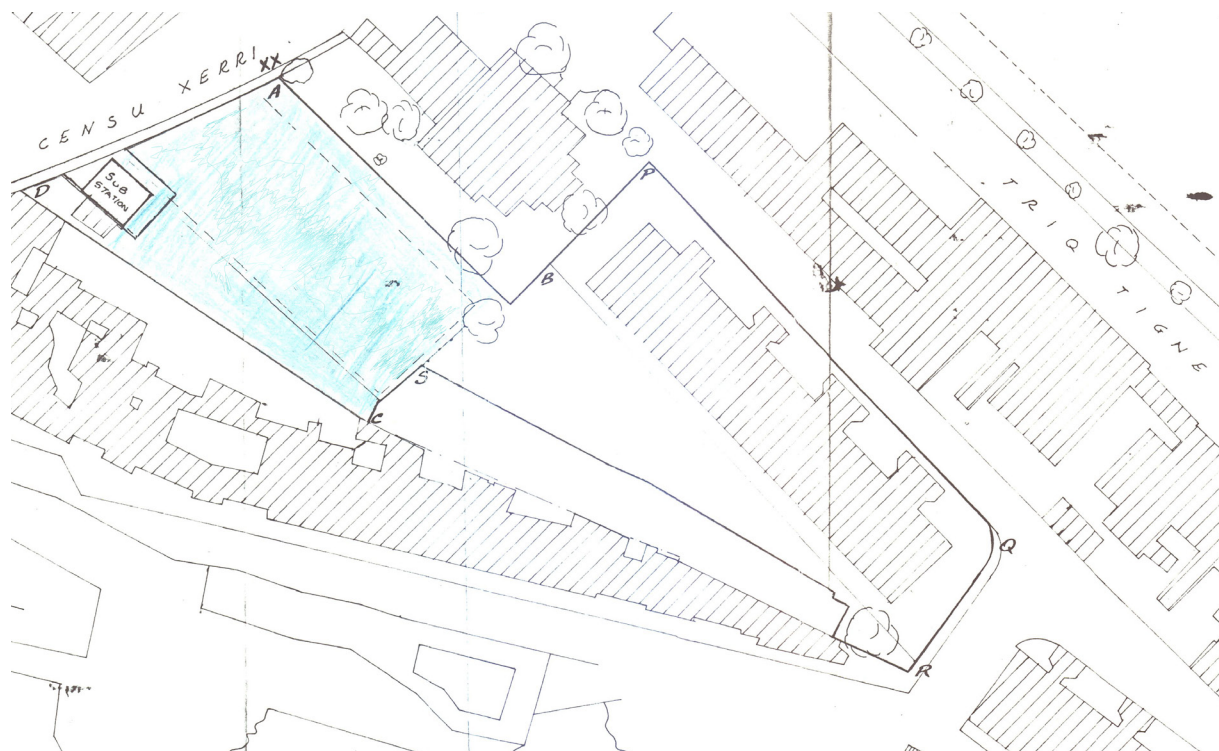
2.2.6 Through this Deed, the Government transferred to Fortina a portion of land in Tigné, Sliema measuring approximately 2,992 square metres. The site was bound by public land and other property owned by Fortina on the southwest, by a road and other property owned by Fortina towards the southeast, and another road and other public property on the northwest (marked as Site E in Figure 2).

Figure 2 | Site transferred through the 1996 Deed



2.2.7 Stipulated in the Deed was that the site was being sold free and unencumbered, and with vacant possession for exclusive use as an extension to the Fortina Hotel. Despite these provisions, a limit was imposed regarding the height of possible development on the site. No development was permitted beyond two reference points. With regard to the area marked A,B,S,C and D in Figure 3, the reference point was set at the level of the road to the northwest of the area and indicated as XX. As regards the area marked as P,Q,R,S and B, the reference point beyond which development was not permitted was set at PQ.

Figure 3 | Site transferred through the 1996 Deed, detailed view



2.2.8 Notwithstanding these limitations, certain exceptions in terms of development were allowed. These comprised:

- a. the development of a boundary wall;
- b. a swimming pool that could not exceed an area measuring 730 square metres and that was not to exceed the level of the road marked PQ in Figure 3;
- c. emergency exits for the developments that were to be carried out below street level;
- d. the construction of an Enemalta sub-station;
- e. garden landscaping;
- f. toilets; and
- g. the reconstruction of the bowls pitch with ancillary facilities.

2.2.9 Any other development carried out on the sites required the prior written approval of the Commissioner of Land, with such authorisation being at the sole discretion of the Commissioner. Any breaches in this regard gave the Government the right to rescind the Deed without any obligation to compensate for any works undertaken.

2.2.10 Acknowledged in the Deed was that Fortina was cognisant of a bowls pitch located on the site that was available for use by the public free of charge. Fortina committed to either retain the bowls pitch at its original location or, if the site was to be utilised otherwise, a bowls pitch of the same size and with similar facilities was to be made available to the public at an alternative location.

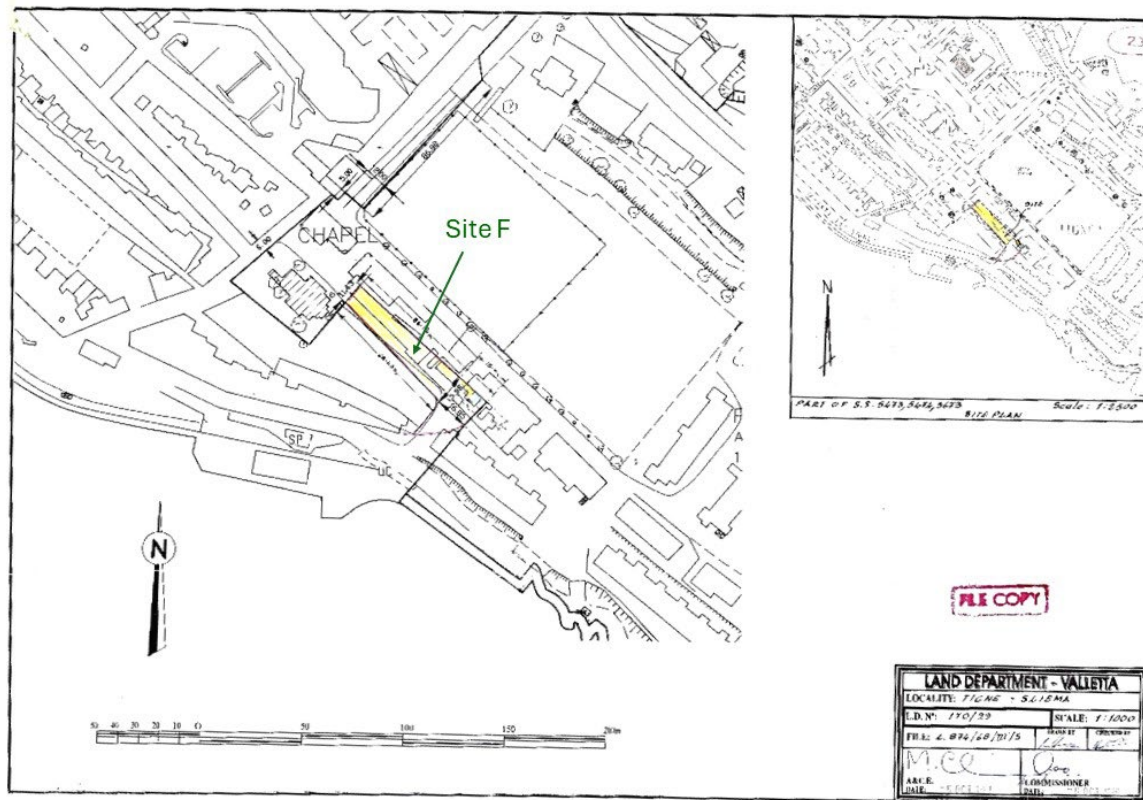
2.2.11 The sale was being made against the sum of Lm107,000 (€249,243) payable to the Government, of which Lm30,000 (€69,881) were settled on the signing of the Deed. Out of the balance of Lm77,000 (€179,362), Lm38,500 (€89,681) was due to be paid within a year from the date of the Deed, while the remaining Lm38,500 (€89,681) was to be settled within two years from the date of entry. An annual compound interest of six per cent was payable on the amounts due.

2.2.12 The duty on documents payable by Fortina amounted to Lm7,490 (€17,447). Notarial fees were also to be paid by the purchaser.

The 2000 contract of sale and transfer

2.2.13 The third contract of sale and transfer reviewed by the NAO was that dated 15 February 2000. Through this Deed, the Government sold a portion of land measuring approximately 1,421 square metres in Tigné, Sliema to Fortel Services Ltd. Appearing on behalf of the Government was the Acting Commissioner of Land, while Fortina was represented by Mr Julian Zammit Tabona. The site transferred, including all existing structures, was bound by other government property on all sides, as indicated in red in Figure 4 and marked as Site F. The land was being sold free and unencumbered and was being granted to be used exclusively as an extension to the Fortina Hotel.

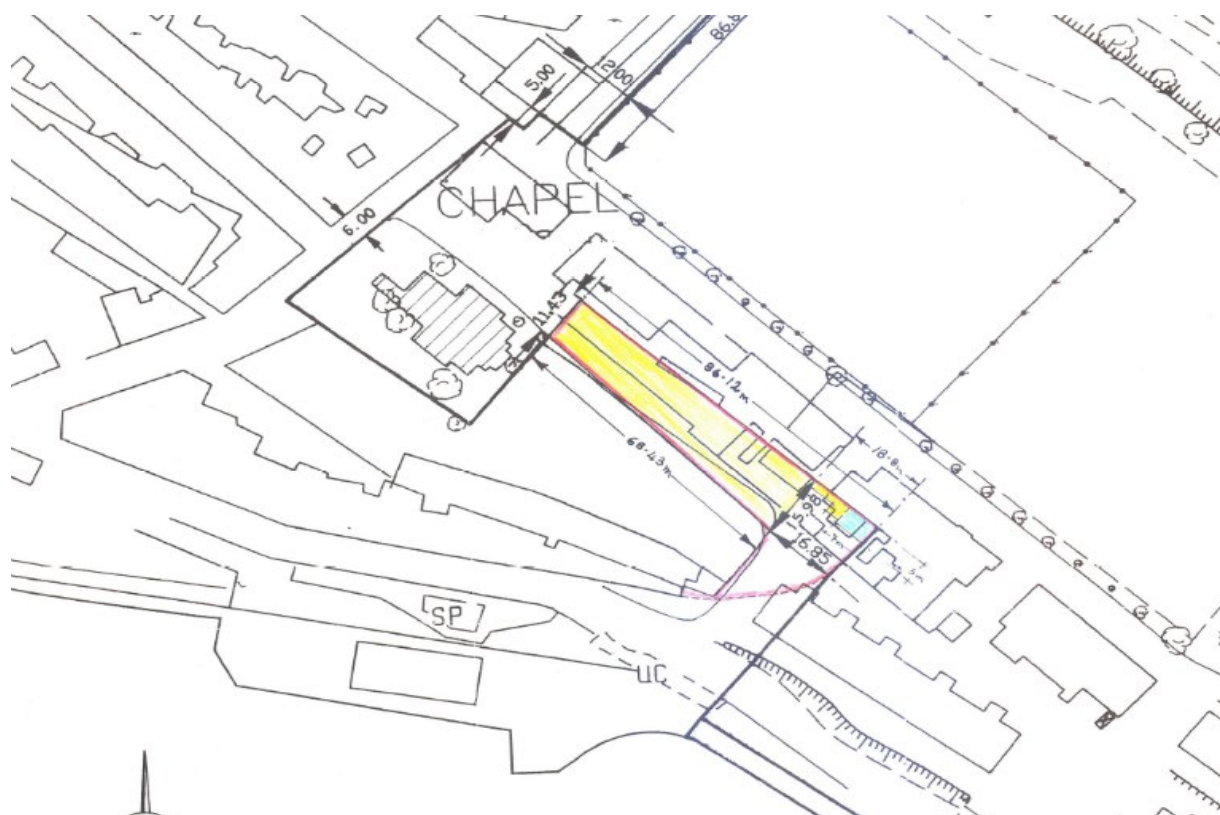
Figure 4 | Site transferred through the 2000 Deed



2.2.14 Fortina agreed to pay the Government Lm400,000 (€931,749) for this acquisition. Out of the amount due, Lm200,000 (€465,875) was payable on signing of the Deed, while Lm100,000 (€232,937) was to be settled by 20 December 2000. The remaining balance of Lm100,000 (€232,937) was to be paid by 28 February 2002. Compound interest set at a rate of six per cent per annum was to be paid on the balance due.

2.2.15 The sale was subject to several conditions. Most notable in this respect was that Fortina was not to construct any building, including parapet walls, higher than 29.5 metres from mean sea level on a part of the site measuring 900 square metres (shaded in yellow in Figure 5), without the prior written permission of the Government. This was at the absolute discretion of the Government. If permission was granted, the rescinding of height restrictions was to be effected at no additional charge payable by Fortina. The obligation to obtain the Government's consent was waived if persons indicated in an annex to the 2000 Deed passed away or indicated agreement with the relinquishment of the height restriction. An exception to this height limitation was applicable to part of the site measuring 35 square metres (shaded in green in Figure 5), where the balconies of any future development could protrude by 2 metres for the first two storeys above the level of 29.5 metres from mean sea level, by 1.5 metres for the next three storeys, and by 1 metre for any additional floors. Subsequent transfers of any of these properties by Fortina were to be subject to these conditions.

Figure 5 | Site transferred through the 2000 Deed, detailed view



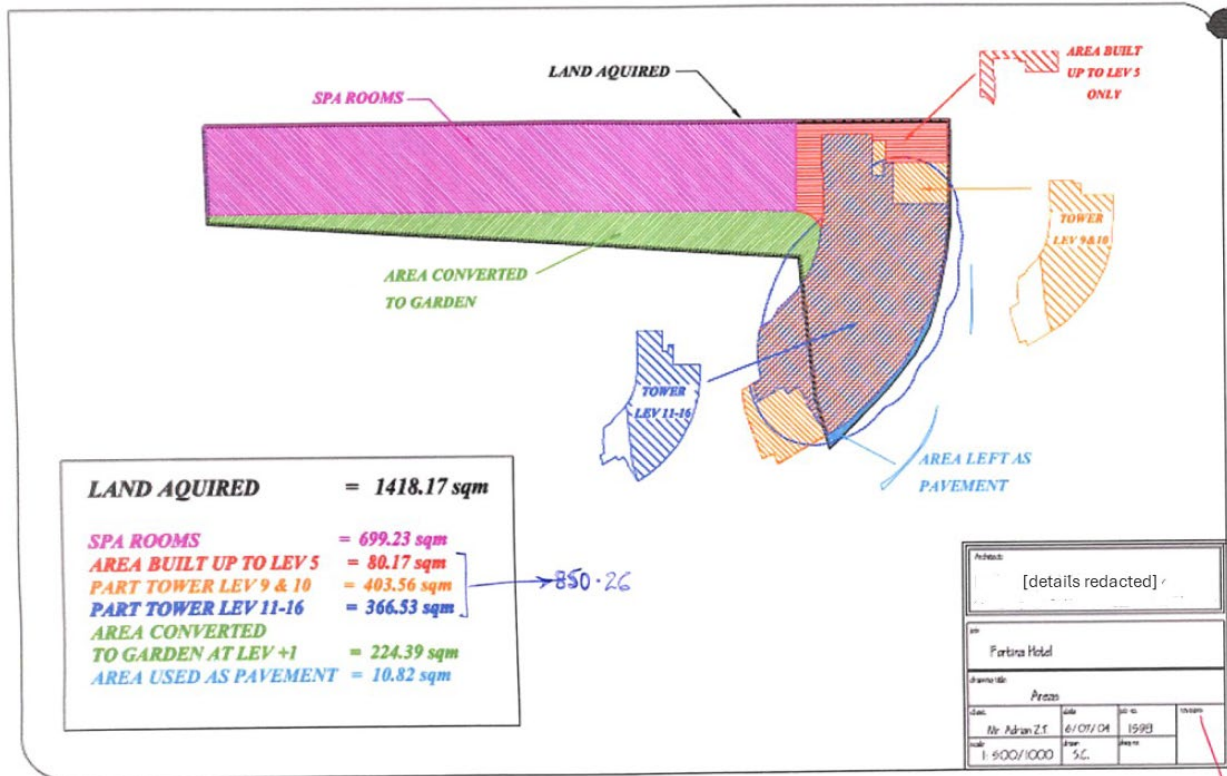
2.2.16 The Government was bound to assign the transferred property to Fortina with vacant possession within two months from the date of the Deed. Notarial fees and duty on documents were payable by Fortina. The latter amounted to Lm20,000 (€46,588).

2.3 The initial attempts by Fortina to secure waivers

The 2004 request

2.3.1 After the Deeds entered in 1991, 1996 and 2000, the waiver of several conditions imposed on the sites was sought. On 12 July 2004, Fortina requested the Government to relinquish the contractual conditions relating to a divided portion of the site acquired by virtue of the 2000 Deed. While the area of the site acquired in 2000 measured 1,421 square metres, the request applied to a portion measuring 850 square metres (corresponding to the areas shaded in red, orange and blue in Figure 6). Specifically, Fortina requested the waiver of the restriction relating to the site's exclusive use as an extension of the Fortina Hotel. At the time of the request, the area comprised a sixteen-storey tower block built on part of the site acquired by Fortina through the 2000 Deed and other land already owned by the Company. This waiver, if granted, would render the tower block free from any limitations on use.

Figure 6 | Divided portion of the site for which the 2004 waiver was sought



- 2.3.2 On 20 December 2004, the Director General (DG) GPD referred the request by Fortina to an Architect GPD, who was to indicate the lump sum that the Government was to charge for the waiving of the limitation of use on the site. The value of the relinquishment of the condition set by the Architect GPD on 1 February 2005 was Lm250,000 (€582,343).
- 2.3.3 A memorandum dated 16 March 2005 was subsequently submitted by the DG GPD to Hon. Tonio Borg, then Deputy Prime Minister and Minister for Justice and Home Affairs. Cited in the memorandum was that the Government had, through the 2000 Deed, transferred to Fortina a site for exclusive use as an extension to the Fortina Hotel. Fortina was requesting the waiver of this limitation in use and the GPD had estimated the value of relinquishing this condition at Lm250,000 (€582,343). Noted in the memorandum was that since the land was originally granted to Fortina through a parliamentary resolution, any changes necessitated a similar process of authorisation.
- 2.3.4 Although the authorisation of the Deputy Prime Minister and Minister for Justice and Home Affairs was not traced in file, the subsequent action by the DG GPD indicated agreement with that proposed in the memorandum, for the DG GPD instructed that preparatory work be undertaken for the drafting of the parliamentary resolution. Later correspondence exchanged between the GPD and Fortina attested to the progress registered in this respect, with detailed plans of the site drawn up and confirmed.

2.3.5 On 26 December 2006, the advice of the Architect GPD² was sought on whether the 2005 valuation of the waiver of conditions warranted revision, given the considerable lapse in time since the original valuation. In reply, on 8 January 2007, the Architect GPD proposed that the Government ought to request Lm450,000 (€1,048,218) for the waiving of the condition relating to the exclusive use of the site as an extension of the Fortina Hotel. Of note to the NAO was that the revised valuation by the Architect GPD referred to two parcels of land, measuring 577 square metres in total, part of which was acquired through the 2000 Deed (marked as 'A' in Figure 7), while the other part obtained by virtue of the 1996 Deed (marked as 'B' in Figure 7).³ It is unclear to the NAO how the area of the site changed from 850 square metres cited in the 1 February 2005 valuation to 577 square metres quoted in the revised valuation. Furthermore, the revised valuation represents the first instance wherein the extent of the tower block encompassed parts of the sites transferred through the 1996 and 2000 Deeds, whereas previous references only included the latter.

Figure 7 | Revised area for which the 2004 waiver was sought



² It is to be noted that, on 26 December 2006, the Architect GPD was no longer an employee of the Department when requested to revise the original valuation of the waiver of conditions by the GPD dated 1 February 2005. For this reason, Architect GPD is henceforth referred to as 'former Architect GPD'.

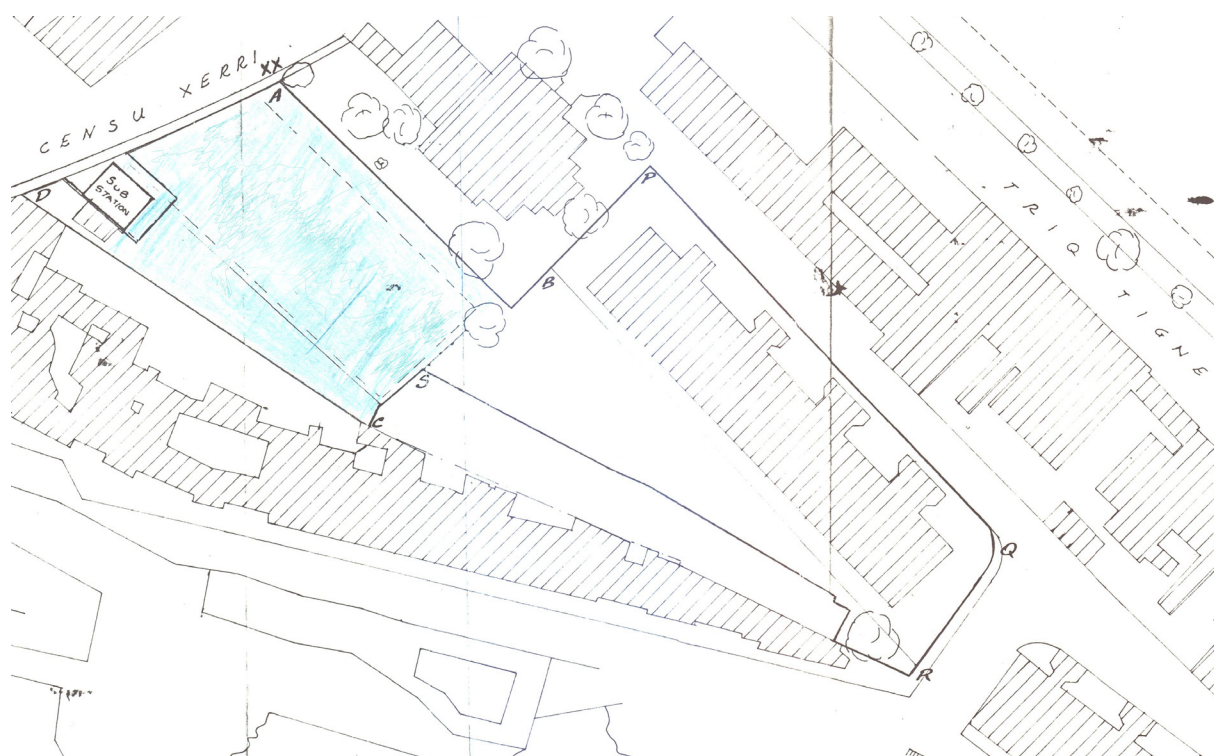
³ It is pertinent to note that while the revised valuation by the Architect GPD was dated 8 January 2007, the site plan referred therein as 'P.D. No: 2007_476' was dated 6 July 2007.

- 2.3.6 Fortina signified its agreement to the revised valuation in correspondence submitted to the DG GPD on 30 January 2007. Indicated therein was that, further to discussions held, the parties agreed to remove reference to the conditions limiting use of the site in the 2000 Deed against payment by Fortina to the Government of Lm450,000 (€1,048,218). Of this amount, Lm250,000 (€582,343) was to be paid on the signing of the Deed, whereas the balance was to be settled in three equal instalments over a period of three years from the date of signing. Fortina also proposed that outstanding amounts were to be subject to a reasonable rate of interest. Following exchanges by the GPD and the Ministry of Finance, the latter proposed that a rate of interest of five per cent was to be levied, with the rate increased to eight per cent in case of default.
- 2.3.7 On 22 March 2007, the DG GPD agreed with that proposed by the Ministry of Finance and instructed immediate steps to be taken to draft a parliamentary resolution for this waiver. Shortly thereafter, on 28 March 2007, the Director Land GPD informed Fortina that the Government had accepted that the rate of interest payable be set at five per cent; however, that the rate would be revised to eight per cent in the event of default.
- 2.3.8 Documentation in the GPD file indicated that a draft parliamentary resolution was prepared, wherein the Deputy Prime Minister and Minister for Justice and Home Affairs was to request Parliament to consent to the rescission of the condition stipulating the exclusive use of part of the site as an extension to the Fortina Hotel. A draft agreement reflecting this amendment was appended to the parliamentary resolution. However, the outcome of this process was not captured on file.
- 2.3.9 While the NAO established that the rescission of the condition limiting use was not seen through, for later developments attest to this, the reason why this process came to a halt remained unclear. Following queries made, the incumbent CEO Lands Authority informed the NAO that, based on file movements, the draft parliamentary resolution and final deed were filed by the Director Land GPD between July and September 2007. However, no further action was recorded, with the file periodically brought up until it was put away by the Director Land GPD in October 2008.

The 2011 request

- 2.3.10 On 23 May 2011, Fortina wrote to the Commissioner of Land requesting for the conditions relating to a part of the land purchased from the Government by virtue of the 1996 Deed (shaded in blue in Figure 8) to be rescinded. In its request, Fortina contended that the indicated site was no longer useful as an open area and requested permission for the development thereof. In this respect, Fortina requested the rescinding of the height limitation prohibiting development above street level and the obligation for exclusive use of the site as an extension of the Fortina Hotel. Furthermore, Fortina contended that the bowls pitch had not been used for several years and therefore sought that the obligation to maintain the pitch available for the public be waived.

Figure 8 | Area for which the 2011 waiver was sought



2.3.11 The request by Fortina was followed up on 5 July 2011, when the Commissioner of Land requested another Architect GPD to provide a valuation for the rescinding of the height limitation for the designated area, noting that the amendment of the contract of sale was to be subject to a one-time premium payable to the Government. Following verifications undertaken, the GPD established that the area measured 1,172 square metres. On 5 October 2011, the Architect GPD informed the Commissioner of Land that the one-time premium was €1,000,000.

2.3.12 On 18 October 2011, the Commissioner of Land referred the request by Fortina to Hon. Tonio Fenech, the then Minister of Finance, Economy and Investment, seeking approval for the rescinding of the height limitation for the designated area against the payment of €1,000,000. To this end, the Commissioner of Land proposed that the sale of the air space be made through tender at the indicated value, subject to a right of first refusal in favour of Fortina. The request for authorisation was submitted through the Hon. Jason Azzopardi, then Parliamentary Secretary for Revenues and Lands and the DG GPD. The NAO noted that the Commissioner of Land only referred to the condition regarding height limitation in his request for a valuation of the waiver and in his referral to the Minister of Finance, Economy and Investment, thereby omitting reference to the relinquishment of limitations in use and the obligation to maintain the bowls pitch.

- 2.3.13 Although the approval of the Minister of Finance, Economy and Investment, or the acknowledgement of the Parliamentary Secretary for Revenues and Lands and the DG GPD, was not found on file, the NAO understood that that proposed by the Commissioner of Land was endorsed based on subsequent action. On 27 October 2011, the GPD Tender Committee discussed the request by Fortina and refuted the valuation put forward. The GPD Tender Committee requested that a report and a revised valuation be submitted. For this reason, on 27 December 2011, the GPD requested the former Architect GPD to provide a valuation for the one-time premium to be paid by Fortina to the Government for the waiving of the height limitation and the consequent sale of the resultant air space for the designated area. On 8 January 2012, the former Architect GPD established a value of €700,000.
- 2.3.14 While the NAO has no visibility over the outcome of the submission of the second valuation by the former Architect GPD, based on preceding and subsequent developments, this Office inferred that this valuation was not deemed acceptable by the GPD Tender Committee. In fact, on 2 March 2012, following a request by the DG GPD, a third valuation was submitted by a Real Estate Appraiser, who established that the financial compensation due to the Government for the waiving of the height limitation for an area measuring 1,350 square metres was €2,500,000. From this, the amount paid by Fortina in 1996 for the acquisition of the site as burdened with limitations (€250,000) and interest potentially accrued thereon (six per cent annually for 15 years, that is, €225,000), was to be deducted, resulting in a balance payable to the Government of €2,025,000.
- 2.3.15 According to records retained by the GPD, on 27 March 2012, the GPD Tender Committee accepted the valuation by the Real Estate Appraiser of €2,500,000. However, the Committee resolved to obtain legal assurance as to whether the 1996 Deed conditioned Fortina to undertake any development on the site and further information regarding its current use. The Committee agreed that discussions with Fortina would be held when this information was obtained. Action was promptly taken by the GPD on both matters. On 2 April 2012, the Legal Section GPD confirmed that the 1996 Deed did not obligate Fortina to develop the ground floor level, but allowed works below street level. Any other construction was only allowed with the permission and at the absolute discretion of the Commissioner of Land. Regarding use, on 12 April 2012, the Enforcement Section GPD established that the site comprised a substation and a leisure area ancillary to the Fortina Hotel. In a subsequent minute by the Secretary GPD Tender Committee, dated 17 April 2012, it was indicated that the Commissioner of Land had asserted that the bowls pitch was not an issue since this public area had been incorporated into the road and provided for in a contract with a third party.
- 2.3.16 Following the resolution of these issues, a meeting was held with Fortina. According to records retained by the GPD dated 24 April 2012, Fortina were interested in developing the site as a boutique hotel and were to submit plans to this effect. The Secretary GPD Tender Committee registered that a member of the GPD Tender Committee (an architect by profession) and the Real Estate Appraiser were to amend the third valuation to reflect the site's planned use and that the airspace was to be retained by the Government. Relevant in this respect was an email sent by the DG GPD to the member of the GPD Tender Committee and the Real Estate Appraiser on 18

April 2012, wherein he instructed that the valuation of the site be revised downwards to reflect its continued use as a hotel and that the airspace was not to be included in the sale.

2.3.17 Following this exchange, no subsequent developments were registered in the relative GPD file, indicative of a process that had effectively stalled. This situation persisted for a few years. However, of note to the NAO was a minute by the Commissioner of Land to the DG GPD dated 2 March 2015. The relevance of this minute emerges from its reference to the request originally submitted by Fortina on 23 May 2011 for the development of an open area adjacent to the Fortina Hotel and already owned by the Company, as well as to the valuations by the former Architect GPD (€700,000) and the Real Estate Appraiser (€2,025,000). Noted in this minute was the request by the Commissioner of Land to discuss the matter with the DG GPD. While this minute is indicative of Fortina's continued interest in the development of the site, the NAO was unable to trace any additional developments in this regard, hence bringing to a conclusion the Company's second attempt to secure the waiver of limitations burdening its site.

2.4 The process leading to the rescission of conditions

The 2017 request

2.4.1 Evidence of Fortina's intention to remove the development and use restrictions on the site of the Fortina Hotel emerged in early 2017. On 22 March 2017, Fortina sought the clearance of the GPD for the submission of a development planning application for the site. The planned development comprised the demolition of the existing four-star hotel and the excavation of the site. This was to be followed by the construction of three levels of below ground car parking facilities, the construction of a luxury residential complex rising to a maximum of 15 floors above street level, and the construction of five additional floors on the existing five-star hotel tower and an additional three floors on the hotel's spa wing.

2.4.2 On 23 March 2017, the GPD indicated that it found no objection in principle to the submission of the development planning application that Fortina sought clearance for. The GPD's clearance was subject to the correctness of declarations regarding ownership, that it did not run counter to the conditions under which the site was leased or given on emphyteusis, and that no third-party rights were infringed by the development. In addition, the GPD noted that clearance was being issued without prejudice to its final decision regarding any development permitted by the PA.

2.4.3 Following the consent in principle, on 3 April 2017, a Notary Public submitted a request on behalf of Fortina to the Lands Authority for the rescinding of certain restrictions imposed on the area earmarked for development.⁴ The Notary Public acting on behalf of Fortina was Dr Charles

⁴ On 3 February 2017, the Lands Authority was established through the enactment of Chapter 563 of the Laws of Malta, thereby replacing the GPD. Subsequently, on 25 April 2017, through Legal Notice 121 of 2017, all the powers previously held by the Commissioner of Land were transferred to the Lands Authority. Chapter 573 of the Laws of Malta, the Government Lands Act, was also enacted on 25 April 2017, regulating "the administration of Government land, ... [including] the grant of title to any immovable property of the Government or that which is administered by such Government, and to provide for matters connected therewith and ancillary thereto."

Mangion, at the time a Government MP.⁵ In the correspondence addressed to the Chair BoG Lands Authority, the planned restructuring of the site was outlined. Indicated was that the project was to include the upgrading of hotel facilities to five-star standard, the provision of a public area and the construction of residential units. The Notary Public asserted that the development of the hotel by Fortina would result in an increase in the room stock from 147 to 218 suites, with an investment of €55,000,000 envisaged. As part of its corporate social responsibility, Fortina proposed the provision and maintenance, at its expense, of a public area within the project corresponding to 2,380 square metres, which area was to be permanently retained as an open space. To render the project feasible and to provide a reasonable return on capital employed, Fortina put forward part of the site for the construction of freehold residences. The residential component of the project was to cover 1,810 square metres, equivalent to 20 per cent of the total area of the site owned by Fortina, which measured 9,045 square metres.

2.4.4 The Notary Public indicated that, out of the 9,045 square metres, 620 square metres were purchased freehold by Fortina from third parties, while the remaining 8,425 square metres were purchased from the Government through the different Deeds. Although the sites acquired from the Government were freehold, they were subject to certain limitations for which rescissions were sought. Specifically, the rescissions requested were intended for Fortina to:

- a. build an additional two floors as hotel rooms on part of the site purchased through the 2000 Deed and already in use as a hotel. Out of the total area of 1,420 square metres, the portion of the site on which development was planned was 705 square metres.⁶ Development on the site was limited to a height of 29.5 metres from mean sea level, which restriction Fortina sought to overturn. Noted in the correspondence submitted by the Notary Public was that the 2000 Deed provided that the Government could grant permission, at its discretion, for development beyond this height limitation, at no additional cost to the Company. This area is shaded in green and cross hatched in black in Figure 9;
- b. build freehold residential property up to any level sanctioned by the PA on a portion of the land acquired through the 1996 Deed. The area for which waivers were sought measured 625 square metres (shaded in violet in Figure 9). Two waivers were requested for this portion of the site, that is, the limitation on site use, originally restricted as an extension to the Fortina Hotel, and a restriction on height. In effect, Fortina sought the further development of this portion of the site through the construction of residential units to be sold to third parties. The Notary Public highlighted that the waivers were being sought for only part of the site, which in total measured 3,010 square metres,⁷ and that the remaining 2,380 square metres were to be subject to the original limitations imposed yet become open for public use (shaded in grey in Figure 9); and

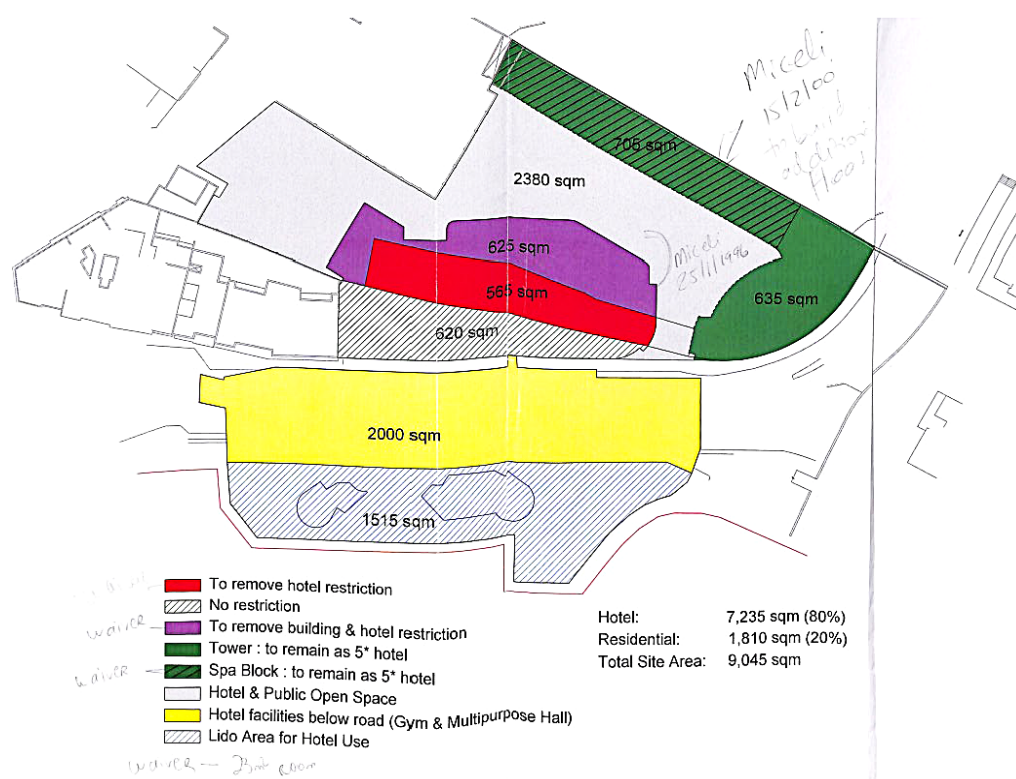
⁵ Dr Charles Mangion's tenure as an MP of the 12th Legislature came to an end on 1 May 2017, with the dissolution of Parliament prior to the general election.

⁶ The 2000 Deed imposed height restrictions on an area of 900 square metres. In his request to the Lands Authority, the Notary Public observed that the site for which a waiver was sought, referred to as measuring 705 square metres, was the same as that cited in the 2000 Deed measuring 900 square metres.

⁷ While the correspondence submitted by the Notary Public cited a total area of 3,010 square metres (~ 2,380 square metres + 625 square metres) transacted in the 1996; he also noted that this area was indicated as measuring 2,992 square metres in the 1996 Deed.

- c. construct freehold residential property on 565 square metres⁸ of the land purchased in the 1991 Deed through the waiver of the restriction on use as an extension of the Fortina Hotel (shaded in red in Figure 9). Also requested was that a room measuring 23 square metres, acquired through the 1991 Deed, be redesignated and form part of the area intended for use as a public space. The other portions of land assigned to Fortina by virtue of the 1991 Deed (shaded in yellow and in white hatched in blue in Figure 9) were to remain subject to the original restrictions imposed by the Government.

Figure 9 | Areas for which waivers were sought in 2017



2.4.5 Requested by the NAO to explain its rationale for submitting this correspondence to the Chair BoG Lands Authority instead of the former CEO Lands Authority, Fortina referred to the role played by the Notary Public acting on its behalf in drafting the request to the Authority but indicated that it had no knowledge of the reasoning for referring the matter to the former.

A valuation by the Lands Authority

2.4.6 The NAO has limited visibility over the developments that ensued following the request submitted by Fortina on 3 April 2017, as the next document on file was a valuation undertaken on behalf of the Lands Authority. Through enquiries made by the NAO, this Office ascertained that the correspondence was referred to the former CEO Lands Authority.

⁸ The NAO noted that this area was quoted as measuring 465 square metres in the 1991 Deed.

- 2.4.7 Based on testimony provided by Fortina, this Office also established that the Lands Authority did not reply to Fortina's request. The only interaction recalled by Fortina in response to its correspondence was a request made by the former CEO Lands Authority for plans and other information related to parts of the site. However, Fortina could not recall the timing of this exchange.
- 2.4.8 On 30 September 2017, the former CEO Lands Authority requested a meeting with three architects whose services were being sought for the valuation of the Fortina site. This Office was unable to establish how the Lands Authority selected these architects as no record of this initial interaction and its basis was retained by the Authority. Nevertheless, on 11 October 2017, the authorisation of the former CEO Lands Authority was sought for the replacement of one of the architects originally approached, with the nominated substitute endorsed the day after. As indicated earlier, the three architects who accepted this assignment are hereinafter referred to as the Architects Lands Authority.
- 2.4.9 The NAO was not provided with the terms of reference set by the Lands Authority, which gap rendered it impossible for this Office to determine the extent of the site that was to be valued. This lacuna assumes importance in later developments.
- 2.4.10 On 17 October 2017, the Architects Lands Authority submitted a valuation relating to a site forming part of the Fortina Hotel to the Authority. In preparing the valuation, the Architects Lands Authority carried out an inspection of the site on 11 October 2017. Noted in the valuation report was that a measured site survey was not undertaken, and that instead, the areas were calculated by reference to the identified boundaries of the property highlighted in red in Figure 9. The site plan presented in Figure 9 was annexed to the valuation report. The Architects Lands Authority also referred to the appropriate PA map server facility. The NAO deems it pertinent to note that the site subject to valuation was only one of the several sites for which Fortina requested the Government to rescind conditions imposed thereon.
- 2.4.11 In line with the provisions of the Government Lands Act, in particular Article 79(3)(a-h), the valuation by the Architects Lands Authority included the following:
- a. the date of valuation was set as 12 October 2017;
 - b. the date with reference to which the property was valued was indicated as 11 October 2017;
 - c. as regards the state of the property, the Architects Lands Authority noted that the site formed part of a hotel complex constructed several years ago, and although improvements were made, these were not carried out in a holistic manner and the facility was due for an overall update;
 - d. in terms of use and third-party rights, the portion of land valued was specifically granted by the Government for exclusive use as a hotel;

- e. insofar as reference to comparable transactions, present land rates were adopted for hotel and residential uses;
- f. regarding restrictions arising from zoning-related requirements, noted was that the site fell within an area for development of new hotels in Sliema and was governed by Policy NHSJ15;
- g. the method of valuation was based on the difference in values between the existing hotel use and the proposed use as outlined in the planning application then subject to approval; and
- h. a relevant conflict of interest declaration whereby the Architects Lands Authority declared that no such conflict exists.

2.4.12 Acknowledged by the Architects Lands Authority was that title documentation was provided in the form of the 1991, 1996 and 2000 Deeds. Reference was also made to the correspondence submitted by the Notary Public on behalf of Fortina on 3 April 2017, with the Architects Lands Authority noting that the request to the Lands Authority “refers exclusively to a divided portion of land measuring 565 square metres. In the above-mentioned deeds the divided portion of land amounting to 565 square metres cannot be identified.” Reiterated by the Architects Lands Authority was that the land under consideration was that marked in red in the plan attached to the Notary Public’s correspondence, as reproduced in Figure 9. Evident in this plan was that the portion of the site marked in red was only one of several parts for which rescissions were being sought. The Architects Lands Authority further assumed that each site had a good and marketable title, was free from any pending litigation, and emphasised that reliance was not to be placed on their interpretation thereof without verification by the Lands Authority’s legal advisors.

2.4.13 Noted in the valuation drawn up by the Architects Lands Authority was that the site measured approximately 565 square metres, with a rear frontage of around 61.6 metres and an average depth of around 10.36 metres. Also noted was that the site formed part of the Fortina Hotel and that the existing structure overlooked the hotel pool deck, having views of the sea and a football pitch from the upper floors. The site being valued formed part of a larger portion of land measuring 5,347 square metres, on which development in terms of PA/06252/17 was sought. The Architects Lands Authority indicated that the proposed residential development would outstand on the existing rear hotel construction and impinge on the existing pool deck area.

2.4.14 The development sought through PA/06252/17 comprised “Demolition of existing 4-star hotel and the Spa Wing of the 5-star hotel, and excavation of site. Construction of 3 levels of below ground car parking; construction of ground floor retail complex (mix of Class 4B and Class 4C) under a landscaped public open space; and construction of residential complex rising to a maximum of 15 floor above street level. Development also to include complete refurbishment (including internal alterations) of the existing 5-star hotel, the construction of five additional floors on the hotel tower and construction of stepped hotel block rising to 13 floors above the plaza, in place

of the Spa Wing spaces." Elaborating, the Architects Lands Authority noted that 11 residential floors were permitted for development should residential units be constructed instead of the existing hotel. However, should the hotel use be retained, the construction of an additional three floors was permissible in view of applicable planning policies.

- 2.4.15 The first component of the valuation was the estimation of the land value for hotel use, including existing and proposed development. This was calculated in line with the Kamra tal-Periti Valuation Standards issued in 2012 for the valuation of premises based on operational performance of business trading properties and the comparative method for hostel premises. The Architects Lands Authority noted that as a rough rule of thumb, the value of a hotel bedroom is 1,000 times its RevPAR value. The RevPAR value is the revenue generated per available room, irrespective of occupancy. Based on available information, the RevPAR value for the Fortina Hotel was estimated at €90 per night for 2017. Consequently, applying the 1,000-multiplier resulted in a value of €90,000 per bedroom. This estimate was deemed reasonable when compared to other hotel sales. According to international standards, for a development to be feasible, its land value was not to exceed 15 to 20 per cent of its market value. Nonetheless, the Architects Lands Authority argued that, given Malta's low labour costs, this percentage could be adjusted to 25 per cent. Applying this percentage to the 156-bedroom units estimated at €90,000 per unit, the Architects Lands Authority estimated that the total land value for the existing and proposed hotel development was €3,510,000.⁹
- 2.4.16 Another aspect considered by the Architects Lands Authority in the first component of valuation was the value of the airspace of the existing hotel. Considering the 156 rooms permissible in terms of the Hotels Height Limitation Adjustment Policy, a new floor area of 8,977 square metres was established. Assigning the 25 per cent land value to each bedroom unit, estimated at €90,000, resulted in an airspace value of €22,500 per room. Comprehensively, the airspace of the 156 rooms was valued at €2,902,500. The Architects Lands Authority compared this to the land value for the existing and proposed hotel development and established the land value for hotel use as €3,500,000.
- 2.4.17 The second component of the valuation was the estimation of the air space value of the proposed apartment use, which was determined using the residual method of valuation. The Architects Lands Authority noted that this was an intermediate airspace that traversed the middle of the proposed apartments. Also asserted was that a well-known rule of thumb for plot areas divides the front, intermediate and rear portions on a cost basis by applying a ratio of 4:3:2. In this case, because the site was a seafront plot with Valletta views, the proportion was increased to 8:3:2. The change in ratio for the front portion was substantiated on the basis of market rates for finished apartments on the seafront and internal apartments taking in no sea views within the immediate vicinity. The market value of finished units on the Tigné seafront facing Valletta was cited as €6,500 per square metre. On considering the total development costs, the airspace value of the site when developed as residential units was estimated at €3,375 per square metre, as outlined in Figure 10.

⁹ $25\% \times 156 \text{ rooms} \times €90,000/\text{bedroom} = €3,510,000$

Figure 10 | Architects Lands Authority valuation of airspace for residential use

	Estimated cost (€/m ²)	Asking price (€/m ²)
Market value of completed units		6,500.00
Development costs		
Construction & finishing costs	525.00	
Professional fees @ 8%	42.00	
VAT @ 18%	102.06	
MEPA levy	5.66	
Total construction & finishing costs	674.72	
Interest costs @ 5.75% on development costs for half the development period (30 months)	48.50	
Estate agent fees @ 5% of market value	325.00	
Developers' profit @ 22.5% of market value	1,462.50	
Total development costs		2,510.72
Residual value for land considered in 30 months' time		3,989.28
Vacant land value considering present value for 30 months development period & 6 months selling period @ 5.75%		3,373.29

2.4.18 Applying the rate of €3,375 per square metre to the 8:3:2 ratio for the front, mid and rear portions of the airspace resulted in rates of €6,231, €2,337 and €1,558 per square metre, respectively.¹⁰ The Architects Lands Authority calculated the net area of the proposed internal development as 6,710 square metres. Consequently, applying the rate of €2,335 per square metre (given that this was an intermediate airspace and rounded from €2,337) resulted in a total airspace value of €15,667,000.

2.4.19 In conclusion, the Architects Lands Authority reiterated that the freehold value of the site if used for residential purposes was €15,667,000, while the existing hotel value together with the potential development of additional floors was estimated at €3,500,000. Therefore, the Architects Lands Authority determined that the value of the change of use of the site was the difference between these two estimates, that is €12,167,000. The NAO noted that the copy of the valuation made available by the Lands Authority was unsigned and bore a handwritten note indicating that this was a draft.

2.4.20 Following the submission of the valuation by the Architects Lands Authority in relation to the portion of the site marked in red in Figure 9, the NAO noted that no other action was taken by the Lands Authority to determine the value of the other portions of the site for which Fortina sought conditions to be rescinded. This Office established this understanding since no documentation was provided indicating that the value of these portions, for which a charge could be levied by the Government, was determined. Moreover, the NAO was unable to ascertain what action was taken by the Lands Authority regarding the valuation submitted, for no record was retained on

¹⁰ Front = (3*€3,375/m²)*8/13 = €6,231/m²
 Mid = (3*€3,375/m²)*3/13 = €2,337/m²
 Rear = (3*€3,375/m²)*2/13 = €1,558/m²

file and no reference on the matter was made by the BoG Lands Authority in meetings held between October 2017 (when the initial valuation was submitted) and April 2018 (when the next documented development of note took place).

- 2.4.21 The omission of the other sites for which waivers were sought from any action resulting in their valuation was lent credence by the action taken by the former CEO Lands Authority on 13 April 2018. Based on information sourced from the Architects Lands Authority, the NAO established that on that day, following a chance encounter with one of the Architects Lands Authority, the former CEO Lands Authority made a few enquiries regarding the valuation that had been submitted several months earlier. In essence, the former CEO Lands Authority enquired about the cost of construction being low, the inclusion of capital gains in the valuation, how certain values were arrived at and whether the build-up potential of the hotel was to be reduced in view of the pending planning permit. In submissions made to the NAO, the former CEO Lands Authority referred to a meeting held with the Architects Lands Authority, during which the valuation report was discussed.
- 2.4.22 Following internal discussions among the Architects Lands Authority on the points raised by the former CEO Lands Authority, a revised valuation was submitted on 20 April 2018. While the revised valuation was consistent with the draft valuation in many respects, a few key differences and points of salience were noted. It is pertinent to state that the date of the revised valuation was not updated, with the report submitted in April 2018 citing the date of original submission, that is, 17 October 2017. In addition, the date of valuation and the date with reference to which the property was valued were respectively indicated as 12 October 2017 and 11 October 2017, consistent with the draft valuation despite the lapse in time.
- 2.4.23 The fundamental difference between the draft and revised valuations was the rate of the airspace value for residential use, reduced from €3,375 per square metre initially established to €2,500 per square metre. This revision was the result of two changes made in the valuation method. The first change was the inclusion of the demolition of the existing structure as part of the development costs, resulting in an upward revision from €525 per square metre to €775 per square metre. This consequently inflated other components that were calculated as a percentage of this cost element, such as professional fees, VAT and interest costs. The second change was the application of a deduction in relation to the duty on documents and transfers, calculated at eight per cent of the market value and therefore set at €520 per square metre. Of relevance in this regard was the disclaimer included by the Architects Lands Authority in the revised valuation report, which read as follows, "Lands Authority instructed that this residual valuation should include for the tax payable according to the Duty on Documents & Transfers Act, as noted in [Figure 11]. This is usually not catered for in normal valuation methodology, as all investment proposals have their own tax regimes, together with the tax status of the purchaser being an unknown factor. As a further example if these units are not transferred but rented out instead no such tax is levied."
- 2.4.24 The cumulative effect of these revisions was the increase in total development costs, from €2,511 per square metre to €3,372 per square metre. As a consequence, the residual value of land decreased to €3,130 per square metre, which when adjusted to present value to account for the period of development and sale, further reduced to €2,645 per square metre (Figure 11 refers).

Figure 11 | Architects Lands Authority revised valuation of airspace for residential use

	Revised estimated cost (€/m ²)	Revised asking price (€/m ²)	Initial estimated cost (€/m ²)	Initial asking price (€/m ²)
Market value of completed units		6,500.00		6,500.00
Development costs				
Demolition of existing + construction & finishing costs	775.00		525.00	
Professional fees @ 8%	62.00		42.00	
VAT @ 18%	150.66		102.06	
MEPA levy	5.66		5.66	
Total construction & finishing costs	993.32		674.72	
Interest costs @ 5.75% on development costs for half the development period (30 months)	71.39		48.50	
Estate agent fees @ 5% of market value	325.00		325.00	
Developers' profit @ 22.5% of market value	1,462.50		1,462.50	
Less duty on documents & transfers @ 8%	520.00		not considered	
Total development costs		3,372.21		2,510.72
Residual value for land considered in 30 months' time		3,127.79		3,989.28
Vacant land value considering present value for 30 months development period & 6 months selling period @ 5.75%		2,644.82		3,373.29

2.4.25 Applying the 8:3:2 ratio for the front, mid and rear portions of the airspace, this time to the rate of €2,500 per square metre (rounded downwards from €2,645 per square metre) resulted in rates of €4,615, €1,730 and €1,155 per square metre, respectively.¹¹ The Architects Lands Authority again referred to the net area of the proposed internal development as 6,710 square metres and applied the rate of €1,730 per square metre, given that the site was an intermediate airspace. This calculation resulted in a total airspace value of €11,600,000.

¹¹ Front = (3*€2,500/m²)*8/13 = €4,615/m²
 Mid = (3*€2,500/m²)*3/13 = €1,730/m²
 Rear = (3*€2,500/m²)*2/13 = €1,155/m²

- 2.4.26 Concluding the revised valuation, the Architects Lands Authority noted that the present market value of the land on a freehold basis and for the proposed residential use was estimated at €11,600,000, while the existing hotel land value together with the potential development of additional floors was estimated at €3,500,000. Offsetting the two values, the Architects Lands Authority determined that the value of the change of use of the site from that of a hotel to residential was the difference between the two estimates, that is €8,100,000. The NAO noted that the revised valuation was signed by the Architects Lands Authority.
- 2.4.27 Documentation reviewed by the NAO, in the form of correspondence exchanged between the Architects Lands Authority, indicated that the revisions to the valuation reflected the points raised by the former CEO Lands Authority. While the Architects Lands Authority expressed no reservations to the revision of the cost of construction and clarified the origin of certain values, concern was expressed regarding the inclusion of capital gains as a cost in the valuation. The NAO understood that the Architects Lands Authority disagreed with the instructions provided by the former CEO Lands Authority to consider capital gains in this manner and resolved to include a disclaimer in the valuation. In correspondence exchanged among the Architects Lands Authority on 18 April 2018, one noted that "The disclaimer is necessary as under normal circumstances this factor is not included in valuations, but if we were instructed to do so, we must make it clear that this was the case."

The Board of Governors takes charge

- 2.4.28 The developments that ensued following the submission of the revised valuation by the Architects Lands Authority remained obscure to the NAO, for no evidence of activity was recorded in file and no discussion on the matter was held by the BoG Lands Authority. The next related development over which this Office has visibility was the appointment of the CEO Lands Authority in July 2018.
- 2.4.29 This change assumes relevance for press coverage a few months later would shift attention onto the possible conflict of interest of the CEO Lands Authority. Reported in the press on 27 September 2018 was that the PA had approved the proposed Fortina development. Also cited was that, according to the CEO Lands Authority, discussions with Fortina were still ongoing, and any agreement would be referred to Parliament. Later press coverage indicated that, on the same day, follow-up questions were sent to the CEO Lands Authority regarding common business interests with the owners of the Fortina Hotel.
- 2.4.30 That reported in the press was brought to the attention of the BoG Lands Authority by the CEO Lands Authority a day after, that is, on 28 September 2018. According to the minutes of the meeting held by the Board, the CEO Lands Authority indicated that he had set up two companies in 2006, the objectives of which were unrelated to the development being undertaken by Fortina. The CEO Lands Authority noted that although he was not a director or actively involved in the management thereof, he conceded that these companies had shareholders in common with those of the Fortina Hotel. Notwithstanding this, while reiterating that he had no direct interest, when appointed CEO Lands Authority and to avoid circumstances not in the best interest of the Authority, he divested of his shareholding in these companies. The CEO Lands Authority informed the Board that the sale of shares was finalised with respect to one of the companies; however, in

the case of the other, the transfer of shares had not yet been concluded due to difficulties beyond his control, though it was at an advanced stage. According to the minutes, the divestment by the CEO Lands Authority was to be concluded shortly, thereby terminating any interest in these companies. Moreover, the CEO Lands Authority claimed that such action was taken prior to press coverage. While noting that the Minister and the Parliamentary Secretary were informed, the CEO Lands Authority indicated that he did not want to participate in any discussions regarding Fortina for the disclosed reasons and passed responsibility onto the Board to nominate a Lands Authority official to be tasked with responsibility for these discussions.

- 2.4.31 During the meeting of 28 September 2018, the BoG Lands Authority enquired as to what discussions and negotiations would be held between the Lands Authority and Fortina, with reference made to the fact that any minister could put forward a parliamentary resolution. The Board acknowledged that the process of negotiation would be a lengthy one and would ultimately require parliamentary approval. In addition, the Board considered who to nominate as a replacement of the CEO Lands Authority in negotiations with Fortina, and it was decided that ad hoc meetings of the Board would be called should any requests be received regarding Fortina. In conclusion, the CEO Lands Authority committed to inform the Board when the transfer of his shares in the second company was finalised.
- 2.4.32 The ensuing development of note was correspondence submitted by Fortina to officials of the Lands Authority on 24 October 2018. In its submission, Fortina referred to a meeting held at the Authority regarding the proposed development on its site. Fortina enquired whether there were any further developments regarding its request. The correspondence was internally redirected to the CEO Lands Authority, requesting direction on how to proceed. In turn, the CEO Lands Authority referred the matter to the BoG Lands Authority.
- 2.4.33 On 26 October 2018, the BoG Lands Authority discussed the correspondence submitted by Fortina. The Board considered the possibility of engaging an official to take charge of the process in connection with the request by Fortina and debated whether the official was to be an employee of the Authority. In addition, the Board recommended the setting up of a committee to oversee the action required and to determine whether external auditors were to be engaged. Of note to the NAO was that the Board discussed the method of disposal that was to be resorted to, and whether this was to be through a parliamentary resolution or otherwise. The Board decided that a memorandum was to be prepared by a Senior Officer Lands Authority, which was to include details relating to the case and the conditions imposed through the relevant Deeds, the request by Fortina, the required decisions and the procedure by which they were to be made. The Senior Officer Lands Authority was not to disclose any information relating to the case except with the Board. While the Chair BoG Lands Authority abstained from this decision, the other members of the Board agreed to engage the Senior Officer Lands Authority in this respect. When queried by the NAO, the Deputy Chair BoG Lands Authority was unable to shed light on why the Chair abstained from the decision to nominate the Senior Officer Lands Authority. Nevertheless, this decision was ratified by the Board in its subsequent meeting of 2 November 2018. The request was relayed to the Senior Officer Lands Authority on 8 November 2018.

2.4.34 The Senior Officer Lands Authority refused the appointment in correspondence submitted to the BoG Lands Authority on 11 November 2018. His decision was based on the understanding that the assignment required an economic, commercial and financial analysis in terms of the proposed project and the waiving of contractual conditions imposed on the site, areas that he had limited knowledge of. Additionally, the Senior Officer Lands Authority referred to recent press coverage wherein it was reported that the former CEO Lands Authority had disclosed that the negotiations with Fortina were at an advanced stage. The Senior Officer Lands Authority asserted that he had not been party to these negotiations and contended that if certain details regarding these negotiations were already known by third parties, he would be unable to report in confidence to the BoG Lands Authority. In view of this, the Senior Officer Lands Authority argued that it was not in his interest, or the interest of any official of the Lands Authority, the Lands Authority itself or the BoG, to be involved in a process of evaluation leading to a decision on this case, more so on an individual basis. It was in this context that the Senior Officer Lands Authority suggested the appointment of a person or persons, totally independent of the Authority, with the necessary experience to undertake a scientific and professional analysis. The Senior Officer Lands Authority emphasised the importance of this course of action in view of the substantial profit implications arising from the decisions to be taken. Nonetheless, the Senior Officer Lands Authority indicated his willingness, if necessary, to prepare information about the case, as captured in the relevant files held by the Authority, and to provide assistance in the drafting of the parliamentary resolution. The refusal by the Senior Officer Lands Authority was discussed by the BoG Lands Authority on 16 November 2018, which consequently resolved to assess alternative measures.

2.4.35 During the meeting held on 30 November 2018, the Chair BoG Lands Authority informed the BoG Lands Authority of a meeting held with a professional services firm, during which the firm declared a conflict of interest, having already provided advice to Fortina. This led the NAO to understand that the Lands Authority was interested in engaging the professional services firm to undertake the analysis in line with that proposed by the Senior Officer Lands Authority. In addition, the BoG Lands Authority was informed that the most recent request by Fortina was for the development of residential apartments and debated whether a meeting with Fortina was to be held to clarify its request.

Broadening the request for waiver

2.4.36 A fortuitous development was noted a few days later, for on 6 December 2018, the Notary Public wrote to the Chair BoG Lands Authority highlighting that the PA had approved the development of residential buildings, offices and commercial outlets on the site originally indicated in earlier correspondence submitted on 3 April 2017. For this reason, Fortina requested the revocation of all contractual use restrictions to allow for any development on site approved in the planning permit without limitation. Fortina recognised that this approval was to be subject to the terms and conditions proposed and agreed with the Lands Authority, and requested expediency in the publication of the requisite deed of modification and revocation. Attached to this correspondence were the approved planning permits.

2.4.37 One of the permits referred to was PA/06252/17, an application for which had been submitted on 6 June 2017 and approved by the PA on 12 April 2018. In essence, the permit allowed for the

demolition of the existing 4-star hotel and part of the 5-star hotel, the construction of underground parking, and the development of retail and residential complexes. In addition, the permit granted the right for the extension and refurbishment of the existing 5-star hotel. The other permit, bearing reference PA/03913/18, corresponded to an application submitted on 18 April 2018 and approved on 4 October 2018. Through the approval of this application, the PA granted Fortina permission to change the use of several residential units and part of the retail element at ground floor to offices.

2.4.38 The NAO could not trace the acknowledgement or reply submitted by the Lands Authority in response to the correspondence dated 6 December 2018. In testimony provided to this Office, Fortina further confirmed that, aside from the periodic enquiries made with the Lands Authority, there was no interaction between it and the Authority during the period April 2017 till December 2018, that is, from the point of its original correspondence through which the rescinding of conditions was sought, till its subsequent request to widen possible use of the site. In additional clarifications provided, Fortina stated that these enquiries were initially with the former CEO Lands Authority and later with the Chair BoG Lands Authority. Moreover, Fortina indicated that at the point of departure of the former CEO Lands Authority in mid-2018, not much had been resolved.

2.4.39 Nevertheless, Fortina highlighted its expectation of expedience on the part of the Lands Authority. Fortina informed the NAO that it initially was confident that the relevant authorisations would be secured until the demolition and excavation works were completed and construction till road level finalised. It was in this context that Fortina commenced with these works prior to it securing the relevant waivers from the Lands Authority. However, the delays were far lengthier than expected. Fortina argued that the period during which works were ongoing posed a particular strain on the company, be it in terms of operational, financial and staff-related considerations, which made it imperative for it to conclude the project in the shortest timespan possible.

The Board of Governors acknowledges gaps in the Lands Authority's valuation

2.4.40 Crucial developments were registered in the next meeting held by the BoG Lands Authority on 12 December 2018. During this meeting, the Chair BoG Lands Authority informed the Board of a meeting he had with the Notary Public representing Fortina and of a document provided whereby reference was made to the planning permit issued, in view of which the requested change of use of the site was being extended beyond residential development to now encompass office use and commercial outlets. The BoG Lands Authority decided that since the site had originally been granted by virtue of a parliamentary resolution, then the Board's remit was limited to submitting its recommendation to the responsible Minister.

2.4.41 After this initial discussion by the BoG Lands Authority, the Architects Lands Authority joined the meeting.¹² Noted in the minutes was that the Architects Lands Authority explained to the Board the brief given to them by the former CEO Lands Authority, which was to determine the

¹² Although the minutes of the BoG Lands Authority indicated that two of the three Architects Lands Authority were present, the Architects informed the NAO that all three had in fact attended this meeting.

difference in land value resulting from the change in use from a hotel to residential purposes. Specified in the minutes was that the Architects Lands Authority indicated that they were only requested to value a portion of the site (that marked in red in Figure 9) and that they had based their valuation on the planning application (PA/06252/17) submitted by Fortina. After the BoG Lands Authority read the salient part of the report, the Architects Lands Authority explained that the land value per square metre was higher for residential units than for offices.

- 2.4.42 The Architects Lands Authority stated that they had subsequently been tasked with preparing another report that took into consideration the application of a deduction corresponding to the duty on documents and transfers payable. The BoG Lands Authority acknowledged the point emphasised by the Architects Lands Authority in their valuation report, wherein the following was stated “this is usually not catered for in normal valuation methodology.” The Opposition MP on the BoG Lands Authority requested access to both valuation reports drawn up by the Architects Lands Authority, the remit of their engagement and who assigned these terms to them, particularly since the first report was not found in the relevant file. The NAO's review of documents retained by the Lands Authority confirmed that the initial valuation was not filed.
- 2.4.43 According to the minutes of the BoG Lands Authority, and of note to the NAO, was that the Architects Lands Authority reiterated that their valuation was limited to part of the site (that marked in red in Figure 9). The BoG Lands Authority understood that it was necessary to determine the precise parts of the site for which waivers from contractual obligations were required and asserted that a review of all relevant Deeds was required. The Opposition MP on the BoG Lands Authority proposed that the Chair was to appoint an official of the Lands Authority to establish the facts of the case and the details of the Deeds. This proposal was seconded by the BoG Lands Authority.
- 2.4.44 Although scant details were retained in file regarding the mandating of the task identified by the BoG Lands Authority, a status report was drawn up by the Senior Manager (Contracts) Lands Authority. Further details regarding this assignment were obtained by the NAO in a meeting with the Senior Manager (Contracts), who also provided this Office with correspondence substantiating that stated. In essence, on 18 December 2018, the Secretary BoG Lands Authority relayed the assignment commissioned to the Senior Manager (Contracts) by the Board, whereby she was tasked to prepare a memorandum explaining the facts of the case and the conditions emanating from the relevant contracts. Moreover, the Senior Manager (Contracts) was informed that she was not to discuss the case with anybody other than the Board and if consultation with third parties was required, she was to discuss this with the Board prior. That same day, the Senior Manager (Contracts) notified the Secretary that she accepted the assignment; however, she emphasised that she would not put forward any opinion on the case since this was not within her responsibility, and would provide a resumé of the information that emerged from the file. In submissions to the NAO, the Senior Manager (Contracts) indicated that this approach was motivated by the fact that she was not involved in negotiations with Fortina. The Senior Manager (Contracts) was provided with access to the relevant files following correspondence exchanged with the Secretary on 27 December 2018.

- 2.4.45 The status report was undated; however, its context within the case and in the file retained by the Lands Authority indicated that it was compiled around January 2019. The report served to outline the details of the various Deeds and the several requests made by Fortina for the waiving of contractual conditions (the Deeds and the waiver requests are reported on in detail in sections 2.2 and 2.3, respectively), highlighting the many restrictions burdening the different parts of the site.
- 2.4.46 The Senior Manager (Contracts) Lands Authority proceeded by summarising the request for waiver received in April 2017. Through this request, Fortina sought a waiver on an area of 1,810 square metres, an aggregate corresponding to four sites, namely:
- a. a site measuring 706 square metres, to build two additional floors to be used as an extension to the hotel, thereby requiring a waiver on height restriction (this area is shaded in green and cross hatched in black in Figure 9);
 - b. a site measuring 625 square metres, where the waiving of height and use restrictions were sought (this area is shaded in purple in Figure 9), with the remaining area to be made open for public use (shaded in grey in Figure 9);
 - c. a site measuring 565 square metres, for which the restriction on use as an extension to the Fortina Hotel was sought (marked in red in Figure 9); and
 - d. a site measuring 23 square metres, which was to be incorporated in the public open space.
- 2.4.47 Noted in the status report was that two valuations had been drawn up by the Architects Lands Authority, one of €12,167,000 and the other of €8,100,000. Highlighted by the Senior Manager (Contracts) Lands Authority was that both valuations corresponded to the site measuring 565 square metres, that is, waiver c. in the preceding paragraph. Of note to the NAO was that the Senior Manager (Contracts) Lands Authority specified that the valuation "... does not seem to have taken into consideration the other 3 waivers requested by the company. This statement has to be specifically clarified with the architects."
- 2.4.48 Also referred to in the status report was the other request for waiver received by the Lands Authority from the Notary Public acting on behalf of Fortina. In the request, reference was made to the PA's approval of the development of offices and commercial outlets. Consequently, the Notary Public sought the revocation of the limitations imposed for sole use in connection with touristic purposes and requested approval for the sites to be developed for the purposes sanctioned in the planning permit, without limitation. The Senior Manager (Contracts) Lands Authority noted that it was unclear whether this request was taken into consideration by the Architects Lands Authority.

- 2.4.49 In testimony provided to the NAO, the Senior Manager (Contracts) Lands Authority indicated that when finalised, she submitted the status report to the BoG Lands Authority. She indicated that, following the submission of the status report, the Board did not request any clarification, explanation or elaboration on points made therein. As to her subsequent involvement, the Senior Manager (Contracts) noted that she was not involved until a late stage in the process, when her input was sought to review the draft deed of modification and termination.
- 2.4.50 The NAO was provided with a record of a minute titled 'Fortina Valuations' bearing reference 590/2019. By way of background, each minute recorded by the BoG Lands Authority is assigned a unique reference number. Based on the chronology of reference numbers, this Office established that the meeting by the BoG Lands Authority corresponding to this minute must have taken place between 12 December 2018 and 8 February 2019. This record was provided to this Office by the Opposition MP on the BoG Lands Authority. In essence, the minute indicated that the Opposition MP on the BoG Lands Authority had again requested a copy of the valuations prepared by the Architects Lands Authority; however, no copies were provided. Also discussed was whether Board members were to have access to the Lands Authority files, a proposal the Board supported. Consequently, the Opposition MP on the BoG Lands Authority renewed his request for access to the valuations by the Architects Lands Authority and other documents not directly related to the request by Fortina. In its submission of information to the NAO, the Lands Authority did not provide this Office with minutes corresponding to this entry. This omission on the part of the Lands Authority casts doubt on the completeness of records made available to the NAO. The gravity of this shortcoming remains contingent on whether this was an isolated instance or otherwise, an aspect that this Office is not in a position to determine.

Fortina submits its valuation

- 2.4.51 The next developments of note were registered on 4 February 2019, when Fortina Investments Ltd¹³ prepared feedback in response to the €8,100,000 valuation drawn up by the Architects Lands Authority and had its position endorsed by a professional services firm that same day. The firm engaged by Fortina was that initially contacted by the Lands Authority to assist with the analysis of the proposed project, which engagement was refused by the firm citing a conflict of interest (paragraph 2.4.35 refers). It is unclear to the NAO how Fortina obtained the revised valuation by the Architects Lands Authority, for no record was found in file attesting to this being communicated. While the NAO is aware of two meetings held between the Lands Authority and Fortina after the compilation of the valuation by the former and before the submission of feedback by the latter, it was not evident that the valuation of the land for which waivers were being sought was disclosed. The NAO cannot exclude that other meetings were held between the parties, over which this Office has no visibility.
- 2.4.52 Through a document dated 4 February 2019, Fortina prepared feedback in response to the valuation drawn up by the Architects Lands Authority dated 17 October 2017. Fortina noted that the valuation should have included two non-seafront parcels of land, one measuring 565

¹³ The successors in title to Fortel Services Ltd.

square metres (marked in red in Figure 9), and the other measuring 625 square metres (marked in purple in Figure 9), which parcels formed part of a larger site of 5,345 square metres. Fortina emphasised that it held the freehold title to both sites; however, acknowledged that these were burdened by certain restrictions in use and development. A point of pertinence was that Fortina noted that the site measuring 625 square metres was not included in the valuation by the Lands Authority.

2.4.53 Citing the €8,100,000 valuation arrived at by the Architects Lands Authority, several points of divergence were noted by Fortina. According to Fortina, the rate assigned to the site was inflated; the site was only accessible by it; the application of the 8:3:2 ratio and other costs was erroneous; and the valuation failed to attribute value to the existing asset. Based on these points of divergence, Fortina countered the Lands Authority’s valuation through three adjustments. The first adjustment addressed the 8:3:2 ratio, with Fortina contending that it was incorrectly applied by the Architects Lands Authority; had it been applied correctly, it would have resulted in lower per square metre rates and a downward adjustment of €5,148,077. The second adjustment considered the value of the existing hotel rooms, rather than the airspace value, requiring another adjustment in favour of Fortina of €5,467,500. The third adjustment was in the Government’s favour, for Fortina valued the site measuring 625 square metres at €7,137,083, yet deducted €1,900,000 for the existing amenities thereon. Based on these adjustments, Fortina maintained that the fair value for the waiver of the restrictions encumbering the sites was €2,721,506 (Figure 12 refers).

Figure 12 | Revised valuation by Fortina

Valuation by the Architects Land Authority	€8,100,000
Adjustment 1 – Reduction in value of the 565m ² site	(€5,148,077)
Adjustment 2 – Increase in value of existing hotel rooms	(€5,467,500)
Adjustment 3 – Developable value of the 625m ² site	€7,137,083
Adjustment 3 – Value of existing amenities on the 625m ² site	(€1,900,000)
Revised value by Fortina	€2,721,506

2.4.54 In an undated letter by the professional services firm to Fortina, reference was made to the feedback prepared by the latter. The firm confirmed that the points raised by Fortina reflected the key conclusions reached by it following review. Based on the workings provided, the professional services firm concluded that the revised fair value adjustment of €2,721,506 proposed by Fortina would appear to fairly reflect the difference between the in-use value of the site at the valuation date, inclusive of all amenities, and the value of the site without restrictions on alternative use. It is unclear to the NAO how this report drawn up by Fortina and endorsed by the professional services firm was referred to the Lands Authority, for a copy of this exchange of correspondence was traced in the relative Lands Authority file without any context as to its receipt.

2.4.55 Providing further background, Fortina informed the NAO of its disbelief when it received the Lands Authority valuation of €8,100,000, which was deemed far over-valued to its detriment. Fortina maintained that it was unaware of the earlier valuation by the Architects Lands Authority that resulted in a value of approximately €12,200,000 initially ascribed to the conditions burdening the site. Commenting on its initial reaction following receipt of the €8,100,000 valuation, Fortina

indicated that the basis of its disagreement rested on the fact that the site was owned freehold, landlocked, inaccessible, with no sea views, and the premises of a fully operational hotel. This reaction was grounded in a valuation that Fortina had obtained in 2017, close to when correspondence was submitted to the Lands Authority for the rescinding of conditions. At the time Fortina had commissioned the professional services firm to provide advice on a fair consideration payable to the Government for the lifting of conditions encumbering the site earmarked for mixed-use development. According to Fortina, the professional services firm employed a comparative method, assessing the unrestricted value of the site being developed into residential units against its value-in-use as part of the existing hotel operations. Based on the firm's analysis, the value for the rescission of conditions was set at approximately €2,597,000. The NAO was not provided with access to the initial valuation report drawn up by the professional services firm for Fortina.

- 2.4.56 According to Fortina, it was against this setting that it again engaged the professional services firm in 2019 to formally and officially challenge the valuation of the Lands Authority. Fortina maintained that the firm arrived at its €2,700,000 valuation, highlighting key points of divergence between its assessment and that of the Architects Lands Authority. In elaboration, Fortina stated that it had prepared notes to counteract the valuation obtained from the Lands Authority and that, given the professional services firm's earlier assistance provided, the firm endorsed Fortina's valuation of €2,700,000.
- 2.4.57 Queries on the matter were also directed by the NAO to the professional services firm. The firm confirmed that it was engaged by Fortina to support it in understanding the value of the restrictions over the site. This considered the existing commitments on site and the value added that would have accrued to Fortina should the restrictions be lifted.
- 2.4.58 The NAO apportioned the adjustments proposed by Fortina in its valuation to the sites measuring 565 square metres and 625 square metres. This resulted in values of €356,009 and €2,365,497, respectively. Queried as to the basis of the resultant variance between the two sites, despite their similarities, the professional services firm noted that Fortina's determined value of the restrictions reflected the value of the sites in their current state and within the restrictions at the time. Since one of the sites was already developed as a 4-star operating hotel, more value was attributed to it when compared to the other site. This resulted in a discrepancy in the values of the restrictions encumbering the two sites, that is, €356,009 and €2,365,497.
- 2.4.59 The counter valuation proposed by Fortina was captured in an internal report drawn up by a Lands Authority official dated 4 February 2019. The report referred to the original request submitted by Fortina for the waiver of restrictions and provided key information regarding the site. Of interest was that the report notes that Fortina was not in agreement with the €8,100,000 valuation arrived at by the Architects Lands Authority and maintained that the value of the removal of the conditions was €2,721,506. In conclusion, it was noted that, since changes in conditions in similar past cases were decided through a parliamentary resolution, and these sites were disposed of through such a resolution, the same procedure was to be applied. To this end, the Lands Authority official recommended that the BoG Lands Authority consider whether it was to seek the advice of an audit firm to ensure consistency with similar cases.

The Board of Governors seeks another valuation

- 2.4.60 The meeting held by the BoG Lands Authority on 8 February 2019 drew together the several developments that were registered regarding the site. The Chair BoG Lands Authority acknowledged receipt of the status report prepared by the Senior Manager (Contracts) Lands Authority, wherein a case history of the sites and Deeds was provided. Following discussion, the BoG Lands Authority decided that an audit firm was to be engaged to evaluate the requests by Fortina. Furthermore, the Board deemed it imperative that the audit firm review the two valuations drawn up by the Architects Lands Authority, the report by the Senior Manager (Contracts) Lands Authority, and that prepared by the Lands Authority official. The audit firm was not only to consider the value of the site but assign a value for the removal of the conditions burdening parts of the site as requested by Fortina, in terms of applicable permits and present value. The BoG Lands Authority asserted that this approach was in line with similar cases reviewed by it. The Opposition MP on the BoG Lands Authority raised concern whether the request for a new valuation was intended to reduce the value already established in the valuation by the Architects Lands Authority. The BoG Lands Authority resolved that the Lands Authority file was to be referred to the audit firm to be engaged with the exclusion of the valuation by Fortina. This raised the concern of the Chief Audit Officer Lands Authority, who indicated that this was not an ideal situation and argued that the valuation by Fortina was to remain in file, but the audit firm instructed not to take it into consideration. Nonetheless, the BoG Lands Authority resolved that the Fortina valuation was not to be referred. According to the Deputy Chair BoG Lands Authority, the Board's decision was intended to limit any bias on the part of the audit firm.
- 2.4.61 On 1 March 2019, the BoG Lands Authority reconvened and discussed matters relating to the waivers sought by Fortina. Based on the minutes of this BoG meeting, the NAO inferred that the Lands Authority had, in the weeks prior, identified and approached the audit firm it sought to engage to undertake the above-described assignment, and received the terms of reference that were to guide the firm in its assignment. During the meeting of 1 March 2019, the Chair BoG Lands Authority referred the engagement letter to the Board and specified in detail the work that was to be undertaken to provide the Authority with advice. The members of the BoG Lands Authority proposed some amendments to the terms of engagement.
- 2.4.62 The scope of work assigned to the audit firm by the BoG Lands Authority was captured in an agreement dated 5 March 2019 and countersigned by the Chair BoG Lands Authority on 20 March 2019. Specified in this respect was that the audit firm was to:
- a. review documentation held by the Lands Authority in relation to the request for waivers submitted by Fortina;
 - b. ascertain the facts of the case, including the relevant conditions established in the Deeds;
 - c. analyse all requests for waivers made by Fortina and more specifically the more recent request (understood by the NAO as reference to that received by the Lands Authority on 4 February 2019);

- d. consider the valuation undertaken by the Architects Lands Authority;
- e. refer to the reports drawn up by the Senior Manager (Contracts) Lands Authority and a Lands Authority official (understood by the NAO as reference to the internal report dated 4 February 2019); and
- f. advise the Lands Authority on the best decision the Authority should take.

2.4.63 Ultimately, the audit firm was to undertake a valuation of the property and establish a value for the removal of conditions requested by Fortina that affected parts of the site. The audit firm noted that the scope of its work did not include the provision of any tax advice and indicated that it would be in a position to deliver a draft report by 11 March 2019. The NAO established that no other developments relating to the outcome of the engagement of the audit firm were captured in the minutes of meetings held by the BoG Lands Authority until June 2019.

2.4.64 A glimpse into the ongoing negotiations between the Lands Authority and Fortina was provided in correspondence submitted by the Authority to a bank on 29 April 2019. In this correspondence, the Chair BoG Lands Authority confirmed that the Authority was in negotiations with Fortina regarding the waiver of height and use restrictions on parts of the site occupied by the Fortina Hotel. Noted by the Chair was that negotiations had reached a very advanced stage, and that agreement was expected by end June 2019. The context of this correspondence remained unclear to the NAO and the basis for the setting of June 2019 as the likely deadline for the conclusion of negotiations could not be ascertained.

Fortina accepts the Lands Authority's valuation

2.4.65 A critical development was registered on 10 June 2019, when Fortina Developments Ltd wrote to the Chair BoG Lands Authority regarding the encumbrances in favour of the Government burdening the Fortina site, highlighting that its request for their rescission had been made two years prior and was still pending. Also noted were the valuations of the site, that of €8,100,000 commissioned by the Government and that of €2,721,506 established by a professional services firm on behalf of Fortina. Based on this latter valuation, Fortina had objected to the value ascribed by the Lands Authority and requested its revision to reflect a more accurate and realistic value. Noted in the correspondence was that Fortina had already obtained the necessary planning permits, completed demolition and commenced construction of the underlying levels. Also cited was that Fortina had entered into commercial obligations with a third party for the acquisition of part of the site, which transaction was to ensure project continuation through the injection of funds. Moreover, Fortina contended that the project was to generate positive effects on the financial services, real estate and tourism sectors, and to the general economy.

2.4.66 Notwithstanding the aforementioned reservations, a step towards resolution was proposed by Fortina in its correspondence of 10 June 2019. In a bid to resolve the impasse, while reasserting the validity of its valuation, Fortina agreed to increase its payment obligation "to the full €8,100,000 and this in full and final settlement and in line with the original amount requested by the Lands Authority this seemingly being the only way left for the company to successfully conclude these

negotiations.” However, Fortina specified that this offer was subject to certain conditions regarding payment, with the Company claiming that such conditions were in line with practices already adopted by the Lands Authority, its predecessors, and former administrations. The conditions delineated by Fortina were the payment of:

- a. a lump sum of €1,000,000 on the signing of the deed for the removal of the restrictions over parts of the site; and
- b. the remaining sum of €7,100,000 within ten years from the date of the deed, or by part payment on the sale of residential units that were to be developed on the site. This sum was to be divided by the number of proposed residential units, in equal value, and on the transfer of one or more of the units, the corresponding apportioned value due to the Government was to be paid. In warranty of this payment, the Government was to reserve a special hypothec over each of the units.

2.4.67 Indicating that Fortina felt constrained to increase its purchase offer, it reiterated that it was equitable and fair if the Lands Authority accepted these payment considerations. Enclosed with the submission by Fortina were two valuations, that obtained by the Company and the revised valuation by the Architects Lands Authority.

The Board of Governors refers the matter for political consideration

2.4.68 A development of note with far-reaching consequences was that decided during the BoG Lands Authority meeting held on 14 June 2019. In this meeting, the Chair BoG Lands Authority informed the Board and read the correspondence received from Fortina dated 10 June 2019. In the discussion that ensued, the Government MP on the BoG Lands Authority made the point that Fortina had accepted the original valuation by the Architects Lands Authority and consequently the Minister was to be informed since the process was to be concluded through a parliamentary resolution. The Opposition MP on the BoG Lands Authority noted that Fortina’s acceptance was based on the revised valuation by the Architects Lands Authority and was subject to certain payment terms. The BoG Lands Authority acknowledged that the valuation report by the audit firm engaged by it had not yet been received. In this context, the Board resolved that the Chair BoG Lands Authority was to submit a copy of the correspondence and supporting documentation received from Fortina and the original valuation by the Architects Lands Authority.

2.4.69 That resolved during the BoG Lands Authority meeting of 14 June 2019 was actioned a few days later for, on 17 June 2019, the Chair BoG Lands Authority submitted correspondence to the Minister and to the Parliamentary Secretary. In this correspondence, the Chair referred to the letter received from Fortina dated 10 June 2019 and the annexes enclosed therewith, that is, the revised valuation of €8,100,000 established by the Architects Lands Authority and that by the professional services firm engaged by Fortina. Also referred to and attached was the request by the Notary Public acting on behalf of Fortina dated 3 April 2017 and the status report. Highlighted by the Chair BoG Lands Authority was that the original valuation by the Architects Lands Authority established a value of €12,167,000, which was subsequently amended for the following reason, “Lands Authority instructed that this residual valuation should include for the

tax payable according to the Duty on Documents and Transfers Act, as noted in Item 9, Table 3. This is usually not catered for in normal valuation methodology, as all investment proposals have their own tax regimes, together with the tax status of the purchaser being an unknown factor. As a further example if these units are not transferred but rented out instead, no such tax is levied.”

2.4.70 In the letter sent to the Minister and to the Parliamentary Secretary, reference was also made to the correspondence submitted by the Notary Public on 6 December 2018 and the planning permit enclosed therewith, with both documents appended to the Chair's letter. Also referred to the Minister and to the Parliamentary Secretary was the status report compiled by the Senior Manager (Contracts) Lands Authority, which synopsis provided a detailed description of that purchased from the Government and the relevant Deeds, all of which were annexed. Included in the submission by the Chair was the internal report drawn by an official of the Lands Authority and the minutes of the BoG Lands Authority meeting of 8 February 2019.

2.4.71 Noted in the correspondence submitted to the Minister and to the Parliamentary Secretary were the developments subsequently registered during the BoG Lands Authority meeting held on 14 June 2019, following the receipt of the letter sent by Fortina on 10 June 2019. Excerpts of the minutes of this meeting were reproduced as follows, “[Chair BoG Lands Authority] informed and read a letter sent by [Fortina]. A discussion was held and [Government MP on the BoG Lands Authority] raised the point that there was acceptance by Fortina Developments of the original valuation undertaken by the three architects engaged by the Lands Authority, and therefore the Minister was to be notified since the process was to be concluded through a parliamentary resolution. The [Opposition MP on the BoG Lands Authority] raised the point that the acceptance was based on the second valuation carried out by the three architects engaged by the Lands Authority, subject to payment terms. Acknowledged was that the report by the [audit firm engaged by the Lands Authority] had not yet been received. Therefore, the Chair was to send a copy of the letter and the attached documents received that week from Fortina Developments and include the original valuation by the three architects to the Minister.”¹⁴

2.4.72 The Chair BoG Lands Authority highlighted that among the considerations raised was the fact that the site was landlocked, not seafront, and freehold. Concluding the correspondence submitted to the Minister and to the Parliamentary Secretary, as decided by the BoG Lands Authority, the Chair was referring the matter to the Minister to consider whether a parliamentary resolution was to be presented.

Political authorisation

2.4.73 The NAO has limited visibility over the events that ensued following the receipt of the correspondence by the Chair BoG Lands Authority of 17 June 2019. However, based on testimony

¹⁴ “[Chair Lands Authority] informa u nqrat ittra mibghuta minghand [Fortina]. Saret diskussjoni u [Government MP on the BoG Lands Authority] irreleva ili kien hemm l-accetazzjoni ta' Fortina Developments ta l-istima originali li kienet saret minn tlett Periti mqabbdha mill-Awtorita tal-Artijiet, u allura ghandu jigi notifikat il-Ministru ladarba l-process se jintemm permezz ta' Risoluzzjoni Parlamentari. [Opposition MP on the BoG Lands Authority] irreleva li l-accetazzjoni qed issir fuq it-tieni stima riveduta li saret mit-tlett Periti mqabbdha mill-Awtorita tal-Artijiet bi program ta' hlas. Jirrizulta illi r-rapport ta' [audit firm engaged by the Lands Authority] ghadu ma wasalx sa lllum. Ghalhekk ic-Chairman ghandu jibghat kopja ta' l-ittra u dokumenti annessi li rcieva din il-gimgha minghand Fortina Developments, izid ukoll l-ewwel stima tat-tlett Periti lill-Ministru.”

obtained, this Office established that on 24 June 2019 the Parliamentary Secretary submitted a draft of a memorandum intended for Cabinet for the consideration and possible revision of the Chair BoG Lands Authority. Later that day, the Chair proposed a few amendments. According to the Minister, on 27 June 2019, the matter relating to the rescission of conditions burdening the Fortina site was referred to Cabinet.

- 2.4.74 According to the Minister, appended to the memorandum to Cabinet was a draft deed. The NAO established that the deed of modification and termination was drafted by the Notary Public representing Fortina.¹⁵ This was confirmed by the Senior Manager (Contracts) Lands Authority in submissions to the NAO. This Office enquired with the Lands Authority whether it was normal practice for the notary appointed by the third party to draft the deed, rather than the Authority's nominated notary. In reply, the Lands Authority stated that it was usually the purchaser acquiring the rights or the property who chose a notary of trust to draft the relevant deed, and such choice was not objected to by the Authority. In this case, Fortina chose to engage its own notary. Nonetheless, the draft deed was reviewed by the Senior Manager (Contracts) Lands Authority and possibly others.
- 2.4.75 The Minister informed the NAO that, apart from the draft deed, all documentation referred to him by the Chair BoG Lands Authority in the correspondence of 17 June 2019, and the correspondence itself, was appended to the Cabinet memorandum. By way of clarification, the documents referred to in this respect comprised the request by Fortina of April 2017, the valuations by the Architects Lands Authority and that by the professional services firm engaged by Fortina, the additional request by Fortina of December 2018 together with the relevant planning permit, the status report, the minutes of a meeting of the BoG Lands Authority wherein the Board decided to engage an audit firm to value the conditions to be rescinded, Fortina's letter of acceptance, and the 1991, 1996 and 2000 Deeds.
- 2.4.76 In submissions to the NAO, the Minister and the Parliamentary Secretary indicated that Cabinet approved the memorandum regarding the rescission of conditions burdening the Fortina site, leading to referral to the NAOAC and later to Parliament. A parliamentary resolution was brought for the consideration of the NAOAC¹⁶ by the Parliamentary Secretary on behalf of the Minister on 10 July 2019. Noted in the resolution was that Fortina had, in March 2017, requested the waiver of conditions imposed on properties transferred to it by the Government through the 1991, 1996 and 2000 Deeds.¹⁷ The request was motivated by the planned restructuring of the site, for which the relevant planning permit had been obtained. The project was to entail an investment of €55,000,000, funded in part by Fortina and in part through the issuance of a bond. The development comprised the upgrading of the hotel and other amenities, including mixed use on the three sites acquired from the Government and burdened with certain restrictions. Also noted was that the Lands Authority had engaged three architects to inspect the site and draw up a report to address the request by Fortina. The Minister indicated that the valuation arrived at

¹⁵ The Notary Public representing Fortina from this point onwards was Dr Malcolm Mangion.

¹⁶ The NAOAC is a sub-committee of Parliament. The Auditor General and National Audit Office Act establishes that the Committee is to be made up of three Government and two Opposition MPs and elect a chair from among its members. Of relevance to this audit is the NAOAC's role in endorsing transfers of Government land, as regulated under the Government Lands Act.

¹⁷ The NAO ascertained that reference to March 2017 was erroneous and should have read 3 April 2017.

by the Architects Lands Authority for the removal of restrictions was €8,100,000, stated that this report had been referred to Fortina, and that Fortina had in turn engaged a professional services firm that revised the valuation to €2,721,506. While maintaining its position, Fortina conceded to pay the €8,100,000 requested by the Lands Authority; however, this acceptance was subject to certain payment terms, namely, the upfront settlement of €1,000,000 and the remaining balance of €7,100,000 settled over a period of 10 years or on the sale of properties developed on the site. Reference was made to Article 31(c) of the Government Lands Act, whereby property owned or administered by the Government could be transferred through a parliamentary resolution, and that the BoG Lands Authority had approved this transaction on 14 June 2019 after due consideration and recommended that the Minister be notified to proceed with the required parliamentary resolution. In this context, the Minister tabled a draft deed for the approval of Parliament.

2.4.77 During the meeting of the NAOAC of 10 July 2019, the Parliamentary Secretary read the parliamentary resolution endorsed by the Minister.¹⁸ At the outset, a point of clarification was raised by the Opposition MP on the Committee, who was also a member of the BoG Lands Authority, wherein it was noted that the BoG Lands Authority had not approved this transaction since this responsibility was borne by Parliament. This understanding was acknowledged by the Committee. Other points raised by the Opposition MP on the BoG Lands Authority related to the discrepancies and inaccuracies between the areas as described in the draft contract and the site plans provided, and the fact that two years had lapsed since the valuation by the Architects Lands Authority.

2.4.78 The other Opposition MP on the Committee lamented on the insufficient time allowed for preparation for this meeting, noting that the Opposition was provided with the draft contract a few days prior and with relevant workings the previous evening. Moreover, he asserted that the Opposition had reservations on three main issues. First, the Opposition objected to a commercial entity entering into an agreement with third parties and then using this as leverage with the Government to waive the conditions on the site for the agreement with third parties to be concluded. Second, the Opposition noted that the valuation undertaken by the Architects Lands Authority, which was limited to one area, was being considered as the compensation due to the Government for all areas for which waivers were necessary. Furthermore, observing the significant discrepancy between the valuations of €8,000,000 and €2,000,000, the Opposition MP reiterated that "something somewhere is wrong". Third, the Opposition expressed reservations regarding the payment terms, noting the failure to impose any interest on outstanding dues and the absence of any obligation to sell the property or parts thereof. The relevance of this point was that payments to the Government were contingent on sales by Fortina over the 10-year period allowed. The Opposition MP argued that this lack of obligation to sell could result in all the properties being rented, with the Government effectively granting an interest-free loan of €7,100,000 for a period of 10 years.

¹⁸ In attendance during the NAOAC sitting of 10 July 2019 were the Hon. Chris Fearne as Chair, the Hon. Robert Abela and the Government MP on the BoG Lands Authority as members representing Government, and the Hon. Beppe Fenech Adami and the Opposition MP on the BoG Lands Authority as members representing the Opposition.

- 2.4.79 The concerns raised by the Opposition MPs were countered by the Notary Public representing Fortina and in attendance for the meeting of the NAOAC. In essence, the Notary Public explained that the Notarial Profession and Notarial Archives Act (Chapter 55) precluded him from including site plans since this transaction did not entail the transfer of property. The Notary Public also provided information regarding the different sites for which waivers were sought, reiterated the basis of the valuation carried out by Fortina and argued that it was ordinary for contracts to be subject to certain conditions.
- 2.4.80 The Government MPs on the NAOAC raised certain points. One Government MP noted that any agreement between Fortina and third parties was irrelevant and had no bearing on the Committee's deliberations, for the Government's interest was that of securing value for money. Elaborating in this respect, the Government MP noted that he would have been concerned had the Government opted for the lower valuation. On the other hand, the Government MP on the BoG Lands Authority, who was also a member of the NAOAC, provided context to the discrepancy in valuations and explained that Fortina's agreement with third parties conditioned its acceptance of the Government's valuation.
- 2.4.81 Although the parliamentary resolution was approved by the majority of NAOAC members, the Chair of the Committee resolved that since unanimous agreement was not reached, the resolution was to be referred for further discussion in Plenary, in line with established parliamentary practice.
- 2.4.82 In submissions to the NAO, Fortina raised concern regarding what it perceived as incorrect and out of context assertions made during the NAOAC debate. A letter of clarification was subsequently sent by Fortina to the Minister, the Parliamentary Secretary and the Chair BoG Lands Authority on 12 July 2019, outlining its position. Fortina expressed dismay at the discussions held in the NAOAC, which were perceived as misrepresenting the facts surrounding the valuation for lifting encumbrances on its land and sought to rectify these misconceptions. Fortina referred to its request for the modification and partial rescinding of conditions in 2017, the valuation of €8,100,000 arrived at by the Lands Authority, and Fortina's engagement of the professional services firm in view of its disagreement with the value ascribed by the Authority. The professional services firm established that the value corresponding to that sought by Fortina was €2,721,506, and that the valuation was referred to the Lands Authority indicating Fortina's willingness to settle this amount. Fortina maintained that the Lands Authority took no action for two years, leaving Fortina commercially coerced into paying the amount set by the Lands Authority despite it not reflecting the true value of the rescission or modification of conditions. In this respect, Fortina stated that the €8,100,000 was in full and final settlement of all rights and interests held by the Lands Authority in relation to the site, was payable in line with the proposed terms and by no means diminished the accuracy and correctness of the report drawn up by the professional services firm.
- 2.4.83 During the Plenary sitting held on 17 July 2019, on behalf of the Minister, the Parliamentary Secretary presented the parliamentary resolution relating to the waiver of conditions sought by Fortina for the discussion and approval of Parliament. The draft deed of amendment was also tabled.

2.4.84 In the discussion that ensued, several Government MPs, namely, the Minister, the Parliamentary Secretary, the Government MP on the BoG Lands Authority, the Government MP member of the NAOAC, and Hon. Silvio Parnis, intervened in favour of the resolution. Several arguments in support of ratification were made, with the Government MPs:

- a. asserting that the 9,045 square metre site was already owned by Fortina, of which 620 square metres were purchased from private owners and the remaining 8,425 square metres acquired freehold from the Government through three Deeds in 1991, 1996 and 2000;
- b. maintaining that the valuation by the Architects Lands Authority was made in accordance with the law and in line with prevailing architectural standards;
- c. indicating that the proposed development on site was conformant to applicable planning policies and approved by the PA;
- d. arguing that any agreement that Fortina had with third parties concerning the site did not result in any pressure being put on the Government to grant the required waivers since the original request for the relinquishment of limitations had been made two years prior;
- e. expounding the considerable investment of circa €55,000,000 that was to be made by Fortina, which was contingent on the waiving of the conditions burdening the site;
- f. arguing that it was normal practice for negotiations to be undertaken prior to the conclusion of a contract;
- g. insisting that the Lands Authority upheld its valuation despite the considerable divergence between this and the one prepared by the professional services firm on behalf of Fortina;
- h. affirming the positive commitment by Fortina to social corporate responsibility when providing the public with access to a substantial area of the site of circa 2,380 square metres;
- i. claiming that this was not the first case where the Government had agreed to a staggered payment mechanism as this had been employed in other instances where public land was transferred to private entities;
- j. highlighting the numerous concerns evident in property transfers undertaken by the previous administration as reported on by the NAO;
- k. insisting that there was now total transparency in transactions involving the sale or transfer of public land when previously such acts were not brought for the consideration of Parliament;
- l. maintaining that the payment sought by the Government was for the rescinding of certain conditions and not the value of the site;

- m. indicating that the first valuation by the Architects Lands Authority was an estimation and not a valuation as, if not, then there would have been two valuations; and
- n. affirming that the Government made its decisions in Cabinet and then, as a parliamentary group, resorted to Parliament for approving the relinquishment of conditions.

2.4.85 On its part, the Opposition made several arguments countering that stated by the Government MPs. The Leader of the Opposition Hon. Adrian Delia, the Opposition MP on the BoG Lands Authority, Hon. Robert Arrigo and Hon. Godfrey Farrugia, opposed the transaction on the basis of various considerations. These included that:

- a. the proposed development on site was for mixed use, including residential, commercial and offices, when initially the site was granted as an extension to the Fortina Hotel, therefore the Government was to ensure that it secured the maximum revenue possible in view of the change of use of the site;
- b. the justification for the low payment being sought by the Government in view of the fact that the site was landlocked was fallacious since this was located precisely in the middle of the entire area without which the project could not be realised and that adjacent land sold for commercial purposes was often sold at a premium;
- c. the valuation was, at the outset, incorrect since this took into consideration residential use when, in fact, the last request made by Fortina was also for commercial purposes;
- d. there was an incongruence between the waivers sought by Fortina and the valuation by the Lands Authority, with several parts of the overall site not valued yet included in the transaction and for which the lifting of height and use restrictions was requested, an omission that was acknowledged by Fortina in its valuation;
- e. instructions to the Architects Lands Authority to amend the valuation were unorthodox, as attested by the Architects Lands Authority themselves in the revised valuation, that it was unclear who issued these instructions, and that these instructions were not endorsed by the BoG Lands Authority;
- f. the discrepancy between the valuations arrived at by the Lands Authority and by Fortina was so significant that it could not be reasonably explained;
- g. the value established for the Fortina site did not reflect its true worth, particularly when compared to another site transferred by the previous administration years prior and reported on by the NAO;
- h. the decision by the BoG Lands Authority to obtain another valuation from an audit firm was not seen through once Fortina agreed to the revised valuation;
- i. the proposed payment terms were not favourable to the Government for they effectively

constituted an interest free loan being made available to Fortina, on which considerable interest would have accrued;

- j. the claim by Fortina that it was attracting a major company to set up base in Malta was incorrect since this was already operating locally;
- k. the process was anomalously led by the Chair BoG Lands Authority as no other official within the Lands Authority consented to being involved in the matter;
- l. contrary to that stated, the BoG Lands Authority did not approve the valuations or the transaction, but merely referred the matter to the responsible Minister;
- m. the fact that the draft deed was prepared by the notary engaged by Fortina and not by the Government;
- n. despite the fact that the waivers being sought were being debated, works were underway on the site, rendering Parliament's approval a mere formality; and
- o. concerns raised by the Opposition were futile given the majority that the Government had.

2.4.86 The resolution was put to a vote, with 34 Government MPs voting in favour and 27 Opposition MPs against.

2.5 The Deed of modification and termination of contractual conditions

2.5.1 On 26 July 2019, in a meeting of the BoG Lands Authority, the Board acknowledged the parliamentary resolution passed on 17 July 2019 for the waiver of conditions burdening the Fortina site. The Board authorised the Senior Manager (Contracts) Lands Authority to appear on behalf of the Authority in the Deed of amendment between the Government and Fortina. Noted in the minutes was that the Opposition MP on the BoG Lands Authority objected to the transaction.

2.5.2 Following the authorisation of the BoG Lands Authority, the Deed of modification and termination of contractual conditions was entered into on 26 July 2019. The Senior Manager (Contracts) Lands Authority appeared on behalf of the Authority and in representation of the Government. In submissions to the NAO, the Senior Manager (Contracts) explained that she appeared as the Authority's signatory due to the conflict of interest declared by the CEO Lands Authority. The CEO and the Senior Manager (Contracts) were the only two signatories that could represent the Authority in this respect. On the other hand, Mr Edward Zammit Tabona and Mr Antoine Portelli, the CEO and Chief Operating Officer, respectively, appeared on behalf of Fortina Developments Ltd, and Mr Julian Zammit Tabona and Mr Michael Zammit Tabona, Directors, represented Fortel Services Ltd.

2.5.3 Stated in the Deed was that Fortina Developments Ltd and Fortel Services Ltd jointly owned the Fortina site, which comprised:

- a. a divided portion of land, including its corresponding air space and underground area acquired from third parties and the Government¹⁹, measuring approximately 5,636 square metres;
- b. a divided portion of land situated under Tigné Street and excluding air space, acquired from the Government through the 1991 Deed and with an approximate measurement of 1,964 square metres; and
- c. a divided portion of land, off Tigné Street and bordered by the shore, up to one metre above street level including the corresponding underground area, measuring approximately 1,346 square metres and acquired from the Government by virtue of the 1991 Deed.

2.5.4 The 2019 Deed specified the provenance of the different parts of the site, as follows:

- a. the first portion, measuring 15.23 square fathoms (equivalent to 1,019 square metres), with its frontage on Tigné Street and the site of the original Fortina Hotel, was privately purchased yet subject to military clearance rights, which limited the height of development thereon to 15 feet and 2 inches (equivalent to 4.62 metres);
- b. the second portion was acquired from the Government through the 1991 Deed and comprised land measuring approximately 465 square metres sited immediately behind the Fortina Hotel, a room on the ground floor with an approximate measurement of 23 square metres, airspace of a site measuring approximately 1,964 square metres up to the height of street level, and the airspace of another site up to a height of one metre above the existing street level with a measurement of approximately 1,346 square metres. These properties were subject to use as an extension to the Fortina Hotel;
- c. the third portion, also purchased from the Government through the 1996 Deed, measured approximately 2,992 square metres and was subject to several restrictions. These comprised use as an extension of the Fortina Hotel, the imposition of height restrictions, the reconstruction of a bowls pitch and ancillary facilities, the development of a pool area and landscaping, and the siting of a substation without any claim for compensation; and
- d. the fourth portion, sold by the Government through the 2000 Deed, measured approximately 1,421 square metres and was subject to several conditions. These included use as an extension to the Fortina Hotel, a concession relating to the protrusion of balconies, and height restrictions; however, the latter limitation could be waived by the Government without necessitating any payment by Fortina.

2.5.5 Noted in the 2019 Deed was that, in view of the diversification of interests of Fortina regarding use of the site, the waiving of restrictions limiting development was sought. Acknowledged was

¹⁹ Noted in the 2019 Deed was reference to four deeds entered into by Fortina and the Government. Three of the Deeds were addressed in Section 2.2 of this report, namely, that of 1991, 1996 and 2000. However, a fourth, dated 19 November 2002, was also cited in the 2019 Deed. The NAO had no visibility over the 2002 Deed, with no reference made to it in the relevant Lands Authority files or in exchanges with officials.

that Fortina had requested to acquire all restrictions held by the Government over the site, yet committed to retain part of the site for use as a hotel.

2.5.6 The waivers sought by Fortina were as follows:

- a. removal of the restriction limiting use of parts of the site acquired through the 1991 Deed as an extension to the Fortina Hotel, measuring 465 and 23 square metres;
- b. rescinding of the obligation to use the site purchased through the 1996 Deed, measuring 2,992 square metres, for tourism purposes and as an extension of the Fortina Hotel. Other waivers corresponding to parts of this site were:
 - i. the removal of restrictions impeding development and height limitations on a portion measuring 766 square metres; and
 - ii. the removal of restrictions impeding development, subject to a height limitation up to 15.7 metres from mean sea level, on a portion measuring 2,220 square metres. In addition, for this sub-portion of land, Fortina requested the relinquishment by the Government of all obligations for the reconstruction of the bowls pitch and ancillary facilities, the development of a pool area and landscaping, and the siting of a substation. Furthermore, Fortina sought the right to request compensation from the Government should the existing substation be extended;
- c. for the site measuring 1,421 square metres acquired through the 2000 Deed, the following was sought:
 - i. the removal of height restrictions burdening part of this site measuring 900 square metres, including limitations relating to balconies and other protrusions;
 - ii. the removal of the limitation on use as an extension to the Fortina Hotel on part of the site measuring 275 square metres, up to a height of 15.7 metres from mean sea level; and
 - iii. on part of the site measuring 430 square metres, the obligation on use as part of the Fortina Hotel was to remain.

2.5.7 Asserted in the 2019 Deed was that the Government had carried out a valuation of the request by Fortina and determined that the removal and/or modification of its rights over the property was valued at €8,100,000. Also noted was that Fortina had commissioned a valuation by a professional services firm, which had established a value of €2,721,506 for the relinquishment of the Government's rights, a valuation that was not accepted by the Government. In view of commercial considerations and the lapse since its request, Fortina agreed to pay the Government's valuation for the termination of the above rights, which the Government accepted. In accordance with Article 31(c) of the Government Lands Act and following the parliamentary resolution dated 17 July 2019, the Government granted the waivers sought by Fortina.

2.5.8 Specified in the 2019 Deed were the modifications and termination of conditions acceded to by the Government. In essence, the waivers granted by the Government reflected what was sought by Fortina, as captured in the preceding paragraph. Nevertheless, the NAO noted a few key differences between the waivers requested and granted, as follows:

- a. with respect to the 1991 Deed, Fortina sought the removal of the restriction limiting use on part of the site measuring 465 square metres. Nonetheless, in the Government's consent to this request, an area of 487 square metres was cited; and
- b. as regards the 430 square metres forming part of the 2000 Deed, for which the obligation on use as part of the Fortina Hotel was to persist, two variations were noted:
 - i. the Government granted a waiver on height restriction despite the fact that this was not requested by Fortina; and
 - ii. the obligation on use was limited to any development from 15.7 metres above mean sea level, implying that development below this threshold was no longer restricted as an extension to the Fortina Hotel.

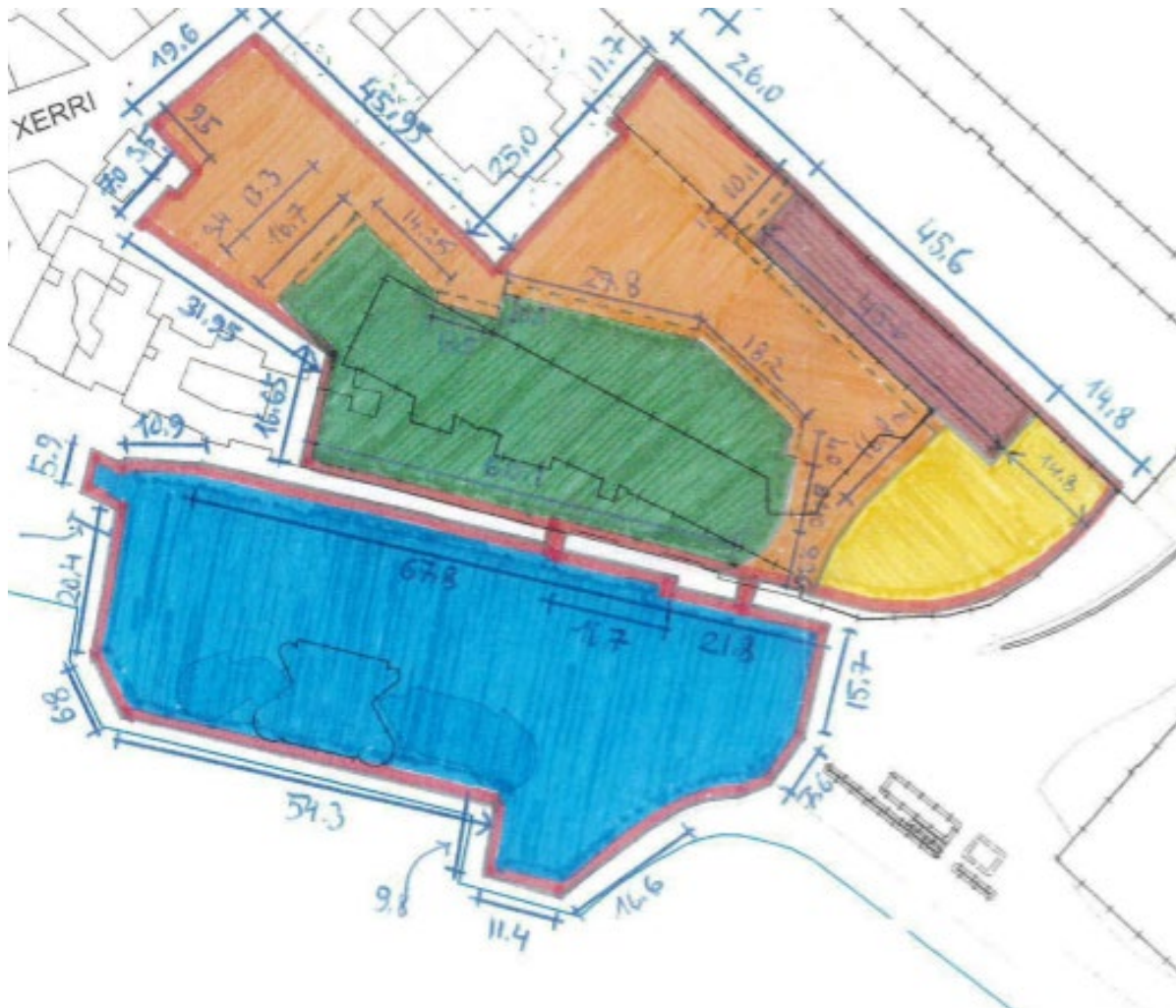
2.5.9 Also waived were the military clearance rights in favour of the Government, which condition imposed a restriction on the height of development on the portion of the site housing the original Fortina Hotel.

2.5.10 Noted in the 2019 Deed were the sites on which encumbrances persisted. These comprised:

- a. an area measuring 3,515 square metres²⁰ granted to Fortina by the Government through the 1991 Deed, marked in blue in Figure 13, for which height restrictions remained;
- b. an area measuring 2,510 square metres, in part granted to Fortina by the Government through the 1996 Deed and in part through the 2000 Deed, for which the restriction on height limitation was adjusted, although encumbrances relating to the development of the site and use were lifted, marked in orange in Figure 13;
- c. an area measuring 430 square metres, acquired through the 2000 Deed, for which use for touristic purposes continued to apply from 15.7 metres above mean sea level upwards, marked in brown in Figure 13; and
- d. an area measuring 635 square metres, purchased by Fortina through the 2000 Deed, with use for touristic purposes now limited from 15.7 metres from mean sea level upwards, marked in yellow in Figure 13.

²⁰ The NAO noted a discrepancy between the areas cited in the 1991 and 2019 Deeds. In the 1991 Deed, the site referred to comprised two areas, which in total measured 3,310 square metres. In contrast, the 2019 Deed referred to the same area as measuring 3,515 square metres.

Figure 13 | Areas on which encumbrances persisted following the 2019 Deed



Note:

1. All encumbrances relating to the area marked in green were waived by the Government.

2.5.11 The value established by the Government for the reduction and removal of conditions was of €8,100,000. Fortina was to pay the Government €1,000,000 on signing of the Deed, with the balance of €7,100,000 to be paid within 10 years from this date. No interest on the outstanding balance was to be levied by the Government. Fortina was to provide the Government with a special hypothec on a divided portion of land as a guarantee for the amount due. The site under hypothec measured 993 square metres, was 12.06 metres above mean sea level and was earmarked for the development of a block of not less than 60 apartments. If Fortina sought to transfer one or more of the said apartments prior to the lapse of the 10-year period, it was to notify the Lands Authority with details relating to the contract to be entered into and confirm the number of apartments which remained subject to the hypothec in favour of the Government. Fortina was also to inform the Lands Authority of the payment that it was to make to the Government in connection with the sale of the apartment so that the hypothec on the sold apartment was

removed. The remaining balance due to the Government was not to be less than the outstanding value divided by the number of apartments subject to hypothec. Therefore, the minimum value that was to be paid by Fortina for the release of an apartment was to be calculated as follows:

$$\frac{\text{(outstanding amount due to Government)}}{\text{(number of apartments under hypothec)}} \times \text{number of apartments being sold} = \text{value payable by Fortina}$$

- 2.5.12 Specified in the 2019 Deed was that the Lands Authority reserved the right to inspect the property to ensure that the number of apartments subject to hypothec was not reduced arbitrarily by Fortina.
- 2.5.13 Duty on Documents and Transfers payable by Fortina was set at five per cent of the contract value, resulting in an amount due to the Government of €405,000, which sum was paid on signing. The Notary Public who represented Fortina during the NAOAC notarised the Deed, with relevant fees paid by Fortina.
- 2.5.14 The 2019 Deed effectively removed most of the restrictions imposed by the Government on the Fortina site, allowing the latter to proceed with the planned development thereon. The redevelopment of the site, which now comprised residential, retail, office, parking, public space, and an upgraded hotel and other amenities, was undertaken in the ensuing years, with the project inaugurated in November 2023. The ensuing chapter adopts an analytical perspective, scrutinising the actions of those involved to determine whether decisions taken were in the public interest.

Chapter 3

The process leading to the 2019 Deed: Legality and good governance considerations

3.0.1 After two requests for waivers where no tangible progress was registered, another attempt was made in March 2017, when Fortina sought the Government's clearance regarding the submission of a development planning application for the site. This was shortly followed by a request for the waiver of limitations on the site submitted by Fortina in April 2017. In essence, Fortina sought to remove use and height restrictions imposed by the Government on four parts of the site. These developments mark the beginning of the NAO's focus of analysis. A pertinent point of context is that the request by Fortina coincided with the restructuring of the GPD, which was replaced by the Lands Authority set up only a month prior.

3.1 Appointment of the Architects Lands Authority and the setting of terms of reference

3.1.1 The NAO was not provided with any acknowledgement of receipt submitted in response to Fortina's request of 3 April 2017. Also not made available was correspondence exchanged internally within the Lands Authority on the merits of the request and how this was to be processed, which assessment would have identified the nature and extent of waivers being requested by Fortina and how these were to be valued. Furthermore, no evidence of referral of the request to the BoG Lands Authority was provided. In testimony provided to this Office, the Deputy Chair BoG Lands Authority recalled that the letter sent by Fortina was brought to the attention of the Board and its intent briefly conveyed, but the request itself was not the subject of discussion. In later submissions, the Deputy Chair BoG Lands Authority conceded that this development was not captured in the minutes of the Board. Whether these initial shortcomings in governance and management were attributable to the recent setting up of the Lands Authority, or otherwise, is debatable; however, the significance of these gaps becomes more grievous when considering later developments.

3.1.2 A glimpse into the initial consideration by the Lands Authority of the request for waivers sought by Fortina was provided to the NAO by the Government MP on the BoG Lands Authority. According to the Government MP on the BoG Lands Authority, the Authority had obtained legal advice on whether the Government's waiver of the conditions was required, with the advice obtained indicating that such waiver was not necessary. Nevertheless, the Authority ultimately decided to obtain a valuation. He also referred to discussions with the Attorney General and cited past cases where the Court had decided that, once ground rent was redeemed, any conditions imposed on a site would no longer apply; however, he conceded that this was a grey area. This Office deemed

the reference made to the redemption of ground rent by the Government MP on the BoG Lands Authority as anomalous, for this was not relevant to the Fortina case. The Government MP on the BoG Lands Authority also referred to other legal advice obtained by the relevant ministry regarding whether the waivers were to be rescinded through a parliamentary resolution or through a public deed, with the former option advised and agreed to. Notwithstanding that stated by the Government MP on the BoG Lands Authority, the NAO was not provided with any documentation in support of the advice obtained by the Lands Authority. Moreover, no reference was made to the considerations raised by the Government MP on the BoG Lands Authority in the minutes of the Board, in other documents retained by the Authority, or in submissions to this Office by others involved in the process.

- 3.1.3 The next documented development following the request by Fortina was a valuation relating to the site dated 17 October 2017, indicative of the fact that the Lands Authority had acted on the request. The NAO sought to establish how this valuation was obtained, with particular attention directed towards how the architects were engaged and the terms of reference set. Documentation retained by the Lands Authority did not include any information regarding the selection of the Architects Lands Authority.
- 3.1.4 Queried by this Office as to the procedure for the selection of architects, the Lands Authority indicated that, as from 2018, the Authority adopted a process whereby architects engaged by it to carry out valuations were listed in alphabetical order and selected in rotation. According to the Lands Authority, this procedure was updated in 2022 to better regulate the valuation process. Nonetheless, the NAO noted that the initial valuation for the Fortina site pre-dated 2018, and therefore the information provided did not apply. The Lands Authority confirmed this understanding and noted that no system was in place prior to 2018. In submissions to the NAO, the former CEO Lands Authority indicated that he had discussed the appointment of these architects with the Chair BoG Lands Authority. According to the former CEO Lands Authority, the architects were selected based on their expertise in property valuation. In turn, the Deputy Chair BoG Lands Authority informed this Office that the appointment of the Architects Lands Authority was not brought to the attention of the Board.
- 3.1.5 More crucial was the Lands Authority's failure to document the terms of engagement set. On requesting such information, the NAO was informed that the Authority could not source any documents regarding the commissioning of this assignment; however, it referred to the minutes of the meeting of the BoG Lands Authority dated 12 December 2018. According to the minutes, the Architects Lands Authority, who were in attendance, indicated that the brief given to them by the former CEO Lands Authority was to determine the difference in land value resulting from the change in use from a hotel to residential purposes for one part of the site (marked in red in Figure 9). In submissions to this Office, the former CEO Lands Authority acknowledged that the terms of reference were not documented but maintained that the request by Fortina was brought to the attention of, and discussed with, the Architects Lands Authority.
- 3.1.6 In a meeting with the NAO, the Architects Lands Authority confirmed what was indicated in the minutes of the meeting held by the BoG Lands Authority on 12 December 2018, in particular that the brief had been assigned to them by the former CEO Lands Authority. Additionally, the

Architects Lands Authority confirmed that their valuation was limited to that requested by the Lands Authority with regard to the site and dimensions indicated. Documentation confirming that the task was assigned by the former CEO Lands Authority was provided to this Office by the Architects Lands Authority in the form of correspondence dated 30 September 2017. Notwithstanding this, the Architects Lands Authority maintained that their experience of interactions with the Lands Authority when it was first set up was that documentation of proceedings was scarce and appointments and briefs were generally communicated face-to-face.

- 3.1.7 Referring to the meeting held between the BoG Lands Authority and the Architects Lands Authority, the Government MP on the BoG Lands Authority noted that such meetings were not usually convened. However, in this case, the BoG Lands Authority deemed it important to obtain clarification from the Architects Lands Authority regarding the methodology employed in their valuation.
- 3.1.8 Based on documentation made available, it was evident to the NAO that the other parts of the site for which Fortina sought waivers were not valued by the Lands Authority. The Architects Lands Authority asserted that they were not aware of the other requests by Fortina and that their valuation was consistent with the terms of reference set by the Lands Authority.
- 3.1.9 Another aspect considered by the NAO in the assessment of the engagement of the Architects Lands Authority was whether such appointment was compliant with the relevant legislative provisions. The Government Lands Act came into force on 25 April 2017 and was therefore the applicable legal framework regulating the valuation of government land when the request by Fortina was processed by the Lands Authority. Article 79(4) of this Act stipulates that when the government land to be disposed of has a value exceeding €400,000, a valuation report drawn up by three architects appointed by the Lands Authority is required. The NAO established that this legal requirement was adhered to through the appointment of the Architects Lands Authority.
- 3.1.10 Although the Lands Authority adhered to the legal provision necessitating a valuation to be undertaken by three architects when the value of the government land to be disposed of exceeded a certain threshold, the NAO established that the terms of reference set for this valuation were grossly inadequate since they did not address the various requests for waiver sought by Fortina. While this Office was not provided with documented terms of reference, the assertions made by the Architects Lands Authority during a meeting of the BoG Lands Authority – that they were only requested to value one part of the site by the former CEO Lands Authority – was not contested by the Authority. The Lands Authority's failure to establish terms of reference that adequately reflected the requests made by Fortina, and which ultimately formed the basis of the Government's disposal, undermined the process from the outset. This failure in governance on the part of the former CEO Lands Authority draws the NAO's gravest concern; however, this liability is somewhat mitigated by the fact that the attention of the BoG Lands Authority and others was subsequently drawn to the incomplete valuation of the site on several occasions, yet no remedial action was taken in each instance.

3.2 Anomalies in the valuation established by the Lands Authority

- 3.2.1 A valuation dated 17 October 2017 was submitted by the Architects Lands Authority to the Lands Authority. This valuation, marked as draft, established a value of €12,167,000 for the waiver of certain limitations on part of the Fortina site. In April 2018, the Architects Lands Authority revised their valuation to €8,100,000.
- 3.2.2 The NAO assessed whether the valuation carried out by the Architects Lands Authority complied with the Government Lands Act. Article 79(2) of the Act stipulates that a valuation was to be carried out by architects in accordance with one of the methodologies approved by the Lands Authority, which methodology was to be clearly stated. The Lands Authority manual titled ‘Consolidated document on property valuation’ specified the methods approved by the Authority. The Architects Lands Authority informed this Office that they employed two methods of valuation. The hotel was valued using the trading method of valuation, while the residual method was applied for the residential component. The NAO noted that while the residual method was listed in the Lands Authority manual, the trading method was not. Nonetheless, this Office acknowledges that this method of valuation is considered valid by professionals in the field.
- 3.2.3 Reservations regarding the method of valuation employed by the Architects Lands Authority were expressed by the Government MP on the BoG Lands Authority. He contended that the valuation was erroneous in that the value established reflected an outright purchase of the site by Fortina rather than the value of the waiver of conditions imposed thereon. While the Government MP on the BoG Lands Authority did not question the valuation itself, he raised doubt whether the task assigned by the former CEO Lands Authority was appropriate in terms of the request received by the Authority. When presented with excerpts of the valuation report by the NAO, the Government MP on the BoG Lands Authority conceded that the methodology employed by the Architects Lands Authority was correct. Of particular concern to this Office was the discrepancy between the detailed criticism levelled by the Government MP on the BoG Lands Authority at what he contended were erroneous considerations by the Architects Lands Authority in their valuation, and the major omission of other waivers of significant financial materiality from the valuation process, disregarded by the BoG Lands Authority.
- 3.2.4 Also specified in Article 79(3) of the Government Lands Act are the details that must be included in a valuation report. These comprise the date of valuation, the date and state of the property when valued, its use, including third-party rights, comparable transactions, planning restrictions, the valuation method, and a declaration by the architects of no conflict of interest. The NAO confirmed that the required details were included in the valuation report drawn up by the Architects Lands Authority.
- 3.2.5 The NAO sought to understand the basis for the changes to the valuation by the Architects Lands Authority. This Office established that the valuation was revised following direction provided by the former CEO Lands Authority. Two elements accounted for this revision. The first was the inclusion of the demolition of the existing structure as part of the development costs, while the second was the application of a deduction in relation to duty on documents and transfers.

- 3.2.6 The inclusion of demolition costs resulted in an increase in development costs of €341 per square metre, which comprised the cost of demolition per se and the associated revisions in professional fees, VAT and interest payable. In part, this accounted for the increase in development costs, from that originally estimated as €2,511 per square metre to the later revision of €3,372 per square metre. In submissions to the NAO, the Lands Authority noted that the inclusion of the cost of demolition represented 40 per cent of the difference between the valuations. The NAO verified that asserted by the Lands Authority and established that, from the overall €4,067,000 (€12,167,000 less €8,100,000) revision in value, €1,626,800 was attributable to the inclusion of demolition costs. In a meeting with this Office, the Architects Lands Authority maintained that they were undisputedly in agreement with the feedback provided by the former CEO Lands Authority on this matter and that the original developments costs cited were underestimated. In view of that stated by the Architects Lands Authority, the NAO deemed this aspect of the adjustment reasonable and has no further concerns in this regard.
- 3.2.7 The second element that had an impact on the valuation was the inclusion of a charge corresponding to duty on documents and transfers as part of the development costs. A rate of eight per cent was applied to the market value of completed units, established as €6,500 per square metre. The resultant duty was set at €520 per square metre. This charge accounted for 60 per cent of the €4,067,000 difference between the original valuation and that revised. The NAO established the value of this deduction as €2,440,200. Several issues of concern emerge as to the regularity of this deduction.
- 3.2.8 When queried on whether this revision was an accepted practice in valuations of land, the former CEO Lands Authority asserted that the Architects Lands Authority were free to disagree with his advice and not implement the proposed deduction. Moreover, the former CEO Lands Authority maintained that, ultimately, it was the BoG Lands Authority that decided the outcome of this and any other case referred to it. He argued that there were further checks and balances in place to scrutinise his decision and the advice provided to the Architects Lands Authority, and maintained that the Board, the NAOAC and Parliament did not discuss the matter with him. Nevertheless, the former CEO Lands Authority reiterated his understanding that, if the duty on documents and transfers was not deducted from the valuation by the Architects Lands Authority, then this would result in Fortina incurring this tax expense twice.
- 3.2.9 Of concern to the NAO was that stated by the Architects Lands Authority, who expressed disagreement with the deduction of duty on documents and transfers as part of the valuation. Internal correspondence exchanged among the Architects Lands Authority and the disclaimer included in their revised valuation attested to this. The Architects Lands Authority contested that such a deduction was not normal practice in valuation methodology, as all investment proposals were governed by different tax regimes, the tax status of the purchaser was unknown, and no such tax was to be levied if the residential units were rented and not sold. During a meeting with the NAO, the Architects Lands Authority confirmed their reservations to the change concerning duty on documents and transfers proposed by the former CEO Lands Authority as this was not considered normal practice and its inclusion substantially reduced the valuation.

- 3.2.10 Similar concerns regarding the anomalous deduction of duty on documents and transfers from the valuation arrived at by the Architects Lands Authority were expressed by the Deputy Chair BoG Lands Authority. He stated that the Board did not contest or query valuations drawn up by architects on behalf of the Authority, except when evident methodological errors were noted or when a valuation was not in sync with property market rates. The Deputy Chair BoG Lands Authority asserted that the Board was initially not aware of the original valuation and expressed concern regarding instructions given to the Architects Lands Authority in respect of the deduction of duty on documents and the basis for advocating this revision. The Deputy Chair BoG Lands Authority confirmed that the documentation relating to the initial instructions and the subsequent revisions to the valuation provided to the Architects Lands Authority by the former CEO Lands Authority was not on file, and that the Board was not aware of these exchanges. Elaborating, the Deputy Chair BoG Lands Authority emphasised that he sought to cast no aspersion on the integrity of the Architects Lands Authority, who were experts and had ample experience in the field of valuating properties. He contended that the Architects Lands Authority were right in expressing concern regarding the deduction on duty and documents as advised by the former CEO Lands Authority. The Deputy Chair BoG Lands Authority could not recall any other case where such a deduction was effected.
- 3.2.11 Commenting along similar lines, the Opposition MP on the BoG Lands Authority stated that the Board ordinarily endorsed valuations as presented to it; however, in this case, the Board's concern was raised following the revision of the valuation by the Architects Lands Authority from €12,100,000 to €8,100,000. In this respect, the Opposition MP on the BoG Lands Authority questioned the basis of and who decided or issued instructions to effect such a deduction. Moreover, he emphasised that these concerns were never addressed by the BoG Lands Authority and maintained that despite sustained requests for access, the Opposition MP on the BoG Lands Authority was not provided with a copy of the initial valuation.
- 3.2.12 In view of the concerns raised by the Architects Lands Authority, the NAO sought to better understand the basis of guidance provided by the former CEO Lands Authority to include duty on documents and transfers as part of the development costs. Although adamant on this point, the former CEO Lands Authority did not refer to any advice sought from relevant authorities regarding the charging or otherwise of duty. Queried as to whether the Lands Authority had obtained any clearance or guidance in relation to this tax treatment, the Authority indicated that no relevant information was found on file.
- 3.2.13 To corroborate the validity of the inclusion of duty on documents and transfers as part of the development costs, the NAO sought the views of the Malta Tax and Customs Administration. According to the Malta Tax and Customs Administration, duty on documents and transfers is payable on all property and land transfers, including contracts for the waiving of conditions limiting site use. This duty is set at five per cent when the buyer is a commercial entity. Moreover, the Malta Tax and Customs Administration informed the NAO that duty on documents and transfers is generally not a deductible expense. Documentation provided by the Malta Tax and Customs Administration confirmed that duty on documents and transfers paid by Fortina to the Government on 7 August 2019 amounted to €405,000. This was equivalent to five per cent of the €8,100,000 payable by Fortina for the waiving of conditions.

- 3.2.14 Based on the advice sourced from the Malta Tax and Customs Administration, the NAO's concern regarding the inclusion of duty on documents and transfers as part of the development costs intensifies, for this should not have been considered as a deductible expense adverse to the Government. Aggravating matters is the manner through which this deduction was applied, with two irregularities noted. The first relates to the rate applied, which was incorrectly set at eight per cent in the revised valuation by the Architects Lands Authority and should have been charged at five per cent. The second and graver concern relates to the discrepancy between the duty as established in the revised valuation, €2,440,200, and that paid by Fortina, €405,000. The discrepancy arises from the different bases on which duty was calculated, with a deduction of eight per cent applied to the €6,500 per square metre in the revised valuation, and five per cent applied to a rate equivalent to €1,207 per square metre ($€8,100,000 / 6,710$ square metres) in the Deed. The incorrect inclusion of duty as a development cost resulted in a loss of revenue due to the Government, for the value of the transaction was effectively understated by at least €2,400,000 in favour of Fortina.
- 3.2.15 One final aspect considered by the NAO related to the payment of fees for valuations undertaken by the Lands Authority. Article 79(4) of the Government Lands Act stipulates that when the land to be disposed of has a value exceeding €400,000 then a valuation drawn up by three architects to be appointed by the Lands Authority is required. Moreover, Article 79(6) stipulates that the fees of the architects are to be borne by the party acquiring the title over the Government land, in this case, Fortina. Article 79(5) prescribes the method for calculating the fees payable, setting a capping of €2,500 for each architect. Requested to provide information in this respect, the Lands Authority informed this Office that, as at April 2024, it had not received all the architects' invoices, and consequently the relevant reimbursement from Fortina had not yet been sought.
- 3.2.16 In sum, certain aspects of the valuation for the waiver of conditions on part of the Fortina site raised no concern. The valuation by the Architects Lands Authority conformed with the requirements stipulated in the Government Lands Act. One of the two elements of revision to the valuation proposed by the former CEO Lands Authority, that concerning the inclusion of demolition costs, was readily agreed to by the Architects Lands Authority and raised no concern for this Office. However, that relating to the deduction of duty on documents and transfers drew the NAO's attention, for this was objected to by the Architects Lands Authority, elicited the reservations of the BoG Lands Authority and was deemed anomalous by the Malta Tax and Customs Administration. Notwithstanding the reservations expressed by the BoG Lands Authority, the NAO could not reconcile this sense of unease with the fact that the Board did not take any decisive action to address this irregular forgoing of tax. Of graver concern was the approach taken by the former CEO Lands Authority, who identified aspects of the valuation that could be contested in Fortina's favour, yet did not apply the same level of diligence in safeguarding the Government's interests. These concerns are further compounded by the fact that no valuation was obtained in relation to the other waivers sought by Fortina.

3.3 The other sites not valued by the Lands Authority

- 3.3.1 While the preceding section delved into the anomalies that arose in the Lands Authority's valuation for the waiver of conditions on a part of the site of the Fortina Hotel, attention is now redirected

towards the other sites not included as part of the valuation by the Architects Lands Authority. The revised valuation by the Architects Lands Authority submitted on 20 April 2018 indicated that this was for a divided portion of land measuring 565 square metres, notwithstanding that the request by Fortina, as captured in the correspondence submitted by the Notary Public to the Lands Authority on 3 April 2017, cited several other parts of the site for which waivers were being sought.

3.3.2 The 565 square metres valued at €8,100,000 by the Architects Lands Authority was one of four sites for which waivers were requested. Of the three sites not valued by the Lands Authority, two had a monetary value, in that the waiving of limitations burdening these sites was against a charge that ought to have been levied by the Government. The first of these sites corresponded to an area measuring 625 square metres, which formed part of a larger area measuring 3,010 square metres originally acquired by Fortina in 1996. The waivers requested by Fortina for a part of this site related to height and use limitations. Noted by Fortina was that the remaining portion of this site, measuring 2,380 square metres, was to remain subject to existing restrictions but be converted to a public open space. The second of these sites, an area measuring 23 square metres, purchased by Fortina in 1991 and forming part of the Fortina Hotel, was to be redesignated for public use. The third site, for which a change in height limitation was sought, measured 705 square metres. This was acquired by Fortina in 2000; however, any change in this restriction could be granted at the discretion of the Government at no additional charge.

3.3.3 In a meeting with the NAO, the former CEO Lands Authority indicated that when the Authority was set up it adopted a system whereby requests made to it were assigned to case officers. In this case, the former CEO Lands Authority assumed this role – a decision motivated by the case's importance and financial materiality – thereby exerting a more direct involvement in its processing. It was in the context of this role that the former CEO Lands Authority engaged the Architects Lands Authority to value the waivers sought by Fortina on only part of the site. Confronted by the NAO as to the omission of the other parts of the site for which waivers were similarly requested by Fortina, the former CEO Lands Authority initially maintained that all parts of the site had been valued; however, on the further presentation of evidence, he conceded that this exclusion in the valuation process was an error. The former CEO Lands Authority noted that this omission was never brought up in discussions with the BoG Lands Authority or the Architects Lands Authority. Given the gravity of the error and the fact that the BoG Lands Authority would later become aware of it but not rectify the omission, the NAO enquired with the former CEO Lands Authority whether any form of pressure or influence was exerted on him to commit this mistake. The former CEO Lands Authority conceded that enquiries were often made by third parties on cases being considered by the Authority; however, he denied being subjected to any pressure or influence to omit the other parts of the site that were not valued. In reply to queries raised by the NAO, the former CEO Lands Authority stated that the termination of his tenure at the Authority was unconnected to the Fortina case.

3.3.4 In submissions to the NAO, the Opposition MP on the BoG Lands Authority argued that the Architects Lands Authority were bound by the terms set and could only value that cited in these terms. He maintained that it was not the responsibility of the Architects Lands Authority to question the completeness of their remit. The Opposition MP on the BoG Lands Authority contended that

gaps in the valuation were the consequence of omissions in the task assigned to the Architects Lands Authority. Nevertheless, he conceded that the Board was aware of these gaps, despite there being no record of such discussions, and had taken corrective action through the engagement of the audit firm.

3.3.5 In turn, Fortina confirmed that more sites, other than that valued by the Lands Authority, ought to have been valued. Fortina argued that the request by the Notary Public acting on its behalf clearly captured all sites within the broader area over which Fortina sought the rescission of conditions in the correspondence sent to the Lands Authority. Moreover, Fortina noted that its valuation included all sites for which waivers were requested and payment due. Fortina maintained that despite that the value of the transaction for the entire site only matched that assigned by the Lands Authority for a part of the site, this was of no concern. Fortina sought to justify this by arguing that the amount agreed to was overvalued, particularly when compared to other land whose conditions were rescinded by the Government. In addition, Fortina claimed that the value arrived at by the Lands Authority was erroneous, and while the site was significant to it, it was not of value to any other third party given that the site was landlocked and access only possible through land owned by Fortina. From a broader perspective, Fortina asserted that its investment in the project and its successful fruition was in the Government's interest, for it contributed to economic growth and the further development of the tourism sector.

3.3.6 Of significant concern to the NAO was that the former CEO Lands Authority did not request the Architects Lands Authority to determine compensation for all parts of the Fortina site over which the Government could impose a charge for the waiving of conditions. Evident was that the height and use limitations burdening the area measuring 625 square metres was a material omission on the part of the Lands Authority. The potential compensation that could have been realised by the Government for the lifting of the restrictions on this site, as attested by the valuation later established by Fortina, was substantial. The remaining portion of 2,380 square metres, although still subject to height limitations, was now to serve a different use, from one restricted to tourism purposes to a public open space. Although this change appears innocuous at face value, its relevance is significant in that redesignation of this area as a public space allowed Fortina to apply the PA Floor Area Ratio Policy, which Policy allowed for the construction of additional floors on the tower located on another part of the Fortina site. Consequently, the potential monetary value of this waiver was substantial. The same logic applied to the area of 23 square metres, also to be converted as a public area; however, given its limited size, compensation to the Government would not have been substantial. Nevertheless, having reviewed the waivers requested by Fortina, the NAO maintains that the valuation by the Lands Authority significantly misrepresented and undervalued what the Government was to forgo. This failure was exacerbated by the BoG Lands Authority that despite being cognisant of the incomplete valuation – a matter also raised by Fortina – did not take the necessary remedial measures to address these gaps.

3.4 Failures in governance by the Board of Governors Lands Authority

A declared conflict of interest

- 3.4.1 In July 2018, a new CEO Lands Authority was appointed. Under ordinary circumstances, a change in headship would not have a significant effect on the way the Lands Authority would process a request such as Fortina's. However, in this case, the change in CEO resulted in the BoG Lands Authority taking a more direct role in the management of the request. This situation arose when, in late September 2018, following queries by the press, the CEO Lands Authority declared a conflict of interest in the matter due to having business interests in common with the owners of the Fortina Hotel. Corroborating the understanding that the BoG Lands Authority took a more active role in this process was correspondence submitted by Fortina to the Lands Authority on 24 October 2018, referred to the CEO Lands Authority, who in turn redirected same to the Board.
- 3.4.2 Following enquiries by the NAO, the CEO Lands Authority stated that he never had any common shareholding with the ultimate beneficiary owners of Fortina or any companies in which they were involved in. Nevertheless, the CEO Lands Authority acknowledged his minor shareholding in two companies with two children of one of the owners of Fortina. The CEO Lands Authority contended that this information was in the public domain and was duly registered in the Register of Companies. Regardless, the CEO Lands Authority maintained that he deemed it important to avoid any perceptions of conflict of interest and argued that his early divestment of this shareholding was partially motivated by this consideration.
- 3.4.3 Queried on his disclosure of interests a day after the press coverage on the matter, the CEO Lands Authority indicated that he had requested the BoG Lands Authority to include an agenda item to this end immediately following questions received from the media prior to the publication of the article. The CEO Lands Authority argued that the scheduling of Board meetings was not within his remit and that he had no earlier opportunity to make this disclosure. Nonetheless, the CEO Lands Authority claimed that, from his appointment onwards, he intentionally did not participate in any discussions and/or negotiations on the matter relating to Fortina. Elaborating, the CEO Lands Authority noted that no major decision and/or material action was taken by him or by the Authority during the period between his appointment and disclosure to the Board.
- 3.4.4 Requested by the NAO to indicate whether he had any discussions or interactions with Fortina at any time, the CEO Lands Authority excluded any decision or material action taken or anything that could have changed the course of decisions or actions at the time. However, the CEO Lands Authority did not exclude being requested to provide updates on progress, understood by the NAO as information provided to Fortina in response to enquiries made. Nevertheless, the CEO Lands Authority maintained that he would not have entered into detailed discussions or interactions on the matter but would have referred enquiries to the BoG Lands Authority.

- 3.4.5 On its part, in submissions made to the NAO, one of the representatives of Fortina acknowledged knowing the CEO Lands Authority personally and indicated that he had approached him for assistance on Fortina's request for the rescission of conditions burdening its site. Nonetheless, according to Fortina, the CEO Lands Authority immediately declined to be involved and advised that Fortina was to continue dealing with the Chair BoG Lands Authority. Requested to clarify the possible conflict of interest that the CEO Lands Authority had with Fortina, the latter maintained that the CEO had no association with the owners of the Fortina Hotel, held no shares in the relevant company, nor was involved in the project. Nonetheless, one of the representatives of Fortina conceded that he had known the CEO Lands Authority for several years and that the latter was a close friend of his. He admitted that he had had a business connection with the CEO Lands Authority, but emphasised that this had ended long before and that, at this juncture, this posed no conflict of interest. Fortina noted that the CEO Lands Authority's withdrawal from the matter might have contributed to delays and complications in obtaining the Government's approval and ultimately the project. Moreover, Fortina contended that the assistance sought from the CEO Lands Authority was only meant to expedite the process and not to influence the value ascribed.
- 3.4.6 Commenting in this regard, the Minister indicated that he would occasionally follow up on the conflict of interest with the CEO Lands Authority to ensure that he was not getting involved in the process.
- 3.4.7 The NAO noted that the minutes of meetings of the BoG Lands Authority were circulated among all members of the Board. Regarding the Fortina request, based on records sourced from the Lands Authority, this Office established that it was only when the Board decided to refer the matter to the Minister that the distribution of minutes was extended to include the Minister, the Parliamentary Secretary and the CEO Lands Authority. This situation did not draw the NAO's concern, for the circulation to the Minister, the Parliamentary Secretary and the CEO Lands Authority was a means of providing visibility of the work of the Board, and the inclusion of the CEO at this stage could not be construed as a conflict of interest given that the Board had arrived at a decision.

Assuming the Chief Executive Officer's role

- 3.4.8 The BoG Lands Authority promptly sought to mitigate the conflict of interest of the CEO Lands Authority when, on 26 October 2018, the Board requested the Senior Officer Lands Authority to provide it with information relating to Fortina's request, details of the conditions burdening the site, any decisions to be taken by the Authority and the procedures to be followed. This attempt by the BoG Lands Authority proved futile for, on 11 November 2018, the Senior Officer Lands Authority refuted the assignment highlighting several concerns. Foremost among these was press coverage wherein it was reported that the former CEO Lands Authority had disclosed that the negotiations with Fortina were at an advanced stage, a process that he had not been party to. In view of these concerns, the Senior Officer Lands Authority recommended that the necessary economic, commercial and financial analysis be undertaken by person/s independent of the Authority.

- 3.4.9 It is unclear to the NAO whether the decision of the BoG Lands Authority to engage the Senior Officer Lands Authority was to be understood in light of Article 15(6) of the Lands Authority Act, which stipulates that “In the absence of the Chief Executive Officer, or if the Chief Executive Officer is unable to perform the functions of his office, whether under this or any other provision of this Act, the Chairperson of the Board may, following consultation with the Chief Executive Officer, appoint any one of the officers or employees of the Authority to act as Acting Chief Executive Officer.” The reason for this Office’s lack of clarity as to the BoG Lands Authority’s adherence to this provision emanates from subsequent action taken by the Board as a reaction to the Senior Officer’s declining of the assignment.
- 3.4.10 Following the refusal of the Senior Officer Lands Authority, and consistent with feedback provided, the BoG Lands Authority approached a professional services firm to carry out the required analysis. This too proved to no avail for the firm declared a conflict of interest. The need for this analysis became more pronounced in early December 2018 when Fortina widened its request to the Lands Authority, asking for the rescission of all restrictions limiting development of the site, in line with the PA’s approval for residential, office and commercial use. Matters culminated in the BoG Lands Authority meeting of 12 December 2018. During this meeting, the Architects Lands Authority highlighted that they were only requested to value a portion of the site and that they were instructed to apply a deduction corresponding to the duty on documents and transfers payable, a practice which they deemed unorthodox.
- 3.4.11 Faced with the refusals by the Senior Officer Lands Authority and the professional services firm, the concerns raised by the Architects Lands Authority regarding the completeness and validity of the valuation, and the wider request for waivers by Fortina, the BoG Lands Authority resolved to appoint an official of the Lands Authority to establish the relevant facts. According to the Deputy Chair BoG Lands Authority, the Chair was preoccupied by the concerns raised and resolved to appoint the Senior Manager (Contracts) Lands Authority to establish a comprehensive understanding.
- 3.4.12 In submissions to the NAO, the Senior Manager (Contracts) Lands Authority confirmed this assignment; however, she noted that when engaged she was bound by a degree of confidentiality deemed unusual, for she was precluded from consulting with officials of the Lands Authority on whose technical expertise she ordinarily relied on in cases of the sort.
- 3.4.13 Nevertheless, the facts of the case were made clear in a status report drawn up by the Senior Manager (Contracts) Lands Authority in January 2019 and discussed by the BoG Lands Authority on 8 February 2019. Highlighted in the status report was that the revised valuation only corresponded to one of the four sites for which waivers were originally sought and that it was unclear whether the subsequent request made by Fortina for the lifting of all restrictions was brought to the attention of the Architects Lands Authority. The NAO noted that the status report afforded the BoG Lands Authority with a comprehensive understanding of the waivers requested by Fortina, the part of the site valued by the Architects Lands Authority, and the waivers for which no valuation was set. In submissions to the NAO, the Senior Manager (Contracts) clearly recalled assertions

in the status report that the valuation did not cover all waivers requested. The Deputy Chair BoG Lands Authority confirmed this understanding, emphasising that the status report clearly outlined which parts of the Fortina site were valued and which were not, and that the Board fully understood these implications. Therefore, as of February 2019, the BoG Lands Authority effectively established a clear understanding of the key issues concerning the Fortina site, mainly that not all waivers were valued and the anomalous deduction of duty on documents.

- 3.4.14 Paradoxically, the Government MP on the BoG Lands Authority and the Opposition MP on the BoG Lands Authority indicated to the NAO that their main concern following the review of the status report was that a revised valuation could lead to a situation where the Authority would obtain less by way of compensation for all the site than that originally established for a portion of the site. The main concern expressed by the Government MP on the BoG Lands Authority in this respect was that the Board would be subject to considerable criticism should its actions in seeking another valuation be construed as facilitating the assignment of a lower value to the waiver of conditions by the Government, which would thereby favour Fortina. This understanding was based on the fact that the site was not located on the seafront, had restricted access, and offered limited development potential unless Fortina also acquired the adjacent part of the site from third parties.
- 3.4.15 Queried by the NAO on whether it was aware of the status report and its implications in terms of the completeness of the Lands Authority's valuation of the rescission of all conditions, Fortina maintained it was unaware of this development. Furthermore, Fortina were confounded as to why the Lands Authority did not request a meeting at this stage, which would have allowed the parties to discuss the matter in greater detail.
- 3.4.16 In sum, the NAO has difficulty in reconciling the concern of the BoG Lands Authority – wary that a new valuation would result in a downward revision adverse to the Government – with all information referred to the Board, be it from clarifications obtained from the Architects Lands Authority, from the Senior Manager (Contracts), and from Fortina, that all pointed to a site that, if valued comprehensively, would result in an increase in the compensation payable to the Government.

A leak remains unquestioned

- 3.4.17 Of concern to the NAO was that, prior to the BoG Lands Authority meeting of 8 February 2019, Fortina was somehow provided with the valuation drawn up by the Architects Lands Authority. This was evident in Fortina's counterproposal dated 4 February 2019, wherein reference was made to the valuation by the Architects Lands Authority. In testimony to the NAO, Fortina confirmed that it was the receipt of the €8,100,000 valuation by the Architects Lands Authority that triggered its submission of a counter-valuation of €2,700,000.
- 3.4.18 The NAO sought to establish who provided Fortina with the valuation by the Architects Lands Authority, for no record of this key exchange was captured in the file retained by the Lands Authority or the proceedings of the BoG Lands Authority. Despite the efforts of this Office, the matter remained unclear.

- 3.4.19 In testimony provided to the NAO, Fortina claimed that it was uncertain as to how the valuation by the Architects Lands Authority came to be in its possession. Fortina was unsure whether this was received by post or as an email and could not confirm any specific details in this respect. The NAO is sceptical of the uncertainty expressed by Fortina, particularly in view of the significance of the valuation, the shock that reportedly ensued when obtained, and the fact that no earlier correspondence had been received from the Authority, making receipt of this valuation unique in many ways and consequently a development that ought to have been recalled.
- 3.4.20 Queries addressed to the CEO Lands Authority shed no light on this issue. Prompted to indicate whether he had, or was aware of who had, provided Fortina with access to the Lands Authority's valuation, the CEO Lands Authority replied in the negative in both instances. The CEO Lands Authority argued that the engagement of the Architects Lands Authority and their valuation report preceded his appointment. However, this point was deemed irrelevant by the NAO for that being sought was information relating to the disclosure of the valuation report, which occurred during his tenure, and not its commissioning or conclusion.
- 3.4.21 In submissions to the NAO, the Deputy Chair BoG Lands Authority indicated that at no point did the Board discuss, nor was the Board informed, that the valuation by the Architects Lands Authority was to be referred to Fortina. He contended that this premature disclosure was not in the interest of the Lands Authority. Queried by the NAO whether the untimely and unauthorised disclosure of the valuation raised the Board's concern, the Deputy Chair was noncommittal, conceding that it should have. Nevertheless, the Deputy Chair maintained that he was unaware of who divulged the valuation yet opined that it was unthinkable that any Board member would make such a disclosure. Pressed to indicate why there was no evident sense of outrage but a mere acceptance, the Deputy Chair BoG Lands Authority acknowledged that the Board could have done better.
- 3.4.22 Similarly, the Opposition MP on the BoG Lands Authority could not recall being informed that the valuation by the Architects Lands Authority had been referred to Fortina, maintained that such disclosure was not standard practice, and raised concern regarding the fact that the decision to refer the valuation was not captured in the minutes of the Board.
- 3.4.23 When queried regarding who disclosed the valuation of the Architects Lands Authority to Fortina, the Government MP on the BoG Lands Authority referred to the Chair BoG Lands Authority as the main interlocutor between the Authority and Fortina. His understanding was based on the fact that it was the Chair BoG Lands Authority who updated the Board of progress registered. Notwithstanding that the Government MP on the BoG Lands Authority maintained that the Chair informed the Board of key developments, he conceded that the decision to disclose the valuation by the Architects Lands Authority to Fortina was not referred to the Board. Pressed to indicate whether he was aware of who disclosed the valuation to Fortina, the Government MP on the BoG Lands Authority indicated that he did not know.
- 3.4.24 The NAO deemed the disclosure to Fortina detrimental to the Lands Authority, for the valuation by the Architects Lands Authority was still under consideration by the Board. Furthermore, the disclosure of this valuation was highly illogical and counterproductive to the interests of the Lands

Authority, for the Authority was in the process of establishing a comprehensive understanding of what waivers were requested by Fortina and what had and had not been valued. That the valuation by the Architects Lands Authority did not comprehensively capture all waivers sought was referred to in the BoG Lands Authority meeting of 12 December 2018 and confirmed through the status report drawn up shortly after. Fortina further validated the gaps in valuation by the Lands Authority in its counter valuation, wherein it was highlighted that a part of the site for which waivers were sought had not been considered by the Lands Authority. Fortina proceeded to assign a substantial value to this portion of the site, hence aggravating the NAO's concerns.

- 3.4.25 There was no reasonable explanation provided by the Lands Authority and Fortina as to how a sensitive document that ought to have been accessible only to the former came to be in the latter's possession, casting doubt on the transparency of the process and the integrity of the parties. The nature of this interaction between the Lands Authority and Fortina remained a matter of grave concern to the NAO, with the Office highlighting the implausibility of a situation where, after months of sending correspondence without an official reply, the valuation was suddenly received by Fortina without context or warning.
- 3.4.26 Another aspect concerning the counterproposal by Fortina dated 4 February 2019, and discussed by the BoG Lands Authority on 8 February 2019, was that no member of the Board questioned the fact that Fortina had submitted a 'counterproposal' when no proposal had been made by the Lands Authority. The unprompted submission by Fortina ought to have elicited discussions within the Board, evidence of which was not traced by the NAO.
- 3.4.27 In addition, the NAO noted that the valuation submitted by Fortina was not acknowledged or replied to by the Lands Authority. Seen in isolation, this gap in communication may appear insignificant; however, the fact that the Lands Authority invariably failed to respond to or document its response to submissions by Fortina raises further concern regarding the exchanges between the parties. Compounding matters was that the minutes of the BoG Lands Authority failed to capture any concern on the part of the Board regarding the evident leaks in its processing of Fortina's request for the rescission of conditions. That progress in the processing of Fortina's request was registered regardless supports the understanding that communication between the parties was ongoing, yet undocumented, eroding the standard of accountability and responsibility expected of a process of this materiality.

An anomalous governance setup

- 3.4.28 Setting aside the anomalous premature disclosure to Fortina of the valuation for part of the site and Fortina's counterproposal, by 8 February 2019, the BoG Lands Authority had a complete understanding of the facts. Aware of the gaps in the valuation, the BoG Lands Authority appropriately resolved to engage an audit firm to establish a fair value for all waivers requested by Fortina. By 1 March 2019, the BoG Lands Authority had proceeded with this line of action, engaging an audit firm to assist in this respect, with relevant terms of reference set.
- 3.4.29 The NAO is of the opinion that the actions by the BoG Lands Authority – its initial unsuccessful attempt to engage a professional services firm to value the site, the subsequent assignment to

the Senior Manager (Contracts) Lands Authority to draft a status report, and the engagement of an audit firm to value all waivers sought – equate with it assuming the role of Acting CEO as contemplated in Article 15(6) of the Lands Authority Act. The assumption of this responsibility by the BoG Lands Authority was deemed anomalous by the NAO, for it is debatable whether the Board could be considered as “officers or employees of the Authority”. The reservations of the NAO stem from the fact that the BoG Lands Authority effectively circumvented the governance structure contemplated in the Act, which distinguished between the role of the CEO and that of the Board, in this case fused into one and under the direct control of the Board.

- 3.4.30 These concerns resonated with statements made by the Deputy Chair BoG Lands Authority in testimony provided to the NAO. The Deputy Chair BoG Lands Authority conceded that the Board effectively assumed an executive role instead of one of oversight. According to the Deputy Chair, this situation caused concern to the Board and was a source of anxiety to the Chair BoG Lands Authority, especially in view of the issues raised by the Senior Officer Lands Authority and the conflict of interest of the CEO Lands Authority resulting from his business interests.
- 3.4.31 Somewhat contrasting were submissions to the NAO made by the Government MP on the BoG Lands Authority, who maintained that the role of the Board remained unchanged in this process, for the work ordinarily delegated to the CEO was instead assigned to other officers of the Authority. He argued that the withdrawal of the CEO Lands Authority did not adversely affect the administration of the process, for not all files would be ordinarily reviewed by the CEO, and that such reviews were at times delegated to other officials. While that stated by the Government MP on the BoG Lands Authority, that not all cases would be directly reviewed by the CEO, was deemed reasonable, this Office contends that a case of materiality such as that of Fortina would have ordinarily involved the input of the CEO. Hence, the absence of this function in this case was considered significant.
- 3.4.32 In turn, the Opposition MP on the BoG Lands Authority argued that the executive role assumed by the Board, when it decided not to delegate the management of Fortina’s request but to take on this responsibility, was less than ideal. Compounding matters was the process of review employed by the Board, with limited time for accessing and analysing relevant documentation and the substantial caseload assigned. The retention of information in a physical file format rendered simultaneous review by the different members of the Board impossible. The Opposition MP on the BoG Lands Authority conceded that the proceedings of the Board were to be conducted in a more transparent manner, particularly in cases concerning material transactions.
- 3.4.33 Of note, albeit tangential to the Board’s decision to directly manage Fortina’s request, was the statement by the Opposition MP on the BoG Lands Authority regarding his dual role as an MP and as a member of the Board. He expressed some unease on this duality, particularly regarding voting rights in both fora. The Opposition MP on the BoG Lands Authority maintained that he was against this double voting despite instances of being pressured to take a vote as member of the Board. In this context, any waivers granted would require parliamentary approval. The Board debated whether to vote on the issue or to forward the necessary documentation to the responsible Minister. Concerning his voting in Board proceedings, the Opposition MP on the BoG Lands Authority clarified that he had communicated his intention to abstain from voting at that stage to avoid compromising his eventual position in Parliament.

3.4.34 In sum, the NAO is of the understanding that the governance structure of the Lands Authority was undermined by the Board's assumption of an executive role when handling Fortina's request, a function that ought to have been carried out by a delegated official of the Authority given the CEO Lands Authority's declared conflict of interest. This shift in responsibilities blurred the lines between the Board's default role of oversight and its assumed executive function, raising concerns of non-compliance with the Lands Authority Act and leading to the exploitation of deficiencies that consequently arose. Moreover, the complexity of the case and its materiality warranted dedicated administrative input, a function that the BoG Lands Authority, with its constraints and limitations, could not fulfil.

An illogical agreement

3.4.35 A development that drew the NAO's attention was the correspondence submitted by the Chair BoG Lands Authority to a bank on 29 April 2019 confirming that negotiations between the Authority and Fortina were at a very advanced stage and that agreement relating to the rescission of conditions was to be reached by end June 2019. Fortina confirmed that the letter sent by the Chair BoG Lands Authority to the bank was part of the process being driven by Fortina to secure financing for the project. Confronted by that stated in the letter, that negotiations had reached a very advanced stage, which contradicted earlier assertions that no negotiations were held, Fortina was unable to provide a plausible explanation. Based on the evidence at hand, the parties were poles apart, with Fortina valuing the conditions at approximately €2,700,000 and the Lands Authority at around €8,100,000. The NAO was unable to ascertain whether negotiations were at a very advanced stage, as attested by the Chair BoG Lands Authority, or inexistent, as claimed by Fortina. Whether Fortina could secure financing when the value of the transaction was yet unknown is beyond the scope of this audit; however, the fact that agreement was reached as envisaged by the Chair BoG Lands Authority tends to lend credence to the version of events captured in the correspondence to the bank.

3.4.36 On 10 June 2019, despite reservations expressed, Fortina agreed to increase its payment obligation to the Government to €8,100,000. This correspondence was discussed by the BoG Lands Authority on 14 June 2019, wherein the Board resolved to submit relevant documentation to the Minister, since the process was to be concluded through a parliamentary resolution.

3.4.37 Prior to delving into the rationality behind the BoG Lands Authority's decision to refer the matter to the Minister, the NAO's attention is immediately drawn to the anomalous context surrounding the agreement reached. The first concern raised by this Office in this respect is that the correspondence submitted by Fortina on 10 June 2019 was again unprompted. This situation was deemed implausible by the NAO for, in order for agreement to be reached, it is logical to assume that the party disposing of an asset, in this case, the Lands Authority, must inform the party acquiring the asset of the value assigned thereto. The NAO was not provided with any record of such disclosure by the Lands Authority to Fortina at any point throughout the process. The Deputy Chair BoG Lands Authority conceded that Fortina's unprompted acceptance was anomalous considering that it was never formally informed of the Lands Authority's valuation.

- 3.4.38 The second concern relates to the fact that Fortina had initially valued the waiver for all the site at several multiples less than the value established by the Lands Authority for part of the site. Notwithstanding the disparity between the two valuations and no record of discussions between the parties, agreement was enigmatically reached.
- 3.4.39 Commenting in this respect, Fortina lamented with the NAO that throughout the process, it received no official feedback from, nor had any meaningful interaction or engaged in any form of negotiation with, the Lands Authority or any other party representing the Government. Fortina highlighted how its project-related costs were increasing and that a major prospective tenant was becoming impatient with the lack of progress. According to Fortina, irrespective of whom it tried to speak to, it was always directed to the Chair BoG Lands Authority. Fortina complained that it was not provided with an opportunity to explain to the Lands Authority the basis of its valuation and other points relevant to what should have been ongoing negotiations. Moreover, Fortina contended that the valuation by the Architects Lands Authority was erroneous, claiming that the fact that the site was already developed, was Fortina's own property and that it was freehold were ignored in the Lands Authority's valuation. In submissions to this Office, Fortina noted that after prolonged frustration and lack of progress, it decided to accept the Government's valuation to move the project forward. Fortina highlighted this in its letter of acceptance to the Lands Authority, wherein it reaffirmed its disagreement with the €8,100,000 valuation and its belief in its own valuation of €2,700,000, stating that it had no choice and was politely forced to accept the Government's value. It was this context that led Fortina to, in June 2019, accept the €8,100,000 established by the Lands Authority.
- 3.4.40 Further attesting to the dearth of interaction between the parties, Fortina indicated that, following the submission of its letter of acceptance to the Lands Authority, it received no feedback from and was not consulted by the Government in any way. According to Fortina, it eventually became aware that the transaction was to proceed through the Notary Public acting on its behalf, who informed it that the matter was to be discussed by the NAOAC.
- 3.4.41 In reference to the absence of any record of negotiation between the parties, the Minister contended that negotiations must have taken place for, otherwise, the case would have stalled. In submissions to the NAO, the Minister noted that no audit trails of negotiations were left in this case, and even if negotiations were held through meetings, hence explaining the absence of correspondence, then such meetings were to be documented and filed. Requested to indicate whether he was aware of who was communicating with Fortina on behalf of the Lands Authority, the Minister referred to the Parliamentary Secretary and the Chair BoG as his main points of contact on the case. On the broader concern emanating from the fact that the Lands Authority did not retain a record of any official correspondence sent to Fortina during the processing of its request, the Minister conceded that this was less than ideal, and referred to other Government entities where all interactions were logged in a transparent manner.
- 3.4.42 From the perspective of the Lands Authority, the Deputy Chair BoG Lands Authority maintained that he was not aware of what triggered Fortina's acceptance of the value set by the Architects Lands

Authority, which was significantly higher than that submitted by it a few months prior. In addition, the Deputy Chair recognised that, despite the evident incongruity arising from Fortina's change in stance, this did not elicit any discussion within the Board. The Government MP on the BoG Lands Authority contended that Fortina was somehow aware of the intransigent position adopted by the Board in adhering to the €8,100,000 value established by the Architects Lands Authority, which ultimately resulted in Fortina's acceptance of the compensation payable. Nevertheless, the NAO fails to comprehend how these evident concerns were not questioned by the BoG Lands Authority and routinely accepted as ordinary developments, when these should have triggered far greater discussion and scrutiny within the Board.

- 3.4.43 The NAO deemed the acceptance by Fortina of the Lands Authority valuation as inexplicable and suspect, more so when one considers that the Lands Authority never formally informed Fortina of the €8,100,000 valuation and both parties maintaining that no discussions or negotiations were held. It is against this setting that the NAO deemed Fortina's unprompted letter of acceptance as implausible, a situation rendered more inexplicable when the BoG Lands Authority did not question how agreement was reached from a standstill position.

Chaotic referral

- 3.4.44 The point at which the BoG Lands Authority changed its course of action without apparent reason can be identified in the minutes of the Board meeting held on 14 June 2019. Cited in the minutes was "[Chair BoG Lands Authority] informed of and read a letter sent by [Fortina]. A discussion was held and [Government MP on the BoG Lands Authority] pointed out that there was the acceptance by Fortina Developments of the original estimate drawn up by three architects engaged by the Lands Authority, and therefore the Minister was to be notified once the process was to be concluded through a Parliamentary Resolution."²¹

- 3.4.45 A slightly different version of events was recalled by the Deputy Chair BoG Lands Authority in testimony provided to the NAO. The Deputy Chair indicated that the Chair BoG Lands Authority informed the Board of a letter submitted by Fortina wherein it expressed agreement to the €8,100,000 valuation and decided that the Board was to collate all available information to date and refer it to the Minister.

- 3.4.46 The NAO deemed this course of action by the BoG Lands Authority irrational. The BoG Lands Authority had established, beyond doubt, that the waivers requested by Fortina had not been comprehensively addressed to the detriment of the Government. Moreover, the BoG Lands Authority had agreed that these gaps were to be resolved through the engagement of an audit firm. The firm was in fact engaged several weeks prior. Despite acknowledging that the valuation report by the audit firm had not yet been received, on 14 June 2019, the BoG Lands Authority resolved to refer the matter to the Minister. Immediately, two concerns emerge: first, whether the

²¹ The following is a verbatim excerpt of the minutes of the BoG Lands Authority meeting held on 14 June 2019, "[Chair BoG Lands Authority] informa u nqrat ittra mibgħuta mingħand [Fortina]. Saret diskussjoni u [Government MP on the BoG Lands Authority] irreleva illi kien hemm l-aċċetazzjoni ta' Fortina Developments ta' l-istima originali li kienet saret minn tlett periti mqabba mill-AA [Awtorità tal-Artijiet], u allura għandu jiġi notifikat il-Ministru la darba l-proċess se jintemm permezz ta' Risoluzzjoni Parlamentari."

Board's decision constituted a recommendation; and second, that the Board effectively referred a process that was yet to be completed.

- 3.4.47 Relevant to the first issue, that is, the process of notification of the Minister, are Articles 13(c) and (d) of the Lands Authority Act, cited hereunder:

“13(c) Where the Board votes against a recommendation or a decision taken by the Chief Executive Officer, and thus overturn the said recommendation or decision, the Board shall register in the relevant file the specific reasons adduced by it justifying its vote. Such decision by the Board shall be immediately notified to the Minister. The Minister may, if he deems necessary, and after giving detailed reasons, send back to the Board said decision for its review. ...

13(d) Where the Board votes in favour of a recommendation or a decision taken by the Chief Executive Officer, the Board shall register in the relevant file the specific reasons adduced by it justifying its vote. Such decision by the Board shall immediately be notified to the Minister. The Minister may, if he deems necessary, and after giving detailed reasons, send back to the Board the said decision for its review.”

- 3.4.48 Stipulated in these Articles was that the BoG Lands Authority was to vote either in favour or against a recommendation or a decision of the CEO. In this case, there was no recommendation or decision of the CEO Lands Authority, who had declared a conflict of interest and subsequently distanced himself from the process. It is unclear to the NAO what action registered by the BoG Lands Authority, when assuming the role usually fulfilled by the CEO, constituted the equivalent of a recommendation or decision that consequently triggered the Board's adjudication thereof.

- 3.4.49 As regards the decision-making process adopted by the BoG Lands Authority, the minutes of the meeting of 14 June 2019 make no reference to a vote being taken on the granting, or otherwise, of the waivers sought by Fortina. Moreover, the minutes of this Board meeting do not capture the decision of the Board as in favour or against a recommendation or decision to this effect. The adoption of this neutral stance by the BoG Lands Authority ran counter to the obligation specified in Articles 13(c) and (d), which required the Board to decide either in favour or against and necessitated that such a decision be appropriately motivated and documented. In either of the circumstances, the BoG Lands Authority was to notify the Minister of its decision and, if not in agreement, the Minister could request the Board to reconsider its decision. Given the ambiguous referral of the case by the BoG Lands Authority to the Minister, the NAO enquired as to the rationale of this decision by the Board.

- 3.4.50 In submissions to the NAO, the Deputy Chair BoG Lands Authority maintained that, in this case, the Board assumed responsibility for collating all relevant information and referring same to the Minister and the Parliamentary Secretary. This decision was partly motivated by the considerable time lapse in concluding the request by Fortina and the pressure possibly exerted by Fortina for the resolution of its request. According to the Deputy Chair, the Chair BoG Lands Authority would ordinarily be the target of such pressure. The BoG Lands Authority deemed it prudent not to overstep its role, particularly in view of the fact that the waivers sought by Fortina were to be granted through a parliamentary resolution. Further reinforcing the Board's stance were

the concerns raised by officials of the Lands Authority, who emphasised that the transaction was to be authorised by Parliament. The Deputy Chair also referred to matters raised by the Senior Officer Lands Authority when refusing to assist the Board, highlighting various concerns relating to Fortina's request. The Deputy Chair argued against the Board making any recommendation, especially since only one part of the site was valued. He maintained that the Executive had a broader overview of matters and that the Board was to support this decision-making function by presenting all facts. The Deputy Chair stated that the decision to refer the matter to the Minister was not contested by any member of the Board.

- 3.4.51 In turn, the Government MP on the BoG Lands Authority recalled that, following the receipt of Fortina's acceptance, the Board decided to refer all documents to the Minister for his consideration, which decision was uncontested and endorsed by the entire Board. His understanding was that the Minister was continuously notified by the Chair of progress that was being registered by the BoG Lands Authority in relation to Fortina's request for the waiver of conditions. The Government MP on the BoG Lands Authority rationalised the Board's referral to the Minister in terms of the conflicting valuations of the Lands Authority and Fortina and the considerable variance arising therefrom. Notwithstanding this, he contended that the Minister had the technical support necessary to assess submissions made by the BoG Lands Authority and could refer the case back to the Board and request additional action to be taken should this be deemed necessary, as happened in other cases.
- 3.4.52 Consistent with the above, the Opposition MP on the BoG Lands Authority noted that in instances when matters were to be decided through a parliamentary resolution, the Board would merely relay the information to the Minister without making any recommendation. He claimed that, in such cases, the Chair BoG Lands Authority often advocated this approach.
- 3.4.53 In submissions to the NAO, a member of the BoG Lands Authority indicated that when public land is to be disposed of by a parliamentary resolution in terms of the Government Lands Act, the role of the Board is to administer the process, collate documentation and offer recommendations, if deemed necessary, to the Minister on the options for the way forward. Based on the minutes of meetings of the BoG Lands Authority, the Board member's understanding was that, considering the actions taken by the Board in previous months, the documentation that had been collated, and the actions/documentation which were still pending, the Board deemed it opportune to notify the Minister of the situation as it stood at that point in time, given that the land was to be eventually disposed of through a parliamentary resolution. Citing the records retained by the BoG Lands Authority of its meeting of 14 June 2019, the Board member stated that the minutes do not indicate that the process was concluded nor that the Board had made a formal recommendation on the way forward to the Minister.
- 3.4.54 Consistent views were expressed by another member of the BoG Lands Authority, who recalled that the Board oversaw different stages of the process. Specific reference was made to the valuation by the Architects Lands Authority and its revision, the subsequent doubt that emerged regarding the comprehensiveness of that valued, the discrepancies brought to the Board's attention through the status report, and the engagement of the audit firm in response thereto. The member of the BoG Lands Authority understood that Fortina was requesting a final decision to be taken in

view of its planned investment and the lapse of time since its original request. She recalled that in discussions during the meeting of 14 June 2019, the Board was assured that all the facts of the case and relevant documentation were to be referred to the Minister and the Parliamentary Secretary, including the fact that the audit firm's report had not yet been received by the Lands Authority, since the disposal was to be carried out through a parliamentary resolution. The member of the BoG Lands Authority contended that, with all the information at hand, the final decision-makers could decide on a way forward. She maintained that, should any clarifications be required, the input of the Board would have been requested; however, she recalled that none was sought.

- 3.4.55 Another member of the BoG Lands Authority indicated a limited recollection of the decision by the BoG Lands Authority to refer the matter to the Minister, particularly in view of the Board's awareness of the incomplete valuation by the Authority and the pending valuation of the audit firm. The member explained her difficulty in recalling the basis of the Board's decision on account of her absence from meetings wherein key developments relating to the case were registered. In addition, she could not recall details of the discussion held during the meeting of 14 June 2019, and the minutes provided limited information of what was discussed. The lack of recollection was compounded by the considerable lapse of time and the substantial workload of the Board.
- 3.4.56 Further queries addressed to the Lands Authority by the NAO failed to elicit plausible explanations that could rationalise the course of action taken by the BoG Lands Authority. Presented with the gaps in valuation identified in the report by the Senior Manager (Contracts) Lands Authority, the Authority maintained that it resolved these lacunae by referring the matter to the Minister. Requested to provide documentation regarding the approval of the €8,100,000 valuation, the Lands Authority claimed that approval was granted by Parliament and not the Authority.
- 3.4.57 In conclusion of the first issue, the NAO deemed the neutral stance of mere referral adopted by the BoG Lands Authority in breach of the provisions of the Lands Authority Act, which stipulate a vote either in favour or against a recommendation. This Office noted that there was no record of any vote being taken by the BoG Lands Authority; however, the minutes indicated that the Board was in favour of the Government waiving the conditions burdening the Fortina site. This understanding of the NAO was elicited from that recorded in the minutes of the BoG Lands Authority meeting of 14 June 2019, namely, "therefore the Minister was to be notified once the process was to be concluded through a Parliamentary Resolution". This Office deems the explanations of mere referral by the members of BoG Lands Authority as indefensible, for the provisions specified in the Act dictate responsibility for a decision, irrespective of whether in favour or against.
- 3.4.58 As regards the second issue, the NAO sought the views of the members of the BoG Lands Authority as to the rationale of the Board in submitting to the Minister what effectively was an incomplete process of valuation. In testimony to this Office, the Deputy Chair BoG Lands Authority conceded that no member of the Board questioned why the Board was proceeding with referral to the Minister when the valuation by the audit firm was pending. The Deputy Chair acknowledged that the Chair drew the Board's respect and consequently none of the members doubted the pending status of the audit firm's valuation report. In hindsight, the Deputy Chair agreed that the Board could have insisted on refraining from acting until the valuation report was in hand.

- 3.4.59 Reference is made to assertions by the Government MP on the BoG Lands Authority regarding this Office's understanding of the referral of an incomplete process by the Board to the Minister. Pressed to elaborate on how the waivers not valued by the Lands Authority could be construed as a complete process, the Government MP on the BoG Lands Authority maintained that there were no gaps in the valuation, but mere disagreement on the values assigned by the Lands Authority and Fortina. He claimed that the valuation by Fortina could not be readily disregarded for it was endorsed by a professional services firm and the BoG Lands Authority effectively referred to the Minister the highest valuation it had in hand up till that point. Another factor cited by the Government MP on the BoG Lands Authority in justifying referral to the Minister was that the process had been ongoing for several years. Nevertheless, the Government MP on the BoG Lands Authority argued that it was ultimately Parliament that granted the waiver of conditions to Fortina.
- 3.4.60 The Opposition MP on the BoG Lands Authority referred to an element of fatigue setting in and argued that he considered further debates on the waivers sought by Fortina within the confines of the Board as a futile endeavour. This situation was compounded by the fact that requests for information often remained unaddressed. Further aggravating matters were his concerns that the case was manipulated.²² He deemed more effective the resort to public interventions, that is, through parliamentary fora, for the ultimate decision-making body of this issue was Parliament.
- 3.4.61 In conclusion of the second issue, it is with grave concern that the NAO notes that the BoG Lands Authority was undisputedly aware that it was referring to the Minister an incomplete valuation, a situation that favoured Fortina and was adverse to the interests of the Government. In this Office's opinion, rather than referral to the Minister, the more logical response that Fortina's correspondence should have elicited from the BoG Lands Authority was reference to the process of valuation that was still underway.
- 3.4.62 Faced with the unexplainable decision-making process of the BoG Lands Authority at this instance in the process, the NAO sought information regarding whether the BoG Lands Authority was subjected to undue influence or coerced to act with haste and in such a manner. Enquiries to this effect were made with the Minister, the Parliamentary Secretary, the Deputy Chair BoG Lands Authority, the Government MP on the BoG Lands Authority and the Opposition MP on the BoG Lands Authority, the former CEO Lands Authority, and Fortina, who all denied knowledge of any undue influence or coercion exerted on the BoG Lands Authority. Notwithstanding that stated, the NAO cannot reconcile how the BoG Lands Authority acted independently, for its action in referring the matter to the Minister reversed the Board's own efforts to establish a fair value of the site.

Statements, misstatements and omissions

- 3.4.63 Having considered the decision of the BoG Lands Authority to refer the matter to the Minister, the NAO sought to ascertain what information was brought to the Minister's attention. On 17 June 2019, the Chair BoG Lands Authority submitted correspondence and documents of relevance to

²² The testimony of the Opposition MP in this respect was as follows, "Pero keep in mind illi after all this long marathon, fejn jiena għalija kont diġa qtajtilha rasha li dan kien deal jinten, għidt jiena I will make the case issa where it matters."

the matter to the responsible Minister and the Parliamentary Secretary. Enclosed were Fortina's acceptance letter, the valuations by the Architects Lands Authority and Fortina, the requests for waivers sought by Fortina, the planning permit, and the status report.

- 3.4.64 The NAO noted that while the correspondence by the Chair BoG Lands Authority to the Minister and the Parliamentary Secretary referred to certain key developments, other essential facts were either insufficiently referred to or omitted. An important point brought to the attention of the Minister and the Parliamentary Secretary was the revision to the valuation by the Architects Lands Authority brought about by a deduction in tax payable, with relevant concerns as highlighted in their valuation cited. However, other essential facts were obscurely referred to by the Chair BoG Lands Authority, such as the additional waivers sought by Fortina, which were indirectly alluded to through reference to correspondence and planning documentation appended. Another matter that was vaguely brought up and to which no context was provided was that the valuation by the audit firm being sought by the Lands Authority was not yet submitted. Graver still was that the Chair BoG Lands Authority failed to make any direct reference to the gaps in the valuation process, that several of the waivers requested had not been valued, and that the value of €8,100,000 corresponded to only one part of the site.
- 3.4.65 Aside from all the above concerns, the fundamental failure of the correspondence submitted by the Chair BoG Lands Authority to the Minister and the Parliamentary Secretary on 17 June 2019 was the omission of any decision by the Board being notified to the Minister. As indicated, the letter comprised a restatement of certain facts, a misstatement of others, and an excerpt of the minutes of the BoG Lands Authority meeting held on 14 June 2019. The only reference to a decision was that the BoG Lands Authority decided to refer the documentation to the Minister to assess whether he wished to present a parliamentary resolution.²³ The NAO sought the views of the members of the BoG Lands Authority on their understanding of what the letter construed.
- 3.4.66 The Deputy Chair BoG Lands Authority maintained that the Chair had accurately and comprehensively referred the matter to the Minister and the Parliamentary Secretary. He contended that the summing up by the Chair BoG Lands Authority was correct and that all facts known to the Board were clearly relayed to the Minister. Elaborating on the Board's role, the Deputy Chair asserted that this comprised the collation of all pertinent facts and documentation relating to contractual conditions and valuations, and to refer same to the political executive. Moreover, the Deputy Chair argued that the diffident referral by the Chair BoG Lands Authority was indicative of his reluctance to outright recommend the rescission of conditions. Questioned by the NAO whether he believed it was the Minister's responsibility to review the considerable documentation submitted to arrive at an informed decision, the Deputy Chair argued that it was reasonable to expect the Minister to decide given the significant investment involved.
- 3.4.67 One of the members of the BoG Lands Authority maintained that the letter of 17 June 2019 faithfully implemented the Board's decision as it provided the list of collated documents with a summary of salient points emerging from the documents and of the key decisions taken by

²³ The precise wording at source was as follows, "Kif gie deciz mill-Bord is-sottoskritt qieghed jibghat dan l-inkartament lill-Onorevoli Ministru biex jevalwa jridx jipprezenta xi Rizoluzzjoni Parlamentari."

the Board. The conclusion of this correspondence emphasised that the letter itself and the documentation were being referred to the Minister to enable him to evaluate whether any parliamentary resolution should be presented.

3.4.68 Having reviewed the provisions stipulated in the Lands Authority Act regarding the process of ministerial notification, the correspondence submitted to the Minister and to the Parliamentary Secretary by the Chair BoG Lands Authority on 17 June 2019, and that stated by the members of the Board, the NAO's attention is immediately drawn to the fact that this crucial correspondence did not specify any decision by the Board being notified to the Minister and to the Parliamentary Secretary. This Office is of the opinion that the decision by the BoG Lands Authority to refer all documentation to the Minister cannot be construed as a decision in favour or against the Government's waiver of the conditions sought by Fortina. This was more of an abdication of responsibility on the part of the Board, which abdication cannot be reconciled by the NAO with the earlier efforts by the Board to establish a true and fair value of all waivers sought. Moreover, this was a departure from the stance captured in the minutes of the BoG Lands Authority meeting of 14 June 2019, wherein the Board resolved that "... the Minister was to be notified once the process was to be concluded through a Parliamentary Resolution".

3.4.69 In conclusion, the NAO found that the correspondence submitted by the Chair BoG Lands Authority to the Minister and the Parliamentary Secretary failed to fulfil the Board's obligations in terms of the Lands Authority Act. The Act required that the BoG Lands Authority inform the Minister of its decision, whether in favour or against; however, in this case, the Chair failed to specify what was being recommended by the Board. Instead, the correspondence selectively highlighted certain key developments, while other important facts were either limitedly or obscurely referenced or omitted altogether. In this Office's understanding, the submission of all supporting documentation to the Minister and the Parliamentary Secretary did not shift the decision-making responsibility from the Board to the Minister but was a subtle attempt by the Chair at securing the Board's abdication of this duty.

3.5 A hidden valuation revealed

3.5.1 Following the review of the status report prepared by the Senior Manager (Contracts) Lands Authority, on 8 February 2019, the BoG Lands Authority resolved to engage an audit firm to evaluate Fortina's requests for waivers. In its review, the audit firm was to consider the valuations by the Architects Lands Authority, the status report prepared internally, as well as Fortina's counter valuation. According to the minutes of the subsequent Board meeting held on 1 March 2018, the Lands Authority had, in the interim, identified and approached the audit firm it sought to engage and had received the terms of reference proposed by the firm. Following some amendments, the terms were endorsed by the Board.

3.5.2 In clarifications provided, the Secretary BoG Lands Authority informed the NAO of a meeting held between the Chair BoG Lands Authority and representatives of the audit firm soon after its engagement. The Secretary BoG Lands Authority confirmed that she was present for this meeting called by the audit firm to discuss the documentation required and how it was to proceed in its engagement by the Board. The audit firm corroborated that stated by the Secretary BoG Lands Authority and confirmed that the relevant Authority file was provided.

- 3.5.3 The NAO sought to ascertain whether the engagement of the audit firm conformed to the relevant provisions of the Government Lands Act. This Office’s attention was drawn to Article 79(4) of this Act, which specified that when the value of the land to be disposed of exceeded €400,000, a valuation was to be drawn up by three architects appointed by the Lands Authority. While the NAO acknowledges the effort by the BoG Lands Authority to obtain a comprehensive valuation of all waivers sought, this Office considered whether the engagement of the audit firm was in line with that stipulated in the Government Lands Act, which required the appointment of three architects.
- 3.5.4 In this regard, the Deputy Chair BoG Lands Authority referred to Article 79(2) of the Government Lands Act, which provided that “... During the preparation of the report, periti may seek the aid of other experts in different areas, which aid shall be indicated in their report.” Moreover, the Deputy Chair justified the appointment of the audit firm, as captured in its letter of engagement, in terms of its role in “... Advising the Lands Authority on the best decision the Authority should take.” He emphasised that, in its engagement, the audit firm committed to carry out its valuation in line with the Government Lands Act. Consequently, the Deputy Chair argued that the engagement of the audit firm did not depart from that established by law. He maintained that this engagement was intended to provide advice to the BoG Lands Authority, which advice would have been referred to the Architects Lands Authority for their consideration. Furthermore, the Deputy Chair maintained that resort to the audit firm was in line with guidance provided to the Board by officials of the Lands Authority. In sum, the Deputy Chair contended that this course of action was consistent with the rationale previously adopted by the Board to engage in discussions with the Architects Lands Authority.
- 3.5.5 On the decision to obtain another valuation, the Government MP on the BoG Lands Authority indicated that the firm was engaged on the basis that it already provided audit services to the Authority in terms of its statutory financial reporting requirements. In turn, the Opposition MP on the BoG Lands Authority claimed that the Board was pressured to seek the services of the particular audit firm engaged. He referred to the provisions of the Government Lands Act regarding the engagement of three architects and maintained that the Board ought to have requested the Architects Lands Authority to value the outstanding waivers. Queried by the NAO regarding the source of this pressure, the Opposition MP on the BoG Lands Authority referred to the Chair BoG Lands Authority, backed by other members of the Board. Another concern raised by the Opposition MP on the BoG Lands Authority related to the reconciliation of the two valuations and whether the valuation by the Architects Lands Authority was to be reassessed by the audit firm.
- 3.5.6 Concerns regarding the regularity of the engagement of the audit firm to value the site were also raised by the Minister. In submissions to the NAO, the Minister highlighted that the Lands Authority Act specified that three architects were to undertake such valuations. The Minister questioned the basis of Fortina’s challenge of the valuation by the Architects Lands Authority, who were independent despite being engaged by the Authority. Similar criticism was directed towards the BoG Lands Authority, that likewise resorted to engage an audit firm to carry out the valuation of the conditions burdening the Fortina site.

- 3.5.7 Providing an element of context to its assignment, in submissions to the NAO, the audit firm indicated that it was appointed as the external auditor to the Lands Authority following a public call for tenders. The audit firm was engaged in this capacity in 2019 and rendered services to the Authority up to 2023. Also noted by the audit firm was that it had been engaged by the Lands Authority to undertake other ad hoc valuation assignments similar to that of the Fortina site. Prompted by the NAO as to whether the audit firm collaborated with the Architects Lands Authority, the firm indicated that it was instructed to coordinate solely with the BoG Lands Authority and consequently did not interact with the Architects Lands Authority.
- 3.5.8 Having considered the perspectives put forward on the regularity of the engagement of the audit firm in terms of the Government Lands Act, the NAO's concerns persist. This Office remained unconvinced that this engagement conformed with the provisions of Article 79(4) of the Act. Moreover, the application of Article 79(2) to this context was deemed dubious, for the Article specifies that architects engaged by the Lands Authority may seek the assistance of other experts. In this case, it was not the Architects Lands Authority who sought the aid of the audit firm, but the BoG Lands Authority itself that engaged the firm directly, without any involvement or awareness of the Architects Lands Authority.
- 3.5.9 On 14 June 2019, the Chair BoG Lands Authority informed the Board of the letter received from Fortina whereby it signified its acceptance of the valuation by the Architects Lands Authority. While acknowledging that the valuation report by the audit firm engaged by the BoG Lands Authority had not yet been received, the Board resolved that the Chair BoG Lands Authority was to forward to the Minister a copy of the correspondence and supporting documentation received from Fortina and the valuation by the Architects Lands Authority. In fact, on 17 June 2019, the Chair BoG Lands Authority submitted the relevant correspondence to the Minister and to the Parliamentary Secretary. Reiterated by the Chair BoG Lands Authority in this correspondence was that the valuation of the audit firm engaged by the Lands Authority was still pending.
- 3.5.10 The NAO was somewhat sceptical that an established audit firm failed to fulfil an assignment it had agreed to undertake. Therefore, the Office made enquiries directly with the audit firm tasked to evaluate the waivers sought by Fortina to ascertain whether the valuation requested by the Lands Authority was carried out and, in the affirmative, the value of the waivers and the possible reasons as to why this was not brought to the attention of the BoG Lands Authority. If not, the NAO requested any justifications as to why the engagement was discontinued.
- 3.5.11 Correspondence provided by the Lands Authority and reviewed by the NAO showed that, on 5 March 2019, the audit firm submitted its terms of engagement to the Chair BoG Lands Authority, who countersigned the terms on 20 March 2019. Specified in the scope of work was that the engagement comprised a comprehensive review of all waivers sought by Fortina and a valuation thereof. More specifically, the audit firm asserted that its work included the following:
- a. an analysis of the facts of the case, including the relevant conditions stipulated in the 1991, 1996 and 2000 contracts;

- b. an analysis of all the requests made by Fortina as captured in the relevant Lands Authority file, more specifically the most recent request;
- c. an analysis of the valuations conducted by the Architects Lands Authority;
- d. an analysis of the status report and of the case report prepared internally by the Lands Authority; and
- e. advising the Lands Authority on the best decision the Authority was to take.

3.5.12 In addition, the audit firm was to undertake a valuation of the present property and establish a value for the removal of the conditions that affected part of the property as requested by Fortina, provided that this was carried out in line with the Government Lands Act. Moreover, the audit firm specified that, for the avoidance of doubt, its scope of work did not include the provision of any tax advice.

3.5.13 In terms of reporting, the audit firm indicated that it would submit a draft report by 11 March 2019, subject to access to the information needed for the assignment. The firm further noted that the valuation would be presented in the form of a long report, explaining the methodology adopted, the analysis performed, any assumptions applied, and any relevant limitations to its conclusions, as provided for in the relevant legislation, in particular Article 79 of the Government Lands Act. Also specified in the correspondence was the fee payable by the Lands Authority, set at €15,000 excluding VAT, of which 20 per cent was payable on signing, while the remaining 80 per cent was due on delivery of the report. The agreement, dated 5 March 2019, was signed by the Managing Partner (Audit and Assurance) and countersigned by the Chair BoG Lands Authority on 20 March 2019.

3.5.14 The NAO established that, on 5 March 2019, the Secretary BoG Lands Authority informed the Authority's Finance Unit of the Board's decision to engage the audit firm and instructed payment of the initial 20 per cent of the fee payable. The Chair BoG Lands Authority was in copy. This Office ascertained that the audit firm invoiced the Lands Authority for this initial fee on 12 March 2019. The invoice was addressed to the former CEO Lands Authority²⁴, which the NAO understood as a minor inaccuracy on the part of the audit firm for, at the time, the former CEO Lands Authority was not an employee of the Authority. Documentation provided by the Lands Authority indicated the settlement of this invoice shortly thereafter.

3.5.15 Queried as to his awareness of the agreement entered into between the Chair BoG Lands Authority and the audit firm, the CEO Lands Authority stated that he was not involved in the decision to appoint the firm to undertake the valuation and did not recall being made aware of the details and/or the scope of the agreement at the time. The CEO Lands Authority maintained that he became aware of the engagement of the firm from parliamentary debates. As regards the settlement of the initial payment, the CEO Lands Authority informed this Office that he could not recall whether the

²⁴ The invoice, dated 12 March 2019, was addressed to the former CEO Lands Authority, who had been replaced by the CEO Lands Authority in July 2018.

invoice was referred for his approval; however, he maintained that if the invoice clearly indicated that it was for the Fortina valuation, then he would have redirected it to the Chair and the BoG Lands Authority for approval.

- 3.5.16 Despite what was recorded in the minutes of the BoG Lands Authority meeting of 14 June 2019 and the declaration made by the Chair BoG Lands Authority when referring the matter to the Minister and to the Parliamentary Secretary on 17 June 2019 – that the valuation report by the audit firm remained pending – the NAO obtained a copy of the report from the audit firm. The report titled 'Lands Authority: Evaluation of Fortel Services Limited's waiver request' was dated 25 March 2019 and was addressed to the BoG Lands Authority.
- 3.5.17 In the initial section of the report, a timeline of the salient events was presented. Noted was that the Fortina Hotel was built on a plot of land measuring circa 9,045 square metres, of which 8,425 square metres were bought by Fortel Services Ltd from the Government by virtue of three separate Deeds. Details of the sites acquired from the Government and the compensation paid were stated. Also stated were the diverse requests for the rescinding of limitations imposed by the Government on the sites sold to Fortina. According to the valuation report, an initial request for waiver was made in 2004, with subsequent requests made in 2006, 2017 and 2018. A description of the proposed development as approved in PA 06252/17 and PA 03913/18 was also provided.
- 3.5.18 In the second part of the report, the audit firm outlined the methodology adopted and the assumptions made in its valuation of the waivers requested. Regarding the basis of preparation, it was stated that one of the main parameters employed in the valuation was the "Market Value" of the various properties planned on site. The market value assumed was in line with the definition contemplated under the European Council Directive 2006/48/EC, that is, "the estimated amount for which the property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion." The audit firm reiterated that the scope of the assignment was to establish a value for the removal of conditions that affected part of the property as requested by Fortina, taking also into consideration the relative permits and the present value.
- 3.5.19 Noted in the valuation was that Fortina proposed the development of four blocks that were to include residential, retail, commercial areas and parking spaces on a portion of land at the time designated for hotel development. The audit firm asserted that as the requested waivers would alter the permitted use of this area to one that was more profitable, an added consideration was to be paid by Fortina to the Government. In essence, the audit firm was to value the difference between the airspace value of the proposed development and that of the development then permitted. The valuation of the waivers was based on the latest approved permit, that is, PA/03913/18.
- 3.5.20 The first element of the proposed development valued by the audit firm was the airspace of the residential component. The audit firm noted that this was an intermediate airspace that cut across through the central and rear portion of the proposed apartments and consequently did not have sea views. As a result, reference was made to comparable residences, with information sourced

indicating an average selling price of €6,500 per square metre. A factor of 0.85:1 was applied to account for the conversion of saleable area to gross floor area. Several assumptions were made, which included an agency fee of 5.9 per cent, a final withholding tax on market value of 10 per cent, development costs based on professional experience, professional fees of 8 per cent on development costs, a profit margin of 25 per cent on selling price, a development period of 3 years, a selling period of 1 year, interest of 5.75 per cent per annum on 60 per cent of the cost of development, and a real discount rate of 6.1 per cent. Based on these assumptions, the audit firm estimated the present value of airspace for residential development as €1,130 per square metre.

- 3.5.21 In valuing the second element of the proposed development, the market value of airspace of offices was arrived at through the capitalised lease method. A capitalisation rate of six per cent was assumed. Referring to publicly available information, the audit firm established that lettable office space in the area realised a rate of €400 per square metre. The conversion factor to adjust lettable area to gross floor area in the case of office development was 0.8:1. As regards the assumptions on which this component of the valuation was based, the audit firm indicated an agency fee of 4.92 per cent, a final withholding tax on market value of 10 per cent, development costs based on professional experience, professional fees of 8 per cent on development costs, a profit margin of 25 per cent on market value, the possible non-payment of input VAT on development costs, a development period of 3 years, a selling period of 1 year, interest of 5.75 per cent per annum on 60 per cent of the cost of development, and a real discount rate of 5.4 per cent. In terms of these assumptions, the audit firm established the present value of airspace for office development as €1,190 per square metre.
- 3.5.22 The third element, the retail component, was also estimated by the audit firm using the capitalised lease method, with a capitalisation rate of six per cent applied. An annual rate of €650 per square metre for lettable rental area was set through reference to publicly available information. To convert lettable area to gross floor area, a factor of 0.5:1 was applied. In valuing the retail airspace, the audit firm relied on the same assumptions used in the valuation of office airspace. The only difference was the real discount rate utilised, now assumed at 5.6 per cent. The audit firm arrived at a rate of €1,070 per square metre for the present value of airspace for the retail development.
- 3.5.23 The valuation of airspace of parking constituted the fourth element of the audit firm's valuation. The market value estimation was based on a transaction between third parties in 2018 where 132 car spaces were acquired for €4,600,000, equating to €34,848 per space. Based on the minimum area for a car space established in terms of Maltese legislation of 11.52 square metres and a conversion factor of 0.4:1, the audit firm established that 28.8 square metres were required for each car space to provide for common areas. The market value arrived at was of €1,210 per square metre. While most assumptions applied for the other elements remained unchanged, the agency fee was set at 5.9 per cent, the profit margin established as 12.5 per cent on market value, and a discount rate determined as 5.4 per cent. Based on these parameters, the audit firm concluded that the present value of airspace for the parking development was nil per square metre.

3.5.24 The final element in the valuation was the airspace of the 4-star Fortina Hotel. The audit firm noted that the restrictions imposed on the land limited use solely to the operation of a hotel. Consequently, it was necessary to determine the value of the land contingent on such use. The valuation of the hotel was based on a comparative analysis of 4-star hotels listed on the Malta Stock Exchange. The audit firm based its assessment on the gross operating profit of these hotels as a proxy and calculated the average gross operating profit multiple. The resulting gross operating profit per available room for these hotels was estimated at €18,774, while its average multiple was 7.6 times. The estimated resultant value per room was €142,682, which when considered in terms of a 60 square metre 4-star hotel room (inclusive of common areas and other amenities) resulted in a value of €2,371. An equity internal rate of return of 16.9 per cent for hotels in 2018, referenced through a third-party study, was applied. Assumptions relating to development cost, professional fees, input VAT, development period, selling period, and interest payable on development cost remained unchanged; however, a real interest rate of 6.3 per cent was applied. In terms of these parameters, the airspace value for the hotel development was determined as €50 per square metre.

3.5.25 The audit firm summarised the present value of the airspace on a per square metre basis corresponding to each component of development as illustrated in Figure 14. Noted by the audit firm was that the present value of the airspace was to be used in the event that Fortina paid the entire waiver payment upfront. Were payment deferred until the project was finalised, then the value of the airspace to be paid to the Government was the value at project completion.

Figure 14 | Audit firm’s valuation of airspace per square metre for the different development components

	Residential	Office	Retail	Parking	Hotel
Market value					
Gross selling value per saleable (net) area (€)	6,500	400	650	3,025	
<i>Conversion factor – net area to gross area</i>	85.0%	80.0%	50.0%	40.0%	
Gross market value (€)	5,525	5,333	5,417	1,210	
Less commission paid to agents (€)	(326)	(262)	(266)	(71)	
Less final withholding tax (€)	(553)	(533)	(542)	(121)	
Net market value (€)	4,647	4,538	4,609	1,018	2,371
Development cost					
Construction, finishing & furnishing costs (hotel only) (€)	(1,416)	(1,350)	(1,500)	(610)	(1,525)
Professional fees (€)	(96)	(108)	(120)	(49)	(122)
MEPA levy (€)	(6)	(12)	(12)	(11)	(12)
Interest paid (€)	(104)	(97)	(106)	(69)	(102)
Total development cost (€)	(1,622)	(1,567)	(1,738)	(739)	(1,761)
Profit element					
<i>Developer’s profit margin</i>	25.0%	25.0%	25.0%	12.5%	17.0%
Developer’s profit (€)	(1,381)	(1,333)	(1,354)	(151)	(403)
Value of airspace					
Value of airspace if paid on project completion (€)	1,644	1,637	1,517	128	207
Impact of discounting (€)	(514)	(447)	(447)	(128)	(159)
Present value of airspace (€)	1,130	1,190	1,070	0	50

3.5.26 Considering all parameters, the audit firm determined the present market value of the proposed development of the residential, office, retail and parking components of the project on a freehold basis as €19,178,375 (Figure 15), while the permissible development of the 4-star hotel was set at €836,816. Therefore, offsetting the airspace value of the hotel from that of the proposed development resulted in a valuation of the waivers to be granted by the Government as €18,341,559. The audit firm considered the possibility of the Lands Authority consenting to the deferral of the waiver payment until completion of the development. In this event, the payment due by Fortina for the waiver would increase by €5,546,383 to €23,887,942.

Figure 15 | Audit firm’s valuation of the waivers in present terms and on completion of the project

	Square metre	Portion of land purchased from Government	Present value in €/m ²	Present value in €	Value on completion in €/m ²	Value on completion in €
Proposed development						
Residential	15,750	65.7%	1,130	11,701,119	1,644	17,020,543
Offices	8,078	65.7%	1,190	6,320,031	1,637	8,695,396
Retail	1,645	65.7%	1,070	1,157,226	1,517	1,640,604
Total				19,178,375		27,356,542
Current development						
Hotel	25,473	65.7%	50	836,816	207	3,468,600
Value of waivers				18,341,559		23,887,942

Note:

1. The portion of land purchased from the Government was set at 65.7 per cent through the deduction of the site measuring 620 square metres acquired by Fortina from third parties. The total area considered measured 1,810 square metres, of which 1,190 square metres were acquired from the Government. The 1,190 square metres correspond to 65.7 per cent of 1,810 square metres.

3.5.27 Finally, the audit firm recommended that the Lands Authority introduce a proviso in the deed of waiver whereby any further development over and above that captured in PA/03913/18 would entail the payment of an additional consideration by Fortina to the Government.

3.5.28 In its review of the valuation by the audit firm, the NAO sought clarification regarding why no value was assigned to the part of the site designated for use as a parking area. In explanations provided, the audit firm noted that, despite its significant size, the parking area was considered as contributing to the overall development value rather than being considered as an element of the project warranting a separate value. The rationale for not assigning a distinct value to the parking area was that its contribution was already captured in the overall value of the development. According to the audit firm, without the parking area, the remainder of the development would not be viable, meaning that parking served as an integral part of the overall project. Therefore, while the parking area had value, the value was embedded within the valuation of the other components of the site.

3.5.29 Having established that the audit firm had concluded the valuation of the waivers sought by Fortina and given that this report was not acknowledged by the BoG Lands Authority either through direct correspondence with the audit firm or during proceedings of the Board, the NAO sought to better understand the interaction between the audit firm and the Authority. Specifically, this

Office sought to establish whether the report was referred to anyone in particular and requested supporting documentation in connection therewith. In submissions to the NAO, the audit firm stated that the report was sent to the Chair BoG Lands Authority. According to the audit firm, the Chair subsequently requested a meeting wherein the contents of the report were discussed. Although no records of this meeting were retained, the audit firm indicated that it likely happened in April 2019, shortly after the submission of the valuation report. Furthermore, the audit firm noted that it was unaware of what action the Chair took within the internal structures of the Lands Authority with respect to its report. Additionally, this Office ascertained that the Lands Authority did not seek any clarification or raise any queries regarding the report drawn up by the audit firm.

3.5.30 In a meeting with the NAO, the audit firm reiterated the information provided and confirmed that the submission of the valuation report was made solely to the Chair BoG Lands Authority. According to the audit firm, during its meeting with the Chair, he indicated that the valuation report would create problems for him. Elaborating, the audit firm explained that the problem arose from the higher value assigned by the firm for the rescission of conditions. Faced with this reaction, the audit firm offered to revise the report if it contained any factual inaccuracies or faulty assumptions; however, no further feedback was received thereafter. The audit firm confirmed that this was the only meeting held with the Chair during which the valuation was discussed.

3.5.31 The NAO sought to corroborate the information provided by the audit firm through other sources. A query to this end was made to the Lands Authority, with the NAO seeking visibility over meetings between the Chair BoG Lands Authority and the audit firm through a review of the Authority's visitors log. The NAO identified an entry dated 3 April 2019 as the most likely record of the meeting held, for the audit firm was listed as the visitor, the Secretary BoG Lands Authority was indicated as the host (the incumbent CEO Lands Authority informed the NAO that persons meeting the Chair BoG Lands Authority would be registered either under the Secretary BoG Lands Authority or the Chair's personal secretary), and the meeting occurred shortly after the submission of the valuation report and within the timeframe recalled by the audit firm. This understanding was confirmed by the audit firm. In turn, this Office made enquiries with the Secretary BoG Lands Authority, who indicated that she was not aware of any other meeting between the Chair BoG Lands Authority and the audit firm other than the initial meeting held on the latter's engagement. The Secretary BoG Lands Authority confirmed that no valuation by the audit firm was brought to the attention of the Office of the Chair BoG Lands Authority until 8 April 2019, that is, the point when her role as Secretary to the Board ceased.

3.5.32 In view of the critical importance of the valuation, the NAO explored whether the Chair BoG Lands Authority relayed the submission by the audit firm to the other members of the Board. The Deputy Chair BoG Lands Authority confirmed to the NAO that the valuation report drawn up by the audit firm was not presented to the BoG Lands Authority. Additionally, the Deputy Chair informed this Office that, following queries received from the NAO in connection with this audit, the Lands Authority made enquiries with the audit firm, which confirmed its submission of the valuation report shortly after it was commissioned. This development was of concern to the Deputy Chair, who questioned why the report was never referred to the BoG Lands Authority and why the outstanding fee, payable on completion, was not settled by the Authority. The Deputy Chair

emphasised that payments of the sort were ordinarily endorsed by the Board; however, in this case, the Board did not authorise the remaining fee due to the audit firm. Although the Deputy Chair acknowledged that the Chair BoG Lands Authority had documented that the audit firm report had not yet been submitted when this was not so, he maintained that this was uncharacteristic of the Chair.

- 3.5.33 In turn, the Opposition MP on the BoG Lands Authority expressed concern regarding the fact that this valuation was concealed from the Board, and worse still, the falsehood that it had not been submitted. Aggravating matters was that the Opposition MP on the BoG Lands Authority had enquired as to the pending status of the valuation sought from the audit firm, yet no response was provided. According to him, the submission of this valuation must have come to the attention of Fortina, as such awareness would explain its sudden acceptance of the value established by the Architects Lands Authority.
- 3.5.34 According to the Government MP on the BoG Lands Authority, the Board was not provided with the valuation undertaken by the audit firm and was not aware of its meeting with the Chair. Consistent with this assertion by the Government MP on the BoG Lands Authority was that, between March and June 2019, the Board had enquired as to the outcome of the assignment to the audit firm and feedback in this respect was always that this was still pending. He contended that the BoG Lands Authority acted appropriately with the information that it had in hand. Moreover, according to the Government MP on the BoG Lands Authority, prior to referral to the Minister and the Parliamentary Secretary, the Board resolved to request the audit firm to conclude its assignment, which request was to be made by the Chair BoG Lands Authority. Nevertheless, the NAO noted that no record of this intervention, or other similar efforts made by the BoG Lands Authority, were captured in the minutes of the Board.
- 3.5.35 In testimony to the NAO, Fortina claimed that it was unaware of the valuation commissioned by the BoG Lands Authority and undertaken by the audit firm. When queried by this Office on whether the significantly higher value arrived at by the audit firm influenced its decision to accept the Authority's valuation, namely that undertaken by the Architects Lands Authority, Fortina vehemently denied this.
- 3.5.36 The NAO's gravest concerns emerge when one considers the actions of the Chair BoG Lands to conceal the valuation report drawn up by the audit firm. Based on the evidence reviewed, the NAO concluded that the Chair's assertion that the report remained pending was false, a misrepresentation that served the interests of third parties rather than the public interest. The extent of evidence in hand shows that the Chair BoG Lands Authority acted with intent in his efforts to hide the valuation report, informing the audit firm that the significantly higher value arising from the comprehensive valuation of the waivers sought would cause problems. Through his actions, the Chair BoG Lands Authority misled the Board, the Minister and the Parliamentary Secretary, and ultimately Parliament, when stating that the audit firm's report remained pending, when this was already in his possession. Nevertheless, the NAO did not exclude the possible involvement of others in this matter, for later developments attested to and supported this understanding. Fortina's acceptance of the valuation by the Architects Lands Authority, which was significantly lower than that established by the audit firm, some weeks after the audit firm

submitted its valuation to the Chair also drew this Office's attention, for the absence of any documented interaction and the timing of acceptance were deemed suspect.

- 3.5.37 Following the conclusion of its engagement, the audit firm invoiced the Lands Authority for the remaining 80 per cent of the fee on 12 April 2019. This invoice, in contrast with that initially submitted, was addressed to the Chair BoG Lands Authority. The audit firm clarified that this invoice was addressed to the Chair at his specific instruction. The NAO established that the Lands Authority did not settle this invoice, for the audit firm issued a corresponding credit note to the Authority on 12 September 2019, effectively offsetting the amount due. The credit note was issued to the former CEO Lands Authority²⁵, again understood by this Office as a minor oversight on the part of the audit firm. Following queries by the NAO, the Lands Authority maintained that there was no explanation on file as to why the invoice for the balance of the fee payable to the audit firm was cancelled through the issuance of the credit note. In submissions to this Office, the CEO Lands Authority stated that he was not aware that the audit firm had submitted a valuation report to the Chair BoG Lands Authority and recalled that during parliamentary debates, reference was made to the fact that the report was either not completed or delivered. In addition, the CEO Lands Authority indicated that he could not recall any information relating to the credit note and maintained that had this been brought to his attention, he would have referred it to the Chair and the BoG Lands Authority.
- 3.5.38 Having exhausted the line of enquiry regarding the outstanding 80 per cent of the fee with the Lands Authority, the NAO's efforts were redirected towards the audit firm. Following enquiries to this effect, the audit firm informed this Office that it had received instructions to issue a credit note to the Authority for the balance due and issue invoices to the OPM instead. In testimony to the NAO, the audit firm informed this Office that it was the Chair BoG Lands Authority who had instructed the redirection of invoices to the OPM and who had specified that these invoices were to be referred for the attention of the Chief of Staff OPM. The pending amount was divided into three invoices, issued on 31 July 2019, 31 August 2019 and 30 September 2019, all submitted for the attention of the Chief of Staff OPM.
- 3.5.39 According to the audit firm, after issuing fresh invoices to the OPM, it was summoned for a meeting with the Chief of Staff OPM. No other representatives of the Government were present. During this meeting, the audit firm was requested to explain the basis of its valuation. Again, the audit firm offered to revise its valuation report if any of its assumptions were flawed or its facts incorrect; however, no challenges in this regard were forthcoming. The audit firm was unable to provide the NAO with the date when this meeting was held; yet it indicated that it likely occurred sometime after the issue of the credit note to the Lands Authority and the invoices to the OPM. The NAO sought to corroborate what was stated by the audit firm with the Chief of Staff OPM; however, he informed this Office that he could not recall this meeting. While he did not contest that asserted by the audit firm, the Chief of Staff OPM referred to the considerable time lapse since. Enquiries with the OPM also proved to no avail for the Ministry noted that no entries for visits by the audit firm were captured in the visitors' logbook between August and October 2019.

²⁵ The credit note, dated 12 September 2019, was addressed to the former CEO Lands Authority, who had been replaced by the CEO Lands Authority in July 2018.

- 3.5.40 Following this meeting with the Chief of Staff OPM, the relevant invoices, now issued to the OPM, were settled. The NAO confirmed that all payments were effected on 21 October 2019 and 23 October 2019. This Office noted that the invoices were certified for payment by the Chief of Staff OPM.
- 3.5.41 The NAO deemed the referral of the invoices for amounts due by the Lands Authority to the OPM anomalous, for this Ministry bore no evident connection to the Authority or the Fortina case. Given that the invoices were directly referred to the Chief of Staff OPM, this Office sought to ascertain the basis and extent of his involvement in this matter. Prompted by the NAO, the Chief of Staff OPM recollected that his first involvement in the Fortina case was connected to the interest expressed by an established gaming company in setting up office in Malta. The company planned to lease the offices that Fortina intended to develop on its site. The Chief of Staff OPM indicated that the company met the then Prime Minister and Hon. Silvio Schembri, then Parliamentary Secretary for Financial Services, Digital Economy and Innovation. Elaborating on his involvement, the Chief of Staff OPM stated that Fortina met with him and the Prime Minister in an effort to conclude negotiations, thereby rendering possible the investment envisaged by the gaming company.
- 3.5.42 The Chief of Staff OPM maintained that meetings held with Fortina related to the Government's efforts to attract foreign investment and likely occurred prior to June 2017. He also referred to the lengthy process of planning sanctioning that ensued, with the Chief of Staff OPM noting that the gaming company warned of possible withdrawal from its intended investment. Elaborating, the Chief of Staff OPM referred to the weekly meetings held relating to major development and investment projects, including that of Fortina, which were attended by the Prime Minister, the Deputy Prime Minister, the Minister responsible for lands, the CEO PA and the CEO Lands Authority. In addition, the Chief of Staff OPM recalled other meetings relating to the Fortina site with the Chair BoG Lands Authority and the CEO Lands Authority. Although the Chief of Staff indicated that these meetings were held in 2017, the NAO noted that the CEO Lands Authority took office in mid-2018, implying that these meetings may have happened later than recalled. Of concern to the NAO was that, in later submissions, the Chief of Staff OPM contended that he never discussed the matter with the Chair BoG Lands Authority and the CEO Lands Authority; however, referred to the latter's friendship with Fortina which, in his opinion, rendered resort to the OPM redundant.
- 3.5.43 In turn, the Prime Minister recalled receiving correspondence from Fortina around October or November 2018 drawing his attention to the fact that Fortina was not getting any traction on its request regarding the deed of modification of conditions sought. The Prime Minister informed the NAO that a meeting was convened in the following days or weeks, and was attended by Fortina, the Chief of Staff OPM and himself. During this meeting, Fortina explained that the delays and lack of contact from the Lands Authority could lead to it defaulting on a property deal with a third party. According to the Prime Minister, as a government, the third party was one of its prime targets for relocation to Malta in a post-Brexit scenario, particularly in view of its significant addition to the local gaming ecosystem. The Prime Minister tasked the Chief of Staff OPM to look into the matter and to request the Lands Authority to follow up. He could not recall any further involvement until the matter was brought to the attention of Cabinet and Parliament. The Prime Minister referred to the discussions that ensued during the NAOAC and maintained that nothing

irregular was flagged during the proceedings, which were then followed by a Plenary debate. In further submissions, the Prime Minister referred to Legal Notice 196/2024, titled 'Amendment or Revocation of a Condition Imposed in a Contract of a Property Transferred by the Government, the Lands Authority or Ecclesiastical Entities by means of a Sale or Emphyteusis Regulations, 2024' which, he maintained, was uncontested. The Prime Minister noted that this Legal Notice established clear guidelines and principles in approaching situations similar to the case under review in this audit. While this Office concedes that the subject matter addressed by the Legal Notice is relevant, its coming into force in August 2024 rendered it inapplicable to the case.

- 3.5.44 Queried on the involvement of the Chief of Staff OPM, the Minister stated that he was unaware of this and that he had never spoken to him on the matter. The Minister affirmed that the Chief of Staff OPM would ordinarily be present for Cabinet meetings, understood by the NAO as implying that the Chief of Staff OPM would have been aware of developments relating to Fortina's request raised during Cabinet meetings. Additional enquiries were made with the Minister on whether he spoke to the Prime Minister about this case. The Minister indicated that all his interactions with the Prime Minister on the matter were publicly known or related to the coordination of the process of parliamentary scrutiny.
- 3.5.45 Regarding the payment of invoices by the OPM, the Chief of Staff OPM contended that such payments would ordinarily be endorsed by the Principal Permanent Secretary following assertion of the validity of claims for payment. In this case, the Chief of Staff OPM maintained that the deed with Fortina was sanctioned by Cabinet; however, he informed the NAO that he could not disclose any information relating to this process. Seeking to clarify his involvement, the Chief of Staff OPM emphasised that he could not effect any payments on behalf of the Government, particularly those unrelated to his Ministry. Notwithstanding that stated, the NAO obtained evidence that the Chief of Staff OPM had authorised the settlement of the invoices issued by the audit firm.
- 3.5.46 The Chief of Staff OPM argued that he had no reason to request the Chair BoG Lands Authority to redirect the invoices to him and denied that he had ever met or discussed the matter with the audit firm or requested that invoices originally sent to the Lands Authority be channelled to the OPM. What was stated by the Chief of Staff OPM raised concerns for the NAO, as information provided to this Office by the audit firm cast doubt or belied what was asserted. In this respect, the audit firm maintained that the Chair BoG Lands Authority instructed it to submit the invoices to the Chief of Staff OPM and provided a relatively detailed account of its meeting with the Chief of Staff OPM. The strongest evidence refuting that claimed by the Chief of Staff OPM remains the fact that he authorised the settlement of invoices raised when there existed no link or connection between the OPM and the work of the Lands Authority on the Fortina case.
- 3.5.47 An interesting element of context regarding the interactions between the Chair BoG Lands Authority and the Chief of Staff OPM was provided to the NAO by the latter. In testimony, the Chief of Staff OPM indicated that he met the Chair once or twice and recalled his unease with the situation, understood by this Office as reference to the incomplete valuation commissioned by the former CEO Lands Authority. The Chief of Staff OPM maintained that it was this unease that led to the commissioning of another valuation by the Chair BoG Lands Authority. In the latter's support, the Chief of Staff OPM argued that, in the circumstances, it was convenient to scapegoat the Chair.

- 3.5.48 On his awareness or otherwise of the valuation report compiled by the audit firm, the Chief of Staff OPM maintained that he was usually not involved at this level and that his efforts were generally focused on facilitating the envisaged investment, without delving into the detailed tasks necessary for its realisation. The Chief of Staff OPM was unsure whether the Chair BoG Lands Authority had informed him of the valuation by the audit firm. This point was deemed important by the NAO for the Chief of Staff OPM was the only Government representative, aside from the Chair BoG Lands Authority, for whom evidence indicating awareness of the existence of the audit firm's valuation report was traced. In addition, the Chief of Staff OPM was unsure whether this valuation was referred to Cabinet and maintained that he had no access to such records.
- 3.5.49 Requested to indicate whether he exerted any pressure to make a decision that favoured Fortina, or if any pressure was put on him to influence his actions, the Chief of Staff OPM denied any such intervention. Prompted by the NAO as to whether he was aware of anyone else who might have been pressured or influenced in this regard, the Chief of Staff OPM asserted that he was not aware of any such instance and emphasised that making assumptions about others would be unfair. The Chief of Staff OPM clarified that friendships or associations did not necessarily imply wrongdoing or financial impropriety, and added that if someone was subsequently offered employment, it did not inherently indicate any unethical behaviour, even if previously employed with the Government. The Chief of Staff OPM concluded by stating that such situations were well-known and did not necessarily imply misconduct. Regardless, the NAO maintains an element of reservation on what was stated. The situation, where officials in positions of influence within the Government move to related private sector employment, raises ethical concerns relating to revolving doors, especially since public trust may be undermined due to potential conflicts of interest.
- 3.5.50 The NAO deemed the involvement of the Chief of Staff OPM in settling fees due to the audit firm for work undertaken on behalf of the BoG Lands Authority as anomalous and questionable. The Chief of Staff OPM could not recall significant developments relating to his involvement in this respect and denied the authorisation of payments when the NAO obtained evidence to the contrary. Seen in isolation, the involvement of the Chief of Staff OPM may appear innocuous; however, a more troubling understanding emerges when seen in conjunction with other shortcomings. First, the evidence sourced by the NAO in relation to the payments made to the audit firm by the OPM shows that, aside from the Chair BoG Lands Authority, the Chief of Staff OPM was another official aware of the existence of the valuation. Concerns regarding the discrepancy between the audit firm's valuation and that levied by the Government have already been raised. Second, there existed no legitimate link between the role of the Chief of Staff OPM and his settling of the fees due by the Lands Authority to the audit firm. The NAO considered the actions by the Chair BoG Lands Authority in redirecting amounts payable to the OPM and the acceptance of the Chief of Staff OPM to settle these fees as part of an effort to obscure the valuation by the audit firm. Third, the unusual circumstances surrounding the case would ordinarily facilitate recollection, as was the case with the audit firm, that recalled its meeting with the Chief of Staff OPM.
- 3.5.51 One final point of grave concern to the NAO in relation to the valuation by the audit firm related to the response of the Lands Authority to queries made by this Office regarding the existence of this valuation. The NAO's request to the Lands Authority for the audit firm's valuation report

was made on 20 March 2023. In the reply of 27 July 2023, the CEO Lands Authority informed this Office that the only references in the files of the Authority to the commissioning of this advice from the audit firm were the minutes of the BoG Lands Authority meeting dated 1 March 2019, the point at which the Board was informed of the firm's engagement, the minutes of the Board meeting of 14 June 2019, wherein it was stated that the valuation report by the audit firm had not yet been submitted, and a reiteration of this in the letter to the Minister by the Chair BoG Lands Authority on 17 June 2019. As indicated in paragraphs 3.5.10 and 3.5.11, the NAO only managed to source the valuation following enquiries made directly with the audit firm. The NAO's concern on this matter emerged when this Office became aware that the Lands Authority was cognisant of and had access to the valuation report by the audit firm on 3 April 2023, that is, several months prior to the Authority informing the NAO that it had no record of the valuation in its files. The evidence supporting this was internal correspondence exchanged by officials of the Lands Authority. This sequence of events broadens the culpability of the Lands Authority in concealing the valuation by the audit firm, for its malign effort was no longer restricted to 2019, that is, the point when the valuation report was received, but now extended to 2023, when the Authority withheld the valuation from the NAO.

3.6 The oversight process

3.6.1 Referral by the BoG Lands Authority of the request for waivers sought by Fortina to the Minister and the Parliamentary Secretary effectively triggered the process of political oversight that would lead to the Government consenting to remove the limitations burdening the site against payment. Oversight comprised four processes, that is, consideration by the Minister and the Parliamentary Secretary, followed by referral to Cabinet, the review of the NAOAC, and concluded with the endorsement by Plenary. The NAO's analysis of the facts related to each of these processes is delved into in turn.

Ministerial review

3.6.2 In the correspondence submitted to the Minister and the Parliamentary Secretary on 17 June 2019, the Chair BoG Lands Authority referred the request for waivers by Fortina for their consideration and for possible address through a parliamentary resolution. On 10 July 2019, the Parliamentary Secretary, acting on behalf of the Minister, presented a parliamentary resolution to the NAOAC. The NAO established that this was in accordance with the provisions of the Government Lands Act. Article 31(c) of this Act specified that, "No land which either belongs to the Government or which is either possessed, kept or 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: ... (c) in accordance with a special resolution of the House of Representatives which is in force at the time of the disposal ...".

3.6.3 The NAO sought to establish the facts related to the evaluation undertaken by the Minister and the Parliamentary Secretary following receipt of the aforementioned correspondence. Queried to this effect, the Parliamentary Secretary indicated that the Chair BoG Lands Authority had informed him about the work being undertaken relating to the request by Fortina and that once the valuation was finalised this was to be submitted for the approval of the Board. Following

the Board's approval, the Chair referred the matter to the Parliamentary Secretary, who then informed the Minister that the Board was recommending referral to Cabinet. The Parliamentary Secretary asserted that he met with the Chair on a fortnightly basis and that the rationale behind the Board's decision and referral to Cabinet was reiterated by the Chair in one of these meetings. According to the Parliamentary Secretary, the Chair briefed him on the questions that would likely be raised by Cabinet and proposed responses thereto. Elaborating, the Parliamentary Secretary maintained that the Minister was regularly updated on developments.

- 3.6.4 In submissions to the NAO, the Minister indicated that when, in April 2017, Fortina requested the rescission of conditions burdening land it had acquired from the Government, he was not the minister responsible for lands. The Minister understood that a strategic decision to this effect was taken prior to his appointment in June 2017, for he contended that the Lands Authority had, by then, already initiated the process and that he was not approached as to whether the rescission of conditions was in line with government policy.
- 3.6.5 Moreover, the Minister contended that his role, as defined in the Lands Authority Act, was limited to matters of policy and not to aspects linked to the process itself. Elaborating, the Minister referred to the differences in ministerial responsibility arising under the scenario when the GPD was regulated in terms of the Public Administration Act (Chapter 497) and that when set up as the Lands Authority in terms of the Lands Authority Act (Chapter 563). Under the previous regime, the minister was tasked with the general direction and control of all departments, agencies and entities of the government under his or her responsibility and could give direct instructions to the head of department, chief executive or board of directors or any employee reporting thereto. This changed through the enactment of the Lands Authority Act and the Government Lands Act (Chapter 573), with Article 3 of the latter specifying that the Authority was now "responsible with the administration of all the land that belongs to the Government and it also administers any other land that does not belong to the Government however it is possessed or held or administered by the Government." According to the Minister, with the establishment of the Lands Authority, the minister lost the general direction and control of the Authority now tasked with the disposal of public land, or, as was the case in this instance, delegated this power to the House of Representatives by virtue of Article 31 of the Government Lands Act.
- 3.6.6 The Minister provided further context to his role, for his focus was influenced by the backdrop of the Lands Authority. He indicated that the daily direction of the Authority fell under the responsibility of the Parliamentary Secretary, in whom he had full trust. Nevertheless, the Minister referred to several governance issues that beleaguered the Lands Authority. The Minister referred to disagreements in leadership between the Chair BoG Lands Authority and the CEO Lands Authority, with the Minister having to intervene repeatedly to mediate between the two. According to the Minister, this tension was partly due to how the Authority was set up in terms of law. He referred to the governance structure of the Lands Authority as unique in that governors, rather than directors, were appointed to the Authority's board. Their constitution as governors afforded them the powers and responsibilities necessary for the execution of their role. Moreover, he referred to the Prime Minister's role in their appointment and their required technical and professional competencies. The Minister acknowledged that long-standing governance challenges in the management of public land were exacerbated by past cases of mismanagement, several of

which were reported on by the NAO in previous audits. These cases contributed to the push for reforms to reduce political influence and enhance accountability. The Minister referred to the reform being intended to empower technical and professional experts over political appointees, thereby ensuring that decisions were based on expert assessment rather than patronage.

- 3.6.7 Requested to elaborate on the role of the Minister in connection with transactions of public land, he maintained that his role was to provide policy direction, not to get involved in operational details or technical evaluations of transactions. The Minister noted that he was responsible for deciding on high-level policy issues and intentionally avoided intervening in specific cases. He highlighted that decision-making on technical matters within the Lands Authority rested with qualified professionals and emphasised that these individuals were better equipped to handle such evaluations than the Minister. The Minister argued that his hands-off approach was consistent with the reform that had led to the setting up of the Lands Authority, intended to ensure governance without undue political influence.
- 3.6.8 The NAO sought to better understand the nature and extent of ministerial oversight exercised in the disposal of public land of materiality. The Minister questioned what was intended by this and argued that oversight was the responsibility of the BoG Lands Authority, whose governors were full-time appointees and referred to media and parliamentary scrutiny as supplementary to this function. Whilst the NAO is of the opinion that the Lands Authority Act assigned certain functions of oversight to the minister, reference is made to the decision by the Commissioner for Standards in Public Life, Chief Justice Emeritus Joseph Azzopardi in Case No. K/047 dated 14 August 2025.
- 3.6.9 Queried as to the action taken by the Minister in connection with the receipt of the correspondence submitted by the Chair BoG Lands Authority on 17 June 2019, the Minister stated that he was not regularly updated on individual transactions by the Lands Authority, including that of Fortina. While the Minister conceded that he was generally aware of processes occurring within the Authority, specific updates on negotiations or transaction progress were not brought to his attention. The Minister clarified that he was not directly involved in the Fortina transaction or its negotiations and emphasised that such matters were typically handled by the Lands Authority, possibly overseen by the Parliamentary Secretary. However, the Minister did not deny general knowledge of Fortina's request to rescind conditions but emphasised that he was not informed of and did not ask for any specific details regarding the case. As to who was negotiating with Fortina on behalf of the Government, the Minister referred to this as being within the remit of the Lands Authority. In addition, the Minister affirmed that he had not discussed any aspect relating to the request made by Fortina with it or any of its representatives.
- 3.6.10 When the NAO raised the matter as to whether the BoG Lands Authority was referring the matter for the consideration of the Minister and the Parliamentary Secretary or recommending the rescission of conditions on the Fortina site, the latter noted that he had evaluated the correspondence by the Board with the Chair and possibly with the Minister. When considering the Chair's proposal to seek Cabinet's authorisation, the Parliamentary Secretary understood that this implied an outright recommendation rather than a mere referral.

- 3.6.11 A stronger reaction was elicited from the Minister when requested to comment on the correspondence sent by the Chair BoG Lands Authority on 17 June 2019, particularly on whether this constituted a referral or a recommendation. In submissions to the NAO, the Minister indicated that he had reprimanded the Chair following the receipt of this correspondence for its intent was unclear. The Minister chastised the Chair BoG Lands Authority on grounds that this was his full-time role and that he had all the resources required for fulfilling it, and consequently the Minister deemed it unacceptable for the Chair to obfuscate what was sought.²⁶
- 3.6.12 According to the Minister, during this exchange with the Chair BoG Lands Authority, the Minister made it clear that he would not consider the Chair's final statement of his correspondence (which read, "Kif għie deciz mill-Bord is-sottoskritt qiegħed jibgħat dan l-inkartament lill-Onorevoli Ministru biex jevalwa jridx jipprezenta xi Riżoluzzjoni Parlamentari"²⁷) and that he would inform Parliament that the Chair had considered all that was necessary and submitted a recommendation to him. The Minister informed the Chair that if he believed that the referral was to be disregarded, then he was to withdraw it and submit a different recommendation. He stated that the Chair informed him that no such action was required as the recommendation was valid and that the Minister could proceed. The Minister referred to previous minutes of the BoG Lands Authority and argued that these did not reflect the ambivalence captured in this correspondence. Following this exchange, the Minister referred the matter to Cabinet.
- 3.6.13 In initial submissions to the NAO, the Minister indicated that during the meeting held between the Minister and the Chair BoG Lands Authority following the 17 June 2019 correspondence, aside from the possible presence of the Parliamentary Secretary, no other officials were present. In the affidavit subsequently submitted to the NAO, the Minister maintained that the Parliamentary Secretary was present for this meeting. In turn, the Parliamentary Secretary did not exclude the possibility of a meeting involving the Minister, the Chair and himself.
- 3.6.14 In the affidavit submitted, the Minister argued that, as indicated by the Chair BoG Lands Authority, through the Parliamentary Secretary, he as Minister had no other option but to give notice to the Clerk of the House and propose the resolution. The Minister reinforced this argument through reference to statements made during the proceedings of the NAOAC by the Government MP and Opposition MP members of the BoG Lands Authority. In essence, the Government MP noted that the Minister could proceed with a parliamentary resolution, while the Opposition MP on the BoG Lands Authority indicated that the Board did not endorse the transfer but approved that the contract be referred to Parliament.²⁸

²⁶ In reference to the Chair's obfuscation of that sought, the Minister's precise words, an element of which is lost in translation, were "u lili toqgħodx tilgħabli bid-diskors".

²⁷ As decided by the Board the undersigned [Chair BoG Lands Authority] is submitting this documentation to the Honourable Minister to assess whether he wishes to present a Parliamentary Resolution.

²⁸ The relevant excerpts of the interventions by the Government MP and Opposition MP members of the BoG Land Authority highlighted by the Minister were: [Government MP] Jigifieri fejn qed jintqal "għie approvat mill-Bord tal-Gvernaturi tal-Awtorità tal-Artijiet" qed issir referenza għall-fatt li l-Ministru jista' jipprocedi permezz ta' riżoluzzjoni parlamentari, u mhux l-approvazzjoni tal-kuntratt per se. [Opposition MP] Jigifieri qed nikkonfermaw li l-Bord tal-Gvernaturi ma approvax dan it-trasferiment imma approva li l-kuntratt jitressaq quddiem il-Kamra.

- 3.6.15 Some points of note emerge in this regard. First, it is pertinent to note that the correspondence submitted by the Chair BoG Lands Authority to the Minister reflected the uncertainty registered in the minutes of the Board meeting of 14 June 2019, where the Board opted to merely refer the matter for the consideration of the Minister, an understanding confirmed by several members in later submissions to the NAO. Second, the mere fact that the Minister challenged the Chair BoG Lands Authority to indicate whether the Board was making a recommendation or not confirms that the correspondence fell short of an outright decision.
- 3.6.16 On these points, the NAO enquired why the Minister did not refer the matter back to the BoG Lands Authority given the acknowledged ambiguity and in view of Articles 13(c) and 13(d) of the Lands Authority Act (see paragraph 3.4.47), which provide for this course of action. In response, the Minister maintained that it was not his role to intervene in this respect, that following their interaction the Chair BoG Lands Authority conceded that the Board was recommending the rescission, and that the Minister had merely relayed the Board's submission onwards.
- 3.6.17 In testimony provided to the NAO, the Minister was critical of how the BoG Lands Authority was reluctant to assume responsibility and recommend or otherwise to the Minister in a clear manner despite the many hours clocked and corresponding remuneration received. The Minister deemed the Board's shifting of responsibility for the decision onto him as unfair, and it was in this context that the Minister directed the Chair BoG Lands Authority to indicate whether the Board was recommending the rescission of the conditions or otherwise.
- 3.6.18 The Minister sought to dispel any reluctance by the Lands Authority to recommend, or the possibility of the Minister to revert the matter to the Authority, through reference to exchanges that ensued the meeting with the Parliamentary Secretary and the Chair BoG Lands Authority. As part of the affidavit, the Minister included excerpts of emails between the Parliamentary Secretary and the Chair BoG Lands Authority in relation to the drafting of the memorandum to Cabinet. Based on these excerpts, the NAO understood that on 24 June 2019, the Parliamentary Secretary submitted a draft of the memorandum for the consideration and possible revision of the Chair. Later that day, the Chair proposed a few amendments. According to the Minister, these exchanges confirmed that the Lands Authority acted in its civil and legal capacity and recommended that the matter be referred to Parliament for it to decide.
- 3.6.19 Further criticism levelled by the Minister at the Board was prompted following an enquiry by the NAO relating to the considerable lapse between the date of the valuation of the Architects Lands Authority and the Board's referral to the Minister. In this respect, the Minister emphasised that the BoG Lands Authority spent two and a half years working on this case.
- 3.6.20 The NAO also enquired on the deduction of duty payable by Fortina to the Government instigated by the former CEO Lands Authority, which was objected to by the Architects Lands Authority and referred to in the correspondence submitted by the Chair BoG Lands Authority to the Minister and the Parliamentary Secretary. The Minister acknowledged that while this matter was cited in the correspondence, he was not requested to take any action in this regard and consequently did not pursue the matter further. He argued that the Lands Authority had recommended a value of

€8,100,000 and that he had proceeded accordingly. The Parliamentary Secretary asserted that when the correspondence was referred to him, he was of the understanding that the deduction of duty was a closed issue that had been approved by the Board. According to the Parliamentary Secretary, the Chair made scant reference to the deduction of duty during their discussions in preparation for referral to Cabinet, an issue that was similarly not raised during Cabinet deliberations.

- 3.6.21 Nonetheless, the Parliamentary Secretary indicated that he reviewed all the documents referred to him in the correspondence submitted by the Chair BoG Lands Authority. The Parliamentary Secretary deemed such review essential since the matter was to be discussed at Cabinet level. Prompted by the NAO to confirm whether his review included the status report, the Parliamentary Secretary stated that he had reviewed all the documents. However, he acknowledged that he might not have fully understood all the information provided, relying instead on the support of the Chair and the Senior Manager (Contracts) Lands Authority to assist him.
- 3.6.22 On his part, the Minister stated that he had not reviewed the documents referred with the correspondence by the Chair BoG Lands Authority of 17 June 2019. In addition, the Minister argued that he had not gone through the documentation when initially submitted, when referred to Parliament and at any stage thereafter. The Minister contended that it was not his responsibility to do so. Queried as to how the Minister could endorse, or otherwise, matters referred to him for approval without going through the relevant documents, the Minister referred to the input of his secretariat in such matters, as well as to the assistance provided by the Parliamentary Secretary and his secretariat. However, the Minister maintained that their role was that to ensure that documents cited complied with relevant legal requirements and that the verification of valuation-related matters went beyond such remit.
- 3.6.23 Given that asserted by the Minister and the Parliamentary Secretary, the NAO questioned how the concerns regarding the gaps in the valuation process raised in the status report were not addressed. The Minister indicated that he was unaware that the valuation by the Lands Authority did not capture all parts of the site subject to conditions. He maintained that these lacunae were not highlighted in the correspondence submitted by the Chair BoG Lands Authority on 17 June 2019. When informed that this issue was flagged in documentation annexed to this correspondence, the Minister reiterated that he had not reviewed this documentation. In specific reference to the status report, the Minister contended that he had no knowledge of this report prior to his meeting with the NAO and claimed that the Chair had not drawn his attention to it. This Office notes that the status report was referred to in the correspondence submitted by the Chair and attached therewith. Commenting more broadly on the fact that not all parts of the site were valued, the Minister contended that this must have been due to negligence. In actual fact, the error leading to the partial valuation of the site was detected and flagged in several instances throughout the process that eventually resulted in final agreement.
- 3.6.24 In turn, the Parliamentary Secretary indicated that he could not recall whether he was aware of the concerns relating to the gaps in the Lands Authority's valuation; however, he maintained that the Board had raised no issues in this regard. Furthermore, the Parliamentary Secretary maintained that the focus following referral by the Chair BoG Lands Authority was on the drafting

of the contract and not on the documents referred by the Chair that indicated omissions in the valuation process. Emphasising this point, the Parliamentary Secretary argued that he was not aware that only part of the site was valued by the Lands Authority and questioned why the Board had continued the process given these gaps. Furthermore, he contended that Cabinet had not drawn attention to these concerns, that similarly the NAOAC had not raised any issues, and that it was ultimately Parliament that was responsible for the authorisation of this transaction. He argued that the Government and Opposition MPs on the BoG Lands Authority had a far better visibility and understanding of the case than himself. The Parliamentary Secretary maintained that it was ultimately the Board's responsibility to decide on such matters and that it was imperative that politicians remain distant from such functions. Nevertheless, the Parliamentary Secretary conceded that he too did not enquire with the BoG Lands Authority. The Parliamentary Secretary acknowledged that in cases of public land or ownership, the Government bore an obligation to secure maximum value in the interest of the public.

- 3.6.25 On his part, the Deputy Chair BoG Lands Authority acknowledged assertions by the NAO that referral to the Minister was made at a point when there were several critical aspects that remained pending. However, the Deputy Chair maintained that the Executive did not query any of these outstanding issues, despite that attention was drawn to them in the correspondence submitted to the Minister and the Parliamentary Secretary by the Chair BoG Lands Authority.
- 3.6.26 On the valuation by the audit firm, the Parliamentary Secretary maintained that he was unaware that this had been submitted to the Chair BoG Lands Authority and that the Chair had never brought this report to his attention. The Parliamentary Secretary recalled that he and the Chair had a good relationship and expressed doubt as to how the Chair could have misled him and the other members of the Board in this manner. He maintained that the Chair was a person of integrity and that there possibly was a reason for him not divulging the audit firm's valuation report. The Parliamentary Secretary expressed his unease with the situation, arguing that it was easy to assign blame on someone who could not refute or rebut assertions made in his regard.
- 3.6.27 The matter concerning the valuation by the audit firm was also raised by the NAO with the Minister. The Minister questioned why the Chair BoG Lands Authority had, in the correspondence of 17 June 2019, informed him that the valuation by the audit firm was still pending when this was not the case.
- 3.6.28 In further testimony to the NAO on the matter, the Minister indicated that he was uncertain of when he became aware of the valuation by the audit firm, whether this resulted from discussions with the Chair immediately after receipt of the aforementioned correspondence or following the debate in Plenary, understood by the NAO as reference to the sitting held on 17 July 2019. Elaborating, the Minister stated that after becoming aware of the valuation by the audit firm, he inquired with the Chair BoG Lands Authority for an explanation. According to the Minister, the Chair informed him that this report was commissioned to assess whether another valuation was necessary, that it had several defects, that it was to be disregarded, that it had not been received and that the Authority had decided to proceed with the other valuation it had in hand. The NAO noted that the comments regarding the valuation having several defects and it not having been

received were considered contradictory. Although the Minister conceded the evident contradiction, the matter remained unquestioned, for he relied on that relayed to him by the Chair.

- 3.6.29 Following receipt of the correspondence sent by the Chair BoG Lands Authority on 17 June 2019, the Minister directed the Parliamentary Secretary to refer the matter to Cabinet. The Minister indicated that the Parliamentary Secretary or his staff drafted a Cabinet memorandum and clarified that, although he had delegated this task to the Parliamentary Secretary, he ultimately retained responsibility for it. The Minister stated that he did not discuss the matter with anyone else aside from the Parliamentary Secretary. Specific reference was made by the NAO as to whether he had discussed the matter with other Lands Authority officials or representatives of Fortina. The Minister denied interactions with both.
- 3.6.30 In disclosures to the NAO, the Parliamentary Secretary indicated that he sought the assistance of officials of the Lands Authority in the drafting of the Cabinet memorandum. The Parliamentary Secretary referred to the input of the Chair BoG Lands Authority and the Senior Manager (Contracts) Lands Authority.
- 3.6.31 A contrasting version of events was provided by the Senior Manager (Contracts) Lands Authority, who denied being involved in the drafting of the Cabinet memorandum. The Senior Manager (Contracts) recalled being assigned this task; however, she was not given access to the files and was subsequently informed by the Chair BoG Lands Authority that the Cabinet memorandum had been prepared. According to the Senior Manager (Contracts), draft Cabinet memoranda were generally prepared by the Lands Authority and referred to the Minister's secretariat for review, feedback and amendments. Ultimately, it was the Ministry that had the final say on the content to be presented. The Senior Manager (Contracts) indicated that the Authority generally provided supporting documentation, plans and draft contracts and valuations.
- 3.6.32 Concerned by the referral to Cabinet of what constituted an incomplete process, the NAO enquired with the Minister and the Parliamentary Secretary whether any undue influence or pressure was exerted on them or by them to conclude this process. Both denied being subject to or subjecting others to any coercion to act in a prescribed manner.
- 3.6.33 Similar queries were directed to Fortina, that categorically denied seeking to pressure or influence the Minister and the Parliamentary Secretary. Fortina maintained that, aside from the interactions disclosed to the NAO, it or its representatives did not exert any pressure, or try to influence, in any way, officials or persons who were involved in this process, including the Chair BoG Lands Authority. However, Fortina indicated interaction with the Prime Minister at some point during the process to push for progress on the transaction, which had stalled. According to Fortina, the focus of the discussion was to address delays and ensure that the project could move forward. Fortina could not recall specific meetings with the Chief of Staff OPM. However, Fortina indicated that an interaction likely took place after the meeting with the Prime Minister, who referred the matter to the Chief of Staff OPM. Fortina emphasised that the discussions focused on expediting the process leading to the rescission of conditions as the stalemate arising from the value ascribed to the rescission by each party was untenable to it.

Cabinet's involvement

- 3.6.34 In submissions to the NAO, the Minister indicated that the matter was referred to Cabinet on 27 June 2019. According to the Minister, the letter and all supporting documentation sent by the Chair BoG Lands Authority on 17 June 2019, whereby he referred the case to the Minister and the Parliamentary Secretary, was transmitted to Cabinet. The Minister noted that in the presentation to Cabinet by the Parliamentary Secretary, the latter explained the memorandum and drew attention to the fact that the letter by the Chair had been clarified. This reference to clarification was understood by the NAO as alluding to the fact that while the correspondence by the Chair did not recommend any particular action, according to the Minister, in subsequent interactions between him and the Chair, the latter conceded that the correspondence was recommending action. According to the Minister, Cabinet approved the memorandum as presented. On his part, the Parliamentary Secretary informed this Office that Cabinet endorsed the rescinding of conditions and that the matter was subsequently redirected to the NAOAC.
- 3.6.35 The Minister provided further context to Cabinet's scrutiny and indicated that a draft deed was presented for its endorsement. According to the Minister, during Cabinet discussions he queried the staggering of payments by Fortina to the Government. The explanation received by the Minister in this respect was that the Lands Authority was adhering to previously established practices when such a mechanism was used, with specific reference made to the acquisition of the site formerly occupied by the Institute of Tourism Studies by third parties as justification to this end.
- 3.6.36 The NAO established that the draft deed appended to the Cabinet memorandum was prepared by the Notary Public representing Fortina.
- 3.6.37 Given what was stated by the Minister and the Parliamentary Secretary, that the matter was referred to Cabinet, the NAO sought information relating to the MTIP's interaction therewith. This Office requested information relating to when submissions to Cabinet were made, what was disclosed, and the direction subsequently provided by Cabinet. The Permanent Secretary MTIP maintained that interactions with Cabinet were bound with an element of secrecy and consequently referred the NAO to liaise directly with the Cabinet Office.
- 3.6.38 Requests for information regarding Cabinet's involvement in the authorisation leading to the Government's rescission of conditions burdening the Fortina site were redirected to the Cabinet Office. In its reply, the Cabinet Office informed the NAO that, in line with advice obtained by it from the State Advocate, it was not authorised to divulge exempt documents to this Office. The only documents made available by the Cabinet Office comprised the draft deed of modification and termination, two site plans, and the valuation report drawn up by the Architects Lands Authority, which documents were subsequently disclosed as part of the parliamentary procedure and therefore were publicly available. The NAO was later informed by the Cabinet Office that it did not have in its possession any other supporting documents relating to the rescission of conditions by the Government in favour of Fortina.

- 3.6.39 The NAO sought an independent legal opinion on access to Cabinet documents. This Office was informed that while the need for the AG to have full disclosure of government documents, including those of Cabinet, was acknowledged and required for a full and thorough audit, as it stands, the law does not empower the AG to request such documentation, confirming State Advocate's advice.
- 3.6.40 This lacuna in access to documentation retained by the Cabinet Office limited the NAO's visibility over a crucial part of the process of authorisation. This Office was consequently unable to ascertain whether Cabinet's ratification was based on an informed process, which limitation curtailed this Office from determining Cabinet's involvement in this process of authorisation.
- 3.6.41 According to the Minister and the Parliament Secretary, Cabinet approved the rescinding of conditions burdening the Fortina site.

Anomalies in the parliamentary resolution

- 3.6.42 Another perspective analysed by the NAO was how the information conveyed by the BoG Lands Authority regarding Fortina's request for waivers was relayed to the NAOAC. Through this analysis, this Office sought to determine whether the information provided to the NAOAC by the Minister and the Parliamentary Secretary was sufficient for the Committee to form a comprehensive understanding and make an informed decision on what was being granted by the Government to Fortina.
- 3.6.43 However, prior to delving into this aspect of analysis, this Office sought a better understanding of the process leading to the drafting of the parliamentary resolution. According to the Parliamentary Secretary, given its legal nature, the parliamentary resolution was drafted by the Chair BoG Lands Authority and the Parliamentary Secretary's personal assistant, a lawyer by profession, and possibly the Senior Manager (Contracts) Lands Authority. The Parliamentary Secretary informed the NAO that the Chair assisted him in preparing for the anticipated scrutiny of the NAOAC, providing guidance on how he was to reply to possible queries raised.
- 3.6.44 Seeking to corroborate what was stated by the Parliamentary Secretary regarding the involvement of officials in the drafting of the parliamentary resolution, the NAO sought the views of the Permanent Secretary MTIP. In submissions to this Office, the Permanent Secretary MTIP indicated that he was not involved in the drafting of the parliamentary resolution. Queried as to whether he was aware of others involved in this process, the Permanent Secretary MTIP noted that the competent authority in this regard was the Lands Authority, and that, as a fact, political responsibility fell under the competence of the Parliamentary Secretary within the MTIP.
- 3.6.45 The Senior Manager (Contracts) denied being involved in the drafting of the parliamentary resolution. She indicated that the resolution was ordinarily prepared in tandem with the Cabinet memorandum. Elaborating, the Senior Manager (Contracts) noted that the Cabinet memorandum served as the basis for the parliamentary resolution, with the latter including greater detail.

- 3.6.46 Setting aside the inconsistencies as to who drafted the parliamentary resolution, the NAO established that, at some point, the draft was referred to the Minister. In testimony to this Office, the Minister confirmed that the resolution was based on the correspondence of the Chair BoG Lands Authority and other facts elicited by the Parliamentary Secretary. However, the Minister assumed direct responsibility for including the statement that the BoG Lands Authority was recommending the rescission of conditions.
- 3.6.47 The parliamentary resolution included information relating to the requests by Fortina for waivers of conditions burdening the sites acquired from the Government in view of the company's intended mixed use of the development. Also noted in the resolution was that Fortina was to invest €55,000,000 in this project, that the Architects Lands Authority had valued the site at €8,100,000, and that Fortina had in turn determined its value at around €2,700,000. Notwithstanding this difference, Fortina agreed to the valuation established by the Lands Authority, subject to certain payment terms.
- 3.6.48 Of concern to the NAO was what was not disclosed to the NAOAC in the parliamentary resolution. A key fact not included in this respect and deemed crucial by this Office for sound deliberation by the Committee was that the valuation by the Architects Lands Authority corresponded to only one part of the site for which waivers were requested. This limitation was acknowledged in the valuation report drawn up by the Architects Lands Authority, the status report drawn up by the Lands Authority and the valuation report drawn up by Fortina, all documents appended to the correspondence submitted by the Chair BoG Lands Authority to the Minister and to the Parliamentary Secretary. However, the NAO noted that the Chair BoG Lands Authority did not include this fact, or recommend that it is included, in the parliamentary resolution.
- 3.6.49 This omission in the parliamentary resolution was brought to the attention of the Minister and the Parliamentary Secretary by the NAO. In submissions to this Office, the Minister argued that he could not include facts in the resolution that he was unaware of, did not delve into other issues for he actioned the case as referred to him by the Chair BoG Lands Authority, and presented facts that he deemed relevant to the case. In turn, the Parliamentary Secretary maintained that his understanding was limited by the documentation provided and what was disclosed to him. Challenged by the NAO with the fact that this omission was raised as a concern during the parliamentary process but that the process proceeded regardless, the Parliamentary Secretary argued that the matter was put to a vote and that this was how parliamentary democracy functioned.
- 3.6.50 Another point noted by the NAO was the dissonance between the letter of referral by the Chair BoG Lands Authority to the Minister and the Parliamentary Secretary on one hand and the parliamentary resolution presented to the NAOAC on the other hand. The correspondence submitted by the Chair imparted that the matter was being referred for the consideration of the Minister and the Parliamentary Secretary, without recommending any course of action. On the other hand, the parliamentary resolution indicated that the BoG Lands Authority had recommended that the Minister proceed with the granting of the waivers. The contrast between that submitted by the Chair BoG Lands Authority and that referred to Parliament by the Minister is rendered evident in Figure 16.

Figure 16 | The referral by the Chair BoG Lands Authority and the recommendation in the Parliamentary Resolution

Excerpt from the letter by the Chair BoG Lands Authority to the Minister and the Parliamentary Secretary dated 17 June 2019	Excerpt from the parliamentary resolution referred by the Minister on 10 July 2019
<p>“[Chair BoG Lands Authority] informed and read a letter sent by [Fortina]. A discussion was held and [Government MP on the BoG Lands Authority] raised the point that there was acceptance by Fortina Developments of the original valuation undertaken by the three architects engaged by the Lands Authority, and therefore the Minister was to be notified since the process was to be concluded through a parliamentary resolution. ...”</p> <p>... As decided by the Board the undersigned [Chair BoG Lands Authority] is submitting this documentation to the Honourable Minister to assess whether he wishes to present a Parliamentary Resolution.²⁹</p>	<p>And since this was approved by the Board of Governors of the Lands Authority in the meeting on 14 June 2019, after due consideration and recommended to notify the Minister to proceed with a Parliamentary Resolution and that the CEO was to appear on the related contracts; ...³⁰</p>

3.6.51 In view of the significance of the omissions and misrepresentation, the NAO sought the views of the Minister and the Parliamentary Secretary. In this respect, the Minister reiterated that the Chair BoG Lands Authority did not object to the Minister framing the correspondence of 17 June 2019 as a recommendation. Furthermore, the Minister argued that none of the other members of the BoG Lands Authority contested his presentation of developments as captured in the parliamentary resolution. On the other hand, several members of the BoG Lands Authority maintained with the NAO that the resolution did not reflect what was agreed during the Board meeting of 14 June 2019 and the letter by the Chair of 17 June 2019. Nevertheless, this point was not raised by any Board member during any subsequent meeting held by the BoG Lands Authority. However, most members of the BoG Lands Authority had no visibility of the parliamentary resolution prior to its presentation during the NAOAC and had no opportunity to intervene within this forum. The only exceptions were the Government MP and Opposition MP on the BoG Lands Authority, with the latter raising several concerns in this respect. In turn, the Parliamentary Secretary corroborated several of the points raised by the Minister. The Parliamentary Secretary also referred to a meeting that he had with the Chair BoG Lands Authority during which the parliamentary resolution was discussed, which dismissed any lingering concerns he might have had regarding the Board’s recommendation.

²⁹ “[Chair Lands Authority] informa u nqrat ittra mibghuta minghand [Fortina]. Saret diskussjoni u [Government MP on the BoG Lands Authority] irreleva ili kien hemm l-accetazzjoni ta’ Fortina Developments ta l-istima originali li kienet saret minn tlett Periti mqabbda mill-Awtorita tal-Artijiet, u allura ghandu jigi notifikat il-Ministru ladarba l-process se jintemm permezz ta’ Risoluzzjoni Parlamentari ...” ... Kif gie deciz mill-Bord is-sottoskrit [Chair BoG Lands Authority] qieghed jibghat dan l-inkartament lill-Onorevoli Ministru biex jevalwa jridx jipprezenta xi Rizoluzzjoni Parlamentari.

³⁰ U billi dan gie approvat mill-Bord tal-Gvernaturi tal-Awtorità tal-Artijiet fis-seduta ta’ nhar l-14 ta’ Ġunju 2019, wara li sar għarbiel meħtieġ u rakkomandat li jinnotifika lil Ministru sabiex jissokta b’rizoluzzjoni Parlamentari u liċ-CEO biex jidher fuq il-kuntratti relatati; ...

- 3.6.52 Of note to the NAO was the statement made by the Deputy Chair BoG Lands Authority, who maintained that the wording of the parliamentary resolution misrepresented the decision of the Board, that had only agreed to collate and refer information to the Executive for it to consider any further parliamentary action. The Deputy Chair BoG Lands Authority supported arguments to this effect raised by the Opposition MP on the BoG Lands Authority during parliamentary interventions. Elaborating in this regard, the Deputy Chair BoG Lands Authority argued that the decision was ultimately the Executive's, for it had a broader overview of the intended investment than the Board.
- 3.6.53 In sum, the NAO deemed the omission of these facts in the parliamentary resolution as limiting the ability of the NAOAC to make an informed decision. The selective presentation of facts in the parliamentary resolution, in tandem with the irrational actions of the BoG Lands Authority, raises the NAO's gravest concerns.

Review by the National Audit Office Accounts Committee

- 3.6.54 Having referred to the input of the Minister and the Parliamentary Secretary in processing the request for waivers sought by Fortina as forwarded by the BoG Lands Authority, the NAO's attention now shifts to the scrutiny afforded by the NAOAC. Stipulated in Article 31(c) of the Government Lands Act was that, before notice of a motion proposing the resolution was presented to the Clerk of the House of Representatives by a Minister, the Minister was to refer this motion to the NAOAC, and the Committee was to discuss the motion and report on the matter to the House of Representatives. Also specified in the Act was that the NAOAC was to meet to discuss the draft deed/writing/notice within fifteen days from its receipt and report thereon to the Plenary within one month.
- 3.6.55 Article 31(c) provided that, where the NAOAC failed to report to the House of Representatives in a final manner within the one-month period allowed, the Minister could give notice to the Clerk of the House of Representatives proposing a resolution as referred to in this Article. The Act specified that while the NAOAC had the right to attend and take part in the debate in Plenary, the Committee members did not have the right to vote. If the NAOAC was unanimous in its position on the motion, the Plenary was to vote on the motion without debate.
- 3.6.56 In anticipation of the meeting of the NAOAC that was to be held on 10 July 2019, the members of the Committee were provided with a copy of the parliamentary resolution. Aside from the resolution, on 5 July 2019, the members of the NAOAC were furnished with a draft deed relating to the waivers to be granted by the Government and two site plans.
- 3.6.57 On 8 July 2019, an Opposition MP, who was also a member of the NAOAC, requested a copy of all the documentation relating to the valuation exercise undertaken by the Lands Authority in relation to the request by Fortina. This request was promptly relayed to the CEO Lands Authority by the Committee Clerk NAOAC on 9 July 2019. In copy were the Chair NAOAC, the Opposition MP and the Permanent Secretary MTIP. The Permanent Secretary requested the Chair BoG Lands Authority to provide the requested documentation, which was made available that same day.

3.6.58 Shortly thereafter, the Committee Clerk NAOAC provided all Committee members with documentation deemed relevant by the Lands Authority in relation to the valuation of the site. In essence, the documentation provided was the same as that submitted by the Chair BoG Lands Authority to the Minister and to the Parliamentary Secretary on 17 June 2019 and all supporting documentation referred to therein. The supporting documentation provided was voluminous and comprised:

- a. the 1991 and 1996 Deeds through which the Government transferred parts of a site in Tigné, Sliema to Fortina subject to certain limitations;
- b. the request for waivers submitted on behalf of Fortina by a Notary Public and a report highlighting the limitations burdening different parts of the site;
- c. the original and revised valuation by the Architects Lands Authority;
- d. the valuation by Fortina and feedback obtained by it from a professional services firm in relation thereto;
- e. PA-related documentation indicating the permitted development;
- f. other correspondence by the Notary Public wherein Fortina requested further waivers;
- g. the status report drawn up by the Senior Manager (Contracts) Lands Authority, indicating the parts of the site that were not valued by the Lands Authority and the additional waivers for which there was doubt on whether value was established;
- h. the application report drawn up by the Lands Authority capturing referral of the request by Fortina to the BoG Lands Authority; and
- i. an excerpt of the minutes of the BoG meeting dated 8 February 2019, wherein the Board discussed the status report drawn up by the Senior Manager (Contracts) Lands Authority and resolved to appoint an audit firm to provide a comprehensive valuation of all waivers sought.

3.6.59 Discussion by the NAOAC went ahead as planned on 10 July 2019, during which the parliamentary resolution presented by the Parliamentary Secretary on behalf of the Minister was considered. The NAO deemed that the time available to the members of the NAOAC for familiarisation with the facts of the case was insufficient, for crucial information necessary to form an opinion on whether the Government's interests were duly safeguarded was only made available less than a day prior. Noted was that the parliamentary resolution only provided a partial account of the facts, and although the letter by the Chair BoG Lands Authority listed the main developments, it simultaneously did not impart a clear understanding of certain key issues or omitted any reference thereto. While the key issues referred to in this sense could be traced in the various documents provided, the volume of information and the complexity of the case rendered the identification

of these issues difficult within the timeframe available. Notwithstanding this, no request for postponement was made by any NAOAC member.

- 3.6.60 During the discussion, several concerns were raised regarding the proposed waivers. Foremost among which were concerns relating to the fact that only one part of the site had been valued by the Lands Authority, that two years had lapsed since this valuation, that the payment terms proposed by Fortina were disadvantageous to the Government, that inaccuracies in the areas cited in the draft contract and the site plans were noted, that an agreement reached between Fortina and a third party for use of the site was leveraged against the Government, and that the BoG Lands Authority had not approved the transaction since such endorsement fell within Parliament's remit.
- 3.6.61 Counter arguments were made by Fortina's representative and the Government MPs on the NAOAC. In essence, Fortina contended that the transaction did not comprise the transfer of property but merely the waiver of limitations imposed thereon by the Government. On the other hand, the Government MPs maintained that the agreement between Fortina and third parties was irrelevant to the Committee's consideration of the matter, and that the Government's objective was that of ensuring value for money. No reaction was elicited in relation to the other concerns raised by the Opposition MPs referred to in the previous paragraph.
- 3.6.62 In submissions to the NAO, Fortina explained that following attendance at the NAOAC, it resolved to send a letter to the Parliamentary Secretary and the Chair BoG Lands Authority on points raised during the Committee's sitting. Fortina claimed that certain statements made were taken out of context and did not reflect the true situation. In its correspondence, Fortina highlighted its objections and clarified points it believed were misrepresented in the NAOAC discussion. Of interest to the NAO was that, according to Fortina, it sought to ensure that the decision-makers in Parliament received accurate information and were not misled by incorrect statements made in the earlier NAOAC sitting.
- 3.6.63 In turn, the Deputy Chair BoG Lands Authority argued that, despite all relevant documentation being referred, parliamentary scrutiny was lacking and neither the Government nor Opposition MPs queried any aspect relating to the matter. This criticism resonated with that stated by the Parliamentary Secretary, who contended that discussions with the NAOAC mainly related to the change in use of the bowls pitch and the open space. This Office observed that these perspectives did not reflect the nature of the discussion, for several of the issues expounded on by the NAO in this audit were raised during the proceedings of the Committee.
- 3.6.64 It is on the point of value for money that the NAO's concerns crystallise, for it was evident that the valuation by the Lands Authority was flawed and did not provide the Government with the true value of the transaction, as the valuation did not correspond to the entire site, but merely one part thereof. In addition, the two-year lapse since valuation and the payment terms proposed ought to have intensified the concerns of the NAOAC. Instead, these issues were dismissed with no meaningful discussion on how such failures were to be addressed.

- 3.6.65 Despite the lack of true consideration of the request for the removal of limitations burdening the Fortina site, on 10 July 2019, the NAOAC approved the parliamentary resolution for the granting of the waivers against the payment of €8,100,000. Nonetheless, the Chair NAOAC resolved that, since unanimous agreement was not reached, in line with established parliamentary procedure, the resolution was to be referred for further discussion in the Plenary.
- 3.6.66 In this Office's understanding, it should have been ensured that the NAOAC members had more time to review the extensive supporting documentation that was made available to the Committee only a day before its discussion of the resolution. However, no request by any member of the Committee for the postponement of the NAOAC meeting was made.
- 3.6.67 The NAO is of the opinion that although referral to the Plenary was made in line with established parliamentary procedure, the NAOAC members overlooked an opportunity to rectify a process that was fraught with oversights, such as the gaps in the valuation of the waivers.

Approval by Plenary

- 3.6.68 On 17 July 2019, Plenary discussed the parliamentary resolution relating to the waiver of conditions sought by Fortina put forward by the Parliamentary Secretary on behalf of the Minister. The discussion that ensued captured the dichotomy of views regarding the resolution, with the Government MPs arguing in its favour and the Opposition MPs highlighting concerns in relation thereto.
- 3.6.69 The Government MPs contended that the site was already owned by Fortina, was appropriately valued, would entail development in line with planning policies, would involve considerable investment by Fortina, and that the payment mechanism was employed in previous transfers of public land, among other matters raised.
- 3.6.70 In submissions to the NAO and in line with the position taken by the Government during Plenary, the Government MP on the BoG Lands Authority claimed that if one considered the part of the site that was valued and the value assigned to it, then the rate per square metre was significant. This Office contested this assertion, for the value assigned was to be seen in terms of all the waivers sought.
- 3.6.71 Counter-arguments put forward by the Opposition MPs included concerns regarding the Government's failure to maximise revenue, in the main due to unaccounted changes in use, an under-appreciation of the premium value of the site, several waivers not being valued, unorthodox instructions to architects resulting in the understatement of value, and payment terms that were not favourable to the Government as they merely represented an interest-free loan to Fortina.
- 3.6.72 Other matters raised by the Opposition MP on the BoG Lands Authority concerned the Board's role in the process leading to the approval of the waivers requested by Fortina. The concerns mainly related to the governance of this process, for the BoG Lands Authority assumed a direct

role in managing the process, as opposed to its customary role of oversight, and did not approve the transaction but merely referred the request for ministerial consideration. In submissions to the NAO, the Opposition MP on the BoG Lands Authority argued that while the Lands Authority bore administrative responsibility, political responsibility rested with Parliament, with the outcome ultimately decided through the parliamentary vote.

- 3.6.73 When put to a vote, the parliamentary resolution passed, with 34 Government MPs voting in its favour, while 27 Opposition MPs voted against.
- 3.6.74 The NAO enquired with the Minister as to the accelerated process of approval by Parliament. Queried as to how several concerns were raised but dismissed during the process of parliamentary scrutiny, the Minister maintained that he presented to Parliament what the Lands Authority presented to him. The Minister contended that this Office's attention was to focus on scrutinising the Lands Authority.
- 3.6.75 Of interest to the NAO was the statement by the Deputy Chair BoG Lands Authority, who expressed concerns regarding the disposal of public land through parliamentary resolution, focusing on the flaws relating to the determination of value in this method of disposal. The Deputy Chair observed that, irrespective of the governance structure in place, be it a department or authority, and the government of the day, the disposal of public land through parliamentary resolution remained contentious, evidenced by the several instances of past controversy.
- 3.6.76 While the NAO acknowledges that the outcome of the parliamentary debate was binding, this Office's reservations on whether the Government's interests were safeguarded persist. The concerns raised throughout the process remained unaddressed, as ultimately reflected in the Deed of modification and termination of contractual conditions that was entered into between the Government and Fortina in July 2019.

Chapter 4

The 2019 Deed between the Government and Fortina did not adequately safeguard the public interest

4.1 An analysis of the waivers requested and granted, and compensation charged

4.1.1 The preceding chapter focused on the Government’s efforts to establish the value of the waivers sought by Fortina, and the process of governance leading to the authorisation thereof. Attention is now directed towards the 2019 Deed, with the NAO analysing the waivers requested and granted, and the compensation charged. In essence, this process of analysis forms the basis of this Office’s understanding of whether the Government safeguarded the public interest. Figure 17 presents a disaggregated view of the waivers granted by the Government to Fortina and an assessment of whether the Government was entitled to compensation arising from its consent to lift conditions imposed through the 1991, 1996 and 2000 Deeds. The NAO’s assessment was also informed by relevant development planning implications.

Figure 17 | Analysis of compensation due and charged for waivers granted through the 2019 Deed

Waivers granted	Compensation due	Compensation charged
exclusive use for tourism purposes of the site purchased by Fortina in the 1991 Deed measuring approximately 487 square metres	compensation was due to the Government; however, value was established for a site measuring 565 square metres	Yes
exclusive use for tourism purposes of a room at ground floor purchased by Fortina in the 1991 Deed measuring approximately 23 square metres	compensation was due to the Government; however, the NAO acknowledges the limited area and the intended public use of the site	No
exclusive use for tourism purposes of the site purchased by Fortina in the 1996 Deed measuring approximately 2,992 square metres	compensation was due to the Government; although no development was intended and the area was designated as an open public space, its use as such enabled Fortina to apply the Floor Area Ratio Policy, thereby allowing higher levels to be built on other areas	No
obligation not to build on the site purchased by Fortina in the 1996 Deed measuring approximately 2,992 square metres	compensation was due to the Government; however, this compensation overlapped with that arising from the waivers relating to use and height	No

The Government's rescission of restrictions on the site of the Fortina Hotel

height restriction on the divided portion of land purchased by Fortina in the 1996 Deed measuring 766 square metres	compensation was due to the Government; however, this compensation overlapped with that arising from the waivers relating to use and build	No
height restriction on the divided portion of land purchased by Fortina in the 1996 Deed measuring 2,220 square metres, such that development up to 15.7 metres above mean sea level was allowed	compensation was due to the Government; however, this compensation overlapped with that arising from the waivers relating to use and build	no
rebuild a bowls pitch, ancillary facilities, boundary wall, swimming pool, emergency exits, substation and landscaping, as stipulated in the 1996 Deed	no compensation was due to the Government; however, the waiver relating to the obligation to provide a bowls pitch had non-financial public interest considerations	not applicable
height restriction on the site measuring approximately 430 square metres acquired by Fortina in the 2000 Deed	according to the 2000 Deed, no compensation was due to the Government for development above 29.5 metres from mean sea level; however, such development was subject to Government authorisation	not applicable
height restriction on the site measuring approximately 275 square metres acquired by Fortina in the 2000 Deed	according to the 2000 Deed, no compensation was due to the Government or Fortina; moreover, a more stringent height restriction was introduced in the 2019 Deed of amendment, with height limitation reduced from 29.5 metres to 15.7 metres above mean sea level	not applicable
exclusive use for tourism purposes of the site purchased by Fortina in the 2000 Deed measuring approximately 275 square metres	compensation was due to the Government; while the 2000 Deed provided that authorisation for development above 29.5 metres from mean sea level threshold could be granted by the Government at no additional charge, this exemption did not extend to a change in use – in this case, the redesignation of the area as an open public space enabled the application of the Floor Area Ratio Policy elsewhere on the site	no
exclusive use for tourism purposes of the site purchased by Fortina in the 2000 Deed measuring approximately 430 square metres up to 15.7 metres above mean sea level	compensation was due to the Government; while the 2000 Deed provided that authorisation for development above 29.5 metres from mean sea level threshold could be granted by the Government at no additional charge, this exemption did not extend to a change in use – in this case, the redesignation of the area as an open public space enabled the application of the Floor Area Ratio Policy elsewhere on the site	no

exclusive use for tourism purposes of the site purchased by Fortina in the 2000 Deed measuring approximately 635 square metres up to 15.7 metres above mean sea level	compensation was due to the Government; while the 2000 Deed provided that authorisation for development could be granted by the Government at no additional charge, this exemption did not extend to a change in use – in this case, the redesignation of the area as an open public space enabled the application of the Floor Area Ratio Policy elsewhere on the site	no
military clearance rights, stipulating a height limitation of fifteen feet and two inches above street level, relating to the land housing the original Fortina hotel, privately owned by Fortina and purchased from third parties	whether compensation was due to the Government is debatable, in view that military clearance was no longer required and development on site and in the broader area since the 1960s was in violation of this limitation, with no enforcement action taken in this respect	not applicable

4.1.2 Given the anomaly between the compensation due, as established by the BoG Lands Authority, and that charged, as set in the 2019 Deed, the NAO sought the views of the Senior Manager (Contracts) Lands Authority as signatory to this Deed. Ordinarily, this Office does not delve into the role of the designated signatory on behalf of the Government, as the NAO generally focuses on the process of authorisation of the transaction subject of the deed, rather than the official representing the Government. However, in this case, the signatory drafted the status report, which highlighted the several significant gaps in the valuation of the waivers requested and that remained unaddressed in the 2019 Deed. The Senior Manager (Contracts) argued that the assignment of responsibility to her to appear as signatory on behalf of the Government occurred by default given the conflict of interest declared by the CEO Lands Authority, the only other signatory who could appear on such a deed.

4.1.3 Regarding the anomalies in the valuation process, the Senior Manager (Contracts) Lands Authority argued that the status report was discussed by the Board and that the draft deed was reviewed by it, was endorsed by the Cabinet and was ultimately approved by Parliament. On the latter point, the Senior Manager (Contracts) affirmed that Parliament’s decision was not one that she could contest. Acknowledging the anomalous nature of the contract she was signing on behalf of the Lands Authority in testimony to the NAO, the Senior Manager (Contracts) found comfort in the knowledge that the case was scrutinised by several parties, was in accordance with legislative requirements, and that it was consequently her duty to follow through with Parliament’s instructions. She emphasised that the BoG Lands Authority’s and Parliament’s approval meant that any objection on her part was irrelevant, as it would seem as if she was refusing to carry out a task that was assigned to her. The Senior Manager (Contracts) consequently felt that it was imperative that she fulfilled her duty.

4.1.4 Furthermore, the Senior Manager (Contracts) Lands Authority stated that she was not involved in any stage of the process after the finalisation of the status report, was not aware of the valuation sought by the BoG Lands Authority from the audit firm and of Fortina’s acceptance of the €8,100,000 value determined by the Architects Lands Authority for part of the site.

4.1.5 Based on the NAO's assessment, the Government did not adequately safeguard the public interest when consenting to the waiver of several obligations burdening the Fortina site. This Office acknowledges that the Government did obtain a valuation corresponding to one of the waivers sought. However, of concern was that several other conditions burdening the site were extinguished without compensation being charged and received by the Government. This failure is aggravated by the fact that the Lands Authority was aware of this gap in establishing value but proceeded to refer the matter for authorisation. On their part, the Minister and the Parliamentary Secretary forwarded the request to the NAOAC, relying on the reported endorsement of the Chair BoG Lands Authority. While the attention of the NAOAC was drawn to the irregularities in the Government's processing of Fortina's request for waivers, the Committee sidestepped the concerns raised and shifted responsibility onto Plenary to sanction the lifting of limitations in line with established procedure. Despite concerns raised once again during Plenary proceedings, which resonated with points elicited in the NAO's assessment of whether the public interest was adequately safeguarded, the motion was approved regardless.

4.2 A truer valuation of the waivers granted by the Government to Fortina

4.2.1 In view of the significant gaps in the Government's valuation of the waivers granted to Fortina, the NAO sought to determine the value of that granted through the lifting of conditions burdening the Fortina site through the Deed of modification and termination entered into on 26 July 2019. To this end, the NAO engaged an independent third-party expert to assist the Office in establishing value.

4.2.2 Central to the determination of value were the 1991, 1996 and 2000 Deeds through which the Government granted land for the development of the Fortina Hotel. The NAO sought to ascertain the actual areas of the site transferred by the Government through these Deeds; the waivers granted; how these areas were redefined in the 2019 Deed; whether the development carried out on these sites between 1991 and 2022 was compliant with the provisions of the relevant Deed; and identify instances of infringement sanctioned through the 2019 Deed. The valuation of compensation was based on 2019 and present rates.

4.2.3 The NAO took into consideration several factors when conducting this valuation. These included the classification of the property, the underlying regulatory framework applicable to the site, the contractual limitations imposed in the Deeds and relevant site plans, the waivers applied for and those granted, the value of the waivers conceded through the 2019 Deed, and any compliance-related issues. In undertaking this valuation, this Office reviewed all planning applications submitted for the site, with PA/06252/17 utilised as the basis for valuation. Pertinent to the valuation were the officially approved drawings sourced from planning applications, as these were instrumental in valuing the newly proposed and the pre-existing areas of the site. This Office also reviewed property valuations conducted by third parties for distinct sections of the site prior to the execution of the 2019 Deed.

Property classification and assumptions

- 4.2.4 The property under consideration was classified as a freehold property, indicating unrestricted ownership rights. However, there were servitudes that imposed legally recognised rights or restrictions affecting the use of the property. Each site within the property was assumed to have a clear and marketable title, with no ongoing legal disputes regarding ownership. Other than the servitudes, no extraordinary or burdensome restrictions, easements, covenants, or encumbrances that would significantly impact the property's value were encountered.

Valuation parameters

Basis of valuation

- 4.2.5 The assets considered in this valuation were categorised as 'Investment Property' assets. All market values presented adhere to the Kamra tal-Periti Valuation Standards 2012. The valuation model employed was the 'Fair Value' model, as defined by The European Group of Valuers' Associations. The definition of 'Fair Value' utilised for the valuation was "The estimated amount for which the asset should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing, wherein the parties had each acted knowledgeably, prudently, and without compulsion."

Planning applications

- 4.2.6 The first available record of PA applications on the Authority's portal was dated 1995 and corresponded to additions to the spa and to the construction of an outdoor pool. The next application, submitted in 1998, comprised an extension to the hotel including the basement, new lobby and bedrooms, and the demolition of part of the existing structure.
- 4.2.7 PA records prior to 1995 indicated four applications for different works; however, these corresponded to a small area of the land on which the Fortina Hotel is presently sited. The applications were documented on two sets of survey sheets dated 1951 and 1971. The 1951 survey sheets indicated building outlines that differed from those depicted in the 1971 survey sheets. Furthermore, the 1971 survey sheets specifically refer to 'Hotel' and 'Pool' in the location where the hotel and lido were known to exist until 2018. These observations imply that the hotel was constructed prior to 1971. Nevertheless, there are no records of the plans or permits relating to the construction of the hotel.
- 4.2.8 The planning applications submitted after 1995 relevant to this valuation are listed hereunder. Each application is elaborated on, with attention directed to the location covered by the permit, its correlation to the specific Deed between the Government and Fortina, and a comparison of the permit with the actual structures constructed.

- 4.2.9 The application PA/01844/95 (to carry out additions to the spa and construct an outdoor pool) was in respect of land acquired by Fortina through the 1991 Deed. No enforcement notices were issued. The pool remained operational until its recent demolition. One could therefore reasonably assume that the development was carried out in accordance with the approved planning permit.
- 4.2.10 During construction undertaken in connection with PA/07193/98 (extension to the hotel, including basement, new lobby and bedrooms; demolition of part of the existing structure), two enforcement notices were issued. One notice, bearing reference EC/0067/02, related to the commencement of works prior to the granting of planning permission. This notice was closed after permission to sanction the illegality was granted. The other, EC/0176/02, was for the violation of a condition of the permit. This notice was subsequently withdrawn. It was not possible to verify if the completed structures aligned with the permit drawings and conditions due to the complete demolition of the hotel in 2018. It could be assumed that the works were in accordance with the approved drawings and permit conditions given that the hotel, as restructured, had been operational for years.
- 4.2.11 PA/07620/03, which comprised the introduction of permanent resident floors and an additional three floors, was withdrawn. Four other applications were for minor modifications to the hotel facilities, namely PA/03637/06 (provision of hairdresser's area to complement facilities available at the hotel), PA/03639/06 (establishment of a small gift shop within the hotel), PA/04505/10 (sanctioning of LPG tanks for hotel use) and DN/0837/15 (alterations on façade and minor internal alterations). These applications were submitted and approved after the 2000 Deed and were compliant with the requirements thereof. The ensuing application, PA/03932/16, for the change of use of part of the hotel to a medical centre and from part of the clinic to a pharmacy, was withdrawn. In turn, PA/05836/16 (placement of timber platform in front of site frontage, erecting of retractable shading awnings, safety railings, tables and chairs) did not relate to the sites of interest and was not considered further.
- 4.2.12 Of relevance to this audit was PA/06252/17, through which Fortina proposed the demolition of the existing 4-star hotel and the spa wing of the 5-star hotel and excavation of the site; and the construction of three levels of below-ground car parking, a ground floor retail complex, a residential complex of 15 floors, five additional floors on the hotel tower, and a stepped hotel block rising to 13 floors in place of the spa wing. As a result of this application, exemptions or modifications to existing conditions limiting the site's potential were required. This application was submitted after the 2000 Deed and served as the foundation for the subsequent waivers later incorporated in the 2019 Deed, outlining the specific changes and concessions granted.
- 4.2.13 Following the submission of PA/06252/17, Fortina applied for PA sanctioning of specific elements or modifications of the project. The endorsement of these applications by the PA was rendered possible through the 2019 Deed and set the general guidelines and requirements for the development on the site. The applications comprised:
- a. PA/10403/17, which provided for the demolition of the 4-star hotel, pools and garden structures;

- b. PA/03913/18, which was for the change of use of residential blocks and part of the retail element at ground floor to offices;
- c. PA/04590/19, which allowed the demolition of the existing restaurant terrace, the removal of swimming pools and levelling of the existing lido platform, the extension of the platform to create a new swimming pool and the extension of public foreshore access around the platform, the construction of a restaurant with a kitchen below the promenade level, and the creation of a public open space at promenade level above the restaurant;
- d. PA/01161/22, which proposed layout changes to the residential and retail components, the change of use of the approved cafeteria at ground floor to retail, the change of use of five residential units at first floor to a food court, extensions at levels 14 and 15 and the construction of two additional floors in the residential block, the proposed integration of the landscaped area around St Luke's Garrison Chapel and the vacant plot into the overall public open space of the development, including the construction of interconnecting staircases and sanctioning of minor alterations; and
- e. PA/02322/23, through which the renewal of PA/06252/17 was sought.

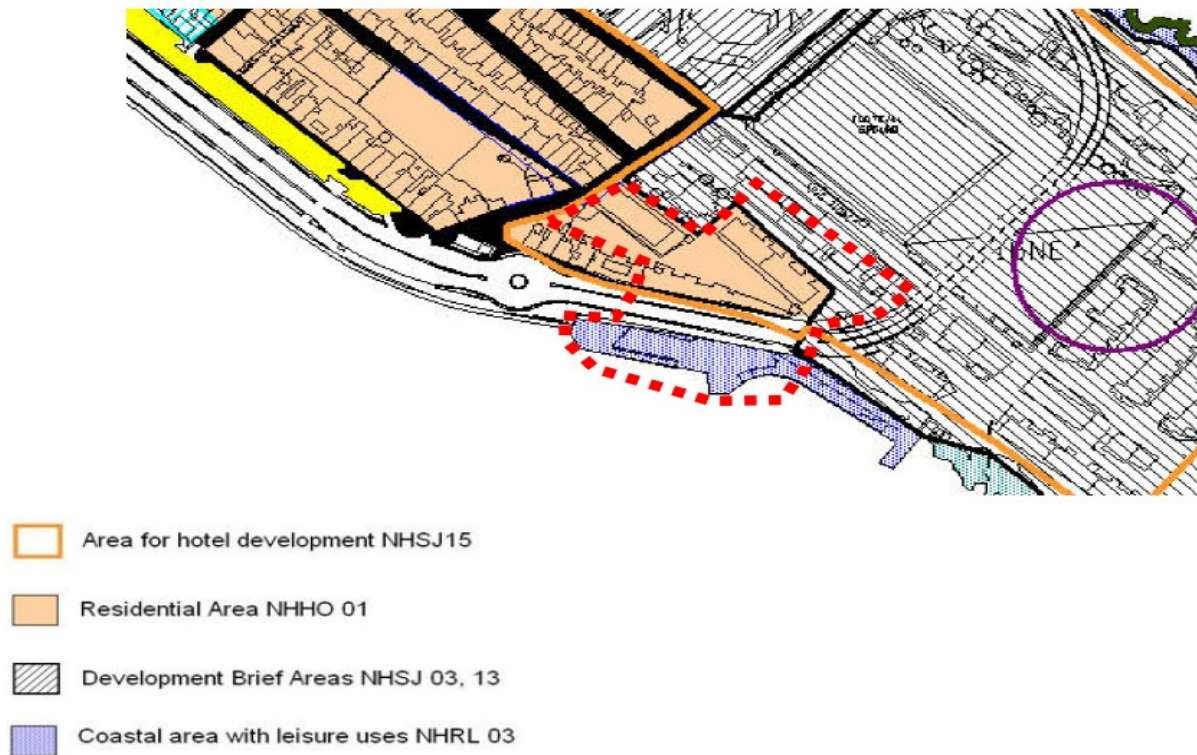
Planning policies

- 4.2.14 The Fortina site is subject to a set of policies outlined in the PA's North Harbour Local Plan and relevant drawings and documents approved in 2006. These policies provide a framework for land use, development, and other considerations within the North Harbour area. The 2006 drawings and documents outline the specific regulations, guidelines, and objectives that govern the development of the site and ensure its compliance with the broader planning goals and objectives of the local area. These policies play a significant role in shaping the permitted land uses, building design, environmental considerations, and other factors related to permissible development.

Site uses

- 4.2.15 Figure 18 portrays part of the map SJ3 sourced from the North Harbour Local Plan. It illustrates the designated land uses for the site, with the approximate boundaries of the 1991, 1996, 2000 and 2019 Deeds indicated by the red dashed lines. This map serves as a visual representation of the planned land uses within the site and helps to determine the specific areas covered by each Deed. Evident is the relevance of the different policies applicable to the site, namely, NHSJ15, NHHO01, NHSJ03 and NHRL03.

Figure 18 | Designated land uses for the site as established in the North Harbour Local Plan



4.2.16 NHSJ15 regulated the development of new hotels in Sliema. The Policy established the criteria that were to guide the assessment of applications for the development of new hotel projects within this area. These included that:

- the prior approval of the Malta Tourism Authority was obtained;
- the proposed development was not likely to create significant adverse impacts on the local amenity;
- the scale of the proposed development was consistent with the building height limitation and the character of the area;
- the proposed development would not compromise existing and future proposals for traffic management in the area; and
- the proposal was in conformity with all relevant policies in the Local Plan.

4.2.17 NHHO01 of the Local Plan designated residential areas within the urban development boundaries of certain settlements, including Sliema. The Plan sought to guide the future growth of residential areas by encouraging the location of more dwelling units and established a list of acceptable land uses within all frontages located within such areas. These included:

- terraced residential development;

- b. residential institutions, provided that these were small scale, located in the proximity of the town or local centre and that nursing homes and clinics were easily accessible from the arterial and distributor road network;
- c. hostels;
- d. small shops and supermarkets, provided that these complied with several specifications and provisions;
- e. offices, contingent on several conditions and requirements;
- f. non-residential institutions, swimming bath or pool, skating rink, health club, sauna, sports hall, other indoor or outdoor land-based sports or recreation uses not involving motorised vehicles or firearms, and interpretation centres, provided that these were small scale, did not create adverse impacts on the residential amenity of the area, among others;
- g. educational facilities;
- h. business and light industry, subject to certain restrictions and the nature of the activity/use;
- i. proposals to convert from general industry to business and light industry, provided that the existent operation was a permitted one and that the proposed use was more neighbourhood compatible than the operation it intended to replace; and
- j. taxi business or for the hire of motor vehicles.

4.2.18 NHSJ03 identified strategic car parking sites at Qui-Si-Sana and Chalet that supported the area's traffic management strategy. The Qui-Si-Sana car park site was situated near the northern boundary of the Sliema town centre and was considered a suitable location for tourist-related facilities located below ground level and for access to shops and employment.

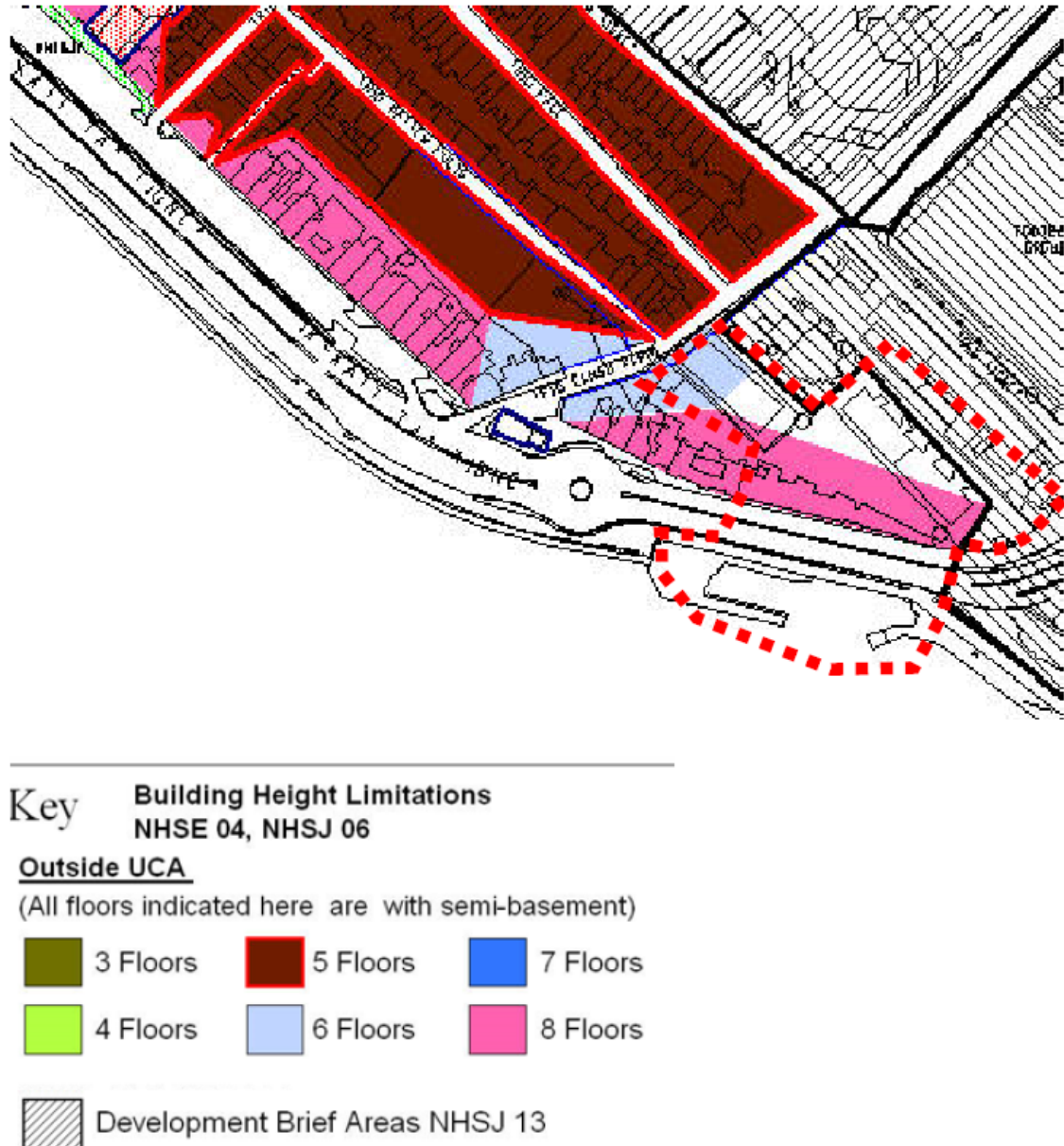
4.2.19 Policy NHRL03 allowed for beach concessions granted by the Lands Authority whereby private operators could hire equipment for bathers, but were not permitted to construct structures, and beach encroachments that enabled the operators to carry out development in coastal areas for private and commercial use. Linked to this Policy was the Structure Plan Policy CZM3, which indicated the permitted land-uses as outlined in the relevant area policy maps within the designated coastal areas with leisure uses. These included:

- a. leisure and assembly, including visitor attractions, provided that these enhanced the tourist product;
- b. restaurants; and
- c. bars.

Building height limitations

4.2.20 The North Harbour Local Plan also designated building height limitations, with map SJ3 of relevance to the Fortina site (Figure 19 refers). The Plan highlighted the applicability of Policies NHSE04 and NHSJ06, which specified the permissible building height within the area. The approximate superimposed boundaries of the Fortina site, as established in the Deeds entered into with the Government, are delineated by the red dashed lines.

Figure 19 | Building heights as established in the North Harbour Local Plan



4.2.21 In line with Policy NHSE04, building height limitations were established through the relevant area policies and building heights and urban design maps. The Local Plan allowed for the limited easing of building height limitations established through the Temporary Provision Schemes of 1988. Where maximum building heights were not specified in the Plan, the redevelopment of land or buildings was to be considered in relation to the prevailing building height in the area. The Policy indicated that for sites located within designated urban conservation areas, where receded floors were permitted, certain exceptions were allowed. Also noted was that the PA could consider easing building height limitations in relation to the provision of public civic facilities (NHSS02), hotel extensions (NHTO01 and NHTO02) and the provision of public car parks (NHSG03).

4.2.22 Policy NHSJ06 indicated that proposals for new high buildings consisting of a façade width less than 25 metres would not be permitted except where the proposed façade had a design that was identical to, and continuous with, that of its existing neighbouring building.

Justification for the use of PA/06252/17 as the basis for valuation

4.2.23 In determining the value of the waivers sought, the NAO utilised PA/06252/17 as the primary reference point for valuation. The bases for this were the following:

- a. permit continuity: despite the issuance of a subsequent permit in 2018, that is, PA/03781/18, which became executable on 30 October 2018, all documented aspects of the process leading to the signing of the 2019 Deed of rescission referred exclusively to PA/06252/17. The most notable reference was made in the correspondence sent by Fortina to the Chair BoG Lands Authority on 10 June 2019, which explicitly described PA/06252/17 as defining the maximum developable area realisable at the time;
- b. valuation and compensation determined: the valuation by the Architects Lands Authority, which served as the foundation for determining €8,100,000 as the payment due to the Government, was based on the parameters and development potential outlined in PA/06252/17. This indicated that the valuation and approval by the Government for the waiving of conditions relied on this permit as the benchmark;
- c. timing and consistency: Fortina's letter of 10 June 2019, just six weeks prior to the execution of the 2019 Deed, reflected that PA/06252/17 remained the operative permit for all relevant valuation assessments. The absence of any reference to PA/03781/18 in exchanges between the Lands Authority and Fortina further supports the conclusion that PA/06252/17 was deemed the applicable standard for determining value;
- d. deed provisions and assumptions: the 2019 Deed generally aligned with the parameters, assumptions and development potential described in PA/06252/17;

- e. administrative consistency: reliance on PA/06252/17 ensured a consistent and justifiable basis for valuation since it was explicitly recognised by the Lands Authority and Fortina during the transaction process. Furthermore, the use of this permit avoided discrepancies or overestimations that could have arisen from relying on the subsequent planning permit PA/03781/18, which had no documented impact on the terms of the Deed; and
- f. development parameters and constraints: the scope of PA/06252/17 reflected the development potential, including land use, floor area and planning constraints, as perceived during the valuation period. Its reference by the Land Authority and Fortina indicated that both parties based their decisions on this specific permit, thereby rendering it the most accurate representation of the site's valuation context.

The Deeds

4.2.24 As part of the process of establishing the value of the sites transferred by the Government to Fortina, the NAO verified the extent of the lands transacted through reference to various sources. Included in this analysis are the different parts of the site as identified in the 1991, 1996, 2000 and 2019 Deeds.

Sites transferred through the 1991 Deed

- 4.2.25 According to the Deed dated 12 June 1991, the Government transferred to Fortina the following areas, which were to serve as an extension to the Fortina Hotel:
- a. a divided portion of land measuring approximately 465 square metres, denoted by a red border on site plan LD 321/90 (Figure 20 refers); however, the plan lacked specific dimensions and relied on adjacent site borders, fences and existing structures, such as staircases, as references. No earlier plans were found prior to this Deed that could provide a more precise definition of the outlined border as depicted on the site plan;
 - b. a room located on the ground floor with an approximate area of 23 square metres and a height of 11 courses, highlighted with a yellow border on site plan LD 76/91 (Figure 21 refers);
 - c. the airspace of the land up to the height beneath street level, measuring approximately 1,964 square metres, indicated with a blue border on site plan LD 76/91 (Figure 21 refers), with an approximate layout of the area evident in the relative screenshot taken from the PA map server (Figure 22 refers); and
 - d. the airspace of the land up to one metre above the existing street level, covering an area of approximately 1,346 square metres, outlined with a red border on site plan LD 76/91 (Figure 21 refers) and illustrated in the screenshot taken from the PA map server (Figure 23 refers).

Figure 20 | Site plan LD 321/90

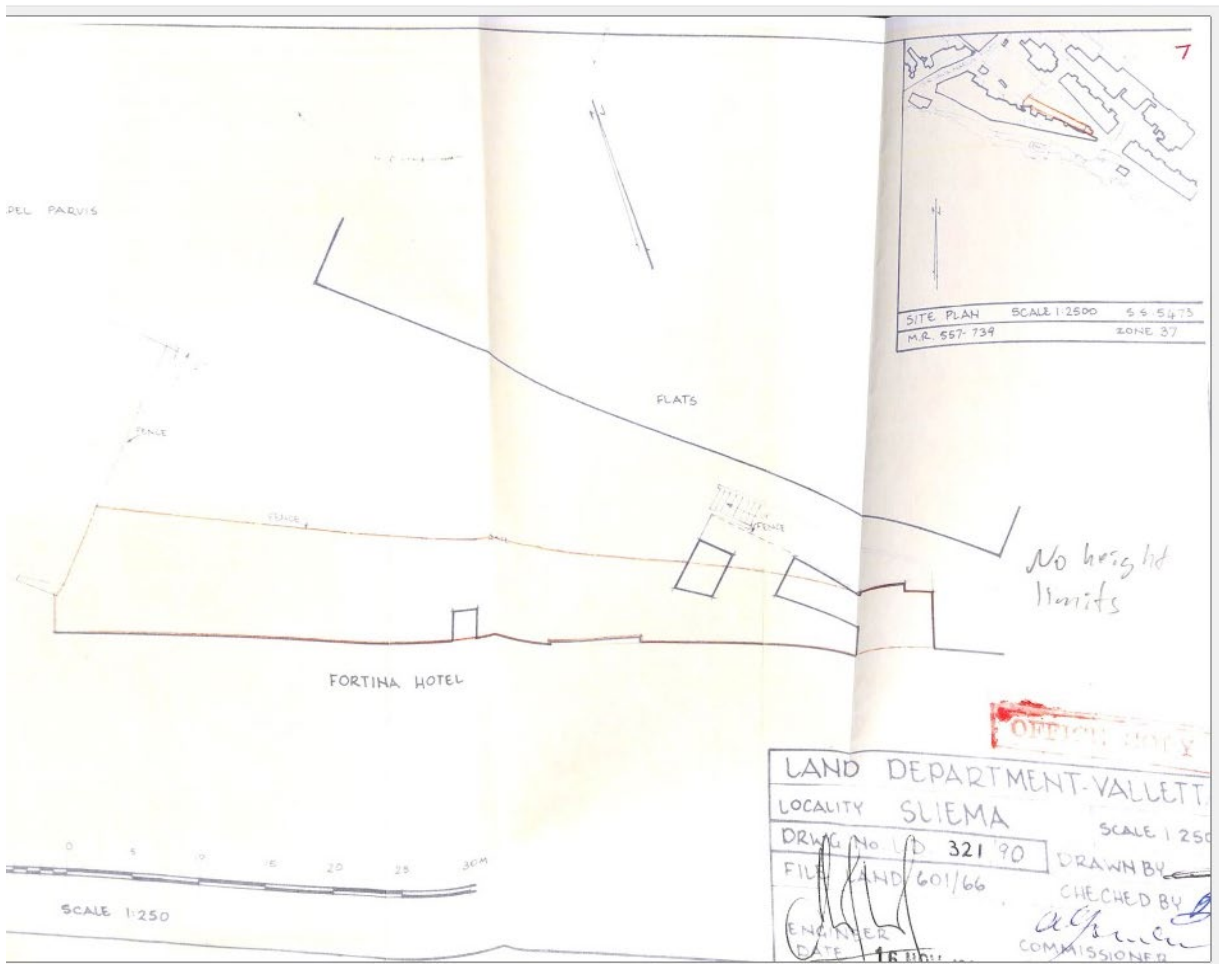


Figure 21 | Site plan LD 76/91

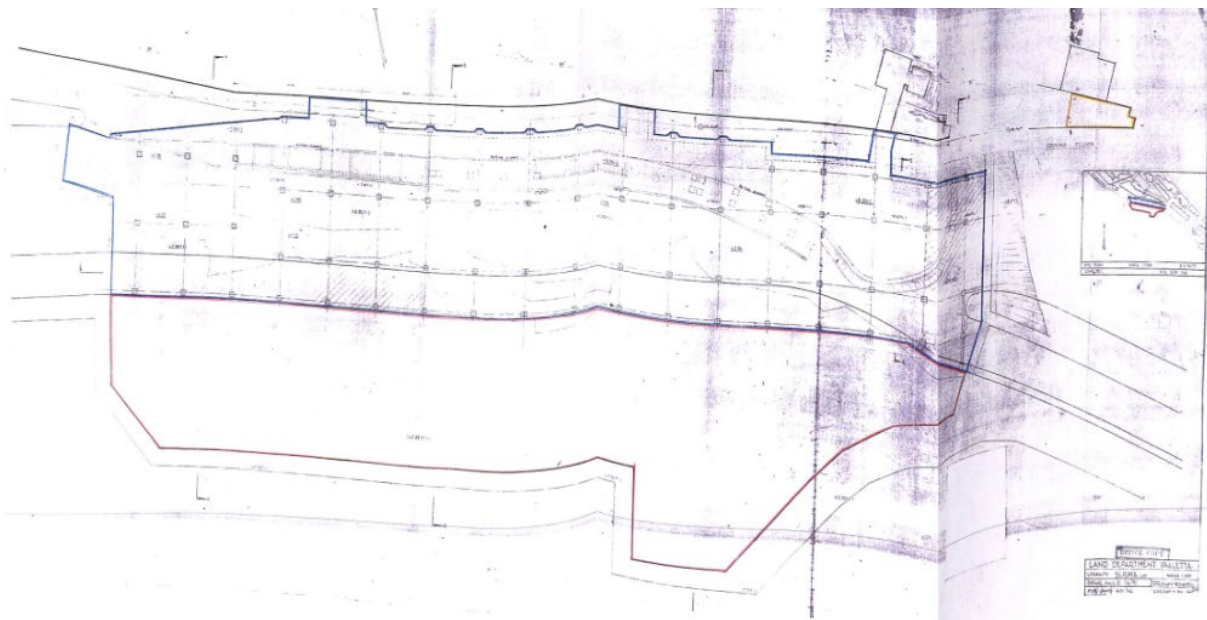
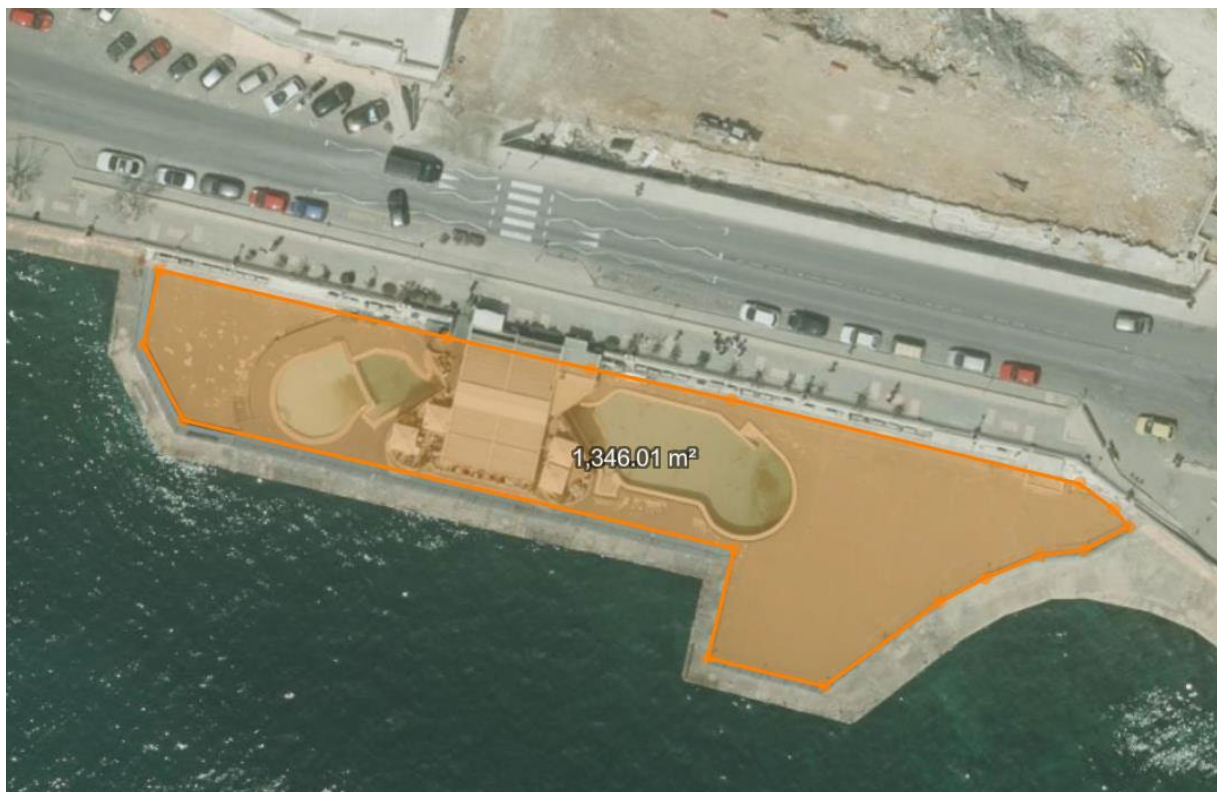


Figure 22 | Screenshot from PA map server of area with blue border on site plan LD 76/91



Figure 23 | Screenshot from PA map server of area with red border on site plan LD 76/91



Sites transferred through the 1996 Deed

4.2.26 The land transferred by the Government by virtue of the 1996 Deed comprised a divided portion of land measuring approximately 2,992 square metres, indicated in the site plan LD 208/95 as shown in Figure 24.

4.2.27 The transfer was subject to certain limitations, including that:

- a. the land was to be used exclusively as an extension of the Fortina Hotel;
- b. no construction was allowed above the existing ground level at the date of the contract, except for specific authorised structures such as boundary walls, swimming pools, emergency exits below street level, buildings for the Enemalta sub-station extension, landscaping, toilets, and the reconstruction of the bowls pitch and related facilities;
- c. any other works above road level XX and road level PQ required the prior written consent of the Commissioner of Land;
- d. failure to obtain the necessary consent could result in the Government requesting the rescission and cancellation of the contract without any obligation to compensate for works already carried out; and
- e. the bowls pitch located on the site was intended for public use without any charges levied, and that should the land occupied by the pitch be used otherwise, an alternative bowls pitch accessible to the public free of charge was to be provided.

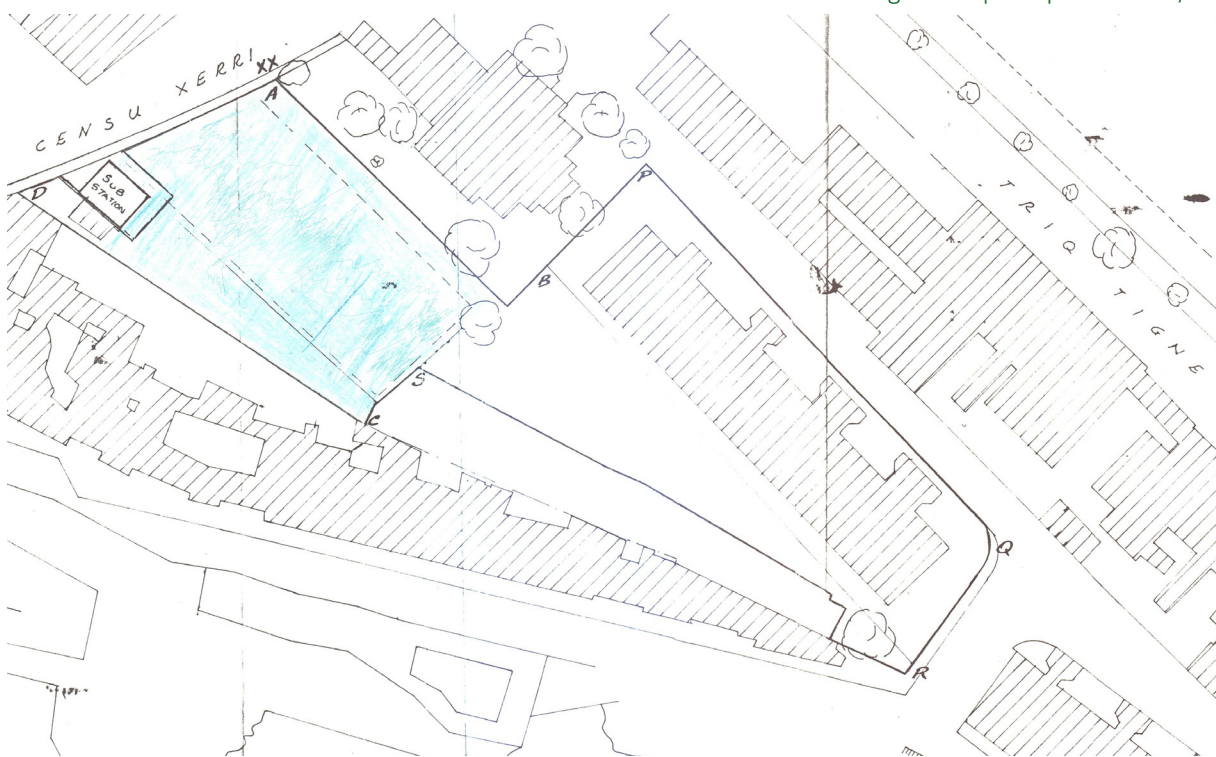


Figure 24 | Site plan LD 208/95

4.2.28 The NAO cross-referenced the dimensions of the site as presented in LD 208/95 with a digitised representation of the site. The outcome is depicted in the green area illustrated in Figure 25. This process revealed that the compared dimensions were aligned, suggesting that the digitisation process accurately represented the measurements established in the original plan, thereby providing a reliable representation of the site's dimensions.

Figure 25 | Digitised representation of the area cross-referenced with site plan LD 208/95



4.2.29 Nonetheless, verification of the measurements of the digital version of the depicted area established that the actual size of the land transferred through the 1996 Deed was not 2,992 square metres, as originally stated therein, but 3,068 square metres.

4.2.30 Another point of interest that emerged from this verification related to a portion of land transacted in the 1991 Deed. The area marked in red in Figure 25 corresponded to a site transferred by the Government to Fortina in 1991 and declared as measuring 465 square metres. Measurement of the area through this process indicated that this area was understated and in fact measured 475 square metres.

4.2.31 The area marked in magenta in Figure 25 corresponded to a portion of land acquired by Fortina from third parties, on which the original hotel was built. This deduction was made based on the preexisting layout of the hotel depicted in the 1996 survey sheets. This area of land was not subject to the audit being undertaken but is an important part of the area of the Fortina Hotel structure.

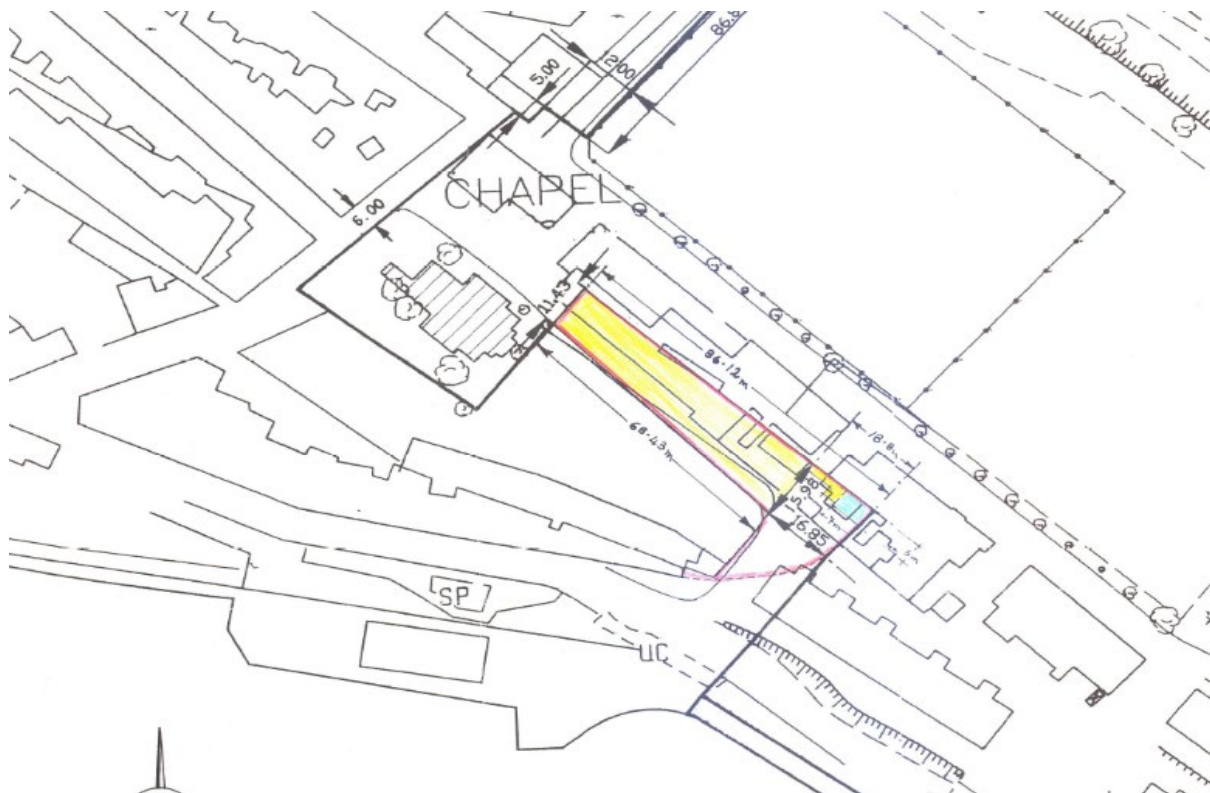
Sites transferred through the 2000 Deed

4.2.32 The land transferred by the Government to Fortina through the 2000 Deed comprised a portion of land measuring approximately 1,421 square metres, including all existing structures on site. This portion of land is indicated with a red border on site plan LD 170/99 (Figure 26 refers).

4.2.33 The 2000 Deed specified several contractual limitations, as follows:

- a. the land was sold for exclusive use as an extension to the Fortina Hotel;
- b. a maximum development height of 29.5 metres above mean sea level was imposed on a portion of the site measuring approximately 900 square metres, inclusive of the parapet wall; however, Fortina could exceed this height limitation subject to the Government's consent, which consent was to bear no additional charge; and
- c. on a portion of the site measuring 35 square metres, highlighted in green on site plan LD 170/99 (Figure 26 refers), balconies could protrude by two metres in respect of the first two storeys from 29.5 metres above mean sea level, by one and a half metres for the subsequent three storeys, and by one metre in respect of the following storeys.

Figure 26 | Site plan LD 170/99



appeared pertinent was NHSJ15, which designated the site as a component of the area earmarked in the planning policies for hotel development.

The 2019 Deed of modification and termination of contractual conditions

4.2.39 On 26 July 2019, the Government and Fortina entered into a Deed of modification and termination of contractual conditions. The main aim of this Deed was to lift certain limitations imposed on the site emanating from the 1991, 1996 and 2000 Deeds and on the portion of the site purchased from third parties. The waiving of certain contractual conditions was made against the payment of €8,100,000 by Fortina to the Government.

4.2.40 The waivers granted by the Government were the:

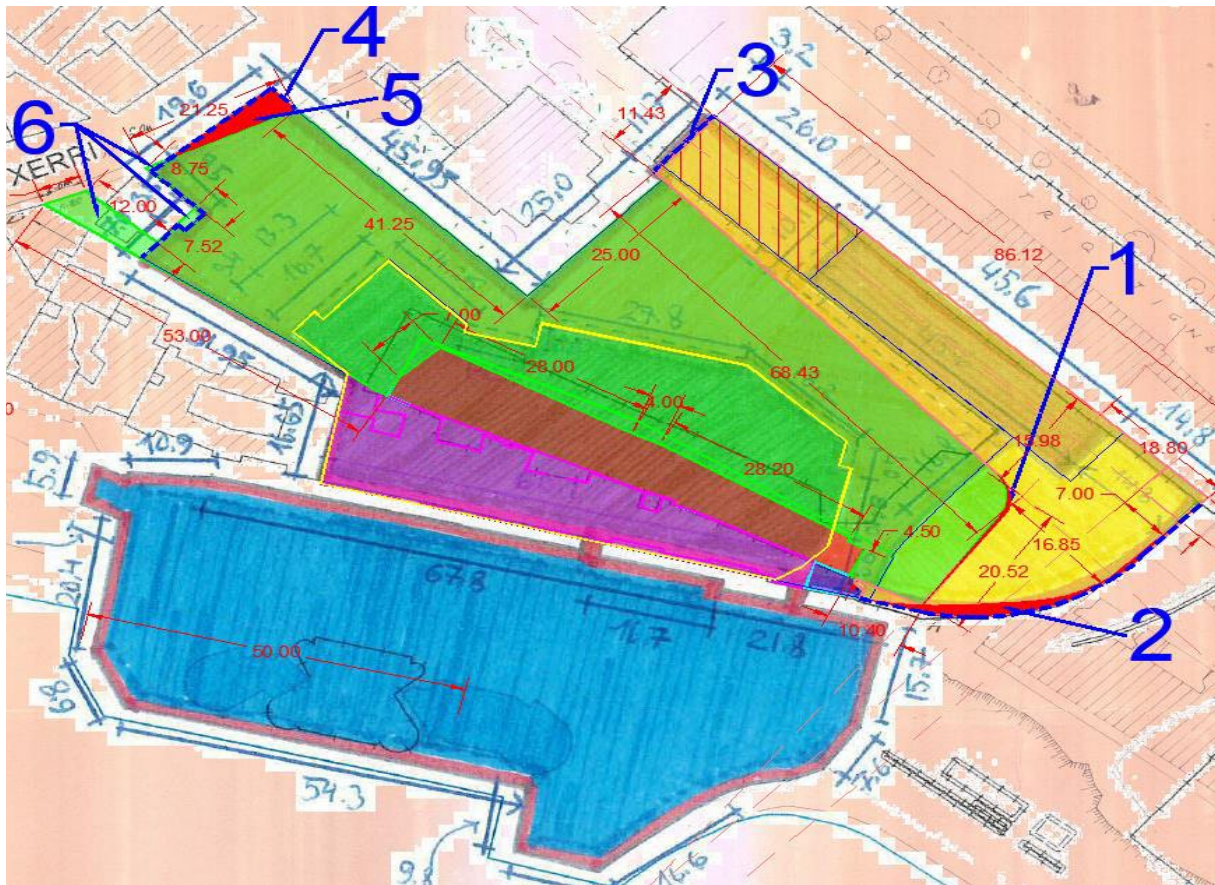
- a. removal of the obligation for exclusive use for tourism purposes on a site measuring approximately 487 square metres (indicated as 465 square metres in the 1991 Deed), another site measuring approximately 2,992 square metres acquired through the 1996 Deed, and an additional area measuring approximately 23 square metres (indicated as a ground floor room in the 1991 Deed); nonetheless, the area under Tigné Street and the lido area, measuring approximately 1,964 and 1,346 square metres respectively, were to retain the same conditions specified in the 1991 Deed;
- b. removal of the obligation 'not to build' imposed on a site measuring approximately 2,992 square metres acquired by Fortina through the 1996 Deed;
- c. removal of the height restriction imposed on a divided portion of land measuring 766 square metres, forming part of the site measuring approximately 2,992 square metres acquired by Fortina in the 1996 Deed;
- d. modification of the height restriction imposed on a divided portion of land measuring 2,220 square metres transferred to Fortina in the 1996 Deed, which originally permitted construction up to a height of 15.7 metres above mean sea level, thereby allowing development of an additional 2.75 metres when compared to the preceding height restriction of 12.3 metres from mean sea level;
- e. removal of the obligations to rebuild a bowls pitch and ancillary facilities, boundary wall, swimming pool, emergency exits, substation buildings and landscaping as outlined in the 1996 Deed;
- f. modification of the height restriction, including the granting of protrusions of balconies, as outlined in the 2000 Deed, namely the removal of:
 - i. the obligation of the height restriction for a site measuring approximately 430 square metres, including any height restrictions governing the protrusions of balconies for existing or future buildings; and
 - ii. any restrictions or concessions governing the protrusions of balconies for existing or future buildings for a site measuring approximately 275 square metres, while allowing for a servitude to be established from the level of 15.7 metres above mean sea level;

- g. removal of the obligation for the exclusive use for tourism purposes on a site measuring approximately 275 square metres, which formed part of the site measuring approximately 1,421 square metres acquired by Fortina through the 2000 Deed;
- h. removal of the obligation for the exclusive use for tourism purposes on a site measuring approximately 430 square metres up to 15.7 metres above mean sea level, which formed part of the site measuring approximately 1,421 square metres acquired by Fortina through the 2000 Deed; however, the obligation was to remain for the area above 15.7 metres above mean sea level; and
- i. removal and revocation of all rights, interests, easements, obligations, negative obligations, personal interests, height restrictions and any residual obligations of military clearance rights that may have affected the site. These also included any rights and interests held by the Government, except for those specifically stated in the 1991, 1996, and 2000 Deeds that had not been removed, modified or reduced. The Government retained any other rights and interests arising from these Deeds that were deemed to be valid and intact.

4.2.41 Overall, the 2019 Deed redefined the boundaries, removed or adjusted limitations, and clarified the rights and entitlements related to the site. To clearly delineate the contractual limitations that remained in force, the 2019 Deed restated the boundaries of the now consolidated site as indicated in Figure 28, namely:

- a. the site measuring approximately 3,515 square metres remained unchanged in terms of the rights and entitlements of the Government specified in the 1991 Deed (marked in blue in Figure 28);
- b. the Government waived its rights and entitlements on the site measuring approximately 1,947 square metres, which was rendered free from any burdens (marked in green in Figure 28); this area included:
 - i. a triangular-shaped portion of land measuring approximately 694 square metres along the façade of Tigné Street, acquired from third parties,
 - ii. land measuring approximately 487 square metres without direct street access, and an additional portion of approximately 23 square metres acquired through the 1991 Deed and previously subject to a use restriction now removed, and
 - iii. land measuring approximately 766 square metres acquired as part of a larger area through the 1996 Deed, previously subject to use and height restrictions, and the prohibition of any construction now removed;
- c. a site measuring approximately 2,510 square metres (marked in orange in Figure 28) consisting of land transferred as part of a larger parcel through the 1996 Deed and a smaller portion associated with the 2000 Deed, previously subject to height restrictions that were adjusted to 15.7 metres from mean sea level rather than removed; however, the right prohibiting construction and limitations on use for tourism purposes were both removed;

Figure 29 | Site as delineated in the 2019 Deed compared to earlier Deeds



4.2.43 This analysis by the NAO resulted in six differences of note, elaborated on hereunder:

- a. the site plan of the 2019 Deed incorporated an area of six square metres that was previously not accounted for (indicated as 1 in Figure 29);
- b. a new area measuring 41 square metres was assimilated, expanding the site boundaries and encroaching onto the public area (indicated as 2 in Figure 29);
- c. the profile of the boundary wall to the north was altered, partially enlarging the site and modifying the dimensions specified in the 2000 Deed and site plan LD 170/99 (indicated as 3 in Figure 29);
- d. revisions to the site's profile towards the west were made, aligning it more closely with the indications provided in the 1996 Deed, but also changing the profile towards the road (indicated as 4 in Figure 29);
- e. inclusion of a new area measuring approximately 38 square metres (indicated as 5 in Figure 29); and
- f. exclusion of a portion of the site that was acquired through the 1996 Deed (indicated as 6 in Figure 29).

Comparison of areas

4.2.44 Fundamental to the valuation process was the establishment of the areas for which the Government granted waivers to Fortina through the 2019 Deed. The NAO sought to ascertain whether the areas cited in the 2019 Deed tallied with other sources. Five sources were considered, that is, the areas as:

- a. listed in the 1991, 1996 and 2000 Deeds (paragraph 4.2.45 refers);
- b. measured in the site plans attached to the 1991, 1996 and 2000 Deeds (paragraphs 4.2.45 and 4.2.46 refer);
- c. cited in the 2019 Deed when referring to the 1991, 1996 and 2000 Deeds (paragraphs 4.2.47 and 4.2.48 refer);
- d. redefined in the 2019 Deed (paragraph 4.2.49 refers); and
- e. indicated in the site plan appended to the 2019 Deed (paragraphs 4.2.50 and 4.2.51 refer).

4.2.45 The NAO noted discrepancies in the areas cited in the 1991, 1996 and 2000 Deeds when compared to the areas measured from the drawings attached thereto (Figure 30 refers). While the total area cited in the 1991, 1996 and 2000 Deeds amounted to 4,901 square metres, the area measured in the relative site plans amounted to 4,993 square metres.

Figure 30 | Areas as cited in the Deeds and respective site plans

Description of the site	Measurement (m ²)		
	Stated in Deed	Measured from plan to Deed	Discrepancy
1991 Deed - Ground floor room	23	23	0
1991 Deed - Area adjacent to the hotel	465	475	10
1996 Deed - 1 plot of land	2,992	3,068	76
2000 Deed - 1 plot of land	1,421	1,427	6
Total cumulative area	4,901	4,993	92

4.2.46 The total difference noted between the areas cited in the Deeds and those measured from the digitised versions of the site plans appended thereto amounted to 92 square metres. Moreover, the NAO noted that the total area measured from the site plans excluded two internal parts of land measuring six square metres, which were eventually assimilated through the 2019 Deed. Should this area be included, the total difference in the area for the entire site would amount to approximately 98 square metres. While 98 square metres may seem relatively minor when compared to the total area, small variations or discrepancies in land measurements can have legal and practical implications, especially when concerning property rights, boundaries and potential future development or use of the land.

- 4.2.47 The initial part of the 2019 Deed referred to the sites transferred through the 1991, 1996 and 2000 Deeds. The NAO compared these sites, as quoted in the 2019 Deed, to the original Deeds, to ensure that the sites quoted tallied. The total area cited in the 2019 Deed was 4,923 square metres. This Office identified a discrepancy of 22 square metres in relation to an area corresponding to the 1991 Deed. While the 1991 Deed indicated that the area adjacent to the hotel measured 465 square metres, this was cited as 487 square metres in the 2019 Deed.
- 4.2.48 Another point of note was that relating to the site measuring 1,421 square metres transferred by virtue of the 2000 Deed. In the 2019 Deed, this site was divided into three separate areas of 430, 275 and 635 square metres, according to the specific restrictions applicable to each portion of the site. Consequently, the aggregate area covered by specific restrictions was 1,340 square metres. The remaining area of 81 square metres was not included under the specific waivers granted through the 2019 Deed; however, it was provided for through the general provisions that applied to the entire site as stated in the 2019 Deed.
- 4.2.49 The 2019 Deed redefined the areas based on use and allowed building height. The NAO established that the area of the sites under consideration in the 2019 Deed amounted to 4,851 square metres (Figure 31 refers). This comprised a total area of 5,522 square metres, from which an area measuring 671 square metres was to be deducted as this was acquired by Fortina from third parties.

Figure 31 | Areas as redefined in the 2019 Deed

Area (in Figure 28) marked as	Description of site for which waivers were sought	Measurement (m ²)
Blue	Lido area and area under the road are not considered as there was no change in limitations	-
Green	Four portions of land	1,947
Orange	A portion of land acquired in the 1996 Deed and another in the 2000 Deed	2,510
Brown	A portion of land acquired in the 2000 Deed	430
Yellow	A portion of land acquired in the 2000 Deed	635
	Total area indicated in the 2019 Deed	5,522
	Less area acquired from third parties	(671)
	Total area indicated in the 2019 Deed less that acquired from third parties	4,851

- 4.2.50 The final source of information reviewed was the site plan appended to the 2019 Deed. The NAO noted that this site plan differed from the areas specified in the Deed itself. To ascertain the accuracy or otherwise of the site plan, a digitised version of this plan was cross-checked and validated against the relevant 2017 planning permit drawings that served as the foundation for the waivers sought in 2019. This Office established that the site plan and the planning permit drawings tallied, with the aggregate area amounting to 5,703 square metres (Figure 32 refers).

Figure 32 | Areas as indicated in the site plan appended to the 2019 Deed and planning permit drawings

Area (in Figure 28) marked as	Description of site for which waivers were sought	Measurement (m ²)
Blue	Lido area and area under the road are not considered as there was no change in limitations	-
Green	Four portions of land	1,989
Orange	A portion of land acquired in the 1996 Deed and another in the 2000 Deed	2,538
Brown	A portion of land acquired in the 2000 Deed	461
Yellow	A portion of land acquired in the 2000 Deed	715
Total area indicated in the site plan of the 2019 Deed		5,703

4.2.51 The NAO noted that notwithstanding the fact that the 2019 Deed site plan was based on and tallied with the permit drawings, a discrepancy of 181 square metres was identified when comparing the total redefined area as cited in the 2019 Deed (5,522 square metres) and the total area indicated in its appended site plan (5,703 square metres). The discrepant area, adverse to the Government, was not accounted for in the 2019 Deed.

4.2.52 On comparing the different sources of information, the discrepancies and uncertainties that emerged regarding the measurements and boundaries of the property instil an element of doubt regarding the transaction in the 2019 Deed. Figure 33 lists the divergent measurements obtained by the NAO when considering the different sources of information relating to the site transacted by the Government and Fortina in 2019. It is pertinent to note that, where indicated, the measurements incorporate the part of the hotel area acquired by Fortina from third parties, which part measured 671 square metres. Comparing the different sources results in discrepancies in the total site area ranging from 22 square metres (when considering the two areas with the least discrepancy between them) to 181 square metres (when considering the two areas with the largest discrepancy between them).

Figure 33 | Measurement of the site transacted in the 2019 Deed according to different sources of information

Sources of information	Measurement (m ²)
Areas as listed in the 1991, 1996 and 2000 Deeds (4,901m ² + 671m ²)	5,572
Areas as measured in the site plans attached to the 1991, 1996 and 2000 Deeds (4,993m ² + 671m ²)	5,664
Areas as cited in the 2019 Deed when referring to the 1991, 1996 and 2000 Deeds (4,923m ² + 671m ²)	5,594
Areas as redefined in the 2019 Deed	5,522
Areas as indicated in the site plan appended to the 2019 Deed	5,703

- 4.2.53 Given the lack of clarity regarding the exact outline of the plot containing the original hotel area, including any associated shafts and backyards, the NAO was constrained to assume that the area as redefined in the 2019 Deed was accurate. Nevertheless, the variations and discrepancies in the reported areas and boundaries raised valid concerns about the accuracy and consistency of the measurements and information provided in the documents. Furthermore, the Deeds under analysis did not provide a clear and sufficient picture of the actual areas and boundaries of different parts of the site, and accurate boundaries of the entire site transferred.
- 4.2.54 The lack of clarity and information regarding the boundaries and areas of the site posed challenges in determining the portions of the separate Deeds that were to be valued against the waivers granted through the 2019 Deed. Compounding matters was the fact that the 2019 Deed did not clearly define the boundary of the entire site, and it remained unclear whether the Government had agreed to grant waivers for areas not included in previous Deeds at no additional charge, while reclaiming other areas that had formed part of earlier Deeds without providing any compensation. The 2019 Deed did not provide information on these specific issues, further complicating the assessment process. Further uncertainty remained regarding the ultimate confirmed areas of delineation between separate Deeds within the overall area covered by the 2019 Deed and the determination of whether the areas in the site plan or the area as indicated in the Deed took precedence in defining the boundaries.

Assessment of the hotel structures against the Deeds

Assumptions

- 4.2.55 In 2017, Fortina submitted an application to the PA to explore the feasibility of reconfiguring the entire site. Through this application, Fortina sought to address the limitations imposed by the Government through the 1991, 1996 and 2000 Deeds by seeking waivers or exceptions. The intention was to reassess and potentially modify the existing conditions and restrictions to better align with Fortina's development plans. Included with the application were plans of the existing building.
- 4.2.56 The information available did not provide a clear distinction regarding which parts of the site corresponded to the five-star hotel and to the four-star hotel. However, the NAO confirmed that the original building was categorised as a four-star facility. The tower and the new hotel wing were presumed to form part of the five-star facility. Additionally, it was assumed that the extension at the back of the original hotel, including the additional floors on the existing building sharing the same corridors and staircases, fell within the four-star hotel.

The four-star hotel

- 4.2.57 The four-star hotel consisted of two parts, one built on land acquired from third parties and on which a hotel was constructed in the early seventies, and the other on land acquired from the Government through the 1991 Deed.

The portion of the four-star hotel built on the site acquired from third parties

- 4.2.58 In 1951, the Government sold a portion of land to third parties, which transfer included a servitude of military clearance rights. This servitude imposed a height limitation of fifteen feet and two inches (approximately 4.6 metres) from the street level. However, according to the 2019 Deed, this part of the site was sold without restrictions in 1951.
- 4.2.59 The 2019 Deed referred to two other deeds pertaining to the same portion of the site, one signed in 1959 and the other in 1962. While the 1962 deed contained a partial derogation from the military clearance rights, there was no indication provided as to the specific details or extent of this derogation.
- 4.2.60 The overall area of this portion of the four-star hotel, fully owned by Fortina, was estimated as 709 square metres. The specific portion sold in 1951 was approximately 66.87 square metres (equivalent to 15.23 square qasab as stated in the deed). However, the 2019 Deed did not specify the areas of the other two sites sold in 1959 and 1962. Furthermore, it was not clearly indicated whether the military clearance rights applied to the entire site where the original hotel was constructed or only to a specific portion of the site.
- 4.2.61 According to PA records predating 1995, four applications were submitted pertaining to different areas, but collectively they covered only a small portion of the land owned by Fortina. As previously noted, no records of planning permits for the original hotel were available.
- 4.2.62 It is pertinent to note that this part of the four-star hotel surpassed the height limitation imposed by the military clearance rights, set at 4.6 metres from street level. According to the section drawings submitted with PA/06252/17, this building had a height of 27.55 metres.
- 4.2.63 Since the NAO was unable to trace the permit for the original hotel from the PA's records, it was not possible to verify the basis on which this permit was obtained and whether the servitude in question was abolished during the initial construction. Nonetheless, the 2019 Deed indicated that the military clearance rights were completely abolished across the entire site. It is to be noted that the 1991, 1996 and 2000 Deeds, through which different sections of the site were transferred, did not contain any servitude related to military clearance. Therefore, this Office assumed that the 2019 Deed specifically eliminated the military clearance requirement and the associated building height restriction for the part of the four-star hotel that predated the 1991 Deed.
- 4.2.64 Due to insufficient information, it remained unclear to the NAO whether Fortina breached the height limitation imposed in connection with military clearance prior to the 2019 Deed. Consequently, it was not possible to determine the precise impact in terms of volume and the corresponding value of the relinquished rights for this part of the site.

The portion of the four-star hotel built on land acquired through the 1991 Deed

- 4.2.65 The four-star hotel constructed in the seventies extended on land transferred by the Government to Fortina through the 1991 Deed. The land acquired through this Deed was divided into two areas, a ground floor room measuring 23 square metres and a site measuring 465 square metres.
- 4.2.66 During the refurbishment and extension of the hotel, the ground floor room measuring 23 square metres was incorporated into the four-star hotel. This addition was carried out in accordance with the planning permit issued in 1998. Regarding the site adjacent to the original hotel, measuring 465 square metres, it was noted that the site plan LD 321/90 (Figure 20 refers) attached to the 1991 Deed was entirely hand-drawn and lacked accurate dimensions, possibly leading to discrepancies in site area.
- 4.2.67 On digitally reproducing the shape outlined in LD 321/90, an approximate area of 528 square metres was established. It is to be noted that the site plan included elements such as existing fences and a staircase, which likely served as references for defining the site's perimeter. Assuming that these elements were used as reference points for marking the outline of the new building, it was reasonable for the NAO to conclude that these aligned with the perimeter of the extension built after the 1991 Deed. Except for the requirement for the site to be used as an extension of the hotel, the 1991 Deed imposed no additional servitudes on these areas of the site.
- 4.2.68 Through the 1996 Deed, Fortina acquired another portion of land, measuring approximately 2,992 square metres, adjacent to that granted by the Government in the 1991 Deed and on which the four-star hotel was extended. This area was further specified and cross-referenced with the dimensions provided in the site plan LD 208/95, which site plan was appended to the 1996 Deed. A digitised version of the land indicated in this site plan (shown in green in Figure 34) was overlaid with the existing building as indicated in planning application PA/06252/17 (areas shaded in grey in Figure 34).
- 4.2.69 Evident in the digitised version was that the area acquired in 1996 overlapped with the outlines of the extension of the four-star hotel built in terms of planning application PA/07193/98. This overlap raised the NAO's concerns that a portion of the extended four-star hotel may have been built on land where no construction was allowed, potentially breaching the conditions set forth in the 1996 Deed. This area, measuring approximately 105 square metres, is indicated by the red dashed outline and marked as 1 in Figure 34.

Figure 34 | Digitised land area in site plan LD 208/95 overlaid on planning application PA/06252/17



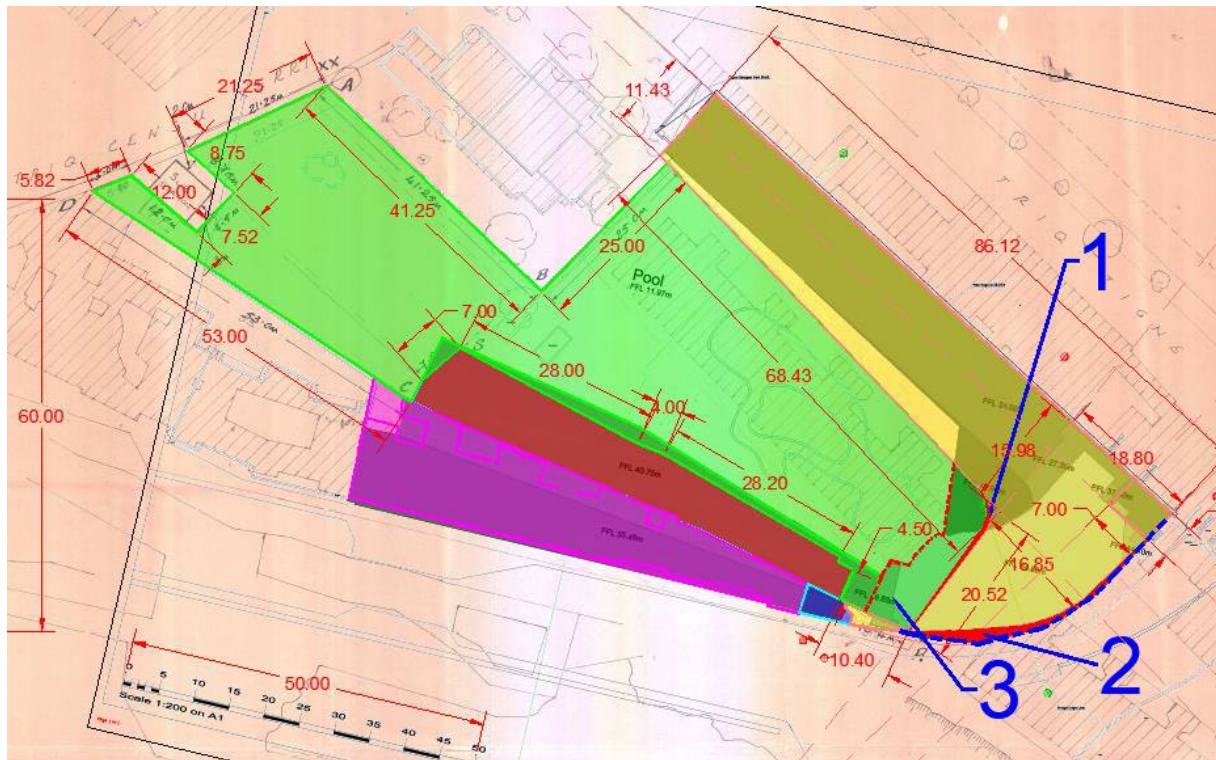
The five-star hotel

4.2.70 Based on the information sourced by the NAO, this Office established that the five-star hotel was constructed on a plot of land consisting of two areas transferred through the 1996 and 2000 Deeds.

4.2.71 When the digitised versions of the site plans appended to these Deeds were overlaid with the existing building drawings obtained from planning application PA/06252/17, three areas of non-compliance with the Deeds were identified up to 2019, that is:

- a. an internal area of six square metres that was not included in any of the Deeds (marked as 1 and represented by the red-coloured area in Figure 35);
- b. a public area measuring 30 square metres that was not included in any of the Deeds (marked as 2 and depicted as a red-coloured area in Figure 35); and
- c. an area measuring 135.5 square metres that was built on the land transferred by virtue of the 1996 Deed, thereby indicating a breach of the Deed’s provisions which prohibited construction thereon (marked as 3 and shown as a red dashed area within the green portion of the site in Figure 35).

Figure 35 | Five-star hotel: Areas of non-compliance



Valuations

Overview

4.2.72 To determine the additional value accrued to the site from the removal or alteration of restrictions through the 2019 Deed, the NAO undertook a series of valuations aimed at establishing such value. The valuations were arrived at through:

- a. a calculation of the Gross Development Value (GDV) for the two existing hotels, including amenities, prior to the 2019 Deed;
- b. a computation of the GDV for the new residential block, underlying garages, commercial units, and the five-star hotel outlined in PA/06252/17, post the 2019 Deed, with further assumptions taken into consideration to streamline the valuation process and account for specific constraints;
- c. the determination of the Gross Development Costs (GDC) for the existing hotels, taking into account pre-2019 Deed conditions;
- d. a calculation of the GDC for the new development, primarily based on PA/06252/17, reflecting the stipulations of the 2019 Deed and the altered usage;
- e. the derivation of land value by adopting the residual approach, established as the difference between the GDV and the GDC for both scenarios, that is, pre and post the 2019 Deed;

- f. defining the added value to the land, calculated as the difference between its previous value and that arising from the 2019 Deed;
- g. the assessment of the breaches in conditions set out in the 1991, 1996 and 2000 Deeds; and
- h. the consideration of the portion of land valued by the Architects Lands Authority in 2018.

4.2.73 These valuations collectively contributed to a comprehensive assessment of the added value ensuing from the modifications and eliminations of restrictions as provided for by the Government to Fortina in the 2019 Deed.

Assumptions

4.2.74 The valuations undertaken by the NAO were based on several assumptions pertaining to the circumstances prevalent in 2019. All property measurements were carried out in accordance with the code of measuring practice as established in the Kamra tal-Periti Valuation Standards 2012.

The four-star hotel

4.2.75 In determining value, the four-star hotel was considered in terms of its full potential volume, which allowed for the addition of two extra floors beyond the height limit stipulated in the local plans. For this valuation, the other conditions outlined in the Hotels Height Limitation Adjustment Policy were presumed to be met. To achieve the maximum allowable volume, which entailed an additional two floors above the height limitation of eight floors and the semi-basement, rising to a height of 35.5 metres above street level, the following modifications were considered: four floors were added on the seaside section of the building, which originally had a height of 27.5 metres from street level, and three floors were added to the rear section, which had an initial height of 31.5 metres from street level. This assumption has been considered in the GDV and the GDC.

4.2.76 Another assumption considered by the NAO related to construction, finishes and services. The limitations imposed prior to the 2019 Deed permitted the complete reconstruction of the hotel up to the allowable maximum height. Nevertheless, for the hotel owner, a more favourable return could have been achieved by selling the hotel in its current state, capitalising on the potential of additional floors, as opposed to investing in an entirely new construction prior to selling. The latter option would necessitate a larger investment and the resulting variance in market value, which is influenced by operational costs, would have been minimal. The disparity in enhanced finishes and services would not substantially impact room prices, which are a key factor in market value determination. However, the amounts associated with the upgrades would have significantly reduced the overall net amount realisable by the hotel owner.

4.2.77 In view of these considerations, the GDC were calculated taking into account the current age of the building and factoring in the effects of wear and tear. Nevertheless, the additional floors,

representing the site's unbuilt potential, were estimated using rates applicable to new construction. Furthermore, rates for finishes and services were presumed to be approximately 85 per cent of the rates applicable to similar works in a five-star hotel. These rates were rounded up to the nearest whole number.

The five-star hotel

- 4.2.78 The NAO understood that the inclusion of additional levels to the five-star hotel would not have provided additional potential revenue for the Government, as there was no specific height limitation imposed on this site. Moreover, this Office deemed the assessment of an arbitrary number of additional floors as not feasible. Consequently, the five-star hotel was evaluated in its current state, without factoring in any additional levels. However, to ensure a comparable assessment of the two hotel developments, the methodology applied to the four-star hotel was adopted in the consideration of the five-star hotel. Despite the approved planning application allowing for the addition of more floors, the NAO's assessment only accounted for the original volume of the pre-existing five-star hotel.
- 4.2.79 In terms of construction, finishes and services, the NAO extended the same assumptions relating to the four-star hotel – specifically those concerning the overall value to the owner and the fact that rates were contingent on the age of the hotel – to the existing five-star hotel (on site prior to the 2019 Deed). When considering the fact that the 2019 Deed allowed for changes in use below 15.7 metres above mean sea level, the approach taken to fully capitalise on the site's potential assumed the demolition of the existing hotel. Demolition would have enabled further excavation, leading to the creation of underground parking spaces that could subsequently be marketed as part of the residential assets.
- 4.2.80 Assessing the construction, finishes and services post the 2019 Deed, the NAO took cognisance of Fortina's planning application PA/06252/17. When approved, this application allowed Fortina to retain the tower segment of the five-star hotel and permitted the demolition of the remaining portion of the structure on the site. Fortina's decision to retain a part of the structure and not exploit the underground potential may have been influenced by the cost associated with rebuilding the same tower. However, the primary driving factor in this scenario was the now permissible change in use for the lower levels. Therefore, the decision to retain the existing structure (bar the tower) was disregarded and a new structure accommodating the revised use for the lower levels was considered. This aspect was duly incorporated into the GDC for the new hotel, which were calculated using rates relevant to new construction, finishes and services. This was a strategic commercial choice of the hotel developer, as the additional costs associated with new construction increased the value of the site when compared with retaining this portion of the existing structure. On the other hand, the strategy of retaining the tower did not maximise the full potential value for the site and the potential volumes that could have been gained under the tower. Consequently, these two factors were presumed to offset each other, thereby achieving a balance in the overall assessment.
- 4.2.81 The levels below and above ground, extending up to 15.7 metres above mean sea level, were exempted from the strict requirement of exclusive hotel use in the 2019 Deed. The NAO deemed

that a five-star hotel could not maintain its designation if it solely consisted of rooms without any accompanying facilities. Consequently, the feasibility of a five-star hotel without direct street access, lacking hotel amenities on the ground level, and devoid of accessible back-of-the-house supply from the road was highly implausible. In this regard, the valuation of areas pertaining to the new five-star hotel use on floors below 15.7 metres above mean sea level was conducted as endorsed in planning application PA/06252/17. This approach was deemed prudent by the NAO. Nevertheless, this Office acknowledged that these areas could have potentially served different purposes, such as residences or commercial spaces. Such alternative use could have enhanced the overall value and contributed to the appreciation of the land.

4.2.82 In addition to the amenities contained within the footprint of the five-star hotel, it was assumed that the external pool facilities situated between the two hotels, as well as the subterranean spa facilities, were regarded as integral components of the five-star hotel. However, acknowledged was that guests of the four-star hotel could also make use of these facilities.

The area under Tigné Street and the lido

4.2.83 Although the area under Tigné Street, the lido and pool were not factored into consideration for valuation purposes due to their use remaining unchanged, the NAO noted that the restrictions in force prior to the 2019 Deed specified that no structure above one metre from street level could be erected. However, over time, a structure resembling a temporary installation for use as a restaurant was set up, covering an area of approximately 143 square metres and exceeding the permissible height of one metre, obstructing the views of Valletta from the public promenade (Figure 36 refers).

Figure 36 | Restaurant above the lido area obstructing Valletta views



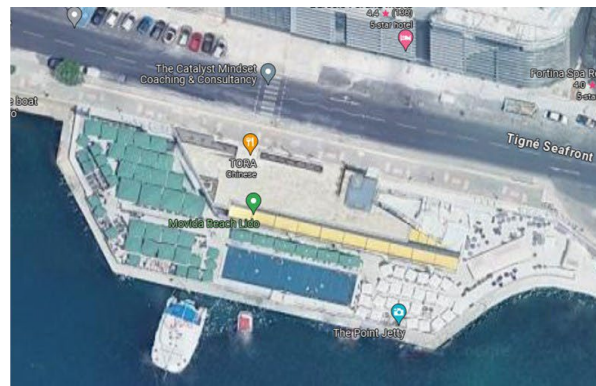
4.2.84 The NAO deemed this construction in breach of the 1991 Deed. Nevertheless, the newly proposed lido, constructed on-site and existing as of 2023, rectified this breach. The only remaining protruding structures were the lift and the covered staircase leading to the restaurant and lido on levels below the promenade. Furthermore, the roof was extended to create a new open public space.

4.2.85 Nevertheless, new infringements were noted by the NAO in the design of the lido, for the pool structure and pool deck occupied more area than allocated in the Deeds up to 2019. This infringement included a portion of the sea and a public walkway adjacent to the sea as indicated in PA/04590/19. Figure 37 shows the outline of the newly proposed and now built lido.

Figure 37 | Aerial view of lido: Comparison of areas granted and occupied



Source: Environment and Resources Authority



Source: Google Maps

4.2.86 The NAO established that on 9 January 2019, Fortina submitted an application to the PA for the demolition of the existing restaurant terrace, the removal of swimming pools, the levelling and extension of the existing lido platform, the creation of a new swimming pool, the extension of the public foreshore access around the platform, the construction of a restaurant below the promenade level, and the creation of a public open space at promenade level above the restaurant. At some point, Fortina informed the Lands Authority of its planning application, with the Authority noting, on 9 May 2019, that it had no objection in principle to the development sought.

4.2.87 Following the PA's approval of PA/04590/19 on 1 July 2020, on 1 September 2020, Fortina submitted a request to the Lands Authority for the purchase of 147 square metres of the existing public foreshore passage that ran along the perimeter of the Fortina lido and an adjacent area of 351 square metres of sea. The combined area of 508 square metres was to be incorporated as part of Fortina's lido as per the approved PA permit. Fortina was to create a new public foreshore passage of 130 square metres at the perimeter of the extended lido, which area was to remain public. On 27 October 2020, the case was referred to the Lands Authority's Disposal Committee, wherein it was decided that the disposal was to be made by means of a parliamentary resolution.

4.2.88 Following a lengthy delay, the matter concluded on 10 July 2023 when, following a debate by Plenary, Parliament resolved to dispose of the land requested by Fortina through a temporary emphyteusis of 65 years against an annual payment of approximately €114,000. A penalty of €70,000 was imposed on Fortina for the illegal occupation of the redeveloped site prior to Parliament's approval.

Market value after completion

Gross Development Value of the hotels and amenities

- 4.2.89 Various approaches could be employed to value hotels and establish their market value. These include the income capitalisation approach and the sales comparison approach. Additionally, more simplified valuation techniques, based on rule-of-thumb principles, have often been used. These include the average daily rate multiplier and the bottle/can soda multiplier methods.
- 4.2.90 Simplified methods can yield reasonably accurate values, but their reliability is not consistent as they hinge on hotel occupancy rates and operational costs, which must fall within specific ranges for these methods to be effective. Essentially, these valuation techniques tend to restrict the assessment to room revenue exclusively, disregarding any supplementary income from sources such as food, beverage or the rental of other spaces within the hotel, for example a spa or hairdressing salon. This limitation can result in an incomplete reflection of the true value of the hotel.
- 4.2.91 Since the NAO lacked access to recent hotel sales records or those from 2019, the sales comparison approach was not employed. Consequently, the primary method utilised by this Office in establishing value was based on the income capitalisation method. Although the NAO did not consider Fortina's actual hotel income, alternatively available statistical data pertaining to the revenue and expenses of luxury hotels were utilised.
- 4.2.92 To provide an additional benchmark for comparison, the NAO utilised a simplified method based on the average daily rate. This rate was then multiplied by the number of rooms and further amplified by a factor of 1,000 to derive hotel values.

Average yearly room rates

- 4.2.93 As part of the valuation process, the NAO sought to establish the average yearly room rates for four-star and five-star hotels. To this end, this Office relied on accessible data published by the Malta Hotels and Restaurants Association detailing the average room rates for 2019. The data sourced indicated an average room rate of:
- a. €85.70 for a four-star hotel; and
 - b. €168.80 for a five-star hotel.
- 4.2.94 Moreover, through reference to the Malta Hotels and Restaurants Association report for 2022, the NAO established that the recorded room rate for a five-star hotel in 2022 was €191.10.
- 4.2.95 To determine variations between rooms offering views of Valletta and the harbour, as opposed to those without such views, and to distinguish between room and suite rates, a current applicable rate was required to establish a reliable benchmark that would be readily cross-referenced with present-day rates. This contemporary benchmark would subsequently enable the application of the same ratios to establish a similar relationship for the rates in 2019.

- 4.2.96 As the average rate for the year 2023 was not available at the date of the NAO's valuation, the rate for 2022 was adjusted to account for inflation, set at 6.2 per cent in 2023. This calculation yielded an average rate of €202.95 for a five-star hotel in 2023.
- 4.2.97 For comparative analysis, it was noted that the disparity between the rates of 2019 and 2022 for the five-star hotel indicated an increase of 13.21 per cent. In contrast, the inflation rate during the same period stood at 3.74 per cent. This observation led the NAO to the understanding that the assumed increase in average room rates from 2022 to 2023 could be even higher than the figure obtained after adjusting for inflation. Therefore, the rates utilised by this Office were not considered to be overestimated.

Hotel's total revenue and expenses percentages

- 4.2.98 The NAO acknowledged that total revenue percentage for luxury hotels can vary widely depending on factors such as location, amenities, services offered and market demand. On average, five-star hotels aim to generate revenue through the following sources:
- a. 50 to 60 per cent of total revenue from rooms;
 - b. 20 to 30 per cent from food and beverage;
 - c. 10 to 15 per cent from events and conferences; and
 - d. 5 to 10 per cent from other services such as spa facilities, retail, and others.
- 4.2.99 Similarly, the percentage of total expenses for five-star hotels can vary widely depending on factors such as location, size, facilities, management and market conditions. On average, luxury hotels aim to keep their total expenses, including operational costs, labour, maintenance, marketing, and other expenditures, within a range of 70 to 80 per cent of total revenue, thereby realising a gross operating profit margin of 20 to 30 per cent. Nevertheless, the NAO recognises that these percentages are approximate and can differ significantly based on the specific circumstances of each hotel.
- 4.2.100 For this valuation, the NAO assumed that total room revenue for a five-star hotel constituted an average of 55 per cent of the hotel's overall revenue. Additionally, expenses were considered to amount to 75 per cent of total revenue. These assumptions served as a foundational framework for this Office's valuation process.
- 4.2.101 In the case of the four-star hotel, room revenue was assumed to constitute a larger proportion of total revenue. This assumption considered the limited amenities in the hotel and the high number of rooms, including potential additional floors. As a result, room revenue was estimated to account for 75 per cent of the hotel's total revenue. Additionally, the NAO assumed that operating expenses were significantly lower due to the hotel's lower rating and the absence of certain additional amenities. Therefore, operating costs were assumed at 66 per cent of total revenue. These assumptions reflected the specific characteristics and circumstances of the four-star hotel.

Occupancy rates

4.2.102 Hotel occupancy rates were obtained from the National Statistics Office. In this context, the average occupancy rates over the ten-year period leading up to 2019 were 67.4 per cent for a five-star hotel and 70.2 per cent for a four-star hotel (Figure 38 refers).

Figure 38 | Occupancy rates for five-star and four-star hotels, 2010-2019

Occupancy	2010 (%)	2011 (%)	2012 (%)	2013 (%)	2014 (%)	2015 (%)	2016 (%)	2017 (%)	2018 (%)	2019 (%)	Average (%)
Five-star hotel	61.5	62.9	63.6	65.0	68.9	71.1	71.7	70.1	70.3	68.9	67.4
Four-star hotel	68.5	70.7	67.5	66.4	70.7	70.7	71.6	72.1	72.5	71.3	70.2

Source: National Statistics Office, Malta

Outlook and type of accommodation multiplier

4.2.103 To establish the parameters that differentiate between rooms with sea-facing views and those with inward-facing vistas available at the five-star Fortina Hotel that was due to open in late 2023, the NAO utilised actual advertised data of room rates from a publicly accessible information source. This data was then employed to formulate the multipliers applied to average rates and validate these factors within a current context. Subsequently, these refined parameters were employed to project the potential revenue more accurately by applying them to the average rates of 2019. This approach allowed for a more precise depiction of the anticipated revenue based on the actual projected potential of the new hotel and its specific characteristics.

4.2.104 The data relating to the advertised average daily rates for the different accommodation available at the five-star Fortina Hotel in 2023 were:

- a. €288 for a suite;
- b. €229 for a room with no sea view;
- c. €263 for a room with a sea view; and
- d. €178 for a room with no sea view, excluding breakfast.

4.2.105 Based on this analysis, specific multipliers – adjustment factors applied to the base rate to reflect the different characteristics of rooms – were established as follows:

- a. 1.15 for Valletta and harbour views, resulting in an average daily room rate of €233.39; and
- b. a multiplier of 0.88 for inward views, leading to an average daily room rate of €178.59.

4.2.106 Applying the same principles, a set of adjustment factors for rooms and suites were defined as follows:

- a. a multiplier of 1.235 for a suite, resulting in an average Valletta-facing suite daily rate of €288.24; and
- b. a multiplier of 1.0 for a room, yielding an average daily room rate with inward views of €178.59.

4.2.107 These adjustment factors for the different types of accommodation account for their specific attributes, providing a more accurate representation of chargeable room rates.

Number of rooms

4.2.108 The number of rooms plays a significant role in the revenue generated by a hotel. In determining the number of rooms at the Fortina Hotel, the NAO considered available information and made additional assumptions as outlined hereunder.

4.2.109 The number of rooms in the four-star hotel was derived from the available layouts and exterior images of the hotel. A standard floor plan comprised 11 rooms at the back and 17 rooms at the front of the hotel. The NAO assumed that this plan would apply to the additional floors allowed in terms of the Hotels Height Limitation Adjustment Policy of 2014. Consequently, the calculation of the room revenue generated by the four-star hotel was based on a complement of 301 rooms.³¹

4.2.110 The NAO acknowledged that the substantial number of rooms could be ambitious for a four-star hotel with limited amenities. Nonetheless, this estimation aligned with the available policy that allowed for the maximisation of hotel volumes, thereby permitting this quantity of rooms. It is on this premise that this Office's calculations were based.

4.2.111 The determination of the number of rooms in the existing five-star hotel was based on the actual layout of the hotel, as indicated in the drawings of the existing building in PA/06252/17. However, it was noted that the drawings pertaining to the planning application for the new five-star hotel and the existing five-star hotel excluded two floors, that is floors 14 and 16 in the tower, which appeared to not have been considered as part of the hotel. These floors were labelled as 'third party property' in the proposed development drawings and were completely omitted from the drawings of the existing five-star hotel. The NAO deemed this omission anomalous, considering that the site was exclusively designated for hotel use and that the 2019 Deed designated levels 14 and 16 for this purpose.

4.2.112 Given that the 2019 Deed permitted no change in use on any of the floors above 15.7 metres from mean sea level, the omission of levels 14 and 16 was disregarded. Both these levels were accounted for assuming the typical layout of the adjacent floors. With these considerations, the NAO estimated that the number of rooms in the existing five-star hotel was 146.

³¹ The Hotels Height Limitation Adjustment Policy, published in August 2014, facilitated the vertical extension of hotels rated as three-star or above by the Malta Tourism Authority. Through this Policy, such hotels could apply for development permission to increase the height of the hotel building to not more than two additional floors over and above the height limitation permitted in the Local Plan, provided that the resultant design featured a high-quality product in keeping with the urban context.

4.2.113 As stated, the calculation of the number of rooms in the proposed five-star hotel was derived from the hotel's actual layout, as specified in the drawings to PA/06252/17. Only the levels up to the fourth floor in the wing part of the hotel and the levels up to floor 17 in the tower part of the hotel were considered in the NAO's valuation. The rationale behind this approach was based on the understanding that the inclusion of additional levels would not generate additional revenue to the Government, considering provisions to this effect stipulated in the 2000 Deed.

4.2.114 Given these constraints and accounting for the assumed layouts of floors 14 and 16, the total number of rooms was calculated as 143. This approach ensured that the specific circumstances related to the floor levels and designated areas were accurately accounted for in determining the number of rooms in the proposed five-star hotel.

4.2.115 It is pertinent to note that the footprint of the proposed hotel wing was reduced when compared to the footprint of the existing five-star hotel wing. Despite this reduction, the redesigned layout accommodated a similar number of rooms within the span of four floors of the wing. This adjustment led to the creation of smaller rooms in the new layout when compared to those in the existing setup.

Gross Development Values

4.2.116 The GDVs of the hotels and amenities were established through income capitalisation. Utilising the parameters outlined above and applying a capitalisation rate of eight per cent, considered reasonable for this type of investment in the given location, the estimated market values arrived at were:

- a. €41,840,000 for the existing five-star hotel, inclusive of all amenities and use of the underground levels;
- b. €39,220,000 for the existing four-star hotel and relevant amenities; and
- c. €40,780,000 for the newly proposed five-star hotel.

The unexploited potential of basement levels under the 5- and 4-star hotels

4.2.117 The potential for the development of additional basement levels as a public commercial car park was based on the understanding that these levels were permissible in 2019 but remained unexploited. In fact, the Deeds imposed no restrictions on the development of underground levels below the hotels. The area of the underground car park was derived by deducting the existing supporting areas necessary for the operation of the hotels from the total possible basement area.

4.2.118 In terms of the operational assumptions utilised as the basis for valuation, the NAO considered that the possible available space would be utilised for public commercial car parking and would result in 400 spaces. Assuming year-round and uninterrupted daily operations, adjusted for off-peak hours and variable utilisation for the remaining hours, the NAO arrived at an occupancy rate of 26.25 per cent. Considering an average stay of three hours per vehicle, a charge of €5 per

stay (based on comparable car parks), operating and maintenance costs of 15 per cent of gross revenue, and a capitalisation rate of 6.5 per cent resulted in a market value for the car park of €20,047,692. The assumed developable area, including circulation space, was 14,125 square metres, resulting in a rate €1,420 per square metre.

4.2.119 The NAO is cognisant that, while occupancy and rate assumptions were grounded in real-world benchmarks, deviations in local demand or pricing could impact actual returns. Moreover, the 6.5 per cent capitalisation rate reflected a moderate risk level. Were this to be adjusted for higher risk or market instability, the estimated market value would consequently be lower.

4.2.120 The potential value of the car park was estimated by subtracting the areas necessary as support for the hotels' operations, such as storage and maintenance, from the total basement area. Also taking into consideration the existing infrastructure limitations resulted in an area that could be used as a commercial public car park of 11,038 square metres. Applying the rate of €1,420 per square metre led to a GDV of €15,674,200.

Gross Development Value of the residential blocks, commercial units and underground levels

4.2.121 The GDV for the remaining assets within the Fortina site was determined using the comparative sales method. This approach was reinforced by external evidence derived from recorded advertised prices for comparable properties within the vicinity.

4.2.122 In the case of apartments and car spaces, the valuation was based on records of advertised prices in 2019. For the commercial assets, the valuation relied on advertised prices in 2023. A local property website that aggregates listings from multiple real estate agencies was used to gather information related to advertised prices for similar properties in the area in 2018, 2019, 2020 and 2023. The valuation of the asset was based on its potential for new development, considering the approved PA/06252/17.

4.2.123 In valuing the residential assets, the NAO assumed that these were completed to a high level of finishes and services. This consideration took into account the prime location and favourable outlook associated with these assets.

4.2.124 The apartments within the Fortina site were advertised as shell properties, with the option to add internal finishes at an additional cost. However, in the context of establishing market value, the NAO sought to determine the highest potential value achievable within the parameters of the market value definition. Consequently, this Office assumed that the apartments were sold in a finished state.

- 4.2.125 The market value for finished apartments was calculated at a base rate of €9,052.26 per square metre, which represented the average market rate for similar properties in the area in 2019. This rate was then adjusted based on factors such as storey height, location, level of finishes, and outdoor accommodation. These factors were considered as relevant within the local pool of residential assets and validated through numerous valuations of comparable properties.
- 4.2.126 The average rate for apartments was further adjusted based on their orientation, either facing the sea or inward. The assessment of residential potential considered the entire floor area without division into separate apartments. Nevertheless, the factor associated with view orientation was averaged using the individual areas of apartments on distinct levels with the specific view. A factor of 1.2 was employed for sea-facing apartments, which was applied to the average rate per square metre. For apartments lacking this view, a factor of 0.9 was utilised.
- 4.2.127 The valuation of the car park levels was based on residential and commercial uses, reflecting distinct market values and assumptions. For residential car park spaces, a market value per space of €20,000 was determined. This was based on 2019 advertised prices for similar properties in the area. Several spaces were allocated for residential use in line with the Development Control Design Policy, Guidance and Standards 2015. Circulation space costs were assumed to be included as part of the cost of the allocated residential car spaces. As regards the commercial public car park spaces, the rate per square metre was determined as €1,420.
- 4.2.128 The market value for other commercial assets was established by considering advertised sale values for comparable properties in the area in 2023. The rate was then adjusted for projected inflation between 2019 and 2023, assumed to be 10.2 per cent.³² This yielded a rate of €6,360.15 per square metre.
- 4.2.129 Traditionally, commercial assets are often valued using methods such as the income capitalisation method. However, in the absence of records of applicable rates in 2019 and given the availability of 2023 prices for similar properties, the valuation was based on this data. The NAO assumed that the commercial development would be sold in shell condition, as such properties are ordinarily fitted and branded by the owner.
- 4.2.130 This comprehensive approach to valuation considered various factors and market data to arrive at an estimated market value that aligned with the characteristics and potential of these components of the Fortina site. This yielded an assumed value for the entire residential component of €212,080,000 in 2019 (Figure 39 refers). Regarding the car park, the assumed value of the 400 car spaces available based on type was €14,510,000 (Figure 40 refers). The value of the commercial component of the site, with an estimated internal area of 447.90 square metres and an estimated external area of 115.52 square metres, was calculated as €3,110,000 for 2019.

³² At the time of valuation, a rate of inflation of 6.15 per cent was projected for 2023.

Figure 39 | Estimated market value for the residential component, 2019

Level	Type	Internal area (m ²)	External area (m ²)	Assumed value in 2019 (€)
1	apartments	1,641.53	173.95	16,170,000
2	apartments	1,657.41	276.16	18,520,000
3	apartments	1,657.41	276.16	18,520,000
4	apartments	1,657.41	276.16	18,520,000
5	apartments	1,657.41	276.16	18,520,000
6	apartments	1,657.41	276.16	18,520,000
7	apartments	1,657.41	276.16	18,520,000
8	apartments	1,604.61	304.09	18,050,000
9	apartments	1,176.85	646.90	15,010,000
10	apartments	1,164.31	233.12	13,320,000
11	apartments	1,054.96	303.86	12,400,000
12	apartments	848.40	375.76	10,650,000
14	apartments	667.20	329.17	9,000,000
15	apartments	293.25	372.26	5,760,000
roof	roof	293.25	0	600,000
Total				212,080,000

Figure 40 | Estimated market value for the car park, 2019

Type of car park space	Quantity (n)	Percentage of car park area (%)	Proportion (m ²)	Assumed value in 2019 (€)
Residential	184	46	6,497.39	3,680,000
Commercial public	216	54	7,627.37	10,830,000
Total	400	100	14,124.76	€14,510,000

4.2.131 Considering the residential (€212,080,000), commercial (€14,510,000) and underground parking (€3,110,000) elements of the Fortina site, the total market value was estimated by the NAO to amount to €229,700,000.

Gross Development Costs and residual value of the land for the existing hotels considering pre-2019 Deed conditions

4.2.132 The areas of the existing hotels were established based on the predefined assumptions and available information, as detailed earlier. The gross external area of the four-star hotel totalled 11,257 square metres, that of the terraces and balconies accounted for 2,567 square metres and the extent of the common areas was 4,542 square metres. Figure 41 provides the detailed areas of the different levels of the four-star hotel, including the new floors as permitted, and the roof.

Figure 41 | Areas of the four-star hotel per level

Level	Gross external areas (m ²)	Terraces and balconies (m ²)	Common areas (m ²)
basement-2	0	0	75.28
basement-1	0	0	488.64
0	1,056.59	0	213.04
1	1,056.59	155.30	213.04
2	914.39	107.45	355.24
3	914.39	107.45	355.24
4	914.39	107.45	355.24
5	914.39	116.00	355.24
6	914.39	114.97	355.24
7	914.39	117.82	355.24
8	423.95	31.35	355.24
8 (new half floor as per Policy)	490.44	86.47	0
9 (new floor as per Policy)	914.39	117.82	355.24
10 (new floor as per Policy)	914.39	117.82	355.24
11 (new floor as per Policy)	914.39	117.82	355.24
roof	0	1,269.63	0
Total	11,257.08	2,567.35	4,542.40

4.2.133 Regarding the five-star hotel, the gross external area accounted for 14,608 square metres, the area of the terraces and balconies was established as measuring 6,136 square metres and that of the common areas was 3,210 square metres. Details of the area per level of the five-star hotel are provided in Figure 42.

Figure 42 | Areas of five-star hotel per level

Level	Gross external areas (m ²)	Terraces and balconies (m ²)	Common areas (m ²)
basement-2	1,239.77	0	0
basement-1	1,282.87	0	0
0	3,084.24	0	361.48
1	1,555.39	2,756.28	291.89
2	993.04	287.85	309.93
3	993.04	209.06	309.93
4	993.04	209.06	309.93
5	406.34	736.48	269.12
6	395.55	128.52	121.32
7	394.55	128.52	122.32
8	394.55	128.52	122.32
9	383.84	128.52	128.52
10	393.11	132.56	119.26
11	367.52	157.16	119.26
12	346.14	132.39	124.97
14	346.14	132.39	124.97

15	346.14	132.39	124.97
16	346.14	132.39	124.97
17	346.14	132.39	124.97
roof	0	471.11	0
Total	14,607.55	6,135.59	3,210.13

4.2.134 The NAO sought to establish the cost of construction, completion and finishing of the four-star and five-star hotels. In drawing up the cost estimate, different rates were applied to account for the different classification of the hotels.

4.2.135 For the existing four-star hotel, the cost per square metre and lump sum estimates employed were based on the rates applicable in 2019 and accounted for wear and tear (Figure 43 refers). It is to be noted that the policy allowing for additional floors also mandated that existing hotel rooms and amenities were to undergo upgrades during the construction of new floors. However, the estimate presented in Figure 43 does not factor in the upgrade costs for the existing part of the hotel. The rationale applied here was that the estimate was required to establish the replacement cost of the existing building and to account for its full potential.

Figure 43 | Estimated rates of works for the four-star hotel

Item	Rate (€)
construction of below ground areas	230/m ²
construction of above ground areas	250/m ²
construction of new potential floors (excluding cost of upgrade to existing levels)	300/m ²
construction works related to new roof	150/m ²
room finishes (existing levels)	425/m ²
room finishes (new levels)	540/m ²
external terraces finishes (existing levels)	100/m ²
external terraces finishes (new levels)	155/m ²
external terraces finishes (roof level)	95/m ²
common areas finishes (existing levels)	85/m ²
common areas finishes (new levels)	115/m ²
underground areas finishes	150/m ²
ground floor reception and common areas finishes	640/m ²
mechanical and electrical (M&E) services for rooms (existing levels)	240/m ²
M&E services for rooms (new levels)	270/m ²
M&E services for underground areas	100/m ²
M&E services for common areas (existing levels)	85/m ²
M&E services for common areas (new levels)	115/m ²
M&E services for terraces (existing levels)	35/m ²
M&E services for terraces and roof (new levels)	40/m ²
M&E services for terraces (ground floor)	50/m ²
façade finishes (including apertures)	135/m ²
lift	35,000
excavation rate	35/m ³

4.2.136 Considering the aforementioned rates, the cost of demolition works, construction, finishes, and M&E services estimated by the NAO amounted to €15,536,358. Accounting for professional, site technical officer and health and safety officer fees, finishing and furnishing of rooms, equipment, the financing of the project, planning-related expenditure, an adequate contingency on costs, and marketing and agents' fees, resulted in additional costs of €9,938,668. No developer's profit was assumed since a hotel's profit is based on operation, not on the sale of assets. A breakdown of these costs is provided in Figure 44. Aggregating these amounts resulted in a GDC estimated at €25,475,026 for the four-star hotel.

Figure 44 | Estimated Gross Development Cost of the four-star hotel

Item	Cost (€)
demolition	180,000
construction	4,690,438
finishes	7,164,937
M&E services	3,500,983
Sub-total 1	15,536,358
professional fees @ 10% (architect, M&E and civil engineer)	1,786,686
site technical officer fees (assumed as 36 months @ €1,000/month)	36,000
health and safety officer fees (assumed as 48 months @ €1,000/month)	48,000
furnishing (approximately €8,925/room)	2,686,425
furnishing (other)	111,810
equipment	57,002
financing of project costs @ 6%	1,180,215
commuted parking payment scheme (only for the potential floors)	452,000
development permit fees (only for the potential extension)	16,709
contingency on all costs @ 10%	2,191,121
developer's profit (assumed 0%)	0
marketing/agents' fees @ 3.5% (on sale value)	1,372,700
Sub-total 2	9,938,668
Gross Development Cost	25,475,026

4.2.137 Utilising the income capitalisation method, the NAO established a GDV for the four-star hotel of €39,220,000. Therefore, the surplus available for the site on completion was calculated as the difference between the GDV and the GDC, resulting in a difference of €13,744,974.

4.2.138 To account for the time necessary for completing the works, further adjustments were made using the deferred present value over a span of five years, applying a rate of 3.45 per cent (representing the average lending bank rate as at the date of the 2019 Deed, that is, 17 July 2019). It is to be noted that purchasing fees at a rate of 8 per cent were not factored into the calculation, given that the land was already owned by Fortina. Consequently, the resulting residual land value net of transfer costs and debt for this part of the site was estimated by the NAO as €11,600,333.

4.2.139 When considering the existing five-star hotel, rates per square metre and lump sum estimates were utilised by the NAO to calculate the cost of works (Figure 45 refers). Rates were again based on those applicable in 2019 and accounted for wear and tear.

Figure 45 | Estimated rates of works for the five-star hotel

Item	Rate (€)
construction of below ground areas	230/m ²
construction of above ground areas	250/m ²
construction works related to the roof	150/m ²
room finishes	500/m ²
external terraces finishes	120/m ²
external terraces finishes ground floor	130/m ²
external terraces finishes roof level	100/m ²
common areas finishes	100/m ²
underground areas finishes	100/m ²
ground floor reception and common areas finishes	750/m ²
M&E services for rooms	280/m ²
M&E services for underground areas	100/m ²
M&E services for common areas	100/m ²
M&E services for terraces and roof	40/m ²
façade finishes including apertures	150/m ²
lift	35,000
excavation rate	35/m ³

4.2.140 Applying these rates resulted in an estimated cost for demolition, construction, finishes and M&E services amounting to €20,088,578. Considering the professional, site technical officer and health and safety officer fees, finishing and furnishing of rooms, equipment, the financing of the project, planning-related expenditure, an adequate contingency on costs, and marketing and agents’ fees, resulted in additional costs of €10,551,661. The NAO again imputed no developer’s profit since a hotel’s profit is based on operation rather than the sale of assets. The resulting GDC of the five-star hotel, arrived at by the NAO through the aggregation of these amounts, was €30,640,239 (Figure 46 refers).

Figure 46 | Estimated Gross Development Cost of the five-star hotel

Item	Cost (€)
demolition	270,000
construction	5,890,759
finishes	9,690,339
M&E services	4,237,480
Sub-total 1	20,088,578
professional fees @ 10% (architect, M&E and civil engineer)	2,310,188
site technical officer fees (assumed as 36 months @ €1,000/month)	36,000
health and safety officer fees (assumed as 48 months @ €1,000/month)	48,000
furnishing (approximately €12,750/room)	1,861,500
furnishing (other)	433,500
equipment	221,000
financing of project costs @ 6%	1,524,724

commuted parking payment scheme	0
development permit fees	0
contingency on all costs @ 10%	2,652,349
developer's profit (assumed 0%)	0
marketing/agents' fees @ 3.5% (on sale value)	1,464,400
Sub-total 2	10,551,661
Gross Development Cost	30,640,239

4.2.141 The GDV of the five-star hotel, set at €41,840,000 through the application of the income capitalisation method, was then offset against this GDC. The resulting surplus available for the site on completion amounted to €11,199,761. The NAO further adjusted this amount to account for present value deferred for five years at a rate of 3.45 per cent (being the average lending bank rate as at the date of the 2019 Deed). Purchasing fees at 8 per cent were not considered, as the land was already owned by Fortina. As a result, the anticipated residual land value net of transfer costs and debt for the site of the existing five-star hotel was €9,297,469.

4.2.142 In total, the combined value of the sites of the existing four-star (€11,600,333) and five-star hotels (€9,297,469), given the limitations associated with use and height as specified in the Deeds prior to that entered into in 2019, was estimated by the NAO at €20,897,802.

Gross Development Costs of the new proposed hotel

4.2.143 The dimensions of the proposed hotel were determined by the NAO in accordance with available data and the assumptions outlined earlier. This Office established that the new five-star hotel was to occupy 10,227 square metres of gross external area, 3,257 square metres of terraces and balconies, and common areas of 2,926 square metres (Figure 47 refers).

Figure 47 | Areas of new five-star hotel per level

Level	Gross external areas (m ²)	Terraces and balconies (m ²)	Common area (m ²)
basement-2	540.51	0	0
basement-1	360.88	0	0
0	1,720.17	480.37	442.10
1	925.41	174.69	183.91
2	773.26	173.11	264.57
3	773.26	173.11	264.57
4	773.26	173.11	264.57
5	383.84	146.12	128.52
6	383.84	128.52	128.52
7	383.84	128.52	128.52
8	383.84	128.52	128.52
9	383.84	128.52	128.52
10	393.11	132.56	119.26

11	367.52	157.16	119.26
12	346.14	132.39	124.97
14	346.14	132.39	124.97
15	346.14	132.39	124.97
16	346.14	132.39	124.97
17	346.14	132.39	124.97
roof	0	471.11	0
Total	10,277.28	3,257.37	2,925.69

4.2.144 The NAO assessed the projected expenses relating to the construction, completion, and finishes required for the new five-star hotel. The costs per square metre and lump sum elements were estimated on the rates applicable in 2019 (Figure 48 refers).

Figure 48 | Estimated rates of works for the new five-star hotel

Item	Rate (€)
construction of below ground areas	230/m ²
construction of above ground areas	300/m ²
construction works related to the roof	150/m ²
room finishes	635/m ²
external terraces finishes	180/m ²
external terraces finishes ground floor	320/m ²
external terraces finishes roof level	135/m ²
common areas finishes	135/m ²
underground areas finishes	90/m ²
ground floor reception and common areas finishes	905/m ²
M&E services for rooms	320/m ²
M&E services for underground areas	180/m ²
M&E services for common underground areas	90/m ²
M&E services for common above areas	135/m ²
M&E services for terraces and roof	45/m ²
façade finishes including apertures	165/m ²
lift	35,000
excavation rate	35/m ³

4.2.145 Applying the rates indicated in Figure 48, the estimated cost of demolition, excavation, construction, finishes and M&E services arrived at by the NAO was €18,528,441. Factoring in other costs, namely, fees payable for professional services, site supervision and health and safety, the finishing and furnishing of rooms, equipment, project financing, planning-related expenses, an element of contingency, and marketing and agents' fees, resulted in an additional outlay of €10,474,238. No provision for the developer's profit was made since the basis for profit generated by a hotel is its operation, rather than through the sale of assets. Details of these costs are presented in Figure 49. In total, accounting for the assumed reduced volume and its associated amenities, the GDC of the new five-star hotel estimated by the NAO was €29,002,679.

Figure 49 | Estimated Gross Development Cost of the new five-star hotel

Item	Cost (€)
demolition	270,000
excavation	642,327
construction	4,804,342
finishes	8,932,680
M&E services	3,879,092
Sub-total 1	18,528,441
professional fees @ 10% (architect, M&E and civil engineer)	2,130,774
site technical officer fees (assumed as 48 months @ €1,000/month)	48,000
health and safety officer fees (assumed as 60 months @ €1,000/month)	60,000
furnishing (approximately €15,000/room)	2,145,000
furnishing (other)	500,000
equipment	250,000
financing of project costs @ 6%	1,406,311
commuted parking payment scheme	0
development permit fees	0
contingency on all costs @ 10%	2,506,853
developer's profit (assumed 0%)	0
marketing/agents' fees @ 3.5% (on sale value)	1,427,300
Sub-total 2	10,474,238
Gross Development Cost	29,002,679

4.2.146 Deducting the GDC of €29,002,679 from the GDV previously determined, that is, €40,780,000, resulted in a surplus available for the site on completion of €11,777,321. This amount was further adjusted to account for the deferred present value over a span of five years at a rate of 3.45 per cent, determined in line with the average lending bank rate as at the date of the 2019 Deed. Purchasing fees at a rate of 8 per cent were not incorporated into the calculation given Fortina's pre-existing ownership of the land. Consequently, the projected residual land value net of transfer costs and debt pertaining to the site allocated for the new five-star hotel was estimated as €9,939,695, rounded to €9,940,000.

Gross Development Costs of the new proposed residential, carpark and commercial development

4.2.147 The total floor area of the residential, carpark and commercial development was determined based on measurements obtained from relevant planning application drawings. The NAO's calculations incorporated the entire approved volume and considered the application of the principle expounded in the Floor Area Ratio Policy, which allowed for the transfer of the additional unbuilt volume of the two plaza areas onto the residential component. The contribution from these plazas allowed for an additional level in the 2019 Deed when compared to previous Deeds and accommodated the change in use for all levels. The basement levels under the entire site, accessible through Tigné Street, were to predominantly serve as parking facilities and formed an integral part of this component of the development.

4.2.148 The total area earmarked for residential and commercial development and for use as a carpark was 41,167 square metres. Of this total, 33,670 square metres were gross external areas, 4,912 square metres were terraces and balconies, while the common area was 2,585 square metres. The development was spread over several storeys as outlined in Figure 50.

Figure 50 | Areas of the proposed residential, carpark and commercial development

Level	Gross external areas (m ²)	Terraces and balconies (m ²)	Common area (m ²)
basement-3	4,378.46	129.94	286.48
basement-2	4,378.46	0	286.48
basement-1	4,300.08	0	364.85
0	2,217.28	115.52	451.13
1	1,641.53	173.95	107.38
2	1,657.41	276.16	107.38
3	1,657.41	276.16	107.38
4	1,657.41	276.16	107.38
5	1,657.41	276.16	107.38
6	1,657.41	276.16	107.38
7	1,657.41	276.16	107.38
8	1,604.61	304.09	107.38
9	1,176.85	646.90	84.85
10	1,164.31	233.12	84.85
11	1,054.96	303.86	56.21
12	848.40	375.76	56.21
14	667.20	306.17	27.60
15	293.25	372.26	27.60
roof	0	293.25	0
Total	33,669.85	4,911.78	2,585.30

4.2.149 The NAO estimated the cost of construction, completion, finishes and other associated costs for the residential, carpark and commercial development. The per square metre and lump sum costs were based on the rates applicable in 2019, as outlined in Figure 51.

Figure 51 | Estimated rates of works for the residential, carpark and commercial development

Item	Rate (€)
construction of below ground areas	250/m ²
construction of above ground areas	300/m ²
construction works related to the roof	150/m ²
apartment finishes	900/m ²
commercial units finishes (sold shell)	0/m ²
external terraces finishes	150/m ²
external terraces finishes roof level	80/m ²
common areas finishes	120/m ²

underground areas finishes	50/m ²
M&E services for apartments	450/m ²
M&E services for underground areas	100/m ²
M&E services for common areas	150/m ²
M&E services for terraces and roof	45/m ²
façade finishes including apertures	230/m ²
lift	35,000
pool construction, M&E and finishes	13,000
excavation rate	35/m ³

4.2.150 Applying the rates indicated in Figure 51, the NAO established that the cost of demolition, excavation, construction, finishes and M&E services amounted to €44,130,497. Costs for professional, site technical officer and health and safety officer services, finishing and furnishing of rooms, the financing of the project, planning-related expenditure, an adequate contingency on costs, a provision for the developer's profit and marketing and agents' fees, resulted in additional expenditure of €94,474,110. A disaggregation of these costs is provided in Figure 52. In total, the GDC for the residential, carpark and commercial development amounted to €138,604,607.

Figure 52 | Estimated Gross Development Cost of the residential, carpark and commercial development

Item	Cost (€)
demolition	180,000
excavation	1,384,015
construction	11,838,100
finishes	20,338,787
M&E services	10,389,595
Sub-total 1	44,130,497
professional fees @ 10% (architect, M&E and civil engineer)	5,075,010
site technical officer fees (assumed as 48 months @ €1,000/month)	48,000
health and safety officer fees (assumed as 60 months @ €1,000/month)	60,000
financing of project costs @ 6%	3,363,930
commuted parking payment scheme (none in PA/06252/17)	0
development permit fees	240,388
contingency on all costs @ 10%	5,291,782
developer's profit (assumed @ 30%)	68,910,000
marketing/agents' fees @ 5% (on sale value)	11,485,000
Sub-total 2	94,474,110
Gross Development Cost	138,604,607

4.2.151 The surplus available for the site on completion was consequently calculated by the NAO as €91,095,393. This was arrived at by deducting the €138,604,607 in GDC from the GDV of the residential, carpark and commercial development, established as €229,700,000. The anticipated completion time for this development was estimated to extend over seven years in view of the substantial extent of the built structure. To accurately reflect the time value of money and account

for the extended completion period, the estimated amount was adjusted using the principle of deferred present value over the specified seven-year duration. The rate applied was 3.45 per cent, which corresponded to the average lending bank rate as at 17 July 2019, the date of the 2019 Deed. Purchasing fees were not factored into this calculation as the ownership of the land was already established and accounted for. As a result, the anticipated residual land value net of transfer costs and debt, for the part of the site allocated for the residential, carpark and commercial development by Fortina was estimated at €71,838,000.

4.2.152 In total, the combined value of the land associated with the 2019 Deed, comprising the new five-star hotel (€9,940,000) and the residential, carpark and commercial development (€71,838,000) was estimated by the NAO as €81,778,000.

Defining the added value to the land resulting from the 2019 Deed

4.2.153 Having established the GDV and the residual land value net of transfer costs and debt for the four-star and five-star hotels on site prior to the 2019 Deed as well as the prospective unbuilt basement, and the new five-star hotel and the residential, carpark and commercial development post the 2019 Deed, the NAO aggregated these components to arrive at an overall residual land value of the Fortina site. This Office established that the residual land value of the four-star and five-star hotels pre-2019 Deed and the prospective unbuilt basement was €26,722,427. Furthermore, the NAO determined that the residual land value of the new five-star hotel, the residential, carpark and commercial development as permitted through the 2019 Deed was €81,778,000. The NAO established that when the residual land value pre-2019 was deducted from that accruing through the 2019 Deed, this resulted in an increase in land value of €55,055,573 (Figure 53 refers), rounded to €55,056,000.

Figure 53 | Added land value resulting from the 2019 Deed

Use of the site pre- and post-2019 Deed	Total built area (m ²)	Market value (€)	Residual land value (€)
Four-star hotel (pre-2019)	17,097	39,220,000	11,600,333
Five-star hotel (pre-2019)	23,482	41,840,000	9,297,469
Prospective unbuilt basement	11,038	15,674,200	5,824,625
Sub-total 1		96,734,200	26,722,427
New five-star hotel with no vertical extension ¹	15,989	40,780,000	9,940,000
Residential, carpark and commercial	41,167	229,700,000	71,838,000
Sub-total 2		270,480,000	81,778,000
Difference in value²		173,745,800	55,055,573

Notes:

1. Includes reduction of the volume arising from the deduction of three floors above 15.7 metres on the old hotel site. One level remains to be built. Area presented here was taken from Deed plan and reduced using old hotel land value/m² since previously existing rights were removed and not included in the floor to area ratio.
2. The remaining public area that has not been built up to 15.7 metres above mean sea level was not valued separately since the area was included in the residential block through the application of the Floor Area Ratio Policy.

Valuation of breaches identified concerning the conditions set out in the previous Deeds

- 4.2.154 In addition to the valuation of the waivers granted by the Government to Fortina through the 2019 Deed, the NAO sought to determine whether any other infringements to the 1991, 1996 and 2000 Deeds persisted until entry into the 2019 Deed. Moreover, this Office valued any such breaches to determine amounts possibly due to the Government arising from the disregard of limitations imposed on the site.
- 4.2.155 On its part, Fortina maintained that the sites acquired from the Government were developed in compliance with the conditions stipulated in the Deeds and in line with established regulations and planning permits in force at the time.
- 4.2.156 Regardless of that stated, the NAO's attention was drawn to the 1996 Deed. Cited therein was a clause regarding the built structure which specified that 'No construction was allowed above the existing ground level at the date of the contract, except for specific authorised structures such as boundary walls, swimming pools (not exceeding 730 square metres), emergency exits below street level, buildings for the Enemalta sub-station extension, garden landscaping, toilets (not greater than 30 square metres), and reconstruction of the bowls pitch and related facilities (not exceeding 30 square metres).' Furthermore, the 1996 Deed imposed a height limitation on the built structure, specifying that it could not exceed the height defined by the level of Ċensu Xerri Street, which was approximately 12.3 metres from mean sea level. This level was consistent with the pool deck level of the five-star hotel, which was built in accordance with the provisions of the 1996 Deed.
- 4.2.157 One breach identified by the NAO in terms of these limitations related to the extension of the four-star hotel, which was constructed over the land transferred in the 1991 Deed. This Office established that the four-star hotel encroached on land that was transferred in the 1996 Deed. The land area of this breach was determined as 105.5 square metres, with a total built area of 844 square metres.
- 4.2.158 Another breach noted by this Office was identified in relation to the five-star hotel. A part of this hotel was constructed on land where no building over and above the level of the pool deck should have been erected, hence breaching the height limitation imposed on this part of the site. The NAO determined that the footprint of the encroached area measured 140 square metres, with the resultant construction thereon accounting for 1,567 square metres. It is pertinent to note that the GPD was aware of this irregularity since 2004, when Fortina requested a waiver on use with respect to the tower block. This block was mainly built on the site acquired through the 2000 Deed; however, part of the structure had encroached on land granted by the Government by means of the 1996 Deed, which Deed prohibited any development above street level. The NAO confirmed that the GPD and later the Lands Authority failed to address the encroachment on land where no development was allowed between 2004 and 2019.
- 4.2.159 The NAO evaluated these breaches by considering the value of the land encroached on by each of the hotels. The land value per square metre of the existing four-star hotel was that established through the determination of the residual land value (as illustrated in Figure 53). Assigning a value

of €11,600,333 to the total built area of 17,097 square metres resulted in a rate of €678.50 per square metre. Applying a similar method to the five-star hotel, the value per square metre arrived at when dividing the residual land value of €9,297,469 by 23,482 square metres was €395.94.

4.2.160 Taking these values into account, the NAO attributed an estimated value of €1,193,093 to the breaches identified (Figure 54 refers), rounded to €1,195,000.

Figure 54 | Breach in 1996 Deed over no build area

Site	Land area (m ²)	Built area (m ²)	Market value (€)	Residual land value (€)
Four-star hotel	105.5	844	1,936,110	572,655
Five-star hotel	140.0	1,567	2,792,065	620,438
Total			4,728,175	1,193,093

4.2.161 An alternative approach to valuing the breaches could involve calculating the operating profit generated by the hotels over the years while they occupied the land with a ‘no build’ policy. However, this method would necessitate access to records of the hotels’ actual revenues and expenditures from the time of their existence up to 2019. Since the NAO has no mandate to access this data, the method used to estimate value was the residual land value.

4.2.162 Another breach identified by the NAO in connection with the 1996 Deed related to the obligation on Fortina to maintain or reconstruct the bowls pitch sited adjacent to the hotel. Although the breach of this obligation could not be assigned a financial value by the NAO, this was of detriment to the public interest. Immediately of concern to the NAO was that, despite the obligation placed on Fortina, stated in the 2019 Deed was that the bowls pitch had become derelict. Specified in the Deed was that the degradation of the site was attributable to non-use; however, this Office maintains that the 1996 Deed did not indicate use as a contingency to Fortina’s upkeep of the pitch. An element of context to how the site became derelict after its assignment to Fortina was established by the NAO through the review of relevant documentation. According to records retained by the Lands Authority, divergences between the caretakers of the bowls pitch and the owners of the Fortina Hotel emerged in late 1995, when works being undertaken by Fortina on the hotel caused damage to the pitch. The matter concerning the upkeep of the pitch was again raised in January 1999 by the Sliema Local Council. In submissions to Hon. Jesmond Mugliett, then Parliamentary Secretary in the Ministry for Education, subsequently forwarded to the GPD, reference was made to the fact that the reconstructed premises consisted of a smaller room than that demolished, no electricity was installed, the sanitary facilities were inadequate, and the surface of the pitch was not level. By February 2000, no corrective action was taken, as attested in correspondence submitted by the Sliema Local Council to the Parliamentary Secretary, wherein it was stated that the surface of the pitch had caved in. Following enquiries by the Parliamentary Secretary, in June 2000, the GPD noted that Fortina had addressed concerns regarding the sanitary facilities. No reference was made to the other concerns raised by the Sliema Local Council.

4.2.163 In submissions to the NAO, Fortina referred to ministerial intervention whereby it was requested to reinstate the bowls pitch. Fortina claimed that the bowls pitch was rebuilt and enjoyed by elderly gentlemen for around 10 to 12 years; however, Fortina contended that usage faded and

eventually stopped. Fortina conceded that the bowls pitch laid abandoned and unused for many years and was eventually integrated into the open plaza accessible to the public as part of its project.

4.2.164 The passage of time rendered it impossible for the NAO to ascertain whether the obligation on Fortina to maintain the bowls pitch was honoured at any point in time. However, the documentation reviewed and that asserted in the 2019 Deed indicated that Fortina neglected its social obligation to ensure the site's upkeep.

4.2.165 The NAO sought to ascertain whether the Lands Authority monitored Fortina's adherence to the contractual limitations imposed by the Government through the 1991, 1996 and 2000 Deeds, and whether action was taken on infringements detected. The Lands Authority informed this Office that no documentation was found in file regarding the monitoring and enforcement of conditions.

4.2.166 Combining the value of the breaches that could be quantified in financial terms, estimated by the NAO at €1,193,093, with the €55,055,573 net residual land value, resulted in a total amount of €56,248,666, which can be approximated as €56,250,000.

Valuation of asset acquired by Fortina from third parties

4.2.167 Given that part of the site was acquired by Fortina from third parties, it was necessary for the NAO to deduct the value of this portion of the property from this Office's overall valuation. The land acquired by Fortina in this respect was a sea-facing stretch measuring 671 square metres (marked as 1 and 2 in Figure 55) and airspace over a room at ground level measuring 23 square metres (marked as 3 in Figure 55).

Figure 55 | Land acquired by Fortina from third parties



- 4.2.168 The 2019 Deed referred to the portions of the site marked in Figure 55 in the context of the waivers granted by the Government; however, this was only in terms of the Government renouncing any rights that it could have had following the execution of this Deed. Nonetheless, no change in use or adjustment to the maximum allowable height was made in the 2019 Deed or prior, except for the small area marked as 3.
- 4.2.169 The NAO recognised that Fortina had an option of exceeding the height limitation of eight floors of the hotel set out in the local plans through the development of two additional floors, which would have been in line with the 2014 revised policy for hotel heights. Nevertheless, if the use of this area were to change, the maximum allowable building height would revert to eight floors in accordance with local plans.
- 4.2.170 Although PA/06252/17 was valid at the time of signing of the 2019 Deed, which permit allowed the development of an additional seven staggered floors, thereby increasing the land's value, these floors were only feasible and the permit valid as a result of the Government's waivers granted in the 2019 Deed. The NAO noted that these rights could not be considered by Fortina as an inherited entitlement stemming from ownership of the site acquired from third parties prior to the 1991 Deed. Therefore, it could be concluded that the added value exclusively originated from the 2019 Deed and the transfer of development volume from previously restricted parts of the site.
- 4.2.171 Some additional factors considered by the NAO warrant reference. Due to its shape and location, despite its sea- and Valletta-facing location, parts 1 and 2 in Figure 55 would accommodate not more than three apartments comparable in size and type to the apartments in PA/06252/17. In addition, this area would also require a higher ratio of vertical circulation elements and service shafts due to its profile and fire safety regulations. The portion of land marked as 3 in Figure 55, including the airspace over the 23 square metre ground floor room acquired in the 1991 Deed, was included in the height adjustment to 15.7 metres above mean sea level and had its use restriction removed in the 2019 Deed.
- 4.2.172 Considering the aforementioned, in determining the value of the portion of the site acquired from third parties, several assumptions were necessary to arrive at a comparable and maximum value. Assigning a maximum value to this portion of the site ensured consistency with the principle of prudence. The following assumptions were made:
- a. the value deduction from the original site corresponded to the portion of the 4-star hotel, including the basement, based on average rates per floor for each use. This was applied across the 10 floors of the hotel structure existing pre-2019;
 - b. as regards the post-2019 scenario, for the parts of the site marked as 1 and 2 in Figure 55, it was assumed that:
 - i. this scenario accounted for the use proposed in PA/06252/17 and assumed that development would comprise an 8-floor building, including semibasement, in line with the local plans;

- ii. eight floors meant eight floors and a recessed penthouse, in line with the local plans interpretation document;
 - iii. since detailed plans for the tentative layout of this building were not available, and any provisional estimate would involve several assumptions, the same rates applied to the apartments constructed under PA/06252/17 were utilised. These rates factor in reduced common spaces and fewer service shafts, which were used as an offset for the added value of the top floor and the penthouse;
 - iv. the airspace over the portion of the site approved for residential development under PA/06252/17 was limited to the height restrictions set in the local plans. This assumption was based on the fact that the added value from exceeding this height limitation was realised through the 2019 Deed and the transfer of volumes from previously acquired public land in conjunction with the height and use restriction waivers secured through the 2019 Deed for the parts of the site acquired by Fortina through the 1991, 1996 and 2000 Deeds; and
 - v. the car park for all three underground levels was calculated based on the resulting value per square metre, as determined from the commercial car park value cited in paragraph 4.2.127.
- c. again, in relation to the post-2019 scenario, for the part of the site marked as 3 in Figure 55, it was assumed that:
- i. the maximum allowable height was reduced from 10 floors to 15.7 metres above mean sea level. While this area could have been developed to its full potential, the development volume was transferred to the residential building under the Floor Area Ratio Policy, and consequently the transferred volume included in the calculation;
 - ii. the ground floor level was excluded from the calculation, as this was acquired through the 1991 Deed; however, the residential portion overlying this level was to be accounted for; and
 - iii. the car park was not included in the calculation for this portion of the site, as it was covered by the 1991 Deed.

Residual land value of the hotel (a pre-owned asset of Fortina) prior to the 2019 Deed

4.2.173 The estimated market value of the existing 4-star hotel, considering its relevant amenities, was calculated by applying the rate per square metre derived from the total value of this hotel (as estimated in Figure 53). The rate arrived at was €2,380 per square metre, which was then applied to the floor space of the 4-star hotel as it stood prior to the 2019 Deed, limited to the portion of the site acquired by Fortina from third parties. The GDV of the potential basement was established by applying the rate of €1,420 per square metre (as determined in paragraph 4.2.127) to arrive at a potential commercial car park value. By applying these rates, the NAO established a total market value, in a finished state, of the portion of the site acquired by Fortina from third parties of €21,173,200, rounded to €21,173,000.

Figure 56 | Market value of part of the site acquired by Fortina from third parties, prior to the 2019 Deed

Site acquired by Fortina from third parties	Area (m ²)	Rate (€/m ²)	Assumed value in 2019 (€)
Portion above ground ¹	7,695.24	2,380	18,314,700
Portion below ground (potential) ²	2,013.00	1,420	2,858,500
Total market value in finished state			21,173,200

Notes:

1. The rate of €2,380 per square metre was arrived at following the deduction of a basement area of 563.92 square metres.
2. The car park was assumed as being entirely utilised for commercial use and the minimal existing basement amenities of the 4-star hotel were ignored.

4.2.174 The total area for the site was 10,402 square metres. Of this total, 4,787 square metres comprised the gross external area, 1,472 square metres were terraces and balconies, and 4,143 square metres constituted the common area (Figure 57 refers).

Figure 57 | Areas of the site acquired by Fortina from third parties

Level	Gross external area (m ²)	Terraces and balconies (m ²)	Common area (m ²)
basement-3 ¹	0	0	671.00
basement-2 ¹	0	0	671.00
basement-1 ¹	0	0	671.00
0	457.96	0	213.04
1	480.96	86.47	213.04
2	480.96	86.47	213.04
3	480.96	86.47	213.04
4	480.96	86.47	213.04
5	480.96	86.47	213.04
6	480.96	86.47	213.04
7	480.96	86.47	213.04
8 (new floor as per Policy)	480.96	86.47	213.04
9 (new floor as per Policy)	480.96	86.47	213.04
roof	0	694.00	0
Total	4,786.60	1,472.23	4,143.40

Note:

1. There was no limitation on the number of underground levels that could be developed; however, since the comparator set three levels, the same number of levels was used for this comparison. Nevertheless, the change in use increased the value of these underground levels.

4.2.175 To calculate the GDC for this portion of the site, the rates and parameters applied in previous sections of this report were utilised (Figure 58 refers). A GDC of €12,649,847 was arrived at, which when deducted from the GDV of €21,173,200 resulted in a surplus available for the site on completion of €8,523,353. Taking into account the time required for the completion of works, assumed as five years, and applying a rate of 3.45 per cent (representing the average lending bank rate as at the date of the 2019 Deed, that is, 17 July 2019) to adjust for the deferred present

value, resulted in a residual land value net of transfer costs and debt of €7,193,446. It is pertinent to note that purchasing fees at a rate of eight per cent were not factored given that the land was already owned by Fortina.

Figure 58 | Estimated Gross Development Cost of the site acquired by Fortina from third parties

Item	Cost (€)
demolition	90,000
excavation	217,201
construction	2,568,950
finishes	3,850,607
M&E services	1,804,974
Sub-total 1	8,531,732
professional fees @ 10% (architect, M&E and civil engineer)	853,173
site technical officer fees (assumed as 36 months @ €1,000/month)	36,000
health and safety officer fees (assumed as 48 months @ €1,000/month)	48,000
furnishing (approximately €8,925/room)	1,356,600
furnishing other	59,092
equipment	30,125
financing of project costs @ 6%	564,342
commuted parking payment scheme (none in PA/06252/17)	0
development permit fees for underground levels	20,797
contingency on all costs @ 10%	1,149,986
developer's profit (assumed 0%)	0
marketing/agents' (assumed 0%)	0
Sub-total 2	4,118,115
Gross Development Cost	12,649,847

Residual land value of the residential element (a pre-owned asset of Fortina) post-2019 Deed

4.2.176 In terms of the market value of the residential element on the site acquired by Fortina from third parties as contemplated post the 2019 Deed, the NAO considered three distinct portions, marked as 1, 2 and 3 in Figure 55. These measured 661, 10 and 23 square metres, respectively. For the purposes of this valuation, similar sized sea-facing terraces were assumed to derive a comparative value to the apartments as outlined in PA/06252/17. The rates used for this calculation were consistent with those referenced in earlier sections of this report.

4.2.177 Based on these assumptions, the NAO estimated the market value of the residential component on the portion of the site acquired from third parties as €55,550,000. In turn, the commercial car park was estimated at €2,880,000, while the commercial component was valued at €4,060,000. In aggregate, the market value of these elements amounted to €62,490,000. The relevant areas by type and value assumed post the 2019 Deed, leading to this aggregate amount, are presented in Figure 59.

Figure 59 | Market value of part of the site acquired by Fortina from third parties, post the 2019 Deed

Level	Type	Internal area (m ²)	External area (m ²)	Assumed value in 2019 (€)
-3	Commercial car park	671.30	0	960,000
-2	Commercial car park	671.30	0	960,000
-1	Commercial car park	671.30	0	960,000
Sub-total: Commercial car park				2,880,000
0	Commercial	596.69	115.52	4,060,000
Sub-total: Commercial				4,060,000
1	Apartments	619.69	86.47	6,360,000
2	Apartments	619.69	86.47	7,070,000
3	Apartments	619.69	86.47	7,070,000
4	Apartments	619.69	86.47	7,070,000
5	Apartments	619.69	86.47	7,070,000
6	Apartments	619.69	86.47	7,070,000
7	Apartments	619.69	86.47	7,770,000
8	Apartments	353.69	266.00	6,070,000
Sub-total: Apartments				55,550,000
Total				62,490,000

4.2.178 To calculate the GDC for these elements post the 2019 Deed, the rates and parameters previously utilised in this report were applied (Figure 60 refers). A GDC of €13,636,190 was determined. When deducted from the GDV of €62,490,000, this resulted in a surplus available for the site on completion of €48,853,810. Accounting for the anticipated completion time, estimated to extend over a period of five years due to the substantial size of the built structure, and to accurately reflect the time value of money, a rate of 3.45 per cent (representing the average lending bank rate as at the date of the 2019 Deed, that is, 17 July 2019) was applied. The resulting residual land value net of transfer costs and debt was €41,231,105. Purchasing fees were not considered as the land was already owned by Fortina.

Figure 60 | Estimated Gross Development Cost of the site acquired by Fortina from third parties

Item	Cost (€)
demolition	90,000
excavation	217,201
construction	2,605,834
finishes	5,004,412
M&E services	2,590,752
Sub-total 1	10,508,199
professional fees @ 10% (architect, M&E and civil engineer)	1,050,820
site technical officer fees (assumed as 36 months @ €1,000/month)	36,000
health and safety officer fees (assumed as 48 months @ €1,000/month)	48,000
financing of project costs @ 6%	696,936
commuted parking payment scheme (none in PA/06252/17)	0

development permit fees	56,582
contingency on all costs @ 10%	1,239,654
developer's profit (assumed 0%)	0
marketing/agents' (assumed 0%)	0
Sub-total 2	3,127,992
Gross Development Cost	13,636,190

The added value to the land arising from the 2019 Deed, adjusted for the portion acquired from third parties

4.2.179 The NAO determined that the residual land value of the entire site owned by Fortina resulting from the 2019 Deed amounted to €55,055,573. Through this valuation, the NAO sought to establish the value of the restrictions limiting Fortina's use and development of the site and rescinded by the Government. Nonetheless, this Office acknowledged that part of the site was acquired by Fortina from third parties and consequently no restrictions were imposed by the Government on this portion of the site. This Office established that the added value accrued by Fortina as a result of the 2019 Deed on the land it acquired from third parties was the difference between the residual land value of this portion of the site as developed prior to the 2019 Deed (€7,193,446) and its residual land value post the 2019 Deed (€41,231,105), that is, €34,037,659. The deduction of this value from the residual land value of the entire site (€55,055,573) resulted in a difference of €21,017,914, rounded to €21,000,000, which reflected the value of the restrictions rescinded by the Government in the 2019 Deed (Figure 61 refers). This value corresponds to the portions of the site transferred by the Government to Fortina through the 1991, 1996 and 2000 Deeds, over which several restrictions had been imposed.

Figure 61 | Added value resulting from the 2019 Deed, adjusted for the portion acquired from third parties

Use of the site pre- and post-2019 Deed	Total built area (m ²)	Market value (€)	Residual land value (€)
Four-star hotel (pre-2019)	17,097	39,220,000	11,600,333
Five-star hotel (pre-2019)	23,482	41,840,000	9,297,469
Prospective unbuilt basement	11,038	15,674,200	5,824,625
Owned portion of four-star hotel	(9,708)	(21,173,000)	(7,193,446)
Sub-total 1		75,561,200	19,528,981
New five-star hotel with no vertical extension ¹	15,989	40,780,000	9,940,000
Residential, car park and commercial	41,167	229,700,000	71,838,000
Owned residential, car park and commercial	(9,199)	(62,490,000)	(41,231,105)
Sub-total 2		207,990,000	40,546,895
Difference in value²		132,428,800	21,017,914

Notes:

1. Includes reduction of the volume arising from the deduction of three floors above 15.7 metres on the old hotel site. One level remains to be built. Area presented here was taken from Deed plan and reduced using old hotel land value/m² since previously existing rights were removed and not included in the floor to area ratio.
2. The remaining public area that has not been built up to 15.7 metres above mean sea level was not valued separately since the area was included in the residential block through the application of the Floor Area Ratio Policy.

Conclusion

- 4.2.180 The consent of the Government to waive the limitations regarding development on the site owned by Fortina resulted in a substantial accretion in value to the latter. Whereas the Lands Authority established a residual land value of €8,100,000, the NAO's independent valuation of €21,000,000 was significantly higher. This discrepancy may be attributed to two factors. First was that the NAO's valuation was based on 2019 rates, that is, the point at which the Government consented to the relinquishment of the conditions burdening the site. On the other hand, the Lands Authority's valuation was based on 2017 rates, the point at which the Architects Lands Authority were engaged. Second, and more crucial, was that this Office valued all the waivers sought by Fortina, whereas the Lands Authority limited its valuation to only one part of the site.
- 4.2.181 Evident in the discrepancy between the valuations was that the Government did not secure a true and fair value of what was conceded to Fortina when lifting restrictions over permissible development. The difference between the value assigned by the NAO and that assigned by the Government for the waiving of conditions on the portions of the site acquired from the Government was €12,900,000, adverse to public finances.
- 4.2.182 The extent and nature of the discrepancy draws the NAO's gravest concerns. Primary responsibility for this failure ought to be borne by the Lands Authority, for it was within the Authority's remit to ascertain that the Government secured value for money for what was being transacted. However, the rescission of conditions was not solely within the remit of the Lands Authority, for it warranted referral and endorsement by various other stakeholders. As shown in this report, the process leading to the agreement proceeded regardless despite the concerns raised.

4.3 Inequitable payment terms

- 4.3.1 The compensation payable to the Government for the waivers granted through the 2019 Deed was €8,100,000. The Deed stipulated that a payment of €1,000,000 was to be effected on the signing of the Deed, and the balance of €7,100,000 was to be paid within 10 years therefrom. No interest was to be levied by the Government on the outstanding balance. In the event that Fortina sold any apartments to be developed on the site, it was to effect a proportional payment, computed by dividing the balance due to the Government by the remaining number of unsold units. In this context, Fortina provided the Government with a special hypothec on a divided portion of land, measuring 993 square metres at a level of 12.06 metres from mean sea level, which site was earmarked for development as a block of not less than 60 apartments, illustrated in red in Figure 62. On the sale of one or more of the apartments prior to the lapse of the 10-year period and relevant payment to the Government, the sold apartments were to be excluded from the special hypothec.

Institute of Tourism Studies. Elaborating, Fortina stated that the staggered payment terms was a means for it to cope with the increased cost of the transaction and comply with the payments set in the 2019 Deed.

- 4.3.4 Comparison of the 2019 Deed with this correspondence rendered evident that the Lands Authority accepted the payment terms proposed by Fortina as is. This Office was not provided with any documentation that indicated attempts made by the Lands Authority to negotiate more equitable payment terms. In submissions to the NAO, the Lands Authority maintained that the payment amounts and terms were conditions set in the contract approved by Parliament. Similar assertions were made by the Deputy Chair BoG Lands Authority, who maintained that the payment terms were not authorised by the Board but emerged during the process of parliamentary approval. In response to queries raised with the Ministry for Finance regarding whether the Ministry's authorisation was necessary and sought in relation to the setting of Fortina's payment terms, the Ministry indicated that there was no obligation in this respect on the Lands Authority.
- 4.3.5 Aggravating matters was that the revenue that the Government was to register from the 2019 Deed hinged on when Fortina elected to sell residential units. Deferring sales closer to the 10-year cut-off – when Fortina would be required to settle the balance- implied that the Government would realise less value in net present terms. An amount of €7,100,000 in 2029, or whatever balance remained, would be worth far less than the same amount in 2019. The decision not to impose interest on outstanding balances rendered the deferral of sale even more viable to Fortina. Although the NAO is not able to precisely establish the extent of revenue lost by the Government when allowing for a lengthy repayment period and not setting interest, for such a calculation depends on when Fortina opts to sell its residential units, it is noted that the potential loss could be substantial.
- 4.3.6 Although the 2019 Deed specified that the residential development subject to hypothec was to comprise a block of not less than 60 apartments, on 15 July 2021, the Notary Public representing Fortina informed the Senior Manager (Contracts) Lands Authority that due to changes in architectural design, the number of apartments was reduced to 57. Notwithstanding this, on 27 September 2021, following a site visit by the Lands Authority, it was established that the number of residential units was 59.³³ Consequently, the €7,100,000 payable by Fortina was to be equally split among these 59 units, resulting in a payment to the Government of €120,339 for each apartment sold.
- 4.3.7 The NAO sought to establish what payments were made by Fortina to the Government in respect of the 2019 Deed. As at an end 2024, of the €8,100,000 payable, Fortina effected payments to the Government amounting to €2,925,424, leaving a balance of €5,174,576 (Figure 63 refers).

³³ Information sourced from www.fortinainvestments.com/development/ stated the following "In 2023, the Fortina Hotel was developed into a state-of-the-art, mixed-use development, which spans a built-up area of 60,000 square meters. The project features a 5-star hotel, 64 luxury apartments, a sprawling commercial area ...". The NAO noted that the number of apartments cited did not tally with the amount established by the Lands Authority.

Figure 63 | Statement of payments made by Fortina to the Government

Date	Details	Amount (€)	Balance (€)
26 July 2019	2019 Deed	-	8,100,000
26 July 2019	Payment on entry into 2019 Deed	1,000,000	7,100,000
18 January 2023	Sale of apartment	120,339	6,979,661
24 March 2023	Sale of apartment	120,339	6,859,322
26 July 2023	Sale of two apartments	240,678	6,618,644
14 September 2023	Sale of apartment	120,339	6,498,305
2 November 2023	Sale of two apartments	240,678	6,257,627
17 January 2024	Sale of apartment	120,339	6,137,288
17 January 2024	Sale of apartment	120,339	6,016,949
26 April 2024	Sale of apartment	120,339	5,896,610
10 June 2024	Sale of apartment	120,339	5,776,271
2 September 2024	Sale of apartment	120,339	5,655,932
3 October 2024	Sale of two apartments	240,678	5,415,254
24 October 2024	Sale of two apartments	240,678	5,174,576

4.3.8 Based on documentation reviewed, the NAO ascertained that, following payments effected by Fortina on the sale of the 16 apartments indicated in Figure 63, the Lands Authority accordingly revised the special hypothec in favour of the Government.

Chapter 5

Timeline and key conclusions

5.1 Timeline

5.1.1 Having analysed the process leading to the Government’s consent to the waiver of limitations burdening the Fortina site, hereunder is a chronological account of the main developments in relation thereto (Figure 64 refers). Key in this respect were the 1991, 1996 and 2000 Deeds, through which Fortina acquired parcels of public land from the Government for use in connection with the Fortina Hotel. Various attempts were subsequently made by Fortina to have the Government rescind the restrictions imposed on the sites; however, the first two attempts were not concluded. The third attempt made in April 2017 and the focus of this audit was realised following the endorsement by Parliament and entry into the relevant Deed of modification and termination of the contractual conditions in July 2019.

Figure 64 | Timeline of key developments

Date	Development
12 June 1991	A contract of sale and transfer was entered into between the Government and Fortel Services Ltd. Through this contract, Fortina acquired several sites that were to serve as an extension of the facilities of the Fortina Hotel. These comprised a divided portion of land measuring approximately 465 square metres, a room on the ground floor with an approximate measurement of 23 square metres, the airspace of another portion of land up to the height beneath street level measuring approximately 1,964 square metres, and the airspace of a site up to a height of one metre above the existing street level with a measurement of approximately 1,346 square metres. The sale was made against the payment of Lm110,000 (€256,231).
25 January 1996	Another contract of sale was entered into by the Government and Fortel Services Ltd, through which the latter acquired a portion of land in Tigné, Sliema measuring approximately 2,992 square metres. The site was intended for exclusive use as an extension to the Fortina Hotel. A limit was imposed regarding the height of possible development on the site. The sale was made against the sum of Lm107,000 (€249,243) payable to the Government.
15 February 2000	Through the third contract of sale and transfer, the Government sold a portion of land measuring approximately 1,421 square metres in Tigné, Sliema to Fortel Services Ltd for exclusive use as an extension to the Fortina Hotel. Fortina agreed to pay the Government Lm400,000 (€931,749). The sale was subject to several conditions, most notable of which was the imposition of height restrictions on further development.
12 July 2004	Fortina requested the Government to relinquish the contractual conditions relating to a divided portion of the site acquired by virtue of the 2000 Deed. Specifically requested was the waiver of the restriction relating to the site’s exclusive use as an extension of the Fortina Hotel. At the time of the request, the area comprised a sixteen-storey tower block.
26 December 2006	Fortina agreed to pay the Government approximately €1,050,000 for this first waiver.

October 2008	The NAO established that the first waiver sought was not seen through, with final developments noted around October 2008. The reason why this process came to a halt remained unclear.
3 February 2017	The Lands Authority was established through the enactment of Chapter 563 of the Laws of Malta, thereby replacing the GPD. The Authority's first CEO, referred to as the former CEO Lands Authority, was appointed shortly thereafter.
22 March 2017	Fortina sought the clearance of the GPD for the submission of a development planning application for the site. The planned development comprised the demolition of the existing four-star hotel and the excavation of the site, and the construction of three levels of below ground car parking facilities, a luxury residential complex, additional floors on the existing five-star hotel tower and additional floors on the hotel's spa wing.
23 March 2017	The GPD indicated that it found no objection in principle to the submission of the development planning application that Fortina sought clearance for; however, it noted that clearance was being issued without prejudice to its final decision regarding any development permitted by the PA.
3 April 2017	A Notary Public, at the time a Government MP, submitted a request on behalf of Fortina to the Lands Authority for the waiver of certain restrictions imposed on the area earmarked for development. The waivers requested comprised permission to: construct two additional floors on part of the site; build residential property on another part, hence removing height and use limitations; and develop residential property on another part of the site, necessitating the removal of use restrictions. No acknowledgement or response by the Lands Authority was traced by the NAO.
25 April 2017	All the powers previously held by the Commissioner of Land were transferred to the Lands Authority through Legal Notice 121 of 2017. The Government Lands Act was also enacted, regulating "the administration of Government land, ... [including] the grant of title to any immovable property of the Government or that which is administered by such Government, and to provide for matters connected therewith and ancillary thereto."
6 June 2017	Fortina applied for a planning permit, under reference PA/06252/17, for development that comprised the demolition of the existing 4-star hotel and part of the 5-star hotel, and excavation of the site. In addition, Fortina sought permission for the construction of underground car parking facilities, the construction of a ground floor retail complex (a mix of Class 4B and Class 4C outlets) under a landscaped public open space, and the building of a residential complex rising to a maximum of 15 floors above street level. The development was also to include the complete refurbishment of the existing 5-star hotel, the construction of five additional floors on the hotel tower and the construction of a stepped hotel block rising to 13 floors above the plaza, in place of one of the hotel's wings.
30 September 2017	The former CEO Lands Authority requested a meeting with three architects whose services were being sought for the valuation of the Fortina site.
11 October 2017	The authorisation of the former CEO Lands Authority was sought for the replacement of one of the architects originally approached, with the nominated substitute endorsed the day after. The three architects who accepted this assignment are hereinafter referred to as the Architects Lands Authority. The NAO was not provided with the terms of reference set by the Lands Authority.

17 October 2017	The Architects Lands Authority submitted a valuation relating to a site forming part of the Fortina Hotel to the Lands Authority. The Architects Lands Authority determined that the value of the change of use of the site was €12,167,000. The NAO noted that the copy of the valuation made available by the Lands Authority was unsigned and bore a handwritten note indicating that this was a draft.
12 April 2018	The PA approved Fortina's application for development of the site under reference PA/06252/17. The permit allowed for the demolition of the existing 4-star hotel and part of the 5-star hotel, the construction of underground parking, and the development of retail and residential complexes. In addition, the permit granted the right for the extension and refurbishment of the existing 5-star hotel.
13 April 2018	Pursuant to a chance encounter with one of the Architects Lands Authority, the former CEO Lands Authority made a few enquiries regarding the valuation that had been submitted several months earlier. The former CEO Lands Authority enquired about the cost of construction being low, that capital gains were to be included in the valuation, how certain values were arrived at and whether the build-up potential of the hotel was to be reduced in view of the pending planning permit.
18 April 2018	The Architects Lands Authority expressed concern regarding the inclusion of capital gains as a cost in the valuation. In correspondence exchanged among the Architects Lands Authority, one noted that "The disclaimer is necessary as under normal circumstances this factor is not included in valuations, but if we were instructed to do so, we must make it clear that this was the case."
18 April 2018	In another application, bearing reference PA/03913/18, Fortina sought the PA's approval for the change of use of a number of residential units and part of the retail element at ground floor to offices.
20 April 2018	A revised valuation was submitted by the Architects Lands Authority following internal discussions on the points raised by the former CEO Lands Authority. Two key changes were made to the valuation, that is, the inclusion of costs associated with the demolition of existing structures and the application of a deduction for duty on documents and transfers. The revisions resulted in a value of the change of use of the site of €8,100,000.
May 2018	The tenure of the former CEO Lands Authority came to an end.
1 July 2018	The CEO Lands Authority was appointed.
27 September 2018	Reported in the press was that the PA approved the proposed Fortina development. Also cited was that, according to the CEO Lands Authority, discussions were still ongoing, and any agreement would be referred to Parliament. Later press coverage, on this day, indicated that follow-up questions were sent to the CEO Lands Authority regarding common business interests with the owners of the Fortina Hotel.
28 September 2018	During a meeting of the BoG Lands Authority, the CEO Lands Authority disclosed his shareholding in two companies which had shareholders in common with those of the Fortina Hotel. The CEO Lands Authority indicated that he had divested his shareholding in these companies, and that, while the sale of shares in one of the companies was concluded, those of the other were pending. He indicated that the Minister and the Parliamentary Secretary were informed and notified the Board that he did not want to participate in any discussions regarding Fortina. The Board considered who to nominate as a replacement.

4 October 2018	The PA approved Fortina’s application under PA/03913/18 for the change of use of part of its residential and retail elements to offices.
24 October 2018	Correspondence submitted by Fortina to officials of the Lands Authority wherein reference was made to a meeting held at the Authority regarding the Fortina development project. Fortina enquired whether there were any further developments regarding its request.
25 October 2018	Fortina’s correspondence was internally redirected to the CEO Lands Authority, who in turn referred the matter to the BoG Lands Authority.
26 October 2018	The BoG Lands Authority discussed the correspondence by Fortina and decided that a memorandum was to be prepared by the Senior Officer Lands Authority, which was to include details relating to the case and the conditions imposed through the relevant contract, the request by Fortina, the decisions that were necessary and by means of which procedure.
2 November 2018	The decision to engage the Senior Officer Lands Authority was ratified by the BoG Lands Authority.
11 November 2018	The Senior Officer Lands Authority refused the appointment by the BoG, arguing that the assignment required an economic, commercial and financial analysis. He suggested the appointment of a person/s, totally independent of the Authority, with the necessary experience to undertake this analysis, particularly in view of the substantial profit implications arising from the decisions to be taken.
16 November 2018	The BoG Lands Authority discussed the refusal by the Senior Officer Lands Authority and resolved to assess alternative measures.
30 November 2018	The Chair BoG Lands Authority informed the Board of a meeting held with a professional services firm wherein the latter declared a conflict of interest, having already provided advice to Fortina, leading the NAO to understand that the Authority was interested in engaging the firm to undertake the analysis in line with that proposed by the Senior Officer Lands Authority. The BoG was also informed that the most recent request by Fortina was for the development of residential apartments and debated whether a meeting with Fortina was to be held to clarify its request.
6 December 2018	The Notary Public wrote to the Chair BoG Lands Authority highlighting that the PA had approved the development of residential buildings, offices and commercial outlets on the site. For this reason, Fortina requested the revocation of all contractual use restrictions to allow for any development on site approved in the planning permit without limitation. No acknowledgement or response by the Lands Authority was traced by the NAO.
12 December 2018	The Chair BoG Lands Authority informed the Board of a meeting he had with the Notary Public representing Fortina and of a document provided whereby reference was made to the planning permit issued, in view of which the requested change of use of the site was being extended beyond residential development to now encompass office use and commercial outlets. The Architects Lands Authority joined the meeting of the BoG and indicated that they were only requested to value a portion of the site and that they were instructed to apply a deduction corresponding to the duty on documents and transfers payable, a practice “not usually catered for in normal valuation methodology”. The BoG understood that it was necessary to determine the parts of the site for which waivers from contractual obligations were required and asserted that a review of all contracts was required and resolved to appoint an official of the Lands Authority to establish the relevant facts.

18 December 2018	The Secretary BoG Lands Authority informed the Senior Manager (Contracts) Lands Authority of an assignment tasked by the Board whereby she was to prepare a memorandum explaining the facts of the case and the conditions emanating from the relevant contracts. That same day, the Senior Manager (Contracts) notified the Secretary that she accepted the assignment.
January 2019	A status report was drawn up by the Senior Manager (Contracts) Lands Authority. Noted in the status report was that the two valuations drawn up by the Architects Lands Authority corresponded to one of the four sites for which waivers were sought by Fortina and that the valuation "... does not seem to have taken into consideration the other 3 waivers requested by the company. This statement has to be specifically clarified with the architects." The other request for waiver received from the Notary Public acting on behalf of Fortina was also referred to, with the Senior Manager (Contracts) noting that it was unclear whether this request was taken into consideration by the Architects Lands Authority.
undated	In correspondence exchanged between a professional services firm and Fortina, the former concluded that the revised fair value adjustment of €2,721,506 proposed by Fortina would appear to fairly reflect the difference between the in-use value of the site at the valuation date, inclusive of all amenities, and the value of the site without restrictions on alternative use.
4 February 2019	Unprompted, Fortina prepared feedback in response to the valuation drawn up by the Architects Lands Authority despite this not being disclosed by the Authority, noting that the valuation should have included two parcels of land measuring 565 and 625 square metres. Citing the €8,100,000 valuation arrived at by the Architects Lands Authority, Fortina identified several points of divergence and proposed adjustments resulting in the downward revision of the value of the waivers encumbering the sites, proposed as €2,721,506. This submission by Fortina was not acknowledged or replied to by the Lands Authority.
4 February 2019	In an internal report drawn up by a Lands Authority official, it was noted that Fortina were not in agreement with the €8,100,000 valuation arrived at by the Architects Lands Authority and maintained that the value of the removal of the conditions was €2,721,506. The report concluded that the changes in conditions were to be decided through a parliamentary resolution and recommended that the BoG Lands Authority consider whether it was to seek the advice of an audit firm.
8 February 2019	A meeting was held by the BoG Lands Authority during which two important developments were registered. First was the Board's acknowledgement of the status report drawn up by the Senior Manager (Contracts) Lands Authority. Second was that the BoG Lands Authority decided that an audit firm was to be engaged to evaluate the requests by Fortina, taking into account the valuations by the Architects Lands Authority and the status report.
1 March 2019	The BoG Lands Authority was reconvened. The NAO inferred that the Lands Authority had, in the weeks prior, identified and approached the audit firm it sought to engage and received its proposed terms of reference. The members of the Board proposed some amendments to the terms.
5 March 2019	The audit firm submitted its terms of engagement, later countersigned by the Chair BoG Lands Authority. Specified in the scope of work was that the engagement comprised a comprehensive review of all waivers sought by Fortina and a valuation thereof.
12 March 2019	The audit firm issued an invoice addressed to the former CEO Lands Authority for the initial 20 per cent of the fee payable. The Authority settled this invoice shortly thereafter.

20 March 2019	The Chair BoG Lands Authority countersigned the terms of engagement submitted by the audit firm.
25 March 2019	The audit firm's valuation report, titled 'Lands Authority: Evaluation of Fortel Services Limited's waiver request', was submitted to the BoG Lands Authority. The value of the waivers arrived at by the firm was €18,341,559 in present terms or €23,887,942 if settled on completion.
3 April 2019	At the request of Chair BoG Lands Authority, a meeting was held with the audit firm during which the contents of the report were discussed.
12 April 2019	The audit firm issued an invoice addressed to the Chair BoG Lands Authority for the remaining 80 per cent of the fee payable.
29 April 2019	Correspondence submitted by the Chair BoG Lands Authority to a bank, whereby he confirmed that the Authority was in negotiations with Fortina regarding waivers to be granted by the Government. Noted was that negotiations had reached a very advanced stage, and that agreement was expected by end June 2019.
10 June 2019	Fortina Developments Ltd wrote to the Chair BoG Lands Authority indicating that, despite the validity of its valuation, it agreed to increase its payment obligation to the Government to €8,100,000. However, Fortina specified that €1,000,000 would be settled on the signing of the deed, while the remaining €7,100,000 was to be paid within ten years from entry into the deed or by part payment on the sale of residential units that were to be developed on the site.
14 June 2019	The Chair BoG Lands Authority informed the Board of the letter received from Fortina. The Government MP on the BoG Lands Authority noted that Fortina's acceptance of the Government's valuation was to be referred to the Minister since the process was to be concluded through a parliamentary resolution. While acknowledging that the valuation report by the audit firm engaged by the BoG Lands Authority had not yet been received, the Board resolved that the Chair BoG Lands Authority was to submit a copy of the correspondence and supporting documentation received from Fortina and the original valuation by the Architects Lands Authority.
17 June 2019	The Chair BoG Lands Authority submitted correspondence to the Minister and the Parliamentary Secretary. Enclosed with this correspondence were several documents of relevance to the matter, including the letter by Fortina of a few days prior, the valuation by the Architects Lands Authority, the valuation subsequently established by Fortina, the requests by the Notary Public acting on behalf of Fortina of April 2017 and December 2018, the planning permit for development intended at the site, and the status report drawn up by the Senior Manager (Contracts) Lands Authority. The Minister was requested to consider whether a parliamentary resolution was to be presented.
24 June 2019	The Parliamentary Secretary submitted a draft of the memorandum intended for Cabinet for the consideration and possible revision of the Chair BoG Lands Authority. Later that day, the Chair proposed a few amendments.
27 June 2019	According to the Minister, the matter relating to the rescission of conditions burdening the Fortina site was referred to Cabinet.

5 July 2019	A parliamentary resolution was referred for the consideration of the NAOAC by the Minister. Included in the resolution was information relating to the waivers sought, the disparate valuations by the Lands Authority and Fortina, the payment terms proposed by the latter, the legal basis for the transfer of Government property through a parliamentary resolution and reference to a draft deed. Aside from the resolution, members of the NAOAC were furnished with the draft deed and two site plans.
8 July 2019	An Opposition MP on the NAOAC requested the Committee Clerk to provide a copy of all documentation relating to the valuation exercise undertaken by the Lands Authority in relation to the request by Fortina.
9 July 2019	The Committee Clerk NAOAC relayed the request by the Opposition MP to the CEO Lands Authority, copying the Chair NAOAC and the Permanent Secretary MTIP. The Permanent Secretary requested the Chair BoG Lands Authority to provide the requested documentation, which was made available that same day and relayed to the NAOAC shortly thereafter.
10 July 2019	The parliamentary resolution was discussed during a meeting of the NAOAC. Several concerns were raised by the Opposition MPs on the Committee, primarily relating to the discrepancies and inaccuracies between the areas as described in the draft contract and the site plans, the fact that two years had elapsed since the valuation by the Architects Lands Authority, that this valuation – which was limited to one area – was being considered as the compensation due to the Government for all areas for which waivers were sought, and that the payment terms could result in the Government granting an interest-free loan of €7,100,000 for ten years. Although the parliamentary resolution was approved by the NAOAC, unanimous agreement was not reached, necessitating that the resolution be referred for further discussion in Plenary.
12 July 2019	Fortina submitted correspondence to the Minister, the Parliamentary Secretary and the Chair BoG Lands Authority maintaining that the discussions held in the NAOAC misrepresented the facts surrounding the valuation for lifting encumbrances on its land and sought to rectify these misconceptions.
17 July 2019	During the parliamentary debate concerning the resolution put forward for the waiver of restrictions imposed on the Fortina site, the Opposition raised several concerns regarding the comprehensiveness of the valuation, with several areas of the site for which waivers were sought omitted, revisions to the valuation, and the payment terms set, among other issues. In turn, the Government countered by stating that the process was compliant with the applicable regulatory framework and overseen by the Lands Authority, independent of ministerial intervention, and that the project was to be of benefit. The resolution passed with 34 votes in favour and 27 against.
26 July 2019	In a meeting, the BoG Lands Authority acknowledged the passing of the parliamentary resolution for the waiver of conditions burdening the Fortina site and authorised the Senior Manager (Contracts) Lands Authority to appear on behalf of the Authority in the deed of amendment that was to be entered into. Noted in the minutes was that the Opposition MP on the BoG Lands Authority objected to the transaction.

26 July 2019	The Deed of modification and termination of contractual conditions was entered into between the Government and Fortina. Through this Deed, the several waivers sought by Fortina with respect to different parts of the site, relating to restrictions imposed on use for tourism purposes, and development and height limitations, were granted by the Government against payment of €8,100,000. Of this, Fortina was to pay €1,000,000 on the signing of the Deed and the remaining €7,100,000 within 10 years, interest-free, with part payments effected on the sale of each apartment.
31 July 2019	The audit firm issued an invoice addressed to the Chief of Staff OPM for the first instalment of the remaining 80 per cent due for services rendered to the Lands Authority in connection with the valuation of the waivers sought by Fortina.
31 August 2019	The audit firm issued another invoice addressed to the Chief of Staff OPM for the second tranche of the 80 per cent payable for services rendered to the Lands Authority in connection with the valuation of the waivers sought by Fortina.
12 September 2019	The audit firm issued a credit note addressed to the former CEO Lands Authority offsetting the 80 per cent of the fee due.
30 September 2019	The audit firm issued the final invoice addressed to the Chief of Staff OPM for the third part of the 80 per cent payable for services rendered to the Lands Authority in connection with the valuation of the waivers sought by Fortina.
23 October 2019	All remaining invoices issued by the audit firm were paid by the OPM.
December 2020	The tenure of the CEO Lands Authority concluded.
February 2021	The incumbent CEO Lands Authority was appointed.
31 December 2024	By this date, of the €8,100,000 payable, Fortina effected payments to the Government amounting to €2,925,424, leaving a balance of €5,174,576. The outstanding amount is to be settled by July 2029.

5.2 Conclusions

5.2.1 In July 2019, the Government consented to the rescission of the waivers that burdened the site of the Fortina Hotel against the payment of €1,000,000 up front and €7,100,000 over a maximum of 10 years from the date of the Deed. In essence, the several height and use restrictions that emanated from the Deeds of 1991, 1996 and 2000, through which the Government originally transferred public land to Fortina, were rescinded through the 2019 Deed. The process of rescission was triggered by a request made by Fortina in April 2017, extended in December 2018 to allow for residential, commercial and office development on the site originally granted for tourism purposes. Hereunder are the key conclusions arrived at by the NAO following the review of this process.

5.2.2 To address the request by Fortina of April 2017, it was the responsibility of the Lands Authority to determine the value of the rescissions to be granted by the Government. The NAO ascertained that the Lands Authority complied with the legal requirement to obtain a valuation by three architects, for the value of the government land to be disposed of exceeded the prescribed threshold of €400,000. However, the NAO concluded that the terms of reference provided to the Architects Lands Authority were grossly inadequate, as these did not consider all requests for waiver made by Fortina. Although the terms of reference set by the Lands Authority were not documented,

the Architects Lands Authority asserted that they were instructed to only value one part of the site by the former CEO Lands Authority, a fact that was not contested by the Authority. The Lands Authority's failure to establish terms of reference that adequately reflected the requests submitted by Fortina and what was eventually disposed of by the Government set the process off in an inauspicious manner. This failure in governance on the part of the former CEO Lands Authority is a matter of grave concern to the NAO; however, this is partially mitigated by the fact that primarily the BoG Lands Authority and others were made aware of the incomplete valuation yet either did not take or follow through on corrective action.

5.2.3 The valuation by the Architects Lands Authority, dated October 2017, established that the Lands Authority was to levy a charge of €12,167,000 for the rescission of certain limitations on part of the Fortina site measuring 565 square metres. This valuation was revised to €8,100,000 by the Architects Lands Authority in April 2018. The NAO established that the valuation by the Architects Lands Authority was revised following changes proposed by the former CEO Lands Authority. One of the changes proposed – the inclusion of demolition costs – was accepted without objection and raised no concern to this Office. However, the proposed deduction of duty on documents and transfers drew the NAO's attention, as it was opposed by the Architects Lands Authority, elicited reservations from the BoG Lands Authority, and was considered anomalous by the Malta Tax and Customs Administration. Despite these reservations, the NAO could not reconcile the Board's unease with its lack of decisive action to address this irregular forgoing of tax. Of greater concern was the initiative taken by the former CEO Lands Authority in identifying elements of the valuation that could be contested in Fortina's favour but not acting with the expected level of diligence in safeguarding the Government's interests.

5.2.4 The 565 square metres valued at €8,100,000 by the Architects Lands Authority was one of four sites for which waivers were requested. Out of the three sites not valued by the Lands Authority, two had a monetary value, and measured 625 square metres and 23 square metres, while for the third, which measured 705 square metres, no charge ought to have been levied by the Government. It is with grave concern that the NAO noted that the former CEO Lands Authority did not request the Architects Lands Authority to establish compensation for all parts of the site over which the Government could levy a charge for the lifting of restrictions. The failure to value height and use limitations imposed on the 625 square metre area represented a significant omission on the part of the Lands Authority. The compensation that could have been secured by the Government for the lifting of these restrictions, as later attested by the valuation provided by Fortina, was considerable. The area of 23 square metres, originally intended for tourism-related use, was now designated as a public open space based on Fortina's request. An argument could be made that, given its small scale, the compensation due to the Government was not material; however, its realisable value was to be seen in terms of the applicability of the Floor Area Ratio Policy, through which Fortina could develop additional floors on the tower situated elsewhere on the site. Another part of the site, measuring 2,380 square metres and still subject to height restrictions, was similarly redesignated as a public open space instead of its previous use for tourism purposes. This change carried considerable implications, for the reclassification of the 2,380 square metres allowed Fortina to capitalise on the site's development potential through the application of the Floor Area Ratio Policy. Having considered the waivers requested by Fortina, the NAO is of the opinion that the valuation established by the Lands Authority grossly

misrepresented and understated the value of that to be relinquished by the Government. This failure was perpetuated by the BoG Lands Authority that, despite being aware of the gaps in the valuation – with attention no less drawn by Fortina – did not take decisive corrective action.

5.2.5 In July 2018, a new CEO Lands Authority was appointed. Under ordinary circumstances, a change in leadership would not be expected to materially influence how the Lands Authority processed a request of the nature submitted by Fortina. However, in this case, this appointment resulted in the BoG Lands Authority assuming a more direct and active role in the processing of the request. This development was precipitated in late September 2018, when, following enquiries by the media, the CEO Lands Authority declared a conflict of interest in the matter, on grounds of having shared business interests with the proprietors of the Fortina Hotel. Nonetheless, the CEO Lands Authority asserted that, from the time of his appointment, he deliberately refrained from participating in any discussions and/or negotiations related to the request by Fortina. Requested by the NAO to clarify whether he had engaged in any discussions or interactions with Fortina at any point, the CEO Lands Authority excluded having taken any decisions, undertaken any material actions, or engaged in any conduct that could have influenced the course of decisions or actions. However, the CEO Lands Authority did not exclude the possibility of having been asked to provide updates on progress, understood by the NAO as reference to information provided to Fortina in response to enquiries made. Notwithstanding this, the CEO Lands Authority maintained that he would not have entered into substantive discussions or interactions on the matter and would have referred such enquiries to the BoG Lands Authority.

5.2.6 The BoG Lands Authority sought to mitigate the conflict of interest of the CEO Lands Authority and establish a clear understanding of the facts of the case. The need for decisive action became more pronounced in December 2018, when Fortina broadened its request for the revocation of all contractual use restrictions to allow for any development on site approved by the PA. At the same time, following submissions to this effect by the Architects Lands Authority, the Board became aware that not all waivers were valued. To this end, after its futile attempt at engaging a professional services firm to value the waivers sought, the BoG Lands Authority resolved to appoint the Senior Manager (Contracts) Lands Authority to establish a comprehensive understanding in the form of a status report. Noted in the status report, drawn up in January 2019, was that the revised valuation pertained solely to one of the four sites for which waivers were originally requested and that it was unclear whether Fortina's additional request for the lifting of all restrictions had been brought to the attention of the Architects Lands Authority. The NAO established that the status report provided the BoG Lands Authority with a comprehensive overview of the waivers requested by Fortina, those valued by the Architects Lands Authority, and those for which no valuation was obtained. The status report was discussed by the BoG Lands Authority on 8 February 2019, consequently implying that the Board had effectively established a clear understanding of the principal issues concerning the Fortina site, namely, that not all waivers had been valued and that duty on documents had been anomalously deducted.

5.2.7 It was with concern that the NAO noted that, prior to the BoG Lands Authority meeting held on 8 February 2019, the valuation prepared by the Architects Lands Authority had somehow been forwarded to Fortina. This was evidenced in the counterproposal submitted by Fortina on 4 February 2019, which made direct reference to the valuation by the Architects Lands Authority. The NAO

considered the disclosure to Fortina detrimental to the Lands Authority, as the valuation by the Architects Lands Authority was still under review by the Board. This disclosure was irrational and counterproductive to the Lands Authority, given that the waivers being requested, and whether they had been valued, was still being determined by the Authority. Although Fortina assigned a value of €2,700,000 for all the waivers sought, in its valuation Fortina drew attention to the parts of the site not valued by the Lands Authority and assigned a substantial value thereto, thereby heightening the NAO's concerns. No reasonable explanation was put forward by either the Lands Authority or Fortina as to how a sensitive document, meant to be accessible solely to the former, ended up in the possession of the latter, raising serious concerns regarding the transparency of the process and the integrity of those involved. The nature of this interaction remained a matter of grave concern to the NAO, which underscored the implausibility of a scenario in which, following months of sending correspondence without an official reply, Fortina suddenly received the valuation without context or notice.

5.2.8 Another aspect of concern regarding Fortina's counterproposal, discussed by the BoG Lands Authority in its meeting of 8 February 2019, was that no Board member questioned how a 'counterproposal' had been submitted in the absence of any proposal made by the Lands Authority. The unsolicited nature of Fortina's submission should have elicited discussion within the Board, yet no such deliberation was evident in the records reviewed by the NAO. Consistent with previous practice, the valuation submitted by Fortina was neither acknowledged nor addressed by the Lands Authority. While this lapse in communication may seem insignificant in isolation, the Lands Authority's consistent failure to respond to or record its response to Fortina's submissions raised further concern about the nature of the exchanges between the parties. This was compounded by the fact that minutes of the BoG Lands Authority did not reflect any concern over the evident leaks related to its processing of Fortina's request. That the request proceeded regardless despite these issues implied ongoing yet undocumented communication, undermining the level of accountability and responsibility expected in a process of such materiality.

5.2.9 Aware of the gaps in that valued by the Lands Authority, the BoG Lands Authority resolved to engage an audit firm to determine a fair value for all waivers requested by Fortina. This was actioned by 1 March 2019, with an audit firm appointed and the relevant terms of reference established. Effectively, the actions of the BoG Lands Authority to assign a professional services firm to value the site, to task the Senior Manager (Contracts) Lands Authority to prepare a status report and to engage an audit firm to assess the value of all waivers sought, was consistent with the Board assuming the role of Acting CEO in terms of the Lands Authority Act. The NAO maintains that the governance structure of the Lands Authority was compromised when the BoG Lands Authority assumed an executive role in processing Fortina's request, a responsibility that, according to the Lands Authority Act, should have been borne by a delegated official of the Authority given the CEO Lands Authority's declared conflict of interest. This shift in responsibilities blurred the distinction between the Board's oversight function and its assumed executive duties, raising concerns of non-compliance with the Lands Authority Act and creating vulnerabilities that enabled the fraudulent exploitation of deficiencies that arose. The complexity and materiality of the case required focused executive input, a function that the BoG Lands Authority was not positioned to provide given its inherent constraints.

- 5.2.10 Despite its reservations, on 10 June 2019, Fortina agreed to pay the Government €8,100,000 in settlement of the waivers requested. This was discussed by the BoG Lands Authority on 14 June 2019, with the Board resolving to forward the relevant documentation to the Minister, given that the process was to be finalised through a parliamentary resolution. Two concerns emerged in relation to the agreement being reached in this manner. The first concern raised by the NAO is that Fortina's correspondence was again unprompted. This Office deemed this situation absurd, for reaching agreement logically requires the disposing party, in this case the Lands Authority, to inform the acquiring party of the assigned value of the asset being transacted. Inexplicably, at no point during the process was the NAO provided with any record indicating that such a disclosure was made by the Lands Authority to Fortina. The second concern pertains to the fact that Fortina had initially valued all sites for which waivers were requested at several multiples less than the value arrived at by the Lands Authority for only one part of the site. Despite this significant disparity and the absence of any documented discussions between the parties, agreement was inexplicably reached. It is within this context that the NAO deemed Fortina's unprompted letter of acceptance as questionable, a situation made surreal, and consequently suspect, by the BoG Lands Authority's failure to question how agreement was reached from a position of complete standstill.
- 5.2.11 The decision of the BoG Lands Authority to notify the Minister was considered illogical by the NAO as the Board had already established, unequivocally, that the waivers requested by Fortina had not been comprehensively valued, a situation adverse to the interest of the Government. Moreover, the BoG Lands Authority had agreed that these gaps in valuation were to be rectified through the engagement of an audit firm, which firm was engaged several weeks prior. Despite acknowledging that the audit firm's valuation report was still pending, on 14 June 2019, the Board illogically resolved to refer the matter to the Minister. This decision by the BoG Lands Authority drew the NAO's attention on two counts: first, was whether the Board's action constituted a formal recommendation; and second, was the fact that the Board had effectively referred a process that was incomplete.
- 5.2.12 The NAO deemed the neutral stance of mere referral assumed by the BoG Lands Authority to be in breach of the Lands Authority Act, for the Act required a vote either in favour or against a recommendation. While the minutes made no reference to a vote being taken, the minutes indicated that the Board supported the Government's waiver of the conditions burdening the Fortina site. This understanding was based on the assertion that "... the Minister was to be notified once the process was to be concluded through a Parliamentary Resolution." This Office considered the explanation of mere referral by the BoG Lands Authority untenable, as the Act clearly imposed on the Board a duty to take a definitive position, whether in favour or against. As regards the second issue, the NAO noted with grave concern that the BoG Lands Authority was fully aware it was referring an incomplete valuation to the Minister, a course of action against the interests of the Government. Rather than proceeding with such a referral, the more logical and appropriate response by the BoG Lands Authority to Fortina's correspondence should have been reference to a valuation process that was still ongoing.

- 5.2.13 Despite the irrationality of the action taken when referring an incomplete process to the Minister, all involved denied being subject to any pressure or undue influence. Nevertheless, the NAO cannot reconcile how the BoG Lands Authority acted independently, as its decision to refer the matter was irrational and effectively reversed the actions taken in the preceding weeks towards establishing a fair value for the site.
- 5.2.14 The decision of the BoG Lands Authority was actioned on 17 June 2019, with the Chair BoG Lands Authority submitting correspondence and relevant documentation to the Minister and the Parliamentary Secretary. Enclosed in this correspondence were Fortina's letter of acceptance, the valuations prepared by the Architects Lands Authority and Fortina, the list of waiver requests submitted by Fortina, the planning permit, and the status report. The NAO found that the correspondence submitted by the Chair BoG Lands Authority to the Minister and the Parliamentary Secretary fell short of fulfilling the Board's obligations under the Lands Authority Act. The Act mandated that the BoG Lands Authority was to make a recommendation, either in favour or against a particular course of action, to the Minister. In this instance, the Chair did not indicate the Board's recommendation. Instead, the correspondence selectively emphasised certain developments, such as the revision to the valuation by the Architects Lands Authority brought about by a deduction in tax payable. Crucially, other key facts were either vaguely referenced or minimally addressed, such as the additional waivers sought by Fortina and that the valuation by the audit firm remained pending. Graver still was that other issues were omitted altogether, such as the gaps in the valuation process, the fact that several of the waivers requested had not been valued, and that the value of €8,100,000 corresponded to only one part of the site. The submission of supporting documentation did not shift the decision-making responsibility from the BoG Lands Authority to the Minister but rather represented a subtle attempt to facilitate the Board's abdication of its duty to decide.
- 5.2.15 Despite what was recorded in the minutes of the BoG Lands Authority meeting of 14 June 2019, and what was stated by the Chair in the referral to the Minister and the Parliamentary Secretary on 17 June 2019 – that the audit firm's valuation report was still pending – the NAO ascertained that the valuation report had been drawn up. This Office obtained a copy of this report directly from the audit firm. The valuation report titled 'Lands Authority: Evaluation of Fortel Services Limited's waiver request', was dated 25 March 2019 and addressed to the BoG Lands Authority. Considering all parameters, the audit firm determined the value of the waivers to be granted by the Government as €18,341,559. In the event that the Lands Authority consented to the deferral of the payment until completion of the development, the amount due by Fortina for the waivers would increase to €23,887,942.
- 5.2.16 Although the audit firm's valuation report was addressed to the BoG Lands Authority, the NAO established that the report was withheld from the Board by the Chair BoG Lands Authority. The NAO's gravest concerns emerge in this respect. Based on the evidence reviewed, the NAO concluded that the Chair's assertion that the report remained pending was false. This misrepresentation served the interests of third parties rather than the public interest. Evidence obtained by this Office indicated that the Chair acted with intent to suppress the report, for he informed the audit firm that the substantially higher value resulting from the comprehensive valuation of the requested waivers would create difficulties. Through his actions, the Chair BoG

Lands Authority misled the Board, the Minister, the Parliamentary Secretary, and ultimately Parliament, when he falsely documented that the report was still pending when, in fact, it was already in his possession. Nonetheless, the NAO cannot exclude the involvement of other parties in this matter, as evidence associated with subsequent developments lends credence to this. One questions Fortina's acceptance of the valuation by the Architects Lands Authority some weeks after the audit firm had established a higher valuation in its report to the Chair. The absence of any documented communication during this period and the timing of Fortina's acceptance was deemed suspect by the NAO.

5.2.17 Following the conclusion of its engagement, the audit firm issued an invoice to the Lands Authority on 12 April 2019 for the remaining 80 per cent of its fee, as 20 per cent had been settled by the Authority on engagement. This invoice was addressed to the Chair BoG Lands Authority on his instruction. The NAO established that this outstanding amount was not settled by the Lands Authority, with a credit note issued by the audit firm on 12 September 2019. The audit firm informed this Office that the Chair BoG Lands Authority had instructed it to invoice the OPM instead and refer same for the attention of the Chief of Staff OPM. Shortly thereafter, the Chief of Staff OPM convened a meeting with the audit firm. The NAO considered the involvement of the Chief of Staff OPM in settling fees owed by the Lands Authority to the audit firm as anomalous and questionable. While the Chief of Staff OPM claimed to have no recollection of key developments relating to his involvement and denied authorising payments, this Office obtained evidence to the contrary. Though the involvement of the Chief of Staff OPM may appear innocuous when viewed in isolation, a more troubling understanding emerges when considered alongside other shortcomings. Firstly, the NAO reasoned that, other than the Chair BoG Lands Authority, the Chief of Staff OPM was another Government official who was aware of the audit firm's valuation. Secondly, there was no functional link between the role of the Chief of Staff OPM and the settlement of fees due by the Lands Authority. The NAO viewed the redirection of the invoice by the Chair BoG Lands Authority and the involvement of the Chief of Staff OPM when authorising payment as part of an effort to obscure the receipt of the valuation by the audit firm. Thirdly, the uniqueness of the circumstances surrounding the case would ordinarily facilitate recollection, as demonstrated by the audit firm in its recall of its meeting with the Chief of Staff OPM. His claim of no memory of such a meeting was, in the NAO's view, questionable.

5.2.18 One final point of grave concern to the NAO regarding the audit firm's valuation related to the Lands Authority's response to this Office's enquiries about the existence of the report. On 20 March 2023, the NAO requested a copy of the valuation from the Lands Authority. In a reply dated 27 July 2023, the incumbent CEO Lands Authority stated that the only references in the Authority's records relating to the advice sought from the audit firm were the minutes of the BoG Lands Authority meeting of 1 March 2019, the point at which the Board was informed of the firm's engagement, the minutes of the meeting held on 14 June 2019 wherein it was noted that the valuation report had not yet been submitted, and a reiteration of this claim in the letter of the Chair BoG Lands Authority to the Minister dated 17 June 2019. The NAO's concern in this regard emerged on learning that the Lands Authority was aware of and had access to the audit firm's valuation report by 3 April 2023, that is, several months before informing this Office that no such record existed in its files. This sequence of events broadens the Lands Authority's culpability in terms of its efforts to conceal the valuation. What was initially a failure rooted in

2019, when the report was first received and withheld, extended into 2023 through a continued and deliberate effort to withhold the report from the NAO.

- 5.2.19 The correspondence by the Chair BoG Lands Authority dated 17 June 2019 marked the point at which the further processing of the case shifted onto the Parliamentary Secretary and the Minister. The latter argued that his role, as defined in the Lands Authority Act, was constrained to issues of policy and that he intentionally avoided intervening in specific cases. According to the Minister, the establishment of the Lands Authority purposely resulted in the loss of ministerial control and general direction over the Authority, now responsible for the disposal of public land. In the case of Fortina, the Minister argued that this power was further delegated to the House of Representatives in terms of the Government Lands Act. Whilst the NAO noted that the Lands Authority Act provided for ministerial input in the scrutiny of decisions taken by the BoG Lands Authority, reference is made to the decision by the Commissioner for Standards in Public Life, Chief Justice Emeritus Joseph Azzopardi, in Case No. K/047 dated 14 August 2025.
- 5.2.20 In line with that stated, the Minister clarified that he was not directly involved in the Fortina transaction or its negotiations, emphasising that such matters were ordinarily managed by the Lands Authority, and possibly overseen by the Parliamentary Secretary. In turn, the Parliamentary Secretary stated that he had regular meetings with the Chair BoG Lands Authority and that, during one of these meetings, the Chair conveyed the rationale behind the Board's decision to refer Fortina's case to the Minister. According to the Parliamentary Secretary, the Chair also briefed him on potential questions that might arise in Cabinet and suggested responses thereto, and maintained that the Minister was regularly kept informed of developments.
- 5.2.21 On whether the BoG Lands Authority was merely referring the matter to the Minister and the Parliamentary Secretary for consideration or recommending the rescission of conditions on the Fortina site, the Parliamentary Secretary noted that he had evaluated the correspondence with the Chair BoG Lands Authority, and possibly with the Minister, and understood the Chair's proposal to seek Cabinet's authorisation as an outright recommendation rather than a referral. This was corroborated by the Minister, who informed the NAO that he had reprimanded the Chair BoG Lands Authority on receiving the correspondence, as its intent was unclear. The Minister deemed it unacceptable for the Chair to obscure the nature of what was being sought and informed him that if the referral was to be disregarded, then the Chair BoG Lands Authority should withdraw the correspondence and submit a revised recommendation. According to the Minister, the Chair responded that no such action was necessary, asserting that the recommendation was valid and that the Minister could proceed accordingly.
- 5.2.22 Some points of note arise in this regard. First, the correspondence submitted by the Chair BoG Lands Authority to the Minister mirrored the ambiguity recorded in the minutes of the Board meeting held on 14 June 2019, during which the Board opted to merely refer the matter for the Minister's consideration, an interpretation later confirmed by several members of the Board in submissions to the NAO. Second, the fact that the Minister challenged the Chair BoG Lands Authority to clarify whether the Board was making a recommendation or not further confirmed that the correspondence lacked the clarity and decisiveness expected of a recommendation.

- 5.2.23 The Minister was critical of the BoG Lands Authority's reluctance to assume responsibility and to provide a clear recommendation. The Minister referred to later exchanges between the Parliamentary Secretary and the Chair BoG Lands Authority during the drafting of the Cabinet memorandum in support of his argument that the Board was effectively recommending the transaction. According to the Minister, these exchanges confirmed that the Lands Authority acted within its civil and legal remit and recommended that the matter be referred to Parliament for a decision.
- 5.2.24 Although the correspondence submitted by the Chair BoG Lands Authority could have more clearly conveyed the key facts and issues concerning Fortina's request for waivers, this was partly mitigated by the inclusion of all relevant documentation necessary for a thorough understanding.
- 5.2.25 Regarding the valuation by the audit firm, the Parliamentary Secretary stated that he was unaware it had been submitted to the Chair BoG Lands Authority and that the Chair had never brought the report to his attention. He affirmed his belief in the Chair's integrity and argued that there might have been a reason why the audit firm's valuation report was not disclosed. The Parliamentary Secretary voiced discomfort with the situation, noting that it was easy to place blame on someone who was no longer able to refute or contest the claims made against him. In turn, the Minister questioned why, in the correspondence dated 17 June 2019, the Chair BoG Lands Authority informed him that the audit firm's valuation was still pending, when in fact it was not.
- 5.2.26 In further testimony to the NAO on the matter, the Minister stated that he was uncertain as to when he became aware of the audit firm's valuation, whether this awareness arose from discussions with the Chair BoG Lands Authority immediately following receipt of the correspondence or after the debate in Parliament in July 2019. According to the Minister, on learning of the audit firm's valuation, he sought clarification from the Chair BoG Lands Authority. The Minister alleged that the Chair informed him that the report had been commissioned to determine whether a further valuation was required, that it was flawed, that it was to be disregarded, that it had not been received, and that the Authority had opted to proceed with the valuation already in its possession. The NAO observed that the claims that the report was defective and that it had not been received were contradictory. Although the Minister acknowledged this contradiction, the issue remained unquestioned.
- 5.2.27 Concerned by the referral to Cabinet of what was an incomplete process, the NAO questioned the Minister and the Parliamentary Secretary as to whether any undue influence or pressure was exerted on them or by them to bring the process to a close. Both denied having been subjected to, or exerting, any form of coercion intended to compel action in a specific direction. Similar enquiries were made with Fortina, which categorically denied attempting to pressure or influence the Minister or the Parliamentary Secretary. Fortina asserted that, beyond the interactions disclosed to the NAO, neither the company nor its representatives exerted any pressure or sought to influence, in any manner, any officials or individuals involved in the process, including the Chair BoG Lands Authority. Although all maintained that no undue influence or pressure was exerted, concerns persist regarding the eventual referral to Cabinet.

- 5.2.28 The NAO established that the matter was discussed by Cabinet on 27 June 2019. Appended to the Cabinet memorandum was the letter and all supporting documentation sent by the Chair BoG Lands Authority on 17 June 2019. Although the NAO did not have visibility over Cabinet's decision, the Minister and the Parliamentary Secretary indicated that Cabinet approved the rescission of conditions encumbering the Fortina site. Following requests by the NAO, the Cabinet Office informed the NAO that this Office was not entitled to access the documents sought, a view confirmed by this Office's legal advisors. As a result, the NAO was unable to determine Cabinet's input in the process of authorisation.
- 5.2.29 Cabinet's approval allowed for the matter to be referred to Parliament, specifically, the NAOAC. Referral was made through a parliamentary resolution, which included information of Fortina's request for waivers intended to allow mixed-use development on sites acquired from the Government; Fortina's planned investment of €55,000,000; the Lands Authority valuation of €8,100,000; and Fortina's valuation of €2,700,000; and Fortina's acceptance of the former valuation subject to certain payment terms. Of concern to the NAO was what was not disclosed to the NAOAC in the parliamentary resolution. A key fact that was not included and deemed crucial by this Office for sound deliberation by the Committee was that the valuation of €8,100,000 corresponded to only one part of the site for which waivers were requested.
- 5.2.30 The NAO also noted a dissonance between the referral by the Chair BoG Lands Authority in his correspondence to the Minister and the Parliamentary Secretary, and the recommendation of the Board as cited in the parliamentary resolution presented to the NAOAC. The Minister reiterated that the Chair BoG Lands Authority did not object to the Minister's framing of the correspondence as a recommendation and maintained that no other Board member contested the portrayal of events as outlined in the parliamentary resolution. The Parliamentary Secretary corroborated several of the Minister's points. Conversely, the Deputy Chair BoG Lands Authority and several other Board members asserted that the wording of the parliamentary resolution misrepresented the Board's decision, that had merely agreed to compile and refer information to the Executive for it to consider any further parliamentary action.
- 5.2.31 The NAO considered the omission of certain facts in the parliamentary resolution as curtailing the NAOAC's ability to reach an informed decision. This, combined with the irrational conduct of the BoG Lands Authority, gave rise to the NAO's concerns regarding the inadequate safeguarding of the public interest.
- 5.2.32 In anticipation of the meeting of the NAOAC, on 5 July 2019, the members of the NAOAC were provided with a copy of the parliamentary resolution, a draft deed relating to the waivers to be granted by the Government and two site plans. On 8 July 2019, an Opposition MP, who was also a member of the NAOAC, requested a copy of all the documentation relating to the valuation exercise undertaken by the Lands Authority in relation to the waivers sought by Fortina, which request was acceded to on 9 July 2019. The parliamentary resolution proposing the rescission of conditions was discussed during the NAOAC meeting held on 10 July 2019. The NAOAC approved the parliamentary resolution against the payment of €8,100,000; however, since unanimous agreement was not reached, the resolution was referred for further discussion in Plenary.

- 5.2.33 The NAO notes the limited time allocated by the NAOAC for the review of the supporting documentation, particularly in light of the extensive documentation provided to the Committee. Nonetheless, during proceedings, attention was drawn to concerns relating to the fact that the valuation did not comprise all sites for which waivers were sought, the payment terms set, and the lapse since the date of valuation, among others.
- 5.2.34 In referring the matter to Plenary an opportunity was missed by the NAOAC to reassess a process characterised by notable shortcomings. Given the Committee's oversight role in matters involving the transfer of public land, this Office considers that further engagement with the Lands Authority was warranted.
- 5.2.35 On 17 July 2019, Plenary debated the resolution concerning the waiver of conditions requested by Fortina, presented by the Parliamentary Secretary on behalf of the Minister. Put to a vote, the resolution passed with 34 Government MPs voting in favour and 27 Opposition MPs against.
- 5.2.36 On 26 July 2019, the Deed of modification and termination of contractual conditions was entered into between the Government and Fortina. Through this Deed, the several waivers sought by Fortina with respect to different parts of the site, relating to restrictions imposed on use for tourism purposes, and development and height limitations, were granted by the Government against payment of €8,100,000. Of this, Fortina was to pay €1,000,000 on the signing of the Deed and the remaining €7,100,000 within 10 years, interest-free, with part payments effected on the sale of each apartment. This Office established that the payment terms outlined in the 2019 Deed were those proposed by Fortina.
- 5.2.37 The NAO assessed whether the Government secured fair payment terms. Of concern to this Office was the absence of any interest imposed on Fortina on the outstanding balance. This issue was further compounded by the fact that the Government revenue from the 2019 Deed hinged on when Fortina elected to sell residential units. By failing to levy interest on the unpaid balance, the Government rendered it more viable for Fortina to defer the sale of these units. While the NAO cannot precisely quantify the revenue foregone by the Government arising from the lengthy repayment period and the failure to impose interest, given that this depends on the timing of Fortina's sales, the potential loss could be substantial. As at end 2024, Fortina had paid €2,925,424 of the €8,100,000 due, leaving an outstanding balance of €5,174,576.
- 5.2.38 Of greater concern to the NAO were the substantial gaps identified in the Government's valuation of the waivers granted to Fortina. Given this lacuna, the NAO sought to determine the value of what was granted by the Government through the removal of conditions encumbering the Fortina site as effected in the 2019 Deed. To this end, in line with its practice, the NAO engaged an independent third-party to assist the Office in establishing the relevant value.
- 5.2.39 The Government's consent to waive development limitations on the site resulted in a substantial increase in the site's value to the benefit of Fortina. While the Lands Authority established a residual land value of €8,100,000, the NAO's valuation stood significantly higher at €21,000,000. Two key factors account for this discrepancy. Firstly, the NAO's valuation was based on 2019

rates – reflecting the point at which the Government consented to the removal of the conditions encumbering the site – whereas the Lands Authority relied on 2017 rates, corresponding to when the Architects Lands Authority were initially engaged. Secondly, and more critically, the NAO valued all the waivers sought by Fortina, while the Lands Authority limited its valuation to only one part of the site.

- 5.2.40 The discrepancy between the valuations clearly indicated that a true and fair value for the concession to Fortina through the lifting of conditions restricting development was not secured. The difference between the value assigned by the NAO and that determined by the Government for the waiving of conditions on the portions of the site previously acquired from the Government amounted to €12,900,000. While this Office recognises that property valuations involve a degree of subjectivity, the NAO asserts that subjectivity cannot be cited as a reasonable explanation for the extent of the disparity noted. Subjectivity may explain variations in rates; however, it cannot be invoked where the discrepancy stems from the Lands Authority's failure to value the conditions on significant portions of the site.
- 5.2.41 The extent and nature of the discrepancy in valuation drew the NAO's gravest concern, since safeguarding the public interest demanded otherwise. In the NAO's view, primary responsibility for this failure lies with the Lands Authority, for it was its duty to ensure that the Government secured value for money in the transaction. However, the process leading to the agreement with Fortina involved various other stakeholders. Ultimately, the impact of this was that the value realised by the Government was significantly less than that established by the audit firm engaged by the BoG Lands Authority and the valuation obtained by the NAO.
- 5.2.42 In sum, seen chronologically, despite Fortina's initial request for several waivers, only one was valued. This valuation was revised on dubious grounds by the Lands Authority, and when Fortina subsequently widened its request for waivers no corresponding revision to what was valued by the Authority was undertaken. Despite attempts to address the significant gaps in the valuation process, no true progress was registered. For even when a valuation to this effect was obtained by the Chair BoG Lands Authority, it was not disclosed to the Board. The parties then reached agreement without any apparent exchange or effort to negotiate being made, further casting doubt on the integrity of the process, more so when one considers that agreement was reached shortly after the audit firm submitted its report. The audit firm's report and the NAO's own independent verification brought to the fore the materiality of what ought to have been realised by the Government through this transaction, as opposed to what was paid by Fortina. In view of this chain of events and the evidence at hand, the NAO recommends that the pertinent authorities whose action is warranted, actively consider the possibility to further investigate this matter to address concerns that extend beyond the remit of this Office.

2024-2025 (to date) Reports issued by NAO

NAO Annual Report and Financial Statements

July 2025 National Audit Office Annual Report and Financial Statements 2024

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